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## Arbitrator Again In The Hot Seat In Newspaper Seizure Case

By **Caroline Simson**

Law360, New York (February 24, 2017, 4:46 PM EST) -- Two days after failing to disqualify a majority of an arbitration tribunal who last year rejected his \$330 million damages claim against Chile, an aging Spanish newspaper owner whose publication was seized in 1973 by Chilean dictator Augusto Pinochet again targeted one of those arbitrators in a disqualification bid.

Victor Pey Casado and a foundation that held his newspaper shares on Thursday said that their own appointed arbitrator, V.V. Veeder QC, should be disqualified from the proceedings, telling the International Centre for the Settlement of Investment Disputes that answers he supplied in connection with the **previous inquiry** into an alleged conflict of interest were "incomplete and misleading."

Pey Casado, who was a friend of Chilean socialist leader Salvador Allende whose newspaper, *El Clarin*, was occupied and seized after Pinochet and other military leaders overthrew Allende's government, alleges that Veeder has a conflict of interest because he is a member of the same chambers in England as two barristers representing Chile in cases before the International Court of Justice.

In the Feb. 23 document, Pey Casado takes aim in particular at a Dec. 11 email Veeder sent to the ICSID administrative council in response to the initial disqualification bid — which also targeted tribunal president Sir Franklin Berman QC — in which Veeder describes the circumstances that led to his resignation a decade ago as the presiding arbitrator in a proceeding involving Venezuela and a company called Vanessa Ventures Ltd.

In the email, Veeder said that Pey Casado's counsel "misunderstood" the relevant circumstances in the case. He resigned, he said, because he learned at the jurisdictional hearing that one of the counsel acting for Vanessa Ventures was an English barrister, Christopher Greenwood, who was, at that time, also co-counsel with him acting for a different party in a different and unrelated ICSID case. Like Veeder, Greenwood is a member of Essex Court Chambers.

But that didn't paint an accurate picture of what happened, Pey Casado said, because Veeder knew that Greenwood was representing Vanessa Ventures before the hearing. Veeder resigned only after counsel for Venezuela objected during that hearing because Greenwood and Veeder were members of the same chambers, Pey Casado said.

"The communication which Mr. Veeder sent to the Center on 11 December 2016 is therefore knowingly incomplete, even deceptive, inasmuch as it obscures this precise objection," he said in the French-only disqualification proposal.

In the December email, Veeder told the ICSID administrative council that Pey Casado misunderstood the relevant circumstances in the Vanessa Ventures case when he cited Veeder's resignation there in support of his challenge in the instant arbitration.

"I did not resign because he and I were both members of the same barristers' chambers," Veeder wrote. "Before the jurisdictional hearing, I did not know that this counsel was acting for Vanessa Ventures; nor could have I taken any legitimate steps by myself to check for any such

conflict owing to the confidential nature of every English barrister's professional practice."

Attorneys for the parties were not immediately available to comment on Friday.

The disqualification proposal was filed two days after Dr. Jim Yong Kim, chairman of the International Centre for the Settlement of Investor Disputes' administrative council, denied Pey Casado's bid to disqualify Veeder and Beraman because they are both members of Essex Court Chambers. Kim determined that Pey Casado had filed the proposal too late.

The disqualification bid is just the latest chapter in an arbitration that has been ongoing before ICSID for nearly two decades.

Last September, the tribunal decided on a resubmission proceeding that followed the partial annulment of an initial \$10 million award granted in 2008 to Pey Casado and a foundation that held his newspaper shares.

Both sides felt the 2008 award was wrong, leading to the partial annulment in 2013. Pey Casado, who turned 101 last year, insisted that the Chilean government had been unjustly enriched and sought between \$92 million and \$330 million in a new arbitration.

His claims were **rejected** in their entirety in September, however. Pey Casado and his foundation were ordered to pay \$160,000 in costs to Chile, according to the Sept. 13 award. The arbitration continues as the tribunal considers the claimants' request to rectify the September award.

Pey Casado and the President Allende Foundation are represented by Juan Garcés of Garcés & Prada Abogados and Carole Malinvaud and Alexandra Muñoz of Gide Loyrette Nouel.

Chile is represented by Paolo Di Rosa, Gaela Gehring Flores and Mallory Silberman of Arnold & Porter Kaye Scholer; Carlos Álvarez Voullième, Liliana Macchiavello and Victoria Fernández-Armesto of Chile's Investment Promotion Agency; and Jorge Carey, Gonzalo Fernández and Juan Carlos Riesco of Carey & Cia.

The case is Pey Casado et al. v. Republic of Chile, case number ARB/98/2, at the International Center for the Settlement of Investment Disputes.

--Editing by Bruce Goldman.