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Firm Wins Critical Ruling for Syracuse Mountains in PDVSA Bond Case

News & Events

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November 12, 2021 – HHR scored a crucial victory for Syracuse Mountains Corporation after defeating a motion to dismiss a breach-of-contract lawsuit against Venezuelan state-owned oil and gas company Petróleos de Venezuela S.A. (PDVSA) brought by Syracuse over defaulted principal and interest payments on \$376 million worth of bonds.

On Oct. 12, U.S. District Court Judge Valerie Caproni of the Southern District of New York rejected PDVSA's argument that Syracuse is precluded from suing to enforce five series of notes issued by PDVSA because the legal agreements these notes accompany have a "no action" clause.

"It is true that, as PDVSA points out, without the Indentures, the Notes would not exist," Judge Caproni wrote in her decision. "That truism, however, does not change the plain reading of the contracts. PDVSA cannot rely on contract language that simply does not exist."

Between 2007 and 2013, PDVSA entered into five agreements authorizing the issuance of a series of accompanying notes, of which Syracuse is a "beneficial owner." Syracuse beneficially holds notes with a collective principal value of over \$376 million.

According to Syracuse, beginning in late 2017, PDVSA stopped making interest payments on the notes and failed to pay the principal due on two of the notes. Syracuse filed suit against PDVSA in March 2021, pointing out two provisions in the agreements protecting Syracuse's right to sue under the notes.

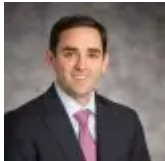
The first is a clause on "Cumulative Rights and Remedies," which ensures that "no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy." The second is a clause protecting the right of holders to receive payment on the notes, which includes "the right...to institute suit for the enforcement of any such payment."

In May, PDVSA filed a motion to dismiss, noting a provision in the agreement that states, "Holders may not enforce the Indenture or the Notes except as provided in the Indenture," to argue that the notes fall under the same pre-suit requirements as the agreements.

"This would affect the Court's analysis if anything about holders' ability to enforce the Notes as 'provided in the Indenture,'" she explained. "But the fact that the Indenture 'does not provide noteholders with an affirmative right to enforce the notes' does not necessitate a broader reading of the no-action clause than the plain language of the clause offers."

Michael DeBernardis leads the HHR team, which also includes Nicolas Swerdloff, Shayda Vance, Carter Rosekrans and Sarah Jackson.

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