Before the:

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
(ADDITIONAL FACILITY)

VANNESSA VENTURES, LTD. (Claimant)
v.
BOLIVARIAN REPUBLIC OF VENEZUELA

(ICSID Case No. ARB/(AF)/04/6)

May 7-11, 2007
Arbitration Suite of IDRC
70, Fleet Street
London, United Kingdom

Monday, 16th April 2007
DAY 1

List of Participants
Tribunal
Monday, 7th May 2007 8:02:13
(10.00 am) 10:00:40

PRESIDENT VEEDEER: Good morning, ladies 10:02:53
and gentlemen. We will start the first day of 10:02:53
this hearing in London. We need to go through 10:02:55
the introductions first. On my left, as you 10:03:03
will recognize, is my co-Arbitrator, Charles 10:03:07
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Brower. On my right is my co-Arbitrator, Jan Paulsson. To my extreme left is the Secretary of the Tribunal, Claudia Frutos-Peterson, and we would just like to go around the room first taking the Claimants and then the Respondents, identifying the persons present here today.

MR. LASKIN: John Laskin, counsel.

MR. TERRY: John Terry, counsel.

MS. MACLEAN: Julie Maclean, counsel.

MS. ALMEIDA: Marianna Almeida, counsel, in-house.

MS. FLEAR: Ruth Anne Flear, Secretary to John Terry.

MR. MORGAN: John Morgan. I am with Vannessa Ventures.


EXPLORIUM ENTERPRISES.

PRESIDENT VEEDER: Thank you very much. You are here at the request of the Claimants. Let's turn to the Respondent.

MR. GOODMAN: Good morning. My name is Ron Goodman, here for the Respondent. We will just go around the room, I think.

MR. DI ROSA: My name is Paulo Di Rosa.

MS. GEHRING FLORES: Good morning. Gaela Gehring Flores for Respondent.

MR. EVSEEV: Dmitri Evseev, also for Respondent.
We now need to deal with certain procedural matters in accordance with the agenda that was sent to the parties on the 4th of May. The first of those procedural matters is an application which was made by the Respondent by the letter dated 3rd May, 2007 from Winston & Strawn, to which the Claimant responded by letter of the 4th of May, 2007 from their legal representatives.

As recorded in the letter of the 3rd of May, 2007 from Winston & Strawn, this is an application for the withdrawal of Professor Greenwood from these proceedings. We understand this is still a live application in the light of the response of the 4th of May from the Claimant's legal representatives, and unless there are other matters which need to be addressed before we look at that application, we propose to start with that.

Is that agreeable to the Claimant?

MR. TERRY: Mr. President, just one point. You asked whether it was still a live matter. Mr. Goodman and I haven’t spoken about this since we had the exchange of correspondence. It appeared in his letter that he believed that there had been a sudden and recent appointment...
of Mr. Greenwood. We, of course, explain in our letter the history behind our retainer of Mr. Greenwood. I don't know whether this changes Venezuela's view, because the letter, with respect, it wasn't completely clear to us, it seemed to be a combination of this, as Mr. Goodman called it, "sudden appointment", and the issues of the disclosures from The Panel that raised their concerns, so we are not sure whether there is still an issue.

I certainly haven't heard anything further from my friend.

PRESIDENT VEEDER: Perhaps you can help us, because we noticed the date in your letter of the 4th of May, that Professor Greenwood was instructed in the, "Fall", of 2006. Could you be more precise as to what that date suggests?

MR. TERRY: In the fall of 2006, we had received in late August or early September the Memorial on Jurisdiction from Venezuela. That Memorial included in it the expert report of Yves Fortier. You will remember that we sent a letter to the Tribunal taking the position that in our view the matters dealt with in the Fortier report were more a matter of argument than expert evidence. Consistent with that, we retained Mr. Greenwood at the time being, in our view, as someone with expertise in public international law and treaty interpretation to
assist us in making the argument on the first jurisdictional point raised by Venezuela. That is the history behind the retainer at that point in time.

We were asked by ICSID to provide a list of the parties that were -- or the counsel and others who were attending for April 23rd. We did so. At that point on April 23rd the -- or shortly thereafter, and I forget the exact date on which ICSID would have transmitted the list to the Respondents, but they received the list, and then, of course, on April 27th followed with the disclosures from yourself, Mr. President, and Mr. Brower.

PRESIDENT VEEDER: Let's turn the floor to the Respondent. Is this a live application?

MR. GOODMAN: The application remains as written. The timing of it, of the retention, is, of course, interesting, the timing of when we found out about it was the -- was, I think, at the point that we were making. I should say that upon receipt of the letter of 4th May from my friend, the thing that also -- and also coming from the explanation we have just heard, it is also not clear at this point, given that he has tied it to the witness statement of Mr. Fortier and the exchange that was had with the Tribunal at that time -- I should say that the letters that were written to the Tribunal at that time.
We are not certain now what 
Mr. Greenwood's role is going to be, as to 
whether he's now being put on as an expert, 
which is what it seems now that since it is 
tied to the witness statement of Mr. Fortier. 
We will recall that the Claimants did have an 
expert -- that they submitted an expert 
opinion, Professor Macrea. 
Now it seems that we are not sure if 
Mr. Greenwood is being retained as counsel or 
as expert. We would object to, obviously, him 
being presented as an expert at this late 
stage, but we also retain the objections that 
we made in our letter of May 4th as counsel. 
MR. TERRY: Mr. President, may I simply 
clarify the role of Mr. Greenwood?
PRESIDENT VEEDER: Please do. 
MR. TERRY: Just going back, again, to the 
fall, you will recall that we did send a letter 
to the Tribunal on that issue. I don't believe 
that that was ever dealt with at the time. As 
a matter of prudence, in terms of having an 
expert report to respond to Mr. Fortier's, we 
did obtain the expert report of Donald Macrea 
at the time. That is our expert report. To 
the extent the Tribunal is going to rely on 
expert reports in those issues, it is the
Mr. Greenwood -- I can assure my friend is here solely in the role as counsel. The reason he's not in the room right now, sitting in the counsel's chair, is we thought it was appropriate, given the nature of this issue, that he sit outside until this matter could be determined.

PRESIDENT VEEDER: Well, the factual situation has been clarified. It is the position of the Claimant to have Professor Greenwood here as one of its legal representatives, and we understand, also, that, as such, he will be addressing the Tribunal by way of oral submissions to the Tribunal today. Is that right?

MR. TERRY: He will not -- our plan is, as we noted in the correspondence -- to do an opening today, which is not going to be more than about an hour to an hour-and-a-half. Mr. Greenwood, our plan would be to address the Tribunal later on in our argument solely on the matter of issue, solely in the role of counsel, making a presentation as counsel, arguing as counsel.

PRESIDENT VEEDER: As we also understand, this is a live application and it would now seem appropriate to hand the floor back to the Respondent to pursue the application as they wish, in the light of the letter of the 4th of June.
May, 2007 from the Respondents' legal representatives and the clarification that we have just heard this morning. So, the Respondent has the floor.

MR. GOODMAN: We accept the explanation of Mr. Greenwood being presented as counsel and not as expert, and we trust the Tribunal, of course, takes note of that. As for further exposition, I think the exposition is as set forth in the letter and we will leave it at that for your decision. Thank you.

PRESIDENT VEEDER: You have a right of response.

MR. TERRY: I take it, then, that we still do have a live issue despite the explanation. The only other points I would add, simply because Mr. Greenwood provided us with this information and the panel members will be aware of this as well, he explained in two of the arbitrations, I believe one involved Azerbaijan, one involves Uzbekistan, both of those, I understand, are at a very early stage. In one case there has been the procedural hearing only. In the other, I understand there hasn't yet been the procedural hearing, so that is additional information that Mr. Greenwood wanted us to pass on.

Of course, as we set out in the letter, we set out our views that in our view the
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co-Arbitrator role is not one that, we believe, 10:14:37
certainly from an objective perspective, would 10:14:40
reasonably lead to a problem with impartiality. 10:14:44

Unless you have any questions on our 10:14:49
submissions we have set out our submissions and 10:14:51
our view on this issue.

PRESIDENT VEEEDER: Thank you very much. 10:14:56

We have a certain number of questions, and the 10:14:57
first is; as you see, the Respondent is

invoking the IBA, "Guidelines on Conflict of 10:15:00
Interest in International Arbitration", 10:15:03

a private document, albeit published by the 10:15:07
IBA. If we look at General Standard 7, which 10:15:09
is at page 15 of the little booklet, it seeks 10:15:12

10:15:18
to impose a duty on parties to inform an 10:15:25
Arbitrator, the Arbitral Tribunal, the other 10:15:29
parties in the arbitration institution or other 10:15:33
appointing authority if any, about any direct 10:15:35
or indirect relationship between it -- I leave 10:15:39
out certain words -- and the Arbitrator.

Now, as we understand what you have said 10:15:44
this morning, confirming what was said in the 10:15:49
letter of the 4th of May, Professor Greenwood 10:15:51
was instructed by the Claimant at some stage 10:15:54
after the Memorial on Jurisdiction from the 10:15:56
Respondent, which was the 28th of August, 2006. 10:16:00

MR. TERRY: Yes. 10:16:03

PRESIDENT VEEEDER: And before the 10:16:12
preparation of the Counter-Memorial of the 10:16:14
Claimant that was submitted on the 15th of 10:16:17
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MR. TERRY: Yes.

PRESIDENT VEEDER: At the time when he was instructed, was any thought given to notifying the Tribunal, or the other party, of Professor Greenwood’s direct or indirect relationships between members of the Tribunal?

MR. TERRY: It wasn’t viewed — we were aware, I can say, because it is clear, we were aware that Mr. Greenwood was a member of the same chambers, Essex Chambers, as yourself, Mr. President. We discussed the matter with Mr. Greenwood, just to assess whether that would give rise to any conflict. We were certainly aware in Canada of the existence of the relationship between barristers within chambers as it is traditionally understood in England, and ourselves and Mr. Greenwood were not concerned by that relationship, and didn’t view that as a relationship which would give rise to a conflict of interest.

So, there was no — at that point there was no consideration given to the necessity of informing the Tribunal that Mr. Greenwood may play a role as counsel in this proceeding.

If I could just take a moment to look through the rest of Section 7?

MR. President, as I say, we were not focusing on the provisions of the IBA conflict
of interest rules, but if we look at the rules,  

the explanation to General Standard 7, on the  

next page, page 16:  

"In addition, any party or potential party  
to an arbitration is, at the outset, required  

to make a reasonable effort to ascertain or  
disclose publicly available information  

applying the general standard which might  
affect the Arbitrator's impartiality and  

independence".  

Although we weren't looking specifically  
at that standard, we were reflecting upon the  
same set of issues, and our view then and our  
view now would be that we would fall within  
those provisions, that it wouldn't be the kind  
of relationship that would give rise to -- as  
it says here, would affect the Arbitrator's  
impartiality and independence, and we remain of  
that view. The fact that there is a chambers  
relationship, as we have expressed in our  
letter, and as the IBA guidelines discuss in  
detail, that that relationship is not one that  
should give rise to an issue of impartiality  
and independence.

PRESIDENT VEEDEER: Thank you. Another  
question, and, again, since we are trespassing  
potentially on issues of privilege we don't  
require an answer, at least not for the time  
being, but would we be wrong in assuming that  
Professor Greenwood played a part in the
drafting of the Claimant's Counter-Memorial of the 15th of December, 2006, and in the Rejoinder Memorial of the 16th of April, 2007?

MR. TERRY: He certainly reviewed a draft of each.

PRESIDENT VEEDER: Thank you.

ARBITRATOR PAULSSON: Reviewed and contributed to, I suppose?

MR. TERRY: I think it would be fair to say upon review he had comments.

PRESIDENT VEEDER: Do you have anything more you wish to add to your response?

MR. TERRY: No thank you, Mr. President.

PRESIDENT VEEDER: The Respondent has a right of reply.

MR. GOODMAN: A short reply.

Now, we are troubled by just the piling on in the few days prior to the hearing of various things of this sort. I suppose we will be getting to Canada's attempted intervention as well, but this is, again, something that is being -- when there has been plenty of time to clear these issues, to have them necessarily come up in the last few days prior to the hearing is, itself, troubling for Venezuela.

I think I will leave it there.

PRESIDENT VEEDER: The Tribunal would like...
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to pause here and just consult privately. So,
we will take a break of ten minutes.

(10.23 am)
OFF THE RECORD

(10.36 am)
PRESIDENT VEEDEER: Let's resume.

I make this as a personal statement and
not as a decision of the Tribunal. Personally,
I am greatly troubled by the circumstances in
which Professor Greenwood was instructed as
counsel by the Claimant last autumn, and that
this development was not disclosed to the
Tribunal, ICSID or the Respondent until
recently.

I do not consider that I can continue in
this arbitration as Chairman of this Tribunal
unless both parties expressly consent to my
doing so now, and Professor Greenwood withdraws
from this case with immediate effect.

That is my statement. We are going to
break again and then return to hear further
submissions or comments from the parties.

(10.37 am)

OFF THE RECORD

(11.29)

MR. TERRY: Mr. President, first of all,
we regret that you, Mr. President, were put
into an awkward position by the circumstances
of the retainer of Mr. Greenwood, and we also
convey Mr. Greenwood's regret in that respect.
We are willing to have Mr. Greenwood withdraw as counsel, and I should just turn it over to my friend Mr. Goodman to provide his views.

PRESIDENT VEEDEER: Thank you.

MR. GOODMAN: Mr. President, Venezuela does consider this whole issue a very serious one, which of course is why we raised it, and we are under instructions that, while we appreciate the obvious honesty and integrity that led you to offer to make the statement that you made, we are not in a position to consent to the your remaining as chairman, and it is our feeling that these kinds of situations are unfortunate, and we believe that Arbitrators, when faced with this kind of situation, should, indeed, take the actions that you suggest, and I think that is our statement at this point. Thank you.

PRESIDENT VEEDEER: Thank you for both your statements. The Tribunal would like to reflect upon what has been said. We will have another break now and resume shortly.

(11.31 am)

OFF THE RECORD

(11.46 am)

PRESIDENT VEEDEER: Let’s resume. This is a personal statement and not a decision of the Tribunal.
I thank the parties for their exchanges. Having carefully considered those exchanges, I cannot, in these circumstances, continue as President of this Tribunal, and accordingly I shall forthwith submit my resignation as a member of this Tribunal in accordance with Article 14, subparagraph (3) of the arbitration additional facility rules.

There is another statement to follow from my co-Arbitrator, Mr. Paulsson.

ARBITRATOR PAULSSON: Thank you very much. This is also a personal statement. In light of the decision made by the Chairman, I wish to request both parties to release me from my mandate as Arbitrator for reasons I will now explain. The reason for asking the parties' permission, if you continue reading Article 14.3, you will see that Arbitrators named by one party, if they resign, are subject to the consideration of the remaining Arbitrators when they resign. Under the circumstances, we no longer have two other Arbitrators to consider my resignation, and that is the reason I wish the parties to consent to the release from my mandate.

The parties should recall that when I was appointed I wrote a statement calling your attention to the fact that my law firm, which is quite a sizeable one, has historically had a number of dealings with the Venezuela.
government on the side of government entities and against it, and that given a sizeable law firm and a sizeable nation, it was likely that those types of situations might continue to occur.

No-one had an objection to that at the time, and as I am sitting here today, I am still not at ease with my functioning as Arbitrator in this case, and would not resign -- would not propose my resignation if it weren't for the fact that I now know that these proceedings will be disrupted in any event in order to have a new Chairman appointed. Under those circumstances, I am telling you that if I had to consider my position from when I was first appointed as of today, I would decline to serve, because, in the intervening time, there have been a number of political initiatives in Venezuela which are a matter of public record, which we can read about in the newspapers, which create circumstances where there is more likelihood to be international litigation, and I am just very concerned about that, that that may be such that one day, even though I am not in an uncomfortable position now, I might find myself in that position, and I don't think that is in the interests of any party.

Taking, for these purposes, that
Claimant’s case is a valid case, take that proposal, there would be possibly disappointment under those circumstances on the Venezuelan side. On the side of the Claimant, I don’t understand why a Claimant would want to have a successful outcome of the arbitration which is then under a cloud.

so, those are my reasons, and I emphasize that I make this request understanding that this case is going to be disrupted in any event, and I think it is prudential in the interests of everyone if I were to be replaced.

Thank you.

PRESIDENT VEEDER: What I suggest now is that we again suspend this hearing. It will perhaps not resume formally today, but it may be useful, whether formally or informally, for the parties to confer as to how they see these proceedings continuing, and whether anything can be salvaged from what was planned to take place this week. I shall not be involved, and my formal involvement will now cease as I speak now, but let's break, and with one or more Arbitrators it may be helpful to examine what can be done.

Mr. Goodman, you had something to say?

MR. GOODMAN: Just that we thank the Arbitrators for being ready to do this case, and again, to honour the President for his statesmanlike position on this.
I did have a question with regard to Mr. Paulsson's comment with respect to the need for a kind of joint release. I didn't necessarily find that in the rules. It does happen that Tribunals sometimes resign, whether one, two, or sometimes three of them, and they are not constrained by the fact that there is then no -- I am not sure, maybe we need guidance from ICSID -- but there was at least in one of the rules now, I don't know if it is in the Additional Facility rules, where, if there are not sufficient other members to grant the consent, if that was the issue, that that issue was decided by ICSID itself, but I am not -- you may be right. I just thought that there was no constraint necessarily, but you may be talking about something other than a rules-based issue.

ARBITRATOR PAULSSON: Thank you for the question, Mr. Goodman. I am trying to fill what I perceive to be a gap in Article 14.3. Given the position taken by the Chairman, I am in the second sentence now, I am an Arbitrator appointed by one of the parties. My resignation is subject to consideration by the Tribunal.

There is a problem in working out that
rule. I think that would be resolved if both parties, in a phrase which I have invented for the circumstances, if both parties would, "Release me from my mandate". I think that would resolve any problem in this regard.

MR. GOODMAN: I think from our side, the issue is not the release which I am instructed to grant, if that is what the right word is, but just that this does not prejudice Venezuela's right to appoint a new Arbitrator, because the issue of consent or not is at the basis of the ability for a party to appoint an Arbitrator once an Arbitrator resigns, and I think -- I do think you are right. I think there is a gap here which is not in the regular ICSID rules which does take care of that issue, so we are happy -- not happy -- but we will grant the release without, however, prejudice to our ability to appoint an Arbitrator to replace you.

ARBITRATOR PAULSSON: I should not be musing on these things on the hoof, as it were, but I believe that you are correct, that the problem that you have just addressed is one that arises under arbitrations under the ICSID Convention, and the matter you have just raised about the way in which I will be replaced does not fall subject to that rule under the Additional Facility rules.

I had made my statement and explained my
position on the hypothesis that it was in the
interests of both parties that a reconstituted
Tribunal has -- is one with respect to which
there are no concerns at all, and it is in that
spirit that I think it is prudential for me to
withdraw.

MR. TERRY: Mr. Paulsson and Tribunal
members and former members, we are just going
to take a moment with our client.

PRESIDENT VEEDER: Please do.

(11.56 am)

OFF THE RECORD

(12.06 pm)

ARBITRATOR PAULSSON: Let me start off by
saying that I should have listened to myself
and not invented things on the hoof, because
Article 17, filling vacancies under the
Additional Facility rules does deal with the
situation of a resignation without the consent
of the Tribunal, and I am, of course, in a bit
of a difficulty in obtaining the consent of the
Tribunal under present circumstances. That
being said --

MR. TERRY: We have conferred with our
clients, Mr. Paulsson, and we grant the release
you request.

ARBITRATOR PAULSSON: Right. Thank you
very much. For the record, may I take it then,
on both sides, that your consent to releasing
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me from my mandate should be deemed as an agreement by the parties that they consider this a resignation to which consent should be given? There is nobody else to give it.

MR. GOODMAN: We would understand that according to the rules, specifically to the rules, that you are resigning pursuant to 14.3 of the rules?

ARBITRATOR PAULSSON: Correct.

MR. GOODMAN: And the parties consent thereto. This is what I have understood.

MR. TERRY: Yes.

ARBITRATOR PAULSSON: Thank you.

MS. FRUTOS-PETERSON: Just for the record, the Secretary wants to say that on behalf of the Secretary General in accordance with Article 16 now, the proceeding has suspended and there are two vacancies in the Tribunal that they will have to be replaced, and it is only by then that the proceeding will be resumed.

ARBITRATOR PAULSSON: May I express my admiration for the written work that has taken place in this Tribunal? I was honoured to serve on the Tribunal. I was very impressed by the work that was done. I regret for the parties that this disruption has occurred, and for myself, that I will not be in a position to see how the case developed, so I wish you God speed, both sides.
17 (12.10 pm) 12:10:18
18 (Hearing suspended) 12:10:21
19 ---------------oOoOoOo--------------- 12:10:25
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