Second Circuit Explains Its Decision Reversing the Grant of Injunction To Enforce $18 Billion Award Against Chevron

February 1, 2012 by Louis M. Solomon

Chevron Corp. v. Hugo Gerardo Camacho Naranjo, et al., No. 11-1150-cv(L), is the Second Circuit's decision explaining its ruling ealier in 2011 to reverse the District Court's grant of a preliminary injunction precluding any enforcement activities of an $18 billion judgment against Chevron by native Ecudorians for environmental liability entered by a court (and now affirmed) in Ecuador.

We have posted on this case several times (e.g., here and here, in the latter case reporting on the Second Cirtcuit's reversal elaborated on by the Panel). At this point in the appeal — when the Court is explaining its earlier ruling — the Court of Appeals articulated the issue as to whether Chevron could affirmatively use the Uniform Foreign Country Money-Judgments Recognition Act as enacted in New York. The Court of Appeals ruled that Chevron could not use the Act in a preemptive, anticipatory manner even if the judgment it was trying to avoid was allegedly fraudulently obtained (on which the Court of Appeals expressed no opinion).

The international practice aspects of the case, and of the current decision, are many.

First, the Court of Appeals was unwilling to weigh in on the fraud and misconduct allegations that are central to Chevron's claims, instead holding that the Act "nowhere authorizes a court to declare a foreign judgment unenforceable on the preemptive suit of a putative judgment-debtor".

Second, the Court of Appeals found that "[c]onsiderations of international comity provide additional reasons to conclude that the Recognition Act cannot support the broad injunctive remedy granted by the district court". In passing the uniform statute and making it a part of New York law, "New York undertook to act as a responsible participant in an international system of justice — not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs". Indeed, the Court of Appeals explained that "when a court in one country attempts to preclude the courts of every other country from ever considering the effect of that foreign judgment, the comity concerns become much graver". Making the point that concerned us when we considered the District Court's injunction, the Court of Appeals stated that, in entering such a broad injunction, "the court risks disrespecting the legal system not only of the country in which the judgment was issued, but also those of other countries, who are inherently assumed insufficiently trustworthy to recognize what is asserted to be the extreme incapacity of the legal system from which the judgment emanates".

Third, the Court of Appeals analyzed whether the current suit was or should be treated under the conditions and constrains of the seminal decision by the Second Circuit in China Trade & Dev. Corp. v. M.V. Choong Young, 837 F.2d 33 (2d Cir. 1987), which we discuss at length in the discussion of the ordering or sequencing of international litigation our e-book, *International Practice: Topics and Trends*. Ultimately the Court of Appeals found that the balancing required by *China Trade* "has limited relevance here"

After rejecting as well jurisdiction and a cause of action under the Declaratory Judgment Act, the Second Circuit remanded the case with a direction that the declaratory judgment claim be dismissed in it entirety.

Tagged Comity, Int'l Regulatory & Enforcement, Provisional Remedies, Sequencing Dispute Resolution