IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORP., Plaintiff, v. PETRÓLEOS DE VENEZUELA, S.A.; PDV HOLDING, INC.; and CITGO HOLDING, INC., f/k/a PDV America, Inc., Defendants.	Civ. No. _______________

COMPLAINT

Plaintiff Crystallex International Corp. ("Crystallex"), by and through its attorneys, for its Complaint in the above-captioned action against Defendants Petróleos de Venezuela, S.A. ("PDVSA"); PDV Holding, Inc. ("PDVH"); and CITGO Holding, Inc. ("CITGO Holding"), formerly known as PDV America, Inc., alleges as follows:

NATURE OF THE ACTION

1. Crystallex, as an existing and future creditor of the Bolivarian Republic of Venezuela ("Venezuela"), brings this action to stop Defendants' ongoing efforts to hinder and delay Crystallex's ability to recover the billions of dollars owed to it by Venezuela.

2. Crystallex is a Canadian gold producer that specialized in developing and operating gold mines in Venezuela and other parts of South America. Crystallex's most important asset was its comprehensive and exclusive rights in Las Cristinas, an untapped gold reserve likely to yield about 17 million, and potentially up to 26 million, ounces of gold. Crystallex's Las Cristinas rights came at an enormous cost (in addition to the actual costs of the

acquisition itself). For example, Crystallex spent more than $640 million dollars to explore, develop, and construct mining facilities at Las Cristinas, as well as funding substantial local Venezuelan social improvement programs such as building a hospital and water treatment plant.

3. But after Crystallex spent hundreds of millions of dollars, Venezuela for years delayed granting Crystallex the necessary permits to commence gold mining, and instead terminated Crystallex's rights in Las Cristinas and expropriated its investments, which were subsequently transferred by the Venezuelan state to the wholly-government-owned and -controlled PDVSA. PDVSA paid no consideration for the Crystallex assets that it received. After PDVSA received Crystallex's assets for no consideration at all, PDVSA sold 40% of the rights it took from Crystallex (and rights to certain smaller gold reserves) for $9.5 billion. That purchase price values Las Cristinas at approximately $6.87 billion.

4. Venezuela's actions were in violation of its obligations under a bilateral treaty between itself and Canada, the Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments, *signed on* July 1, 1996, *entered into force* January 28, 1998 (the "Treaty"). Crystallex filed an arbitration against Venezuela pursuant to the Treaty in order to bring its $3.1 billion claim to judgment. The hearing is complete and the arbitration award is expected in the near future.

5. Venezuela was (and is) facing billions of dollars in liability from the numerous arbitration proceedings arising from its repeated expropriation of foreign investments. But Venezuela has made it clear that it would refuse to pay any arbitration award resulting from these proceedings, including an award in Crystallex's favor. As part of Venezuela's plan to thwart enforcement, it took affirmative steps to hinder and delay Venezuela's creditors in any enforcement proceeding in the United States.

6. Knowing that investors who obtained arbitration awards against Venezuela would go after its largest United States-based asset, CITGO Petroleum Corporation ("CITGO"), for payment of those awards, Venezuela sought to avoid enforcement of any arbitral award against it. At first, Venezuela tried to sell CITGO—which it owned through PDVSA, PDVH and CITGO Holding—so that it could transfer the value of that asset out of the United States before it could be executed upon.

7. When that plan failed, Venezuela devised a backup plan to move assets out of the United States. Venezuela enlisted its alter ego PDVSA, the wholly-owned national oil company through which Venezuela implements government policies at home and aboard, to extract as much value as possible from CITGO. PDVSA did so by orchestrating a series of debt offerings and asset transfers among PDVSA and its subsidiaries PDVH and CITGO Holding that converted CITGO's value to cash, then removing those funds from the United States and transferring them into PDVSA's coffers in Venezuela.

8. PDVSA directed its wholly-owned subsidiary PDVH to direct its wholly-owned subsidiary CITGO Holding to issue $2.8 billion in debt, almost all of which CITGO Holding then proceeded to transfer, without any consideration, to its immediate parent, PDVH, as a shareholder "dividend." CITGO Holding was forced to pay a 12 percent interest rate in order to borrow the $2.8 billion and the bonds were rated as non-investment grade, or "junk," bonds by all three major ratings agencies from the moment that they were issued. The debt offering had no legitimate business purpose. Upon receiving these funds, PDVH paid its own "dividend" equal to what it received from CITGO Holding to its immediate Venezuela-based and -owned parent, PDVSA. Both dividends were transfers to insiders. The net result of these activities was that Venezuela (through PDVSA and its subsidiaries) repatriated $2.8 billion in proceeds, while

leaving its U.S.-based subsidiary, CITGO Holding, insolvent on an accounting basis, all while Venezuela was facing dozens of arbitrations and litigation seeking billions of dollars in recoveries.

9. The Delaware Uniform Fraudulent Transfer Act ("DUFTA") makes plain that these transactions constituted a fraudulent transfer intended to hinder or delay Crystallex's efforts to enforce its arbitral award. Crystallex is therefore entitled to an order directing the Defendants to return the nearly $2.8 billion that they transferred from the United States to Venezuela in violation of DUFTA and an injunction preventing similar misconduct in the future. Alternatively, Crystallex is entitled to a money judgment against the Defendants in an amount equal to the value of its arbitral claims against Venezuela (up to $2.8 billion).

PARTIES

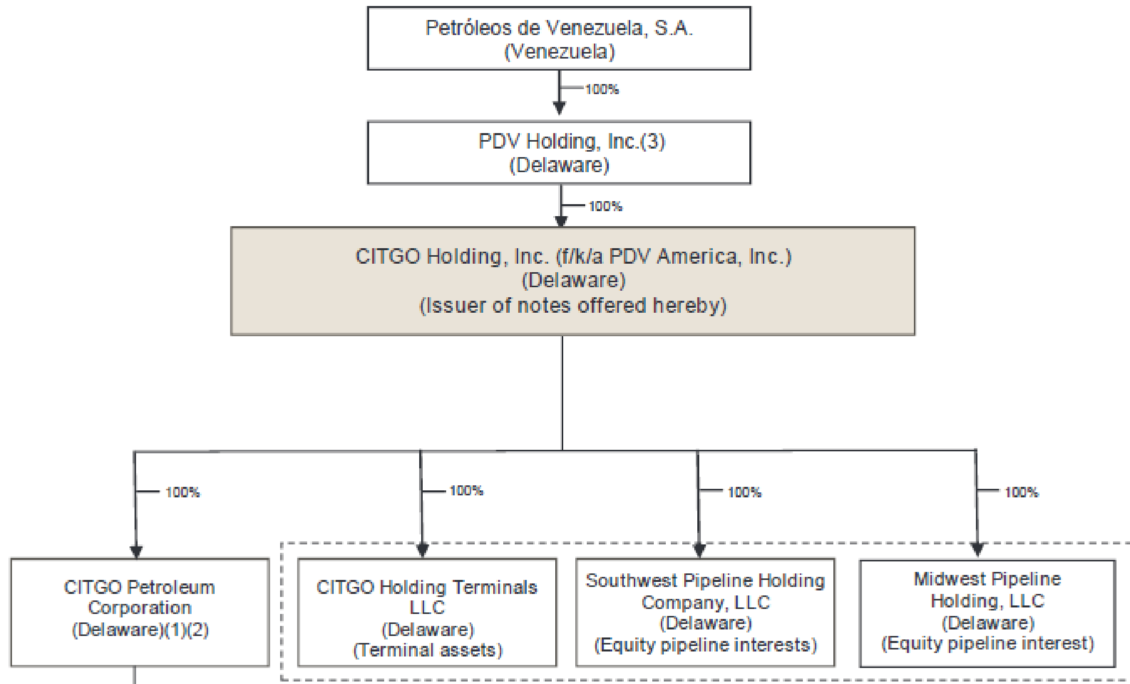
10. Plaintiff Crystallex International Corp. is a Canadian corporation with its principal place of business at 8 King Street East, Suite 1201, Toronto, Ontario M5C 1B5 Canada.

11. Defendant Petróleos de Venezuela, S.A. is a foreign corporation wholly owned and controlled by Venezuela. PDVSA's principal place of business is in Caracas, Venezuela. PDVSA does not purport to have a registered office or principal place of business within the United States. PDVSA is an instrumentality of the nation of Venezuela for purposes of the Foreign Sovereign Immunities Act.

12. Defendant PDV Holding, Inc. is a Delaware corporation with its principal place of business at 1293 Eldridge Parkway, Houston, Texas 77077. PDVH is a wholly-owned direct subsidiary of PDVSA.

13. Defendant CITGO Holding, Inc. is a Delaware corporation with its principal place of business at 1293 Eldridge Parkway, Houston, Texas 77077. CITGO Holding is a wholly-owned direct subsidiary of PDVH, and a wholly-owned indirect subsidiary of PDVSA.

14. Defendants' corporate structure is, in relevant part, as follows:



JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over the entire action pursuant to 28 U.S.C. § 1330(a) and 28 U.S.C. § 1367. PDVSA is a "foreign state" as defined under 28 U.S.C. § 1603—specifically, it is an "agency or instrumentality of a foreign state" as defined in 28 U.S.C. § 1603(b). Under 28 U.S.C. § 1605, PDVSA is not immune from the subject matter jurisdiction of this Court because this action is based upon (i) PDVSA's commercial activity in the United States; (ii) at least one act performed by certain of the Defendants in the United States in connection with PDVSA's commercial activity elsewhere; and/or (iii) at least one act committed outside the territory of the United States in connection with PDVSA's commercial activity elsewhere, where that act caused a direct effect in the United States.

16. Personal jurisdiction in this District is proper over PDVH and CITGO Holding pursuant to 8 *Del. C.* § 321(a), 10 *Del. C.* § 3111, and Federal Rule of Civil Procedure 4(k).

17. Personal jurisdiction in this District over PDVSA is proper pursuant to 28 U.S.C. § 1330(b) and 28 U.S.C. § 1608.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (f). PDVH and CITGO Holding each reside in this District. Further, a substantial part of the events or omissions giving rise to the claim herein occurred in this District.

FACTUAL ALLEGATIONS

19. The facts of this case relate to a complex fraudulent transfer. Venezuela, through its alter ego, PDVSA, perpetrated this transfer to hinder or delay Crystallex's ability to enforce its arbitration award.

1. The Las Cristinas Gold Reserves

20. Situated in the southeast portion of Venezuela, near a town dubbed El Dorado (the city of gold), Las Cristinas is Venezuela's—and one of the world's—largest yet un-mined gold reserves. Extensive on-site studies concluded that Las Cristinas contains proven and probable reserves of almost 17 million ounces of unmined gold, with indications of at least another nine million available ounces.

21. Although gold was first discovered in the Las Cristinas region in the 1920s, efforts to mine that gold were sporadic and insignificant until at least the 1980s. Major efforts to explore and develop the Las Cristinas gold reserves, as well as to construct and build a mine, began in the 1990s, but came to an abrupt halt in 1999 due to (among other things) uncertainties in gold prices and title to the mine.

22. Subsequently, Venezuela assigned to Corporación Venezolana de Guayana ("CVG")—a state instrumentality—the exclusive right to explore and exploit the Las Cristinas gold reserves and to enter into operations agreements with third parties to further those purposes.

On September 17, 2002, Crystallex entered into a Mining Operation Agreement ("MOA") with CVG, a state-owned and -run company.

23. Crystallex engaged in gold mining and exploration, with a focus on operating mines and exploration sites in Venezuela. Crystallex has a well-established record of developing and operating gold mines in both Venezuela and elsewhere in South America, including operating two gold mines located in the El Callao District just north of Las Cristinas.

24. Through the MOA, Crystallex acquired comprehensive and exclusive rights to explore, develop a mine on, exploit, and sell gold from Las Cristinas. Notwithstanding its other ventures, these exclusive rights were Crystallex's principal assets.

25. These assets were valuable. At a time when Las Cristinas was Crystallex's only significant asset, and when gold prices were at $653 per ounce (less than half the price of gold at the time of expropriation), the company's market capitalization was approximately $1.17 billion. By February 2011, when Venezuela began its expropriation of Crystallex's assets, gold prices had more than doubled, to nearly $1,373 per ounce.

26. The expected benefits to Venezuela were myriad—and Venezuela acknowledged as much. When awarding the project to Crystallex, Venezuela estimated that the direct income to its coffers that would be generated through Crystallex's development of and operations at Las Cristinas would be $530 million. Under the MOA, Crystallex not only assumed all development, production, and financing costs, but also committed to pay a 3% exploitation tax, a royalty on gold sales between 1%-3% to CVG, and an income tax of 34%. In addition, at the time of the investment, Crystallex paid an upfront fee of $15 million, promised (and made) millions in social improvements to and investments in the region, and agreed to the creation of employment opportunities to benefit the area.

27. Crystallex began development in earnest and made good on its obligations under the MOA. Crystallex spent more than $600 million in capital costs for the Las Cristinas mining project, local infrastructure, and community projects.

2. Venezuela's Expropriation of Crystallex's Assets

28. Notwithstanding its substantial investments, Crystallex's development of Las Cristinas was delayed due to issues related to the issuance of a permit needed to build a mine at Las Cristinas and conduct mining activities. These delays occurred despite commitments that it was CVG's sole responsibility to acquire all necessary permits on behalf of the project.

29. Crystallex was first required to submit a technical, financial, and economic feasibility study regarding mining operations at Las Cristinas. Crystallex submitted that study in September 2003; CVG approved it in March 2004. Crystallex, however, did not receive formal approval of the feasibility study from Venezuela's Ministry of Basic Industry and Mining until March 2006. In the interim, and after formal approval, Crystallex continued to develop the project and provide comprehensive updates to the feasibility study.

30. Crystallex also needed to obtain an environmental permit to construct and operate the contemplated gold mine. Crystallex initiated this process in April 2004 with its submission of an environmental impact study to CVG and Venezuela's Ministry of Environment and Natural Resources. In response, CVG sought additional data collection and studies, which Crystallex provided within the year.

31. Over three years later, in May 2007, Crystallex received written approval of its environmental impact study from the Ministry of Environment. The Ministry informed Crystallex that the appropriate environmental permit would be issued upon Crystallex's fulfillment of two more requirements: the posting of a construction compliance guarantee bond, and payment of certain environmental taxes.

32. Crystallex met both requirements later that same month. But the Venezuelan government, while acknowledging that all requirements for the environmental permits were met, still failed to issue them. The delay was so protracted that the Venezuelan National Assembly's Commission of Economic Development reviewed the delayed issuance of the environmental permit and held hearings on the matter—at which Crystallex, CVG, the Ministry of Basic Industry and Mines, and Ministry of Environment and Natural Resources all testified. The Chairman of that commission recommended that the permits be granted.

33. Despite Crystallex's fulfillment of all stated requirements, and the recommendation that the permit be issued, the Ministry of Environment and Natural Resources denied the promised permit in April 2008. In July and August 2008, Venezuela indicated that it was reconsidering the denial of the permit. However, no permit was forthcoming. Instead, Venezuela expropriated Crystallex's assets and investments at Las Cristinas.

34. On February 3, 2011, CVG unilaterally terminated the MOA on the ground that *Crystallex* had stalled progress on the development and operation of the Las Cristinas gold mine, as well as "for reasons of opportunity and convenience." Consequently, Venezuela expropriated Crystallex's assets. Venezuela took possession of the Las Cristinas mine in April 2011. Upon taking Crystallex's investment, Venezuela did not compensate Crystallex as it was required to do under international law.

35. In August 2011, the late Venezuelan President Hugo Chávez nationalized gold production within its borders.

36. Venezuela later announced that PDVSA, through an affiliate, would hold Crystallex's interests in Las Cristinas, though it paid no compensation to the government (or to Crystallex) to obtain this interest.

37. In 2013, PDVSA in-turn transferred to the Venezuelan Central Bank 40% of its interest in a newly-created gold mining company, which held, among other things, the right to Las Cristinas. The Venezuelan Central Bank paid $9.5 billion for this interest. Effectively, Venezuela gifted Crystallex's interest in Las Cristinas to PDVSA so that PDVSA could turn around and sell part of that interest to the Central Bank.

38. Crystallex's exclusive and comprehensive rights to design, build, and operate a mine to extract and process the Las Cristinas gold reserves were its principal assets. Venezuela's unlawful termination and expropriation of its rights and investments in Las Cristinas proved devastating to Crystallex.

39. Soon after Venezuela nationalized the nation's gold production, Crystallex was forced to file for bankruptcy, saw its share price plummet to 15 cents, and was delisted from the Toronto Stock Exchange and other foreign exchanges.

40. Crystallex subsequently obtained protection under the Canadian Companies' Creditors Arrangement Act. Among other things, it obtained permission to maintain possession of what property it had left as it awaited payment of its arbitral award against Venezuela to help pay its creditors.

3. Crystallex's Arbitral Proceeding against Venezuela

41. Following Venezuela's expropriation of its assets, Crystallex began to pursue its claims against Venezuela under the Treaty, which Canada and Venezuela entered into in January 1998, well before Crystallex began its investment in Las Cristinas.

42. The Treaty contains protections against the harms Crystallex suffered: unlawful expropriation, unfair and inequitable treatment, and failure to provide full protection and

security. It also referred investment disputes such as Crystallex's to the World Bank's International Centre for Settlement of Investment Disputes ("ICSID").

43. ICSID is an international arbitration institution that facilitates legal dispute resolution involving international investors from its contracting member states.

44. At the time that Crystallex filed its ICSID request for arbitration, Venezuela was a contracting member state of ICSID. Venezuela signed the ICSID Convention in August 1993 and ratified it in May 1995.[1] Canada, on the other hand, was not an ICSID member state at the time. The Treaty provided that where only one of the Treaty parties were a party to the ICSID Convention, disputes would be submitted for resolution under ICSID's Additional Facility Rules.

45. Accordingly, on February 16, 2011, immediately after the purported termination of the MOA and expropriation of Las Cristinas, Crystallex filed a request for arbitration against Venezuela under the ICSID Additional Facility Rules.[2] Crystallex sought compensation for the full value of its total investments in an amount no less than $3.1 billion.

46. Crystallex is currently awaiting the final and binding arbitration award from the ICSID arbitral tribunal, which is expected in the near future.

4. Venezuela, through PDVSA, Arranged the Transfer of Nearly $2.8 Billion to Hinder and Delay Creditors

47. CITGO is Venezuela's most significant asset in the United States, with revenues of over $42 billion and earnings of $1.8 billion in 2013 alone. As Venezuela was well aware,

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[1] Venezuela denounced the ICSID Convention in January 2012. Pursuant to that Convention's terms, Venezuela was still subject to ICSID's jurisdiction since Crystallex had commenced its arbitration prior to Venezuela's denunciation becoming effective.

[2] Crystallex was not alone in seeking relief for Venezuela's expropriation of its assets. At least 30 disputes relating to Venezuela's expropriations, many in the oil and mining industries, are currently before or have been decided by ICSID, which could result in approximately $20 billion to $30 billion in total arbitral awards against Venezuela.

this made CITGO a natural target for judgment creditors, including ICSID arbitration award holders.

48. Venezuela was intent on avoiding payment of ICSID arbitration awards that would be rendered against it. Accordingly, through PDVSA and its subsidiaries, Venezuela sought to monetize its interests in CITGO and repatriate those proceeds, thereby shielding them from attempts to enforce any arbitral award.

a. Venezuela Announced Its Refusal to Pay Arbitral Awards

49. On numerous occasions, Venezuelan government officials stated publicly that Venezuela would refuse to pay any anticipated arbitral award against it and would proactively thwart efforts to enforce such awards. Venezuelan officials stated that Venezuela's main strategy for preventing enforcement of those awards would be converting its lucrative and exposed asset, CITGO, into more fungible and liquid assets, and then secreting those assets out of the United States.

50. For example, in a televised January 2012 speech, President Chávez declared, "I tell you now, ***we will not recognize any decision*** … [t]hey are trying the impossible: to get us to pay them. ***We are not going to pay them anything.***"

51. Similarly, in July 2014, Venezuelan officials expressly acknowledged that Venezuela's then-recently announced decision to sell CITGO was "motivated by concerns in Caracas that two arbitration panels at the World Bank's International Centre for Settlement of Investment Disputes (ICSID) likely will issue rulings soon ordering [PDVSA] to compensate ConocoPhillips and ExxonMobil for their stakes in Venezuelan integrated Orinoco assets that were nationalized in 2007."

52. The Venezuelan government echoed this assessment in August 2014, when news outlets reported that "[t]he [Venezuelan] government says selling Citgo will protect oil assets

from being seized by arbitration and international trials that are currently developing in America."

b. Through PDVSA, Venezuela Implemented a Transfer to Liquidate Its Most Vulnerable Asset: CITGO

53. In an attempt to repatriate the value of CITGO, Venezuela's first tack was to offer the company for sale outright. News outlets reported that CITGO was being offered for sale, with bids expected in the range of $8 billion and $11 billion. However, Venezuela and PDVSA were apparently unable to attract a buyer, and Venezuela elected to call off the sale process sometime in late 2014.

54. Aware that CITGO remained vulnerable to execution in the United States, Venezuela developed an alternative plan to convey money out of CITGO and back to Venezuela before it could be seized by Venezuela's creditors. Together, Defendants PDVSA, PDVH and CITGO Holding, all direct or indirect wholly-owned subsidiaries of Venezuela with overlapping officers and directors, devised a scheme to extract billions of dollars from CITGO and then send it out of the country—from the United States to Venezuela—all during the pendency of multiple lawsuits and arbitrations. Specifically, Venezuela devised a plan whereby PDVH would cause CITGO Holding to borrow billions of dollars for no legitimate business purpose, and then transfer those funds, without any consideration in return, to PDVH as shareholder "dividends," where, in turn, those funds would be paid as a dividend to PDVH's direct parent, again without consideration, thereby moving the funds to PDVSA outside the United States.

55. Pursuant to this plan, Defendants fraudulently transferred almost $2.8 billion from the United States to Venezuela. The strategy concocted by PDVSA, PDVH and CITGO Holding involved many steps—in order to conceal and obfuscate the transfer—but when the transaction is viewed as a whole, its ultimate and intended effect was quite simple: $2.8 billion was borrowed

at a 12 percent interest rate—due to the riskiness of the transaction and the Defendants' (and Venezuela's) substantial existing debt—and that money was transferred out of the country without any consideration in return. The transaction had no legitimate purpose and was designed deliberately to hinder and delay Venezuela's creditors.

56. At the outset, CITGO Holding arranged two separate forms of debt: (i) a $1.5 billion bond issuance; and (ii) a $1.3 billion loan facility formed through a credit agreement entered into contemporaneously with the closing of the bond issuance. Three former CITGO subsidiaries (which CITGO Holding acquired from CITGO as part of the debt issuance at issue here) are guarantors of the bonds: CITGO Holding Terminals, LLC; Southwest Pipeline Holding, LLC; and Midwest Pipeline Holding, LLC (collectively, the "Guarantors").

57. Upon the closing of the bond issuance, CITGO Holding purported to use proceeds from both the bond issuance and the loan facility to "purchase" from CITGO all of the LLC interests in the Guarantors for an aggregate purchase price of $748 million. This purchase rendered each of the Guarantors' a wholly-owned direct subsidiary of CITGO Holding (as opposed to indirect wholly-owned subsidiaries, as they were before the offering).

58. Next, CITGO paid the money it just received from CITGO Holding back to CITGO Holding in the form of a "dividend" of $748 million. The "dividend" back to CITGO Holding was for the same amount that CITGO had just received from CITGO Holding as a "purchase price" for CITGO's interests in the Guarantors.

59. CITGO Holding then took the $748 million it had just "round tripped" to CITGO and back, together with substantially all of the remaining funds from the bond issuance and the loan facility—a total of nearly $2.8 billion—and paid it as a "dividend" to PDVH, CITGO

Holding's direct parent. All of the steps in this fraudulent transfer were planned out before the money was borrowed and were part of a single scheme.

60. Because PDVH is also incorporated in the United States, the transferred funds could not remain in PDVH if Defendants were to avoid successfully Venezuela's creditors. Accordingly, on information and belief, PDVH passed the multi-billion dollar "dividend" it received from CITGO Holding on to PDVSA. In turn these funds were transferred, either directly or indirectly, to the Venezuelan government.

61. The net result of these transactions was that CITGO Holding saddled itself with $2.8 billion in debt, while nearly $2.8 billion in "dividends" ended up in the hands of PDVSA (and Venezuela) outside the United States where they could not be reached by Venezuela's creditors.

c. Venezuela's Transfer Was Intended to Hinder or Delay Creditors, Including Crystallex

62. The details surrounding these transfers further evidence that they were designed to hinder or delay Venezuela's creditors, including Crystallex.

63. The bond offering materials prepared by, or on behalf of, CITGO Holding are candid about the infirmities of the debt transactions, as well as the backdrop against which they were made.

64. The bond offering circular stated that "in connection with the arbitrations against PDVSA and the Bolivarian Republic of Venezuela, the claimants may seek to freeze or attach [CITGO Holding's] assets and/or assets of PDVSA, [PDVH] and/or CITGO."

65. The offering materials further recognized that the transactions would be subject to challenges under "fraudulent transfer laws."

66. In the bond offering circular, CITGO Holding stated that "[a] court would likely find that a … party granting the lien did not receive reasonably equivalent value or fair consideration for its guarantee or lien if such entity did not substantially benefit directly or indirectly from the issuance of the notes or the lien and where the transaction lacked 'good faith.'"

67. The materials go on to state that "no assurance can be given that any of the Transactions would not be challenged as a fraudulent transfer."

68. CITGO Holding also disclosed its control by PDVSA and, ultimately, Venezuela. CITGO Holding's bond circular contains the statement that "[n]o assurance c[ould] be given that the Bolivarian Republic of Venezuela, as PDVSA's shareholder, will not adopt policies or exercise its control of PDVSA in a manner that might adversely affect [CITGO Holding bondholders'] interests."

69. CITGO Holding went on to warn that "PDVSA could at any time in the future conduct other processes or undertake one or more transactions to monetize its interests in us, and any such process could be undertaken or any such transaction could occur at a time when it would be beneficial to PDVSA but could have a negative impact on [CITGO Holding's] business and operations." This echoed CITGO's admonition in a July 2014 bond offering that "PDVSA may pursue transactions or other opportunities that could involve risks to our creditors. In the past PDVSA has explored strategic alternatives relating to CITGO and it is currently seeking to monetize its ownership interest in us."

70. CITGO Holding's own financial statements enclosed in the bond offering materials indicate that as a result of the $2.8 billion in debt and the payment of $2.8 billion in dividends, CITGO Holding has negative shareholder equity and is insolvent on a GAAP basis.

71. The debt from the bond issuance was immediately rated as distressed debt by at least two ratings agencies, including Standard & Poor's and Moody's. Notably, the bond issuance provided yields in excess of 12%, a substantial rate in the current interest rate environment and reflecting the significant risks associated with the issuance.

72. Further, the bonds issued by CITGO Holding traded at a discount from par from the moment they were issued.

73. The $2.8 billion in debt taken on by CITGO Holding had no discernible business purpose. As the offering materials themselves made clear, no more than $50 million—a mere 1.8% of the total debt acquired—was to be retained by CITGO Holding. To the contrary, "[s]ubstantially all of the proceeds from th[e] offering [were] used to pay the Total Shareholder Dividend to [PDVH], and none of such proceeds [were] used to further invest in" CITGO Holding. In other words, the sole purpose of the transaction was to cash out the value of PDSVA's indirect equity interest in CITGO Holding.

74. The bond offering materials were equally forthright about PDVSA's status as an alter ego of Venezuela.

75. The materials make clear that PDVSA is "100% owned and controlled" by Venezuela, and identifies as a "risk factor" to investors the fact that "[m]ajor corporate actions of PDVSA may be subject to the approval of the Venezuelan government, as its sole shareholder."

76. The bond materials also expressly contemplate and address the possibility that, in connection with the arbitrations and lawsuits against PDVSA and Venezuela, creditors might seek to "pierc[e] the corporate veil of PDVSA" and "no assurances can be made as to the ultimate outcome of any such proceeding."

5. PDVSA: Venezuela's Alter Ego

77. Venezuela's fraudulent transfer was executed through its wholly-owned and -controlled subsidiary, PDVSA. And PDVSA is merely an alter ego of Venezuela, especially vis-à-vis Crystallex. Accordingly, PDVSA is liable to Crystallex for the debts of Venezuela.

78. PDVSA is not a typical state-owned oil company. The government has full control over PDVSA: PDVSA is the primary source of funds for the Venezuelan government, and has been used time and time again as a tool to implement state policy initiatives that have little (if anything) to do with its purported corporate purpose as a petroleum company.

79. In addition to directing PDVSA's oil operations—from dictating the price of oil, to exploration priorities and to whom it should sell—Venezuela directs PDVSA to serve the state in a plethora of other ways.

80. Venezuela directs PDVSA to perform state social functions on its behalf; it requires PDVSA to contribute most of its revenue to the state; it dictates how and when PDVSA should borrow money; and it designates PDVSA to perform government duties under foreign treaties and to conduct local expropriations on Venezuela's behalf.

81. By its own admission, PDVSA is a multi-purpose tool that Venezuela uses as and when it needs.

82. Venezuela's control over PDVSA is dictated by Venezuelan law, including its Constitution.

83. Venezuela runs PDVSA on a day-to-day basis, including through government officials occupying the most senior positions at PDVSA.

84. Venezuela's economy is entirely dependent on PDVSA.

85. Venezuela utilizes PDVSA's assets as if they were its own.

86. PDVSA is used to achieve the political and social objectives of the state.

87. PDVSA is used by Venezuela as a tool to implement its foreign policy.

88. PDVSA has acted as an alter ego of Venezuela in its interactions with Crystallex.

89. Venezuela and PDVSA have publicly admitted that the two are one and the same.

90. Put simply, PDVSA operates as an alter ego of the Venezuelan government**.**

a. PDVSA's Connection to the Venezuelan Government Is Entrenched in Venezuelan Law, Including the Constitution

91. PDVSA is unique among state-owned entities in Venezuela. Its very creation was mandated by Presidential decree, and its ongoing relationship with the government has been enshrined in the Venezuelan Constitution.

92. PDVSA was born out of Venezuela's nationalization of the oil industry in 1975 and the passage of a new law that reserved to the state all matters related to the oil and gas industry. PDVSA's incorporation was decreed by the President that same year as the vehicle through which Venezuela would implement its control over the oil and gas industry.

93. Article 1 of PDVSA's Articles of Incorporation (which are contained in the presidential decree founding PDVSA) makes clear that PDVSA is "a state company . . . created with the form of a commercial company, which shall comply with and execute the hydrocarbons policies dictated by the National Executive . . . in the activities that are entrusted to it."

94. The same Articles of Incorporation provide that the government, as the sole shareholder, represents Venezuela in the Shareholder Assembly, which is responsible for the "supreme direction and management of the company."

95. In 1999, when Venezuela's current Constitution was adopted, Venezuela's control of PDVSA was entrenched. Article 303 of the Constitution states that: "For reasons of economic and political sovereignty and national strategy, the State shall retain all shares of Petróleos de

Venezuela, S.A." Venezuelan courts have concluded that the Constitutional references to PDVSA confirm its "public nature" and its place at the top of "hierarchically organized entities that are in charge of public tasks."

96. Likewise, the Venezuelan Supreme Court has found that "even though Petróleos de Venezuela S.A. is a company constituted and organized as a commercial entity, it is beyond doubt, as is affirmed in the Constitution, that the company is part of the general structure of the Public National Administration."

97. Today, the government's legal control over the oil and gas industry, and, as such, PDVSA, is detailed in the Organic Law of Hydrocarbons. Article 8 of that law states that it is the Ministry of Petroleum and Mining, not PDVSA, that is responsible for formulating, regulating and controlling the "policies and planning" related to hydrocarbons activities.

98. The Ministry executes this control through the adoption of binding guidelines that PDVSA must then follow.

99. As a leading Venezuelan lawyer and professor, Allan Brewer-Carías, has explained:

> PDVSA has a legal framework that distinguishes it from not only from the centralized administration and autonomous institutes, but also from other state companies. . . . [F]ew state companies are subject, unreservedly, to the "dispositions adopted by the National Executive," as happens with Petróleos de Venezuela, S.A.

100. Similarly, Venezuelan commentator Isabel Boscán de Ruesta, described PDVSA as "a legal entity of public nature, special and unique."

b. Venezuelan Government Officials Run PDVSA on a Day-to-Day Basis

101. According to several of PDVSA's debt offerings and SEC filings, "[t]he National Executive . . . regulates and supervises our operations."

102. In practice, the government's control over PDVSA is extensive. Not only does the government have control over appointing the individuals who run PDVSA—which, in itself would demonstrate control—but the individuals appointed to run PDVSA *concurrently hold senior government positions*. As a result, there is no distinction, much less separation, between the government officials that are supposed to oversee PDVSA and the corporate leaders that run PDVSA.

103. Government personnel are cross-appointed, by presidential decree, to the most senior posts within PDVSA. Government officials and other personnel run the company on a day-to-day basis, *from within the company itself*. The government officials who set government policy for PDVSA to follow are the same individuals who execute the daily operations of PDVSA.

104. This internal governmental control is most clearly demonstrated by the fact that the Minister of Petroleum and Mining, Eulogio Del Pino, is cross-appointed as president of PDVSA and CITGO Holding. Rafael Ramirez, one of Mr. Del Pino's predecessors as Minister of Petroleum and Mining, also long served as president of PDVSA. Accordingly, every decision of the president of PDVSA is simultaneously a decision of the government.

105. Mr. Del Pino is not the only government Minister to hold a senior PDVSA role. The Minister of Foreign Affairs, Delcy Rodriguez, was recently appointed by the Venezuelan President as PDVSA's Vice-President of International Affairs. Consistent with Ms. Rodriguez's appointment, PDVSA plays an extensive role in executing Venezuelan foreign policy.

106. The government appoints the entire Board of Directors by presidential decree. Every board member not directly employed by PDVSA is a government official, and four board members are Cabinet Ministers. In addition to Mr. Del Pino and Ms. Rodriguez, Venezuela's

Minister of the Economy and Finance and the Minister of Knowledge and Planning are also PDVSA board members. A fifth board member is the Head of the National Treasury.

107. The Ministry of Petroleum and Mining has also been physically merged with PDVSA. The offices of the Ministry are located in the same building as PDVSA's head offices on Av. Libertador La Campiña in Caracas. The Ministry of Industry is also located in the same complex.

108. Governmental control of PDVSA's day-to-day operations is not limited simply to the acts of government officials who are embedded in the company. Rather, the government also acts directly in dictating PDVSA's activities.

109. Examples of the government's actions in this regard include:

i. The government, including the Venezuelan President himself, hires and fires PDVSA personnel. For example, after a labor dispute in 2002, the late President Hugo Chavez personally and publicly fired seven PDVSA executives and forcibly retired 12 other employees, calling out each individual personally as part of a televised speech on national television.

ii. Similarly, in response to a prolonged strike in protest of President Chavez, in 2003, the government proceeded to fire directly approximately 18,000 PDVSA employees, nearly 40% of the company's workforce at the time.

iii. The Venezuelan President appoints, by decree, senior PDVSA officials, as well as the board of directors.

iv. Venezuela dictates how much oil PDVSA must produce, including through its participation in the Organization of Petroleum Exporting Countries (OPEC).

v. Venezuela designates the price at which PDVSA must sell its products to certain buyers. As PDVSA explained in a 2011 debt offering, "[t]he Venezuelan government, rather than the international market, determines the price of products such as gasoline, diesel, natural gas and liquefied petroleum gas, or LPG, sold by us through our affiliates in the domestic market."

vi. Venezuela dictates to whom PDVSA must sell oil, and on what terms.

vii. At Venezuela's direction, PDVSA has been (and continues to be) required to take up new lines of business, in which it has little to no prior expertise and which are often at best tangentially related to PDVSA's core operations as an oil producer.

viii. Venezuela has charged PDVSA with operating numerous new businesses that have been expropriated by the government. These businesses—such as gold mining—are often handed to PDVSA for free following expropriation.

ix. The government requires PDVSA to run social programs on its behalf.

c. Venezuela's Economy Is Entirely Dependent on PDVSA

110. Current Venezuelan President Nicolas Maduro has explained that PDVSA is "a central pillar of economic stability" in Venezuela.

111. The Venezuelan Supreme Court has likewise acknowledged that PDVSA's activities "play a fundamental role in the national economy."

112. PDVSA's contributions to the state economy go well-beyond the usual royalty and tax payments that a typical oil and gas company would be expected to make. Instead, PDVSA, directly or indirectly, provides nearly all state funding and is often used to implement government programs, including as part of the Social and Economic Development National Plan 2013-2019.

113. Several analysts have recognized the intimate connection between Venezuela and PDVSA. For instance, earlier this year, analysts at JPMorgan issued a report noting:

> It is difficult to overemphasize the degree to which Venezuela as a sovereign credit and state-oil company PDVSA are intertwined. Venezuela relies on oil for some 97% of its overall exports, and PDVSA produces nearly 100% of all of Venezuela's oil exports. The government take from the oil sector traditionally accounts for about half of budget revenues, while in recent years it has also supported a large (and largely unaccountable) parallel budget.

114. Not only does PDVSA account for half of the official budget of Venezuela, it contributes billions and billions of additional dollars to off-budget "development funds," such as Fondo Nacional para el Desarrollo Nacional ("National Development Fund" or "FONDEN"). As a Reuters special report observed, "Fonden is the largest of a handful of secretive funds that put decisions on how to spend tens of billions of dollars in the hands of [then-President] Chavez, who has vowed to turn the OPEC nation's economy into a model of oil-financed socialism."

115. In addition to the value extracted from PDVSA to fund the national budget directly, PDVSA is legally obligated to channel many billions of dollars to FONDEN each year. According to PDVSA's website, PDVSA's formal "contributions" to FONDEN come in two forms. First, PDVSA "contributes" its "excess" foreign currency to FONDEN; that includes all foreign currency not needed to satisfy any obligations in relation to its foreign investments or to be converted to Bolivars—the currency of Venezuela—for local operational expenses. Second, PDVSA also pays additional "special contributions" on so-called "extraordinary" and "exorbitant" oil prices. According to a 2014 Report of the Ministry of Economy and Finance, contributions to FONDEN for the first ten months of 2014 were in excess of $11.7 billion.

116. In 2005, Rafael Ramirez—then-president of PDVSA and Minister of Petroleum and Energy—explained: "The use of surplus oil profits in investment projects contributes, not

only to socio-economic development, but also reduces the financial pressure on the Treasury and as a consequence improves the country's financial performance in the mid-term."

117. Separate from PDVSA's contributions to FONDEN, PDVSA supports the government's off-budget operations through the Venezuelan Central Bank's foreign exchange system. When PDVSA converts currency into Bolivars, it does so at an artificially low U.S. Dollar to Bolivar exchange rate, thereby funneling additional contributions to the state.

118. But it is not just PDVSA's profits and foreign currency that go to the state (whether on or off the official budget). PDVSA also *takes out debt on behalf of the government*. For instance, in October 2010, President Chavez announced that half of a $3 billion bond offering of PDVSA would be used to finance a housing program.

119. In an earlier bond offering, where the proceeds were earmarked for the "financing of capital expenditures and social development expenses," PDVSA explained:

> The Bolivarian Republic of Venezuela, as our sole owner, has pursued, and may pursue in the future, certain of its macroeconomic and social objectives through us. As a result, we may engage in activities that give preference to the objectives of the Venezuelan government rather than our economic and business objectives. We may make investments, incur costs and engage in sales on terms that affect our results of operations and financial condition.

120. PDVSA is ordered to make excessive contributions to the state budget and state programs, even if it leaves the company incapable of capitalizing investments necessary to carry on its business operations. As explained by the Economist magazine in 2012: "With so little attention paid to the actual business of extracting oil, it is little wonder that PDVSA's production has fallen from 3m barrels a day in 1999 to 2.4m today, according to OPEC. In the same period, its foreign debt has risen fivefold."

121. PDVSA has itself admitted to its financial entanglement with Venezuela. In the risk factors associated with its 2011 Senior Note offerings, PDVSA warned: "[a]ny actual or

anticipated changes or downgrades in Venezuela's credit ratings could affect the market value of [PDVSA's] Notes."

d. Venezuela Uses PDVSA's Assets as if They Were Its Own

122. PDVSA's assets are virtually indistinguishable from Venezuela's. Venezuela regularly uses PDVSA's assets for state purposes that have nothing to do with PDVSA's business.

123. As an example, the Venezuelan government directs the use of PDVSA's fleet of aircraft to benefit the government's political objectives. Press reports detail the use of PDVSA planes for travel by Venezuelan officials, such as Elias Jaua, former Vice President of Venezuela under Hugo Chavez.

124. Venezuela also makes PDVSA aircraft available to politicians from other countries with whom it shares political ideals.

125. For example, it was reported by the Venezuelan government that, in September 2015, Columbian guerilla leader Rodrigo Londono Echeverri, a top commander in the Fuerzas Armadas Revolucionarias de Colombia, or FARC, travelled on an official Venezuelan plane to Havana. Media reports in Venezuela stated that the aircraft was part of PDVSA's fleet of planes.

126. PDVSA jets have also been used to transport former Honduran president Manuel Zelaya to Washington, D.C., and to transport Bolivian president Evo Morales to Libya and Iran. In addition, Venezuela has "lent" three planes belonging to PDVSA to the Cuban government, where they have been used to transport President Raul Castro and Vice President Miguel Díaz-Canel on government business.

127. In a similar vein, the Venezuela government treats the oil PDVSA produces as its own and does with it as it wishes—without regard to the impact to PDVSA's commercial operations. For example, Venezuela has entered into numerous agreements with China, pursuant

to which, in exchange for substantial investments in Venezuela, the government agreed to direct PDVSA to sell millions of barrels of oil to China at below market prices or subject to terms that increase PDVSA's costs of sale in order to satisfy Venezuela's obligations. To date, China has advanced over $50 billion to Venezuela under these programs in exchange for oil and fuel from PDVSA.

128. In effect, Venezuela took out more than $50 billion of loans to benefit Venezuela directly, and paid for those loans by taking billions in revenue from PDVSA—with no corresponding benefit to PDVSA.

129. PDVSA has also been used by the government to fund the purchase of large Venezuelan companies in other industries, such as in telecommunications and electric power. And, as PDVSA warned its debt investors in 2011, "We cannot assure you that the government of Venezuela will not require us to . . . purchase other businesses" in the future.

e. Venezuela Uses PDVSA to Achieve the Government's Social and Political Objectives

130. According to Venezuela itself, the PDVSA of today, or the "New PDVSA," is much more than an oil and gas company. Former PDVSA President and Venezuelan Minister of Petroleum and Mining, Rafael Ramirez, put it best when he remarked: "PDVSA is a company at the service of the state and the people, and must be made available for the people's interests."

131. PDVSA's 2004 Management Report similarly remarked that PDVSA was "a fundamental tool at the service of the [Venezuelan] State." And more recently, PDVSA has explained that the "New PDVSA" is "subordinated to the Venezuelan State . . . with a profound commitment to the real owner of the oil: the Venezuelan people."

132. Accordingly, PDVSA is charged with a broad mandate to contribute to the social and political objectives of the State that have nothing to do with the commercial business

operated by PDVSA. Venezuela uses PDVSA to conduct government functions, such as providing public housing; importing, distributing, and selling food; paving roads; and creating and operating farms. These activities are typically undertaken in response to government directives, and through the formation and funding of "social missions" or through the incorporation of new PDVSA subsidiaries. As just one of several examples, PDVSA Agricola has been charged with implementing Venezuela's Strategic Plan for Agricultural Development.

133. Entire arms of PDVSA are created for the sole purpose of performing ordinary government services. In 2004, the president of one of PDVSA's subsidiaries explained that, whereas previously PDVSA's social development objectives were limited to "philanthropic contributions," "today, Petróleos de Venezuela contributes in all aspects that the state requires."

134. The social programs implemented by PDVSA are not those of a traditional state-owned enterprise. Rather, PDVSA is used to perform the functions of the state itself. In 2012, the Economist magazine explained: "[Rafael Ramirez] has . . . allowed Mr. Chávez to use the company as a piggy bank for his 'socialist revolution': last year, PDVSA spent twice as much on off-budget government programmes as it did on taxes, royalties and dividends."

135. Unsurprisingly then, in 2011, PDVSA warned its debt investors: "We cannot assure you that the government of Venezuela will not require us to increase our financial contributions to social programs" in the future.

136. Venezuela uses PDVSA to expropriate foreign investments. In fact, in several expropriation decrees, PDVSA is formally designated as the "expropriating entity."

137. This power is sometimes directed towards assets that are associated with the oil industry—for example, when PDVSA expropriated 11 drilling rigs, which would "push forward national oil and gas production and strengthen [Venezuela's] policy of national oil sovereignty,"

or when PDVSA obtained 46 drilling teams that were previously operated by private companies and are now directly controlled by PDVSA.

138. But often PDVSA is used as a tool of expropriation for assets that have nothing to do with the oil industry. For example, PDVSA assisted with the expropriation of a Venezuelan cement company. And Venezuela handed Crystallex's interest in Las Cristinas to PDVSA for free. PDVSA now owns 60% of the interests and investments wrongfully expropriated from Crystallex, after selling off the other 40% at a valuation of $6.87 billion.

f. PDVSA Is Venezuela's Key Foreign Policy Tool

139. Internationally, PDVSA is a key tool in Venezuela's foreign policy. In words taken from its own website, PDVSA is a "geopolitical instrument to promote the creation of a multipolar system" that acts as "a counterweight to the current unipolar system."

140. Similarly it claims to be, among other things, "an arm of [Venezuela's] geopolitical strategy" promoting "energy integration in Latin America and the Caribbean" and "coordinat[ing] the oil policy of OPEC."

141. The President of PDVSA (and Minister of Petroleum and Mining) often accompanies the head of state and Minister of Foreign Affairs on official state visits. And the Minister of Foreign Affairs is a Director of PDVSA.

142. PDVSA's instrumental role in Venezuela's foreign policy is demonstrated by a program known as Petrocaribe. Through Petrocaribe, Venezuela commits PDVSA to selling oil to select Caribbean and Latin American nations at substantial discounts and/or on preferential payment terms—such as long term concessional loans that make the transactions uncommercial—to effectuate the Venezuelan government's foreign policies. Essentially, this program is a form of state aid to neighboring countries that Venezuela seeks to influence.

143. According to Petrocaribe's website, PDVSA has been tasked with "implementing the operating guidelines of Petrocaribe" though its subsidiary, PDV Caribe S.A. Among other things, PDV Caribe is responsible for "carrying out social projects in member countries." This is done to further the foreign policy of Venezuela.

144. Venezuela has also entered into several agreements with China, including a 1996 Treaty relating to the joint development of cooperation in the hydrocarbon sector, which was executed by PDVSA "on instruction from the Ministry of Energy and Mines." As discussed above, these agreements bind PDVSA to supply China with oil, often to repay debt taken on by the government.

145. Most recently, President Maduro visited China in September 2015, along with Eulogio del Pino (PDVSA President and Minister of Petroleum and Mining) and Rodolfo Marco Torres (Minister of Finance and a PDVSA Director), to negotiate an additional $5 billion loan. In total, Venezuela has borrowed $50 billion from China through oil-for-loans agreements.

g. PDVSA Acted as an Extension of Venezuela in Its Dealings with Crystallex

146. Crystallex witnessed PDVSA's unity with Venezuela first-hand.

147. Crystallex's interactions with PDVSA arose in the context of the government's expropriation. In all of Crystallex's interactions with PDVSA, the company has acted as an extension of the state. Thus, PDVSA's conduct with regards to Crystallex provides a particular demonstration that PDVSA is an alter ego of Venezuela.

148. After nationalizing gold production and expropriating Crystallex's interests, Venezuela ultimately handed Crystallex's interests in Las Cristinas, one of the largest undeveloped gold reserves in the world, over to PDVSA for no consideration. PDVSA was tasked by Venezuela to mine gold through a newly created subsidiary, Empresa Nacional Aurífera, S.A. ("ENA"): a task unrelated to PDVSA's business as an oil and gas company.

149. Venezuela's Central Bank bought 40% of PDVSA's interest in ENA (including the rights to Las Cristinas that Venezuela stripped from Crystallex) for $9.5 billion (in the form of forgiveness of a portion of PDVSA's more than $40 billion in debt owed to the Central Bank). PDVSA ended up with a 60% interest in the assets taken from Crystallex and $6.87 billion in consideration (the portion of the $9.5 billion attributable to Las Cristinas)—all without any payment to Venezuela (or Crystallex).

150. The details of the transaction only became public in mid-2014. The reason: PDVSA needed to reduce its debt to the Central Bank in order to access the foreign currency markets—in the form of an additional $5 billion in debt. According to a PDVSA press release at the time, "[t]he funds obtained will be used for PDVSA's corporate aims [and] to finance investment projects including investment for the nation's social development."

151. The Crystallex transaction demonstrates how Venezuela treats PDVSA as an arm of the state—moving assets in and out of the company without payment or consideration, and ordering the company to undertake operations that benefit the government whether or not those operations fall within the company's remit.

152. The Crystallex arbitration is also demonstrative of the way in which Venezuela considers PDVSA's assets to be its own. Despite the fact that Crystallex had brought suit against *Venezuela* for its violations of the Treaty, *PDVSA* paid ICSID's administrative fees *directly* on behalf of the government.

153. ICSID did not simply process PDVSA's payment, however. Rather, it sought to expressly confirm that PDVSA, a purportedly "separate" commercial entity, was making payment on behalf of the state. Accordingly, ICSID asked Venezuela to acknowledge that the payment by PDVSA was made on Venezuela's account; and Venezuela confirmed that it was.

Even though PDVSA was not a party to the proceedings, its bank account was paying the arbitrator's fees.

h. The Government and PDVSA Admit to Being One and the Same

154. It is not just in the Crystallex arbitration that Venezuela has acknowledged its relationship with PDVSA; Venezuela publicly admits that PDVSA is a "tool" of the state. Indeed, one of Venezuela's acknowledged goals over the last decade has been to make clear to its citizens that it had taken back "the People's" oil and gas company. That was the purpose behind the state's 2004 rebranding of the company as the "New PDVSA."

155. At the time of the rebranding, the Venezuelan Ministry of Communications released a pamphlet entitled: "The New PDVSA: Producing for the Good of the People." In it, the Ministry made clear: "PDVSA belongs to the People." The same pamphlet made clear that PDVSA was not just an oil and gas company; it was a critical part of the state's social and economic infrastructure.

156. Even government-edited secondary school textbooks explain that PDVSA is merely an arm of the government. One such textbook, entitled "Our Republican History", explains that the "New PDVSA" is "a fundamental and transcendent tool for the pursuit of the economic, social and cultural equity of the Venezuelan people . . . because its economic contributions finance the different social missions created by the national government."

157. In 2014, Rafael Ramirez, then-Minister of Petroleum and Mining, and President of PDVSA, explained how Venezuela's control of PDVSA had increased over the years. He explained that in earlier days, "the old PDVSA had usurped the role of the Ministry of Petroleum and Mining as the institutional seat of oil policy in the country." According to Ramirez, PDVSA had usurped the Ministry's authority by, among other things, "establish[ing] sales prices of oil"

and "grant[ing] rights to exploit new areas." After the Bolivarian revolution, however, things changed:

> [I]n the first instance, the Ministry of Petroleum and Mining as a representative of the Venezuelan state, re-established its role as institutional seat of national oil policy; it is now the one who establishes the sales prices of our oil destroying policies of discounts of the old PDVSA; it exercises control of our production and export of oil and oil products; it sets production coordination policies with the defense strategy of prices and grants the rights and mining areas as established in our Hydrocarbons Law.

158. In no uncertain terms, the government itself has made clear that it controls PDVSA in every way. It is for this reason that PDVSA must now be held to account for the debts of Venezuela.

FIRST CAUSE OF ACTION
Fraudulent Transfer in Violation of
The Delaware Uniform Fraudulent Transfer Act (DUFTA)
(Against All Defendants)

159. Crystallex repeats and incorporates the allegations set forth in Paragraphs 1 through 158 as though fully set forth herein.

160. The Delaware Uniform Fraudulent Transfer Act (DUFTA), 6 *Del. C.* § 1301 et seq., provides that a transfer is "fraudulent" as that term is used in the act, if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor, *id.* § 1304(a). And in determining such actual intent, courts look to the non-exclusive badges of fraud delineated in the statute, *see id.* § 1304(b), and other considerations.

161. During the pendency of Crystallex's arbitral proceedings against Venezuela, Venezuela knew and anticipated that Crystallex (and several other investors whose interests Venezuela expropriated) would obtain an arbitral award against Venezuela.

162. In response, Venezuela's alter ego, PDVSA, caused CITGO Holding to raise $2.8 billion in debt and execute a series of transactions that moved those debt proceeds offshore as "dividends" from CITGO Holding to PDVSA. These transactions bear several badges of fraud:

i. The debt proceeds were transferred from CITGO Holding to PDVH, which controls CITGO Holding and is thus an "insider."

ii. The debt proceeds were subsequently transferred from PDVH to PDVSA, which controls PDVH (and CITGO Holding) and is thus an "insider."

iii. By moving assets from its indirect U.S.-based subsidiary to its own coffers, PDVSA retained control of the transferred debt proceeds and merely moved them offshore.

iv. Before causing the transfer through the purported "dividend" payouts, Venezuela had either already been sued or threatened with suits predicted to result in billions of dollars in arbitral awards against it. In addition, Venezuela itself expressly and publicly recognized that CITGO's assets would be the primary targets for the enforcement of any unpaid arbitral awards.

v. PDVSA not only retained control but also "removed" the debt proceeds from the United States by moving offshore the monetized value of CITGO, a domestic Delaware corporation whose assets and/or shares could readily be attached and executed to pay arbitral awards against Venezuela.

vi. No consideration was exchanged for the transfer of the debt proceeds. CITGO Holding received no consideration for the nearly $2.8 billion "dividend" it paid, and PDVSA offered nothing in exchange for receiving that "dividend."

vii. Venezuela publicly expressed its intent not to pay any arbitral award resulting from its expropriation of investments, as well as its intent to monetize CITGO's assets, located in the United States, to avoid their seizure in fulfillment of such awards.

viii. The transfer of the debt proceeds to PDVSA rendered CITGO Holding insolvent on an accounting basis. The debt incurred by CITGO Holding through the bond issuance and loan facility created negative shareholder equity.

ix. The transfer of the near-$2.8 billion occurred shortly after CITGO Holding incurred a substantial debt nearly identical to that amount.

x. CITGO Holding incurred the $2.8 billion in debt just months after PDVSA ended its unsuccessful attempt to sell its subsidiary, CITGO.

163. Crystallex's arbitral claims against Venezuela are enforceable against PDVSA, which is an alter ego and instrumentality of Venezuela:

i. Venezuela brought about PDVSA's incorporation via a Presidential Decree and its unique role is enshrined in the Venezuelan Constitution and made clear under Venezuelan law.

ii. Venezuelan officials manage and control PDVSA's day-to-day operations. PDVSA's express purpose is to perform the "primary activities" of Venezuela in the hydrocarbons industry under the National Executive's instructions and policies.

iii. The Minister of Petroleum and Mines is the president of PDVSA and CITGO Holding. Venezuela dictated the price at which PDVSA can sell oil and to

whom it can sell oil. The President of Venezuela has personally directed the firings of thousands of PDVSA employees.

iv. Venezuela and PDVSA have common directors and officials. The President of Venezuela appoints PDVSA's Board of Directors, all of whom are members of the Venezuelan Executive Branch. In addition to the Minster of Petroleum and Mines, at least three other PDVSA Directors are also ministers in the Venezuelan government.

v. Venezuela exercises substantial economic control over PDVSA.

vi. All of PDVSA's profits go to the Venezuelan government. Even PDVSA's debt offerings are intended to raise funds for government programs. Among other things, PDVSA provides more than 50% of official government funding and many billions more in "off-budget" funds. In addition, PDVSA was used to fund the purchase of numerous Venezuelan companies on behalf of the government.

vii. Venezuela frequently uses PDVSA's property as its own, and is the true beneficiary of PDVSA's conduct.

viii. Venezuela routinely utilizes PDVSA as its vehicle for executing a wide range of government policies and objectives with Venezuela and abroad, and uses PDVSA's resources to do so.

164. Crystallex is therefore entitled to the relief specified in DUFTA, *see* 6 *Del. C.* § 1307, against Defendants' fraudulent transfer, particularly, an order directing the return of the $2.8 billion removed from CITGO Holding and imposing a money judgment equal to that amount on PDVSA and PDVH should the funds not be returned. Crystallex also seeks an

injunction barring any further transfers from PDVH or CITGO Holding, until such time as the debt to Crystallex has been paid.

SECOND CAUSES OF ACTION
Civil Conspiracy
(Against All Defendants)

165. Crystallex repeats and incorporates the allegations set forth in Paragraphs 1 through 164 as though fully set forth herein.

166. Defendants PDVSA, PDVH and CITGO Holding willfully and deliberately agreed to enter into a series of transactions expressly designed to remove $2.8 billion from the United States to Venezuela.

167. Defendants agreed to encumber CITGO Holding with billions of dollars of debt for no legitimate business purpose. Rather, the money was borrowed in order to fund a multi-step $2.8 billion dividend that was structured with the specific and intended objective of depriving Venezuela's creditors of a valuable asset that otherwise would have been available for execution in satisfaction of judgments entered into against Venezuela and/or its alter ego PDVSA.

168. As a result of the Defendants' conspiracy, Venezuela's and PDVSA's most significant United States-based asset has been rendered insolvent on a GAAP basis and burdened with billions of dollars of debt issued at a "junk" bond interest rate of 12%.

169. Because of this diminution in the value of CITGO, Crystallex's ability to recover has been substantially impaired.

170. Crystallex is therefore entitled to money damages in the amount of $2.8 billion or the final amount of its arbitration award against Venezuela, whichever is lower.

PRAYER FOR RELIEF

WHEREFORE, Crystallex respectfully requests judgment against Defendants be entered as follows:

i. Directing the Defendants to return the nearly $2.8 billion that they removed to Venezuela to the United States, where it would be available to satisfy Crystallex's judgment against Venezuela;

ii. Awarding money damages against each of the Defendants should they fail to return the $2.8 billion in an amount equal to Crystallex's uncollected arbitration award, such amount to be proven at trial;

iii. Enjoining the Defendants from transferring any portion of the $2.8 billion that remains in the United States out of the country;

iv. Enjoining the Defendants from further attempts to remove assets outside the United States; and

v. Granting such other and further relief as the Court may deem just or proper.

*/s/ Raymond J. DiCamillo*__________
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