

Paraguay Claims Immunity From Suit Over Project Loans

By **Jimmy Hoover**

Law360, Washington (September 2, 2016, 7:15 PM ET) -- Paraguay asserted sovereign immunity from a state-owned Italian insurance firm's lawsuit seeking millions of dollars in guaranteed loan repayments for two manufacturing projects, telling a D.C. federal court Friday a corrupt Paraguayan official inked the deals while acting outside his authority.

The South American republic denied that it "waived" its sovereign immunity when Gustavo Gramont Verres, Paraguay's consul in Switzerland at the time, executed written guarantees pledging to repay private loans on behalf of two companies he had stakes in, in the event of the companies' default. The suit was lodged by SACE SpA, a firm that had insured a group of banks that issued the loans.

Under U.S. common law, the "waiver" exception to foreign sovereign immunity applies only when such a waiver is executed by someone with "actual authority" to do so, Paraguay argued during a hearing on its dismissal motion.

"It doesn't matter what the agent thought, and it doesn't matter what the third party thought. It only matters what the authority was," the country's attorney Ana C. Reyes of Williams & Connolly LLP told U.S. District Judge Ketanji Brown Jackson. "Every court to have considered the issue held there was no actual authority."

SACE countered that the proper standard for the waiver exception to the Foreign Sovereign Immunity Act was whether Gramont had the "apparent authority" in the eyes of a reasonable counterparty to sign the guarantees. Nevertheless, the firm insisted that Judge Jackson follow the judgments against Paraguay rendered by Swiss courts that had overseen the litigation and enforce the guarantees, saying it was "eminently reasonable to rely on the decisions that they made."

"They're the ones with the facts," said SACE's attorney Jonathan J. Gimblett of Covington & Burling LLP. "You don't have all the facts."

Friday's hearing eventually evolved into a debate over whether the U.S.' interest would be better served by adopting the "actual authority" standard for the waiver exception or the "apparent authority" standard. While Reyes insisted that using apparent authority would make the U.S. subject to more litigation abroad and weaken international relations, Gimblett warned of the burdens that the "actual authority" standard would place on counterparties such as New York City bond investors to investigate the local laws of a country to determine whether a transaction is legal.

The dispute dates back to the late 1980s, when two Paraguayan companies co-owned by Gramont entered into separate deals with Italian firms to develop a fruit preserve factory and a pharmaceutical plant in the country. To finance the project, Gramont's companies borrowed 40 million Swiss francs (\$40.8 million) from a consortium of banks organized by the Swiss Overland Trust Banque, on the condition that the loan was guaranteed by the Paraguayan government. The banks further insured the notes by taking out a policy with SACE.

In an attempt to meet the guarantee requirement, Gramont, purportedly acting on Paraguay's behalf, executed guarantees to repay the loan in the event of a default.

Things turned south in 1989, when Paraguay's President General Alfredo Stroessner was removed from office in a coup d'état and the companies defaulted on the loans. When the banks sought repayment from Paraguay, the country renounced the agreements. A whirlwind of litigation unfurled in France, resulting in a settlement between SACE and the banks and judgments against Paraguay for repayment. Gramont was convicted in his country of various crimes.

SACE's current complaint, filed in July 2015, asks the D.C. federal court to enter judgment against the country for €28 million (\$31.2 million) and 46.7 million Swiss francs, 23 years of interest on a payment of 10 million Swiss francs to BNP, and post-judgment interest on all those amounts.

SACE is represented by Ali M. Yazdi, Eugene D. Gulland and Jonathan J. Gimblett of Covington & Burling LLP.

Paraguay is represented by Dane H. Butswinkas, Ana C. Reyes and Richmond T. Moore of Williams & Connolly LLP.

The case is SACE SpA v. Republic of Paraguay, case number 1:15-cv-01042, in the U.S. District Court for the District of Columbia.

--Editing by Edrienne Su.