UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORP.,	)	
	)	
Plaintiff,	)	
	)	PUBLIC REDACTED VERSION
v.	)	
	)	
BOLIVARIAN REPUBLIC OF VENEZUELA,	)	Case No. 1:17-mc-00151-LPS
	)	
Defendant.	)	
	)	
	)	

CITGO PETROLEUM CORPORATION'S
MOTION TO CONTINUE THE STAY ENTERED ON AUGUST 23, 2018

Intervenor CITGO Petroleum Corporation ("CITGO") respectfully requests the Court to continue the stay of execution on the shares of PDV Holding, Inc. ("PDVH") attached by way of the Court's August 23, 2018 Order, D.I. 95, pending resolution of Petróleos de Venezuela, S.A.'s ("PDVSA") interlocutory appeal of this Court's August 9, 2018 Order, D.I. 78, to the Third Circuit, D.I. 80.[1]

I. Factual and Procedural History

On April 7, 2017, Crystallex International Corp. ("Crystallex") obtained a judgment against the Bolivarian Republic of Venezuela ("Venezuela") from the United States District Court for the District of Columbia, confirming an international arbitral award entered against Venezuela on April 4, 2016. Crystallex registered the $1.202 billion judgment with this Court, D.I.1-1, and filed a motion for the issuance of a writ of attachment *fieri facias* against the shares

[1] As the Court is aware from prior litigation, PDVH is the wholly owned subsidiary of PDVSA, CITGO Holding is the wholly owned subsidiary of PDVH, and CITGO is the wholly owned subsidiary of CITGO Holding.

of PDVH owned by PDVSA (the "PDVH Shares"), arguing that PDVSA is the alter ego of Venezuela, D.I. 2, 3-1. PDVSA, the national oil company of Venezuela, moved to intervene on August 22, 2017, D.I. 14; that motion was granted on August 28, 2017, D.I. 17.

On August 9, 2018, the Court granted Crystallex's request for a writ of attachment against PDVSA as a means of enforcing Crystallex's judgment against Venezuela, concluding that—notwithstanding the presumptions of both corporate separateness and sovereign immunity to which PDVSA is entitled—PDVSA is the alter ego of Venezuela and the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* ("FSIA"), does not preclude the writ of attachment sought by Crystallex. D.I. 78, 83. In the August 9 Order, the Court directed the Clerk of Court not to issue the writ of attachment until the Court issued a separate order to that effect. D.I. 78. PDVSA promptly filed a notice of appeal on August 10, 2018, seeking interlocutory review by the Third Circuit of the District Court's decision regarding PDVSA's sovereign immunity under the FSIA, and, as a consequence, its decision to grant Crystallex's request for a writ of attachment. *See* D.I. 80. On August 16, 2018, the parties submitted their respective positions regarding whether and how the issuance, service, and execution of the writ of attachment should proceed, with Crystallex urging immediate and unsupervised effectuation of a sale of the PDVH Shares and PDVSA urging the Court to hold the proceedings in abeyance, as its jurisdiction had been stripped by virtue of PDVSA's interlocutory appeal to review the critical threshold issue of sovereign immunity. D.I. 86. CITGO likewise filed a letter on August 17, 2018, alerting the Court to its interest in the potential execution on the PDVH Shares. D.I. 87, 91.

On August 23, 2018, the Court concluded it retained jurisdiction to effectuate its August 9, 2018 Order and directed the issuance and service of the writ of attachment. D.I. 95. The Court stayed execution on the PDVH Shares pending input from interested non-parties regarding

the next steps in this action. *Id.* The Clerk proceeded to issue Crystallex's Praecipe and issue the writ of attachment to the U.S. Marshals Service, and the U.S. Marshals Service served the writ of attachment on PDVH on August 24, 2018. D.I. 96. CITGO has filed this Motion in response to the Court's solicitation of the views of interested entities, which were ordered to be submitted seven days after service of the writ.

II. The Court Should Continue to Stay Execution on the PDVH Shares Because It Lacks Jurisdiction to Proceed.

This Court should continue its stay of execution on the PDVH Shares pending resolution of PDVSA's interlocutory appeal to the Third Circuit for the simple reason that PDVSA's appeal divests this Court of all jurisdiction to proceed. Although the Court has agreed that "PDVSA is correct that the Court no longer retains jurisdiction over the issues on appeal," it nonetheless has concluded that it "retains authority to enforce the judgment that is currently on appeal." D.I. 95 at 3. CITGO respectfully submits that the Court has erred in this regard.[2]

This Court's August 9, 2018 Order authorizing a writ of attachment is predicated on the Court's conclusion that PDVSA does not benefit from the protections of sovereign immunity—a conclusion that unquestionably warrants immediate appellate review. *Fed. Ins. Co. v. Richard I. Rubin & Co.*, 12 F.3d 1270, 1281-82 (3d Cir. 1993); *accord Rep. of Venez. v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312, 1323 (2017). Proceeding to enforce the August 9, 2018 Order while an appeal is pending defies the purpose of sovereign immunity, as a sale of the PDVH Shares would "destroy the 'legal and practical' value of [PDVSA's] sovereign immunity defense"—*i.e.*, being immune from the attachment and execution of its property in its capacity as a purported alter ego of Venezuela. *Fed. Ins. Co.*, 12 F.3d at 1282. The cases upon which the

[2] This is the first opportunity for CITGO to be heard on this point of law.

Court relied to reach a contrary conclusion lack this sovereign immunity dimension and are therefore inapposite.

Specifically, the Court's reliance on *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585 (6th Cir. 1987), D.I. 95 at 3, is misplaced, as that case involved a contempt holding against an ordinary individual litigant (who made no claim of sovereign immunity) for failing to abide by an order requiring compliance with a subpoena while the enforcement order was on appeal. This is categorically different from forcing a presumptively immune sovereign entity, such as PDVSA, to sell off $1.2 billion in assets when its immunity has been invoked and is squarely before the Court of Appeals.[3] Moreover, even if *N.L.R.B.* were directly applicable, the Court's August 23, 2018 Order directing the Clerk of Court to issue the writ of attachment, D.I. 95 at 2, went beyond the scope of its August 9, 2018 Order, which expressly directed the Clerk of Court *not* to issue the writ, D.I. 78 at 1. PDVSA appealed the August 9 Order before the Court issued the August 23 Order, and the standard set out in *N.L.R.B.* would therefore prohibit the Court's August 23 expansion of its August 9 order when the latter was already on appeal. 829 F.2d at 588-89.

Likewise, the Court's observation that Rule 62(d) of the Federal Rules of Civil Procedure would be meaningless if an appeal divests a district court of jurisdiction to enforce an order or judgment fails to take into account the unique posture of a presumptively immune entity. D.I. 95 at 3-4 (citing *In re Gushlak*, 2012 WL 2564523 (E.D.N.Y. July 2, 2012) and *Brown v. Braddick*, 595 F.2d 961 (5th Cir. 1979)). In the normal course, requiring a litigant to post a supersedeas bond before requesting a stay pending appeal does not implicate sovereign immunity or principles of international comity. However, where, like here, the litigant *is* an agency or

[3] *Lauber v. Belford High School*, 2012 WL 12994877, at *2 n.4 (E.D. Mich. Aug. 31, 2012), to which the Court also cites, relies exclusively on *N.L.R.B.*

instrumentality of a foreign sovereign that has asserted immunity under the FSIA, is presumptively immune, and has the right to immediately challenge any conclusion to the contrary, requiring the posting of a supersedeas bond—or proceeding with a sale that cannot be reversed despite a pending appeal—would, again, "destroy the 'legal and practical' value of [the presumptively immune litigant's] sovereign immunity defense." *Fed. Ins. Co.*, 12 F.3d at 1282.

Other courts have recognized this distinction and have concluded that no motion for a stay pending appeal is required when sovereign immunity is at play. *E.g.*, *Princz v. Fed. Rep. of Ger.*, 998 F.2d 1, 1 (D.C. Cir. 1993) (per curiam) (observing a motion to stay is "unnecessary" where litigant appeals denial of sovereign immunity because case is stayed automatically); *De Csepel v. Rep. of Hung.*, 2011 WL 13244741, at *1 (D.D.C. Nov. 30, 2011) (noting that an "interlocutory appeal of the [district court's] ruling on sovereign immunity" resulted in "all proceedings" being "stayed pending resolution of that appeal"). This Court's reliance on the D.C. District Court's ruling in another *Crystallex* matter for the proposition that PDVSA must file a supersedeas bond and a Rule 62(d) motion, D.I. 95 at 4 (citing *Crystallex Int'l Corp. v. Bolivarian Rep. of Venez.*, 16-cv-66-RC D.I. 44 at 5-6 (D.D.C. Aug. 8, 2017)), is misplaced, as Venezuela *did not challenge* jurisdiction under the FSIA in that matter, thus placing the case squarely outside the universe of cases in which sovereign immunity is a live legal question. *See Crystallex*, 16-cv-661-RC D.I. 32 (D.D.C. Mar. 25, 2017) (observing that Venezuela did not challenge the court's jurisdiction under the FSIA).

Ultimately, the general rule that the filing of a notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal," *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), takes on special significance when the notice of appeal pertains to a denial of sovereign immunity under the FSIA. In order to provide the "'legal

and practical' value of the[] sovereign immunity defense," *Fed. Ins. Co.*, 12 F.3d at 1282, enforcement of the underlying order should shut down completely until the appellate court has had an opportunity to confirm or deny the district court's determination regarding the threshold issue of immunity. Indeed, because the propriety of the attachment and execution on the PDVH Shares is "inextricably tied to the question of immunity . . . [i]t makes no sense for [such proceedings] to go forward while the court of appeals cogitates on whether there should be" attachment at all. *See Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989) (describing proper handling of litigation in the qualified immunity context).

For all these reasons, CITGO respectfully submits that the Court was wrong to conclude it may proceed to enforce its order despite the pending interlocutory appeal regarding PDVSA's sovereign immunity, as the Court's ruling regarding PDVSA's immunity underpins the entirety of the Court's order authorizing attachment, rendering the ultimate order itself an "aspect of the case involved in the appeal" over which the Court presently has no jurisdiction. *Griggs*, 459 U.S. at 58. Accordingly, the Court should continue its stay of execution on the PDVH Shares pending the resolution of PDVSA's Third Circuit appeal.

III. Even if the Court Has Jurisdiction to Proceed, It Should Continue to Stay Execution on the PDVH Shares Pending PDVSA's Interlocutory Appeal.

Even if the Court adheres to its determination that it has jurisdiction to proceed with the sale of the PDVH Shares, CITGO requests that execution on the PDVH Shares continue to be stayed pending resolution of PDVSA's interlocutory appeal of this Court's August 9, 2018 decision. D.I. 80. This Court may grant—or extend—a stay in its discretion and as a means of efficiently controlling its docket. *St. Clair Intellectual Prop. Consultants, Inc. v. Fujifilm Holdings Corp.*, No. 08-373-JJF-LPS, 2009 WL 192457, at *2 (D. Del. Jan. 27, 2009) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Court "must weigh competing interests

and maintain an even balance," *id.* (quoting *Landis*, 299 U.S. at 255), which involves considering "(1) the length of the requested stay; (2) the 'hardship or inequity' that the movant would face in going forward with the litigation; (3) the injury that a stay would inflict upon the non-movant; and (4) whether a stay will simplify issues and promote judicial economy." *Id.* Generally, though not always, if granting a stay would damage another party, the moving party must demonstrate a hardship or inequity that would accompany moving forward. *Id.*; *see also Cooper Notification, Inc. v. Twitter, Inc.*, No. 09-865-LPS, 2010 WL 5149351, at *2 (D. Del. Dec. 13, 2010). All four of these factors counsel in favor of continuing the stay of execution on the PDVH Shares.

A. CITGO Would Face Significant Hardship Absent Continuing the Stay.

Starting with the second *St. Clair* factor listed above, CITGO—which is not, and has never been held to be, the alter ego of Venezuela or PDVSA—could be irreparably and severely harmed by an unstructured, immediate sale of the PDVH Shares. As detailed in CITGO's Motion to Intervene filed concurrently herewith, a sale of [redacted]

[redacted] To risk such harm before the Third Circuit has confirmed that this Court's August 9, 2018 Order was proper would be injudicious. Entering a stay, by contrast, would be reasonable and just and, as set forth below, would not prejudice Crystallex.

B. Continuing the Stay Would Not Injure Crystallex.

With regard to the third factor—the injury a stay would work on Crystallex—Crystallex itself has informed this Court that once the writ of attachment was served, the resulting lien would "provide Crystallex the same protection afforded any other judgment creditor" and would "establish[] Crystallex's priority interest in the shares." D.I. 86 at 1-2. Following the Court's August 23, 2018 Order, the writ of attachment was issued and served on PDVH on August 24, 2018, establishing, according to Crystallex, its priority interest in the PDVH Shares and preventing the further transfer of such shares to any other entity. D.I. 95, 96. Moreover, absent the issuance of a Specific License from the Office of Foreign Assets Control ("OFAC") in the Department of Treasury, the current U.S. sanctions against Venezuela prohibit the sale of PDVH

stock through public sale. Executive Order 13808, 82 Fed. Reg. 41155 (Aug. 29, 2017) ("EO 13808"); Executive Order 13835, 83 Fed. Reg. 24001 (May 21, 2018) ("EO 13835"); OFAC FAQ 595. Accordingly, delaying execution on the doubly-secured PDVH Shares until after the Third Circuit has weighed in on the important question of sovereign immunity posed by PDVSA's interlocutory appeal and, by extension, the propriety of the writ itself, will cause no injury to Crystallex.

C. Continuing the Stay Would Promote Judicial Economy.

Next, a stay would promote judicial economy (the fourth factor in *St. Clair* test) by permitting the Third Circuit to weigh in on the issue of PDVSA's sovereign immunity before this Court is faced with the complicated task of determining how to structure a sale of the PDVH Shares that simultaneously comports with Delaware law, maximizes the PDVH Shares' value, and minimizes harm to non-parties, such as CITGO.

The Court has already rightly identified its potential role in ensuring any sale process adheres to a "commercially reasonable procedure." D.I. 83 at 75. Under Delaware law, courts have broad discretion to fashion remedies and relief as the facts of a given case may dictate. *E.g.*, *Brinckerhoff v. Enbridge Energy Co.*, 159 A.3d 242, 262 & n.70 (Del. 2017). In particular, courts have discretion to specify the terms and conditions of compliance with a writ of attachment of shares. *See, e.g.*, *Wallace v. Geckosystems Int'l Corp.*, C.A. No. K12A-08-004 (JTV), 2013 WL 3340535, at *1 (Del. Super. Ct. June 26, 2013); *Baker v. Gotz*, 387 F. Supp. 1381, 1391 (D. Del. 1975) (stating that the court's power to sequester stock "springs from the historic and inherent power of equity"). In addition to commercial reasonableness, the Court must play a role in ensuring any sale comports with Delaware law. The unprecedented magnitude and complexity of a future sale pursuant to this Court's writ of attachment warrants

careful structuring and supervision, as opposed to the slapdash approach proposed by Crystallex, which would ultimately entail the expenditure of substantial judicial resources.

The Delaware statute authorizing attachment of company stock specifies that a sale of those shares is limited to "[s]o many of the shares . . . sold at public sale to the highest bidder, as shall be sufficient to satisfy the debt . . . ." 8 Del. C. § 324(a). Under the statute's terms, it would be inappropriate to sell *all* attached shares to satisfy a debt; instead, this Court must direct the U.S. Marshals office to sell only the number of shares needed to satisfy the judgment. *See Wallace*, 2013 WL 3340535, at *4 (ordering "a sufficient number of shares" to be sold to satisfy the judgment). Accordingly, the United States Marshals Office[4] could not place all of the PDVH Shares up for auction—as Crystallex appears to suggest—but rather the Court must ensure that it only tenders enough to satisfy Crystallex's arbitral award.

If PDVH were a publicly traded corporation, determining the appropriate number of shares to sell would be a relatively straightforward procedure. But for a privately held company, valuation of shares is an "extremely difficult task" because there is no readily ascertainable market. *Kool, Mann, Coffee & Co. v. Coffey*, 300 F.3d 340, 362-3 (3d Cir. 2002). Bidders for PDVH Shares would take into account a number of factors, including potentially the company's financial condition and operating results, operational development and capital structure, economic outlook of the business, earnings and dividend-paying capacity, size of the block of stock being sold, and an appropriate illiquidity discount. *See* American Institute of Certified Public Accountants, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation* 2 (2013); Larry J. Kasper, *Business Valuations: Advanced Topics* 6–7 (1997); Aswath Damodaran, *Investment Valuation: Tools and Techniques for Determining the Value of*

[4] *See LNC Invest., Inc. v. Dem. Rep. Congo*, 69 F. Supp. 2d 607, 610 (D. Del. 1999) (explaining that the Marshals Office may serve writs of attachment *fieri facias* issued in federal court).

Any Asset 684 (3d ed. 2012). It is not uncommon for parties whose property of uncertain value has been sold pursuant to a writ of attachment *fieri facias* to have used independent appraisers to ensure that the sale is for an appropriate value. *E.g.*, *G. A. C. Commercial Corp. v. Aurora Trucking Co.*, 404 F.2d 761, 764 (6th Cir. 1968); *Smith v. Landis*, 211 F.2d 166, 168 (5th Cir. 1954); *Van Senden v. O'Brien*, 58 F.2d 689, 690 (D.C. Cir. 1932); *see also, e.g.*, Iowa Code § 626.93 (requiring an appraisal of personal property levied upon for execution). Determination of how many shares of PDVH must be sold in order to satisfy the $1.2 billion judgment would be the only fair way to meet the requirements of Delaware law. Ultimately, valuation would be negotiated between a buyer and the seller, and the seller's ability to obtain a fair price—as required to comply with Delaware law regarding the sale of attached shares, and for the protection of PDVSA's creditors other than Crystallex—would depend on the care and deliberation with which the sale process was conducted.

The decision of how many shares of PDVH to sell has significant ramifications. As noted above, [redacted] *See Holmes v. Wooley*, 792 A.2d 1018, 1020 (Del. Super. Ct. 2001) (observing that a writ of attachment should not issue if it would "offend the interests of justice"). [redacted]

Accordingly, any order of sale issued by this Court would have to provide that the *only*

asset sold would be the number of PDVH Shares sufficient to raise $1.2 billion and that the sale itself would be managed by the seller and its professional advisors. A professionally managed process would be required to obtain optimal valuation for the PDVH Shares and, thereby, ensure that only so many shares would be sold as necessary to satisfy Crystallex's judgment. Indeed, the CITGO Entities are not aware of any previous stock auction under 8 Del. C. § 324 on the scale contemplated here.[5] Among the cases available on Westlaw citing Delaware's attachment statute, 8 Del. C. § 324, the largest judgment to be satisfied through attachment of stock was a default judgment for $567,000; there, the Delaware Superior Court ultimately found the attachment invalid. *Brainard v. Canaday*, 112 A.2d 862, 864, 872 (Del. Super. Ct. 1955). The table below enumerates the other readily ascertainable judgments for which attachment under 8 Del. C. § 324 issued or was sought:

Judgment amount	**Case**
$289,080.61	*Harrington v. Hollingsworth*, 1996 WL 769635 (Del. Super. Ct. Dec. 20, 1996)
$121,250.08	*Atl. Props. Grp. v. Deibler*, 1994 WL 45433 (Del. Super. Ct. Jan. 6, 1994)
$25,766	*UMS Partners, Ltd. v. Jackson*, 1995 WL 413395 (Del. Super. Ct. June 15, 1995)
$17,100, plus costs and interest	*Wallace v. Geckosystems Int'l Corp.*, 2013 WL 3340535 (Del. Super. Ct. June 26, 2013)
$15,000	*Livingston v. Ramunno*, 1999 WL 1611322 (Del. Mar. 30, 1999)

Ultimately, a sale of this magnitude appears to be unprecedented in the Delaware courts, and the Court would have to play a major role in ensuring any such sale not only comports with

[5] A representative from the U.S. Marshals Office for the District of Delaware has stated that she could not recall if her office had ever conducted a stock auction. She stated that her office would seek guidance from the local Sheriff's office. A representative from the New Castle County Sheriff's office in Wilmington has stated that her office had conducted a limited number of stock auctions, but only for a handful of shares at a time.

Delaware law but also is conducted in a commercially reasonable way to identify viable potential buyers, preserve value, and avoid unnecessary collateral damage to non-parties, [redacted].[6] Structuring such a sale would require consultation with industry experts and entail numerous steps above and beyond those required in a typical public sale. *See* Decl. of David Maughan (Ex. 1) at ¶¶ 7-16. Should the Third Circuit reverse this Court's conclusion regarding the FSIA, all the work this Court would undertake to structure the sale of the PDVH Shares would be for naught. The judicially economical approach, therefore, is to await the Third Circuit's review.

D. Continuing the Stay Until Resolution of PDVSA's Appeal Is Appropriate.

Finally, the length of the requested stay is appropriate (the first *St. Clair* factor), as it is no longer than necessary to attain the benefits of judicial economy. Once the Third Circuit has ruled, the Court will know whether to undertake the task of structuring a sale of the PDVH Shares.

Moreover, while Crystallex suggests that an immediate, unsupervised sale would allow it to obtain its arbitral award quickly, any such sale—if conducted fairly and to maximize the value of the PDVH Shares—would, in fact, take time. The sale of any asset for $1.2 billion is a complex undertaking requiring a significant amount of work by the seller and its advisors in

[6] It goes without saying that Crystallex cannot run the sale, as an adverse party in litigation will never have a sufficiently trusting relationship with the seller's management to access information required by buyers or help management evaluate and negotiate offers from buyers. Moreover, Crystallex cannot fairly lead this process because its incentive would be to obtain the fastest possible transaction for $1.2 billion, regardless of the value of PDVH and regardless of the impact of that transaction on CITGO's ongoing operations. Indeed, that incentive is apparent in Crystallex's proposal that the Court conduct an immediate, unstructured auction for the PDVH Shares—a process that is in conflict with Delaware law, that any sophisticated party knows is unlikely to result in a fair transaction for the seller, and that may not produce any transaction at all, because any buyer paying $1.2 billion for an asset would require extensive due diligence and the negotiation of a detailed purchase agreement.

order to obtain a fair valuation, as required to ensure no more PDVH Shares than necessary are sold. This is especially true where the asset is some portion of the sales of a profitable, complex, privately-held company that is majority-owned by another party. Given that the goal of any commercially reasonable sale of the PDVH Shares would be to obtain the defined $1.2 billion in exchange for the smallest percentage of ownership possible, at *least* the following five steps would have to be undertaken before a sale could occur. Maughan Decl. ¶¶ 10-15.

1. The seller and its advisors would conduct initial due diligence, including interviews with management, development of a marketing strategy, preparation of a confidential information memorandum ("CIM") describing the company, and development of a buyer list.

2. The seller and its advisors would conduct preliminary marketing, including contacting and qualifying buyers, distributing the CIM to buyers who sign a nondisclosure agreement, preparing management presentations to prospective buyers, and requesting preliminary indications of interest (which would each be unique).

3. The seller and its advisors would conduct intensive buyer interaction, including selecting buyers to meet with management, conducting management presentations, supporting buyer due diligence, and requesting letters of intent or preparing actual draft purchase agreements.

4. The seller and its advisors would conduct buyer selection, including evaluating the letters of intent or draft purchase agreements, negotiating the final value and terms of a transaction, and selecting a buyer.

5. The seller and its advisors would finalize the transaction by, *inter alia*, negotiating a definitive purchase agreement, submitting the necessary regulatory filings, and closing the transaction.

Each of these steps would require the services of professional investment bankers, and the entire process may require multiple rounds of bids and numerous regulatory approvals. Moreover, depending on the purchaser, Hart-Scott-Rodino Act filings and clearance may need to be obtained as well as the necessary licenses from OFAC. And given the complexity of this entire process, it is also possible that potential *buyers* would not be willing to engage in the costly process of exploring the purchase of a $1.2 billion stake in PDVH prior to a Third Circuit ruling affirming the order of attachment, even if the Court ordered a sale to proceed immediately.

Finally, the pendency of the appeal itself will be a drag on any sale process. As set forth in the Declaration of David Maughan, any buyer of a $1.2 billion asset will be required to undertake significant due diligence, analysis, and negotiations before committing to a transaction. Maughan Decl. ¶¶ 24-27. Bidders will be required to spend their own time analyzing the asset, as well as hire lawyers, financial advisors, and perhaps industry experts or other consultants. The out-of-pocket costs of these efforts could easily run into the millions of dollars, and the opportunity cost of spending time on a PDVH transaction would also be significant to a sophisticated investor with numerous other opportunities. The possibility that the Third Circuit may reverse this Court's order of attachment, halting a sale process before any transaction could be completed, would discourage potential bidders from participating in the process. Those who would participate might devote fewer resources to analyzing the transaction than they otherwise would, which in turn would prevent them from making an optimal bid for the PDVH Shares. Thus, conducting a sale process before the resolution of PDVSA's appeal poses a significant risk of obtaining a lower valuation for the PDVH Shares, and, in turn, of selling more than otherwise required to raise $1.2 billion, in violation of Delaware law and to the disadvantage of PDVSA's creditors other than Crystallex.

If one thing is clear, it is that Crystallex's suggestion of a quick sale of the PDVH Shares is not realistic, and extending the present stay of execution on the PDVH Shares pending resolution of the FSIA issue by the Third Circuit is hardly the delay tactic Crystallex would have the Court believe it to be. Awaiting the Third Circuit's ruling (and the accompanying certainty), therefore, is the appropriate benchmark for how long the existing stay of execution should last.

Conclusion

Faced with an unprecedented attachment and execution with the potential to have severe, irreversible negative effects on non-parties [redacted] CITGO respectfully submits that the fairest and most judicious course is for the Court to hold any sale in abeyance until the Third Circuit acts. Therefore, CITGO requests that the Court continue the existing stay on execution of the PDVH Shares entered on August 23, 2018, pending resolution of PDVSA's interlocutory appeal of the Court's August 9, 2018 Order.

Respectfully submitted,

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August 31, 2018

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send notification of such filing to all registered participants.

/s/ Kenneth J. Nachbar

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