Bolivian arbitration benefits funder and client

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Energy firm Rurelec has secured the payment of an UNCITRAL award – with a little help from third-party funder Burford.

An innovative approach to funding has benefitted British energy company **Rurelec**, as it received a USD 31.5 million payment from the Bolivian government following a four-year dispute.

The successful receipt of the money came after the power generation company received financial assistance from third-party funder **Burford Capital**, which provided funding in the form of a USD 15 million up-front loan, secured against the arbitration award.

Payment to Rurelec was released on Friday after being approval by Bolivian energy minister, Juan Jose Sosa. The USD 31.5 million was compensation for the government's 2010 nationalisation of Rurelec's 50.001% stake in Bolivian energy company **Empresa Eléctrica Guaracachi**.

The arbitration at the Permanent Court of Arbitration in The Hague was brought under the US-Bolivia and UK-Bolivia bilateral investment treaties, and conducted under UNCITRAL rules. The case was launched in November 2010, with hearings taking place in April 2013.

Rurelec instructed an international team from **Freshfields Bruckhaus Deringer**, while Bolivia was represented by its attorney general and **Dechert** lawyers from France and the US. Neither set of lawyers were available for comment at the time of going to press.

The award was issued on 31 January by a panel led by Portuguese lawyer **José Miguel Júdice**, and consisting of Spaniard **Manuel Conthe** and Argentine arbitrator **Raúl Emilio Vinuesa**.

The British energy company agreed to waive some of the money in order to secure prompt payment, bringing the award down from the initial USD 35.5 million.

In a statement, **Peter Earl**, CEO of Rurelec, lamented that it had taken so long to reach a settlement, and said that though he supported “the right of every single country to nationalise strategic assets”, the treatment of the company had been unfair.

“We have received compensation of less than two times earnings before interest, tax, depreciation and amortisation,” he said, adding that the company “had no alternative but to go to international arbitration”.

He insisted that Rurelec remained a friend to Bolivia and praised the economic programme of **Evo Morales**, but warned that British shareholders would be wary of investing in the country in future.

FUND FAIR

Although Rurelec did not require assistance to fund the case, its path to success was eased by its funding arrangement with Burford Capital, allowing it to invest in its business during the proceedings.

Rather than a standard arrangement, with funding tied directly to costs, Burford provided a USD 15 million loan, using the arbitration as an asset to secure it.

According to Burford, the loan allowed Rurelec “to monetize the value of its arbitration claim” and the company “used the facility to expand its business while it awaited the outcome of its arbitration”.

Rurelec chairman **Colin Emson** said in the statement that the loan “lowered our cost of capital and helped our business expand”.

Time and cost were two key factors that surfaced at *CDR*’s recent Arbitration Symposium in London- at which funders and lawyers were amply represented.

After the award, Rurelec paid Burford USD 26 million, made up of the repaid USD 15 million loan and a USD 11 million fee, which was calculated on a sliding scale based on time and amount.

Skadden, Arps, Slate, Meagher & Flom advised Rurelec in the financing transaction, while **Latham & Watkins** represented Burford.

Nick Rowles-Davies, a managing director at Burford, says the arrangement made more sense for Burford than a traditional finance provider, given its familiarity with assessing and reviewing cases. He says the funder has been planning this expansion in services for some time.

“Burford is trying to position itself as a finance provider. We have specialist skills that allow us to use these sorts of methods. We would rather people thought of us as having the ability to provide finance in all sorts of ways.”

Rowles-Davies, who joined the company from Isle of Man-headquartered rival **Vannin Capital** in April, says that rather than look to funders when they do not want to take the financial risk, this method allows the company to expand, rather than cover legal fees.

“Here, the advantage is that you have an asset which could be used to raise finance," he explains. "If you have the cash flow to fund the litigation, you can raise the sum separately using this method.”

CEO of Burford, **Christopher Bogart**, added in a statement: “This is a good demonstration that the benefits of litigation finance go far beyond that of simply helping to pay legal fees, and in many cases can provide an effective alternative method of financing to help companies achieve their strategic goals.”

Rowles-Davies says the evaluation process is the same for Burford as in a conventional funding arrangement. “We look at what the prospects of success are and the chance of recoverability and the ratio between the budget and the likely damages. Here, we do a similar thing, but it’s how much of the ultimate award can they take by way of advance.”

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