

**Phillips Petroleum Co. Venezuela Ltd. v Petroleos De Venezuela, S.A.**

2026 NY Slip Op 32035(U)

May 9, 2026

Supreme Court, New York County

Docket Number: Index No. 659128/2025

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PHILLIPS PETROLEUM COMPANY VENEZUELA  
LIMITED, and CONOCOPHILLIPS PETROZUATA B.V.,

Plaintiffs,

- v -

PETROLEOS DE VENEZUELA, S.A., PDVSA  
PETROLEO, S.A., and CORPOGUANIPA, S.A.,

Defendants.

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INDEX NO. 659128/2025

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for \_\_\_\_\_ ALTERNATE SERVICE \_\_\_\_\_.

In motion sequence 001, plaintiffs, Phillip Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V, move pursuant to 28 U.S.C. §1608(b)(3)(C) for authorization to serve the summons, complaint, and corporate disclosure statement upon defendants, Petroleos de Venezuela, S.A (PDVSA), PDVSA Petroleo, S.A (PPSA) and Corpoguanipa S.A, effectuated by commercial courier and electronic mail as detailed in the Ex-parte Order. (NYSCEF 28, Exparte Order.)

The Settlement Agreement between the parties permits service by a special arrangement. A special arrangement is defined by 28.US.C § 1608 (b) as an arrangement between the plaintiff and the agency or instrumentality<sup>1</sup> of a foreign state. (28.US.C § 1608 (b).) On January 15, 2016, pursuant to the special arrangement in

<sup>1</sup> 28 U.S.C. §1608(b) applies to PDVSA because it is a wholly owned “agency or instrumentality” of the Bolivarian Republic of Venezuela. (See *Petróleos de Venezuela, S.A. v MUFG Union Bank, N.A.*, 2025 US Dist 183693 [SDNY Sep. 18, 2025].)

§7.0 of the Settlement Agreement (Agreement),<sup>2</sup> plaintiffs served defendants by sending the documents to Hilda Cabez via email and commercial courier (DHL Express) at the address specified in the Agreement. (NYSCEF 10, Zoe Bunnell aff ¶ 4.) Neither could be delivered.<sup>3</sup> Other attempts to deliver to Cabeza were also unsuccessful due to multifaceted disputes over who represented defendants. Thus, service under the special arrangement and the Agreement failed. (NYCEF 9, Plaintiffs' MOL at 7.<sup>4</sup>)

The Foreign Sovereign Immunities Act, 28 USC §1608(b)(3), provides that, if service cannot be made under either subsection (1)<sup>5</sup> or (2)<sup>6</sup> of § 1608(b), then service may be made, "if reasonably calculated to give actual notice as directed by order of the court consistent with the law of the place where service is to be made." (28 USC §1608[b][3][c].) Plaintiffs again through email and courier service attempted service on

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<sup>2</sup> Section 7.0 of the Settlement Agreement constitutes such a "special arrangement," in which respondents irrevocably agreed to accept service of any legal process in relation to "any controversy or claim arising out of or relating to this Agreement, or the validity or breach thereof" by "transmission of such documents by commercial courier or registered mail to Hilda Cabeza, Consultora Jurídica de PDVSA" to a specified address in Venezuela and by email to Ms. Cabeza at a specified email address.

<sup>3</sup> "On January 16, 2026, DHL informed us that the Venezuela Service Packets were rejected during an inspection by the United States Customs and Border Protection. On January 22, 2026, DHL returned the Venezuela Service Packets to Kobre & Kim LLP's New York office and provided us a letter confirming their inability to deliver the Service Materials to Venezuela due to "lack of denied party clearance due to commercial and operational reasons and reputational risks." (NYSCEF 10, Zoe Bunnell aff ¶5.)

<sup>4</sup> NYSCEF pagination.

<sup>5</sup> (1): Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

<sup>6</sup> (2): if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents.

numerous representatives of the defendants, as well as defendants' legal counsel in other actions pending in the United States District Courts for the Southern District of New York and the District of Delaware via email and courier service. (NYSCEF 10, Affirmation of Zoe Bunnell ¶¶ 4, 8-11.) Bunnell describes the service in detail. (*Id.* at ¶¶ 6-8, 10, 11.) Some attempts of service remained undelivered while some were rejected by the recipients for lack of authorization to accept service. (*Id.* ¶¶ 7, 9, 12, 13-15; See also NYSCEF 13-25 for proof of delivery and responses.) As 28. U.S.C § 1608(b)(1) and (2) were unavailable, §1608(b)(3) is applicable. Accordingly, the question here is whether plaintiffs' service was sufficient actual notice under §1608(b)(3).

In a similar case, where plaintiffs served a default judgment on PDVSA, service under §1608(b)(2) was unavailable, but the court allowed service under §1608(b)(3) finding that "Venezuela] has no agents in the United States with the authority required by § 1608(b)(2)." (*Pharo Gaia Fund, Ltd v Petróleos de Venezuela, S.A.*, No. 23-cv-10071-JSR, 2024 WL 917608, at 11 (SDNY Mar. 4, 2024).]<sup>7</sup> Similarly, plaintiffs have not been able to find any agents of the defendants in the United States and thus plaintiffs may rely on service under §1608(b)(3) because plaintiffs service was sufficient actual notice.

Furthermore, courts apply the "substantial compliance test in §1608(b) not the strict compliance test for service under § 1608(a<sup>8</sup>)." (*Trans Commodities, Inc. v*

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<sup>7</sup> The judgment was subsequently vacated at plaintiff's request, but the analysis remains the same. (*Pharo Gaia Fund, Ltd v Petróleos de Venezuela, S.A.*, 23-CV-10071-JSR, 2025 WL 1380685 [SDNY May 12, 2025].)

<sup>8</sup> § 1608(a) is used when:

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

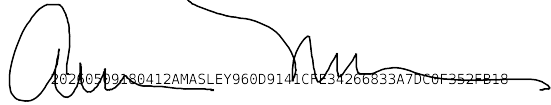
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Motion No. 001

*Kazakstan Trading House, S.A.*, 1997 US Dist 23906 [SDNY May 27, 1997, 96 Civ. 9782(BSJ)].) Finally, service under § 1608(b)(3) can be satisfied by “technically faulty service as long as the defendants received adequate notice of the suit and are not prejudiced.” (*Doe v State of Israel*, 400 F Supp 2d 86, 103 [DDC 2005].) Here, to reiterate, plaintiffs served defendants’ counsel in related matters and some of the service of defendants’ counsel for this litigation was also accepted. (See NYSCEF 10, Affirmation of Zoe Bunnell ¶¶ 4, 8-11.) Thus, service was effective under the “technically faulty service” standard.

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- (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
  - (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
  - (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
  - (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

Accordingly, it is

ORDERED that plaintiffs' motion for alternate service is granted and order signed  
(NYSCEF 28).



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5/9/2026

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE