The Virgin Islands Consortium

Hess Corp. Sues Virgin Islands Government For Millions In Tax Refunds

Business / **Published On January 08, 2015 06:24 PM /**

Cynthia Graham January 08, 2015

In the wake of the failed effort by Atlantic Basin Refining (ABR) to purchase St. Croix's HOVENSA refinery when the 30th Legislature on Dec. 19 rejected the proposed Operating Agreement between ABR and the Virgin Islands Government, Hess Oil Virgin Islands Corp., HOVENSA's owners, has filed a multi-million dollar suit against the Virgin Islands Government in an effort to collect tax refund payments in excess of $200 million they say are owed them by the V.I. Government.

The lawsuit, *Hess Oil Virgin Islands Corp. & Subsidiaries v. The Government of the United States Virgin Islands*, was filed in the New York Southern District Court on Dec. 24, five days after the ABR deal was shutdown by the Senate.

Details made available to *VI Consortium* by Sen. Nellie Rivera-O'Reilly in November, revealed that in 2011 HOVENSA claimed refunds for corporate taxes it paid in prior years to the V.I. Government; however, the Government contested and hired an auditing company to investigate HOVENSA, who, in turn, hired an auditing company to review the status of the Government.

Since then, the two parties have been entangled in a dispute over who owes who.

The Government's auditor concluded that HOVENSA owed more than $200 million in taxes; however, the way the ABR Operating Agreement had been crafted, HOVENSA would have been relieved from paying its debt, Rivera-O'Reilly said.

"The Government of the Virgin Islands should pursue the tax audit, and claim and lien all assets," Rivera-O'Reilly told the *VI Consortium*.

On Jan. 2, three days before John P. de Jongh, Jr. completed his second term as governor, Rivera-O'Reilly issued a letter to the governor requesting that he activate provisions made available to the V.I. Government and seize the assets of HOVENSA in order to satisfy the $200 million debt.

"As you know, the Security Agreement governing the terms of the Natural Resource Claim Settlement requires Hovensa to pay $40M by December 31, 2014. That deadline has now passed. Pursuant to the security agreement the outstanding amounts are secured by a lien against the real and personal property located upon the refinery. All crude oil and proceeds derived from the ongoing storage leases are also collateral under the agreement. The terms and conditions of the security agreement, allow the government to seize the assets of the refinery in order to collect the settlement amount. Specifically, Section 5.2 (iii) of Article V, "Events of Default and Remedies," states:

(iii) without notice (except as specifically provided elsewhere herein), demand or advertisement of any kind to the Grantor or any other Person, enter the premises of the Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at the Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Grantee may deem commercially reasonable."

Rivera-O'Reilly went on to say that unless HOVENSA has "satisfied its obligations under the Settlement Agreement, the government of the Virgin Islands has ample and broad authority to avail itself of the property as set forth above," adding, "It is clear from testimony and the recent lawsuit, that Hovensa has no intentions to comply with the terms of the settlement."

She requested that the now-former governor and Attorney General "apprise the incoming administration of the recent developments and, to the extent possible, immediately exercise all remedies and options available under the security agreement to include taking possession of the property."

As of press time, the *VI Consortium* had not received information as to whether de Jongh responded to Rivera-O'Reilly's letter or if the new Mapp administration would pursue the matter.