

**IN NAME OF THE QUEEN!**

**PETITION FOR A PREJUDGMENT GARNISHEE ORDER (PURSUANT TO  
ART. 718 CCP)**

To the Honorable Summary Trial Judge  
of the District Court, The Hague

The Court is respectfully notified by:

Petitioner, the company incorporated under the law of the Isle of Man called **LLANOS OIL EXPLORATION LTD.**, having its principal place of business in Bogotá D.C. (Republic of Colombia), hereby choosing domicile in (1076 DA) Amsterdam at Peter van Anrooystraat 7, at the office of Lexence N.V., of which office F.H.J. van Schoonhoven, Esq., deals with the matter as the attorney (with the right of substitution) and files the current petition;

This petition is made against:

1. The company incorporated under the law of Colombia called **ECOPETROL S.A.**, having its principal place of business in Bogotá D.C. at Carrera 7 no. 37-65 in the Republic of Colombia.

**Introduction**

1. On October 17, 2008, February 12, 2008 and February 18, 2009, the Petitioner ("Llanos Oil") U E.A petitioned the Honorable Summary Trial judge for leave to levy prejudgment third-party garnishment orders against the Respondent ("Ecopetrol") and the Republic of Colombia. These petitions were approved in relation to Ecopetrol alone. **Exhibit 1** contains the decisions made by the Honorable Summary Trial Judge. The present petition is based on the same facts and grounds as expressed in the previous petitions.
2. Llanos Oil has an interest in imposing a new prejudgment third-party garnishment order against Ecopetrol. Llanos Oil has reason to believe that there are currently assets belonging to the respondent held by the third parties named in paragraph 15.

## **Background**

3. Reference is made to the draft summons for an extensive overview of the facts and background. The draft summons was filed as an exhibit with the previous petitions. Because of its size, this exhibit is not being enclosed at the moment. Of course it would be possible to send this on if we are asked to do so.

### *Facts*

4. An agreement was entered into with effect from November 14, 2002 between Llanos Oil and the respondent number 1 ("Ecopetrol"). Under that agreement, Llanos Oil obtained the exclusive right to undertake exploration and operational work for oil and gas in an area called Guatapurí in the Cesar region in the north-east of Colombia ("**Guatapurí Agreement**"). The agreement was entered into for a term of 28 years.
5. Llanos Oil is a company incorporated under the law of the Isle of Man and is run by Dutch brothers Hendrik and Albert van Bilderbeek. Llanos Oil mainly has Dutch investors.
6. Ecopetrol is a Colombian state company given responsibility by the government of Colombia for oil and gas management in Colombian soil. In this capacity, Ecopetrol concludes private contracts with third parties.

### *Termination of the Guatapurí Agreement*

7. On July 23, 2003, Luis Eduardo Peña, in his position of Vice President of Exploration and Production, terminated the agreement with Llanos Oil on behalf of Ecopetrol. Llanos Oil had allegedly failed to comply with the contractual obligation to provide a security of \$2,500,000.00 as a guarantee for the investments in the first year of exploration.
8. As referred to in the summons, the termination of the Guatapurí Agreement is unfounded and Llanos Oil did comply with its obligation to provide a security of \$ 2,500,000.00
9. In addition, pursuant to Ecopetrol's legally established contract manual, the Vice President of Exploration and Production was not authorized to represent Ecopetrol to terminate the agreement.

According to Colombian private law, such delegation constitutes abuse of power. Under Colombian commercial law, the person who is guilty of abuse of power is liable for the ensuing damages. To this effect, Llanos Oil obtained legal advice from Colombian lawyer Manuel Castro associated with the Santiago Salah, Abogados, Consultores & Asociados Law Office in Bogotá.

10. Furthermore, the fact and circumstances under which the Guatapurí Agreement was terminated show that Ecopetrol had the resolute intention to terminate the Guatapurí Agreement with Llanos Oil in order to transfer the contractual rights to US coal company Drummond Ltd. According to Colombian law, this constitutes a wrongful act.

**The claim**

11. Ecopetrol has committed a breach of contract by unilaterally terminating the Guatapurí Agreement, although Llanos Oil had fulfilled all of the conditions of the Agreement. Furthermore, the ground adduced by Ecopetrol for terminating the Agreement does not justify termination. As a result of this termination, Ecopetrol is liable for the losses sustained and yet to be sustained by Llanos Oil as the result of the termination of the Guatapurí Agreement.
12. According to Colombian private law, Ecopetrol is guilty of abuse of power by not observing Ecopetrol's internal rules and regulations pertaining to contracts with third parties. On this ground, too, Ecopetrol is liable for the damages suffered by Llanos Oil as a result of the termination of the Guatapurí Agreement.
13. In addition, the actions of Ecopetrol pertaining to the termination of the Guatapurí Agreement must be deemed unlawful as they were committed knowingly and in a dishonest way and were only intended to allow the US company Drummond Ltd. to take over the rights from the agreement. On this ground, too, Ecopetrol is liable for the damages suffered by Llanos Oil as a result.

## Losses

14. As a result of the termination of the Guatapurí Agreement, Llanos Oil suffered losses consisting of the investments made for the Guatapurí Agreement as well as the loss of the income it would have received if it had been able to continue its activities under the Guatapurí Agreement. In particular, the latter loss item is huge. In the Guatapurí area, it has been proven there are large oil and gas reserves. The losses are currently estimated at \$7,610,650,000.00, which corresponds to €5,587,922,170.00. The Honorable Summary Trial Judge previously permitted Llanos Oil to impose prejudgment third-party garnishment orders for an amount of € 7,000,000,000.00.

## Request for prejudgment third-party garnishment

15. As further security for the claims against Ecopetrol described in paragraph 11 et seq., Llanos wishes to have prejudgment garnishment levied against the following:
- (a) **ABN AMRO Bank N.V.**, registered in (1082 PP) Amsterdam at Gustav Mahlerlaan 10,
  - (b) **Royal Dutch Shell plc**, registered in (2596 HR) The Hague at Carel van Bylandtlaan 30,
  - (c) **Royal Dutch Shell B.V.**, registered in (2596 HR) The Hague at Carel van Bylandtlaan 30, and
  - (d) **Shell Exploration Company B.V.**, registered in (2596 HR) The Hague at Carel van Bylandtlaan 30
16. There is a legal relationship in existence between ABN AMRO Bank N.V. and Ecopetrol. Ecopetrol uses the services of ABN AMRO Bank N.V. on a large scale for its payment transactions. In response to a previously imposed garnishment order dated October 22, 2008, ABN AMRO Bank N.V. accordingly stated it had a legal relationship with Ecopetrol. ABN AMRO went on to state that there were no positive balances present on

the garnishment date. Llanos now has reason to suspect that ABN AMRO now in fact holds money due to Ecopetrol.

17. Llanos Oil is also aware that Shell has been a trading partner of Ecopetrol for a considerable period. Llanos Oil considers it likely that are currently assets belonging to Ecopetrol under this legal relationship with the companies in the Shell group mentioned above.

#### **Fear of misappropriation**

18. As Ecopetrol has no known residential address in the Netherlands, there is no need to prove a fear of misappropriation in terms of Article 765 of the Code of Civil Procedure.

#### **Claim in the principal action**

19. In terms of the Decision dated April 20, 2009. Your Honor, as Summary Trial Judge, has already determined that period for filing the claim in the principal action should be extended by one year, to April 22, 2010. Your Honor, as Summary Trial Judge, need not therefore specify a period for the filing of the claim in the principal action.

#### **Jurisdiction**

20. Pursuant to Art. 700(1) of the Netherlands Civil Code, Your Honor has jurisdiction regarding this petition.

#### **NOW THEREFORE:**

The Petitioner accordingly seeks an order from Your Honor, as Summary Trial Judge, enforceable insofar as possible notwithstanding any appeal, to:

grant it leave to levy prejudgment garnishment against the Respondent named at 1, in relation to the claim for €7,000,000,000 estimated in the Decision dated October 17, 2008, in the hands of the third parties specified in paragraph 15.

Amsterdam, November 19, 2009

Attorney

Attorney

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Permitted as requested, establishing the amount for which leave is granted, including interest and expenses, at EUR 7,000,000,000 (seven billion euros), provided that the claim in the principal action is brought by April 22, 2010.

The Hague, November 19, 2009

*(signed)*

R.F. Paris

Summary Trial Judge

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This matter is being dealt with by F.H.J. van Schoonhoven, Esq., of Lexence N.V., Peter van Anrooystraat 7 (1076 DA Amsterdam), tel: +31 (0)20-5736 745 fax: +31 (0)20-5736 895.

Issued as a process server's copy,

Nov 19 2009

Clerk of Court

*(signed)*