

**STATEMENT OF THE HONOURABLE STUART YOUNG,  
MINISTER OF ENERGY AND ENERGY INDUSTRIES AND  
MINISTER IN THE OFFICE OF THE PRIME MINISTER  
THE REPUBLIC OF TRINIDAD AND TOBAGO**

**A&V OIL AND GAS LIMITED ARBITRATION**

Madame Speaker, I have been authorized by the Cabinet to make the following statement.

It is essential that the irrefutable facts and truth be placed on the public record with respect to the matters surrounding A&V Oil and Gas Limited ("AV") and the Petroleum Company of Trinidad and Tobago Limited ("Petrotrin"). There is no better place to put the facts into the public domain, and on the record, than here in the Parliament of the Republic of Trinidad and Tobago.

At the end of presenting this statement, I will lay a copy of the seventy six (76) page decision of the panel of three judges in the arbitration between AV and Petrotrin. This is being done in the public's interest, so that the population can see and read the unanimous detailed findings of the judges, and their coherent reasoning, as to why they have come to the decisions and findings of how AV conducted its business with state-owned Petrotrin. I have taken the liberty of replicating in this statement, the narration of facts by the judges, where appropriate.

The matter which led to the wrongful termination of AV was first made public, on a political platform, on **10<sup>th</sup> September, 2017** by the Leader of the Opposition. Accordingly, the population should be told what led to the dispute between AV and Petrotrin and what was the decision of three eminent and experienced judges; what led to

their finding that there was no evidence of wrongdoing on the part of AV, contrary to the claims that have been repeatedly made by Senior members of the Opposition.

The relationship between AV and Petrotrin was based on a contract dated **18<sup>th</sup> November 2009** called an Incremental Production Service Contract ("IPSC") where it was agreed that AV would take possession of, and explore and extract oil from, an area commonly referred to as the Catshill Field. AV would then deliver the oil to Petrotrin for payment. This contractual arrangement had been taking place for years until it was brought to an abrupt end by Petrotrin when it terminated the IPSC by Notice dated **19<sup>th</sup> December, 2017**.

Madame Speaker as I stated before, the termination of the contract had its origin in allegations made by the Leader of the Opposition in September 2017 where, on a political platform, she read from a **draft** and **interim** Petrotrin Internal Audit Report which claimed that AV was being paid for oil that it never supplied to Petrotrin. The Leader of the Opposition, established the term "fake oil" and went further to state that AV was getting away with fraud and misconduct because it was a financier of the People's National Movement and due to the friendship of its Chief Executive Officer and the Prime Minister of Trinidad and Tobago. These extremely damaging, false allegations have been repeated many times by the Opposition, in particular, the Leader of the Opposition. However, it has been determined by a panel of judges that Petrotrin did not act fairly with respect to AV and importantly, that AV was not guilty of any wrongdoing as alleged.

## **Events leading to Termination of AV**

Madame Speaker, AV was required by the IPSC to invest in improving oil production from the Catshill Field by, amongst other things, conducting a comprehensive survey of the field, working over existing wells, using its production rigs, drilling new wells using its drilling rigs and improving the infrastructure to enable increased oil production. AV began to increase production from **mid-2015** when new wells and work overs of existing wells started to provide the returns on the investments that AV had been making. In **April 2016**, AV sought to renew the IPSC for a further term of 10 years to 2029, and promised to drill new wells via an aggressive drilling programme. The parties were communicating on a possible extension of the IPSC, and AV was preparing to pursue an expanded and aggressive drilling programme, when Petrotrin wrote AV on **14<sup>th</sup> August, 2017**, stating that it had discovered certain inappropriate practices in the delivery of oil for the period **January to June 2017** which it was investigating. Petrotrin advised AV that it was withholding payment to it of its most recent invoice pending the investigation. AV responded on **15<sup>th</sup> August 2017** (a day later), stating that it would comply fully with the investigation.

On **17<sup>th</sup> August 2017** Petrotrin's Internal Audit Department produced a report (that was a draft and interim report) in which it said that its evidence suggested that there had been fraudulent activity in the Catshill Field in that AV had colluded with Vidya Deokiesingh, (a Petrotrin employee and former PNM candidate), and had been overstating production for at least six months. On **21<sup>st</sup> August, 2017** the Internal Audit Department produced a Supplementary Report which purported to identify deficiencies in the controls governing the transmission of crude, from the fields to the refinery at Pointe-a-Pierre. It was the Leader of the Opposition

on **10<sup>th</sup> September, 2017** who read from a document that she said was the Audit Report claiming fraudulent behaviour by AV. AV's attorneys wrote to Petrotrin on **14<sup>th</sup> September, 2017**, referring to reports in the media of what was alleged by the Leader of the Opposition, and stated that it was the first time that AV was hearing of such allegations, that AV had not received a copy of the said report, that AV had not been asked to respond to any allegations and for reasons set out in detail in the letter, the Audit Report's purported findings were baseless and without foundation, the attorney called on Petrotrin to immediately correct the record.

On **30<sup>th</sup> September, 2017** Petrotrin announced in the press that it had retained Kroll Consulting Canada Co ("Kroll") to probe what was being referred to as the "fake oil" scandal. On **17<sup>th</sup> November, 2017** Petrotrin issued a media release saying that its finding had been confirmed by Kroll and that an additional report by Gaffney Cline had found that the reservoir was not capable of producing the volumes of oil in question.

On **1<sup>st</sup> December, 2017** Petrotrin wrote AV saying that, after a careful review of the Kroll and Gaffney Cline reports, which it said were privileged and confidential, it had formed the view that there were reasonable grounds for **suspecting** that AV has misconducted itself or had otherwise been involved in wrongful or fraudulent activity and had participated in inappropriate practices in the delivery of oil to Petrotrin over the period from **April 2016 to July 2017**. Petrotrin indicated that, on the basis of this suspicion, it was proposing to terminate the IPSC.

AV responded by letter dated **8<sup>th</sup> December, 2017** denying that it had been involved in any wrongful or fraudulent activity, it answered each of the reasons given by Petrotrin for its suggestions

against AV and invited Petrotrin to attempt to negotiate a resolution of the matter in good faith.

Madame Speaker, Petrotrin terminated the contract on **19<sup>th</sup> December, 2017** stating that it had reasonable grounds for suspecting that AV had misconducted itself or otherwise had been involved in wrongful or fraudulent activity and had participated in inappropriate practices by allegedly overstating the volume of oil it produced and sold to Petrotrin for the period **April 2016 to July 2017**. It was this termination, and the grounds upon which the termination were based, that were challenged by AV by commencing arbitration proceedings against Petrotrin.

It is to be noted that at all times, AV disputed the matters raised by Petrotrin. AV advised the panel that it was never given a copy of any of the four reports, nor was it ever given an opportunity to provide any information, data or rebutals to the Internal Audit Department, Kroll or Gaffney Cline despite its requests to do so. This unfair treatment of AV was to prove to be the fatal blow and one of the main reasons why the judges found that Petrotrin was wrong and that it did not have sufficient evidence to support its decision to terminate AV. In short, Petrotrin was found, in the legal contractual arbitration, to not be able to defend its action of termination of a contract with AV, based on political platform allegations and its own suspicion.

### **The Arbitrators**

Madame Speaker in **June 2021** the Arbitration Tribunal, chaired by Sir Dennis Byron, former President of the Caribbean Court of Justice (CCJ), comprising members, Lord David Hope, expert, specialist, British arbitrator and Retired Justice of Appeal Humphrey Stollmeyer, delivered their unanimous decisions in the arbitration

between AV and Petrotrin. These eminent judges were selected by both Petrotrin and AV.

Madame Speaker, the panel hearing evidence from a number of witnesses, with submissions, as well as, cross examination by Queen's Counsel and Senior Counsel for both parties, over thirteen days, comprised these three very experienced, and competent jurists who have sat as judges at the highest levels of a number of Court systems internationally; these are individuals who have considered, and decided, facts and law in a significant number of matters. There can be no question as to their competence in coming to the decisions that they did.

The Right Honourable Sir Dennis Byron is a Fellow of the Chartered Institute of Arbitrators. He was the President of the Caribbean Court of Justice, which is the final Court of Appeal for several Commonwealth Caribbean countries. Prior to that he was the Chief Justice of the Eastern Caribbean Supreme Court. He was also a Permanent Judge of the United Nations International Criminal Tribunal for Rwanda. It was agreed by both AV and Petrotrin that Sir Dennis Byron should chair the panel of arbitrators.

Lord David Hope was the Vice President of the Supreme Court of the United Kingdom, (the highest court in the UK). He was also the Vice President of the Judicial Committee of the Privy Council. After his retirement from the UK Supreme Court and the Privy Council he has acted as a judge in arbitrations throughout the world. Lord Hope was chosen as an arbitrator by AV.

Retired Justice of Appeal Humphrey Stollmeyer was a Justice of Appeal of the Court of Appeal of Trinidad and Tobago. Before becoming a Judge he had an extensive practice in Corporate and Commercial law at JD Sellier & Co one of the leading law firms in

Trinidad and Tobago. He is also a Justice of Appeal (non-resident) in Turks & Caicos and occasionally sits as an Acting Justice of Appeal of the Eastern Caribbean Supreme Court. He is also a member of the International Chamber of Commerce International Court of Arbitration and a Fellow of the Chartered Institute of Arbitrators. Justice Stollmeyer was chosen by Petrotrin.

Madame Speaker the quality and experience of the three judges is beyond question. They have sat at the highest levels of court systems at home and abroad.

### **The Arbitration and the Findings**

The main matter that the tribunal was called upon to decide in the arbitration was whether Petrotrin was entitled in law and/ or fact to terminate the IPSC by the **Notice dated 19<sup>th</sup> December, 2017** on the basis of it having reasonable grounds for suspecting that AV had misconducted itself or had been involved in wrongful or fraudulent activity and had participated in inappropriate practices in the alleged overstatement of the volume of oil it produced and sold to Petrotrin for the period **April 2016 to July 2017**.

AV sought the payment of the sums of **TT\$84.7 million** for crude oil that it supplied during the period **June 2017 to December 2017** and **TT\$17.3 million (US\$2.3 million)** for crude oil it supplied during the period **1<sup>st</sup> January, 2018 to 28<sup>th</sup> February, 2018**. AV also claimed, that Petrotrin's decision to terminate was wrongful and in breach of Contract and as a result it was entitled to losses and damages of approximately, **US\$140 million or TT\$966 million**.

There were thirteen (13) witnesses for AV and eight (8) witnesses for Petrotrin, including expert witnesses, their evidence was taken and they were cross examined by attorneys for both sides.

Petrotrin refuted AV's claims, and in essence argued that it was entitled to terminate the contract. Petrotrin claimed that as a result of the alleged activities by AV it had overpaid AV, and it was entitled to hold the sums that it did, and that AV had no right to the sums of **TT\$84.7 million and TT\$17.3 million** that it was holding. Petrotrin also made counterclaims against AV.

The written decision of these three Judges is well reasoned and provides clear, step by step reasoning, as to why they came to the following important and unanimous findings. Madame Speaker, the Judges found, inter alia, that:-

- (i) Petrotrin failed to establish, and did not have any reasonable grounds for suspecting, that AV was engaged in misconduct, fraudulent or inappropriate activity, as alleged;
- (ii) Petrotrin was not entitled to treat any of the crude oil delivered to it by AV during the period **April 2016 to June 2017** as having not been delivered. In other words there was no evidence that AV was paid for "fake oil";
- (iii) Petrotrin was not entitled to terminate the IPSC; and
- (iv) AV is entitled to damages for wrongful termination of the IPSC.

The tribunal went on to order, inter alia, that:-

- (i) AV was entitled to payments of the sums of **TT\$84.7 million and TT\$17.3 million** for unpaid invoices for the delivery of crude oil to Petrotrin together with interest.



The Tribunal further stated that the issues of damages and compensation to which AV was entitled, whether Petrotrin was entitled to payment of specific sums claimed in its counterclaim, and the costs of the Arbitration, would be dealt with at a further hearing.

Madame Speaker, the following findings by the panel are drawn to your attention:-

**(i) Was the Decision to Terminate AV as at 19<sup>th</sup> December 2017 wrongful?** – The tribunal found at paragraph [43] that, "*[W]hen we look at the course of [Petrotrin's] conduct overall during this period, we are left in no doubt that [Petrotrin] was not willing to engage with [AV] in a fair, even-handed and open-minded discussion as to what the reasons were for the apparent discrepancies which had given rise to the decision of the Internal Audit team to investigate what was happening at Catshill. Its single-minded and uncompromising approach left no room for discussion as to where the truth might lie. As [AV] says, it had prejudged the issue. ... [Petrotrin's] conduct fell so far short of what the duty to act fairly required that we have to conclude that its decision to terminate was wrongful. The result is that [Petrotrin] was not in possession of all the information that it should have had, that all necessary inquiries had not been made and that the decision to terminate cannot be said to have been objectively reasonable.*";

**(ii)** Did Catshill have the capacity to produce the oil said to have been sold? – This was another matter to be considered and decided by the Tribunal. It is important to note that AV completed drilling 31 new wells in 2016 and the first half of 2017. At paragraph [73] the Tribunal found that, “[We] are *satisfied that the Catshill Field was capable of producing the quantities of oil that [AV says it] sold to [Petrotrin]. That is because the information that is before us shows that it was so. This information also reveals significant defects in the Audit Report on which [Petrotrin] relied when deciding to terminate the IPSC, which they would have discovered had all necessary inquiries been made. ... What [Petrotrin] did not do was to examine the evidence as to what was actually happening on the ground throughout that period.*”;

**(iii)** Capacity of the sales pumps - *On this issue the Tribunal found that it was possible that pump flow rates relied on by AV were possible and that Petrotrin would have seen this if they made all necessary inquiries;*

**(iv)** Siphoning – *On allegations that AV was siphoning oil and therefore fraudulently inflating oil figures it was selling to Petrotrin, the Tribunal found that there was no evidence to support this proposition by Petrotrin;*

**(v) Allegations with respect to Vidya Deokiesingh – at paragraph [103] the Tribunal found that, “[W]e can find nothing in this evidence to suggest that these movements, conversations or contacts were part of a conspiracy with anybody in [AV’s] organisation to defraud [Petrotrin]”.** The tribunal went on to say at paragraph [107] that, “[T]he necessary inquiries must therefore be even handed, not prejudiced in favour of one side or the other. That means that the possibility that there may be an innocent explanation must be inquired into and resolved before the action is taken. If an innocent explanation is found for what was thought at first sight to be suspicious, that factor must be left out of account. For that reason, we have concluded that [Petrotrin] has failed to show that Mr. Deokiesingh’s behaviour gave reasonable grounds for suspecting that [AV] was involved in wrongful or fraudulent activity.”

**Madame Speaker the experienced panel of three distinguished judges decided, unanimously, that there was no fake oil issue.**

### **Post Arbitration**

Madame Speaker, it is well recognised that the best judges to determine facts are those that hear the evidence of witnesses. Appeals on findings of facts, especially, of arbitrations are very rarely successful or overturned. To suggest that these three experienced and distinguished judges would have erred in their factual determinations is deemed in some legal quarters to be wishful or hopeful thinking, far-fetched and very unlikely to be overturned by a High Court.

Madame Speaker there has been conversation and advice coming largely from the birthplace of Petrotrin's difficulty, as to whether Petrotrin should have sought a review, effectively, an appeal, of the Tribunal's findings by the High Court.

This is done by an application to the High Court in very restricted circumstances. It is not an application that generally succeeds especially when one is seeking to overturn findings of fact. When one reads the decision of the Tribunal you immediately see that the findings are findings of fact save for a couple issues of legal analysis.

Notwithstanding, Madame Speaker, the Board of Petrotrin prudently sought the advice of two Senior Counsel and one Queen's Counsel on this matter. The clear and unequivocal advice of one Senior Counsel, Mr Justice Rolston Nelson, who has also served as a Judge of the Court of Appeal of Trinidad and Tobago and a Judge of the Caribbean Court of Justice, and Queen's Counsel Simon Hughes, a highly experienced silk who practises internationally in numerous Courts, at all levels, including the Supreme Court of the UK, the Privy Council, and international arbitrations, was that Petrotrin's application to set aside the Tribunal's award would be unsuccessful. **An application to 'appeal' the arbitration decision would fail.**

Having regard to the advice received, (despite the advice of Senior Counsel who had conducted the arbitration proceedings on Petrotrin's part), the Board of Petrotrin decided that it would not be prudent to pursue an application to set aside the award.

Madame Speaker, based on the findings of the Tribunal, Petrotrin was liable to AV for losses and damages. **AV's claim for losses and damages was approximately TT\$966 million.** The parties engaged in negotiation, and eventually agreed to terms of

settlement that Petrotrin would pay the sum of TT\$18 million to AV, in settlement of all and any damages suffered in connection with the termination of the IPSC, and that Heritage Petroleum Company Limited ("Heritage"), Petrotrin's subsidiary, would grant AV a new 10 year Enhanced Production Services Contract for oil exploration and production in Catshill. The only outstanding issue left for resolution between the parties is the issue of costs to be paid to AV by Petrotrin. In short, Madam Speaker, Petrotrin, instead of having to find cash to pay TT\$996 million in cash, Petrotrin was able to persuade AV to accept access to the Catshill Field for the purpose of resumption of AV drilling activities in the expectation that this venture would be successful, providing future benefits to AV and Heritage, one a seller of oil and the other a buyer of the said oil produced by AV.

Madame Speaker this hopefully brings to an end the mischief, misinformation and attempts to mislead the people of Trinidad and Tobago after almost four years. The laying of the award/ decision of the Tribunal in the House today allows the public to read for themselves every line of the findings of the panel of arbitrators; to see, first hand, the detailed manner in which these three judges found what they did.

Madam Speaker, I thank all honourable Members for the opportunity to have made this statement, for the record.