COLUMN | THE WHEELS OF JUSTICE GRIND

COLUMN | THE WHEELS OF JUSTICE GRIND SLOWLY: MCDERMOTT INTERNATIONAL'S MULTIPLE PROBLEMS; NIGERIA'S FORMER OIL MINISTER CHARGED WITH CORRUPTION IN UK [OFFSHORE ACCOUNTS]

In 1964, the American civil rights activist Dr Martin Luther King Jr delivered a sermon at Wesleyan University in Connecticut, closing by saying, "The arc of the moral universe is long, but it bends toward justice."

How inspiring, how suitable for a motivational poster. But what about President Vladimir Putin's lengthy and murderous tenure, what about Zimbabwean tyrant Robert Mugabe living to 95 and dying peacefully in a hospital bed in Singapore, and what about all the injustice and unfairness we see all around us?

One can't help but often wonder, why can't the wheels of justice and the arc of the moral universe just get a move on, and hurry up delivering some consequences?

If you like justice, have we got some updates for you.

McDermott, Chicago Bridge and Iron, and Colombia – more on the US$16 million hooker saga

Photo: McDermott International

One of the most widely-viewed stories we published in 2019 was an account of how offshore construction stalwart McDermott International acquired an unfortunate lawsuit when it bought the sh*t-show onshore construction company Chicago Bridge and Iron Company (CB&I) in 2018.

CB&I was being taken to arbitration over a disastrous project to upgrade a refinery in Cartagena on Colombia's Caribbean coast for Reficar, a division of the Colombian state oil company Ecopetrol. Ecopetrol alleged that it was owed US$4.5 billion (with a "b") in damages and losses from CB&I after Reficar had paid US$5.9 billion to CB&I for its work, far above the original lump sum price estimate of US$3.8 billion. When the work was finally finished, two years behind schedule and billions of dollars over budget, Reficar took the case to arbitration in the United States.

In the arbitration claim, it was alleged that the newly-acquired McDermott subsidiary had paid US$16 million for prostitutes – for whom is not clear – and had apparently expensed them to Reficar.

CB&I refuted the Colombia claim and made a counterclaim against Reficar for US$267 million in unpaid invoices.

An unhappy ending

Half of our readers were shocked that an American company should be engaged in such immoral and egregious behaviour, which could violate the Foreign Corrupt Practices Act. The other half reckoned that CB&I were idiots for paying so much, and that much better deals were to be had on entertainment and sex workers in Bangkok, Jakarta, and elsewhere.

There was at least one unhappy ending from the saga.

The take-over of CB&I was an unmitigated disaster – McDermott paid out US$300 million in "finance, structuring, and other fees" to buy the company, but it was a deal that bankrupted

McDermott and led to its shareholders being wiped out. The company entered Chapter Eleven in January 2020 as losses from CB&I's onshore projects overwhelmed McDermott, but not before the Houston-based contractor awarded its top management US$7 million in retention payments, as we documented.

Then, as part of the bankruptcy, judge David. R. Jones approved McDermott's plan to pay out more bonuses of up to US$106 million for the company's senior executives and other supposedly "key" employees, including a bonus of up to US$12.6 million for CEO David Dickson.

SEC objection over-ruled

The Securities and Exchange Commission (SEC) also objected to the Chapter 11 plan due to provisions that would release current and former McDermott officers, directors, principals, employees, and current and former equity holders from liability. The judge overruled these objections.

The company emerged from bankruptcy protection in June 2020 with about US$4.6 billion of debt eliminated and the creditors owning the company. It is not clear what bonuses were paid to Mr Dickson. However, the bankruptcy settlement provided McDermott's management with 7.5 per cent of newly issued equity in the restructured company, because they were worth it, while leaving the equity shareholders with nothing.

As McDermott is a private company, since the emergence from Chapter Eleven, we have been denied access to its financial results, which are now password protected on its website and available only by request. We also don't know its shareholder registry, but directors of the post-Chapter Eleven company included staff from Goldman Sachs and the Carlyle Group, a large American private equity company.

However, there's news, but not good news for the company's shareholders and directors…

The arbitration award is out…

When the Colombian arbitration proceedings were finally disclosed in 2019, McDermott was very clear:

"The venue for the arbitration hearings is New York, New York. We do not believe a risk of material loss is probably related to this matter, and accordingly, our reserves for this matter were not significant as of December 31, 2018. While it is possible that a loss may be incurred, we are unable to estimate the range of potential loss, if any."

Guess what? Some weeks ago, the arbitration award was announced – you can read it in full here on the excellent *Jusmundi* website.

The cost of the arbitration was mind-blowing. Both companies paid out over US$50 million each on legal fees, and another US$25 million more apiece on expert witnesses. The case took over five years to reach judgement. Arbitration is neither cheap, nor quick nor easy.

The results were not pretty, either.

US$1 billion defeat

Despite McDermott's belief that it owed Ecopetrol nothing, and indeed that Reficar should pay its overdue invoices, the panel of three arbitrators thought differently.

In clause 2256 of their judgement, the arbitrators unanimously found that, "CB&I did not simply fail to exercise proper skill and/or care; it allowed cost overruns of some US$800 million and delays in Mechanical Completion of two years, with one year's worth of solely-caused delay – this proves a spectacular, rather than ordinary, failure by CB&I to control cost and schedule."

The arbitrators concluded that this spectacular failure on the part of CB&I was extremely damaging to its Colombian customer, ruling in clause 2481:

"Reficar's claim against CB&I UK in an amount of US$1,008,410,000, are set-off against CB&I UK's counterclaim against Reficar in an amount of US$914,939 resulting in a net credit held by Reficar against CB&I UK in an amount of US$ 1,007,495,061. This amount must be reduced by US$70 million already collected by Reficar under the Performance [guarantee]. **Thus, the amount in US$ to which Reficar is entitled in accordance with this Award is US$937,495,061"** (our highlighting, yes, that is over nine hundred and thirty seven million US dollars).

The panel awarded Reficar interest on that massive award from December 31, 2015 onwards, and a net amount of around US$60 million of Reficar's costs. So, the total bill to McDermott's subsidiary is over US$1 billion.

"The ruling is crucial because it acknowledges the violations in the planning and execution of the contracts by the mentioned firm," said Ricardo Roa, president of Ecopetrol, quoted in *Colombian Finance,* adding that "a working group will be formed with the counterparty to establish a payment plan."

What happens now?

I don't know. Can Ecopetrol collect the US$1 billion it is owed? The McDermott bankruptcy of 2020 muddies the waters, and as a private company, McDermott is not obligated to disclose to customers, staff, and suppliers if and when it will pay the US$1 billion to Ecopetrol.

When we learn more, we'll keep you posted.

Meanwhile, what happened to the McDermott Leadership team?

The architects of the disastrous decision to acquire CB&I have now both left McDermott, much richer for their tenure. In November 2019, a day after reporting a US$1.9 billion quarterly loss relating to the catastrophic problems at CB&I, McDermott's CFO Stuart Spence resigned from his post "to pursue other opportunities."

After announcing Mr Spence's departure, the company filed another disclosure with the SEC a week later. It turned out that as compensation for leaving, Mr Spence received a severance payment of US$866,666.67, as we reported. That was based on the balance of the US$1.3 million retention bonus not already paid out to him. Mr Spence's restricted stock in the company also vested, so he could sell those shares if he chose, as well. That arc of the moral universe didn't seem to be bending to justice at all.

Then, on June 7, 2021, McDermott announced that CEO David Dickson had resigned with immediate effect, without giving any reasons, along with the Chief Commercial Officer, Brian McLaughlin, as we reported. And because it was a private company then, we didn't learn of the compensation arrangements McDermott made for Mr. Dickson or Mr McLaughlin.

I think we can guess…

The SEC reaches a settlement

But now there have been some (very minor) consequences for two of the former senior executives of McDermott. In June, the SEC published a judgement against former CEO David Dickson and former CFO Stuart Spence.

These proceedings arose out of their role in the approval of estimates of losses forecast recorded by McDermott on the Cameron Liquified Natural Gas project in the USA, which CB&I has struggled to execute in a timely manner. The estimates were released to investors in a formal filing, and they had reason to believe the forecasts were unduly optimistic.

The SEC imposed penalties of US$100,000 on Mr Dickson, and US$40,000 on Mr Spence. Yes, that would be penalties of less than 1 per cent of the remuneration they received from their tenure at McDermott, tenure which led to the bankruptcy of the company, and the complete destruction of value for its shareholders.

Whoops! Now there a US$1 billion arbitration award against its subsidiary in a claim, which the company, under their management had stated in public filings, did "not believe a risk of material loss is probable related to this matter."

Don't call that justice.

Additional problems...

As well as facing the consequences of the CB&I arbitration defeat, McDermott is also facing operational issues on the Greater Tortue Ahmeyim (GTA) project for supermajor BP offshore Mauritania and Senegal, and commercial issues in the Gulf, where Saudi Aramco has cancelled some large contracts it had previously award the company.

McDermott just can't seem to get a break.

Contractual dispute with BP over performance on GTA Project

Amazon *(Photo: McDermott)*

Earlier this year, we covered the upgrades to the dynamically positioned McDermott construction vessel *Amazon* to automate its pipe handling and install a tower to perform J-lay pipelaying operations. The vessel's first contract was for BP.

In June, *Upstream* reported that McDermott was experiencing significant technical problems in the project, as there were issues lining up the pipe at the bottom of the J-lay tower above the vessel's moonpool, impacting heavily on productivity and slowing down the welding of the pipe. Four weeks ago, BP's CEO announced that the start-up of the first phase of the GTA was now expected to be delayed until the first quarter of next year.

Last week, the situation got worse when Iain Esau, writing in *Upstream*, reported that McDermott had stopped work on the BP project. On August 21, *Amazon*'s AIS data showed that the vessel was docked in Nouakchott port in Mauritania, and it was reported that the ship was offloading materials. It remained there this past weekend.

Mr Esau reported that the vessel would shortly be leaving the GTA project and mobilising to its next workscope in the Gulf of Mexico for Shell on the Whale Project.

Tidewater recently acquired the Solstad platform supply vessel (PSVs) that were supporting *Amazon*, and *Normand Spear* was also sitting idle at Nouakchott anchorage as well at the time of writing, as per VesselFinder.

Amazon sailing away?

Upstream reported that McDermott had left the site with the final 20 kilometres of the BP pipeline not laid, and that McDermott was compelled to stop work because it was in dispute with BP over payments on the contract. BP had seemingly not paid McDermott.

Sources told the newspaper that McDermott "is at a stage where it cannot continue like this without any payment… for a long time", because it "is not sitting with a lot of cash."

We're not sure whether walking away from a job halfway through has ever encouraged a customer to pay in a timely manner, but faced between labouring on with BP on GTA for another two months and possibly not being paid, or inflicting delays on Shell (and possibly incurring penalties) in the Gulf of Mexico, McDermott management clearly decided to cut their losses.

Let's see what happens.

Performance guarantee problems?

Then, to cap a truly terrible few weeks, the industry press in the Middle East reported that Saudi Aramco had cancelled the contracting process for three offshore contracts previously awarded to McDermott for the expansion of the Zuluf oilfield in Saudi Arabia.

Zuluf is located in 36 metres of water and has been producing since 1973. The Saudi Aramco expansion plan aims to boost production to 1.4 million barrels of heavy oil per day. With two main sandstone reservoir structures, the field is estimated to contain more than 31 billion barrels of oil-equivalent in proven reserves.

The three engineering, procurement, and construction (EPC) contracts awarded to McDermott apparently totalled over US$1.8 billion, and Saudi Aramco's decision to terminate the contracts allegedly arose from McDermott's failure to provide the necessary performance bank guarantees.

Anxious times

Losing a major arbitration for US$1 billion would be bad. Having a major contractual dispute with BP over the GTA project and suspending performance and walking away from the project due to non-payment would be a serious problem. Losing a trio of massive offshore EPC contract awards valued at US$1.8 billion from Saudi Aramco because the company could not provide the performance guarantees required by the customer would be disastrous.

All three happening at once is not at all good, and we have to hope that McDermott has the full backing of its shareholders to see it through this succession of shocks. The picture is not pretty at all.

The arc of justice is heading towards Nigeria's former oil minister?

Diezani K. Alison-Madueke, Minister of Petroleum Resources of Nigeria, during the Ending Energy Poverty Session at the World Economic Forum on Africa held in Addis Ababa, Ethiopia, May 2012 (Photo: World Economic Forum)

Finally, we close with a reminder that the wheels of justice do grind slowly, but sometimes investigations do result in charges and a day in court.

Last November, we reported on Glencore's admission of bribery in Africa and how the Swiss-based, London-listed company had been ordered to pay fines and restitution of £280 million (now US$352 million) as well as all the costs of the British Serious Fraud Office (SFO), which led the investigation. The American Department of Justice Statement of Facts into Glencore's crimes identified, but did not name, the two key Nigerian officials who participated in Glencore's bribery scheme.

Bloomberg reported in 2021 that one of the individuals in question was Nigeria's oil minister at the time, Diezani Alison-Madueke. She became minister after a trail-blazing career in Shell, and, in 2014, she was elected as the first female President of Organisation of the Petroleum Exporting Countries (OPEC).

London resident charged

Finally, the British authorities have now charged her with bribery following a long-running investigation by the National Crime Agency (NCA). The NCA said in a statement on Tuesday last week that the 63-year-old Nigerian politician is suspected of accepting bribes during her time as Minister for Petroleum Resources, in exchange for awarding multi-million dollar oil and gas contracts.

The NCA said that she is alleged to have benefitted from "at least £100,000 (US$126,000) in cash, chauffeur driven cars, flights on private jets, luxury holidays for her family, and the use of multiple London properties." The party allegedly paying these bribes was not identified by the NCA.

The chargesheet against her also details financial rewards she allegedly received, including furniture, renovation work, and staff for her London properties, the payment of private school fees, and gifts from high-end designer shops such as Cartier jewellery and Louis Vuitton goods.

Assets frozen

Ms Alison-Madueke, who lives in St John's Wood, London (as per the NCA), will appear at Westminster Magistrates Court on October 2. The NCA said assets worth millions of dollars had been frozen as part of the investigation.

"We suspect Diezani Alison-Madueke abused her power in Nigeria and accepted financial rewards for awarding multi-million-pound contracts," said Andy Kelly, head of the NCA's International Corruption Unit.

The NCA said it provided evidence to the US Department of Justice in March that resulted in the recovery of assets worth US$53.1 million linked to her alleged criminality, including a yacht.

She has previously denied any wrongdoing, and she will have her day in court to prove her innocence. The *Financial Times* reported that Alison-Madueke had earlier been arrested in 2015 in the UK, although the reasons for her detention were never made public at the time.

Innocent until proven guilty remains a key tenet of English law, and I am sure Ms Alision-Madueke, who married a Nigerian admiral, will set out her side of the story in court.

Meanwhile, in Nigeria...

Nigerian President Bola Tinubu (Photo: Official Facebook page of Bola Tinubu)

Nigeria's new president, Bola Tinubu, has appointed his cabinet. One of the more surprising ministers is Atiku Bagudu, who holds the Budget and Economic Planning portfolio.

Surprisingly, Mr Bagudu was closely associated with the very crooked military dictatorship of General Sani Abacha in the 1990s. Indeed, Nigerian journalists at the *Premium Times* newspaper have documented that in 2003, Mr Bagudu admitted to financial malpractice when he agreed to return about US$163 million to the Nigerian government to avoid being extradited to New Jersey for prosecution for embezzlement.

Before admitting to the malpractice, he was jailed for six months in a federal prison in Houston, Texas, while awaiting his extradition to New Jersey.

The deal to return the money to the government coffers was part of a successful deal to halt the extradition.

The Nigerian president also has form

Of course, Mr Tinubu had his own assets briefly frozen by the United States government in 1993 as a result of a court case asserting that the Department of Justice had "probable cause" to believe Mr Tinubu's American bank accounts held the proceeds of heroin dealing. The *BBC* reported that he settled with the US government and forfeited about US$460,000 later that year.

Court documents and later reporting on the case in 2008 from *Sahara Reporters* suggested that in the late 1980s, Mr Tinubu had been associated with two Chicago heroin dealers of Nigerian descent. In 1988, Mr Tinubu stated that he was an employee of Mobil Oil Nigeria, Fairfax, Virginia and his take home pay was US$2,400 per month, which made the large funds held under his name a source of suspicion.

He's now President of Nigeria, and Mr Bagudu is Minister of Budget and Economic Planning.

Don't call that justice.

Background Reading

The full history of the "arc of justice" quote is here.

Read our historic coverage of McDermott – we reiterate our point that "the acquisition of CB&I by McDermott must rank as one of the biggest financial disasters in the history of the offshore industry."

Ecopetrol's press release on its arbitration victory against CB&I is here.

Read the 2008 reporting on President Tinubu's run-in with the American justice system entitled "How U.S Federal Agents succesfully Linked Bola Tinubu to drug Trafficking Ring in Chicago"

See the Lyrics to Rough Justice: "The sneaky and snide / Take all your money / And take *your pride."*

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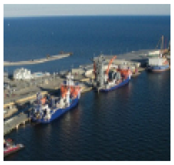

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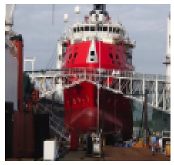

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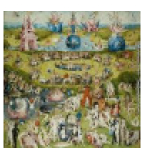

Hieronymus Bosch

This anonymous commentator is our insider in the world of offshore oil and gas operations. With decades in the business and a raft of contacts, this is the go-to column for the behind-the-scenes wheelings and dealings of the volatile offshore market.