

International Arbitration Group Of The Year: Covington

By **Caroline Simson**

Law360 (February 14, 2024, 2:01 PM EST) -- Covington & Burling LLP was able to convince an international tribunal last April to order Russia to pay \$5 billion to Naftogaz after the Kremlin seized the Ukrainian state-owned oil and gas company's Crimean assets, earning the firm a spot among Law360's 2023 International Arbitration Groups of the Year.

The Naftogaz case is one of several that Covington's international arbitration practice has brought on behalf of Ukrainian individuals or entities against Russia over events that began with the Kremlin's illegal annexation of Crimea in 2014.

That includes two cases brought by Ukraine against Russia at the International Court of Justice — one relating to the events in Crimea, and one relating to the Kremlin's February 2022 invasion of Ukraine — and a case lodged by Ukrainian billionaire Rinat Akhmetov against Russia at the European Court of Human Rights.

Covington's international arbitration practice includes about 50 attorneys who are concentrated in the firm's offices in New York, London and Washington, D.C., as well as in Dubai and Seoul. The size of the practice group has grown in recent years, largely through internal promotions, according to Marney Cheek, who co-chairs the group alongside Jeremy X. Wilson.

Although it isn't as large as some of Covington's other practice groups, international arbitration is an important area of focus for the firm, Cheek told Law360.

"We tend to handle high-stakes international arbitration for a lot of the firm's major clients, and the firm sees our international arbitration practice as a complement to our robust litigation offering," she said.

One of the things that makes Covington's international arbitration group unique is the firm's willingness to staff matters across offices and practice groups, said Wilson, adding this gives it the ability to take on cases that require specialized expertise.

"For example, where we have IP issues, we work and collaborate with our patent colleagues who are patent litigators," he said. "We're able to staff matters that will have a mix of arbitration lawyers and other specialists from the firm, and we've seen that that has really helped us achieve our successes on behalf of clients. I think that is testimony to the culture and the way the firm is set up."



One of the practice group's largest wins in 2023 was in the Naftogaz case, which resulted in a \$5 billion award issued on April 12 by an international tribunal seated in The Hague. The dispute arose after Russia illegally annexed Crimea in 2014, prior to which Naftogaz was the peninsula's largest participant in natural gas exploration, production, transport, storage, processing and distribution.

While the arbitration concerned events that took place before Russia invaded Ukraine in February 2022, those subsequent events made the case a particularly poignant one for Wilson, who was a member of the Covington team representing Naftogaz.

He noted the hearing in the arbitration, which took place at the Peace Palace in The Hague, was ongoing when the invasion happened. Naftogaz representatives subsequently left the proceedings in order to be reunited with their families, he said.

"While this case concerned the annexation of Crimea and the subsequent expropriation of the oil and gas assets in Crimea, the ongoing conflict meant that this was a very personal case for our client," he said. "We became very close with our colleagues at Naftogaz, and to be able to obtain some sort of justice for them, through this monetary award, was extremely important."

Cheek said the oil and gas assets that Russia expropriated in the Black Sea are the "crown jewel" of Ukraine's gas resources, meaning the assets underpinning the Naftogaz case are of "incredible importance to the Ukrainian people."

Several months after securing the Naftogaz award, a Covington team was arguing for Ukraine in another high-profile case before the ICJ over Russia's full-scale invasion of its smaller neighbor.

In that case, Ukraine argued Russian President Vladimir Putin was violating the 1948 Convention on the Prevention and Punishment of the Crime of Genocide when he attempted to justify the attack based on an "absurd lie" that genocide had been committed in the Donbas region of eastern Ukraine.

The ICJ dealt Ukraine a setback earlier this month when it tossed a significant portion of the case, but Cheek noted at the time that a damages award is still possible.

That case was preceded by the other ICJ case lodged by Ukraine against Russia over the annexation of Crimea, which related specifically to Russia's failure to stop the supply of weapons to the Donetsk People's Republic and Luhansk People's Republic in eastern Ukraine — including the missile used to shoot down Malaysia Airlines Flight MH17 — as well as claims of racial discrimination against ethnic Ukrainians and Tatars in Crimea, according to Covington.

The firm was arguing the case in The Hague this past June.

In 2017 and 2019, the firm was able to secure historic victories for Ukraine in that case. The first involved a win for Ukraine on its request for provisional measures; the second came when the ICJ rejected Russia's jurisdictional objections and said the case would proceed to the merits.

Cheek noted the court's jurisdictional ruling was "groundbreaking" in that it marked the first time Russia would have to respond on the merits to accusations that it is violating international law.

"We really are asking the court to grapple with some important and novel legal questions, so it has been

quite rewarding to be on the cutting edge. And I would say, Ukraine is a great partner on that," she said. "Their lawyers are well-steeped in international law. And so partnering with them on these cases has felt morally satisfying, but also intellectually satisfying."

Another significant achievement for Covington's international arbitration group came in May, when U.S. District Judge Ana Reyes denied Venezuela's bid to block enforcement of an approximately \$619 million arbitral award issued to Spanish affiliates of Mexican tortilla manufacturer Gruma SAB de CV.

The Gruma affiliates — Valores Mundiales SL and Consorcio Andino SL — won the award in 2017 after Venezuela seized the companies' investments in various plants, factories and flour mills in the country.

In December, the D.C. Circuit affirmed Judge Reyes' decision to enforce the award after rejecting arguments that the arbitral tribunal wrongly barred opposition leader Juan Guaidó's interim government from challenging it.

Covington partner Miguel López Forastier, who is a member of the legal team representing Valores, told Law360 their enforcement strategy has been paying off.

Together with another Venezuelan creditor and Covington client — oil services company Tidewater Investment SRL, owed some \$36.4 million — the two companies are well-positioned to collect at least some of the debt during an auction of Citgo's indirect parent company, which is being conducted in Delaware later this year.

The auction involves Citgo parent PDV Holding Inc., a subsidiary of the Venezuelan state-owned oil company PDVSA. It's expected to be possibly the only way for creditors of Venezuela, which are owed billions of dollars, to be made whole. Initiated by the defunct Canadian gold mining company Crystallex International Corp., the process is being closely watched by lawyers who view it as a creative way to enforce a judgment against a recalcitrant debtor country.

"It is groundbreaking — everything that is happening in Delaware is brand new," Forastier said. "The judge is really making law as we go ... the [process] is going to be used in other enforcement cases against other sovereigns in the future. So from that point of view, it's very interesting."

Covington was also able to achieve a significant result in July for the Clooney Foundation for Justice when an Argentine prosecutor ordered a criminal probe in a case against Venezuelan security forces following the execution of two civilians participating in a protest against Venezuelan President Nicolás Maduro in 2014.

The Argentine case — filed under the principle of universal jurisdiction, through which a country can investigate and prosecute acts committed in another country if they violate international law — was in response to a criminal complaint filed in Argentina less than a month prior by the Clooney Foundation for Justice and a pro bono Covington team, the firm said.

It marked the first time in history that a criminal probe based on universal jurisdiction had been directly initiated in Argentina by a prosecutor rather than a judge, according to the firm.

Forastier told Law360 the case is an important one for Covington.

"The story of these families is heartbreaking," he said. "These were law-abiding people, regular people, who were doing nothing wrong but to just protest against the government ... it is the kind of case that when you get into the facts, you cannot help but feel a strong desire to right a huge wrong."

--Editing by Caitlin Wolper.

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