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5 International Arbitrations To Watch

By **Keith Goldberg**

Law360, New York (January 26, 2016, 6:55 PM ET) -- For international arbitration attorneys, the juiciest cases to track can be summed up in one word: multiple.

Multiple billions of dollars in damages private investors are seeking from sovereign nations. Multibillion-dollar arbitration awards that investors are seeking to enforce, in multiple jurisdictions around the world.

Here, Law360 highlights five international arbitrations that attorneys are watching closely.

Yukos Shareholders v. Russia

The 2014 ruling issued by a Permanent Court of Arbitration tribunal in the Netherlands was stunning: Russia engaged in an illegal campaign to destroy Yukos Oil Co. and transfer its assets to state-owned oil company Rosneft in violation of the Energy Charter Treaty. The award to Yukos' former majority shareholders was even more stunning: $50 billion, the largest ever awarded by an arbitration tribunal, according to experts.

But the real battle may be over whether the former shareholders, which include Hulley Enterprises Ltd., Yukos Universal Ltd. and Veteran Petroleum Ltd., will ever collect that award, attorneys say. Russia was ordered in November 2014 to pay the shareholders, which moved to confirm the award in the U.S. But Russia has disputed the PCA's jurisdiction, pointed to the alleged absence of an agreement to arbitrate under the ECT and cited its sovereign immunity.

"You have a state that is testing how far you can go in resisting enforcement of an arbitration award," Skadden Arps Slate Meagher & Flom LLP international arbitration partner Timothy G. Nelson said. "What happens when an award is rendered? How far you can go in challenging it, and what courts can you challenge it in?"

Russia is fighting the original arbitration ruling in the Netherlands, while locking horns with the shareholders in Washington, D.C., federal court over their bid to enforce the award. The dispute's ultimate resolution could serve as a road map for future investor-state arbitration disputes, attorneys say.

"The scope of the various attacks on the award and potentially conflicting decisions by various courts around the world and how you deal with that ... will be an interesting exercise in these sorts of disputes

in the future," McDermott Will & Emery LLP international arbitration partner Lisa Richman said.

The Yukos shareholders are represented in the U.S. enforcement case by Christopher M. Ryan, Henry S. Weisburg and Richard F. Schwed of Shearman & Sterling LLP.

Russia is represented in the U.S. enforcement case by Carolyn B. Lamm, Francis A. Vasquez Jr., Frank Panopoulos and Eckhard Robert Hellbeck of White & Case LLP.

The U.S. enforcement case is Hulley Enterprises Ltd. et al. v. Russian Federation, case number 1:14-cv-01996, in the U.S. District Court for the District of Columbia.

Abaclat et al. v. Argentina

As part of the fallout from the catastrophic collapse of Argentina's government in 2001, when it registered the largest sovereign debt default in history, thousands of Italian bondholders holding more than $1 billion in claims have pursued an arbitration case under the Argentina-Italy bilateral investment treaty.

The dispute is notable for a couple of reasons, attorneys say. There are thousands of claimants, which is rare for an international arbitration. And more controversially, it's a dispute over sovereign debt, which is usually fought over in courts, not before arbitration panels.

Yet the World Bank's International Centre for Settlement of Investment Disputes ruled in 2011 that it had jurisdiction over the case because the bonds in question, and in particular the security entitlements held by the bondholders, qualified as investments made in Argentina.

"Some commentators don't believe sovereign bonds are investments, and they also argue that this whole notion of investor-state treaties is based around a state expropriating or grossly maltreating your investment, rather than simply not paying its debt," Nelson said. "Others in the field think the claim has merit because the state conduct goes beyond mere debt default."

There's also concern that by allowing the arbitration to move forward, the ICSID is opening the door to a flood of debt default cases against sovereign nations. But Nelson believes those concerns are overblown.

"More often, however, if you have a sovereign bond issue that gives the bondholders the right to go to court, they're happy to go to court," Nelson said.

The bondholders are represented by Carolyn B. Lamm, Jonathan C. Hamilton, Abby Cohen Smutny, Andrea J. Menaker and Francis A. Vasquez Jr. of White & Case LLP, Grimaldi e Associati, and Perez Alati Grondona Benites Arntsen & Martinez De Hoz.

Argentina is represented by the country's Treasury Solicitor's Office and Cleary Gottlieb Steen & Hamilton LLP.

The case is Abaclat et al. v. Argentine Republic, case number ARB/07/5, in the International Centre for Settlement of Investment Disputes at the World Bank.

ConocoPhillips v. Venezuela

Like the Yukos-Russia case, the dispute between ConocoPhillips Co. and Venezuela is notable for not only the subject matter — expropriation of oil projects — but also the lengths a sovereign nation will go to contest a purportedly improper ruling.

In September 2013, an ICSID panel ruled that Venezuela illegally expropriated ConocoPhillips' oil investments in the Petrozuata and Hamaca heavy crude oil projects and the offshore Corocoro development project in the summer of 2007. While the panel hasn't yet ruled on the amount of the award, the oil company said it suffered an estimated $4.5 billion loss.

But the award portion of the arbitration has been complicated by Venezuela's attempts to undo the tribunal's ruling. The country first asked the panel to reconsider the ruling, which the panel denied in 2014.

Venezuela has also made two bids to disqualify two of the panel's three members, claiming that they weren't impartial and that one of the arbitrators had a conflict through his former law firm. Both bids have been rejected by World Bank President Jim Yong Kim, who chairs the ICSID's Administrative Council, with the latest rejection coming in July.

“That's a case that's probably got a whole bunch of interesting damages issues, but it's being watched by the international arbitration profession because of the number of arbitrator challenges and procedural issues,” Nelson said. “Frankly, it worries anybody in business that is looking to investor-state arbitration to see that being used as a tactic.”

ConocoPhillips is represented by Elliot Friedman, Lauren Friedman, Sam Prevatt and Lee Rovinescu of Freshfields Bruckhaus Deringer LLP and Jan Paulsson, Gaetan Verhoosel and Luke Sobota of Three Crowns LLP.

Venezuela is represented by its prosecutor general's office and George Kahale III, Miriam K. Harwood, Mark H. O'Donoghue, Benard v. Preziosi Jr. and Gabriela Alvarez-Avila of Curtis Mallet-Prevost Colt & Mosle LLP.

The case is ConocoPhillips Petrozuata BV et al. v. Bolivarian Republic of Venezuela, case number ARB/07/30, in the International Centre for Settlement of Investment Disputes at the World Bank.

Chevron v. Ecuador

In the yearslong fight over alleged drilling pollution in the Amazon rain forest, most of the focus has been on the fierce battle between Chevron Corp. and the so-called Lago Agrio plaintiffs in U.S. courts over their bid to enforce a $9.5 billion judgment handed down by an Ecuadorean court. A New York federal judge has already ruled that the judgment was fraudulently obtained, and that ruling is currently being appealed in the Second Circuit.

But just as noteworthy is the Permanent Court of Arbitration dispute between Chevron and Ecuador being contested in the Netherlands. Chevron is arguing that Ecuador colluded with the Lago Agrio plaintiffs in securing the judgment, violating the bilateral investment treaty between Ecuador and the U.S.

The Lago Agrio plaintiffs are pursuing enforcement bids in the U.S., Canada and other jurisdictions — the

Canada Supreme Court recently gave them the green light to pursue their enforcement efforts. However, a favorable ruling by the PCA panel would provide Chevron with quite a trump card, according to Ed Kehoe, who co-chairs King & Spalding LLP's international arbitration practice and represents Chevron in the arbitration case.

“The tribunal has the ability to declare that the judgment is essentially unenforceable. That's what we're asking for,” Kehoe said. “They would still have a case in Canada, but if we have an international arbitration ruling, that would be helpful.”

That decision isn't expected until sometime in 2016, Kehoe said. On Jan. 20, the PCA panel said that enforcement proceedings should be put on hold until it issues its final ruling, and rejected arguments by Ecuador that the PCA lacked jurisdiction to hear Chevron's claims and wrongly issued interim awards to the energy company. Ecuador is appealing the Jan. 20 ruling.

Meanwhile, the arbitration has spilled over into the U.S. court case. Attorney Steven Donziger, who represented the Lago Agrio plaintiffs in Ecuador, has asked the Second Circuit court to take notice of the PCA tribunal's visits to polluted sites and witness testimony from the arbitration that allegedly exonerates him of liability for fraud.

Chevron is represented by R. Doak Bishop, Edward G. Kehoe, Wade M. Coriell, Caline Mouawad, Isabel Fernandez de la Cuesta, David Weiss, Elizabeth Silbert and Sara McBrearty of King & Spalding LLP and Jan Paulsson of Three Crowns LLP.

Ecuador is represented by its prosecutor general's office, as well as Ricardo Ugarte, Eric W. Bloom and Tomas Leonard of Winston & Strawn LLP and by Dechert LLP.

The case is Chevron Corp. et al. v. Republic of Ecuador, case number 2009-23, in the Permanent Court of Arbitration.

Strategic Infrasol Foodstuff and Thakur Family Trust UAE Joint Venture v. India

Attorneys say India is becoming a hot spot for investor-state disputes. With the Strategic Infrasol dispute, involving two groups of investors from the United Arab Emirates and a soured multibillion-dollar real estate development deal in Mumbai, it's easy to see why.

The investors, Strategic Infrasol Foodstuff LLC and Thakur Family Trust UAE, filed an arbitration notice against the Indian government in October, claiming their interests in two redevelopment projects were expropriated by co-developer and Mumbai-based conglomerate SP Group, according to Indian news reports.

The investors are targeting the Indian government because the lands being redeveloped are owned by several government agencies, which didn't give them a fair shake, according to reports. But what's really eye-popping are the damages the investors are seeking: a whopping $85 billion.

“The thing that has everyone's attention here is that it's an $85 billion claim, the largest ever filed against India,” Mayer Brown LLP partner Mike Lennon said. “Whenever there are big dollars attached, people watch.”

The investors are asking the London Court of International Arbitration to take the case under the

arbitration rules of the United Nations Commission on International Trade Law.

Counsel and case information wasn't immediately available.

--Additional reporting by Kelly Knaub. Editing by Mark Lebetkin and Edrienne Su.