

International Arbitration Group Of The Year: Gibson Dunn

By **Caroline Simson**

Law360 (February 12, 2020, 3:32 PM EST) -- Gibson Dunn & Crutcher LLP helped to secure a landmark Third Circuit decision providing an opening for Venezuela's creditors to begin collecting an estimated \$150 billion in debt, and convinced a California judge not to enforce a "sham" \$18 billion arbitration award against Chevron Corp., landing it among Law360's 2019 International Arbitration Groups of the Year.

Gibson Dunn's international arbitration team isn't the firm's largest group, but the practice area has increasingly become a focal point for the firm, leading to an expansion from one arbitration partner in 2008 to about 50 lawyers today who are predominantly focused on arbitration.

The practice group, based in arbitration hubs like London, New York, Paris, Washington, D.C., and Singapore, has made a name for itself in recent years, taking on — and winning — unusual and complicated international arbitration cases.

Penny Madden, who co-chairs the firm's international arbitration group, recognizes that it's somewhat of a cliché to attribute the group's success to the firm's collegial environment. But for Gibson Dunn, she says it's really true — and that's a big part of what differentiates the firm from its competitors.

"We are great friends, and we are also very mutually supportive," Madden said. "Every law firm will say 'We have great culture,' but this is the only firm where I've really experienced that."

And that culture doesn't just benefit Gibson Dunn's lawyers, it's also apparent to clients, Madden said. That collaborative nature is a big part of the group's success in international arbitration, because disputes may begin in arbitration but end up before a court in the U.S., England or any other jurisdiction in the world.

"We do really like to have a bespoke team for a case, with all the relevant experience," Madden said, adding that the firm may bring in other lawyers from the firm on a case depending on whether arbitration, litigation or appellate specialists are needed during different stages of a dispute.

For a case in which the purported owners of lands in Saudi Arabia were seeking to enforce an \$18 billion arbitral award against Chevron, the firm called in the experienced litigator Randy Mastro, who co-chairs



the firm's litigation practice group, to lead the team acting as lead counsel for the oil behemoth.

Convincing a court not to enforce an arbitral award is always an uphill task, but doing so in this instance was critical for Chevron given its size and the circumstances surrounding the underlying proceeding — fraud before a court or arbitral tribunal, misconduct that's become increasingly common, according to Mastro.

The oil giant claimed in the litigation that the arbitration that led to the award, which was issued following a dispute over a decades-old concession agreement to develop Saudi oil fields, was a "sham." The company argued that there had never been an arbitration agreement between Chevron and the purported landowners, and that there were "substantial irregularities" in the underlying arbitration.

In fact, the organization that conducted the arbitration later became the subject of a criminal investigation for alleged forgeries and other misconduct, and the arbitrators were convicted of attempted theft and forgery, Chevron told the court.

"This was a bogus arbitration by a bogus organization that had no legitimacy whatsoever," Mastro told Law360, adding that the proceeding "was an attempt to ensnare a U.S. company that operates internationally. It was fraudulent from the inception and the court needed to know that."

Ultimately, the case was dismissed by a California federal judge in September, after he concluded that the claimants were not parties to the underlying arbitration agreement. The judge also pointed to the "numerous procedural infirmities" that precluded confirming the award, including that the petitioners had provided the court with multiple versions of the award, some of which included "suspect" authentication stamps.

The case is currently on appeal at the Ninth Circuit.

The firm also achieved two significant victories in 2019 for Crystallex International Corp., for which it acted as lead counsel in both cases. The first came in February, when the D.C. Circuit decided without hearing oral arguments to affirm a ruling enforcing a massive \$1.4 billion arbitral award, including interest, against Venezuela. The Canadian mining company won the award after being ousted by the Venezuelan government from a lucrative gold mining project.

The second victory came in late July, when the Third Circuit ruled that Crystallex could seize shares in Citgo Petroleum Corp.'s parent company to enforce the award. The Third Circuit's decision affirmed a landmark ruling that had been issued the previous August in Delaware federal court, in which U.S. District Judge Leonard P. Stark concluded that Venezuela's state-owned oil company, Petróleos de Venezuela SA, is the country's alter ego.

That means the Citgo shares, held by a PDVSA subsidiary, are the property of Venezuela and can be seized to pay the country's debts. Judge Stark's ruling opened the door for Crystallex, and potentially Venezuela's other creditors, to go after Venezuela's largest U.S. asset.

It was a critical ruling for Crystallex and Venezuela's numerous other creditors — estimated to be owed some \$150 billion — given the ongoing political and economic turmoil in the country.

Meanwhile, in May, the firm secured a victory acting as lead counsel for Dana Gas PJSC and Crescent Petroleum Co. International Ltd. by defeating a multibillion-dollar London Court of International

Arbitration claim involving Hungary's MOL Group.

The dispute had arisen out of a decision to settle a \$39 billion feud with the Kurdistan Regional Government of Iraq, which resulted in a \$1 billion payment to a joint venture including Crescent Petroleum, Dana Gas, and Pearl Petroleum Co. Ltd.

MOL Group challenged the deal as a minority shareholder in Pearl, saying the matter should not have been settled. The LCIA tribunal disagreed, however, concluding that it would have been "clear to any reasonable director" that "the deal on the table was unquestionably better than no deal" and that "the risk of no deal was too great for the opportunity to settle to be passed up."

Gibson Dunn also acted as lead counsel for Agility Public Warehousing, which filed the first investment treaty claim against Iraq over the country's allegedly unfair treatment of the Kuwaiti company's \$500 million dollar telecommunications investment. In July, the tribunal unanimously rejected Iraq's jurisdictional objections in the proceeding. Proceedings on the merits of the dispute and possible damages will now proceed.

--Editing by Nicole Bleier.