

International Arbitration Group Of The Year: Gibson Dunn

By Joyce Hanson

Law360 (February 15, 2024, 2:02 PM EST) -- Gibson Dunn & Crutcher LLP aided hip-hop mogul Jay-Z in navigating closely watched arbitration hearings and related litigation as he sparred with liquor giant Bacardi over the multibillion-dollar valuation of their joint cognac venture, earning the law firm a spot among Law360's 2023 International Arbitration Groups of the Year.

Rahim Moloo, a partner in Gibson Dunn's New York office and co-chair of the international arbitration practice group, said what began as a disagreement over the price of luxury cognac venture D'Ussé LLC accelerated into multiple arbitration hearings, court cases in both New York and Delaware, temporary restraining orders, an action to block all arbitration proceedings, and a petition to vacate an arbitration award.

"It was definitely one of our top achievements, if not the top achievement in 2023," Moloo said.

"Ultimately, as a result of the success we had in the fora in a short amount of time, we were able to reach a resolution in the dispute that allows for both parties to move forward in partnership for the betterment of the brand and a successful outcome for our client, which is the best kind of win."

Bacardi Ltd. subsidiary Empire Investments Inc. agreed in February 2023 to buy out a portion of Shawn "Jay-Z" Carter's company SCLiquor LLC after a yearlong feud. According to the parties, Bacardi acquired the majority of D'Ussé, and Jay-Z earned a financial payout in the hundreds of millions of dollars while retaining a "significant ownership stake" in the French cognac venture, which launched in 2012.

Moloo said at the height of the dispute, he argued in four hearings in just three months, "so it got pretty intense" — even though Jay-Z's company and the Bacardi unit both wanted an amicable settlement.

"Oftentimes, when a relationship between two parties has completely fallen apart, they have nothing to lose and they'll fight it to the end," Moloo said. "But when there's an ongoing relationship in the midst of litigation, there are more opportunities to reach a resolution that is good for everybody."

The Gibson Dunn partner said Jay-Z's celebrity status and Bacardi's reputation as a large, family-owned spirits company heightened the public focus on the multimillion-dollar fight.

"When Jay-Z is involved in a dispute of that magnitude, it's closely followed," Moloo said. "We had a status conference in court, and usually these conferences are not that big a deal. But here, we heard who was on



the phone call, and there were various media outlets listening in on the status conference because of the profile of the parties."

Lindsey D. Schmidt, a Gibson Dunn partner also based in New York, pointed to Kuwaiti logistics firm Agility Public Warehousing Co.'s \$1.65 billion award in a shareholder dispute as another instance of the law firm's ability to litigate and arbitrate multiple proceedings in different fora and jurisdictions across the world.

In the March 21 win, Agility subsidiary Iraq Telecom Ltd. and a related firm convinced an International Chamber of Commerce tribunal, seated in the Dubai International Financial Centre, that Iraqi telecommunications company Korek Telecom's controlling shareholder, Sirwan Saber Mustafa Barzani, engaged in a scheme to bribe Iraqi regulators.

As a result, he procured a wrongful decision that let him expropriate the two companies' \$810 million stake in Korek, Agility said in a statement. The \$1.65 billion win for Iraq Telecom represented one of the largest arbitral awards of 2023, according to Gibson Dunn.

"Fortunately for our client, the tribunal unanimously found that Korek and its chair participated in a deliberate and intentionally corrupt scheme to defraud our client by bribing Korek's regulators at the Iraq Communications and Media Commission to issue a decision that effectively stripped [Iraq Telecom] of its shareholding in Korek without any compensation at all," Schmidt said.

The achievement was significant not only for the size of the award, but also for the fraud and corruption findings, according to Schmidt. She said such claims are difficult to prove in international arbitration because corruption allegations carry a high burden of proof.

"It's exceptional that the tribunal unanimously came to the conclusion that it did," Schmidt said. "It's difficult to get witnesses to come forward. It took a number of years to find the documentary evidence that corroborated and confirmed that bribery had taken place."

Another recent victory for Gibson Dunn was its representation of a Liberty Mutual Insurance Co. subsidiary in a United Nations Commission on International Trade Law arbitration against Venezuela, arising under a bilateral investment treaty signed by Spain and Venezuela.

The UNCITRAL case, which commenced in 2021, alleged inequitable treatment of the insurer due to Venezuela's expropriation of Liberty's Venezuelan subsidiary, while also pointing to the country's currency exchange and transfer control restrictions.

Liberty Mutual was forced to sell the Venezuelan subsidiary, resulting in an impairment of \$700 million and substantially more in damages, according to Gibson Dunn.

Venezuela's first line of defense was to raise jurisdictional objections, saying the UNCITRAL tribunal didn't have jurisdiction under the Spain-Venezuela BIT, or bilateral investment treaty, Moloo said.

But Gibson Dunn prevailed in that phase of the arbitration, he noted, saying a unanimous decision by the arbitral tribunal in January 2023 denied jurisdictional objections and allowed the case to proceed to the merits. The case is currently pending before the Permanent Court of Arbitration.

In another accomplishment involving Venezuela, Gibson Dunn continued its run of victories before the Delaware federal court to enforce Canadian miner Crystallex International Corp.'s \$1.4 billion arbitration

award against Venezuela's U.S.-based Citgo Petroleum Corp.

In October 2022, U.S. Circuit Judge Leonard P. Stark approved a timeline for the sale of shares in Citgo's parent, PDV Holding Inc., boosting Crystallex's bid to recoup the massive judgment against Venezuela via the proceeds from ownership deals for the state-linked oil giant.

"Citgo, which is [a] large oil and gas company in the United States, will be sold in 2024 to satisfy Crystallex's judgment," Moloo said. "We have about \$1 billion outstanding on it. Other creditors have joined the line, but we're at the front of the line, and we're the only ones with a perfected writ of attachment."

Moloo said international arbitration is a focus for Gibson Dunn, which counts roughly 80 lawyers in the practice group, split between the U.S. and the rest of the world, as well as 40 or so lawyers in other areas who contribute their expertise. The U.S.-based attorneys are in New York, Houston, Dallas and Los Angeles; London is a major center abroad, as are Paris, Dubai, Riyadh, Singapore and Hong Kong.

"I joined the firm almost 10 years ago as the first dedicated international arbitration lawyer in the U.S.," Moloo said. "We have grown since then from one to about 40 people involved in the international arbitration practice in the U.S."

Schmidt said a number of partners have joined Gibson Dunn in the past year. For example, she said, Robert Spano became a partner in the London and Paris offices in January 2023 and serves as the co-chair of the firm's artificial intelligence practice group.

Singapore partner Paul Tan, who leads the arbitration practice for the firm in Asia, and Mohammed M. Bashir, a partner in Riyadh, Saudi Arabia, also joined Gibson Dunn recently. Bashir had previously worked at the Jordanian Ministry of Foreign Affairs and was engaged by Gibson Dunn as a public law expert when it opened its office in Riyadh in November 2023 with seven partners.

Gibson Dunn expects to see further activity in Latin America, with a growing number of energy-related disputes in the coming year, according to Schmidt.

"In 2023, we saw a sharp uptick in arbitrations being initiated in developing energy sectors," she said. "Argentina, Bolivia and Chile have sought to expand the mining of lithium, and Mexico has nationalized lithium. Lithium is key to energy transition, and I think it will be a spotlight in 2024."

Moloo said global disputes are becoming more multidisciplinary, with clients increasingly going to court for issues such as regulatory matters or sanctions, as well as appearing before tribunals for international arbitration.

Not long ago, he recalled, one of his clients described the dispute experience "as analogous to being in line at Disneyland."

"You think you've reached the end of the line, then you turn the corner and look inside the building, and you see an entirely new line," Moloo said. "We want to anticipate that line you don't see from the outside. I think clients who have become more sophisticated realize there is that next line once you turn the corner, and they're looking for a firm that can deal with the entire process."

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