

The Global Lawyer: The Global Lawyer of the Year



By Michael D. Goldhaber

Dollar for dollar, there was really no victory that compares. David Kavanagh of Skadden, Arps, Slate, Meagher & Flom not only stopped a proposed \$16 billion share swap between BP and the Russian state oil company Rosneft in its tracks. In effect, he also redirected from BP to Exxon (and from the U.K. to the U.S.) the exploitation of petrocarbon reserves in the Russian Arctic that Vladimir Putin says may drive a half-trillion dollars in investment.

Equally impressive from a lawyer's point of view, he did it fast. "We managed to bring on in a few weeks, from standing start to award, a case that would normally have taken a year," said Kavanagh.

On the morning of Jan. 15, 2011, Kavanagh was riding London's tube from his home in Chelsea to Canary Wharf when he read of BP's proposal to Rosneft. He immediately saw the potential for a challenge to the deal by AAR, the consortium of three oligarch groups that owns 50 percent of BP's preexisting Russian joint venture, TNK-BP. "What a great, fascinating dispute," Kavanagh remembered thinking. "I wonder who's going to get that one." A few minutes later, Kavanagh was summoned to a meeting with AAR by Skadden's co-head of global transactions, Scott Simpson.

On Feb. 1, Kavanagh and AAR persuaded a London high court to freeze BP's Arctic deal pending arbitration. On March 24, they convinced an ad hoc arbitral panel formally seated in Stockholm to enjoin the deal and effectively kill it, based on a prima facie showing that BP was obliged under its joint venture agreement to initially explore the Rosneft deal through TNK-BP.

Legally, AAR's claim was such an obvious winner that BP's move is widely seen as a political rather than a legal miscalculation. The supposition is that BP expected that politics would trump law, and the Kremlin's kleptocrats would stop the oligarchs from getting in the way of a deal with Russia's state oil company, especially one that was initiated by deputy prime minister and former Rosneft chair Igor Sechin. On this reading, AAR deserves credit for standing on its rights. Skadden, the London courts, and the commercial arbitrators mainly get credit for speed. Of course, as anyone knows who has tried to complete a deal while navigating, say, the European Court of Justice, speed is no mean thing.

AAR chief Stan Polovets praised "Skadden's ability to draw on expertise as to the English court system through to English and Russian corporate law and to international arbitration." The key to victory, he said, was to adopt a dual fast-track strategy and execute it fast.

On Aug. 30, after negotiations between AAR and BP failed, Exxon swooped in to grab BP's prize. If the price of oil stays high enough and Russian taxes stay low enough to justify the costly extraction of Arctic oil reserves (the going rate for ice platforms is \$15 billion a pop), this could keep Exxon on top of the world for decades, and it might do more to cement U.S.-Russian relations than any deal in history. From the narrow view of legal business, the most delicious irony is that Exxon hired for its own megadeal the same law firms that killed BP's megadeal: Skadden and Akin, Gump, Strauss, Hauer & Feld (which played a supporting role advising the Renova Group wing of AAR).

AAR did not come up holding the grand prize, but the game is not over. The oligarchs still seek a final finding from the arbitrators that BP breached the TNK-BP shareholders agreement. Presumably, they would then put before the TNK-BP board (which includes three independent directors) the recommendation to seek billions of dollars in damages from BP, for depriving TNK-BP of decades of Arctic oil profits. This might put pressure on BP to buy out AAR, which according to the Financial Times was seeking a price of \$35 billion or more for its half of TNK-BP. Meanwhile, BP has filed a pair of reprisal arbitrations against the three groups that comprise AAR, Alfa, Access, and Renova, claiming that they violated the shareholders agreement by pursuing their own extracurricular Russian deals. The tribunals have not yet been convened.

The triumph of the Arctic arbitrators' contract interpretation might reflect well on Russian rule of law but there is more to the saga. In July a group of small minority shareholders in TNK-BP Holdings sued BP in Tyumen arbitration court in western Siberia, eventually claiming \$5 billion in damages to TNK-BP shareholders. The day after the Exxon deal was announced, Russian bailiffs and special forces raided BP's Moscow office by order of the Siberian court, in what BP described as "part of a pressure campaign." Both AAR and the shareholder group suing in Siberia deny any relationship with each other, and the case is in abeyance. All that can be said is that the episode is reminiscent of a Siberian suit brought by a sliver shareholder of Norway's Telenor, which also happened to strengthen the bargaining position of Alfa Group vis-a-vis its Western partner in a Russian investment. (Telenor withdrew its allegation in U.S. federal court for lack of proof that the principals of the sliver shareholder and Alfa were related). Best of luck to Exxon doing business in Russia. And good thing they're lawyered up.

An honorable mention for Global Lawyer of the Year goes to Kavanagh's partner, Karyl Nairn, who surely had the most cinematic case. After her clients, the Israeli and Greek oil traders Rony Fuchs and Ioannis Kardassopoulos, won a \$100 million victory in an investor arbitration against Georgia, Fuchs was lured to Tbilisi last October, ostensibly to sign a \$70 million settlement. According to Skadden's account, Fuchs was entrapped, thrown in prison on bribery charges, and tortured. Nairn won an order from the ICSID revision tribunal to allow immediate enforcement of the full award, filed a European Court of Human Rights claim, and prepared to agitate for Georgia's ejection from ICSID and the Council of Europe. In a happy turn of events, Georgia paid a \$37.5 million settlement, and Fuchs is now home for Chanukah.

The first inaugural Global Lawyer of the Year marks the last column of The Global Lawyer's first full calendar year. We will return in 2012 to our usual obsessions with international business disputes and human rights, and we'll resume our informal competition to discuss Chevron in Ecuador more often than New York Times columnist Gail Collins mentions that Mitt Romney once strapped the family dog to the roof of his car.