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The FIRM LINE



March 2016

Investor state dispute settlement and the \$50 billion case

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A few of the legal texts in the library of the Permanent Court of Arbitration, in The Hague

On July 18, 2014, an arbitral tribunal sitting in The Hague ordered the Russian Federation to pay shareholders of the defunct oil company Yukos an unprecedented sum of damages -- **\$50 billion, plus \$60 million in legal fees and costs.**

One year later, after Russia had made no move to pay the award, courts in France and Belgium responded to a request by the claimants and **froze dozens of Russian state-owned assets, including bank accounts and buildings**, in anticipation that they might be seized as payment on the arbitral award. Meanwhile, the Yukos shareholders have told reporters that they're **seeking similar actions** in the U.S., the U.K., Germany and the Netherlands.

The Yukos case has created headlines all over the world. It's also drawn attention to a field of law many people have never even heard of, but that I've been practicing for about 10 years -- namely, investor state dispute settlement, or ISDS.

ISDS is a neutral, international arbitration procedure, designed to provide investors with a way to settle claims against sovereign states, without having to try those claims in the same states' local courts.

ISDS arbitrators are appointed by the parties in each case, or by an appointing authority if the parties fail to or choose not to appoint them. These arbitrators do not have to be tied to any particular geographic region or national bar. Many, if not most, of them are from North America

Recent ISDS cases have resulted in awards of \$50 billion, \$2.19 billion, and \$1 billion

and Western Europe, but an increasing number are from other regions and legal backgrounds. While they almost universally have experience in international law, very few arbitrators have served as judges in traditional courtrooms.

Given this system that has no traditional judges, no direct ties to traditional courts, and, most importantly, no right to appeal, why do investors bring ISDS claims? In some cases, it's because they cannot reasonably expect to get a fair hearing in a local court. The tribunal for the Yukos case, for instance, noted the Russian authorities' ["intimidation and harassment of Yukos's senior executives, mid-level employees, in-house counsel and external lawyers."](#)

Even more disturbing, the tribunal found that Russia had conducted a ["ruthless campaign to destroy Yukos"](#), appropriate its assets, and eliminate [its primary owner] Mr. Khodorkovsky as a political opponent" by putting him in prison. By the time the company's former majority owners brought their arbitration in The Hague, they were living abroad, and [didn't dare return to Russia](#).

But not all ISDS cases involve concerns about judicial bias or the claimants' safety. Small businesses and individuals may choose to bring an ISDS case simply because it's a more efficient and straightforward means of prosecuting their claims, and one that offers a near-certain path to payment of any resulting award. According to the Office of the U.S. Trade Representative, about [half of all ISDS cases are brought by individuals and small or medium businesses](#).

ISDS cases have recently produced some stunning outcomes. In 2012, two of these cases -- brought by Dow Chemical against Kuwait and by Occidental Petroleum against Ecuador -- resulted in awards of [\\$2.19 billion](#) and [\\$1 billion](#).

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Primary source materials about international arbitration:

- [Newly posted awards, decisions and materials in the field of international arbitration](#)
- [ICSID home site](#)
- [ICSID Convention, regulations and rules](#)
- [Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention](#)
- [Permanent Court of Arbitration](#)



Jones Swanson welcomes Jennifer Morrison Ersin as a special partner

Jones, Swanson, Huddell & Garrison, LLC is pleased to announce the addition of Jennifer Morrison Ersin to the firm as a Special Partner, practicing out of Istanbul, Turkey.

Jennifer has been representing private and sovereign entities in arbitrations under the rules of the International Chamber of Commerce (ICC), United Nations Commission on International Trade Law (UNCITRAL), American Arbitration Association (AAA), and International Centre for Settlement of Investment Disputes (ICSID) for more than a decade. She advises on arbitrations in all sectors, including natural resources, agribusiness, and construction. She focuses on managing disputes arising from large-scale infrastructure projects.

Jennifer received her J.D. from Columbia Law School in 2002, where she was a Harlan Fiske Stone Scholar.

She is admitted to practice in New York, State Courts of New York and the District of Columbia.

In addition to her practice, she serves as an instructor in the graduate and undergraduate programs at Yeditepe University Law School in Istanbul, Turkey, where she teaches courses in international commercial and investment arbitrations.

Please read Jennifer's full bio on our website by clicking [here](#).

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Jones, Swanson, Huddell & Garrison, LLC, is a boutique litigation law firm based in New Orleans, with a second office in Baton Rouge, Louisiana. The firm primarily handles complex commercial and environmental/property disputes. In those litigation arenas, the firm has a strong nationwide presence, continues to represent many of Louisiana's and the Southeast's largest and most active business entrepreneurs and landholders, and retains a sharp focus on the customized representation of smaller businesses and individuals. Jones Swanson has served as lead counsel in New York, Connecticut, Massachusetts, California, and Texas, as well as in Mississippi, Alabama, Florida, and Louisiana.

The Firm Line is a newsletter designed to inform our clients and friends about legal issues that may impact their lives and businesses, developments at the firm, and other items of interest. Our intention is to keep the information we provide in this newsletter concise. We welcome further discussion on the topics addressed herein, as well as ideas and suggestions as to topics of interest that we could cover in future issues, and thoughts as to how we can deliver better, more insightful information to our readership. Above all, we hope that The Firm Line proves interesting and noteworthy.

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