UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HULLEY ENTERPRISES LTD., YUKOS UNIVERSAL LTD., and VETERAN PETROLEUM LTD., *Petitioners,* *v.* THE RUSSIAN FEDERATION *Respondent.*	)	Case No. 1:14-cv-01996-ABJ

RESPONDENT'S MOTION TO DENY CONFIRMATION OF ARBITRATION AWARDS PURSUANT TO NEW YORK CONVENTION

Pursuant to 9 U.S.C. § 207 and the Court's August 4, 2015 Minute Order, Respondent, the Russian Federation, respectfully submits this motion requesting that the Court dismiss the Petitioners' Petition to Confirm Arbitration Awards and refuse to recognize and enforce the awards pursuant to the Convention for the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), codified at 9 U.S.C. §§ 201-208 (2000).

Pursuant to Rule 7(a) of the Civil Rules of the United States District Court for the District of Columbia, Respondent submits herewith a Memorandum of Points and Authorities in Support of its Motion. Respondent has also submitted documents with exhibits in further support of this Motion, with its companion Motion to Dismiss the Petition to Confirm Arbitration Awards for Lack of Subject Matter Jurisdiction.

Finally, Respondent submits herewith a Proposed Order pursuant to Rule 7(c) of the Civil Rules of the United States District Court for the District of Columbia.

Dated: Washington, D.C.
October 20, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2015, I filed a true and correct copy of the foregoing Motion to Refuse Recognition of Arbitration Awards Pursuant to New York Convention with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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THE RUSSIAN FEDERATION'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DENY CONFIRMATION OF ARBITRATION
AWARDS PURSUANT TO NEW YORK CONVENTION

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TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 3

I. The Arbitrations 4

A. The Tribunal Followed A Faulty Process 4

B. The Tribunal's Faulty Process Led To Egregiously Erroneous Results 7

II. The Russian Federation Has Challenged The Awards In Multiple Jurisdictions 9

ARGUMENT 12

I. The Awards Are A Nullity Because The Russian Federation Never Agreed To Arbitrate With Petitioners (New York Convention, Article V(1)(a)) 13

II. Confirmation Of The Awards Would Be Contrary To The Public Policy Of The United States (New York Convention, Article V(2)(b)) 13

A. Petitioners Violated Their Duty Of Candor To The Tribunal 14

B. The Awards Condone Serious Fraud And Illegality By Petitioners And Their Affiliates 16

C. The Awards Evince The Tribunal's Bias And Prejudice Against The Russian Federation 21

D. The Awards Purport To Punish The Russian Federation For Its Exercise Of Police Powers Within Its Territory 25

III. Confirmation Of The Awards Should Be Refused Because The Russian Federation Was Denied A Meaningful Opportunity To Be Heard (New York Convention, Articles V(1)(b), V(1)(d) And V(2)(b)) 26

IV. Confirmation Of The Awards Should Be Refused Because The Tribunal's Composition Violated The Agreement Of The Parties (New York Convention, Articles V(1)(d) And V(1)(c)) 33

V. Confirmation Of The Awards Should Be Refused Because The Tribunal's Procedure Was Not In Accordance With The Agreement Of The Parties (New York Convention, Article V(1)(d)) 39

CONCLUSION 40

TABLE OF AUTHORITIES

CASES

Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378 (11th Cir. 1988) 15

Changzhou AMEC E. Tools & Equip. Co. v. E. Tools & Equip., Inc., Civ. No. 11-00354, 2012 WL 3106620 (C.D. Cal. July 30, 2012), *aff'd* 571 F. App'x 609 (9th Cir. 2014) 17

China Minmetals Materials Import and Export Co., Ltd. v. Chi Mei Corporation, 334 F.3d 274 (3d. Cir. 2003)...13

Commercial Union Ins. Co. v. Lines, 378 F. 3d 204 (2d Cir. 2004)..17

Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1968) 21

Encyclopaedia Universalis SA v. Encyclopaedia Britannica, Inc., 403 F.3d 85 (2d Cir. 2005) 33

Europcar Italia, S.p.A. v. Maiellano Tours, Inc., 156 F.3d 310 (2d Cir. 1998) 15

First State Ins. Co. v. Banco de Seguros Del Estado, 254 F.3d 354 (1st Cir. 2001) 26

Iran Aircraft v. Avco Corp., 980 F.2d 141 (2d Cir. 1992) 26

Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274 (5th Cir. 2004)...15, 26

Kitchen v. Rayburn, 86 U.S. 254 (1873)...16, 21

Laminoires-Trefileries-Cableries de Lens, S.A. v. Southwire Co., 484 F. Supp. 1063 (D. Ga. 1980) 24

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc., 473 U.S. 614 (1985) 17

National Oil Corp. v. Libyan Sun Oil Co., 733 Fed. Supp. 800 (D. Del 1990) 15

Nicaragua v. United States, 1986 I.C.J. 14 (June 27, 1986)...14

Paklito Investment Ltd. v. Klockner East Asia, Ltd., Supreme Court of Hong Kong (Jan. 15, 1993), XIX Y.B. Comm. Arb. 664 27

Perma Life Mufflers, Inc. v. Int'l Parts Corp., 392 U.S. 134 (1968) (Marshall, J., concurring in the result) 16

Quiborax S.A. et al. v. Plurinational State of Bolivia, ICSID Case No. Arb/06/2, Partially Dissenting Opinion of Professor Brigitte Stern (Sep. 16, 2015)..26

Safeway Stores, Inc. v. United Food and Commercial Workers Union, Local 400, 621 F. Supp. 1233 (D.D.C. 1985) 22, 23

Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974) 17

Stolt-Nielsen S.A. et al. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010) 21

Storer Broadcasting Co. v. Am. Fed'n of Television & Radio Artists 600 F.2d 45 (6th Cir. 1979) 22

TermoRio S.A. v. Electranta S.P., 487 F.3d 928 (D.C. Cir. 2007) 12

Transmarine Seaways Corp. of Monrovia v. Marc Rich & Co., A.G., 480 F. Supp. 352 (S.D.N.Y. 1991) 17, 21

STATUTES, RULES AND INTERNATIONAL CONVENTIONS

28 U.S.C. §§ 1602-1611 ....1, 25

1976 UNCITRAL Arbitration Rules 34, 39

Civil Procedure Rules pt. 11 11

Convention for the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330, U.N.T.S. 38, codified at 9 U.S.C. §§ 201-208 (2000). .... passim

Energy Charter Treaty, 17 December 1994, 2080 U.N.T.S. 95, Reg. No. 36116 ....4, 38, 39

COMMENTARIES

ALBERT JAN VAN DEN BERG, THE NEW YORK CONVENTION OF 1958: TOWARDS A UNIFORM JUDICIAL INTERPRETATION (1981) 13

P. Bienvenu & M. Valasek, *Compensation for Unlawful Expropriation, and Other Recent Manifestation of the Principle of Full Reparation in International Investment Law,* in van den Berg (ed.),
50 Years of the New York Convention (ICCA Congress Series vol. 14) (2009) 32, 37

Sophie Nappert, *Mammoth Arbitrations: the Yukos Awards of 18 July 2014*, TRANSNATIONAL DISPUTE MANAGEMENT (TDM), Vol. 12, Issue 5 (Aug. 2015) 9, 24

INTRODUCTION

In the separate, companion motion and supporting memorandum, the Russian Federation addresses why the Petition to Confirm Arbitration Awards ("Petition") filed by Hulley Enterprises Ltd. ("Hulley"), Veteran Petroleum Ltd. ("Veteran"), and Yukos Universal Ltd. ("Universal") should be dismissed for lack of subject-matter jurisdiction under the U.S. Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611, and Section 202 of Federal Arbitration Act ("FAA"), 9 U.S.C. § 202. In this motion and memorandum, the Russian Federation addresses why the three Interim Awards on Jurisdiction and Admissibility dated November 30, 2009 (the "Interim Awards") and the three Final Awards dated July 18, 2014 (the "Final Awards" and, together with the Interim Awards, the "Awards") issued by the arbitral tribunal in The Hague (the "Tribunal") should be refused recognition and enforcement under Section 207 of the FAA, 9 U.S.C. § 207, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").[1]

The Court need not reach the New York Convention issues herein until it decides the jurisdictional issues raised in the companion motion. Should the Court decide that subject-matter jurisdiction exists, it nonetheless should deny confirming the Awards for the following reasons.

First, confirmation of the Awards should be denied pursuant to New York Convention Art. V(1)(A) because there was no agreement to arbitrate. As discussed fully in the memorandum of law supporting the Jurisdictional Motion ("Jurisdictional Brief" or "Jur'l Br."), the Russian Federation did not offer or consent to arbitrate with Petitioners. Therefore, the

[1] Convention for the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330, U.N.T.S. 38, codified at 9 U.S.C. §§ 201-208 (2000). Copies of the Interim Awards are included at Gaillard Decl., Ex. D (Dkt. # 2-4); Ex. E (Dkt. # 2-5), Ex. F (Dkt. # 2-6). Copies of the Final Awards are included at Gaillard Decl., Ex. A (Dkt. # 2-1); Ex. B (Dkt. # 2-2), Ex. C (Dkt. # 2-3).

Tribunal had no jurisdiction, and its Awards are a nullity. There is therefore nothing for this Court to confirm, recognize or enforce.

Second, confirmation of the Awards should be denied pursuant to New York Convention Art. V(2)(b) because confirmation of the Awards would be repugnant to the public policy of the United States in several ways. First, the Petitioners violated their duty of candor to the Tribunal by not revealing their true identities, the fraud which they perpetrated to obtain their investment and their deceit concerning operation in violation of law. That lack of candor continues before this Court. Deceived as to Petitioners' true relationship with a handful of Russian oligarchs, the arbitrators condoned Petitioners' fraud and illegal conduct and rewarded the oligarchs with a $50 billion dollar award for an investment that they obtained fully financed and spent years exploiting to extract hundreds of millions of dollars out of the sale of Russia's natural resources.

In finding the Russian Federation liable, the arbitrators also exhibited bias and prejudice and openly sought to punish the Russian Federation for exercising its police powers to enforce its tax laws and prosecute Petitioners' tax evasion and other unlawful schemes.

Third, confirmation of the Awards should be denied pursuant to New York Convention Arts. V(1)(b), V(1)(d), and V(2)(b) because the awards were rendered in utter disregard of the Russian Federation's most basic due process right, its right to be heard and present its defense. Despite repeated requests by the Russian Federation, the Tribunal did not provide the parties the opportunity to comment on the arbitrary valuation methodology it used to arrive at the $50 billion damages Awards – the largest arbitration awards in modern times.

Fourth, confirmation of the Awards should be denied pursuant to New York Convention Arts. V(1)(d) and V(1)(c) because the arbitral authority was irregularly composed and the arbitrators disregarded their mandate to decide the dispute personally. In violation of the

agreement of the parties, and their legitimate expectations as to the process, the Tribunal allowed a third party – presented as an administrative assistant – to act as a *de facto* fourth arbitrator and play a critical role in substantive aspects of the proceedings.

Finally, confirmation of the Awards should be denied pursuant to New York Convention Art. V(1)(d) because the arbitral procedure was not in accordance with the agreement of the parties. In disregard of that agreement, the Tribunal declined to refer the question of whether Yukos's tax assessments were expropriatory and discriminatory to the tax authorities of Cyprus, England and Russia, brushing aside its clear obligation to make such a referral as an "exercise in futility".

BACKGROUND

The background to this case is described at length in the companion Jurisdictional Brief. It establishes, among other things, that (1) the Petitioners are shell companies; (2) the Russian oligarchs that own and control Petitioners ("Oligarchs") fraudulently obtained the shares and assets of OAO Yukos Oil Company ("Yukos") in the 1995 "Loans for Shares" program; (3) between 1995 and 2004 the Oligarchs continued to conceal their ownership of those shares by transferring them to on- and off-shore shells, including ultimately to Petitioners, in furtherance of their fraud, tax evasion, and other unlawful schemes; (4) by December 2003, Russia issued a series of tax assessments to Petitioners that were authorized under Russian law; and (5) Petitioners' contention that the Russian Federation's enforcement of its own laws was "politically motivated" was firmly rejected by the European Court of Human Rights ("ECHR"). The Jurisdictional Brief also describes the Petitioners' lack of candor to the Tribunal about their connections to the Oligarchs' fraud. This memorandum describes the underlying arbitration proceedings that led to the Awards and the pending post-arbitration proceedings in various

jurisdictions. In short, the staggering Awards were the product of a flawed process, rendered in violation of fundamental rules of procedure and not enforceable under the New York Convention.

I. The Arbitrations

A. The Tribunal Followed A Faulty Process

The arbitral proceedings at issue were unusual and flawed in many respects. First, they were commenced under a treaty that was never ratified by the Russian Federation and only provisionally applied by the treaty's own terms. Second, they involved numerous findings of fraudulent schemes by Petitioners and the Oligarchs that were given no legal effect. Third, the Tribunal was clearly influenced by claims of "political motivation" that were irrelevant to the issues before the Tribunal, as recognized by the ECHR. Fourth, the Tribunal failed to allow the parties to be heard when it calculated $50 billion in damages by means of an arbitrary, mix-and-match method that none of the parties put forth and that was bound to be inaccurate by design.

Petitioners initiated three arbitrations against the Russian Federation in The Hague in the Netherlands (the "Arbitrations") in November 2004, alleging that the Russian Federation had expropriated their investments in Yukos. *See* Ex. R-443, Ex. R-444, Ex. R-445 (Petitioners' Notices of Arbitration). The three proceedings, which were conducted in parallel, were brought under the Energy Charter Treaty (the "ECT"),[2] a treaty that the Russian Federation signed, provisionally applied pursuant to its Article 45(1), but never ratified. *See* Interim Awards, ¶ 37.

A three-member Tribunal was appointed to hear the dispute. On October 31, 2005, a preliminary procedural conference was convened in The Hague. The parties and the Tribunal executed the Tribunal's Terms of Appointment, agreeing that the Arbitrations would be governed by the 1976 UNCITRAL Arbitration Rules. *See* Ex. R-320 (Terms of Appointment), ¶

[2] Energy Charter Treaty, 17 December 1994, 2080 U.N.T.S. 95, Reg. No. 36116.

4(a). The parties and the Tribunal also agreed that the International Bureau of the Permanent Court of Arbitration (the "PCA") in The Hague would act as the Registry. *Id.* ¶ 7. The Terms of Appointment provided that "[t]he Tribunal may appoint a member of the Registry to act as Administrative Secretary" and specified that "[t]he Administrative Secretary and other members of the International Bureau [of the PCA] shall carry out administrative tasks on behalf of the Tribunal." *Id.* ¶ 7(c). Mr. Brooks Daly of the PCA was appointed Administrative Secretary. Ex. R-321 (Transcript of October 31, 2005 Hearing), at 9:21-10:8.

At the end of the procedural conference, the Chairman of the Tribunal advised the parties that "I have asked one of my colleagues in my office in Montreal to assist me in the conduct of this case." Ex. R-321 (Transcript of October 31, 2005 Hearing), at 92:21-93:8. The Chairman explained that "[b]ecause, like all of us, I travel a lot, if at any time I am unreachable, you could always contact him. . . . It may come to pass that you wish to find out something with respect to the tribunal that Brooks Daly might not be aware of. Martin [Valasek] at my office in Montreal could be reached and hopefully will have the answer for you." *Id.* The role of Mr. Valasek was not specified further, but was to prove of critical importance later.

The Russian Federation challenged the Tribunal's jurisdiction, notably on the basis that it had never ratified the ECT. In three Interim Awards on Jurisdiction and Admissibility (the "Interim Awards") dated November 30, 2009, the Tribunal rejected all but one of the Russian Federation's objections and deferred consideration of the remaining objection. *See* Interim Awards. The case then proceeded to the merits phase with the remaining jurisdictional question outstanding.

During the merits phase, the Tribunal considered and found that Petitioners and their owners had engaged in fraudulent and unlawful activities. In particular, the Tribunal recognized, among other things:

- The Petitioners are mere shell entities beneficially owned by the Oligarchs. *See* Final Awards, p. xv;
- There were irregularities and possible illegalities in connection with the Loans for Shares auction in 1995, whereby the Oligarchs acquired their interests in Yukos;
- The Petitioners had made fraudulent tax filings. *See id.* ¶ 1620;
- The Petitioners and Yukos engaged in "sham-like" transactions in low tax regions of Russia and "material and significant mis-conduct." *See id.* ¶¶ 1404, 1637;
- Yukos had failed to file proper VAT returns. *See id.* ¶¶ 596, 694.

Because the issues pertaining to damages were complex, the Russian Federation early-on requested that the arbitration be bifurcated into liability and damages phases. The Tribunal declined to do so, even though the parties noted that the analysis would be complicated. *See* Ex. R-441 (Procedural Order No. 10), ¶¶ 4-5 (deferring decision on bifurcation), Ex. R-442 (Procedural Order No. 11) (rejecting bifurcation).

Petitioners put forth their damages calculation in the form of a report and analysis supplied by their valuation expert, Mr. Brent Kaczmarek. The Russian Federation countered with critiques of Mr. Kaczmarek's analysis by Professor James Dow. The Tribunal rejected Mr. Kaczmarek's valuations and Petitioners' request for $114 billion. *See* Final Awards, ¶¶ 1760-62; 1777-1812; Expert Report of Professor James Dow dated October 20, 2015 ("Dow Op."), ¶¶ 40-59.

Despite rejecting the available methodologies, the Tribunal did not return to the parties or their experts for further briefing and analysis. Instead, the Tribunal, without consulting any valuation expert, embarked on its own analysis that was not guided by any known or accepted method of valuation and was never revealed to the parties for comment. The Tribunal never once allowed the parties to be heard on the lengthy and complex analysis it performed. The results were – predictably – grossly erroneous. Dow Op., ¶¶ 22-25.

Finally, it became clear in the end that the Tribunal's decision was unduly influenced by Mr. Valasek, who the parties did not appoint as an arbitrator and had assumed was performing only ministerial tasks. It emerged after the Final Awards were rendered that Mr. Valasek had billed in excess of $1 million (€970,562.50) to the case. *See* Final Awards, ¶ 1863. After the Russian Federation made inquiries, the PCA disclosed that Mr. Valasek had billed over 3,000 hours, considerably more than any of the arbitrators. *See* Ex. R-438 (Respondent's Letter to PCA dated September 9, 2014); Ex. R-316 (PCA's Letter to Respondent dated October 6, 2014). A detailed linguistic and statistical analysis of the Final Awards has now established that Mr. Valasek had a significant hand in the drafting of the Final Awards. *See* Ex. R-251 (Report of Dr. Carole Chaski dated September 11, 2015).

B. The Tribunal's Faulty Process Led To Egregiously Erroneous Results

The Tribunal issued its Final Awards on July 18, 2014. Despite finding, consistent with the ruling of the ECHR, that Petitioners had engaged in tax evasion on a massive scale, the Tribunal nonetheless turned a blind eye and held that Petitioners' claims were not barred because, according to the Tribunal, the doctrine of "'unclean hands' does not exist as a general principle of international law. . ." *See* Final Awards, ¶ 1363. The Tribunal further declined even to consider the fraud and illegalities connected to the acquisition of Yukos because these "involved Bank Menatep and the Oligarchs, an entity and persons separate from Claimants, one

of which—Veteran—had not even come into existence." *Id*. ¶¶ 1369-70. The Tribunal so concluded even though Petitioners did not contest in the Arbitrations, and the Tribunal confirmed elsewhere, that the "Oligarchs" – Mr. Khodorkovsky and his group, are the ultimate beneficial owners of Petitioners. *Id*. p. xv (defining "Oligarchs" as "the individuals who have or had a beneficial interest in the trusts behind Claimants, namely Messrs. Khodorkovsky, Lebedev, Nevzlin, Dubov, Brudno, Shakhnovsky, and Golubovitch"). Petitioners' deception as to their corporate structure that commenced against the Russian Federation in 1995 continued and deceived the Tribunal. The evidence now indicates to the contrary. Their continued omission of the relevant facts deprived the Tribunal of the key links in the record as to Petitioners real identity. The very oligarchs who illegally obtained their investment appear before the Court as Petitioners, as the witness statements of Messrs. Anilionis and Zakharov describe and Mr. Kothari demonstrates in his expert statement. *See* Jur'l Br. at Introduction, and Background § VI.

On damages, the Tribunal ordered the Russian Federation to pay Petitioners in excess of $50 billion as damages and an additional $60 million in legal costs. *See* Final Awards, ¶ 1888. As Counsel for Petitioners have acknowledged, the Awards were "by far the largest award ever rendered by an arbitral tribunal." Ex. R-440 (Press Release dated July 28, 2014). The Tribunal effectively imposed a punitive amount of damages against a sovereign State for enforcing its own tax laws—a category of dispute the State specifically did not offer or consent to arbitrate under the ECT. The Tribunal awarded that unprecedented amount on the basis of its own arbitrary valuation method, without even purporting to hear the parties in this respect. The Tribunal's method, which "mixes and matches" disparate and incompatible parts of the parties'

valuation models, is non-standard and not one that had been discussed by the parties' valuation experts or that could otherwise have been anticipated. *See* Dow Op., ¶¶ 12-16.

The Tribunal's decision was clearly influenced by considerations beyond the evidence presented. Independent commentators have found the Tribunal's liability findings "troubling" and many aspects of the Awards "surprising." Sophie Nappert, *Mammoth Arbitrations: the Yukos Awards of 18 July 2014*, TRANSNATIONAL DISPUTE MANAGEMENT (TDM), Vol. 12, Issue 5 (Aug. 2015), Ex. RLA-54, at 2-3. From the start of its analysis, the Tribunal proceeded on the basis of an "unwavering conviction that Russia's actions towards Yukos were politically motivated and concerted to bring about Yukos' destruction." *Id.* The Tribunal's preconception in this respect stands in stark contrast with the ECHR's findings that there was no evidence of such improper motivation and that court's words of caution that "[i]t is often much easier for a politician to take a stand than for a judge, since the judge must base his decision only on evidence in the legal sense." *Case of Khodorkovskiy v. Russia*, App. No. 5829/04, Judgment, ¶¶ 257-59 (Eur. Ct. H.R. Nov. 28, 2011), Ex. R-434.

II. The Russian Federation Has Challenged The Awards In Multiple Jurisdictions

The Russian Federation considers the Awards to be illegitimate and has commenced proceedings in the District Court of The Hague in the Netherlands, the seat of the Arbitrations, to have them set aside, because it never agreed to arbitrate with Petitioners and on account of other fundamental defects in the proceedings (the "Dutch Proceedings"). The Tribunal failed to uphold the rule of law: it allowed an arbitration to be brought by parties who are Russian nationals, obtained their alleged investment through fraudulent and illegal acts, and with whom Russia never consented to arbitrate. The Awards also were rendered with disregard to the legitimate exercise of the Russian Federation's police power to enforce tax laws, which the Russian Federation had never consented to arbitrate. The Awards result in large part from the

Petitioners' continued deception of the Tribunal as to their nationality and the illegality of the means by which the ownership of Yukos was obtained.

On November 10, 2014, the Russian Federation filed a 220-page Writ of Summons setting forth its arguments. *See* Ex. R-328. Petitioners filed their 309-page Statement of Defense on May 20, 2015. *See* Ex. R-331. The Russian Federation filed a 382-page Reply on September 16, 2015. *See* Ex. R-319. The Dutch Proceedings are now approaching completion in the first instance: Petitioners are due to file a Rejoinder on December 16, 2015, a hearing is scheduled for February 9, 2016, and a judgment is expected in April 2016. *See* van den Berg Decl., ¶ 6.

Notwithstanding the pendency of the Dutch Proceedings and the fundamental flaws in the Awards, Petitioners have commenced an aggressive campaign to enforce the Awards the world over, presumably with a view of straining the Russian Federation's relationship with other sovereign nations. In **Belgium**, Petitioners caused the President of the Court of First Instance to deliver an *ex parte* enforcement (*exequatur*) order on June 24, 2015. The Russian Federation filed a "*tierce opposition*" on July 31, 2015 requesting that the *exequatur* order (i) be declared null and void and (ii), as a provisional measure, be suspended pending the determination of the Russian Federation's opposition. Hearings on the requests for provisional measures and for a declaration that the *exequatur* order is null and void are expected in March and October or November 2016, respectively.

In **France**, Petitioners obtain a similar *ex parte* enforcement order on December 1, 2014, which was served on the Russian Federation in March 2015. The Russian Federation filed an interim measures motion on August 13, 2015 to stay enforcement pending a hearing on the merits of the *ex parte* order. The Russian Federation's first brief on the merits of the *ex parte* order is due to be filed on November 3, 2015; Petitioners' response is due on March 3, 2016.

The dates for submission of the parties' second briefs have not yet been set. A hearing on the motion to stay is scheduled for December 3, 2015. In the interim, Petitioners have initiated a wide-ranging and vigorous campaign to seize assets purported to be those of the Russian Federation in France. Between June and July 2015, about 150 seizures were made in France.

In the **United Kingdom**, Petitioners submitted an application to the English courts on January 30, 2015 for recognition of the Final Awards against the Russian Federation in England (the "Claim"). On February 4, 2015 the English Court made an order permitting Petitioners to serve the Claim on the Russian Federation outside of the Jurisdiction of England and Wales. The Claim was then served on the Russian Federation through diplomatic channels on April 24, 2015. The deadline for the Russian Federation to serve either a challenge to the jurisdiction of the English courts or its defence was initially August 10, 2015. Following negotiations with the solicitors acting for the Petitioners, the parties agreed a revised timetable and, in accordance with that timetable, the Russian Federation filed and served an application under the Civil Procedure Rules Part 11 ("CPR Part 11 Application") on September 25, 2015. The CPR Part 11 Application is a challenge to the jurisdiction of the English courts to hear the Claim. This application is based on the Russian Federation's sovereign immunity under the State Immunity Act 1978. The English Court has scheduled a procedural hearing, which is called a 'Case Management Conference' or 'CMC' for December 9, 2015, at which a timetable for procedural steps, like document disclosure, for the determination of the CPR Part 11 Application will be set. The substantive hearing of the CPR Part 11 Application is scheduled to take place not earlier than November 28, 2016, with a time estimate of 12 days.

If, following the CPR Part 11 Application, the English Court determines that it does have jurisdiction, it will only then proceed to consider whether or not Petitioners should be granted an

order for the enforcement of the Awards in England. That, in turn, would require further submissions by the parties on the relevant grounds for refusing enforcement pursuant to section 103 of the Arbitration Act (which is based on the relevant provisions of the New York Convention).

ARGUMENT

Petitioners seek confirmation of the Awards under the New York Convention. Petition ¶ 3. Pursuant to Section 207 of the FAA, an application to the Court to confirm "an arbitral award falling under the [N.Y.] Convention" should be denied if the Court "finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the Convention." 9 U.S.C. § 207; *TermoRio S.A. v. Electranta S.P.*, 487 F.3d 928, 934 (D.C. Cir. 2007) ("[T]he New York Convention enumerates specific grounds upon which a court may refuse recognition and enforcement of an arbitration award.").

Article V of the New York Convention lists the grounds for refusal of recognition and enforcement of a foreign award. Those grounds include, *inter alia*, where (i) the agreement to arbitrate "is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made" (Article V(1)(a)); (ii) "[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case" (Article V(1)(b)); (ii) "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place" (Article V(1)(d)); or (iii) "[t]he recognition or enforcement of the award would be contrary to the public policy of that country" (Article V(2)(b)).

As noted in the Introduction and discussed below, confirmation should be denied on several grounds under Article V.

I. The Awards Are A Nullity Because The Russian Federation Never Agreed To Arbitrate With Petitioners (New York Convention, Article V(1)(a))

Article V(1)(a) of the New York Convention provides that a court may decline to recognize or enforce a foreign award when the agreement to arbitrate "is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made." The phrase "is not valid" is interpreted by U.S. and foreign courts to include the existence of an agreement to arbitrate. *E.g.*, *China Minmetals Materials Import and Export Co., Ltd. v. Chi Mei Corporation*, 334 F.3d 274, 286-87 (3d. Cir. 2003) (holding that forgery of the contract including the arbitration clause is a ground for denying enforcement under the New York Convention and explaining that "[r]ead as a whole, therefore, the Convention contemplates that a court should enforce only valid agreements to arbitrate and only awards based on those agreements."); *see also* ALBERT JAN VAN DEN BERG, THE NEW YORK CONVENTION OF 1958: TOWARDS A UNIFORM JUDICIAL INTERPRETATION 287 (1981) (noting that "one of the matters of invalidity of the arbitration agreement under the law applicable to it could be the *lack of consent*. . .") (emphasis in original).

For the reasons discussed in the Jurisdictional Brief, there was no agreement to Arbitrate between the Russian Federation and Petitioners. Jur'l Br. Argument § I.B.2. The lack of an agreement to arbitrate, let alone a valid agreement, means the Court can refuse recognizing and enforcing the Awards under Article V(1)(a) of the New York Convention.

II. Confirmation Of The Awards Would Be Contrary To The Public Policy Of The United States (New York Convention, Article V(2)(b))

Pursuant to Article V(2)(b) of the New York Convention, a court of the country where recognition or enforcement of a foreign award is sought may decline to do so if "recognition or

enforcement of the award would be contrary to the public policy of that country." Confirmation of the Awards would violate the public policy of the United States for at least four separate reasons.

A. Petitioners Violated Their Duty Of Candor To The Tribunal

As detailed in Background Section VI of the Jurisdictional Brief, the Petitioners omitted any reference in the arbitration to the series of prior transactions through various corporate shell entities by which the Oligarchs deceptively "laundered" their original fraud. Petitioners thereby hid from the Tribunal that the Oligarchs, who remained in continuous ownership and control of the Yukos shares, had illegally obtained them. Petitioners' shares in fact were obtained through systematic rigging of the Loan-for-Shares auctions, concealment of the true identity of the bidders, and deceit as to the legitimacy of the competition. Petitioners failed to disclose that the owners and investors at all times were Russian nationals, and that the Oligarchs created multitudes of shell companies between themselves and Petitioners to obscure their collusive activity. This lack of candor directly led to key findings by the Tribunal, including that Petitioners' alleged investment was insufficiently linked to the Oligarchs' fraud to exclude it from protection of the treaty. *See* Final Awards, ¶ 1370.

It is firmly established that parties to international legal proceedings and their representatives are under a duty of candor to the court or tribunal. *See* Expert Opinion of Professor Rudolph Dolzer ("Dolzer Op."), ¶¶ 313-21; *see also Nicaragua v. United States*, 1986 I.C.J. 14 (June 27, 1986) (dissenting opinion of Judge Schwebel), Ex. RLA-52, ¶ 27 ("Deliberate misrepresentations by the representatives of a government party to a case before this Court cannot be accepted because they undermine the essence of the judicial function."); International Bar Association, IBA Guidelines on Party Representation in International Arbitration (May 25,

2013), Ex. RLA-51, Guideline § 9 ("A Party Representative should not make any knowingly false submission of fact to the Arbitral Tribunal.").

U.S. courts have recognized that "[e]nforcement of an arbitration award may be refused [under the New York Convention] if the prevailing party furnished perjured evidence to the tribunal or if the award was procured by fraud." *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 306 (5th Cir. 2004); *Europcar Italia, S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310, 315 (2d Cir. 1998) (observing that "the issue of a fraudulently obtained arbitration … award" is one "which might violate public policy and therefore preclude enforcement"). Willful non-disclosure of material evidence constitutes fraud justifying non-enforcement. *See National Oil Corp. v. Libyan Sun Oil Co.*, 733 Fed. Supp. 800, 814 (D. Del 1990) ("Intentionally giving false testimony in an arbitration proceeding would constitute fraud."); *Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383-85 (11th Cir. 1988) (vacating award affected by claimant's expert perjury as to his credentials).

In this case, the fraud was manifest. For example, during the arbitration, Petitioners nebulously represented to the Tribunal that they had "***first purchased Yukos Shares in 1999***," and that the shares had originated with "***a variety of companies ('the original sellers')***." Ex. R-437, ¶ 296 (Hulley Rejoinder on Jurisdiction) (emphasis added). Petitioners failed to disclose that all of these supposed "original sellers," *i.e.*, Hawksmoor, Avimore, Ebon Crown, Medusa Shipping, and Kandall, were "shelf" companies owned by RTT and controlled by its employees, who had been directed to purchase them on behalf of the Oligarchs. *See* Zakharov Decl. ¶¶ 12-13; Anilionis Decl. ¶¶ 29-30; Kothari Op. ¶¶ 18-21 and Table 2. Petitioners also asserted that, when Mr. Gulin signed contracts on behalf Hulley Enterprises Ltd., "Mr. Gulin was acting pursuant to a Power of Attorney issued to him by [Hulley Enterprises Ltd.] (and executed by

[Hulley Enterprises Ltd.'s] two Cypriot directors)." Ex. R-437, ¶ 365 n. 553 (Hulley Rejoinder on Jurisdiction). Petitioners failed to reveal that Mr. Gulin, like all other RTT employees, in fact acted as an agent of the Oligarchs. Mr. Anilionis, who took secret instructions exclusively from the Oligarchs and implemented them, was at all times required to keep confidential the Oligarch's control of RTT and its related companies. *See* Anilionis, ¶¶ 9-15.

These omissions were critical. The Tribunal acknowledged that Petitioners could have been "barred from seeking relief under the ECT" if their investment was made "in bad faith or in violation of the laws of the [Russian Federation]." Final Awards, ¶ 1364. The Tribunal moreover agreed that if Petitioners' investment was the culmination of a "series of transactions" that was "sufficiently connected" to the illegal acquisition of the Yukos shares in 1995 and 1996, their claims might be barred.

> The Tribunal agrees with Respondent that an examination of the legality of an investment should not be limited to verifying whether the last in a series of transactions leading up to the investment was in conformity with the law. The making of the investment will often consist of several consecutive acts and all of these must be legal and bona fide. Final Awards, ¶ 1369.

The Tribunal, however, declined to reach any conclusions regarding the allegations of illegality, reasoning that the illegal transactions "connected to the acquisition of Yukos" in 1995 and 1996 "involved Bank Menatep and the Oligarchs, an entity and persons *separate from [Petitioners]*." Final Awards, ¶ 1370 (emphasis added). As explained in detail in the Jurisdictional Brief, the Tribunal was misled in reaching this conclusion. Jur'l Br. Background § VI.

B. The Awards Condone Serious Fraud And Illegality By Petitioners And Their Affiliates

In the United States, "a court will not lend its power to assist or protect a fraud." *Kitchen v. Rayburn*, 86 U.S. 254, 263 (1873). "The principle that a wrongdoer shall not be permitted to

profit through his own wrongdoing is fundamental in our jurisprudence." *Perma Life Mufflers, Inc. v. Int'l Parts Corp.,* 392 U.S. 134, 151 (1968) (Marshall, J., concurring in the result).

This "judicial policy of refusing to 'lend [the court's] power to assist or protect a fraud" requires a court to refuse to confirm an arbitral award where "the arbitrators have found fraud" or "deceit" explicitly, and yet nonetheless "allowed [the fraudulent party] to benefit from this fraud." *Commercial Union Ins. Co. v. Lines*, 378 F. 3d 204, 208-09 (2d Cir. 2004) (reversing confirmation of the awards and remanding to the district court to consider if confirmation would "violate the court's equitable principles"). Likewise, courts refuse to confirm as against public policy foreign awards enforcing agreements obtained through irregular means such as duress or coercion. *See Changzhou AMEC E. Tools & Equip. Co. v. E. Tools & Equip., Inc.*, Civ. No. 11-00354, 2012 WL 3106620, at *19 (C.D. Cal. July 30, 2012) (refusing to confirm under Article V(2)(b) a foreign award based on an agreement exacted under duress), *aff'd* 571 F. App'x 609 (9th Cir. 2014); *Transmarine Seaways Corp. of Monrovia v. Marc Rich & Co., A.G.*, 480 F. Supp. 352, 358 (S.D.N.Y. 1991) ("Agreements exacted by duress contravene the public policy of the nation, and accordingly duress, if established, furnishes a basis for refusing enforcement of an award under Article V(b)(2) of the Convention.") (citation omitted).

The Supreme Court has made clear that, although arbitrators may hear cases involving allegations of serious fraud and illegality, an enforcing court may always consider under Article V(2)(b) whether the public interest has been appropriately addressed by the arbitrators. *See Scherk v. Alberto-Culver Co.,* 417 U.S. 506, 519 n. 14 (1974) ("presumably the type of fraud alleged here [securities fraud] could be raised, under Art. V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards . . . in challenging the enforcement of whatever arbitral award is produced through arbitration."); *Mitsubishi Motors Corp. v. Soler*

Chrysler-Plymouth Inc., 473 U.S. 614, 638 (1985) ("Having permitted the arbitration to go forward [on matters involving allegations of antitrust violations], the national courts of the United States will have the opportunity at the award-enforcement stage to ensure [under Article V(2)(b)] that the legitimate interest in the enforcement of antitrust laws has been addressed").

Likewise, in international practice, "arbitral tribunals are not free to disregard allegations and evidence of fraud and illegality." Expert Opinion of Professor George A. Bermann dated October 20, 2015 ("Bermann Op."), ¶ 140. To the contrary, "there is considerable authority for the proposition that an arbitral tribunal should, on its own motion, investigate suspicions of serious illegality." *Id.* "Fraud and illegality are considered to be such violations of public policy that international arbitral tribunals are expected to act upon any serious indications that fraud or illegality may have occurred . . ." *Id.* A tribunal's failure to do so justifies non-enforcement under Article V(2)(b) of the New York Convention. *See id. See also* Dolzer Op., ¶ 321 ("To enforce awards resulting from a party's deceit would run counter to the international principle of good faith and trans-national public policy because it would condone abusive conduct that is seriously prejudicial to the integrity of the international arbitral system.").

In the present case, this Court should refuse confirmation of the Awards because the Tribunal condoned Petitioners' and their principals' fraud in the acquisition and operation of Yukos, allowing them to benefit from their wrongdoing.

The Oligarchs behind Petitioners – Mr. Khordorkovsky and his group – acquired control of Yukos – then a state-owned company – in the mid-1990s through a series of rigged auctions, collusive acts and other abuses of the "Loans-for-Shares" program. *See* Jur'l Br. Background § II. Their activities were deliberately deceptive and hidden from the Russian Federation. Jur'l Br. Background § III. At the behest of its new owners, Yukos then engaged in fraud on a

massive scale, depriving the Russian Federation of billions of dollars in tax revenues. Jur'l Br. Background § IV. On that basis, because Petitioners were only a front for a criminal enterprise and the acquisition and operation of Yukos had from the outset been infected by widespread fraud and illegality, the Russian Federation argued in the Arbitrations that the claim should be barred and dismissed. *See* Final Awards, ¶ 1283.

The Tribunal agreed that the fraud and illegality in the acquisition of Yukos, if proven, would bar the claim. *Id.* ¶ 1352 ("An investor who has obtained an investment in the host State only by acting in bad faith or in violation of the laws of the host state, has brought itself within the scope of application of the ECT through wrongful acts. Such an investor should not be allowed to benefit from the Treaty."). The Tribunal nonetheless declined to entertain the Russian Federation's allegations on the basis that "the alleged illegalities connected to the acquisition of Yukos through the loans-for-shares program occurred in 1995 and 1996, at the time of Yukos' privatization. They involved Bank Menatep and the Oligarchs, an entity and persons separate from Claimants, one of which—Veteran—had not even come into existence." *Id.* ¶¶ 1369-70. The Tribunal made this finding while acknowledging elsewhere that Petitioners are mere shell entities beneficially owned by the "Oligarchs." *Id.* p. xv (defining "Oligarchs" as "the individuals who have or had a beneficial interest in the trusts behind Claimants, namely Messrs. Khodorkovsky, Lebedev, Nevzlin, Dubov, Brudno, Shakhnovsky, and Golubovitch").[3] The evidence now submitted by the Russian Federation demonstrates that petitioners were actually owned from 1995 until the present by the Oligarchs. *See* Kothari Op. ¶¶ 22-44, Figures 1-3 & Tables 2-3; Zakharov Decl. ¶¶ 12-15; Anilionis Decl. ¶¶ 22-33.

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[3] The Tribunal also explicitly linked its finding that Petitioners had been unlawfully expropriated to the alleged expectations and treatment of these Oligarchs. *Id.* ¶ 1578 (finding that, while Petitioners should have expected that "Yukos' tax avoidance operations risked adverse reaction from the Russian authorities," "not only did Mikhail Khodorkovsky not appear to expect to be arrested even after the arrest of Platon Lebedev, he and his colleagues surely could not have been expected to anticipate the rationale and immensity of the tax assessments and fines"), ¶ 1583 (finding that the expropriation of Yukos had not been "carried out under due process of law" in part because of "[t]he harsh treatment accorded to Messrs. Khodorkovsky and Lebedev").

Petitioners did not contest in the arbitrations, and the Tribunal confirmed, that Messrs. Khodorkovsky, Nevzlin, Lebedev, Dubov, Brudno and Shaknovsky – the "Oligarchs" – were, at all relevant times, the ultimate beneficial owners of Petitioners and that these individuals stand to receive any recovery on the Awards. *See* Ex. R-439 (Petitioners' Letter to the Tribunal dated November 3, 2006); Final Awards, p. xv. By elevating form over substance, the Tribunal turned a blind eye to these individuals' fraud, allowing them to benefit from their criminal activities by giving them $50 billion in arbitral awards.

The Tribunal's handling of Petitioners' fraud in the operation of Yukos is equally troubling. In this respect, the Tribunal clearly recognized that Petitioners had engaged in widespread fraud and tax evasion. The Tribunal found that Petitioner Hulley Enterprises Limited appeared to have "falsely declared on Cypriot withholding tax forms that 'income'—dividends from Yukos—'was not connected with activities carried on in the Russian Federation'" – a *prima facie* abuse of the Cyprus-Russia Double Taxation Agreement – and in that manner avoided "hundreds of millions of dollars in Russian taxes." *See* Final Awards, ¶¶ 1620-21. The Tribunal also acknowledged the "sham-like nature of some elements of [Yukos's] operations in at least some of the low-tax regions notably in the ZATOs of Lesnoy and Trekhgorny." *Id.* ¶ 1611. The Tribunal further found that "Yukos' abuse of the low-tax regions by some of its trading entities, including its questionable use of the Cyprus-Russia [Double Taxation Agreement]" constituted "material and significant mis-conduct by Claimants and by Yukos (which they controlled)." *Id.* ¶¶ 1634-37. The Tribunal's findings in this respect echoed those of the European Court which, in two separate unanimous judgments, found that Yukos had engaged in tax evasion on a massive scale. *See OAO Neftyanaya Kompaniya Yukos v. Russia*, App. No. 14902/04, Judgment,

¶ 593 (Eur. Ct. H.R. Sept. 20, 2011), Ex. R-260; *Khodorkovskiy and Lebedev v. Russia*, Apps. Nos. 11082/06, 13772/05, Judgment, ¶ 786 (Eur. Ct. H.R. July 25, 2013), Ex. R-65.

Despite these findings, the Tribunal again allowed Petitioners (and the individuals behind them) to get away scot-free. The Tribunal held that, notwithstanding their fraud, Petitioners' claim was not barred because, according to the Tribunal, the doctrine of "'unclean hands' does not exist as a general principle of international law. . ." *See* Final Awards, ¶ 1363. The Tribunal decreased the damages awarded by 25% (supposedly for "contributory negligence", but reflecting the contrived nature of the damages calculation itself), but nonetheless still awarded Petitioners the staggering sum of $50 billion. *Id.* ¶ 1637. The Tribunal's elucidation of international law as ignoring the unclean hands doctrine was wrong. *See* Dolzer Op., ¶¶ 292-312. But, even if it were not, the doctrine of "unclean hands" and the principle that "a court will not lend its power to assist or protect a fraud" are firmly established in the public policy of this country. *Kitchen v. Rayburn*, 86 U.S. 254, 263 (1873). In these circumstances, confirmation of the Awards would violate this Court's equitable principles.

C. The Awards Evince The Tribunal's Bias And Prejudice Against The Russian Federation

"[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 150 (1968). It was not "the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another." *Id.* For the purposes of Article V(2)(b) of the New York Convention, "[t]he Supreme Court's elucidation of arbitral propriety in *Commonwealth Coatings* is a declaration of public policy." *Transmarine Seaways Corp. of Monrovia v. Marc Rich & Co. A.G.*, 480 F.Supp. 352, 357 (S.D.N.Y. 1979).

Further, in the United States, the powers of arbitrators are not unfettered. A decision by arbitrators who ignore the record and "dispense their own brand of industrial justice" may be refused enforcement. *See Stolt-Nielsen S.A. et al. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010) (quoting *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001)); *Storer Broadcasting Co. v. Am. Fed'n of Television & Radio Artists,* 600 F.2d 45, 48 (6th Cir. 1979) ("It is apparent that rather than base his award on evidence in the record, the arbitrator 'dispense(d) his own brand of industrial justice.' This he cannot do."); *Safeway Stores, Inc. v. United Food and Commercial Workers Union, Local 400*, 621 F. Supp. 1233, 1241 (D.D.C. 1985) (citing *Storer Broadcasting Co.* and holding that "if no support whatsoever exists" in the record, a court may vacate the award.).

Here, the Awards are the product of systematic bias and prejudice against the Russian Federation. The bias and prejudice of the arbitrators are transparent in their result-oriented fact-finding, based not on record evidence of what the Russian Federation ***did***, but on the arbitrators' own speculations as to what the Russian Federation ***might*** have done.

For example, the Tribunal acknowledged that Yukos failed to file proper VAT returns, but nonetheless dismissed the Russian Federation's contention that Yukos could have avoided the bulk of its VAT liability had it filed the required returns, on the basis that "the Russian Federation was determined to impose the VAT liability on Yukos, and would have done whatever was necessary to ensure that the VAT liability was imposed on Yukos" and that "it was Respondent's intent to impose VAT liability on Yukos no matter what Yukos did." *See* Final Awards, ¶ 694. The Tribunal likewise brushed aside the Russian Federation's observation that Yukos could have avoided being charged fines and penalties by paying, albeit under protest, the tax assessments on the basis that, "[a]s with the issue of VAT liability, the Tribunal is convinced

that had Yukos done so, the Russian Federation would still have found a way or a reason to impose the fines on Yukos." *Id.* ¶ 750.

The Tribunal again resorted to speculations to dismiss the Russian Federation's contention that it was Yukos that had caused its own bankruptcy by failing to repay certain loans due to a syndicate of banks. The Tribunal accepted the Russian Federation's evidence that "Yukos was in a position to pay off the balance of the A Loan and that its willful failure to do so contributed to the circumstances of its bankruptcy by leading SocGen to petition for it" (*id.* ¶ 1630), but nonetheless speculated that "[i]n view of the larger circumstances, it is difficult to conclude that, even if the A Loan had been paid, another ground for pushing Yukos into bankruptcy would not have been found." *Id.* ¶ 1625.

The Tribunal likewise dismissed the argument that Yukos had caused its own demise by seeking to ward off prospective buyers of its production unit, Yuganskneftgaz (YNG), when it was auctioned to satisfy Yukos's unpaid tax liabilities. While the Tribunal conceded that Yukos's promise of a "lifetime of litigation" and its obtaining a TRO from a Texas court "may have resulted in a low winning bid" (*id.* ¶ 1023), the Tribunal nevertheless again speculated that "Yukos' ultimate fate would have been no different" and that "[i]ts demise may have been postponed, or the path to its demise altered in some minor way, but it would not have been avoided." *Id.* ¶ 1631.

Finally, the Tribunal again resorted to speculations to conclude that the actions of Russian oil company Rosneft, including its bidding at the bankruptcy auction of Yukos, could be attributed to the Russian Federation. The Tribunal observed that "it may well be that in taking those actions, Rosneft did so at the sub rosa direction of the Russian State," but acknowledged that "proving that admittedly is elusive, in the absence of an inculpatory admission on behalf of

the Russian State . . ." *Id.* ¶ 1474. The Tribunal nonetheless concluded that "while proof of specific State direction is lacking, it may reasonably be held that the highest officers of Rosneft who at the same time served as officials of the Russian Federation in close association with President Putin acted in implementation of the policy of the Russian Federation." *Id.* ¶ 1480. For all of these conclusions—the premises for a $50 billion award—one searches in vain for a cite to real evidence.

As commentators have noted, the arbitrators' findings are "troubling." Sophie Nappert, *Mammoth Arbitrations: the Yukos Awards of 18 July 2014*, TRANSNATIONAL DISPUTE MANAGEMENT (TDM), Vol. 12, Issue 5 (Aug. 2015), Ex. RLA-54, at 2-3. From the start of their analysis, the arbitrators proceeded on the basis of an "unwavering conviction that Russia's actions towards Yukos were politically motivated and concerted to bring about Yukos' destruction." *Id.* at 2-3. That preconception stands in stark contrast with the findings of the European Court of Human Rights, which rejected both Yukos's claim that its tax assessments were politically motivated and Mr. Khodorkovsky's claim that the charges brought against him were likewise politically motivated. *See OAO Neftyanaya Kompaniya Yukos v. Russia*, App. No. 14902/04, Judgment ¶ 665 (Eur. Ct. H.R. Sept. 20, 2011), Ex. R-260; *Khodorkovskiy and Lebedev v. Russia*, Apps. Nos. 11082/06, 13772/05, Judgment ¶ 908 (Eur. Ct. H.R. July 25, 2013), Ex. R-65.

By ignoring the record and basing their decisions on speculations as to what the Russian Federation ***might*** have done, not what it ***did***, the arbitrators displayed bias and partiality against the Russian Federation and "dispensed [their] own brand of industrial justice." Confirmation of the Awards would be contrary to the public policy of this country and should be denied under Article V(2)(b) of the New York Convention.

D. The Awards Purport To Punish The Russian Federation For Its Exercise Of Police Powers Within Its Territory

Enforcement of a foreign award that is "penal rather than compensatory" is contrary to U.S. public policy and must be refused under Article V(2)(b) of the New York Convention. *See Laminoires-Trefileries-Cableries de Lens, S.A. v. Southwire Co.*, 484 F. Supp. 1063, 1069 (D. Ga. 1980) (declining confirmation under Article V(2)(b) of the New York Convention of a foreign award incorporating interest at a punitive rate). For that purpose, an award is penal, not compensatory, where it imposes "a sum of money which the law exacts by way of punishment for doing something that is prohibited or omitting to do something that is required to be done." *Id.* This U.S. public policy applies even more emphatically with respect to sovereign States. The Foreign Sovereign Immunities Act thus expressly prohibits subjecting sovereign States to punitive damages. That statute, which is the sole basis on which a United States court may exercise jurisdiction over a foreign sovereign, provides that "a foreign state … shall not be liable for punitive damages." 28 U.S.C. § 1606.

Here, for the most part, the Tribunal's award of damages sought not to compensate Petitioners for the loss of their interest in Yukos, but to punish the Russian Federation. The Tribunal's intent to punish the Russian Federation is clear in its award of costs. Based on the purported "egregious nature of many measures of Respondent which the Tribunal has found were in breach of the ECT," the Tribunal awarded costs of $60 million against the Russian Federation. *See* Final Awards, ¶¶ 1886-87. That intent to punish is also transparent in the Tribunal's calculations of damages. The Tribunal held that "in the case of an unlawful expropriation, as in the present case, Claimants are entitled to select either the date of expropriation or the date of the award as date of valuation." *Id.* ¶ 1763. This holding had a dramatic impact – several dozens of billions of dollars – on the damages awarded to Petitioners.

The Tribunal found that the "total amount of Claimants' damages," calculated as of 19 December 2004 (date of the expropriation), was $21.988 billion while the same loss, calculated as of 2014 (date of the awards), amounted to $66.694 billion. *Id.* ¶ 1826. The Tribunal based its award on that latter higher amount. *Id.*

An approach which, on the sole basis that an expropriation was "unlawful" and "illegal," results in awarding dozens of billions of dollars of additional damages is not remedial, but penal in nature. The Tribunal's approach has recently been thoroughly criticized as a "solution which systematically applies the harshest damages on the Respondent State," which is "biased in favor of the investors" and "resembles punitive damages, which are excluded in international law." *Quiborax S.A. et al. v. Plurinational State of Bolivia*, ICSID Case No. Arb/06/2, Partially Dissenting Opinion of Professor Brigitte Stern (Sep. 16, 2015), ¶ 56, Ex. RLA-53. To that extent, confirmation of the Awards must be denied as contrary to public policy.

III. Confirmation Of The Awards Should Be Refused Because The Russian Federation Was Denied A Meaningful Opportunity To Be Heard (New York Convention, Articles V(1)(b), V(1)(d) And V(2)(b))

Pursuant to Article V(1)(b) of the New York Convention, a court may decline to recognize and enforce a foreign arbitral award if "[t]he party against whom the award is invoked . . . was otherwise unable to present his case."

In the United States, "[t]he defense provided for in Article V(1)(b) 'essentially sanctions the application of the forum state's standards of due process,' and these due process rights are 'entitled to full force under the Convention as defenses to enforcement.'" *Iran Aircraft v. Avco Corp.*, 980 F.2d 141, 145-46 (2d Cir. 1992). *See also Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 298-299 (5th Cir. 2004); *First State Ins. Co. v. Banco de Seguros Del Estado*, 254 F.3d 354, 357 (1st Cir. 2001). In this respect, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a

meaningful time and in a meaningful manner.'" *Avco Corp*., at 146. (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). On that basis, courts in the United States and elsewhere decline to enforce under the New York Convention awards that were rendered in disregard of the parties' right to be heard. *Avco Corp*., at 146 (declining confirmation on the basis that the arbitral tribunal had "denied Avco the opportunity to present its claim in a meaningful manner"); *Paklito Investment Ltd. v. Klockner East Asia, Ltd*., Supreme Court of Hong Kong (Jan. 15, 1993), XIX Y.B. Comm. Arb. 664, Ex. RLA-34 (declining confirmation of award based on findings of experts on which the respondent had had no opportunity to comment).

Pursuant to Article V(1)(d) of the New York Convention, a court may further decline to recognize and enforce a foreign arbitral award if "the arbitral procedure was not in accordance with the agreement of the parties . . ." The 1976 UNCITRAL Arbitration Rules, which the parties agreed would govern the Arbitrations, provide in their Article 15(1) that, "[s]ubject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, ***provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case***." (Emphasis added.)

The right to be heard, enshrined in Article V(1)(b) of the New York Convention and the 1976 UNCITRAL Rules, is "a fundamental procedural principle applicable to international arbitral proceedings generally." Bermann Op., ¶ 48. "The requirements of due process, and notably the right to be heard, apply with as much force to questions of damages as to questions of liability." *Id*. ¶ 58. "The right to be heard in international arbitration is deemed so fundamental that its violation justifies declining recognition and enforcement not only under Article V(1)(b) of the New York Convention, but also as a matter of public policy under Article V(2)(b) of the Convention." *Id*. ¶ 46. "A special preoccupation in international practice is the

requirement that arbitral tribunals refrain from rendering a decision that comes as a 'surprise' to the parties because it is based upon considerations that were extraneous to their submissions and debate or on reasoning that they could not reasonably have anticipated." *Id.* ¶ 51. In this context, "the right to be heard takes on special importance in international arbitration because parties enjoy little or no judicial review of an arbitral tribunal's legal and factual determinations." *Id.*

Here, the Tribunal violated the Russian Federation's right to be heard and rendered a surprise decision when it awarded over $50 billion on the basis of a nearly invented and hopelessly flawed valuation methodology that departed dramatically from the submissions and that could not have been reasonably anticipated by the parties.

Petitioners sought compensation in excess of $114 billion for the value of their shares in Yukos and the dividends that they would have received but for the expropriation (plus pre-award interest). *See* Final Awards, ¶¶ 1694-1729. Petitioners asserted that their investment had effectively been expropriated on November 21, 2007, when Yukos was struck off the Russian register of legal entities, and valued their claim as of that date. *Id.* ¶ 1696.

The date as of which a valuation is conducted – the valuation date – is the key factual premise of any damages calculation. *See* Dow Op. ¶ 39. Both sides informed the Tribunal that calculating damages as of a date other than November 21, 2007 would require further expert analysis. *See* Ex. R-446 (Respondent's Submission on Bifurcation dated April 29, 2011), at ¶ 22 (noting that "[t]he Kaczmarek Report's conclusion would be useless if the Tribunal were to conclude that a different valuation date (or dates) should apply."), Ex. R-448 (Transcript of May 9, 2011 Hearing), at 147:18-22 (Claimants' counsel) (noting that "it is a lot more difficult to play with the dates . . . It is not something you can do in five minutes live but experts can do that.

They certainly can give you the right answer if you modify this and that parameter.") and 151:16-25 (Respondents' counsel) (noting that "[a]ll the calculations that have been presented are forward looking as of a particular date . . . If you change that date, . . . you have to go back in time and look at what were the expectations of the parties at that time, and without giving us the opportunity to do so in relation to particular liability determinations at a particular time, we would be significantly prejudiced."). In his first report in the arbitrations, the Russian Federation's expert, Professor Dow, thus explained that "the Tribunal's ruling on what is or is not a treaty violation is a necessary prerequisite to a damages calculation." Ex. R-324 (First Report of James Dow dated April 1, 2011), ¶ 21. For that reason, the Russian Federation requested early in the proceedings that the Tribunal bifurcate the proceedings into successive liability and damages phases. *See* Ex. R-446 (Respondent's Submission on Bifurcation dated April 29, 2011). The Tribunal declined to do so – twice. Ex. R-441 (Procedural Order No. 10), ¶¶ 4-5, Ex. R-442 (Procedural Order No. 11).

Ultimately, the Tribunal rejected the date of November 21, 2007 that Petitioners had used in their valuations and instead held that Yukos had been effectively expropriated as of December 19, 2004, when its main production unit, YNG, was auctioned off. *See* Final Awards, ¶¶ 1760-62. The Tribunal held that Yukos had to be valued as of that date (December 19, 2004) ***or*** as of the date of the awards (which, for that purpose, the Tribunal fixed as of June 30, 2014), ***whichever yielded the higher amount***. *Id.* ¶¶ 1763-69; 1777. The Tribunal also rejected the entire valuation exercise propounded by Petitioners. In particular, the Tribunal found that the discounted cash flow (DCF) model proffered by Petitioners had been "influenced by [their expert]'s own pre-determined notions as to what would be an appropriate result." *Id.* ¶ 1785. In other words, the model had been reverse engineered.

As a result of these determinations, the Tribunal was left without any reliable valuation of Petitioners' interest in Yukos. Where key premises of the parties' valuations, such as the valuation date, are modified, "it is standard practice for an arbitral tribunal to require further submissions." Bermann Op., ¶ 69. This is especially so where substantial claims are presented against a sovereign State. *See id*. ¶ 50 (observing that "the right to be heard takes on even greater importance in investor-State arbitrations, since such cases implicate the sovereign State's duty to protect the public interest"). The Tribunal did not do so, even though it faced a claim of $114 billion, the largest claim ever submitted to international arbitration (by far).

Instead of requesting further submissions, and despite the parties' warning that "it is a lot more difficult to play with the dates" than with any other variable, the Tribunal developed its own method to value Petitioners' interest in Yukos as of the two valuation dates it had selected (December 19, 2004 or June 30, 2014). That method "mixes and matches disparate and incompatible parts of [Petitioners'] models, and [the Russian Federation's] corrections to them, in ways that neither side proposed, endorsed or could have anticipated." Dow Op., ¶ 12. First, to calculate Yukos's hypothetical equity value, the Tribunal purported to move an estimate of that value as of November 2007 backward and forward in time to the two valuation dates (2004 and 2014). Dow Op., ¶ 13. The Tribunal did so by reference to an industry price index, the RTS Oil & Gas index (the "RTS Index"). *Id*. Second, to calculate Yukos's hypothetical dividends, the Tribunal did not base itself on the RTS Index. *Id*. The Tribunal instead purported to calculate dividends from an unrelated source, namely, certain cash flows derived from Petitioners' DCF models (which the Tribunal had earlier found were reverse engineered). *Id*.

As summarized by Professor Dow in his expert statement submitted herewith:

> [T]he Tribunal developed a valuation method that was materially different from anything proposed by the parties, and could not

> have been foreseen by them. I did not have an opportunity to consider that valuation method. The Tribunal's new method was seriously flawed, which led to serious and obvious defects in the Tribunal's ultimate conclusions. After rejecting Claimants' valuations, the Tribunal did not return to the parties or the experts for assistance in developing an appropriate alternative damages analysis. Instead, without seeking any advice from any expert or party, the Tribunal invented its own alternative models and damages analysis. The results were substantively incoherent, inconsistent with any accepted valuation approaches and yielded a damages figure that was inflated by at least $20 billion due to double counting and other obvious errors.

Dow Op., ¶ 4. The Tribunal's valuation method was not part of the methods used by the parties' valuation experts in their reports. *Id.*, ¶¶ 12-16; Ex. R-326 (First Report of Brent Kaczmarek dated September 15, 2010); Ex. R-327 (Second Report of Brent Kaczmarek dated March 15, 2012); Ex. R-324 (First Report of James Dow dated April 1, 2011) and Ex. R-325 (Second Report of James Dow dated August 15, 2012). Nor could that novel method have been reasonably anticipated by the Russian Federation. The three main valuation methods that Petitioners' expert had used – discounted cash flow, comparable companies and comparable transactions – are standard and common valuation methods. Dow Op., ¶ 7. The disagreement between the experts in the Arbitrations "was not over the choice of valuation method but over the implementation of these valuation methods." *Id.* In contrast, the Tribunal's method is not part of "standard valuation practice" taught in used by valuation practitioners. Dow Op., ¶ 16. Professor Dow does not believe that "Tribunal's method has ever been used or proposed in a valuation or damages context." *Id.*[4]

Tellingly, the Tribunal itself acknowledged that the Russian Federation had not been afforded a sufficient opportunity to be heard. This use of the "RTS Index" was first suggested by

[4] Several other aspects of the Tribunal's valuation method departed materially from the parties' submissions and could not have been reasonably anticipated. These points have been discussed at length by the parties in the Dutch proceedings, and will not be repeated here. *See* Ex. R-328 (Writ of Summons), ¶¶ 386-467, Ex. R-331 (Statement of Defense), ¶¶ 491-596, and Ex. R-319 (Statement of Reply), ¶¶ 380-476.

Petitioners in a demonstrative exhibit submitted during closing arguments at the hearing. Dow Op., ¶ 58; Ex. R-436 (Transcript of Day 17 of Merits Hearing), at 18:16-25; Ex. R-433 (Arbitration Exhibit C-1785). The Tribunal rejected the Petitioners' calculations on the basis that "these figures were only introduced by Claimants at a very late stage of the proceedings (through demonstrative exhibits at the Hearing and in Claimants' Post-Hearing Brief) and ***could therefore not be properly addressed by Respondent***." Final Awards, ¶ 1786 (emphasis added). The Tribunal nonetheless proceeded to use the RTS Index in part of its determination of Yukos's equity value.

Compounding the Tribunal's disregard for the parties' right to be heard is the fact that, unbeknownst to them, the Tribunal appears to have largely delegated to a third party the task of determining damages in this case. A linguistic analysis of the Final Awards produced in the Dutch Proceedings concludes that it is "extremely likely" (with a statistical degree of certainty above 98%) that the Tribunal's assistant, Martin Valasek, wrote 71% of the damages section of the Final Awards (Section XII – The Quantification of Claimants' Damages). *See* Ex. R-251 (Report of Dr. Carole Chaski dated September 11, 2015). As explained further in the next section, Mr. Valasek was an associate (and then a partner) at the Tribunal Chairman's law firm who had expressed distinctive views in publications on certain issues related to damages valuation that were squarely before the Tribunal in the Arbitrations. *See* P. Bienvenu & M. Valasek, *Compensation for Unlawful Expropriation, and Other Recent Manifestation of the Principle of Full Reparation in International Investment Law,* in van den Berg (ed.), 50 Years of the New York Convention (ICCA Congress Series vol. 14) (2009), Ex. RLA-50, at 231. These same views are reflected in the Final Awards.

The Tribunal's failure to hear the parties on its valuation method had a dramatic impact on the amount of damages awarded. This is so because the Tribunal's valuation method is flawed as a matter of economics (and for that further reason could not have been reasonably anticipated by the parties), and necessarily leads to under or over counting damages. *See* Dow Op., ¶¶ 17-19. In this case, the Tribunal's method led it to assume, on the one hand, that Yukos's equity value would have increased in line with the market (as reflected by the RTS Index) and, on the other hand, that Yukos's dividends would have been far above the market. As a result, the Tribunal overstated damages by at least $20 billion. *See id.* ¶¶ 22-25.

Because the Tribunal rendered a surprise decision on damages and did not afford the Russian Federation a meaningful opportunity to be heard on its damages methodology resulting in the largest damages award in history, confirmation of the Awards should be denied under Articles V(1)(b), V(1)(d) and V(2)(b) of the New York Convention.

IV. Confirmation Of The Awards Should Be Refused Because The Tribunal's Composition Violated The Agreement Of The Parties (New York Convention, Articles V(1)(d) And V(1)(c))

Pursuant to Article V(1)(d) of the New York Convention, a court may decline to recognize and enforce a foreign arbitral award if the "composition of the arbitral authority . . . was not in accordance with the agreement of the parties."

U.S. courts will not confirm a foreign award rendered by an arbitral authority that did not comport with the agreement of the parties. *See Encyclopaedia Universalis SA v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 91 (2d Cir. 2005) (refusing to confirm award because the tribunal did not "comport with [the] agreement's requirements for how arbitrators are selected"). "Article V(1)(d) of the New York Convention itself suggests the importance of arbitral composition . . ." *Id.*

For similar reasons, the composition of the arbitral authority did not comport with the agreement of the parties because, without the parties' consent, the Tribunal allowed Mr. Valasek, to act essentially as a fourth arbitrator and play a substantial and substantive role in the proceedings. Accordingly, the delegation to Mr. Valasek also justifies refusal to recognize and enforce the Awards under Article V(1)(d) of the New York Convention.

Under Article 5 of the 1976 UNCITRAL Arbitration Rules, which the parties agreed would govern the Arbitrations, the Tribunal was to be composed of three arbitrators: "If the parties have not previously agreed on the number of arbitrators (i.e., one or three), and if within fifteen days after the receipt of the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed."

In accordance with the UNCITRAL Rules, Petitioners appointed one arbitrator (Mr. Daniel Price, subsequently replaced by Mr. Charles Poncet) in their Notices of Arbitration on February 14, 2005, the Russian Federation appointed one arbitrator (Judge Stephen M. Schwebel) on April 8, 2005 and, the parties having failed to agree on the third arbitrator, the Secretary General of the PCA appointed the Chairman (Mr. Yves Fortier) on July 21, 2005. *See* Interim Awards, ¶¶ 6-16.

At the initial procedural conference on October 31, 2005, the Chairman advised the parties that "I have asked one of my colleagues in my office in Montreal to assist me in the conduct of this case." Ex. R-321 (Transcript of October 31, 2005 Hearing), at 92:21-93:8. The Chairman did not seek the parties' consent and instead described the role of that then-associate attorney, Mr. Valasek, as merely one of liaison with the parties: "Because, like all of us, I travel a lot, if at any time I am unreachable, you could always contact him. . . . It may come to pass that you wish to find out something with respect to the tribunal that Brooks

Daly might not be aware of. Martin [Valasek] at my office in Montreal could be reached and hopefully will have the answer for you." *Id.* The role of Mr. Valasek was not specified further. The Tribunal's Terms of Appointment executed that same day do not even mention Mr. Valasek. *See* Ex. R-320 (Terms of Appointment).

Based on accepted practice, the Russian Federation had reasonable expectations that Mr. Valasek's role would be strictly limited. Although it is not uncommon for arbitral tribunals to be assisted by arbitral secretaries and assistants (who have even less of a role than secretaries), there is "a powerful consensus within the international arbitral community" that arbitral secretaries must be assigned "a drastically circumscribed role in the arbitral proceedings." Bermann Op., ¶ 88. Arbitral secretaries and assistants discharge mostly administrative and logistical tasks. *See id.* ¶ 86. They may assist with legal research and, although this latter point is subject to considerable debate, draft discrete, non-substantive parts of an award. *See id.* ¶¶ 87-93 (discussing typical roles). However, it is clear that "secretaries should neither participate in nor influence the arbitral tribunal's core functions, and thus not participate at all in evaluating the parties' submissions and evidence or deciding the legal and factual issues in the case." *Id.* ¶ 86. Drafting substantive portions of the awards is also "off limits." *Id.* ¶ 95. A recent large scale survey of international arbitrators and practitioners shows an overwhelming consensus in this respect: over 87% of respondents opposed having arbitral secretaries prepare drafts of substantive parts of the awards or discuss the merits of the dispute with the arbitrators. *See* Ex. R-366, at 43 (2015 Queen Mary University of London/White & Case LLP International Arbitration Survey). And assistants bear an even lesser role than secretaries.

As the Russian Federation discovered after the Final Awards were rendered, Mr. Valasek's involvement went far beyond accepted practice and to what the parties may be

said to have consented. *See* Ex. R-328 (Writ of Summons in Dutch Proceedings), ¶¶ 486-509, Ex. R-331 (Statement of Defense), ¶¶ 601-630, and Ex. R-319 (Statement of Reply), ¶¶ 503-588.

The Final Awards revealed that Mr. Valasek billed in excess of $1 million (€970,562.50) to the case. *See* Final Awards, ¶ 1863. This was in addition to the €866,522.60 that was billed by the PCA for secretaries and administration of the case. *Id.* ¶ 1864. After the Russian Federation made inquiries, the PCA disclosed that Mr. Valasek had billed over 3,006 hours, considerably more than any of the arbitrators. *See* Ex. R-438 (Respondent's Letter to the PCA dated September 9, 2014); Ex. R-316 (PCA's Letter to Respondent dated October 6, 2014). In particular, from January 1, 2009 through the Final Awards, Mr. Valasek billed over 2,625 hours, that is, ***1,033 hours*** more than the Chairman, ***1,085*** hours more than Arbitrator Poncet and ***773*** hours more than Arbitrator Schwebel. *Compare id. with* Ex. R-315 (PCA Statement dated January 29, 2008); Ex. R-314 (PCA Statement dated February 4, 2009).

To date, the PCA has refused to disclose further details regarding the hours worked by Mr. Valasek on the basis that such disclosure would invade "the confidentiality of the Tribunal's deliberations." Ex. R-316 (PCA's Letter to Respondent dated October 6, 2014). The magnitude of Mr. Valasek's involvement, especially during the post January 1, 2009 period, and the discrepancy with the arbitrators' own hours confirms his playing a significant, substantive role in the proceedings. That period, which followed the Hearing on Jurisdiction and Admissibility in December 2008, was the more substantive phase of the proceedings during which the Interim Awards were drafted, the parties' arguments and evidence on the merits were assessed, and the Final Awards were drafted. *See* Bermann Op., ¶ 114. It is implausible that Mr. Valasek devoted over ***65 full work weeks*** (5 days x 8 effective hours) during that period merely dealing with logistical, administrative and other menial tasks. This is all the more so where logistical support

through the proceedings was provided by the PCA, which billed €866,552.60. *See* Final Awards, ¶ 1863.

A linguistic analysis of the authorship of the Final Awards, conducted by a leading expert in the field, Dr. Carole Chaski, further demonstrates Mr. Valasek's substantive involvement in the proceedings. In a report submitted in the Dutch Proceedings, Dr. Carole Chaski concludes that it is "extremely likely" (with a statistical degree of certainty of 95% or more) that Mr. Valasek wrote the majority of the key substantive sections of the Final Awards, including the Preliminary Objections, Liability and Damages sections. *See* Ex. R-251 (Report of Dr. Carole Chaski dated September 11, 2015). Dr. Chaski's methodology is tested and reliable, and her authorship opinions, based on the same method, were accepted without limitations by this Court in *Greene v. Dalton*, No. 96-2161 TPJ (D.D.C. Sept. 18, 1996). *Id.* ¶ 7.

Mr. Valasek's hand is especially transparent in the Tribunal's handling of damages. Mr. Valasek, who publishes in the field of international arbitration, has expressed distinctive views on issues that were squarely before the Tribunal. For example, during the course of the proceedings, Mr. Valasek published an article that endorsed the position that, where an expropriation is found to be "unlawful," the claimant should be entitled to compensation calculated as of the date of the expropriation or as of the date of the award, whichever was greater. *See* P. Bienvenu & M. Valasek, *Compensation for Unlawful Expropriation, and Other Recent Manifestation of the Principle of Full Reparation in International Investment Law,* in van den Berg (ed.), 50 Years of the New York Convention (ICCA Congress Series vol. 14) (2009), Ex. RLA-50, at 231. In the Final Awards, the Tribunal adopted Mr. Valasek's position, holding that because the expropriation was "unlawful," the Claimants were entitled to the greater of

compensation calculated as of the date of the expropriation or as of the date of the Awards. *See* Final Awards, ¶¶ 1763-69.

The unavoidable conclusion from the above record is that, in violation of the agreement of the parties, Mr. Valasek was critically involved in substantive aspects of the proceedings and acted as a *de facto* fourth arbitrator. The role that Mr. Valasek played went far beyond accepted international practice and "greatly exceeded the legitimate expectations of the parties." Bermann Op., ¶ 123. As a result, the "composition of the arbitral authority" was not in accordance with the agreement of the parties and confirmation should therefore be denied under Article V(1)(d) of the New York Convention.

For the same reasons, confirmation should be further denied under Article V(1)(c) of the New York Convention. Under that provision, which relates to the mandate of the arbitrators, a court may decline to recognize and enforce a foreign arbitral award if "[t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration," in other words, if the arbitrators disregarded their mandate. Here, the parties granted the arbitrators a mandate to decide their dispute and perform their duties personally, to the exclusion of anyone else, and the delegation of critical aspects of the proceedings, including apparently the valuation analysis and damages calculation, to Mr. Valasek was not contemplated by the parties and not part of that mandate. Such breach of their mandate by the arbitrators justifies refusal to confirm the Awards under Article V(1)(c) of the New York Convention.

V. Confirmation Of The Awards Should Be Refused Because The Tribunal's Procedure Was Not In Accordance With The Agreement Of The Parties (New York Convention, Article V(1)(d))

Pursuant to Article V(1)(d) of the New York Convention, a court may decline to recognize and enforce a foreign arbitral award if the "the arbitral procedure was not in accordance with the agreement of the parties."

In disregard of their obligations under Article 21(5) of the ECT, Petitioners failed to refer to the tax authorities of England, Cyprus, and Russia the question of whether the tax assessments of Yukos by the Russian Federation in 2003 and 2003 were expropriatory or discriminatory. *See* Jur'l Br. Argument § I.B.4. In these circumstances, the ECT *obliged* the Arbitral Tribunal to make itself the referral to the tax authorities: "Failing such referral by the Investor or the Contracting Party, bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) *shall* make a referral to the relevant Competent Tax Authorities." ECT Art. 21(5)(b)(i) (emphasis added). The Tribunal did not do so and brushed aside the referral mechanism under Article 21(5) as "an exercise in futility." *See* Final Awards, ¶¶ 1421-27.

Further, in disregard of its procedural obligation under Article 32(3) of the 1976 UNCITRAL Rules, which the parties agreed would govern the Arbitrations, the Tribunal failed to "state the reasons upon which the award is based" to the extent that, as explained above, the Tribunal based many of its findings on speculations.[5]

As a result of the Tribunal's disregard for its obligations under Article 21(5) of the ECT and its obligation to provide reasons, the arbitral procedure was not in accordance with the agreement of the parties and confirmation of the Awards should be refused under Article V(1)(d) of the New York Convention.

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[5] The Awards are also lacking reasons in several other respects. These points have been discussed at length by the parties in the Dutch proceedings, and will not be repeated here. *See* Ex. R-328 (Writ of Summons), ¶¶ 516-535, Ex. R-331 (Statement of Defense), ¶¶ 631-663, and Ex. R-319 (Statement of Reply), ¶¶ 633-777.

CONCLUSION

For the foregoing reasons, the Court should deny confirmation of the Awards and dismiss the Petition.

Dated: October 20, 2015

Respectfully submitted,

WHITE & CASE LLP

/s/ Carolyn B. Lamm

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HULLEY ENTERPRISES LTD., YUKOS UNIVERSAL LTD., and VETERAN PETROLEUM LTD., *Petitioners,* *v.* THE RUSSIAN FEDERATION *Respondent.*	)	Case No. 1:14-cv-01996-ABJ

ORDER

Having reviewed and considered Respondent the Russian Federation's Motion to Dismiss Petitioners' Petition to Confirm Arbitration Awards for Lack of Subject Matter Jurisdiction, the papers accompanying the motion, Petitioner's Opposition papers, and Respondent's Reply papers, it is hereby

ORDERED, that Respondent's motion is GRANTED; it is further

ORDERED, that the Petition is DISMISSED; it is further

ORDERED, that Petitioners are ordered to pay Respondent's costs pursuant to Fed. R. Civ. P. 54(d) in an amount to be assessed.

SO ORDERED this ___ day of __________, 2015.

____
Amy Berman Jackson
United States District Judge

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