

## Ukraine Oil Co. Can Seek Info In \$2.56B Gazprom Award Fight

By **Caroline Simson**

*Law360 (October 1, 2019, 7:55 PM EDT)* -- Ukraine's state-owned oil and gas company can seek documents from Gazprom's Dallas-based oil and gas reserves auditor as the Ukrainian company pursues litigation in the Netherlands to enforce a \$2.56 billion arbitral award against the Russian natural gas giant, a Texas judge ruled on Monday.

U.S. Magistrate Judge Renee Harris Toliver approved NJSC Naftogaz of Ukraine's application seeking permission to subpoena DeGolyer & MacNaughton Corp. for documents and deposition testimony, ruling that Naftogaz had met the applicable statutory requirements and that various discretionary factors weighed in the Ukrainian company's favor.

They included that Naftogaz's petition did not conceal or attempt to get around foreign proof-gathering restrictions, Judge Toliver noted.

The Ukrainian company had previously sought related evidence in the Dutch proceedings but had been largely unsuccessful because of technical limitations and the absence of permissive proof-gathering rules analogous to Section 1782 of the U.S. code, the statute under which the Texas application was brought, according to the decision.

At issue was information held by DeGolyer & MacNaughton that Naftogaz claims is relevant to Gazprom's alleged efforts to transfer its interest in certain Dutch subsidiaries. The Russian company is majority owned by the Russian government.

Naftogaz claims these transfers are fraudulent and part of Gazprom's strategy to avoid paying the award, which was issued to Naftogaz in February 2018 to resolve a dispute arising from Gazprom's alleged failure to deliver a minimum volume of gas between 2009 and 2017 under a 10-year gas purchase agreement.

Gazprom has challenged the award, which was issued by a Stockholm tribunal, alleging that expert analysis revealed that much of the award was not written by the arbitrators.

At the time of its petition late last year, the Ukrainian company said it had already initiated litigation in the Netherlands to enforce the award, and was planning to file a fraudulent-conveyance claim. The current status of the latter proceeding was not immediately clear Tuesday.

Counsel for Naftogaz declined to comment on Tuesday. Representatives for DeGolyer & MacNaughton Corp. could not immediately be reached for comment.

Naftogaz had filed the petition last December, telling the court that it needed the information in connection with its efforts to enforce the \$2.56 billion arbitral award against Gazprom in the Netherlands, where it's targeting the company's Dutch assets.

The company said it had already initiated enforcement proceedings there, and that it planned to initiate separate litigation accusing Gazprom of transferring its interests in its Dutch assets to intentionally prevent them from being frozen.

Naftogaz is represented by James L. Sowder and Stephen J. Huschka of Thompson Coe Cousins & Irons LLP, and by C. William Phillips, David Z. Pinsky, Joshua B. Picker, Marney Cheek and William Lowery of Covington & Burling LLP.

The petition was filed ex parte so DeGolyer and MacNaughton did not make an appearance.

The case is NJSC Naftogaz of Ukraine v DeGolyer and MacNaughton Corp., case number 3:18-mc-00092 in the U.S. District Court for the Northern District of Texas.

--Editing by Peter Rozovsky.