

International Arbitration Group Of The Year: Covington

By **Caroline Simson**

Law360 (February 7, 2020, 3:48 PM EST) -- Covington & Burling LLP helped U.S. drugmaker Eli Lilly escape a \$1.8 billion trade secrets dispute involving a French biotech company and convinced an international tribunal to find that Russia unlawfully expropriated Crimean assets belonging to Ukraine's state-owned oil company, helping to land it among **Law360's 2019 International Arbitration Groups of the Year**.

With 13 offices throughout the world, Covington's global footprint may be on the smaller side compared to many international law firms. The firm's relatively small cadre of senior lawyers who specialize in international arbitration are located in Covington's Dubai, London, Washington, D.C., and New York offices — all cities that are recognized as global arbitration hubs.

But group co-chair Marney Cheek said that those numbers don't give a real sense of the strength of the firm's international arbitration practice group. The more than 20 partners specializing in international arbitration will often coordinate with lawyers in other offices — meaning the firm has about 120 lawyers across their offices working on international arbitration-related matters, she explained.

"[International arbitration] is quite a big focus" for the firm, Cheek told Law360. "We're very busy, so we have been making strategic hires and internal promotions at all levels. I think it is an area where the firm is focused on continuing to grow."

International arbitration has gained steam within the past few decades, and many firms have recently added an international arbitration group. But Covington has boasted an international arbitration practice group since its founding just over a century ago.

In fact, one of the firm's first cases was an international arbitration in The Hague, with firm co-founder Edward B. Burling and an associate, Dean Acheson, representing the Kingdom of Norway in a proceeding against the U.S. in a dispute over compensation owed following a 1917 requisition order by the U.S. for all ships over 2,500 tons, including certain ships that were being built for Norwegian citizens.



More recently, the firm has made a name for itself taking on — and winning — a wide variety of international arbitration cases.

"I think if there's a unifying theme to the cases we take, it's that they usually have a cutting edge issue, or a difficult issue — an issue of first impression," Cheek said, adding that when clients realize they're facing such a case, "they're going to come to Covington."

Among those was a case in which Covington acted as lead counsel for the U.S. drugmaker Eli Lilly & Co., which had fallen into a \$1.8 billion dispute with French biotech company Adocia SA for alleged misappropriation of trade secrets after the U.S. company terminated a license agreement for a type of insulin for patients with Type 1 and Type 2 diabetes.

Adocia had accused Eli Lilly of stealing its trade secrets and misusing its confidential information, but a tribunal unanimously found last August that Adocia did not possess a valid trade secret and that it hadn't disclosed trade secret information to Eli Lilly. Nor had Eli Lilly in any way misused Adocia's trade secrets or confidential information, according to Covington.

"I think [the Eli Lilly case] is a good example of the value we deliver for clients," Cheek said, noting that the team handling the case included the firm's top international arbitration and intellectual property practitioners. "Lilly turned to Covington because we know international arbitration, but we also know intellectual property."

One month later, the firm obtained a victory as lead counsel to Ukraine in a proceeding against Russia relating to three Ukrainian naval vessels and 24 Ukrainian servicemen who were detained in the Black Sea in 2018.

The Ukrainian vessels had attempted to navigate through the Kerch Strait, which connects the Black Sea and Sea of Azov. Russia prevented them from doing so, and the ships tried to return to their port of origin but were seized by the Russian Coast Guard. The servicemen on board were charged with alleged violations of Russian laws on illegal border crossings.

In September, an arbitral tribunal constituted under the United Nations Convention on the Law of the Sea concluded that Russia's actions violated international law, noting that, "the actions taken by the Russian Federation could irreparably prejudice the rights claimed by Ukraine to the immunity of its naval vessels and their servicemen," and that "the continued deprivation of liberty and freedom of Ukraine's servicemen raises humanitarian concerns."

The arbitrators ordered their immediate release, and Russia complied on Sept. 7.

It wasn't the first time that Covington had acted for Ukraine. In February 2019, the firm acted as counsel for Ukraine's state-owned oil and gas company NJSC Naftogaz, securing a victory in arbitration with Russia over the alleged expropriation of the Ukrainian company's assets following the 2014 invasion and annexation of Crimea.

In that proceeding, a Permanent Court of Arbitration tribunal concluded that Russia had violated an investment treaty it had signed with Ukraine. Damages in the case are still being decided, but Naftogaz's assets have been estimated at about \$5 billion.

The firm is continuing to represent Ukraine in proceedings against Russia at the International Court of Justice, in which the country accuses Moscow of failing to stop the financing of terrorism in eastern Ukraine, including the supply of the missile used to shoot down Malaysia Airlines Flight MH17. Ukraine won certain provisional measures in the case in 2017, and a hearing on jurisdiction was conducted last June.

The ICJ case marks the first time a case has been filed under the UN's International Convention for the Suppression of the Financing of Terrorism, according to Covington, which is acting as counsel to Ukraine.

Meanwhile, the firm acted as lead counsel to two Spanish subsidiaries of Mexican food conglomerate GRUMA SAB de CV in a proceeding against Venezuela at the International Centre for Settlement of Investment Disputes after the country seized the subsidiaries' operations there.

The tribunal issued the companies a nearly \$500 million award in mid-2017, and an ad hoc committee ruled in September to lift a stay of enforcement during Venezuela's annulment bid, allowing the subsidiaries to move ahead with enforcement efforts. It was an important victory given that Venezuela is believed to owe its creditors about \$150 billion, and many have already begun trying to collect that debt.

--Editing by Nicole Bleier.