Zack A. Clement, PLLC

FINANCIAL RESTRUCTURE FOR BUSINESSES AND GOVERNMENTS

YUKOS OIL COMPANY
Three Years
Three Bankruptcies

Zack A. Clement

DECEMBER 1, 2016

TABLE OF CONTENTS

I. Yukos Oil Company

In 2003, the Russian Government began a course of conduct to bring under government control, the assets of what was one of Russia's (and the world's) largest energy companies, Yukos Oil Company ("Yukos"). Yukos, whose shares were traded on several European stock exchanges, had more reserves than Exxon-Mobil and a market capitalization in the 2003 oil market of over $40 billion. In today's oil market, these same assets would have a market capitalization of well over $100 billion.

Even though these assets were located primarily within the Russian Federation, the Yukos story includes one Russian bankruptcy and two United States bankruptcy cases. Many issues arose in these cases as: (1) Yukos used the United States Bankruptcy Code in an attempt to forestall its dismemberment and reorganize under Chapter 11; and (2) a Russian representative later used a U.S. Chapter 15 case to support an involuntary bankruptcy filed against Yukos in Russia by trying to control assets of Yukos International UK, B.V. ("Yukos International"), a Dutch subsidiary of Yukos that owned interests in refineries and pipelines in Lithuania and Slovakia.

II. The Three Yukos Bankruptcy Cases

As widely reported in the world press, by early December of 2004, (1) Yukos' CEO, Mikhail Khordorkovsky, had been jailed on alleged tax charges for over a year; (2) Yukos had, in the preceding eleven months, received retroactive tax assessments of $28 billion (the "Tax Claims"); (3) Yukos' bank accounts in Russia had been frozen; (4) Yukos' proposals to settle and pay taxes had been refused; and (5) Yukos was facing a tax foreclosure sale on December 19, 2004 (the "Tax Foreclosure Sale") of the stock of its largest asset, Yuganskneftegas ("YNG"), an oil producing subsidiary in Siberia holding massive oil reserves, that was responsible for over 60% of Yukos revenues.

It appeared that there would be only one real bidder at the Tax Foreclosure Sale, Gazpromneft, which would bid a price of approximately $9 billion, less than half the value of the assets according to then-recent appraisals by two investment banks. Gazpromneft was a subsidiary of Gazprom, Russia's huge gas producer and supplier. Gazpromneft had been formed to facilitate the planned merger of Gazprom and Rosneft, an oil company owned 100% by the Russian Government. Before this planned merger, the Russian Government owned slightly less than 50% of Gazprom. After this proposed merger, the Russian Government would own more than 50% of Gazprom and thus own and control huge reserves of both oil <u>and</u> gas.

Immediately before Michael Khodorkovsky was jailed in October 2003 (which caused its stock price to fall), and again in early 2004 before the retroactive taxes began to be assessed, Yukos had a market capitalization of over $40 billion, illustrating that it had the ability to pay all of the Tax Claims, if it were appropriate and if it had been permitted to do so. Yukos challenged the Tax Claims as politically motivated, selectively and discriminatorily applied,[1] in amounts that effectively constituted confiscation[2], and assessed and enforced without due process. From early 2004 on, the Russian taxing authorities ("Russian Tax Authority") froze all of Yukos' assets in Russia, effectively preventing Yukos from paying these taxes (the "Russian Tax Freeze Orders").

Faced with this, Yukos tried to (1) stop the loss of its major asset, (2) divert the Russian Tax Claims into an appropriate independent forum (Russia had agreed to arbitrate such claims against Yukos through its Foreign Investment Law), and (3) reorganize as a going concern able to pay valid claims against it over time by filing a Chapter 11 case in Houston, Texas, where one of its officers had fled after being warned not to come back to Russia.

In that Chapter 11 case, the Houston Bankruptcy Court issued a TRO whose ultimate effect was that Rosneft (not Gazpromneft) obtained YNG in a series of unusual transactions financed by the Russian Government. Even after the loss of YNG, Yukos was able to file a Plan of Reorganization explaining how it could (1) reorganize as a going concern around its remaining substantial assets, or, (2) if forced into liquidation through continued asset expropriation, have a liquidating trustee pursue recompense for the benefit of its creditors and shareholders for the expropriation of its assets.

Later, on the motion of the agent bank for the group that would have financed Gazpromneft's participation in the Tax Foreclosure Sale, the Houston Bankruptcy Court, while reaffirming that it had jurisdiction, decided that dismissal of the Houston Bankruptcy Case was appropriate because Yukos was primarily a Russian company and could only reorganize with the cooperation of the Russian Government.

This was not the end of the Yukos' interaction with U.S. bankruptcy, however. After Yukos' Chapter 11 case was dismissed in March 2005, Yukos began focusing on the sale of certain of its international assets, outside of Russia and outside of the jurisdiction of the Russian Tax Freeze Orders, in order to pay the claims of (1) a Western Bank Group owed approximately $500 million (the "Bank Group") and (2) Moravel, an affiliate of Yukos' largest shareholder, owed approximately $700 million. Yukos proposed to do this by selling shares owned by Yukos International in Mazeikiu Nafta, a huge Lithuanian refinery (the "MN Sale"). The negotiated $1.5 billion price for the MN Sale would have easily paid the Bank Group and Moravel claims in full.

Before Yukos could complete the MN Sale, however, Rosneft entered into a written contract under which the Bank Group would start an involuntary bankruptcy against Yukos in

[1] The Russian Tax Authority asserted tax claims against Yukos for 2001 that were in excess of four times the average taxes for the consolidated gross industry, for 2002 that were in excess of three and one-half times such industry average taxes, and for 2003 that were in excess of two and one-half times such industry average taxes.

[2] The Russian Tax Authority had retroactively asserted tax liabilities against Yukos for each of 2001 and 2002 <u>in excess of 100% of Yukos' annual consolidated gross revenue</u> (not net income) and for 2003 <u>in excess of 80% of Yukos' annual consolidated gross revenue</u>.

Russia, after which Rosneft would buy the Bank Group's claim. This contract was performed, the Bank Group filed the involuntary bankruptcy, and, as a result, Yukos was ordered into a "temporary administration" bankruptcy proceeding in Russia on March 13, 2006 (the "Russian Bankruptcy Case"). That same day, Mr. Eduard Rebgun was appointed temporary administrator and he obtained an order requiring Yukos' management to report to him concerning any sale anywhere in the world worth more than $1 million (the "Russian Bankruptcy Freeze Order"), including sales by foreign subsidiaries of Yukos such as Yukos International's proposed MN Sale.

Mr. Rebgun (the "Petitioner") then instituted a Chapter 15 case in New York on April 13, 2006, seeking recognition of the Russian Bankruptcy Case and obtained, without notice to Yukos, a temporary restraining order from the New York Bankruptcy Court (the "Chapter 15 TRO") supporting the Russian Bankruptcy Freeze Order, effectively prohibiting sale of assets by Yukos' subsidiaries outside of Russia, including Yukos International's MN Sale.

Yukos contested this Chapter 15 TRO and eventually it was vacated after a trial. Prior to August 1, 2006, when it had the power to do so, Yukos opposed the requested recognition of Yukos' Russian Bankruptcy Case as violation of U.S. public policy. Between April 13, 2006 and August 1, 2006, no hearing was held on whether to grant recognition of the Russian Bankruptcy Case under Chapter 15.

On June 1, 2006, Yukos filed an Outline of Plan of Reorganization in the Russian bankruptcy (the "Plan Outline"), containing a term sheet for a plan of reorganization along with material financial information which explained how Yukos could, in a Russian reorganization, pay all of its creditors in full, including the contested Russian Tax Claims, and still have over $15 billion of equity for its shareholders.

At a Creditors Meeting held in Moscow on July 20 and 25, 2006, Yukos continued to explain how it was solvent by over $15 billion and could pay its claims pursuant to its Plan Outline. Notwithstanding this, the Russian creditors, led by the Russian Tax Authority (which became the Representative of the Creditors Committee in the Yukos Russian Bankruptcy Case), voted overwhelmingly at the Creditors Meeting to liquidate Yukos, and the Russian Bankruptcy Court confirmed that recommendation on August 1, 2006, and appointed a Petitioner to carry out this liquidation.

The two U.S. bankruptcy cases concerning Yukos raise a number of significant issues about (1) how far U.S. Courts can and should go in helping the reorganization of foreign companies which meet the standards of Bankruptcy Code Section 109 and (2) how far U.S. Courts should go in a Chapter 15 case to help a "foreign representative" who is allegedly aiding and abetting asset expropriations in a "foreign proceeding" that would violate U.S. public policy.

A. Chapter 11 - The Houston Bankruptcy Case

Having failed to obtain relief within the Russian legal system,[3] and facing the loss of 60% of its oil and gas reserves, Yukos, on December 14, 2004, filed a voluntary petition for relief under Chapter 11[4] and an Original Complaint for Injunctive Relief pursuant to Section 105 of the Bankruptcy Code,[5] seeking a temporary restraining order to, among other things, enforce the automatic stay of Section 362(a) by enjoining certain parties from participating in the December 19, 2004 Tax Foreclosure Sale. On December 15, 2004, United States Bankruptcy Judge Letitia Clark held a status conference and set the request for injunctive relief for an evidentiary hearing the next day.

1. Eligibility of a Foreign Corporation to be a U.S. Debtor

At the evidentiary hearing, as a threshold matter, Yukos, then Russia's largest publicly owned oil company, asserted that it was eligible to be a debtor in a United States bankruptcy case based on the plain meaning of Section 109, because it had (1) a place of business and (2) property in the United States. Essentially, (1) Yukos' CFO had been warned not to return to Russia from England and had come back to his long-time home in Houston, where he was functioning as Yukos' CFO thus giving Yukos a place of business in Houston, and (2) Yukos had given its Houston law firm $6 million of retainers in connection with filing of a Chapter 11 case in the city where its CFO was conducting Yukos' business.

The Houston Bankruptcy Court noted the CFO's presence, but ultimately found that Yukos' basis to be a debtor under Section 109 was the unearned portion of the $6 million of retainers paid to its bankruptcy counsel shortly prior to the bankruptcy filing. The Bankruptcy Court held that:

> For a foreign corporation to qualify as a debtor under 11 U.S.C. § 109(a), courts have required that <u>nominal amounts of property be located in the United States</u>. The courts have noted that there is "virtually no formal barrier" to having federal courts adjudicate foreign debtors' bankruptcy proceedings. *In re Globo Comunicacoes E Participacoes S.A.*, 2004 WL 2624866,(S.D.N.Y. 2004), citing *In re Aerovias Nacionales de Colombia S.A. (In re Aviance)*, 303 B.R. 1 (Bankr. S.D.N.Y. 2003); *In re Global Ocean Carriers, Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000).

In re Yukos Oil Company, 320 B.R. 130, 132 (Bankr. S.D. Tex. 2004). Plainly, over $5 million was more than a nominal amount.

---

[3] Indeed, the only Russian judge who entered a ruling in favor of Yukos on its tax appeals was, thereafter, summarily removed from the bench.

[4] *In re: Yukos Oil Company*; Cause No. 04-47742; In the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

[5] *Yukos Oil Company v. Russian Federation et al.*; Case No.: 04-03952; In the United States Bankruptcy Court for the Southern District of Texas.

2. The Houston Bankruptcy Court Issues a TRO

After finding a likelihood of irreparable harm to Yukos, the Houston Bankruptcy Court entered a temporary restraining order (the "Chapter 11 TRO") enjoining the following entities from taking any actions with respect to the stock of YNG: (1) the three companies registered to bid at the Tax Foreclosure Sale auction, including Gazpromneft (the only buyer with financing) and two shell companies which were apparently registered to bid in order to fulfill a requirement under Russian law that at least two bidders be present for a "valid" auction; (2) six Western financial institutions that had announced an intention to fund Gazpromneft's bid at the Tax Foreclosure Sale (the "Western Banks"); and (3) "those persons in active concert or participation with them."[6]

In the Memorandum Opinion issued with the Chapter 11 TRO (the "TRO Opinion"), Judge Clark found that: "[t]he weight of the evidence supports a finding that it is substantially likely that the assessments and manner of enforcement regarding [Yukos'] taxes were not conducted in accordance with Russian law." *Id*. at 136. With respect to the proposed government-run auction of Yukos' primary asset, Judge Clark also found that "[t]he evidence supports a finding of the likelihood that [Yukos'] shares of YNG will be sold for approximately half the value estimated by two different investment bankers." *Id*. at 137. Finally, Judge Clark expressed a policy concern that:

> <u>Participants in international commerce</u>, in Russia, in the United States, and elsewhere, <u>need to have an expectation that when they invest in foreign enterprises they may do so without fear that their investments may be the subject of confiscatory action by agencies of the foreign government</u>. In the instant case, the appearance to [Yukos], and its investors, of such a confiscation, is created by what appears, on the evidence before this court, to be the inconsistent application of Russian law within the Russian legal system.

Id. at 137 (emphasis added).

On the day before the Tax Foreclosure Sale, December 18, 2004, Gazpromneft filed an emergency appeal of the Chapter 11 TRO. After holding a full hearing that same day, the United States District Court for the Southern District of Texas refused to set aside the Chapter 11 TRO, holding that, "with respect to the automatic stay, I take the stay extremely seriously and until and unless a bankruptcy case is dismissed the automatic stay governs."

The Bankruptcy Court's TRO effectively precluded Gazpromneft from purchasing YNG at the Tax Foreclosure Sale and the Western Banks from financing that sale. The Russian Government moved forward anyway and conducted the Tax Foreclosure Sale as planned on December 19, 2004. A newly formed company with no assets, Baikal Finance, made the

[6] Docket No. 8, *Yukos Oil Company v. Russian Federation et al.*; Case No.: 04-03952; In the United States Bankruptcy Court for the Southern District of Texas.

winning auction bid of approximately $8.5 billion for the YNG stock. Within a few days, Rosneft, a 100% Russian Government-owned oil company, announced that it would acquire the YNG stock from Baikal Finance in a transaction financed by the Russian Government, which the highest levels of the Russian Government described as necessary "to avoid liability."

Despite having 60% of its assets expropriated, Yukos remained a viable and recognizable business with, among other assets, two other production subsidiaries (Tomskneft and Samaraneftegas) and eight refineries. Yukos filed a Plan of Reorganization in the Houston Bankruptcy Case outlining its proposal to preserve and maximize the value of its assets for the benefit of its legitimate creditors and shareholders, either (1) as a going concern, if possible, or (2) through a liquidating trustee, if necessary. The liquidating trustee would pursue recompense for assets expropriated from Yukos.

3. Dismissal Based on the "Totality of the Circumstances"

Shortly after the Tax Foreclosure Sale, the agent for the Western Banks that were to have funded Gazpromneft's purchase of YNG filed a Motion to Dismiss Yukos' U.S. Chapter 11 case asserting six grounds: (1) Yukos was not eligible to be a debtor under Section 109(a); (2) the case should be dismissed for cause pursuant to Section 1112(b); (3) the case should be dismissed under the doctrine of forum non conveniens; (4) the case should be dismissed because Yukos would be unable to comply with the duties of a Chapter 11 debtor[7]; (5) the case should be dismissed on grounds of international comity; and (6) the case should be dismissed based on the act of state doctrine.

After discovery and a two-day trial, Judge Clark issued a Memorandum Opinion, in which she found that Yukos was qualified to be a debtor under Section 109 and that she had jurisdiction over Yukos' Chapter 11 case. *In re Yukos Oil Company*, 321 B.R. 396, 406-07 (Bankr. S.D. Tex. 2005).

Judge Clark ruled in Yukos' favor on (1) forum non-conveniens, (2) international comity and (3) the act of state doctrine, holding that none of these arguments required dismissal. As to forum non-conveniens, Judge Clark declined to apply it (indeed, no court ever has) to dismiss an entire bankruptcy case, as opposed to a single adversary proceeding in a bankruptcy case. *Id*. at 407-08. Similarly, Judge Clark found no case applying international comity to require dismissal of a bankruptcy case from a forum that a debtor had voluntarily chosen. *Id*. at 408-09. As to the act of state doctrine, the Court noted that "although the acts of the Russian Government doubtless have significant impact on the efforts of Yukos to reorganize itself financially, the filing and conduct of this Chapter 11 case does not in itself require that this Court sit in judgment on those acts," thus, the act of state doctrine did not require dismissal. *Id*. at 409-10.

Finally, Judge Clark found no bad faith on the part of Yukos pursuant to Section 1112(b) of the Bankruptcy Code, but, after making all of these findings in Yukos' favor, employed a

[7] This argument was not pursued at the hearing and was not discussed in Memorandum Opinion.

"totality of the circumstances" analysis[8] under Section 1112(b) to conclude that Yukos' Chapter 11 case should be dismissed. The factors that Judge Clark took into account were:

(1) The funds that created jurisdiction for the U.S. Court were transferred one week before the case was filed for the purpose of creating U.S. jurisdiction.[9]

(2) Yukos seeks to substitute U.S. law to alter creditor priorities that would be applicable in the law of other jurisdictions.

(3) Yukos has pending actions against the Russian Government and others in arbitrations, the Russian Courts and the European Court of Human Rights.

(4) The U.S. Bankruptcy Court has no special expertise to consider the issues that are pending before these other tribunals, many of which will turn on application of laws of other countries.

(5) It is "not clear that this Court can obtain personal jurisdiction of the pertinent parties sufficient to grant much of the relief sought" in the Chapter 11 case.

(6) Yukos could not reorganize as a going concern without the cooperation of the Russian Government.

(7) The vast majority of the business and financial activities of Yukos continue to occur in Russia and they require the cooperation of the Russian Government in its roles as regulator of production and taxing authority.

(8) Finally, although the act of state doctrine, standing alone, does not compel dismissal of the instant case, the evidence indicates that Yukos was, on the petition date, <u>one of the largest producers of petroleum products in Russia, and was responsible for approximately 20 percent of the oil and gas production in Russia. The sheer size of Yukos, and correspondingly, its impact on the entirety of the Russian economy, weighs heavily in favor of allowing resolution in the forum in which participation of the Russian Government is assured</u>.

321 B.R. at 410-11.

---

8 *See, e.g., In re Chaffin*, 816 F. 2d 1020 (5th Cir. 1987).

9 The Bankruptcy Court did not address the fact that Yukos CFO had created a place of business for Yukos at his house in Houston after he had been forced to leave Russia.

This concluding paragraph concerning the significance of Yukos to the Russian economy is in keeping with the statement early in Judge Clark's opinion that many of the assets at issue are literally in the ground in Russia and important to the Russian economy.

> However, the debtor is not a United States company, but a Russian company, and its assets are massive relative to the Russian economy, and, since they are primarily oil and gas in the ground, are literally a part of the Russian land. While there is precedent for maintenance of a bankruptcy case in the United States by corporations domiciled outside the United States, none of those precedents cover a corporation that is a central part of the economy of the nation in which the corporation was created.

321 B.R. at 409.

Furthermore, it goes with the concern that Judge Clark had expressed in connection with her act of state analysis that she did not wish to interfere with U.S. foreign policy.

> The Court also notes that, in light of the size of the underlying transactions and the purported acts of the Russian Government, as well as its apparent refusal to accept service of process, resolution of the matters raised in this case with respect to the Russian Government may rise to the level of the conduct of foreign policy, which is reserved to the President of the United States.[10]

Id.

Yukos argued in its Motion for New Trial that these findings did not meet the standard of Section 1112(b), which permits dismissal only if it is "in the best interests of creditors and the [debtor's] estate." Further, as Yukos argued to the Bankruptcy Court on rehearing, and to the District Court on appeal, dismissal of Yukos' Chapter 11 case not only failed to benefit the debtor, but it was also in the "best interests" of only one creditor, the Russian Government, not the best interests of creditors as a whole.

Judge Clark's ruling under Section 1112(b) could be seen as a decision to abstain under Section 305(a)(1) from hearing Yukos' bankruptcy case in favor of "a forum in which participation of the Russian Government is assured." Section 305(a)(1) provides that "the Court . . . may dismiss a case. . . if . . . the interests of creditors and the debtor would be better served by dismissal." Section 305 raises the same question as Section 1112(b), whether it was really in the "interests … of the debtor" to dismiss the Yukos U.S. Chapter 11 case in favor of another forum where the "participation of the Russian Government is assured." As will be discussed below, subsequent events answer this question in the negative.

[10] Yukos had argued that this concern was not well founded because the U.S. State Department made numerous statements condemning what the Russian Government was doing to Yukos and never filed any statement asking that the Yukos bankruptcy case be dismissed.

Seventeen months later, an involuntary Russian bankruptcy case against Yukos in which Rosneft (100% Russian owned) and the Russian Tax Authority have participated fully, has provided the forum in which the Russian Taxing Authority will liquidate Yukos (with little foreseeable chance of a dividend to non-governmental creditors or equity) in the face of evidence that Yukos is solvent by over $15 billion.

Chapter 15 of the Bankruptcy Code had not been enacted at the time of Judge Clark's ruling, but was then pending before Congress. Judge Clark's ruling could also be seen as a finding that the "center of the main interest" for Yukos was in Russia, therefore discretion could be exercised to dismiss a full U.S. Chapter 11 case for Yukos in favor of a bankruptcy case for Yukos that might be later filed in Russia. Chapter 15 does not require, or even contemplate, the dismissal of a validly filed Chapter 11 U.S. case over which there is jurisdiction in the United States, simply because it is possible to imagine a center of main interest in another country where no bankruptcy has yet been filed. Chapter 15 is written to deal with pending cases in other countries whose representatives come to the United States seeking recognition of the foreign proceeding and cooperation. Chapter 15 does not limit the extent of the United States bankruptcy court jurisdiction expressed in 11 U.S.C. § 109 and 28 U.S.C. § 1334 for foreign companies which choose to file in the U.S. if they qualify for jurisdiction here when there is no case pending against them in a foreign country.

Yukos sought a quick review of the Houston Bankruptcy Court's dismissal order. When the District Court declined to grant a stay of the dismissal order pending the appeal, Yukos determined that there would be no benefit in continuing to pursue relief under Chapter 11 and dismissed its appeal.

B. Yukos' Post-Chapter 11 Attempts to Protect its Non-Russian Assets

After the dismissal of its Chapter 11 case, Yukos began to try to sell certain assets of its international subsidiaries to pay the claims arising out of Yukos' default (occasioned by the Russian Tax Freeze Orders) on loan agreements with (1) a group of Western Banks (approximately $500 million) (the "Bank Group") and (2) Moravel, an affiliate of the major shareholder of Yukos (approximately $700 million). Yukos expressed the view that these were legitimate claims, as opposed to the Russian Tax Claims that Yukos continued to challenge in Russian Courts. The primary asset that Yukos sought to sell was Yukos International's 53.7% interest in the Mazeikiu Nafta refinery, the largest commercial enterprise in Lithuania (the "MN Refinery"), worth approximately $1.5 billion, more than enough to pay the claims of the Bank Group and Moravel.

To protect its ability to pay the claims of the Bank Group and Moravel and close on the MN Sale, Yukos set up a Dutch Trust (the "Stichting") as a subsidiary of its Dutch subsidiary Yukos Finance B.V. and a parent to Yukos International which owned the MN Refinery interest. The Stichting insulated the MN Refinery from control by the Russian Tax Authority.

As Yukos proceeded to market the MN Refinery during 2005, the Bank Group obtained an English Court judgment and Moravel obtained a final arbitration award, both to help collect their claims. Based on these judgments, each of them obtained executory attachments in the Dutch courts against Yukos Finance B.V. so that any dividends from sale of the MN Refinery would have to be paid to them. Had the MN Sale been consummated, the Bank Group and Moravel would have been paid in full pursuant to these executory attachments.

C. The Involuntary Russian Bankruptcy Case – Rosneft's Complicity

During the earlier stages of the expropriation of Yukos assets, the highest officers of the Russian Government told the press that the Russian Government would not force Yukos into a Russian bankruptcy. After the Houston Bankruptcy Case was dismissed, there appeared to be a period of lessened overt pressure against Yukos in Russia. However, behind the scenes Rosneft moved to insert itself in these matters. In December 2005, Rosneft signed an agreement with the Bank Group providing that, if the Bank Group obtained recognition of its English Court judgment in Russia, then moved to put Yukos into bankruptcy in Russia, Rosneft would buy the Bank Group's claim. The Bank Group and Rosneft both acted in accordance with this contract. In March of 2006, the Bank Group filed an involuntary bankruptcy case against Yukos in Moscow and, shortly after the filing, Rosneft announced to the Russian Bankruptcy Court that the Bank Group's claims had been transferred to it. In these circumstances it could still be claimed that the Russian Government had not filed an involuntary bankruptcy proceeding against Yukos.

Immediately thereafter, Petitioner was appointed temporary administrator and sought and obtained an order from the Russian Bankruptcy Court requiring his consent to any sale or other disposition of assets greater than $1 million, by Yukos or any of its affiliates, including Yukos' international affiliates outside of Russia. The applicable Russian statute: (1) only requires such approvals for disposition of assets worth more than 5% of the debtor company (in Yukos' case 5% would be greater than $2 billion) and (2) only gives the Russian Court authority over the debtor (Yukos), not over its subsidiaries, certainly not over its subsidiaries outside of Russia.

D. The New York Bankruptcy Case – Chapter 15

On April 13, 2006, Petitioner filed a Chapter 15 case in New York seeking (1) recognition of the Russian Bankruptcy and (2) a temporary injunctive relief under Section 1519 to supplement the Russian Bankruptcy Freeze Order.

At the time the Chapter 15 case was filed, Yukos had no appreciable assets in the United States. Indeed, beyond seeking control over the MN Sale, the main reason for the filing in New York seems to have been to enjoin three named officers of Yukos and its affiliates who are United States citizens. When Yukos learned of the Chapter 15 case and the issuance of the Chapter 15 TRO, Yukos challenged (1) the propriety of recognizing the Russian bankruptcy proceedings, (2) the reach of the foreign proceeding and (3) the authority of Petitioner. Yukos also challenged the need for the specific relief granted as to the MN Sale, because Yukos (1) had conducted a commercially reasonable sale; (2) had obtained a good price and (3) was required under the pending Dutch proceedings to place the proceeds of the sale with a Dutch Court bailiff, to be handed out under applicable Dutch law.

Chapter 15 contemplates a fairly straightforward procedure - a "foreign representative" of a "foreign proceeding" initiates a case by filing with the U.S. Bankruptcy Court the documents identifying the foreign proceeding and indicating his or her authority. See, 11 U.S.C. § 1514 -17. The United States Court reviews the orders and, if the filed documents fulfill the fairly minimal requirements of Section 1515, grants recognition to the foreign proceeding "at the earliest possible time," subject to the public policy exception contained in Section 1506. 11 U.S.C. 1517.

After more than a month of negotiations, two meetings between Yukos and Petitioner in London, numerous hearings and a trial on May 25, 2006, the New York Bankruptcy Court declined to extend the Chapter 15 TRO (which expired by its own terms on May 25, 2006), and Yukos moved forward with the MN Sale. Even though the Chapter 15 TRO is no longer in place, the Chapter 15 case is still pending at the time of this writing.

III. Recognition Issues Raised in Yukos' Chapter 15 Case

The Yukos Chapter 15 case raised some still unanswered questions about the extent of review to be undertaken in a Chapter 15 case. Yukos, joined by its majority shareholder, argued against the grant of injunctive relief and recognition under Chapter 15 and the grant of injunctive relief on several grounds, which were ruled on by the New York Bankruptcy Court. Yukos raised the following arguments:

A. The U.S. Court should apply the public policy exception of Chapter 15 to deny recognition of the Russian Bankruptcy Case because it was simply an extension of the Russian Government's efforts to expropriate Yukos' assets without due process or fair compensation through improper use of its tax laws, violating important U.S. Constitutional policies.

Section 1506 of the Bankruptcy Code authorizes the court to deny relief under Chapter 15 if the relief requested would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. This exception to the somewhat routine recognition procedures of Chapter 15 was included as a necessary protection against instances in which a foreign proceeding is serving a policy fundamentally unacceptable to basic American values.

In support of its argument that recognition of the Russian involuntary bankruptcy against Yukos would be contrary to the public policy of the United States, Yukos filed with the New York Bankruptcy Court the Declaration of Jay Lawrence Westbrook, who: (1) served as co-head of the United States delegation to the UNCITRAL Working Group that developed the Model Law on Cross-Border Insolvency that in turn was adopted, with relatively few adaptations, as Chapter 15 of the Bankruptcy Code; (2) served as the United States Reporter to the Transnational

Insolvency Project of the American Law Institute and the principal drafter of its Principles of Transnational Insolvency, which was adopted by the ALI at its 2003 Annual Meeting; and (3) worked with the executive and legislative branches in discussions of the drafting of Chapter 15 as it was finally adopted. Professor Westbrook explained in his Declaration that:

> [Section 1506] reflects a long-standing exception to most treaty provisions around the world. In the Model Law negotiations it represented the *sine qua non* to acceptance of the law by the forty some nations who negotiated its terms at UNCITRAL. The provision is not, of course, meant to be invoked lightly or routinely, but it is available as a necessary protection against the rare but important instances in which a foreign proceeding is serving a policy fundamentally unacceptable to basic American values such as those set forth in the Fifth Amendment to the United States Constitution.[11]

Yukos argued that the Russian Government's continued expropriation of Yukos' assets without just compensation, as is prohibited by the Fifth Amendment, was precisely the kind of public policy violation that a United States Court should refuse to recognize or facilitate. Yukos urged the New York Bankruptcy Court not to participate in such a course of conduct by granting recognition in the Chapter 15 case citing, among other things, *In re Blackwell* 270 B.R. 814 (Bankr. W.D. Texas 2001), where a United States Bankruptcy Court, ruling on a request for ancillary relief under the former Section 304 of the Bankruptcy Code, observed that:

> There may, in fact, be courts in some countries to which we should not extend comity. Their proceedings may be so facially sham, or so patently corrupted, or so far removed from what humans on this planet might recognize as the administration of justice that to accord their rulings and proceedings recognition would only perpetrate an injustice. Unfortunately, history and current events have shown us that, indeed, such affronts to justice do exist on our planet, and no high-minded principles of international cooperation should ever overcome an American court's refusal to allow itself to be exploited by cooperating with such tribunals.

In re Blackwell 270 B.R. at 822-23 (emphasis added).

Given the litany of facts demonstrating the egregious course of conduct directed against Yukos by the Russian Tax Authority -- acts universally recognized as an expropriation of assets without due process or just compensation and with no meaningful judicial review or recourse, achieved through a selective, discriminatory and confiscatory misapplication of Russian tax law[12] -- the Chapter 15 case filed against Yukos in New York presented significant issues about

[11] Declaration of Jay Lawrence Westbrook, Docket No. 24, *In re Petition of Eduard K. Rebgun*; Case No. 06-B-10755, In the United States Bankruptcy Court for the Southern District of New York (emphasis added).

[12] These essential facts have been recognized as true by: (1) U.S. Bankruptcy Judge Letitia Clark in Houston, Texas; (2) U.S. District Judge Nancy Atlas in Houston, Texas; (3) the United States State Department; (3) the Counsel on

the public policy ramifications of recognition under Chapter 15. However, Yukos' public policy challenge to recognition was not reached and the parameters and extent of review of that issue remain open questions under Chapter 15.

B. Petitioner's requests for recognition under Chapter 15 and injunctive relief exceeded both his powers and the powers of the Russian Bankruptcy Court under Russian law.

The involuntary bankruptcy in Russia was filed solely against Yukos Oil Company, not its subsidiaries. Petitioner was appointed temporary administrator solely of Yukos Oil Company, not its subsidiaries. Yet the Chapter 15 TRO enjoined the activities of non-Russian subsidiaries of Yukos Oil Company several tiers removed from their parent company.

In opposition to recognition, Yukos submitted evidence that, under established Russian law, the Russian temporary administration proceeding (in which Petitioner was appointed) had jurisdiction or authority solely over Yukos Oil Company and not over subsidiaries or affiliates of Yukos Oil Company. A Russian bankruptcy court, therefore, could not issue any order binding on even a first-tier, wholly owned subsidiary of a Russian debtor company.

Yukos further presented evidence that Russian law makes no claim to extraterritorial jurisdiction. Thus, control of the disposition of the MN Refinery owned by Yukos' non-Russian affiliate, several tiers down Yukos' corporate organizational chart, was beyond the power of the Russian Court which appointed Petitioner. Thus, although the Russian bankruptcy court entered the Russian Bankruptcy Freeze Order, which purported to expand the reach of its jurisdiction, that order violated Russian law.

Yukos also argued that the New York Bankruptcy Court should look behind the face of the Russian Bankruptcy Court orders Petitioner presented purporting to vest him with authority as a "receiver" and determine that, under applicable Russian law, Petitioner did not qualify as a "foreign representative" for purposes of Chapter 15. Yukos submitted evidence that, under Russian law, Petitioner was merely a "temporary administrator or observer." Under Russian law (as written, if not as applied to Yukos) the management of a company placed into temporary administration remains in control of the business. Unlike a "receiver," as that term is understood in United States jurisprudence, Petitioner was not in control of the company; he could merely exercise those specific limited powers listed in Article 66 of the Russian Bankruptcy Law. Nothing in Russian Bankruptcy Law allows the Russian Court to broaden the powers of the temporary administrator other than the power given to the court in Article 66 to broaden the list of types of transactions <u>by Yukos Oil Company</u> that require approval of the temporary administrator. Thus, Petitioner had only limited authority in Russia over Yukos and had no jurisdiction or authority over subsidiaries or affiliates of Yukos Oil Company.

Foreign Relations; (4) the Council of the European Union; (5) the English Courts; and (6) the world financial press.

Yukos further presented evidence that, under Russian law, a temporary administrator does not have the power to bring a new case in any court in Russia or abroad. Petitioner was not authorized to take any legal action other than in the Russian Court that appointed him, and nothing in the Russian Bankruptcy Law gave him the power to bring or intervene in any kind of action in any other court or to act as a "foreign representative"[13] seeking recognition of a "foreign proceeding." An inquiry into the status of Petitioner as a "foreign representative," would, by itself, have been sufficient to deny recognition. Again, although the Russian bankruptcy court entered an order, which purported to expand the powers of Petitioner, that order violated Russian law.

While the general rule set forth in *Blackwell, supra* is that a United States Bankruptcy Court should not entertain collateral attacks on another court's ruling,[14] as noted above, that general rule is not without exception. However, because of the manner in which the Yukos Chapter 15 case proceeded, with the New York Bankruptcy Court having focused on the resolution of the Chapter 15 TRO issues relating to the MN Sale, the New York Bankruptcy Court never reached Yukos' arguments under Russian law against recognition.

In future Chapter 15 cases, when a United State Bankruptcy Court is asked to decide whether to grant recognition, the extent of the permissible review of the underlying nature of a foreign proceeding and the authority of the foreign representative remains an open issue. If considerations of public policy and comity are implicated, no ruling from the Yukos Chapter 15 case prohibits a United States Court from looking behind the four corners of an order from a "foreign proceeding" appointing a "foreign representative" to determine the propriety of recognition.

C. Recognition is the sine qua non for relief under Chapter 15 and injunctive relief should not be extended unless and until a court enters an order of recognition.

The Chapter 15 TRO was ostensibly granted, and later extended five times (for a total of 42 days), under Section 1519 of the Bankruptcy Code which provides solely for provisional relief pending recognition of a foreign proceeding under Section 1517 of the Bankruptcy Code. From the outset of the Chapter 15 case, Yukos argued that no aspect of the proposed MN Sale presented the need for urgent relief to protect the interests of creditors because the Dutch Courts were in control over the proceeds of that sale.

Yukos argued repeatedly that the decision of whether to grant recognition of a foreign proceeding is central to the statutory scheme of Chapter 15 and must be made at the earliest possible time as required by Section 1517(c). Under Chapter 15, unlike its predecessor, Section 304, recognition is the pre-requisite to cooperation with any foreign proceeding under that chapter. Thus, relief under Section 1519 was meant to be very short-term relief. These issues

[13] 11 U.S.C. § 101(24) defines a "foreign representative" as a duly selected trustee, administrator, or other representative of an estate in a foreign proceeding.
[14] *In re Blackwell*, 270 B.R. at 822

were not decided in the Yukos Chapter 15 case as the Court focused attention on the practical issue of the MN Sale, whether it was for a good price resulting from a good sale process, and whether the proceeds of sale would be dealt with properly. Petitioner's request for recognition was never scheduled for hearing. As a result, the question of the extent of relief that can be granted under Section 1519 before recognition remains open for future claims.

D. Relief under Section 1519 should be limited solely to actions related to assets located in the United States.

Yukos also argued that by issuing the Chapter 15 TRO, the New York Bankruptcy Court was prematurely attempting to assert worldwide jurisdiction not contemplated by Chapter 15. Even if the New York Bankruptcy Court had granted recognition to the Russian Bankruptcy Case (presumably a "foreign main proceeding" as defined in Section 1502), the relief available to Petitioner under Section 1520 after recognition, including an automatic stay and protections against transfer of debtor property, would have been limited to assets situated "within the territorial jurisdiction of the United States", which is defined as tangible property physically located in the U.S. and intangible property deemed located in the United States under applicable non-bankruptcy law. 11 U.S.C. § 1502(8).

Section 1521 authorizes additional "appropriate" relief following recognition, subject to the protections provided in Section 1522. Although this relief is not specifically limited to assets within the United States, such a limit is certainly its primary function, as illustrated by the language of Section 1521(a)(5).[15]

Further, Section 1511 outlines the manner in which a foreign representative <u>can</u> obtain access to a United States Bankruptcy Court's extra-territorial jurisdiction by commencing, after recognition, "(1) an involuntary case under Section 303; or (2) a voluntary case under Section 301 or 302, if the foreign proceeding is a foreign main proceeding." 11 U.S.C. § 1511(a). Section 1528 is even more specific regarding when a foreign representative can seek such extra-territorial jurisdiction. It provides:

> After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be <u>restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary</u> to implement cooperation and coordination under sections 1525, 1526, and 1527, <u>to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28,</u> to the extent that such other

[15] "Upon recognition of a foreign proceeding, whether main or non-main, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including-- . . .

> (5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;"

> assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

11 U.S.C. § 1528 (emphasis added). In the absence of recognition, these Bankruptcy Code provisions providing relief to the foreign representative are not operative.

Recognition of a foreign proceeding does not create a bankruptcy estate in the same manner as a filing under other chapters of the Bankruptcy Code. Recognition merely permits a court to provide assistance to a foreign representative; it does not, by itself, invoke the worldwide jurisdiction of the United States Bankruptcy Courts. Thus, any temporary relief granted pursuant to Section 1519 should not have extended beyond the territorial jurisdiction of the United States.

The Chapter 15 TRO granted and extended under Section 1519 purported to control, in the absence of a determination whether recognition should be granted, assets located in the Netherlands owned by a non-debtor, non-Russian affiliate of Yukos. While Yukos challenged this as beyond the Bankruptcy Court's power under Chapter 15, again, no decision was reached on the issue because no hearing was conducted on the question of recognition; rather, the New York Bankruptcy Court encouraged a negotiated resolution of the MS Sale issues. As a result, the permissible extent and duration of relief under Section 1519 remains an open question.

E. The Court, based on comity, should abstain from hearing the case pursuant to Section 305 of the Bankruptcy Code.

Yukos argued that the New York Bankruptcy Court should abstain from granting relief relating to the MN Sale because considerations of comity for the Russian Bankruptcy Case conflicted with a countervailing concern for comity vis-à-vis the Dutch courts, where several actions were pending regarding the MN Sale. Two days after filing the Chapter 15 case in New York, Petitioner sought to intervene in the pending Dutch court proceedings relating to the MN Sale by filing a pleading that mirrored, in some places word for word, the relief requested from the New York Bankruptcy Court. Yukos argued that the New York Bankruptcy Court should deny recognition, or at the very least refuse to provide assistance related to the Dutch assets, based on deference to and comity with the Dutch courts, and concern over the possibility of conflicting orders from the two courts because the subject matter, the relief requested, and the parties seeking relief were the same.

Section 305(a)(1) of the Bankruptcy Code provides that a court, "after notice and a hearing," may dismiss or suspend all proceedings in a case at any time if "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a).

Yukos asserted that the New York Bankruptcy Court should abstain because all parties involved, creditors and debtor alike, would benefit from dismissal of the Chapter 15 case under

Section 305(a)(1).[16] "Factors the courts have considered in determining whether the interests of creditors and the debtor would be 'better served' by dismissal or suspension of a proceeding include whether another forum is available and whether another proceeding has proceeded to the point that it would be costly and time-consuming to start afresh under the Bankruptcy Code." *In re Bd. of Dirs. of Multicanal S.A.*, 314 B.R. 486, 522 (Bankr. S.D.N.Y. 2004) (emphasis added). Also, where other proceedings are pending that will substantially affect the outcome of a bankruptcy the court is justified in abstaining from the case. *See, e.g., In re Duratech Indus., Inc.*, 241 B.R. 283, 287 (E.D.N.Y. 1999) (upholding the bankruptcy court's abstention because pending civil litigation was anything but "predictable" and could affect a successful reorganization). *See In re Schur Mgmt. Co.*, 323 B.R. 123, 129 (Bankr. S.D.N.Y. 2005) ("Where one of the likely local law outcomes would obviate the need for bankruptcy entirely, the presence of such unsettled non-bankruptcy issues is a factor in counseling dismissal of the case pursuant to 11 U.S.C. § 305(a)(1) as being in the best interests of creditors and the debtor. *In re Realty Trust Corp.*, 143 B.R. 920, 926-27 (D. N. Mariana Is. 1992)").

Yukos also noted that the Houston Bankruptcy Court had previously found that the United States Bankruptcy Courts were not the proper place to resolve the disputes between Yukos, the Russian Government and its affiliated entities; instead, she effectively abstained and dismissed Yukos' Chapter 11 case. Yukos asserted that, if it was previously correct for the United States Bankruptcy Courts to abstain from providing the protection of United States bankruptcy law to Yukos (its employees, its creditors, and its shareholders), then the New York Bankruptcy Court should not now seize control over the MN Sale which was proceeding in the Netherlands, under Dutch Law, concerning Dutch assets and was already under the supervision of the Dutch Courts.

IV. The Later Chapters

A. The Chapter 15 TRO Expires

As noted above, after a number of hearings, many of which evolved into chambers conferences, the New York Court declined to extend the Chapter 15 TRO, finding after an evidentiary hearing that Yukos had acted "honorably," had run a good sale process and obtained a good price and risked losing the sale of the MN Refinery.

Based on negotiations conducted in chambers with the Court (and independently), the parties reached agreement on a further order that was entered the next day on May 26, 2006, in which (1) Yukos International agreed to report to Petitioner concerning any future asset sales greater than $25 million, and (2) Petitioner agreed to "facilitate" Yukos proposal of its Outline of

[16] "Courts that have construed Section 305(a)(1) are in general agreement that abstention in a properly filed bankruptcy case is an extraordinary remedy, and that dismissal is appropriate under that provision only where the court finds that both "creditors and the debtor" would be "better served" by a dismissal." *In re Globo Comunicacoes E Participacoes S.A.*, 317 B.R. 235, 255 (S.D.N.Y. 2004) (citing *In re RAI Mktg. Servs., Inc.*, 20 B.R. 943, 945-46 (Bankr. D. Kan. 1982); *In re Martin-Trigona*, 35 B.R. 596, 598-99 (Bankr. S.D.N.Y. 1983); *In re Pine Lake Village Apartment Co.*, 16 B.R. 750, 753 (Bankr. S.D.N.Y. 1982)).

a Plan of Reorganization ("Plan Outline") to its creditors, and to "report" back to the U.S. Court concerning the Creditors Meeting at which it would be considered.[17]

B. Yukos Proposes a Reorganization Plan in Russia

Yukos provided its Plan Outline to Petitioner on June 1, 2006. The Plan Outline proposed mechanism by which Yukos could: (1) preserve and continue its core operations as a major oil and gas exploration, production, refining and marketing company in Russia; (2) address and pay in full all Allowed Claims of creditors; and (3) preserve equity for its shareholders. As with a Disclosure Statement, the Plan Outline contained substantial information concerning claims, asset values and cash flows. The Plan Outline asserted, based on the expert opinion of Alvarez & Marsal, that (1) Yukos had assets worth approximately $30 billion dollars, (2) would have under the Plan remaining core assets of approximately $20 billion and (3) an equity for its shareholders of approximately $15 billion.

Essentially, the Plan Outline provided for Yukos to dispose of non-core assets including (1) its multibillion stock interest in YNG, (2) its multibillion stock interest in Sibneft and (3) its approximately $1.5 billion of international assets to pay down over $10 billion of debt, leaving Yukos with a $20 billion core asset company, having oil production, refining and marketing assets.

C. The Creditors Meeting and the August 1, 2006 Moscow Court Hearing

The Temporary Administrator's Report to the July 20, 2006 Creditors Meeting made available in advance of that meeting estimated claims somewhat higher than Yukos assumed in its Plan Outline and asserted that values were substantially lower at approximately $18.76 billion, thus found insolvency, and recommended liquidation. Yukos contested this valuation through a statement made by its CEO to the Creditors Meeting that the valuation of $30 billion in Yukos' June 1, 2006 Plan Outline had undoubtedly increased since it was made, because (1) oil prices had risen to over $75 per barrel and (2) the recent Rosneft IPO had assumed a value of $82 billion for Rosneft (mainly based on its YNG asset), thus corroborating a high price for Yukos' remaining oil producing assets and substantially increasing the value of Yukos' remaining preferred stock interest in Rosneft above what Yukos had previously estimated.

At about this time, UBS Warburg published a valuation of Yukos at approximately $29 billion. According to a reputable news agency:

> UBS Warburg analysts . . . offer a following valuation of Yuko's assets: "Our evaluation puts Yukos at about $29 billion, including 9.7 percent stake in Rosneft ($7.7 billion) and 20 percent stake in Gazpromneft (former Sibneft, $4.2 billion)

[17] This May 26, 2006 Order also provided that the parties would encourage the Dutch Courts to establish a procedure in which the Examiner could file in the Dutch Courts claims against these Proceeds that had been filed against Yukos in Russia, with the Dutch Courts to decide first whether to give these claims comity, and, if not, leaving these claims to be reproved as necessary under Dutch law.

plus production assets, which produce 430,000 barrels a day ($10.7 billion) and refining assets with production volumes of 690,000 barrels a day ($5.6 billion)."

When creditors voted to adjourn the Creditors Meeting to July 25, 2006, Yukos consulted further with Alvarez & Marsal, and concluded that, because of the current high market for oil production and refinery assets, and the value established by the recent Rosneft IPO, Yukos' assets were indeed worth substantially more than $30 billion. As a result, Yukos presented to the July 25, 2006 Creditors Meeting a one-page Chart prepared by Alvarez & Marsal showing a current fair market valuation of Yukos' assets of approximately $37.7 billion. Based on this, Yukos reiterated (1) it was solvent, (2) should not be liquidated and (3) should be reorganized pursuant to its Plan Outline.

After hearing this presentation at the July 25, 2006 Creditors Meeting, the creditors, led by the Russian Tax Authority, voted by a substantial majority to make the following recommendations to the Russian Bankruptcy Court:

(1) To reject Yukos Plan of Reorganization;

(2) To reject appointing a Trustee to operate Yukos as a going concern;

(3) To liquidate Yukos; and

(4) To appoint the Russian Tax Authority to be the Representative of the Creditors Committee.

At a hearing held, on August 1, 2006, the Moscow Arbitrazh Court presiding over Yukos' case accepted the recommendations made at the Creditors Meeting and ordered that Yukos be liquidated. Its assets were mainly acquired by Rosneft.

V. Summary

In Yukos, Government actions caused an insolvency. The ownership of massive amounts of Russian oil was played out in three bankruptcy cases, two in the United States (one started by Yukos' owners and another started by officials aligned with the Russian government) and one in Russia (started by Western financial institutions at the behest of Rosneft owned by the Russian government).

The Yukos saga continues to this day. Ultimately, Rosneft sold itself to the public capital markets in a huge initial public offering generating over $70 million.

Mikhail Khordorkovsky remained in jail in Siberia until the eve of the Sochi Olympics.

Yukos' managers continued fighting using Yukos' international assets and won a judgment against the Russian government in the European Court of Human Rights for improper taking of YNG, and sought compensation from the Russian government.

Yukos' shareholders obtained an arbitral award against the Russian government for taking Yukos' major assets in a way harsher than necessary to obtain repayment of the tax claim, even assuming it was valid.

As the arbitral award was described by the shareholders' lawyers, important evidence of the Russian government's improper approach was (1) that it seized YNG's assets in an improper foreclosure sale where the assets were transferred to a shell company created overnight in a shopping center, financed by the Russian treasury; and (2) that it liquidated Yukos in the face of a viable reorganization plan that was presented by the company at the Russian creditors meeting. These facts occurred in connection with the two U.S. bankruptcy cases.

Yukos' shareholders offered proof of many billion dollars of damages based on this arbitral award. The Russian government has not paid this arbitral award; indeed, as of this date, the Russian government has obtained a court order stopping its enforcement. The struggle continues.

Conclusion

Yukos shows that powerful nations can take ownership of their oil and gas assets, generating insolvency and complicated international bankruptcy issues. The ultimate issue is how much the government will have to pay for what it takes, what forum will decide that issue, and how it will enforce its ruling.

Zack Clement

Zack A. Clement, PLLC
3753 Drummond St.
Houston Texas 77025
832 274 7629
zack.clement@icloud.com
www.zackclement.com

Fellow, American College of Bankruptcy
Member, International Insolvency Institute