

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-BAH

PETITIONERS' STATUS REPORT

In accordance with the Court's Order of November 20, 2020, Petitioners Hulley Enterprises Ltd., Yukos Universal Ltd., and Veteran Petroleum Ltd. (collectively, "HVY") submit this Status Report.¹

1. As the Court is aware, on February 18, 2020, The Hague Court of Appeal issued a judgment rejecting each of the Russian Federation's grounds for setting aside the Arbitral Awards. *See* Mem. Op. Granting Mtn. to Stay (Nov. 20, 2020), Dkt. 194 at 6. The Russian Federation subsequently initiated a cassation appeal (the "Cassation Appeal") to the Dutch Supreme Court, seeking to reverse the Hague Court of Appeal's decision. *Id.* The Cassation Appeal raised seven different grounds for reversing the Hague Court of Appeal. *Id.* at 6-7 & n.4 (listing them). On November 20, 2020, this Court entered an Order that stayed this action "until November 18, 2022, *or until resolution of proceedings in the Dutch Supreme Court* to set aside the arbitral awards at issue." Stay Order, Dkt. 193 at 1 (emphasis added).

¹ The Parties were unable to agree on a Joint Status Report due to their significant disagreements about the meaning of the Dutch Supreme Court's decision and its effect on this Court's Stay Order.

2. On November 5, 2021, the Dutch Supreme Court resolved the proceedings before it. An English translation of the Dutch Supreme Court’s judgment is attached hereto as **Exhibit 1**.² This decision means that this Court’s Stay Order has now expired of its own force because there has now been a “resolution of proceedings in the Dutch Supreme Court.” Stay Order, Dkt. 193, at 1.

3. The Dutch Supreme Court rejected *six* of the Russian Federation’s seven grounds for reversing the Court of Appeal, including all of the grounds on which the Russian Federation principally relied in this Court when seeking to stay this action. The below table summarizes these grounds and the Dutch Supreme Court’s holdings:

No.	Ground for Appeal	Decision of Dutch Supreme Court
2	“Is the Russian Federation bound to provisionally apply Article 26 [of the Energy Charter Treaty (“ECT”)] pursuant to Article 45 ECT?” Ex. 1, ¶ 5.2, p.14.	“[T]he complaints in ground 2 cannot lead to cassation.” Ex. 1, ¶ 5.2.21, p.25.
3	“Did HVY make an Investment and are they an Investor within the meaning of Articles 1 and 26 ECT?” Ex. 1, ¶ 5.3, p.25.	“[T]he complaints in ground 3 cannot lead to cassation.” Ex. 1, ¶ 5.3.16, p.32.
4	“Do the alleged illegal acts of HVY and Khodorkovsky et al. affect the eligibility of the arbitral awards for setting aside?” Ex. 1, ¶ 5.4, p.32.	“[T]he complaints in ground 4 cannot lead to cassation” Ex. 1, ¶ 5.4.13, p.37.
5	“Did the [A]rbitral [T]ribunal violate its mandate by not seeking advice from the relevant tax authorities (Article 21(5) ECT)?” Ex. 1, ¶ 5.5, p.37.	“[T]he complaints in ground 5 cannot lead to cassation.” Ex. 1, ¶ 5.5.9, p.40.
6	“Is the manner in which the [A]rbitral [T]ribunal’s assistant was involved in the creation of the arbitral awards, a ground for setting aside the arbitral awards?” Ex. 1, ¶ 5.6, p.40.	“The complaints in the ground cannot lead to cassation.” Ex. 1, ¶ 5.6.2, p.40.
7	“Do the [A]rbitral [T]ribunal’s decisions regarding Yukos’ alleged abuse of sham companies lack sound reasoning?” Ex. 1, ¶ 5.7, p.40-41.	“The complaints in the ground cannot lead to cassation.” Ex. 1, ¶ 5.7.2, p.41.

² Exhibit 1 is a preliminary and unofficial translation prepared by HVY’s Dutch counsel. HVY will endeavor to reach agreement with the Russian Federation on a jointly agreed translation for use in these proceedings.

4. The *sole* ground on which the Russian Federation prevailed was ground number one. This was an issue of Dutch civil procedure—specifically, whether the Russian Federation had procedurally defaulted its belated claims that HVY allegedly committed fraud during the arbitrations. The Hague Court of Appeal had held that this allegation was procedurally defaulted because the Russian Federation had failed to raise it in a separate “revocation” proceeding, under a different provision of the Dutch Civil Code. The Dutch Supreme Court reversed that decision:

No.	Ground for Appeal	Decision of Dutch Supreme Court
1	“Can [allegations of] fraud in the arbitration proceedings be raised only in [Dutch] revocation proceedings,” and not in Dutch <i>set-aside</i> proceedings? Ex. 1, ¶ 5.1, p.8.	In an appropriate case, Dutch law will permit such allegations (of fraud committed during the arbitration proceedings) to be made in <i>set-aside</i> proceedings. Ex. 1, ¶ 5.1.12, p.13. The Court of Appeal erred in holding that a <i>revocation</i> proceeding is the only procedure available to make such allegations. <i>Id.</i> ¶ 5.1.1(v), p.9 (summarizing Court of Appeal’s holding); ¶ 5.1.12, p.13 (reversing this procedural holding without “discuss[ing]” any other issue).

The Dutch Supreme Court did not address, or express any opinion on, the *merits* of the Russian Federation’s allegations of fraud during the arbitration or whether raising such allegations in the setting aside proceedings would be a violation of due process in this case. Ex. 1, ¶ 5.1.12, p.13 (declining to “discuss[ing]” any other issue besides the question of Dutch procedural law).

5. The Dutch Supreme Court then “refer[red] the case to the Amsterdam Court of Appeal” for “further examination and decision.” *Id.* ¶ 8, p.41. HVY’s Dutch counsel has advised HVY that this “further examination” will concern *only* the Russian Federation’s sole remaining ground for setting aside the Arbitral Awards, i.e., the allegations of purported fraud during the arbitration. All of the Russian Federation’s other grounds for setting aside, brought forward in the Dutch Supreme Court, have now been finally resolved in HVY’s favor. This is the result of the Dutch Supreme Court’s decision to reject the complaints of the Russian Federation, against the decision of the Hague Court of Appeal, regarding those other grounds. The Hague Court of

Appeal's decision on those other grounds has become final and can no longer be questioned or reconsidered by any Dutch court.

6. Attached hereto as **Exhibit 2** is a November 18, 2021 article, published in *Lexology*, summarizing the Dutch Supreme Court's judgment.³ The *Lexology* article is entirely consistent with HVY's summary above. It explains that "the Dutch Supreme Court rejected Russia's claims that it was not bound by the Energy Charter Treaty (ECT), thereby confirming the arbitral tribunal's jurisdiction." Ex. 2, at 2. It further explains that "[t]he Supreme Court further dismissed several other grounds for annulling the *Yukos* awards," but that it "accepted Russia's argument that the lower courts should have reviewed (the admissibility of) Russia's claims that there was sufficient evidence that the Yukos shareholders had committed fraud during the arbitration proceedings," and thus "referred the matter back to the Appeal Court of Amsterdam." *Id.*; *see also id.* at 4 ("While the Supreme Court judgment does not mean the end of the Yukos saga before the Dutch courts, the pressing issues on the applicability and interpretation of the ECT have been finally decided upon.").

7. On November 16, 2021, HVY initiated proceedings in the Amsterdam Court of Appeal, by summoning the Russian Federation to appear on January 4, 2022. HVY's initial submissions to the Amsterdam Court of Appeal are currently due on February 15, 2022.

8. On November 17, 2021, HVY filed a consent motion to dismiss its appeal of this Court's Stay Order. Consent Motion, D.C. Circuit No. 20-7113 (Nov. 17, 2021). Because the Stay Order has expired of its own force, *see supra* ¶ 2, that appeal is now moot.

³ The *Lexology* article is available online at: <https://www.lexology.com/commentary/arbitration-adr/netherlands/freshfields-bruckhaus-deringer-llp/yukos-supreme-court-confirms-tribunals-jurisdiction-but-orders-fraud-in-arbitration-allegations-to-be-investigated-by-lower-court>.

9. HVY is presently considering the appropriate next steps in this confirmation action. HVY intends to present its position to the Court promptly. In the meantime, HVY objects to any further stay of this action, and respectfully requests the opportunity to be heard before any further order of this Court.

Dated: November 22, 2021

Respectfully submitted,

/s/ Steven M. Shepard

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