

President's Message

The Gulf Petro Saga appears to finally have come to an end. To refresh your memory: In a Swiss arbitration between Gulf Petro, a Texas oil company and Nigeria's state-owned oil company ("NNPC"), the Arbitral Tribunal rendered a final award against Gulf Petro. The latter challenged the award in the Swiss Federal Supreme Court, but the Court upheld the Arbitral Tribunal's decision. Gulf Petro then challenged the award in the Texas Courts but those Courts dismissed the challenge for lack of subject matter jurisdiction. Gulf Petro and its principals then brought yet another action in the Texas Courts against NNPC and now also against the three arbitrators, this time under the Racketeer Influenced and Corrupt Organizations Act ("RICO") and Texas fraud laws, alleging that the three arbitrators had been bribed. The US District Court for the Eastern District of Texas dismissed the action, concluding that it lacked subject matter jurisdiction over the law suit, which it determined to be a collateral attack on a foreign arbitral award. Gulf Petro appealed the dismissal to the Fifth Circuit Court of Appeals. In the appeals proceedings, ASA for the first time in its history, together with the AAA, submitted an amicus curiae brief to the Appeals Court arguing that the correct way to pursue allegations of bribery against arbitrators sitting in a Swiss-based arbitration was by way of criminal proceedings against the arbitrators in Switzerland or their home country and, if the accusations were found to be true, by requesting a revision of the Swiss arbitral award. The US Court of Appeals for the Fifth Circuit has now, on January 7, 2008, dismissed Gulf Petro's appeal and confirmed the District Court's decision on two grounds: First, like the District Court, it found that the claims asserted by Gulf Petro were no more, in substance, than a collateral attack on the Arbitral Tribunal's final award. Second, it held that once it was established that the claims constituted a collateral attack on a foreign arbitral award, it was the New York Convention that governed the matter. That Convention barred the litigation of claims of the type asserted by Gulf Petro in all but the Courts of the primary jurisdiction, i.e. in casu Switzerland. The Fifth Circuit Court of Appeals' decision and its reasoning on what qualifies as a collateral attack on a foreign arbitral award and on the scope and effect of the New York Convention is of great relevance to international commercial arbitration and we therefore publish the decision in full in the Case Law Section of this Bulletin.

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Dr. Markus Wirth