

Ukrainians Hit Russia With Multimillion-Dollar Claims

By **Vidya Kauri**

Law360, New York (January 11, 2016, 9:52 PM ET) -- Hughes Hubbard & Reed LLP initiated five arbitration proceedings against Russia that range from approximately \$20 million to \$1 billion on behalf of Ukrainian businesses including Ukraine's largest bank, a real estate investment company, several petrol stations and a private airport, according to the firm and court documents released Monday.

The claims, brought under a 1998 bilateral investment treaty meant to encourage economic cooperation and expansion, are to recover for alleged losses incurred after Russian troops invaded Crimea in 2014 and shut down or nationalized Ukrainian businesses without paying for them, according to the investors' attorney John Townsend.

The claims were lodged at various times in the first half of 2015 in the Permanent Court of Arbitration in The Hague, an intergovernmental organization with approximately 115 member states.

The parties that launched the claims are the financial institution PJSC CB PrivatBank & Finance Co. Finilon LLC, or PrivatBank; PJSC Ukrnafta, which is both publicly and privately owned and is one of Ukraine's largest oil and gas companies; nearly a dozen private petrol stations; Aeroport Belbek LLC, which is near Sevastapol and is one of two airports in Crimea; and Everest Estate LLC, which is the lead plaintiff for about 20 to 25 companies that owned resort hotels, apartment buildings and other real estate parcels.

The airport and the real estate properties were nationalized by decree of the new government installed in Crimea shortly after Russian troops entered, Townsend said.

"PrivatBank had branches and cash machines all over Crimea," Townsend said. "When the Russians came in, they sealed off the peninsula, they stopped the flow of cash and then they just started grabbing the money and eventually took all the branches and shut down the whole PrivatBank operation in Crimea. Most of those branches are now operating as branches of a Russian state-owned bank."

Although two separate arbitration proceedings were filed for the private petrol stations and Ukrnafta, they make "the same claim that by April 2014, thugs organized by the Russian Federation seized the administrative office, which ran both sets of stations and ... took the stations, took the cash, took the petrol, kicked our people out," Townsend said.

According to Townsend and documents from the Permanent Court of Arbitration, Russia wrote a letter to the court in all five cases saying that the court had no authority to form an arbitral tribunal to settle

the claims and that Russia was not consenting to participate in arbitration proceedings.

But Townsend said the bilateral investment treaty permits the investors of one country whose property has been appropriated by the other country to launch private arbitration proceedings either under the rules governing the Stockholm Chamber of Commerce or the United Nations Commission on International Trade Law.

Arbitral panels were struck up through the course of 2015 under UNCITRAL rules, and briefing dates were scheduled. However, the briefing date in the Aeroport Belbek case went by on Sept. 30 without Russia filing a statement of defense.

Briefing dates for the other four cases are scheduled in February, April and May. As per UNCITRAL rules, the arbitration proceedings will go ahead even without Russia's participation, beginning with the tribunals examining if they have jurisdiction in the cases.

The claimants are represented by John M. Townsend, James H. Boykin, Vitaly Morozov, Marc-Olivier Langlois and Leon Ioannou of Hughes Hubbard & Reed LLP.

Russia has not appointed any representatives, according to the Permanent Court of Arbitration.

The cases are Aeroport Belbek LLC & Mr. Igor Kolomoisky v. The Russian Federation, case number 2015-07; PJSC CB PrivatBank & Finance Company Finilon LLC v. The Russian Federation, case number 2015-21; JSC Ukrnafta v. The Russian Federation, case number 2015-34; Stabil LLC et al. v. The Russian Federation, case number 2015-35; and Everest Estate LLC et al. v. The Russian Federation, case number 2015-36.

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