

# Appeal in Yukos \$186M Claim to Rosneft Fraught With Legal Nuances

By [The Moscow Times](#)

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Samaraneftegaz's offices on the Volga river in Samara. The firm is struggling to bat off claims of \$186 million. **Denis Grishkin**

A subsidiary of state-controlled oil giant Rosneft has appealed a U.S. court judgment ordering payment of \$186 million to Yukos Capital, according to court documents obtained by the RAPSİ legal news service.

Samaraneftegaz argued that the judgment ignored Russian law in granting recognition and enforcement of the arbitration award to the subsidiary of the now-defunct Yukos oil company once owned by Mikhail Khodorkovsky, who was released after 10 years in prison in December.

The dispute revolves around two July 2004 loan agreements, which provided for the arbitration of disputes in Russia and under Russian law, as well as November 2005 addenda to the agreements that provided for arbitration in New York's International Court

of Arbitration of the International Chamber of Commerce, or ICC under New York law, according to a recent order.

A supplemental judgment in early October, ordered Rosneft to pay \$186 million to Yukos Capital. On Jan. 9, the district court ordered Samaraneftgaz to turn over assets in order to satisfy the judgment, and to refrain from paying dividends, making loans, or providing other such payments to shareholders or corporate affiliates until either the judgment was satisfied or a bond posted pending appeal.

## **Appeal Strategy**

Samaraneftgaz raised several issues on appeal in a brief filed Friday with the U.S. Court of Appeals for the Second Circuit. It argued that the district court had found that the relevant factors weighed in favor of dismissal based on forum non conveniens, but had declined to dismiss on this basis.

Forum non conveniens is a legal doctrine that allows a court to decline jurisdiction if a case would be more properly litigated elsewhere.

The appeal claimed that the district court "abused its discretion," as it should have dismissed the case rather than retaining it.

It also argued that the district court erred in accepting jurisdiction over Samaraneftgaz based on the addenda to the arbitration claim, saying that the addenda were "void as a matter of Russian law."

It raised several points that would put the legality of the document at odds with Russian law before asserting that each such factor was "sufficient to render the addenda void under Russian law, which eliminates the basis for personal jurisdiction. In ruling to the contrary, the district court ignored or misapplied Russian law."

Samaraneftgaz then asserted that the district court erred by failing to issue estoppel to facts that had been found in related Russian proceedings. Collateral estoppel is a legal doctrine that bars a party from re-litigating issues that have already been dealt with.

The gas company also complained that it had not been properly notified of key stages during the course of the arbitration proceedings.

## **Policy and Rates**

It argued that enforcing the award would also violate U.S. public policy. The appellant asserts: "Yukos Capital's 'loans' to Samaraneftgaz were no credit extension at all — Yukos Capital merely cycled Samaraneftgaz's own funds back to it, solely to evade taxes and insulate Yukos Oil from liability."

The gas company notes that U.S. case law encourages the interest of the courts in aiding foreign countries with their tax investigations.

Samaraneftgaz also alleged that conversion of the award from Russian rubles into U.S. dollars was erroneous in and of itself, and that an improper exchange rate had been used that

resulted in the amount of the award being increased by 25 percent.

It said that the court had used the exchange rate current on the date of the arbitration award, rather than the one current on the date of the judgment.

Samaraneftegaz argued that the Jan. 9 order had been granted without addressing its concerns, although it had opposed Yukos' turnover motion. It explained, "Samaraneftegaz opposed that motion because using Russian assets as requested would expose Samaraneftegaz's employees to criminal liability in Russia and because the motion was contrary to principles of comity and the framework of the New York Convention."

Samaraneftegaz is Rosneft's second-largest oil and gas production unit. Yukos Capital is a Luxembourg-based subsidiary of the now defunct Yukos Oil Company.

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