

## Int'l Arbitration Group Of The Year: Sullivan & Cromwell

By **Caleb Symons**

*Law360 (February 13, 2023, 2:02 PM EST)* -- Sullivan & Cromwell LLP successfully defended pharmaceutical and biotechnology company Bayer from allegations that it withheld key financial data while negotiating a €7.4 billion (\$7.9 billion) sale of its crop science businesses to chemical manufacturer BASF, earning the firm a spot among Law360's 2022 International Arbitration Groups of the Year.

Dustin Guzior, co-head of Sullivan & Cromwell's intellectual property and technology litigation practice, led the defense of Bayer, helping earn a victory in an International Chamber of Commerce arbitration that prompted a nearly 5% rise in the German company's stock price.

The tribunal, last August, found no evidence to support BASF's multibillion-dollar case alleging Bayer had failed to disclose the continuing costs of its crop seeds assets before selling them to the chemicals outfit in two deals worth a combined €7.4 billion. Those transactions were part of Bayer's effort to get antitrust clearance for its roughly \$62 billion merger with Monsanto Co., with the German firm divesting its crop science businesses as it sought regulatory approval.

Guzior said Sullivan & Cromwell tried to approach the ICC arbitration as it would handle a court case, insisting on holding the proceedings live in Germany and even securing deposition-like interviews with key witnesses.

"That ended up being an important strategic decision," he said. "The tribunal was able to experience witness demeanor [and] the way that they answered questions in the room."

Predominantly a trial lawyer, Guzior said he often consulted Sullivan & Cromwell's international arbitration and global dispute resolution practice during the Bayer case.

That collaboration is typical at the firm, according to Andrew J. Finn, a partner and coordinator of the global disputes practice. The group — which is based in New York City but includes attorneys from all four Sullivan & Cromwell offices in the U.S. — takes a generalist approach, which Finn touted as "one of the things that I think differentiates us from a lot of our peers."

"A lot of disputes that we handle for our clients are not necessarily one-dimensional," he said, noting



that an arbitration case can quickly shift to litigation. "We've found that it can be tremendously helpful, and add value for our clients, to be ... comfortable in a lot of different forums."

In another high-profile arbitration, Sullivan & Cromwell helped the owner of a Mexican liquefied gas facility stop Gazprom and Shell from terminating their long-term contracts for storage and regasification services — agreements with a combined value of \$600 million.

Sullivan & Cromwell successfully defended its client, a subsidiary of energy infrastructure firm Sempra, from a \$1.3 billion case the energy giants had brought before an ICC tribunal. In their decision last April, arbitrators tossed those claims and sided with Energía Costa Azul that Gazprom and Shell cannot escape their contracts, which run through 2028.

The energy companies didn't immediately comply with that award, Finn said, so Sullivan & Cromwell attorneys quickly obtained attachment rulings for the Sempra subsidiary in New York City and the Netherlands.

"Our ability to ... quickly start up enforcement efforts is part of the benefit of being a generalist litigator," he said.

Sullivan & Cromwell also proved its acumen last year in swiftly resolving a dispute over the Kyrgyz government's move, in 2021, to seize one of the largest gold mines in Central Asia.

Representing Canadian firm Centerra Gold, which had operated the Kumtor mine, Sullivan & Cromwell initiated an investor-state arbitration before the United Nations Commission on International Trade Law while simultaneously engaging with Kyrgyzstan on settlement negotiations. Centerra dropped its claims last April, agreeing to hand over the mine in exchange for 26% of its shares — worth more than \$770 million — that were previously held by Kyrgyzstan's state-owned gold refiner.

"Rather than having a drawn-out, multiyear battle in arbitration and then figuring out when [we] could enforce an award, and how against a sovereign, which is always a challenging part of investor-state cases, we were able to help the client figure out a solution that made sense for them," Finn said.

Sullivan & Cromwell's international arbitration and global dispute resolution practice has seen a pair of substantial changes in recent years, as former coordinator Joseph E. Neuhaus moved into an of counsel role and Pedro José Izquierdo joined as a special counsel focusing on Latin America. Otherwise, though, Finn said the group has stayed very consistent — a trend he expects to continue.

"I don't really anticipate many significant changes going forward," he said. "We have an excellent group overall, and we find that we can tackle whatever issues are arising for our clients."

--Editing by Daniel King.