

## International Arbitration Group Of The Year: Cleary Gottlieb

By Kaitlyn Burton

*Law360 (January 18, 2019, 4:10 PM EST)* -- Cleary Gottlieb Steen & Hamilton LLP scored a settlement for Western Digital in a dispute with joint venture partner Toshiba Corp. over the Japanese technology giant's planned sale of its memory unit to a group led by Bain Capital, and aided Russian energy company Tatneft in its ongoing campaign to enforce a \$112 million arbitration award against Ukraine, landing the firm a spot among Law360's International Arbitration Practice Groups of the Year.

The Western Digital Corp. case illustrates much of the work that Cleary's international arbitration team does, because it "involved the intersection of litigation and arbitration," according to Jeffrey Rosenthal, a partner at the firm.

"All of our arbitration partners are extremely experienced in arbitration-related litigation," he noted, which he said came in handy during the Western Digital-Toshiba dispute.

Western Digital and its SanDisk unit had pushed back against Toshiba's plans to sell off Toshiba Memory Corp., arguing Toshiba hadn't fully resolved issues regarding the two memory companies' joint ventures.

Rosenthal said the firm was able to inform Western Digital of its judicial options, "and use its ability to seek injunctive relief in court to start off the arbitration with a big advantage."

Toshiba and Western Digital agreed in December 2017 to settle their differences over the sale of Toshiba Memory, ending their legal fight and clearing a key hurdle in what had been a hotly contested attempt to sell the memory business to the Boston-based private equity firm.

The technology companies will "strengthen and extend their relationship, and enhance the mutual commitment to their ongoing flash memory collaboration," instead of continuing to spar in the courtroom and across the negotiating table, per a joint statement at the time.

Firm partner Howard Zelbo said the case also shows the "close way in which we work with our corporate group, and bringing the expertise of our corporate group into the dispute practice."



"We are a lockstep firm in terms of compensation. One of the few left of our stature and size that are," he added. "That means I can have my corporate partner in on a case just by phone call and they will work with me hand-in-hand if they have a special expertise."

Cleary also helped another client, Tatneft, achieve success in 2018.

A D.C. federal judge in March declined to toss Tatneft's suit to enforce a \$112 million award it won following the forced takeover of Ukraine's largest refinery.

Tatneft is trying to collect the July 2014 award, plus interest — which the firm says now places it at around \$140 million — for the refinery takeover.

Ukraine had several arguments as to why the suit should be dismissed, including its contention that the arbitration exception in the Foreign Sovereign Immunities Act, which would ordinarily mean Ukraine would have to face the suit, doesn't apply here because Tatneft is a state-controlled entity.

U.S. District Judge Colleen Kollar-Kotelly rejected Ukraine's arguments related to its motion to dismiss, and declined to stay the action while an appeal in France plays out.

According to Cleary, this was a big step toward enforcing the award against Ukrainian commercial property in the U.S.

And it's part of a multijurisdictional enforcement effort also in London and Moscow.

Rosenthal also said the "cross-border nature" of the practice sets them apart.

With Tatneft, for example, the enforcement procedures have involved lawyers in the firm's New York, Paris, London and Washington offices, he said, adding, "We have this seamless ability to handle arbitration-related litigation and enforcement proceedings really around the globe."

Additionally, Cleary represented Agfa-Gevaert Group in knocking out an International Chamber of Commerce arbitration under German law alleging about €450 million (\$516 million) in damages concerning the sale of the company's consumer imaging division, per the firm.

That May win is also part of a larger accomplishment for the firm.

Cleary has defeated more than €1 billion (\$1.1 billion) in claims against Agfa-Gevaert over the past decade, Rosenthal noted.

"It's really been a very rewarding series of victories on behalf of Agfa," he said.

The firm has more than 60 disputes partners worldwide, with offices in New York, D.C., London, Paris, Frankfurt, Milan, Rome and Brussels.

Cleary has made an effort to develop its Latin American arbitration practice over the past few years, firm partner Ari MacKinnon said. He pointed to Cleary's representation of Vitro Flat Glass, a Mexican glass company, as part of that push.

"We are really focused on continuing to develop our [Latin American] arbitration practice, which includes arbitrations here in the U.S. ... but also arbitrations seated in Latin America," he said.

Cleary was also recognized as an International Arbitration Group of the Year in 2016.

--Additional reporting by Benjamin Horney, Matthew Guarnaccia and Caroline Simson. Editing by Marygrace Murphy.