



School of International Arbitration

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International Arbitration Case Law

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J&P AVAX SA V. TECNIMONT SPA (PARIS COURT OF APPEALS) DECISION

Case Report by Georgios Soumavleris**
Edited by Ignacio Torterola***

A Decision rendered on March 12, 2009, under the French Code of Civil Procedure.

Claimant's counsel: DUBOSQ-PELLERIN Professional Partnership, assisted by Mr. Philippe PINSOLLE, Mr. Fernando MATILLA-SERRANO, SHEARMAN & STERLING LLP

Defendant's Counsel: FISSELIER-CHILOUX-BOULAY Professional Partnership, assisted by Mr. Louis Christophe DELANOY, BREDIN PRAT LLP

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Digest

1. Facts of the Case

J&P Avax SA (“Avax”), a Greek company, and Tecnimont S.p.A. (“Tecnimont”), an Italian company, concluded a subcontracting agreement for the construction of a propylene plant in Thessaloniki, Greece. As a result of a dispute between the two parties, Tecnimont invoked the arbitration clause of the said agreement, which provided for ICC arbitration in Paris. Tecnimont appointed Ms. Dimolitsa and Avax appointed Mr. Verveniotis (who was subsequently replaced by Mr. Kaissis), as arbitrators. The two arbitrators appointed Mr. Jarvin (who was employed by the international law firm “Jones Day LLP” in Paris) as President of the Tribunal. On October 30, 2002, Mr. Jarvin filed a declaration of independence. On July 16, 2007, Avax wrote to the President of the Tribunal asking for information regarding a potential conflict arising out of Jones Day LLP’s business relations with Tecnimont. Following Mr. Jarvin’s clarifications, Avax filed on September 14, 2007 a petition with the ICC Court of Arbitration challenging Mr. Jarvin, which was finally dismissed because of being time barred. Avax then reserved its rights and continued with the arbitration proceedings, while seeking additional information with respect to Mr. Jarvin’s ties with Tecnimont and its mother company and its subsidiaries.

The Tribunal rendered a partial award on December 10, 2007. Avax filed a claim to set aside the award with the Paris Court of Appeal on grounds of unlawful composition of the tribunal pursuant to the French Code of Civil Procedure.

2. Legal Issues Discussed in the Decision

(a) Admissibility

The Paris Court of Appeals decided that Avax’s petition to set aside the award was admissible. Avax became fully aware of Jones Day LLP’s ties with Tecnimont and its mother company and subsidiaries in its correspondence with Mr. Jarvin during the period of October-March 2008. Avax was not aware of these ties before the issue of the partial award, and given that it had not waived its right to challenge the independence of Mr. Jarvin, Avax was entitled to pursue the setting aside of the award on the ground of an unlawful composition of the tribunal.¹

¹ Decision of the Paris Court of Appeals, p. 4.

(b) Composition of the Tribunal

The Paris Court of Appeals concluded that the President of the Tribunal had a conflict of interest arising out of the business relationship between the President's international law firm and Tecnimont. The Court recalled that arbitrators are obliged to disclose to the parties any circumstance that may give rise to reasonable doubt regarding their impartiality and independence.² Having set out all undisclosed ties that Jones Day LLP was proved to have with Tecnimont (and its mother company and subsidiaries) from 2002 until 2007, the Court held that because Mr. Jarvin had a conflict of interest involving one of the parties, he was not independent, and, consequently, the Tribunal was unlawfully composed.

3. Decision

The Court set aside the partial award and ordered Tecnimont to pay Avax the amount of €70,000 in accordance with Article 700 of the Code of Civil Procedure, in addition to Avax's attorneys' fees.

² *Id.*, p. 3.