

Settlement Talks Launched in \$22.5 Billion Russian RICO Case Against Bank of New York

By David Bario

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Any case that brings together an airline disaster plaintiffs' lawyer from Miami, a former U.S. attorney general, Alan Dershowitz, the author of the RICO act, and Jonathan Schiller of Boies, Schiller & Flexner is bound to be a doozy. And indeed, the \$22.5 billion suit filed two years ago in Moscow's Arbitrazh Court by Russia's Federal Customs Service against the Bank of New York Mellon has not disappointed. (We've previously covered the case here <http://amlawdaily.typepad.com/amlawdaily/2008/06/from-russia-wit.html> and here <http://www.law.com/jsp/tal/digestTAL.jsp?id=1196279889483>.) But like all good things, the so-called "Russian RICO" case must come to an end, and with news Wednesday that the Russian agency has proposed a meeting with the bank to discuss a possible settlement <http://online.wsj.com/article/SB123613366454525533.html>, it appears that the end is near.

Dow Jones cited a Russian news source in reporting that the Customs Service, under order to settle the case from Prime Minister Vladimir Putin, might be willing to accept as little as \$800 million http://money.cnn.com/news/newsfeeds/articles/djf500/200903031330DOWJONESDJONLINE000645_FORTUNE5.htm.

Miami plaintiffs lawyer Steven Marks of Podhurst Orseck brought the suit, which alleged that a BoNY vice president illegally transferred \$7 billion out of Russia more than a decade ago, after the bank spurned his initial offer to resolve the case for \$600 million. Marks took the novel approach of filing in Russian courts but citing U.S. RICO laws. When the Russian court ordered hearings on the applicability of RICO in Russian civil jurisprudence, Marks was able to wrangle RICO drafter G. Robert Blakey and Harvard's Dershowitz to testify on the Customs Service's behalf.

The Bank of New York called on Schiller, who brought his own big guns to the Russian hearings: former U.S. Attorney General Richard Thornburgh and New York litigator Greg Joseph.

To find out how serious settlement talks are, we called Marks, who's in Russia preparing for the March 10 resumption of RICO hearings. Marks told us he's expecting the Russian court to issue final judgment on the RICO applicability soon, and suggested that the imminent ruling may be prompting settlement talks. "For the first time, the banks seems to be expressing interest in resolving the case," he said.

When we talked to Schiller, he downplayed the importance of the Russian RICO ruling. "We are confident that if any bogus judgment were to emerge from this court it would not be enforceable in any country in which the bank has material assets," he said. But Schiller did tell us that it's "a significant development" that the Russian Customs agency--and not Marks--had written to the bank in hopes of resolving the case.

Russia, with plenty of bank headaches at home, may feel like it doesn't need more in New York.