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# Hughes Hubbard & Reed

## Firm Helps Client Avoid Enforcement of Arbitration Award Set Aside in China

### News & Events

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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**May 6, 2022** - Last week, Judge Dabney L. Friedrich of the U.S. District Court for the District of Columbia ruled in favor of HHR client Sinopec International Petroleum Exploration and Production Company, which is part-owned by Chinese state-owned oil and gas company Sinopec, allowing it to avoid paying a \$21 million arbitration award in favor of British Virgin Islands (BVI)-based company Uni-Top that had been set aside by the Chinese courts.

Judge Friedrich ruled that Uni-Top, which is registered in the BVI, had not been able to show that the D.C. District Court was the proper venue for the case it had brought against SIPC. Although one of Sinopec's shareholders, Sinopec Group, did business in Washington, Uni-Top had not convinced the court that SIPC was an agency or instrumentality of the Chinese government, nor had it established that SIPC did business in D.C.

The dispute stems from a 2005 agency agreement in which Uni-Top agreed to help SIPC buy \$4.18 billion of shares in Canadian oil and gas company PetroKazakhstan. Uni-Top initiated two arbitrations before the China International Economic and Trade Arbitration Commission (CIETAC) to recover the commission it argued was due from SIPC. The first case was dismissed in 2013, as the tribunal held that the commission was payable only after the PetroKazakhstan shares were transferred to SIPC.

In 2015, a second tribunal ordered SIPC to pay more than \$21 million plus costs, holding that the Chinese state entities had deliberately frustrated the satisfaction of the condition precedent by not taking any steps to conclude the sale of the acquisition. However, that award was set aside by the courts in Beijing, the place of arbitration, and the set-aside was confirmed by the Supreme People's Court.

Uni-Top, represented by a team of arbitration heavyweights from Wilmer Hale, applied to the DC court in 2020 to enforce the second award, invoking the New York Convention and the U.S. Foreign Sovereign Immunities Act (FSIA), which allows actions against foreign states to be brought in D.C. Hughes Hubbard, teaming up to represent SIPC with Chinese-based King & Wood Mallesons, moved to dismiss the action for lack of jurisdiction, improper venue, and under

the New York Convention, which gives courts at the place of arbitration (in this case, Beijing) the power to set aside awards.

In a January 2022 opinion, Judge Friedrich rejected Uni-Top's argument that SIPC could be considered a "political subdivision" of the Chinese state for the purposes of the FSIA, and ordered further briefing on whether venue was proper. Last week, she held that the court would be an improper venue for the action even if SIPC were classified as an "agency or instrumentality" of China under the FSIA.

Judge Friedrich said that she could dismiss the case without granting Uni-Top's motion for jurisdictional discovery in support of its argument that SIPC is an "agency or instrumentality" of China.

The victory was covered by [Law360](#) and [Global Arbitration Review](#).

John Townsend and James Boykin led the HHR team with assistance from Shayda Vance and Carter Rosekrans.

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**John M. Townsend**



**James H. Boykin**



**Shayda Vance**



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