

Translated from:



URUGUAY'S DEFENDER

Uruguay re-hires law firm to defend itself against Philip Morris and includes an Uruguayan attorney on the team. An NGO headquartered in Washington is to contribute half a million dollars so the Government will not be alone in the battle/ doing battle single-handedly.

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From a far-away desk in Washington, the attorney whom *The American Lawyer* magazine terms as “Mr. Global Court-of-law” **studies/examines/analyzes** Uruguay. For the second time around, Paul Reichler, 1973 Harvard graduate, was appointed by the government to legally represent it before an international court-of-law. This time around it will be against Philip Morris, which filed a claim in February, 2010 against the State for violating a bilateral investment treaty between Switzerland (the company’s headquarters) and Uruguay. A case which the government tried to avoid/dodge because it would cost the State several thousands of U.S. Dollars (millions in the event it loses).

“Uruguay has a very strong case and I am proud to once again be representing the country,” says Reichler, excusing himself for not being able to provide more details. “It would be inappropriate to publicly comment on a case that is pending,” he explained via e-mail, from his Foley Hoag office, a law firm head-quartered in Boston and Washington, DC.

He knows quite well which safeguards are required by these kinds of cases. In 1984 he represented Nicaragua in a claim which the Central American country filed against the United States for supporting the so-called “*contras*”, paramilitary forces organized to oust/overthrow the Sandinista government. Reichler was 36 years old; two years later, he won the case.

This was not the only case that the **brilliant/star** attorney **fought out/battled** at the International Court of Justice in The Hague. In 1998 he represented Uganda when the Republic of Congo accused the country of **involvement in/intervening** in its civil war and **occupation in/of occupying** its territory. In 2007 he once again represented Nicaragua (for the fourth time, now as recurring legal adviser for the Sandinistas) in a boundary dispute filed against Costa Rica **which is still pending;/ the case is still pending**. Since 2009 he has been representing Georgia in a case against Russian ethnic cleansing practice attempts in its occupied zones in the aftermath of the 2008 invasion. “Jokingly, Reichler states that if you want to practice international law in

Washington, you can either work for him or for the Legal Advisory Office (whose client is the U.S.

Department of State); and **he is the one who has the more interesting clients/ his clients are the more interesting ones.** According to *The American Lawyer*, January, 2009, the description of the legal realm is only a minor exaggeration.

In Uruguay, he is certainly remembered for other things. Reichler led the team involved in **defending Uruguay/in the Uruguayan defense** in the claim filed by Argentina with The Hague for alleged contamination of the Botnia cellulose plant (currently known as UPM). Seven more Foley Hoag attorneys worked with him, including Firm partners and associates.

“Our first contact was with Carlos Gianelli, the Uruguayan ambassador in Washington,. He was the one who coordinated subsequent meetings in Montevideo,” Reichler recollected. Reinaldo Gargano, former Foreign Affairs Minister, José Luis Cancela, its General Director and Gonzalo Fernández, former Secretary with the President’s Office, participated in the meetings. “After the meetings in Montevideo took place, we were informed that we had been chosen for the case,” the attorney added.

Four years of intense work **followed/ensued/transpired** after the decision. The team also consulted three **important/reowned** international attorneys, **unaffiliated with/not related to** the Firm (Foley Hoag has a staff of 230 attorneys, 15 of whom specialize in/committed/devoted to international arbitration work).

Team participation included an attorney with local roots. Analía González, a 1999 graduate of the Universidad de la República, could not resist the temptation to defend her native land in international courts of law. She was, by this time, in Washington DC studying towards her Masters degree at the George Washington University Law School. “Through El País, I learned in 2006, that Uruguay had chosen the law firm Foley Hoag. Since this was a case of the utmost importance to my country and **knowing of/aware of** the firm’s prestige, I contacted Paul Reichler,” she recounted in an e-mail forwarded to this supplement.

“It was an enriching professional experience **to be able/in a position** to support the best international law specialists in the world in their **discourses/speeches** before 15 judges in The Hague. It was exciting to view the drive, grit and total and absolute commitment displayed by the professionals and technical staff in the team,” she remembered.

González, as well as an attorney from Venezuela, are today the two Latin American female attorneys part of the team working on the Philip Morris case.

“It was a special honor for me to work for Uruguay in this case,” reminisced Reichler on the litigation against Argentina. “The most important issue was to **see/prove** whether Botnia was contaminating or not the Uruguay River. The Court ruled, by overwhelming majority, in favor of Uruguay. It also found that Uruguay had fulfilled its obligation of **consulting with/to consult** with Argentina before **embarking on the plant’s construction/building** the plant. And, despite the judgment providing that this **notice/warning** had not been **given/made** in accordance with the Uruguay River Statute, this was treated as a technical violation.”

International Support. Uruguay is not alone in this new legal **battle/dispute**. In addition to receiving international organizations’ support, the NGO Campaign for Tobacco Free Kids has offered advice on health issues and **financing/funding** which could total half a million dollars.

My **belief/opinion** is that they have a very strong case. International law is clear in that Uruguay is entitled to **impose/enforce** regulations to reduce tobacco **use/consumption/smoking**, and that the actions taken by Uruguay (in this regard) are within the government’s power,” remarked Matthew Myers from his Washington office. He is the President of Campaign for Tobacco Free Kids, which has been working for 15 years promoting tobacco control policies in the United States and around the world.

“We have offered financial assistance to Uruguay so it will not be alone in **defending itself/single-handedly defending itself**,” added Myers. In the next few weeks, the NGO along with the government will **agree on/define** the amount which will be allocated; a donation of 500,000 is being considered.

“We have also spoken with some of the worlds’ leading tobacco experts in Canada, Australia, Ireland, India who have offered their assistance should it be necessary.” Their contacts have already **proven successful/had a positive effect**. Michael Bloomberg, New York’s mayor, has shown his support evidenced through the Bloomberg Philanthropies Foundation, whose program against tobacco (T.C.: *The Bloomberg Initiative to Reduce Tobacco Use*) is estimated at 375 million dollars. The World Health Organization, as well as the Pan American Health Organization, have both publicly voiced their support for Uruguay in this international **claim/dispute**.

This is not the first time that a country has **challenged/confronted/finds itself in a dispute with** a tobacco company. These multi-national businesses have **prompted/incited/instigated**

Indonesia to **sue/file a claim against** the United States, which as a result of the Family Smoking Prevention and Tobacco Control Act, banned the import of clove-flavored cigarettes produced in the Asian country. The **claim/dispute** is filed with the WHO's [sic: WTO] Dispute Settlement Body. Canada was threatened with being presented with similar **claims/disputes/lawsuits**.

Even Norway must now defend itself against a tobacco company. The country, second world-wide in restricting smoking/tobacco use in public places, has been unable to escape Philip Morris. Following the example of others such as Ireland and Iceland, Norway banned cigarettes from being displayed in store windows to reduce the impulsive **use of cigarettes/ smoking**. Philip Morris alleges that this measure has not shown any effective impact in the **use of cigarettes/smoking**.

“What we are seeing is a pattern involving the use of trade treaties to **warn/threaten/intimidate** countries and **diminish/reduce** a sovereign nation's decision-making power. We believe that Philip Morris filed a claim against Uruguay because it thought it could intimidate it by doing so,” was Myer's opinion. There are hundreds of bilateral treaties in the world on which tobacco companies' legal claims could potentially be based.

And they are certainly intimidating. It is estimated that the **lawsuit/claim** filed by Uruguay could take between three and four years. The government in an effort to be spared such time, announced that it would **back-track on/revert** some of the **regulations enacted/measures taken** by former President, Tabaré Vázquez. The September announcement regarding changes in tobacco legislation sought to open up negotiations with Philip Morris though this effort was **unsuccessful/to no avail**.

Next December 3rd., representatives from the Uruguayan Chancery will meet with Foley Hoag to continue analyzing strategy. Uruguay and Philip Morris have already designated their arbiters before the World Bank's International Centre for Settlement of Investment Disputes (ICSID). Philip Morris is represented by the Swiss firm Lalive, though *Qué Pasa* was able to confirm that Guyer y Regules, the Uruguayan firm is also **handling/ involved** in the case. The firm chose not to disclose in detail what its role will be.

The lawsuit is **slated/du**e to begin in March. Hundreds of thousands of dollars alone will be spent to cover attorney fees. Uruguay is preparing itself to avoid making an **unsound investment of funds/bad investment of funds**.

Philip Morris is suing Uruguay for **2 billion U.S. Dollars/is seeking 2 billion U.S. Dollars** from Uruguay, according to several press versions.

The **process/lawsuit** due to begin in March before the World Bank could take as long as **three or four years**.

The NGO Campaign for Tobacco Free Kids would contribute **US\$ 500,000 worth in legal advice/to cover legal advice** to Uruguay

Measures under the Magnifying Glass/Scrutiny

The tobacco company claims it was **impacted/affected** by the resolution providing a single presentation of cigarettes per brand name and by new warning images occupying 80% of cigarette package space.