

International Arbitration MVP: Foley Hoag's Paul Reichler

By Jack Newsham

Law360, New York (December 13, 2016, 11:49 AM EST) -- Governments have long turned to Foley Hoag LLP's Paul Reichler for help with international legal disputes, but his recent arbitration wins for Uruguay in a tobacco regulation fight with Philip Morris International Inc. and the Philippines in its maritime rights row with China got the world's attention and earned him a spot on Law360's list of international arbitration MVPs.

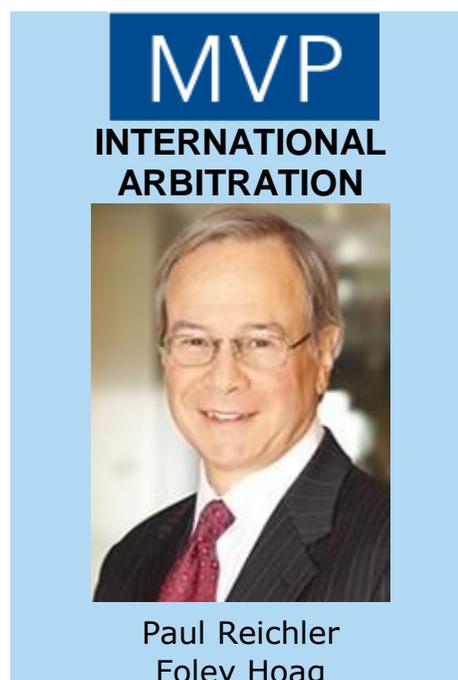
Reichler has been known for decades as a top practitioner of public international law, representing sovereign states in their disputes with other countries. He made a name for himself representing Nicaragua in the 1980s when it sued the U.S. in the International Court of Justice for supporting the right-wing Contra rebels and won a condemnation of American policies there.

His victories on behalf of Uruguay and the Philippines — delivered four days apart in July — thrust Reichler's cases into the headlines again. Public health groups around the world hailed Uruguay's triumph over Philip Morris's challenge to its anti-smoking rules, and the Philippines' win against China in an arbitration under the U.N. Convention on the Law of the Sea has drawn the same kind of David-versus-Goliath comparisons that his work for Nicaragua did in the 1980s.

"They're all once-in-a-lifetime cases, and I've had three of them," Reichler said.

The Philippines decision concluded that China's claims to dominion over the whole South China Sea have no legal weight and blasted China for occupying several rocks and using its coast guard to keep Filipino fishermen away from their historic waters near the Scarborough Shoal, and it won praise from the U.S. and several of its allies. But China boycotted the proceedings and insists that the award has no legal weight.

China has largely ignored the tribunal's conclusions and insisted that its dispute with the Philippines be settled through bilateral negotiations. Even Rodrigo Duterte, the Philippines' new president, has not



been eager to play up the award, calling it a mere “piece of paper” even while he has vowed not to roll over for Beijing. But Reichler said that doesn’t mean the arbitration failed. It gave the country a new tool in its negotiating repertoire, he said.

“The case was a total success, from the standpoint of the Philippines, on every single issue that mattered. ...The next phase is back into diplomacy,” he said. “In that context, it would be counterproductive for the government of the Philippines to adopt a hostile or an antagonistic attitude toward China.”

The win for Uruguay has also had a global impact, and sparked a broader discussion about countries’ right to regulate. The decision in that case, which came months after Australia defended its regulations in a similar arbitration, was cited by New Zealand legislators when they decided to beef up their country’s anti-smoking laws.

Reichler said Philip Morris’s claims turned the spotlight on elements of investor-state arbitration that are unfair to states. He said arbitrators and the institutions that appoint them have an inherent bias in favor of investors because their services won’t be in demand if the flow of claims dries up, and a “fairer system” — like the investment dispute courts in Canada’s new trade treaty with the European Union — is needed.

“It would be a mistake to develop a false sense of confidence because of that favorable arbitral award,” he said. “What we’ve seen is an encroachment of so-called investment protection into areas that should be the prerogative of states.”

Currently, Reichler is working on more than a dozen cases, largely maritime disputes. His clients include Somalia, Ghana and Nicaragua, which are engaged in disputes with neighbors under UNCLOS, the same global sea treaty that governed the Philippines v. China arbitration. He also represents Uruguay, Mauritius and two energy companies owned by the Bangladeshi government in investor-state arbitration cases pending with World Bank tribunals.

— Editing by Ben Guilfooy.