

International Arbitration Group Of The Year: King & Spalding

By Joyce Hanson

Law360 (December 15, 2020, 9:56 PM EST) -- King & Spalding LLP's international arbitration practice is known not only for winning high-value awards for clients, such as a \$4 billion-plus victory for Shell and Chevron in a dispute against the Philippines, but for leading multiple arbitrations in disputes brought under the Energy Charter Treaty, landing it among Law360's International Arbitration Groups of the Year.

The growing global practice is composed of about 120 full-time arbitration attorneys working out of 18 offices around the world on proceedings that involve more than 140 countries, according to King & Spalding. The firm said it's handling 170 pending arbitrations valued at approximately \$160 billion.

Also tapped as a Law360 group of the year in 2018, King & Spalding's international arbitration practice has made new hires during the COVID-19 pandemic, adding on seasoned construction and engineering lawyer Steve O'Neal and a large number of partners from Boies Schiller Flexner LLP, according to practice co-head and management committee member Edward Kehoe, who credits the firm's reputation for collaboration and collegiality.

"We really do work seamlessly across the different offices with each other," said Kehoe, who is based in New York. "Because our cases are so big, we normally don't have just one senior partner on a case. Oftentimes, we'll have two or three, so we're not competitive within the law firm. Quite the opposite. We realize that we're stronger when we all work together."

Senior treaty arbitration practitioner Ken Fleuriot, based in both Paris and Washington, D.C., said that King & Spalding's collaborative culture is a big selling point for the firm in terms of recruiting.

"I'm probably involved in nearly 30 of our group's cases. Probably in at least a third of my cases, there are either four or five offices involved," Fleuriot said. "We really do try to staff our cases with the best teams in multiple offices. It's exciting for the associates to work with others in different parts of the world. Even the most senior partners we recruit like the fact that they're going to be able to staff their cases with people with the right native language experience and the right civil or common law experience."



King & Spalding is now handling 20 high-profile arbitrations under the energy industry's Energy Charter Treaty investment agreement, with all of the cases being brought in Europe's renewable energy sector by European Union claimants against another EU state, according to Fleuriet. He added that his firm is the most-appointed law firm for investment claims under the ECT.

"The reason the cases are so talked about in the media is that they all involve what is known colloquially as 'the intra-EU issue.' It's essentially the question of whether a claimant or an investor in one EU country is entitled to bring an arbitration against a different EU state," Fleuriet said. "For more than a decade, the European Commission has been trying to throw up roadblocks to prevent this type of arbitration because they want everything to be handled in the EU courts. They don't want international arbitration to exist outside of the EU courts."

King & Spalding client Cavalum SGPS SA, a renewable energy investor, won a tribunal's favorable award in August 2020 against Spain under the ECT in a dispute involving the legal framework for encouraging renewable electricity generation, according to Fleuriet. Notably, he said, the tribunal unanimously rejected Spain's intra-EU jurisdictional objection.

"In this particular case, as well as a number of ECT cases, we have defeated Spain's intra-EU jurisdictional objection, and we have defeated also the amicus submissions filed by the EC, essentially trying to argue that under EU law, you cannot have an arbitration between a national of one EU member state and another EU member state," Fleuriet said.

While achieving significant wins on the proper interpretation of treaties and other new legal issues, King & Spalding has also simply, or not so simply, won large monetary awards for its international arbitration clients.

In one of the highest-value arbitrations in Philippine history, King & Spalding represented oil majors Shell and Chevron in their arbitration against the Republic of the Philippines over an income tax assumption mechanism related to profits from an offshore gas field that the state alleged was impermissible under a petroleum services contract.

But in December 2019, an International Chamber of Commerce tribunal found that the companies weren't required to reimburse the Philippines for \$4 billion in unpaid taxes and rendered a final award granting the law firm's clients further relief in addition to the earlier \$4 billion award, according to King & Spalding.

"We have 120 lawyers who do nothing but full-time international arbitration across the globe," Kehoe said. "We're not growing just for growth's sake. It has to be profitable growth. We've been very successful in doing that with very high-level lawyers. We have a very good track record of winning cases, which clients like to see. Not to be crass about it, but clients like to win. It's better to win than to lose."

--Editing by Gemma Horowitz.