

Construction Group Of The Year: King & Spalding

By Nathan Hale

Law360 (January 27, 2023, 2:02 PM EST) -- With King & Spalding LLP's global practice handling half a trillion dollars in construction contracts, including advising Occidental Petroleum on its plans to create the world's first commercial-scale direct air capture project, and also untangling litigation for similarly complex deals, the firm earned a spot as one of Law360's 2022 Construction Groups of the Year.

Partner Scott Greer, who leads the transactional team, credited the practice group's deep bench and exclusive focus on construction work for its fourth consecutive selection in the category. King & Spalding has 15 U.S.-based attorneys working solely on drafting and negotiating construction contracts — probably five times as many as any competitor, plus another 10 doing that internationally, he said.

"We need to be specialized. We need to be able to sell our services, because if you look at it, contractors, for example, have lawyers in-house that negotiate construction contracts every day, so they're specialists. We need to be specialists," Greer said.

Partner Mike Stenglein said that same mantra of specialization extends to the 53 lawyers in the construction dispute group, which he supervises.

"You need to be able to understand and talk the language of construction in order to be able to effectively prosecute a case or defend a case," he said, adding that King & Spalding is able to deliver a strong one-two punch with its outstanding construction experience and the firm's top-level expertise in international arbitration.

Greer and Stenglein also pointed to a firm culture that deploys the attorneys best suited for a job regardless of where they are based or their specific practice group. The construction group features lawyers across the firm's global network of 23 offices, with significant numbers based in Houston and Austin, Texas; Atlanta; New York; San Francisco; Paris; London; Singapore; and Abu Dhabi.

"This really is just one team, and we're all working together to ensure that we're doing the best kind of work around the globe," Stenglein said. "That is very, very important to us here at K&S."

The construction group has particularly stood out, counseling energy clients amid the industry's transition to renewable sources and new methods and technologies.



King & Spalding is drafting and negotiating contracts for Occidental Petroleum's 1PointFive direct air capture, or DAC, project, the first commercial-scale project of its type, which aims to pull carbon dioxide directly from the air and store it in geologic reservoirs deep underground.

The facility — which will be the largest DAC plant in the world, capturing up to 1 million metric tons of carbon dioxide annually — is under construction on approximately 100 acres in Texas' Permian Basin, and the firm has been retained by Oxy to handle its plans to build up to 70 DAC plants around the world.

"The cool thing about these projects is that they could be put anywhere," Greer said, noting each facility is likely to cost about \$1 billion.

King & Spalding is also advising Transmission Developers Inc., a Blackstone company, on construction matters for the \$4 billion Champlain Hudson Power Express project, which will send clean Canadian hydropower 339 miles to New York City.

The project — featuring a fully buried, high-voltage direct current transmission line, which results in less loss of power along the line — will be the first of its kind in the U.S. and the largest of its kind in the world. Expected to be completed in mid-2026, it will deliver 1,250 megawatts of low-cost electricity, while eliminating 3.9 million metric tons of carbon dioxide emissions per year, equal to 44% of New York's passenger vehicle traffic, according to the firm.

King & Spalding is also representing HIF, a leading electrofuels, or e-fuels, company, on two projects. A first-of-its-kind \$4 billion industrial-scale e-fuels plant will produce about 200 million gallons of synthetic methanol using captured carbon dioxide and hydrogen generated through renewable energy. The e-fuel will be converted into liquefied petroleum gas, gasoline and jet fuel. A second project in Chile will use green hydrogen to produce carbon-neutral gasoline that can run in combustion engines in an almost carbon dioxide-neutral way. Porsche has committed \$75 million to the project and plans to use this e-fuel gasoline in its vehicles, the firm said.

The practice group's litigators have also been busy in the energy sector, but Stenglein was quick to note they are often called on to clean up others' messes.

"Scott's contracts are so tight, so effective, so good, that rarely do they end up in dispute," he said of his transactional colleagues' work.

As a prime example, Footprint Power Salem Harbor Development LP hired King & Spalding to replace two other firms just six months ahead of an arbitration hearing over contractor Iberdrola Energy Projects Inc.'s claims for \$1.7 billion after it was terminated for failing to deliver a Massachusetts power plant on time and incurring costs well over its \$704 million lump sum payment.

While Footprint conceded that it owed Iberdrola \$61.5 million, the tribunal awarded the contractor only \$48 million and ordered Footprint to return a partially used \$140 million letter of credit.

"We view that as a huge success," Stenglein said.

King & Spalding also has been representing Microsoft Corp. in a dispute over the construction of two data centers in Texas. Contractor Rogers-O'Brien brought an initial claim for \$35 million in delay

damages, while Microsoft has responded with a \$39 million counterclaim for delay, gross negligence and defective work.

The proliferation of data collection has led to an accompanying acceleration in data center development, leading to more disputes over the construction of these facilities filled with sensitive equipment, Stenglein said. He noted the firm was recently hired by the developer of a hyperscale data center in Frankfurt to handle a dispute over a roughly \$100 million cost overrun.

Greer said increased costs from inflation posed the biggest challenge over the past year, along with rising interest rates. This can require more work on first-of-their-kind projects to secure financing and get contractors to take on financial responsibility, he said.

These same economic headwinds and lingering delays resulting from the COVID-19 pandemic have caused difficulties for contractors and produced more disputes, Stenglein added.

But the list of notable matters King & Spalding's construction practice is handling continues, including a first-of-its-kind project to extract brine from water sources to develop lithium for electric vehicle batteries and a hydrogen production project in Indiana that aims to be the largest carbon capture project in the world. There's also its ongoing work on The Line, the futuristic \$500 billion city under construction in the Saudi Arabian desert.

"The important point is that this is not commodity work that just anybody can do," Greer said. "It's the most exciting time in my career working on these kinds of projects."

--Editing by Daniel King.