

Construction Group Of The Year: King & Spalding

By **Chuck Slothower**

Law360 (February 6, 2024, 2:02 PM EST) -- King & Spalding LLP secured a \$1.9 billion arbitration award in June in a case stemming from cost overruns at a Colombian oil refinery and is defending the award in forums on three continents, earning a spot among Law360's 2023 Practice Groups of the Year for Construction.

The Reficar case punched through a \$70 million contractual liability limitation and has led to court action in Colombia, New York, the United Kingdom and the International Chamber of Commerce arbitration in the Netherlands. The case goes to the very heart of international business, King & Spalding lawyers said.

"We've argued in the U.K. proceeding that the very viability of international arbitration and its application for cross-border investment is at stake," said Mike Stenglein, a partner who leads the firm's trial and disputes practice for construction.

King & Spalding has represented Reficar since 2014 in its quest to pursue liability from Chicago Bridge & Iron Co. NV, which is now a subsidiary of McDermott International Inc., regarding cost overruns at the Cartagena, Colombia, refinery. Reficar is majority-owned by the Colombian government through another entity.

The firm has defended the \$1.9 billion award against attempts to extinguish it at the ICC. In London, where the award is being scrutinized at the High Court of Justice, Stenglein will be a fact witness for Reficar and subject to cross-examination.

The case has made Stenglein an in-demand commentator on international construction disputes, particularly on gross negligence.

"Its impact is significant," Stenglein said of the landmark case. "I have clients calling from Australia, Asia, the Middle East, clients I've never spoken to before wanting me to present on that. There's demand across the world on how this impacts front-side contracting terms and how, if you're involved in a dispute, that impacts you."

The Reficar case is only one major case engaging King & Spalding's construction practice group, which is composed of approximately 50 lawyers who focus on disputes and another 20 to 25 who concentrate on contract work. The team is spread around the world, with a concentration in Texas that often works with the energy industry.



"Houston is the best place in the world to do what I do — better than New York, better than London," said Scott Greer, a Houston-based partner who leads the construction contracts team.

Clients can trust that their lawyers at the firm have an in-depth understanding of construction projects, Greer said. He has recruited former engineers and construction litigators who have deep knowledge of construction processes and technologies. "We bring in this technical capability, particularly on complex projects," Greer said.

Stateside, King & Spalding represents Samsung in its under-construction semiconductor fabrication plant near Austin, Texas, acting as both contracts and disputes counsel. The plant is the largest private infrastructure project in the Lone Star State, lawyers said.

"The CHIPS Act has made a big impact on foreign-based companies coming to the U.S. to make investments in chips plants," Stenglein said of the 2022 legislation that provided billions of dollars in incentives to the industry.

King & Spalding has long served the fossil-fuel industry, but the firm also works on emerging-energy technologies. It is advising NET Power on a cutting-edge natural gas plant to be built in West Texas that will capture nearly all its emissions.

The plant will run off natural gas, using a proprietary process that reuses much of the carbon dioxide generated while sequestering the rest. The technology may have financial benefits too, Greer added. "They think these plants can pay for themselves in like five years," he said.

King & Spalding has had the lion's share of legal work related to liquefied natural gas plants — typically among the largest construction projects in the U.S. In 2023, the firm advised NextDecade on an \$11.7 billion EPC agreement for the \$18 billion Rio Grande LNG project.

The firm was able to secure key U.S. Department of Energy export licenses before the Biden administration announced a pause on new LNG export permits.

"It's a very large project," Greer said. "It's the largest LNG project ever built in one phase in the world."

Now attorneys are navigating disputes arising from escalating costs due primarily to labor, the lawyers said.

"Projects are really being impacted by the availability of skilled labor and supervision, and it costs more," Stenglein said. "Owners and contractors are suffering from, 'Who should pay for this escalation in price? Who pays for that, contractors or owners?' That is an issue we're seeing a lot right now."

Greer said costs are prompting project owners to consider unusual ways of structuring projects.

"It's an interesting time," he said. "It's the most interesting time since I've been doing this. Sometimes we're having to break these up into smaller projects, but wrap them in a way that they're still financeable."

--Editing by John C. Davenport.

All Content © 2003-2024, Portfolio Media, Inc.