

## International Arbitration Group Of The Year: King & Spalding

By Joyce Hanson

*Law360 (February 16, 2024, 3:58 PM EST)* -- King & Spalding LLP won a \$16 billion victory against the Republic of Argentina for former shareholders of YPF SA in what the firm said is the largest U.S. judgment ever against a sovereign nation — and one of the largest U.S. judgments ever — landing it among Law360's 2023 International Arbitration Groups of the Year.

The monumental ruling secured against Argentina on behalf of ex-shareholders Petersen Energia Inversora SAU and Eton Park Capital Management LP stemmed from the nation's expropriation of YPF when it nationalized the oil and gas company in 2012 without first making a tender offer to shareholders, according to King & Spalding.

In her Sept. 8 ruling, U.S. District Judge Loretta A. Preska accepted the investors' arguments on the effective date of the government takeover, the value of their shares and the prejudgment interest rate, calculations the investors said entitled them to roughly \$8.4 billion in damages and \$7.6 billion in interest. King & Spalding served as lead trial counsel along with Clement & Murphy PLLC and Kellogg Hansen Todd Figel & Frederick PLLC.

"As a factual matter," said Atlanta-based King & Spalding partner Elizabeth Silbert, "it's the largest damages award that's ever been handed down by the Southern District of New York and the largest ever issued against a sovereign in the United States. The significance of this ruling highlights the enforcement of the rule of law and the treatment of foreign investment. The government can't change the ground rules on an investor and render a major investment null."

Silbert, also the deputy head of the firm's international arbitration and litigation practice, said that Petersen and Eton Park were forced into bankruptcy when Argentina failed to conduct the mandatory tender offer and instead forced YPF back under state control in 2012. They had been the second- and third-largest shareholders, respectively, following Argentina's 1993 listing of YPF on the New York Stock Exchange when it went public, according to King & Spalding.

Looking at another King & Spalding achievement in 2023, London partner Sarah Walker said the firm secured a landmark victory on June 2 — "an almost \$2 billion award" — for a subsidiary of Colombia's national petroleum company, Ecopetrol SA, in a high-profile dispute with Netherlands-based Chicago Bridge & Iron Co. NV and U.K.-based CB&I UK Ltd. over the construction of an oil refinery in Cartagena.



The state-owned subsidiary, Refineria de Cartagena SA, or Reficar, launched arbitration proceedings against the CB&I entities before an International Chamber of Commerce tribunal in March 2016 after they finished the project two years late and charged Reficar \$5.9 billion rather than the agreed-upon \$3.2 billion, King & Spalding said.

The tribunal, after nine years of proceedings, ultimately granted the award to Reficar and confirmed the liability of the contractor for breaching its obligations under the engineering, procurement and construction contract. The unprecedented \$1.9 billion award for Reficar totaled more than \$1 billion in damages, plus \$841 million in interest and fees, King & Spalding said.

Walker said the law firm has relied on a multijurisdictional team during the Reficar proceedings. The attorneys who worked on the arbitration are located in the U.S., and there is now an insolvency case before the London High Court where one of the entities that had to pay the award is seeking to put itself into bankruptcy, she said.

"It's a fabulous example of how we work across offices within our team on very big matters. It's the expertise we bring. We describe it as a 'sticky' group. A lot of us have worked together for many years," Walker said.

Looking more closely at the practice's "stickiness," she said the team's esprit de corps differentiates it from competing international arbitration practices at other law firms.

"We keep our team because they like to work with us," said, noting that she has been with the international arbitration practice in London for 14 years, while Silbert has been working with the practice in the U.S. for 16 years.

"We take people in as we grow, and they are the leaders of the next generation," Walker said. "It makes it a fun, interesting place to work. For our clients, they have a diversity of thought coming to each of their disputes. It makes us creative. Nobody has a monopoly on good ideas. Having a broad and diverse team makes you better, and we understand that."

Silbert said there are 122 lawyers in 17 cities in the international arbitration and litigation practice. The U.S. offices are in New York, Los Angeles, Chicago, Washington, Houston, Miami, Atlanta, Denver, San Francisco, Silicon Valley and Austin, Texas. Outside the U.S., the practice has lawyers in London, Paris, Geneva, Singapore, Dubai and Frankfurt, Germany.

The total number of lawyers at the firm is around 1,200. Of that, a full 10% are doing international arbitration work, Silbert said.

"We've been intentionally building and maintaining our brand in international arbitration for the last 20 years," she said. "It's an area of focus and strength for the firm."

Currently, the practice is handling more than 200 pending cases valued at approximately \$200 billion, according to King & Spalding.

The practice covers a wide range of commercial and investment arbitration matters, but the team is particularly well known for energy, construction and mining, the firm said. New engagements reflect further expansion into private equity, life sciences, transportation, technology and consumer-related cases.

While King & Spalding is known for its well publicized investor-state work, the firm "actually has a lot more going on," Silbert reflected.

"We have many clients that we can't disclose, but they're big, exciting and cutting edge," she said. "We're doing a lot in new energies, in hydrogen and new technologies. We're doing a lot for major banks. Unfortunately, it's hard to disclose those when they're private disputes, but the message we want to send is we've got a diverse practice. The publicity we get from investor-state disputes lets clients know that we handle big disputes that have a spider-web effect of spinning off litigation and issues in a lot of different countries. I can't think of another practice with our breadth and depth."

--Additional reporting by Rick Archer and Ali Sullivan. Editing by Andrew Cohen.