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Akin Gump

STRAUSS HAUER & FELD

100

The guide to specialist arbitration firms **2013**

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THE GAR 100

London. A group of international arbitration students are about to receive the first lecture of their course. Each year, it's broadly the same.

"This is the *White Book*," their teacher will say – a partner at a London law firm – as he holds up a copy of the *White Book* – the UK's court rules of procedure. "It's two volumes and takes up this amount of space on your shelves."

He measures a breeze block with his hands. "It tells you everything that can happen in a High Court case.

"And this is the ICC rules," he says, holding up, well, a pamphlet. "It's about this thick," he says, picking up an imaginary cat in a finger-pinch. "But ICC arbitration is no less complex than High Court litigation."

"The difference between those two thicknesses" – he does the pinch and the breeze block again – "is what international arbitration lawyers know. And it's not written down."

It's that unwritten lore that gives rise to this book. Because unless you have it, you don't stand much chance of successfully navigating a process that, frankly, is unique within the law. A leading textbook on the subject – *Redfern & Hunter on International Arbitration* – observes that a stranger stumbling into an international arbitral hearing might fail to spot that a legal process was underway. It would likely be in a hotel room or training room somewhere. There would be two small groups on one side of the table; on the other, a trio with possibly a bit more grey hair. Something would clearly be going on, but it's all very informal. There's no audience, no usher and little hint of pomp or ceremony. It could perhaps be mistaken for a training course (apart from the presence of a stenographer).

And yet millions, possibly billions, could be at stake. As business has globalised, international arbitration has become the world's commercial court. And more recently, a check on capricious government too. To give you just a hint at what goes on, in the past 10 years, two regional telecoms businesses have acquired new owners thanks to the rulings of arbitral tribunals. Recently, arbitrators told Ecuador to pay $2billion to Occidental. The sums are huge.

Being an international arbitration advocate isn't everyone's cup of tea. For a start, there can be enormous amounts of travel. Second, you'll have to navigate all sorts of legal and cultural issues – ranging from the mindset of the opposing lawyer to working under some other nation's law.

A big ICC case from a few years ago should help to illustrate. On one side, a Middle Eastern government with a strong Islamic tradition; on the other, the two international oil companies. The arbitrators are French, Belgian and English. Although the hearings physically take place in Europe, the law to be applied is Middle Eastern. One of the law firms finds it must convey all of its advice to the client orally – the client puts a ban on the use of written memorandums.

So it can be hot and grimy work. The clients who require international arbitration help are not necessarily nice, listed companies that document things properly and are governed by commercial logic. Indeed, many arbitrations have their roots in the cut-throat politics of resource-rich states, which adds another dimension. Or opposing counsel may be a handful – either because they're so aggressive (thanks to different ethical rules), or just inept and lost in the process. A lawyer who holds him or herself out as skilled in the area must be au fait with all these things.

It's little wonder some don't like it. A *GAR* reporter once sat next to a mid-level associate at a dinner who went on at length about how much he'd loathed his stint in international arbitration. He said that some of the rough-house tactics he'd seen were appalling.

He isn't alone. Quite a few lawyers who step across from litigation report feeling almost seasick in this world where case procedure can be entirely ad hoc.

Over the years, more and more big commercial law firms have come to regard international arbitration as a unique skill set. It all began in the early 1990s when firms such as Freshfields, Clifford Chance and Shearman & Sterling began to centralise international arbitration work. (Other firms resisted the fashion. One leading name of his era tried for years to get his managing partner to follow suit – to no avail. A few years later, the managing partner heard Freshfields described as a "specialist arbitration firm" by a big client – and immediately changed his tune.)

These days, many law firms can supply a client with a lawyer or two who has worked most of his or her career in international arbitration.

And their clients are the better for it. Because, as should be clear by now, international arbitration is all about ringcraft. And when someone who has that ringcraft takes on someone who doesn't, the former pretty much always has the upper hand.

It's not just because they know how to address the chairman of the tribunal (although there is that, and indeed some funny stories about arbitrators being addressed as "your excellency" and "your Holiness" by US plaintiff's lawyer types).

Rather, it's because at some point they'll misjudge the occasion. Perhaps when cross-examining they will "come out of the blocks at 100 miles per hour against an elderly Swiss professor," as one source remembers seeing. Such a tactic "may be appropriate in a courtroom, but will play badly in front of arbitrators, especially if they are also Swiss professors!"

Or they may inadvertently prick the curiosity of an arbitrator, say, by suggesting that a topic is off limits; forgetting that arbitrators have broader powers to go where they wish. Or they may simply come across as rather condescending. A lot of lawyers from certain legal traditions, when dealing with those from others, naturally are.

Matthew Weiniger – a partner with Herbert Smith in London (and the visiting professor whose students get the breeze-block/cat-pinch comparison) – recalls being pretty much gifted a case by a naïve opponent.

That opponent – a reasonable UK corporate firm ("you'd immediately know them") and a QC ("who was brilliant but doing his first arbitration") – misconstrued a key procedural order. That led them to hand over more documents than they needed to – "the good and bad documents – everything, including internal client memos." Weiniger romped through the cross-examination, as the better prepared. The arbitrator's order, it so happened, was a fairly standard formulation.

Does Weiniger get gifts of that type often? "I'm used to it," he says. "Usually there are more subtle things."

There may have been a more high-profile example recently. In 2011, a joint venture proposal between BP and Rosneft imploded after BP lost an arbitration. It was noted by the cognoscenti in London that BP's chosen law firm isn't super-famous for international arbitration; whereas the opponent's was.

In the end, there's no escaping the old adage, "know your judge" – or its even more important other half, "make sure your judge knows you". The longer any advocate spends in the presence of their adjudicators, the better they will tend to do. The advantage arises for two reasons: improved intuition and the fact that the advocate arrives in front of them with personal capital.

"QCs, in the High Court, are brilliant because they know those panels inside out and that style of advocacy," according to London international arbitration specialist, who asked to speak on condition of anonymity so he could be fully frank.

"Laurence Rabinowitz QC [a well-known UK advocate for commercial cases from One Essex Court] can appear before any judge and they know him: 'Ah, Mr Rabinowitz – very interesting and nice to see you!' The same thing applies in international arbitration. For example, I've got a case right now in front of [a leading international arbitrator]. Every time I go to a conference, he's there ... we read each other's books. My opponent, in comparison ... he hasn't got a clue.

"If you take all the partners in our group," the source adds, "then we've appeared before every single arbitrator worth knowing. Not just once, but multiple times in the past few years. We have the inside knowledge as a result of that. So that means, if I pick up the phone to [names a leading arbitrator] because I want to appoint them, I know they're going to phone back.

"QCs in the high court are brilliant, because what they have is ringcraft. But when it comes to international arbitration, I have the ringcraft."

Another specialist confirms this view. He says he wishes more of his opponents were international arbitration purists because it is more efficient. "I would love to do more cases against Freshfields," this source says. "I tell clients: If this were against Freshfields, I'd get you a deal in two days. It would be over. But because we've got these idiots we're probably going to have to fight for years."

Sophisticated clients, as it happens, get this. They see the value of specialist international arbitration counsel. A survey★ published in 2006 found that three-quarters of in-house counsel interviewees would seek a lawyer they regarded as an international arbitration advocate rather than a litigator. (They defined specialisation as a mix of reputation, amount of work undertaken and experience. In the interim, more law firms have caught religion and created their own international arbitration groups.)

So the challenge now is finding those specialist counsel.

The book you are holding may help. Six years ago, *Global Arbitration Review* conceived the *GAR 100* as vehicle to identify at least 100 firms one can consider "approved" in this discipline. To gain inclusion, a firm would have to open its books to our researchers and allow us "audit" exactly what they'd been up to. Broadly, we've used the criteria identified in that survey: reputation; amount of work undertaken; and experience.

With this edition – our sixth – the number of approved firms is 151, and more countries than ever are covered (at least 40). We've added 16 new firms since the last edition. Once again, it's a mix of large and small practices – sometimes as small as one person (if that person is sufficiently well-known).

As well as adding new firms, we've continued to improve our descriptions of firms. Many now include extra sections outlining the history of the practice – and in particular (where information could be obtained) its lineage (ie, connection with key figures of the past).

Similarly, we set increasing store by a track record of success (while recognising that success is a relative concept – a "win" can be a loss and a "loss" can be win.) It's not unreasonable to expect an arbitration group to win, from time to time, as it goes about its general work.

The research period for all data in the book is 1 August 2010 to 1 August 2012. All the other information is correct as of 1 January this year.

The editorial team is enormously grateful to the firms who responded to this year's request for current information. We're also grateful to various colleagues within *Law Business Research* – particularly Tom Barnes and Nina Nowak from *Who's Who Legal* – for their contribution. On a personal note, I'd like to thank the many international arbitration lawyers – young and old – who have taken time over the years to explain the nuances of their craft to me. I also owe a big thank you to the rest of the *GAR* writing team who have to fit writing this in with their other reporting, and features editor Sebastian Perry for organising the whole process.

David Samuels
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★ *International Arbitration: a study into corporate attitudes*, by PricewaterhouseCoopers and the School of International Arbitration, London.

Akin Gump Strauss Hauer & Feld

Pending cases as counsel:	14
Value of pending counsel work:	US$40 billion
Treaty cases:	3
Current arbitrator appointments:	3 (none as sole or chair)
No. of lawyers sitting as arbitrator:	2

The arrival of a Geneva team helped this US firm enter the GAR 100 last year

The firm began in Texas in 1945, serving the oil and gas industry. Although it has worked regularly on international arbitrations over the years for clients in that sector, its name grew markedly in 2010 when it acquired a well-established team from Hogan & Hartson in Geneva (ahead of that firm's merger with Lovells).

That brought the highly regarded Charles Adams to Akin Gump. One very famous arbitrator confided to *GAR* in 2009 that Adams – who has some 250 arbitrations under his belt and 38 years in Washington, DC, Paris and Geneva – is one of the most persuasive advocates he knows.

Network

The firm has 17 international offices, including bases in Abu Dhabi, Beijing, Geneva, Hong Kong, London and Moscow, on top of its network in the US.

For the international arbitration practice, the key cities are Geneva and London, where partner Justin Williams and his team regularly assist on English law matters.

Who uses it?

The Alstom Group is one long-time client – Adams and his team have conducted over 24 proceedings for it in the past 15 years. Other regular customers include EADS and its Airbus affiliate; Siemens; US hospitality group Carlson; and Swedish food packaging company Tetra Pak.

The team is a decent option too if you have a last-minute instruction. Elektrim Finance called on it very late on during one part of its long-running dispute with Vivendi and Deutsche Telekom over control of a Polish telephone company. The Akin Gump team geared up for the principal merits hearing in less than four weeks.

Similarly, VeriSign retained it with only two weeks to go before AAA/ICDR hearings against RealNetworks.

The Canadian province of British Columbia has also instructed it in connection with an LCIA claim about the contentious softwood lumber agreement between Canada and the US.

Track record

Among other things, Charles Adams and his group are responsible for one particularly spectacular enforcement action. They enforced an award won by the Eurotrain consortium against Taiwan High Speed Rail Corporation by arresting and impounding the then-largest container ship in the world.

They also steered one of the longest-running investment cases against Poland to a conclusion after taking over the case at the quantum phase. The case eventually settled for less than one-tenth of the €14 billion initially claimed.

Meanwhile, Spencer Griffith in Beijing and Bernd Janzen in Washington, DC, secured a victory for British Columbia in the LCIA claim brought against it by the US. In July, the tribunal dismissed claims that the Canadian province had breached the 2006 softwood lumber agreement.

In 2012, Adams and his team also helped Alstom resolve its dispute with Endel over a power plant in New Caledonia. The tribunal awarded Endel just €2.35 million – considerably less than the €26 million originally sought.

In addition, the firm obtained an €11 million award on behalf of Carlson Anse Marcel (a French affiliate of The Carlson Group) in a dispute with an engineering company over a €60 million project for the renovation of one of its hotels in the Caribbean.

Recent events

In Geneva, the firm promoted Matthew Bate to partner, and it launched a new Hong Kong office in Asia.

New York partner Steven Pesner, together with a team from the London and New York offices, represented VimpelCom, the world's sixth largest mobile telephone operator, in a dispute with Telenor, one of VimpelCom's largest shareholders.

In Geneva, partners Michael Stepek and Matthew Bate received a new instruction to defend Houston-based Virasa Technologies in a US$170 million ICC claim brought by a Korean industrial manufacturer affiliated with Hyundai.

Stepek has also been instructed to represent Renova in a suite of three UNCITRAL arbitrations against BP over the exploration and development of oil licence blocks in the South Kara Sea in the Russian Arctic.

Justin Williams, supported by a team in London, is acting for Russian private equity investor RSM HoldCo in a London-seated LCIA arbitration.

The same team is representing Israeli chemicals company Dead Sea Works in another London-seated LCIA claim against a US oil and gas company over a sale and purchase agreement.

Client comment

Philip Ray, senior counsel at Siemens, praises the firm's "willingness to be there for you and brainstorm, even if not representing you on a matter" and the "extraordinary value" of its service.