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Q&A With Akin Gump's Michael Stepek

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Michael J. Stepek

Michael J. Stepek, a partner at Akin Gump Strauss Hauer & Feld LLP, focuses his practice on international arbitration and litigation, international private and public law and international trade, with a particular focus on disputes involving the control of corporate entities, foreign direct investment, concession agreements, major infrastructure construction projects, and joint ventures in the energy, mining, telecommunications and transportation industries. Stepek is licensed in the U.S. and is a solicitor in England and Wales.

Q: What attracted you to international arbitration work?

A: From the beginning of my legal studies, I was intrigued by attempts to reconcile various aspects of legal systems around the world, which, in many instances, are built upon entirely different principles and foundations. International arbitration was a natural outgrowth of that interest as it presented a system of dispute resolution that was designed to bridge these differences in national systems by working in certain ways parallel to them and, in other ways, in conjunction with them such as enforcement. Further, adding cultural, linguistic and questions of substantive laws under any number of jurisdictions to a legal dispute was, and is, very intellectually challenging.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: The two trends most affecting the practice of international arbitration today in my view are the growing acceptance of wide-ranging document disclosure obligations and the rise of the dedicated arbitrator. When I first started practicing in international arbitration, there was relatively little acceptance of document disclosure obligations outside of what might occur when one could identify a specific document in the possession of the other side. It was certainly nothing like what is seen more and more frequently today where one is presented with document requests for multiple categories of documents, all of which need to be collected, reviewed, produced or withheld for privilege and which often end up the subject of contentions hearings. It constitutes a tremendous expense and delay in the process for a dubious value.

In a different vein, there has been a rise in the number of professionals who only act as arbitrators. Focusing solely as an arbitrator can inevitably lead to the loss of perspective, which one has when one works both as an arbitrator and counsel. That practical perspective was a benefit to international arbitration, and one that differentiated it from national legal systems. Moreover, relying exclusively on fees earned as an arbitrator creates a natural incentive for arbitrators to take on more work than they

can handle individually. This potential over-commitment can lead to substantial delays. It also creates its own incentive to leverage one's time by using others. When one is selected as an arbitrator, one has been selected for his or her personal judgment. The use of this leverage creates a question, whether or not justified, that the other persons involved are substituting their judgment for that of the selected arbitrator. At a minimum, this does not create confidence in the system of international arbitration as a means of dispute resolution.

Q: What is the most challenging case you've worked on and why?

A: A few years back, there was a case that arose out of a joint venture agreement. The claims our client had brought were based on the breach of a right of first refusal. The other side then cleverly came up with a counterclaim alleging that years earlier my client had breached the same provision. I thus had to thread a needle whereby, on the one hand, press our client's case for breach, while, on the other, defending the acts of my client years earlier.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: Be prepared to get your hands dirty. Effective advocacy in international arbitration, as in most any forum, requires an intimate knowledge of the facts of the case. Given the size of most international arbitrations, this typically means there are copious amounts of facts to be understood and absorbed. This takes a tremendous time commitment and focus, but there is no way to have a career in international arbitration without understanding that you need to fully commit yourself to it. You cannot look at a dispute from above, but need to get fully immersed in the details of each case. There really are no shortcuts.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: I would say that the attorneys who impress me the most are the few who are able to distill a dispute down to its essence rather than treat every disputed fact or issue of law as critical, and who is then able to effectively examine a witness to that end. Not all lawyers have such skills, and Professor James Seckinger is someone who has really devoted his life to training young lawyers for these skills, first with the National Institute for Trial Advocacy in the United States and now with the Foundation for International Arbitration Advocacy.

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