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Q&A With Crowell & Moring's George Ruttinger

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George D. Ruttinger

George D. Ruttinger is a partner in the Crowell & Moring's government contracts group and co-chairman of the international dispute resolution group. He has represented domestic and foreign clients in international arbitrations before tribunals of the International Chamber of Commerce, Stockholm Chamber of Commerce, Netherlands Arbitration Institute, Permanent Court of Arbitration, and the World Bank's International Centre for Settlement of Investment Disputes (ICSID). During a 12-month period from 2013 to 2014, he handled three trials of international investment arbitrations under ICSID and UNCITRAL rules.

Ruttinger has represented clients in a range of industries, including aerospace, technology, manufacturing and pharmaceuticals. Beyond his core government contracts and international disputes practices, Ruttinger is a versatile litigator and trial lawyer who has successfully represented clients in complex antitrust litigation and mass torts cases. Ruttinger served as a law clerk to the Honorable Malcolm R. Wilkey of the U.S. Court of Appeals for the District of Columbia Circuit. He is a member of the California and District of Columbia bars as well as the bars of seven federal courts of appeals, five federal trial courts, and the U.S. Supreme Court.

Q: What attracted you to international arbitration work?

A: I started my career 40 years ago as a litigator in state and federal courts and in domestic arbitrations. In the early 2000's, one of our major transportation clients had entered into a contract with the port operator in Rotterdam under which the operator built a dedicated terminal for our client that it would utilize for 20 years. The client then decided to sell its ocean shipping business to a competitor that had its own terminal in Rotterdam. The port operator brought a claim against our client at the Netherlands Arbitration Institute claiming that selling its shipping business to the competitor breached the contract for the dedicated terminal, depriving the operator of tens of millions of dollars of revenue. The case went to hearing in Rotterdam in 2003. This was my first taste of international arbitration, and I found a number of aspects of the process to be fascinating.

This was my first brush with civil law concepts and arbitrators, who have very different attitudes towards resolution of disputes than American judges or arbitrators who are trained in the common law. For example, the civil law arbitrators tend to focus more on the documentary evidence and pay less attention to witness testimony. American-style cross examination is a novelty for them. At a break in the hearing, one of the Dutch arbitrators observed to one of my partners and I: "It's interesting how you ask questions. You ask questions to make a point."

After that experience a dozen years ago, I have been involved in a number of international arbitrations, including investment treaty arbitrations. I found these arbitrations challenging and exciting for a number of reasons. First, unlike common law litigation, the opportunity for discovery is limited, so an advocate cannot set up his cross-examinations through pretrial depositions. He must rely on the limited documentary record and witness statements proffered by the other side. Second, investment arbitrations involve an interesting interplay between principles of international law and domestic law of the nation in which the investment was made (and expropriated). Third, it is customary for both sides' experts on a particular issue, such as damages, to be questioned together in a conference or "hot tub." I enjoy the opportunity for a more free-wheeling exchange that focuses on the differences between the respective experts' opinions and a blend of cross and direct examination on each issue.

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

A: The first trend is the inclusion of Investor State Dispute Settlement (ISDS) provisions in major multilateral treaties such as the Trans Pacific Partnership. This will expand the resolution of international investor-state disputes through arbitration. The second is the increasing availability of third-party funding for international arbitrations. There are a number of firms that specialize in providing funding for international arbitrations in return for a share of any settlement or ultimate award. Another vehicle is after-the-event insurance, under which the insurer funds attorneys' fees and costs for pursuing arbitrations. The insured (the claimant) does not pay the premium unless it is successful in the arbitration and is awarded damages. These types of funding mechanisms make it possible for firms whose only asset is the investment that was expropriated by a sovereign to pursue compensation for the expropriation.

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

A: For several years, I worked on a massive investment dispute involving expropriation of utility companies valued at hundreds of millions of dollars. The ultimate decision turned on whether the claimant had acquired the shares of the utilities before the expropriation. The sovereign alleged that the share transfer documents exhibited by the claimant were fraudulent and/or backdated. Thus, there was extensive expert testimony by handwriting experts, forensic computer experts (who opined the authenticity of deleted facsimile files recovered from floppy disks), handwriting impression experts, and leading experts in audio files (who opined on the authenticity of alleged government intercepts of conversations between prior owners of the utilities).

I have never been involved in another case in which the authenticity of virtually every document of consequence was challenged and subjected to minute scrutiny by leading forensic experts. Ironically, the ultimate decision turned not on document authenticity, but on whether the transfer of the utility shares had been accomplished in the precise manner required by local law, involving physically transferring the shares from the prior owner to the claimant.

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

A: Given my background, I believe young lawyers need to acquire a range of skills to become successful international arbitration practitioners. First, they need to become versed in the procedural rules and practices of the various fora for resolving international disputes, including the International Chamber of Commerce, Stockholm Chamber of Commerce, and International Centre for Settlement of Investment Disputes. Second, they need to master the precepts of international law and custom that often govern

in international arbitrations, particularly in investor-state disputes.

Third, they must understand the mechanisms available to enforce international arbitral awards under the New York Convention and the ICSID Convention. Fourth, although most international arbitrations are conducted in English, most also involve testimony by witnesses whose first language is not English. Mastering one or more foreign languages would enhance a young lawyer's proficiency in international proceedings. Finally, young lawyers should acquire experience in trial advocacy skills, including oral argument and cross-examination. In my experience, it is this skill set that is often lacking in lawyers practicing at some of the leading international arbitration firms.

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

A: Stanimir Alexandrov, the leader of Sidley Austin's international arbitration practice, is someone I have long admired. Stanimir has vast experience as both an advocate and arbitrator in international arbitrations, and exemplifies all of the qualities that I have identified as keys to success for young lawyers in the field.

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