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Prêt-à-Porter

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Arnold & Porter picked up a prize at the 2013 GAR Awards in Bogotá for "large international arbitration practice that impressed". GAR interviews practice head Paolo Di Rosa and partner Jean Kalicki about the firm's successes.

Paolo Di Rosa and Jean Kalicki

The award for large international arbitration practice that impressed is intended to recognise exceptional performance. The GAR team chose last year's winner, Skadden Arps Slate Meagher & Flom, largely on the back of its successful handling of the Fuchs v Georgia saga. This year, the category was voted on by the GAR readership – with Arnold & Porter receiving significantly more votes than the other eight firms shortlisted.

While the voters didn't give their reasons, it's hard to disagree with their choice. Presenting the award, Canadian arbitrator J William Rowley QC noted that Arnold & Porter has enjoyed a remarkable "winning streak" at ICSID. He counted at least 12 wins for the firm on behalf of states at ICSID (including annulment proceedings), and even more if you count cases in which liability was lost but the damages awarded were greatly reduced. Recent victories include the long-awaited Electrabel v Hungary award, handed down in late 2012, which found that Hungary's compliance with EU law on state aid was not in breach of the Energy Charter Treaty. Last year the firm also helped EDF and its affiliates win more than US$200 million in an ICSID case against Argentina.

The future also looks promising, judging by the firm's recent instructions. South Korea has retained it to advise on a US$2.5 billion ICSID claim brought by US private equity fund Lone Star concerning the Asian financial crisis of the late 1990s.

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It's the first treaty claim against South Korea and the largest ever filed against an Asian state. The firm is also representing Turkish company Karkey Karadeniz in an ICSID case against Pakistan, relating to the ongoing political feud between that country's government and judiciary.

Arnold & Porter's international arbitration group has its roots in its public international law work in the 1980s but became a freestanding practice group in 2007 with the arrival of practice head Paolo Di Rosa and a team from Winston & Strawn. A former assistant legal adviser at the US State Department, Di Rosa has overseen the group's steady expansion, including the promotion of Jean Kalicki to the partnership in 2008. More recent lateral hires include partner David Reed, who joined last year from Shearman & Sterling in London.

What's the secret of the practice's success?

DI ROSA: A combination of factors, the main one being a heavy focus on client service. We try to make every client feel like their matter is our top priority. Another key element is the selection of the members of our team. We have attempted to achieve an ideal mix of people, with respect to language skills, cultural background, legal training – common and civil law – private and public sector experience, etc. This has helped us handle a wide range of matters more effectively.

For my part, in terms of managerial strategy, I have tried consciously to give those diverse team members as much latitude, support and resources as possible to let them prosper on an individual level, and then to get out of their way!

Two other factors bear mentioning: personal qualities – including, in particular, collegiality, mutual respect and a sense of humour – and, finally, a solid dose of luck, which is always essential!

What's been the most memorable case you've worked on?

DI ROSA: For sheer duration and bizarreness, it would have to be the Victor Pey Casado v Chile case at ICSID. I have lived with it almost uninterruptedly for the last 11 years, through its various twists and turns.

KALICKI: Representing Hungary in both the AES and Electrabel cases gave me a great crash-course in the relationship between EU law and investment arbitration. My work for AbitibiBowater, in a NAFTA claim against Canada, and Club Hotel Loutraki and Casinos Austria, in a BIT claim against Serbia, both taught me that the best outcome for a client may be an early negotiated resolution rather than protracted litigation.

What's been the highlight of the past year for you?

DI ROSA: Our victory in the EDF v Argentina case – also a long-running arbitration that presented many complexities.

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KALICKI: I have been equally thrilled by my growing arbitrator practice – which now takes up as much as half of my time – and by the diversification of our counsel work. I was honoured to be selected as lead counsel to South Korea in its first ever investment treaty case. I have enjoyed digging in to the case, learning more about Korean culture, and developing strong working relationships with my co-counsel at Bae Kim & Lee.

Who has most inspired you as a practitioner or arbitrator?

DI ROSA: There are too many to name and I wouldn't want to offend anyone! I have learned an enormous amount from every practitioner for or with whom I have worked, as well as from every arbitrator I have come across along the way. I also benefited greatly from the instruction I received from my colleagues at all levels at the US State Department Office of the Legal Adviser – to my mind, the best international law firm in the world.

KALICKI: The late William Rogers, a brilliant and principled public international lawyer [and former undersecretary of state in President Ford's administration], was instrumental in wooing me to Arnold & Porter from my prior home at Cleary Gottlieb Steen & Hamilton. Bill taught me valuable lessons in advocacy, leadership and life. On a personal level, he was a man of impeccable moral character. Henry Kissinger declared at his memorial service that "Bill Rogers was my conscience"; he certainly believed in truth and honesty, as well as moral courage.

Is the role of counsel the same whether you're representing states or investors, or are their different priorities depending on which side you're taking?

DI ROSA: The roles are in principle the same but the challenges and priorities are often different. There are a host of shoals to navigate as counsel to a state that are typically absent, or at least less prominent, in the representation of investors. These include those with political, bureaucratic, public relations, inter-agency, budgetary, even ideological interests.

How does your caseload shape up in terms of investment versus commercial arbitration?

DI ROSA: Our portfolio of commercial arbitration matters has grown substantially in recent years, in large part due to the incorporation of Maria Chedid's team in San Francisco, Dmitri Evseev's move from Washington, DC, to London, and, more recently, the arrival of David Reed's team in London. But the proportion of investor-state arbitration work continues to be larger.

What's the biggest challenge facing international arbitration today?

DI ROSA: I don't believe there is a single predominant one. Among the important ones on a macro level is preserving – or restoring, depending on one's perspective – the qualities that distinguished arbitration from litigation in the first place. Investment arbitration also continues to face certain growing pains.

KALICKI: The tendency for parties, guided by counsel, to only trust the "usual sus-

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pects" for important arbitral appointments, which results in a small circle of extremely busy arbitrators taking much too long to render awards and discourages parties from viewing arbitration as an efficient alternative.

The leading institutions have done a good job expanding their rosters to include "next generation" arbitrators, but appointments are only rarely made by institutions, so the real change in mindset has to come from the private bar.

What lies ahead for the practice?

DI ROSA: In terms of personnel, we grew significantly over the last several years, so we are no longer seeking to expand at the same pace. That said, we are looking to attract an arbitration team to our New York office, and will continue to hire on occasion in different offices whenever we identify an especially good fit.

With respect to caseload, we have been making a conscious effort to expand beyond our traditional Latin America focus, and are now handling matters relating to North America, Europe, Asia and (to a lesser extent) Africa. And as indicated, we have also been seeking to broaden our commercial arbitration portfolio.

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