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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Mayer Brown's Michael Lennon

Law360, New York (April 25, 2016, 10:37 AM ET) --

Michael P. Lennon Jr.

Michael P. Lennon Jr. is a partner in Mayer Brown LLP's litigation and dispute resolution and international arbitration practices. He has handled a variety of arbitration and litigation matters, particularly in the energy, natural resources and construction sectors.

Lennon acts on behalf of clients before the leading international arbitral institutions, including ICSID, ICC, LCIA and the Dubai International Arbitration Centre, as well as national courts. He has a distinguished record as a trial lawyer and arbitration advocate and has tried numerous cases before arbitral tribunals, courts and juries, as well as enforcement, annulment and appellate proceedings arising from his matters. He also acts as an arbitrator. In addition, Lennon has substantial experience handling intellectual property and other commercial disputes.

Recent examples of his work include advising an Asian national oil company in dispute concerning a coal bed methane production sharing contract, advising the owner of a second-generation bioethanol plant in a licensing, equipment supply and construction dispute, advising international oil companies on contractual and international law issues arising out of the Middle East, North Africa and South America, and advising a major international engineering and construction company on a dispute arising from an African mining project.

Q: What attracted you to international arbitration work?

A: My attraction to international arbitration springs from four factors. First, international arbitration is the preferred dispute resolution mechanism for disputes in the energy sector. As someone interested in and practicing in the energy sector, it was a natural evolution to be drawn into international arbitration. Second, I very much appreciate the ability to select decision-makers who are knowledge in the field of the dispute. Third, the civility of the lawyers and the quality of the lawyering is a significant attraction.

Cases are so much more enjoyable when they are fought on a high intellectual field with counsel who can disagree agreeably. Far more often than not, this is the case in an international arbitration. Fourth, and finally, I was attracted to and remain excited by the prospect of working with clients from other cultures. I enjoy learning about new cultures, and I also believe that cross-cultural interaction can give me new perspective, better understanding and greater appreciation for my own culture.

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

A: To me, one good and one bad trend are most notable. On the plus side, greater attention is being paid to soft law in the practice of international arbitration, particular procedural soft law. International arbitration is not a homogeneous and uniform practice across all jurisdictions. Nor are homogeneity and uniformity likely achievable. Soft law, then, while often not legally binding or enforceable, can provide baseline expectations and best, or at least internationally accepted, practices that can drive parties, counsel and arbitrators toward more consistent behavior. For example, originally issued in 1947, revised in 1999 and further revised in 2010, the IBA Rules on the taking of evidence in international arbitration articulate commonly and widely accepted precepts on the conduct of an arbitration, to the point where parties routinely rely on them in an arbitration without formally adopting them.

On the negative side, the trend of escalating time and cost in international arbitration is on the mind of virtually every practitioner and the topic of conferences and conversations around the globe. This is not a new trend, and it may be its persistence that is the most vexing aspect of the trend.

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

A: Libya, though it actually never became a case, thankfully. In 2011 and 2012, I had the privilege of representing a group of oil companies as they managed the delicate situation of sanctions and civil war. My clients fully expected that their oil concession would be expropriated, which expropriation would have to be arbitrated, and planned accordingly. Ultimately, the concession was not expropriated. The representation required deep legal analysis and strategic thinking about contractual issues, such as force majeure, and public international law issues, such as state succession and liability for contracts and existential questions surrounding statehood and successor governments. The legal issues were complex, difficult and fascinating.

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

A: Two things. First, master the legal theory and framework of international arbitration. Such mastery will allow you to spot and avoid traps in cases. Second, I highly recommend getting trial experience or training in cross-examination. Although documentary evidence may carry the most weight in international arbitration cases, good cross-examination of witnesses can be a major contributor to a successful outcome. Occasionally, you can turn your opponent's witness into the best witness for your case. That truly is a bombshell moment.

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

A: Doak Bishop. Doak has worked tirelessly in this profession for nearly 40 years and could quite justifiably relax a bit. Instead, he continues to work to improve and advance the practice of international arbitration, always with humility, grace and aplomb.

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