

Debt woes, broken contracts and soured business deals may cost global investors billions in losses and create seemingly never-ending headaches for policy makers. But there is a set of specialists profiting from such geopolitical problems: arbitration lawyers.

But there is a set of specialists profiting from such geopolitical problems: arbitration lawyers.

The legal profession is facing corporate cutbacks in spending and pushback over billable hours, but at least a dozen law firms based in the United States are in line for huge paydays stemming from myriad international issues.

About a dozen legal heavyweights like White & Case, Shearman & Sterling and King & Spalding are benefiting from the growing number of lucrative, complex international disputes. About 120 such actions worth more than \$1 billion each are pending at international arbitration tribunals worldwide, according to a recent tally by American Lawyer magazine.

Often, these awards result from suits brought by companies or commercial interests against foreign governments or entities they control, invoking investment protections in international or bilateral treaties. Big awards also stem from contract disputes between two or more private entities that have invested internationally.

Among the eye-popping claims that have already reached resolution is a \$2.2 billion decision against Kuwait's Petrochemical Industries in favor of Dow Chemical over a joint plastics venture that the Kuwaitis canceled. Dow Chemical was represented by the Atlanta-based King & Spalding and Shearman & Sterling, based in New York.

King & Spalding also represented Universal Compression, a Houston-based natural-gas compression services provider, when it landed a \$442 million arbitration award last year from Venezuela to make good on the nationalization of its operations in the country.

King & Spalding, which began as a regional firm 128 years ago, has handled nearly two dozen international arbitration cases in the last two years, of which 20 are disputes between corporate entities or other groups and the countries where they invested. The firm has 64 lawyers and associate lawyers working on global arbitrations that are valued at \$60 billion, according to American Lawyer's scorecard, issued in July.

Edward G. Kehoe, co-head of King & Spalding's international arbitration practice, said the firm spotted the potential of such commercial disagreements a decade ago and began to "slowly build the business, because we saw increasing need for investor protection against appropriation."

"We wanted to catch a rising wave of business," said Mr. Kehoe, whose firm is also handling the arbitration in the fractious legal feud between the Chevron Corporation and Ecuador. (Chevron bought Texaco in 2001, and inherited a court case in which Texaco was accused of dumping billions of gallons of toxic waste and causing major environmental damage in the Amazon rain forest. Chevron was ordered in 2011 to pay \$9 billion in damages.)

Ecuador, along with Argentina, Venezuela and the Czech Republic, are defendants that appear most often in claims brought by dissatisfied parties, according to the United Nations Conference on Trade and Development, which tracks worldwide investment. Canada, Egypt, the United States and Poland are next on the list.

Worldwide, at least 518 treaty claims cases were pending last year against 95 countries, according to the United Nations body, and more than 100 known arbitrations between feuding private investors. The World Bank's International Center for the Settlement of Investment Disputes, located in Washington, logged 50 new cases last year, up from one in 1982.

Law firms charge either by the hour (the going rate at top firms hovers around \$1,000 an hour) or take a percentage of the final arbitration award. As more countries include arbitration clauses in bilateral trade pacts and more investors plow money into infrastructure and other big overseas projects, the prospects for rising revenue are not lost on law firms.

"The volume and complexity of deals are ramping up, illustrated by the 163 percent growth in the number of U.S. law firm offices opened overseas last year," said William D. Henderson, director of the Center on the Global Legal Profession at Indiana University's Maurer School of Law.

Law firms are vying to recruit law partners with international experience, and law schools like Columbia University's are adding graduate courses in the field, said George A. Bermann, who teaches arbitration at Columbia and is director of its new Center for International Commercial and Investment Arbitration.

"Not only are courses multiplying," he said in an e-mail, but "enrollment - in all - is growing."

The United Nations Conference on Trade and Development makes public basic information on cases. But most such commercial conflicts can be hidden from public view because there is no incentive for aggrieved plaintiffs or the recalcitrant countries being sued to air their issues in public. Some cases are settled through private arbitration and others come before tribunals, including the International Chamber of Commerce's International Court of Arbitration in Paris.

Corporations triumph in most of the disputes that are made public, with two-thirds of tribunal decisions favoring their claims, according to the U.N. scorecard. Nine public decisions last year awarded damages to the party claiming injury, with a record award of \$1.77 billion against Ecuador for terminating an oil contract in 2006 with Occidental Petroleum.

Some countries, however, are beginning to dig in against arbitration claims, not only because of the staggering dollar amounts, but also because they can disrupt national decision-making.

Uruguay and Philip Morris International, for example, are wrangling over the country's restrictions on tobacco use, which the tobacco giant says violates a bilateral investment treaty.

Those who favor international forums for settling disputes - where arbitrations are presided over by one arbitrator or a panel of three - say that such tribunals avoid local courts, which can tilt in favor of parochial interests.

"It's a big improvement from historical gunboat diplomacy," said Edna Sussman, an arbitrator and mediator with experience in more than 100 international and other arbitrations. She helped spearhead the opening of the New York International Arbitration Center in Manhattan to encourage holding such proceedings in the city.

Such "arbitration will definitely grow as international commerce grows," she said, adding that some question whether secretive arbitration bodies should be deciding cases with billions of dollars on the line that can impinge on a government's regulatory powers.

The small circle of arbitrators, who are typically lawyers or experts who have other employment, is also seen as too clubby and riddled with conflicts of interest from their day jobs as practitioners.

As recently as two decades ago, such international arbitration was not a big revenue generator, said Carolyn B. Lamm, a White & Case partner who specializes in the field.

Most treaties, intended to give foreign investors like corporations an avenue outside of local courts in case their investments were nationalized, "did not take effect until the 1980s, and we had two or three cases a year," she said.

White & Case since has grown to a 150-person arbitration practice and currently oversees 223 arbitration matters valued at \$73 billion, according to Global Arbitration Review, a law journal. Those cases included a \$2.5 billion dispute in which the Canadian mining company Gold Reserve is claiming that Venezuela seized its mining properties.

"If an investor is confronted with a dispute, arbitration as means of enforcement is much better," Ms. Lamm said.

"You can go anywhere you can find an asset. But if you use the courts, you really have to rely on deference to the local court, and that might not turn out as well."

(Published by NYT - August 26, 2013)