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Litigator of the Week: QE's Stern Hits Pay Dirt in $720M Win for Deepwater Driller

'No matter how much the other side tries to cherry pick evidence to suggest the award is wrong-headed, you have to stay focused on what's really at issue.'

By Jenna Greene
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Our Litigator of the Week is Quinn Emanuel Urquhart & Sullivan's Karl Stern—managing partner of the firm's Houston office and co-head of its energy practice. Stern led a team winning a $720 million arbitration award for client Vantage Deepwater in a fight stemming from a canceled drilling contract with state-owned Brazilian oil company Petrobras.

After the award was issued last year, Petrobras challenged it in U.S. District Court for the Southern District of Texas, arguing that one of the arbitrators had a conflict of interest. The company also said the contract was procured through bribery

On Friday, U.S. District Judge Alfred Bennett sided with Stern and his client, upholding the award in a 24-page decision.

Karl Stern partner with Quinn Emanuel.

Lit Daily: Who is your client and what was at stake?

Karl Stern: Our client is Vantage Deepwater Company, an offshore drilling contractor. Petrobras wrongfully terminated a drillship contract with Vantage less than three years into an eight-year term. The damage to Vantage was enormous, actually forcing it into bankruptcy.

What were the circumstances that led up to the dispute?

Vantage invested nearly a billion dollars in an offshore drillship, the Titanium Explorer, so it could perform the Petrobras contract. Petrobras was happy with Vantage's performance when oil prices and drillship rates were high, but when market conditions took a turn for the worse at the end of 2014, Petrobras started looking for excuses to get out of the contract. In August 2015, Petrobras exaggerated complaints about Vantage's performance as an excuse to terminate the contract.

How did you come to be involved and who were the other members of your team?

I was hired to take the case over in late 2016, after an intense selection process that included a mock

argument against a competing firm. I'd never seen anything like that before.

We had a lean team. In the arbitration, Charles Eskridge (who was recently nominated to the federal district court here in Houston), counsel Kate Shih, and former associate Jon Liroff did incredible work and Tai Heng-Cheng, who has since left QE, provided very helpful support.

Paul Dobrowski and Danielle Andrasek of Dobrowski LLP actively participated in the arbitration. We had the same team in the confirmation proceeding with the additions of Chris Porter from Quinn Emanuel and Ed Fernandes from Hunton Andrews Kurth.

Set the stage for the arbitration (who, what, where, when):

We had a panel of three distinguished international arbitrators. The Chair was Prof. William Park, a professor at Boston University School of Law. Vantage appointed Charles Brower from London, and Petrobras appointed James Gaitis out of Whitefish, MT.

We had a 12 day hearing in Houston in May and June 2017. Petrobras was represented by a team from Thompson & Knight led by Bill Katz and Andrew Derman. Thirteen witnesses testified during the hearing.

Although it was not a focus of the confirmation proceeding, much of the evidence at the hearing related to Petrobras's pretextual complaints about operations as an excuse for terminating the contract. One witness, Hamylton Padilha, testified by video from Brazil.

In June 2018, Judge Brower and Professor Park issued a 101-page Final Award, rejecting all of Petrobras's excuses for terminating the contract and awarding Vantage all of its damages. Mr. Gaitis dissented.

During the arbitration, allegations surfaced that the contract was procured through bribery. What happened? How did you respond?

After Vantage filed the arbitration, Petrobras argued that the termination was also justified because the contract was allegedly procured by bribes paid not by Vantage, but by an individual who owned the Titanium Explorer at the time the contract was entered.

We had three responses. First, we identified significant gaps in Petrobras's evidence that bribes were even paid. Their only witness on bribery testified that he did not know if illicit payments were actually ever made to anyone.

Second, as the arbitrators found, even if bribes had been paid, Vantage itself did not pay any bribes, and Vantage did not know about any scheme to pay bribes.

Third, we showed that Petrobras knowingly ratified the contract after it learned of the alleged bribery. In 2013, long after the alleged bad guys had left Petrobras, Petrobras learned that one of the key players in the alleged scheme admitted the whole thing to a reporter in a recorded conversation.

Petrobras did its own extensive internal audit and didn't take any action, because under the market conditions at the time, the terms of the contract were very favorable. Petrobras went on to amend and novate the contract multiple times, acknowledging that the contract was valid and binding. It was only after market conditions changed, two years later, that Petrobras started plotting to get out of the contract.

I gather Petrobras objected to Vantage's first arbitrator pick, David Keltner, and then your second, Judge Charles Brower. Why? What did opposing counsel mean when they said Brower had a "close personal friendship" with a partner at your law firm?

Mr. Keltner withdrew before we were hired. I believe he disclosed a potential conflict that arose after he was appointed based on a change in Vantage ownership after it emerged from bankruptcy.

Petrobras objected to Vantage's appointment of Judge Brower based on his disclosure that he was appointed by a QE client in another case. That's not a valid basis to disqualify, and ironically, Judge Brower ruled against our client in that case.

Petrobras also complained that one of the lawyers in our London office—who was not involved in this arbitration in any way—had served as a law clerk to Judge Brower in The Hague many years ago. This relationship, which was fully disclosed, just isn't the type of relationship that requires disqualification. Every authority that's looked at it has agreed.

Are conflict-of-interest rules for arbitrators more ambiguous than those for judges in federal or state courts? Is this a legitimate area of concern?

The rules regarding conflicts of interest for arbitrators are fairly well defined and enforced. Nothing in this case came close to violating those rules. Unfortunately, disappointed parties in arbitrations frequently pursue a strategy of attacking the arbitrators. The cynical attacks on Judge Brower here were unfortunate, but were easily shown to be entirely baseless.

How else did Petrobras try to vacate the award and what was your response?

Petrobras also asserted a public policy defense based on its allegations of bribery. In the end, that simply proved to be another attempt to re-litigate the case and avoid the clear implications of the ratification finding in the award.

What's most significant to you about the decision from the Southern District of Texas upholding the arbitral award?

It's a well-reasoned decision that affirms the firmly-established policy of enforcing arbitration awards. Sophisticated parties that voluntarily agree to submit their disputes to arbitration must accept the consequences of that agreement and abide by the resolution of the dispute by the arbitrators. Petrobras ignored its contractual commitments to Vantage when it terminated the contract and ignored those commitments again when it tried to avoid the arbitration award in the district court.

What's the takeaway/ lessons learned for other big-league disputes where an arbitration award is challenged?

There is a temptation in a proceeding like this to feel the need to defend the actual merits of the award. You've just been through a lengthy arbitration process—where you've won a tremendous victory, and where you're steeped in the facts and arguments that resulted in that award.

When your opponent tries to undermine the award by again arguing its view of the facts, it is tempting to respond in kind. But that is simply not an issue properly before the reviewing federal court. And no matter how much the other side tries to cherry pick evidence to suggest the award is wrong-headed, you have to stay focused on what's really at issue in confirmation—the integrity of the process, and the parties' prior commitment to resolve the dispute by arbitration.

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