GIBSON DUNN

International Arbitration Group Of The Year: Gibson Dunn

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Gibson Dunn & Crutcher LLP's international arbitration team has been fighting to make Spain pay $1.3 billion of arbitral awards in landmark investor-state litigation, and won a jurisdictional dispute against Colombia in a U.S.-based salvage company's $10 billion claim over an 18th century shipwreck, earning it a spot among the 2024 *Law360* International Arbitration Groups of the Year.

The team represents Blasket Renewable Investments LLC, a group of British investors, in half of Gibson Dunn's 16 pending cases against Spain that seek enforcement of a total of $1.3 billion of arbitral awards related to the country's decision to dial back its renewable energy incentives. Madrid refuses to pay and argues that international tribunals have infringed on the authority of European Union courts in arbitrations under the Energy Charter Treaty.

Matthew McGill, co-chair of Gibson Dunn's judgment and arbitral award enforcement practice, said the firm is at the forefront of efforts to enforce these treaty-based arbitration awards against Spain. He pointed to the firm's recent victory in December before the D.C. Circuit, which denied bids by Spain and the European Commission for a rehearing of several cases brought by renewable energy investors, including Blasket.

"Now that the D.C. Circuit has ruled and the cases are no longer stayed in the D.C. district courts, we expect more cases will begin proceeding toward judgment and we will make progress in enforcing these awards," McGill said. "This is hugely significant not only with respect to the dispute between Spain and the investors under the Energy Charter Treaty, but to any investor-state arbitration between an EU investor and an EU member state."

Spain is preparing to seek review before the U.S. Supreme Court. McGill said he expects a high court order on the country's petition for a writ of certiorari by the end of June.

Enforcement litigation against sovereign nation is a relatively new area of law, according to Rahim Moloo, co-chair of Gibson Dunn's international arbitration group. He said cases stemming from international arbitration are now appearing before the Supreme Court more often, because sovereigns resisting payment of awards keep pressing their appeals until they reach the high court.

Moloo said the investor-state arbitration system became truly active only two to three decades ago, starting with cases against Argentina that arose due to the government's 2001 default on billions of dollars of foreign debt, marking the largest sovereign default ever at that point.

When lengthy arbitral proceedings are completed, Moloo said, it's not unusual for states to push back and decide they don't want to pay the awards — as was the case with Argentina.

"Creditors have to then resort to the courts to enforce those arbitral awards, so there's a lot

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Matthew D. McGill

Rahim Moloo

of new law, where courts have to grapple with how these regimes apply to sovereigns who refuse to pay arbitration awards when the United States and other countries have a treaty obligation to enforce these awards," Moloo said.

About 20 Gibson Dunn partners work on international arbitration matters out of offices in Dallas, Dubai, Hong Kong, Houston, London, Los Angeles, Munich, New York, Paris, Riyadh in Saudia Arabia, Singapore and Washington, D.C., according to Moloo. The group's partners are joined by another 55 or so attorneys whose primary practice is international arbitration.

Noting that Gibson Dunn is a global law firm that counts more than 2,000 lawyers, Moloo said the international arbitration practitioners constitute a relatively small group, but their numbers are growing.

"I joined the firm just over 10 years ago, and at that point, I was the first international arbitration lawyer in the U.S. In the last few years, we've grown pretty substantially and mostly organically," he said, noting that two of his colleagues in New York — Lindsey D. Schmidt and Charline O. Yim — have become partners.

Moloo said a $10 billion claim by San Diego-based salvage company Sea Search Armada LLC against the Republic of Colombia highlights Gibson Dunn's ability to represent clients in complex international arbitration. The firm won a jurisdictional victory when a Permanent Court of Arbitration tribunal issued a unanimous decision rejecting Colombia's preliminary objections in February 2024.

The PCA decision favoring Sea Search Armada relates to alleged breaches of the U.S.-Colombia Trade Promotion Agreement due to the country's purportedly unlawful expropriation of the company's rights to sunken gold and jewels from an 18th century shipwreck in the Caribbean Sea.

The wreck of the three-masted Spanish galleon called the San José, which sank in 1708, led to the decades-long dispute after Sea Search Armada found the ship in the early 1980s, according to Moloo.

"Once Sea Search found the ship, they reported it to the Colombian government, and they were entitled as a result of that find to 50% of the treasure," he said. "There was decades of litigation in the Colombian courts related to our client's and its predecessor's entitlement. Ultimately, the Colombian Supreme Court in 2007 confirmed the predecessor's entitlement to 50% of the treasure."

But Colombia in 2020 declared the entire ship to be "cultural patrimony," or cultural property, and dispossessed Sea Search Armada of its rights to the bounty, Moloo said. Gibson Dunn is now in the merits and damages phase of the case and getting set for a final public hearing at the Peace Palace in The Hague at the end of 2025.

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