

EVERSHEDS
SUTHERLAND



Protecting your interests

Our Global Commercial Disputes Team

Introduction

Our disputes practice assists clients in managing and resolving commercial disputes wherever they arise. Global corporations trust us to advise them through threats, crises and disputes of the highest strategic importance across all sectors.

We handle market leading cases in most of the major economies across the globe. Our disputes lawyers understand that the successful management and resolution of a dispute can mean completely different things to different businesses. Our clients trust us to understand their risks and opportunities and this enables us to devise a dispute management strategy that works for them.

Why work with us?

We identify the appropriate commercial strategy for every dispute. While hard fought litigation might in some cases be the best or necessary approach, we explore alternative dispute resolution options and adopt measures to avoid disputes materialising in the first place.

Our team of lawyers includes experienced trial lawyers, arbitration specialists, mediators and former prosecutors/regulators from around the world with experience across many sectors of the global economy.

As pioneers in the field of legal project management we use cutting edge litigation technology and work to an agreed methodology to deliver successful outcomes on time and on budget, proposing innovative project management and billing solutions that suit our clients' differing requirements.

We handle cases in the civil and criminal courts at all appellate levels.

Our arbitration practice covers all the leading global arbitration centres including: New York, London, Paris, Singapore, Hong Kong and Zurich.

With over 400 experienced litigation lawyers in the US, Europe, the Middle East, Africa and Asia, our global team is able to handle the largest and most complex cross border disputes and regulatory challenges. We understand the interplay between different legal systems and jurisdictions, leveraging that knowledge for the benefit of our clients.



69 offices



34 countries



400+ commercial dispute lawyers



7th largest Litigation practice in the world

THE LAWYER
Global Litigation Top **50**

A Global Team



Europe

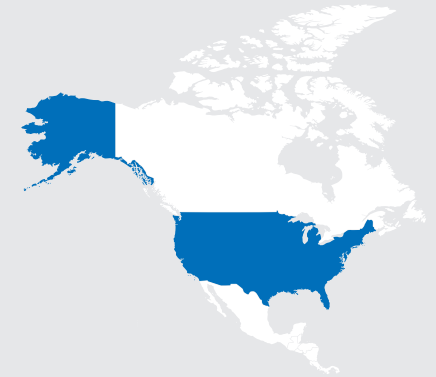
With over 30 offices across the continent in Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Russia, Slovakia, Spain, Sweden, Switzerland and the UK, we offer our clients deep local and international expertise in the management and resolution of complex and high profile disputes in all sectors.

Examples of our disputes work in Europe:

- acting for a European energy conglomerate in English High Court proceedings making post-acquisition warranty and indemnity claims in excess of £120 million against global financial institutions regarding the condition of the acquired asset
- acting for a private equity investment trust in relation to its multi-million pound claims for breach of accounting warranties by the sellers, following the discovery of serious accounting issues arising from a fraud by the CFO of a US-based subsidiary within the acquired group. The claim settled shortly after trial in our client's favour

"They provided very valuable insight and excellent industry knowledge. We really appreciated the open and friendly communication and it was a real pleasure to work with them... the team is responsive and pragmatic."

Chambers UK



USA

We rank as one of the top 15 firms for complex commercial litigation in the BTI Litigation Outlook survey of multinational in-house counsel. From offices in Atlanta, Austin, Chicago, Houston, New York, Sacramento, San Diego and Washington DC, our disputes team acts in complex and high profile disputes.

Examples of our US disputes work:

- defending and coordinating Transocean Offshore Deepwater Drilling Inc.'s legal responses in cases and investigations arising from the 2010 oil spill in the Gulf of Mexico, including proceedings in multidistrict litigation, third-party investigations, and government inquiries and investigations
- serving as lead counsel to the Florida Senate, Florida House of Representatives and State Board of Education in a constitutional challenge to Florida's US\$19 billion K-12 public school funding system. After a four-week trial, the court entered judgment in favor of the State
- representing Cobb County and the Cobb-Marietta Coliseum and Exhibit Hall Authority in litigation challenging approximately US\$397 million in revenue bonds that form the public funding component of the new Atlanta Braves baseball stadium

"These attorneys are intelligent, creative and quick — they work in excellent partnership with clients."

Chambers USA



Africa

We act for clients across Africa. Working alongside local firms within our Africa Law Institute, we use our hub offices in South Africa (Johannesburg and Durban), Mauritius (Port Luis) and Tunisia (Tunis) to provide clients with a single point of contact and a consistent, localised service across the continent.

Examples of our disputes work in Africa:

- acting for a commodities company in litigation for breach of a loan agreement and related contracts in respect of a mining project in the Democratic Republic of Congo
- acting for a Chinese state-owned oil company in connection with a multi-billion dollar environmental dispute with the government of the Republic of Chad and a private contractor relating to the alleged dumping of crude oil in the country

"One of their main strengths is their pragmatism. They also have a presence in the majority of African countries, and an ability to work with many local consultants, providing real expertise."

Chambers Africa



Asia

With full service offices in China (Beijing, Hong Kong, Shanghai), Singapore and Brunei Darussalam, we are recognised as one of the leading international law firms in Asia. Alongside our hub offices, we partner with local law firms in over 40 countries through the Eversheds Sutherland Asia Pacific Alliance, including through designated Business Groups in India and Japan.

Examples of our disputes work in Asia:

- acting for a global technology company in a supply chain dispute in court proceedings (including claims for injunctive relief) in Hong Kong, China, Singapore and Malaysia and an ICC arbitration seated in New Jersey, USA
- acting for an Indian company in a Singapore-seated ICC arbitration against a European conglomerate concerning wind energy technology and successfully obtaining an arbitral award

"Clients appreciate the firm's understanding of both local and foreign legal issues: Eversheds Sutherland are familiar with Chinese companies and culture and also have international expertise and experience; the combination is great."

Chambers Asia and Pacific



Middle East

We are the largest international law firm in the Middle East in terms of geographical coverage. We are ideally situated to act as a strategic link between East and West, using our offices in the United Arab Emirates (Abu Dhabi and Dubai), Jordan (Amman), Qatar (Doha), Saudi Arabia (Riyadh) and Iraq (Baghdad and Erbil).

Examples of our disputes work in the Middle East:

- acting for a Middle Eastern national oil company in ad hoc arbitration proceedings concerning a dispute in excess of US\$20 billion regarding the performance of a long-term gas supply agreement
- acting for Middle Eastern corporates in a multi-million US dollar cross-border claim in the Dubai International Financial Centre (DIFC) Courts against a Swiss financial institution operating in the DIFC

"Fantastic attention, very responsive and supportive...great – very practical and commercial advice."

Chambers Middle East

Commercial Dispute Resolution



Commercial/contractual claims

We advise clients on a full range of contractual disputes, including supply chain disputes (including termination), sale/purchase contracts, complex debt enforcement, distributorship and commercial agents arrangements. Recent examples include:

- defending four leading US and European electronic consumer goods manufacturers in complex litigation including allegations by competitors of breaches of EU/UK Competition law (price fixing and abuse of dominant position) and breaches of contract. The case was brought in the English High Court and involved our clients' UK subsidiaries and their US/European parent companies
- acting for a global chemicals company in a US\$100 million claim against the Japanese supplier of business critical manufacturing equipment and managing the mediation which took place in Hong Kong
- acting for a securities business defending a claim against it in the English High Court for £108 million in respect of alleged failures in the design and supply of a fire suppression system



Corporate disputes

We have global experience acting for clients in shareholders' disputes, joint venture disputes and post-transaction disputes, including warranty and indemnity claims. Relevant examples include:

- acting in a £40 million shareholder dispute involving multiple High Court proceedings including allegations of breaches of directors' duties, unfair prejudice and a trustee action to compel the removal of trustees controlling a majority of the shares of the company
- representing the special committee of the board of a major US media company in a shareholder challenge to a US\$1 billion management-led buyout
- defending a US aerospace firm in a shareholder lawsuit arising out of a tender offer and proposed merger valued at over US\$490 million
- acting for a UK plc in its defence of steps being taken by an activist shareholder seeking to remove the board of directors. Involved an integrated legal and commercial strategy to successfully defend the action



Professional liability

We have a strong track record in acting for clients bringing or defending claims regarding professional liability, including professional negligence, malpractice and professional regulatory issues. Recent examples include:

- defending a 'Big Four' accounting firm in a number of negligent misrepresentation and professional negligence lawsuits arising from the bankruptcy of the firm's audit client, which was formerly one of the largest privately held mortgage originators in the US
- acting for a financial institution making a claim against its former surveyor, a global real estate firm, for professional negligence in respect of valuation services provided
- representing a global accounting firm in a series of related matters including a US\$350 million accountants liability class action, various derivative shareholder claims, a bankruptcy-related adversary proceeding, and accompanying regulatory investigations related to audit work performed for a jewellery store chain
- defending large US law firms in complex and highly sensitive professional liability matters



Product liability

We act for businesses in class actions and mass tort claims arising from product defects across a wide range of sectors, from consumer electronics, automotive, medical devices and pharmaceuticals to industrial machinery, aerospace and chemicals. Recent examples include:

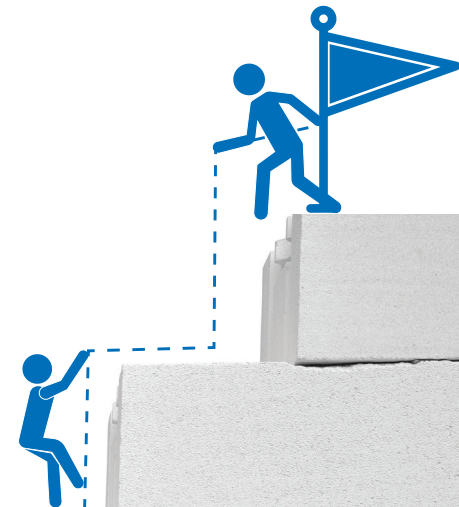
- defending an automotive manufacturer in a major multi-million pound cross-border dispute arising from a fatal accident, in which the UK element of the case amounted to the largest product liability claim in the country
- advising manufacturers and distributors on global product recalls in up to 60 countries
- advising manufacturers and suppliers of various medical devices (including breast implants, gastric bands and patient lifting devices) on defending personal injury claims, regulatory compliance and European Conformity marking issues



Class actions and group litigation

Routinely litigating 'bet-the-company' cases, where the very survival of a company is at stake, we have successfully defended insurers, broker-dealers, financial institutions, Fortune 500 companies, investment companies, mortgage lenders and public companies, as well as their owners, officers, directors and partners, in class actions brought in a number of jurisdictions. Alongside any such actions, we have been at the forefront of managing reputational issues and the media's impact arising from crisis situations and from high profile litigation. Recent examples of our US class action experience include:

- counselling Progressive Casualty Insurance Corp. and related entities in 18 antitrust actions and a RICO class action consolidated in an MDL proceeding in Florida alleging a conspiracy among insurance companies relating to automobile repair labor rates
- representing Progressive Casualty Insurance Co. and Progressive Direct Insurance Co. in a class action alleging unfair business practices under Connecticut's Unfair Trade Practices Act (CUTPA/CUSPA), tortious interference and unjust enrichment
- representing GEICO and a GEICO executive in an action alleging Bivens/Section 1983 and various other claims relating to the Plaintiff's alleged improper criminal indictment



Construction and Infrastructure

Over 200 dedicated construction lawyers, who work on some of the most ambitious construction projects throughout the world, comprise our global construction and infrastructure group. Our lawyers regularly advise on risk mitigation and dispute resolution throughout a project's lifecycle, from inception to completion.

Our extensive experience in construction contract drafting and negotiations helps clients effectively allocate and manage the various risks of project performance, including cost and financial issues, contract changes and delays, claims management, potential defaults, and insurance matters.

Our global network of lawyers is unparalleled in achieving successful results for our clients across a wide range of jurisdictions and in a variety of dispute resolution forums, including negotiation, litigation, arbitration and mediation.

Our team regularly advises on complex and high-value construction and infrastructure disputes, including:

- representing a major EPC contractor in an SIAC arbitration in Singapore with a Korean counterparty concerning a US\$550 million contract on what was then the world's largest tri-fuel power plant, located in the Middle East. Multiple issues arose involving delay, design, workmanship, and entitlement to liquidated damages
- advising the world's largest heavy lifting and heavy transport company concerning a dispute over a €2.2 billion contract to construct the 'Chernobyl Arch'. Disputes arose concerning delay, lost profits, and the price of variations
- acting for a major EPC contractor in an LCIA arbitration in Switzerland relating to a claim for loss of over €40 million in revenue following an explosion at a gas power plant in the UK, which involved allegations of gross negligence
- representing a Korean global organisation in arbitrations in Dubai and Qatar arising out of the construction of a 2km road tunnel under Abu Dhabi city and a Qatar infrastructure project. Both matters involved claims totalling US\$70 million
- successfully defending a UAE investment corporation in an arbitration in Abu Dhabi concerning payment for, and cancellation of, a high-rise tower development project. Thereafter, prosecuting a second arbitration to enforce rights achieved in the first arbitration. Claims and counterclaims totalled US\$250 million
- securing a favourable settlement for a Qatar energy company of 80 discrete claims, worth over US\$300 million, by a Japanese contractor on a Qatar project
- representing one of the world's largest construction management companies in resolving US\$200 million in claims for contract balance, extra work and delay arising out of the abatement and deconstruction of 130 Liberty Street (the former "Deutsche Bank Building") in downtown Manhattan—the last building to be removed from the "Ground Zero" site

International Arbitration

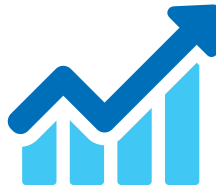
Our market-leading International Arbitration Group specialises in representing companies, financial institutions, States and State entities in major commercial and investment-treaty arbitrations around the world. Known for our forensic preparation, pragmatic strategic advice, innovative working practices and convincing advocacy, we have over 80 specialist international arbitration lawyers around the globe, including in all the major arbitration hubs. Our teams are experienced in conducting arbitrations under all major arbitral rules and ad hoc proceedings in disputes governed by laws across a wide range of common law and civil law systems.



International commercial arbitration

Our core service is advising on high-value, complex contractual disputes, with particular specialisations in energy, infrastructure, telecoms, manufacturing, trading and commodities and financial services. We conduct international arbitrations pursuant to the rules of all major arbitration institutions including the ICC, LCIA, SCC, AAA, HKIAC, SIAC, DIAC and Swiss Rules. As well as acting as counsel and advocates in arbitral proceedings, our lawyers are frequently appointed to sit as arbitrators. Recent examples include:

- our Paris and London offices representing a Middle Eastern national oil company in long-running ad hoc arbitration proceedings seated in London against a Middle Eastern company in a dispute in excess of US\$20 billion regarding performance of a long-term gas supply agreement
- our Zurich, London and Beijing offices acting for a major national oil company in a Swiss Rules arbitration in a dispute arising out of a Swiss law governed cooperation agreement concerning upstream and downstream projects in Algeria
- our Doha office acting for a major Qatari entity in bringing claims in an LCIA arbitration for compensation arising from the sale of shares in a Togolese entity



Investor-state arbitration

We are a globally top-ranked firm for investor-State arbitrations, and we regularly represent both claimant investors and respondent States in disputes arising under multilateral and bilateral investment treaties. We appear frequently before ICSID tribunals, the Iran-US Claims Tribunal, arbitrations administered by the Permanent Court of Arbitration, and ICC tribunals, as well as ad hoc tribunals, including under the UNCITRAL Rules. Recent examples include:

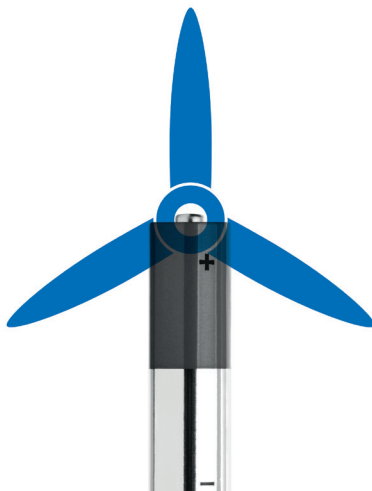
- our London, Paris, Dubai and Jordan offices representing an African state in defending three unrelated and ongoing investment treaty claims all arising from the events of the Arab Spring: the first in an ad hoc BIT arbitration governed by the UNCITRAL Rules brought by an Asian investor worth over US\$550 million; the second in an ICC arbitration under a BIT brought by a European investor; and the third in proceedings brought by a UAE investor pursuant to the OIC Treaty
- our Paris and Singapore offices advising two groups of investors in proceedings in excess of US\$700 million against a South East Asian state concerning the alleged expropriation of an LNG import terminal and nationwide distribution business
- our Singapore and Paris offices representing the Government of Slovenia in ICSID claims commenced by an Italian investor in respect of a highway tunnel project



Public international law

We are regarded as having the pre-eminent public international law (PIL) practice. We were the first firm to have an established practice devoted to PIL, and we have maintained a consistent track record over 35 years representing States, government entities and multinationals in both contentious and advisory PIL matters. We are recognised for our global breadth of practice, political sensibilities, pragmatic advice, cost-effectiveness and advocacy skills. Recent examples include:

- Timor-Leste - Australia case
- Slovenia - Croatia case
- Ecuador - Colombia case concerning aerial herbicide spraying
- Peru - Chile case concerning maritime delimitation
- Nicaragua - Colombia case concerning disputed sovereignty and maritime delimitation
- Romania - Ukraine case concerning maritime delimitation in the Black Sea



Case studies



International arbitration: national energy company

We represent a national oil company in defending a series of international arbitration claims totalling over US\$33 billion arising from a long-term gas sales contract. Following various technical and other issues which prevented our client from supplying product under the contract, the claimants commenced separate arbitrations seeking compensation for both historic and future lost profits and indemnities against claims from their downstream customers. The claimants' damages claim is particularly complex, involving the recreation of an alleged hypothetical market situation which would have existed for 10 years had our client been able to supply the product, and the projection of this hypothetical market for a further 15 years in the future to account for the remaining period of the contract.

These disputes encompass a very wide range of issues in upstream and midstream oil & gas, including issues of foreign law, force majeure, price formula and price revision negotiations, complex contractual and performance questions, delivery and nomination issues, a technical assessment of pipeline, surface and sub-surface facilities, alleged equipment failures, market-related questions and background political issues.



Crisis management for Transocean – Deepwater Horizon

Within hours of the 2010 explosion on the Deepwater Horizon, numerous state and federal agencies began investigating the accident. Transocean, a global provider of offshore contract drilling services, worked to help stop the spill and salvage the wreckage while answering the inquiries, complying with investigators, and helping its injured employees and the families of those affected by the disaster. The accident was followed by civil charges, civil litigation, and intense international media scrutiny. We led the client's defence in all matters arising from the spill and advised the company's executives and board on managing unfolding events. This included:

- leading the defence of the company in civil multi-district litigation in various jurisdictions, which required taking more than 250 depositions
- guiding the client through Congressional inquiries, and testifying on the client's behalf during Congressional hearings
- establishing a team for efficient data collection, review and production. This team has managed more than 70 million pages of data produced by all parties during civil litigation to date, and more than 50 sets of document requests from litigants and government agencies including the Department of Justice, Securities and Exchange Commission, the U.S. Chemical Safety Board, the National Academy of Engineering, congressional committees, and the President's Oil Spill Commission



Pursuing high value complex claims

We represented the subsidiary of one of the world's leading industrial and systems manufacturers in a dispute with the New York City Department of Environmental Protection (DEP) concerning a US\$150 million contract for electrical work at a critical water filtration plant responsible for more than 10% of the city's water supply.

This was one of the largest capital construction projects in the city's history and the largest underground and stacked dissolved air flotation water treatment plant ever constructed in the US.

We also represented the client in three separate disputes involving more than US\$20 million with the DEP in connection with electrical work performed at wastewater treatment facilities servicing the city.

Doing things differently

Fees and funding

We fully embrace the move away from the chargeable hour as a means of billing. We regularly use a number of alternative fee arrangements, such as:

- ✓ Fixed and Capped fees
- ✓ Blended rate
- ✓ 'Client satisfaction fees'
- ✓ Fee estimate with collar
- ✓ Conditional fee agreement
- ✓ After the event insurance
- ✓ Damages based agreement
- ✓ Third party funding
- ✓ One fee retainer

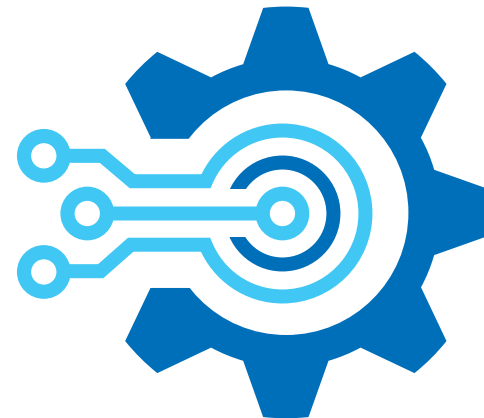
We are clear and transparent about costs from the outset. We also report regularly throughout the matter, for your control and visibility.

In addition, we have strong relationships with third-party funders.

Litigation technology

We were early adopters of innovative technologies that contribute to the efficient and effective management of disputes and assist us to achieve great outcomes with our clients.

- ✓ Global litigation technology team
- ✓ E-disclosure
- ✓ Data analysis, forensics, artificial intelligence
- ✓ Document collaboration and e-bundling
- ✓ Case management and reporting



Key contacts

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