Q&A With WilmerHale's John Pierce

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John V.H. Pierce

John V.H. Pierce is the head of the international arbitration practice in the New York office of Wilmer Cutler Pickering Hale and Dorr LLP. Described by Chambers USA as "a crucial figure in the firm's global arbitration practice," Pierce represents clients in international arbitration matters in venues around the world, under both civil and common law regimes, and under the rules of all major arbitral institutions.

Pierce has represented European, U.S., Latin American and other companies, in a wide range of industries and sectors, in arbitrations sited in Latin America, the U.S., Europe and Asia. He has particular experience in international joint venture, merger and acquisition, shareholder, pharmaceutical, electronics, telecommunications, transportation, financial services, and agency disputes. In addition to his work as counsel, Pierce sits as an arbitrator in international disputes, and he is a frequent writer and speaker on issues of international arbitration and dispute resolution.

He is a board member and member of the Programs Committee of the New York International Arbitration Center; a founding member of the International Arbitration Club of New York; a member of the International Commercial Dispute Resolution Committee at the Association of the Bar of the city of New York; and a member of the Council on Foreign Relations.

Q: What attracted you to international arbitration work?

A: I was always interested in having an internationally-oriented career. It was that interest that led me to study at the Georgetown Foreign Service School and Institut d'Études Politiques in Paris, and then to pursue a fellowship at the École Polytechnique. That interest also led me to Georgetown Law School which has an exceptional international law program.

After working at a firm during my second year summer, it became clear to me that I wanted to focus on dispute resolution, rather than transactional work. Marrying that interest with my international focus naturally led to an interest in international arbitration. So, when I left my clerkship, I looked for opportunities to work in a leading international arbitration practice. I had heard great things about Gary Born's practice and, when I learned that Wilmer had just opened an office in New York (in late 1999), I jumped at the opportunity. I left New York for London in late 2001 to work on an arbitration with Gary and I have been practicing in this area ever since.

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

A: Although the practice is constantly evolving, I will mention two trends that, in my experience, are increasingly affecting the practice of international arbitration. The first trend is the incorporation of technology into the process. By that I mean the increasing use of technology in every step of the advocacy process — from hyperlinked submissions, to electronic discovery, to electronic hearing bundles, to the use of monitors and electronic "trial"-like presentations during hearings.

There are some arbitrators, of course, who prefer the traditional, more low-tech, "all paper" approach for submissions and oral advocacy at hearings. But I think the clear trend is in the direction of paperless submissions and hearing presentations. This is a big (and welcome) change from my first-years in the practice. And I think this trend will only accelerate as younger practitioners continue to join this practice area.

The second trend — and one that has been the subject of much debate and commentary — is the so-called "Americanization" of the arbitration process: from larger submissions, to more extensive disclosure, to a more liberal approach to witness preparation, to a more adversarial approach generally in the process. Many have debated whether these are generally positive developments for the practice or, on the contrary, whether this trend is damaging to the process of international arbitration. As in many cases, I think the answer lies somewhere in the middle. I do think that criticism had fairly been directed at the increasing burdens of document disclosure in international arbitration which is becoming more litigation-like and which arbitrators from both civil and common law backgrounds must be more vigilant about policing. One of the challenges for those of us who practice in this field will be to continually monitor this trend to ensure that the users of the international arbitration system — our clients — are well served by the process.

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

A: Early in my career, I worked on an arbitration matter seated in Seoul on behalf of an American company against a Korean company. The arbitration was before a single arbitrator from the U.K. who was appointed by the institution administering the proceedings. The sole arbitrator made the case extraordinarily challenging for both parties. He appeared unwilling to make crisp, decisive rulings on procedural matters and yet was all too eager to make novel substantive arguments on behalf of the parties or to take the case in a direction that neither party was advocating. It was a bizarre experience that left both sides enormously frustrated. And it is an experience that has affected me both in my role as counsel and as an arbitrator.

As counsel, I generally favor three-person tribunals to reduce the likelihood of eccentric decision-making by a sole arbitrator; and when I serve as arbitrator, I am particularly mindful of the importance of making prompt, decisive rulings that provide clarity to the parties on the way forward. Clients have told me that they value promptness and clarity, even if the decision does not go entirely their way, over muddled compromises that complicate rather than clarify the issues.

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

A: First of all, I would encourage younger lawyers considering a career in international arbitration to start learning the law and practice of international arbitration as soon as they are able. When I was in law school, not so long ago, there were no courses in international arbitration; now, most top law schools have courses in the field that are taught by leading academics or practitioners. These courses provide a great opportunity to get a sense for the legal issues that arise in international arbitration and to see whether one finds those issues to be exciting and interesting enough to make them the focus of one's career.

Second, if possible, it is important to go to a firm that has a dedicated international arbitration practice. There are many fine firms in New York, for example, that have a few practitioners who practice at least partly in the field; but I would advise a young attorney considering a career in this area to join a firm that has invested heavily in this space, that is committed to a truly international approach (with lawyers from diverse jurisdictions in the practice), and that has a distinct international arbitration group with practitioners who do nothing but (or almost nothing but) international arbitration. It is in those practices that a young lawyer has the best chance to really immerse herself in the practice area and develop the experience necessary to advance in the field.

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

A: I have been very impressed of late by Salim Moollan of Essex Court Chambers in London. I first ran across Salim when we were adversaries in a long, hard-fought series of arbitrations some years ago. I was impressed at the time by Salim's careful preparation and agile examination of witnesses. More recently, Salim sat on a tribunal in an arbitration seated in Switzerland in which I appeared as counsel. Much of the witness testimony was in French, of which Salim is a native speaker, and he was helpfully able to correct the interpreter, at important times, with respect to the testimony of the witnesses. He was also very well prepared, had little patience for nonsense or bluster, asked incisive questions of both sides, and immediately focused on the key issues in dispute. I found him to be a very effective arbitrator.