

## Dispute Resolution Support Services

*Contractual, commercial and technical expertise in the global energy industry*



### Dispute Resolution Support Services at Arthur D. Little

The senior members of our Dispute Resolution Support team have worked on the commercial and technical aspects of the global energy industry since the 1970s. They have personal experience of negotiating Production Sharing Agreements, LNG & Gas Sales Agreements, including gas storage agreements, transactional valuations, infrastructure access disputes and associated damages claims. We offer our clients valuable insights into custom & practice in the global energy industry, and related technical, commercial and contractual matters.

Our team regularly provides expert witness testimony in contractual disputes, supporting clients involved in complex litigation and arbitration proceedings. We work throughout the value chain, including upstream oil & gas, pipelines and LNG, gas storage, trading and retail. Our clients span the entire energy spectrum, from global oil and gas companies and large multi-national utilities, to small niche players in specific markets, plus National Oil Companies, governments and regulatory bodies. Our work is global by nature, and we have experience in Europe, Asia, the Americas, Africa and the Middle East.

We have been called as Experts in arbitration proceedings under UNCITRAL, ICC and other procedural rules, in addition to supporting clients and their Counsel in contractual disputes which do not go to litigation or arbitration. Knowing not just “what to say” but “how to say it” is often critical to our clients’ success.

### Why we are different

Our experience is real, relevant and recent:

- Over the past five years alone, our team has been involved in over 70 disputes, and been cross-examined around 35 times.
- Our Global Energy Practice colleagues work on strategic and operational challenges with major energy players, so we have our finger on the pulse of current day operations, in addition to our Dispute Advisory expertise.
- We are committed to the highest standards of ethics for expert support and we remain independent, willing to debate and disagree with our client and their Counsel where necessary.

### How to work most effectively with Expert Witnesses

#### 1. Start early

While it may be better for parties to settle disputes amicably, we recognize that it can sometimes be impossible to resolve disputes, and for tactical reasons it may be necessary to launch legal or arbitral proceedings to ensure the other side engages seriously in negotiations.

One piece of advice we always share with our clients and their legal teams is to get our input sooner rather than later. We are increasingly asked to provide our input earlier in cases. We can support with the development of the economic theory of a case during the merits/liability phase, ensuring key common-sense economic and industry practice arguments are considered as the basis of the claim. We then offer support as the case strategy is being developed, and throughout the process, culminating in a claim, damages calculations and settlement calculations.

This early strategic support can help ensure that there is clarity and agreement about the nature of the claim before any detailed quantum evaluation takes place. Late-stage changes in the definition of the claim will generally lead to re-work and schedule pressures.

#### 2. Getting early access to all the relevant data

We understand that sometimes it may be difficult to access all relevant documents and that some potentially critical data may become available only after our analysis is well underway. This may be because of a long translation backlog, changing priorities as to what data may be required, a new realisation as to what is available, or challenges with the disclosure and discovery processes. Such delayed information-flow can result not only in a significant late-stage change in perspective but also in substantial re-work, both of which should be avoided. We therefore always find it very valuable at the outset of any engagement to spend time discussing with the legal team all likely data needs, in great detail. This supports the legal team in their efforts to secure all relevant data as early as possible and helps ensure that the work can be completed in as efficient and timely manner as possible.

#### 3. Remember that an initial view is just that – initial!

We have been asked many times to give a rough estimate of value based on only a few hours of review and analysis. This is then used to provide an initial assessment of the potential claim. We are happy to do this, though it must be borne in mind that this value is an early indication and is likely to change once we have spent several weeks analyzing a particular issue, perhaps

sifting through thousands of documents to support our final view. Our more considered judgement may turn out to be rather different from our initial quick calculation; in fact deviation to some degree should be expected. We are looking for the most robust analysis in our reports, and ultimately on the stand during hearings we must be able to defend every assumption we use and every figure we quote.

#### 4. Two heads may be better than one

In our experience, it can be very hard to find a single expert who can cover the depth of detail required across all disciplines. On several occasions we have been asked to team up with other consultancies which offer niche services, such as forensic accountancy, or specific engineering or other technical experience. We bring the commercial, valuation and industry expertise, and can work with the other Expert to produce a jointly authored Expert Report. Pooled knowledge is often more valuable on the witness stand. We have experience of working with many Counsel, Arbitrators and Experts, and can share our experiences of them to assist in identifying how to deal with counterparts most effectively.

#### 5. Working together

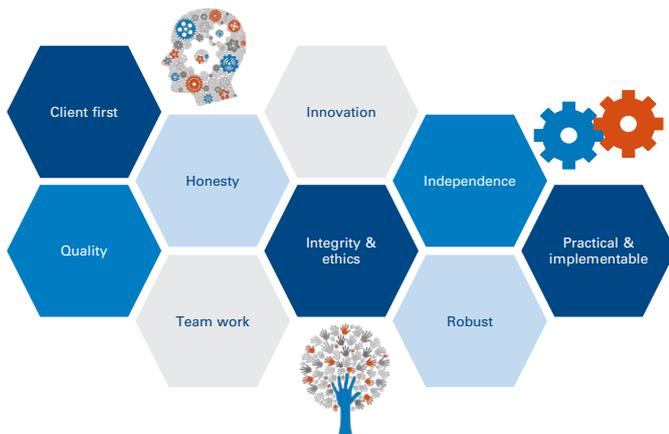
We prefer to work closely with clients and their Counsel throughout the case, to ensure timely input to work schedules, clarity of deadlines and responsibilities of the team. A good working relationship is especially important as we prepare ourselves for hearings. Some legal teams invite us to provide technical inputs to their opening statements, closing arguments and post hearing briefs. Multi-disciplinary case teams with the legal counsel, client representatives and industry experts working together ensure every aspect of the case can be addressed appropriately.

#### 6. Meeting the counterpart's expert witness

As part of the process, we are often asked to meet with the counterpart's expert with the objective of setting out any areas of agreement or disagreement to the Tribunal or judge. At this stage, within the confines set by the legal case, we do our best to serve Counsel and our client, while maintaining and defending our independent view. We need clear instructions as to what we can and cannot discuss in these meetings.

#### 7. Maintaining the expert's integrity and independence

We are bound by our ethics and company values to retain our integrity and independence, to ensure our lasting credibility as an independent Expert able to assist a Tribunal or a judge. Within that context, we need to focus on the most robust arguments we can find to support our position, and keep the analysis and commentary simple for all non-technical readers.



### Examples of our work in Dispute Resolution – Upstream oil and gas

- Expert Witness support on behalf of a National Oil Company in a dispute arising from the delay of a producer contractually obliged to develop an upstream gas project and an associated liquefaction plant.
- Expert Witness testimony concerning the valuation of an oil field in Azerbaijan following a dispute between the owner and an investment bank which had allegedly undersold the asset.
- Expert Witness testimony, valuation and business plan assessment of a newly patented Ultrasound Technology to improve production from mature oil fields.
- Expert Witness testimony in a dispute heard at the High Court in London, valuing oil fields in Kurdistan, both during the exploration and the development phase.
- Expert economic and valuation support in a dispute concerning Asian coal bed methane potential.
- Expert support in a dispute concerning the value impact of seismic survey data in large areas of undrilled deep-water offshore exploration acreage in South East Asia.

### Examples of our work in Dispute Resolution – Midstream oil and gas

- Expert Witness testimony on behalf of a National Oil Company disputing the value of over-lifted gas volumes via a gas export pipeline to Europe.
- Expert Witness testimony in a dispute regarding the unreliability of gas supplies in a long term gas contract, and quantifying a potential price discount.

- Expert Witness support in a dispute following a cancelled gas pipeline import contract in the Eastern Mediterranean.
- Expert Witness testimony in a dispute involving two parties who had invested in infrastructure to supply LNG to the US, which had then been impacted by US shale production.

### Examples of our work – Tax

- Expert economic support valuing oil and gas assets, for tax purposes.
- Negotiating upstream taxation regimes in countries such as Angola, Mozambique, Norway, the UK, and many others.
- Expert Witness testimony in a dispute regarding a new upstream windfall profits tax.
- Expert Witness support in a dispute regarding the fiscal regime and competitiveness of natural gas in the Eastern Mediterranean.

### Examples of our work – Price reviews

- We have been involved in numerous price review processes and arbitrations involving gas delivered under long term contracts to European buyers from other locations in Europe, Africa, Russia and the Middle East.
- We undertake market value research and calculations, price and margin analyses, TDS cost and netback calculations, LNG market trend analysis, spark/dark spread analysis, reviews of traded market development, and of gas-to-gas competition.
- We use our understanding of custom and practice in the gas industry, experience derived from involvement in contract negotiations and knowledge of commercial terms, to support our clients.
- We have been involved throughout these processes, from negotiation support, interpretation of PR terms, evidence and justification for trigger decision, assessment of robustness and quantum of claim and proposals for adjustment, through to provision of expert reports and testimony. We have also acted as expert determinator on several occasions.

### Key team members

#### Nick White

Nick White has over 35 years' experience in the upstream oil and gas industry and the European gas and power industries. He is heavily involved in dispute resolution work relating to gas price review arbitrations, building on his experience of negotiation of fiscal terms and negotiation of GSAs as well as studies of the market value of gas in various European markets and prefeasibility studies of new gas infrastructure, etc.

He has provided oral expert witness testimony on many occasions in a variety of locations (including London, Stockholm, Paris, Geneva and Lausanne), jurisdictions, and under various procedural arrangements (including ICC, SCC, ICSID and UNCITRAL).

#### Stephen Rogers

Stephen is an exploration and development geologist by training, having spent 14 years with BP managing exploration development projects in various parts of the world, and a further 7 years managing the commercial aspects of producing assets for both Hess and TXU. He joined Arthur D. Little in 2004, and has focused on the provision of strategic, operational and contractual support to oil and gas exploration and production companies worldwide.

He has given oral expert witness testimony on various cases at the High Court in London, regarding upstream oil field disputes in Europe, Asia and the Middle East, in addition to appearing as an expert witness in several arbitrations.

#### Kirsty Ingham

Kirsty Ingham is a Principal in Arthur D Little's UK Energy Practice, which she joined in September 2004. She has worked in the European energy markets for over fifteen years, including roles in industrial and commercial gas, electricity and oil procurement, risk management, contract valuation and optimization, and acquisition processes. At Arthur D. Little, Kirsty has supported clients on contractual disputes, price reviews, arbitrations and regulatory issues in the natural gas and power markets across Europe.

#### Yvonne Fuller

Yvonne Fuller is a Principal based in Arthur D. Little's Energy Practice in London. She has specialized in energy strategy and economics for both public and private sector clients since 1998. Her analyses have covered oil and gas market modeling throughout the value chain, including upstream, LNG, gas pipelines, trading and retail. Over the past decade, the majority of her dispute resolution work has focused on supporting clients

involved in upstream and midstream arbitrations and litigations in North Africa, Asia and the Middle East.

#### Katia Valtorta

Katia Valtorta is a Principal in Arthur D. Little's Milan office. She focuses on gas and power retail and wholesale markets, feasibility studies for gas transportation assets, energy efficiency and energy sourcing for large industrial users, distributed generation, cogeneration and renewable energy projects. She has acted as an Expert Witness in various arbitrations, focusing on the development of the Italian energy market, price reviews and commercial LNG matters.

#### Salman Ali

Salman Ali is a Principal based in Arthur D. Little's Madrid office. He has worked in consulting for over 20 years, with experience across a range of energy segments including natural gas and power, as well as numerous low carbon technologies. He has supported utilities, E&P companies, financial investors, industry associations and regulators. In addition to his litigation work, he has worked on a range of topics from market modeling, technology development and sourcing, investment analysis and valuation, and regulatory model design.

### Contacts

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#### Arthur D. Little

Arthur D. Little has been at the forefront of innovation since 1886. We are an acknowledged thought leader in linking strategy, innovation and transformation in technology-intensive and converging industries. We navigate our clients through changing business ecosystems to uncover new growth opportunities. We enable our clients to build innovation capabilities and transform their organizations.

Our consultants have strong practical industry experience combined with excellent knowledge of key trends and dynamics. Arthur D. Little is present in the most important business centers around the world. We are proud to serve most of the Fortune 1000 companies, in addition to other leading firms and public sector organizations.

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