

Q&A With Foley & Lardner's George Ash

Law360, New York (October 01, 2010) -- George W. Ash is a partner in the Detroit office of Foley & Lardner LLP. He chairs the firm's regulated industries department, government and public policy practice, and government procurement practice.

His practice focuses on government procurement law. He counsels clients on the preproposal, proposal, negotiation and performance of U.S. government prime contracts and subcontracts, and on resolving contract disputes.

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

A: It was a complicated public-private-nonprofit partnership that allowed the seaport of Detroit to remain open. The transaction involved a number of parties with diverse interests.

There was a defunct port commission that had issued bonds secured by operating revenue from the port; a port operator that had abandoned his contract; a bank threatening to foreclose on the port to pay bond holders; a federal judge considering whether to allow the foreclosure; the city of Detroit, which was to acquire the port when the bonds were paid; a newly constituted port authority that wanted a port to manage; and my client that operated nearby truck and rail operations and saw the addition of the port as providing the building blocks for a multimodal transportation hub.

Everyone had legal representation, and while we all agreed we wanted the port to remain open, the terms were hotly contested. We determined a concession rather than a lease was in our client's best interest, and through a series of agreements had the city of Detroit quit-claim their revisionary interest in the port to the new port authority. Our client redeemed the bonds and worked out a master concession agreement with the port authority, and then a subconcession agreement with a company that would operate the port.

The master concession agreement runs for 25 years, with three 25-year options. Revenue is shared between the city of Detroit, the port authority, the master concessionaire and the subconcessionaire.

Port expansion is contemplated in the agreement through private or public funding. It is the most complicated transaction I have worked on, touching a wide variety of legal disciplines, all conducted in a public, political environment.

Q: What accomplishment as an attorney are you most proud of?

A: After I finished my LL.M. in air and space law from the University of London, while on active duty with the U.S. Air Force, I was assigned to President Ronald Reagan's Strategic Defense Initiative (SDI), as their legal adviser for international law and treaty compliance.

My primary responsibility was to help construct demonstration experiments that complied with international law, in particular the Anti-Ballistic Missile Treaty with the Soviet Union. Once designed, it was then my responsibility to get the compliance aspect of the experiment blessed by the arms control community and ultimately funded by Congress.

Due to the political nature of the program, it typically took 18 months to get an experiment approved. Since I was one of the few individuals familiar with SDI's entire experiment portfolio, I became an adviser to the defense and space arms negotiations in Geneva, Switzerland.

I truly believe that SDI hastened the collapse of the former Soviet Union, ending the Cold War. The development of real ballistic missile defense will make the world a safer place as more nations become nuclear powers.

Q: What aspects of law in your practice area are in need of reform, and why?

A: There needs to be a quick, fair and user-friendly method for resolving disputes between the federal government and contractors, especially small businesses. We generally apply the same rules and procedures to mom-and-pop businesses as Fortune 50 companies.

The federal boards of contract appeals were designed to provide this type of relief, but in my view they fail miserably. It typically takes a year from the time an action is filed at a board until a hearing is held, and then another year before a decision is issued.

Even then, the initial board decision only addresses a contractor's "entitlement" to recover, not the "quantum" or amount of recovery.

Then, if the parties can't agree on the quantum, it's back to the board for another hearing and decision. Small businesses just can't wait years like this in order to get paid for their work.

On the one hand, the government recognizes the importance of small businesses to the U.S. economy and encourages small-business participation in government procurement, but then takes a very unsympathetic and frankly counterproductive approach in resolving disputes.

Q: Where do you see the next wave of cases in your practice area coming from?

A: Government contract compliance matters have always been a sensitive subject with Congress since war profiteering during the Civil War led to the passage of the original False Claims Act (FCA). Since then, the FCA has been strengthened and expanded several times, and with every abuse discovered more laws are passed (often to further punish what was already illegal).

Abuses during the wars in southwest Asia have inflamed Congress and become easy political fodder for adding new requirements for contractors.

Add to this the fact that the recent economic downturn has caused many nontraditional government contractors to look enviously at the government as a “cash cow” and an outlet for their goods and services with little concern for the compliance requirements included in virtually every federal government contract or subcontract.

Finally, the passage of the American Recovery and Reinvestment Act (ARRA) has created the perfect storm of huge amounts of money, expected to be spent quickly with special reporting requirements related to how the money was spent and the jobs created or saved.

There is no doubt the effectiveness of the ARRA will be a hotly debated political issue that will trigger numerous audits attempting to verify the reported effectiveness numbers. These audits will likely lead to investigations that will keep government contract lawyers busy for years to come.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Karen Manos, currently the co-partner in charge of Gibson Dunn & Crutcher LLP's Washington, D.C., office and co-chair of the firm's government and commercial contracts practice. I first knew of Karen when I was teaching at the U.S. Air Force Academy. I was the course director for the required Introduction to Law course and Karen easily was the number one cadet in the class.

She went on to graduate number one in her law class at Duke and has had successful careers as a judge advocate and in private practice. She has written the definitive work on government contract costs and pricing and serves as the chair of the public contract law section of the ABA. Despite these accomplishments, Karen remains down-to-earth, modest and gracious.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: The old saying that nothing is certain but death and taxes has a corollary — that the government will take your tax money and spend it (and lately, even a little more).

In short, government procurement is here to stay. It is a much broader and more dynamic practice than most realize, including issues related to contracts, construction, white collar, accounting, intellectual property and litigation, just to name a few specialties.

I would encourage an attorney interested in the area to spend some time working for the government both to learn the acronyms and lexicon of the trade, but also to understand how the government operates and how decisions are made.

I have found the latter to be the most valuable insight I provide clients.

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