

THE
AM LAW LITIGATION DAILYSelendy Gay Elsberg's Rajat Rana Aims to Bring Some Trial
Lawyer Approaches to Investment Treaty Arbitration

By Ross Todd
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When **Rajat Rana** moved his investment treaty arbitration practice from **Alston & Bird** to **Selendy Gay Elsberg** this summer, it was a reunion of sorts. Rana practiced earlier in his career as an associate in the New York office at **Quinn Emanuel Urquhart & Sullivan**, back before Selendy Gay's founders left Quinn to form their own one-office trial firm in 2018.

Rana's latest move continues a long-term trend in the international arbitration world of lawyers leaving big international firms—including Freshfields, Clifford Chance and Sherman & Sterling—to practice in smaller disputes-centered settings. Where many of those prior arbitration specialists left Big Law to form their own boutiques, Rana opted to link up with an established litigation shop. Last week the Litigation Daily caught up with Rana to discuss the move and the overall trend lines in arbitrations involving bilateral investment treaties. *The following has been edited for length and clarity.*

Litigation Daily: It used to be that bilateral investment treaty arbitrations were by and large the ambit of large international law firms. So get me up to speed: What's been going on in this market?

Raj Rana: It's a great question. It's been over the last six years—probably more. I think it most-



Rajat Rana of Selendy Gay Elsberg

ly started with Three Crowns when a group of partners left **Freshfields**. Since then, the trend has followed where there are now specialized boutique firms or small firms that actually just focus on arbitration work.

I think it's mostly driven by clients because especially in bilateral investment treaties—as with most practices—there's a really significant demand for experts who do this day-in and day-out.

I can tell you an example from a pitch I was just in where people approached us about trial work. Clients want a firm that does trials and the question is always asked: How many of you have done trials? How many trials in the last year? If you go to other places, the answer is much different. I think at Selendy the answer is much more, I think,

enticing to potential clients who are facing those significant disputes.

I feel this whole drive [in my practice] is because of clients. Bilateral cases involve suing governments, which is not an easy decision. Clients are exercising what will sometimes be called a “nuclear option.” If they want to sue the government, they want someone who can do this without any distractions and who has a dedicated team who has done this before.

Also when you sue governments, what I noticed is big firms often do work for sovereign wealth funds in the M&A practice and private equity and they may have potential conflicts. They may not want to be adverse to a government. But I think a benefit of a smaller firm is that you are essentially conflict-free, especially in a firm like ours with only a disputes practice. That also allows you to be very aggressive when you want to take certain positions because there’s no expectation of future corporate work. So, coming back to your point, I think it’s all client-driven.

Well, you have worked for both sovereigns and for investors. Is there a firm division in this practice or is it common to have a mix of both investor-side and sovereign-side work? And does your move to Selendy Gay indicate a shift in your own practice?

So overall, the firms who tend to do mostly investor-side work, they want to represent private companies and individuals because there are a lot more opportunities that way. It’s a much more profitable practice. When you represent sovereigns, it’s much more limited in terms of fees, but there are some firms that have just done that practice. So if you look at **Curtis, Mallet[-Prevost, Colt & Mosle]**, I think if you look at **Squire Patton Boggs**, they mostly have sovereign practice.

There really is a clash between the two practices: You can either go investor-side and go against sov-

ereigns, or you can represent sovereigns, especially if you’re a repeat player. So if you look at **Dechert** for example, **Eduardo Silva Romero**, who is based in Paris, has built a formidable Latin American practice, but it’s essentially a sovereign practice. So he represents countries in Latin America, but they’re repeat players because they get sued all the time. So it eventually becomes a profitable practice.

Coming to my practice here: At Selendy we always say we are on both sides of “the v.” But I think for my practice, it’s essentially going to be more on the investor-side, because that allows you to have more alternative fee arrangements, be more flexible, have your skin in the game. On the defense side, that’s a little harder to do. So, my goal here is just to focus more on the plaintiff/claimant side as opposed to the respondent side.

So with other folks in this practice hanging out their own shingle, why did you decide to move to a trial-focused shop like Selendy Gay Elsberg?

Because I have known the founding partners of the firm for over a decade. I have never worked with someone who’s as brilliant as **Faith [Gay]** and **Philippe [Selendy]** and **David Elsberg**. I worked with them when I was at Quinn for five-and-a-half years. And I was honestly a little bummed when Faith started her firm and I didn’t get a call from her. So when I actually got a call earlier this year, I was really excited because, for me, where I am in my career, it’s a really exciting opportunity to be at a place that’s aggressive in terms of, obviously, the advocacy. But also they’re go-getters, in terms of business development. So I thought, how exciting it would be to join a firm where we share the same values in terms of our trial styles and the excitement to grow something new.

Second is the talent here at the firm. I’ve been here three months. It is absolutely remarkable: the associate quality, the partner quality, the collegiality. These are all the things I focused on, and I’ve

been proven right. When you're doing these big cases, you really want a team from the associate level, not just at the partner level, who can actually do witness interviews and do cross-examination. We have second-year associates who are doing cross-examinations in our huge cases. I think overall, I felt that the framework is there to really build a great practice where I also saw a demand from international arbitration clients.

Oftentimes when clients want someone who is a great cross-examiner, there would always be a request to call a [King's Counsel] from the U.K. But I thought there was a huge gap in international arbitration. Of course, I know in arbitration, everything is based on your written advocacy. But actually in the hearing sometimes when you're crossing really tough witnesses—for example, some really corrupt ministers and foreign officials—you really need tough cross-examiners. I thought there was a huge gap there which I thought a firm like Selendy Gay could fill. You can bring that American style of cross-examination of really great storytelling so you're not just reading a script that is drafted by your colleagues where everyone falls asleep 60 minutes in. I wanted to try that hybrid where we can really bring those unique litigation skills into the world of arbitration. The firm has done a tremendous amount of arbitration work mostly on the commercial side. So my goal was for David Ellsberg and I to combine the commercial arbitration side with the investor-treaty side I would bring and have sparks happen. So far, it's been great.

So what are the skills from Selendy Gay-style trial lawyering that translate to the investment treaty arbitration world? And what are the skills that are unique to that world that you're bringing to the table?

I think some are just generalist skills at the trial level. One is obviously the writing style. In the world of arbitration, it's completely dependent on writing. As a partner, the last thing I want to do is write everything from scratch. The goal in the investment treaty practice is to do things leanly. So the goal is obviously to work with a team that's just stellar, who can come in and the first drafts are great, who can write in great English. I feel having been here three months, most of our associates are former clerks, so the writing style is great.

Then the second is with witness interviews. Some may say you don't really need that skill. But I feel it requires a lot of skill, especially when you're dealing with witnesses who are not based in the U.S. So I think it requires a lot of patience. At Selendy Gay, we have associates who at the fourth-year level are experts in doing witness interviews in the white-collar world. So that experience from white-collar investigations—where you're reviewing hundreds of documents and trying to tell a story—comes extremely handy in the investment treaty practice. Like most lawyers, most clients don't know about the investment treaty practice. So when you first tell them that there's a solution to this problem and here's how they can do it, I feel it requires a lot of hand-holding. You can really use the skills that we have from working for our white-collar clients in terms of interviews, in terms of document collection.

Our big goal in the trial practice is to start thinking about trial from the day we are hired and move backward. We start drafting briefs and putting a strategy together based on that skill set. And I thought it would be fantastic to use that creative thinking and strategy in the investment treaty practice.