

## THE OIL BARON

Curtis, Mallet's managing partner brings in \$25 million a year advising some of the most resource-rich—and reviled—governments in the world.

By Daphne Eviatar

It was a dreary January afternoon,

and George Kahale was looking forward to a relaxing deep-tissue massage and some decompression in the steam room at his Manhattan gym. After months of travel to Kazakhstan and round-the-clock negotiations over development of its Kashagan oil field, this Saturday afternoon off was a rare treat for the managing partner of Curtis, Mallet-Prevost, Colt & Mosle.

Alas, it was not to be. As Kahale stepped out of his East Side apartment building, he heard the familiar ring of his BlackBerry. A senior official of Venezuela's state oil company, Petróleos de Venezuela, S.A. (PDVSA), an important Curtis, Mallet client, was on the line. The company had just received a fax from Exxon Mobil Corporation. The Texas-based oil giant had won an order from a London court freezing \$12 billion of PDVSA's assets.

"It wasn't clear what had happened exactly," Kahale recalls. For more than a year PDVSA had been in tense negotiations with Exxon. Venezuela wanted the American company to renegotiate its contract to develop a Venezuelan oil field. Kahale says he wouldn't have been surprised if Exxon had filed a notice of

### CURTIS, MALLET

Number of attorneys*	200
Number of equity partners*	32
Gross revenue	\$110,000,000
Profits per partner	\$920,000
Revenue per lawyer	\$550,000

\* As of August 31, 2007



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intent to arbitrate the dispute. But “this was different,” he says. Indeed, a British court freezing billions of assets without notice was highly unusual.

Kahale and his client struggled over the broken phone line to understand the fax, but to no avail. Soon the PDVSA official was insisting that his lawyer come to Caracas immediately to help craft the company’s response. Kahale agreed. He canceled his massage and left New York the next morning.

Such emergencies are not unusual for Kahale. Since starting as an associate at Curtis, Mallet right out of New York University School of Law in 1974, the 58-year-old partner has developed a growing and increasingly lucrative specialty representing resource-rich governments under intense political and economic pressure—including some of the most reviled and distrusted leaders in the world.

Kahale’s early clients included the government of Libya under Colonel Muammar el-Qaddafi, and *Petróleos Mexicanos* (Pemex), the state oil company of Mexico, which since 1938 has frustrated the United States and international oil companies by denying them a stake in Mexico’s oil reserves. More recently, Kahale has represented the governments of Venezuela, Bolivia, and Kazakhstan. All, to one degree or another, are seeking to wrest control of their oil and gas industries from multinational companies that negotiated valuable rights from them in the 1990s.

That was the era of privatization. The Soviet Union had fallen, commodity prices were low, and developing countries, cash-poor and eager for foreign investment, were embracing the prevailing neoliberal economic theory that free markets and private ownership of industry would yield the best results. But now the tide is turning. As the price of oil has soared, leaders of oil-rich nations have tired of watching foreign companies reap unprecedented profits off their natural resources. They want more of the payoff for themselves.

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and the government is getting much less of it,” observes William Dodge, a professor of international law and business at the University of California–Hastings College of the Law.

But that requires changing the formulas agreed upon decades ago, which isn’t easy. Over the last 15 years, international law has developed, through a proliferation of bilateral investment treaties and other trade agreements, to protect foreign investors, generally by tying the hands of governments. It’s now much more difficult for host countries to change domestic laws and agreements that govern their natural resource industries than it was

during the wave of nationalizations in the 1970s. If a government’s actions run afoul of international law, it could face costly arbitration proceedings and judgments worth billions of dollars. “You have a very complex international investment law system, which is evolving very rapidly,” says Karl Sauvart, executive director of the Columbia Program on International Investment. “You really need top-of-the-line expertise to understand what is happening.”

That’s what Curtis, Mallet is offering. Representation of foreign governments is not a new line of work for the firm, but Kahale says that “it’s now probably bigger than ever before.” The managing partner

### SMALL FEET, BIG FOOTPRINT

Representing international pariahs has turned out to be a lucrative business for Curtis, Mallet-Prevost, Colt & Mosle. And it hasn’t scared off other clients, either. Last year the New York–based firm’s gross revenue jumped 10 percent, to \$110 million. In large part that growth came from its international transactions and litigation work, according to managing partner George Kahale. Profits per partner rose almost as much, to \$920,000. (PPP grew in part because, while the number of Curtis lawyers overall rose by 9 percent, the firm lost three equity partners.) Although it still doesn’t rival Am Law 100 firms, which last year boasted average PPP of \$1.3 million, for a firm of only about 240 lawyers (as of this spring), Curtis is doing very well.

Perhaps because of its large international practice, the firm is also the industry leader when it comes to minority partners. Twenty percent of Curtis’s attorneys are minorities, according to *Minority Law Journal*, a sibling publication that surveys the 211 biggest and richest American firms on diversity issues. Moreover, eight of Curtis’s 12 offices are outside the United States—London; Frankfurt; Istanbul; Mexico City; Milan; Paris; Muscat, Oman; and most recently, Astana in Kazakhstan.

In addition to representing nationally owned industries, the firm’s strong practice areas include private equity, international tax, bankruptcy, litigation, and international arbitration. William Weinstein, a principal of the Gordon Brothers Group, LLC, a Boston-based global advisory, investment, and restructuring firm, says he’s been “extraordinarily happy with their work,” citing the firm’s “huge network of attorneys in all aspects of law.” Gordon Brothers buys distressed companies, which “often has to happen very quickly. [Curtis lawyers] work around the clock, and they’re always available.”

In litigation, under the stewardship of its eminent longtime criminal defense partner Peter Fleming, Curtis has developed a specialty defending accounting firms in securities class actions. Clients in this area include Deloitte & Touche LLP, PricewaterhouseCoopers International Limited, and Arthur Andersen. Curtis lawyers are “more than responsive,” says the general counsel of a long-standing client that relies on Curtis for this work but did not want to be named. “There are only a handful of firms in the country with this expertise.”

Wendy Kelley, the general counsel of Biovail Corporation, a Canadian pharmaceutical company, is also pleased. Curtis recently defended the company against white-collar criminal allegations and in a Securities and Exchange Commission investigation, both of which settled on favorable terms, says Kelley. “We ended up getting to them because our original counsel was conflicted,” says Kelley. “Once we got to Curtis, I transferred all my files there.”

—D.E.

estimates that the work, most of which he brings into the firm, yields about \$25 million worth of business annually, or about 23 percent of the Am Law 200 firm's revenue [see "Small Feet, Big Footprint," page 108]. With state-run oil companies now 15 of the world's top 25 oil companies, according to rankings by *Petroleum Intelligence Weekly*, their representation has become a highly profitable specialty.

Kahale fell into this line of practice when he joined the firm. A Syrian American raised with Arabic-speaking parents, he was drafted early on to work with two partners representing the Libyan government, which had just nationalized its oil industry. Libya hadn't defended itself in the slew of arbitration claims filed against the country by private oil companies. However, it sought Curtis, Mallet's help in resisting enforcement of the default judgments that were issued against it. In 1980 the firm won what would become a famous victory when a federal district court judge in Washington, D.C., refused to enforce an arbitration award against Libya because the nationalization was an "act of state" that precluded judicial review. The Libyan American Oil Company (a subsidiary of Atlantic Richfield Company) appealed; the parties settled soon afterward. But it was a significant victory for Libya and its leader—soon dubbed by Ronald Reagan as "the mad dog of the Middle East"—and it helped spur Curtis, Mallet's nascent practice representing pariah governments.

If it seems an odd specialty for a relatively small New York-based firm, the practice is also a natural outgrowth of the firm's history. "Curtis was one of the pioneers among U.S. law firms in representing Latin American clients," says Guillermo Ulke, a partner in the New York office, originally from Argentina, who works on international transactions. Indeed, Severo Mallet-Prevost, one of the firm's early partners, defended Venezuela in border disputes in the late nineteenth century. "He was a key force in developing the Latin American side of our activities," says Peter Wolrich, managing partner of the firm's Paris office.

The high-stakes nature of the work helps attract and keep young lawyers at the firm. "International law is really cool," says Miriam Harwood, a partner who has worked intensively on Venezuela matters. "People come up to me all the time saying they want to work on the arbitrations," she says. "Especially the younger associates." (It's not clear whether that translates into overall associate satisfaction. Although Curtis jumped almost 100 points—from 160 to

63—in *The American Lawyer's* associate satisfaction ranking between 2005 and 2006, its rating among New York firms slipped last year from 29 to 46. Associates didn't return enough surveys to allow us to rank the firm nationwide for 2007.)

But with "cool" comes responsibility. "This is very heavy stuff," adds Harwood. "You feel like you're responsible for a whole country. It's sort of a moral burden."

Curtis has shouldered that burden carefully. To cement the trust of its clients and avoid conflicts of interest, the firm does not represent private oil companies. "It's very difficult to do a major amount of work on the host-country side and represent oil companies too," says Kahale. "Some firms do both, but host countries often don't like it. They know if you're on one side of the table in deal one, to be on the other side in deal two is problematic. Especially if you're dealing with highly sensitive issues."

Even partners at Shearman & Sterling, which represents both national oil companies and major international oil and gas firms, acknowledge that the dual role can yield conflicts. "From the [national oil company's] perspective, when they appoint you they won't know, and you won't know, who they'll end up partnering with" when they finally reach deals with foreign oil companies, says Nicholas Buckworth, who heads Shearman's project finance group from London. "If I was sitting there with the NOC selecting a law firm to advise us, I'd want to know [the NOC] won't get dropped halfway through because it turns out the law firm has a conflict."

Buckworth insists that Shearman isn't "embedded" with any major oil company the way some firms are. And he adds wryly that "Curtis, Mallet is not a major player in the oil and gas industry that we come across," which makes it easier for the firm to pledge absolute loyalty to their national oil company clients.

Still, there are risks to Curtis, Mallet's specialty. For years, U.S. law prevented American lawyers from traveling to Libya, for example, deeming it a sponsor of terrorism. Then, in 1996, Congress imposed economic sanctions, thwarting the firm's ability to accept new cases for the Libyan government. That could happen again with another Curtis client: In March the Bush administration reportedly launched an inquiry into whether Venezuela should be deemed a state sponsor of terrorism, which could bring with it similar economic sanctions.

But representing pariah governments has otherwise been a lucrative practice that doesn't seem to have ruffled the feathers of other clients. "It hasn't been an issue," says Ulke, when asked if the firm has received any complaints. Curtis, Mallet clients confirmed this. William Weinstein,

## Curtis, Mallet began representing Venezuela

principal at the Gordon Brothers Group, LLC, a global advisory and restructuring firm, noted that whoever else Curtis, Mallet represents "doesn't matter to us. It's not important for my purposes."

Clients hostile to U.S. policy don't seem to hold Curtis, Mallet's American nationality against it, either. Although Hugo Chavez famously pronounced George Bush "the devil" and predicted that the United States was "on the way down," he's had no compunctions about hiring a U.S.-based firm.

in 2003, shortly after the country passed a controversial law requiring foreign oil companies to relinquish their majority ownership interests in Venezuelan oil fields and increase the portion of profits paid to the state. It was an act that left the country open to costly claims from foreign investors. Though the governing international law wasn't completely clear, one thing was: Venezuela needed a good lawyer.

Kahale, a mild-mannered but intense man known to be both highly secretive and extremely loyal, says he was referred to the Venezuelan government by another client, although he won't specify which one. Nor will he name his contacts in the government, or even acknowledge if he's ever met the president. He *will* say that Curtis was first hired by unspecified Venezuelan officials to analyze a set of complex contracts involving an unnamed industry. Soon afterward, Venezuela hired Curtis to handle the first major challenge created by the new hydrocarbons law: the renegotiation of 32 operating contracts with about 25 private oil companies, controlling the production of 500,000 barrels of oil per day.

Venezuela was demanding that all foreign investors transform their old operating agreements into incorporated joint ventures (known locally as "mixed companies"), which would be majority-owned and controlled by the state. Foreign oil companies, which as

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operators hadn’t been paying royalties, would now be required to pay 30 percent royalties and 50 percent income taxes, up from 34 percent. It was a harsh blow to the foreign oil companies, but Venezuela was adopting a take-it-or-leave-it approach.

Kahale and his team had to develop a negotiating strategy that gave Venezuela the terms it was demanding while offering the companies enough to keep them invested in the country, or at least willing to accept the compensation Venezuela was willing to pay them for relinquishing their interests. By the time talks were over, all but two of the companies had accepted the terms of the new law and signed new agreements. (The holdouts—Total S.A. and Eni S.p.A.—have since settled their claims against the government.) But overall the renegotiations were a success. “In the end we had a deal we felt we could go forward with,” says Charles James, vice president and general counsel of Chevron Corporation. “There was a positive economic basis for us to continue in the relationship.”

Last year Curtis advised Venezuela on a second round of agreements involving another 500,000 daily barrels of oil. This time, seven companies agreed to Venezuela’s terms, and two—Exxon Mobil and Conoco Inc.—refused. While Conoco is still negotiating a possible settlement with the government, Exxon Mobil is now bringing claims against both Venezuela and PDVSA in two separate international arbitrations. “Venezuela has expropriated our assets, and PDVSA has reneged on its contractual commitments,” says Margaret Ross, a spokesperson for Exxon Mobil. Curtis, Mallet is defending both the government and the national oil company against Exxon’s claims.

Despite this ongoing battle, even those on the other side of the bargaining table admit that Kahale and his team have been extremely successful. “They developed a very comprehensive strategy,” says one lawyer for an oil company who was involved in the negotiations but did not want to be named. “If you consider that they have changed 32 operating contracts into mixed companies and have only one litigation out of it, I think they did a very good job.”

That job has boosted Curtis’s reputation

in the region, where governments are increasingly demanding that foreign companies renegotiate their old contracts to come in line with renewed nationalist demands. In Bolivia, for example, anger over natural gas production contracts that were negotiated with international companies in the 1990s boiled over in 2003. It led to the ouster of two successive presidents and the election in 2005 of left-wing leader and Chavez *compañero* Evo Morales.

In 2006 Kahale represented Bolivia, as that country, like Venezuela, forced the renegotiation of natural gas contracts with eight major foreign companies invested there. Belying the predictions of many outside experts, Bolivia, with Kahale’s counsel, successfully renegotiated more than 50 contracts and won strong terms for the government, with the state company winning a substantial share in all major producing fields and the foreign companies agreeing to pay taxes and royalties that were hiked from 18 to 50 percent.

But perhaps the most difficult recent negotiations were on behalf of Kazakhstan, a relatively new Curtis, Mallet client that last summer joined the growing ranks of oil-rich nations maneuvering for a larger stake in their natural resources. For the Kazakh government, that meant reopening contracts governing development of the coveted Kashagan oil field, the largest oil discovery in the world since the early 1970s.

Then represented by Shearman, Kazakhstan had negotiated those deals with a consortium of the world’s most powerful oil companies—including Exxon Mobil, Shell Oil Company, and ConocoPhillips—in 1997. At that time, the price of oil was less than \$15 a barrel.

In the ensuing years, the consortium, led by Italy’s Eni, faced mounting difficulties, partly due to Kashagan’s unique location and hazards. In the middle of a nature preserve, Kashagan’s oil is under intense pressure and contains a high concentration of fatally poisonous hydrogen sulphide, requiring workers to carry emergency safety equipment at all times. In summer the temperature rises well above 100 degrees Fahrenheit; in winter it drops to 40 below zero, freezing the shallow water and raising the cost of oil recovery.

Last summer, the consortium notified the Kazakh government that production, which had originally been scheduled to begin in 2005, would be delayed until 2010. And the cost would almost triple: from \$57 billion to \$136 billion.

Kazakh officials were furious. Not only would this delay the production of about 1.5 million barrels of oil per day that the government was counting on, but under the contract, the government wouldn’t collect any profits until after the oil companies had produced enough oil to cover their costs. In August, citing environmental violations, the government halted production.

Then it turned to Curtis, Mallet. “We have a Kazakh attorney in our firm who introduced us to some government officials there a few years back,” explains Eric Gilioli, a Curtis, Mallet partner based in New York who has worked intensely on Kazakhstan matters. “When the time came to look for international counsel, they remembered meeting us.”

From September to January, Gilioli, Kahale, and Curtis, Mallet attorneys from the Istanbul and London offices spent weeks at a time in Astana, Kazakhstan’s shiny new business capital. Kazakhstan wanted to double its stake in the Kashagan field, meaning each company would have to relinquish a portion of its own interest. The government also wanted compensation for the delays and cost overruns. But the consortium balked—in particular, Exxon Mobil, according to lawyers involved. (Exxon declined to comment on the negotiations.)

As the oil companies resisted Kazakhstan’s demands, the government ratcheted up the pressure. In late September it passed a law allowing the government to break its contracts with the foreign oil companies. And it set the deadline for revising the contracts for October 22.

“At one point it looked like the agreement would be terminated,” recalls Gilioli. That would have opened the field up to new bids, so negotiations were being watched closely by the industry, as well as the Russian, Chinese, and U.S. governments.

The deadline was eventually extended to January 15. But by late December, according to lawyers involved, Exxon Mobil still refused to accept Kazakhstan’s terms.

While Kazakh officials sat at the negotiating table, Kahale and his team advised them from behind the scenes. “George composed certain deal points, or negotiating objectives, that he thought, based upon his experience in other countries, were achievable,” says Gilioli. “That was critical to keeping the process going.”

On January 13, the last scheduled day for negotiations, government officials met the companies’ in-house lawyers for lunch at a local Kazakh restaurant, rented out for what they hoped would be a celebratory meal. Kahale was holed up in a back room in the restaurant with his laptop, working on drafts and consulting with Kazakh officials during breaks. But by midnight, the group of about 30 was still at the long U-shaped table, negotiating. “Usually you have a pretty good idea that you’re going to reach agreement,” says Kahale. “But this is one where we really did not know for sure. It was anybody’s guess which way it was going to go.”

Waiters brought out heaping platefuls of local delicacies, professional dancers were waiting to perform, and traditional Kazakh folk music filled the cavernous space. Still, there remained one unsigned agreement.

It was signed at 1:00 A.M. “I came out for the celebration,” says Kahale.

Though Kahale often remains behind the scenes during government negotiations, colleagues say he’s remarkably hands-on when it comes to representing his clients.

“George is not the sort of managing partner that remains above the fray,” says Harwood. “He knows everything. He reads everything. I don’t know how he does it. And he has better

recall than anybody in the room. Sometimes it’s a little frightening to work for him.”

“He’s a very creative lawyer,” adds Wolrich. “He sees deep into issues and contracts and problems, and has a very good sense of how to conduct negotiations and to gain the trust of people that you’re negotiating with. I think it’s partly training and partly personality. He never gets excited, never screams, never loses his cool. He’s always on top of it, and always under control.”

A lawyer representing an international oil company involved in the Venezuela negotiations, but who did not want to be named, confirmed that: “It was a civilized discussion. You can have a negotiation with [Kahale] on the other side of the table. He’s not taking an aggressive or an unreasonable approach.”

In March, Kahale had just returned from a five-and-a-half-day hearing in London, where PDVSA was seeking to have the high court lift the order freezing the \$12 billion in Venezuelan assets. The week before, he’d been in Miami, Caracas, and Astana. Though his voice was a bit hoarse, he didn’t look nearly as tired as he should have. “The English court has no business meddling in this matter,” he insisted.

The worldwide freezing order against PDVSA was a huge challenge that sent Kahale and his colleagues scrambling to write briefs, obtain affidavits, and otherwise prove within the space of just a few weeks that Exxon Mobil had no right to freeze PDVSA’s assets. (Gordon Pollock, QC of Essex Court Chambers, working with John Fordham,

head of commercial litigation at the London-based law firm Stephenson Harwood, argued the case before the high court.)

On March 18, Justice Paul Walker ruled that Mobil (the subsidiary of Exxon Mobil bringing the case) “has no good arguable case” that PDVSA planned to dissipate its assets, or even that the London court had jurisdiction over the matter. He lifted the freeze order.

Mobil had launched “a bold strike designed to create movement in the negotiations,” Kahale said after PDVSA’s victory. “It ended up backfiring.” Lawyers for Steptoe & Johnson, which represented Mobil in the proceedings, declined to comment.

With the victories piling up, Curtis can expect more referrals and additional government clients. In recent months countries including Ecuador, Nigeria, and even Libya have indicated an interest in renegotiating long-standing oil contracts.

Kahale, who in May announced that he’s stepping down as managing partner and will become firm chairman so he can focus on his international practice, says he’s already been hired to represent another government in Latin America to renegotiate resource contracts, although he won’t say which one.

If such developments alarm foreign investors, they’re opening up a huge new opportunity for American law firms. “So long as oil is a scarce and expensive resource and they’re sitting on top of big reserves, national oil companies are going to increasingly call the shots,” says Shearman’s Buckworth. And call George Kahale.

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The logo for Curtis, featuring the word "CURTIS" in a bold, blue, serif font. The text is centered within a grey, horizontal oval shape that tapers at both ends.