

Paxus Founder On Junction Of Human Rights, Corporate Law

By **Emily Lever**

Law360 (January 4, 2023, 1:32 PM EST) -- Litigation and arbitration attorney Suzanne Spears left her partnership position at Allen & Overy LLP in June to strike out on her own, founding the business- and human rights-focused firm Paxus LLP in London.

Founding Paxus was the culmination of a long game for Suzanne Spears, who decided that she wanted to work in the human rights field and found that working with companies would be more effective than working at the state level. With the European Union recently announcing a mandatory directive on corporate due diligence for human rights and sustainability issues, the time was ripe to launch the new firm, according to Spears.

Spears worked for the United Nations, the U.S. Council on Foreign Relations and the Inter-American Institute of Human Rights before starting her BigLaw career at Debevoise & Plimpton LLP. Most recently, she co-led the global business and human rights practice at Allen & Overy and co-founded its environmental, social and governance practice. She specialized in investor-state disputes and transnational tort litigation over ESG issues.

Three international arbitration attorneys followed Spears to Paxus from Allen & Overy: counsel Sebastián Mejía and Olga Owczarek, and associate Finnuala Meaden-Torbitt.

Spears also recruited counsel Kuzi Charamba, who is also a postdoctoral fellow at the University of Hong Kong researching finance and sustainable development; international arbitration associate Aishwarya Nair, formerly of Emirati law firm Al Tamimi & Co.; international law associate Sebastián Abad-Jara, previously a research assistant at Human Rights Watch; and Leonardo Camacho, a specialist in public policy and constitutional law in Asia and formerly a policy adviser to the National Infrastructure Commission in the U.K.

Spears spoke to Law360 Pulse about her new venture and the state of her field at the intersection of business and human rights. This interview has been edited for length and clarity.

Why did you decide to leave your BigLaw firm and start your own boutique?

I've been preparing for 20 years for this moment. I was a human rights lawyer before going into BigLaw. I knew eventually there would be regulation because of the impact that companies have on our lives everywhere. In some countries companies have even more impact than the government.

I specifically went off to work for companies so that later I could do this. I had worked for the U.N.; I knew that working for companies was the way to go because they had the biggest impact, but I needed to learn how things worked and earn the trust of companies. I learned these industries quite well and corporate clients know that I've got their backs, as opposed to being out to get them. I speak their language and I also speak the language of human rights.

The market has turned such that human rights have become a strategic imperative for business these days, [with the European Union] requiring mandatory human rights due diligence on companies' operations as well as their supply chains. A company is required to seek to prevent human rights impacts with which they could be associated, and if they fail to do so there's potential for affected individuals to bring claims in home country courts.

It's really the right time; companies are treating this as an important issue and of course, there's litigation going on against companies for their own actions as well as [the actions of] their supply chains overseas.

How will your work at Paxus be different from BigLaw work?

The reason to do this work outside a BigLaw firm is really because of conflicts; also because it enables me to be much more nimble; I can adapt my work to the client and to the market without the constraints.

I'm excited to be able to collaborate with people who, like me, have a background not only in law but also in the social sciences field, who are better suited to this work than the law-exclusive lawyers.

One of the things we're finding is in high demand is privileged investigations for clients of potential human rights abuses either in their own operations or their supply chains.

For example, let's just say there's a war-torn country in Africa, and we have to evaluate the risks that are facing the company of being implicated in the potential war crimes that are being committed by opposing sides. I can use on the team people who aren't part of the law firm, but who are country specialists.

In privileged investigations, I'm able to go to the field to investigate a situation, because I have human rights training. I'm able to do interviews, including [with] affected communities. I can do an actual on-the-ground legally privileged investigation to protect the company's interest and investigate how their activities could be having impacts on other people. I spent time in Colombia during their conflict, so I have experience working in conflict zones.

In BigLaw it's not possible [to send a lawyer into the field]; it would have been prohibitively expensive. But now it's doable.

What kinds of matters are coming your way at the moment?

Companies have come to me asking me: what are my risks of being sued for complicity with the Myanmar government, the Russian government, and what are the legal requirements for being sued? It's not just doing in-country legal investigations but also counseling on what is a war crime and how they become complicit in it.

There's due diligence on their proposed investments; if [a company is] going into a state that is noticeable for its poor human rights record, I would do a human rights impact assessment. Or if a company is already invested somewhere, I would advise them on that.

Sometimes, unfortunately, the advice has to be how to make an exit. Myanmar and Russia are seeing lots of exits right now. There's the concept of a responsible exit: you don't just leave; maybe you're selling your company to someone who's going to be even more complicit in the abuses that you're trying not to be involved in. If you're a telecoms operator and you're afraid your service is being used to restrict free speech, if you leave, it could be that the license reverts to the state and your customers are that much more at risk of being spied upon.

[In that case] it's about doing due diligence [concerning] who will take over and putting in mechanisms to increase your leverage to the extent that you can.

We'll also be representing companies in disputes with other companies over human rights. This is often arbitration because companies don't want their dirty laundry aired in court. When you're suing your supplier over human rights violations, you don't want it in the papers that you've found human rights abuses in your supply chain. Those issues will also start coming up more and more in investment disputes.

Do you see a possible future where human rights abuses become less rampant?

Companies should see human rights due diligence as a risk mitigation framework. I think there have been a number of wake-up calls to companies, even in the past year, where companies thought the financial benefit outweighed the human rights risk and then realized that was no longer the case.

A lot of people make the argument that market forces are starting to provide deterrents. It has to be the perfect storm: consumer pressure, litigants accessing legal resources. ... Regardless of whether these suits are tossed out, they're in the papers. It is to the benefit of companies to be able to proclaim they are free of child labor.

But I am cynical enough to think that ultimately it needs legislation, voluntary pressures only take companies so far. You've got to figure out legislation that incentivizes companies to stop, like the domestic legislation and international treaties for corruption — not that we've rooted out corruption, but we've certainly come a long way.

For example, there are banks requiring good human rights performances because they too are obliged to do due diligence on what their loan recipients are up to.

Unfortunately, our world, especially the U.S. economy, was built on slavery. If companies can get away with not paying their workers, they will. That is the way the global economy does tend to work: the cheaper, the better.

But we are seeing this change, and it's starting to become an issue. And we're seeing now that it's important that companies' reporting isn't aspirational or puffery. Just because companies are expected to talk about human rights records doesn't mean they can just make stuff up; it's much more risky for them if they inflate their performances. They're opening themselves up to greenwashing or social washing claims.

--Editing by Karin Roberts.