

REMEDIES IN COMMERCIAL, INVESTMENT AND ENERGY ARBITRATIONS

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APRIL 17-18, 2008
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REMEDIES IN COMMERCIAL, INVESTMENT AND ENERGY ARBITRATIONS

April 17-18, 2008 • St. Regis Hotel • Houston, Texas, USA

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THURSDAY MORNING, APRIL 17, 2008

Presiding Officer: Paul W. Wright,
ExxonMobil Corporation, Houston, TX, USA

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. 1.50 hrs

Remedies: Principles and Practice in International Arbitration

What discretion do arbitrators find they have within the bounds of the applicable law? How do arbitrators decide remedies issues? What gets balanced? What are problematic issues for arbitrators, and for advocates? What flexibility do arbitrators have in making awards?

Moderator: V. V. "Johnny" Veeder, Essex Court Chambers, London, United Kingdom

Guillermo Aguilar-Alvarez, Weil, Gotshal & Manges LLP, New York, NY, USA

Gerald Aksen, Thelen Reid Brown Raysman & Steiner LLP, New York, NY, USA

Jan Paulsson, Freshfields Bruckhaus Deringer, Paris, France

10:30 a.m. Break

The Law and Economics of Damages, Restitution, and Lost Profits

10:45 a.m. 1.75 hrs

Part I: Economic Principles of Damages

A panel of leading economic and valuation experts discuss key conceptual and empirical issues in the construction and calculation of damages and restitution, including common mistakes, pitfalls, and best practices.

Moderator: Timothy J. Tyler, Mayer Brown LLP, Houston, TX, USA

Scott T. Jones, FTI Consulting, Inc., Cambridge, MA, USA

Brent C. Kaczmarek, Navigant Consulting, Inc., Washington, DC, USA

Stewart C. Myers, MIT Sloan Management, Cambridge, MA, USA

Pablo T. Spiller, Jeffrey A. Jacobs Distinguished Professor of Business & Technology University of California, Berkeley, LECG, LLC, Emeryville, CA, USA

THURSDAY AFTERNOON

12:30 p.m. Break for Lunch

LUNCHEON PRESENTATION

1:00 p.m. .67 hr

The New Dawn: New Wine in New Bottles

Addressing new solutions and new opportunities for investment arbitration.

V. V. "Johnny" Veeder, Essex Court Chambers, London, United Kingdom

1:45 p.m. 1.25 hrs

Part II: Expropriation Damages and Methodologies, Fair Market Value and Discrete Damage Problems

A discussion of general principles, methodologies, and special problems in conceptualizing, analyzing, and determining compensation and damages in international arbitration.

Moderator: Craig S. Miles, King & Spalding LLP, Houston, TX, USA

Charles A. Beach, ExxonMobil Corporation, Irving, TX, USA

Irmgard Marboe, University of Vienna, Vienna, Austria

Andrea Menaker, NAFTA Arbitration Division, U.S. Department of State, Washington, DC, USA

3:00 p.m. Break

3:15 p.m. 1.50 hrs

Part III: Unpacking Lost Profits

This panel will discuss issues affecting the award of the net present value of lost revenues in commercial and investor-state arbitrations from the perspectives of claimants and respondents, including questions such as the conditions for the award of lost revenues; purposes of awarding lost revenues and implications for their calculation; the nature or risks relevant to value based on projections of future revenues; obligation to mitigate; treatment of individual losses in the context of general crises; avoiding double counting; and the potential for moral hazard resulting from excessive or inadequate compensation.

Moderator: William H. Knull III, Mayer Brown LLP, Houston, TX, USA

John P. Bowman, King & Spalding LLP, Houston, TX, USA

Ignacio Gomez-Palacio, Gomez-Palacio y Asociados, Mexico City, DF, Mexico

Louis T. Wells, Harvard Business School, Boston, MA, USA

4:45 p.m. 1.00 hr

Declaratory Relief and Injunctions

To what extent is declaratory relief available in investor-state arbitrations, what effect can it have, and how would it be enforced? What are the prudential considerations a tribunal considers in deciding to enjoin national court proceedings? What is the role of comity in deciding these questions and how should panels with different mandates make way for each other?

Moderator: Alan S. Rau, The University of Texas School of Law, Austin, TX, USA

David R. Haigh, Burnet, Duckworth & Palmer LLP, Calgary, Alberta, Canada

Loukas Mistelis, Queen Mary University of London, London, United Kingdom

Francisco Orrego Vicuna, 20 Essex St. Barristers, London, United Kingdom

5:45 p.m. Adjourn to Reception

FRIDAY MORNING, APRIL 18, 2008

Presiding Officer:

R. Doak Bishop, King & Spalding LLP,
Houston, TX, USA

8:30 a.m. 1.00 hr

Interest, Currency and Tax Issues

Interest in investor-state. What trend is detectable from current cases on prejudgment interest arbitration? How do taxation principles figure in the law and amounts of awards? At what time and what rate should currencies be converted, or should that matter be left to enforcing courts?

Moderator: Tomasz J. Sikora, El Paso Corporation, Houston, TX, USA

John Gotanda, Villanova University, Villanova, PA, USA

Richard E. "Rory" Walck, Global Financial Analytics, LLC, Fairfax, VA, USA

9:30 a.m. .75 hr

Attorney Fees and Costs

This session addresses the latest developments with attorney fees and costs in international arbitrations. Are contingency fees available in international arbitration and

what is the likelihood of a tribunal awarding them?

Moderator: C. Mark Baker, Fulbright & Jaworski L.L.P., Houston, TX, USA

William W. Russell, Schirrmeyer Diaz-Arrastia Brem, LLP, Houston, TX, USA

Audley Sheppard, Clifford Chance, London, United Kingdom

10:15 a.m. Break

10:30 a.m. 1.00 hr

Enforcement Options Against Sovereigns

In investor state arbitration, what practical recourse is available under the ICSID Convention if a state party refuses to pay an award? Enforcement options in US courts. Availability of post award execution and discovery under 28 USC § 1782.

James L. Loftis, Vinson & Elkins LLP, London, United Kingdom

Kevin M. O'Gorman, Fulbright & Jaworski LLP, Houston, TX, USA

11:30 a.m. 1.00 hr

Non-Expropriation Damages in Investment Cases

Treaty claims, and the methodologies used in calculating damages in these claims, will be explored in this segment.

Moderator: R. Doak Bishop, King & Spalding LLP, Houston, TX, USA

Stephen Jagusch, Allen & Overy LLP, London, United Kingdom

Pierre-Yves Tschanz, Tavernier Tschanz, Geneva, Switzerland

FRIDAY AFTERNOON

12:30 p.m. Break for Lunch

LUNCHEON PRESENTATION

1:00 p.m. .50 hr

International Energy Disputes: Past, Present and Future

The dynamic interaction between the transformation of an industry and the resolution of its disputes.

Ewell E. Murphy Jr., Attorney at Law, Houston, TX, USA

1:30 p.m. Break

1:45 p.m. 2.00 hrs

General Counsel Panel Discussion

General Counsel from leading international energy industry companies will review and an-

alyze remedies and their relative importance in the context of international commercial and investor-state arbitrations, as well as how counsel develop damage models and view the ability to collect under various arbitration regimes.

Moderator: Alan R. Crain Jr., Baker Hughes, Inc., Houston, TX, USA

Theodore M. Frois, ExxonMobil Corporation, Houston, TX, USA

Kristin Furnish, Grupo ICA, Mexico City, DF, Mexico

Clyde W. Lea, ConocoPhillips, Houston, TX, USA

3:45 p.m. Adjourn

About the Symposium

What can the arbitrator do in fashioning remedies in commercial, investment and energy arbitrations? This program — jointly sponsored by the Permanent Court of Arbitration (PCA), the Houston International Arbitration Club (HIAC), and The University of Texas School of Law — brings together an internationally-renowned faculty from Europe, Latin America, Canada and the U.S., in a special conference focused on the law, economics, advocacy and enforcement of remedies in commercial and investment cases. The conference blends analysis with practical application of economic and legal principles to solve real problems facing the international energy and construction sectors. Keynote speaker V. V. "Johnny" Veeder leads a distinguished opening panel that examines these issues, and also delivers the keynote luncheon address on Thursday. The conference ends with a distinguished General Counsel's panel, including counsel from ExxonMobil, ConocoPhillips, Baker Hughes, and Grupo ICA. Don't miss this unique and valuable program!

MCLE

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.00 hours. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944).

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April 17-18, 2008



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good through March 17, 2008
(subject to availability)

Parking: Valet Only, \$13 day,
\$27 overnight (subject to change)

As a courtesy to family members accompanying registrants, complimentary town car service will be provided to and from the hotel and the world-class shopping at the Galleria Shopping Center.

KEY DATES

Registration & Cancellation

April 9, 2008—5 p.m. CST
last day for early registration
additional fee for registrations
received after this time

April 11, 2008—5 p.m. CST
last day for full refund

April 14, 2008—5 p.m. CST
last day for partial refunds
\$50 processing fee applied

April 17, 2008—9 a.m. CST
conference begins

ABOUT THE COVER



"Improv 154," oil on canvas, is by David Newman. For more information, call (512) 241-1852 or visit www.artworksbydavid.com

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Mail this registration form to:

The University of Texas School of Law, Attn. IA08
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CONFERENCE REGISTRATION

Includes Course Binder, Thursday and Friday Lunch Presentations and Thursday Evening Reception
All prices in US dollars.

☐ Early Registration Fee due by Wednesday, April 9, 2008 \$595.00

☐ Registration Fee after Wednesday, April 9, 2008 \$645.00

CONFERENCE PUBLICATIONS AND MEDIA

Allow 2-4 weeks from the conference date for delivery.

☐ Course Binder Without Conference Registration \$200.00

Note: Conference registration includes Course Binder.

☐ Audio CD Set \$175.00

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(\$200 purchased alone, \$50 with registration or purchase of Course Binder or Audio CD Set)

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