

## WEIGHING THE FACTS:

### *Information Exchange and Presentation of Evidence in International Commercial and Investment Arbitration*

Earn up to 11.75 Hours of MCLE Credit Including 1.50 Hours of Ethics



**14-15 MAY 2009**

### **ACADEMY HALL, PEACE PALACE THE HAGUE, THE NETHERLANDS**

*Registration includes lunch, networking reception and  
tour of the historic Peace Palace*

#### **Sponsors**

Exxon Mobil Corporation  
Fulbright & Jaworski L.L.P.  
King & Spalding  
KPMG  
Mayer Brown LLP  
Vinson & Elkins L.L.P.

#### **Media Partners**

Kluwer Law International      Oxford University Press  
Oil, Gas & Energy Law Intelligence (OGEL)      Transnational Dispute Management (TDM)

## WEIGHING THE FACTS:

### *Information Exchange and Presentation of Evidence in International Commercial and Investment Arbitration*

14-15 May 2009 • Academy Hall, Peace Palace • The Hague, The Netherlands

Earn up to 11.75 Hours of MCLE Credit Including 1.50 Hours of Ethics

#### THURSDAY MORNING, 14 MAY 2009

##### Presiding Officer:

**Brooks Daly, Permanent Court of Arbitration,  
The Hague, The Netherlands**

##### 8:00 a.m. Registration Opens

Includes continental breakfast.

##### 8:50 a.m. Welcoming Remarks

Christiaan Kröner, Secretary-General,  
Permanent Court of Arbitration,  
The Hague, The Netherlands

##### 9:00 a.m. .50 hr

##### Cross-Cultural Problems Involving Exchange of Information

The process of the exchange of information is a fertile source of cultural clash in international commercial arbitration. Why is this so, and how can it be avoided?

Lucy F. Reed, Freshfields Bruckhaus Deringer LLP,  
New York, NY USA

Albert Jan van den Berg, Hanotiau & van den Berg,  
Brussels, Belgium

##### 9:30 a.m. 1.25 hrs

##### Evolving Principles of Information Exchange: Consensus and Divergence

To a remarkable degree, international arbitration has become a unique, harmonized blend of common law and civil law practices. There is widespread consensus on many practices, including many of those embodied in the *IBA Rules on the Taking of Evidence in International Commercial Arbitration*. However, the process is evolving and there remain areas on which a consensus has yet to emerge.

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

Mark Appel, American Arbitration Association,  
Dublin, Ireland

John Beechey, International Chamber of  
Commerce, Paris, France

Otto Lo de Witt Wijnen, NautaDutilh,  
Rotterdam, The Netherlands

##### 10:45 a.m. Break

##### 11:00 a.m. 1.25 hrs

##### The Present and Future of Electronic Disclosure in International Arbitration

A discussion of recent institutional pronouncements

on electronic disclosure in international arbitration with special emphasis on how a decision-maker should exercise discretion in deciding these issues.

Moderator: Kevin M. O'Gorman, Fulbright &  
Jaworski L.L.P., Houston, TX, USA

Hon. Nancy F. Atlas, United States District  
Court for the Southern District of Texas,  
Houston, TX, USA

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

Michael E. Schneider, Lalive,  
Geneva, Switzerland

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

#### THURSDAY AFTERNOON

##### Presiding Officer:

**Timothy J. Tyler, Mayer Brown LLP,  
Houston, TX, USA**

##### 12:15 p.m. Break for Lunch

##### KEYNOTE LUNCHEON PRESENTATION

##### 12:30 p.m. .75 hr

Hon. Thomas Buergenthal, International  
Court of Justice, The Hague, The Netherlands

##### 1:15 p.m. Break

##### 1:30 p.m. 1.50 hrs

##### Evidence Issues in Arbitration with States

States have different powers and justifications for the acquisition and protection of evidence. With the increase in arbitration with States, particularly under investment treaties, has come an increase in allegations of witness intimidation, illegally obtained evidence, and the invocation of political sensitivity privilege, which are rare or absent in arbitration between private parties. This panel will consider how these and other issues affect the standard and allocation of the burden of proof, and the use of presumptions and inferences by arbitral tribunals.

Moderator: Brooks Daly, Permanent Court of  
Arbitration, The Hague, The Netherlands

Mark A. Clodfelter, Winston & Strawn,  
Washington DC, USA

Jan Paulsson, Freshfields Bruckhaus Deringer LLP,  
Paris, France

Albert Jan van den Berg, Hanotiau & van den Berg,  
Brussels, Belgium

##### 3:00 p.m. Break

##### 3:15 p.m. 1.50 hrs ethics

##### Privilege and Ethical Obligations Involving Production and Protection of Evidence

The *AKZO Nobel* decision in the European Court of First Instance declared that documents held by in-house counsel, and correspondence between a business and its in-house lawyers, were not protected by legal professional privilege in a European Commission competition-law investigation.

This panel will discuss the significance of the *AKZO Nobel* decision in arbitrations where parties rely on different national-court practice on professional privilege and disclosure of documents produced by or exchanged with in-house counsel. The panel will also examine: gaps where current rules and choice of law principles in international arbitration fail to address these issues; recent institutional changes aimed at leveling the privilege playing field; and the effect of differing rules of professional ethics across jurisdictions.

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

Teresa Giovannini, Lalive,  
Geneva, Switzerland

Hilary Heilbron, Brick Court Chambers,  
London, United Kingdom

Kenneth B. Reisenfeld, King & Spalding,  
Washington, DC, USA

##### 4:45 p.m. 1.25 hrs

##### Enforcement of Party Requests

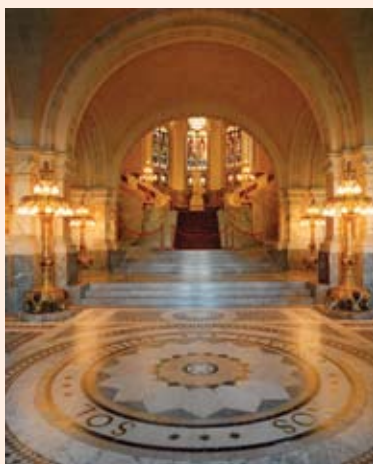
What enforcement mechanisms are available for a party who wishes to obtain information from an opponent for use in a forthcoming arbitration? Are there any limits to a tribunal's ability to "draw adverse inferences," or to shift the burden of proof, and how should the tribunal go about taking these measures? To what extent are actions taken by tribunals subject to judicial review? Alternatively, in what circumstances can applications be made directly to a court rather than to the tribunal? And what are the differences between seeking disclosure from an adverse party, or from someone who is not a party to the arbitration agreement at all?

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

Louise Barrington, King's College - Center of  
Construction Law, London, United Kingdom

W. Laurence Craig, Orrick, Paris, France

William W. Park, Boston University School of  
Law, Boston, MA, USA



**ADJOURN TO  
RECEPTION AND OPTIONAL TOUR  
THURSDAY 14 MAY 2009, 6 P.M.**

All registrants and speakers are invited to a special reception and a private tour of the historic Peace Palace immediately following the Thursday program.

Enjoy refreshments, networking and the unique opportunity to see the spectacular architecture and art of the Peace Palace.

**FRIDAY MORNING, 15 MAY 2009**

**Presiding Officer:**  
**Ginger Menown, KPMG, Houston, TX, USA**

**8:00 a.m. Conference Room Opens**

Includes continental breakfast.

**8:30 a.m. 1.25 hrs**

**Expert Evidence in International Arbitration:  
Are Standards Needed?**

There remain widely diverse approaches to the retention, instruction and supervision of expert witnesses and the use (and abuse) of expert evidence in international arbitration. The panel will discuss these approaches and attempts to develop a standardized approach to the use of expert evidence, particularly the Chartered Institute's *Protocol for the Use of Party-Appointed Expert Witness in International Arbitration*.

Moderator: James L. Loffis, Vinson & Elkins L.L.P., London, United Kingdom

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

Teresa Cheng, Des Voeux Chambers, Hong Kong, China

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

**9:45 a.m. 1.00 hr**

**E-Discovery: A Look Behind the Curtain—  
Tools and Techniques**

A practical discussion of electronic disclosure issues likely to arise in an international commercial arbitration including the consideration of its unique problems and the technology tools, methods and costs of preservation, collection, processing, review and production of electronically stored information.

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

Mark S. Yacano, LeClairRyan  
Richmond, VA, USA

**10:45 a.m. Break**

**11:00 a.m. 1.50 hrs**

**General Counsel Panel**

General Counsel from a variety of global companies will discuss practicalities of preservation and production of evidence, especially electronic evidence, in arbitration proceedings. Discussions of cost, budgeting, maintaining privilege across jurisdictional boundaries, and drafting will be considered.

Moderator: Paul W. Wright,  
Exxon Mobil Corporation, Houston, TX, USA

Andrew Clarke, Exxon Mobil Corporation,  
Surrey, United Kingdom

Alan R. Crain Jr., Baker Hughes, Inc.,  
Houston, Texas, USA

Jan Eijbouts, Akzo Nobel (Retired),  
Zeist, Netherlands

Jean Claude Najjar, General Electric France,  
Paris, France

**12:30 p.m. Adjourn**



*Photos courtesy of the Permanent Court of  
Arbitration. For more information, visit  
[www.pca-cpa.org](http://www.pca-cpa.org).*

**SPONSORS**

**Exxon Mobil Corporation**

ExxonMobil is the world's largest publicly traded international oil and gas company, with an industry-leading inventory of global oil and gas resources. [www.exxonmobil.com](http://www.exxonmobil.com)

**FULBRIGHT  
& Jaworski L.L.P.**

Fulbright & Jaworski, a full-service international law firm, serves the needs of businesses, governments, non-profit organizations and individual clients around the world.

[www.fulbright.com](http://www.fulbright.com)

**KING & SPALDING**

King & Spalding has provided the highest quality legal services to its clients for over a century, representing more than 250 public companies. [www.kslaw.com](http://www.kslaw.com)



KPMG International is a global network of professional firms providing Audit, Tax, and Advisory services. [www.kpmg.com](http://www.kpmg.com)

**MAYER • BROWN**

Mayer Brown is a leading global law firm with 21 offices in key business centers across the Americas, Asia and Europe.

[www.mayerbrown.com](http://www.mayerbrown.com)

**Vinson & Elkins LLP**

Vinson & Elkins, an international law firm based in Houston, is a recognized leader in energy and infrastructure projects, cross-border transactions, international dispute resolution, and more. [www.velaw.com](http://www.velaw.com)



## CONFERENCE FACULTY

MARK APPEL  
American Arbitration Association  
Dublin, Ireland

HON. NANCY F. ATLAS  
United States District Court for the Southern District of Texas  
Houston, TX, USA

C. MARK BAKER  
Fulbright & Jaworski L.L.P.  
Houston, TX, USA

LOUISE BARRINGTON  
King's College - Center of Construction Law  
London, United Kingdom

JOHN BEECHEY  
International Chamber of Commerce  
Paris, France

HON. THOMAS BUERGENTHAL  
International Court of Justice  
The Hague, The Netherlands

TERESA CHENG  
Des Voeux Chambers  
Hong Kong, China

ANDREW CLARKE  
Exxon Mobil Corporation  
Surrey, United Kingdom

MARK A. CLODFELTER  
Winston & Strawn  
Washington, DC, USA

W. LAURENCE CRAIG  
Orrick  
Paris, France

ALAN R. CRAIN JR.  
Baker Hughes, Inc.  
Houston, TX, USA

BROOKS DALY  
Permanent Court of Arbitration  
The Hague, The Netherlands

JAN EIJSBOUTS  
Akzo Nobel (Retired)  
Zeist, Netherlands

TERESA GIOVANNINI  
Lalive  
Geneva, Switzerland

HILARY HEILBRON  
Brick Court Chambers  
London, United Kingdom

WILLIAM H. KNULL III  
Mayer Brown LLP  
Houston, TX, USA

JAMES L. LOFTIS  
Vinson & Elkins L.L.P.  
London, United Kingdom

LOUKAS MISTELIS  
Queen Mary University of London  
London, United Kingdom

JEAN CLAUDE NAJAR  
General Electric France  
Paris, France

KEVIN M. O'GORMAN  
Fulbright & Jaworski L.L.P.  
Houston, TX, USA

WILLIAM W. PARK  
Boston University School of Law  
Boston, MA, USA

JAN PAULSSON  
Freshfields Bruckhaus Deringer LLP  
Paris, France

ALAN S. RAU  
University of Texas School of Law  
Austin, TX, USA

LUCY F. REED  
Freshfields Bruckhaus Deringer LLP  
New York, NY, USA

KENNETH B. REISENFELD  
King & Spalding  
Washington, DC, USA

MICHAEL E. SCHNEIDER  
Lalive  
Geneva, Switzerland

TOMASZ J. SIKORA  
El Paso Corporation  
Houston, TX, USA

TIMOTHY J. TYLER  
Mayer Brown LLP  
Houston, TX, USA

ALBERT JAN VAN DEN BERG  
Hanotiau & van den Berg  
Brussels, Belgium

OTTO LO DE WITT WIJNEN  
NautaDutilh  
Rotterdam, The Netherlands

PAUL W. WRIGHT  
Exxon Mobil Corporation  
Houston, TX, USA

MARK S. YACANO  
LeClairRyan  
Richmond, VA, USA

## MEDIA PARTNERS



[www.kluwerlaw.com](http://www.kluwerlaw.com)

OXFORD

[www.oup.co.uk](http://www.oup.co.uk)

OGEI

[www.ogel.org](http://www.ogel.org)

TNM

[www.transnational-dispute-management.com](http://www.transnational-dispute-management.com)

## PLANNING COMMITTEE

TIMOTHY J. TYLER—CHAIR  
Mayer Brown LLP  
Houston, TX, USA

R. DOAK BISHOP  
King & Spalding  
Houston, TX, USA

JOHN P. BOWMAN  
King & Spalding  
Houston, TX, USA

ALAN R. CRAIN JR.  
Baker Hughes, Inc.  
Houston, TX, USA

BROOKS DALY  
Permanent Court of Arbitration  
The Hague, The Netherlands

MICHAEL J. ESPOSITO  
University of Texas School of Law  
Austin, TX, USA

JAMES L. LOFTIS  
Vinson & Elkins L.L.P.  
London, United Kingdom

BELINDA MACMAHON  
Permanent Court of Arbitration  
The Hague, The Netherlands

EWELL E. MURPHY JR.  
Attorney at Law  
Houston, TX, USA

KEVIN M. O'GORMAN  
Fulbright & Jaworski L.L.P.  
Houston, TX, USA

ALAN S. RAU  
University of Texas School of Law  
Austin, TX, USA

KENNETH B. REISENFELD  
King & Spalding  
Washington, DC, USA

BENJAMIN H. SHEPPARD JR.  
University of Houston Law Center  
Houston, TX, USA

TOMASZ J. SIKORA  
El Paso Corporation  
Houston, TX, USA

PAUL W. WRIGHT  
Exxon Mobil Corporation  
Houston, TX, USA



Exp. Date (mm/yy)



THE UNIVERSITY OF TEXAS AT AUSTIN  
THE UNIVERSITY OF TEXAS SCHOOL OF LAW  
P.O. Box 7759 • Austin, TX, USA 78713-7759

*This program is not printed or mailed at state expense.*

## WEIGHING THE FACTS:

*Information Exchange and Presentation of Evidence in International  
Commercial and Investment Arbitration*

14-15 May 2009 • Academy Hall, Peace Palace • The Hague, The Netherlands

**NON-PROFIT-ORG**

U.S. Postage Paid  
The University of  
Texas  
School of Law

Email us at

[utcle@law.utexas.edu](mailto:utcle@law.utexas.edu)

or call us at

+1 512-475-6700

for more information

---

## WEIGHING THE FACTS:

*Information Exchange and Presentation of Evidence in International  
Commercial and Investment Arbitration*



**14-15 MAY 2009**

**ACADEMY HALL, PEACE PALACE  
THE HAGUE, THE NETHERLANDS**