

4th Annual Arbitration and National Courts: Conflict and Cooperation

May 13-14, 2010 • Four Seasons Hotel • Houston, TX

Thursday Morning, May 13, 2010

Presiding Officer:

Jason E. Doughty, ConocoPhillips - New York, NY

8:00 am	<p>Registration Opens</p> <p>Includes continental breakfast.</p>
9:05 am	<p>Welcoming Remarks</p>
9:15 am 0.75 hr	<p>An Introduction to Arbitral Jurisdiction: Who Decides?</p> <p>"Everything interesting happens at the borders between domains of power." What are the relative responsibilities of courts and arbitrators in setting the process in motion, and in allocating arbitral jurisdiction? How should power be allocated among different legal systems—for example, between the state where an arbitration has its "seat," and other jurisdictions where an award may be brought for purposes of enforcement? How should we resolve the tension between the parties' choice of a place for the arbitration, and the possible concerns of other states for the interests of their own nationals? These questions are critical to the international arbitration system, and provide an introduction to many of the themes to be touched on throughout the symposium.</p> <p>Commentator: Alan S. Rau, The University of Texas School of Law - Austin, TX W. Michael Reisman, Yale Law School - New Haven, CT</p>
10:00 am	<p>Break</p>
10:15 am 1.75 hrs	<p>Injunctions in Favor of and Against Arbitration</p> <p>The traditional function of courts in assisting local arbitrations, by enjoining parallel litigation elsewhere, has increasingly, in recent years, been accompanied by the reverse phenomenon: where courts seek to intervene on behalf of a local party who claims that he never agreed, or was not really a party to, any binding obligation to arbitrate at all. Both forms of injunctive relief have been particularly controversial within the EU—where they seem to collide with Community Law, and developments are ongoing—but the matter will assume increasing importance in other states as well.</p> <p>Moderator: James L. Loftis, Vinson & Elkins RLLP - London, United Kingdom</p> <p>Panelists: Brooks Daly, Permanent Court of Arbitration - The Hague, Netherlands</p> <p>Panelists: Hon. Dominique T. Hascher, Cour d'Appel, France - Paris, France</p> <p>Panelists: Gabrielle Kaufmann-Kohler, Lévy Kaufmann-Kohler - Geneva, Switzerland</p> <p>Panelists: Loukas Mistelis, Centre for Commercial Law Studies, Queen Mary, University of London - London, United Kingdom</p>

12:00 pm 0.25 hr	<p>Enabling the Proceeding?: Court-Assisted Evidence Gathering</p> <p>What role do (and should) courts play in the gathering of evidence for arbitration cases? Parties in arbitration increasingly cite 28 U.S.C. Section 1782 to seek court-ordered document production and depositions in support of international arbitration cases. A discussion of this trend and the role of arbitrators in the process.</p> <p>Kevin M. O'Gorman, Fulbright & Jaworski L.L.P. - Houston, TX</p>
12:15 pm 0.25 hr	<p>Arbitral Subpoenas</p> <p>An update on the authority of arbitrators to subpoena witnesses and a discussion of the timing, scope, and judicial enforcement of arbitral subpoenas in the United States, including subpoenas directed to third parties for pre-hearing testimony or document production.</p> <p>Ben H. Sheppard Jr., University of Houston Law Center - Houston, TX</p>

Thursday Afternoon, May 13, 2010

Presiding Officer:

Jennifer Smith, Baker Botts L.L.P. - Houston, TX

	KEYNOTE LUNCHEON PRESENTATION FEATURING LORD HOFFMAN
12:30 pm	<p>Break for Lunch</p> <p>Included in conference registration.</p>
1:00 pm 0.75 hr	<p>Arbitrators and the Courts</p> <p>How do arbitrators and the courts act so as to minimize mutual rubbing/conflict between the dual jurisdictions? What are the differences in decision-making techniques? In opinion-writing techniques? In their respective attitudes towards the formal/official body of "law" promulgated by public authorities? What about conflicts between national judiciaries? Who has primary responsibility for supervising/monitoring the arbitral process? Where does England go after <i>West Tankers</i>?</p> <p>Leonard H. Hoffmann, Brick Court Chambers - London, United Kingdom</p>
2:00 pm	Break
	Enforcing and Reviewing Awards

2:15 pm 1.50 hrs	<p>The Second Look Doctrine: Twenty-Five plus Years after <i>Mitsubishi</i></p> <p>Having permitted the arbitration to go forward, what opportunity do the national courts have at the award-enforcement stage to ensure that important public policies (i.e., antitrust, competition, securities) have been properly addressed? The panel addresses the Second Look Doctrine described in <i>Mitsubishi</i>, its evolution in the following years, and the similar doctrine in European countries.</p> <p>Moderator: Michael S. Goldberg, Baker Botts, LLP - Houston, TX</p> <p>Panelists: David D. Caron, University of California, Berkeley - Boalt Hall School of Law - Berkeley, CA</p> <p>Panelists: Pierre Mayer, Dechert LLP - Paris, France</p>
3:45 pm	Break
4:00 pm 1.50 hrs	<p>Argentine Impasse: Enforcing Awards against State Parties</p> <p>Implications for the future of investor/state arbitration if awards are not promptly paid by the state party: an examination of state immunity and pre-award sheltering of assets and the long term implications. This panel addresses state immunity laws in U.S. and European jurisdictions, as well as applicable conventions; suggests possible solutions to maximize an investor's ability to collect a damages award; explores the implications for the future of investor/state arbitrations when damages awards are a fraction of the amount claimed; and reviews the arguably conflicting policy considerations underpinning state immunity and the substantive and procedural rights granted to investors by investment treaties, with enforcement of awards against Argentina and Russia as examples of that clash.</p> <p>Moderator: Tomasz J. Sikora, El Paso Corporation - Houston, TX</p> <p>Panelists: Andrea K. Bjorklund, UC Davis School of Law - Davis, CA</p> <p>Panelists: Toni D. Hennike, Exxon Mobil Corporation - Houston, TX</p> <p>Panelists: John M. Minor, Alliant Emerging Markets - Chicago, IL</p>
5:30 pm	Adjourn to Reception

Friday Morning, May 14, 2010

Presiding Officer:

Timothy J. Tyler, Vinson & Elkins L.L.P. - Houston, TX

8:30 am	<p>Conference Room Opens</p> <p>Includes continental breakfast.</p>
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9:15 am 1.75 hrs	<p>Arbitrators and the Role of Law</p> <p>An examination of the different perspectives from which arbitrators and national courts approach legal issues, including the same legal issue that may be presented at different times to an arbitral tribunal and a national court over the life of the dispute.</p> <p>Moderator: C. Mark Baker, Fulbright & Jaworski L.L.P. - Houston, TX</p> <p>Panelists: John Bowman, King & Spalding LLP - Houston, TX</p> <p>Panelists: W. Laurence Craig, Orrick - Paris, France</p> <p>Panelists: Anthony Evans, Dubai International Financial Centre Courts, and Arbitrator - London, United Kingdom</p>
11:00 am	Break
11:20 am 1.00 hr	<p>Escaping National Court Review: ICSID Annulment</p> <p>This panel highlights issues that have arisen in the context of two different scenarios for challenging international arbitration awards. The first scenario concerns the challenge before national courts (at the seat, or legal place, of arbitration) of arbitration awards that decide claims under treaties for the protection of investments. The second scenario concerns applications for the annulment of awards under the provisions of the ICSID Convention (decided by an ad hoc Committee appointed in accordance with the Convention).</p> <p>R. Doak Bishop, King & Spalding LLP - Houston, TX Alejandro A. Escobar, Baker Botts (UK) LLP - London, United Kingdom</p>

Friday Afternoon, May 14, 2010

Presiding Officer:

Alan R. Crain, Baker Hughes Incorporated - Houston, TX

	KEYNOTE LUNCHEON
12:20 pm	<p>Lunch</p> <p>Included in conference registration.</p>
12:50 pm 0.67 hr	<p>Representation of State Parties in Investment Arbitration</p> <p>Investor-state arbitration rules under most modern Bilateral Investment Treaties and Investment Chapters in Free Trade Agreements provide investors with a right to bring an international claim against the state which allegedly breached an investment obligation under the treaty without having to convince its own state to make a claim on its behalf. Governments have used this private right of action as an important element of their foreign investment promotion strategies. Such right, however, has also carried significant financial and even political risks to sovereigns as investor-state arbitration rules not only provide private parties with a right of direct access to international arbitration but also empower arbitral tribunals to award monetary damages in favor of such parties (who are typically one-time users of the arbitration system). The foregoing elements have given rise to an interesting interaction among states (which, as “repeated players”, seek to mitigate the risks of arbitration) as well as highly divergent positions between sovereigns and investors when they appear before arbitral tribunals.</p> <p>Mariano Gomezperalta Casali, Robert Wray PLLC - Mexico City, DF</p>

1:30 pm	Break
1:40 pm 1.33 hrs	<p>General Counsels' Forum</p> <p>Our distinguished panel of corporate counsel will provide the client perspective on critical issues that impact the fundamental decision regarding whether to arbitrate or not and the potential viability of international arbitration in the future. Arbitration is a creature of contract, and our panel provides insight into how companies determine whether arbitration will be selected as the dispute resolution mechanism and the critical questions that are faced by these users of international arbitration.</p> <p>Moderator: Alan R. Crain, Baker Hughes Incorporated - Houston, TX</p> <p>Panelists: Robert W. Baker, El Paso Corporation - Houston, TX</p> <p>Panelists: Jason E. Doughty, ConocoPhillips - New York, NY</p> <p>Panelists: David A. Isenegger, Shell U.K. Limited - Aberdeen, United Kingdom</p> <p>Panelists: Mark E. Lowes, KBR, Inc. - Houston, TX</p>
3:00 pm	Adjourn