

THE INSTITUTE FOR TRANSNATIONAL ARBITRATION'S ACADEMIC COUNCIL
and the
AMERICAN SOCIETY OF INTERNATIONAL LAW
present

WHEN ARBITRATIONS GO BAD

March 25, 2009
The Fairmont Hotel
Washington, D.C.

Conference Co-Chairs

Prof. David J. Bederman, Emory University School of Law, Atlanta
Prof. Loukas A. Mistelis, Queen Mary University of London, London

In recent years, the arbitration community has shown a higher degree of confidence as the system establishes itself as the preferred method for the settlement of international disputes. At the same time, some of the criticisms become more prominent. This conference explores a few phenomena of pathology of the arbitration process and provides counsel, user, arbitrator, academic and state perspectives.

8:00 **Registration** and Continental Breakfast

9:00 **WELCOME AND INTRODUCTION**

Prof. David D. Caron, C. William Maxeiner Distinguished Professor of Law, Boalt School of Law, University of California, Berkeley; Chair, Institute for Transnational Arbitration

9:05-9:45 **THE TORTOISE AND THE HARE: DELAYS IN PROCEEDINGS**

Is the arbitration process slow? Even more importantly, is it susceptible to abuses by the parties? Is it possible for arbitrators to streamline the process while also observing the unqualified need for due process?

Introduction: **Prof. David J. Bederman**, Emory University School of Law, Atlanta

Who Owns the Arbitration? Collaboration Between Tribunal and Counsel

Donald Francis Donovan, Debevoise & Plimpton LLP, New York; Adjunct Professor, NYU Law School and School of International Arbitration, Queen Mary University of London

The Arbitrator's Perspective

Gerald Aksen, Independent Arbitrator, New York

Roundtable and Q&A

9:45-10:50 **BAIT AND SWITCH: DISCOVERY ABUSES & OTHER ABUSES OF PROCESS**

The most frequent complaints about arbitrations gone bad relate to discovery abuses and other attempts to derail the process. What is the extent of acceptable discovery? What can the tribunal do to ensure that the process stays on track? What are other common pathologies of the arbitral process?

Introduction: **Prof. David J. Bederman**, Emory University School of Law, Atlanta

Document Production in International Arbitration and What Does It Have To Do With Discovery?

Nathalie Voser, Schellenberg Wittmer, Zurich; Assistant Professor, Faculty of Law, University of Basle

Message From a Client

Charles A. Beach, Coordinator, Corporate Litigation, Law Department, Exxon Mobil Corporation, Irving, Texas

The Arbitrator's Perspective

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Roundtable and Q&A

10:50-11:10 **Break**

11:10-12:15 **THE HEAVY-HANDED SOVEREIGN: DEFAULTS, PRESSURE AND INTIMIDATION**

Several war stories have been reported about arbitration involving states, ranging from kidnapping of arbitrators to intimidation of counsel and witnesses to limiting access to necessary information. Are these frequent occurrences or exceptional events? How can arbitrators ensure that the process will not be aggravated?

Introduction: Prof. Loukas A. Mistelis, Queen Mary University of London, London

The Convenient Myth of David and Goliath in Treaty Arbitration

Lucy F. Reed, Freshfields Bruckhaus Deringer LLP, New York; President, American Society of International Law

You Can't Bet the State Like You Can Bet the Company: The Proper (and Improper) Conduct of Sovereigns in Arbitration

Laurence Shore, Gibson Dunn & Crutcher LLP, New York; Visiting Professor, School of International Arbitration, Queen Mary University of London

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Roundtable and Q&A

12:15 **CONCLUDING REMARKS**

Prof. Charles H. Brower, II, Croft Institute for International Studies, University of Mississippi School of Law, Oxford, Mississippi; Chair, ITA Academic Council

12:20-1:30

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Conference papers as well as contributions from other arbitration specialists and experts will be published in a book, forthcoming in 2009.