

**20<sup>th</sup> Annual ITA Workshop:**  
***Confronting Ethical Issues***  
***in International Arbitration***

**Westin Galleria Hotel**  
**Dallas, Texas**  
**June 18, 2009**

**8:00 Registration**

**9:00 Welcome Remarks ..... Prof. David D. Caron, ITA Chair**

**ACT I — ETHICAL ISSUES IN SELECTING THE ARBITRAL TRIBUNAL**

**9:05 Introduction to the Workshop and Act I ..... Kenneth B. Reisenfeld, Workshop Co-Chair**

**9:10 Act I, Scene I — Interviewing Prospective Arbitrators**

Counsel for Seller/Claimant and Buyer/Respondent adopt radically different approaches to interviewing their respective party-appointed arbitrators. What are the ethical constraints on *ex parte* communications during these interviews? To what extent should the Chartered Institute Guidelines be followed?

Stage Left – Claimant’s Interview:

Arbitration Counsel for Claimant ..... **James H. Carter**  
In-House Counsel for Claimant ..... **Alan R. Crain**  
Claimant’s Prospective Arbitrator ..... **J. Martin Hunter**

Stage Right – Respondent’s Interview:

Arbitration Counsel for Respondent ..... **Eduardo Zuleta**  
In-House Counsel for Respondent ..... **Tomasz J. Sikora**  
Respondent’s Prospective Arbitrator ..... **Henri C. Alvarez**

**9:25 Act I, Scene II — Arbitrator Disclosures and Challenges**

Following the arbitrator interviews, the parties assess their strategies for constituting and potentially challenging members of the panel. They also explore the arbitrators’ and parties’ respective duties of due diligence and disclosure as well as the potential applicability of the IBA Guidelines on Conflicts of Interest in International Arbitration.

Stage Right – Respondent’s Counsel:

Arbitration Counsel for Respondent ..... **Eduardo Zuleta**  
In-House Counsel for Respondent ..... **Tomasz J. Sikora**

Stage Left – Claimant’s Counsel:

Arbitration Counsel for Claimant ..... **James H. Carter**  
In-House Counsel for Claimant ..... **Alan R. Crain**

**9:40 Audience Voting: Interview Techniques and Strategic Choices**

**9:45 Panel Discussion and Q&A: Interview Techniques, Duties of Due Diligence and Disclosure and the Benefits and Pitfalls to Challenging Arbitrators**

Moderator:..... **Kenneth B. Reisenfeld**

**10:15 Commentary and Panel Discussion: Insiders’ Perspectives on Challenges before the ICC International Court of Arbitration**

Moderator:..... **Kenneth B. Reisenfeld**

**Commentary: How the ICC Resolves Arbitrator Challenges ..... John Beechey**

**Commentary: The Role of the ICC Secretariat.....Jennifer Kirby**

**10:30 Moderated Audience Q&A on Act I Issues**

**10:40 Break**

**11:00 Commentary: Narrow is the Gate and Strait is the Way: Some Recurring Problems in International Arbitral Ethics..... W. Michael Reisman**

**ACT II — THE ARBITRATION: ETHICAL ISSUES IN PRESENTING THE CASE**

**11:20 Introduction to Act II ..... James E. Castello, Workshop Co-Chair**

**11:25 Act II, Scene I — Information Gathering**

Buyer/Respondent’s in-house Counsel discusses with her outside lawyers the company’s defense to the arbitration, including whether to seek information from Seller/Claimant’s former in-house lawyer, who reportedly left on unhappy terms. Respondent’s (European) counsel A and (U.S.) counsel B express different concerns about such an interview, based on the various possible ethical constraints that may apply.

Respondent’s counsel B interviews Claimant’s former in-house lawyer and discusses with him his ethical obligations regarding confidential information and attorney communications with his former client.

Stage Left – Discussion of Respondent’s Defense and Ethical Obligations Regarding Witness Interviews

European Counsel for Respondent ..... **Caline Mouawad**  
U.S. Counsel for Respondent..... **José I. Astigarraga**  
In-House Counsel for Respondent ..... **Toni D. Hennike**

Stage Right – Respondent’s U.S. Lawyer Meets  
with Claimant’s Former In-House Counsel

U.S. Counsel for Respondent..... **José I. Astigarraga**  
Former In-House Counsel for Claimant ..... **Thomas R. Snider**

**11:45 Panel Discussion and Q&A: Information Gathering**

Moderator:..... **James E. Castello**

**12:00 Act II, Scene II — Hearing on Document Disclosure Requests**

Claimant and Respondent have each sought disclosure of the other party’s documents, including ones prepared by in-house counsel. The protections afforded such documents differ under the applicable legal regimes of Buyerland and Sellerville. The tribunal hears argument on motions to order disclosure.

Counsel for Claimant ..... **Dominique Brown-Berset**  
Counsel for Respondent ..... **Florian Kremslehner**  
Arbitration Chairperson ..... **Charles N. Brower**  
Arbitrator Appointed by Claimant ..... **Ahmed Sadek El-Kosheri**  
Arbitrator Appointed by Respondent ..... **Lucy F. Reed**

**12:15 Audience Voting: Motions to Order Disclosure**

**12:20 Panel Discussion and Q&A: Protecting Privileges and Confidentiality**

Moderator:..... **James E. Castello**

**12:35 – 2:15**

**HOSTED LUNCHEON**

**WHOSE ARBITRATION IS IT ANYWAY?**

**A CORPORATE PERSPECTIVE ON THE DUTIES OF COUNSEL AND THE ARBITRAL TRIBUNAL**

**Carla Powers Herron**  
Group Counsel - Litigation  
The Shell Group  
Houston, Texas USA

*Co-Sponsored by*  
**ExxonMobil Corporation**  
**Navigant Consulting, Inc.**

**2:15 Act II, Scene III — Arbitrator Deliberation on Motions for Disclosure and Possible Corruption Issues**

The arbitrators deliberate on the motions to order disclosure. One arbitrator also queries what obligation the arbitrators may have to pursue concerns as to possible bribery.

Arbitration Chairperson ..... **Charles N. Brower**  
Arbitrator Appointed by Claimant ..... **Ahmed Sadek El-Kosheri**  
Arbitrator Appointed by Respondent ..... **Lucy F. Reed**

**2:30 Audience Voting: Motions For Disclosure and Possible Corruption Issues**

**2:35 Panel Discussion and Q&A: Motions For Disclosure & Corruption Issues**

Moderator:..... **James E. Castello**

**ACT III — DECISIONS AND CHALLENGES AFTER THE ARBITRAL PROCEEDINGS**

**2:50 Introduction to Act III ..... Prof. Catherine A. Rogers, Workshop Co-Chair**

**2:55 Act III, Scene I — Attorney and Client Strategy Session**

Counsel for the losing party -- Buyer/Respondent -- strategizes with client about potential bases for challenging the award, including on grounds of alleged bias and misconduct of the arbitrators. Discussion focuses on which jurisdictions the prevailing party might seek enforcement in, and whether to raise a challenge against the chairperson. Meanwhile, Seller and its counsel discuss filing an ethics complaint with the DC Bar against Buyer’s Counsel for his alleged misconduct in the arbitration.

Stage Left – Claimant’s Strategy Session:

Arbitration Counsel for Respondent ..... **Matthew S. Dunne**  
In-House Counsel for Respondent ..... **Tomasz J. Sikora**

Stage Right – Respondent’s Strategy Session:

Arbitration Counsel for Claimant ..... **Oswaldo Jorge Marzorati**  
In-House Counsel for Claimant ..... **Tim Martin**

**3:10 Audience Voting: Strategies in Raising Challenges for Bias or Misconduct**

**3:15 Panel Discussion and Q&A: Challenges for Bias or Misconduct**

Moderator:..... **Prof. Catherine A. Rogers**

**3:30 Break**

**3:50 Act III, Scene II — Hearing to Enforce/Challenge Award**

In a U.S. District Court hearing, Counsel for Seller/Claimant seeks to enforce the award and Counsel for Respondent raises several grounds for challenging the award, including alleged misconduct of counsel, alleged illegal influence peddling, and the tribunal’s evidentiary rulings.

Counsel for Claimant ..... **Arif Hyder Ali**  
Counsel for Respondent ..... **John M. Townsend**  
U.S. District Court Judge ..... **Deborah G. Hankinson**

**4:05 Audience Voting: Challenges to the Award**

**4:10 Panel Discussion and Q&A: Hearings to Enforce/Challenge Award**

Moderator: ..... **Prof. Catherine A. Rogers**

**4:25 Act III, Scene III — Disciplinary Hearing**

Attorney is charged before a Hearing Committee of the D.C. Bar Association with professional misconduct. Arguments in the hearing focus on what ethical rules apply and the ambiguities raised by Rule 8.5.

Bar Association Counsel ..... **Robert E. Lutz**  
Counsel for Attorney ..... **Pieter H. F. Bekker**  
U.S. Counsel for Respondent ..... **José I. Astigarraga**

**4:40 Audience Voting: How Should the Hearing Committee Rule?**

**4:45 Panel Discussion and Q&A: Disciplinary Hearings**

Moderator: ..... **Prof. Catherine A. Rogers**

**5:00 Moderated Audience Q&A**

**5:15 Closing Remarks ..... Prof. David D. Caron**