

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

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

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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?

Bernardo M. Cremades
B. Cremades y Asociados, Madrid, Spain

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

John Beechey, International Chamber of
Commerce, Paris, France

Richard W. Naimark, American Arbitration
Association, New York, NY, USA

Otto Lo de Witt Wijnen, Ideka BV,
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
(Invited)

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

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

Jan Paulsson, Freshfields Bruckhaus Deringer LLP,
Paris, France

Additional Panelist TBD

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

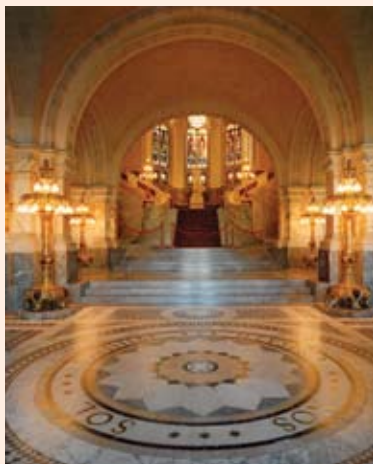
What enforcement mechanisms are available for a party who wishes to obtain information from an opponent for use in a forthcoming arbitration? Are there any limits to a tribunal's ability to "draw adverse inferences," or to shift the burden of proof, and how should the tribunal go about taking these measures? 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

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

Additional Panelists TBD

12:30 p.m. Adjourn



Photos courtesy of the Permanent Court of Arbitration. For more information, visit www.pca-cpa.org.

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THE HAGUE, THE NETHERLANDS

14-15 MAY 2009



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Academy Hall
Carnegieplein 2

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KEY DATES

Registration & Cancellation

22 April 2009—5 p.m. CST
last day for early registration
additional fee for registrations
received after this time

8 May 2009—5 p.m. CST
last day for full refund

11 May 2009—5 p.m. CST
last day for partial refunds
\$50 processing fee applied

14 May 2009—9 a.m. CET
conference begins

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CONFERENCE REGISTRATION

Includes Course Binder, Thursday Lunch Presentation, Reception and Peace Palace Tour

All prices in US dollars.

Early Registration Fee due by Wed. 22 April 2009..... \$625.00

Registration Fee after Wed. 22 April 2009 \$700.00

ACADEMIC RATE (FACULTY AND STUDENTS)

Early Registration Fee due by Wed. 22 April 2009..... \$250.00

Registration Fee after Wed. 22 April 2009 \$325.00

CONFERENCE PUBLICATIONS AND MEDIA

Allow 2-4 weeks from conference date for delivery.

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Audio CD Set \$175.00

eBinder on CD (PDF format) \$225.00/\$50.00

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