

THE PERFECT ARBITRATION

ANNUAL "UP & COMING" ARBITRATION PRACTITIONERS' CONFERENCE

Wednesday 21 October 2009

Hilton Park Lane, 22 Park Lane, London W1K 1BE

Chaired by Peter Rees QC, Debevoise & Plimpton

FEATURING EXPERT ADDRESSES FROM:

- ◆ Merryck Lowe, Alvarez & Marsal DA&F Europe
- ◆ The Rt Hon The Lord Woolf, Blackstone Chambers
- ◆ Dr Julian Lew QC, 20 Essex Street
- ◆ Professor Phillip Capper, White & Case
- ◆ Jennifer Kirby, Herbert Smith
- ◆ Chris Newmark, Spenser Underhill Newmark
- ◆ Marko Hentunen, Castrén & Snellman
- ◆ Andrew Foyle, One Essex Court
- ◆ Wolf von Kumberg, Northrop Grumman
- ◆ Sophie Lamb, Debevoise & Plimpton and ICC YAF
- ◆ Martin Hunter, Alvarez & Marsal DA&F Europe
- ◆ Vera Van Houtte, Stibbe
- ◆ His Honour Humphrey Lloyd QC, Atkin Chambers
- ◆ Matthias Kuscher, ICC International Court of Arbitration
- ◆ Dr Christoph Liebscher, Wolf Theiss

COVERING:

- ◆ Making the leap: From the bench to the tribunal
- ◆ Strategic considerations in getting the seat, governing law, and tribunal right
- ◆ Controlling time and costs: The responsibilities of arbitrators, counsel, and the institutions
- ◆ The perfect arbitration: Is there such a thing?
- ◆ Practical considerations for getting on the arbitration ladder
- ◆ Presentation of evidence and the use of experts
- ◆ Writing arbitral awards

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8.45 REGISTRATION AND COFFEE

9.15 WELCOME AND OPENING REMARKS

MERRYCK LOWE, ALVAREZ & MARSAL DA&F EUROPE

9.30 OPENING ADDRESS

MAKING THE LEAP: FROM THE BENCH TO THE TRIBUNAL

THE RT HON THE LORD WOOLF, BLACKSTONE CHAMBERS

10.00 SESSION ONE

STRATEGIC CONSIDERATIONS IN GETTING THE SEAT, GOVERNING LAW, AND TRIBUNAL RIGHT

DR JULIAN LEW QC, 20 ESSEX STREET (CHAIR)

PROFESSOR PHILLIP CAPPER, WHITE & CASE

JENNIFER KIRBY, HERBERT SMITH

IN THE HEAT OF DRAFTING A CONTRACT, THE ARBITRATION AGREEMENT CAN OFTEN BE NEGLECTED BY PARTIES, RESULTING IN POTENTIAL PITFALLS FOR THE UNWARY IN THE EVENT OF A DISPUTE, OR OPPORTUNITIES TO GAIN A STRATEGIC ADVANTAGE THROUGH THE INTERPLAY BETWEEN THE SEAT, THE GOVERNING LAW, AND THE CONSTITUTION OF THE TRIBUNAL. THE CHOICES MADE AT BOTH CONTRACT FORMATION AND THE COMMENCEMENT OF A DISPUTE HAVE PRACTICAL AND LONG-TERM IMPLICATIONS FOR THE ARBITRAL PROCESS AND THE ENFORCEABILITY OF THE AWARD. THIS SESSION EXAMINES THE STRATEGIC CONSIDERATIONS THAT PARTIES SHOULD TAKE INTO ACCOUNT WHEN DRAFTING AGREEMENTS TO ARBITRATE AND DURING THE CRITICAL, INITIAL STAGES OF AN ARBITRATION, AS WELL AS HOW ICC TREATS THESE ISSUES IN PRACTICE WHEN THE ARBITRATION AGREEMENT IS SILENT ON THESE MATTERS.

WHAT CHARACTERISES A GOOD ARBITRATION SEAT? SHOULD THERE BE A LINK BETWEEN THE SEAT AND THE SUBJECT MATTER OF THE CONTRACT OR SHOULD THE SEAT BE ‘NEUTRAL’?

WHICH GOVERNING LAW WORKS BEST AND SHOULD THE CHAIR BE QUALIFIED IN IT? WHAT SHOULD PARTIES CONSIDER WHEN SELECTING ARBITRATORS FOR THE TRIBUNAL? ARE CO-ARBITRATORS REALLY EXPECTED TO BE AS NEUTRAL AS THE CHAIR? IS IT POSSIBLE TO FIND AN ARBITRATOR WHO IS BOTH EXPERIENCED AND AVAILABLE? WHEN IT COMES TO TRIBUNALS, IS THREE REALLY A MAGIC NUMBER?

11.10 MORNING COFFEE

11.40 SESSION TWO

CONTROLLING TIME AND COSTS: THE RESPONSIBILITIES OF ARBITRATORS, COUNSEL, AND THE INSTITUTIONS

CHRIS NEWMARK, SPENSER UNDERHILL NEWMARK (CHAIR)

MARKO HENTUNEN, CASTRÉN & SNELLMAN

ANDREW FOYLE, ONE ESSEX COURT

AN ICC STUDY IDENTIFIED THAT IN ARBITRATIONS, 2% OF COSTS WERE ATTRIBUTABLE TO ICC ADMINISTRATION OF THE CASE, 16% RELATED TO ARBITRATORS’ FEES AND EXPENSES, AND 82% WERE ATTRIBUTABLE TO PARTY-TO-PARTY COSTS, SUCH AS COUNSEL, WITNESSES, AND DISCOVERY.

HOW CAN OR SHOULD THE TRIBUNAL AND COUNSEL ADOPT MEASURES TO CONTROL COSTS AND KEEP TO THE TIMETABLE? ARE THE TERMS OF REFERENCE A BENEFIT OR HINDRANCE IN THE PROCEDURAL TIMETABLE? HOW CAN THE ACTIVE USE OF MEASURES SUCH AS THE REDFERN SCHEDULE AND CHESSE-CLOCK PROCEDURES CONTRIBUTE TO ROBUST AWARDS WITHIN THE TIMEFRAME? ARE THE TIMEFRAMES SET OUT IN THE ICC AND OTHER INSTITUTIONAL RULES UNREALISTIC OR ASPIRATIONAL? CAN THE ARBITRATION BE REASONABLY CONDUCTED WITHOUT HEARINGS, OPENING, OR CLOSING SUBMISSIONS? HOW SHOULD ARBITRATORS DEAL WITH DELAYING TACTICS? WHAT PRACTICES DOES ICC EMPLOY TO MINIMISE DELAY IN RELATION TO PROCEDURE AND THE RENDERING OF THE AWARD? HOW CAN THE USE OF IT ASSIST TO MANAGE TIME AND COSTS?

12.50 KEYNOTE ADDRESS

THE PERFECT ARBITRATION - IS THERE SUCH A THING?

WOLF VON KUMBERG, NORTHROP GRUMMAN

13.10 LUNCH

14.15 PRACTICAL CONSIDERATIONS FOR GETTING ONTO THE ARBITRATION LADDER

SOPHIE LAMB, DEBEVOISE & PLIMPTON AND ICC YAF

14.30 SESSION THREE

PRESENTATION OF EVIDENCE AND THE USE OF EXPERTS

PETER REES QC, DEBEVOISE & PLIMPTON (CHAIR)

MARTIN HUNTER, ALVAREZ & MARSAL DA&F EUROPE

VERA VAN HOUTTE, STIBBE

WHAT ARE THE MOST EFFECTIVE MEANS TO PRESENT WRITTEN AND ORAL EVIDENCE? HOW ACTIVE A ROLE SHOULD ARBITRATORS TAKE IN DIRECTING THE TAKING OF EVIDENCE? HOW DO THE PARTIES, THE CONSTITUTION OF THE TRIBUNAL, AND DIFFERENT LEGAL TRADITIONS IMPACT THE ROLE OF EXPERTS, AND HOW CAN THE TRIBUNAL AND COUNSEL GET THE MOST OUT OF THEIR EXPERT SUCH AS WITNESS CONFERENCING AND HOT-TUBBING? HOW CAN THE TRIBUNAL CREATE A LEVEL PLAYING FIELD WHEN EXPERTS COME FROM DIFFERENT CULTURAL OR LEGAL BACKGROUNDS? WHAT ARE THE IMPLICATIONS OF TRIBUNAL-APPOINTED EXPERTS AS DISTINCT FROM PARTY-APPOINTED EXPERTS? WHAT ARE THE BENEFITS OF LEGAL EXPERTS AS COMPARED WITH LEGAL SUBMISSIONS? WHEN DOES WITNESS PREPARATION BECOME COACHING, AND HOW DOES THE TRIBUNAL SPOT IT?

15.40 AFTERNOON TEA

16.10 SESSION FOUR

WRITING ARBITRAL AWARDS

HIS HONOUR HUMPHREY LLOYD QC, ATKIN CHAMBERS (CHAIR)

MATTHIAS KUSCHER, ICC INTERNATIONAL COURT OF ARBITRATION

DR CHRISTOPH LIEBSCHER, WOLF THEISS

THERE IS NO SINGLE ‘CORRECT’ FORM OF AN AWARD IN AN ICC ARBITRATION. THE ACTUAL FORM, STYLE AND CONTENT OF AN AWARD DEPEND ON VARIOUS FACTORS SUCH AS THE NATURE OF THE DISPUTE, THE COMPOSITION OF THE ARBITRAL TRIBUNAL, AND THE NEEDS OF THE PARTIES, AS WELL AS LEGAL CONSIDERATIONS. YET, CERTAIN MATTERS ARE CLEARLY INDISPENSABLE; NOTABLY CLEAR REASONING, THE STATEMENT OF THE PLACE OF ARBITRATION, DATE OF THE AWARD, AND THE SUBJECT MATTER OF THE AWARD ARE ALL BASIC ASPECTS THAT ARE NECESSARY FOR AN ENFORCEABLE AWARD. HOWEVER, WHAT ARE THE CHARACTERISTICS OF A GOOD AWARD? WHERE ARE THE POTENTIAL PITFALLS FOR LESS EXPERIENCED ARBITRATORS, SUCH AS LANGUAGE, STRUCTURE, CALCULATIONS, DISSENTING OPINIONS, QUANTUM, AND COSTS? WHAT ARE THE MOST FREQUENT REASONS OF FORM AS TO WHY THE DRAFT AWARD MIGHT BE SENT BACK TO THE TRIBUNAL? HOW CAN SUBMISSIONS FROM THE PARTIES ASSIST ARBITRATORS WHEN WRITING THE AWARD? HOW DOES THE PROCESS OF ICC SCRUTINY REALLY WORK AND WHAT DOES IT ADD TO THE AWARD?

17.20 CLOSING SUMMARY

PETER REES QC, DEBEVOISE & PLIMPTON

17.30 RECEPTION

Peter Rees QC is a partner at Debevoise & Plimpton, London. He is a Fellow and Chairman of the Board of Management of the Chartered Institute of Arbitrators, and a past Chairman of the Chartered Institute’s Practice & Standards Committee. Peter is an accredited Adjudicator with TeCSA, and an accredited Mediator with ADR Chambers. He was a member of the ICC Task Force on Reducing Time and Costs in Complex Arbitration, and is a Council Member of ICC United Kingdom.

Merryck Lowe is a Managing Director with Alvarez & Marsal and heads the firm’s European Dispute Analysis & Forensics practice. Merryck assists clients with post-acquisition breach of contract and breach of warranty disputes, business valuations, and culpability for financial misstatement and inappropriate assurance. He investigates and advises on claims under EU competition law, allegations of fraud and shareholders and board director disputes. He is a Chartered Accountant (ICAEW) and Deputy President of the Institute of Chartered Accountants in West Yorkshire.

Lord Woolf is a chartered arbitrator, a Special Adviser to CEDR, Co-Chair of the Commission for Settlement in Arbitration, and a member of CEDR’s Distinguished Panel of Third-Party Neutrals. Between 1996 and 2000 he held the position of Master of the Rolls, and in 2000 he was appointed Lord Chief Justice of England and Wales. Following his retirement in 2005, he joined Blackstone Chambers as a non-resident member. He has also chaired the network of the Presidents of the Supreme Judicial Courts of the European Union’s Working Group on Mediation.

Dr Julian Lew QC is a member of 20 Essex Street, London. He is a Professor and Head of the School of International Arbitration, Centre for Commercial Law Studies, Queen Mary, University of London. Julian is the British member of the ICC International Court of Arbitration and author of various publications including *Comparative International Commercial Arbitration* (2003, with Mistelis and Kroll).

Professor Phillip Capper is a partner at White & Case, London. Formerly Chairman of the Faculty of Law at Oxford University, he is now Nash Professor of Engineering Law at King’s College. As counsel, Phillip has acted under the rules of ICC, LCIA, UNCITRAL, and the Stockholm, Madrid and Prague Chambers of Commerce, as well as in contractual mediations and ad hoc arbitrations. As arbitrator, Phillip has chaired ICC, LCIA and UNCITRAL arbitral tribunals.

Jennifer Kirby is an international arbitration partner at Herbert Smith in Paris. Prior to this, she was Deputy Secretary General of the ICC International Court of Arbitration, where she supervised thousands of international arbitrations held all over the world and involving parties and arbitrators from dozens of different countries. Jennifer began her career in private practice in 1995 in New York, where she represented clients in international arbitrations and complex commercial litigations.

Christopher Newmark is a partner at Spenser Underhill Newmark, London. He specialises in large international commercial disputes, and is a commercial mediator and a member of CEDR’s mediator training faculty. He has also acted as an arbitrator under LCIA, ICC and CEDR appointments. Chris is a Vice-Chairman of the ICC Commission on Arbitration, sat on the ICC Task Force that drafted the ICC ADR Rules, and co-chaired the ICC Task Force on Reducing Time and Costs in Complex Arbitration.

Marko Hentunen heads Castrén & Snellman’s Dispute Resolution expertise group, in Helsinki. He specialises in domestic and international arbitration and commercial litigation, and has acted as an arbitrator in several institutional and ad hoc arbitral tribunals. He is a board member of the Finnish Arbitration Association, and a member of the ICC Commission on Arbitration, the IBA Arbitration and Litigation Committee, and the ICC Task Force on the Revision of the ICC Rules of Arbitration. He was a member of the ICC Task Forces on Reducing Time and Costs in Complex Arbitration, and National Rules of Procedure for Recognition and Enforcement of Foreign Awards pursuant to the NY Convention.

Andrew Foyle is a member of One Essex Court, specialising in international arbitration. Prior to joining the chambers, he was head of Lovells’ international arbitration practice from 1998 to 2006, and was senior partner of the Hong Kong office from 1994 to 1998. He is a member of the ICC International Court of Arbitration, a Fellow of the Chartered Institute of Arbitrators, and is a member of the LCIA. He is also a member of the ICDR Panel of Arbitrators and on the panel of the Hong Kong International Arbitration Centre.

Sophie Lamb is a member of Debevoise & Plimpton’s International Dispute Resolution Group in London. Specialising in complex litigation and international arbitration, she has acted as counsel and arbitrator in dozens of international arbitrations arising under the rules of the major arbitral institutions. Sophie is on the coordinating committee of the ICC International Court of Arbitration Young Arbitrators Forum (Europe & Russia Chapter), and a member of the ICC Task Forces on Expertise Proceedings and the New York Convention.

Wolf von Kumberg has been the European Legal Director and Assistant General Counsel to Northrop Grumman Corporation and its predecessor, Litton Industries, Inc, for over 15 years. Prior to that he served five years as the Vice President – Legal Affairs for Litton Canada, after having spent several years in legal practice with a major Toronto law firm. He has received law degrees from Canadian and European Universities and is qualified as a lawyer in both Canada and England.

Martin Hunter, a Managing Director with Alvarez & Marsal Construction Disputes & Advisory Europe, brings more than 20 years of experience in the construction sector. With more than 10 years of experience in construction-related disputes, serving in both advisory and expert witness-related roles, Martin has worked extensively on projects throughout the UK, as well as in Continental Europe, the US, the Middle East, Africa, the Caribbean and Asia. He brings deep expertise in oil and gas-related projects, and has been appointed as an expert in oil and gas pipeline disputes in Central Asia, Europe and the Middle East.

Vera Van Houtte is a partner at Stibbe, Brussels. She has extensive experience in the conduct of ad hoc arbitrations, and those conducted under the rules of ICC, LCIA, and UNCITRAL. She specialises in real estate, construction and energy law, and has been involved in major construction and renovation projects in Belgium and internationally. Vera has published numerous articles on these areas of practice and has lectured widely on European construction law and aspects of international arbitration at national and international conferences.

His Honour Humphrey Lloyd QC was a judge of the Technology and Construction Court in London from 1993 to 2005, and then resumed practice as an arbitrator at Atkin Chambers, London. He has served on ICC’s Commission on Arbitration, was co-chairman of an ICC group on the writing of arbitral awards, and was the principal author of article on *Drafting Arbitral Awards* (published in ICC Bulletin, Fall 2005). He also served on ICC working parties on Terms of Reference, Multi-Party Arbitration, Arbitration and Construction, Time and Costs and the Pre-Arbitral Referee Procedure (of which he was co-chairman).

Matthias Kuschler is currently a Counsel at the ICC International Court of Arbitration in Paris, where he is in charge of the case management team dealing principally with arbitrations seated in or connected to the United Kingdom and the Commonwealth. He was educated at Cambridge, Oxford and Heidelberg and called to the Bar of England and Wales in 2006.

Dr Christoph Liebscher is a partner and heads up the arbitration group at Wolf Theiss in Vienna. Christoph has over 30 years’ experience working as arbitrator and counsel in more than 100 domestic and international commercial arbitrations and litigations in English, German and French. He lectures on international commercial arbitration at the University of Salzburg, is a past member of the ICC International Court of Arbitration, and is a delegate at the UNCITRAL Working Group on Arbitration.

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RECEPTION: 17.30

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Registration Fees

	Rate	VAT	Total
Members of ICC United Kingdom / ICC Young Arbitrators Forum (YAF)	£330.00	£49.50	£379.50
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