

INTERNATIONAL LITIGATION AND ARBITRATION

Update









Organized by the International Litigation and Arbitration Committee of The Florida Bar International Law Section

InterContinental Hotel Miami May 11 - May 12, 2006 ABA Section of International Law

ABA International Litigation Committee of

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Bruce J. Berman is a partner in the law firm of McDermott Will & Emery LLP and is based in its Miami office. He is a member of the Firm's Trial Department, where his practice encompasses a broad range of commercial disputes, in federal and state trial and appellate courts and in domestic and international arbitration tribunals, involving substantive areas of law including corporate, federal and state securities, aviation, intellectual property (copyright, trademark, unfair competition and internet-related issues), health law, real estate, construction and commercial lending (real estate, asset-based and lease financing).

Scott A. Burr is an associate with Astigarraga Davis. His practice focuses on the representation of multinational corporations and foreign governments in international litigation and arbitration matters, including the recovery of assets procured through fraud and public corruption.

Gary E. Davidson is a partner with Rasco Reininger Perez Esquenazi & Vigil, P.L. in Miami, and has litigated and arbitrated complex domestic and international commercial cases throughout the United States, with a focus on the maritime, insurance, hotel, travel and real estate industries. Since 1999, he has also served as an adjunct professor on the faculty of Nova Southeastern University's law school, teaching courses on international litigation and travel law. Mr. Davidson has authored a number of law review and journal articles focusing on international and transport issues and has been a frequent speaker before a variety of legal and trade groups in the United States and in Europe.

Edward H. Davis, Jr. is a founding shareholder of Astigarraga Davis, and represents banking, corporate and governmental victims of serious fraud and grand corruption in the investigation and prosecution of civil fraud matters. His practice involves locating, freezing and recovering missing assets and funds in the United States, Latin America, the Caribbean and Europe with a special focus on so-called secrecy havens. He is a Certified Fraud Examiner and secretary to the International Law Section of the Florida Bar.

Georgina Fabian is a senior associate in the Chicago office of Mayer, Brown, Rowe & Maw LLP. Her practice is focused on international dispute resolution with a particular focus on international litigation and arbitration. A native of Mexico, she is authorized to practice law in the Mexican Republic, New York and Illinois. With broad experience in common and civil law, she has represented foreign and domestic clients in the United States and Mexico in international litigation and arbitrations under the ICC, AAA, ICSID, and ad hoc rules.

Daniella Friedman is a partner with the firm of Montello & Friedman, P.A. and specializes in complex commercial litigation, international litigation, and appellate law. She has extensive experience representing multinational companies, financial institutions, and business owners in complex business, shareholder, and real estate disputes involving multiple parties in state and federal trial and appellate courts.

John Fellas is a partner in the New York office of Hughes Hubbard & Reed LLP, practicing in the fields of international litigation and arbitration. He has practiced in both the United States and England. He is a member of the New York Bar and a Solicitor of the Supreme Court of England and Wales. He has served as counsel, and as chair, sole arbitrator and co-arbitrator, in arbitrations under the AAA, ICC and ad hoc rules. He also serves on the Mediation Panel of the District Court for the Southern District of New York and has been retained to act as an expert witness on United States law in proceedings in other countries, most recently by the United States Department of Justice.

Mauricio Gomm F. Dos Santos is a practicing Brazilian lawyer and partner in Gomm Santos – Associated Lawyers, Curitiba, Parana, Brazil. He specializes in Brazilian arbitration law and has been involved in litigation and arbitration of commercial contracts, agency, distribution, franchising agreements, project finance, banking and insurance law. He has also served as arbitrator in international cases under Inter-American Commercial Arbitration Commission (IACAC) rules involving distributorship and agency agreements. He has lectured and taught arbitration courses in the Getulio Vargas Foundation in Rio de Janeiro and Sao Paulo, as well as the Pontifical Catholic University of Curitiba.

Enrique A. González Calvillo is the founding partner of González Calvillo, S.C. For over twenty years, Mr. González Calvillo has focused his practice on international and corporate law issues. He has extensive experience as both an arbitrator and mediator in proceedings brought under the auspices of several organizations, including the International Court of Arbitration of the International Chamber of Commerce and México's National Chamber of Commerce. Mr. González Calvillo has served as México's representatives to a number of international organizations, including NAFTA's Commercial Dispute Consulting Committee.

Jonathan C. Hamilton practices in international dispute resolution with the global law firm of White & Case LLP. He has experience in ICSID, ICC and AAA/ICDR arbitrations and in matters before domestic and foreign courts. He has particular experience in the representation of sovereigns in foreign investment disputes. Based in Washington, D.C., Mr. Hamilton also has worked in the New York and Mexico City offices of White & Case and as a visiting lawyer with a leading firm in Peru.

Robert J. Hauser practices at the litigation firm Beasley Hauser Kramer Leonard & Galardi, P.A. in West Palm Beach. Mr. Hauser practices exclusively in the areas of commercial litigation, including commercial arbitration, health care litigation, and appellate practice. Mr. Hauser joined Tew & Beasley LLP (now known as Tew Cardenas LLP) in West Palm Beach as an associate in 1997. In December 1997, Mr. Hauser formed his present law firm along with James W. Beasley, Jr. Mr. Hauser is "AV" rated by Martindale Hubbell and is a member of The Florida Bar, the United States District Court for the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit. He is a member of the Palm Beach County Bar Association (Appellate Practice Committee); the Palm Beach County Trial Lawyers' Association; and the Academy of Florida Trial Lawyers.

Daniel E. Karson has over 30 years experience directing investigations of business crimes and regulatory violations. His notable litigation support and asset search cases include investigations of Ferdinand Marcos (for the United States House of Representatives) and Jean Claude Duvalier (for the Republic of Haiti.) In 1986, he launched Kroll's European operations, opening its office in London and serving as its first Managing Director. He also opened Kroll offices in Boston (1997) and Philadelphia (1998). Mr. Karson's practice areas include major investigations of fraud and cases involving litigation support, contests for corporate control, crisis management, asset searches, grey market diversion and due diligence. He served as Kroll's general counsel for eleven years.

Martin S. Kenny is the principal of the British Virgin Islands-based multi-disciplinary practice of Martin Kenney & Co., Solicitors. Mr. Kenney is a specialist investigative and litigation lawyer in multi-jurisdictional economic crime and international serious fraud. Offshore Alert of Miami has said that Mr. Kenney is "one of the world's leading authorities on the legal aspects of freezing and seizing assets in multiple jurisdictions." The Financial Times (US Edition) has called him a "top international asset chaser."

Luis S. Konski is a shareholder of the law firm of Becker & Poliakoff, P.A., based in the firm's Coral Gables office, and heads the firm's International Litigation Department. Mr. Konski specializes in a broad range of complex business disputes in federal and state courts, including international litigation and arbitration. He is fluent in English and Spanish, is conversant in Portuguese and holds the highest ranking assigned by Martindale-Hubbell in his profession.

Giselle Leonardo is a member of the Florida Bar and is the principal of Giselle Leonardo, P.A., Fort Lauderdale, Florida. She is an Arbitrator with the American Arbitration Association and has chaired and served on panels for international, large complex commercial, energy and construction disputes. Ms. Leonardo has served as an arbitrator trainer and has presented various seminars on arbitration methods, strategies, and processes including a recent presentation for the Annual Broward County Bench Bar Convention. Formerly, Ms. Leonardo served as Corporate Counsel to various multinational corporations including major international developers and contractors performing work in Asia, Latin America, Africa and other regions for the development and implementation of infrastructure projects ranging form \$125 million to \$700 million with foreign governments, multilaterals and/or consortiums.

Alvin F. Lindsay is a partner of the international law firm of Hogan & Hartson LLP. Mr. Lindsay's work involves litigating complex commercial cases including business disputes, products liability, securities defense, and class actions. He has extensive trial experience as first-chair litigation counsel in state and federal courts, as well as international and domestic arbitration. Representing both plaintiffs and defendants, he has won a number of multi-million dollar trials and has been litigation counsel in some of the most important lawsuits in the state of Florida, including the year 2000 presidential election cases where he represented Florida's secretary of state from the trial court level through the United States Supreme Court.

David Lindsey is a partner at Clifford Chance. Mr. Lindsey's practice concentrates on international commercial arbitration, commercial litigation, and reinsurance, with a focus on international commercial contracts and power/energy construction projects. He has represented numerous corporate clients in arbitration matters under the rules of the ICC, the LCIA, the AAA, the SMA, and UNCITRAL. Mr Lindsey also advises companies in diverse industries on large, complex commercial litigation matters. In the area of reinsurance, he has represented major reinsurers in disputes regarding quota share treaties, excess loss policies, and alternative risk and finite risk transfer products. He is a frequent lecturer and is co-editor and author of Commercial Arbitration in Latin America.

Richard C. Lorenzo is a partner of the international law firm of Hogan & Hartson LLP. Mr. Lorenzo's practice focuses on international, cross-border, and commercial litigation and arbitration. Mr. Lorenzo has broad experience in international litigation and arbitration disputes representing foreign and domestic clients in the United States, Venezuela, Brazil, Argentina, Peru, Chile, Ecuador, Central America, and the Caribbean. He has lectured and published extensively in his practice area, is an adjunct professor of International Arbitration at St. Thomas University School of Law, is a United States member of the International Chamber of Commerce Arbitration Commission and comments on international legal matters in the national and international media making numerous televised appearances on CNN En Español.

Pedro J. Martinez-Fraga is a principal shareholder of Greenberg Traurig LLP, Chair of the firm's Miami International Litigation and Arbitration Department, and Co-Chair of the firm's National and International Practice Group concerning Transnational Arbitration and International Litigation. Mr. Martinez-Fraga has lectured and published widely in the area of International Law and Civil Procedure. He has represented as lead counsel the Republics of Argentina, Brazil, Chile, and the Kingdom of Spain, as well as numerous geopolitical instrumentalities and subdivisions of South American and European countries. He is an Adjunct Professor of Law at the University of Miami School of Law where he teaches International Litigation and Transnational Arbitration. Mr. Martinez-Fraga has prosecuted numerous cases before the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights against Cuba, Venezuela, and Haiti.

George Mencio, Jr. is a partner in the law firm of Holland & Knight. He practices principally in the areas of corporate and international law, with an emphasis on cross-border transactions, dispute resolution and arbitrations relating to international trade and commerce, infrastructure and mining projects, shipping and aviation. Mr. Mencio's arbitration experience extends to disputes before the International Court of Arbitration of the International Chamber of Commerce and the International Centre for Dispute Resolution of the American Arbitration Association.

Henry E. Mendia is a partner in the Miami office of Stroock & Stroock & Lavan LLP. Mr. Mendia has broad experience representing parties in international commercial disputes, both before international arbitration panels as well as United States courts. Mr. Mendia has particular experience handling matters involving Latin America, and has worked extensively in Argentina, Chile, Bolivia, Colombia, Venezuela as well as Central America. In addition to handling purely private disputes, Mr. Mendia has been on both sides of cases involving foreign sovereigns.

David Mizrachi is the senior partner at Mizrachi, Davarro & Urriola in Panama, Republic of Panama. He is a United States trained attorney admitted to practice in the State of Florida and the Republic of Panama, specializing in international dispute resolution and commercial transactions. He routinely handles legal issues spanning the two major legal traditions of civil law and common law. He is also a public translator and has served as an expert on Panamanian law in state and federal courts in the United States

Rima Y. Mullins is counsel in the Miami office of White & Case LLP. Her areas of practice include general commercial litigation, appellate and class actions. She has participated in cases at the trial and appellate level in both federal and state courts throughout the country.

Lawrence W. Newman is a partner in the litigation department of the New York office of Baker & McKenzie LLP. He has had extensive experience in the litigation and arbitration of international commercial and investment disputes, including those involving foreign states. For many years, he was the Chairman of the national committee of American claimant companies and counsel against the government of Iran following the revolution in that country. He is the author, co-author and editor and co-editor of numerous books and articles on subject relating to international litigation and arbitration, including "International Arbitration Checklists" (2004) and "The Leading Arbitrators' Guide to International Arbitration" (2004). He is the co-editor of a forthcoming book, "The Leading Latin American Lawyers' Guide to International Arbitration."

Keith Oliver specializes in commercial, regulatory and insolvency litigation, and heads the specialist civil fraud team at Peters & Peters in London, England. He has extensive experience in UK and international asset tracing, including the use of emergency relief procedures, and is often involved in multi jurisdictional actions in the USA, continental Europe and worldwide. He represents both individuals and major corporate clients in Companies Act and Financial Services and Markets Act investigations and prosecutions, and is widely recognized as one of the UK's leading lawyers in civil fraud.

Luis M. O'Naghten's is a shareholder in the Miami office of Akerman Senterfitt whose primary area of practice is international complex commercial litigation. He has represented parties in disputes before United States courts and before international arbitration panels (both ICC and AAA/ICDR) in a wide range of disputes in several countries in Latin America and Spain. Mr. O'Naghten has provided advice to major international banks, United States and foreign multinational corporations and US energy companies. He also has significant experience representing both foreign sovereigns and parties adverse to foreign sovereigns. His practice focuses on international financial frauds, energy disputes and shareholder disputes.

Hilda Piloto is a partner in the litigation department of Amstein & Lehr LLP. Her experience includes the handling of a variety of international, complex civil litigation matters including the prosecution and defense of RICO claims, commercial disputes, employment discrimination matters and insurance coverage disputes.

Joseph L. Raia is a director in the Miami office of Holtzman Equels and for over 25 years has handled a broad range of litigation and arbitration matters. This work includes business and financial issues, the sale and distribution of goods, intellectual property, real estate development and construction, for clients throughout South America, the Caribbean, Europe, especially Italy, and the Philippines.

C. Ryan Reetz is a shareholder with the law firm of Greenberg Traurig LLP, and a co-founder of the firm's International Litigation Department in Miami. His practice is focused on international and domestic commercial litigation and arbitration, as well as disputes involving foreign sovereigns. Mr. Reetz teaches transnational litigation and arbitration as an adjunct professor at the University of Miami School of Law and trial skills through the National Institute for Trial Advocacy (NITA).

Wilfredo "Fred" A. Rodriguez is a partner at the law firm of Holland & Knight, where he chairs the firm-wide international litigation and arbitration practice group. With over twenty years of litigation experience, Mr. Rodriguez has defended and prosecuted a wide variety of complex international business disputes in state and federal courts in the United States. He has also participated in numerous domestic and international arbitrations and mediations held in the United States and in foreign jurisdictions. Mr. Rodriguez is recognized as a leader in international litigation and arbitration in various publications, including Chambers Global, Chambers USA, The International Who's Who of Commercial Litigation Lawyers, The Best Lawyers in America and the South Florida Legal Guide. He is fluent in English and Spanish and holds the highest ranking assigned by Martindale-Hubbell in his profession.

Lic. Humberto Saenz Marinero is a senior partner of the law firm of Saenz & Asociados, one of El Salvador's leading firms. Lic. Saenz's practice is focused on administrative and international, commercial disputes. He has handled numerous international arbitrations and is considered one of El Salvador's experts in the arbitration field. In addition to representing local and international clients in El Salvador, Lic. Saenz has served as lead counsel in international arbitrations taking place in Nicaragua and the United States. Lic. He has been recognized by LatinLawyer as of one of Central America's "top 40 - under 40" legal practitioners.

Sean R. Santini is a shareholder of Akerman Senterfitt and a member of the firm's International Litigation and Arbitration practice. For over 16 years, Mr. Santini has litigated on behalf of clients throughout the United States, Latin America and the Caribbean in both federal and state court, as well as in international arbitration proceedings. His practice focuses on a variety of complex commercial matters, including franchise and distributorship disputes, intellectual property litigation, securities class actions, products liability defense and shareholder derivative suits.

Brian J. Stack is a shareholder with Stack Fernandez Anderson & Harris, P.A. His practice focuses on complex litigation and appellate matters for multinational companies, with an emphasis on commercial disputes, business torts, and unfair trade practice claims.

Craig Edward Stein has chaired arbitration panels that have heard disputes between parties from various countries located in Africa, Europe, and Asia, as well as North and South America. The amount in dispute in the international arbitration cases in which Mr. Stein has participated as an arbitrator has ranged from between \$1 million and \$100 million dollars. Mr. Stein is listed on the American Arbitration Association's (International Centre for Dispute Resolution) Panel of International Arbitrators and has been selected by the AAA to be a member of its faculty that trains its National Commercial Panel. In addition, Mr. Stein was asked by the Florida Bar and the AAA to teach an International Arbitration seminar at the Florida Bar's annual convention. He frequently lectures on emerging issues in commercial arbitration, both domestic and international. Mr. Stein was recently invited to teach at the Florida State Court trial Judges Annual Winter Educational Conference on matters related to issues regarding the interaction of trial courts with the arbitration process.

Nicolas Swerdloff is a partner in the Miami office of Hughes Hubbard & Reed LLP and a member of that firm's Litigation Department, and Arbitration and ADR Group. He has been with Hughes Hubbard & Reed, in its New York and Miami offices, since 1983. Mr. Swerdloff specializes in international disputes, including complex litigation and arbitration in the United States and abroad. His experience includes representation of: (1) the Central Bank of Paraguaya in actions to recover funds misappropriated from certain Paraguayan banks in liquidation; (2) Banco Popular del Ecuador, S.A., an Ecuadorean bank taken over by the Ecuadorean FDIC, in a RICO action filed by the Republic of Colombia seeking \$180 million; (3) ALSTOM in an action seeking \$300 million in damages based upon alleged failures in the construction of the propulsion systems for four luxury cruise ships; and (4) ARCO Chemical Company in an International Chamber of Commerce arbitration and proceedings before the European Commission arising from a dispute with a licensee over the ownership of technology for manufacturing propylene oxide and styrene monomer.

Ron Weil is a board certified civil trial lawyer designated by the National Board of Trial Advocacy. He has earned the confidence of some of the area's most prominent persons and corporations in a variety of cases involving construction contract litigation, intellectual property litigation, securities fraud, franchise litigation and business torts. His trial work has involved the federal and state courts of Florida, New York, Ohio, Arizona, the District of Columbia, and Puerto Rico. He has worked effectively with foreign counsel in Switzerland, the United Kingdom, France, and throughout Latin America to promote his clients' interests in this country and to coordinate foreign and international litigation.

PRESENTS THE

FOURTH ANNUAL INTERNATIONAL LITIGATION AND ARBITRATION UPDATE

MAY 11 - MAY 12, 2006 at the InterContinental Hotel Miami

THURSDAY, MAY 11, 2006

9:00 a.m.

Introductory Remarks

Nicolas Swerdloff, Hughes Hubbard & Reed LLP with Luis S. Konski, Becker & Poliakoff, P.A & Richard C. Lorenzo, Hogan & Hartson LLP

9:05 a.m. - 10:05 a.m.

Survey of Hot Cases and New Legislation

Moderator — Gary E. Davidson

Rasco Reininger Perez Esquenazi & Vigil, P.A.

- Rima Y. Mullins, White & Case LLP
- Joseph L. Raia, Holtzman Equels
- Ron Weil, Ronald Weil & Associates

<u>10:05 a.m. – 11:20 a.m.</u>

Obtaining and Dissolving U.S. Injunctions, Anglo Saxon Freeze Orders and Civil Law Provisional Remedies in a **Fraud Case**

Moderator — Edward H. Davis, Jr., Astigarraga Davis

- Brian J. Stack, Stack Fernandez Anderson & Harris, P.A.
- Keith Oliver, Peters & Peters
- David Mizrachi, Mizrachi, Davarro & Urriola
- Martin Kenney, Martin Kenney & Co.

15 Minute Break

11:35 a.m. – 12:20 p.m.

Dueling Judges: Abstention, Comity and Parallel Litigation

Moderator — Daniella Freidman, Montello & Friedman, P.A.

- Scott A. Burr, Astigarraga Davis
- C. Ryan Reetz, Greenberg Traurig LLP

12:20 p.m. - 2:00 p.m.

Speaker — Daniel E. Karson, Kroll, Inc.

2:00 p.m. – 3:00 p.m.

Challenges in Representing the Foreign Sovereign

Moderator - Luis M. O'Naghten, Akerman Senterfitt

- Johnathan C. Hamilton, White & Case LLP
- Henry E. Mendia, Strook & Strook & Lavan LLP
- Lawrence W. Newman, Baker & McKenzie LLP

3:00 p.m. — 4:00 p.m. Gatekeeper Issues in Enforcing **Arbitration Clauses**

- John Fellas, Hughes Hubbard & Reed LLP
- Georgina Fabian, Mayer Brown Rowe & Maw LLP

15 Minute Break

4:15 p.m. - 5:15 p.m.

Challenging the Arbitrator

Moderator — Craig E. Stein, Craig Edward Stein, P.A.

- David Lindsey, *Clifford Chance*
- Robert J. Hauser, Beasley Hauser Kramer Leonard & Galardi, P.A.
- Giselle Leonardo, Giselle Leonardo, P.A.

5:15 p.m. Cocktail Reception

FRIDAY, MAY 12, 2006

Workshop on Evidentiary Problems in **International Litigation and Arbitration**

9:00 a.m. - 10:00 a.m.

Discovery

Moderator — Luis S. Konski, Becker & Poliakoff, P.A.

- Bruce J. Berman, McDermott Will & Emery LLP
- Pedro J. Martinez-Fraga, Greenberg Traurig LLP
- Mauricio Gomm, Gomm Santos
- Wilfredo A. Rodriguez, Holland & Knight LLP

<u>10:00 a.m. – 11:00 a.m.</u>

Spoliation of Evidence in the Context of the International Case

Moderator — Sean R. Santini, Akerman Senterfitt

- George Mencio, Holland & Knight LLP
- Enrique A. Gonzalez Calvillo, González Calvillo, S.C.

15 Minute Break

11:15 a.m. - 12:15 p.m.

Preparing the Offshore Witness for Deposition or Trial/hearing

Moderator - Richard C. Lorenzo,

Hogan & Hartson LLP

- Alvin Lindsay, Hogan & Hartson LLP
- Humberto Saenz, Saenz & Asociados
- Hilda Piloto, Arnstein & Lehr LLP

12:15 p.m.

Closing Comments

Nicolas Swerdloff, Hughes Hubbard & Reed LLP with Luis S. Konski, Becker & Poliakoff, P.A & Richard C. Lorenzo, Hogan & Hartson LLP

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Hughes Hubbard & Reed LLP, Miami, Fla.

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Becker & Poliakoff, P.A., Miami, Fla.-International Arbitration

Richard C. Lorenzo

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MAY 11 - MAY 12, 2006

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Please call the InterContinental Hotel Miami at 305-577-1000 (Identify yourself as an attendee of the Fourth Annual International Litigation and Arbritration Update Seminar for the group rate. Deposit required at time of reservation.)