

Damages in International Arbitration – October 19, 2012

Friday, October 19, 2012

The University Club of New York, One West 54th Street New York, NY 10019
Tel: 212 247 2100; Fax: 212 572 3457

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Program Description

Damages in International Arbitration: How Much is Prevailing Worth?

Damages are a key concern in international arbitration proceedings because achieving them or avoiding them are the countervailing goals of the parties. Damages may take many forms: they are not only compensatory, but they may also be subject to counterclaims and set-offs, reduced by failures to mitigate and enlarged by the application of interest and costs. They may be arrived by tribunals in a variety of ways, some more disciplined than others. Issues of causation loom large even before the application of methods of quantification.

Ascertaining damages can therefore be a hugely complex process, both legally and factually, for those presenting or defending against them and for those assessing them. In measuring damages, tribunals may be required to address such factors as destruction of market value, lost dividends or royalties and similar future consequences of what may be found to be the unlawful deprivation of business property. In cases concerning capital investments, tribunals may have to look decades into the future and consider uncertainty of future revenues or costs, interest rates, inflation, regulatory changes and other risks. Complex calculations are usually required and expert evidence is invariably involved. In addition, since claims are often for hundreds of millions of dollars or more, even small changes in the variables used in valuation methodology may significantly affect the amount of the award.

Damages in international arbitration are therefore a vast and important topic requiring, in arbitration proceedings, thoughtful and detailed consideration by the tribunal, the parties and valuation experts such as accountants and economists. The seminar will offer presentations by leading authorities on damages and experienced practitioners, with roundtable discussions and opportunities for contributions from attendees. The afternoon session will focus on the complex issues presented by the use of the discounted cash flow (DCF) method of assessing damages, through a mock tribunal session involving the examination of an expert concerning his report on the valuation of losses in the value of a business investment.

The seminar will provide insights from leading authorities and experts on what should be foremost in the minds of all – advocates, experts, arbitrators and the parties – that are involved in the international arbitration process — how best to determine what prevailing on the merits in international arbitration is worth.

Co-Chairs

Mark Kantor is an independent arbitrator and mediator. He teaches courses in International business Transactions and in International Arbitration as an Adjunct Professor at the Georgetown University Law Center. Mr. Kantor was formerly a partner with Milbank, Tweed, Hadley & McCloy in their Corporate and Project Finance Groups. His recent arbitration and mediation engagements include disputes in the energy, telecommunications, semiconductors, political risk insurance, water rights, finance and banking.

Lawrence W. Newman is Of Counsel in the New York office of Baker & McKenzie. Mr. Newman practices mainly in the area of international litigation and arbitration. He is the author and co-author of several works on international arbitration and litigation. For Cross-Exam~conceived the idea of the book upon which the conference is based. Mr. Newman received his initial courtroom experience in his five years as an Assistant United States Attorney in the Office in the United States Attorney for the Southern District of New York, after which he joined the litigation department of the New York office of Baker & McKenzie. That department, under his direction, focused on international litigation and arbitration and became the leading law office in the world (in terms of number of cases) in the representation of claimants against Iran in arbitration at the Iran-United States Claims Tribunal in The Hague. Mr. Newman has represented claimants and respondents in commercial and investment arbitration proceedings in the United States, Europe and Latin America. He also sits as an arbitrator in cases involving international matters.

Faculty

Manuel Abdala is a Senior Vice President with Compass Lexecon in Washington, D.C. He was previously a Director at LECG since 1998, where he was co-chair of its international arbitration practice group. He has provided written and oral expert testimony in more than 90 international arbitration cases, many of them involving treaty disputes between private investors and governments on topics related to damage valuation, as well as opinions on government conduct vis-a-vis investors' expectations and regulatory standards. He also has substantial experience in commercial arbitrations in shareholder disputes, property damages, and political risk insurance claims. He is currently a member of the Institute for Transnational Arbitration (ITA), the International Society of the New Institutional Economics (ISNIE) and has been engaged as guest professor at the International Arbitration Program in American University.

Alexander Bělohávek is Founder and Senior Partner of The Bělohávek Law Offices, Prague. He is a

Member of the International Court of Arbitration at the International Chamber of Commerce (ICC) in Paris as well as Member of the ICC Commission on International Arbitration and a Member of the National Committee of the ICC in the Czech Republic. He has acted as arbitrator or counsel in more than 170 international arbitrations and is listed as arbitrator with the international arbitral centers of several economic chambers in Central Europe. He has published numerous books and articles on arbitration and business law.

Miriam K. Harwood is a Partner in the International Arbitration group of Curtis, Mallet-Prevost, Colt & Mosle LLP in New York. Her practice focuses on investment treaty arbitration and international commercial arbitration, particularly as counsel for foreign states, state-owned entities and governmental agencies. She has acted as counsel in arbitrations conducted in the United States and abroad, and under the auspices of the ICC International Court of Arbitration, the International Centre for Settlement of Investment Disputes (ICSID) and the Stockholm Chamber of Commerce.

Sabine Konrad is a German Rechtsanwältin and Partner in the K&L Gates Frankfurt office. She also spends time working with colleagues in the Washington, D.C. office. Her principal area of practice is international dispute resolution, in particular international arbitration and public international law. She regularly advises investors and governments in matters of investment protection.

Michael Mayer is Vice President of Charles River Associates in Chicago. He has performed numerous business valuation assignments and has evaluated numerous claims for economic loss in a broad range of business, banking, securities, and insurance disputes. He has also performed financial investigations of brokerage firms, savings & loans, banks, and insurance companies. In litigation matters, Mr. Mayer has been most actively involved in the determination of damages in securities fraud and breach of fiduciary duty cases, broker/dealer litigation, failed mergers/acquisitions, bankruptcy, dealer/franchisee termination, lender liability, and shareholder disputes. He has also testified as an expert with respect to financial and economic issues, including valuation, lost profits, loss of principal, and prejudgment interest. In addition, Mr. Mayer is a CFA as well as a CFE.

Craig Miles is Partner in King & Spalding's International Arbitration Group, residing in the Houston office. He was recently named to Global Arbitration Review's "45 Under 45". His practice focuses on representing foreign investors in disputes with host governments, primarily before the World Bank's International Centre for Settlement of Investment Disputes (ICSID), and private parties in commercial disputes before the International Chamber of Commerce (ICC), the American Arbitration Association (AAA), and other domestic and international arbitral institutions.

Sophie Nappert is a dual-qualified lawyer in the UK and Canada. She is an arbitrator in independent practice based in London. She is ranked in Global Arbitration Review's Top 30 List of Female Arbitrators Worldwide. Her areas of expertise include energy and natural resources, construction, investment treaty disputes and disputes against State parties. Ms. Nappert is a member of the UNCITRAL Working Group on International Commercial Arbitration and Conciliation.

Timothy G. Nelson is a Partner in the New York office of Skadden, Arps, Slate, Meagher & Flom. He represents clients in a variety of disputes involving cross-border and international law issues, including arbitration before international bodies such as the American Arbitration Association/International Centre for Dispute Resolution (ICDR), the International Chamber of Commerce (ICC), the International Centre for Settlement of Investment Disputes (ICSID) and tribunals constituted under the Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL).

Michael D. Nolan is a Partner in the Washington, DC office of Milbank, Tweed, Hadley & McCloy and a member of the firm's Litigation & Arbitration Group. Mr. Nolan has represented clients in US federal and state courts and before arbitral tribunals in all manner of complex disputes, including general commercial, securities, antitrust, tax and insolvency cases. Mr. Nolan's practice has a particular focus on international arbitration and transnational litigation.

Eric Ordway is a Partner and leading member of Weil, Gotshal & Manges LLP's International Arbitration group with extensive experience in international litigation and arbitration, products liability, mass tort and complex litigation. He has been involved in all aspects of such litigation and arbitration, including hearings, jury trials and appeals.

Kathleen Paisley is a Partner in the Brussels office of Ambos NBGO. She is an American lawyer who has been practicing in Belgium and England for more than 20 years. Kathleen specializes in international dispute resolution, European Union competition law, and all aspects of IT/IP exploitation and development. She serves Belgian and international clients in all sectors, with particular emphasis on issues where an understanding of technology, accounting or finance matters.

Abby Cohen Smutny is a Partner in the Washington, D.C. office of White & Case LLP and is recognized as one of the world's leading experts in international arbitration. She represents clients in international commercial arbitration, in investment treaty arbitration, and in international disputes before U.S. courts, and counsels clients as to a wide variety of claims. She has represented and counseled clients in disputes involving numerous industries, including banking, financial services, oil & gas, mining, electric power, real estate development, water supply, retail, pharmaceuticals, construction, tobacco, railroads, telecommunications, and manufacturing.

Greig Taylor is a Managing Director in FTI Consulting's Economic and Financial Consulting group, and is a member of the firm's International Arbitration practice, based in New York. His practice specialises in the assessment of damages and related quantum issues, and the provision of expert testimony, in the context of international disputes.

Albert Jan van den Berg is a Partner in Hanotiau & van den Berg in Brussels, Belgium. He is and has been presiding and party-appointed arbitrator as well as counsel in numerous international arbitrations (ad hoc, AAA/ICDR, CRCICA, ECT, ICC, ICSID, LCIA, NAFTA, NAI, SCC, SIAC, and UNCITRAL, relating to, inter alia, banking, broadcasting, construction, defense projects, distributorship, electricity and gas supply, fashion, futures and options, gambling, information technology, insurance and reinsurance, investments, joint ventures, licensing, media, mining, oil and gas, pharmaceuticals, post M&A, post-privatisation, professional associations, sales, satellites, sports, telecom, turnkey projects.

Richard E. (Rory) Walck is a Partner with Global Financial Analytics in Fairfax, Virginia and has thirty-seven years of experience in business management, public accounting and financial consulting. As the "public face" of GFA, Rory handles the expert witness engagements and leads the client service team on GFA's engagements. Rory has given expert witness testimony in state and federal courts, before domestic and international arbitration tribunals, at regulatory proceedings and in depositions in more than sixty matters. Rory has been repeatedly named one of the world's leading experts in arbitral proceedings by Who's Who Legal.

Herfried Wöss is a Partner with Wöss & Partners in Mexico City. He is a president, co-arbitrator, counsel and legal expert in international and domestic arbitrations, including investment arbitrations. He has particular experience with respect to state companies and construction disputes and also engages in dispute boards and

expert proceedings. Moreover, he is also an expert on dispute resolution under WTO, NAFTA and other FTAs. He currently handles a multimillion-dollar portfolio, largely as sole and co-arbitrator. His arbitration experience reaches from the acquisition of ships, franchise agreements, international sales contracts, the automotive and pharmaceutical industries, the construction of industrial plants, gas pipelines, thermoelectrical plants and substations, to damages claims for the violation of joint venture agreements, amongst others

Howard Zelbo is a Partner in the New York office of Cleary Gottlieb Steen & Hamilton. Mr. Zelbo's practice focuses on international and domestic arbitration, as well as securities and general commercial litigation. He has extensive experience as lead attorney in numerous arbitrations and has represented banking and other financial institutions in commercial disputes. Mr. Zelbo has represented both bidders and targets in several takeover litigations. He is the former Chairman of the Securities Litigation Committee of the New York State Bar and is currently a member of the Executive Committee of the Commercial Litigation Section.

Schedule

9:15- 9:30 – Introduction By Co-Chairs

9:30-10:30 – Principles of Damages

10:30-11:00 – Different types of Damage Computations

11:00 – 11:30 — Coffee/Tea Break

11:30-1:00 – Roundtable Discussion on Presentation of Damages

- (a) Scope of Opinions – to what extent may experts opine credibly on the economics of a particular industry?
- (b) Direct, Cross-Examination and Re-Direct at hearings
- (c) Witness Conferencing (“hot-tubbing”) and Similar Techniques – effective or not?
- (d) Effective communication with Arbitrators –including giving them a chance to adjust calculations
- (e) Tribunal Experts — their proper role

1:00-2:00 – Lunch

2:00-3:30 – Mock hearing before three-person tribunal

- (a) Direct examination (in addition to written report because many in the audience may not have read report)
- (b) Cross-examination
- (c) Re-direct examination
- (d) Questions from tribunal

3:30-4:00 – Coffee/Tea Break

4:00-5:00 Discussion and commentary among examining lawyers, the witnesses, the tribunal members and other Faculty members

5:00- 6:00 Conclusion and Cocktail Reception

Registration

\$750.00 USD

\$475.00 USD for full-time academics, full-time government employees, and full-time in-house corporate counsel.

Registration

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Financial Aid: [Our Financial Aid policy can be found here.](#)

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Accommodations

The University Club of New York, One West 54th Street New York, NY 10019

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Rooms have been blocked for the nights of **Thursday, October 18 and Friday, October 19**. Reservations can be made via telephone at 212-572-3415 or 212-572-3416 or via email at frontoffice@universityclubny.org. Those wishing to make reservations should mention they are with the Juris Conferences group.

The rooms must be reserved by September 3, 2012, after which rooms are subject to availability.

The rate for a Standard Room with one queen-size bed or two twin-size beds is \$355.00. The rate for members

of The University Club is \$210.00. Room rates are per room per night and are subject to 8.875% New York State sales tax, 5.875% city tax and \$3.50 occupancy tax per room per night.

Cancellation for guaranteed reservations will be accepted up to 6:00PM two days prior to arrive. A charge of one night's stay plus taxes will be imposed for each guaranteed reservation cancelled after the September 3, 2012 deadline.

The University Club accepts **Visa, MasterCard and American Express** as methods of payment.

It is important to note the following:

The University Club is a private Club. Guests and members are required to adhere to the dress code while in the clubhouse.

House Rule XV: Gentleman members and guests are required to wear jackets and ties. Lady members and guests are required to wear clothing of equal formality. For lady members and guests a dress or skirt is always acceptable. A tailored pantsuit, pants and blazer or pant outfit in conservative taste is also acceptable. The only exceptions to this Rule are: Members and guests checking into or out of guest rooms may pass through the lobby, to and from the elevators and the front door, wearing informal dress. Shorts, T-shirts, warm-up suits, jeans or denims, mini skirts or dresses, form-fitting pants, and sandals or sneakers are not appropriate attire at any time in any area of the clubhouse.

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- [Seventh Annual Investment Treaty Arbitration Conference - April 22, 2013](#)
- [Ninth Annual Leading Arbitrators' Conference - March 25, 2013](#)

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Phone: +1 (631) 350-2100
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