



ATLANTA INTERNATIONAL  
ARBITRATION SOCIETY

# The Inaugural Conference of the Atlanta International Arbitration Society

## The United States and Its Place in the International Arbitration System of the 21<sup>st</sup> Century: Trendsetter, Outlier or One in a Crowd?

April 15-17, 2012

The Loews Atlanta Hotel  
1065 Peachtree St. NE  
Atlanta, GA 30309

[www.arbitrateatlanta.org](http://www.arbitrateatlanta.org)

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# PROGRAM

As observed by the reporters for a project to restate the U.S. Law of International Commercial Arbitration: “The United States occupies a unique place in the modern international arbitration system and in its historic evolution.... American lawyers, arbitrators and arbitration specialists have been important contributors to the growth and development of the international commercial arbitration system, from its very inception and within its most venerable institutions.... On the other hand, U.S. parties and lawyers have sometimes taken atypical approaches towards arbitral procedures, particularly when contrasted to some European counterparts, on matters as diverse as arbitrator independence, discovery and the role of lawyers.” What will be the role of the United States in international arbitration of the 21st Century, as trendsetter, outlier, or simply one in a crowd?

## APRIL 15

7:00 pm

### Opening Reception at the Loews Atlanta Hotel, Bar Eleven

## APRIL 16

8:30 am - 9:00 am

### Opening Session

**Welcome:**

**Bernard (“Ben”) J. Greer**, International Legal Strategies LLC; Alston & Bird LLP (ret.), Atlanta, Georgia

**Introduction:**

**Dorothy Toth Beasley**, Henning Mediation & Arbitration Service, Inc.; Chief Judge, Court of Appeals of Georgia (ret.), Atlanta, Georgia

**Opening Remarks:**

**The Hon. Carol W. Hunstein**, Chief Justice, Supreme Court of Georgia, Atlanta, Georgia

9:00 am - 10:30 am

### Restating the Law of International Commercial Arbitration in the United States: Views From Within and Without

The American Law Institute (ALI) commenced a project in 2007 to develop a Restatement on the U.S. Law of International Commercial Arbitration. Portions of the Restatement (notably recognition and enforcement of international awards) have been completed, while others (confirmation and annulment of awards) are in draft form, and still others (for instance, enforcing the arbitration agreement, judicial intervention in arbitral proceedings, and investor/state arbitration) are still in development. The panel will summarize the work to date, discuss its likely practical effect on the practice of international arbitration, and outline some of the more controversial themes that have emerged in the course of the drafting process.

**Moderator:**

**Glenn P. Hendrix**, Partner, Arnall Golden Gregory LLP, Atlanta, Georgia

**Panelists:**

**George A. Bermann**, Professor of Law, Columbia University; Chief Reporter; ALI Restatement Third of the U.S. Law of International Commercial Arbitration, New York, New York

**Charles H. “Chip” Brower, II**, Professor of Law, University of Mississippi School of Law, Oxford, Mississippi

**Jennifer Kirby**, Partner, Kirby, Paris

**Thomas J. Stipanowich**, Professor of Law, Pepperdine Law School, Malibu, California

10:30 am - 11:00 am

### Networking Break

11:00 am - 12:30 pm

### The Federal Arbitration Act: In Need of a Tune-up or Better Left Alone?

The Federal Arbitration Act (the “FAA”) was enacted in the U.S. in 1925, prior to the modern growth of arbitration as a routine means of resolving international commercial disputes. As a result, its terms are more skeletal than those of many other national laws that govern international arbitration, a number of which have been modernized in recent years, including, most recently, those of France and Italy in 2011. Should the FAA also be revamped? Are positive changes possible in the current political environment, with the introduction of the Arbitration Fairness Act and the arbitration provisions in the Dodd Frank Act, or would any amendments represent a step backward? Is it better to leave the FAA alone to function as a pro-arbitration “constitution,” with its precise contours continuing to be fleshed out through case law and arbitration practice? To what extent can or should state international arbitration statutes fill gaps in the FAA? What practical implications do these issues have with respect to international arbitrations seated in the United States?

**Moderator:**

**Douglas H. Yarn**, Professor of Law, Georgia State University Law School, Atlanta, Georgia

# PROGRAM

**Panelists:** **Jack J. Coe, Jr.**, Professor of Law, Pepperdine, Law School; Associate Reporter, ALI Restatement Third of the U.S. Law of International Commercial Arbitration, Malibu, California  
**William W. “Rusty” Park**, Professor of Law, Boston University School of Law; President, London Court of International Arbitration, Boston, Massachusetts  
**William K. Slate II**, President, American Arbitration Association, Washington, D.C.  
**Edna R. Sussman**, Principal, Sussman ADR LLC, New York, New York

**12:30 pm - 2:00 pm**

## Luncheon

**Introduction:** **Hunter R. Hughes III**, Partner, Rogers & Hardin LLP, Atlanta, Georgia  
**Luncheon Speaker:** **The Hon. Kasim Reed**, Mayor, City of Atlanta, Georgia

**2:00 pm - 3:30 pm**

## Manifest Disregard of the Law: Truly a Sword of Damocles Hanging Over Arbitrations in the U.S.?

“Manifest disregard” has been described as “a sword of Damocles” hanging over arbitrations in the U.S., potentially serving as a vehicle for parties to renege on the bargain to have a dispute decided by arbitrators. Indeed, a prominent commentator based outside the U.S. has observed that “if the doctrine of manifest disregard of the law were to be maintained by the U.S. courts, it would seriously endanger the attractiveness of the U.S. as a venue for international arbitration.” U.S. lawyers, on the other hand, note that its application is exceedingly rare, that few, if any, New York Convention awards have ever been vacated on this ground, that certain judicial circuits do not follow the doctrine at all, and that the U.S. Supreme Court has considered but not resolved the question. The panel will address the state of the law following the decisions of the U.S. Supreme Court in the *Hall Street Associates* and *Stolt-Nielsen* and consider the practical import of the “manifest disregard” doctrine for arbitrations conducted in the United States.

**Moderator:**

**Shelby R. Grubbs**, Partner, Miller & Martin PLLC, Atlanta, Georgia

**Panelists:**

**The Hon. Stanley F. Birch**, JAMS; Judge, 11th Circuit U.S. Court of Appeals (ret.), Atlanta, Georgia

**Lorraine M. Brennan**, Managing Director, JAMS International, London

**Christopher R. Drahozal**, Professor of Law, University of Kansas Law School; Associate Reporter, ALI Restatement Third of the U.S. Law of International Commercial Arbitration, Lawrence, Kansas

**Marielle Koppenol-Laforce**, Partner, Houthoff-Buruma, Rotterdam

**3:30 pm - 4:00 pm**

## Networking Break

**4:00 pm - 5:30 pm**

## Changing the Cost and Time Dynamic in International Arbitration: The View From the User Community

Corporate counsels, as the “user-community,” are taking an increasing interest in promoting the use of alternative dispute resolution to reduce costs, increase predictability of outcomes and speed time to resolution. Proactive strategies include initial case management conferences, summary disposition motions, limitations on disclosure (discovery), settlement conferences, expedited procedures, the increased use of technology, and other means. Arbitral institutions are tweaking their rules and practices in response, and some private practitioners are also jumping on board. Although results have not been uniformly successful to date, the motivators for improvements are strong within the corporate community. What are the practical implications for International Commercial Arbitration as it continues to evolve as a method for resolving business disputes? Can corporate counsel effectively influence the process and outcomes? If change is really occurring, what will the new paradigm(s) look like? What is the proper balance between procedural efficiency and cost savings, on the one hand, and risking a poor outcome, on the other?

**Moderator:**

**Philip “Whit” Engle**, Vice President, General Counsel & Secretary, Prenova, Inc., Atlanta Georgia

**Panelists:**

**F. Ramsey Coates**, Senior Vice President & General Counsel (ret.), Westinghouse, Monroeville, Pennsylvania

**Jeffrey P. Elkinson**, President, Chartered Institute of Arbitrators; Partner, Conyers Dill & Pearman, Bermuda

**Jeffrey D. Firestone**, Vice-President/Litigation Counsel, United Parcel Service, Atlanta, Georgia

**John W. Hinchey**, JAMS, Atlanta, Georgia

**Teresa Wynn Roseborough**, Executive Vice President, General Counsel and Corporate Secretary, The Home Depot, Atlanta, Georgia

**Anthony C. “Tony” Walsh**, Senior Litigation Counsel, GE Energy, Atlanta, Georgia

# PROGRAM

6:00 pm

## Reception and dinner at the High Museum of Art – Taylor Lobby

Enjoy dinner and drinks with your colleagues at the High Museum of Art, featuring the celebrated architecture of Richard Meier and Renzo Piano. The Museum will be hosting the “**Picasso to Warhol: Fourteen Modern Masters**” exhibit, offering a wonderful glimpse at the famous work of Henri Matisse, Piet Mondrian, Constantin Brancusi, Fernand Léger, Pablo Picasso, Marcel Duchamp, Giorgio de Chirico, Joan Miró, Alexander Calder, Romare Bearden, Louise Bourgeois, Jackson Pollock, Andy Warhol and Jasper Johns. The Museum is located in Atlanta’s midtown arts district, less than three blocks from the conference host hotel.

APRIL 17

8:30 am - 9:00am

## Keynote Address

Introduction:

**Valerie Strong Sanders**, Counsel, Sutherland Asbill & Brennan LLP, Atlanta, Georgia

Keynote Speaker:

**Judith Gill**, QC, Partner, Allen & Overy, London

9:00 am - 10:30 am

## Lawyer Ethics in International Arbitration: Prospects for a Level Playing Field

Everyone would agree that ethical behavior by advocates is critical to the integrity of an international arbitration proceeding, but by what measure should ethical behavior be determined? For instance, which code of professional ethics should govern, say, a lawyer who is based in Atlanta and dually-licensed to practice law in the State of Georgia and Hong Kong, and who is advocating before an arbitration tribunal seated in Singapore, where the arbitrators hail from Hong Kong, China and California, opposing counsel is an English barrister who is also licensed in Hong Kong, but based in China, the substantive law governing the dispute is Delaware law, and one of the parties is a Georgia corporation and the other Chinese? If counsel to an arbitration proceeding are subject to different codes of ethics, does the client whose lawyer is subject to the lowest ethical standard have an unfair advantage? Should conduct be governed by the rules of the arbitral seat, the lawyer’s home jurisdiction(s), by ethical codes developed by arbitral institutions, by a transnational code of ethics, or simply by reputational constraints? The ABA’s Commission on Ethics 20/20, among other organizations, is presently wrestling with these issues, and a panel of experts will discuss possible solutions.

Moderator:

**Brian A. White**, Partner, King & Spalding LLP, Atlanta, Georgia

Panelists:

**Essam Al-Tamimi**, Senior Partner, Al Tamimi & Company, Dubai

**Nikolaus Pitkowitz**, Partner, Graf & Pitkowitz, Vienna

**Matthew D. Richardson**, Partner, Alston & Bird LLP, Atlanta, Georgia

**Catherine A. Rogers**, Professor of Law, Penn State University Dickinson School of Law; Associate Reporter, ALI Restatement Third of the U.S. Law of International Commercial Arbitration, University Park, Pennsylvania

**Richard H. Sinkfield**, Partner, Rogers & Hardin LLP, Atlanta, Georgia

11:00 am - 12:30 pm

## Judicial Assistance in International Arbitration: Striking a Balance Between Help and Hindrance

Arbitration is generally understood as a set of mutual promises to forego resort to courts and, instead, to resolve disputes in an enforceable manner before neutral, private decision makers. Nonetheless, courts have always played a role in the process. While this traditionally has included resolving challenges to the enforceability of an arbitration agreement or assessing the enforceability of an arbitral award, more recently the assistance afforded by courts has expanded into other areas. Some jurisdictions permit their courts to freeze assets in support of an arbitration. In other instances, courts have issued antisuit injunctions to prevent a party from pursuing litigation inconsistent with an arbitration clause or litigation designed to thwart enforcement of an arbitral award. Finally, some jurisdictions allow parties to seek discovery orders in aid of arbitration, whether located within the court’s jurisdiction or, in some cases, arbitration located abroad. This panel examines these opportunities for judicial assistance, evaluates their compatibility with the “extrajudicial” nature of arbitration and offers advice on how practitioners can use these tools to their client’s advantage, both when drafting arbitration clauses and after disputes arise.

# PROGRAM

**Moderator:** Peter “Bo” Rutledge, Professor of Law, University of Georgia Law School, Athens, Georgia

**Panelists:** John H. Fleming, Partner, Sutherland Asbill & Brennan LLP, Atlanta, Georgia  
Carolyn B. Lamm, Partner, White & Case, Washington D.C.  
Richard N. Sheinis, Partner, Hall Booth Smith & Slover, PC, Atlanta, Georgia  
John L. Watkins, Partner, Barnes & Thornburg LLP, Atlanta, Georgia

**12:30 pm - 2:00 pm**

## Luncheon

**Introduction:** Joan C. Grafstein, JAMS, Atlanta, Georgia

**Luncheon Speaker:** Yu Jianlong, Secretary-General, China International Economic and Trade Arbitration Commission, Beijing

**2:00 pm - 3:30 pm**

## The Changing Face of Investment Treaty Arbitration

Investment treaty arbitration is an option that cannot be overlooked in counseling a client seeking to recover an investment loss resulting from governmental action abroad. There are more than 3,000 international investment agreements in force around the world, most of which allow investors to bring claims against the host state for treaty violations through legally binding international arbitration.

As concise, bilateral arrangements covering a single topic, traditional Bilateral Investment Treaties possessed a relatively narrow scope. However, investment treaty practice is becoming more complex on both sides of the Atlantic. For example, recent U.S. investment treaties have become much longer documents, frequently inserted as chapters into broader Free Trade Agreements with countries like Columbia, South Korea, and Panama. For its part, the European Union seems poised to develop investment treaties that would replace the more than 1,200 bilateral investment treaties currently in force for member states. In both settings, the changing landscape seems likely to produce substantial shifts in the law and politics of investment treaty practice. This panel will discuss the past, present, and future of this growing field.

**Moderator:** Barton Legum, Partner, Salans, Paris

**Panelists:** Guillermo Aguilar-Alvarez, Partner, King & Spalding LLP, New York, New York  
José Astigarraga, Partner, Astigarraga Davis, Miami, Florida  
Meg Kinnear, Secretary-General, International Centre for Settlement of Investment Disputes, Washington D.C.  
Bayo Ojo, SAN, Bayo Ojo & Co.; Former Attorney General & Minister of Justice of Nigeria, Lagos  
Eduardo Zuleta, Partner, Gomez-Pinzon-Zuleta, Bogotá

**4:00 pm - 5:30 pm**

## Disclosure and Discovery in International Arbitration: Do the Revised IBA Rules on the Taking of Evidence in International Arbitration Finally Bridge the Divide?

Perhaps nothing distinguishes American-style litigation from litigation elsewhere in the world so much as the practice of discovery. That divide also manifests itself in the world of international arbitration, albeit to a lesser degree, thanks in part to the IBA Rules on the Taking of Evidence in International Arbitration, which seek to bridge the common law/civil law approaches to obtaining and disclosing evidence. The panel will consider a range of issues relating to discovery and disclosure in international arbitration, including how the IBA Rules are faring two years after being revised in 2010, the challenges posed by electronically-stored documents, and the potential tactical advantages (or mischief, depending on one's perspective) posed by judicial involvement in the process, as through Section 7 of the Federal Arbitration Act or 28 USC §1782.

**Moderator:** John A. Sherrill, Partner, Seyfarth Shaw LLP, Atlanta, Georgia

**Panelists:** John Beechey, Chairman, International Court of Arbitration, ICC, Paris  
A. Stephens Clay, Partner, Kilpatrick Townsend & Stockton LLP, Atlanta, Georgia  
Meghan Magruder, Partner, King & Spalding LLP, Atlanta, Georgia  
Christof Siefarth, Partner, GÖRG, Cologne

**6:00 pm**

## Closing Remarks

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# REGISTER

Registration fees include admission to the opening reception, Monday and Tuesday luncheons, the Monday night dinner and reception at the High Museum, and all CLE/CPD program sessions.

- Regular Registration (\$585 on or before Mar. 15, 2012, \$700 after)
- In-house Corporate Counsel (\$285 on or before Mar. 15, 2012, \$385 after)
- Full-time Law School Faculty (\$285 on or before Mar. 15, 2012, \$385 after)
- Full time Judges: Complimentary registration on or before Mar. 15, 2012
- Additional guest ticket for Monday evening reception only (\$150 each)

## REFUND POLICY

Cancellations must be made in writing and received by ATLAS by March 16, 2012, for a full refund of fees, less a \$100 administration fee. No refund of registration will be granted after that date except in the case of medical emergency or extenuating circumstances approved by ATLAS in its sole discretion.

## ACCOMMODATIONS

Should you require overnight hotel accommodations, a block of rooms is being held at the Loews Hotel in Atlanta at a special low per night group rate of \$159/night. Reservations may be made here: Loews Hotel Reservations or by calling 888-563-9736 and asking for the ATLAS Conference block of rooms.

## REGISTRATION

Please register on-line at: <http://arbitrateatlanta.org/events/registration/>

## SPONSORSHIPS

Sponsorships available at <http://arbitrateatlanta.org/events/the-united-states-and-its-place-in-the-international-arbitration-system-for-the-21st-century/>

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