

ITA-CANACO Americas Workshop
*Damages in International Arbitration:
Strategies, Techniques & Presentation*

**Hotel Camino Real
Mexico City
April 1-2, 2009**

Workshop Co-Sponsor:

White & Case LLP

Institutional Co-Sponsors:

**Arbitration and Mediation Center of the Santiago Chamber of Commerce (CAM Santiago)
Arbitration Center for Mexico (CAM)**

**Arbitration Center of the American Chamber of Commerce of Peru (AmCham Perú)
Arbitration Centre of the Caracas Chamber of Commerce (CACC)**

Argentinean Committee for National and Transnational Arbitration (CARAT)

Brazilian Arbitration Committee (CBAr)

Colombian Arbitration Committee (CCA)

Mexican Bar Association (BMA)

ICC International Court of Arbitration

ICC Mexico

International Centre for Dispute Resolution (ICDR)

Mexican National Corporate Lawyer Association (ANADE)

Peruvian Arbitration Institute(IPA)

APRIL 1, 2009

19:00 – 20:30

WELCOME RECEPTION

Girasoles Room, Camino Real Hotel

Co-sponsored by

Sullivan & Cromwell LLP

APRIL 2, 2009

8:30 Registration

9:00 Introduction to the WorkshopProf. David D. Caron, ITA Chair

ACT I — REACTIONS TO AWARD ON LIABILITY AND ENGAGING EXPERTS *[in English]*

9:10 Introduction to Act I**Stephen Jagusch, Workshop Co-Chair**

9:15 Act I, Scene I — United and Paragonia Learn of Award

Counsel for United, and then counsel for Paragonia, advise their clients’ representatives of the award and deal with their clients’ initial reactions. The lawyers are responsible for explaining the significance of the award, managing client expectations, setting forth the next steps and discussing the need for experts.

United’s reaction and analysis:

United President**Joseph E. Neuhaus**
United’s Outside Lawyer**Anne K. Hoffmann**

Paragonia’s reaction and analysis:

Paragonia Deputy Minister of Foreign Affairs**Munir Maniruzzaman**
Paragonia’s Outside Lawyer**Fernando del Castillo Elorza**

9:35 Act I, Scene II — United’s Expert Beauty Parade

Two prospective experts give brief presentations to United’s legal team. Subsequently, the legal team discuss the positives and negatives of each expert and how each expert’s background and style may benefit the presentation of the case on damages.

First expert presentation:

Expert**John Ellison**
United’s Lawyers **Emilio González de Castilla**
.....**David Brynmor Thomas**

Second expert presentation:

Expert**Brent Kaczmarek**
United’s Lawyers **Dietmar Prager**
.....**José María Abascal**

10:05 Panel Discussion and Q&A

Moderator: **Stephen Jagusch**

Panelists: **David Brynmor Thomas**
José María Abascal
John Ellison
Brent Kaczmarek
Emilio González de Castilla
Dietmar Prager

10:30 Break

ACT II — PREPARING FOR THE QUANTUM HEARING *[in Spanish]*

10:50 Introduction to Act II Cecilia Flores Rueda, Workshop Co-Chair

10:55 Act II, Scene I — Problems with Evidence in Valuation

Counsel for United, and then counsel for Paragonia, discuss from their differing perspectives what evidence their experts require, whether fact witnesses are necessary, how to fill the holes when evidence is missing and what would have been wise to address at an earlier stage.

Discussion by United’s Lawyers **Adriana Braghetta**
..... **Fernando Aguilar**

Discussion by Paragonia’s Lawyers **Federico Godoy**
..... **Aníbal Sabater**

11:20 Act II, Scene II — Preparing for the Hearing with the Experts

In preparing for the quantum hearing with their experts, counsel for United, and then counsel for Paragonia, consider the appropriate valuation methods, what style of presentation is appropriate and the profile of the arbitrators. Counsel for Paragonia further considers whether to present an affirmative case.

Prep of United’s expert:
United’s Lawyers **Luis Alberto Aziz**
..... **Ignacio Gómez Palacio**
United’s Expert **Gabriel Llamas**

Prep of Paragonia’s expert:
Paragonia’s Lawyers **Lucinda A. Low**
..... **Eduardo Siqueiros**
Paragonia’s Expert **Manuel A. Abdala**

11:50 Panel Discussion and Q&A

Moderator: **Cecilia Flores Rueda**

Panelists: **Manuel A. Abdala**
Luis Alberto Aziz
Ignacio Gómez Palacio
Lucinda A. Low
Gabriel Llamas
Eduardo Siqueiros

12:15 Break

ACT III — HEARING ON QUANTUM [in English]

12:35 Introduction to Act III Camilo Cardozo

12:40 Act III, Scene I — The Hearing on Quantum (Part 1)

United presents its expert witness on damages. The expert’s presentation style and one approach to cross examination of a quantum expert are featured.

United’s Lawyer (direct examination)**Philippe Pinsolle**
 United’s Expert **John Ellison**
 Paragonia’s Lawyer (cross examination)..... **Noiana Marigo**
 Arbitral Tribunal **David D. Caron**
 **Donald Donovan**
 **Claus von Wobeser**

13:05 Act III, Scene II — The Hearing on Quantum (Part 2)

Paragonia presents its expert on damages. The expert’s deliberately opposite style from United’s expert and a different approach to cross examination of a quantum expert are featured.

Paragonia’s Lawyer (direct examination) **Jonathan C. Hamilton**
 Paragonia’s Expert **Manuel Abdala**
 United’s Lawyer (cross examination) **Dyalá Jiménez**
 Arbitral Tribunal **David D. Caron**
 **Donald Donovan**
 **Claus von Wobeser**

13:30 Panel Discussion and Q&A

Moderator: **Camilo Cardozo**

Panelists: **Manuel Abdala**
David D. Caron
Jonathan C. Hamilton
Donald Donovan
Dyalá Jiménez
Claus von Wobeser

14:00 – 15:30 **HOSTED LUNCHEON**

THE INTERNATIONAL ARBITRATOR AS TRANSNATIONAL JUDGE

Donald Francis Donovan
 Debevoise & Plimpton
 New York City

Co-sponsored by
Santamarina y Steta

PANEL DISCUSSIONS

16:00 Panel Discussion: Causation and Directness [in Spanish]

Damages must be the consequence of the breach. Several terms are used to define the nature of the link needed between the breach and the damages; for example, that the link must be direct, or the damages must be foreseeable, or the cause of the damages not to remote, or that must not be intervening acts that break the chain of causation. Are those terms really different, or only different ways of expressing the same concept? Another causation issue arises when several damaging causes concur, which raises the issue of the extent of the liability of the breaching party in the case. The panel will be devoted to the consideration of these issues.

Moderator: **José María Abascal, Workshop Co-Chair**

Panelists: **Oliver Armas**
Carlos Loperena
Eduardo Zuleta

16:40 Q&A

17:00 Break

17:10 Panel Discussion: Assessment and Valuation Methods *[in English]*

Assessing damages in investment treaty arbitration poses interesting challenges for arbitrators, counsel, and experts. A threshold question is how to calculate damages for different kinds of breach; for example, a government measure that violates the obligation to provide fair and equitable treatment will likely cause damages different in amount than an act that results in the complete expropriation of an investment. Even given an expropriation, however, the appropriate valuation method will vary depending on the circumstances, ranging from discounted cash flow if the expropriated enterprise is a going concern with the expectation of future profits to book value if future profits are too speculative or uncertain. Our experts will draw from their experience to discuss these and other quantum-related issues.

Moderator: **Andrea K. Bjorklund, Workshop Co-Chair**

Panelists: **Luis Enrique Graham**
Mark A. Kantor
Frank Vasquez

17:50 Q&A

18:10 Closing Remarks José María Abascal, CANACO Commission Director

19:00 – 21:00

RECEPTION AND DINNER

Le Cirque Restaurant, Camino Real Hotel