



INTRODUCTION TO THE ITA WORKSHOP

ITA Chair.....Donald Donovan

INTRODUCTION TO ACT I.....Mark Friedman

CASE STRATEGY AND WRITTEN ADVOCACY

Van Dyke Morocco has just commenced arbitration against Lone Star Construction, seeking the substantial costs of rebuilding the coal unloading jetty destroyed when it was struck by a barge during an unusually powerful storm. Van Dyke’s Request for Arbitration alleges various defects in design and construction of the jetty, and contends that these defects made the jetty vulnerable to the barge, whereas a properly designed and constructed jetty would have survived without damage.

Lone Star’s outside counsel are now meeting with the in-house counsel and a Lone Star engineer to consider how to respond to the Request for Arbitration. What they must develop, and develop quickly, is a strategy for defending the case.

Lone Star’s outside counsel are also eager to pull together the Statement of Defense. They have already prepared a preliminary draft. But are those preliminary views consistent with the evolving case strategy, and are they expressed in a way that is suitable for the kind of international arbitration that is now taking shape?

Contractor’s Outside Counsel.....Judith Gill
 Contractor’s Outside Counsel.....John M. Townsend
 Contractor’s In-house Counsel.....Stephen D. Butler
 Contractor’s In-house Engineer.....David Lane

COMMENTARY AND DISCUSSION:

MAPPING A CASE STRATEGY AND EFFECTIVE WRITTEN ADVOCACY IN INTERNATIONAL ARBITRATION

Commentators

**R. Doak Bishop
Bernard Hanotiau**



INTRODUCTION TO ACT II.....Mark Friedman

PRE-HEARING ADVOCACY

SCENE I—THE PROCEDURAL OPTIONS

With the arbitration under way, the parties now confront a series of choices about how to structure the proceeding. Lone Star's outside counsel confers with the client to lay out the options and decide which procedural elements will provide the best opportunity to present the case in its most favorable light.

SCENE II—ARGUING PROCEDURAL ISSUES

Counsel for Van Dyke and Lone Star meet with the Tribunal for the first time. While Van Dyke and Lone Star have been able to agree on some procedural issues, there are substantial issues that they cannot resolve by themselves and consequently must be resolved by the Tribunal. Counsel square off over the structure of the arbitration.

Contractor's Outside Counsel.....**Fernando Mantilla-Serrano**
Contractor's In-house Counsel.....**Guido Tawil**
Owner's Outside Counsel **Robert H. Smit**
Tribunal.....**Gabrielle Kaufmann-Kohler** Arbitral Chair
Henri Alvarez, Party Appointed
Hon. John S. Martin, Jr., Party Appointed

COMMENTARY AND DISCUSSION:

TAKING ADVANTAGE OF ARBITRATION'S
PROCEDURAL FLEXIBILITY FOR MORE EFFECTIVE
ADVOCACY

Comments by the Members of the Tribunal



INTRODUCTION TO ACT III.....**Pierre Bienvenu**

ADVOCACY WITH WITNESS TESTIMONY

SCENE I—PREPARING WITNESS STATEMENTS

The case is progressing and the time is approaching when Lone Star will have to submit the testimonial and documentary evidence on which it relies. An important part of the evidence will be the testimony of the Lone Star civil engineer principally responsible for the jetty design. Lone Star's counsel meets with the engineer to discuss the engineer's written witness statement that will serve as the engineer's direct testimony in the upcoming merits hearing.

Contractor's Outside Counsel.....**David Brynmor Thomas**

Contractor's In-house Engineer.....**David Lane**

COMMENTARY:

THE USE AND ABUSE OF WRITTEN WITNESS STATEMENTS IN INTERNATIONAL ARBITRATION

The Tribunal.....**Michael E. Schneider**, Arbitral Chair
Gerald Aksen, Party Appointed
Michael J. Moser, Party Appointed

SCENE II—CROSS-EXAMINATION AND WITNESS CONFERENCING/CONFRONTATION

The action then shifts to the hearing itself. The engineer is very comfortable with his written testimony, and feels confident about Lone Star's position in the arbitration. The engineer is called to the stand, affirms the witness statement and is handed over for cross-examination by Van Dyke's counsel. Will the engineer still be confident after the cross-examination?

(continued)



INTRODUCTION TO ACT IV.....**Pierre Bienvenu**

ORAL ADVOCACY

The evidence is in. The witnesses have been heard. All that remains is closing argument. But what is the most effective way to present that argument? Counsel for the parties present variations on closing argument influenced by three traditions of international arbitration: a civil law approach, an English approach, and an American approach.

Owner's Outside Counsel.....**Hilary Heilbron**

Owner's Outside Counsel.....**Philippe Pinsolle**

Contractor's Outside Counsel.....**James H. Carter**

Tribunal.....**Charles N. Brower**, Arbitral Chair

Michael Collins, Party Appointed

Pierre A. Karrer, Party Appointed

COMMENTARY AND DISCUSSION: ORAL ADVOCACY IN ARBITRATION

Comments by the Members of the Tribunal