

OCTOBER 2023
NEWS AND EVENTS

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North America
Branch



Listen! The wind is rising, and the air is wild with leaves,
We have had our summer evenings, now for October eves!

–Humbert Wolfe

It's time for annual leaf turning. This time last year in the eastern Sierra Nevada mountains we had locations in full peak. These locations this year are still mostly green. The good news: the best is still yet to come.

This month, we turn our attention to the Accelerated Route to Memberships and Fellowships in Mexico City and Miami. A

number of NAB members are in the news this month. And we have an outstanding selection of Featured Members in this issue.

*Steven J. Cologne FCI Arb
NAB Newsletter Editor
Vice Chair / Communications*

A Message from NAB Chair, David E. Sharp FCI Arb



I am pleased to announce that next year's Annual Members Retreat will be **April 19–21, 2024 in San Diego**. Details will be coming soon. Save the date because you will not want to miss it!

We need your help to publicize the Accelerated Route to Fellowship and Accelerated Route to Membership courses that are being held in Mexico City on **October 13–14**. Please let your contacts know that it is not too late to register and that there is a very good discounted rate available to Registrants from Mexico, Brazil, and Central America. Details are on the website and a registration link is below in this newsletter.

There is an ARF in Miami on **November 9–10**. Encourage your contacts who plan to attend the ICC Conference in Miami to go early and take the ARF and to encourage others to do so. With your help, this course that is co-sponsored by JAMS will have a full house. Again, details are on NAB's website at [CIArbnab.com](https://ciarbnab.com) and a registration link may be found below.

There is a member survey being conducted this month by CI Arb. Research by Design will be conducting the survey. Please participate. Details, including who to contact about whether an email is legitimate, are here: <https://ciarb.org/resources/ciarb-membership-survey/>

Arbitration Decision of Interest

The New York Convention and Challenges to an International Arbitration Award

by Lionel M. Schooler FCIArb
Jackson Walker LLP*

Introduction. A recent decision by the United States Court of Appeals for the Tenth Circuit, *Baker Hughes Services International, LLC v. Joshi Technologies International, Inc.*, 73 F.4th 1139 (10th Cir. 2023), serves as a reminder of the jurisdiction of an American federal court to evaluate a challenge to an arbitral award, and the boundaries within which such a challenge must be evaluated, in a proceeding conducted under the auspices of the New York Convention.

Background Facts. The underlying contractual dispute in this case was characterized by the *Baker Hughes* Court as straightforward. Baker Hughes was hired by a Consortium to provide goods and services in connection with the Consortium's development of oil and gas interests in Ecuador. The Agreement in question contained an arbitration clause requiring resolution of any dispute through the Arbitration and Mediation Center of the Ecuadorian-American Chamber of Commerce. The Court noted that the record indicated that Baker Hughes timely provided the goods and services requested, but no one in the Consortium paid for these. Baker Hughes then submitted a claim to the Arbitral authority specified above to recover the amount due. An arbitrator was appointed, considered the documents and evidence, and issued an award in favor of Baker Hughes.

Baker Hughes then moved to confirm the award in the United States District Court for the Northern District of Oklahoma. The Consortium challenged the jurisdiction of that court to consider the matter, and also moved to vacate the award. The District Court rejected those challenges, and confirmed the award.

Jurisdictional Challenge. On appeal, the *Baker Hughes* Court first addressed the jurisdictional issue raised by the Consortium, focusing upon the procedural requirements for confirmation contained in Article IV of the Convention. That Article generally requires submission of a duly authenticated award, together with the original agreement. Article IV further requires that if the award is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement is required to produce a certified translation of the documents into such language.

In invoking Article IV as support for its jurisdictional challenge, the Consortium contended that while the original award had been rendered by the arbitrator in Spanish, Baker Hughes had only provided English translations of the agreement and the award to the District Court.

The *Baker Hughes* Court rejected this jurisdictional challenge, declining to ascribe jurisdictional relevance to Article IV. Instead, the Court focused upon 9 U.S.C. §203 as the Congressional pronouncement vesting federal courts with jurisdiction for matters "falling under the Convention." It then turned to 9 U.S.C. §202 for Congress' definition of that phrase, and determined that Section 202 allocates subject matter jurisdiction to a matter arising out of a commercial legal relationship in situations involving disputes between a U.S. citizen and a citizen of another country, where performance of the agreement occurs abroad.

Applying these provisions, the Court decided that nothing in the Congressional standard imposes any jurisdictional requirement on a federal court arising from the Convention's procedural rules. It therefore held that Article IV contained no jurisdictional component disqualifying the lower court from evaluating the merits of the award.

Agreement to Arbitrate. The *Baker Hughes* Court next focused upon the Consortium's contention that the district court erred by deferring to the arbitrator's conclusion that the Parties agreed to arbitrate their dispute, contending that no valid arbitration agreement ever existed between Plaintiff and Defendant because neither of them had signed the document containing the arbitration clause.

To review this contention, the Court turned to the enumerated defenses contained in the Convention, initially noting that an award challenger (such as the Consortium) bears a heavy burden because such defenses are construed narrowly to "encourage recognition and enforcement of commercial arbitration agreements in international contracts." The Court then focused upon the specific defense identified in Article V(2)(a) raised here, which allows a court refuse to recognize a foreign arbitral award if the subject matter of the dispute is not capable of settlement by arbitration under

the law of the country where enforcement is sought.

Acknowledging that the Consortium itself did not sign the Agreement in question, the Court nevertheless noted that another entity did sign the Agreement on behalf of the Consortium. Reviewing the facts underlying the relationship between the signatory and the Consortium, the Court determined that they had agreed in writing to be jointly responsible for all obligations under the Agreement. It therefore rejected the Article V(2)(a) defense invoked by the challenger.

Proper Identification of Entity in the Award. Further, the Court rejected the Consortium's objection that an incorrect entity was awarded the amount in question, premised upon the assertion that the Agreement referred to Baker Hughes, *Inc.*, whereas the award referred to Baker Hughes, *LLC*. Acknowledging that the party pursuing arbitration had been identified in two different ways, the Court nevertheless focused upon the "reality" of the transaction, that is, the undisputed fact that the Consortium had willingly accepted goods and services from the supplier and then refused to pay for them. It declined to allow the Consortium to prevail on the claim that it had never formed a binding agreement with the named Baker Hughes entity, determining that the dispute in question was, per the explicit requirements of applicable law, capable of settlement under American law.

Conclusion. The decision in *Baker Hughes* should remind practitioners to focus carefully upon contractual requirements and available award support and defenses under the Convention when enforcing or responding to claims arising from arbitration agreements involving transactions within the scope of the New York Convention.

*Mr. Schooler currently serves as Chair of the Texas Chapter of the North America Branch of the Chartered Institute of Arbitrators.

New Email Address? If your email address changes, please remember to advise

memberservices@ciarb.org and communications@ciarbnab.com

Upcoming Events & Featured Programs



The October "Ask the Arbitrator" event will be **Wednesday, October 18** at 1:00 p.m. EDT/10:00 a.m. PDT: "**Bridging Legal Boundaries and Cultures in Cross-Border Arbitration and Intellectual Property**" and will feature International Arbitrator, **Grant L. Kim FCIArb, FCCA**. This program is free. Register here for the event: https://us06web.zoom.us/webinar/register/WN_exjP1wOrROyvl3YQ0RII0g##registration

NAB is pleased to announce two **Accelerated Route to Fellowship Courses (ARFs)** and a **Accelerated Route to Membership Course (ARM)**. Please consider registering if you are not FCIArb or C.Arb. The ARFs have a 10 years' experience prerequisite and will be held in Mexico City on **October 13–14** and in Miami on **November 9–10**. The Miami course is immediately prior to the ICC conference in Miami. Discounts for qualified MCIArb and ACIArb are available for the ARF courses and the same is true for the ACIArb who take the ARM course. Ordinarily, individuals who take the ARM have 5 years' experience. Any questions about qualification to take any course can be answered by John Pinney at jpinney@brickergraydon.com. The ARM in Mexico City will be at the same time and place as the Mexico City ARF. If you are ACIArb, consider taking the ARM if you are not yet qualified for the ARF.

Details and registration for the Mexico City ARF are here:
<https://www.ciarbnab.com/training/mexico-2023-fellowship.pdf>

Details and registration for the Mexico City ARM are here:
[2023 Mexico Accelerated Route to Membership Brochure \(ciarbnab.com\)](#)

Details and registration for the Miami ARF are here:[CIARB NAB ARF Miami Brochure](#)

The brochures and registration links are all on the home page of NAB website under Featured Programs and Upcoming Events. Reach NAB's website here:
<https://www.ciarbnab.com/>

NAB is proud to serve as a co-sponsor in four webinars presented by Nivalion and Wöss & Partner. A video link from the first webinar "**Fight the Good Fight: ESG Pressure Points from the Trenches to Policy and Decision-Makers**" held on September 21 is available here: <https://woesetpartners.com/news-insights/recorded-webinars/>. The webinars are limited to 75 minutes each from **September to December 2023**, and will present current trends and considerations of this emerging area of law and practice, including the associated risks. NAB Members **Dr. Herfried Wöss and Kevin O'Gorman** are part of the distinguished panel of speakers. Details and the full webinar program are available here: [Climate Change in Arbitration and Litigation](#)

The NAB is collaborating with the ABA Section of Dispute Resolution in two upcoming events.

[2023 Ombuds Day: Diverse in Role, United in Service](#) - **October 12** | 1 PM Eastern (Virtual Webinar) – This year's complimentary signature event, hosted by the Ombuds Day Subcommittee, features "[A Conversation with Thomas Zgambo](#)". Dr. Zgambo, the Ombudsman for the International Monetary Fund, has served in the field for nearly 30 years with organizations including Polaroid, Coca-Cola, and the World Bank. The program is complimentary to all and registration can be found [here](#).

[2023 Advanced Mediation & Advocacy Skills Institute](#) - **October 18-19** | Two-Day Virtual Program: **Mediating at the Cutting Edge: Advanced Tools and Strategies for Today and Tomorrow**. Featuring plenary speakers Hon. Bridget McCormack (Ret.) and Hon. Bruce E. Meyerson (Ret.), this Institute features the opportunity to learn from leading mediation authorities in the field. Plenary sessions are followed by small group break-out discussions allowing participants to interact in-depth with the faculty and each other. Register [here](#) using discount code **CO2023**. When registering, select the cooperating entity (CIARB) from the drop down menu to receive the discount.

Currents: Journal of International Economic Law & the South Texas College of Law Houston presents its **Fall 2023 Centennial Symposium: "The Crossroads of International Arbitration, Finance, and Investment"** on **October 20** from 9:00 a.m.– 5:30 p.m. at South Texas College of Law Houston campus, Joe Green Hall. This event provides 7.5 CLE hours. NAB Member **Denise Peterson FCIARB** is part of the distinguished panel of speakers. Full program details and a registration link are available here:

<https://www.stcl.edu/academics/law-reviews-journals/currents/conferences/symposium-2/#1694797232559-148829b8-b4e8>

JAMS is a proud sponsor of Miami Arbitration Week taking place on **November 8-15**. NAB will be partnering with JAMS to present the Inaugural Miami Arbitration Week (MAW) Kickoff Event on **November 8** at 5:00 p.m. Eastern. The event will be held at Hogan Lovells, 600 Brickell Avenue, Suite 2700, Miami, Florida. Panel Discussion – "**Greener Grass or Scorched Earth: The Impact of Legislation and Court Reform on Arbitration Friendliness in the Americas.**" Cocktails and networking will follow the program. Register here for the event: <https://www.mias.org/event-details/inaugural-miami-arbitration-week-maw-kickoff-event>

NAB is proud to support the Miami International Arbitration Society (MIAS) in its upcoming **2nd LatAm Investor-State Arbitration Conference** (www.mias.org) which will take place in Miami on **Sunday, November 12** from **8:00 a.m. to 4:00 p.m.** at the University of Miami's Shalala Student Center Complex. **NAB Members receive a 10% discount using code: GOMIAS2023.** Full details and a link to the registration is here: <https://www.mias.org/event-details/2nd-annual-latam-investor-state-arbitration-conference>



The December "Ask the Arbitrator" event will be **Thursday, December 7** at 1:00 p.m. EDT/10:00 a.m. PDT: "**From the Science Bench to the 'Bar': Bridging Disciplines for Success**" and will feature International Arbitrator, **Harrie Samaras FCIArb** and will be moderated by **Cariana M. Jones**, a Juris Doctor (J.D.) candidate at the University of Pittsburgh School of Law. Ms. Jones will interview Ms. Samaras to gain insights into her professional journey. **This program is free.** Register here for the event: https://us06web.zoom.us/webinar/register/WN_WQxq8sDLTI6Q6AAE_9W7iA

Join the Membership Match Program

Participate in NAB's **Membership Match Program**. The program aims to add value to Associates and Members through mentoring with Fellows. Once a match is secured, the goal is to meet virtually for 30 minutes, 10 times per year to address issues unique to the mentees. The match is intended to last one year from inception but may be subject to renewal. Please contact CIArb NAB, Vice Chair of Membership, **Ava Borrasso C.Arbitrator**, FCIArb at ajb@ajborrassolaw.com if you are interested in participating as a mentor or mentee.



On September 12, the DC Chapter of the Chartered Institute of Arbitrators North America Branch and the Energy Disputes Arbitration Center (EDAC) sponsored "Looking Through a Prism: Perspectives on Contemporary Issues in Energy Disputes" in the Washington, DC office of **Squire Patton Boggs**. Welcome remarks were provided by **Charles "Chip" Rosenberg**. The program included a panel discussion moderated by **Ezgi Ceren Cubuk** (U.S. Representative for EDAC) which examined contemporary issues in

energy disputes from the perspectives of **Gonzalo Flores** (arbitral institution), **Mallory Silberman** (external counsel), **Serhat Eskiyoruk** (arbitrator), **Jeffery Commission** (third-party funder), and **Tim Hart** (quantum expert). The program, which was well attended by approximately 75 participants, was followed by a networking reception.

NAB Chair **David E. Sharp FCIArb** is pleased to announce that, pursuant to the delegation of authority given to him by the Board, **Peter Day FCIArb** is appointed to the empty Chapter Chair Seat on the Board. **Peter** is the Seattle Chapter Chair.

Additionally, **Peter** has agreed to become the shadow of the Treasurer and will become Treasurer effective January 1, 2024.

Congratulations to **James (Jim) Reiman, FCI Arb, Q. Arb.** His book **Negotiation Simplified: A Framework and Process for Understanding and Improving Negotiating Results** is a 2023 NYC Big Book Award Winner in the category of Audiobook Nonfiction. This is the book's second award. In August 2022, the book received the Nonfiction Authors Association's highest award – Gold! The book is available in hardcopy, Kindle, and audiobook formats, as well as epub and mobi formats. It may be purchased on Amazon, at Barnes & Noble, and hundreds of independent book sellers. **Well done Jim!**

International Arbitrator **Mark Baker FCI Arb** was the panelist for the September 15 Ask the Arbitrator: "**Unravel the Phenomenon of Career Success with a Trailblazer.**" The event was moderated by **Cariana M. Jones**, a Juris Doctor (J.D.) candidate at the University of Pittsburgh School of Law. A recording is now available on the [NAB Website](#).

NAB's Young Members Group Chair **Eugenie Rogers MCI Arb** co-moderated a panel along with **Diogo Pereira** at a ICC YAAF event in New York, which preceded the ICC New York Conference on September 21. The panel also featured **John Fellas, Nancy Thevenin FCI Arb**, and **Sarah Reynolds FCI Arb**.

In addition, **Eugenie Rogers MCI Arb**, as the Texas organizer for the global [Arbitration Lunch Match](#) initiative, hosted a round of lunch matches in 46 cities across the world during the last week of September.

Many FCI Arb in NAB were at the **ICDR's First Annual Energy Law Conference** in Houston in September. **Ann Ryan Robertson C. Arb** and past president of CI Arb, **Wendy Venoit FCI Arb**, Boston Chapter Chair and member of the NAB Board of Directors, and **Kevin O'Gorman MCI Arb** gave presentations. Many other Fellows were also in attendance including **Gary McGowan FCI Arb**, **Ed Murphy FCI Arb**, **David Harrell FCI Arb**, and **David E. Sharp FCI Arb**.

NAB Members: Don't miss an opportunity to promote yourself by publishing in Lexology! Lexology has a broad reach. If you wrote something that you are legally allowed to have published without copyright or other legal restrictions, send it to our Lexology contact, **Ava Borrasso C. Arb, FCI Arb** at Ajb@ajborrassolaw.com.

You can now invite non-members who might be interested to sign up for the newsletter at [CI Arb North America Branch Newsletter](#).



FEATURED MEMBERS

This month's Featured Members are: **Sam Barakat, Steve Bauer, John J. Buckley, Jr., Edi M.O. Faal, and Elizabeth A. Tippin**. Learn about them below and on the homepage of NAB's website [NAB Website](#).

Sam Barakat (Phoenix, AZ)

Sam Barakat FCIARB, has been in the construction industry for over twenty years. He is a Professional Engineer, qualified lawyer, expert witness, arbitrator, and certified mediator.



During the first half of his career, Sam provided engineering services on various infrastructure projects including bridges, tunnels, roads, retaining walls, terminals, and marine structures. His remaining practice is devoted to providing claim consultancy services on projects (local and international) in various sectors, including residential, commercial, cultural, hospitality, and social. Sam has been involved in domestic and international arbitrations under the rules of various institutions (AAA, ICC, DIAC, and LCIA.) He provided expert opinions on several cases including issues related to delay, damages, constructability, and duty of care. Currently, Sam is a Principal at Rider Levett Bucknall, leading their advisory services in North America.



Steve Bauer (Boston, MA)

Steve Bauer FCIArb, has an international arbitration and mediation practice resolving technology and life sciences disputes arising from R&D, collaboration, and license agreements, or involving patents and other intellectual property. He chairs the ADR Committee of AIPPI (the largest international IP organization), and is on the Tech List of the Silicon Valley Arbitration & Mediation Center. He joined JAMS' Boston office after a career as a trial lawyer leading the IP and commercial disputes practices at a large NY-based law firm. Steve received undergraduate and graduate degrees from MIT in electrical engineering and computer

science (bio-medical track), and his JD from Boston University. Steve taught MIT's intellectual property course for 10 years, as well as various IP courses at BU. He started his career as a law clerk at the Federal Circuit Court of Appeals. Steve is an IFR-rated pilot.



John J. Buckley, Jr. (Washington, D.C.)

John J. Buckley, Jr. FCIArb, has broad experience in complex commercial disputes gained over four decades in private practice and through appointments as arbitrator. He was a partner in Williams & Connolly LLP for almost forty years and founded the firm's international arbitration practice group. He is a Fellow of the CIArb, the College of Commercial Arbitrators, and the American College of Trial Attorneys and is a member of the American Law Institute. He is listed on the arbitrator rosters of the American Arbitration Association (including its national energy panel), the ICDR and CPR's Panel of Distinguished Neutrals, including various specialty panels. He has been a faculty-appointed lecturer on

international arbitration at Yale Law School and is a frequent speaker at arbitration conferences. His arbitration cases have included energy, oil & gas, telecommunications, patents, IP licensing, biotechnology, and U.S. and foreign investments.

Edi M.O. Faal (Los Angeles, CA)

Edi M.O. Faal FCIArb, is an attorney and counselor of the Supreme Court of the United States, and was admitted to the Bar in California and Indiana in 1982. He is also a member of the Bar of England and Wales. Mr. Faal qualified as a Barrister from Middle Temple Inn of Court, London, and received a Master of Laws from University of London, and Juris Doctor from Western State University. He is a Fellow of the Chartered Institute of Arbitrators, and is on the Panel of Arbitrators at ICSID. Mr. Faal has extensive trial experience in state and federal courts where he



handled both civil and criminal cases. His practice is now focused on international commercial and investment disputes, and recently he successfully represented a sovereign state in a major ICSID petroleum exploration arbitration.



Elizabeth A. Tippin (San Francisco, CA)

Elizabeth A. Tippin FCIArb, is an International Arbitrator/Mediator/Dispute Boards in the construction, environmental, energy, and commercial arenas for over 1,800 projects, spanning over 30 years. Her background includes being appointed an Administrative Law Judge and a member of the Large and Complex Construction and Master Mediator Panels of the American Arbitration Association. She also has over thirty years of experience as an attorney, providing general counsel legal services to global architecture and engineering firms. She is a Fellow of the Chartered Institute of Arbitrators, was appointed

Northern California Super Lawyers for Alternative Dispute Resolution, 2020 – 2023, and received the Mediation Society 2014 Award for Distinguished Contribution to the Field of Mediation.

News About Members

This newsletter has expanded to report news about Members. If you have something to report, please email that information to newsletter@ciarbnab.com. To ensure the newsletter goes out the first business day of each month, it is requested that information for the **November 2023** newsletter be submitted by **October 19, 2023**.

When participating in a program or event of another organization, please remember to include in event fliers and publications, if possible, your post-nominal designations such as **FCIArb**. In addition to showcasing credentials you have earned, doing so helps all members by raising recognition of CIArb and, by association with you, helping to demonstrate that CIArb members are highly qualified individuals who have been credentialed by what in our opinion is the world's leading ADR credentialing organization.

* * *

Get involved with one (or more) of the NAB Committees. Communications (and its social media subcommittee), Programs, and Training would definitely appreciate help. Contact information is on the website or email communications@ciarbnab.com to get directed to the right person(s).

Student Members, please share the information about free student memberships with those of your classmates who have not joined. More details are available on our [website](#).

Facebook – Follow and like NAB's Facebook Page: [Chartered Institute of Arbitrators North America Branch - Home | Facebook](#). Interact with posts and comment on our monthly "What Do You Think?" feature about developments in ADR.

Twitter – Follow and interact with [NAB's Twitter account](#).

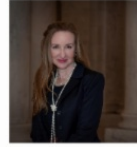
Instagram – Follow [NAB on Instagram](#) and help grow our presence on Instagram.

Finally, don't forget to join NAB's members only [Linkedin Group](#). It is open to all CIArb members. There, you can post questions, articles, and anything that might be of interest to members and comment on our monthly "What Do You Think?" feature about ADR. Also, check out NAB's public LinkedIn page: [Chartered Institute of Arbitrators - NAB | LinkedIn](#)



STEVEN J. COLOGNE
FCI Arb

NAB Vice Chair /
Communications



JULIA SULLIVAN
FCI Arb

Vice Chair / Social
Media Subcommittee

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