

JANUARY 2024
NEWS AND EVENTS

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North America
Branch



I Love Beginnings. If I were in charge of calendars, every day would be January 1.
-Jerry Spinelli

It is the time of year when we say out with the old and in with the NEW! It is my pleasure therefore to introduce to all members the new co-editors of the Newsletter. Please join me in welcoming **Julia Sullivan FCI Arb** and **Eugenie Rogers MCI Arb** (applause)!



Julia Sullivan is an attorney in the United States but also a solicitor in England and Wales. She is an international arbitrator with more than 30 years' experience in the energy industry. She is a Fellow in the Chartered Institute of Arbitrators.



Eugenie Rogers is a partner in Baker McKenzie's Dallas office who handles primarily international disputes. She has substantial experience representing clients in complex cross-border disputes, including international commercial arbitration and business litigation. Eugenie will also become the 2024-2025 NAB Vice-Chair of Communications.

It has been my honor to be the communicator for these past two years of all things NAB. Our organization can only remain vibrant when new ideas and ways of communicating those ideas can be imparted from leadership. It is my hope that the good parts of the Newsletter will continue under Julia and Eugenie, like the Featured

Members and thoughtful announcements regarding training and speaker presentations. I would like to personally thank David Sharp, our Chair, for entrusting me with this Newsletter assignment these past two years. I would also thank my fellow NAB Board members for their support, advice and comments as we grew the Newsletter these past two years.

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

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



Happy 2024! Now that we have closed the book on 2023, it is a time to reflect on how to make 2024 even better. One thing you can do is to register for and attend the Members' Retreat in San Diego. There you will meet and socialize with CI Arb members from all around NAB and, no doubt from other places as well. Register [here](#).

If you have ideas for making NAB better or programs that you would like to suggest or help produce, please let me know.

All the best for 2024!

Arbitration Decision of of Interest

Eleventh Circuit Rejects Vacatur of International Arbitration Award Based Upon Arbitrator Panel's Prior Involvement in Other Arbitrations or Lawsuits

by Lionel M. Schooler FCI Arb*
Jackson Walker LLP

Introduction. In *Grupo Unidos por el Canal, S.A. v. Autoridad Del Canal de Panama* 78 F.4th 1252 (11th Cir. 2023), the United States Court of Appeals for the Eleventh Circuit recently addressed the controversy that has frequently arisen in international arbitration decisions: the failure of tribunal members to disclose relationships arising from prior arbitrations or litigation.

Background. Grupo Unidos (a consortium of European companies) was hired to design and construct a new set of locks to expand the Panama Canal. However, Grupo Unidos failed to complete the project until well past the original deadline. In the wake of this development, Grupo Unidos initiated an arbitration against the Canal Authority for breach of contract, pursuant to ICC Rules. Each party nominated an arbitrator. The parties then agreed to appoint the president of the tribunal. Each of the designated arbitrators had extensive experience in arbitrating international construction contract disputes.

Disclosures. Pursuant to ICC Rules, as part of the appointment process, each arbitrator was then required to submit "a statement of acceptance, availability, impartiality and independence," including "any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties" or "could give rise to reasonable doubts as to the arbitrator's impartiality. Each arbitrator did so. One Panel arbitrator disclosed ("as the parties were aware") his involvement as a co-arbitrator in an "associated case." He also identified twenty-two other arbitrations in which he was involved either as chair or as co-arbitrator of those tribunals. Another Panel arbitrator disclosed his professional relationships with the law firms representing the parties, as well as his appointment by Panama in another international arbitration. He also identified his involvement in fourteen other arbitrations, either as chair, co-arbitrator, or counsel. A third Panel arbitrator disclosed his involvement in twenty-eight pending arbitrations, either as chair, co-arbitrator, or counsel.

In light of these disclosures, neither party requested any additional information from any of the arbitrators.

The Arbitration. As the Grupo Unidos Court noted, the elongated arbitration process stretched out over five (5) years, and included 3,500 pages of pleadings, 78 fact witnesses, 63 expert witnesses, more than 3,500 exhibits, a 20-day hearing on the merits, and almost 1,300 pages of post-hearing briefing. In 2020, the tribunal eventually issued a partial award, which resulted in a net win for the Canal Authority of more than \$238,000,000.00.

Supplemental Disclosures. After this Partial Award was issued, Grupo Unidos, for the first time, requested additional disclosures from the arbitrators, focusing upon the relationships they had had amongst each other, as well as relationships with other arbitrators in related arbitration matters between the parties or the parties' counsel. While noting that Grupo Unidos' requests were far broader than what was required by the ICC, the panelists nevertheless provided additional disclosures, simultaneously reiterating no issues with independence or impartiality. Unsatisfied with these responses, Grupo Unidos requested further information about relationships by the arbitrators based upon appointments in other arbitrations, as well as contacts with counsel for the Canal Authority in other matters. In reply, the arbitrators submitted further information indicating that two of the arbitrators disclosed that they had served together on another arbitration panel unrelated to the controversy in the present case, and another in which one of the panelists had nominated another of the panelists as tribunal president in yet another proceeding. The disclosures indicated that these other proceedings involved different parties and different counsel. The disclosures further indicated that one of the arbitrators had served as an arbitrator in an unrelated arbitration where one of the other arbitrators in that case served as co-counsel for the Canal Authority in this proceeding.

Challenge to Panel Membership. Before the Final Award was issued, Grupo Unidos requested that the International Chamber of Arbitration ("ICA") remove each of the tribunal members based upon these subsequent disclosures. The ICA rejected all of Grupo Unidos' challenges. While it did observe that certain of the relationships should have been disclosed previously, it concluded that there were no facts upon which to question the independence or impartiality of any of the tribunal members.

Final Award. The tribunal then addressed all remaining issues of liability and damages, which resulted in a final award of \$285,000,000 in favor of the Canal Authority. The District Court rejected all of Grupo Unidos' subsequent challenges to the award and confirmed it.

Court's Analysis. On appeal, the Eleventh Circuit first noted that the Federal Arbitration Act governed the analysis of the matters at issue. From there, the Court reiterated the principle that vacatur of an award can only occur under exceptional circumstances.

Turning to the merits, the Court confronted Grupo Unidos' contention that the arbitrators' "concealing," or "failing to disclose," information related to their "possible biases" resulted in a violation of a fundamentally fair dispute resolution process. Grupo Unidos posited that the nomination of one of the arbitrators as president by another arbitrator in an unrelated arbitration potentially influenced the decision making process by the two arbitrators in this dispute. Grupo Unidos further posited that the work by those two arbitrators in other cases with attorneys representing the Canal Authority in this case fostered a potential conflict of interest. The Court initially noted the FAA's standard for vacatur on the basis of evident partiality. It further agreed with Grupo Unidos that when making required disclosures, arbitrators should err on the side of greater, not fewer, disclosures. However, the Court then stated it was unwilling to follow Grupo Unidos' arguments to their logical conclusion, i.e., that "mere indications of professional familiarity are reasonably indicative of possible bias." 78 F.4th at 1262. It rejected each of Grupo Unidos' late-disclosed relationships as proof of evident partiality. It determined that there were many sound and impartial reasons for the parties' choice of the president of this tribunal, especially considering the president's extensive arbitration

experience with construction arbitrations; and that there was no evidentiary basis on which to determine that the relationship of another of the arbitrators with one of the counsel for the Canal Authority in another case influenced his independence and impartiality in this case.

The Court concluded that it was not concerned with the reality that “elite members of the small international arbitration community cross paths in their work.” *Id.* at 1264.**

Conclusion. The relationship of and interactions among members of the “small international arbitration community” of arbitrators has become a recent focal point about the need to expand the available cohort of arbitrators eligible to serve in highly specialized areas of arbitration such as the one involved in this case. Even so, as the Eleventh Circuit demonstrates in this case, in order to overcome the high bar of vacatur under the FAA, a party seeking such relief solely on the basis of prior relationships will have to submit more robust evidence of partiality than the surmise of implied lack of independence and impartiality superficially exhibited solely by the existence of such relationships.

*Mr. Schooler is the immediate Past Chair of the Texas Chapter of the North American Branch of the Chartered Institute of Arbitrators.

**The Court also rejected Grupo Unidos’ invocation of the New York Convention as providing any basis for vacatur of the award.

New Email Address? If your email address changes, please remember to advise memberservices@ciarb.org and communications@ciarbnab.com

Upcoming Events & Featured Programs



SECOND ANNUAL NAB MEMBERS' RETREAT APRIL 19–21, 2024 IN SAN DIEGO, CALIFORNIA

Join other CIArb members in beautiful San Diego for networking and educational programming at the Humphreys Half Moon Inn on Shelter Island, only a short drive from the airport. **All CIArb members welcome regardless of Branch.** Check out a video of the venue here: <https://video214.com/play/PiuW3jU7z1uzcBA21Cbviw/s/dark>



Discounted Early Bird Registration through February is \$595. **After February 1**, the rate will be \$645. Registration includes a place for one at the welcome reception on Friday, Saturday morning breakfast and educational session, and farewell breakfast on Sunday. Spouses or significant others may register for an additional \$200 which covers all of the same events above. Our Saturday dinner (location to be announced) is \$200 per person.

Click here for event Registration: <https://www.ciarbnab.com/product/registration-2024-retreat-sandiego/>

While hotel accommodations are on your own, NAB has reserved a block of rooms at Humphreys Half Moon Inn so that registrants may find a room at the venue. You may register at Humphreys Half Moon Inn here: <http://tinyurl.com/Chartered-Institute>

AGENDA

Friday, April 19, 2024, 5:30 p.m. to 8:00 p.m.

Welcome reception: Heavy hors d'oeuvres with drink tickets for two alcoholic or soft drinks. Additional drinks will be available to purchase. Dinner, which may not be needed, on your own.

Saturday, April 20, 2024

Breakfast: 7:30 a.m. – 9:00 a.m.,

CLE Program: 8:30 a.m. – 11:30 a.m. Details being arranged,

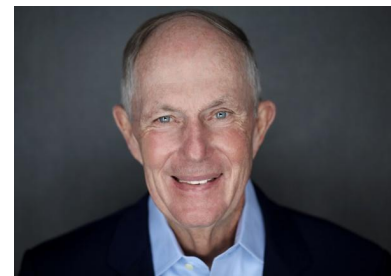
Tour of the aircraft carrier Midway: 1:00 p.m. Or visit sites in San Diego on your own,

6:00 p.m.– 10:00 p.m.: Dinner, location to be announced.

Sunday, April 21, 2024

Breakfast: 8:00 a.m. – 10:00 a.m.

Eugenie Rogers MCI Arb is co-chairing the Young Lawyers Roundtable at the **12th ITA–IEL–ICC Joint Conference on International Energy Arbitration** in Houston on **January 18–19, 2024**. She will also moderate a panel at the event on “Ensuring the Independence and Impartiality of Experts in Arbitration.” Among other conference organizers and speakers, this event will also feature **Christina Beharry FCI Arb**, **Richard D. Deutsch FCI Arb**, **Michael P. Lennon, Jr. FCI Arb**, **John Burritt McArthur FCI Arb**, **Kevin O’Gorman MCI Arb**, **Ann Ryan Robertson FCI Arb**, and **Willie Wood FCI Arb**. More information on the conference is available here: <https://www.cailaw.org/Institute-for-Transnational-Arbitration/Events/2024/ita-iel-icc-conference.html>.



The Sixth Annual **Schiefelbein Global Dispute Resolution Conference** will convene top lawyers, counsel for global corporations, internationally-recognized arbitrators and mediators, academics, and leaders at arbitration institutions to engage in discussions on timely issues in international dispute resolution. Les Schiefelbein, a Chartered Institute of Arbitrators Fellow, provided an endowment to the Sandra Day O’Connor College of Law at Arizona State University to establish the Schiefelbein Global Dispute Resolution Program. The Program is in two parts– an annual Global Dispute Resolution Conference and scholarships for law students to gain knowledge, experience and the necessary professional contacts to

prepare them for careers in the global dispute resolution community. The conference will be held on **January 11, 2024**, at the Sandra Day O'Connor College of Law in Phoenix. Click [here](#) for more information and to register.

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 CI Arb NAB, Vice Chair of Membership, **Ava Borrasso C.Ar**, FCI Arb at ajb@ajborrassolaw.com if you are interested in participating as a mentor or mentee.



Congratulations to **Eugenie Rogers MCI Arb** and **Julia Sullivan FCI Arb** who are the new co-Editors of the NAB Newsletter starting next month!

Congratulations to our slate of officers for 2024: Chair –**David E. Sharp FCI Arb**, Vice Chair/Training – **John Pinney FCI Arb**, Vice Chair/Membership –**Julia Sullivan FCI Arb**, Vice Chair/Programs– **Reena Soni FCI Arb**, Treasurer – **Pete Day FCI Arb**, Secretary – **Blanca del Carmen Martinez Mendoza ACI Arb**. Of course, consistent with the bylaws, all will be Members of the Board.

Eugenie Rogers MCI Arb, Chair of NAB's YMG was appointed to the Board and, as noted above will be Vice Chair/Communications.

Thank you to **Reynaldo Urtiaga FCI Arb**, who after years of service, asked to conclude his time as Mexico Chapter Chair.

Congratulations to **Cecilia Flores Rueda FCI Arb** who the Board has appointed Mexico Chapter Chair and who will also serve on the Board this year in one of the Chapter Chair seats.

Congratulations to **Rene De Liux Campos Garcia FCI Arb** who is Vice Chair of the Mexico Chapter.

Thank you to **Ava Borrasso C.Ar**. for her years of service as Vice Chair/Membership. Ava remains on the Board.

Thank you to **Sunu Pillai FCI Arb** for his years of service as Treasurer. Sunu remains on the Board.

Thank you to **Tom Cunningham FCI Arb** for his service as Co-Vice Chair/Programs and for his great work in planning the fabulous Annual Members' Retreat that took place in Santa Fe. Tom remains on the Board and will act as a Special Projects Chair as requested by NAB's Chair.

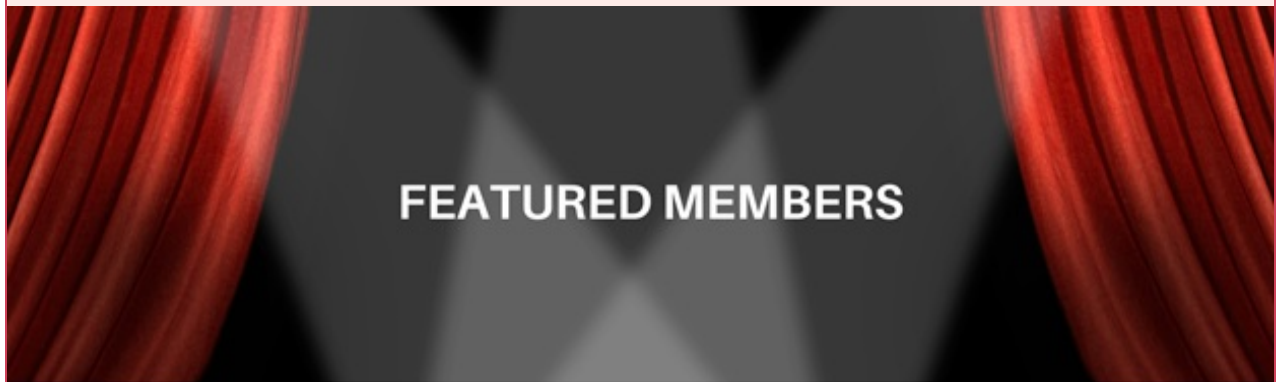
International Arbitrator **Harrie Samaras FCI Arb** was the panelist for the December 7 Ask the Arbitrator: "Science Scholar Turned ADR Luminary: Bridging Disciplines for

Success." A recording is now available on the [NAB Website](#).

NAB was proud to serve as a co-sponsor in four webinars presented by Nivalion and Wöss & Partners from **September to December 2023**. The webinars presented current trends and considerations related to ESG, including the associated risks. NAB Members **Dr. Herfried Wöss** and **Kevin O’Gorman** were part of the distinguished panel of speakers.

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](#).



This month's Featured Members are: **Rene De Liux Campos Garcia, Merril Hirsh, David W. Ichel, Basil Odigie, and Thomas C. Watts**. Learn about them below and on the homepage of NAB's website [NAB Website](#).



Rene De Liux Campos Garcia (Mexico City, MX)

Rene De Liux Campos Garcia, FCI Arb is the managing partner of **Delieux Abogados** in Mexico City. With over a decade of experience, he serves as an independent arbitrator and has been a Fellow of the Chartered Institute of Arbitrators in London since 2009. René has played key roles as both an arbitrator and party counsel in diverse procedures, including Ad Hoc Cases, the International Chamber of Commerce (ICC), the Court of Arbitration for Sports (CAS), and the National Chamber of Commerce of Mexico City (Canaco). His strong educational background includes earning a Bachelor’s degree

in Law with special honors from Centro Universitario México, Division Estudios Superiores (CUMDES) in Mexico. Rene furthered his expertise by obtaining a Master’s degree in International Trade Law from the University Technological Sydney (UTS) in Australia, complemented by a postgraduate degree in Commercial Law from the Escuela Libre de Derecho in Mexico City. René’s commitment to excellence in arbitration and his extensive legal knowledge make him a distinguished professional in the field.



Merril Hirsh (Washington, D.C.)

Merril Hirsh FCI Arb of **HirshADR PLLC** is an arbitrator; a hearing committee chair for the DC Board of Professional Responsibility; a hearing examiner for the Architect of the Capitol; a commercial and family law mediator; and the Executive Director of the Academy of Court-Appointed Neutrals. He has also litigated cases for over 40 years in courts of over 40 states. He serves on the ABA Section of Dispute Resolution Council. He

received the Section's 2023 Lawyer as Problem Solver Award for his work on two 2023 ABA resolutions on court-appointed neutrals and is the only two-time recipient of the Academy of Court-Appointed Neutrals Civil Justice Award.



David W. Ichel (Miami, FL and New York, NY)

David Ichel FCIArb is a full-time arbitrator, mediator and court-appointed neutral for complex commercial disputes. He was a long-time litigation partner at Simpson Thacher & Bartlett LLP (1978-2014) and teaches Complex Litigation at Duke (2011 to present) and University of Miami (2018-20) Law Schools. He is a Fellow of the Chartered Institute of Arbitrators and the Academy of Court Appointed Neutrals as well as a member of the AAA, ICDR, CPR, ICC, FedArb and

ARIAS-US arbitration and mediation panels. He arbitrates and mediates disputes involving M&A, joint ventures, supply/distribution, insurance, intellectual property, executive employment, financial services and securities, product and service liability, class actions, professional liability of accountants and lawyers. He is a member of the American Law Institute and the Duke Law School Board of Visitors (Chair 2009-15).



Basil Odigie (Houston, TX)

Basil Odigie FCIArb is a mechanical engineer with extensive experience in construction disputes arbitration as an independent arbitrator in some countries in Africa and Europe, and in the USA. He is a certified adjudicator and a panelist of Dispute Review Board Foundation and the Dispute Board Federation. He also practices as an independent consultant for construction claims. He holds the Project Management Institute Inc.'s PMP credentials and has diverse experience in project management/construction contract management. He is member of these institutions:

London Court of International Arbitration, ICC Commission on Arbitration and ADR, Society of Construction Law (UK), National Contract Management Association; and Advisory Board Member ITA Institute for Transnational Arbitration. He holds Post Graduate Diplomas [PG Dip] International Construction Law [UWE], PG Dip International Commercial Arbitration [QMUL] and PG Dip International Mediation [QMUL].



Thomas C. Watts III (Anaheim Hills, CA)

Thomas C. Watts LLM, FCIArb has been admitted to the state bar in California as well as the federal courts for over 45 years, with practice emphasis in complex commercial, real estate and construction matters. A frequent presenter for audiences ranging from Bar associations to the ABA dispute resolution section, Mr. Watts is also an adjunct professor of law at La Verne University, School of Law having developed the courses in Arbitration, Mediation, and Negotiation. He serves as a neutral for several ADR providers including the American Arbitration Association.

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 February 2024 newsletter be submitted by January 17, 2024.

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 CI Arb and, by association with you, helping to demonstrate that CI Arb 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](#).

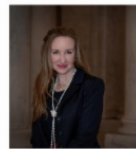
Instagram – Follow [NAB on Instagram](#) and help grow our presence on Instagram.

Finally, don't forget to join NAB's members only [Linkedin Group](#). It is open to all CI Arb 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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