

Kluwer Arbitration Blog

Interviews with Our Editors: Arbitrating Silicon Valley Disputes with Lester Schiefelbein, CEO of the Silicon Valley Arbitration & Mediation Center (SVAMC)

Giorgio Sassine (Musick, Peeler & Garrett LLP) · Saturday, July 4th, 2020



Mr. Schiefelbein, welcome to the Kluwer Arbitration Blog! We are grateful to have the opportunity to share your unique perspectives with our readers.

1. *Please give our readers a brief introduction to yourself and your route to becoming CEO of the SVAMC.*

Following law school I was in the United States Air Force Judge Advocate General's Corps (JAG) as a legal officer, which provided me the introduction to government contracts and international law. I then joined the Lockheed Corporation (now Lockheed Martin) and was the Vice-President and Deputy General Counsel of Space Systems. In this role, I oversaw legal functions and drafted and negotiated international contracts with governments and private parties across the globe. I had the good fortune of working with leaders in the White House, Congress and the Executive Branch, as well as leaders in many foreign countries. I served as an advocate in numerous international

commercial arbitrations with the amount in dispute for these arbitrations totaling in the billions of dollars.

Today, I act as an arbitrator and mediator with a specialty in aviation, aerospace, national defense and technology matters. I became a founding member and Director of SVAMC in 2014 and was honored to be elected CEO in 2017.

2. What role does SVAMC have in the international arbitration scene? How are its services beneficial to companies, practitioners, and arbitrators / mediators? Can you explain SVAMC's efforts to support arbitration and mediation centers around the world?

SVAMC is a leading not-for-profit organization that advances the use of arbitration and mediation in technology-related business disputes around the world. Our [International Committee](#), with members including corporate counsel, law firms, neutrals, law schools and arbitration institutions, provide programs, webinars and thought leadership initiatives on ADR in technology disputes.

Two exciting SVAMC initiatives today are a Task Force on Tech Disputes, Tech Companies & International Arbitration and a study focusing on the use of blockchain and smart contracts in technology ADR. We provide an annual “[Tech List](#)” naming the top arbitrators and mediators with expertise in technology disputes, which arbitration and mediation institutions and law firms have acknowledged using in arbitrator and mediator selections. SVAMC has also partnered with many major arbitration institutions both in the US and around the globe on programs, webinars and initiatives.

3. Historically, what approaches have Silicon Valley-based companies taken toward dispute resolution? Over the years, has there been an increase in Silicon Valley toward the use of ADR services? If so, what do you think are the prime factors motivating its increased use?

As a former Silicon Valley General Counsel, I have insight into the approaches companies have taken toward technology dispute resolution. My experience is that a phased approach to dispute resolution is preferred, starting with settlement negotiations, and if this step is not successful, then parties transition to mediation, and finally arbitration if required. This phased approach is favored to resolve difficult issues and to foster and sustain business relationships with customers and suppliers. However, one size does not fit all and there have been high-profile litigation matters filed by Silicon Valley companies, particularly in patent disputes, that take three to five years to resolve through the courts.

There has been an increase in the use of arbitration by technology companies that operate globally. They are motivated by (1) the ability to select an arbitrator with specialized expertise and a strong background in technology industry law and practice, (2) the shortened time for resolution, (3) confidentiality and (4) the ability to enforce international awards.

4. Many California litigators and in-house counsel (perhaps U.S. lawyers in general) still view litigation as the preferred method of settling a dispute. What fundamental steps would help

American litigators and in-house counsel understand the benefits of ADR?

This is a hot button issue. In-house corporate counsel are accountable to the corporation for the outcome of a dispute resolution matter. They approve and manage payment of bills for outside counsel, neutrals, arbitration institutions, expert-witnesses and court reports. With such a critical and central role, it is time for corporate counsel to step up to the plate and engage with ADR.

Educating corporate counsel is fundamental. SVAMC recently formed a [Corporate Counsel Task Force](#) to discuss with corporate counsel the benefits of ADR for their particular business disputes. The Corporate Counsel Task Force Members are current and former corporate counsel, leading neutrals and law firm members from across the globe with know-how from thousands of ADR matters. This initiative does not stop with discussion. The SVAMC International Committee is drafting a tool kit with detailed information on the “how to “ in dispute resolution to include everything from reviewing characteristics of candidate mediators and arbitrators to enforcing awards. I doubt if many outside counsel will balk at the direction of the General Counsel that the new preferred method in technology dispute resolution is ADR.

5. *In July 2018, California enacted a law that finally allowed foreign attorneys to participate in international arbitrations seated in California. This was a long-time coming, and was spearheaded in large part by the burgeoning international arbitration community in California. Two years later, have advancements been made to recognize California as a hospitable seat for international arbitration? [If not, please elaborate.] What do you see as the next most important steps toward making California a more recognized seat?*

A noted achievement is that the California International Arbitration Council was formed in 2019 to promote international arbitration in California through educational, promotional and organizational initiatives and programs. Going forward the California international arbitration community needs to focus on the positive points of having the seat – the legal home of the arbitration – in California. The selection of the seat determines the law governing the arbitration procedures and often, and more importantly, the process and rights of the arbitration award. In my former role as a corporate counsel, I felt the selection of the seat was more important than the choice of law. The Chartered Institute of Arbitrators and the *Global Arbitration Review* rank the safest seats for international arbitration. It will be a positive point in California’s favor, as it should be, for the global international community to become more aware that California is now the center of both technology and arbitration innovation in the United States.

6. *What are SVAMC’s short-term goals? In the longer term, where do you see SVAMAC ten years down the line? Does the SVAMC ever envision itself transitioning into administering arbitrations or mediations?*

The COVID-19 pandemic has presented an immediate new goal –while courts are closed or clogged, SVAMC is increasing its webinars and thought leadership with emphasis that ADR is the key to technology dispute resolution. Why?

First, Purpose: parties need to find commercial solution paths to address contract non-performance and preserve business relationships.

Second, Process: a mediation or arbitration can be conducted in a few days –an example is use of the emergency procedures in arbitration institution rules.

Third, Person: an outstanding neutral with ADR experience and knowledge of the law and subject matter can be appointed in a day.

Fourth, Process–via the virtual platforms that we are now using on a daily basis.

Ten years down the line I foresee an explosion in membership and SVAMC will be an invited partner to every ADR program and initiative on technology dispute resolution. Further, SVAMC continues to champion diversity and a culture of inclusion. Also, our “Tech List“ appointees will continue to be in high demand as neutrals in technology dispute resolution matters.

I do not see SVAMC administering cases. SVAMC best serves the international business community by advocating for ADR in technology disputes. However, in the tech space innovation is in our DNA – let’s revisit this issue in ten years.

- 7. We know that space arbitration is a true passion of yours, where you have both written and spoken at conferences on the subject. What do you see as the most interesting aspects of space law that have yet to be fully examined by the arbitration community? What role can SVAMC play in space arbitration, and what are the key ways that role can expand?***

Admittedly, I am a space junkie. Space has been the centerpiece of my legal career. I act as a mediator and arbitrator in aerospace and aviation matters, and make presentations to school children on space activities and space junk. What’s new in space is New Space –aerospace companies working independently of governments and traditional major contractors to develop faster, better and cheaper access to space and space technologies. With private companies now involved in space activities there needs to be a new look at fault and damages under the 1967 Outer Space Treaty and 1972 Space Liability Convention. Satellites and space junk do smack into each other. There are 1,900 operational satellites in orbit. There are 160 million pieces of space junk (human made objects in space which no longer serve a useful function) in orbit. Consider that a 150 million dollar communications satellite launched and owned by a private party collides with a space junk satellite, the size of a car, which is owned by a state. This collision generates thousands of pieces of new space junk which may collide with other operational satellites. Concepts of fault and liability negotiated over 50 years ago need clarification based on 2020 realities. A leading role for SVAMC is to advise that emergency and expedited dispute resolution procedures may be best suited for New Space companies that value optimum results provided by effective, efficient and low cost processes. An industry built on innovation resulting in competitive edge would continue this advantage in having disputes resolved in days and months rather than years.

- 8. Do you have any advice for young practitioners who would like to begin arbitrating or mediating disputes? What steps can young practitioners take to become a part of the SVAMC lists of neutrals?***

My advice to young practitioners is to take advantage of the many opportunities now available to learn about and become a participant in arbitration and mediation activities. The COVID-19

pandemic has created learning experiences not available in the past, including virtual events and webinars on varied arbitration and mediation topics. Once you finish a webinar send an email to each speaker thanking them for the program or asking a question. Join the young professional groups associated with arbitration institutions. SVAMC also has a [Young Professionals group](#).

But my best advice to young practitioners is to find a mentor. An arbitrator or mediator who you know or respect who can assist and guide you in a career path. Don't be bashful: send that email to the person you want to be your mentor. Neil Kaplan, a good friend and colleague, is now conducting interview [webinars](#) in collaboration with Delos Dispute Resolution. In this series, he interviews top arbitrators and part of the discussion is the career path of the interviewee. A common thread in each interview is a discussion of being in the right place at the right time and just how important good luck can be in a career-progressing step. But make no mistake, good fortune is the product of a tireless work ethic. In the Silicon Valley and technology-related arbitration and mediation worlds, the SVAMC can offer a number of tools to support a career path and I encourage you to visit our [website](#) for more information.

Thank you for sharing your time and perspectives with us!

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