Kluwer Arbitration Blog

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Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Saturday, August 20th, 2022

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The ITA Board of Reporters have reported on the following awards.

Parties Not Indicated (Award), CCIR Arbitral Award No. 52 of 19 March 2021, 19 March 2021

Cosmin Vasile, Zamfirescu Racoti Vasile & Partners

Failure to undergo the DAB procedure due to the fact that an adjudicator could not be jointly nominated by the parties does not prevent the parties from going to arbitration under Sub-clause 20.4.

Parties Not Indicated (Award), CCIR Arbitral Award No. 120 of 9 December 2021, 09 December 2021

Cosmin Vasile, Zamfirescu Racoti Vasile & Partners

The Arbitral Tribunal decided that, by agreeing on the application of the Rules of Arbitration of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, the parties have decided that the Arbitral Tribunal shall have jurisdiction to hear both contractual and extra-contractual disputes.

Parties Not Indicated (Award), CCIR Arbitral Award No. 121 of 15 December 2021, 15 December 2021

Cosmin Vasile, Zamfirescu Racoti Vasile & Partners

The 28 days' deadline for giving notice under Sub-clause 20.1 is fixed and mandatory for the party requesting additional costs/an extension of time, and not a flexible deadline, regardless of the fact that the respondent knew of the existence of the event giving rise to the claim.

A v. B. & Anor (HKIAC's Prima Facie Power to Proceed), HKIAC Case ID CD2021/12/04, 01 February 2021

Sarah Grimmer, Hong Kong International Arbitration Centre (HKIAC)

In this case, HKIAC decided on a prima facie basis to proceed with the arbitration under the 2018 HKIAC Administered Arbitration Rules ("2018 Rules") in circumstances where (1) the arbitration clause contained express references to HKIAC and its "rules and practice"; (2) the Claimant commenced the arbitration under the 2018 Rules; and (3) the Respondents had not made a final choice of institution or rules where it was empowered to do so under the arbitration clause. HKIAC concluded that there was a possibility that an arbitration agreement under the 2018 Rules might exist.

A v. B. & Anor (Applicability of Expedited Procedure), HKIAC Case ID CD2021/12/08, 01 October 2018

Sarah Grimmer, Hong Kong International Arbitration Centre (HKIAC)

In this case, the Claimant requested to apply the expedited procedure under the 2013 HKIAC Administered Arbitration Rules ("2013 Rules") on the ground of exceptional urgency, citing its urgent need for capital and potentially imminent insolvency. HKIAC rejected the request on the basis that, among other things, the Claimant did not make out a case of exceptional urgency and the expedited procedure could not provide the protection sought by the Claimant to avoid the alleged harm caused by the Respondents. HKIAC also considered the complexity of the dispute and found that the prejudice caused to the Respondents of being forced into the expedited procedure of a complex and high-value dispute outweighed the benefits that could be obtained by the Claimant.

A & Anor v. B. (Consolidation of Arbitrations), HKIAC Case ID CD2021/12/10, 01 August 2018

Sarah Grimmer, Hong Kong International Arbitration Centre (HKIAC)

In this case, the Claimants requested the consolidation of two arbitrations against the same Respondent arising under separate but materially identical contracts, arbitration clauses, and claims relating to the same multicurrency note programme, pursuant to Article 28.1(c) of the 2013

HKIAC Administered Arbitration Rules (the “2013 Rules”). HKIAC decided to consolidate the arbitrations having considered the conditions under Article 28.1(c) and several other factors.

TVL International, LLC v. Zhejiang Shenghui Lighting Co., Ltd. and SengLED USA, Inc. (Partial Final Award and Final Award), ICDR Case No. 01-17-0004-7802, 09 August 2019

Michele Sonen

This dispute arose out of alleged trade secrets infringement stemming from a prospective OEM arrangement between a US consumer electronics company and a Chinese manufacturer to market a new type of lightbulb. Shortly after negotiations broke down between the parties, the prospective manufacturer began selling a product that the Claimant alleged was identical to its bulb and used stolen technology, in violation of a NDA and US state and federal law protecting trade secrets. The Tribunal agreed and awarded the Claimant damages totaling nearly USD 1.8 million, including punitive damages.

Advanced Aerofoil Technologies, AG. & Ors v Todaro & Ors (Partial Final Award), ICDR Case No. 50 152 T 0013112, 06 March 2013

Inigo Kwan-Parsons

New York’s unforgiving laws regarding contracting out of fraudulent misrepresentations have been applied in this arbitral proceeding, reminding parties to be cautious when drafting aa agreement. In this case, the arbitrator rejected the claimant’s claims alleging they had been induced by fraudulent misrepresentation into entering a settlement agreement by referring to a contractual provision within the settlement agreement which barred any claims for misrepresentations ‘both known and unknown’ to the parties.

Vantage Deepwater Company and Vantage Deepwater Drilling, Inc. v. Petrobras America Inc., Petrobras Venezuela Investments & Services, BV, and Petroleo Brasileiro S.A. (Petrobras Brazil) (Final Award), ICDR Case No. 01-15-0004-8503, 29 June 2018

Michele Sonen

In this arbitration, a majority of the Tribunal awarded Vantage Deepwater USD 615 million in damages for wrongful termination by Petrobras of a long-term lease of an oil drilling rig. Petrobras had leased the rig from Vantage Deepwater for a term of 8 years, but terminated the agreement only 2 years and 9 months into the term.

Premium Petroleum Services Corp. v. Superior Energy Services Colombia S.A.S. & Superior Energy Services Inc. (Final Award), ICC Case No. 21574/RD/MK, 19 July 2018

Inigo Kwan-Parsons

In this heavily litigated saga, an arbitral tribunal navigated numerous preliminary issues (as to evidence and jurisdiction), before addressing claims brought by Premium Petroleum Services Corp. (Premium) against Superior Energy Services Colombia S.A.S. and Superior Energy Services Inc. (collectively, Superior), and Superior's counterclaims against Premium, in accordance with Columbian law, arising from a sale purchase agreement between the parties (SPA) and associated employment agreements. In addressing the parties' issues, the arbitral tribunal interpreted the provisions of the SPA in light of the principle of 'good faith', finding substantively for Superior.

Constellation Overseas Ltd. v. Alperton Capital Ltd., Capinvest Fund Ltd., Universal Investment Fund Ltd., Commercial Perfuradora Delba Baiana Ltda. & Interoil Representacao Ltda. (Interim Award), ICC Case No. 23856/MK, 26 April 2019

Sarada Nateshan

In this arbitration governed by the Rules of the International Chamber of Commerce (ICC), the Arbitral Tribunal issued an Interim Award, which barred the Claimant from "pledging, transferring or otherwise encumbering the disputed shares," and from selling off the assets of the drillship companies that were formed as part of the joint venture between the Parties.

Global Gaming Philippines LLC (as assignor) and GGAM Netherlands B.V. (as assignee) v. Bloomberry Resorts and Hotels Inc. and Sureste Properties, Inc. (Partial Award on Liability), SIAC Case No. [xxx], 20 September 2016

Michele Sonen

The owners of a casino and resort in Manila terminated its service agreement with its management and services operator. The Tribunal concluded that the termination was wrongful. It also rejected the owners' attempt to require the operator to return its shares in the resort's parent company or enjoin sale of the shares to a third party.

Global Gaming Philippines LLC (as assignor) and GGAM Netherlands B.V. (as assignee) v. Bloomberry Resorts and Hotels Inc. and Sureste Properties, Inc. (Final Award), SIAC Case No. [xxx], 27 September 2019

Michele Sonen

The owners of a casino and resort in Manila wrongfully terminated its service agreement with its management and services operator. As compensation, the Tribunal awarded the owners over USD 85 million in damages. The Tribunal also concluded that the owners had improperly impeded the operators' sale of its shares in the resort's parent company and awarded the owners approximately USD 190 million in damages for the value of the shares

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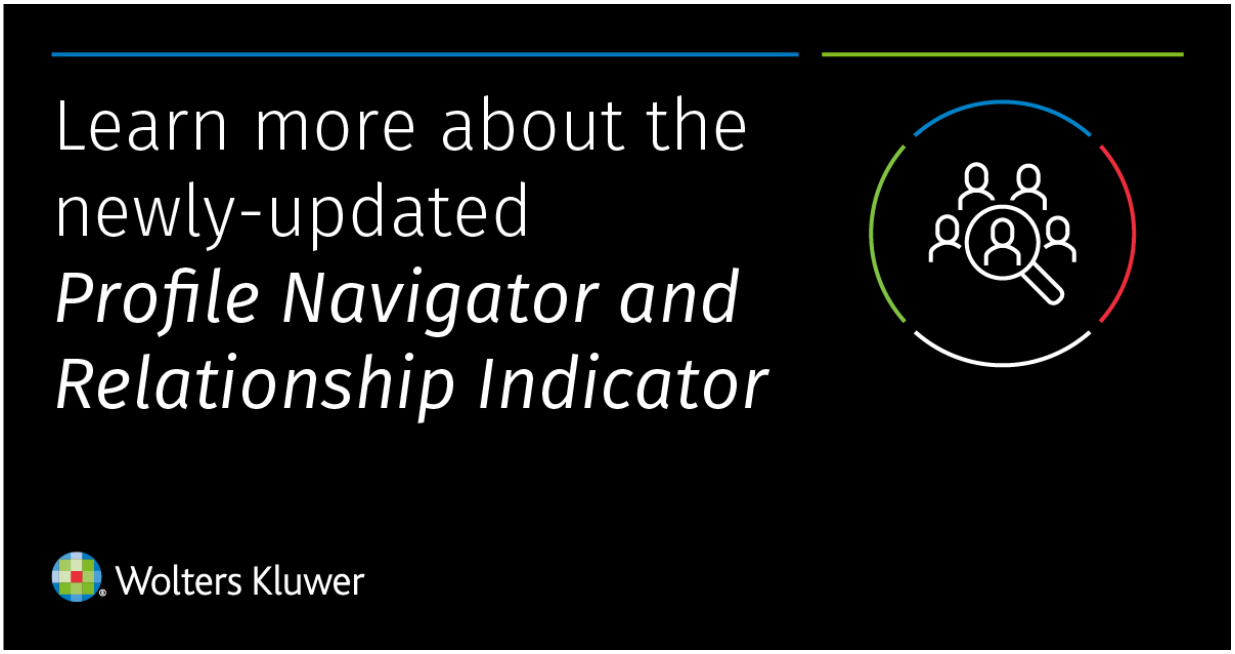

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