

Kluwer Arbitration Blog

2023 Year in Review: A Look at International Arbitration in California

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In 2023, the international arbitration landscape in California continued to develop and grow. This blog post highlights the past year's most notable events impacting international arbitration practitioners in the Golden State.

2nd Annual California International Arbitration Week, and Plans for 2024

In March 2023, [California Arbitration](#) (CalArb) and [California Lawyers Association](#) (CLA) hosted the 2nd Annual California International Arbitration Week (CIAW) in Los Angeles. Building on the successful inaugural CIAW that took place in March 2022, the 2023 CIAW attracted over 1,500 attendees from all over the world, including Singapore, Armenia, Brazil, Mexico, South Korea, Hong Kong, Mainland China, and Japan. In-person events were held at White & Case, King & Spalding, Squire Patton Boggs, Norton Rose Fulbright, JAMS, LimNexus, and the University of Southern California.

Presentations included “[The Future of California Arbitration and Best Practices for Drafting Technology Disputes Clauses](#),” “Analyzing International Dispute Resolution in Key Industries in California and Abroad,” “[Opportunities and New Trends in the US to Asia-Pacific Practice](#),” “Arbitrating Technology Disputes: Present Realities, Future Possibilities,” and “[When Worlds Collide – Arbitration of International Patent Disputes](#).” Earlier this year, Giorgio Sassine, Co-Lead of the 2023 CIAW Joint Planning Committee, was [interviewed by Kluwer Arbitration Blog](#) about the event (more coverage of CIAW available [here](#)).

CalArb and CLA are busy preparing for the 3rd Annual CIAW to be held March 11–14, 2024 in San Francisco, California at the Hyatt Regency San Francisco (Embarcadero Center). For more information visit the [CalArb website](#).

Highlights include “Arbitrating in a Time of Trade War: Successfully Navigating the Minefields of National Security, Cross-Border Data Restrictions, Sanctions and US-China Decoupling to Achieve Fair and Efficient Cost Resolution,” and “The Swords and Shields of Arbitrating IP Disputes in California and Beyond.” CLE Credit will be offered for many of the presentations including “Women in Arbitration – California Stories,” “Navigating Arbitrator Disclosures and Challenges in International Arbitration,” and “Ethical Conundrums Faced by Parties and

Arbitrators in International Arbitration.” Young CalArb will co-sponsoring a Trivia Night to celebrate the CIAW’s closing with categories like California history and geography, famous arbitrators and more.

Dana Welch Elected as Second President of CalArb

Over the summer, [Dana Welch](#) was elected as the second President of CalArb, replacing CalArb founder [Gary Benton](#) in the first change in CalArb’s leadership since it was formed. Gary, who shepherded the organization through its inception and helped to establish CIAW as a staple event in the state, will continue to serve on the CalArb Executive Committee and Board of Directors.

Dana, also a Founding Member of CalArb, is an arbitrator and mediator based in Northern California who has practiced in ADR for over twenty years. She is a Northern California Super Lawyer in the field of Alternative Dispute Resolution, has been included in the 2022 and 2023 Editions of “Best Lawyers in America®” for Arbitration, was named in “Who’s Who Legal 2022” as one of the leading practitioners in commercial mediation, and was named Acquisition International Global’s Best in Commercial Arbitration in Northern California for 2018. She was also named by the National Law Journal as a 2018 ADR Champion. Dana is also a Fellow of the College of Commercial Arbitrators, where she is the President-elect and serving on the Executive Committee, and she is a Fellow of the Chartered Institute of Arbitrators and an elected Fellow of the American Bar Foundation.

Prior to becoming a neutral, Dana served as the General Counsel of Robertson Stephens, a San Francisco-based investment bank, and prior to that, practiced as a litigator focusing on business, employment and securities matters. She was the founding executive director of the Berkeley Center for Law, Business and the Economy at the University of California’s Berkeley Law School.

Artificial Intelligence and New SVAMC Guidelines

The non-profit [Silicon Valley Arbitration and Mediation Center](#) (SVAMC) published the first-ever [Guidelines on the Use of Artificial Intelligence in Arbitration](#) (Guidelines) in draft form for comment. The Guidelines, which are intended as a “point of reference for arbitral institutions, arbitrators, parties and their representatives (including counsel), experts, and, where relevant, other participants in the arbitral process,” tackle topics including the need to safeguard confidentiality and the non-delegation of an arbitrator’s decision-making responsibilities.

The Guidelines are intended to be used as a supplement, as necessary, to national laws. Participants can use them to afford more uniformity and certainty to the proceedings, i.e., agreeing to the accepted uses of AI at the initiation of a dispute resolution process. As explained by the Guidelines themselves, they are “[i]ntended to guide rather than dictate” and “to accommodate case-specific circumstances and technological developments, promoting fairness, efficiency, and transparency in arbitral proceedings.”

International Arbitration Developments Involving California Courts

Finally, there were a number of California-related court decisions and legal developments in 2023 that every international arbitration practitioner should take notice of, as they will likely reverberate in 2024 and beyond.

In [Coinbase Inc. v. Bielski](#), No. 22-105 (U.S. 2023), the U.S. Supreme Court held that litigation in

district courts is automatically stayed when a party appeals the denial of a motion to compel arbitration, reversing a Ninth Circuit (which includes California) decision to the contrary. Delivering the 5-4 majority opinion, Justice Kavanaugh reasoned that a district court should not exercise jurisdiction over aspects of a case involved in an appeal, and in an appeal of denial of a motion to compel arbitration, the entire case “is essentially ‘involved in the appeal’” (for more on *Coinbase*, see [here](#)).

The *Coinbase* decision, however, did not directly resolve whether such stays would be required in state court proceedings. In an apparent response to *Coinbase*, California Governor Gavin Newsom signed [Senate Bill 365](#) in October 2023, which went into effect on January 1, 2024 and provides California state court judges with the discretion to continue trial court proceedings while an appeal on the denial of a motion to compel arbitration is underway. This amendment to the California Code of Civil Procedure Section 1294(a) represents a substantial shift from prior state law, as well as the U.S. Supreme Court’s approach in *Coinbase v. Bielski*, and has sparked debate over its potential impact on the efficacy of arbitration agreements and potential preemption by the Federal Arbitration Act.

In *Ashot Yegiazaryan aka Ashot Egiazaryan v. Vitaly Ivanovich Smagin, et al. and CMB Monaco fka Compagnie Monegasque de Banque v. Vitaly Ivanovich Smagin*, No. 22–381 (U.S. 2023), the Supreme Court affirmed a Ninth Circuit’s ruling that green-lighted a private civil suit under the Racketeer Influenced and Corrupt Organizations Act (RICO) against persons alleged to have interfered in the enforcement of a foreign arbitral award that had been previously confirmed in the U.S. The high court recognized that a plaintiff alleges the type of “domestic injury” required for filing a RICO action when the circumstances surrounding the injury indicate it arose in the United States, affirming a previous Ninth Circuit ruling. The case focused on Vitaly Smagin, a Russian citizen residing in Russia, who obtained an LCIA arbitration award against Ashot Yegiazaryan, a California resident. Smagin filed a lawsuit in the Central District of California under RICO, alleging that the defendants engaged in criminal activity to prevent him from recognizing the award and collecting the judgment in California. The District Court dismissed the complaint, finding that Smagin had failed to plead a “domestic injury,” relying heavily on Smagin’s Russian residency. The Ninth Circuit reversed that decision. The Supreme Court then agreed with the Ninth Circuit’s context-specific approach, stating that courts should look to the circumstances surrounding the alleged injury to assess whether it arose in the United States, in particular, the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity. This ruling clarifies the application of RICO to extraterritorial claims of damage to intangible property like arbitral awards, expanding the scope of RICO to include certain international disputes that arguably cause domestic injuries in the U.S.

In *Fujitsu Semiconductor Ltd. v. Cypress Semiconductor Corp.*, No. 22-mc-80313-VKD (N.D. Cal. 2023), a Northern District of California Court granted a motion to compel arbitration, holding in part that incorporation of the Commercial Arbitration Rules of the Japan Commercial Arbitration Association (JCAA Rules) into a dispute resolution clause delegated the question of arbitrability to the arbitrator. This decision relied on Ninth Circuit precedent that incorporation of the American Arbitration Association (AAA) Commercial Arbitration Rules is clear and unmistakable evidence of delegation of this issue to the arbitrators. It thus rejected the objection of Cypress Semiconductor Corp. that the relevant rule of the JCAA Rules, which provides that the arbitral tribunal “may” decide its own jurisdiction is different from the analogous rule of the AAA, which states that an arbitral tribunal “shall” make such a determination. The Court found the use of “may” in the JCAA Rules to be “indistinguishable under the circumstances.”

In *McConnell v. Advantest America, Inc.*, 92 Cal. App. 5th 596 (Cal. Ct. App. 2023), a California court held that an arbitrator overstepped his authority by issuing broad document subpoenas to compel non-parties to produce documents into a shared drive at a hearing specially set for the sole purpose of receiving this discovery from the non-party. The Court of Appeal held that because the parties in their arbitration agreement did not agree to full discovery under California's Civil Discovery Act, or otherwise explicitly agree to allow non-party discovery, allowing such discovery to be conducted through a "loophole" by which the arbitrator could schedule a hearing solely for the purposes of receiving such discovery was improper. This decision does not address, however, whether an arbitrator can compel the production of non-party witnesses and evidence at a merits hearing.

Conclusion

2023 highlights included CalArb and CLA hosting the 2nd Annual California International Arbitration Week, Dana Welch being elected President of CalArb, and SVAMC issuing the first guidelines for the use of Artificial Intelligence in arbitration, a number of California court decisions that will have a lasting effect on international arbitration practitioners in 2024 and beyond. 2024 promises to be just as interesting.

Katie Connolly and Tuyana Molokhoeva are the Co-Chairs Young California Arbitration (Young CalArb). Young CalArb believes that the future of international arbitration in California lies in the hands of our promising young professionals. Its mission is to provide a dynamic platform that nurtures their growth and strengthens their network within the arbitration community. Young CalArb is committed to advancing the cause of California Arbitration in developing and promoting California as a hub for international arbitration. Its vision is to shape a progressive future for international arbitration in California. Young CalArb is sponsored by CalArb.

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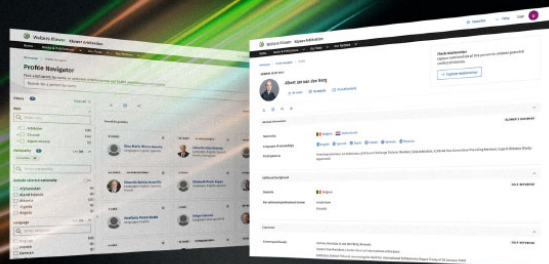
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