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present

Escalation Clause in Cross Border Dispute Resolution: Why Your Client Wants Mediation

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

June 22, 2017

LIVE PRESENTATION

Boca Raton Resort & Club
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COURSE NO. 2513R



ALTERNATIVE DISPUTE RESOLUTION SECTION
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THE FLORIDA BAR
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Course Program

Learn from your corporate clients about what they want and why. For those engaged in cross border practice whether from the standpoint of a transaction attorney or a litigator, whether in-house or outside counsel, join us for this important discussion of evolving trends in managing disputes more economically and efficiently. Learn new developments that may inform your drafting of dispute resolution clauses for cross border deals as well as your approach to resolving cross border disputes.

As more and more disputes are resolved through International Arbitration, more is understood about its pros and cons. Many corporations are finding success through mediation. Learn why and how mediation can help you better address the needs of your corporate clients. In addition to discussing the attributes of a workable escalation clause, this panel will also explore the role of outside and in-house counsel in cross border mediation.

Panel Chair: *Ricardo J. Cata, Upchurch, Watson*

Moderator: *Professor Joan Stearns Johnsen,
University of Florida Levin College of
Law, Gainesville, FL*

Panelists: *Olivier P. André, Vice President, Institute
for Conflict Prevention & Resolution
("CPR"), New York, NY*
*Laura J. Stipanowich, Senior Counsel,
Bechtel Oil, Gas and Chemicals, Inc.,
Houston, TX*
*Carlos M. Hernandez, Executive Vice
President, Chief Legal Officer, Fluor,
Houston, TX*
*Luis Martinez, Vice President,
International Centre for Dispute
Resolution ("ICDR"), New York, NY*
*Teresa Garcia-Reyes, Senior Counsel,
Litigation, GE Oil and Gas, Houston, TX*

CLE Credits

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(Maximum Credit: 2.5 hours)

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Course Speakers



Olivier P. André is CPR's Vice President, International and Dispute Resolution Services. In this capacity, Mr. André is responsible for CPR's international activities, as well as international arbitration and mediation matters which are brought before CPR pursuant to its rules. He is involved in all aspects of the proceedings, including neutral selection, challenges, clause drafting assistance and procedural questions. Olivier is also responsible for Y-ADR – a program for young international dispute resolution practitioners – and the upcoming CPR International Mediation Competition to take place in São Paulo in May 2017. Olivier recently contributed to the drafting of the CPR European Mediation and ADR Practical Guide for Corporates, the CPR Administered Arbitration Rules and the CPR International Mediation Procedure (2017). He is a member of CPR's European Advisory Board and CPR's Brazil Advisory Board, a member of CPR's Arbitration Committee, a member of the International Commercial Disputes Committee – and of its cybersecurity working group – and an affiliate member of the Arbitration Committee of the New York City Bar Association. He started his legal career at Shearman & Sterling L.L.P. and at the ICC Court of International Arbitration in Paris. He has been trained as a mediator and studied law in France, Germany and in the U.S., where he obtained his Juris Doctor and where he is admitted to practice law in New York and Massachusetts. He is a CEDR accredited mediator and a dual citizen of the United States and of the European Union (France).



Ricardo Cata practiced as a civil litigator and trial lawyer in South Florida for 38 years. His mediation practice focuses on construction and design defects; commercial, franchise and contractual disputes; trademark infringement; cross-border disputes (in litigation or arbitration); aviation, maritime and cruise passenger claims; general, resort, product and premises liability; medical malpractice; and wrongful death. He is certified to mediate civil cases by the U.S. District Court, Southern and Middle Districts of Florida. Ricardo is a Florida Supreme Court Approved Arbitrator and a member of the American Arbitration Association's Mediator Panel, the American Arbitration Association's Roster of Neutrals and the ICDR Cruise Line and Seafarer Arbitrator Panel (CL & SAP). He also is a member of the CPR Panels of Distinguished Neutrals and the National Academy of Distinguished Neutrals (NADN). Ricardo has served as arbitrator in AAA commercial disputes. During his legal practice, Ricardo represented resorts and tour operators from Latin America in Florida's circuit and federal courts, obtaining dismissals on forum non conveniens or lack of personal jurisdiction. Ricardo also represented domestic and international manufacturers of products on claims of design and/or manufacturing defects and represented U.S. and Latin American clients in commercial and contractual disputes. He also represented clients in claims of design and construction defects, wrongful death suits, franchise litigation, maritime disputes, and medical and chiropractic malpractice suits. A native of Cuba, Ricardo is bilingual in Spanish and English, and has mediated in Spanish.



Teresa Garcia-Reyes is Senior Counsel, Litigation for GE Oil & Gas, in Houston, Texas. She represents her division in commercial disputes worldwide, with a focus on leading negotiations, mediations, arbitrations, and litigations in North and South America. Her experience includes acting as counsel in commercial disputes under the rules of various

Course Speakers - *continued*

international and regional institutions, and coordinating the activities of outside counsel in domestic court and arbitral proceedings. She also leads policy initiatives within her business, aimed at managing and reducing the risks of disputes with suppliers and customers, including promoting the use of mediation as form of alternative dispute resolution. Teresa is a native of Houston, Texas. She graduated from Texas A&M University, cum laude, with a B.B.A. in Management, in 2001, and from Tulane Law School, summa cum laude, with a J.D., in 2004. She is a member of the Texas bar, and is licensed in the Southern, Eastern, and Northern Districts of Texas. Prior to joining GE, Teresa was with Morgan Lewis & Bockius LLP, where her practice focused on commercial disputes and patent litigation. Prior to that, Teresa was with the international law firm Mayer Brown LLP, where she represented clients in commercial disputes both in US courts and in international arbitrations. Teresa is a former Co-Chair of the Houston Bar Association's Gender Fairness Committee, and she currently serves as her business' representative on GE's Diversity & Inclusion Committee. She also currently serves as one of the ICC YAF Regional Coordinators for North America, and is a 2017 Leadership Council on Legal Diversity Fellow. She is active in various community organizations, including the Houston Livestock Show & Rodeo.



Carlos M. Hernandez is executive vice president, chief legal officer and secretary for Fluor Corporation (NYSE: FLR). He joined Fluor in 2007. Prior to joining Fluor, Mr. Hernandez served as general counsel and secretary for ArcelorMittal Americas of the ArcelorMittal (NYSE: MT) steel group. Mr. Hernandez also served as general counsel and secretary of International Steel Group (NYSE: ISG), Inc. prior to its acquisition by Mittal Steel Company. Before joining ISG, Mr. Hernandez served as executive vice president, general counsel and secretary for a NYSE-listed consumable products distribution and retail company in Dallas. Early in his career, Mr. Hernandez worked as a civil engineer with an international consulting engineering firm. Mr. Hernandez holds a bachelor of science in civil engineering from Purdue University and a juris doctorate from the University of Miami School of Law. Mr. Hernandez is a past chair of the Advisory Council of the Lyles School of Civil Engineering of Purdue University, is Vice-Chair of the Board of Directors of the International Institute for Conflict Prevention and Resolution and serves on the Board of Advisors of the Southern Methodist University Corporate Counsel Symposium, the Board of the Southern Methodist University Tate Lecture Series, the Advisory Board of the Center for BrainHealth, The University of Texas at Dallas, and the United Way of Metropolitan Dallas Resource Development Committee.



Joan Stearns Johnsen is a Legal Skills Professor at the University of Florida Levin College of Law and a commercial arbitrator and mediator. Joan has several decades of experience resolving commercial disputes as a mediator and arbitrator. She sits on the panels of the American Arbitration Association, CPR, FINRA, the NFA, the Health Lawyers Association, and Resolute Systems. Joan is certified by the International Mediation Institute and is a Fellow of the Chartered Institute of Arbitrators. At the University of Florida, Joan teaches international arbitration, negotiation, and mediation related skills. Joan is a frequent speaker and trainer having presented on various topics for PLI, the NASD/FINRA, the American Law Institute, and for The Bar of the City of New York. Joan has presented

trainings for corporations and law firms including UBS, Morgan Stanley Smith Barney, Cushman Wakefield, and Akerman and has published numerous articles on best practices in mediation and arbitration. Joan is also on the faculty of the ABA Section of Dispute Resolution's Advanced Mediation Institute and Advanced Arbitration Institute. Joan began her career as an Enforcement Attorney for the Commodity Futures Trading Commission in Washington, DC. Joan has also been In-house at Smith Barney and the Commodity Exchange, Inc. in New York. Joan is active in the Dispute Resolution Community. She is presently Budget Officer of the ABA's Section of Dispute Resolution and a member of its Executive Committee. Joan also is co-chair of the Mediation Subcommittee of the ADR Committee of the ABA's Section of Litigation. Joan is also a member of The Florida Bar International Law Section.



Luis M. Martinez is Vice President of the International Centre for Dispute Resolution, (ICDR) the international division of the American Arbitration Association, (AAA) and is an Honorary President of the Inter-American Commercial Arbitration Commission, (IACAC). Luis M. Martinez as the Vice President of the International Centre for Dispute Resolution located in New York serves as an integral part of the ICDR's international strategy team and is responsible for international arbitration and mediation business development for the East Coast of the United States (from Maine to Florida, including Atlanta, Miami and New York City) Central and South America, the Caribbean, Spain and Portugal. Mr. Martinez in his capacity as President of the IACAC was responsible for the oversight of its network of arbitral centers throughout the Americas and as the only institution that is expressly included in the Inter-American Convention on International Commercial Arbitration conducted numerous arbitration and mediation initiatives aimed at developing the region's ADR culture. Mr. Martinez joined the AAA in 1996 as the first attorney hired to staff the newly created ICDR and later served as the ICDR's first director. Mr. Martinez worked as the Vice President responsible for the ICDR's international administrative services and prior to that held the position of a staff attorney for the AAA's Office of the General Counsel before assuming his current position. Mr. Martinez received a Bachelor's Degree from Georgian Court College and a Juris Doctor degree from St. John's University School of Law. He has had numerous articles published on international arbitration and has appeared as a speaker in programs throughout the world. Mr. Martinez is admitted to practice law in the State of New York and the State of New Jersey. He is a dual citizen of Spain and the United States and is fluent in Spanish and proficient in Portuguese.



Laura Stipanowich is a Senior Counsel for Bechtel Oil, Gas and Chemicals, Inc. in Houston as of January, 2017. Prior to joining Bechtel, Laura practiced with the law firms of Smith, Currie & Hancock LLP in Washington, D.C., and Sutherland, Asbill & Brennan LLP in Atlanta, where she specialized in the areas of construction transactions, alternative dispute resolution, and litigation. In addition to her practice, Laura has written numerous articles and presented seminars throughout the United States on issues impacting the construction industry, with a particular focus on alternative dispute resolution. Laura is also a certified mediator and was recently admitted to the AAA panel of Arbitrators. Prior to attending law school at the University of Virginia, Laura obtained her bachelor's degree from the University of Kentucky and remains a stalwart supporter of the Wildcats.

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