

SEPTEMBER 2023
NEWS AND EVENTS

ciarb.
North America
Branch



"I love September, especially when we're in it."
– Willie Stargell, Pittsburgh Pirates baseball great.

Hello NAB Members, can you believe there are only four months left in 2023! Hope everybody's Summer is doing well. I can't get ahold of anyone because people take vacations when kids start going back to school.

We welcome to our newsletter team **Mr. Lonnie Schooler** who will school us on new arbitration cases each month. The Board is grateful and thank you **Lonnie** for your contribution to the NAB! We congratulate in this issue six new

Featured Members and a host of upcoming events and featured programs. Onward team!

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

Arbitration Decision of Interest

The Intersection of Confidentiality and Confirmation
by Lionel M. Schooler FCI Arb
Jackson Walker LLP*



A recent decision by the United States Court of Appeals for the District of Columbia Circuit focuses upon the foreseeable intersection of arbitration award confidentiality requirements and arbitration confirmation requirements when such an award is submitted to a court for confirmation, and alerts arbitration practitioners to the importance of vigilance in enforcing such requirements.

Arbitration practitioners typically include boilerplate clauses in agreements requiring arbitration of disputes, including a clause emphasizing the importance of maintaining the confidentiality of any resulting arbitration proceedings. Such a clause was the focal point of *Stafford v. IBM*, ____ F.4th ____, 2023 WL 5183546 (D.C. Cir. Aug. 14, 2023). The *Stafford* decision highlights the importance of enforcing confidentiality clauses at the confirmation stage.

The claimant in this case was a former employee of IBM who had signed a separation agreement. That agreement contained a clause requiring arbitration of any claims arising from the termination of her employment. The agreement contained a "privacy and confidentiality" clause which provided in pertinent part as follows:

To protect the confidentiality of proprietary information, trade secrets or other sensitive information, the parties shall maintain the confidential nature of the arbitration proceeding and the award. That clause also contained an exception to confidentiality for "court application for a preliminary remedy, or a judicial challenge to an award or its enforcement."

Following separation, the claimant asserted a claim for age discrimination which went to arbitration. The claimant prevailed. She then filed a petition under the Federal Arbitration Act to confirm the award. She attached the award to the petition under seal, but simultaneously requested that it be unsealed. Soon after this petition was filed, IBM paid the award in full. The district court then confirmed the award and also granted the claimant's motion to unseal, over IBM's objection.

IBM appealed. It contended that the petition to confirm had become moot once it paid the award in full; and that the district court had accordingly erred in unsealing the "confidential" award. The *Stafford* Court agreed with IBM, vacated confirmation of the award, reversed the grant of the motion to unseal the award, and remanded the case to the district court with instructions to dismiss the petition as moot.

The Court first ruled that the claimant's petition to confirm the award had become moot when IBM paid the award in full, as this payment eliminated any "concrete" interest in enforcement required by Article III. The Court went on to hold that any presumption of public access to judicial documents is outweighed by the importance of confidentiality under the FAA and the impropriety of Stafford's effort to evade the confidentiality provision in question.

The decision in *Stafford* should remind practitioners to focus carefully upon confidentiality language when drafting and thereafter enforcing arbitration agreements.

*Mr. Schooler currently serves as Chair of the Texas Chapter of the North America Branch of the Chartered Institute of Arbitrators.

New Email Address? If your email address changes, please remember to advise

memberservices@ciarb.org and communications@ciarbnab.com

Upcoming Events & Featured Programs



The September "Ask the Arbitrator" event will be **Wednesday, September 15** at 1:00 p.m. EDT/10:00 a.m. PDT: "**Unravel the Phenomenon of Career Success with a Trailblazer**" and will feature International Arbitrator, **Mark Baker FCIArb**, and will be moderated by **Cariana M. Jones**, a Juris Doctor (J.D.) candidate at the University of Pittsburgh School of Law. Ms. Jones will interview Mr. Baker to gain insights into his professional journey. **This program is free.** Register here for the event: https://us06web.zoom.us/webinar/register/WN_bd1VNwcRRhC60YN0NW0mpw

NAB is pleased to co-sponsor "**Looking Through a Prism: Perspectives on Contemporary Issues in Energy Disputes**" which takes place on **September 12** from 5:00–8:30 pm EDT at Squire Patton Boggs in Washington, D.C. A distinguished panel will discuss contemporary issues in energy disputes featuring arbitration and legal industry professionals. Welcome remarks will be provided by **Charles "Chip" Rosenberg**. The discussion will be followed by a networking cocktail reception. The full agenda and registration for this event are here: [Perspectives on Contemporary Issues in Energy Disputes](#)

A virtual **Accelerated Route to Fellowship** course (plus exam) will be presented and organized jointly by the North America, New York and Canada Branches and held via

Zoom over four half-day sessions on **September 14 and 15 and September 28 and 29, 2023**. This course will feature five interactive breakout workshops PLUS three plenary sessions explore the challenges of organizing and managing a complex international arbitration and the drafting of an enforceable reasoned international award. More details on this course and a registration link is available here: <https://www.ciarnab.com/product/september2023-virtual-arf/>

Additional **Accelerated Route to Fellowship** courses will be held in Mexico City on Friday and Saturday, **October 13 and 14** and in Miami on Thursday and Friday, **November 9 and 10**. The Miami program is being held before the start of the Miami International Arbitration Society's Arbitration Week on that Sunday and the ICC's Miami trainings and conference starting on Saturday, **November 11**, and running through Tuesday, **November 14**. Any questions about the course should be directed to **Jim Reiman FCI Arb**, Program Director (jreiman@ReimanADR.com). More details on this course will be coming soon.

NAB is proud to serve as a co-sponsor in four webinars presented by Nivalion and Wöss & Partners starting on **September 21** with "**Fight the Good Fight: ESG Pressure Points from the Trenches to Policy and Decision-Makers**." The four webinars are limited to 75 minutes each from **September to December 2023**, and will present current trends and considerations of this emerging area of law and practice, including the associated risks. NAB Members **Dr. Herfried Wöss** and **Kevin O'Gorman** are part of the distinguished panel of speakers. Details and the full webinar program are available here: [Climate Change in Arbitration and Litigation](#)

The NAB is collaborating with the ABA Section of Dispute Resolution in two upcoming events.

[2023 Ombuds Day: Diverse in Role, United in Service](#) - **October 12** | 1 PM Eastern (Virtual Webinar) – This year's complimentary signature event, hosted by the Ombuds Day Subcommittee, features "[A Conversation with Thomas Zgambo](#)". Dr. Zgambo, the Ombudsman for the International Monetary Fund, has served in the field for nearly 30 years with organizations including Polaroid, Coca-Cola, and the World Bank. The program is complimentary to all and registration can be found [here](#).

[2023 Advanced Mediation & Advocacy Skills Institute](#) - **October 18-19** | Two-Day Virtual Program: **Mediating at the Cutting Edge: Advanced Tools and Strategies for Today and Tomorrow**. Featuring plenary speakers Hon. Bridget McCormack (Ret.) and Hon. Bruce E. Meyerson (Ret.), this Institute features the opportunity to learn from leading mediation authorities in the field. Plenary sessions are followed by small group break-out discussions allowing participants to interact in-depth with the faculty and each other. Register [here](#) using discount code **CO2023**. When registering, select the cooperating entity (CIARB) from the drop down menu to receive the discount.

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



Great news! **Eugenie Rogers** has agreed to Chair NAB's Young Members Group. She is

already at work on the job. **Welcome Eugenie!**

Leading international arbitration practitioners **Amb. (r.) David Huebner C.Arb FCIArb**, **Katherine Smith Dedrick FCIArb**, **Peter K. Rosen FCIArb**, and **Peter Neumann FCIArb** were panelists at the **August 25** panel discussion: **"Never would I ever...Overcoming Resistance to Innovation in International Arbitration."** The discussion was moderated by **David Sharp FCIArb**. A recording is now available on the [NAB Website](#).

Nelson Edward Timken FCIArb has been appointed as an affiliate member of the New York City Bar Association Arbitration Committee for 2023–2024. **Congratulations Nelson!**

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, FCIArb** at Ajb@ajborrassolaw.com.

You can now invite non-members who might be interested to sign up for the newsletter at [CIArb North America Branch Newsletter](#).

FEATURED MEMBERS

This month's Featured Members are: **Tom Alan Cunningham, R. Carson Fisk, Colm MacKernan, Steven G. Shapiro, Peter F. Vaira, and June Yeum**. Learn about them below and on the homepage of NAB's website [NAB Website](#).



Tom Alan Cunningham (Houston, TX)

Tom Alan Cunningham FCIArb has practiced commercial litigation and arbitration for almost 50 years. Originally a partner in an international law firm, Tom started his own firm in 1998 to focus on the trial and arbitration of commercial cases. He is a Fellow of the American College of Trial Lawyers, the American Board of Trial Advocates, and the American Law Institute. He is listed on the CPR Panel of Distinguished Neutrals and various panels of the

American Arbitration Association. Tom has been a CIArb Fellow for many years. He has served as a member of the Board of the North America Branch and Chair of the Texas Chapter. In 2017, Tom produced for the North America Branch a global energy arbitration conference in Houston and in 2023, he produced the first annual NAB retreat in Santa Fe, New Mexico.



R. Carson Fisk (Austin, TX)

R. Carson Fisk FCIArb is a construction attorney based in Austin, Texas who devotes a significant portion of his practice to serving as an arbitrator in construction disputes. He is board certified in Construction Law by the Texas Board of Legal Specialization and has two decades of experience in which he has focused on representing construction industry participants in contentious and non-contentious matters. He

has served as an arbitrator in cases concerning matters such as payment issues, lien and bond claims, delays and disruption, extra work claims, differing site conditions, termination claims, and design/construction defects involving projects in the building, civil infrastructure, industrial, and governmental/institutional sectors. He is a member of the American Arbitration Association's National Panel of Construction Arbitrators, the CPR Dispute Resolution's Construction ADR Panel, and the British Virgin Islands International Arbitration Centre's Panel of Arbitrators.



Colm MacKernan (Washington D.C., London, Dublin)

Colm MacKernan FCIArb is a U.S. and Irish educated lawyer admitted in New York, England & Wales and on the Irish roll of solicitors. He has lived and worked in the U.S., Japan and Europe as a lawyer in arbitration, intellectual property, technology and antitrust/competition litigation and arbitration, in private practice and as General Counsel to the major technology companies ARM and Psion. He has been lead counsel in high-value technology arbitrations in Europe, North America and Asia, including one appealed to and upheld by the Japanese Supreme Court. He has written several legal books; one, a practical guide to technology legal and commercial jargon, is republished at www.ipglossary.com. He specializes in complex international disputes involving technology. He is a graduate of Georgetown Law, a science graduate of Trinity College Dublin and fluent in French and English.



Steven G. Shapiro (Washington, D.C.)

Steven Shapiro FCIArb, an arbitrator and mediator, hears matters in complex hospitality disputes and construction disputes. A Fellow of the CIArb, Steven began his career in private legal practice, moved to construction engineering and commercial general contracting, then combined his experience in academics at the American University Washington College of Law. He launched and directs the sole hospitality law program in the U.S., plus teaches, writes, and speaks on topics in construction, engineering, and design. He has been recognized for bringing the realities and economics of commercial practice into the classroom. Steven is the co-editor of two recent treatises and accompanying conferences in international arbitration and comparative law: *Current Topics in International Hospitality & Construction Arbitration* (Brill, to be published in 2023) and *The Impact of COVID on International Arbitration* (Brill 2022, Swiss National Science Foundation award-winner).



Peter F. Vaira (Philadelphia, PA)

Peter F. Vaira FCIArb, Special Counsel for Weir Greenblatt Pierce LLP, serves as special master in complex civil cases in the state and federal courts of Pennsylvania. He is a certified national and international arbitrator for cases involving discovery disputes, attorney conduct issues, and settlement agreements. He also acts as counsel to firms involved in criminal investigations. He is a former United States Attorney of the Eastern District of Pennsylvania. He has served as Independent Hearing Officer of the Laborers' International Union. He was executive director of the Mayor's Commission to Investigate the city's responsibility in the collapse of a building that killed seven persons and injured ten others. He is a member of the American College of Trial Lawyers, and The American Law Institute.

June Yeum (New York, NY)

June Yeum FCIArb is a Partner with Pillsbury Winthrop and



serves on the adjunct faculty at the University of Pennsylvania Law School, teaching international arbitration. As arbitrator, she has sat in ICC, AAA, SIAC, WIPO, KCAB, UNCITRAL and ICDR arbitrations on data theft, trademark, licensing, energy, service and infrastructure cases, governed by the laws of Singapore, Canada, Korea, CISG as well as various US states. As counsel, she has practiced cross-border business disputes since 1999, primarily in New York but also in Singapore and Seoul, handling life sciences, construction, joint venture and supply chain disputes. She has been noted for her “fine record in infrastructure and construction disputes” (Legal500 Asia Pacific 2019), “excellent performance and successful results” (Chambers Global 2019), “exceptional advocate” (Chambers Global 2015), and “profound experience and knowledge in international arbitration” (Chambers Global 2021). She is licensed in New York and Singapore International Commercial Court.

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 October 2023 newsletter be submitted by September 18, 2023.

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 FCI Arb. 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

Visit www.ciarbnab.com

Connect with us



Chartered Institute of Arbitrators, North America Branch | c/o Legal Web Design 2373 Central
Park Blvd., Suite 100, Denver, CO 80238

[Unsubscribe newsletter@ciarbnab.com](mailto:unsubscribe@ciarbnab.com)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by newsletter@ciarbnab.com powered by



Try email marketing for free today!