AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW

International Legal Exchange (ILEX) Briefing Trip and Symposium on International Dispute Resolution

ORDRE DES AVOCATS DE PARIS

Convocation

Friday, 28 January 2005

Maison du Barreau de Paris

Contents

Sponsored By:
Debevoise & Plimpton LLP

Program

14h30	**Welcome and Opening Remarks**: The Honorable Jean-Marie Burguburu (Battonier de l'Ordre des Avocats du Barreau de Paris); Kenneth B. Reisenfeld (Chair, ABA Section of International Law; Haynes and Boone LLP, Washington, DC)
	The Facts of the Case: Barton Legum (Debevoise & Plimpton LLP, Paris)
	English Litigation Panel: **Judge**: Lord Michael Mustill (Former Law Lord, London); Counsel: Lord Daniel Brennan QC (Matrix Chambers, London); **Counsel**: Robert Akenhead QC (Atkin Chambers, London)
	French Litigation Panel: **Judge**: Alain Lacabarats (Conseiller de la Deuxième Chambre Civile, Cour de Cassation, Paris); **Counsel**: Jean-François Prat (Bredin Prat, Paris); **Counsel**: Jean-Michel Darrois (Darrois Villey Maillot Brochier, Paris); **Moderator, French Panel**: Alain de Foucaud (LeBoeuf Lamb Greene & MacRae, Paris)
	International Arbitration Panel: **Arbitrator**: Hon. Andrew Rogers QC (Former Chief Judge, Supreme Court of New South Wales, Australia); **Counsel**: John M. Townsend (Hughes Hubbard & Reed LLP, Washington); **Counsel**: Bruno Leurent (Salans, Paris)
16h20	**Coffee Break**
	U.S. Litigation Panel: **Judge**: Justice Stephen G. Breyer (U.S. Supreme Court, Washington, DC); **Counsel**: Donald Francis Donovan (Debevoise & Plimpton LLP, New York, NY); **Counsel**: Glenn Hendrix (Arnall Golden Gregory LLP, Atlanta, GA)
	Commentary by Panelists
	Questions and Commentary by Audience
	Convocation Closing and Wrap-Up
18h30-20h30	**Convocation Reception (3ème Etage – Salon de Harlay)**

Convocation Chair and Moderator: Barton Legum (Debevoise & Plimpton LLP, Paris)

Moderator, French Panel: Alain de Foucaud (LeBoeuf Lamb Greene & MacRae, Paris)

Rapporteur: Michael M. Ostrove (Debevoise & Plimpton LLP, Paris)

Hypothetical Facts

Background:

In 2000, Carbo-Low, Inc., a Delaware corporation with its principal place of business in New York, entered into an agreement (the "Agreement") with Beste Schokolade, a Swiss company. The Agreement called for Beste Schokolade to supply of a range of low carbohydrate, "genuine" Swiss chocolate meeting detailed specifications. The Agreement repeatedly referred to the product as "genuine Swiss chocolate."

At the time of the contract, low-sugar/low-carbohydrate diets such as those developed by Atkins and Montignac were gaining popularity in the United States. Carbo-Low marketers had taken note of high-priced, low carbohydrate chocolates sold in specialty food shops in New York City and Los Angeles. Carbo-Low was looking to distribute similar products all over the country at lower prices.

Ultimately, Carbo-Low was unable to negotiate the low-end supply prices it had hoped for, given the large quantities it agreed to purchase. Nevertheless, believing in the American hunger for low-carb sweets, Carbo-Low proceeded with the deal even though it meant putting a more expensive product on the market than Carbo-Low's business plan had originally envisioned.

The Agreement contained a dispute resolution clause, whereby the parties agreed that:

> Any dispute arising out of the interpretation or enforcement of this Agreement shall be finally settled by arbitration. The arbitration hearing shall be conducted in accordance with the ICC Arbitration Rules in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. The seat of the arbitration shall be London, U.K., and it shall be conducted in the English language.

In 2001, Beste Schokolade began supplying the chocolate to Carbo-Low, which marketed the product widely throughout the United States under its own brand as Carbo-Low Genuine Swiss Chocolate. The product was a failure for Carbo-Low. Market surveys revealed that consumers consistently thought the product did not taste good and did not taste like real chocolate. Carbo-Low was forced to cut its wholesale prices dramatically in an effort to sell off its inventory and suffered huge losses.

Upon investigating the causes of the market failure of Carbo-Low Genuine Swiss Chocolate, Carbo-Low discovered that Beste Schokolade did not, in fact, manufacture chocolate at all – low-carb or otherwise. Rather, Beste Schokolade contracted to purchase all of its own supply of chocolate from the renowned French chocolatier, Chocolat Pur.

As Carbo-Low looked to the expiry of the initial contract period, it began to consider alternative suppliers in the hope of finding a better product at a lower supply price. Carbo-Low researched the low-carb chocolates in small distribution on the U.S. market and manufactured by many of the well-known European chocolate houses (not including Chocolat Pur). Its investigation led Carbo-Low to suspect the existence of a European chocolate cartel that conspired to keep prices high for its chocolates, including its low-carb chocolates, so as to sell to a particular set of consumers in the United States and abroad.

In December 2003, Carbo-Low filed a three-count Complaint against Beste Schokolade, Chocolat Pur, and several other European chocolate manufacturers in a federal court in New York City alleging (1) breach of defendant Beste Schokolade's contractual obligation to supply Carbo-Low with "genuine" Swiss chocolate; (2) breach of defendant Beste Schokolade's obligations to meet the quality specifications of the contract; and (3) a violation of U.S. competition law – specifically, Section 1 of the Sherman Act, 15 U.S.C. § 1 – in that through price-fixing activities that improperly raised the price of European-manufactured, low-carbohydrate chocolate, defendants "engaged in a horizontal contract, combination or conspiracy in unreasonable restraint of trade."

Carbo-Low alleged $40 million in total damages.

In February 2004, Beste Schokolade moved to dismiss the complaint on the grounds of lack of personal jurisdiction and for failure to state a claim on which relief could be granted. It also moved in the alternative to stay and compel arbitration. Carbo-Low opposed the arbitration motion on the grounds that its Sherman Act price-fixing claims were beyond the scope of the parties' arbitration agreement.

In February 2004, Chocolat Pur moved to dismiss the complaint for lack of personal jurisdiction, failure to state a claim on which relief could be granted, and on the basis of Article 15 of the French Civil Code, which provides a privilege of jurisdiction for any French entity to be sued exclusively in France.

In March 2004, Beste Schokolade commenced arbitration proceedings, filing a demand for arbitration with the ICC and requesting a declaratory judgment of no liability. Carbo-Low opposed jurisdiction of the arbitral tribunal for the same reasons asserted in the New York district court, but reserving that position, appointed its arbitrator and agreed to a schedule to brief the jurisdictional arguments.

In June 2004, the New York district court denied the motions to dismiss or for a stay. With regard to Beste Schokolade's motion, the court held that "it would be improper to compel arbitration because Carbo-Low's Sherman Act claim in no way depends upon interpretation or enforcement of any provision of the Agreement."

Beste Schokolade appealed to the U.S. Court of Appeals for the Second Circuit.

In addition, Beste Schokolade named Chocolat Pur as a third-party defendant in the district court proceedings, claiming its supplier to be liable for all of Carbo-Low's claims regarding the quality of the chocolate. The quality specifications of the exclusive supply contract between Beste Schokolade and Chocolat Pur were identical to those in the Agreement.

Meanwhile, immediately following the New York district court ruling, Carbo-Low wrote to the ICC tribunal contending that the district court decision was *res judicata* and compelled a finding that the ICC tribunal had no jurisdiction over the dispute between the parties. The tribunal requested briefing and set hearings.

Carbo-Low also requested a permanent injunction from the district court against any further proceedings before the ICC tribunal.

PROCEEDINGS THAT WILL BE HEARD TODAY:

1) ENGLISH COURT PROCEEDINGS

Beste Schokolade has applied to the High Court of Justice, Queen's Bench Division, Commercial Court in London for an anti-suit injunction, to prevent Carbo-Low from continuing with its own motion for an injunction against the continuation of the arbitration until after the ICC tribunal has ruled on the issue of *res judicata* and its own jurisdiction. Should the arbitral tribunal find jurisdiction, Beste Schokolade has requested the High Court to enjoin Carbo-Low from proceeding any further in the district court.

This is the first application we will hear today.

2) FRENCH COURT PROCEEDINGS

The U.S. proceedings have been ongoing for over a year. Fearing that the U.S. courts will not recognize that it has no jurisdictional ties to the United States and may hold it liable for any contract breach committed by Beste Schokolade, Chocolat Pur has filed an action against Beste Schokolade with the Tribunal de commerce de Paris, consistent with the forum selection clause in the contract between these two parties which provided that "any dispute, controversy or claim arising out of, relating to, or in connection with, this contract, or the breach, termination or validity thereof will be referred to the Tribunal de commerce de Paris."

Chocolat Pur seeks a judgment (1) declaring that the French courts are the only proper jurisdiction for the resolution of disputes between Chocolat Pur and Beste Schokolade, including any disputes about the quality of the chocolate supplied by Chocolate Pur to Beste Schokolade; (2) declaring that Chocolat Pur fulfilled all its obligations under the supply agreement; and (3) requesting that money damages be awarded against Beste Schokolade in the amount of three unpaid invoices.

In support of this action, Chocolat Pur seeks provisional measures barring Beste Schokolade from pursuing its claims against Chocolat Pur in the U.S. litigation.

Argument on this application will be the second argument we hear today.

3) ICC ARBITRATION PROCEEDINGS

The ICC tribunal is about to conclude hearings regarding whether the district court's decision on jurisdiction constituted *res judicata* and whether the tribunal has jurisdiction over the dispute between Carbo-Low and Beste Schokolade. The tribunal has been briefed on the decision of the High Court.

We will next hear oral closing argument in these hearings.

4) US APPELLATE COURT PROCEEDINGS

Several months have passed, and the district court has granted Carbo-Low's application for a permanent injunction. Beste Schokolade's appeal from that decision has been consolidated with its appeal from the district court 's decision that the parties had not agreed to arbitrate the Sherman Act claims in addition to the contract breach claims raised by Carbo-Low.

The last argument we will hear today will be before the Second Circuit Court of Appeals.

The value and weight of the decisions made by the High Court and the ICC tribunal will be argued by the parties and considered by the court.

Cas Pratique

Faits :

Carbo-Low Inc., un société immatriculée au Delaware dont le siège principal est situé à New York, a conclu en 2000 une contrat avec la société suisse Beste Schokolade (le « Contrat »). Le Contrat avait pour objet la fourniture par Beste Schokolade, parmi une série de produits faibles en glucide, d'un chocolat suisse « original » répondant à certains critères spécifiques. Le Contrat fait référence au produit comme un « chocolat suisse original ».

A la date de signature du Contrat, les régimes faibles en sucre et en glucide tels que ceux développés par Atkins et Montignac connaissaient une forte popularité aux Etats-Unis. La vente de tels chocolats à des prix élevés dans des magasins spécialisés à New York et Los Angeles avait d'ailleurs attiré l'attention des services marketing de Carbo-Low. Carbo-Low souhaitait donc distribuer des produits similaires à prix plus faibles sur l'ensemble du pays.

Carbo-Low n'a finalement pas été en mesure d'obtenir les faibles prix qu'elle espérait compte tenu de l'importante quantité achetée. Néanmoins, sûre de la demande des américains pour les sucreries à faible dose en glucide, Carbo-Low décida de finaliser l'opération même si cela impliquait de mettre sur le marché des produits plus chers que ce qui était initialement prévu dans le business plan de Carbo-Low.

Le Contrat contenait une clause compromissoire par laquelle les parties étaient convenues que :

> « Tous différends émanant de l'interprétation ou de l'exécution du présent Contrat seront tranchés définitivement par arbitrage. L'audience d'arbitrage sera soumise au Règlement d'Arbitrage de la Chambre de Commerce Internationale en vigueur au moment de l'arbitrage, sous réserves d'éventuelles modifications contenues ci après ou convenues entre les parties. Le tribunal arbitral siégera à Londres (Royaume Uni) et la langue de la procédure d'arbitrage sera l'anglais. »

En 2001, Beste Schokolade débuta la fourniture de chocolat à Carbo-Low qui commercialisa le produit sur l'ensemble des Etats-Unis sous sa propre marque : Carbo-Low Chocolat Suisse Original. Le produit se révéla être un échec pour Carbo-Low. Les enquêtes marketing ont révélé que l'ensemble des consommateurs avait estimé que le produit n'était pas bon et n'avait pas le goût de chocolat. Carbo-Low fut dans l'obligation de diminuer significativement ses prix de gros afin de liquider les stocks et connut de lourdes pertes.

En examinant les causes de l'échec de Carbo-Low Chocolat Suisse Original, Carbo-Low s'aperçut qu'en réalité Beste Schokolade ne fabriquait aucun chocolat, faible en glucide ou autre. Au contraire, Beste Schokolade avait lui-même conclu un contrat de fourniture de chocolat avec le maître chocolatier français, Chocolat Pur.

A l'approche du premier terme du contrat, Carbo-Low décida de chercher d'autre fournisseur dans l'espoir de trouver un meilleur produit à un prix inférieur. La société rechercha les chocolats à faible dose en glucide fabriqués par nombreux des maîtres chocolatiers Européens (sauf Chocolat Pur) et de faible diffusion aux Etats-Unis. Cette enquête conduisit Carbo-Low à soupçonner l'existence d'un cartel de chocolatier Européens visant à vendre leur chocolats (y compris ceux à faible dose en glucide) à des prix élevés et à un panel spécifique de consommateurs aux Etats-Unis et à l'étranger.

En décembre 2003, Carbo-Low déposa, à l'encontre de Beste Schokolade, de Chocolat Pur et de nombreux autres chocolatiers européens, une assignation (« *three count Complaint* ») auprès d'un tribunal fédéral de première instance de la ville de New York sur le fondement du (1) manquement de Beste Schokolade à son obligation contractuelle de fourniture de chocolat suisse « original », (2) manquement de Beste Schokolade à satisfaire aux critères de qualité tels que définis dans le contrat et (3) violation des règles de concurrence américaines - en particulier Section 1 du *Sherman Act*, 15 U.S.C. para.1 – en ce que, par le biais de pratiques de fixation des prix qui ont abusivement augmenté les prix des chocolats à faible dose en glucide de fabrication européenne, les défendeurs « ont conclu un accord horizontal visant à l'entente et au rapprochement dans le but de restreindre abusivement les échanges commerciaux».

Le montant des demandes de Carbo-Low s'élevait à 40 millions de dollars.

En février 2004, Beste Schokolade déposa une requête (« *motion* ») afin de faire échec à la demande au motif d'absence de compétence juridictionnelle et d'incapacité à établir une demande pouvant faire l'objet d'une réparation. Elle déposa également une requête afin d'obtenir une procédure d'arbitrage. Carbo-Low s'opposa à la requête aux fins d'arbitrage au motif que la plainte concernant la fixation des prix (*Sherman Act*) dépassait l'accord des parties sur la procédure arbitrale.

En février 2004, Chocolat Pur déposa une requête afin de faire échec à la demande au motif d'absence de compétence juridictionnelle, d'incapacité à établir une demande pouvant faire l'objet d'une réparation et sur le fondement de l'article 15 du code civil qui prévoit un privilège de juridiction pour toute entité française afin d'être exclusivement poursuivi devant un tribunal de France.

En mars 2004, Beste Schokolade initia la procédure d'arbitrage en adressant sa demande à la CCI et en requérant un jugement déclaratif de non responsabilité. Carbo-Low s'opposa à la compétence du tribunal arbitral pour les mêmes raisons que celles évoquées devant le tribunal fédéral New-Yorkais, mais tout en réservant sa position, désigna son arbitre et consentit à établir un calendrier pour les débats sur la compétence juridictionnelle.

En juin 2004, le tribunal fédéral New-Yorkais rejeta les requêtes décrites ci-dessus. Concernant la requête de Beste Schokolade, le tribunal déclara « qu'il serait illégitime d'imposer un arbitrage dans la mesure où la requête de Carbo-Low relative au *Sherman Act* ne dépend en aucun cas de l'interprétation ou de l'exécution des stipulations du Contrat ».

Beste Schokolade interjeta appel auprès de la *Court of Appeals for the Second Circuit*.

En complément, elle désigna Chocolat Pur en qualité de défendeur tiers à la procédure près le tribunal fédéral, arguant de la responsabilité de son fournisseur pour toutes les demandes de Carbo-Low concernant la qualité du chocolat. Les critères de qualité contenus dans le contrat de fourniture exclusive entre Beste Schokolade et Chocolat Pur étaient identiques à ceux contenus dans le Contrat.

Dans le même temps, immédiatement après la décision du tribunal fédéral New-Yorkais, Carbo-Low signifia au tribunal arbitral de la CCI que la décision rendue avait force de chose jugée (« *res judicata* ») et démontrait que le tribunal arbitral de la CCI n'avait pas compétence en la matière. Le tribunal demanda des mémoires et mis en place des audience.

Carbo-Low demanda également une injonction permanente du tribunal fédéral dans tous les débats à venir devant le tribunal arbitral de la CCI.

DEBATS QUI SERONT ENTENDUS AUJOURD'HUI :

1) **DEBATS DEVANT LES TRIBUNAUX ANGLAIS**

Beste Schokolade formula une demande d'injonction *anti suit*, auprès de la Haute Cour de Justice (*High Court of Justice*, *Queen's Bench Division)*, chambre commerciale, à Londres, afin d'empêcher Carbo-Low de poursuivre sa propre demande d'injonction contre la poursuite de la procédure arbitrale avant que le tribunal arbitral de la CCI ne se soit prononcé sur le sujet de la *res judicata* ainsi que sur sa compétence. Dans l'éventualité où le tribunal arbitral se déclarerait compétent, Beste Schokolade a demandé à la Haute Cour d'enjoindre Carbo-Low de renoncer à la procédure près le tribunal fédéral.

Il s'agit de la première demande que nous allons entendre aujourd'hui.

2) **DEBATS DEVANT LES TRIBUNAUX FRANCAIS**

Les procédures américaines sont en cours depuis plus d'un an. Chocolat Pur, craignant que les tribunaux américains ne reconnaissent pas l'absence de lien juridictionnel entre elle et les Etats-Unis et ne la déclarent responsable contractuellement pour tous manquements de Beste Schokolade, poursuivit cette dernière devant le tribunal de commerce de Paris. Cette action a été introduite conformément à la clause attributive de juridiction contenue dans le contrat signé entre les parties qui prévoyait que : « tout différends ou litige émanant du présent contrat ou en relation avec le présent contrat, ou tous différends relatifs à l'exécution, la résiliation ou la validité du présent contrat sera soumis au tribunal de commerce de Paris ».

Chocolat Pur cherche à obtenir un jugement (1) déclarant que les tribunaux français sont les seuls tribunaux compétents pour tous différends opposant Chocolat Pur et Beste Schokolade, y compris les différends relatifs à la qualité du chocolat fourni par Chocolat Pur à Beste Schokolade, (2) déclarant que Chocolat Pur a satisfait à ses obligations telles que décrites dans le contrat de fourniture et (3) requérant le paiement par Beste Schokolade de dommages et intérêts équivalents au montant de trois factures impayées.

Au soutien de son action, Chocolat Pur entend obtenir des mesures conservatoires contre Beste Schokolade afin d'empêcher que les procédures américaines initiées à son encontre ne se poursuivent.

Les arguments relatifs à cette demande feront l'objet de la deuxième intervention.

3) **DEBATS DEVANT LE TRIBUNAL ARBITRAL DE LA CCI**

Le tribunal arbitral de la CCI s'apprête à finaliser les débats sur les points suivants : la décision du tribunal fédéral relatif aux questions de compétence peut-elle être considérée comme ayant force de chose jugée (« *res judicata* ») et le tribunal arbitral a-t-il compétence dans le litige opposant Carbo-Low et Beste Schokolade. Le tribunal a eu connaissance de la décision de la Haute Cour.

Nous entendrons par la suite les arguments oraux de clôture des débats ci-dessus évoqués.

4) **DEBATS DEVANT LA COUR D'APPEL AMERICAINE**

Plusieurs mois se sont écoulés et le tribunal fédéral a consenti à Carbo-Low sa demande d'injonction permanente. L'appel de cette décision interjeté par Beste Schokolade fut joint à l'appel de la décision du tribunal fédéral concernant le désaccord des parties sur la compétence du tribunal arbitral pour traiter de la demande liée au *Sherman Act*, qui s'ajoutait à la demande sur le fondement du manquement contractuel soulevé par Carbo-Low.

Le dernier argumentaire d'aujourd'hui sera présenté devant la *Second Circuit Court of Appeals*.

La pertinence et le poids des décisions rendues par la Haute Cour et le tribunal arbitral de la CCI seront discutés par les parties et examinés par la cour.

Biographies of Convocation Speakers

Robert Akenhead QC

I have practised continually and exclusively since 1972 in Construction Law. My practice has been in the English Courts and in British and international arbitrations. English Court work has been of all types and includes numerous defects, professional negligence and bond cases. The international work has involved arbitrations and contracts inter alia in Europe (France and Germany, Russia, Ukraine, Switzerland, Poland, Holland, Scandinavia), Africa (Egypt, Algeria, Nigeria, Ghana, Kenya), Middle East (Iran, Iraq, Jordan, Yemen, Saudi-Arabia, Bahrain, Qatar, Dubai, Oman), India, Malaysia, Singapore, Hong Kong, Australia, Fiji, W. Indies and USA; this work has often been ICC and UNCITRAL arbitration, and stems from international contracts such as FIDIC. The work has frequently included claims relating to final account, defects, delay and disruption and measurement. I have been involved in many disputes relating to pricing mechanisms such as fluctuation formulae, early completion bonuses, value engineering incentives, overhead calculations, variation pricing and the like. I have been regularly concerned with matters of legal argument and interpretation of commercial contracts; additionally I have been concerned with questions of technical fact and expert opinion in the fields of building (all types) and of Engineering (Civil, Geotechnical, Structural, Mechanical and Electrical). I have lectured and given seminars on all legal aspects of building and civil engineering. I also have extensive experience as arbitrator and in other forms of Alternative Dispute Resolution

Lord Daniel Brennan QC

Called 1967, silk 1985 - Dan Brennan has a high-profile environmental, product liability and medical negligence practice involving multi-party actions, such as local residents' claims arising from the Canary Wharf development, the HIV/haemophiliac claims against the UK Government, the Manchester air crash, the Marchioness accident on the Thames, and the claims arising from the Herald of Free Enterprise disaster. He also has an international litigation practice. In 1997 he was the lead barrister in Hong Kong in a successful environmental claim against CIBA Geigy concerning organo-phosphates.

Dan Brennan specialises in Human Rights law; Public International law, International Arbitration and Environmental law

The Honorable Stephen G. Breyer

Stephen G. Breyer, Associate Justice, was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children— Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

M. Jean-Marie Burguburu, Bâtonnier du Barreau de Paris

Diplômé et Lauréat de la Faculté de droit et des sciences économiques de Paris, il est devenu membre du Barreau de Paris en 1966. M. Jean-Marie Burguburu est associé du cabinet d'avocats Gide Loyrette Nouel depuis 1976. Il est le premier associé d'un grand cabinet d'avocats d'affaires à être porté au Bâtonnat.

M. Jean-Marie Burguburu a été assistant des Facultés de droit de 1967 à 1975 et a continué à enseigner en droit privé et en sciences criminelles dans plusieurs instituts académiques ou professionnels, ainsi qu'à l'Ecole de Formation du Barreau de Paris.

Sa pratique professionnelle est orientée vers le droit des affaires, la propriété industrielle, y compris le droit pénal des affaires et les questions de sécurité et de défense.

Membre du Conseil de l'Ordre (1991-1993) et Délégué de la Caisse Nationale des Barreaux Français (1992-2004), M. Burguburu est fondateur, animateur ou membre de plusieurs organisations du Barreau de Paris et d'autres associations nationales et internationales.

Il est Bâtonnier du Barreau de Paris pour les années 2004 et 2005.

Jean-Michel Darrois

Mr. Darrois is a senior partner in the Paris firm of Darrois Villey Maillot Brochier, where he specializes, among other things, in cases involving mergers and acquisitions and white collar crime. He is a member of the Council of the Ordre des Avocats à la Cour d'Appel de Paris and is a Chevalier de la Légion d'honneur de l'ordre national du Mérite. He received degrees from the Institute of Political Studies and the law faculty of the University of Paris.

Alain De Foucaud

Mr. de Foucaud specializes in corporate and stock market law, with an emphasis on admittance of companies onto French and foreign markets, capital risk, and corporate mergers and acquisitions. In the Year 2000, he successfully represented those companies mentioned in Appendix 1 on the occasion of IPOs, mergers or financing.

Donald Francis Donovan

Donald Francis Donovan is a partner with Debevoise & Plimpton LLP in New York City, where he concentrates his practice in international disputes before courts in the United States, international arbitration tribunals, and international courts. Based on surveys of other practitioners, he was recently identified as one of the three leading international arbitration practitioners in New York in the Chambers USA Guide (Chambers & Partners 2004) and as one of the seven leading litigators in New York in Dispute Resolution Handbook 2003/04 (Practical Law Company 2003), and he is regularly recognized as a leader in his field in similar publications.

Mr. Donovan has argued international law, arbitration law, commercial law, and other issues before the International Court of Justice, the Arbitral Tribunal Established by the 1930 Hague Agreement, the International Criminal Tribunal for the Former Yugoslavia, the United States Supreme Court, the United States Courts of Appeals for the Second, Fourth, Ninth, and District of Columbia Circuits, and other federal and state courts throughout the country. He regularly handles litigation involving non-U.S. parties in courts in the United States and conducts arbitrations in venues throughout the world. He also regularly serves as arbitrator in international cases.

Mr. Donovan represented the lead claimant in *Reineccius, First Eagle, and Mathieu v. Bank for International Settlements* (Final Award 19 September 2003/Partial Award 22 November 2002) (available at www.pca-cpa.org), in which a five-member tribunal constituted under the 1930 Hague Agreement recently awarded private shareholders some US$480 million after holding that, under the governing instruments and international law, the Bank had inadequately compensated those shareholders for shares it had compulsorily recalled. Mr. Donovan also recently argued *Hiwot Nemariam v. Federal Democratic Republic of Ethiopia*, 315 F.3d 390 (D.C. Cir. 24 January 2003) (*reprinted at* 42 I.L.M. 423 (2003)), in which he obtained reversal of an order of forum non conveniens and thereby preserved the right of individual claimants to proceed in a U.S. court on claims arising under international law. And he argued successfully in favor of jurisdiction under the ICSID Convention in *Autopista Concesionada de Venezuela, C.A. v. Bolivarian Republic of Venezuela*, 16 *ICSID Review-Foreign Investment L. J.* 5 (2001), and then, in the merits phase, obtained an award finding liability, a right to terminate, and damages (available at www.worldbank.org/icsid).

Mr. Donovan recently argued before the International Court of Justice on behalf of Mexico in *Avena and Other Mexican Nationals (Mexico v. United States)* (available at www.icj-cij.org), in which the Court entered a judgment finding violations of the Vienna Convention on Consular Relations in 51 cases in which Mexican nationals had been sentenced to death in state criminal proceedings in the United States and ordered the United States to

review and reconsider the convictions and sentences, and he also represented Mexico in the recent U.S. proceedings by which the Oklahoma Court of Criminal Appeals complied with that Judgment. He had earlier argued before the ICJ on Mexico's successful request for an order of provisional measures, *Provisional Measures, Order of 5 February 2003*, 42 I.L.M. 309 (2003), having previously served as lead advocate-counselor to the Republic of Paraguay in the *Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States)* and as advocate for the Federal Republic of Germany in the *LaGrand Case (Germany v. United States)*. He also recently advised the Government of Sierra Leone in responding to Liberia's Application to the ICJ, on a forum prorogatum basis, challenging an arrest warrant issued by the Special Court of Sierra Leone.

U.S. decisions in which Mr. Donovan has prevailed on arbitration law issues include *Quackenbush v. Allstate Ins. Co.*, 116 S. Ct. 1712 (1996), in which the United States Supreme Court held that a federal district court should not have abstained in the face of a motion to compel under the Federal Arbitration Act, and *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372 (9th Cir. 1997) (on remand); *Progressive Cas. Ins. Co. v. C.A. Reaseguradora Nacional de Venezuela*, 991 F.2d 42 (2d Cir. 1993); and *North River Ins. Co. v. Allstate Ins. Co.*, 866 F.Supp. 123 (S.D.N.Y. 1994), *app. dism'd by stip.*, No. 94-9153 (2d Cir. 1995), in each of which he obtained an order compelling arbitration.

Mr. Donovan serves as Vice-President and one of two U.S. members of the International Council for Commercial Arbitration (ICCA), composed of the most distinguished arbitration practitioners from around the world. He also serves as Chair of the Advisory Board of Directors of the Institute for Transnational Arbitration, as a member of the Commission on Arbitration of the International Chamber of Commerce, and as a member of the Board of Directors of Human Rights First (until recently the Lawyers Committee for Human Rights). He recently served terms as Chair of the Arbitration Committee of the U.S. Council for International Business (the U.S. National Committee for the ICC International Court of Arbitration) and on the Executive Council of the American Society of International Law. He earlier served as Co-Chair of the International Litigation Committee of the ABA's Section on International Law and Practice and as a member of the Council on International Affairs, Committee on International Law, and Committee on International Human Rights of the Association of the Bar of the City of New York. In July 1997, Mr. Donovan chaired the Fourth Joint Conference of the American Society of International Law and The Netherlands Branch of the International Law Association in The Hague.

Mr. Donovan was recently appointed Adjunct Professor of Law at the New York University School of Law, where he will teach international arbitration. He regularly speaks and writes on international arbitration, international litigation, and international law topics. He is co-author of the United States Report in ICCA's *International Handbook on Commercial Arbitration* (rev'd ed. 1999), the most authoritative multijurisdictional treatment of the law of international arbitration. His other publications include The Scope and Enforceability of Provisional Measures in International Commercial Arbitration, in *International Commercial Arbitration: Contemporary Questions* 82-149 (ICCA Congress Series 2003); International Arbitration and Dispute Resolution, in O'Brien, ed., *International Joint Ventures* 231 (Practising Law Institute 2002); Arbitrating Mass Claims: The Life Insurance Class Actions in the United States, 16 *ICSID Review-Foreign Investment L. J.* 25 (2001); Powers of Arbitrators to Issue Procedural Orders, 10 *ICC International Court of Arbitration Bulletin* 57 (Spring 1999); and International Commercial Arbitration and Public Policy, 27 *N.Y.U. J. Int'l L. & Politics* 645 (1995). His brief amicus curiae to the United States Supreme Court in *Karadžić v. Kadić* was published at 30 *Hastings Int'l & Comp. L. Rev.* 683 (1997).

Mr. Donovan joined Debevoise after serving as law clerk to Associate Justice Harry A. Blackmun of the United States Supreme Court and as legal assistant to Judge Howard M. Holtzmann of the Iran-United States Claims Tribunal. He received his B.A. in 1977 from the University of Virginia and his J.D. in 1981 from Stanford Law School.

Glenn Hendrix

Glenn Hendrix is a litigation partner with Arnall Golden Gregory LLP, Atlanta, Georgia. Mr. Hendrix has successfully handled a variety of cross-border commercial disputes, including, for instance, using the New York Convention to enforce a Russian arbitration award in a Seattle court; holding a Ugandan bank liable as a principal on an obligation of one of its affiliates; arbitrating an insurance coverage claim arising from the sale of an oil refinery to China; defending a major UK-based global logistics company in connection with the termination of its US agency network; and other similar matters. Mr. Hendrix also has substantial experience in litigation with federal and state governments, including, for example, successfully defending companies in actions under the federal False Claims Act; winning a $60 million recovery in a series of administrative appeals on behalf of one client; securing injunctions invalidating a federal administrative rule in another series of cases; and obtaining a precedent-setting ruling that low payment rates to healthcare providers may constitute an unconstitutional taking of property. In a case of first impression, he recently obtained an order barring a federal Office of Inspector General from obtaining a company's quality assurance records. Mr. Hendrix has been voted by his peers in the Georgia bar as a "Georgia Super Lawyer" (*Atlanta Magazine,* 2004, 05*).*

Mr. Hendrix is active in the American Bar Association and, among other positions, co-chairs the International Litigation Committee of the International Section of the. In 2003, he served as a member of the US delegation at The Hague Conference on Private International Law (Special Commission on the Practical Operation of the Hague Conventions on Taking Evidence Abroad and on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters).

Mr. Hendrix has authored several pieces on international commercial dispute resolution issues, including chapters appearing in Private Law, Private Int'l Law & Judicial Cooperation in the EU-US Relationship, Assessing the Value of Law in Transition Economies, Legal Guide to Doing Business in Russia & the Former Republics of the USSR, and The International Litigation Manual (forthcoming 2005), as well as articles appearing in The International Lawyer, Vestnik Vyshego Arbitrazhnogo Suda [Journal of the High Commercial Court of the Russian Federation], and other publications. Mr. Hendrix is also a frequent speaker on international dispute resolution topics, including events sponsored by the American Bar Association, the International Law Association, the Brookings Institution, MGIMO (Russia), and a number of other organizations.

Mr. Hendrix graduated from Emory University Law School in 1985 (With Distinction, Order of the Coif).

Alain Lacabarats

[Pas de Biographie (Bio à acheter sur le Web)]

Barton Legum

Barton Legum is Counsel in the Paris office of Debevoise & Plimpton LLP and a member of the firm's Litigation Department. His practice focuses on international arbitration and litigation. He has argued cases before numerous international arbitration tribunals, the International Court of Justice and state and federal trial and appeals courts in the United States.

Mr. Legum joined Debevoise in 1987 and became Counsel in the firm's New York office in 1998. Earlier in his career he was a law clerk to the Hon. Carolyn Dineen King, now Chief Judge of the United States Court of Appeals for the Fifth Circuit.

From 2000 to 2004, Mr. Legum served as Chief of the NAFTA Arbitration Division in the Office of the Legal Adviser, United States Department of State. In that capacity, he acted as lead counsel for the United States Government in defending over $2 billion in claims submitted to arbitration under the investment chapter of the North American Free Trade Agreement. The United States won every case decided under Mr. Legum's tenure.

Mr. Legum is a member of the Council of the American Bar Association's Section of International Law. He is the Council Committee Liaison who oversees the Section's Committees on International Commercial Dispute Resolution, International Litigation, International Courts and International Criminal Law. He served as a Co-Chair of the Section's International Litigation Committee from 1999 to 2003.

Mr. Legum is the editor of the International Litigation Manual, a forthcoming publication by the American Bar Association. He often writes on international dispute resolution topics. His recent publications include Trends and Challenges in Investor-State Arbitration, 19 ARB. INT'L 143 (2003) and The Innovation of Investor-State Arbitration under NAFTA, 43 HARV. J. INT'L L. 531 (2002). Mr. Legum is a frequent speaker at conferences on international arbitration and litigation.

Mr. Legum received his D.E.A. in public international law from the Université de Droit, d'Economie et de Sciences Sociales de Paris in 1987, his J.D. magna cum laude from the University of Georgia School of Law in 1985 and his B.A. from Rice University in 1982. He is a member of the bars of New York and Georgia.

Bruno Leurent

Bruno Leurent, a partner in the Paris office, specializes in international arbitration and litigation. He acts as arbitrator and as counsel in a broad variety of disputes involving private companies and sovereign States. He is presently chairing a panel of commissioners at the United Nations Compensation Commission (claims brought against Iraq by non Kuwaiti corporations or State enterprises). He is on the panels of arbitrators of numerous institutions, including the ICC, the Association Française d'Arbitrage, the Korean Commercial Arbitration Board and the GCC Commercial Arbitration Center.

He has authored numerous articles on international arbitration, including "Bank guarantees and arbitration" (*International Business Law Journal*, 1990), "Reflexions on the international effectiveness of arbitration awards" (*Arbitration International*, 1996) and "Views on the UNCC and its adjudication of contractual claims" (*Journal of International Arbitration*, 2000).

Mr. Leurent also handles high profile and complex litigations before French Courts, which relate to international law and arbitration and in which he often represents foreign States.

Mr. Leurent was born in 1945. He graduated from the University of Paris (D.E.S. Droit Public, 1967 ; D.E.S. Droit Privé, 1968) and from the Institut d'Etudes Politiques de Paris (Service Public), 1968. He taught public international law, contracts and private international law at the Universities of Phnom Penh (Cambodia) and Paris X. He became a member of the Paris Bar in 1973. He also acted as a legal advisor to the Iran-U.S. Claims Tribunal from 1982 to 1984.

He is a member of the French Committee on Private International Law, the International Law Association, the French Committee on Arbitration and the French Arbitration Association. He speaks French and English.

Lord Michael Mustill

Michael Mustill was called to the Bar in 1965, becoming Queen's Counsel in 1968. Until 1977, he practised mainly in Commercial law as an advisor and advocate. Throughout he was engaged in commercial arbitrations in England, and latterly also with arbitrations elsewhere, as advocate and arbitrator.

Michael Mustill became successively a Judge of the High Court, the Court of Appeal and the Appeal at Committee of the House of Lords, retiring from full-time judicial sittings in 1991. Whilst a High Court Judge he acted as Judge of the Commercial Court, to which arbitration questions are referred. Since then he has sat as arbitrator in numerous cases in England and abroad. Together with co-author Stewart Boyd he published the first edition of "Commercial Arbitration" in 1982. He is the author of more than 30 contributions to legal journals on various subjects. He had also delivered addresses and taken part in arbitration colloquia etc in some twenty countries.

Formerly President of the Chartered Institute of Arbitrators Michael Mustill is currently a Vice President of the Court of Arbitration of the ICC. Outside the world of arbitration he is a Fellow of the British Academy, and a Doctor of laws of Cambridge University, where he has for some years been Yorke Distinguished Visiting Fellow. From October 2003 – October 2004 he was the Goodhart Visiting Professor of Legal Science at that University. He is also an Honorary Professor of Law at Birmingham University.

Michael M. Ostrove

Michael M. Ostrove is International Counsel in the Paris office of Debevoise & Plimpton LLP and is a member of the firm's Litigation Department. Mr. Ostrove's practice focuses on international litigation and arbitration, and he has worked on international matters heard by various national courts, the International Court of Justice and ICC, LCIA, ICSID and ad hoc arbitration panels.

Mr. Ostrove joined Debevoise in 1995 and became International Counsel in 2003. He has been resident in the firm's Paris office since 1998. He is a member of the New York and Paris Bars. Mr. Ostrove is a member of the American Society of International Law, the International Arbitration Institute of the Comité Français de l'Arbitrage, the Swiss Arbitration Association, and the International Law and Practice Section of the American Bar Association. Mr. Ostrove has spoken on international arbitration at various seminars and conferences, and he is author of the Extraterritorial Application of U.S. Law sections of International Litigation, in International Legal Developments in Review: 1997, 32 INT'L LAWYER 223, 234 (1998), and in International Legal Developments in Review: 1998, 33 INT'L LAWYER 403, 418 (1999).

Mr. Ostrove received his B.A., *magna cum laude*, from Yale University in 1989 and his J.D., with Order of the Coif honors, from the Boalt Hall School of Law (University of California at Berkeley) in 1993 where he was an Articles Editor of the Ecology Law Quarterly. Prior to joining Debevoise, Mr. Ostrove clerked for the Hon. Eugene H. Nickerson and studied Public International Law at the University of Paris II.

Jean-François Prat

Mr. Prat is a senior partner in the Paris law firm of Bredin Prat, where he specializes, among other things, in cases and transactions involving corporate law, commercial law and securities. He is a member of the Council of the Ordre des Avocats à la Cour d'Appel de Paris. He received his doctorate in law from the University of Paris, a postgraduate degree in law in London and a degree from the Institute of Political Studies in Aix-en-Provence.

Kenneth B. Reisenfeld

Mr. Reisenfeld founded Haynes and Boone's Washington, D.C. office. Mr. Reisenfeld is a Partner and Chairs the International Trade and Dispute Resolution Practice Group. He has over twenty-five years' experience representing U.S. and foreign corporations and governmental entities in litigation and arbitration of international commercial, investment and technology disputes and in international trade policy and administrative litigation, customs law counseling, export controls and economic sanctions, compliance and enforcement proceedings.

Mr. Reisenfeld currently serves as the Chair of the American Bar Association's 13,000 member Section of International Law.

Mr. Reisenfeld has been appointed by the U.S. Trade Representative to serve on Binational Panels under NAFTA and the U.S.-Canada Free Trade Agreement. He is often selected as an arbitrator in complex commercial, investment, technology and trade cases administered by various arbitral institutions. Mr. Reisenfeld is a frequent speaker and author on international trade, economic sanctions, and international dispute resolution topics.

Mr. Reisenfeld, currently, is a member of the U.S. Department of State's Advisory Committee on International Law, sits on the Advisory Board to the Institute for Transnational Arbitration, and serves as the ABA Liaison to the International Bar Association. He has served as the Chair of the IBA Committee C1 (Trade and Customs) (2002-2004), Chair of the ABA International Commercial Arbitration Committee (1996-2000), and as Advisor to the U.S. Attorney General, U.S. Department of Justice (1979-1981).

Mr. Reisenfeld received his education from Oberlin College (B.A., 1975), and Harvard Law School (J.D., 1978).

The Honorable Andrew Rogers QC

Andrew Rogers is Australia's foremost expert on resolving commercial disputes. Prior to joining Clayton Utz in 1993 as a consultant, he was Chief Judge of the Commercial Division of the Supreme Court of New South Wales where he heard a number of the leading cases on corporate governance, audits and financial disputes.

Prior to his appointment to the Supreme Court in 1979 he was a barrister and QC for more than 20 years during which time he appeared in many commercial disputes including foreign exchange, investment and other financial disputes.

He has been a non-executive director of NSW Treasury Corporation for the last six Select a program of interest from the list below to obtain details about each program, including an overview of the program's unique features, degrees offered, contact information, academic requirements, faculty, course listings, and more.

As well as his consultancy with Clayton Utz, Andrew regularly acts as a mediator and arbitrator in commercial disputes, both domestic and international, including disputes in financial matters.

John M. Townsend

John M. Townsend is partner in the Washington office of Hughes Hubbard & Reed LLP and is chair of that firm's Arbitration and ADR Group. He has been with Hughes Hubbard & Reed, in its New York, Paris and Washington offices, since 1971. He speaks fluent French.

Mr. Townsend specializes in international disputes, including complex litigation and arbitration in the United States and abroad. His experience includes representation of the American Arbitration Association as *amicus curiae* in the *Green Tree v. Randolph* consumer arbitration case in the United State Supreme Court, and numerous arbitrations, as counsel and as arbitror. It also includes the defense of Hallmark Cards, Inc. in the hundreds of cases arising out of the Federal Republic of Germany as *amicus curiae* in an appeal involving extraterritorial restrictions on the use of the "Bayer" trademark.

Mr. Townsend is a member of the Board of Directors and Chair of the Executive Committee of the American Arbitration Association. He was Chair of the AAA's Law Committee and served on the committees that drafted the AAA's *Supplementary Rules for Class Arbitrations* and *International Arbitration Rules*, and worked on the 2004 revision of the AAA/ABA *Code of Ethics for arbitrators in Commercial Disputes*. He chairs the Mediation Committee of the International Bar Association and is a Trustee and a member of the Arbitration and Competition Law Committees of the United States Council for International Business. He is a member of the CPR Panel of Distinguished Neutrals and of CPR's Challenge Review Board, and served on the committees that drafted the *CPR Rules for Non-Administered Arbitration* and the *CPR Rules for Non-Administered Arbitration of International Disputes*. Mr. Townsend is a member of the American Law Institute, of the College of Commercial Arbitrators and of the teaching faculty at the Harvard Law School Trial Advocacy Workshop.

Mr. Townsend's publications include: "Revised Code of Ethics for Commercial Arbitrators Explained" (with Bruce Meyerson); *Dispute Resolution Journal*, February/April 2004; "Commentary on the July 2003 Revisions to the AAA Commercial Arbitration Rules" (with Paul D. Friedland); *Dispute Resolution Journal*, November 2003/January 2004; "Avoiding the Seven Deadly Sins of Drafting Arbitration Clauses," *Dispute Resolution Journal,* February/April 2003; "Bridging the Common Law – Civil Law Gap in Arbitration" (with Siegfried Elsing), *Arbitration International*, February 2002 (reprinted in the 17th edition of *ADR & The Law*); "Recent Developments in NAFTA Arbitration," *ADR Currents,* September / November 2001; "Commercial Arbitration in the United States: The Legal Structure," in *Commercial Mediation and Arbitration in the NAFTA Countries* (JuristNet 1999); "The Case for Site Licenses," *European Competition Law Review*, March 1999; "Nonsignatories and Arbitration: Agency, Alter Ego and Other Identity Issues," *ADR Currents*, September 1998.

Mr. Townsend obtained both his B.A. (1968) and his J.D. (1971) from Yale University.