

ICCA Congress Signals Miami's Arrival As Arbitration Hub

By **Carolina Bolado**

Law360, Miami (March 28, 2014, 8:12 PM ET) -- Once a backwater for international arbitration, Miami's strong ties to Latin America and its plethora of bilingual professionals have helped transform the Magic City into a major hub for the resolution of international disputes, a fact signaled in no small part by its selection as host city for an upcoming event known as the "Olympics of the international arbitration world."

Next week, attorneys and arbitrators from around the world will descend on Miami for the International Council for Commercial Arbitration's biennial congress, which is being held in the United States for the first time since a 1986 meeting in New York City.

Miami was also recently announced as the venue for arbitration between an international consortium of infrastructure firms and the agency that operates the Panama Canal over a \$1.6 billion funding gap for canal expansion, further cementing its growing reputation as the venue of choice for international disputes.

"Back in the 1980s, Miami wasn't even on the arbitration map, and New York ... had been up until that time the leading U.S. destination for arbitration activities," Gary Davidson at Diaz Reus LLP said. "That has all changed. Not only is this a long time coming to bring ICCA back to the U.S., but it also demonstrates how important Miami has become."

The selection of Miami as the event host comes as validation to the local attorneys who worked together for years to lobby Tallahassee for more arbitration-favorable state laws, to lure top talent to South Florida, and to persuade colleagues to include Miami as an arbitration venue when drafting business contracts.

Florida's laws originally limited what foreign practitioners could do in the state, so several members of Miami's arbitration community convinced state legislators to change them, according to Donald Hayden at Baker & McKenzie LLP. They also got the legislature to incorporate the model law of the United Nations Commission on International Trade Law into the Florida Arbitration Act.

Meanwhile, the Florida Bar allows attorneys and arbitrators to work in the state on arbitrations without needing a special license or approval by the bar, according to John Barkett of Shook Hardy & Bacon LLP. And because the state has no income tax, practitioners can render services there without worrying about getting taxed, he said.

Still, Miami practitioners have had to continually make their pitch to attorneys who draft business contracts with arbitration clauses to make sure that any disputes would be resolved in Miami.

“In some circles, there is an unexplained bias in favor of New York,” Barkett said. “It’s not necessarily rational or thought-through. It’s habitual.”

But the enforcement climate at the federal appellate level works in Miami’s favor, he said. While enforcement outcomes in the Second Circuit have been uneven, the Eleventh Circuit has been fairly consistent, according to Barkett.

And on the state level, Miami’s Eleventh Judicial Circuit Court announced in December that it is establishing an international commercial arbitration court with judges trained to hear international commercial arbitration matters. Only Paris, Singapore, London and New York have similar courts.

The two judges who will helm the court were trained at the University of Miami School of Law’s newly established International Arbitration Institute. Spearheaded by outgoing ICCA President Jan Paulsson, the institute has for the past few years offered a master of laws degree in international arbitration.

Local attorneys’ efforts to build Miami into an arbitration hub have coincided with a period of steady growth throughout most of Latin America that has fueled demand for a neutral venue for dispute resolution.

“The story of South America is the continued development of Chile, the tremendous growth of Brazil, the stabilization of Colombia,” Davidson said. “Peru is moving forward, albeit a little bit slower than some would like. There are still major political and economic issues in Latin America, but things are improving.”

Most cross-border contracts have foreign selection clauses that require arbitration, and more and more often, the selected seat is Miami, according to Hayden.

It’s a place where Latin Americans feel comfortable because of the language and cultural connections and where American multinational corporations are happy to arbitrate because of the state and federal courts that are accustomed to dealing with arbitration awards, according to Hayden.

“Often there is a compromise because neither party trusts the jurisdiction of the other and would prefer to have the arbitration in a third location that would be convenient to all,” Hayden said. “Miami is the perfect location in that regard. It might be cheaper and easier to do it in Miami than trying to put on a full-scale arbitration together in Ecuador or Brazil.”

And Davidson says that one “shouldn’t underestimate the power of the language issue.”

Though the majority of arbitrations in Miami are conducted in English, in an arbitration proceeding involving a Latin American entity, there will be documents and testimony in Spanish or Portuguese, and having easy access to bilingual attorneys and good interpreters and translators is helpful, according to Adolfo Jimenez of Holland & Knight LLP.

“I think we take for granted how much easier and how many more resources there are here,” Jimenez said. “It makes a huge difference, just in terms of the proficiency in dealing with technical disputes or legal terms.”

After laying down the groundwork to turn Miami into an arbitration hub, local practitioners wanted the recognition from ICCA and made the pitch to host the 2014 congress.

Ten law firms — Baker & McKenzie, Holland & Knight, Shook Hardy & Bacon, Diaz Reus, Greenberg Traurig LLP, Astigarraga Davis Mullins & Grossman PA, Hogan Lovells, Akerman LLP, DLA Piper and White & Case LLP — each put in \$20,000 in sponsorship money to show ICCA that the Miami team was serious and committed.

They used the money to put together a promotional package, get commitments from vendors and sponsors, and tell the story of Miami's rise in the international arbitration world.

“We argued that it was time to put Miami on the ICCA arbitration map,” said Barkett, who was on the presentation team that went to Geneva in 2011 to pitch the idea.

Jimenez said the fact that the Miami team was united helped them pull it off.

“One of the things about international arbitration is that you could have a lawyer from across the street as an adversary and then next year you could be co-arbitrators on the same arbitration,” Jimenez said. “There is a spirit of cooperation. We all benefit by having a very developed, strong local bar.”

The next goal is to attract more arbitrations stemming from the growing flow of trade and business between Asia and Latin America. In order to really become a big player there, the city needs to get direct air service to Asia, according to Davidson.

Once that happens, Miami's attributes should lure even more alternative dispute resolution proceedings to its shores.

“You can operate under a piece of legislation you should be familiar with, at a lower price than in New York or London, in comfortable weather in a tropical setting with all of the same benefits that New York or London can provide,” Barkett said. “It's pretty hard to say no to Miami.”

--Editing by Kat Laskowski and Philip Shea.