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Q&A With Shook Hardy's John Barkett

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John M. Barkett

John M. Barkett is a partner in Shook Hardy & Bacon LLP's Miami office. He was appointed by U.S. Supreme Court Chief Justice John Roberts in 2012 to serve on the Advisory Committee on Civil Rules. Since 2003, he has served as a special master overseeing the consent decree governing the restoration of the Florida Everglades.

Barkett has mediated, arbitrated and allocated in matters that collectively exceed more than $4 billion in claims. He has arbitrated matters under UNCITRAL, LCIA, AAA, ICDR and CPR rules and has conducted ad hoc arbitrations. Barkett is an adjunct professor of law at the University of Miami School of Law and over the years, has been a commercial litigator (contract and corporate disputes, employment, trademark and antitrust), environmental litigator (comprehensive environmental response, Compensation and Liability Act, Resource Conservation and Recovery Act and toxic tort).

Q: What attracted you to international arbitration work?

A: It was a natural evolution of my practice. I have been mediating disputes for 20 years. That led to domestic arbitration work as an arbitrator, and that experience opened up doors to do international arbitration work.

Q: What are two trends you see that are affecting the practice of international arbitration?

A: One is a growing emphasis on “winning” versus the effective administration of justice. In a book chapter I wrote in 2008 on the centennial of the ABA Canons of Professional Ethics, I documented how the Advisory Committee on Civil Rules has had to limit the use of certain discovery tools and has added more sanctions provisions to the Rules of Civil Procedure to deal with the cannon of lawyers. I see arbitration rulemakers moving in a similar direction (consider the LCIA’s new guidelines for a party’s legal representative and the recent IBA Guidelines on Party Representation). This is not a happy trend. It means that costs of arbitration will go up and hearings will be delayed.

A second is a growing demand for transparency in all aspects of arbitrator appointments. International arbitration is never going to go away because contracting parties are not likely going to prefer national courts of most countries over international arbitration as a means to resolve disputes. Because of this, it is important that we maintain a strong pool of arbitrators whose integrity and ability are beyond reproach and who will produce an award in a timely manner after conducting a hearing in an efficient

manner. Arbitral legitimacy is threatened if we as the international arbitration community do not ensure fairness by the selection of neutral arbitrators.

Q: What is the most challenging case you've worked on and why?

A: I will give you two. As an advocate, it was a case involving very complex technical facts and the challenge was how to simplify the presentation to make it comprehensible to the arbitrator. As an arbitrator, it was a very high-dollar reinsurance claim where New York law was applicable but there was conflicting precedent and I was the only U.S. arbitrator on the tribunal.

Q: What advice would you give to an attorney considering a career in international arbitration?

A: Latch on to a firm or mentors who can provide proper training and give you the opportunity to participate meaningfully in every phase of the international arbitration process and post-award practice as well. And learn how to cross-examine. Many arbitration practitioners do not have this skill.

Q: Outside of your firm, name an attorney who has impressed you and tell us why.

A: Jan Paulsson. He was my law school roommate. I was privileged to get to know his mother and father, missionaries in Liberia, and watch Jan's career develop in the international arbitration world. He is obviously knowledgeable in the field, but also has a wonderful judicial temperament and an unimpeachable sense of fairness.