

Q&A With Orrick's Vanessa Liborio

Law360, New York (May 24, 2016, 4:17 PM ET) --

Vanessa Liborio is a partner in Orrick Herrington & Sutcliffe LLP's international arbitration practice, based in Geneva. Within her practice, she represents companies in high-stakes arbitration proceedings, focusing on infrastructure projects, energy investments, manufacturing and other sectors.

Liborio has acted as counsel in numerous international arbitration proceedings before the International Chamber of Commerce, the London Court of International Arbitration, the Swiss Chambers of Commerce, and other international forums subject to a variety of procedural and substantive laws (including English, French, New York and Swiss law). She has also served as sole neutral and party-appointed arbitrator in international commercial disputes and has successfully resolved cases before the Swiss Supreme Court.



Vanessa Liborio

Q: What attracted you to international arbitration work?

A: The diversity and flexibility of this field initially attracted me. While a lawyer is often limited to one jurisdiction or one field of law, international arbitration is transferable across countries and industry sectors, which, at times, removes apparent linguistic, cultural and logistical barriers.

Moreover, I have always appreciated that in international arbitration, contrary to state court litigation, the procedures are tailored to the specific case between the parties. The parties have the liberty to choose, for instance, the applicable law on the merits, the language of the proceedings, the seat of the arbitral tribunal, the number of arbitrators and the level of confidentiality of these proceedings. This unique feature of international arbitration provides substantial liberty to the various actors, not only the parties, but also the arbitrators and the counsel.

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

A: The first trend that is affecting my practice is the appointment of women arbitrators. The increasing popularity of arbitration has resulted in an increased need for neutrals to serve on arbitration panels. These neutrals come from a variety of backgrounds, but most have substantial legal or business experience, with the majority being retired judges or practicing attorneys. Most of these arbitrators are chosen to arbitrate cases based on their membership in an alternative dispute resolution organization. When a disputant files a claim with the relevant organization, the organization typically provides a list of arbitrators from which the parties may choose. Unfortunately, however, women are consistently

missing from these arbitrator lists.

Although there are frequent complaints about getting the “same short list of mediators and arbitrators to choose from, consisting mainly of older white males,” it is difficult to understand how this list system works in the various dispute resolution organizations, as there are no “official” industry statistics regarding the number of women selected to arbitrate disputes. Yet there are various studies and anecdotal evidence revealing that female arbitrators are selected to serve on arbitration panels at a rate that is dramatically lower than that of their male counterparts.

This situation has, however, received much attention in many arbitration journals and conferences. The hope is that including more female arbitrators on arbitration panels will result in a more fair and effective arbitration process.

The second trend is third-party funding (TPF). Over the last few years, we have witnessed a tremendous increase in the participation of third-party funders in international arbitration. Besides guaranteeing access to justice for those who are financially incapable of bearing the costs of an arbitration proceeding or helping those who prefer to maintain cash-flow and offset the risk of an uncertain arbitration outcome, the funded party will most certainly benefit from limiting the potential losses of an unfavorable award, as well as from having an external assessment of the strengths and weaknesses of the case.

Arbitrators, parties and counsel are experiencing with increasing frequency that TPF can give rise to a host of important issues, including conflicts of interest for tribunals, as well as the nature and degree of influence that the funders have in the management of the dispute. Accordingly, in recent years international institutions and professional organizations have begun to address the involvement of TPF in arbitrations. While it is important that TPF relationships be regulated, requiring full disclosure of the funding terms in all arbitrations would be too much and unnecessary. Counsel for parties using TPF must always keep in mind that their duty is to their client(s), not to the TPF. Arbitral institutions could lead the effort of regulating the industry by imposing specific duties to the parties and the arbitrators under the institutional rules of arbitration.

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

A: The most challenging case I have ever worked on was a matter in which the crucial witnesses of my client were illiterate. I was a junior associate at the time. This multiparty arbitration involved a series of fraudulent transactions at warehouses in an African country in connection with collateral management agreements entered into between Swiss and African companies and English banks. The only witnesses of the repetitive thefts at the warehouses were three illiterate farm workers, who had not received any formal education and only spoke a rare African dialect. As they were unable to read or write, we had to be continuously assisted by interpreters and I had to use creative techniques, such as using a set of pictures and drawings to understand the facts.

I was in charge of preparing these witnesses for the arbitral proceeding in London — by far the most challenging task I had ever received. The witnesses had never left their country, let alone traveled on an airplane. Moreover, we were only able to secure visas for their travel to Switzerland, not to London. Thus my task was even more challenging because I had to prepare the witnesses for a cross examination via video conference. As it was the witnesses’ first time traveling on an airplane, and traveling to a large western city, the witnesses were naturally afraid of everything in Geneva, from the buildings, to the cold temperatures, to the food. It took me seven entire days just to have their witness statements translated

into their dialect and to explain the conduct of the arbitral proceedings. Although I have handled more challenging disputes since this case, I learned a tremendous amount about managing witnesses through this experience.

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

A: The opportunities for international arbitration lawyers are rising as we are witnessing a growth in the number of cross-border commercial disputes. My advice would be to be patient, first gaining experience through observation. I would further recommend that the young attorney attempt to become the one who everyone wants to work with, which entails developing strong legal skills, proficiency in foreign languages, flexibility, and a good-natured and cosmopolitan character.

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

A: Undoubtedly, Charles C. Adams Jr. has impressed me the most. He was nominated as the U.S. Ambassador to Finland by President Barack Obama in July 2014 and was confirmed by the U.S. Senate in June 2015. He has been my mentor for over 12 years and remains today one of my most trusted advisers.

Ambassador Adams is highly regarded in the international arbitration community for many reasons. First, his intellectual skills are extraordinary. I witnessed his ability to quickly absorb, assimilate and analyze extremely complex and voluminous material in construction cases, often in just a few days. After such a limited preparation time, he is able either to draft a submission of hundreds of pages, in a superb style, or to give an opening statement of more than one hour without any notes.

Furthermore, he is passionate about his work. When talking to clients or to arbitrators, his enthusiasm is contagious. His oral and written skills are outstanding, which explain his numerous career victories.

Ambassador Adams also has a special talent: his interlocutors feel special and are touched by his dedication and attention. Ambassador Adams is not only an amazing lawyer but a well-rounded person with vast amounts of knowledge and insight to offer. A generous and balanced person, with a strong sense of humor, who enjoys spending time with his family and friends, I consider myself very lucky to have had Ambassador Adams as my mentor, and I hope that our paths will cross again.

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