

INTERNATIONAL COUNCIL FOR  
COMMERCIAL ARBITRATION

YEARBOOK  
COMMERCIAL ARBITRATION  
VOLUME XXXVII – 2012

GENERAL EDITOR  
ALBERT JAN VAN DEN BERG

with the assistance of the  
Permanent Court of Arbitration  
Peace Palace, The Hague



*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspennpublishers.com](mailto:customer.service@aspennpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

*Printed on acid-free paper.*

ISBN 978-90-411-3809-5

©2012 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

# Prof. Dr. Pieter Sanders

## 1912 – 2012

On 27 September 2012, days after his 100th birthday, Prof. Dr. Pieter Sanders, Honorary President of ICCA, passed away. His contribution to the development of international commercial arbitration, and to ICCA in particular, can only be called unique.

Professor Sanders played a key role as a principal drafter of the 1958 New York Convention, and contributed greatly to the development of other harmonizing instruments. He was a special consultant to the United Nations Commission on International Trade Law for the preparation of the UNCITRAL Arbitration Rules 1976, and participated in the drafting of the 1961 European Convention on International Commercial Arbitration.

The negotiations for the Convention inspired him and a few others to establish a forum where arbitration practitioners from all over the world could meet and exchange ideas, unfettered by the bureaucracy of States and their tense relations in the midst of the Cold War: the International Council for Commercial Arbitration, ICCA, thus emerged.

In 1976, feeling the need to monitor the application of the New York Convention in the Contracting States, he led ICCA to publishing the *Yearbook Commercial Arbitration*. The *ICCA Congress Series* followed in 1982 and the *International Handbook of Commercial Arbitration* in 1984. Of all these publications he was the first General Editor.

Professor Sanders was also an active member of the ICCA Council (the new Governing Board), including serving two terms as President between 1978 and 1986. Through his 100th year, he continued to advise ICCA Council members on ICCA policy and to provide inspiration for ICCA's young practitioners' group, Young ICCA, founded in 2010.

Pieter Sanders also played an essential role in Dutch arbitration. He wrote an outstanding doctoral thesis on the setting aside of arbitral awards; co-founded the Netherlands Arbitration Institute (NAI) in 1949 and chaired it for many years; was a member of the ICC Arbitration Commission since 1949; drafted the 1986 Dutch Arbitration Act; edited the *Tijdschrift voor*

*Arbitrage* (TvA – Journal for Arbitration) and, before it, *Arbitrale Rechtspraak* (Arbitration Case Reports); authored the treatise *Het nieuwe arbitragerecht* (The New Arbitration Law) and many other publications in the field of arbitration. In 1959, he became a professor at the Dutch Economic Polytechnic School, the predecessor of the Erasmus University Rotterdam, and in 1962 he was the motor behind the creation of the Erasmus School of Law.

Pieter Sanders' impact on the legal world was not limited to arbitration. Among other things, he developed the concept of the European Company for the European Commission in Brussels and the Code of Conduct for Transnational Corporations for the United Nations.

The life of this prominent lawyer was no less impressive outside the world of arbitration. As a young lawyer with a degree from Leiden University he was interned in a hostage camp in the Netherlands during the war. When the war ended, he was called to serve the first free Dutch Government as Secretary-General of War. In that capacity he assisted the Dutch government in its negotiations with Mr. Sukarno over the independence of Indonesia, then a Dutch colony. He resigned when it became clear that a peaceful solution was impossible, and went back to his hometown Schiedam, near Rotterdam, to resume his arbitration practice.

The son of a famed architect, Pieter Sanders was an art lover and collector. The house he shared for over fifty years with his wife Ida, who died in 2010, was filled with exceptional modern, contemporary and ethnic art. His enormous gift for recognizing talent helped him discover artists, such as Henry Moore and Karel Appel, early in their career. Appel was a close friend. Their friendship dated back to the time (around 1950) that the artist, then still unknown, stole some paint. Pieter Sanders stepped in as his lawyer and advised him never to do that again, then paid for his paint. Karel Appel was grateful for this for the rest of his life, as evidenced by his many paintings in Pieter Sanders' collection.

Professor Sanders was very generous with the materials that he had collected, both books and art. In 1978, he donated his extensive arbitration library to the T.M.C. Asser Institute in The Hague, and again in 2011 to the Peace Palace library. He and Ida donated almost their entire art collection to several Dutch museums.

Professor Pieter Sanders will be greatly missed, as a giant of arbitration, as a model of elegance, manners and good humor, and as a mentor and friend to those who had the fortune of working with him.

---

# Pieter Sanders

## 1912-2012

---

**Founder and editor of  
the Yearbook Commercial Arbitration,  
the ICCA Congress Series and the  
International Handbook on Commercial  
Arbitration**

As the founder and inaugural editor of  
the ICCA Publications, Pieter Sanders was crucial  
for Kluwer Law International's arbitration content.

We remember him as an inspiring person  
with many passions in life.



**Wolters Kluwer**  
Law & Business

# INTRODUCTION

Volume XXXVII (2012) of the Yearbook again presents readers with a selection of arbitral awards and court decisions made accessible by translations, indices and categorized lists. Since Volume XXXV (2010), the Yearbook's selection of arbitral awards and court decisions is available in a combination of print edition and online publishing. *Arbitral awards* continue to be published in print in their entirety, as are Parts of the Yearbook providing various information. *Court decisions* are presented at two levels of consultation: a *Summary* of each decision, prefaced by a short recap, is published in print; a detailed *Excerpt* of the decision is available online at <[www.kluwerarbitration.com](http://www.kluwerarbitration.com)>. A code provided with the Yearbook allows readers to access the relevant Volume online, as well as the preceding Volume. Readers who have purchased Volume XXXVII (2012) can therefore access materials from both this Volume and Volume XXXVI (2011).

Information on how to access the online materials is provided in a **Note to the Reader** at the beginning of this Volume (p. xv).

All volumes of the Yearbook, along with ICCA's *International Handbook on Commercial Arbitration* and selected volumes of ICCA's *Congress Series*, are also made available by general subscription on the online service <[www.kluwerarbitration.com](http://www.kluwerarbitration.com)>.

The *International Handbook on Commercial Arbitration* functions alongside the Yearbook in providing up-to-date information on arbitration law and practice in more than seventy countries. The Handbook contains National Reports together with the relevant legal texts. Its Table of Contents is reproduced in **Part I** of the Yearbook.

In **Part II** of the Yearbook, new or amended rules of arbitral institutions are announced, with a reference to the websites where the rules can be obtained. This year, information is provided on Brazil, PR China, Cyprus, Germany, Korea, Malaysia, the Netherlands, Rwanda, Switzerland, the United Kingdom and the International Centre for Settlement of Investment Disputes (ICSID).

**Part III** announces newly enacted arbitration legislation and informs readers of other developments relevant to the practice of arbitration. In this volume, information is provided on Colombia, Finland, Hungary, India, Lithuania, Montenegro, Portugal, Singapore, South Sudan, Tajikistan, Turkey and Venezuela.

**Part IV**, *Arbitral Awards*, contains a selection of awards made under the auspices of the International Chamber of Commerce (ICC). Topics discussed in the awards include the interpretation of ambiguous arbitration clauses, the requirement that an arbitration clause be "in writing", the applicable law to the

substantive validity of the arbitration clause, rate of interest and compound interest, the costs of arbitration and legal costs, and the standing of a liquidator to commence arbitration.

Part V of the Yearbook reports on court decisions on arbitration. **Part V – A**, reporting on the 1958 New York Convention, traditionally constitutes the bulk of the Yearbook. This Volume contains 82 cases from 22 countries, including, for the first time, cases from Bosnia and Herzegovina, Guatemala and Uruguay. The selection this year includes an update on Brazilian jurisprudence on the New York Convention, with twelve reported cases, six decisions from the courts of Germany and five from the Netherlands. Decisions from Australia, Germany, Greece, Guatemala, India, the Russian Federation, and Spain reflect the parallel application of the UNCITRAL Model Law as adopted in these jurisdictions together with the Convention. In some decisions, the relationship between the 1958 New York Convention, the 1965 Washington (ICSID) Convention and the 1975 Panama Convention is mentioned. The reporting in Part V – A includes cases from Bosnia and Herzegovina, Brazil, Colombia, France, Germany, Greece, Guatemala, Israel, Italy, Korea, Netherlands, the Russian Federation, Spain, Switzerland, the United Arab Emirates and Uruguay, all translated from their original language into English.

The selection this year includes the decision of the Supreme Court of India in *Bharat*, in which the Court effectively set aside earlier holdings and held that Indian courts may annul only awards rendered in arbitrations taking place in India and may not annul awards rendered in international commercial arbitrations held outside India under Indian substantive law. Recurring issues in the 1958 New York Convention decisions further include the applicable law to the existence and validity of the arbitration agreement; the enforcement of an award set aside in the country of rendition; alleged violations of due process, in particular the lack of a proper notice; the requirement that the arbitration agreement and the award be translated; and whether the failure to supply the necessary documents for requesting enforcement of an award may be cured at the later stage in the enforcement proceedings.

Decisions rendered by courts in the United States dealt in several cases, inter alia, with the issue whether the public policy defense under the New York Convention can be raised at the stage in which enforcement of the arbitration agreement is sought. The Eleventh Circuit in *Lindo* answered this question in the negative.

No new decisions are reported this year in **Part V – B**, reporting on the 1961 European Convention.

**Part V – C**, reporting on the 1965 Washington (ICSID) Convention, contains a United States decision discussing subject-matter and personal jurisdiction and proper venue in respect of the enforcement of an ICSID award. One decision from the United States is also reported in **Part V – D** on the 1975 Panama Convention.

Up-to-date lists of Contracting States and Signatories to the respective Convention are also provided. In addition, Part V – A also contains an Index of Cases reported in this Volume.

**Part V – E**, Other Court Decisions on Arbitration, contains a selection of decisions on topics that are relevant to the practice of (international) arbitration. This year, the reporting includes a decision of the Swiss Federal Supreme Court annulling an award of the Court of Arbitration for Sport on public policy grounds, and two decisions from the United Kingdom: the Privy Council in *La Générale des Carrières et des Mines* (Gécamines) gave an overview of the doctrine of sovereign immunity and the position of state-owned corporations and concluded that Gécamines, an entity owned by the Democratic Republic of the Congo, could not be equated with the State and was not liable for the State's debts consisting of two ICC awards. The Court of Appeal in *Sulámerica* dealt in detail with the issue of the law applicable to arbitration agreements and concluded that in the case at issue, failing either an express or implied choice, the law of the seat – English law – applied as having the closest and most real connection with the arbitration agreement.

A complete list of all court decisions and awards published in the Yearbook since 1976 and a Consolidated Index of Cases are available online on the ICCA website <[www.arbitration-icca.org](http://www.arbitration-icca.org)> under the Publications button.

The Yearbook concludes with the **Bibliography**, which this year includes works on investment arbitration, arbitration under the Energy Charter Treaty, detailed examinations of the rules of several arbitral institutions, overviews of the arbitration law and practice in Asia, PR China and Korea, and a discussion of recent developments in the case law of the United States Supreme Court on arbitration.

The Yearbook's effort to reflect as many aspects as possible of the evolving world of arbitration was supported as always by its numerous correspondents, whose assistance is gratefully acknowledged. They are individually thanked in the Introductions to the various Parts and in footnotes where appropriate.

Many thanks go to the ICCA Editorial Staff, D.ssa Silvia Borelli, managing editor, and Ms. Alice Siegel, assistant managing editor, who collected, selected, translated, excerpted and edited the materials for this volume with the able assistance of Ms. Helen Pin, and Ms. Lise Bosman, executive director of ICCA,



## INTRODUCTION

and Ms. Yanying Li, assistant legal counsel of the Permanent Court of Arbitration, who both assisted in preparing this year's Bibliography.

On behalf of ICCA, I also wish to thank the Permanent Court of Arbitration and its current Secretary-General, Hugo Hans Siblesz, as well as its former Secretary-General, Mr. Christiaan Kröner who was replaced in June 2012. For fifteen years, the PCA has hosted the ICCA Editorial Staff at the headquarters of its International Bureau at the Peace Palace. The administrative and technical support of the entire PCA staff is greatly appreciated.

In all of its publications, ICCA is advised by ICCA's Editorial Board. The Editorial Board is presently composed of Professor Jan Paulsson, President of ICCA and General Editor, *International Handbook on Commercial Arbitration*; Mr. Kap-You (Kevin) Kim, Secretary-General of ICCA; Professor Martin Hunter and the undersigned as General Editor of ICCA publications.

Since the inception of the Yearbook, readers throughout the world have been a major source of material. Therefore, may I continue to call on you, as reader and Yearbook user, to submit texts concerning:

- recent changes in arbitration legislation;
- newly enacted arbitration rules;
- arbitral awards (the confidentiality of which is ensured);
- court decisions of general interest and, in particular, court decisions applying the New York Convention, the European Convention, the Washington Convention and the Panama Convention.

Brussels  
November 2012

Albert Jan van den Berg  
General Editor

Materials for the Yearbook are to be addressed to the General Editor or to the ICCA Editorial Staff at their respective addresses as indicated below.

ICCA Publications  
c/o International Bureau of the  
Permanent Court of Arbitration  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands  
E-mail: [icca@pca-cpa.org](mailto:icca@pca-cpa.org)

Prof. Dr. Albert Jan van den Berg  
c/o Hanotiau & van den Berg  
IT Tower, 9th Floor  
480 Avenue Louise, B.9  
1050 Brussels  
Belgium  
E-mail: [ajvandenbergh@hvdvdb.com](mailto:ajvandenbergh@hvdvdb.com)

## ONLINE RESOURCES

The **ICCA website** contains constantly updated information and useful tools to make consultation of ICCA publications easier and more user-friendly.

*The ICCA website contains:*

- a presentation on ICCA and the current list of its officers and members
- information on general membership of ICCA
- the announcement of upcoming events, such as the forthcoming ICCA Congresses in Miami in 2014 and Mauritius in 2016
- a selection of recent articles by ICCA members
- a "latest news" section
- information and reports on ICCA's training workshops for national court judges, known as the New York Convention Roadshow

*Under the "Publications" button, the reader will find:*

- the tables of contents of all volumes of the Yearbook and of the ICCA Congress Series, as well as the current table of contents of the International Handbook on Commercial Arbitration
- a list of all court decisions and awards published in the Yearbook since 1976
- a Consolidated Index of Cases, which facilitates research of decisions applying the 1958 New York Convention by subject matter and Article of the Convention

*Also included on the website are:*

- historic materials from the archives of ICCA and its members
- resources for young arbitration practitioners and a link to Young ICCA
- full film footage of the presentations given at the XXI ICCA Congress in Singapore in June 2012

The ICCA website can be found at <[www.arbitration-icca.org](http://www.arbitration-icca.org)>.



**KluwerArbitration database**

Materials published in the Yearbook Commercial Arbitration, the International Handbook on Commercial Arbitration and selected volumes of ICCA's Congress Series are also available by subscription in the KluwerArbitration database at <[www.kluwerarbitration.com](http://www.kluwerarbitration.com)>. All materials in this database are fully searchable through a variety of search tools.

# NOTE TO THE READER

This Yearbook Commercial Arbitration Volume XXXVII (2012) includes online access to the complete contents of the 2011 and 2012 Yearbooks at **<www.kluwer arbitration.com>**.

To activate your access, visit:

**<www.kluwerlaw.com/forms/online+access+books>**

Fill in your contact details and use the unique access code provided on the cover of this Yearbook.

Online subscriptions last **one year** and need to be activated by **31 December 2013**; your activation date is the start date.

This is a single-user subscription for personal use only.

Customer support can be contacted at **<sales@kluwer law.com>** should there be any difficulty in activating the access.

# TABLE OF CONTENTS

VOLUME XXXVII – 2012

<b>Prof. Dr. Pieter Sanders, 1912-2012</b>	v
<b>Introduction</b>	
Prof. Albert Jan van den Berg, General Editor	ix
<b>Online Resources</b>	xiii
<b>Note to the Reader</b>	xv
<b>Table of Contents</b>	xvii
 <b>Part I – National Reports</b>	 1
<i>Note General Editor</i>	1
Table of Contents of <i>International Handbook on Commercial Arbitration</i>	1
 <b>Part II – Arbitration Rules</b>	 17
<i>New and Amended Arbitration Rules</i>	19
 <b>Part III – Recent Developments in Arbitration Law and Practice</b>	 23
<i>Recent Developments in Arbitration Law and Practice</i>	25
 <b>Part IV – Arbitral Awards</b>	 27
<i>Note General Editor</i>	29
 Yearbook Comm. Arb'n XXXVII (2012)	 xvii

# TABLE OF CONTENTS

## *International Chamber of Commerce (ICC)*

- Final award in case no. 11490 30
- Final award in case no. 11509 43
- Final award in case no. 12877 49
- Final award on jurisdiction in case no. 14581 62
- Final award in case no. 14630 90
- Final award in case no. 14792 110

## **Index of Arbitral Awards**

Index Awards-1

*Introduction*

*Index of Arbitral Awards*

Index Awards-1

Index Awards-2

## **Part V – A. Court Decisions on the New York Convention 1958 127**

*Introduction*

129

*List of Contracting States (as of 1 November 2012)*

133

*Index of Cases Reported in Volume XXXVII (2012)*

*Prof. Albert Jan van den Berg*

141

*Australia*

- No. 37. Federal Court of Australia, New South Wales District Registry, General Division, 29 June 2012  
*Dampskibsselskabet Norden A/S v. Beach Building & Civil Group Pty Ltd*

163

*Bosnia and Herzegovina*

- No. 1. Ustavni sud Bosne i Hercegovine, 9 May 2006  
*Inkometal AG v. Koksno Hemijski Kombinat d. d.*

166

*Brazil*

- No. 15. Superior Tribunal de Justiça, 15 February 2006  
*Plexus Cotton Limited v. Santana Têxtil S/A*

169

- No. 16. Superior Tribunal de Justiça, 6 March 2006

*Bouvery International S/A v. Irmãos Pereira Comercial e Exportadora Ltda*

171

# TABLE OF CONTENTS

• No. 17. Superior Tribunal de Justiça, 19 April 2006 <i>Union Européenne de Gymnastique – UEG v. Multipole Distribuidora de Filmes Ltda</i>	173
• No. 18. Superior Tribunal de Justiça, 19 June 2006 <i>Tremond Alloys and Metals Corporation v. Metaltubos Indústria e Comércio de Metais Ltda</i>	175
• No. 19. Superior Tribunal de Justiça, 18 October 2006 <i>Grain Partners SpA v. Cooperativa dos Produtores e Trabalhadores Urbanos e Rurais de Sorriso Ltda – Coopergrão et al.</i>	177
• No. 20. Superior Tribunal de Justiça, 23 November 2006 <i>First Brands do Brasil Ltda. et al. v. STP – Petroplus Produtos Automotivos S/A PPA et al.</i>	180
• No. 21. Superior Tribunal de Justiça, 26 June 2007 <i>Guidosimplex Drive Ltda v. Cavenaghi Cavenaghi e Companhia Ltda</i>	183
• No. 22. Superior Tribunal de Justiça, 20 August 2008 <i>Litsa Líneas de Transmisión del Litoral S/A v. SV Engenharia S/A et al.</i>	185
• No. 23. Superior Tribunal de Justiça, 28 May 2009 <i>Devcot S/A v. Ari Giongo</i>	187
• No. 24. Superior Tribunal de Justiça, 19 October 2011 <i>Kia Motors Corporation v. Washington Armênio Lopes et al.</i>	189
• No. 25. Tribunal de Justiça, Paraná, 7 December 2011 <i>Itiquira Energética S/A v. Inepar S/A – Indústria e Construções</i>	193
• No. 26. Superior Tribunal de Justiça, 14 June 2012 <i>Comverse Inc v. American Telecommunication do Brasil Ltda</i>	195
<i>Colombia</i>	
• No. 6. Corte Suprema de Justicia, Civil Cassation Chamber, 12 May 2011 <i>Pollux Marine Services Corp. v. Colfletar Ltda</i>	198
• No. 7. Corte Suprema de Justicia, Civil Cassation Chamber, 27 July 2011 <i>Petrotesting Colombia S.A. et al. v. Ross Energy S.A.</i>	200
• No. 8. Corte Suprema de Justicia, Civil Cassation Chamber, 19 December 2011 and 3 May 2012 <i>Drummond Ltd. v. Instituto Nacional de Concesiones – INCO et al.</i>	205

# TABLE OF CONTENTS

<i>France</i>	
• No. 51. Cour de Cassation, First Civil Chamber, 6 July 2011 <i>Thierry X v. Paul Y</i>	210
• No. 52. Cour de Cassation, First Civil Chamber, 26 October 2011 <i>Elham X v. Mohammad Ben Laden et al.</i>	212
• No. 53. Cour de Cassation, First Civil Chamber, 28 March 2012 <i>Société de Réalisations et d'Études pour les Industriels du Bois – Séribo v. Hainan Yangpu Xindadao Industrial Co Ltd</i>	214
<i>Germany</i>	
• No. 140. Bundesgerichtshof, 8 June 2010 <i>First and Second German Investors v. Brokerage house X</i>	216
• No. 141. Oberlandesgericht, Thuringia, 13 January 2011 <i>Subsidiary company of franchiser v. Franchisee</i>	220
• No. 142. Bundesgerichtshof, 25 January 2011 <i>First, Second and Third German Investors v. Brokerage house X</i>	223
• No. 143. Oberlandesgericht, Naumburg, 4 March 2011 <i>Liquidator of Company A v. Company B</i>	226
• No. 144. Oberlandesgericht, Munich, 4 July 2011 <i>Liquidator of Company Y v. The Kingdom of X</i>	229
• No. 145. Oberlandesgericht, Munich, 14 November 2011 <i>Joint Stock Company A v. Joint Stock Company B</i>	231
<i>Greece</i>	
• No. 22. Efeteio, Athens, 18 July 2011 <i>Greek Buyer v. Ukrainian Seller</i>	234
<i>Guatemala</i>	
• No. 1. Corte de Constitucionalidad, Apelación de Amparo, 5 April 2005 and 4 September 2008 <i>Apatlán, Sociedad Anónima v. Respondent</i>	237
• No. 2. Corte de Constitucionalidad, Inconstitucionalidad en Caso Concreto, 11 March 2008 <i>Corporación de Fianzas, Confianza, Sociedad Anónima and Texaco Guatemala Inc.</i>	240



## TABLE OF CONTENTS

### *India*

- No. 47. High Court, Calcutta, Ordinary Original Civil Jurisdiction, 20 March 2012  
*Coal India Limited v. Canadian Commercial Corporation* 242
- No. 48. Supreme Court of India, 6 September 2012  
*Bharat Aluminium Co. et al. v. Kaiser Aluminium Technical Service, Inc. et al.* 244

### *Israel*

- No. 6. Central Magistrate Court, 15 April 2010  
*The Ukrainian Ministry of Material Provisions v. Vioans Ltd.* 250

### *Italy*

- No. 184. Corte di Appello, Milan, 22 December 2010  
*Company X v. Company Y* 253
- No. 185. Corte di Cassazione, First Civil Chamber, 16 June 2011  
*Del Medico di Giovina Giuliana Del Medico & C sas v. Iberprotein S.L.* 255

### *Korea*

- No. 4. Supreme Court, 10 December 2004  
*Petitioner v. Respondent* 257
- No. 5. Supreme Court, 28 May 2009 and 29 April 2010  
*Majestic Woodchips Inc. v. Hun-Geun Yu, as the receiver of the reorganized Donghae Pulp Co., Ltd. et al.* 259

### *Malaysia*

- No. 5. High Court of Malaya, Kuala Lumpur, 10 October 2011  
*Open Type Joint Stock Company Efirnoye – EFKO v. Alfa Trading Ltd* 264

### *Netherlands*

- No. 39. Voorzieningenrechter, Rechtbank, Amsterdam, 24 February 2011  
*Shalom v. IPC Holland B.V. et al.* 268
- No. 40. Voorzieningenrechter, Rechtbank, Rotterdam, 28 February 2011 and Gerechtshof, The Hague, 20 December 2011  
*Catz International B.V. v. Gilan Trading KFT* 271

# TABLE OF CONTENTS

• No. 41. Voorzieningenrechter, Rechtbank, Amsterdam, 17 November 2011 <i>Nikolai Viktorovich Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat</i>	274
• No. 42. Voorzieningenrechter, Rechtbank, Amsterdam, 10 May 2012 <i>Kompas Overseas Inc. v. OAO Severnoe Rechnoe Parokhodstvo (Northern River Shipping Company)</i>	277
• No. 43. Voorzieningenrechter, Rechtbank, Amsterdam, 26 July 2012 <i>Nova Shipping Ltd v. Med Marine Kilavuzluk ve Romarkaj Hizmetleri Insaat Sanayi ve Ticaret A.S.</i>	282
<i>Russian Federation</i>	
• No. 34. Supreme Arbitrazh Court of the Russian Federation, 11 September 2009 and Presidium of the Supreme Arbitrazh Court of the Russian Federation, 13 September 2010 <i>Stena RoRo AB v. Open Joint Stock Company Baltiysky Zavod</i>	285
<i>South Africa</i>	
• No. 5. High Court of South Africa, Western Cape High Court, Cape Town, 24 February 2012 <i>Phoenix Shipping Corporation v. DHL Global Forwarding SA (Pty) Ltd et al.</i>	290
<i>Spain</i>	
• No. 71. Audiencia Provincial, Fifth Chamber, Seville, 21 July 2011 <i>Miguel Gallego, S.A. v. Odjfell Tankers AS</i>	295
• No. 72. Tribunal Superior de Justicia de Catalunya, Civil and Penal Chamber, 17 November 2011 <i>MK2 S.A. v. Wide Pictures, S.L.</i>	297
<i>Switzerland</i>	
• No. 45. Tribunal Fédéral, Second Civil Chamber, 10 October 2011 <i>Slovakian Seller v. Syrian Buyer</i>	300
• No. 46. Bundesgericht, Second Civil Chamber, 2 July 2012 <i>X SA v. Z LLC</i>	305

# TABLE OF CONTENTS

## United Arab Emirates

- No. 3. Court of Appeal, Dubai, 22 February 2012  
*Airmech Dubai LLC v. Maxtel International LLC* 309

## United Kingdom

- No. 94. Court of Appeal (Civil Division), 27 June 2012  
*Yukos Capital S.A.R.L. v. OJSC Rosneft Oil Company* 312

## United States

- No. 749. United States District Court, Southern District of Florida, 22 March 2010 and United States Court of Appeals, Eleventh Circuit, 23 September 2011  
*Jane Doe v. Princess Cruise Lines, Ltd.* 317
- No. 750. United States District Court, Southern District of Florida, 10 February 2011 and United States Court of Appeals, Eleventh Circuit, 5 July 2012  
*Ingaseosas International Co. v. Aconcagua Investing Ltd.* 322
- No. 751. United States District Court, Southern District of Florida, 15 June 2011  
*Laurent Fernandes v. Holland American Line* 328
- No. 752. United States Court of Appeals, Eleventh Circuit, 29 August 2011  
*Harold Leonel Pineda Lindo v. NCL (Bahamas), Ltd. d/b/a NCL* 330
- No. 753. United States Court of Appeals, Eleventh Circuit, 18 October 2011  
*Ricardo Maxwell v. NCL (Bahamas), Ltd, d/b/a/ NCL* 337
- No. 754. United States Court of Appeals, Ninth Circuit, 18 October 2011  
*Gary Smallwood v. Allied Van Lines, Inc. et al.* 339
- No. 755. United States District Court, Eastern District of Missouri, Eastern Division, 7 December 2011 and 14 March 2012  
*A.O.A. et al. v. Doe Run Resources Corporation et al.* 342
- No. 756. United States Court of Appeals, Second Circuit, 14 December 2011  
*Figueiredo Ferraz e Engenharia de Projeto Ltda v. The Republic of Peru* 346

# TABLE OF CONTENTS

• No. 757. United States Court of Appeals, Ninth Circuit, 15 December 2011 <i>The Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran, as Successor in Interest to the Ministry of War of the Government of Iran v. Cubic Defense Systems, Inc.</i>	35
• No. 758. United States Court of Appeals, Fifth Circuit, 5 January 2012 <i>S &amp; T Oil Equipment &amp; Machinery, Ltd. et al. v. Juridica Investments Limited et al.</i>	35
• No. 759. United States Court of Appeals, District of Columbia Circuit, 13 January 2012 <i>Belize Social Development Limited v. Government of Belize</i>	35
• No. 760. United States Court of Appeals, District of Columbia Circuit, 17 January 2012 <i>Republic of Argentina v. BG Group PLC</i>	36
• No. 761. United States District Court, District of Columbia, 17 January 2012 <i>DRC, Inc. v. Republic of Honduras</i>	36
• No. 762. United States Court of Appeals, Second Circuit, 3 February 2012 <i>Scandinavian Reinsurance Company Limited v. Saint Paul Fire and Marine Insurance Company et al.</i>	368
• No. 763. United States District Court, Southern District of Florida, Miami Division, 13 February 2012 <i>Chelsea Football Club Limited v. Adrian Mutu</i>	373
• No. 764. United States District Court, Southern District of Florida, 24 February 2012 <i>Yuliana Ruiz as Personal Representative of the Estate of Gregory Navarro, deceased v. Carnival Corporation d/b/a Carnival Cruise Lines, Inc.</i>	375
• No. 765. United States District Court, Eastern District of Louisiana, 12 March 2012 <i>First Investment Corp. v. Fujian Mawei Shipbuilding, Ltd. et al.</i>	377
• No. 766. United States Court of Appeals, Fourth Circuit, 16 March 2012 <i>Potenciano L. Aggarao, Jr. v. MOL Ship Management Company, Ltd. et al.</i>	381

# TABLE OF CONTENTS

• No. 767. United States District Court, Southern District of Florida, Miami Division, 23 March 2012 <i>Maynor Centeno v. NCL (Bahamas) Ltd.</i>	388
• No. 768. United States Court of Appeals, Second Circuit, 28 March 2012 <i>The Republic of Iraq v. BNP Paribas USA et al.</i>	390
• No. 769. United States District Court, Southern District of Florida, 2 April 2012 <i>Gonzalo Lujan v. Carnival Corporation</i>	393
• No. 770. United States Court of Appeals, Eleventh Circuit, 10 April 2012 <i>Roy David Castillo Arauz v. Carnival Corporation, d/b/a Carnival Cruise Lines, Inc. et al.</i>	396
• No. 771. United States District Court, Northern District of Texas, Dallas Division, 12 June 2012 <i>Jay Nanda v. Atul Nanda et al.</i>	399
• No. 772. United States Court of Appeals, Fourth Circuit, 9 July 2012 <i>ESAB Group, Incorporated v. Zurich Insurance PLC et al.</i>	402
• No. 773. United States Court of Appeals, Eleventh Circuit, 12 July 2012 <i>Kenneth Fernandes v. Carnival Corporation, d/b/a Carnival Cruise Lines</i>	407
• No. 774. United States Court of Appeals, Second Circuit, 13 July 2012 <i>Thai-Lao Lignite (Thailand) Co. Ltd. et al. v. Government of the Lao People's Democratic Republic</i>	409
• No. 775. United States Court of Appeals, Eleventh Circuit, 20 July 2012 <i>Milton Escobal v. Celebration Cruise Operator, Inc. et al.</i>	412
• No. 776. United States Court of Appeals, Third Circuit, 26 July 2012 <i>Technological Application and Production Company (Tecapro), Hcmc- Vietnam v. Control Screening LLC</i>	414

## TABLE OF CONTENTS

• No. 777. United States Court of Appeals, Second Circuit, 8 August 2012 <i>Werner Schneider, acting in his capacity as insolvency administrator of Walter Bau AG (In Liquidation) v. The Kingdom of Thailand</i>	41
• No. 778. United States Court of Appeals, Second Circuit, 24 August 2012 <i>Zeevi Holdings Ltd. v. Republic of Bulgaria</i>	42
<i>Uruguay</i>	
• No. 1. Suprema Corte de Justicia del Uruguay, 24 March 2006 <i>Nelson Acosta et al. v. Prudential Equity Group Inc. et al.</i>	42
• No. 2. Suprema Corte de Justicia del Uruguay, 9 May 2008 <i>Soufflet International Pte. Ltd. et al. v. Brookner S.A.</i>	42
<b>Part V – B. Court Decisions on the European Convention 1961</b>	43
<i>List of Contracting States and Signatories (as of 1 November 2012)</i>	43
<b>Part V – C. Court Decisions on the Washington Convention 1965</b>	437
<i>List of Contracting States and Signatories (as of 1 November 2012)</i>	439
<i>United States</i>	
• No. W3. United States District Court, Eastern District of Virginia, Alexandria Division, 11 September 2012 <i>Continental Casualty Company v. The Argentine Republic</i>	446
<b>Part V – D. Court Decisions on the Panama Convention 1975</b>	449
<i>List of Contracting States (as of 1 November 2012)</i>	451
• No. P32. United States District Court, Southern District of Florida, Miami Division, 10 September 2012 <i>Gerardo Gerson et al. v. UBS Financial Services, Inc. et al.</i>	453

## TABLE OF CONTENTS

<b>Part V – E. Other Court Decisions on Arbitration</b>	<b>457</b>
<i>Switzerland</i>	
• Bundesgericht, 27 March 2012 <i>Francelino da Silva Matuzalem v. Fédération Internationale de Football Association – FIFA</i>	459
<i>United Kingdom</i>	
• Court of Appeal (Civil Division), 16 May 2012 <i>Sulamérica Cia Nacional de Seguros S.A. et al. v. Enesa Engenharia S.A. et al.</i>	464
• Privy Council, 17 July 2012 <i>La Générale des Carrières et des Mines v. FG Hemisphere Associates LLC</i>	468
 <b>Part VI – Bibliography</b>	 <b>471</b>
<i>I. General</i>	473
<i>II. Countries</i>	491
<i>III. Journals on Arbitration</i>	496
 <b>List of ICCA Officers and Governing Board Members</b>	 <b>505</b>
 <b>List of ICCA Members</b>	 <b>519</b>
 <b>ICCA Membership Now Open</b>	 <b>551</b>