



CRA Insights

# International Arbitration

CRA Charles River  
Associates

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## 2024 review: Updates and trends

Dear Clients and Friends,

Our activities in 2024 reflected ongoing trends from 2023 and emerging forces affecting the landscape for investors and companies around the world. In addition to mainstay disputes such as post-M&A arbitrations, breaches of commercial contracts, joint venture disputes, and supply chain issues, we share here with you some updates and recent trends that we are observing.

The energy crisis in Europe continued to generate new disputes, especially in LNG, while the energy transition keeps leading to arbitrations across the globe. In these contexts, we supported cases involving treaty breaches, force majeure disputes, and supply agreements by offering pre-arbitration analyses, economic studies, and liability assessments. We provided expert testimony on asset valuation, damages, tax deductions, and pricing under long-term agreements. Changing government incentives and tariff adjustments will likely lead to new disputes.

Sanctions have led to more disputes not just in energy but also in other natural resources, especially in mining, affecting the ability to supply materials and equipment, for example. More broadly, arbitration in mining remains a significant portion of our practice, mostly due to resource nationalization, changes in mining codes, environmental disputes, the energy transition, market volatility, and operational challenges. Over the past year, we helped our clients achieve favorable settlements in a wide range of mining cases, including valuations of mining assets, royalty disputes, long-term supply agreements, and critical minerals licensing.

We continued to actively provide quantum opinions in a variety of forums and across a wide array of disputes in sectors such as financial services, manufacturing, and distribution. Going forward, we expect recent political shifts in major jurisdictions to lead to policy reforms that will impact corporations and investors, leading to cross-border disputes in energy, mining, and other sectors.

Significant activity in life sciences/pharma persists, mostly driven by licensing issues and cross-border transactions, as well as areas that intersect with IP, such as patent disputes. We have been retained on a range of pharmaceutical and life science arbitrations, addressing disputes such as contract breaches, royalty disputes, and delayed product delivery. Our work has covered quantifying lost profits, underpaid royalties, and market-entry delays, with significant contributions to favorable outcomes for our clients.

Within IP, we witnessed increased disputes in software licensing and energy tech. Our activity in financial services continues to be concentrated on cross-border financing, intra-company loans, and the effects of sanctions.

Within infrastructure, delays, cost overruns, and regulatory challenges surged particularly with airports and other transportation facilities in Latin America and Asia. Relatedly, real estate is still an active area, especially in hospitality joint ventures, lease agreements, and regulatory compliance.

We present below a sample of our engagements and practical thought leadership from the past year. You are, of course, welcome to contact any of us to learn more about our practices.

Best regards,



Tiago Duarte-Silva



# Energy

**Long-term liquid natural gas:** Seabron Adamson testified as the lead liability and damages expert in an ICDR arbitration seated in Houston regarding the natural gas and LNG sector. This commercial dispute between a major European energy company and an Asian company was related to a long-term LNG tolling agreement. Mr. Adamson testified on force majeure and quantum issues. Claimed damages were approximately \$80 million.

**Gas prices in Asia-Pacific:** Seabron Adamson was retained as the lead economic expert for an Asian-Pacific gas buyer in a gas price review matter. The work focused on setting a new price under a long-term gas supply agreement. The total value claimed in the dispute was greater than US\$200 million; the dispute settled before the hearing.

**Electricity transmission and distribution network concession:** Christopher Russo testified on behalf of a utility in an African country, regarding a concession to operate the electricity transmission and distribution network. The testimony addressed issues surrounding regulation of the energy sector, power purchase agreements, capital investments, and returns on investment. Damages claimed were approximately \$400 million.

**Upstream oil and gas industry:** Tiago Duarte-Silva and Richard Acklam gave expert testimony in an ICSID arbitration regarding an upstream oil and gas asset at exploration stage. They opined on appropriate valuation methodologies for an asset at that stage of development and damages estimates on an ex-ante and ex-post basis.

**Solar panel supply agreement:** For a European renewable energy developer, Seabron Adamson provided a liability analysis in an arbitration matter regarding solar panel supplies from China, as well as pricing and supply of replacement panels. The dispute settled before the hearing.

**Pre-arbitration support involving a long-term power purchase agreement:** Seabron Adamson supplied pre-arbitration support in an ICC matter regarding the scope for potential damages associated with a European power project under a long-term power purchase agreement (PPA). Mr. Adamson analysed likely damages to date and potential future damages under contractual provisions. The damages claimed were greater than \$50 million.

Seabron Adamson (and co-author Santosh Raikar) published the second edition of their leading textbook *Renewable Energy Finance: Theory and Practice published by the Academic Press*. The co-authors teach a class on renewable energy finance at the Carroll School of Management at Boston College.

Richard Acklam co-authored an article in the ninth edition of The Investment Treaty Arbitration Review titled “*Considerations for the valuation of energy assets in international arbitration.*” In this chapter, the authors discuss how the rapid and significant changes in the structure of the energy sector as a result of the recent energy crisis and societal action against climate change may impact asset valuation in an arbitration context, as well as the considerations arbitrators might have with regard to valuation evidence submitted to tribunals.

Richard Acklam is currently serving as Co-Chair of the *Innovation and Policy Task Force on the Campaign for Greener Arbitration*.

*More information about our energy arbitration capabilities and experience can be found [here](#).*



# Mining and Commodities

## **Valuation and oppression damages on behalf of shareholders of top-5 copper mining**

**asset:** CRA was retained by counsel to dissenting shareholders in a multi-billion arbitration claim related to the acquisition by the majority shareholder of all outstanding shares of a copper mining company that holds one of the world's five largest copper producing assets. James Burrows and Tiago Duarte-Silva performed an extensive analysis of the copper mining industry, benchmarking the performance of the world's top producing projects, identifying comparable companies and transactions, and stress testing different valuation methods.

**Obligations under long-term supply agreement:** David Persampieri testified at a hearing in an ICC arbitration regarding a long-term supply agreement for DR-grade iron ore pellet feed to address liability in the first phase of this dispute. He submitted expert reports and testified on the obligations of the respondent associated with the long-term supply agreement.

**Royalty dispute:** David Persampieri advised on a Canadian arbitration dispute regarding the payment of royalties by the operator of a mine producing high-grade iron ore concentrate which is sold on the seaborne market. He submitted an opinion detailing the appropriate market-based price on which to base royalty obligations. The matter moved to Court due to bankruptcy, after which Mr. Persampieri submitted a report and was deposed.

**Valuation of copper asset in South America:** Tiago Duarte-Silva opined on damages in a commercial arbitration in South America related to an early-stage copper project, with \$500 million in claimed damages associated with an equity stake in that project.

**Valuation of phosphate mine:** As part of an impairment analysis for a global agricultural company, Tiago Duarte-Silva and Brian Daniel provided a valuation of a phosphorus mine. Within the context of the industry, we analyzed price and costs forecasts and worked with the asset's owner to assess development and production schedules.

Tiago Duarte-Silva was a panelist in the Young ITA Workshop, during the session titled "[\*Key Considerations in Mining Arbitrations: Case Study and Panel Discussion.\*](#)"

*More information about our mining arbitration capabilities and experience can be found [here](#).*



## Life Sciences/ Pharma

**Medical dermatology product breach of agreement:** Greg Bell testified at a JAMS arbitration hearing concerning the alleged breach of an agreement to commercialize a medical dermatology product. At issue was whether the respondent, a major pharmaceutical company, had used commercially reasonable efforts in its launch and commercialization of the product and its eventual decision to divest the product to another company. Mr. Bell considered the respondent's promotional efforts and other actions against several relevant benchmarks, concluding that commercially reasonable efforts were exercised. In addition, Mr. Bell addressed the damages assessment proffered by claimant's expert, with a focus on critiquing the expert's use of a limited selection of sales projections to serve as the basis for damages.

**Breach of distribution contract of orphan drug in Latin America:** Tiago Duarte-Silva opined on damages in a commercial arbitration between a large pharmaceutical company and a distributor. The distributor argued lost profits due to the early termination of the agreement. His opinions centered on likely future revenues and profits from the sale of this drug in the distributor's territory.

**Analysis of pharmaceutical royalty agreements and calculations:** Christopher Gerardi was retained by a large global pharmaceutical company to evaluate the accuracy and completeness of the company's calculation of patent and trademark royalties (nearly two billion US dollars over an eight-year period). Among other things, Mr. Gerardi evaluated whether items deducted from sales to arrive at the royalty base are permitted by the relevant agreements and whether the company's royalty reporting was consistent with its financial reporting and applicable accounting standards.

**Commercially Reasonable Efforts:** Sean Sheridan was retained by counsel to the Respondent in an ICDR arbitration to assess whether the respondent used commercially reasonable efforts with respect to its obligations under the license agreement between the parties. CRA evaluated the Respondent's efforts relative to industry benchmarks, ultimately concluding that commercially reasonable efforts were exercised. Ultimately, the panel agreed with Dr. Sheridan's opinions regarding the respondent's efforts.

**Dispute over interpretation of termination clause:** Greg Bell was retained by the respondent in a dispute concerning the interpretation of a clause in the termination provision of a collaboration agreement. At issue was whether the respondent was required to continue paying royalties to the claimant following the termination of the agreement. Mr. Bell was asked to opine on whether the claimant's interpretation was consistent with generally accepted accounting principles and the claimant's own publicly reported financial statements. Mr. Bell considered various accounting standards, disclosure and reporting requirements, and the claimant's financial statements, concluding that the respondent's interpretation was consistent with generally accepted accounting standards and claimant's interpretation was inconsistent with the claimant's financial disclosures.

**Breach of agreement for distribution of prescription women's health product:** Greg Bell was retained by the claimant in an arbitration dispute concerning the alleged breach of a non-compete clause in an agreement to distribute a prescription women's health product in a country in Asia. He provided an expert report regarding the quantum of lost profits suffered by the claimant because of the alleged breach. In computing its estimate of quantum, Mr. Bell analyzed and addressed questions regarding the timing of market entry and product sales absent the alleged breach as well as the incremental profit per unit sold.

**Pharmaceutical patent license agreements analysis:** Andrew Tepperman prepared an expert statement on behalf of Respondent in an ICC dispute concerning allegedly underpaid royalties. He opined on economic and industry norms in pharmaceutical patent license agreements, focusing on provisions that may result in deductions from the base of sales on which royalties are paid, as well as the term of the royalty obligation.

**Delayed delivery of active pharmaceutical ingredient:** Andrew Tepperman submitted an expert report on behalf of Respondent in LCIA proceeding involving damages resulting from allegedly delayed delivery of active pharmaceutical ingredient to manufacturer. He quantified lost tablet sales in Canada under the assumption of delayed supply, including potential for future harm in the form of lost market share (i.e., lost "first-mover advantage"), and critiqued the opposing expert analysis.

Andrew Tepperman authored "[\*Best practices in the use of damages experts in complex commercial arbitrations\*](#)" in the 2024 edition of Managing and Resolving Corporate Disputes. He was also a panelist on "Damages Issues in IP and Life Science Disputes" at [\*GAR Live: Damages\*](#).

*More information about our life sciences arbitration capabilities and experience can be found [here](#).*



## Technology

**Airline reservation systems:** Chris Bakewell was retained in a matter regarding damages from airline reservation systems. The claimant's theory involved significant future damages, which CRA rebutted.

**Breach of contract and trade secret claims regarding software:** Julia Rowe served as an expert witness in arbitration proceedings related to the unauthorized use and distribution of software and trade secrets between a software company and a major dental services provider. Ms. Rowe assessed unjust enrichment, direct damages, lost profits, and reasonable royalty damages.

**Semiconductor technology license:** Dan McGavock was retained as a licensing and valuation expert on behalf of a leading global semiconductor fabrication company in connection with an international arbitration dispute (AAA-ICDR) involving a worldwide technology license. Mr. McGavock's primary role was to assess the independent economic value of numerous, discrete trade secrets alleged to be embedded within the license and subject to ongoing royalty payments after the expiration of patent rights. CRA's client secured a favorable settlement, resulting in a substantial reduction to its royalty obligations for the remaining life of the licensed products.

Chris Bakewell was a panelist in the [2024 EDTX Bench Bar Conference](#). The panel covered rules regarding extraterritorial sales. Among the topics discussed were multi-jurisdictional litigation (global perspective) and the pros and cons of discovery via arbitration versus in-court litigation.





## Quantum, shareholder disputes, post-M&A arbitrations

**Treaty arbitration related to airport in Latin America:** Tiago Duarte-Silva opined on damages in an arbitration against a Latin American government, related to a concession to operate an international passenger and cargo airport. The analysis entailed valuation of damages and lost profits from the airport's many lines of businesses, and an analysis of the cargo and passenger plane market in the region.

**Minority shareholder oppression in fintech industry:** Tiago Duarte-Silva and his team assisted counsel to shareholders in an arbitration claim involving allegations of shareholder oppression. The oppression claims related to the valuation of an equity stake in one of North America's fastest growing fintech companies.

**Breach of contract in construction project:** Tiago Duarte-Silva opined in an arbitration centered on a breach of contract in the multi-year multibillion-dollar construction of an airport in Latin America.

As a member of the [GAR Academy Faculty](#), Jim Burrows was a panelist in a workshop on working with witnesses and cross-examination. Burrows discussed the importance of close coordination between experts and fact witnesses, and the need for damage experts to be thoroughly familiar with the liability theory. Experts should work closely with counsel on the facts that need to be developed and supported by fact witnesses.

*More information about our capabilities and experience in quantum of damages can be found [here](#).*

## About CRA's International Arbitration Group

Our International Arbitration Group combines finance, accounting, and quantum expertise with industry expertise from energy, oil and gas, metals and materials, pharmaceuticals and life sciences, banking, financial services, and various other industries to offer a one-stop solution for clients in disputes that might otherwise require several firms. We have been engaged in some of the most complex and high-profile disputes of recent years. To learn more, visit [www.crai.com/ia](http://www.crai.com/ia).

### Consultants involved in matters in this update:

<b>Richard Acklam</b>	<b>Christopher Gerardi</b>	<b>Julia Rowe</b>
<b>Seabron Adamson</b>	<b>Alene Hanson</b>	<b>Christopher Russo</b>
<b>Tahsin Anjum</b>	<b>Robin Hart</b>	<b>Michelle Sandoval Siman</b>
<b>Chris Bakewell</b>	<b>Swati Kanoria</b>	<b>Elias Sekkal</b>
<b>Greg Bell</b>	<b>Zawadi Lemayian</b>	<b>Saumya Sharma</b>
<b>Jim Burrows</b>	<b>Mike Loreth</b>	<b>Sean Sheridan</b>
<b>Kyle Calder</b>	<b>Dan McGavock</b>	<b>Saurabh Singh</b>
<b>Rahul Chhabra</b>	<b>Ken Morotomi</b>	<b>Andrew Tepperman</b>
<b>Rebel Curd</b>	<b>Miagoto Nemadjilembaye</b>	<b>Aidan Westley</b>
<b>Brian Daniel</b>	<b>David Persampieri</b>	<b>Yifan Yu</b>
<b>Garrett Domaratzky</b>	<b>Elliot Pruss</b>	
<b>Tiago Duarte-Silva</b>		



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