SPECIAL REPORT Arbitration & Mediation

Miami a rising star in international arbitration

Commentary by Daniel E. González and Daniel Cervantes

International arbitration is showing signs of strong support and growth in Miami.

González

Cervantes

Arbitration as a primary source of dispute resolution is spreading across the globe and, according to the International Chamber of Commerce, attracts users from approximately 140 countries and independent territories.

Miami is a rising star within this group, having solidified its position among the top five cities in the world as the venue for arbitration in cases governed by the ICC, the International Centre for Dispute Resolution, and other administered and ad hoc arbitrations.

Claiming its rightful place, Miami will be featured April 6-9, 2014, during the largest arbitration event in the world: the congress of the International Council for Commercial Arbitration.

Founded more than 50 years ago, the ICCA is a leading worldwide, nongovernmental organization dedicated to promoting and developing arbitration and other forms of alternative dispute resolution. One of the hallmarks of ICCA's efforts is its biannual worldwide congress featuring presentations by the most prominent international arbitration practitioners and scholars.

Often referred to as the Olympics of the international arbitration world, this congress is regularly attended by more than 1,000 lawyers.

Miami won a contentious bid last year to host the congress after a team of representatives from the Miami International Arbitration Society, including Burt Landy, Daniel E. González, José I. Astigarraga, Judy A. Freedberg and John M. Barkett, traveled to Geneva, Switzerland, to present the case for Miami. The MIAS team touted a multitude of factors, such as the fact that Miami is among the top cities around the world selected as the venue for arbitration. By virtue of its geographic position at the crossroads of Latin America, Europe and North America, Miami competes with New York as the key city in the United States for international arbitration.

Practitioners increasingly see Miami being selected as the venue in arbitration provisions, even when there is no apparent connection to Miami among the parties or within the scope of work at issue.

BIG SPOTLIGHT

The 2014 ICCA Congress in Miami will follow the 2012 ICCA Congress held a few months ago in Singapore, which boasted an inspiring 1,059 delegates and more than 60 renowned speakers.

Like Miami, Singapore was chosen as the host of an ICCA congress because it is on the rise as the focus of Asian international arbitration.

Indeed, Singapore and Miami share many of the qualities that make for a great arbitration venue. Singapore adopted the U.N. Commission on International Trade Law's model law for international arbitrations, has opened the way for lawyers to practice international arbitration within the jurisdiction, has support facilities to assist the smooth and efficient running of arbitration and is widely recognized by parties trading in the region as a neutral and geographically convenient place to arbitrate.

The 2014 ICCA Congress promises to further solidify Miami's place as a world leader in international arbitration. The congress will allow Miami to highlight the reasons why the city should be selected as the seat for arbitration.

In addition to the qualities it shares with Singapore, Miami can boast the fact that the ICDR and the JAMS Arbitration, Mediation, and ADR Services recently opened new state-of-the-art facilities. Also, Florida court trends demonstrate that arbitration agreements are favored and enforced in the state.

Plus, the number of law firms in Miami specializing in international arbitration is increasing, and attorneys at these firms are becoming prominent litigators in the field, especially in cases involving Latin America.

Demonstrating their commitment to international arbitration, these 10 firms with Miami offices were willing to be founding sponsors of the 2014 ICCA Congress before Miami won the bid to host the event: Akerman Senterfitt, Astigarraga Davis, Baker McKenzie, Diaz Reus, DLA Piper, Greenberg Traurig, Hogan Lovells, Holland & Knight, Shook Hardy & Bacon and White & Case.

MIAS is taking charge of preparing for the 2014 ICCA Congress. Leading international arbitration practitioners and academics, as well as judges, government advisers and corporate counsel from around the world, are expected to attend. More information will be available at www.icca-miami2014.com.

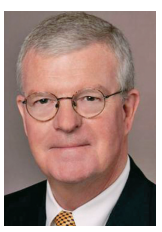
This event is the world's biggest spotlight for international arbitration and, under it, Miami will surely shine.

Daniel E. González is the co-leader of Hogan Lovells' international arbitration practice group. Based in Miami, he serves on the board of ICCA Miami 2014 Inc. Daniel Cervantes, an associate in Hogan Lovells' Miami office, focuses his practice on international commercial litigation and arbitration.

E-discovery increases possibility of mediated resolutions

Commentary by Robert A. Cole

A set of circumstances in Florida and around the country has elevated the need for mediation as an essential tool for the resolution of e-discovery issues in civil cases.



Cole

Florida, among other states, has adopted comprehensive rules of civil procedure addressing electronically stored information, thus joining the federal courts, which have had such rules for many years.

Lawyers are realizing that virtually all information is stored electronically, and there is a burgeoning treasure trove of discoverable information contained in personal devices as well as in enterprise systems. Also, the social media explosion presents unprecedented opportunities to gather facts and investigate issues.

Together, these factors are rapidly expanding the discovery landscape and introducing issues of unprecedented depth and complexity — fomenting a perfect storm of adversarial activity. They are dramatically increasing demands on the courts to referee the inevitable conflicts among counsel that will arise.

A select group of mediators is preparing to meet this need, working closely with an organization formed to educate and certify both legal and technical professionals dealing with e-discovery. Miami attorney Charles Intriago has founded the Association of Certified E-Discovery Specialists, a select member organization.

ACEDS seeks to create an environment for the exchange of ideas, guidance, training and the development of best practices for e-discovery. The author's dispute resolution specialty firm, Upchurch, Watson, White & Max, is an active member of ACEDS, with the goal of providing e-discovery mediation services.

DISCOVERY MANAGEMENT

Almost every business, insurance company, governmental agency and court has either gone to or is heading toward a paperless environment. Virtually all information and documentation is stored electronically.

The volume of ESI is massive and growing exponentially. It's the way that private and public sector business is conducted with regard to data management and storage.

Hence, e-discovery has become a necessary and ubiquitous part of the discovery process in state and federal courts. Litigators and corporate in-house counsel are being forced to become familiar with e-discovery concepts such as the litigation hold, preservation requirements, collection criteria, metatags and ESI format variations.

Judicial budgetary constraints (more state than federal) make it increasingly more difficult to have e-discovery disputes heard and resolved by the courts. In Florida, the courts have had to deal with budgetary shortfalls by establishing hiring freezes on judges and court personnel, furloughs for court employees and limiting the court time available for the resolution of discovery disputes as well as trials.

Unfortunately, as the saying goes, "Justice delayed is justice denied."

It is clear to litigators and their clients that a new and more efficient dispute resolution alternative is needed to assist in the management of litigation and discovery. Through the ACEDS initiative and elsewhere, e-discovery pioneers are recognizing that mediation is not just a process for getting cases settled but can be an effective tool for addressing procedural disputes early in a case.

MEDIATION AGENDA

The self-determination concept of settlement mediation is transferable to the case management and discovery components. As with a traditional mediation settlement conference, the parties can come up with their own creative, mutually agreeable plan for e-discovery. This process will help reduce discovery disputes and limit court involvement, resulting in significant cost savings to both sides.

An agenda for conducting e-discovery mediation might include the following:

- Craft an agreement as to what is reasonably accessible and in what format it will be produced;
- Discuss preservation and collection protocols, including sampling and search techniques;
- Seek agreement on deadlines for production;
- Address the possibility of phased, targeted e-discovery;
- Strive to limit costs and discuss the allocation of extraordinary costs;
- Provide for resolution of issues concerning privileged information;
- Create a method for resolving any disputes that may arise over the mediated plan.

Ideally, this approach will dramatically reduce the time and costs associated with protracted litigation over motions for protective orders and motions to compel. These battles will inevitably arise absent a cooperative, mediated approach.

E-discovery mediation is a new and emerging market for mediators. It is also a solution to a growing problem in civil litigation. E-discovery mediation will reduce the cost of litigation, provide a workable and efficient tool for the conduct of e-discovery, and take some of the burden off a court system where, unfortunately, access is limited by funding and budget constraints.

The forecast is that e-discovery mediation will help litigators, as well as their clients, weather the perfect storm.

Robert A. Cole is a mediation panelist in the Jacksonville office of the alternative dispute resolution firm Upchurch, Watson, White & Max.