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Q&A With Cooley's Tony Stiegler

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Tony Stiegler

Tony Stiegler is a partner at Cooley LLP focusing on resolving commercial disputes across federal courts and in domestic and international arbitration proceedings. He regularly arbitrates disputes as an advocate before panels administered by the American Arbitration Association, Judicial Arbitration and Mediation Services, the Center for International Dispute Resolution, the London Court of International Arbitration, and the International Chamber of Commerce.

Stiegler has tried more than 30 cases to verdict, tried more than 50 arbitrations, led dozens of injunctive relief hearings, and has led and settled almost 1,000 cases during his 30-year career. He has led numerous teams traversing many technologies including pharmaceutical drug discoveries, medical devices, wireless communications, computer chip design, biofuels, F-16 jet maintenance, and consumer products, among others. He has litigated claims relating to patents, trade secrets, collaboration and intellectual property license agreements, trademarks, copyrights, antitrust claims, unfair competition, contractual agreements, defamation, rights of publicity and First Amendment, product liability, and related commercial matters.

He is noted by clients as providing "indispensable expertise and strategic guidance on complex issues, including international dimensions" and has been named a top lawyer by numerous publications including Law360, Legal 500, US News Best Lawyers, Super Lawyers and the San Diego Transcript.

Q: What attracted you to international arbitration work?

A: The excitement and adrenaline of high-stakes and challenging matters for clients at the forefront of technological, medical and scientific advances. It is a diverse practice leading to new subject matter year after year, which appeals to my liberal arts background. My cases typically involve fascinating developments in the fields of biotech, software, chemistry, drug discovery, medical devices, cybersecurity, consumer products and other combinations of science, engineering and business, and often exist in disrupted markets where the stakes are high.

I enjoy the practical problem solving, strategic planning, advocacy and rigor of complex international disputes. The practice requires many skills, including critical and creative thinking, complex fact and issue analysis, the ability to marshal facts and persuade through briefing, cross examination and argument, resource management, interpersonal skills and teamwork. Over the last 30 years, I have seen the pendulum swing away from court litigation where the proceedings were long on discovery, duration

and expense, but short on efficiency and finality, towards a preference for confidential arbitrations and other forms of alternative dispute resolution.

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

A: More highly negotiated contractual dispute resolution clauses specifying ad hoc procedures and departures from standard arbitral body rules, particularly in the areas of discovery and the insistence on a panel of three arbitrators rather than one. In life science, medical device and other biotech/pharma company collaborations, generally more information is held by the larger pharmaceutical company partner responsible for the clinical trials and marketing of U.S. Food and Drug Administration- or EMEA-approved drugs and devices. The results of those collaborations may not become apparent for 10 years or more, while drug and device candidates make their way through animal and human trials. During that time the good faith and commercially reasonable regulatory and diligence efforts required are usually performed by the larger pharmaceutical company partner, and discovery is necessary to level the information playing field.

Where little or no discovery is permitted under standard arbitral body rules, the parties may arbitrate the contractual performance, intellectual property or sales milestone and royalty issues on an uneven dispute playing field, where one party has substantially more information available to it and may only be required to voluntarily disclose those documents and witnesses on which it will rely to support its claims and defenses. Therefore, many licensors in the biotech space are beginning to require provisions in their dispute resolution clause allowing document discovery and depositions in arbitration, to ensure the fairest possible process. This departure from standard arbitration rules makes compelling sense in context of the waiver of a jury trial, the absence of standard discovery rights, and the waiver of all appellate rights. With so much riding on the outcome of an arbitration, moderate discovery and a three-arbitrator panel are vital safeguards to ensure the fairest possible process.

Also, an increase in the number of arbitrations seated in Asia, and particularly Singapore under the auspices of the Singapore International Arbitration Centre (SIAC). India and China have become two of the most frequent state users of the SIAC in foreign direct investment cases. Over the period from 2009 to 2014, the number of SIAC cases increased by approximately 60 percent and this trend will likely continue as companies, wealthy individuals and states seek to resolve their disputes outside the glare of media attention and public courthouses. The current and anticipated growth of the Indian and Chinese markets will lead to more arbitrations seated in Asia and administered by Asian dispute resolution bodies.

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

A: I was lead counsel for claimants Memjet Inc. of San Diego and the George Kaiser Family Foundation of Tulsa, Oklahoma, against Silverbrook Research Pty Ltd. and its founders Kia Silverbrook and Janette Faye Lee. The dispute was a multiyear, five-venue, global cross-jurisdictional dispute over intellectual property ownership and licenses, physical assets, employees, contractual performance and damages. The arbitration was administered by the London Court of International Arbitration applying the law of Wales to a set of commercial agreements concerning advanced and disruptive computerized printing technologies.

Respondent Kia Silverbrook was an arguably brilliant but reclusive prolific inventor with more than 5,000 issued and pending patents covering the field of high-speed, color inkjet printing using one print-head,

more than 70,000 inkjets and several hundred million drops of ink on a given page. Co-respondent Lee was Silverbrook's partner who managed the business operations of their closely held research company in Sydney. Public domain ancillary proceedings were filed in London, Dublin, Sydney and Oklahoma. I was lead counsel for claimants in all matters responsible for global strategy and day-to-day case management, instructing and directing teams of solicitors, barristers, investigators, experts and fact witnesses, reporting to our executive management team and board members, and advocating to the LCIA and our panel of three international arbitrators, and to courts in the U.S., Australia, England and Ireland. A keen command of five dialects of English was required, along with mastery of the cultural nuances associated with each — "Your Honor" is "Your Right Honorable Mr. Justice" or "M' Lord" or a "cracking", "brilliant" or "excellent" result.

The engagement required availability 24/7 to accommodate 19 time zones. The main event was the LCIA arbitration, in which multiple claims, counterclaims and defenses were asserted, motions filed, argued and resolved, and ultimately the matter concluded by a final award. Several highlights included an ancillary proceeding in London brought by claimants over a books and records inspection demand entailing a week-long summary judgment hearing, an anti-suit restraining order sought by respondents in Dublin seeking to enjoin claimants' rights to advance additional claims, and a fraud lawsuit filed by claimants in Tulsa alleging material omissions and false promises by the Silverbrook Research parties.

Ancillary shareholder proceedings were filed against respondents by third-party investors in Sydney claiming an interest in Silverbrook Research and any proceeds of the LCIA arbitration. Ancillary creditor and government collection claims were filed against respondents in Sydney. Bankruptcy proceedings were also initiated against respondents in Sydney in response to creditor claims. Ultimately the case was resolved by settlement and a final award which was confirmed by order and judgment in July 2014.

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

A: Invest time early in a case to assess its strengths and weaknesses. Make your word your bond — integrity is critical to your reputation. Master effective, organized and simple brief writing — persuasive advocacy starts with the written word. Practice with mentors sporting at least a little gray hair — there is little substitute in this area for wisdom, experience and the resulting judgment.

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

A: Kate Harrison of Gilbert & Tobin in Sydney, who is a specialist in intellectual property and was lead counsel for respondents in the Memjet matter. She was smart, appropriately advocated for her client, practical, reasonable, courteous and professional in all respects.