

# Settling Global Disputes

## WHY MIAMI IS NOW A TOP HUB FOR ARBITRATION IN THE AMERICAS

BY DOREEN HEMLOCK

It was a glorious autumn Sunday in Miami – sunny and breezy, a perfect day to be outdoors – when nearly 200 people gathered indoors for a conference on international arbitration. Some came from South America, some from Europe, all keen to discuss ways to resolve disputes where no party has “home-court” advantage.

Fifteen years ago, such a specialized gathering would have been unimaginable. But Miami has blossomed into a hub for international arbitration, especially for commercial disputes in Latin America. A recent survey of lawyers from 39 countries ranked Miami No. 2 in the Americas for the practice, trailing only after New York. Indeed, the University of Miami Law School now shines as one of the few places worldwide to offer a master’s in international arbitration, attracting top practitioners to teach.

Conference attendee Alicia Menendez personifies the city’s rise. A longtime international lawyer in Miami, she began handling arbitration cases three years ago. Now, she represents investors from Canada, Portugal, and beyond in a dispute with a Latin American country that “expropriated” their businesses, the Cuban-American attorney with Shook, Hardy & Bacon in Downtown Miami says. “[I came] to meet up with colleagues from multiple countries. More events like this in Miami can help grow international arbitration here.”

### WHAT ARBITRATION IS AND WHY MIAMI IS A HUB

International arbitration is a practice where parties in conflict choose private individuals to resolve their dispute. It differs from mediation in that the individuals act more



like judges that issue decisions, rather than facilitators for the parties to reach a settlement themselves. Most arbitration decisions are binding and final. The practice is gaining ground as a more neutral, cost-effective, and streamlined solution than litigation.

Miami, long a gateway for business with Latin America, has been targeting arbitration as a growth area for decades, recognizing that foreign investment – and accompanying disputes – have been on the rise in the Latin region.

Leading the advocacy effort is the Miami International Arbitration Society, a group made up largely of lawyers. The Society helped get Florida law changed to allow overseas attorneys not in the Florida Bar to work on international arbitration cases in the state. It also helped train court judges in Miami-Dade County to handle questions that might arise from arbitration cases – moves that make Miami more “arbitration-friendly,” says the Society’s chair Don Hayden of law firm Mark Migdal & Hayden.

Much of the international arbitration in Miami now centers on commercial contract disputes in Latin America. Both sides in those conflicts see the city as convenient because of its ample airlinks, abundant hotels, state-of-the-art digital links, and easy access to stenographers, translators, and arbitrators who speak Spanish, Portuguese, and other languages besides English.

“What better location for international arbitration than Miami, because for Latin Americans, many have second homes here...”

DON HAYDEN (LEFT) OF LAW FIRM MARK MIGDAL & HAYDEN, WITH LOUIS O’NAGHTEN AND ALEXIS MOUREE AT THE INTERNATIONAL ARBITRATION CONFERENCE

“Foreign investors in Latin America often turn to arbitration so they won’t be home-towned,” says Hayden, meaning they won’t face judges abroad who may favor the parties of their homeland, or won’t have to deal with unusual aspects of a legal system different than their own. “And what better location for international arbitration than Miami,” he says, “because for Latin Americans, many have second homes here, and for Americans and other foreign investors, you still have the protection of U.S. courts to enforce any arbitration award.”

What really put Miami on the world map, however, was hosting a key global conference. In 2014, the city welcomed the International Council for Commercial

Arbitration (ICCA) for its biennial meeting. That influential group had met just once before in the United States, back in 1986. The conference not only brought some 1,000 top practitioners to Miami, but also provided funding to the host city to develop arbitration programs for things like training and promotion.

That sparked more conferences and encouraged more players to enter Miami's arbitration market, from law firms to venues that host the hearings, says Hayden. Los Angeles-based law firm Quinn Emanuel, for example, which has 900-plus lawyers in 31 offices worldwide, opened a Miami office in 2021 to focus on litigation and arbitration. Atlanta-based King & Spalding, which has 1,200-plus lawyers in 23 offices worldwide, touted arbitration among several practice areas to explain why it opened a Miami office in 2022. And Veritext Reporting, a U.S. chain known for court reporting and translation, recently opened a multi-party arbitration center in Downtown Miami.

#### WHAT MAKES A GOOD ARBITRATION HUB

To be sure, Miami is not alone in chasing the arbitration business. Panama, Atlanta, Houston, and Rio de Janeiro are also active. Some of those rivals have specialties. Oil-rich Houston is big in energy cases, for example, while Rio is strong for domestic Brazilian disputes, given delays in Brazil's courts.

To keep arbitration growing long-term, Miami needs to stay strong in several key areas. Venues for hearings, for example, must keep up with technology. California-based JAMS, the largest private provider of arbitration and mediation services worldwide, just improved capabilities at its 10-year-old Miami office, offering high-resolution monitors with top-quality sound to better handle witnesses from afar. It also added virtual moderators for online sessions, says lawyer Gary Birnberg, who, like all JAMS members, serves only in neutral roles such as mediator or arbitrator.

The city also needs a pipeline of attorneys skilled in arbitration. That's where UM's International Arbitration Institute comes in. Many of the Institute's graduates practice first in Miami, and, given their experience, often write Miami into contracts as the seat for arbitration if needed, Birnberg says.

Arbitration panels also must include specialists in different industries and not only professionals skilled in law. Consider aviation. When a company misses payments on a leased jet, courts sometimes order the

jet seized. But that means the plane stops generating cash. An aviation specialist on an arbitration panel might help devise a payment plan or other options to help the jet owner get paid. Birnberg himself is part of a group that helped start a new global court specializing in aviation. The Hague Court of Arbitration for Aviation launched in July in the Dutch city known for its court of international justice.

"If we in Miami are going to be on par with New York for international arbitration in the Americas, it's because we have all these elements in place, but also because we're a more pleasant and economical locale than New York," says Birnberg. "With our sunny weather, come October or November, there's a huge argument to hold hearings in Miami, even when cases may be seated elsewhere."

That helps explain why some 200 people turned out on Sunday, Oct. 30 for the Miami International Arbitration Society's 1st Annual LatAm Investor-State Arbitration Conference, focusing on disputes between investors and governments in Latin America. But not everyone came from chillier climes.

Valeria Romero, a Colombian attorney with a master's in corporate law from Spain, was excited to attend an event conveniently



**“With our sunny weather, come October or November, there’s a huge argument to hold hearings in Miami, even when cases may be seated elsewhere.”**

MIAMI LAWYER GARY BIRNBERG (ABOVE RIGHT) SPEAKING AT THE ARBITRATION CONFERENCE

hosted at UM, where she's completing another master's – this time in international arbitration. She's keen on arbitration to widen her opportunities in Miami and beyond.

"Lawyers sometimes have a limited scope of work. But with international arbitration, you can learn about other legal systems," says 29-year-old Romero. "And frankly, it's a practice that's really growing." ●