



## Steven Smith

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**Steve Smith** is a partner in O'Melveny & Myers LLP's San Francisco office and Chair of the Firm's International Arbitration practice. His practice focuses on the arbitration and litigation of complex international commercial and intellectual property disputes in the energy, aerospace, technology and pharmaceutical sectors. In his 26 years of private practice, Steve has handled matters for and against sovereign entities from the Middle East, Europe, Asia, Latin America and Africa. In addition to serving as counsel in arbitrations administered by a variety of arbitral institutions throughout the world, he also has served as an arbitrator in International Chamber of Commerce (ICC) and UNCITRAL arbitrations.

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Recognized in many notable lawyer directories, Steve is highly recommended nationally by *Chambers and Partners USA* 2007 as "a truly outstanding advocate whose written product and oral advocacy simply astound." *Chambers and Partners USA* 2008 commended Steve "for his 'superior written work,' which, according to one high-profile client, is 'the best I've ever seen.' He is also a 'masterful advocate' who can 'put together a mesmerizing argument.'" For the past years, he has been among a handful of lawyers in San Francisco who were "recommended" in the *Global Counsel Handbook on Dispute Resolution: The Law and Leading Lawyers Worldwide*.

Steve is one of the few advocates identified as a leading counsel for arbitration by Who's Who Legal California, which characterized Steve as an "outstanding counsel," (2008), and as a "first-class advocate" (2009). Steve was also recognized as a leader in international arbitration in the 2009 *International Who's Who of Business Lawyers*.

Steve is the recipient of the 2008 California Lawyer of the Year (CLAY) Award for his extraordinary achievement in Alternative Dispute Resolution.

Steve holds a B.A. from the University of Pennsylvania, graduate degrees in history and law from Cambridge University and a J.D. from the University of California, Berkeley, where he was founding editor-in-chief of the school's international law journal.

### Illustrative Professional Experience

## International Arbitration

- Lead counsel for **Bechtel International, Inc.** and affiliates in an ICC arbitration initiated by a Brazilian power company seeking over \$200 million in damages resulting from the failure of the steam turbine generator in a power plant designed and built by the Bechtel entities. The Bechtel companies initiated an action in New York to stay the arbitration on the ground that the power company's claims are all time-barred and thus non-arbitrable. The federal court agreed, and in a landmark ruling permanently stayed the arbitration and entered judgment in favor of the Bechtel entities.
- Lead counsel for **Duke Energy Corporation** in a major UNCITRAL arbitration in London that arose when Sonatrach, the Algerian state-owned energy company, stopped delivering liquefied natural gas (LNG) to Duke under their long-term contracts. The parties asserted numerous claims against one another, with Sonatrach sought \$2.65 billion in damages as a result of Duke's alleged breach of its obligation to develop a US market for Sonatrach's LNG, while Duke sought US\$27 million as a result of Sonatrach's failure to meet its LNG shipping obligations. After nearly six years of arbitration and several separate multi-week hearings, the tribunal issued an award rejecting Sonatrach's damages claim and granting a large recovery to Duke.
- Lead counsel for U.S.-investor controlled Mexican trust in ICC arbitration involving a dispute between joint venture partners that derailed their \$250 million resort development project in Mexico. The liability phase of the arbitration concluded with an award in our client's favor, and the ensuing damages phase culminated in an evidentiary hearing in New York. In Spring 2007, the parties entered into a confidential settlement agreement that allowed our client to take the project forward alone.
- Co-lead counsel for **Lockheed Martin Corporation** in its successful defense of an ICC arbitration brought by the Republic of Korea to recover approximately \$45 million for alleged breach of contract, fraud, and unjust enrichment in connection with a contract to supply military aircraft. The Tribunal cleared Lockheed Martin of any wrongdoing and awarded it a substantial portion of its attorneys fees and costs.
- Lead counsel for U.S. pharmaceutical company in pending arbitration in Zurich, Switzerland, under the rules of

German Institute of Arbitration (DIS), in which a German company is seeking to terminate a drug development and license agreement between the parties.

- Lead counsel for U.S. chemical company in ICC arbitration in which the Mexican partner sought indemnification for JV's exposure to criminal and civil antitrust liability in North America and Europe resulting from our client's sales activities on behalf of the JV. After extensive briefing and a hearing on our client's application for summary disposition, the Tribunal issued a partial award dismissing all but two of the Claimants' fifteen claims, including those seeking nearly all of Claimants' damages. The case quickly settled without any payment from our client.
- Lead counsel for **Cargill** in NAFTA Chapter 11 arbitration against Mexico under ICSID's Additional Facility Rules. Cargill sought substantial damages on claims of expropriation and denial of national treatment, among others, all arising from a discriminatory tax measure designed to promote Mexico's sugar industry.
- Lead counsel for **Mitsubishi Corporation** in an ICC arbitration in Los Angeles, California arising from the parties' license and distribution agreements. After extensive evidentiary hearings, the Tribunal issued a Final Award in Mitsubishi's favor, dismissing claimant's trade secret and related claims seeking approximately \$40 million in damages, and awarding Mitsubishi a broad injunction and over \$8 million in damages, attorneys fees and costs on Mitsubishi's counterclaims for copyright infringement and breach of contract.
- Lead counsel for **Occidental Petroleum Corporation** and an affiliated company in an arbitration in London under the Rules of the International Center for Dispute Resolution concerning disputes arising from the affiliate's sale of assets in Nigeria. After an evidentiary hearing in Madrid, Spain, the Tribunal issued an award in Oxy's favor dismissing all of the claimant's claims.
- Lead counsel for **HBO Asia** in an ICC arbitration against its Taiwanese distributor involving contractual disputes and damages of more than \$26 million, as well as separate judicial and regulatory proceedings in Taiwan. After HBO Asia obtained an expedited Partial Award determining that it had lawfully terminated the parties' distribution agreement, the arbitration and related proceedings settled favorably for our client.
- Lead counsel for a Japanese manufacturer in *Zimmern v.*

*Mitsui Seiki Kogyo Co. Ltd.*, an ICC arbitration in Paris, France in which Mitsui Seiki defeated trade secret claims seeking \$10 million in damages and an injunction that would have closed one of the company's main businesses.

- Lead counsel for a Japanese corporation in *J. D. Lincoln, Inc. v. Nippon Steel Chemical Co., Ltd.*, an arbitration under the International Rules of the American Arbitration Association concerning an \$18 million claim for breach of a contract to supply manufactured items to the Japanese market. The matter settled favorably prior to the hearing.
- Lead counsel for a Japanese chemical company in federal court litigation and related arbitration before the Japan Commercial Arbitration Association in Osaka, concerning a patent-license dispute with a U.S. company. The Japanese company was ultimately successful in enforcing its patent rights, obtaining both a court enforced consent decree against future use of the patented technology and the payment of substantial back royalties.
- Lead counsel for a U.S. energy company concerning disputes with Pertamina, the Indonesian state-owned energy company, arising from Pertamina's failure to meet its U.S. dollar-denominated payment obligations for geothermal energy in the aftermath of the Asian financial crisis and the devaluation of the Indonesian Rupiah.
- Counsel for U.S. commodities trader in two ad hoc arbitrations in Stockholm against a Russian state-owned entity involving a series of claims under a uranium-supply contract. Our client prevailed on all claims in both arbitrations, establishing its entitlement to purchase optional quantities of enriched uranium at contract prices well below the market prices demanded by the seller, thereby eliminating a \$1 billion exposure.
- Counsel for U.S. mining equipment manufacturer in an ICC arbitration in which the firm has been brought to defend antitrust counterclaims seeking nearly \$2 billion in damages.
- Counsel for a French manufacturer in a major ICC arbitration, *Thomson-CSF v. Gould Inc.*, involving various disputes with an American subcontractor on a \$4.5 billion military procurement program, including the subcontractor's claim for a \$114 million equitable adjustment in the fixed contract price. **Thomson-CSF** defeated that claim and obtained a \$21 million award in its favor.
- Counsel for a major oil industry construction and services firm in arbitration before the U.S.-Iran Claims Tribunal

under the UNCITRAL Arbitration Rules against the Government of Iran and the National Iranian Oil Company for expropriation of property and breach of state contract.

- Lead counsel for an English computer company in an ICC arbitration involving a dispute under a contract for the development of network computers.
- Sole arbitrator in an ICC arbitration involving a U.S. company's termination of its Chinese distributor.
- Sole arbitrator in an ICC arbitration involving a complex dispute between joint venture partners over the financing and development of their U.S. business.
- Sole arbitrator in ICC arbitration between Italian and U.S. surfing apparel companies arising from the collapse of their American-joint venture.
- Sole arbitrator in ICC arbitration between U.S. and Canadian companies concerning a dispute under their exclusive distribution and marketing agreement for a dietary supplement.
- Sole arbitrator in an ICC arbitration between Japanese and American biotechnology companies concerning a dispute under a license agreement.
- Sole arbitrator in UNCITRAL arbitration of patent license dispute between a California company and a Japanese-American joint venture.
- Party-appointed arbitrator on three-member panel in ICC arbitration involving dispute under agreement to commercialize biotechnology patents relating to a method to optically read the human genome.
- Chair of three-member tribunal in ICC arbitration involving termination of distribution agreement between U.S. medical device manufacturer and Greek distributor.

### **International Litigation**

- Lead counsel for **Bechtel, Edison S.p.A.** and their affiliated project company in a dispute with the Republic of Ecuador over a 30-year water and sewage concession for a large municipality. The dispute gave rise to litigation in the U.S., in which we succeeded in obtaining a court order blocking Ecuador from drawing down on a letter of credit that served as a performance bond under the parties' concession contract. With the blocking order in place, the project company initiated dispute resolution under the concession contract, including mediation followed by ICC arbitration in Miami.
- Co-lead counsel for **Duke Energy Corporation** in federal

court litigation in Houston, Texas against Citrus Trading Corp. over Duke's termination of the parties' long-term contract for the purchase by Citrus of Algerian LNG. Duke terminated the parties' contract for Citrus' alleged breach, and Citrus counterclaimed for damages of approximately \$200 million on the ground that the termination was allegedly unlawful. The case settled for a fraction of the amount Citrus had sought.

- Lead counsel for **Dainippon Screen Manufacturing Company** and affiliates in patent infringement litigation against Scitex Corporation, an Israeli Company, involving six patents concerning three different technologies in the graphic arts and digital publishing fields. The case, which was approaching trial in federal court, was submitted to mediation/arbitration before the WIPO International Arbitration Center in Geneva, Switzerland. (It was the Center's first matter). The mediation/arbitration led to a settlement favorable to Dainippon Screen.
- Counsel for the **Kuwaiti Government** in *Computer Firmware Systems, Inc. v. The State of Kuwait*, a case in which Kuwait defeated claims arising from an alleged program to diversify the country's economy by establishing a computer industry there.
- Lead counsel for Taiwanese bicycle components manufacturer in its successful defense against claims for patent, trademark, and trade dress infringement.
- Co-lead counsel for the **Royal Automobile Club** in London and related English companies and their directors in the successful defense of a class action lawsuit in Los Angeles superior court seeking \$90 million in damages on claims arising from the £450 million sale of a related motoring services company.
- Lead counsel in successful defense of the U.S. subsidiary of a Korean conglomerate in a federal court action brought by a Malaysian company for breach of contract.
- Counsel for 10 motion picture studios and their trade association in antitrust action brought by would-be American dual-deck VCR manufacturer against Japanese and Korean electronics industries and U.S. motion picture industry. *Go-Video v. Motion Picture Association of America, et al.*
- Counsel for defendant oil company in *Clayco Petroleum Corp. v. Occidental Petroleum Corp. et al.*, (9th Cir. 1983), cert. denied 464 U.S. 1040 (1984), a case establishing that there is no Foreign Corrupt Practices Act

exception to the Act of State doctrine.

### **Regulatory Proceedings**

- Lead counsel for **NEC Corporation** in ITC proceeding brought by Rambus seeking an order excluding, among other things, certain SDRAMs and microprocessors from entering the United States.
- Counsel for **Intervenor Advanced Micro Devices** in ITC proceeding in which Intel sought an order to exclude Taiwanese computers using AMD microprocessors from entering the United States on the ground that they infringed an Intel patent. The ITC terminated the proceeding against Intel with a ruling in AMD's favor.
- Counsel for **IBM** in ITC proceeding based on allegations that certain IBM disk drives infringed patents owned by Conner Peripherals. The matter successfully settled as part of a global settlement.

### **Education**

**University of California, Berkeley, J.D., 1983**  
**Cambridge University, England, L.L.B., 1981 (L.L.M., 1986)**  
with honors  
**Cambridge University, England, M. Phil., History of**  
International Relations, 1979  
**University of Pennsylvania, B.A., History, 1978: *cum laude***

### **Professional Activities**

**Admitted, California**  
**Chair, California State Bar, International Law Section (1999 – 2000)**  
**Chair, ICC's Arbitration Committee for the Northwest U.S. (2002 – present)**  
**Vice-Chair, International Dispute Resolution Committee of the ABA's Section of International Law and Practice (2001 – 2004; 2006 – present)**  
**President, Northern California International Arbitration Club (2005 – 2007)**  
**Member, ICC Commission on Arbitration (2006 – present)**  
**Honorary Member, Commercial Bar Association of London (COMBAR) (2004 – present)**  
**Co-Chair, 2003 Annual Meeting of the ABA's Section of International Law and Practice; 2000 International Law Weekend, on "International Arbitration in Asia: Drafting Effective Provisions, Managing the Process, and Enforcing Awards;" 1999**

International Law Weekend, which focused on “Lessons From The Asian Financial Crisis: Managing The Legal Fallout and Anticipating Future Crises” (San Francisco, California, June 1999); 1997 International Law Weekend, which focused on information technology law in the Asia-Pacific Region (San Francisco, California, August 1997)

**Founding Editor-in-Chief**, *International Tax & Business Lawyer* (renamed *Berkeley Journal of International Law*) (1983)

**Member**, Board of Overseers, *Berkeley Journal of International Law* (2003 – present)

**Author**, “International Commercial Dispute Resolution,” 42 *Int’l Lawyer* 383 (Summer 2008), “Enforcement of International Arbitral Awards,” a chapter in the treatise entitled *Practitioner’s Guide to International Arbitration and Mediation*; “International Commercial Arbitration in Japan,” a chapter in the *Practitioner’s Guide to International Arbitration and Mediation*; “Advocacy and Tactics in International Commercial Arbitration,” 5 *California International Practitioner* 64 (1995); “Badger Revisited: Implications for the Implementation of the Transfer of Technology Code,” 1 *Int’l. Tax & Bus. Law.* 117 (1983); Numerous papers for various programs and conferences

**Lecturer**, Lectured in courses on international dispute resolution and international business at numerous law and business schools, including Stanford, Berkeley and U.C.L.A.

**Speaker**, Speaks frequently on international dispute resolution issues at conferences all over the world, including: Keynote Speaker at ABA Section of Dispute Resolution’s 4th Annual Arbitration Training Institute (San Francisco, California, February 2009); ICC Arbitration Workshop (San Francisco, California, June 2007); Arbitrating the Mega Case (Los Angeles, California, March 2007); 2003 Conference on ICC International Dispute Resolution, Insights into Practice and Procedure (Scottsdale, Arizona, February 2003); 17th Annual Joint Symposium of School of International Arbitration and ICC Institute of World Business Law on “Control and Expedition of Procedure by Arbitrators” (London, England, March 2002); 1998 International Law Weekend on “International Arbitration Of Intellectual Property Disputes Under The New ICC Rules” (San Francisco, California, July 1998); South Korean Ministry of Justice and Korea Private International Law Association Conference on “Recent Developments in International Litigation” (Seoul, South Korea, November 1996); Japanese Institute of International Business Law (Kokusai Shoji-Ho Kenkyusho), Conference on “Representing Japanese Companies in Litigation and Arbitration in the United States” (Tokyo, Japan, January 1996)