

**Curriculum Vitae****Ari D. MacKinnon****Office Location**

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**Professional Experience**

- Partner, International Arbitration and Litigation, Cleary Gottlieb Steen & Hamilton LLP, New York (2015 – Present)
- Associate, International Arbitration and Litigation, Cleary Gottlieb Steen & Hamilton LLP, New York (2009 – 2015)
- Law Clerk, Chambers of Honorable Bruce M. Selya, First Circuit Court of Appeals of the United States, Providence, Rhode Island (2008 – 2009)
- Law Clerk, Chambers of Honorable Shirley Wohl Kram, Southern District of New York, New York (2006 – 2008)

**Admissions in Professional Associations**

- Attorney: State of New York, Southern District of New York, Eastern District of New York, United States Court of Appeals for the Second Circuit, United States Court of the District of Colorado

**Education**

- New York University School of Law, New York, USA, Juris Doctor (J.D.), 2006
- Middlebury College, Middlebury (USA) / Madrid (Spain), M.A. (Spanish Language & Literature), 2003
- Grinnell College, Grinnell (USA), B.A. (Mathematics & Spanish Language), 2002

**Nationality**

- United States

## Recent Experience as Arbitration and Litigation Trial Counsel

- Significant recent experience in commercial arbitration matters:
  - Three Peruvian companies in two complex ICC arbitrations derived from an ICSID arbitration against the Peruvian State related to claims against a Peruvian buyer of natural gas and now involving, among other issues, payments due for hydrocarbon exports.
  - A U.S. subsidiary of a Mexican glass manufacturer in winning a multi-million dollar ICC arbitration award against another glass manufacturer for breach of an exclusive sales agreement, including representation in ICC emergency arbitration proceedings.
  - A Brazilian investment fund in successfully defeating nearly \$6 billion in claims in an ICC arbitration seated in London, governed by Brazilian law, and in the Portuguese language, brought by several investment companies.
  - A European retailer in a merger-related ICC arbitration seated in São Paulo, and governed by Brazilian law, pertaining to a valuation dispute post-acquisition.
  - A major Latin American oil and gas company in a successful Spanish-language arbitration before the Inter-American Commercial Arbitration Commission (IACAC) against a Latin American government related to the termination of an oil concession. The concession contract is governed by the laws of the Latin American country.
  - Western Digital's SanDisk subsidiary in the successful pursuit and settlement of three separate ICC arbitrations against Toshiba arising out of Toshiba's efforts to sell its stake in the parties' multi-billion dollar NAND flash memory joint ventures without SanDisk's consent, and related injunction proceedings in a California state court.
  - A major Latin American oil and gas company in an ICC arbitration relating to the breach of representations and warranties concerning environmental issues contained in a purchase and sale agreement.
  - Latin American affiliates of international oil and gas companies in an ongoing ICC arbitration in New York relating to the interpretation of a gas sales agreement.
  - A major U.S. technology company in ICC arbitrations governed by California law relating to M&A activities.
- Experience as a party-appointed arbitrator:
  - Nominated to serve as a party-appointed arbitrator in a renewable energy-related ICC arbitration seated in Mexico City, governed by Mexican law, and in the Spanish language.
- Recent experience in litigation involving large corporations, financial institutions, and sovereigns in various U.S. federal and state courts, including:
  - Maxus Liquidating Trust v. YPF S.A. et al., 18-50489 (D. Del.) (representing YPF and three of its subsidiaries as defendants in an ongoing adversary proceeding in Delaware Bankruptcy Court, related to the Maxus bankruptcy that was initiated by the Maxus Liquidating Trust against YPF S.A. and three of its subsidiaries and Repsol S.A. and six of its subsidiaries. The Trust seeks up to \$14 billion in damages from YPF and Repsol, challenging transactions dating back over 20 years, based on novel and expansive theories of alter ego and fraudulent transfer, as well as claims for unjust enrichment and civil conspiracy).

- Vantage Deepwater Company et al. v. Petrobras America Inc. et al., 18 cv 2246 (S.D. Tex.) (representing Petroleo Brasileiro S.A. in opposing confirmation proceedings brought in the Southern District of Texas to recognize and confirm an arbitral award for over \$600M issued in Houston, Texas under the auspices of the American Arbitration Association-International Centre for Dispute Resolution).
- Compañía de Inversiones Mercantiles S.A. v. Grupo Cementos de Chihuahua, S.A.B. de C.V. et al., 15-cv-2120-JLK (D. Colo.) (representing Grupo Cementos de Chihuahua, S.A.B. de C.V. and GCC Latinoamérica, S.A. de C.V., in opposing confirmation proceedings brought in the District of Colorado to recognize and confirm an arbitral award issued under the auspices of the IACAC in Bolivia).
- Madoff Trustee Litigations against BNP Paribas entities (Picard v. Equity Trading Portfolio, et al., Adv. Pro. No. 10-04457; Picard v. Oreades SICAV, et al., Adv. Pro. No. 10-05120; Picard v. Legacy Capital Ltd. et al., Adv. Pro. No. 10-05286; , Adv. Pro. No. 11-02796; Picard v. BNP Paribas Arbitrage, et al.; In Picard v. BNP Paribas, et al., Adv. Pro. No. 12-01576) (S.D.N.Y.) (representing various BNP Paribas entities in defense of clawback actions brought by the Trustee for the Estate of Bernard L. Madoff Investment Securities LLC (“BLMIS”), seeking the return of over \$1 billion in funds allegedly transferred by BLMIS to these BNP Paribas entities before BLMIS’s Ponzi scheme was discovered).
- Fairfield Liquidator Litigations against BNP Paribas entities (Fairfield Sentry Ltd., et al. v. BNP Paribas Luxembourg SA, et al., Adv. Pro. No. 10-03626 (BRL); Fairfield Sentry Ltd., et al. v. BNP Paribas Securities Services Luxembourg SA, et al., Adv. Pro. No. 10-03627 (BRL); Fairfield Sentry Ltd. v. BNP Paribas Arbitrage SNC, et al., Adv. Pro. No. 10-04098 (BRL); Fairfield Sentry Ltd. v. BNP Paribas Private Bank and Trust Cayman Ltd., et al., Adv. Pro. No. 10-04099 (BRL); Fairfield Sentry Limited and Fairfield Sigma Limited v. FS/Fortis Banque Luxembourg, Adv. Pro. No. 11-01242 (BRL); Fairfield Sentry Limited v. Fortis Bank SA/NV n/k/a BNP Paribas Fortis, et al., Adv. Pro. No. 11-1617); Fairfield Sentry Limited v. BNP Paribas España (f/k/a Fortis Bank (España)), et al., Adv. Pro. No. 12-01551) (representing various BNP Paribas entities in defense of clawback actions brought by the Liquidators of Fairfield feeder funds, which were invested in BLMIS, seeking the return of over hundreds of millions of dollars in funds allegedly transferred by BLMIS to the Fairfield funds, and by the Fairfield funds to these BNP Paribas entities before BLMIS’s Ponzi scheme was discovered).
- Alaska Electrical Pension Fund et al. v. Bank of America et al., No. 14-cv-7126 (JMF) (S.D.N.Y.) (successful representation of Goldman Sachs & Co. in ultimately settling class action litigations relating to an alleged conspiracy to manipulate the setting of the ISDAFIX benchmark).
- In re Foreign Exchange Benchmark Rates Antitrust Litigation, 13 Civ. 7789 (S.D.N.Y.) (successful representation of Goldman Sachs & Co. in ultimately settling class action litigations relating to an alleged conspiracy to manipulate the foreign exchange market).
- Anchorage Capital Group, L.L.C. v. BNP Paribas, S.A., Index No. 650851/2013 (N.Y. Sup. Ct.) (successful representation of BNP Paribas S.A. in winning dismissal of parallel suits filed in New York and London, in favor of arbitration).
- Affinity LLC v. GFK Mediamark Research & Intelligence LLC, 13-1536 (2d Cir.), 12 Cv. 1728 (RJS) (S.D.N.Y.) (successful representation of GFK Mediamark in winning

dismissal of suit filed for predatory pricing in District Court and in appeal before Second Circuit Court of Appeals)

- Baltimore County Employees' Retirement System v. Gary A. Corless et al., 2012-CA-13015 (Del. Ch.) (successful representation of Goldman Sachs & Co. in ultimately settling claims brought for aiding and abetting a breach of fiduciary duties in connection with a merger and acquisition).
- Lankford v. Chenault et al., No. 653852/2012 (N.Y. Sup. Ct.) (successful representation of American Express Co. securing dismissal of shareholder derivative litigation brought in a New York state court).
- City of Monroe Employees Retirement System v. Thomas E. Capps et al., 2012-CA-7788-CS (Del. Ch.) (successful representation of Goldman Sachs & Co. in ultimately settling claims brought for aiding and abetting a breach of fiduciary duties in connection with a merger and acquisition).
- Silverberg v. Standard Microsystems Corp., Index No. 014752/2012 (N.Y. Sup. Ct.) (successful representation of Standard Microsystems Corp. in ultimately settling claims brought for breach of fiduciary duties in connection with merger and acquisition).
- Nitsoo v. Alpha Natural Resources, Inc. et al., Civ. No. 12-C-149 (W.Va. Cir. Ct.) (successful representation of Alpha Natural Resources, Inc. and certain of its directors and officers in a winning dismissal of a federal securities law class action brought under Section 11 of the Securities Act of the United States).
- FirstBank of Puerto Rico v. Barclays Capital Inc., Adv. Pro. No. 10-04103 (JMP), 14-CV-01935 (NRB) (S.D.N.Y.) (successful representation of Barclays in winning dismissal of lawsuit brought by FirstBank to recover certain bonds sold to Barclays as part of the Asset Sale Agreement which arose out of Lehman Brothers' bankruptcy).
- K+S Aktiengesellschaft v. Rohm & Haas Co., 10 Civ. 9689 (CM) (S.D.N.Y.) (successful representation of Rohm & Haas in ultimately settling a lawsuit brought for purchase price adjustment, following sale by Rohm & Haas to K+S Aktiengesellschaft of its Morton Salt business).
- Brecher v Republic of Argentina, 14-4385 (2d Cir.), 06-civ-15297 (S.D.N.Y.) (represented the Republic of Argentina in defending against class certification in connection with suits related to defaulted debt before the District Court and the Second Circuit Court of Appeals).

### **Publications in the Areas of International Arbitration / Litigation / Compliance**

- "The Scope of Immunity for International Organizations Comes Under Scrutiny Again, Two Years After the U.S. Supreme Court's Decision in *Jam v. International Finance Corporation*," Cleary Gottlieb Alert Memo, March 1, 2021 (joint authorship).
- "2020 Revision of the IBA Rules on the Taking of Evidence in International Arbitration," Cleary Gottlieb Alert Memo, February 17, 2021 (joint authorship).
- "The London Court of International Arbitration Releases Updated Arbitration Rules, Emphasizing Efficiency," Cleary Gottlieb Alert Memo, October 26, 2020 (joint authorship).
- "Circuit Split Intensifies Over Use of 28 U.S.C. § 1782 to Obtain Discovery for Use in

Private International Arbitration,” Cleary Gottlieb Alert Memo, July 13, 2020 (joint authorship).

- “Supreme Court Holds That New York Convention Does Not Preclude Non-Signatories From Invoking State Law Principles To Compel Arbitration,” Cleary Gottlieb Alert Memorandum, June 3, 2020 (joint authorship).
- “Most EU Member States Agree to Terminate Their Intra-EU Bilateral Investment Treaties,” Cleary Gottlieb Alert Memorandum, May 7, 2020 (joint authorship).
- “U.S. District Court Denies Section 1782 Discovery for Use in DIS Arbitration, Highlighting Deepening Circuit Split on Statute’s Applicability to Private Commercial Arbitrations,” Cleary Gottlieb Alert Memorandum, April 3, 2020 (joint authorship).
- “Second Circuit Overturns Arbitration Award Against Non-Signatory Parent Company,” Cleary Gottlieb Alert Memorandum, April 3, 2020 (joint authorship).
- “COVID-19 and the Tolling Of Statutes of Limitations: Impact on Arbitrations Seated in New York,” Cleary Gottlieb Alert Memorandum, March 25, 2020 (joint authorship).
- “3 NY Contract Law Concepts In The Context Of Coronavirus,” Law360, March 4, 2020 (joint authorship).
- “Broadening the Scope of 28 U.S.C. § 1782: Trends in Using U.S. Discovery In Foreign Proceedings,” Cleary Gottlieb Alert Memorandum, October 18, 2019.
- “Climate Change Risks: An Update on Current Litigation Trends,” Cleary Gottlieb Alert Memorandum, September 25, 2019 (joint authorship).
- “Potential End of Suspension of Title III of the Helms-Burton Act: Authorization of Claims Under U.S. Law for ‘Trafficking’ in Certain Cuban Properties,” Cleary Gottlieb Alert Memorandum, February 26, 2019.
- “Supreme Court Confirms Arbitrators Decide Threshold Issues,” Cleary Gottlieb Alert Memorandum, January 9, 2019 (joint authorship).
- *40 Under 40 International Arbitration (2018)* (Book), July 12, 2018 (joint authorship).
- “Why Haven’t We Seen More International Human Rights Law Issues in International Investment Arbitration?” *40 Under 40 International Arbitration* (González-Bueno, Carlos, ed. 2018).
- “A Reassuring 2nd Circ. Approach To Annulled Awards,” Law360, July 28, 2017 (joint authorship).
- “Second Circuit Confirms That an Arbitral Award That Has Been Nullified at the Seat of the Arbitration Should Rarely Be Enforced,” Cleary Gottlieb Alert Memorandum, July 27, 2017 (joint authorship).
- “Second Circuit Rules That FSIA Provides Sole Basis for Jurisdiction Over Foreign Sovereigns in Actions to Enforce ICSID Awards,” Cleary Gottlieb Alert Memorandum, July 17, 2017 (joint authorship).
- “Drafting International Arbitration Clauses” *THĒMIS-Revista de Derecho*, March 26, 2017 (joint authorship).

## Recent Conferences in Areas of International Arbitration / Litigation

- “Benefits and risks of resorting to U.S. courts in the context of arbitration proceedings,” International Congress of Legal Skills in International Arbitration (April 22, 2021).
- “Allegations of Corruption in International Arbitration: Key Issues,” Columbia Arbitration Day (March 12, 2021).
- “Does 28 U.S.C. § 1782 Apply to Private International Commercial Arbitrations? A Mock U.S. Supreme Court Argument,” NYIAC’s New York Arbitration Week - Fordham Conference on International Arbitration and Mediation (November 20, 2020).
- “Practical considerations for litigating Saxon design contracts in civil law,” International Congress of Legal Skills in International Arbitration (September 3, 2020).
- “Episode 1, The Judiciary,” New York International Arbitration Center Podcast on dispelling myths: international arbitration in the U.S. and New York (July 1, 2020).
- “Corruption in Arbitration and the Arbitral Tribunal’s Limits,” VI Congresso CAM-CCBC de Arbitragem (October 21, 2019).
- “Diploma in International Commercial Arbitration,” Chartered Institute of Arbitrators (September 6, 2019).
- “Endless history: conflicts of interest in international arbitrations. What standards should be applied for independent arbitrators, arbitrators-lawyers and ‘transnational’ lawyers?,” Instituto Peruano de Arbitraje, XIII Congreso Internacional de Arbitraje (April 25, 2019).
- “Strategies to Improve Cross-Cultural Advocacy,” Harvard International Arbitration Conference (February 23, 2019).
- “Petrobras – Corporate Disclosures and Shareholder Claims,” GAR Live São Paulo, (November 26, 2018).
- “Corruption in obtaining and performing government contracts: how do courts and tribunals address allegations of corruption?,” IBA Annual Conference (October 10, 2018).
- “A Tale of Two Perspectives: In-house counsel - External counsel dialogue; What clients want counsel to understand vs. what counsel wish clients would consider,” 13th ICC New York Conference on International Arbitration (September 27, 2018).
- “The arbitral proceeding: between efficiency and quality,” XIV Conferência de Arbitragem Internacional do Rio de Janeiro (May 8, 2018).
- “Contratos públicos y corrupción,” Instituto Peruano de Arbitraje, XII Congreso Internacional de Arbitraje (April 25, 2018).
- “Corruption in International Arbitration,” Brooklyn Law School Conference on International Arbitration (April 20, 2018).
- “Enforcement of International Arbitration Awards,” Harvard International Arbitration Law Students Association (April 19, 2018).
- “New Trends in International Arbitration,” ICC/ Young Arbitrators Forum (March 13, 2018).

- Doing Better What Is Already Being Done: Three ICC Court Innovations for 2018,” ICC Conference (February 25, 2018).
- “Document Production,” Young ICCA / International Center for Conciliation and Arbitration of Costa Rica (CICA) Conference on the procedural aspects of obtaining evidence (December 5, 2017).
- “Third-Party Funding: Negotiating Your Prenup,” ICC/ Young Arbitrators Forum (October 3, 2017).
- “¿Cómo contar una historia que emocione?,” Bullard Falla & Ezcurra Taller de Arbitraje (May 18, 2017)
- “Are we moving to an era of too much transparency in international commercial arbitration?,” Latin Lawyer – GAR Live Arbitration Summit (April 27, 2017).
- “Defending Sovereigns,” Harvard International Arbitration Law Students Association (February 15, 2017).
- “The FCPA in Peru and Latin America,” The American Chamber of Commerce of Peru / Rodrigo, Elaias & Medrano Abogados (April 20, 2016).

### **Recent Professional Mentions**

- Recognized as a banded lawyer in *Chambers USA* and *Latin America* Guides for International Arbitration
- “Next Generation Lawyer,” *The Legal 500*, 2020
- “Top Litigator Under 40,” *Benchmark Litigation*, 2016 – 2021

### **Languages**

- English (native)
- Spanish (fluent, capable of conducting proceedings without assistance of interpreter or translator)
- Portuguese (passive knowledge)