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MoloLamken is a law firm focused exclusively on representing clients in complex disputes. We handle civil, criminal, and regulatory matters, as well as appeals, across the US. Our clients span the globe. We are involved in some of the most significant disputes of the day. We frequently represent clients who are based outside the US but are involved in US-centered or cross-border disputes or investigations. This includes work for foreign sovereigns. We provide the same excellent representation to those clients as we do to our US-centred clients, often teaming up with leading lawyers from other parts of the world.

With the economic growth throughout Latin America, MoloLamken has increasingly been called to assist clients seeking top-quality representation to address a number of issues. Below, our partners address a few of the many developments in the area of disputes in Latin America.

Have trends in antitrust enforcement in Latin America followed the increase that has been seen in recent years in the US?

For decades, antitrust enforcement in Latin America has lagged behind US enforcement efforts. That has recently begun to change. In December 2019, for example, Brazil's Administrative Council for Economic Defense (CADE) announced that it would fine IBM approximately \$14m for closing a merger before it could conclude its pre-merger review, even though the Department of Justice and European Commission had approved the merger before closing. Moreover, as Congress debates how to address antitrust concerns associated with big tech companies, CADE has joined with antitrust authorities in Russia, India, and South Africa to tackle the challenge of protecting competition in digital markets. And, in July 2019, CADE announced that Petrobras (Brazil's state-owned oil company) would sell its interest in three natural gas companies due to antitrust concerns.

How prevalent has international arbitration become in Latin America for cross-border disputes?

It is often said that Latin America's stance towards international arbitration was one of scepticism. While this may have been true several decades ago, attitudes have certainly changed. Statistics released by the ICC earlier this year show that parties from the Americas now account for roughly 25% of the overall number of parties in ICC arbitration. More tellingly perhaps, with 117 parties, Brazil was the third-most important user of the ICC in 2018 after the US and France. Arbitration is widely expected to continue to grow in that region in the short-to-medium term. Disputes related to infrastructure projects make up a sizeable portion of international arbitrations in Latin America, though it would be a mistake to think that these are the only types of disputes handled in the region. Arbitration is pervading all areas of international business. While many jurisdictions have modernised their legislation on arbitration (sometimes adopting the UNCITRAL Model Law), arbitration practice often remains influenced by domestic court litigation in Latin America. That being said, the Latin American market is an increasingly sophisticated one.

What recent developments have we seen in the area of data privacy in Latin America?

Since the enactment of the General Data Protection Regulation in Europe, Latin America has begun updating its privacy laws to adapt to the new challenges of digital data protection. Most notably, Brazil has begun preparing for its Lei Geral de Proteção de Dados Pessoais (LGPD), passed in 2018, to become effective in August 2020. The LGPD applies to any entity or person processing data in Brazil, with the purpose of providing goods and services in Brazil, or using data collected in Brazil, and requires them to comply with certain data-protection principles subject only

to certain limited exceptions. Argentina and Chile are likewise working on updating their privacy and data-protection laws.

How can parties in Latin America avail themselves of discovery tools in the US?

Section 1782 of title 28 of the United States Code provides a powerful tool for foreign litigants seeking to obtain discovery. That statute authorises US federal district courts (ie, federal trial courts) to order a person or entity that ‘resides’ within the court’s jurisdiction ‘to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal’. Section 1782 has become a particularly powerful tool for discovery in Latin America, in everything from criminal cases to labour disputes to commercial cases and beyond. This year, the US courts continued to divide over whether the statute authorises discovery for use in foreign arbitral proceedings. The issue will remain unresolved – creating uncertainty regarding whether it may be used to obtain discovery for use in arbitration – unless and until the US Supreme Court weighs in.

STEVEN MOLO

Steven Molo, one of the country’s leading courtroom advocates, is a founding partner of the national litigation boutique MoloLamken. He represents corporations, boards, funds, investors, inventors, and individuals in complex business litigation, white-collar criminal and regulatory matters, and IP litigation. His client base is international.



JESSICA ORTIZ

Jessica Ortiz is a highly-accomplished lawyer who draws on her extensive experience as an Assistant US Attorney in the US Attorney’s Office for the Southern District of New York. Ortiz represents companies and individuals in high-stakes civil litigation and white-collar criminal and regulatory investigations and enforcement actions brought by the Department of Justice, the Securities and Exchange Commission, and other federal and state regulators. She is also called upon to conduct corporate internal investigations in the US and abroad and to advise clients on crisis and risk management. Ortiz is a fluent Spanish speaker.



JUSTIN SHUR

Justin Shur has two decades of first-chair trial experience. Shur has earned a national reputation for successfully representing clients in some of the most prominent white-collar criminal matters, government investigations and high-stakes business disputes. His clients have included *Fortune 500* companies and other major businesses and organisations around the world and across a broad range of industries. He has also represented numerous individuals, from chief executives, board members, and other senior executives to several high-ranking public officials, including a Cabinet member, UN ambassador, and White House adviser to the President.



RÉMY GERBAY

Dr Rémy Gerbay is an international arbitration lawyer whose practice focuses on cross-border commercial disputes, international investment disputes, as well as related litigation. Trained in the UK, US, France, and Switzerland, he represents clients across various sectors, including energy, infrastructure, transportation, pharma, banking, and telecommunications. He has experience with ICC, LCIA, UNCITRAL, Swiss Chambers, DIAC, and ICSID arbitration. He is a fluent French speaker.



LAUREN WEINSTEIN

Lauren Weinstein’s practice focuses on trial and appellate litigation. She represents clients before the US Supreme Court, the federal courts of appeals, and other federal and state courts. Her practice covers a broad array of subject matters, including antitrust law, class actions, constitutional law, business litigation, and securities suits. Weinstein was recently recognised as a Top Lawyer Under 40 by the Hispanic National Bar Association and as a Rising Star of the Plaintiff-side Securities Litigation Bar by *The Legal 500*. She is a fluent Spanish speaker.

