

INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL  
2022 ANNUAL MEETING  
BERLIN

**THROUGH THE LOOKING GLASS:  
THE VIEW FROM THE FRONT  
OF THE (COURT) ROOM**

**Rouven F. Bodenheimer**  
BODENHEIMER  
Cologne/Berlin  
Germany

**Judge Molly Cherry**  
United States District Court Magistrate Judge  
Charleston, South Carolina  
USA

**Judge Martine M. De Roeck**  
Court of Commerce  
Antwerp, Belgium

**Shannon Joseph**  
Morningstar Law Group  
Raleigh, North Carolina  
USA

Outline of Panel Discussion

- I. Introduction to Procedures and Subject Matter Jurisdiction of Each Tribunal
  - A. Court of Commerce, Belgium
  - B. United States District Court
  - C. Arbitration Tribunal (Europe/Civil Law)
- II. Advice on Written Submissions to the Tribunal
- III. Advice on Hearings Before the Tribunal
- IV. Use of Technology
  - In Written Submissions
  - In Hearings

## **A. Brief description of Belgian civil and commercial litigation**

Belgium has a civil law-based system, with (national and international) statutes, as interpreted by case-law, governing both substantive and procedural issues.

Civil procedure is for the most part governed by the rules set out in the Belgian Judicial Code.

The Belgian civil court system is split into several “first instance” courts (including the civil court of first instance and the commercial court). Decisions of “first instance” courts can in most cases be appealed to the appellate courts. Finally, decisions of the appellate courts can be overturned by the Belgian Supreme Court.

The presidents of the courts have jurisdiction to hear urgent applications for temporary interim relief or for an injunction.

Proceedings normally start by notification to the defendant of a writ of summons to appear at an introductory hearing. At this initial hearing the further procedural steps are agreed (or if not agreed, decided by the court). In very simple or urgent cases, the case can be heard at the introductory hearing or shortly thereafter. Normally, however, the parties agree a timetable for the filing of written submissions. The court sets the date when the case is heard. A judgment is issued normally within one month following the hearing.

Belgian courts have limited case management powers. They do set a filing timetable, if the parties fail to agree on one. The parties can file interim applications such as a request for interim investigatory measures (court appointed

expert) and for the production of documents (only if specifically shown to be in the other party's possession and relevant to the case). Otherwise, Belgian procedural law does not provide for separate disclosure or discovery proceedings.

The parties usually rely mainly or only on the written evidence they deem necessary to substantiate their claim or defence. Party-appointed expert evidence is admissible, but will be given less weight because these experts do not owe any duty to the court and will usually defend the position of the instructing party. But courts often appoint experts to elucidate a point of fact, and their advice is given significant weight.

The use of witnesses is very rare in Belgian civil and commercial proceedings.

## **B. Brief Description of US Courts—civil litigation**

Each state of the United States has its own court system. This program will focus on the work of the federal district courts, which typically are the courts of first instance in the United States Court System. There is at least one district court in each state and the District of Columbia. District courts determine the facts of a dispute and apply the law to the facts to adjudicate the case. District court is presided over by district court judges and magistrate judges.

In district court, the process generally is governed by the United States Rules of Civil Procedure. In addition, each district court typically creates and publishes its own set of rules to govern proceedings in that district.

Federal courts have jurisdiction over cases that substantively are governed by the United State Constitution or federal law(s) (versus state law) and cases that raise an issue involving the United States Government. Also, federal courts have jurisdiction over cases in which the parties have “diversity of citizenship”: where the value of the claim exceeds \$75,000 (the value specified by law currently) and the parties on each side are from different states or a foreign country.

A case is commenced by the complaining party by filing a written “pleading” setting forth the facts and legal claims at issue. In response, responding parties submit their response: they generally may seek to dismiss the lawsuit on legal grounds or they may respond to the factual allegations of the lawsuit, and add their own factual allegations and legal claims. After all required “pleadings” have been filed, typically the parties engage in fact “discovery” of the other side. This process

can include written questions and answers, written requests seeking production of documents and things, and depositions of witnesses. After discovery, if the facts are not in dispute, the district court may decide the case based on written submissions from the parties. A hearing may be scheduled for oral argument, but it is not mandatory to conduct a hearing or, in many places, ordinary to have a hearing. If there are facts in dispute, the case is resolved through a trial.

In trials, witnesses appear and testify before the factfinder—usually a jury. The judge presides over the proceeding and determines the law that will apply to the case and what evidence (testimony and documents) is admissible. The judge instructs the jury on its role in determining the facts of the case from the evidence presented, and instructs the jury what law to apply to those facts.

There are two appellate courts above the district court level. There are 13 United States Courts of Appeal that hear and decide appeals from district courts. The 94 United States District Courts are assigned to one of 13 circuits. Each United States Court of Appeal reviews and decides appeals from the district courts within its circuit. These cases are determined only on written submissions; live witness testimony is not presented. The United States Supreme Court hears and decides challenges made to rulings by the United States Courts of Appeal.

A brief overview of the federal court system is available at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>.

A more comprehensive discussion is available at:  
[federalcourssystemintheus.pdf \(uscourts.gov\)](#) (*The Federal Court System in the U.S.: An Introduction for Judges and Judicial Administrators in Other Countries*).

### **C. Brief Description of Arbitration**

Arbitration is a creation of agreement: the parties agree that they will arbitrate and they agree to a set of rules for that process, either by specifying their own rules or by designating an arbitration institution with its rules. Whereas most parties and even more so counsel prefer to operate in a procedural setting that mirrors their own national court system, new paths must be found when parties with different legal backgrounds meet in a dispute. Even institutional rules do not provide for an ideal solution or a standard compromise. The challenge in such situations is to find established and yet tailor-made solutions for the respective dispute at hand. Such challenge requires a solid understanding of different legal cultures as well as established international practices and more often than not the flexibility to adapt to the parties' needs and preferences.