

AMCHAM NEWS



American Chamber of Commerce in New Zealand

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May 2014

Visit of Prime Minister John Key of New Zealand to Washington DC

THE WHITE HOUSE - Office of the Press Secretary.

President Obama will welcome New Zealand Prime Minister John Key back to the White House on June 20, 2014. The meeting will highlight our increasingly close relationship with New Zealand and our collaboration on the Trans-Pacific Partnership, climate change, and military-to-military cooperation. The President looks forward to consulting with Prime Minister Key on these and other issues, including the U.S. rebalance to the Asia-Pacific region, regional maritime security issues, and global security issues such as Ukraine.

Prime Minister John Key said "The invitation underlines the very close relationship between the United States and New Zealand."

"I look forward to meeting with President Obama. We are likely to discuss the Trans Pacific Partnership negotiations, to take stock of our bilateral relationship, and to exchange views on current regional and international issues," he says.

The Prime Minister is travelling to the United States from June 16 to 20. While in Washington DC, the Prime Minister will also meet with a range of senior administration figures, Congressional representatives and business leaders. The Prime Minister will also undertake a full programme in New York in support of New Zealand's bid to win a non-permanent seat on the UN Security Council for 2015-16.

Honolulu Consul-General announced

Foreign Affairs Minister Murray McCully has today named diplomat Robert Kaiwai as New Zealand's first Consul-General in Honolulu, Hawai'i.

"New Zealand is looking to step up our diplomatic engagement with the Northern Pacific and work closely with the United States on Pacific issues," Mr McCully says.

"We welcome the United States' continued involvement in the region and our close cooperation in areas like humanitarian aid, fisheries and disaster risk management.

"Our new Consul-General will be responsible for building on this work and engaging with United States officials and experts regional security issues."

Mr Kaiwai will also be cross-accredited to Palau, the Federated States of Micronesia and the Marshall Islands.

"The smaller states of the Northern Pacific have taken centre stage in the region recently. The Marshall Islands hosted last years' Pacific Islands Forum and Palau is set to host this year.

"Our Consul-General in Honolulu will lead our engagement with Palau on Forum matters and our work with the Federated States of Micronesia and the Marshall Islands on issues such as climate change and fisheries," Mr McCully said.

Mr Kaiwai has been New Zealand's Consul-General in Hong Kong since 2011 and was previously High Commissioner to Kiribati.

Joint Statement at the TPP Ministers Meeting in Singapore

Singapore - We, the Ministers and Heads of Delegation for Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam have just completed a two-day ministerial meeting during which we reviewed recent bilateral engagements, including the U.S.-Japan negotiations last month, as well as the results of the Chief Negotiators meeting last week in Ho Chi Minh City.

In a series of positive meetings we cemented our shared views on what is needed to bring negotiations to a close. We focused in particular on making meaningful progress on market access and also advanced outstanding rules issues in an effort to narrow our remaining differences.

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In order to further build on the momentum of negotiations, we have decided on a pathway of intensified engagement over the coming weeks on market access and rules. As part of that effort, which will take place bilaterally and in other configurations, we have instructed our Chief Negotiators to meet in July. At the same time, Ministers will continue to engage bilaterally to direct negotiations, coordinate, and tackle the most challenging outstanding issues. We will also continue our respective processes of domestic consultations.

Our negotiations during this important period will continue to reflect our long-standing commitment to deliver an ambitious, comprehensive and high-standard agreement consistent with the instructions of our leaders. We will also continue to be guided first and foremost by our shared desire to create jobs, economic growth and opportunity for the people of our countries.

Myron Brilliant for the US Chamber commented “America’s trade negotiators have certainly had a busy May. Trade ministers from the 12 countries taking part in Trans-Pacific Partnership (TPP) negotiations met this week in Singapore to assess recent progress in an exhausting schedule of meetings over the past few months. The Chamber was on the ground there and in negotiations in Vietnam a week earlier as well as the intervening meeting of the APEC Ministers Responsible for Trade in China. We used these opportunities to meet individually with many of the TPP negotiators and push for the goal of a truly comprehensive and high-standard agreement.

Investaphobia and the Irrational Fear of Investor-State Dispute Settlement

By Sean Heather

Every night, as I put my son to bed, I make sure his closet doors are closed. Like many children at bedtime, he has a fear that something may be in his closet, and somehow by having the doors closed he feels safer.

His fear is irrational, and he will soon grow to an age when he no longer cares about his closet doors at bedtime. However, throughout his life, like all of us, he will continue to have fears, most of which, upon reflection, will still be found to be irrational.

When it comes to foreign direct investment, there can be any number of irrational fears. Some fear that outbound investment means the outsourcing of jobs; others fear that inbound investment means foreigners are taking over. However, the greatest fear at the moment involves Investor-State Dispute Settlement (ISDS), a provision included in investment treaties (and many trade agreements).

Investment treaties ensure foreign investors are not subject to discrimination, are treated fairly, and are compensated in the event of expropriation. ISDS simply allows an investor to make a claim when a government has violated the obligations it undertook upon signing an investment treaty.

The next time you hear someone trying to sell fear of ISDS, remember:

ISDS is neither new nor exotic. It has been included in more than 2,700 investment treaties signed over the past four decades. ISDS upholds the same kind of due process protections against expropriation and government takings that appear in the U.S. Constitution.

Under ISDS, relatively few disputes are brought to arbitration. According to UNCTAD, a total of 512 investor-state disputes were filed between 1987 and 2012 — a surprisingly small number for thousands of agreements over nearly half a century.

Under ISDS, investors usually lose. Independent arbitrators aren’t swayed by weak arguments. Governments comfortably win in the vast majority of cases. Even when an investor prevails, it usually is granted a fraction of the amount of compensation originally sought. According to the scorecard of Public Citizen — which actively cultivates fear of international investment agreements — the average recovery is about 15% of the original claim in those instances where the investor prevailed.

Hypothetical and pending cases are no substitute for the record. The fear tactics of anti-ISDS activists rely on hypothetical scenarios or cases that have been initiated but not yet decided. Hypothetical concerns over labor and environmental laws are often cited. At times cases that are still pending are often showcased. Such hyperventilation can only be addressed by an examination of the established track record, which shows that when a government acts in a non-discriminatory manner and affords investors due process, it always wins.

The next time someone comes peddling fear of ISDS, ask this simple question: “Can you cite an ISDS case where the investor won but didn’t deserve compensation?” Expect to hear silence in return.

Statement from U.S. Secretary of Commerce Penny Pritzker on investing in America

U.S. Secretary of Commerce Penny Pritzker today issued a statement on the importance of investing in America and the expansion of the SelectUSA program – the first-ever U.S. government-wide effort to attract business investment in the United States. The Obama Administration also announced today that the second-ever SelectUSA Investment Summit will take place March 23-24, 2015, at the Gaylord National Resort and Convention Center in National Harbor, MD. Along with the White House, the U.S. Commerce Department today also released a new report highlighting progress on the SelectUSA program and the growing attractiveness of the U.S. investment climate.

“The investment climate in the United States leads the world, and it continues to improve,” said U.S. Commerce Secretary Penny Pritzker. “The United States is the world’s largest recipient of foreign direct investment (FDI) because investors recognize that we have the most

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Supporting AmCham

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skilled and productive workforce, a stable and open market, low energy costs, a growing consumer base, and an environment that enables innovation to thrive. American companies are bringing jobs back to the United States, and international investors are directly supporting 5.6 million American jobs – that number is likely to grow as our businesses become more competitive.”

“The Department of Commerce is working hard every day to attract more investment, create more jobs, and strengthen our economic foundation. That is why the President created SelectUSA in 2011 as the first ever U.S. government-wide program to promote and facilitate business investment, including FDI and domestic companies considering re-shoring. We are making investment attraction a core priority across federal agencies and SelectUSA has facilitated \$18 billion in job-creating business investment in the United States. This year alone, SelectUSA has assisted nearly 500 businesses and economic development organizations, and serves as a single point of contact for ready investors, coordinates investment advocacy all the way up to the President, and provides services and support for U.S. communities to compete globally.

“Last year, the Commerce Department hosted the extraordinarily successful inaugural SelectUSA Summit, which brought together hundreds of foreign investors from nearly 60 countries to explore investment deals throughout the United States. We’re proud of the progress we made since the Summit. But more importantly, we are looking forward to the next SelectUSA Investment Summit in National Harbor, MD in March 2015. We invite companies and economic development officials from across the world to join us for another great opportunity to build on our momentum and continue to show that America is open for business, investment and job creation.”

To view the economic report on investment in the United States, visit: http://www.whitehouse.gov/sites/default/files/docs/winning_business_investment_in_the_united_states.pdf

To learn more about the 2015 SelectUSA Investment Summit visit: <http://selectusa.commerce.gov/selectusa-investment-summit>

US tax law to take effect in New Zealand

New Zealand banks are moving to implement their obligations under the United States Foreign Account Tax Compliance Act (FATCA).

The US law aims to reduce tax evasion by US persons using financial accounts outside the United States of America. It does so by requiring participating financial institutions around the world, including New Zealand banks, to provide relevant information about customers who are US persons.

“FATCA does not introduce any new tax obligations for US citizens and residents living in New Zealand. They will still have to file an annual US tax return,” said New Zealand Bankers’ Association deputy chief executive Karen Scott-Howman.

FATCA will be phased in from 1 July 2014. The information reporting requirements will apply to relatively few people living in New Zealand. They include US citizens, US permanent residents and green card

holders, and people born outside the United States who have a US parent.

“Anyone unsure about their US tax status should seek independent tax or legal advice,” Scott-Howman said.

If financial institutions do not comply with FATCA they may be penalised by a 30% withholding tax on principle and income from investments in the United States. US capital markets provide much of the funding most banks need to lend to New Zealand households and businesses. If those funding sources were no longer available due to non-compliance there would be a significant impact on the New Zealand economy.

“Complying with FATCA allows our banks to continue to provide services to US citizens and residents who have New Zealand bank accounts,” said Scott-Howman.

The New Zealand Bankers’ Association has produced a FATCA information sheet for bank customers which is available at:

<http://www.nzba.org.nz/assets/Uploads/Documents/You-and-your-US-tax-obligations.pdf>

NZ Hawaiian Business Association launched

We have recently established the New Zealand Hawaii Business Association. You will see all our detail on our website. Here is an opportunity for exporters and importers within NZ to look at the US Market. Hawaii is the very best US State to research the US market from.

With our offices in Honolulu & Wellington, we able to offer great assistance to your endeavours regarding exports of your goods and services to the state of Hawaii, with the possibility of moving on into mainland USA from NZ, &/or into NZ from Hawaii.

We are planning a launch meeting in Wellington. Possibly next month and also a lunch function in Auckland in the near future. I will keep you informed.

Please go into our newly launched website: <http://nzhawaii.com>

Please take a look into this site and click on all the options on the left hand side of the Home page to see and understand all options offered.

Contact: Robyn Bartram; robyn@nzhawaii.com ; 0274 908 644

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NZ teams win VEX Robotics World Championships for 6th year running

More than 750 teams from 27 countries competed at the VEX Robotics World Championships held recently in Anaheim, Los Angeles – and New Zealand again walked away world champions.

The competition sees robots built over the season by teams of students from junior through to university level compete against other robots in a game of skill. The teams also submit a range of other work for the competition including websites, essays and educational videos on robotics.

In the High School category hundreds of first-round qualifying matches whittle down 500 competing teams to only five alliances of three robots. Those five remaining alliances then compete against each other in a round robin to find out which two alliances will face off in the grand final. Two of the top five alliances included New Zealand teams.

Mt Roskill's Lynfield College successfully defended their World Championship crown and are covered with international glory after allying with a U.S/Canada team to again win the High School World Championship. Incredibly, Lynfield College battled other Kiwis – Otumoetai College allied with a U.S/U.S team – in the final.

"That's a testament to the Kiwi's strengths in building useful relationships and getting known," says Chris Hamling, National Manager for Kiwibots, the Australasian advocate of the Vex Robotics programme.

"It's exactly like real life and business - you can have the best product but if no one knows about it you won't be in demand," he says.

"The Kiwis were red hot because they have worked hard to become well known and liked and have now been on the World Championship winning team for six years in a row. New Zealand had excellent defensive play and sold that concept well – we were valued highly because we could stop the opposing team from scoring. This strategy was successful in the final," says Chris Hamling.

Other NZ teams competing in Anaheim included Albany Home School, Feilding High School (which won an Online Challenge trophy), teams from Massey University and a composite university team called OYES who did exceptionally well in the University division, winning the Excellence Award among others.

While in Anaheim Chris Hamling met with the President of the Northrop Grumman Foundation with a view to get an Australia vs. New Zealand competition up and running. Northrop Grumman is an aerospace company and the biggest worldwide sponsor of VEX Robotics. The Northrop Grumman Foundation is keen to see the Kiwibots spearhead the growth of VEX in Australia.

Former US Ambassador David Huebner attended the World Champs and met with the kiwi teams and Vex's chairman and founders.

www.kiwibots.co.nz

Kiwi students hack their way into space in NASA's Space Apps Challenge.

By Tim O'Brien, University Engagement Specialist, US Consulate, Auckland.

What will astronauts wear in the future? How will they eat? What should you do when you have a spare smart phone and need to take some photos of the universe? [Read more](#)

US Embassy holds 2014 Connecting Young Leaders conference in Christchurch

The United States Embassy is proud to once again host the Connecting Young Leaders conference, held this year in Christchurch. The three day conference is part of the US Embassy's youth and future leaders program and will take place at Canterbury University this weekend. [Read more](#)

[May 01, 2014 - The Project: Digital Disruption conference](#)

In an action-packed two-day event, attendees heard from 36 international and local speakers on how digital disruption is changing the way we live and work and learned how organizations are leveraging the opportunities created by digital disruption to transform their businesses. The unique structure of the conference allowed for exploration of topics on a conceptual, inspirational and practical level. [\[Day 1 wrap\]](#) [\[Day 2 wrap\]](#) [\[photos\]](#) [\[website\]](#)

Basil (Bas) Manderson Logan, CNZM

AmCham was deeply saddened to hear of the passing of Bas Logan on 16 May 2014 surrounded by his loving family at Te Omanga Hospice, Lower Hutt. Aged 78. AmCham's former Executive Director John Gordon attended the funeral on 21 May at St Mary's Anglican Church in Wellington.

Bas was the President of AmCham in 1978, 1979 and 1983 and was made a life member in 1987. He was an experienced Company Chair, Expert in Corporate Strategy Marketing and Governance and Technology Start Up. He received the CNZM in 2007 for services to business and government and held a number of board appointments including:

Chairman of Wedgelock Equipment 2009-2014

Chairman of Opus International Consultants 1992-2009

Chair of NZ Government Superannuation Authority 1999-2008

Chairman/Managing Director IBM New Zealand 1974-1987

Assistant General Manager IBM South Pacific 1987-1989

Our condolences to his wife Judy and family.

SUCCESS STORIES WITH USA

- | | |
|---|---|
| Road to hire 40 engineers, targets massive growth in US | AFT Pharmaceuticals mulls NZX listing as Milford, US investor take 10% stake |
| Winter whizzkids - interning in the off-season | Evergreen, new Armourguard owner, wins \$80m government security contract |
| Tech firm fast-tracks growth | PowerbyProxi snags Silicon Valley executive Gani Jasuf as it targets growth |
| Foley Family Wines to make \$1.9m offer for Martinborough Vineyard Estates | Xero bags top slot on Forbes list |
| US broadcasting giants to buy South Pacific Pictures in billion-dollar-deal | Kiwi to bring US chain to Auckland |
| Scott Technology to buy American robot integrator for up to US\$7.7m | Microsoft Azure strengthens 'Big Compute' with acquisition of Kiwi start-up GreenButton |
| Supplying the rich and famous | Acquisition expands ManpowerGroup's search capability |
| Haden & Custance finds continued success in US market | IBM preferred provider for health sector IT infrastructure |
| Meridian sells US solar plant for undisclosed sum | Pacific Edge shares gain 4% on fourth US deal |

TRADE, BUSINESS and INVESTMENT OPPORTUNITIES

Commercial News USA

The May/June issue of Export USA, the official export promotion magazine of the U.S. Department of Commerce, is currently online at <http://www.thinkglobal.us/exportusa/052014/>

Trade-Leads for Importing and Exporting

You are invited to register your company at America's new online trade leads matchmaking platform for importers and exporters. ThinkGlobal is the world's first B2B matchmaking platform to integrate multimedia, localization, virtual trade show technology, and social media. Just register online at [ThinkGlobal](#)

International Buyer Program – Trade Show Schedule 1 Jan to 31 Dec 2014

for details and support contact Janet Coulthart: janet.coulthart@mail.doc.gov

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US NZ CONNECTIONS

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| Kiwi Expat Association – www.keanewzealand.com | Wanganui New Zealand American Association donnarush@clear.net.nz |
| American Club – Auckland http://www.americanclub.org.nz/ | American Women's Network – Wellington www.awn.co.nz |
| American Women's Club – Auckland www.awcauckland.com | American Club of Christchurch – www.american-club-chch.org |
| NZ/American Association, Wellington www.nzaa.org.nz | Kiwi Club of New York Inc - www.kiwiclubny.org |
| | Kiwi's in LA - www.kiwisinla.com |

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AmCham Role of Honour

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25 Year + members:

Ace Insurance Ltd, DHL Express (New Zealand) Ltd, Eagle Technology Ltd, Hesketh Henry, Kensington Swan, KPMG, The Langham Hotel, Dun & Bradstreet (New Zealand) Ltd, Ernst & Young Ltd, Federal Express Pacific Inc, Wallenius Wilhelmsen Logistics AS.

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BUSINESS TRAVEL & TRAVEL NEWS

News, views and information for Amcham business travellers from **Grant Bevin**, Managing Director Business World Travel.

Business World Travel is a member of **GlobalStar Travel Management**

Abu Dhabi based **Etihad Airways**' Abu Dhabi-Los Angeles service has commenced—uniquely with passengers pre-processed through all US immigration, customs and agriculture inspections before departure from Abu Dhabi (AUH). The daily 16.5 hour flight is served by a Boeing 777-200LR in a three-class configuration with eight first class, 40 business class flatbeds and 200 economy. Etihad's closest New Zealand ports are Melbourne, Sydney, Brisbane and Perth and they now serve a reasonable number of US destinations via Abu Dhabi.

This week **United Airlines** became the first airline to operate out of **London Heathrow Airport's new Terminal 2**, signalling the official opening of the renovated terminal following a £2.5 billion (\$3.8 billion) upgrade. **United** will operate 17 flights a day to the US from the world's newest terminal. The terminal will be the **Star Alliance** home at Heathrow and all 23 member airlines operating at Heathrow will move over the next six months. Singapore Airlines will move around August then finally October sees the arrival of Air New Zealand, Asiana Airlines, Austrian Airlines, Brussels Airlines, Croatia Airlines, LOT Polish Airlines, Lufthansa, South African Airways, SWISS and TAP Portugal. At present the Star airlines are spread around some fairly outdated Heathrow terminals.

Pairing adventure and discovery with the luxury, the **Four Seasons Hotels & Resorts**, one of the world's largest luxury hotel chains, is offering the opportunity to travel in groups on its own branded **Boeing 757 jet**. The round the world trip costs \$US119,000 per person for double occupancy and \$US130,000 to travel solo. The jet is the hotel's first fully branded private jet and marks the entrance of the hotel industry into aviation. The Four Seasons' 52 passenger capacity aircraft is fully decked out in the hotel's white and black brand colours and will offer global in-flight Wi-Fi and food will be managed by chefs and on-board concierge to manage spa treatments. Naturally the three launch itineraries we have reviewed include the best of the **Four Season's** properties. Our very experienced luxury travel advisors Gay Miers in Newmarket (gmiers@bwt.co.nz) or Agota Watt in Wellington (awatt@bwt.co.nz) have your seat waiting. These inaugural voyages depart from the US or Europe and so fares to join the tours are additional; furthermore since they were launched earlier this month they are filling quickly.

Members of **Germany's VDR Association of corporate travel managers** has voted US-based and Sabre owned **Prism** reporting system as the greatest travel annoyance. Voters cited an uneasiness with the way the system extracts their corporate travel data in order to extend volume corporate discounts. The full article is available at www.businesstravelnews.com. Some clients may have expressed concerns around their privacy as the system can also show an airline what competing airlines a client might be using. Our observation from statistics across a number of countries and airlines is that the hassle outlined by VDR travel procurement people is that it's often not worth the modest discounts offered by some airlines. VDR members voted that the second most annoying feature of travel is security!

Condé Nast Traveller has added **Canyon Ranch in Arizona** in the US onto their list of the world's top **Best Spa's in the World 2014**. At Canyon Ranch you can hike or bike through exotic desert canyons or explore pine-topped mountains. Fortify your body with 40+ fitness classes a day. Enjoy unhurried consults with top wellness experts. Our Executive Leisure team can provide a 20% discount to first time visitors. Consult Tanya, Gay or Agota t at BWT about other leading Spa and Executive Health retreats around the world.

Air New Zealand's new 787-9 takes flight

Air New Zealand's first Boeing 787-9 has taken to the air for the first time today, successfully completing its first production test flight in the skies above Seattle, Washington.

The aircraft, which is in Air New Zealand's signature black livery and has the tail registration ZK-NZE, is currently in the final phases of the delivery process before being formally handed over to the airline as the new owner.

Air New Zealand is the launch customer for the Boeing 787-9 and has 10 of these stretch versions of the 787 on order.

Check out our website at www.bwt.co.nz

Reviewing your Corporate Travel? Call our Team:

Jane Higbie Business World Travel Wellington 04-470 6044 jhigbie@bwt.co.nz

Grant Bevin Business World Travel Auckland 09-529 3700 gbevin@bwt.co.nz



FOR YOUR DIARY

| | |
|------------------------|---|
| 18 th June | Auckland CEO lunch (invite only) |
| 25 th June | An audience with 2013 EY Entrepreneur of the Year, Rod Drury, CEO, Xero, Auckland |
| 1 st July | Wellington CEO lunch (invite only) |
| 3 rd July | Ben Carson, Books in Homes breakfast, Wellington |
| 30 th July | AGM reception, Auckland (invite only) |
| 31 st July | Auckland CEO lunch (invite only) |
| Rescheduled ** | |
| 5 th August | TPP update with Trade Minister Tim Groser in conjunction with CANZBA, Auckland |
| 7 th August | 2014 AmCham-DHL Express Success & Innovation Awards Dinner, Auckland |

MEMBER NEWS

People on the move:

Michael Anderson has left the Pullman Auckland Hotel and has relocated to Sydney. Denise McRae has been appointed the Director of Sales & Marketing.

Todd Barclay has left Philip Morris to stand as the Candidate for Clutha-Southland at New Zealand National Party.

Sue Brown has joined DLA Phillips Fox as Partner in its Wellington office. Professor Robert Merkin, has been appointed as a consultant

Mike Munley is the new Business Development Manager at the Medical Technology Association of New Zealand

Michael Stephens, Managing Director of Stephens Law has been appointed as President of the Italian Chamber of Commerce

Wynn Williams has appointed Richard Hern and Ash Hill as Partners

James & Wells has appointed Tim Walden (Hamilton) and Gus Hazel (Auckland) as Partners

Books in Homes events with Ben Carson,

one of the world's pre-eminent neurosurgeons, former head of Paediatric Neurosurgery at Johns Hopkins Hospital in Baltimore, 3 July Auckland & Wellington



When Dr. Ben Carson last visited New Zealand in March 2012 he was one of the world's pre-eminent neurosurgeons. As head of Paediatric Neurosurgery at Johns Hopkins Hospital in Baltimore he came to prominence when he became the first surgeon to successfully separate twins joined at the head.

Brought up in desperate poverty in Detroit, with an absent father and a mother making ends meet as a cleaner, he was known as the dumbest kid in school. His mother realised that reading was a key to success in life so she made her two sons write weekly book reports on titles from the Detroit Public Library. As a result, Ben went from bottom to top of the class and the dream of a career in medicine became a reality.

These achievements inspired the movie 'Gifted Hands' starring Cuba Gooding Jr. and Dr. Carson became an inspiration for millions. He has also written several books which have appeared on the New York Times Best Sellers list.

Now, Dr. Carson has retired from Johns Hopkins but has found even more notoriety after being the guest speaker at President Obama's National Prayer Breakfast in 2013. In his speech he decried many of the current administration's policies whilst proposing some straightforward alternatives. This speech has led to calls for Dr. Carson to run for the Presidency in 2016 – calls which he has so far resisted.

Dr. Carson will be the guest of honour at a breakfast hosted by AMCHAM on July 3rd at 7.30a.m. at Parliament. He is in New Zealand to support literacy charity, Duffy Books in Homes, a chapter of which is also in operation in the USA. The breakfast will also celebrate two milestones for Duffy Books in Homes – 20 years of operation and 10,000,000 books distributed to children from low-income families.

Tickets are \$40 including GST and spaces are strictly limited. Please email mike@amcham.co.nz to book.

For Auckland members who wish to see Dr. Carson, Duffy Books in Homes is holding a fundraising dinner at The Langham Auckland on the evening of July 3rd. More information is available at www.bencarson.co.nz

We would like to invite you to take part in the 2014 DHL Export Barometer.

Complete the survey and we'll put you in the draw to WIN a \$1000 Westfield voucher!

The DHL Barometer surveys exporters around New Zealand each year about their views on the exchange rate, share market, skill shortages and other important issues that impact on their global business prospects.



Your views as a current exporter would be highly appreciated and will help DHL to provide a more accurate snapshot of the experience and views of New Zealand exporters in the current global economic environment.

To complete the survey and put yourself in the draw for a \$1000 Westfield voucher, please use this [link](#):

The online multiple-choice survey takes less than 20 minutes to complete and you will be responding directly to DHL.



Supporting
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LEGAL ISSUES

Norris Legal Consulting – American Law Specialists

In partnership with the Chamber, our objective is to provide Chamber members with information on the complex US legal landscape, which might assist in US-NZ business relationships, and to assist NZ businesses expanding into the lucrative US markets. In our monthly column, we write about legal issues which we deal with in our representation of NZ businesses doing business in and with the US, however, we are also open to suggestions on topics about which members are interested in learning. So, please feel free to email us with your comments, questions and any suggested topics at info@nz-uslegal.co.nz

Arbitration: Is It Really All It's Cracked Out To Be?*

Most international commercial agreements contain clauses which provide for final and binding arbitration to settle any disputes between the parties. Many lawyers are inclined to tell their clients that arbitration is the best way to settle commercial disputes, as it is faster and cheaper than court litigation. Do these clichés really hold true?

In many cases, the decision to choose the court room over arbitration entirely depends on the situation. Court litigation generally becomes expensive because of *discovery* and *motion practice*. Discovery is the process by which litigants gather evidence to prove their case or defense before the court. In the United States for example, discovery generally consists of *requests for production of documents*, *interrogatories* (written questions), and *requests for admissions*, *third party document subpoenas*, and *witness depositions*. Discovery can last from several months to several years, depending on the matters in controversy in the case. “*Motion practice*” is the general terminology used to refer to the various motions traded between parties asserting legal arguments before a case goes to trial. A typical case will contain *motions to compel discovery* (to settle disputes regarding discovery) and *motions for summary judgment* (asking the Court to decide the case on the law without the need for a trial). Many cases between international parties also contain jurisdictional challenge motions. Each of these US court procedures can cost several thousand dollars, with witness depositions and motions for summary judgment sometimes costing in the tens of thousands of dollars (in a worst-case scenario). On the other hand, a small case might only incur a few thousand dollars in discovery expenses and attorneys’ fees. Most if not all of these expenses can be avoided through arbitration.

That being said, arbitration is no cheap endeavor. It requires upfront expenses which are not incurred with court litigation. Initiating a commercial arbitration case generally requires an up-front average fee of approximately \$9,000.00 USD. This fee generally covers the filing fee, the arbitration administration association’s fees, and the costs of a venue for the arbitration. This does not include the additional \$5,000.00 USD to \$30,000.00 USD or more in attorneys’ fees for the initial arbitration submissions and notices, or the general fee of \$5,000.00 USD to \$10,000.00 USD for a single arbitrator to hear the case and issue a ruling. Most arbitration clauses call for a panel of three arbitrators, and this can substantially increase the costs. Initiating a lawsuit in court generally requires a filing fee of approximately \$300.00 USD depending on the state or federal court where the case is filed, plus attorneys’ fees from \$500.00 USD to around \$5,000.00 USD or more. Further, the upfront costs of arbitration can increase significantly where one of the parties is not a willing participant. As happens quite often, many commercial disputes that require arbitration result in one party simply refusing to come to the table at all. Thus, the party that wishes to initiate the arbitration is forced to file a lawsuit in court in order to have the court issue an order for the arbitration to go forward and for all parties to participate. This common situation significantly increases the up-front costs for the party making the arbitration claim.

There is also a common belief that arbitration is more expedient than court litigation, but industry studies conflict on whether arbitration is truly quicker than court litigation. In our experience, arbitration is indeed quicker if the parties both participate in the process. Generally speaking, if there is a single arbitrator, you can agree from the outset that the arbitrator must issue an opinion within a set amount of time. This sort of dictate cannot be placed on a court which generally operates on its own time frame.

Arbitration is also final. There are no appeals and there are very limited circumstances where a court will overturn an arbitration award. In the US, a party that is victorious at trial in court litigation can as a matter of course expect the other side to appeal, or at least threaten to appeal, in an attempt to either overturn the trial court’s decision or force the claimant into settling for less than the amount of the judgment.

So what does all this mean in the end? Arbitration does not actually cost that much less than court litigation and that it sometimes costs more. Our general opinion is that an arbitration clause should only be included in an agreement if the client can afford the upfront costs of arbitration. If you are a small business and money is tight, then arbitration may not be the best option for you if you need to enforce your agreement in case of a breach. A contract with an arbitration clause that is not well thought-out may force your business into situations where significant breaches cannot be dealt with adequately or timely. This is because the amount of the upfront investment required for arbitration may be completely unaffordable for your business or too burdensome on your business given the likely outcome of the case.

Arbitration is an important mechanism in the world of international commercial transactions it should remain, in the appropriate situations, a mainstay of a well-drafted international commercial agreement. However one size does not fit all. Every business should carefully and honestly analyze its ability to incur the upfront set costs of arbitration before including such a clause in its agreements.

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