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COVER STORY

Longtime Litigator moves to international commercial arbitration

By John Roemer
Daily Journal Staff Writer

Moving from advocate to neutral on the international commercial arbitration stage, Cedric C. Chao has left his law firm and set up a shop in San Francisco to be known as Chao ADR PC.

“I am redirecting myself, exploring, climbing a new mountain,” said Chao, who has spent decades as a litigator immersed in the international arbitration world that parallels national civil justice systems. He said he plans to hire out as an international and domestic arbitrator, mediator, special master and arbitration consultant even as he continues to serve as litigation counsel for ongoing cases.

“I’ll be the person who listens,” Chao said of his new focus.

Chao’s shift in focus takes place as California itself is bidding to become a player in international commercial arbitration. A new law on Jan. 1 brought the state into the arbitration mainstream by making the venue friendly to foreign and out-of-state lawyers, aiming to attract high-stakes business disputes that have formerly been resolved in New York, Miami, Singapore, London, Paris and elsewhere.

He has long pushed for the law.

In 2013, Chao and a friendly competitor — Jones Day’s Steven L. Smith — published a Daily Journal op-ed, “Achieving California’s Potential as an International Arbitration Center.” It asked state lawmakers to scrap the protectionist rules that effec-



Daily Journal Photo

Cedric C. Chao, a longtime litigator, has set up his own shop to handle international commercial arbitration, hoping to take advantage of a new state law he helped to draft that makes it easier for arbitrations to take place in California.

tively barred lawyers unlicensed in California from appearing at commercial arbitrations here, lest they be accused of the unauthorized practice of law.

Chao and Smith later worked on a group appointed by the state’s chief justice to draft the new law.

Until Monday, when he officially assumes his new role in a new office at One Market Plaza on the San Francisco waterfront, Chao was for six years the U.S. head of the global arbitration practice of DLA Piper.

Earlier, he founded and headed Morrison & Foerster LLP’s international litigation and arbitration practice. He has represented clients as first chair in five arbitrations where the amount in controversy exceeded \$1 billion and in multiple other cases valued in the hundreds of millions of dollars.

It was at the Singapore International Arbitration Centre a few years back when Chao — there to represent one of the parties to a major business row at an arbitration trial — said he first started thinking seriously about sitting on arbitral panels rather than appearing before them.

“This was an all-star panel led by Yves Fortier, the former Canadian ambassador to the U.N. and a former prominent barrister,” Chao said. “I was thinking about the way he carries himself as a gentleman, very dignified. There was a lot at stake, and I was in the trenches, doing hand-to-hand combat with my opposing counsel. Fortier was keeping the lid on, making sure you felt like you were being heard, keeping things moving.”

“I thought that this is what an arbitrator should be like, and

someday I want to transition to that role,” he added.

Chao has conducted arbitrations himself under the rules of the International Chamber of Commerce and the Singapore International Arbitration Centre. He serves on the ICC Arbitrator Nominating Committee for the U.S. and on the American Arbitration Association/ICDR Council.

With JAMS co-founder Daniel H. Weinstein, Chao authored the mediation chapter in the authoritative “Business and Commercial Litigation in Federal Courts.” Weinstein praised Chao in an email, writing: “Cedric’s leap into the multifaceted world of ADR is an exciting event. He has been one of the few outstanding litigation lawyers who can put on a mediation hat and become an outstanding mediation advocate. I have no doubt he will become an equally outstanding mediator.”

Smith, the Jones Day partner focused on international disputes, cheered Chao’s move. “As an accomplished and savvy practitioner of both international litigation and international arbitration for so many years, Cedric has acquired an instinct for quickly identifying the key issues in a dispute, as well as how best to resolve them in a procedurally fair and efficient way,” Smith said.

“His calm, thoughtful approach, combined with his multi-cultural perspective, will make him an obvious choice for tribunals tasked with resolving difficult cross-border disputes, especially in the Pacific Basin,” Smith added.

Chao will join a handful of California attorneys expert in

the arcane specialty, including arbitrators Abraham D. Sofaer at the Hoover Institution; Jack J. Coe Jr. of Pepperdine School of Law; and Richard Chernick of JAMS. Smith and Fred G. Bennett at Quinn Emanuel Urquhart & Sullivan LLP are seasoned international arbitration advocates who have served as arbitrators.

Arbitration at the international level is significantly different from civil litigation, Chao said. It “is like learning a new language, like Swahili. Style is important. If you come across like a U.S. litigator, you’d get laughed at as tone deaf.”

Chao said that four current trends have converged to persuade him to make the move now. One is the growth of technology disputes. “The sector, of course, is centered right here in Northern California, and it is probably the last sector to begin embracing arbitration,” said, Chao, who advises a lot of tech giants.

“In a U.S. domestic dispute, I wouldn’t push arbitration. But

if you go overseas, do you want your matter to be in a Chinese or Indian court, rather than before an arbitration panel?”

A related trend is the growth in general of U.S.-Asian corporate conflicts. “That commercial axis is growing. I’ve flown back and forth across the Pacific a lot, and I’m comfortable with it. I really understand Asian cultures because I grew up with them,” Chao said.

And there’s what Chao calls the attempted Americanization of arbitration, a process originally designed to streamline the lengthy civil litigation process by largely eliminating discovery and other time-consuming trial court routines.

“American corporate counsel still want some minimal discovery, even in arbitration. Europeans are skeptical of that. I am well placed to work in that space because I come from the U.S. litigation mindset but I understand the European and Asian mindset,” Chao said.

The fourth trend is the opening

of California as an arbitration center.

It will take a while for the state to be written into contracts as the venue of dispute resolution and for the disputes themselves to develop. But this venue will be important for trans-Pacific arbitrations in ways that the East Coast and Europe can’t match, Chao thinks. “This is a great time and place for me to try it.”

Chao’s resume features some big names in Bay Area legal history. After studying economics at Stanford and law at Harvard, he came to San Francisco to clerk for the late U.S. District Judge William H. Orrick Jr., the father of the current judge. An adjacent courtroom belonged to the late U.S. District Judge Charles B. Renfrew, who had a post-bench career in private practice as an arbitrator, mediator and conductor of internal corporate investigations.

“They both advised me not to join a big firm immediately. They told me to get on my feet and learn to try cases by working for

the U.S. attorney’s office, and I did,” Chao said. Later he became a senior associate and one of MoFo legend James J. Brosnahan’s lieutenants.

As MoFo went international in the late 1980s, the firm asked Chao to start an international litigation and arbitration practice. “The economy was going global and we went with it,” he said. “And we got really good at it. We were a thought leader on the West Coast.”

He moved to DLA Piper in 2013. “I got on the [arbitration] approval list for Singapore and China,” Chao said. “The percentage of the world GDP moving East is growing inexorably.” He sees a role for himself as an adviser as well as a neutral.

“People are just starting to think about this emerging area of practice,” he said. “I can give parties insights into how arbitrators will respond to their oral and written presentations. I bring the perspective of an advocate and an arbitrator.”