



Class or Collective Action in Investment Arbitration *

Summary

*** Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session titled "Collective Action in Arbitration" at Washington Arbitration Week featured an expert panel discussing the complexities of mass claims in arbitration. The panel included Dr. Kabir Duggal, Lisa Snow, Matthew Drossos, and Rob Huston, each bringing unique perspectives from their respective fields.

Dr. Duggal provided historical context on mass claims, emphasizing the importance of efficiency and consistency in arbitration, particularly in cases involving multiple claimants. He highlighted examples from past claims commissions and treaties, such as the NAFTA consolidation provisions that address the challenges of handling numerous claims simultaneously.

Lisa Snow contributed insights on financial damages and the role of expert testimony in mass claims. She discussed the practicalities of consolidating claims and the need for standardized documentation to facilitate effective arbitration processes.

Matthew Drossos shared his experience with the Argentine sovereign bond default case, which involved a significant number of claimants. He illustrated the complexities of gathering and presenting evidence in mass claims, emphasizing the importance of establishing individual consent and nationality for arbitration.

Rob Huston discussed the potential for mass claims arising from the ongoing Ukraine-Russia conflict, exploring the challenges of accessing justice for investors affected by Russian economic measures. He introduced the Global Pro Bono Bar Association's initiative to support investors of limited means in pursuing claims against Russia.

The panel underscored the need for innovative approaches to address the unique challenges of mass claims, including the importance of consent, the role of historical precedents, and the potential for new mechanisms to facilitate justice for affected parties. The discussion highlighted the evolving landscape of international arbitration and the ongoing efforts to enhance access to justice for diverse groups of claimants.



Authors

Ian Laird, Rob Houston, Lisa Snow, Matthew Drossos, Kabir Dugal

Topics

Class action

Category

WAW

Full Transcript

00:00:04

Welcome everyone to class or

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Collective action in arbitration. So,

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I was just saying with

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regard to the title. I

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think, Mass claims probably would

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be the more appropriate way

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to look at this. But,

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of course, there's other mechanisms,

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which we'll talk about like,

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consolidated claims which is more



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of a artifact of treaty

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procedure under specific trees like

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like the NAFTA and we'll

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get into that. But let

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me before I make some

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opening remarks, let me introduce

00:00:38
our fantastic panel this afternoon

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in no particular order. We

00:00:44
have Dr. Kabir do gal,

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who's an attorney at Arnold

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importers. New York office. He's

00:00:51
an old old friend. I

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we talk together at the



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Columbia Law School where he

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continues to teach. He's involved,

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not only an International Investment

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arbitration and has had long

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experience. Working in that field

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experience the internet International commercial

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arbitration as well as public

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international law matters and he

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serves not only as counsel

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but as arbitrator and mediator.

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He is a recognized chartered

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arbitrator by the chartered Institute.

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And in addition to his



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teaching at Columbia Law School

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as a lecturer in La

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there, he's an adjunct professor

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at Fordham law school and

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of course, tractor and faculty

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member at the Columbia Law

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School. Chartered Institute of arbitrators

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comprehensive course on International arbitration.

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So it's great to have

00:01:46
a beer here. He's always

00:01:48
a welcome participant in Washington

00:01:52
arbitration week. We really appreciate

00:01:54
you being here. Kabir Lisa



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snow to my left ear

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in the room in Washington

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is a man managing director

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at Kroll. I'm not crew

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cruel. Accrual with a k

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k a r o l

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I everyone gets us mixed

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up. She's a leading independent

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provider of risk and financial

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advisory Solutions and 4/20 years.

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Lisa has served as a

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Consulting and testifying expert specializing

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in financial damages, business valuation



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and forensic accounting issues. She

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and her team and I

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some of them are here

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today. Works across a broad

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range of Industries, including Financial

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Services, Telecom construction and products

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and it said, great to

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have Lisa here. Thanks very

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much for taking your time

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to be here. Matthew drossos

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is a partner in Whiting

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cases, International arbitration and litigation,

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litigation Practice, Group Sandy's the



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two over on my left

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here in Washington. He represents

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clients, including both corporations and

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sovereign states on matters before

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the accident, the ICC Geneva

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Chamber of Commerce. The court

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of arbitration for sport and

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the US federal courts apropos

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to our topic. Today, he

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was his representative matters, include

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the Epic laptop case, which

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involved that mass claims on

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The Sovereign in The Sovereign



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Bond sector, as well as

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other investors stayed in commercial

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disputes, spending my gas and

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construction sectors. And last but

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not least, we're really pleased

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to have Rob Huston here

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today. And he has many

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capacities. But today, he's appearing.

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In the role of executive

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director of the global pro

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bono Bar Association. And this

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is a really interesting group

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of folks and nonprofit organization.



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501, c 3, nonprofit organization

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to be precise. That is

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currently working hard to explore

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potential for investors of limited

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means to advance Mass claims.

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Against the Russian Federation as

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a result of Russia's economic

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measures imposed on foreign investors

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from the quote unfriendly Statham

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quote. So in private practice

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Rob is also represented investors

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and serving clients in International

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Investment arbitration or other matters



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involving public international law so

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it's so great to have

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Rob hear you. Thanks for

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coming as well. And Lisa

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and and Kabir, this is

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going to be a great

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panel. Now as just to

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continue on to my introductory

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comments, I think we'll probably

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use the term Mass claims.

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And and again one of

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the key common elements here

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is that sometimes you just



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don't have a single claimant

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and you have a number

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of individuals, whether they may

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be shareholders, perhaps, or in

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the case of the bondholder

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cases the bond Bond holders,

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or individuals who being affected

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in in a common matter.

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That might Merit, proceeding and

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really this follows is some

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fundamental objectives or principles in

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arbitration. You know, efficiency being

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one of the idea that



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we want to minimize time

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and costs and in multiple

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proceedings that could be very

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expensive. If you had say,

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you know nor are hundreds

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of thousands of potential claimants

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having parallel arbitrations running would

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be exceedingly costly. And frankly,

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just wouldn't happen and the

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other main objective, of course,

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is to avoid contradictory and

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inconsistent decisions. The idea that

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you might have all these



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arbitrations running in parallel, and

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then I'll come in with

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different decisions, would also, Violate

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kind of a fundamental ideas

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and they got the idea

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of supporting a consistency in

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decision-making. So historically, this this

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kind of these objectives have

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being addressed in a number

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of ways and we don't

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have to go back too

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far and maybe a hundred

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hundred fifty years to some



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of the Claims Commission that

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occurred in the early Twentieth

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Century, the Venezuela and Mexico

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claims commissions and as well

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even more recently the Iraq

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UNCC Claims Commission and even

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around us Claims Commission which

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began after the Iranian Revolution

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and frankly that that commission

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is still operating and we're

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going to have a beer

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talk a little bit about

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the historical context. Another solution



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was found in the early

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1990s and now, after the

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article 1126 of that treaty

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has what's called a consolidation

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provision, Which very explicitly, an

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after-party sought to deal with

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the situation in, which there

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might be multiple, claimants, and

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that issues, efficiency, and overlap,

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in terms of the subject

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matter, what may made sense

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for those cases to be

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Consolidated. And that's, there's been



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a number of those cases

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as well. And of course,

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I'll come with a little

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bit about that as we

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go through as well. There

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being other creative approaches and

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we seen primarily at Exit,

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which doesn't have arguably explicit.

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Provisions for consolidation, but we've

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had one of the largest

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cases ever. They have a

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case, which Matthew is going

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to dive into and it



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went on for many years

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and really helped draw out

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and illuminate. A lot of

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the thinking behind the idea

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of how Mass claims Work

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even in other cases. Not

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not not in other than

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a black lab smaller cases

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where there might have been

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rather than sixty thousand planets

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that might be 2 or

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3 tribunals, have taken more

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creative approaches and appointing, similar



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tribunals sometimes as they approach

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while still running separate claims.

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There's really kind of all

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sorts of different ways that

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the tribunals come at this

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issue and you can really

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see the avoidance of parallel

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claims, the avoidance of multiple

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claims, it really meets. She

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objected that we've seen in

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other parts of international law

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and international practice. And you

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can look at the firm



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since the concept of res

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judicata and the idea that

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if you have overlapping subject,

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matter overlapping parties and remedies

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that, you know, that is

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an argument for either, you

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know, shutting down one case,

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Four or combining them. So,

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another issue that's come up

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and, and this was, I

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think one of the reasons

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but not the parties, put

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a consolidation provision in their



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treaty is is a question

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of consent. How do you,

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how do you respond until

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are you? This is that

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they didn't consent to that

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elevation and and that issue

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does come out. You may

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touch on that. But I

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even have, you know what,

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anecdote of one case that

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I did many years ago

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in which we had an

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interesting situation that the respondent



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was the same. So there

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was one responded, but there

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were effectively three claimants a

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parent into Subs, with the

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two subs owned, two different

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properties. The related to two

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separate licenses that were required

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for a single mining project,

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and this is a case

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called duck on Mongolia Converses.

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And I'm so we had

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basically three claimants three bases

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of jurisdiction and we were



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able to bring procreation cases

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under the contract which had

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interesting land expropriation provision under

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the foreign investment law that

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the local law as well

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as the energy Charter treaty.

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So we have these multiple

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basis of jurisdiction and Barrett's,

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luckily they all called for

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unsecured rules. So we had

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a good argument on Seadrill

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side but of course, the

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argument came up in the



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arbitration that well know this

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is three separate times, you

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should run three separate cases.

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And luckily we were able

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to negotiate that and get

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the consent of the Clint

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of the respondent to to

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put this into a single

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case. But ostensibly there were

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three claimants even though they

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were related parties, there was

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enough distinction. In terms of

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their being separate claimants, that



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the argument was there that

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they should have been three

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cases. So he's kind of

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issues arise and all sorts

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of different contexts and I

00:11:02
think that's my signal then

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to move to Kabir first

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and the Kabir provide a

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bit of context and a

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little bit of historical background

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because this is not a

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new issue. This is one

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that's being used throughout the



00:11:19
earliest days of international arbitration,

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and of course, the beer

00:11:25
has an interesting starting slide.

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So take it away. It

00:11:28
could be here by 2

00:11:31
to be here. With a

00:11:32
lot of familiar faces, I'm

00:11:36
going to provide these historical

00:11:37
context about how these things

00:11:40
have worked out. And let

00:11:43
me just give you two

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thoughts to think about as

00:11:47
you were looking at what



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you're talkin about. Think about

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how it affected with successive,

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these commissions and pain. Is

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it two ways you can

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assess them? And this is

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significant because this idea of

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claims commissions from Ukraine of

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floating around for many quarters,

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If you're too busy, we

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should be thinking about them

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claim Vision, one to do.

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The assessment is Julie, individuals

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and individuals getting a voice.



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That's one way we can

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discuss them move to decommission.

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That effective, if you're looking

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at it from that perspective,

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issue to David solving the

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underlying problem. I pretty much

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every Claims Commission from that

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perspective has been a complete

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failure. Only resulted in worse

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things historically, coming out another

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way. You can be thinking

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about this. So let's take

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a look into history. You



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have to meet you bored,

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that takes place between two

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countries and suddenly you have

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the independence of this small

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country, the United States of

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America. Relationships with the former

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mother country. Great Britain, cannot

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create no pun intended there.

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And you see in the

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u.s. history in negotiation of

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one of the most polarizing

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treaties. If you think things

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are bad in the past



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couple of years you have

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a tradition of knowing a

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green when anything at this

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is probably the single moment

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in the u.s. history with

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George Washington was attacked in

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the most unflattering minor. And

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this is the negotiation of

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the Jay Treaty. Right. What's

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unique about this treaty? This

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treaty actually provides for arbitration

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in the form of mixed

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Claims Commission. Not for one,



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not for two but three

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separate sets, two things you

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have one with the dispute

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in relation to the border

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and thank you. We talkin

00:14:14

about Canada, mix Game Commission,

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that's going to be created

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to look at that. The

00:14:21

2nd. The French really supported

00:14:24

the US in the Revolutionary

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War. Obviously, Great Britain than

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when the ships were passing

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across the Atlantic American Indian,



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Ocean of who is in

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the American was a big?

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But it was a lot

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of ill-treatment in the mind

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of the Patriotic Americans on

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the ship. So that's going

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to be a separate commission.

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That's going to really addressed

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this issue and then you

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see relevant to what we're

00:14:55

talking about. You know, deaths

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being ordered to British merchants

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and that's really not getting



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paid. I'm just looking at

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Ultra beauty in different terminology

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good-looking here at the creation

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of a commission does a

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lot of antiquated going to

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be for each state and

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then a president commissioner anything.

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That's the time that we

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used to. It's going to

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resolve these disputes. Again, this

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idea that individuals can bring

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the cans before this commission,

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they can get them. They



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can get them resolved. That

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pretty significant things you do

00:15:43

you want to just joking?

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Will basically about commercial rights

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rights of investors. You put

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a fun fact you this

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did not work out. Great

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1812 is going to be

00:15:58

another woman Washington. D.c. significantly

00:16:02

capitals going to get burned

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a lot of the art

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of the artifacts are going

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to get destroyed and then



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you treat is going to

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be signed. So dumb this

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treaty with historical assessment is

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in mixed bag. Let's look

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at another city and this

00:16:24

is a pretty that's going

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to be signed between the

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US and Mexico in the

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1920s. This is the time

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in this is Lord of

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revolutions happening in Mexico. A

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lot of us in the

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minds of Mexican, this just



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in the Lord of us

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interference American citizens in Mexico.

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Very concerned with the fact

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that they're being treated first

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time. And there is a

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creation of a mixed Claims

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Commission to address all these

00:16:56
issues, you're talkin about the

00:16:59
Constitution, just the way, we

00:17:01
would understand arbitration 11, you

00:17:04
going to then have a

00:17:05
president. You can actually see

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the PCA make in the



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happy appearance. That is if

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we have a stalemate, it's

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going to be resolved by

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the PCA when it comes

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to the Constitution of the

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Tribunal. How did this commission

00:17:21

work that some of our

00:17:22

team is Jesus and I

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Blame You slash give you

00:17:27

credit for finding some of

00:17:29

these early cases and putting

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them in New Mexico right

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to the Bedrock kaseberg minimum



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standard of significance. Again if

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you doing a historical assessment,

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historical assessment is fairly Puritan,

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sold any of the underlying

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problem, it had to be

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abandoned in 1932 and the

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ultimate way to tackle, the

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problem was with the states

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to get together. Direct negotiation.

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I'm going to get in

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and out of this because

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there's a whole host to

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mixed claim commissions that the



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United States into a lesser

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degree, the United Kingdom, a

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going to entered into again

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problems with Venezuela sounds familiar.

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I am commissioned 11 and

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1 and be the Empire,

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the appointing authority. What's the

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queen of the Netherlands? Fun

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fact that you see how

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loyal he had pretty significant

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role to play when it

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comes to resolution thinking. More

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generally about who, the appointing



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authority should be there. Fortunate,

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he moved away from royalty

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into arbitral institutions with these

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a significant position. Try to

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do you put to decide

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this complex dispute Present histories,

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and a present reality is

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any indication of how things

00:19:00
are in terms of the

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US Venezuela Resler relationship. I

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think I just rest my

00:19:06
case. We didn't look at

00:19:10
the hostage crisis that takes



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place in Iran. It going

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to see the hostages in

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Iran, and we're going to

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see the freezing of Iranian

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Assets in the United States

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and a variety of Court

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action, taking place all around.

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The world opinion, really offering

00:19:38

Goods offices, with the Algiers

00:19:41

Accords, and the idea again

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here is to settle the

00:19:45

dispute to arbitration. The going

00:19:48

to create a framework for



00:19:50
resolving the dispute. The gold

00:19:53
is still around you with

00:19:54
schemes. Tributo the body that

00:19:56
comes out of all, this

00:19:57
negotiation is still in operational.

00:19:59
Bonnie, it is continuing to

00:20:02
resolve disputes. It hasn't addressed

00:20:06
the underlying relationship between the

00:20:08
u.s. and Iran and This

00:20:12
is documented realities. A lot

00:20:15
of these cases have been

00:20:18
political as opposed to legal

00:20:20
proceedings in the egg. So



00:20:25

we will take what we

00:20:27

can get from a rule

00:20:29

of law, judicial process in

00:20:32

mixed bag. When do we

00:20:35

look at the invasion of

00:20:38

Kuwait by Iraq, the security

00:20:41

Council, the body that under

00:20:43

the United Nations. Charter is

00:20:45

authorized to deal with peace

00:20:47

and Security. In ages point

00:20:48

this out because This is

00:20:51

the big million dollar question,

00:20:53

but billion dollar question in



00:20:55

the room. With your plate.

00:20:58

How are you going to

00:21:00

get Russia? That has the

00:21:01

veto power really to in

00:21:04

the security Council, really going

00:21:05

to agree to anything you

00:21:07

can look at all this

00:21:07

symbolic General Assembly resolutions but

00:21:10

it is symbolic for all

00:21:13

practical purposes. The security Council

00:21:18

resolution tells us that we're

00:21:20

going to hold a rock

00:21:21

responsible, initially. Resisted Okay, but



00:21:28

is Rock will eventually agree

00:21:30

assets are frozen or the

00:21:33

oil money, and that's going

00:21:35

to be used for a

00:21:36

compensation through arbitration mechanism. You

00:21:40

have to scheme for six.

00:21:41

Different people in six, different

00:21:43

categories, of people who are

00:21:45

entitled to seek compensation again,

00:21:50

I just rest my case.

00:21:51

If you think it Ark,

00:21:54

I leave it to you

00:21:56

to decide how you attacked



00:21:57

Iraq situation today now. At

00:22:01

the commission, worked more or

00:22:03

less work, okay? The process

00:22:07

about how this whole body

00:22:09

was created, is questionable to

00:22:11

put in my glee, I'm

00:22:13

going to just stop here.

00:22:15

Because why you been thinking

00:22:16

about that? I moved yours

00:22:18

and 10 seconds. I'll give

00:22:19

it to you. Even spoke

00:22:20

about consolidation, this is another

00:22:23

way we can look about



00:22:24

it must be nothing. Nothing

00:22:27

to give this some example

00:22:29

you can create a consolidation

00:22:33

tribunal, that's how they're described

00:22:36

in the orders that I

00:22:38

looked at and you giving

00:22:39

some good criteria Hill How

00:22:43

has this worked out? It's

00:22:45

been a mixed bag. And

00:22:48

I don't know if you

00:22:49

would agree, I would seem

00:22:50

mostly badly. There is a

00:22:54

case with the United States



00:22:56

where the tribunal did agree

00:22:59

to consolidation with the United

00:23:02

States has been lucky for

00:23:03

a lot of things in

00:23:04

arbitration. So I'll just leave

00:23:06

that Ivy macropoint putting people

00:23:14

together very often. Do you

00:23:19

want to put lead in

00:23:20

the case in front of

00:23:21

you, two is three high

00:23:23

fructose corn syrup producers, which

00:23:27

is apparently of paying out

00:23:28

there, but they all looked



00:23:29

at each other as compared

00:23:30

to love the idea of

00:23:34

having to share the stage

00:23:36

with people who didn't really

00:23:38

like, This is an option

00:23:41

that out there. How effective

00:23:44

they have been before the?

00:23:46

I just put this out

00:23:49

there because history can provide

00:23:51

us with some good insights

00:23:53

on. How do you say

00:23:54

things have worked out? I

00:23:56

probably stop here and then



00:23:57

the cue any we can

00:23:58

discuss this further but I'll

00:24:00

pass it back to you

00:24:00

for now him Great. It

00:24:08

was great. Thanks so much

00:24:09

that I could beer on

00:24:11

the consolidation. I think you're

00:24:14

right that there is kind

00:24:15

of his mixed history that

00:24:17

have the two cases you

00:24:18

put up. The can for

00:24:19

case I believe there was

00:24:20

like three parties in that



00:24:22

in the corn products case,

00:24:24

three parties as well. And

00:24:26

you know in the in

00:24:28

the corn products case, I

00:24:29

think one of the main

00:24:30

arguments, but they were actually

00:24:32

competitors and actually being in

00:24:37

a single action together and

00:24:39

sharing information, and kind of

00:24:42

having to cooperate that they

00:24:44

basically didn't feel that they

00:24:45

were kind of up to

00:24:46

it and end in the



00:24:48

camper case. You know. It's

00:24:50

similar situation. These, these were

00:24:52

not parties that they may

00:24:54

have had similar cases in

00:24:56

that case, against the us.

00:24:58

But they certainly weren't related

00:25:00

parties in any way. They

00:25:01

were very different corporations. That

00:25:04

being said that they deconsolidation

00:25:06

was ordered The interesting thing

00:25:08

is I find it was

00:25:10

an app to contacts as

00:25:11

you do have a number



00:25:11

of other cases in which

00:25:12

there was consensual consolidation, that

00:25:16

they didn't go through the

00:25:18

procedure that was under the

00:25:19

NAFTA case. In particular, there's

00:25:22

a case called Canadian Cattlemen

00:25:24

for fair, trade versus the

00:25:26

USA. And that's also known

00:25:28

as the BSC case, this

00:25:30

was about DLC regulation, which

00:25:32

was stifling in Canadian exports

00:25:36

of how cattle. And in

00:25:37

that case, there were 109



00:25:39

Canadian companies that, that brought

00:25:41

that case and that matter

00:25:44

was effectively running at Consolidated,

00:25:46

single arbitration. Another case is

00:25:51

Bayview versus Mexico, which was

00:25:54

a case against Mexico by

00:25:56

46 individuals and entities. In

00:25:59

that case, we were making

00:26:02

plans concerning water rights cross-border

00:26:05

water rights from the Rio.

00:26:08

Sunday under international law and

00:26:12

its treatment by Mexico diverting

00:26:17

the water. So in that



00:26:19

case, again, it was filed

00:26:21

as joint group and an

00:26:23

agreement was reached to have

00:26:28

that as a single arbitration

00:26:30

as well. So I think

00:26:32

kind of the lesson of

00:26:33

math does that, you know,

00:26:35

when you have those large

00:26:37

groups of common elements were

00:26:38

effectively, bring in the same

00:26:41

case. They kind of self

00:26:42

a locked in that case

00:26:43

to bring a single claim



00:26:45
a tent. And I think

00:26:47
in those context both Mexico

00:26:49
and the US seem to

00:26:51
agree, a lot more sense

00:26:52
from an efficiency point of

00:26:53
you. Rather than bringing say

00:26:55
I'm a Cattleman case, 109

00:26:57
separate cases that it just

00:26:59
made pure sense to to

00:27:01
bring a single case. So

00:27:03
so that's a little bit

00:27:04
of kind of the history.

00:27:08
Historical context. Next want to



00:27:11

go to Matthew with a

00:27:13

bit more recent history and

00:27:16

certainly a case that was

00:27:18

a blockbuster hit in the

00:27:20

exit world when it was

00:27:21

first brought out it. Sometimes

00:27:24

referred to the Apple at

00:27:26

The Owl and the NFL

00:27:27

part is is truly an

00:27:29

understatement but I'll let I'll

00:27:33

let Matthew kind of take

00:27:34

us through that and you

00:27:35

experience from that chase Matthew.



00:27:42
thanks a lot in and

00:27:46
It's on this but I

00:27:47
think it will help a

00:27:49
little bit. I know the

00:27:56
details and for people who've

00:27:57
never heard of it. The

00:27:59
case arose out of Argentina's

00:28:01
2001 Sovereign Bond defaults on

00:28:03
its International stock and bonds

00:28:06
that were sold and Market

00:28:08
it all throughout the 90s

00:28:09
and early 2000s and then

00:28:11
in in one Mass swoop



00:28:12

to the, the Argentine peso

00:28:15

was unpaid from the dollar

00:28:16

lot of devaluation in financial

00:28:19

crisis, hit Argentina and one

00:28:20

of them moves fault on

00:28:23

all group that was impacted

00:28:27

by this work. Income to

00:28:37

be a. Who had of,

00:28:48

sovereign. Oceans between. Is this

00:29:23

one better? I'll right, there

00:29:25

we go. So that effectively

00:29:28

the link between the Italian

00:29:31

bondholders in Argentina. Was the



00:29:33

flow of funds from the

00:29:35

Italians over to Argentina by

00:29:37

purchasing and holding these Bonds

00:29:38

in the millions and billions

00:29:40

of dollars. And then the

00:29:42

Sovereign bonds issued through various

00:29:44

investment Banks. And then local

00:29:46

Italian Banks and institutions to

00:29:47

their individual shareholders. And at

00:29:50

the time of the fall

00:29:51

to the value of this

00:29:52

was effectively wiped clear? And

00:29:55

then it was driven into



00:29:56

place by what was known

00:29:58

at the time as the

00:29:59

cramdown law, which Argentina instituted

00:30:02

which effectively said, you either

00:30:03

are going to accept our

00:30:05

very, very low exchange rate

00:30:07

for peso denominated bonds which

00:30:10

would give you cents on

00:30:11

the dollar and not allow

00:30:13

people to really recover any

00:30:14

meaningful percentage of their hole.

00:30:16

The merits and the jurisdiction

00:30:19

of this case, I don't



00:30:20

want to get into here

00:30:21

because more about what I'd

00:30:22

like to do is talk

00:30:23

about some practical takeaways that

00:30:24

we got from the mass

00:30:25

claims aspect. But to get

00:30:27

to this, we had a

00:30:29

coordinated effort of all of

00:30:31

these people in conjunction with

00:30:32

the Italian banking Association to

00:30:35

hold out from the exchange

00:30:36

process and initiate a treaty

00:30:38

claim. On the basis of



00:30:39

Argentina's, Sovereign acts at the

00:30:42

time and the original representation

00:30:44

involved to the tune of

00:30:46

180,000 the visuals. And then

00:30:47

eventually after several attempts by

00:30:50

Argentina, to do further exchange

00:30:52

offers concluded, with 60,000 people.

00:30:54

Now, what Ian was just

00:30:56

mentioning to the examples from

00:30:58

NAFTA. 109 people 46 people.

00:31:01

That's a lot of individual

00:31:02

claiming you bring it together.

00:31:04

You initiated there's a lot



00:31:06

of Efficiency do not have

00:31:07

49. Individual's actions are under

00:31:09

9 individual actions. It's equally

00:31:11

the case not to have

00:31:12

160,000 individual exit cases filed

00:31:15

against Argentina. For Sovereign Bond

00:31:18

default, which was one action

00:31:19

affecting many, many people at

00:31:21

the same time. So really,

00:31:23

I think meets the definition

00:31:25

of an mass claim. You know,

00:31:27

when it's one of the

00:31:28

extremes that hopefully shows some



00:31:30

of the practicalities that you

00:31:31

need to face in order

00:31:33

to make this procedure efficient

00:31:35

and effective from the point

00:31:37

of view of a tribunal

00:31:38

from the claimants cells purposes

00:31:40

of establishing liability and establishing

00:31:43

harm and damages and so

00:31:46

what type of information? It's

00:31:49

not a simple. Commercial arbitration

00:31:50

you have to jump through

00:31:51

the added Hoops of establishing

00:31:53

nationality. Ian mentioned also consent



00:31:55
is one of the key

00:31:56
issues, not only do the

00:31:58
filing claim and soon to

00:31:59
have to indicate their consent

00:32:01
to arbitrate. But Argentina itself

00:32:04
here challenge strenuously, its consent

00:32:07
to arbitrate such a dispute

00:32:08
with so many people, you

00:32:10
have to also establish, who

00:32:12
the individuals are and then

00:32:13
key to their damages, what

00:32:15
their bond Holdings amounts were

00:32:16
When they were purchased, was



00:32:18
it before the default? What

00:32:19
amounts were they held in

00:32:21
so that you can accurately

00:32:22
and non-speculative Lee calculate damage?

00:32:24
So a lot of information

00:32:25
to be handled on a

00:32:28
massive scale and it's no

00:32:29
longer. It was no longer

00:32:31
the case where you could

00:32:31
simply attach them as exhibits

00:32:33
and assume that any decision

00:32:35
maker was going to review

00:32:37
each and every one of



00:32:38
them and calculated themselves or

00:32:39
any, given damages individuals can

00:32:41
be faced with well, over

00:32:43
a million documents and multiple

00:32:45
millions of pages in order

00:32:47
to come up with the

00:32:49
necessary jurisdictional hurdles and satisfaction

00:32:52
and then assuming liability the,

00:32:54
the damages as well. And

00:32:56
so what do you do

00:32:58
in the such a circumstance,

00:32:59
assuming that you have mass

00:33:00
claim of other information? A



00:33:05

lot of the Items that

00:33:09

we had to focus was

00:33:10

about how to standardize information

00:33:13

and how to consolidate it

00:33:14

in a way that could

00:33:15

be presented to the decision-maker.

00:33:18

In such a way that

00:33:19

those three arbitrators could render

00:33:22

a decision. And then also

00:33:24

find, hopefully, with respect to

00:33:27

damage has a specific amount

00:33:29

of Damages for all of

00:33:30

these people 60,000 people in



00:33:32

the end, they have to

00:33:33

take all this needs individuals

00:33:35

who have filed the documentation

00:33:37

filled it out. And what

00:33:39

we did here was create

00:33:41

a set of standardized form

00:33:42

listed out, nationality information listed

00:33:45

out there holding information, I

00:33:47

gave signed consent on their

00:33:49

part to arbitrate with Argentina,

00:33:50

and to be represented by

00:33:52

one coordinating law, firm in

00:33:54

and group. And then also



00:33:56

to support that with the

00:33:57

actual documents from the banks

00:33:58

to show Bond Holdings to

00:33:59

satisfy the bird approved, as

00:34:02

I think one of the

00:34:02

sides, the computer put up

00:34:03

earlier from coating, for more

00:34:06

than half the cases out

00:34:07

of the final. Find red

00:34:08

due process is one of

00:34:09

the fundamental issues and you

00:34:11

have to face and that's

00:34:12

the case in all arbitrations,



00:34:13

but it, it goes equally.

00:34:15

So if you're bringing a

00:34:16

mask lame, you can't just

00:34:17

say there's a lot of

00:34:18

people here. Let's just go

00:34:19

with assumptions and estimates, let's

00:34:22

go with a Bellwether tests.

00:34:24

And so we wanted to,

00:34:26

in this case, ensure that

00:34:27

we were saying individually, we

00:34:29

have satisfied, the burden of

00:34:30

proof for everybody in a

00:34:32

manner and in a way



00:34:33

that would allow the effective

00:34:34

review and Confirmation and decision-making

00:34:37

process on those documents. And

00:34:39

so it was a funnel

00:34:40

effect of taking this mass

00:34:41

amount of information and putting

00:34:43

it in a form. Ultimately,

00:34:44

a database that was created

00:34:48

from scratch of the time

00:34:49

and this is back in

00:34:50

2010/2011 artificial intelligence not exactly

00:34:54

where it is now and

00:34:55

automated procedures are where it



00:34:56

is now. So you had

00:34:57

to take those steps working

00:34:58

with people, to do data,

00:34:59

entry, and Kool-Aid, all this

00:35:02

information into one usable set

00:35:04

up, one of the things

00:35:06

that we did and this

00:35:07

ties a little bit. A

00:35:09

discussion as well as we

00:35:10

drew on some of these

00:35:11

historical claims commissions. We looked

00:35:14

back and not so much.

00:35:15

Were they successful or do



00:35:17
these things, the underlying issues,

00:35:18
get resolved, but rather, what

00:35:20
were the procedures that were

00:35:21
put in place? What did

00:35:22
the un's Claims Commission? Do

00:35:24
they stay standardized the application

00:35:26
process, they created various groups

00:35:28
for the applicants to fall

00:35:30
into whether the ABCD Theory,

00:35:31
they mandated that you had

00:35:33
to provide x amount of

00:35:34
information for this, and then

00:35:35
ultimately, to be reviewed, we



00:35:37

did the same thing. And

00:35:38

then on top of it,

00:35:39

we convince the tribunal to

00:35:41

appoint, an individual reviewing us,

00:35:44

who verified the database, Dr.

00:35:46

Norwood cooler, who sat on

00:35:48

and participated in the UN

00:35:50

Claims Commission. He also was

00:35:51

involved in the Kosovo Claims

00:35:53

Commission and what he did

00:35:54

is he brought a team

00:35:55

together to evaluate every single

00:35:57

one of the entries in



00:35:58

the documentation there to confirm

00:36:00

back to my prior side,

00:36:01

that all of the evidence

00:36:03

supported, the information that was

00:36:05

in the state of Base

00:36:06

establishing, nationality, established. Establishing the

00:36:09

bond holding about the date

00:36:11

of purchase in the value.

00:36:12

You came up with a

00:36:13

really detailed report 88% was

00:36:16

fully confirm. 10% 12 percenter

00:36:18

though, needed additional information which

00:36:21

we then provided obtained from



00:36:23

the clan has uploaded ultimately

00:36:25

to where we had over

00:36:25

99% verification by this independent

00:36:29

expert for purposes of review.

00:36:31

The tribunal they are ultimately

00:36:32

in their jurisdiction old decision

00:36:34

found there was consent from

00:36:36

Argentina, there was nothing specific

00:36:38

in the Italy, Argentine a

00:36:39

bit or the exit convention

00:36:40

that restrained, consulted such Mass

00:36:43

claims on in terms of

00:36:44

consent. And then the tribunal



00:36:46

in the expert, ultimately held

00:36:47

that there was a way

00:36:48

to prevent this in a

00:36:50

mass manner, without ultimately getting

00:36:53

to liability. The new Administration

00:36:55

after the creature Administration, left

00:36:58

decided to settle. And I

00:36:59

think one indicative point about

00:37:01

how this information was pulled

00:37:02

together and presented. The new

00:37:04

Argentina, the new Argentina Administration

00:37:07

in fact based their settlement

00:37:09

offer on our principal amount



00:37:11

as detailed in the database.

00:37:12

Based on the evidence do

00:37:14

we pull together? And then

00:37:15

provided at a settlement offer

00:37:16

of that principal amount plus

00:37:18

a certain percentage that was

00:37:20

ultimately accepted setting by taking

00:37:22

these practical considerations, whether you

00:37:24

have 100 claiming sitter coming

00:37:25

in 1000 10,000. It's a

00:37:28

scalable approach that can be

00:37:29

used for any future Claims

00:37:31

Commission or any other private



00:37:33
arbitration. Whether it's in the

00:37:34
exit contacts or in the

00:37:36
commercial context, to be able

00:37:38
to apply to satisfy those

00:37:39
Burns really get to where

00:37:40
you want to go, which

00:37:41
is an award that can

00:37:42
be enforcing them out because

00:37:43
the game. So, without I

00:37:45
will hand it back over

00:37:46
to you in. Thanks, that's

00:37:48
you. I mean, that sounds

00:37:50
like a wild ride. Lot



00:37:52
of information. I'm going to

00:37:55
go to Lisa next cuz

00:37:56
I know she's got much

00:37:58
to say on some of

00:37:58
the cases we've been talking

00:38:00
about, but I was just

00:38:02
wondering what was Counter-argument that

00:38:05
you received that mean, were

00:38:09
they arguing the yes you

00:38:10
had to do a hundred

00:38:11
thousand or 60 thousand separate

00:38:13
arbitrations? I mean that it

00:38:15
doesn't seem reasonable and the



00:38:17

other option is you have

00:38:18

no arbitration. So I know

00:38:27

so that Argentina objected on

00:38:29

a multitude of different jurisdictional

00:38:32

bases in the miscibility basis

00:38:34

and really they did not

00:38:37

consent to be sued by

00:38:39

so many individual claimants and

00:38:41

they would say yes, you

00:38:42

do have to bring individual

00:38:43

once, they all have to

00:38:44

put up the \$25,000 filing

00:38:46

fee, they all have to



00:38:47

you know provide all the

00:38:49

evidence they do it while

00:38:51

on the assumption that there's

00:38:51

no way we would have

00:38:52

done clearly and so excited

00:38:54

I got over the registration

00:38:56

face but this was one

00:38:57

of the first questions based

00:38:58

by the tribunal was to

00:39:00

deal with Argentina's consent argument

00:39:03

and They found was the

00:39:06

treaty and it's a convention

00:39:07

being silent on such things



00:39:09

article, 44 of the exit

00:39:12

convention that allows tribunal's to

00:39:13

make orders and rules to

00:39:15

allow the official procedure to

00:39:17

go ahead. Could make a

00:39:18

determination on whether the the

00:39:20

evidence in the claims submitted

00:39:22

were sufficient to be admissible

00:39:26

before I before I go,

00:39:27

and they went further and

00:39:28

said it to the point

00:39:30

that you just made that

00:39:31

there could be no claim



00:39:33

that the argument either you

00:39:34

filed \$200,000 individual claims or

00:39:36

they don't get to have

00:39:37

their day in court. They

00:39:38

have a treaty, they have

00:39:39

a protection ostensibly under the

00:39:41

the Italy Argentina. Bit. But

00:39:44

are you saying that because

00:39:45

there's so many of them

00:39:46

and such small amounts that

00:39:48

they wouldn't want individually file

00:39:50

arbitrations? They don't get to

00:39:51

go ahead and there was



00:39:52

a fundamental issue of justice

00:39:54

and access to Justice. The

00:39:56

tribunal said this is the

00:39:57

efficient and best way to

00:39:59

do it that is not

00:40:00

prohibited by the international treaties.

00:40:03

A tissue there. So they

00:40:05

spend majority with Terrace CA

00:40:09

and Vandenberg in the majority

00:40:11

and George IV. Stop issuing.

00:40:12

Its extensive descent and ultimately

00:40:14

resigning decided in favor of

00:40:16

jurisdiction as a general matter.



00:40:18

And then part of the

00:40:19

issues for the liability and

00:40:21

subsidiary jurisdictional issues was, did

00:40:24

you satisfy the individual burden

00:40:26

of proof to to nationality

00:40:28

Holdings in my ability? And

00:40:30

then, of course, did you

00:40:31

prove the breeches one? That

00:40:32

was the issue beyond your

00:40:33

section in the second phase

00:40:34

of follow-up and I apologize.

00:40:38

It's a has a new

00:40:41

set of rules 2020, to



00:40:42
rule rule. 46 is actually

00:40:45
titled consolidation or coordination of

00:40:48
arbitration has that no rule

00:40:51
Advanced from a client or

00:40:54
is or how do you

00:40:55
view it and looking at

00:40:57
it. I think they have

00:40:58
taken some of those aspects,

00:41:00
but it's not completely to

00:41:02
the tune of where Arabic

00:41:04
language, which was several people

00:41:06
on the claim and side

00:41:07
filing together. Originally it goes



00:41:09

more towards the I think,

00:41:10

NASA consolidation and other consolidation

00:41:13

rules that you seen a

00:41:14

lot of the ICC contactsdirect,

00:41:17

Hong Kong International arbitration Centre,

00:41:18

where if there are similarly

00:41:20

situated, claimants, can you consolidate

00:41:22

two different claims together? It

00:41:23

goes part of the way

00:41:24

there, but I think two

00:41:25

to have a mass claim,

00:41:27

you would still need to

00:41:27

be arguing some of these



00:41:28
these consent issues. What math?

00:41:42
Earth to build the perfect.

00:41:47
Perspective. Of. Was. He said,

00:42:17
we do. The experts is

00:42:23
to help Matt and his

00:42:24
team figure out which you

00:42:26
know, what are those ranges,

00:42:28
right? A lot of times

00:42:30
experts get called in and

00:42:31
they were asked to value

00:42:32
a claim or valuable an

00:42:34
asset but that may not

00:42:36
really be the right point



00:42:38
of estimation that we really

00:42:39
need to focus on. It

00:42:41
may be the extent to

00:42:42
which their the ability of

00:42:44
the party to pay for

00:42:45
that asset. And that's part

00:42:46
of what was driving that

00:42:47
difference from 2 cents to

00:42:49
70 cents on the dollar.

00:42:50
And then in between there,

00:42:53
there's a settlement value in

00:42:54
from letting that just that

00:42:55
I think it sounds like



00:42:56
that. Settlement value was somewhere

00:42:58
in between that value of

00:43:00
the asset and the and

00:43:01
the what was believed that

00:43:04
one point to believe the

00:43:05
Argentine has ability to pay

00:43:08
on those assets. Very recent

00:43:12
example. There hasn't been in

00:43:13
it. I don't my knowledge

00:43:15
there haven't been any claims

00:43:15
been in Sri Lanka Sri

00:43:17
Lanka is essentially bankrupt right

00:43:19
now. What's the extent that



00:43:20

it has claimed set set

00:43:22

against it? You would run

00:43:24

into that solvency issue on

00:43:26

those claims. Thanks Lisa. That's

00:43:32

great. Please jump in as

00:43:34

well for their comments on

00:43:38

the discussion and of course

00:43:39

while I've questioned this is

00:43:43

really nicely set the stage

00:43:44

for our next panelist. We've

00:43:49

been living, fortunately, unfortunately, in

00:43:53

interesting times from a lawyer's

00:43:55

point of you, and those



00:43:57

who go follow this particular

00:43:59

area that the idea of

00:44:01

mass claims, as in the

00:44:04

context of the Ukraine, Russia

00:44:06

crisis, in the war in

00:44:10

Ukraine, there's been a lot

00:44:12

of discussion About potential remedies

00:44:16

and reparations that might come

00:44:21

out of that situation and

00:44:23

I'll leave this to Robert

00:44:26

to kind of get into

00:44:27

the detail. But just, you

00:44:30

know, one recent thing that



00:44:31
was actually highlighted in the

00:44:32
news was of course, they're

00:44:34
being a number of resolutions

00:44:37
and actions at the United

00:44:38
Nations. And the most recent

00:44:40
just a couple of weeks

00:44:43
ago, was a proposal by

00:44:45
Ukraine for their creation of

00:44:49
a mechanism for reparations and

00:44:52
whether or not that comes

00:44:55
to fruition, I guess is

00:44:57
still up in the air,

00:44:58
but I'll let Robert jump



00:45:01

in and comment on that

00:45:02

because I really think the

00:45:04

current events in Ukraine and

00:45:07

molding Russia. Really kind of

00:45:09

highlights the importance of these

00:45:11

of these issues in a

00:45:13

very concrete and importing. Robert.

00:45:18

Thank you. And I think

00:45:20

it's, it's important for us

00:45:21

to recognize them like a

00:45:23

beer has said, some of

00:45:24

the limitations of of Claims

00:45:25

Commission, says lot of talk



00:45:27

right now about what may

00:45:28

be possible that people would

00:45:30

like, I think in an

00:45:31

ideal world to have funds

00:45:34

go from the pockets of

00:45:35

aggressors over into the pockets

00:45:37

of of those who've been

00:45:38

affected by The Invasion. I

00:45:41

think I bet there's a

00:45:42

lot of action that seems

00:45:44

to be in in the

00:45:44

direction, trying to make that

00:45:46

happen. Certain things are standing



00:45:48

in the way things, like

00:45:49

standard sovereign immunity protections. You

00:45:52

know, you have right now

00:45:53

soon as I saw that,

00:45:55

then just a couple of

00:45:56

weeks ago, the European Union

00:45:58

started talking about recognizing that

00:46:00

Russia is a state sponsor

00:46:01

of terrorism, and that's an

00:46:03

interesting development eventually because the

00:46:05

recognition of the state as

00:46:07

a state-sponsored terrorism has in

00:46:09

the past little green, Canada,



00:46:10
and United States, to certain

00:46:12
implications for sovereign immunity, which

00:46:14
might mean that you might

00:46:15
be able to enforce certain

00:46:17
Awards. I was little Certain

00:46:19
State assets that otherwise might

00:46:20
not be touched commercial assets.

00:46:21
Usually, in in restricted community

00:46:23
jurisdiction. Those are the sorts

00:46:26
of things that that we're

00:46:28
facing is barely made for

00:46:32
this, this current environment. And

00:46:35
how do you adjust with



00:46:36

that? How do you, how

00:46:36

do you work with them?

00:46:39

So I'm this comes through

00:46:41

and I'm starting my screen.

00:46:42

Here we are. Hopefully everyone

00:46:45

can see the slides but

00:46:46

I'm sharing this comes to

00:46:50

a discussion that we've been

00:46:50

having in the glove compartment

00:46:51

of our association for the

00:46:54

last six months or so

00:46:55

we have been looking at

00:46:57

the likelihood. The possibility of



00:46:59

the commission that brings the

00:47:03

money together across the I

00:47:05

think eight different jurisdictions where

00:47:07

its base right now where

00:47:07

where some of the Russian

00:47:08

assets have been frozen. And

00:47:10

we see that there has

00:47:12

been estimated at \$300 billion

00:47:14

in funds, have been frozen.

00:47:17

And yet the need is

00:47:19

so much. Greater, where does

00:47:21

the money come from? Know

00:47:22

some folks might think, well,



00:47:23

gosh, you know what you're

00:47:25

feeling future. I we we

00:47:27

expect continued to add to

00:47:29

go to the Frozen Russian

00:47:31

assets and maybe that's where

00:47:33

the funds come from. Then

00:47:34

again jurisdictions that might decide

00:47:36

to add to that one

00:47:38

consolidate. Cost of of Claims

00:47:42

Commission. Funds might not see

00:47:45

any more Russian funds come

00:47:47

their way and so where

00:47:48

does the money come from?



00:47:50

It's not like to talk

00:47:51

about an alternative that we've

00:47:53

been discussing me in the

00:47:54

global carbon and Bar Association.

00:47:55

We have about a dozen

00:47:56

individual legal academics and practitioners

00:48:00

have been looking at this

00:48:01

idea as an alternative or

00:48:04

something that actually I see

00:48:05

the Claims Commission process. I'd

00:48:07

like to talk about that.

00:48:09

We we have assumed a

00:48:12

lot of folks, are you



00:48:14

familiar with this area of

00:48:15

Law? And we jumped right

00:48:16

on into tonight. And I

00:48:17

hope that in Washington arbitration

00:48:19

with a lot of folks

00:48:20

are hopefully in the course

00:48:22

of questions. People can raise

00:48:23

anything but that, you know,

00:48:24

maybe something that even if

00:48:25

it may sound like a

00:48:26

simple question that that you

00:48:28

like to ask and clarify.

00:48:29

So I'll similarly, just jump



00:48:31
on in. There are a

00:48:33
lot of bilateral investment treaties.

00:48:35
As you know, is everyone

00:48:36
knows I enforce in the

00:48:38
world today in particular and

00:48:41
we'll just jump over the

00:48:41
substandard protections and limitations are

00:48:43
claims. The procedure rules the

00:48:45
sky in particular, Russia has

00:48:49
a number in Forsyth 63

00:48:52
and you'll see here on

00:48:54
a slide that these bilateral

00:48:56
investment treaties. The Russia still



00:48:57
has to die in force.

00:48:58
According to the UN conference

00:49:00
are, or at a conference

00:49:02
and trade it. All those

00:49:04
other investment treaties, are with

00:49:07
27 states that Russian, Al

00:49:09
Adams to be unfriendly gun.

00:49:12
Friendly states are those states

00:49:14
that have been actively placed

00:49:16
economic sanctions on Russia, for

00:49:18
the invasion of Ukraine. And

00:49:20
so in response, what Russia

00:49:22
has done to the first



00:49:24

ACC Highland gyro the unfriendly

00:49:26

States as it were, what

00:49:27

Russia has done is to

00:49:29

place certain restrictions in its

00:49:31

own law, on, foreign investors

00:49:33

that help from those face

00:49:34

things like transfer restrict things

00:49:37

like restrictions on debt repayment

00:49:38

law enforcement of intellectual property

00:49:40

rights are going to take

00:49:44

some time to summarize the

00:49:46

mall but a few And

00:49:48

the question arises been so



00:49:49

one Focus here is rightly

00:49:52

and properly on the Claims

00:49:55

Commission approach that is intended

00:49:57

to get whatever funds. There

00:49:59

might be even more Frozen.

00:50:00

Russian assets were otherwise over

00:50:02

into have a place where

00:50:03

they need to be, which

00:50:04

is to provide reparations to

00:50:06

folks who've lost family members

00:50:07

who have been directly affected

00:50:09

by the invasion of Russia.

00:50:11

And there is absolutely nothing



00:50:12

and no one who would

00:50:14

doubt the the justice that

00:50:18

is needed on that front.

00:50:19

On the other hand it's

00:50:21

also true that a costly

00:50:24

war is one that may

00:50:25

not be worth pursuing next

00:50:26

time and it legal State

00:50:28

aggression that were saying today.

00:50:29

If the cost is greater

00:50:32

well maybe there's something that

00:50:34

needs to be said about

00:50:35

increasing that cost and it



00:50:36
in a way that will

00:50:37
just you describe the next

00:50:39
time. And so what we've

00:50:42
been discussing is a slightly

00:50:43
different approach, okay? I'm going

00:50:46
to come down here and

00:50:47
approach in which rather than

00:50:49
using a UAA Consolidated Claims

00:50:52
Commission process that will move

00:50:54
forward. I suspect it seems

00:50:55
to have a lot of

00:50:56
steam behind at their number

00:50:57
country behind but I suspect



00:50:58

it will come forward. Going

00:51:00

back to give you his

00:51:00

comments. I suspect that he's

00:51:01

probably right. Again, it will

00:51:03

probably have increased voices available.

00:51:06

It probably will not reach

00:51:08

as far as addressing all

00:51:09

the needs that have come

00:51:11

from, this current situation. In

00:51:13

an effort to a second

00:51:14

effort to, to advance from

00:51:18

where we are today to

00:51:18

where we'd like to be



00:51:19

promoting the international rule of

00:51:22

law, discouraging State, aggression, helping

00:51:25

Justice to come those folks

00:51:26

who have been affected by

00:51:27

a Russian economic measures. And

00:51:29

of course it has gotten

00:51:30

caught up in the crossfire

00:51:31

between Russia's economic measures and

00:51:34

those actions have been taken

00:51:35

by other states and imposing

00:51:37

International section. We are developing

00:51:39

project free just as my

00:51:41

brother tree dusted, is a



00:51:43

very simple idea, it's not

00:51:45

so simple in the diagram

00:51:46

here, but basically, it comes

00:51:48

down to this, those twenty-seven

00:51:50

different jurisdictions, those twenty-seven, different,

00:51:52

bilateral, investment treaties, that Russia

00:51:54

has currently in force allow

00:51:55

for investors to pursue claims

00:51:57

against Russia directly just like

00:51:59

we're talkin about here claims

00:52:00

that may be smaller in

00:52:01

size. Know the thing about

00:52:04

it is that when you



00:52:05
commercial practitioners in investor-state arbitration

00:52:08
think of investors, a lot

00:52:09
of times they'll think of

00:52:10
them as we can pay

00:52:13
them. And that's, that's understandable

00:52:14
and human. But what the

00:52:16
trees actually say, and it's

00:52:18
been referred to Carol here

00:52:19
today talking about nationality with

00:52:20
the trees actually, say, is

00:52:22
that a covered investors. The

00:52:24
one that actually just has

00:52:26
been the right nationality in



00:52:27

most cases if you have

00:52:28

the right, nationality? If you

00:52:29

sometimes, if you if you

00:52:31

satisfy other criteria at would

00:52:34

respect, for example, characteristics of

00:52:35

an investment, and then that

00:52:38

means that you're able to

00:52:39

bring that claimed most of

00:52:41

the time. And in many

00:52:42

of the old, bilateral investment

00:52:43

treaties, the Russia still has

00:52:45

in place from the 90s

00:52:46

from the early 2000s, a



00:52:47

much simpler characterization than yesterday

00:52:49

and that is, is mostly

00:52:52

based on nationality. So, going

00:52:53

back to those twenty-seven different

00:52:55

jurisdictions, highlighted for, from the

00:52:56

unfriendly states on the one

00:52:58

hand. Now, targeted by Russia

00:53:00

and on the other hand

00:53:00

still benefiting from the enforce

00:53:03

the investment treaty protection. The

00:53:07

idea here, they were exploring

00:53:08

and going from one of

00:53:09

our association is to reach



00:53:11
out to folks. Who are

00:53:12
of limited means folks, who

00:53:14
otherwise would never see the

00:53:15
inside of the investor-state arbitration

00:53:16
framework. I'm just like some

00:53:18
of the folks do if

00:53:19
I suspect that were represented

00:53:21
in the alligator together to

00:53:25
develop Mass claims based on

00:53:28
communities Community Center of their

00:53:32
ownership. Communities of bilateral investment

00:53:34
treaty protection. Certain other factors

00:53:37
that we've been finding are



00:53:38
factors that promote tribunal recognizing

00:53:41
that it is actually 11

00:53:45
claim. I just with multiple

00:53:47
plan and to bring those

00:53:49
forward in a way that

00:53:50
advances qualifying claims. And, I

00:53:54
mean, times that that would

00:53:57
benefit from Joe Society. Did

00:54:04
you see here in the

00:54:04
gray? Those claims that would

00:54:08
probably benefit from the standard

00:54:10
commercial practice of law and

00:54:12
the standard Avenue that already



00:54:13

exists. Those two Pathways developing

00:54:15

Mass claims qualifying claims on

00:54:18

the one hand and also

00:54:19

known qualifying. Like those folks

00:54:21

who met those business has

00:54:23

been made those High net

00:54:24

worth individuals who might be

00:54:25

interested in moving forward with

00:54:26

that kind of process. But

00:54:28

that that probably don't necessarily

00:54:30

belong because of the size

00:54:32

of the claim because of

00:54:33

of the marketability even claim



00:54:36
that don't necessarily belong in

00:54:38
a mess playing pool. With

00:54:40
investors of limited means to

00:54:42
really can't see Justice without

00:54:44
a mess than the party

00:54:46
moving. Both of those tracks

00:54:47
forward with private-sector legal service.

00:54:50
Providers with litigation, funders that

00:54:52
are participating in the program

00:54:53
and to advance as a

00:54:55
mess claims on the right.

00:54:57
As you see here at

00:54:58
the bottom and on the



00:55:00

left as standard claims in

00:55:01

the commercial practice of Law.

00:55:02

And that's the idea behind

00:55:04

project. Qualification of this process,

00:55:09

but we've been looking at

00:55:10

is, is effectively very simple.

00:55:11

I must claim. Candidates would

00:55:14

be someone's lost an investment

00:55:15

in Russia. Do the Russian

00:55:16

measures targeting foreign investors? As

00:55:18

a result of what has

00:55:19

been happening in Ukraine and

00:55:21

the Fallout from International sanctions



00:55:23

in from the Russian economic

00:55:24

response. And also course where

00:55:28

there's access to investment ever

00:55:29

tration. Those highlighted jurisdictions where

00:55:32

there's both. A bilateral investment.

00:55:34

Treaty is currently in force

00:55:35

and also at the David

00:55:38

that that jurisdictions been targeted

00:55:40

measures that are considered unfriendly

00:55:43

and finally where there's no

00:55:46

other Avenue for access to

00:55:47

Justice like in some small

00:55:49

claims situation, these are the



00:55:51

ideas that we're considering at

00:55:53

the bar association objectives here.

00:55:56

Why would you do this?

00:55:57

All the purpose of this

00:55:59

is not to disturb the

00:56:01

great work that done going

00:56:02

right now. In the discussions

00:56:03

around the Claims Commission to

00:56:05

the extent of that can

00:56:06

be a And that's, that's

00:56:07

certainly necessary. Important. And the

00:56:09

Claims Commission is important to

00:56:10

stay into recognizes focused on



00:56:12

a certain group of folks.

00:56:13

Those folks who've been affected

00:56:15

directly by the war in

00:56:16

Ukraine. By The Invasion, those

00:56:18

folks who have hopefully been

00:56:19

benefiting from humanitarian response and

00:56:22

from from all of the

00:56:23

other response that has been.

00:56:25

So, so incredibly overwhelming. I

00:56:28

think wonderful from many countries

00:56:30

in the world today. Those

00:56:33

folks are the ones who

00:56:34

will hopefully benefit from that



00:56:35

Claims Commission process. The ones

00:56:37

were talking about here are

00:56:38

the others. Be investors. Have

00:56:40

been left over investors. Who

00:56:41

may be? For example, of

00:56:42

pensioners, who have lost their

00:56:43

funds of skipped, over slide

00:56:45

earlier, that shows that in

00:56:46

the UK Market, they're just

00:56:47

been billion pounds lost from

00:56:49

the the dimension Market, a

00:56:52

lot of folks, normal folks

00:56:54

who've invested in their Futures.



00:56:56

You're looking forward to a

00:56:58

retirement when suddenly there is

00:56:59

a geo-political change, suddenly they

00:57:01

become unfriending investors and suddenly

00:57:04

their investment and in a

00:57:05

different jurisdiction, suddenly they the

00:57:08

investment, but they had anticipated

00:57:09

rely on their Futures. It's

00:57:12

it's not there anymore. These

00:57:15

are the folks were talking

00:57:16

about in project to bring

00:57:19

just as folks. I just

00:57:21

mentioned, not the ones who



00:57:22

run the grounds and suffering

00:57:23

from the The Invasion directly,

00:57:25

with the folks who have

00:57:26

indirectly suffer through their investment.

00:57:29

And then, secondly, be forced

00:57:31

to deter future acts of

00:57:32

aggression. Russia. The idea being

00:57:35

with the international rule of

00:57:37

law is something that we

00:57:37

should promote. And in a

00:57:38

time where we seen the

00:57:40

UN Security Council unable to

00:57:41

move forward as been mentioned



00:57:42

earlier today in the case

00:57:44

of State Russian. Well, gosh,

00:57:46

maybe using other letters with

00:57:48

in public international law like

00:57:49

the already. Existing investment Treaty

00:57:51

of Architecture is one way

00:57:54

to encourage future International Peace.

00:57:56

And finally, one interesting and

00:57:59

helpful fall of follow-up. I

00:58:01

think from this is the

00:58:02

democratization practice of investors to

00:58:04

have a tradition. A lot

00:58:05

of times we hear from



00:58:06

ngos and and from those

00:58:09

who say that, the investor-state

00:58:10

arbitration process is going to

00:58:13

leave. It's one, it's one

00:58:14

that right now has been

00:58:16

criticized in a beer, has

00:58:17

been a lot of great

00:58:18

work around, getting a support

00:58:20

State architecture, and a lot

00:58:24

of folks will say that

00:58:25

the least developed countries are

00:58:26

the ones who suffer from

00:58:29

significant Certain that you do



00:58:33

maybe that relate to some

00:58:34

decisions have been made in

00:58:35

the past, that maybe it

00:58:37

makes it difficult to make

00:58:38

solid policy changes for the

00:58:40

future. It may be related

00:58:41

sometimes to the energy sector

00:58:43

and 4 for some of

00:58:44

the development coming forward and

00:58:46

climate change decisions. And those

00:58:48

are the sorts of criticisms

00:58:50

that have given rise up

00:58:51

originally to the decision. Early



00:58:53

discussion is not going right

00:58:54

now bro. We're working where

00:58:57

they're discussing the reform of

00:58:59

the investor State system. It's

00:59:01

important to recognize that this

00:59:02

kind of approach as well

00:59:03

not just in the UN

00:59:05

claims on context is important

00:59:09

and first, right? Also in

00:59:12

the future moving forward and

00:59:13

recognizing the potential of these

00:59:14

nuts claims to democratize the

00:59:17

practice of investor-state arbitration, which



00:59:18

is to say can make

00:59:19

it accessible in some way.

00:59:21

Through mess claims words, appropriate

00:59:23

like in the stock decks,

00:59:24

for common folks who have

00:59:27

lost funds than that are

00:59:29

significant, the band I've lost

00:59:30

funds that are significant to

00:59:31

their futures. At the same

00:59:33

time, don't really have access

00:59:35

to the investors did architecture

00:59:36

because of the high cost

00:59:37

that have been discussed here



00:59:38

today. So, that's the idea

00:59:40

around around Project, Read justices.

00:59:44

And and I think, I

00:59:46

think these are both important

00:59:47

conversations. Been want to be

00:59:48

heard to say that the

00:59:49

the Claims Commission process is

00:59:52

Doom that I think I

00:59:53

may not by Cher entirely

00:59:55

out of the, the negative

00:59:57

you that's a that's a

00:59:58

historically that give you, your

01:00:00

has shared, you know, earlier.



01:00:02

But I do think that

01:00:04

it's important for us to

01:00:05

look at all the options.

01:00:06

I think it's important for

01:00:08

us to think about how

01:00:08

we can move forward in

01:00:10

a way that encourages the

01:00:11

future of international law, that

01:00:13

maximizes the access to Justice

01:00:15

to the extent. We can

01:00:16

and uses the existing architecture

01:00:17

that we've got. Thanks very

01:00:22

much, Robert. That that was



01:00:24
really lightning and best wishes

01:00:28
to pro bono for their

01:00:31
efforts. Let that really feels

01:00:33
very important. Hakuna that suggested

01:00:39
certainly for the prayer, those

01:00:40
likely, millions of individuals that

01:00:43
being impacted from the, you

01:00:47
mention the Claims Commission and

01:00:49
just put a bit of

01:00:50
meat on the bones of

01:00:51
of how that's potentially viewed.

01:00:53
I'm going to put up

01:00:55
some wording. That was part



01:00:58

of The resolution that was

01:01:03

recently at the UN and

01:01:08

this is some of the

01:01:09

keyboarding and it really gets

01:01:11

down to kind of some

01:01:12

of the process that they're

01:01:13

even looking for. In that

01:01:15

context. You provided an excellent

01:01:18

chart in terms of how,

01:01:19

you know, how your groups

01:01:20

going to proceed. But clearly

01:01:23

the recommendation here is and

01:01:25

I'll use the supporting the



01:01:26

creation by member states of

01:01:28

an International Register of damaged

01:01:30

to serve as a record

01:01:31

in documentary form of evidence

01:01:34

and claims information on damage

01:01:36

loss or injury to all

01:01:37

natural and legal persons concerned,

01:01:39

as well as the state

01:01:40

of Ukraine, but it specifically

01:01:43

mentions the wrongful acts of

01:01:46

Russian Federation in her against

01:01:48

Ukraine. So I think what,

01:01:51

you know, when we're listening



01:01:52

to Matthew, talk about the

01:01:55

incredible level of detail and

01:01:57

Dada that that that was

01:02:00

Required. Ultimately that's for proving

01:02:03

up the the number the

01:02:05

damages because that that's that's

01:02:07

what the case here. So

01:02:08

I don't know, just just

01:02:09

as part of our final,

01:02:10

too, because I would seem

01:02:13

to be did the evidentiary

01:02:15

burden would seem to be

01:02:17

very high because this is



01:02:19

illegal. These would be legal

01:02:21

process commission. That there is

01:02:25

that burden to provide the

01:02:27

supporting evidence in that. Couldn't

01:02:29

you do look very much

01:02:30

like that of the process.

01:02:31

We know, from the international

01:02:33

arbitration and Commercial arbitration Yeah,

01:02:36

I think you're correct. It

01:02:37

is a significant challenge. Fortunately,

01:02:41

with building, that database helps,

01:02:44

you start to build hentschel

01:02:45

and you probably learn this.



01:02:47

As you were going through

01:02:48

the Argentine case. It's the

01:02:50

information starts to come into

01:02:52

that database, you can likely

01:02:53

find common Ask kinds of

01:02:56

individuals or kinds of entities

01:02:58

that then you can create.

01:03:00

But I often called bucket.

01:03:04

Types of claimants that The

01:03:05

Condemned be joined together and

01:03:07

their harm can be held.

01:03:09

Most certainly it's not going

01:03:12

to be a single group



01:03:13

of claimants it's going to

01:03:14

have to be a variety

01:03:15

of different kinds of flaming.

01:03:16

Whether it's, you know, what

01:03:19

I was talking about, you

01:03:20

know, the individuals who might

01:03:23

not, otherwise have an opportunity

01:03:25

to make a claim. But

01:03:26

for the support of the

01:03:27

pro bono bar versus what

01:03:30

I think, you are wealthier

01:03:33

nations, and then individuals and

01:03:35

companies and wealthier Nations. I



01:03:37
will have an opportunity to

01:03:38
make that claim. In some

01:03:41
respects I took a look

01:03:42
at in preparation for this

01:03:43
panel. I took a look

01:03:44
at it but the damage

01:03:47
is related to the corn

01:03:48
products case and the transfer

01:03:51
case which is the Canada

01:03:53
soft case. And I think

01:03:54
those are those are interesting

01:03:55
to me for two reasons,

01:03:57
what the corn products case,



01:04:00

where the case was not

01:04:01

Consolidated. I think, when you

01:04:03

look at the financial damages

01:04:05

there, you could see that

01:04:06

the decision not to consolidate

01:04:09

in that case was beneficial

01:04:11

to the company's, not just

01:04:12

for the, the confidentiality that

01:04:14

they were seeking in terms

01:04:16

of disclosure. But I think

01:04:17

also, in terms of harm,

01:04:19

because I think when you

01:04:20

look at ADM Archer, Daniel



01:04:21

Midland, which is one of

01:04:23

the competitors in that potential

01:04:25

cut consolidation case versus Corn

01:04:28

products. Their business, even though

01:04:29

their competitors, their businesses are

01:04:31

different and how their businesses

01:04:33

impacted by Mexico's actions were

01:04:36

also different one to the

01:04:38

other Corn products. Just some

01:04:42

of the specifics around that

01:04:43

which I which I find

01:04:44

interesting is so in that

01:04:48

case Mexico imposed a tariff



01:04:52

on us producers of corn

01:04:58

syrup essentially corn syrup that

01:04:59

goes into primarily soft drink

01:05:03

Beverages and that's one of

01:05:05

one of corn product corn

01:05:06

products Internationals main product that

01:05:09

impacted in the first year

01:05:11

at happened in 2004 it

01:05:12

impacted corn products ebitda in

01:05:15

Mexico by 14%. So they

01:05:17

had a downfall and even

01:05:18

stopped at a 14% in

01:05:21

that first year in Italy.



01:05:23

Reacted, very effectively to that

01:05:26

Tara and close down their

01:05:28

Mexico factories and move that

01:05:29

production to nearby countries and

01:05:32

from those those factories in

01:05:33

nearby countries were able to

01:05:35

provide their product into Mexico.

01:05:37

So from a financial perspective,

01:05:39

they Recovered reasonably well, but

01:05:42

they ended up winning on

01:05:42

both fronts because they ended

01:05:44

up making a claim for

01:05:46

a first 1st 2005. The



01:05:50

clay was established to be

01:05:51

250 million dollars and then

01:05:53

in 2006, the increase the

01:05:55

value of that claim to

01:05:57

350 million dollars, they ultimately

01:06:00

154 million dollars which is

01:06:03

actually a very good outcome

01:06:04

given that they really only

01:06:05

had about a year-and-a-half of

01:06:08

impact to their company in

01:06:10

terms of financial harm. So

01:06:11

I think that case is

01:06:12

really interesting both from a



01:06:14
thinking about the quantification of

01:06:16
Damages, but also what the

01:06:17
company did effectively to mitigate

01:06:19
its damages. But thanks Lisa,

01:06:23
before we get the questions,

01:06:26
which I want to move

01:06:27
to next year, I can't

01:06:30
go to the dental finish.

01:06:33
This without mentioning Roberts, little

01:06:36
challenge to you, are you

01:06:37
skeptical about claims commissions? Is

01:06:39
this, your your view? I

01:06:41
know you a little bit



01:06:44

there, but how about the

01:06:45

prospects for a mechanism in

01:06:49

relation to the Ukraine crisis

01:06:52

in Boston? And if it

01:06:56

does happen, Betty Danger, That's

01:06:59

my big dick to me.

01:07:01

I feel they just look

01:07:03

at history yesterday with the

01:07:04

Eucharist of wood, good luck.

01:07:06

Trying to enforce that. I

01:07:07

mean. Maybe a Unique Reality,

01:07:10

for the respondents date. You

01:07:14

need to be thinking realistically



01:07:16
about all the Avenues Viera

01:07:18
setting aside. This idea that

01:07:23
some countries are going to

01:07:24
get together country's assets as

01:07:29
to procure treatments and that

01:07:31
seems to need to be

01:07:32
an inherently dangerous idea to

01:07:36
leave the US in. Europe

01:07:37
is Russia license tomorrow. Russia

01:07:41
and China are going to

01:07:42
freeze us assets and that

01:07:43
just seems to me the

01:07:45
creation of World War 3.



01:07:47

Something we're really trying to

01:07:48

avoid so why do bees

01:07:50

sting II all to just

01:07:52

point out, you know you're

01:07:53

right now and this is

01:07:55

getting technical. But everything that

01:07:58

you're talkin about right now

01:07:59

is happening in the general

01:08:01

assembly. This is not a

01:08:03

general assembly issue, this is

01:08:05

a security council issue, that's

01:08:08

just part of the security

01:08:09

Council and has the video



01:08:12

I think just the rules

01:08:14

are the rules. when we

01:08:17

stop changing rules to address

01:08:19

situations that warrant change, But

01:08:24

I done in quick reaction

01:08:26

to situations good things. Don't

01:08:28

come out this damn these.

01:08:29

We need principled objections. What

01:08:34

we seen with Russia. It's

01:08:37

not a new observation that

01:08:39

the security Council has applauded

01:08:41

body. So I just do

01:08:43

put it out there that



01:08:44

all of these sound like

01:08:46

incredibly dangerous ideas coming from

01:08:51

good and well-intentioned, places trying

01:08:53

to respond to something that

01:08:55

most decent people feel we

01:08:58

need to respond to We

01:09:01

may be leaving ourselves into

01:09:02

much more dangerous things. So

01:09:05

that's why do we have

01:09:06

Thanksgiving here? I knew you

01:09:10

would always give us your

01:09:11

unvarnished opinion, Matthew before I

01:09:14

go to questions, I'll give



01:09:15

you a chance to respond

01:09:17

on this is well you've

01:09:20

been somebody down in the

01:09:21

trenches on these types of

01:09:23

issues and lived and breathed

01:09:24

them. And you know, now

01:09:26

we're faced with potential claims

01:09:29

commissions and end as we

01:09:30

see with Robert group's effort,

01:09:33

in a potential Mass claims.

01:09:36

What are your thoughts? Yeah,

01:09:39

I mean I think one

01:09:40

of the things that is



01:09:41

a starting point because we

01:09:42

saw and heard from Lisa

01:09:43

that at the at the

01:09:44

tail-end you really are going

01:09:45

to need to have everything

01:09:47

in a row. You can't

01:09:48

get to this point with

01:09:49

high lofty ideals and without

01:09:51

having the underlying information at

01:09:53

hand that you have not

01:09:54

only inasmuch documented evidence as

01:09:57

you can gather together. But

01:09:58

also organized in a coherent



01:10:00
manner that you know, usable

01:10:02
by whoever it may be,

01:10:04
whether it's a establish Claims

01:10:06
Commission. When you go to

01:10:07
a tribunal. I mean without

01:10:08
that you will be stymied

01:10:11
at the stage of perhaps,

01:10:13
there's something you want to

01:10:14
do, but in order to

01:10:15
afford to process to all

01:10:17
parties involved, which is really

01:10:18
again to go back to

01:10:19
one of the first things



01:10:19
that's the whole purpose of

01:10:21
this. Every party is a

01:10:22
is allowed to have to

01:10:23
process. They need to be

01:10:25
permitted to challenge evidence. They

01:10:27
need to be permitted to,

01:10:28
you know, argue that the

01:10:29
evaluation is offer that, the

01:10:31
individual is not a qualified

01:10:33
individual if they're not provided

01:10:35
with the evidence to challenge,

01:10:36
then you don't satisfy that

01:10:38
standard as well Surrey. It



01:10:39
goes both ways. A lot

01:10:40
of this is Butte from

01:10:41
the claim inside, and whether

01:10:42
you can initiate Mass claims

01:10:44
with the same time, you

01:10:45
have to remember that. This

01:10:46
is a two-sided thing until

01:10:47
you know, not leave due

01:10:49
process behind it. So it's

01:10:50
something to keep in mind.

01:10:51
I have a question for

01:10:53
you at Matt, and it

01:10:54
made me, this goes to



01:10:55

Rob as well. What are

01:10:56

the things that I think

01:10:57

about with regard to the

01:10:58

Ukraine and issue, in terms

01:11:00

of data collection is is

01:11:02

almost surely going to be

01:11:03

that you're not going to

01:11:05

know all of the information

01:11:06

at the onset. All the

01:11:08

information you need to know

01:11:09

for the time at which

01:11:12

you ultimately get to a

01:11:13

settlement. And so there's a



01:11:15
real challenge there in terms

01:11:16
of layering of gathering of

01:11:18
information and it's hard to

01:11:20
go back to the well

01:11:21
again, and again, what are

01:11:22
what's been your experience in

01:11:24
that regard? I also waiting

01:11:28
on this to me, this

01:11:28
is been an issue that's

01:11:29
been faced by many of

01:11:30
these Claims Commission that mean

01:11:31
the the UNCC out of

01:11:33
a rock. Anything that's dealing



01:11:34

with a with claims arising

01:11:37

out of Your wartime or

01:11:40

fighting, you're always faced with

01:11:41

sometimes you have more solid

01:11:44

documentation or no identification of

01:11:47

what the harm suffered was

01:11:49

and what the value was.

01:11:50

And then other times you

01:11:51

don't have that at all

01:11:52

either because it's their loss

01:11:53

has been left behind has

01:11:54

been destroyed. And I think

01:11:56

I'm looking at the way



01:11:57
pie prior claims commissions have

01:11:59
done, things is Dave again

01:12:01
and goes to your categorization

01:12:03
of buckets. You have different

01:12:04
groupings of individuals or companies

01:12:06
are affected people who have

01:12:08
different levels of evidence, and

01:12:10
then you can deal with

01:12:11
them in a sort of

01:12:12
staggered fashion, you're going to

01:12:14
be able to deal with

01:12:15
that. Have documentation, you can

01:12:17
address those and then you,



01:12:18

you work your way down

01:12:19

to a standard Doorway to

01:12:21

again handle ones where you

01:12:24

don't have that same type

01:12:25

of thing. You're not dealing

01:12:25

with everybody at the same

01:12:27

in the same form and

01:12:28

that's that was the case

01:12:29

in private arbitration and in

01:12:31

the oven. They were different

01:12:32

people with. But there it

01:12:34

was very standardized and here

01:12:35

you need to deal with



01:12:36
a lack of standardization with

01:12:38
how you a baby robins

01:12:41
already. So I think about

01:12:42
that in their capacity in

01:12:44
that Global pro bono project

01:12:45
Well, that the counter making

01:12:47
her are important and it's

01:12:50
obviously, you know, correct and

01:12:52
true. I think that one

01:12:53
thing and then our researchers

01:12:55
are finding to be the

01:12:57
case. Is that if you

01:12:58
look at Sugar older communities,



01:12:59
that's probably the best starting

01:13:01
point. Their cousin Cheryl their

01:13:02
communities. You probably do have

01:13:04
a little better sense of

01:13:05
the value of a lot,

01:13:06
even though it would still

01:13:07
be expert advice, would be

01:13:09
required reporting it to be

01:13:10
required. At the same time,

01:13:12
you also would have a

01:13:13
little better sense of whether

01:13:16
it's likely to be successful

01:13:18
Masque playing, because a lot



01:13:20

of concerns arising in some

01:13:24

of the cases, like, you

01:13:25

know, that sixty thousand different

01:13:27

bondholders, right? That's an amazing

01:13:29

case and and hats off

01:13:31

to you. That's amazing. At

01:13:33

the same time. I'm making

01:13:34

mess claims in this context,

01:13:36

move forward. I think that

01:13:39

you would ensure whole the

01:13:40

community's I think there's a

01:13:41

great deal of potential within

01:13:45

the shirt. Communities, provide investors



01:13:48

have the right nationality in

01:13:49

and I'll be sleeping then

01:13:50

the relevant bit doesn't have

01:13:52

or other. International business agreement

01:13:54

doesn't have any concerns or

01:13:55

or barriers for indirect shareholding

01:13:57

which is often the case

01:13:58

they're better. Then that means

01:14:01

that a lot of the

01:14:01

records to show how I

01:14:02

will already be in the

01:14:04

hands of of in a

01:14:05

corporate management. A readily-available, a



01:14:07

lot of the events will

01:14:08

be there is not going

01:14:09

to be. I think I

01:14:11

may be as much of

01:14:12

a challenges as the amazing

01:14:14

one that that you and

01:14:15

ends your team in the

01:14:18

applicant place at least I

01:14:19

hope so. But I think

01:14:21

there's a great deal of

01:14:22

potential. I think that you

01:14:23

know some of these ways

01:14:25

of approaching this at the



01:14:26

scale is so great and

01:14:28

there's a great deal of

01:14:28

potential to find the best

01:14:30

day since it is. I

01:14:31

just move them forward. I

01:14:32

think that's what I would

01:14:33

see him. Thanks Robert. Got

01:14:37

a few minutes if there

01:14:39

was some questions in the

01:14:40

audience, either online or in

01:14:44

the room couple over here.

01:14:54

Hello, and thank you for

01:14:55

the wonderful panel. I wonder



01:14:57

did it make sense and

01:15:00

Apple Cloud or in other

01:15:01

Mouse claims to import the

01:15:04

concept of a class certification

01:15:06

that you have an antitrust

01:15:08

cases and how that would

01:15:10

work procedurally and where did

01:15:13

you go? Did you go

01:15:14

through that process in an

01:15:16

informal way? If not for

01:15:18

the class certification itself? Yeah

01:15:22

I'm in class your vacation

01:15:23

was something that was disgusting.



01:15:26

Thought about a really in

01:15:27

the US contacts classification arises

01:15:29

out of the specific rules

01:15:31

that are available in that

01:15:32

Federal rules of civil procedure.

01:15:33

And the power of us

01:15:34

courts to dictate that representative

01:15:37

group in the issues you

01:15:38

face in arbitration. And in

01:15:39

particular, it makes it arbitration

01:15:41

is, you know, one of

01:15:42

the fundamental tenets his consent.

01:15:44

And so you had to



01:15:45

establish, you couldn't just take

01:15:47

a Bellwether group, 10:20 whatever,

01:15:49

a hundred people and say

01:15:50

these qualified, nationality, consent wise

01:15:52

and then apply that. 200000

01:15:54

people. I mean there was

01:15:55

you can think about maybe

01:15:58

making that argument but I

01:15:59

think you really run into

01:16:00

a lot of problems it

01:16:00

again, go back to due

01:16:01

process and then this idea

01:16:03

in Argentina's main point was



01:16:04

we did not consent to

01:16:06

this and if you can

01:16:07

show that, you know, claimant

01:16:09

1,000 100,000 99 was an

01:16:13

Italian national that held a

01:16:15

bond that was purchased before,

01:16:16

Neo 2001 Argentina arguably didn't

01:16:21

consent to arbitrate with them

01:16:23

under the us only b

01:16:24

o r e d. I

01:16:25

r jentina. Italy bit. So

01:16:26

that the idea of class

01:16:28

was something that I doesn't



01:16:30

really work at any of

01:16:31

the extinct contacts and it

01:16:32

really boils down to two

01:16:33

consent. And one of the

01:16:34

reasons we went through all

01:16:35

of the procedural steps in

01:16:37

detail, and verification steps to

01:16:38

show that what our people

01:16:40

had were individualized, evidence of

01:16:43

consent, nationality and holding in

01:16:45

the time of that, in

01:16:46

order to overcome that hurdle,

01:16:48

That was really good question.



01:16:51

I mean, the sort of

01:16:53

distinguishing feature between arbitration and

01:16:55

litigation. Where is quartz, you

01:16:59

know, function of part of

01:17:02

the government, right? It's it's

01:17:04

kind of a top-down ability

01:17:05

the powers. They're just don't

01:17:06

exist in arbitration. It's all

01:17:08

in the specific instrument, like

01:17:11

the treaty. So now all

01:17:12

I do is work but

01:17:13

that's cuz it's there. And

01:17:15

so the consent is baked



01:17:16

in if you bring a

01:17:17

case on and after you

01:17:18

are accepting those provisions. And

01:17:20

that's just not the case

01:17:21

with most radius is just

01:17:23

not there. One more question,

01:17:36

I was wondering if I

01:17:38

have a question with regards

01:17:40

to practical, takeaways regarding the

01:17:43

interplay between different legal orders.

01:17:46

Used to deter rashifal for

01:17:50

this work. Do you work

01:17:53

extensively on these projects which



01:17:55

I never have before? I,

01:17:57

I must admit, they are

01:17:59

checking the you level with

01:18:02

every single tribunal. Do you

01:18:04

know the two to banish

01:18:06

the do. So with this

01:18:08

word U release date of

01:18:13

you crying. So I think,

01:18:15

two days ago in a

01:18:16

cold November 28th and 3rd

01:18:19

of course, the initiative about

01:18:22

what which is going to

01:18:25

be debated at the embassy



01:18:28
of the Netherlands. In next

01:18:29
Monday with immense international support

01:18:33
her in this context of

01:18:34
how could we use? Your

01:18:37
best friend is his from

01:18:38
arbitration and transpose them in

01:18:41
under the UN convention because

01:18:44
they're related to corruption to

01:18:47
return the failures to properly,

01:18:50
the rule of law and

01:18:52
they're there maybe mechanism because

01:18:54
with yes, it's freezing and

01:18:56
respecting, the rule of law.



01:18:57

There's no problem. I I

01:18:58

see that she is a

01:18:59

kleptocracy, the standards of to

01:19:02

list of the European Court

01:19:03

of Human Rights is to

01:19:05

provide them more access to

01:19:07

Justice, allowing them to present

01:19:09

a defense and do I

01:19:11

identify with the beneficial owner

01:19:13

of the structure isn't? It

01:19:14

was very nice in practice.

01:19:16

It's a difficult indeed to

01:19:18

transform month or information in



01:19:21
the investigation with data and

01:19:23
then in every day, but

01:19:25
it's not impossible. I'm come

01:19:29
here, I guess and then

01:19:30
maybe Robert, if you have

01:19:31
a comment of that the

01:19:37
first point, Most of the

01:19:41
international regimes that are out

01:19:44
there a week. This is

01:19:46
by Design, the entire International

01:19:49
regime has promised to Nostrand

01:19:52
of consent. It presents all

01:19:56
kinds of problems. A lot



01:19:58
of the initiatives you're talking

01:19:59
about it actually at the

01:20:01
very early stages before 11

01:20:04
p.m. you need consent and

01:20:06
states can give concerned these

01:20:08
can be dropping this and

01:20:09
nothing can happen. Unless it's

01:20:12
usually doesn't consent especially if

01:20:14
you're talking about large. What

01:20:18
could be done? You could

01:20:21
use until creative techniques to

01:20:24
try and make different regimes

01:20:26
talk with one another. That



01:20:28

is probably as good a

01:20:31

team as we potentially have

01:20:34

in front of us if

01:20:36

you want. Arbitration rules to

01:20:39

inform. Human rights rules of

01:20:45

Isis verse. That should actually

01:20:46

be wiser worse than more

01:20:47

than the other way. But

01:20:49

if you want that dialogue

01:20:51

to take place, you know,

01:20:53

The Vienna convention article, 31

01:20:55

3cm policy decision maker to

01:20:58

consider other rules. It has



01:21:01

been applied woefully inconsistently and

01:21:05

unsystematic Key by decision-makers across

01:21:08

regimes, but that is potentially

01:21:11

an Avenue with an option

01:21:13

that we can adopt. I

01:21:17

do for the doubt that

01:21:19

you can get symbolic victories.

01:21:21

If it's a small estate,

01:21:23

where Security Council bodies are

01:21:26

not involved, you may be

01:21:27

able to get a security

01:21:29

Council resolution. But the reality

01:21:32

of the DMV just have



01:21:33
to accept. This is the

01:21:35
rules are not fundamentally pair

01:21:37
and a not strong. Like

01:21:39
that's just that's just being

01:21:41
too nice to receive. You

01:21:42
have to take it for

01:21:43
what it is very well,

01:21:46
I don't want a quite

01:21:48
leave us with that bit

01:21:51
of reality but Robert will

01:21:53
give you the last word

01:21:55
and maybe you can get

01:21:56
out, have a little more,



01:21:56

uplifting positive you. So it's

01:22:04

it's true that international law,

01:22:07

things move, slow leak. I

01:22:09

think that's why I was

01:22:09

saying, I don't think it's

01:22:10

hopeless that make things move

01:22:11

slowly. So for example, in

01:22:13

this is not even in

01:22:14

the course of what I'm

01:22:15

here to talk about, practice

01:22:19

about an opportunity myself just

01:22:22

to give me example, not

01:22:23

to advise a summers day,



01:22:25

over in West Africa, on

01:22:27

bringing together and the Machines.

01:22:30

Human rights and the environment

01:22:32

protection and investor protection into

01:22:35

a new model. Bilateral investment

01:22:36

treaty, there are some 60

01:22:38

others and not saying it's

01:22:39

it's absolutely Nate butt into

01:22:41

a new model, bilateral investment

01:22:42

treaty, you can find it

01:22:43

on the internet. If you

01:22:44

like, this is terrible investment

01:22:45

facilitation Corporation to bring my



01:22:47

birth certificate. And the idea

01:22:49

of that is to start

01:22:51

it only provides jurisdiction over

01:22:54

on violations of international, recognized

01:22:57

human rights. Abuses arising from

01:22:59

that investment. If an investor

01:23:01

brings a claim against the

01:23:02

state, so it's not a

01:23:04

Panacea, it's not something that

01:23:05

makes suddenly overnight all. This

01:23:07

is a human rights principles

01:23:08

applicable or environment protection applicable

01:23:10

in any meaningful strongway, but



01:23:13
it is a beginning or

01:23:15
when we start talking about

01:23:16
investment protection. We also think

01:23:18
about her talking about business

01:23:20
and human rights and Environmental

01:23:21
Protection. I think that those

01:23:23
incremental steps that a lot

01:23:24
of the changes that were

01:23:25
seeing right now, tree changes

01:23:27
convention around another the depression.

01:23:30
These things over time will

01:23:33
start to coalesce into, you

01:23:35
know, what a lot of



01:23:36

academics are referred to as

01:23:37

redeem interaction where you see

01:23:39

in public international law, a

01:23:40

change here that starts to

01:23:42

affect us ever hear that

01:23:44

the cans reference like this

01:23:46

slowly painstakingly overtime, come together.

01:23:49

There is hope at the

01:23:50

end of the tunnel as

01:23:51

well. So I just want

01:23:56

to thank all of our

01:23:57

speakers today. Kabir Matthew Lisa

01:24:01

and Robert I think that



01:24:03
that really helped provide some

01:24:06
great background as too kind

01:24:08
of the history and the

01:24:09
practice that has grown around

01:24:11
this important topic of mass

01:24:14
claims. And and Robert has

01:24:15
given us a great example

01:24:16
of some excellent work that

01:24:18
is going on in real

01:24:20
time to address some very,

01:24:22
very real problems that along

01:24:26
with hopefully if perhaps the

01:24:28
Claims Commission and we'll see



01:24:30
how that. We're definitely living

01:24:34
in interesting time. So thanks

01:24:35
to everyone. Thanks to our

01:24:36
audience.