

Do We Need Treaty Disciplines on Damages? *

Summary

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

The session featured a discussion among legal and financial experts, including Ryan Martin, Richard Caldwell, and Raphael Ossa, focusing on the complexities of damages in international investment arbitration. Ryan Martin, with a background in oil and gas and consumer products, highlighted the need for clarity in treaty provisions regarding damages. Richard Caldwell, an economist and financial expert, emphasized the importance of the fair market value (FMV) standard in assessing damages, noting that the lack of specificity in bilateral investment treaties can lead to inconsistent outcomes. Raphael Ossa, specializing in international arbitration, pointed out the historical context of treaty development and the evolution of legal standards over time.

The conversation addressed the obligations of states to provide full reparation for injuries caused by international law violations, referencing the principle established by the Permanent Court of International Justice. The participants discussed the challenges in determining compensation, particularly in cases of lawful expropriation, and the complexities surrounding valuation methods, including FMV and discounted cash flow (DCF) analyses.

Key points included the necessity for flexibility in treaties to accommodate various investment scenarios, the subjective nature of future cash flow projections, and the potential for speculation in damage assessments. The experts agreed on the importance of a coherent legal framework that allows for the evaluation of damages based on specific case merits, while also considering the unique circumstances of each investment. The session concluded with an acknowledgment of the challenges and uncertainties involved in damage calculations within international arbitration.

Authors

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Topics

Investment Arbitration, Investment Treaties, Quantum, Damages, Fair Market Value

Category

WAU

Full Transcript

00:00:02

Oil and gas Ryan Martin

00:00:07

was in who founded two

00:00:10

companies and also work in

00:00:11

consumer products in Procter &

00:00:13

Gamble as well as in

00:00:15

Manhattan Management Consulting in Boston

00:00:18

Consulting Group. He has an

00:00:20

MBA from the Stanford Graduate

00:00:23

School of Business because IBS

00:00:26

in industrial engineering with honors

00:00:29

from technology Co the studio

00:00:32

superhero raise the Monterey directors

00:00:37

of both companies in sectors

00:00:39

such as pharmaceutical Fun Factory

00:00:41

expert witness on Damages in

00:00:45

several investment arbitrations because of

00:00:48

the Mexican Government and also

00:00:52

on the couch update Dominican

00:00:54

Republic and he's member of

00:00:57

the Mexican national rowing team.

00:01:02

American career games silver medallist.

00:01:04

We also have Richard Caldwell

00:01:08

that his principal and in

00:01:10

the London Office of the

00:01:12

Brazil group has been with

00:01:15

the firm for over 20

00:01:17

years and economies and a

00:01:20

financial expert with experience ballot

00:01:23

in business and financial instruments

00:01:26

across a range of industries

00:01:28

from electricity to Bank in

00:01:31

Telecom and a range of

00:01:33

settings. He provides economic and

00:01:36

financial advice concerning corporate finance

00:01:38

and migration. The pricing of

00:01:40

Securities assessment of regulatory issues.

00:01:43

Richard is also has a

00:01:46

visor repair commission and National

00:01:48

Regulators Financial issues testify before

00:01:52
the UK competition Supreme tribunal

00:01:54
has been extra damages in

00:01:59
close to 15 ternational arbitration.

00:02:02
Set up in the energy

00:02:05
Charter treaty the London Court

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of international arbitration law work

00:02:15
on behalf of both claimants

00:02:16
and respondent has retained as

00:02:19
an expert witness in several

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International Investment arbitrations related to

00:02:25
stay on energy Renewables and

00:02:30
form the basis of roughly

00:02:39
1 billion-euro investors. Call will

00:02:50

also regularly teaches corporate finance

00:02:54

and valuation course in the

00:02:55

Masters in finance program in

00:02:58

the London London Business School,

00:02:59

and we have also revealed

00:03:03

Ossa that he's a special

00:03:06

counsel in shopping and Pillsbury

00:03:07

focuses his practice in all

00:03:10

aspects in international arbitration and

00:03:13

dispute resolution profile has almost

00:03:15

20 years of experience in

00:03:18

domestic or International litigation and

00:03:21

arbitration and provide clients with

00:03:23

Early Education and Mitigation Of

00:03:26

Business risk and plan of

00:03:29

action that could occur during

00:03:31

those type of disc. It's

00:03:34

Raphael is also representing clients

00:03:37

in transactions and corporate mother's

00:03:40

enjoying a diverse and mixed

00:03:41

practice. Raphael is a fellow

00:03:43

in the Texas bar foundation

00:03:45

and about time. Pro bono

00:03:48

airports in dispute resolution, he

00:03:51

lives in Houston and it's

00:03:53

a pleasure to me to

00:03:54

have you here in this

00:03:57

meeting and I will start

00:03:58

introducing baby should. We will

00:04:01

discuss and I will make

00:04:02

questions that the three finalists

00:04:05

will provide their views and

00:04:08

clarify many aspects on this

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particular station. The station is

00:04:12

a reflection on why do

00:04:16

need or not need a

00:04:18

treaty Provisions related to damages

00:04:21

the subject matter. You know,

00:04:24

it's one of the most

00:04:25

complex areas of an International

00:04:27

Investment arbitration sometimes damages compensation

00:04:31

reparation restitution are used as

00:04:34

a snow animals, but they're

00:04:36

the meaning of town. Sometimes

00:04:38

he's completely different for has

00:04:40

some differences bilateral investment treaties

00:04:44

usually does not contain a

00:04:45

provision of compensation with David.

00:04:47

To provide guidance to arbitral

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tribunal except of the Thunder

00:04:52

of compensation for a lawful

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expropriation. So we should start

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reviewing what we have in

00:04:59

the draft articles on responsibilities

00:05:00

of a state for international

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internationally with a bat in

00:05:05

our city one that says

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that responsible state is under

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an obligation to make full

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reparation for the injury caused

00:05:14

by the international G. It

00:05:16

also says that the injury

00:05:18

include any damage whether material

00:05:20

or morale goes by the

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International League round of the

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state. So it is when

00:05:26

know that this obligation of

00:05:28

make food preparation is one

00:05:30

of the key obligations for

00:05:31

the response of the state.

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The general principle is the

00:05:35

consequence of their famous case

00:05:39

that was scared by the

00:05:42

permanent Court of international Justice

00:05:44

in 1988. When you're 100

00:05:48

years ago that is the

00:05:51

case in the factory of

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the shower. So these cases

00:05:56

are relevant president for operations

00:05:59

since provided principal of preparation

00:06:04

should be made for violation

00:06:08

of international law. So considering

00:06:14

the preparation may include compensation

00:06:16

or non-pecuniary remedy like restitution

00:06:19

compensation has been or has

00:06:23

become the most the most

00:06:24

remedy use in investment arbitration

00:06:28

and all the session relates

00:06:31

to this part. They they

00:06:33

they they compensation in monetary

00:06:37

terms generally refers to the

00:06:40

monetary compensation awarded to the

00:06:43

claim for losses incurred as

00:06:45

a result of the respondent

00:06:47

action. So our finalists will

00:06:50

we will ask some questions

00:06:53

related to this aspect of

00:06:55

international arbitration. And the first

00:06:58

question is to what extent

00:06:59

do Investments with this deal

00:07:01

with compensation for damages. We

00:07:05

will start with Rich. Sure.

00:07:09

Thank you. Lovely to be

00:07:12

here. This is a question

00:07:15

for the lawyers as someone

00:07:22

who gets asked to assess

00:07:25

damages from time to time

00:07:26

the men thing. Of course,

00:07:31

it's for extra trash. So

00:07:34

the FMV standard I guess

00:07:37

the question is fair market

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value is a very common

00:07:41

term. It's a generic term

00:07:44

relate down our various you

00:07:47

can type it in. You

00:07:49

could type it in to

00:07:49

chat GPT and get different

00:07:57

bodies come up with the

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r on the world beyond

00:08:01

the typical definitions will include

00:08:05
the concept of hypothetical buyer

00:08:07
and seller. Unwilling or willing

00:08:12
story on Forest knowledgeable answer.

00:08:17
It's sort of a Transit.

00:08:18
It's a hypothetical transaction as

00:08:20
such a transaction between hypothetical

00:08:24
knowledgeable on Source a proper

00:08:29
marketing some of the definition.

00:08:34
What else should I say?

00:08:40
What else would do? Well,

00:08:43
they don't Define similar standards

00:08:46
for other types of grapes.

00:08:48
Just found a couple open

00:08:54

typically goes in for Donna

00:08:58

to come up with something

00:09:01

that approximates to school compensation.

00:09:06

Night, I even where you're

00:09:09

in. Some market value treaties

00:09:13

don't specify valuation method. So

00:09:16

you won't get a discounted

00:09:22

cash-flow method, please do Market

00:09:26

comparables or something like that

00:09:28

or some other methodology that

00:09:30

you can think of that

00:09:31

plant open another important thing

00:09:34

that's left open protect me

00:09:38

for a peachy clean. Do

00:09:43

you do it after dead

00:09:45

off the breach or do

00:09:47

you do it at some

00:09:48

point theater? For example of

00:09:49

talks meeting with the u.s.a.

00:09:55

So obviously determines among other

00:09:57

things the saint of information

00:09:59

you how about your fingertips

00:10:02

to assess between A very

00:10:07

significant impact on the overall

00:10:09

numbers protect me in volatile

00:10:11

markets for example commodity markets

00:10:14

where prices change significantly over

00:10:18

time. I guess the question

00:10:21

for us and I'm still

00:10:23

annoyed. The question for us

00:10:24

is what happened to the

00:10:25

lack of specificity in the

00:10:28

treaties is a good thing

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or a bad thing. Is

00:10:31

it good because of the

00:10:33

lost and tribunal's to deal

00:10:36

with the specific facts that

00:10:40

are an issue when you

00:10:42

need that flexibility to be

00:10:44

able to handle that. It

00:10:45

was complicated and different foxes

00:10:47

are coming out or is

00:10:49

the lack of specificity specificity

00:10:51

a problem that they can

00:10:54

leave the inconsistency and sort

00:10:58

of weird results between kisses

00:11:01

and ultimately lack of predictability.

00:11:06

and then the discussion Market,

00:11:09

and thanks for that was

00:11:12

a very good introduction and

00:11:14

just to add a little

00:11:15

bit on what you said

00:11:16

in terms of whether there

00:11:17

is there should be something

00:11:18

specific in the treaties it

00:11:22

if you were very specific

00:11:23

at A Treatise. You would

00:11:24

not be recognizing that certain

00:11:26

Endeavors Investments are at different

00:11:31

points in time. You could

00:11:33

have a deemed distribution of

00:11:35

of an investment that is

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that is only occurring that

00:11:39

hasn't operated yet. Would that

00:11:41

be treated similar to a

00:11:42

company that operates for many

00:11:43

years? And so if you

00:11:45

if you're very specific would

00:11:48

you not be missing out

00:11:49

or would you be trying

00:11:51

to measure something with a

00:11:53

standard that you can a

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real use to measure that

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specific to those are the

00:11:57

questions of course that we

00:11:59

need to pose in in

00:12:00

in answering. I'm trying to

00:12:02

answer whether or not or

00:12:04

in the how and how

00:12:06

far is Pacific? Regarding the

00:12:10

evaluation of Dallas. Returning back

00:12:16

to the history. Why do

00:12:18

you think the distribution specific

00:12:21

Thomas permission was not appear

00:12:23

in the basement? Okay, thank

00:12:31

you. Dana went up to

00:12:32

before I I start with

00:12:34

answering the question. I wanted

00:12:35

to thank the university for

00:12:37

hosting us and I wanted

00:12:39

to make clear that I

00:12:40

am not an expert in

00:12:42

Damages. I am an attorney

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and I call him this

00:12:45

gentleman to assist me with

00:12:47

damages. so with that said

00:12:51

Why was there not more

00:12:53

specificity on the classes are

00:12:55

why are they not losses

00:12:56

on Damages in 3DS? I

00:13:00

think it's a little bit

00:13:01

of a historical issue with

00:13:03

the Treaty of themselves and

00:13:05

how the Nations have developed

00:13:06

their treaty the treaty relations

00:13:09

and how have they developed

00:13:14

their? The documents that control

00:13:16

how they connect to each

00:13:20

other back in the back

00:13:23

in the 1700s gained its

00:13:28

independence the United States started

00:13:31

signing treaties of friendship and

00:13:33

Amity and commerce with a

00:13:35

number of nations that included

00:13:38

principally protection of property but

00:13:41

real property or ships or

00:13:44

merchandise, and that was the

00:13:47

basis of most of the

00:13:49

treaty disciplines that we have

00:13:52

even today even in the

00:13:54

1990s after everything was restructured

00:13:58

through the the upcoming of

00:14:02

the b i t as

00:14:03

an independent and Elsa as

00:14:05

a form of a treaty.

00:14:09

That was a response to

00:14:13

the prior situation. That was

00:14:16

nowhere only protecting property and

00:14:18

we are not recognizing the

00:14:20

fact that we have evolved

00:14:22

and that Evolution requires that

00:14:25

we now protect Services between

00:14:27

the other aspects of do

00:14:32

the interactions between parties and

00:14:34

countries and and that really

00:14:37

in impacted how the treaties

00:14:39

were were drafted. Okay, so

00:14:44

return mentioned something that I'm

00:14:48

besides the lawful extirpation the

00:14:52

fair market value my probation.

00:14:54

Appears in almost all bilateral

00:14:56

investment treaties. What should be

00:14:58

the proper method or proper

00:15:01

standard for compensation in cases

00:15:03

of other type of violations.

00:15:10

What's the top? Okay, so

00:15:20

let's let's talk about this

00:15:23

issue that okay, so I

00:15:31

asked me if I'm right.

00:15:45

I'm not sensing the expiration

00:15:48

contact. If you were to

00:15:54

apply after FMV to that

00:15:57

breach then presumably we have

00:16:00

to stay off of a

00:16:06

given thing. Is that a

00:16:08

d it when the breach

00:16:09

happened is it some immediately?

00:16:18

Related issue on on that

00:16:24

goes to the question of

00:16:25

what stage is the answer

00:16:29

and question how many ft

00:16:31

pre Chopper? Is it an

00:16:33

asset in development? Is it

00:16:36

something in the midst of

00:16:38

construction? Is it something that

00:16:39

is already sometime? I'm so

00:16:44

again when risks are different

00:16:48

along the timeline which will

00:16:51

have consequences for how you

00:16:53

then who will buy the

00:16:56

impact on so This complicated

00:17:01

matters in the fbt a

00:17:03

scenario where sometimes the effect

00:17:07

of a breach emerges over

00:17:09

time. It can sometimes be

00:17:12

a short sharp thing in

00:17:14

which case you can identify

00:17:16

a very easily sometimes complicated

00:17:26

there maybe 10 facts emerge

00:17:30

overtime when they breach happens

00:17:32

and in the beginning you

00:17:33

don't know or people don't

00:17:34

know exactly. Sometimes. It's followed

00:17:38

by another fpt breach later.

00:17:41

And again, what are you

00:17:43

going to say, just for

00:17:49

the first bridge at Heartland

00:17:51

second estimate on the deed

00:17:54

of the second breach and

00:17:55

so on and so on.

00:18:00

Get it, if you apply

00:18:02

at and be to some

00:18:04

types of dy3 sort of

00:18:07

the turnout terminology difficult time

00:18:14

is that when your computer.

00:18:20

He's only one possible valuation

00:18:23

standard. There are other standards

00:18:25

that are right there that

00:18:28

different there's the concept of

00:18:30

Equitable body or fair value

00:18:33

between two specific Barbies that

00:18:35

you can identify two specific

00:18:38

partner might have particular Synergy

00:18:42

particular interests that played between

00:18:44

themselves which caused the value

00:18:46

in a transaction between damn

00:18:48

could differ from a hypothetical

00:18:51

transaction between hypothetical buyers and

00:18:53

sellers. And so if you

00:18:56

don't let him be for

00:18:58

feet cleanse than

00:19:02

you would immediately be reeling

00:19:03

or any of these sort

00:19:05

of idiosyncratic things happened between

00:19:08

particular people in particular investment

00:19:13

in terms of whether FM

00:19:20

Bay is that is a

00:19:22

good thing to apply is

00:19:25

an in an SMG calculation.

00:19:27

You're going to have to

00:19:27

think about things like valuation.

00:19:31

It's going to premiums minoriti

00:19:42

describe any particular investment. So

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if you're applying FMB to

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f e t than those

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type of considerations, we're going

00:19:53

to have to come in

00:19:53

today. calculation adult things the

00:19:59

point is I guess it

00:20:00

don't think FMV orefici as

00:20:03

well as her. It would

00:20:05

lead to some complexities. It

00:20:09

certainly wouldn't necessarily expect all

00:20:11

after Chi cleanse which dress

00:20:22

do but it raises a

00:20:23

bunch of compact state which

00:20:24

you might not want to

00:20:25

bring it in and it

00:20:27

one-size-fits-all type way. Right. Thanks.

00:20:31

That was there was a

00:20:33

very good explanation. Perhaps two

00:20:36

hundred to answer that is

00:20:38

to understand what the fair

00:20:39

market value standard really think

00:20:43

you're compensating somebody for the

00:20:45

fair market value or you're

00:20:46

compensating that person for the

00:20:49

entirety of the value that

00:20:51

that specific asset could have

00:20:53

generated for that person going

00:20:54

forward to speaking with standard

00:21:01

is the value of the

00:21:04

which he willing buyer and

00:21:05

a willing seller would exchange

00:21:08

that assets among themselves right

00:21:10

with the full knowledge and

00:21:11

without being pressured to do

00:21:12

so. Experience is more in

00:21:20

in the in the actual

00:21:22

transaction worlds were not necessarily

00:21:24

so focused on the on

00:21:25

the damages world were all

00:21:28

these allegations are hypothetical. So

00:21:30

we have the benefit of

00:21:31

whenever we do an evaluation

00:21:32

of an asset in with

00:21:34

whatever mechanism or or whatever

00:21:36

that you will use. We

00:21:39

have the benefit of going

00:21:40

out to the market and

00:21:41

checking if you were right

00:21:42

or not and that tends

00:21:44

to hold our little bit

00:21:46

over time estimating the value

00:21:53

of assets because of us

00:21:55

we would be out of

00:21:56

a job. It were the

00:22:06

value of an acid eat

00:22:07

is the higher of the

00:22:09

value of the actual assets

00:22:12

so that it take the

00:22:14

requisition cost of those assets.

00:22:16

If you were to go

00:22:17

out to the market and

00:22:18

buy the machines and your

00:22:20

word by you were to

00:22:21

go and buy the the

00:22:22

real estate as a while

00:22:23

or the value of the

00:22:26

cash flows that those assets

00:22:28

will be generating in the

00:22:29

future. Whatever is higher one

00:22:32

plus the other it's one

00:22:33

or the other until we

00:22:35

have to be very careful

00:22:36

in estimating those future values

00:22:39

because that of course is

00:22:40

a very biased exercise to

00:22:43

start with because nobody knows

00:22:45

the future. Even when you

00:22:47

go back in the context

00:22:49

of a damaged you have

00:22:51

to go back in time

00:22:52

and try to salvage value

00:22:53

at a certain point in

00:22:55

the past. But then you

00:22:57

have to go back and

00:22:58

then positioned yourself in the

00:22:59

past as if you were

00:23:01

in the past and in

00:23:02

the future was unknown. So

00:23:04

we have to do a

00:23:05

prospective analysis of the Castro

00:23:08

set specific acid could generate

00:23:11

and that of course is

00:23:13

is is is subjective in

00:23:15

itself and then decides or

00:23:19

if it's higher than when

00:23:32

it reaches the fair market

00:23:34

value in both cases that

00:23:37

will repair the damage for

00:23:39

the entirety of the acid

00:23:40

that approach will not apply.

00:23:45

If it's the damage was

00:23:47

not the compensation would not

00:23:49

require that the other full

00:23:51

compensation of yes. Just took

00:23:56

it back to the to

00:23:58

the projections. Very smart investor

00:24:01

one's head. When I see

00:24:02

a projection. It doesn't tell

00:24:04

me anything about the future

00:24:06

tells me a lot about

00:24:06

who made those projections but

00:24:08

nothing about the future until

00:24:10

we have to be mindful

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in the context of a

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litigation that you know, the

00:24:15

claim and usually Exaggerated so

00:24:21

to speak or or or

00:24:22

try to interpret a very

00:24:24

Rosy future for those assets

00:24:26

and hands come up with

00:24:28

a very attracted by the

00:24:29

way, the defense will always

00:24:33

come back with a very

00:24:35

gloomy interpretation of the future

00:24:39

and how to convince a

00:24:44

a tribunal on what is

00:24:46

fair. I think, you know

00:24:47

taking references from the market

00:24:49

showing what has happened what

00:24:51

has actually happened in the

00:24:53

market. You need to go

00:24:54

back in time what actually

00:24:55

happened back when when the

00:24:57

relevant damage is supposed to

00:25:00

happen in reverse. Compensating for

00:25:11

fair and Equitable treatment is

00:25:12

extremely difficult as this gentleman

00:25:15

has explained in general. He's

00:25:19

a very elusive concept and

00:25:21

we kind of talked about

00:25:22

it. We love talking about,

00:25:24

you know near for temple

00:25:26

in the 1920s. A secretary

00:25:29

girdle letter to the Mexican

00:25:34

ambassador claiming that expropriations to

00:25:37

be needs to be fairly

00:25:39

and justly compensated and the

00:25:42

expectation of the party owning

00:25:43

the property is to keep

00:25:45

the property and profit from

00:25:47

the property. So if it's

00:25:50

taken by the state the

00:25:51

states should pay as a

00:25:53

response to their actions, but

00:25:58

But the concept of fair

00:25:59

and Equitable treatment of the

00:26:01

minimum the standard treatment for

00:26:04

a nurse is has been

00:26:07

or wherever very Elusive and

00:26:09

very fact analysis. So you

00:26:12

have to really value ate

00:26:14

the case on its own

00:26:15

merits and be able to

00:26:17

determine with a techniques that

00:26:19

the gentleman have explained to

00:26:21

you that the case merits

00:26:24

a compensation for that particular

00:26:25

type of injury. Let me

00:26:31

to these two issues for

00:26:32

you for your consideration. What

00:26:34

is what happened? For example,

00:26:37

you have this bridge separate.

00:26:40

Does not entail a complete

00:26:44

loss of investment or or

00:26:46

or the investment continues to

00:26:49

be a complete version of

00:26:54

the investment that I want

00:26:58

to ask you is about

00:26:59

that. They have a strong

00:27:03

link between the lost and

00:27:05

the bridge and we're the

00:27:06

investment agreements should clarify this

00:27:11

aspect. That should be a

00:27:15

link between Dallas and the

00:27:20

witch that has been developed

00:27:21

by by the case. What

00:27:25

is your view? Who was

00:27:28

do whatever? Okay, so if

00:27:34

your britches in the right

00:27:45

now because you need to

00:27:54

damage estimation requires a very

00:28:00
personal hearing construction of a

00:28:05
box for or conjure factual

00:28:08
scenario, which is absolutely reach

00:28:10
versus are not too smart.

00:28:13
I miss you what you're

00:28:16
really saying what you're saying

00:28:17
in your question. Is that

00:28:19
the actual scenario there still

00:28:20
somebody so you could still

00:28:22
apply the incremental lost in

00:28:27
the after the first observation

00:28:39
and then I think the

00:28:40
second part of your question

00:28:41
was a bite right on

00:28:52
box for baby constructed in

00:28:54
a coherent way that matches

00:28:57
to pick names that are

00:28:58
being put forward that develops

00:29:02
from a legal perspective. You

00:29:14
know if it's divorced and

00:29:16
I think that the fact

00:29:22
that she has different language

00:29:25
forces you as a legal

00:29:27
practitioner to really understand the

00:29:30
standard you need to meet

00:29:32
for the butt for analysis

00:29:33

and then also the facts

00:29:37

of your case, you need

00:29:38

to really make a factual

00:29:39

case to the tribunal that

00:29:41

there was in fact an

00:29:43

if it's violations that partially

00:29:45

deprived you of your investment

00:29:47

in the nation and that

00:29:48

your 3D allows you to

00:29:50

recover that. Market valuation standard

00:29:56

absence the damage or the

00:30:08

the cost that is being

00:30:09

contested and what the actual

00:30:13

value is after the fact

00:30:16
and if there is a

00:30:18
difference and you can you

00:30:20
can justify that difference. Then

00:30:22
that could be the exact

00:30:24
nature of the damage that

00:30:26
is freaking itself. Right if

00:30:29
if there was a loss

00:30:30
of a very specific machine

00:30:32
was lost then the next

00:30:35
question is should you be

00:30:37
compensated for the value of

00:30:38
that machine or should you

00:30:40
be compensated for the cash

00:30:42

flow that you expected to

00:30:43

generate from that specific machine

00:30:45

and then a whole lot

00:30:48

of the argument could be

00:30:51

made that that machine was

00:30:52

never going to be anything

00:30:53

or it wouldn't have absent

00:30:56

another factor or then you

00:30:59

can start running into ex

00:31:01

post information becomes available. And

00:31:04

then the question becomes can

00:31:05

you use that post because

00:31:07

it might be the case

00:31:08

that tells you what that

00:31:10

machine would have been lost

00:31:11

anyway, but the damage was

00:31:15

you didn't know that. It's

00:31:20

Tricky a company that developed

00:31:28

the developers of Machinery Machinery,

00:31:32

right and there's a company

00:31:33

that uses a machinery and

00:31:35

operate the Machinery to provide

00:31:37

services and the difference is

00:31:39

in the analysis in those

00:31:40

two cases is whether you

00:31:45

consider the cash flow analysis

00:31:48

was simply the sale value

00:31:49

of the property. let me

00:31:52

just what's a 19 carat?

00:32:06

Because of his last money

00:32:07

I have to borrow a

00:32:09

little more. Because it borrowed

00:32:12

a little more it has

00:32:13

to pay rent. A coherent

00:32:16

back for analysis have to

00:32:17

move through all of them

00:32:18

stamps and think through all

00:32:20

happened as a result of

00:32:22

the given breaching in question.

00:32:25

Another example might be a

00:32:38

sign that I would get

00:32:40

the risks and different way.

00:32:41

And then a preacher and

00:32:46

then that means that some

00:32:48

things are going to happen

00:32:49

to one of the shareholders

00:32:51

of the way. They structure

00:32:55

their investments in the first

00:32:56

again, those types of things

00:32:58

all have to be considerate.

00:33:06

Your attorney needs to do

00:33:09

a really good job at

00:33:10

taking you from point A

00:33:12

to point B and B

00:33:13

to point sitting in for

00:33:14

you to be able to

00:33:15

establish by, you know, a

00:33:17

preponderance of the evidence that

00:33:19

you really have had damaged

00:33:22

based on the fact that

00:33:23

you had to get an

00:33:25

additional loan or get additional

00:33:26

Finance to financial reparation because

00:33:28

the state did something against

00:33:30

you at some point in

00:33:32

time that affected the cash

00:33:33

flow or affected your ability

00:33:35

to operate under the economic

00:33:37

conditions that you said you

00:33:39

had that is a very

00:33:41

very difficult factual analysis in

00:33:43

addition to the difficulties as

00:33:45

you have stated and explained

00:33:47

in calculating the damage itself.

00:33:51

Yes, just to run to

00:33:53

sign. You might seem to

00:33:54

be honest bill in different

00:33:55

ways. I mean I've seen

00:33:57

some for being I've seen

00:34:05

some Investments. Except but that

00:34:09
was a part of the

00:34:09
agreement between the shareholders was

00:34:12
part of the show me

00:34:13
a track with this animation

00:34:33
also a practical example, but

00:34:35
and I don't want to

00:34:37
go to critic any of

00:34:39
these cases, but Mexico Mexico

00:34:47
ATM car deals. What what

00:35:08
what what is the reason

00:35:10
that you think that each

00:35:12
case will have a very

00:35:14
separate standard of a decision

00:35:17

in terms of Damages or

00:35:19

couch with this will try

00:35:21

to prevent this type of

00:35:22

results in perhaps in in

00:35:25

the in the mind of

00:35:26

the states. I was I

00:35:31

was involved in the wards

00:35:41

in in the three cases

00:35:43

given that they were they

00:35:44

stem from the same measure.

00:35:47

It's because the different Investments

00:35:50

of the three companies were

00:35:51

at different stages at the

00:35:53

one company which had been

00:35:56

in the business for many

00:35:58

many years had an established

00:35:59

company was generating profits in

00:36:02

that business would have to

00:36:04

be valued in in a

00:36:05

different way than the business

00:36:06

Jose another company which just

00:36:08

recently had invested in in

00:36:10

a very simple easy transfer

00:36:12

station of the products, which

00:36:15

was a minimal amount of

00:36:17

investment, but they expected to

00:36:18

generate a lot of revenue

00:36:20

from that and profit from

00:36:21

them, but the assets were

00:36:22

different, right? So the measuring

00:36:25

in one scenario would not

00:36:27

necessarily have to be exactly

00:36:28

the same as another cuz

00:36:29

then one or the other

00:36:30

would have been an unfair

00:36:32

or do you have to

00:36:35

see the context of the

00:36:36

investment in that goes back

00:36:38

to the to the fundamental

00:36:39

question should there be guidelines

00:36:41

are very precise guidelines on

00:36:43

how to Value? I think

00:36:45

those three cases show. That

00:36:48

would have been a mistake

00:36:48

because one of the three

00:36:50

or two of the three

00:36:51

the three claims would have

00:36:54

been miss water. And I

00:36:57

agree with that last part

00:36:59

and taking on the second

00:37:00

part of the question and

00:37:01

not addressing the cases directly.

00:37:03

I think he's very important

00:37:05

to have flexibility in the

00:37:07

in the framework of international

00:37:10

treaties and documents. Especially in

00:37:16

issues of Damages that have

00:37:17

such such uncertainties and are

00:37:20

based. So you need to

00:37:24

be able as a stay

00:37:25

negotiating with another state to

00:37:28

create a treaty let there

00:37:30

be 80 between Mexico and

00:37:32

Peru. Let's assume and and

00:37:36

ended up in the process

00:37:38

of negotiating the treaty even

00:37:40

want to say well in

00:37:41
your ass it is worth

00:37:42
a hundred dollars are going

00:37:43
to get a dollar if

00:37:44
your if your eyes are

00:37:45
Israelis were the million-dollar you're

00:37:47
going to get a hundred

00:37:47
to make that scale because

00:37:50
you want to give your

00:37:51
investors flexibility to are you

00:37:53
before three of you know,

00:37:54
that they are entitled to

00:37:56
whatever they are in. Go

00:37:57
to based on the facts

00:37:58

of the case and the

00:37:59

language of the tree. So

00:38:01

you have to as a

00:38:03

negotiator as a state negotiator.

00:38:05

You have to give yourself

00:38:07

the flexibility to protect your

00:38:10

stakeholders who in this case

00:38:12

are your investors? creating very

00:38:16

hard line rules to determine

00:38:19

the damages is normally a

00:38:22

difficult situation and it will

00:38:25

put the investors of the

00:38:28

state that is negotiating with

00:38:30

the other state in the

00:38:31
disadvantage and would be probably

00:38:33
not sufficiently protected in case

00:38:36
their investment is stationed in

00:38:38
any place any of the

00:38:40
many ways that they One

00:38:46
word on this. I I

00:38:47
mean I I was not

00:38:49
involved in any of your

00:38:57
notes and that you were

00:38:58
going to ask this question

00:38:59
is a wart. It strikes

00:39:04
me from standing rewards that

00:39:06
there any lack of specificity

00:39:09

in the treaty language on

00:39:11

Damages. It's not where the

00:39:12

difference is come from. I

00:39:15

mean, I knew more but

00:39:17

the one thing she went

00:39:26

into essentially lost cash flows

00:39:31

over a defined period of

00:39:34

time with more last time.

00:39:39

I have brought the difference

00:39:41

between the Assassin seem to

00:39:43

be some underlying assumption differences

00:39:47

about you no matter if

00:39:51

you can, try but I

00:39:54

One decision seem to bring

00:39:56

in profits. It would be

00:39:57

me and outside of Mexico

00:39:58

and the other one said

00:40:00

that wasn't a difference in

00:40:08

view of the to Trevino's

00:40:09

on the wall example. Yes,

00:40:19

they were different but on

00:40:21

my very quick reading of

00:40:23

the award I didn't see

00:40:25

any of that was related

00:40:26

to the Donald. If I

00:40:29

had one more thing I

00:40:31

need is a story of

00:40:32

personal loan when Peru negotiated

00:40:37

its. Back in the early

00:40:43

2000s Peru found them sub

00:40:47

of the Peruvian negotiators, and

00:40:49

I was not one of

00:40:50

them, but I was working

00:40:51

with the with the ministry

00:40:52

of foreign trade. So I

00:40:54

had some in direct participation.

00:40:56

They were faced with the

00:41:00

United States model b i

00:41:03

t It was basically Here

00:41:06

sign. And when when the

00:41:11

negotiations took a little bit

00:41:13

more, you know that the

00:41:15

form of an actual negotiations

00:41:16

negotiator is found themselves receiving

00:41:22

that the that the responsive

00:41:24

know. We all want to

00:41:25

change that. Thank you very

00:41:26

much know we don't want

00:41:27

him prove that thank you

00:41:28

very much and that has

00:41:30

been the practice not only

00:41:31

of the United States but

00:41:33

many many economies in the

00:41:35

in the world that are

00:41:36

exporting Capital to less-developed countries

00:41:41

and who who are drafting

00:41:45

the street. He's so exporting

00:41:48

capital of countries have the

00:41:50

ability to kind of direct

00:41:53

how the drafting is going

00:41:56

to happen and how The

00:41:59

terms are going to end

00:42:00

up with so if they

00:42:03

wanted to include a specific

00:42:04

language determining what Justin Fair

00:42:09

compensation or adequate unfair compensation

00:42:12

or fair market value compensation

00:42:13

actually means they could do

00:42:15

it, but they have not

00:42:16

done it because they want

00:42:17

to give their as I

00:42:18

said before they want to

00:42:20

give their stakeholders flexibility to

00:42:25

argue in front of a

00:42:26

tribunal the possibility of hired

00:42:29

them. It's so so this

00:42:31

is for for Capital exporting

00:42:34

States and four countries who

00:42:35

can influence the drafting of

00:42:38

a treaty. This is all

00:42:40

about sex ability. And I

00:42:42

think that's the key for

00:42:43

our analysis of flexibility. I

00:42:49

will merge two questions here.

00:42:55

in one had with fine

00:42:56

to have the flexibility bug

00:42:57

in the other so that

00:42:59

you do not have to

00:43:00

have something that's a guidance

00:43:03

for example in the determination

00:43:05

of which will be their

00:43:07

methodology operation with Arista DCF

00:43:10

discounted cash flow that barely

00:43:14

remember market value for a

00:43:19

book a metal or a

00:43:21

type of guy that deals

00:43:23

with these or the interest

00:43:26

rate not given the size

00:43:27

of the claims that many

00:43:29

countries are facing from the

00:43:31

tribunal or the paradisus have

00:43:33

any type of guy. When

00:43:34

do you need to use

00:43:36

a DCF or not or

00:43:38

which type of rain should

00:43:40

be used in the analysis

00:43:44

of Do you know that

00:43:55
could be advantageous and let

00:44:04
me be more specific? If

00:44:07
you look at the last

00:44:08
few years and startups, especially

00:44:11
Tech startups sprang up and

00:44:13
everybody was investing in these

00:44:15
startups in days, you know

00:44:16
companies that are worth over

00:44:21
\$1000000 spring up here and

00:44:22
there and everybody was in

00:44:24
a frenzy to to get

00:44:25
their money in in into

00:44:27
those companies companies, which have

00:44:29

not generated profits, of course,

00:44:32

some not even revenues. They

00:44:34

were valued very high and

00:44:35

they have no track record

00:44:38

and so was a bit,

00:44:39

you know, emotion-driven. Let me

00:44:41

say that and what we've

00:44:43

seen in the last few

00:44:44

months is that the majority

00:44:46

of these companies are now

00:44:48

about 10% of their peaks

00:44:50

back. So there's a huge

00:44:52

variation in in because there

00:44:55

is no track record over

00:44:56

there was no track record

00:44:57

upon which to establish a

00:45:00

fair value. Dad said I

00:45:04

think if you wanted to

00:45:06

apply the discounted cash flow

00:45:07

measure again, it's a perspective

00:45:10

exercise, but it has to

00:45:12

be based on something tangible

00:45:13

long enough. Of of operating

00:45:17

where you can actually predict

00:45:19

what this company has been

00:45:20

generating, you know, \$10 of

00:45:22

profit on a consistent basis

00:45:24

over the last few years.

00:45:24

It would have continued generating

00:45:29

those \$10 of profits going

00:45:31

forward. Maybe not one around

00:45:35

10 having a history of

00:45:38

operation give you a good

00:45:40

safety margin upon which to

00:45:42

to Basehor DCF, but if

00:45:44

you have a company with

00:45:45

no tracker that all perhaps

00:45:47

the better Avenue is to

00:45:49

determine how much were those

00:45:51

assets worth? How much money

00:45:52

did you actually best then

00:45:53

talk to her compensation could

00:45:55

be based upon that because

00:45:57

nobody honestly could predict what

00:46:00

amount of cash. 1 guidelines

00:46:04

would be to give a

00:46:06

message to specify a minimum

00:46:09

period of operation in order

00:46:11

to be able to apply

00:46:13

the TCF Centre and if

00:46:15

you don't have that track

00:46:16

record, can you have to

00:46:17

go to alternate that could

00:46:19

be a minimum viable? This

00:46:24

is where we're going to

00:46:24

disagree with the number. Of

00:46:30

course. Doing evaluation exercise is

00:46:40

in town before you have

00:46:42

to think about that bfmv

00:46:49

itself is a subjective measure

00:46:51

because people treated us at

00:46:54

from the business of forward-looking

00:46:55

expectations every day in the

00:46:58

major stock markets. Write the

00:47:01

FMB is a concept value

00:47:04

is a concept where I

00:47:05

can see and it may

00:47:06

be that my future projections.

00:47:09

Do not turn out to

00:47:11

be what we all thought

00:47:12

they wear at a given

00:47:14

point in time. We may

00:47:15

end up being bad or

00:47:16

Worse. That's why stock market

00:47:18

stuck to it. But the

00:47:21

price on a given day

00:47:22

is can be an objective,

00:47:26

Even if we're looking forward

00:47:28

to trying to respond to

00:47:33

you. Actually, there are some

00:47:39

valuation stand out there in

00:47:42

the World At Large the

00:47:44

one I'm going to point

00:47:45

to the IBS gets updated

00:47:51

every, you know, five ten

00:47:54

years later if I remember

00:47:56

correctly. Is the IDS itself

00:48:05

is free determine the value

00:48:10

is it for example the

00:48:12

definition of fair market value

00:48:14

and not found it. It's

00:48:16

called market value. It's at

00:48:17

so I clearly but the

00:48:18

underlying assumptions are it discusses

00:48:21

me to come up with

00:48:24

their market share market value

00:48:25

for what the standard does

00:48:27

not do is predetermined the

00:48:30

valuation method. It sounds because

00:48:34

that is true sock and

00:48:37

I sat on company-specific to

00:48:39

do so, there are some

00:48:41

general concepts that you can

00:48:42

Define like market value like

00:48:44

the hypothetical buyer framework and

00:48:47

so on but defining the

00:48:50

methodology out those two step

00:48:53

too far. Where are you?

00:48:57

I can see other people

00:48:58

from my perspective to the

00:49:03

arbitrator and I'm going to

00:49:05

as an arbitrator. I would

00:49:06

realize that these two gentlemen

00:49:08

and their positions and their

00:49:10

different perspectives on valuation will

00:49:13

give me any speculation and

00:49:15

inspect you what the value

00:49:17

of possibility of a value

00:49:19

and from there. I would

00:49:21

assess whether the value is

00:49:23

accurate based on the facts

00:49:25

and the law and that

00:49:27

value would be determined based

00:49:29

on the terms of the

00:49:30

treaty and that's the law.

00:49:32

3D and any other pic

00:49:35

of a law that made

00:49:36

that make them into play

00:49:37

at some time some local

00:49:39

and domestic laws are applicable

00:49:40

and from their move on

00:49:44

to the German whether the

00:49:45

facts assist or determine whether

00:49:48

either one of the experts

00:49:50
that I have in front

00:49:50
of me are going to

00:49:52
give me a reasonable value

00:49:54
to determine what damages can

00:49:56
I assess against the state

00:49:58
that is also proving or

00:50:01
providing a damage assessment that

00:50:03
is lower and one side

00:50:05
is going to be lower

00:50:06
than the other Taxi just

00:50:09
say one more thing on

00:50:11
DC app for sale is

00:50:17
not limited to ask that

00:50:20
are already in existence and

00:50:22
have a chocolate. DC app

00:50:25
is becoming tools used by

00:50:28
people in the real world

00:50:29
Niger Capital intensive and back

00:50:32
on your actions certainly, but

00:50:52
the method itself is applicable.

00:50:58
That's how you can use

00:51:02
GCF for 1/6 and have

00:51:04
never generated. That's really the

00:51:07
the metrics that is used

00:51:09
out there in the real

00:51:10
world. I think the key

00:51:11

word here is speculation, right?

00:51:15

How speculative is your projection

00:51:18

going forward if you were

00:51:20

mentioning that everyday people make

00:51:21

decisions on the stock market

00:51:22

based on their views on

00:51:24

the future would be true.

00:51:26

But you have to benefit

00:51:29

the point you in a

00:51:35

certain way. Will they perform

00:51:37

a little better or a

00:51:38

little worse than they have

00:51:39

in the past has something

00:51:40

occurred that might improve their

00:51:42

performance going forward. So there

00:51:43

are facts and there is

00:51:44

a history upon which to

00:51:46

base your urine out. If

00:51:49

you if you have a

00:51:51

company or an asset that

00:51:52

doesn't have any history to

00:51:53

it. It's you know, whatever

00:51:55

you do. You project going

00:51:56

forward will become much more

00:51:58

speculative because you get the

00:52:02

only thing you know is

00:52:02

whatever your project is not

00:52:04

going to happen. So he

00:52:05

better it's going to be

00:52:05

worse. But I mean, whatever

00:52:09

your projected happens, then you

00:52:10

should work in a different

00:52:12

line of work would make

00:52:14

more money. Yes, I can

00:52:24

understand. We are running out

00:52:28

of time. Okay, so I

00:52:33

would say Okay, so One,

00:52:37

you know what you mean?

00:52:39

I'm not sure what you

00:52:41

mean by speculation of what

00:52:43

you mean by track record.

00:52:44

There are stocks are there

00:52:46

in the market where you

00:52:47

see a price or not?

00:52:49

That that hasn't been built.

00:52:52

So people are treated I

00:52:54

can put in real money

00:52:55

at 8 rest buying and

00:52:58

selling shares at 4. What

00:53:05

time Chipotle in the real

00:53:06

world? That doesn't mean the

00:53:07

same set. I guess the

00:53:28

real question comes down to

00:53:30

how do you deal with

00:53:31

wrist? And we're DCF gets

00:53:34

abused is in two ways

00:53:36

that will get abused on

00:53:38

the Cleveland Side by somebody

00:53:40

put in the technique itself

00:53:54

at the question of how

00:53:57

you got to have em

00:53:58

Clemente to DCF. This is

00:54:02

the last question and it's

00:54:04

just a note. Google wants

00:54:14

to know no. Thank you

00:54:26

so much. We would have

00:54:43

start at 3 p.m. Thank

00:54:47

you so much for being

00:54:49

here today and see you

00:54:51

in the afternoon. Okay? Oil

00:00:03

and gas Ryan Martin was

00:00:08

in who founded two companies

00:00:10

and also work in consumer

00:00:12

products in Procter & Gamble

00:00:13

as well as in Manhattan

00:00:16

Management Consulting in Boston Consulting

00:00:18

Group. He has an MBA

00:00:21

from the Stanford Graduate School

00:00:24

of Business because IBS in

00:00:27

industrial engineering with honors from

00:00:29

technology Co the studio superhero

00:00:32

raise the Monterey directors of

00:00:37

both companies in sectors such

00:00:39

as pharmaceutical Fun Factory expert

00:00:43

witness on Damages in several

00:00:46

investment arbitrations because of the

00:00:48

Mexican Government and also on

00:00:53

the couch update Dominican Republic

00:00:55

and he's member of the

00:00:57

Mexican national rowing team. American

00:01:02

career games silver medallist. We

00:01:06

also have Richard Caldwell that

00:01:09

his principal and in the

00:01:10

London Office of the Brazil

00:01:12

group has been with the

00:01:15

firm for over 20 years

00:01:17

and economies and a financial

00:01:21

expert with experience ballot in

00:01:23

business and financial instruments across

00:01:27

a range of industries from

00:01:29

electricity to Bank in Telecom

00:01:31

and a range of settings.

00:01:34

He provides economic and financial

00:01:36

advice concerning corporate finance and

00:01:39

migration. The pricing of Securities

00:01:41

assessment of regulatory issues. Richard

00:01:44

is also has a visor

00:01:47

repair commission and National Regulators

00:01:49

Financial issues testify before the

00:01:53

UK competition Supreme tribunal has

00:01:56

been extra damages in close

00:01:59

to 15 ernational arbitration. Set

00:02:03

up in the energy Charter

00:02:05

treaty the London Court of

00:02:08

international arbitration law work on

00:02:15

behalf of both claimants and

00:02:16

respondent has retained as an

00:02:19

expert witness in several International

00:02:21

Investment arbitrations related to stay

00:02:26

on energy Renewables and form

00:02:33

the basis of roughly 1

00:02:40

billion-euro investors. Call will also

00:02:51

regularly teaches corporate finance and

00:02:54

valuation course in the Masters

00:02:56

in finance program in the

00:02:58

London London Business School, and

00:03:01

we have also revealed Ossa

00:03:04

that he's a special counsel

00:03:06

in shopping and Pillsbury focuses

00:03:09

his practice in all aspects

00:03:10

in international arbitration and dispute

00:03:13

resolution profile has almost 20

00:03:16

years of experience in domestic

00:03:18

or International litigation and arbitration

00:03:21

and provide clients with Early

00:03:25

Education and Mitigation Of Business

00:03:27

risk and plan of action

00:03:29

that could occur during those

00:03:32

type of disc. It's Raphael

00:03:34

is also representing clients in

00:03:38

transactions and corporate mother's enjoying

00:03:40

a diverse and mixed practice.

00:03:41

Raphael is a fellow in

00:03:44

the Texas bar foundation and

00:03:46

about time. Pro bono airports

00:03:49

in dispute resolution, he lives

00:03:51

in Houston and it's a

00:03:53

pleasure to me to have

00:03:54

you here in this meeting

00:03:57

and I will start introducing

00:03:58

baby should. We will discuss

00:04:01

and I will make questions

00:04:03

that the three finalists will

00:04:05

provide their views and clarify

00:04:09

many aspects on this particular

00:04:11

station. The station is a

00:04:14

reflection on why do need

00:04:17

or not need a treaty

00:04:19

Provisions related to damages the

00:04:22

subject matter. You know, it's

00:04:25

one of the most complex

00:04:26

areas of an International Investment

00:04:28

arbitration sometimes damages compensation reparation

00:04:32

restitution are used as a

00:04:34

snare animals, but they're the

00:04:37

meaning of town. Sometimes he's

00:04:38

completely different for has some

00:04:41

differences bilateral investment treaties usually

00:04:44

does not contain a provision

00:04:46

of compensation with David. To

00:04:48

provide guidance to arbitral tribunal

00:04:50

except of the Thunder of

00:04:52

compensation for a lawful expropriation.

00:04:55

So we should start reviewing

00:04:57

what we have in the

00:04:59

draft articles on responsibilities of

00:05:01

a state for international internationally

00:05:04

with a bat in our

00:05:05

city one that says that

00:05:08

responsible state is under an

00:05:10

obligation to make full reparation

00:05:12

for the injury caused by

00:05:14

the international G. It also

00:05:16

says that the injury include

00:05:18

any damage whether material or

00:05:20

morale goes by the International

00:05:22

League round of the state.

00:05:25

So it is when know

00:05:26

that this obligation of make

00:05:28

food preparation is one of

00:05:30

the key obligations for the

00:05:31

response of the state. The

00:05:33

general principle is the consequence

00:05:36

of their famous case that

00:05:42

was scared by the permanent

00:05:43

Court of international Justice in

00:05:45

1988. When you're 100 years

00:05:48

ago that is the case

00:05:51

in the factory of the

00:05:52

shower. So these cases are

00:05:56

relevant president for operations since

00:06:00

provided principal of preparation should

00:06:05

be made for violation of

00:06:08

international law. So considering the

00:06:14

preparation may include compensation or

00:06:17

non-pecuniary remedy like restitution compensation

00:06:21

has been or has become

00:06:23

the most the most remedy

00:06:26

use in investment arbitration and

00:06:29

all the session relates to

00:06:31

this part. They they they

00:06:33

they compensation in monetary terms

00:06:38

generally refers to the monetary

00:06:41

compensation awarded to the claim

00:06:44

for losses incurred as a

00:06:45

result of the respondent action.

00:06:47

So our finalists will we

00:06:51

will ask some questions related

00:06:53

to this aspect of international

00:06:56

arbitration. And the first question

00:06:58

is to what extent do

00:07:00

Investments with this deal with

00:07:02

compensation for damages. We will

00:07:05

start with Rich. Sure. Thank

00:07:10

you. Lovely to be here.

00:07:12

This is a question for

00:07:15

the lawyers as someone who

00:07:22
gets asked to assess damages

00:07:25
from time to time the

00:07:29
men thing. Of course, it's

00:07:33
for extra trash. So the

00:07:35
FMV standard I guess the

00:07:38
question is fair market value

00:07:39
is a very common term.

00:07:42
It's a generic term relate

00:07:45
down our various you can

00:07:47
type it in. You could

00:07:49
type it in to chat

00:07:50
GPT and get different bodies

00:07:58
come up with the r

00:07:59

on the world beyond the

00:08:02

typical definitions will include the

00:08:05

concept of hypothetical buyer and

00:08:08

seller. Unwilling or willing story

00:08:12

on Forest knowledgeable answer. It's

00:08:17

sort of a Transit. It's

00:08:18

a hypothetical transaction as such

00:08:21

a transaction between hypothetical knowledgeable

00:08:27

on Source a proper marketing

00:08:30

some of the definition. What

00:08:39

else should I say? What

00:08:40

else would do? Well, they

00:08:44

don't Define similar standards for

00:08:47

other types of grapes. Just

00:08:49

found a couple open typically

00:08:55

goes in for Donna to

00:09:00

come up with something that

00:09:01

approximates to school compensation. Night,

00:09:07

I even where you're in.

00:09:10

Some market value treaties don't

00:09:13

specify valuation method. So you

00:09:17

won't get a discounted cash-flow

00:09:22

methadone, please do Market comparables

00:09:27

or something like that or

00:09:28

some other methodology that you

00:09:31

can think of that plant

00:09:32

open another important thing that's

00:09:35

left open protect me for

00:09:38

a peachy clean. Do you

00:09:44

do it after dead off

00:09:45

the breach or do you

00:09:47

do it at some point

00:09:48

theater? For example of talks

00:09:50

meeting with the u.s.a. So

00:09:55

obviously determines among other things

00:09:57

the saint of information you

00:09:59

how about your fingertips to

00:10:03

assess between A very significant

00:10:07

impact on the overall numbers

00:10:10

protect me in volatile markets

00:10:12

for example commodity markets where

00:10:14

prices change significantly over time.

00:10:18

I guess the question for

00:10:21

us and I'm still annoyed.

00:10:23

The question for us is

00:10:24

what happened to the lack

00:10:26

of specificity in the treaties

00:10:29

is a good thing or

00:10:30

a bad thing. Is it

00:10:31

good because of the lost

00:10:34

and tribunal's to deal with

00:10:37

the specific facts that are

00:10:40

an issue when you need

00:10:42

that flexibility to be able

00:10:44

to handle that. It was

00:10:45

complicated and different foxes are

00:10:47

coming out or is the

00:10:49

lack of specificity specificity a

00:10:52

problem that they can leave

00:10:54

the inconsistency and sort of

00:10:58

weird results between kisses and

00:11:02

ultimately lack of predictability. and

00:11:06

then the discussion Market, and

00:11:10

thanks for that was a

00:11:13

very good introduction and just

00:11:14

to add a little bit

00:11:15

on what you said in

00:11:16

terms of whether there is

00:11:17

there should be something specific

00:11:19

in the treaties it if

00:11:22

you were very specific at

00:11:23

A Treatise. You would not

00:11:25

be recognizing that certain Endeavors

00:11:29

Investments are at different points

00:11:31

in time. You could have

00:11:33

a deemed distribution of of

00:11:35

an investment that is that

00:11:36

is only occurring that hasn't

00:11:39

operated yet. Would that be

00:11:41

treated similar to a company

00:11:42

that operates for many years?

00:11:43

And so if you if

00:11:45

you're very specific would you

00:11:48

not be missing out or

00:11:50

would you be trying to

00:11:51

measure something with a standard

00:11:53

that you can a real

00:11:54

use to measure that specific

00:11:56

to those are the questions

00:11:57

of course that we need

00:11:59

to pose in in in

00:12:00

answering. I'm trying to answer

00:12:02

whether or not or in

00:12:04

the how and how far

00:12:07

is Pacific? Regarding the evaluation

00:12:10

of Dallas. Returning back to

00:12:16

the history. Why do you

00:12:18

think the distribution specific Thomas

00:12:22

permission was not appear in

00:12:24

the basement? Okay, thank you.

00:12:31

Dana went up to before

00:12:33

I I start with answering

00:12:35

the question. I wanted to

00:12:36

thank the university for hosting

00:12:38

us and I wanted to

00:12:39

make clear that I am

00:12:40

not an expert in Damages.

00:12:42

I am an attorney and

00:12:44

I call him this gentleman

00:12:45

to assist me with damages.

00:12:48

so with that said Why

00:12:52

was there not more specificity

00:12:54

on the classes are why

00:12:55

are they not losses on

00:12:57

Damages in 3DS? I think

00:13:00

it's a little bit of

00:13:01

a historical issue with the

00:13:04

Treaty of themselves and how

00:13:05

the Nations have developed their

00:13:06

treaty the treaty relations and

00:13:11

how have they developed their?

00:13:15

The documents that control how

00:13:17

they connect to each other

00:13:20

back in the back in

00:13:23

the 1700s gained its independence

00:13:29

the United States started signing

00:13:31

treaties of friendship and Amity

00:13:34

and commerce with a number

00:13:35

of nations that included principally

00:13:38

protection of property but real

00:13:42

property or ships or merchandise,

00:13:45

and that was the basis

00:13:48

of most of the treaty

00:13:50

disciplines that we have even

00:13:53

today even in the 1990s

00:13:55

after everything was restructured through

00:13:59

the the upcoming of the

00:14:02

b i t as an

00:14:03

independent and Elsa as a

00:14:06

form of a treaty. That

00:14:10

was a response to the

00:14:14

prior situation. That was nowhere

00:14:16

only protecting property and we

00:14:19

are not recognizing the fact

00:14:20

that we have evolved and

00:14:23

that Evolution requires that we

00:14:25

now protect Services between the

00:14:27

other aspects of do the

00:14:32

interactions between parties and countries

00:14:35

and and that really in

00:14:37

impacted how the treaties were

00:14:39

were drafted. Okay, so return

00:14:46

mentioned something that I'm besides

00:14:49

the lawful extirpation the fair

00:14:52

market value my probation. Appears

00:14:54

in almost all bilateral investment

00:14:57

treaties. What should be the

00:14:58

proper method or proper standard

00:15:02

for compensation in cases of

00:15:03

other type of violations. What's

00:15:10
the top? Okay, so let's

00:15:20
let's talk about this issue

00:15:23
that okay, so I asked

00:15:31
me if I'm right. I'm

00:15:46
not sensing the expiration contact.

00:15:53
If you were to apply

00:15:54
after FMV to that breach

00:15:58
then presumably we have to

00:16:01
stay off of a given

00:16:07
thing. Is that a d

00:16:08
it when the breach happened

00:16:09
is it some immediately? Related

00:16:19
issue on on that goes

00:16:24

to the question of what

00:16:26

stage is the answer and

00:16:30

question how many ft pre

00:16:32

Chopper? Is it an asset

00:16:34

in development? Is it something

00:16:37

in the midst of construction?

00:16:38

Is it something that is

00:16:40

already sometime? I'm so again

00:16:45

when risks are different along

00:16:48

the timeline which will have

00:16:51

consequences for how you then

00:16:53

who will buy the impact

00:16:56

on so This complicated matters

00:17:02

in the fbt a scenario

00:17:03

where sometimes the effect of

00:17:07

a breach emerges over time.

00:17:10

It can sometimes be a

00:17:12

short sharp thing in which

00:17:14

case you can identify a

00:17:16

very easily sometimes complicated there

00:17:27

maybe 10 facts emerge overtime

00:17:30

when they breach happens and

00:17:32

in the beginning you don't

00:17:33

know or people don't know

00:17:35

exactly. Sometimes. It's followed by

00:17:39

another fpt breach later. And

00:17:42

again, what are you going

00:17:43
to say, just for the

00:17:49
first bridge at Heartland second

00:17:52
estimate on the deed of

00:17:54
the second breach and so

00:17:56
on and so on. Get

00:18:00
it, if you apply at

00:18:02
and be to some types

00:18:05
of dy3 sort of the

00:18:07
turnout terminology difficult time is

00:18:16
that when your computer. He's

00:18:21
only one possible valuation standard.

00:18:23
There are other standards that

00:18:26
are right there that different

00:18:29

there's the concept of Equitable

00:18:31

body or fair value between

00:18:33

two specific Barbies that you

00:18:36

can identify two specific partner

00:18:38

might have particular Synergy particular

00:18:42

interests that played between themselves

00:18:44

which caused the value in

00:18:47

a transaction between damn could

00:18:48

differ from a hypothetical transaction

00:18:52

between hypothetical buyers and sellers.

00:18:54

And so if you don't

00:18:56

let him be for f

00:18:59

e t cleanse than you

00:19:02

would immediately be reeling or

00:19:04
any of these sort of

00:19:06
idiosyncratic things happened between particular

00:19:09
people in particular investment in

00:19:18
terms of whether FM Bay

00:19:20
is that is a good

00:19:22
thing to apply is an

00:19:25
in an SMG calculation. You're

00:19:27
going to have to think

00:19:28
about things like valuation. It's

00:19:32
going to premiums minoriti describe

00:19:43
any particular investment. So if

00:19:47
you're applying FMB to f

00:19:49
e t than those type

00:19:52

of considerations, we're going to

00:19:53

have to come in today.

00:19:54

calculation adult things the point

00:19:59

is I guess it don't

00:20:00

think FMV orefici as well

00:20:03

as her. It would lead

00:20:05

to some complexities. It certainly

00:20:09

wouldn't necessarily expect all after

00:20:11

Chi cleanse which dress do

00:20:22

but it raises a bunch

00:20:23

of compact state which you

00:20:24

might not want to bring

00:20:26

it in and it one-size-fits-all

00:20:27

type way. Right. Thanks. That

00:20:32

was there was a very

00:20:33

good explanation. Perhaps two hundred

00:20:36

to answer that is to

00:20:39

understand what the fair market

00:20:40

value standard really think you're

00:20:43

compensating somebody for the fair

00:20:45

market value or you're compensating

00:20:47

that person for the entirety

00:20:49

of the value that that

00:20:51

specific asset could have generated

00:20:53

for that person going forward

00:20:55

to speaking with standard is

00:21:01

the value of the which

00:21:04

he willing buyer and a

00:21:05

willing seller would exchange that

00:21:08

assets among themselves right with

00:21:10

the full knowledge and without

00:21:11

being pressured to do so.

00:21:16

Experience is more in in

00:21:20

the in the actual transaction

00:21:22

worlds were not necessarily so

00:21:24

focused on the on the

00:21:25

damages world were all these

00:21:28

allegations are hypothetical. So we

00:21:30

have the benefit of whenever

00:21:31

we do an evaluation of

00:21:33

an asset in with whatever

00:21:35

mechanism or or whatever that

00:21:38

you will use. We have

00:21:39

the benefit of going out

00:21:41

to the market and checking

00:21:41

if you were right or

00:21:42

not and that tends to

00:21:44

hold our little bit over

00:21:48

time estimating the value of

00:21:53

assets because of us we

00:21:55

would be out of a

00:21:56

job. It were the value

00:22:06

of an acid eat is

00:22:08

the higher of the value

00:22:10

of the actual assets so

00:22:13

that it take the requisition

00:22:15

cost of those assets. If

00:22:16

you were to go out

00:22:18

to the market and buy

00:22:18

the machines and your word

00:22:20

by you were to go

00:22:21

and buy the the real

00:22:23

estate as a while or

00:22:25

the value of the cash

00:22:27

flows that those assets will

00:22:28

be generating in the future.

00:22:30

Whatever is higher one plus

00:22:33

the other it's one or

00:22:34

the other until we have

00:22:35

to be very careful in

00:22:37

estimating those future values because

00:22:39

that of course is a

00:22:40

very biased exercise to start

00:22:44

with because nobody knows the

00:22:45

future. Even when you go

00:22:47

back in the context of

00:22:49

a damaged you have to

00:22:51

go back in time and

00:22:52

try to salvage value at

00:22:53

a certain point in the

00:22:55

past. But then you have

00:22:57

to go back and then

00:22:58

positioned yourself in the past

00:23:00

as if you were in

00:23:01

the past and in the

00:23:02

future was unknown. So we

00:23:04

have to do a prospective

00:23:06

analysis of the Castro set

00:23:09

specific acid could generate and

00:23:12

that of course is is

00:23:13

is is subjective in itself

00:23:15

and then decides or if

00:23:20

it's higher than when it

00:23:33

reaches the fair market value

00:23:34

in both cases that will

00:23:37

repair the damage for the

00:23:39

entirety of the acid that

00:23:44

approach will not apply. If

00:23:46

it's the damage was not

00:23:47

the compensation would not require

00:23:50

that the other full compensation

00:23:51

of yes. Just took it

00:23:56

back to the to the

00:23:58

projections. Very smart investor one's

00:24:01

head. When I see a

00:24:02

projection. It doesn't tell me

00:24:04

anything about the future tells

00:24:06
me a lot about who

00:24:07
made those projections but nothing

00:24:09
about the future until we

00:24:10
have to be mindful in

00:24:12
the context of a litigation

00:24:13
that you know, the claim

00:24:16
and usually Exaggerated so to

00:24:21
speak or or or try

00:24:23
to interpret a very Rosy

00:24:25
future for those assets and

00:24:27
hands come up with a

00:24:28
very attracted by the way,

00:24:30
the defense will always come

00:24:33

back with a very gloomy

00:24:36

interpretation of the future and

00:24:39

how to convince a a

00:24:44

tribunal on what is fair.

00:24:46

I think, you know taking

00:24:48

references from the market showing

00:24:50

what has happened what has

00:24:51

actually happened in the market.

00:24:53

You need to go back

00:24:54

in time what actually happened

00:24:56

back when when the relevant

00:24:57

damage is supposed to happen

00:25:00

in reverse. Compensating for fair

00:25:11

and Equitable treatment is extremely

00:25:13

difficult as this gentleman has

00:25:16

explained in general. He's a

00:25:19

very elusive concept and we

00:25:21

kind of talked about it.

00:25:22

We love talking about, you

00:25:24

know near for temple in

00:25:26

the 1920s. A secretary girdle

00:25:30

letter to the Mexican ambassador

00:25:34

claiming that expropriations to be

00:25:37

needs to be fairly and

00:25:39

justly compensated and the expectation

00:25:42

of the party owning the

00:25:43

property is to keep the

00:25:45
property and profit from the

00:25:48
property. So if it's taken

00:25:50
by the state the states

00:25:51
should pay as a response

00:25:55
to their actions, but But

00:25:58
the concept of fair and

00:26:00
Equitable treatment of the minimum

00:26:01
the standard treatment for a

00:26:04
nurse is has been or

00:26:08
wherever very Elusive and very

00:26:10
fact analysis. So you have

00:26:12
to really value ate the

00:26:14
case on its own merits

00:26:16

and be able to determine

00:26:17

with a techniques that the

00:26:20

gentleman have explained to you

00:26:21

that the case merits a

00:26:24

compensation for that particular type

00:26:26

of injury. Let me to

00:26:31

these two issues for you

00:26:33

for your consideration. What is

00:26:34

what happened? For example, you

00:26:37

have this bridge separate. Does

00:26:42

not entail a complete loss

00:26:44

of investment or or or

00:26:46

the investment continues to be

00:26:49

a complete version of the

00:26:54

investment that I want to

00:26:58

ask you is about that.

00:27:00

They have a strong link

00:27:03

between the lost and the

00:27:05

bridge and we're the investment

00:27:07

agreements should clarify this aspect.

00:27:12

That should be a link

00:27:18

between Dallas and the witch

00:27:20

that has been developed by

00:27:21

by the case. What is

00:27:25

your view? Who was do

00:27:28

whatever? Okay, so if your

00:27:34

britches in the right now

00:27:45

because you need to damage

00:27:57

estimation requires a very personal

00:28:00

hearing construction of a box

00:28:06

for or conjure factual scenario,

00:28:08

which is absolutely reach versus

00:28:12

are not too smart. I

00:28:14

miss you what you're really

00:28:16

saying what you're saying in

00:28:18

your question. Is that the

00:28:19

actual scenario there still somebody

00:28:20

so you could still apply

00:28:23

the incremental lost in the

00:28:27

after the first observation and

00:28:39

then I think the second

00:28:40

part of your question was

00:28:42

a bite right on box

00:28:52

for baby constructed in a

00:28:54

coherent way that matches to

00:28:57

pick names that are being

00:28:58

put forward that develops from

00:29:04

a legal perspective. You know

00:29:14

if it's divorced and I

00:29:21

think that the fact that

00:29:22

she has different language forces

00:29:26

you as a legal practitioner

00:29:27

to really understand the standard

00:29:31

you need to meet for

00:29:32

the butt for analysis and

00:29:34

then also the facts of

00:29:37

your case, you need to

00:29:38

really make a factual case

00:29:39

to the tribunal that there

00:29:41

was in fact an if

00:29:43

it's violations that partially deprived

00:29:46

you of your investment in

00:29:47

the nation and that your

00:29:49

3D allows you to recover

00:29:50

that. Market valuation standard absence

00:30:06

the damage or the the

00:30:08

cost that is being contested

00:30:11

and what the actual value

00:30:14

is after the fact and

00:30:17

if there is a difference

00:30:19

and you can you can

00:30:20

justify that difference. Then that

00:30:23

could be the exact nature

00:30:25

of the damage that is

00:30:26

freaking itself. Right if if

00:30:29

there was a loss of

00:30:30

a very specific machine was

00:30:33

lost then the next question

00:30:35

is should you be compensated

00:30:37

for the value of that

00:30:38

machine or should you be

00:30:40

compensated for the cash flow

00:30:42

that you expected to generate

00:30:43

from that specific machine and

00:30:47

then a whole lot of

00:30:48

the argument could be made

00:30:51

that that machine was never

00:30:52

going to be anything or

00:30:54

it wouldn't have absent another

00:30:57

factor or then you can

00:30:59

start running into ex post

00:31:01

information becomes available. And then

00:31:04

the question becomes can you

00:31:05

use that post because it

00:31:08

might be the case that

00:31:09

tells you what that machine

00:31:11

would have been lost anyway,

00:31:12

but the damage was you

00:31:17

didn't know that. It's Tricky

00:31:20

a company that developed the

00:31:30

developers of Machinery Machinery, right

00:31:32

and there's a company that

00:31:33

uses a machinery and operate

00:31:35

the Machinery to provide services

00:31:37

and the difference is in

00:31:39

the analysis in those two

00:31:41

cases is whether you consider

00:31:46
the cash flow analysis was

00:31:48
simply the sale value of

00:31:49
the property. let me just

00:31:57
what's a 19 carat? Because

00:32:07
of his last money I

00:32:08
have to borrow a little

00:32:09
more. Because it borrowed a

00:32:12
little more it has to

00:32:13
pay rent. A coherent back

00:32:16
for analysis have to move

00:32:17
through all of them stamps

00:32:19
and think through all happened

00:32:21
as a result of the

00:32:23

given breaching in question. Another

00:32:26

example might be a sign

00:32:39

that I would get the

00:32:40

risks and different way. And

00:32:43

then a preacher and then

00:32:46

that means that some things

00:32:49

are going to happen to

00:32:50

one of the shareholders of

00:32:54

the way. They structure their

00:32:55

investments in the first again,

00:32:58

those types of things all

00:32:59

have to be considerate. Your

00:33:08

attorney needs to do a

00:33:09

really good job at taking

00:33:10

you from point A to

00:33:12

point B and B to

00:33:13

point sitting in for you

00:33:15

to be able to stablish

00:33:16

by, you know, a preponderance

00:33:18

of the evidence that you

00:33:19

really have had damaged based

00:33:22

on the fact that you

00:33:23

had to get an additional

00:33:25

loan or get additional Finance

00:33:27

to financial reparation because the

00:33:28

state did something against you

00:33:30

at some point in time

00:33:32

that affected the cash flow

00:33:33

or affected your ability to

00:33:35

operate under the economic conditions

00:33:38

that you said you had

00:33:39

that is a very very

00:33:41

difficult factual analysis in addition

00:33:44

to the difficulties as you

00:33:45

have stated and explained in

00:33:48

calculating the damage itself. Yes,

00:33:51

just to run to sign.

00:33:53

You might seem to be

00:33:54

honest bill in different ways.

00:33:55

I mean I've seen some

00:33:57

for being I've seen some

00:34:05

Investments. Except but that was

00:34:09

a part of the agreement

00:34:10

between the shareholders was part

00:34:12

of the show me a

00:34:13

track with this animation also

00:34:33

a practical example, but and

00:34:36

I don't want to go

00:34:37

to critic any of these

00:34:40

cases, but Mexico Mexico ATM

00:34:56

car deals. What what what

00:35:08

what is the reason that

00:35:10

you think that each case

00:35:12

will have a very separate

00:35:14

standard of a decision in

00:35:18

terms of Damages or couch

00:35:20

with this will try to

00:35:21

prevent this type of results

00:35:23

in perhaps in in the

00:35:25

in the mind of the

00:35:26

states. I was I was

00:35:31

involved in the wards in

00:35:42

in the three cases given

00:35:43

that they were they stem

00:35:44

from the same measure. It's

00:35:48

because the different Investments of

00:35:50

the three companies were at

00:35:51

different stages at the one

00:35:54

company which had been in

00:35:57

the business for many many

00:35:58

years had an established company

00:35:59

was generating profits in that

00:36:03

business would have to be

00:36:04

valued in in a different

00:36:05

way than the business Jose

00:36:07

another company which just recently

00:36:09

had invested in in a

00:36:10

very simple easy transfer station

00:36:13

of the products, which was

00:36:15

a minimal amount of investment,

00:36:17

but they expected to generate

00:36:18

a lot of revenue from

00:36:20

that and profit from them,

00:36:21

but the assets were different,

00:36:23

right? So the measuring in

00:36:25

one scenario would not necessarily

00:36:27

have to be exactly the

00:36:28

same as another cuz then

00:36:29

one or the other would

00:36:31

have been an unfair or

00:36:33

do you have to see

00:36:35

the context of the investment

00:36:37

in that goes back to

00:36:38

the to the fundamental question

00:36:39

should there be guidelines are

00:36:41

very precise guidelines on how

00:36:43

to Value? I think those

00:36:45

three cases show. That would

00:36:48

have been a mistake because

00:36:49

one of the three or

00:36:51

two of the three the

00:36:52

three claims would have been

00:36:54

miss water. And I agree

00:36:58

with that last part and

00:36:59

taking on the second part

00:37:01

of the question and not

00:37:02

addressing the cases directly. I

00:37:04

think he's very important to

00:37:05

have flexibility in the in

00:37:07

the framework of international treaties

00:37:11

and documents. Especially in issues

00:37:16

of Damages that have such

00:37:18

such uncertainties and are based.

00:37:21

So you need to be

00:37:24

able as a stay negotiating

00:37:26

with another state to create

00:37:29

a treaty let there be

00:37:30

80 between Mexico and Peru.

00:37:33

Let's assume and and ended

00:37:37

up in the process of

00:37:38

negotiating the treaty even want

00:37:40

to say well in your

00:37:41

ass it is worth a

00:37:42

hundred dollars are going to

00:37:43

get a dollar if your

00:37:44

if your eyes are Israelis

00:37:45

were the million-dollar you're going

00:37:47

to get a hundred to

00:37:49

make that scale because you

00:37:50

want to give your investors

00:37:52

flexibility to are you before

00:37:54

three of you know, that

00:37:55

they are entitled to whatever

00:37:56

they are in. Go to

00:37:57

based on the facts of

00:37:58

the case and the language

00:37:59

of the tree. So you

00:38:01

have to as a negotiator

00:38:03

as a state negotiator. You

00:38:05

have to give yourself the

00:38:07

flexibility to protect your stakeholders

00:38:11

who in this case are

00:38:13

your investors? creating very hard

00:38:17

line rules to determine the

00:38:19

damages is normally a difficult

00:38:23

situation and it will put

00:38:25

the investors of the state

00:38:29

that is negotiating with the

00:38:30

other state in the disadvantage

00:38:32

and would be probably not

00:38:34

sufficiently protected in case their

00:38:36

investment is stationed in any

00:38:38

place any of the many

00:38:40

ways that they One word

00:38:46

on this. I I mean

00:38:47

I I was not involved

00:38:49

in any of your notes

00:38:58

and that you were going

00:38:59

to ask this question is

00:39:00

a wart. It strikes me

00:39:04

from standing rewards that there

00:39:07

any lack of specificity in

00:39:09

the treaty language on Damages.

00:39:11

It's not where the difference

00:39:12

is come from. I mean,

00:39:16

I knew more but the

00:39:18

one thing she went into

00:39:26

essentially lost cash flows over

00:39:32

a defined period of time

00:39:34

with more last time. I

00:39:40

have brought the difference between

00:39:41

the Assassin seem to be

00:39:44

some underlying assumption differences about

00:39:47

you no matter if you

00:39:51
can, try but I One

00:39:55
decision seem to bring in

00:39:56
profits. It would be me

00:39:57
and outside of Mexico and

00:39:59
the other one said that

00:40:00
wasn't a difference in view

00:40:08
of the to Trevino's on

00:40:09
the wall example. Yes, they

00:40:19
were different but on my

00:40:22
very quick reading of the

00:40:24
award I didn't see any

00:40:25
of that was related to

00:40:26
the Donald. If I had

00:40:30

one more thing I need

00:40:31

is a story of personal

00:40:33

loan when Peru negotiated its.

00:40:41

Back in the early 2000s

00:40:44

Peru found them sub of

00:40:47

the Peruvian negotiators, and I

00:40:49

was not one of them,

00:40:50

but I was working with

00:40:51

the with the ministry of

00:40:52

foreign trade. So I had

00:40:54

some in direct participation. They

00:40:58

were faced with the United

00:41:00

States model b i t

00:41:04

It was basically Here sign.

00:41:09

And when when the negotiations

00:41:11

took a little bit more,

00:41:13

you know that the form

00:41:15

of an actual negotiations negotiator

00:41:20

is found themselves receiving that

00:41:22

the that the responsive know.

00:41:24

We all want to change

00:41:25

that. Thank you very much

00:41:26

know we don't want him

00:41:27

prove that thank you very

00:41:28

much and that has been

00:41:30

the practice not only of

00:41:32

the United States but many

00:41:33

many economies in the in

00:41:36

the world that are exporting

00:41:38

Capital to less-developed countries and

00:41:41

who who are drafting the

00:41:45

street. He's so exporting capital

00:41:48

of countries have the ability

00:41:50

to kind of direct how

00:41:54

the drafting is going to

00:41:56

happen and how The terms

00:41:59

are going to end up

00:42:00

with so if they wanted

00:42:03

to include a specific language

00:42:07

determining what Justin Fair compensation

00:42:10

or adequate unfair compensation or

00:42:12

fair market value compensation actually

00:42:14

means they could do it,

00:42:15

but they have not done

00:42:16

it because they want to

00:42:17

give their as I said

00:42:18

before they want to give

00:42:20

their stakeholders flexibility to argue

00:42:25

in front of a tribunal

00:42:26

the possibility of hired them.

00:42:29

It's so so this is

00:42:31

for for Capital exporting States

00:42:34

and four countries who can

00:42:36
influence the drafting of a

00:42:38
treaty. This is all about

00:42:40
sex ability. And I think

00:42:42
that's the key for our

00:42:44
analysis of flexibility. I will

00:42:49
merge two questions here. in

00:42:55
one had with fine to

00:42:56
have the flexibility bug in

00:42:57
the other so that you

00:42:59
do not have to have

00:43:01
something that's a guidance for

00:43:03
example in the determination of

00:43:05
which will be their methodology

00:43:08

operation with Arista DCF discounted

00:43:11

cash flow that barely remember

00:43:14

market value for a book

00:43:19

a metal or a type

00:43:22

of guy that deals with

00:43:24

these or the interest rate

00:43:26

not given the size of

00:43:27

the claims that many countries

00:43:30

are facing from the tribunal

00:43:31

or the paradises have any

00:43:33

type of guy. When do

00:43:35

you need to use a

00:43:37

DCF or not or which

00:43:39

type of rain should be

00:43:41
used in the analysis of

00:43:49
Do you know that could

00:44:01
be advantageous and let me

00:44:04
be more specific? If you

00:44:07
look at the last few

00:44:08
years and startups, especially Tech

00:44:11
startups sprang up and everybody

00:44:14
was investing in these startups

00:44:15
in days, you know companies

00:44:20
that are worth over \$1000000

00:44:21
spring up here and there

00:44:23
and everybody was in a

00:44:24
frenzy to to get their

00:44:25

money in in into those

00:44:27

companies companies, which have not

00:44:29

generated profits, of course, some

00:44:32

not even revenues. They were

00:44:34

valued very high and they

00:44:37

have no track record and

00:44:38

so was a bit, you

00:44:40

know, emotion-driven. Let me say

00:44:42

that and what we've seen

00:44:43

in the last few months

00:44:44

is that the majority of

00:44:46

these companies are now about

00:44:49

10% of their peaks back.

00:44:51

So there's a huge variation

00:44:54

in in because there is

00:44:55

no track record over there

00:44:57

was no track record upon

00:44:58

which to establish a fair

00:45:00

value. Dad said I think

00:45:04

if you wanted to apply

00:45:06

the discounted cash flow measure

00:45:08

again, it's a perspective exercise,

00:45:11

but it has to be

00:45:12

based on something tangible long

00:45:15

enough. Of of operating where

00:45:18

you can actually predict what

00:45:19

this company has been generating,

00:45:21

you know, \$10 of profit

00:45:23

on a consistent basis over

00:45:24

the last few years. It

00:45:28

would have continued generating those

00:45:29

\$10 of profits going forward.

00:45:33

Maybe not one around 10

00:45:35

having a history of operation

00:45:39

give you a good safety

00:45:40

margin upon which to to

00:45:42

Basehor DCF, but if you

00:45:44

have a company with no

00:45:45

tracker that all perhaps the

00:45:47

better Avenue is to determine

00:45:49

how much were those assets

00:45:51

worth? How much money did

00:45:52

you actually best then talk

00:45:54

to her compensation could be

00:45:55

based upon that because nobody

00:45:58

honestly could predict what amount

00:46:01

of cash. 1 guidelines would

00:46:05

be to give a message

00:46:07

to specify a minimum period

00:46:09

of operation in order to

00:46:12

be able to apply the

00:46:13

TCF Centre and if you

00:46:15

don't have that track record,

00:46:16

can you have to go

00:46:17

to alternate that could be

00:46:19

a minimum viable? This is

00:46:24

where we're going to disagree

00:46:25

with the number. Of course.

00:46:35

Doing evaluation exercise is in

00:46:40

town before you have to

00:46:42

think about that bfmv itself

00:46:50

is a subjective measure because

00:46:52

people treated us at from

00:46:54

the business of forward-looking expectations

00:46:57

every day in the major

00:46:58

stock markets. Write the FMB

00:47:02

is a concept value is

00:47:04

a concept where I can

00:47:06

see and it may be

00:47:06

that my future projections. Do

00:47:10

not turn out to be

00:47:11

what we all thought they

00:47:13

wear at a given point

00:47:14

in time. We may end

00:47:15

up being bad or Worse.

00:47:16

That's why stock market stuck

00:47:19

to it. But the price

00:47:21

on a given day is

00:47:23

can be an objective, Even

00:47:27

if we're looking forward to

00:47:28

trying to respond to you.

00:47:33

Actually, there are some valuation

00:47:40

stand out there in the

00:47:42

World At Large the one

00:47:44

I'm going to point to

00:47:45

the IBS gets updated every,

00:47:51

you know, five ten years

00:47:54

later if I remember correctly.

00:47:59

Is the IDS itself is

00:48:08

free determine the value is

00:48:10

it for example the definition

00:48:12

of fair market value and

00:48:15

not found it. It's called

00:48:16

market value. It's at so

00:48:18

I clearly but the underlying

00:48:19

assumptions are it discusses me

00:48:21

to come up with their

00:48:24

market share market value for

00:48:26

what the standard does not

00:48:27

do is predetermined the valuation

00:48:31

method. It sounds because that

00:48:34

is true sock and I

00:48:37

sat on company-specific to do

00:48:39

so, there are some general

00:48:41

concepts that you can Define

00:48:43

like market value like the

00:48:45

hypothetical buyer framework and so

00:48:47

on but defining the methodology

00:48:51

out those two step too

00:48:53

far. Where are you? I

00:48:57

can see other people from

00:49:00

my perspective to the arbitrator

00:49:04

and I'm going to as

00:49:05

an arbitrator. I would realize

00:49:07

that these two gentlemen and

00:49:08

their positions and their different

00:49:10

perspectives on valuation will give

00:49:14

me any speculation and inspect

00:49:16

you what the value of

00:49:17

possibility of a value and

00:49:20

from there. I would assess

00:49:22

whether the value is accurate

00:49:24

based on the facts and

00:49:25

the law and that value

00:49:27

would be determined based on

00:49:30

the terms of the treaty

00:49:31

and that's the law. 3D

00:49:33

and any other pic of

00:49:35

a law that made that

00:49:36

make them into play at

00:49:37

some time some local and

00:49:39

domestic laws are applicable and

00:49:42

from their move on to

00:49:44

the German whether the facts

00:49:45

assist or determine whether either

00:49:49

one of the experts that

00:49:50

I have in front of

00:49:51

me are going to give

00:49:52

me a reasonable value to

00:49:54

determine what damages can I

00:49:56

assess against the state that

00:49:59

is also proving or providing

00:50:01

a damage assessment that is

00:50:03

lower and one side is

00:50:05

going to be lower than

00:50:06

the other Taxi just say

00:50:09

one more thing on DC

00:50:11
app for sale is not

00:50:18
limited to ask that are

00:50:20
already in existence and have

00:50:22
a chocolate. DC app is

00:50:26
becoming tools used by people

00:50:28
in the real world Niger

00:50:30
Capital intensive and back on

00:50:33
your actions certainly, but the

00:50:52
method itself is applicable. That's

00:51:01
how you can use GCF

00:51:02
for 1/6 and have never

00:51:04
generated. That's really the the

00:51:07
metrics that is used out

00:51:09

there in the real world.

00:51:10

I think the key word

00:51:11

here is speculation, right? How

00:51:15

speculative is your projection going

00:51:18

forward if you were mentioning

00:51:20

that everyday people make decisions

00:51:21

on the stock market based

00:51:24

on their views on the

00:51:25

future would be true. But

00:51:27

you have to benefit the

00:51:35

point you in a certain

00:51:35

way. Will they perform a

00:51:37

little better or a little

00:51:38

worse than they have in

00:51:39

the past has something occurred

00:51:41

that might improve their performance

00:51:42

going forward. So there are

00:51:43

facts and there is a

00:51:44

history upon which to base

00:51:46

your urine out. If you

00:51:50

if you have a company

00:51:51

or an asset that doesn't

00:51:52

have any history to it.

00:51:53

It's you know, whatever you

00:51:55

do. You project going forward

00:51:56

will become much more speculative

00:51:58

because you get the only

00:52:02
thing you know is whatever

00:52:03
your project is not going

00:52:04
to happen. So he better

00:52:05
it's going to be worse.

00:52:06
But I mean, whatever your

00:52:09
projected happens, then you should

00:52:10
work in a different line

00:52:12
of work would make more

00:52:14
money. Yes, I can understand.

00:52:28
We are running out of

00:52:29
time. Okay, so I would

00:52:33
say Okay, so One, you

00:52:39
know what you mean? I'm

00:52:40

not sure what you mean

00:52:41

by speculation of what you

00:52:43

mean by track record. There

00:52:45

are stocks are there in

00:52:46

the market where you see

00:52:47

a price or not? That

00:52:50

that hasn't been built. So

00:52:54

people are treated I can

00:52:55

put in real money at

00:52:56

8 rest buying and selling

00:52:58

shares at 4. What time

00:53:05

Chipotle in the real world?

00:53:06

That doesn't mean the same

00:53:07

set. I guess the real

00:53:28

question comes down to how

00:53:30

do you deal with wrist?

00:53:32

And we're DCF gets abused

00:53:34

is in two ways that

00:53:36

will get abused on the

00:53:38

Cleveland Side by somebody put

00:53:40

in the technique itself at

00:53:55

the question of how you

00:53:57

got to have em Clemente

00:53:58

to DCF. This is the

00:54:02

last question and it's just

00:54:04

a note. Google wants to

00:54:14

know no. Thank you so

00:54:26

much. We would have start

00:54:43

at 3 p.m. Thank you

00:54:47

so much for being here

00:54:49

today and see you in

00:54:51

the afternoon. Okay?