



Features and Challenges of International Construction Arbitration and Multiparty Construction Disputes *

Summary

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

The session from Washington Arbitration Week featured a panel discussion on the complexities of multi-party disputes in international construction projects, highlighting both the benefits and challenges involved. The panel included experts such as Josh Lindsey, Lillian Cory, Derek Carson, and Guy 3D, each bringing extensive experience in international arbitration, construction law, and dispute resolution.

The discussion began with Josh Lindsey addressing the nature of "mega disputes," which often arise from large-scale infrastructure projects involving multiple stakeholders. He emphasized that while size and complexity can lead to disputes, proactive collaboration among all stakeholders during the planning, procurement, and execution stages can mitigate risks. Key factors contributing to disputes include the integration of stakeholder objectives, clarity in contractual communication, and the management of complex interfaces among various project components.

The panelists collectively acknowledged the increasing intricacies of arbitration proceedings, particularly as projects grow larger and involve more parties. They discussed the importance of maintaining order in arbitration, managing expert testimony, and the necessity for active case management by tribunals to streamline the process.

Derek Carson highlighted the challenges of engaging multiple experts and the pitfalls of inconsistent methodologies that can confuse arbitrators. He advocated for early involvement of experts to address issues before they escalate, suggesting that effective communication and clear procedural guidelines can significantly improve arbitration outcomes.

Lillian Cory and Guy 3D added to the conversation by discussing the role of dispute resolution boards and the need for clear timelines and thresholds to prevent disputes from becoming overly complicated. They emphasized the importance of adaptive dispute resolution strategies tailored to the specific context of each project.



Overall, the session underscored the critical need for proactive measures, effective communication, and strategic planning in managing disputes in large construction projects, aiming to foster a collaborative environment that minimizes conflicts and enhances project delivery.

Authors

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Topics

WAW

Category

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Full Transcript

00:06:04

Are the benefits and drawbacks

00:06:07

of that, on the other

00:06:08

hand, parties are free to

00:06:11

modify those agreements and on

00:06:13

occasion that I haven't seen

00:06:14

it a lot in the

00:06:15

construction space, you can use

00:06:17

other theories of implied agreement



00:06:19

to bring in other parties.

00:06:21

I'm a little harder to

00:06:22

do that with a contractor

00:06:24

or subcontractor agency in the

00:06:25

like don't play the same

00:06:26

role. So I think we'll

00:06:29

talk about that a bit.

00:06:31

Well with that, let me

00:06:33

let me introduce our panel

00:06:35

before I do. So I

00:06:37

would like to say We'd

00:06:39

like this to be interactive.

00:06:40

Don't hesitate to raise your



00:06:42

hand to ask a question.

00:06:42

You tell us an experience

00:06:45

you had in the space

00:06:46

and it's better if we're

00:06:47

all interacting with each other

00:06:49

without speaking. First today, after

00:06:52

me will be Josh Lindsey

00:06:53

he's a partner in Kohl's,

00:06:55

international disputes practice, he specializes

00:06:58

in commercial disputes, particularly International

00:07:01

construction, and Engineering any particularly

00:07:03

well, suited for this field

00:07:05

because before becoming a lawyer,



00:07:06

he served as a nuclear

00:07:08

power engineer in the Navy.

00:07:10

So he's smarter than we

00:07:11

are. This is Josh just

00:07:15

recently concluded. A massive complex

00:07:18

multi claim hearing. I think

00:07:21

68 days ago when I

00:07:22

got 68 days of hearings,

00:07:24

got to be one of

00:07:26

the most complex reported, I

00:07:28

see, four seasons in the

00:07:29

space ever. After that, we

00:07:31

have Lillian, Cory, Lilly is



00:07:33

a senior associate at Steptoe

00:07:35

here in Washington. I try

00:07:36

to call Steptoe & Johnson.

00:07:38

Like all firms are under

00:07:44

of Arab, the association that

00:07:47

promotes and serves International arbitration

00:07:49

Community, with ties to your

00:07:51

world. We're just hearing about

00:07:52

how successfully has grown over

00:07:54

the last two years. Very

00:07:55

impressive, she's a native of

00:07:57

Aleppo Syria, which is in

00:07:59

the news recently. She's practice



00:08:01
International arbitration in New York,

00:08:03
DC, and Paris for over

00:08:04
ten years, and has extensive

00:08:06
experience in both construction and

00:08:08
Middle Eastern. And, as well

00:08:10
as other third, we have

00:08:12
Derek Carson, you'll be speaking

00:08:13
to us very recently, joined

00:08:15
Pillsbury as a partner in

00:08:18
the Houston office after nearly

00:08:19
25 years at another International

00:08:21
firm where he was the

00:08:23
head of that firms energy



00:08:24
to speech, practice and former

00:08:26
head of their construction Law

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Group is practice construction law

00:08:29
for his entire career representing

00:08:32
owners, contractors, subcontractors, and lots

00:08:34
of diverse projects. He's a

00:08:36
fellow of Chartered Institute for

00:08:37
arbitrators. This is an arbitrator

00:08:39
in addition to his advocacy

00:08:40
of think. He's going to

00:08:41
tell us about a recent

00:08:42
batter in the space today

00:08:44
and is practice currently involves



00:08:46
a variety of energy infrastructure

00:08:47
projects ranging from petrochemical plant

00:08:50
and pipeline projects to biofuels

00:08:52
and wind farm development. Last

00:08:54
but not least, is Guy

00:08:56
3D who is a senior

00:08:59
manager and the Construction Consulting

00:09:01
practice at exploding ink, which

00:09:03
is the largest US base

00:09:05
consulting, firm, specializing in engineering

00:09:08
and scientific failure, analysis and

00:09:10
prevention. She has over 20

00:09:12
years and both projects and



00:09:13
dispute. Resolution experience extensive on-site

00:09:17
experience working for both General

00:09:19
Contractors and owners, overseeing all

00:09:21
stages of the construction process

00:09:23
and have provided expert testimony

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in domestic, and international arbitration.

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Particularly in cases, involving construction,

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claim and schedule, delays, delays,

00:09:34
and cost overruns with that,

00:09:36
I turn to Josh and

00:09:38
you tell us a About

00:09:38
your massive dispute and some

00:09:40
lessons learnt thank you Greg



00:09:43

for that very kind introduction

00:09:45

and I will first start

00:09:47

by breaking the fundamental rule

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of any panel and contradicting

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something to moderator. Say that

00:09:52

I am definitely not the

00:09:54

most intelligent person at this

00:09:55

table and certainly not in

00:09:56

this room. So I would

00:09:57

just ask her what Greg

00:09:58

said. It didn't just invite

00:09:59

participation from everyone in the

00:10:02

room. I think we all



00:10:03
collectively benefit from different ideas

00:10:06
and perspectives, so if you

00:10:08
don't agree with something, that

00:10:09
one of us is dead,

00:10:09
that's too. Don't hesitate to

00:10:11
thoughts. So, there's a lot

00:10:15
of things we can talk

00:10:16
about around, you know, topic

00:10:18
of complex, diffuse multi clay

00:10:21
multi-party disputes and I thought

00:10:23
I might start the discussion

00:10:24
by talking about a, a

00:10:26
common source of these complex



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disputes. What I will brand

00:10:31

is Mega diffuse often come

00:10:33

from Mega projects, right? Huge

00:10:37

International. Investments in major pieces

00:10:41

of infrastructure that bring different

00:10:42

parties together from around the

00:10:44

world to build something spectacular

00:10:47

or large or really important

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rights. These Mega projects. I

00:10:53

want to be clear or

00:10:54

not inherently destined for Mega

00:10:57

dispute. I've certainly seen in

00:11:00

my practice places, where mega-projects



00:11:03

can avoid the fuse by

00:11:06

taking smart actions early and

00:11:08

throughout the project, no talk

00:11:10

a little bit about that,

00:11:10

but where you have a

00:11:13

mega dispute with lots of

00:11:14

claims, a, lots of parties

00:11:16

often times, there is a

00:11:17

mega-project behind it. And so

00:11:20

what are some of the

00:11:21

things that make mega-projects, you

00:11:24

know, uniquely at risk of

00:11:26

finding themselves in a massive



00:11:28

negative? You are where I

00:11:30

think everyone would agree except

00:11:32

maybe the lawyers in the

00:11:33

room that people want to

00:11:35

avoid these massive. Just you

00:11:36

because their costly and destroy

00:11:38

And ultimately strained resources that

00:11:41

could be used for the

00:11:42

better, the project itself. Now

00:11:45

you might be thinking well

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Josh isn't it? Obvious that

00:11:47

a big project is going

00:11:49

to end up with a



00:11:49

big dispute, right? Is just

00:11:51

a function of size and

00:11:52

complexity and then certainly the

00:11:55

size and complexity of the

00:11:56

project is one of the

00:11:57

factors. But that's as I

00:11:59

said, not all Mega projects

00:12:01

and up in disputes and

00:12:02

so I don't think that's

00:12:03

it. But I do think

00:12:05

that there are certain attributes

00:12:06

of mega mega projects that

00:12:09

can easily lend themselves to



00:12:11
really big complicated disputes, then

00:12:13
we can have an entire

00:12:14
panel on that, that's not

00:12:15
what this entire panels about.

00:12:17
So I'll just pick a

00:12:18
few of those factors one

00:12:20
that is in the planning

00:12:21
stage of the project, another

00:12:23
that's in the procurement stage

00:12:25
of the project and another

00:12:26
that's in the execution stage

00:12:27
at the planning stage. I

00:12:31
think one of the biggest



00:12:32

risk areas for a mega-project

00:12:34

is bringing together the stakeholders

00:12:38

and end-users of that project

00:12:39

and ensuring that their goals

00:12:42

and objectives for the project

00:12:43

are not only understood but

00:12:45

integrated into the planning and

00:12:47

design for the project and

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this is true regardless of

00:12:51

what kind of project you're

00:12:53

dealing with a big oil

00:12:54

and gas facility hospital Airporter

00:13:00

Seaport. All of these big



00:13:02
investment projects typically have a

00:13:06
lot of different interested parties,

00:13:08
they can be government parties,

00:13:10
they can be the end

00:13:12
users private and companies that

00:13:13
will use the facility. Once

00:13:16
it's completed, the investors that

00:13:18
are paying for the project

00:13:19
lot, a long list of

00:13:21
different parties and oftentimes, those

00:13:23
parties have different objectives, different

00:13:27
requirements. For one day need

00:13:29
to get out of that



00:13:29

project. And what I've seen

00:13:32

is that typically it's not

00:13:36

the entire group of stakeholders

00:13:37

and end users who are

00:13:39

tasked with overseeing, the Livery

00:13:41

of the project right? Often

00:13:43

times. It's maybe a subset

00:13:45

of those of, of those

00:13:46

of stakeholders that is actually

00:13:48

kind of guiding the project,

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and that means that it

00:13:52

takes and require it as

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requires a proactive collaboration, and



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discussion with all of the

00:13:58

stakeholders in all of the

00:13:59

end users, to make sure

00:14:01

that their requirements are understood

00:14:03

and integrated into the planning.

00:14:06

And design. I've seen an

00:14:08

instance where the master planning

00:14:10

and design for a project

00:14:12

was largely completed off site

00:14:14

and not just off site,

00:14:15

but on the other side

00:14:16

of the world, okay? And

00:14:18

there's nothing wrong with doing



00:14:19

design, work back in the

00:14:20

home office, the architect home

00:14:22

office wherever, but there needs

00:14:24

to be that on site

00:14:25

in location engagement with the

00:14:27

stakeholders in my opinion because

00:14:29

what happened in this particular

00:14:31

Project is the project was

00:14:33

planned and went through a

00:14:35

concept and preliminary design construction

00:14:38

started to get underway with

00:14:39

further design being conducted by

00:14:42

the contractors. And it wasn't



00:14:44
until building started going up

00:14:45
at some of the end

00:14:46
user. Who said, hey, hold

00:14:47
on a second. That's not

00:14:49
what I need at that

00:14:51
facility is not going to

00:14:52
support my goals and it's

00:14:54
because they had never sat

00:14:56
down at the beginning of

00:14:57
the project and understood what

00:14:58
those girls needed to be

00:14:59
documented them and signed off

00:15:02
on them. So a way



00:15:04

to mitigate that is to

00:15:05

prepare a project or a

00:15:07

program of requirements. Document name

00:15:10

is less important than what

00:15:11

it stands for which is

00:15:13

a, an explanation of what

00:15:14

every and user needs and

00:15:16

a documentation of that. And

00:15:19

a sign off by all

00:15:20

of the parties showing what

00:15:22

what? What's been agreed? Next

00:15:27

in the procurement stage in

00:15:29

here. I'm really talking about



00:15:30
thinking how you will deliver

00:15:33
the project. So big picture

00:15:34
procurement. What's the project delivery

00:15:36
structure? Going to be a

00:15:39
lot of different ways to

00:15:40
deliver mega-projects. Most often those

00:15:45
delivery structures tend to be

00:15:46
somewhat complex because you do

00:15:48
have a lot of different

00:15:49
players that are needed to

00:15:51
come together to deliver a

00:15:52
major project. And we're a

00:15:54
disconnect going to rise is



00:15:57

between the contractual lines of

00:16:00

privity, the contractual relationship between

00:16:02

parties and the lines of

00:16:04

communications between parties. Those are

00:16:06

not always the same, sometimes

00:16:07

they are right, but take

00:16:09

out an EPC M structure.

00:16:11

For example, where you have

00:16:13

a contractual relationship between a

00:16:15

project manager and a motor

00:16:19

But then you have separate

00:16:21

contractual relationships between the owner

00:16:23

and different contractors and subcontractors.



00:16:25

And so for just because

00:16:28

you have different contractual lines,

00:16:29

doesn't mean it's still not

00:16:30

important to have communication lines

00:16:33

in a particular between your

00:16:34

project manager and all of

00:16:36

your contractors so sitting down

00:16:39

at the beginning of a

00:16:39

project and understanding where there

00:16:41

may be those disconnects in

00:16:43

introducing Clarity into the contracts,

00:16:46

into the project execution plan,

00:16:48

for how that communication will



00:16:50

flow and help to avoid

00:16:51

a lot of misunderstanding and

00:16:53

miscommunication on the projects with

00:16:55

which on a mega-project and

00:16:57

lead to major problems, that

00:16:59

are only magnified by the

00:17:01

size of complexity of the

00:17:02

project. Finally interfaces on Mega

00:17:08

projects are so so important.

00:17:10

And so, so complex, and

00:17:13

so when I speak of

00:17:14

interfaces, I'm talking about spatial

00:17:16

interfaces. So space being doing



00:17:19

work in the same physical

00:17:20

area, temporal or our time,

00:17:24

and our faces being wear

00:17:26

different work. Front depend on

00:17:29

one another for achieving their

00:17:30

schedule. One piece of work

00:17:33

by the contractor. A has

00:17:34

to be completed before. Contractor

00:17:36

be can come in behind

00:17:37

and do the work that

00:17:38

that they need to do

00:17:40

and then the other interface

00:17:42

I would cost systems interface



00:17:44

and this is more and

00:17:45

more important with technological advancements

00:17:48

that are integrated into infrastructure

00:17:50

projects using the hospital example.

00:17:53

Again, a hospital really is

00:17:55

a series of Highly advanced

00:17:57

technology and different systems that

00:17:59

are all stitched together and

00:18:01

put into the envelope of

00:18:03

building. And where at in,

00:18:05

on these big Mega projects.

00:18:07

I'm so when those windows

00:18:15

interface is don't marry up,



00:18:17
which often happens, it's going

00:18:19
to happen for these interfaces.

00:18:21
Don't link up the way

00:18:22
there planned. That's where you

00:18:24
can have a disruption in

00:18:25
a delay that can pour

00:18:28
over and starts impact all

00:18:30
of the other work front

00:18:31
around it. And just as

00:18:33
a snowball rolling down a

00:18:35
hill, those interface problems get

00:18:37
bigger and bigger and bigger,

00:18:37
if they're not for actively



00:18:39
managed to mitigate that in

00:18:42
my view. And I'd be

00:18:43
interested in my view. There

00:18:46
has to be a single

00:18:47
point of management that oversees

00:18:49
the interfaces. And some may

00:18:51
say, well that's too big

00:18:52
of a job. We need

00:18:53
are in each individual contractor.

00:18:55
Has their part to do

00:18:57
to manage their interfaces with

00:18:58
their counterparts and I don't

00:19:00
disagree with that but there



00:19:01
has to be in my

00:19:02
experience. And in the individual

00:19:05
entity that is overseeing the

00:19:07
interfaces and conducting the orchestra.

00:19:09
Because without that oversight inherently,

00:19:13
no one's going to understand

00:19:14
the big picture. So I

00:19:17
have some other things I'd

00:19:18
like to say, but I

00:19:19
don't want to take them

00:19:20
all the time from the

00:19:21
other panelists. So I'll pass

00:19:23
the Baton and then maybe



00:19:24

I can chime in with

00:19:25

some other thoughts in terms

00:19:29

of having like one, I

00:19:39

think it needs to be

00:19:40

at a project manager level,

00:19:42

and depending on the structure

00:19:45

of the given project, that

00:19:46

could be on the other

00:19:47

side. Or it could be

00:19:48

on a consultant side or

00:19:50

project manager side PCI environment

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in Alton will be the

00:19:55

EPC contractor, but it needs



00:19:57

to be somebody and coming

00:19:59

back to my mind coming

00:20:00

to number two of those.

00:20:01

Three point is at the

00:20:02

procurement stage. Sitting down here

00:20:04

figuring out. How do we

00:20:05

want to structure delivery of

00:20:07

this? That's when that conversation

00:20:09

needs to happen, you need

00:20:10

to determine who is going

00:20:11

to be the conductor One

00:20:14

quick. Follow-up question, before we

00:20:16

passed done? How much of



00:20:18

your practice focuses on this

00:20:19

portion of the project or

00:20:22

as much of it as

00:20:25

I can because because this

00:20:28

is one of the points

00:20:29

that that I would save.

00:20:31

But I think one of

00:20:33

the other ways you can

00:20:34

mitigate on Mega projects from

00:20:36

of getting these massive disputes

00:20:37

at the end of the

00:20:38

project is to get people

00:20:41

like all of us involved



00:20:43
earlier in the project, right?

00:20:44
Because if if you can

00:20:46
nip small problems in the

00:20:49
bud before they become big

00:20:50
problems, it makes a big

00:20:52
difference. So I would like

00:20:53
to say that even more

00:20:54
of my practice, the features

00:20:56
that then it does certainly

00:20:58
a fair bit of it.

00:20:58
But there's always in my

00:21:00
opinion benefit from evolving center

00:21:03
part of your practice. That's



00:21:14

that's that's a fair question.

00:21:16

I think it's probably more

00:21:17

so clients who have been

00:21:19

through a dispute with us.

00:21:20

But fortunately with weave then

00:21:23

been able to do is

00:21:24

established relationship with clients in

00:21:26

and of service will be

00:21:27

called project Council right? Where

00:21:30

they bring things to us

00:21:32

to our attention sooner and

00:21:34

we work through that through

00:21:35

various ATR methods or even



00:21:37

less formal than that getting

00:21:41

involved in being there at

00:21:43

the table, liquid change orders,

00:21:45

be negotiated. And just making

00:21:47

sure that the language the

00:21:48

client thinks, what they think,

00:21:50

they're getting any change orders,

00:21:51

actually, what they're getting is

00:21:53

is tremendously valuable to mention

00:22:01

sex, to be there. When

00:22:03

the contact itself as being

00:22:04

negotiated, although usually it's you

00:22:07

get to call a sign.



00:22:07

This what you think? So

00:22:19

thank you all for being

00:22:20

here. Team off of what

00:22:21

Josh was just saying. Those

00:22:24

Mega projects that we're seeing

00:22:25

the second he gets them.

00:22:27

At least we make them

00:22:28

bigger and they become massive.

00:22:33

Like what we're seeing in

00:22:34

Saudi Arabia is something we've

00:22:36

never seen before Naomi projects.

00:22:38

Those massive massive project that

00:22:41

in all likelihood a few



00:22:43

years down, the line are

00:22:44

going to leave for those

00:22:45

giant, the shoes that might

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happen and one of the

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areas that we've been struggling

00:22:52

with on a council perspective,

00:22:54

as these projects gets bigger

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and bigger is, how do

00:22:57

we make the proceedings? Not

00:23:01

a nightmare for everyone and

00:23:04

two things that I want

00:23:05

to focus on our one.

00:23:07

When we have those projects



00:23:09

with multiple parties, multiple contracts,

00:23:11

multiple issues will diffuse, how

00:23:14

do you maintain a proceeding

00:23:16

that has a semblance of

00:23:17

order. And then how do

00:23:19

you deal with the other

00:23:21

facts factor? That you have

00:23:23

an arbitration, which are your

00:23:24

experts? I'm sure we're going

00:23:25

to hear from Skytree her

00:23:26

perspective, from that point of

00:23:29

view, Council point of view.

00:23:31

How do you manage this?



00:23:32

And we I mean long

00:23:34

gone are the days where

00:23:35

I think we could still

00:23:36

tell arbitration of game disc

00:23:38

faster, cheaper alternative, or not

00:23:41

in there. But we have

00:23:43

made some progress in a

00:23:45

number of areas to try

00:23:47

and keep things under control,

00:23:48

right? We Now, have we

00:23:53

have tribunals who actually limits

00:23:56

the pages, that a party

00:23:59

can submit sometimes more successfully



00:24:01

than others. It pales in

00:24:03

comparison to 68 days of

00:24:05

hearing, but I just wrapped

00:24:07

up a four-week hearing where

00:24:09

we had, not only reason

00:24:11

closing we had oral closing.

00:24:13

Then two rounds of post

00:24:15

here in Greece, where the

00:24:17

opposing side, submitted a post-hearing

00:24:20

brief of 550 pages. It's

00:24:23

a lot. I mean, what

00:24:28

is a tribunal has engaged

00:24:30

with every paragraph and in



00:24:33

points made in that was

00:24:34

hearing, it is another matter.

00:24:36

And when these projects are

00:24:39

getting bigger and bigger and

00:24:41

more parties are getting involved,

00:24:42

one of the things that

00:24:43

has been trying in the

00:24:46

past two years, is all

00:24:47

information and slender. Folks are

00:24:59

on the zoo may be

00:24:59

taking you some Salve that

00:25:00

might be more or less

00:25:11

in some form will allow



00:25:13
for several disputes to be

00:25:15
heard at once or allow

00:25:16
for joining parties later on,

00:25:18
you should be added a

00:25:19
few and it's been advertised

00:25:21
as being of particular relevance

00:25:22
to the construction industry because

00:25:25
we have these complex sexual

00:25:27
patterns, with many stakeholders more

00:25:30
involved. And you think for

00:25:32
once a contractor has brought

00:25:33
a claim in their claims

00:25:34
Upstream Downstream we might as



00:25:36

well hear them together because

00:25:37

it's going to be more

00:25:38

efficient. So everyone, we don't

00:25:39

need to re-litigate the same

00:25:40

issue in front of multiple

00:25:42

for a you know create

00:25:43

the risk of inconsistent decisions

00:25:45

additional costs and Evans going

00:25:48

to be exhausted. You can

00:25:49

have a project that's 18

00:25:50

months. The bills and then

00:25:53

you have 56 years after

00:25:55

work so that I think



00:25:57

was the idea in practice.

00:25:59

I think what we're seeing

00:25:59

is. It's not a great

00:26:02

one and it's one where

00:26:04

Council. I think we'll have

00:26:05

it tends to be a

00:26:06

little bit risk-averse. Or Council

00:26:08

are very wary of the

00:26:11

implications. And so the numbers

00:26:12

of the institutions are starting

00:26:14

to come out, or 870

00:26:22

new cases, registered his location.

00:26:25

And that's at keeping, in



00:26:27

mind, that construction cases are

00:26:30

usually, but a quarter to

00:26:32

a third of all ICC

00:26:33

cases and it's the same

00:26:34

figures for 2020 to 2021.

00:26:36

It's one maybe at the

00:26:38

most recent decisions and so,

00:26:43

1 things to be mindful

00:26:45

of, from a council perspective,

00:26:47

is it? We all go

00:26:49

to our clients and say

00:26:49

these new institutional rules have

00:26:52

these provisions. And then you



00:26:53

want to be mindful and

00:26:54

hunger, crafting your contract, you

00:26:56

think you want or do

00:26:57

not want consolidation, or do

00:26:59

Under the available, but it's

00:27:02

something that's very hard to

00:27:03

predict in advance. And so,

00:27:05

you know, what do you

00:27:05

do when you're signing the

00:27:06

EPC contract? How do you

00:27:08

know whether or not you're

00:27:09

going to want these Provisions

00:27:12

to be available to or



00:27:13

not? And I would have

00:27:16

handed hands with that is

00:27:18

when these issues are getting

00:27:19

more and more complicated, and

00:27:21

you have these multiple parties.

00:27:23

some of these parties are

00:27:24

going to be engaging their

00:27:25

own experts only has Destruction

00:27:32

of what used to be

00:27:32

to science, teach arbitration but,

00:27:35

you know, you can have

00:27:35

three or four respondents but

00:27:37

generally speaking don't have the



00:27:39

same counsel for them and

00:27:40

they'll coordinate their claims and

00:27:41

more or less. I presented

00:27:43

unified picture to the tribunal.

00:27:45

You're not getting cases where

00:27:47

you have multiple parties, no

00:27:49

clear sign. And then within

00:27:51

each side, there's a different

00:27:54

presentation of a case to

00:27:56

the tribunal. As we recently

00:27:57

concluded a case where the

00:27:59

opposing party on the opposing

00:28:01

side had several parties And



00:28:04

on the issue of delay,

00:28:05

each submitted an expert report

00:28:08

that had a different methodology.

00:28:09

Different data said, different result.

00:28:14

The tribunal who now has

00:28:16

two. So point a finger

00:28:17

in the wind, then just

00:28:18

think, which one are they

00:28:19

going to take on behalf

00:28:20

of that side of the

00:28:22

table? Let alone all of

00:28:23

the parties and those that

00:28:26

we had institutionally in terms



00:28:28
of consolidation enjoying her, we

00:28:30
haven't had that many in

00:28:31
terms of experts, we've had

00:28:32
practically speaking tribunals have trying

00:28:35
to put order into expert

00:28:38
reports one way or another

00:28:40
hot. Tubbing was the one

00:28:42
that everybody speaks up. Something

00:28:44
is really something that comes

00:28:45
at the end of the

00:28:46
process. It doesn't really make

00:28:47
it much cheaper and faster

00:28:49
and more efficient. It's the



00:28:51

one thing that I wanted

00:28:52

to talk about it. The

00:28:52

construction area more, specifically very

00:28:57

quickly is active case management

00:28:59

from the tribunal early on

00:29:01

in the process. So who

00:29:02

were these very complicated disputes

00:29:05

that have just concluded? One

00:29:07

area that has, that was

00:29:08

maybe arguably the most important

00:29:10

one was the fact that

00:29:12

the tribunal was actively managing

00:29:14

expert in a construction dispute



00:29:16

early, on, in the process.

00:29:18

So, narrowing down, what expert

00:29:20

reports cover, what? We know

00:29:23

how many experts we have

00:29:24

an attitude? Do we really

00:29:25

need an expert on topic

00:29:28

X? That one party thinks

00:29:30

is important but everybody else.

00:29:31

Agrees is completely irrelevant and

00:29:33

immaterial to this you, or

00:29:35

are we now forcing parties

00:29:36

to have the calculus. Well,

00:29:39

if someone else is going



00:29:40
to be submitting, an expert

00:29:41
report on this issue, I

00:29:42
might as well admit one.

00:29:43
Otherwise, all of my points

00:29:44
are going to go on

00:29:45
and the cost and complexity

00:29:48
increases. I'm so active case

00:29:51
management. I think it's very

00:29:53
important to do and try

00:29:55
to do well. So it's

00:29:57
not just, it'll convening a

00:30:00
meeting with a tribunal early

00:30:02
on, in the process, discuss



00:30:03

the scope. And number of

00:30:05

experts, it's also making sure

00:30:07

that the tribunal has the

00:30:08

chance to make early rulings

00:30:10

potentially all the methodology that

00:30:11

the experts use. There's no

00:30:13

use in having a three-year

00:30:14

proceeding with expert report after

00:30:17

X report after experts report

00:30:18

that are parallel tracks with

00:30:22

different methodologies, different data, sets

00:30:23

different assumptions. Until we're experts,

00:30:28

actually has to sit down



00:30:29

narrow the scope of their

00:30:31

reports and talk to each

00:30:32

other potentially through the use

00:30:34

of joint expert reports. And

00:30:36

actually tell the tribunal early

00:30:38

on. These are the methodologies.

00:30:39

We agree on these are

00:30:41

the things we disagree about.

00:30:42

It's a way of making

00:30:44

the process actually goes smoothly.

00:30:46

Sorry. We're talking potential. I

00:31:00

mean, it's up to the

00:31:00

parties of the tribunal to



00:31:01

say Lord as they see

00:31:03

fit in this case. So

00:31:06

that early to say, it's

00:31:08

not a very unorthodox construction

00:31:10

project, we know that the

00:31:11

issues here are delay Quantum

00:31:14

extensions of time and in

00:31:16

that case has covid related.

00:31:18

So we know what the

00:31:19

areas of experts opinion of

00:31:21

experts reports needed our. And

00:31:24

here's what we're going to

00:31:25

focus on and these issues



00:31:27

that are secondary and in

00:31:30

a one-party, doesn't think are

00:31:31

relevant to the dispute. You

00:31:33

can have a hearing and

00:31:34

we did in front of

00:31:35

the tribunal to argue why

00:31:37

there should, or should not

00:31:38

be expert evidence adduced on

00:31:40

that points. And in that

00:31:42

case, expert evidence was found

00:31:44

to be unnecessary. We were

00:31:46

able to dispense with three

00:31:48

years and hundreds of thousands



00:31:50

of dollars in costs. Foreign

00:31:52

experts report that the tribunal

00:31:53

from the very beginning had

00:31:55

said was immaterial to the

00:31:56

end of the dispute. It

00:32:00

was at the time that

00:32:01

the terms of reference but

00:32:02

it was in a different

00:32:04

I don't think I can

00:32:06

pass on to. This is

00:32:08

greater than those preliminary evidentiary

00:32:13

rulings. Were they just rolled

00:32:14

into the final award and



00:32:17

actually helped us along the

00:32:19

way narrow down the data

00:32:21

sets, because one thing that

00:32:23

we didn't want to do

00:32:24

in this dispute which very

00:32:25

often happens is the experts

00:32:27

issue, their joint, their expert

00:32:29

reports with the feeding grounds

00:32:32

using completely different data sets

00:32:34

and so what we were

00:32:34

able to do is more

00:32:36

able to have the tribunal

00:32:37

order for document production, before



00:32:39
him before the experts submitted,

00:32:41
any of their expert reports.

00:32:43
So there was no expert

00:32:44
report submitted to the state

00:32:45
exchange with all of the

00:32:52
relevant data that the expert

00:32:55
would would use for their

00:32:56
report then and only then

00:32:58
did the experts start submitting

00:32:59
expert reports based on the

00:33:03
same data. Good, that it

00:33:05
was the same. The methodology

00:33:07
said, the experts wanted to



00:33:08

were different and that was

00:33:10

the subject of their reports

00:33:12

and at the very end

00:33:13

before the hearing was a

00:33:14

joint. Expert reports that each

00:33:16

set of experts in their

00:33:18

discipline had to go through.

00:33:19

And so far example, on

00:33:21

Quantum, even though there have

00:33:24

been multiple rounds of extra

00:33:26

bleeding, it was only in

00:33:27

the joint expert report that

00:33:28

we were able to get



00:33:29

the other side's experts to

00:33:31

say, for costs. The complete,

00:33:34

I wasn't actually able to

00:33:35

verify my own parties cost

00:33:38

cuz I know I've seen

00:33:40

some invoices. I haven't seen

00:33:42

them all and I don't

00:33:43

know that work is actually

00:33:44

been done so I can,

00:33:45

you know, number crunch but

00:33:47

that's basically all I can

00:33:48

do and that will look

00:33:49

him up in the Joint



00:33:50

Task Force report. The origin.

00:33:54

What was the origin of

00:33:56

the process of deciding on

00:33:59

the procedure? Did the did

00:34:01

the panel say we want

00:34:03

to know everything down or

00:34:04

did you or whatever counsel?

00:34:06

And I think it was

00:34:07

both counsel because of the

00:34:09

War Stories. Everybody had gone

00:34:10

through knowing this can be

00:34:13

done and it can work

00:34:14

and it was a collegial



00:34:15
relationship that we have an

00:34:16
opposing counsel and everybody knew

00:34:18
what the issues in this

00:34:20
case was and we thought

00:34:21
one of the ways we

00:34:22
can make this easier faster

00:34:23
cheaper for everyone as let's

00:34:25
just reduced the but let's

00:34:26
narrow it down and try

00:34:28
to make it. You don't

00:34:30
go and try to deal

00:34:32
with it early on and

00:34:33
asked if we thought the



00:34:34

project as opposed to leave.

00:34:35

It's the end of the

00:34:36

year and when everybody's exhausted

00:34:37

and if I do, not

00:34:39

engage with the support until

00:34:42

long past any of these

00:34:44

issues, but I look forward

00:34:51

to the day when someone

00:34:52

does, I think we're all

00:34:57

the increasingly, but I will

00:35:06

say I've tried suggesting some

00:35:09

do not all of those

00:35:10

and frankly just hit a



00:35:11

stone wall with the opposing

00:35:13

party and the tribunal just

00:35:14

doesn't want to be held

00:35:16

if Island anybody's due process.

00:35:17

You know, it works better

00:35:20

with Council trying to the

00:35:22

civil law tradition that it

00:35:24

doesn't, cuz I feel like

00:35:26

all of us training, I

00:35:27

feel like it's a lack

00:35:29

of zealous. I can see

00:35:30

if we don't try to

00:35:31

control the process as much



00:35:32

as possible, but if there's

00:35:33

that sense of the tribunal

00:35:35

is be fact-finder and bleeds,

00:35:37

a little bit more of

00:35:38

the investigation into the case.

00:35:41

It seems like parties might

00:35:43

be a little bit more

00:35:43

willing. This idea involving experts

00:35:48

early and I'm a big

00:35:50

advocate for involving experts Frida's

00:35:52

viewed as well. I think

00:35:55

if you engage a truly

00:35:57

independent expert and the instruction



00:35:59

is assess this, this potential

00:36:03

exposure or my potential claim.

00:36:05

That's really informative to the

00:36:08

party. That is instructed, the

00:36:09

expert. I also, I've seen

00:36:12

what you've described on in

00:36:14

proceedings, and I think with

00:36:16

all of the intention of

00:36:17

narrowing issues in dispute about

00:36:20

to your point, it really

00:36:21

requires arbitrators who are willing

00:36:23

to to enforce that in

00:36:26

some way I am and



00:36:28
that maybe that enforcement is

00:36:29
as simple as a party's.

00:36:32
I would like this to

00:36:33
be done, right? Rather than

00:36:34
just putting in the procedural

00:36:35
order and never speaking of

00:36:37
it again, because one party

00:36:39
is negatively not going to

00:36:41
want to participate in that

00:36:42
process. If they're, you know,

00:36:46
internal view is that expert.

00:36:48
Talking about the issues is

00:36:49
not helpful, right? Well, first



00:36:58
of all, I can think

00:36:58
of washing arbitration week for

00:37:00
having us here today and

00:37:01
invited me to participate this

00:37:02
panel. I really enjoyed getting

00:37:03
to meet my other panel

00:37:05
members and I'm thankful to

00:37:07
be your ankle and great.

00:37:09
Thank you for that. Nice

00:37:09
introduction letter. That guy is,

00:37:11
but it fits me well

00:37:13
in the event. So I

00:37:17
was just old papers. I



00:37:22

written in a chemical cost

00:37:23

to articles, I wrote for

00:37:25

corporate counsel, I should, I

00:37:26

be at a couple of

00:37:27

colleagues wrote for a corporate

00:37:28

counsel, back in 2015, on

00:37:31

multi-party disputes, the consolidation, join

00:37:36

your issues and the arbitrator

00:37:37

selection issues, they realized. While

00:37:39

everything I have to say

00:37:40

about this, I said back

00:37:41

in 2015 and there is

00:37:46

one thing that I did



00:37:47

not say about this, then

00:37:48

I have had a chance

00:37:49

to reflect on that. I

00:37:51

think would be helpful in

00:37:53

that is In these large

00:37:55

disputes. It's natural. The natural

00:37:59

tendency of the lawyers involved

00:38:01

particularly cuz we're advert. We

00:38:03

know we're risk-averse. You don't

00:38:04

want to engage in proceeding.

00:38:06

It's not going to get

00:38:07

the car client. All the

00:38:09

relief they can possibly get.



00:38:11

So work naturally inclined to

00:38:14

add more parties, clients are

00:38:16

inclined for the reasons. That

00:38:18

Lillian said to try to

00:38:19

have one big proceeding for

00:38:21

let's just get this thing

00:38:22

resolved and there's good reasons

00:38:25

for all of that. I

00:38:28

would just caution that one

00:38:30

thing you need to keep

00:38:31

in mind as you're fighting

00:38:32

your clients on, this is

00:38:33

adding parties is necessarily going



00:38:37

to add to the complexity

00:38:38

of the preceding just in

00:38:40

terms of something simple as

00:38:43

just getting everything on the

00:38:44

counter. Cuz now you're dealing

00:38:45

with more witnesses probably longer

00:38:48

hearing you may be doing

00:38:50

more sets of counsel now,

00:38:51

then you have before. And

00:38:53

so was just a practical

00:38:53

aspect, did the bigger the

00:38:56

dispute, get some more parties

00:38:57

that are part of it,



00:38:58

the tougher it is. You're

00:39:01

also opening yourself up to

00:39:02

more of the I know.

00:39:03

And that's really what I'm

00:39:05

sitting as arbitrator. I had

00:39:09

a case that that was

00:39:10

exactly what happened was. Like

00:39:12

the unknown things that came

00:39:14

to bite the parties in

00:39:15

this really disrupted the arbitration.

00:39:17

In that case, it was

00:39:20

a dispute over the construction

00:39:23

of an energy infrastructure project.



00:39:25

There was a joint venture

00:39:27

on one side and a

00:39:30

single contacting you to be

00:39:31

on the other side and

00:39:32

then there's some Financial guarantees

00:39:34

and play. There were some

00:39:36

other third parties that has

00:39:38

interest in it. And so

00:39:39

rather than just having a

00:39:41

dispute between the owner and

00:39:42

the contractor, let's have this

00:39:43

fight about what this happen

00:39:45

on this project and let's



00:39:46

figure out who's liable. We

00:39:47

had all these ancillary is

00:39:49

Robert Raider. I understood exactly

00:39:50

why they departed chosen to

00:39:53

structure their arbitration with these

00:39:55

are very sophisticated lawyers on

00:39:58

both sides. Excellent. International relations

00:40:01

practitioners, who is clear that

00:40:03

they did one. They all

00:40:05

had a goal in mind

00:40:06

and it was obvious when

00:40:07

it was as you ever

00:40:09

say. She progressed first, one



00:40:11
of those tangential parties entered

00:40:13
into insolvency. Pause arbitration. Start

00:40:18
the arbitration back up now

00:40:20
from the other side, and

00:40:21
if your bankruptcy in the

00:40:22
U.S, has the arbitration and

00:40:25
then eventually could start it

00:40:26
back up, and then it'll

00:40:28
be interrelated. State Court litigation

00:40:30
had to do some of

00:40:31
that in the long. And

00:40:33
the short of it is

00:40:33
is too because the party



00:40:35

is had decided to involve

00:40:38

all the parties tangentially around

00:40:40

the dispute. They ended up

00:40:42

in fact, really delaying and

00:40:45

two point. If you don't

00:40:46

think in terms of getting

00:40:47

resolved, it could have been

00:40:50

a one year arbitration, maybe

00:40:52

18 months, the original, you

00:40:54

know, our original is a

00:40:56

pallet. I want to send

00:40:57

it from the time they

00:40:58

filed it. When we reach



00:40:59

at set, the merits hearing

00:41:00

was about 14 months and

00:41:02

it could have been resolved

00:41:04

in that. Instead, she was

00:41:06

later, it still wasn't resolved.

00:41:08

And it was because of

00:41:09

those decisions to involve all

00:41:10

those, Ansel, a part of

00:41:11

the maybe those bankruptcy would

00:41:13

have still had some impact.

00:41:14

I don't know, I didn't

00:41:15

dig into all of that

00:41:17

wasn't my job and I



00:41:17

would figure that out, but

00:41:19

I did know. I guarantee

00:41:21

those parties are they thought

00:41:23

at the beginning, when I

00:41:25

first started that process, we

00:41:27

can get this thing resolved

00:41:28

in 14 months if we

00:41:30

just keep it to what

00:41:31

fight is really about and

00:41:33

then let the who's going

00:41:34

to financially pay for this

00:41:35

award and once it's entered.

00:41:37

So that's a fight you



00:41:38

can have for you can

00:41:39

reserve that for a different

00:41:40

day and sometimes it makes

00:41:41

sense to do so. And

00:41:43

so that's the word of

00:41:45

caution is your how do

00:41:46

you get is to is

00:41:47

to be careful about who

00:41:50

you want to add to

00:41:50

your arbitration and how but

00:41:52

I guess it's hard for

00:41:53

us to do particularly up

00:41:55

front when the parties, our



00:41:57

first coming together to to

00:41:59

do whether to make a

00:42:00

project or you know, if

00:42:02

you just building a standard,

00:42:03

you know, you know, a

00:42:06

Bridge Project Runway. Whatever kind

00:42:09

of typical construction project. There's

00:42:13

going to be some push

00:42:14

and pull right there at

00:42:15

the beginning. Typically the contractor

00:42:19

is a masseuse want to

00:42:20

be able to pull everybody

00:42:22

cuz like the designers messed



00:42:24

this up. It's a typically

00:42:31

there's that and then there's

00:42:32

the owner you may have

00:42:33

to push back the owners

00:42:34

may be thinking about this.

00:42:36

I want one throat to

00:42:38

choke idea, I just fight

00:42:39

it's so there's that Push

00:42:43

Pull at the beginning and

00:42:46

so I think what we

00:42:47

need to do is Council

00:42:48

is trying to give our

00:42:49

client maximum flexibility up front



00:42:52

to be able to deal

00:42:54

with the dispute becomes later

00:42:56

and so the way we

00:42:57

do that is we have

00:42:59

to have some kind of

00:43:00

coordinated system or making sure

00:43:02

that you're coordinated and all

00:43:04

the dispute resolution Provisions sitting

00:43:07

together. Now, if you have

00:43:08

clients are working with the

00:43:09

fidic contracts, those should work

00:43:10

typically it depending on how

00:43:12

much people start fiddling with



00:43:14

them, but my practice is

00:43:17

tipping. A lot of bespoke

00:43:19

EPC and bpcm agreements. And

00:43:23

so it's really at that

00:43:25

point in, you know, on

00:43:27

those too far. Is the

00:43:28

owner of the contractor. We're

00:43:29

part of that agreement, making

00:43:31

sure that the other one

00:43:32

looks design agreement or investment

00:43:34

can give us whatever they

00:43:35

all, come to that same

00:43:36

form of arbitration Clause. If



00:43:38

it's not the same exact,

00:43:40

cause at least something that's

00:43:41

compatible case and point to

00:43:44

get no locking fighting or

00:43:46

wind up in a weird

00:43:47

result, departure partner, Richard choices

00:43:50

here. He had a case

00:43:52

is notorious in Houston and

00:43:56

this years ago, contract between

00:43:59

an oil company and a

00:44:01

drilling contractor and another will

00:44:03

company wants to borrow the

00:44:05

rig, and let's of the



00:44:07

rig is assigned to that

00:44:08

other contractor for a while.

00:44:09

Just the big cans of

00:44:11

not getting used to dispute,

00:44:12

which of those two companies

00:44:13

have to pay for 3

00:44:14

or maybe not in. So

00:44:18

They're the original, joint contracts

00:44:20

at 3, arbitrator has the

00:44:23

most, to compel arbitration. You

00:44:24

got three parties, chaos ensues.

00:44:27

And so, the judge, the

00:44:29

fifth circuit are in the



00:44:30

district court judge in her

00:44:32

wisdom, decided that what she

00:44:34

would do is allow each

00:44:35

party to point arbitrator and

00:44:37

then have those 30.2. Which

00:44:42

is a terrible idea. But

00:44:46

the case is appealed to

00:44:55

the fifth circuit, Let's Straighten

00:44:56

It Out with basically said,

00:44:58

no, either you all agree

00:45:00

on a process or else

00:45:02

there's going to be free

00:45:04

arbitrators to the contract. But



00:45:05

if there be three arbitrators

00:45:07

appointed, I forgot what the

00:45:08

point, even though he was

00:45:09

going to be, but if

00:45:12

you can talk to her

00:45:12

talk to, but if you

00:45:16

don't plan for this in

00:45:17

advance, you can find yourself

00:45:19

in a very, very weird

00:45:21

situation. Later were you trying

00:45:22

to basically pound a square

00:45:25

peg into a round hole?

00:45:26

If you have one contract



00:45:28

that says, we're going to

00:45:29

Arbor fit under ICC and

00:45:31

then the contract. The next

00:45:32

contract has we're going to

00:45:34

the CIA All these contracts

00:45:42

are going to fit together

00:45:43

will save your client a

00:45:45

lot of time. And then,

00:45:46

once that you, if you've

00:45:49

been successful in that, you've

00:45:50

established a, a a scheme

00:45:53

by which we can, we

00:45:55

can consolidate arbitrations or join



00:45:57

other. Part is an arbitration.

00:45:58

If you've done that, then

00:46:00

it's on us as counsel

00:46:02

to make a decision. Okay.

00:46:03

I can't. Now, do I

00:46:05

want it. I think that's

00:46:07

when you have to cut

00:46:08

his accounts and start thinking

00:46:09

of what are the remedies

00:46:10

are really need out of

00:46:11

this arbitration and and then

00:46:14

trying to really keep your

00:46:15

dispute as manageable as possible



00:46:17
and still capture maximum release.

00:46:30
In my practice, I'm finding

00:46:32
that my clients are not

00:46:36
finding the from the dispute

00:46:40
board process. They are finding

00:46:43
that they're basically just having

00:46:45
to litigate twice. And I've

00:46:47
seen that more and more,

00:46:48
and I'm seeing more and

00:46:49
more clients. Look at putting

00:46:51
either very strict time limits.

00:46:54
That can't be letting, you

00:46:55
know, you must adhere to



00:46:56

an door threshold limits, at

00:46:59

least we're thinking about doing

00:47:00

this. I'm wondering what you

00:47:01

guys are saying. That's well,

00:47:05

Personally the last two different

00:47:09

projects that I've had already

00:47:10

had a few resolution board.

00:47:12

I felt like the parties

00:47:15

in contracted for three people

00:47:18

to get to fly to

00:47:19

a nice city, have a

00:47:21

meeting state of nice hotel,

00:47:24

have a great dinner and



00:47:25
then go back and It

00:47:30
was just pretty. As we

00:47:31
all just keep a running

00:47:33
list of the fights are

00:47:35
going to have a job.

00:47:35
So, very much that same

00:47:37
experience and I think part

00:47:40
of it comes from Not

00:47:43
being as careful in choosing,

00:47:44
the drb members, as you

00:47:47
are an arbitration that why

00:47:49
we are super super, we

00:47:50
ought, we will research are



00:47:52

our betters, to the nth

00:47:53

degree, but it seems like

00:47:55

that's maybe that same level

00:47:56

is an apply to the

00:47:57

Army. I don't know. And

00:47:59

then also, like you said,

00:48:00

put him on a budget,

00:48:02

I would add that, you

00:48:09

know, it is the success

00:48:10

of the Arby's and really

00:48:12

any other forms of you

00:48:14

do pre arbitration ATR, really

00:48:17

comes down to what the



00:48:18

parties 12 and are willing

00:48:21

to get out of the

00:48:21

process, which is very difficult

00:48:24

to control when your one

00:48:25

party, right? Because I always

00:48:28

like to say litigation and

00:48:29

arbitration would be so much

00:48:31

more efficient. If you just

00:48:32

didn't have another party where

00:48:37

both parties I have seen

00:48:40

successful resolution of disputes even

00:48:43

Strange things like kind of

00:48:45

pseudo, binding, mediation that both



00:48:47

parties that it was the

00:48:48

middle of the project and

00:48:49

there was a lot of

00:48:50

work to get done. Everybody

00:48:52

was losing money and time

00:48:53

and so they said let's

00:48:55

just there was not a

00:48:56

dealer be in place. Let's

00:48:57

just submit this to a

00:48:58

mediator who will write a

00:48:59

report and we will agree

00:49:00

to be bound by those

00:49:01

finding which is a bold



00:49:03

play, right? But it worked.

00:49:05

And I got the project

00:49:05

back on time and move

00:49:07

things forward. I wonder if

00:49:10

there's a way to buy

00:49:12

the question. If someone's done

00:49:13

it to allow for the

00:49:14

Arby's, but also allow an

00:49:16

exit ramp, if it's just

00:49:18

that. We're so you stop

00:49:19

throwing good money after bad.

00:49:21

You wanted the RV during

00:49:32

the life of the project,



00:49:33
for those small disputes that

00:49:35
are not going to make

00:49:36
it to arbitration and it

00:49:37
just makes the process or

00:49:39
the second faster. The second,

00:49:41
you hit the Capital T

00:49:44
then it becomes around going

00:49:46
through the motions with a

00:49:47
VR because you know that

00:49:48
you got into the arbitration

00:49:49
stage and you're going to

00:49:50
have an excuse or whatever,

00:49:51
the drb process ends up



00:49:53
with is not really the

00:49:54
end of the matter. If

00:49:57
you put a dollar sign

00:49:57
on its or a whatever

00:49:59
it is complexity level on,

00:50:01
its once it is truth

00:50:01
involves issues XYZ. Then we

00:50:08
can dispense with the process.

00:50:09
Thanks for the kind introduction.

00:50:14
I'm actually excited to get

00:50:17
out and horseback to to

00:50:19
the sound. So I am

00:50:21
I Nothing. But when I



00:50:28

get into the challenges and

00:50:31

talk a little bit about

00:50:32

things that would help of

00:50:33

exports in international arbitration, especially

00:50:36

when there are multiple parties.

00:50:38

I don't want to take

00:50:39

a step back and talk

00:50:40

about our role in these

00:50:41

International arbitration. I think Josh

00:50:44

did really nice job of

00:50:45

setting the stage after. Why

00:50:47

are we seeing more just

00:50:48

feels right? Projects are getting



00:50:50

larger and more complex. I

00:50:53

personally think it's the international

00:50:55

nature of the parties involved

00:50:58

that that are used to

00:51:00

their own legal systems. Regulatory

00:51:02

environment, cultural norms. I think

00:51:05

all of that coming together,

00:51:07

amplifies, it just you two

00:51:08

as and when they happen.

00:51:10

So for US exports, especially

00:51:13

an international arbitration. When we

00:51:14

get hired, I do buy

00:51:16

a claimant Auto responding lice



00:51:20
towards a tribunal. And thankfully,

00:51:22
I'm like, wow. Derrick said,

00:51:23
are the five in those.

00:51:24
I've been exposed to our

00:51:26
one, two, three members. These

00:51:28
are all the traitors who

00:51:29
have different legal background jogger,

00:51:32
pickled backgrounds, technical expertise on

00:51:35
his back ground, turkey for

00:51:36
us as exports to understand

00:51:38
because they do, you understand

00:51:40
how technically stabby the arbitration

00:51:42
tribunal is and what level



00:51:44

of detail you have to

00:51:45

go into as exports? The

00:51:47

ones I have not these

00:51:48

arbitrators, I extremely technically stop

00:51:51

challenge with them. Is they

00:51:53

don't have the time or

00:51:54

the resources to go through

00:51:56

thousands of documents in a

00:51:59

project, right? I'm getting to

00:52:01

the weeds of complex issue

00:52:03

and that's where they need

00:52:05

us, experts who have specialized

00:52:07

knowledge to come in and



00:52:09

basically decode these issues for

00:52:11

them to me, I specialize

00:52:13

in delays from my role,

00:52:15

in these arbitration proceedings is

00:52:18

to come up with an

00:52:19

objective fact, based assessment of

00:52:21

what truly delayed the project.

00:52:23

But that is extremely challenging

00:52:25

when the multiple parties. Lillian

00:52:29

spoke about in all different,

00:52:30

explore the different methodologies, different

00:52:33

documents sources. I mean, we

00:52:35

deal with all of that



00:52:36

but just to take it

00:52:37

from a step-by-step analysis standpoint.

00:52:40

The first thing that we

00:52:41

do as experts in specially

00:52:43

has a delay, export is

00:52:45

review, the contemporaneous project schedule.

00:52:47

Now these are scheduled that

00:52:49

a Dell love on a

00:52:50

monthly basis by every party

00:52:52

involved in a construction project

00:52:54

to not only are we

00:52:56

reviewing the scheduled? We're trying

00:52:58

to analyze. What is the



00:52:59
true critical popular? Sifting through

00:53:02
all the noise, the green

00:53:04
off. What are the handful

00:53:05
of issues actually delay? The

00:53:07
project has that Greg mentioned

00:53:10
that adds another level of

00:53:12
complication, but you do that

00:53:15
another, especially when there are

00:53:16
multiple parties involved are a

00:53:18
lot of challenges, right? The

00:53:21
more the party is the

00:53:22
left-handed eyes. The format is

00:53:24
recent project schedules that use



00:53:26

different song. That has different

00:53:28

level of data that have

00:53:30

different reporting format and that

00:53:32

comes from the cultural, you

00:53:34

know, set up and makeup

00:53:35

of the parties involved. And,

00:53:37

you know, internationally, they have

00:53:39

different alarms for project controls

00:53:40

and what they have domestically

00:53:42

to be dealing with all

00:53:43

of that and analyzing these

00:53:45

delays. The next step is

00:53:47

once we get the delays,



00:53:48

we've got a present of

00:53:50

coherent timeline of the issues

00:53:53

and what really happened with

00:53:54

these away from conception to

00:53:56

completion. And that's where documents

00:53:59

coming to play it, right?

00:54:00

So we have launched a

00:54:01

project documents and this can

00:54:04

be the Luminous specialist and

00:54:06

multiple parties involved. Did not

00:54:09

only looking at houses and

00:54:10

sometimes they reach out to

00:54:11

a million documents. But they



00:54:13

also looking at documents that

00:54:15

are in a different language,

00:54:16

right? So that's a translating

00:54:18

Elements by we're looking at

00:54:20

different terminology with you know

00:54:22

what standard documents that we

00:54:24

have to first Digest. Once

00:54:26

we get through all of

00:54:27

that, our next step is

00:54:28

Ben to allocate these delays

00:54:30

using a methodology which is

00:54:33

always a matter of just

00:54:34

you and I haven't figured



00:54:35

out how to come up

00:54:35

with a consistent approach between

00:54:38

the exports. Would we focus

00:54:40

on the methodology that we

00:54:41

think is best suited for

00:54:42

the case? And we all

00:54:44

can't be civilized and we

00:54:45

will assess what are the

00:54:47

financial consequences that each party

00:54:49

faces to all of that

00:54:51

gets extremely complicated for an

00:54:53

export who is on a

00:54:55

limited time and unlimited cost,



00:54:57

right? We've got a budget

00:54:58

that big bottle of Giorgio.

00:55:00

So life example of Sandpoint,

00:55:03

I was recently involved in

00:55:04

an oil and gas matter,

00:55:06

we were hired by the

00:55:07

respondent was the owner and

00:55:10

Liam just mentioned right before

00:55:13

the statement of claim, there

00:55:15

was no production. So we

00:55:17

really hadn't seen all the

00:55:18

documents it happened before. You

00:55:20

do a statement of Defence



00:55:21

was you, we had a

00:55:23

month-and-a-half between when the documents

00:55:26

Good used. And when our

00:55:27

expert Report with you through

00:55:30

the claimants witness statement and

00:55:32

a statement of one of

00:55:34

their subcontractors, we realized that

00:55:36

the claimant had freed free

00:55:39

document management system where they

00:55:41

kept their materials or any

00:55:43

material that was pretty odd.

00:55:45

On the project. Invoices, they

00:55:47

can proceed handicap, tracking dogs



00:55:49
and material management was one

00:55:51
of our biggest causes for

00:55:53
delay on this project. So

00:55:54
we are as exports were

00:55:56
curious to see if what

00:55:57
the subcontractor had trapped in

00:55:59
a real-time basis with what

00:56:01
was having a client's contemporaneously.

00:56:03
So we can access to

00:56:05
the document management system. But

00:56:07
it was extremely serious, right?

00:56:09
It was probably free. And

00:56:11
there was very little training.



00:56:12

We had never seen this

00:56:14

document management system before the

00:56:17

documents and the records were

00:56:18

in a different language. So

00:56:20

there was an element of

00:56:20

the consulate translation which means

00:56:23

we and our team spent

00:56:25

a lot of time. Extracting,

00:56:27

the key information that would

00:56:28

help our case before. Again,

00:56:31

like I mentioned, we had

00:56:32

a month-and-a-half between when the

00:56:34

documents were produced on our



00:56:35
reports would you month-and-a-half sounds

00:56:37
like a long time, right?

00:56:38
But when you have analysis,

00:56:40
you got thousands of documents.

00:56:41
You've got to review, You've

00:56:43
bought you know, writing which

00:56:45
takes off Xbox little longer

00:56:46
than it, takes my legal

00:56:47
counsel and then you have

00:56:49
multiple layers of review, right?

00:56:51
You know what the time

00:56:53
disappears quickly? It's challenge of

00:56:55
like that that we face.



00:56:56

And I do want to

00:56:59

wrap up by saying, you

00:57:00

know, we on our team

00:57:03

scandal proactively and I think

00:57:05

both, you know, Josh and

00:57:06

Lillian have touched on some

00:57:07

of them before us as

00:57:09

exports. Only retention, is she,

00:57:12

right? I would love to

00:57:13

work for Josh and then,

00:57:14

you know, who buy into

00:57:15

this concept, but most of

00:57:17

the dispute, we get involved



00:57:19

in real late to the

00:57:20

party, right? And it's challenging

00:57:22

because of multiple parties. I

00:57:24

just spoke about the complexity

00:57:25

of These issues, it takes

00:57:27

time and we trying to

00:57:29

serve our clients do the

00:57:30

best we can and it's

00:57:32

important for us to have

00:57:33

access to the information. We

00:57:34

need to do our analysis.

00:57:36

The second gym is setting

00:57:38

to the boundary right and



00:57:40
these mega-projects, Mega dispute them,

00:57:43
multiple exports. Working for the

00:57:45
same side of the same

00:57:47
time and upfront as an

00:57:49
export is important to me

00:57:50
to know, where should I

00:57:52
fix my expertise? Just because

00:57:54
I Quantified, the delay doesn't

00:57:56
mean that I'm responsible for

00:57:57
the delay related right. There

00:57:59
could be another opening on

00:58:01
that that's important to set

00:58:03
the boundaries because Dad cannot



00:58:04

avoid duplication of efforts. Are

00:58:07

we trying to be a

00:58:08

fishing pier? Another item, which

00:58:10

is pretty intuitive. Riding with

00:58:12

me as exports, would love

00:58:13

to get it. Never happened

00:58:15

is still have you no

00:58:16

sense of size document production

00:58:18

like I said for me

00:58:20

as of the last work

00:58:21

projects schedule. She tried. But

00:58:23

if I get a piece

00:58:24

meal production off, these documents



00:58:26

makes it extremely inefficient because

00:58:29

there's no way I can

00:58:30

finish my analysis. Unless I

00:58:31

get the full picture. And

00:58:33

if I don't do the

00:58:33

analysis, I can start writing

00:58:35

those reports. Consummate the reports

00:58:37

but the challenge. But is

00:58:39

also something that proactively if

00:58:40

we can work on together,

00:58:42

right? Can be done. And

00:58:44

then finally, it's just realistic

00:58:46

timeline ride, International arbitration, these



00:58:49
procedural, orders have very strict

00:58:51
timelines worked on some which

00:58:53
have like four xsportreports do

00:58:55
in a year and it

00:58:56
gets extremely challenging as exports.

00:58:59
Need the time specially with

00:59:01
the volume of documentation involved

00:59:03
in these complex matters to

00:59:05
do our analysis and synthesize

00:59:06
on now. And finally, I

00:59:09
would like to talk about

00:59:10
the hearing crap Ryan. I

00:59:13
mean this is a favorite



00:59:14

topic of mine because I've

00:59:15

been on the good side

00:59:16

or the bad side of

00:59:17

view, the bad Forest. So

00:59:21

this was an international arbitration

00:59:23

matter that happened during covid.

00:59:26

So but he'll rings but

00:59:28

were trouble in nature for

00:59:30

sleepy Gottfried's and really late

00:59:31

in the process. Analysis was

00:59:34

rushed in. Can you continue

00:59:36

to shrink wrap? Would they,

00:59:38

the lawyers, went through our



00:59:41
presentation on the allocated, every

00:59:43
exports of the 45 minutes

00:59:46
to present our case during

00:59:47
during the first explored goes

00:59:49
on and because of the

00:59:51
virtual nature, there was issues

00:59:53
that were technical challenges, there

00:59:55
were issues with the consolation

00:59:56
that were gaps in the

00:59:57
presentation, which led to the

00:59:59
Expo losing track of time

01:00:01
and went over the allocated

01:00:03
time. So just had a



01:00:04
ripple effect because Station proceedings,

01:00:09
you get x amount of

01:00:10
minutes and the opposing party

01:00:11
gets the same amount of

01:00:12
time and what was our

01:00:15
export, you know, how to

01:00:16
reduce that presentation from 45

01:00:18
minutes to put a five-match

01:00:20
10 minutes in the grand

01:00:21
scheme of things doesn't sound

01:00:22
like a lot, but when

01:00:24
you got an extra to

01:00:25
spend yours and lies and



01:00:27

key issues and you've got

01:00:28

forty-five minutes to summarize the

01:00:30

highlights to a tribunal, right?

01:00:33

Every minute counts, needless to

01:00:35

say, the case didn't go

01:00:36

well, but on the flip

01:00:38

side, I have hope because

01:00:39

I recently worked with a

01:00:41

law firm in Sac is

01:00:42

Joshua's Law Firm that we

01:00:44

were in an arbitration. We're

01:00:45

going on with the level

01:00:46

of preparation, which is something



01:00:48

I hadn't seen ride. The

01:00:50

legal team has Todd out,

01:00:52

not only, you know, the

01:00:53

whole procedural timeline giving the

01:00:55

exports adequate time to prepare

01:00:57

and provide analysis, but that

01:00:59

took into the curing portion

01:01:01

of the whole process, right?

01:01:03

It's not only had we

01:01:06

rehearsed, right? We had we

01:01:08

Tourist. Our presentation when you

01:01:10

went to pods we knew

01:01:12

which Graphics to pause on.



01:01:13

We knew what you do

01:01:14

highlights of each Graphics, how

01:01:16

we should present it and

01:01:18

not only, did they take

01:01:19

the song with the director,

01:01:20

took the time with the

01:01:21

exports ride, one of the

01:01:24

most uncertain parts off? You

01:01:27

know what I'm hearing is?

01:01:28

The cross-examination is older friends

01:01:30

with the most nerve-wracking part

01:01:31

for us, but just having

01:01:33

that mocks separation, right? Just



01:01:36
had us. You don't get

01:01:37
a level of comfort. And

01:01:39
needless to say, I'm hearing

01:01:41
right around, like, a Swiss

01:01:43
watch perfectly timed, but I

01:01:46
will say, you do level

01:01:47
of preparation. There are cost

01:01:49
implication Ryan, but if you

01:01:51
don't, I'll front you plan

01:01:53
for it as a legal

01:01:54
team. The exports have a

01:01:56
discussion off at level of

01:01:57
crap, that will take pride



01:01:58

you building that cost in

01:02:00

your budget. There are options

01:02:02

is the cost efficiency. So

01:02:04

that is my phone! So,

01:02:12

We will obviously work with

01:02:14

experts all the time and

01:02:15

we have our set of

01:02:16

things that we try to

01:02:17

do to keep the experts

01:02:18

on track many of whom

01:02:19

are already on track, but

01:02:20

you know in case they

01:02:22

get that person who's trying



01:02:23

to litigate the last case

01:02:25

instead of your case, they're

01:02:26

not, they're not doing the

01:02:27

work. What are your top

01:02:28

tips for keeping us and

01:02:30

controls with you? I mean,

01:02:36

my biggest pet peeves. Is

01:02:37

when I get off, I'm

01:02:39

given a deadline without prior

01:02:41

discussion on this Council that

01:02:43

I've worked with right for

01:02:44

a little bit and I

01:02:45

would appreciate having input. So



01:02:47

if you're committing to you

01:02:49

know something deliverable is like

01:02:50

a joint in the process,

01:02:53

it will be nice to

01:02:54

come back to the export

01:02:56

and just say, hey how

01:02:56

does this affect your timeline?

01:02:58

You've already slated to do

01:03:00

with paintings and focus models

01:03:02

are very complicated but does

01:03:04

he owe florentines perspective? Adults

01:03:06

have more resources than you

01:03:07

know more Hoss Cartwright will



01:03:09

be nice to have that

01:03:10

in fraction to Doesn't happen

01:03:14

often we can manage, but

01:03:15

it would be nice for

01:03:16

it to happen. Can I

01:03:19

ask you guys, if you

01:03:20

have any thoughts about tribunal

01:03:22

appointed at first? Because we

01:03:26

fear that because the expert

01:03:28

all of a sudden. Now

01:03:29

there's an idea that the

01:03:30

traitor and whatever, the tribunal

01:03:33

appointed expert is going to



01:03:35
say, is going to become

01:03:35
gospel for the award and,

01:03:37
you know, there's a fear

01:03:41
of giving up control of

01:03:42
the process of making sure

01:03:43
there's an expert that is

01:03:44
going to present the case

01:03:47
as you would like it

01:03:48
done. Because, you know, as

01:03:49
independent experts are at the

01:03:51
end of the council and

01:03:53
parties, you can find an

01:03:55
extra this one to prevent



01:03:56
this. The cases in a

01:03:57
way that's favorable to you.

01:03:58
You have any benefits or

01:04:03
or Draw downstairs by the

01:04:05
tribunal directly as opposed to

01:04:06
through the party's. Yeah, I

01:04:08
am. I think it always

01:04:09
comes with a bias. Private

01:04:11
was the tribunal has appointed

01:04:12
you a right at the

01:04:13
expertise. They looking for I

01:04:17
haven't really dealt with it,

01:04:19
but I, I think, for



01:04:21
me, if there was a

01:04:22
tribunal appointed expert, just as,

01:04:24
you know, someone finding and

01:04:26
helping our legal counsel, it's

01:04:27
just like a Ford betrayed,

01:04:29
right? You're going to get

01:04:30
them on your side, you're

01:04:31
trying to see them. The

01:04:32
only difference being as they

01:04:33
going to be the most

01:04:33
technically Savvy person on that

01:04:35
panel, right. So it's more

01:04:36
like a sign for us



01:04:37

to just wait till they

01:04:39

get our Anything else panel.

01:04:48

It could be anything from

01:04:50

the audience. First instinct. I

01:05:30

don't know if I can

01:05:31

answer the question directly, but

01:05:33

I will have seen it

01:05:35

both ways and in both

01:05:37

ways being where a relationship

01:05:40

has continued and flourished. And

01:05:43

we're a relationship has not

01:05:45

flourished after out of taking

01:05:47

that, that's important step. But



01:05:50

in the latter instance, where

01:05:52

it was made clear through

01:05:54

the formal dispute, notification process,

01:05:56

and taking those formalize steps

01:05:59

Midstream in a project at

01:06:01

a very crucial moment and

01:06:05

it didn't go. Well, it

01:06:06

did not result in a

01:06:07

meeting of the minds, what

01:06:10

we ended up doing was

01:06:12

negotiating a different way of

01:06:15

structuring the project to complete

01:06:17

the project so that it



01:06:20

would help to address some

01:06:22

of the concerns of both

01:06:23

parties at the restructuring aspects

01:06:26

of the relationship that very

01:06:28

clearly were not working. Disagreements

01:06:30

about what was not working,

01:06:31

but it was acknowledged that

01:06:34

it was not working. So,

01:06:35

we restructured those aspects and

01:06:38

then entered a tolling agreement

01:06:40

to deal with the dispute

01:06:41

later. Now. Of course, invited

01:06:44

a significantly bigger dispute, that



01:06:47

might have existed really run

01:06:49

the project because it allowed

01:06:50

for the passage of time

01:06:51

between two parties that already

01:06:54

had disputes between them, and

01:06:55

they both are kind of

01:06:56

piling onto the pile, but

01:06:58

it did allow for the

01:06:59

successful completion of project. So,

01:07:02

even though we, you know,

01:07:04

inserted this rather aggressive step

01:07:07

of formalizing, a dispute Midstream,

01:07:09

we found a way to



01:07:10

get the project done and

01:07:12

do what the dispute later.

01:07:15

What else? One point, which

01:07:19

is it can something is

01:07:21

level at the store, but

01:07:21

it can be helpful at

01:07:22

times in narrowing down to

01:07:24

dispute because you don't want

01:07:25

those Boombastic claimed that in

01:07:27

another situation. You know, Council

01:07:29

overzealous Council, might be inclined

01:07:31

to make, but where do

01:07:32

you know that the relationship



01:07:33

is going to continue for

01:07:34

a long time? You might

01:07:37

temper down the claims that

01:07:39

might not be particularly necessary

01:07:41

or instructive and then hand-in-hand

01:07:45

with that, when the relationship

01:07:47

continues, sometimes there's a there's

01:07:48

a bigger degrees in a

01:07:52

relationship than just using as

01:07:54

large as these projects in

01:07:56

this youth can be. A

01:07:58

lot of these cases, the

01:07:59

relationship is an order of



01:08:02
magnitude or two larger, and

01:08:04
I think a lot of

01:08:05
the players are a bit

01:08:06
more sophisticated to know, whatever

01:08:09
happens stays in this, has

01:08:10
to end the relationship. I

01:09:09
had it at this earlier.

01:09:11
I am more and more

01:09:12
talking about thresholds and other

01:09:14
things, because I look does

01:09:15
initial discussions between management and

01:09:19
almost always be there if

01:09:21
you don't want. The project



01:09:24

people getting mad at each

01:09:25

other and escalating into the

01:09:27

top and then you have

01:09:27

ten million dollars in expenses.

01:09:29

You want top-level management to

01:09:31

come in. So I don't

01:09:31

think many people are looking

01:09:33

to dispense with that. Whether

01:09:36

you're going to have some

01:09:38

form of mediation or drv

01:09:40

or something in between, that's

01:09:43

a little bit more negotiable.

01:09:44

I think, depending on the



01:09:46

pride and he looked, it

01:09:47

depends on the type of

01:09:48

project type of agreement, various

01:09:51

factors that you need there,

01:09:52

most of the time, some

01:09:55

form of alternative dispute, resolution

01:09:58

is good to include. I've

01:10:01

just come to the conclusion

01:10:02

that on the dispute with

01:10:05

a capital T. It's usually

01:10:06

a waste of time and

01:10:08

end. We've had a hard

01:10:09

time limiting the process you



01:10:11
even ride as much as

01:10:13
we're having problems with the

01:10:14
arbitration is now leaking into

01:10:15
the grp process as well.

01:10:16
And so, it becomes very

01:10:18
expensive. So we've talked about

01:10:20
using thresholds, that's what we've

01:10:21
been doing. I don't know.

01:10:23
That's what other people have

01:10:24
landed. Also, just need to

01:10:26
be careful with the even

01:10:27
if it's not a drb

01:10:28
process but just to step



01:10:30
class like that. First Executives

01:10:32
me and then you go

01:10:33
to mediation and then you

01:10:34
can start it over to

01:10:35
you, just need to have

01:10:36
clear, timelines built in there

01:10:38
so that you're not, you

01:10:39
know, creating a trap for

01:10:41
somebody for you taken. Basically,

01:10:43
it's been awhile you off

01:10:44
and getting start your arbitration.

01:10:46
If that's what's going to

01:10:47
have to go. And it's



01:10:48

not a bad idea, to

01:10:50

have a tolling of the

01:10:52

statute of limitations, or something

01:10:53

in there, that's in the

01:10:55

standard contracts. Most the time

01:10:56

now, but not in all

01:10:58

of them. And there are

01:10:58

some some jurisdictions where you're

01:11:01

not allowed to do that.

01:11:02

So you need to most

01:11:04

of the common law and

01:11:05

most of them are fine,

01:11:06

but if you don't have



01:11:08

time limits and there's a

01:11:10

running in the statue of

01:11:10

limitations, you could have some

01:11:11

real problems. And I am

01:11:15

perhaps Pollyanna here. I I

01:11:17

still very much believe in

01:11:18

a t, r i have

01:11:19

seen it work but there

01:11:22

are instances where it's not

01:11:23

going to work. You almost

01:11:25

know from the outset, we're

01:11:27

not going to get anywhere.

01:11:27

And in what I try



01:11:31

to advise clients, who have

01:11:32

these multi-tier dispute resolution Provisions,

01:11:35

perhaps in a form contract

01:11:37

that they use for every

01:11:38

project, right? They just we

01:11:40

have a new project. Here's

01:11:41

that's the end of this

01:11:42

Clause. Plug-and-play, is that I

01:11:44

think you need to be

01:11:45

more more mindful about, will

01:11:48

this dispute resolution proceeding procedure

01:11:51

work for this project with

01:11:53

these parties because if it's



01:11:55

a massive project and maybe

01:11:57

building in those very formalistic

01:11:59

and extended timelines makes sense

01:12:01

or if you're working with

01:12:02

a a sovereign or a

01:12:03

government counterparty that needs the

01:12:05

time and needs the, the

01:12:07

formality of the process in

01:12:09

order to reach a decision

01:12:10

on their end. Every project

01:12:12

is different and I do

01:12:13

think that all too often,

01:12:15

you know, particular kind of



01:12:17

bigger institutional clients, who have

01:12:19

projects all the time, they

01:12:20

get comfortable with a set

01:12:22

of rules and they stick

01:12:24

with them. And they don't

01:12:25

always work for every project.

01:12:29

Anyone else think I'll let

01:12:32

is the drb is when

01:12:33

they work successfully Force the

01:12:35

parties contemporaneously to document a

01:12:38

claim, right? So when we

01:12:39

export get involved off the

01:12:41

fact, you know, it's it's



01:12:43

a nice way for us

01:12:44

to get up to speed

01:12:44

instead of sitting 2 year

01:12:46

olds different versions of different

01:12:47

documents that are all in

01:12:49

a package, right? For that

01:12:50

may not be right, but

01:12:53

at least you have both

01:12:54

parties on stunning of that

01:12:55

issue at that time. So

01:12:56

helpful for us, Alright, thank

01:13:02

everybody very much. Are the

00:06:05

benefits and drawbacks of that,



00:06:08

on the other hand, parties

00:06:10

are free to modify those

00:06:12

agreements and on occasion that

00:06:14

I haven't seen it a

00:06:15

lot in the construction space,

00:06:16

you can use other theories

00:06:18

of implied agreement to bring

00:06:20

in other parties. I'm a

00:06:21

little harder to do that

00:06:22

with a contractor or subcontractor

00:06:24

agency in the like don't

00:06:25

play the same role. So

00:06:28

I think we'll talk about



00:06:29

that a bit. Well with

00:06:32

that, let me let me

00:06:34

introduce our panel before I

00:06:36

do. So I would like

00:06:37

to say We'd like this

00:06:39

to be interactive. Don't hesitate

00:06:41

to raise your hand to

00:06:42

ask a question. You tell

00:06:44

us an experience you had

00:06:46

in the space and it's

00:06:47

better if we're all interacting

00:06:48

with each other without speaking.

00:06:51

First today, after me will



00:06:53

be Josh Lindsey he's a

00:06:54

partner in Kohl's, international disputes

00:06:56

practice, he specializes in commercial

00:06:59

disputes, particularly International construction, and

00:07:02

Engineering any particularly well, suited

00:07:04

for this field because before

00:07:05

becoming a lawyer, he served

00:07:07

as a nuclear power engineer

00:07:09

in the Navy. So he's

00:07:10

smarter than we are. This

00:07:15

is Josh just recently concluded.

00:07:16

A massive complex multi claim

00:07:20

hearing. I think 68 days



00:07:22
ago when I got 68

00:07:23
days of hearings, got to

00:07:25
be one of the most

00:07:26
complex reported, I see, four

00:07:29
seasons in the space ever.

00:07:30
After that, we have Lillian,

00:07:32
Cory, Lilly is a senior

00:07:33
associate at Steptoe here in

00:07:35
Washington. I try to call

00:07:36
Steptoe & Johnson. Like all

00:07:40
firms are under of Arab,

00:07:44
the association that promotes and

00:07:48
serves International arbitration Community, with



00:07:50

ties to your world. We're

00:07:51

just hearing about how successfully

00:07:53

has grown over the last

00:07:54

two years. Very impressive, she's

00:07:56

a native of Aleppo Syria,

00:07:58

which is in the news

00:07:59

recently. She's practice International arbitration

00:08:02

in New York, DC, and

00:08:04

Paris for over ten years,

00:08:05

and has extensive experience in

00:08:07

both construction and Middle Eastern.

00:08:08

And, as well as other

00:08:10

third, we have Derek Carson,



00:08:12

you'll be speaking to us

00:08:14

very recently, joined Pillsbury as

00:08:17

a partner in the Houston

00:08:18

office after nearly 25 years

00:08:20

at another International firm where

00:08:23

he was the head of

00:08:23

that firms energy to speech,

00:08:25

practice and former head of

00:08:26

their construction Law Group is

00:08:28

practice construction law for his

00:08:30

entire career representing owners, contractors,

00:08:33

subcontractors, and lots of diverse

00:08:35

projects. He's a fellow of



00:08:36

Chartered Institute for arbitrators. This

00:08:38

is an arbitrator in addition

00:08:40

to his advocacy of think.

00:08:41

He's going to tell us

00:08:41

about a recent batter in

00:08:42

the space today and is

00:08:44

practice currently involves a variety

00:08:46

of energy infrastructure projects ranging

00:08:49

from petrochemical plant and pipeline

00:08:51

projects to biofuels and wind

00:08:53

farm development. Last but not

00:08:55

least, is Guy 3D who

00:08:58

is a senior manager and



00:09:00

the Construction Consulting practice at

00:09:02

exploding ink, which is the

00:09:04

largest US base consulting, firm,

00:09:06

specializing in engineering and scientific

00:09:08

failure, analysis and prevention. She

00:09:11

has over 20 years and

00:09:12

both projects and dispute. Resolution

00:09:15

experience extensive on-site experience working

00:09:18

for both General Contractors and

00:09:19

owners, overseeing all stages of

00:09:22

the construction process and have

00:09:24

provided expert testimony in domestic,

00:09:27

and international arbitration. Particularly in



00:09:29
cases, involving construction, claim and

00:09:32
schedule, delays, delays, and cost

00:09:35
overruns with that, I turn

00:09:37
to Josh and you tell

00:09:38
us a About your massive

00:09:39
dispute and some lessons learnt

00:09:41
thank you Greg for that

00:09:44
very kind introduction and I

00:09:45
will first start by breaking

00:09:48
the fundamental rule of any

00:09:49
panel and contradicting something to

00:09:51
moderator. Say that I am

00:09:53
definitely not the most intelligent



00:09:54

person at this table and

00:09:55

certainly not in this room.

00:09:56

So I would just ask

00:09:58

her what Greg said. It

00:09:59

didn't just invite participation from

00:10:01

everyone in the room. I

00:10:02

think we all collectively benefit

00:10:04

from different ideas and perspectives,

00:10:06

so if you don't agree

00:10:08

with something, that one of

00:10:09

us is dead, that's too.

00:10:10

Don't hesitate to thoughts. So,

00:10:15

there's a lot of things



00:10:15

we can talk about around,

00:10:17

you know, topic of complex,

00:10:19

diffuse multi party multi-party disputes

00:10:22

and I thought I might

00:10:23

start the discussion by talking

00:10:25

about a, a common source

00:10:27

of these complex disputes. What

00:10:29

I will brand is Mega

00:10:32

diffuse often come from Mega

00:10:34

projects, right? Huge International. Investments

00:10:40

in major pieces of infrastructure

00:10:42

that bring different parties together

00:10:43

from around the world to



00:10:45
build something spectacular or large

00:10:49
or really important rights. These

00:10:52
Mega projects. I want to

00:10:53
be clear or not inherently

00:10:55
destined for Mega dispute. I've

00:10:59
certainly seen in my practice

00:11:01
places, where mega-projects can avoid

00:11:04
the fuse by taking smart

00:11:06
actions early and throughout the

00:11:09
project, no talk a little

00:11:10
bit about that, but where

00:11:12
you have a mega dispute

00:11:14
with lots of claims, a,



00:11:15

lots of parties often times,

00:11:17

there is a mega-project behind

00:11:19

it. And so what are

00:11:21

some of the things that

00:11:22

make mega-projects, you know, uniquely

00:11:25

at risk of finding themselves

00:11:27

in a massive negative? You

00:11:29

are where I think everyone

00:11:31

would agree except maybe the

00:11:33

lawyers in the room that

00:11:34

people want to avoid these

00:11:35

massive. Just you because their

00:11:37

costly and destroy And ultimately



00:11:39
strained resources that could be

00:11:41
used for the better, the

00:11:42
project itself. Now you might

00:11:45
be thinking well Josh isn't

00:11:47
it? Obvious that a big

00:11:48
project is going to end

00:11:49
up with a big dispute,

00:11:50
right? Is just a function

00:11:51
of size and complexity and

00:11:54
then certainly the size and

00:11:55
complexity of the project is

00:11:57
one of the factors. But

00:11:58
that's as I said, not



00:12:00

all Mega projects and up

00:12:01

in disputes and so I

00:12:03

don't think that's it. But

00:12:04

I do think that there

00:12:05

are certain attributes of mega

00:12:07

mega projects that can easily

00:12:10

lend themselves to really big

00:12:12

complicated disputes, then we can

00:12:14

have an entire panel on

00:12:15

that, that's not what this

00:12:16

entire panels about. So I'll

00:12:17

just pick a few of

00:12:19

those factors one that is



00:12:21

in the planning stage of

00:12:22

the project, another that's in

00:12:24

the procurement stage of the

00:12:25

project and another that's in

00:12:26

the execution stage at the

00:12:29

planning stage. I think one

00:12:32

of the biggest risk areas

00:12:33

for a mega-project is bringing

00:12:36

together the stakeholders and end-users

00:12:39

of that project and ensuring

00:12:41

that their goals and objectives

00:12:42

for the project are not

00:12:44

only understood but integrated into



00:12:47

the planning and design for

00:12:49

the project and this is

00:12:50

true regardless of what kind

00:12:52

of project you're dealing with

00:12:53

a big oil and gas

00:12:55

facility hospital Airporter Seaport. All

00:13:01

of these big investment projects

00:13:04

typically have a lot of

00:13:07

different interested parties, they can

00:13:09

be government parties, they can

00:13:11

be the end users private

00:13:13

and companies that will use

00:13:14

the facility. Once it's completed,



00:13:16

the investors that are paying

00:13:18

for the project lot, a

00:13:20

long list of different parties

00:13:21

and oftentimes, those parties have

00:13:24

different objectives, different requirements. For

00:13:28

one day need to get

00:13:29

out of that project. And

00:13:31

what I've seen is that

00:13:33

typically it's not the entire

00:13:36

group of stakeholders and end

00:13:38

users who are tasked with

00:13:40

overseeing, the Livery of the

00:13:41

project right? Often times. It's



00:13:44

maybe a subset of those

00:13:45

of, of those of stakeholders

00:13:47

that is actually kind of

00:13:49

guiding the project, and that

00:13:51

means that it takes and

00:13:52

require it as requires a

00:13:54

proactive collaboration, and discussion with

00:13:58

all of the stakeholders in

00:13:59

all of the end users,

00:14:00

to make sure that their

00:14:02

requirements are understood and integrated

00:14:05

into the planning. And design.

00:14:06

I've seen an instance where



00:14:09

the master planning and design

00:14:11

for a project was largely

00:14:12

completed off site and not

00:14:14

just off site, but on

00:14:15

the other side of the

00:14:16

world, okay? And there's nothing

00:14:18

wrong with doing design, work

00:14:20

back in the home office,

00:14:21

the architect home office wherever,

00:14:23

but there needs to be

00:14:24

that on site in location

00:14:26

engagement with the stakeholders in

00:14:28

my opinion because what happened



00:14:30

in this particular Project is

00:14:32

the project was planned and

00:14:34

went through a concept and

00:14:36

preliminary design construction started to

00:14:38

get underway with further design

00:14:40

being conducted by the contractors.

00:14:43

And it wasn't until building

00:14:44

started going up at some

00:14:46

of the end user. Who

00:14:47

said, hey, hold on a

00:14:47

second. That's not what I

00:14:49

need at that facility is

00:14:51

not going to support my



00:14:53

goals and it's because they

00:14:54

had never sat down at

00:14:56

the beginning of the project

00:14:57

and understood what those girls

00:14:59

needed to be documented them

00:15:01

and signed off on them.

00:15:02

So a way to mitigate

00:15:04

that is to prepare a

00:15:06

project or a program of

00:15:09

requirements. Document name is less

00:15:10

important than what it stands

00:15:12

for which is a, an

00:15:13

explanation of what every and



00:15:15

user needs and a documentation

00:15:18

of that. And a sign

00:15:19

off by all of the

00:15:20

parties showing what what? What's

00:15:23

been agreed? Next in the

00:15:27

procurement stage in here. I'm

00:15:29

really talking about thinking how

00:15:32

you will deliver the project.

00:15:34

So big picture procurement. What's

00:15:35

the project delivery structure? Going

00:15:37

to be a lot of

00:15:39

different ways to deliver mega-projects.

00:15:42

Most often those delivery structures



00:15:46
tend to be somewhat complex

00:15:48
because you do have a

00:15:49
lot of different players that

00:15:50
are needed to come together

00:15:51
to deliver a major project.

00:15:53
And we're a disconnect going

00:15:55
to rise is between the

00:15:58
contractual lines of privity, the

00:16:01
contractual relationship between parties and

00:16:03
the lines of communications between

00:16:05
parties. Those are not always

00:16:06
the same, sometimes they are

00:16:08
right, but take out an



00:16:10

EPC M structure. For example,

00:16:12

where you have a contractual

00:16:13

relationship between a project manager

00:16:16

and a motor But then

00:16:20

you have separate contractual relationships

00:16:22

between the owner and different

00:16:24

contractors and subcontractors. And so

00:16:26

for just because you have

00:16:28

different contractual lines, doesn't mean

00:16:30

it's still not important to

00:16:31

have communication lines in a

00:16:33

particular between your project manager

00:16:35

and all of your contractors



00:16:37

so sitting down at the

00:16:39

beginning of a project and

00:16:40

understanding where there may be

00:16:42

those disconnects in introducing Clarity

00:16:45

into the contracts, into the

00:16:46

project execution plan, for how

00:16:48

that communication will flow and

00:16:51

help to avoid a lot

00:16:52

of misunderstanding and miscommunication on

00:16:54

the projects with which on

00:16:56

a mega-project and lead to

00:16:57

major problems, that are only

00:17:00

magnified by the size of



00:17:01
complexity of the project. Finally

00:17:05
interfaces on Mega projects are

00:17:09
so so important. And so,

00:17:11
so complex, and so when

00:17:13
I speak of interfaces, I'm

00:17:15
talking about spatial interfaces. So

00:17:17
space being doing work in

00:17:19
the same physical area, temporal

00:17:23
or our time, and our

00:17:24
faces being wear different work.

00:17:27
Front depend on one another

00:17:29
for achieving their schedule. One

00:17:32
piece of work by the



00:17:33

contractor. A has to be

00:17:34

completed before. Contractor be can

00:17:37

come in behind and do

00:17:38

the work that that they

00:17:39

need to do and then

00:17:41

the other interface I would

00:17:43

cost systems interface and this

00:17:44

is more and more important

00:17:46

with technological advancements that are

00:17:49

integrated into infrastructure projects using

00:17:52

the hospital example. Again, a

00:17:54

hospital really is a series

00:17:56

of Highly advanced technology and



00:17:58

different systems that are all

00:18:00

stitched together and put into

00:18:02

the envelope of building. And

00:18:04

where at in, on these

00:18:06

big Mega projects. I'm so

00:18:10

when those windows interface is

00:18:16

don't marry up, which often

00:18:18

happens, it's going to happen

00:18:20

for these interfaces. Don't link

00:18:22

up the way there planned.

00:18:23

That's where you can have

00:18:25

a disruption in a delay

00:18:26

that can pour over and



00:18:29

starts impact all of the

00:18:30

other work front around it.

00:18:32

And just as a snowball

00:18:34

rolling down a hill, those

00:18:35

interface problems get bigger and

00:18:37

bigger and bigger, if they're

00:18:38

not for actively managed to

00:18:40

mitigate that in my view.

00:18:43

And I'd be interested in

00:18:44

my view. There has to

00:18:46

be a single point of

00:18:48

management that oversees the interfaces.

00:18:50

And some may say, well



00:18:51

that's too big of a

00:18:52

job. We need are in

00:18:54

each individual contractor. Has their

00:18:56

part to do to manage

00:18:57

their interfaces with their counterparts

00:18:59

and I don't disagree with

00:19:00

that but there has to

00:19:02

be in my experience. And

00:19:04

in the individual entity that

00:19:06

is overseeing the interfaces and

00:19:08

conducting the orchestra. Because without

00:19:11

that oversight inherently, no one's

00:19:13

going to understand the big



00:19:15
picture. So I have some

00:19:18
other things I'd like to

00:19:18
say, but I don't want

00:19:19
to take them all the

00:19:20
time from the other panelists.

00:19:22
So I'll pass the Baton

00:19:24
and then maybe I can

00:19:25
chime in with some other

00:19:25
thoughts in terms of having

00:19:30
like one, I think it

00:19:40
needs to be at a

00:19:41
project manager level, and depending

00:19:44
on the structure of the



00:19:45
given project, that could be

00:19:47
on the other side. Or

00:19:48
it could be on a

00:19:49
consultant side or project manager

00:19:51
side PCI environment in Alton

00:19:54
will be the EPC contractor,

00:19:56
but it needs to be

00:19:57
somebody and coming back to

00:19:59
my mind coming to number

00:20:00
two of those. Three point

00:20:02
is at the procurement stage.

00:20:03
Sitting down here figuring out.

00:20:05
How do we want to



00:20:06

structure delivery of this? That's

00:20:08

when that conversation needs to

00:20:09

happen, you need to determine

00:20:10

who is going to be

00:20:12

the conductor One quick. Follow-up

00:20:15

question, before we passed done?

00:20:17

How much of your practice

00:20:18

focuses on this portion of

00:20:21

the project or as much

00:20:25

of it as I can

00:20:25

because because this is one

00:20:28

of the points that that

00:20:30

I would save. But I



00:20:31

think one of the other

00:20:33

ways you can mitigate on

00:20:34

Mega projects from of getting

00:20:36

these massive disputes at the

00:20:37

end of the project is

00:20:39

to get people like all

00:20:41

of us involved earlier in

00:20:44

the project, right? Because if

00:20:46

if you can nip small

00:20:48

problems in the bud before

00:20:49

they become big problems, it

00:20:52

makes a big difference. So

00:20:52

I would like to say



00:20:53

that even more of my

00:20:54

practice, the features that then

00:20:56

it does certainly a fair

00:20:58

bit of it. But there's

00:20:59

always in my opinion benefit

00:21:01

from evolving center part of

00:21:05

your practice. That's that's that's

00:21:15

a fair question. I think

00:21:16

it's probably more so clients

00:21:18

who have been through a

00:21:19

dispute with us. But fortunately

00:21:22

with weave then been able

00:21:24

to do is stablished relationship



00:21:25

with clients in and of

00:21:27

service will be called project

00:21:28

Council right? Where they bring

00:21:32

things to us to our

00:21:32

attention sooner and we work

00:21:34

through that through various ATR

00:21:36

methods or even less formal

00:21:38

than that getting involved in

00:21:41

being there at the table,

00:21:44

liquid change orders, be negotiated.

00:21:46

And just making sure that

00:21:47

the language the client thinks,

00:21:49

what they think, they're getting



00:21:50

any change orders, actually, what

00:21:52

they're getting is is tremendously

00:21:54

valuable to mention sex, to

00:22:01

be there. When the contact

00:22:04

itself as being negotiated, although

00:22:05

usually it's you get to

00:22:07

call a sign. This what

00:22:08

you think? So thank you

00:22:20

all for being here. Team

00:22:21

off of what Josh was

00:22:22

just saying. Those Mega projects

00:22:24

that we're seeing the second

00:22:26

he gets them. At least



00:22:27

we make them bigger and

00:22:30

they become massive. Like what

00:22:34

we're seeing in Saudi Arabia

00:22:35

is something we've never seen

00:22:36

before Naomi projects. Those massive

00:22:39

massive project that in all

00:22:42

likelihood a few years down,

00:22:43

the line are going to

00:22:44

leave for those giant, the

00:22:45

shoes that might happen and

00:22:49

one of the areas that

00:22:51

we've been struggling with on

00:22:53

a council perspective, as these



00:22:55

projects gets bigger and bigger

00:22:56

is, how do we make

00:22:57

the proceedings? Not a nightmare

00:23:02

for everyone and two things

00:23:05

that I want to focus

00:23:05

on our one. When we

00:23:08

have those projects with multiple

00:23:10

parties, multiple contracts, multiple issues

00:23:12

will diffuse, how do you

00:23:15

maintain a proceeding that has

00:23:16

a semblance of order. And

00:23:19

then how do you deal

00:23:20

with the other facts factor?



00:23:22

That you have an arbitration,

00:23:23

which are your experts? I'm

00:23:25

sure we're going to hear

00:23:25

from Skytree her perspective, from

00:23:27

that point of view, Council

00:23:31

point of view. How do

00:23:32

you manage this? And we

00:23:34

I mean long gone are

00:23:34

the days where I think

00:23:36

we could still tell arbitration

00:23:37

of game disc faster, cheaper

00:23:39

alternative, or not in there.

00:23:41

But we have made some



00:23:43

progress in a number of

00:23:45

areas to try and keep

00:23:47

things under control, right? We

00:23:49

Now, have we have tribunals

00:23:55

who actually limits the pages,

00:23:58

that a party can submit

00:23:59

sometimes more successfully than others.

00:24:02

It pales in comparison to

00:24:04

68 days of hearing, but

00:24:07

I just wrapped up a

00:24:07

four-week hearing where we had,

00:24:09

not only reason closing we

00:24:12

had oral closing. Then two



00:24:14

rounds of post here in

00:24:15

Greece, where the opposing side,

00:24:18

submitted a post-hearing brief of

00:24:20

550 pages. It's a lot.

00:24:24

I mean, what is a

00:24:29

tribunal has engaged with every

00:24:30

paragraph and in points made

00:24:33

in that was hearing, it

00:24:35

is another matter. And when

00:24:38

these projects are getting bigger

00:24:40

and bigger and more parties

00:24:42

are getting involved, one of

00:24:43

the things that has been



00:24:44

trying in the past two

00:24:46

years, is all information and

00:24:52

slender. Folks are on the

00:24:59

zoo may be taking you

00:25:00

some Salve that might be

00:25:01

more or less in some

00:25:12

form will allow for several

00:25:14

disputes to be heard at

00:25:15

once or allow for joining

00:25:17

parties later on, you should

00:25:18

be added a few and

00:25:20

it's been advertised as being

00:25:22

of particular relevance to the



00:25:23
construction industry because we have

00:25:25
these complex sexual patterns, with

00:25:28
many stakeholders more involved. And

00:25:31
you think for once a

00:25:32
contractor has brought a claim

00:25:33
in their claims Upstream Downstream

00:25:35
we might as well hear

00:25:36
them together because it's going

00:25:38
to be more efficient. So

00:25:38
everyone, we don't need to

00:25:39
re-litigate the same issue in

00:25:41
front of multiple for a

00:25:42
you know create the risk



00:25:44
of inconsistent decisions additional costs

00:25:48
and Evans going to be

00:25:49
exhausted. You can have a

00:25:49
project that's 18 months. The

00:25:52
bills and then you have

00:25:53
56 years after work so

00:25:55
that I think was the

00:25:57
idea in practice. I think

00:25:59
what we're seeing is. It's

00:26:02
not a great one and

00:26:03
it's one where Council. I

00:26:05
think we'll have it tends

00:26:05
to be a little bit



00:26:06
risk-averse. Or Council are very

00:26:08
wary of the implications. And

00:26:12
so the numbers of the

00:26:13
institutions are starting to come

00:26:14
out, or 870 new cases,

00:26:22
registered his location. And that's

00:26:27
at keeping, in mind, that

00:26:28
construction cases are usually, but

00:26:31
a quarter to a third

00:26:32
of all ICC cases and

00:26:34
it's the same figures for

00:26:35
2020 to 2021. It's one

00:26:36
maybe at the most recent



00:26:40

decisions and so, 1 things

00:26:44

to be mindful of, from

00:26:46

a council perspective, is it?

00:26:48

We all go to our

00:26:49

clients and say these new

00:26:50

institutional rules have these provisions.

00:26:53

And then you want to

00:26:53

be mindful and hunger, crafting

00:26:55

your contract, you think you

00:26:56

want or do not want

00:26:57

consolidation, or do Under the

00:27:00

available, but it's something that's

00:27:02

very hard to predict in



00:27:03

advance. And so, you know,

00:27:05

what do you do when

00:27:06

you're signing the EPC contract?

00:27:07

How do you know whether

00:27:09

or not you're going to

00:27:09

want these Provisions to be

00:27:12

available to or not? And

00:27:16

I would have handed hands

00:27:17

with that is when these

00:27:18

issues are getting more and

00:27:20

more complicated, and you have

00:27:21

these multiple parties. some of

00:27:23

these parties are going to



00:27:24
be engaging their own experts

00:27:26
only has Destruction of what

00:27:32
used to be to science,

00:27:33
teach arbitration but, you know,

00:27:35
you can have three or

00:27:36
four respondents but generally speaking

00:27:38
don't have the same counsel

00:27:39
for them and they'll coordinate

00:27:40
their claims and more or

00:27:42
less. I presented unified picture

00:27:44
to the tribunal. You're not

00:27:46
getting cases where you have

00:27:48
multiple parties, no clear sign.



00:27:50

And then within each side,

00:27:52

there's a different presentation of

00:27:55

a case to the tribunal.

00:27:56

As we recently concluded a

00:27:58

case where the opposing party

00:28:00

on the opposing side had

00:28:02

several parties And on the

00:28:05

issue of delay, each submitted

00:28:06

an expert report that had

00:28:09

a different methodology. Different data

00:28:11

said, different result. The tribunal

00:28:15

who now has two. So

00:28:16

point a finger in the



00:28:17

wind, then just think, which

00:28:19

one are they going to

00:28:20

take on behalf of that

00:28:21

side of the table? Let

00:28:22

alone all of the parties

00:28:23

and those that we had

00:28:27

institutionally in terms of consolidation

00:28:29

enjoying her, we haven't had

00:28:30

that many in terms of

00:28:31

experts, we've had practically speaking

00:28:33

tribunals have trying to put

00:28:37

order into expert reports one

00:28:40

way or another hot. Tubbing



00:28:41

was the one that everybody

00:28:42

speaks up. Something is really

00:28:44

something that comes at the

00:28:46

end of the process. It

00:28:47

doesn't really make it much

00:28:48

cheaper and faster and more

00:28:49

efficient. It's the one thing

00:28:51

that I wanted to talk

00:28:52

about it. The construction area

00:28:55

more, specifically very quickly is

00:28:58

active case management from the

00:29:00

tribunal early on in the

00:29:01

process. So who were these



00:29:03
very complicated disputes that have

00:29:05
just concluded? One area that

00:29:07
has, that was maybe arguably

00:29:09
the most important one was

00:29:11
the fact that the tribunal

00:29:12
was actively managing expert in

00:29:14
a construction dispute early, on,

00:29:17
in the process. So, narrowing

00:29:19
down, what expert reports cover,

00:29:22
what? We know how many

00:29:23
experts we have an attitude?

00:29:24
Do we really need an

00:29:26
expert on topic X? That



00:29:29

one party thinks is important

00:29:30

but everybody else. Agrees is

00:29:32

completely irrelevant and immaterial to

00:29:33

this you, or are we

00:29:35

now forcing parties to have

00:29:36

the calculus. Well, if someone

00:29:39

else is going to be

00:29:40

submitting, an expert report on

00:29:41

this issue, I might as

00:29:42

well admit one. Otherwise, all

00:29:44

of my points are going

00:29:45

to go on and the

00:29:46

cost and complexity increases. I'm



00:29:51

so active case management. I

00:29:53

think it's very important to

00:29:54

do and try to do

00:29:55

well. So it's not just,

00:29:57

it'll convening a meeting with

00:30:01

a tribunal early on, in

00:30:02

the process, discuss the scope.

00:30:04

And number of experts, it's

00:30:06

also making sure that the

00:30:07

tribunal has the chance to

00:30:09

make early rulings potentially all

00:30:11

the methodology that the experts

00:30:12

use. There's no use in



00:30:13
having a three-year proceeding with

00:30:16
expert report after X report

00:30:17
after experts report that are

00:30:18
parallel tracks with different methodologies,

00:30:23
different data, sets different assumptions.

00:30:26
Until we're experts, actually has

00:30:28
to sit down narrow the

00:30:30
scope of their reports and

00:30:31
talk to each other potentially

00:30:33
through the use of joint

00:30:35
expert reports. And actually tell

00:30:37
the tribunal early on. These

00:30:39
are the methodologies. We agree



00:30:40

on these are the things

00:30:41

we disagree about. It's a

00:30:44

way of making the process

00:30:45

actually goes smoothly. Sorry. We're

00:30:59

talking potential. I mean, it's

00:31:00

up to the parties of

00:31:01

the tribunal to say Lord

00:31:02

as they see fit in

00:31:03

this case. So that early

00:31:06

to say, it's not a

00:31:08

very unorthodox construction project, we

00:31:11

know that the issues here

00:31:12

are delay Quantum extensions of



00:31:15
time and in that case

00:31:17
has covid related. So we

00:31:19
know what the areas of

00:31:20
experts opinion of experts reports

00:31:22
needed our. And here's what

00:31:24
we're going to focus on

00:31:25
and these issues that are

00:31:27
secondary and in a one-party,

00:31:30
doesn't think are relevant to

00:31:32
the dispute. You can have

00:31:33
a hearing and we did

00:31:35
in front of the tribunal

00:31:36
to argue why there should,



00:31:37

or should not be expert

00:31:39

evidence adduced on that points.

00:31:41

And in that case, expert

00:31:43

evidence was found to be

00:31:44

unnecessary. We were able to

00:31:46

dispense with three years and

00:31:49

hundreds of thousands of dollars

00:31:50

in costs. Foreign experts report

00:31:53

that the tribunal from the

00:31:54

very beginning had said was

00:31:56

immaterial to the end of

00:31:57

the dispute. It was at

00:32:01

the time that the terms



00:32:01

of reference but it was

00:32:02

in a different I don't

00:32:05

think I can pass on

00:32:06

to. This is greater than

00:32:11

those preliminary evidentiary rulings. Were

00:32:14

they just rolled into the

00:32:15

final award and actually helped

00:32:17

us along the way narrow

00:32:20

down the data sets, because

00:32:22

one thing that we didn't

00:32:23

want to do in this

00:32:24

dispute which very often happens

00:32:26

is the experts issue, their



00:32:29

joint, their expert reports with

00:32:30

the feeding grounds using completely

00:32:33

different data sets and so

00:32:34

what we were able to

00:32:35

do is more able to

00:32:36

have the tribunal order for

00:32:38

document production, before him before

00:32:40

the experts submitted, any of

00:32:42

their expert reports. So there

00:32:43

was no expert report submitted

00:32:45

to the state exchange with

00:32:52

all of the relevant data

00:32:54

that the expert would would



00:32:56

use for their report then

00:32:57

and only then did the

00:32:58

experts start submitting expert reports

00:33:02

based on the same data.

00:33:04

Good, that it was the

00:33:06

same. The methodology said, the

00:33:07

experts wanted to were different

00:33:09

and that was the subject

00:33:11

of their reports and at

00:33:12

the very end before the

00:33:13

hearing was a joint. Expert

00:33:15

reports that each set of

00:33:18

experts in their discipline had



00:33:19

to go through. And so

00:33:20

far example, on Quantum, even

00:33:23

though there have been multiple

00:33:25

rounds of extra bleeding, it

00:33:27

was only in the joint

00:33:28

expert report that we were

00:33:29

able to get the other

00:33:30

side's experts to say, for

00:33:32

costs. The complete, I wasn't

00:33:34

actually able to verify my

00:33:36

own parties cost cuz I

00:33:39

know I've seen some invoices.

00:33:41

I haven't seen them all



00:33:42

and I don't know that

00:33:43

work is actually been done

00:33:44

so I can, you know,

00:33:46

number crunch but that's basically

00:33:48

all I can do and

00:33:49

that will look him up

00:33:50

in the Joint Task Force

00:33:50

report. The origin. What was

00:33:55

the origin of the process

00:33:58

of deciding on the procedure?

00:34:00

Did the did the panel

00:34:02

say we want to know

00:34:03

everything down or did you



00:34:04

or whatever counsel? And I

00:34:07

think it was both counsel

00:34:08

because of the War Stories.

00:34:10

Everybody had gone through knowing

00:34:12

this can be done and

00:34:14

it can work and it

00:34:15

was a collegial relationship that

00:34:16

we have an opposing counsel

00:34:17

and everybody knew what the

00:34:19

issues in this case was

00:34:20

and we thought one of

00:34:21

the ways we can make

00:34:22

this easier faster cheaper for



00:34:24
everyone as let's just reduced

00:34:26
the but let's narrow it

00:34:27
down and try to make

00:34:29
it. You don't go and

00:34:31
try to deal with it

00:34:32
early on and asked if

00:34:34
we thought the project as

00:34:35
opposed to leave. It's the

00:34:36
end of the year and

00:34:37
when everybody's exhausted and if

00:34:38
I do, not engage with

00:34:41
the support until long past

00:34:43
any of these issues, but



00:34:50

I look forward to the

00:34:51

day when someone does, I

00:34:57

think we're all the increasingly,

00:34:58

but I will say I've

00:35:07

tried suggesting some do not

00:35:09

all of those and frankly

00:35:10

just hit a stone wall

00:35:11

with the opposing party and

00:35:13

the tribunal just doesn't want

00:35:15

to be held if Island

00:35:16

anybody's due process. You know,

00:35:19

it works better with Council

00:35:22

trying to the civil law



00:35:23

tradition that it doesn't, cuz

00:35:25

I feel like all of

00:35:26

us training, I feel like

00:35:28

it's a lack of zealous.

00:35:29

I can see if we

00:35:30

don't try to control the

00:35:31

process as much as possible,

00:35:32

but if there's that sense

00:35:34

of the tribunal is be

00:35:35

fact-finder and bleeds, a little

00:35:37

bit more of the investigation

00:35:40

into the case. It seems

00:35:42

like parties might be a



00:35:43

little bit more willing. This

00:35:46

idea involving experts early and

00:35:49

I'm a big advocate for

00:35:50

involving experts Frida's viewed as

00:35:53

well. I think if you

00:35:56

engage a truly independent expert

00:35:58

and the instruction is assess

00:36:02

this, this potential exposure or

00:36:05

my potential claim. That's really

00:36:07

informative to the party. That

00:36:09

is instructed, the expert. I

00:36:11

also, I've seen what you've

00:36:13

described on in proceedings, and



00:36:15

I think with all of

00:36:17

the intention of narrowing issues

00:36:19

in dispute about to your

00:36:20

point, it really requires arbitrators

00:36:22

who are willing to to

00:36:25

enforce that in some way

00:36:26

I am and that maybe

00:36:28

that enforcement is as simple

00:36:30

as a party's. I would

00:36:32

like this to be done,

00:36:33

right? Rather than just putting

00:36:35

in the procedural order and

00:36:36

never speaking of it again,



00:36:37
because one party is negatively

00:36:40
not going to want to

00:36:42
participate in that process. If

00:36:44
they're, you know, internal view

00:36:46
is that expert. Talking about

00:36:49
the issues is not helpful,

00:36:50
right? Well, first of all,

00:36:58
I can think of washing

00:36:59
arbitration week for having us

00:37:00
here today and invited me

00:37:01
to participate this panel. I

00:37:03
really enjoyed getting to meet

00:37:04
my other panel members and



00:37:06

I'm thankful to be your

00:37:07

ankle and great. Thank you

00:37:09

for that. Nice introduction letter.

00:37:11

That guy is, but it

00:37:12

fits me well in the

00:37:15

event. So I was just

00:37:17

old papers. I written in

00:37:22

a chemical cost to articles,

00:37:24

I wrote for corporate counsel,

00:37:25

I should, I be at

00:37:27

a couple of colleagues wrote

00:37:28

for a corporate counsel, back

00:37:29

in 2015, on multi-party disputes,



00:37:34
the consolidation, join your issues

00:37:36
and the arbitrator selection issues,

00:37:38
they realized. While everything I

00:37:40
have to say about this,

00:37:40
I said back in 2015

00:37:42
and there is one thing

00:37:46
that I did not say

00:37:48
about this, then I have

00:37:49
had a chance to reflect

00:37:50
on that. I think would

00:37:51
be helpful in that is

00:37:54
In these large disputes. It's

00:37:58
natural. The natural tendency of



00:38:00
the lawyers involved particularly cuz

00:38:02
we're advert. We know we're

00:38:03
risk-averse. You don't want to

00:38:04
engage in proceeding. It's not

00:38:07
going to get the car

00:38:08
client. All the relief they

00:38:10
can possibly get. So work

00:38:12
naturally inclined to add more

00:38:14
parties, clients are inclined for

00:38:17
the reasons. That Lillian said

00:38:18
to try to have one

00:38:19
big proceeding for let's just

00:38:21
get this thing resolved and



00:38:24

there's good reasons for all

00:38:26

of that. I would just

00:38:28

caution that one thing you

00:38:30

need to keep in mind

00:38:31

as you're fighting your clients

00:38:32

on, this is adding parties

00:38:35

is necessarily going to add

00:38:37

to the complexity of the

00:38:38

preceding just in terms of

00:38:40

something simple as just getting

00:38:43

everything on the counter. Cuz

00:38:45

now you're dealing with more

00:38:46

witnesses probably longer hearing you



00:38:49

may be doing more sets

00:38:50

of counsel now, then you

00:38:51

have before. And so was

00:38:53

just a practical aspect, did

00:38:55

the bigger the dispute, get

00:38:56

some more parties that are

00:38:57

part of it, the tougher

00:38:59

it is. You're also opening

00:39:02

yourself up to more of

00:39:03

the I know. And that's

00:39:04

really what I'm sitting as

00:39:07

arbitrator. I had a case

00:39:09

that that was exactly what



00:39:11
happened was. Like the unknown

00:39:12
things that came to bite

00:39:15
the parties in this really

00:39:16
disrupted the arbitration. In that

00:39:19
case, it was a dispute

00:39:21
over the construction of an

00:39:23
energy infrastructure project. There was

00:39:26
a joint venture on one

00:39:28
side and a single contacting

00:39:31
you to be on the

00:39:31
other side and then there's

00:39:33
some Financial guarantees and play.

00:39:35
There were some other third



00:39:37

parties that has interest in

00:39:39

it. And so rather than

00:39:40

just having a dispute between

00:39:41

the owner and the contractor,

00:39:42

let's have this fight about

00:39:44

what this happen on this

00:39:45

project and let's figure out

00:39:46

who's liable. We had all

00:39:48

these ancillary is Robert Raider.

00:39:50

I understood exactly why they

00:39:52

departed chosen to structure their

00:39:54

arbitration with these are very

00:39:56

sophisticated lawyers on both sides.



00:40:00

Excellent. International relations practitioners, who

00:40:03

is clear that they did

00:40:04

one. They all had a

00:40:05

goal in mind and it

00:40:06

was obvious when it was

00:40:07

as you ever say. She

00:40:09

progressed first, one of those

00:40:11

tangential parties entered into insolvency.

00:40:15

Pause arbitration. Start the arbitration

00:40:18

back up now from the

00:40:20

other side, and if your

00:40:21

bankruptcy in the U.S, has

00:40:23

the arbitration and then eventually



00:40:25

could start it back up,

00:40:26

and then it'll be interrelated.

00:40:29

State Court litigation had to

00:40:30

do some of that in

00:40:32

the long. And the short

00:40:33

of it is is too

00:40:34

because the party is had

00:40:36

decided to involve all the

00:40:38

parties tangentially around the dispute.

00:40:41

They ended up in fact,

00:40:43

really delaying and two point.

00:40:46

If you don't think in

00:40:46

terms of getting resolved, it



00:40:49

could have been a one

00:40:50

year arbitration, maybe 18 months,

00:40:52

the original, you know, our

00:40:55

original is a pallet. I

00:40:57

want to send it from

00:40:57

the time they filed it.

00:40:58

When we reach at set,

00:40:59

the merits hearing was about

00:41:01

14 months and it could

00:41:03

have been resolved in that.

00:41:04

Instead, she was later, it

00:41:06

still wasn't resolved. And it

00:41:08

was because of those decisions



00:41:09

to involve all those, Ansel,

00:41:11

a part of the maybe

00:41:12

those bankruptcy would have still

00:41:13

had some impact. I don't

00:41:14

know, I didn't dig into

00:41:16

all of that wasn't my

00:41:17

job and I would figure

00:41:18

that out, but I did

00:41:19

know. I guarantee those parties

00:41:22

are they thought at the

00:41:24

beginning, when I first started

00:41:25

that process, we can get

00:41:28

this thing resolved in 14



00:41:29

months if we just keep

00:41:30

it to what fight is

00:41:31

really about and then let

00:41:33

the who's going to financially

00:41:35

pay for this award and

00:41:36

once it's entered. So that's

00:41:37

a fight you can have

00:41:38

for you can reserve that

00:41:39

for a different day and

00:41:41

sometimes it makes sense to

00:41:42

do so. And so that's

00:41:44

the word of caution is

00:41:45

your how do you get



00:41:46
is to is to be

00:41:49
careful about who you want

00:41:50
to add to your arbitration

00:41:51
and how but I guess

00:41:53
it's hard for us to

00:41:54
do particularly up front when

00:41:56
the parties, our first coming

00:41:57
together to to do whether

00:42:00
to make a project or

00:42:01
you know, if you just

00:42:02
building a standard, you know,

00:42:04
you know, a Bridge Project

00:42:07
Runway. Whatever kind of typical



00:42:10
construction project. There's going to

00:42:13
be some push and pull

00:42:15
right there at the beginning.

00:42:18
Typically the contractor is a

00:42:20
massuse want to be able

00:42:21
to pull everybody cuz like

00:42:23
the designers messed this up.

00:42:25
It's a typically there's that

00:42:31
and then there's the owner

00:42:32
you may have to push

00:42:33
back the owners may be

00:42:35
thinking about this. I want

00:42:37
one throat to choke idea,



00:42:38

I just fight it's so

00:42:42

there's that Push Pull at

00:42:44

the beginning and so I

00:42:46

think what we need to

00:42:47

do is Council is trying

00:42:49

to give our client maximum

00:42:50

flexibility up front to be

00:42:53

able to deal with the

00:42:54

dispute becomes later and so

00:42:56

the way we do that

00:42:57

is we have to have

00:42:59

some kind of coordinated system

00:43:00

or making sure that you're



00:43:02

coordinated and all the dispute

00:43:05

resolution Provisions sitting together. Now,

00:43:08

if you have clients are

00:43:08

working with the fidic contracts,

00:43:10

those should work typically it

00:43:12

depending on how much people

00:43:13

start fiddling with them, but

00:43:15

my practice is tipping. A

00:43:18

lot of bespoke EPC and

00:43:21

bpcm agreements. And so it's

00:43:24

really at that point in,

00:43:26

you know, on those too

00:43:27

far. Is the owner of



00:43:28

the contractor. We're part of

00:43:29

that agreement, making sure that

00:43:31

the other one looks design

00:43:32

agreement or investment can give

00:43:34

us whatever they all, come

00:43:35

to that same form of

00:43:37

arbitration Clause. If it's not

00:43:39

the same exact, cause at

00:43:40

least something that's compatible case

00:43:44

and point to get no

00:43:45

locking fighting or wind up

00:43:47

in a weird result, departure

00:43:49

partner, Richard choices here. He



00:43:51

had a case is notorious

00:43:53

in Houston and this years

00:43:56

ago, contract between an oil

00:43:59

company and a drilling contractor

00:44:01

and another will company wants

00:44:04

to borrow the rig, and

00:44:06

let's of the rig is

00:44:08

assigned to that other contractor

00:44:09

for a while. Just the

00:44:10

big cans of not getting

00:44:11

used to dispute, which of

00:44:13

those two companies have to

00:44:14

pay for 3 or maybe



00:44:16
not in. So They're the

00:44:19
original, join contracts at 3,

00:44:21
arbitrator has the most, to

00:44:23
compel arbitration. You got three

00:44:25
parties, chaos ensues. And so,

00:44:28
the judge, the fifth circuit

00:44:29
are in the district court

00:44:31
judge in her wisdom, decided

00:44:33
that what she would do

00:44:34
is allow each party to

00:44:36
point arbitrator and then have

00:44:38
those 30.2. Which is a

00:44:42
terrible idea. But the case



00:44:54

is appealed to the fifth

00:44:55

circuit, Let's Straighten It Out

00:44:56

with basically said, no, either

00:44:59

you all agree on a

00:45:01

process or else there's going

00:45:03

to be free arbitrators to

00:45:05

the contract. But if there

00:45:06

be three arbitrators appointed, I

00:45:08

forgot what the point, even

00:45:09

thought he was going to

00:45:09

be, but if you can

00:45:12

talk to her talk to,

00:45:12

but if you don't plan



00:45:17

for this in advance, you

00:45:18

can find yourself in a

00:45:19

very, very weird situation. Later

00:45:21

were you trying to basically

00:45:23

pound a square peg into

00:45:25

a round hole? If you

00:45:27

have one contract that says,

00:45:29

we're going to Arbor fit

00:45:30

under ICC and then the

00:45:31

contract. The next contract has

00:45:34

we're going to the CIA

00:45:41

All these contracts are going

00:45:43

to fit together will save



00:45:44

your client a lot of

00:45:45

time. And then, once that

00:45:48

you, if you've been successful

00:45:50

in that, you've established a,

00:45:51

a a scheme by which

00:45:53

we can, we can consolidate

00:45:56

arbitrations or join other. Part

00:45:57

is an arbitration. If you've

00:45:59

done that, then it's on

00:46:01

us as counsel to make

00:46:02

a decision. Okay. I can't.

00:46:04

Now, do I want it.

00:46:06

I think that's when you



00:46:07

have to cut his accounts

00:46:08

and start thinking of what

00:46:10

are the remedies are really

00:46:11

need out of this arbitration

00:46:12

and and then trying to

00:46:14

really keep your dispute as

00:46:16

manageable as possible and still

00:46:17

capture maximum release. In my

00:46:30

practice, I'm finding that my

00:46:35

clients are not finding the

00:46:38

from the dispute board process.

00:46:41

They are finding that they're

00:46:44

basically just having to litigate



00:46:45
twice. And I've seen that

00:46:47
more and more, and I'm

00:46:49
seeing more and more clients.

00:46:50
Look at putting either very

00:46:52
strict time limits. That can't

00:46:55
be letting, you know, you

00:46:56
must adhere to an door

00:46:57
threshold limits, at least we're

00:47:00
thinking about doing this. I'm

00:47:01
wondering what you guys are

00:47:02
saying. That's well, Personally the

00:47:08
last two different projects that

00:47:10
I've had already had a



00:47:11

few resolution board. I felt

00:47:13

like the parties in contracted

00:47:16

for three people to get

00:47:18

to fly to a nice

00:47:19

city, have a meeting state

00:47:23

of nice hotel, have a

00:47:24

great dinner and then go

00:47:25

back and It was just

00:47:30

pretty. As we all just

00:47:32

keep a running list of

00:47:34

the fights are going to

00:47:35

have a job. So, very

00:47:36

much that same experience and



00:47:39

I think part of it

00:47:41

comes from Not being as

00:47:43

careful in choosing, the drb

00:47:45

members, as you are an

00:47:48

arbitration that why we are

00:47:49

super super, we ought, we

00:47:51

will research are our betters,

00:47:52

to the nth degree, but

00:47:54

it seems like that's maybe

00:47:55

that same level is an

00:47:57

apply to the Army. I

00:47:58

don't know. And then also,

00:47:59

like you said, put him



00:48:01

on a budget, I would

00:48:07

add that, you know, it

00:48:09

is the success of the

00:48:11

Arby's and really any other

00:48:13

forms of you do pre

00:48:15

arbitration ATR, really comes down

00:48:18

to what the parties 12

00:48:20

and are willing to get

00:48:21

out of the process, which

00:48:23

is very difficult to control

00:48:24

when your one party, right?

00:48:26

Because I always like to

00:48:28

say litigation and arbitration would



00:48:30

be so much more efficient.

00:48:31

If you just didn't have

00:48:32

another party where both parties

00:48:38

I have seen successful resolution

00:48:41

of disputes even Strange things

00:48:44

like kind of pseudo, binding,

00:48:46

mediation that both parties that

00:48:48

it was the middle of

00:48:48

the project and there was

00:48:50

a lot of work to

00:48:50

get done. Everybody was losing

00:48:52

money and time and so

00:48:54

they said let's just there



00:48:56

was not a dealer be

00:48:56

in place. Let's just submit

00:48:58

this to a mediator who

00:48:59

will write a report and

00:49:00

we will agree to be

00:49:01

bound by those finding which

00:49:02

is a bold play, right?

00:49:04

But it worked. And I

00:49:05

got the project back on

00:49:06

time and move things forward.

00:49:07

I wonder if there's a

00:49:10

way to buy the question.

00:49:12

If someone's done it to



00:49:13

allow for the Arby's, but

00:49:15

also allow an exit ramp,

00:49:17

if it's just that. We're

00:49:18

so you stop throwing good

00:49:21

money after bad. You wanted

00:49:32

the RV during the life

00:49:33

of the project, for those

00:49:34

small disputes that are not

00:49:36

going to make it to

00:49:36

arbitration and it just makes

00:49:37

the process or the second

00:49:40

faster. The second, you hit

00:49:42

the Capital T then it



00:49:45
becomes around going through the

00:49:46
motions with a VR because

00:49:47
you know that you got

00:49:48
into the arbitration stage and

00:49:50
you're going to have an

00:49:50
excuse or whatever, the drb

00:49:52
process ends up with is

00:49:53
not really the end of

00:49:54
the matter. If you put

00:49:57
a dollar sign on its

00:49:58
or a whatever it is

00:49:59
complexity level on, its once

00:50:01
it is truth involves issues



00:50:02

XYZ. Then we can dispense

00:50:08

with the process. Thanks for

00:50:13

the kind introduction. I'm actually

00:50:16

excited to get out and

00:50:17

horseback to to the sound.

00:50:20

So I am I Nothing.

00:50:28

But when I get into

00:50:29

the challenges and talk a

00:50:32

little bit about things that

00:50:33

would help of exports in

00:50:34

international arbitration, especially when there

00:50:37

are multiple parties. I don't

00:50:39

want to take a step



00:50:39

back and talk about our

00:50:40

role in these International arbitration.

00:50:42

I think Josh did really

00:50:44

nice job of setting the

00:50:46

stage after. Why are we

00:50:47

seeing more just feels right?

00:50:49

Projects are getting larger and

00:50:51

more complex. I personally think

00:50:54

it's the international nature of

00:50:56

the parties involved that that

00:50:59

are used to their own

00:51:00

legal systems. Regulatory environment, cultural

00:51:04

norms. I think all of



00:51:06
that coming together, amplifies, it

00:51:08
just you two as and

00:51:09
when they happen. So for

00:51:11
US exports, especially an international

00:51:13
arbitration. When we get hired,

00:51:15
I do buy a claimant

00:51:17
Auto responding lice towards a

00:51:20
tribunal. And thankfully, I'm like,

00:51:22
wow. Derrick said, are the

00:51:23
five in those. I've been

00:51:24
exposed to our one, two,

00:51:26
three members. These are all

00:51:28
the traitors who have different



00:51:30

legal background jogger, pickled backgrounds,

00:51:33

technical expertise on his back

00:51:35

ground, turkey for us as

00:51:37

exports to understand because they

00:51:39

do, you understand how technically

00:51:40

stabby the arbitration tribunal is

00:51:43

and what level of detail

00:51:44

you have to go into

00:51:45

as exports? The ones I

00:51:48

have not these arbitrators, I

00:51:49

extremely technically stop challenge with

00:51:52

them. Is they don't have

00:51:53

the time or the resources



00:51:55

to go through thousands of

00:51:57

documents in a project, right?

00:52:00

I'm getting to the weeds

00:52:02

of complex issue and that's

00:52:04

where they need us, experts

00:52:06

who have specialized knowledge to

00:52:08

come in and basically decode

00:52:10

these issues for them to

00:52:12

me, I specialize in delays

00:52:15

from my role, in these

00:52:16

arbitration proceedings is to come

00:52:18

up with an objective fact,

00:52:20

based assessment of what truly



00:52:22

delayed the project. But that

00:52:24

is extremely challenging when the

00:52:26

multiple parties. Lillian spoke about

00:52:29

in all different, explore the

00:52:31

different methodologies, different documents sources.

00:52:34

I mean, we deal with

00:52:35

all of that but just

00:52:37

to take it from a

00:52:38

step-by-step analysis standpoint. The first

00:52:41

thing that we do as

00:52:42

experts in specially has a

00:52:43

delay, export is review, the

00:52:45

contemporaneous project schedule. Now these



00:52:48

are scheduled that a Dell

00:52:50

love on a monthly basis

00:52:51

by every party involved in

00:52:53

a construction project to not

00:52:55

only are we reviewing the

00:52:57

scheduled? We're trying to analyze.

00:52:59

What is the true critical

00:53:00

popular? Sifting through all the

00:53:03

noise, the green off. What

00:53:04

are the handful of issues

00:53:06

actually delay? The project has

00:53:10

that Greg mentioned that adds

00:53:12

another level of complication, but



00:53:14

you do that another, especially

00:53:16

when there are multiple parties

00:53:17

involved are a lot of

00:53:18

challenges, right? The more the

00:53:21

party is the left-handed eyes.

00:53:23

The format is recent project

00:53:25

schedules that use different song.

00:53:27

That has different level of

00:53:29

data that have different reporting

00:53:31

format and that comes from

00:53:33

the cultural, you know, set

00:53:34

up and makeup of the

00:53:36

parties involved. And, you know,



00:53:37
internationally, they have different alarms

00:53:40
for project controls and what

00:53:41
they have domestically to be

00:53:43
dealing with all of that

00:53:44
and analyzing these delays. The

00:53:46
next step is once we

00:53:47
get the delays, we've got

00:53:49
a present of coherent timeline

00:53:51
of the issues and what

00:53:53
really happened with these away

00:53:55
from conception to completion. And

00:53:57
that's where documents coming to

00:53:59
play it, right? So we



00:54:00
have launched a project documents

00:54:03
and this can be the

00:54:04
Luminous specialist and multiple parties

00:54:07
involved. Did not only looking

00:54:09
at houses and sometimes they

00:54:11
reach out to a million

00:54:12
documents. But they also looking

00:54:14
at documents that are in

00:54:15
a different language, right? So

00:54:17
that's a translating Elements by

00:54:19
we're looking at different terminology

00:54:21
with you know what standard

00:54:23
documents that we have to



00:54:24

first Digest. Once we get

00:54:26

through all of that, our

00:54:27

next step is Ben to

00:54:29

allocate these delays using a

00:54:31

methodology which is always a

00:54:33

matter of just you and

00:54:34

I haven't figured out how

00:54:35

to come up with a

00:54:36

consistent approach between the exports.

00:54:39

Would we focus on the

00:54:40

methodology that we think is

00:54:41

best suited for the case?

00:54:42

And we all can't be



00:54:44

civilized and we will assess

00:54:46

what are the financial consequences

00:54:48

that each party faces to

00:54:50

all of that gets extremely

00:54:52

complicated for an expert who

00:54:54

is on a limited time

00:54:56

and unlimited cost, right? We've

00:54:58

got a budget that big

00:54:59

bottle of Giorgio. So life

00:55:02

example of Sandpoint, I was

00:55:03

recently involved in an oil

00:55:05

and gas matter, we were

00:55:06

hired by the respondent was



00:55:08

the owner and Liam just

00:55:12

mentioned right before the statement

00:55:14

of claim, there was no

00:55:15

production. So we really hadn't

00:55:17

seen all the documents it

00:55:19

happened before. You do a

00:55:20

statement of Defence was you,

00:55:22

we had a month-and-a-half between

00:55:25

when the documents Good used.

00:55:26

And when our expert Report

00:55:28

with you through the claimants

00:55:31

witness statement and a statement

00:55:33

of one of their subcontractors,



00:55:34

we realized that the claimant

00:55:37

had tried free document management

00:55:40

system where they kept their

00:55:42

materials or any material that

00:55:44

was pretty odd. On the

00:55:45

project. Invoices, they can proceed

00:55:48

handicap, tracking dogs and material

00:55:50

management was one of our

00:55:52

biggest causes for delay on

00:55:53

this project. So we are

00:55:55

as exports were curious to

00:55:56

see if what the subcontractor

00:55:58

had trapped in a real-time



00:56:00

basis with what was having

00:56:02

a client's contemporaneously. So we

00:56:04

can access to the document

00:56:05

management system. But it was

00:56:07

extremely serious, right? It was

00:56:09

probably free. And there was

00:56:11

very little training. We had

00:56:13

never seen this document management

00:56:15

system before the documents and

00:56:17

the records were in a

00:56:18

different language. So there was

00:56:20

an element of the consulate

00:56:21

translation which means we and



00:56:24

our team spent a lot

00:56:25

of time. Extracting, the key

00:56:27

information that would help our

00:56:29

case before. Again, like I

00:56:32

mentioned, we had a month-and-a-half

00:56:33

between when the documents were

00:56:34

produced on our reports would

00:56:36

you month-and-a-half sounds like a

00:56:37

long time, right? But when

00:56:39

you have analysis, you got

00:56:40

thousands of documents. You've got

00:56:42

to review, You've bought you

00:56:44

know, writing which takes off



00:56:45

Xbox little longer than it,

00:56:47

takes my legal counsel and

00:56:49

then you have multiple layers

00:56:50

of review, right? You know

00:56:52

what the time disappears quickly?

00:56:53

It's challenge of like that

00:56:55

that we face. And I

00:56:58

do want to wrap up

00:56:59

by saying, you know, we

00:57:02

on our team scandal proactively

00:57:04

and I think both, you

00:57:05

know, Josh and Lillian have

00:57:07

touched on some of them



00:57:08

before us as exports. Only

00:57:10

retention, is she, right? I

00:57:13

would love to work for

00:57:14

Josh and then, you know,

00:57:14

who buy into this concept,

00:57:16

but most of the dispute,

00:57:18

we get involved in real

00:57:20

late to the party, right?

00:57:21

And it's challenging because of

00:57:22

multiple parties. I just spoke

00:57:24

about the complexity of These

00:57:26

issues, it takes time and

00:57:28

we trying to serve our



00:57:29

clients do the best we

00:57:31

can and it's important for

00:57:32

us to have access to

00:57:34

the information. We need to

00:57:35

do our analysis. The second

00:57:37

gym is setting to the

00:57:39

boundary right and these mega-projects,

00:57:42

Mega dispute them, multiple exports.

00:57:44

Working for the same side

00:57:46

of the same time and

00:57:48

upfront as an export is

00:57:49

important to me to know,

00:57:50

where should I fix my



00:57:52
expertise? Just because I Quantified,

00:57:55
the delay doesn't mean that

00:57:56
I'm responsible for the delay

00:57:58
related right. There could be

00:57:59
another opening on that that's

00:58:02
important to set the boundaries

00:58:03
because Dad cannot avoid duplication

00:58:06
of efforts. Are we trying

00:58:07
to be a fishing pier?

00:58:09
Another item, which is pretty

00:58:11
intuitive. Riding with me as

00:58:12
exports, would love to get

00:58:14
it. Never happened is still



00:58:16

have you no sense of

00:58:17

size document production like I

00:58:19

said for me as of

00:58:20

the last work projects schedule.

00:58:22

She tried. But if I

00:58:23

get a piece meal production

00:58:25

off, these documents makes it

00:58:27

extremely inefficient because there's no

00:58:29

way I can finish my

00:58:30

analysis. Unless I get the

00:58:31

full picture. And if I

00:58:33

don't do the analysis, I

00:58:34

can start writing those reports.



00:58:36

Consummate the reports but the

00:58:38

challenge. But is also something

00:58:39

that proactively if we can

00:58:41

work on together, right? Can

00:58:43

be done. And then finally,

00:58:45

it's just realistic timeline ride,

00:58:47

International arbitration, these procedural, orders

00:58:50

have very strict timelines worked

00:58:52

on some which have like

00:58:53

four xsportreports do in a

00:58:56

year and it gets extremely

00:58:57

challenging as exports. Need the

00:59:00

time specially with the volume



00:59:01
of documentation involved in these

00:59:03
complex matters to do our

00:59:05
analysis and synthesize on now.

00:59:08
And finally, I would like

00:59:10
to talk about the hearing

00:59:11
crap Ryan. I mean this

00:59:13
is a favorite topic of

00:59:14
mine because I've been on

00:59:16
the good side or the

00:59:16
bad side of view, the

00:59:20
bad Forest. So this was

00:59:21
an international arbitration matter that

00:59:24
happened during covid. So but



00:59:27

he'll rings but were trouble

00:59:28

in nature for sleepy Gottfried's

00:59:30

and really late in the

00:59:32

process. Analysis was rushed in.

00:59:35

Can you continue to shrink

00:59:37

wrap? Would they, the lawyers,

00:59:40

went through our presentation on

00:59:42

the allocated, every exports of

00:59:43

the 45 minutes to present

00:59:46

our case during during the

00:59:48

first explored goes on and

00:59:50

because of the virtual nature,

00:59:52

there was issues that were



00:59:53
technical challenges, there were issues

00:59:55
with the consolation that were

00:59:57
gaps in the presentation, which

00:59:59
led to the Expo losing

01:00:00
track of time and went

01:00:02
over the allocated time. So

01:00:04
just had a ripple effect

01:00:05
because Station proceedings, you get

01:00:09
x amount of minutes and

01:00:10
the opposing party gets the

01:00:12
same amount of time and

01:00:14
what was our export, you

01:00:16
know, how to reduce that



01:00:17

presentation from 45 minutes to

01:00:19

put a five-match 10 minutes

01:00:21

in the grand scheme of

01:00:21

things doesn't sound like a

01:00:23

lot, but when you got

01:00:24

an extra to spend yours

01:00:26

and lies and key issues

01:00:28

and you've got forty-five minutes

01:00:29

to summarize the highlights to

01:00:31

a tribunal, right? Every minute

01:00:34

counts, needless to say, the

01:00:36

case didn't go well, but

01:00:37

on the flip side, I



01:00:38
have hope because I recently

01:00:40
worked with a law firm

01:00:41
in Sac is Joshua's Law

01:00:42
Firm that we were in

01:00:44
an arbitration. We're going on

01:00:46
with the level of preparation,

01:00:47
which is something I hadn't

01:00:49
seen ride. The legal team

01:00:51
has Todd out, not only,

01:00:52
you know, the whole procedural

01:00:54
timeline giving the exports adequate

01:00:56
time to prepare and provide

01:00:58
analysis, but that took into



01:01:00

the curing portion of the

01:01:01

whole process, right? It's not

01:01:05

only had we rehearsed, right?

01:01:07

We had we Tourist. Our

01:01:09

presentation when you went to

01:01:10

Pods we knew which Graphics

01:01:12

to pause on. We knew

01:01:14

what you do highlights of

01:01:15

each Graphics, how we should

01:01:17

present it and not only,

01:01:18

did they take the song

01:01:20

with the director, took the

01:01:21

time with the exports ride,



01:01:24

one of the most uncertain

01:01:25

parts off? You know what

01:01:27

I'm hearing is? The cross-examination

01:01:28

is older friends with the

01:01:30

most nerve-wracking part for us,

01:01:32

but just having that mocks

01:01:34

separation, right? Just had us.

01:01:37

You don't get a level

01:01:37

of comfort. And needless to

01:01:40

say, I'm hearing right around,

01:01:42

like, a Swiss watch perfectly

01:01:44

timed, but I will say,

01:01:46

you do level of preparation.



01:01:48

There are cost implication Ryan,

01:01:50

but if you don't, I'll

01:01:52

front you plan for it

01:01:53

as a legal team. The

01:01:55

exports have a discussion off

01:01:56

at level of crap, that

01:01:58

will take pride you building

01:02:00

that cost in your budget.

01:02:01

There are options is the

01:02:02

cost efficiency. So that is

01:02:04

my phone! So, We will

01:02:13

obviously work with experts all

01:02:14

the time and we have



01:02:15
our set of things that

01:02:16
we try to do to

01:02:17
keep the experts on track

01:02:18
many of whom are already

01:02:19
on track, but you know

01:02:21
in case they get that

01:02:22
person who's trying to litigate

01:02:24
the last case instead of

01:02:25
your case, they're not, they're

01:02:26
not doing the work. What

01:02:28
are your top tips for

01:02:29
keeping us and controls with

01:02:32
you? I mean, my biggest



01:02:37
pet peeves. Is when I

01:02:38
get off, I'm given a

01:02:40
deadline without prior discussion on

01:02:42
this Council that I've worked

01:02:43
with right for a little

01:02:44
bit and I would appreciate

01:02:46
having input. So if you're

01:02:48
committing to you know something

01:02:49
deliverable is like a joint

01:02:50
in the process, it will

01:02:54
be nice to come back

01:02:55
to the export and just

01:02:56
say, hey how does this



01:02:57

affect your timeline? You've already

01:02:59

slated to do with paintings

01:03:01

and focus models are very

01:03:02

complicated but does he owe

01:03:04

florentines perspective? Adults have more

01:03:06

resources than you know more

01:03:08

Hoss Cartwright will be nice

01:03:09

to have that in fraction

01:03:11

to Doesn't happen often we

01:03:14

can manage, but it would

01:03:15

be nice for it to

01:03:16

happen. Can I ask you

01:03:19

guys, if you have any



01:03:21
thoughts about tribunal appointed at

01:03:23
first? Because we fear that

01:03:27
because the expert all of

01:03:29
a sudden. Now there's an

01:03:30
idea that the traitor and

01:03:32
whatever, the tribunal appointed expert

01:03:34
is going to say, is

01:03:35
going to become gospel for

01:03:36
the award and, you know,

01:03:38
there's a fear of giving

01:03:41
up control of the process

01:03:43
of making sure there's an

01:03:43
expert that is going to



01:03:45

present the case as you

01:03:47

would like it done. Because,

01:03:48

you know, as independent experts

01:03:51

are at the end of

01:03:51

the council and parties, you

01:03:54

can find an extra this

01:03:55

one to prevent this. The

01:03:56

cases in a way that's

01:03:57

favorable to you. You have

01:03:59

any benefits or or Draw

01:04:03

downstairs by the tribunal directly

01:04:06

as opposed to through the

01:04:07

party's. Yeah, I am. I



01:04:08
think it always comes with

01:04:10
a bias. Private was the

01:04:11
tribunal has appointed you a

01:04:13
right at the expertise. They

01:04:14
looking for I haven't really

01:04:18
dealt with it, but I,

01:04:19
I think, for me, if

01:04:21
there was a tribunal appointed

01:04:23
export, just as, you know,

01:04:24
someone finding and helping our

01:04:26
legal counsel, it's just like

01:04:28
a Ford betrayed, right? You're

01:04:29
going to get them on



01:04:30

your side, you're trying to

01:04:31

see them. The only difference

01:04:32

being as they going to

01:04:33

be the most technically Savvy

01:04:34

person on that panel, right.

01:04:36

So it's more like a

01:04:37

sign for us to just

01:04:38

wait till they get our

01:04:45

Anyting else panel. It could

01:04:48

be anything from the audience.

01:05:17

First instinct. I don't know

01:05:31

if I can answer the

01:05:31

question directly, but I will



01:05:34

have seen it both ways

01:05:36

and in both ways being

01:05:38

where a relationship has continued

01:05:41

and flourished. And we're a

01:05:44

relationship has not flourished after

01:05:46

out of taking that, that's

01:05:48

important step. But in the

01:05:50

latter instance, where it was

01:05:53

made clear through the formal

01:05:55

dispute, notification process, and taking

01:05:57

those formalize steps Midstream in

01:06:00

a project at a very

01:06:01

crucial moment and it didn't



01:06:05
go. Well, it did not

01:06:06
result in a meeting of

01:06:08
the minds, what we ended

01:06:11
up doing was negotiating a

01:06:14
different way of structuring the

01:06:16
project to complete the project

01:06:18
so that it would help

01:06:21
to address some of the

01:06:22
concerns of both parties at

01:06:25
the restructuring aspects of the

01:06:26
relationship that very clearly were

01:06:28
not working. Disagreements about what

01:06:30
was not working, but it



01:06:33

was acknowledged that it was

01:06:34

not working. So, we restructured

01:06:36

those aspects and then entered

01:06:39

a tolling agreement to deal

01:06:40

with the dispute later. Now.

01:06:43

Of course, invited a significantly

01:06:45

bigger dispute, that might have

01:06:47

existed really run the project

01:06:49

because it allowed for the

01:06:50

passage of time between two

01:06:52

parties that already had disputes

01:06:54

between them, and they both

01:06:55

are kind of piling onto



01:06:57
the pile, but it did

01:06:59
allow for the successful completion

01:07:00
of project. So, even though

01:07:02
we, you know, inserted this

01:07:04
rather aggressive step of formalizing,

01:07:08
a dispute Midstream, we found

01:07:10
a way to get the

01:07:10
project done and do what

01:07:12
the dispute later. What else?

01:07:17
One point, which is it

01:07:20
can something is level at

01:07:21
the store, but it can

01:07:22
be helpful at times in



01:07:23
narrowing down to dispute because

01:07:24
you don't want those Boombastic

01:07:26
claimed that in another situation.

01:07:28
You know, Council overzealous Council,

01:07:30
might be inclined to make,

01:07:31
but where do you know

01:07:32
that the relationship is going

01:07:33
to continue for a long

01:07:35
time? You might temper down

01:07:38
the claims that might not

01:07:40
be particularly necessary or instructive

01:07:43
and then hand-in-hand with that,

01:07:46
when the relationship continues, sometimes



01:07:48

there's a there's a bigger

01:07:51

degrees in a relationship than

01:07:52

just using as large as

01:07:55

these projects in this youth

01:07:57

can be. A lot of

01:07:58

these cases, the relationship is

01:08:00

an order of magnitude or

01:08:02

two larger, and I think

01:08:05

a lot of the players

01:08:05

are a bit more sophisticated

01:08:07

to know, whatever happens stays

01:08:10

in this, has to end

01:08:11

the relationship. I had it



01:09:10
at this earlier. I am

01:09:11
more and more talking about

01:09:12
thresholds and other things, because

01:09:14
I look does initial discussions

01:09:17
between management and almost always

01:09:21
be there if you don't

01:09:22
want. The project people getting

01:09:24
mad at each other and

01:09:26
escalating into the top and

01:09:27
then you have ten million

01:09:28
dollars in expenses. You want

01:09:30
top-level management to come in.

01:09:31
So I don't think many



01:09:32

people are looking to dispense

01:09:33

with that. Whether you're going

01:09:36

to have some form of

01:09:38

mediation or drv or something

01:09:40

in between, that's a little

01:09:43

bit more negotiable. I think,

01:09:45

depending on the pride and

01:09:46

he looked, it depends on

01:09:47

the type of project type

01:09:49

of agreement, various factors that

01:09:52

you need there, most of

01:09:54

the time, some form of

01:09:57

alternative dispute, resolution is good



01:10:00

to include. I've just come

01:10:02

to the conclusion that on

01:10:03

the dispute with a capital

01:10:05

T. It's usually a waste

01:10:07

of time and end. We've

01:10:09

had a hard time limiting

01:10:10

the process you even ride

01:10:12

as much as we're having

01:10:13

problems with the arbitration is

01:10:14

now leaking into the grp

01:10:15

process as well. And so,

01:10:17

it becomes very expensive. So

01:10:19

we've talked about using thresholds,



01:10:21
that's what we've been doing.

01:10:21
I don't know. That's what

01:10:23
other people have landed. Also,

01:10:25
just need to be careful

01:10:26
with the even if it's

01:10:28
not a drb process but

01:10:29
just to step class like

01:10:30
that. First Executives me and

01:10:32
then you go to mediation

01:10:33
and then you can start

01:10:34
it over to you, just

01:10:35
need to have clear, timelines

01:10:38
built in there so that



01:10:38

you're not, you know, creating

01:10:40

a trap for somebody for

01:10:42

you taken. Basically, it's been

01:10:44

awhile you off and getting

01:10:45

start your arbitration. If that's

01:10:46

what's going to have to

01:10:47

go. And it's not a

01:10:49

bad idea, to have a

01:10:51

tolling of the statute of

01:10:52

limitations, or something in there,

01:10:53

that's in the standard contracts.

01:10:56

Most the time now, but

01:10:57

not in all of them.



01:10:58

And there are some some

01:10:59

jurisdictions where you're not allowed

01:11:01

to do that. So you

01:11:03

need to most of the

01:11:05

common law and most of

01:11:06

them are fine, but if

01:11:08

you don't have time limits

01:11:09

and there's a running in

01:11:10

the statue of limitations, you

01:11:11

could have some real problems.

01:11:11

And I am perhaps Pollyanna

01:11:17

here. I I still very

01:11:18

much believe in a t,



01:11:19

r i have seen it

01:11:20

work but there are instances

01:11:22

where it's not going to

01:11:24

work. You almost know from

01:11:25

the outset, we're not going

01:11:27

to get anywhere. And in

01:11:29

what I try to advise

01:11:31

clients, who have these multi-tier

01:11:33

dispute resolution Provisions, perhaps in

01:11:36

a form contract that they

01:11:37

use for every project, right?

01:11:39

They just we have a

01:11:40

new project. Here's that's the



01:11:41
end of this Clause. Plug-and-play,

01:11:42
is that I think you

01:11:44
need to be more more

01:11:46
mindful about, will this dispute

01:11:48
resolution proceeding procedure work for

01:11:52
this project with these parties

01:11:54
because if it's a massive

01:11:56
project and maybe building in

01:11:58
those very formalistic and extended

01:12:00
timelines makes sense or if

01:12:01
you're working with a a

01:12:02
sovereign or a government counterparty

01:12:04
that needs the time and



01:12:06
needs the, the formality of

01:12:08
the process in order to

01:12:09
reach a decision on their

01:12:11
end. Every project is different

01:12:13
and I do think that

01:12:14
all too often, you know,

01:12:16
particular kind of bigger institutional

01:12:18
clients, who have projects all

01:12:19
the time, they get comfortable

01:12:21
with a set of rules

01:12:23
and they stick with them.

01:12:25
And they don't always work

01:12:26
for every project. Anyone else



01:12:30
think I'll let is the

01:12:32
drb is when they work

01:12:34
successfully Force the parties contemporaneously

01:12:37
to document a claim, right?

01:12:39
So when we export get

01:12:40
involved off the fact, you

01:12:42
know, it's it's a nice

01:12:43
way for us to get

01:12:44
up to speed instead of

01:12:45
sitting 2 year olds different

01:12:47
versions of different documents that

01:12:49
are all in a package,

01:12:50
right? For that may not



01:12:52
be right, but at least

01:12:53
you have both parties on

01:12:54
stunning of that issue at

01:12:55
that time. So helpful for

01:12:57
us, Alright, thank everybody very

01:13:02
much.