



## International Arbitration and the Challenges of Financial Services in the First Three Decades of the New Century \*

### Summary

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

The session at Washington Arbitration Week featured a panel discussing international arbitration and the challenges facing financial services in the current economic climate. Key participants included Kearney from Norton Rose Fulbright, Michael Sket, a valuation and banking expert, and Thomas White from Sullivan & Cromwell.

The panel highlighted significant developments in the financial sector over the past few years, particularly the impact of monetary tightening and rising interest rates, which have led to substantial deposit outflows from smaller banks. This context set the stage for discussions on recent high-profile investment treaty cases and the evolving regulatory landscape affecting financial services.

The conversation delved into notable cases, such as those involving Chinese insurance companies and the Greek sovereign debt crisis, emphasizing the importance of treaty language in determining jurisdiction and the classification of financial instruments as investments. The panelists also explored the complexities of proving bad faith in regulatory actions and the challenges of assessing damages in banking disputes, given the interconnected nature of financial institutions and their regulatory requirements.

Arbitration was discussed as a preferred method of dispute resolution over domestic litigation, with advantages such as streamlined discovery processes and the expertise of international tribunals. However, challenges remain, particularly regarding jurisdiction, the nuances of police powers, and the enforcement of awards against states, which often involve overcoming sovereign immunity.

Looking ahead, the panelists predicted an increase in disputes related to regulatory changes, the rise of digital assets, and the implications of ESG regulations. They expressed interest in ongoing developments, particularly regarding bondholder claims and the evolving financial landscape in countries like Argentina. Overall, the session provided



valuable insights into the dynamic interplay between international arbitration and the financial services sector.

### **Authors**

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### **Topics**

International Arbitration, Financial Services, Challenges, New Challenges, New Century

### **Category**

WAW

### **Full Transcript**

00:00:00

Bachelorette Jose Antonio Rivas and

00:00:06

Ian Laird and Maria Lucia

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Casas in the whole team.

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I think they have just

00:00:09

done an extraordinary job. The

00:00:13

panels have been just asking

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the highest level of quality

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really terrific people other than

00:00:19

Mike panel, but you know,



00:00:22

you always have one. I'm

00:00:25

just so impressed with what

00:00:26

you have done. And I

00:00:29

think we're all very grateful

00:00:30

for what you have done

00:00:32

with it. So without further

00:00:34

ado. Well the welcome everyone

00:00:42

and and thank you to

00:00:44

decorate and to Alex and

00:00:46

unto David as well and

00:00:49

to win all the crew

00:00:50

from the international arbitration of

00:00:53

I was telling Alex that



00:00:57

I met him. When when

00:01:00

I had a different Hat

00:01:01

awards are very little value

00:01:07

if you are unable to

00:01:09

enforce them and you're unable

00:01:11

to look after the assets

00:01:14

of all the parties at

00:01:16

that lost show end up.

00:01:20

I was telling a lie.

00:01:22

That I actually missed the

00:01:24

contact with him. He is

00:01:26

an honest lawyer. And and

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and one of the kindest



00:01:32

person I can think of

00:01:34

I would like to thank

00:01:41

you and I might introduce

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you and then and then

00:01:47

you'll do the rest the

00:01:48

magic so cretney is at

00:01:54

the Norton Rose Fulbright. She

00:01:57

focuses her practice on International

00:02:00

dispute settlement with an emphasis

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on investor-state arbitration. She represents

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crossover investors as well as

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respond Goldman in proceedings before

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exit and the under the



00:02:15  
additional cases. Pools and and

00:02:21  
the and many other cases

00:02:23  
under various investment cast of

00:02:27  
the are at cetera importantly

00:02:30  
he has already being a

00:02:32  
speaker and she has already

00:02:34  
helped us with other panels

00:02:36  
in while washing arbitration week

00:02:39  
and also the world arbitration

00:02:40  
update. So I'm I'm really

00:02:42  
thankful to her old job,

00:02:44  
which is somehow not that

00:02:47  
easy because this matter involves



00:02:49  
investment re arbitration and international

00:02:53  
commercial arbitration into related to

00:02:55  
the financial sector and up

00:02:57  
and it's not nuclear science,

00:02:59  
but but it can be

00:03:01  
very complex and and therefore

00:03:04  
I'm grateful to to Kearney

00:03:06  
to head on and I'm

00:03:07  
also very grateful for your

00:03:09  
presence here are so welcome

00:03:11  
and please take it away.

00:03:13  
Thank you very much. Thank

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you. It's true. I have



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learned I had to study

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a little bit about this

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particular topic. That is very

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interesting and I'm excited about

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it. Thank you very much.

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I love participating in these

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events and thank you to

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decorate for hosting us. And

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of course thank you to

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the panelists. Well introduced shortly.

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I just want to welcome

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everybody to this panel titled

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International arbitration and the challenges



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of financial services in the

00:03:42

first three decades of the

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new century. Let's just unpack

00:03:46

that title a little bit.

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So shiny from the and

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refocusing of course 2020-23 but

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that's actually a very long

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time considering all of the

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activity that's going on in

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global economies that have expected

00:04:00

Financial Services. I'm sure there's

00:04:03

one is aware when the

00:04:05

USB have had inflation and



00:04:07

the measures That central banks

00:04:10

in the US and elsewhere

00:04:11

have taken to cool inflation

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relating to that. We've had

00:04:16

bank failures in the US

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and in Europe before that

00:04:20

covid before that's a 2008

00:04:23

financial crisis on even in

00:04:25

times of maybe not crises.

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We have banks in fermenting

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macro-prudential measures aimed at ameliorating

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Financial system rest. So the

00:04:37

time has gone on in



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the last three decades in

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the financial services sector, so

00:04:43

we will probably maybe focus

00:04:45

on it be even more

00:04:46

recent events in that area.

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And of course this week

00:04:51

is about arbitration. So we're

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going to talk about International

00:04:55

arbitration both investment and Commercial.

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We're going to discuss some

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notable cases. Most the most

00:05:01

recently decided were brought most

00:05:04

of those are investment arbitrations,



00:05:06

but we will have chocolate

00:05:08

some commercial as well. A

00:05:10

lot of those are cases

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where there's a private bank

00:05:14

have sued central banks and

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Regulators or investment funds have

00:05:19

stood central banks and Regulators.

00:05:20

So that's it. So let

00:05:28

me introduce our at our

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illustrious panel that is with

00:05:32

us and we'll start with

00:05:34

story on Neville. Am I

00:05:35

right? Sorry on is a



00:05:37  
member of Dead Boys International

00:05:39  
dispute resolution group in New

00:05:41  
York. So thank her very

00:05:43  
much for coming down to

00:05:44  
DC with us today. She

00:05:46  
is part of the desk

00:05:48  
as well. Her practice focuses

00:05:50  
on public international law international

00:05:53  
arbitration and complex litigation with

00:05:55  
a particular emphasis on the

00:05:56  
Middle East. She's admitted to

00:05:59  
the New York and Paris

00:06:00  
bars in addition to being



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a solicitor in England and

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Wales with nearly 20 years

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of experience. So Ian and

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advises and represents sovereign states

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state-owned entities and multinational corporations

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in a variety of jurisdictions

00:06:13

and four on issues of

00:06:14

civil and common law public

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international law and treaty and

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contract interpretation. She also advises

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private Equity Funds and hedge

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funds including in connection with

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investments in the Middle East.



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The screen we have Michael's

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get hot. He is an

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independent valuation and banking expert

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based in New York. He

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has testified on valuation matters

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in international commercial arbitration across

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Industries, including banking construction power

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generation and transmission oil and

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gas Transportation telecommunication and food

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before working as an expert.

00:06:53

Michael Works in banking for

00:06:54

17 years. He was the

00:06:56

chief operating officer of the



00:06:58

Investment Bank of Commerce Bank

00:07:00

Germany's second-largest Bank from 2005

00:07:03

to 2011 and prior to

00:07:05

that. He was responsible for

00:07:06

Commerce Banks own m&a transactions

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and for managing the bank's

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regulatory capital for six years.

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He has a deep understanding

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evaluation of Banks and financial

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instruments and a bank regulation

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my clothes and mathematician by

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training and hold the second

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master's degree in engineering and



00:07:23  
management from MIT. And the

00:07:26  
welcome Michael. Last but not

00:07:29  
least you have Thomas White

00:07:30  
Tom is a partner in

00:07:32  
next to a story on

00:07:33  
him and Sullivan & Cromwell

00:07:35  
litigation group in DC his

00:07:37  
practice focuses on complex commercial

00:07:39  
litigation and increasingly arbitration. He

00:07:42  
has represented some of the

00:07:43  
world's leading financial institutions including

00:07:46  
Goldman Sachs Barclays Swiss re

00:07:48  
UBS and Banco Popular. He



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is representing the Republic of

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Argentina in cases pending in

00:07:54

New York and London relating

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to the Republic's expropriation of

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51% of y p s

00:08:00

and the GDP length securities

00:08:02

issued as part of the

00:08:03

Republic's debt restructuring Tom has

00:08:06

been at Sullivan & Cromwell

00:08:07

since 2008 after completing his

00:08:09

quick ship with honorable Loretta

00:08:11

a Prescott of the southern

00:08:13

district of New York. So



00:08:15

welcome to thank you. Okay.

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So feel free to jump

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in with questions throughout we

00:08:21

may be moving quickly and

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I will also be some

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time at the end if

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you have questions that goes

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for online as well. I'll

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try and keep an eye

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on the chat in response

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to the question. You can

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post questions on the chat

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and I will try and



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read those questions up if

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I see them. Okay, and

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they're good questions. No judgement.

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I will probably read any

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question you but in the

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end, okay, let's start with

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Michael as being on lawyer

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and the ex-banker Michael. Maybe

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you can give us a

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taste and a fraction an

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explanation of some of the

00:08:58

economic factors that have affected

00:09:00

Financial Services most recently. Thank



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you Courtney in good afternoon

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everyone and I'm happy that

00:09:06

you're not asking about the

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last three decades. So the

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most significant development in the

00:09:13

last two years was certainly

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the mandatory. So the title

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and resell past increase grade

00:09:19

seven times since March 2022

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from from virtually Zero from

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0.25% to 5.5% Currently this

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movement was very material that

00:09:32

boost the the biggest move



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in one cycle that the

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Federal Reserve had time since

00:09:38

the early 1980s on the

00:09:40

pole vaulter when when inflation

00:09:42

was extremely high and it

00:09:44

also happened really fast to

00:09:46

him may happen in just

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17 months. So as a

00:09:49

result, we saw that commercial

00:09:51

banks have lost deposits in

00:09:54

the US of 1.3 trillion

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US Dollars. That's 7% of

00:10:00

all deposits held by the



00:10:01

US Banks and why did

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that happen? It happened because

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at higher rates there were

00:10:06

just more attractive investment opportunities

00:10:09

for foreign investors. And the

00:10:11

last part of deposit outflows

00:10:12

have ended up actually in

00:10:14

money market that said such

00:10:18

a large and possibly put

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it out. So it is

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quite a rare event. So

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if you look at that

00:10:23

statistics since the 1970s, all



00:10:26  
you see is deposits increasing

00:10:29  
constantly and this is the

00:10:32  
first time that you really

00:10:34  
see that massive outflowing in

00:10:36  
such a short. Of time.

00:10:39  
So I think this called

00:10:40  
many banks just by surprise.

00:10:42  
And additionally the outflow was

00:10:44  
not uniform it hit smaller

00:10:46  
Banks much harder than the

00:10:48  
big four and that was

00:10:49  
certainly the case for the

00:10:51  
sweet banks that that Fayette



00:10:53

which were sitting in Valley

00:10:54

Bank Signature Bank and First

00:10:57

Republic. So then why did

00:10:59

those things fade in the

00:11:00

case of Silicon Valley Bank

00:11:02

Silicon Valley Bank at to

00:11:04

replace the liquidity that it

00:11:06

had lost from deposit with

00:11:08

drawers and it it did

00:11:10

that by selling 21 billion

00:11:12

in US government bonds not

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the problem was that that

00:11:17

government bonds had lost in



00:11:18

value because of monetary tightening

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its it's simple if it's

00:11:23

rates go up. fixed-rate bonds

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lose in value and to

00:11:31

give you an example. If

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you have bought the the

00:11:33

30-year Government Bond that was

00:11:35

issued just before monetary tightening

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in February 2020 that Bond

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would have lost, you know,

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37% in value. And remember

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we're talkin about US government

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bonds, which are considered one



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of the lowest risk investments

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in the world. So that

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that was exactly what happened

00:11:55

to to Silicon Valley Bank

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Silicon Valley. So it's 21

00:11:58

billion dollars in US government

00:12:01

bonds at loss of 1.8

00:12:03

billion and when it announced

00:12:05

that to the market, it

00:12:07

had basically solved the liquidity

00:12:09

problem in the short-term, but

00:12:11

it had created a capital

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problem because because of that



00:12:15  
loss Silicon Valley Bank announced

00:12:18  
to the market that it

00:12:18  
would have to raise fresh

00:12:20  
capital and that just met

00:12:22  
with panic and was in

00:12:23  
just two days deposit as

00:12:25  
withdrew 140 billion of deposits

00:12:28  
from Silicon Valley, which was

00:12:30  
More than two-thirds of of

00:12:32  
the of the overall deposit

00:12:34  
of Silicon Valley Bank, and

00:12:35  
that was a massive thing

00:12:37  
from and Silicon Valley obviously



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did not survive that as

00:12:42

we know it didn't stop

00:12:43

there because when something like

00:12:46

that happens investors are looking

00:12:48

for the next terminal piece

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to fall and those two

00:12:52

pieces were Signature Bank and

00:12:55

First Republic Bank silver. So

00:12:57

the share prices of both

00:12:58

Banks collapsed quickly after after

00:13:01

those events and depositors again

00:13:04

panicked and the end or

00:13:06

three Banks pay it because



00:13:08

because of massive bankrupt, so

00:13:11

that was really an effect

00:13:14

off of monetary tightening but

00:13:16

monetary tightening was not the

00:13:18

only factor that play the

00:13:20

road again. There are the

00:13:22

Texans playing some of them

00:13:24

are secondary effects from monetary

00:13:26

tightening such as for example

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the deposit so What's Venture

00:13:31

Capital funding measure capitals? I

00:13:32

need ride up with birth

00:13:35

rates on on the ride,



00:13:37

and that affect the particularly

00:13:39

Silicon Valley Bank and Trust

00:13:41

Republic Bank, because Silicon Valley

00:13:44

Klein was starting at Eclipse

00:13:46

front wheel starting to pull

00:13:47

deposit from those two bags

00:13:49

and both bags at very

00:13:51

strong franchises in Silicon Valley

00:13:53

the Federal Reserve Peridot to

00:13:56

the monetary tightening had also

00:13:59

stopped its quantitative-easing, which it

00:14:03

had started after the global

00:14:04

financial crisis, and it actually



00:14:06

went in Reverse in the

00:14:07

middle of 2022 and it

00:14:09

started quantitative tightening which created

00:14:12

more pressure on banks liquidity,

00:14:14

and lastly because of covid

00:14:16

commercial real estate sector has

00:14:19

been suffering in that has

00:14:21

been a problem for Signature

00:14:23

Bank, which had large exposure

00:14:25

to the sector Sew sewing

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in Indiana. Thank you. Seppi

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sewing spring this year was

00:14:32

it was a combination of



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many factors, but the monetary

00:14:35

tightening was certainly one of

00:14:37

the biggest and the driver

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Manual of the secondary sex.

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That's not to say that

00:14:42

monetary tightening was was kind

00:14:44

completely as a surprise when

00:14:47

you would would come and

00:14:48

banks have have Who is

00:14:51

to protect their bouncy then

00:14:53

protect their Investments against expected

00:14:56

interest rate Rises, but some

00:15:00

are better than others and



00:15:02

some banks also got exposed

00:15:04

because of a strategic positioning

00:15:06

more to those attacks than

00:15:08

that other banks in. This

00:15:09

is exactly what we have

00:15:11

seen this year. Thank you,

00:15:14

Michael and everyone here in

00:15:16

the back. I feel like

00:15:17

yes, you can hear it

00:15:18

in the back of soft

00:15:19

me. Michael really quickly. We

00:15:21

have a question from online

00:15:24

that maybe you can answer



00:15:25

briefly before we turned it

00:15:27

to fly on why did

00:15:29

the depositors and those failed

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Banks holds much money in

00:15:32

their deposit accounts. Why did

00:15:33

they not realize there was

00:15:34

a risk of keeping huge

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Mountain Bank and that's moving

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money into treasury bills that

00:15:38

are which are safer if

00:15:39

you can give a quick

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response to that. So Pine

00:15:45

in in most bang for



00:15:47

your deposit us have not

00:15:49

lost any money and you're

00:15:52

right that some deposits are

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not insured and I take

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leaves deposits about \$250,000. But

00:16:00

as I said earlier that

00:16:01

many opportunities to put your

00:16:05

money at work because interest

00:16:07

rates by 0.25 per cent.

00:16:09

So so for many of

00:16:11

those depositors deposits in banks

00:16:13

by the mall more attractive

00:16:15

investment at the time mod



00:16:18

fact Rotana. Thank you. Can

00:16:25

you please give us maybe

00:16:26

an introduction or summary of

00:16:28

some recent cases in the

00:16:30

financial sector related to these

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sorts of issues. So if

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you thank you. Thank you

00:16:35

Courtney and thank you for

00:16:36

the invitation to be hearing

00:16:38

something out cuz I'm telling

00:16:39

you and Decker so happy

00:16:42

to be here and stuff

00:16:43

like that is just my



00:16:45

heart says I will mention

00:16:46

a few minutes. I was

00:16:48

involved in one of the

00:16:49

other cases that I will

00:16:50

discuss. So it's it's a

00:16:52

topic that is yeah, we're

00:16:53

together interested. Thank you for

00:16:54

taking it. So yes, we

00:16:57

have seen a significant increase

00:17:00

of number of high-profile investment

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treaty cases arising out of

00:17:05

the financial services industry and

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largely for the macroeconomic conditions



00:17:11

that you Courtney in and

00:17:12

Michael just described and I

00:17:14

just want to just give

00:17:15

a couple of examples just

00:17:17

to give you a sense

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of the types of sort

00:17:19

of financial instruments that have

00:17:20

been an issue. Those cases

00:17:22

first starting and has not

00:17:25

existed list, of course that

00:17:27

in 2009. They were too

00:17:29

large Chinese insurance companies that

00:17:34

brought an extra claim against



00:17:37

Belgium arising out of measures

00:17:38

that Belgium has taken a

00:17:41

rising out of the 2008

00:17:43

financial crisis and it was

00:17:46

in relation to an investment

00:17:48

that those investors to Chinese

00:17:51

companies had made in the

00:17:52

company called forties Group, which

00:17:54

is a banking and Insurance

00:17:55

Group fast forward 2016 and

00:17:58

his case was dismissed for

00:17:59

lack of jurisdiction because basically

00:18:02

the claims that were at



00:18:03

issue were covered by a

00:18:04

previous treaty that had to

00:18:05

cause a dispute resolution cause

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I was Far narrower than

00:18:08

the the 2009 treaty that

00:18:11

they try to to rely

00:18:12

on provided then in 2012.

00:18:16

There was also a very

00:18:18

famous case that made the

00:18:19

headline the push do viruses.

00:18:21

Grease a case which arose

00:18:24

out of the Greek restructuring

00:18:27

of the sovereign debt crisis



00:18:30

I should say which will

00:18:31

also serve who was a

00:18:32

byproduct of the 2008 financial

00:18:34

crisis that also resulted in

00:18:37

the same dismissal of jurisdiction.

00:18:40

So you could see sort

00:18:41

of a trend in a

00:18:42

way we think of maybe

00:18:43

a trend of Minnesota in

00:18:45

this particular case. Those were

00:18:47

7 deaths 07 Bond. I'm

00:18:50

so in one case you

00:18:51

had Insurance Group Investments. And



00:18:54

in the other you had

00:18:55

bombs that were the financial

00:18:56

instruments that were issued last

00:18:59

year. We saw also an

00:19:00

Austrian bank call Dad ecobank

00:19:03

that filed a claim against

00:19:05

Slovenia arising out of measures

00:19:07

that were taken by the

00:19:09

state that related to specific

00:19:12

loans that were made in

00:19:14

Swiss friends sort of the

00:19:16

byproduct of the currency devaluation

00:19:18

in Switzerland and What is



00:19:22

interesting is that not only

00:19:23

in that case the financial

00:19:24

instruments were loans and like

00:19:26

bombs and other you know,

00:19:27

what investments and insurance companies

00:19:29

that I mentioned earlier. But

00:19:31

in that particular case ID

00:19:33

cobank, I found a new

00:19:35

lesson three countries starting with

00:19:37

Montenegro and then Croatia and

00:19:40

then again Slovenia and course.

00:19:42

We'll see you know that

00:19:43

the last case was just



00:19:44

filed last year. So we'll

00:19:45

just have to be on

00:19:46

the lookout for the kids

00:19:48

that I want to just

00:19:49

maybe spend a couple more

00:19:50

minutes a couple minutes on

00:19:52

is is is is is

00:19:53

a case that I as

00:19:54

I mentioned I worked on

00:19:55

so many years which is

00:19:57

the Gramercy Pro case which

00:19:59

was filed in 2016 under

00:20:02

the us through to PA



00:20:04

and that case arose out

00:20:08

of pharmacies investment in bonds.

00:20:12

But what was interesting is

00:20:14

that those bombs which work

00:20:15

or land Bonds were issued

00:20:17

by the government of Peru

00:20:19

in the 1970s? As part

00:20:22

of an agrarian reform. So

00:20:24

essentially the country gave issued

00:20:27

Bonds in exchange for land

00:20:29

of the size of Portugal.

00:20:31

So he imagined it was

00:20:33

a pretty pretty sizable piece



00:20:34

of land and because prudent

00:20:37

have the funds to be

00:20:39

able to repay those this

00:20:41

land outright. It issued to

00:20:42

Stan's fast forward, you know

00:20:45

through at you kind of

00:20:47

make a crisis hyperinflation to

00:20:50

currency denominations in 1980s the

00:20:53

value of those bombs became

00:20:55

essentially worthless. But in 2001

00:20:59

the Constitutional tribunal of Peru

00:21:02

said that the government actually

00:21:03

had to repay the land



00:21:05

on both the principal and

00:21:07

the interest at current value

00:21:09

and not nominal value and

00:21:11

it is on that basis

00:21:12

that Gramercy decided by man

00:21:14

sees the hedge fund based

00:21:15

in Connecticut Gramercy decided to

00:21:17

invest in those bombs based

00:21:20

on the legitimate expectations. I

00:21:23

would say that you would

00:21:25

actually do good on a

00:21:27

Statin pay pay the land

00:21:28

on that but instead of



00:21:30

doing that it's an issued

00:21:32

a series of what was

00:21:34

called Supreme decrees which purported

00:21:37

to pay the land bond

00:21:38

that but essentially destroyed the

00:21:41

value of the bonds would

00:21:42

use the value of the

00:21:43

bounce back. What we argued

00:21:45

was 99% and so on

00:21:47

that basis Gramercy filed an

00:21:49

investment treaty case as I

00:21:51

mentioned under the us through

00:21:52

TPA and alleging. Abbreviation Richard



00:21:59  
minimum standard of treatments in

00:22:01  
addition to two other clients.

00:22:03  
We were fortunate to have

00:22:05  
a favorable ruling just this

00:22:07  
past December. So I think

00:22:08  
it's the case that I

00:22:09  
can only talk about is

00:22:10  
being having involved in the

00:22:11  
case, but also having seen

00:22:13  
it true. We we received

00:22:15  
an award this past December.

00:22:16  
We're by the majority found

00:22:18  
and what is really interesting.



00:22:20

I think four boxes of

00:22:21

discussion is that it found

00:22:23

that those particular bonds or

00:22:25

7. Actually constitute Investments under

00:22:28

the under the particular treated

00:22:30

and I'll come back to

00:22:31

this later in the discussion.

00:22:33

Of course, this is was

00:22:35

it at 344 Gramercy. There

00:22:37

was I will say, you

00:22:38

know in the in the

00:22:39

interests of transparency there was

00:22:40

also a dissenting opinion which



00:22:42

was surrounded by a Cruz

00:22:44

appointed arbitrator which took a

00:22:46

different who took a different

00:22:46

view as to whether they

00:22:48

had been jurisdiction, but I

00:22:50

won't get into details on

00:22:52

that suffice it to say

00:22:53

that I think this is

00:22:54

a good example of and

00:22:56

like the other cases that

00:22:57

Mentioned we're by the tribunal

00:22:59

found that he didn't have

00:23:00

jurisdiction to rule or to



00:23:02

consider that specific financial instruments

00:23:04

were covered investments into the

00:23:06

relevant Riebes in that case.

00:23:08

We were favorable. So I

00:23:10

hope that gives you sort

00:23:11

of a sense of funeral

00:23:13

the type of financial instrument

00:23:14

that may give rise to

00:23:16

investment treaty claims. Very interested.

00:23:19

Thank you for now come

00:23:22

as a litigator. How would

00:23:24

you say arbitration and financial

00:23:26

services differs from litigations? I'm



00:23:28

sorry. This is a multi-part

00:23:29

question has there been in

00:23:31

litigation has arbitration rather than

00:23:35

domestic litigation been recently seeing

00:23:37

a rise in these types

00:23:39

of cases. And if so,

00:23:41

why do you think that

00:23:41

is thank you. Thank you

00:23:44

for the invitation to the

00:23:46

speak to you all today

00:23:47

and thank you to decorate

00:23:48

for for your hospitality and

00:23:50

in hosting us you're right.



00:23:54

So I didn't begin my

00:23:56

career in the arbitration space

00:23:58

at Essen see you're a

00:24:00

litigator and we don't further

00:24:02

differentiate you as Associates, you

00:24:05

know, growing up in the

00:24:07

litigation space, but I've always

00:24:09

worked very closely with financial

00:24:12

sector clients and so I

00:24:14

can glean their perspective on

00:24:16

these issues over the course

00:24:18

of many. So now 15

00:24:21

years later a substantial portion.



00:24:24

My practice is devoted to

00:24:26

arbitration often with an international

00:24:28

component to it. And so

00:24:31

I bring a perspective to

00:24:34

these issues as someone who

00:24:35

does a lot of arbitration

00:24:37

work now up, but who

00:24:39

hasn't been steeped in it

00:24:41

for his entire career as

00:24:43

as many of you have

00:24:44

and soak to get to

00:24:46

your question your last question

00:24:47

Courtney. Yes. I've seen a



00:24:49  
substantial rise in arbitration from

00:24:53  
where I sit as a

00:24:55  
preferred method of of dispute

00:24:58  
resolution in comparison to domestic

00:25:00  
litigation and I think it's

00:25:02  
worth I'm thinking about why

00:25:05  
that's the case. And I

00:25:07  
think that gets to your

00:25:08  
first question, which is the

00:25:10  
differences between the two are

00:25:12  
precisely why I think we've

00:25:14  
seen an increase in an

00:25:15  
arbitration from from the client's



00:25:19  
perspective document Discovery is much

00:25:23  
more rational the discovery process

00:25:27  
and domestic litigation for those

00:25:29  
of you who have contended

00:25:31  
with Ed and the meat

00:25:32  
and confers and the letters

00:25:34  
and the arguments we see

00:25:36  
some of that an arbitration

00:25:38  
but it's not nearly as

00:25:39  
big nearly as much headspace

00:25:41  
as us and in ordinary

00:25:42  
us litigation and that is

00:25:45  
clients least favorite part of



00:25:47

the spirit resolution process. So

00:25:50

there's a preference. I think

00:25:52

we're much more streamlined approach

00:25:54

to document production where the

00:25:58

request themselves are going to

00:26:00

be scrutinized and then we'll

00:26:01

be we'll have to show

00:26:03

relevance and materiality. And just

00:26:06

combined with the general preference.

00:26:08

I think I tribunals of

00:26:09

not having much interest and

00:26:10

in dealing with these issues

00:26:12

and an ordering no extraordinary



00:26:15  
expenses e-discovery. So that's one

00:26:18  
reason the second one. I

00:26:19  
find somewhat lamentable which is

00:26:22  
that clients prefer the absence

00:26:25  
of depositions that depositions is

00:26:27  
my favorite part of the

00:26:28  
domestic litigation process, at least

00:26:31  
I'm taking the depositions defending

00:26:33  
them as it's not as

00:26:34  
much fun, but that's so

00:26:36  
clients. You not mind clients

00:26:38  
you is that depositions are

00:26:40  
expensive disruptive to the business



00:26:43

often times oftentimes. The folks

00:26:46

are trying to get the

00:26:47

most senior people step positions.

00:26:50

And ultimately I think the

00:26:52

view is that they don't

00:26:53

add much The process a

00:26:56

couple of other reasons I

00:26:59

think are the challenges and

00:27:02

getting your class or Collective

00:27:04

arbitrations and they at arbitration

00:27:06

context like we know of

00:27:07

exceptions to that but it

00:27:09

does continue to be very



00:27:10

rare and just generally speaking

00:27:13

the lawyers have a lot

00:27:14

more flexibility or procedures that

00:27:16

that are going to govern

00:27:17

the dispute resolution process. Sylvester

00:27:21

some of that the procedural

00:27:22

reasons why I think we're

00:27:23

seeing more more of them

00:27:24

to play on the commercial

00:27:25

side, but I think the

00:27:27

most important development in my

00:27:29

opinion as I thought about

00:27:30

this issue is that I



00:27:34

think we've seen over the

00:27:35

course of the last 15

00:27:37

years at least in my

00:27:38

experience a substantial increase in

00:27:40

the quality of the tribunals

00:27:42

that are resolving these cases

00:27:45

me when I first started

00:27:46

practicing I think there was

00:27:48

a sense that you never

00:27:50

know. What's going to happen

00:27:51

in Ann Arbor Trail. You

00:27:52

should let me know some

00:27:53

degree. Maybe that's true today,



00:27:54

but that's true and domestically

00:27:56

creation as well. But with

00:28:00

tribunals that are better and

00:28:01

better and more sophisticated. I

00:28:03

think that clients are increasingly

00:28:05

comfortable having high State disputes

00:28:09

resolved by these fees tribunals

00:28:12

where you can have confidence

00:28:13

that they're going to be

00:28:16

sophisticated and that their degree

00:28:19

of sophistication. Standing will surpass

00:28:21

judges even some of the

00:28:23

more favoured jurisdictions for resolving



00:28:26  
international disputes. So I think

00:28:29  
this is particularly important in

00:28:31  
the financial sector where some

00:28:36  
of the instruments can be

00:28:38  
complex and require in a

00:28:39  
rolling up your sleeves understanding

00:28:41  
them understand being a transaction

00:28:45  
understanding an industry. But now

00:28:48  
I think it's increasingly clear

00:28:50  
that International tribunals are up

00:28:52  
to this task. So I

00:28:53  
think I think those are

00:28:54  
the reasons why it's becoming



00:28:56

a larger and larger portion

00:28:58

of practices, like folks like

00:29:01

me and and and a

00:29:04

preferred method for resolving some

00:29:05

very significant. Okay, let's get

00:29:13

into sort of the nitty-gritty

00:29:15

of these cases and the

00:29:17

breakdown what the challenges are

00:29:19

and the different factors the

00:29:22

jurisdiction damages and enforcement. Would

00:29:28

you like to start talking

00:29:30

about the challenges of arbitration

00:29:32

and financial services with respect



00:29:33  
to jurisdiction, then sure. Yeah,

00:29:36  
so I think Might make

00:29:39  
some thank you honey. I'm

00:29:41  
done being too used to

00:29:43  
do this. Dinglasan. Zuma said

00:29:47  
the challenges on jurisdiction to

00:29:51  
read their number of challenges

00:29:53  
that can arise not necessarily

00:29:54  
specific to the financial industry.

00:29:57  
I would say but just

00:29:59  
I think just go to

00:30:00  
try to resolve those issues

00:30:01  
the way I have considered.



00:30:02

This is very to put

00:30:04

it very simply just take

00:30:06

a look at the treaty

00:30:07

because then the answer is

00:30:08

very often in the treaty

00:30:10

in the way that the

00:30:12

you know that the scope

00:30:13

of the treaty is is

00:30:14

is defined while it is

00:30:17

true that there has been

00:30:18

a lot of academic debate

00:30:20

over whether financial instruments can

00:30:23

be protected and irrelevant treaties



00:30:26

what really matters is bringing

00:30:27

the language of the treaty

00:30:29

and I think and I'll

00:30:29

let you know why I'll

00:30:30

touch base on you know,

00:30:31

that this couple of examples

00:30:32

that I mentioned earlier. I

00:30:34

think at least in my

00:30:35

eyes you there's no reason

00:30:36

why financial instruments At least

00:30:39

on their face cannot be

00:30:42

construed as cover investment if

00:30:45

the treaty so provides of



00:30:46

course, so what matters is

00:30:48

really looking at the definition

00:30:50

of the Investments under the

00:30:52

under the treaty and to

00:30:54

see whether it is Broad

00:30:55

enough to Encompass the type

00:30:57

of financial instrument that is

00:30:59

that issue and that really

00:31:00

explains I think in large

00:31:02

part how Batman 3D tribunals

00:31:06

have approached the question and

00:31:08

I mentioned earlier and you

00:31:10

know, including by dismissing the



00:31:12  
case for lack of jurisdiction

00:31:13  
including and some of the

00:31:15  
cases that I mentioned the

00:31:16  
post of a case being

00:31:17  
one of them, but also,

00:31:19  
you know opposing jurisdiction in

00:31:21  
the case that I mentioned

00:31:22  
for Gramercy because if you

00:31:24  
actually look at the particular

00:31:27  
treaty under which The Gramercy

00:31:30  
claim was brought in so

00:31:32  
that was as I said

00:31:33  
the US proved to be



00:31:34

a case, what is interesting

00:31:37

is that in Pretty in

00:31:38

that? Particular tree tea there

00:31:41

was an express provision that

00:31:43

allowed for Investments to take

00:31:46

the form of bonds, which

00:31:48

is very unlike other types

00:31:49

of other types of Two

00:31:51

Kitties and like so if

00:31:53

you compare that to the

00:31:55

treaty that was an issue

00:31:56

in the bush over case

00:31:57

the tribunal took a different



00:31:59

View and considered that there

00:32:01

was no Express mention of

00:32:03

bonds being protected under the

00:32:05

treaty and therefore they consider

00:32:07

that you know, the the

00:32:08

language was far more restrictive

00:32:10

and therefore did not Encompass

00:32:12

this type of financial instruments.

00:32:13

Of course, in addition to

00:32:16

look at looking at the

00:32:17

start of the broad definition

00:32:19

of the of the type

00:32:21

of Investments that are covered



00:32:22

under the treaty. You also

00:32:24

need to go to take

00:32:24

a look outside in the

00:32:26

treaty to see whether it

00:32:27

it might be potential car

00:32:28

bass. And for example, the

00:32:31

US Mexico Canada agreement include

00:32:33

specific carve-outs for financial services

00:32:36

and sort of like fat

00:32:37

certain tax tax. Haitian measures

00:32:39

so you want to be

00:32:40

on the lookout for those

00:32:42

as law in addition to



00:32:43

just looking at that the

00:32:44

definition of treatise there, of

00:32:46

course other than mutations that

00:32:48

can come into play. For

00:32:50

example, when you look at

00:32:52

the the definition of an

00:32:54

investment generally the Investments need

00:32:57

to be made in the

00:32:58

current in the territory of

00:33:00

the other Contracting party and

00:33:02

that is an issue that

00:33:04

can prove to be tricky.

00:33:05

For example of financial instruments.



00:33:07

I bought on the secondary

00:33:08

Market that can be at

00:33:09

that can be an issue

00:33:10

and then last but not

00:33:12

least. I will also mention

00:33:14

temporal restrictions about you know,

00:33:17

what is the date of

00:33:17

the entry of course of

00:33:19

the treaty. When was the

00:33:20

investment made specific statues of

00:33:23

limitations that canceled of constrain

00:33:25

the filing of the the

00:33:27

arbitration as well and that



00:33:29

is something that is not

00:33:30

specific to the final straw

00:33:32

service Financial Services industry, but

00:33:34

that is something that has

00:33:36

become an issue for example

00:33:37

in the case that I

00:33:38

mention. Underwear, I talked about

00:33:40

this to Chinese insurance companies.

00:33:43

That was the issue. That

00:33:44

was by the tribunal dismissed

00:33:46

the claim for lack of

00:33:47

jurisdiction because as I mentioned

00:33:49

the claims that were at



00:33:50

issue actually spell under the

00:33:52

other tree 1996 PD as

00:33:54

requested to to falling into

00:33:56

the nutrient in 2013 to

00:33:58

2009. So this temporal limitations

00:34:01

are the Odyssey all considerations

00:34:03

that the investor needs to

00:34:05

take into account potential challenges

00:34:07

that may arise down the

00:34:08

line that you want to

00:34:09

think about before actually falling

00:34:10

the claim. Thank you. Yes,

00:34:13

so so challenges not unique's



00:34:15  
in financial instruments, but certainly

00:34:18  
interesting and what about challenges

00:34:21  
on the merits and he's

00:34:24  
kind of arbitration. Yeah. I

00:34:25  
think I think to come

00:34:27  
to mind and end the

00:34:28  
first Challenge on the merits,

00:34:30  
you know speaking of financial

00:34:31  
services. Is the police Powers

00:34:35  
Doctrine Sofia 30 of the

00:34:37  
state to enact and enforce

00:34:40  
laws up for the welfare

00:34:42  
health and safety of public.



00:34:45

So this is an important

00:34:47

issue because of the challenge

00:34:48

in differentiating between legitimate exercises

00:34:52

of police powers and actions

00:34:55

that are you know, pre-tax

00:34:56

than end up unfairly impacting

00:34:59

investor. So, you know a

00:35:02

new banking regulation might impose

00:35:04

more stringent know your client

00:35:08

requirements are other things that

00:35:10

at first blush might very

00:35:13

well be excessively or very

00:35:15

burdensome for the client, but



00:35:18

I think it's fair to

00:35:19

say that a tribunal is

00:35:20

going to be skeptical of

00:35:22

the idea that there's going

00:35:25

to be a claim they

00:35:26

are because it seems to

00:35:28

be something that is legitimately

00:35:31

falls under the police power.

00:35:33

Now there's something that's much

00:35:36

more punitive. Purports to be

00:35:39

some kind of Reform you

00:35:41

can imagine the types of

00:35:42

regulations and we seen them



00:35:44

where tribunals have been much

00:35:48

more skeptical because they sense

00:35:50

that it's a pretext for

00:35:52

unfairly targeting certain foreign investment.

00:35:55

So the point is that

00:35:57

in both cases the tribunal

00:35:59

is going to need to

00:36:00

look closely at the situation

00:36:02

and consider the nature of

00:36:05

the regulation with the intent

00:36:07

was behind the regulation the

00:36:09

impact of these states actions

00:36:11

and whether these were proportionate



00:36:14  
to legitimate public policy objective.

00:36:18  
So this is an inherently

00:36:19  
fact-based and in complex issue

00:36:22  
that's going to require a

00:36:23  
good understanding of the new

00:36:26  
regulations and end the relevant

00:36:28  
markets that that are affected

00:36:30  
by them. The other challenge

00:36:33  
relates to proving bad faith.

00:36:35  
And in this context now,

00:36:37  
it's interesting because how do

00:36:39  
you do that? How do

00:36:41  
you prove bad faith when



00:36:42

you're talking about a particular

00:36:43

Sovereign know who's who's going

00:36:46

to be the respondent and

00:36:48

the traditional role in the

00:36:49

US at least historically is

00:36:52

that courts will not even

00:36:54

look at the alleged motives

00:36:58

or purposes up behind what

00:37:02

a legislature's intent was and

00:37:04

I'm passing a law and

00:37:06

they're similar deference that that's

00:37:08

given to regulations and you

00:37:10

know, if there's a separation



00:37:12  
of powers rationale behind that

00:37:15  
line of cases not that

00:37:17  
General there are exceptions to

00:37:18  
the general perspective, but there's

00:37:22  
also the Practical difficulty in

00:37:24  
getting inside the head detective

00:37:26  
you're talking about a law

00:37:27  
that's been passed by legislature.

00:37:29  
You know, what what one

00:37:30  
purse Inside was his reason

00:37:32  
for voting in favor of

00:37:33  
the law doesn't necessarily give

00:37:36  
rise to any inference about



00:37:37

what someone else has reason

00:37:39

was for passing a law.

00:37:40

So so proving bad faith

00:37:42

particularly when you talk about

00:37:43

a law it's going to

00:37:45

be very challenging for precisely

00:37:47

the reasons I think that

00:37:48

us courts generally avoid engaging

00:37:51

in that exercise altogether. There

00:37:55

was actually an interesting ruling

00:37:58

from the United States that

00:38:01

were a ruling came out

00:38:02

from the US Supreme Court



00:38:03

this week where the legislatures

00:38:07

in the state of Arizona

00:38:09

stepped in to defend a

00:38:14

law that was passed by

00:38:15

the Arizona legislature because the

00:38:17

divided administration another plane has

00:38:20

challenged the law the voting

00:38:22

ideal are voting registration law.

00:38:26

And there was a challenge

00:38:27

that was brought to it

00:38:28

under the US Constitution and

00:38:30

and equal protection statutes and

00:38:34

the state's attorney general refused



00:38:37

to send the law and

00:38:39

so legislators from Arizona stepped

00:38:43

in an attempt to defend

00:38:45

the constitutionality of the law

00:38:46

and their depositions were then

00:38:49

immediately noticed during the course

00:38:52

of Discovery were noticed. And

00:38:55

the legislators move to quash

00:38:57

the subpoenas on a concept

00:38:59

of legislative privilege, which is

00:39:02

that they shouldn't have to

00:39:03

account for why they pass

00:39:06

the law and they said



00:39:08

that the concept behind his

00:39:09

legislative privileges that they're shielded

00:39:11

from both criminal and civil

00:39:13

liability and being compelled to

00:39:15

answer these text question the

00:39:16

response of document request and

00:39:19

the district court rejected that

00:39:21

argument and and required that

00:39:23

speech posing. This week is

00:39:24

ultimately made its way to

00:39:25

the Supreme Court which also

00:39:27

denied their application for Relief.

00:39:29

So it's just kind of



00:39:31

a timely and interesting story

00:39:34

falling under the headline of

00:39:35

it's the rare case where

00:39:37

you're going to be able

00:39:39

to take the depositions and

00:39:41

get testimony that tries to

00:39:43

penetrate exactly what was going

00:39:45

on in the mind of

00:39:46

a legislator were the government

00:39:49

actor and so you really

00:39:52

have to rely on indirect

00:39:53

ways. Establishing in town and

00:39:56

there's been some success by



00:39:59

looking for example at comparing

00:40:01

the stated objective with whatever

00:40:03

the regulatory action was with

00:40:05

how it was actually implemented

00:40:07

and if they are and

00:40:09

what the impact was and

00:40:10

if there's a disconnect there

00:40:11

it might give rise to

00:40:12

an inference of bad faith.

00:40:15

Their ways of improving discriminatory

00:40:18

treatment looking at have domestic

00:40:20

entities are treated looking at

00:40:22

foreign investors are treated that



00:40:24

could indicate bad faith as

00:40:26

I mentioned before. Is there

00:40:27

a disproportionate impact on a

00:40:29

particular company you can look

00:40:32

at the process by which

00:40:34

the law was passed. It

00:40:35

was a through the ordinary

00:40:37

process with something extraordinary about

00:40:39

it. But ultimately, I think

00:40:41

this is an area where

00:40:42

experts election is going to

00:40:44

be extremely important in the

00:40:46

process explaining what the Norms



00:40:49

are comparing it to how

00:40:51

other countries have dealt with

00:40:52

a similar problem. And so

00:40:55

I think that it's particularly

00:40:56

important to vet your experts

00:41:00

if you're going to have

00:41:01

a very early in the

00:41:02

process and get really comfortable

00:41:04

with who's being retain if

00:41:06

you're going to have to

00:41:07

rely on a bat face

00:41:08

plant. I've also heard it

00:41:13

said that maybe financial institutions



00:41:16

as claimants have a harder

00:41:18

time because maybe there's some

00:41:21

bias against Financial less than

00:41:24

50. Maybe I would say.

00:41:25

I think he's still out

00:41:33

on that. I think that's

00:41:34

the general presumption that there's

00:41:38

going to be hostility towards

00:41:40

financial institutions. But again, if

00:41:43

if if you're comfortable with

00:41:45

your tribunal and you think

00:41:47

this is one of I

00:41:48

think the benefits of of



00:41:50

arbitration that I was talking

00:41:51

about with my earlier remarks

00:41:54

is that if I were

00:41:55

advising a client financial institutions

00:41:59

client On a strong case

00:42:01

but it had to be

00:42:02

decided by a jury that

00:42:05

would be a very different

00:42:06

piece of advice for that

00:42:08

reason, you know bias against

00:42:10

financial institutions that would be

00:42:12

very different advice than if

00:42:13

I had what I expect



00:42:15  
to be very competent tribunal

00:42:17  
composed of you know, you

00:42:20  
know under the ICC or

00:42:21  
any kind of forum where

00:42:24  
you can expect no high-quality

00:42:26  
arbitrators be resolving the issue.

00:42:29  
So I think like General

00:42:31  
view on that issue is

00:42:32  
that certainly the phenomenon exists

00:42:35  
that's documented where there is

00:42:38  
a bias particular post-financial crisis

00:42:41  
against financial institutions, but I've

00:42:44  
you being in an arbitral



00:42:45

form as a mitigant against

00:42:47

at that buy us. That's

00:42:50

a good point. Thank you

00:42:51

Michael back to you. What

00:42:54

about damages? Challenges in these

00:42:58

kinds of cases specifics of

00:43:00

damages from my perspective banking

00:43:04

cases from the perspective of

00:43:06

an expert quite different from

00:43:09

from other Industries, not only

00:43:11

from a valuation perspective, but

00:43:12

also in in general from

00:43:14

an expert to Spector and



00:43:16

and Tom Paxton on 13

00:43:19

Reasons, which is regulation. So

00:43:22

banks are different from other

00:43:24

companies in the sense that

00:43:25

they are more interconnected with

00:43:27

with an industry and with

00:43:30

the entire economy sucks. So

00:43:32

if one runs into problems

00:43:34

chances are that those problems

00:43:38

can can can spill over

00:43:40

into into the sector and

00:43:41

and the reason for that

00:43:42

again a bank robbed banks



00:43:45

of depositors deposit us can

00:43:46

withdraw their money in overnight

00:43:50

and that can lead to

00:43:52

Bank Run and companies outside

00:43:54

to finish the second chance

00:43:56

don't have to Closet so

00:43:57

they cannot encounter a bank

00:43:59

run. And for that reason

00:44:01

thinks I have a deregulated

00:44:03

that as a good reason

00:44:04

for regulation and that hasn't

00:44:07

won. So so banks have

00:44:11

to comply with a host



00:44:12

of of regulatory requirements and

00:44:14

Regulatory ratios. And those requirements

00:44:17

have to be built into

00:44:19

a variation order for that

00:44:21

model to make sense that

00:44:24

create the challenge because regulation

00:44:27

is complex regulation evolves. All

00:44:29

the time regulation is different

00:44:32

across jurisdictions and regulation can

00:44:34

even be different across Banks.

00:44:35

So different size banks have

00:44:37

different regulations banks have different

00:44:39

ratios that they have to



00:44:41

comply even if they're the

00:44:42

same bank. So it becomes

00:44:44

quite Complex Center and variation

00:44:47

Moto can become very complicated

00:44:50

and in the short. Of

00:44:51

time, but from my perspective

00:44:54

other challenges that bad that's

00:44:59

an expert has to know

00:45:00

about when it comes to

00:45:03

Banking and and that has

00:45:04

also to do with this

00:45:06

rat that's regulation. So particularly

00:45:10

in the wake of the



00:45:11

2007 2008 Global financial crisis

00:45:14

that has been a lot

00:45:16

of changes on regulation and

00:45:18

one of the changes is

00:45:19

that many Regulators Around the

00:45:20

World created so-called Bank resolution

00:45:24

regimes. So those regimes are

00:45:27

basically manuals for Regulators how

00:45:30

to behave in the case

00:45:32

of a banking crisis. And

00:45:35

then if it is bank

00:45:36

will be to be in

00:45:37

a group of banks that



00:45:39

issue with those Frameworks is

00:45:41

that they are quite new

00:45:42

a bank crisis doesn't happen

00:45:46

every day. So they haven't

00:45:48

really been tested and and

00:45:50

Regulators have been Interpreting those

00:45:54

regimes different beers, but for

00:45:56

example the European Union as

00:45:58

a unified banking resolution regime

00:46:01

in 2017, Italy and Spain

00:46:05

experienced banking crisis and and

00:46:10

both countries interpreted tourism quite

00:46:13

different than active quite differently



00:46:15  
in spite of being under

00:46:17  
the same regulatory regime. Another

00:46:23  
challenge that I'm I'm seeing

00:46:24  
from a banking expert perspective

00:46:27  
is always it regulatory action

00:46:30  
is in most because one

00:46:32  
of the questions and that

00:46:33  
touches on on what I

00:46:34  
mentioned earlier on police power

00:46:36  
is always quit the regulator

00:46:38  
has taken an action that

00:46:40  
would have been more beneficial

00:46:42  
to the claimant while at



00:46:44

the same time protecting the

00:46:45

banking system. So quit feeling

00:46:47

The Regulators mandates to to

00:46:49

maintain Financial stability and to

00:46:52

prove that that route existed

00:46:55

is sometimes the the minute

00:47:00

of the all the experts

00:47:01

and that sometimes and one

00:47:05

of the issues in that

00:47:06

is sometimes information asymmetry because

00:47:10

the claim and might not

00:47:12

have all the information that

00:47:13

the regulator have and and



00:47:15  
the regulator might not provide

00:47:17  
that information because critical documents

00:47:19  
might talk about the sector

00:47:21  
as a whole. In my

00:47:22  
thoughts on on other banks

00:47:24  
for example, but it could

00:47:27  
also be and typically Bang

00:47:28  
Bang Theory Solutions or banking

00:47:31  
says happening over weekend The

00:47:33  
Regulators present but the same

00:47:35  
and if the claim is

00:47:36  
Disney investor in the bank

00:47:37  
is not present in these



00:47:39

in these discussions. So it

00:47:41

don't understand why the regulator

00:47:48

did what she did and

00:47:49

and really understand whether that

00:47:52

was funded this route to

00:47:54

to take that would have

00:47:55

been more beneficial for the

00:47:57

claim and one other thing

00:48:00

that I would like to

00:48:01

touch on under the Broadway

00:48:04

a regular Atlanta is contingent

00:48:08

convertible bonds because that has

00:48:09

been an issue with with



00:48:11

credits with which failed this

00:48:13

year. I'm continuing convertible bonds

00:48:16

are also a child of

00:48:18

the financial crisis. So they

00:48:19

were created after the global

00:48:21

financial crisis. But the specific

00:48:23

purpose to have banks that

00:48:27

experience a capital shortfall to

00:48:30

create regulatory capital in a

00:48:32

in a short short. Of

00:48:34

time and they do that

00:48:35

by either being converted into

00:48:37

Equity or by being written



00:48:39

down and like like resolution

00:48:42

regimes those instruments have not

00:48:44

been tested a lot and

00:48:47

Regulators have also treated those

00:48:50

instruments differently and that has

00:48:51

been at the heart of

00:48:52

the dispute about the treatment

00:48:55

of Credit Suisse because the

00:48:57

Swiss regulator order to bang

00:48:58

to rights down all of

00:49:00

its convertible contingent convertible bonds,

00:49:03

and all of those has

00:49:07

basically lost an entire investment



00:49:09  
and at the same time

00:49:10  
to say to UBS Colitis

00:49:13  
with Shayla. Grable to recover

00:49:15  
some of that money is

00:49:17  
at the core of many

00:49:19  
of the claims that Bond

00:49:21  
holders. Starting lineup after appearing

00:49:24  
at the moment. So so

00:49:26  
in summary Bank in cases

00:49:28  
and cases from the fraud

00:49:36  
and Banking Act with respective.

00:49:40  
Thank you. And what about

00:49:43  
last but not least we're



00:49:44

at enforcement. So now do

00:49:46

you have any thoughts on

00:49:47

any challenges and enforcement particular

00:49:49

to arbitration and financial services?

00:49:51

I think generally speaking seeking

00:49:54

to enforce Awards arising out

00:49:56

of actions in the dino

00:49:59

of banking Regulators. For example,

00:50:01

I think we'll raise pretty

00:50:03

similar issues as you know

00:50:05

is when and forcing other

00:50:07

types of rewards, I do

00:50:08

think that one issue that



00:50:10

I think it's worth discussing

00:50:11

is really suffering Humanity because

00:50:14

in most cases the claimants

00:50:16

will have an award against

00:50:17

the state and therefore to

00:50:20

the extent that that claim

00:50:21

and seeks to and forth

00:50:23

against the state it will

00:50:24

have to overcome the running

00:50:26

Manatee and of course the

00:50:28

procedures governing enforcement can vary

00:50:31

depending on the jurisdiction where

00:50:33

you seek to enforce against



00:50:35  
the specific State Assets in

00:50:39  
the US for example The

00:50:41  
foreign Sovereign immunities act also

00:50:43  
known as sffs. I meant

00:50:46  
proceedings against the foreign State

00:50:49  
and state-owned entities in radio.

00:50:51  
I mean to boil it

00:50:53  
down to a very simple

00:50:54  
proposition at the key question

00:50:57  
is whether the assets that

00:51:00  
are that you tried to

00:51:03  
seize are used for commercial

00:51:05  
activity. And that's a test.



00:51:06

That is a true under

00:51:08

US size is very similar

00:51:10

Islam the UK law and

00:51:12

that is a test that

00:51:14

is very true fact intensive

00:51:16

and that really create a

00:51:19

very often a significant hurdle

00:51:22

to to to be able

00:51:23

to overcome a sovereign immunity

00:51:26

when you're trying to enforce

00:51:28

against State assets know the

00:51:31

investor that has an award

00:51:33

against the state can also



00:51:34

try to enforce against assets

00:51:37

owned by state-owned entities and

00:51:38

not the state itself. But

00:51:40

every seat for that as

00:51:41

well because the award is

00:51:43

against the state not state-owned

00:51:45

entities you need to do

00:51:47

what we call piercing the

00:51:49

corporate veil and and again

00:51:52

under you saw that presents

00:51:53

a specific restrictions including their

00:51:58

visit to Avenues to Reedy

00:52:00

overcoming the presumption of what



00:52:02

we call set corporate separateness

00:52:04

and piercing the corporate veil

00:52:05

between the state and state-owned

00:52:08

entities in their assets. You

00:52:10

basically need to show that

00:52:11

basically the state-owned entity is

00:52:14

the alter ego of the

00:52:15

state. So you need me

00:52:16

to show that the corporate

00:52:18

entities as quoting from the

00:52:19

Supreme Court case the bank

00:52:21

case is so extensively controlled

00:52:24

by its owner that a



00:52:25  
relationship of principal and agent

00:52:28  
is to get it that's

00:52:29  
number one. Number two is

00:52:31  
recognizing that separate juridical status

00:52:35  
of the entity would work

00:52:36  
fraud or Injustice on the

00:52:38  
other party. So either you

00:52:39  
show that it's at the

00:52:40  
Alter Ego always you sure

00:52:42  
that it would be fraudulent

00:52:43  
otherwise and that too is

00:52:46  
also very fact intensive their

00:52:48  
number of factors that are



00:52:50

applied by different circuits in

00:52:54

different ways. I will say

00:52:55

there might be some times

00:52:56

at discrepancy between say the

00:52:59

second circuit the fifth circuit

00:53:01

but by and large are

00:53:03

the factors are considered is

00:53:04

the degree to which government

00:53:06

officials like for example manage

00:53:08

the daily Affairs of the

00:53:09

state-owned company. That's one of

00:53:11

the factors that is generally

00:53:12

considered or the independence of



00:53:15

the state-owned entity Board of

00:53:17

Managers from government control. So

00:53:19

again, it's ready to show

00:53:20

that there is a and

00:53:21

it should have been effective

00:53:22

control of the state over

00:53:24

the state-owned entity. And if

00:53:25

you're able to demonstrate that

00:53:27

you can do what we

00:53:28

call piercing the corporate veil

00:53:30

and therefore seek to have

00:53:31

assets and force against the

00:53:34

assets of the state-owned entities,



00:53:35  
even though you only have

00:53:37  
an award against the against

00:53:38  
the state itself. Going short

00:53:41  
and I will call you

00:53:41  
cuz I'm done and it's

00:53:43  
sitting in for you know,

00:53:46  
it's not because you have

00:53:46  
a favorable toward that is

00:53:48  
the end of the road

00:53:48  
and forcement presents significant issues,

00:53:51  
including as it relates to

00:53:53  
277 humidity. So something to

00:53:56  
keep in mind. Thank you.



00:53:58

Thank you. So several months

00:54:02

have passed to wear at

00:54:04

the end of 2023 since

00:54:06

we had the bank collapses

00:54:07

in the spring. Maybe we

00:54:10

have some hindsight perspective of

00:54:12

what the results of those

00:54:14

of those collapses were in

00:54:16

particular with financial services Michael.

00:54:19

Can you tell us a

00:54:20

bit about what happened after?

00:54:22

Okay, let me let me

00:54:24

answer. That was two questions.



00:54:26

One is Chris. How about

00:54:28

the crisis earlier this year

00:54:29

contained on the second question

00:54:30

is has it been contained?

00:54:32

So I think I'll factors

00:54:35

have how to contain the

00:54:37

crisis and what is the

00:54:40

guarantees of the deposits above

00:54:42

Silicon Valley Bank and Signature

00:54:44

Bank at and First Republic

00:54:46

as well as ADD large

00:54:47

amounts of uninsured depositors, which

00:54:50

means deposits that exceed the



00:54:52

insured amount of 250,000 that

00:54:55

issue has always been in

00:54:58

discussion with Those deposit should

00:54:59

be insured or not, whether

00:55:01

whether that should be insured

00:55:04

by the by the state

00:55:05

and in both cases Silicon

00:55:07

Valley and signature of the

00:55:08

FBI and the state guaranteed

00:55:12

all deposits. Also be uninsured

00:55:14

deposits. So no deposit has

00:55:16

lost any money in this

00:55:17

bank failures. We know that



00:55:21

didn't stop the painting at

00:55:22

the time because Republic First

00:55:24

Republic Bank came after those

00:55:26

two and faith and was

00:55:29

bought by JP Morgan. But

00:55:31

but I think it helped

00:55:32

the second measure which I

00:55:35

think it's more impactful and

00:55:37

was taken by the Federal

00:55:39

Reserve and it's maybe maybe

00:55:40

less less known is is

00:55:43

a new financing facilities at

00:55:47

the Federal Reserve Act introduced



00:55:49

in response to those bank

00:55:50

failures and that facility is

00:55:52

called blank term Fanning program.

00:55:53

So as we know the

00:55:55

Federal Bank is a lender

00:55:56

of Last Resort and end.

00:55:58

Things can go to the

00:55:59

Federal Reserve to borrow money

00:56:02

against against collateral and that

00:56:04

has that opportunity that has

00:56:07

always been there. Then the

00:56:10

thing that is different about

00:56:11

the new bank concerning program



00:56:13

is the banks can now

00:56:15

pledge US government bonds at

00:56:18

par. So in the past

00:56:20

when you would have a

00:56:21

Government Bond and their government

00:56:22

bond, for example, because of

00:56:24

monetary tightening would have lost

00:56:26

in value and let's take

00:56:28

the early example of the

00:56:29

30-year Bond again that 30-year

00:56:32

Bond trades right now. It's

00:56:34

6365 cents on the dollar.

00:56:36

You could take that Bond



00:56:38

planted where the where the

00:56:40

Federal Reserve and got 63

00:56:42

or 65 million for every

00:56:44

hundred million that you have

00:56:45

involved in those. The new

00:56:48

windows different you can pledge

00:56:50

at par. So if you

00:56:51

bought that Bond when it

00:56:52

was in February 2022, you

00:56:56

can get from the terrorists

00:56:57

100 million back. So you

00:56:59

bought it for her and

00:57:00

you can get back hundred



00:57:01

million and that is really

00:57:03

significant because that means that

00:57:06

Silicon Valley Bank, if not

00:57:08

have needed to do what

00:57:10

it takes by by selling

00:57:11

Bonds in the market rate

00:57:12

for the plants those banks

00:57:14

with the Federal Reserve not

00:57:16

have lost any money and

00:57:18

would not have needed to

00:57:20

learn to race crash capitals.

00:57:22

So I think that that

00:57:23

has been read a game-changer.



00:57:25

It is kind of the

00:57:31

monetary tightening that we saw

00:57:32

Banks need time to respond

00:57:35

to changes in the interest

00:57:36

rate environment that can prepare

00:57:38

for it but still as

00:57:40

a bank if you see

00:57:41

deposit I'll close as we

00:57:42

solved by the beginning of

00:57:43

this year. It's very difficult

00:57:45

to respond to those Outlaws

00:57:47

very quickly. But over time

00:57:50

you have more time and



00:57:51

then and you you can

00:57:52

just respond to those to

00:57:54

those actors and I think

00:57:55

most banks by now half

00:57:57

and lastly what I said

00:57:59

earlier already is not all

00:58:03

things are created equal. Do

00:58:06

things like like the tree

00:58:08

that stays at the difference

00:58:10

between positioning that made them

00:58:12

more vulnerable to to to

00:58:14

the events that happened because

00:58:16

I want in Silicon Valley



00:58:19

or they had exposure to

00:58:21

the real real estate. Commercial

00:58:24

real estate sector and mowed

00:58:26

all banks have the same

00:58:28

block for the interest rate

00:58:29

hikes. So I think what

00:58:31

we've seen is that those

00:58:33

banks that have been the

00:58:34

weakest have to pay you

00:58:36

then and the others have

00:58:37

moved on. The second question

00:58:40

obviously is I was just

00:58:43

doing right now is this



00:58:47

the rest that's nice still

00:58:49

talks of a babbling in

00:58:50

commercial real estate. That's also

00:58:52

the theory that at some

00:58:54

point that they usually quiddity

00:58:56

that governments created during the

00:58:58

pandemic will at some point

00:58:59

to run out and both

00:59:01

of those factors or any

00:59:03

other factor that might happen

00:59:04

that we don't know about

00:59:05

today can can attack the

00:59:08

banking in the street. So



00:59:09

I looked at the development

00:59:11

of a market indicators for

00:59:13

banking to see how how

00:59:15

the industry has has developed

00:59:17

since then and the first

00:59:20

thing that I can say,

00:59:21

is that the outflow of

00:59:22

deposits have Stop. So since

00:59:25

the lowest point in in

00:59:27

time in terms of US

00:59:29

Bank deposits, which was April

00:59:30

this year deposits have recovered

00:59:33

by the three hundred billion



00:59:34

dollars to 1 billion short

00:59:37

of whatever Ian in February

00:59:39

last year. No one trillion

00:59:41

1 trillion short of what

00:59:43

happened in February last year,

00:59:44

but the outflow has stopped

00:59:46

the second aspect that I

00:59:49

looked at is is the

00:59:50

Pats new bank Trump funding

00:59:52

program and that is at

00:59:54

an all-time high right now.

00:59:55

So so you could see

00:59:57

that Banks really quickly picked



01:00:00

up that program and use

01:00:01

that program during the crisis

01:00:03

and it's pretty much at

01:00:05

that level or a little

01:00:06

bit little bit on the

01:00:08

ride. So banks are still

01:00:09

using that program and that

01:00:11

program is the tractors to

01:00:13

bank but it's not the

01:00:14

cheapest humming program. So one

01:00:16

could argue that if banks

01:00:17

had other opportunities to to

01:00:19

raise liquidity at lower costs



01:00:22

they would. I still go

01:00:24

to that program the third

01:00:26

aspect that I looked at

01:00:27

the share prices. So share

01:00:30

prices in banking pin hap

01:00:31

recovered in particular in November.

01:00:34

But if you strip out

01:00:35

the big four Banks and

01:00:37

only look at mid-sized and

01:00:38

large fangs of a total

01:00:40

assets of about 50 million

01:00:42

to 50 billion. Pretty much

01:00:45

have the same market cap



01:00:47  
that they had in March

01:00:48  
this year. So they have

01:00:50  
moved a hundred and 1%

01:00:53  
of the market cap off

01:00:54  
of March was that market

01:00:56  
capitalization yesterday. So pretty much

01:00:58  
the same as asked during

01:01:00  
the height of the crisis

01:01:01  
and lastly. I look the

01:01:03  
truck that is so short

01:01:04  
interest off of investors who

01:01:06  
bet that that bank shares

01:01:09  
will fall further. They are



01:01:12

pretty much as active as

01:01:14

they used to be during

01:01:15

the crisis. So short interest

01:01:17

is roughly at 90% of

01:01:19

what it was during the

01:01:20

crisis if you strip out

01:01:22

the big four Banks, So

01:01:24

all in all there is

01:01:25

recovery, but that the sector

01:01:27

is not back to pre-crisis

01:01:28

levels. Very interesting. Thank you.

01:01:34

So, how about some predictions

01:01:37

now? What do you think



01:01:41  
is going to happen in

01:01:43  
arbitration financial services are in

01:01:46  
the sector which is the

01:01:58  
financial services sector is by

01:02:01  
its nature such a dynamic

01:02:03  
sector that I predict there

01:02:06  
will be disputes over regulatory

01:02:08  
changes because the sector is

01:02:11  
going to be changing alongside

01:02:12  
the changes in the Economy

01:02:14  
Inn in that's the nature

01:02:15  
of this business. So I

01:02:17  
think there will be as



01:02:19  
financial markets continue to evolve

01:02:22  
there will be more regulations

01:02:25  
and then that I predict.

01:02:27  
May lead to an increase

01:02:30  
in disputes over those regulations.

01:02:32  
So that's that's kind of

01:02:33  
my cop-out answer a couple

01:02:35  
of that are not particularly

01:02:37  
bold, but I think our

01:02:39  
Our Fair more specific ones

01:02:43  
are you know in particular

01:02:45  
work we're getting a lot

01:02:46  
of thought to digital assets



01:02:49

and the rapid growth of

01:02:51

digital currencies and digital Assets

01:02:54

in in general. I think

01:02:56

will be an interesting area

01:02:57

to keep an eye on

01:02:58

Estates grapple with how they

01:03:01

are regulating these areas and

01:03:03

they're going to be interesting

01:03:04

questions that I'm sure folks

01:03:06

in this room have been

01:03:07

thinking about terms of whether

01:03:09

these are even covered by

01:03:10

treaties and how to go



01:03:11

about thinking of of some

01:03:13

of the challenges that will

01:03:15

relate to those assets. So,

01:03:16

you know, the legal recognition

01:03:19

of those assets cybersecurity data

01:03:22

protection, you know, the cross-border

01:03:24

nature of digital assets I

01:03:26

think is an area where

01:03:27

There's right is right for

01:03:31

there to be disputes going

01:03:33

forward. And then the other

01:03:35

one is is esgi mean

01:03:37

this has now been around



01:03:38

for some time. But increasingly

01:03:40

you can imagine State using

01:03:46

ES GR8 stated objectives relating

01:03:50

to ESG as a pretext

01:03:52

for actually accomplishing some policy

01:03:55

objective and I can imagine

01:03:57

that back to be an

01:03:58

area where there will be

01:03:59

more disputes as well in

01:04:01

areas like energy mining infrastructure

01:04:04

and things like that. So

01:04:05

you can imagine you could

01:04:07

see some more challenges to



01:04:09

ESG type regulations are or

01:04:11

laws going forward. Thank you.

01:04:14

Sorry I was going to

01:04:16

add any predictions tonight. I

01:04:18

think those are all very

01:04:19

good points there. Yeah, Sarah

01:04:21

and deeds and I agree

01:04:22

with what you said that

01:04:23

maybe just to to additional

01:04:25

thoughts and you touched upon

01:04:26

that Michael at Katie Street.

01:04:28

I I am on the

01:04:30

lookout to see what happens



01:04:31

with this group of bondholders.

01:04:32

I think a number of

01:04:34

them had threatened to file

01:04:35

an investment treaty arbitration some

01:04:38

some of them at the

01:04:39

headlines. I think I'd like

01:04:40

to see what happens in

01:04:42

that space and and an

01:04:44

ultimate see whether they Prevail

01:04:46

or not whether they will

01:04:47

be you no more deference

01:04:48

toward the the Swiss government

01:04:49

or not. That's an area



01:04:51

that I particularly Keen to

01:04:53

follow and then the other

01:04:54

one is probably even more

01:04:55

recently. We saw the victory

01:04:58

of the presidential election Lion

01:05:00

in Argentina. He made promises

01:05:02

as part of his presidential

01:05:04

campaign, including you know, the

01:05:07

dollar is a session and

01:05:10

the end and eradication of

01:05:12

the of the century Bank

01:05:14

of been for lack of

01:05:15

better words. I don't know



01:05:17

whether those reforms that will

01:05:18

not necessarily materialize and you

01:05:21

know wonder what the effects

01:05:23

of the those reforms could

01:05:24

have on the on the

01:05:26

financial Market in Argentina, but

01:05:28

I would say that's definitely

01:05:29

something that I'd like you

01:05:30

to keep an eye out

01:05:31

for indeed the same as

01:05:38

filed on I'm on the

01:05:39

lookout for for claims from

01:05:41

the from the bondholders. I



01:05:43  
think that's the super interesting

01:05:45  
topic that that the devil

01:05:47  
is in the details. You

01:05:49  
have to look into the

01:05:50  
prospectuses of all those bonds

01:05:53  
and it's going to be

01:05:55  
that's going to be a

01:05:56  
really interesting discussion interesting Lee

01:05:59  
enough. The the sect of

01:06:01  
the cocoa sector is booming

01:06:02  
right now. So Banks keep

01:06:04  
issuing those bonds and investors

01:06:07  
are picking them up like



01:06:08  
like crazy including including an

01:06:11  
issue when you yes. But

01:06:14  
I'd be really interested to

01:06:16  
see how that how that

01:06:17  
story would play out. And

01:06:19  
otherwise, I I mention two

01:06:20  
of the risks that I

01:06:22  
think could could play out

01:06:24  
which is commercial real estate

01:06:26  
done. And the fact that

01:06:27  
that there was so much

01:06:29  
liquidity in the market throughout

01:06:33  
the pandemic and after the



01:06:34

pain that make and that

01:06:35

security might run out of

01:06:37

run out at some point

01:06:39

and then the question is

01:06:41

it is still out. I

01:06:43

think whether we have a

01:06:44

soft Landing or a little

01:06:46

bit more of a bumpy

01:06:47

ride. Is Coco bonds that

01:06:51

their contingency convertible bonds that

01:06:52

you discussed earlier? What time

01:07:02

does the Tijuana? Thank you

01:07:14

for the panel. That was



01:07:15  
really interesting. Excellent. Do you

01:07:17  
guys have any questions? Yes,

01:07:20  
so I can turn you

01:07:21  
on. Sure, you can come

01:07:30  
through. Yeah, no one questioned

01:07:38  
44 404 Michael the PD

01:07:44  
some trees do have an

01:07:46  
extrusion of sovereign bonds by

01:07:49  
the Columbian treaties were the

01:07:50  
Chilean traditions and the wonder

01:07:53  
whether you have seen since

01:07:54  
since Gramercy whether you might

01:07:56  
might be too early, but



01:07:57

whether you have seen any

01:07:59

developments in terms of the

01:08:01

treaty negotiations that would would

01:08:03

incorporate the Extrusion of sovereign

01:08:06

bonds such as those. I

01:08:08

mean, I know that some

01:08:09

of these treaties negotiated by

01:08:12

the US have a special

01:08:14

Clauses, but have you seen

01:08:16

treaties that are actual exploding

01:08:20

Sovereign Bond Serrano Chile or

01:08:24

Colombia Tetra question is do

01:08:29

you think that the notion



01:08:33

The power to regulate which

01:08:36

has been now underline so

01:08:38

much and treat and I

01:08:39

don't know how much you

01:08:40

follow investment renegotiation put the

01:08:43

husband has been underlined so

01:08:45

much is having some effect

01:08:47

in the in the financial

01:08:49

sector Market or or or

01:08:51

are financial institutions finding a

01:08:55

way to be creative as

01:08:56

as you explained friends in

01:08:58

the Pokemon. I'm happy to



01:09:02  
start to pick up the

01:09:03  
the first question then I'll

01:09:05  
be very short. I I

01:09:06  
think you're right cuz I

01:09:08  
ain't going to know that

01:09:08  
it's it's might be a

01:09:09  
little too early to tell

01:09:10  
you know, I would expect

01:09:13  
that. They might be some

01:09:15  
negotiations around the weather at

01:09:17  
7. Should be covered or

01:09:19  
not. I'm just to see

01:09:20  
treaties but I should also



01:09:21

say that, you know, I

01:09:22

only just gave a couple

01:09:23

of examples of instances where

01:09:26

investment treaty tribunals have found

01:09:28

that bonds actually constitute is

01:09:30

covered investment to do the

01:09:31

route and treaty there are

01:09:32

the cases as well. It's

01:09:33

not the only one. I'm

01:09:34

so Props. You know that

01:09:35

Trend started earlier. I think

01:09:38

it is still too early

01:09:39

to tell Anderson Crescent Oaks



01:09:45

Antonio's. Thanks for the question

01:09:47

in. I'm I'm not sure

01:09:50

I can I can answer

01:09:51

them in the way that

01:09:52

that you are sick, but

01:09:54

I would like to offer

01:09:55

and maybe slightly different answer

01:09:58

and it is this is

01:09:59

how regulation is changing what

01:10:04

what you see is in

01:10:06

my view that that regulation

01:10:08

response to to past events

01:10:11

and those events never reply



01:10:12  
so so in and that's

01:10:15  
quite interesting in pain in

01:10:17  
the sense of the of

01:10:19  
the resolution really reading but

01:10:20  
also with respect to the

01:10:23  
Thule contingent convertible bonds because

01:10:25  
those were created to tackle

01:10:28  
Capital problem so problems off

01:10:31  
off of regulatory capital and

01:10:38  
but it would be seen

01:10:39  
recently instances of Bank runs

01:10:42  
where where Banks run out

01:10:44  
of liquidity and those same



01:10:45  
Banks might have enough Capital

01:10:47  
at the moment on Not

01:10:49  
even have enough capital in

01:10:50  
the future. So so those

01:10:52  
instruments that were created to

01:10:54  
tackle. The other problems are

01:10:56  
not adequate to to text

01:10:58  
liquidity problems. And then I

01:10:59  
think that is something that

01:11:01  
that regulation is working on

01:11:04  
right now where where the

01:11:05  
banking sector will change but

01:11:07  
that's more driven from the



01:11:10

side of Regulation that night.

01:11:11

I think you you asked

01:11:12

me whether banks are adjusting

01:11:14

tool to two new two

01:11:18

cases to to avoid so

01:11:19

I wouldn't be able to

01:11:23

answer that. But definitely regulation

01:11:25

is changing and trying to

01:11:27

tackle the yesterday's problems now.

01:11:35

I have a question in

01:11:37

person, or how about online?

01:11:39

If you put it in

01:11:41

the chat, I'll read it



01:11:42

out everybody, and I'm sorry.

01:11:45

I have to leave you

01:11:46

for a for a 4:30

01:11:48

meeting, but but it was

01:11:50

a pleasure being with you

01:11:51

today, and I'll let you

01:11:52

keep asking questions or thank

01:11:54

you. Thank you. Thank you

01:12:03

everyone. Thank you very much.

01:12:09

Thank you, Michael. Bachelorette Jose

00:00:03

Antonio Rivas and Ian Laird

00:00:06

and Maria Lucia Casas in

00:00:08

the whole team. I think



00:00:09

they have just done an

00:00:10

extraordinary job. The panels have

00:00:14

been just asking the highest

00:00:16

level of quality really terrific

00:00:18

people other than Mike panel,

00:00:20

but you know, you always

00:00:22

have one. I'm just so

00:00:25

impressed with what you have

00:00:27

done. And I think we're

00:00:29

all very grateful for what

00:00:32

you have done with it.

00:00:32

So without further ado. Well

00:00:40

the welcome everyone and and



00:00:42

thank you to decorate and

00:00:45

to Alex and unto David

00:00:47

as well and to win

00:00:49

all the crew from the

00:00:51

international arbitration of I was

00:00:57

telling Alex that I met

00:00:59

him. When when I had

00:01:00

a different Hat awards are

00:01:04

very little value if you

00:01:08

are unable to enforce them

00:01:09

and you're unable to look

00:01:12

after the assets of all

00:01:15

the parties at that lost



00:01:17  
show end up. I was

00:01:22  
telling a lie. That I

00:01:22  
actually missed the contact with

00:01:25  
him. He is an honest

00:01:27  
lawyer. And and and one

00:01:30  
of the kindest person I

00:01:33  
can think of I would

00:01:40  
like to thank you and

00:01:43  
I might introduce you and

00:01:46  
then and then you'll do

00:01:47  
the rest the magic so

00:01:50  
cretney is at the Norton

00:01:55  
Rose Fulbright. She focuses her



00:01:58

practice on International dispute settlement

00:02:01

with an emphasis on investor-state

00:02:03

arbitration. She represents crossover investors

00:02:08

as well as respond Goldman

00:02:10

in proceedings before exit and

00:02:13

the under the additional cases.

00:02:20

Pools and and the and

00:02:22

many other cases under various

00:02:24

investment cast of the are

00:02:27

at cetera importantly he has

00:02:31

already being a speaker and

00:02:33

she has already helped us

00:02:34

with other panels in while



00:02:37  
washing arbitration week and also

00:02:39  
the world arbitration update. So

00:02:41  
I'm I'm really thankful to

00:02:42  
her old job, which is

00:02:45  
somehow not that easy because

00:02:47  
this matter involves investment re

00:02:51  
arbitration and international commercial arbitration

00:02:54  
into related to the financial

00:02:56  
sector and up and it's

00:02:58  
not nuclear science, but but

00:03:01  
it can be very complex

00:03:02  
and and therefore I'm grateful

00:03:05  
to to Kearney to head



00:03:06

on and I'm also very

00:03:08

grateful for your presence here

00:03:09

are so welcome and please

00:03:12

take it away. Thank you

00:03:14

very much. Thank you. It's

00:03:16

true. I have learned I

00:03:17

had to study a little

00:03:18

bit about this particular topic.

00:03:20

That is very interesting and

00:03:21

I'm excited about it. Thank

00:03:23

you very much. I love

00:03:26

participating in these events and

00:03:28

thank you to decorate for



00:03:29

hosting us. And of course

00:03:31

thank you to the panelists.

00:03:32

Well introduced shortly. I just

00:03:34

want to welcome everybody to

00:03:36

this panel titled International arbitration

00:03:39

and the challenges of financial

00:03:41

services in the first three

00:03:42

decades of the new century.

00:03:45

Let's just unpack that title

00:03:47

a little bit. So shiny

00:03:49

from the and refocusing of

00:03:50

course 2020-23 but that's actually

00:03:54

a very long time considering



00:03:56

all of the activity that's

00:03:58

going on in global economies

00:03:59

that have expected Financial Services.

00:04:02

I'm sure there's one is

00:04:04

aware when the USB have

00:04:05

had inflation and the measures

00:04:08

That central banks in the

00:04:10

US and elsewhere have taken

00:04:13

to cool inflation relating to

00:04:15

that. We've had bank failures

00:04:17

in the US and in

00:04:19

Europe before that covid before

00:04:22

that's a 2008 financial crisis



00:04:23

on even in times of

00:04:26

maybe not crises. We have

00:04:28

banks in fermenting macro-prudential measures

00:04:31

aimed at ameliorating Financial system

00:04:35

rest. So the time has

00:04:37

gone on in the last

00:04:38

three decades in the financial

00:04:41

services sector, so we will

00:04:43

probably maybe focus on it

00:04:46

be even more recent events

00:04:48

in that area. And of

00:04:50

course this week is about

00:04:52

arbitration. So we're going to



00:04:54

talk about International arbitration both

00:04:56

investment and Commercial. We're going

00:04:59

to discuss some notable cases.

00:05:00

Most the most recently decided

00:05:02

were brought most of those

00:05:05

are investment arbitrations, but we

00:05:06

will have chocolate some commercial

00:05:08

as well. A lot of

00:05:11

those are cases where there's

00:05:13

a private bank have sued

00:05:15

central banks and Regulators or

00:05:18

investment funds have stood central

00:05:20

banks and Regulators. So that's



00:05:24

it. So let me introduce

00:05:28

our at our illustrious panel

00:05:31

that is with us and

00:05:33

we'll start with story on

00:05:34

Neville. Am I right? Sorry

00:05:36

on is a member of

00:05:37

Dead Boys International dispute resolution

00:05:40

group in New York. So

00:05:42

thank her very much for

00:05:43

coming down to DC with

00:05:44

us today. She is part

00:05:46

of the desk as well.

00:05:49

Her practice focuses on public



00:05:51  
international law international arbitration and

00:05:53  
complex litigation with a particular

00:05:56  
emphasis on the Middle East.

00:05:57  
She's admitted to the New

00:05:59  
York and Paris bars in

00:06:00  
addition to being a solicitor

00:06:01  
in England and Wales with

00:06:03  
nearly 20 years of experience.

00:06:04  
So Ian and advises and

00:06:07  
represents sovereign states state-owned entities

00:06:09  
and multinational corporations in a

00:06:12  
variety of jurisdictions and four

00:06:13  
on issues of civil and



00:06:15

common law public international law

00:06:17

and treaty and contract interpretation.

00:06:19

She also advises private Equity

00:06:21

Funds and hedge funds including

00:06:23

in connection with investments in

00:06:25

the Middle East. The screen

00:06:30

we have Michael's get hot.

00:06:32

He is an independent valuation

00:06:34

and banking expert based in

00:06:36

New York. He has testified

00:06:38

on valuation matters in international

00:06:40

commercial arbitration across Industries, including

00:06:43

banking construction power generation and



00:06:46

transmission oil and gas Transportation

00:06:48

telecommunication and food before working

00:06:52

as an expert. Michael Works

00:06:54

in banking for 17 years.

00:06:55

He was the chief operating

00:06:57

officer of the Investment Bank

00:06:59

of Commerce Bank Germany's second-largest

00:07:01

Bank from 2005 to 2011

00:07:04

and prior to that. He

00:07:05

was responsible for Commerce Banks

00:07:07

own m&a transactions and for

00:07:10

managing the bank's regulatory capital

00:07:12

for six years. He has



00:07:13  
a deep understanding evaluation of

00:07:15  
Banks and financial instruments and

00:07:17  
a bank regulation my clothes

00:07:19  
and mathematician by training and

00:07:21  
hold the second master's degree

00:07:22  
in engineering and management from

00:07:24  
MIT. And the welcome Michael.

00:07:28  
Last but not least you

00:07:29  
have Thomas White Tom is

00:07:31  
a partner in next to

00:07:33  
a story on him and

00:07:34  
Sullivan & Cromwell litigation group

00:07:36  
in DC his practice focuses



00:07:38

on complex commercial litigation and

00:07:40

increasingly arbitration. He has represented

00:07:43

some of the world's leading

00:07:44

financial institutions including Goldman Sachs

00:07:46

Barclays Swiss re UBS and

00:07:49

Banco Popular. He is representing

00:07:52

the Republic of Argentina in

00:07:53

cases pending in New York

00:07:55

and London relating to the

00:07:57

Republic's expropriation of 51% of

00:07:59

yp s and the

00:08:01

GDP length securities issued as

00:08:03

part of the Republic's debt



00:08:04

restructuring Tom has been at

00:08:06

Sullivan & Cromwell since 2008

00:08:08

after completing his quick ship

00:08:10

with honorable Loretta a Prescott

00:08:12

of the southern district of

00:08:13

New York. So welcome to

00:08:16

thank you. Okay. So feel

00:08:19

free to jump in with

00:08:20

questions throughout we may be

00:08:22

moving quickly and I will

00:08:24

also be some time at

00:08:25

the end if you have

00:08:26

questions that goes for online



00:08:27

as well. I'll try and

00:08:29

keep an eye on the

00:08:30

chat in response to the

00:08:33

question. You can post questions

00:08:34

on the chat and I

00:08:36

will try and read those

00:08:37

questions up if I see

00:08:39

them. Okay, and they're good

00:08:42

questions. No judgement. I will

00:08:45

probably read any question you

00:08:46

but in the end, okay,

00:08:48

let's start with Michael as

00:08:50

being on lawyer and the



00:08:51

ex-banker Michael. Maybe you can

00:08:54

give us a taste and

00:08:56

a fraction an explanation of

00:08:58

some of the economic factors

00:08:59

that have affected Financial Services

00:09:02

most recently. Thank you Courtney

00:09:04

in good afternoon everyone and

00:09:06

I'm happy that you're not

00:09:07

asking about the last three

00:09:09

decades. So the most significant

00:09:12

development in the last two

00:09:13

years was certainly the mandatory.

00:09:15

So the title and resell



00:09:17

past increase grade seven times

00:09:20

since March 2022 from from

00:09:24

virtually Zero from 0.25% to

00:09:27

5.5% Currently this movement was

00:09:31

very material that boost the

00:09:33

the biggest move in one

00:09:35

cycle that the Federal Reserve

00:09:37

had time since the early

00:09:38

1980s on the pole vaulter

00:09:41

when when inflation was extremely

00:09:42

high and it also happened

00:09:45

really fast to him may

00:09:47

happen in just 17 months.



00:09:48

So as a result, we

00:09:50

saw that commercial banks have

00:09:52

lost deposits in the US

00:09:55

of 1.3 trillion US Dollars.

00:09:57

That's 7% of all deposits

00:10:01

held by the US Banks

00:10:02

and why did that happen?

00:10:04

It happened because at higher

00:10:05

rates there were just more

00:10:07

attractive investment opportunities for foreign

00:10:10

investors. And the last part

00:10:11

of deposit outflows have ended

00:10:13

up actually in money market



00:10:15

that said such a large

00:10:19

and possibly put it out.

00:10:20

So it is quite a

00:10:21

rare event. So if you

00:10:22

look at that statistics since

00:10:24

the 1970s, all you see

00:10:27

is deposits increasing constantly and

00:10:32

this is the first time

00:10:33

that you really see that

00:10:35

massive outflowing in such a

00:10:37

short. Of time. So I

00:10:40

think this called many banks

00:10:41

just by surprise. And additionally



00:10:43

the outflow was not uniform

00:10:45

it hit smaller Banks much

00:10:47

harder than the big four

00:10:48

and that was certainly the

00:10:50

case for the sweet banks

00:10:52

that that Fayette which were

00:10:53

sitting in Valley Bank Signature

00:10:56

Bank and First Republic. So

00:10:58

then why did those things

00:10:59

fade in the case of

00:11:01

Silicon Valley Bank Silicon Valley

00:11:03

Bank at to replace the

00:11:05

liquidity that it had lost



00:11:06

from deposit with drawers and

00:11:09

it it did that by

00:11:11

selling 21 billion in US

00:11:13

government bonds not the problem

00:11:16

was that that government bonds

00:11:18

had lost in value because

00:11:19

of monetary tightening its it's

00:11:21

simple if it's rates go

00:11:24

up. fixed-rate bonds lose in

00:11:27

value and to give you

00:11:31

an example. If you have

00:11:32

bought the the 30-year Government

00:11:34

Bond that was issued just



00:11:36  
before monetary tightening in February

00:11:38  
2020 that Bond would have

00:11:41  
lost, you know, 37% in

00:11:44  
value. And remember we're talkin

00:11:46  
about US government bonds, which

00:11:49  
are considered one of the

00:11:50  
lowest risk investments in the

00:11:52  
world. So that that was

00:11:54  
exactly what happened to to

00:11:55  
Silicon Valley Bank Silicon Valley.

00:11:57  
So it's 21 billion dollars

00:12:00  
in US government bonds at

00:12:01  
loss of 1.8 billion and



00:12:04

when it announced that to

00:12:06

the market, it had basically

00:12:08

solved the liquidity problem in

00:12:10

the short-term, but it had

00:12:11

created a capital problem because

00:12:13

because of that loss Silicon

00:12:16

Valley Bank announced to the

00:12:18

market that it would have

00:12:19

to raise fresh capital and

00:12:21

that just met with panic

00:12:23

and was in just two

00:12:24

days deposit as withdrew 140

00:12:27

billion of deposits from Silicon



00:12:29

Valley, which was More than

00:12:31

two-thirds of of the of

00:12:33

the overall deposit of Silicon

00:12:34

Valley Bank, and that was

00:12:36

a massive thing from and

00:12:38

Silicon Valley obviously did not

00:12:40

survive that as we know

00:12:43

it didn't stop there because

00:12:44

when something like that happens

00:12:47

investors are looking for the

00:12:48

next terminal piece to fall

00:12:50

and those two pieces were

00:12:53

Signature Bank and First Republic



00:12:56

Bank silver. So the share

00:12:57

prices of both Banks collapsed

00:12:59

quickly after after those events

00:13:02

and depositors again panicked and

00:13:04

the end or three Banks

00:13:07

pay it because because of

00:13:09

massive bankrupt, so that was

00:13:12

really an effect off of

00:13:15

monetary tightening but monetary tightening

00:13:17

was not the only factor

00:13:19

that play the road again.

00:13:20

There are the Texans playing

00:13:23

some of them are secondary



00:13:24  
effects from monetary tightening such

00:13:27  
as for example the deposit

00:13:28  
so What's Venture Capital funding

00:13:31  
measure capitals? I need ride

00:13:33  
up with birth rates on

00:13:36  
on the ride, and that

00:13:38  
affect the particularly Silicon Valley

00:13:40  
Bank and Trust Republic Bank,

00:13:42  
because Silicon Valley Klein was

00:13:45  
starting at Eclipse front wheel

00:13:46  
starting to pull deposit from

00:13:48  
those two bags and both

00:13:49  
bags at very strong franchises



00:13:52

in Silicon Valley the Federal

00:13:55

Reserve Peridot to the monetary

00:13:57

tightening had also stopped its

00:14:01

quantitative-easing, which it had started

00:14:03

after the global financial crisis,

00:14:05

and it actually went in

00:14:06

Reverse in the middle of

00:14:07

2022 and it started quantitative

00:14:10

tightening which created more pressure

00:14:13

on banks liquidity, and lastly

00:14:15

because of covid commercial real

00:14:18

estate sector has been suffering

00:14:21

in that has been a



00:14:21  
problem for Signature Bank, which

00:14:24  
had large exposure to the

00:14:26  
sector Sew sewing in Indiana.

00:14:29  
Thank you. Seppi sewing spring

00:14:31  
this year was it was

00:14:32  
a combination of many factors,

00:14:34  
but the monetary tightening was

00:14:36  
certainly one of the biggest

00:14:37  
and the driver Manual of

00:14:39  
the secondary sex. That's not

00:14:42  
to say that monetary tightening

00:14:43  
was was kind completely as

00:14:45  
a surprise when you would



00:14:47

would come and banks have

00:14:49

have Who is to protect

00:14:52

their bouncy then protect their

00:14:54

Investments against expected interest rate

00:14:58

Rises, but some are better

00:15:01

than others and some banks

00:15:03

also got exposed because of

00:15:05

a strategic positioning more to

00:15:07

those attacks than that other

00:15:09

banks in. This is exactly

00:15:10

what we have seen this

00:15:11

year. Thank you, Michael and

00:15:15

everyone here in the back.



00:15:17

I feel like yes, you

00:15:18

can hear it in the

00:15:18

back of soft me. Michael

00:15:21

really quickly. We have a

00:15:22

question from online that maybe

00:15:24

you can answer briefly before

00:15:25

we turned it to fly

00:15:27

on why did the depositors

00:15:30

and those failed Banks holds

00:15:31

much money in their deposit

00:15:32

accounts. Why did they not

00:15:33

realize there was a risk

00:15:34

of keeping huge Mountain Bank



00:15:35  
and that's moving money into

00:15:37  
treasury bills that are which

00:15:38  
are safer if you can

00:15:40  
give a quick response to

00:15:41  
that. So Pine in in

00:15:46  
most bang for your deposit

00:15:48  
us have not lost any

00:15:49  
money and you're right that

00:15:52  
some deposits are not insured

00:15:54  
and I take leaves deposits

00:15:55  
about \$250,000. But as I

00:16:00  
said earlier that many opportunities

00:16:03  
to put your money at



00:16:06

work because interest rates by

00:16:08

0.25 per cent. So so

00:16:10

for many of those depositors

00:16:12

deposits in banks by the

00:16:14

mall more attractive investment at

00:16:16

the time mod fact Rotana.

00:16:21

Thank you. Can you please

00:16:25

give us maybe an introduction

00:16:27

or summary of some recent

00:16:29

cases in the financial sector

00:16:31

related to these sorts of

00:16:32

issues. So if you thank

00:16:34

you. Thank you Courtney and



00:16:35  
thank you for the invitation

00:16:37  
to be hearing something out

00:16:38  
cuz I'm telling you and

00:16:39  
Decker so happy to be

00:16:42  
here and stuff like that

00:16:44  
is just my heart says

00:16:46  
I will mention a few

00:16:46  
minutes. I was involved in

00:16:49  
one of the other cases

00:16:50  
that I will discuss. So

00:16:51  
it's it's a topic that

00:16:52  
is yeah, we're together interested.

00:16:54  
Thank you for taking it.



00:16:55

So yes, we have seen

00:16:58

a significant increase of number

00:17:02

of high-profile investment treaty cases

00:17:04

arising out of the financial

00:17:06

services industry and largely for

00:17:09

the macroeconomic conditions that you

00:17:11

Courtney in and Michael just

00:17:13

described and I just want

00:17:14

to just give a couple

00:17:16

of examples just to give

00:17:17

you a sense of the

00:17:18

types of sort of financial

00:17:19

instruments that have been an



00:17:21

issue. Those cases first starting

00:17:24

and has not existed list,

00:17:26

of course that in 2009.

00:17:28

They were too large Chinese

00:17:31

insurance companies that brought an

00:17:35

extra claim against Belgium arising

00:17:38

out of measures that Belgium

00:17:39

has taken a rising out

00:17:41

of the 2008 financial crisis

00:17:44

and it was in relation

00:17:47

to an investment that those

00:17:49

investors to Chinese companies had

00:17:51

made in the company called



00:17:53

forties Group, which is a

00:17:54

banking and Insurance Group fast

00:17:56

forward 2016 and his case

00:17:58

was dismissed for lack of

00:17:59

jurisdiction because basically the claims

00:18:02

that were at issue were

00:18:03

covered by a previous treaty

00:18:05

that had to cause a

00:18:06

dispute resolution cause I was

00:18:08

Far narrower than the the

00:18:09

2009 treaty that they try

00:18:11

to to rely on provided

00:18:14

then in 2012. There was



00:18:17

also a very famous case

00:18:19

that made the headline the

00:18:20

push do viruses. Grease a

00:18:22

case which arose out of

00:18:24

the Greek restructuring of the

00:18:29

sovereign debt crisis I should

00:18:30

say which will also serve

00:18:32

who was a byproduct of

00:18:33

the 2008 financial crisis that

00:18:36

also resulted in the same

00:18:38

dismissal of jurisdiction. So you

00:18:40

could see sort of a

00:18:41

trend in a way we



00:18:43

think of maybe a trend

00:18:44

of Minnesota in this particular

00:18:45

case. Those were 7 deaths

00:18:47

07 Bond. I'm so in

00:18:50

one case you had Insurance

00:18:51

Group Investments. And in the

00:18:54

other you had bombs that

00:18:55

were the financial instruments that

00:18:57

were issued last year. We

00:18:59

saw also an Austrian bank

00:19:02

call Dad ecobank that filed

00:19:04

a claim against Slovenia arising

00:19:06

out of measures that were



00:19:08

taken by the state that

00:19:11

related to specific loans that

00:19:13

were made in Swiss friends

00:19:15

sort of the byproduct of

00:19:17

the currency devaluation in Switzerland

00:19:20

and What is interesting is

00:19:22

that not only in that

00:19:23

case the financial instruments were

00:19:25

loans and like bombs and

00:19:26

other you know, what investments

00:19:28

and insurance companies that I

00:19:29

mentioned earlier. But in that

00:19:32

particular case ID cobank, I



00:19:34

found a new lesson three

00:19:36

countries starting with Montenegro and

00:19:39

then Croatia and then again

00:19:40

Slovenia and course. We'll see

00:19:42

you know that the last

00:19:43

case was just filed last

00:19:45

year. So we'll just have

00:19:46

to be on the lookout

00:19:46

for the kids that I

00:19:48

want to just maybe spend

00:19:49

a couple more minutes a

00:19:50

couple minutes on is is

00:19:52

is is is a case



00:19:54

that I as I mentioned

00:19:55

I worked on so many

00:19:56

years which is the Gramercy

00:19:57

Pro case which was filed

00:20:00

in 2016 under the us

00:20:03

through to PA and that

00:20:06

case arose out of pharmacies

00:20:10

investment in bonds. But what

00:20:13

was interesting is that those

00:20:14

bombs which work or land

00:20:16

Bonds were issued by the

00:20:18

government of Peru in the

00:20:20

1970s? As part of an



00:20:22  
agrarian reform. So essentially the

00:20:25  
country gave issued Bonds in

00:20:28  
exchange for land of the

00:20:29  
size of Portugal. So he

00:20:31  
imagined it was a pretty

00:20:33  
pretty sizable piece of land

00:20:35  
and because prudent have the

00:20:38  
funds to be able to

00:20:39  
repay those this land outright.

00:20:42  
It issued to Stan's fast

00:20:44  
forward, you know through at

00:20:46  
you kind of make a

00:20:47  
crisis hyperinflation to currency denominations



00:20:51  
in 1980s the value of

00:20:53  
those bombs became essentially worthless.

00:20:57  
But in 2001 the Constitutional

00:21:00  
tribunal of Peru said that

00:21:02  
the government actually had to

00:21:04  
repay the land on both

00:21:06  
the principal and the interest

00:21:08  
at current value and not

00:21:10  
nominal value and it is

00:21:12  
on that basis that Gramercy

00:21:13  
decided by man sees the

00:21:14  
hedge fund based in Connecticut

00:21:16  
Gramercy decided to invest in



00:21:18

those bombs based on the

00:21:20

legitimate expectations. I would say

00:21:23

that you would actually do

00:21:26

good on a Statin pay

00:21:28

pay the land on that

00:21:29

but instead of doing that

00:21:31

it's an issued a series

00:21:33

of what was called Supreme

00:21:35

decrees which purported to pay

00:21:37

the land bond that but

00:21:39

essentially destroyed the value of

00:21:41

the bonds would use the

00:21:43

value of the bounce back.



00:21:44

What we argued was 99%

00:21:47

and so on that basis

00:21:48

Gramercy filed an investment treaty

00:21:50

case as I mentioned under

00:21:52

the us through TPA and

00:21:54

alleging. Abbreviation Richard minimum standard

00:22:00

of treatments in addition to

00:22:02

two other clients. We were

00:22:04

fortunate to have a favorable

00:22:06

ruling just this past December.

00:22:08

So I think it's the

00:22:08

case that I can only

00:22:09

talk about is being having



00:22:11

involved in the case, but

00:22:12

also having seen it true.

00:22:13

We we received an award

00:22:15

this past December. We're by

00:22:17

the majority found and what

00:22:19

is really interesting. I think

00:22:21

four boxes of discussion is

00:22:22

that it found that those

00:22:24

particular bonds or 7. Actually

00:22:26

constitute Investments under the under

00:22:29

the particular treated and I'll

00:22:31

come back to this later

00:22:32

in the discussion. Of course,



00:22:34  
this is was it at

00:22:35  
344 Gramercy. There was I

00:22:37  
will say, you know in

00:22:39  
the in the interests of

00:22:40  
transparency there was also a

00:22:41  
dissenting opinion which was surrounded

00:22:43  
by a Cruz appointed arbitrator

00:22:45  
which took a different who

00:22:46  
took a different view as

00:22:47  
to whether they had been

00:22:48  
jurisdiction, but I won't get

00:22:51  
into details on that suffice

00:22:53  
it to say that I



00:22:54  
think this is a good

00:22:54  
example of and like the

00:22:56  
other cases that Mentioned we're

00:22:58  
by the tribunal found that

00:22:59  
he didn't have jurisdiction to

00:23:01  
rule or to consider that

00:23:03  
specific financial instruments were covered

00:23:05  
investments into the relevant Riebes

00:23:07  
in that case. We were

00:23:09  
favorable. So I hope that

00:23:11  
gives you sort of a

00:23:12  
sense of funeral the type

00:23:13  
of financial instrument that may



00:23:15

give rise to investment treaty

00:23:16

claims. Very interested. Thank you

00:23:20

for now come as a

00:23:22

litigator. How would you say

00:23:24

arbitration and financial services differs

00:23:27

from litigations? I'm sorry. This

00:23:28

is a multi-part question has

00:23:30

there been in litigation has

00:23:33

arbitration rather than domestic litigation

00:23:36

been recently seeing a rise

00:23:38

in these types of cases.

00:23:39

And if so, why do

00:23:41

you think that is thank



00:23:43

you. Thank you for the

00:23:44

invitation to the speak to

00:23:46

you all today and thank

00:23:48

you to decorate for for

00:23:49

your hospitality and in hosting

00:23:51

us you're right. So I

00:23:54

didn't begin my career in

00:23:56

the arbitration space at Essen

00:23:58

see you're a litigator and

00:24:01

we don't further differentiate you

00:24:03

as Associates, you know, growing

00:24:06

up in the litigation space,

00:24:08

but I've always worked very



00:24:09  
closely with financial sector clients

00:24:13  
and so I can glean

00:24:15  
their perspective on these issues

00:24:16  
over the course of many.

00:24:20  
So now 15 years later

00:24:21  
a substantial portion. My practice

00:24:25  
is devoted to arbitration often

00:24:28  
with an international component to

00:24:30  
it. And so I bring

00:24:31  
a perspective to these issues

00:24:34  
as someone who does a

00:24:36  
lot of arbitration work now

00:24:38  
up, but who hasn't been



00:24:40  
steeped in it for his

00:24:41  
entire career as as many

00:24:43  
of you have and soak

00:24:45  
to get to your question

00:24:46  
your last question Courtney. Yes.

00:24:48  
I've seen a substantial rise

00:24:50  
in arbitration from where I

00:24:54  
sit as a preferred method

00:24:56  
of of dispute resolution in

00:24:58  
comparison to domestic litigation and

00:25:02  
I think it's worth I'm

00:25:04  
thinking about why that's the

00:25:05  
case. And I think that



00:25:07

gets to your first question,

00:25:08

which is the differences between

00:25:11

the two are precisely why

00:25:13

I think we've seen an

00:25:14

increase in an arbitration from

00:25:18

from the client's perspective document

00:25:21

Discovery is much more rational

00:25:23

the discovery process and domestic

00:25:28

litigation for those of you

00:25:29

who have contended with Ed

00:25:31

and the meat and confers

00:25:33

and the letters and the

00:25:35

arguments we see some of



00:25:37

that an arbitration but it's

00:25:38

not nearly as big nearly

00:25:40

as much headspace as us

00:25:42

and in ordinary us litigation

00:25:44

and that is clients least

00:25:46

favorite part of the spirit

00:25:49

resolution process. So there's a

00:25:51

preference. I think we're much

00:25:52

more streamlined approach to document

00:25:55

production where the request themselves

00:25:59

are going to be scrutinized

00:26:00

and then we'll be we'll

00:26:03

have to show relevance and



00:26:04  
materiality. And just combined with

00:26:07  
the general preference. I think

00:26:08  
I tribunals of not having

00:26:09  
much interest and in dealing

00:26:12  
with these issues and an

00:26:13  
ordering no extraordinary expenses e-discovery.

00:26:17  
So that's one reason the

00:26:19  
second one. I find somewhat

00:26:20  
lamentable which is that clients

00:26:23  
prefer the absence of depositions

00:26:26  
that depositions is my favorite

00:26:27  
part of the domestic litigation

00:26:30  
process, at least I'm taking



00:26:31  
the depositions defending them as

00:26:33  
it's not as much fun,

00:26:34  
but that's so clients. You

00:26:37  
not mind clients you is

00:26:38  
that depositions are expensive disruptive

00:26:43  
to the business often times

00:26:45  
oftentimes. The folks are trying

00:26:46  
to get the most senior

00:26:48  
people step positions. And ultimately

00:26:51  
I think the view is

00:26:52  
that they don't add much

00:26:54  
The process a couple of

00:26:58  
other reasons I think are



00:27:00

the challenges and getting your

00:27:02

class or Collective arbitrations and

00:27:05

they at arbitration context like

00:27:07

we know of exceptions to

00:27:08

that but it does continue

00:27:10

to be very rare and

00:27:12

just generally speaking the lawyers

00:27:13

have a lot more flexibility

00:27:15

or procedures that that are

00:27:16

going to govern the dispute

00:27:18

resolution process. Sylvester some of

00:27:21

that the procedural reasons why

00:27:23

I think we're seeing more



00:27:23

more of them to play

00:27:24

on the commercial side, but

00:27:27

I think the most important

00:27:28

development in my opinion as

00:27:30

I thought about this issue

00:27:33

is that I think we've

00:27:35

seen over the course of

00:27:36

the last 15 years at

00:27:37

least in my experience a

00:27:39

substantial increase in the quality

00:27:41

of the tribunals that are

00:27:43

resolving these cases me when

00:27:45

I first started practicing I



00:27:47

think there was a sense

00:27:48

that you never know. What's

00:27:50

going to happen in Ann

00:27:51

Arbor Trail. You should let

00:27:52

me know some degree. Maybe

00:27:53

that's true today, but that's

00:27:54

true and domestically creation as

00:27:57

well. But with tribunals that

00:28:00

are better and better and

00:28:02

more sophisticated. I think that

00:28:03

clients are increasingly comfortable having

00:28:06

high State disputes resolved by

00:28:10

these fees tribunals where you



00:28:12

can have confidence that they're

00:28:15

going to be sophisticated and

00:28:17

that their degree of sophistication.

00:28:20

Standing will surpass judges even

00:28:23

some of the more favoured

00:28:24

jurisdictions for resolving international disputes.

00:28:28

So I think this is

00:28:29

particularly important in the financial

00:28:31

sector where some of the

00:28:37

instruments can be complex and

00:28:38

require in a rolling up

00:28:40

your sleeves understanding them understand

00:28:44

being a transaction understanding an



00:28:46

industry. But now I think

00:28:49

it's increasingly clear that International

00:28:51

tribunals are up to this

00:28:52

task. So I think I

00:28:53

think those are the reasons

00:28:54

why it's becoming a larger

00:28:57

and larger portion of practices,

00:29:00

like folks like me and

00:29:02

and and a preferred method

00:29:04

for resolving some very significant.

00:29:10

Okay, let's get into sort

00:29:14

of the nitty-gritty of these

00:29:15

cases and the breakdown what



00:29:18

the challenges are and the

00:29:20

different factors the jurisdiction damages

00:29:25

and enforcement. Would you like

00:29:29

to start talking about the

00:29:30

challenges of arbitration and financial

00:29:32

services with respect to jurisdiction,

00:29:34

then sure. Yeah, so I

00:29:37

think Might make some thank

00:29:40

you honey. I'm done being

00:29:42

too used to do this.

00:29:43

Dinglasan. Zuma said the challenges

00:29:48

on jurisdiction to read their

00:29:52

number of challenges that can



00:29:53  
arise not necessarily specific to

00:29:56  
the financial industry. I would

00:29:58  
say but just I think

00:30:00  
just go to try to

00:30:00  
resolve those issues the way

00:30:02  
I have considered. This is

00:30:03  
very to put it very

00:30:04  
simply just take a look

00:30:06  
at the treaty because then

00:30:08  
the answer is very often

00:30:09  
in the treaty in the

00:30:11  
way that the you know

00:30:12  
that the scope of the



00:30:14  
treaty is is is defined

00:30:16  
while it is true that

00:30:17  
there has been a lot

00:30:18  
of academic debate over whether

00:30:21  
financial instruments can be protected

00:30:24  
and irrelevant treaties what really

00:30:27  
matters is bringing the language

00:30:28  
of the treaty and I

00:30:29  
think and I'll let you

00:30:30  
know why I'll touch base

00:30:31  
on you know, that this

00:30:32  
couple of examples that I

00:30:33  
mentioned earlier. I think at



00:30:35

least in my eyes you

00:30:35

there's no reason why financial

00:30:37

instruments At least on their

00:30:40

face cannot be construed as

00:30:43

cover investment if the treaty

00:30:46

so provides of course, so

00:30:48

what matters is really looking

00:30:49

at the definition of the

00:30:51

Investments under the under the

00:30:53

treaty and to see whether

00:30:54

it is Broad enough to

00:30:56

Encompass the type of financial

00:30:58

instrument that is that issue



00:30:59

and that really explains I

00:31:01

think in large part how

00:31:03

Batman 3D tribunals have approached

00:31:06

the question and I mentioned

00:31:08

earlier and you know, including

00:31:11

by dismissing the case for

00:31:12

lack of jurisdiction including and

00:31:14

some of the cases that

00:31:16

I mentioned the post of

00:31:17

a case being one of

00:31:18

them, but also, you know

00:31:19

opposing jurisdiction in the case

00:31:21

that I mentioned for Gramercy



00:31:22

because if you actually look

00:31:25

at the particular treaty under

00:31:28

which The Gramercy claim was

00:31:31

brought in so that was

00:31:33

as I said the US

00:31:34

proved to be a case,

00:31:36

what is interesting is that

00:31:37

in Pretty in that? Particular

00:31:39

tree tea there was an

00:31:41

express provision that allowed for

00:31:44

Investments to take the form

00:31:46

of bonds, which is very

00:31:48

unlike other types of other



00:31:50

types of Two Kitties and

00:31:52

like so if you compare

00:31:54

that to the treaty that

00:31:56

was an issue in the

00:31:56

bush over case the tribunal

00:31:58

took a different View and

00:31:59

considered that there was no

00:32:01

Express mention of bonds being

00:32:04

protected under the treaty and

00:32:06

therefore they consider that you

00:32:08

know, the the language was

00:32:09

far more restrictive and therefore

00:32:11

did not Encompass this type



00:32:12  
of financial instruments. Of course,

00:32:15  
in addition to look at

00:32:16  
looking at the start of

00:32:17  
the broad definition of the

00:32:19  
of the type of Investments

00:32:21  
that are covered under the

00:32:22  
treaty. You also need to

00:32:24  
go to take a look

00:32:25  
outside in the treaty to

00:32:26  
see whether it it might

00:32:27  
be potential car bass. And

00:32:29  
for example, the US Mexico

00:32:31  
Canada agreement include specific carve-outs



00:32:34  
for financial services and sort

00:32:36  
of like fat certain tax

00:32:38  
tax. Haitian measures so you

00:32:40  
want to be on the

00:32:41  
lookout for those as law

00:32:42  
in addition to just looking

00:32:43  
at that the definition of

00:32:45  
treatise there, of course other

00:32:47  
than mutations that can come

00:32:48  
into play. For example, when

00:32:52  
you look at the the

00:32:52  
definition of an investment generally

00:32:56  
the Investments need to be



00:32:58

made in the current in

00:32:59

the territory of the other

00:33:00

Contracting party and that is

00:33:03

an issue that can prove

00:33:04

to be tricky. For example

00:33:05

of financial instruments. I bought

00:33:07

on the secondary Market that

00:33:09

can be at that can

00:33:10

be an issue and then

00:33:12

last but not least. I

00:33:13

will also mention temporal restrictions

00:33:16

about you know, what is

00:33:17

the date of the entry



00:33:18

of course of the treaty.

00:33:19

When was the investment made

00:33:21

specific statues of limitations that

00:33:24

canceled of constrain the filing

00:33:26

of the the arbitration as

00:33:28

well and that is something

00:33:29

that is not specific to

00:33:31

the final straw service Financial

00:33:33

Services industry, but that is

00:33:35

something that has become an

00:33:36

issue for example in the

00:33:38

case that I mention. Underwear,

00:33:39

I talked about this to



00:33:41  
Chinese insurance companies. That was

00:33:44  
the issue. That was by

00:33:45  
the tribunal dismissed the claim

00:33:46  
for lack of jurisdiction because

00:33:48  
as I mentioned the claims

00:33:50  
that were at issue actually

00:33:51  
spell under the other tree

00:33:53  
1996 PD as requested to

00:33:55  
to falling into the nutrient

00:33:56  
in 2013 to 2009. So

00:33:59  
this temporal limitations are the

00:34:02  
Odyssey all considerations that the

00:34:04  
investor needs to take into



00:34:05  
account potential challenges that may

00:34:07  
arise down the line that

00:34:08  
you want to think about

00:34:09  
before actually falling the claim.

00:34:12  
Thank you. Yes, so so

00:34:14  
challenges not unique's in financial

00:34:16  
instruments, but certainly interesting and

00:34:20  
what about challenges on the

00:34:22  
merits and he's kind of

00:34:24  
arbitration. Yeah. I think I

00:34:26  
think to come to mind

00:34:27  
and end the first Challenge

00:34:29  
on the merits, you know



00:34:30

speaking of financial services. Is

00:34:34

the police Powers Doctrine Sofia

00:34:37

30 of the state to

00:34:39

enact and enforce laws up

00:34:42

for the welfare health and

00:34:43

safety of public. So this

00:34:46

is an important issue because

00:34:48

of the challenge in differentiating

00:34:50

between legitimate exercises of police

00:34:53

powers and actions that are

00:34:55

you know, pre-tax than end

00:34:57

up unfairly impacting investor. So,

00:35:00

you know a new banking



00:35:02  
regulation might impose more stringent

00:35:07  
know your client requirements are

00:35:09  
other things that at first

00:35:11  
blush might very well be

00:35:14  
excessively or very burdensome for

00:35:17  
the client, but I think

00:35:18  
it's fair to say that

00:35:19  
a tribunal is going to

00:35:21  
be skeptical of the idea

00:35:23  
that there's going to be

00:35:25  
a claim they are because

00:35:26  
it seems to be something

00:35:29  
that is legitimately falls under



00:35:32

the police power. Now there's

00:35:35

something that's much more punitive.

00:35:38

Purports to be some kind

00:35:39

of Reform you can imagine

00:35:42

the types of regulations and

00:35:44

we seen them where tribunals

00:35:46

have been much more skeptical

00:35:49

because they sense that it's

00:35:50

a pretext for unfairly targeting

00:35:53

certain foreign investment. So the

00:35:56

point is that in both

00:35:57

cases the tribunal is going

00:35:59

to need to look closely



00:36:01

at the situation and consider

00:36:04

the nature of the regulation

00:36:06

with the intent was behind

00:36:08

the regulation the impact of

00:36:10

these states actions and whether

00:36:13

these were proportionate to legitimate

00:36:15

public policy objective. So this

00:36:18

is an inherently fact-based and

00:36:21

in complex issue that's going

00:36:23

to require a good understanding

00:36:24

of the new regulations and

00:36:27

end the relevant markets that

00:36:29

that are affected by them.



00:36:31

The other challenge relates to

00:36:33

proving bad faith. And in

00:36:36

this context now, it's interesting

00:36:38

because how do you do

00:36:40

that? How do you prove

00:36:41

bad faith when you're talking

00:36:42

about a particular Sovereign know

00:36:45

who's who's going to be

00:36:46

the respondent and the traditional

00:36:49

role in the US at

00:36:50

least historically is that courts

00:36:53

will not even look at

00:36:55

the alleged motives or purposes



00:36:59

up behind what a legislature's

00:37:03

intent was and I'm passing

00:37:05

a law and they're similar

00:37:06

deference that that's given to

00:37:09

regulations and you know, if

00:37:11

there's a separation of powers

00:37:13

rationale behind that line of

00:37:16

cases not that General there

00:37:18

are exceptions to the general

00:37:19

perspective, but there's also the

00:37:22

Practical difficulty in getting inside

00:37:25

the head detective you're talking

00:37:26

about a law that's been



00:37:27

passed by legislature. You know,

00:37:29

what what one purse Inside

00:37:31

was his reason for voting

00:37:32

in favor of the law

00:37:33

doesn't necessarily give rise to

00:37:36

any inference about what someone

00:37:37

else has reason was for

00:37:39

passing a law. So so

00:37:40

proving bad faith particularly when

00:37:43

you talk about a law

00:37:44

it's going to be very

00:37:45

challenging for precisely the reasons

00:37:47

I think that us courts



00:37:49

generally avoid engaging in that

00:37:51

exercise altogether. There was actually

00:37:56

an interesting ruling from the

00:37:58

United States that were a

00:38:01

ruling came out from the

00:38:02

US Supreme Court this week

00:38:04

where the legislatures in the

00:38:08

state of Arizona stepped in

00:38:12

to defend a law that

00:38:14

was passed by the Arizona

00:38:15

legislature because the divided ministration

00:38:19

another plane has challenged the

00:38:21

law the voting ideal are



00:38:23  
voting registration law. And there

00:38:26  
was a challenge that was

00:38:27  
brought to it under the

00:38:28  
US Constitution and and equal

00:38:31  
protection statues and the state's

00:38:36  
attorney general refused to send

00:38:38  
the law and so legislators

00:38:41  
from Arizona stepped in an

00:38:44  
attempt to defend the constitutionality

00:38:46  
of the law and their

00:38:48  
depositions were then immediately noticed

00:38:51  
during the course of Discovery

00:38:52  
were noticed. And the legislators



00:38:56

move to quash the subpoenas

00:38:58

on a concept of legislative

00:39:00

privilege, which is that they

00:39:02

shouldn't have to account for

00:39:05

why they pass the law

00:39:06

and they said that the

00:39:08

concept behind his legislative privileges

00:39:10

that they're shielded from both

00:39:12

criminal and civil liability and

00:39:14

being compelled to answer these

00:39:15

text question the response of

00:39:17

document request and the district

00:39:20

court rejected that argument and



00:39:22

and required that speech posing.

00:39:23

This week is ultimately made

00:39:25

its way to the Supreme

00:39:26

Court which also denied their

00:39:28

application for Relief. So it's

00:39:30

just kind of a timely

00:39:32

and interesting story falling under

00:39:34

the headline of it's the

00:39:36

rare case where you're going

00:39:38

to be able to take

00:39:39

the depositions and get testimony

00:39:42

that tries to penetrate exactly

00:39:44

what was going on in



00:39:45

the mind of a legislator

00:39:47

were the government actor and

00:39:50

so you really have to

00:39:52

rely on indirect ways. Establishing

00:39:55

in town and there's been

00:39:57

some success by looking for

00:40:00

example at comparing the stated

00:40:02

objective with whatever the regulatory

00:40:04

action was with how it

00:40:06

was actually implemented and if

00:40:08

they are and what the

00:40:09

impact was and if there's

00:40:10

a disconnect there it might



00:40:12

give rise to an inference

00:40:13

of bad faith. Their ways

00:40:16

of improving discriminatory treatment looking

00:40:19

at have domestic entities are

00:40:21

treated looking at foreign investors

00:40:23

are treated that could indicate

00:40:25

bad faith as I mentioned

00:40:27

before. Is there a disproportionate

00:40:28

impact on a particular company

00:40:30

you can look at the

00:40:32

process by which the law

00:40:34

was passed. It was a

00:40:36

through the ordinary process with



00:40:37  
something extraordinary about it. But

00:40:41  
ultimately, I think this is

00:40:42  
an area where experts election

00:40:44  
is going to be extremely

00:40:45  
important in the process explaining

00:40:48  
what the Norms are comparing

00:40:50  
it to how other countries

00:40:52  
have dealt with a similar

00:40:53  
problem. And so I think

00:40:55  
that it's particularly important to

00:40:58  
vet your experts if you're

00:41:00  
going to have a very

00:41:02  
early in the process and



00:41:03

get really comfortable with who's

00:41:04

being retain if you're going

00:41:07

to have to rely on

00:41:08

a bat face plant. I've

00:41:12

also heard it said that

00:41:14

maybe financial institutions as claimants

00:41:17

have a harder time because

00:41:20

maybe there's some bias against

00:41:22

Financial less than 50. Maybe

00:41:25

I would say. I think

00:41:29

he's still out on that.

00:41:33

I think that's the general

00:41:35

presumption that there's going to



00:41:39

be hostility towards financial institutions.

00:41:41

But again, if if if

00:41:43

you're comfortable with your tribunal

00:41:46

and you think this is

00:41:48

one of I think the

00:41:49

benefits of of arbitration that

00:41:51

I was talking about with

00:41:52

my earlier remarks is that

00:41:54

if I were advising a

00:41:56

client financial institutions client On

00:42:01

a strong case but it

00:42:02

had to be decided by

00:42:03

a jury that would be



00:42:05

a very different piece of

00:42:07

advice for that reason, you

00:42:09

know bias against financial institutions

00:42:11

that would be very different

00:42:13

advice than if I had

00:42:14

what I expect to be

00:42:15

very competent tribunal composed of

00:42:19

you know, you know under

00:42:20

the ICC or any kind

00:42:22

of forum where you can

00:42:24

expect no high-quality arbitrators be

00:42:28

resolving the issue. So I

00:42:30

think like General view on



00:42:32

that issue is that certainly

00:42:33

the phenomenon exists that's documented

00:42:37

where there is a bias

00:42:38

particular post-financial crisis against financial

00:42:41

institutions, but I've you being

00:42:44

in an arbitral form as

00:42:46

a mitigant against at that

00:42:48

buy us. That's a good

00:42:50

point. Thank you Michael back

00:42:54

to you. What about damages?

00:42:57

Challenges in these kinds of

00:42:58

cases specifics of damages from

00:43:03

my perspective banking cases from



00:43:05

the perspective of an expert

00:43:08

quite different from from other

00:43:10

Industries, not only from a

00:43:11

valuation perspective, but also in

00:43:13

in general from an expert

00:43:15

to Spector and and Tom

00:43:17

Paxton on 13 Reasons, which

00:43:19

is regulation. So banks are

00:43:23

different from other companies in

00:43:25

the sense that they are

00:43:26

more interconnected with with an

00:43:28

industry and with the entire

00:43:30

economy sucks. So if one



00:43:32  
runs into problems chances are

00:43:36  
that those problems can can

00:43:39  
can spill over into into

00:43:41  
the sector and and the

00:43:42  
reason for that again a

00:43:43  
bank robbed banks of depositors

00:43:46  
deposit us can withdraw their

00:43:47  
money in overnight and that

00:43:51  
can lead to Bank Run

00:43:52  
and companies outside to finish

00:43:55  
the second chance don't have

00:43:57  
to Closet so they cannot

00:43:58  
encounter a bank run. And



00:44:00

for that reason thinks I

00:44:02

have a deregulated that as

00:44:04

a good reason for regulation

00:44:05

and that hasn't won. So

00:44:09

so banks have to comply

00:44:11

with a host of of

00:44:13

regulatory requirements and Regulatory ratios.

00:44:16

And those requirements have to

00:44:18

be built into a variation

00:44:20

order for that model to

00:44:21

make sense that create the

00:44:25

challenge because regulation is complex

00:44:27

regulation evolves. All the time



00:44:30  
regulation is different across jurisdictions

00:44:32  
and regulation can even be

00:44:34  
different across Banks. So different

00:44:36  
size banks have different regulations

00:44:38  
banks have different ratios that

00:44:41  
they have to comply even

00:44:42  
if they're the same bank.

00:44:43  
So it becomes quite Complex

00:44:46  
Center and variation Moto can

00:44:48  
become very complicated and in

00:44:51  
the short. Of time, but

00:44:53  
from my perspective other challenges

00:44:56  
that bad that's an expert



00:45:00

has to know about when

00:45:02

it comes to Banking and

00:45:04

and that has also to

00:45:05

do with this rat that's

00:45:07

regulation. So particularly in the

00:45:10

wake of the 2007 2008

00:45:12

Global financial crisis that has

00:45:15

been a lot of changes

00:45:17

on regulation and one of

00:45:18

the changes is that many

00:45:19

Regulators Around the World created

00:45:21

so-called Bank resolution regimes. So

00:45:25

those regimes are basically manuals



00:45:29

for Regulators how to behave

00:45:31

in the case of a

00:45:32

banking crisis. And then if

00:45:35

it is bank will be

00:45:36

to be in a group

00:45:38

of banks that issue with

00:45:40

those Frameworks is that they

00:45:42

are quite new a bank

00:45:44

crisis doesn't happen every day.

00:45:46

So they haven't really been

00:45:48

tested and and Regulators have

00:45:51

been Interpreting those regimes different

00:45:55

beers, but for example the



00:45:56

European Union as a unified

00:45:58

banking resolution regime in 2017,

00:46:04

Italy and Spain experienced banking

00:46:08

crisis and and both countries

00:46:11

interpreted tourism quite different than

00:46:14

active quite differently in spite

00:46:16

of being under the same

00:46:18

regulatory regime. Another challenge that

00:46:24

I'm I'm seeing from a

00:46:25

banking expert perspective is always

00:46:29

it regulatory action is in

00:46:30

most because one of the

00:46:32

questions and that touches on



00:46:33

on what I mentioned earlier

00:46:35

on police power is always

00:46:37

quit the regulator has taken

00:46:39

an action that would have

00:46:41

been more beneficial to the

00:46:42

claimant while at the same

00:46:44

time protecting the banking system.

00:46:46

So quit feeling The Regulators

00:46:48

mandates to to maintain Financial

00:46:50

stability and to prove that

00:46:53

that route existed is sometimes

00:46:57

the the minute of the

00:47:00

all the experts and that



00:47:02

sometimes and one of the

00:47:05

issues in that is sometimes

00:47:07

information asymmetry because the claim

00:47:11

and might not have all

00:47:12

the information that the regulator

00:47:14

have and and the regulator

00:47:15

might not provide that information

00:47:17

because critical documents might talk

00:47:20

about the sector as a

00:47:22

whole. In my thoughts on

00:47:23

on other banks for example,

00:47:25

but it could also be

00:47:27

and typically Bang Bang Theory



00:47:29

Solutions or banking says happening

00:47:32

over weekend The Regulators present

00:47:34

but the same and if

00:47:35

the claim is Disney investor

00:47:36

in the bank is not

00:47:38

present in these in these

00:47:39

discussions. So it don't understand

00:47:46

why the regulator did what

00:47:48

she did and and really

00:47:50

understand whether that was funded

00:47:52

this route to to take

00:47:55

that would have been more

00:47:56

beneficial for the claim and



00:47:57

one other thing that I

00:48:00

would like to touch on

00:48:01

under the Broadway a regular

00:48:05

Atlanta is contingent convertible bonds

00:48:09

because that has been an

00:48:10

issue with with credits with

00:48:12

which failed this year. I'm

00:48:14

continuing convertible bonds are also

00:48:16

a child of the financial

00:48:19

crisis. So they were created

00:48:20

after the global financial crisis.

00:48:22

But the specific purpose to

00:48:25

have banks that experience a



00:48:28  
capital shortfall to create regulatory

00:48:31  
capital in a in a

00:48:33  
short short. Of time and

00:48:35  
they do that by either

00:48:36  
being converted into Equity or

00:48:38  
by being written down and

00:48:40  
like like resolution regimes those

00:48:43  
instruments have not been tested

00:48:45  
a lot and Regulators have

00:48:48  
also treated those instruments differently

00:48:51  
and that has been at

00:48:52  
the heart of the dispute

00:48:52  
about the treatment of Credit



00:48:55

Suisse because the Swiss regulator

00:48:58

order to bang to rights

00:48:59

down all of its convertible

00:49:01

contingent convertible bonds, and all

00:49:05

of those has basically lost

00:49:08

an entire investment and at

00:49:09

the same time to say

00:49:11

to UBS Colitis with Shayla.

00:49:14

Grable to recover some of

00:49:16

that money is at the

00:49:18

core of many of the

00:49:19

claims that Bond holders. Starting

00:49:23

lineup after appearing at the



00:49:25

moment. So so in summary

00:49:27

Bank in cases and cases

00:49:31

from the fraud and Banking

00:49:37

Act with respective. Thank you.

00:49:41

And what about last but

00:49:44

not least we're at enforcement.

00:49:45

So now do you have

00:49:46

any thoughts on any challenges

00:49:48

and enforcement particular to arbitration

00:49:50

and financial services? I think

00:49:53

generally speaking seeking to enforce

00:49:55

Awards arising out of actions

00:49:57

in the dino of banking



00:50:00

Regulators. For example, I think

00:50:02

we'll raise pretty similar issues

00:50:04

as you know is when

00:50:05

and forcing other types of

00:50:07

rewards, I do think that

00:50:09

one issue that I think

00:50:10

it's worth discussing is really

00:50:12

suffering Humanity because in most

00:50:14

cases the claimants will have

00:50:16

an award against the state

00:50:18

and therefore to the extent

00:50:20

that that claim and seeks

00:50:22

to and forth against the



00:50:24  
state it will have to

00:50:25  
overcome the running Manatee and

00:50:27  
of course the procedures governing

00:50:29  
enforcement can vary depending on

00:50:32  
the jurisdiction where you seek

00:50:34  
to enforce against the specific

00:50:37  
State Assets in the US

00:50:39  
for example The foreign Sovereign

00:50:42  
immunities act also known as

00:50:43  
sffs. I meant proceedings against

00:50:48  
the foreign State and state-owned

00:50:49  
entities in radio. I mean

00:50:51  
to boil it down to



00:50:53  
a very simple proposition at

00:50:56  
the key question is whether

00:50:58  
the assets that are that

00:51:02  
you tried to seize are

00:51:03  
used for commercial activity. And

00:51:06  
that's a test. That is

00:51:07  
a true under US size

00:51:09  
is very similar Islam the

00:51:11  
UK law and that is

00:51:12  
a test that is very

00:51:14  
true fact intensive and that

00:51:17  
really create a very often

00:51:20  
a significant hurdle to to



00:51:22

to be able to overcome

00:51:24

a sovereign immunity when you're

00:51:27

trying to enforce against State

00:51:28

assets know the investor that

00:51:32

has an award against the

00:51:33

state can also try to

00:51:35

enforce against assets owned by

00:51:37

state-owned entities and not the

00:51:39

state itself. But every seat

00:51:41

for that as well because

00:51:42

the award is against the

00:51:43

state not state-owned entities you

00:51:46

need to do what we



00:51:47

call piercing the corporate veil

00:51:49

and and again under you

00:51:52

saw that presents a specific

00:51:55

restrictions including their visit to

00:51:59

Avenues to Reedy overcoming the

00:52:01

presumption of what we call

00:52:02

set corporate separateness and piercing

00:52:05

the corporate veil between the

00:52:07

state and state-owned entities in

00:52:08

their assets. You basically need

00:52:10

to show that basically the

00:52:13

state-owned entity is the alter

00:52:14

ego of the state. So



00:52:16

you need me to show

00:52:17

that the corporate entities as

00:52:18

quoting from the Supreme Court

00:52:20

case the bank case is

00:52:22

so extensively controlled by its

00:52:24

owner that a relationship of

00:52:26

principal and agent is to

00:52:28

get it that's number one.

00:52:29

Number two is recognizing that

00:52:32

separate juridical status of the

00:52:35

entity would work fraud or

00:52:37

Injustice on the other party.

00:52:38

So either you show that



00:52:40

it's at the Alter Ego

00:52:41

always you sure that it

00:52:42

would be fraudulent otherwise and

00:52:45

that too is also very

00:52:47

fact intensive their number of

00:52:49

factors that are applied by

00:52:51

different circus in different ways.

00:52:54

I will say there might

00:52:56

be some times at discrepancy

00:52:57

between say the second circuit

00:52:59

the fifth circuit but by

00:53:02

and large are the factors

00:53:03

are considered is the degree



00:53:05  
to which government officials like

00:53:07  
for example manage the daily

00:53:09  
Affairs of the state-owned company.

00:53:10  
That's one of the factors

00:53:12  
that is generally considered or

00:53:14  
the independence of the state-owned

00:53:16  
entity Board of Managers from

00:53:18  
government control. So again, it's

00:53:19  
ready to show that there

00:53:21  
is a and it should

00:53:21  
have been effective control of

00:53:23  
the state over the state-owned

00:53:24  
entity. And if you're able



00:53:26

to demonstrate that you can

00:53:27

do what we call piercing

00:53:29

the corporate veil and therefore

00:53:31

seek to have assets and

00:53:33

force against the assets of

00:53:34

the state-owned entities, even though

00:53:36

you only have an award

00:53:37

against the against the state

00:53:38

itself. Going short and I

00:53:41

will call you cuz I'm

00:53:42

done and it's sitting in

00:53:45

for you know, it's not

00:53:46

because you have a favorable



00:53:47

toward that is the end

00:53:48

of the road and forcement

00:53:50

presents significant issues, including as

00:53:52

it relates to 277 humidity.

00:53:55

So something to keep in

00:53:56

mind. Thank you. Thank you.

00:53:59

So several months have passed

00:54:03

to wear at the end

00:54:04

of 2023 since we had

00:54:06

the bank collapses in the

00:54:08

spring. Maybe we have some

00:54:11

hindsight perspective of what the

00:54:13

results of those of those



00:54:15

collapses were in particular with

00:54:17

financial services Michael. Can you

00:54:20

tell us a bit about

00:54:20

what happened after? Okay, let

00:54:24

me let me answer. That

00:54:25

was two questions. One is

00:54:27

Chris. How about the crisis

00:54:28

earlier this year contained on

00:54:30

the second question is has

00:54:31

it been contained? So I

00:54:33

think I'll factors have how

00:54:35

to contain the crisis and

00:54:38

what is the guarantees of



00:54:41  
the deposits above Silicon Valley

00:54:43  
Bank and Signature Bank at

00:54:44  
and First Republic as well

00:54:46  
as ADD large amounts of

00:54:48  
uninsured depositors, which means deposits

00:54:51  
that exceed the insured amount

00:54:53  
of 250,000 that issue has

00:54:56  
always been in discussion with

00:54:58  
Those deposit should be insured

00:55:00  
or not, whether whether that

00:55:03  
should be insured by the

00:55:04  
by the state and in

00:55:06  
both cases Silicon Valley and



00:55:08

signature of the FBI and

00:55:10

the state guaranteed all deposits.

00:55:13

Also be uninsured deposits. So

00:55:15

no deposit has lost any

00:55:17

money in this bank failures.

00:55:19

We know that didn't stop

00:55:21

the painting at the time

00:55:22

because Republic First Republic Bank

00:55:25

came after those two and

00:55:28

faith and was bought by

00:55:29

JP Morgan. But but I

00:55:31

think it helped the second

00:55:34

measure which I think it's



00:55:35  
more impactful and was taken

00:55:38  
by the Federal Reserve and

00:55:39  
it's maybe maybe less less

00:55:42  
known is is a new

00:55:44  
financing facilities at the Federal

00:55:47  
Reserve Act introduced in response

00:55:50  
to those bank failures and

00:55:51  
that facility is called blank

00:55:52  
term Fanning program. So as

00:55:55  
we know the Federal Bank

00:55:56  
is a lender of Last

00:55:57  
Resort and end. Things can

00:55:59  
go to the Federal Reserve



00:56:00

to borrow money against against

00:56:03

collateral and that has that

00:56:05

opportunity that has always been

00:56:07

there. Then the thing that

00:56:11

is different about the new

00:56:12

bank concerning program is the

00:56:14

banks can now pledge US

00:56:17

government bonds at par. So

00:56:19

in the past when you

00:56:20

would have a Government Bond

00:56:22

and their government bond, for

00:56:23

example, because of monetary tightening

00:56:25

would have lost in value



00:56:27

and let's take the early

00:56:28

example of the 30-year Bond

00:56:30

again that 30-year Bond trades

00:56:33

right now. It's 6365 cents

00:56:36

on the dollar. You could

00:56:37

take that Bond planted where

00:56:39

the where the Federal Reserve

00:56:40

and got 63 or 65

00:56:43

million for every hundred million

00:56:44

that you have involved in

00:56:46

those. The new windows different

00:56:49

you can pledge at par.

00:56:50

So if you bought that



00:56:52

Bond when it was in

00:56:53

February 2022, you can get

00:56:56

from the terrorists 100 million

00:56:58

back. So you bought it

00:56:59

for her and you can

00:57:00

get back hundred million and

00:57:02

that is really significant because

00:57:03

that means that Silicon Valley

00:57:06

Bank, if not have needed

00:57:08

to do what it takes

00:57:10

by by selling Bonds in

00:57:12

the market rate for the

00:57:13

plants those banks with the



00:57:14

Federal Reserve not have lost

00:57:16

any money and would not

00:57:19

have needed to learn to

00:57:20

race crash capitals. So I

00:57:22

think that that has been

00:57:24

read a game-changer. It is

00:57:28

kind of the monetary tightening

00:57:31

that we saw Banks need

00:57:33

time to respond to changes

00:57:35

in the interest rate environment

00:57:37

that can prepare for it

00:57:38

but still as a bank

00:57:40

if you see deposit I'll



00:57:41

close as we solved by

00:57:43

the beginning of this year.

00:57:44

It's very difficult to respond

00:57:46

to those Outlaws very quickly.

00:57:48

But over time you have

00:57:50

more time and then and

00:57:52

you you can just respond

00:57:53

to those to those actors

00:57:55

and I think most banks

00:57:56

by now half and lastly

00:57:58

what I said earlier already

00:58:00

is not all things are

00:58:03

created equal. Do things like



00:58:06

like the tree that stays

00:58:08

at the difference between positioning

00:58:11

that made them more vulnerable

00:58:12

to to to the events

00:58:15

that happened because I want

00:58:16

in Silicon Valley or they

00:58:19

had exposure to the real

00:58:21

real estate. Commercial real estate

00:58:25

sector and mowed all banks

00:58:27

have the same block for

00:58:29

the interest rate hikes. So

00:58:30

I think what we've seen

00:58:31

is that those banks that



00:58:33  
have been the weakest have

00:58:36  
to pay you then and

00:58:37  
the others have moved on.

00:58:38  
The second question obviously is

00:58:41  
I was just doing right

00:58:44  
now is this the rest

00:58:47  
that's nice still talks of

00:58:49  
a babbling in commercial real

00:58:51  
estate. That's also the theory

00:58:53  
that at some point that

00:58:55  
they usually quiddity that governments

00:58:57  
created during the pandemic will

00:58:59  
at some point to run



00:59:00

out and both of those

00:59:01

factors or any other factor

00:59:03

that might happen that we

00:59:05

don't know about today can

00:59:07

can attack the banking in

00:59:09

the street. So I looked

00:59:10

at the development of a

00:59:11

market indicators for banking to

00:59:14

see how how the industry

00:59:15

has has developed since then

00:59:18

and the first thing that

00:59:20

I can say, is that

00:59:21

the outflow of deposits have



00:59:23

Stop. So since the lowest

00:59:25

point in in time in

00:59:28

terms of US Bank deposits,

00:59:29

which was April this year

00:59:31

deposits have recovered by the

00:59:33

three hundred billion dollars to

00:59:36

1 billion short of whatever

00:59:38

Jan in February last year.

00:59:40

No one trillion 1 trillion

00:59:42

short of what happened in

00:59:44

February last year, but the

00:59:45

outflow has stopped the second

00:59:48

aspect that I looked at



00:59:49

is is the Pats new

00:59:51

bank Trump funding program and

00:59:53

that is at an all-time

00:59:54

high right now. So so

00:59:56

you could see that Banks

00:59:58

really quickly picked up that

01:00:00

program and use that program

01:00:02

during the crisis and it's

01:00:04

pretty much at that level

01:00:06

or a little bit little

01:00:07

bit on the ride. So

01:00:08

banks are still using that

01:00:10

program and that program is



01:00:12

the tractors to bank but

01:00:13

it's not the cheapest humming

01:00:15

program. So one could argue

01:00:16

that if banks had other

01:00:18

opportunities to to raise liquidity

01:00:21

at lower costs they would.

01:00:23

I still go to that

01:00:24

program the third aspect that

01:00:27

I looked at the share

01:00:27

prices. So share prices in

01:00:30

banking pin hap recovered in

01:00:32

particular in November. But if

01:00:35

you strip out the big



01:00:35

four Banks and only look

01:00:37

at mid-sized and large fangs

01:00:39

of a total assets of

01:00:41

about 50 million to 50

01:00:42

billion. Pretty much have the

01:00:46

same market cap that they

01:00:47

had in March this year.

01:00:49

So they have moved a

01:00:50

hundred and 1% of the

01:00:53

market cap off of March

01:00:55

was that market capitalization yesterday.

01:00:57

So pretty much the same

01:00:58

as asked during the height



01:01:00  
of the crisis and lastly.

01:01:02  
I look the truck that

01:01:04  
is so short interest off

01:01:05  
of investors who bet that

01:01:08  
that bank shares will fall

01:01:10  
further. They are pretty much

01:01:12  
as active as they used

01:01:14  
to be during the crisis.

01:01:16  
So short interest is roughly

01:01:17  
at 90% of what it

01:01:19  
was during the crisis if

01:01:21  
you strip out the big

01:01:23  
four Banks, So all in



01:01:24

all there is recovery, but

01:01:26

that the sector is not

01:01:27

back to pre-crisis levels. Very

01:01:33

interesting. Thank you. So, how

01:01:35

about some predictions now? What

01:01:41

do you think is going

01:01:42

to happen in arbitration financial

01:01:45

services are in the sector

01:01:46

which is the financial services

01:01:59

sector is by its nature

01:02:02

such a dynamic sector that

01:02:05

I predict there will be

01:02:07

disputes over regulatory changes because



01:02:10

the sector is going to

01:02:11

be changing alongside the changes

01:02:13

in the Economy Inn in

01:02:15

that's the nature of this

01:02:16

business. So I think there

01:02:19

will be as financial markets

01:02:20

continue to evolve there will

01:02:23

be more regulations and then

01:02:25

that I predict. May lead

01:02:29

to an increase in disputes

01:02:30

over those regulations. So that's

01:02:32

that's kind of my cop-out

01:02:33

answer a couple of that



01:02:36

are not particularly bold, but

01:02:39

I think our Our Fair

01:02:40

more specific ones are you

01:02:44

know in particular work we're

01:02:46

getting a lot of thought

01:02:47

to digital assets and the

01:02:51

rapid growth of digital currencies

01:02:53

and digital Assets in in

01:02:55

general. I think will be

01:02:56

an interesting area to keep

01:02:58

an eye on Estates grapple

01:03:00

with how they are regulating

01:03:02

these areas and they're going



01:03:03  
to be interesting questions that

01:03:05  
I'm sure folks in this

01:03:06  
room have been thinking about

01:03:07  
terms of whether these are

01:03:09  
even covered by treaties and

01:03:10  
how to go about thinking

01:03:13  
of of some of the

01:03:14  
challenges that will relate to

01:03:15  
those assets. So, you know,

01:03:18  
the legal recognition of those

01:03:19  
assets cybersecurity data protection, you

01:03:23  
know, the cross-border nature of

01:03:25  
digital assets I think is



01:03:26

an area where There's right

01:03:29

is right for there to

01:03:32

be disputes going forward. And

01:03:34

then the other one is

01:03:35

is esgi mean this has

01:03:38

now been around for some

01:03:39

time. But increasingly you can

01:03:41

imagine State using ES GR8

01:03:48

stated objectives relating to ESG

01:03:51

as a pretext for actually

01:03:53

accomplishing some policy objective and

01:03:56

I can imagine that back

01:03:58

to be an area where



01:03:59

there will be more disputes

01:04:01

as well in areas like

01:04:02

energy mining infrastructure and things

01:04:05

like that. So you can

01:04:06

imagine you could see some

01:04:08

more challenges to ESG type

01:04:10

regulations are or laws going

01:04:12

forward. Thank you. Sorry I

01:04:15

was going to add any

01:04:16

predictions tonight. I think those

01:04:18

are all very good points

01:04:19

there. Yeah, Sarah and deeds

01:04:21

and I agree with what



01:04:23

you said that maybe just

01:04:24

to to additional thoughts and

01:04:26

you touched upon that Michael

01:04:27

at Katie Street. I I

01:04:29

am on the lookout to

01:04:30

see what happens with this

01:04:32

group of bondholders. I think

01:04:33

a number of them had

01:04:34

threatened to file an investment

01:04:36

treaty arbitration some some of

01:04:38

them at the headlines. I

01:04:40

think I'd like to see

01:04:41

what happens in that space



01:04:42

and and an ultimate see

01:04:45

whether they Prevail or not

01:04:46

whether they will be you

01:04:47

no more deference toward the

01:04:48

the Swiss government or not.

01:04:50

That's an area that I

01:04:51

particularly Keen to follow and

01:04:54

then the other one is

01:04:55

probably even more recently. We

01:04:57

saw the victory of the

01:04:58

presidential election Lion in Argentina.

01:05:01

He made promises as part

01:05:04

of his presidential campaign, including



01:05:06

you know, the dollar is

01:05:08

a session and the end

01:05:11

and eradication of the of

01:05:13

the century Bank of been

01:05:15

for lack of better words.

01:05:15

I don't know whether those

01:05:17

reforms that will not necessarily

01:05:19

materialize and you know wonder

01:05:22

what the effects of the

01:05:23

those reforms could have on

01:05:25

the on the financial Market

01:05:27

in Argentina, but I would

01:05:28

say that's definitely something that



01:05:30

I'd like you to keep

01:05:31

an eye out for indeed

01:05:33

the same as file on

01:05:38

I'm on the lookout for

01:05:40

for claims from the from

01:05:42

the bondholders. I think that's

01:05:44

the super interesting topic that

01:05:47

that the devil is in

01:05:48

the details. You have to

01:05:49

look into the prospectuses of

01:05:51

all those bonds and it's

01:05:54

going to be that's going

01:05:55

to be a really interesting



01:05:56  
discussion interesting Lee enough. The

01:06:00  
the sect of the cocoa

01:06:01  
sector is booming right now.

01:06:03  
So Banks keep issuing those

01:06:05  
bonds and investors are picking

01:06:07  
them up like like crazy

01:06:09  
including including an issue when

01:06:12  
you yes. But I'd be

01:06:15  
really interested to see how

01:06:16  
that how that story would

01:06:18  
play out. And otherwise, I

01:06:19  
I mention two of the

01:06:21  
risks that I think could



01:06:23

could play out which is

01:06:25

commercial real estate done. And

01:06:27

the fact that that there

01:06:29

was so much liquidity in

01:06:30

the market throughout the pandemic

01:06:33

and after the pain that

01:06:34

make and that security might

01:06:36

run out of run out

01:06:38

at some point and then

01:06:40

the question is it is

01:06:41

still out. I think whether

01:06:43

we have a soft Landing

01:06:45

or a little bit more



01:06:47  
of a bumpy ride. Is

01:06:50  
Coco bonds that their contingency

01:06:51  
convertible bonds that you discussed

01:06:53  
earlier? What time does the

01:07:02  
Tijuana? Thank you for the

01:07:15  
panel. That was really interesting.

01:07:16  
Excellent. Do you guys have

01:07:17  
any questions? Yes, so I

01:07:20  
can turn you on. Sure,

01:07:26  
you can come through. Yeah,

01:07:33  
no one questioned 44 404

01:07:40  
Michael the PD some trees

01:07:45  
do have an extrusion of



01:07:47  
sovereign bonds by the Columbian

01:07:49  
treaties were the Chilean traditions

01:07:51  
and the wonder whether you

01:07:53  
have seen since since Gramercy

01:07:55  
whether you might might be

01:07:57  
too early, but whether you

01:07:58  
have seen any developments in

01:08:00  
terms of the treaty negotiations

01:08:01  
that would would incorporate the

01:08:04  
Extrusion of sovereign bonds such

01:08:07  
as those. I mean, I

01:08:08  
know that some of these

01:08:09  
treaties negotiated by the US



01:08:13

have a special Clauses, but

01:08:15

have you seen treaties that

01:08:19

are actual exploding Sovereign Bond

01:08:21

Serrano Chile or Colombia Tetra

01:08:25

question is do you think

01:08:30

that the notion The power

01:08:35

to regulate which has been

01:08:36

now underline so much and

01:08:39

treat and I don't know

01:08:40

how much you follow investment

01:08:42

renegotiation put the husband has

01:08:44

been underlined so much is

01:08:46

having some effect in the



01:08:47  
in the financial sector Market

01:08:51  
or or or are financial

01:08:54  
institutions finding a way to

01:08:55  
be creative as as you

01:08:57  
explained friends in the Pokemon.

01:09:01  
I'm happy to start to

01:09:03  
pick up the the first

01:09:04  
question then I'll be very

01:09:05  
short. I I think you're

01:09:07  
right cuz I ain't going

01:09:08  
to know that it's it's

01:09:09  
might be a little too

01:09:10  
early to tell you know,



01:09:12

I would expect that. They

01:09:14

might be some negotiations around

01:09:16

the weather at 7. Should

01:09:18

be covered or not. I'm

01:09:19

just to see treaties but

01:09:21

I should also say that,

01:09:22

you know, I only just

01:09:23

gave a couple of examples

01:09:24

of instances where investment treaty

01:09:27

tribunals have found that bonds

01:09:28

actually constitute is covered investment

01:09:31

to do the route and

01:09:31

treaty there are the cases



01:09:32  
as well. It's not the

01:09:33  
only one. I'm so Props.

01:09:35  
You know that Trend started

01:09:36  
earlier. I think it is

01:09:38  
still too early to tell

01:09:44  
Anderson Crescent Oaks Antonio's. Thanks

01:09:47  
for the question in. I'm

01:09:49  
I'm not sure I can

01:09:50  
I can answer them in

01:09:52  
the way that that you

01:09:54  
are sick, but I would

01:09:55  
like to offer and maybe

01:09:57  
slightly different answer and it



01:09:58

is this is how regulation

01:10:01

is changing what what you

01:10:04

see is in my view

01:10:07

that that regulation response to

01:10:09

to past events and those

01:10:12

events never reply so so

01:10:13

in and that's quite interesting

01:10:15

in pain in the sense

01:10:18

of the of the resolution

01:10:20

really reading but also with

01:10:22

respect to the Thule contingent

01:10:24

convertible bonds because those were

01:10:26

created to tackle Capital problem



01:10:30

so problems off off of

01:10:33

regulatory capital and but it

01:10:38

would be seen recently instances

01:10:41

of Bank runs where where

01:10:42

Banks run out of liquidity

01:10:44

and those same Banks might

01:10:46

have enough Capital at the

01:10:47

moment on Not even have

01:10:49

enough capital in the future.

01:10:50

So so those instruments that

01:10:53

were created to tackle. The

01:10:55

other problems are not adequate

01:10:57

to to text liquidity problems.



01:10:59

And then I think that

01:11:00

is something that that regulation

01:11:03

is working on right now

01:11:04

where where the banking sector

01:11:06

will change but that's more

01:11:08

driven from the side of

01:11:10

Regulation that night. I think

01:11:11

you you asked me whether

01:11:13

banks are adjusting tool to

01:11:15

two new two cases to

01:11:18

to avoid so I wouldn't

01:11:22

be able to answer that.

01:11:23

But definitely regulation is changing



01:11:26

and trying to tackle the

01:11:28

yesterday's problems now. I have

01:11:36

a question in person, or

01:11:39

how about online? If you

01:11:40

put it in the chat,

01:11:41

I'll read it out everybody,

01:11:44

and I'm sorry. I have

01:11:46

to leave you for a

01:11:47

for a 4:30 meeting, but

01:11:49

but it was a pleasure

01:11:50

being with you today, and

01:11:51

I'll let you keep asking

01:11:52

questions or thank you. Thank



01:11:55

you. Thank you everyone. Thank

01:12:04

you very much. Thank you,

01:12:09

Michael.