



5 Things to Think About When Initiating Your Arbitration *

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 discussion titled "Five Things to Know Before You Begin an Arbitration," moderated by Yogurt Manual Pineda. The event aimed to provide practical insights for young practitioners transitioning into international arbitration, emphasizing the importance of understanding fundamental concepts early in the process.

Key participants included Antonio Freya, a partner specializing in international public law and arbitration, and panelists Ankita, Tatiana, and Mike, who shared their diverse backgrounds and experiences in arbitration. The discussion focused on five critical considerations for initiating arbitration:

1. ****Enforcement****: The panel highlighted the necessity of considering the enforceability of arbitration awards. Participants discussed factors influencing enforcement, such as the respondent's willingness to pay, historical compliance with awards, and potential legal barriers in different jurisdictions, particularly within the EU context.
2. ****Prospect of Success****: The importance of evaluating the likelihood of success in arbitration was stressed, including the need to manage client expectations realistically. The discussion emphasized understanding the client's objectives and the implications of pursuing arbitration versus settlement.
3. ****Settlement Considerations****: The panel noted that many clients may initiate arbitration as a strategy to facilitate settlement. They discussed the importance of maintaining open communication with clients about their goals, whether they seek to resolve disputes amicably or pursue aggressive litigation.
4. ****Procedural Options****: The discussion included insights on available procedural avenues prior to arbitration, such as utilizing courts for evidence gathering or seeking emergency measures. The ICC's mediation rules were also mentioned as an alternative for dispute resolution.



5. ****Client Objectives****: Understanding the ultimate goals of clients was emphasized as a critical factor in shaping the arbitration strategy. The panelists discussed how emotional factors can influence clients' decisions and the importance of building trust to facilitate open communication.

The session concluded with a call for practitioners to consider these foundational aspects as they navigate the complexities of international arbitration. The panelists encouraged attendees to engage in continuous learning and community building within the arbitration field.

Authors

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Topics

Arbitration, International Arbitration

Category

WAW

Full Transcript

00:00:20

Well, good evening everyone. My

00:00:23

name is is and I'm

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sorry to be repeating the

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same name. But every every

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session is is a new

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one and there may be

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people connected online who haven't

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heard it yet. So I

00:00:36
am a partner at the

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boutique as well as an

00:00:45
international commercial arbitration Boutique. And

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we also do do public

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international law also teach at

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Georgetown law country arbitration of

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public international law and one

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of the co-founders of Washington

00:00:58
arbitration week together with Ian

00:01:01
Laird and that we have

00:01:02
been we have received an

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enormous support for from from

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sponsors including Decker attended many

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of you here. So we're

00:01:13

very thankful. Also our host

00:01:16

today and work were particularly

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proud of Having also an

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incredible set of board members

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advisors in in great part

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advised us on the topics

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that you see today. We

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have we have on tonight

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this evening. We're having a

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panel which is co-sponsored by

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the ICC and an impact

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as the moderator is yogurt

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manual Pineda and before introducing

00:01:56

him. I would like to

00:01:59

emphasize that then Washington arbitration

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week in addition to the

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the complex topics very very

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very sectors has also a

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very practical approach to International

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arbitration. do things in in

00:02:21

in in simple terms, hence,

00:02:24

the name of this panel

00:02:28

is the five things that

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that you need to know

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before you begin an arbitration

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and That is basically to

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share knowledge practical knowledge with

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young practitioners with and my

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young eyes. I don't mean

00:02:46

young in terms of age

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because these people who actually

00:02:50

move from the corporate world

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into International arbitration in there.

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No, but you know what,

00:03:00

I mean, so I'm being

00:03:04

practical is very very important

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to us and in a

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way, we have a Samsung

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history because when we started

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his strategy LP, he had

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already started his his Boutique

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law firm and one of

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the first panels that will

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put together is how to

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be a boutique law firm

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in international arbitration. So I

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want to know I want

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to tell you that that

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warrant or not Ward No

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worries on that well say

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is if you are interested

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in that panel, it's recorded

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and and Washington week as

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well as our sister event,

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which is the world of

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attrition update. Please keep reports

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everything. Yes, everyone agrees to

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to being recorded their consent

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forms at cetera. And then

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why do we do this?

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We do this because we're

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creating a DVD Library so

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that people can watch the

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noted that has been shared

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for the past four to

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three years and actually quite

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nice because you can actually

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look into the video and

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it's synchronized with the an

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automatic transcript and you put

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five things that you need

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to know before beginning an

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arbitration and you should be

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able to see where that

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was where those sentences were

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with those words were were

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sent during the proceedings like

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like a PDF document. And

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the the tool he's already

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in our website. And of

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course we're we're running better

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test at this stage, but

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it will be available to

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everyone it is available. The

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ones that down recorded but

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those will do so with

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that. Let me tell you

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a little bit of an

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international lawyer specializing in international

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public international law and investigations

00:05:03

relating to corruption and money-laundering

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sanctions and terrorist Finance. Mr.

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He's Basin in DC and

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is admitted to practice in

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the District of Columbia. And

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Florida Panthers have been in

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Florida. By the way. It's

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yes and no offense to

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those in Florida, but it's

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one of the most protectionist

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bars that that that they

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are in the country. So

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it's not that hard in

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any of his practice focuses

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on all aspects of international

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disputes and investigations with significant

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experience in Latin America Europe

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the US and the Middle

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East before founding the Alameda

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area. Mr. Freya work with

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leading international law firms in

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Paris, London and Washington DC

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and he specifically said be

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quiet. Thank you so much.

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Antonio. It's a real pleasure.

00:06:01

And I also just want

00:06:02

to take a quick moment

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it to thank you for

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all the great work that

00:06:05

you've done Washington arbitration week

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so he may or may

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not know. Set up for

00:06:09

years ago and it feels

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like I think a real

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need in the community. This

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is something that mean Washington

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is a great Center for

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arbitration and it's about time

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that we have something like

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this. So I think it's

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a really great and and

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on behalf of the ICC

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I mentioned I'm nice to

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see after I presented for

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Washington. It's a partnership that's

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very much valued by the

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ICC and these sorts of

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events that build a community

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of practitioners that get engaged

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as Professionals in this area.

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I think our are meaningful

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in and it's important part

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of of I think my

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identity as a lawyer and

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I think it should be

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part of all of ours

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to help build this community

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as a practitioners in particular

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is focused on on junk

00:06:48

practitioners in providing a voice

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in a platform for younger

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practitioners to learn about arbitration

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and to become part of

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the community a historically arbitration

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is have the reputation of

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having the dinosaurs of the

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field and and I think

00:07:00

maybe you know fifty to

00:07:01

eighty years ago some of

00:07:02

the most prominent arbitrators were

00:07:03

in fact diplomats and Senior

00:07:05

Statesman type figures a lot

00:07:07

has changed since that time

00:07:08

and Contribute to build a

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more inclusive practices. So what

00:07:13

we've been doing with ICF

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past couple years is trying

00:07:16

to set up a series

00:07:18

of events that deal with

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topics that could be of

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interest for young practitioners. They're

00:07:23

also interesting for more experienced

00:07:24

practitioners. I think the idea

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that I'm trying to go

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for the store to buy

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high-level Basics it snowed some

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of that you can learn

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very quickly. But if it

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takes a lifetime to master

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their bite you no coming

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up with subject matter that's

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hopeful engaging for many people

00:07:37

at different parts in different

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points in their professional Journeys.

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So I'm particularly grateful today

00:07:41

to have this esteemed panel

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to to talk with us

00:07:44

start with Ankita. Ankita is

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the council at Gibson Dunn

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& Crutcher International arbitration and

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transnational litigation in judgment in

00:07:53

a ward enforcement Practice Group.

00:07:54



She was born in India,

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but meet me there when

00:07:57

she was 3 years old

00:07:58

and settled yourself all over

00:08:01

the world before settling down

00:08:02

in the United States to

00:08:03

practice law. She cannot however

00:08:05

give up her globe-trotting completely

00:08:07

which is probably why she's

00:08:08

doing it or not. So

00:08:08

I would When she's not

00:08:11

on Zoom calls and drafting

00:08:13

several hundred Pages brief to

00:08:15



take naps only when next

00:08:21

we have Tatiana Tatiana was

00:08:23

originally a pro bono kid.

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If you describe yourself in

00:08:25

law school wanting to focus

00:08:26

on human rights and in

00:08:28

pro bono type practices this

00:08:30

changed only slightly. I hope

00:08:32

when she had the opportunity

00:08:34

to serve as legal advisor

00:08:35

to judge Rosemary's barkett at

00:08:37

the Iran us claims tribunal.

00:08:38

She became fascinated with complex

00:08:40



legal factual issues involving state

00:08:42

state cases, and that led

00:08:44

her to arbitration. She still

00:08:46

strives to maintain her pro

00:08:47

bono practice and hasn't looked

00:08:49

back since when she's not

00:08:51

working or running or doing

00:08:52

yoga you like to hang

00:08:53

out with your family and

00:08:54

read fiction. Next we have

00:08:56

Mike Mike is really from

00:08:57

Indiana. She became interested in

00:08:59

an operation after taking a

00:09:00



summer course in law school

00:09:01

on arbitration. He's passionate about

00:09:03

working with colleagues from different

00:09:05

cultural and legal backgrounds and

00:09:07

like to come up with

00:09:08

Creative Solutions. Problems for his

00:09:11

clients you can find him

00:09:12

gravel cycling baking pizza or

00:09:14

playing frisbee with his dog

00:09:15

when he's not solving these

00:09:17

cross-border disputes dear friend of

00:09:22

mine former office mate of

00:09:23

mine actually from a from

00:09:24



Argentina and he practice in

00:09:26

Argentina until 2011 and has

00:09:29

been a member of the

00:09:30

international arbitration practice at Fresh

00:09:32

fields in Washington DC since

00:09:33

then or since August 2012

00:09:35

investor State and in international

00:09:39

commercial arbitration with a focus

00:09:40

on Latin America has represented

00:09:42

clients and act as a

00:09:43

secretary in numerous disputes involving

00:09:45

different Industries oil and gas

00:09:47

electricity mining infrastructure Pharma in

00:09:49



retail and one interesting fact

00:09:50

about one which he hasn't

00:09:52

shared one and I actually

00:09:54

used to play on a

00:09:55

soccer team. He likes to

00:09:56

play soccer and rugby team

00:09:58

was called like a sucker

00:09:59

which means The Hangover it

00:10:01

every Saturday. We actually have

00:10:02

to cook it when he

00:10:04

got to got to see

00:10:05

if it was on the

00:10:05

previous penalty was also part

00:10:07



of the exchange team in

00:10:09

I think you may be

00:10:10

fair to say maybe the

00:10:10

best player of the three

00:10:11

of us in some ways

00:10:12

to die. Today's topic is

00:10:18

as we mentioned is five

00:10:21

things to think about when

00:10:22

starting your arbitration and I

00:10:23

think there's many things you

00:10:26

can think about it. I

00:10:27

feel like a cliché answer

00:10:28

that a lot of people

00:10:28



give you this question is

00:10:29

you have to start in

00:10:31

with enforcement you have to

00:10:31

start with the money and

00:10:33

I think that's a very

00:10:34

critical topic, but I hope

00:10:36

that I'm coming we're going

00:10:37

to talk about but I

00:10:39

hope that over the course

00:10:39

of presentation we can also

00:10:41

show you for things that

00:10:41

might be even more important

00:10:43

to think about for your

00:10:44



clients. So just just kick

00:10:46
it off in to start

00:10:47
off from the end. We'll

00:10:49
start with the the question

00:10:50
of enforcement and Mike if

00:10:53
you can just kick us

00:10:53
off and tell us about

00:10:54
you know, why you need

00:10:56
to start thinking about this

00:10:57
Sunday 1 or so, so

00:11:02
Maybe a lot of people

00:11:03
are thinking the same thing.

00:11:09
near me Maybe a lot

00:11:12



of people are taking this

00:11:13

but it seems a little

00:11:14

counterintuitive actually to just start

00:11:16

from the end when you're

00:11:17

at the beginning like a

00:11:18

Quentin Tarantino movie. But so

00:11:23

if we assume were talking

00:11:24

about a claim in although

00:11:25

this is also potentially relevant

00:11:28

for respondents as well. Let's

00:11:31

assume or Ultimate Gold is

00:11:32

money damages our ultimate goal

00:11:34

with this later to be

00:11:36



a lot of things but

00:11:37

we assume it's money damages.

00:11:38

Just getting an award doesn't

00:11:41

mean that the money is

00:11:42

in our client's pocket. You

00:11:45

might think of it like

00:11:46

I'm not sure if this

00:11:48

is an entirely apt analogy,

00:11:51

but I'm going to try

00:11:52

it if if you think

00:11:54

of the arbitration process like

00:11:56

ordering a package online. It's

00:12:00

your the package you click

00:12:01



on the box and and

00:12:03

then your package gets on

00:12:04

a plane or a big

00:12:06

truck to a distribution center.

00:12:07

And there's a different truck

00:12:09

that then brings it the

00:12:10

last mile to your house.

00:12:13

When you get the award

00:12:14

is almost like your your

00:12:16

package is the distribution center,

00:12:18

but now you have to

00:12:19

figure out how is it

00:12:21

going to reach your house?

00:12:22



How is that money going

00:12:23

to reach your client pocket

00:12:24

so we can do a

00:12:27

handful of questions as like,

00:12:30

how is that going to

00:12:30

happen? You might ask is

00:12:33

the responding going to voluntarily

00:12:34

pay does does the respondent

00:12:38

have a history of complying

00:12:40

with arbitration Awards? You can

00:12:43

look that up for press

00:12:44

operator responded. You might have

00:12:46

an experience with a frequent

00:12:49



counterpart and it will tell

00:12:50

you a little bit about

00:12:51

whether they're likely to pay

00:12:53

an award my task. Is

00:12:55

there a line of other

00:12:57

creditors waiting to seize assets

00:13:00

of the same responded that

00:13:02

we seen that in Venezuela

00:13:04

and Citgo. Can ad and

00:13:07

an entire new degree of

00:13:08

complexity to the process. You

00:13:12

might also ask if there

00:13:13

are other impediments to enforcement

00:13:15



if you're if you're responding

00:13:17

is an intra EU is

00:13:20

an EU State and it's

00:13:21

an entry you arbitration now,

00:13:23

we might be dealing with

00:13:24

that. Give me a compass

00:13:24

for a problem. So that's

00:13:26

another impediment to enforcement. A

00:13:30

little bit more about some

00:13:32

of those issues in terms

00:13:33

of Acme. So if you're

00:13:38

in case you're not familiar

00:13:38

with me and Tom are

00:13:40



a couple of judgments from

00:13:42

the court of justice of

00:13:43

the European Union, which purport

00:13:46

to Hibbett the arbitration of

00:13:50

Entry you disputes pursuant to

00:13:53

treaties between investors and states.

00:13:57

Try not to listen to

00:13:58

microphone again. So many Elders

00:14:04

award holders of intra EU

00:14:07

arbitration Awards against Auburn State

00:14:09

might think twice before trying

00:14:12

to enforce them in the

00:14:14

EU against an EU State

00:14:16



cuz that's likely be very

00:14:17

difficult. If not impossible which

00:14:21

might lead them to look

00:14:22

elsewhere for assets United States.

00:14:24

For instance. I think we're

00:14:26

familiar with some enforcement actions

00:14:28

against Spain particular year in

00:14:30

the United States do United

00:14:32

Kingdom Australia. What do you

00:14:35

know? These are jurisdictions where

00:14:37

you have to consider are

00:14:39

there likely to be assets

00:14:41

in those jurisdictions and assets

00:14:43



that are maybe not subject

00:14:46

to sovereign immunity expenses are

00:14:48

they assets that are used

00:14:52

for commercial purposes that that

00:14:54

could be exempt from sovereign

00:14:56

immunity. Pickled questions. I think

00:14:58

he the overarching point stepping

00:15:01

back a little bit is

00:15:02

why why do we have

00:15:04

to think about these questions

00:15:05

before we start an arbitration

00:15:07

in importance to tell her

00:15:10

our expectations in our client's

00:15:12



expectations with regard to to

00:15:14

the time this likely to

00:15:16

take to achieve their end

00:15:17

goal with with regard to

00:15:20

the cost that is likely

00:15:21

to take to get to

00:15:23

achieve that goal and it

00:15:25

could inform strategic decisions like

00:15:27

their openness to negotiating their

00:15:31

openness to to a settlement

00:15:32

offer and what the threshold

00:15:35

of an attractive settlement offer

00:15:37

might be Let me see

00:15:39



the way you're describing. It

00:15:40

sounds almost like a client

00:15:41

might be like a an

00:15:42

eager kid trying to get

00:15:43

like two and two slice

00:15:44

of pizza or some candy

00:15:45

like split it out and

00:15:46

wait out. Do you know

00:15:47

that's a conversation we need

00:15:49

to have right away with

00:15:50

the client. I mean is

00:15:51

that is that something that

00:15:52

that that comes up quite

00:15:55



frequently you sent that in

00:15:56

your practice clients have an

00:15:58

awareness of this. Is it

00:15:59

is it something that that

00:16:01

comes up? I think they

00:16:02

tend to be aware to

00:16:04

some degree. And and I

00:16:06

also think of the conversation

00:16:07

that death probably takes place

00:16:11

after doing diligence about the

00:16:15

underlying claims to see if

00:16:18

there's a there there but

00:16:20

still at the at the

00:16:21



early stages before commencing in

00:16:25

arbitration at will say I

00:16:26

think that is a conversation

00:16:28

that can be had even

00:16:30

further before a claim arises

00:16:32

is a conversation you might

00:16:33

have when drafting a dispute

00:16:35

resolution Claus in an I

00:16:40

think this is an excellent

00:16:41

subject and ID and I

00:16:44

think that it's you know,

00:16:45

we have many people not

00:16:46

into who may be counselors

00:16:48



by because we have to

00:16:49

have people who are arbitrators

00:16:51

aspire to be arbitrators something

00:16:53

that from the arbitrator's respected.

00:16:54

They also have two to

00:16:55

think about and consider. You're

00:16:59

at the arbitrators maybe to

00:17:02

a lesser extent. Although they

00:17:04

made as a controversial statement.

00:17:06

I would think that that

00:17:08

a tribunal should always have

00:17:11

in mind rendering an enforceable

00:17:14

award. Weather weather a tribunal

00:17:19



would have in mind the

00:17:23

enforcement of that award in

00:17:25

in any jurisdiction across the

00:17:26

globe without necessarily be a

00:17:29

focus on the rules of

00:17:30

the seed. I'm not I'm

00:17:32

not sure about it be

00:17:33

interested to know if others

00:17:34

have abused her. I mean

00:17:36

certainly you would think that

00:17:38

the tribunal has to keep

00:17:39

in mind all of the

00:17:40

award under the under the

00:17:44



law of the sea product

00:17:53

award at the providing to

00:17:55

the parties is enforceable in

00:17:57

this is something I mean

00:17:58

that I think it's a

00:17:59

little bit beforehand is something

00:18:00

that even institutions worry about

00:18:01

so, I mean by the

00:18:05

ICC, I think it's worth

00:18:06

mentioning that I succeed self

00:18:08

conduct. The review process has

00:18:11

a checklist that it goes

00:18:12

through with the a panel

00:18:13



of experts from different jurisdictions

00:18:15
to look at to make

00:18:15
sure there's no Procedural irregularities

00:18:18
or formulaic Eric regularities in

00:18:21
you be surprised you can

00:18:22
catch math mistakes and things

00:18:24
like that before they left

00:18:25
your work truck the door.

00:18:26
So it's something that's considered

00:18:30
a deep does the rest

00:18:30
of it, but I don't

00:18:31
have any thoughts on on

00:18:32
this question of enforcement from

00:18:34



my perspective of a council

00:18:36

arbitrator institution. Acme of comes

00:18:41

to a problem and we

00:18:42

are still seeing a number

00:18:44

of tribunals issue Awards under

00:18:46

entropy you VIPs and multilateral

00:18:49

treaties and it hasn't seemed

00:18:53

to stop them. So I

00:18:55

think when you're when you're

00:18:56

thinking about what will make

00:18:58

an award enforceable, they're different

00:19:00

categories, they're different buckets. And

00:19:02

I think he brought up

00:19:03



his jurisdiction. Like well may

00:19:05

not be enforceable in the

00:19:07

European courts, but you can

00:19:08

probably get it enforced in

00:19:09

the UK in the US

00:19:10

if you have assets there.

00:19:12

I'm just another point to

00:19:15

add to that, you know

00:19:17

taking the store if you

00:19:20

have Focus transfer a lot

00:19:22

on compensation and and having

00:19:24

the award be something back

00:19:26

as compensatory. I have actually

00:19:29



in my experience had a

00:19:30

lot of questions from tribunals

00:19:32

particularly in investor-state arbitration is

00:19:36

that are seated not in

00:19:38

arbitration that are seated in

00:19:40

certain jurisdictions and something that

00:19:43

often comes something that they're

00:19:45

all can carry us about

00:19:45

is the enforceability of non-pecuniary

00:19:48

damage type of warts if

00:19:51

you're asking for interim relief

00:19:52

for asking for some tripping

00:19:54

chunk of relief that is

00:19:56



I think something has often

00:19:58

come up and get o

00:20:00

s s might be curious

00:20:03

about it because it's not

00:20:04

always obvious weather that kind

00:20:06

of release is available at

00:20:08

the seat. Is now that

00:20:13

you know mediation funding arbitration

00:20:16

funding has become so prevalent

00:20:18

in many ways. And these

00:20:21

are more used to using

00:20:22

an I think enforcement from

00:20:25

the point of your collection

00:20:27



is absolutely clear from day

00:20:29

one if you're thinking about

00:20:30

you and funding so the

00:20:32

first thing that you have

00:20:34

to think about it's going

00:20:36

to be that so I

00:20:36

think in the end that

00:20:37

sends three important if you

00:20:39

are really considering that Alex

00:20:42

is going to be question

00:20:44

number one night. I just

00:20:46

started working because this is

00:20:49

all so, of course presuming

00:20:50



that you're on the claim

00:20:50

inside for the darker side

00:20:52

of all this is if

00:20:52

you have a judgement proof

00:20:53

client is on the respondent

00:20:55

side of a weirdo claimants

00:20:59

in case that has No

00:21:10

assets is also this is

00:21:12

something that comes up or

00:21:13

if they have Assets in

00:21:14

in offshore jurisdictions are you

00:21:16

know, there's these days for

00:21:19

better or worse there. There's

00:21:20



a lot of complexity in

00:21:21

that recovery process, which is

00:21:23

never to be used in

00:21:25

in in arbitration more important

00:21:30

than that, which is really

00:21:34

about success. Okay. So, I

00:21:36

mean that you cannot enforce

00:21:38

award if you don't have

00:21:38

an award or maybe you

00:21:40

have you know, you're not

00:21:41

going to want to enforce

00:21:41

the word unless it's a

00:21:42

good word for you to

00:21:45



talk about just some of

00:21:46

the considerations you want to

00:21:47

think about in terms of

00:21:49

of the prospect of success

00:21:50

is not only about the

00:21:52

actual Prospect of it. But

00:21:53

but how to how to

00:21:54

manage that with your client,

00:21:55

so I was wondering if

00:21:58

you had any thoughts on

00:22:00

on at one point you

00:22:01

think about this how you

00:22:02

think about this how you

00:22:04



communicate about these sorts of

00:22:06

subjects as well? You everyone

00:22:10

for attending on spending your

00:22:12

Wednesday evening with us? Sorry,

00:22:15

I did that should not

00:22:16

have been a question. And

00:22:16

I had I think you

00:22:20

know, it was everything interesting

00:22:22

to me that Diego. I'm

00:22:24

started off the panel by

00:22:26

single enforcement is often kind

00:22:28

of the first question on

00:22:29

a lot of clients Minds

00:22:31



is there thinking about whether

00:22:32

or not to initiate an

00:22:33

arbitration and I think that

00:22:35

that is in 3 Singley

00:22:37

becoming true for a potential

00:22:39

claimants and investors State arbitration

00:22:41

certainly because you are quite

00:22:43

concerned him. You're going to

00:22:44

go through this 23 or

00:22:45

process against the state. Y'all

00:22:47

know if they're at they

00:22:48

have enough assets to satisfy

00:22:50

your judgment. I mean these

00:22:51



awards are at the claims

00:22:52

at least are sometimes in

00:22:53

the billions of dollars. You

00:22:56

don't even know if the

00:22:57

state has that much money

00:22:58

in their coffers let alone

00:23:00

whether they be willing to

00:23:01

pay you and how hard

00:23:02

they'd fight, but When it

00:23:05

comes to commercial arbitration, I

00:23:07

do think that what what

00:23:09

tends to be on on

00:23:10

Bose client's mind. This is

00:23:13



more of the prospects of

00:23:14

success because often times you're

00:23:16

in either an ongoing commercial

00:23:19

relationship with your counter party

00:23:20

that you're going to be

00:23:21

arbitrating against or you know,

00:23:24

you're potentially want to engage

00:23:26

with the counterparty again. And

00:23:29

so if you are going

00:23:30

to be initiating this arbitration

00:23:32

on a commercial arbitration the

00:23:35

the prospects of success both

00:23:37

on in the arbitration, but

00:23:39



also and I think we're

00:23:41

going to hear about this

00:23:41

a little bit later with

00:23:42

respect to your overall objective

00:23:44

your overall commercial objective becomes

00:23:47

very important and took to

00:23:51

me at least that that's

00:23:52

nice. I will say that

00:23:53

most of the client to

00:23:54

come with a potential commercial

00:23:57

arbitration and I are very

00:23:58

worried about the prospects of

00:24:00

success. He R6S Define more

00:24:02



broadly, you know, not just

00:24:04

success with Back to the

00:24:05

arbitration but success with respect

00:24:07

to the commercial objective that

00:24:09

they have and I think

00:24:11

that that tends to be

00:24:12

at the center at the

00:24:14

Forefront of their minds because

00:24:15

generally speaking enforcement against another

00:24:19

kind of commercial entities is

00:24:20

not really a worry for

00:24:21

most of these kinds of

00:24:23

cases. Happy to stop there

00:24:27



and ask but it also

00:24:28

happy to go look at

00:24:34

the potential for success. I

00:24:38

find in my practice. Sometimes

00:24:39

I have one. Sometimes. I

00:24:40

almost always have client to.

00:24:43

Maybe see things through Rose

00:24:46

Colored Glasses or have an

00:24:48

idea of the facts and

00:24:49

what can be proved in

00:24:51

her or her to come

00:24:53

with their own conclusions sometimes

00:24:54

and there's a sort of

00:24:56



process of analyzing that as

00:24:59

opposed to just taking it

00:25:00

and running it just to

00:25:01

sort of a critical intake

00:25:03

process there and I was

00:25:04

wondering how you how you

00:25:06

look at the question of

00:25:08

the facts presented to you

00:25:09

by your clients how you

00:25:11

look at the legal arguments

00:25:13

that your clients are very

00:25:14

excited or confident about how

00:25:18

USS that in in in

00:25:19



how you deal with clients

00:25:21

and at that early stage

00:25:22

a question because you know,

00:25:26

and I think we were

00:25:27

speaking about this in preparation

00:25:28

for for this talk. But

00:25:31

the people that bring you

00:25:34

the arbitration are in the

00:25:36

client whether it's yeah, what

00:25:38

organizational unit within the client

00:25:41

or whether it's just the

00:25:41

individuals for bringing the arbitration.

00:25:43

They don't have an in-house

00:25:47



legal department and is just

00:25:49

a bunch of individuals, but

00:25:50

the people are generally bringing

00:25:52

the keys to you have

00:25:53

a very very rarely actually

00:25:54

live the case that giving

00:25:56

rise to the arbitration. And

00:25:57

so what you often find

00:25:59

is that not only are

00:26:02

the facts and and the

00:26:04

case that's pink Rosetta to

00:26:06

you as a potential case.

00:26:07

Not only are there holes

00:26:09



in the in the story

00:26:12

that's being told to you

00:26:13

because you don't have the

00:26:14

complete information. You're getting a

00:26:15

second round at the best

00:26:17

maybe third had met before

00:26:18

it happened, but your butt

00:26:20

but their perspective is also

00:26:23

colored by the role that

00:26:25

they occupy in that organizational

00:26:27

unit. Right? So you might

00:26:29

imagine that someone like an

00:26:31

in-house counsel might be more

00:26:33



risk-averse and maybe they don't

00:26:35

want to get no necessarily

00:26:37

proceed with the arbitration. Whereas

00:26:40

maybe somebody who is involved

00:26:42

in the day-to-day. assist you

00:26:44

to hate their counterparty really

00:26:48

wants to go ahead and

00:26:48

litigate the Yeah, I'm trying

00:26:52

to not think of a

00:26:53

swear word here that really

00:26:54

wants. This arbitration so they

00:27:00

might have a much more

00:27:01

aggressive a much more optimistic

00:27:02



you at the arbitration right?

00:27:04

You have to eat those

00:27:08

considerations into account when you're

00:27:10

getting the story when you're

00:27:12

getting this case and figure

00:27:13

out well, okay, who is

00:27:15

it was actually live through

00:27:16

the fact that this arbitration.

00:27:17

Let me go talk to

00:27:18

them but doesn't always happen

00:27:20

right? They might not be

00:27:23

available. Sometimes it's the CEO

00:27:26

of the organization. They're not

00:27:27



going to give you you

00:27:28

know, and now we're out

00:27:29

of Thursday to just talk

00:27:30

to you about this dude

00:27:31

there. They might not be

00:27:34

around. You know, I've been

00:27:36

involved in disputes where some

00:27:39

of the key events. I'm

00:27:41

actually involved in a dispute

00:27:42

right now. Where is the

00:27:43

key events took place before

00:27:45

I was born in I'm

00:27:46

old so, you know and

00:27:49



then a lot of people

00:27:49

involved in that dispute are

00:27:51

either dad or Advanced stages

00:27:54

of dementia and you know,

00:27:55

Remember talking to some of

00:27:57

these individuals and just you

00:27:58

know, it was it was

00:28:00

a process to understand what

00:28:03

actually happened 40 years ago.

00:28:05

So it is it's a

00:28:08

challenge to to take that

00:28:11

incomplete puzzle piece and then

00:28:13

add back the missing pieces

00:28:14



through these conversations. And then

00:28:19

also what size I mean

00:28:20

obviously, you know where where

00:28:21

lawyer isn't the one thing

00:28:22

we could use you at

00:28:23

least one one of the

00:28:25

reasons people come to us

00:28:26

has its Juju kind of

00:28:27

that objektiv legal analysis. Once

00:28:30

you hop it back and

00:28:32

be able to provide an

00:28:35

answer to the client that

00:28:36

is objective and that you

00:28:37



don't takes away our removes

00:28:40

the filters through which the

00:28:42

case might have originally been

00:28:44

presented to you. I think

00:28:48

that's that's that's a critical

00:28:50

part of the work that

00:28:51

that we do an end

00:28:52

as I'm listening to him.

00:28:53

In this case, for example

00:28:54

of events that happened before

00:28:56

you were born and Witnesses.

00:28:58

I might have dementia there's

00:29:00

one question which is getting

00:29:01



to the truth. And then

00:29:03

there's another question of proving

00:29:04

the truth to the tribunal

00:29:05

and I find that also

00:29:07

to be a you know,

00:29:09

when you have situations where

00:29:10

client tells you something that

00:29:11

they believe with every cell

00:29:12

in your body and you

00:29:13

hear it and you believe

00:29:15

it too but the question

00:29:16

is, how are we going

00:29:16

to get this tribunal to

00:29:18



leave this? Damn? I might

00:29:19

just landed from maybe maybe

00:29:20

you're having this is just

00:29:21

not admissible. So there's there's

00:29:24

there's A long road to

00:29:26

long road to get to

00:29:27

the to the award and

00:29:28

end in of course, even

00:29:29

further down the line to

00:29:30

enforcement Mike into evaluating The

00:29:36

credibility and availability of the

00:29:38

Witnesses in the evidence. One

00:29:41

thing to think about his

00:29:41



willingness of of your witnesses

00:29:43

to testify even if they

00:29:45

are generally available, even if

00:29:47

they are they seem credible

00:29:49

are they willing to testify

00:29:51

and we had a case

00:29:53

recently where one of the

00:29:55

other side's witness is submitted

00:29:57

a witness statement signed at

00:29:58

the beginning of the arbitration.

00:30:00

If you ain't came along

00:30:02

we exchanged witness list. He

00:30:04

was on the list evil

00:30:06



be hearing we hear from

00:30:08

opposing counsel that he's not

00:30:09

going to be at the

00:30:10

hearing and say well that's

00:30:13

strange white your why was

00:30:14

that and the funeral wrote

00:30:15

to the other side asking

00:30:18

for an explanation as it

00:30:20

turned out he was originally

00:30:21

reluctant to submit a witness

00:30:24

statement and testify but the

00:30:25

other side didn't disclose that

00:30:27

fact that the tribunal in

00:30:29



the tribunal was very upset

00:30:30

about that to happen to

00:30:32

be a Swiss seated arbitration.

00:30:34

So the tribunal has ordered

00:30:36

two beautiful assistance under the

00:30:38

Swiss Pila. We convened a

00:30:40

whole new hearing we brought

00:30:41

the witness to the hearing

00:30:42

and you refuse to answer

00:30:43

any questions. So the tribunal

00:30:46

totally ignored his testimony rejected

00:30:49

that way. It was said

00:30:50

in support of that jurisdiction

00:30:51



with Jackson projected that jurisdictional

00:30:53

objection and was a good

00:30:54

result for us, but it's

00:30:56

a kind of party is

00:30:58

done. Maybe some more diligent

00:30:59

about that party is That

00:31:01

witness is willingness to testify

00:31:03

it could have been it

00:31:06

could have avoided that situation.

00:31:08

That's a very interesting case.

00:31:12

When do you have any

00:31:13

thoughts on that beat or

00:31:14

two questions about the prospect

00:31:16



of success and and how

00:31:18

that say. I mean, I

00:31:21

think first not to believe

00:31:24

whatever they tell you. Don't

00:31:34

don't buy it. I think

00:31:35

I think there's an issue

00:31:36

sometimes. Rarely at the beginning

00:31:38

of the case where that's

00:31:39

difficult because I mean does

00:31:42

it cost to go into

00:31:43

piles of documents? So sometimes

00:31:46

you you end up and

00:31:47

I can give you an

00:31:48



opinion based on a set

00:31:52
of facts if you if

00:31:53
these are the correct. This

00:31:55
is my opinion and that's

00:31:59
really hard at the beginning

00:32:01
because cost sometimes I was

00:32:03
going to get to it

00:32:04
maybe later but we can

00:32:05
mention you just mention funding.

00:32:08
Funny and you know if

00:32:10
maybe a client is willing

00:32:11
to invest a bit of

00:32:12
money in having lawyers look

00:32:14



at the documents and then

00:32:15

you have an opinion with

00:32:18

footnotes document and then if

00:32:20

I can go look at

00:32:21

the look at the documents

00:32:22

they all yet. There's something

00:32:24

really here. I mean that's

00:32:25

going to button on the

00:32:28

same time. It's going to

00:32:29

be much better for the

00:32:30

client to make a decision

00:32:31

to say yes for the

00:32:32

trigger. Let's have an arbitration

00:32:34



it seemed best whatever it

00:32:35

is going to cost, you

00:32:36

know where he's standing at

00:32:40

the beginning consideration because I

00:32:46

mean before you're getting to

00:32:47

enforce when you have to

00:32:48

think about how am I

00:32:49

going to file this are

00:32:49

we going to win? This

00:32:50

is a worthwhile to invest

00:32:51

the time money. I mean,

00:32:52

it's it's not only the

00:32:54

cost that that, you know,

00:32:55



the the money paid to

00:32:57

lawyers in Reno and traveling,

00:32:59

and everything else, but it's

00:33:00

also the time when clients

00:33:01

have to devote an incredible

00:33:02

amount of their their their

00:33:04

people's time some people, you

00:33:06

know end up distracted from

00:33:07

their main job. Because they're

00:33:09

helping be Witnesses in in

00:33:10

proceedings that brings us to

00:33:13

another consideration that essential for

00:33:21

resettlement in I don't know

00:33:24



you had any thoughts on

00:33:26

this idea of settlement in

00:33:27

and when you start of

00:33:29

at one point, you should

00:33:30

think about that how you

00:33:31

should go about considering that

00:33:32

are quite sure what I

00:33:33

would say early and often.

00:33:34

I guess. I just have

00:33:37

an anecdote about settlement. We

00:33:40

we represented a pharmaceutical company

00:33:43

in a potential dispute with

00:33:45

a supplier. It was a

00:33:46



long-term Supply contracts. We thought

00:33:51

it was inevitable that the

00:33:53

dispute would go to arbitration.

00:33:54

But because the parties positions

00:33:58

were very far apart. We

00:34:01

started negotiating none the less

00:34:02

we put together. for the

00:34:05

best sensitivity analysis of the

00:34:08

possible settlement scenarios and as

00:34:12

part of that analysis, will

00:34:13

you sort of ballpark be

00:34:14

put together a model that

00:34:16

let us play with different

00:34:17



likelihood of success for the

00:34:19

parties on on the merits

00:34:21

on objections on Quantum that

00:34:26

would allow us to play

00:34:27

with how you know, how

00:34:28

much legal fees and cost

00:34:31

would be for each party's

00:34:33

what's the likelihood that the

00:34:34

tribunal will award costs and

00:34:36

fees to the losing party

00:34:37

and that allowed us to

00:34:39

to figure out where where

00:34:41

where is the where is

00:34:43



the breaking point at which

00:34:45

it becomes more advantageous to

00:34:48

say, let's go let's go

00:34:49

to arbitration because we're never

00:34:51

we're never going to add

00:34:52

that that figure that settlement

00:34:54

figure is going to be

00:34:56

too much for us or

00:34:59

Turn on the other side

00:35:01

of that figure. That's a

00:35:02

settlement that we can live

00:35:03

with because the risk-weighted likelihood

00:35:08

of a damages award in

00:35:10



individual arbitration would be greater

00:35:13

than than that settlement figure

00:35:14

ultimately. It allowed us to

00:35:16

to come up with a

00:35:17

figure that worked and then

00:35:19

we reached a settlement that

00:35:20

was was something beneficial for

00:35:23

both parties. I I completely

00:35:28

agree with that and I

00:35:29

think you would find that

00:35:30

a lot of cases. The

00:35:35

clients don't necessarily intend to

00:35:37

see the end of the

00:35:38



arbitration come about ever the

00:35:41

arbitration might be initiated very

00:35:45

strategically for the very purpose

00:35:47

of bringing about a settlement

00:35:48

right? I'm like that all

00:35:51

the time because it's it's

00:35:53

it is relatively inexpensive to

00:35:55

you know, filing notice of

00:35:57

arbitration and that's 10 pages

00:35:58

are, you know, kind of

00:36:00

bare minimum standards that you

00:36:01

needed to but it can

00:36:03

be expensive to respond as

00:36:05



can be expensive for the

00:36:07

operations ongoing operations. And in

00:36:11

a frankly just incentivize the

00:36:13

parties to go ahead and

00:36:14

settle and for that reason

00:36:17

even you'll also see this

00:36:19

happen to be sent the

00:36:21

budget permits this to happen

00:36:23

having a completely separate teams

00:36:27

and place for settlement and

00:36:29

for the arbitration and they

00:36:31

don't talk to each other

00:36:32

because you wanted me Came

00:36:34



about through the barrier between

00:36:36

the good cop and bad

00:36:37

cop and you want the

00:36:39

arbitration to go ahead as

00:36:40

aggressively as possible while at

00:36:42

the same time extending the

00:36:45

Olive Branch to your account

00:36:47

of partying and having them

00:36:49

come to you once they've

00:36:51

had enough of your side

00:36:58

at the very beginning with

00:36:59

his early and often and

00:37:00

it's that often point. I

00:37:02



think in the in the

00:37:04

US courts, unless Miller with

00:37:06

other domestic court's been the

00:37:07

escorts at least there are

00:37:09

ample opportunities throughout the course

00:37:11

of a litigation for settlement

00:37:14

and there are tools in

00:37:15

the courts toolbox to kind

00:37:17

of forced the parties to

00:37:19

a negotiating a remediation table.

00:37:21

At least. I have a

00:37:22

conversation and one of the

00:37:24

things that I've noticed about

00:37:25



that is that it eliminates

00:37:27

this perception of showing weakness

00:37:29

for The Other Side by

00:37:30

post and the potential for

00:37:33

settlement. Arbitration frequently you don't

00:37:36

have those moments and you

00:37:38

don't have a piano or

00:37:40

tribunal who can or will

00:37:41

say have you guys considered

00:37:44

remediation talk? And so one

00:37:48

thing to think about as

00:37:50

you're initiated an arbitration is

00:37:52

he one of the advantages

00:37:54



of arbitration right is the

00:37:55

flexibility in here and be

00:37:56

able to put together your

00:37:57

own procedural rules. So can

00:37:59

you build in inflection point

00:38:01

where you're going to at

00:38:04

the outset say to the

00:38:05

other side we'll talk again

00:38:07

after the red print schedules

00:38:10

in the production of documents

00:38:11

or we'll talk again after

00:38:12

the initial exchange of memorials

00:38:15

so that your kind of

00:38:16



eliminating that sense of I'm

00:38:19

showing weakness. I like now.

00:38:20

It looks like I don't

00:38:21

believe in my case and

00:38:22

then I can take you

00:38:23

seriously if you try and

00:38:24

settle I think that's that's

00:38:27

an excellent point in might

00:38:27

actually just reminded me that

00:38:28

was recently a publication by

00:38:30

the ICC about the role

00:38:32

of arbitrators and helping clients

00:38:33

that alert came out I

00:38:34



think in the last month

00:38:36
or so and in one

00:38:37
of the fourth dimension that

00:38:38
I don't know if any

00:38:38
of y'all have experience with

00:38:39
this is exactly color Kaplan

00:38:40
intro. So it's at the

00:38:42
introduction of their the hearings

00:38:43
begin with this a little

00:38:44
bit more of a probatoria

00:38:46
approach to to to the

00:38:48
case and info for the

00:38:50
begin to tease out some

00:38:51



of the issues and understanding

00:38:52

where and when there might

00:38:54

be a potential first settlement

00:38:56

in one of the other

00:38:56

interesting things that dimensions in

00:38:58

the publication is is this

00:38:59

idea of an in Germany

00:39:01

many german-speaking jurisdictions. You have

00:39:03

an ability for judges to

00:39:05

give you their Impressions on

00:39:06

a Case earlier early on

00:39:08

to American lawyers, but you

00:39:15

do get this sort of

00:39:16



a hint about where things

00:39:17

may be going which can

00:39:20

sometimes encourage settlement. I was

00:39:23

wondering if you all have

00:39:24

had any Experiences with the

00:39:26

arbitrator's playing reproductive or properly

00:39:28

counterproductive role in this respect.

00:39:33

I think what you're describing

00:39:35

of absorb. I think what

00:39:38

you're describing sounds a lot

00:39:39

like mediation here right where

00:39:42

you have a mediator basically

00:39:44

tell the parties where if

00:39:46



they are Betrayed at they

00:39:47

would they would get, that

00:39:48

had experiences in my contacts.

00:39:50

But I mean the German

00:39:51

system sounds very helpful. Actually.

00:39:55

It would be nice to

00:39:56

get a read from the

00:39:57

arbitrator as to where things

00:40:00

are going sooner rather than

00:40:01

later. We we did have

00:40:04

a Kaplan opening and it

00:40:05

in one of our cases

00:40:06

but his years ago now,

00:40:08



but as I recall it

00:40:10
was it was less. It

00:40:12
seems less about your the

00:40:14
prospect of settlement as simply

00:40:17
another opportunity for the parties

00:40:19
to present their cases in

00:40:21
an initial form a later

00:40:23
morphed a little bit. But

00:40:24
as I recalled that I

00:40:27
don't think that it was

00:40:28
settlement really played into it

00:40:30
for either side, but are

00:40:31
our positions may have been

00:40:32



barely stayed out by then.

00:40:36

No, I've had happened right

00:40:41

before the final hearing with

00:40:42

you divorce. So you examples

00:40:50

of no not really helping

00:40:53

but ultimately decided to settle

00:40:56

maybe the scientific approach like

00:40:59

the one you suggested. It

00:41:00

was really cool. Yeah, I

00:41:03

mean no no, no not

00:41:04

in my experience importunate, which

00:41:11

we think is important to

00:41:12

131 subject. I'm at the

00:41:16



cabin and other procedural considerations

00:41:19

or or the methods that

00:41:21

that should be considered by

00:41:23

a party or Again by

00:41:25

arbitrator or fondant in for

00:41:28

for an arbitration. Go ahead.

00:41:30

So so I'm assuming there's

00:41:33

there's an arbitration agreement then

00:41:34

you're going to go to

00:41:35

arbitration. But before you do

00:41:37

that, you should you should

00:41:39

lay out what other options

00:41:40

you have before starting yoga

00:41:43



tration, Ivysaur were talking about

00:41:44

so you should you should

00:41:45

really think what options you

00:41:47

have before courts before starting

00:41:50

the arbitration what sort of

00:41:52

procedures you can you can

00:41:54

file in Aid of arbitration

00:41:56

and I will soon as

00:41:57

you can see our options

00:41:58

within the ICC rules. For

00:42:00

example, by the way, I'm

00:42:02

used to be an ICC.

00:42:03

Yes. No, yes. No, maybe

00:42:07



our component. I will refer

00:42:10

to that which is so

00:42:14

I think I think before

00:42:15

you started arbitration you you

00:42:16

should sing and you can

00:42:17

go to the court and

00:42:19

they can really help you

00:42:20

improve your case in many

00:42:21

ways. You know now it's

00:42:24

become very common to use

00:42:25

section 1782 can the US.

00:42:26

Do you have obtained the

00:42:29

documents that for that? Patrician

00:42:31



going but that's an example.

00:42:32

You can also get an

00:42:34

injunction before you start the

00:42:37

arbitration you can think of

00:42:40

things that can help you

00:42:42

improve your chances of success

00:42:45

were eventually securing, you know

00:42:50

collection and I would also

00:42:51

if you get an attachment

00:42:55

of some sort of an

00:42:55

injunction or something it's a

00:42:57

pressure points. So when your

00:42:59

thing about settlement the more

00:43:01



pressure points you have you

00:43:03

know, the better chances or

00:43:04

do you have more leverage?

00:43:05

So you should also think

00:43:07

about that head of an

00:43:09

arbitration within the ICC world.

00:43:11

You can get an emergency

00:43:13

arbitrator to get an injunction

00:43:15

for example of some kind

00:43:17

of precautionary measure for you

00:43:19

actually started irritation. ICC has

00:43:24

a mediation set of rules,

00:43:27

which are good. I think

00:43:31



they're becoming I don't have

00:43:33

experience with them. I understand

00:43:34

they're becoming more and more

00:43:35

used to be the nice

00:43:40

thing of mediation. I know

00:43:41

how familiar people are with

00:43:43

it. And I'm from Argentina.

00:43:44

Originally. We have mandatory mediation

00:43:46

before mediation. So people are

00:43:48

very used to it. You

00:43:50

have a neutral that will

00:43:52

fulfil different roles than ice

00:43:54

thing. It's it's super flexible.

00:43:56



You can you know, if

00:43:57

roses will work. However, you

00:43:59

want it to be the

00:44:01

neutral will operate in whichever

00:44:03

way you want it to

00:44:03

be can suggest Solutions or

00:44:07

it can be more in

00:44:08

a simply bring the parties

00:44:09

together without actually suggesting you

00:44:11

can speak whatever you want.

00:44:12

The nice thing is you

00:44:14

can have these I think

00:44:16

it's quite cheap. I was

00:44:17



looking at they cost to

00:44:19

cheap solution really. I'm going

00:44:24

before the arbitration in parallel,

00:44:27

you know the mediator if

00:44:30

the parties agree can also

00:44:31

become the arbitrator later on.

00:44:33

I mean, I don't think

00:44:35

that's advisable rolling out but

00:44:37

that's super flexible. So, you

00:44:41

know, it's almost as you

00:44:45

know, you can give it

00:44:47

a try the problem with

00:44:48

that is of course enforcement.

00:44:50



It's you will end up

00:44:51

with with basically a contract

00:44:54

which is the settlement but

00:44:56

if you're doing it while

00:44:58

you have an arbitration, I'm

00:44:59

going you could put that

00:45:02

agreement we can send a

00:45:03

work so they can send

00:45:04

the word will end up

00:45:06

marrying, you know covered by

00:45:07

the New York convention, which

00:45:08

is says the beauty of

00:45:10

arbitration at the end of

00:45:11



the day, so CID, I

00:45:14

think those are things to

00:45:15

hear you mention all this

00:45:18

because I think that there

00:45:20

was at some point or

00:45:21

still is to some extent

00:45:22

this assumption that that that

00:45:24

mediation or some of these

00:45:25

alternate procedures are already only

00:45:27

for smaller value disks you

00:45:29

but I think now it

00:45:30

is you're fighting with some

00:45:30

of the largest disputes people

00:45:32



interested mediation or not. It

00:45:34

not only that but even

00:45:35

expedited proceedings. I just get

00:45:37

this over with in a

00:45:38

year even for a large

00:45:39

just you just because of

00:45:40

the hassle of of of

00:45:42

a proceeding. So I think

00:45:43

to look at those sweets

00:45:44

of options is something that

00:45:46

that that needs to be

00:45:47

done and as earlene importantly

00:45:51

in the process to walk

00:45:56



for it is is the

00:45:57

final consideration before your arbitration.

00:46:00

Most important is really decide.

00:46:02

What if your client 1,

00:46:04

I mean, what is the

00:46:05

ultimate objective here in in

00:46:07

potatoes? Wondering if you could

00:46:08

help us out and had

00:46:09

unpack that a bit. Sure,

00:46:11

I happy to get us

00:46:12

started on that when I'm

00:46:13

sure Michael panelist will have

00:46:15

lots of thoughts on this

00:46:16



as well cuz it is

00:46:16

a critical consideration and I

00:46:19

think it sounds like it

00:46:21

should be a really easy

00:46:22

question to answer and it

00:46:24

is not always a really

00:46:25

easy question to answer. So

00:46:27

do you have a mention

00:46:28

at the outset that I

00:46:29

am a pro bono kid.

00:46:30

I came with a human

00:46:31

rights background to arbitration inside

00:46:36

is used to coming from

00:46:37



a world where there's a

00:46:37

lot of emotion and passion

00:46:39

and subjectivity for my clients

00:46:41

cuz they are living the

00:46:44

the cases that were bringing.

00:46:45

I wasn't quite prepared for

00:46:47

that to also be the

00:46:48

case when you're dealing with

00:46:50

companies in sovereign states, but

00:46:52

it was very frequently is

00:46:54

the case that the clients

00:46:55

are dealing with have strong

00:46:57

emotions and they feel very

00:46:58



deeply and passionately about the

00:47:01

situation that they found something

00:47:02

and they're coming to us

00:47:03

as litigators because they're in

00:47:07

a crisis point on so

00:47:08

they're coming out of very

00:47:09

vulnerable time. For there for

00:47:12

their companies and often for

00:47:13

for themselves personally as well.

00:47:15

And I think it's really

00:47:16

critical to keep that in

00:47:17

mind when you're having these

00:47:18

initial conversations with your client

00:47:21



that this is not necessarily

00:47:23

going to be as empty

00:47:24

as I was saying. This

00:47:25

is not necessarily going to

00:47:26

be an objective conversation that

00:47:28

you're going to be having

00:47:29

with someone who's thinking truly

00:47:31

strategically and you know working

00:47:33

in three-dimensional chess if I

00:47:36

think one of the things

00:47:37

that I try and keep

00:47:38

in mind is that where

00:47:40

is Ellis Advocates over also

00:47:41



counselors and as counselors is

00:47:44

our job to make sure

00:47:45

our clients know that we

00:47:47

have their back we are

00:47:48

on their side. We have

00:47:49

their best interest at heart

00:47:51

and that that's really we're

00:47:53

striving to that end with

00:47:55

them and Sometimes it involves

00:48:00

just initial really long conversations

00:48:03

where you're letting out a

00:48:04

lot of thoughts and feelings

00:48:06

and ideas before you can

00:48:07



even start to get to

00:48:08

the questions that will help

00:48:10

you elucidate. Okay? Well, what

00:48:12

is it that you actually

00:48:13

want to do refer again

00:48:14

to empty just saying. Well,

00:48:15

do you want to continue

00:48:16

a relationship with this counterparty

00:48:19

or is this over? Do

00:48:20

you do you want to

00:48:21

just get out of here?

00:48:22

Are you looking for settlement

00:48:24

pressure or you looking to

00:48:25



inflict maximum pain because you're

00:48:27

just really pissed off about

00:48:29

the way that you've been

00:48:30

treated and figuring out those

00:48:33

questions and the initial reaction.

00:48:35

If you know I'm pissed

00:48:36

off and I want to

00:48:36

inflict maximum pain and then

00:48:38

you get down the road

00:48:39

like it actually this is

00:48:41

like a pretty important relationship

00:48:43

and I've been looking at

00:48:45

our bottom line. So can

00:48:47



we walk this back? So

00:48:49

I think part of it

00:48:50

is to maintain really open

00:48:52

lines of communication with your

00:48:54

client and to keep coming

00:48:56

back to them with questions

00:48:58

and I think The trickiest

00:48:59

things to do in science

00:49:01

and this is tricky without

00:49:02

getting like you guys any

00:49:03

advice but I think one

00:49:05

of the trickiest things to

00:49:06

do is walk that line

00:49:07



between us again and key.

00:49:09

Very very wise saying between

00:49:12

providing objective advice to your

00:49:15

client that will help them

00:49:16

achieve their goals, but also

00:49:17

being that counselor and that

00:49:19

trusted adviser who they believed

00:49:21

firmly is on their side

00:49:23

and it's only if they

00:49:24

believe firmly that you're on

00:49:25

their side that they're going

00:49:26

to tell you like all

00:49:28

the dirty laundry that you

00:49:29



need to know to give

00:49:30

them that objective advice. So

00:49:32

it's it's kind of a

00:49:33

constant putting shifting of what

00:49:35

hat you're wearing and figuring

00:49:36

out how you're going to

00:49:37

frame the advice that you

00:49:38

give in a way that

00:49:39

doesn't come across as callous

00:49:41

but comes across as striving

00:49:44

striving for that go with

00:49:46

your client. That I was

00:49:53

actually taking it but does

00:49:54



anyone else have anything to

00:49:56
add in this or any

00:49:58
thoughts about you know, what

00:50:00
are some of the the

00:50:02
key questions to ask her

00:50:03
or how to go about

00:50:04
you know, I've been talking

00:50:05
with your mentioning is, building

00:50:07
trust and do that fast.

00:50:10
So and something's do have

00:50:12
an extra life cycle. They

00:50:13
do take time. But how

00:50:16
do you purchase that how

00:50:17



do you approach that bad

00:50:19

side of being a counselor?

00:50:20

And I was wondering what

00:50:22

if you have any thoughts

00:50:23

about how you manage the

00:50:27

information and communication, Illinois, I

00:50:30

agree, you know, we tend

00:50:32

to deal with the general

00:50:32

counsel or or a lawyer

00:50:34

within the company and they

00:50:36

respond to someone that is

00:50:37

in the commercial side and

00:50:39

they get pressure because the

00:50:41



deal didn't go the way

00:50:42

they want it so course

00:50:43

there's a lot of pressure

00:50:44

going on right and they

00:50:46

they want to solve these

00:50:48

problems the best way they

00:50:49

can you know I think

00:50:54

it's it's I think clients

00:50:58

want to hear the truth

00:50:59

and if if the case

00:51:01

is not maybe they don't

00:51:03

want to tell you or

00:51:05

maybe so if you can

00:51:10



I think it's really important

00:51:12

if you can identify with

00:51:13

those dishes out and help

00:51:14

the the the in-house counsel

00:51:17

weed out where the issues

00:51:19

are. Sometimes we also deal

00:51:20

with you know, there's there's

00:51:23

I don't know if there's

00:51:24

a parent company and there's

00:51:25

a there's a local company

00:51:27

that handles whatever business right

00:51:30

in the front happened down

00:51:32

there right now and they

00:51:34



have their interests and then

00:51:36

the parent company has their

00:51:37

interests and then you know

00:51:38

that you are you're advising

00:51:40

the company and you want

00:51:42

them all to trust you.

00:51:43

But at some point do

00:51:45

you have that internal thing

00:51:46

going on? What are you

00:51:47

reading me to and find

00:51:49

a way to more? Let's

00:51:52

get to the truth because

00:51:53

at the end of the

00:51:53



day, you can only tell

00:51:55
them if they have a

00:51:56
case or not. If you

00:51:57
know what the facts are,

00:51:58
right, so Daddy's that's freaky

00:52:02
that requires a bit of

00:52:03
you know, something something else

00:52:10
and then you need to

00:52:11
find the polite way of

00:52:13
finding out what's going on.

00:52:15
I think I think that

00:52:16
sort of goes back to

00:52:17
this idea of I mean,

00:52:18



what is the objective of

00:52:19

the client rights of a

00:52:20

date the company can have

00:52:21

strategic objectives that the general

00:52:23

counsel can have objectives and

00:52:25

you need to learn how

00:52:26

to not learn maybe you

00:52:30

don't need to do this,

00:52:30

but there's something about understanding

00:52:33

the complexity of the situation

00:52:35

and end in appreciating that

00:52:37

fully that that can make

00:52:39

your life better and in

00:52:41



just yesterday. I don't know

00:52:43

if you have any any

00:52:45

other thoughts about you know,

00:52:47

how to get to the

00:52:48

core of what's being presented

00:52:50

to you. Yeah, I mean.

00:52:54

I completely agree. I think

00:52:55

there is like a sword

00:52:56

in Genesis about on in

00:53:00

terms of how you would

00:53:01

establish trust and In a

00:53:06

lot of Articles have been

00:53:07

written about the psychology of

00:53:09



trust and you know what

00:53:10

it takes to to get

00:53:11

somebody to trust you. And

00:53:12

the I think the Corvette

00:53:18

is is problem is what

00:53:19

I would owe you for

00:53:21

what it's worth. My my

00:53:22

opinion is I think that

00:53:26

the client needs to be

00:53:27

able to understand and believe

00:53:32

I would say not just

00:53:33

understand and believe that you're

00:53:35

on their side and that

00:53:37



you're not doing this, you

00:53:39

know for sure you're not

00:53:41

asking them to pursue this

00:53:42

case because you want to

00:53:44

have a case that's going

00:53:46

to bring in money or

00:53:47

you don't want your you're

00:53:49

not siding with for example

00:53:51

one or the other person

00:53:54

or entity at the client.

00:53:56

You're really just looking out

00:53:58

for what is in the

00:53:59

best interest of the client.

00:54:01



I think establishing. Making them

00:54:06

believe that is is really

00:54:08

what helps them see that

00:54:11

you are your advice is

00:54:13

truly objective and a cracked

00:54:15

if I could bring us

00:54:18

back to one of the

00:54:18

things one or two of

00:54:19

the things that we talked

00:54:20

about earlier, but other sort

00:54:22

of other types of a

00:54:23

TR other dispute resolution procedures

00:54:25

and settlement if if after

00:54:29



hearing the client out evaluating

00:54:32

the the facts as they

00:54:33

tell them to you, maybe

00:54:34

do a witness testimony the

00:54:35

documents that are available it

00:54:38

becomes evident that and you

00:54:40

know what maybe this is

00:54:41

something that we should mediate

00:54:42

maybe this is something we

00:54:43

should try to settle making

00:54:44

that recommendation which is no

00:54:46

it it may result in

00:54:48

less fees. And then do

00:54:50



you do less work for

00:54:50

the lawyers? But I think

00:54:54

that's a part of being

00:54:54

a trusted advisor is advising

00:54:57

them about the other options

00:54:59

and at the end of

00:55:01

the day that that might

00:55:02

that might make a client

00:55:04

very very happy and give

00:55:06

And give them the results

00:55:06

today, not that they thought

00:55:08

they were looking for at

00:55:09

the beginning but the result

00:55:10



that that is right for

00:55:11

them and and that they

00:55:12

need that's excellent. So I

00:55:15

see that we're running so

00:55:16

slow on time and I

00:55:18

want to make sure we

00:55:18

had a chance to get

00:55:19

y'all's input on this to

00:55:21

just quickly when summer is

00:55:22

a 5 things. You should

00:55:23

know them before we go

00:55:24

to question was enforcement potential

00:55:27

for success legal and factual

00:55:29



for settling procedural considerations. And

00:55:32

then the most important it's

00:55:34

really clients ultimate objective. Those

00:55:36

are the five things that

00:55:36

we sort of wanted to

00:55:38

bring to you today. And

00:55:39

we thought I want to

00:55:40

ask you I have a

00:55:41

couple questions from our online

00:55:42

audience backrest wanted to give

00:55:44

priority to those of us

00:55:44

who are here in case

00:55:46

anyone have any questions for

00:55:48



the panel. How does your

00:55:54

approach change if the client

00:55:58

can feel your feet? I'll

00:56:08

go ahead and take it.

00:56:09

I think I wouldn't say

00:56:11

that the approach. Oh, sorry.

00:56:14

So the question for those

00:56:16

listening in his does your

00:56:17

approach change or and if

00:56:19

so how if you are

00:56:20

seeking third-party funding to bring

00:56:22

a claim? So I think

00:56:28

that in some ways it

00:56:30



changes and in other ways

00:56:31

it does not I think

00:56:32

the the necessity of always

00:56:34

making sure you understand your

00:56:35

client's ultimate objective getting their

00:56:38

trust and giving them solid

00:56:40

advice as to whether or

00:56:41

not this is a meritorious

00:56:42

claim worth bringing if it's

00:56:45

worth the the the time

00:56:47

and and the costs that

00:56:49

are going to be involved

00:56:50

for them even in just

00:56:51



securing the litigation funding that

00:56:53

to me doesn't change what

00:56:57

does change is the level

00:56:59

of due diligence that is

00:57:00

sometimes involved in being able

00:57:03

to bring the case and

00:57:05

I think there are some

00:57:06

really Profound advantages to having

00:57:10

to do that sort of

00:57:11

intense due diligence that you'll

00:57:12

need to do in order

00:57:13

to pass muster with a

00:57:14

litigation funder to get funding

00:57:16



for your case. You're going

00:57:17

to go in much better

00:57:18

prepared and you're going to

00:57:20

know a lot more about

00:57:21

about the keys in the

00:57:23

fact that sometimes you would

00:57:24

if you have a client

00:57:26

who is just paying for

00:57:27

things and you don't have

00:57:28

to go through the whole

00:57:29

like but let's talking and

00:57:31

everything before I get to

00:57:33

this. I have equipment just

00:57:37



thought on this and I

00:57:38

think there are cases that

00:57:39

are pro bono cases, right?

00:57:40

So those of course there

00:57:42

are there separate category. I

00:57:44

find the the trick your

00:57:46

cases if you have a

00:57:47

client that's that's not a

00:57:48

pro bono case that's telling

00:57:50

you they're going to pay

00:57:51

and then the payment doesn't

00:57:52

show up and they say

00:57:53

next month or actually we

00:57:54



have a deal in Angola

00:57:55

coming out. And as soon

00:57:56

as that money comes in

00:57:57

then we'll pay you and

00:57:58

in in Wichita out there

00:58:00

that's Mexican and make of

00:58:01

it a client that it

00:58:03

is playing games. And I

00:58:05

found that if you want

00:58:06

your clients to respect you

00:58:07

have to respect yourself. You

00:58:09

have to have boundaries. You

00:58:10

have to be the authority

00:58:10



on on how the proceedings

00:58:12

going to be around 2.

00:58:13

I think the quickest way

00:58:15

to lose your clients respect

00:58:16

as if you don't maintain

00:58:17

boundaries as well. So I

00:58:19

I do think it's actually

00:58:20

an essential part of serving.

00:58:23

Your client is is is

00:58:24

to have lines and have

00:58:26

a very clear and transparent

00:58:27

and I think that process

00:58:31

of knowing when to say

00:58:32



no and being firm about

00:58:32

that doesn't build respect and

00:58:35

it will take us to

00:58:36

I think it's for the

00:58:37

flipside of some of that

00:58:37

the service that were talking

00:58:38

about. he meant in terms

00:58:58

of incomes of this question

00:59:00

of payment. I think I

00:59:06

think they're the same. I

00:59:08

think you're absolutely the same.

00:59:09

I think they become more

00:59:10

complex though. I mean, so

00:59:17



it's up. For example, I

00:59:18

think like this question. What's

00:59:20

the ultimate objective can shift

00:59:21

dramatically, right? Cuz you have

00:59:22

political objectives that are at

00:59:24

that can be partisan as

00:59:25

opposed to National Air Condition

00:59:27

ministrations have changed in the

00:59:28

meantime, there might be questions

00:59:29

that you can't prove that

00:59:31

are above like ultimate existential

00:59:33

political importance to a to

00:59:35

a situation. So I think

00:59:38



they changed if you have

00:59:40

any thoughts on on the

00:59:42

question of sovereigns and how

00:59:43

this changes in that context

00:59:44

can get much more complex

00:59:49

and can change as political

00:59:51

administration's change or can change.

00:59:53

Cuz you're dealing with different,

00:59:54

you know agencies or entities

00:59:55

within the Sovereign. I think

00:59:58

the question of like what

01:00:01

success looks like can also

01:00:03

be very different and it

01:00:04



there and that's intimately tied

01:00:06

in of course to what

01:00:07

your clients ultimate objective is,

01:00:10

but does success for the

01:00:11

state look like winning this

01:00:13

particular claim and then losing

01:00:16

a whole bunch of investors

01:00:17

who are now terrified of

01:00:18

coming into the government or

01:00:20

coming in and investing or

01:00:22

does exhaust look like getting

01:00:25

a settlement that no one

01:00:27

knows about her. But I'm

01:00:30



saying there is space might

01:00:32

have concerns about a private

01:00:33

settlement versus Public public proceedings.

01:00:37

So I do think there's

01:00:39

just the same 550 ago

01:00:42

saying the same five factors.

01:00:44

It's just the analysis of

01:00:46

them looks somewhat different. And

01:00:49

just to add on that

01:00:50

I think it's it's it's

01:00:51

a great question. But the

01:00:52

other point is it states

01:00:53

come in so many shapes

01:00:54



and sizes right there some

01:00:56

states that are huge monstrosity

01:00:58

and there's others that are

01:00:59

kind of like family-owned business.

01:01:00

I think it's important thing

01:01:03

to just took to be

01:01:04

reminded even clients come in

01:01:05

different shapes and sizes. in

01:01:12

your experience free action settlement

01:01:21

for mediation turn off my

01:01:32

top analysts have any concrete

01:01:34

experience with this. I have

01:01:36

not had specific experience with

01:01:39



enforcing a mediated settlement that

01:01:43

was not voluntarily complied with

01:01:46

it. I think that ordinarily

01:01:48

in negotiating a settlement in

01:01:51

mediating a settlement you would

01:01:52

hope that the parties would

01:01:54

be willing to comply with

01:01:56

their agreement right away. I

01:01:59

suppose it must happen that

01:02:00

that that is not the

01:02:01

case, but I think one

01:02:04

of the things that we

01:02:05

want brought up earlier is

01:02:07



that part of the magic

01:02:08

of the arbitration system is

01:02:10

that if the mediation takes

01:02:12

place in the context of

01:02:13

an arbitration, we can reduce

01:02:15

that mediated settlement to a

01:02:18

consent award which would potentially

01:02:22

assuage some of the concerns

01:02:24

that you might have with

01:02:25

enforceability. I actually have had

01:02:28

that experience or and I

01:02:34

would say that the difference

01:02:35

isn't necessarily at this stage

01:02:37



of or the way in

01:02:39

which the award has or

01:02:40

the settlement has been brought

01:02:42

about whether it's your settlement

01:02:43

mediation or arbitration but more

01:02:46

about the type of entity

01:02:47

against whom the award has

01:02:49

been rendered and you know,

01:02:53

as I think I kind

01:02:54

of mentioned at the beginning

01:02:55

of what I was talking

01:02:56

about success and enforcement is

01:02:59

very rare that if your

01:03:01



award is against of commercial

01:03:02

and to leave I thought

01:03:03

award will not be paid

01:03:04

or if you settled up

01:03:06

let you do you agree

01:03:07

to a settlement against another

01:03:09

company at this specially if

01:03:11

there are either on going

01:03:13

or potentially in Central Business

01:03:16

Opportunities with them swear that

01:03:19

that settlement won't actually be

01:03:20

complied with or without a

01:03:21

ward 1 be complied with

01:03:23



but states are completely different

01:03:25

ballgame. The example that I

01:03:28

have wear a sound which

01:03:29

was not complied with with

01:03:31

some steaks. And so that's

01:03:33

a no-go for a host

01:03:36

of reasons. Right? I mean

01:03:37

not all of them are

01:03:38

necessarily being bad faith on

01:03:40

part of the The Entity

01:03:41

that settled or the people

01:03:42

that settled with you but

01:03:43

they might simply be out

01:03:45



of power. And so you're

01:03:45

facing a new Administration has

01:03:47

decided it's not in their

01:03:48

interest to go ahead and

01:03:49

pay the award or comply

01:03:51

with us at lunch at

01:03:53

they have been negotiated. Don't

01:03:55

just going to say we

01:03:56

we actually had a situation

01:03:57

like that and he was

01:03:58

an investment case. We had

01:04:00

a preliminary award that had

01:04:02

construction until you know, what

01:04:03



needed to happen then send

01:04:05

it was an agreement between

01:04:07

the state and the investor

01:04:08

and then you imply going

01:04:11

through the courts and then

01:04:12

the local courts will issue

01:04:14

a decision and it was

01:04:15

pretty good with the deceased

01:04:18

had to be does know

01:04:20

this was no meddling with

01:04:21

a court. It was just

01:04:22

what would what would happen

01:04:23

and then the agreement was

01:04:26



reached? And then a client

01:04:28

files before the local courts,

01:04:30

and then because of political

01:04:32

reasons the estate lawyer in

01:04:35

that case decided to you

01:04:37

know to some shenanigans that

01:04:39

weren't supposed to have anywhere

01:04:40

part of the agreement. And

01:04:41

then that we had to

01:04:43

go to the tribunal the

01:04:44

tribunal anyways, he wasn't wasn't

01:04:46

pretty but we ended up

01:04:50

with the with the same

01:04:52



result is just that there

01:04:54

are a few hiccups because

01:04:56

of state so you have

01:04:58

multiple interests and it's difficult

01:05:00

to manage that But without

01:05:05

it I'm going to have

01:05:06

to say thank you very

01:05:06

much to the panel and

01:05:08

thank you all for coming

01:05:09

here. We have a drinks

01:05:10

and reception brings her bad

01:05:12

side. So once again, thank

01:05:13

you all for coming. I

01:05:20



was I was asked to

01:05:21

tell everyone that if you

01:05:23

registered there are name tags

01:05:24

outside on a table. Well,

00:00:21

good evening everyone. My name

00:00:23

is is and I'm sorry

00:00:26

to be repeating the same

00:00:27

name. But every every session

00:00:29

is is a new one

00:00:30

and there may be people

00:00:32

connected online who haven't heard

00:00:35

it yet. So I am

00:00:37

a partner at the boutique

00:00:44



as well as an international

00:00:45

commercial arbitration Boutique. And we

00:00:48

also do do public international

00:00:50

law also teach at Georgetown

00:00:52

law country arbitration of public

00:00:54

international law and one of

00:00:56

the co-founders of Washington arbitration

00:00:59

week together with Ian Laird

00:01:01

and that we have been

00:01:02

we have received an enormous

00:01:06

support for from from sponsors

00:01:09

including Decker attended many of

00:01:12

you here. So we're very

00:01:13



thankful. Also our host today

00:01:16

and work were particularly proud

00:01:19

of Having also an incredible

00:01:21

set of board members advisors

00:01:27

in in great part advised

00:01:31

us on the topics that

00:01:33

you see today. We have

00:01:36

we have on tonight this

00:01:41

evening. We're having a panel

00:01:43

which is co-sponsored by the

00:01:45

ICC and an impact as

00:01:50

the moderator is yogurt manual

00:01:52

Pineda and before introducing him.

00:01:58



I would like to emphasize

00:01:59

that then Washington arbitration week

00:02:02

in addition to the the

00:02:04

complex topics very very very

00:02:08

sectors has also a very

00:02:11

practical approach to International arbitration.

00:02:18

do things in in in

00:02:21

in simple terms, hence, the

00:02:26

name of this panel is

00:02:28

the five things that that

00:02:30

you need to know before

00:02:31

you begin an arbitration and

00:02:36

That is basically to share

00:02:38



knowledge practical knowledge with young

00:02:42

practitioners with and my young

00:02:45

eyes. I don't mean young

00:02:47

in terms of age because

00:02:48

these people who actually move

00:02:50

from the corporate world into

00:02:52

International arbitration in there. No,

00:02:55

but you know what, I

00:03:00

mean, so I'm being practical

00:03:05

is very very important to

00:03:07

us and in a way,

00:03:11

we have a Samsung history

00:03:15

because when we started his

00:03:17



strategy LP, he had already

00:03:19

started his his Boutique law

00:03:21

firm and one of the

00:03:22

first panels that will put

00:03:23

together is how to be

00:03:26

a boutique law firm in

00:03:28

international arbitration. So I want

00:03:31

to know I want to

00:03:32

tell you that that warrant

00:03:34

or not Ward No worries

00:03:36

on that well say is

00:03:38

if you are interested in

00:03:39

that panel, it's recorded and

00:03:41



and Washington week as well

00:03:45

as our sister event, which

00:03:47

is the world of attrition

00:03:48

update. Please keep reports everything.

00:03:51

Yes, everyone agrees to to

00:03:55

being recorded their consent forms

00:03:57

at cetera. And then why

00:03:59

do we do this? We

00:04:00

do this because we're creating

00:04:02

a DVD Library so that

00:04:04

people can watch the noted

00:04:07

that has been shared for

00:04:08

the past four to three

00:04:09



years and actually quite nice

00:04:13

because you can actually look

00:04:14

into the video and it's

00:04:16

synchronized with the an automatic

00:04:19

transcript and you put five

00:04:23

things that you need to

00:04:24

know before beginning an arbitration

00:04:26

and you should be able

00:04:27

to see where that was

00:04:29

where those sentences were with

00:04:31

those words were were sent

00:04:33

during the proceedings like like

00:04:34

a PDF document. And the

00:04:37



the tool he's already in

00:04:38

our website. And of course

00:04:40

we're we're running better test

00:04:42

at this stage, but it

00:04:43

will be available to everyone

00:04:45

it is available. The ones

00:04:49

that down recorded but those

00:04:50

will do so with that.

00:04:52

Let me tell you a

00:04:54

little bit of an international

00:04:57

lawyer specializing in international public

00:05:01

international law and investigations relating

00:05:03

to corruption and money-laundering sanctions

00:05:06



and terrorist Finance. Mr. He's

00:05:11

Basin in DC and is

00:05:13

admitted to practice in the

00:05:15

District of Columbia. And Florida

00:05:16

Panthers have been in Florida.

00:05:19

By the way. It's yes

00:05:22

and no offense to those

00:05:23

in Florida, but it's one

00:05:24

of the most protectionist bars

00:05:26

that that that they are

00:05:27

in the country. So it's

00:05:28

not that hard in any

00:05:32

of his practice focuses on

00:05:35



all aspects of international disputes

00:05:37

and investigations with significant experience

00:05:40

in Latin America Europe the

00:05:42

US and the Middle East

00:05:43

before founding the Alameda area.

00:05:47

Mr. Freya work with leading

00:05:50

international law firms in Paris,

00:05:51

London and Washington DC and

00:05:53

he specifically said be quiet.

00:05:56

Thank you so much. Antonio.

00:05:59

It's a real pleasure. And

00:06:01

I also just want to

00:06:02

take a quick moment it

00:06:03



to thank you for all

00:06:04

the great work that you've

00:06:05

done Washington arbitration week so

00:06:07

he may or may not

00:06:08

know. Set up for years

00:06:09

ago and it feels like

00:06:10

I think a real need

00:06:11

in the community. This is

00:06:13

something that mean Washington is

00:06:14

a great Center for arbitration

00:06:15

and it's about time that

00:06:17

we have something like this.

00:06:18

So I think it's a

00:06:19



really great and and on

00:06:21
behalf of the ICC I

00:06:22
mentioned I'm nice to see

00:06:24
after I presented for Washington.

00:06:25
It's a partnership that's very

00:06:27
much valued by the ICC

00:06:28
and these sorts of events

00:06:29
that build a community of

00:06:31
practitioners that get engaged as

00:06:33
Professionals in this area. I

00:06:35
think our are meaningful in

00:06:36
and it's important part of

00:06:38
of I think my identity

00:06:39



as a lawyer and I

00:06:40

think it should be part

00:06:41

of all of ours to

00:06:41

help build this community as

00:06:43

a practitioners in particular is

00:06:46

focused on on junk practitioners

00:06:49

in providing a voice in

00:06:50

a platform for younger practitioners

00:06:52

to learn about arbitration and

00:06:53

to become part of the

00:06:54

community a historically arbitration is

00:06:57

have the reputation of having

00:06:58

the dinosaurs of the field

00:06:59



and and I think maybe

00:07:00

you know fifty to eighty

00:07:02

years ago some of the

00:07:02

most prominent arbitrators were in

00:07:03

fact diplomats and Senior Statesman

00:07:05

type figures a lot has

00:07:07

changed since that time and

00:07:09

Contribute to build a more

00:07:11

inclusive practices. So what we've

00:07:13

been doing with ICF past

00:07:15

couple years is trying to

00:07:17

set up a series of

00:07:18

events that deal with topics

00:07:20



that could be of interest

00:07:21

for young practitioners. They're also

00:07:23

interesting for more experienced practitioners.

00:07:25

I think the idea that

00:07:26

I'm trying to go for

00:07:27

the store to buy high-level

00:07:28

Basics it snowed some of

00:07:29

that you can learn very

00:07:30

quickly. But if it takes

00:07:31

a lifetime to master their

00:07:33

bite you no coming up

00:07:34

with subject matter that's hopeful

00:07:35

engaging for many people at

00:07:37



different parts in different points

00:07:38

in their professional Journeys. So

00:07:40

I'm particularly grateful today to

00:07:42

have this esteemed panel to

00:07:43

to talk with us start

00:07:45

with Ankita. Ankita is the

00:07:47

council at Gibson Dunn &

00:07:48

Crutcher International arbitration and transnational

00:07:50

litigation in judgment in a

00:07:53

ward enforcement Practice Group. She

00:07:55

was born in India, but

00:07:56

meet me there when she

00:07:57

was 3 years old and

00:07:58



settled yourself all over the

00:08:01

world before settling down in

00:08:02

the United States to practice

00:08:03

law. She cannot however give

00:08:05

up her globe-trotting completely which

00:08:07

is probably why she's doing

00:08:08

it or not. So I

00:08:08

would When she's not on

00:08:11

Zoom calls and drafting several

00:08:13

hundred Pages brief to take

00:08:16

naps only when next we

00:08:21

have Tatiana Tatiana was originally

00:08:23

a pro bono kid. If

00:08:24



you describe yourself in law

00:08:25

school wanting to focus on

00:08:27

human rights and in pro

00:08:28

bono type practices this changed

00:08:31

only slightly. I hope when

00:08:33

she had the opportunity to

00:08:34

serve as legal advisor to

00:08:35

judge Rosemary's barkett at the

00:08:37

Iran us claims tribunal. She

00:08:39

became fascinated with complex legal

00:08:40

factual issues involving state state

00:08:43

cases, and that led her

00:08:44

to arbitration. She still strives

00:08:47



to maintain her pro bono

00:08:48

practice and hasn't looked back

00:08:49

since when she's not working

00:08:51

or running or doing yoga

00:08:52

you like to hang out

00:08:53

with your family and read

00:08:54

fiction. Next we have Mike

00:08:56

Mike is really from Indiana.

00:08:58

She became interested in an

00:08:59

operation after taking a summer

00:09:01

course in law school on

00:09:02

arbitration. He's passionate about working

00:09:04

with colleagues from different cultural

00:09:05



and legal backgrounds and like

00:09:07

to come up with Creative

00:09:08

Solutions. Problems for his clients

00:09:11

you can find him gravel

00:09:13

cycling baking pizza or playing

00:09:14

frisbee with his dog when

00:09:15

he's not solving these cross-border

00:09:18

disputes dear friend of mine

00:09:22

former office mate of mine

00:09:23

actually from a from Argentina

00:09:25

and he practice in Argentina

00:09:27

until 2011 and has been

00:09:29

a member of the international

00:09:30



arbitration practice at Fresh fields

00:09:32

in Washington DC since then

00:09:34

or since August 2012 investor

00:09:37

State and in international commercial

00:09:39

arbitration with a focus on

00:09:40

Latin America has represented clients

00:09:42

and act as a secretary

00:09:43

in numerous disputes involving different

00:09:45

Industries oil and gas electricity

00:09:47

mining infrastructure Pharma in retail

00:09:50

and one interesting fact about

00:09:51

one which he hasn't shared

00:09:52

one and I actually used

00:09:54



to play on a soccer

00:09:55

team. He likes to play

00:09:56

soccer and rugby team was

00:09:58

called like a sucker which

00:10:00

means The Hangover it every

00:10:01

Saturday. We actually have to

00:10:03

cook it when he got

00:10:04

to got to see if

00:10:05

it was on the previous

00:10:06

penalty was also part of

00:10:07

the exchange team in I

00:10:09

think you may be fair

00:10:10

to say maybe the best

00:10:11



player of the three of

00:10:11
us in some ways to

00:10:12
die. Today's topic is as

00:10:19
we mentioned is five things

00:10:21
to think about when starting

00:10:22
your arbitration and I think

00:10:23
there's many things you can

00:10:26
think about it. I feel

00:10:27
like a cliché answer that

00:10:28
a lot of people give

00:10:29
you this question is you

00:10:30
have to start in with

00:10:31
enforcement you have to start

00:10:32



with the money and I

00:10:34

think that's a very critical

00:10:35

topic, but I hope that

00:10:36

I'm coming we're going to

00:10:38

talk about but I hope

00:10:39

that over the course of

00:10:40

presentation we can also show

00:10:41

you for things that might

00:10:42

be even more important to

00:10:43

think about for your clients.

00:10:45

So just just kick it

00:10:46

off in to start off

00:10:47

from the end. We'll start

00:10:49



with the the question of

00:10:50

enforcement and Mike if you

00:10:53

can just kick us off

00:10:53

and tell us about you

00:10:55

know, why you need to

00:10:56

start thinking about this Sunday

00:10:57

1 or so, so Maybe

00:11:02

a lot of people are

00:11:03

thinking the same thing. near

00:11:09

me Maybe a lot of

00:11:12

people are taking this but

00:11:13

it seems a little counterintuitive

00:11:14

actually to just start from

00:11:16



the end when you're at

00:11:18

the beginning like a Quentin

00:11:19

Tarantino movie. But so if

00:11:23

we assume were talking about

00:11:24

a claim in although this

00:11:26

is also potentially relevant for

00:11:28

respondents as well. Let's assume

00:11:31

or Ultimate Gold is money

00:11:33

damages our ultimate goal with

00:11:34

this later to be a

00:11:36

lot of things but we

00:11:37

assume it's money damages. Just

00:11:40

getting an award doesn't mean

00:11:41



that the money is in

00:11:43

our client's pocket. You might

00:11:46

think of it like I'm

00:11:47

not sure if this is

00:11:48

an entirely apt analogy, but

00:11:51

I'm going to try it

00:11:52

if if you think of

00:11:54

the arbitration process like ordering

00:11:57

a package online. It's your

00:12:00

the package you click on

00:12:01

the box and and then

00:12:03

your package gets on a

00:12:05

plane or a big truck

00:12:06



to a distribution center. And

00:12:08

there's a different truck that

00:12:09

then brings it the last

00:12:10

mile to your house. When

00:12:14

you get the award is

00:12:15

almost like your your package

00:12:16

is the distribution center, but

00:12:19

now you have to figure

00:12:19

out how is it going

00:12:21

to reach your house? How

00:12:22

is that money going to

00:12:23

reach your client pocket so

00:12:25

we can do a handful

00:12:28



of questions as like, how

00:12:30

is that going to happen?

00:12:30

You might ask is the

00:12:33

responding going to voluntarily pay

00:12:35

does does the respondent have

00:12:38

a history of complying with

00:12:40

arbitration Awards? You can look

00:12:43

that up for press operator

00:12:44

responded. You might have an

00:12:47

experience with a frequent counterpart

00:12:49

and it will tell you

00:12:50

a little bit about whether

00:12:52

they're likely to pay an

00:12:53



award my task. Is there

00:12:56

a line of other creditors

00:12:57

waiting to seize assets of

00:13:01

the same responded that we

00:13:03

seen that in Venezuela and

00:13:04

Citgo. Can ad and an

00:13:07

entire new degree of complexity

00:13:09

to the process. You might

00:13:12

also ask if there are

00:13:13

other impediments to enforcement if

00:13:16

you're if you're responding is

00:13:18

an intra EU is an

00:13:20

EU State and it's an

00:13:21



entry you arbitration now, we

00:13:23

might be dealing with that.

00:13:24

Give me a compass for

00:13:25

a problem. So that's another

00:13:26

impediment to enforcement. A little

00:13:31

bit more about some of

00:13:32

those issues in terms of

00:13:33

Acme. So if you're in

00:13:38

case you're not familiar with

00:13:39

me and Tom are a

00:13:40

couple of judgments from the

00:13:42

court of justice of the

00:13:43

European Union, which purport to

00:13:46



Hibbett the arbitration of Entry

00:13:51

you disputes pursuant to treaties

00:13:53

between investors and states. Try

00:13:57

not to listen to microphone

00:13:58

again. So many Elders award

00:14:04

holders of intra EU arbitration

00:14:07

Awards against Auburn State might

00:14:10

think twice before trying to

00:14:12

enforce them in the EU

00:14:14

against an EU State cuz

00:14:16

that's likely be very difficult.

00:14:18

If not impossible which might

00:14:21

lead them to look elsewhere

00:14:22



for assets United States. For

00:14:25

instance. I think we're familiar

00:14:26

with some enforcement actions against

00:14:28

Spain particular year in the

00:14:30

United States do United Kingdom

00:14:33

Australia. What do you know?

00:14:35

These are jurisdictions where you

00:14:37

have to consider are there

00:14:39

likely to be assets in

00:14:41

those jurisdictions and assets that

00:14:43

are maybe not subject to

00:14:46

sovereign immunity expenses are they

00:14:48

assets that are used for

00:14:52



commercial purposes that that could

00:14:54

be exempt from sovereign immunity.

00:14:57

Pickled questions. I think he

00:14:59

the overarching point stepping back

00:15:01

a little bit is why

00:15:02

why do we have to

00:15:04

think about these questions before

00:15:06

we start an arbitration in

00:15:09

importance to tell her our

00:15:10

expectations in our client's expectations

00:15:12

with regard to to the

00:15:15

time this likely to take

00:15:16

to achieve their end goal

00:15:18



with with regard to the

00:15:20

cost that is likely to

00:15:22

take to get to achieve

00:15:23

that goal and it could

00:15:25

inform strategic decisions like their

00:15:29

openness to negotiating their openness

00:15:31

to to a settlement offer

00:15:32

and what the threshold of

00:15:35

an attractive settlement offer might

00:15:37

be Let me see the

00:15:39

way you're describing. It sounds

00:15:40

almost like a client might

00:15:41

be like a an eager

00:15:42



kid trying to get like

00:15:43

two and two slice of

00:15:44

pizza or some candy like

00:15:45

split it out and wait

00:15:46

out. Do you know that's

00:15:48

a conversation we need to

00:15:49

have right away with the

00:15:51

client. I mean is that

00:15:51

is that something that that

00:15:53

that comes up quite frequently

00:15:55

you sent that in your

00:15:56

practice clients have an awareness

00:15:58

of this. Is it is

00:15:59



it something that that comes

00:16:01

up? I think they tend

00:16:02

to be aware to some

00:16:04

degree. And and I also

00:16:06

think of the conversation that

00:16:08

death probably takes place after

00:16:12

doing diligence about the underlying

00:16:15

claims to see if there's

00:16:18

a there there but still

00:16:20

at the at the early

00:16:21

stages before commencing in arbitration

00:16:25

at will say I think

00:16:26

that is a conversation that

00:16:28



can be had even further

00:16:30

before a claim arises is

00:16:32

a conversation you might have

00:16:33

when drafting a dispute resolution

00:16:36

Claus in an I think

00:16:40

this is an excellent subject

00:16:43

and ID and I think

00:16:44

that it's you know, we

00:16:45

have many people not into

00:16:46

who may be counselors by

00:16:48

because we have to have

00:16:49

people who are arbitrators aspire

00:16:51

to be arbitrators something that

00:16:53



from the arbitrator's respected. They

00:16:54

also have two to think

00:16:56

about and consider. You're at

00:16:59

the arbitrators maybe to a

00:17:02

lesser extent. Although they made

00:17:04

as a controversial statement. I

00:17:07

would think that that a

00:17:09

tribunal should always have in

00:17:11

mind rendering an enforceable award.

00:17:17

Weather weather a tribunal would

00:17:21

have in mind the enforcement

00:17:24

of that award in in

00:17:25

any jurisdiction across the globe

00:17:27



without necessarily be a focus

00:17:29

on the rules of the

00:17:30

seed. I'm not I'm not

00:17:32

sure about it be interested

00:17:33

to know if others have

00:17:34

abused her. I mean certainly

00:17:36

you would think that the

00:17:38

tribunal has to keep in

00:17:39

mind all of the award

00:17:43

under the under the law

00:17:45

of the sea product award

00:17:54

at the providing to the

00:17:55

parties is enforceable in this

00:17:57



is something I mean that

00:17:58

I think it's a little

00:17:59

bit beforehand is something that

00:18:00

even institutions worry about so,

00:18:02

I mean by the ICC,

00:18:05

I think it's worth mentioning

00:18:06

that I succeed self conduct.

00:18:08

The review process has a

00:18:11

checklist that it goes through

00:18:12

with the a panel of

00:18:13

experts from different jurisdictions to

00:18:15

look at to make sure

00:18:16

there's no Procedural irregularities or

00:18:18



formulaic Eric regularities in you

00:18:21

be surprised you can catch

00:18:22

math mistakes and things like

00:18:24

that before they left your

00:18:25

work truck the door. So

00:18:26

it's something that's considered a

00:18:30

deep does the rest of

00:18:31

it, but I don't have

00:18:31

any thoughts on on this

00:18:32

question of enforcement from my

00:18:34

perspective of a council arbitrator

00:18:37

institution. Acme of comes to

00:18:41

a problem and we are

00:18:42



still seeing a number of

00:18:44

tribunals issue Awards under entropy

00:18:46

you VIPs and multilateral treaties

00:18:51

and it hasn't seemed to

00:18:53

stop them. So I think

00:18:55

when you're when you're thinking

00:18:57

about what will make an

00:18:58

award enforceable, they're different categories,

00:19:00

they're different buckets. And I

00:19:02

think he brought up his

00:19:03

jurisdiction. Like well may not

00:19:06

be enforceable in the European

00:19:07

courts, but you can probably

00:19:08



get it enforced in the

00:19:09

UK in the US if

00:19:10

you have assets there. I'm

00:19:13

just another point to add

00:19:15

to that, you know taking

00:19:17

the store if you have

00:19:20

Focus transfer a lot on

00:19:22

compensation and and having the

00:19:24

award be something back as

00:19:26

compensatory. I have actually in

00:19:29

my experience had a lot

00:19:30

of questions from tribunals particularly

00:19:33

in investor-state arbitration is that

00:19:36



are seated not in arbitration

00:19:39

that are seated in certain

00:19:41

jurisdictions and something that often

00:19:43

comes something that they're all

00:19:45

can carry us about is

00:19:46

the enforceability of non-pecuniary damage

00:19:49

type of warts if you're

00:19:51

asking for interim relief for

00:19:52

asking for some tripping chunk

00:19:55

of relief that is I

00:19:56

think something has often come

00:19:59

up and get o s

00:20:01

s might be curious about

00:20:03



it because it's not always

00:20:04

obvious weather that kind of

00:20:06

release is available at the

00:20:08

seat. Is now that you

00:20:13

know mediation funding arbitration funding

00:20:17

has become so prevalent in

00:20:19

many ways. And these are

00:20:21

more used to using an

00:20:22

I think enforcement from the

00:20:26

point of your collection is

00:20:28

absolutely clear from day one

00:20:29

if you're thinking about you

00:20:30

and funding so the first

00:20:33



thing that you have to

00:20:34

think about it's going to

00:20:36

be that so I think

00:20:37

in the end that sends

00:20:37

three important if you are

00:20:40

really considering that Alex is

00:20:43

going to be question number

00:20:44

one night. I just started

00:20:47

working because this is all

00:20:49

so, of course presuming that

00:20:50

you're on the claim inside

00:20:51

for the darker side of

00:20:52

all this is if you

00:20:52



have a judgement proof client

00:20:54

is on the respondent side

00:20:55

of a weirdo claimants in

00:20:59

case that has No assets

00:21:10

is also this is something

00:21:12

that comes up or if

00:21:13

they have Assets in in

00:21:14

offshore jurisdictions are you know,

00:21:16

there's these days for better

00:21:19

or worse there. There's a

00:21:20

lot of complexity in that

00:21:21

recovery process, which is never

00:21:23

to be used in in

00:21:25



in arbitration more important than

00:21:31

that, which is really about

00:21:35

success. Okay. So, I mean

00:21:36

that you cannot enforce award

00:21:38

if you don't have an

00:21:38

award or maybe you have

00:21:40

you know, you're not going

00:21:41

to want to enforce the

00:21:41

word unless it's a good

00:21:42

word for you to talk

00:21:45

about just some of the

00:21:47

considerations you want to think

00:21:48

about in terms of of

00:21:49



the prospect of success is

00:21:51

not only about the actual

00:21:52

Prospect of it. But but

00:21:53

how to how to manage

00:21:55

that with your client, so

00:21:57

I was wondering if you

00:21:58

had any thoughts on on

00:22:01

at one point you think

00:22:02

about this how you think

00:22:02

about this how you communicate

00:22:05

about these sorts of subjects

00:22:06

as well? You everyone for

00:22:10

attending on spending your Wednesday

00:22:13



evening with us? Sorry, I

00:22:15

did that should not have

00:22:16

been a question. And I

00:22:16

had I think you know,

00:22:20

it was everything interesting to

00:22:23

me that Diego. I'm started

00:22:24

off the panel by single

00:22:26

enforcement is often kind of

00:22:28

the first question on a

00:22:29

lot of clients Minds is

00:22:31

there thinking about whether or

00:22:32

not to initiate an arbitration

00:22:34

and I think that that

00:22:35



is in 3 Singley becoming

00:22:37

true for a potential claimants

00:22:39

and investors State arbitration certainly

00:22:41

because you are quite concerned

00:22:43

him. You're going to go

00:22:44

through this 23 or process

00:22:46

against the state. Y'all know

00:22:48

if they're at they have

00:22:48

enough assets to satisfy your

00:22:50

judgment. I mean these awards

00:22:52

are at the claims at

00:22:53

least are sometimes in the

00:22:54

billions of dollars. You don't

00:22:56



even know if the state

00:22:57

has that much money in

00:22:58

their coffers let alone whether

00:23:00

they be willing to pay

00:23:01

you and how hard they'd

00:23:02

fight, but When it comes

00:23:06

to commercial arbitration, I do

00:23:08

think that what what tends

00:23:10

to be on on Bose

00:23:11

client's mind. This is more

00:23:13

of the prospects of success

00:23:14

because often times you're in

00:23:16

either an ongoing commercial relationship

00:23:19



with your counter party that

00:23:20

you're going to be arbitrating

00:23:22

against or you know, you're

00:23:24

potentially want to engage with

00:23:26

the counterparty again. And so

00:23:29

if you are going to

00:23:30

be initiating this arbitration on

00:23:32

a commercial arbitration the the

00:23:35

prospects of success both on

00:23:37

in the arbitration, but also

00:23:40

and I think we're going

00:23:41

to hear about this a

00:23:41

little bit later with respect

00:23:43



to your overall objective your

00:23:44

overall commercial objective becomes very

00:23:47

important and took to me

00:23:51

at least that that's nice.

00:23:52

I will say that most

00:23:53

of the client to come

00:23:54

with a potential commercial arbitration

00:23:57

and I are very worried

00:23:58

about the prospects of success.

00:24:01

He R6S Define more broadly,

00:24:02

you know, not just success

00:24:05

with Back to the arbitration

00:24:06

but success with respect to

00:24:07



the commercial objective that they

00:24:09

have and I think that

00:24:11

that tends to be at

00:24:13

the center at the Forefront

00:24:14

of their minds because generally

00:24:17

speaking enforcement against another kind

00:24:19

of commercial entities is not

00:24:20

really a worry for most

00:24:22

of these kinds of cases.

00:24:26

Happy to stop there and

00:24:27

ask but it also happy

00:24:29

to go look at the

00:24:36

potential for success. I find

00:24:38



in my practice. Sometimes I

00:24:39

have one. Sometimes. I almost

00:24:40

always have client to. Maybe

00:24:45

see things through Rose Colored

00:24:46

Glasses or have an idea

00:24:49

of the facts and what

00:24:49

can be proved in her

00:24:51

or her to come with

00:24:53

their own conclusions sometimes and

00:24:56

there's a sort of process

00:24:57

of analyzing that as opposed

00:24:59

to just taking it and

00:25:00

running it just to sort

00:25:01



of a critical intake process

00:25:03

there and I was wondering

00:25:04

how you how you look

00:25:06

at the question of the

00:25:08

facts presented to you by

00:25:09

your clients how you look

00:25:11

at the legal arguments that

00:25:14

your clients are very excited

00:25:15

or confident about how USS

00:25:18

that in in in how

00:25:19

you deal with clients and

00:25:21

at that early stage a

00:25:23

question because you know, and

00:25:27



I think we were speaking

00:25:27

about this in preparation for

00:25:29

for this talk. But the

00:25:32

people that bring you the

00:25:34

arbitration are in the client

00:25:37

whether it's yeah, what organizational

00:25:39

unit within the client or

00:25:41

whether it's just the individuals

00:25:42

for bringing the arbitration. They

00:25:46

don't have an in-house legal

00:25:47

department and is just a

00:25:49

bunch of individuals, but the

00:25:50

people are generally bringing the

00:25:52



keys to you have a

00:25:53

very very rarely actually live

00:25:55

the case that giving rise

00:25:56

to the arbitration. And so

00:25:58

what you often find is

00:26:00

that not only are the

00:26:02

facts and and the case

00:26:05

that's pink Rosetta to you

00:26:06

as a potential case. Not

00:26:08

only are there holes in

00:26:10

the in the story that's

00:26:12

being told to you because

00:26:13

you don't have the complete

00:26:14



information. You're getting a second

00:26:16

round at the best maybe

00:26:17

third had met before it

00:26:18

happened, but your butt but

00:26:20

their perspective is also colored

00:26:23

by the role that they

00:26:25

occupy in that organizational unit.

00:26:28

Right? So you might imagine

00:26:29

that someone like an in-house

00:26:31

counsel might be more risk-averse

00:26:34

and maybe they don't want

00:26:35

to get no necessarily proceed

00:26:37

with the arbitration. Whereas maybe

00:26:40



somebody who is involved in

00:26:42

the day-to-day. assist you to

00:26:45

hate their counterparty really wants

00:26:48

to go ahead and litigate

00:26:49

the Yeah, I'm trying to

00:26:52

not think of a swear

00:26:53

word here that really wants.

00:26:56

This arbitration so they might

00:27:00

have a much more aggressive

00:27:01

a much more optimistic you

00:27:03

at the arbitration right? You

00:27:07

have to eat those considerations

00:27:09

into account when you're getting

00:27:10



the story when you're getting

00:27:12

this case and figure out

00:27:13

well, okay, who is it

00:27:15

was actually live through the

00:27:16

fact that this arbitration. Let

00:27:18

me go talk to them

00:27:19

but doesn't always happen right?

00:27:21

They might not be available.

00:27:23

Sometimes it's the CEO of

00:27:26

the organization. They're not going

00:27:27

to give you you know,

00:27:28

and now we're out of

00:27:29

Thursday to just talk to

00:27:30



you about this dude there.

00:27:33

They might not be around.

00:27:34

You know, I've been involved

00:27:36

in disputes where some of

00:27:39

the key events. I'm actually

00:27:41

involved in a dispute right

00:27:42

now. Where is the key

00:27:43

events took place before I

00:27:45

was born in I'm old

00:27:46

so, you know and then

00:27:49

a lot of people involved

00:27:50

in that dispute are either

00:27:52

dad or Advanced stages of

00:27:54



dementia and you know, Remember

00:27:56

talking to some of these

00:27:57

individuals and just you know,

00:27:58

it was it was a

00:28:00

process to understand what actually

00:28:03

happened 40 years ago. So

00:28:05

it is it's a challenge

00:28:09

to to take that incomplete

00:28:12

puzzle piece and then add

00:28:13

back the missing pieces through

00:28:16

these conversations. And then also

00:28:19

what size I mean obviously,

00:28:20

you know where where lawyer

00:28:22



isn't the one thing we

00:28:22

could use you at least

00:28:24

one one of the reasons

00:28:25

people come to us has

00:28:26

its Juju kind of that

00:28:27

objektiv legal analysis. Once you

00:28:30

hop it back and be

00:28:33

able to provide an answer

00:28:35

to the client that is

00:28:36

objective and that you don't

00:28:38

takes away our removes the

00:28:40

filters through which the case

00:28:43

might have originally been presented

00:28:44



to you. I think that's

00:28:48

that's that's a critical part

00:28:50

of the work that that

00:28:51

we do an end as

00:28:53

I'm listening to him. In

00:28:53

this case, for example of

00:28:54

events that happened before you

00:28:57

were born and Witnesses. I

00:28:59

might have dementia there's one

00:29:00

question which is getting to

00:29:01

the truth. And then there's

00:29:03

another question of proving the

00:29:04

truth to the tribunal and

00:29:06



I find that also to

00:29:07

be a you know, when

00:29:09

you have situations where client

00:29:10

tells you something that they

00:29:11

believe with every cell in

00:29:12

your body and you hear

00:29:14

it and you believe it

00:29:15

too but the question is,

00:29:16

how are we going to

00:29:17

get this tribunal to leave

00:29:18

this? Damn? I might just

00:29:19

landed from maybe maybe you're

00:29:20

having this is just not

00:29:21



admissible. So there's there's there's

00:29:25

A long road to long

00:29:27

road to get to the

00:29:27

to the award and end

00:29:29

in of course, even further

00:29:30

down the line to enforcement

00:29:31

Mike into evaluating The credibility

00:29:36

and availability of the Witnesses

00:29:38

in the evidence. One thing

00:29:41

to think about his willingness

00:29:42

of of your witnesses to

00:29:44

testify even if they are

00:29:45

generally available, even if they

00:29:47



are they seem credible are

00:29:50

they willing to testify and

00:29:51

we had a case recently

00:29:53

where one of the other

00:29:55

side's witness is submitted a

00:29:57

witness statement signed at the

00:29:58

beginning of the arbitration. If

00:30:01

you ain't came along we

00:30:02

exchanged witness list. He was

00:30:04

on the list evil be

00:30:06

hearing we hear from opposing

00:30:08

counsel that he's not going

00:30:09

to be at the hearing

00:30:10



and say well that's strange

00:30:13

white your why was that

00:30:14

and the funeral wrote to

00:30:16

the other side asking for

00:30:19

an explanation as it turned

00:30:20

out he was originally reluctant

00:30:23

to submit a witness statement

00:30:24

and testify but the other

00:30:25

side didn't disclose that fact

00:30:28

that the tribunal in the

00:30:29

tribunal was very upset about

00:30:30

that to happen to be

00:30:32

a Swiss seated arbitration. So

00:30:34



the tribunal has ordered two

00:30:36

beautiful assistance under the Swiss

00:30:38

Pila. We convened a whole

00:30:40

new hearing we brought the

00:30:41

witness to the hearing and

00:30:43

you refuse to answer any

00:30:44

questions. So the tribunal totally

00:30:47

ignored his testimony rejected that

00:30:49

way. It was said in

00:30:50

support of that jurisdiction with

00:30:52

Jackson projected that jurisdictional objection

00:30:54

and was a good result

00:30:55

for us, but it's a

00:30:57



kind of party is done.

00:30:58

Maybe some more diligent about

00:30:59

that party is That witness

00:31:02

is willingness to testify it

00:31:04

could have been it could

00:31:06

have avoided that situation. That's

00:31:09

a very interesting case. When

00:31:13

do you have any thoughts

00:31:13

on that beat or two

00:31:15

questions about the prospect of

00:31:16

success and and how that

00:31:18

say. I mean, I think

00:31:21

first not to believe whatever

00:31:33



they tell you. Don't don't

00:31:34
buy it. I think I

00:31:35
think there's an issue sometimes.

00:31:37
Rarely at the beginning of

00:31:38
the case where that's difficult

00:31:40
because I mean does it

00:31:42
cost to go into piles

00:31:43
of documents? So sometimes you

00:31:46
you end up and I

00:31:47
can give you an opinion

00:31:48
based on a set of

00:31:52
facts if you if these

00:31:53
are the correct. This is

00:31:55



my opinion and that's really

00:32:00

hard at the beginning because

00:32:01

cost sometimes I was going

00:32:03

to get to it maybe

00:32:04

later but we can mention

00:32:05

you just mention funding. Funny

00:32:09

and you know if maybe

00:32:10

a client is willing to

00:32:11

invest a bit of money

00:32:12

in having lawyers look at

00:32:14

the documents and then you

00:32:15

have an opinion with footnotes

00:32:18

document and then if I

00:32:20



can go look at the

00:32:21

look at the documents they

00:32:22

all yet. There's something really

00:32:24

here. I mean that's going

00:32:26

to button on the same

00:32:28

time. It's going to be

00:32:29

much better for the client

00:32:30

to make a decision to

00:32:31

say yes for the trigger.

00:32:33

Let's have an arbitration it

00:32:34

seemed best whatever it is

00:32:35

going to cost, you know

00:32:37

where he's standing at the

00:32:40



beginning consideration because I mean

00:32:46

before you're getting to enforce

00:32:47

when you have to think

00:32:48

about how am I going

00:32:49

to file this are we

00:32:49

going to win? This is

00:32:50

a worthwhile to invest the

00:32:51

time money. I mean, it's

00:32:53

it's not only the cost

00:32:54

that that, you know, the

00:32:56

the money paid to lawyers

00:32:57

in Reno and traveling, and

00:32:59

everything else, but it's also

00:33:00



the time when clients have

00:33:01

to devote an incredible amount

00:33:03

of their their their people's

00:33:05

time some people, you know

00:33:06

end up distracted from their

00:33:07

main job. Because they're helping

00:33:09

be Witnesses in in proceedings

00:33:11

that brings us to another

00:33:14

consideration that essential for resettlement

00:33:22

in I don't know you

00:33:25

had any thoughts on this

00:33:26

idea of settlement in and

00:33:28

when you start of at

00:33:29



one point, you should think

00:33:30

about that how you should

00:33:31

go about considering that are

00:33:32

quite sure what I would

00:33:34

say early and often. I

00:33:36

guess. I just have an

00:33:38

anecdote about settlement. We we

00:33:41

represented a pharmaceutical company in

00:33:44

a potential dispute with a

00:33:45

supplier. It was a long-term

00:33:47

Supply contracts. We thought it

00:33:51

was inevitable that the dispute

00:33:53

would go to arbitration. But

00:33:56



because the parties positions were

00:33:58

very far apart. We started

00:34:01

negotiating none the less we

00:34:04

put together. for the best

00:34:05

sensitivity analysis of the possible

00:34:08

settlement scenarios and as part

00:34:12

of that analysis, will you

00:34:13

sort of ballpark be put

00:34:15

together a model that let

00:34:16

us play with different likelihood

00:34:19

of success for the parties

00:34:20

on on the merits on

00:34:22

objections on Quantum that would

00:34:26



allow us to play with

00:34:28

how you know, how much

00:34:29

legal fees and cost would

00:34:32

be for each party's what's

00:34:33

the likelihood that the tribunal

00:34:35

will award costs and fees

00:34:36

to the losing party and

00:34:39

that allowed us to to

00:34:40

figure out where where where

00:34:41

is the where is the

00:34:43

breaking point at which it

00:34:45

becomes more advantageous to say,

00:34:48

let's go let's go to

00:34:49



arbitration because we're never we're

00:34:51

never going to add that

00:34:53

that figure that settlement figure

00:34:55

is going to be too

00:34:56

much for us or Turn

00:35:00

on the other side of

00:35:01

that figure. That's a settlement

00:35:03

that we can live with

00:35:04

because the risk-weighted likelihood of

00:35:08

a damages award in individual

00:35:11

arbitration would be greater than

00:35:13

than that settlement figure ultimately.

00:35:15

It allowed us to to

00:35:16



come up with a figure

00:35:17

that worked and then we

00:35:19

reached a settlement that was

00:35:21

was something beneficial for both

00:35:23

parties. I I completely agree

00:35:28

with that and I think

00:35:29

you would find that a

00:35:30

lot of cases. The clients

00:35:36

don't necessarily intend to see

00:35:38

the end of the arbitration

00:35:39

come about ever the arbitration

00:35:42

might be initiated very strategically

00:35:45

for the very purpose of

00:35:47



bringing about a settlement right?

00:35:49

I'm like that all the

00:35:51

time because it's it's it

00:35:53

is relatively inexpensive to you

00:35:56

know, filing notice of arbitration

00:35:57

and that's 10 pages are,

00:35:58

you know, kind of bare

00:36:00

minimum standards that you needed

00:36:02

to but it can be

00:36:03

expensive to respond as can

00:36:06

be expensive for the operations

00:36:08

ongoing operations. And in a

00:36:11

frankly just incentivize the parties

00:36:13



to go ahead and settle

00:36:15

and for that reason even

00:36:18

you'll also see this happen

00:36:19

to be sent the budget

00:36:22

permits this to happen having

00:36:25

a completely separate teams and

00:36:27

place for settlement and for

00:36:30

the arbitration and they don't

00:36:32

talk to each other because

00:36:33

you wanted me Came about

00:36:34

through the barrier between the

00:36:36

good cop and bad cop

00:36:37

and you want the arbitration

00:36:39



to go ahead as aggressively

00:36:41

as possible while at the

00:36:42

same time extending the Olive

00:36:45

Branch to your account of

00:36:47

partying and having them come

00:36:50

to you once they've had

00:36:51

enough of your side at

00:36:58

the very beginning with his

00:36:59

early and often and it's

00:37:01

that often point. I think

00:37:02

in the in the US

00:37:05

courts, unless Miller with other

00:37:06

domestic court's been the escorts

00:37:08



at least there are ample

00:37:09

opportunities throughout the course of

00:37:11

a litigation for settlement and

00:37:14

there are tools in the

00:37:15

courts toolbox to kind of

00:37:17

forced the parties to a

00:37:19

negotiating a remediation table. At

00:37:21

least. I have a conversation

00:37:22

and one of the things

00:37:24

that I've noticed about that

00:37:26

is that it eliminates this

00:37:27

perception of showing weakness for

00:37:29

The Other Side by post

00:37:31



and the potential for settlement.

00:37:34

Arbitration frequently you don't have

00:37:36

those moments and you don't

00:37:38

have a piano or tribunal

00:37:40

who can or will say

00:37:42

have you guys considered remediation

00:37:47

talk? And so one thing

00:37:48

to think about as you're

00:37:50

initiated an arbitration is he

00:37:52

one of the advantages of

00:37:54

arbitration right is the flexibility

00:37:55

in here and be able

00:37:56

to put together your own

00:37:57



procedural rules. So can you

00:37:59

build in inflection point where

00:38:02

you're going to at the

00:38:04

outset say to the other

00:38:05

side we'll talk again after

00:38:07

the red print schedules in

00:38:10

the production of documents or

00:38:11

we'll talk again after the

00:38:13

initial exchange of memorials so

00:38:15

that your kind of eliminating

00:38:16

that sense of I'm showing

00:38:19

weakness. I like now. It

00:38:20

looks like I don't believe

00:38:21



in my case and then

00:38:22

I can take you seriously

00:38:23

if you try and settle

00:38:25

I think that's that's an

00:38:27

excellent point in might actually

00:38:28

just reminded me that was

00:38:29

recently a publication by the

00:38:30

ICC about the role of

00:38:32

arbitrators and helping clients that

00:38:34

alert came out I think

00:38:35

in the last month or

00:38:36

so and in one of

00:38:37

the fourth dimension that I

00:38:38



don't know if any of

00:38:38

y'all have experience with this

00:38:39

is exactly color Kaplan intro.

00:38:41

So it's at the introduction

00:38:42

of their the hearings begin

00:38:43

with this a little bit

00:38:44

more of a probatoria approach

00:38:46

to to to the case

00:38:48

and info for the begin

00:38:50

to tease out some of

00:38:51

the issues and understanding where

00:38:53

and when there might be

00:38:54

a potential first settlement in

00:38:56



one of the other interesting

00:38:57

things that dimensions in the

00:38:58

publication is is this idea

00:39:00

of an in Germany many

00:39:01

german-speaking jurisdictions. You have an

00:39:04

ability for judges to give

00:39:05

you their Impressions on a

00:39:06

Case earlier early on to

00:39:08

American lawyers, but you do

00:39:15

get this sort of a

00:39:16

hint about where things may

00:39:18

be going which can sometimes

00:39:20

encourage settlement. I was wondering

00:39:23



if you all have had

00:39:24

any Experiences with the arbitrator's

00:39:27

playing reproductive or properly counterproductive

00:39:29

role in this respect. I

00:39:34

think what you're describing of

00:39:35

absorb. I think what you're

00:39:38

describing sounds a lot like

00:39:40

mediation here right where you

00:39:42

have a mediator basically tell

00:39:44

the parties where if they

00:39:46

are Betrayed at they would

00:39:47

they would get, that had

00:39:49

experiences in my contacts. But

00:39:50



I mean the German system

00:39:53

sounds very helpful. Actually. It

00:39:56

would be nice to get

00:39:56

a read from the arbitrator

00:39:58

as to where things are

00:40:00

going sooner rather than later.

00:40:02

We we did have a

00:40:04

Kaplan opening and it in

00:40:06

one of our cases but

00:40:07

his years ago now, but

00:40:09

as I recall it was

00:40:10

it was less. It seems

00:40:13

less about your the prospect

00:40:14



of settlement as simply another

00:40:17

opportunity for the parties to

00:40:19

present their cases in an

00:40:21

initial form a later morphed

00:40:24

a little bit. But as

00:40:26

I recalled that I don't

00:40:28

think that it was settlement

00:40:29

really played into it for

00:40:30

either side, but are our

00:40:31

positions may have been barely

00:40:32

stayed out by then. No,

00:40:37

I've had happened right before

00:40:41

the final hearing with you

00:40:42



divorce. So you examples of

00:40:50

no not really helping but

00:40:53

ultimately decided to settle maybe

00:40:57

the scientific approach like the

00:40:59

one you suggested. It was

00:41:00

really cool. Yeah, I mean

00:41:03

no no, no not in

00:41:04

my experience importunate, which we

00:41:11

think is important to 131

00:41:15

subject. I'm at the cabin

00:41:17

and other procedural considerations or

00:41:19

or the methods that that

00:41:21

should be considered by a

00:41:23



party or Again by arbitrator

00:41:25

or fondant in for for

00:41:29

an arbitration. Go ahead. So

00:41:31

so I'm assuming there's there's

00:41:33

an arbitration agreement then you're

00:41:35

going to go to arbitration.

00:41:36

But before you do that,

00:41:37

you should you should lay

00:41:39

out what other options you

00:41:40

have before starting yoga tration,

00:41:43

Ivysaur were talking about so

00:41:45

you should you should really

00:41:46

think what options you have

00:41:48



before courts before starting the

00:41:50

arbitration what sort of procedures

00:41:53

you can you can file

00:41:54

in Aid of arbitration and

00:41:57

I will soon as you

00:41:57

can see our options within

00:41:58

the ICC rules. For example,

00:42:00

by the way, I'm used

00:42:02

to be an ICC. Yes.

00:42:03

No, yes. No, maybe our

00:42:07

component. I will refer to

00:42:10

that which is so I

00:42:14

think I think before you

00:42:15



started arbitration you you should

00:42:16

sing and you can go

00:42:18

to the court and they

00:42:19

can really help you improve

00:42:21

your case in many ways.

00:42:22

You know now it's become

00:42:24

very common to use section

00:42:25

1782 can the US. Do

00:42:27

you have obtained the documents

00:42:29

that for that? Patrician going

00:42:32

but that's an example. You

00:42:33

can also get an injunction

00:42:35

before you start the arbitration

00:42:37



you can think of things

00:42:41

that can help you improve

00:42:44

your chances of success were

00:42:45

eventually securing, you know collection

00:42:50

and I would also if

00:42:53

you get an attachment of

00:42:55

some sort of an injunction

00:42:56

or something it's a pressure

00:42:57

points. So when your thing

00:42:59

about settlement the more pressure

00:43:02

points you have you know,

00:43:03

the better chances or do

00:43:04

you have more leverage? So

00:43:06



you should also think about

00:43:07

that head of an arbitration

00:43:10

within the ICC world. You

00:43:12

can get an emergency arbitrator

00:43:14

to get an injunction for

00:43:16

example of some kind of

00:43:17

precautionary measure for you actually

00:43:20

started irritation. ICC has a

00:43:25

mediation set of rules, which

00:43:29

are good. I think they're

00:43:32

becoming I don't have experience

00:43:33

with them. I understand they're

00:43:35

becoming more and more used

00:43:37



to be the nice thing

00:43:40

of mediation. I know how

00:43:42

familiar people are with it.

00:43:43

And I'm from Argentina. Originally.

00:43:45

We have mandatory mediation before

00:43:47

mediation. So people are very

00:43:49

used to it. You have

00:43:50

a neutral that will fulfil

00:43:52

different roles than ice thing.

00:43:54

It's it's super flexible. You

00:43:56

can you know, if roses

00:43:58

will work. However, you want

00:43:59

it to be the neutral

00:44:01



will operate in whichever way

00:44:03

you want it to be

00:44:04

can suggest Solutions or it

00:44:07

can be more in a

00:44:08

simply bring the parties together

00:44:10

without actually suggesting you can

00:44:11

speaking whatever you want. The

00:44:13

nice thing is you can

00:44:14

have these I think it's

00:44:16

quite cheap. I was looking

00:44:17

at they cost to cheap

00:44:19

solution really. I'm going before

00:44:25

the arbitration in parallel, you

00:44:29



know the mediator if the

00:44:30

parties agree can also become

00:44:31

the arbitrator later on. I

00:44:34

mean, I don't think that's

00:44:35

advisable rolling out but that's

00:44:37

super flexible. So, you know,

00:44:41

it's almost as you know,

00:44:45

you can give it a

00:44:47

try the problem with that

00:44:48

is of course enforcement. It's

00:44:50

you will end up with

00:44:52

with basically a contract which

00:44:55

is the settlement but if

00:44:57



you're doing it while you

00:44:58

have an arbitration, I'm going

00:45:00

you could put that agreement

00:45:02

we can send a work

00:45:03

so they can send the

00:45:04

word will end up marrying,

00:45:06

you know covered by the

00:45:07

New York convention, which is

00:45:09

says the beauty of arbitration

00:45:11

at the end of the

00:45:11

day, so CID, I think

00:45:14

those are things to hear

00:45:17

you mention all this because

00:45:18



I think that there was

00:45:20

at some point or still

00:45:21

is to some extent this

00:45:22

assumption that that that mediation

00:45:25

or some of these alternate

00:45:26

procedures are already only for

00:45:27

smaller value disks you but

00:45:29

I think now it is

00:45:30

you're fighting with some of

00:45:31

the largest disputes people interested

00:45:33

mediation or not. It not

00:45:34

only that but even expedited

00:45:36

proceedings. I just get this

00:45:37



over with in a year

00:45:38

even for a large just

00:45:40

you just because of the

00:45:41

hassle of of of a

00:45:42

proceeding. So I think to

00:45:43

look at those sweets of

00:45:44

options is something that that

00:45:47

that needs to be done

00:45:47

and as earlene importantly in

00:45:51

the process to walk for

00:45:56

it is is the final

00:45:57

consideration before your arbitration. Most

00:46:01

important is really decide. What

00:46:03



if your client 1, I

00:46:04

mean, what is the ultimate

00:46:05

objective here in in potatoes?

00:46:07

Wondering if you could help

00:46:08

us out and had unpack

00:46:09

that a bit. Sure, I

00:46:12

happy to get us started

00:46:12

on that when I'm sure

00:46:13

Michael panelist will have lots

00:46:15

of thoughts on this as

00:46:16

well cuz it is a

00:46:17

critical consideration and I think

00:46:20

it sounds like it should

00:46:21



be a really easy question

00:46:23

to answer and it is

00:46:24

not always a really easy

00:46:26

question to answer. So do

00:46:28

you have a mention at

00:46:28

the outset that I am

00:46:29

a pro bono kid. I

00:46:30

came with a human rights

00:46:32

background to arbitration inside is

00:46:36

used to coming from a

00:46:37

world where there's a lot

00:46:38

of emotion and passion and

00:46:40

subjectivity for my clients cuz

00:46:42



they are living the the

00:46:44

cases that were bringing. I

00:46:46

wasn't quite prepared for that

00:46:48

to also be the case

00:46:49

when you're dealing with companies

00:46:50

in sovereign states, but it

00:46:52

was very frequently is the

00:46:54

case that the clients are

00:46:55

dealing with have strong emotions

00:46:57

and they feel very deeply

00:46:59

and passionately about the situation

00:47:01

that they found something and

00:47:02

they're coming to us as

00:47:04



litigators because they're in a

00:47:07

crisis point on so they're

00:47:09

coming out of very vulnerable

00:47:10

time. For there for their

00:47:12

companies and often for for

00:47:13

themselves personally as well. And

00:47:15

I think it's really critical

00:47:17

to keep that in mind

00:47:18

when you're having these initial

00:47:19

conversations with your client that

00:47:21

this is not necessarily going

00:47:23

to be as empty as

00:47:24

I was saying. This is

00:47:25



not necessarily going to be

00:47:26

an objective conversation that you're

00:47:28

going to be having with

00:47:29

someone who's thinking truly strategically

00:47:31

and you know working in

00:47:33

three-dimensional chess if I think

00:47:36

one of the things that

00:47:37

I try and keep in

00:47:38

mind is that where is

00:47:40

Ellis Advocates over also counselors

00:47:42

and as counselors is our

00:47:45

job to make sure our

00:47:46

clients know that we have

00:47:47



their back we are on

00:47:48

their side. We have their

00:47:50

best interest at heart and

00:47:52

that that's really we're striving

00:47:53

to that end with them

00:47:55

and Sometimes it involves just

00:48:01

initial really long conversations where

00:48:03

you're letting out a lot

00:48:04

of thoughts and feelings and

00:48:06

ideas before you can even

00:48:07

start to get to the

00:48:09

questions that will help you

00:48:10

elucidate. Okay? Well, what is

00:48:12



it that you actually want

00:48:13
to do refer again to

00:48:14
empty just saying. Well, do

00:48:16
you want to continue a

00:48:17
relationship with this counterparty or

00:48:19
is this over? Do you

00:48:20
do you want to just

00:48:21
get out of here? Are

00:48:22
you looking for settlement pressure

00:48:24
or you looking to inflict

00:48:25
maximum pain because you're just

00:48:27
really pissed off about the

00:48:29
way that you've been treated

00:48:31



and figuring out those questions

00:48:33

and the initial reaction. If

00:48:35

you know I'm pissed off

00:48:36

and I want to inflict

00:48:37

maximum pain and then you

00:48:38

get down the road like

00:48:39

it actually this is like

00:48:41

a pretty important relationship and

00:48:44

I've been looking at our

00:48:45

bottom line. So can we

00:48:47

walk this back? So I

00:48:49

think part of it is

00:48:50

to maintain really open lines

00:48:52



of communication with your client

00:48:54

and to keep coming back

00:48:56

to them with questions and

00:48:58

I think The trickiest things

00:49:00

to do in science and

00:49:01

this is tricky without getting

00:49:02

like you guys any advice

00:49:03

but I think one of

00:49:05

the trickiest things to do

00:49:06

is walk that line between

00:49:07

us again and key. Very

00:49:09

very wise saying between providing

00:49:13

objective advice to your client

00:49:15



that will help them achieve

00:49:16

their goals, but also being

00:49:18

that counselor and that trusted

00:49:19

adviser who they believed firmly

00:49:21

is on their side and

00:49:23

it's only if they believe

00:49:24

firmly that you're on their

00:49:26

side that they're going to

00:49:26

tell you like all the

00:49:28

dirty laundry that you need

00:49:29

to know to give them

00:49:30

that objective advice. So it's

00:49:32

it's kind of a constant

00:49:33



putting shifting of what hat

00:49:35

you're wearing and figuring out

00:49:36

how you're going to frame

00:49:37

the advice that you give

00:49:38

in a way that doesn't

00:49:40

come across as callous but

00:49:43

comes across as striving striving

00:49:45

for that go with your

00:49:46

client. That I was actually

00:49:53

taking it but does anyone

00:49:54

else have anything to add

00:49:57

in this or any thoughts

00:49:58

about you know, what are

00:50:01



some of the the key

00:50:02

questions to ask her or

00:50:03

how to go about you

00:50:04

know, I've been talking with

00:50:05

your mentioning is, building trust

00:50:07

and do that fast. So

00:50:11

and something's do have an

00:50:12

extra life cycle. They do

00:50:13

take time. But how do

00:50:16

you purchase that how do

00:50:17

you approach that bad side

00:50:19

of being a counselor? And

00:50:21

I was wondering what if

00:50:22



you have any thoughts about

00:50:23

how you manage the information

00:50:28

and communication, Illinois, I agree,

00:50:31

you know, we tend to

00:50:32

deal with the general counsel

00:50:33

or or a lawyer within

00:50:34

the company and they respond

00:50:36

to someone that is in

00:50:37

the commercial side and they

00:50:39

get pressure because the deal

00:50:41

didn't go the way they

00:50:42

want it so course there's

00:50:43

a lot of pressure going

00:50:45



on right and they they

00:50:47

want to solve these problems

00:50:48

the best way they can

00:50:49

you know I think it's

00:50:55

it's I think clients want

00:50:58

to hear the truth and

00:50:59

if if the case is

00:51:01

not maybe they don't want

00:51:03

to tell you or maybe

00:51:06

so if you can I

00:51:11

think it's really important if

00:51:12

you can identify with those

00:51:13

dishes out and help the

00:51:15



the the in-house counsel weed

00:51:18

out where the issues are.

00:51:19

Sometimes we also deal with

00:51:21

you know, there's there's I

00:51:24

don't know if there's a

00:51:24

parent company and there's a

00:51:26

there's a local company that

00:51:27

handles whatever business right in

00:51:30

the front happened down there

00:51:32

right now and they have

00:51:34

their interests and then the

00:51:36

parent company has their interests

00:51:37

and then you know that

00:51:38



you are you're advising the

00:51:40

company and you want them

00:51:42

all to trust you. But

00:51:43

at some point do you

00:51:45

have that internal thing going

00:51:46

on? What are you reading

00:51:48

me to and find a

00:51:50

way to more? Let's get

00:51:52

to the truth because at

00:51:53

the end of the day,

00:51:54

you can only tell them

00:51:55

if they have a case

00:51:56

or not. If you know

00:51:57



what the facts are, right,

00:51:59

so Daddy's that's freaky that

00:52:03

requires a bit of you

00:52:04

know, something something else and

00:52:10

then you need to find

00:52:11

the polite way of finding

00:52:13

out what's going on. I

00:52:15

think I think that sort

00:52:16

of goes back to this

00:52:17

idea of I mean, what

00:52:18

is the objective of the

00:52:19

client rights of a date

00:52:21

the company can have strategic

00:52:22



objectives that the general counsel

00:52:24

can have objectives and you

00:52:26

need to learn how to

00:52:26

not learn maybe you don't

00:52:30

need to do this, but

00:52:31

there's something about understanding the

00:52:34

complexity of the situation and

00:52:35

end in appreciating that fully

00:52:37

that that can make your

00:52:39

life better and in just

00:52:42

yesterday. I don't know if

00:52:44

you have any any other

00:52:45

thoughts about you know, how

00:52:48



to get to the core

00:52:49

of what's being presented to

00:52:50

you. Yeah, I mean. I

00:52:55

completely agree. I think there

00:52:56

is like a sword in

00:52:57

Genesis about on in terms

00:53:00

of how you would establish

00:53:03

trust and In a lot

00:53:06

of Articles have been written

00:53:07

about the psychology of trust

00:53:09

and you know what it

00:53:10

takes to to get somebody

00:53:12

to trust you. And the

00:53:15



I think the Corvette is

00:53:18

is problem is what I

00:53:20

would owe you for what

00:53:21

it's worth. My my opinion

00:53:22

is I think that the

00:53:26

client needs to be able

00:53:27

to understand and believe I

00:53:33

would say not just understand

00:53:34

and believe that you're on

00:53:35

their side and that you're

00:53:37

not doing this, you know

00:53:39

for sure you're not asking

00:53:41

them to pursue this case

00:53:43



because you want to have

00:53:44

a case that's going to

00:53:46

bring in money or you

00:53:47

don't want your you're not

00:53:49

siding with for example one

00:53:51

or the other person or

00:53:55

entity at the client. You're

00:53:56

really just looking out for

00:53:59

what is in the best

00:54:00

interest of the client. I

00:54:02

think establishing. Making them believe

00:54:06

that is is really what

00:54:10

helps them see that you

00:54:11



are your advice is truly

00:54:13

objective and a cracked if

00:54:17

I could bring us back

00:54:18

to one of the things

00:54:18

one or two of the

00:54:19

things that we talked about

00:54:20

earlier, but other sort of

00:54:22

other types of a TR

00:54:24

other dispute resolution procedures and

00:54:26

settlement if if after hearing

00:54:30

the client out evaluating the

00:54:32

the facts as they tell

00:54:33

them to you, maybe do

00:54:34



a witness testimony the documents

00:54:36

that are available it becomes

00:54:38

evident that and you know

00:54:40

what maybe this is something

00:54:41

that we should mediate maybe

00:54:42

this is something we should

00:54:43

try to settle making that

00:54:44

recommendation which is no it

00:54:47

it may result in less

00:54:49

fees. And then do you

00:54:50

do less work for the

00:54:51

lawyers? But I think that's

00:54:54

a part of being a

00:54:54



trusted advisor is advising them

00:54:57

about the other options and

00:54:59

at the end of the

00:55:01

day that that might that

00:55:03

might make a client very

00:55:05

very happy and give And

00:55:06

give them the results today,

00:55:07

not that they thought they

00:55:08

were looking for at the

00:55:09

beginning but the result that

00:55:11

that is right for them

00:55:12

and and that they need

00:55:13

that's excellent. So I see

00:55:15



that we're running so slow

00:55:17
on time and I want

00:55:18
to make sure we had

00:55:18
a chance to get y'all's

00:55:20
input on this to just

00:55:22
quickly when summer is a

00:55:22
5 things. You should know

00:55:24
them before we go to

00:55:25
question was enforcement potential for

00:55:27
success legal and factual for

00:55:30
settling procedural considerations. And then

00:55:33
the most important it's really

00:55:34
clients ultimate objective. Those are

00:55:36



the five things that we

00:55:37

sort of wanted to bring

00:55:38

to you today. And we

00:55:39

thought I want to ask

00:55:40

you I have a couple

00:55:41

questions from our online audience

00:55:43

backrest wanted to give priority

00:55:44

to those of us who

00:55:45

are here in case anyone

00:55:47

have any questions for the

00:55:48

panel. How does your approach

00:55:54

change if the client can

00:55:58

feel your feet? I'll go

00:56:08



ahead and take it. I

00:56:09

think I wouldn't say that

00:56:11

the approach. Oh, sorry. So

00:56:15

the question for those listening

00:56:16

in his does your approach

00:56:17

change or and if so

00:56:19

how if you are seeking

00:56:21

third-party funding to bring a

00:56:22

claim? So I think that

00:56:28

in some ways it changes

00:56:30

and in other ways it

00:56:31

does not I think the

00:56:32

the necessity of always making

00:56:34



sure you understand your client's

00:56:36

ultimate objective getting their trust

00:56:38

and giving them solid advice

00:56:40

as to whether or not

00:56:41

this is a meritorious claim

00:56:42

worth bringing if it's worth

00:56:45

the the the time and

00:56:48

and the costs that are

00:56:49

going to be involved for

00:56:50

them even in just securing

00:56:52

the litigation funding that to

00:56:54

me doesn't change what does

00:56:57

change is the level of

00:56:59



due diligence that is sometimes

00:57:00

involved in being able to

00:57:03

bring the case and I

00:57:05

think there are some really

00:57:08

Profound advantages to having to

00:57:10

do that sort of intense

00:57:11

due diligence that you'll need

00:57:12

to do in order to

00:57:13

pass muster with a litigation

00:57:15

funder to get funding for

00:57:16

your case. You're going to

00:57:18

go in much better prepared

00:57:19

and you're going to know

00:57:20



a lot more about about

00:57:22
the keys in the fact

00:57:23
that sometimes you would if

00:57:25
you have a client who

00:57:26
is just paying for things

00:57:27
and you don't have to

00:57:28
go through the whole like

00:57:30
but let's talking and everything

00:57:31
before I get to this.

00:57:36
I have equipment just thought

00:57:37
on this and I think

00:57:39
there are cases that are

00:57:39
pro bono cases, right? So

00:57:41



those of course there are

00:57:42

there separate category. I find

00:57:44

the the trick your cases

00:57:47

if you have a client

00:57:47

that's that's not a pro

00:57:49

bono case that's telling you

00:57:50

they're going to pay and

00:57:51

then the payment doesn't show

00:57:52

up and they say next

00:57:53

month or actually we have

00:57:55

a deal in Angola coming

00:57:56

out. And as soon as

00:57:56

that money comes in then

00:57:57



we'll pay you and in

00:57:59

in Wichita out there that's

00:58:00

Mexican and make of it

00:58:01

a client that it is

00:58:03

playing games. And I found

00:58:05

that if you want your

00:58:06

clients to respect you have

00:58:07

to respect yourself. You have

00:58:09

to have boundaries. You have

00:58:10

to be the authority on

00:58:11

on how the proceedings going

00:58:12

to be around 2. I

00:58:14

think the quickest way to

00:58:15



lose your clients respect as

00:58:16

if you don't maintain boundaries

00:58:18

as well. So I I

00:58:19

do think it's actually an

00:58:20

essential part of serving. Your

00:58:23

client is is is to

00:58:24

have lines and have a

00:58:26

very clear and transparent and

00:58:28

I think that process of

00:58:31

knowing when to say no

00:58:32

and being firm about that

00:58:33

doesn't build respect and it

00:58:35

will take us to I

00:58:36



think it's for the flipside

00:58:37
of some of that the

00:58:38
service that were talking about.

00:58:48
he meant in terms of

00:58:58
incomes of this question of

00:59:00
payment. I think I think

00:59:06
they're the same. I think

00:59:08
you're absolutely the same. I

00:59:09
think they become more complex

00:59:10
though. I mean, so it's

00:59:18
up. For example, I think

00:59:19
like this question. What's the

00:59:20
ultimate objective can shift dramatically,

00:59:21



right? Cuz you have political

00:59:23

objectives that are at that

00:59:24

can be partisan as opposed

00:59:25

to National Air Condition ministrations

00:59:27

have changed in the meantime,

00:59:28

there might be questions that

00:59:30

you can't prove that are

00:59:31

above like ultimate existential political

00:59:33

importance to a to a

00:59:35

situation. So I think they

00:59:38

changed if you have any

00:59:40

thoughts on on the question

00:59:42

of sovereigns and how this

00:59:43



changes in that context can

00:59:47

get much more complex and

00:59:49

can change as political administration's

00:59:51

change or can change. Cuz

00:59:53

you're dealing with different, you

00:59:54

know agencies or entities within

00:59:56

the Sovereign. I think the

00:59:59

question of like what success

01:00:01

looks like can also be

01:00:03

very different and it there

01:00:04

and that's intimately tied in

01:00:06

of course to what your

01:00:07

clients ultimate objective is, but

01:00:10



does success for the state

01:00:12

look like winning this particular

01:00:14

claim and then losing a

01:00:16

whole bunch of investors who

01:00:17

are now terrified of coming

01:00:18

into the government or coming

01:00:20

in and investing or does

01:00:22

exhaust look like getting a

01:00:25

settlement that no one knows

01:00:27

about her. But I'm saying

01:00:31

there is space might have

01:00:32

concerns about a private settlement

01:00:34

versus Public public proceedings. So

01:00:38



I do think there's just

01:00:39

the same 550 ago saying

01:00:42

the same five factors. It's

01:00:44

just the analysis of them

01:00:46

looks somewhat different. And just

01:00:49

to add on that I

01:00:50

think it's it's it's a

01:00:51

great question. But the other

01:00:52

point is it states come

01:00:53

in so many shapes and

01:00:54

sizes right there some states

01:00:56

that are huge monstrosity and

01:00:58

there's others that are kind

01:00:59



of like family-owned business. I

01:01:02

think it's important thing to

01:01:03

just took to be reminded

01:01:04

even clients come in different

01:01:06

shapes and sizes. in your

01:01:13

experience free action settlement for

01:01:21

mediation turn off my top

01:01:33

analysts have any concrete experience

01:01:34

with this. I have not

01:01:37

had specific experience with enforcing

01:01:40

a mediated settlement that was

01:01:44

not voluntarily complied with it.

01:01:46

I think that ordinarily in

01:01:49



negotiating a settlement in mediating

01:01:51

a settlement you would hope

01:01:53

that the parties would be

01:01:55

willing to comply with their

01:01:56

agreement right away. I suppose

01:01:59

it must happen that that

01:02:00

that is not the case,

01:02:02

but I think one of

01:02:04

the things that we want

01:02:05

brought up earlier is that

01:02:07

part of the magic of

01:02:08

the arbitration system is that

01:02:10

if the mediation takes place

01:02:12



in the context of an

01:02:14

arbitration, we can reduce that

01:02:16

mediated settlement to a consent

01:02:19

award which would potentially assuage

01:02:23

some of the concerns that

01:02:25

you might have with enforceability.

01:02:27

I actually have had that

01:02:30

experience or and I would

01:02:34

say that the difference isn't

01:02:36

necessarily at this stage of

01:02:38

or the way in which

01:02:39

the award has or the

01:02:41

settlement has been brought about

01:02:42



whether it's your settlement mediation

01:02:44

or arbitration but more about

01:02:46

the type of entity against

01:02:48

whom the award has been

01:02:50

rendered and you know, as

01:02:53

I think I kind of

01:02:54

mentioned at the beginning of

01:02:55

what I was talking about

01:02:56

success and enforcement is very

01:03:00

rare that if your award

01:03:01

is against of commercial and

01:03:03

to leave I thought award

01:03:04

will not be paid or

01:03:05



if you settled up let

01:03:06

you do you agree to

01:03:07

a settlement against another company

01:03:10

at this specially if there

01:03:11

are either on going or

01:03:13

potentially in Central Business Opportunities

01:03:17

with them swear that that

01:03:19

settlement won't actually be complied

01:03:21

with or without a ward

01:03:22

1 be complied with but

01:03:24

states are completely different ballgame.

01:03:27

The example that I have

01:03:29

wear a sound which was

01:03:29



not complied with with some

01:03:31

steaks. And so that's a

01:03:33

no-go for a host of

01:03:36

reasons. Right? I mean not

01:03:37

all of them are necessarily

01:03:39

being bad faith on part

01:03:40

of the The Entity that

01:03:42

settled or the people that

01:03:42

settled with you but they

01:03:44

might simply be out of

01:03:45

power. And so you're facing

01:03:46

a new Administration has decided

01:03:47

it's not in their interest

01:03:48



to go ahead and pay

01:03:49

the award or comply with

01:03:51

us at lunch at they

01:03:53

have been negotiated. Don't just

01:03:55

going to say we we

01:03:56

actually had a situation like

01:03:57

that and he was an

01:03:58

investment case. We had a

01:04:00

preliminary award that had construction

01:04:02

until you know, what needed

01:04:04

to happen then send it

01:04:05

was an agreement between the

01:04:07

state and the investor and

01:04:09



then you imply going through

01:04:11

the courts and then the

01:04:12

local courts will issue a

01:04:14

decision and it was pretty

01:04:17

good with the deceased had

01:04:18

to be does know this

01:04:20

was no meddling with a

01:04:21

court. It was just what

01:04:22

would what would happen and

01:04:24

then the agreement was reached?

01:04:27

And then a client files

01:04:29

before the local courts, and

01:04:31

then because of political reasons

01:04:33



the estate lawyer in that

01:04:35

case decided to you know

01:04:37

to some shenanigans that weren't

01:04:39

supposed to have anywhere part

01:04:40

of the agreement. And then

01:04:42

that we had to go

01:04:43

to the tribunal the tribunal

01:04:44

anyways, he wasn't wasn't pretty

01:04:46

but we ended up with

01:04:51

the with the same result

01:04:52

is just that there are

01:04:54

a few hiccups because of

01:04:56

state so you have multiple

01:04:58



interests and it's difficult to

01:05:00

manage that But without it

01:05:05

I'm going to have to

01:05:06

say thank you very much

01:05:07

to the panel and thank

01:05:08

you all for coming here.

01:05:09

We have a drinks and

01:05:11

reception brings her bad side.

01:05:12

So once again, thank you

01:05:13

all for coming. I was

01:05:21

I was asked to tell

01:05:22

everyone that if you registered

01:05:23

there are name tags outside



01:05:25
on a table.