



Update and Status on Section 1782 of Title 28 of the United States Code (“Section 1782”)—allowing an “interested party” to a foreign proceeding to seek US-style discovery from a person or entity located in the United States—and ramifications for International 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 focused on Section 1782 of Title 28 of the United States Code, which permits international parties to seek discovery from entities located in the U.S. The discussion was moderated by Adam Glassman and featured panelists including Danielle Willis, Michael Rodriguez Martinez, John Marino, and Evan Clamsen, who provided insights into the implications of recent Supreme Court decisions on international arbitration.

The panel highlighted that Section 1782 allows litigants in foreign proceedings to request evidence from U.S. courts, provided certain conditions are met, such as the existence of a foreign tribunal and the residence of the person or entity from whom evidence is sought within the court's jurisdiction. Key factors for the court's discretion include the relevance of the evidence, the nature of the foreign proceedings, and the potential burden on the party from whom evidence is requested.

Recent Supreme Court rulings have narrowed the applicability of Section 1782, particularly in the context of commercial and investment arbitration. The court clarified that "foreign or international tribunal" refers only to bodies exercising governmental authority, which excludes many commercial arbitration tribunals. This has raised concerns about the future use of Section 1782 for obtaining evidence in international arbitration cases.

Panelists discussed specific cases illustrating the challenges posed by the Supreme Court's interpretation, including instances where courts denied requests based on the nature of the tribunals involved. They also explored alternative strategies for obtaining discovery, such as leveraging local state statutes that allow for pre-arbitration discovery, although these are less commonly used in international contexts.

The session concluded with a recognition of the ongoing challenges in international



arbitration and the need for practitioners to adapt to the evolving legal landscape. Participants emphasized the importance of strategic planning and thorough research when seeking discovery under Section 1782 or similar provisions.

Authors

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Topics

Section 1782, United States Code, Interested Party, US-style discovery, United States, International Arbitration

Category

WAW

Full Transcript

00:01:22

International Commercial Refrigeration and I'm

00:01:51

a partner of a strange

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yellow feet, which is an

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international boutique Law Firm here

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in Washington DC during both

00:01:57

the International Investment arbitration and

00:02:00

the international commercial arbitration as

00:02:02

well. As a public international



00:02:04

law will show our in

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Bogota Colombia and four years

00:02:09

ago was founded who founded

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with the L A R

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C Washington arbitration we can

00:02:14

first year we had about

00:02:16

fifteen hundred people and I

00:02:18

believe that with the thousand

00:02:24

people number in the first

00:02:26

two days and that we

00:02:27

had a great event yesterday

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and we're very happy to

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be connected not only International



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arbitration matters, but also matters

00:02:35

with the with International Education

00:02:38

and this is what what

00:02:39

this panel is really about.

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The name of our panel

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today is an update on

00:02:47

the status on Section 1782

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of title 28 of the

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United States code section 1782

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which allows an international interested

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parties to form proceeding to

00:03:02

cqs style Discovery from a

00:03:04

person or entity located in



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the United States and some

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ramifications for international arbitration. There

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has been much going on

00:03:15

who's reading section 1782 including

00:03:20

a decision by the US

00:03:24

Supreme Court, but but before

00:03:27

I do that, I would

00:03:28

like to know introduce or

00:03:30

our Pilots. I'm going to

00:03:31

get together with Adam Glassman

00:03:35

who is here at my

00:03:37

right. We will do a

00:03:39

physical function of the moderators



00:03:42

given that to our initial

00:03:44

moderator was not able to

00:03:46

join us for reasons completely

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not related to his to

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his will so without I'd

00:03:54

like to excuse him a

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fortune. He wasn't able to

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be with us now. Let

00:04:01

me introduce our panelists to

00:04:03

my left is Danielle Willis

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show Bar Cafe focuses his

00:04:08

practice on cross-border litigation investigation

00:04:11

on arbitration including white-collar representations



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International investigation complex commercial disputes

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international law matters and international

00:04:22

arbitration. These representations are included

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matters involving more than two

00:04:28

dozen jurisdiction spouting Latin American

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Europe Asia, the Middle East

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and Africa to his left

00:04:38

is Michael Rodriguez Martinez, he's

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an associate at Allen &

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every International arbitration group Michael's

00:04:45

practice focuses on three main

00:04:48

pillars International dispute International Mining

00:04:52

and data privacy. Michael's experience



00:04:55

includes investment arbitration at exit

00:04:57

on the PCA and Commercial

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arbitrations at the ice. This

00:05:01

case is on in compass

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mine and transportation and many

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other sectors. And to hit

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to his left is a

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John Marino. He's a partner

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resident in the firm's Washington

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DC office where he practices

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in the engage National resolution

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allegation group represents clients across

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a variety of jurisdictions in



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commercial and investment of attrition

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and complex civil litigation. The

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industries within which he has

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work spans the globe and

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include Commodities defense Financial Services

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Hospitality manufacturing media Mining and

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technology and last but not

00:06:01

least Evan classement is Deputy

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chair of scepters virtual integration

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group. And for more than

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two decades. He has been

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skillfully navigate to Flying to

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New York Court in matters,



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involving high contentious and sensitive

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civil and criminal litigation issues

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is diverse practice include representations

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of plaintiff and defendant in

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all manners. Commercial litigation white-collar

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criminal matters professional liability mattress

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and intellectual property dispute Evans

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practice frequently and Compasses multi-jurisdictional

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across were these boots on

00:06:42

efforts to obtain an enforced

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judgment on arbitral Awards globally

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what one of the reasons

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why we're we're here is



00:06:50
because one the Supreme Court's

00:06:53
decision, and the other is

00:06:55
whether there are any tools

00:06:57
or to use from Us

00:07:04
Fort Wayne Center for Discovery

00:07:06
or similar exercises with that.

00:07:10
I would like to welcome

00:07:14
everyone and also welcome. Evans

00:07:19
overview of the section 7

00:07:23
Blade to thank you to

00:07:31
everyone. Thank you for coming

00:07:33
to our station on 1382.

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So 1782 is a federal



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statute that allows a litigant

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were a potential it again

00:07:41

in a foreign legal proceeding

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to apply to a US

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federal court order compelling and

00:07:48

other person Corporation to provide

00:07:50

evidence or used to The

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Forum proceeding. I'll start by

00:07:55

giving you the relevant portion

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of the statue to sell

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and I think most of

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the next hour will be

00:08:00

discussing some of the world.



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The District Court of the

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district in which the person

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reside where is found they

00:08:15

would arrest him to give

00:08:16

his testimony or statement or

00:08:18

to produce a document or

00:08:19

other thing for use in

00:08:21

a proceeding in a 4in

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work international tribunal including criminal

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investigations conducted before formal accusation.

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He made pursuant to a

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letter rogatory issued or request

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made by a foreign or



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International tribunal or upon the

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application of any interested person

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and made direct the testimony

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or seated to give in

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or documents or other thing

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for you before I person

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appointed by the court a

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person may not be compelled

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to give the testimony or

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statement or produced the document

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or other thing in violation

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of any legally applicable privilege.

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So the formal requirements for



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a 1782 request are fairly

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basic. The proceeding must be

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before a foreign or International

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tribunal and I'll be a

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lot of the stuff that

00:09:14

I'm not delighted the person

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from whom the evidence is

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thought must resign or be

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found in the district of

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the Court where the application

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filed. Those are the only

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formal requirements at that point

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as discretion whether the court



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will decide to order that

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Discovery be taken. There are

00:09:40

four factors that come from

00:09:43

a cheese for virtuous until

00:09:45

that are applied by the

00:09:47

court in determining whether Discovery

00:09:49

will be border. I'll quickly

00:09:51

go through that right now

00:09:52

and then get on to

00:09:53

talk about why we're all

00:09:55

here is the offense and

00:09:57

the for discretionary factors whether

00:10:01

the documents are within the



00:10:05

non-jewish tribunals jurisdictional reach and

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does accessible absentee assistance attention

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you to do nothing the

00:10:12

court is going to consider

00:10:13

you need some information or

00:10:16

can you get at at

00:10:17

it another way? The next

00:10:19

Factor the nature of the

00:10:21

note you must try to

00:10:21

do, you know the character

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of the preceding the rod

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and the receptivity of the

00:10:25

foreign government or court or



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agency abroad to US federal

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court assistance does the tribunal

00:10:33

watch this information to be

00:10:36

procured whether the 1780 to

00:10:40

request concealed and attempt to

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circumvent or improve Gathering restrictions

00:10:45

or other policies of a

00:10:47

foreign country where the United

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States government. So are you

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applying through 1782 to get

00:10:53

around a Prohibition on this

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Abaddon in the jurisdiction in

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which the underlying matter the



00:11:00

form and the last to

00:11:05

consider whether the unruly intrusive

00:11:08

or burdensome damask? I'm obviously

00:11:11

that's in the eye of

00:11:11

the beholder. What is unduly

00:11:13

burdensome 21 to work in

00:11:16

a year intersection writing something

00:11:18

and Where's the nearest addiction

00:11:20

and certainly need something different

00:11:21

in that jurisdiction outside of

00:11:23

the Court uses his discretion

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ultimately decide or they're going

00:11:28

to order Discovery take it



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or not. None of those

00:11:32
factors are just positive but

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all of those go into

00:11:35
the magic that is the

00:11:36
Court's decision about whether to

00:11:38
order to cover your knots.

00:11:40
I would I would eat

00:11:41
two things one is that

00:11:42
a city doesn't have to

00:11:44
be present in Korea to

00:11:46
be anticipated so courts of

00:11:48
litigated that quite a bit

00:11:49
and I've had cases where



00:11:51
we file 782 is and

00:11:54
there was no current proceeding

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and and and one reason

00:11:59
case we didn't file the

00:12:00
actual underlined proceeding for several

00:12:03
months. So with the second

00:12:05
circuit as hell is that

00:12:07
a show that is reasonably

00:12:09
anticipated. Usually if there's a

00:12:11
typical you'll have after David

00:12:14
from me if she party

00:12:15
saying what you know what

00:12:18
you hear when you're legal



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theories are what the potential

00:12:20
claims are you so you

00:12:22
have to have some reasonable

00:12:23
articulation of what you going

00:12:25
to do. That's one point

00:12:27
it in terms of the

00:12:28
I would also add in

00:12:30
terms of the litter of

00:12:32
over broad thing. I would

00:12:33
look at this and we

00:12:34
always look at this as

00:12:35
a rule 45 you're getting

00:12:40
the district court to issue



00:12:41
issue subpoenas to the party.

00:12:44
So, you know, you think

00:12:45
about strategically the scope of

00:12:47
what you're doing. It's not

00:12:48
helpful to give some crazy

00:12:50
overgrown scope in a subpoena.

00:12:52
You want to be thoughtful

00:12:55
about it. McLeod Center Are

00:13:03
we giving to actually lead

00:13:15
associate at unlock sure for

00:13:18
a long time? So hurry

00:13:26
up. What is about and

00:13:28
wood spring court side and



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obviously my thoughts on on

00:13:33

going forward at the lecture

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two cases involving applicability of

00:13:40

1780 to the first one

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was a commercial arbitration second

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was an investor State arbitration.

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The commercial case was actually

00:13:48

a proceeding hadn't been initiated

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yet fire client luxury in

00:13:53

Germany. It was a business

00:13:55

transaction that had been was

00:13:58

that luxury would think it

00:14:01

was fraud. I didn't summon



00:14:04
formation after the completion of

00:14:05
the transaction that cost luxure

00:14:07
to overpay some business unit.

00:14:09
And that sells contract included

00:14:11
a commercial arbitration clause for

00:14:13
arbitration in Germany before initiating

00:14:16
arbitration. Luxure Discovery. We represent

00:14:20
all the way from the

00:14:25
United States and two of

00:14:28
his officers on 1782 The

00:14:31
District Court granted the request

00:14:32
and then ZF appeal to

00:14:34
the sixth Circuit of forced



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a the sixth circuit issued

00:14:38

a stay of the District

00:14:40

Court's order granting 17 age

00:14:42

every rule on the merits

00:14:47

of the appeal. Interstate case

00:14:52

was based on an electric

00:14:54

bill creation of a Russian

00:14:56

on Bank by the 20th

00:14:57

and during the national election

00:14:59

process. Was there any appointed

00:15:00

a company called Alex CDL

00:15:03

at the temporary administrator and

00:15:06

a Russian Ambassador assigned its



00:15:10

rights initials on the fund

00:15:13

initially during the arbitration stock

00:15:15

Discovery in the US against

00:15:17

a temporary administrator Alex partner

00:15:19

and CEO The District Court

00:15:23

granted the request order. It

00:15:30

was a surprise. I had

00:15:31

been a circuit split on

00:15:32

whether an international arbitration tribunal

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mostly commercial tribunals constituted and

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tribunals are in the case.

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essentially the Supreme Court decision

00:15:50

has three parts benchley analysis



00:15:53
of 1782 and 2nd and

00:15:55
applications to commercial first day

00:16:00
arbitration. So the most important

00:16:03
part I think of the

00:16:04
Court's decision is that is

00:16:05
held at the phrase Foreigner

00:16:07
International tribunal is limited to

00:16:09
an adjudicator body exercises governmental

00:16:12
Authority Warren Tribune was a

00:16:15
tribunal imbued with government Authority

00:16:17
by one nation and an

00:16:18
international tribunal the tribunal computed

00:16:20
by governmental or you by



00:16:22
multiple Nations or nor International

00:16:27
tribunal has to have government

00:16:30
Authority has there been any

00:16:31
Court held that a commercial

00:16:34
tribunal was not it was

00:16:38
a private dispute resolution Body

00:16:40
by private parties in a

00:16:42
private contract to operate under

00:16:44
private arbitration institution as arbitrators,

00:16:49
at least two of them

00:16:50
are selected by the parties.

00:16:51
No government is involved in

00:16:53
creating the tribunal or prescribed



00:16:55
procedure. The court also found

00:16:59
that the ad hoc investor-state

00:17:00
tribunal in the case was

00:17:02
not a governmental Authority, even

00:17:05
though it was in part

00:17:06
rated or was important establish

00:17:11
by treating the court said

00:17:14
the pivotal issue was the

00:17:17
substance of the state's agreement

00:17:18
that these two Nations intense

00:17:20
for a governmental Authority on

00:17:22
the app or enforcement of

00:17:25
the treaty that it did



00:17:27

not do so. That ad

00:17:31

hoc case the court found

00:17:32

that the fact that the

00:17:33

treaty had a provision that

00:17:36

allows the investor to choose

00:17:37

between domestic court and investment

00:17:40

arbitration meant that the country's

00:17:44

add establish one method of

00:17:47

resolving a dispute that involved

00:17:49

a government-appointed and another one

00:17:55

which didn't Additionally the court

00:17:58

found that the treaty did

00:17:59

not read the tribunal the



00:18:01
tribunal functions independently. It is

00:18:04
not affiliated with either State

00:18:05
the arbitrator the trophy by

00:18:07
the parties. There's a lack

00:18:08
of official affiliation with face

00:18:10
or any government entity does

00:18:14
not receive any government funding

00:18:15
only through the spring party.

00:18:22
Importantly though sort the court

00:18:24
said that while starving might

00:18:26
imbue an ad hoc arbitration

00:18:28
tribunal with government Authority it

00:18:30
noted that governmental and intra



00:18:32
governmental bodies may take many

00:18:33
forms did not attempt to

00:18:35
describe how they should be

00:18:37
structured. So the relevant question

00:18:39
is whether the nation's intended

00:18:40
to.... In the case. obviously,

00:18:52
you know, the biggest issue

00:18:54
with the Supreme Court opinion

00:18:55
is that the Supreme Court

00:18:56
has a what government Authority

00:18:57
is or how government confused

00:19:00
a non-domestic work with government

00:19:03
Authority or administrative tribunal has



00:19:07

led to All the following

00:19:11

cases and us being here

00:19:12

today. What was one question

00:19:15

Michael was this is an

00:19:18

investor arbitration that was around

00:19:20

6 and let let me

00:19:26

let me ask one question

00:19:28

and I'm going to move

00:19:30

around a little bit. Let's

00:19:33

let's look into an Article

00:19:35

15. 254 of the s

00:19:39

s e r s to

00:19:41

read this follows a party



00:19:44
seeking recognition of enforcement in

00:19:46
the territories of a contraction

00:19:48
State shall furnish a competent

00:19:50
or or older Authority which

00:19:54
sucks States shall have the

00:19:56
designated for the purpose of

00:19:58
a copy of a ward

00:19:59
certified to the secretary-general and

00:20:01
before that article paragraph one

00:20:04
provide each contract Contracting parties

00:20:08
shall recognize on a ward

00:20:10
rendered pursuant to this convention

00:20:12
as finding an enforcer picking



00:20:16

your application in. I got

00:20:18

award within its territories as

00:20:21

if it were a final

00:20:22

Judgment of a court in

00:20:25

that state. So arbitration practitioners

00:20:28

know very well that this

00:20:30

article that's the Jewel of

00:20:32

the crown of the ship

00:20:33

invention and any does provide

00:20:39

that state shall recognize conventional

00:20:48

War as if it were

00:20:51

a Judicial decision of the

00:20:53

high score of the land.



00:20:54

So this is somehow speculated,

00:20:58

but but your thoughts on

00:21:01

on on Springport respected in

00:21:05

this we're still at International

00:21:08

arbitration award, but now from

00:21:11

an existing panel Mexican best

00:21:14

in Palo Alto. I think

00:21:18

we should have brought my

00:21:23

son is that I don't

00:21:26

know. I don't know if

00:21:27

you want to talk about

00:21:28

we build before we get

00:21:29

into a Johnson argue just



00:21:42
last week actually up before

00:21:46
the second circuit. I'll give

00:21:47
you a quick background so

00:21:48
that you all are familiar.

00:21:50
We build an Italian company

00:21:52
to wise or in investments

00:21:58
in Panama developing the lock

00:22:02
system of the canal. There

00:22:04
was ongoing difficulties between the

00:22:08
Italian company and the Panamanian

00:22:10
government. And so the Italian

00:22:13
company brought him fix it

00:22:15
matter against Set alarm for



00:22:18
violating the Panamanian Italian git

00:22:21
as part of that case

00:22:25
the Italian company brought a

00:22:30
1782 action in New York

00:22:33
asking for an advisor of

00:22:35
the pennant Panamanian government to

00:22:38
produce testimony and the district

00:22:42
court in light of the

00:22:43
denied the request ultimately I

00:22:48
can go into a bit

00:22:49
more detail about the grounds

00:22:51
on which the district were

00:22:52
denied it, see what the



00:22:55
judge kaplan's thinking was when

00:22:59
the application but deny the

00:23:01
factors are as follows first

00:23:03
asked whether the tribunal was

00:23:07
a pre-existing body or one

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form for the purpose of

00:23:10
adjudicating investor-state dispute. It does

00:23:15
not have a standing is

00:23:17
a stinker. I know I'm

00:23:18
talking this panel was the

00:23:20
results of an agreement between

00:23:22
the parties the s factor

00:23:24
the court considered was whether



00:23:28

the VIP itself free to

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see if the tribunal again

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and found that it did

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not third the court inquired

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whether the tribunal functions independently

00:23:41

and is not affiliated with

00:23:44

either of the relevant VIP

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nation is found that the

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lack any official affiliation with

00:23:52

either the government of Italy

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or the government of Panama

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or any other government or

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inter governmental entity. worth the



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court observed that the tribunal

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does not receive any government

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funding it is it runs

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through the funding of each

00:24:12

party. And so that also

00:24:15

led the court to the

00:24:16

conclusion that this was not

00:24:18

an inter-governmental tribunal as contemplated

00:24:21

by 1782 next the word

00:24:26

analyze whether the eating worm

00:24:30

public or confidential. There was

00:24:34

some disagreement there about whether

00:24:35

of course workings of the



00:24:37
extended proceedings are confidential but

00:24:42
they're all there are now

00:24:43
also public is only to

00:24:45
those other ultimately the court

00:24:46
found that their confidential nature

00:24:48
counseled in the favor of

00:24:51
finding it not a government.

00:24:53
You know, finally the court

00:24:56
found that the tribunal was

00:24:59
only one of several options

00:25:00
available under the VIP The

00:25:03
Party The Party could have

00:25:04
chosen to pursue of governmental



00:25:06

tribunal instead of chose to

00:25:08

take to travel and the

00:25:10

district court threw the cap

00:25:11

and found that instructor. He's

00:25:16

going to feel right now.

00:25:16

So it's really unclear how

00:25:18

the second circuit is going

00:25:20

to ultimately hold the party

00:25:24

looking to enforce the application

00:25:27

was trying to tether the

00:25:30

proceeding to the uniqueness of

00:25:32

exit and sort of the

00:25:34

hybrid nature of excited as



00:25:36

contrasted with an ounce of

00:25:38

arbitration for example, and was

00:25:41

looking for industry within the

00:25:43

extinct process that make it

00:25:45

that made it more like

00:25:46

a governmental tribunal or a

00:25:50

governmental body. Ultimately whether the

00:25:53

second circuit going to find

00:25:54

that that is persuasive or

00:25:56

not. Is anyone's guess the

00:25:59

council for the applicant was

00:26:02

stressing the nature of excited

00:26:06

and the finality of its



00:26:08

decision. The only way that

00:26:11

it was going to die

00:26:12

can be challenging through an

00:26:13

annulment process that Can you

00:26:15

play with in Excel contrasted

00:26:18

with with other at our

00:26:20

conversation whether whether the second

00:26:24

circuit buys those arguments is

00:26:25

unclear at the moment to

00:26:27

hear what other analysts think

00:26:30

about the we build you

00:26:33

no likelihood of success or

00:26:35

do we think it's going



00:26:36

to go up more along

00:26:37

the lines of where can

00:26:38

I listen to the argument?

00:26:43

And I think that the

00:26:46

applicant Linksys to the prepare

00:26:48

their case to the provision

00:26:49

you but just read earlier

00:26:52

the panel was reading some

00:26:54

of the press reported. They

00:26:55

were not providing any clues

00:26:57

to what they were thinking

00:26:58

so hard to say, but

00:27:01

it's a lot you know



00:27:02

it I think that the

00:27:03

applicant made it an argument

00:27:04

that the procedures are different

00:27:08

than the other. So what

00:27:11

happens there? Michael and Angela

00:27:24

Educators a little bit on

00:27:25

on on the VIP that

00:27:27

was applicable in in this

00:27:28

last exit convention case it

00:27:32

because I I believe that

00:27:33

that that might be an

00:27:36

important factor if it's an

00:27:38

old Legacy bite like a



00:27:42

European models and transparency and

00:27:46

to be at the lower

00:27:47

scale if it's an investment

00:27:49

chapter of Free Trade Agreement

00:27:51

to the level of transparency

00:27:54

is is much higher. So

00:27:55

in the end that might

00:27:57

play a role within the

00:27:58

what are proceedings. Yeah, well,

00:28:03

so I'm not quite sure

00:28:05

which what the treaty what

00:28:08

the what the treaty Provisions

00:28:09

in the weevils Case by



00:28:10
24, but it is true

00:28:12
that brinson's the Canada Panama

00:28:15
Free Trade Agreement or the

00:28:17
US a democracy and a

00:28:20
half. air on the side

00:28:22
of transparency versus older if

00:28:26
that do not have any

00:28:28
sort of transparency provisions and

00:28:30
because traditionally arbitrations have been

00:28:32
held confidentially arbitration historically held

00:28:38
under the treaties or otherwise,

00:28:40
my personal view is that

00:28:45
Exit rockaz are going to



00:28:47
fall the same way that

00:28:48
all others if you look

00:28:51
at the pleadings and we

00:28:53
build it and the analysis

00:28:57
that I laid out, but

00:28:58
it provided for in terms

00:29:00
of the tribunal all of

00:29:03
that pretty much applies to

00:29:04
exit from uterus as well.

00:29:05
If you look at the

00:29:06
pleadings that we build filed

00:29:08
in District Court on all

00:29:11
of those points. It was



00:29:12

focusing on exit exit as

00:29:15

an institution. It says the

00:29:18

administrative regime I would function

00:29:20

but not on the App

00:29:21

Store at all. I know

00:29:23

we don't call it a

00:29:24

clock in for purposes of

00:29:28

the ocean and sell as

00:29:33

any not institutional arbitration and

00:29:37

the statue doesn't talk about

00:29:39

or an orange for National

00:29:42

Institution that talks about a

00:29:43

horn or International Tribunal. all



00:29:46
of the fastest that you

00:29:47
can distinguish in my view

00:29:49
unexpected exit from an ad

00:29:54
hoc Tribunal that relate to

00:29:59
the doctor that was Supreme

00:30:00
Court considered are actually about

00:30:02
dicks abusive to Chenal tribunals.

00:30:04
And that's exactly why the

00:30:06
you know, when you read

00:30:07
The District Court opinion it

00:30:08
goes it basically explains how

00:30:10
they fix the tribunal itself.

00:30:12
It's the panel itself is



00:30:14
pretty much an indistinguishable from

00:30:16
an act from what we

00:30:17
call in my view. And

00:30:25
again, I've already said that

00:30:26
the Supreme Court has said

00:30:29
it was too hard to

00:30:31
figure out what it means

00:30:31
to a governmental authorities that

00:30:33
we won't get into it.

00:30:34
The only thing in terms

00:30:36
of international arbitration. I can

00:30:37
see that somehow might have

00:30:39
some sort of arbitration panel



00:30:40
is governmental Authority is the

00:30:44
European Union's multilateral investment Court.

00:30:47
It would be a standard

00:30:48
Court which is different from

00:30:49
adults. I do know it's

00:30:51
judges that are permanent. It's

00:30:53
funded by member states the

00:30:56
judges Are from the countries

00:30:59
that you know will be

00:31:02
agreed to go in to

00:31:07
be part of the smoke

00:31:08
a lot of investment for

00:31:09
you would think it would



00:31:11

match a proceedings and the

00:31:13

judges salaries in the tribunal

00:31:15

and Jean will be funded

00:31:16

by the members all of

00:31:17

those things, you know, they're

00:31:19

not created. Like we would

00:31:21

have all of these things

00:31:23

are the exact thing that

00:31:24

the Supreme Court said we're

00:31:26

locking at all, but that's

00:31:29

the way it is strange

00:31:35

to think that the court

00:31:37

found out. There's there's no



00:31:40
consent by By the state

00:31:46
party's it to the extent

00:31:48
that investment arbitration tribunal has

00:31:53
provided the one side the

00:31:58
offer of the state precisely

00:32:00
in investment treaty or a

00:32:02
b b i t or

00:32:03
what have you and the

00:32:05
acceptance of that offer in

00:32:08
the request for the way

00:32:10
if it would be interesting

00:32:11
to see how the court

00:32:13
didn't see that on the



00:32:14
funding side. It's also interesting

00:32:16
because our views are or

00:32:18
partly funded by the whole

00:32:19
state so isn't that recognition

00:32:22
of that? But but of

00:32:23
course I'm in this is

00:32:24
this is a little bit

00:32:24
of Monday morning quarterbacking which

00:32:32
which of course will still

00:32:33
have around for the Appellate

00:32:35
Court. But anyway, well, I

00:32:40
think before we get to

00:32:42
that briefly in a probably



00:32:45

helpful for criminal and civil

00:32:54

proceedings. We've used most frequently

00:32:59

for financial records in New

00:33:01

York, you know, which capital

00:33:05

we've used it effectively to

00:33:08

trace a sentence with broad

00:33:10

so You know where you

00:33:14

had a case of years

00:33:16

ago with the huge fraud

00:33:17

that happened in London and

00:33:20

we did a series of

00:33:22

nine different applications to trace

00:33:24

dollar transactions around the world.



00:33:26

So through our correspondent banks

00:33:29

in New York and ended

00:33:33

up helping Strays 150 million

00:33:35

dollars worth of Liberty Pawn.

00:33:38

And so that it's incredibly

00:33:44

useful we had him what's

00:33:47

up what happened like that

00:33:49

It's tricky because you know

00:33:53

say the funds went through

00:33:54

a bank, you know, you

00:33:56

find out where they first

00:33:57

Wednesday they went through a

00:33:59

bank from London to Tbilisi



00:34:01

Georgia. And you know, you

00:34:04

have to figure out if

00:34:05

this is because these are

00:34:07

Dollar Tree in taxes, that's

00:34:08

why you are down. I

00:34:13

handled the dollar transactions for

00:34:15

us and sometimes it's not

00:34:19

clear because my phone thinks

00:34:22

about multiple correspondent banking relationships

00:34:25

that were in a swift

00:34:28

transaction. And so, you know,

00:34:32

one of the first things

00:34:37

I would say is you



00:34:39
need to be here do

00:34:40
your research and be very

00:34:42
careful about what you do

00:34:47
try to get as much

00:34:48
as you can about which

00:34:49
entities you're looking for. Cuz

00:34:51
if you could spend a

00:34:52
lot of money trying to

00:34:53
put together a application and

00:34:55
cleft of the wrong party

00:34:56
and it happened and I

00:34:59
think about that and you're

00:35:04
that that the sort of



00:35:04

one obviously be really careful

00:35:06

with that in it sort

00:35:07

of tied to that when

00:35:08

you're tracing money. Do fraud

00:35:11

sometimes you got to think

00:35:13

about your greater judgment enforcement

00:35:15

strategy? Because if you're issuing

00:35:18

subpoenas, do you want to

00:35:21

go ex parte it when

00:35:24

you're making the application, you

00:35:25

know, cuz you want if

00:35:26

you're worried about the station

00:35:27

of time, you really have



00:35:30

to have all your ducks

00:35:31

in a row before you

00:35:31

file anything you ready to

00:35:33

enter say it's a transaction

00:35:36

in the UK are the

00:35:37

underlined cases in UK by

00:35:44

the ultimately application save a

00:35:48

chance to win. Cuz sometimes

00:35:49

you know, the court will

00:35:51

last wire you, you know,

00:35:52

you can put in your

00:35:53

application. Are you letting everyone

00:35:54

know you're doing this or



00:35:56
alternatively the bank that you're

00:35:59
getting the subpoena to will

00:36:00
notify the you know account

00:36:03
holders. So you have to

00:36:05
be ready. It is necessary

00:36:06
first, if you want to

00:36:08
go ex parte off to

00:36:09
get out the Davidsons. Why

00:36:10
you're doing that and then

00:36:12
you need to be prepared

00:36:13
to you know, take action,

00:36:17
you know, where in the

00:36:18
UK they would be some



00:36:19

kind of Reason in order

00:36:20

to make sure that you

00:36:22

know, as soon as you

00:36:22

data file that you're on

00:36:24

to them that you know,

00:36:25

whoever is in the front.

00:36:26

You want to be able

00:36:29

to show picture of your

00:36:30

freezes in place or whatever.

00:36:32

You need to check yourself

00:36:33

out of just helping them

00:36:36

get the money for their

00:36:38

just stated that that's one



00:36:40
thing another another thing. I

00:36:44
would just throw the flag,

00:36:47
Do you know the other

00:36:50
answer of the defensive if

00:36:58
you have a you say,

00:37:00
you're keeping Angela situation involved

00:37:05
in the farm proceeding applicants

00:37:09
will go after the US.

00:37:10
To try to get in

00:37:13
the back door. So it

00:37:15
don't go after any of

00:37:16
the US entity which most

00:37:19
of the time with absolutely



00:37:20

nothing to do with the

00:37:21

foreign entity the european-based density

00:37:23

and that's not always true.

00:37:26

So I know that's a

00:37:30

lot of Thanksgiving there are

00:37:34

very careful with others are

00:37:35

not as careful in terms

00:37:36

of separating their corporate structures.

00:37:38

And so were the applicants

00:37:47

going after you are sensitive

00:37:48

and there's really no relationship

00:37:52

to the car and and

00:37:53

today and there's no basis



00:37:54
to think there is an

00:37:58
email support you have to

00:38:03
go out to provide affidavit

00:38:04
and evidence to say that

00:38:10
Are times that we've seen

00:38:12
where you know the bank

00:38:19
and the US New York

00:38:20
affiliate will have records I'm

00:38:23
in servers and just because

00:38:25
the you have to say

00:38:27
that you're the UK bank

00:38:29
is involved in the litigation

00:38:31
Aaron and the applicants are



00:38:33

the interest rates and get

00:38:34

the information through the you

00:38:40

know, proceeding the barber seating.

00:38:41

They still can get it

00:38:43

through Court upheld the second

00:38:45

circuit that you still can

00:38:47

go after the New York

00:38:50

and today for example, if

00:38:53

they entity has it you're

00:38:54

not you don't have to

00:38:55

exhaust all your remedies first

00:38:56

before coming to New York.

00:38:57

That is a cute hot



00:39:00

Matrix was where the court

00:39:05

allowed discovery of the New

00:39:08

York. Swiss bank in that

00:39:11

case, even though sort of

00:39:15

it and run, but then

00:39:16

you are kin to be

00:39:17

at the documents. So they

00:39:19

allowed to proceed she got

00:39:21

a really think that through

00:39:22

and another thing search similar.

00:39:32

To consider is some New

00:39:38

York detective course. There's a

00:39:39

certain mixed language in Berry



00:39:42

circuits about Even if documents

00:39:48

are not located in the

00:39:49

district. So the entity might

00:39:51

be in the district, but

00:39:52

they may have access on

00:39:55

servers or otherwise to documents

00:39:57

and other jurisdictions around the

00:39:58

world. There are cases where

00:40:02

the courts have allowed Discovery

00:40:04

extraterritorial early. So you have

00:40:07

to be really careful about

00:40:08

that and that's something I

00:40:10

would advise taking clients to



00:40:12

really have strict controls on

00:40:15

access to documents and so

00:40:16

forth between a few things.

00:40:22

I would say in terms

00:40:25

of other. Seen other things

00:40:29

where you know an applicant

00:40:32

will go after an entity

00:40:35

that may have been in

00:40:36

the district at some point.

00:40:37

But no longer is we

00:40:39

had a case were representing

00:40:41

a Swiss bank that had

00:40:44

a very briefly and also



00:40:46

Florida but having four years,

00:40:49

but the applicant, you know,

00:40:51

Use that to try to

00:40:55

get in a file applications

00:40:57

a different District of Florida,

00:40:58

you know based on some

00:41:02

former relationship. We got rid

00:41:05

of that for you to

00:41:06

spend the money making an

00:41:10

application. You need to be

00:41:14

really careful with your research

00:41:15

and you don't waste your

00:41:21

resources unless you're you know



00:41:23

confident the facts and obviously

00:41:28

if you're on the receiving

00:41:29

an easy to spot the

00:41:32

Surplus. They're just some thoughts.

00:41:35

Thank you Evan and you

00:41:38

started looking into Discovery options.

00:41:43

But now the question is

00:41:44

Night of the Supreme Court

00:41:46

decisions and possibly another one.

00:41:50

Who knows if it will

00:41:50

get out there or it

00:41:52

did. At the Appellate Court,

00:41:54

what other options are there?



00:41:57

I mean what what are

00:42:01

Arbitrators and an artisan International

00:42:04

tribunals Specialty Sports Supreme Court

00:42:15

decision for those of us

00:42:16

who practice 1782 law strategy

00:42:25

and it's unfortunate that do

00:42:28

without leave since I think

00:42:30

is depends on whether you're

00:42:32

dealing with a commercial arbitration

00:42:33

or a an investment State

00:42:36

arbitration. Start first with with

00:42:40

with investors State I think

00:42:41

with investors stayed and it's



00:42:43

it's really become practically impossible

00:42:46

at this point to obtain

00:42:48

1782 Discovery just because of

00:42:51

the language of the Supreme

00:42:52

Court decision. I I don't

00:42:54

I don't see it happening.

00:42:55

Really you just got to

00:42:57

take in a broader. Look

00:42:58

at how that this is

00:42:59

your game up the last

00:43:01

time the Supreme Court took

00:43:02

up a 17-0 lead to

00:43:03

Case Western 2004 when it



00:43:05

took up until just in

00:43:06

case the place out the

00:43:07

discretionary Factory in Justice Ginsburg

00:43:13

love to take cases about

00:43:15

cross-border issues and cross-border jurisdiction,

00:43:19

and she was the one

00:43:20

taking up cases regarding personal

00:43:23

jurisdiction and purposeful. When can

00:43:27

you tell him to aux

00:43:29

cord in for a party?

00:43:30

She was the one that

00:43:31

was thick with those issues

00:43:33

are there is so so



00:43:35

why chances are they're really

00:43:37

for a sec? Case to

00:43:40

come back up to the

00:43:41

Supreme Court and revisit its

00:43:44

analysis regarding the nature of

00:43:47

international arbitration tribunals. I don't

00:43:52

think that's going to happen.

00:43:53

Number two. I don't think

00:43:55

any circuit is going to

00:43:58

go against the Supreme Court

00:44:00

by trying to create some

00:44:01

huge difference between an addict

00:44:06

battle or an egg sit



00:44:07

panel and the other cfk.

00:44:09

So I just don't see

00:44:11

that happening either. I think

00:44:13

the only way in which

00:44:15

someone will be able to

00:44:18

get 1782 Discovery in the

00:44:20

context of an investor State

00:44:22

arbitration is if parties in

00:44:26

the free cities are drafted

00:44:27

different with some sort of

00:44:28

language that makes it clear

00:44:30

that this stage are creating

00:44:33

and a government tribunal or



00:44:36

that they are providing their

00:44:38

gun. 4020 International Investment arbitration

00:44:42

tribunal anything short of that

00:44:43

changes in the way International

00:44:46

treaties are drafted. I don't

00:44:49

see that happening now in

00:44:53

commercial arbitration. I think it's

00:44:54

a bit of a of

00:44:55

a different story because I

00:44:58

think it is going to

00:44:58

be very dependent on the

00:45:00

nature of the country for

00:45:02

the arbitration you seated and



00:45:05

the nature of the arbitration

00:45:07

panel in that commercial arbitration

00:45:09

by that. I mean, as

00:45:11

you know many countries in

00:45:14

Asia and Western Europe in

00:45:17

South America arbitrators to a

00:45:20

large extent like judges so

00:45:23

arbitration rules in certain countries,

00:45:27

and I guess I'd Mexico

00:45:29

I can so I can

00:45:29

cite Spain will say that

00:45:33

arbitrators have the ability to

00:45:35

act as judges and that



00:45:37

awards that are issued. Buy

00:45:39

arbitrators have The Binding effect

00:45:41

of a of a court

00:45:43

order of a court judgment.

00:45:45

And so do the extended

00:45:46

local legislation of the countries

00:45:49

for arbitration sweet arbitrators an

00:45:53

arbitration tribunal as judges. I

00:45:56

think the changes the landscape

00:45:57

and that could continue creating

00:45:59

1782 Discovery opportunity for international

00:46:04

commercial arbitration. Now if the

00:46:07

arbitration is seated in a



00:46:08

country that treats arbitration as

00:46:10

a purely private institution and

00:46:14

as a figure of contract,

00:46:16

yeah, I think that's going

00:46:18

to be impossible. But there's

00:46:19

a lot there's a lot

00:46:21

to do there still starts

00:46:24

screaming for a second that

00:46:25

that neither opportunity is going

00:46:28

to be available in the

00:46:29

future for 1782. I had

00:46:31

a report investment arbitration or

00:46:33

for commercial arbitration. Why can



00:46:35

we do it after work?

00:46:36

We're starting to see this

00:46:37

come up in our case.

00:46:38

What strategies are we trying

00:46:40

to eat show in commercial

00:46:41

arbitration? What we're trying to

00:46:44

do is to try to

00:46:45

see if we can get

00:46:46

basically the either the arbitration

00:46:50

tribunal or the foreign Court

00:46:53

of the country where the

00:46:54

arbitration tribunal is seated two

00:46:57

quote-unquote sponsored the discovery. So



00:47:01

by that we mean having

00:47:03

either the arbitration panel issue

00:47:05

an order that they would

00:47:07

like United States Court assistance

00:47:10

to obtain certain discovery that

00:47:12

is located in the United

00:47:14

States during the procession of

00:47:15

eight more control of a

00:47:16

u.s. Party or the arbitration

00:47:19

tribunal has Judge that they

00:47:22

are indeed acting as judges

00:47:24

under whatever local law about

00:47:27

country worthy arbitration tribunal is



00:47:30

the other option is to

00:47:32

go to a court for

00:47:34

the arbitration. You see that

00:47:35

and many countries permit this

00:47:37

opportunity. To go to court

00:47:40

outside of the arbitration panel

00:47:42

to compel the production of

00:47:44

evidence when it is a

00:47:46

third party that you're seeking

00:47:47

evidence, Not one of the

00:47:48

party of the arbitration. So

00:47:51

if you can get a

00:47:52

quart or a local court



00:47:53

order saying that it requires

00:47:56

International Court assistance in US

00:47:58

court assistance for a specific

00:48:00

piece of evidence, and then

00:48:01

you can take it to

00:48:02

the United States which basically

00:48:04

trying to get or a

00:48:10

cord for the arbitration tribunal

00:48:11

to sponsor your 1782 Discovery

00:48:15

52nd way. And this applies

00:48:22

both were commercial arbitration send

00:48:24

investor-state arbitration is just to

00:48:26

try to come up with



00:48:28

a viable and credible and

00:48:30

I was little jittery perspective

00:48:32

litigation that you can argue

00:48:34

too. And you ask or

00:48:35

that you don't really need

00:48:37

the 1782 Discovery for either

00:48:39

the commercial arbitration for the

00:48:41

investor-state arbitration. You really need

00:48:44

it for a prospective litigation

00:48:46

in a pure and traditional

00:48:49

for that may very well

00:48:51

be connected to the arbitration.

00:48:53

The reason why you why



00:48:55

you need the risk of

00:48:57

doing better. It's obvious. He

00:48:59

will naturally ask look before

00:49:05

dancer a protective order that

00:49:08

prevents you from using that

00:49:09

evidence in any context other

00:49:11

than in the prospective litigation

00:49:13

work, which you are seeking

00:49:14

it. So you might not

00:49:15

be able to introduce it

00:49:16

anyway in the arbitration, but

00:49:17

at least the baby and

00:49:18

Avenue for you to try



00:49:19
to get some information. Otherwise

00:49:22
not be able to get

00:49:23
everyone's remarks as to what's

00:49:36
next. What's next given these

00:49:38
framework decisions. And and what

00:49:41
options are next door in

00:49:43
the lightest of the way

00:49:45
that set the time that

00:49:47
walk. Yeah, so I think

00:49:54
again I think that all

00:49:57
1782 Discovery for all International

00:50:03
Creations basically dead except for

00:50:09
the idea that you can



00:50:10
go see her to the

00:50:12
court at the scene of

00:50:13
your jurisdiction or some other

00:50:15
International court and have them

00:50:17
sponsor somewhere that that I

00:50:21
can I can understand that

00:50:22
but direct 1782 applications from

00:50:27
any type of proceeding International

00:50:30
arbitration. I think it's that

00:50:31
I mean in Luxor, we

00:50:33
we spent a long time

00:50:34
arguing before the court in

00:50:35
our fleeting and in our



00:50:36

argument explaining how in Germany,

00:50:39

you know, the arbitrator's having

00:50:42

Unity just like judges how

00:50:43

the rulings are final based

00:50:45

on German law. We fight

00:50:46

of the German arbitration act

00:50:47

right and that's all developed

00:50:59

restrictions have some sort of

00:51:01

provision that says arbitration awards

00:51:03

are final and binding and

00:51:04

will be treated like touch

00:51:05

with the law. And so

00:51:06

I think Whether it's commercial



00:51:08

arbitration or you know, your

00:51:11

dad for direct 7282 any

00:51:16

solution is a long-term or

00:51:19

meeting, you know. Project M

00:51:24

changing the way treaties are

00:51:26

drafted to make it. Give

00:51:29

some hook USB ports are

00:51:32

used to be able to

00:51:33

find that these tribunals are

00:51:35

imbued with government Authority is

00:51:37

changing, you know us either

00:51:40

the FAA or you know,

00:51:42

just remember that United States



00:51:43
is of is the Federation

00:51:44
and many states have their

00:51:46
own arbitration statues including some

00:51:49
including Georgia and Florida that

00:51:51
are basically you could try

00:51:52
and vote for Supreme Court

00:51:54
said that you can decide

00:51:56
to apply the state arbitration

00:51:58
statute other than you know,

00:52:00
instead of the FAA has

00:52:02
relaxed. So you may want

00:52:06
to be in arbitration here

00:52:07
in a specific statute like



00:52:08

California is arbitration statute allows

00:52:11

Court in that jurisdiction to

00:52:13

issue subpoenas for trying to

00:52:16

jump in and interrupt ladies

00:52:17

and gentlemen, I was just

00:52:19

notified Thing is going to

00:52:20

be a fire alarm that

00:52:21

we do not have to

00:52:25

evacuate. So please let us

00:52:28

out here. Thank you community

00:52:45

were very frustrated by the

00:52:46

decision know there was a

00:52:48

time before people were using



00:52:49

1782 International arbitration and international

00:52:52

relations work. So, you know

00:52:55

the fact that we don't

00:52:56

have Access to broader us

00:53:00

strawberry tools did not destroy

00:53:04

the 70s 80s or 90s

00:53:08

and some people are just

00:53:11

going back to the basic

00:53:12

principles of arbitration. Actually. Thank

00:53:15

you Mike. I would like

00:53:16

I would like to double

00:53:18

down on some of the

00:53:19

ideas that that done put



00:53:23
on the floor and I

00:53:26
strongly believe that that explain

00:53:28
that any treaty Amendment or

00:53:33
or renewal would be one

00:53:36
of the long-term and I

00:53:37
most likely not effective to

00:53:41
the extent that there's no

00:53:42
multilateral investment treaty. So why

00:53:45
you treating really does very

00:53:47
little in front of 3003

00:53:49
Serrano enforce the the European

00:53:55
champion multilateral What is is

00:53:58
a house as a place



00:54:02
of its own. No need

00:54:04
to go there at really

00:54:06
original project my best. So

00:54:10
so what what practical solutions

00:54:14
would you offer time when

00:54:16
you are confronted with the

00:54:17
the lack of section 1782

00:54:21
in in the short-term. That's

00:54:23
the big question but one

00:54:26
option extremely to look at

00:54:27
State Statute. So in the

00:54:30
United States, most prominently New

00:54:33
York has a a local



00:54:36
statutes 3102 which allows you

00:54:40
to get Discovery in Aid

00:54:43
of arbitration. So it said

00:54:46
it's certainly a possibility and

00:54:48
you can try to use

00:54:49
sheer or it doesn't say

00:54:51
that I'm limited to commercial

00:54:53
arbitration investor-state arbitration. Obviously the

00:54:57
limitations as compared to 1782

00:54:59
are obvious. Number one. You

00:55:01
could only Target in New

00:55:02
York Bass party or documents

00:55:05
located in New York number



00:55:08

to it's not commonly used

00:55:12

in the context of international

00:55:13

disputes. 3102 is most commonly

00:55:16

used by insurance companies in

00:55:19

Insurance arbitration want to preserve

00:55:22

evidence that they fear is

00:55:23

going to be destroyed prior

00:55:25

to the commencement of an

00:55:26

insurance arbitration. So you're going

00:55:28

to get judges in New

00:55:29

York that are maybe not

00:55:30

familiar with it. But it

00:55:34

has been done and if



00:55:36

it could surely be done

00:55:37

in the future for new

00:55:38

york-based party. So that's one

00:55:41

of their other statutes in

00:55:43

other jurisdictions, Georgia-Florida Texas that

00:55:47

also allow you to do

00:55:49

pre-shoot Discovery. But mainly for

00:55:53

the purposes of preserving evidence

00:55:55

that you fear is going

00:55:56

to be destroyed. So I

00:55:58

think there's there's an argument

00:55:59

to be made at least

00:56:00

in circumstances of the emergency



00:56:03

that you could try to

00:56:03

use those types of stay

00:56:06

procedures to get some evidence

00:56:08

in anticipation of or during

00:56:11

the course of an arbitration

00:56:12

to preserve evidence, but those

00:56:14

statutes as far as I

00:56:15

know have never been used

00:56:17

in the context of an

00:56:18

international arbitration. So really just

00:56:20

looking at state laws and

00:56:21

most prominently 3102 John I

00:56:26

see you naughty How do



00:56:32

you spell. How about we

00:56:33

built but I agree looking

00:56:35

at local state law is

00:56:37

probably the most obvious next

00:56:39

Roseanne important over the next

00:56:44

few years in light of

00:56:45

a square peg in a

00:56:51

round hole and you have

00:56:53

to be good enough. Now,

00:56:57

we have one question from

00:56:59

from the online audience, which

00:57:02

is what about International Education?

00:57:05

What about litigation that come



00:57:07
to court in the US

00:57:10
are those those those patients

00:57:20
using section 782 I think

00:57:25
that there's no limitation on

00:57:26
that via doesn't touch that.

00:57:28
So I think it's a

00:57:31
that's moving ahead strongly. I

00:57:36
would like to open the

00:57:37
floor for anybody who might

00:57:38
have questions and please identify

00:57:42
yourself and and I'm not

00:57:44
in harlots letter. I don't

00:57:46
see any microphone. So if



00:57:48

it doesn't work come and

00:57:51

pick you up. destruction take

00:58:24

the judges Olympic commercial litigation

00:58:38

Even though it's not an

00:58:56

arbitration very similar to the

00:59:06

office right now. 1982 even

00:59:26

though it is 60 by

00:59:40

36 right now. I have

01:00:40

your attention, please. May I

01:01:07

have your attention, please? May

01:01:09

I have your attention, please?

01:02:01

May I have your attention,

01:02:01

please? May I have your



01:02:03
attention, please? May I have

01:02:30
your attention, please? I have

01:02:55
your attention, please. May I

01:03:22
have your attention, please? May

01:03:49
I have your attention, please?

01:04:16
Attention, please. May I have

01:04:46
your attention, please? May I

01:05:11
have your attention, please? May

01:05:38
I have your attention, please?

01:06:05
May I have your attention,

01:06:06
please? Good doesn't work surprised.

01:06:35
I just want want to

01:06:39
go get the floor. I



01:06:41

saw you want to complete

01:06:43

your remarks. Are you good?

01:06:45

yeah, I mean so I

01:06:49

think So I can tell

01:06:51

you what we did. We

01:06:53

explain as much as possible

01:06:55

how a tribunal in Germany

01:06:58

a commercial arbitration only function

01:07:00

only works because the government

01:07:01

has given it the power

01:07:03

from the beginning to the

01:07:05

end. We made the same

01:07:06

point on the FAA, right?



01:07:08

The state is The Sovereign

01:07:09

and only through law and

01:07:11

you give you no power

01:07:13

to a non government spends

01:07:15

its actually act in a

01:07:16

way that is in Portugal

01:07:17

in any for that matter.

01:07:18

That's why you have laws

01:07:21

that say arbitration Agreements are

01:07:23

enforceable under law. It's just

01:07:30

a nice slogan is not

01:07:32

true that arbitrations are just

01:07:34

a matter of private party.



01:07:35

And that's everywhere. We had

01:07:38

a submission that went through

01:07:40

different countries and explained that

01:07:42

as well. The reality of

01:07:45

situations remind you again having

01:07:47

been involved there is if

01:07:48

you look at the text

01:07:49

of the Treaty of the

01:07:50

of the statute, you can't

01:07:52

really get to where the

01:07:53

Supreme Court. With the textual

01:07:54

analysis. But if you look

01:07:56

at the legislative history is



01:07:57

quite clear that the statute

01:07:58

was talking about government tribunals

01:08:02

and we went back and

01:08:04

forth very very for very

01:08:06

long time about whether we

01:08:07

stuck with a textual analysis

01:08:09

and how we dealt with

01:08:10

the legislative history. We stuck

01:08:13

with a textual analysis because

01:08:14

it was more beneficial to

01:08:15

us obviously and the Supreme

01:08:17

Court has ruled for a

01:08:18

text to let you know



01:08:21

decision is what the court

01:08:23

did was look at the

01:08:24

legend of history figure out

01:08:25

what the actual answer is

01:08:26

and then Publicly do a

01:08:32

text to get to the

01:08:33

house you so that to

01:08:37

me is why they don't

01:08:39

actually answer what it means

01:08:40

to imbue or how you

01:08:42

can imbue or what is

01:08:43

governmental Authority. You would think

01:08:46

the government's Authority is this



01:08:47

award has the power of

01:08:49

law, right? It's binding under

01:08:51

law or civil as a

01:08:53

judgment and we made that

01:08:54

point and every statute every

01:08:58

Lick Barbecue will say it

01:08:59

and the experimental say it

01:09:00

and that apparently wasn't governmental

01:09:03

Authority. Things about how it

01:09:06

wasn't permanent has to do

01:09:08

with government can have a

01:09:08

permanent only have permanent bodies

01:09:10

consent of the parties private



01:09:12
parties confidentiality as a governmental.

01:09:16
Tribunals administrative tribunals like immigration

01:09:19
trib is the United States

01:09:20
are public and not under

01:09:21
so I think that's the

01:09:23
you know. Thank you, Michael.

01:09:29
Anybody else has a question

01:09:32
and if not, I would

01:09:36
really like to thank a

01:09:37
windbreaker for hosting us surprising

01:09:41
us in the best of

01:09:42
way that we are really

01:09:53
grateful to be posted here



01:09:55

Washington on vacation week John

01:09:58

from crawling boring and and

01:10:00

Michael and done and thank

01:10:05

you very much for being

01:10:07

on this panel. And and

01:10:08

that one question not to

01:10:10

be answered now is how

01:10:11

do how how do you

01:10:12

keep understanding International arbitration given

01:10:17

that seems that the the

01:10:20

challenges are coming from everywhere

01:10:22

like we have the US

01:10:23

Supreme Court we have spoken



01:10:26
unto trial discussions and end.

01:10:28
They're more but as as

01:10:30
Jeff Brower said yesterday. Will

01:10:35
be ready for the next

01:10:36
thank you very much and

01:10:38
the next panel will start.

01:10:40
I believe in Northeast there.

01:10:42
So 20 minutes. Okay. Thank

01:10:44
you. plan for the fire

00:01:22
International Commercial Refrigeration and I'm

00:01:51
a partner of a strange

00:01:52
yellow feet, which is an

00:01:53
international boutique Law Firm here



00:01:55

in Washington DC during both

00:01:57

the International Investment arbitration and

00:02:00

the international commercial arbitration as

00:02:02

well. As a public international

00:02:04

law will show our in

00:02:06

Bogota Colombia and four years

00:02:09

ago was founded who founded

00:02:10

with the L A R

00:02:12

C Washington arbitration we can

00:02:14

first year we had about

00:02:16

fifteen hundred people and I

00:02:18

believe that with the thousand

00:02:24

people number in the first



00:02:26

two days and that we

00:02:27

had a great event yesterday

00:02:28

and we're very happy to

00:02:30

be connected not only International

00:02:32

arbitration matters, but also matters

00:02:35

with the with International Education

00:02:38

and this is what what

00:02:39

this panel is really about.

00:02:43

The name of our panel

00:02:45

today is an update on

00:02:47

the status on Section 1782

00:02:50

of title 28 of the

00:02:53

United States code section 1782



00:02:56

which allows an international interested

00:02:59

parties to form proceeding to

00:03:02

cqs style Discovery from a

00:03:04

person or entity located in

00:03:07

the United States and some

00:03:09

ramifications for international arbitration. There

00:03:14

has been much going on

00:03:15

who's reading section 1782 including

00:03:20

a decision by the US

00:03:24

Supreme Court, but but before

00:03:27

I do that, I would

00:03:28

like to know introduce or

00:03:30

our Pilots. I'm going to



00:03:31

get together with Adam Glassman

00:03:35

who is here at my

00:03:37

right. We will do a

00:03:39

physical function of the moderators

00:03:42

given that to our initial

00:03:44

moderator was not able to

00:03:46

join us for reasons completely

00:03:48

not related to his to

00:03:50

his will so without I'd

00:03:54

like to excuse him a

00:03:55

fortune. He wasn't able to

00:03:56

be with us now. Let

00:04:01

me introduce our panelists to



00:04:03

my left is Danielle Willis

00:04:05

show Bar Cafe focuses his

00:04:08

practice on cross-border litigation investigation

00:04:11

on arbitration including white-collar representations

00:04:15

International investigation complex commercial disputes

00:04:19

international law matters and international

00:04:22

arbitration. These representations are included

00:04:25

matters involving more than two

00:04:28

dozen jurisdiction spouting Latin American

00:04:31

Europe Asia, the Middle East

00:04:35

and Africa to his left

00:04:38

is Michael Rodriguez Martinez, he's

00:04:40

an associate at Allen &



00:04:42

every International arbitration group Michael's

00:04:45

practice focuses on three main

00:04:48

pillars International dispute International Mining

00:04:52

and data privacy. Michael's experience

00:04:55

includes investment arbitration at exit

00:04:57

on the PCA and Commercial

00:04:59

arbitrations at the ice. This

00:05:01

case is on in compass

00:05:02

mine and transportation and many

00:05:04

other sectors. And to hit

00:05:23

to his left is a

00:05:25

John Marino. He's a partner

00:05:28

resident in the firm's Washington



00:05:30

DC office where he practices

00:05:32

in the engage National resolution

00:05:34

allegation group represents clients across

00:05:39

a variety of jurisdictions in

00:05:41

commercial and investment of attrition

00:05:43

and complex civil litigation. The

00:05:47

industries within which he has

00:05:49

work spans the globe and

00:05:52

include Commodities defense Financial Services

00:05:55

Hospitality manufacturing media Mining and

00:05:59

technology and last but not

00:06:01

least Evan classement is Deputy

00:06:05

chair of scepters virtual integration



00:06:07

group. And for more than

00:06:09

two decades. He has been

00:06:11

skillfully navigate to Flying to

00:06:14

New York Court in matters,

00:06:15

involving high contentious and sensitive

00:06:18

civil and criminal litigation issues

00:06:20

is diverse practice include representations

00:06:23

of plaintiff and defendant in

00:06:26

all manners. Commercial litigation white-collar

00:06:30

criminal matters professional liability mattress

00:06:34

and intellectual property dispute Evans

00:06:36

practice frequently and Compasses multi-jurisdictional

00:06:39

across were these boots on



00:06:42

efforts to obtain an enforced

00:06:44

judgment on arbitral Awards globally

00:06:47

what one of the reasons

00:06:49

why we're we're here is

00:06:50

because one the Supreme Court's

00:06:53

decision, and the other is

00:06:55

whether there are any tools

00:06:57

or to use from Us

00:07:04

Fort Wayne Center for Discovery

00:07:06

or similar exercises with that.

00:07:10

I would like to welcome

00:07:14

everyone and also welcome. Evans

00:07:19

overview of the section 7



00:07:23

Blade to thank you to

00:07:31

everyone. Thank you for coming

00:07:33

to our station on 1382.

00:07:34

So 1782 is a federal

00:07:38

statute that allows a litigant

00:07:39

were a potential it again

00:07:41

in a foreign legal proceeding

00:07:43

to apply to a US

00:07:45

federal court order compelling and

00:07:48

other person Corporation to provide

00:07:50

evidence or used to The

00:07:52

Forum proceeding. I'll start by

00:07:55

giving you the relevant portion



00:07:57
of the statue to sell

00:07:58
and I think most of

00:07:59
the next hour will be

00:08:00
discussing some of the world.

00:08:10
The District Court of the

00:08:12
district in which the person

00:08:12
reside where is found they

00:08:15
would arrest him to give

00:08:16
his testimony or statement or

00:08:18
to produce a document or

00:08:19
other thing for use in

00:08:21
a proceeding in a 4in

00:08:22
work international tribunal including criminal



00:08:25
investigations conducted before formal accusation.

00:08:28
He made pursuant to a

00:08:31
letter rogatory issued or request

00:08:33
made by a foreign or

00:08:35
International tribunal or upon the

00:08:37
application of any interested person

00:08:39
and made direct the testimony

00:08:42
or seated to give in

00:08:43
or documents or other thing

00:08:44
for you before I person

00:08:46
appointed by the court a

00:08:47
person may not be compelled

00:08:49
to give the testimony or



00:08:50
statement or produced the document

00:08:52
or other thing in violation

00:08:54
of any legally applicable privilege.

00:08:57
So the formal requirements for

00:08:59
a 1782 request are fairly

00:09:01
basic. The proceeding must be

00:09:10
before a foreign or International

00:09:12
tribunal and I'll be a

00:09:13
lot of the stuff that

00:09:14
I'm not delighted the person

00:09:18
from whom the evidence is

00:09:19
thought must resign or be

00:09:21
found in the district of



00:09:23
the Court where the application

00:09:24
filed. Those are the only

00:09:26
formal requirements at that point

00:09:29
as discretion whether the court

00:09:34
will decide to order that

00:09:36
Discovery be taken. There are

00:09:40
four factors that come from

00:09:43
a cheese for virtuous until

00:09:45
that are applied by the

00:09:47
court in determining whether Discovery

00:09:49
will be border. I'll quickly

00:09:51
go through that right now

00:09:52
and then get on to



00:09:53

talk about why we're all

00:09:55

here is the offense and

00:09:57

the for discretionary factors whether

00:10:01

the documents are within the

00:10:05

non-jewish tribunals jurisdictional reach and

00:10:07

does accessible absentee assistance attention

00:10:10

you to do nothing the

00:10:12

court is going to consider

00:10:13

you need some information or

00:10:16

can you get at at

00:10:17

it another way? The next

00:10:19

Factor the nature of the

00:10:21

note you must try to



00:10:21

do, you know the character

00:10:22

of the preceding the rod

00:10:23

and the receptivity of the

00:10:25

foreign government or court or

00:10:27

agency abroad to US federal

00:10:29

court assistance does the tribunal

00:10:33

watch this information to be

00:10:36

procured whether the 1780 to

00:10:40

request concealed and attempt to

00:10:42

circumvent or improve Gathering restrictions

00:10:45

or other policies of a

00:10:47

foreign country where the United

00:10:48

States government. So are you



00:10:50

applying through 1782 to get

00:10:53

around a Prohibition on this

00:10:55

Abaddon in the jurisdiction in

00:10:59

which the underlying matter the

00:11:00

form and the last to

00:11:05

consider whether the unruly intrusive

00:11:08

or burdensome damask? I'm obviously

00:11:11

that's in the eye of

00:11:11

the beholder. What is unduly

00:11:13

burdensome 21 to work in

00:11:16

a year intersection writing something

00:11:18

and Where's the nearest addiction

00:11:20

and certainly need something different



00:11:21
in that jurisdiction outside of

00:11:23
the Court uses his discretion

00:11:26
ultimately decide or they're going

00:11:28
to order Discovery take it

00:11:31
or not. None of those

00:11:32
factors are just positive but

00:11:34
all of those go into

00:11:35
the magic that is the

00:11:36
Court's decision about whether to

00:11:38
order to cover your knots.

00:11:40
I would I would eat

00:11:41
two things one is that

00:11:42
a city doesn't have to



00:11:44

be present in Korea to

00:11:46

be anticipated so courts of

00:11:48

litigated that quite a bit

00:11:49

and I've had cases where

00:11:51

we file 782 is and

00:11:54

there was no current proceeding

00:11:57

and and and one reason

00:11:59

case we didn't file the

00:12:00

actual underlined proceeding for several

00:12:03

months. So with the second

00:12:05

circuit as hell is that

00:12:07

a show that is reasonably

00:12:09

anticipated. Usually if there's a



00:12:11
typical you'll have after David

00:12:14
from me if she party

00:12:15
saying what you know what

00:12:18
you hear when you're legal

00:12:19
theories are what the potential

00:12:20
claims are you so you

00:12:22
have to have some reasonable

00:12:23
articulation of what you going

00:12:25
to do. That's one point

00:12:27
it in terms of the

00:12:28
I would also add in

00:12:30
terms of the litter of

00:12:32
over broad thing. I would



00:12:33
look at this and we

00:12:34
always look at this as

00:12:35
a rule 45 you're getting

00:12:40
the district court to issue

00:12:41
issue subpoenas to the party.

00:12:44
So, you know, you think

00:12:45
about strategically the scope of

00:12:47
what you're doing. It's not

00:12:48
helpful to give some crazy

00:12:50
overgrown scope in a subpoena.

00:12:52
You want to be thoughtful

00:12:55
about it. McLeod Center Are

00:13:03
we giving to actually lead



00:13:15

associate at unlock sure for

00:13:18

a long time? So hurry

00:13:26

up. What is about and

00:13:28

wood spring court side and

00:13:29

obviously my thoughts on on

00:13:33

going forward at the lecture

00:13:35

two cases involving applicability of

00:13:40

1780 to the first one

00:13:43

was a commercial arbitration second

00:13:45

was an investor State arbitration.

00:13:47

The commercial case was actually

00:13:48

a proceeding hadn't been initiated

00:13:51

yet fire client luxury in



00:13:53

Germany. It was a business

00:13:55

transaction that had been was

00:13:58

that luxury would think it

00:14:01

was fraud. I didn't summon

00:14:04

formation after the completion of

00:14:05

the transaction that cost luxure

00:14:07

to overpay some business unit.

00:14:09

And that sells contract included

00:14:11

a commercial arbitration clause for

00:14:13

arbitration in Germany before initiating

00:14:16

arbitration. Luxure Discovery. We represent

00:14:20

all the way from the

00:14:25

United States and two of



00:14:28

his officers on 1782 The

00:14:31

District Court granted the request

00:14:32

and then ZF appeal to

00:14:34

the sixth Circuit of forced

00:14:36

a the sixth circuit issued

00:14:38

a stay of the District

00:14:40

Court's order granting 17 age

00:14:42

every rule on the merits

00:14:47

of the appeal. Interstate case

00:14:52

was based on an electric

00:14:54

bill creation of a Russian

00:14:56

on Bank by the 20th

00:14:57

and during the national election



00:14:59
process. Was there any appointed

00:15:00
a company called Alex CDL

00:15:03
at the temporary administrator and

00:15:06
a Russian Ambassador assigned its

00:15:10
rights initials on the fund

00:15:13
initially during the arbitration stock

00:15:15
Discovery in the US against

00:15:17
a temporary administrator Alex partner

00:15:19
and CEO The District Court

00:15:23
granted the request order. It

00:15:30
was a surprise. I had

00:15:31
been a circuit split on

00:15:32
whether an international arbitration tribunal



00:15:34
mostly commercial tribunals constituted and

00:15:39
tribunals are in the case.

00:15:44
essentially the Supreme Court decision

00:15:50
has three parts benchley analysis

00:15:53
of 1782 and 2nd and

00:15:55
applications to commercial first day

00:16:00
arbitration. So the most important

00:16:03
part I think of the

00:16:04
Court's decision is that is

00:16:05
held at the phrase Foreigner

00:16:07
International tribunal is limited to

00:16:09
an adjudicator body exercises governmental

00:16:12
Authority Warren Tribune was a



00:16:15

tribunal imbued with government Authority

00:16:17

by one nation and an

00:16:18

international tribunal the tribunal computed

00:16:20

by governmental or you by

00:16:22

multiple Nations or nor International

00:16:27

tribunal has to have government

00:16:30

Authority has there been any

00:16:31

Court held that a commercial

00:16:34

tribunal was not it was

00:16:38

a private dispute resolution Body

00:16:40

by private parties in a

00:16:42

private contract to operate under

00:16:44

private arbitration institution as arbitrators,



00:16:49

at least two of them

00:16:50

are selected by the parties.

00:16:51

No government is involved in

00:16:53

creating the tribunal or prescribed

00:16:55

procedure. The court also found

00:16:59

that the ad hoc investor-state

00:17:00

tribunal in the case was

00:17:02

not a governmental Authority, even

00:17:05

though it was in part

00:17:06

rated or was important establish

00:17:11

by treating the court said

00:17:14

the pivotal issue was the

00:17:17

substance of the state's agreement



00:17:18

that these two Nations intense

00:17:20

for a governmental Authority on

00:17:22

the app or enforcement of

00:17:25

the treaty that it did

00:17:27

not do so. That ad

00:17:31

hoc case the court found

00:17:32

that the fact that the

00:17:33

treaty had a provision that

00:17:36

allows the investor to choose

00:17:37

between domestic court and investment

00:17:40

arbitration meant that the country's

00:17:44

add establish one method of

00:17:47

resolving a dispute that involved



00:17:49

a government-appointed and another one

00:17:55

which didn't Additionally the court

00:17:58

found that the treaty did

00:17:59

not read the tribunal the

00:18:01

tribunal functions independently. It is

00:18:04

not affiliated with either State

00:18:05

the arbitrator the trophy by

00:18:07

the parties. There's a lack

00:18:08

of official affiliation with face

00:18:10

or any government entity does

00:18:14

not receive any government funding

00:18:15

only through the spring party.

00:18:22

Importantly though sort the court



00:18:24

said that while starving might

00:18:26

imbue an ad hoc arbitration

00:18:28

tribunal with government Authority it

00:18:30

noted that governmental and intra

00:18:32

governmental bodies may take many

00:18:33

forms did not attempt to

00:18:35

describe how they should be

00:18:37

structured. So the relevant question

00:18:39

is whether the nation's intended

00:18:40

to.... In the case. obviously,

00:18:52

you know, the biggest issue

00:18:54

with the Supreme Court opinion

00:18:55

is that the Supreme Court



00:18:56

has a what government Authority

00:18:57

is or how government confused

00:19:00

a non-domestic work with government

00:19:03

Authority or administrative tribunal has

00:19:07

led to All the following

00:19:11

cases and us being here

00:19:12

today. What was one question

00:19:15

Michael was this is an

00:19:18

investor arbitration that was around

00:19:20

6 and let let me

00:19:26

let me ask one question

00:19:28

and I'm going to move

00:19:30

around a little bit. Let's



00:19:33

let's look into an Article

00:19:35

15. 254 of the s

00:19:39

s e r s to

00:19:41

read this follows a party

00:19:44

seeking recognition of enforcement in

00:19:46

the territories of a contraction

00:19:48

State shall furnish a competent

00:19:50

or or older Authority which

00:19:54

sucks States shall have the

00:19:56

designated for the purpose of

00:19:58

a copy of a ward

00:19:59

certified to the secretary-general and

00:20:01

before that article paragraph one



00:20:04

provide each contract Contracting parties

00:20:08

shall recognize on a ward

00:20:10

rendered pursuant to this convention

00:20:12

as finding an enforcer picking

00:20:16

your application in. I got

00:20:18

award within its territories as

00:20:21

if it were a final

00:20:22

Judgment of a court in

00:20:25

that state. So arbitration practitioners

00:20:28

know very well that this

00:20:30

article that's the Jewel of

00:20:32

the crown of the ship

00:20:33

invention and any does provide



00:20:39
that state shall recognize conventional

00:20:48
War as if it were

00:20:51
a Judicial decision of the

00:20:53
high score of the land.

00:20:54
So this is somehow speculated,

00:20:58
but but your thoughts on

00:21:01
on on Springport respected in

00:21:05
this we're still at International

00:21:08
arbitration award, but now from

00:21:11
an existing panel Mexican best

00:21:14
in Palo Alto. I think

00:21:18
we should have brought my

00:21:23
son is that I don't



00:21:26

know. I don't know if

00:21:27

you want to talk about

00:21:28

we build before we get

00:21:29

into a Johnson argue just

00:21:42

last week actually up before

00:21:46

the second circuit. I'll give

00:21:47

you a quick background so

00:21:48

that you all are familiar.

00:21:50

We build an Italian company

00:21:52

to wise or in investments

00:21:58

in Panama developing the lock

00:22:02

system of the canal. There

00:22:04

was ongoing difficulties between the



00:22:08

Italian company and the Panamanian

00:22:10

government. And so the Italian

00:22:13

company brought him fix it

00:22:15

matter against Set alarm for

00:22:18

violating the Panamanian Italian git

00:22:21

as part of that case

00:22:25

the Italian company brought a

00:22:30

1782 action in New York

00:22:33

asking for an advisor of

00:22:35

the pennant Panamanian government to

00:22:38

produce testimony and the district

00:22:42

court in light of the

00:22:43

denied the request ultimately I



00:22:48
can go into a bit

00:22:49
more detail about the grounds

00:22:51
on which the district were

00:22:52
denied it, see what the

00:22:55
judge kaplan's thinking was when

00:22:59
the application but deny the

00:23:01
factors are as follows first

00:23:03
asked whether the tribunal was

00:23:07
a pre-existing body or one

00:23:09
form for the purpose of

00:23:10
adjudicating investor-state dispute. It does

00:23:15
not have a standing is

00:23:17
a stinker. I know I'm



00:23:18

talking this panel was the

00:23:20

results of an agreement between

00:23:22

the parties the s factor

00:23:24

the court considered was whether

00:23:28

the VIP itself free to

00:23:31

see if the tribunal again

00:23:33

and found that it did

00:23:34

not third the court inquired

00:23:38

whether the tribunal functions independently

00:23:41

and is not affiliated with

00:23:44

either of the relevant VIP

00:23:45

nation is found that the

00:23:48

lack any official affiliation with



00:23:52

either the government of Italy

00:23:54

or the government of Panama

00:23:55

or any other government or

00:23:58

inter governmental entity. worth the

00:24:02

court observed that the tribunal

00:24:06

does not receive any government

00:24:07

funding it is it runs

00:24:09

through the funding of each

00:24:12

party. And so that also

00:24:15

led the court to the

00:24:16

conclusion that this was not

00:24:18

an inter-governmental tribunal as contemplated

00:24:21

by 1782 next the word



00:24:26

analyze whether the eating worm

00:24:30

public or confidential. There was

00:24:34

some disagreement there about whether

00:24:35

of course workings of the

00:24:37

extended proceedings are confidential but

00:24:42

they're all there are now

00:24:43

also public is only to

00:24:45

those other ultimately the court

00:24:46

found that their confidential nature

00:24:48

counseled in the favor of

00:24:51

finding it not a government.

00:24:53

You know, finally the court

00:24:56

found that the tribunal was



00:24:59

only one of several options

00:25:00

available under the VIP The

00:25:03

Party The Party could have

00:25:04

chosen to pursue of governmental

00:25:06

tribunal instead of chose to

00:25:08

take to travel and the

00:25:10

district court threw the cap

00:25:11

and found that instructor. He's

00:25:16

going to feel right now.

00:25:16

So it's really unclear how

00:25:18

the second circuit is going

00:25:20

to ultimately hold the party

00:25:24

looking to enforce the application



00:25:27

was trying to tether the

00:25:30

proceeding to the uniqueness of

00:25:32

exit and sort of the

00:25:34

hybrid nature of excited as

00:25:36

contrasted with an ounce of

00:25:38

arbitration for example, and was

00:25:41

looking for industry within the

00:25:43

extinct process that make it

00:25:45

that made it more like

00:25:46

a governmental tribunal or a

00:25:50

governmental body. Ultimately whether the

00:25:53

second circuit going to find

00:25:54

that that is persuasive or



00:25:56

not. Is anyone's guess the

00:25:59

council for the applicant was

00:26:02

stressing the nature of excited

00:26:06

and the finality of its

00:26:08

decision. The only way that

00:26:11

it was going to die

00:26:12

can be challenging through an

00:26:13

annulment process that Can you

00:26:15

play with in Excel contrasted

00:26:18

with with other at our

00:26:20

conversation whether whether the second

00:26:24

circuit buys those arguments is

00:26:25

unclear at the moment to



00:26:27
hear what other analysts think

00:26:30
about the we build you

00:26:33
no likelihood of success or

00:26:35
do we think it's going

00:26:36
to go up more along

00:26:37
the lines of where can

00:26:38
I listen to the argument?

00:26:43
And I think that the

00:26:46
applicant Linksys to the prepare

00:26:48
their case to the provision

00:26:49
you but just read earlier

00:26:52
the panel was reading some

00:26:54
of the press reported. They



00:26:55
were not providing any clues

00:26:57
to what they were thinking

00:26:58
so hard to say, but

00:27:01
it's a lot you know

00:27:02
it I think that the

00:27:03
applicant made it an argument

00:27:04
that the procedures are different

00:27:08
than the other. So what

00:27:11
happens there? Michael and Angela

00:27:24
Educators a little bit on

00:27:25
on on the VIP that

00:27:27
was applicable in in this

00:27:28
last exit convention case it



00:27:32

because I I believe that

00:27:33

that that might be an

00:27:36

important factor if it's an

00:27:38

old Legacy bite like a

00:27:42

European models and transparency and

00:27:46

to be at the lower

00:27:47

scale if it's an investment

00:27:49

chapter of Free Trade Agreement

00:27:51

to the level of transparency

00:27:54

is is much higher. So

00:27:55

in the end that might

00:27:57

play a role within the

00:27:58

what are proceedings. Yeah, well,



00:28:03

so I'm not quite sure

00:28:05

which what the treaty what

00:28:08

the what the treaty Provisions

00:28:09

in the weevils Case by

00:28:10

24, but it is true

00:28:12

that brinson's the Canada Panama

00:28:15

Free Trade Agreement or the

00:28:17

US a democracy and a

00:28:20

half. air on the side

00:28:22

of transparency versus older if

00:28:26

that do not have any

00:28:28

sort of transparency provisions and

00:28:30

because traditionally arbitrations have been



00:28:32
held confidentially arbitration historically held

00:28:38
under the treaties or otherwise,

00:28:40
my personal view is that

00:28:45
Exit rockaz are going to

00:28:47
fall the same way that

00:28:48
all others if you look

00:28:51
at the pleadings and we

00:28:53
build it and the analysis

00:28:57
that I laid out, but

00:28:58
it provided for in terms

00:29:00
of the tribunal all of

00:29:03
that pretty much applies to

00:29:04
exit from uterus as well.



00:29:05

If you look at the

00:29:06

pleadings that we build filed

00:29:08

in District Court on all

00:29:11

of those points. It was

00:29:12

focusing on exit exit as

00:29:15

an institution. It says the

00:29:18

administrative regime I would function

00:29:20

but not on the App

00:29:21

Store at all. I know

00:29:23

we don't call it a

00:29:24

clock in for purposes of

00:29:28

the ocean and sell as

00:29:33

any not institutional arbitration and



00:29:37

the statue doesn't talk about

00:29:39

or an orange for National

00:29:42

Institution that talks about a

00:29:43

horn or International Tribunal. all

00:29:46

of the fastest that you

00:29:47

can distinguish in my view

00:29:49

unexpected exit from an ad

00:29:54

hoc Tribunal that relate to

00:29:59

the doctor that was Supreme

00:30:00

Court considered are actually about

00:30:02

dicks abusive to Chenal tribunals.

00:30:04

And that's exactly why the

00:30:06

you know, when you read



00:30:07

The District Court opinion it

00:30:08

goes it basically explains how

00:30:10

they fix the tribunal itself.

00:30:12

It's the panel itself is

00:30:14

pretty much an indistinguishable from

00:30:16

an act from what we

00:30:17

call in my view. And

00:30:25

again, I've already said that

00:30:26

the Supreme Court has said

00:30:29

it was too hard to

00:30:31

figure out what it means

00:30:31

to a governmental authorities that

00:30:33

we won't get into it.



00:30:34

The only thing in terms

00:30:36

of international arbitration. I can

00:30:37

see that somehow might have

00:30:39

some sort of arbitration panel

00:30:40

is governmental Authority is the

00:30:44

European Union's multilateral investment Court.

00:30:47

It would be a standard

00:30:48

Court which is different from

00:30:49

adults. I do know it's

00:30:51

judges that are permanent. It's

00:30:53

funded by member states the

00:30:56

judges Are from the countries

00:30:59

that you know will be



00:31:02
agreed to go in to

00:31:07
be part of the smoke

00:31:08
a lot of investment for

00:31:09
you would think it would

00:31:11
match a proceedings and the

00:31:13
judges salaries in the tribunal

00:31:15
and Jean will be funded

00:31:16
by the members all of

00:31:17
those things, you know, they're

00:31:19
not created. Like we would

00:31:21
have all of these things

00:31:23
are the exact thing that

00:31:24
the Supreme Court said we're



00:31:26

locking at all, but that's

00:31:29

the way it is strange

00:31:35

to think that the court

00:31:37

found out. There's there's no

00:31:40

consent by By the state

00:31:46

party's it to the extent

00:31:48

that investment arbitration tribunal has

00:31:53

provided the one side the

00:31:58

offer of the state precisely

00:32:00

in investment treaty or a

00:32:02

b b i t or

00:32:03

what have you and the

00:32:05

acceptance of that offer in



00:32:08

the request for the way

00:32:10

if it would be interesting

00:32:11

to see how the court

00:32:13

didn't see that on the

00:32:14

funding side. It's also interesting

00:32:16

because our views are or

00:32:18

partly funded by the whole

00:32:19

state so isn't that recognition

00:32:22

of that? But but of

00:32:23

course I'm in this is

00:32:24

this is a little bit

00:32:24

of Monday morning quarterbacking which

00:32:32

which of course will still



00:32:33
have around for the Appellate

00:32:35
Court. But anyway, well, I

00:32:40
think before we get to

00:32:42
that briefly in a probably

00:32:45
helpful for criminal and civil

00:32:54
proceedings. We've used most frequently

00:32:59
for financial records in New

00:33:01
York, you know, which capital

00:33:05
we've used it effectively to

00:33:08
trace a sentence with broad

00:33:10
so You know where you

00:33:14
had a case of years

00:33:16
ago with the huge fraud



00:33:17
that happened in London and

00:33:20
we did a series of

00:33:22
nine different applications to trace

00:33:24
dollar transactions around the world.

00:33:26
So through our correspondent banks

00:33:29
in New York and ended

00:33:33
up helping Strays 150 million

00:33:35
dollars worth of Liberty Pawn.

00:33:38
And so that it's incredibly

00:33:44
useful we had him what's

00:33:47
up what happened like that

00:33:49
It's tricky because you know

00:33:53
say the funds went through



00:33:54

a bank, you know, you

00:33:56

find out where they first

00:33:57

Wednesday they went through a

00:33:59

bank from London to Tbilisi

00:34:01

Georgia. And you know, you

00:34:04

have to figure out if

00:34:05

this is because these are

00:34:07

Dollar Tree in taxes, that's

00:34:08

why you are down. I

00:34:13

handled the dollar transactions for

00:34:15

us and sometimes it's not

00:34:19

clear because my phone thinks

00:34:22

about multiple correspondent banking relationships



00:34:25
that were in a swift

00:34:28
transaction. And so, you know,

00:34:32
one of the first things

00:34:37
I would say is you

00:34:39
need to be here do

00:34:40
your research and be very

00:34:42
careful about what you do

00:34:47
try to get as much

00:34:48
as you can about which

00:34:49
entities you're looking for. Cuz

00:34:51
if you could spend a

00:34:52
lot of money trying to

00:34:53
put together a application and



00:34:55

clef of the wrong party

00:34:56

and it happened and I

00:34:59

think about that and you're

00:35:04

that that the sort of

00:35:04

one obviously be really careful

00:35:06

with that in it sort

00:35:07

of tied to that when

00:35:08

you're tracing money. Do fraud

00:35:11

sometimes you got to think

00:35:13

about your greater judgment enforcement

00:35:15

strategy? Because if you're issuing

00:35:18

subpoenas, do you want to

00:35:21

go ex parte it when



00:35:24

you're making the application, you

00:35:25

know, cuz you want if

00:35:26

you're worried about the station

00:35:27

of time, you really have

00:35:30

to have all your ducks

00:35:31

in a row before you

00:35:31

file anything you ready to

00:35:33

enter say it's a transaction

00:35:36

in the UK are the

00:35:37

underlined cases in UK by

00:35:44

the ultimately application save a

00:35:48

chance to win. Cuz sometimes

00:35:49

you know, the court will



00:35:51

last wire you, you know,

00:35:52

you can put in your

00:35:53

application. Are you letting everyone

00:35:54

know you're doing this or

00:35:56

alternatively the bank that you're

00:35:59

getting the subpoena to will

00:36:00

notify the you know account

00:36:03

holders. So you have to

00:36:05

be ready. It is necessary

00:36:06

first, if you want to

00:36:08

go ex parte off to

00:36:09

get out the Davidsons. Why

00:36:10

you're doing that and then



00:36:12

you need to be prepared

00:36:13

to you know, take action,

00:36:17

you know, where in the

00:36:18

UK they would be some

00:36:19

kind of Reason in order

00:36:20

to make sure that you

00:36:22

know, as soon as you

00:36:22

data file that you're on

00:36:24

to them that you know,

00:36:25

whoever is in the front.

00:36:26

You want to be able

00:36:29

to show picture of your

00:36:30

freezes in place or whatever.



00:36:32

You need to check yourself

00:36:33

out of just helping them

00:36:36

get the money for their

00:36:38

just stated that that's one

00:36:40

thing another another thing. I

00:36:44

would just throw the flag,

00:36:47

Do you know the other

00:36:50

answer of the defensive if

00:36:58

you have a you say,

00:37:00

you're keeping Angela situation involved

00:37:05

in the farm proceeding applicants

00:37:09

will go after the US.

00:37:10

To try to get in



00:37:13
the back door. So it

00:37:15
don't go after any of

00:37:16
the US entity which most

00:37:19
of the time with absolutely

00:37:20
nothing to do with the

00:37:21
foreign entity the european-based density

00:37:23
and that's not always true.

00:37:26
So I know that's a

00:37:30
lot of Thanksgiving there are

00:37:34
very careful with others are

00:37:35
not as careful in terms

00:37:36
of separating their corporate structures.

00:37:38
And so were the applicants



00:37:47

going after you are sensitive

00:37:48

and there's really no relationship

00:37:52

to the car and and

00:37:53

today and there's no basis

00:37:54

to think there is an

00:37:58

email support you have to

00:38:03

go out to provide affidavit

00:38:04

and evidence to say that

00:38:10

Are times that we've seen

00:38:12

where you know the bank

00:38:19

and the US New York

00:38:20

affiliate will have records I'm

00:38:23

in servers and just because



00:38:25
the you have to say

00:38:27
that you're the UK bank

00:38:29
is involved in the litigation

00:38:31
Aaron and the applicants are

00:38:33
the interest rates and get

00:38:34
the information through the you

00:38:40
know, proceeding the barber seating.

00:38:41
They still can get it

00:38:43
through Court upheld the second

00:38:45
circuit that you still can

00:38:47
go after the New York

00:38:50
and today for example, if

00:38:53
they entity has it you're



00:38:54

not you don't have to

00:38:55

exhaust all your remedies first

00:38:56

before coming to New York.

00:38:57

That is a cute hot

00:39:00

Matrix was where the court

00:39:05

allowed discovery of the New

00:39:08

York. Swiss bank in that

00:39:11

case, even though sort of

00:39:15

it and run, but then

00:39:16

you are kin to be

00:39:17

at the documents. So they

00:39:19

allowed to proceed she got

00:39:21

a really think that through



00:39:22

and another thing search similar.

00:39:32

To consider is some New

00:39:38

York detective course. There's a

00:39:39

certain mixed language in Berry

00:39:42

circuits about Even if documents

00:39:48

are not located in the

00:39:49

district. So the entity might

00:39:51

be in the district, but

00:39:52

they may have access on

00:39:55

servers or otherwise to documents

00:39:57

and other jurisdictions around the

00:39:58

world. There are cases where

00:40:02

the courts have allowed Discovery



00:40:04
extraterritorial early. So you have

00:40:07
to be really careful about

00:40:08
that and that's something I

00:40:10
would advise taking clients to

00:40:12
really have strict controls on

00:40:15
access to documents and so

00:40:16
forth between a few things.

00:40:22
I would say in terms

00:40:25
of other. Seen other things

00:40:29
where you know an applicant

00:40:32
will go after an entity

00:40:35
that may have been in

00:40:36
the district at some point.



00:40:37

But no longer is we

00:40:39

had a case were representing

00:40:41

a Swiss bank that had

00:40:44

a very briefly and also

00:40:46

Florida but having four years,

00:40:49

but the applicant, you know,

00:40:51

Use that to try to

00:40:55

get in a file applications

00:40:57

a different District of Florida,

00:40:58

you know based on some

00:41:02

former relationship. We got rid

00:41:05

of that for you to

00:41:06

spend the money making an



00:41:10
application. You need to be

00:41:14
really careful with your research

00:41:15
and you don't waste your

00:41:21
resources unless you're you know

00:41:23
confident the facts and obviously

00:41:28
if you're on the receiving

00:41:29
an easy to spot the

00:41:32
Surplus. They're just some thoughts.

00:41:35
Thank you Evan and you

00:41:38
started looking into Discovery options.

00:41:43
But now the question is

00:41:44
Night of the Supreme Court

00:41:46
decisions and possibly another one.



00:41:50

Who knows if it will

00:41:50

get out there or it

00:41:52

did. At the Appellate Court,

00:41:54

what other options are there?

00:41:57

I mean what what are

00:42:01

Arbitrators and an artisan International

00:42:04

tribunals Specialty Sports Supreme Court

00:42:15

decision for those of us

00:42:16

who practice 1782 law strategy

00:42:25

and it's unfortunate that do

00:42:28

without leave since I think

00:42:30

is depends on whether you're

00:42:32

dealing with a commercial arbitration



00:42:33

or a an investment State

00:42:36

arbitration. Start first with with

00:42:40

with investors State I think

00:42:41

with investors stayed and it's

00:42:43

it's really become practically impossible

00:42:46

at this point to obtain

00:42:48

1782 Discovery just because of

00:42:51

the language of the Supreme

00:42:52

Court decision. I I don't

00:42:54

I don't see it happening.

00:42:55

Really you just got to

00:42:57

take in a broader. Look

00:42:58

at how that this is



00:42:59

your game up the last

00:43:01

time the Supreme Court took

00:43:02

up a 17-0 lead to

00:43:03

Case Western 2004 when it

00:43:05

took up until just in

00:43:06

case the place out the

00:43:07

discretionary Factory in Justice Ginsburg

00:43:13

love to take cases about

00:43:15

cross-border issues and cross-border jurisdiction,

00:43:19

and she was the one

00:43:20

taking up cases regarding personal

00:43:23

jurisdiction and purposeful. When can

00:43:27

you tell him to aux



00:43:29
cord in for a party?

00:43:30
She was the one that

00:43:31
was thick with those issues

00:43:33
are there is so so

00:43:35
why chances are they're really

00:43:37
for a sec? Case to

00:43:40
come back up to the

00:43:41
Supreme Court and revisit its

00:43:44
analysis regarding the nature of

00:43:47
international arbitration tribunals. I don't

00:43:52
think that's going to happen.

00:43:53
Number two. I don't think

00:43:55
any circuit is going to



00:43:58

go against the Supreme Court

00:44:00

by trying to create some

00:44:01

huge difference between an addict

00:44:06

battle or an egg sit

00:44:07

panel and the other cfk.

00:44:09

So I just don't see

00:44:11

that happening either. I think

00:44:13

the only way in which

00:44:15

someone will be able to

00:44:18

get 1782 Discovery in the

00:44:20

context of an investor State

00:44:22

arbitration is if parties in

00:44:26

the free cities are drafted



00:44:27

different with some sort of

00:44:28

language that makes it clear

00:44:30

that this stage are creating

00:44:33

and a government tribunal or

00:44:36

that they are providing their

00:44:38

gun. 4020 International Investment arbitration

00:44:42

tribunal anything short of that

00:44:43

changes in the way International

00:44:46

treaties are drafted. I don't

00:44:49

see that happening now in

00:44:53

commercial arbitration. I think it's

00:44:54

a bit of a of

00:44:55

a different story because I



00:44:58
think it is going to

00:44:58
be very dependent on the

00:45:00
nature of the country for

00:45:02
the arbitration you seated and

00:45:05
the nature of the arbitration

00:45:07
panel in that commercial arbitration

00:45:09
by that. I mean, as

00:45:11
you know many countries in

00:45:14
Asia and Western Europe in

00:45:17
South America arbitrators to a

00:45:20
large extent like judges so

00:45:23
arbitration rules in certain countries,

00:45:27
and I guess I'd Mexico



00:45:29

I can so I can

00:45:29

cite Spain will say that

00:45:33

arbitrators have the ability to

00:45:35

act as judges and that

00:45:37

awards that are issued. Buy

00:45:39

arbitrators have The Binding effect

00:45:41

of a of a court

00:45:43

order of a court judgment.

00:45:45

And so do the extended

00:45:46

local legislation of the countries

00:45:49

for arbitration sweet arbitrators an

00:45:53

arbitration tribunal as judges. I

00:45:56

think the changes the landscape



00:45:57

and that could continue creating

00:45:59

1782 Discovery opportunity for international

00:46:04

commercial arbitration. Now if the

00:46:07

arbitration is seated in a

00:46:08

country that treats arbitration as

00:46:10

a purely private institution and

00:46:14

as a figure of contract,

00:46:16

yeah, I think that's going

00:46:18

to be impossible. But there's

00:46:19

a lot there's a lot

00:46:21

to do there still starts

00:46:24

screaming for a second that

00:46:25

that neither opportunity is going



00:46:28

to be available in the

00:46:29

future for 1782. I had

00:46:31

a report investment arbitration or

00:46:33

for commercial arbitration. Why can

00:46:35

we do it after work?

00:46:36

We're starting to see this

00:46:37

come up in our case.

00:46:38

What strategies are we trying

00:46:40

to eat show in commercial

00:46:41

arbitration? What we're trying to

00:46:44

do is to try to

00:46:45

see if we can get

00:46:46

basically the either the arbitration



00:46:50

tribunal or the foreign Court

00:46:53

of the country where the

00:46:54

arbitration tribunal is seated two

00:46:57

quote-unquote sponsored the discovery. So

00:47:01

by that we mean having

00:47:03

either the arbitration panel issue

00:47:05

an order that they would

00:47:07

like United States Court assistance

00:47:10

to obtain certain discovery that

00:47:12

is located in the United

00:47:14

States during the procession of

00:47:15

eight more control of a

00:47:16

u.s. Party or the arbitration



00:47:19

tribunal has Judge that they

00:47:22

are indeed acting as judges

00:47:24

under whatever local law about

00:47:27

country worthy arbitration tribunal is

00:47:30

the other option is to

00:47:32

go to a court for

00:47:34

the arbitration. You see that

00:47:35

and many countries permit this

00:47:37

opportunity. To go to court

00:47:40

outside of the arbitration panel

00:47:42

to compel the production of

00:47:44

evidence when it is a

00:47:46

third party that you're seeking



00:47:47

evidence, Not one of the

00:47:48

party of the arbitration. So

00:47:51

if you can get a

00:47:52

quart or a local court

00:47:53

order saying that it requires

00:47:56

International Court assistance in US

00:47:58

court assistance for a specific

00:48:00

piece of evidence, and then

00:48:01

you can take it to

00:48:02

the United States which basically

00:48:04

trying to get or a

00:48:10

cord for the arbitration tribunal

00:48:11

to sponsor your 1782 Discovery



00:48:15

52nd way. And this applies

00:48:22

both were commercial arbitration send

00:48:24

investor-state arbitration is just to

00:48:26

try to come up with

00:48:28

a viable and credible and

00:48:30

I was little jittery perspective

00:48:32

litigation that you can argue

00:48:34

too. And you ask or

00:48:35

that you don't really need

00:48:37

the 1782 Discovery for either

00:48:39

the commercial arbitration for the

00:48:41

investor-state arbitration. You really need

00:48:44

it for a prospective litigation



00:48:46

in a pure and traditional

00:48:49

for that may very well

00:48:51

be connected to the arbitration.

00:48:53

The reason why you why

00:48:55

you need the risk of

00:48:57

doing better. It's obvious. He

00:48:59

will naturally ask look before

00:49:05

dancer a protective order that

00:49:08

prevents you from using that

00:49:09

evidence in any context other

00:49:11

than in the prospective litigation

00:49:13

work, which you are seeking

00:49:14

it. So you might not



00:49:15

be able to introduce it

00:49:16

anyway in the arbitration, but

00:49:17

at least the baby and

00:49:18

Avenue for you to try

00:49:19

to get some information. Otherwise

00:49:22

not be able to get

00:49:23

everyone's remarks as to what's

00:49:36

next. What's next given these

00:49:38

framework decisions. And and what

00:49:41

options are next door in

00:49:43

the lightest of the way

00:49:45

that set the time that

00:49:47

walk. Yeah, so I think



00:49:54

again I think that all

00:49:57

1782 Discovery for all International

00:50:03

Creations basically dead except for

00:50:09

the idea that you can

00:50:10

go see her to the

00:50:12

court at the scene of

00:50:13

your jurisdiction or some other

00:50:15

International court and have them

00:50:17

sponsor somewhere that that I

00:50:21

can I can understand that

00:50:22

but direct 1782 applications from

00:50:27

any type of proceeding International

00:50:30

arbitration. I think it's that



00:50:31

I mean in Luxor, we

00:50:33

we spent a long time

00:50:34

arguing before the court in

00:50:35

our fleeting and in our

00:50:36

argument explaining how in Germany,

00:50:39

you know, the arbitrator's having

00:50:42

Unity just like judges how

00:50:43

the rulings are final based

00:50:45

on German law. We fight

00:50:46

of the German arbitration act

00:50:47

right and that's all developed

00:50:59

restrictions have some sort of

00:51:01

provision that says arbitration awards



00:51:03
are final and binding and

00:51:04
will be treated like touch

00:51:05
with the law. And so

00:51:06
I think Whether it's commercial

00:51:08
arbitration or you know, your

00:51:11
dad for direct 7282 any

00:51:16
solution is a long-term or

00:51:19
meeting, you know. Project M

00:51:24
changing the way treaties are

00:51:26
drafted to make it. Give

00:51:29
some hook USB ports are

00:51:32
used to be able to

00:51:33
find that these tribunals are



00:51:35
imbued with government Authority is

00:51:37
changing, you know us either

00:51:40
the FAA or you know,

00:51:42
just remember that United States

00:51:43
is of is the Federation

00:51:44
and many states have their

00:51:46
own arbitration statues including some

00:51:49
including Georgia and Florida that

00:51:51
are basically you could try

00:51:52
and vote for Supreme Court

00:51:54
said that you can decide

00:51:56
to apply the state arbitration

00:51:58
statute other than you know,



00:52:00
instead of the FAA has

00:52:02
relaxed. So you may want

00:52:06
to be in arbitration here

00:52:07
in a specific statute like

00:52:08
California is arbitration statute allows

00:52:11
Court in that jurisdiction to

00:52:13
issue subpoenas for trying to

00:52:16
jump in and interrupt ladies

00:52:17
and gentlemen, I was just

00:52:19
notified Thing is going to

00:52:20
be a fire alarm that

00:52:21
we do not have to

00:52:25
evacuate. So please let us



00:52:28
out here. Thank you community

00:52:45
were very frustrated by the

00:52:46
decision know there was a

00:52:48
time before people were using

00:52:49
1782 International arbitration and international

00:52:52
relations work. So, you know

00:52:55
the fact that we don't

00:52:56
have Access to broader us

00:53:00
strawberry tools did not destroy

00:53:04
the 70s 80s or 90s

00:53:08
and some people are just

00:53:11
going back to the basic

00:53:12
principles of arbitration. Actually. Thank



00:53:15
you Mike. I would like

00:53:16
I would like to double

00:53:18
down on some of the

00:53:19
ideas that that done put

00:53:23
on the floor and I

00:53:26
strongly believe that that explain

00:53:28
that any treaty Amendment or

00:53:33
or renewal would be one

00:53:36
of the long-term and I

00:53:37
most likely not effective to

00:53:41
the extent that there's no

00:53:42
multilateral investment treaty. So why

00:53:45
you treating really does very



00:53:47

little in front of 3003

00:53:49

Serrano enforce the the European

00:53:55

champion multilateral What is is

00:53:58

a house as a place

00:54:02

of its own. No need

00:54:04

to go there at really

00:54:06

original project my best. So

00:54:10

so what what practical solutions

00:54:14

would you offer time when

00:54:16

you are confronted with the

00:54:17

the lack of section 1782

00:54:21

in in the short-term. That's

00:54:23

the big question but one



00:54:26

option extremely to look at

00:54:27

State Statute. So in the

00:54:30

United States, most prominently New

00:54:33

York has a a local

00:54:36

statutes 3102 which allows you

00:54:40

to get Discovery in Aid

00:54:43

of arbitration. So it said

00:54:46

it's certainly a possibility and

00:54:48

you can try to use

00:54:49

sheer or it doesn't say

00:54:51

that I'm limited to commercial

00:54:53

arbitration investor-state arbitration. Obviously the

00:54:57

limitations as compared to 1782



00:54:59
are obvious. Number one. You

00:55:01
could only Target in New

00:55:02
York Bass party or documents

00:55:05
located in New York number

00:55:08
to it's not commonly used

00:55:12
in the context of international

00:55:13
disputes. 3102 is most commonly

00:55:16
used by insurance companies in

00:55:19
Insurance arbitration want to preserve

00:55:22
evidence that they fear is

00:55:23
going to be destroyed prior

00:55:25
to the commencement of an

00:55:26
insurance arbitration. So you're going



00:55:28

to get judges in New

00:55:29

York that are maybe not

00:55:30

familiar with it. But it

00:55:34

has been done and if

00:55:36

it could surely be done

00:55:37

in the future for new

00:55:38

york-based party. So that's one

00:55:41

of their other statutes in

00:55:43

other jurisdictions, Georgia-Florida Texas that

00:55:47

also allow you to do

00:55:49

pre-shoot Discovery. But mainly for

00:55:53

the purposes of preserving evidence

00:55:55

that you fear is going



00:55:56
to be destroyed. So I

00:55:58
think there's there's an argument

00:55:59
to be made at least

00:56:00
in circumstances of the emergency

00:56:03
that you could try to

00:56:03
use those types of stay

00:56:06
procedures to get some evidence

00:56:08
in anticipation of or during

00:56:11
the course of an arbitration

00:56:12
to preserve evidence, but those

00:56:14
statutes as far as I

00:56:15
know have never been used

00:56:17
in the context of an



00:56:18
international arbitration. So really just

00:56:20
looking at state laws and

00:56:21
most prominently 3102 John I

00:56:26
see you naughty How do

00:56:32
you spell. How about we

00:56:33
built but I agree looking

00:56:35
at local state law is

00:56:37
probably the most obvious next

00:56:39
Roseanne important over the next

00:56:44
few years in light of

00:56:45
a square peg in a

00:56:51
round hole and you have

00:56:53
to be good enough. Now,



00:56:57

we have one question from

00:56:59

from the online audience, which

00:57:02

is what about International Education?

00:57:05

What about litigation that come

00:57:07

to court in the US

00:57:10

are those those those patients

00:57:20

using section 782 I think

00:57:25

that there's no limitation on

00:57:26

that via doesn't touch that.

00:57:28

So I think it's a

00:57:31

that's moving ahead strongly. I

00:57:36

would like to open the

00:57:37

floor for anybody who might



00:57:38
have questions and please identify

00:57:42
yourself and and I'm not

00:57:44
in harlots letter. I don't

00:57:46
see any microphone. So if

00:57:48
it doesn't work come and

00:57:51
pick you up. destruction take

00:58:24
the judges Olympic commercial litigation

00:58:38
Even though it's not an

00:58:56
arbitration very similar to the

00:59:06
office right now. 1982 even

00:59:26
though it is 60 by

00:59:40
36 right now. I have

01:00:40
your attention, please. May I



01:01:07

have your attention, please? May

01:01:09

I have your attention, please?

01:02:01

May I have your attention,

01:02:01

please? May I have your

01:02:03

attention, please? May I have

01:02:30

your attention, please? I have

01:02:55

your attention, please. May I

01:03:22

have your attention, please? May

01:03:49

I have your attention, please?

01:04:16

Attention, please. May I have

01:04:46

your attention, please? May I

01:05:11

have your attention, please? May

01:05:38

I have your attention, please?



01:06:05

May I have your attention,

01:06:06

please? Good doesn't work surprised.

01:06:35

I just want want to

01:06:39

go get the floor. I

01:06:41

saw you want to complete

01:06:43

your remarks. Are you good?

01:06:45

yeah, I mean so I

01:06:49

think So I can tell

01:06:51

you what we did. We

01:06:53

explain as much as possible

01:06:55

how a tribunal in Germany

01:06:58

a commercial arbitration only function

01:07:00

only works because the government



01:07:01

has given it the power

01:07:03

from the beginning to the

01:07:05

end. We made the same

01:07:06

point on the FAA, right?

01:07:08

The state is The Sovereign

01:07:09

and only through law and

01:07:11

you give you no power

01:07:13

to a non government spends

01:07:15

its actually act in a

01:07:16

way that is in Portugal

01:07:17

in any for that matter.

01:07:18

That's why you have laws

01:07:21

that say arbitration Agreements are



01:07:23
enforceable under law. It's just

01:07:30
a nice slogan is not

01:07:32
true that arbitrations are just

01:07:34
a matter of private party.

01:07:35
And that's everywhere. We had

01:07:38
a submission that went through

01:07:40
different countries and explained that

01:07:42
as well. The reality of

01:07:45
situations remind you again having

01:07:47
been involved there is if

01:07:48
you look at the text

01:07:49
of the Treaty of the

01:07:50
of the statute, you can't



01:07:52

really get to where the

01:07:53

Supreme Court. With the textual

01:07:54

analysis. But if you look

01:07:56

at the legislative history is

01:07:57

quite clear that the statute

01:07:58

was talking about government tribunals

01:08:02

and we went back and

01:08:04

forth very very for very

01:08:06

long time about whether we

01:08:07

stuck with a textual analysis

01:08:09

and how we dealt with

01:08:10

the legislative history. We stuck

01:08:13

with a textual analysis because



01:08:14

it was more beneficial to

01:08:15

us obviously and the Supreme

01:08:17

Court has ruled for a

01:08:18

text to let you know

01:08:21

decision is what the court

01:08:23

did was look at the

01:08:24

legend of history figure out

01:08:25

what the actual answer is

01:08:26

and then Publicly do a

01:08:32

text to get to the

01:08:33

house you so that to

01:08:37

me is why they don't

01:08:39

actually answer what it means



01:08:40

to imbue or how you

01:08:42

can imbue or what is

01:08:43

governmental Authority. You would think

01:08:46

the government's Authority is this

01:08:47

award has the power of

01:08:49

law, right? It's binding under

01:08:51

law or civil as a

01:08:53

judgment and we made that

01:08:54

point and every statute every

01:08:58

Lick Barbecue will say it

01:08:59

and the experimental say it

01:09:00

and that apparently wasn't governmental

01:09:03

Authority. Things about how it



01:09:06

wasn't permanent has to do

01:09:08

with government can have a

01:09:08

permanent only have permanent bodies

01:09:10

consent of the parties private

01:09:12

parties confidentiality as a governmental.

01:09:16

Tribunals administrative tribunals like immigration

01:09:19

rib is the United States

01:09:20

are public and not under

01:09:21

so I think that's the

01:09:23

you know. Thank you, Michael.

01:09:29

Anybody else has a question

01:09:32

and if not, I would

01:09:36

really like to thank a



01:09:37

windbreaker for hosting us surprising

01:09:41

us in the best of

01:09:42

way that we are really

01:09:53

grateful to be posted here

01:09:55

Washington on vacation week John

01:09:58

from crawling boring and and

01:10:00

Michael and done and thank

01:10:05

you very much for being

01:10:07

on this panel. And and

01:10:08

that one question not to

01:10:10

be answered now is how

01:10:11

do how how do you

01:10:12

keep understanding International arbitration given



01:10:17
that seems that the the

01:10:20
challenges are coming from everywhere

01:10:22
like we have the US

01:10:23
Supreme Court we have spoken

01:10:26
unto trial discussions and end.

01:10:28
They're more but as as

01:10:30
Jeff Brower said yesterday. Will

01:10:35
be ready for the next

01:10:36
thank you very much and

01:10:38
the next panel will start.

01:10:40
I believe in Northeast there.

01:10:42
So 20 minutes. Okay. Thank

01:10:44
you. plan for the fire