

Dispute resolution SIG Transatlantic Arbitration



Chairs:

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Together with our MSI Partner in Bratislava, we have just won a major case in international arbitration (EUR 44 million plus 3 million cost) after 3 ½ years of work.

PARTIES AND FACTS

- Our clients, a conglomerate of Slovak/Hungarian business entities had issues with a technology for the production of green fuels. They entered into an Agreement with a US technical service provider to act as troubleshooter. The cooperation did not work as planned; our clients developed their own solution.
- Some of the **intercultural challenges** should also allow us to benefit from **learnings on both sides of the big pond**.



ISSUES

GOVERNING SUBSTANTIVE LAW

- Major impact on the case and its legal assessment / Arbitrators / do they know the applicable law?

GOVERNING PROCEDURAL RULES

- Ad hoc
- Institutional Rules – vast differences (UNCITRAL, US, ICC, LCIA; VIAC (Vienna Rules), SCC etc.
- Flexibility & recent developments (convergence)

VIAC || Vienna International
Arbitral Centre

INTERNATIONAL PRACTICE

- Many institutional frameworks develop towards an international standard

ARBITRATORS

- US
- Continental European
- Globally minded
- Academics / Professionals



CLAIM

- How to formulate the claim
- How many rounds of exchanges



(PRE-TRIAL) DISCOVERY

- US
- Continental European
- Convergence / Redfern Schedule

WITNESSES

- Witness statements / Cooperation with counsel
- Questioning by parties vs. Arbitrators
- Direct examination
- Cross examination
- Also witnesses surprised by customs

EXPERTS

- Party appointed
- Arbitrator appointed
- Cross examinations
- Expert witness conferencing

COST FACTOR

- American Rule
- European Rules / expectations

GUIDING CLIENTS

- In light of the above clients need a lot of guidance and preparation
- Cultural briefings



SPECIAL ISSUES

SECURITY FOR COST

- When chances are that costs cannot be recovered even if you win
- When awards are not enforceable (Sanctions, Russia etc.)

THIRD PARTY FUNDING (TPF)

- Disclosure
- Implications

SETTLEMENT

- Attitudes towards settlement
- Arbitrators
- Parties
- Counsel



CONTACT DETAILS

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Other discussions and comments