

VIRTUAL ROUND TABLE

CORPORATE *LiveWire*

LITIGATION & DISPUTE RESOLUTION 2015



MEET THE EXPERTS



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Alstom, a world leader in power generation, electrical grid and rail transport infrastructure

With a presence in over a hundred countries and a broad range of products and services in the power generation, electrical grid and rail transport infrastructure markets, Alstom is at the forefront of economic, social and environmental progress.

Alstom builds the fastest train and the highest capacity automated metro in the world, provides turnkey integrated power plant solutions and associated services for a wide variety of energy sources, including hydro, nuclear, gas, coal and wind, and it offers a wide range of solutions for power transmission, with a focus on smart grids.

- Alstom employs 93,000 people in around 100 countries.
- It had sales of €20.3 billion in 2013/14.
- The Group is chaired by Patrick Kron



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Selvyn Seidel founded and chairs Fulbrook Capital Management LLC, an institutional advisor in commercial claims. Fulbrook identifies, evaluates, manages, and arranges capital for commercial claimants to apply towards prosecuting meritorious claims. Fulbrook specializes in complex national and international claims, whether brought in the United States, or in another country. It has a special and in some important ways unique capacity and goal to assist in enhancing the value of the claim closer to its true value, reducing costs needed to prosecute the claim, and bringing more certainty to the process and costs involved.



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Partner and Head of Litigation, Ross frequently acts in complex international insolvencies, restructurings and security enforcements and is regularly retained by local and overseas insolvency professionals, directors, fund administrators, auditors, creditors and investors in connection with all aspects of the restructuring and winding up of companies, investment funds, limited partnerships, SIV's and structured finance entities. He has specific experience of coordinating cross-border appointments and obtaining recognition and assistance for insolvency professionals appointed by foreign courts. Having practiced continuously in the Cayman Islands since 1994, Ross is one of the most experienced litigators at the Cayman bar and has acted in more than 40 reported cases and was admitted in the British Virgin Islands in 2008.



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Toby Gibson is a partner in Gibson and Co. The firm celebrates its 300th anniversary this year and Toby is the 10th generation of his family to be a partner in the firm. Having worked for magic circle firms, Toby and his wife Jane set up a boutique litigation practice within Gibson and Co in 2003. Since then, Toby and the firm have acted in a series of cases for and against investment banks. The firm is notable for acting for foreign governments such as Sri Lanka and the Arab Republic of Egypt as well as The European Commission and Credit Suisse.

MEET THE EXPERTS



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Practice areas

General Corporate, Public Procurement, Dispute Resolution

Experience

Service at Swedish Courts, 2002-2004

UN Headquarter, New York, Department of Public Information, internship 2001-2002

Education

University of Lund (LL M, 2002)



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Practice Areas

Marco Tulio Venegas is engaged in the following practice areas:

Constitutional and Administrative Proceedings

Commercial Litigation

Industrial and Intellectual Property

National and International Commercial Arbitration

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Gwendoline is head of the firm's Commercial Dispute Resolution Group and joined from City firm, Herbert Smith.

Ranked as a leading individual and in the top tier for commercial dispute work for a number of years, Gwendoline is a highly respected litigator and has been involved in several reported cases. Her "sensible, intelligent and measured...Welsh fighting spirit" means that clients consider her to be a "very talented lawyer and great fun to work with".

Her clients come from multiple industries and business sectors and include major corporates and leading financial institutions. She has more than 25 years of experience of representing clients in their most complex and important disputes. Her practice includes commercial and civil litigation matters, regulatory matters, internal investigations and domestic and international arbitrations.

She is an accredited mediator with the Centre for Dispute Resolution, a member of the Chartered Institute of Arbitrators and a member of the International Bar Association. For the last three years, she has been a Governor of the College of Law.



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Over the last 12 years Krister has focused exclusively on institutional and ad hoc arbitrations in Sweden, Denmark, Norway and England. He is also a Chartered Arbitrator by the Swedish Arbitration Association and the SCC.

Krister has also regularly acted as counsel in civil and commercial actions in Sweden, including appeals before the Swedish Supreme Court and the Court of Justice of the European Union.

Litigation & Dispute Resolution 2015

Our Litigation & Dispute Resolution Roundtable 2015 provides in-depth analysis on the latest trends and recent developments. We spoke with eight experts from around the world with highlighted topics including: the landscape in the United Kingdom post-Jackson reforms, the rationale behind drafting a dispute resolution clause into contracts, and the advantages and disadvantages of alternative dispute resolution.

1. Have there been any recent regulatory changes or interesting developments?

Aronsky: Regulatory changes are something permanent with a tendency to continuously tightening and more restrictive rules. Some of them may be well founded, others are of a more administrative nature.

Gibson: In the post credit crisis world, the regulators are much more prominent. For international financial institutions, their relationship with their regulators is critical. In this country, the FCA has taken a proactive approach, for example in relation to the interest rate hedging product redress scheme and the rate fixing investigations. There has been a good deal of customer/bank litigation exploring the interplay between the regulatory regime and the common law.

The changes in rules on funding mean that the new form of CFAs are rarely used and that a variety of litigation funding alternatives are being considered. Although the Excalibur case has given all market participants food for thought, new funding models are being used in

the apparent growth in group litigation.

Davies: Over the last couple of years the Jackson reforms have had a huge impact on the way litigation is conducted in England and Wales; these reforms range from the introduction of proportionality and costs budgeting to the abolition of the recovery of success fees and ATE insurance premiums from the losing party. The reforms have resulted in the way in which litigation is approached changing significantly.

2014 saw a flood of litigation involving relief from sanctions (imposed for non-compliance with court orders) following the decisions in Mitchell and Denton creating uncertainty and increased costs as a result of satellite litigations. Things now seem to have settled down and although the courts are not being quite as draconian as they were pre-Denton, they still have a broad discretion when granting relief from sanctions, so strict compliance with court orders remains the safest approach.

The changes to Part 36 (offers to settle) which are due to come into force in April 2015 will hopefully see a simplification

of the rules which should lead to a reduction in the amount of satellite litigation around Part 36 costs in 2015.

McDonough: There have been two main regulatory developments in the Cayman Islands. First, Cayman has entered into a FATCA inter-governmental agreement with the US (and a similar agreement with the UK). This means many Cayman investment funds will be subject to FATCA reporting obligations in order to avoid their US investors facing the 30% withholding tax. The Cayman financial services industry has adapted to these changes, and funds are outsourcing many reporting tasks to third party administrators.

Secondly, Cayman has introduced a licensing regime for fund directors, under the auspices of the Cayman Islands Monetary Authority. With some exceptions, the law applies to directors of regulated Cayman funds, no matter where the directors are physically located. The law permits directors to be corporate as well as natural persons, and there are penalties for non-registration.

Venegas: Yes, there have been very

important regulatory changes in Mexico in the past year. In 2014 the Congress finally passed a reform to the existing legal framework for the oil, electricity and renewable energies. Within this legal reform it was authorised that PEMEX (the state owned oil company) and CFE (the state owned electricity company) submit to arbitration or any other alternative dispute resolution method. In addition, the agreements entered into by said entities shall be deemed as commercial in nature and, therefore, any contradiction between the principles of commercial laws and administrative laws will be eliminated.

2. Are you noticing any increases in industry-specific litigation?

Aronsky: Many higher value disputes are settled through arbitration and away from state courts in order to retain confidentiality.

Gibson: Even though it is now more than six years (the relevant limitation period) since the collapse of Lehman Bros, there is still a serious amount of banking and financial services litigation. On the retail side, there has

been a growth in claims management style firms bringing a large number of relatively small negligence based claims. There is still a good deal of property and personal guarantee related work being generated as banks harden their line with commercial property secured lending. Claims based on the conduct of investment bank employees (for example in relation to the fixing of rates) can be expected to increase on the back of the recent regulatory findings.

Seidel: Patent litigation continues to expand, even though this is an uncertain time overall and there are also negative trends in various areas, such as the areas relating to “trolls”. Litigation involving banks, and some other financial institutions, is also increasing, but that is nothing profound or new. I would add securities fraud litigation, including that involving allegations of price manipulation and insider trading, is coming back. I am looking at this from the perspective of the third party litigation financing industry (although I practiced as a litigation lawyer for a great many years before entering this industry), and within that lens there is a further narrowing, since we specialise in patents, international disputes, and bankruptcy and financial distress. So I come to this within a particular context only. There are of course a number

of other areas that a number of other litigators who focus on them, will add.

McDonough: The financial services sector still dominates the Cayman Islands’ litigation landscape; high-value disputes arise from hedge fund insolvencies, investor redemptions and shareholder disagreements. Investor certainty is always an important consideration, in cases where the court must balance its concern to achieve justice between the parties, against the broader commercial impact of its decisions. For example, in a recent clawback claim brought by liquidators against a redeemed investor, the court refused to unwind the redemption even though the fund was insolvent when it was paid (the fund was perpetrating a Ponzi-scheme fraud), and the redemption gave preferential treatment to that one investor, vis-à-vis other redeemed investors who remained unpaid. The result would have been different, however, if the fund had positively *intended* to give preference to that particular investor.

Venegas: Currently, there has been an increase in collection matters, as well as in disputes regarding distribution agreements. Particularly the latter disputes have increased in number and size before State Courts and

Arbitral Tribunals.

3. To what extent does the proliferation of technology and the advancement of manufacturing altered the litigatory landscape?

Aronsky: Parties intensify and concentrate increasingly on management and specialists administered resolution in order to get around cost intensive, resource and time consuming procedures ahead of resorting to litigation.

Gibson: The most obvious alteration in the litigation landscape relates to disclosure. The proliferation of email and other messaging systems means that an increasing volume of documents are generated by clients in their normal course of business. This in turn poses challenges to their legal teams when disclosing documents, but the same advances in technology can be used to make the disclosure exercise easier. It is an issue of harnessing effectively the available technology. Advances in manufacturing are being made all over the world. When things go wrong in the supply chain, then the litigation tends to be multijurisdictional.

Venegas: At least in the Mexican jurisdiction, there has not been any

noticeable change in the litigatory landscape. If any, the disputes related to manufacturing are scarce and commonly settled before reaching Courts or arbitration.

4. What systems can be put into place to minimise the risk of litigation?

Aronsky: Sufficient time should be invested in carefully negotiating contracts involving relevant “faculties” and avoiding undue time pressure. In cases where disagreements of whatever nature and for whatever reason surface, parties shall concentrate on the underlying issue, and what is behind, not on persons as occasionally observed. Meditation might be helpful by assisting parties in finding commonly viable solutions and preserving the relationship.

Krister: To advise clients that they should raise potentially contentious issues at the beginning of a business relationship and to ensure that the parties execute a written agreement.

Davies: The best way for businesses to minimise the risk of litigation is to resolve issues which arise before they develop into full-blown disputes (although this won’t be possible in

every case). Businesses should create internal “early warning” systems that highlight problems and allow them to be addressed quickly or escalated to senior management as appropriate. For example, in the context of customer contracts, such a system could include regular internal reviews of performance levels and meetings with the customer to discuss the results and ways in which to improve performance. This enables potential problems to be dealt with before they become real issues, helping the business to maintain positive relationships with its customers.

Businesses could also implement their own internal alternative dispute resolution processes to deal with those issues that are not resolved through the early warning system.

Increased awareness of legal risks or requirements through employee training can reduce the incidence of customer complaints and litigation. This is something we have worked on with clients to educate their employees about relevant legislation and how to minimise the risk of litigation.

Venegas: First, a very efficient and proactive audit system to detect any deviation in the normal reception of payments or the management of

inventory. In addition, important contract and business relationships must be evaluated each semester to identify potential sources of disputes and to clear up any misunderstanding before reaching a boiling point which may cause a bigger problem.

5. Can you outline the benefits and drawbacks of typical court proceedings?

Aronsky: The “benefit” may lay in legal certainty. However technology disputes are largely misplaced in state courts where “generalists” have to decide. Moreover they may be difficult to be internationally enforced.

Lina: The primary benefit is the relatively small court administration fee. Furthermore, there is a possibility to appeal the judgment to the Court of Appeal. The greatest drawback relates to the duration of the proceedings. For instance, it can take up to a couple of years to obtain a final and binding judgment.

Davies: Traditionally, the main benefit of court proceedings has been the high calibre of English court judges which has given parties confidence in the judgment to be handed down and certainty in terms of the legal process.

There are also greater rights of appeal in court proceedings than in say arbitration proceedings.

However, one of the main drawbacks of court proceedings is that they are rarely private. Court trials in England are usually open to members of the public and the fact that a party is involved in litigation is public information. The transcript of the court’s judgment is usually publicly available and non-parties are usually able to obtain copies of any statements of case or judgments unless the court makes a special order otherwise.

The other main drawback is the cost of court proceedings, particularly for the losing party who usually ends up being responsible for the majority of the costs of the litigation, as the typical rule is that “costs follow the event”. The cost of litigation is likely to rise even further in the near future, as although historically court fees have been relatively modest, there are plans to significantly increase court fees, particularly in the Commercial Court.

It remains to be seen how the post-Jackson requirement for proportionality of litigation costs on the one hand and the likely increased Court fees on the other will impact on access to

justice generally.

McDonough: Commercial disputes in the Cayman Islands benefit from being handled by a specialist Financial Services Division of the Grand Court (“FSD”). The FSD judges are experienced in commercial matters; some are former High Court judges from England. The court draws upon English law and procedure; indeed, much of Cayman’s legal system is based upon the English model. The FSD is impressively responsive, pragmatic and efficient.

Venegas: The benefits are that in a culture which is becoming more and more conflictive, court proceedings are an incentive to reach a settlement. The average of a Court proceeding and legal expenses related to it are usually important factors to consider reaching an amicable solution after a litigation has started. Litigation before Courts in Mexico is a “form of communication” and not necessarily a breaking point in the relationship between the parties. The drawbacks are curiously the same factors, duration and cost, which if not managed properly would result in an inefficient and costly litigation. Litigating in Mexico is a two-edged sword.

6. What are the advantages and disadvantages of alternative dispute resolution?

Aronsky: ADR – and in particular Mediation or similarly structured procedures – often allow to continuing a relationship since the solution found is one elaborated by the parties with the Mediator’s assistance. However, there is no guarantee for success. Both or all mediating parties need to show a will to attain a solution.

Gibson: If timed correctly, it is difficult to identify any disadvantage to alternative dispute resolution. It offers the respective clients an opportunity to take control of their dispute and achieve a certain outcome. The alternative – a determination imposed on the clients by a tribunal – always has some measure of uncertainty. The potential cost savings are of course significant. ADR also provides the parties with an opportunity to agree an outcome that their tribunal is incapable of ordering. The worst that can happen in a failed mediation is that the parties learn more about their respective cases. If it ever was, it is no longer a sign of weakness to mediate as the courts routinely require ADR now.

Davies: To some extent, this will depend on the type of ADR involved, however most forms of ADR are private (unlike English court proceedings) and generally flexible in terms of format and structure.

In terms of arbitration, probably the most important factor in its favour is the ease with which an arbitration award can be enforced. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides an extensive enforcement regime for international arbitration awards. There is no real equivalent for the enforcement of court judgments.

In mediation on the other hand, one of the key advantages is the wide range of solutions available to the parties to resolve their issue, which are much wider than the range of options available to the court or arbitral tribunal.

Mediation can and should play a significant role in the resolution of any dispute, particularly given that the courts can impose costs sanctions on parties who refuse to mediate.

Whether court proceedings or ADR is the best route for dealing with a dispute will depend on the facts of each

individual case.

Seidel: There are a host of different types of alternative dispute resolution, and variations from country to country exist. I will focus on the U.S. and the U.K., which are the two largest consumers of litigation.

In the U.S. and the U.K. the typical alternative dispute resolution methods used are arbitration and mediation. Each holds many potential advantages, especially as to: promised speed; lower costs; more predictability in venue, law, and procedures; and confidentiality. Each has delivered on those promises in many cases, and if used properly, hold the potential of delivering on them all.

Indeed, international arbitration has grown significantly over the years because the parties have chosen it and various features within it, and today is continuing to grow significantly. Mediation has also grown in both countries, and continues to grow, although it has had a tough time gaining full traction for various reasons, including that it has often been non-binding and has not been successful.

Both have disadvantages. International arbitration has in many people’s

minds become too expensive and too protracted, losing key promised features. Mediation has not yet gained the credibility and use that would allow it to be as effective as it should be. Since it is often non-binding, parties sometimes fear that the mediation will disserve them by giving away strategy and other information that will hurt them in the dispute when it goes ahead.

McDonough: Alternative dispute resolution, such as mediation and arbitration, is sometimes useful because it can help parties to resolve their dispute privately and (in some cases) at an early stage. Cayman recently updated its arbitration law, based largely upon international standards. Likewise, it is easy to enforce foreign arbitration awards in the Cayman Islands; this may be useful if there are Cayman assets available to satisfy the award. However, ADR has drawbacks. For example, arbitration will have an extra layer of costs, in the form of fees which need to be paid to the arbitration panel. Furthermore, there are some legal powers that are only available to the court; for example, the liquidation process requires court approval at various stages.

Venegas: I would say that the main

advantage in using an alternative dispute resolution method is the professionalism and specialisation that usually exists in the attorneys involved either as litigators, arbitrators or mediators. The disadvantage is without doubt the costs which are always higher than in a normal litigation before Courts.

7. Can you talk us through the rationale behind drafting a dispute resolution clause into contracts?

Gibson: The rationale is for the parties to predetermine, and therefore control, how they will resolve any dispute. There are a number of matters that the parties might wish to decide in advance. First, what tribunal is to be used? The choices include a national court, an arbitration tribunal (sole or joint) or an expert. Second, which law is to govern the dispute? Third, the parties may want to elect a particular venue for the tribunal or court. Fourth, the parties may decide to include ADR at a specific point in the dispute. Other matters include confidentiality, the language of the resolution process and the duration of the process. Each of these matters can be strategically important.

Krister: It is important to adopt an anticipatory approach regarding substantive law and procedural law and

to only draft an agreement when the parties have agreed on the commercial subject matter thereof.

Davies: The purpose of a dispute resolution clause is to encourage (or depending on the drafting, it may force) the parties to seek to resolve issues that arise through an alternative dispute resolution process. This provides the parties with a cost-effective and expedient way in which to deal with complicated technical issues. It also allows the parties to settle their differences cost-effectively, quickly and privately whilst providing them with the opportunity to repair any damage to their relationship allowing them to continue to work together.

Including a dispute escalation clause also allows issues to be dealt with at the appropriate level of management, again ensuring that they are resolved before they become full-blown disputes.

The dispute resolution clause needs to be carefully drafted so as to avoid issues on the interpretation of the clause itself.

Having a dispute resolution clause provides certainty in terms of the process to be used prior to a dispute arising, after which agreement between the parties can become more problematic.

Venegas: You should always consider the potential amount that may be subject to dispute and the complexity of the issues. If the performance of the contract does not offer any complex problem and the obligations of the parties are very straight forward in their content and interpretation then unless the amount disputed may be high the most recommendable dispute resolution clause would be to submit to the local courts. If one or more of the above mentioned factors plays an important role, then the advantage of including an arbitration or other type of ADR clause shall be carefully evaluated.

Seidel: The rationale, so far as I am concerned, is that litigation is typically too nasty, costly, and uncertain, and there is a good deal of freedom of choice (subject to public policy) to eliminate through a dispute resolution clause to reduce horrible aspects of litigation. Parties have within their power to tailor the possible litigation to iron out many of the problems or issues — specifying court or arbitration; choosing the governing law and the venue; altering procedures such as scope and quantity of discovery; including or excluding a jury; limiting appellate options; permitting third party funding; to illustrate a number of opportunities. If the parties and their lawyers are

sufficiently informed and focused and have the negotiating strength, a good many headaches can be anticipated and escaped.

8. According to the City UK's Legal Services 2014 report, 40% of governing law in all global corporate arbitrations is English law and London is viewed internationally as the leading preferred centre for arbitration. Why is the UK legal system in such high demand?

Gibson: This is a result of a combination of English law's sophistication and the reliability of its institutions. The sophistication of the English law means that it is capable of determining any type of dispute, whether on the basis of precedent or principle, on a known and transparent basis. That, together with the reliability of its institutions, enables legal advisers to predict with some confidence the outcome of the issues in dispute. Clients crave certainty, and while any dispute resolution process is inherently uncertain, English law provides a higher level of certainty than many other legal systems.

Davies: There are many reasons why businesses choose English law as the governing law. Neutrality, impartiality, certainty and predictability are all very

important factors and our legal system is seen to satisfy those requirements. Moreover many parties are familiar with English law, the English legal system and the English language – it has international acceptance.

England is also the home of quality arbitrators. The Chartered Institute of Arbitrators is highly regarded worldwide and is the leading professional arbitration body worldwide. We also have very expertise legal counsel involved in international arbitration.

In terms of London as the seat of the arbitration, it is common for the governing law and the seat to go together on the basis that it is likely that the arbitration will be conducted more cost effectively, efficiently and with legal certainty. England is also seen as “arbitration friendly” with a track record in enforcing agreements to arbitrate and arbitral awards.

As for institutions, businesses again look for neutrality but also the reputation of the institution. It does not necessarily follow that English law and London as the seat mean that the parties will choose LCIA. However, whilst the ICC is the most widely used arbitration institution, the LCIA’s reputation is growing considerably. There are also

practical considerations as to why it may be more convenient to have the seat and the headquarters of the instruction in the same place.

Venegas: Maybe, because of our proximity with the US, but unfortunately in Mexico the English law and England as a site of arbitration are really not included as relevant elements in the contracts or disputes between the parties. The more usual seats for arbitration are either Mexico, the US or France (because of the influence of the ICC system of arbitration).

Seidel: If that is what the City UK’s Legal Services 2014 report maintains, I wonder a little about how reliable it is. While London is a leading arbitration centre, and operates within a tried and true system, I think a number of jurisdictions would challenge the claim that it was *the* leading Centre. Paris isn’t a bad centre, and claims it is the leading centre. New York isn’t bad either as a centre, and is actually actively expanding right now. There are other important centres. In fact, London has recently declared that it is determined to *become* the leading centre. New York has declared the same. These declarations suggest both jurisdictions acknowledge they are not there now. In fact, jurisdictions are starting to

compete with each other to draw in more international arbitration, since it is by itself a commercially and bread winner, and also it can attract business because it tells people that commercial disputes can be sensibly sorted out. (I even heard that New Zealand has announced it will become the leading global arbitration centre)

None of this, however, is to take away from the fact that the UK is a true leader as an arbitration centre, and for good reason. This has developed over the years for many reasons, such as: London is a commercial and financial centre, and its law is used and relied on often in international transactions; London’s arbitration system has developed in a robust way, and is today highly respected in general; London is also a centre for disputes, particularly international ones, as is New York; the arbitrators and arbitration advocates here are high quality indeed.

I can add that third party funders of international arbitrations can also be found in London. London has more of such funders, than any jurisdiction by far, except for the U.S. That can assist in the growth of arbitration in London of meritorious claims that qualify for funding.

9. When you are representing an international client how would you determine which jurisdiction to file for arbitration?

Krister: This will be determined by the salient arbitration agreement, if any. In the absence thereof, jurisdiction will be determined according to substantive law.

Venegas: The key factors will always be the location in which the obligations are performed and the possibility of enforcing any award (depending on the location of the assets). In addition the attitude of the Courts toward the recognition of arbitral awards is an essential factor to take into account.

Seidel: If the claimant is seeking third party funding, the first question and possibly decisive question is whether the jurisdiction accepts funding, or does not accept it. If there is a choice, the claimant who seeks funding will of course want a jurisdiction that accepts funding. Other factors for a claimant seeking funding include the security available for the investor, the foreign exchange situation, and the enforceability of any judgment.

These questions and determinations must of course be measured against the pluses and minuses that the claimant

and its lawyers see from a purely litigation perspective. Here, the funder is equally concerned about choosing a jurisdiction that is positive for the litigator.

10. Can you outline the complexities of dealing with cross-border disputes and how you would successfully control the situation?

Lina: The procedural issues and proof of material law in cross-border disputes are both salient and recurring issues. The key is to raise such issues with the arbitrator(s) at the beginning of the dispute in order to facilitate a settlement and thereby avoid unnecessary uncertainties later during the proceedings.

McDonough: There are three situations where cross-border issues tend to arise: (i) insolvencies (ii) liability claims and (iii) asset recovery. The difficulties can be wide-ranging, such as ensuring the most favourable forum for a liquidation; obtaining/opposing the Cayman court granting assistance to a foreign liquidator (e.g. to pursue Cayman law claims); co-ordinating litigation strategy across multiple proceedings; and enforcing judgments against available assets. Success comes from proper strategic planning, taking

quick action and (in some cases) pushing the boundaries of existing law and practice. For example, the Cayman court has had to decide whether Cayman anti-avoidance statutes should be applied “by analogy” even where the main insolvency proceedings are in another jurisdiction; the Privy Council ultimately said those statutes could *not* be applied in that way, but the point was far from clear-cut.

Venegas: Cross-border disputes represent a very interesting challenge for any lawyer. National Laws and Courts continue to be the rule. The contradictions and continuous overlapping of the different jurisdictions hearing one same dispute (with several ramifications) are always the source of conflicting decisions that force lawyers to expand their views and risk analysis. The best way to handle these disputes is focusing in forming a good team of local lawyers in each relevant jurisdiction and have a leader that may coordinate them to form a real transnational team. In my experience the best coordinated team is always the one that finally prevails in this type of disputes.

11. What key trends do you expect to see over the coming year and in an ideal world what would you like to see implemented or changed?

Aronsky: Parties should learn how to deal with complex issues. Conflict management should be part of an educational syllabus. Instead of looking into immediate results we rather should explore alternatives and invest necessary time. At the end it is faster and cheaper. What looks virulent today may be of inferior priority tomorrow. Where we cannot resolve disagreements among ourselves we shall not be ashamed to ask a third party.

Lina: The key trend relates to a more frequent use of taking of evidence and disclosure of documents in national arbitrations in Sweden, heading more towards international arbitrations.

McDonough: The Cayman Islands will continue to see high-value litigation arising from the financial services sector. Some of the biggest claims, such as Madoff-related liability litigation, will be reaching trial within the next year or so. Further disputes may arise, in Cayman and also other offshore jurisdiction, as the Russian economy faces mounting pressures – and structures set up by Russian-based individuals and entities face “stress-testing” as a result. In an ideal world, we would like to see the Cayman Islands becoming a preferred seat for international arbitrations.

Venegas: I believe that, maybe with little baby steps, each year the litigation practice is becoming more and more uniform worldwide. The frontiers based on applicable law, court or arbitration, and even language is disappearing. The ideal world would be to have better legal systems that take advantage of both cultures, civil and common law, to reach to the fairest solutions taking into account the substance of the disputes and avoiding the improper advantages arising from the manipulation of the process or the differences between the quality of the attorneys that the parties’ can afford depending on their financial status or situation.

Seidel: From my perspective in the third party funding industry, I think the key trend is a growing awareness among litigants and their lawyers of third party funding. That growth is tangible. I have said in the past that the industry’s biggest enemy is a lack of awareness of the industry. On the flip side of that coin, is the point that one of the industry’s best friends is an awareness of the industry. The story of third party funding, working as it should, is in my view compelling. As the story gets around, the market and industry benefit.

