MR. JASON MAYNARD: Good morning. We would like to get started.

I would like to extend a warm welcome to you on this, our 6th Annual Arbitration and Investment Summit, Caribbean, Latin America, and Other Emerging Markets. My name is Jason Maynard. I'm a partner at the law firm of Peter D. Maynard, Counsel & Attorneys, the primary sponsor of this Summit.

We are pleased to have with us and to welcome the Honorable Brent Symonette, Minister of Financial Services, Trade and Industry;

Judge Scott Silverman, retired Judge, 11th Judicial Circuit, USA;

Dr. Rodney Smith, President of the University of The Bahamas;

Professor Datuk Sundra Rajoo, Chartered Arbitrator, Director of the Kuala Lumpur Regional Centre for Arbitration; former President, Chartered Institute of Arbitrators;

The Honorable Justice Courtney Abel of the Belize High Court;

The Honorable Justice Barry Leon, Commercial Judge, Eastern Caribbean Supreme Court, Arbitrator and Mediator;

Professor Alexander Belohlavek, past President of the

World Jurist Association, Law Offices of Alexander Belohlavek, Prague, Czech Republic;

Asmet Barnadee (phonetic), Director of Legal Affairs, Office of the Attorney General and Ministry of Legal Affairs;

Professor Ajibola from the Chartered Institute of the Bank of Nigeria;

Santhaan Krishnan, President of the Commonwealth Lawyers Association;

Leslie Isaac, counsel for the Public Hospital Authority;

Etienne R. Claes, The Honorable Consul for Belgium.

I would also like to welcome all of our distinguished panelists and guests and Student Rapporteurs. I would like to thank our partners and sponsors, including the University of The Bahamas; the Law Department of the University of The Bahamas; the Asian International Arbitration Centre; the World Jurist Association; the Chartered Institute of Arbitrators, Bahamas Branch; the Chartered Institute of Arbitrators, North American Branch; the Arbitration Committee of The Bahamas Bar Association; the Commonwealth Lawyers Association; Atlanta International Arbitration Society; Atlanta Center for International Arbitration and Mediation; Judicial Arbitration

and Mediation Services, Inc., or "JAMS"; Alternative Dispute Resolution, Bahamas; Worldwide Reporting, LLP, Washington D.C., who actually is providing us with realtime transcription this morning, as you can see on the television next to me.

The theme of this Summit is Arbitration, Alternative Dispute Resolution, Cooperation versus Competition. Although this session speaks of international business such as maritime and construction matters, these are also domestic to a considerable extent. Make no mistake about it: We need to be strong in domestic dispute settlement. That would be the basis for the successful completion of our international aspirations.

Accordingly, the skill sets of settlements should be utilized now without delay in the case management at the Supreme Court, magistrates and investment tribunals and utility services; restorative justice; community mediation in, for example, the urban renewal centers and churches; domestic mediation and arbitration in cooperation with the Chamber of Commerce with whom we've worked very closely--Mr. Edison Sumner, its CEO, will be with us later--and, of course, international arbitration.

The record is very compelling that Scandinavian tigers such as Sweden and Pacific tigers such as Singapore, Hong Kong,

and Malaysia and African tigers such as Mauritius have built strong international commercial arbitration seats on the foundation of a strong domestic dispute-settlement base; so, therefore, the dispute settlement is a field which could employ more Bahamians right now. Therefore, we look forward to a fruitful action-oriented Summit, and once again I welcome you.

I now invite Dr. Rodney Smith, President of the University of The Bahamas, to give the opening remarks.

(Applause.)

DR. RODNEY SMITH: Distinguished legal minds, distinguished ladies and gentlemen, visitors to our shores, good morning, and welcome.

Following established protocol, I would like to welcome you to the University of The Bahamas's Oakfield campus for the 6th Annual Arbitration and Investment Summit. It is always a pleasure and privilege for the University to serve as a partner for this Summit and to host it on our campus.

Our mission at U.B. is to advance and expand access to higher education, promote academic freedom, drive national development, and to build character through teaching, learning, research, scholarship, and service. Under these Guiding Principles, U.B. must be integral in the training and education

of arbitrators as a significant part of our law program. The Bahamas has been working diligently towards becoming a regional center of excellence for arbitration, and we host a cadre of internationally recognized and accredited arbitrators and mediators. This is something of which we are, indeed, extremely exceedingly proud.

As we continue to move ahead on this path, it is important that we both recognize and help to define roles for those professional groups and associations that will play a major part in helping to create this regional center of excellence. I would like to thank Mr. Peter Maynard for remaining committed to furthering education on arbitration and continuing to organize this informative and influential Summit. It is my expectation that all attendees and participants will have a productive and rewarding day of presentations and discussions.

Again, I extend a warm welcome to the University of The Bahamas. Please consider our campus your home.

Thank you.

(Applause.)

MR. JASON MAYNARD: I would like to now invite Dr. Datuk Sundra Rajoo to give his opening remarks.

(Applause.)

PROFESSOR DATUK SUNDRA RAJOO: A very good morning, Honorable Minister and President of the University, dignitaries, and ladies and gentlemen.

It is clearly a great honor for me to be here, and I bring greetings from the East. Normally, you don't get someone coming from Asia to speak in the Caribbean, but it is a great honor for me to be here simply because of the topic itself. The topic of arbitration and ADR is something that is so important in the East, in effect, the people have shifted to Asia. The point I would like to make is that we see the same thing that is going to happen here, that the people are going to shift to the Caribbean and Latin America, so the future is actually about Asia and the West as we see it--not the Old West but the New West.

So, one of the things that we also realize as we talk about arbitration, we talk about ADR, we are almost like a wheel, of spokes of a wheel. The smaller centers are at the bottom, and the bigger centers are at the top, but they're all rolling. We are all rolling. And because we are rolling, we will actually go to the top. And it would be different rings that we have, and this is the things that I want to discuss that

perhaps we should look at some of the developments that are going on in the East in terms of how institution-building is going on.

Two is how other firms of ADR are becoming as equally important--for example, construction adjudication is picking up in a very big way--and international arbitration, as we see, is something seen more esoteric, but the most important thing in the second level of building things is actually the domestic arbitrations and the domestic ADR processes that go to assist, actually, the court and bring down the burden of court cases which burden the entire system.

So, for a small country like Malaysia--I consider Malaysia as a small country--in Asia we are small--we have very, very good role models; for example, Singapore, we have Hong Kong--and then we have giants like China, and we have giants like India, whose economic development actually run the entire area together with Japan normally.

But the role of America and also of Europe is actually diminishing at the present moment in our area, so we are actually looking at how we have developed our own programs of ADR.

So, my message basically being here today is to

actually try to discuss some of the things that are happening in our part of the world, and I hope that we can actually cooperate, collaborate, and prosper together.

Thank you very much.

(Applause.)

MR. JASON MAYNARD: Thank you, Professor Rajoo.

I would like now to invite Mr. Santhaan Krishnan, advocate of the Supreme Court of India and President of the Commonwealth Lawyers Association, to give his opening remarks.

(Applause.)

MR. SANTHAAN KRISHNAN: Good morning, everybody.

Dr. Peter Maynard, distinguished guests and other friends: In Commonwealth Lawyers Association, we always believe in work towards upholding the rule of law. Conflict resolutions or dispute-settlement mechanisms is one of the very important aspects of the rule of law. Markets always throw us situations for us to respond. The faster we respond, we exist and thrive as institutions. We have been seeing for quite some time how various arbitration institutions have responded, especially, for example, in the East, we have examples of Singapore and Hong Kong, where we saw the arbitration institutions catching up with the market, adopting new techniques, modernizing their rules,

and trying to be an example for the things that are thrown up in the market.

In the process, they also see the assistance and help from both of the judiciary as well as legislative mechanisms in existence. Accordingly, these are stakeholders, and when all the stakeholders come forward together and to help the cause, we have seen both Singapore and Hong Kong in action as opposed to many similar institutions in the West. I think tomorrow is yours.

The way I see the market, the way things are developing in this part of the world in Caribbean and Latin America, the way Singapore and Hong Kong have set examples for all of us to emulate, I think the initiatives which have been taken by Peter Maynard and many the initiatives that are happening across this region will definitely help the cause and institutions.

Thank you.

(Applause.)

MR. JASON MAYNARD: Thank you, Mr. Krishnan.

Finally, I would like to invite the Honorable Brent Symonette, Minister of Financial Services, Trade and Industry, to give his opening remarks.

(Applause.)

THE HONORABLE SYMONETTE: Thank you very much, Mr. Maynard.

It is, indeed, a pleasure to be here this morning with the distinguished lists of guests and colleagues to bring remarks at the opening of your 6th Annual Summit.

I noted with interest the topics that you have on the program, and I think they are not only timely, I welcome the President of the Commonwealth Lawyers Association saying the future is ours here in this region. I think it's fair to say the Government of The Bahamas is cognizant that the continued reliance of our country on tourism, foreign direct investment, and financial services as the driver of our economy and is committed to creating jobs and making sure we diversify the economy, that these goals can only be achieved in the context of an increasingly globalized society, which comes with those realities involved.

It's fair to say that the Bahamas is recognized internationally as a mature, well-regulated, and sophisticated international financial center, and we have myriad services, as you are well aware, from banking and private trusts, investment advisory services and insurance, and the list goes on. But if we continue to accept that globalization is, if you want to say,

a "buzzword" of the current times, we have to make sure that the perception of The Bahamas in the global economy matches and produces.

So, we have to continue to look at ourselves differently if we are take advantages of changes in the international arena. It cannot be here in The Bahamas, as I said before, "business as usual." We cannot afford to be left behind as our regional neighbors make changes in the way they do business.

Recently, the Prime Minister in the national conflict and Chambers of Commerce talked about decline in the ease of doing business and stated that countries around us are rapidly instituting changes and simplifying processes to make it easier for businesses to operate.

Many of you are aware that, in the recent World Bank Doing Business Report, The Bahamas ranked 121st out of 190 with countries with Jamaica being 67, St. Lucia was 86, and Trinidad and Tobago 96, and the D.R. 103rd.

So we have to, as the Government, look forward to a number of initiatives aimed to changing the ease of business of doing business in The Bahamas; and, as such, we will target three priority areas. Many of you have seen it in the local

newspaper dealing with a business-license process; we started to change that. We are going to change some investor-proposal ideas, so persons can become permanent residents of The Bahamas based on changing certain investment criteria. And I think the President had already sent me a proposal whereby if you considered investing in the University of The Bahamas, that then would be one of the avenues by which persons can get permanent residency--I'm saying considering that; I'm not saying we have adopted that, Mr. President--and the other one will, obviously, be the immigration process. So, all in all, we have a greater transparency of doing business in The Bahamas.

We've heard already this morning that there is a need to resolve disputes promptly and in a manner acceptable to all Parties, and I think on your itinerary I saw the Bahamas saga was a good illustration of how this has happened, and I think someone is talking about it either today or tomorrow, whether this jurisdiction should be the jurisdiction or another jurisdiction and so on and so forth. So, these are aspects I think we all have to look at.

But it is fair to say--and I think some of you may have heard me say it, and I think you heard the President say it--The Bahamas remains committed to the establishment of a modern and

sophisticated international commercial arbitration center. We believe that, given our financial-services sector, our large ship registry, that there are opportunities here in The Bahamas for creating jobs for professional and also trickle-down effect in the economy as such.

I think it's fair to say that the establishment of an arbitration center will not only complement the legal profession here in The Bahamas, but also, as I said, the financial services, maritime, foreign direct investments, and international business initiatives. And we also accept that the arbitration is quickly becoming, as I think we have already heard this morning, the alternate or the preferred method of dispute resolution.

So, with all of that, we take into account also our geological locations between North and Central and South America positions as well, our air transport; our very high level of education with the newly established University of The Bahamas; a stable government; a very good judiciary; a very good court system--albeit, some may say, a little slow, but still reliable with our courts being able to appeal to the Privy Council in the U.K.

So, we're mindful of the Government of all of these

initiatives, as we continue to grow the economy, but we also believe we need to develop more initiatives and products and services to attract various other financial industries, and I think as you had seen recently, the commercial enterprise bill which attracts and schedules certain industries that may not be here or we wish to attract here and want to come here.

We also have home base and also possibly have headquarters here in The Bahamas. Also, for those of us living here, we want to revamp government services so they are more consumer-friendly, productive and responsible.

And lastly, we want to relax the current immigration policies that are here in The Bahamas, which will result in an exchange of professionals across our borders. That one might be the more interesting one that leads to discussion after I have left the room.

(Laughter.)

THE HONORABLE SYMONETTE: But changing the way we do business we have to do, to continue to do business the same way and expecting a different result, obviously we all know that cannot happen.

So, as I was mentioning, I think by liberalizing our immigration rules and regulations, we need to achieve a greater

exchange of legal expertise in the area of trust, certainly in maritime and other financial services.

Having said that, I think The Bahamas has made quite a bit of progress since your last convention, and we are moving towards establishing an international arbitration hub here, which will become a reality shortly.

Since becoming Minister, as many of you may be aware, I visited Singapore last November to attend a conference, a financial services conference, but I took time out with a number of our team to go to the arbitration center there and speak to the officials and see how that center works. And many of you know, it's a very impressive center, and I think we could go a long way toward establishing a similar one here.

The Ministry will or has--I think has in some cases or will in those having perceived it, start to circulate a survey on certain questions relating to the creation of an arbitration center in the Bahamas, and we would appreciate your feedback.

Many of you are also aware that we have accepted the UNCITRAL Model Law, which will be the basis for The Bahamas moving forward with its International Arbitration Centre. And we're also looking at the accession to the Permanent Court of Arbitration as an important step towards establishing us as a

center, and the possibility we might become a host country for the PCA administering disputes within this region.

Those are the dreams, so hopefully we will be able to make them a reality.

So, as we move forward to becoming an arbitration center, we welcome your feedback. And over the last few months, I have been meeting with various interested parties. I met with most of the senior law firms. I was due to meet with the Bar Association, I think, last week, but unfortunately a lot of the lawyers involved had other meetings, so we couldn't meet, to discuss where does the whole question of our immigration policy fit in with moving towards an arbitration center, and I think for many Bahamian practitioners that's the big question in the room.

But having said that, I think it is an opportunity for many of us to grow the economy and not be concerned or overly concerned about how the effect of an arbitration center will relate to the immigration rules and policies in The Bahamas.

Another issue--I think it was on Thursday's newspaper--the question arose as to whether or not we will have one arbitration law for the local arbitration and one for international, and I think it's fair to say that the Arbitration

Act of 2009 was designed primarily for domestic commercial arbitration in mind and has limited aspects towards its implementation so I think, as I've already mentioned, the UNCITRAL model we will adopt international arbitration, and we will work together to see how the two of them can complement each other as we go forward. And again, in that area, I welcome your feedback, and please do not hesitate to either contact me or any of the members of my team in the Ministry.

So, we clearly believe there should be two different arbitration processes.

With that, I would like to welcome you here on behalf of the Government and the people of The Bahamas, and I thank Dr. Maynard and those that have spoken before me for welcoming you. We trust that you have an enjoyable, productive conference, and that you have an opportunity to enjoy not only the campus of the University of The Bahamas but people of the Commonwealth of The Bahamas. Welcome, and we trust you have a good conference. Thank you very much.

(Applause.)

MR. JASON MAYNARD: Thank you, Minister Symonette, for your opening remarks.

We're now a bit ahead of the schedule, so we'll

continue along.

Session 1, the topic is "Smooth or Rough Seas: Challenges to Maritime Arbitration." The moderator is Dr. Peter Maynard, Head of the Law Department, University of The Bahamas, National President for The Bahamas for the World Jurist Association.

(Applause.)

DR. PETER MAYNARD: Good morning. Let me invite our speakers up for this morning's first session: Judge Scott Silverman, Paul Hehir, and Leah Martínez.

First, we will begin, there are a lot of new developments in the area of arbitration maritime law. We are particularly pleased that the great news is that The Bahamas is a place to do maritime arbitration--increasingly so--and so we are delighted to have this panel put together. We are going in the following sequence:

We start with Judge Scott Silverman. Judge Silverman is one of the stalwarts of the Summit. He's a dear friend. And from several summits ago, he came forward with reflections on his experience as a judge. He is a retired Judge of the 11th Judicial Circuit. He joined JAMS after nearly 22 years on the Bench in Miami, and distinguished himself as a stellar judge and

one of South Florida's highest-rated circuit court judges. He's down to Earth and pragmatic--I can attest to that--and he fosters an atmosphere conducive to achieving positive results.

He has presided over tens of thousands of cases as a jurist. He believes that a trial is the most inefficient way to resolving a conflict. The "abyss of litigation," as he calls it, can be aggravating, time-consuming, expensive, and places the lives of otherwise productive people on hold. His experiences and breadth of knowledge can prove useful to the parties as they works towards the conclusion of their case. He is available to serve as a mediator, arbitrator, special magistrate, neutral evaluator, private judge or umpire, and he also presides over mock trials.

His bio is very impressive and quite lengthy. Things in it include mediating claims made by a well-known rapper and adult actress over their sex tape; land numerous other cases, including those in the maritime area.

I will introduce the rest of the speakers as well before I call Scott to come forward.

Seated on the far end, Paul Hehir--I hope I pronounced that correctly--Paul is Associate Vice President of Litigation of Royal Caribbean International and Celebrity Cruises. He

obtained his undergraduate degree from Boston College and his juris doctorate from Suffolk University Law School. He has been an attorney in the maritime industry for over 17 years and is currently the Associate Vice President of Litigation for Royal Caribbean Cruises Limited, RCCL, where he manages several attorneys and eleven claims adjustors in the defense of crew and passenger claims. Prior to his employment at RCCL, he worked at Carnival Cruise Lines as Senior Litigation Counsel for approximately four years in handling crew and guest claims in-house. Paul worked as litigation associate for the maritime law firm of Mayes & Gassenheimer P.A., prior to his tenure at Carnival where he gained valuable trial and litigation experience.

In the middle is Leah Martinez. She is Senior Manager, Crew Claims and Litigation of Royal Caribbean Cruises Limited. She has a very impressive CV, having worked at Royal Caribbean for--since 2012 in various capacities starting first as Senior Litigation Attorney and now in her present position as Senior Manager, Crew Claims and Litigation. Previously, she was an associate at the firm of Mayes, Lara & Ebersole, P.A. She's a graduate of Florida State University College of Law, gaining a juris doctorate in May 2005.

So, please welcome our three panelists.

(Applause.)

DR. PETER MAYNARD: And also, I turn the floor over now to Judge Scott Silverman.

JUDGE SILVERMAN: Well, good morning, everyone. It's good to see everyone.

I will tell you, to give you an idea of how much progress has been made is, when I came here several years ago, this was the College of The Bahamas. It's now the University of The Bahamas, and so progress marches on.

It was also heartening to hear the comments of the Minister who voiced his commitment to domestic as well as international arbitration because I think he recognizes that, like an independent judiciary, when you have good arbitrators and a good process that is recognized by countries such as The Bahamas, you're going to have businesses invest and feel comfortable doing business in The Bahamas. This is an enlightened approach, this is an enlightened view, and it can only benefit the people of this country.

Now, I also have to render thanks to Peter Maynard, who has really put forth a yeoman's effort in moving forward with this Summit year after year. And I will tell you, from my

perspective, the crowds are getting larger, and that's a direct result of Peter's dedication to this program and the people that work with Peter, including his son Jason and Letitia.

What I want to do is talk about real world. This is a chart of the 11th Judicial Circuit. The 11th Judicial Circuit is Miami, and it's the fourth busiest court system in the country. This chart charts case filings over the last--what is it? How many years? From 2000--I'm a lawyer; I don't do math that well--2005 to 2017.

Actually, somebody once told me there are three kinds of lawyers: Those who are good at math and those who aren't.

(Laughter.)

JUDGE SILVERMAN: You got it. Good. So you know where I'm at.

And what this does is this tracks the number of filings in the 11th Judicial Circuit against the three big cruise lines: World, Norwegian, and Carnival.

If you go back to 2005, you will see--and you total them all up--there are 437 filings against these various cruise lines. As of 2017, it dropped down to 65.

So, I asked this question: Are people less litigious? Are there fewer lawyers filing cases because they learned to

love the cruise lines? Probably not.

Now, there are three cases that are mentioned here: Bautista, Thomas, and Lindo. And I could talk to you about these cases forever, but I will make it easy: Good for arbitration, bad for arbitration, good for arbitration. And somewhere in 2009, the Plaintiff's Bar, because typically it's personal injury actions against cruise lines filed because of injuries to seamen, recognized that they're just going to stop fighting the cruise lines in these instances because what was happening is that they would file the lawsuit, there would be an arbitration clause in the Contract, they would file the lawsuit in state court, the cruise lines would have the case moved to Federal Court to compel arbitration. And what you know what would happen? The Federal Court would compel arbitration.

So, between 2005 and 2009, my speculation is they got tired of doing the lawsuits, so just said, "Okay, we're going to just go direct to arbitration," so you see this tremendous drop between these three years.

And Lindo, just to give you a heads up, Lindo basically said federal courts are going to take a hands-off approach. They're going to take a limited review in when or when not to send a case for arbitration. The bottom line is you're going to

arbitration. If you have a problem with the Award, come back, and we will talk about it.

But remember, these cases in all these arbitrations, the presiding treaty is the 1958 New York Convention. So, the Federal courts really have limited review anyway. What matters is the juridical seat of arbitration.

I love lawyers. I'm a lawyer myself, and lawyers in South Florida are really good, but what happens is a lot of lawyers--plaintiffs' lawyers and defense lawyers as well--view international arbitration through the prism of traditional litigation. They forget, they don't realize, they skim over the arbitration clause, that they are in an international proceeding, and so the natural inclination is that when there is some difficulty, they run to Federal Court; and, in reality, you have to look where is the seat of the arbitration. So, the seat matters.

And you're going to hear today from my friends over here some really important news concerning international arbitration in The Bahamas, so I'm not going to take away any of their comments because these people have some important things to tell you.

But suffice it to say, international arbitration in the

real world has had a tremendous impact in what has happened in what I would like to refer to as our "analogue court"--right?--because international arbitration is so very important now for businesses, and so I wanted to point that out to you. That's real-world.

I will also point out to you--and I don't want to try for this one, but maybe this will answer some questions or at least raise some questions in your minds why the cruise lines have opted to go the route of arbitration as opposed to litigation. In Miami--Dade County, again, the 11th Judicial Circuit--over the past seven years, there have been seven trials involving cruise lines. First of all, for the first time, I think, in the new era, in 2017, there were no cases against any of the cruise lines in our Circuit Court that went to trial. None. Zero. And this is a downward trend because, in 2011, in total, there were four, 2012 there were three, 2013 there were three, 2014 there was one, 2015 there was one, 2016 there was one. And the last one to be tried was actually a Royal Caribbean Cruise Line case, and that settled, I think, after three days of trial.

But when you take all these verdicts together that have been rendered over the past seven years, the total amount of

verdicts was over $25 million.

Now, that number is misleading; admittedly, it is absolutely misleading. Why? Because much of that $25 million aggregate verdict was reversed by the appellate courts. But it does show you what juries can and sometimes do. And maybe, when our friends from the Royal Caribbean speak, they could address some of these issues and some of the factors that went into going into arbitration and why it benefits seamen, why it benefits them, why it's a better and more palatable alternative means of case resolution.

So, in The Bahamas, you have the BMA, the Bahamian Maritime Authority. Anybody here from the Bahamian Maritime Authority? Well, I will tell you a little bit about them. They have been around for 23 years. They were created in 1995. They are semi-autonomous, but they are governmental, so there is some governmental control, but they do act on their own. They are dedicated to maintaining the highest standards for Bahamian flag vessels in its fleet, and its function is to register vessels and provide assistance in that; enforce safety inspections; monitor and improve standards on board and the environment. And they have offices in The Bahamas, London, Hong Kong, and Greece. They're all over the place.

They also provide a tremendous amount of education, and if you go on line and look them up, you will find all sorts of educational programs that shipowners or seamen, whoever wishes to take a course can do so, so they're very active. But, also importantly, they work with the International Maritime Organization, the IMO, which is the UN agency dedicated to technical and operational matters.

But here are some important things they are obligated to do here, is to assist in the development of the maritime industry in The Bahamas and to expand and create maritime employment opportunities for Bahamians. Is there anything that they could do, do you think, to foster international arbitration in The Bahamas? What do you think? Yeah, probably; right? They flag vessels; right? They flag vessels.

And so, you know, the question becomes, if you're going to flag and you get the benefits of the Bahamian--the country of The Bahamas, the Commonwealth of The Bahamas, why wouldn't you want to maybe send many of your new arbitrator cases here? We're competent, we're qualified, we're capable. Why not use us? After all, you get these benefits.

It's something to think about. I don't know if they've ever actually looked at it, I don't know if they have thought

about it seriously. I have no idea. That's why I was hoping somebody from the BMA would be here today.

We also have the Bahamian Shipowners Association, and that was created in 1997, and what is their purpose; right? They promote the interest of the shipowners of Bahamian-registered vessels, and I would also like to hear from my friends from Royal Caribbean whether or not they have had any involvement with those folks at all.

Anybody here from that organization? No?

They facilitate the dialogue between the shipowners and the BMA, so basically they are a facilitator between the Bahamian Maritime Authority and the shipowners.

This is kind of an interesting chart. This talks about or addresses flagging the vessels--pardon me, not the flagging the vessels per se, but where The Bahamas ranks with the rest of world. And when comes to gross tonnage that's flagged by The Bahamas, you may not be Number 1, but you're Number 7, which, as I say, ain't bad; right? But, when it comes to boat registration, you're Number 4; and when it comes to cruise-line registration, you're either Number 3 or Number 4, so you're really up there. It's a very important country. And maybe to some degree you use that position as some leverage that benefits

your country.

Certainly, all of these vessels that come here week in and week out are a major boom to the economy here in The Bahamas--I think anybody, even I, can recognize that--but there needs also to be that relationship between country and these people that you serve and that serve your people as well.

So, what do you think? Has the BMA and the BSA, have they been successful? What do you think? It would be great to hear from somebody and let us know.

These charts represent 2015 and 2018, the percentage of passengers per cruise line. Recognize that the big three--Royal, NCL, and Carnival--all headquartered out of Miami, South Florida, they represent basically 80 percent of the market, but they also represent about 72 percent of the revenue that's created through the cruise-line industry. All three of them major, major, major players in this economy.

And for the first time in this Summit we actually have representatives from the cruise line. This is a major accomplishment on Peter's behalf, and it also represents a great opportunity for Royal in this case to talk to you and let them know what their plans are and what their thoughts are that will affect this community, that will affect this country.

I am going to move on very, very quickly and just talk about some arbitration clauses. This is not a course in arbitration clauses per se, but we could talk about the place of arbitration "shall be the seaman's country of citizenship unless arbitration is unavailable under the Convention in that country in which case and only in that case the arbitration shall take place in Nassau, Bahamas."

So, in this particular clause, what was happening is the cruise line and the union that negotiated this Clause with the cruise line.

You know what, we're going to look to see what the citizenship is of that seaman who is making the complaint, seeking arbitration. Again, the seat is one of the most important things that is ever decided in these arbitration clauses.

Unfortunately, what happens is lawyers will sometimes draft these things that are not international lawyers, and they will use the word "place." And sometimes "place" means "venue," and sometimes it means "seat of arbitration," but it can be confusing, and it causes people to go to further mediation.

Suggestion: Anybody who is drafting out there, use "seat of arbitration," don't use "place"; use "venue," don't use

"location." It's just a much, much better practice.

So, here is another one: "The arbitration shall take place in Miami." This "place" venue? This probably means venue, the "place" can mean "seat of arbitration," but this gets confusing. Miami, Florida; Oslo, Norway, or any other location agreed to by the owners of companies and the seafarers.

Good golly, where is the seat going to take place? And again, that's important because if somebody needs to challenge an award made by an arbitrator, you go to seat of arbitration. All of these other countries that are signatories to the 1958 Convention, all that really matters is--and I'm going to generalize now--is do we recognize and enforce the Award? That's the big issue. But when you're attacking these things or you're seeking assistance from a court, you go to the seat of arbitration. That's why it really matters.

Some other ones: "The arbitration shall take place in Miami; Oslo, Norway." You know, it just gets confusing. Here is one: "Rome, Italy, or any other location." And these are all in maritime collective bargaining agreements; and, depending on who the agreement is with, when it was negotiated, they change--they change--but they're very important because they set the future.

Let me just go through these real fast because what I have to say up here is far, far less important, quite frankly, than what you're going to hear from the folks that follow me.

Do you have any thoughts on what The Bahamas can do better to bring more international arbitrations to its shores? Any thoughts?

I will tell you, to hear the commitment by the Minister was like music--it should be music to all of your ears--because it is enlightened, it is perspective, and it is ultimately going to benefit everybody here in this country.

So, I thank you for your time.

(Applause.)

DR. PETER MAYNARD: Thank you very much, Judge Scott, for bringing things in perspective.

Let me at this point recognize a few additional arrivals. In particular, I would like to recognize the former President of the Court of Appeal, Damineti Allen (phonetic), who is sitting here. We're delighted to have you with us.

Actually, directly behind you or right next to you is Judge Courtney Abel, I think you may have met from Belize; and also behind you, Jennifer Esteban, who is with the Regional Judicial and Legal Service Commission of the Caribbean Court of

Justice directly behind you. So, welcome.

Scott brought out the leverage that The Bahamas out to have in the area of maritime arbitration, and it seems to be bearing fruit. We have certainly voiced the idea that The Bahamas should be considered as a place to actually conduct more in the area of maritime arbitration. You heard the words of the Minister.

And we have some good news that The Bahamas is a default seat, but let's bring Paul Hehir, and I will turn the floor over to you. Let's welcome Paul, please.

(Applause.)

MR. PAUL HEHIR: Good morning, everybody. It really is an honor to be here.

I want to clear up one thing.

Leah was introduced as the Senior Manager. She just got to promoted last week to Director.

(Applause.)

MR. PAUL HEHIR: So arbitration, it's truly is an evolution, really. Ten years ago, we had arbitration but didn't really have a hope. When I say we had arbitration, it was the cruise-line industry. So, Judge Silverman put a slide up there and it showed back the three cases--Bautista and then the other

two cases--it was really, like, when it happened to change, it was both sides: Plaintiffs' lawyers and defense lawyers. Who would benefit the most? Where would the money go? Actually, that was the whole thing. Arbitration, are you going to make enough money? Plaintiffs' lawyers aren't going to make enough money, defense lawyers are going to pay too much? But no one really talked about who we are talking about: It's the crew member; right? There is a crew member out there that needs a voice, so the unions got involved, and through like baby steps, we evolved to where we are now.

Ten years ago, we had arbitrations, we had three arbitrators, it was home country of the crew member. That was the venue. 150 different countries where we hired from. How practical was that? I was on phone calls on conferences, and we had to have translators for the potential arbitrators, sometimes multiple translators. Is that ridiculous? It didn't work for our side, the cruise line. It didn't work for the plaintiffs' lawyers. And the poor crew member hardly knew what was going on; right? So baby steps. Baby steps.

And the union has been very protective, and rightfully so, of the crew member, and that's the backbone of our cruise line for the best year we've ever had. 75,000 crew members.

Think of that. If we as the cruise line try to cheap it out and not be fair, what do you think would happen to us; right?

So, these arbitrations, they evolved. Then it was, "Okay, you can have, well, the flag, but you're in Miami." Okay, but then there's still three arbitrators. It never really made sense. Ten years this had gone on. But now we are here, and this is the first collective bargaining agreement from July of last year that we've agreed with the union the venue here in The Bahamas, the law of the flag. That makes sense; right? Royal Caribbean. All of the Royal Caribbean ships are flagged in The Bahamas; right? And one of the arguments was, "Well, you need to have a good judicial backbone system, legal system." You have one here; right? This is where the legal system originated out of common law back in England. The backbone of the legal system is right here. It can be done here.

So, it feels like we're done evolving, and maybe we just have to say--from the cruise lines' perspective, this feels right, and we could be, and Judge Silverman was alluding to, this is could be the beginning of something really special here, our relationship with this country. I'm talking about the cruise-line industry, not just this one, and I truly believe that.

I have to apologize in advance, these slides are pretty elementary, but they told me to keep it kind of light and that there be a lot of questions.

Oh, by the way, if anyone has a question, just stop me. This is just real loose, okay?

So, another reason why this makes sense--by the way, let me stop there: We haven't had any arbitrations yet here, but the clause is viable right now, so it takes a little bit more for a suit to come in, and then we actually have to implement this.

When the plaintiff lawyers find out about it, they will probably have a time with it because we wanted it, we agreed with our union. And it is like one of those things when someone has something, and you really don't want it but people think it's cool and then you really want it, so that's what's happening here. Well, they want it to be there, I don't want it there, so they will probably make a big stink about it like they have done in the past, but this is the argument right now. This is fair. This is fair.

And from a geography standpoint, I mean, we're right here. Our flight took us 40 minutes to get here? This makes sense, not where we're doing arbitrations. We had to go to

Poland once. Does that make sense? That didn't go well, either. Whatever.

(Laughter.)

MR. PAUL HEHIR: All right. We start with the selection of an arbitrator.

It's about control; right? Both sides can pick an arbitrator. Judge Silverman is an arbitrator, very well-respected. So, when I get on the phone with a plaintiff's lawyer, "I say here is this situation, I have this crew member, such-and-such happened, who do we want to have arbitrate this? Well, when you're in the court system in the United States, it's chosen for you. You file a case, and it's random, and there is your judge.

Here you can say, "You know, I think Judge Silverman would be perfect for this case for a number of reasons," but if someone didn't like Judge Silverman, you say, "You know, I don't want--there are another five we can choose." Does that sound fair? We can choose, and then a lawyer can tell their crew member, "I like this judge because of this, this and this."

And from the Defense Bar, the maritime community, we could say, "Okay, I like that. That makes sense."

Another thing too, unions--I mean, unions can represent

a crew member. Unions can get involved, too.

Are there people from the unions here? How you doing?

The union can actually represent a crew member. It says anyone--that's a little bit of a stretch, but it's not anyone, but you can have a union rep represent a crew member if you want. You couldn't really do that in a court of law.

So, this is what would happen in litigation. Judge Silverman mentioned this. If you're in court, Judge Silverman would have a court docket, and then every month you would have a two-week calendar, three-week trial calendar?

JUDGE SILVERMAN: Three weeks.

MR. PAUL HEHIR: How many cases on your calendar call on some of the calendars?

JUDGE SILVERMAN: Too many. Fifty. Take the oldest one.

MR. PAUL HEHIR: Well, then, just put these 49 cases over here, and guess what happens? The older cases would go, and then everything else would be continued.

JUDGE SILVERMAN: When you average 2.9 years to get the drop.

MR. PAUL HEHIR: Not continue the next month. You will get something in the mail that says, "Okay, your case is eight

months from now."

Now, the Plaintiffs' Bar was like, "Nah, how am I going to get this resolved? Where am I going to get my money?" What about the crew member? There is a crew member who is in the system, what is he or she doing? You say," Look, I have to resolve this thing," and it's 2.9. Is that ridiculous?

Arbitrations, soup to nuts. Everything is done six to eight months--eight month tops. It's a streamlined system. It makes the most sense for everybody, especially if you're a crew member.

So, again, the selection of the arbitrator is fair, the forum is fair, the laws are fair.

I will go through this. He's already covered these things.

This was the big thing: The governing law is what I think makes the most sense. I think this could be a good relationship going forward because The Bahamas recognizes a lot of the things in maritime law, the personal injury, that type of thing. And we have things within our collective bargaining agreement that fill in those gaps.

So, Judge Silverman, we were talking last night: Maintenance and cure. Maintenance is the food and lodging you

give a crew member while they're being treated, and the cure is the money you give for that treatment. Bahamian look--you could look at any book you want; you're not going to find maintenance and cure. So, in our collective bargaining unit, we have discussed that. There is something for a crew member there. So, if something needs to be supplemented, we do that. Does that sound fair? We do that for the fairness of the crew member.

Any questions right now?

(No response.)

MR. PAUL HEHIR: So, just to give you some statistics, last year, we arbitrated how many cases, Leah?

MS. LEAH MARTINEZ: Arbitrated to final hearing? About five.

MR. PAUL HEHIR: Five doesn't sound like a lot, and we had 75 filings, and the process to get to the bottom of cases we are dealing with the arbitrators, they get to the late action and it settles. You have hearings, usually telephonic hearings, you are going back and forth, Judge Silverman has been on a number of these. And based on rulings in the streamlined system, the case is settled.

So, the system works right now, so we see what we

foresee going forward is that The Bahamas is going to be a perfect venue for us. Geographically speaking, the law is right, and we really look forward to having this great relationship going forward. And again, I appreciate Peter Maynard and the school for having us. Thank you.

(Applause.)

DR. PETER MAYNARD: Thanks very much. You have given us some great news of the default venue. That is the very beginning of something very important for The Bahamas, so we're delighted to have the news.

To develop this some more, we have Leah Martinez. Let's welcome Leah, please.

(Applause.)

MS. LEAH MARTINEZ: Hello, and good morning everyone.

Again, thank you very much for having us here. Everyone has been very welcoming. I hope this is informative for you. It is an exciting time for Royal Caribbean as we look at new ways to handle arbitration and really start to enforce the provisions that we have in our current CBA.

So, this was actually addressed previously by Paul, but one of the benefits for arbitration and it benefits both parties is the speed with which we can get through resolution on the

claim. Certainly, it's very important for the crew member because, while they're waiting for their claim to be resolved, they're generally not working or they're working somewhere else, they may still be having medical issues ongoing. So, for them, getting resolution and getting compensation or at resolution of their claim is very important. It's obviously very important for Royal Caribbean as well.

We actually have currently two remaining cases, older cases, in the Miami-Dade State Court, which I believe their dates of incidents are 2005 and 2007, and there's really no reason for that. Those cases should be resolved. Certainly, Royal Caribbean wants them pushed through. I keep telling my bosses that it's going to happen, and the next quarter we will get resolution, and then we show up at a calendar call, and the case will get continued for whatever reason.

So, in arbitration, we really don't have that issue. As Judge Silverman indicated, these cases get fed on three-week trial period, where arbitrations are generally wrapped up from the beginning to the end of about three to five days, so that three to five days is a much easier calendar for everybody to get on their schedules and agree to, so we tend to proceed with those much quicker.

Now, the cost of arbitration is very interesting. Theoretically, the idea is that with arbitration and the streamlined nature of the process is that it will be cheaper for both sides, and generally it is. Certainly, the longer a case goes, the more expensive it is because the longer we go, we do additional discovery, a claimant who maybe was deposed two years ago needs to be re-deposed. All the Parties have to get back together. You have another deposition. It can be very expensive.

The arbitrator itself can be expensive. Under CBA, those are costs that Royal Caribbean fully pays for. So, when you are comparing the costs of arbitration, I believe that the crew members and their attorneys actually get a better deal with the arbitration process because, for them, it's significantly cheaper. If the arbitrations are run the way that they should be, it should be cheaper for both sides, and so I believe this was discussed a little bit about the discovery that's permitted in arbitration.

So, with the streamlined process, we liked to really just get those depositions that are very important. So, when you have a state court case or a federal court case, you may be doing seven, eight, nine depositions per side. In our current

CBA, we actually have a limitation, at least at a starting point, is that each side gets three depositions, limited in duration to seven hours. For myself, part of my job description is having to be deposed. I really love the limitation, if anybody has ever been deposed here, after four or five hours, your mind gets tired, so the seven-hour limit is very helpful. And I believe most attorneys, if they're doing what they should be doing, they get their depositions done much well under that time.

The provision, the CBA does allow--for either party to go back to request the arbitrator for additional depositions, if the case is more complicated, but overall it shows the trend towards more streamline needs, get them through the process quicker and get them to a final resolution.

And the inverse of that, arbitration is cheaper, litigation tends to be more expensive for all the reasons I discussed before, generally focused on discovery and the experts that are being used.

Additionally, with moving forward with these arbitrations here in The Bahamas, Royal Caribbean as well as the crew member and their attorneys will be looking for experts to assist them with those cases.

So, generally, the cases tend to focus on medical aspects, so we dealt with a lot of orthopedic surgeons, neurologists, sometimes cardiology. Every once in a while, the case takes a turn so we're looking more at maybe a human-factors expert. A crew member may allege they were injured in the way they were performing their work, so parties will bring in experts.

Less often in arbitration, there may be economists and life-care planners, but generally when we're dealing with arbitrators who are able to understand those concepts and don't need an expert to sit down and walk them through it; whereas, when you're dealing with a jury trial with individuals who really don't understand the numbers that are being presented to them, they don't understand a lot of the law that is being presented to them, the experts help them to discern really what the issues in the case are. Arbitrators often don't need that type of intensive information presented to them.

And again, the evidence and the discovery process is really well controlled by the arbitrator. There are certain arbitrators who always allow interrogatories which are not generally allowed or used in arbitrations. We have some arbitrators that will have unlimited requests for production, so

immediately Royal Caribbean will be served with generally 80 to 100 requests for production for every possible document.

So, for us or for Royal Caribbean Royal and I believe for the plaintiffs' side as well, it helps to kind of streamline that process. In the preliminary hearing that we have with the arbitrator, we try to outline really what the core issues are in the case which should really set the schedule for the discovery. If you brought a case that doesn't involve anything involving cleaning logs, the cleaning logs should be requested in the arbitration, so we try to set those up front and determine exactly what each side needs in order to put their case on for the arbitrator.

And at that time we do the preliminary hearing, we generally try to set the final hearing for the arbitration, and that's generally done, I would say, between six to eight months, assuming that the crew member is no longer treating. If they're still treating, sometimes we tend to push off the final hearing until they're at the point where they are medically cleared. Under the Maritime Law, we call that "Maximum Medical Improvement," and generally that's a better time to proceed with the final hearing.

And in terms of awards, we get very different awards

from different arbitrators, and sometimes the same arbitrator gives us awards that nobody could have predicted, and I think that just shows you that the arbitrators are sitting down, they're taking all the information that's presented to them, they're applying the law to the facts that are there, and to give reasoned awards. And they will actually outline the reasoning and their basis for what they're awarding, which is helpful for both sides, but certainly for myself and the rest of the company, just to see what the direction from the judges are, the arbitrators are, and what they saw they believed was not done appropriately, what they saw that was done appropriately, whereas when you get a jury verdict, you don't get that information. You just get a number and a yes or no because you've done something wrong, and it doesn't allow us much insight into what the award was for.

And again, this is a little bit duplicative, but essentially under litigation there is a full discovery process with experts and expert witness reports, depositions, requests for admissions, different types of discovery processes where in the arbitration process you really try to streamline that so that everybody can get to the heart of what they need for their case so that they can present it to the arbitrator.

So, the arbitration process really is pretty informal. For myself, I have to attend all the arbitrations on behalf of the company. I would much rather sit in an arbitration for three to five days than in a state court setting for a week or two weeks because it's a much more informal process. The arbitrators understand that everybody in the room are professionals. We have a crew member who this case is very important to them, and everybody respects that. We take breaks when necessary, whereas when you're in a more formal setting with a jury, it can be more difficult to kind of adjust to everyone's schedules.

There are some arbitrators that like to hear their arbitrations done fully on papers, which is somewhat difficult sometimes with a personal-injury claim, which are the claims we are arbitrating, so those can be difficult to put on paper, but sometimes the cases are rather simple, and they can be done on paper. It is a more cost-effective way to do the arbitration as well. The Parties don't need to have their experts in line at the hearings for the full day because generally, if you need an expert, even if it's only for three hours to testify in the morning, they will bill you and an entire day, which is very expensive; versus when it's done on the papers, generally

deposition transcripts are submitted, affidavits are submitted, and it's a much more cost-efficient process.

Some arbitrators actually have done some kind of interesting ways of getting to maybe what the truth of the matter is or what they believe would be the right decision because in every one of these cases, each party retains their own experts. Their experts review the facts of the case, they may review medical records, and they will sit in front of the arbitrator, and they will explain their position on what the medical shows.

But oftentimes you have a situation where the arbitrator maybe has a question or wants to go back and revisit something that the expert for the other side had said. This is the idea of the "hot-tubbing," which it's called, essentially you have two experts sitting next to each other with very different opinions but both very smart, well-credentialed individuals, and that gives the arbitrator a chance to ask specific questions to kind of maybe answer questions for them that they don't understand. It's very helpful. And it also kind of shows you the relaxed nature of arbitration is really meant to get a fair resolution. It's not so strict on the way that the normal rules of a state court may run, so that's a good

process.

And it just notes that this is something that happens more overseas or in Europe, something more common that we do offer up from time to the arbitrators, even if it's maybe on an evidentiary hearing or whether or not the deposition needs to be taken.

So, that's essentially where we are at. We covered, I think, a lot about the arbitration process, and I hope this made sense and it wasn't too basic or maybe even too quick on certain aspects. I believe we are probably going to open up for questions or discussion unless anybody has anything specific for me.

QUESTION: (Off microphone and inaudible.)

MS. LEAH MARTINEZ: Yes, actually, that was a great question. You just triggered--as soon as you started discussing that, that reminded me.

So, we actually started with inception of our 2015 CBA, we did have a clause that required what was called a "conciliation conference," and essentially required the parties, before proceeding with an arbitration, to sit down and discuss the case. We currently, in our newest CBA, do require mediation prior to proceeding to arbitration, which certainly benefits

both sides.

Certain attorneys are very willing to do it and they are very excited about the concept. I show up to the proceeding just so they could check the box and move on with the arbitration, but if both parties come to the table interested in trying to resolve the case, it's great because then we get stock before we get the filing fees in the preliminary hearing, so that's something we are pushing going forward as well.

JUSTICE ABEL: In those kind of medical situations, have you ever used the same mediation process instead of the arbitration?

MS. LEAH MARTINEZ: I personally do not like it. I like to keep the mediators and the arbitrators separates because the mediation process is really dependent on the parties being open and being very candid, and there are things that you may want to present to a mediator as part of your presentation that it just wouldn't be appropriate to discuss with your arbitrator.

And I also feel like if you mediate a case and everything is out there and you arbitrate with that arbitrator later, they may have already kind of in their mind a perception of this new case based on what happened in the old case.

So, I tend to think it's better to keep them separate.

JUDGE SILVERMAN: If I may address that because I have been in that position where I served as arbitrator and they've asked me to mediate the case. And besides getting a bunch of waivers that they're not going to disqualify me, I have to give them a caveat, don't listen to anything I tell them in the mediation. Don't read into anything I'm saying because I'm trying to get them to resolve your case. If I say something, you think this is going to be the way I rule as an arbitrator, and I'm two different people wearing two different hats, but it's really uncomfortable.

I will tell you, I have done it about three times, and each time the case mediated to successful conclusion, but I don't like it, so there you have it.

JUSTICE ABEL: Is that not success?

JUDGE SILVERMAN: It's success, but you just feel smarmy about it because you know the case, you know the players. Even though you tell them don't listen to what you're saying, they're going to still read into everything you are going to tell them. It's just a weird place to be.

JUSTICE ABEL: It's difficult because we're thinking in terms of we are living in paradise.

JUDGE SILVERMAN: Of course.

We've got the judicial hat on, and the switch over to something that isn't judicial is odd. It's like boxing with a south paw. It's very strange. You could still knock out the other guy, but a little tougher opponent.

QUESTION: (Off microphone and inaudible.) So, in terms of speed and time, it makes sense. What would your reaction be to that?

JUDGE SILVERMAN: The mediation is always going to be shorter than the arbitration, so from the time perspective, it's quicker than mediation.

Remember cases settle usually because both parties want to settle. If one party doesn't want to settle, it's not going anywhere. Arbitration, on the other hand, is where the rubber meets the road, as they say, and the decision is going to be made regardless of the desire of the parties.

All I can tell you is, having done it, I don't like doing it, but I have done it.

MR. PAUL HEHIR: Well, from a practical standpoint, too, if the same person is the mediator and the arbitrator and it goes all the way through, then the arbitrator sticks one of the parties, no one is going to use that guy as a mediator anymore. So, you might have had the success three times, but if

you did it one time and you really hit a party, they would not want to do that anymore.

JUDGE SILVERMAN: As mediator, you have longer shelf life than as arbitrator because as, arbitrator you're, always going to be pegged. It doesn't matter what you do, your outcome could be a thousand percent correct, but someone is going to peg you. I spent over two decades on the bench, but I didn't realize until I started as a mediator that justice is very subjective. For whatever reason, the winner always seems to get justice; right? The loser, "The judge didn't get it, the jury is dumb. My lawyer was awful." Doesn't matter. Everybody has got an excuse for everything.

MR. PAUL HEHIR: The general rule is if both parties, at the end of the day, are disappointed, it was fair. If everyone is happy, justice was served.

Strike that one.

COURT REPORTER: Too late.

(Laughter.)

JUDGE SILVERMAN: Arbitration, that's why your shelf life is somewhat limited than arbitration.

With these folks over here, I made decisions, and they thought I was brilliant. I also made decisions where they

thought I was totally dumb. That was the nature of the beast.

QUESTION: (Off microphone and inaudible) ...don't provide for initiative if they feel an opportunity to reach a settlement, and the arbitrator is empowered to pursue or assist the parties in pursuing that settlement if, indeed, he or she needs--the opportunity arises and would then allow the parties to go off with some instruction and try to reach a settlement and come back.

The law also foresees that if the parties so required, the arbitrator can actually try to assist the party to reach that settlement so that, indeed, depending on the culture, some cultures are more attuned to allowing for that sort of thing to happen. For example, in Asia, where there is a tendency, the culture is to allow conciliatory approaches to resolution is both frequent they happen. Germany has picked up on that, and in their laws actually allow that to happen.

JUDGE SILVERMAN: Generally, in international arbitration, we are not conciliators, and we don't push people into mediation.

This CBA, I have to tell you, I have called the union, I have called the cruise line on this one because this is the first one I have ever seen in a CBA that requires as a condition

to going to arbitration to mediate. Listen, people can come up with their own resolution, it's better for everyone.

QUESTION: The point I was making is that the law has a provision that allows that to happen--it has a structure.

(Applause.)

QUESTION: Calvin was mentioning that in the context, the BVI...

(Off microphone and inaudible.)

QUESTION: In the appropriate circumstances serve as mediator, so there is that provision within the region. And as I recall it, the ICC Rules, in fact, also encourage the parties to seek mediation in appropriate circumstances. It's not unusual in the context of international arbitration.

JUDGE SILVERMAN: JAMS, for example, has a mediator reserve that, when I'm selected as an arbitrator, I don't know who this mediator is, but the parties select the mediator in advance. So, if they want to go into mediation, they could do that.

MR. SANTHAAN KRISHNAN: I want to add what Malcolm has said. In fact, in Hong Kong and in China, it's part of the law, the concept of what is called "arbitration, mediation, arbitration." It's arb-med-arb. Med-arb is a bit different.

Med-arb is something that actually has some difficulty there because the great strength of arbitration is actually universal enforcement under the New York Convention, which is 157 countries.

Now, the New York Convention requires for there to be a dispute. So, in the old days, when we all started our arbitration career, we were told, if there is a mediation, then you appoint an arbitrator to actually record that settlement in an arbitration award, but that will follow the New York Convention simply because there is no dispute at the point you are actually recording.

So, I think to overcome that, I think many jurisdictions are now looking at appointing the arbitrator because there is a dispute, and then allowing mediation could be to the same arbitrator in some countries or in other countries to actually go off and then come back and mediate, the arbitrator is already appointed to actually settle the dispute on terms set up.

So, I think there is actually a problem of actually enforcement rather, and so these techniques are being developed all over the world, particularly in the East. And in fact, certain cultures, as the gentleman pointed out, is prone towards

mediation.

In fact, I'm doing work in China where the first point or if you do work in Japan, the first point they will say "dispute avoidance, mediation." "Arbitration" is only the last resort.

DR. PETER MAYNARD: Thank you so much. Some more comments here. I will go down the front.

A piece of good news was that Paul and Leah are looking for experts, and so make sure to make yourself known to them.

QUESTION: My name Ajibola. I'm President of the Bank of Nigeria. I'm also a lawyer, and I want to share my own experience, as happened in Nigeria, due to most part of Africa.

Over the course of our own background, which is more conciliatory posture than adversarial, mediation happens to be the most popular in Nigeria and, indeed, the Government at the same time, which is the Federal Government, as most governments, they have nationality in place to encourage mediation. Arbitration is more or less a private affair than government-sponsored machinery for resolving disputes.

Like in Lagos State, which has population of about 22 million, government, indeed, has what is called "multi-door courthouse," which is all set up backed by law to encourage

mediation as for the board for CCS. And in the banking industry, for example, most claims, issues, and disputes go to that multi-door courthouse which applies rule of mediation and arbitration, and we have had so many disputes resolved.

In my position, we have through the Bank Committee in Nigeria. All they do is to mediate between banks, bankers, and their customers, and within the last couple of years resolved issues on matters running into several billions of dollars without going through arbitration. So, we're talking about Nigeria today and the modality for dispute resolution. It is not of mediation and arbitration. Indeed, as an individual and also as mediator by mediating institution.

So, this is the trend we have in the Nigeria, and also what has been popularized in most African countries, we believe now in conciliation. I share that the parties go back home happily and remain in relationship current conduct and transactions on adversary, and--I'm repeating again because of our own concern, you come back and you find it difficult to remain friends, remain partners, you really need to do business together again.

Thank you.

DR. PETER MAYNARD: Parties go home equally happy or unhappy.

QUESTION: Just a quick comment, the International Mediation Institute and, I think, the ICDR in the last year-and-a-half or so did a major study on what they called "mixed-mode dispute resolution," which unpacks all these issues about when it is appropriate to mix different techniques and how that may work or may not work, and, indeed, the cultural aspects of this particular thing, and that study has been reported by a guy called Tom Stufadovich (phonetic)--did I mispronounce that?--in the last few months, so it's quite interesting.

DR. PETER MAYNARD: We have some more time.

QUESTION: Good morning. What criteria is needed to become an arbitrator?

JUDGE SILVERMAN: How to become an arbitrator? You don't have to be a former judge. It helps because you have to have a record in making decisions, but I could tell you, Florida, really, anybody can be an arbitrator. If the parties choose to have your local dog-catcher to be an arbitrator, and you're happy with him or her, then fine, that's your arbitrator. But sometimes the contract will set forth the criteria for selecting the arbitrator. If it's an oil-and-gas matter, it may require somebody to be a petroleum engineer to sit as the arbitrator. It may require somebody who has at least four years

of judicial experience.

My preference is that there be a in line in there that says that the arbitrator must have been a judge in the 11th Judicial Circuit for nearly 22 years and started off with red hair and ended up with none, but I have never seen that one yet.

(Laughter.)

QUESTION: A good way to go about investigating how to become an arbitrator is through professional organizations, particularly in my mind the Chartered Institute of Arbitrators, which is a global body comprising 16,000 arbitrators and dispute-resolvers in 140 countries worldwide. They have a Web site, "CIArb.org." They're based out of London, England, and they do training and accreditation, and they show career paths. In fact, it's something simply called the "Pathways," is the path that you follow depending on what your particular interests are. If you're able to track an outfit such as the Chartered Institute of Arbitrators, you can take them through your entire career as you build your way up to being both an advocate and ultimately an arbitrator. There is a branch here in The Bahamas.

By the way, Dr. Maynard is in charge of that.

JUDGE SILVERMAN: I do have a question, and this is

really for our union representatives as well as Royal.

The mediations that are proceeding with the arbitration, is it the intent that they be held in the Bahamas, too, or back in the U.S.? Is it the intent that the mediations be held in the U.S. or in The Bahamas?

QUESTION: I have to see the CBA, to be honest. But the intent is the question on venue, et cetera. Every case is different, so the intention is that it's done in the most economical and easiest place available to the parties involved?

JUDGE SILVERMAN: Because under the CBA can appear face time or whatever it is, my experience mediations doesn't work well.

QUESTION: It also depends on the topic, how simple a case is, how complex it is, how much the seafarer, because there's a lot of ladies on board, too, how much they trust their representatives, whether it's the union, whether it's a private attorney. There is a lot of different details that would determine where that mediation takes place.

But it's not meant to be another step in the process as a later process. It's meant to be something that simplifies cases that need to be simplified and can be fixed.

So, as to whether there is a formal intention as to where

that takes place, my belief, without looking at the text, is that there is none. It's open. It's the last step of the grievance-handling procedure before it becomes formal.

JUDGE SILVERMAN: It strikes me that it's a point of contention, "yes, you appear; no, you will not appear."

(Off microphone and inaudible.)

MS. LEAH MARTINEZ: It's a little wordy, but the reason that it's like that is to ensure the process is not going to hinder the actual arbitration or resolution of the case.

MR. PAUL HEHIR: Another thing, too, I'm not saying plaintiffs' lawyers are sketchy, but when we give a--some are good--when we give an offer to the plaintiff's lawyer, we don't know what they do with that; right? We're in mediation, we could look right across the table and say, "Ma'am or sir, this is what we think is fair. Here it is. This is the number, and we could get that to you within five days."

That is really all about the crew member; right? It's his or her decision. That's what the dispute's about, so the crew member can look back and say what do I mean by this? "They offer me X, and they're going to pay me in how many days?" You can't do that in arbitration. We can actually communicate.

I think the venue of where it happens is, I don't want

to say "secondary," but it's our ability to communicate with the crew member, him or herself.

QUESTION: When the parties come together and accept the new procedure for the arbitration, you can make the determination that any offers, how you treat the offers, and the parties can agree that the offers can be treated, can be made to the arbitrator. The envelopes are not open until such time that it's come to deliberations, and then the arbitrators can open the envelopes and make certain determinations based on the agreements of the parties at the beginning in those preliminary hearings that you have when you set up the procedures, so you can do that.

Again, it's the autonomy of the process that the parties can dictate how the process is determined, and one of the things they can and have been recently including are these offers and making provisions about how they can be treated because you will often find sometimes the offer may have been better than the decision, and in which case there is the accusation or the allegation that there has not been a good-faith approach to these matters. But again, you would have to determine that at the beginning of the arbitration, if you are well treated at the end.

QUESTION: I think what Leah said is really important because in the international setting, international informal setting, the venue is really secondary because a lot of these mediations take place through a conference call: One person is in Malaysia, the other person is in Miami, one person is somewhere else. So, where is the venue? I mean, how does it help to establish the venue of the mediation if it's supposed to be flexible? It's whatever works. I understand it's difference than seat, but we're not in arbitration; we're just in mediation.

JUDGE SILVERMAN: I could tell you just because the way it is in Florida. In mediation, all the parties have to be present, and my experience has been with insurance adjustors in Ohio agree to telephone? No. Hang up. And that's sometimes the end of the mediation. But when people have to come in and be physically present and have discussion, things tend to resolve more so than when they're not in person.

MR. PAUL HEHIR: In Florida we have that rule. It's not diversity of jurisdiction. We have people from that area generally. When you hire from 150-plus countries, the practicality of everyone being in the same room is not that practical. But that would be the best-case scenario. But what

we're trying to do, if we're trying to streamline the process, to get into the nuance, that is defeating the purpose.

QUESTION: And again, what you said at the beginning, if they don't want to settle, mediation is not going to work anyway. So, if people want to settle this process, they will make their best effort to show up in the best manner possible.

And seafarers are poor people, okay? They don't have the means to pay for a plane ticket and appear, even if they have the resource. It's very complicated. Mediation is mean to be flexible, informal, and try to make the best effort to settle before going to arbitration.

JUDGE SILVERMAN: Seafarer's union, you do see that as a benefit for your union members in the sense that--

QUESTION: Mandatory mediation? We will see how it works.

JUDGE SILVERMAN: The number of filings in Dade County this year, 2017 compared to 2015, 3,000-case reduction in the number of cases. I think some of that--I can't say all of it--was pre-suit mediation because there are escalation clauses that typically say the CEOs have to meet with each other if there is a dispute, or CFOs. Then if it's not resolved, they have to have a formal meeting.

I think the last mediation I did was pre-suit mediation, and it was resolved, so it doesn't even make it.

QUESTION: But if you want to know for the benefit of the seafarer or not, we would have to see how many cases were correctly solved in mediation and with proper compensation, which is something difficult to measure when all these awards--they're not awards, but agreements, settlement agreements, are not put into awards because we can't see them.

JUDGE SILVERMAN: I will also tell you from the mediator's perspective, cases don't always settle the day of mediation, but if you get the conversation going and they settle in one or two weeks, I personally consider that a win, but it gets people talking because otherwise you have about--prior to mediation, people didn't want to talk. If I called Peter and said we want to settle, then Peter got on the phone and says "they want to settle, we got them over a barrel." This way, when you have mandatory mediation, nobody gets the benefit over the other one. Everyone has got to go.

As I see it, it's an opportunity for everybody. They're spending a lot on the arbitrator and the process. Claimant's counsel, good golly, call for a doctor, and there is costs and attorneys' fees because what happens, everyone bears

their own costs. Here is what happens: You may get an award, but what's going to happen is the costs that are associated with that are going to come off the top of the seafarer's award.

QUESTION: We're well-aware of that.

JUDGE SILVERMAN: It's interesting to read that.

DR. PETER MAYNARD: We heard from Paul and Leah that default arbitration venue is of interest to the companies. What about the union? What is the union's view on the default arbitration provision in the CBA?

QUESTION: Let me see if I understood the question correctly. I would have to see the text, but I understand it does. The Royal Caribbean one, yes.

(Inaudible.)

DR. PETER MAYNARD: I think we are just pretty much on time to end.

Another quick question?

QUESTION: In the event that the mediation has had in The Bahamas, the question of enforceability in my mind arises, how is the mediation settlement offer? We have a mediation act that says mediation shall be enforced by Bahamian courts, so how do you come about it in the course of the mediation to settlements?

JUDGE SILVERMAN: That's an interesting question. In Florida, if you enter into a mediated settlement agreement, you know you are going to a Florida court to enforce it. Only once have I seen the following, and this is from an international lawyer whose case I mediated. He put in an arbitration clause in the mediated settlement agreement, which is interesting. So, if the international party that he was suing defaulted, then you know what? He can get an award and basically shop that award anywhere in 158 jurisdictions. I have only said to people, I have always lectured that I much rather have an international arbitral award under the 1958 Convention than a judgment from the U.S. Supreme Court because I can go anywhere with that award pretty much. But with the U.S. Supreme Court, I've got it domesticated. It's a whole different headache.

So, the only thing I have to worry about under the 1958 Convention is, is the court going to recognize it and is it going to enforce it? And the Convention sets forth specifically what the terms are.

To answer your question, I think The Bahamas you might be able to.

QUESTION: But enforceability goes to arbitration rather than mediation, so there are two separate forums; right?

You can enforce an arbitral award, but not mediation or settlement.

MR. PAUL HEHIR: Settlement agreement is the Contract. All you have to do is put into the settlement agreement what the jurisdiction--all disputes that can be done in arbitration in a Bahamian court or U.S. court is really just a small contract. All you have to do is just put where any dispute from that agreement would be helped.

DR. PETER MAYNARD: Well, it's a very interesting session to begin the morning. Would you agree? Let's have a round of applause for their papers.

(Applause.)

DR. PETER MAYNARD: Also, let's please thank David. David Kasdan is giving us the benefit of the realtime transcription, Worldwide Reporting. Let's thank David for his effort.

(Applause.)

COURT REPORTER: Thank you.

DR. PETER MAYNARD: We will have a break, and we will continue sharp at 11:00. Directly behind us is the coffee room, and so let's reconvene at 11:00 a.m. Thank you.

(Brief recess.)

MR. COLIN JUPP: Good day, everyone. Thank you all for coming back into the room, and we're about to start our second session for the day. The topic is "Court-connected Mediation and Arbitration, Anti-suit Injunctions: Helpful or Harmful?"

As we heard from our first panel, two of the biggest issues in ADR is speed and costs, so this topic should definitely be of interest to everyone in the room.

I'm very pleased to have such an illustrious panel who will be sharing with us this morning. We have Justice Courtney Abel, Justice of the Supreme Court of Belize. He is the leader and mind behind having conceived the current Belize proposal for court-connected arbitration, an expert in the field, and we are very pleased that you can join us this morning, Justice Abel.

Additionally, we have Mr. Philip "Whit" Engel. He's a Fellow of the Chartered Institute of Arbitrators and attorney and solicitor, arbitrator and mediator of international business trade and investments based in Atlanta, Georgia, but with a worldwide practice. His background and experience as being in building businesses and resolving disputes in the field of energy, construction, engineering, facilities management, real property, intellectual property, logistics and corporate law in the U.S., Canada, the Caribbean, Europe and the Middle East. He

has negotiated and closed on some transactions up to CAD 4 billion.

And also we have Ms. Caryl Lashley, Master of Law and Notary Republic, with experience in litigation matters, a career in law for more than 30 years, a Fellow of the Chartered Institute of Arbitrators. Her professional memberships include FIDA, International Federation of Women Lawyers, Society of Trust and Estate Practitioners, the International Bar Association, The Bahamas Bar Association.

So, as we can see, we're very grateful for these experts to be able to come and share with us this morning; and, without much further ado, I would like to ask the Honorable Justice Courtney Abel to come forward and share with us regarding court-connected mediation and arbitration. Let's give him a very warm welcome.

(Applause.)

JUSTICE ABEL: Good morning.

Whenever I'm on these panels, I'm always shocked when I'm given introductions like this because I feel I'm a bit of a con man because I really don't feel as if I know as much as the people usually on the panel with me or, indeed, the people in the room, but it's happening with such frequency now that I'm

beginning to wonder perhaps what it is that I'm doing.

And it reminds me of when I first became a judge in Belize over five years ago. My interest was always in jurisprudence, the philosophy of law, and so I not only did I think out of the box, I didn't consider that there was a box. And I think that when I took that attitude to the Bench in Belize, having practiced for many, many years in the Eastern Caribbean, I suddenly started doing all kinds of seemingly crazy things, and I was getting settlements left, right and center. A huge backlog which I had suddenly disappeared. And I suddenly began to think, "Oh, my God, I am going to get into trouble," I must be doing something wrong because, if I'm able to do this, and it appears to be so easy, why then aren't other people doing it already?

And then I went to a few conferences, asked a few knowledgeable people, and they said, "No, no, no, no, no, you're on the right track," and so I kept going. And as I stand here now, I can tell you, after five years, I don't have any backlog in my court of civil cases. I don't have any outstanding judgments. I deliver as far as possible oral judgments--that is, judgments given straight after the lawyers have finished speaking--and I produce draft judgments in other case, a few,

and very few I give written judgments.

And it seems it works, but the thing is that I was talking just now to recently retired court of appeals judge from here and explaining to her the system, and it is simply thinking that there is no box. There is no box. And the planning of a lot of these novel ideas that are happening in what I call "appropriate" dispute resolution, not "alternative"--not "alternative"--because if the end result is the resolution of disputes, what is alternative about it? If it works, what is it alternative to? Trial? That doesn't work. No, it's using any appropriate method to get to the end result.

So, what I found that is really interesting--I have written that, but I'm sure you will get copies of it, but I think it's far more interesting to be talking to you like this--what I found is that judges have to sit down and try and be at the cutting-edge of what is happening with dispute resolution, and what is cutting-edge is, really, things like mediation, conciliation, early dispute assessments and arbitration, and applying it to the court system and using it in a fluid way without thinking that there are only boundaries.

And, of course, as I was explaining to the retired judge here, one of the first things I did when I first arrived

on the judicial scene was to make it clear that all this business about adjournment was to look at what happened in my court, but the culture of the adjournments have to stop, and it was blasted all over the newspapers and everywhere else.

And, of course, the biggest "culprit," if you pardon the expression, were the senior lawyers, who thought they could come up with all kinds of fancy arguments as to why their case should be adjourned and all the other persons' cases should not, and I disabused them very quickly of that notion.

So, nowadays, the only way thing they might be able to get an adjournment is if they say, "Judge, we have been in discussion, and we are at the brink of settling this case."

(Laughter.)

JUSTICE ABEL: And then I tell them--and this is usually, I tell them, "Look, come and make your arguments on the day of the hearing, which is set," and then they come, and they make the argument. I say, "Okay, the Court is empty. Go outside there, settle it and come back here and give me the result, and we will move on." Right? And it works, and it works like magic.

But the critical thing about case management, which a lot of people and a lot of judges don't understand--and I tried

to explain--I was asked to do a training session for the Attorney General last year--or was it two years ago? December before last--and I tried to explain to him then that a judge should really spend most of their time managing cases not trying them, and the investment in the management of cases pays huge dividends and, frankly, can be applied not only to civil matters and commercial matters, which I'm considered to be a specialist in, but it can also apply, in my view, to criminal matters. And it can also apply to the court of appeal.

But I don't think the seismic change or the mind shift has been reached in the sense that what a judge has to be doing is applying their minds and their thinking towards resolving a case without the need of a trial. That is the objective, that any trial is an absolute last resort; and, when that takes place, including the management process, it has to be done in such a way that there is absolute transparency. No ambush.

What I often do in terms of case management is insist that all the--all the evidence, all the issues, all the arguments, all the authorities are fleshed out long before the trial date is set and the case is due to be heard; and, with that kind of transparency, you create the climate for resolving disputes.

Now, I was at a conference like this a few years ago in arbitration, so-called "high-level meeting" in St. Lucia, and they were talking about arbitration and what have you. And, of course, while they were talking, I started to daydream because I had already set up a system of court-connected mediation system in Belize soon after I arrived--I was the chair of the committee--and it was working like magic. We not only prepared the public by going on a roadshow and explaining everything to the public. We created an infomercial.

We then had to train the judges, to talk to the judges about it, because they didn't really understand, and they weren't going to refer matters to mediation that they didn't understand. And, of course, we adopted things for the Bar Association and everything else, so the whole publicity thing, and it worked like magic.

I was sitting down and applying this, and I said why shouldn't this work with arbitration? And I daydreamed, and it came to me in a flash, and it was clear as daylight, and I went back to the Chief Justice and I said, "C.J.," I said, "I got this idea," and to his credit, a wonderful person to deal with, I said, "This is it," and I explained court-connected arbitration. And he said, "You really think this could work?"

I said, "Yes, it's going to work." He said, "All right, let's do it." So, we went ahead, and we started the whole process going.

Well, I always believe in creating the first draft because, if you get people in the room and there is not a first draft to talk about, they're going to talk round and round in circles, so I created the first draft as I did with the previous rules for court-connected arbitration, and then I threw it out to the Bar Association and what have you.

And to cut a long story short, we had the benefit of Dr. Christopher Malcolm. Stand up, Malcolm. He was then the President of the Caribbean of the Chartered Institute of Arbitrators. He came and did some phenomenal training with the Secretary at the time, Shan Greer, and they retrained, I think, about 14 or 15 non-lawyers, and about the rest--how many? Total about 30-40-something persons as arbitrators. I sat down in the room when he was training the non-lawyers for arbitration, and I said, "How is he going to cover all the ground that these people need to prepare them to deal with arbitration in a way that a lawyer is obviously prepared in the short space of time?" And I was amazed, I've got to tell you, Chris, I was amazed at how he was able to break it down, and I think the reason is that he's

been doing something called "street law" in Jamaica, so he had to break the law down for that. I mean, he was amazing.

But anyway, we trained all these arbitrators, and they're all members of the Chartered Institute of Arbitrators. They've all got the certificate from the University of the West Indies, under whose auspices the course was conducted. And they also were eligible for and most of them have actually been sworn in to be on the Roster of Arbitrators.

But the effect of this whole system, the rules are nearly finished, and they're about to go to the draftsman, the Bar Association tallies it up for finalization. But if it's gone to the draftsperson, it's come back with comments and it's about to be finalized.

What is the concept of court-connected arbitration? It's simple. It relates to having a filed claim and an option which the parties can take of having their dispute resolved not by a judge but by somebody on the Roster of Arbitrators instead of the judge. And it's as simple as that. And we have set up a whole administrative arrangement around that, similar to what we got with court-connected mediation.

And the whole thing is driven, of course, by a national committee of stakeholders who meet every month, and they decide

all the policy issues that are connected with ADR and make decisions which are then submitted to the Chief Justice in an advisory capacity.

But the idea of having this body is, I think, one of the great innovations because not only does arbitration and mediation democratize dispute resolution and takes it out of the hands of the so-called "judges" and everyone else. Anybody can be an arbitrator, everyone can be a mediator, but the committee actually brings them on board, and they then become the sounding board, the selling points for what we were doing.

When we took the show on the road in terms of publicity, a lot of the people on the committee were the people who actually were ordinary people, some lawyers, some professionals, and they were the ones who were selling the whole thing to the public. They were the public; right?

So, the whole concept of court-connected arbitration is effectively the introduction of choice into the system so that a litigant can decide who their judge is going to be, and all the other--the seat of the arbitration is obviously Belize because there is a filed claim, but we have set up all the administrative system around it, and we hope that it will work.

And I think there is a general interest throughout the

other parts of the Caribbean--Trinidad; I know Jamaica, Dr. Malcolm, is interested, very interested in pursuing it; I spoke at the meetings in Guyana; I spoke in Trinidad--and they're all dying to see what is going to happen, so this is the real innovation. And the whole concept is thinking that there is no box.

But I think, crucially, all the rules and procedure and everything, there is just so much stuff, but the real innovation, I think, is what I think really we should try and inject even into the judicial process, which is a whole new altitude and approach towards dispute resolution, that anything goes as long as it can result in the resolution of disputes. And I'm convinced that what I thought I was doing wrong and terrified me when I first started as a judge is that very, very simple concept, which is let's get to resolution.

I was telling the retired court of appeal judge, what is interesting is that one CCJ judge once came up to me and said, "Courtney, we're not getting any of your decisions coming up to the CCJ," and my CCJ was there and said, "Nobody is appealing them," and one of the reasons why people are not appealing them is most of them are actually settled, so I think it's really a way to go.

I'm happy to take any answers. There is a paper here which I've presented, and it's a bit dense. You can take that away and read it, but I'm happy to answer any questions anybody has.

(Applause.)

MR. JUDD: Thank you very much, Justice Abel. I'm sure we will have numerous questions for you at the end.

Next up, if we could have Mr. Whit Engel. Let's give him a round of applause.

(Applause.)

MR. PHILIP "WHIT" ENGLE: Ladies and gentlemen, thank you very much for letting me speak. It's my privilege to be here today. It's my special privilege to be following Justice Courtney Abel on the podium here.

Nelson Mandela once said: "There is no passion in thinking small." Well, I propose to you--I submit to you--that Justice Abel not only has the passion, but he thinks big. He's thinking outside the box.

Just consider some of the things that he just shared with us:

Knocking down barriers of the status quo;

In executing court-connected mediation, executing

court-connected arbitration;

Eliminating caseloads; and

Reducing appeals.

This is real innovation. And to call it--I would like to borrow that term, if I could--"ADR-appropriate dispute resolution."

Anyway, my presentation, I'm going to apologize in advance, is much more mundane. It has to do with "anti," and it's anti-suit, anti-arbitration injunctions.

Now, the purpose of an anti-suit injunction is to prevent any given party from proceeding to a lawsuit. Why? Because there is some sort of arbitration agreement in place that would preclude a suit from happening. In the U.S., for example, if there is an arbitration provision and the case gets filed in court, it is mandatorily kicked out and sent to arbitration. The purpose of an anti-arbitration injunction is to prevent a party from proceeding to arbitration, and so it's the flip side of the coin. And that happens generally because of the lack of a valid arbitration agreement between the parties. It doesn't take much for there to be an arbitration agreement between parties.

However, oftentimes, parties get called to arbitration

who are not even signatories to an arbitration agreement, whether that be pre-dispute or post-dispute. "Pre-dispute" means a written agreement to arbitrate before the dispute arises. "Post-dispute" means a written agreement to arbitrate after the dispute arises.

In the U.S., the process for either is similar to obtaining an injunction in the U.S. Federal Court. It's usually by an independent petition or in the context of ongoing litigation and as a motion.

Now, there are also counter-anti-suit injunctions, which prevent a party from seeking to enforce an anti-suit injunction, which is also known as an anti-anti-suit injunction.

So, what these are--it sounds excessively complicated--it sounds like triple negative; right? So, basically what happens is somebody obtains an anti-suit or anti-arbitration injunction in a foreign jurisdiction, and then one of the parties races to court in the U.S. to try and prevent enforcement of that injunction in a U.S. court. But for purpose of our discussion, this is as deep as I'm going to go into the anti-anti-suit injunctions.

For anti-suit--remember, this is where we're stopping the other party from suing--basically, this is first-year law

student basic stuff here: You have to have jurisdiction, you have to have venue, the timing has got to be right, and there have to be certain elements present in order for a judge to even be able to hear a case. So, for jurisdiction, you need to have personal jurisdiction of the party--in other words, you must be able to--the court must have a reach over that party to be able to get them under their control, and the court must also have subject-matter jurisdiction over the matter.

Venue is often paired with a motion to compel arbitration.

The timing has to be such that, a lawsuit should not have proceeded for an excessive length of time where it would cause an unjust outcome or inequitable outcome if we were to suddenly start all over again in arbitration or vice versa, we're to start suddenly all over again in litigation.

It has to involve the same parties, and oftentimes in international business there may be multiple parties involved. And the issues in the foreign proceedings that are sought to be enjoined--the injunction is against the parties--that is, the injunction sought in Federal Court is against the parties--not against the foreign court system from acting on or conducting litigation nor arbitration. It's against the parties. The U.S.

court has no jurisdiction over other courts and tribunals outside of the U.S.

All right. Anti-suit injunctions are more readily granted in certain jurisdictions than others. This is just the way it is in our system.

Anti-injunction--this is actually anti-arbitration injunction--a word is missing--there you file for one of these to prevent arbitration from happening because you're claiming or one party is claiming that there is no arbitration agreement between the parties. It could also be because there is a tenuous connection between the signatories. In other words, it might be a parent or subsidiary organization or the person that's signing might not have been authorized. In other words, it may be these are sort of the standard arguments to be made for the invalidity of the absence of an arbitration agreement or the invalidity of one.

Also, there may be a failure to meet a condition precedent, one of which may be, for example, a requirement to conduct mediation before arbitration occurs.

The process for filing for an anti-arbitration injunction is basically the same set of elements as for an anti-suit injunction, or for any preliminary injunctive relief

there must be success of likelihood of success on the merits; there must be irreparable injury; the threatened injury must outweigh the damage proposed the injunction may cause the opposing party; and the injunction cannot be adverse to the public interest.

At least one court in the U.S. has ruled that irreparable harm may be shown if not granting the anti-arbitration injunction would result in arbitration of a dispute involving a party who is not covered by an arbitration agreement.

Mercifully brief. Any questions?

Thank you.

(Applause.)

MR. JUDD: Thanks very much, Whit, for discussing the ins and outs of the arbitration anti-suit injunction and relationship between the two.

Next, we would like to call on Ms. Caryl Lashley, please.

(Applause.)

MS. CARYL LASHLEY: Good morning, all.

With pleasure, I'm here today and with equal or more pleasure, I meet with these gentlemen on the same panel, and I

would like to say that, although I only met Mr. Engel during the last couple of months when we talked about this presentation, I have known Justice Abel four years this year, and he had the same passion back then.

So, court-connected mediation and arbitration and anti-suit injunctions. And I think we're talking about anti-suit injunctions, what the prerequisites are, why people apply, who apply, et cetera, what we really want to talk about is "court-disconnected" mediation and arbitration.

But before I get into what I have to say today, I would like to invite you to look at, next we have a booth set up, "ADR Bahamas," and so please, in the foyer, have a look, get one of our flags, get some cards and contact us. We have some fliers and other information, so please visit our booth. We're a full-service conflict-resolution organization, conduct training, workshops, provide meeting and arbitrator services within the practice of resolving conflict responsibly. And I think, as Justice Abel used the word "appropriate," I use the word "responsibly" because, if we're resolving our disputes "responsibly," a lot of times we will choose "appropriate" dispute resolution.

So, what are the prerequisites? We might tend to

suggest that the application should arise in circumstances where perhaps there should be mediation or perhaps there should be arbitration. For example, in cases where the parties are at odds relative to the jurisdiction in which the suit is brought, there are treaties and conventions. And then in shipping and insurance matters, you have certain requirements as to (a) whether suits can be brought and (b) the limitation issues relative thereto, and so that would be important. Otherwise, we have the contractual provisions.

In many contracts, there are provisions specifically dealing with how you resolve disputes arising. The contracts deal with jurisdiction, they deal with the process, they deal with everything relative to that. So, as soon as there is a dispute, the resolution clause is invoked. There isn't any room for negotiation as to whether we go to arbitration or not. Once the arbitration clause is invoked, then you take that route.

So, once you have that contractual obligation, it really would be a breach of faith to try and go into court and get your matter heard there. You're really trying to prolong the process. You're trying to flex your muscles because of unequal bargaining power, so these are the things we need to look out for when we're talking about anti-suit injunction, why

are these parties going to the court instead of following the positions that they have determined voluntarily earlier on.

And then, of course, you have in some jurisdictions rules of court, legislative requirements, which deal with the dispute-resolution process. And, of course, in those instances, enforcement is very easy.

So, contextually, there are many issues which make the injunction applications important. People put in place contractual provisions for confidentiality. They would not like to take the matter to court because they don't want all their information in the public domain. Sometimes the parties know that the available resources are going to be minimal, the court process is going to be long and costly. And especially when there is inequality of the bargaining parties, the weaker party is unable to have any flexibility in controlling the process, so we're again back to good faith.

In The Bahamas, anti-suit injunction applies in a couple of circumstances, primarily whether the contract provides for a certain method to be followed in terms of dispute resolution. Parties go to court, they try to go around the process, and unfortunately sometimes the other party, regardless of whether they had a contractual provision, so they're taking

advantage of from the beginning. However, when they recognize it, then they need to bring it up and say, "Oh, no, no, no, we would not like to go further because we have this clause in our contract that was agreed, so we came to a dispute."

Time and expense are the main factors for concern. The process is slow and costly. The issues are relative to strict evidence, cost delay, and documents aren't always readily available. Opportunities to change the process midstream are often flip.

So, following what both Mr. Engel and Justice Abel just said, we need to look at what is available and do what we consider to be the right process, pull out, call out the person who is trying to flex his muscle and use inequality of bargaining power to take another route, and remind the parties that, what we want to do is responsible conflicts resolution.

Now, we have the Arbitration Act of 2009, and that deals, by Section 9, with the thing of legal proceedings, and then you have Section 10 which deals with relief by interpleader. So, we have the broad concepts and signed the legislation, but unfortunately we don't have in place specific rules that say this is Step 1, Step 2, Step 3, and take it right through; and so, without specific rules, the value of ensuring a

speedy determination is often minimized and sometimes lost.

We know the playing field is not level, often. We know that the party with the greater bargaining power, usually financial, would use the system to his advantage as much as possible, to procrastinate--to do whatever--to get the benefit that he's up there.

So, the court, through the Act, must grant injunction, anti-suit, where it is satisfied that arbitration or mediation agreement--whichever one it is, arbitration agreement or mediation agreement--is operative, valid, and operable. And once we are satisfied that agreement is valid, then there is no discussion, you go to the next step and get the injunction and let them go to arbitration to get the matter resolved.

But also in The Bahamas the next stage is called mediation and arbitration, those processes have to be put in place by rules, practice, directions--whatever. We have to encourage the sustainability of relationships. We have to foster communication and improve the level of commerce by appropriate communication.

In that regard, the important considerations would be the conduct of the parties, relationships to be maintained; independence and of transparency, as my learned friend said, of

the court, the mediator, the arbitrator; the interdependence of the system, because the court and the arbitration system must work together for it to happen; impartiality of all concerned; cooperation and collegiality of the parties and their representatives, and I know there is a segment next on cooperation or competition, and that has some bearing on where we are in this regard.

And some of these concepts, although arbitration and mediation are not only for lawyers, but some of these very topics are dealt with in the Code of Ethics of our Bar Association.

So, while saving on time, saving of costs, relationships, those things are of the utmost importance to us, we must have confidence in the system; and we must not be cynical; we must not be prejudicial; but we have to, as they say, as Mr. Engel agreed with Justice Abel, recognize that there is no box. And if we think there is a box, think outside of it.

And so, with that, I didn't go through mine, but I thank you. I didn't scroll over, but that's really the topics that I wanted to talk with you about today. And of course, I'm available for any questions as well.

(Applause.)

MR. JUDD: Thank you very much, Mrs. Lashley.

As we heard, we would like to open up now as a great hallmark of our conference to questions from the floor.

I think we have a question.

QUESTION: I have a question of Justice Abel about the whole concept of court-connected arbitration. And for me, one of the issues of arbitration is that there is a significant cost if you're having, let's say, three arbitrators; the arbitrators have to be paid. The arbitration I've known, they're paid sometimes on an hourly basis, and it can become quite expensive.

In terms of court-connected arbitrations, how are the costs of the arbitrators dealt with?

JUSTICE ABEL: Yes. The first thing is that, unlike mediation where the parties can be taken kicking and screaming into the process, arbitration is completely consensual, so the parties have to agree, and they would only agree if they think it's appropriate, and there would be cost savings.

Now, it would be inappropriate, I think, for a lot of cases filed in the Supreme Court for there to be three arbitrators, so there would be one. And the rules we have devised so far has actually got a scale of fees for arbitrators, so that the parties can look at the scale of fees and factor

that in, and people who are on the Roster of Arbitrators are bound by the scale of fees.

I mean, of course, it's possible, if parties agree--party autonomy is critical in arbitrations--they can always go outside of that. If they want an arbitrator who doesn't want to do it for that price, they can always agree, but that's the way in which the system has been set up. But as I say, the whole point is that it's to be used as appropriate. And if the costs then outweigh the awards or whatever, then obviously not.

But the critical thing is that the whole point of arbitration is it should be quicker. It should be you can choose your arbitrator. It can be in private so that you don't have to wash all your dirty linen in public. And you can negotiate--you can choose in terms of you can actually decide what procedures you want to use. Anything goes, you know?

QUESTION: I have another question. I recognize all the benefits of arbitration. My second question is about the whole system of precedents as you decide cases in the Supreme Court, you provide precedents to which lawyers look and say, "Oh, this is probably how the court will decide a matter, this is the way the court analyzed it." How is that dealt with in

the whole system of arbitration? I know they rely on court precedents sometimes, but I think arbitrations themselves?

JUSTICE ABEL: But the court precedents are much overrated, eh?

(Laughter.)

JUSTICE ABEL: As a lawyer, I mean, you know that some judges are not bound by any precedents, and there are some lawyers who spend all their time getting around precedents; right?

But the whole point is transparency and there not be any ambush because, at the end of the day, I don't think I have ever--I have never lost any sleep about giving any decision yet--yet. To me, once I attack a problem in a particular way, the theory I work under is that the solution should pop up. I shouldn't have to make a decision. And if I've managed the case properly and the solution isn't proper, then I have not managed it properly, you know?

QUESTION: I just want to say I'm a commercial lawyer, and when my clients come to me and ask me for an opinion, it's very, very valuable to me to look at previous decisions and say, "This is probably the way it will fall." I can't talk about timing but focusing as a well-reasoned judgment.

JUSTICE ABEL: I write well-reasoned judgments, but it's an absolute last resort.

And I choose which judgments I write because, at the end of the day, a lot of my judgments are oral. As soon as the lawyers sit down, I say, "Okay, I will give my decision now," and I give my decision.

Now, "oral" doesn't mean "oral," you know. Most of it is actually prepared in advance. It's a lot of work. You're going to have to do the work anyway, so actually as a judge you decide whether you do it before the trial or whether you do it after. And which is better? You do it before the trial, and you manage the case so that you have all the ammunition and all the arguments and all the information that you need to make a decision. And the actual argument is really just to test your own either the way you're leading or what you have and the things that are worrying you and that kind of thing.

But, ultimately, it's for your benefit because I don't tell the lawyers what to write, telling them to write written submissions. They could write what they like. I don't have to read it, but they could write tomes--right?--and they could be used on appeal. As I was explaining to the judges, it's not really for me to read it. It's really for me to ensure that I'm

satisfied that lawyers have actually done their work when the case comes on for trial, and there is transparency and the information is shared.

So, in fact, the truth of the matter is that, if there is transparency, if the information is shared, most decisions are total no-brainers. You can advise your client because it's usually clear what the issues are, and that's the way I manage--I'm issue-driven in terms of deciding cases. And, for instance, lawyers often say, "Well, but, Judge, you know," they want a day for trial. I say, "Day for trial? What's that?" Some of them have tried saying, "Well, you know, every litigant is entitled to a day in court." I said, "Well, you will get the day in court. It's called 'case management conference,' you know, and I expect you to be there, and we can rehearse the whole thing. We could go through."

In case management, I have case management conference after case management conference. I adjourn them constantly until I'm satisfied before I go on to any preferred review or anything like that.

And you can practically have a trial in the case management conference in case you didn't know because, if you've managed the case properly, you've got all the witness

statements, all the evidence is there, there is complete transparency. You can actually have a mini-trial, as it were, without, if you're smart as a judge without showing your hand, you could ask questions, you could say, "How do you intend to prove?" That's the issue to say you've got a good case, but how are you going to prove this? Show me. Show me what's in the witness statement. You could literally do it, and the clients are there.

So, sometimes we don't know what happens between the lawyer and the clients outside of the court, but in the case management conference, you could actually talk directly to the clients, even though you're talking through the lawyer, and it works like magic. And sometimes they don't even know what's happening, so there is this thing about you've got actively managing cases means exactly what it says: "Actively managing cases." And judges shouldn't be worried.

You could actually take the risk of recusing yourself. It might be a risk worth taking if you're going to get a settlement, you know?

MR. JUDD: Thank you very much, Justice Abel.

Whit, you mentioned at the level of the anti-suit injunction. Traditionally, arbitration has been seen as a way

to save costs and speed, but more and more we're hearing that, in reality, the arbitrations can actually sometimes be even more costly and longer than going to trial.

So, if you could possibly speak perhaps to how are the courts reacting to the anti-anti-suit injunction as a way to preserve the arbitration? Have you seen anything along those lines developing?

MR. PHILIP "WHIT" ENGLE: No. I'm sorry.

(Laughter.)

MR. PHILIP "WHIT" ENGLE: I just don't know much about anti-anti- to be able to make any comment, but the whole business, the whole argument that arbitration is better, faster and cheaper, I think, is one that deserves just a minute or two, if I could take that time.

International arbitrations are generally, because you have to pay for the decision-makers as well as for the parties, they are generally more expensive, they often cost more, and the outcome is whatever the outcome is.

However, the beauty of international arbitration involves a recognition that, especially by the administering organizations such as JAMS and AAA and ICDR and others, to make expedited procedures available to the parties, streamlining the

process and making sure that there is a product at the end that can be done quickly and efficiently and, perhaps, cheaper.

QUESTION: Yesterday, there was perception with international arbitration is more expensive, I used word deliberately because very often, as lawyers, we tend to do with some of us which not normally do, which is (off microphone and unclear).

There is another problem as well from the lawyer's side. Very often those of us who have done litigation, we do not tend to charge effectively for all the work that we do. And if we were to add up everything and put them altogether (unclear) are much more higher, and as lawyers, you're right, we're often underwriting the costs of litigation, so it's something which--so when I settle for arbitration and ADR, I never thought it was necessary. I said the dispute is managed and process, and so what I said the management system and how it is you could use it at their level at different stages to achieve different results. And if we take that mindset away from this general approach which we tend to in the dispute-settlement system, then we will take a different approach. I recognize with proper costs you can spell a different story.

MR. JUDD: Thank you very much, Chris. I believe our

Student Rapporteur, Mr. Clyde Newton, has a question.

QUESTION: Good morning.

My question is generally based on the anti-arbitration injunctions and basically on what discretion would the courts use in granting such an injunction because, as a law student and through my own research, we read or thought about arbitration means a quick and easy process, and it seems to me the anti-arbitration injunction would kind of lengthen the process or make it a bit redundant because it's already--well, the arbitration clause has already been drafted and they already agreed on this, so now why would a person ask for such a thing, and how would the courts go about granting the injunction?

MS. CARYL LASHLEY: I think that, generally speaking, if you have a contract which has a provision for arbitration or mediation, the anti-suit injunction application arises only--once the dispute arises, one of the parties determines it will go to court, the other party then will apply to the court and say, "I would like an injunction to stop this process going in and send us back. Let us get it arbitrated or let us get it to mediation," whichever the case may be.

Effectively, the process should be very much shorter and very much less costly if that happens immediately.

MR. PHILIP "WHIT" ENGLE: If you're in the position where you have the arbitration clause drafted and agreed by the parties, the beauty of international arbitration is that the tribunal itself can rule on its own jurisdiction to handle this matter. In some jurisdictions, you can go outside to a court to get its input into it, but for an enforceable award, it is the tribunal--worldwide, it is the tribunal that can determine its own jurisdiction, and it does not have to go to a court.

QUESTION: And the arbitration doesn't have to stop.

MR. PHILIP "WHIT" ENGLE: Correct.

QUESTION: The arbitration can continue, and that is the protection. You have to look at the Model Law. The Model Law tells you specifically that the tribunal has the jurisdiction to continue the arbitration even though there is a matter going on in court called the anti-arbitration injunction.

JUSTICE ABEL: Well, I want to let you all into a little secret. How would the judges approach these things?

I think the modern approach--I'm using the "out of the box" kind of a approach--is to look and see what the substance of the application is because we know that applications, whether they are anti-suit injunctions or anyone kind of interlocutory injunctions, can be used by parties a lot of the times just to

obfuscate the issues, just to delay the process, as just another means of delaying the due resolution of the case.

So, ultimately, I think the judge has to telescope--usage is mine--the real issues and what the substance of it. And obviously, if the parties have agreed on a process of dispute resolution, then that ought to be forced to go along with that agreement. That's the whole point of it.

So I think, in terms of modern case management, you have to understand whether games are being played or not.

QUESTION: Justice Abel, I think you're the only judge that I have ever spoken to who has not lost any sleep over judgments.

(Laughter.)

QUESTION: I served in the judiciary for 21-and-a-half years, and I'm sure I lost ten-and-a-half years of sleep, so congratulations to you.

JUSTICE ABEL: I maybe did something wrong.

QUESTION: Maybe something right.

But I wanted to ask whether there were any statistics that you could share with us which would indicate the success of your court-connected mediation and arbitration system in Belize.

JUSTICE ABEL: As I was talking to you earlier--and I

think I must be a mind reader or an older man or something--because, as I was talking to you earlier on, I thought to myself I really should have provided some statistics here, but the only statistics I can use, the only one and the only effective one I can use is that I don't have a backlog. I do not have any outstanding judgments.

Well, I could tell you the civil court, barring one judge--and who shall remain nameless--is fairly quite well up-to-date. The criminal court is abysmal--it is an absolute embarrassment; and I hope nobody is quoting me this, but it's a well-known fact--but I personally believe, as I mentioned to you earlier on that, this same approach and method of case management and of getting matters to be resolved can be applied also to criminal cases. And I have attended a conference in Singapore last year where--and that's the second time I have attended them; and they're doing some incredible stuff, I've got to tell you--that was the only purpose I was really there for, to try and see how they were using appropriate dispute resolution to eliminate backlog in criminal cases, and they have established that it can be done, and I'm convinced as well it can be done in the court of appeal.

But it's more difficult with the court of appeal

because, with a judge, you're on your own, and you can make the decision by yourself. In the court of appeal, you might be with two other judges and tend to be collegiate, and there needs to be a way of kind of getting around that.

MR. JUDD: I think we have time for two more. We have Barry and then Santhaan.

QUESTION: Justice Abel, in terms of the court-annexed arbitration, how does the process work when you see a case that you think the parties may be amenable or you think should be arbitrated? How do you move from that point to getting them to agree?

JUSTICE ABEL: This is purely theoretical at this stage, but I found that the power--the judge has an enormous amount of power and influence especially over parties, more so over parties than over the lawyers, and that is why the parties have always got to be present in case management conferences. And smart judges have smart ways of doing these things without putting themselves on the line.

You ask certain pointed questions, difficult questions, especially if you've prepared your case, you've looked to the file, you've done your homework. And when this lawyer starts spluttering and they can't answer the question and the client is

there, it's quite clear what's going on, you know?

I think that's the whole magic of the whole concept of actively managing cases. A lot of judges are still set in the old days where they can't get their hands dirty, they can't come into the arena. They have got to sit up there and look straight-faced and neutral, and actively managing cases is about getting past that and involves a certain amount of nuance and subtlety, but you could be very active in the case without showing your hand. I'm sure you do it all the time, so I'm sure you can teach me a few things about how to do that.

MR. JUDD: Thank you very much.

I think we just have one more time--no? Apologies. We've got an executive decision.

(Laughter.)

DR. PETER MAYNARD: Thank you all very much for your time. Thank you very much, panelists.

(Applause.)