Kluwer Arbitration Blog

2025 PAW: Different Roles, Shared Realities – A Dialogue on Settlement and Document Production in Arbitration

Silvia Lamprinopoulou · Thursday, April 10th, 2025

As part of the 2025 Paris Arbitration Week ("PAW"), Latham & Watkins, in collaboration with Columbia Law School, hosted two interactive panels examining key procedural issues in international arbitration from the perspectives of arbitrators, clients, and counsel.

The first panel, moderated by Samuel Pape (Latham & Watkins), explored the "whether, why, and how" of facilitating settlement in arbitral proceedings. Speakers included Mimi Lee (Chevron), Professor George Bermann (Columbia Law School), Dr. Andreas Hacke (Zwanzig Hacke Meilke & Partners), Jan Michael Ahrens (Siemens AG), and John V.H. Pierce (Latham & Watkins).

The second panel, led by Hugo Varenne (Latham & Watkins), addressed document production, evidence gathering, and the use of witnesses. The panel featured as speakers Patricia Saiz (Saiz Arbitration), Barton Legum (Honlet Legum), Miranda Mako (Mondi Group), and Charles Claypoole (Latham & Watkins).

This post outlines key takeaways from both discussions.

The Role of Tribunals, Clients and Counsel in Facilitating Settlement During Arbitral Proceedings

The Value of Settlement

George Bermann opened the discussion by asserting that tribunals do have a role in promoting settlement—though, in practice, they rarely make use of the tools available. This is a missed opportunity, especially when considering that one of the primary goals of arbitration is to resolve disputes efficiently and cost-effectively.

From a U.S. perspective, Bermann contrasted the adversarial mindset that makes parties less open to settlement with countries like Germany, where courts view promoting settlement as part of their responsibility. Andreas Hacke reinforced this, pointing to the German ZPO (code of civil procedure), which encourages courts to facilitate settlement. From a counsel's perspective, Hacke emphasized the importance of setting client expectations early, especially when the case might not be as strong as the client believes.

Full alignment with the client's goals was also stressed by John V.H. Pierce. While some clients express openness to settlement early on, others remain uninterested throughout the proceedings. Mimi Lee highlighted the investor-State perspective, where settlement is often approached with greater caution. In her experience, parties in these cases frequently prefer the formality of an award. Bermann echoed this, suggesting that political factors could lead States to reject compromise in favor of risking a potential loss.

Timing, the panelists agreed, is critical when considering settlement. From the counsel's perspective, Lee emphasized the value of being a strategic partner early on—encouraging clients to explore resolution pathways before arbitration escalates. Having such mechanisms built into the contract from the outset is crucial for overcoming ego or hesitation at a later stage.

Jan Michael Ahrens presented the client perspective, explaining that companies like Siemens are often more interested in resolution than in a win. Arbitration clauses are included in contracts as a fallback mechanism—but early resolution mechanisms should not be overlooked. That said, the boundaries of the arbitrator's role should remain clear and strict—they should never take on the role of a mediator behind closed doors.

Lee echoed the value of the first procedural meeting as an opportunity to observe how counsel, parties, and arbitrators interact strategically. That initial encounter can quietly set the tone for how open the room might be to early resolution.

Multi-Tier Clauses and Alternative Dispute Resolution

Bermann addressed the ongoing debate around multi-tier clauses—are they questions of jurisdiction or admissibility? He leaned toward the latter, emphasizing that if parties intentionally included such a clause, it reflects an ex ante choice that must be respected under the principle of party autonomy. The message was clear: if Alternative Dispute Resolution ("ADR") is part of the contract, tribunals should give it real weight. Ahrens warned, however, that vague or overly complex ADR clauses can potentially delay resolution.

Hacke observed that ADR's growing use is no accident. Two dynamics are driving the shift: increased training for counsel and pressure from clients seeking faster outcomes. Pierce added that some court systems now mandate mediation, meaning U.S. lawyers are growing more familiar with alternative processes. This shift can also help counter the hesitation lawyers sometimes feel about being the first to raise settlement. Nonetheless, much depends on the quality of the mediator, their structuring of the process and their neutrality.

The Preliminary Views Debate

The panel closed with the issue of preliminary views. Samuel Pape shared his experience of opinions being expressed after failed settlements; a practice that risks prejudging the case. Bermann emphasized that the tribunal should always be careful not to appear to be pre-judging the case. Timing is again critical—the earlier you give a preliminary view, the bigger the risk.

A live poll conducted by Pape revealed unanimous consensus in favor of soft, subtle preliminary views over firm positions. Hacke then shared a warning: in one case, the final award was the exact opposite of an earlier preliminary view. Could such a scenario lead to a challenge of the arbitrator or annulment? Bermann considered it unlikely but agreed that tribunals should remain mindful of professional and ethical standards. One possible safeguard is for the tribunal to declare upfront that

preliminary views may be shared, with the parties agreeing not to challenge the tribunal on this basis.

To conclude, while facilitating settlement is crucial from all sides, it remains important to recognize the thresholds and respect the boundaries of a fair and balanced process.

Document Production and Evidence-Gathering in International Arbitration – How Much is Too Much?

Document Production Under Scrutiny

The second panel focused on evaluating the standardized document production process in arbitration. Patricia Saiz opened the discussion by observing that sometimes, the system works, but often, it does not. A major issue is the asymmetry between common and civil law approaches. While the first typically undertake a thorough search of documents, the latter tend to provide only what is available. Barton Legum highlighted that this asymmetry often stems more from the counsel's approach than from the clients themselves.

Miranda Mako added a practical note: sometimes, document production is simply unnecessary. She suggested a "pre-document production conference" after the first round of submissions (similar to a pre-hearing conference)—when tribunals can assess what is truly needed. Saiz agreed that, by this stage, arbitrators have enough context to narrow the scope and guide parties toward relevance and specificity. Charles Claypoole noted that in larger arbitrations, there is too much debate about the necessity of documents, which should be determined by the tribunal, not the parties. One practical solution was presented: ask the parties to submit a joint procedural calendar early on to help determine whether document production is even required. So, can evidence production shift a case after all? According to Claypoole, it can, particularly in fraud cases. Legum noted it has more impact on liability than damages, while Saiz recalled instances where a single document changed the narrative in favor of the respondent. Despite these challenges, no one supported excluding document production by default—at least not without first reviewing a draft calendar.

Deciding on the Rules

Saiz emphasized the need for arbitrators to clarify what "narrow" and "specific" actually mean in practice. While the IBA Rules aim for a common standard, interpretations vary across jurisdictions. From the arbitrator's view, only after the first submissions can arbitrators judge which documents meet these criteria. Legum was cautious about this timing. He said delays at that stage would slow down the whole process. Still, others felt that being flexible at this stage helps focus on what is important.

On the Redfern Schedule, three rounds of exchange were considered useful. Mako agreed, especially from the in-house counsel side, where deadlines are tight. As to whether compliance with document production rules is declining, Saiz shared the outcome from a survey on ethics: most lawyers said they would disclose damaging documents, but doubted others in their jurisdiction actually do.

Witnesses: Valuable but Risky

As the discussion shifted to witnesses, the panel reached a consensus: witness testimony is powerful, but risky. Hearings are a pivotal moment for arbitrators, as emphasized by Saiz. When a witness speaks, the dots start connecting and gray areas clear up. However, Mako was more skeptical, preferring witnesses only when documents cannot do the job.

Arbitration is more than analysis. As Barton put it, a hearing is a kind of performance, and every story needs a face. Sometimes, not having a person tell the story is a mistake you cannot rectify, Claypoole said. Ultimately, however, over-prepared witnesses, who rely too heavily on Latin expressions or look to counsel during cross-examination, can be more damaging than helpful.

Space for Improvement

All panelists agreed it is not more rules that are needed. The responsibility for managing document production lies between the parties and the tribunal, from start to finish. When drafting an award, Legum always considers how the parties will interpret it, particularly concerning the quality of the evidence. Saiz prefers to acknowledge when she finds certain evidence convincing, or not, without targeting a particular witness. Claypoole agreed, noting that feedback should be tied to the reasoning of the award. Mako concluded with a bigger question: do arbitration awards actually help improve the system? She was not so sure.

The discussion made one thing clear: document production and witness evidence should serve the case—not overwhelm it. Arbitrators and parties should be practical, thoughtful, and flexible.

This post is part of Kluwer Arbitration Blog's coverage of Paris Arbitration Week 2025.

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