An arbitral award is worth only as much as the ability to secure its enforceability. To the extent the vast majority of prayers for relief in arbitration are for money damages, an arbitral award granting damages is worth only as much as the ability to obtain payment, voluntary or compulsory, of such damages.

Accordingly, the standards for compensation argued by the parties, advocated by the experts, and applied by the tribunal, are potentially crucial to the whole process. It serves to focus the arbitrator, the counsel, the party, the expert on the practical need for certainty and clarity in achieving monetary satisfaction, and in properly pleading standards of compensation in the first place.

Notwithstanding all other highly significant and thorny issues of procedure, choice of law, taking of evidence, compatibility with public policy under the *lex arbitri* and *lex causae*, etc., it is the bottom-line quest for damages that informs the entire arbitration and the assessment of victory and failure by the parties. Agreements and disagreements on the procedural framework, the applicable substantive law, the means of presenting and proving allegations and enforceability of any award at the seat or elsewhere are all, ultimately, sideshows in comparison with the end result—did the claim for damages prevail and, if so, in what amount and on what basis?

I have been asked to speak about experts in this context in particular, and I would like to address six points in brief.

**DAMAGES EXPERTS GENERALLY**

First, despite the skepticism often brought to the subject of experts, especially in Continental Europe, a competent expert on compensation standards can make even the most abstruse area of expertise come to life—both in
writing in an expert report and more, particularly, in oral testimony. But, by the same token, even the most straightforward area of expertise can become hopelessly tangled and unintelligible in a written report and especially in oral testimony.

Three broad categories of damages experts might be identified. These are (1) the party-appointed expert, (2) the tribunal-appointed expert designated with the consensus of the parties, and (3) the tribunal-appointed expert designated without the consensus of the parties.

In the case of party-appointed experts, modern-day, commonly used institutional and ad hoc arbitration regimes invariably provide for the introduction by one or more parties of expert damages evidence. In terms of the orality of such evidence, it is interesting to note certain commonly encountered differences in approach between common law- and civil law-inspired arbitration practitioners. For example, civil law-inspired statements of the claim initiating an arbitration will often include “offers of evidence” with or without the name of a particular individual to serve as damages expert, whereas common law-inspired requests for arbitration more often stop short of making such offers on the theory that they are premature and that their absence should not be equated with an inability to substantiate the case.

In the former approach, where an expert or even a specific individual is introduced already in the first instance, presumably counsel will also have done the necessary due diligence before making the “offer” of the damages expert. With respect to the orality of the evidence, such inquiry should include (1) whether the expert evidence “lends itself” to oral examination and (2) whether the expert offered is suited to defend his or her expert opinion effectively under cross-examination. Ultimately, the differences in approach with regard to the timing and specificity of offering expert evidence are increasingly becoming subject to convergence. Thus, the stereotypical contrasts of earlier years are often breaking down. Alternatively, interestingly enough, common law practitioners may also partially adopt civil law approaches and civil law practitioners common law approaches, depending upon the needs of their particular case.

In the case of the tribunal-appointed expert designated with or without the consensus of the parties, the susceptibility of the taking of the expert evidence by oral means may be less of a concern, particularly where the tribunal selects the expert. In such cases, the tribunal would be well advised to preserve the ability to test the evidence of the expert by oral examination through the parties’ counsel. At the same time, the tribunal may be less concerned with the expert’s oral testimony than with his prior written report. In the case of a tribunal-appointed expert selected with the consensus and also the input or agreement of the parties, the concern may be greater.