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Upon graduating from Georgetown University Law Center in Washington, D.C., Harry Payton began a successful career in commercial litigation in Miami, Florida. Harry is Board Certified by the Florida Bar in Civil Trial and Business Litigation, an accomplishment of less than 100 Florida attorneys state-wide. He is recognised for his high standards of professionalism, and has received the highest "AV Preeminent" rating from Martindale-Hubbell for more than 30 years.

Since 2005, he has been named in Florida Super Lawyers as a top-rated business litigation attorney. Harry was an active participant in the Managing Litigation as a Business initiative. He was a leader in the American Bar Association's effort to create a uniform system of billing and budgeting, which serves as a platform for assessing the productivity and efficiency of outside counsel and law firms.

Payton & Associates, LLC is a boutique law firm located in Miami, Florida that specializes in complex commercial litigation. The firm represents clients in both state and federal courts, as well as in arbitration proceedings, throughout the State of Florida.

Typical cases include breach of contract, shareholder derivative actions, international trade disputes, commercial foreclosures and leasehold disputes, misappropriation of confidential business information, business torts such as fraud and misrepresentation, conversion, defamation, and enforcement of non-compete agreements. The firm provides the highest calibre of services at the highest level of professionalism.



QUESTION ONE

**How swiftly are disputes handled in Florida's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?**

Like every state, Florida has two court systems: the federal system and the state system. The federal system will entertain cases where the plaintiff and the defendant are of diverse citizenship and the amount in controversy exceeds \$75,000. The federal system also entertains cases based on federal law. The state court system entertains all cases of every nature exclusive of those that are required to be filed in federal court. There is no impediment in either the federal court system or the state court system to the prompt filing of claims. Cases can be filed as soon as the papers are prepared. For matters that are very complex and that meet the federal jurisdictional standards, it may be advisable to file in federal court because the judges are generally better prepared and have assistants that the state court judges do not have.

A common complication to cross-border resolutions is the need to translate foreign language documents into English, which may delay the process of preparing the suit for filing. Florida requires every foreign language document to be translated by a certified translator if the document is going to be filed in court and be the basis for or related to the claim. Failure to file the translation of the documents on which the case is based is grounds for dismissal of the action. For cases filed in federal court, the translator should be a certified federal court translator.

QUESTION TWO

**Are there any cultural issues that businesses should be aware of when dealing with the legal dispute in Florida? How can working with a third party on the ground help to navigate these issues?**

Florida is the gateway in and out of Central and South America. South Florida, in particular, is a very multi-cultural community.

Many people from Latin America are unable to understand our system of discovery, the inquiry directed to the adversary and non-party witnesses to learn as much as possible about the claims or the defenses raised by the opposing party. It is, perhaps, the most liberal discovery of its kind. The guidelines for discovery are very broad. All discovery is permissible providing it is relevant or likely to lead to the discovery of admissible evidence.

Discovery takes several forms in both the federal and the state court systems. In the federal court, the rules require voluntary disclosure of pertinent documents. This, even before the parties make demands upon each other. The process of discovery is governed by Florida's rules of procedure, which are very similar to the rules of procedure in federal court. The most common forms of discovery are interrogatories, requests for admissions and requests for production of documents. In written discovery, one party may ask another to answer written questions under oath. These questions are referred to as interrogatories. Another form of discovery is a request for admissions of fact wherein the requesting party asks the opposing party to admit stated facts and/or the authenticity of documents. Finally, the parties may request documents relevant to the claim or defense. Following written discovery, the parties have the opportunity to interrogate opposing parties and non-party witnesses in the presence of a stenographer/ court reporter who administers an oath and records the questions and answers. This process is known as a deposition. In addition to having a court reporter present, the party taking the deposition may choose to record it on video for later use in court, including at trial.

The discovery process is the most time consuming, expensive part of preparing a case for trial.

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QUESTION THREE

**What are the most common challenges when dealing with disputes in Florida? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?**

The most common challenges involve time and money. In both court systems, the disposition of the bulk of the cases filed is between one and two years. The more complex the case, the longer it will take to resolve. Access to the courthouse is readily available. Some Florida counties have adopted a business court for handling commercial disputes. The business courts are patterned after the federal court system of oversight and case management. The following counties have adopted business courts: Miami-Dade County (Miami); Orange County (Orlando); Hillsborough County (Tampa); Broward County (Fort

**TOP TIPS**

**Cost-effective and timely dispute resolution in your jurisdiction**

- ✓ Put an effective arbitration agreement in your contracts. Determine how much money you can afford to lose before feeling deprived of the right of appeal, and above that sum of money provide an option for the parties to elect litigation.
- ✓ In your contracts, select a forum for the resolution of disputes: private arbitration under state or federal arbitration rules; AAA or Jams arbitration or litigation in federal and/or state court and the location.
- ✓ Identify the best mediators in the jurisdiction in which you choose to resolve your dispute and decide whether to require mediation before any other form of dispute resolution.
- ✓ Get your arms around a comprehensive set of facts before taking further action.
- ✓ Insist counsel provide a budget that both parties can agree upon.

Lauderdale). Cases filed in the business courts tend to move faster than in other court divisions.

The cost of litigation has been a paramount issue for corporate America since at least the early 1990s, when the American Bar Association Section of Litigation undertook a study of the rising cost of legal fees and the creation of a uniform system of billing and budgeting. A comprehensive review of the facts giving rise to a case should occur very early in the case. From that comprehensive view, witnesses should be identified and a budget should be drawn according to the litigation codes adopted by the ABA.

As an alternative to litigation, the parties could select mediation as the first step in dispute resolution and/or arbitration. Arbitration could be binding and non-binding according to the agreement of the parties. Arbitration was designed to be economical, efficient and expeditious. If the parties treat arbitration as it was intended, it can accomplish its objective. If the parties treat arbitration as another form of litigation, in effect you would have litigation with a private judge or judges, as the case may be. An effective arbitration can be had with one arbitrator applying the substantive law of the state, permitting one deposition of a party on each side and one expert and an exchange of documents relied upon. In that way, arbitration can be more cost-effective than litigation.