



# Cross Examination In International Arbitration

Kyiv Arbitration Days 2011

Kyiv, Ukraine

November 17, 2011

Presented by: Gene M. Burd

# About Arnall Golden Gregory LLP

- Founded in 1949
- Over 150 attorneys
- Core competencies in Corporate Law, Dispute Resolution, Private Wealth, and Bankruptcy
- Focal industries include Real Estate, Life Sciences Healthcare, Commercial Lending, Food Manufacturing/ Distribution and Technology
- Notable clients include SYSCO, PRG-Schultz, Costco, CryoLife, Rollins, Inc., JAS Worldwide and Rich Products
- Glenn P. Hendrix is the Managing Partner of the firm and Jonathan Golden, son of founder Sol I. Golden, serves as Chairman of the firm.

# About Arnall Golden Gregory LLP

Ми говоримо по-українськи, говорим по-руськи and are ready to guide you through the ever-changing and often complicated international marketplace.

- International Dispute Resolution
- Mergers and acquisitions
- Capital markets financing
- Strategic alliances
- Joint ventures
- Other business-related guidance

# The Concept

- US (common law) technique to ascertain truth
- International Arbitration is not a US courtroom
- You can still use the tactics to advance your case

# Be Prepared

- Determine the objective
- Write down key questions
- Use witness statements and expert reports
- Be prepared to contradict “wrong” answers

# Ask Leading Questions

- Ask “yes” questions
- Do not ask “no” questions
- Tell your story with your questions
- Avoid open ended questions

# Ask Only Known Questions

- You should know the answer to the question
- You should be able to prove the answer to the question
- Exception: the answer does not matter
- Exception: set up facts for the ultimate question

# Ask Simple Question

- Be Brief
- One fact per question
- Avoid multipart questions
- Avoid ambiguous questions



# Do Not Repeat Witness Statement

- Emphasize your part of the story
- Do not let the witness to repeat witness statement
- Do not let the witness to explain the witness statement away
- Use “Silent” cross-examination
- Bait and set trap before springing it

# Secure Your Right to Control

- Set the ground rules
- Again -- “yes” questions
- Repeat question if not answered
- Emphasize that the question was not answered
- But do not be mean

# Do Not Quarrel

- Save argument for closing
- Do not use sarcastic tone
- Be firm but courteous
- Keep in mind cultural differences

# Highlight Favorable Documents

- Use text from the documents that benefit you
- Read verbatim
- Do not ask witness to read
- Do not ask to explain the document
- Caution: excessive verbatim reading may antagonize arbitrators

# Cultural Differences

- Be mindful of who the arbitrators are
- Do not embarrass the witness unless absolutely necessary
- Be respectful
- Do not badger the witness
- US legal movies are generally not a good example

# Cross-Examination in International Arbitration



*Not if, but how.®*

For more information, contact:

Glenn Hendrix at 404.873.8500 or Gene M. Burd at 202.677.4030

[glenn.hendrix@agg.com](mailto:glenn.hendrix@agg.com)

[gene.burd@agg.com](mailto:gene.burd@agg.com)

