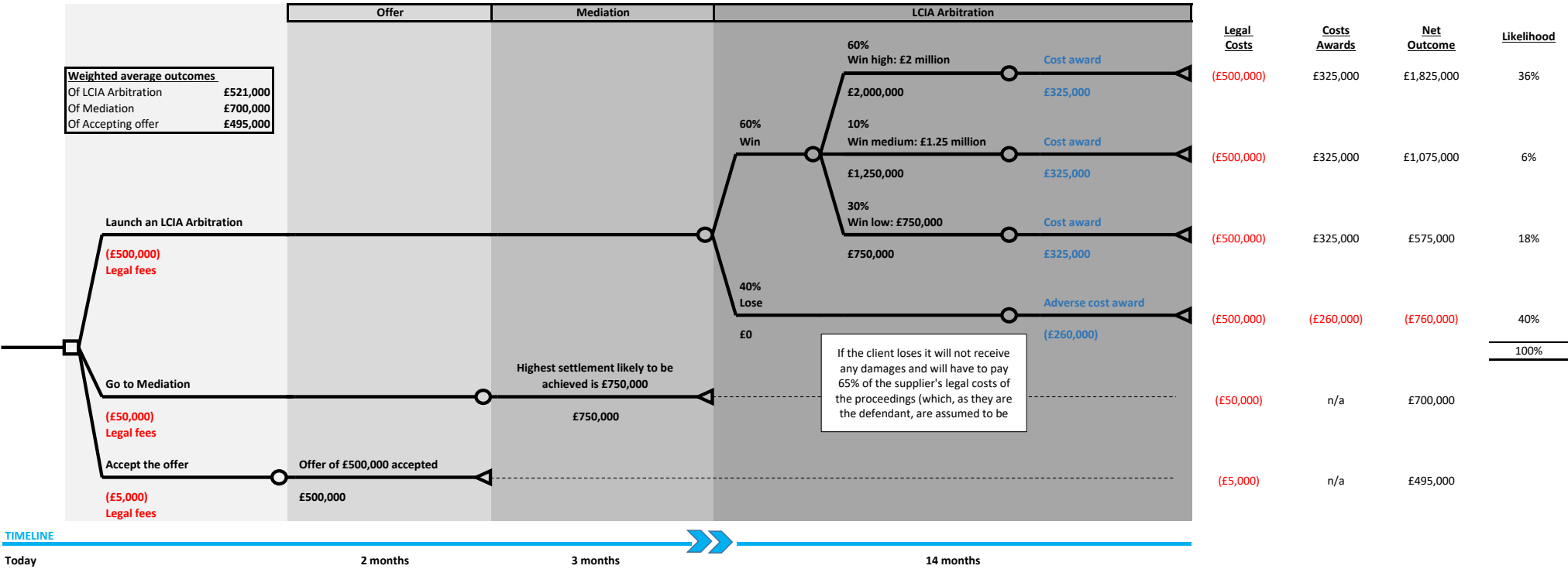




Potential LCIA Arbitration - dispute with supplier

Decision Tree

Case Facts:
Our client is involved in a contractual dispute with a supplier and is claiming damages of £2 million. The supplier has made an offer to settle of £500,000 and the client's initial view is that this offer is too low. The client has asked for advice on whether to accept the offer, the options available to it, the associated costs and likely outcomes.



Assumptions:

1. The weighted average is the "expected value" of each option. This can be used to compare and evaluate alternatives. The option with the highest expected value is the most favourable.
2. We have assumed that the successful party at Arbitration will recover 65% of its legal costs.
3. We have assumed that the supplier's legal costs are less than our client's's costs, being only £400,000, as it is the defendant rather than the claimant.

Analysis and Conclusion:

The combined legal and forensic team prepared the above decision tree based upon their current knowledge of the case and evidence disclosed so far. The decision tree demonstrates that the highest weighted average expected outcome is achieved by rejecting the offer and proceeding to mediation, where it is judged that a better settlement can be achieved. Therefore, from a purely financial perspective we would advise our client to reject the offer and seek to mediate. In terms of an acceptable settlement figure, because the client's weighted average expected outcome from arbitration is £521k, any acceptable settlement would have to be more than this figure. However, there may be other commercial factors to consider (positive or negative) that could affect the client's decision as to whether to settle immediately or proceed to an Arbitration. These factors are set out in the box to the right.

Other commercial considerations:

There may be other factors to consider (positive or negative) with the strategic options set out above. Including:

Issues with accepting the offer or mediating

- Accepting early settlement could set a precedent of being a "soft touch"
- Mediation process means having to reveal the Claimant's position
- Accepting the offer will resolve the matter immediately, save management time and might preserve the subcontractor relationship

Issues with proceeding to arbitration:

- Significant diversion of management time versus settlement
- Irrevocable damage to existing subcontractor relationships
- Litigation risk associated with arbitration outcomes
- Claimant staff might be required to attend hearings
- Potential for a pyrrhic victory