



Arnold & Porter's Unprecedented Streak of Favorable Results on Behalf of Sovereign States in Investment Arbitrations

Arnold & Porter has an ongoing streak—spanning nearly two decades—of 34 consecutive positive results in final awards or decisions¹ on behalf of sovereign States in investment arbitrations.² The relevant rulings are the following:

29 COMPLETE VICTORIES

- 1. Dominican Republic** - *Michael Ballantine and Lisa Ballantine*, PCA Case No. 2016-17: Award dated 3 September 2019: dismissed on jurisdiction all of the claimants' claims against the Dominican Republic, which had totaled USD 41.5 million and had been asserted under the DR-CAFTA.
See: <https://globalarbitrationreview.com/article/1197138/dominican-republic-defeats-claim-by-dual-nationals>. (Award not yet public.)
- 2. Bulgaria** - *State General Reserve Fund of the Sultanate of Oman*, ICSID Case No. ARB/15/43: Award dated 13 August 2019: the claimant withdrew all claims (with prejudice) shortly after our client Bulgaria submitted its final pre-hearing pleading. The ICSID tribunal confirmed the dismissal of claims (with prejudice) and ordered the claimant to pay all of the costs of the arbitration, including Bulgaria's legal fees. See: <https://www.reuters.com/article/bulgaria-oman-arbitration/bulgaria-says-oman-has-withdrawn-arbitration-claim-over-corpbank-idUSL5N2205B7>. See also <https://globalarbitrationreview.com/article/1190490/omani-state-fund-withdraws-claim-against-bulgaria>. (Award not yet public)
- 3. Czech Republic** - *WA Investments-Europa Nova Limited*, PCA Case No. 2014-19 (UNCITRAL Rules), Award dated 15 May 2019: dismissed for lack of jurisdiction all of the claimant's claims under the Czech Republic-Cyprus BIT and dismissed on the merits all of the claimant's remaining claims under the Energy Charter Treaty. In addition to dismissing all claims, the tribunal also ordered the claimant to pay the Czech Republic 75% of the costs of arbitration. Award: <https://www.italaw.com/sites/default/files/case-documents/italaw10671.pdf>

¹ The streak encompasses all awards or decisions which, at the time of issuance, constituted a final ruling (or a potentially final ruling, e.g., an award that at the time of issuance was final but was subject to an annulment application). Accordingly, the streak does not include partial or interim awards, jurisdictional decisions that did not dismiss the claims, or provisional measures decisions, since none of those constitute final overall decisions.

² This streak is believed to be the longest of any law firm in the world. See, e.g., *Global Arbitration Review 2019 "GAR 100"* (ranking of the world's top 100 international arbitration firms) ("As a defender of states, Arnold & Porter has arguably had a longer winning streak at ICSID than any other firm in this book"); *Latin Lawyer 250 2019* ("Few firms can compete with its success rate on behalf of sovereigns; the firm has had 28 consecutive positive results in investor state disputes . . .").

4. **Czech Republic** - *Voltaic Network GmbH*, PCA Case No. 2014-20 (UNCITRAL Rules), Award dated 15 May 2019, dismissed all of the claimant's claims under the Czech Republic-Germany BIT and the Energy Charter Treaty. In addition to dismissing all claims, the tribunal also ordered the Claimant to pay the Czech Republic 75% of the costs of arbitration. Award: <https://www.italaw.com/sites/default/files/case-documents/italaw10668.pdf>
5. **Czech Republic** - *Photovoltaik Knopf Betriebs-GmbH*, PCA Case No. 2014-21 (UNCITRAL Rules), Award dated 15 May 2019, dismissed all of the claimant's claims under the Czech Republic-Germany BIT and the Energy Charter Treaty. In addition to dismissing all claims, the tribunal also ordered the claimant to pay the Czech Republic 75% of the costs of arbitration. Award: <https://www.italaw.com/sites/default/files/case-documents/italaw10674.pdf>
6. **Czech Republic** - *I.C.W. Europe Investments Limited*, PCA Case No. 2012-22 (UNCITRAL Rules), Award dated 15 May 2019, dismissed for lack of jurisdiction all of the claimant's claims under the Czech Republic-UK BIT and dismissed on the merits all of the claimant's remaining claims under the Energy Charter Treaty. In addition to dismissing all claims, the tribunal also ordered the claimant to pay the Czech Republic 75% of the costs of arbitration. Award: <https://www.italaw.com/sites/default/files/case-documents/italaw10678.pdf>
7. **Czech Republic** - *Antaris*, PCA Case No. 2014-1 (UNCITRAL Rules), Award dated 2 May 2018: dismissed on the merits all of the claims against the Czech Republic, which had concerned an investment in the Czech solar power industry. The claims had been asserted by German investors Antaris GmbH and Dr. Michael Göde pursuant to the Energy Charter Treaty and the Czech-German bilateral investment treaty ("BIT"). In addition to dismissing all claims, the tribunal also ordered the claimants to pay to the Czech Republic USD 2 million in attorneys' fees and costs. Award. <https://www.italaw.com/cases/2080> (English).
8. **Czech Republic** - *Wirtgen, ad hoc arbitration*, Award dated 11 Oct. 2017: dismissed on the merits all of the claims against the Czech Republic, which had been brought by German investors Jürgen Wirtgen, Stefan Wirtgen, Gisela Wirtgen, and JSW Solar (zwei) GmbH & Co.KG under the Czech-German BIT. Award: <https://www.italaw.com/cases/6428> (English).
Award: <https://www.italaw.com/cases/6428> (English).
9. **Costa Rica** - *Supervisión y Control S.A.*, ICSID Case No. ARB/12/4, Award dated 18 Jan. 2017: dismissed on admissibility grounds all of the claimant's claims, which had totaled US\$345 million and had been asserted under the Spain-Costa Rica BIT.
Award: <https://www.italaw.com/sites/default/files/case-documents/italaw8230.pdf> (English)
10. **Chile** - *Victor Pey Casado*, ICSID Case No. ARB/98/2, Resubmission Proceeding, Award dated 13 Sept. 2016: dismissed all of the claimants' damages claims (totaling US\$340 million), and partially granted costs to Chile.
Award: <http://www.elclarin.cl/images/pdf/Award1392016PeyCasadoChile.pdf> (English).
11. **Panama** - *Transglobal*, ICSID Case No. ARB/13/28, Award dated 2 June 2016: dismissed all of the claims (asserted under the US-Panama BIT), for lack of jurisdiction.
Award: <https://www.italaw.com/sites/default/files/case-documents/italaw7336.pdf> (English).
12. **Dominican Republic** - *Corona Materials*, ICSID Case No. ARB(AF)/14/3, Award dated 31 May 2016: dismissed all of the US claimants' claims (asserted under the DR-Central America Free Trade Agreement (DR-CAFTA)), for lack of jurisdiction.
Award: <http://www.italaw.com/sites/default/files/case-documents/italaw7314.pdf> (English).

- 13. Hungary - *Electrabel***, ICSID Case No. ARB/07/19, Award dated 25 Nov. 2015: dismissed on the merits the sole remaining claim, following the earlier dismissal of all other claims, pursuant to a decision of 30 November 2012 (see separate *Electrabel* entry below).

Award: <http://www.italaw.com/sites/default/files/case-documents/italaw4495.pdf> (English).
- 14. Hungary - *Accession Mezzanine Capital L.P.***, ICSID Case No. ARB/12/3, Award dated 17 Apr. 2015: dismissed sole remaining claim (for lack of jurisdiction), following earlier summary judgment dismissal of all other claims (see separate *Accession* entry below).

Award: <https://www.italaw.com/sites/default/files/case-documents/italaw4353.pdf> (English).
- 15. Hungary - *Emmis International***, ICSID Case No. ARB/12/2, Award dated 16 Apr. 2014: dismissed sole remaining claim (for lack of jurisdiction), following earlier summary judgment dismissal of all other claims (see separate *Emmis* entry below).

Award: <http://www.italaw.com/sites/default/files/case-documents/italaw3143.pdf> (English).
- 16. Hungary - *Electrabel***, ICSID Case No. ARB/07/19, Decision dated 30 Nov. 2012: dismissed on the merits all but one of claimant's claims, and postponed decision on the single remaining claim (subsequently also dismissed; see separate *Electrabel* entry above).

Decision: <http://italaw.com/sites/default/files/case-documents/italaw1071clean.pdf> (English).
- 17. Hungary - *Emmis International***, ICSID Case No. ARB/12/2, Decision on Objection Pursuant to ICSID Arbitration Rule 41(5) (summary judgment), dated 11 Mar. 2013: dismissed all of claimant's claims on which it ruled on jurisdiction, but deferred decision on one of the claims (subsequently also dismissed; see separate *Emmis* entry above). Decision: http://www.italaw.com/sites/default/files/case-documents/italaw1239_0.pdf (English).
- 18. Hungary - *Accession Mezzanine Capital L.P.***, ICSID Case No. ARB/12/3, Decision on Objection Pursuant to ICSID Arbitration Rule 41(5) (summary judgment), dated 16 Jan. 2013: dismissed all of claimant's claims on which it ruled on jurisdiction, but deferred decision on one of the claims (subsequently also dismissed; see separate *Accession* entry above). Decision: <http://italaw.com/sites/default/files/case-documents/italaw1292.pdf> (English).
- 19. Chile - *Victor Pey Casado***, ICSID Case No. ARB/98/2, Annulment Proceeding, Decision dated 18 Dec. 2012: granted Chile's petition for annulment of an earlier damages award against Chile, and fully dismissed claimants' counterclaim for annulment, with an award of costs to Chile.

Decision: <http://italaw.com/sites/default/files/case-documents/italaw1178.pdf> (English).
- 20. Hungary - *AES***, ICSID Case No. ARB/07/22, Annulment Proceeding, Decision dated 29 June 2012: dismissed all of claimant's annulment claims, with an award of costs and legal fees to Hungary.

Decision: <http://italaw.com/sites/default/files/case-documents/ita1072.pdf> (English)
- 21. Chile - *Sociedad Anónima Eduardo Vieira***, ICSID Case No. ARB/04/7, Annulment Proceeding, Decision dated 10 Dec. 2010: dismissed all of claimant's claims for annulment, with full award of costs to Chile. Decision: <http://italaw.com/sites/default/files/case-documents/ita0796.pdf> (Spanish).
- 22. Panama - *Nations Energy***, ICSID Case No. ARB/06/19, Award dated 24 Nov. 2010: dismissed all of claimant's claims, with an award of costs and legal fees to Panama.

Award: http://ita.law.uvic.ca/documents/NationsResourcesVPanama_Award.pdf (Spanish)

- 23. Hungary** - *AES*, ICSID Case No. ARB/07/22, Award dated 23 Sept. 2010: dismissed on the merits all of claimant's claims (which had been asserted under the Energy Charter Treaty).
Award: <http://ita.law.uvic.ca/documents/AESvHungaryAward.pdf> (English).
- 24. Chile** - *Victor Pey Casado*, ICSID Case No. ARB/98/2, Revision Proceeding, Decision dated 18 Nov. 2009: dismissed all of claimant's revision claims, and granted full reimbursement of costs to Chile.
Decision: http://ita.law.uvic.ca/documents/Decisiundel18-11-2009Spanish_000.pdf (Spanish).
- 25. Venezuela** - *I&I Beheer*, ICSID Case No. ARB/05/4: all claims dismissed in 2007; discontinuance (not published).
- 26. Chile** - *Sociedad Anónima Eduardo Vieira*, ICSID Case No. ARB/04/7, Award dated 21 Aug. 2007: dismissed on jurisdictional grounds all of claimant's claims, which had been asserted under the Spain-Chile BIT.
Award: <http://ita.law.uvic.ca/documents/VieiraAward.pdf> (Spanish).
- 27. El Salvador** - *Inceysa Vallisoletana*, ICSID Case No. ARB/03/26, Award dated 2 Aug. 2006: dismissed all of Claimant's claims (asserted under the EL Salvador-Spain BIT), with a full award of costs to El Salvador.
Award: http://ita.law.uvic.ca/documents/Inceysa_Vallisoletana_sp_001.pdf (Spanish).
- 28. Hungary** - *Telenor*, ICSID Case No. ARB/04/15, Award dated 13 Sept. 2006: dismissed on jurisdictional grounds all of claimant's claims (which had been asserted under the Hungary-Norway BIT), and granted a full award of costs and attorney fees to Hungary. Award: <http://italaw.com/sites/default/files/case-documents/ita0858.pdf> (English).
- 29. Argentina** - *Compañía Aguas de Aconquija and Vivendi*, ICSID Case No. ARB/97/3 ("*Vivendi I*"), Award dated 21 Nov. 2000: dismissed on jurisdictional grounds all of claimants' claims (which had been asserted under the France-Argentina BIT).³ Award: http://ita.law.uvic.ca/documents/Eaux-Award-Sp_000.pdf (Spanish).

2 WITHDRAWN CLAIMS

- 30. Slovak Republic** - *U.S. Steel Global Holdings BV*, PCA Case No. 2013-6 (UNCITRAL Rules): Claimant withdrew all claims (without prejudice), days before the final hearing.
- 31. Kyrgyzstan** - *Consolidated Exploration Holdings Ltd.*, ICSID Case No. ARB(AF)/13/1): Case settled in 2015, on terms satisfactory to our client.

3 DAMAGES VICTORIES

- 32. Guatemala** - *Railroad Development Corporation*, ICSID Case No. ARB/07/23, Award dated 29 June 2012: The amount claimed was more than USD 100 million in damages and interest, but claimant was awarded less than US\$14 million (plus interest and partial costs).
Award: <http://italaw.com/sites/default/files/case-documents/ita1051.pdf> (English)
- 33. Chile** - *Victor Pey Casado*, ICSID Case No. ARB/98/2, Award dated 8 May 2008: The amount claimed was initially US\$515 million⁴ but claimants were awarded only US\$10 million in damages (plus interest and partial costs). However, the US\$10 million award of damages was later annulled (see point 17 above), and more recently, following a resubmission proceeding, claimants' damages claims were summarily dismissed, resulting in

³ Note: Argentina was not represented by Arnold & Porter in any subsequent proceeding in the Vivendi dispute (including the first annulment proceeding, the resubmission proceeding, or the second annulment proceeding).

⁴ In a subsequent "revision" proceeding, Claimants increased their claim to US\$ 797 million.

an award of zero damages (see point 4 above). Award: <http://ita.law.uvic.ca/documents/PeyLAUDO.pdf> (Spanish).

- 34. Venezuela - Autopista Concesionada de Venezuela (Aucoven)**, ICSID Case No. ARB/00/5, Award dated 23 Sept. 2003: The amount claimed was US\$330 million, but claimant was awarded only US\$13 million (plus interest). Award: <http://www.italaw.com/sites/default/files/case-documents/italaw6354.pdf>.

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- A different way to evaluate Arnold & Porter's success rate on behalf of sovereign States, in investment arbitrations that have concluded, is by reference to the total amount of the claims faced, compared to the total amount of damages actually granted:
 - Total cumulative amount claimed by investors: **US\$5,358,000,000** (\$5.3 billion)
 - Total cumulative amount awarded to investors: **US\$ 27,000,000** (\$27 million) (plus interest and certain costs).
 - Accordingly, on average, claimants in investment arbitrations have obtained only 0.52% of the total amount they have claimed against Arnold & Porter's sovereign clients.
- Arnold & Porter has obtained victories in every phase and format of arbitral proceedings (preliminary/expedited objections, admissibility, jurisdiction, merits, damages, revision, annulment, and claim withdrawal).

Stellar Record in Obtaining Significant Awards of Costs and Attorneys' Fees

Arnold & Porter has amassed an impressive track record in obtaining awards of costs and attorneys' fees for its clients, as for example in the cases listed below:

1. *SGRF v. Republic of Bulgaria* (ICSID Case No. ARB/15/43): The ICSID tribunal ordered the claimant to bear not only the totality of the costs of the arbitration, but also the totality of Bulgaria's legal fees.
2. *Lone Star v. Hana Financial Group*: The ICC tribunal awarded our client 90% of its attorneys' fees and costs.
3. *WA Investments-Europa Nova Limited v. Czech Republic* (PCA Case No. 2014-19): The tribunal ordered Claimant to reimburse the Czech Republic for a portion of its arbitration costs.
4. *Voltaic Network GmbH v. Czech Republic* (PCA Case No. 2014-20): The tribunal ordered Claimant to reimburse the Czech Republic for a majority of its arbitration costs.
5. *Photovoltaik Knopf Betriebs-GmbH v. Czech Republic* (PCA Case No. 2014-21): The tribunal ordered Claimant to reimburse the Czech Republic for a majority of its arbitration costs.
6. *I.C.W. Europe Investments Limited v. Czech Republic* (PCA Case No. 2012-22): The tribunal ordered Claimant to reimburse the Czech Republic for a majority of its arbitration costs.
7. *Antaris v. Czech Republic* (PCA Case No. 2014-01): The tribunal ordered Claimant to pay US\$2 million dollars in attorneys' fees and costs.
8. *Nations Energy Inc. and others v. Republic of Panama* (ICSID Case NO. ARB/06/19): The tribunal ordered Claimant to pay all of Panama's costs and attorneys' fees (totaling US\$ 4.5 million dollars).
9. *AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Republic of Hungary* (ICSID Case No. ARB/07/22) (Annulment): The *ad hoc* Committee ordered Claimants to pay 100% of Hungary's costs and attorney's fees.
10. *Victor Pey Casado and Fundación Presidente Allende v. Republic of Chile* (ICSID Case No. ARB/98/2) (revision proceeding): Tribunal ordered Claimant to cover 100% of the costs. In the Resubmission Proceeding, the Tribunal awarded the Republic of Chile half of its costs.
11. *Sociedad Anónima Eduardo Vieira v. Republic of Chile* (ICSID Case No. ARB/04/7) (annulment proceeding): The Republic of Chile received a full award of costs in the decision issued by the *ad hoc* Committee in the annulment proceeding.
12. *Telenor Mobile Communications A.S. v. Republic of Hungary* (ICSID Case No. ARB/04/15): The tribunal granted full costs and attorney fees to our client, the Republic of Hungary.
13. *Transglobal Green Energy, LLC and Transglobal Green Energy de Panama, S.A. v. Republic of Panama* (ICSID Case No. ARB/13/28): The tribunal awarded Panama over 92% of attorneys' fees, plus all arbitration costs.
14. European State: The Contractor was awarded only a small portion of the damages it sought and was ordered to pay almost 90% of the costs of the arbitration.