



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

Arnold & Porter has an ongoing streak—spanning 15 years—of 28 consecutive positive results in final awards or decisions* on behalf of sovereign States in investment arbitrations.† The relevant rulings are the following:

COMPLETE VICTORIES

1. **Czech Republic** - *Antaris, ad hoc arbitration*, Award dated 2 May 2018: dismissed all of the claims brought against the Czech Republic by German investors Antaris GmbH and Dr. Michael Göde pursuant to the Energy Charter Treaty and the Czech-German bilateral investment treaty (“BIT”), concerning an investment in the Czech solar power industry. The tribunal not only dismissed all claims but ordered the Claimants to pay to the Czech Republic US\$2 million in attorneys’ fees and costs.

Award. <https://www.italaw.com/cases/2080> (English). See also <https://www.mfcr.cz/en/news/press-releases/2018/victory-in-international-arbitration-31797> (English) and “Czech Republic wins second solar case” *Global Arbitration Review* 4 May 2018 at <https://globalarbitrationreview.com/article/1169149/czech-republic-wins-second-solar-case> (English, subscription required).

2. **Czech Republic** - *Wirtgen, ad hoc arbitration*, Award dated 11 Oct. 2017: dismissed all of the Claimants’ claims, brought by German investors Jürgen Wirtgen, Stefan Wirtgen, Gisela Wirtgen and JSW Solar (zwei) GmbH & Co.KG (asserted under the Germany-Czech Republic BIT). The tribunal concluded that a tax on solar power plants and other measures introduced by the Czech Republic in 2011 did not violate the BIT.

Award: <https://www.italaw.com/cases/6428> (English). See also <https://www.mfcr.cz/en/news/press-releases/2017/czech-republic-won-in-breakthrough-solar-29866> (English) and <http://globalarbitrationreview.com/article/1148951/czech-republic-wins-first-solar-case> (English; subscription required).

* 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.

† This streak is believed to be the longest of any law firm in the world. See, e.g., *Global Arbitration Review* 2018 “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 2018 (Arnold & Porter’s track record in investment-state arbitration is hard to beat ... Few firms can compete with its success rate on behalf of sovereigns”).

3. **Costa Rica** - *Supervisión y Control S.A.*, ICSID Case No. ARB/12/4, Award dated 18 Jan. 2017: dismissed all of the Claimant's claims (totaling US\$345 million), asserted under the Spain-Costa Rica BIT, on the basis of inadmissibility of the claims under the treaty.
Award: <https://www.italaw.com/sites/default/files/case-documents/italaw8230.pdf> (English)
4. **Chile** - *Victor Pey Casado*, ICSID Case No. ARB/98/2, Resubmission Proceeding, Award dated 13 Sept. 2016: unanimous ruling in favor of the Republic of Chile, dismissing all of the Claimants' damages claims (totaling US\$340 million), and granting our client a partial award of costs.
Award: <http://www.elclarin.cl/images/pdf/Award1392016PeyCasadoChile.pdf> (English).
5. **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).
6. **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).
7. **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 at point 10 below).
Award: <http://www.italaw.com/sites/default/files/case-documents/italaw4495.pdf> (English).
8. **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 at point 12 below).
Award: <https://www.italaw.com/sites/default/files/case-documents/italaw4353.pdf> (English).
9. **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 at point 11 below).
Award: <http://www.italaw.com/sites/default/files/case-documents/italaw3143.pdf> (English).
10. **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 (later also dismissed; see separate *Electrabel* entry at point 7 above).
Decision: <http://italaw.com/sites/default/files/case-documents/italaw1071clean.pdf> (English).
11. **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, but deferred decision on one of the claims (later also dismissed; see separate *Emmis* entry at point 9 above). Decision: http://www.italaw.com/sites/default/files/case-documents/italaw1239_0.pdf (English).
12. **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, but deferred decision on one of the claims (later also dismissed; see separate *Accession* entry at point 8 above). Decision: <http://italaw.com/sites/default/files/case-documents/italaw1292.pdf> (English).

- 13. 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 award of costs to Chile.
Decision: <http://italaw.com/sites/default/files/case-documents/italaw1178.pdf> (English).
- 14. Hungary** - *AES*, ICSID Case No. ARB/07/22, Annulment Proceeding, Decision dated 29 June 2012: dismissed all of Claimant's annulment claims, with award of costs and legal fees to our client (Hungary).
Decision: <http://italaw.com/sites/default/files/case-documents/ita1072.pdf> (English)
- 15. 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 our client (Chile).
Decision: <http://italaw.com/sites/default/files/case-documents/ita0796.pdf> (Spanish).
- 16. 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 our client (Panama).
Award: http://ita.law.uvic.ca/documents/NationsResourcesVPanama_Award.pdf (Spanish)
- 17. Hungary** - *AES*, ICSID Case No. ARB/07/22, Award dated 23 Sept. 2010: dismissed all of Claimant's claims (asserted under the Energy Charter Treaty).
Award: <http://ita.law.uvic.ca/documents/AESvHungaryAward.pdf> (English).
- 18. 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 our client (Chile).
Decision: http://ita.law.uvic.ca/documents/Decisiundel18-11-2009Spanish_000.pdf (Spanish).
- 19. Venezuela** - *I&I Beheer*, ICSID Case No. ARB/05/4: all claims dismissed in 2007; ruling not published. See http://www.arnoldporter.com/news.cfm?u=ArnoldPorterLawyersHelpVenezuelaPrevailInICSIDArbitrationBroughtByDutchInvestor&type=case_study&action=view&id=4590 (Arnold & Porter press release).
- 20. Chile** - *Sociedad Anónima Eduardo Vieira*, ICSID Case No. ARB/04/7, Award dated 21 Aug. 2007: dismissed all of Claimant's claims, asserted under the Spain-Chile BIT.
Award: <http://ita.law.uvic.ca/documents/VieiraAward.pdf> (Spanish).
- 21. 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 full award of costs to our client (El Salvador).
Award: http://ita.law.uvic.ca/documents/Inceysa_Vallisoletana_sp_001.pdf (Spanish).
- 22. Hungary** - *Telenor*, ICSID Case No. ARB/04/15, Award dated 13 Sept. 2006: dismissed all of Claimant's claims (asserted under the Hungary-Norway BIT), and granting a full award of costs and attorney fees to our client (Hungary). Award: <http://italaw.com/sites/default/files/case-documents/ita0858.pdf> (English).
- 23. Argentina** - *Compañía Aguas de Aconquija and Vivendi*, ICSID Case No. ARB/97/3 ("*Vivendi I*"), Award dated 21 Nov. 2000: dismissed all of Claimant's claims (asserted under the France-Argentina BIT).[‡]
Award: http://ita.law.uvic.ca/documents/Eaux-Award-Sp_000.pdf (Spanish).

[‡] **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).

WITHDRAWN CLAIMS

- 24. 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.
- 25. Kyrgyzstan** - *Consolidated Exploration Holdings Ltd.*, ICSID Case No. ARB(AF)/13/1: Case settled in 2015, on terms satisfactory to our client.

DAMAGES VICTORIES

- 26. 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)
- 27. Chile** - *Victor Pey Casado*, ICSID Case No. ARB/98/2, Award dated 8 May 2008: The amount claimed was initially US\$515 million — later elevated in a Revision Proceeding to US\$797 million — but Claimant was 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 13 above), and more recently, following a resubmission proceeding, the Claimants' damages claims were summarily dismissed, resulting in a final award of zero damages (see point 4 above).
Award: <http://ita.law.uvic.ca/documents/PeyLAUDO.pdf> (Spanish).
- 28. 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\$5,200,000,000** (\$5.2 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 0.53% of the total amount they have claimed against Arnold & Porter's sovereign clients.