



**Study of Damages**  
**In International Center for the Settlement of Investment Disputes Cases**

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1<sup>st</sup> Edition

June 2014

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## 1 Foreword

In the world of international arbitration, disputes between foreign investors and sovereign states are often settled by rights and protections granted in investment treaties. As a general rule, if a foreign investor makes an investment in a country in which the investor's home country has a bilateral or multilateral investment treaty, that treaty often offers protections for the investor in the event of certain adverse actions by the host country, such as expropriation or inequitable treatment. If an investor feels that the host country has violated the investment treaty, the investor can file an international arbitration to try to recover the loss of value in its investment as a result of the alleged bad act of the host government.

Each investment treaty can specify which arbitral institution can administer an arbitration or in some cases the parties can choose. This first edition of our study is focused upon just arbitrations handled by International Center for the Settlement of Investment Disputes ("ICSID") as they have the most comprehensive listing and tracking of current and past cases. ICSID is a member of the World Bank Group.

The number of publicly ICSID awards has reached a volume that now allows for meaningful quantitative study of the results. There are numerous writings and studies about ICSID awards that are focused upon the legal issues; however, we endeavored instead to study the damages and quantitative aspects of the awards, including interest and costs. Our study was conducted based upon awards issued and publicly available as of June 30, 2013.

Publicly reported damages awarded at ICSID are nearly \$4.5 billion. Two awards account for over 59% of the total reported awards to date. Excluding those two awards, the average damages awarded are approximately \$34 million, which is about 34% of the average claimed amount.

There have been 280 cases concluded at ICSID, including eleven that were in the process of seeking annulment. We do not know the outcome of approximately 40% of the ICSID cases because they were either settled or the award was not published. However, our study finds that the respondent won in nearly 80% of the reported cases – either through discontinuance, a finding of no jurisdiction, awards of no liability, or awards with liability but less than 20% of the amount claimed being awarded. Conversely, the claimant only won more than 50% of what it claimed in around 12% of the reported cases and received between 20% and 50% of its claim in about 8% of the cases.

The study of the awards also shows interesting insights into the players at ICSID. The study of the players generally shows the most concentration of merit awards by individual arbitrator, as there are a dozen arbitrators with five or more merit awards. By law firm, there are less than 20 firms who have more than two reported cases and just six firms with five or more. The experience of the damages experts is most diluted, as there are only seven who have been reported in more than one case and just five who have been experts in four or more reported damages awards. We have studied the track records of the law firms, experts, and tribunal members to track the results they have achieved in cases that have progressed to the merit award stage.

In summary, we find the results to be thought provoking and in many instances different than common perception about ICSID arbitration. We welcome the opportunity to meet with those of you who might be interested in learning more about our findings. We also welcome feedback on any particular case highlighted or providing us with any awards we have not located and therefore omitted. For inquiries or comments, please contact Rebecca Vélez at [rvelez@credibilityconsulting.com](mailto:rvelez@credibilityconsulting.com) or 1-312-237-4831.

## 2 About the Authors

Credibility International (“Credibility”) is a consulting firm specialized in forensic accounting with one of our primary practices as damages experts in international disputes. Our team’s experience in international disputes, both contract and treaty cases, is deep with more than 25 disputes involving aggregate claims in excess of \$15 billion. Credibility has been the testifying expert in disputes involving parties from all of the Americas, Europe, Africa, and Asia with disputes involving over \$1 billion of claims in the following industries: consulting, energy, financial services, manufacturing, mining, and telecommunications.

For more information about Credibility, please visit [www.credibilityinternational.com](http://www.credibilityinternational.com).

Tim Hart, the founder and president of Credibility, is the primary author of this study. Tim is a CPA and Certified Fraud Examiner who has served as damages expert in over 50 cases, half of those being international arbitrations. Tim has served as the damages expert in a dozen investment treaty arbitrations, starting with the CSOB v. Slovak Republic ICSID case<sup>1</sup> and including other ICSID, NAFTA, and UNCITRAL cases, with aggregate claimed damages exceeding \$10 billion. Tim’s expert cases in international disputes are summarized in Appendix A.

Ryan Hart, an intern at Credibility and a student at the University of Notre Dame, and Rebecca Vélez, a director at Credibility, performed the primary research. Other Credibility team members performed quality review on the study.

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<sup>1</sup> ICSID case number ARB/97/04

### 3 The Study

The study was undertaken to focus upon damages in arbitration cases at ICSID. We chose to study the ICSID awards because ICSID keeps a comprehensive historic listing of all of its completed and pending cases, and ICSID has the most publicly reported awards. Our primary focus in this first version of the study was upon merit awards, without particular focus upon awards that reported settlements or jurisdictional awards. As a byproduct of our research, we also report on two other quantitative elements, interest and costs.

#### 3.1 Approach

The following describe the steps in our study:

1. We started with the list of all concluded ICSID cases.<sup>2</sup>
2. We noted all cases that had gone to award and searched for published versions of those awards.<sup>3</sup>
3. In cases where we could not find the awards, we searched for news reports of the amounts claimed and any reported award amounts.
4. For the awards that were located, we compiled the following information (if available) from the published award, the ICSID website, or the applicable source:
  - Case number
  - Claimant
  - Respondent
  - Status
  - Award Date
  - Industry
  - Law firms
  - Lawyers
  - Arbitrators
  - Claim / type of damages claimed
  - Currencies of claims and awards
  - Original claim amount
  - Claim amounts at hearing (high and low if alternative values were claimed)
  - Basis of claim at hearing (DCF, Invested Cost, etc.)
  - Damages amount per respondent at hearing
  - Basis of damages amount per respondent at hearing (DCF, Invested Cost, etc.)
  - Damages experts
  - Damages experts' firm
  - Liability found
  - Amount of damages awarded

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<sup>2</sup> <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtIsRH&actionVal=ListConcluded>

<sup>3</sup> The study is focused upon the damages and quantum issues in ICSID cases that were completed and publicly available as of June 30, 2013.

- Basis of damages amount (DCF, Invested Cost, etc.)
  - Interest awarded
  - Interest rate (fixed rate or floating)
  - Basis of interest rate (US Treasuries, LIBOR, contractual rate, etc.)
  - Simple or compound interest
  - Costs claimed
  - Costs awarded
  - Party costs awarded to
  - Tribunal costs
5. For awards involving foreign currency, all amounts were converted to US dollars as of the award date.<sup>4</sup>
  6. We calculated the average amount claimed at the hearing.
  7. We calculated the percentage of awarded damages to the average amount claimed.
  8. From this data set, we performed a number of analyses and created a variety of reports.

Please note that many of the awards do not differentiate between the base award amount (often as of the date of the alleged bad act) and any pre-award interest. Accordingly, some of the comparisons between the award amount and the original claim might be skewed (where the amount of the recovery might look higher when compared to the claim) due to interest.

### 3.2 Population

Our study is focused upon actual awards issued by tribunals at ICSID; therefore, our overall study population primarily involves completed cases, with the exception of a few that have gone to merit award and are pending an effort to annul. Our analysis was focused only upon those cases where merit awards were issued and available as of June 30, 2013. See Exhibit 1 for a listing of the cases included in our study.

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<sup>4</sup> This currency conversion method will cause some comparisons between claim amounts and award amounts to be impacted by differences in exchange rates between the date the claim was filed and the date of the award.

## 4 Findings

We have endeavored to report upon the damages and other quantitative elements including interest awards and costs in the completed ICSID cases. From this base quantitative data, we prepared a range of analyses including our own scorekeeping of wins, losses and draws.

### 4.1 Analysis of the Merit Awards

Of the concluded cases, we located 99 merit awards, ten of which were pending annulment. We included these ten awards in the study due to the low incidence of annulment. Liability was found in 57 of the cases and no liability was found in 42 of the cases.

We located the amount claimed in 87 of the 99 merit awards.<sup>5</sup> We were not able to find a claim amount for twelve of the awards where no liability was found. Damages claimed on these 87 awards totaled \$22.8 billion. However, one single case, which lost on liability, *Generation Ukraine Inc. v. Ukraine*,<sup>6</sup> makes up over 41% of that amount, with a claim of over \$9.4 billion.<sup>7</sup> Excluding this single outlying claim, the total amount claimed in the study population was \$13.4 billion. This \$13.4 billion in claims relates to 86 cases, for an average case size of \$155 million with the median claim size approximating \$60 million. This difference between the simple average and the median shows that there are a few significant large cases that are outliers.

The group of 30 cases where no liability was found and we identified a claim amount (excluding the *Generation Ukraine v. Ukraine* case<sup>8</sup>) represented almost \$4.2 billion of claimed damages. The average of these claims was \$140 million with a median of \$64 million. This gap between the median and mean once again shows that there are outliers on the high end of the claim range. The range of claims in this group starts from a low of around a half million dollars in the *Eudora A. Olguin v. Paraguay* case<sup>9</sup> involving food products, to a high of over \$1 billion in the *Vannessa Ventures v. Venezuela*<sup>10</sup> gold mining case. The damages claimed in the *Vannessa* case were over twice the damages claimed in the next largest case where no liability was found. With the *Vannessa* case excluded, the average case size where no liability was found drops from \$140 million to just over \$109 million.

For many of the awards where no liability was found, there is limited if any discussion of damages issues. A few of these awards do provide some detailed discussion about the damages case, but the majority of these awards are silent on most damages issues.

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<sup>5</sup> The claim amount was found in most all instances in the award. We searched other sources for the claim amount if it was not specified in the award. A small number of the claim amounts rely upon press reports.

<sup>6</sup> ICSID case number ARB/00/9

<sup>7</sup> This case appears to be a clear outlier as the tribunal said in the award that “Claimant’s presentation has lacked the intellectual rigour and discipline one would expect of a party seeking to establish a cause of action before a(n) international tribunal” and “Claimant’s presentation of its damages claim has reposed on the flimsiest foundation.”

<sup>8</sup> ICSID case number ARB/00/9

<sup>9</sup> ICSID case number 98/5

<sup>10</sup> ICSID case number (AF)04/6

## 4.2 Analysis of Awards with Liability Found

The 57 cases in which liability was found provide far more insight into the question of damages. All but one of these 57 awards where liability was found awarded damages, thus the award itself discusses in some detail the damages case put forward by both sides. In most all of these cases, the awards discuss the quantum of the claims put forward by the claimants. We identified the basis of the claims in 34 cases. Based on these, the most common bases presented by claimants at the hearing are the discounted cash flow valuation method, lost profits, and the amount of a loan. Many of the awards also describe the alternative damages put forward by the respondent.

In aggregate, this group of cases involved over \$9 billion in claims. The average of these claims was \$163 million with a median claim of \$50 million. Again, the gap between the median and mean claims shows that there are outliers on the high end of the claim range. Two significant outliers are *Occidental v. Ecuador*<sup>11</sup> and *CSOB v. Slovak Republic*.<sup>12</sup> The total claim in the *Occidental* case was \$2.4 billion and the total claims in the *CSOB* case amounted to \$1.4 billion. With these two outlying cases removed from the group, the average claim size drops by 39% to under \$100 million per case with the median claim moving to \$45 million, indicating there was still a significant range of damages claimed.

Of these 57 cases where liability was found, \$4.5 billion in damages were awarded which represents 49% of the damages claimed. The average award was \$79 million with the median award approximating \$12 million. The awards are in a wide range with a number of rather small awards and again influenced by the two outlying large awards, *Occidental* which was almost \$1.8 billion and *CSOB* which was \$867 million. If the *Occidental* and *CSOB* awards are removed the average award drops to \$34 million, which is 34% of the damages claimed.

When comparing the awards to the claimed amounts in those cases where liability was found, there are a number of observations that can be made. First, the smaller sized claims generally resulted in a higher recovery percentage. Second, a small percentage of the cases, approximately 9%, resulted in awards of 100% of the claimed amount.<sup>13</sup> Third, no claim over \$100 million has been awarded 100% of the claimed amount. The largest case with a 100% recovery was the *Fuchs v. Georgia* case,<sup>14</sup> where \$90 million was claimed and awarded.<sup>15</sup> Of the 19 cases with claims over \$100 million, only four achieved awards greater than 60% of the claimed amount. These findings suggest that there have actually been very few cases where the actual investment or the proven value exceeded \$100 million. The findings also show that tribunals are generally skeptical of damages claims and often award a tiny fraction of the claim. The following chart shows the award as a percentage of the claimed amount for each case in which damages were awarded.

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<sup>11</sup> ICSID case number ARB/06/11

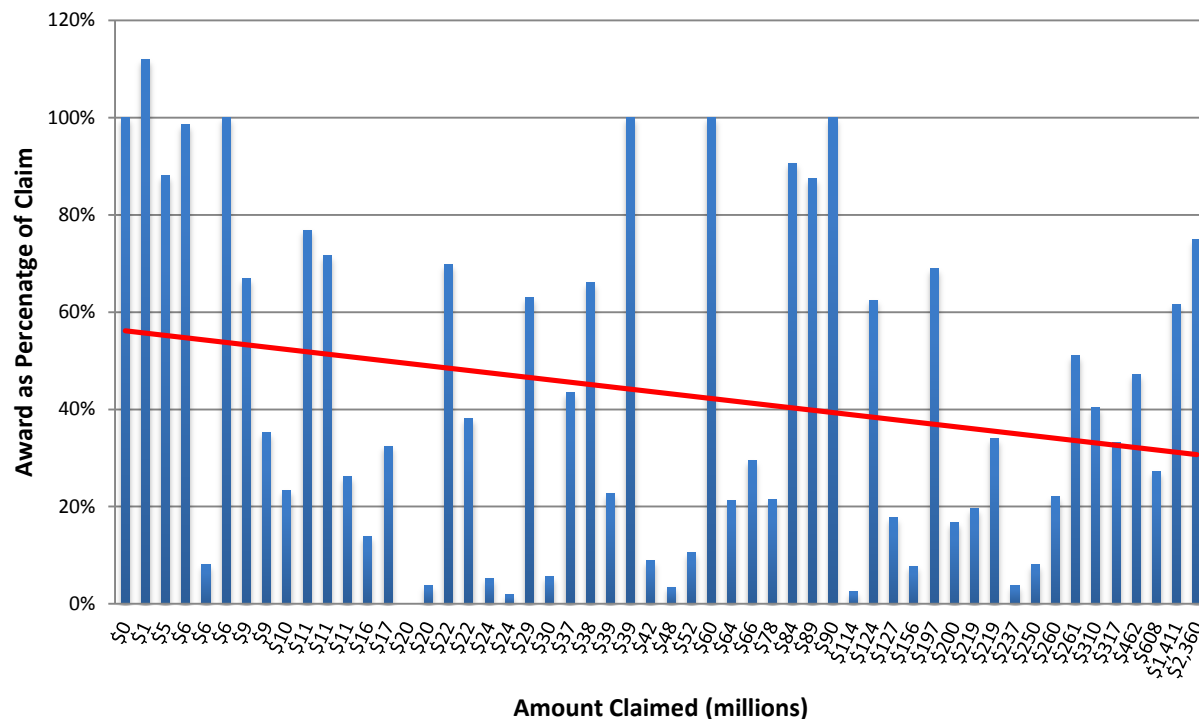
<sup>12</sup> ICSID case number ARB/97/4

<sup>13</sup> All of the references to the percentage of the award amount to the claim amount is expressed as the percentage of the average of the high and low claims presented, if more than one claim amount was put before the tribunal during the hearing.

<sup>14</sup> ICSID case number ARB/05/18 & 07/15

<sup>15</sup> This case was subsequently settled post-award for less than the awarded amount.

**Figure 4.1: Award as a Percentage of Claimed Amount**



### 4.3 Ranking of the Damages Claims

A simple ranking of the damages claims shows that there have been 30 cases with claims over \$120 million. The following table is sorted from largest claim to the smallest with a cut-off at the 30<sup>th</sup> largest claim.<sup>16</sup>

<sup>16</sup> Two annulled awards have been included in this table as they properly represent claimed amounts, albeit not properly counted as damages awarded.

**Table 4.1: Top 30 Claims**

Rank	Case Number	Claimant(s)	Respondent(s)	Status	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
1	ARB/00/9	Generation Ukraine Inc.	Ukraine	Final Award	9,446,287,341	-	0.0%
2	ARB/06/11	Occidental Petroleum Corporation and Occidental Exploration and Production Company	Ecuador	Award, Pending Annulment	2,359,500,000	1,769,625,000	75.0%
3	ARB/97/4	CSOB	Slovak Republic	Final Award	1,410,532,920	867,873,364	61.5%
4	ARB(AF)/04/6	Vannessa Ventures Ltd.	Venezuela	Final Award	1,045,000,000	-	0.0%
5	ARB/01/12	Azurix Corp.	Argentina	Final Award	608,414,000	165,240,753	27.2%
6	ARB/03/29	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.	Pakistan	Final Award	539,751,471	-	0.0%
7	ARB/00/7	World Duty Free Company Limited	Kenya	Final Award	500,000,000	-	0.0%
8	ARB/02/8	Siemens A.G.	Argentina	Final Award	462,477,071	217,838,439	47.1%
9	ARB/01/3	Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P.	Argentina	Annulled Award, Pending Resubmission	412,897,066	106,200,000	25.7%
10	ARB/98/2	Víctor Pey Casado and President Allende Foundation	Chile	Award, Pending Resubmission	397,347,674	10,132,690	2.6%
11	ARB/02/9	Champion Trading Company and Ameritrade International, Inc.	Egypt	Final Award	365,171,121	-	0.0%
12	ARB/97/3	Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A.	Argentina	Final Award	316,923,000	105,000,000	33.1%
13	ARB/05/16	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S.	Kazakhstan	Final Award	310,000,000	125,000,000	40.3%
14	ARB/01/8	CMS Gas Transmission Company	Argentina	Final Award	261,100,000	133,200,000	51.0%
15	ARB/02/1	LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc.	Argentina	Award, Pending Annulment	259,500,000	57,400,000	22.1%
16	ARB/05/17	Desert Line Project LLC	Yemen	Final Award	249,501,059	20,219,686	8.1%
17	ARB/02/5	PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi	Turkey	Final Award	236,831,500	9,061,479	3.8%
18	ARB/06/3	The Rompetrol Group N.V.	Romania	Final Award	225,438,057	-	0.0%
19	ARB/05/15	Waguih Elie George Siag and Clorinda Vecchi	Egypt	Final Award	219,486,000	74,550,795	34.0%
20	ARB/03/15	El Paso Energy International Company	Argentina	Award, Pending Annulment	219,100,000	43,030,000	19.6%
21	ARB/02/16	Sempra Energy International	Argentina	Annulled Award, Pending Resubmission	209,380,000	128,250,462	61.3%
22	ARB(AF)/04/5	Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, INC	Mexico	Final Award	200,000,000	33,510,091	16.8%

Rank	Case Number	Claimant(s)	Respondent(s)	Status	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
23	ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A.	Argentina	Award, Pending Annulment	197,444,209	136,138,430	69.0%
24	ARB/07/24	Gustav F W Hamster GmbH & Co KG	Ghana	Final Award	156,567,285	-	0.0%
25	ARB/00/5	Autopista Concesionada de Venezuela, C.A.	Venezuela	Final Award	155,582,915	12,089,929	7.8%
26	ARB/03/24	Plama Consortium Limited	Bulgaria	Final Award	146,120,152	-	0.0%
27	ARB/01/11	Noble Ventures, Inc	Romania	Final Award	143,531,000	-	0.0%
28	ARB/05/13	EDF (Services) Limited	Romania	Final Award	132,576,000	-	0.0%
29	ARB/84/3	Southern Pacific Properties (Middle East) Limited	Egypt	Final Award	126,874,000	22,568,000	17.8%
30	ARB(AF)/05/2	Cargill, Incorporated	Mexico	Final Award	123,813,029	77,329,240	62.5%

#### 4.4 Ranking of the Damages Awards

On the other hand, if the top 30 damages awards are ranked, the 30<sup>th</sup> ranked damages award is 11% of the 30<sup>th</sup> ranked damages claim. The following table is sorted from largest to smallest by the damages award.

**Table 4.2: Top 30 Awards**

Rank	Case Number	Claimant(s)	Respondent(s)	Status	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
1	ARB/06/11	Occidental Petroleum Corporation and Occidental Exploration and Production Company	Ecuador	Award, Pending Annulment	2,359,500,000	1,769,625,000	75.0%
2	ARB/97/4	CSOB	Slovak Republic	Final Award	1,410,532,920	867,873,364	61.5%
3	ARB/02/8	Siemens A.G.	Argentina	Final Award	462,477,071	217,838,439	47.1%
4	ARB/01/12	Azurix Corp.	Argentina	Final Award	608,414,000	165,240,753	27.2%
5	ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A.	Argentina	Award, Pending Annulment	197,444,209	136,138,430	69.0%
6	ARB/01/8	CMS Gas Transmission Company	Argentina	Final Award	261,100,000	133,200,000	51.0%
7	ARB/02/16	Sempra Energy International	Argentina	Annulled Award, Pending Resubmission	209,380,000	128,250,462	61.3%
8	ARB/05/16	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S.	Kazakhstan	Final Award	310,000,000	125,000,000	40.3%
9	ARB/01/3	Enron Creditors Recovery Corporation and Ponderosa Assets	Argentina	Annulled Award, Pending Resubmission	412,897,066	106,200,000	25.7%

Rank	Case Number	Claimant(s)	Respondent(s)	Status	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
10	ARB/97/3	Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A.	Argentina	Final Award	316,923,000	105,000,000	33.1%
11	ARB/05/18 & 07/15	Ron Fuchs and Ioannis Kardassopoulos	Georgia	Final Award	90,249,474	90,249,474	100.0%
12	ARB/06/7	Togo Electricité and GDF-Suez Energie Services	Togo	Final Award	88,681,496	77,539,193	87.4%
13	ARB(AF)/05/2	Cargill, Incorporated	Mexico	Final Award	123,813,029	77,329,240	62.5%
14	ARB/03/16	ADC Affiliate Limited ADC & ADMC Mangement Limited	Hungary	Final Award	84,073,034	76,200,000	90.6%
15	ARB/05/15	Waguih Elie George Siag and Clorinda Vecchi	Egypt	Final Award	219,486,000	74,550,795	34.0%
16	ARB/07/29	SGS Société Générale de Surveillance S.A.	Paraguay	Award, Pending Annulment	61,525,951	61,525,951	100.0%
17	ARB/09/2	Deutsche Bank AGD	Sri Lanka	Award, Pending Annulment	60,368,993	60,368,993	100.0%
18	ARB/02/1	LG&E Energy Corp., LG&E Capital Corp. et al	Argentina	Award, Pending Annulment	259,500,000	57,400,000	22.1%
19	ARB/03/15	El Paso Energy International Company	Argentina	Award, Pending Annulment	219,100,000	43,030,000	19.6%
20	ARB(AF)/04/5	Archer Daniels Midland Company and Tate & Lyle Ingredients Americas	Mexico	Final Award	200,000,000	33,510,091	16.8%
21	ARB/04/6	OKO Pankki Oyj VTB Bank AG Sampo Bank PLC	Estonia	Final Award	37,945,369	25,078,871	66.1%
22	ARB/84/3	Southern Pacific Properties (Middle East) Limited	Egypt	Final Award	126,874,000	22,568,000	17.8%
23	ARB/07/17	Impregilo S.p.A.	Argentina	Final Award	119,362,503	21,294,000	17.8%
24	ARB/05/17	Desert Line Project	Yemen	Final Award	249,501,059	20,219,686	8.1%
25	ARB/98/4	Wena Hotels Limited	Egypt	Final Award	66,010,908	19,493,283	29.5%
26	ARB/03/28	Duke Energy International Peru Investments No. 1	Peru	Final Award	29,296,135	18,440,746	62.9%
27	ARB(AF)/97/1	Metalclad	Mexico	Final Award	77,737,264	16,685,000	21.5%
28	ARB/96/1	Compañía del Desarrollo de Santa Elena S.A.	Costa Rica	Final Award	36,868,875	16,000,000	43.4%
29	ARB(AF)/04/3&4	Talsud, S.A. and Gemplus S.A.	Mexico	Final Award	22,238,340	15,508,381	69.7%
30	ARB/07/23	Railroad Development Corporation	Guatemala	Final Award	63,778,212	13,518,759	21.2%

While there are 33 claims in our study that exceed \$100 million, there are only ten awards that exceed \$100 million. Ten of the top 30 claims lost on liability, while a number of awards were for much less than claimed. Needless to say, the damages awarded in many cases are a small fraction of the damages claimed.

## 4.5 Ranking of Failed Claims

We also ranked the cases where we were able to identify a claimed amount and no damages were awarded (almost exclusively due to no liability being found). This grouping has 30 cases.

**Table 4.3: Top Claims with no Awards**

Rank	Case Number	Claimant(s)	Respondent(s)	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
1	ARB/00/9	Generation Ukraine Inc.	Ukraine	9,446,287,341	-	0.0%
2	ARB(AF)/04/6	Vannessa Ventures Ltd.	Venezuela	1,045,000,000	-	0.0%
3	ARB/03/29	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.	Pakistan	539,751,471	-	0.0%
4	ARB/00/7	World Duty Free Company Limited	Kenya	500,000,000	-	0.0%
5	ARB/02/9	Champion Trading Company and Ameritrade International, Inc.	Egypt	365,171,121	-	0.0%
6	ARB/06/3	The Rompetrol Group N.V.	Romania	225,438,057	-	0.0%
7	ARB/07/24	Gustav F W Hamester GmbH & Co KG	Ghana	156,567,285	-	0.0%
8	ARB/03/24	Plama Consortium Limited	Bulgaria	146,120,152	-	0.0%
9	ARB/01/11	Noble Ventures, Inc	Romania	143,531,000	-	0.0%
10	ARB/05/13	EDF (Services) Limited	Romania	132,576,000	-	0.0%
11	ARB/06/1	Spyridon Roussalis	Romania	119,642,666	-	0.0%
12	ARB/06/13	Aguaytia Energy, LLC	Peru	91,100,000	-	0.0%
13	ARB/04/13	Jan de Nul N.V. and Dredging International N.V.	Egypt	81,390,370	-	0.0%
14	ARB/05/19	Helnan International Hotels A/S	Egypt	66,117,794	-	0.0%
15	ARB/02/18	Tokios Tokelès	Ukraine	65,000,000	-	0.0%
16	ARB/99/2	Alex Genin, Eastern Credit Limited, INC. and A.S. Baltoil	Estonia	61,639,344	-	0.0%
17	ARB(AF)/02/1	Fireman's Fund Insurance Company	Mexico	50,000,000	-	0.0%
18	ARB(AF)/99/2	Mondev International Ltd.	United States	50,000,000	-	0.0%
19	ARB(AF)/00/3	Waste Management, Inc.	Mexico	36,000,000	-	0.0%
20	ARB/07/12	Toto Costruzioni Generali S.p.A.	Lebanon	33,538,057	-	0.0%
21	ARB/08/16	GEA Group Aktiengesellschaft	Ukraine	30,832,017	-	0.0%
22	ARB/05/8	Parkerings-Copagniet AS v. Republic of Lithuania	Lithuania	28,122,624	-	0.0%
23	ARB/02/13	Salini Costruttori S.p.A. Italastrade S.p.A.	Jordan	28,000,000	-	0.0%
24	ARB/03/6	M.C.I. Power Group, L.C. and New Turbine, Inc	Ecuador	25,000,000	-	0.0%
25	ARB/05/22	Biwater Gauff Limited	Tanzania	19,608,990	-	0.0%
26	ARB/03/5	Metalpar S.A. and Buen Aire S.A.	Argentina	17,938,099	-	0.0%
27	ARB(AF)/97/2	Robert Azinian, Kenneth Davitian and Ellen Baca	Mexico	15,401,500	-	0.0%

Rank	Case Number	Claimant(s)	Respondent(s)	Average Claim (US\$)	Damages Awarded (US\$)	% Realized
28	ARB/94/2	Tradex Hellas S.A.	Albania	3,107,074	-	0.0%
29	ARB/07/21	Pantechniki S.A. Contractors & Engineers	Albania	2,098,823	-	0.0%
30	ARB/98/5	Eudora A. Olguín	Paraguay	553,623	-	0.0%

There have been 11 cases with reported claimed damages in excess of \$100 million. In total, these failed claims total \$13 billion or exceed \$3.4 billion if the outlying *Generation Ukraine v. Ukraine* case<sup>17</sup> is excluded.

#### 4.6 Basis of Damages Awards

For cases in which the basis for the claim presented at the hearing was discussed, about a quarter of them reported using the discounted cash flow methodology as the basis. The basis for the damages awarded was discussed in a higher number of cases. The investment cost was the most prominently relied upon basis for the damages awarded. This is likely due to its more straightforward calculation and reasonable certainty of this method, as compared to other methodologies. The discounted cash flow valuation methodology and a summation of excess expenses were the second and third most relied upon bases for damages. These three bases account for almost half of the cases in which the basis for damages was discussed.

The table below lists the top 30 damages awards and the basis for such damages. Of these larger award cases, ten awards were based on the discounted cash flow method and seven were based on the investment amount.

**Table 4.4: Basis of Award for Top 30**

Rank	Case Number	Claimant(s)	Respondent(s)	Damages Awarded (US\$)	Basis of Damages
1	ARB/06/11	Occidental Petroleum Corporation and Occidental Exploration and Production Company	Ecuador	1,769,625,000	DCF
2	ARB/97/4	CSOB	Slovak Republic	867,873,364	Loan
3	ARB/02/8	Siemens A.G.	Argentina	217,838,439	Investment
4	ARB/01/12	Azurix Corp.	Argentina	165,240,753	Investment
5	ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A.	Argentina	136,138,430	DCF
6	ARB/01/8	CMS Gas Transmission Company	Argentina	133,200,000	DCF
7	ARB/02/16	Sempra Energy International	Argentina	128,250,462	DCF
8	ARB/05/16	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S.	Kazakhstan	125,000,000	DCF
9	ARB/01/3	Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P.	Argentina	106,200,000	DCF

<sup>17</sup> ICSID case number ARB/00/9

Rank	Case Number	Claimant(s)	Respondent(s)	Damages Awarded (US\$)	Basis of Damages
10	ARB/97/3	Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A.	Argentina	105,000,000	Investment
11	ARB/05/18 & 07/15	Ron Fuchs and Ioannis Kardassopoulos	Georgia	90,249,474	DCF
12	ARB/06/7	Togo Electricité and GDF-Suez Energie Services	Togo	77,539,193	Unpaid invoices
13	ARB(AF)/05/2	Cargill, Incorporated	Mexico	77,329,240	Lost Profits
14	ARB/03/16	ADC Affiliate Limited ADC & ADMC Mangement Limited	Hungary	76,200,000	DCF
15	ARB/05/15	Waguih Elie George Siag and Clorinda Vecchi	Egypt	74,550,795	Investment
16	ARB/07/29	SGS Société Générale de Surveillance S.A.	Paraguay	61,525,951	Unpaid invoices
17	ARB/09/2	Deutsche Bank AGD	Sri Lanka	60,368,993	Value of hedge agreement
18	ARB/02/1	LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc.	Argentina	57,400,000	Lost dividends
19	ARB/03/15	El Paso Energy International Company	Argentina	43,030,000	DCF
20	ARB(AF)/04/5	Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, INC	Mexico	33,510,091	Lost Profits
21	ARB/04/6	OKO Pankki Oyj VTB Bank AG Sampo Bank PLC	Estonia	25,078,871	Loan
22	ARB/84/3	Southern Pacific Properties (Middle East) Limited	Egypt	22,568,000	Loans, investment, costs, small incremental value
23	ARB/07/17	Impregilo S.p.A.	Argentina	21,294,000	Investment
24	ARB/05/17	Desert Line Project LLC	Yemen	20,219,686	Arbitral Award
25	ARB/98/4	Wena Hotels Limited	Egypt	19,493,283	Investment
26	ARB/03/28	Duke Energy International Peru Investments No. 1 Ltd.	Peru	18,440,746	Taxes
27	ARB(AF)/97/1	Metalclad Corporation	Mexico	16,685,000	Investment
28	ARB/96/1	Compañí del Desarrollo de Santa Elena S.A.	Costa Rica	16,000,000	Real estate appraisal
29	ARB(AF)/04/3&4	Talsud, S.A. and Gemplus S.A.	Mexico	15,508,381	DCF
30	ARB/07/23	Railroad Development Corporation	Guatemala	13,518,759	Investment plus NPV of Leases

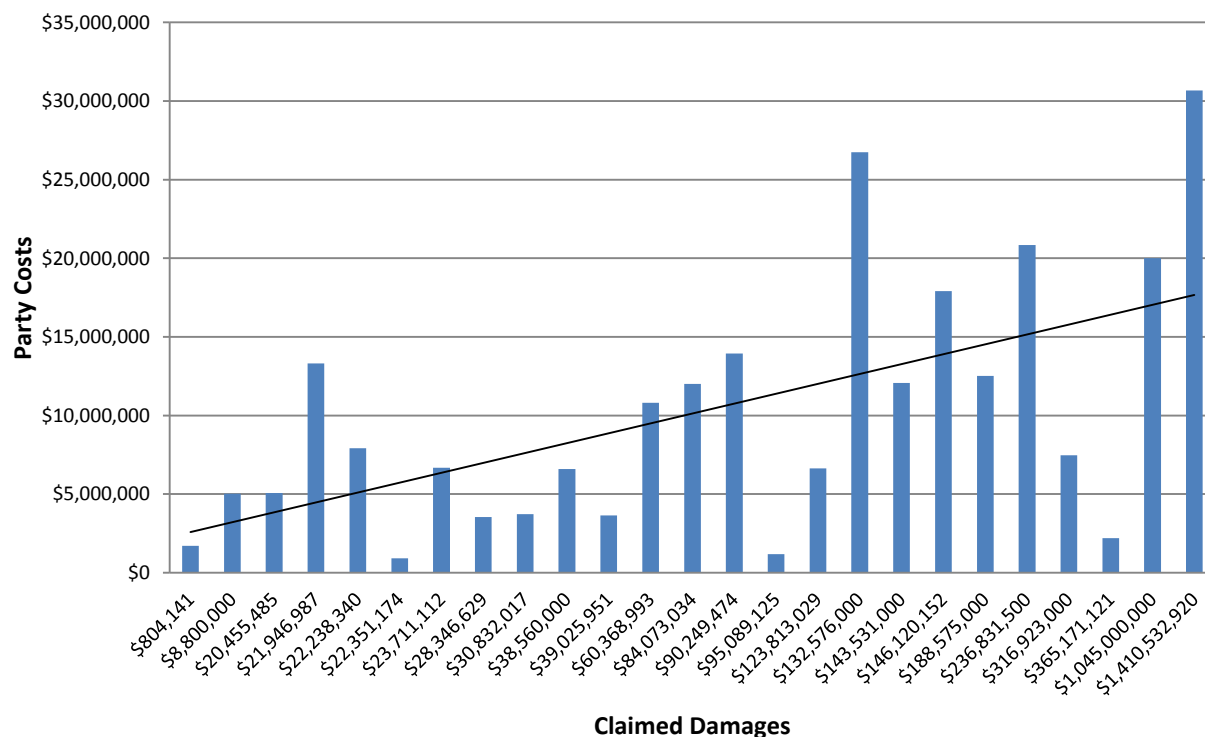
## 4.7 Analysis of Costs

The costs of investment treaty arbitration can appear high, but many factors need to be considered when analyzing the absolute cost, such as: (1) the amount of the damages claimed, (2) the complexity of the underlying investment, the duration of the investment and case facts, and (3) the number of years it took to arbitrate the case until the merit award, or case cycle time. From the data we have compiled, we can analyze the impact of the amount of the claim and the case cycle time. The complexity of the underlying investment and case fact set are beyond the scope of this study.

#### 4.7.1 Impact of Damages Claimed on Costs

First, we will focus upon whether there is a relationship between the damages claimed and the total party costs. While it is clear that there are basic costs in bringing an investment treaty arbitration and responding to one, the size of the claim as a general matter appears to impact the cost of the arbitration. The chart below is comprised of all cases for which we identified both a damages claim amount and total costs of the parties (25 cases with both data elements).<sup>18</sup>

**Figure 4.2: Total Party Costs v. Claimed Damages**



As can be seen from the linear trend line, the costs of the cases generally follow the amount at risk in damages. However, there are some significant outliers on both sides of the line. On average, a surprisingly high 24% of the damages claimed were spent by the parties. However, if one very small case with a claim amount of less than \$1 million is eliminated (*Elsamex v. Honduras*<sup>19</sup>), the average total costs spent compared to the damages claimed drops to a more reasonable 16%. The table below lists seven of the cases that were significant outliers in terms of total party costs compared to the damages claimed.

<sup>18</sup> It is quite common for the tribunal not to document the total costs in an award when they decide not to award costs. It is also somewhat common for the amount of damages claimed not to be disclosed in the award if liability is not found.

<sup>19</sup> ICSID case number ARB/09/4

**Table 4.5: Outlier Total Party Costs v. Claimed Damages**

*Dollars in millions*

Case	Damages Claimed	Award	Total Party Costs	% of Claim	% of Award	Costs Awarded?
ARB/03/28 Duke Energy v. Peru (power)	\$21.9	\$18.4	\$13.3	60.7%	72.3%	No
ARB(AF) 06/1 SMIST v. Kyrgyzstan (Hotel)	\$22.4	\$8.5	\$0.9	4.1%	10.8%	Claimant: \$0.647
ARB 05/17 Desert Line v. Yemen (settlement enforcement)	\$95.1	\$19.2	\$1.2	1.3%	6.3%	Claimant: \$0.4
ARB 05/13 EDF v. Romania (duty free)	\$132.6	\$-	\$26.7	20.1%	N/A	Respondent: \$6.0
ARB 97/3 Vivendi v. Argentina (water & sewer)	\$316.9	\$105.0	\$7.5	2.4%	7.1%	Claimant: \$0.702
ARB 02/9 Champion v. Egypt (cotton)	\$365.2	\$-	\$2.2	0.6%	N/A	Respondent: \$0.411
ARB 97/4 CSOB v. Slovak Republic (bank)	\$1,410.5	\$867.0	\$30.7	2.2%	3.5%	Claimant: \$10.0

There are a few observations that can be made on the cases with party costs that were far lower or higher than normal in expense compared to the average. Of course there are a wide variety of proceedings including whether there were serious and drawn out jurisdictional phases or changes in the arbitral panels. On a case specific basis, the following are observations about the costs:

- The *Duke v. Peru* case<sup>20</sup> involved a tax dispute and had very high costs as a percentage of the claimed amount. From reading the award, there is no obvious explanation as to why the party costs were so high relative to the relatively small amount at risk.
- The *SMIST v. Kyrgyzstan* case<sup>21</sup> involved a single hotel property that would typically be a simpler type of case compared to say a dispute over a recently privatized industry.
- The *Desert Line v. Yemen* case<sup>22</sup> involved the enforcement of a settlement and did not involve a case in chief involving valuation of the underlying investment. As such, the low party costs are not surprising.
- In the *EDF v. Romania* case,<sup>23</sup> the \$26.7 million of party costs ranks second in terms of absolute costs behind the CSOB case and it appears that the tribunal recognized that

<sup>20</sup> ICSID case number ARB/03/28

<sup>21</sup> ICSID case number ARB(AF)/06/1

<sup>22</sup> ICSID case number ARB/05/17

<sup>23</sup> ICSID case number ARB/05/13

these costs were excessive, as they awarded \$6 million to Romania in essence to get the costs back to an even split between the parties.

- In the *Vivendi v. Argentina* case,<sup>24</sup> Argentina did not use outside counsel and consequently had very low costs on its side of the case. Had the party costs been about equal, the total costs would not have been much more of an outlier.
- It is not clear why the absolute costs in the *Champion v. Egypt* case<sup>25</sup> were so low relative to the size of the claimed amount. However, there was no liability found and respondent was awarded over \$400,000 of costs.
- Although the *CSOB v. Slovak Republic* case<sup>26</sup> was the most expensive in terms of party costs reported to date (at over \$30 million), the total claim is the second largest reported to date, as well as the second largest award. When the award for costs of \$10 million, which is the largest cost award reported to date, is taken into account, the total costs were right around \$20 million which is around the amount that would be expected based on the size of the claim.

#### 4.7.2 Impact of Case Duration on Costs

Next, we studied whether the duration of the arbitral proceedings helped explain some of the costs as the work parties put into a case often expands or contracts based upon time allowed. In addition to the extra work that fills extra time, long pauses or breaks in the proceedings naturally cause the participants to spend more time getting back up to speed during each subsequent phase. The duration of a case is often referred to as cycle time. Our study indicates that longer cycle time drives higher costs.

The chart below shows the reported total party costs by the cycle time in years. The chart is organized from left to right with the shortest case lasting less than a year, and the next shortest group of cases lasting three years spanning up to ten years.

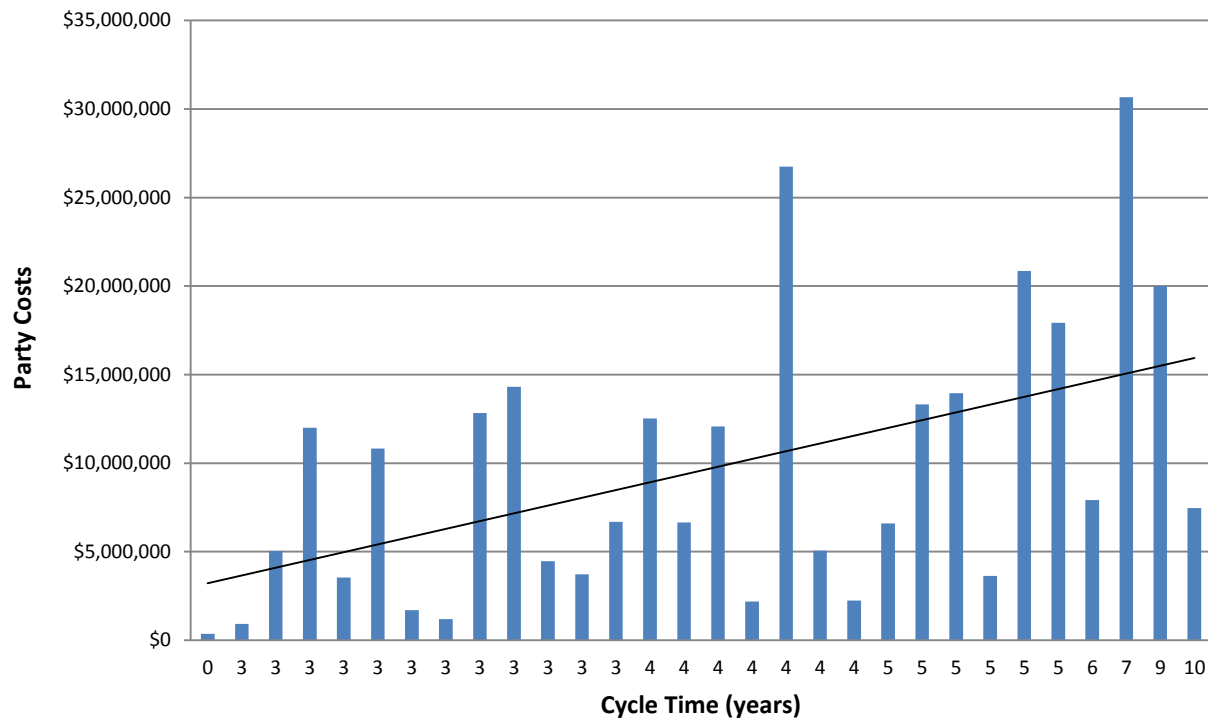
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<sup>24</sup> ICSID case number ARB/97/3

<sup>25</sup> ICSID case number ARB/02/9

<sup>26</sup> ICSID case number ARB/97/4

**Figure 4.3: Total Party Costs v. Case Cycle Time**



As can be seen from the linear trend line, there is a general correlation between longer case duration and higher party costs. While there are obvious exceptions to this rule, it is not surprising to see this trend. This finding suggests that to the extent parties can condense the total duration of the proceedings they have a better chance of controlling costs.

## 5 Interest Rates in Awards

For the cases where damages and interest were awarded, we compiled the interest rate (whether fixed or floating), the basis of the interest rate, and whether interest had been awarded on a simple or compound basis. The 50 cases with awarded damages and interest dating back to 1990 show that interest has been awarded based on a floating rate in the majority of the cases with LIBOR or U.S. Treasury rates as the predominant basis. Further review of these awards shows that the highest interest rate ever awarded was 10% (one award in 1990 in Sri Lanka<sup>27</sup> and another in 2009 in Zimbabwe<sup>28</sup>).

The awards during the past five years, since 2008, show that tribunals have awarded floating interest rates based primarily on LIBOR or U.S. Treasury rates, as 18 out of 24 awards since 2008 had floating interest rates. All interest awards in 2012 and 2013 were based on floating rates. Accordingly, it appears that tribunals have begun to adopt floating rates as their preferred interest rate basis.

The table below lists the awards since 2008 and reports the basis of the interest rate and whether the interest rate awarded was simple or compounded.

**Table 5.1: Interest Awards Since 2008**

Award Year	Case Number	Claimant(s)	Respondent(s)	Interest Rate	Basis of Interest Rate	Simple or Compound
2008	ARB/03/28	Duke Energy International Peru Investments No. 1 Ltd.	Peru	Floating	SUNAT	Simple
2008	ARB/03/9	Continental Casualty Company	Argentina	Floating	6 month average LIBOR plus 2%	Compound
2008	ARB/04/19	Duke Energy Electroquil Partners and Electroquil S.A.	Ecuador	Floating	Central Bank of Ecuador	Simple
2008	ARB/05/16	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S.	Kazakhstan	Floating	6 month average LIBOR plus 2%	Compound
2008	ARB/05/17	Desert Line Project LLC	Yemen	5.00%	Tribunal decision	Simple
2009	ARB(AF)/05/2	Cargill, Incorporated	Mexico	Floating	US monthly bank loan prime rate	Compound
2009	ARB(AF)/06/1	Sistem Muhendislik Insaat Sanayi ve Ticaret A.S.	Kyrgyzstan	Floating	LIBOR USD 12 Month Rate	Compound
2009	ARB/05/15	Waguih Elie George Siag and Clorinda Vecchi	Egypt	Floating	6 month LIBOR rate	Compound
2009	ARB/05/6	Bernardus Henricus Funnekotter and others	Zimbabwe	10.00%	LIBOR plus political risk	Compound
2009	ARB/05/7	Saipem S.p.A.	Bangladesh	3.38%	Per ICC award	Simple

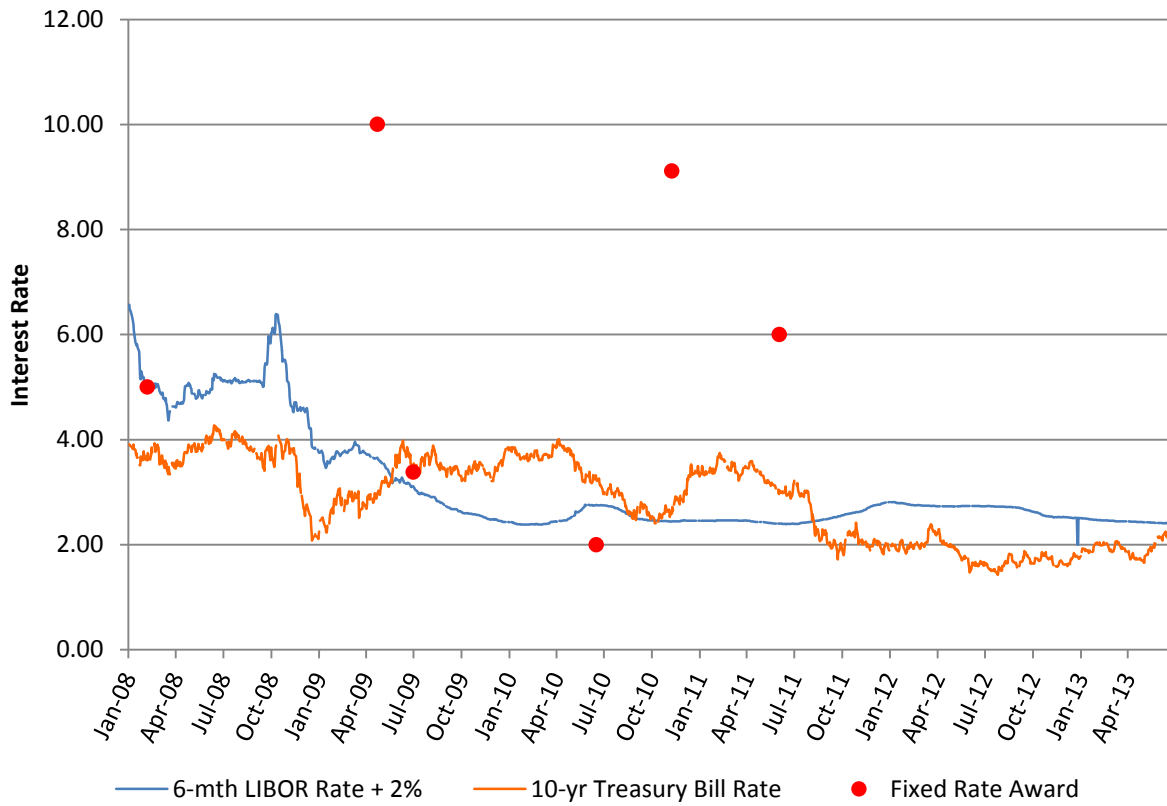
<sup>27</sup> The Claimant requested 10% interest and Respondent did not raise any objections. ICSID Case No. ARB/87/3 *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, Final Award, ¶ 112

<sup>28</sup> The 10% interest was based on LIBOR plus political risk. ICSID Case No. ARB/05/6 *Bernardus Henricus Funnekotter and Others v Republic of Zimbabwe*, Award, ¶ 143

Award Year	Case Number	Claimant(s)	Respondent(s)	Interest Rate	Basis of Interest Rate	Simple or Compound
2010	ARB(AF)/04/3&4	Talsud, S.A. and Gemplus S.A.	Mexico	2.00%	Tribunal decision	Compound
2010	ARB/05/18 & 07/15	Ron Fuchs and Ioannis Kardassopoulos	Georgia	Floating	6 month LIBOR rate plus 4%	Compound
2010	ARB/07/16	Alpha Projektholding GmbH	Ukraine	9.11%	10 Year US treasury bonds plus market risk premium for Ukraine	Compound
2011	ARB/03/15	El Paso Energy International Company	Argentina	Floating	LIBOR plus 2%	Compound
2011	ARB/06/18	Joseph C. Lemire	Ukraine	Floating	6 month average LIBOR plus 2%	Compound
2011	ARB/07/17	Impregilo S.p.A.	Argentina	6.00%	Tribunal decision	Compound
2012	ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A.	Argentina	Floating	10 Year US Treasury bonds	Compound
2012	ARB/06/11	Occidental Petroleum Corporation and Occidental Exploration and Production Company	Ecuador	Floating	6 month LIBOR rate	Compound
2012	ARB/07/23	Railroad Development Corporation	Guatemala	Floating	6 month LIBOR rate plus 2%	Compound
2012	ARB/07/29	SGS Société Générale de Surveillance S.A.	Paraguay	Floating	30 Day LIBOR Plus 1%	Simple
2012	ARB/09/16	Swisslion DOO Skopje	Former Yugoslav Macedonia	Floating	LIBOR	Compound
2012	ARB/09/2	Deutsche Bank AGD	Sri Lanka	Floating	9 month LIBOR	Simple
2012	ARB/09/20 & 08/1	Reinhard Hans Unglaube and Marion Unglaube	Costa Rica	Floating	5-year US T-bill	Compound
2013	ARB/11/23	Mr. Franck Charles Arif	Moldova	Floating	EURIBOR	Simple

The graph below compares the 6-month LIBOR rate plus a 2% spread, the 10-Year Treasury bill rate, and the six fixed rates awarded since 2008.

**Figure 5.1: Floating Rates and Fixed Rate Awards Since 2008**



## 6 Results by Participants

Compilation of the data for this study has provided a rich data set for analyzing the reported decisions to date for the arbitrators, law firms, and experts. Overall, it can be noted that the most significant concentration of experience is in the arbitrator group as there are far more individual arbitrators who have been involved in a significant number of cases. There is only a small group of law firms that have established a substantial track record to date in terms of ICSID awards issued, and even a smaller subset of that group that have solid winning records. There is even less concentration of completed case experience in the damages expert grouping, with a small handful of experts having testified in more than one case and a smaller subset of that group who have been successful in their role as experts.

Overall, we have scored the various participants using a number of metrics. The scoring is meant to measure the tendencies of the arbitrators based upon their historic record. For law firms and experts, the scoring is meant to identify a measure of the number and size of cases handled and also to assign a win, loss, or draw to the case based upon results.

### 6.1 Results by Arbitrator

For the arbitrators, our measures were rather simple. We tallied whether the tribunal found liability and calculated the simple average damages awarded as a percentage of the claimed amount. We included cases with no liability found in the average at 0%.

We identified twelve arbitrators who were members of tribunals who had issued five or more merit awards.<sup>29</sup> Two of the twelve arbitrators were involved in five awards while one of the arbitrators was involved in nine of the awards. At one end of the scale, an arbitrator who had been involved in six awards found liability twice with total average award at 2.8% and in the two cases where liability was found the awards were both less than 9% of the claimed amounts. At the other end of the scale, one arbitrator has been involved in eight merit awards with liability found all eight times with an average percentage awarded of 61%. The table below is sorted by average award percentage from lowest to highest.

**Table 6.1: Average Award Percentage by Arbitrator**

*Note: Not adjusted for dissenting opinions*

Arbitrator	Merit Awards	No Liability	Liability	Average Award %	If Liability, Average Award %	Total Claimed Damages
A	5	3	2	2.8%	8.3%	\$884,212,459
B	5	4	1	7.0%	35.2%	\$773,989,528
C	5	3	2	8.4%	21.1%	\$9,751,848,723
D	8	5	3	14.1%	37.5%	\$4,011,752,175
E	7	2	5	14.9%	19.8%	\$606,533,889
F	5	2	3	18.0%	30.0%	\$1,869,448,920

<sup>29</sup> The arbitrators identified with five or more ICSID awards (in alphabetical order): Franklin Berman, Piero Bernardini, Karl-Heinz Böckstiegel, Bernardo Cremades, Yves Fortier, Gabrielle Kaufmann-Kohler, Marc Lalonde, Jan Paulsson, Brigitte Stern, Albert Jan van den Burg, V.V. Veeder, and Francisco Orrego Vicuña.

Arbitrator	Merit Awards	No Liability	Liability	Average Award %	If Liability, Average Award %	Total Claimed Damages
G	7	4	3	20.7%	48.4%	\$649,349,991
H	5	2	3	27.7%	46.1%	\$820,333,861
I	8	2	6	27.8%	37.0%	\$1,553,403,494
J	7	2	5	34.3%	51.5%	\$1,521,756,177
K	9	2	7	46.8%	60.1%	\$3,239,740,158
L	8	0	8	61.0%	61.0%	\$1,431,027,127

In looking at this numerical ranking of the most active arbitrators to date, it shows that the average damages awarded in all of their cases has been around 24%. However, they find liability in more than half of the cases they have been involved in and award about 38% of the damages claimed in those cases.

## 6.2 Results by Law Firm

Analysis of the law firms or even individual lawyers is more complex as there is less overall concentration of experience than in the arbitrator group, yet a couple of firms with rather deep records of awards. Also, in analyzing the results by law firm or even the individual lawyer level, there are many different factors that might be important to a client in selecting a firm for future work. In addition, with the amount of movement of individual lawyers between firms, a current analysis of a firm's experience might be better based on the experience of the lawyers currently on their roster, not those who have moved on. Finally, representing claimants and respondents has certain inherent differences, including some degree of control on part of claimant's counsel on analyzing the validity of both the claim(s) and reasonableness of the damages before filing the claim. While on the other hand, the respondent's counsel needs to react to claims whether substantive or failing basic reasonableness standards. Accordingly, we have prepared a variety of law firm rankings.

There are 19 law firms who have been involved in two or more merit awards. At the upper end of the scale in terms of the number of cases is White & Case with 12 awards.<sup>30</sup> Freshfields Bruckhaus Deringer follows with 10 awards and next are Arnold & Porter and Sidley Austin with 6 awards each.

Of course, this study is limited to the cases that have been completed that have published damages awards. Clearly, there are a number of firms who represent clients in a number of pending cases at ICSID who will likely enter the rankings within the next few years, assuming that a number of those cases progress to the point of a merit award being issued.

### 6.2.1 Law Firm Ranking by Number of Merit Awards

We have identified eleven firms with four or more merit awards in our population. The following table ranks the firms sorted first by the number of cases and then by the average claim size.

<sup>30</sup> White & Case actually has 13 awards; however, the claimed amount was not fully disclosed in one case and therefore excluded from our ranking system. White & Case was on the respondent side of the MTD Equity vs. Chile case (ICSID case number ARB 01/7), which was awarded \$5.8 in damages.

**Table 6.2: Law Firms Ranked by Merit Awards**

*Dollars in millions*

Rank	Law Firm	# of Merit Awards	Total Claimed Amount	Average Claim Size
1	White & Case	12	\$2,348	\$196
2	Freshfields	10	\$1,003	\$100
3	Arnold & Porter	6	\$516	\$86
3	Sidley	6	\$842	\$140
5	Latham	5	\$97	\$19
5	Allen & Overy	5	\$105	\$21
5	Matrix Chambers	5	\$640	\$128
8	Magisters	4	\$69	\$17
8	Grichenko & Associates	4	\$9,532	\$2,383
8	Pillsbury Winthrop	4	\$382	\$96

## 6.2.2 Law Firm Ranking by Value of Claims Handled

When the firms are ranked by the aggregate claims handed, the firms who each have handled the largest ICSID claims in history rank highly given the absolute low number of cases for any on firm. Ranking first is Grichenko & Associates, mainly based on the single *Generation Ukraine* case<sup>31</sup> which involved the previously discussed \$9.4 billion claim that was dismissed on liability. Absent that case, Grichenko & Associates would have ranked 17<sup>th</sup> with almost \$87 million of claims. Covington & Burling and Debevoise & Plimpton earned their second and third place rankings based mostly on their work as co-counsel on the \$2.36 billion *Occidental v. Ecuador* case.<sup>32</sup> White & Case's ranking was helped by the CSOB case,<sup>33</sup> but its aggregate claim value would still have been around \$1 billion without that case.

**Table 6.3: Law Firms Ranked by Aggregate Claim Size**

*Dollars in millions*

Rank	Law Firm	# of Merit Awards	Total Claimed Amount	Average Claim Size
1	Grichenko & Associates	4	\$9,532	\$2,383
2	Covington	2	\$2,619	\$1,310
3	Debevoise	3	\$2,543	\$848
4	White & Case	12	\$2,348	\$196
5	M&M Bomchil	3	\$1,332	\$444
6	King & Spalding	3	\$1,166	\$389
7	Freshfields	10	\$1,003	\$100

<sup>31</sup> ICSID case number ARB/00/9

<sup>32</sup> ICSID case number ARB/06/11

<sup>33</sup> ICSID case number ARB/97/4

Rank	Law Firm	# of Merit Awards	Total Claimed Amount	Average Claim Size
8	Sidley	6	\$842	\$140
9	Matrix Chambers	5	\$640	\$128
10	Salans	3	\$590	\$197

Note that the average size per claim for the top ten firms is quite high with an average claim size of around \$443 million or \$278 million if Grichenko & Associates is excluded.

### 6.2.3 Law Firm Ranking by Results

We have also analyzed the results achieved by the law firms in terms of wins, losses, and draws reported in the awards. In order to do this we defined what made a winning and losing case and devised two scoring systems.

First, we classified the cases as a win or loss for the claimant/respondent or a draw. We scored the **respondent as winning** if:

- (a) they were **not found liable**, or
- (b) they were found liable but were only ordered to **pay less than 20% of the claimed damages**. We chose 20% for this threshold because approximately the bottom quartile, or 25% of the cases, were awarded damages below 20% of the claimed amount.

We scored the **claimant as winning** if **damages over 50% of the claimed amount** were awarded. We chose 50% because it approximated the mean and median of the damages awarded.

We scored the **case a draw** if the damages awarded were between **20% and 50%**.

Next, we scored the cases on two different scales – one which was “un-weighted” and another where we “weighted” results for claimants and respondents differently. The un-weighted scoring is simple – one point was awarded for a win, no points were scored in a draw, and one point was deducted for a loss. The weighted system accounts for the relative difficulty for achieving a claimant win as a large number of the merit awards found that the claimant lost on liability. The weighted system follows:

- On the claimant side a win equals three points, a tie is one point, and a loss is zero.
- On the respondent side a win equals two points, a tie is one point, and loss is negative one point.

We believe that these two different scoring systems provide alternative bases to evaluate the results by firm.

#### 6.2.3.1 Law Firm Ranking by Un-Weighted Scoring

When applying the un-weighted scoring system, pure wins and losses are the only factors that score or deduct points as draws are not a factor in this system. We ranked the firms by first sorting by points and then by winning percentage. White & Case ranked first on the strength of its eight wins and only two offsetting losses. Freshfields had the same number of losses but one fewer win than White & Case, which put them one point behind. The table below shows the nine firms with a positive score ranked using this method.

**Table 6.4: Law Firms Ranked by Un-weighted Scoring**

*Dollars in millions*

Rank	Law Firm	Points	Wins	Losses	Draws	Merit Awards	Winning %	Points per Case	Total Claimed Amount	Average Claim Size
1	White & Case	6	8	2	2	12	67%	0.50	\$2,348	\$196
2	Freshfields	5	7	2	1	10	70%	0.50	\$1,003	\$100
3	Latham	4	4	0	1	5	80%	0.80	\$97	\$19
3	Arnold & Porter	4	4	0	2	6	67%	0.67	\$516	\$86
5	Magisters	3	3	0	1	4	75%	0.75	\$69	\$17
6	Grichenko & Associates	2	2	0	2	4	50%	0.50	\$9,532	\$2,383
7	Allen & Overy	1	3	2	0	5	60%	0.20	\$105	\$21
7	M&M Bomchil	1	1	0	2	3	33%	0.33	\$1,332	\$444
7	Covington	1	1	0	1	2	50%	0.50	\$2,619	\$1,310

### 6.2.3.2 Law Firm Ranking by Weighted Scoring

When the firms are ranked by the weighted scoring system, the top of the league does not shuffle much, but the top ten changes a lot. The reason for this is that the value of claimant side wins and draws are positively valued and respondent side losses cause a loss of points. Under the weighted scoring system, White & Case stays at the top of the rankings primarily due to claimant side wins and draws and limited offsetting respondent losses. Freshfields is in second place in this scoring system followed by Arnold & Porter, as they have primarily respondent side wins which score lower points than its one claimant side win.

The table below is sorted first by points and then by points per case to develop the ranking.

**Table 6.5: Law Firms Ranked by Weighted Scoring**

*Dollars in millions*

Rank	Law Firm	Points	Wins	Losses	Draws	Merit Awards	Winning %	Points per Case	Total Claimed Amount	Average Claim Size
1	White & Case	20	8	2	2	12	67%	1.67	\$2,348	\$196
2	Freshfields	15	7	2	1	10	70%	1.50	\$1,003	\$100
3	Arnold & Porter	11	4	0	2	6	67%	1.83	\$516	\$86
4	Latham	9	4	0	1	5	80%	1.80	\$97	\$19
5	Allen & Overy	8	3	2	0	5	60%	1.60	\$105	\$21
6	Magisters	7	3	0	1	4	75%	1.75	\$69	\$17
7	Grichenko & Associates	6	2	0	2	4	50%	1.50	\$9,532	\$2,383
7	Matrix Chambers	6	2	2	1	5	40%	1.20	\$640	\$128
9	M&M Bomchil	5	1	0	2	3	33%	1.67	\$1,332	\$444
10	Covington	4	1	0	1	2	50%	2.00	\$2,619	\$1,310
10	Fulbright	4	1	1	1	3	33%	1.33	\$55	\$18

As can be seen from the various rankings, there are a handful of firms who have a substantial number of cases. Also, the results achieved by these firms varies greatly.

### 6.3 Results by Damages Expert

When compared to the pool of arbitrators and law firms, the experience of damages experts in ICSID cases is even more concentrated. There were 59 damages experts mentioned in the awards, yet 52 of those experts were involved in just one case. Accordingly, there are just seven experts named in more than one completed ICSID case with a reported merit award.

Based on the data available, we were able to do a comparison between these more experienced experts and the inexperienced experts. There are 13 cases in which the state was found liable and both the claimant and respondent were supported by one-time experts. The median percentage realized in these cases was 22%, and a mean realization rate of 32%. As could be expected, the realization rates for the experienced experts have been higher. When on the claimant side, the experienced experts realized a median of 77% with a mean of 70% in the 7 cases they testified. While on the respondent side, the experienced experts realized a median of 32% and a mean of 35% in the 8 cases they testified.

Although the sample size is small, were we able to conclude that the experienced experts were much more effective than the inexperienced experts. The data on the respondent side suggests that the inexperienced experts handle the respondent side better than they handle the claimant side; however, the mean-median difference may not be statistically significant to overcome the small sample size.

We performed further analysis on the experts with four or more cases that have progressed to merit awards that have not been annulled. These experts are: Brent Kaczmarek (8 awards), Tim Hart (4 awards), Carlos LaPuerta (4 awards), Howard Rosen (4 awards) and the team of Manuel Abdala and Pablo Spiller (4 awards). With such a limited pool of experts, there are only four firms with four or more cases. Those firms are: Brattle, Credibility, FTI,<sup>34</sup> and Navigant.

For purposes of ranking the experts, we applied the same rating scales as used on the law firms for both the weighted and un-weighted methods. We scored a win for respondent's damages expert in cases where no liability was found and conversely a loss for claimant's expert on that same case. We have done this because in an investment treaty case, the expert is typically involved in the analysis and description of the investment from a financial standpoint.

Ideally, we would be able to score the respondent experts based upon how the amount of the damages award in comparison to an alternate damages amount put forward by that expert. Unfortunately, the awards have not reported the alternative respondent amounts consistently enough to perform meaningful analysis. However, it is clear in a number of cases that the methodology and damages amount calculated by the respondent expert was preferred by the tribunal.

The table below ranks the experts using the un-weighted method (1 point for a win, zero points for a draw, and negative one point for a loss) as described previously relating to the law firm rankings.

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<sup>34</sup> FTI team is comprised of professionals in FTI Consulting and its wholly owned subsidiary, Compass Lexecon.

**Table 6.6: Experts Ranked by Un-weighted Scoring**

*Dollars in millions*

<b>Firm:</b>	<b>Navigant</b>	<b>Credibility</b>	<b>Brattle</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>
<b>Expert:</b>	Brent Kaczmarek	Tim Hart	Carlos LaPuerta	Aggregate	Manuel Abdala / Pablo Spiller	Joseph Kalt	Anthony Charlton	Howard Rosen
<b>Points</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>-3</b>	<b>1</b>	<b>1</b>	<b>-1</b>	<b>-4</b>
<b>Wins</b>	5	4	2	3	2	1	0	0
<b>Losses</b>	0	0	1	6	1	0	1	4
<b>Draws</b>	3	0	1	1	1	0	0	0
<b>Merit Awards</b>	8	4	4	10	4	1	1	4
<b>Winning %</b>	62.5%	100.0%	50.0%	30.0%	50.0%	100.0%	0.0%	0.0%
<b>Points / Award</b>	0.63	1.00	0.25	(0.30)	0.25	1.00	(1.00)	(1.00)
<b>Total Claims</b>	\$855	\$2,647	\$750	\$4,359	\$564	\$2,360	\$-	\$1,435
<b>Damages Claimed: Expert Claimant</b>	\$261	\$1,411	\$288	\$4,295	\$501	\$2,360		\$1,435
<b>Damages Awarded: Expert Claimant</b>	\$192	\$868	\$57	\$2,028	\$255	\$1,770		\$3
<b>% Realized</b>	73.5%	61.5%	20.0%	47.2%	51.0%	75.0%		0.2%
<b>Damages Claimed: Expert Respondent</b>	\$595	\$1,236	\$462	\$64	\$64	\$-		\$-
<b>Damages Awarded: Expert Respondent</b>	\$129	\$2	\$9	\$14	\$14	\$-		\$-
<b>% Realized</b>	21.7%	0.1%	2.0%	21.2%	21.2%	0.0%		0.0%

As shown in this ranking, Navigant is ranked first based entirely on the record of Brent Kaczmarek with five points on the basis of his five case wins (*Noble Ventures v. Romania*, *Duke Energy v. Peru*, *Cargill v. Mexico*, *EDF v. Romania*, and *Fuchs v. Georgia*) without a loss. Ranking second is Credibility, based entirely on Tim Hart's record as an expert with four case wins (*CSOB v. Slovak Republic*, *Noble Ventures v. Romania*,<sup>35</sup> *Vannessa Ventures v. Venezuela* and *Arif v. Moldova*) against no losses. Next in the ranking was Brattle based upon the work of Carlos LaPuerta with one point based upon his two wins (*PSEG v. Turkey* and *Rompetrol v. Romania*) offset by one loss (*Parkerings-Copagniet v. Lithuania*).

The table above also reports winning percentage, total claims handled, and the value of claims and awards for both claimants and respondents. As can be seen the winning percentages range from 100% to a low of 0%. The total claim value ranges from a high of \$2.647 billion to a low of \$564 million. On the claimant's side, the percentage realized range from a high of 75% to a low of 0.2%. However, on the respondent's side the range is much tighter from a high of 21.7% to a low of 0.1%.

Using the weighted method to score the experts, results in a shuffling of the firms ranking and the rankings of individual experts. The table below ranks the firms using the weighted method of scoring.

<sup>35</sup> The Noble Ventures v. Romania case is listed for both Mr. Kaczmarek and Mr. Hart because they prepared the report when they practiced together at Navigant and both signed the expert reports.

**Table 6.7: Firms Ranked by Weighted Scoring**

*Dollars in millions*

<b>Firm:</b>	<b>Navigant</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>	<b>FTI</b>	<b>Credibility</b>	<b>Brattle</b>
<b>Expert:</b>	<b>Brent Kaczmarek</b>	<b>Aggregate</b>	<b>Manuel Abdala / Pablo Spiller</b>	<b>Joseph Kalt</b>	<b>Anthony Charlton</b>	<b>Howard Rosen</b>	<b>Tim Hart</b>	<b>Carlos LaPuerta</b>
<b>Points</b>	16	10	7	3	0	0	9	5
<b>Wins</b>	5	3	2	1	0	0	4	2
<b>Losses</b>	0	6	1	0	1	4	0	1
<b>Draws</b>	3	1	1	0	0	0	0	1
<b>Merit Awards</b>	8	10	4	1	1	4	4	4
<b>Winning %</b>	62.5%	30.0%	50.0%	100.0%	0.0%	0.0%	100.0%	50.0%
<b>Points / Award</b>	2.00	1.00	1.75	3.00	-	-	2.25	1.25
<b>Total Claims</b>	\$855	\$4,359	\$564	\$2,360	\$-	\$1,435	\$2,647	\$750
<b>Damages Claimed: Expert Claimant</b>	\$261	\$4,295	\$501	\$2,360		\$1,435	\$1,411	\$288
<b>Damages Awarded: Expert Claimant</b>	\$192	\$2,028	\$255	\$1,770		\$3	\$868	\$57
<b>% Realized</b>	73.5%	47.2%	51.0%	75.0%		0.2%	61.5%	20.0%
<b>Damages Claimed: Expert Respondent</b>	\$595	\$64	\$64	\$-		\$-	\$1,236	\$462
<b>Damages Awarded: Expert Respondent</b>	\$129	\$14	\$14	\$-		\$-	\$2	\$9
<b>% Realized</b>	21.7%	21.2%	21.2%	0.0%		0.0%	0.1%	2.0%

Once again, Navigant ranks first on the strength of Mr. Kaczmarek's record. However, FTI moved from a negative score using the un-weighted method due to the fact that the majority of its expert assignments have been for claimants and the weighted method provides more points for success on behalf of claimants. Credibility is ranked next followed by Brattle. The individual expert ranking using this method is: (1) Mr. Kaczmarek (16 points), (2) Mr. Hart (9 points), (3) Drs. Abdala & Spiller (7 points), and (4) Mr. LaPuerta (5 points).

## 7 Relationship of Party Costs to Case Outcome

Upon completion of our analysis of the wins, losses, and draws, we looked to see if we could find any relationship between the costs spent by the parties and the case outcome. The results of this analysis, although based on a limited sample set, show interesting trends.

In cases where claimants won, we had party costs for both parties in eleven of those cases. In all eleven of those cases, the claimant spent more than the respondent. In this group of cases, the claimants spent 1.75 times the amount the respondents spent. If *CSOB v. Slovak Republic*<sup>36</sup> is excluded, claimants outspent respondents by more than 2:1. These results might not be entirely surprising given that it is the claimant's burden to prove the case and this data suggests that the successful claimants spent more money proving their case. We do note however, that there is a bias in the underlying data as costs are generally reported most often in the awards in instances where the tribunal awarded costs and therefore cases with disproportionate costs spent by the winning party are more likely to be reported.

The table below lists the eleven cases that were claimant wins where we had party costs for each party.

**Table 7.1: Cases Won by Claimant with Reported Costs**

Claimant(s)	Respondent	Claimant Costs Claimed (US\$)	Respondent Costs Claimed (US\$)	Average Amount Claimed at Hearing (US\$)	Damages Award (US\$)	Claimant Cost / Claimed Amount	Respondent Cost / Claimed Amount
Elsamex, S.A.	Honduras	1,434,752	273,097	804,141	685,477	209.3%	39.8%
OKO Pankki Oyj VTB Bank AG Sampo Bank PLC	Estonia	2,661,487	879,450	28,346,629	17,253,833	15.4%	5.1%
SGS Société Générale de Surveillance S.A.	Paraguay	2,913,787	728,207	61,525,951	61,525,951	4.7%	1.2%
Cargill, Incorporated	Mexico	3,350,946	3,296,140	123,813,029	77,329,240	4.3%	4.3%
Talsud, S.A. and Gemplus S.A.	Mexico	5,362,973	2,553,438	22,238,340	15,508,381	34.6%	16.5%
Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A.	Argentina	6,680,534	786,119	316,923,000	105,000,000	6.4%	0.7%
ADC Affiliate Limited ADC & ADMC Mangement Limited	Hungary	7,623,693	4,380,335	84,073,034	76,200,000	10.0%	5.7%
Ron Fuchs and Ioannis Kardassopoulos	Georgia	7,942,298	6,001,963	90,249,474	90,249,474	8.8%	6.7%

<sup>36</sup> ICSID case number ARB/97/04

Claimant(s)	Respondent	Claimant Costs Claimed (US\$)	Respondent Costs Claimed (US\$)	Average Amount Claimed at Hearing (US\$)	Damages Award (US\$)	Claimant Cost / Claimed Amount	Respondent Cost / Claimed Amount
Deutsche Bank AGD	Sri Lanka	7,995,127	2,822,435	60,368,993	60,368,993	13.2%	4.7%
Duke Energy International Peru Investments No. 1 Ltd.	Peru	8,888,837	4,428,930	21,946,987	18,440,746	48.2%	24.0%
CSOB	Slovak Republic	16,351,846	14,314,236	1,410,532,920	867,873,364	1.9%	1.6%
<b>Total</b>		<b>71,206,280</b>	<b>40,464,351</b>	<b>2,220,822,497</b>	<b>1,390,435,459</b>	<b>5.1%</b>	<b>2.9%</b>
<b>Total Without CSOB</b>		<b>54,854,434</b>	<b>26,150,115</b>	<b>810,289,577</b>	<b>522,562,095</b>	<b>10.5%</b>	<b>5.0%</b>

We found 16 cases in which the respondent won and we had reported party costs. Of those sixteen cases, the respondent outspent the claimant in ten of those cases and in many cases by a significant margin. In the *RSM v. Grenada* case,<sup>37</sup> the respondent spent more than ten times the amount spent by the claimant. In the remaining ten cases where the respondent outspent the claimant, it was by millions of dollars. In the six cases where respondent won, yet they were outspent by the claimant, the claimant spent approximately half a million more in four of the cases and about \$3 million more in two of the cases (*AES v. Hungary*<sup>38</sup> and *PSEG v. Turkey*<sup>39</sup>).

The table below lists the 16 cases in which respondent won and the party costs were reported.

**Table 7.2: Cases Won by Respondent with Reported Costs**

Claimant(s)	Respondent	Claimant Costs Claimed (US\$)	Respondent Costs Claimed (US\$)	Average Amount Claimed at Hearing (US\$)	Damages Award (US\$)	Respondent Outspent Claimant
RSM Production Corporation, Rachel S. Grynberg, Stephen M. Grynberg and Miriam Z. Grynberg	Grenada	31,093	330,127			Yes
Desert Line Project LLC	Yemen	717,191	471,535	95,089,125	19,219,686	No
Tza Yap Shum	Peru	917,215	4,147,254	20,455,485	786,306	Yes
Gustav F W Hamester GmbH & Co KG	Ghana	1,030,743	3,436,857	156,567,285	\$-	Yes
Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise	Ukraine	1,332,770	917,021		\$-	No

<sup>37</sup> ICSID case number ARB/10/6

<sup>38</sup> ICSID case number ARB/07/22

<sup>39</sup> ICSID case number ARB/02/5

Claimant(s)	Respondent	Claimant Costs Claimed (US\$)	Respondent Costs Claimed (US\$)	Average Amount Claimed at Hearing (US\$)	Damages Award (US\$)	Respondent Outspent Claimant
Champion Trading Company and Ameritrade International, Inc.	Egypt	1,372,280	821,516	365,171,121	\$-	No
Swisslion DOO Skopje	Former Yugoslav Macedonia	2,104,362	4,583,356	23,711,112	436,485	Yes
GEA Group Aktiengesellschaft	Ukraine	2,131,123	1,595,871	30,832,017	\$-	No
Víctor Pey Casado and President Allende Foundation	Chile	2,762,253	4,389,112	397,347,674	10,132,690	Yes
Noble Ventures, Inc	Romania	3,145,210	8,930,868	143,531,000	\$-	Yes
Plama Consortium Limited	Bulgaria	4,677,522	13,243,357	146,120,152	\$-	Yes
(1) Piero Foresti, (2) Ida Laura De Carli, (3) Dora Foresti, (4) Maria Teresa Suardo, (5) Paola Suardo, (6) Antonio Foresti, (7) Luigi Foresti, (8) Massimiliano Foresti, (9) Franca Conti, (10) Daniela Conti, (11) Finstone s.à.r.l	South Africa	5,780,112	7,047,274		\$-	Yes
Vannessa Ventures Ltd.	Venezuela	6,500,000	13,500,000	1,045,000,000	\$-	Yes
EDF (Services) Limited	Romania	8,167,699	18,574,642	132,576,000	\$-	Yes
AES Summit Generation Limited and AES-Tisza Erőmű Dft.	Hungary	8,787,994	5,522,883		\$-	No
PSEG Global Inc. and Konya İlgin Elektrik Üretim ve Ticaret Limited Sirketi	Turkey	11,900,805	8,950,832	236,831,500	9,061,479	No
<b>Total</b>		<b>61,358,370</b>	<b>96,462,505</b>	<b>2,793,232,472</b>	<b>39,636,647</b>	

For cases that resulted in a draw, we only had four cases with reported costs, so we do not believe that analysis of that group is meaningful.

Review of this party cost data in relationship to the case outcome suggests that the money spent by the parties has a strong correlation with case outcome, particularly if the claimant wins.

## 8 Authors' Notes

We are hopeful that this study is useful to the international arbitration investment treaty community including claimants, respondent states, arbitrators, counsel, and experts. The quantitative analysis of the awards provides a look into the history and helps show some trends in the areas of damages, interest, and party costs.

As you review this study, please let us know if you are interested in meeting with us to explore the findings in more depth. In addition, we welcome feedback on the contents of the study and suggestions for information that might be helpful to you in future editions of this study. For comments or a request to meet to discuss the study, please contact either:

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## Exhibit 1: Cases Included in the Study

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
1981	ARB/81/1	Amco Asia Corporation, Pan American Development Limited, PT Amco Indonesia	Republic of Indonesia	Final Award	\$15,000,000	\$2,696,330
1982	ARB/82/1	Société Ouest Africaine des Bétons Industriels	Senegal	Final Award	\$419,908,947	\$152,203,873
1984	ARB/84/3	Southern Pacific Properties (Middle East) Limited	Egypt	Final Award	\$126,874,000	\$22,568,000
1987	ARB/87/3	Asiana Agricultural Products Limited	Sri Lanka	Final Award	\$8,067,368	\$460,000
1993	ARB/93/1	American Manufacturing and Trading, Inc	Republic of Zaire	Final Award	\$21,574,405	\$9,000,000
1994	ARB/94/2	Tradex Hellas S.A.	Albania	Final Award	\$3,107,074	\$-
1996	ARB/96/1	Compañía del Desarrollo de Santa Elena S.A.	Costa Rica	Final Award	\$36,868,875	\$16,000,000
	ARB/96/3	Fedax N.V.	Venezuela	Final Award	\$679,022	\$760,195
1997	ARB(AF)/97/1	Metalclad Corporation	Mexico	Final Award	\$77,737,264	\$16,685,000
	ARB(AF)/97/2	Robert Azinian, Kenneth Davitian and Ellen Baca	Mexico	Final Award	\$15,401,500	\$-
	ARB/97/3	Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A.	Argentina	Final Award	\$316,923,000	\$105,000,000
	ARB/97/4	CSOB	Slovak Republic	Final Award	\$1,410,532,920	\$867,873,364
	ARB/97/7	Emilio Agustín Maffezini	Spain	Final Award	\$404,065	\$404,065

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
1998	ARB/98/4	Wena Hotels Limited	Egypt	Final Award	\$66,010,908	\$19,493,283
	ARB/98/5	Eudora A. Olguín	Paraguay	Final Award	\$553,623	\$-
	ARB/98/2	Víctor Pey Casado and President Allende Foundation	Chile	Award, Pending Resubmission	\$397,347,674	\$10,132,690
1999	ARB(AF)/99/1	Marvin Roy Feldman Karpas	Mexico	Final Award	\$333,560,271	\$18,621,374
	ARB(AF)/99/2	Mondev International Ltd.	United States	Final Award	\$50,000,000	\$-
	ARB/99/2	Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil	Estonia	Final Award	\$61,639,344	\$-
	ARB/99/6	Middle East Cement Shipping and Handling Co. S.A.	Egypt	Final Award	\$42,240,000	\$3,749,400
2000	ARB(AF)/00/1	ADF Group Inc	United States	Final Award	\$-	\$-
	ARB(AF)/00/2	Técnicas Medioambientales Tecmed, S.A.	Mexico	Final Award	\$52,000,000	\$5,533,017
	ARB(AF)/00/3	Waste Management, Inc.	Mexico	Final Award	\$36,000,000	\$-
	ARB/00/5	Autopista Concesionada de Venezuela, C.A.	Venezuela	Final Award	\$26,604,678,415	\$2,067,377,929
	ARB/00/7	World Duty Free Company Limited	Kenya	Final Award	\$500,000,000	\$-
	ARB/00/9	Generation Ukraine Inc.	Ukraine	Final Award	\$9,446,287,341	\$-
	ARB/00/6	Consortium R.F.C.C	Morocco	Final Award	\$89,546,949	\$-
2001	ARB/01/11	Noble Ventures, Inc	Romania	Final Award	\$143,531,000	\$-
	ARB/01/12	Azurix Corp.	Argentina	Final Award	\$608,414,000	\$165,240,753
	ARB/01/14	F-W Oil Interests, Inc	Trinidad & Tobago	Final Award	\$-	\$-

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
	ARB/01/3	Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P.	Argentina	Annulled Award, Pending Resubmission	\$412,897,066	\$106,200,000
	ARB/01/7	MTD Equity Sdn. Bhd. And MTD Chile S.A.	Chile	Final Award	\$-	\$5,871,322
	ARB/01/8	CMS Gas Transmission Company	Argentina	Final Award	\$261,100,000	\$133,200,000
	ARB/01/2	Antoine Goetz and others	Burundi	Final Award	\$23,584,058	\$1,222,042
2002	ARB(AF)/02/1	Fireman's Fund Insurance Company	Mexico	Final Award	\$50,000,000	\$-
	ARB/02/1	LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc.	Argentina	Award, Pending Annulment	\$259,500,000	\$57,400,000
	ARB/02/13	Salini Costruttori S.p.A. Italastrade S.p.A.	Jordan	Final Award	\$28,000,000	\$-
	ARB/02/14	CDC Group plc	Seychelles	Final Award	\$6,737,726	\$6,737,726
	ARB/02/16	Sempra Energy International	Argentina	Annulled Award, Pending Resubmission	\$209,380,000	\$128,250,462
	ARB/02/18	Tokios Tokelès	Ukraine	Final Award	\$65,000,000	\$-
	ARB/02/5	PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi	Turkey	Final Award	\$236,831,500	\$9,061,479
	ARB/02/8	Siemens A.G.	Argentina	Final Award	\$462,477,071	\$217,838,439
	ARB/02/9	Champion Trading Company and Ameritrade International, Inc.	Egypt	Final Award	\$365,171,121	\$-
	ARB/02/10	IBM World Trade Corp	Ecuador	Final Award; Settlement	\$4,680,508	\$3,500,000
2003	ARB/03/15	El Paso Energy International Company	Argentina	Award, Pending Annulment	\$219,100,000	\$43,030,000

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
	ARB/03/16	ADC Affiliate Limited, ADC & ADMC Management Limited	Hungary	Final Award	\$84,073,034	\$76,200,000
	ARB/03/23	EDF International S.A., SAUR International S.A. and León Participaciones Argentinas S.A.	Argentina	Award, Pending Annulment	\$197,444,209	\$136,138,430
	ARB/03/24	Plama Consortium Limited	Bulgaria	Final Award	\$146,120,152	\$-
	ARB/03/28	Duke Energy International Peru Investments No. 1 Ltd.	Peru	Final Award	\$29,296,135	\$18,440,746
	ARB/03/29	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S.	Pakistan	Final Award	\$539,751,471	\$-
	ARB/03/5	Metalpar S.A. and Buen Aire S.A.	Argentina	Final Award	\$17,938,099	\$-
	ARB/03/6	M.C.I. Power Group, L.C. and New Turbine, Inc	Ecuador	Final Award	\$25,000,000	\$-
	ARB/03/9	Continental Casualty Company	Argentina	Final Award	\$114,030,000	\$2,800,000
2004	ARB(AF)/04/5	Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, INC	Mexico	Final Award	\$200,000,000	\$33,510,091
	ARB(AF)/04/6	Vannessa Ventures Ltd.	Venezuela	Final Award	\$1,045,000,000	\$-
	ARB/04/13	Jan de Nul N.V. and Dredging International N.V.	Egypt	Final Award	\$81,390,370	\$-
	ARB/04/19	Duke Energy Electroquil Partners and Elctroquil S.A.	Ecuador	Final Award	\$17,185,444	\$5,578,566
	ARB/04/6	OKO Pankki Oyj, VTB Bank AG, Sampo Bank PLC	Estonia	Final Award	\$53,560,469	\$34,336,070
	ARB(AF)/04/3 & 4	Talsud, S.A. and Gemplus S.A.	Mexico	Final Award	\$303,238,340	\$31,016,762
2005	ARB(AF)/05/2	Cargill, Incorporated	Mexico	Final Award	\$123,813,029	\$77,329,240
	ARB/05/13	EDF (Services) Limited	Romania	Final Award	\$132,576,000	\$-

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
	ARB/05/15	Waguih Elie George Siag and Clorinda Vecchi	Egypt	Final Award	\$219,486,000	\$74,550,795
	ARB/05/16	Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S.	Kazakhstan	Final Award	\$310,000,000	\$125,000,000
	ARB/05/17	Desert Line Project LLC	Yemen	Final Award	\$345,848,394	\$28,641,560
	ARB/05/19	Helnan International Hotels A/S	Egypt	Final Award	\$107,904,200	\$-
	ARB/05/22	Biwater Gauff Limited	Tanzania	Final Award	\$19,608,990	\$-
	ARB/05/6	Bernardus Henricus Funnekotter and others	Zimbabwe	Final Award	\$28,198,345	\$18,856,022
	ARB/05/7	Saipem S.p.A.	Bangladesh	Final Award	\$8,294,586	\$6,304,682
	ARB/05/8	Parkerings-Copagniet AS	Lithuania	Final Award	\$48,522,624	\$-
	ARB/05/18 & 07/15	Ron Fuchs and Ioannis Kardassopoulos	Georgia	Final Award	\$90,249,474	\$90,249,474
	ARB/05/9	Empresa Eléctrica del Ecuador, Inc. (EMELEC)	Ecuador	Final Award	\$-	\$-
	ARB/05/03	LESI, S.p.A. and Astaldi, S.p.A.	Algeria	Final Award	\$-	\$-
2006	ARB(AF)/06/1	Sistem Muhendislik Insaat Sanayi ve Ticaret A.S.	Kyrgyzstan	Final Award	\$22,351,174	\$8,500,000
	ARB/06/1	Syridon Roussalis	Romania	Final Award	\$208,662,421	\$-
	ARB/06/11	Occidental Petroleum Corporation and Occidental Exploration and Production Company	Ecuador	Award, Pending Annulment	\$2,359,500,000	\$1,769,625,000
	ARB/06/13	Aguaytia Energy, LLC	Peru	Final Award	\$91,100,000	\$-
	ARB/06/18	Joseph C. Lemire	Ukraine	Final Award	\$38,560,000	\$8,717,850
	ARB/06/3	The Rompetrol Group N.V.	Romania	Final Award	\$225,438,057	\$-
	ARB/06/19	Nations Energy, Inc.	Panama	Award, Pending Annulment	\$62,163,552	\$-

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
	ARB/06/7	Togo Electricité and GDF-Suez Energie Services	Togo	Final Award	\$41,199,612,246	\$39,238,747,742
2007	ARB(AF)/07/1	(1) Piero Foresti, (2) Ida Laura De Carli, (3) Dora Foresti, (4) Maria Teresa Suardo, (5) Paola Suardo, (6) Antonio Foresti, (7) Luigi Foresti, (8) Massimiliano Foresti, (9) Franca Conti, (10) Daniela Conti, (11) Finstone s.à.r.l	South Africa	Final Award	\$-	\$-
	ARB/07/12	Toto Costruzioni Generali S.p.A.	Lebanon	Final Award	\$33,538,057	\$-
	ARB/07/14	Liman Caspian Oil BV and NCL Dutch Investment BV	Kazakhstan	Final Award	\$-	\$-
	ARB/07/16	Alpha Projektholding GmbH	Ukraine	Final Award	\$11,400,000	\$5,250,782
	ARB/07/17	Impregilo S.p.A.	Argentina	Final Award	\$119,362,503	\$21,294,000
	ARB/07/21	Pantechniki S.A. Contractors & Engineers	Albania	Final Award	\$2,098,823	\$-
	ARB/07/22	AES Summit Generation Limited and AES-Tisza Erőmű Dft.	Hungary	Final Award	\$-	\$-
	ARB/07/23	Railroad Development Corporation	Guatemala	Final Award	\$63,778,212	\$13,518,759
	ARB/07/24	Gustav F W Hamester GmbH & Co KG	Ghana	Final Award	\$283,397,871	\$-
	ARB/07/29	SGS Société Générale de Surveillance S.A.	Paraguay	Award, Pending Annulment	\$61,525,951	\$61,525,951
	ARB/07/32	Astaldi S.p.A	Honduras	Award, Pending Annulment	\$5,569,148	\$5,488,696
	ARB/07/6	Tza Yap Shum	Peru	Award, Pending Annulment	\$20,455,485	\$786,306
	ARB/07/10	M. Meerapfel Söhne AG	Central African Republic	Final Award -- Damages Not Reported	\$-	\$-

Year Filed	Case Number	Claimant(s)	Respondent(s)	Status	Amount Claimed at Hearing (Avg)	Damages Awarded (Avg)
2008	ARB/08/11	Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise	Ukraine	Final Award	\$-	\$-
	ARB/08/16	GEA Group Aktiengesellschaft	Ukraine	Final Award	\$30,832,017	\$-
	ARB/08/18	Malicorp Limited	Egypt	Final Award	\$-	\$-
	ARB/08/8	Inmaris Perestroika Sailing Maritime Services GmbH, Windjammer Beteiligungsgesellschaft mbH & Co. KG, Dr. Sven-Holger Undritz as insolvency administrator of Inmaris Windjammer Sailing GmbH i.L., Dr. Sven-Holger Undritz as insolvency administrator of Inmaris Windjammer Chartering GmbH i.L.	Ukraine	Final Award	\$9,675,283	\$2,258,351
2009	ARB/09/11	Global Trading Resource Corp. and Globex International, Inc.	Ukraine	Final Award	\$-	\$-
	ARB/09/16	Swisslion DOO Skopje	Former Yugoslav Macedonia	Final Award	\$42,724,112	\$786,485
	ARB/09/2	Deutsche Bank AGD	Sri Lanka	Award, Pending Annulment	\$60,368,993	\$60,368,993
	ARB/09/20 & 08/1	Reinhard Hans Unglaube and Marion Unglaube	Costa Rica	Final Award	\$8,800,000	\$3,100,000
	ARB/09/4	Elsamex, S.A.	Honduras	Award, Pending Annulment	\$11,273,262	\$8,075,995
2010	ARB/10/6	RSM Production Corporation, Rachel S. Grynberg, Stephen M. Grynberg and Miriam Z. Grynberg	Grenada	Final Award	\$-	\$-
2011	ARB/11/23	Mr. Franck Charles Arif	Moldova	Final Award	\$84,802,461	\$22,498,288

## Appendix A: Tim Hart International Expert Experience

### Treaty Cases

- Ceskoslovenska Obchodni Banka (CSOB) v. The Slovak Republic; *Breach of Contract*; ICSID case No. ARB/97/4. Testified as damages expert in April 2003. Filed expert reports in August 2001 and November 1999. Dispute involved the moneys owed related to the obligations of the Slovak Republic relating to the debt of the foreign trade bank of the former Czechoslovakia. Award for claimant of \$877 million. (Engaged by claimant; parties from Czech Republic & Slovak Republic)
- Americas and Caribbean Power Limited v. The Cooperative Republic of Guyana; Investment Dispute; Private arbitration. Served as the chair of the panel of Arbitrators in March 2003 relating to a dispute over tariffs and the required capital investments. (Engaged as the chair of the panel; parties from US & Guyana)
- GAMI Investments, Inc. v. The Government of the United Mexican States; Expropriation; NAFTA. Filed expert reports in February 2004 and February 2003. Matter involved the valuation of the investment in five sugar mills and the damages related to an expropriation in Mexico. The mills were returned just prior to the hearings. (Engaged by claimant; parties from US & Mexico)
- Noble Ventures v. The Government of Romania; Expropriation; ICSID case No. ARB/01/11. Filed expert reports in January and August 2004. Dispute involved the privatization of a steel company and related assets in Romania. The tribunal returned a decision awarding no damages to the claimant. (Engaged by respondent; parties from US & Romania)
- S&T Oil Equipment & Machinery LTD. v. The Government of Romania; Expropriation; ICSID case No. ARB/07/13. Filed expert reports on damages in July 2009 and December 2008. Dispute involved the privatization of an ammonia plant in Romania. Matter discontinued due to lack of payment by claimant. (Engaged by respondent; parties from US & Romania)
- Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela; Expropriation; ICSID case No. ARB(AF)/04/6. Filed expert reports on damages in January 2010 and March 2009. Dispute involves the valuation of a gold mine in Venezuela. (Engaged by respondent; parties from Canada & Venezuela)
- Highbury International AVV and Ramstein Trading Inc. v. Bolivarian Republic of Venezuela; Expropriation; ICSID Case No. ARB/11/1. Testified in Washington in August 2012. Filed expert reports on damages in May 2012 and December 2011. Dispute involves the valuation of an investment in gold and diamond mining concessions in Venezuela. (Engaged by respondent; parties from Netherlands & Venezuela)
- Franck Charles Arif v. Republic of Moldova; Expropriation; ICSID Case No. ARB/11/23. Testified in Paris in November 2012. Filed expert reports on damages in October and May 2012. Dispute involves the investment in duty free shops at an airport in Moldova and on the Moldovan/Romanian border. (Engaged by respondent; parties from France & Moldova)

- Merck Sharpe & Dohme (I.A.) Corp. v. The Republic of Ecuador; Denial of Justice; UNCITRAL Arbitration Case No. 2012-10. Filed expert reports regarding the financial condition of the claimant in July and August 2012. Dispute involves a request for interim measures involving a \$150 million judgment in Ecuador. (Engaged by respondent; parties from US and Ecuador)
- Crystallex International Corporation v. Bolivarian Republic of Venezuela; Expropriation; ICSID Case No. ARB/11/2. Testified in Washington in February 2014. Filed expert reports on damages in September 2013 and November 2012. Dispute involves the valuation of an investment in a gold mining concession in Venezuela. (Engaged by respondent; parties from Canada & Venezuela)
- Oxus Gold plc v. Republic of Uzbekistan; Expropriation; UNCITRAL Arbitration. Testified in Paris in May 2014. Filed expert reports on damages in February 2014 and February 2013. Dispute involves the valuation of investments in gold and other mineral mining interests in Uzbekistan. (Engaged by respondent; parties from England & Uzbekistan)
- Tenaris S.A. and Talta – Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela; Expropriation; ICSID Case No. ARB/11/26. Testified in Washington in February 2014. Filed expert reports on damages in December and May 2013. Dispute involves the valuation of a hot briquetted iron plant in Venezuela. (Engaged by respondent; parties from Luxembourg, Portugal & Venezuela)
- Supervisión y Control S.A. v. Republic of Costa Rica; Breach of Contract; ICSID Case No. ARB/12/4. Testified in Washington in January 2014. Filed expert reports on damages in January and September 2013. Dispute involves the appropriate tariffs for the national vehicle inspection services concession in Costa Rica. (Engaged by respondent; parties from Spain & Costa Rica)

### **International Contract Cases**

- MCI Global Resources, Inc. And MCI International, Inc., V. Metro Position Sdn. Bhd.; Breach of Contract; ICC, Case No. 9134/CK. Testified in September 1997 in Paris. Filed an expert Report in May 1997. Dispute involved pre-paid calling cards. (Engaged by claimant; parties from US & Malaysia)
- UEG Araucaria Ltda. v. Companhia Paranaense de Energia; Breach of Contract. Filed expert reports in May and December 2005 in an ICC case on the losses sustained by a consortium of investors contracted to build a gas-fired thermal power plant in Brazil. Matter settled. (Engaged by claimant; parties from US & Brazil)
- FLAG Telecom Group Limited v. Videsh Sanchar Nigam Limited; Breach of Contract; ICC case number 13 638/JNK/EBS. Testified in The Hague in November 2007 as damages expert. Filed expert reports in October and May 2007 on lost profits claim relating to international telecommunications and the Indian market. Claimant awarded damages in an amount presented by Hart. (Engaged by respondent; parties from UK & India)

- British Sky Broadcasting Limited and Sky Subscriber Services Limited v. Electronic Data Systems Limited and Electronic Data Systems Corporation: Breach of Contract; Testified in the High Court of Justice, Queen’s Bench Division – Technology and Construction Court (England & Wales) in July 2008 as damages expert and filed a joint memorandum of the experts following the judgment in February 2010. Filed a number of expert reports in respect of costs and lost benefits from August 2007 through June 2008 on breach of contract and negligent misrepresentation claims relating to a customer relationship management system. Matter settled following award. (Engaged by defendant)
- Nejapa Power Company, LLC v. Comisión Ejecutiva Hidroeléctrica Del Río Lempa; Breach of Contract; Testified in April 2009 in Washington as damages expert. Filed expert reports in March 2009 and October 2008 in an international arbitration conducted under the rules of the UN Commission on International Trade Law on dispute relating to a power purchase agreement in El Salvador. (Engaged by respondent; parties from US & El Salvador)
- Diners Club (Singapore) Pte. Ltd., Diners Club (NZ) Ltd., Diners Club (Malaysia) Sdn. Bhd. v. Diners Club International Ltd; Breach of Contract; ICC case number 15339/JEM. Testified in London in December 2009 as damages expert. Filed expert reports in September and February 2009. Dispute involved the operation of payment card operations in Singapore, New Zealand and Malaysia. (Engaged by respondent; parties from Malaysia, New Zealand, Singapore & US)
- MMX Corumbá Mineração LTDA and MMX Trade & Shipping LLC v. Eregli Demir Ve Çelik Fabrikalari; Breach of Contract; International Court of Arbitration, ICC case number 16056/VRO. Filed an expert report on damages in July 2009. Dispute involved a supply contract for iron ore involving parties from Brazil, Turkey and the US. Matter settled. (Engaged by claimant; parties from Brazil & Turkey)
- Diners Club Ecuador S.A. v. Diners Club International Ltd; Breach of Contract; ICC case number 15540/JRF. Testified in London in July 2010 as damages expert. Filed expert reports on damages in May 2010 and October 2009. Dispute involved the operation of payment card operations in Ecuador. (Engaged by respondent; parties from Ecuador & US)
- Fluvioimar International Limited v. MMX Corumbá Mineração S.A. and MMX Metálicos Corumbá Ltda; Breach of Contract; Society of Maritime Arbitrators. Filed a post-award affidavit in the U.S. District Court Southern District of New York in July 2011. Testified in New York in August 2010. Filed an expert report on damages in June 2010. Dispute involved a shipping contract for iron ore and pig iron. (Engaged by respondent; parties from Argentina & Brazil)
- The Egyptian Company for Mobile Phone Services (Mobinil) v. Telecom Egypt Company; Breach of Contract; Cairo Regional Center for International Commercial Arbitration (CRCICA) arbitration 644 of the year 2009. Testified in Cairo in October 2013. Filed expert reports on damages in January 2012 and December 2010. Dispute involves an agreement between the fixed line operator and a wireless operator on matters of interconnect and other settlement charges. (Engaged by respondent; parties from Egypt)

- Regis Paillardon v. Archer-Daniels-Midland Company and ADM Latin America, Inc.; Breach of Contract; American Arbitration Association (AAA) International Centre for Dispute Resolution case number 50180T004310. Testified in Miami in September 2011 as damages expert. Filed an expert report in July 2011. Dispute involves a joint venture dealing in agricultural commodities. (Engaged by respondent; parties from Venezuela & US)
- International College of IT and Management (U.S.A.) v. Troy State University; Breach of Contract; International Chamber of Commerce (ICC) case number 16 892/VRO. Testified in New York in February 2012. Filed expert reports on damages in August and December 2011. Dispute involved college programs in Vietnam. (Engaged by respondent; parties from Vietnam & US)
- Telecom Egypt Company v. Vodafone Egypt Telecommunications, Vodafone Group Plc, Vodafone Europe BV, Vodafone International Holdings BV; Breach of Contract; Cairo Regional Center for International Commercial Arbitration (CRCICA) arbitration 650 of the year 2009. Testified in Paris in November 2013. Filed expert reports on damages in October 2012, January 2011 and November 2011. Dispute involves an agreement between the fixed line operator and a wireless operator on matters of interconnect and other settlement charges. (Engaged by claimant; parties from Egypt)