



DAVID A. PAWLAK

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CAREER

DAVID A. PAWLAK LLC, 2005-present

Arbitrator, international counsel and advisor leading an independent boutique law practice and consultancy, providing cost-effective, results-oriented representation and advisory services in international arbitration, with a focus on investment treaty matters.

U.S. DEPARTMENT OF STATE, OFFICE OF THE LEGAL ADVISER, TREATY ARBITRATION TEAM, 2001-2005

Attorney-Adviser dedicated exclusively to investment treaty matters as a key member of U.S. team that prevailed in every investor-State arbitration during tenure.

MILBANK, TWEED, HADLEY & MCCLOY, 1998-2001

Litigation and arbitration associate in New York office.

U.S. DEPARTMENT OF JUSTICE, HONORS PROGRAM, 1996-1998

Assistant District Counsel in New York.

BAR ADMISSIONS

New York, 1997

U.S. District Court for the Southern District of New York

U.S. District Court for the Eastern District of New York

U.S. Court of International Trade

PRACTICE

Investment Treaty Arbitration (UNCITRAL, ICSID, ICSID Additional Facility, ICC, SCC)

International Commercial Arbitration (UNCITRAL, VIAC, ICC, *ad hoc*)

Treaty Negotiation Support

Management of Investment Treaty Obligations

Management of Investment Treaty Disputes

SELECTED TREATY ARBITRATION MATTERS

Optima Ventures LLC, Optima 7171 LLC and Optima 55 Public Square LLC v. United States of America

Arbitrator appointed by respondent the United States of America in ICSID matter. Pending.

ICSID Annulment Committee Member in a BIT dispute

Appointed by Chairman of the Administrative Council of ICSID in *Pawlowski AG and Projekt Sever s.r.o. v. Czech Republic*. Pending.

ICSID Annulment Committee President in a BIT dispute

Appointed by Chairman of the Administrative Council of ICSID in *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*. Concluded.

ICSID Annulment Committee President in a BIT dispute

Appointed by Chairman of the Administrative Council of ICSID in *Longreef Investment A.V.V. v. Bolivarian Republic of Venezuela*. Concluded.

Olegs Roščins v. Republic of Lithuania

Arbitrator appointed by respondent Lithuania in ICSID matter. Discontinued.

ICSID Annulment Committee Member in a BIT dispute

Appointed by Chairman of the Administrative Council of ICSID in *OI European Group B.V. v. Bolivarian Republic of Venezuela*. Concluded.

Raiffeisen Bank International AG and Raiffeisen Bank Austria d.d. v. Republic of Croatia

Counsel for the State in defense of an UNCITRAL Rules claim under the Austria-Croatia BIT. Terminated with costs to the State following Croatia's successful application to the German courts for a declaration of inadmissibility.

Adria Group B.V. and Adria Group Holding B.V. v. Republic of Croatia

Counsel for the State in defense of an ICSID claim under the Croatia-Netherlands BIT. Pending.

Elektrogospodarstvo Slovenije - razvoj in inženiring d.o.o. v. Bosnia and Herzegovina

Counsel for claimant in an ICSID Arbitration Rules case brought under a BIT and the Energy Charter Treaty. Pending.

Investment treaty claimant v. Middle Eastern State

Advisory services to two claimant companies in a dispute under a UK BIT. Settled.

Deripaska v. the State of Montenegro

Counsel for the State in defense of a PCA-administered UNCITRAL Rules BIT claim. The tribunal's October 2019 award dismissed all claims, granting full costs to the State.

Medusa Montenegro Limited v. the State of Montenegro

Counsel for the State in defense of a claim under a UK and other BITs, a foreign investment law and the UNCITRAL Arbitration Rules. The tribunal's July 2019 award dismissed all claims, with an award of arbitration costs to the State.

AS PNB Banka and others v. Republic of Latvia

Co-counsel for the State in ICSID proceedings brought under the Latvia-UK BIT (Nov. 9, 2018 – Feb. 15, 2019).

Investment treaty claimant v. a Balkan State

Counsel for claimant in a dispute under a BIT and the Energy Charter Treaty. Consultations phase.

CEAC Holdings Limited v. Montenegro

Co-counsel for the State in ICSID annulment proceedings with respect to an award on jurisdiction issued under the Cyprus-Serbia and Montenegro BIT. Annulment application denied, with full costs to the State.

MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro

Counsel in defense of a claim under a Dutch BIT, the Montenegrin foreign investment law and the ICSID Additional Facility Rules. The tribunal's May 2016 Award dismissed all claims for damages, with an award of costs of arbitration to the State.

European American Investment Bank AG v. the Slovak Republic

Counsel in defense of a claim under the Austria-Slovakia BIT and the UNCITRAL Arbitration Rules. The dispute related to the regulation of the Slovak health insurance sector. The tribunal's October 2012 and June 2014 awards resulted in the dismissal of the claims in their entirety, with an award of costs in favor of the State.

U.S. Steel Global Holdings I B.V. v. the Slovak Republic

Advisor to the Ministry of Finance in defense of a claim initiated under the UNCITRAL Rules and the Dutch-Slovak BIT in relation to electricity tariff measures. The tribunal took note of the withdrawal of the claims on agreed terms and terminated the proceedings in June 2014.

Slovak Gas Holding BV, GDF International SAS & E.ON Ruhrgas International GmbH v. the Slovak Republic

Co-lead arbitration counsel in defense of ICSID arbitration claims under the Energy Charter Treaty arising from the regulation of natural gas distribution. The tribunal's March 2013 award embodied the parties' settlement agreement.

Alps Finance and Trade AG v. the Slovak Republic

Lead counsel in defense of a BIT claim brought under the Switzerland-Slovakia BIT and the UNCITRAL Arbitration Rules raising claims of denial of justice and full protection and security. The tribunal's March 2011 award dismissed all claims, with an award of costs, including costs of legal representation, in favor of Slovakia.

The East Cement For Investment Company v. Republic of Poland

Counsel in defense of a BIT claim brought under the ICC Rules. Following the exchange of the principal pleadings and evidence discovery, the investor abandoned its claim. The tribunal's August 2011 award ordered the investor to pay Poland's legal fees.

Austrian Airlines v. Slovak Republic

Lead counsel in defense of a claim brought under the Austria-Slovakia BIT and the UNCITRAL Arbitration Rules. In its October 2009 final award, the tribunal dismissed the investor's claims.

Inmaris Perestroika Sailing Maritime Services GmbH v. Ukraine

Advisor to counsel team defending an ICSID claim brought under the Germany-Ukraine BIT. The dispute arose in connection with the operation of a windjammer sail training ship that was owned by an education institution of Ukraine.

Cargill, Incorporated v. Republic of Poland

Led the defense of a \$150 million claim against Poland under the UNCITRAL Arbitration Rules. Claimant asserted that the imposition of EU-mandated agricultural product quotas resulted in violations of the Poland-U.S. BIT.

Glamis Gold v. United States of America

Defended initial phases of a \$50 million claim under the UNCITRAL Arbitration Rules by a Canadian gold mining company claiming expropriation and denial of the minimum standard of treatment resulting from federal and state measures concerning open-pit mining. The tribunal's 2009 award dismissed all claims.

Methanex v. United States of America

Defended a \$970 million claim by a Canadian methanol producer under the UNCITRAL Arbitration Rules. Claimant argued that California's ban of the fuel additive MTBE violated NAFTA's national treatment, fair and equitable treatment, and expropriation provisions. The tribunal dismissed all claims and awarded the U.S. its costs of defending the claim.

Mondev v. United States of America

Defended a \$50 million claim by a Canadian developer under the NAFTA and the ICSID Additional Facility Rules. Claimant asserted violations based on a decision of Massachusetts' highest court. Argued the central issues of the international minimum standard of treatment and denial of justice. The tribunal decided the case in favor of the United States.

ADF v. United States of America

Defended a \$90 million claim by a steel producer under the NAFTA and the ICSID Additional Facility Rules involving the application of the federal Surface Transportation Act. Presented factual submissions and argument on fair and equitable treatment. The tribunal decided the case in favor of the United States.

Fireman's Fund v. Mexico

Represented U.S. interests as NAFTA Party on issues of treaty interpretation in a \$50 million claim under the ICSID Additional Facility Rules. Fireman's alleged violations of NAFTA's investment and financial services chapters in connection with an investment in bonds issued by a Mexican bank holding company.

Waste Management II v. Mexico

Represented U.S. interests as NAFTA Party on issues of treaty interpretation in a \$60 million claim against Mexico under the ICSID Additional Facility Rules alleging breach of the fair and equitable treatment obligation and expropriation.

SELECTED COURT AND COMMERCIAL ARBITRATION MATTERS

A Foreign Sovereign Immunities Act case in U.S. District Court

Co-counsel to Poland and its political subdivision Gmina Ludwin in successful motion to dismiss claims of expropriation and unjust enrichment in U.S. District Court for the Northern District of Illinois (No. 20-cv-6477).

An UNCITRAL Rules arbitration

Represented claimant in complex energy sector dispute between two State-owned entities under the 2010 UNCITRAL Rules, resulting in Euro 125 million favorable award.

An ICC Rules arbitration

Represented two project companies of a leading global real estate investment management fund as claimants in a dispute under Hungarian law as regards

representations and warranties in connection with a transaction for two Budapest office complexes.

A dispute between a Balkan company and a Turkish company

Successful pre-arbitration resolution of cross claims under the English Sale of Goods Act and the ICC Rules regarding the delivery and inspection of cargo at a steel plant.

A CEE highway infrastructure ad hoc arbitration

Served on claimant's hearing counsel team in a Euro 150 million plus dispute brought under the 2010 UNCITRAL Rules and involving a State entity.

A VIAC Rules arbitration between two Luxembourg entities

Represented claimant in a dispute under the VIAC Rules arising out of a share purchase agreement and the permitting and construction of a heat and electricity plant in a CEE State.

A multi-party VIAC Rules arbitration

Represented claimant in the initiation of a multi-party arbitration under the VIAC Rules relating to the interpretation of an escrow agreement regarding the disposition of funds in a purchase price escrow account.

An ICC Rules arbitration between U.S. and Hungarian entities

Represented two U.S. claimants in a multi-million Euro dispute relating to the development of an office tower in Budapest, and the proper application of a compensation formula under a purchase agreement.

An employment dispute under the ICC Rules

Arbitration advisor to a CEO and member of limited liability partnership contract in an employment dispute with an emerging markets investment fund under Delaware law.

A major European telecommunications industry arbitration

Sited in Vienna under the VIAC Rules to resolve a Euro 2 billion dispute over control of a telecommunications joint venture.

ADVISORY / CONSULTANCY WORK

Treaty Arbitration Advice, Arbitrator Selection and Arbitrator Challenges, Counsel and advisor in treaty-mandated settlement consultations, preliminary case analyses for both claimants and States, arbitrator selection and arbitrator challenges in several high-stakes treaty arbitration matters, including for CEE and Balkan States and their counsel teams (2008 – present).

Managing Investor-State Disputes Training Workshop: Media and Communications Strategy, Adviser-Lecturer, Ministry of Justice of Georgia, Commercial Law Development Program, Tbilisi, Georgia (Dec. 2016).

Investor-State Arbitration Workshop, Adviser-Lecturer, Ministry of Justice of Georgia, Commercial Law Development Program, Kvareli, Georgia (Nov. 2014).

Model BIT Drafting and Review, Advisor to a CEE State (2014).

A State-to-State matter, Advisor to State regarding issues of public international law and nominations to a panel for an expert determination regarding socialist era debt obligations (2011).

Investor Consultations and Amicable Settlements, Advisor-Consultant, Ministry of Trade, Industry and Tourism, Bogotá, Colombia (April 2010).

Model BIT Review, Advisor-Lecturer, General Directorate for International Economic Affairs (DIRECON), Santiago, Chile (Sept. 2009).

Arbitral Award Enforcement, Counsel to the Ministry of Justice of an Eastern European State regarding the enforcement of an arbitral award (2008).

Investment Protection under the Morocco-U.S. Free Trade Agreement, Consultant-Lecturer, Commercial Law Development Program Workshop, Ministry of Economy and Finance, Rabat, Morocco (April 2008).

Investor Protection and the Implementation of Investment Treaty Obligations, Training Seminar II, Lecturer, Ministry of Trade, Industry and Tourism, Bogotá, Colombia (Feb. 2007).

Investor Protection and the Implementation of Investment Treaty Obligations, Training Seminar I, Lecturer, Ministry of Trade, Industry and Tourism, Bogotá, Colombia (Nov. 2006).

Model BIT Review & Investment Agreement Negotiations, Advised U.S. government officials on drafting investment and dispute resolution provisions of international investment agreements as attorney-adviser at U.S. Department of State (2001-2005).

SPEAKING ENGAGEMENTS / TRAINING PROGRAMS

Arbitration Boutiques and Solo Practitioners – Can they Compete and Provide World Class Service in International Investment and Commercial Arbitration? Speaker, World Arbitration Update (Oct. 15, 2021).

Implications of Investment Treaty Commitments on Governance, Lecturer, Course on Managing International Investment – Legal Frameworks, Centre for International Law, National University of Singapore; Ministry of Foreign Affairs, Singapore Cooperation Program (Nov. 3-6, 2020).

ILC Article 11 Attribution and Responsibility in the Context of State Succession, Speaker, Thirty Second ITF Public Conference: State Responsibility in Investment Law, British Institute of International and Comparative Law (BIICL), London, U.K. (May 10, 2019).

Arbitration Youth Forum, Lecturer, “Post-arbitral Proceedings: Planning and Practice Considerations,” Autumn Meeting, Court of Arbitration, Polish Chamber of Commerce (Oct. 20, 2016).

ICC Arbitration Training Programme, Lecturer, Workshop on Case Strategy and Management, sponsored by the ICC Court of Arbitration and the Faculty of Law of the Jagiellonian University, Kraków, Poland (Jan. 22-23, 2016).

ICC Arbitration and ADR Training Programme, Lecturer, Workshop on Hearings and Evidence, sponsored by the ICC Court of Arbitration and the Faculty of Law of the Jagiellonian University, Kraków, Poland (Jan. 30-31, 2015).

4th Investment Treaty Arbitration Conference, Settlement of Investment Disputes: Practical Steps, Speaker, “Tools Available to States to Provide Interpretive Guidance to Tribunals,” Prague, Czech Republic (Oct. 30, 2014).

Approaches to Securing Investment Protection in Russia and CEE, Invited Speaker, Russian-Polish Legal Day, Moscow, Russian Federation (Oct. 24, 2013).

Arbitration Under The UNCITRAL & ICSID Rules: A Comparison, Lecturer, Workshop on Key Issues Relevant to the Negotiation of International Investment Agreements, Ministry of Economy, Labour and Entrepreneurship of Croatia, Zagreb, Croatia (Sept. 21-23, 2011).

Rethinking Investment Treaty Law: A Policy Perspective, Lecturer, London School of Economics Transnational Law Project, London, U.K. (May 23, 2011).

Dispute Settlement in International Investment Agreements, Lecturer, Workshop on International Investment Agreements, organized by the General Directorate for International Economic Affairs (DIRECON), Santiago, Chile (April 13, 2011).

Relative Standards of Treatment, Absolute Standards of Treatment, and Dispute Settlement, Lecturer and Handbook Peer Reviewer, Seminar for Negotiators of International Investment Agreements, sponsored by the Asia Pacific Economic Cooperation (APEC), the Ministry of Foreign Affairs of Chile, the Ministry of Economy of Mexico and U.N. Conference on Trade & Development, Santiago, Chile (April 11-13, 2011).

Most Favored Nation Treatment in Investment Agreements, Discussant, Organisation for Economic Co-operation and Development (OECD), International Investment Agreements and Investor-State Dispute Settlement at a Crossroads, Paris, France (Dec. 2010).

Fair and Equitable Treatment; Management of Investment Treaty Disputes; Alternative Dispute Resolution and Dispute Prevention Policies, Lecturer, Asia Pacific Economic Cooperation (APEC), Regional Training Course on the Core Elements of International Investment Agreements, Kuala Lumpur, Malaysia (June 2009).

Investment Protection under Colombia's International Investment Agreements, Lecturer, Training Workshop for Government Officials, Ministry of Trade, Industry and Tourism, Bogotá, Colombia (Feb. 2009).

Expert Meeting on Investment for Development: The Development Dimension of International Investment Agreements, Invited Participant, U.N. Conference on Trade & Development, Geneva, Switzerland (Feb. 2009).

Investment Treaties and National Security Issues, Lecturer, Conference on Investment Treaty Arbitration, Court of Arbitration at the Polish Chamber of Commerce, sponsored by Sołtysiński, Kawecki & Szlęzak, Warsaw, Poland (Nov. 2008).

Managing Investment Obligations: A Guide for Government Officials, Lecturer, Seminar on Investment Agreements and Investor-State Disputes for Latin American Officials, sponsored by the Inter-American Development Bank, Organization of American States and U.N. Conference on Trade & Development, Bogotá, Colombia (Sept. 2008).

Alternative Methods of Investor-State Dispute Resolution, Lecturer, U.N. Conference on Trade & Development and Ministry of Justice of Ukraine, Conference for Countries from Eastern and Southern Europe and Central Asia, Kiev, Ukraine (June 2008).

Grounds for Initiating Arbitration involving Governments, Government Agencies & State-owned Companies; Avoiding Disputes under International Law and Bilateral Investment Treaties, Lecturer, Ministry of Justice Program on International Arbitration Involving States or State-owned Entities, Kiev, Ukraine (Nov. 2007).

Fair and Equitable Treatment; National Treatment; Transparency in International Investment Agreements; Comparing the UNCITRAL & ICSID Arbitration Rules, Lecturer & Resource Person, U.N. Conference on Trade & Development, Regional Training Session on International Investment Agreements and Investment Disputes for Countries of Eastern & Southern Europe and Central Asia, Minsk, Belarus (July 2007).

Arbitration Theory and Practice, Lecturer, Development Lawyers Course, International Development Law Organization, Rome, Italy (April 2007).

Dispute Resolution under NAFTA Chapter Eleven, Guest Lecturer, International Dispute Resolution, American University Washington College of Law, Washington, D.C. (April 2004).

The International Minimum Standard of Treatment of Foreign Investment: Fair and Equitable Treatment, Speaker, U.N. Conference on Trade & Development, Intensive Training Course for Negotiators of Investment Agreements, Lima, Peru (Oct. 2003).

NAFTA Investment Disputes Docket Briefing, Speaker & U.S. State Department Representative, National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation, Washington, D.C. (May 2003).

Investor-State Arbitration under Bilateral Investment Treaties, Speaker, A Forum on Arbitration of International Commercial Disputes, American Arbitration Association, Pittsburgh, Pennsylvania (Dec. 2002).

Investor-State Arbitration under NAFTA Chapter Eleven: The Role of Government Counsel, Speaker, Inter-American Bar Association Annual Conference, Cochabamba, Bolivia (June 2002).

Rules of Origin Determinations & The Future of the Free Trade Area of the Americas, Speaker, Inter-American Bar Association Annual Conference, Quito, Ecuador (Fall 1995).

APPOINTMENTS, MEMBERSHIPS & AWARDS

Who's Who in America, 2022

Panel of Arbitrators, International Centre for Settlement of Investment Disputes (ICSID), June 2010 to present.

Panel of Arbitrators for International Investment Disputes, Beijing Arbitration Commission / Beijing International Arbitration Center, November 2021 to present.

List of Non-national Panelists under Chapter 18 (Dispute Resolution) of the Colombia-Costa Rica Free Trade Agreement (appointed by decision of the Free Trade Commission).

International Institute for Conflict Prevention and Resolution, Panel of Distinguished Neutrals.

Roster of Arbitrators, Centro de Arbitraje de México (CAM).

List of Arbitrators, Georgian International Arbitration Centre (Tbilisi).

Member (former), United Nations Conference on Trade and Development (UNCTAD) international investment agreements experts group.

Member, The Investment Treaty Forum, British Institute of International and Comparative Law (BIICL).

Member, American Society of International Law.

Advisory Committee Member, World Arbitration Update.

Lawyer Monthly, Arbitration and Mediation – Law Firm of the Year – Poland, 2017.

Acquisition International, 2016 Excellence Award: Most Outstanding for Investment Treaty Arbitration.

Dispute Resolution Awards, Best for Investment Treaty Arbitration, Poland, 2016.

ACQ Country Awards, Litigation Law Firm of the Year, Czech Republic, 2010.

U.S. Department of State, Meritorious Honor Award for work on investor-State treaty arbitration matters, 2003.

Milbank Tweed Hadley & McCloy, *Pro Bono Publico* Award, 1999.

EDUCATION

THE UNIVERSITY OF PITTSBURGH, 1992-1996

Juris Doctorate / Masters in Public & International Affairs – Joint Degree
Graduate Certificate – Center for Latin American Studies

JOHNS HOPKINS SCHOOL FOR ADVANCED INTERNATIONAL STUDIES,
1992

Summer Program

THE UNIVERSITY OF MICHIGAN, 1986-1990

Bachelor of Arts, Political Science

PUBLICATIONS

Most-Favoured-Nation Treatment: Interpretations by arbitral tribunals, at International Investment Agreements and Investor-State Dispute Settlement at a Crossroads, OECD-UNCTAD Symposium Proceedings (Dec. 14, 2010).

Managing Investment Treaty Obligations and Investor-State Disputes: A Guide for Government Officials (co-author), in *LATIN AMERICAN INVESTMENT TREATY ARBITRATION: THE CONTROVERSIES AND CONFLICTS* (Thomas E. Carbonneau ed., Kluwer Law International 2008).

Western Nations Could Be Hit by Legal Action on SWFs, *FINANCIAL TIMES*, June 26, 2008 (Comment & analysis, Letters).

Enforcement of Foreign Arbitral Awards, *INTERNATIONAL LAWYER: THE YEAR IN REVIEW* (Summer 2005).

International Trade in the Americas: The Inter-American Lawyer's Guide to Origin Determinations, 5 *TULANE J. OF INT'L & COMP. L.* (1997).

Learning from Computers: The Future of the Free Trade Area of the Americas, 27 *UNIV. OF MIAMI INTER-AMER. L. REV.* (1996).

CITIZENSHIP

United States of America

European Union (Irish)