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COMMODIFYING JUSTICE:
How Third-Party Funding Exposes the Capture of Investor-State Dispute Settlement

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Introduction: Funding as the Window onto a Rigged System

Third-party funding (TPF) in litigation is usually presented as a neutral tool that widens "access to justice." In some settings, that may be true: for an individual, a class of consumers, or a community group seeking redress for environmental or social harm, outside financing can be the only way to get into a courtroom at all.[1] But investor-State dispute settlement (ISDS) is not necessarily that setting, and the access to justice framing disguises what is actually happening. In ISDS, funding is not a great equalizer. It is evidence that the system was either never built to deliver justice in the first place, or, at the very least, has been captured to the point that justice is no longer what it delivers.[2]

WHAT IS THIRD-PARTY FUNDING AND HOW IS IT USED IN ISDS?

Third-party funding (TPF) is the provision of financing to a party to a dispute, usually the claimant, by a third party, that is, a person or entity with no prior interest in or connection to that dispute,[3] in exchange for a share (whether fixed or by way of percentage) of the proceeds of the claim, if successful.[4] The financing is therefore typically advanced on a non-recourse basis: the funder has no recourse against the funded party if the case is unsuccessful. The funders are, in substance, investment funds, and the asset they invest in—in the case of ISDS—is the potential value of the ISDS claim. Their business model rests on assessing the risk and strength of a claim, including the likely return, predicting how a tribunal will apply the law to the facts, and sometimes (depending on the funding arrangement) providing expertise on case management and strategy, including at the enforcement phase of an award.[5] This brief also treats the monetization of an ISDS award as functionally part of the same phenomenon, i.e., arrangements where funders advance cash against an award that is subject to enforcement, whether by acquiring the award in whole or in part.[6] In each case, whether at the dispute stage or at the enforcement stage, the result is the same: outside capital acquires an interest in the proceeds of the claim against a State.

The key participants in third-party funding of ISDS claims are the claim holders, the funders, the lawyers, and sometimes the funding brokers.[7] Financing may cover legal fees, out-of-pocket costs (expert, arbitrator and institutional fees, and discovery-related expenses), or the costs of subsequent enforcement and appeals; it may be structured around a single claim or a portfolio of claims; and it is increasingly used for collateral purposes, such as raising working capital for the claimant entity, discharging other liabilities, or financing unrelated litigation.[8]

Historically, TPF was understood primarily as a mechanism by which financially-distressed claimants could obtain access to justice. Today, much of the litigation finance market is driven by large, well-resourced corporate claimants who use funding to manage risk, reduce legal budgets, move the cost of arbitration off the balance sheet, or free capital for other business priorities; funding, in short, is typically not for the impecunious.[9]

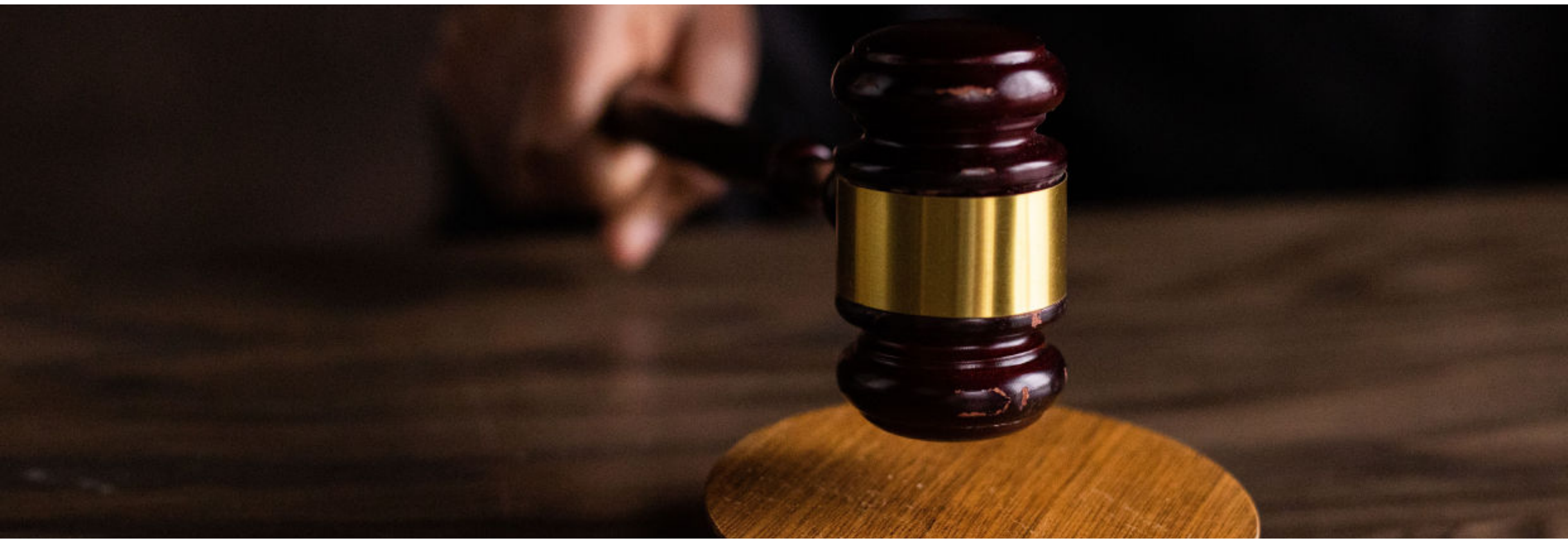
That distinction matters for this brief. TPF can, in particular cases, genuinely widen access; but access to ISDS is not synonymous with access to justice, and even where it is, funding is not necessarily the most appropriate access to justice tool.[10] The access to justice rationale, in other words, fits a minority of cases while lending its rhetoric to the rest.

Under the thousands of investment treaties signed among States that contain ISDS, only foreign investors may bring claims against States that host their investment. Respondent States can do no more than defend those claims. ISDS is, in this sense, a one-way mechanism. An investor may challenge almost any exercise of public authority—legislation, regulations, court judgments, administrative decisions—claiming that it breaches a protection afforded under the relevant investment treaty (or contract) and has diminished the value of its investment. And it may do so without first exhausting domestic remedies and without taking on any reciprocal obligations of its own. The architecture is asymmetric by design.[11]

The key point, therefore, is not that TPF distorts an otherwise balanced regime, but that TPF fits seamlessly into a structure that is already lopsided, prone to abuse, and detached from the public interest. Professor Frank Garcia puts it bluntly when he states that "TPF within a system as unbalanced as the investment law regime is… an exploitation" and that it is "explicitly designed to take advantage of the asymmetric structure of the investment regime today for the benefit of speculative finance."[12] This brief takes Garcia's argument as a starting point and pushes it further. The advantage-taking he identifies is not an abuse of the system but rather a faithful expression of it. TPF takes unfair advantage of the ISDS system precisely because ISDS was built to be taken advantage of, and the funder simply does, efficiently and at scale, what the regime already invites.

Seen through the funding lens, the ISDS regime stops looking like a neutral forum for resolving investment disputes and starts looking like a market, one in which speculative financiers bankroll claims against public treasuries, treating a State's sovereign act as an asset class and the State's liability as yield. This is a sharp break from centuries of legal caution. The common law doctrines of maintenance and champerty once prohibited outsiders from financing litigation in which they held no genuine stake, precisely to stop the powerful from turning courts into instruments of private profit. In ISDS, those safeguards have largely fallen away. The arbitration finance industry is said to have accelerated after the 2008 financial crisis, when capital left traditional asset classes and discovered a new one: the ISDS claim.[13] Funds seeking high returns with limited downside risk recognized the system for what it is—a one-sided machine for manufacturing sovereign liability—and moved in accordingly.[14]

Two layers of speculation now sit on top of each other. ISDS already lets investors speculate on public authority, converting regulatory and political risk into damages claims often well in excess of the capital actually committed.[15] TPF then speculates on the claims themselves, wagering on the outcomes of those disputes and trading the resulting awards, with the cost of both bets ultimately falling on the public treasuries of (mostly) disadvantaged and developing States least able to absorb it.



HISTORICAL FOUNDATIONS: MAINTENANCE, CHAMPERTY, AND THE COLLAPSE OF THE SAFEGUARDS

The common law's long suspicion of TPF originates in the doctrines of maintenance and champerty. Maintenance was the support of another's litigation by someone with no legitimate interest in it; champerty was maintenance in exchange for a share of the proceeds. Originating in medieval England, these prohibitions aimed to stop the powerful from profiting by stirring up litigation—protecting the integrity of the courts and guarding against social discord.[16]

As judicial systems grew more robust and independent, the strict prohibitions came to look excessive. The modern trend across major common law jurisdictions—Australia, England, Hong Kong, and parts of the United States—has been towards liberalization: criminal prohibitions largely abolished, though the doctrines continue to survive in some contractual claims. That shift was justified by TPF's role in widening access to justice, enabling meritorious claims that would otherwise be too costly to bring.[17]

Crucially, liberalization should have come paired with regulation—controls on funders exerting undue control over proceedings or generating conflicts of interest. That pairing is missing in ISDS. The regime has imported the permission while discarding the safeguards, leaving funders free to exercise exactly the kind of control over litigation that maintenance and champerty were designed to forbid.[18] The historical arc—from blanket prohibition, to regulated permission, to the unregulated permission now visible in investment arbitration—is itself part of the indictment.

The argument of this brief is straightforward. Third-party funding is best understood as a window onto a structure already rigged against the public. It does not distort an otherwise sound mechanism; it reveals what ISDS already is. That speculative capital can move in, treat a State's sovereign act as an asset class, and profit from the system's one-way design is not a flaw introduced by funders. It is evidence about the regime that makes their entry rational. The conclusion is therefore not that TPF needs a disclosure rule or proper regulation. Regulating the funders would leave the underlying structure they exploit untouched. The point is the reverse: that ISDS can be exploited this way at all is an indictment of its design, and TPF, by exposing how it is used and what the regime allows, strengthens the case for dismantling the mechanism altogether.

Third-party funding thus brings into focus several structural features that go to the heart of the investment regime's purpose and jurisdictional design. These are best understood not as isolated defects in the funding industry, but as symptoms of a regime already built to serve capital at the public's expense, made visible once an industry emerges to profit from them. This brief focuses on three: the gap between the development these treaties promise and the actors they reward; the use of funding to enable non-investors and post-dispute acquirers to capture the ISDS mechanism; and the problem of hidden repeat players who coordinate multiple proceedings and trade awards as assets, at both the merits and enforcement stages, behind a veil of opacity.

1. Whose Development? Whose Justice?

The first tension lies between what investment treaties say they are for and what they actually reward. On paper, these treaties do not protect capital for its own sake. They protect it as a means to an end: the host State accepts certain standards of treatment in order to attract foreign investment, and that investment is supposed to support development and prosperity in that host State[19]—through jobs, infrastructure, and technology transfer that benefit the population. This developmental narrative has helped sustain the expansion of the investment treaty network over the last several decades. ISDS sits within that bargain as the enforcement mechanism, meant to reassure investors and keep productive capital flowing toward those goals. The case law, however, tells a different story about both who benefits and who is left out. Third-party funding sharpens that contrast and makes that gap between promise and operation impossible to ignore.

1.1 The Actors the Regime Rewards: Funders

Third-party funding introduces into the dispute an actor whose interest has nothing to do with the host State's development or prosperity and everything to do with the financial return on the legal claim against the host State. The funder's presence reveals what the process was already organized to deliver: the protection of claim profitability. It also brings into clearer view what the regime's rhetoric tends to obscure: development may justify the system, but the substantive protections operate without any requirement that the host State and its population actually benefit. The funder is simply the actor that sees this most clearly, and prices it.

Teinver v. Argentina illustrates this plainly. The dispute arose from Argentina's nationalization of Aerolíneas Argentinas. The claim, registered in 2009, sought USD 1.6 billion. In 2010, Burford Capital agreed to fund the claimants' legal fees—an initial commitment of USD 12.8 million—in exchange for a substantial share of any award. Burford, however, was not a passive financier: the funding agreement required the use of designated King & Spalding counsel and allowed Burford to walk away if the claimants' power of attorney changed,[20] giving the funder real leverage over how the case was run. The tribunal eventually awarded USD 324 million plus interest,[21] of which Burford stood to take more than 40%—a return of more than ten times its outlay.[22]

Burford had no connection to the underlying airline; its only investment was in the ISDS claim. On Burford's own account, the size of the recovery turned on its capital rather than on anything it had built or operated in Argentina. Without that money, its chief executive said, "it is doubtful that this kind of recovery could have been obtained."[23]

The financialization of the claim did not end with the award. During the annulment phase, Burford sold its interest in the *Teinver* case to an institutional investor for roughly USD 107 million—a reported 736% return[24]—illustrating the emergence of a secondary market in transferable interests in treaty awards. A dispute against a sovereign had become a tradable asset, bought and sold between financiers with no stake in Argentina's economy. This is not ISDS being pulled away from its developmental rationale by an outside force; it is ISDS revealing how little that rationale ever constrained it. The State's liability has become the asset, and it can change hands like any other commodity.

This points to a feature of the funding model that the access to justice defense obscures. Funders are often said to screen out weak claims because their returns depend on winning, so their due diligence supposedly filters out unmeritorious cases.[25] But winning the award is not the only way a funder is paid. A funder can also realize its return by selling all or part of a claim to another investor before the proceedings conclude.[26] That option rewards something different from merit: a large claim promising outsize damages may be easier to place with a buyer than a smaller but sounder one, so the model does not necessarily select for legal strength.[27] On that logic, a funder can profit from a claim it never wins, provided it has sold enough of the position to someone else. Merit is not necessarily what the model selects for; claim size may matter more.[28]

Like Burford in the *Teinver* case, not all funders are passive. However, since funding arrangements are not disclosed as a matter of practice, it is difficult to draw definitive conclusions about the extent of funder control across the industry.[29] *Eco Oro v. Colombia* is another clear example and warrants some detail, because it shows what a funded claim may be brought against.

Eco Oro held the Angostura concession in Colombia's Santurbán region but had only ever held the right to explore, never to exploit. When it sought a license for an open pit mine in 2009, the environmental authority returned the application, taking the view that the ecological value of the Santurbán páramo ruled out a mine of that kind. The páramo is the high altitude wetland ecosystem that Colombian law singles out for heightened protection.[30] Colombia holds roughly half the world's páramos, which supply freshwater for millions and act as carbon sinks; large-scale mining in them threatens precisely those functions.[31] The disputed measures in the ISDS case were a sequence of actions taken by the State across its various branches over more than a decade, as protection of the páramo developed incrementally.[32] Eco Oro's complaint was that these measures effectively destroyed the value of its investments. Meanwhile, the pressure to protect the páramo came largely from grassroots mobilization in Bucaramanga, the regional capital downstream of the wetland.[33]

Those measures, that is, protections that took a decade to consolidate, are what the funded claim was designed to monetize. After the Constitutional Court's 2016 decision, and following findings by the World Bank Group's Compliance Advisor Ombudsman that the International Finance Corporation (IFC) had not met its own environmental and social standards in backing the project, the IFC eventually divested from Eco Oro.[34] Eco Oro turned to a third-party funder, Trexs Investments LLC. Trexs, managed by Tenor Capital, put in USD 14 million for an ownership stake, control over the arbitration, including over any settlement or change of control, a board seat (occupied by David Kay, a partner at Tenor), and up to 51% of the gross proceeds of the arbitration[35]—terms so extensive that, in the company's own shareholder circular, the funder had "full control over the Arbitration."[36] On Eco Oro's own account the claim "ripened" only in 2016,[37] which is to say the funding facilitated, if it did not cause, a claim brought after the páramo was plainly off-limits.

The result is captured in the Declaration on Costs of Professor Philippe Sands. Against Colombia's legal costs of USD 6.3 million, Eco Oro's ran up USD 33.3 million—about five times the claimant mean across ISDS cases[38]—a figure Sands called "jaw-dropping" and, given the environmental context and the serious risk of failure, "indecent." He voiced "the most serious concerns" about such arrangements, warning of the "real risk" that the system "is subverted when claims are controlled or directed by a third-party funder which has no prior relationship with the purported investment or the host State," still greater where that funder takes "a majority of any damages awarded" while bearing none of the costs of failure. Proceedings of this kind, he concluded, are "a form of privatised 'justice'" that was "not envisaged to be a system to leverage financial speculation and financial gains by third parties."[39]

In the end, the tribunal awarded Eco Oro nothing;[40] yet the case continues. Eco Oro has launched annulment proceedings,[41] reportedly backed by a funder once again;[42] and where the law firm Freshfields ran the arbitration, the annulment is now with Gibson Dunn, which is involved with coordinating Blasket Renewables' enforcement campaign in the United States against Spain, discussed below (Section 3).

Odyssey v. Mexico shows the same logic, but in starker distributional terms: the funder emerged as the only real winner. Odyssey Marine Exploration—a U.S. treasure-hunting company turned seabed mining promoter—brought a claim under the North American Free Trade Agreement (NAFTA) legacy provisions against Mexico after regulators twice refused an environmental permit for the Don Diego marine phosphate project. The project site, in the Gulf of Ulloa, is a biologically rich area vital to artisanal fishers and to endangered species such as loggerhead turtles and grey whales.[43] Odyssey had no operating mines and only sporadic income, so it turned to Poplar Falls LLC (a subsidiary of DrumCliffe LLC),[44] which reportedly advanced at least USD 18.7 million[45] under an agreement entitling it to a multiple of its outlay plus a share of any award.[46] Odyssey claimed roughly USD 2.36 billion for alleged lost future profits,[47] a figure whose sheer scale made the claim attractive to finance regardless of its underlying strength, since even partial success could generate a substantial return.

The tribunal awarded Odyssey USD 37.1 million plus interest—about 1.5% of the amount claimed.[48] Given the steep return waterfall in the funding agreement, which paid Poplar Falls up to 300% of each tranche before Odyssey saw anything, Poplar Falls absorbed most or all of the proceeds of the award.[49] The funder's grip ran deeper still: under the agreement, Poplar could convert what it had advanced into ownership of Odyssey itself, taking shares in the company if Odyssey walked away from the claim.[50] At the end, the named investor won almost nothing; the financier won almost everything; and the public paid the damages and all the arbitration costs. The structure permits this result, and an industry has emerged to extract it.

Across these cases, the funder steers strategy, counsel, and settlement from a position with no genuine stake in the underlying investment—precisely what maintenance and champerty once sought to prevent. What TPF makes visible is that the relationship between the treaty's stated purpose and its operation was always loose: the system rewards the profitability of the claim, and the development it advertises was never meant to be a condition of recovery.

1.2 The Actors the Regime Excludes: Affected Communities

If investment treaties exist to deliver development and prosperity, the mismatch just traced above becomes sharper still when set against the people that development is meant to serve. Populations of host States—the people who are supposed to benefit from the jobs, the infrastructure, and the stronger institutions—are the intended beneficiaries no less than the governments that sign the treaties on their behalf. Yet the case law, especially in disputes involving large-scale land and resource projects, shows that this population is the constituency that the regime is most structured to exclude. They cannot bring claims. In the majority of cases, they cannot even hear the investor's arguments or be heard by the tribunal and the disputing parties. The most they are usually offered is leave to file an amicus curiae brief, and that leave is discretionary, easily refused, resource-intensive, and where accepted, often undermined.[51]

That treatment stands in sharp contrast to the latitude given to funders. A financier with no connection to the country, the project, or the underlying dispute can enter from behind one of the parties, bankroll the claim, take a share of any award or even the investor itself, and in some cases help steer the litigation, while disclosing little more than its name to the tribunal and the respondent State. Even that degree of disclosure is recent: only since 2022 have ICSID Arbitration Rules required a funded party to disclose the existence of third-party funding and name the funder and those who own and control it.[52] That disclosure, moreover, is made to the tribunal for the narrow purpose of screening arbitrator conflicts, and possibly informing security for costs applications,[53] not to inform the public, which may never learn a funder is involved at all. The cases below illustrate both dynamics.

In *Odyssey v. Mexico*, the Puerto Chale Fishing Cooperative, together with the Center for International Environmental Law (CIEL), sought leave to file an amicus submission on the environmental and social stakes of the Don Diego project.[54] The majority refused the petition (in a 2021 order) finding that the Cooperative—whose fishing grounds would have been devastated by the project—had no "significant interest" and that its views were irrelevant because Odyssey sought compensation rather than performance.[55] The distributive asymmetry could hardly be starker: the Cooperative, whose members bore the direct environmental risk, was barred from so much as filing a brief, while the third-party funder, Poplar Falls, which had no connection to the territory, had no comparable test to meet.

In *Kappes v. Guatemala*, the dispute centered on the suspension of a gold and silver mine for failure to consult properly with local Indigenous and affected communities. La Puya, a community resistance movement that described itself as an environmental justice movement, twice sought to file an amicus submission to inform the tribunal about the gaps in the environmental studies, the project's effect on the community, and suspected bribery.[56] The tribunal rejected the petitions (in 2019 and again in 2021), reasoning that counsel had not shown who exactly led La Puya or by what authority it spoke for the affected communities.[57] The claimant's own backer, a Burford affiliate (Diriba Investments LLC), had to satisfy no such requirement; it disclosed its name and nothing more.[58]

Eco Oro v. Colombia shows the same exclusion. An alliance of six organizations,[59] including the Comité para la Defensa del Agua y el Páramo de Santurbán, which was the grassroots organization that had played a central role in the domestic litigation leading to the mining restrictions, filed a request to address the human rights and environmental dimensions of the dispute. The tribunal held (in a 2021 order) that they had not shown those issues were even within the scope of a case it treated as a straightforward compensation claim.[60] The Tenor-controlled funder with no stake in Colombia's development ran the case; the people who lived with the consequences could not get through the door.

Silver Bull v. Mexico confirms the pattern. The company sued over a blockade by local miners at its Sierra Mojada project. When the Mexican human rights organization ProDESC sought to bring a community and corporate due diligence perspective to the proceeding, the tribunal dismissed the application (in a 2025 order) as generic and outside the applicant's expertise.[61] Silver Bull's own case was financed by Bench Walk Advisors in exchange for a contingent share of any damages. The company ultimately lost and was ordered to pay Mexico nearly USD 1 million in costs,[62] but the asymmetry of access held regardless of the result.

Even where community amicus submissions are admitted, participation is tightly constrained. In *Gabriel Resources v. Romania*, the tribunal (in a 2018 order) allowed an amicus submission by a group of NGOs but hemmed it in at every turn: it barred them from relying on witness testimony, confined them to matters within their supposed expertise, refused their request to attend the hearing, and openly doubted they added anything useful.[63] The funder, by contrast, faced no such constraints. According to Gabriel's own public disclosures, the claim was financed (up to USD 40.625 million)[64] by Enescu Investments, LLC—an entity managed by Tenor Capital—and Kopernik Global Investors.[65] The funder's reach extended into the company itself: David Kay, the same partner at Tenor who was given a board seat in Eco Oro around the same time, was also appointed to Gabriel's board as Tenor's nominee in connection with that financing.[66] The community asking to be heard was kept at the margins of the proceeding, while the financier backing the claim held a seat in the boardroom of the party bringing it.

In *Infinito Gold v. Costa Rica*, the environmental organization APREFLOFAS had brought the domestic litigation case that led to the annulment of Infinito's mining concession in Costa Rica's courts. When Infinito turned to ISDS, APREFLOFAS sought to put before the tribunal those court proceedings and the ongoing corruption investigations into how the concession had been approved. It was allowed to file a written submission, but only on tightly drawn terms: it had to avoid duplicating the parties' facts and arguments, confine any jurisdictional point to the single objection that the concession was obtained illegally and rest that point only on evidence post-dating its earlier submission, and stay within 10,000 words; and it was refused permission to attend the hearing.[67] The investor, by contrast, was backed by Vannin Capital[68] under no comparable conditions—as in *Gabriel Resources,* the financier underwriting the claim faced no real limits, while the environmental organization seeking to speak to the dispute was let in, if at all, only on a tight leash. That the funded claim ultimately recovered nothing only underscores the asymmetry: the regime scrutinized the community that had prevailed in Costa Rica's own courts and asked nothing of the financier bankrolling a claim that failed.

These cases reveal the regime's underlying hierarchy. An actor with no stake in the host country is welcomed in, finances the claim, and is sometimes given control over the proceeding and a majority of its proceeds; the people whose water, land, and livelihoods are at stake are told they lack the right expertise or the standing to speak. A community must clear an "interest" threshold just to file a brief, while the financier standing behind the claim merely rides in on the investor's standing. That asymmetry is the design. A better amicus procedure would not fix that. So, when the regime is defended in the language of access to justice, the question is simple: access for whom, and justice for whom?

2. Who Counts as an "Investor?" Funders, Sham Claims, and Abuse of Process

The second tension concerns the definition of a "covered investor"—the gatekeeping concept meant to keep ISDS tied to genuine economic actors. When a party acquires an investment, not to engage in commercial activity but solely to gain access to international arbitration, it is not engaging in a protected, bona fide transaction. Rather, a claim based on such an acquisition is, or should be, an abuse of process. Third-party funding presses on the same fault line and shows how easily the gate can be passed: the requirement meant to keep ISDS tied to genuine economic actors can be satisfied by an entity standing in for a financier whose only outlay is in the claim.

Tribunals already police the blunter versions of this manipulation in cases that have nothing to do with funding. Two decisions, described here, sketch the doctrine before the funding dimension comes into view.

Phoenix Action v. Czechia illustrates this logic at the point of entry. There, an investor acquired two Czech companies already mired in pre-existing domestic disputes and almost immediately filed an ISDS claim over those same disputes. The tribunal condemned the arrangement as an abuse of the system, finding that the entity had been created with the "sole purpose" of pursuing an arbitration claim "without any intent to perform any economic activity in the host country"[69]—an artificial transaction designed solely to transform a domestic grievance into an international one.[70] To accept jurisdiction, the tribunal warned, would be to sanction an "abusive manipulation of the system of international investment protection," since any domestic dispute could then be internationalized simply by transferring the underlying interests to a foreign vehicle.[71]

In the more recent decision of *Zeph v. Australia*, the tribunal read the treaty's object and purpose—deepening economic linkages and promoting investment among the parties—to require that a qualifying investor actually deploy economic resources in the host State, "not simply by investors owning and controlling assets."[72] Bare shareholding or corporate control, absent economic contribution, does not suffice.

On the logic of those cases, a funder that acquires or controls a claimant while contributing nothing to the host economy sits in the same position; its outlay is in the claim, not in the country. Whether a given treaty's text formally shuts such an actor out is harder to answer than it might first seem. Many treaties define "investor" and "investment" loosely enough that a financier holding a controlling interest through a qualifying vehicle may fall inside the definition; some of those definitions may have been written, by accident or otherwise, to be that accommodating. The concept meant to confine ISDS to genuine economic actors, then, does little in practice to keep speculators out. A financier incorporated in a third State may lack the nationality of the treaty's other contracting party—the quality meant to qualify an investor for protection at all—but still emerge as the principal beneficiary and controller of the claim. In substance, the arbitration then runs between a State and a financial actor whose only "investment" is the case itself.

LARAH v. Uruguay raises that question directly. Latin American Regional Aviation Holdings (LARAH), a Panamanian company, brought an arbitration claim over the effective nationalization and liquidation of its investment in Uruguay's flag carrier, Pluna, claiming that a series of State measures—culminating in a forced surrender of shares without compensation, after which Pluna was suspended and eventually liquidated—had destroyed its investment.[73] The critical point, however, is that LARAH had become a litigation vehicle. The arbitration was launched only after Caballero Verde S.R.L., a Panamanian investment company controlled by Tenor Capital, acquired LARAH's shares in 2018—six years after the June 2012 contested measures.[74] By its own account, Caballero spent more than two years analyzing LARAH as an investment, treating the prospective legal claim as the core asset.[75] The party pursuing the claim was a financial actor that had entered years after the disputed measures were passed, bought a dormant grievance, and turned it into a treaty claim. It had no ongoing project to protect.

The tribunal found that Uruguay had breached the fair and equitable treatment standard under the Panama-Uruguay investment treaty and ordered it to pay LARAH roughly USD 30 million in compensation, plus interest and costs.[76] The enforcement phase proved even more revealing: when negotiations between the State and LARAH's owners broke down, the claimant moved to enforce the award in Luxembourg in late 2024, reportedly seizing Uruguayan State assets and bank accounts there and signaling further action in the United States.[77] At that point, the dispute had little left to do with aviation. It had become an exercise in monetizing a judgment across global financial centers, with private equity specialists using treaty machinery to compel a sovereign to pay.

Pluna, moreover, had been chronically unprofitable across its decades of operation, and the original investors—principals of a private equity firm specializing in distressed assets—brought no aviation experience when they took control in 2007.[78] That a doomed carrier still produced a roughly USD 30 million award, ultimately satisfied at some USD 64 million once enforcement began, shows how completely the claim's value had detached from any genuine economic contribution.[79]

LARAH exposes a contradiction at the heart of the regime, namely that treaty protection is supposedly conditioned on genuine economic contribution, yet the system routinely lets a funder that contributes only litigation finance inherit and wield the treaty's most powerful protection—the power to invoke State liability. The doctrines the cases described above apply—abuse of process and the demand for genuine economic contribution—reach the crude version, in which an entity is thrown together on the eve of filing to turn a domestic dispute into an international one. They do much less against a funder working through a claimant with real corporate substance, where the funder's own role remains invisible. A defender of the system might respond that investment treaties already contain safeguards to keep insubstantial vehicles out.

One such safeguard for screening economic substance is the denial of benefits clause. However, it is aimed at a different problem. Where a treaty contains such a clause at all, it is built to strip protection from shell companies, namely entities owned or controlled by third (or, under some clauses, host) State nationals that carry a treaty partner's nationality on paper but conduct no substantial business in the State where they are incorporated.[80] The test runs to the claimant's own activity—what the named entity does, not what its corporate group does. It asks whether the named entity is a letterbox; it does not ask who stands behind it. So, a funder can direct a case from behind an entity that satisfies the treaty's nationality test and has enough substance to avoid challenge—as several of the cases above show—while the clause never reaches that funder itself.

Two further features widen the gap. The clause does not run on its own. Across these treaties it is drafted as a right the State reserves and must actively invoke, not a bar that operates automatically.[81] And the burden to establish the fulfilment of the conditions for the denial of benefits clause rests on the State[82]—a burden tribunals acknowledge States struggle to discharge even against an obvious shell.[83] But even a State that carries it has only shown the entity is a shell; it has not reached the party directing the dispute, who is not what the clause is built to find. And because funding agreements are seldom disclosed, the State and the tribunal may never learn who that is—the problem the next section takes up.

3. Privity of Interest and Hidden Repeat Players

The third tension cuts deepest, because it is less about what the regime cannot see than about what it chooses not to act on. The doctrinal tool to look past corporate form to economic reality already exists; what follows shows that the regime declines to use it where it would matter most.

This section therefore looks at three variations on a common strategy. First, cases where a single corporate group orchestrates multiple merits stage claims (*Orascom*, *Ampal*). Second, the hypothetical—but doctrinally salient—scenario of a common funder coordinating a portfolio of merits stage claims across States or measures. Third, enforcement stage vehicles like Blasket that acquire awards and then run coordinated enforcement campaigns. The legal labels differ (investor, funder, assignee), but the underlying question is the same: how far can one economic actor leverage ISDS's one-way architecture, out of view, to concentrate financial pressure on a State for the regulatory choices it has made?

Two of those three—merits-stage funders and post-award enforcement specialists—are best understood as versions of one phenomenon, not because their contractual roles are identical but because the risks they create for States and for regulation are. In both models, a third party with no stake in the host economy acquires an economic interest in the proceeds of claims against a State—whether by financing the arbitration, buying the award, or both—and then coordinates arbitration and enforcement across jurisdictions. The doctrinal tools that exist to police privity of interest and abuse of process are indifferent to whether that common actor enters before or after the award; the harm is the same: multiple proceedings, concentrated pressure, and opaque repeat play.

3.1 Orchestrated Claims Within a Single Corporate Group

Claimants have long sought to multiply proceedings over the same harm, splitting a single economic interest across corporate vehicles to bring overlapping claims. Tribunals have responded only occasionally, drawing on abuse of rights and *res judicata* doctrine to prevent multiple recoveries for the same harm. Two decisions mark out the doctrine. The point of recalling these cases, however, is not to credit the tribunals; it is to show that these tools have been used in the past.

In *Orascom v. Algeria*, the tribunal held that orchestrating multiple arbitrations through entities in a single vertical corporate chain—all challenging the same Algerian measures—constituted an abuse of rights that rendered the ISDS claim inadmissible. The tribunal stressed that "the initiation of multiple proceedings to recover for essentially the same economic harm" would betray the purposes of investment treaties—even though "the parties to the dispute and the legal bases for the claims … are different."[84] In *Ampal-American v. Egypt*, the same parties in interest pursued overlapping claims over the same harm through two parallel proceedings under different instruments; the tribunal held that running both in parallel "crystallized" an abuse of process and required the claimants to elect a single forum.[85]

3.2 The Common-Funder Portfolio: A Doctrinally Salient Hypothetical

The doctrinal tool exists, but no published ISDS award appears to extend privity of interest or abuse of process reasoning to common-funder situations. The structural logic, however, is or should be the same. If different claimants under different treaties are financed and effectively steered by the same funder against the same State, or against the same category of measures across several States, the underlying mischief is identical—a single economic actor is coordinating multiple proceedings—only displaced one level back. What stops the doctrine from reaching it is not a limit in the doctrine but a fact about the regime: the funder is usually invisible, so the State can never assemble the facts the doctrine would require. The strategic goal need not even be to win. The credible threat of cumulative liability can be enough to chill regulation, and the actual recovery, where awards land, is a further gain.

Because the regime makes the real version impossible to see, the case has to be put hypothetically. Suppose a funder—whether built around fossil-fuel interests or acting for a principal whose business model depends on continued resource extraction—takes the view that the climate policy measures now being adopted across jurisdictions, such as phase-out timelines, methane rules, and permit revocations, are themselves the problem to be arbitrated. It funds a portfolio of claims brought by formally independent investors against States adopting those measures, some targeting the same type of measure across multiple States, others targeting sequential measures within a single jurisdiction. Each claim, viewed alone, looks like an ordinary investor grievance. Viewed whole, the portfolio is a coordinated campaign to make climate regulation prohibitively expensive, or to chill it, by making it rational—especially for resource-strapped States—to abandon or scale back measures rather than defend them. The ultimate funder is never known. The respondent States have no way to see that they face the same adversary, and no tool that would let them treat the campaign as what it is.

A visible version of this dynamic is already familiar. Philip Morris brought near-simultaneous treaty claims against Uruguay and Australia over their tobacco-control measures, and the pendency of those claims is documented to have chilled similar regulation elsewhere, with New Zealand, among others, delaying comparable legislation pending the outcomes. An industry actor with the resources and the stake to do so could target the same category of regulation across jurisdictions in its own name. The objection was never that the coordinating actor is hidden. It is that the machinery of arbitration is marshalled to serve one actor's political, economic, or ideological preference about which regulations survive—and funding allows a funder to do the same thing *and* do it out of public view.[86]

No public case has confronted a common-funder pattern of this kind on the merits—either because no such pattern exists, or, more plausibly, because nothing in the regime would make one visible. The choice between those two explanations is one the regime has arranged for us to be unable to make. The vast majority of ISDS claims to date have been arbitrated with no funding disclosure obligation at all. The 2022 ICSID Arbitration Rules require a funded party to name the funder and those who "own and control" it, but that disclosure does not extend to the public, and it is neither verified nor extended to the funder's other cases against the same State. Nor do tribunals coordinate their deliberations across related claims. The pattern is therefore possible because nothing forbids it and hidden because nothing requires it to be made public—the exploitation of the system that Frank Garcia has described.[87]

3.3 What Becomes Visible at Enforcement: Blasket

While this merits stage version stays out of view, an enforcement stage version makes the same architecture visible and immediate. Blasket Renewable Investments LLC offers a contemporary window into what fund-driven litigation may look like in practice. The window is partial, and the partiality is itself part of the point.

Blasket's own court filings disclose only one layer. Its corporate disclosure statement identifies it as a Delaware LLC, registered to a corporate nominee address in Wilmington.[88] Its sole managing member, Trinity Investments DAC, holds 60%, with the remaining 40% held by Blasket Investments DAC,[89] both Irish special purpose vehicles, and states that no publicly held corporation owns more than 10% of Blasket. The statement goes no further. Trinity's audited 2024 financial statements, a separate source, identify Attestor Limited, a London-based investment manager running a distressed-debt and special-situations strategy with a European focus, as Trinity's investment manager.[90] Even at that layer, it remains unclear whether the fund is operating on its own account or as a vehicle for another principal; for example, as a third-party litigation funder, one of the original claimants restructured, a strategic investor, or someone else whose identity the public record does not reveal. The ultimate investors in the Attestor fund are not publicly known, and the broader corporate architecture beyond that layer is outside the scope of this paper. What is clear is Blasket's apparent sole purpose is to enforce multiple renewable energy awards against Spain across multiple jurisdictions.

By assignment, Blasket has stepped into the shoes of the original award creditors in the Spanish renewable energy disputes, which arose from Spain's rollback of its incentives scheme that had attracted significant investment from 2007 onward.[91] The assignors disclose only that their transactions were concluded with an "unaffiliated financier" under a "Funded Participation Agreement."[92] The campaign has been fought across Australian,[93] English,[94] and Dutch[95] courts, with proceedings still ongoing in the United States;[96] the consolidated awards in Australia alone amount to approximately €500 million.[97]

What makes this campaign more than the sum of its parts is the moment it was assembled. The original claimants assigned their interests to Blasket while Spain's enforcement opposition was pending[98]—that is, mid-litigation, with the *Achmea*/*Komstroy* defense and the European Commission's intra-EU State aid framework actively in play.[99] Whatever the precise motivations, this arrangement has at least two structural consequences. It consolidates enforcement in jurisdictions that are not likely to be receptive to the EU law objections that would have travelled with the original EU claimants. The federal courts in the United States, for instance, have so far declined to give those objections effect at the enforcement stage.[100] And it removes the awards from the territorial reach of the European Commission's State aid clawback regime, under which payment of an intra-EU award has been treated as unlawful State aid since the Commission's *Micula* and related decisions.[101] On the most likely reading of the public record, the original claimants exited at a discount and the financier behind Blasket assumed—and now arbitrages—the residual risk; though, with beneficial ownership undisclosed, the possibility that the original claimants continue to control Blasket through the assignment structure cannot be ruled out.

Two cautions are needed before drawing the doctrinal inference. First, there is no publicly available evidence that Blasket, or whoever stands behind it, was involved in the original arbitrations or whether it acquired its position only after the awards were rendered. Second, the doctrinal tools developed in *Orascom* and *Ampal* police admissibility at the merits stage and are not directly applied in the enforcement forums where Blasket appears. From the respondent State's perspective, though, the distinction makes little practical difference. Whether a third-party finances the original arbitration or acquires the award afterward, an actor with no stake in the host economy has converted sovereign liability into an asset and can coordinate pressure across multiple proceedings and jurisdictions.

The point here is therefore not that courts have already recognized a 'Blasket-type' portfolio as an abuse of process, but that the same architecture of opacity and concentrated pressure exists at enforcement and could in principle operate, unseen, at the merits stage as well. If a single well-resourced vehicle is openly assembling a portfolio of coordinated enforcement actions against one State over one set of measures, with the identity of its principal undisclosed or undiscoverable from public records, there is no reason to assume the same logic was not at work at the merits stage in some portion of the more than 50 ISDS cases that Spain faced over the same reforms.[102] We simply cannot know. The disclosure rules under which those cases were arbitrated were not designed to tell us. And the costs of that arrangement fall not on the parties to the arbitration but on the public on whose behalf the contested measures were taken.

The doctrine of privity of interest exists in principle; the opacity of the funding and assignment model keeps it out of reach in practice. A respondent State that wishes to argue, in the merits phase, that two formally unrelated claimants are in privity through a common funder must first establish facts the regime gives it no tools to find. A respondent State that wishes to argue, at the enforcement stage, that an opaque assignee should not be entitled to invoke the full machinery of ICSID enforcement must do so under domestic procedural rules that vary by jurisdiction, with no coordinated international answer.

THE DISTRESSED-DEBT PARALLEL

The pattern described in this section—financial actors with no stake in the host economy acquiring a State's liabilities at a discount and then pursuing full recovery—is already familiar from the market for distressed sovereign debt. After a default, specialized funds buy government bonds cheaply, refuse restructuring, and litigate for payment of the full face value.[103] NML Capital, an Elliott Management affiliate (run by US billionaire Paul Singer), became the best known example after buying defaulted Argentine bonds, securing far reaching injunctions in New York, and ultimately settling in 2016 for around USD 4.65 billion, a multiple of its purchase price.[104] Elliott had used similar strategies earlier against Peru and Congo.[105]

The debt and ISDS worlds also intersect in a more direct way. Sovereign bonds have themselves been treated as "investments" in treaty arbitration, most notably in *Abaclat and Others v. Argentina*, where the tribunal accepted jurisdiction over claims by Italian bondholders, and in *Ambiente Ufficio v. Argentina*, which followed a similar path.[106] In response, some investment treaties have excluded sovereign debt from the definition of a covered investment.[107] The same funds and law firms often move across both markets. The concentration strategy described earlier—assembling a portfolio of claims against a single State so the cost of political pressure can be spread across the whole—has a direct analogue in the debt market, where a fund's acquisition of one debtor's obligations turns diffuse creditor pressure into a single coordinated campaign, much like Blasket's.

Enforcement also moves beyond courts and arbitral tribunals. A funder whose only asset is the award or government bond has stronger incentives to use lobbying and diplomatic leverage than an operating investor with a long-term project in the host State. In Argentina's case, holders of unpaid ICSID awards—including Blue Ridge Investments, a Bank of America subsidiary that had bought the *CMS Gas Transmission v. Argentina* award on the secondary market[108]—successfully urged the United States to suspend Argentina's trade preferences and to oppose loans at the World Bank and InterAmerican Development Bank until payment was made.[109] A comparable dynamic was visible within Argentina itself. While NML pursued the bond litigation in New York, Paul Singer funded a years-long campaign against the Kirchner government through the American Task Force Argentina; after right-wing Mauricio Macri took office, his government settled with the holdout creditors, and Singer's fund recovered a multiple of what it had paid for the bonds.[110]

In each instance, the award or bond operates as an instrument of economic and political leverage in the hands of whoever owns it, and actors whose business is recovery alone have the strongest incentive to wield it. That is why the analogy matters. Whether the asset is a bond, a treaty award, or a funded claim, the logic is the same: an actor with no developmental stake acquires sovereign liability at a discount, concentrates pressure across legal and political forums, and turns the State's exposure into yield. ISDS does not depart from that model; it supplies another market in which it can operate.

3.4 The Architecture, Not the Actors

None of this is malfunction. The lack of disclosure rules permit the system to operate outside public view, and that is what they were built to do. Defenders of the ISDS regime—many of them also defenders of TPF in ISDS—insist that disclosure of funding arrangements is properly limited to conflict-of-interest challenges and security for costs applications, and that broader disclosure would be intrusive, commercially sensitive, and chilling of legitimate investment.[111] That framing tells us who the regime is built to serve. Disclosure is "intrusive" only if the parties whose business model depends on its absence are the ones whose interests count; the respondent States whose regulatory measures gave rise to the claims and whose treasuries pay the awards do not enter the calculation.

In the end, the problem is the foundation, not the players. A system in which a single economic actor—disclosed or undisclosed, commercial or politically motivated—can coordinate a portfolio of formally independent claims against one State over one set of measures, while giving that State neither the visibility nor the tools to respond, cannot credibly claim to be a neutral arbiter between investors and sovereigns. And the logic does not stop at investment treaties; it reaches any forum in which funded claims against States can be traded as assets and enforced across borders, as the Sulu saga shows in its starkest form.

FUNDING, COLONIAL CLAIMS, AND THE SULU SAGA

The Sulu saga arose outside the investment treaty context. However, it follows the same funded enforcement logic to its most extreme conclusion: a colonial era deed, dormant for decades, becomes a multi-billion-dollar asset once a funder is willing to bankroll the gamble. In *Heirs of the Sultan of Sulu v. Malaysia*, eight Filipino claimants describing themselves as heirs of the last Sultan of Sulu pursued Malaysia under a private deed signed in 1878 (rather than an investment treaty). By that deed, the Sultan granted territory in present-day Sabah to agents of what became the British North Borneo Company.[112] The instrument of consent was a colonial-era grant whose operative word, "pajak," the claimants read as a perpetual lease and Malaysia read as a cession of sovereignty. Malaysia and its predecessors had paid the heirs a token annual sum until those payments stopped in 2013. When the heirs sought arbitration, they relied on a clause referring disputes to a British colonial official whose office had ceased to exist in 1963.[113]

None of it would have proceeded without outside money. The London- and Jersey-based funder Therium financed the claim across nine successive rounds, at a reported cost exceeding USD 20 million, covering counsel and researchers across multiple jurisdictions.[114] That capital carried the claim through every stage, including the appointment of a sole arbitrator by a Spanish court, a preliminary award, and, after the Madrid High Court annulled the arbitrator's appointment and ordered the proceedings closed, their continuation in Paris under the same arbitrator. In February 2022, he issued a final award of USD 14.92 billion, widely reported as the second largest in the history of arbitration.[115]

The award then became an asset to be enforced. The heirs pursued Malaysian State property abroad, obtaining seizure orders in Luxembourg against two units of Malaysian State oil firm Petronas and attempting to attach diplomatic premises in Paris.[116] The courts have since unwound the award at every level. The Paris Court of Appeal stayed enforcement, refused to recognize the preliminary award, and annulled the final award for want of jurisdiction; the French Cour de cassation and the Dutch Supreme Court reached the same conclusion.[117] In Spain, the arbitrator was criminally convicted of contempt for continuing after his appointment had been annulled.[118]

The funder did not emerge intact. Therium has since wound down its litigation funding business, transferred its portfolio to a US investment group, and relaunched as an advisory firm, and it now faces a conspiracy claim in Jersey brought by the Petronas subsidiaries whose assets were targeted.[119] It has framed its exit as a commercial decision, and the claim against it remains unresolved.

What the saga exposes is not a defect peculiar to one funder or one arbitrator. It is the logic traced throughout this report, followed to its end. A contested colonial grant, effectively dormant for more than a century, was repackaged as a multi-billion-dollar financial instrument at least partly because a funder was willing to underwrite the wager and a forum was willing to entertain it. While the treaty framing was absent, the structure was familiar. A sovereign act was recast as an asset class, a State's liability was priced as yield, and the public was left to bear the cost long after the financiers had moved on.

Conclusion: The Case Against the System, Not Just Its Financiers

The three tensions discussed in this brief—the gap between the development these treaties promise and the actors they actually reward; the use of funding to enable non-investors and post-dispute acquirers to capture the ISDS mechanism; and the way opacity allows a single actor to coordinate claims and enforce awards across jurisdictions, at the merits stage and after, without the respondent State ever seeing the hand behind them—are more than a critique of an industry. They are a diagnosis of a regime. Across all three, funding does the same thing: it shows what ISDS already rewards. The development the treaties advertise was never a condition of recovery; non-investors can drive and profit from claims; the asymmetry is there to be industrialized; the opacity is there to hide behind. The communities who bear the consequences are kept out, while public money flows to financiers who bear none of the risk.

The defense of this market—made, for instance, by Professor Kathleen Claussen—is that trading treaty claims is neither barred by investment treaties nor at odds with their aims, and that the secondary market does useful work, like supplying liquidity, letting smaller investors recover, and aligning enforcement with the aims of investment law.[120] The cases here suggest the opposite, and Claussen's own premises help explain why. That treaties nowhere prohibit the trade, and in their subrogation clauses appear to contemplate claims changing hands, is the brief's point, not an answer to it.[121] A regime that treats a sovereign's liability as freely alienable has already accepted its own commodification, and the absence of a prohibition reflects who drafted these instruments and for whom. The promise that trading widens access to justice assumes what is in dispute: the "access" on offer runs only to those holding a marketable claim against a State—investors and the financiers who buy them out—not to affected communities, who have no claim to sell and, as the amicus cases show, often cannot be heard at all. What the market mostly does is convert sovereign regulatory judgments into tradable assets, managed by parties—like the undisclosed owner behind Blasket—who were never in the host country and bear none of its development risks. *LARAH* and *Teinver* show how the "original investor" rationale dissolves the moment an investment is acquired for its litigation value alone.

It is tempting to treat all of this as a regulatory problem—disclosure rules, caps on returns, a tighter investor definition. Each reform might help at the margin, but it treats the symptom and leaves the disease. Third-party funding did not break a working system; it found one already built this way and made the most of it. Every harm traced in this paper is a sharper version of a flaw already in ISDS—the one-way access, the indifference to the public interest, the treatment of sovereign acts as tradable risk. The funding industry has, in effect, run a market test of ISDS, and the verdict is that the system's most valuable feature is its capacity to turn State liability into private yield. A mechanism that does that so well, and serves its public purpose so poorly, does not need a better disclosure or regulation rule. It needs to be reconsidered as a whole.

Endnotes

1 Jérôme Saulnier, Klaus Müller, and Ivona Koronthalyova, Responsible Private Funding of Litigation: European Added Value Assessment (European Parliament Research Service, March 2021), pp 1-2. The clearest recent illustration (outside the investment context) is *Bates and Others v. Post Office Ltd*, the English group litigation in which more than 550 sub-postmasters wrongly pursued over shortfalls generated by the Horizon accounting system were able to bring their claim only because the litigation funder Therium financed it against a far better-resourced institutional opponent. See Alan Bates, "Our Post Office victory is being twisted by those who don't want to see its like again," *The Guardian Opinion* (10 May 2024). Even there the double edge is apparent: of the £57.75 million settlement, the larger share went to the funder and legal costs, leaving the individual claimants relatively little—approximately £12 million to share, or £20,000 each. See "Settlement disagreement," *Post Office Trial* (21 April 2021); "The Post Office scandal's far-reaching impact on litigation funding," *The Global Legal Post* (3 May 2024). So, while funding opened the courtroom door for the claimants, it did not necessarily deliver full redress. This also shows that access and justice are not necessarily the same thing.

2 For more on this topic, see Frank J. Garcia in "The Case Against Third-Party Funding in Investment Arbitration," *IISD Investment Treaty News* (July 2018); and Tara Santosuosso and Randall Scarlett, "Third-Party Funding in Investment Arbitration: Misappropriation of Access to Justice Rhetoric by Global Speculative Finance," 60 *Boston College Law Review* (2019) I.-8.

3 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 18.

4 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 18; Principles Governing the Third-party Funding of Litigation (European Law Institute, December 2024), p 12.

5 Brooke Güven and Lise Johnson, "The Policy Implications of Third-Party Funding in Investor-State Dispute Settlement" (CCSI Working Paper, 2019), p 3; Victoria Sahani, Mick Smith, and Christiane Deniger, "Third-Party Financing in Investment Arbitration," in Christina L. Beharry (ed) *Contemporary and Emerging Issues on the Law of Damages and Valuation in International Investment Arbitration* (Brill Nijhoff, 2018) 27 at p 34.

6 Principles Governing the Third-party Funding of Litigation (European Law Institute, December 2024), p 14; and Victoria Sahani, Mick Smith, and Christiane Deniger, "Third-Party Financing in Investment Arbitration," in Christina L. Beharry (ed) *Contemporary and Emerging Issues on the Law of Damages and Valuation in International Investment Arbitration* (Brill Nijhoff, 2018) 27 at p 32.

7 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 20.

8 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 20.

9 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 20. See also, Christopher Bogart, the co-founder and CEO of Burford Capital, in "Third-Party Financing of International Arbitration," *The European Arbitration Review 2017* (14 October 2016) ("In some instances of arbitration finance, outside funding is necessary for a claim to proceed at all and for justice to be obtained, as in the case of an impecunious claimant or one facing liquidity or budgetary challenges. This is the most discussed form of arbitration finance because it is the simplest and easiest to understand, but it is increasingly the case that more complex arrangements are becoming the norm, with companies using external capital out of choice, not necessity: moving cost and risk off corporate balance sheets has, after all, far better outcomes for accounting issues, risk management and financial reporting").

10 Brooke Güven and Lise Johnson, "The Policy Implications of Third-Party Funding in Investor-State Dispute Settlement" (CCSI Working Paper 2019), pp 13-14.

11 Primer On International Investment Treaties and Investor-State Dispute Settlement (CCSI, December 2021).

12 Frank J. Garcia, "The Case Against Third-Party Funding in Investment Arbitration," *IISD Investment Treaty News* (July 2018). Garcia further states that "[t]he structural deficits of the [bilateral investment treaty]/ISDS regime are not irrelevant to the TPF phenomenon, but in fact help drive the TPF funding model and make investment arbitration a very attractive investment market." See Frank J. Garcia, "Third-Party Funding as Exploitation of the Investment Treaty System," 59 *Boston College Law Review* (2018) 2911 at p 2913.

13 Frank J. Garcia, "Third-Party Funding as Exploitation of the Investment Treaty System," 59 *Boston College Law Review* (2018) 2911 at p 2913; Maya Steinitz, "Whose Claim Is This Anyway? Third-Party Litigation Funding," 95 *Minnesota Law Review* (2011) 1268 at pp 1283-1285.

14 An early and influential illustration is *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016). Crystallex, a Canadian company holding rights to the Las Cristinas gold deposits, brought a claim under the Canada–Venezuela BIT after Venezuela denied an environmental permit and terminated its contract. Once insolvent, it financed the arbitration through a court-approved debtor-in-possession auction won by Tenor Capital Management, which committed an initial USD 36 million for 35% of the net proceeds—a share that later rose toward 70%, together with two seats on Crystallex's board. See *Crystallex International Corporation (Re)*, 2012 ONCA 404 (13 June 2012), paras 6, 28. The tribunal awarded approximately USD 1.2 billion plus interest to the claimant. Tenor is the same funder that recurs, through different vehicles, behind the *Eco Oro, Gabriel Resources*, and *LARAH* cases described in this paper; *Crystallex* is where that pattern begins. Its enforcement is taken up in fn 97.

15 See for e.g., Tony Marzal, "Quantum (In)Justice: Rethinking the Calculation of Compensation and Damages in ISDS," 22 *Journal of World Investment & Trade* (2021) 249; Martins Paparinskis, "Crippling Compensation in the International Law Commission and Investor–State Arbitration," 37(1-2) *ICSID Review - Foreign Investment Law Journal* (2022) 289; and "Compensation and Damages in Investor-State Dispute Settlement Proceedings," *UNCTAD IIA Issues Note* (September 2024).

16 Victoria Sahani, "Reshaping Third-Party Funding," 91 *Tulane Law Review* (2017) 405 at p 453; Maya Steinitz, "Whose Claim Is This Anyway? Third-Party Litigation Funding," 95 *Minnesota Law Review* (2011) 1268 at p 1286.

17 "Emerging approaches to the regulation of third-party funding," *Norton Rose Fulbright Global Publication* (October 2017); Jern-Fei Ng, "The Role of the Doctrines of Champerty and Maintenance in Arbitration," *Mondaq* (12 July 2010).

18 Third-party funding agreements that vest the funder with control over strategy, settlement, and/or the conduct of the proceeding implicate precisely the concern animating the maintenance and champerty doctrines, i.e., that "the true controller of that side of the case [is] beyond the court's direct control." See Maya Steinitz, "Whose Claim Is This Anyway? Third-Party Litigation Funding," 95 *Minnesota Law Review* (2011) 1268 at pp 1288–89 (quoting *Campbells Cash & Carry Pty. Ltd. v. Fostif Pty. Ltd.* (2006) 229 CLR 386, 487 (Austl.) (Callinan & Heydon, JJ., concurring)). See also *id.* at pp 1286, 1299, 1327 (identifying the "fears that third parties could effectively control litigation" as a core rationale for the prohibition). Steinitz ultimately argues these control concerns can be managed through regulation rather than prohibition; see *id.* at pp 1325–1335, but her account of the doctrine's animating rationale stands independent of that normative conclusion.

19 Canada and the Republic of Cameroon BIT (2014), Preamble ("Recognizing that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between them and to the *promotion of sustainable development*"); UK and Colombia BIT (2010), Preamble ("Recognising the need to promote and protect foreign investments with the aim to stimulate individual business initiative and to *foster the economic prosperity of both Contracting Parties*"); Netherlands and Armenia BIT (2005), Preamble ("Recognising that agreement upon the treatment to be accorded to such investments will *stimulate the flow of capital and technology and the economic development of the Contracting Parties* and that fair and equitable treatment of investments is desirable"); Republic of Korea and Trinidad and Tobago BIT (2002), Preamble ("Recognizing that the promotion and protection of investments on the basis of this Agreement will be conducive to the stimulation of individual business initiative and *will increase prosperity in both States*"); United States of America and Rwanda BIT (2008), Preamble ("Recognizing that agreement on the treatment to be accorded such investment will stimulate the flow of private capital and the *economic development of the Parties*").

20 *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Award (21 July 2017), para 197.

21 *Teinver v. Argentina*, ICSID, ICSID Case No. ARB/09/1, Award (21 July 2017), para 1147. This total includes USD 3.5 million in costs that the Respondent had to contribute toward the claimants' legal and other costs, on top of the compensation awarded to the claimant, USD 320,760,000.

22 Burford Capital Reports Favourable Investment Result, *Burford News Details* (24 July 2017).

23 Burford Capital Reports Favourable Investment Result, *Burford News Details* (24 July 2017).

24 Burford sells Teinver investment for $107 million, a 736% return, *Burford News & Press Releases* (11 October 2019).

25 Emily Slater, "Getting to "yes": What lawyers need to know about Burford's litigation finance diligence process," *Burford Insights & Research* (23 October 2019); Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), pp 6, 18-20.

26 Kathleen Claussen, "The International Claims Trade," 41 *Cardozo Law Review* (2020) 1743 at pp 1789-1795. Funders themselves describe selling claim interests before a matter resolves. Burford Capital, the largest commercial litigation funder, states in its 2025 Annual Report that, in a small number of permitted matters, it has made a secondary sale of all or a portion of an asset prior to its conclusion and reports more than USD 350 million in secondary transactions to date. See Burford Capital 2025 Annual Report (Form 10-K) for the fiscal year ended 31 December 2025, "Asset monitoring and realizations" and Shareholder letter, as well as Glossary, defining "Colorado" as a vehicle established for the secondary sale of part of Burford's entitlement in the YPF/Petersen matter.

27 For a worked example of the price such a sale can realize, see the *Teinver* case above.

28 Report of the ICCA–Queen Mary Task Force on Third-Party Funding in International Arbitration, *The ICCA Reports No. 4* (April 2018), p 25. See also, for the sharper claim that funders' valuation and gain-recognition practices may overstate realized returns and weaken any link between funder incentives and claim merit: Muddy Waters Capital, "Burford Capital Limited (BUR LN)" (7 August 2019) (a short seller's analysis of Burford's balance sheet; Burford, however, disputed the report's methodology and conclusions).

29 The disclosure obligation introduced in the 2022 ICSID Arbitration Rules will not cure this. See ICSID Arbitration Rules, Rule 14 (1 July 2022). TPF disclosure under Rule 14 is made to the tribunal and the respondent State for conflict-screening, not to the public, and neither is placed to build a picture of funder involvement across the industry. The rule is in any event prospective, ICSID-specific, and limited to the funder's name and address, and the immediate owner, where the third-party funder is a juridical person.

30 Lisa Bohmer, "Analysis: Arbitrators in Eco Oro v. Colombia environmental mining ban dispute disagree on police powers and scope of minimum standard of treatment in Canada-Colombia FTA; majority finds MST breach, and decides that general exceptions do not relieve Colombia from its duty to pay compensation," *IAReporter* (16 September 2021).

31 Lorenzo Cotula and Nicolás M. Perrone, "Seeing Santurbán through ISDS: A sociolegal case study of Eco Oro v. Colombia," 37(2) *Leiden Journal of International Law* (February 2024) 440.

32 *Eco Oro Minerals Corp. v. The Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021), para 678 ("*Eco Oro Decision*"). This included the Constitutional Court's recognition of a duty to protect the páramo and to apply the precautionary principle as early as 2002 (Colombian Constitutional Court, Judgment C-339/02 (7 May 2002); Colombian Constitutional Court, Sentencia T-666 (15 August 2002)); *Eco Oro Decision*, Annex A, p 3/36); a 2010 reform to the mining code confirming that mining could be prohibited in the páramo (*Eco Oro Decision*, Annex A, p 6/36); mapping by a State research institute establishing that the páramo overlapped with more than half of Eco Oro's concession (*Eco Oro Decision*, paras 91, 105); and a 2014 resolution that formally adopted that delimitation (*Eco Oro Decision*, para 154). General prohibition notwithstanding, legislation had carved out exceptions that allowed certain mining projects to continue with their operations despite being located in a páramo (*Eco Oro Decision*, paras 154, 158). In 2016, however, the Constitutional Court struck those exceptions down (Constitutional Court of the Republic of Colombia, Sentencia C-035/16 (8 February 2016); Sentence C-035/16 of the Constitutional Court of Colombia (*Alberto Castilla et al v. Colombia*) (8 February 2016), Environmental Law Alliance Worldwide); and separately struck down the government's own delimitation of the páramo's boundaries for lack of public consultation (Constitutional Court of the Republic of Colombia, Sentencia T-361/17 (30 May 2017). The Constitutional Court declared Resolution 2090 legally ineffective because local communities and affected parties were not adequately consulted during the drafting process. See *Eco Oro Decision*, Annex A, p 30/36. The decision, however, indicated that any new delimitation could not afford a lower level of environmental protection than what had been provided in Resolution 2090).

33 Lorenzo Cotula and Nicolás M. Perrone, "Seeing Santurbán through ISDS: A sociolegal case study of Eco Oro v. Colombia," 37(2) *Leiden Journal of International Law* (February 2024) 440.

34 "Ombudsman finds the IFC failed to comply with its investment standards in Colombia," *CIEL Blogpost* (1 September 2016); *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021), para 168; World Bank divests from Eco Oro Minerals and mining project in Colombian Páramo (*AIDA*, 19 December 2016).

35 *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021), paras 169, 223; *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Declaration on Costs of Professor Philippe Sands KC (4 April 2024), para 10; Eco Oro Minerals Corp., "Eco Oro Minerals Announces Board Appointment" (Press Release, 26 July 2016); Eco Oro Minerals Corp., "Material Change Report" (22 July 2026) (accessed through sedar.ca).

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37 *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 September 2021), para 872.

38 Matthew Hodgson, Yarik Kryvoi, and Daniel Hrcka, "2021 Empirical Study: Costs, Damages and Duration in Investor-State Arbitration," *BIICL and Allen & Overy* (June 2021), p 4.

39 *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Declaration on Costs of Professor Philippe Sands KC (4 April 2024).

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41 *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Application for Annulment (30 July 2025).

42 Eco Oro Minerals Corp., "Eco Oro Seeks Annulment of ICSID Tribunal Decision on Damages and Announces US$45 Million Financing" (Press Release, 31 July 2025) (accessed through sedar.ca).

43 Jen Moore, Ellen Moore, and Carla García Zendejas, "Third-party funder is the only winner in Odyssey Marine Exploration's suit against Mexico," *CIEL Blogpost* (21 October 2024).

44 *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Memorial de Contestación (February 23, 2021), para 58.

45 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Memorial de Contestación (February 23, 2021), paras 58-63.

46 Jen Moore, Ellen Moore, and Carla García Zendejas, "Third-party funder is the only winner in Odyssey Marine Exploration's suit against Mexico," *CIEL Blogpost* (21 October 2024).

47 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Claimant's Memorial (4 September 2020), para 357.

48 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Award (17 September 2024), para 821.

49 "Odyssey Marine Exploration Reports Win in NAFTA Arbitration Case" (Odyssey Marine Exploration Press Release, 17 September 2024).

50 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Memorial de Contestación (23 February 2021), paras 58-63.

51 See the shortcomings of amicus briefs in Ladan Mehranvar, with Jessica Hennings, Robin Marie Kelly, Lena Raxter, and Ana Toimil, "How the International Investment Law Regime Undermines Access to Justice for Investment-Affected Stakeholders" (CCSI, January 2024), pp 16-24; and Nathalie Bernasconi, Martin Dietrich Brauch, and Howard Mann, "Civil Society and International Investment Arbitration: Tracing the Evolution of Concern," in Thomas Schultz and Federico Ortino (eds) *The Oxford Handbook of International Arbitration* (Oxford University Press, 2020) 304.

52 ICSID Arbitration Rules, Rule 14 (1 July 2022).

53 See Christina L Beharry, "Herzig v Turkmenistan Requests for Security for Costs in ICSID Arbitrations Involving Third-Party Funded Insolvent Claimants," 36(1) *ICSID Review* (2021) 14 (discussing security for costs in ISDS cases involving insolvent, third-party funded claimants whose funding agreements disclaim liability for adverse costs awards, leaving successful States unable to recover their defense costs).

54 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Joint application seeking authorization for the Sociedad Cooperativa de Producción Pesquera Puerto Chale S.C.L. and the Center for International Environmental Law to act as amicus curiae in Arbitration proceedings Odyssey Marine Exploration, Inc. v. United Mexican States (12 October 2021).

55 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Procedural Order No. 6 (20 December 2021), paras 18-19.

56 *Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, La Puya's Request for Amicus Curiae Submission (23 October 2019) and Petition for Amicus Submission (29 June 2020).

57 *Kappes v. Guatemala*, ICSID Case No. ARB/18/43, Procedural Order No. 2 (7 November 2019) and Procedural Order No. 5 (5 February 2021).

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59 The organizations in the petition to file an amicus submission included Comité Santurbán, the Center for International Environmental Law (CIEL), the Asociación Interamericana para la Defensa del Ambiente (*AIDA*), MiningWatch Canada, the Institute for Policy Studies (IPS) and the Centre for Research on Multinational Corporations (SOMO). See *Eco Oro v. Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6 (18 February 2019).

60 *Odyssey v. Mexico*, ICSID Case No. UNCT/20/1, Procedural Order No. 6 (20 December 2021), para 18.

61 *Silver Bull Resources, Inc. v. United Mexican States*, ICSID Case No. ARB/23/24, Procedural Order No. 6 (22 September 2025), para 14.

62 Silver Bull Provides Update on Its Arbitration Case against Mexico and Voting Results of the Annual Meeting of Shareholders, Silver Bull Resources, Inc., News Release (16 April 2026); Silver Bull Resources Announces Dismissal Of Its NAFTA Claim Against Mexico On Jurisdictional And Time Limitations, Silver Bull Resources, Inc., News Release (1 June 2026).

63 *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Procedural Order No. 19 (7 December 2018), paras 58, 60.

64 Gabriel Resources Ltd, Material Change Report, Form 51-102F3 (5-14 July 2016) (accessed through sedar.ca).

65 Closing of Private Placement, Gabriel Resoucres Ltd Press Release (14 July 2016). The funder's identity is drawn from Gabriel's own public disclosures rather than the arbitral record. Indeed, even the annulment documents remain conspicuously vague on the point: neither the identity nor, in any express way, the very existence of a third-party funder is named, the proceedings referring only obliquely to the claimant's "financial sources." See *Gabriel Resources v. Romania*, ICSID Case No. ARB/15/31, Annulment Proceeding, Decision on Stay of Enforcement of the Award (21 January 2025), para 38 ("Furthermore, the same financial sources that funded the Applicants during arbitration remain available").

66 Gabriel Resources Ltd, Press Release (29 July 2016) (accessed through sedar.ca).

67 *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Procedural Order No. 5 (22 February 2018), para 54.

68 *Infinito Gold v. Costa Rica*, ICSID Case No. ARB/14/5, Decision on Jurisdiction (4 December 2017), para 30.

69 *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award (15 April 2009), paras 93, 142.

70 *Phoenix Action v. Czechia*, ICSID Case No. ARB/06/5, Award (15 April 2009), para 34.

71 *Phoenix Action v. Czechia*, ICSID Case No. ARB/06/5, Award (15 April 2009), para 144.

72 *Zeph Investments PTE Ltd. v. The Commonwealth of Australia*, PCA Case No. 2023-40, Award (26 September 2025), para 153.

73 *Latin American Regional Aviation Holding S. de R.L. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/19/16, Award (13 February 2024), paras 210, 362. See also Lisa Bohmer, "Analysis: ICSID tribunal finds that Uruguay breached BIT by exacerbating financial difficulties of local airline through inconsistent, imprudent, and irrational conduct," *IAReporter* (15 March 2024); Javier Ferrero Díaz, "PLUNA airlines arbitration fallout: Uruguay's assets targeted In Luxembourg," *ISDS Platform* (18 November 2024).

74 Mauricio Pérez, "De buitres y caballeros," *Brecha* (23 February 2024).

75 "Caballero Verde adquiere la totalidad de las acciones en circulación de Latin American Regional Aviation Holdings S.A.," *Bolsamania* (22 October 2018); Mauricio Pérez, "De buitres y caballeros," *Brecha* (23 February 2024).

76 *LARAH v. Uruguay*, ICSID Case No. ARB/19/16, Award (13 February 2024), para 1223.

77 L. Andrew S Riccio, Emily Brait, and Elizabeth Barbeary, "Aviation in the Americas," *Global Arbitration Review* (18 July 2025).

78 The original investors were the Leadgate partners Matías Campiani, Hugo Sebastián Hirsch, and Arturo Álvarez Demalde, who acquired control of Pluna in 2007. The tribunal awarded compensation on a sunk costs basis, rejecting a discounted cash flow claim of roughly USD 862 million. See *LARAH v. Uruguay*, ICSID Case No. ARB/19/16, Award (13 February 2024), paras 71-77, 219, 1179; and "Uruguay faces arbitration claim over collapsed airline," *ISDS Platform* (8 November 2018).

79 The Luxembourg enforcement reportedly froze Uruguayan assets across some 37 financial institutions, and Uruguay paid USD 64.3 million in mid-2025. See "Uruguay paid US$64 million after Luxembourg account seizure not disclosed by previous government," *MercoPress* (8 September 2025).

80 "Denial of Benefits in Investment Arbitration," *Aceris Law LLC* (26 June 2022).

81 Loukas Mistelis and Crina Baltag, "'Denial of Benefits' Clause in Investment Treaty Arbitration," Queen Mary University of London, School of Law Legal Studies Research Paper No. 293/2018 (2018), pp 13-18.

82 Loukas Mistelis and Crina Baltag, "'Denial of Benefits' Clause in Investment Treaty Arbitration," Queen Mary University of London, School of Law Legal Studies Research Paper No. 293/2018 (2018), pp 30-31.

83 *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Final Award (26 March 2008), paras 64-65.

84 *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award (31 May 2017), paras 488, 543.

85 *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction (1 February 2016), para 331.

86 *Philip Morris Asia Ltd v. The Commonwealth of Australia*, PCA Case No. 2012-12 (plain packaging legislation), and *Philip Morris Brands Sàrl v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7 (graphic health warnings and single presentation requirements). Both cases were ultimately unsuccessful, on jurisdiction and merits, respectively. An interesting point here is that the case against Uruguay is a mirror image of public interest funding that ran the other way in favor of Uruguay, when Bloomberg Philanthropies helped underwrite the State's defense of its tobacco-control measures.

87 Frank J. Garcia, "Third-Party Funding as Exploitation of the Investment Treaty System," 59 *Boston College Law Review* (2018) 2911.

88 Blasket Renewable Investments LLC was registered as a Delware Limited Liability Company on 14 July 2022, with a Wilmington address.

89 *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130, Brief in Opposition (14 August 2025), p iii.

90 Trinity Investments Designated Activity Company, Financial Statements for the Year Ended December 31, 2024, at pp 2–6 (identifying Attestor Limited, 7 Seymour Street, London, as the Investment Manager; describing the Company as a Section 110 qualifying special purpose company investing primarily in "distressed debt, credit, special opportunities and other opportunistic investments with a European focus"). The financial statements of Blasket Investments DAC are filed as an annex to Trinity's, indicating that both DACs are managed within the same Attestor fund family. See also Lobbyregister des Deutschen Bundestages, Trinity Investments DAC entry.

91 Pablo del Río and Pere Mir-Artigues, "A Cautionary Tale: Spain's solar PV investment bubble" (Spanish National Research Council and University of Lleida, February 2014), p 10.

92 *AES Solar Energy Coöperatief U.A. and Ampere Equity Fund B.V. v. The Kingdom of Spain*, U.S.D.C. D.D.C. Civil Action No. 1:21-cv-03249-RJL, Blasket Reply Brief in Support of Motion to Substitute (6 March 2023), p 2; Sebastian Perry, "US court declines to enforce ECT award against Spain," *Global Arbitration Review* (23 March 2023) (noting Blasket's "ultimate beneficial owner has not been identified").

93 *Blasket Renewable Investments LLC v. Kingdom of Spain*, FCA 1028 (29 August 2025); Blasket Renewable Investments LLC v. Kingdom of Spain (relief), FCA 1469 (26 November 2025); Leon Chung, Kayla Laird, Emily Hunyor, and Alison Cook, "Waiving Goodbye to Immunity: A Case Note on Blasket Renewable Investments LLC v Kingdom of Spain [2025] FCA 1028," *Herbert Smith Freehills Kramer Insight* (18 December 2025). Note that in the Australian enforcement proceedings, two of the judgments (*RREEF and Watkins*) are entered *in favor of*

Blasket Renewable Investments LLC, confirming that the Australian Federal Court has substituted Blasket for the original claimants in those two proceedings as well. The *9REN* and *NextEra* judgments are entered in favor of the original claimants. So, of the four known Australian enforcement actions, Blasket holds two; the others remain with the original parties.

94 Judgment of the High Court of Justice of England and Wales, EWHC 2874 (10 November 2025). The claimants in this case also include Blasket Renewable Investments LLC.

95 *AES Solar and Others (PV Investors) v. The Kingdom of Spain*, PCA Case No. 2012-14, Judgment of the Amsterdam District Court (5 February 2025).

96 *Kingdom of Spain v. Blasket Renewable Investments LLC*, et al., No. 24-1130, On Petition for Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit (5 May 2025). See also, for e.g., reports that Blasket has recently sought to enforce those awards by targeting payments linked to Spain's national football team during the 2026 World Cup, including subpoenas to FIFA, Adidas, Hilton and other commercial partners of the Royal Spanish Football Federation in U.S. courts: "A vulture fund stalking Spain at the World Cup," *Yahoo Finance* (9 June 2026).

97 *Blasket Renewable Investments LLC v. Kingdom of Spain*, FCA 1028 (29 August 2025); *Blasket Renewable Investments LLC v. Kingdom of Spain* (relief), FCA 1469 (26 November 2025). The use of a funded award to reach the assets of State-owned entities across jurisdictions is not new. Its foundational precedent under investment treaties is *Crystallex* (fn 14): once the USD 1.2 billion award was confirmed in the United States, the funded award-holder pursued PDVSA's U.S. assets on the theory that PDVSA was Venezuela's alter ego, securing attachment of the shares behind CITGO and widening the range of sovereign-linked assets exposed to enforcement. See *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380 (D. Del. 2018), affirmed, 932 F.3d 126, 3d Circuit (29 July 2019). The *Blasket* and *LARAH* campaigns operate against that backdrop.

98 *Kingdom of Spain v. Blasket Renewable Investments LLC*, et al., No. 24-1130, Brief in Opposition, (14 August 2025), p 9.

99 The Court of Justice of the European Union held in *Slovak Republic v. Achmea BV*, Case C-284/16, EU:C:2018:158 (6 March 2018), that arbitration clauses in intra-EU bilateral investment treaties are incompatible with EU law, and extended that holding to intra-EU disputes under the Energy Charter Treaty (ECT) in *Republic of Moldova v. Komstroy LLC*, Case C-741/19, EU:C:2021:655 (2 September 2021). The European Commission has separately determined, in a series of decisions beginning with *Micula* and then *Antin*, that any payment by an EU Member State of an intra-EU ICSID award constitutes unlawful State aid under Article 107 TFEU, with the Court of Justice substantially endorsing that approach in *Commission v. European Food SA*; see Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (*Micula*); Commission Decision (EU) 2025/1235 of 24 March 2025 on State aid SA.54155 (Antin); *European Commission v. European Food SA and Others*, Case C-638/19 P, EU:C:2022:50 (25 January 2022).

100 The leading authority is *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088 (D.C. Cir. 2024) (rejecting Spain's argument that EU law deprived Spain of capacity to consent to ECT arbitration with EU investors and holding that the existence of an arbitration agreement under the ECT is sufficient to ground enforcement under the Foreign Sovereign Immunities Act's (FSIA) arbitration exception); rehearing denied 2 December 2024. The D.C. Circuit's reasoning has since been applied in three further D.D.C. decisions issued on 12–14 August 2025 enforcing additional intra-EU ICSID awards against Spain, including in proceedings now styled *Blasket Renewable Investments, LLC v. Kingdom of Spain* (formerly *RREEF Infrastructure v. Spain* and formerly *Infrared Environmental Infrastructure GP v. Spain*). The non-ICSID outlier in the U.S. enforcement record cuts the other way and is instructive: in the *PV Investors* matter, the D.D.C. declined enforcement on a non-ICSID award under the New York Convention on the ground that, under EU law, no valid agreement to arbitrate existed and so the FSIA arbitration exception did not apply. The divergence turns on the near automatic enforceability of ICSID awards as against the broader defenses available to non-ICSID awards under the New York Convention. Spain petitioned the U.S. Supreme Court for a writ of certiorari on 1 May 2025 (*Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130), with petition-stage amicus briefs in support filed on 4 June 2025 by the European Commission on behalf of the European Union, the Republic of Poland, the Republic of Bulgaria, and the Government of Romania. On 6 October 2025, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States. The United States filed its brief on 26 May 2026, recommending denial of certiorari. The brief concluded, however, that this case is a poor vehicle in which to address the underlying FSIA question because Spain would likely lose on remand: under Articles 27 and 46 of the VCLT, "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty," and the EU law objection Spain advances is "precisely what the Vienna Convention forbids." *Kingdom of Spain v. Blasket Renewable Investments LLC*, No. 24-1130, Brief for the United States as Amicus Curiae (U.S. May 26, 2026), pp 17–18. The petition remains pending as of the date of writing.

101 See fn 99.

102 See Ladan Mehranvar and Sunayana Sasmal, "The Role of Investment Treaties and Investor-State Dispute Settlement in Renewable Energy Investments" (Columbia Center on Sustainable Investment, December 2022).

103 For the argument that such conduct is abusive rather than a vindication of the rule of law, see Joseph E. Stiglitz and Martín Guzmán, "Argentina's Griesafault," Project Syndicate (7 August 2014); and UNCTAD, *Principles on Promoting Responsible Sovereign Lending and Borrowing* (2012), especially Principle 7 (creditors facing a debtor clearly unable to service its debts should act cooperatively toward a swift resolution).

104 *NML Capital, Ltd., EM Ltd., v. The Republic of Argentina*, Docket No. 10-4450-cv (L) (30 March 2012); Daniel Bases, Richard Lough, and Sarah Marsh, "Argentina, lead creditors settle 14-year debt battle for $4.65 billion," *Reuters* (1 March 2016).

105 Peter Stone, "This Vulture-Fund Billionaire Is the GOP's Go-To Guy on Wall Street," *Mother Jones* (September/October 2013); "Paul Singer: Vulture Fund Pioneer," *Hedge Clippers* (7 April 2015).

106 *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility (4 August 2011); and *Ambiente Ufficio S.p.A. and others v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility (8 February 2013). See also Josef Ostřanský, "Default Disputes in Investment Arbitration: Jurisdictional Considerations and Policy Implications," 3(1) *Groningen Journal of International Law* (2015) 27; Dimitrij Euler and Giuseppe Bianco, "Breaking the Bond: Vulture Funds and Investment Arbitration," 31(3) *ASA Bulletin* (2013) 558.

107 Livia Hinz, "International investment agreements and sovereign debt: an empirical analysis," 18(3) *Capital Markets Law Journal* (2023) 365.

108 Blue Ridge acquired, through an assignment from the original award holder, the rights to payment under the award in *CMS Gas Transmission Co. v. Argentina*, ICSID Case No. ARB/01/8, Award (12 May 2005), as affirmed in the Decision of the Ad Hoc Committee on the Application for Annulment (25 September 2007). See *Blue Ridge Investments L.L.C. v. The Republic of Argentina*, Case 1:10-cv-00153-PGG, Petition for an Order Confirming Foreign Arbitral Award (8 January 2010).

109 Theodore R. Posner and Marguerite C. Walter, "Abiding Role of State-State Engagement in the Resolution of Investor-State Disputes," in Jean E. Kalicki and Anna Joubin-Bret (eds) *Reshaping the Investor-State Dispute Settlement System* (Brill Nijhoff, 2015) 381 at pp 384-385; GSP 2011 Annual Review: Country Practice Petitions under Review (USTR, 2012); and "US will vote against loans to Argentina in World Bank and IDB," *MercoPress* (29 September 2011).

110 "TIME Lets Billionaire Vulture Fund Head Praise New Argentine President… Who Just Agreed to Pay Him Billions of Dollars," *CEPR* (21 April 2016).

111 For example, see Switzerland's submission on Draft Provision 12: Third-party funding, in the UNCITRAL, Working Group III process: "Compilation of comments received on the draft provisions on procedural and cross-cutting issues (A/CN.9/WG.III/WP.244)" (1 April 2025), p 46/60 ("… Switzerland would like to emphasize that… it is of the view that regulation of Third-party funding should be limited to addressing transparency and disclosure, notably to ensure potential conflicts of interest are avoided or to assess whether security for costs must be provided. Going further might interfere with legitimate contractual relationships"). See also, *South American Silver Ltd. v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Claimant's Opposition to Bolivia's Request for *Cautio Judicatum Solvi* and Disclosure of Information (14 December 2015), paras 38, 40 ("In the interest of transparency and to address Bolivia's concern regarding conflicts of interest, SAS proposes to disclose the name of its Third-party funder. Disclosing the name of that entity alone will enable all parties to determine whether any relationship exists between the relevant parties in this arbitration. Assuming that no relevant relationships exist, there is no need to disclose any further information. […] SAS noted that the terms of SAS's funding agreement are irrelevant to the issues in dispute in this arbitration and that the terms of that agreement are confidential, commercially sensitive, and that SAS and the funder would incur prejudice if the Tribunal ordered SAS to disclose the terms of the funding agreement").

112 For the 1878 deed and the dispute's background, see Muhammad Syed, "Untangling Colonial Thorns: Heirs to the Sultanate of Sulu v. Malaysia," *EJIL: Talk!* (2 February 2026); Jason Santos, "The invalid Sulu claim over Sabah: a historical explanation," *The Vibes* (13 March 2022).

113 Muhammad Syed, "Untangling Colonial Thorns: Heirs to the Sultanate of Sulu v. Malaysia," *EJIL: Talk!* (2 February 2026).

114 "Therium conducted nine rounds of funding for the case," with total costs reported above USD 20 million across eight jurisdictions; see "Malaysia hails 'victory' in row with Sulu sultan's Filipino heirs," *Al Jazeera* (7 June 2023).

115 "Spain charges arbitrator who awarded $15 billion to sultan's heirs in Malaysia dispute," *BusinessWorld* (12 December 2023); Muhammad Syed, "Untangling Colonial Thorns: Heirs to the Sultanate of Sulu v. Malaysia," *EJIL: Talk!* (2 February 2026); "End of the Sultan of Sulu Saga? The Paris Court of Appeal Annuls the Final Award," *Proskauer Rose LLP* (1 April 2026).

116 "Petronas units in Luxembourg ordered seized in colonial-era row," *Al Jazeera* (16 February 2023); Rozanna Latiff, "After $15 bln award, sultan's heirs target Malaysian properties in Paris," *Reuters* (7 March 2023).

117 "End of the Sultan of Sulu Saga? The Paris Court of Appeal Annuls the Final Award," *Proskauer Rose LLP* (1 April 2026).

118 "Spanish Supreme Court upholds conviction of arbitrator in Sulu case, dismissing final appeal," *the Vibes* (16 October 2025).

119 Gautam Naik, "Litigation Finance Hits a Wall After Bets on Huge Gains Falter," *Insurance Journal* (1 December 2025); Upmanyu Trivedi and Constantine Courcoulas, "Litigation funder fights PETRONAS as 'royal heirs' US$15 bil victory unravels," *The Edge Malaysia* (27 March 2026).

120 Kathleen Claussen, "The International Claims Trade," 41 *Cardozo Law Review* (2020) 1743.

121 Those subrogation clauses exist because political risk insurance depends on them. When a public insurer such as the World Bank's Multilateral Investment Guarantee Agency, or a private underwriter, indemnifies an investor for an expropriation, it is subrogated to the investor's claim and may pursue the host State in the investor's place. See Convention Establishing the Multilateral Investment Guarantee Agency, Article 18. An investor who wants to be made whole after a genuine expropriation therefore has a route that does not require ISDS at all, which weakens the access to justice case for funding a claim rather than insuring against the loss. And where the insurer does pursue recovery, it earns a return beyond the premium it has already charged, converting a risk-pooling product into a financialized recovery play of the same kind as TPF, capital advanced up front and a share of the recovery taken at the end. That the same claim-alienation goes unremarked in insurance does not make it benign in funding; it shows how far the regime has already gone in treating a State's liability as something to be bought and pursued by parties that never bore the loss.

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