



### **Abby Cohen Smutny**

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### **Bars and Courts**

District of Columbia

New York

US District Court for the District of Columbia

### **Education**

JD, University of Chicago Law School

AB, Vassar College

Université des Langues et Lettres de Grenoble

London School of Economics and Political Science

### **Awards and Recognition**

International Arbitration, Band 1, Chambers Global, 2023

International Arbitration - Band 1, Chambers USA 2023

International Arbitration Leading Lawyer "Hall of Fame", The Legal 500 USA, 2023

The Best Lawyers in America, 2023, "Lawyer of the Year" for International Arbitration, 2022

Benchmark Litigation: National Practice Area Star, Local Litigation Star, Top 250 Women in Litigation, 2023

Lawdragon 500 Global Litigation, 2023

## **Practice Experience**

Abby Cohen Smutny for many years has been recognized as one of the world's most prominent international arbitration practitioners, ranked as a Global Band 1 practitioner by Chambers Global. With over 35 years of experience, she has secured numerous landmark victories for her clients involving billions of dollars in claims. She is the former Global Head of White & Case's award winning International Arbitration Practice.

She has been described in Chambers as "fantastic," and as "a phenomenal lawyer, without doubt," and as "major force in treaty arbitrations... smart, practical and... both aggressive and diplomatic." Chambers also has observed that she is "renowned for her 'thorough and technical' preparation, as well as her 'vigorous and energetic' advocacy", stating "you can't go to a better practitioner, especially on cutting-edge cases."

Global Arbitration Review has quoted clients who describe her as "a motivational powerhouse" whose "determination and motivation to succeed was a critical factor in our success."

The International Who's Who of Commercial Arbitration noted her "virtually unrivalled knowledge of state responsibility and investment treaty protection."

The Legal 500 has described her as an "exceptional counsel who impresses with reliable strategic judgment and excellent advocacy skills," and as a "powerhouse ... the best."

Ms. Smutny's experience includes matters relating to a wide range of industries including banking, financial services, oil & gas, mining, electric power, real estate development, water supply, retail, pharmaceuticals, construction, tobacco, railroads, telecommunications and manufacturing.

She has significant experience managing claims arising out of project financing, privatizations, natural resource concessions, contracts with States and state-entities and political risk insurance.

She has experience with arbitrations under all major arbitral institutions and rules including ICSID, ICC, LCIA, AAA/ICDR, VIAC, SIAC, HKIAC, and the SCC, as well as in ad hoc arbitrations, including under the UNCITRAL Rules and before the PCA. Her experience includes both commercial arbitration and as well as investor-State arbitration under bilateral investment treaties (BITs), the Energy Charter Treaty (ECT), the USMCA and the NAFTA, the DR-CAFTA and the ASEAN treaty.

Representative matters include:

### **Financial institution**

- Representing Afriland First Group et al. in an ICSID arbitration against the Democratic Republic of Congo relating to the unlawful treatment of Afriland First Bank.

### **Mining company Gabriel Resources Ltd. investment treaty arbitration**

Who's Who Legal: Thought Leaders - Arbitration, Global Arbitration Review, 2023

Euromoney's Expert Guide to the Leading US Lawyers – Best of the Best USA, 2023, Commercial Arbitration, 2023, Women in Business Law, 2023

## Languages

English, French

## Citizenship

United States

- Representing Gabriel Resources Ltd. in an ICSID arbitration of investment treaty claims against Romania relating to one of the largest undeveloped gold projects in the world.

### Group of cryptocurrency traders

- Representation of a group of cryptocurrency traders in an HKIAC arbitration of a dispute regarding the performance of a cryptocurrency exchange.

### ICL in investment treaty arbitration relating to potash mine project

- Representing ICL Europe in an UNCITRAL Rules arbitration of investment treaty claims against Ethiopia relating to treatment of investment in potash mine project.

### Mining company Gold Reserve Inc. investment treaty arbitration

- Representing Gold Reserve Inc. in an ICSID (Additional Facility) arbitration under the Canadian-Venezuelan BIT, relating to one of the largest undeveloped gold/copper deposits in the world, in which Gold Reserve was awarded US\$740 million.

### Kingdom of Saudi Arabia in several ICSID arbitrations arising under investment treaties

- Representing the Kingdom of Saudi Arabia in several ICSID arbitrations arising out of investment treaties.

### European State in an ICC arbitration of a telecommunications dispute

- Representing a European State in an arbitration of a dispute relating to the purchase price of a telecommunications company, in which the State was awarded over US\$100 million.

### Consortium of investors in tariff dispute relating to water concession

- Representation of a consortium of investors in an arbitration relating to the economic terms of water concession before the Vienna International Arbitral Centre (VIAC), in which our clients were awarded more than US\$100 million.

### Kingdom of Jordan in oil production sharing agreement dispute

- Representing the Hashemite Kingdom of Jordan in an ICSID arbitration with Trans-Global Petroleum Inc. under the US-Jordan BIT defending against claims of US\$1 billion relating to an oil production sharing agreement in which all claims were released in their entirety in a favorable consent award.

### Leading bank Československá obchodní banka, a. s. in ICSID arbitration

- Representing one of the leading banks in the Czech Republic in an ICSID arbitration of a dispute with the Slovak Republic, in which the bank was awarded US\$877 million.

**Republic of Bulgaria in four Energy Charter Treaty ICSID arbitrations relating to the power sector**

- Representing Republic of Bulgaria in four ICSID arbitrations arising under the Energy Charter Treaty and bilateral investment treaties regarding disputes in the generation, distribution, and supply of electric power.

**Republic of Bulgaria in an Energy Charter Treaty ICSID** arbitration relating to an investment in the oil and gas sector.

**Republic of Bulgaria in ICSID arbitration relating to oil refinery**

- Representing Republic of Bulgaria in an ICSID arbitration with Plama Consortium Ltd., of a dispute arising under the Energy Charter Treaty and the Cyprus- Bulgaria BIT, involving the operation of an oil refinery. The investor's claims were dismissed in their entirety and our client obtained a sizable cost award.

**Republic of Bulgaria in ICSID arbitration relating to a real estate development**

- Representing Republic of Bulgaria in an ICSID arbitration of a dispute arising under a bilateral investment treaty relating to a real estate development project.

**Republic of Bulgaria in ICSID arbitration relating to an oil and gas company**

- Representing Republic of Bulgaria in an ICSID arbitration of a dispute arising under the Energy Charter Treaty relating to an oil and gas company.

**Romania in three ICSID arbitrations relating to the privatization of a steel mill, airport duty free concessions, and the privatization of chemical facilities**

- Representing Romania in an ICSID arbitrations brought by Nobel Ventures, EDF (Services) Ltd., and S&T Oil under various BITs, relating to concessions and privatization agreements. In the first two cases the investor's claims were dismissed in their entirety, and in the third case the investor abandoned its claims prior to the hearing.

**Republic of the Philippines in airport concession dispute**

- Representing the Republic of the Philippines in two ICSID arbitrations with Fraport AG Frankfurt Airport Services Worldwide of a dispute arising under the German- Philippines BIT relating to a concession to construct and operate an airport terminal in Manila. The investor's claims were dismissed in their entirety in both cases.

**US oil company in dispute relating to concession contract and production sharing agreement**

- Representing a US company in an ICC arbitration of dispute with a North African State and its national oil company relating to concession contract and production sharing agreement.

**Hungary in ICSID arbitration relating to power purchase agreement**

- Representing Hungary in an ICSID arbitration with AES of an Energy Charter Treaty dispute arising out of power purchase agreement.

**US financial institution in dispute regarding tax treatment**

- Representing US financial institution in ICSID arbitration of dispute with North African State regarding tax treatment.

**US manufacturer in ICC dispute with Middle Eastern State**

- Representing US manufacturer in ICC arbitration of dispute regarding contractual performance and payments due.

**US power company PSEG in ICSID arbitration with Turkey**

- Representation of US power company in investment treaty dispute regarding the development of coal-fired power plant.

**Republic of Costa Rica in ICSID arbitration arising from expropriation**

- Representing the Republic of Costa Rica in an ICSID arbitration with Compañía Desarrollo de Santa Elena S.A. of dispute regarding the compensation due following the expropriation of real property for purposes of environmental conservation.

**Canadian real estate developer in NAFTA dispute**

- Representing Mondev International Ltd. in a NAFTA dispute against the United States arising out of an investment in a commercial real estate development.

**European State in real estate development dispute**

- Representing a European State in an UNCITRAL rules arbitration regarding an investment in commercial real estate development

**Republic of Chile in real estate development dispute**

- Representing the Republic of Chile in ICSID arbitration of dispute with MTD Equity and MTD Chile S.A. arising out of an investment in a commercial real estate venture.

**Publications**

Practical Guide to International Arbitration, Smutny, McDougall, and Daly, Juris (2020)

"Enforcement of ICSID Convention Arbitral Awards in U.S. Courts," Vol. 43 Pepperdine Law Review 649 (2016) (co-authored with Anne Smith and McCoy Pitt)

Practicing Virtue: Inside International Arbitration, Caron, Schill, Smutny, and Triantafyllou (eds.), Oxford University Press (2015)

"Compensation Due in the Event of an Unlawful Expropriation: The 'Simple Scheme' Presented by Chorow Factory and its Relevance to Investment Treaty Disputes," in Caron et al. (eds.), *Practicing Virtue*, Oxford University Press (2015)

"Arbitral Institutions," in Golden and Lamm (eds.), *International Financial Disputes*, Oxford University Press (2015) (co-authored with Petr Polášek)

"Investment Treaty Protections, Political Risk, and Tribunal Decision-Making," in A. Rovine (ed.) *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers 2013* Brill (2014)

"Unlawful or Bad Faith Conduct as a Bar to Claims in Investment Arbitration" in J. Werner et al. (eds.), *A Liber Amicorum: Thomas Wälde – Law Beyond Conventional Thought*, Cameron May (2009) (co-authored with Petr Polášek)

"The MFN Clause: What are its Limits, in *Arbitration under International Investment Agreements: A Guide to the Key Issues*, 2d ed. (Oxford University Press 2018) (co-author, with Petr Polášek and Chad Farrell)

"The Use of Experts in Investment Treaty Arbitration" in *Les Experts: Auxiliaires ou Substituts de Juge?* Centre Français de Droit Comparé (2009) (co-authored with Daniel R. Gilbert)

"Claims of Shareholders in International Investment Law" in C. Binder et al. (eds.), *International Investment Law, Liber Amicorum* Christopher Schreuer, Oxford University Press (2009)

"Confidentiality in Relation to States," *ICC International Court of Arbitration Bulletin (Special Supplement)* (co-authored with Kristen Young)

"Enforcing Foreign Arbitral Awards in the United States: The Non-Arbitrable Subject Matter Defense," *Journal of International Arbitration* vol. 25(6) (2008) (co-authored with Hansel T. Pham)

"Foreign Investment and Political Risk: What You Should Know About Investment Protection Treaties (Parts I & II)," *Bloomberg European Law Journal*, Vol. 2, Nos. 6 & 7, June 2008 & July 2008 (co-authored with Stephen T. Ostrowski)

"Principles of Compensation in Investment Treaty Arbitration," *ICSID Review Foreign Investment Law Journal*, Vol. 22, No. 1, Spring 2007

"The 2006 Amendments to ICSID's Arbitration Rules," *Global Arbitration Review*, Vol. 1, Issue 4, August 2006 (co-authored with Erika M. Serran)

"ICSID Annulment," *Investment Treaty Law: Current Issues*, Vol. 1, BIICL, 2006

"State Responsibility and Attribution: When Is a State Responsible for the Acts of State Enterprises?," *International Investment Law and Arbitration: Leading Cases from the ICSID, NAFTA, Bilateral Treaties and Customary International Law*, Cameron May, 2005

"ICSID Arbitration: Procedural Review," Transnational Dispute Management, Vol. II, Issue 2, April 2005

"Arbitration Before the International Centre for Settlement of Investment Disputes," 2002 Business Law International, 367, September 2002

"How to Commence an International Arbitration," Practitioner's Guide to International Arbitration and Mediation, Juris Publishing, 2001 (co-authored with Stephen Bond)

"The International Centre for Settlement of Investment Disputes: Responses to Problems and Changing Requirements," Mealey's International Arbitration Report, 1, Vol. 12, November 1997 (co-authored with Carolyn B. Lamm)

"Arbitration Agreements versus Forum Selection Clauses: Legal and Practical Considerations," International Dispute Resolution: The Regulation of Forum Selection [Fourteenth Sokol Colloquium], J.L. Goldsmith, ed. 1997 (co-authored with Charles N. Brower)

"The Effect of Independence of Quebec Upon Treaties and Agreements with the United States of America," The American Review of Canadian Studies, 57, Vol. 27, Spring 1997 (co-authored with Charles N. Brower)

"Enforcing ICSID Arbitration Agreements," ICSID Review Foreign Investment Law Journal, 64, Vol. 11, 1996 (co-authored with Carolyn B. Lamm)

## **Professional Associations**

ICCA, Vice President, Governing Board Member

American Society of International Law, Counsellor, former Vice-President, Member of the Executive Committee, Member of the Executive Council

ITA, former Chair of Executive Committee, Advisory Board Member

SIAC, Member Court of Arbitration

Saudi Center for Comm'l Arbitration, Member Board of Directors

AAA, Advisory Board Member

ALI, Adviser, US Restatement on International Commercial Arbitration

LCIA, former President of North American User's Council

IBA, former Vice Chair of Arbitration Committee and former Chair of Investment Treaty Subcommittee

DC Bar, former Chair of International Law Section

Global Arbitration Review, Editorial Board, Member

Journal of International Arbitration, Editorial Board, Member

World Arbitration and Mediation Review, former Co-Editor in Chief

Yearbook on International Investment Law and Policy, former Editorial Board  
Member