

Continental Casualty v Argentine Republic (US-Argentina BIT)

AREAS OF POLICY AFFECTED: social security (workers' compensation insurance), privatization (social security), monetary system (financial crisis, currency reform)

CASE SUMMARY: The claimant was a U.S. insurance company that had administered a privatized worker's compensation insurance scheme in Argentina. In response to its severe financial crisis of 2001-02., Argentina enacted emergency measures that caused economic losses to the claimant's investment portfolio. The measures included, for example, restrictions on transfers out of the country, devaluation of the national currency, and a national debt re-scheduling. The claimant argued that the measures violated the U.S.-Argentina bilateral investment treaty (BIT) by expropriating its assets and denying it fair and equitable treatment.

Argentina argued that the measures were necessary to mitigate and respond to a national financial crisis. Argentina relied on, among other things, an exceptions clause in the BIT that exempted measures required to maintain public order and protect national security. Argentina also relied on the general necessity defence in customary international law. The tribunal found that, for the most part, Argentina's measures were justified under the BIT exceptions clause. It awarded the modest amount of (U.S.) 2.8 million (plus interest) in compensation to the claimant.

COMMENT: This case was one of many involving Argentina. It demonstrates the challenges that investment treaty obligations present for countries facing a national economic crisis. It also raised the question of whether states can rely on national security exceptions in this context. Other tribunals have not allowed Argentina to justify its measures of 2001-02 based on BIT exceptions clauses. This indicates that investors and states may be subject to different degrees of legal protection or liability depending on the tribunal's interpretive approach. More broadly, it demonstrates the lack of coherence in the system, in the absence of a supervising international court or appellate body that has the power to resolve conflicting approaches to investment treaty law.

Source: www.iiapp.org (May 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at www.iiapp.org. © Gus Van Harten 2011. *You may forward or re-publish the information in this report with attribution to www.iiapp.org.*