

Corporate Attacks: Financial Stability

Case Study: Insurance Privatization

Investor-State Dispute Settlement (ISDS) grants corporations shocking powers to attack the laws we rely on for a clean environment, financial stability, affordable medicines, safe food and decent jobs. The cases are decided by tribunals composed of three private attorneys, some of whom rotate between serving as “judges” and bringing cases against governments. The tribunalists are paid by the hour and are unaccountable to any court system or electorate. Under U.S. trade and investment pacts alone, corporations have already won more than \$3.6 billion in taxpayer money, with \$34 billion still pending.

Eureko v. Poland

Case Settled (investor obtained \$1.6 billion)

In 2003, Eureko, a Netherlands-based company, [filed a claim against Poland under the Netherlands-Poland BIT](#) for prohibiting it from taking a controlling stake in PZU, Poland’s first and largest insurance company. Facing significant public and political opposition to a previous administration’s decision to sell a controlling share of Poland’s public insurance firm to a foreign corporation, the Polish government [reversed its privatization plans](#).

Eureko argued that the government’s actions amounted to a violation of its BIT-mandated obligation to provide “fair and equitable treatment.” While divided, the majority of the tribunal held in a 2005 decision that [Poland indeed violated that obligation](#), in addition to the prohibition against uncompensated expropriation. The tribunal also decided that the government’s actions had violated a private contract with Eureko, and that this alleged contractual violation itself constituted a violation of the BIT. The tribunal determined that it was [able to use the BIT to enforce the terms of a private contract](#) through what is known as an ‘umbrella clause’ – a BIT provision that empowers foreign investors to elevate contractual disputes to BIT investor-state cases. The dissenting tribunal member noted that empowering a firm to transform a contractual dispute into a BIT case [“created a potentially dangerous precedent.”](#)

Poland also took issue with the appointment by Eureko of the arbitrator Judge Stephen Schwebel, who had a working relationship with a law firm that was launching other investor-state cases against Poland. After Poland’s attempt to challenge the appointment of Schwebel failed, the arbitration was expected to proceed to the damages phase, when [a settlement was reached instead](#). Under the settlement, Eureko [obtained a reported \\$1.6 billion](#) for Poland’s decision to maintain domestic control of the country’s largest insurance firm.