We are pleased to present the latest edition of Quantum Quarterly, a publication of King & Spalding’s International Arbitration practice group. This edition includes an interview with Professor Francisco Orrego Vicuña of Chile, one of the most experienced investment arbitrators in the world. Professor Orrego has chaired, among others, the CMS v. Argentina case, which included what the Annulment Committee in the case later described as “one of the most detailed decisions on damages in ICSID case-law.” Professor Orrego’s comments on damages issues and effective arbitral advocacy on quantum from the standpoint of the arbitrator should be of great interest to all readers. This edition also includes summaries of several recent damages awards, as well as a review of Mark Kantor’s Valuation for Arbitration. As always, we welcome any feedback you may have.

All the best.

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Interview with Professor Francisco Orrego Vicuña

Name: Francisco Orrego Vicuña

Born: Santiago, Chile

Experience: Judge at the Administrative Tribunal of the World Bank; Member of the Commission for the Settlement of Disputes between Chile and the United States; President or Member of several investment arbitration tribunals and annulment committees, such as Fedex N.V v. Venezuela, Maffezini v. Spain, Wena Hotels Ltd. v. Egypt, CMS Gas Transmission Co. v. Argentina, PSGE Global Inc. v. Turkey, Joy Mining Machinery Ltd. v. Egypt, and Occidental Exploration and Production Company v. Ecuador

Speaks and writes fluently in Spanish, English and French

Q: Could you please describe in general terms your experience as to how tribunals approach quantum issues? For example, is the deliberation process with respect to damages different from the deliberation process with respect to legal issues such as jurisdiction or liability? If so, how?

A: Quantum is of course at the very heart of any award as it is there where justice will be translated into a specific outcome. I am told that counsel

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begin their reading from the back of the award so as to instantly realize the outcome of their pleas. Usually tribunals will discuss first the legal issues concerning liability and only after will compensation be addressed. However, like under old principles, recently the question has arisen as to whether liability can be established separately from damages. There are cases where this will not be possible and it is the existence of damages that will allow to proceed with the discussion on liability, a case in point being the recent NAFTA Chapter 11 award in Merrill & Ring v. Canada. Historically liability was considered to encompass damages as a condition precedent but this was decoupled at a point in some artificial way. If the old principle is followed it will have the consequence of not easily allowing for the bifurcation of liability and quantum in separate rulings.

Because of the above, the process of deliberation concerning quantum might not be entirely different from that concerning liability and they might be dealt with as an integrated whole. Jurisdiction will be different and usually disposed of at an early stage, except where it will be totally or partially joined to the merits. If conceived as an integrated deliberation this might strengthen the role of quantum because it is different to regard it as a condition of liability than as the mere consequence. Thus far this is what largely explains that tribunals have dealt with quantum less conspicuously than with liability.

Q: Almost all complex cases nowadays involve the use of opposing party-sponsored quantum experts. Moreover, in many cases, such as those involving forward-looking discounted cash flow analyses, the quantum issues can be quite technical and complex, and may involve industries in which the arbitrators may not have had much prior experience. How do arbitrators “cut through the fog” in such cases? To what extent is it necessary to rely on “expert conferencing” (i.e., putting the opposing quantum experts on the stand simultaneously to narrow the areas in dispute) and/or tribunal-appointed experts for this purpose? What have you found to be the most efficient procedure to address such problems?

A: Indeed, opposing party-sponsored quantum experts have become a regular feature of arbitration and their contribution is usually of great value. This is particularly the case of highly complex investment or contract operations. The discussion by the experts will normally allow the tribunal to well understand the issues at play and the differences of view of the parties. This is true even of the most complex financial transactions which in themselves will be beyond the technical expertise of arbitrators. This does not dispose of course of the core question of how that quantum will be determined.

This is where two additional measures of help might be considered by the tribunal. The first is the appointment of an independent quantum expert that will be able to form a view about which elements of the party-sponsored reports are supported by evidence and reasonableness. The independent expert will normally produce its own conclusions which, subject to further comments from the parties, will form the basis of the tribunal’s own decision. The search for the independent expert is not an easy task.

The second measure of help will concern the expert conferencing at the hearing on the merits. This technique is not often used, but in those cases that I have seen where resort to it has been made, it has been most effective. Clarification of many aspects in doubt will ensue and eventually the expert views might turn out not to be radically different. In those experiences it has been particularly gratifying to realize that the experts conduct themselves in great professional standing and courtesy, which does not always happen with witnesses. Both tools have been helpful but in my personal experience the role of the independent expert is more comprehensive that what a hearing will allow.

Q: Do you perceive there to be any material differences between pure commercial disputes and investment arbitration cases with respect to quantum issues? If so, what are they?

A: Material differences there might be and indeed there are, but this is not the result of one case being commercial and the other investment-related. The differences arise from the nature of the dispute. To set the price of a sales transaction is not the same as to set the value of an expropriated corporation. On the other side, however, the nature of a commercial transaction
can be as complex as that of an investment and in this case differences will of course narrow down. The opposite is equally true where the complexity of the investment dispute will be not too different from that you are likely to find in a commercial case.

**Q:** Are there any trends that you can identify in the investment arbitration arena with respect to damages? For example, are awards now more detailed regarding the reasoning on damages?

A: The most important trend that one can identify is that quantum analysis is becoming more sophisticated by the day. If one thinks for example of the discounted cash flow method for the measurement of value and damages it will not be difficult to realize that past performance and estimates of future income become part of a rather broad frame, including questions concerning the determination of WACC, adjustment for inflation and a host of other matters. This again will only be possible to address by a tribunal with the assistance of experts.

To that extent awards are by necessity more detailed, but I do not believe that they should in themselves become an expert report. The tribunal’s role will be to judge on the basis of the criteria supplied to it by the parties and the experts and it will have to explain its choices but not by means of repeating the expert’s analysis.

**Q:** Do you have any recommendations regarding advocacy with respect to damages in investment arbitrations?

A: Various thoughts come to mind in respect of this question. The first is that both the parties and the tribunal should not lose sight of the fact that quantum is a measure of damages and as such it must be kept within what it is reasonable and necessary to reestablish the situation existing before the adverse measures were taken and eventually their consequences, just like under the universally accepted principles of the Chorzow Factory case. Because of this, claims for inflated damages, which are on occasion seen, are inevitably brought down to reality. Advocacy should help tribunals to attain the real measurement and not overstate the case, thus avoiding doubts and some degree of guesswork.

A second thought concerns the fact that the quantum of damages is the way the tribunal perceives that it is translating justice into a specific amount. Justice, however, is not a mathematical exercise. It follows that counsel would strengthen their own cause if they help the tribunal in explaining how the amounts claimed for are the expression of justice. Technical explanations are indispensable but are not enough. In the end the tribunal will always ask itself whether its determinations on quantum make sense as the expression of justice and to that extent it will adjust its findings to such conviction.

Because of the above, legal, financial and business questions will interplay in the decisions taken. When counsel for the parties are familiar with both legal and financial questions this becomes an additional helpful element to the tribunal’s task as it avoids to address each element in isolation. I have not found this very often, however. So much so that I have recommended to many interested students the possibility that they might supplement their law studies with the economic dimensions of business and finance. It is a kind of new blend of expertise. ✩

**According to the CMS Annulment Committee, the CMS Award authored by Orrego was “one of the most detailed decisions on damages in ICSID case-law.”**
Recent Damages Awards

_Azurix Corp. v. Argentine Republic_ (ICSID Case No. ARB/01/12), Annullment Proceeding, Decision of the Ad Hoc Committee, Sept. 1, 2009

**Sector involved:** Water and Sewage Concession

**Applicable BIT:** U.S.-Argentina BIT

**Members of the Annullment Committee:** Dr. Gavan Griffith Q.C. (Chairman), Judge Bola Ajibola and Mr. Michael Hwang S.C.

**Amount of damages under review:** US$165,240,753 (plus interest compounded semi-annually)

**Grounds raised for annulment in relation to damages:** (1) Tribunal manifestly exceeded its powers when it determined applicable standard of compensation and (2) Tribunal failed to state reasons and/or issued contradictory reasons for the amount of damages awarded

**Case Overview:** _Azurix v. Argentina_ involved a U.S. company’s successful bid for privatization of an Argentinian company, owned and operated by the Province of Buenos Aires, which was in charge of providing potable water and sewage services in the Province. In 1999, Azurix, through its Argentinian subsidiary, ABA, paid the Province a Canon payment of approximately US$438.5 million, in exchange for a 30-year concession. Over the next several years, Azurix made additional capital contributions to ABA of almost US$113 million. Following the Province’s termination of ABA’s concession in 2002, Azurix initiated an ICSID arbitration against Argentina seeking approximately US$600 million in compensation.

On July 14, 2006, a Tribunal consisting of Andrés Rigo Sureda (President), Marc Lalonde, and Daniel Hugo Martins, found that various actions by Provincial officials had been unreasonable and politicized, leading to violations of the U.S.-Argentina BIT. The Tribunal found that Argentina (through the actions of the Province) had violated the BIT by: (1) failing to accord fair and equitable treatment to Azurix’s investment; (2) failing to accord full protection and security to Azurix’s investment; and (3) taking arbitrary measures that impaired Azurix’s use and enjoyment of its investment.

The Tribunal determined that the fair market value standard was appropriate for Argentina’s breaches of the fair and equitable treatment, full protection and security, and arbitrary measures provisions in taking over the 30-year concession in only its third year. The Tribunal awarded US$60 million as the fair market value in 2002 of the Canon that Azurix had paid for the concession in 1999, and an additional US$105 million for the amounts that Azurix invested during the concession’s short life.

On November 13, 2006, Argentina filed an application for annulment of the Tribunal’s award, citing among other grounds for annulment, issues relating to the Tribunal’s calculation of damages. On September 1, 2009, the Annullment Committee dismissed Argentina’s application for annulment in its entirety.

**Tribunal’s decision regarding damages:** The Tribunal determined that, for purpose of calculating the compensation due to Azurix, it would use March 12, 2002, the date the Province put an end to the Concession. In regards to the basis upon which the

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1. King & Spalding was counsel to Claimants in both the initial arbitration and the annulment proceedings. The award and decision on annulment are available at http://icsid.worldbank.org/ICSID.

2. _Azurix v. Argentina Award_ ¶ 424.

3. _Id._ ¶ 429-430.
Despite dismissing Azurix’s claim for expropriation, the Tribunal decided that a compensation based on the fair market value of the Concession would be appropriate. Reviewing the two methodologies submitted by Azurix to measure fair market value (actual investment and book value), the Tribunal determined that the actual investment method should be applied. However, the Tribunal considered that a significant adjustment was required to arrive at the real value of the Canon paid by Azurix. The Tribunal considered its role to be to determine what an independent and well-informed third party would have been willing to pay for the Concession in March 2002, in a context where the Province would have honored its obligations. It concluded that the value should be established at US$60 million. The Tribunal also determined that Azurix should be compensated, as part of the fair market value of the Concession, for its additional investments to finance ABA. The additional investments of US$112,844,446 were reduced by US$7,603,693, the amount of damages the Tribunal found to be related to contractual claims that it believed should be borne by Azurix as part of its business risk. Thus, the amount awarded on account of additional investments was US$105,240,753.

The Tribunal therefore awarded compensation to Azurix on account of the fair market value of the Concession in the amount of US$165,240,753, including both the Canon and Azurix’s additional investments.

Annulment Committee’s decision regarding damages: First, the Committee determined that the Tribunal did not manifestly exceed its powers in determining the applicable standard of compensation. The Committee noted that, in order to justify annulment, the complaint had to relate to the non-application of the applicable standard of compensation, rather than the incorrect application of that standard. The Committee found no fault with the Tribunal’s identification of the applicable law for the purposes of determining the quantum of damages — the BIT itself and, failing any express provision in the BIT, general principles of international law. The Committee noted that “[t]he Tribunal decided to exercise a discretion pursuant to customary international law, and not to exercise a discretion instead of customary international law.”

The Committee found nothing in the BIT that reserved the fair market value standard of compensation solely to cases of expropriation. If the Tribunal had discretion in the approach that it adopted to the assessment of damages, there is no logical reason why it might not, in the exercise of that discretion, in any case where it considered it appropriate to do so, also apply the fair market value standard to cases of non-expropriatory breaches of the BIT. Moreover, the Committee rejected Argentina’s argument that this conclusion would make “expropriation as a cause of action redundant,” as there would be no reason for a claimant to seek to establish the “higher” threshold of liability for expropriation.

Second, the Committee determined that the Tribunal did not fail to state reasons or issue contradictory reasons for the amount of damages awarded. The Committee determined that the Tribunal provided adequate reasons as to the causal link between the Tribunal’s findings of liability and its finding that the amount of damages would be the fair market value of the Concession on March 12, 2002. The Committee rejected Argentina’s argument that the Tribunal’s decision to apply the fair market value standard contradicted its finding that there was no expropriation. The Committee found that it was clear from the Tribunal’s reasoning that the Tribunal considered that the fair market value standard of compensation was not confined exclusively to cases of expropriation, but that it could also be applied in cases of breaches of other provisions of the BIT.

The Committee also considered it clear that the damages awarded under the “actual investment” method corresponded to the amounts actually invested by the claimant, which would include both the Canon payment and Azurix’s additional investments. Moreover, the Committee considered it sufficiently

\[\textit{continued on Page 6}\]

\[\text{Decision on Annulment ¶ 320.}\]
clear that the Tribunal considered that the whole of the Canon payment was an investment of Azurix, and that ABA was merely a vehicle for carrying out the investment; therefore Azurix was entitled to 100% of what a third party would pay for the Concession despite the fact that Azurix only owned 90% of ABA’s shares.

Finally, the Committee found that the Tribunal arrived at the US$60 million figure by applying a modified form of the “actual investment” method. Under that method, in determining the fair market value, the Tribunal took the actual amounts invested by Azurix as its starting point, but then reduced the relevant amounts when it considered that there were reasons justifying this. Thus, while the actual amounts invested by Azurix totaled over US$550 million, the Tribunal only took US$165 million into account in assessing damages.

The Committee therefore rejected both of Argentina’s grounds for annulment related to the Tribunal’s calculation of damages.

Costs: The Committee held that Argentina should bear all expenses incurred by ICSID in connection with the proceeding, including the fees and expense of the members of the Committee, but that each party should bear its own litigation costs and expenses, including costs of legal representation.

Rumeli v. Republic of Kazakhstan (ICSI Case No. ARB/05/16), Annulment Proceeding, Decision of the Ad Hoc Committee, March 25, 2010

Sector involved: Telecommunications

Applicable BIT: Turkey-Kazakhstan

Members of the Annulment Committee: Judge Stephen M. Schwebel (Chairman), Professor Campbell McLachlan Q.C., Dr. Eduardo Silva Romero

The Tribunal’s Award: The Tribunal held that Kazakhstan had expropriated Rumeli and Telsim’s 60% stake in the telecommunications company KaR-Tel and awarded them damages in the amount of US$125 million (the “Award”).

Kazakhstan’s position: Kazakhstan sought the annulment of the Tribunal’s damages award on the basis that it was “inexplicable, being based on inconsistent, illogical or nonexistent reasons,” and that the Tribunal had failed to adequately state the reasons for its decision on the quantum of damages.

In addition to arguing that the Tribunal’s damages award was inconsistent with certain factual holdings, Kazakhstan criticized the Tribunal in three main respects. First, Kazakhstan alleged that the Tribunal had preferred the liquidation value approach of Kazakhstan’s damages expert, Navigant, but nonetheless had adopted the discounted cash flow (DCF) method advanced by Rumeli and Telsim’s damages expert, Analysys, despite describing its shortcomings. Second, Kazakhstan contended that, in applying the DCF method, the Tribunal took the Analysys figure of US$227 million as a starting point and, without providing full reasons for its decision to

“The Committee also considered it clear that the damages awarded under the “actual investment” method corresponded to the amounts actually invested by the claimant…”
accept or reject various factors relevant to the DCF analysis, reduced this figure to arrive at a damages award of US$125 million. Third, Kazakhstan argued that it was not possible to see how the DCF analysis resulted in the figure of US$125 million, in light of the Tribunal’s failure to elaborate on any of the inputs or to describe the methodology used.

**Rumeli and Telsim’s position:** The Claimants contended that the Award was easy to follow and was not lacking in reasons, and that Kazakhstan’s complaints related exclusively to the correctness of the award. According to the Claimants, the Tribunal adopted the DCF approach—and the figure of US$227 million—as a starting point because it would have been a starting point in discussions between a willing buyer and a willing seller, and because it reflected the significance of the telecommunications license held by KaR-Tel. In light of the circumstances, including KaR-Tel’s balance sheet insolvency and the prospect that the company’s fortunes would not improve without new management, the Tribunal exercised its discretion and reduced the figure to US$125 million.

**The standard of review applied by the Committee:** In considering an application to annul an award on the grounds that a tribunal “has failed to state the reasons on which it is based,” the Committee was of the view that this ground concerns a failure to state *any* reasons, not the failure to state correct or convincing reasons. Moreover, it considered that an *ad hoc* committee was entitled to seek to understand the reasons for an award in light of the full record before the tribunal.

**Observations regarding the quantification of damages:** Before analyzing the parties’ contentions and examining the evidence on damages before the Tribunal, the Committee made some general observations about the nature of the task facing a tribunal when it is determining the quantum of damages. The Committee highlighted the distinction between the “fact of loss,” which is for the claimant to prove, and the “amount of loss,” which is for the tribunal to determine in light of all of the evidence before it. Because the task of valuing the future profitability of a business is inherently uncertain, the Committee stated that tribunals “are generally allowed a considerable measure of discretion in determining issues of quantum.”

“… the figure of US$125 million was stated in the Award without an explanation of the Tribunal’s underlying mathematical calculation in arriving at that number.”

**Conclusions of the Committee:** The Committee acknowledged that the figure of US$125 million was stated in the Award without an explanation of the Tribunal’s underlying mathematical calculation in arriving at that number. Although the Committee considered it “highly desirable” for tribunals to explain how an ultimate damages figure is derived, the Committee declined to annul the Award because it deemed that the Tribunal had not failed to give reasons for its damages award. In the Committee’s view, the Tribunal had clearly rejected the argument that Rumeli and Telsim’s shares in Kar-Tel were worthless at the time of expropriation and had concluded that Kar-Tel’s major asset, the license, was income-generating, thereby warranting the use of the DCF method as a tool to ascribe a value to it. Accordingly, the only evidence available to the Tribunal was that put forward by Analysys on behalf of Rumeli and Telsim. However, the Tribunal was not limited by the evidence or figures put forward by the parties. The Tribunal had taken the Analysys figure as a starting point and was entitled to balance a number of countervailing considerations, which led to the reduction from US$227 million to the final damages figure of US$125 million. Since the estimation of damages in such circumstances is not an exact science, the Committee considered that the Tribunal had a measure of discretion to arrive at the final figure, noting that “[t]here may in that context be real limitations on the extent of reasoning which can reasonably be expected.”
Our “Old But Still (Very) Useful” Section

The Sapphire Petroleum Case

The Sapphire International Petroleum Ltd. v. National Iran Oil Company (NIOC) award was rendered more than 45 years ago, and to this day remains one of the most relied upon — and one of the most discussed — cases on standards of compensation.

In 1958, Sapphire and NIOC entered into a contract to expand the production and exportation of Iranian oil and set up a joint venture, the Iranian Canada Oil Company (IRCAN), to carry out the terms of the contract on their behalf. The contract was to be performed in two phases: First, Sapphire would be exclusively in charge of the prospection through IRCAN, second, IRCAN would act on behalf of both parties during the production phase.

Sapphire was contractually entitled to receive from NIOC complete reimbursement of its expenses incurred during the prospection phase. Conversely, NIOC had the right to cancel the contract if Sapphire failed to complete its prospection obligations at the end of the initial phase. Sapphire would in that case be liable to pay NIOC a guaranteed indemnity of US$350,000.

Sapphire quickly started prospecting in the concession area and within a few months claimed reimbursement of its expenses, in accordance with the contract. NIOC, however, refused to refund the expenses submitted by Sapphire, arguing that it was not consulted before the prospection operations began as required by the contract. After unsuccessfully seeking assistance from the Shah of Iran and in light of NIOC’s position, Sapphire ceased prospection operations. In early 1961, NIOC terminated the contract and cashed the US$350,000 guarantee on the grounds that Sapphire had failed to carry out its drilling obligations.

In September 1960, three months before NIOC’s termination of the contract, Sapphire notified NIOC of its request for arbitration and appointed an arbitrator. As a result of NIOC’s refusal to appoint an arbitrator, Sapphire moved to have a sole arbitrator nominated by the President of the Swiss Federal Court, as provided in the contract. The sole arbitrator, applying general principles of law, found that Sapphire had fulfilled its initial obligations under the contract and that NIOC’s deliberate failure to carry out its obligations breached the contract and justified Sapphire’s non-performance of its remaining contractual obligations.

The arbitrator also applied general principles of law to the determination of damages, but also used the principle of ex aequo et bono (i.e., equity) to the issue of lost profits. Sapphire had claimed expenses incurred before and after the termination of the contract. The arbitrator refused to award compensation for the expenses incurred before the termination of the contract, but awarded compensation for the expenses incurred afterwards. Sapphire had also claimed a refund of the US$350,000 guaranteed indemnity, which the arbitrator granted. Finally, Sapphire claimed loss of profits it expected to earn when performing the contract. It is on the latter point that the Sapphire award reaches its seminal character.

The sole arbitrator followed a two-fold reasoning when addressing the claim for loss of profits. The first step was to determine whether a loss of opportunity can give a legal right to compensation. The arbitrator held:

“It is not necessary to prove the exact damage in order to award damages. On the contrary, when such proof is impossible, particularly as a result of the behaviour of the author of the damage, it is enough for the judge

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to be able to admit with sufficient probability the existence and extent of the damage.”

The arbitrator considered that Sapphire had demonstrated a sufficient probability of the success of the venture if it had been able to complete the prospection phase and that Sapphire could therefore claim loss of profits. The arbitrator then went on to decide on an amount to be awarded to Sapphire for this head of claim. He resorted to the principle of *ex aequo et bono* to determine the amount of the compensation for the loss of opportunity on the basis of available evidence. The arbitrator considered that a compensation in the amount of US$2 million was reasonable and equitable.⁶

The *Sapphire Petroleum* findings continue to be cited and followed in major contemporary cases. The Award in *LETCO v. Liberia* and *LLAMCO v. Libya*, for instance, rely on the Sapphire rationale when discussing the issue of compensation for lost profits.⁷

The *AMCO v. Indonesia* Tribunal also based its decision to award compensation for lost profits on the *Sapphire* award, which it directly quotes:

“According to the generally held view the object is to place the party to whom they are awarded in the same pecuniary position they would have been in if the contract had been performed in the manner provided for by the parties at the time of its conclusion.”⁸

More recently, the Tribunal in *Waste Management v. Mexico* went through a careful and detailed analysis of the findings on the issue of lost profits in the *Sapphire* award. However, it ultimately concluded that the *Sapphire* findings were not directly relevant to the present case as they dealt with contractual breaches where the *Waste Management* case was about expropriations.⁹

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⁶ The expert designated by Sapphire estimated that the total profit for Sapphire in this venture could have been as high as US$46,000,000.


⁸ *Amco Asia Corp. v. Republic of Indonesia* (ICSID Case No. ARB/81/1), Award (Resubmitted Case), May 31, 1990, ¶183 (citing *Sapphire 35* ILR 183 (1987)).

⁹ *Waste Management, Inc. v. United Mexican States* (ICSID Case No. ARB(A5)/00/3 (NAFTA)), Award, April 30, 2004, ¶147-149.
The publication of *Valuation for Arbitration* has marked the beginning of a renewed interest on damages and valuation in the international arbitration context. In that sense, it paved the way for numerous books, articles and conferences on this issue that have since bloomed. The main difficulty of that subject, and the widely acknowledged contribution of Kantor's book, is the necessity to combine a thorough understanding of the legal issues at stake with an in-depth economic and financial analysis of the different valuation methodologies. Facing these challenges, Kantor drew on his long experience as a corporate and project finance lawyer, and combined it with his understanding of international commercial arbitration. The result is *Valuation for Arbitration*, which combines a thorough analysis of economic concepts and valuation tools with a series of user-oriented “checklists” to deal with concrete issues.

This monograph starts with a presentation of the particular challenges of the subject and introduces the different valuation and appraisal standards used in the United States and across the world. A functional point in the first chapter is an explanation of the differences between the American approach to damages and quantum experts – with the parties presenting their own experts – and the European approach, where the tribunal usually appoints its own expert. Chapter 2 describes the three “families” of valuation approaches: income-based, market-based, and asset-based. Kantor also introduces other issues in this chapter, such as contact-based damages, sunk investment costs, and “legal limits to compensation.”

Chapter 3 addresses the problem of comparability. For Kantor, comparability is the basis for market-based valuation, and also for income-based valuation, when assessing the appropriate discount rate in the capital asset pricing model. Chapter 4 is dedicated to discounted cash-flow (DCF) valuation – which is increasingly used in arbitration proceedings – and its major components. Chapters 5 and 6 respectively address adjusted present value (APV) and capitalized cash-flow (CCF) methods. Chapter 7 focuses on asset-based methods, particularly adjusted book value (ABV). The author expresses reservations about the latter method, deeming it no less subjective than income-based approaches, and highlights the danger of double-counting associated therewith.

Chapter 8 discusses the use of discounts and discount rates. The author advocates for the use of such discounts in order to fairly account for external circumstances. This position, although criticized by some authors, appears nevertheless as reflecting arbitral practice.

The last two chapters specifically target arbitrators and provide them with guidelines, checklists, and suggestions of how to deal with valuation issues. Among these are a series of indications on how to handle the legal standards and sources for the calculation of interest, in the absence of any guidance on this subject in the major international arbitration rules. Kantor also devotes a substantive portion of his analysis to the management of valuation expert witnesses by arbitrators.

Overall, this book provides its reader with a comprehensive synthesis of the legal and economic issues associated with valuation and damages. It is particularly well suited for arbitrators having to decide on these issues. This “arbitrator-centric” approach also makes this book a powerful tool for counsel, providing them with a framework through which to evaluate their arguments. The structure of the book, however, is not an easy one to follow. This may be due to the dense nature of the analysis it contains, and of the original character of the author’s reflection on the subject. If this book is not necessarily the primary recommendation for a novice trying to get an overall view of the subject, it is indeed an indispensable tool for an experienced practitioner having to deal with these issues. ♦
King & Spalding’s International Arbitration Group

Who We Are

King & Spalding’s International Arbitration practice has been ranked among the best in the world by Chambers Global, Global Arbitration Review, The Legal 500 and the American Lawyer’s Focus Europe (Top 2), among others. Chambers USA called King & Spalding “one of arbitration’s biggest success stories.”

We are world leaders in both investment and international commercial arbitration. Global Arbitration Review reported in its Guide to Specialist Arbitration Firms 2009 that, with very few exceptions, “King & Spalding must possess the largest repository of ICSID [International Centre for Settlement of Investment Disputes] experience you can tap.” The firm has registered over 25 ICSID cases and represented clients in many non-ICSID, treaty-based arbitrations.

King & Spalding’s International Arbitration group includes Doak Bishop, John Bowman, John Savage, Eric Schwartz, Reggie Smith, Roberto Aguirre Luzi, James Castello, Wade Correll, Charles Correll, Ken Fleuriet, Ed Kehoe, Craig Miles, Jennifer Price and Margrete Stevens, among others. Our team has more than 50 members in our Houston, Paris, London, New York, Washington, D.C., Atlanta, Singapore and San Francisco offices. The group includes lawyers who are natives of several different countries and regions and who have been educated in different legal traditions. King & Spalding’s International Arbitration group presents a culturally, nationally and educationally diverse group of lawyers, which greatly contributes to their proven ability to understand and address the intricacies of international disputes.


King & Spalding’s International Arbitration practice offers virtually unparalleled experience, knowledge, leadership, diversity and determination. It is “one of arbitration’s biggest success stories” not only for itself, but also for its clients.

King & Spalding is an international law firm with more than 880 lawyers in Abu Dhabi, Atlanta, Austin, Charlotte, Dubai, Frankfurt, Geneva, Houston, London, New York, Paris, Riyadh (affiliated office), San Francisco, Silicon Valley, Singapore and Washington, D.C. The firm represents half of the Fortune 100 and in Corporate Counsel surveys consistently has been among the top firms representing Fortune 250 companies. For additional information, visit www.kslaw.com.

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