

gdr

The international journal of  
commercial and treaty arbitration



# 1000

The guide to specialist  
arbitration firms **2013**

---

Fully revised and updated  
6th annual edition

# Curtis Mallet-Prevost Colt & Mosle

People in <i>Who's Who</i> :	3
Pending cases as counsel:	57
Value of pending counsel work:	US\$120 billion
Treaty cases:	32
Current arbitrator appointments:	7 (2 as sole or chair) (excluding UNCLOS work)
No. of lawyers sitting as arbitrator:	5

*Renowned for its investor-state work, the firm is now focused on building its commercial arbitration strength – and has made a star hire from GE's in-house team*

Curtis Mallet-Prevost Colt & Mosle has made a name for itself in recent times as a knight in shining armour for states facing serious claims under investment treaties.

That is in part down to a deliberate policy of representing only sovereigns in such claims, never investors. According to the international arbitration group co-chair, George Kahale III, it is not feasible for a single arbitration group to represent both claimants and states in similar proceedings because of the recurring legal issues. He thinks that governments now believe this too.

The growth of Curtis' practice suggests he is right. The firm reckons it is currently acting in 17 different ICSID cases – more than any other law firm. That's largely thanks to the firm's long-standing relationship with the government of Venezuela, which it represents in the bulk of its investment treaty cases. But the firm also counts Algeria, Kazakhstan, Turkmenistan and Uganda as arbitration clients.

Kahale, who's also the firm's chairman and former managing partner, began as a transactional attorney. A US publication dubbed him "the Oil Baron" in 2008 for his work on behalf of state oil companies such as Kazakhstan's KazMunayGas.

Although strongly identified with BIT work, the firm also has a presence in Paris, where the other practice co-chair, Peter Wolrich, resides. Wolrich has strong links with the ICC having been chair of its commission on arbitration since 2002. He also oversaw the latest revisions to the ICC arbitration rules.

The firm is taking its commercial arbitration practice increasingly seriously. In 2013, the Paris office announced it had hired Jean-Claude Najjar, formerly general counsel for General Electric in France. Najjar is one of the more prominent corporate counsel on the arbitration conference circuit and was recently fêted with an Outstanding Achievement at the IBA annual conference

in Dublin for his efforts in making sure clients' perspectives on the process are heard.

Najar's hire followed that of Nadia Darwazeh, a German-Jordanian former ICC counsel for Europe, the Middle East and Africa, who joined in Paris in September.

Other names to know are Miriam Harwood in the New York office, Galileo Pozzoli in Milan, Gabriela Alvarez-Avila in Mexico City and Claudia Frutos-Peterson in Washington, DC. The latter two are former ICSID counsel. Kate Brown de Vejar, also in Mexico City, is a member of the Australian delegation to the UNCITRAL working group on transparency in investor-state arbitration.

## Network

The practice is concentrated in New York, DC, Paris, Milan and Mexico City, though it also has boots on the ground in Almaty and Astana (Kazakhstan), Ashgabat (Turkmenistan), Istanbul and Buenos Aires.

## Who uses it?

States, states and more states. Turkmenistan has retained it on some 20 matters. The firm is representing Venezuela in around 12 cases, as well as defending Algeria and its government-owned oil company, Sonatrach, in matters worth several billion. A recent client is the government of Uganda, which has retained it for an UNCITRAL dispute with Canada's Heritage Oil over capital gains tax; and Ghana, which is using it for an ICC case brought by a mining company.

The firm also represents state entities such as PDVSA of Venezuela, Mexico's Pemex, Kazakhstan's KazMunayGas and the Nigerian National Petroleum Company.

## Track record

Although many of their ICSID cases still have some way to run, the firm has scored some notable results. For example, in June 2012, it won the dismissal of a billion-dollar ICSID claim against Kazakhstan brought by Kazakh-registered entity Caratube. The tribunal declined jurisdiction, holding there was insufficient proof that the claimant was under "foreign control" for the purposes of the ICSID Convention.

In 2011, the firm knocked out another ICSID claim – this time by US telecoms investor Brandes against Venezuela. That panel held that an ambiguous provision in Venezuela's 1999 investment law could not be read as a free-standing consent to ICSID jurisdiction. The Curtis team had already persuaded tribunals in the Mobil and Cemex cases on the same point. (Those cases were allowed to proceed on other grounds.)

It has also proved adept at significantly lowering the amount of money at stake in other claims. In early 2012, an ICC tribunal awarded ExxonMobil subsidiary Mobil Cerro Negro US\$908 million in a claim against PDVSA – a far cry from the US\$12 billion it initially asked for. PDVSA says that, after deductions, the final pay-out is

more like US\$250 million. In Mobil's parallel ICSID case, Curtis also persuaded the tribunal to exclude a sizeable chunk of the US\$10 billion claim that related to events predating a corporate restructuring.

In addition, the firm has enjoyed success before US and UK courts – it was Curtis that put paid to the US\$12 billion freezing order granted by the High Court in London in support of Mobil's ICC claim; and that defeated a petition for section 1782 discovery brought by Caratube against Kazakhstan.

### Recent events

Besides the arrivals of Darwazeh and Najjar in Paris, the Milan office welcomed Tullio Rodolfo Treves as a public international law consultant. A retired academic, Treves has just ended a 17-year stint as a judge at the International Tribunal of the Law of the Sea, which is based in Hamburg. He is also part of the ad hoc panel hearing a maritime dispute between Bangladesh and India at the Permanent Court of Arbitration in The Hague.

In DC, US-Iranian Borzu Sabahi published *Compensation and Restitution in Investor-State Arbitration* in mid-2011, which was nominated for book of the year by OGE MID.

George Kahale was one of the speakers at GAR Live New York, where he controversially argued that the entire ICSID system is “broken” and in need of a “complete revamping” – a memorable session that saw him face off against Nigel Blackaby of Freshfields Bruckhaus Deringer.

The firm's work for Venezuelan state oil company PDVSA in an ICC claim brought by ConocoPhillips ended in something of a draw. The panel awarded Conoco over US\$66 million in compensation for production cuts that PDVSA imposed on one of its projects, but knocked out an even larger claim for US\$100 million relating to a different project. Conoco's parallel ICSID claim, however, continues.

Curtis also had some success on behalf of Turkmenistan in 2012, persuading an ICSID tribunal that Turkish construction company Kilic Insaat had failed to comply with a treaty requirement to go to local courts for one year before seeking arbitration. In one of the odder legal wrangles of 2012, the parties held a hearing on “treaty authenticity” to establish which version of the text (Russian, English or Turkish) they should abide by. Although the tribunal ruled in the state's favour on the issue, the case is not yet over – further jurisdictional hearings took place in December.

Curtis also succeeded in settling a cluster of claims brought by Russian telecoms operator Mobile Telesystems. The company signed a new agreement with the government to operate in the country, withdrawing an US\$800 million ICSID claim and three ICC breach-of-contract claims against the telecoms ministry and two state entities. The firm continues to represent Turkmenistan in five other ICSID claims.