



# Judd L. Kessler

*counsel to the firm*

Judd practices primarily as an arbitrator in major international commercial and investment arbitration cases. For further information on his experience as an arbitrator, please refer to Representative Matters. Judd has also practiced in the areas of international business transactions, international project financing and government contracting. He has been a partner at Porter Wright Morris & Arthur since 1982.

Judd's practice has included counseling of major international companies, to their immediate legal needs and more broadly as an advisor on major foreign policy issues affecting business. Based on his experience and long relationships in the executive and legislative branches of the United States government, he has an established track record of enabling clients to identify and deal with sensitive political and business issues based on information going well beyond what is made public in ordinary media sources. He is knowledgeable in all aspects of U.S. export controls, including ITAR, EAR and OFAC, and has successfully managed complex voluntary disclosures and investigations related to the above.

Judd has also become a leading international arbitrator in cases involving foreign investment, having served as president of several major arbitration tribunals, as well as an important resource for the Porter Wright litigation/arbitration team in representing major clients in international arbitration cases.

Prior to joining Porter Wright, Judd was assistant general counsel of the Agency for International Development (AID). He was appointed by President Reagan to the career rank of counselor in the Senior Foreign Service. He was also chief counsel for AID's Near East and North African programs and before that, chief counsel for its Latin American and Caribbean programs. Earlier, he was chief legislative counsel for the agency, special assistant to the Under Secretary of State for Military and Security Assistance and resident regional legal adviser for AID in South America for five years. During this period, Judd had principal responsibility for legal aspects of cases involving more than \$800 million in assets of U.S.-owned private investments nationalized in Chile by the Allende government, including a major role in representing the interests of Overseas Private Investment Corp. which had issued political risk insurance for many of those investments.

## CONTACT

[jkessler@porterwright.com](mailto:jkessler@porterwright.com)  
202.778.3080  
[www.porterwright.com](http://www.porterwright.com)

2020 K Street, NW  
Suite 600  
Washington, DC 20006

## EDUCATION

Harvard Law School, J.D.

Oberlin College, B.A.

## LANGUAGES

- Spanish, *fluent*
- French, *intermediate*

## SERVICES

### International Business & Trade

- Export controls and economic sanctions
- Cross-border litigation and arbitration

### Litigation

### Intellectual Property

- International business and intellectual property

Judd is a frequent author of articles in business and legal journals on business law and international transactions. He is also a speaker and commentator on international business law issues for such institutions as the American Management Association, the National Association of Manufacturers and the International Development Law Institute.

## REPRESENTATIVE MATTERS

### ***RWE Innogy GmbH and RWE Innogy Aersa S. A. U. v. Kingdom of Spain***

- Appointed to three-arbitrator ICSID tribunal (with S. Wordworth, Pres. and A. Joubin-Bret) to decide case involving wind-power project brought under the Energy Charter Treaty. Case in initial stages.

### ***Tenaris S. A. and Talta Trading v. Bolivarian Republic of Venezuela***

- Appointed to three-arbitrator ICSID tribunal (with J. Beechey, Pres. and T. Landau) to decide case arising from alleged expropriation of steel tube manufacturing plant. Award issued in 2016.

### ***Marion Unglaube v. Government of Costa Rica***

- Chairman of three arbitrator ICSID panel (with F. Berman, B. Cremades) to decide a claim brought by a German investor against the government of Costa Rica. The case involved the alleged taking of real property designated for resort development as well as disputes regarding the scope of governmental rights in relation to regulatory and other powers vs. the rights and expectations of the owner. Award issued in 2012.

### ***Tza Yap Shum v. Government of Peru***

- Chairman of three-arbitrator panel (with J. Fernandez Armesto, H. Otero) to decide the first ICSID claim by an investor of Chinese nationality. The case was bifurcated to deal first with complicated questions of jurisdiction. The first hearing in this matter was conducted in November 2007 and the final award was issued in 2011. A request for annulment of the award was rejected in 2015.

### **Japanese Joint Venture**

- Participated as a member of counsel team in representing a Japanese joint venture in an arbitration in Tokyo involving allegations that the American partner had violated its contractual duties to the venture. Each side also alleged patent and copyright violations with respect to the venture's technology for manufacturing computer chips.

### ***National Grid PLC v. Government of Argentina***

- Appointed as arbitrator by counsel for claimant, National Grid PLC (with A. Rigo, Pres. and Prof. A Garro). This proceeding was conducted largely in Spanish under the UNCITRAL rules but was administered by ICSID. The final award was issued in 2008.

### ***Repsol S.A. v. Petroecuador***

- Chairman of three-arbitrator ICSID ad hoc committee (with Prof. P. Bernardini, G. Biggs) reviewing arbitral award against the Ecuadorian National Petroleum Company (Petroecuador). This proceeding was conducted entirely in Spanish. Final decision was issued in early 2007.

### ***NEWCO, Inc. v. Government of Belize***

- Party-appointed arbitrator (with M. Hunter, A. Fiadjor) in UNCITRAL ad hoc case arising from alleged breach of concession contract for expansion of Belize International Airport; hearing in this matter was completed in January 2008. The final award was issued later that year.

The following cases are described in general terms due to confidentiality requirements:

- International airport concession contract dispute (party-appointed arbitrator in UNCITRAL ad hoc case arising from alleged breach of concession contract for expansion of international airport in Belize).

- Tribunal President in dispute between a Dutch subsidiary of a major U.S. company and minority shareholders in major Venezuelan glass manufacturing company.
- Party appointed arbitrator in a dispute between a major U.S. aircraft manufacturing company and aircraft parts manufacturer in a Middle Eastern country related to production of military aircraft.
- Software company vs. foreign distributor (sole arbitrator appointed by the AAA/ICDR and International Commercial Arbitration Commission (IACAC) to decide an international distribution contract dispute involving Colombia).
- Construction dispute related to fuel loading facilities for electric power generation facility (chairman of three arbitrator AAA/ICDR panel in contract dispute related to a power plant project in the Dominican Republic).
- Dispute between prime and subcontractor on major defense contract (chairman of three arbitrator AAA panel to decide dispute under a large defense contract); case settled with assistance of panel chairman.
- Claim by noted prize fight promoter for breach of agent contract by world super lightweight champion from Mexico (chairman of three-arbitrator panel; case proceeded to full hearing and award).
- Claim by U.S. investor under political risk insurance policy arising from destruction of warehouses in Zaire (chairman of three arbitrator panel; bifurcated hearing completed as to liability only; award filed).
- Dispute between Florida-based electric utility and a coal transport company (sole arbitrator in determination of legal rights and damages for termination of a 24-year coal-transloading contract).
- Dispute between major health equipment manufacturer and Canadian lessee (sole arbitrator in determination of contractual rights under an international equipment lease and related guarantees).
- Dispute between major Middle Eastern bank (guarantor) and U.S. based training company (sole arbitrator in a dispute regarding contractual rights and bank guaranties arising from termination of contract for training by a U.S. company of the security forces of a Middle Eastern government. Represented equity research firm in obtaining injunctive relief in state court and NASD (now FINRA) proceedings against a group of former employees who had formed a competing firm.

## BAR ADMISSIONS

- District of Columbia
- Maryland
- New Jersey
- Supreme Court of the United States

## PRESENTATIONS

- “Investment Protection in Latin America,” The Inter-American Bar Association D.C. Chapter, April 11, 2017
- “Third Party Financing in International Arbitration,” The District of Columbia Bar Association, International Section, Feb. 21, 2017
- “The Legal Significance of a Decision by a Country to Withdraw from ‘Membership’ in the International Centre for the Settlement of Investment Disputes,” International Arbitration at the 50th Conference of the Inter-American Bar Association, June 2014
- “Prevention and Administration of International Investment Arbitration Disputes,” Municipal Government Center of Bogota, November 2013
- “Legitimate Expectations – What Does It Mean in the Context of Foreign Direct Investment Arbitration,” October 2013

- “Legitimate Expectations,” Investment Treaty Forum, British Institute of International and Comparative Law, May 2013
- “The Role of the Arbitrator: Hard-and-fast rules or flexible approach?,” American University Washington College of Law, March 2013
- “How to Set Up Agents or Distributors in Mexico, Rules on Having a Direct Employee Present and Tax Implications,” U.S. Department of Commerce webinar, Dec. 12, 2012

## PUBLICATIONS

- “Investment arbitration, legitimacy and national law in Latin America: An arbitrator’s perspective,” *The American Review of International Arbitration*, Columbia Law School, 2016; also published in *Spain Arbitration Review*, Club Español de Arbitraje Vol. 29 2017
- “Proof of damages in international arbitration: A crucial but not very glamorous aspect of the process,” *Arbitration: Journal of Commercial and Investment Arbitration*, The Center for International Arbitration, 2011; this article also published in Spanish, *Spain Arbitration Review*, 2011

## PROFESSIONAL ASSOCIATIONS

- American Arbitration Association, International Panel of Arbitrators
- London Court of International Arbitration
- International Council for Commercial Arbitration (ICCA)
- World Bank, International Center for the Settlement of Investment Disputes (ICSID), Panel of Arbitrators and Conciliators
- International Chamber of Commerce (ICC), United States Arbitration Committee
- Inter-American Bar Foundation, President
- American Society of International Law
- American Bar Association
- Federal Bar Association, International Section, past Chairman
- Export Legal Assistance Network, Founder; National Coordinator
- Cosmos Club of Washington, D.C.

## HONORS | AWARDS

- *Best Lawyers*®, International Arbitration - Commercial and International Arbitration - Governmental
- *Chambers USA and Global*, International Arbitration: Arbitrators, Band One, Nationwide
- *Washington, D.C. Super Lawyers*®
- *Investment Arbitration Reporter*, recognized as one of 80 lawyers worldwide who are most experienced in international investment arbitration
- William Roy Vallance Award, 2009
- Inter-American Bar Association, Inter-American Jurisprudence Prize, 2004
- Inter-American Bar Association, International Lawyer of the Year (Norberg Award), 2002
- Export Legal Assistance Network, U.S. Presidential, “E” Award (Excellence in Export Service), 1997