

Three Corporate Lawyers Rule

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. ISDS empowers multinational corporations to sue our governments before panels of three corporate lawyers unaccountable to any electorate. Some of these lawyers rotate between judging cases and representing corporations against governments, which is a conflict of interest. Such dual roles would be deemed unethical in most legal systems. U.S. judges, for example, are forbidden from representing private clients. The lawyers on ISDS tribunals are paid by the hour, creating an incentive for cases to go on for years, even if they have no merit.

Tribunals are not bound by precedent – the three corporate lawyers can make up new interpretations of what rights and powers they think corporations have. The lawyers are also not bound by even what the governments that signed ISDS treaties think the treaties require of them. There is no outside appeal to the three corporate lawyers' rulings.

Under ISDS, corporations alone can launch cases. The corporations have no responsibilities to governments, nor can governments sue corporations in this system. The corporations that launch ISDS cases also pick one of the lawyers who will act as a "judge." (Imagine if the plaintiff were allowed to pick the judge in a domestic court case.) This creates a perverse incentive for the panel of three corporate lawyers – formally called tribunalists – to invent sweeping rights for foreign firms and rule against governments. By helping out the multinational corporations, tribunalists can boost firms' interest in launching more ISDS cases and in picking them for the next lucrative tribunalist gig.