Corporate Attacks: Financial Stability

Case Study: Too-Big-To-Fail

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. The corporate lawyers can award the corporations unlimited sums to be paid by America's taxpayers, including for the loss of expected future profits the corporations claim they would have earned if the domestic law was never enacted. The corporate lawyers' decisions are not subject to appeal and the amount they can order taxpayers to give corporations has no limit.

Saluka v. Czech Republic

Investor Win (awarded $236 million)

Saluka Investments, a Netherlands investment company, filed an investor-state claim in 2001 under the Netherlands-Czech Republic BIT against the Czech government for not bailing out a private bank, in which the company had a stake, in the same way that the government bailed out banks in which the government had a major stake. The bailouts came in response to a widespread bank debt crisis. Investicni a Postovni Banka (IPB), the first large bank to be fully privatized in the Czech Republic, along with three large banks in which the government retained significant ownership, had been suffering from significant debt and borderline insolvency, threatening the Czech banking sector. Consequently, the government placed IPB into forced administration in 2000 and then sold the bank for one crown to another bank.

Saluka, a minority shareholder in IPB, claimed the Czech government violated the BIT's "fair and equitable treatment" provisions because the government did not give IPB the same degree of assistance as it gave to the banks in which the government possessed a large stake. The government argued that rectifying IPB's debt problems was the responsibility of private shareholders, while the problems of the large banks in which the government had a major shareholding interest were the government's responsibility.

The investor-state tribunal decided that the Czech Republic had violated the BIT's "fair and equitable" treatment obligation and acted discriminatorily by giving greater government aid to banks in which the government was a major stakeholder. The tribunal ordered the government to pay Saluka $236 million.