

“Denial of Benefits” – Practical Lessons For States and Investors From the *Pac Rim* Arbitration

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The *Pac Rim Cayman LLC v. The Republic of El Salvador* jurisdictional hearing marks the first time that any international tribunal has decided a “denial of benefits” defense in the context of CAFTA. Indeed, such a defense has yet to be determined under the similar NAFTA treaty. The *Pac Rim* tribunal sustained such a defense, dismissing all CAFTA claims in the arbitration, on the basis that the claimant had no “substantial business activities” in any treaty state (other than in the respondent) and that claimant was owned by a “person of a non-Party,” namely its Canadian parent corporation. The decision holds important lessons for both host states and investors and how investments should be structured in the common context of international conglomerate investors with numerous affiliates.

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