

**Kim Smajlovic, CVA**

Founder/Principal – Fortis Disputes & Consulting, LLC

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Kim Smajlovic is the founder and Principal at Fortis Disputes & Consulting, LLC, and for over 20 years has provided privileged and expert consulting services in the context of international arbitration, commercial litigation, and other complex disputes or claims.

Ms. Smajlovic has led engagements and advised clients (businesses, investors, sovereign governments and their counsel) in both privileged and expert consulting roles on matters involving claims of lost profits, diminished or expropriated asset or investment value, infringed intellectual property rights, and fraud, across all stages of the disputes life cycle ranging from discovery to settlement. These matters have spanned a wide range of industries including energy, technology, real estate, agribusiness, financial institutions, chemicals, retail, and manufacturing, among others.

She has assessed damages, addressed issues of economic causation and class certification, and provided testimony and written evidence in disputes heard before U.S. state and federal courts, and in international commercial and investor-state disputes under the auspices of various arbitral forums including ICSID, ICC, PCA, and SIAC, and under UNCITRAL arbitration rules. Prior to founding Fortis Disputes & Consulting in 2023, Ms. Smajlovic was a Senior Director at Alvarez & Marsal for 18 years, and prior to that held roles at Navigant Consulting (now Ankura), where she focused on dispute analysis, commercial litigation and investigations.

Ms. Smajlovic earned a bachelor's degree in Finance and Business Honors from the University of Texas at Austin. She is a Certified Valuation Analyst ("CVA"), and is a member of ArbitralWomen and the National Association of Certified Valuators and Analysts.

Certifications

Certified Valuation Analyst

Professional Affiliations

National Association of Certified Valuators and Analysts

ArbitralWomen

Education

B.B.A. in Finance and Business Honors, University of Texas at Austin

Select Professional Experience**International Arbitration**

- PCA arbitration between a real estate development company and an African nation (Respondent). Assessed damages in relation to the breach of a leasehold agreement for the construction of a waterfront mixed-use real estate development. Case is ongoing.
- UNCITRAL arbitration between a Turkish construction company and an African nation (Claimant). Calculated damages associated with the cancellation of the construction of an industrial city. Case is ongoing.
- ICC arbitration between an Austrian electric/hybrid transmission design firm and a Chinese manufacturer of electric/hybrid buses and heavy commercial Vehicles (Claimant). Calculated damages to Claimant based on Respondent's alleged theft and misappropriation of Claimant's transmission designs and subsequent patenting thereof.

- PCA Arbitration Between Indian Investors vs. Balkan State (Respondent): Currently advising a Balkan state in a dispute involving multifaceted damages claimed by Indian investors related to coke and fertilizer manufacturing facilities located in the Balkans. The case involves complex technical and financial assessments, with a focus on analyzing the root cause of the damages claimed. The overall claim exceeds \$400 million. The case is bifurcated and ongoing.
- ICSID Arbitration Dispute Involving Minority Shareholder in Central Eastern European Coal Power Plant and Mine (Claimant): The Claimant initiated a dispute against a European state under the Energy Charter Treaty (ECT), alleging that actions taken by the state breached several ECT provisions, including those related to unlawful expropriation and the denial of fair and equitable treatment (FET). These actions allegedly resulted in the expropriation of the Claimant's minority stake in a local mining company. My role involves calculating the lost profits and determining the value of the expropriated business. The case is ongoing.
- ICSID arbitration between a CIS telecommunications company and a sovereign state (Claimant). Calculated the fair market value of Claimant's expropriated telecommunications operations in a sovereign nation, as well as historical lost profits associated with certain illegal measures. Case is ongoing.
- ICSID arbitration between a bank holding company and a sovereign nation (Respondent). Assessed the fair market value of Claimant's banking operations in a CIS nation after the bank was shut down by regulators. Case is ongoing.
- PCA arbitration between an individual investor and a Balkan state (Claimant). Calculated the fair market value of Claimant's expropriated real estate investments (33 total), including hotel, office, retail, and luxury villa. Case is ongoing.
- UNCITRAL arbitration involving a part owner of an oil & gas concession in the East China Sea and Chinese O&G conglomerate (Respondent). Evaluated damages to a working interest owner in an offshore Chinese gas field which would allow for an equitable dissolution of its Production Sharing Agreement and other associated development contracts with Chinese conglomerate, and prepared counterclaim. Tribunal awarded value calculated by A&M as well as full counterclaim to Respondent.
- ICSID arbitration between a Cypriot investor and a Balkan State (Claimant). Advised client on the valuation of its investment portfolio (various real-estate developments in Serbia, factoring business, banking certificates, and various other commercial investments) which was impaired due to the alleged actions of the sovereign state. Case is ongoing.
- ICSID arbitration between a Middle Eastern fertilizer producer and a sovereign state (Respondent). Evaluated damages to a fertilizer manufacturer located in a developing country as a result of its loss of status as a free zone company, as well as alleged differential treatment from the government in its natural gas supply contracts. Case settled prior to hearing.

- ICSID arbitration between a consortium of investors in renewable energy projects and a sovereign state (Claimant). Advised a consortium of banks on the impact of regulatory changes on the fair market value of their debt holdings related to 70+ solar and solar-thermal projects which underlie hundreds of loans issued by the banks. Case is ongoing.
- ICSID arbitration between and integrated oil and gas company and a South American nation (Claimant). Modeled the fair market value of more than \$4 billion of assets owned by a major U.S. integrated oil and gas company that were expropriated by a South American government. Also quantified economic damages arising from illegal pre-expropriation measures, including significant royalty and income tax increases, export curtailments and project expansion disallowance.

United States Federal and State Court Litigation

Energy

- Analyzed alleged underpayments associated overriding royalty interests in gas wells acquired by an oil and gas company.
- Served as a bankruptcy advisor to the Unsecured Creditors Committee of a large integrated nuclear corporation. Role included research and advisory related to potential claims or causes of action that could result additional funds to the bankruptcy estate and creditor pool.
- Evaluated damages allegedly owed by an E&P company with operations in Colombia accused of fraudulently misrepresenting reserves to its investors.
- Evaluated a large investment bank's role with respect to a \$45 million secured debt issuance with warrants that was consummated by an E&P company with operations in South America. Analysis also included an evaluation of the solvency and value of the company as of certain dates.
- Evaluated \$650 million damages claim for an integrated oil and gas firm accused of interfering with the contract execution between a geophysical services company and the Mexican government. Analysis included an evaluation of the capital position of the plaintiff company, the underlying assumptions in the lost profits model, and the viability of the claimed cash flows.
- Evaluated calculation of alleged damages resulting from a U.S. refinery fire totaling in excess of \$600 million. Analyzed underlying accounting records, forecasts, budgets, production charges, and pricing used in the plaintiff's damages model and identified \$150 million in overstatements, errors, and unsupported calculations.
- Valued lost profits and incremental expenses incurred as a result of lost generation capabilities at a large coal-fired generation facility. Project required the historical analysis of generation facility and entire power generation fleet of defendant company, the evaluation of third-party sales and purchase transactions during the damage period, the determination of market prices during the damage period, and the evaluation of incremental generation costs.

- Quantified economic damages arising from a power trading dispute involving natural gas pricing swaps.

Real Estate/Environmental/Toxic Tort/Class Action

- Evaluated multiple diminution of property value claims along the Gulf Coast alleged as a result of the Deepwater Horizon spill.
- Prepared analysis in opposition of class certification for a proposed class of residential homeowners seeking property value diminution damages.
- Prepared analysis in opposition to class certification for thousands of residential and commercial property owners seeking class certification for damages resulting from alleged property value stigma associated with a former wood-treating facility (now Superfund site). The analysis presented included an evaluation of the merits of using Plaintiffs' proposed automated regression model as a method to uniformly determine unimpaired market value and damages on a class-wide basis.
- Prepared analysis in opposition to class certification for thousands of residential property owners seeking class certification for damages resulting from allegedly defective roofing shingles. The analysis presented included an evaluation of the merits of using Plaintiffs' proposed automated valuation (i.e. regression) model as a method to uniformly determine unimpaired market value and damages on a class-wide basis.
- Evaluated the economic benefit (as calculated under the EPA's "BEN" model) allegedly reaped by a metallurgical coke manufacturer as a result of delayed capital expenditures necessary to maintain compliance with pollution control standards. Also examined their ability to pay the calculated benefit.
- Determined the appropriate restated accrual amounts related to toxic tort for two separate years for a large public chemical manufacturer.
- Evaluated the EPA's claim that a large oil and gas company gained an economic benefit of \$80 million as a result of delaying certain capital expenditures and operating expenses at its refineries. The claim was levied against the company after an oil spill.
- Evaluated numerous property value diminution and stigma claims as result of various forms of environmental contamination including petroleum hydrocarbons, TCE and PCE.
- Calculated economic damages and lost profits associated with a commercial real estate dispute.

Agribusiness

- Served as a privileged consultant on a large agribusiness class multi-district litigation matter. Role included assisting counsel with fact and expert discovery (including discovery requests and preparation for plaintiff and expert depositions), bellwether plaintiff evaluation and selection, and support of experts in opposition of class certification and damages evaluation.
- Assessed damages allegedly owed by a fertilizer manufacturer on a litigation matter filed by a group of companies involved in alfalfa farming. Farming

companies alleged financial loss caused by the fertilizer manufacturer. Assessed financial condition and solvency of farming entities through an analysis of various financial statements and tax returns and through preparation of a comprehensive cash flow history.

Intellectual Property

- Calculated damages in a trademark infringement matter involving a manufacturer of natural gas processing equipment.
- Prepared damages claim in a trademark infringement matter involving the unauthorized use of educational campaign materials.
- Evaluated damages to a transportation and logistics company resulting from an employee theft of trade secrets.
- Evaluated damages to a law firm resulting from a misappropriated legal award from multiple patent settlements. Analysis included the valuation of the underlying settled patents and the development of an appropriate allocation model based on multiple parties involved.
- Calculated damages on a copyright infringement matter involving specialized software.

Financial Institutions

- Evaluated the commercial real estate portfolios of several banks to determine the adequacy of their Allowance for Loan and Lease Loss ("ALLL"). Responsibilities included operational management of projects, evaluation of commercial real estate loan underwriting and collateral valuations, development of a model to calculate recommended ALLL based on extrapolation of sample reviewed, and preparation of summary findings and recommended bank initiatives to be reviewed by both bank management and external regulators.
- Analyzed the financial statements and accounting records of a major U.S. bank accused by the SEC of managing earnings through reserve manipulation.
- Directed and performed reviews of large commercial mortgage loan portfolios to determine whether entities that sold loans into securitizations violated representations and warranties made under the Mortgage Loan Purchase Agreement at the time of sale.
- Consulted on litigation involving a \$300 million subprime mortgage loan securitization trust portfolio. Constructed hypothetical cash flow models for individual securitizations within the trust and constructed an IRR analysis of each securitization using actual purchase price and cash flow information.
- Performed a statistical review of a \$4 billion commercial loan portfolio acquired by a large financial institution in order to estimate the frequency and potential impact of discrepancies between twelve select loan terms related to the calculation of interest due. The review assessed whether the sample loans were converted into the institution's loan processing system to properly calculate interest income, as well as whether the sample loans were configured correctly on the acquired institution's system prior to conversion. Analysis included the evaluation of the loan processing systems, review of

loan documentation, and the creation of a model comparing the system data to actual loan documentation.

Insurance/Claims

- Modeled the Business Interruption loss of a clothing retailer as a result of Hurricane Ike. Negotiated final settlement claim with client's insurer.
- Evaluated an employee dishonesty insurance claim for a large mattress company and assisted with settlement negotiations.
- Facilitated the FEMA reimbursement process for a large school district for expenses incurred as a result of Hurricane Ike.
- Prepared two separate Business Interruption claims for a particle board manufacturing company.

Other Select Experience

- Organized and oversaw a detailed review of all foreign labor contracts in Kuwait and Iraq for a large U.S. government contractor. Assessed contract award, administration, cost allocation and compliance with local regulations to ensure compliance with Federal Acquisition Regulation provisions.
- Designed budget allocation model for a large public school district that assigned overhead costs to individual campuses and provided for increased transparency in budgeting process.
- Provided consulting services on a complex commercial litigation matter defending a Big Four accounting firm against fraudulent misrepresentation. Tasks included competitor evaluations, analyses of acquisitions, calculations on debt structure, and review of credit agreements and financial covenants.