



# The Winning Brief: Basic Elements and Common Fallacies

*Sylvia T. Tonova*

12 June 2015  
Geneva, Switzerland



One Firm Worldwide<sup>SM</sup>

The contents of this document are proprietary and should not be duplicated or shared without express permission from Jones Day.

# The Winning Brief



## Basic Elements

1. Structure, roadmap and flow
2. Frame the issues to be decided
3. “Theming” and “Juicing”
4. Tone and style
  - Claimant vs. Respondent
  - First brief or subsequent briefs
  - Cultural differences
5. How to deal with unhelpful facts or law?

## Common Fallacies

1. Adopting a “kitchen sink” approach & repetition
2. Authoring a treatise on the legal standards
3. Overstatement (factual and legal)
4. Failure to develop an important factual/legal point
5. Not thinking your argument through (think chess!)
6. Not managing client expectations
7. Respond to everything – to do or not to do?



## Time to Vote

**Should you respond to everything raised in the opposing party's brief?**



## Time to Talk

**What Stood Out Most About an Excellent Brief?**

**What About a Poorly Drafted Brief?**



**Questions?**

**Thank you.**



## **SYLVIA TONOVA**

### ASSOCIATE

Sylvia Tonova has represented both investors and states in investor-state and commercial arbitrations for almost a decade. Her experience includes arbitrations conducted under the rules of ICSID, UNCITRAL, ICC, LCIA, and VIAC. Sylvia advises clients on drafting arbitration clauses and structuring investments in view of treaty protections and has extensive experience with investments in Eastern Europe and the CIS.

Sylvia currently represents four claimants in an ICSID arbitration against Uzbekistan brought under the Energy Charter Treaty and the Turkey-Uzbekistan BIT. She also represented the claimants in an ICC arbitration against Ghana in connection with a gold mining dispute. Prior to joining Jones Day, Sylvia practiced at a leading law firm in Washington, D.C. where she represented clients in oil and gas, mining, telecommunications, banking, and services disputes, including the successful representation of Bulgaria in an ICSID arbitration under the Energy Charter Treaty and Romania in two ICSID arbitrations. She also represented Gold Reserve in an investment arbitration against Venezuela relating to one of the world's largest undeveloped gold/copper deposits; a CIS state in an investment arbitration concerning a gold mine; a Kazakh bank in an UNCITRAL arbitration involving denial of justice claims; and an Eastern European state in an ICC arbitration against multiple respondents arising out of the privatization of a telecommunications company.

Sylvia is co-chair of Young ICCA, serves as Associate Managing Editor of the World Arbitration & Mediation Review, and is a member of the peer review board of the ICSID Review — Foreign Investment Law Journal.



#### **CONTACT**

stonova@jonesday.com

#### **LONDON**

(T) 44.20.7039.5218

#### **EXPERIENCE HIGHLIGHTS**

Federal Elektrik Yatirim ve Ticaret arbitrates issues against Uzbekistan under Energy Charter Treaty

Canadian investor initiates UNCITRAL arbitration against Kazakhstan under Canada-U.S.S.R. Bilateral Investment Treaty of 1989

Kazakh investors initiate ICSID arbitration against Uzbekistan

#### **LANGUAGES**

English; Bulgarian; Russian; Spanish (basic)

#### **EDUCATION**

Georgetown University (J.D. cum laude 2005; Recipient of the International Academy of Trial Lawyers' Award for the Harrison Institute for Public Law); Bradford College (B.A. summa cum laude 2000); School for International Training (International Studies, Organizations and Social Justice Program, Geneva, Switzerland, 2000)

#### **BAR ADMISSIONS**

New York and District of Columbia