

Mining arbitrations in practice

Filing trends, shifting geography, and claimant recovery



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Executive summary

October 2026

This article builds on CRA's 2023 study, *Disputes Involving Mineral Assets: Statistics and Trends*.¹ Since that study, the volume and character of mining disputes have continued to evolve. Questions that arise repeatedly in our work in these matters include: in which regions are disputes becoming more concentrated, which minerals are increasingly at issue, and how claimed damages compare with the amounts tribunals ultimately award.

Mining disputes arise in a range of forums, including investor-State arbitration, commercial arbitration, and domestic courts. Among the many disputes arising in the mining sector, we focus here on treaty arbitrations between investors and States.

These proceedings provide a sufficiently consistent public record across jurisdictions to examine patterns in filings, geography, minerals, claims, awards, and outcomes. The resulting dataset allows us to put empirical context around issues that regularly arise in the assessment of mining disputes.

The present study expands our dataset to 155 investor-State mining arbitrations since 2000. It updates the trend and geographic analysis from the 2023 study and adds a new dimension: award-to-claim ratios by property stage and allocation of arbitration costs. The forces that drove mining disputes in the past have intensified, increasing the relevance of the empirical record of how tribunals resolve these disputes and determine quantum.

Before turning to the detailed analysis, we summarize our principal findings below.

Filing rates have accelerated sharply. Investor-State mining arbitrations averaged approximately five new cases per year from 2000 through 2021. Since 2022, that pace has increased to roughly ten cases per year.

Critical minerals have become more prominent. Their share of mining arbitrations increased from approximately 32% in 2006-2015 to 44% in 2016-2026.

Latin America remains the largest dispute region, while Africa has grown the fastest. Latin America's share increased from 34% in 2006-2015 to 42% in 2016-2026. Over the same periods, Africa's share increased from 16% to 34%.

Tribunals frequently award a small fraction of the damages claimed. In cases where tribunals found a breach and awarded damages, the award was less than 10% of the amount claimed for 54% of the cases.

Award-to-claim ratios differ by property stage. Cases involving properties that were producing at the time of the alleged breach had a higher median award-to-claim ratio compared to cases involving non-producing properties.

Arbitration cost allocations are also associated with recovery of claims. Cases in which respondents bore most arbitration costs were associated with higher award-to-claim ratios compared to other cases.

Commodity prices are associated with dispute activity. Using gold as a case study, periods of elevated prices are associated with more treaty-arbitration filings involving gold assets. Gold provides the most informative commodity-specific analysis because it is the most frequently disputed mineral in our dataset.

Recorded findings of breach are relatively limited. Approximately 25% of concluded cases ended with a recorded finding that the respondent State had breached its obligations. The remaining cases included settlements, discontinuances, jurisdictional or admissibility dispositions, and merits outcomes without a breach finding.

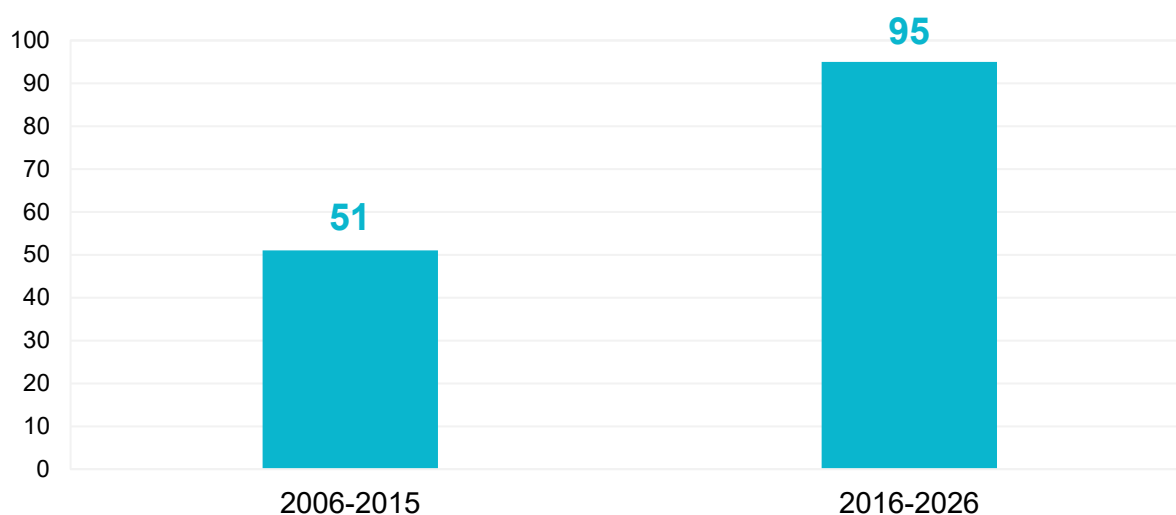
Taken together, these findings provide empirical context for issues that arise repeatedly in mining disputes. They reinforce the importance of looking beyond headline claim amounts and broad project characteristics to the particular economics of the asset, its stage of development, the risks that remained as of the relevant date, and the counterfactual against which the loss is being measured. The data can provide useful benchmarks but are most informative when considered alongside the facts and economics of the individual project.

Mining disputes over time

Before examining the characteristics and outcomes of mining disputes, it is useful to consider whether the recent increase in filings represents a temporary fluctuation, or a sustained change in dispute activity.

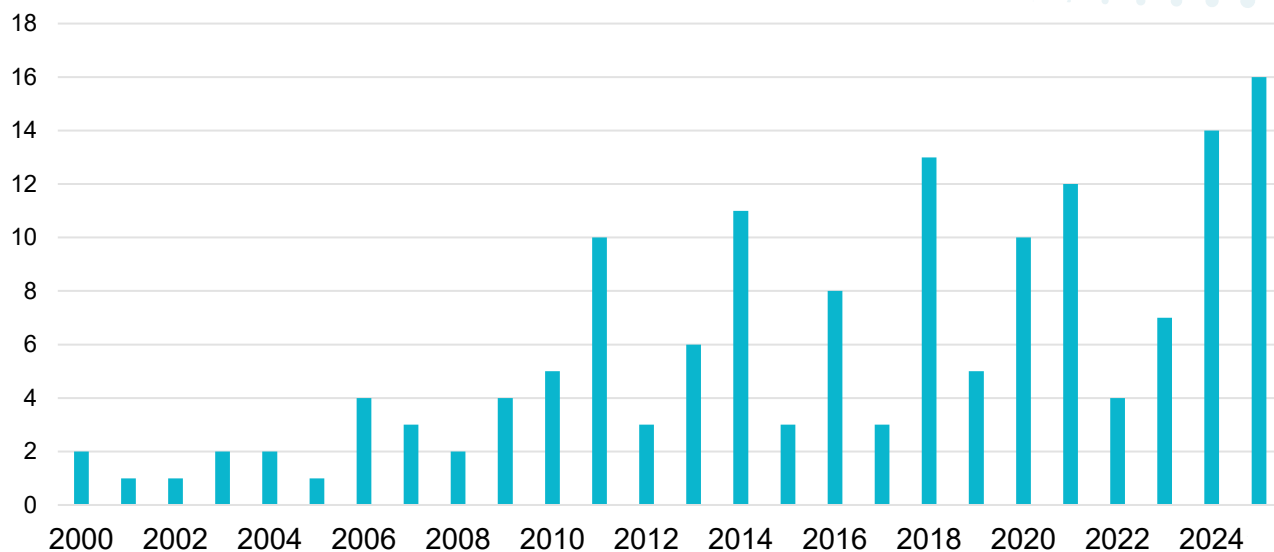
The 155 investor-State arbitrations in our dataset provide a clear picture of how mining disputes have evolved. As Figure 1 shows, 95 cases were filed from 2016 through February 2026, almost twice the 51 cases filed from 2006 through 2015.²

Figure 1: Mining arbitrations: 2006-2015 v. 2016-2026



Investor-State mining arbitrations averaged approximately five new cases per year from 2000 through 2021. Since 2022, the rate has increased to roughly ten cases per year.

Figure 2 shows annual treaty arbitration filings over time. Filings were relatively steady in the early 2000s, increased through the 2010s, and reached their highest levels in the most recent years. Short-term fluctuations remain, but the broader pattern is one of sustained elevation in mining dispute activity.

Figure 2: Mining arbitrations over time³

Several structural factors appear to have contributed to this increase. One important driver is the clean energy transition, which has significantly increased demand for critical minerals such as copper, lithium, and nickel. As these resources have become more strategically valuable, host States and investors have had stronger incentives to assert their respective interests, which in turn has heightened the risk of disputes.

In parallel, there has been increased foreign direct investment in mining-intensive regions, particularly in Africa and Latin America. The expansion of exploration and development activity has brought a larger number of projects into legally and economically sensitive phases, where disagreements over licensing, taxation, ownership, and regulatory compliance are more likely to arise. A larger base of projects therefore increases the absolute number of potential disputes.

At the same time, political and legal instability in certain jurisdictions has played a significant role. Changes in mining codes, the introduction of local content requirements, revisions to fiscal regimes, and, in some cases, the revocation or renegotiation of existing concessions, have all contributed to a more uncertain investment environment. These developments increase the likelihood that disputes will escalate to arbitration, particularly where parties rely on treaty protections to resolve conflicts.

These results put numbers around a pattern that is increasingly visible in mining disputes: greater economic stakes in mineral assets are coinciding with more active State intervention and a greater potential for disputes.

“In our experience, host governments can become increasingly impatient when mining projects fail to deliver the economic benefits expected of them. More complex engineering and construction can extend development schedules, while inflation-driven cost overruns can create additional financing needs and further delays. These pressures can strain relations between investors and governments, potentially contributing to disputes.”

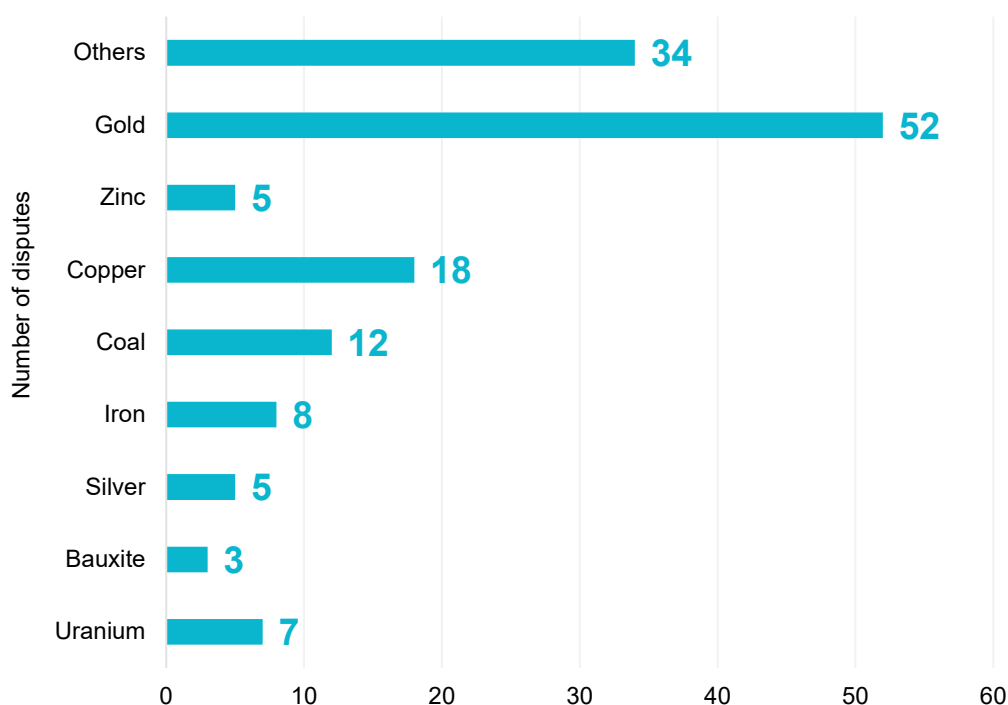
— Rob Hansen,
Behre Dolbear

Minerals underlying disputes

The mineral underlying a dispute can shape the economics of the project, its strategic importance, and the valuation issues presented to the tribunal. We therefore examine which minerals most frequently give rise to disputes and how the composition of mining disputes has changed over time.

The distribution of disputes across minerals is concentrated but diverse. As Figure 3 shows, gold is the most frequent primary mineral in mining arbitrations, accounting for approximately 36% of cases. Copper follows at 13%, coal at 8%, and iron at 6%. Silver, uranium, zinc, and bauxite each account for between 2% and 5%, while the remaining 24% involve less frequently disputed minerals.

Figure 3: Primary minerals involved in mining disputes from 2000-2026⁴



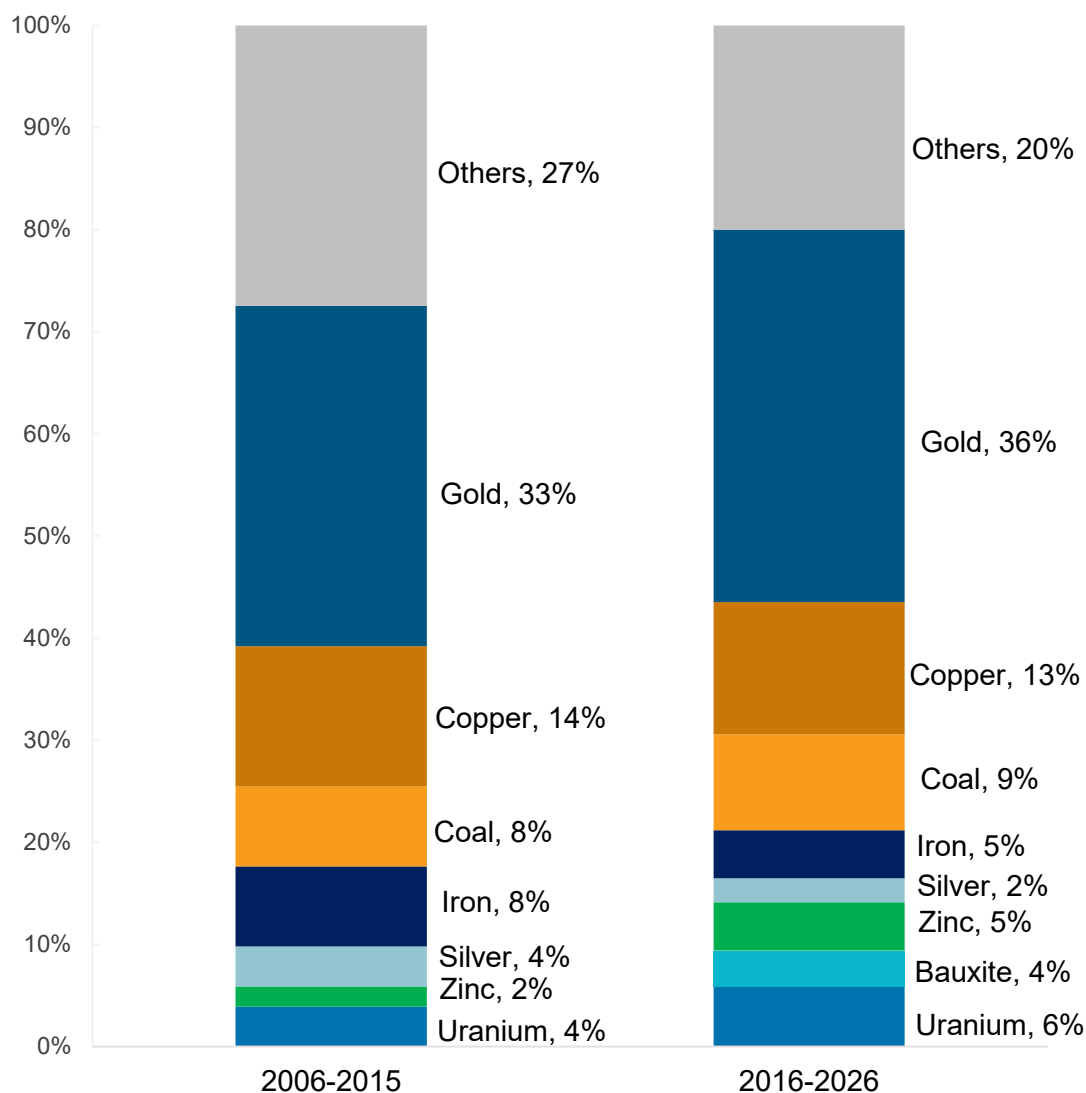
36%

Gold is the most frequent primary mineral.

Gold and copper together account for about half of the disputes in the dataset. There is also substantial overlap at the asset level: approximately 67% of assets with copper as the primary mineral also include gold resources, consistent with the geological co-location of the two minerals in many complex projects.

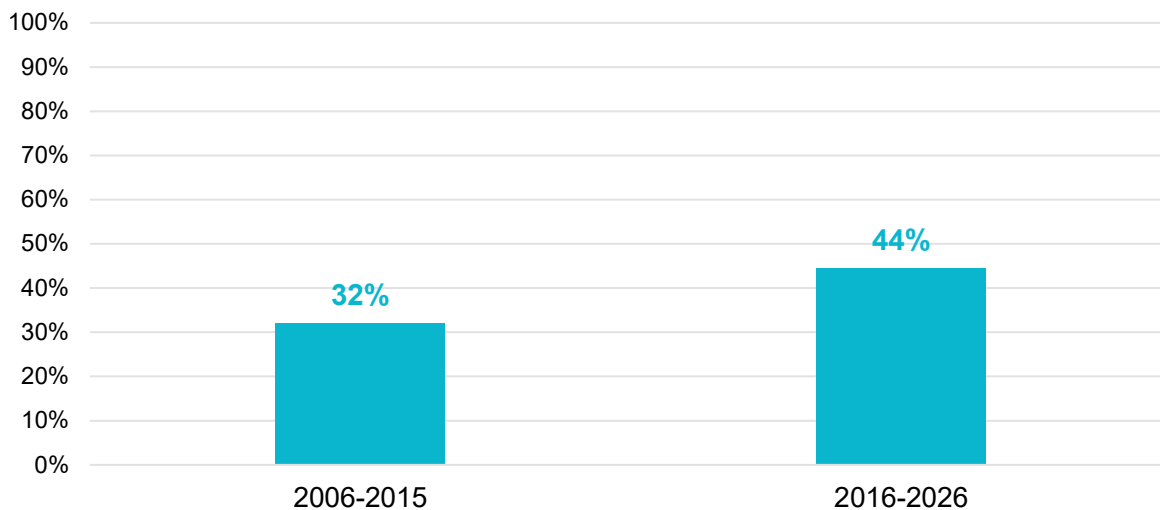
Figure 4 compares the mineral composition of disputes across the two sub-periods. Gold's share increased modestly, from 33% in 2006-2015 to 36% in 2016-2026. Coal also increased from approximately 8% of disputes to 9%, uranium from 4% to 6%, bauxite from 0% to 4%, and zinc from 2% to 5%. At the same time, the "Others" category declined from approximately 27% to 20%. This contraction indicates that disputes are becoming more concentrated in fewer commodities, rather than being spread across a wide range of minerals.

Figure 4: Composition of commodities underlying mining disputes: 2006-2015 v. 2016-2026⁵



The share of disputes involving projects in which a critical mineral was the primary mineral also increased between the two periods. As Figure 5 shows, critical minerals accounted for approximately 32% of investor-State mining arbitrations in 2006-2015 versus 44% in 2016-2026.

Figure 5: Share of mining disputes involving critical minerals: 2006-2015 v. 2016-2026⁶



This shift is consistent with broader changes in the mining sector. Critical minerals such as copper, lithium, and nickel are central to battery production, electric vehicles, and renewable energy infrastructure. Uranium has also gained renewed attention because of energy security and nuclear-power expansion, while bauxite remains central to infrastructure, transportation, and electrification.

Coal presents a more complex case. Although long-term demand is expected to decline in many markets as economies decarbonize, thermal coal remains a significant part of the energy mix in a number of jurisdictions, particularly in emerging economies. Metallurgical coal remains crucial for the steelmaking process. Disputes involving coal assets reflect both legacy investments and tensions arising from regulatory shifts as governments balance decarbonization objectives with short- to medium-term energy needs.

Overall, the dispute mix is shifting toward a more concentrated set of strategically significant commodities. That shift affects not only where disputes arise, but also the project risks and valuation questions tribunals must assess.

“The growing share of disputes involving critical minerals fits a familiar pattern. As energy-security and decarbonization goals make these minerals more strategically important, States may seek to capture more of their value through renegotiation, ownership requirements, profit-sharing mandates, or permit revocations. Investors should assume their investments may be tested and should secure stabilization commitments and investment treaty coverage from the outset.”

— Kristen Young,
Willkie Farr & Gallagher LLP

Geography of mining disputes

Mining investment, regulatory intervention, and treaty exposure are not distributed evenly across jurisdictions. So, examining where disputes arise helps identify the regions in which mining-arbitration exposure is most concentrated and how that concentration has shifted over time.

The geographic concentration of the cases is consistent with the issues that recur in mining investments and disputes in resource-intensive jurisdictions. Latin America and Africa account for 38% and 30% of disputes, respectively. Asia accounts for 19% and the rest of the world for 12%.

Figure 6: Geographic distribution of mining disputes from 2000-2026⁷

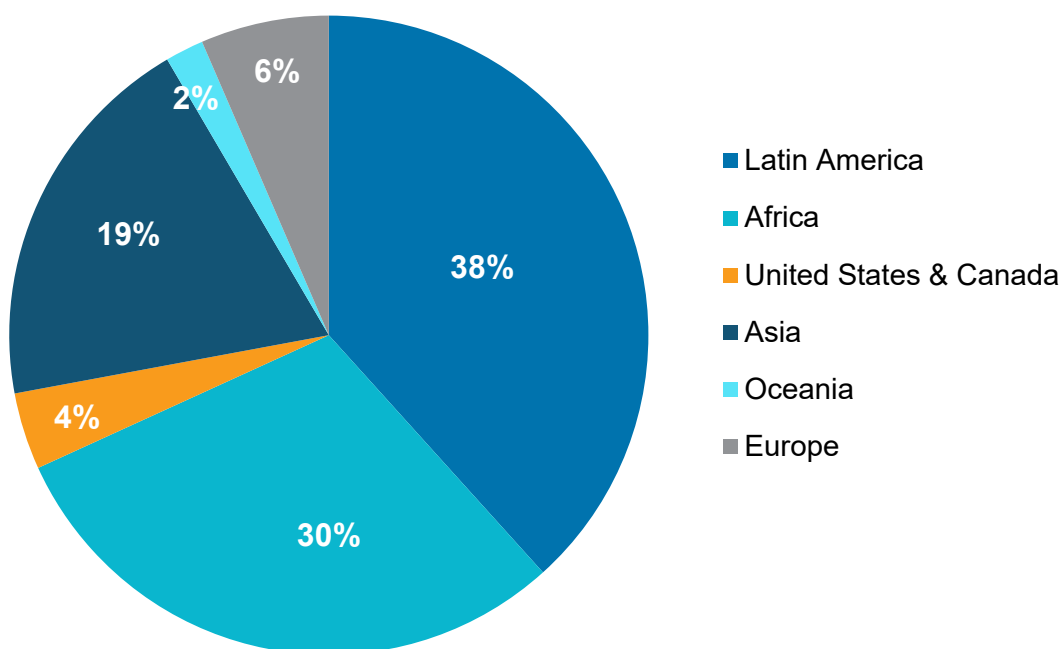
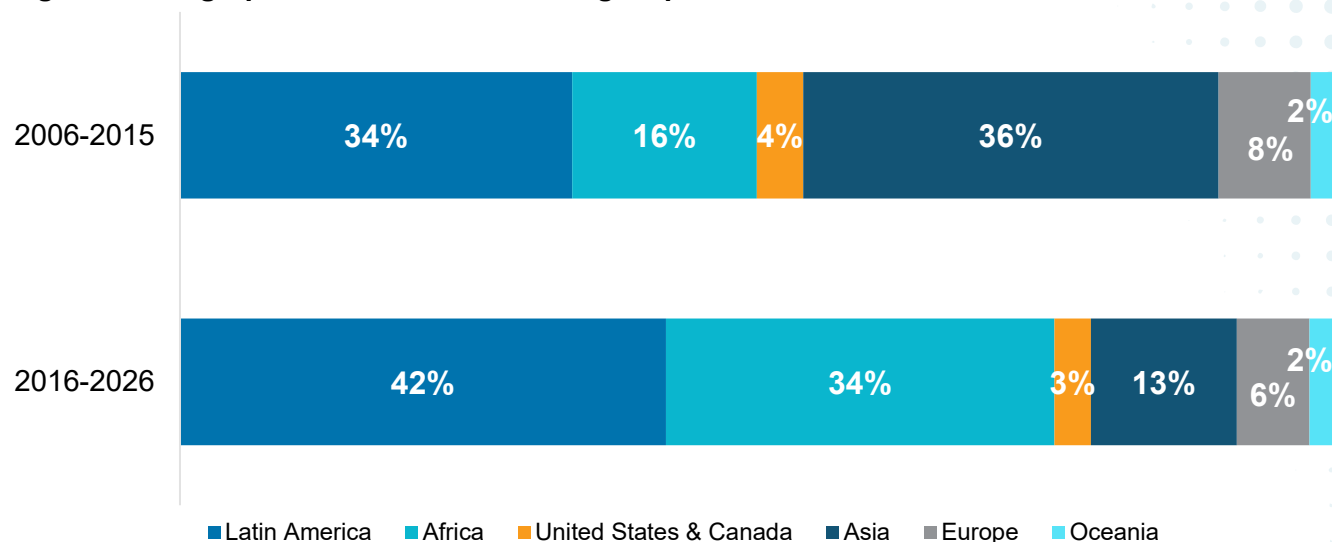


Figure 7 shows a substantial reallocation of dispute activity between regions over time. In 2006-2015, Asia accounted for approximately 36% of mining arbitrations, and Africa accounted for 16%. In 2016-2026, Asia's share declined to 13%, while Africa's increased to 34%. Latin America's share increased from 34% to 42%.

Figure 7: Geographic distribution of mining disputes: 2006-2015 v. 2016-2026⁸



“The growth in African mining disputes chimes with what we are seeing in practice, as a renewed wave of resource nationalism predictably tracks commodity price cycles and shifting geopolitics. But what ultimately determines how these disputes are resolved is the long-term relationship between the parties — and the tools available today to help get there are considerably more sophisticated than they were even a decade ago.”

—Joshua Kelly, Freshfields

The shift reflects substantial increases in case counts as well as shares. Disputes involving African States increased by approximately 300% between the two periods, while cases involving Latin American States increased by approximately 135%. Together, Africa and Latin America account for about 76% of cases filed since 2016.

At the country level, between 2016 and 2026 in Latin America, Mexico and Colombia are the most frequently named respondents, each representing approximately 11% of disputes. Panama follows at 6% and Peru follows at 5%. In Africa, no country has been the respondent more than three times.

Latin America remains the largest region for mining arbitrations, but Africa has grown the fastest. Africa's share more than doubled between the two periods, making it the second-largest region in the dataset and shifting the regional balance of mining disputes.

What claimants recover from mining disputes

In practice, the amount claimed provides limited guidance as to the amount ultimately recovered. Award-to-claim ratios provide a useful way to benchmark that difference across disputes.

Claims in our dataset span from roughly \$37 million to \$9 billion, while awards range from approximately \$1 million to \$4 billion. Claims were, on average, approximately 25 times the amounts awarded; the median claim was approximately nine times the award. The difference between the mean and median reflects a small number of cases with exceptionally large claims relative to the awards.

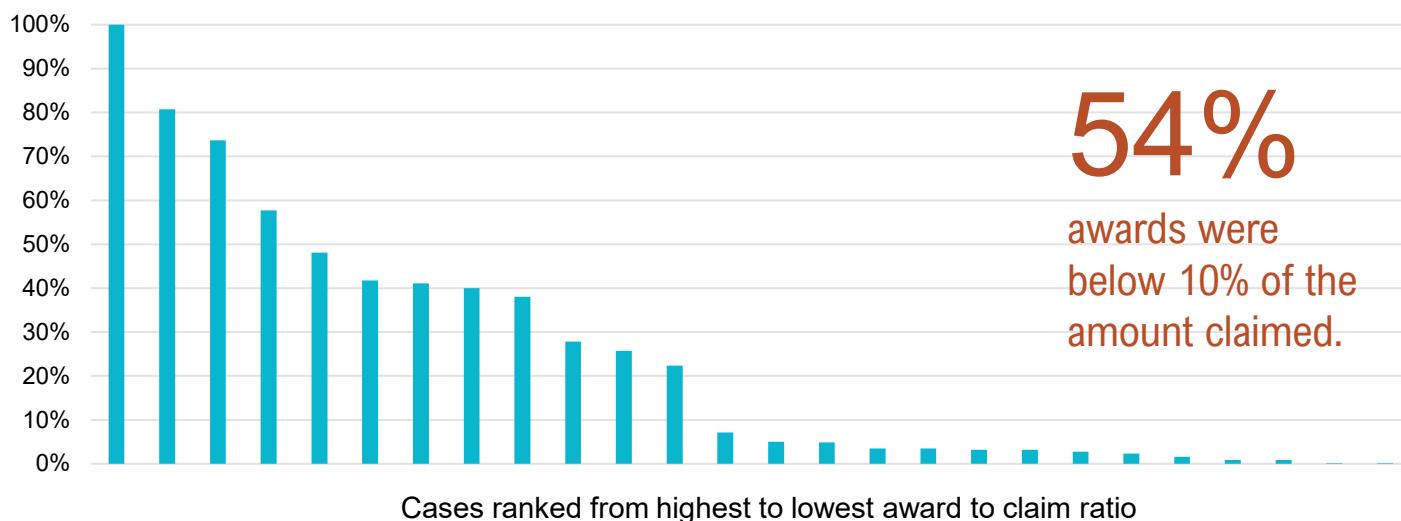
Given that claim size alone is not a reliable indicator of outcome and that tribunals often award substantially less than what claimants seek, award-to-claim ratios are a helpful measure for comparing outcomes across disputes.⁹

Of the 26 cases for which tribunals found a breach and awarded damages, 14 (54%) cases resulted in awards below 10% of the amount claimed, as shown in Figure 8 below. The result reinforces the importance of distinguishing the scale of a claim from the economic support for it. A significant portion of these cases relate to properties that were not producing at the time of the alleged breach.

“The finding that approximately half of positive awards were for less than 10% of the amount claimed has important implications when claimants assess the risk and reward of pursuing a claim. It reinforces the need to give causation and quantum the same early attention as jurisdiction and liability, and to evaluate a range of realistic damages scenarios rather than focusing principally on the high-water mark.”

— Chris Hunter, Emily Sherkey,
Ryan Lax, Torys

Figure 8: Distribution of award-to-claim ratio, 2000-2026¹⁰



For the cases in which the tribunal found a breach and awarded damages, aggregate award-to-claim outcomes differ between producing and non-producing properties. The median award-to-claim ratio was 15% for cases involving properties that were producing at the time of the alleged breach and 6% for cases with non-producing properties, indicating higher recoveries among projects at the producing stage.

Table 1: Median award-to-claim ratio by property stage¹¹

Property Stage (as of the alleged breach)	Median award-to-claim ratio
Non-producing stage	6%
Producing stage	15%

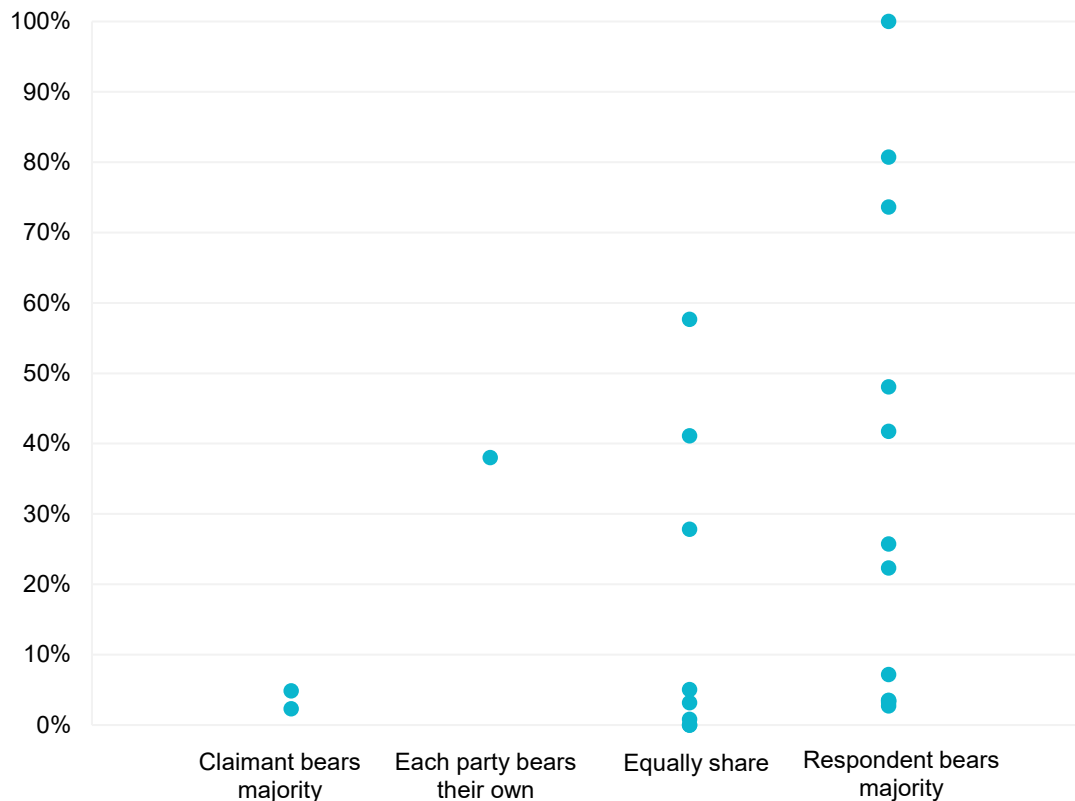
The result is consistent with our experience that production status, although important, rarely determines valuation in isolation; project economics, mineral characteristics, permitting, development risk, and the specific counterfactual also matter.

“In our experience, claimants in mining arbitrations overwhelmingly tend to pursue damages based on the present value of future profits, rather than out-of-pocket or sunk costs, which tend to serve as secondary or alternative measures. Those claims depend heavily on contested production forecasts, commodity prices and discount rates, and can therefore produce a wide range of supportable valuations. That range is an important feature of mining disputes and may help explain why claimed amounts can differ so significantly from amounts ultimately awarded.”

— Brian Kolenda, Lenczner Slaght

Cases in which respondents bore the majority of arbitration costs had a median award-to-claim ratio of 24%. Cases in which claimants bore most costs had a median ratio of 4%.¹² Figure 9 shows this relationship at the case level. The direction of causality cannot be determined from this analysis alone - tribunals may allocate costs in the claimant's favor because the claim was meritorious.¹³ Even so, the association between recovery and cost allocation is pronounced.

Figure 9: Award-to-claim ratio by allocation of arbitration costs, 2000-2026¹⁴



Commodity prices and dispute activity: Gold as a case study

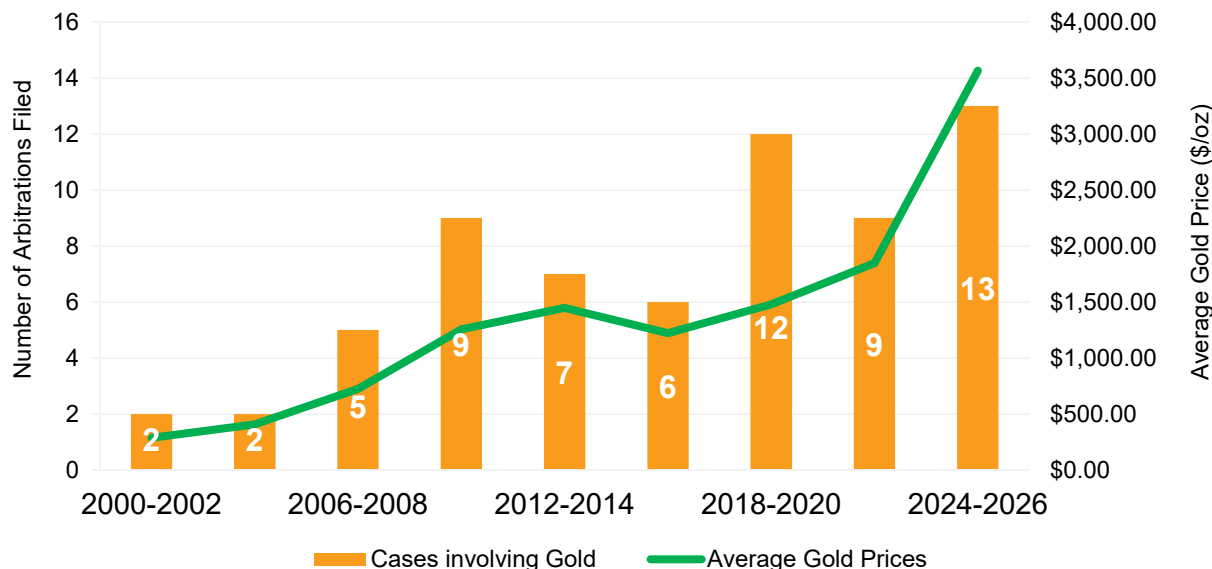
It is often argued that commodity prices may influence the incentives of both host States and investors, but commodity-specific analysis requires a sufficient number of disputes and a reliable market-price series. Gold is the most frequently disputed mineral in our dataset and has a long, transparent market-price series, making it the most useful commodity-specific test of the relationship between commodity prices and arbitration filings. We therefore use gold as a case study.

The data indicate an association between gold-price cycles and the incidence of treaty arbitrations involving gold assets. As Figure 10 shows, periods of elevated gold prices are associated with a greater number of filings involving gold assets. This relationship does not, by itself, establish that higher gold prices cause more disputes.

The association between higher gold prices and increased dispute activity is economically intuitive. As gold prices rise, the value of underlying assets increases, which can strengthen incentives for host States to revise fiscal terms, renegotiate agreements, or assert greater control over resource extraction. These actions, in turn, can increase the likelihood of disputes.

Higher prices may also influence investor behavior. Investors may be more likely to initiate arbitration when gold prices are elevated because potential damages are larger and higher prices can reinforce the perceived viability of the underlying project, including for assets that are not yet producing. The observed relationship may therefore reflect incentives facing both States and investors, rather than a single causal mechanism.

Figure 10: Gold-related disputes and average gold prices (\$/oz)¹⁵



Mining dispute outcomes

Our dataset also provides a detailed view of how investor-State mining arbitrations progress and resolve over time, including the distribution of outcomes, the likelihood of findings of breach, the typical duration of proceedings, and the allocation of costs.

A majority of investor-State mining arbitrations have reached a final outcome. 102 cases (66% of cases) in the dataset are concluded, while 53 (34%) remain pending. Among the concluded cases, 16 cases were discontinued before a final determination, and 86 cases were continued. Of these continued cases, 79% resulted in an award and 21% settled before a final award.

The pipeline of pending cases is also informative. Of the cases that remain pending, the large majority, approximately 87%, are currently at the merits stage, indicating that they are still in the process of document production, hearing, or deliberation. The remaining 13% are in annulment, consolidation, or resubmission proceedings. This distribution suggests that a significant portion of recent filings have not yet reached the stage at which outcomes can be evaluated.

Recorded findings of breach are relatively limited. 25% of concluded cases ended with a finding that the respondent State had breached its obligations. The remaining cases included settlements, discontinuances, jurisdictional or admissibility dispositions, and merits decisions without a breach finding. They should therefore not all be characterized as tribunal findings of no breach.

The duration of proceedings in investor-State mining arbitrations is also notable. The median and average time from filing to final award is approximately five years.¹⁶ These figures are consistent with the complexity of mining disputes, which often involve detailed factual records, extensive expert evidence, and significant procedural steps. From a practical perspective, this timeline implies that parties to a mining dispute should expect a multi-year process before a final resolution is reached.

“Given the competition for high-quality assets, investors increasingly consider opportunities that come with pending or threatened claims. If investors are not to pass over potentially attractive assets, their diligence needs to look at the merits of the case and the real potential exposure, rather than stopping at the amount claimed.”

— Matthew Fisher, La Mancha Resource Capital

66 cases in our dataset had publicly available information on arbitration costs. Among these cases, tribunals allocated the majority of costs to respondents in 12 cases, split costs equally in 29 cases, and assigned the majority of costs to claimants in 17 cases. In the remaining 8 cases, each party was ordered to bear its own arbitration costs.

63 cases in our dataset had publicly available information on legal costs. Among these cases, respondents were ordered to bear claimants' legal costs in 10 cases, while claimants were ordered to bear respondents' legal costs in 14 cases. Equal allocation occurred in 4 cases, and in the remaining 35 cases each party bore its own legal costs. Tribunals therefore appear more inclined to leave legal fees with the parties than to shift them.

Endnotes

- ¹ “Disputes Involving Mineral Assets: Statistics & Trends,” 2023, available at: <https://www.crai.com/insights-events/publications/disputes-involving-mineral-assets-statistics-trends/>.
- ² We collected data as of February 28, 2026, covering investor-State arbitrations which were mostly administered by ICSID or the PCA and reported by ICSID, UNCTAD, or the PCA. The resulting database contains 164 disputes. This analysis is limited to the 155 cases filed between 2000 and February 28, 2026.
- ³ The database includes filings through February 28, 2026. Cases filed in 2026 are excluded from the figure because the year is not yet complete.
- ⁴ The database includes filings through February 28, 2026. Seventeen of the 155 cases were excluded because the available information did not identify the primary mineral involved. A case may involve more than one primary mineral; hence, the count of cases shown in the figure are not mutually exclusive.
- ⁵ The database includes filings through February 28, 2026.
- ⁶ Critical minerals are minerals, elements, substances, or materials that are essential to a country’s economy or national security and whose supply chains are vulnerable to disruption. See USGS, “What are critical minerals?,” November 6, 2025, available at: <https://www.usgs.gov/programs/mineral-resources-program/science/what-are-critical-minerals-0>. The list of critical minerals considered for the analysis is: uranium, metallurgical/coking coal, copper, zinc, niobium, potash, 3T minerals, aluminum, lanthanides, boron/borate, rare earth elements, nickel, phosphate/phosphorus, cobalt, lithium and silver.
- ⁷ The database includes filings through February 28, 2026. One case (ARB/07/3) was excluded from the regional analysis because it involved respondents from multiple continents.
- ⁸ The database includes filings through February 28, 2026. One case (ARB/07/3) was excluded from the regional analysis because it involved respondents from multiple continents.
- ⁹ Because public information is not available consistently across cases, the analyses in this section use different periods and samples; each figure and table identifies the applicable period and number of cases.
- ¹⁰ This analysis covers cases filed from 2000 through February 28, 2026, for which the tribunal found a breach, and both claimed and awarded amounts were publicly available. The resulting sample contains 26 cases. This includes 2 cases where zero damages were awarded.
- ¹¹ This analysis uses the same 26-case sample described above in footnote 11. Out of the 26 cases, 10 cases involved producing properties and 16 cases involved non-producing properties.
- ¹² This analysis covers cases filed from 2000 through February 28, 2026, for which the tribunal found a breach, and claimed, awarded amounts and arbitration costs were publicly available. The sample results in 23 cases.

- ¹³ The observed association does not establish that cost allocation independently determines recovery.
- ¹⁴ This analysis covers the same cases as in footnote 13.
- ¹⁵ This analysis includes 65 disputes involving gold assets, filed from 2000 through February 28, 2026. The analysis compares filing dates with contemporaneous average gold prices.
- ¹⁶ This analysis covers 42 cases from 2000 to 2026 in which the reported claim and award amounts, the date of the request for arbitration, and the date of the award are publicly available.

CRA's experience in international arbitration and natural resources

CRA experts have extensive expertise in both commercial and investment treaty arbitrations, having provided testimony in major international arbitration forums such as ICSID, PCA, ICC, LCIA, SIAC, HKIAC, SCC, and under UNCITRAL rules. We have been involved in some of the most intricate and high-profile disputes in recent years, regularly working on the largest claims among expert firms.

We combine finance, accounting, economics, and quantum expertise with expertise in specific industries: energy, oil and gas, metals and materials, mining, pharmaceuticals and life sciences, banking, and financial services. This comprehensive approach creates a global solution that brings together diverse expertise to effectively address the complexities of each case and deliver strategic insights tailored to our clients' specific needs.

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CRA is a leading organization in applying economic principles and analysis to the natural resources sector. Our team of experts brings extensive experience in commodity and market outlook analysis, competition assessment, and technology evaluation. We specialize in assisting clients with feasibility studies, business plans, and implementation strategies, helping them navigate complex market dynamics and economic challenges to enhance or reshape their corporate and business strategies.

In disputes, our deep understanding of the dynamic business environment in mining, metals, and materials companies allows us to provide precise and accurate economic analysis. With over thirty years of consulting and litigation experience, we offer valuable support in evaluating the economic aspects of disputes.

With a strong presence in the minerals, materials, and components manufacturing industries, our team comprises professionals with diverse backgrounds in business economics, corporate finance, materials science and engineering, geology, chemical engineering, and industrial organization. We are committed to providing independent, reliable, and in-depth analysis to help clients evaluate opportunities, design effective strategies, and make informed business decisions.

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For examples of our experience in mining arbitrations, please click [here](#).

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