

# NAFTA CHAPTER 11 INVESTOR DISPUTES

## Case Histories

Updated August 28, 2003 by Yone Yu, USEPA

### Commonly Cited NAFTA Chapter 11 Articles

Article 1102 – National Treatment

Article 1103 – Most Favored Nation Treatment

Article 1104 – Standard of Treatment

Article 1105 – Minimum Standard of Treatment

Article 1106 – Performance Requirements

Article 1109 – Transfer of Funds

Article 1110 – Expropriation and Compensation

## Claims against Canada

### **Crompton Corp.**

Synopsis: Claim for \$100 million plus costs and expenses based on NAFTA Articles 1102, 1103, 1104, 1105, 1106, and 1110. The expropriation claim is based on Canada's ban of Lindane, which is a canola seed protectant.

|   |                    |
|---|--------------------|
| Notice of Intent to Submit a Claim to Arbitration         | November 6, 2001   |
| Amended Notice of Intent to Submit a Claim to Arbitration | September 19, 2002 |

*Status: Case Pending*

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### **Ethyl Corp.**

Synopsis: Ethyl Corp is a Virginia-based chemical company that produces MMT, a gasoline additive. It filed a \$251 million claim against Canada for alleged violations of Chapter 11's requirements under Articles 1102, 1106, and 1110. The claim is based on Canada's ban on the import and inter-provincial transport of MMT in 1997.

|                               |                   |
|-------------------------------|-------------------|
| Notice of Arbitration         | April 14, 1997    |
| Statement of Claim            | October 2, 1997   |
| Statement of Defense          | November 27, 1997 |
| Award on Confidentiality      | November 28, 1997 |
| Award on Place of Arbitration | November 28, 1997 |
| Award on Jurisdiction         | June 24, 1998     |

*Status: On July 20, 1998, Canada reversed its ban on MMT and settled with Ethyl for \$13 million in legal fees and damages.*

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### **Ketcham Investments, Inc. & Tysa Investments, Inc.**

Synopsis: Claim for \$30 million plus costs, expenses, and other damages based on Article 1102, 1103, 1105, 1106, and 1110. The expropriation claim is based on the argument that Canada's actions resulted in exports of softwood lumber that were lower than they otherwise would have been.

|   |                   |
|---|-------------------|
| Notice of Intent to Submit a Claim to Arbitration | December 22, 2000 |
|---|-------------------|

*Status: Claim was abandoned without commencement of arbitration*

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**Pope & Talbot, Inc.**

Synopsis: Pope & Talbot is a U.S. investor with a Canadian subsidiary that operates softwood lumber mills in British Columbia. Pope & Talbot claim that Canada’s allocation of the fee-free quota under the U.S.-Canada Softwood Lumber agreement was unfair and inequitable. They have filed for damages in excess of \$507 million for alleged violations of NAFTA Article 1102, 1105, 1106, and 1110.

|                       |                |
|-----------------------|----------------|
| Notice of Arbitration | March 25, 1999 |
| Statement of Claim    | March 25, 1999 |
| Final Award           | May 31, 2002   |

*Status: On May 31, 2002, the tribunal awarded Pope & Talbot \$461,566 in damages and interest for violation of Article 1105 – for an administrative audit undertaken to verify Pope & Talbot's quota. All other claims were dismissed.*

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**S.D. Myers**

Synopsis: S.D. Myers is an Ohio corporation that processes and disposes of PCB waste. They filed claims against Canada for violations of NAFTA Articles 1102, 1105, 1106, and 1110. They believe that Canada’s ban on the export of PCB waste to the U.S. in 1995 resulted in economic harm to their investment through lost contracts, opportunities, and hindrances to operations in Canada.

|                               |                   |
|-------------------------------|-------------------|
| Statement of Claim            | October 30, 1998  |
| Statement of Defense          | June 18, 1999     |
| 1 <sup>st</sup> Partial Award | November 13, 2000 |
| 2 <sup>nd</sup> Partial Award | October 21, 2002  |

*Status: The tribunal found in favor of S.D. Myers with respect to the Article 1102 and 1105 claims, but in favor of Canada in all other respects. The ruling did not require Canada to change its laws, as the ruling applied only to an interim order that was no longer in effect. The tribunal awarded the investor \$6.05 million plus interest for damages incurred. Canada has petitioned the federal courts in Ottawa to set aside these awards.*

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**Signa S.A.**

Synopsis: There are no public documents available on this case.

|   |                   |
|---|-------------------|
| Notice of Intent to Submit a Claim to Arbitration | Never made public |
|---|-------------------|

*Status: Arbitration Never Commenced*

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**Sun Belt, Inc.**

Synopsis: Sun Belt is an American water company that alleges \$10.5 billion in damages against Canada for breaches to NAFTA Articles 1102, 1105, and 1110. They assert that a Canadian bulk water export moratorium imposed by the British Columbia government was illegal and contrary to international law.

|   |                   |
|---|-------------------|
| Notice of Intent to Submit a Claim to Arbitration | November 27, 1998 |
| Notice of Claim and Demand for Arbitration        | October 12, 1999  |

*Status: Case Pending - Possibly Abandoned*

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**Trammel Crow Co.**

Synopsis: Trammel is a U.S. real estate management company with a claim for \$32 million plus costs and expenses based on NAFTA Article 1105 (Minimum Standard of Treatment).

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|---|------------------|
| Notice of Intent to Submit a Claim to Arbitration | December 7, 2001 |
|---|------------------|

*Status: Claim Abandoned*

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**UPS**

Synopsis: United Parcel Service (UPS) is a U.S. parcel delivery service that has filed suit a \$160 million suit against Canada for alleged violations of NAFTA Articles 1102 & 1105, and Articles 1502(3) & 1503(2) which cover supervision of government monopolies and state entities. The investor charges that Canada uses its postal monopoly infrastructure to reduce the costs of delivering its non-monopoly services.

|                                    |                   |
|------------------------------------|-------------------|
| Notice of Intent                   | January 19, 2000  |
| Notice of Arbitration              | April 19, 2000    |
| Statement of Claim                 | April 19, 2000    |
| Amended Statement of Claim         | November 30, 2001 |
| Award on Jurisdiction              | November 22, 2002 |
| Revised Amended Statement of Claim | December 20, 2002 |

*Status: Case Pending*

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## Claims against the United States

### **ADF Group, Inc.**

Synopsis: Claim for \$90 million in damages for violations of NAFTA Articles 1102, 1105(1), and 1106. The expropriation claim is based on alleged injuries caused by the federal Surface Transportation Assistance Act of 1982, which requires that federally funded state highway projects use only domestically produced steel.

|                       |                 |
|-----------------------|-----------------|
| Notice of Arbitration | July 19, 2000   |
| Final Award           | January 9, 2003 |

*Status: On January 9, 2003, the tribunal dismissed ADF's claims against the United States in their entirety.*

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### **Canfor Corp.**

Synopsis: Claim for \$250 million plus costs and expenses based on NAFTA Articles 1102, 1103, 1105, and 1110. The expropriation claim is based on U.S. protectionism of domestic softwood lumber manufacturers, which resulted in lost sales for the claimant.

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|---|------------------|
| Notice of Intent to Submit a Claim to Arbitration | November 5, 2001 |
| Notice of Arbitration and Statement of Claim      | July 9, 2002     |

*Status: Case Pending*

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### **Doman Indus. Ltd.**

Synopsis: Claim for \$513 million plus costs and expenses based on NAFTA Articles 1102, 1103, 1104, 1105, and 1110. The expropriation claim is based on U.S. protectionism of domestic softwood lumber manufacturers, which resulted in lost sales for the claimant.

|   |             |
|---|-------------|
| Notice of Intent to Submit a Claim to Arbitration | May 1, 2002 |
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*Status: Case Pending*

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### **Glamis Gold Ltd.**

Synopsis: Glamis Gold is a Canadian investor who owns Glamis Imperial, a Nevada corporation that owns rights to mining claims and mill sites in the State of California. Glamis claims that California allegedly expropriated its investments by adopting a regulatory measure preventing conventional open-pit mining for the intent of blocking Glamis' mining developments. The investor claims that these action breach NAFTA Articles 1105 and 1110.

|   |               |
|---|---------------|
| Notice of Intent to Submit a Claim to Arbitration | July 21, 2003 |
|---|---------------|

*Status: Case Pending*

**Kenex Ltd.**

Synopsis: Kenex is a Canadian company that manufactures, markets and distributes industrial products made from the cannabis plant. It claims \$20 million in damages from violations of NAFTA Articles 1102, 1103, 1104, and 1105. The expropriation is based on the Drug Enforcement Administration's interpretation of the Controlled Substances Act as prohibiting the sale of products that cause THC to enter the human body.

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|---|------------------|
| Notice of Intent to Submit a Claim to Arbitration | January 14, 2002 |
| Notice of Arbitration                             | August 2, 2002   |

*Status: Case Pending*

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**Methanex**

Synopsis: Methanex is a Canadian marketer and distributor of methanol. Methanex has filed a \$1 billion claim against the United States for alleged expropriation of its investments (Article 1110), denial of fair and equitable treatment under international law (Article 1105), and denial of national treatment (Article 1102). Its claim is based on California's ban on the use or sale of the gasoline additive MTBE, in which methanol is used for its manufacture.

|   |                   |
|---|-------------------|
| Notice of Intent to Submit a Claim to Arbitration | July 2, 1999      |
| Notice of Arbitration                             | December 2, 1999  |
| Statement of Claim                                | December 3, 1999  |
| Amended Statement of Claim.                       | February 12, 2001 |
| 1st Partial Award                                 | August 7, 2002    |

*Status: Case Pending*

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**Mondev International Limited**

Synopsis: Mondev is a Canadian real-estate development corporation that submitted a claim of \$50 million in damages for alleged losses attributable to a Massachusetts Supreme Court ruling regarding statutory immunization from intentional tort liability of the Boston Redevelopment Authority. The claim alleges that the U.S. failed to meet its obligations under NAFTA Articles 1102, 1105, and 1110.

|                       |                   |
|-----------------------|-------------------|
| Notice of Arbitration | September 1, 1999 |
| Final Award           | October 11, 2002  |

*Status: On October 11, 2002, the tribunal issued an award dismissing all claims against the United States.*

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**R. Loewen and Loewen Corp.**

Synopsis: Loewen is a Canadian corporation involved in the death-care industry. Loewen's claim for damages is in excess of \$600 million for alleged violations of the NAFTA Articles 1102, 1105, and 1110. The claim is based on a Mississippi lawsuit in which a local businessman sued Loewen and its U.S. subsidiary for breaching a settlement agreement and engaging in unfair competition.

Notice of Arbitration / Statement of Claim  
Final Award

October 30, 1998  
June 26, 2003

*Status: On June 26, 2003, the tribunal dismissed the claims against the United States in their entirety.*

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**Tembec Corp.**

Synopsis: There are no public documents available on this case.

Notice of Intent to Submit a Claim to Arbitration

May 4, 2002

*Status: Case Pending*

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## Claims against Mexico

### Adams et al.

Synopsis: The U.S. investors claim compensation and damages of \$75 million plus interest for alleged violations to NAFTA Articles 1102, 1105, and 1110. The investors were involved in the management and development of an international resort known as Baja Beach Resort, located in the State of Baja California, Mexico. The expropriation claim is based on a direct taking of real property.

|                       |                   |
|-----------------------|-------------------|
| Notice of Intent      | November 11, 2000 |
| Notice of Arbitration | February 16, 2001 |

*Status: Case Pending*

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### Azinian

Synopsis: Azinian and other shareholders in a Mexican company, Desona, claimed that the City of Naucalpan terminated without cause the contract that had been awarded to Desona to operate a landfill and waste management system for the city. The investors claimed \$14 million in damages for violations to NAFTA Articles 1105 & 1110.

|                       |                  |
|-----------------------|------------------|
| Notice of Arbitration | March 10, 1997   |
| Memorial              | January 28, 1998 |
| Final Award           | November 1, 1999 |

*Status: On November 1, 1999, the tribunal issued an award in Mexico's favor on all issues.*

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### Calmark Commercial Development, Inc.

Synopsis: Calmark is a U.S. entity that has claimed damages of \$400,000 against Mexico for a dispute over development properties in Cabo San Lucas. The investor cites alleged violations of NAFTA Articles 1105, 1109, and 1110.

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|--|------------------|
| Notice of Intent to Commence Arbitration | January 11, 2002 |
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*Status: Case Pending*

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### **Corn Products International**

Synopsis: Corn Products is a leading U.S. producer of High Fructose Corn Syrup (HFCS), a soft drink sweetener. The investor claims a breach of NAFTA Articles 1102, 1106, and 1110 by the Mexican government for the imposition of an allegedly discriminatory tax on soft drinks containing HFCS. The claimant seeks damages in excess of \$250 million.

|                  |                  |
|------------------|------------------|
| Notice of Intent | January 28, 2003 |
|------------------|------------------|

*Status: Case Pending*

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### **Feldman**

Synopsis: Marvin Feldman is a U.S. citizen who filed a claim on behalf of CEMSA, a registered foreign trading company and exporter of cigarettes from Mexico. He claimed \$40 million in damages from Mexico's denial of certain tax refund benefits granted to exporters. The investor cited violations of NAFTA Articles 1102 & 1110.

|                       |                   |
|-----------------------|-------------------|
| Notice of Intent      | February 20, 1998 |
| Notice of Arbitration | April 30, 1999    |
| Memorial              | March 30, 2001    |
| Final Award           | December 16, 2002 |

*Status: The tribunal dismissed the investor claim of expropriation, but upheld the claim on violation of the national treatment obligation. Feldman was awarded \$9.5 million pesos plus interest.*

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### **Fireman's Fund**

Synopsis: Fireman's Fund is a U.S. insurance company that sells personal and business insurance. The investor claims damages against Mexico for alleged violations of NAFTA Articles 1102, 1105, 1110, and 1405. Their statement asserts that Mexico facilitated the purchase of debentures denominated in Mexican pesos and owned by Mexican investors, but did not facilitate debentures denominated in U.S. dollars and owned by Fireman's Fund.

|   |                  |
|---|------------------|
| Notice of Arbitration                               | October 30, 2001 |
| Record of Decision Concerning Procedure (Bilingual) | October 31, 2002 |
| Award on Jurisdiction                               | July 27, 2003    |

*Status: Case Pending*

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**Robert J. Frank**

Synopsis: Claim for \$1.5 million plus costs and expenses based on breaches of NAFTA Articles 1102, 1105, and Article 1110. The expropriation claim is based on a direct taking of real property.

|   |                   |
|---|-------------------|
| Notice of Intent to Submit a Claim to Arbitration | February 12, 2002 |
| Notice of Arbitration                             | August 5, 2002    |

*Status: Case Pending*

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**GAMI Investments**

Synopsis: GAMI is a U.S. corporation claiming to hold a 14.18% interest in a Mexican sugar production company. In September 2001, Mexican officials issued a decree to revitalize the national sugar industry. GAMI alleges that Mexican officials expropriated sugar mills owned by subsidiaries of its investment and further regulated the sugar industry in a discriminatory fashion through this decree. The claim asks for damages of over \$27 million for violations to NAFTA Articles 1102, 1105, and 1110.

|                       |                 |
|-----------------------|-----------------|
| Notice of Intent      | October 1, 2001 |
| Notice of Arbitration | April 9, 2002   |

*Status: Case Pending*

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**Haas**

Synopsis: There are no public documents available on this case.

|                  |                   |
|------------------|-------------------|
| Notice of Intent | December 12, 2001 |
|------------------|-------------------|

*Status: Case Pending*

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**International Thunderbird Gaming Corporation**

Synopsis: International Thunderbird Gaming Corporation is a Canadian gaming and entertainment company that seeks damages for alleged injuries from the regulation and closure of its gaming facilities by the Mexican government. The suit claims \$100 million in damages for violations to NAFTA Articles 1102, 1103, 1104, 1105, and 1110.

|                       |                |
|-----------------------|----------------|
| Notice of Intent      | March 21, 2002 |
| Notice of Arbitration | August 1, 2002 |

*Status: Case Pending*

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**Lomas Sante Fe Investment, LLP**

Synopsis: There are no public documents available on this case.

|                  |                 |
|------------------|-----------------|
| Notice of Intent | August 28, 2001 |
|------------------|-----------------|

*Status: Case Pending*

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**Metalclad**

Synopsis: Metalclad is a U.S. waste disposal company that sought damages of over \$43 million for alleged violations of NAFTA Articles 1102, 1103, 1104, 1105, 1106, 1110, and 1111. They assert that Mexico wrongfully refused to permit a Metalclad subsidiary from opening and operating a hazardous waste facility that it built in La Pedrera, San Luis Potosi, even though some Mexican officials allegedly solicited the project and it met all legal requirements.

|                       |                   |
|-----------------------|-------------------|
| Notice of Intent      | December 30, 1996 |
| Notice of Arbitration | January 2, 1997   |
| Final Award           | September 2, 2000 |

*Status: The tribunal issued an award in favor of the investor for \$16.7 million. Mexico petitioned the Supreme Court of British Columbia to set aside the award on grounds that the tribunal exceeded its jurisdiction and that issuing the award would violate public policy. The British Columbia court set aside part of the award.*

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**Waste Management, Inc.**

Synopsis: Waste Management is a U.S. waste disposal company that claims damages of \$60 million for alleged violations to NAFTA Articles 1105 and 1110. They claim that the State of Guerrero and municipality of Acapulco granted a Waste Management subsidiary, Acaverde, a 15-year concession for public waste management services, but did not comply with payment and other obligations agreed upon. The investor also claims that a Mexican bank that offered an unconditional guarantee for payment arbitrarily refused to honor their guarantee.

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|--|--------------------|
| Notice of Intent                         | February 6, 1998   |
| Notice of Arbitration                    | September 29, 1998 |
| Final Award (Dismissing on Jurisdiction) | June 2, 2000       |

*Status: On June 2, 2000, the tribunal dismissed the investor's claim for lack of jurisdiction.*

**Waste Management, Inc. – Resubmitted Claim**

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|-----------------------|--------------------|
| Notice of Arbitration | September 18, 2000 |
| Award on Jurisdiction | June 26, 2002      |

*Status: Case Pending*

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