

TABLE OF NAFTA CHAPTER 11 INVESTOR-STATE CASES & CLAIMS

February 2005

Key
 **Indicates date Notice of Intent to File a Claim was filed, the first step in the NAFTA investor-state process when an investor notifies a government that it intends to bring a NAFTA Chapter 11 suit against that government.
 *Indicates date Notice of Arbitration filed, the second step in the NAFTA investor-state process when investor notifies an arbitration body that it is ready to commence arbitration under NAFTA Chapter 11.
 The two venues for the adjudication of NAFTA Chapter 11 disputes are the World Bank's International Center for the Settlement of Investment Disputes (ICSID) and the United Nation's Commission on International Trade Law (UNCITRAL).

Corporation or Investor	Venue	Damages Sought (U.S.\$)	Status of Case	Issue
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Cases & Claims Against the United States

Loewen Oct. 30, 1998*	ICSID	\$725 million	Dismissed	Canadian funeral conglomerate challenged large Mississippi state court damage award granted by a jury in a contract dispute suit by a local company claiming Loewen engaged in anti-competitive, predatory business practices. June 2003 – Claim dismissed on procedural basis. Tribunal found that Loewen's reorganization as a U.S. corporation under U.S. bankruptcy law destroyed the firm's ability to bring the NAFTA claim as a <i>foreign</i> investor.
Mondev Sep. 1, 1999*	ICSID	\$50 million	Dismissed	Canadian real estate developer challenged City of Boston's actions in development contract dispute and adverse state supreme court ruling that denied the firm compensation on the grounds that city actions were shielded by principle of sovereign immunity. October 2002 – Claim dismissed on procedural grounds. Tribunal found that the majority of Mondev's claims, including of expropriation, were time-barred meaning that the dispute on which the claim was based predated NAFTA and that court rulings were well founded in state law.
Methanex Dec. 3, 1999*	UNCITRAL	\$970 million	Pending	Canadian corporation which produces methanol, a component chemical of gasoline additive MTBE, challenges California phase-out of MTBE, which is contaminating drinking water throughout the state. August 2002 – Jurisdictional ruling indicates that because Methanex only produces a component ingredient of MTBE, methanol, not the actual product, company is to "distant" from the MTBE ban to qualify as a firm harmed by it, suggesting that certain MTBE producers may be qualified to bring similar NAFTA suits. Methanex allowed to resubmit claim to demonstrate how the MTBE ban was <i>specifically</i> directed toward methanol producers instead of merely affecting them. U.S. government has spent \$3 million on legal defense to date on case, which NAFTA supporters are eager to have dismissed permanently on technical grounds for fear of political ramifications if Methanex wins.
ADF Group Jul. 19, 2000*	ICSID	\$90 million	Dismissed	Canadian steel contractor challenged U.S. Buy America provision in Virginia highway construction contract. January 2003 – Claim dismissed on procedural grounds. Tribunal found that the basis of the claim constituted "government procurement" and therefore fell under the procurement provisions of NAFTA, Chapter 10, not Chapter 11.
James Baird Mar. 15, 2002**	Arbitration has not yet commenced	\$13 billion		Canadian investor challenged U.S. policy of disposing nuclear waste at Yucca Mountain, Nevada site. Investor claims to have patents for alternative waste disposal method and location.
Doman May 1, 2002**	Arbitration has not yet commenced	\$513 million		Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Canfor Jul. 9, 2002*	UNCITRAL	\$250 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.

Kenex Aug. 2, 2002*	UNCITRAL	\$20 million	Pending	Canadian hemp production company challenged U.S. Drug Enforcement Agency regulations criminalizing importation of hemp foods. In 2004 the firm won a U.S. federal court case charging that the agency overstepped its statutory authority when issuing the rules. Status of NAFTA case unclear.
Ontario Limited Sep. 9, 2002**	Arbitration has not yet commenced	\$38 million		Canadian company seeks return of property after its bingo halls and financial records were seized during an investigation for RICO violations in Florida.
Tembec Dec. 3, 2003*	UNCITRAL	\$200 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Glamis Gold Dec. 9, 2003*	UNCITRAL	\$50 million	Pending	Canadian company seeks compensation for California regulation requiring backfilling and restoration of open pit mines that would damage Native American sacred sites.
Albert J. Connolly Feb. 19, 2004**	Arbitration has not yet commenced	Value of expropriated property		U.S. investor claims real estate was expropriated by Canadian government to be used as a park.
Grand River Mar. 10, 2004*	UNCITRAL	\$340 million	Pending	Small Canadian tobacco company seeks damages in claim challenging U.S. tobacco settlements due to the requirement that tobacco companies contribute to state escrow funds set up by state law.
Terminal Forest Products Mar. 30, 2004*	UNCITRAL	\$90 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Canadian Cattlemen for Fair Trade Aug. 12, 2004**	Arbitration has not yet commenced	\$300 million		Group of Canadian cattlemen and feedlot owners seeks compensation for losses incurred when the U.S. halted imports of live Canadian cattle after the discovery of a case of BSE (mad cow disease) in Canada in May 2003.

Cases & Claims Against Canada

Signa Mar. 4, 1996**	Arbitration never commenced	\$40 million		Mexican pharmaceutical manufacturer filed challenge of Canadian patent law which blocked the manufacture of a generic equivalent to CIPRO, the multi-spectrum antibiotic. Little is known with regard to the disposition of this case.
Ethyl Apr. 14, 1997*	UNCITRAL	\$250 million	Settled; Ethyl wins, \$13 million paid	U.S. chemical company challenged Canadian environmental regulation of gasoline additive MMT. July 1998 – Canada loses NAFTA jurisdictional ruling, reverses ban, pays \$13 million in damages and legal fees to Ethyl.
S.D. Myers Oct. 30, 1998*	UNCITRAL	\$20 million	S.D. Myers wins, \$4.8 million paid	U.S. waste treatment company challenged Canadian ban of PCB exports. Ban was compliant with multilateral environmental treaty on toxic waste trade November 2000 – NAFTA tribunal dismisses S.D. Myers claim of expropriation, but upholds claims of discrimination and equates this violation with a violation of the minimum standard of treatment required by international law. Panel also states that “market share” could constitute a NAFTA protected investment.
Pope & Talbot Mar. 25, 1999*	UNCITRAL	\$381 million	P&T wins, \$450,000 paid	U.S. timber company challenged Canada’s implementation of 1996 U.S.-Canada Softwood Lumber Agreement. April 2001 – NAFTA tribunal dismissed claims of expropriation and discrimination, but held that the rude behavior of the Canadian government officials seeking to verify firm’s compliance with Softwood Lumber Agreement constituted a violation of the minimum standard of treatment required by NAFTA for foreign investors. Tribunal also stated that “market access” could be considered a NAFTA-protected investment.
UPS Apr. 19, 1999*	UNCITRAL	\$160 million	Pending	UPS claims that Canadian post office parcel delivery service, due to its status as a public service, enjoys NAFTA-illegal subsidies that undermine the market share of foreign private sector competitor UPS.

Sun Belt Oct. 12, 1999*	Arbitration has not yet commenced	\$10 billion	Unknown	U.S. water company challenged moratorium by Canadian province (British Columbia) on bulk water exports.
Ketcham and Tysa Investments Dec. 22, 2000**	Arbitration never commenced			U.S. softwood lumber firms challenged Canadian implementation of 1996 Softwood Lumber Agreement. Case later withdrawn, perhaps due to limited success of similar Pope & Talbot case.
Trammel Crow Sep. 7, 2001**	Arbitration never commenced	\$32 million	Settled	U.S. real estate company filed complaint regarding discrimination over Canada Post's competitive bidding process. Reportedly settled in 2002.
Crompton Nov. 6, 2001**	Arbitration has not yet commenced	\$100 million		U.S. chemical company, producer of pesticide lindane, a hazardous persistent organic pollutant, challenges voluntary agreement established in Canada to restrict production of the chemical.

Cases & Claims Against Mexico

Amtrade International Apr. 21, 1995**	Arbitration never commenced	\$20 million		U.S. firm claimed it was discriminated against by a Mexican firm while seeking to bid for pieces of property, in violation of a pre-existing settlement agreement. Little is known with regard to the disposition of this case.
Metalclad Jan. 13, 1997*	ICSID	\$90 million	Metalclad wins, \$15.6 million paid	U.S. firm challenged Mexican municipality's refusal to grant construction permit for toxic waste dump and governor's declaration of ecological preserve surrounding the site. August 2000 – NAFTA tribunal ruled that the denial of the construction permit and the creation of an ecological reserve are tantamount to an "indirect" expropriation and that Mexico violated the minimum standard of treatment guaranteed foreign investors because the firm was not granted a "clear and predictable" regulatory framework. In October 2000, the Mexican government challenged the NAFTA ruling in Canadian court alleging arbitral error. A Canadian judge ruled that the tribunal erred in part by importing transparency requirements of NAFTA Ch 18 into Ch 11 and reduced award by \$1 million. In 2004, the Mexican federal government's effort to hold state financially responsible failed in Mexican Supreme Court.
Azinian, et al. Mar. 10, 1997*	ICSID	\$19 million	Dismissed	U.S. investors challenged revocation of solid waste collection contract by City of Naucalpan and Mexican federal court decision upholding the revocation. November 1999 – Claim dismissed. NAFTA tribunal held that the firm made fraudulent misrepresentations with regard to its experience and capacity to fulfill the contract and dismissed claims of expropriation and unfair treatment.
Waste Management Sep. 29, 1998* Resubmitted: Sep. 18, 2000*	ICSID	\$60 million	Dismissed	U.S. waste disposal giant challenged City of Acapulco revocation of waste disposal concession, also implicated Mexican courts and the actions of Mexican government banks. April 2004 – Claim dismissed. Tribunal found that the investor's business plan was based on unsustainable assumptions and that none of the government bodies named in the complaint failed to accord the minimum standard of treatment, nor did the city's actions amount to an expropriation.
Karpa (Feldman) Apr. 7, 1999*	ICSID	\$50 million	Karpa wins, \$1.5 million paid	U.S. cigarette exporter challenged denial of export tax rebate by Mexican government. December 2002 – The tribunal rejected an expropriation claim but upheld a claim of discrimination after the Mexican government failed to provide evidence that the firm was being treated similarly to Mexican firms in "like circumstances." Karpa attempted to bring this ruling into Canadian domestic court, but its case was dismissed by a Canadian judge.
Scott Ashton Blair May 21, 1999**	Arbitration never commenced	Value of property he owns		U.S. investor purchased a residence and restaurant in Mexico and claims he was harassed by Mexican government officials and improperly jailed because he was a U.S. citizen.
Adams, et al. Feb. 16, 2001*	UNCITRAL	\$75 million		U.S. landowners challenged Mexican court ruling that developer who sold them property did not own land and therefore could not convey it.

Lomas Santa Fe Aug. 28, 2001**	Arbitration has not yet commenced	\$210 million		An American real estate development company claimed Mexican government discriminated against him and expropriated land intended for commercial development. Implicated adverse Mexican court decision as well.
Fireman's Fund Oct. 30, 2001*	ICSID	\$50 million	Pending	U.S. insurance corporation alleges that Mexico's handling of debentures issued to capitalize a bank was discriminatory.
Francis Kenneth Haas Dec. 12, 2001**	Arbitration has not yet commenced	\$17 million		American citizen claimed he was cheated out of his rights in an investment firm held with former Mexican business partners. Implicated state government officials as well.
GAMI Investments Apr. 9, 2002*	UNCITRAL	\$55 million	Dismissed	U.S. minority-share investors in Mexican sugar mills challenged failure of government to ensure profitability of mills and September 2001 expropriation of five debt-ridden sugar mills. In Nov. 2004, NAFTA panel dismissed all claims after Mexican Supreme Court reversed the challenged expropriations.
Thunderbird Gaming Aug. 1, 2002*	UNCITRAL	\$100 million	Pending	Canadian company operating three video gambling facilities in Mexico challenges government's closure of facilities. Most forms of gambling are illegal in Mexico.
Robert J. Frank Aug. 5, 2002*	UNCITRAL	\$1.5 million		U.S. citizen challenges government confiscation of vacation property alleged to be his in Baja California, Mexico.
Calmark date not avail.**	Arbitration has not yet commenced	\$400,000		U.S. company challenges Mexican domestic court decisions regarding a development project planned for Cabo San Lucas, alleging company was cheated out of property and compensation by various individuals.
Halchette 1995	No public documents available	Unknown		Halchette, a U.S. firm which operates airport concessions in Mexico, filed a notice of claim. Disposition of the case is unknown.
ADM and A.E. Staley Oct. 13, 2003**	Unknown	\$100 million		U.S. company is leading producer of high fructose syrup HFCS, a soft drink sweetener. Agribusiness giant seeking compensation against Mexican government for imposing an allegedly discriminatory tax against its subsidiary company and HFCS exports to Mexico.
Corn Products Oct. 21, 2003**	ICSID	\$325 million		U.S. company is leading producer of high fructose syrup HFCS, a soft drink sweetener. Agribusiness giant seeking compensation against Mexican government for imposing an allegedly discriminatory tax against its subsidiary company and HFCS exports to Mexico.
Bayview Irrigation Aug. 27, 2004**	Arbitration has not yet commenced	\$550 million		17 water rights holders in the United States challenge Mexico's alleged failure to implement 1944 water-sharing treaty governing water in the Rio Grande.

Summary

Total Claims Filed Against All 3 NAFTA Parties:	42 Cases	\$28 billion		NOTE: This amount excludes cases where there has been a final award, and includes the Baird and Sun Belt claims, which are disproportionately high. Without Baird and Sun Belt, total claims against all three NAFTA parties is \$5 billion.
Total Cases Currently in Active Arbitration:	11 Cases			7 against the United States, 1 against Canada, 3 against Mexico
Dismissed Cases (Won by NAFTA governments):	6 Cases			Loewen, Mondev, ADF, Azinian, Waste Management, GAMI
Cases Won by Investors:	5 Cases	\$35 million awarded		Ethyl, S. D. Myers, Pope & Talbot, Metalclad, Karpa (Feldman)