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U.S. Dodges Bullet on NAFTA Glamis Case: Mining Firm's Claim Had Major Flaws, but Four Foreign Investor Cases against U.S. Totaling Over \$6 Billion Still Pending

WASHINGTON, D.C. – A NAFTA tribunal's dismissal of Glamis Gold Inc.'s challenges against California's mining regulations is not surprising given severe flaws in Glamis' claim and the fact that the ruling does nothing to remedy the serious problem of NAFTA providing foreign investors special rights to attack domestic health and environmental laws, Earthjustice, Earthworks, Public Citizen and Sierra Club said today.

The panel's decision in the Glamis case does not affect the outcome of the four other NAFTA challenges pending against the United States in which foreign investors are demanding more than \$6 billion in U.S. taxpayer compensation. The Glamis case attracted considerable attention because it involved a firm claiming to be a Canadian foreign investor under NAFTA in order to file a challenge over a mining claim available only to U.S. residents that it had acquired through its domestic subsidiary. Further, Glamis claimed that California mining regulations had caused an indirect taking of the mining claim's value and thus NAFTA required the firm to be compensated. Yet, in fact, Glamis remained free to sell its valuable mining rights or to operate the mine following California's mining laws.

"It is no surprise that this long-delayed NAFTA case was dismissed given the major flaws in Glamis' claim. In addition, there would have been serious political ramifications if a foreign corporation had been able to use NAFTA to be awarded millions of our tax dollars because it did not want to comply with non-discriminatory mining regulations that protect public health, the environment and the cultural and religious practices of an Indian tribe," said Lori Wallach, director of Public Citizen's Global Trade Watch division. "Today's dismissal does nothing to fix the underlying problems with U.S. trade agreements' foreign investor rights rules, which are replicated in the leftover Bush trade pacts with Panama, Colombia and Korea the Obama administration inherited."

"Happily for California's taxpayers and environment, the panel ruled against Glamis' attempts to avoid having to play by the same rules as everyone else," said Margrete Strand Rangnes, director of the Sierra Club's Responsible Trade program. "But the fact that Glamis' claim was even possible, that a foreign company could try to undermine U.S. environmental laws in the name of higher profits, shows why our trade agreements' foreign investor rules must be altered."

Although the NAFTA tribunal dismissed Glamis' demand for taxpayer compensation, the Canadian firm still maintains its mining claims in southern California's Imperial Valley. Earthjustice, Earthworks, Public Citizen and the Sierra Club support the Quechan Indian tribe's efforts to ensure that Glamis does not harm sacred Quechan lands in California's Imperial Valley.

Glamis, a Canadian firm with U.S. subsidiaries, was involved in a lengthy permitting process to develop an open-pit, cyanide heap-leach gold mine on federal lands in the Imperial Valley. In order to proceed with the mine, Glamis needed permission from federal and state entities, which reviewed the mine's impact on the environment and on the neighboring Quechan Indian Tribe.

In early 2001, after six years of study, the federal Department of the Interior (DOI) formally denied the project on the basis that it would negatively impact Quechan religious and cultural practices. Shortly thereafter, upon cursory review, new Bush administration DOI officials reversed the decision. At that point, the state of California promulgated new rules requiring the backfilling of open pit mines near cultural sites to protect the environment and return the area to its natural state for use by the Quechan.

Instead of complying with the backfilling requirements applicable to all such mines in California, Glamis used NAFTA's foreign investor rights to demand \$50 million in U.S. taxpayer compensation for what it claimed was a violation of its rights under NAFTA. Glamis could have complied with the law and tried to work its claim. Alternatively, Glamis could have sold its mining rights. (Ironically, Glamis' mining claims are more valuable now with gold at \$950 an ounce than when the case started when gold was \$325 an ounce). Either way, Glamis could have profited without resorting to NAFTA tribunals, which makes its claim for damages for expropriation of its assets farfetched.

NAFTA's controversial investor-state dispute resolution system allows foreign investors to sue the federal government for cash damages in special arbitration panels that operate outside the U.S. court system when they believe that federal or state laws or actions have negatively impacted their investments. Similarly, investor-state rights have been included in subsequent free trade agreements, even though the issue has been highly controversial on Capitol Hill. As a candidate, President Obama campaigned against these overreaching rules, pledging to remedy the problem.

"That federal and state environmental and public land laws should not be overridden by the profit-making interests of foreign corporations is the correct outcome," said Lauren Pagel with Earthworks, one of the conservation groups that submitted legal briefs to the tribunal. "However, the fact that Glamis' case proceeded to this point, and required large expenditures of taxpayer dollars to defeat, was based on two policies that need change: NAFTA's investor rules and the antiquated U.S. 1872 Mining Law under which Glamis had filed its mining claim. Laws designed to protect the environment and irreplaceable cultural resources on federal public land should not be put at risk anytime a foreign corporation files a mining claim, which is a problem that must be remedied now that the House and Senate are finally considering reforms of the 1872 Mining Law."

"The United States should not have to waste taxpayer money defending against foreign investor claims every time federal or state governments act to protect important public resources," said Martin Wagner, managing attorney of Earthjustice's international program. "With respect to all U.S. trade agreements, President Obama should clarify that non-discriminatory measures to protect the environment, public health and sacred spaces do not violate the rights of foreign investors. Moreover, the president should amend international trade and investment agreements to require foreign investors to bring their claims in domestic courts before having access to international tribunals."

For more background on the Glamis case see: <http://www.citizen.org/documents/GlamisBackgrounderFINAL.pdf>

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EARTHWORKS is a non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral development, in the U.S. and worldwide.

Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C. For more information, please see <http://www.citizen.org>.

The Sierra Club is America's oldest, largest, and most influential grassroots environmental organization. Inspired by nature, we are 1.3 million of your friends and neighbors, working together to protect our communities and the planet.