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TABLE OF FOREIGN INVESTOR-STATE CASES AND CLAIMS UNDER NAFTA AND OTHER U.S. "TRADE" DEALS

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The North American Free Trade Agreement (NAFTA) established an array of new corporate rights and protections that were unprecedented in scope and power. NAFTA's Investor-State Dispute Settlement (ISDS) regime empowers multinational corporations to sue our governments before panels of three corporate lawyers. These lawyers can award the corporations unlimited sums to be paid by taxpayers, including for the loss of their expected future profits. The corporations need only convince the lawyers that a law, safety regulation, court ruling or other government action violates the new rights that NAFTA grants them. The lawyers' decisions are not subject to appeal. By elevating individual corporations to the same status as sovereign governments, ISDS drastically consolidates and formalizes corporate power.

NAFTA's extreme rules have been replicated in other U.S. "free trade" agreements (FTAs), including the Central American Free Trade Agreement and FTAs with Korea, Colombia, Peru, Panama and Oman. Not only has more than $475 million in compensation been paid out to corporations using ISDS just under U.S. agreements, but these corporate protections make it less risky and cheaper to outsource jobs. The corporate payoffs came after attacks on natural resource policies, environmental protections, health and safety measures and more. In fact, of the more than $55 billion in the 23 pending ISDS claims under NAFTA and other U.S. FTAs, nearly all relate to environmental, energy, financial, public health, land use and transportation policies – not trade issues or government seizures of property or investments.

ISDS creates a parallel and privileged set of legal rights for multinational corporations to own and control other countries' natural resources and land, establish or acquire local firms, and to operate them under privileged terms relative to domestic enterprises. For instance, corporations have received payouts when new policies undermine their "expectations" of a "stable regulatory environment." The scope of the "investments" covered is vast, including derivatives and other financial instruments, intellectual property rights, government licenses and permits, as well as more traditional forms of investment.

The rigged ISDS enforcement system allows multinational firms to skirt national court systems and privately enforce their extraordinary privileges by directly challenging national governments before extrajudicial tribunals. Cases are litigated outside any domestic legal system in international arbitration bodies of the World Bank and the United Nations. A panel composed of three corporate lawyers has the power to award an unlimited amount of taxpayer dollars to corporations for the "expected future profits" that the attorneys surmise the firms would have earned if not for the challenged policy. If a corporation wins its investor-state case, the taxpayers of the "losing" country must foot the bill. States whose laws are challenged have no standing in the cases and must rely on the federal government to defend state policies that the federal government may not support.

While fewer than 50 cases were filed in the first three decades of the investor-state system, corporations launched at least 50 cases *each* year for the last six years, intensifying concerns about the system's threats to democracy, taxpayers and the public interest.[1] Countries from South Africa to Indonesia to India have withdrawn from or renegotiated their ISDS-enforced pacts. The corporate lobby is desperately trying to save their ISDS regime, but are increasingly isolated.

The U.S. National Conference of State Legislatures representing the mainly Republican GOP-controlled U.S. state legislative bodies, the U.S. National Association of Attorneys General, small business organizations, unions and consumer and environmental groups and Democratic and Republican members of the U.S. Congress alike have called for ISDS to be removed from U.S. trade agreements. Stark criticism of ISDS also has come from voices as disparate as U.S. Supreme Court Chief Justice John Roberts and pro-free trade think tanks such as the Cato Institute and progressive Democratic U.S. Senator Elizabeth Warren (D-Mass.) and former Vice President Biden's chief economist Jared Bernstein.

Key
* Indicates date Notice of Intent was filed, the first step in the investor-state process, when an investor notifies a government that it intends to bring a claim against that government
** Indicates date Notice of Arbitration was filed, the second step in the investor-state process, when an investor notifies an arbitration body that it is ready to commence arbitration under an FTA

FTA Cases & Claims Against the United States[2]

Corporation or Investor	Venue	Damages Sought (US$)	Status of Case	Issue
Loewen July 29, 1998* Oct. 30, 1998**	ICSID	$725 million	Dismissed[3]	Loewen, a Canadian funeral home conglomerate, challenged a state court ruling in a private contract dispute. In the underlying domestic court case, a Mississippi jury determined Loewen had engaged in anti-competitive and predatory business practices that "violated every contract it ever had" with a local funeral home. After losing the court case and being ordered to pay $85 million, Loewen launched a NAFTA case against the U.S. government for $725 million. The corporation attacked the Mississippi jury verdict and the state's civil procedure rules as violated NAFTA's national treatment, fair and equitable treatment, and expropriation rules. This was the first NAFTA investor-state case challenging a domestic court ruling, and the NAFTA tribunal decided that ISDS tribunals had jurisdiction to review a domestic jury decision in a private contract dispute. The tribunal did not place limits on NAFTA tribunals' powers to review court decisions. The tribunal narrowly dismissed Loewen's claim on procedural grounds. (The tribunal found that Loewen's reorganization under U.S. bankruptcy laws as a U.S. corporation no longer qualified it as a "foreign investor" entitled to NAFTA protection.) However, the tribunal's ruling "criticized the Mississippi proceedings in the strongest terms" and made clear that foreign corporations that lose tort cases in the United States can use NAFTA to attempt to evade liability by shifting the cost of their court damages to U.S. taxpayers. For more information, see: www.citizen.org/documents/Loewen-Case-Brief-FINAL.pdf

Mondev May 6, 1999* Sept. 1, 1999**	ICSID	$50 million	Dismissed	Mondev, a Canadian real estate developer, challenged a Massachusetts Supreme Court ruling regarding local government sovereign immunity and land-use policy. Mondev claimed that the city of Boston had unfairly interfered with an optional second phase of a construction project by planning a road to run through a parcel of land on which it had been operating a garage business. The Massachusetts Supreme Court held that the investor had been unable to demonstrate that it was willing and able to perform its contractual obligations and ruled that the Boston Redevelopment Authority (of the city government) was immune from civil suits. After the U.S. Supreme Court denied Mondev's request for a re-hearing, Mondev launched a NAFTA investor-state claim against the United States. A NAFTA tribunal dismissed the claim on procedural grounds, finding that the majority of Mondev's claims, including its expropriation claim, were time-barred because the dispute on which the claim was based predated NAFTA. Even so, the U.S. government was required to pay half of the tribunal's costs as well as its own legal fees. For more information, see: www.citizen.org/trade/article_redirect.cfm?ID=1887
Methanex June 15, 1999* Dec. 3, 1999**	UNCITRAL	$970 million	Dismissed	Methanex, a Canadian corporation that produced methanol, a component chemical of the gasoline additive MTBE, challenged California's phase-out of MTBE. Studies linked MTBE with neurotoxological and carcinogenic health impacts and identified environmental risks. The American Water Works Association has estimated that it would cost about $25 billion to clean up U.S. public water systems contaminated with MTBE.[4] California decided to phase out the chemical to halt contamination of drinking water sources. In its NAFTA case, Methanex alleged that the California phase-out of MTBE was discriminatory and violated the company's right to a minimum standard of treatment. The claim was dismissed on procedural grounds. The tribunal ruled that it had no jurisdiction to determine Methanex's claims because California's MTBE ban did not have a sufficient connection to the firm's methanol production to qualify Methanex for protection under NAFTA's investment chapter. The tribunal ordered Methanex to pay the U.S. government $4 million in legal and arbitration fees.[5] For more information, see: www.citizen.org/documents/Issue6.pdf

ADF Group Feb. 29, 2000* July 19, 2000**	ICSID	$90 million	Dismissed	ADF group, a Canadian steel contractor, challenged the U.S. Buy America law in relation to a Virginia highway construction contract. At issue was a 1980s law developed to recycle taxpayer funds back into the U.S. economy in a sector – steel – that was considered vital for U.S. infrastructure and national defense. A tribunal dismissed the claim, finding that the basis of the claim constituted "government procurement" and therefore was not covered under NAFTA Article 1108. (Even so, the U.S. government was required to pay half of the tribunal's expenses as well as its own legal fees.) Starting with CAFTA, FTA investment chapters have included foreign investor protections for aspects of government procurement activities. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Canfor Nov. 5, 2001* July 9, 2002**	UNCITRAL	$250 million	Consolidated	Canfor, a Canadian softwood lumber company, claimed damages relating to U.S. anti-dumping and countervailing duty measures implemented in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Tembec and Terminal Forest Products claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Kenex Jan. 14, 2002* Aug. 2, 2002**	UNCITRAL	$20 million	Arbitration never began	Kenex, a Canadian hemp production company, challenged new U.S. Drug Enforcement Agency regulations criminalizing the importation of hemp foods. Kenex tried to import WTO requirements to use "sound science" into U.S. NAFTA obligations, and argued that the regulation was arbitrary and unfair. In 2004, Kenex won a U.S. federal court case that held the agency overstepped its statutory authority when issuing the rules. The NAFTA investor-state case was abandoned. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
James Russell Baird March 15, 2002*		$13.58 billion	Arbitration never began	James Baird, a Canadian investor, challenged a U.S. policy of disposing nuclear waste at a Yucca Mountain, Nevada site. The investor held patents for a competing sub-sealed waste disposal method and location. For more information, see:

				www.citizen.org/documents/NAFTAReport_Final.pdf
Doman May 1, 2002*		$513 million	Arbitration never began	Doman, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Tembec Corp. May 3, 2002* Dec. 3, 2003**	UNCITRAL	$200 million	Consolidated	Tembec, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Terminal Forest Products and Canfor claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ontario Limited Sept. 9, 2002*		$38 million	Arbitration never began	Ontario Limited, a Canadian company, launched a NAFTA claim seeking return of property after its bingo halls and financial records were seized during an investigation for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) in Florida. Under Florida law, bingo halls may only be operated by non-profits, including churches and charities. Otherwise, the proceeds must be donated. While the Florida Supreme Court eventually ruled that the RICO Act cannot be used to close or seize bingo halls, they remain illegal for commercial enterprise. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Terminal Forest Products Ltd. June 12, 2003* March 30, 2004**	UNCITRAL	$90 million	Consolidated	Terminal Forest Products, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Canfor and Tembec claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Glamis Gold Ltd. July 21, 2003*	UNCITRAL	$50 million	Dismissed	Glamis Gold, a Canadian mining company, sought compensation for a California law requiring backfilling and restoration of open-pit mines near Native American sacred sites. Glamis was seeking permits to operate an open-pit cyanide heap-leach mine on federal lands on which it had acquired a Bureau of Land Management mining concession.

Dec. 9, 2003**				Many nations (and the U.S. state of Montana) have banned cyanide heap-leach mining altogether given the environmental and health threats posed by the discarded heaps of cyanide-contaminated earth around such mines. Glamis claimed that it has a "right to mine" under federal law. And that California land use rules, including those relating to preservation of Native American cultural sites, that condition permitting on the firm restoring the land post-mining to its original state equated to an expropriation of their investment and violated NAFTA minimum standard of treatment" protections. Instead of proceeding with its application and plan to comply with the state law, Glamis filed a NAFTA claim. The tribunal dismissed Glamis' claims in June 2009. The ruling is often cited as the exception to the typical, highly problematic practice of ISDS tribunals fabricating expansive notions of what obligations the minimum standard of treatment rule requires of governments and then finding for corporations. The tribunal in this case actually applied the Customary International Law analysis that the NAFTA countries have repeatedly stated is the proper standard of review. The tribunal also ordered Glamis to pay 2/3 of the arbitral costs rather than split them evenly. Even so, the U.S. government was required to pay for 1/3 of the costs and for the time of government lawyers for a case that was dismissed. For more information, see: www.citizen.org/documents/GlamisBackgrounderFINAL.pdf
Grand River Enterprises et. al. Sept. 15, 2003* March 12, 2004**	UNCITRAL	$340 million	Dismissed	Grand River Enterprises, a Canadian tobacco manufacturer, (in addition to its two individual owners and one U.S. business associate) sought damages over a 1998 U.S. Tobacco Settlement, known as the Master Settlement Agreement (MSA), which requires tobacco companies to contribute to state escrow funds to help defray medical costs of smokers. The Canadian tobacco company had utilized loopholes in the escrow scheme to expand its U.S. sales – loopholes that the states ultimately closed. This loophole closing was a central basis of the corporation's claim. While finding that no NAFTA violation occurred, a tribunal decided that the United States had to bear its own defense costs, arguing that the United States did not consult with indigenous businesses before implementing the challenged aspects of the MSA. The tribunal also questioned whether these aspects of the tobacco control policy contributed to

				public health, despite significant drops in teenage smoking rates over the period. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Canadian Cattlemen for Fair Trade Aug. 12, 2004* March 16 2005-June 2, 2005**	UNCITRAL	$235 million	Dismissed	A group of Canadian cattlemen and feedlot owners sought compensation for losses incurred when the United States halted imports of live Canadian cattle after the discovery of a case of bovine spongiform encephalopathy (BSE), better known as mad cow disease, in Canada in May 2003. A tribunal dismissed the claim at the jurisdiction phase, ruling that the cattlemen did not have standing to bring the claim because they did not have an investment in the U.S., nor did they intend to invest in the U.S. For more information, see: www.citizen.org/documents/CanadianCattlemen_for_FairTrade.pdf
Softwood Lumber Consolidated Proceeding Sept. 7, 2005	ICSID	$540 million	Concluded	Canfor, Terminal Forest and Tembec – Canadian softwood lumber companies – challenged U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. The agreement had been signed to avert a trade war over U.S. industry complaints that Canada was unfairly subsidizing logging companies. The companies alleged violations of NAFTA provisions on minimum standard of treatment, national treatment and expropriation, among others. A tribunal approved the U.S. request to consolidate Canfor, Terminal Forest and Tembec cases under ISCID rules. The Tembec case was withdrawn in 2005, but a dispute over litigation costs continued to be adjudicated by the NAFTA tribunal. A final ruling terminated the Canfor and Terminal Forest cases in 2007, and apportioned costs in all three cases. The termination followed a new softwood lumber agreement that the U.S. and Canada entered into in 2006 which resolved many NAFTA and domestic court cases on the issue. The softwood lumber dispute was also litigated at the WTO and in NAFTA's state-state dispute resolution system before the 2006 agreement was reached. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Domtar Inc.	UNCITRAL	$200 million	Arbitration never began	Domtar, a Canadian softwood lumber company, filed a claim after a 2006 U.S.-Canada softwood lumber agreement to try to recover the money it paid out while U.S. countervailing duties were in place.

April 16, 2007**				Domtar claimed numerous violations, including minimum standard of treatment, national treatment and transfers of investments violations. (See also "Softwood Lumber" case above.)
Apotex (I) Dec. 10, 2008**	UNCITRAL	$8 million	Dismissed	Apotex, a Canadian generic drug manufacturer, challenged the decision of U.S. courts not to clarify patent issues relating to its plan to develop a generic version of the Pfizer drug Zoloft (sertraline) when the Pfizer patent expired in 2006. Due to legal uncertainty surrounding the patent, the firm sought a declaratory judgment in U.S. District Court for the Southern District of New York to clarify the patent issues and give it the "patent certainty" to be eligible for final FDA approval of its product upon the expiration of the Pfizer patent. The court declined to resolve Apotex's claim and dismissed the case in 2004, and this decision was upheld by the federal circuit court in 2005. In 2006, the case was denied a writ of certiorari by the U.S. Supreme Court. Because the courts declined to clarify the patent situation, another generic competitor got a head-start in producing the drug. Apotex challenged all three court decisions as a misapplication of U.S. law, and as violations of NAFTA's expropriation, discrimination and minimum standard of treatment provisions. The tribunal dismissed the claim in 2013, arguing that neither Apotex's drugs nor its related expenditures constituted an "investment" in the United States that was protected under NAFTA.
CANACAR April 2, 2009**	UNCITRAL	$30 billion	Arbitration never began	CANACAR, a group of Mexican truckers, launched a NAFTA claim after a bipartisan coalition in Congress set specific safety and environmental conditions that had to be met before a controversial Bush administration program, allowing 26 Mexican carriers full access to U.S. roadways, could take effect. The Bush pilot program was an effort to comply with a NAFTA obligation to make U.S. highways fully accessible to Mexican trucks. The Clinton administration had resisted implementing that obligation, given U.S. Department of Transportation studies that revealed severe safety and environmental problems with Mexico's truck fleet and drivers' licensing. Such resistance had prompted Mexico to initiate a state-to-state NAFTA dispute, resulting in a tribunal ruling that the United States had to grant full roadway access to Mexican-domiciled trucks or face trade sanctions. CANACAR launched its investor-state case to further pressure the United States to grant access to Mexican trucks after Congress' initiative to place safety and environmental conditions on such access.

				In its NAFTA claim, CANACAR claimed that such requirements violated the nondiscrimination, most favored nation, and fair and equitable treatment investor protections in NAFTA. The claimants created a novel argument that, due to the fact that they pay certification fees to the Federal Motor Carrier Safety Administration, they have an "investment" in the United States and qualify as "investors" under NAFTA.[6] After the Mexican government levied further threats of trade sanctions against the United States for continued restrictions on Mexican-domiciled trucks, the Obama administration signed a deal in 2011 to allow the trucks into the U.S. interior for three years, despite the unresolved safety and environmental concerns. More than two years after the launch of the pilot program, only 13 Mexican motor carriers are participating – a fraction of the 46 carriers that the U.S. Department of Transportation said would be necessary to provide a statistically valid analysis of program participants' safety performance.[7] With such a small and non-representative sample, and with the pilot program expiring in less than a year, it remains to be seen whether U.S. officials will provide wider access to Mexico-domiciled trucks without data on the safety and environmental implications of doing so. To pressure the U.S. government to grant such access, CANACAR announced in early 2014 that it now seeks $30 billion in U.S. taxpayer compensation, up from $6 billion, in its investor-state case.[8] For more information, see: www.citizen.org/documents/NAFTAs-20-year-legacy.pdf
Apotex (II) June 4, 2009**	UNCITRAL	$8 million	Dismissed	Apotex, a Canadian drug manufacturer, challenged the decision of the FDA not to approve development of a generic version of the Bristol Myers Squibb drug Pravachol (provastatin sodium). The firm was unable to obtain approval from the FDA. Apotex filed a NAFTA claim, arguing that the United States violated the national treatment, minimum standard of treatment, and expropriation and compensation obligations of NAFTA. The tribunal dismissed the claim in 2013, arguing that neither Apotex's drugs nor its related expenditures constituted an "investment" in the United States that was protected under NAFTA.
Cemex Sept. 2009*		N/A	Arbitration never began	Cemex, a Mexican cement company, filed a notice of intent to bring a NAFTA claim against the U.S. government after the state of Texas launched a lawsuit against Cemex for not paying royalties on

				metals the company extracted from state-owned land.[9] Cemex sought to use the NAFTA claim to indemnify itself against potential losses in the Texas courts.
Apotex (III) Feb. 29, 2012**	ICSID	$520 million	Dismissed	Apotex, a Canadian drug manufacturer, launched a NAFTA case against FDA-imposed restrictions on imports of Apotex drugs, which followed FDA inspections of Apotex manufacturing facilities. In its claim, Apotex argued that FDA inspections practices were discriminatory and violated a NAFTA-guaranteed minimum standard of treatment for the company.[10] The tribunal dismissed the claim in 2014, with a majority deciding that the ruling still held from the earlier Apotex cases that some of Apotex's claimed "investments" were not covered by NAFTA. For those that were covered, the tribunal did not find a NAFTA violation.
Victims of the Stanford Ponzi Scheme Dec. 28/29, 2012*		$254 million	Arbitration never began	Individual investors from Central America, South America and the Caribbean filed notices of intent in separate claims against the U.S. government under CAFTA-DR, the U.S.-Peru FTA and the U.S.-Chile FTA. The investors stated that they lost money as a result of a Ponzi scheme run by convicted U.S. ex-financier Allen Stanford. They argued that the U.S. Securities and Exchange Commission failed to promptly shut down Stanford's scheme, which the investors alleged as a violation of national treatment, fair and equitable treatment and most favored nation obligations.
TransCanada Corporation & TransCanada Pipelines Limited January 6, 2016*	ICSID	$15 billion	Arbitration never began	In June 2016, the TransCanada Corporation launched an ISDS case under NAFTA demanding $15 billion in compensation because the corporation's bid to build a pipeline was rejected by the U.S. government.[11] The $15 billion claim was five times more than the $3.1 billion that TransCanada said it already had invested in the pipeline project because the compensation demand included the future expected profits that TransCanada claimed it would have earned had the pipeline been allowed. The proposed 875-mile pipeline – called the Keystone XL – would transport to the U.S. Gulf Coast up to 830,000 barrels per day of highly-corrosive crude oil extracted from tar sands in Alberta, Canada. The pipeline would transport one of the dirtiest fossil fuels on the planet[12] across more than a thousand rivers, streams, lakes and wetlands[13] as it traverses six U.S. states. Indigenous leaders, farmers, and ranchers in the path of the

				project stressed that a spill from the pipeline would threaten their lands and livelihoods.[14] Their concerns were bolstered by environmental and health experts who provided evidence during the course of various federal and state reviews of the project about how tar sands oil development in Alberta, Canada already has devastated the land and water of Canadian First Nations communities, released toxic chemicals that poisoned and sickened these communities[15] and threatened local species of fish and wildlife.[16] The pipeline also raises significant concerns with respect to its climate impacts. If the pipeline were completed, it would create new demand for intensified carbon-intensive tar sands extraction and processing as the purpose of the pipeline was to transport the tar-sands oil to U.S. Gulf Coast refineries for processing so finished product could be exported into the global market.[17] The November 2015 decision by the U.S. government not to approve the pipeline project came after tens of thousands of citizens in the states that would be affected and by environmental activists nationwide had worked for six years to demonstrate that the pipeline was not in the national interest and would pose serious health and environmental risks. In January 2016, just two months after the U.S. government's decision to reject the pipeline, TransCanada filed notice of intent to start an ISDS case under NAFTA. It simultaneously filed a U.S. federal court case, claiming that the decision to reject the pipeline was unconstitutional because only Congress, not the president, has authority to make such a decision.[18] In its ISDS notice of arbitration, TransCanada claimed the United States had violated four different investor rights provided by NAFTA. First, it claimed that the U.S. government violated the minimum standard of treatment, arguing that the U.S. government led TransCanada to develop "reasonable expectations" that the Obama administration would approve the pipeline, only to ultimately reject it. The company noted that, while in 2010 the U.S. State Department was "inclined" to approve the project, subsequently "politicians and environmental activists ... continued to assert that the pipeline would have dire environmental consequences," which ultimately led the Obama administration to reject it for "symbolic reasons, not because of the merits."[19] TransCanada also alleged that disapproval of the project violated the NAFTA investor protection against indirect expropriation, arguing that the

				pipeline "substantially deprived" the company of its investment in the project." TransCanada also claimed violations of NAFTA's national treatment standard, claiming that the United States treated the Canadian firm worse than it treated U.S. firms, and of NAFTA's "most-favored nation" standard, claiming that the United States treated the Canadian firm worse than other international pipeline firms. These latter claims were lodged despite the fact that no other company would be permitted to build the pipeline. In his first week as president in January 2017, Donald Trump signed an executive order inviting TransCanada to submit a new application for the pipeline's construction. ISDS rules permitted TransCanada to continue to pursue compensation via ISDS for lost revenue it claims was caused by the project's delay even after receiving a permit. However, on February 28, 2017, the company suspended its case for 30 days, which coincided precisely with the time period by which the U.S. State Department was to make a final decision on the new permit application.[20] During that 30 day period, on March 4, 2017, the White House clarified that a previous Trump executive order calling for pipelines to be constructed with American-made steel and pipe would not apply to the Keystone XL.[21] Shortly thereafter, the State Department issued the permit.[22] TransCanada then announced that it would discontinue its NAFTA ISDS case.[23] Various news outlets reported that close observers suspected that the quick permit approval and the Buy American steel/pipe waiver that blessed TransCanada's use of foreign steel and piping were likely the "settlement" price extracted from the Trump administration by TransCanada for dropping its NAFTA claim.

NAFTA Cases & Claims Against Canada

Signa March 4, 1996*		$36.7 million	Withdrawn	Signa, a Mexican generic drug manufacturer, launched a claim against a Canadian patent law that prevented the company from manufacturing a generic form of the antibiotic CIPRO. The company claimed that Canadian law allowed Bayer, the owner of the CIPRO patent, to block the generic manufacture of CIPRO without requiring any preliminary judicial consideration of the contested patent. Signa alleged this as a violation of NAFTA

				rules against minimum standard of treatment and expropriation, though arbitration never began. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ethyl April 14, 1997*	UNCITRAL	$251 million	**Settled; Ethyl win, $13 million**	Ethyl, a U.S. chemical company, launched an investor-state case over a proposed Canadian ban of MMT, a toxic gasoline additive used to improve engine performance. MMT contains manganese – a known human neurotoxin. MMT is not used in most countries, and is banned by the U.S. Environmental Protection Agency in reformulated gasoline. Canadian legislators were concerned about the public health and environmental risk of MMT emissions and about MMT's interference with emission-control systems. Before the Canadian parliament even acted, Ethyl filed its ISDS claim, arguing that the proposed law would result in e a NAFTA-forbidden expropriation of its assets. Given Ethyl had no production facility in Canada, its expropriation claim focused on NAFTA's obligations for governments to compensate for actions "tantamount to" expropriation. Canada argued that Ethyl did not have standing under NAFTA to bring the challenge. First, at issue was a ban on cross-border trade of a product made in the United States, not a measure affecting an Ethyl investment in Canada. (Canada noted that Ethyl could try to persuade the U.S. government to bring a state-state case.) Second, the law had not been passed when the challenge was filed, thus Canada argued that there was no "government action" to challenge. But, a NAFTA tribunal rejected Canada's objections in a 1998 jurisdictional decision that paved the way for a ruling on the merits. Less than a month later, the government announced that it would settle with Ethyl. The settlement terms required Canada to reverse the ban, post advertising announcing MMT was safe and pay the firm $13 million in damages for the period the ban had been in place and as well as tribunal cost and all legal fees. Today Canada depends largely on voluntary restrictions to reduce the presence of MMT in gasoline.[24] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
S.D. Myers July 22, 1998*	UNCITRAL	$70.9 million	**S.D. Myers**	S.D. Myers, a U.S. waste treatment company, challenged a Canadian ban on the export of a hazardous waste called polychlorinated biphenyls (PCB). Canada enacted the ban to comply with its

Oct. 30, 1998**			**win, $5.5 million** ($3.8 million + $1.7 million interest)	obligations a multilateral environmental treaty, the Basel Convention, encouraging domestic treatment of toxic waste. The U.S. Environmental Protection Agency (EPA) has determined that PCBs are harmful to humans and toxic to the environment. S.D. Myers argued that the ban constituted disguised discrimination in violation of NAFTA's fair and equitable treatment obligation and was "tantamount to an expropriation." A tribunal dismissed S.D. Myers' claim of expropriation, but upheld claims of discrimination and deemed the export ban as a violation of the minimum standard of treatment foreign investors must be provided under NAFTA, because it limited S.D. Myers' plan to treat the waste in Ohio. The panel also stated that a foreign firm's "market share" in another country could be considered a NAFTA-protected investment. A Canadian Federal Court dismissed Canada's petition to have the decision overturned, finding that any jurisdictional claims were barred from being raised since they had not been raised in the NAFTA claim, and that upholding the tribunal award would not violate Canadian "public policy" as Canada had argued. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Sun Belt Dec. 2, 1998* Oct. 12, 1999**		$33.7 million	Arbitration never began	Sun Belt, a U.S. bulk water importer/exporter, challenged a British Columbia bulk water export moratorium. Public protests had forced the moratorium, as many Canadians were concerned that if Canadian provinces mass-exported water it would begin to be treated as a commodity under NAFTA, making it difficult for Canada to limit water withdrawals from the Great Lakes. In its notice of intent to launch a NAFTA dispute, the U.S. company argued that the popularly-pushed water export moratorium was discriminatory and violated the company's entitlement to a minimum standard of treatment under NAFTA. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Pope & Talbot Dec. 24, 1999* March 25, 1999**	UNCITRAL	$507.5 million	**P&T win, $0.5 million** ($0.46 million + $0.04	Pope & Talbot, a U.S. timber company with operations in British Columbia, challenged Canadian implementation of the 1996 U.S.-Canada Softwood Lumber Agreement. Pope & Talbot claimed that quotas on duty-free imports of Canadian timber into the United States violated NAFTA national treatment and minimum standard of treatment guarantees, and constituted expropriation. The

			million interest)	U.S. and Canadian governments had agreed on the quotas to avert a trade war over U.S. industry complaints that Canada was unfairly subsidizing logging companies. Although the company was treated in the same manner as similar companies in British Columbia, it pointed to logging companies in other provinces not subject to the quota to support its allegation of discrimination. A NAFTA tribunal dismissed the company's claims of expropriation and discrimination, but held that, even though Canada reasonably implemented the lumber agreement, the allegedly rude behavior of Canadian government officials seeking to verify Pope & Talbot's compliance constituted a violation of the minimum standard of treatment required by NAFTA for foreign investors. The panel also stated that a foreign firm's "market access" in another country could be considered a NAFTA-protected investment. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
United Parcel Service Jan. 19, 2000* April 19, 1999**	UNCITRAL	$160 million	Dismissed	UPS, the world's largest package delivery company, claimed that the Canadian post office's parcel delivery service was unfairly subsidized by virtue of being part of the public postal service – Canada Post. As the first NAFTA case against a public service (and since mail delivery is a publicly-owned service in numerous countries), the case was closely watched and included amici briefs submitted by the Canadian Union of Postal Employees and other citizen groups. UPS's claims were dismissed. A tribunal concluded that key NAFTA rules concerning competition policy could not be invoked because UPS was inappropriately framing Canada Post as a "party" to Chapter 11. In addressing whether Canada's treatment of UPS comported with customary international law, the tribunal found that there was no customary international law prohibiting or regulating anticompetitive behavior. A lengthy dissenting opinion was filed by one tribunalist, indicating that a similar case could generate a very different result. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ketcham and Tysa Investments		$30 million	Withdrawn	Several U.S. softwood lumber firms challenged Canadian implementation of a 1996 Softwood Lumber Agreement. The firms claimed that Canada gave higher quotas to domestic firms than to the firms' Canadian subsidiaries, and that this

Dec. 22, 2000*				constituted expropriation and a breach of national treatment and minimum standard of treatment provisions.
Trammell Crow Sept. 7, 2001*		$32 million	Withdrawn	Trammell Crow, a U.S. real estate company, filed notice of its intent to launch a NAFTA claim over alleged discrimination in Canada Post's bidding processes. The company claimed that the Canadian government skirted a competitive bidding process and extended an old contract to manage post facilities after the company had spent time and money preparing a bid for a new contract. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Crompton/ Chemtura Original notice of claim dated Nov. 6, 2001* Feb. 10, 2005**	UNCITRAL	$100 million	Dismissed	Crompton, a U.S. chemical company and producer of pesticide lindane – a hazardous persistent organic pollutant – challenged a voluntary agreement between manufacturers and the Canadian government to restrict production of the pesticide. Beginning in 1998, the Canadian Pesticide Management Regulatory Agency (PMRA) and canola growers represented by the Canadian Canola Council organized companies to voluntarily phase out the production of lindane for canola. The U.S. EPA had been reviewing lindane as a suspected toxin for years before Crompton filed its notice of arbitration. In the year after Crompton launched its NAFTA claim against Canada for voluntary restrictions on lindane, the EPA banned its use as a pesticide in the U.S. When threatening a NAFTA claim, Crompton – which later merged with another company to become the Chemtura Corporation – argued that the voluntary phase-out program violated NAFTA provisions against discrimination, performance requirements and expropriation, and failed to provide the company a minimum standard of treatment. In August 2010, the tribunal ruled against the company, in part because the company's own actions helped initiate the ban. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Albert J. Connolly Feb. 19, 2004*		Not availab le	Arbitration never began	Albert J. Connolly, a U.S. investor, claimed that real estate he owned in Canada was expropriated by the province of Ontario for the purpose of building a park as part of Ontario's Living Legacy Program. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf

Contractual Obligations June 15, 2004*		$20 million	Arbitration never began	Contractual Obligations, a U.S. animation production company, challenged as a NAFTA violation Canadian federal tax credits that were only available to Canadian firms employing Canadian citizens and residents.
Peter Pesic July 2005*			Withdrawn	Peter Pesic, a U.S. investor, claimed that a Canadian decision not to extend a work visa impaired his investment in Canada.
Great Lake Farms Feb. 28, 2006* June 5, 2006**	UNCITRAL	$78 million	Arbitration never began	A U.S. agribusiness challenged Canadian provincial and federal restrictions on the exportation of milk to the U.S. The company alleged violation of NAFTA's most favored nation rule, minimum standard of treatment rule, expropriation prohibition, and rules on monopolies and state enterprises.
Merrill and Ring Forestry Sept. 25, 2006* Dec. 27, 2006**	UNCITRAL	$51.2 million	Dismissed	Merrill and Ring Forestry, a U.S. forestry firm, challenged Canadian federal and provincial regulations restricting the export of raw logs. Numerous labor groups petitioned to submit amici briefs in the case, seeking to maintain and strengthen Canada's raw log export controls at both the provincial and federal levels. They stated that such NAFTA claims could lead to the abandonment of log export controls which they deem essential to the continued employment of tens of thousands of Canadian workers. Merrill and Ring Forestry argued that the export regulations violated NAFTA national treatment and minimum standard of treatment provisions. A tribunal ruled against Merrill and Ring Forestry, but ordered Canada to pay half of arbitration costs, amounting to about $500,000.
V. G. Gallo Oct. 12, 2006* March 30, 2007**	UNCITRAL	$355.1 million	Dismissed	Gallo, a U.S. citizen, owned a company that bought a decommissioned open-pit iron ore mine in Northern Ontario. He challenged a 2004 decision by the newly-elected Ontario government to block a proposed landfill on the site. Gallo claimed this decision was "tantamount to an expropriation" and deprived Gallo of a minimum standard of treatment under NAFTA. A tribunal ruled that Gallo did not have ownership of the mine at the time of the alleged infraction, but ruled that Canada still had to cover its own legal fees.[25]
(Exxon) Mobil Investments	ICSID	$59.1 million	**Mobil and Murphy win,**	U.S. firms Mobil and Murphy Oil challenged the Canada-Newfoundland and Labrador (NL) Offshore Petroleum Board's "Guidelines for Research and Development Expenditures" as NAFTA-forbidden performance requirements. When NAFTA was

and Murphy Oil Aug. 2, 2007* Nov. 1, 2007**			**$13.9 million** (plus interest)	negotiated, Canada had taken a reservation for imposition of performance requirements on investors in its oil sector. The reservation specifically listed several provincial-federal boards, including the Canada-NL board, and the laws under which the boards and conditions for investment are established. The Canada-NL board requires firms involved in the offshore oilfields to submit "benefits" plans to comply with a requirement that firms invest in research and development as well as worker training. A series of guidelines specifying the amount and types of R&D and worker training required of firms had been issued starting in the late 1980s. In their ISDS claim, Mobil and Murphy claim that the 2004 version of the guidelines constituted NAFTA-forbidden performance requirements because relative to past guidelines, they would result in the firms spending more money and were more specific about the forms of R&D and training that would meet the firms' obligations. Canada countered that R&D and worker training requirements were not even on the list of NAFTA-prohibited performance requirements, but that had they been, Canada had taken a broad reservation to exclude application of the relevant NAFTA obligation to the relevant government board's activities. The majority of the panel rejected Canada's arguments and in 2012 issued a ruling in favor of Mobil and Murphy Oil. One tribunalist dissented, noting that Canada had negotiated for a reservation allowing the very policies being challenged. However, ISDS rulings require only a majority of the tribunal, and the ISDS regime provided Canada no right to appeal the merit. The majority then ordered Canada to pay the oil corporations more than $13 million, plus interest.
Marvin Gottlieb *et.al.* Oct. 30, 2007*		$6.5 million	Arbitration never began	Marvin Gottlieb and other foreign investors challenged an increase in Canadian taxation of income trusts –legal structures commonly used by energy companies to reduce taxation. Concerned about a declining corporate tax base, Canada changed the manner in which income trusts were taxed in 2006. Investors alleged that this change effectively eliminated the income trust model as an investment option and caused "massive destruction" to their holdings. An exchange of letters between the U.S. and Canadian tax agencies confirmed that the investors' claim of NAFTA-prohibited expropriation could not proceed. However, this determination did not affect the investors' claims that the new tax policy

				violated NAFTA's national treatment, most favored nation and fair and equitable treatment obligations.
Clayton/ Bilcon Feb. 5, 2008* May 26, 2008**	UNCITRAL	$443 million	**Clayton/ Bilcon win** (damages still pending)	Members of the U.S.-based Clayton family and a corporation they control, Bilcon, challenged environmental requirements affecting their plans to open a large, open-pit blasting gravel quarry to operate for 50 years on a pristine Nova Scotia bay that is a tourist hub, salmon fishery and endangered whale breeding ground and to build a marine terminal to ship out the gravel. Federal and provincial law required an environmental review. The panel of experts conducting the review recommended the permits be denied. The local commercial fishing and tourism industries, Indian tribes and residents raised human and marine environment concerns during the review process. Bilcon argued the review did not comply with Canadian law, in part by giving too much weight to community concerns. Rather than challenging it in Canadian court, Bilcon went to ISDS. The firm argued that the review was arbitrary, discriminatory and unfair, and thus a breach of NAFTA's minimum standard of treatment, national treatment and most favored nation obligations.[26] In a March 2015 ruling, two of three tribunalists ignored decades of clarifications by the three NAFTA governments that ISDS tribunals may not substitute their views for those of domestic administrative or judicial bodies and decided the review violated Canadian law. The tribunal majority created an broad interpretation of the minimum standard of treatment, invented obligations to which no NAFTA signatory had agreed — including not to disappoint investors' expectations — and ruled against Canada.[27] The third tribunalist issued a dissent warning about the impropriety of an ISDS tribunal substituting its judgement for that of a Canadian federal court and ordering damages that would not have been available had a Canadian court found the law was violated. He called the decision a serious "intrusion" into the "public policy of the state" and warned that: "Once again, a chill will be imposed on environmental review panels which will be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages under NAFTA Chapter 11. In this respect, the decision of the majority will be seen as a remarkable step backwards in environmental protection."[28]
Georgia Basin		$5 million	Other	Georgia Basin is a limited partnership based in Washington State that owns timber lands in British Columbia. It alleged that Canada's export controls

Feb. 5, 2008*				on logs harvested from land in British Columbia under federal jurisdiction violated Canada's NAFTA obligations regarding expropriation, minimum standard of treatment, discrimination, most favored nation treatment and performance requirements. A tribunal decided on January 31, 2008 to not allow Georgia Basin to participate in the Merrill and Ring Forestry hearings described above.
Centurion Health July 11, 2008* Jan. 5, 2009**	UNCITRAL	$160 million	Terminated	A U.S. citizen and his firm, Centurion Health Corporation, challenged aspects of Canada's national healthcare system and "serious inconsistencies" between provinces regarding private-sector provision of health-care service. Howard and his firm sought to take advantage of an "increasing openness" to private involvement in the Canadian healthcare system in order to build a large, private surgical center in British Columbia. He claimed his project was thwarted by discriminatory and "politically motivated" road blocks. He alleged violations of NAFTA's national treatment and minimum standard of treatment obligations, among others. A tribunal terminated the claim because the investor had not made a deposit to cover the costs of arbitration.
Dow Chemical Aug. 25, 2008* Mar. 31, 2009**	UNCITRAL	$2 million	Settled	Dow AgroSciences LLC, a subsidiary of the U.S. Dow Chemical Company, filed a NAFTA Chapter 11 claim for losses it alleged were caused by a Quebec provincial ban on the sale and certain uses of lawn pesticides containing the active ingredient 2,4-D. Quebec and other provinces banned the ingredient as an environmental precaution, and responses to public comments suggested about 90% popular support for the pesticide bans.[29] When Dow filed the NAFTA claim, other provinces were still considering the ban, and there was speculation that the claim was intended to deter them.[30] But after five provinces followed Quebec's lead and banned the pesticide, Dow decided to settle with Canada in a deal that left the bans intact and required no taxpayer compensation to the corporation.[31] However, the settlement required Quebec to state, "products containing 2,4-D do not pose an unacceptable risk to human health or the environment provided that the instructions on their label are followed." Dow portrayed the statement as acknowledgement that the contested pesticides were safe.[32]
Malbaie River Outfitters Inc.		$7.8 million	Withdrawn	U.S. citizen William Jay Greiner owned a business called Malbaie River Outfitters Inc., which provided fishing, hunting, and lodging for mostly U.S. clients in the province of Quebec. Greiner claimed that by changing the lottery system for obtaining salmon

Sept. 10, 2008* Dec. 2, 2010**				fishing licenses in 2005, the provincial government of Quebec "severely damaged the investor's business." He also challenged Quebec's decision to revoke his outfitter's license for three rivers, which he contended effectively destroyed his business.
David Bishop Oct. 8, 2008*		$1 million	Arbitration never began	U.S. citizen David Bishop claimed that his outfitting business Destinations Saumon Gaspésie Inc. was harmed by Quebec's 2005 changes to the lottery system for obtaining salmon fishing licenses in a manner similar to the Malbaie River Outfitters case above.
Shiell Family Oct. 8, 2008*		$21.3 million	Arbitration never began	The Shiell family has dual U.S. and Canadian citizenship and owned companies in both nations. They claimed that one of their companies, Brokerwood Products International, was forced into a fraudulent bankruptcy by the Bank of Montreal. The family claimed that it was not protected by the Canadian courts and various Canadian regulators, in violation of Canada's NAFTA investor protection obligations.
Christopher and Nancy Lacich Apr. 2, 2009*		$1,059	Withdrawn	This case is very similar to the Gottlieb et.al case above. Christopher and Nancy Lacich were U.S.-based investors involved in Canadian energy trusts when the government changed the tax structure of the trusts to counteract a declining tax base. Christopher and Nancy claimed that this taxation rule change constituted expropriation.
Abitibi-Bowater Inc. Apr. 23, 2009* Feb. 25, 2010**	UNCITRAL	$467.5 million	**Settled, Abitibi-Bowater gets $123 million**	AbitibiBowater, a paper corporation headquartered in Canada but also incorporated in Delaware, used NAFTA to challenge the decision of Newfoundland and Labrador, a Canadian province, to confiscate various timber, water rights and equipment held by AbitibiBowater after the corporation closed a paper mill in Newfoundland, putting 800 employees out of work. The government of the province argued that the rights were contingent on its continued operation of the paper mill, pursuant to a 1905 concessions contract. Shortly after closure of the mill, Newfoundland seized water rights, timber rights, and equipment of the company. AbitibiBowater claimed that Newfoundland's action constituted expropriation under NAFTA. In August 2010, the government of Canada announced that it would pay AbitibiBowater $123 million to settle the case.
Detroit International Bridge Company		$3.5 billion	Dismissed	Detroit International Bridge Company, a U.S.-based corporation, challenged a Canadian law on safety and security measures for international bridges. In February 2007, Canada enacted the International Bridges and Tunnels Act, which gave the government the power to mandate safety and

Jan. 25, 2010* April 29, 2011**				security measures at international bridges, require approval before the transfer of ownership of international bridges or substantial structural changes to the bridge, and regulate toll fees, among other reforms. The Detroit International Bridge Company claimed that this law constituted expropriation of its investment (the Ambassador Bridge) and violated its NAFTA-protected right to a minimum standard of treatment. Protesting the government's plans to build a second bridge to absorb increased traffic flow (rather than expand the company's own bridge), the company alleged that it had an "exclusive" right, enforceable under NAFTA, to operate a bridge across the Detroit River.[33] In an April 2015 decision, the tribunal majority dismissed the case on procedural grounds before examining the merits of the company's arguments. The tribunal majority determined that it lacked jurisdiction over the claim since the company had a simultaneous case against Canada in a U.S. court that concerned the same bridge-related conflicts. NAFTA does not allow a foreign investor to pursue damages claims in a domestic court *at the same time* as an ISDS claim against the same government policy. However, it does permit foreign investors to launch cases against government policies in domestic courts, lose there, and then re-litigate the same claims before ISDS tribunals.
John R. Andre, March 19, 2010*		$8.3 million	Arbitration never began	Andre, a Montana investor who operated a caribou hunting lodge in Canada's Northwest Territories, complained that the territorial government expropriated his investment through its caribou conservation measures. He claimed that cuts in the number of caribou hunting licenses resulted in a regulatory taking, and that the closure of the area to hunting by the provincial government was a full expropriation, driven by animus toward U.S. businesspersons.
St. Mary's VCNA, LLC, May 13, 2011*		$275 million	**Settled, St. Mary's gets $12 million**	A Brazilian company with a U.S. subsidiary that in turn owns a Canadian company sought to engage in rock quarrying activities in Canada. The investor complained that various sub-federal government actions slowed the permitting process, resulting in a "substantial deprivation of its interest in the Quarry Site." Though the company's claim to be able to access NAFTA as a U.S.-based company was under dispute (given an apparent lack of substantial business activities in the U.S.), Canadian officials announced in 2013 that the government would settle with the company, paying it $12 million.[34]

Mesa Power Group, July 6, 2011* October 4, 2011**		$738.6 million	Dismissed	Mesa Power Group, a U.S.-based corporation owned by Texas oil magnate T. Boone Pickens, challenged a green jobs program of the government of Ontario. The provincial government's green jobs program incentivizes clean energy production by paying preferential rates to solar and wind power generators that source their equipment locally. In its first two years, the program created 20,000 jobs, attracted $27 billion in private investment, and contracted 4,600 megawatts of renewable energy.[35] Mesa Power Group claimed that the successful program had prohibitive rules, taking particular issue with the buy local stipulations. The corporation alleged that such requirements violate its NAFTA-enshrined rights to most favored nation treatment, national treatment, and fair and equitable treatment.[36] In a March 2016 decision, the tribunal majority ruled that Canada had not breached its NAFTA obligations. It determined that Canada's program was considered procurement and therefore not subject to most favored nation treatment or national treatment, and that Canada had not violated fair and equitable treatment. Despite dismissing all claims, the majority ruled that Mesa Group had to reimburse Canada for just 30 per cent of its legal costs.[37] In July 2017, the DC court dismissed Mesa's petition to set-aside the tribunal award, but did not require the company to reimburse Canada's additional legal fees.[38]
Mercer January 26, 2012* April 30, 2012**	ICSID	$231.6 million	Pending	Mercer International, a US-based wood pulp company, challenged Canadian energy sector regulations.[39] At issue was the treatment that Mercer's subsidiary, the Celgar Pulp Mill, received from the provincial government of British Columbia and BC Hydro, a public provincial power company. Mercer alleged that the public entities unfairly discriminated against Celgar by offering lower input electricity rates to its BC-based competitors. Celgar, like other mills, both purchases and generates electricity. Mercer claimed that while domestic mills were permitted to sell their electricity at high rates and buy at low rates, provincial regulation prevented Celgar from doing so. The company alleged violations of national treatment, most favored nation treatment, the minimum standard of treatment, and provisions concerning monopolies and state enterprises.[40]
Windstream Energy LLC		$522.1 million	Win, Windstream gets $19.1 million	Windstream Energy, a U.S.-based energy corporation, challenged Canada over the company's inability to participate in Ontario's green energy program – the same program targeted by Mesa Power Group (above). The corporation had

October 15, 2012* November 5, 2013**				contracted with Ontario's provincial government to provide energy generated by an offshore wind farm located in Lake Ontario. But in February 2011, the provincial government declared a moratorium on offshore wind production, stating that time was needed to study the environmental impacts of the relatively new energy source (currently there are only a few freshwater offshore wind farms in the world). Windstream's notice alleged that the moratorium "effectively annulled the existing regulatory framework" and thus contravened Canada's NAFTA obligations concerning fair and equitable treatment, expropriation, and discrimination. In September 2016, the NAFTA tribunal ruled that Canada had violated Windstream's right to fair and equitable treatment even though it found that the moratorium seemed genuine, and ordered Canada to pay $19.1 million. For more information, see: bit.ly/W7eHBP
Eli Lilly and Company November 7, 2012* (for Strattera) June 13, 2013* (amended to include Zyprexa) September 12, 2013**	UNCITRAL	$483.4 million	Dismissed	Indiana-based Eli Lilly, the fifth-largest U.S. pharmaceutical corporation, challenged Canada's patent standards after Canadian courts invalidated the company's patents for Strattera and Zyprexa. (These drugs are used to treat attention deficit hyperactivity disorder (ADHD), schizophrenia and bipolar disorder.) Canadian federal courts applied Canada's promise utility doctrine to rule that Eli Lilly had failed to demonstrate or soundly predict that the drugs would provide the benefits that the company promised when applying for the patents' monopoly protection rights. The resulting patent invalidations paved the way for the production of less expensive, generic versions of the drugs. Eli Lilly's notice argued that Canada's entire legal basis for determining a patent's validity – that a pharmaceutical corporation should be required to verify its promises of a drug's utility in order to obtain a patent – is "arbitrary, unfair, unjust, and discriminatory." The company alleged that Canada's legal standard violated the NAFTA guarantee of a minimum standard of treatment for foreign investors and resulted in a NAFTA-prohibited expropriation. On March 16, 2017, after years of high-profile campaigning from access-to-medicines advocates, the tribunal dismissed the claim. However, the grounds on which it based its dismissal allowed the tribunal to refrain from commenting on many of the substantive issues raised in the case, meaning it avoided ruling on the merits of using the specific ISDS claims alleged in this case to attack a country's patent regime.

				Instead, the tribunal focused on procedural matters unique to this filing. Namely, the tribunal noted that under NAFTA, cases must be filed within three years of an alleged "government action" that an investor claims violated its NAFTA rights. Thus, the "alleged breach" in this case was not the previous change in Canadian patent law itself, but the Canadian courts' enforcement of the law that resulted in Eli Lilly's patents being invalidated. The tribunal then concluded that such court enforcement did not constitute a "dramatic change" of the law. This fancy legal footwork allowed the tribunal to avoid having to weigh in on whether Canada's patent law violated its intellectual property obligations and whether that would have constituted a violation of the NAFTA-guaranteed minimum standard of treatment for investors or also whether the law change would constitute an expropriation of Eli Lilly's investment. The tribunal ordered Eli Lilly to bear the US$750,000 cost of the arbitration (the hourly fees of the three tribunalists, venue, travel costs, etc.) as well as 75 percent of Canada's legal fees. This means that this case that it "won" will cost Canada US$1.2 million in tax dollars to pay its lawyers as well as the opportunity costs of those lawyers not being able to do other work for almost four years.[41] For more information, see: www.citizen.org/eli-lilly-investor-state-factsheet
Lone Pine Resources Inc. November 8, 2012* September 6, 2013**	UNCITRAL	$109.8 million	Pending	Lone Pine Resources, a U.S.-based corporation, challenged Quebec's moratorium on the controversial practice of hydraulic fracturing, or fracking, for natural gas. The provincial government declared the moratorium in 2011 so as to conduct an environmental impact assessment of the extraction method widely accused of leaching chemicals and gases into groundwater and the air. Lone Pine Resources, a Delaware-headquartered gas and oil exploration and production company, had plans and permits to engage in fracking on over 30,000 acres of land directly beneath the St. Lawrence River. Lone Pine argued that the fracking moratorium nullified those permits. According to Lone Pine, such policymaking contravened NAFTA's protections against expropriation and for fair and equitable treatment. The United States, Mexico and several non-governmental organizations have submitted documents supporting Canada's case.[42] A final judgement is pending. For more information, see: bit.ly/W7eHBP

JML Heirs LLC and J.M. Longyear LLC February 14, 2014*		$12 million	Withdrawn	U.S. investors who owned a logging company in Canada notified Canada that they intend to launch a NAFTA case against the government for not extending to their company an Ontario tax break reserved for Canadian firms that practice sustainable harvesting. The U.S. investors argued that their exclusion from the tax break is not because they are logging unsustainably, but because their company does not meet the criteria under Ontario's law that more than half of the shareholders must be Canadian to qualify for the tax break. The investors alleged that this condition violated the national treatment and minimum standard of treatment protections that NAFTA provided their company. In June 2015, the investors withdrew their claim.
Mobil Investments February 18, 2015	ICSID	$18.1 million	Pending	U.S. oil corporation Mobil (of ExxonMobil) is launching another NAFTA challenge against the Canada-Newfoundland Offshore Petroleum Board's Guidelines for Research and Development Expenditures, which require oil extraction firms to support R&D in Canada's poorest provinces. An earlier NAFTA case that Mobil and Murphy Oil launched against the same policy resulted in a $13 million ruling against Canada (see above). The tribunal in that case decided the corporations could continue bringing cases against Canada for the continued requirement to support R&D. Mobil is now taking advantage of that allowance.
Bahige Bassem Chaaban, Jeffrey Thomas, Mohahud Saddedin and Cen Biotech Inc August 30, 2015*	N/A	$4.8 billion	Pending	Cen Biotech, a Canadian-based company, was unable to build a facility to cultivate and grow medical marijuana because it failed to obtain production and sale licenses from Health Canada[43] – a federal department tasked with improving the health of Canadians. Since early 2013, Cen Biotech's parent company Creative Energy informed investors that it would soon obtain a license to build a facility that would earn $5 billion in revenue, which led to a significant uptick in the company's stock value. Once it emerged that Health Canada actually refused to provide the license, the company's stock quickly reversed and dropped substantially.[44] Cen Biotech asserts that Health Canada did not properly assess its license request, and is seeking $4.8 billion in compensation. The company claims violations of international law standards of treatment, national treatment, and most favored nation treatment.[45]

Resolute Forest Products * December 30, 2015	UNCITRAL	$70 million	Pending	Resolute Forest Products (RFP), a Montreal-based forest products company incorporated in Delaware, claims that it had to shut down a paper mill in Quebec due to the rise of a competing paper mill in Nova Scotia that had received a provincial funding package to restart operations in 2012.[46] RFP has asserted that a decline in demand for specialty paper combined with the increased competition was responsible for its declining revenues. RFP also admitted that the price of fiber — an important input in paper — was abnormally high in Quebec and the mill was 126 years old, implying that there were other reasons for closing.[47] RFP has a history of using ISDS. In 2010, the company – then known as AbitibiBowater – filed a request for arbitration in response to what it asserted was an expropriation by the provincial government of Newfoundland and Labrador.[48] The government of Canada payed AbitibiBowater $122 million to settle the case. Canadian press reports suggest that RFP is using the ISDS claim to raise its profile among struggling Quebec-based companies seeking financial assistance from a federal government now led by a Prime Minister from Quebec.[49]
Tennant Energy March 2, 2017* June 1, 2017**	UNCITRAL	$86.1 million	Pending	Tennant Energy, LLC, a U.S. investor that sought to establish a windfarm electricity project, challenged Ontario's 2009 "Feed-in Tariff Program" initiative. The Ontario Feed-In Tariffs program provided terms for payment from electricity distributors to both larger-scale generators of renewable solar, wind or other forms of energy and to customers for the renewable electricity they generate from home solar panels. The Ontario program was designed to encourage investment in and the greater use of renewable energy sources.[50] Details are not currently available on this case, but in its notice of arbitration, Tennant Energy claimed that the program was non-transparent, that the company was treated unfairly, and thus NAFTA's minimum standard of treatment was violated[51]. Tennant is seeking $86.1 million from Canada.[52]

NAFTA Cases & Claims Against Mexico

Amtrade International		$20 million	Arbitration never began	Amtrade International, a U.S. company, claimed it was discriminated against by a Mexican government-owned oil firm (Petroleos Mexicanos) while attempting to bid for pieces of the firm's property. The U.S. corporation accused Petroleos

April 21, 1995*				Mexicanos of violating a pre-existing settlement agreement by failing to auction government-owned items. Amtrade argued that this inaction amounted to a violation of numerous NAFTA provisions, including restrictions on the powers of government monopolies and state enterprises. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Halchette 1995			Arbitration never began	No documents regarding this case are public.
Metalclad Dec. 30, 1996* Jan. 2, 1997**	ICSID	$90 million	**Metalclad win, $16.2 million** ($15.6 million + $0.6 million interest)	Metalclad, a U.S. waste management corporation, challenged the decision of Guadalcazar, a Mexican municipality, not to grant a construction permit for a toxic waste facility unless the firm cleaned up existing toxic waste problems. The permit had been denied and conditions set for the Mexican firm from which Metalclad acquired the facility. Metalclad argued that the continuing decision to deny a permit to a U.S. investor with NAFTA rights violated NAFTA's ban on expropriation without compensation and NAFTA's guaranteed minimum standard of treatment for foreign investors. The tribunal ruled that denial of the permit constituted an "indirect" expropriation and that the process leading up to the decision violated NAFTA's minimum standard of treatment because the firm was not granted a "clear and predictable" regulatory environment. A factor the tribunal relied on was that Mexican federal officials encouraged the firm to invest and advised that obtaining the local permit would not be a problem, despite the Mexican operator having been denied the same permissions. The tribunal effectively imposed an obligation on Mexico that is not found in NAFTA: to ensure that all officials at all levels provided the same advice to foreign investors. The tribunal also defined expropriation in extremely broad terms, imposing its assumptions about what an investor's reasonable expectations of gain would be, and then concluded that regulation that interfered with the investor's intended use and thus undermined the expected benefit was an indirect expropriation. When 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 from NAFTA Chapter 18 into NAFTA Chapter 11 and reduced the award by $1 million. The Mexican federal government's effort to make

				the state and local governments pay the $16.2 million failed in the Mexican Supreme Court. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Azinian, *et al* Dec. 10, 1996* March 10, 1997**	ICSID	$19.2 million	Dismissed	Investors purportedly representing a U.S. firm challenged a Mexican federal court decision revoking a waste management contract for a suburb of Mexico City. The decision came after the court found 27 irregularities in the multimillion dollar contract. It was later revealed that the investors had lied about their business experience (e.g. claiming 40 years when they had just over one year, which ended in bankruptcy) and were in no position to deliver on the promises they made in the contract. The investors launched their NAFTA claim with the argument that the contract cancellation violated their right to fair and equitable treatment. A tribunal ruled that the firm had made fraudulent misrepresentations with regard to the contract, and dismissed their claims of expropriation and unfair treatment. In an uncharacteristic move, the tribunal stated that the NAFTA dispute settlement system should not be seen as a place to litigate any governmental contract breach, or as a court of appeal for any disliked domestic court ruling. Just the same, the tribunal required Mexico to pay half of the tribunal's expenses as well as its own legal fees. For more information, see: www.citizen.org/documents/ACF186.PDF
Feldman Karpa Feb. 16, 1998* Apr. 7, 1999**	ICSID	$30.3 million	**Feldman Karpa win, $1.7 million** ($0.7 million + $1 million interest)	Feldman, the owner of a U.S. cigarette exporter, challenged the Mexican government's decision to deny the firm an export tax rebate. Feldman called this a "creeping expropriation" and also claimed that Mexico had failed to give the same treatment it gave to Mexican investors in like circumstances. The tribunal rejected the expropriation claim, but upheld a claim of discrimination after the Mexican government did not provide evidence that the firm was being treated similarly to Mexican firms in "like circumstances." Mexico, citing the need to protect confidential business information, had not provided evidence on the national treatment claim. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf

Waste Management June 30, 1998* Sept. 29, 1998** Resubmitted: Sept. 18, 2000**	ICSID	$36 million	Dismissed	Waste Management, a U.S. waste disposal giant, challenged the Mexican City of Acapulco, alleging that the city failed to honor a contract with the company for the provision of waste services. The corporation accused the city of failing to make contractual payments, while accusing Mexico's courts, public banks, and central government of violating the company's NAFTA-protected right to a minimum standard of treatment. A tribunal dismissed the claim, finding 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. Further, the tribunal stated that NAFTA was not intended to place the onus on government entities to assume all risks in business deals or to compensate for business failures. Nonetheless, Mexico was required to pay half of the tribunal's expenses as well as its own legal fees. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Scott Ashton Blair May 21, 1999*		Not avail.	Arbitration never began	Scott Ashton Blair, a U.S. citizen who had purchased land in Mexico to build a residence and restaurant, claimed he was victimized by Mexican government officials because he was a U.S. citizen. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Fireman's Fund Nov. 15, 1999* Jan. 15, 2002**	ICSID	$50 million	Dismissed	Fireman's Fund, a U.S. insurance corporation, alleged that Mexico's handling of financial crises discriminated against foreign investors. The U.S. corporation claimed that when financial difficulties such as the 1997 peso crisis struck, Mexican officials bailed out domestic investors, but not foreign investors like Fireman's Fund. In 2003 a tribunal dismissed most claims, including claims of discrimination, but allowed an expropriation claim to proceed. In 2007 the tribunal ruled that, although there is a "clear case of discriminatory treatment," the only question before them was the question of expropriation and that the actions of the Mexican government did not rise to the level of expropriation. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf

Adams, *et al* Nov. 10, 2000* April 9, 2002**		$75 million	Arbitration never began	A group of U.S. citizens who claimed to own properties in Mexico challenged a Mexican federal court ruling that the developer who sold them the properties had not owned the land and thus could not legally sell it. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Lomas Santa Fe Aug. 28, 2001*		$210 million	Arbitration never began	Lomas Santa Fe, a U.S.-based real estate development company, challenged the Mexican government's refusal to allow commercial development on property that the company owned in Mexico. The company claimed discriminatory treatment, and also alleged that the government later expropriated the land. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
GAMI Investments Oct. 1, 2001* April 9, 2002**	UNCITRAL	$27.8 million	Dismissed	U.S. minority shareholder investors in a Mexican sugar company (GAM) challenged a government policy to support sugar farmers' income and alleged inadequate enforcement of policies to support the profitability of GAM. The Mexican government required sugar mills (such as those owned by GAM) to pay a fixed amount to Mexican sugar farmers, who faced downward income pressure due to a NAFTA-enabled influx of U.S. highly-subsidized high fructose corn syrup. In addition to challenging this policy, the U.S. investors, with a 14% stake in GAM, alleged that the Mexican government insufficiently and discriminatorily enforced policies to support sugar companies. The investors also challenged Mexico's expropriation of several of GAM's debt-ridden sugar mills, while GAM itself challenged the expropriations in a court case in Mexico. A NAFTA tribunal allowed the U.S. investors' claim to proceed even though they were a minority shareholder, and even though there was no allegation that the Mexican government had directly interfered with their shares (only that government regulations had indirectly affected the value of those shares). The tribunal also allowed the claim to proceed even though GAM sought resolution via domestic courts and though NAFTA prohibits claims from being simultaneously pursued in domestic courts and under NAFTA's investor-state regime. The tribunal ultimately dismissed all claims, ruling the discrimination allegations to be without validity and throwing out the expropriation claim after a

				ruling in GAM's domestic case reversed the challenged expropriations. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
[Francis Kenneth Haas]() Dec. 12, 2001*		$17 million	Arbitration never began	Haas, a U.S. citizen, claimed he was cheated out of his investment in a business he had co-owned with Mexican business partners, and that the state of Chihuahua, via alleged incompetence and procedural irregularities, violated its NAFTA obligation to ensure fair and equitable treatment. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
[Calmark]() Jan. 11, 2002*		$0.4 million	Arbitration never began	Calmark, a U.S. company, challenged Mexican domestic courts for allegedly failing to assist the company in recouping compensation in a business deal that went awry. Calmark claimed that its business partners cheated the company out of a property in Mexico, and that its own lawyer then betrayed the company by settling the resulting domestic case in a way that left Calmark without compensation. Calmark alleged that the Mexican judiciary violated NAFTA by not assisting the company in securing the money it was owed. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
[Robert J. Frank]() Feb. 12, 2002* Aug. 5, 2002**	UNCITRAL	$1.5 million	Arbitration never began	Frank, a U.S. citizen, challenged government confiscation of property alleged to be his in Baja California, Mexico. His claim made no mention of an attempt to first pursue the case in the Mexican legal system. For more information, see: www.citizen.org/documents/Chapter-11-Report-Final.pdf
[Thunderbird Gaming]() March 21, 2002* Aug. 1, 2002**	UNCITRAL	$100 million	Dismissed	Thunderbird Gaming, a Canadian company operating video gaming facilities in three Mexican cities, challenged the government's closure of the facilities. Gambling has been illegal in Mexico since 1947, banned for its connection to crime and poverty. Thunderbird had installed "skill machines" (hard to distinguish from slot machines), gaining government authorization on the condition that they were truly based on skill and were not a form of gambling. In a later inspection of the facilities, government authorities determined that the games were not based on skill, that they constituted illegal gambling, and that they had to be shut down.

				Thunderbird claimed violations of national treatment and fair and equitable treatment. A tribunal dismissed all claims, ruling that the company had failed to demonstrate that it was treated in a discriminatory or unfair manner. For more information, see: www.citizen.org/documents/Chapter-11-Report-Final.pdf
Corn Products International Jan. 28, 2003* Oct. 21, 2003**	ICSID	$325 million	**Corn Products win, $58.4 million**	Corn Products International (CPI), a U.S. agribusiness producing high fructose corn syrup (HFCS) – a derived sweetener linked to obesity – challenged a government tax levied on beverages sweetened with HFCS (i.e. soft drinks) but not those sweetened with cane sugar. Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S. refusal to open its market to Mexican cane sugar as stipulated by NAFTA. The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. CPI asserted that Mexico's HFCS tax violated its NAFTA obligation to provide foreign investors with national treatment. A tribunal ruled that Mexico's HFCS tax violated the national treatment rule by "fail[ing] to accord CPI, and its investment, treatment no less favourable than that it accorded to its own investors in like circumstances, namely the Mexican sugar producers who were competing for the market in sweeteners for soft drinks." It rejected Mexico's defense that the tax was a countermeasure to a U.S. NAFTA breach by ruling that countermeasure defenses, while allowed by international law in state-to-state cases, are not applicable in investor-state cases under the same treaties. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
ADM/Tate & Lyle Oct. 14, 2003* Aug. 4, 2004**	ICSID	$100 million	**ADM win, $37 million** ($33.5 million + $3.5 million interest)	Archer Daniels Midland (ADM), one of the largest U.S. agribusiness corporations and a producer of high fructose corn syrup (HFCS), and AE Staley, a U.S. subsidiary wholly owned by the British corporation Tate & Lyle, challenged the same Mexican tax on HCFS described in the Corn Products International (CPI) case above. The tax was levied on beverages sweetened with HFCS, but not those sweetened with cane sugar. As in the CPI case, Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S. refusal to open its market to

				Mexican cane sugar as stipulated by NAFTA. The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. ADM and AE Staley asserted that Mexico's HFCS tax violated its NAFTA obligation to provide foreign investors with national treatment and constituted a NAFTA-illegal performance requirement and an expropriation. A tribunal ruled that Mexico's HFSC tax violated NAFTA's national treatment and performance requirement rules (but did not find it was an expropriation). It decided that Mexican sugar producers and U.S. and British HFSC producers were "in like circumstances" and that the HFSC-only tax thus discriminated against the foreign HFCS producers, even though it also applied to Mexican HFCS producers. The tribunal further declared that the tax amounted to a NAFTA-banned performance requirement. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Bayview Irrigation Aug. 27, 2004* Jan. 19, 2005**	ICSID	$667 million	Dismissed	A group of 17 U.S. irrigation districts claimed that Mexico diverted water from the Rio Grande, which forms the U.S.-Mexico border, to help irrigate Mexican farmland at the cost of U.S. farms, in violation of a 1944 U.S.-Mexico water-sharing treaty. Water shortage is a major concern both the southwestern United States and in Mexico, where many consider the enduring shortage to be a national security issue. A tribunal dismissed the case on procedural grounds, determining that the claimants, who were in the United States, and whose "investment" was in the United States, did not qualify as "foreign investors" in Mexico. Even so, the tribunal required Mexico to pay half of the tribunal's costs as well as its own legal fees. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Cargill Sept. 30, 2004* Dec. 29, 2004**	ICSID	$123.8 million	**Cargill win, $90.7 million** ($77.3 million + $13.4	Cargill, the largest privately-held corporation in the United States and a producer of high fructose corn syrup (HFCS), challenged the same Mexican tax on HCFS described in the Corn Products International (CPI) and Archer Daniels Midland (ADM) cases above. The tax was levied on beverages sweetened with HFCS, but not those sweetened with cane sugar. As in the CPI and ADM cases, Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S.

			million interest)	refusal to open its market to Mexican cane sugar as stipulated by NAFTA. The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. Cargill asserted that Mexico's HFCS tax violated NAFTA's obligations concerning national treatment, most favored nation treatment, expropriation, fair and equitable treatment and performance standards. A tribunal ruled in favor of Cargill, awarding $77.3 million, the largest award to date in an investor-state dispute brought under a U.S. FTA. In addition, the tribunal ordered Mexico to pay for the tribunal's costs and half of Cargill's own legal fees. The tribunal decided that U.S. agribusiness giant Cargill and Mexican sugar producers were "in like circumstances" and that the HFSC-only tax thus discriminated against Cargill, even though it also applied to Mexican HFCS producers. The tribunal further declared that the tax amounted to a NAFTA-banned performance requirement and a violation of Cargill's right to fair and equitable treatment. For more information, see: www.citizen.typepad.com/eyesontrade/2011/03/cola-wars-beat-drug-wars.html
Internacional Vision (INVISA), et. Al Feb. 15, 2011*		$9.7 million	Arbitration never began	A group of U.S. investors challenged a Mexican government decision not to grant an extension of a ten-year agreement that had allowed them to place billboards on Mexican federal land near a U.S.-Mexico border crossing. The investors argue that the decision to not continue renting out federal land, in addition to the resulting removal of the billboards, constituted an expropriation and violated their NAFTA-enshrined rights to national treatment and fair and equitable treatment.
KBR, Inc. February 19, 2013* August 30, 2013**	UNCITRAL	$110 million	Dismissed	KBR, a large U.S. defense and energy contractor, challenged Mexican court rulings that annulled another investor-state tribunal's ruling in a contractual dispute between KBR and Pemex, Mexico's state-owned oil company. The underlying dispute resulted in a ruling from an International Chamber of Commerce (ICC) tribunal that ordered Pemex to pay more than $300 million to KBR. KBR filed suit in U.S. courts to enforce the ICC ruling, while Pemex challenged it in Mexican courts. After Mexican courts annulled the ICC ruling, KBR launched a NAFTA case arguing that the annulment violated Mexico's national treatment, most favored nation, minimum standard of treatment and expropriation obligations. While pursuing the NAFTA claim, KBR is simultaneously pursuing full

				enforcement of the ICC ruling in U.S. courts, and has reportedly initiated a third case in Luxembourg. The claim was reportedly dismissed in an unpublished April 2015 award.[53] Press has reported that Pemex entered into a $435 million settlement with KBR Inc.[54]
B-Mex, LLC and others May 23, 2014*	ICSID	$100 million	Pending	A group of U.S. investors allege that Mexican officials have interfered with their business by forcing the closure of Mexican casinos in which they have investments, following an act of arson in one of the casinos. The investors acknowledge that their own business partner in Mexico is pursuing a case in Mexican courts to invalidate their permit to operate. They suggest that they may seek to also challenge the outcome of that case in their NAFTA claim. The investors claim violation of NAFTA's national treatment, minimum standard of treatment, most-favored-nation treatment, and expropriation obligations.
Lion Mexico Consolidated L.P. August 6, 2015* December 11, 2015**	ICSID	$200 million	Pending	Lion Mexico Consolidated (LMC), a Canadian affiliate of the U.S.-based real estate fund Clarion Partners, loaned a total of $32.8 million to a Mexican firm to develop two real estate projects in the Mexican states of Nayarit and Jalisco.[55] The loans were secured by promissory notes and the land's mortgage. After the Mexican firm missed a loan payment in 2012, LMC attempted to collect its collateral, but it discovered that a Mexican court cancelled the Canadian firm's claim on the land several months prior when it received a loan restructuring agreement. LMC claims the loan restructuring agreement was forged and is now seeking more than $200 million in damages, a value worth more than 500 percent of the original loan of $32.8 million. The complainant asserts that this has been a violation of NAFTA provisions regarding expropriation and fair and equitable treatment.[56] In December 2016, the Tribunal entered a decision to dismiss Mexico's submission that the Tribunal lacks jurisdiction *ratione materiae*. On June 30, 2017, the Tribunal set the timetable for the jurisdictional phase.
Primero Mining Corp. June 2, 2016*			Pending	Primero Mining Corp, a Canadian mining company that owns San Dimas gold and silver mine two other properties in the states of Durango and Guanajuato, filed a notice of intent against Mexico under NAFTA. Few details of the claim are known, but the company claims that it is related to the Mexican tax authority allegedly "revoked legal rights previously granted to the company." Earlier in 2016, the company revealed that the Mexican

				tax authority had filed a legal claim against its Mexican subsidiary related to an agreement on how the company would pay tax on realized silver prices.[57]
Jorge Luis Blanco, Joshua Dean Nelson and Tele Fácil México April 21, 2016*	UNCITRAL	$500 million	Pending	Tele Fácil México and two U.S. investors who own the firm seek $500 million on claims that the conduct of Mexico's communications regulatory agency violated its NAFTA investor rights and destroyed its business.[58] The investors established a firm in Mexico, Tele Fácil, to provide fixed and mobile phone, cable and internet services. The firm was granted a concession to operate as a telecommunications provider and then negotiated with Telmex, Mexico's main provider, for interconnection services. Mexico's telecommunications law requires Telmex, which owns 70 percent of phone lines in Mexico, to provide such services. After settling on rates, the firms deadlocked on two other contract issues. Tele Fácil brought the dispute to Mexico's Federal Institute of Telecommunications (IFT), the communications regulatory agency. IFT ruled in favor of Tele Fácil and ordered Telmex to provide interconnection within ten days. Telmex did not. Tele Fácil claims that IFT did not respond to Tele Fácil's requests for enforcement. Four month later, without providing Tele Fácil notice or opportunity to present its views, IFT issued a new ruling reversing the old one. IFT later issued a third ruling invalidating the agreed interconnection rates. Tele Fácil's notice of intent alleges that IFT violated Mexican law so as to ensure Tele Fácil could not provide competing services after Telmex, which is owned by Mexico's wealthiest person, Carlos Slim, meddled in the IFT process. Tele Fácil claims that IFT's actions violate the minimum standard of treatment and NAFTA's rules against expropriation.[59]
Vento Motorcycles, Inc. September 25, 2017**	ICSID	N/A	Pending	Vento Motorcycles is claiming that it manufactures in the United States and that the Mexican government has violated its investor rights by imposing tariffs on Vento motor bikes sold in Mexico that the Mexican government argues really are manufactured in China.[60] The notice of intent is not publicly available and little information is available about the case. Among the curious issues is what investment in Mexico has occurred, as the few press reports on the case suggest that at issue is a trade-in-goods dispute. But according to the ICSID website, in December 2017 arbitrators were appointed to start proceedings.[61]

Oro Negro April 2018*		$700 million	Pending	U.S. investors in Oro Negro, a Mexican petroleum services company, are reportedly attempting to use NAFTA to seek compensation after a dispute between the Mexican company and Mexico's state oil company, PEMEX. PEMEX had been leasing five oil rigs in the Gulf of Mexico from Oro Negro, and in 2015, required that the company cut its day rates, allegedly in response to falling oil prices. Oro Negro claims that PEMEX threatened to terminate its contracts with the company in 2017 if it did not agree to further contractual amendments, including the temporary suspension of the rigs' operation and then further cuts in day rates.[62] The company had been facing financial difficulties and declared bankruptcy in 2017. In April 2018, U.S. investors in the company reportedly submitted a notice of intent under NAFTA, claiming that PEMEX's actions violated their right to national treatment and against expropriation. The U.S investors claim that PEMEX gave preferential treatment to a rival drilling company and conspired with other Oro Negro bondholders to force the company out of business. They are seeking $700 million in compensation.[63]
Dal-Tile April 2018*		N/A	Pending	Dal-Tile, a U.S. tile manufacturer operating in Mexico, is challenging a Mexican court's ruling related to commercial arbitration in which it was engaged with a Mexican firm. The dispute began in 2006 when Dal-Tile offered to buy out the majority stake of a joint-venture project with Interceramic, a Mexican firm. When Interceramic refused, Dal-Tile initiated commercial arbitration between the two companies in Houston, Texas, under the auspices of the International Chamber of Commerce. The Mexican firm initiated a case in Mexican courts challenging the Houston-based process, Based on an invocation of the "Calvo doctrine," a foreign policy doctrine originating in Latin America that holds that jurisdiction in international investment disputes lies with the country in which the investment is located, the judge stopped the arbitration from proceeding. (The Calvo Doctrine implies that a foreign government should not intervene on an investors' behalf before local resources are exhausted.) Dal-Tile then filed an ISDS claim under NAFTA, claiming that the Mexican court's actions were a denial of justice and thus a violation of NAFTA's minimum standard of treatment.[64]

Australia FTA Cases & Claims Against Australia

APR Energy LLC April 14, 2017**	UNCITRAL	$260 million	Pending	APR Energy Holdings Ltd, a U.S.-based energy company, has initiated an ISDS claim against Australia under the U.S.-Australia Free Trade Agreement – despite the fact that the FTA *does not include investor-state dispute settlement*. The firm is basing its claim on the FTA's most favored nation provision, arguing that because Australia consented to ISDS arbitration under its investment treaty with Hong Kong, which includes ISDS, the government must provide that same consent to arbitration under its U.S. FTA that does not provide for IDDS enforcement. The company is seeking $260 million, including more than $200 million in "lost enterprise value."[65] The underlying issue triggering this claim relates to what entity rightly owns four electricity-generating gas turbines worth approximately $60 million now operating in Western Australia. APR acquired a division of General Electric that had leased the turbines to an Australian company called Forge that had been contracted by utility Horizon Power in Western Australian. Forge went bankrupt. In its liquidation proceedings, it argued that ownership of the turbines had vested in Forge because neither GE nor APR had complied with Australian legal requirements that lessors for terms of more than one year must register a security interest in the leased property. APR appealed an initial lower court determination in Forge's favor and lost. While APR appealed to the Australian High Court, it filed its ISDS claim arguing that the Australian courts' decisions violated the FTA's rules against expropriation and the minimum standard of treatment. The Australian government issued two curt letters in response to the notice stating that the FTA in question does not provide for ISDS and "…if your clients [APR] persist in submitting a notice of arbitration, the Australian Government will vigorously contest jurisdiction and will seek a full award of its costs." If APR proceeds, then an ISDS tribunal will decide IF the MFN clause "writes in" ISDS enforcement for an agreement in which the signatory nations did not include ISDS enforcement. In fall 2017, APR filed a $100 million malpractice suit in U.S. court against the law firm, Baker McKenzie, that represented its interests in Australia relating to its dealing with Forge.

CAFTA Cases & Claims Against Costa Rica

Aaron C. Berkowitz, et. al. October 9, 2012* June 10, 2013**	UNCITRAL	$33.6 million	Dismissed	A group of U.S. investors claimed that the Costa Rican government has not sufficiently or promptly paid them for beachfront property that the government plans to convert into a nature reserve. Just before CAFTA took effect, Costa Rica's Supreme Court ordered government authorities to begin the process of purchasing the investors' beachfront property to convert it into a national park. The investors argued that subsequent delays and inadequate payment for the land violate Costa Rica's CAFTA obligations concerning national treatment, most favored nation treatment, expropriation and a minimum standard of treatment. On May 30, 2017, the Tribunal dismissed the case and instructed the investors and Costa Rica to each bear their own legal costs and Tribunal fees and expenses.[66]
Daven R. Aven, et. al. September 17, 2013* January 24, 2014**	UNCITRAL	$70 million	Pending	A group of U.S. investors claim that they were treated unfairly by the Costa Rican government when the authorities halted construction of a beachfront development project and brought criminal charges against the investors, citing damage to protected wetlands and forest. The investors claim that the authorities' actions violate Costa Rica's CAFTA obligations concerning fair and equitable treatment, expropriation, national treatment and most favored nation treatment.[67] The Costa Rican government, which claims that the area has been an environmental treasure with rich biodiversity, filed a counterclaim against the investors, claiming monetary damages for the restoration of wetlands and forests, which the country estimated would cost at least $500,000 to $1 million.[68]

CAFTA Cases & Claims Against the Dominican Republic

TCW Group, et. al.	UNCITRAL	$500 million	**Settled, TCW gets $26.5 million**	TCW Group, a U.S. investment management corporation that jointly owned with the government one of the Dominican Republic's three electricity distribution firms, claimed that the government violated CAFTA by failing to raise

March 15, 2007* June 17, 2008**				electricity rates and failing to prevent electricity theft by poor residents. The French multinational Société Générale (SG), which owned the TCW Group, filed a parallel claim under the France-Dominican Republic Bilateral Investment Treaty.[69] The concerns detailed by TCW, which initiated its claim two weeks after CAFTA's enactment, related to decisions taken before the treaty's implementation.[70] TCW took issue with the government's unwillingness to raise electricity rates, a decision undertaken in response to a nationwide energy crisis. TCW also protested that the government did not subsidize electricity rates, which would have diminished electricity theft by poor residents. The *New York Times* noted that such subsidization was not feasible for the government after having just spent large sums to rectify a banking crisis.[71] TCW alleged expropriation and violation of CAFTA's guarantee of fair and equitable treatment. TCW demanded $500 million from the government for the alleged CAFTA violations, despite having spent just $2 to purchase the business from another U.S. investor.[72] The company also admitted to having "not independently committed additional capital" to the electricity distribution firm after its $2 purchase in 2004.[73] After a tribunal constituted under the France-Dominican Republic Bilateral Investment Treaty issued a jurisdictional ruling in favor of SG, allowing the case to move forward, the government decided to settle with SG and TCW. The government paid the foreign firms $26.5 million to drop the cases, reasoning that it was cheaper than continuing to pay legal fees.[74]
Corona Materials LLC March 15, 2012* June 10, 2014**	ICSID	$100 million	Dismissed	Corona Materials, a U.S. mining company, claimed that the Dominican Republic violated CAFTA by delaying and then denying environmental approval for an aggregate materials mine. In deeming the mine "not environmentally feasible," the government cited concern for the prospective impact on nearby water sources. Corona argue that the denial of environmental approval for the mine violated the company's CAFTA-protected rights to a minimum standard of treatment and national treatment, and constituted a CAFTA-prohibited expropriation of its investment. In a May 2016 decision, a tribunal dismissed Corona's claims due to a procedural issue. Because Corona had not submitted its claim within three years of having acquired knowledge of the alleged CAFTA breaches, the tribunal

				determined that it did not have jurisdiction to rule on the merits. Despite dismissing the claims, the tribunal did not deem them frivolous and thus ruled that both parties had to equally share the cost of the arbitrations and cover their own legal fees.[75]
Michael, Lisa and Rachel Ballantine June 12, 2014*	UNCITRAL	$20 million	Pending	Three individuals of dual U.S.-Dominican Republic nationality threatened to launch a CAFTA claim against the Dominican Republic for denying environmental approval for their plans to expand a gated resort. In its decision to not authorize the development expansion, the Ministry of Environment explained that the land in question fell within the bounds of a protected national park. The developers allege that the government drew the park's boundaries in a discriminatory manner. They claim violations of CAFTA's national treatment, most favored nation, minimum standard of treatment, and expropriation obligations.

CAFTA Cases & Claims Against El Salvador

Pac Rim Cayman LLC Dec. 9, 2008* April 30, 2009**	ICSID	$314 million	Dismissed	Pacific Rim Mining Corp., a Canadian-based corporation that sought to establish a massive gold mine using water-intensive cyanide ore processing in El Salvador, claimed that the government violated CAFTA by not issuing a permit for the mine. This proposed project, to be located in the basin of El Salvador's largest river, as well as applications filed by various companies for 28 other gold and silver mines, generated a major national debate about the health and environmental implications of mining in El Salvador, a densely populated country with limited water resources.[76] Leaders of El Salvador's major political parties, the Catholic Church and a large civil society network expressed concerns.[77] In April 2008, one month after El Salvador's president announced that he would not grant mining permits until the legislature undertook an in-depth environmental study of the proposed mining projects, a new U.S.-based Pacific Rim subsidiary sent a letter to the Salvadoran government to threaten a CAFTA claim.[78] The corporation had incorporated the subsidiary – Pac Rim Cayman LLC – just five months earlier.[79] Pacific Rim never completed the feasibility study

				necessary to obtain an exploitation permit for its mine and in July 2008 ceased exploratory drilling.[80] Later that year, the company launched its CAFTA challenge, claiming that the Salvadoran government's decision to not grant the mining permit violated CAFTA's rules on expropriation and national treatment, among others.[81] In a CAFTA tribunal's 2012 jurisdictional ruling, El Salvador lost on three out of four counts. The tribunal allowed Pac Rim to continue pursuing its claims at the World Bank's International Centre for Settlement of Investment Disputes (ICSID) under a domestic investment law with provisions similar to CAFTA. In October 2016, ICSID announced its unanimous decision that Pac Rim's lawsuit was without merit, as the corporation had failed to meet the legal requirements to receive a mining permit.[82] While El Salvador will not be required to pay compensation, it only received $8 million to cover its more than $12 million in legal fees.[83]
Commerce Group Corp. March 16, 2009* July 2, 2009**	ICSID	$100 million	Dismissed	The Commerce Group Corporation, a mining corporation based in Wisconsin,[84] challenged El Salvador's revocation of its environmental permits for a gold mine after the company failed its environmental audit.[85] In April 2010, the Salvadoran Supreme Court ruled that the company had been accorded due process during and after the audit.[86] But Commerce Group had launched a parallel CAFTA challenge related to its environmental permits in March 2009, claiming expropriation and denial of fair and equitable treatment. In March 2011 a tribunal dismissed the case on a technicality. If Commerce Group had simply written a letter to the Salvadoran judiciary to state that it was waiving its right to challenge revocation of its environmental permits in Salvadoran courts, then its claim would likely be permitted to move forward under CAFTA. When El Salvador attempted to recoup its estimated $800,000 in legal costs, the tribunal denied the request, siding with Commerce Group that its case was not frivolous.[87] After the corporation launched an ill-fated attempt to annul the award, El Salvador spent another two years and an additional $600,000 to defend its environmental policies.[88]

				For more information, see: www.citizen.org/documents/CAFTA-investor-rights-undermining-democracy.pdf

CAFTA Cases & Claims Against Guatemala

Railroad Development Corporation June 14, 2007**	ICSID	$64 million	**RDC win, $16.4 million** ($11.3 million + $5.1 million interest)	Railroad Development Corporation (RDC), a U.S.-based company, claimed that the Guatemalan government violated CAFTA by initiating a legal process to weigh revocation of the company's disputed railroad contract. Guatemala privatized its railroad system in 1997 and concessioned it to a subsidiary of RDC, which had presented proposals to rehabilitate the entire network in five phases. In its first eight years of operation, RDC only completed the first phase.[89] Unsatisfied with the slow progress, in 2006 Guatemala declared parts of the RDC scheme "injurious to the interests of the state" (*lesivo*), the first step in an administrative legal process to determine whether a contract should be revoked.[90] While no decision had been reached, RDC initiated a CAFTA claim the following year, alleging the *lesivo* declaration itself to be an indirect expropriation and a violation of CAFTA's national treatment and fair and equitable treatment rules. The majority of the $64 million claim was for the alleged loss of future anticipated profits.[91] In 2012 a tribunal produced a judgment in favor of RDC and against Guatemala. While the tribunal determined the national treatment and indirect expropriation accusations to be baseless, it upheld the allegation that Guatemala's non-binding *lesivo* declaration had failed to afford RDC a minimum standard of fair and equitable treatment. In doing so, the tribunal ignored the definition of that standard found in CAFTA and reiterated by other governments, instead borrowing a broad interpretation from another investor-state tribunal (the one in the NAFTA *Waste Management* case above).[92] For more information, see: www.citizen.org/RDC-vs-Guatemala
Tampa Electric Company (TECO)	ICSID	$243.6 million	**TECO win, $37.8 million**	Tampa Electric Company (TECO), a U.S.-based energy company, challenged Guatemala's decision to lower the electricity rates that a private utility could charge. Guatemala privatized its electricity distribution system in 1998. In

Guatemala Holdings LLC Jan. 13, 2009* Oct. 20, 2010**			($21.1 million + $3.9 million interest + $12.8 million legal fees)	August 2008, it lowered the electricity rates that the privatized utility could charge. TECO indirectly owned a small stake in the electric utility: its Guatemalan subsidiary indirectly held a 24 percent share in Deca II, a holding company with a majority stake in the Guatemalan utility company. TECO began threatening a CAFTA claim in response to the lowering of electricity rates as early as one month after the new rates were announced. The corporation launched its CAFTA claim against Guatemala on October 20, 2010, alleging a violation of a minimum standard of treatment. The next day, TECO sold its indirect stake in Deca II, leaving it with no investment in the electricity utility.[93] A tribunal ruled in favor of TECO in December 2013, ordering Guatemala to pay the company $25 million (including interest), plus $7.5 million to cover the company's own legal expenses. The tribunal decided that Guatemala's electricity regulatory agency had set electricity rates without granting sufficient consideration to the non-binding advice of an "Expert Commission" and that doing so violated the CAFTA obligation to grant TECO a minimum standard of treatment. Like the tribunal in the *RDC v. Guatemala* case (above), the tribunal ignored the narrower definition of the minimum standard obligation found in CAFTA, instead borrowing a broad interpretation of the obligation from another investor-state tribunal (the one in the NAFTA *Waste Management* case above). The tribunal ruled in favor of TECO in spite of the fact that the company only had an indirect, minority stake in a holding company that was the majority owner of Guatemala's electric utility. This decision conveyed an expansive interpretation of how significant an "investment" has to be for an "investor" to be allowed to launch a CAFTA claim. The decision also contradicted one reached by a tribunal in a separate investor-state claim concerning the same actions of the Guatemalan government. In that claim, the Spanish company Iberdrola, which had a larger stake than TECO in the Guatemalan electric utility, failed to convince the tribunal that it had jurisdiction to pursue the claim.[94] TECO and Guatemala both sought to annul some or all of the award, and in April 2016, an ad-hoc annulment committee decided in favor of Teco that portions of the award should be annulled, which opened a path for Teco to seek additional

				damages under CAFTA, so Guatemala could end up having to pay significantly more.[95]

CAFTA Cases & Claims Against Nicaragua

Bailey and others July 2017* November 30, 2017**	ICSID	N/A	Pending	A group of U.S. investors in a Nicaraguan company Industria Oklahoma Nicaragua S.A, claimed that the Nicaraguan government violated its CAFTA obligations when it terminated a 2004 oil concession. The initial oil concession specified an exploration phase for six years followed by a 30-year exploitation phase. The Nicaraguan government, claiming that the required exploration had not been carried out, began the process of terminating the concession in 2014 and completed termination in 2016. The U.S. investors in the company submitted their notice of intent in July 2017, claiming expropriation of their concession. The investors claim that they invested more than $70 million into the exploration activities, and that they found oil that would yield more than $1 billion in revenue over the lifetime of the concession.[96]

Morocco FTA Cases & Claims Against Morocco

The Carlyle Group 1/30/2018*	ICSID	$400 million	Pending	The U.S. private equity corporation, Carlyle Group, filed a notice of intent[97] under the U.S.-Morocco FTA, claiming that the stockpiles of oil it had bought and entrusted to the custody of the Samir Group refinery had disappeared when the company went bankrupt and that some of the oil had been expropriated by the Moroccan government. Carlyle group is demanding $400 million in compensation for this alleged expropriation.

Peru FTA Cases & Claims Against Peru

Renco Group, Inc. / Doe Run Peru Dec. 29, 2010*	UNCITRAL	$800 million	Dismissed New case pending	Renco Group, a corporation owned by one of the wealthiest people in the United States, Ira Rennert, demanded $800 million from the government of Peru. The corporation claimed that the Peruvian government violated the U.S.-Peru FTA by not granting an extension on the firm's overdue commitment to clean up environmental

Aug. 9, 2011** Aug. 2016* (new notice of intent filed)				contamination. Doe Run Peru, Renco's Peruvian subsidiary, failed to meet its environmental clean-up commitments under the terms of a 1997 privatization of a metal smelting operation in La Oroya, Peru - one of the world's most polluted sites. The Peruvian government granted two extensions past the 2007 date by which Doe Run was to have built a sulfur oxide treatment facility – a commitment that the corporation repeatedly failed to fulfill. In 2007 and 2008, Doe Run was challenged in class action lawsuits filed in Missouri courts, the firm's state of incorporation. The suits demanded compensation and medical assistance for La Oroyan children that had been injured by toxic emissions from the smelter since its acquisition by Renco.[98] In 2010, the company launched an $800 million investor-state claim against Peru under the FTA. The company claimed a violation of fair and equitable treatment, blamed Peru for not granting a *third* extension to comply with its unfulfilled 1997 environmental commitments, and demanded that Peru, not Renco, should have assumed liability for the Missouri cases. Some analysts believed that Renco used the investor-state claim to derail the Missouri-based lawsuit seeking compensation for La Oroya's children. Renco previously had tried three times to remove the case to federal court from the Missouri courts, where the jury pool was likely to be skeptical of the company after highly publicized incidents of pollution in Missouri. Renco had failed each time. But one week after launching its investor-state claim, Renco tried a fourth time to remove the case to federal courts and succeeded. The same judge that had denied the previous requests now granted it, citing the ISDS claim under the Peru FTA as the reason given federal legislation on arbitration would newly apply because of the ISDS claim. In July 2016, after six years of costly litigation with the three ISDS tribunalists charging hundreds of dollars per hour in addition to Peru paying for its defense lawyers, the tribunal dismissed Renco's claim. Oddly, it did so based on a jurisdictional issue it could have decided years earlier. The tribunal determined that it did not have jurisdiction over the case because the company had failed to comply fully with an FTA requirement that it had to waive certain domestic litigation rights to proceed with an ISDS claim.[99]

				However, the tribunal ruled that the Peruvian government and the corporation must split the costs of arbitration as well as each bearing its own legal costs. This means a $8.39 million bill for Peru despite the case being dismissed and the grounds for dismissal being that the corporation failed to meet the technical rules for pursuing an ISDS claim.[100] At the time of the decision, Renco stated that "the Tribunal's decision is an insignificant victory for Peru," immediately threatening to refile the same claims after resolving the technicality upon which the case was dismissed.[101] In August 2016, Renco made good on its threat and filed a new Notice of Intent to restart an ISDS case on the same matters.[102] For more information, see: www.citizen.org/documents/renco-la-oroya-memo.pdf
Gramercy Funds Management LLC February 1, 2016* June 2, 2006**	UNICTRAL	$1.6 billion	Pending	In 2006, Gramercy Funds Management, a U.S.-based hedge fund, began buying Peruvian land bonds, which had been issued in the 1960s and 1970s as compensation to landholders as part of agrarian reform undertaken by the military government at the time.[103] Peru defaulted on this debt during its economic crisis in the early 1980s and is currently evaluating how much it will pay its creditors. Gramercy claims that the Peruvian government is violating its investor rights under the Peru FTA by not paying $1.6 billion, which they claim is the contemporary equivalent of the value they had that the time of issue. The hedge fund claims Peru FTA violations of the standards of expropriation, fair and equitable treatment, and national treatment, and most favored nation.[104] The Peruvian government claims that Gramercy purchased this public debt at "deeply discounted" rates, has refused to participate with other creditors in the debt restructuring, and is violating the terms of the FTA while simultaneously pursuing a claim in Peruvian courts.[105] Furthermore, The Peru FTA was not in force until 2009, three years after Gramercy began purchasing the land bonds.

Oman FTA Cases & Claims Against Oman

Adel a Hamadi al Tamimi April 19, 2011* Dec. 5, 2011**	ICSID	$560 million	Dismissed	Mr. Al Tamimi, a naturalized U.S. citizen whose companies partnered with the Oman Mining Company (OMCO, a state-owned enterprise) on a limestone quarry investment, claimed that the government violated the U.S.-Oman FTA by terminating the project on environmental grounds. In 2007, al Tamimi commenced the limestone operation after being informed by OMCO that necessary environmental permits had been obtained. Within weeks, officials from the Commerce and Environmental Ministries told al Tamimi that the final permits had actually not been obtained, and various stop-work orders were issued.[106] As al Tamimi stated, "OMCO now had to make a choice: it could fulfill its obligations under the Lease Agreements [with al Tamimi], which would mean disobeying or confronting the Environmental and Commerce Ministries, or it could use whatever leverage it had over [al Tamimi's] Companies and exert every effort to get them to suspend their operations until a solution could be found to the permitting issues. It chose the latter." Al Tamimi did not cease operations until April 2008.[107] He had racked up various environmental fees, which he apparently did not pay.[108] In 2009 he was arrested and convicted for violation of environmental laws,[109] though his conviction was later overturned by an appeals court.[110] In his claim, Al Tamimi alleged that Oman expropriated his property rights by terminating the limestone operation leases,[111] discriminated against him,[112] and violated the FTA obligation to afford fair and equitable treatment by undermining his "legitimate expectations." After more than four years of litigation, the tribunal dismissed Al Tamimi's claims under the FTA and ruled that the claimant should pay 75 percent of Oman's legal costs.[113]

Panama FTA Cases & Claims Against Panama

James Falgout, Barbara Falgout, Clarence		$98.5 million	Pending	A group of U.S. investors claimed that the government of Panama violated the FTA by not allowing them to purchase contested beachfront property and by not halting acts of harassment against the investors. The government denied the

Johnson and Retire in Chiriqui, S.A. December 31, 2012*				investors’ bid for the beachfront property on the basis that the property was too close to the Costa Rica border to be sold to foreigners under Panamanian law – a claim that the investors refuted. The investors alleged that an “illegal” road was then constructed on other property that they had purchased, and that local authorities were complicit in subsequent acts of intimidation against the investors. They asserted violations of Panama FTA provisions regarding national treatment, expropriation, fair and equitable treatment, and protection and security.
Bridgestone Americas, Inc. and Bridgestone Licensing Services, Inc. October 28, 2016	ICSID	$16 million	Pending	Two U.S. subsidiaries of the Japanese tire firm, Bridgestone, filed this case to challenge a Panamanian Supreme Court decision. Bridgestone had sued a Panamanian firm, Muresa, over its use of the trademark “Riverstone,” which Bridgestone alleged was a causing confusion with its brand. The Panamanian Supreme Court reversed the decisions of two lower courts to rule in Muresa’s favor and ordered Bridgestone to pay $5 million in damages for its alleged “bad faith” challenge. Bridgestone claims that Panama is violating its right of fair and equitable treatment under the minimum standard of treatment clause and the FTA’s national treatment and indirect expropriation provisions.[114] Panama argues that it should be able to prevent the claim from proceeding under the U.S.-Panama FTA’s “denial of benefits” provision, which states: “a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.” The claimants argue the case should proceed despite the Japanese ownership of the subsidiaries on the grounds that the subsidiaries have “substantial business activities” in the United States. On December 13, 2017, the Tribunal dismissed Panama’s jurisdictional argument.[115] A final decision is pending.
Omega Engineering LLC and Mr. Oscar Rivera December 30, 2016	ICSID	$100 million	Pending	Omega Engineering LLC, a Puerto Rican company, and U.S. citizen Oscar Rivera have initiated an ISDS case under the U.S.-Panama FTA and a U.S.-Panama Bilateral Investment Treaty alleging that various Panamanian government entities breached eight contracts, which constituted violations of the FTA and BIT protections regarding expropriation, fair and equitable treatment, full protection and security, and

				unreasonable or arbitrary measures. The dispute involves contracts granted to Omega by the previous Martinelli administration for the construction of three hospitals, a school, a municipal hall, a court house and other facilities. Omega and Omega's president, Rivera, claim the new Panamanian government violated the FTA and BIT by treating the company and Rivera unfairly, namely by failing to pay for the construction of public buildings and by launching allegedly unfounded criminal proceedings against Rivera in the context of anti-corruption investigations relating to the previous Panamanian administration.[116] The Panamanian Justice Department has issued an arrest warrant for Rivera related to an alleged money-laundering scheme organized by former Panamanian President Martinelli.

Colombia FTA Cases & Claims Against Colombia

Cosigo Resources, Ltd., Cosigo Resources Sucursal Colombia, Tobie Mining and Energy, Inc. February 19, 2016*	UNICTRAL	$16.5 billion	Pending	U.S. corporation Tobie Mining and Energy and Canadian investors Cosigo and Cosigo Resources claimed that the Colombian government violated the FTA when it decided to create a nature reserve to protect Amazon rainforest land and prohibit mining within its borders. In 2008, the companies were granted interests in a gold mining concession by the Alvaro Uribe administration in the Taraira region of Colombia, near the Brazilian border, but before a final agreement could be reached, a national park was created, blocking the mine.[117] The investors claim creating the national park was "fraudulent" and that denying their concession due to the park constitutes an expropriation of their investment. Thus, the companies are asking a private tribunal to order Colombia either to return their concession to allow them to mine in the Amazon, or to pay $16.5 billion – over 25 percent of Colombia's national budget – to the corporation. Despite admitting having spent only $11 million in mining-related preparations, Tobie justifies the $16.5 billion demand by claiming that is what the corporation hypothetically could have earned if allowed to extract all the gold and iron believed to lie beneath the rainforest land.[118]

				The Canadian investors are listed in the notice of intent, despite Canada not being a party to the U.S. treaty with Colombia.[119] The lawyer representing the claim has suggested that more claims against Colombia related to the nature reserve will be forthcoming.[120]
Astrida Benita Carrizosa March 9, 2018*	ICSID	N/A	Pending	A U.S. investor, Astrida Benita Carrizosa, is seeking compensation using the Colombia FTA's ISDS mechanism over decisions by Colombian courts with respect to the amount of compensation owed investors in a bank relating to actions taken by Colombia's Central Bank during a temporary liquidity crisis in the late 1990s. While the Central Bank's actions may have alleviated the worst of the crisis, U.S. shareholders of Corporacion Grancolombiana de Ahorro y Vivienda (GRANAHORRAR) felt that they had been unfairly targeted by the Central Bank's crisis response actions. In 2007, Colombia's highest administrative court, the Council of State, ordered substantial compensation to the former owners of GRANAHORRAR. The Colombian government challenged that compensation decision before the Constitutional Court, a different branch of the Colombian courts, which reduced the compensation for the former bank owners. In response, the bank's U.S. shareholders launched an ISDS claim under the Colombia FTA, claiming that the Constitutional Court's decision was a judicial expropriation of their investment. The Colombia FTA has a three-year statute of limitations on claims and may be interpreted to not allow ISDS claims for investment in the financial services sector. Thus, Carrizosa's claim invokes the controversial "most-favored nation" provision in the Colombia deal, arguing that Colombia must provide the same investor protections to U.S. investors as it provides in all of its other investment treaties. Carrizosa's investor claim invokes the bilateral investment treaty Colombia has with Switzerland, which includes a longer five-year statute of limitations and consent to ISDS for financial services, arguing that those rights from another agreement should be available to it to obtain compensation under the Colombia FTA.[121] The notice of intent is not available, and the amount requested is unknown, though Carrizosa claims it expected to receive $600,000 Colombian after the 2007 Council of State ruling.[122]

Alberto Gelzis, et al March 9, 2018*	UNCITRAL	N/A	Pending	Three U.S. investors launched a Colombia FTA claim in UNCITRAL on the same GRANAHORRAR bank issues and demands as were initiated in the Astrida Benita Carrizosa vs. Colombia claim filed at ICSID. Please see above.[123]

Korea FTA Cases & Claims Against Korea

Seo September 7, 2017*		$2 million	Pending	Mrs. Seo, a Korean-born, naturalized U.S. citizen is claiming that the U.S.-Korea FTA's expropriation and minimum standard of treatment requirements were violated in the context of government expropriation of her home and related property for a redevelopment project in a Seoul neighborhood. In 2001, Seo acquired the property for $330,000. In 2012, the Korean government designated the area for redevelopment and Seo was offered $850,000 compensation. She challenged the amount as below market value, filed a criminal complaint against relatives for claims that while she resided in the United States they forged her and her husband's consent to join residents agreeing to compensation and alleges that she suffered mental distress after city officials entered her property to order her to vacate. Her civil claims relating to the amount of compensation and lack of consent were denied in domestic court. Seo vacated the property but refused to accept the compensation. The court ordered the $850,000 to be placed in escrow. Her notice states that she seeks a negotiated settlement, but absent a satisfactory outcome will proceed with arbitration to demand $2 million in compensation.

Summary

Total Claims Filed under NAFTA-style Deals:	**100 Claims**[124]			
Cases Dismissed (Won by gov'ts):	**30 Cases**[125]			Loewen, Mondev, Methanex, Glamis Gold Ltd., Canadian Cattlemen for Fair Trade, Grand River, United Parcel Service, Merrill and Ring Forestry, Chemtura, Azinian, et al, Waste Management (2 cases), Fireman's Fund, GAMI Investments, Thunderbird Gaming, Bayview Irrigation, V.G. Gallo, ADF Group, Apotex (3 cases), Commerce Group, Detroit International Bridge Company, Mesa Power Group LLC, Corona Materials, KBR, Inc, Abdel A Hamadi al Tamimi, Renco Group, Eli Lilly, Pac Rim
Cases Won by Investors (or resulting in payments to investors):	**16 Cases**	**$475.2 million paid to foreign investors**		Ethyl, S.D. Myers, Pope & Talbot, AbitibiBowater, Metalclad, Feldman Karpa, Corn Products International, ADM/Tate & Lyle, Cargill, TCW Group, Mobil Investments, RDC, St. Mary's, TECO, Clayton/Bilcon, Windstream Energy

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actions caused a significant reduction in earnings from EEGSA. As discussed above, until Oct. 21, 2010, TGH held a 24% ownership interest in EEGSA through a holding company DECA II when TGH's interest was sold. In connection with the sale of TGH's ownership interest in EEGSA, TGH reserved the right to pursue the arbitration claim described above. Iberdrola is in international arbitration under the bilateral trade treaty in place between the Republic of Guatemala and the Kingdom of Spain."

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