

**NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER  
SECTION B OF CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE  
AGREEMENT**

Billy Joe Adams, Juan Alarcon, Robert Alonzo, Andrews Robert, Sam Amato, Miguel Agustin Manuel Arias Ferreira , George Babcock, Juan Barajas, Maria Dolores Landin de Barr, Joseph Roger Barreto, Harold Ulrich Bartels, Robert Benson, Kenneth Bitting, Robert Lee Blanchard, Bluemn Dona & Ben, Boussala Marcel, William Brady, Frank Bruneau, Bruce Burton, Chavez Jabriola , Charlotte Clark, Ron Colman, Colon Nicholas, Alma Rosa Colunga, Harry Danziger, Troy Evert & Winifred Click, Donald Digby, Hort August Doerzapf, Edward Everett, Joseph Doss, Claudia Alceste Gago Dunning, Louis Farino, Jacob Jr. Felder, Thomas Fischer, Jan Flickinger, Francisco Flores, Jeffrey Furst, Jorge Garcia, John Garner, Gary Giannini, Arnold William Gieseler, Robert Barry Glickman, Edward Galindo, Phillip Garr, Henry Gonzalez, Grace Community Chapel, Raymond Graves, Carol & Anthony Grisanti, Irving Grouse, Terry Gruner, Donald Walter Hansen, William & Gertrude Hansen, Marlowe & Margaret Harms, Michael & Mary Heslin, Dorothy Jane Higgins, Hugh & Lois Hofmann, John Hook, Roger Hooker, Ronald Kenneth & Thea Hull, Merle David Janke, Robert Johnson, Waldren Jerome, Daniel William Kamp, Terrance Kiele, Stephen Michael & Barbara Kilroy, Cooky Kechart, Stephen & Mary Krase, Virginia Kiser, Michael Kramer, John Lawrence, Maurice Leon, David & Elizabeth Lewis, Juan Cesar Limon, Vincent Longoria Meraz, Richard Lucas, Julian Martinez, Peter Martinez, Alan Mayer, Kerry & Eleni Mayer, Robert & Barbara Macmillan, Raul & Eugenia Magaña, Peter McNulty, Frank Mitchell, Harold Moore, Jose & Charlotte Martinez, Wayne & Shirley Moseley, Ron & Jacqueline Moseman, James Mullaneaux, Joseph Vincent & Joann K. Noyes, Alfred Noffsinger, Alfred Nordstrom, Isabel O'Donnell, Robert & Alice Olson, Leslie Orrett, Heidi Osuna, Nestor Palma, Penin Light Metals, Del & Dee Peterson, Edward & Ona Phinney, Michael Piller, Roger Potash, Putnam Patricia, Anthony Quintero, Rafael Ramirez, Robert Riffenburgh, Phillip Roberts, Santiago & Gladys Rodriguez, Ino & Barbara Rojas, Victoria Ruiz, Albert Sackler, Lynne Marie Sana, Jerry & Patricia Sandoval, James & Sharon Sauer, Diana Lynn Scanlon, Bernadette Schmucker, Kenneth Wayne Schulz, Wesley Schulz, Claus & Dolores Sellier, Beverly Jean & Samuel Sharp, Richard Sinclair/Banning III, Vicent Sotomayor, Alyce Spar, Dayne William Stiles, Robert Szemanski, Kenneth Rusell & Shirley Taylor, Doris & Charlie Temple, Robert Willis & Maxene Thompson, Carl Salvatore Triola, Joseph Tully, Dirk Van Hilten, David Vazquez, Jesse Velazquez, Joseph Vittono, Richard Wallstrom, Denise Werner-Hansen, Richard Wesley, Daniel Wiley/Bonda, , William Young, IrvingYudin, Leigh & Sharon Zaremba

*Investors*

v.

Government of Mexico  
*Party*

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement ("NAFTA"), the Investors mention above (hereafter known as "the Investors") serve a

Notice of Intent to Submit a Claim to Arbitration for breach of the Party's obligations under NAFTA.

**A. Name and address of the representative of the disputing Investor:**

**U.S. Mailing Address:**

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East Lake, CA 91915 USA

**Office Address:**

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Zona Del Rio  
Tijuana, Baja California 22320

**B. Breach of Obligations**

The Investors allege that the Government of Mexico has breached its obligations under:

- (1) Article 1102 – National Treatment
- (2) Article 1105 – Minimum Standard of Treatment
- (3) Article 1110 – Expropriation and Compensation

The relevant portions of NAFTA are:

**Article 1102: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

**Article 1105 – Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

**Article 1110 – Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of a such an investment ("expropriation"), except:
  - a. for a public purpose;
  - b. on a non-discriminatory basis;
  - c. in accordance with due process of law and Article 1105(1); and
  - d. on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include

- going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.

### **C. Factual Basis for the Claim and Issues**

#### **FACTS**

1. The Investors are United States citizens and residents. The Investors engage in the management and maintenance of a residential tourist development. Their investments are in residential housing and associated infrastructure improvements.
2. Dennis Peyton is a certified Mexican lawyer who is representing the Investors.
3. The land where the Investors have their investments was owned by the Mexican government through an *ejido* land grant in Baja California , near the city of Ensenada (the "Property"). Said *ejido* gained control and use of the Property by Presidential decree and subsequently entered into contracts with the Investors which were duly authorized by the Government of Mexico to permit the establishment of a residential tourism development. Most of the homes in this residential tourism development were built and paid for by the Investors who are currently U.S. citizens and residents.
4. Investors have entered into contracts to purchase property in said residential tourism development and subsequently invested approximately \$50 million dollars in improvements in the form of infrastructure and homes.
5. Before entering into these contracts, the Investors were given written assurance by the Mexican federal government, specifically the Secretary of Agrarian Reform (SRA), that their investments were legal and safe due to (a) a Mexican Presidential Decree which made the property they intended to purchase fall under the control of the SRA; and (b) the confirmation of this fact, as reflected in the registration of said land in the National Agrarian Registry (RAN).
6. After years of litigation, it has now been decided by the courts in Mexico that the Property did not form part of the land covered by the Presidential decree, and, therefore, must be restored to the rightful owners. However, during said litigation, none of the Investors were ever given the opportunity to defend their interests in the Property.
7. The Investors acted as good faith consumers and investors in Mexico and relied on SRA assurances in order to invest millions of dollars in vacations homes and infrastructure improvements. Now they have been evicted by the Mexican government, and stand to lose everything without ever having the opportunity to defend their rights in a court of law.
8. SRA has openly violated Mexican law by colluding with private citizens to allow \$50 million dollars in improvements on the property to go forward as litigation was pending, and, all the while, never notifying the Investors of the possibility that they could lose their investment and the related improvements.
9. The Investors have filed numerous actions but each time have been denied an opportunity to be heard in court. They have filed a criminal complaint only to be denied this most basic right, and, when the complaint was finally admitted, it was

sent to Mexican courts that could never resolve the issues in question for lack of jurisdiction.

10. On October 23, 2000 the Mexican Supreme Court issued orders for the enforcement of the judgement mentioned in point 6 above. Since that time, Mexican government officials have had the power and authority to evict the Investors from their land and homes. In support of its position the court indicated that it is its conclusion that "the social interest depends on the immediate enforcement of the judgement, and, as such, they should not be delayed by excuses, lower court judgements, or claims by third parties that they have acquired property in good faith. For this reason, the restitution of the property to its legitimate owners should be carried out with all improvements and even when such property is in the possession of persons other than those who were parties to the litigation in question."

### **National Treatment**

During the litigation, which eventually resulted in a court ordered restoration of the Property to Mexican land owners, the Investors were never notified by the SRA of the proceedings, nor were they allowed to defend themselves in said proceedings as interested third parties; in spite of the fact that the SRA knew, or should have known, that hundreds of homes were being constructed while said litigation was being carried out. Because the SRA's failure to notify the Investors, they were not accorded treatment as favorable as that accorded Mexico's own investors with respect to the establishment, acquisition, management, and general disposition of their investments in Baja California.

This is clearly demonstrated by the fact that several Mexican land owners were able to completely litigate the issues regarding title to the Property without the SRA ever notifying the Investors so that they could be equally heard before the court and thereby accorded the opportunity to be treated no less favorably as the several Mexican land owners who eventually won said litigation, and as such, were afforded the opportunity to be heard in a court of law.

Given that the SRA, as an agency of the Mexican Federal Government, authorized the use of the Property as a residential tourism development, thereby confirming its right to title to the Property through the *ejido* land grant and Presidential Decree, the Investors had no other choice but to rely on the representations made by the SRA regarding the validity of the transactions by which the Investors acquired the Property. Therefore, when the SRA and the Mexican Federal Government were sued by several Mexican land owners to recover the Property, the SRA and the Mexican Federal Government failed to afford the Investors national treatment by not notifying the Investors that their investments were in jeopardy, and allowing them to participate in the litigation as is required by law. Given the scope and size of the residential tourism development which was in construction on the Property during the first years of said litigation, together with the fact that the SRA issued a written authorization and subsequent filing with the National Agrarian Registry of the title and assignments of the Property to the developer, thereby establishing constructive notice

of the same; and considering the amount of active involvement by SRA in the promotion of said development, it is clear that the SRA knew that hundreds of homes were being constructed by the Investors as said litigation was going on. Such Investors were affected third parties to said litigation and both the Mexican Federal Government, as defendants, and the Mexican land owners, as the plaintiffs, should have notified the Investors as required by law in order to allow them to defend their interests in the Property accordingly. The failure of the Mexican Federal Government, through the offices of the SRA, to carry out such notifications caused the Investors to be treated less favorably than the Mexican investors and, as such, violates the provisions of article 1102 of NAFTA.

### **Minimum Standard of Treatment**

Prior to investing the Investors were given written assurance that their investment in the Property was safe. This was done through a letter to the developer from the SRA affirming "the absolute legality and legal safety" of building a home on the Property. Moreover, the existence of a Presidential Decree, still in force at the time of that the Investors purchased the land, confirmed that the Property was owned by the Mexican Federal Government through an *ejido* land grant. The registration of the land in the National Agrarian Registry (RAN), still in force at the time that the Investors acquired the Property, also confirms that the Property was social/agrarian and not private property. Both this Presidential Decree and the registration in RAN confirm that, at the time that the Investors acquired the Property, the *ejido* land grant was valid and legally recognized and recorded with RAN, thereby establishing constructive notice to all interested third parties. At no time prior to the eviction notice received by the Investors in September of 1999 were the Investors ever notified directly or through any public filing in RAN that the status of the Property and/or their rights to acquisition had in any way changed.

However, a court decision, handed down several years after investments were made by the Investors, calls for the eviction of the Investors because the *ejido* land grant issued by the Presidential Decree did not include the Property. As set forth in the preceding section, the Investors were never afforded the opportunity to participate in the litigation that resulted in said court decision, and under Mexican law, there exists no remedy or possible appeal against this decision.

Therefore, the Investors were wrongly convinced with promises by SRA officials, and by a legal Presidential Decree and a legal RAN registration, that the *ejido* land grant was legal and that it had the right to sell the Property after the completion of the privatization process. As a result of the Mexican government's actions, the Investors were subject to unfair treatment, and their investments were unjustly left unprotected and subject to juridical insecurity unacceptable under international or Mexican law.

Given the fact that the Investors were neither notified of litigation, which is now resulting in their eviction from the Property, nor allowed to defend themselves in the such proceeding as interested third parties, there is no doubt that the Investors are not being accorded the minimum standard of treatment as set forth in article 1105 of NAFTA. Both omissions are demonstrative of the fact that the Mexican government did not accord to the

Investors treatment in accordance with international law, including fair and equitable treatment and full protection and security.

It is our contention that the Mexican Federal Government, through the offices of the SRA, willingly participated in illegal activities which induced the Investors into making investments at the Property. This was done by:

1. illegally manipulating survey maps to include the Property in the *ejido* land grant;
2. authorizing such a survey to be filed and recorded at RAN in order to satisfy any third party investigations as to the Property's status ;
3. subsequently providing written assurances issued by the Mexican Federal Government, used to induce the Investors into making investments which they would never have made otherwise, by affirming "the absolute legality and legal safety" of building a home on the Property; and,
4. intentionally not notifying the Investors of litigation which they knew could result in the loss of their property.

Considering the foregoing, it is clear that the investments of the Investors were not accorded treatment in accordance with international law, including fair and equitable treatment and full protection and security. To the contrary, either the Mexican Government actively participated in fraudulent activities by accepting bribes in exchange for the inclusion of the Property in the survey of the *ejido* land grant; or, at the very least, they were guilty of gross negligence which has resulted in the potential loss of millions of dollars by the Investors who relied on false representations.

### **Expropriation and Compensation**

Given the nature of *ejido* land grants, and the fact that most have resulted from the Mexican Federal Government's virtual expropriation of private property, it is our contention that the Mexican Federal Government falsely claimed that, by Presidential decree, the Property was converted from private property to a federally owned *ejido* land grant. This is tantamount to the expropriation of the Property, and, as such, the Mexican Federal Government made it virtually impossible for the Investors to reach any other conclusion other than the Property was no longer owned by the former Mexican landowners. From the date of the Presidential decree granting the *ejido* land grant, and its subsequent recordation with the RAN, the Property was no longer private property due to the fact that constructive notice was established by recording the corresponding title documents with the that federal land registry. Therefore, when the Investors acquired their interest in the Property they did so, as required by law, with the consent of rightful owner of the property which was the Mexican Federal Government.

Even though years later the Mexican Supreme Court determined that the Property should not have been included in the real estate which was claimed by the *ejido* land grant sanctioned by a Presidential decree, the fact remains that, due to the constructive notice established by the Mexican Federal Government's recordation of the decree and the corresponding land surveys and title, the title to the Property was transferred to the

Mexican Federal Government starting from the date of recordation and remained that way until the judgement was handed down by the Mexican Supreme Court indicating that the Property must be restored to the Mexican land owners.

During this period of time the Investors acquired their right to the Property and the Mexican Federal Government was the lawful owner of the Property. Therefore it is our contention that, since the Mexican Federal Government gained title to the Property through a Presidential decree, which is tantamount to expropriation, and maintained such title publicly through constructive notice at the federal land registry throughout the years when the Investors acquired their interest in the Property, it is also tantamount to expropriation for the Mexican Federal Government to now deprive the Investors of their possessions currently held within the Property.

In light of these facts, the Mexican Federal Government has violated article 1110 of NAFTA which states: "No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of a such an investment..." By definition of the Mexican Supreme Court, the force of the Federal Government was used for the social interest of Mexico. The Court's position is clearly set forth in its recent decision regarding the property in which the following was published: "the social interest depends on the immediate enforcement of the judgement, and, as such, they should not be delayed by excuses, lower court judgements, or claims by third parties that they have acquired property in good faith. For this reason, the restitution of the property to its legitimate owners should be carried out with all improvements and even when such property is in the possession of persons other than those who were parties to the litigation in question." Said decision caused actions which resulted in the eviction of the Investors by a measure tantamount to nationalization or expropriation of the investment of the Investors.

The only exceptions to this provision are also not met by the Mexican Federal Government. Such exceptions are as follows:

1. **that the expropriation be for public purpose.** In this case the expropriation was carried out to the benefit of Mexican investors and not to the benefit of the public.
2. **that the expropriation be carried out on a non-discriminatory basis.** In this case the expropriation was carried out in blatant discrimination of the Investors who have never been given equitable consideration by any Mexican governmental authority with regard to their rights to the Property, whereas the Mexican investors are receiving the benefits of the property being restored to their ownership.
3. **that the expropriation be carried out in accordance with due process of law.** In this case the Investors have never been given any opportunity to be heard in any Mexican court which is in flagrant violation of their constitutional right to due process of law.
4. **that the expropriation be carried out on payment of compensation....** No compensation has ever been offer or even determined by the Mexican Federal Government.

## ISSUES

1. Has the Government of Mexico taken measures inconsistent with its obligations under articles 1102, 1103, 1106, and/or 1110 of NAFTA?
2. If the answer to questions 1 is yes, what is the compensation to be paid to the Investors as a result of the inconsistency of the Government of Mexico with its obligations arising under Chapter 11 of NAFTA?

### **D. Relief Sought and Damages Claimed**

The Investors claims damages for the following:

1. Damages of not less than USD \$75 million for the damages caused by the Mexican government's actions that were inconsistent with its obligations contained in Section A of Chapter 11 of NAFTA;
2. Costs associated with these proceedings, including all professional fees and disbursements;
3. Fees and expenses incurred with regard to legal actions taken in denseness of the Investors rights with regard to the Property before all criminal and judicial authorities in Mexico and the United States;
4. Pre-award and post-award interest at a rate to be fixed by the Tribunal;
5. Tax consequences of the award to maintain the integrity of the award;
6. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

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