

DEC 19 '03 13:09 FR JUDGES' CHAMBERS

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COURT FILE NO.: 03-CV-23500

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF AN ARBITRATION PURSUANT TO CHAPTER ELEVEN OF
THE NORTH AMERICAN FREE TRADE AGREEMENT ("NAFTA")
BETWEEN MARVIN ROY FELDMAN KARPA AND THE UNITED MEXICAN
STATES,
ICSID ADDITIONAL FACILITY CASE NO. ARB (AF)/99/1

BETWEEN:

THE UNITED MEXICAN STATES

Applicant

)
)
) J. Christopher Thomas, Q.C., J. Cameron
) Mowatt, Patrick G. Foy, Q.C., Lawrence A.
) Elliot, Robert J.C. Deane, for the Applicant
)
)
)

- and -

MARVIN ROY FELDMAN KARPA

Respondent

)
) Barbara A. McIsaac, Q.C., Colin Baxter,
) Robert Benjamin Mills for the Respondent
)
)
)

- and -

THE ATTORNEY GENERAL OF CANADA

Intervener

)
) Brian R. Evernden, for the Intervener
)
)
)

CHILCOTT J.

DECISION RE COSTS

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[1] The Respondent seeks his costs on a partial indemnity scale up to September 17, 2003 and on a substantial indemnity basis from September 18, 2003 to the present on the basis that an offer to settle by the Respondent was made to the Applicant on September 17, 2003. In the alternative, the Respondent seeks his costs on a partial indemnity basis for the entire proceeding.

[2] The Applicant does not take issue with the hours claimed by the Respondent in respect of the preparation and attendance at the review hearing. However, it submits that the hourly rate claimed on a partial indemnity basis is too high. As for disbursements, the Applicant takes issue with the amount claimed in respect of the Loperena Affidavit and the fees and disbursements of the consulting Mexican counsel.

[3] The court recognizes that the application was only the first or second of its kind and was extremely complex, involving matters of domestic, foreign, and international law. The court is advised that the damage award was in the vicinity of \$2.2 million, including interest.

[4] The Respondent urges the court to consider the Respondent's offer to settle, although it does not strictly fall under Rule 49.10.

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[5] I do consider that offer although I come to the conclusion that it was slightly less than the amount claimed and, in my view, was not significant enough to trigger costs on a substantial indemnity basis after September 17, 2003. Therefore, costs will be awarded on a partial indemnity basis.

[6] The award of costs must reflect more what the court views as a fair and reasonable amount that should be paid by the unsuccessful party. The amount at which costs are to be fixed is not simply an arithmetic function dependent on the number of hours worked multiplied by the hourly rate, but the party paying the costs should be subject to an order which is fair and reasonable.

[7] The costs, excluding disbursements and GST, are fixed at, preparation \$72,819, and attendance on the application, one and half days, \$8,045, for a total of \$80,864.

[8] In this court's view the preparation of the Loperena Affidavit and the retaining of consulting Mexican counsel was a proper disbursement. It is very simple after the fact to say that they were not necessary, but in my view proper case presentation would require and even demand that both these steps be taken.

[9] Therefore, the disbursements in the amount of \$36,870.63 will be allowed.

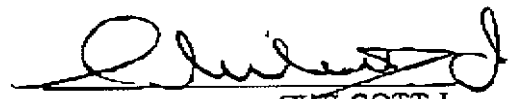
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[10] Fees and disbursements totalling \$117,734.63 will be allowed, plus 7% GST, for a total of \$125,976.05.



CHILCOTT J.

Released: December 18, 2003

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE UNITED MEXICAN STATES

Applicant

- and -

MARVIN ROY FELDMAN KARPA

Defendant

- and -

THE ATTORNEY GENERAL OF CANADA

Intervener

DECISION RE COSTS

CHILCOTT J.

Released: December 18, 2003