

April 11, 2007

By E-mail & Facsimile

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Re: *Grand River Enterprises et al. v. United States of America*

Dear Members of the Tribunal and Counsel:

The Respondent United States of America respectfully supplements its March 30 letter, which sought confirmation from Professor Anaya concerning the scope of his representation of the claimants in the *Dann* case and information regarding any other current representations in matters adverse to the United States. The United States has not yet received a response to that letter from Professor Anaya. Given the fifteen-day notice requirement under the UNCITRAL Arbitration Rules,¹ the United States at this time submits, regrettably, its determination that Professor Anaya's apparent ongoing representation of the claimants in the *Dann* case "give[s] rise to justifiable doubts as to [his] impartiality or independence" in this matter.²

As noted in our March 30 letter, at the time of Professor Anaya's appointment to the Tribunal, Claimants' counsel provided the United States with a website link to Professor Anaya's *curriculum vitae*, which disclosed his representation, from 1997 to 2002, of the claimants in *Dann v. United States* before the Inter-American Commission

¹ UNCITRAL Arbitration Rules, art. 11(1).

²*Id.* art. 10(1).

on Human Rights. Since the time of his appointment, Professor Anaya has not disclosed any post-2002 representation of a party in any proceeding adverse to the United States, even though he appears to have renewed his representation of the *Dann* claimants.

The United States submits that serving as an arbitrator in a case in which the United States is a respondent, while simultaneously representing a claimant who is adverse to the United States in another proceeding “give[s] rise to justifiable doubts as to the arbitrator’s impartiality or independence” within the meaning of Article 10 of the UNCITRAL Arbitration Rules. It is critically important that arbitration proceedings under NAFTA Chapter Eleven, which are transparent and of wide public interest, avoid even the appearance of bias. Accordingly, the United States respectfully requests that Professor Anaya resign as an arbitrator in this case.

Respectfully submitted,

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