

Todd Weiler

From: Todd Weiler [tweiler@naftalaw.org]
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To: news@naftaclaims.com
Subject: NAFTA News -- August 2nd, 2002

Dear friends and colleagues:

This is the introductory edition of a free e-mail service called "**NAFTA News**." You won't receive these messages very frequently (i.e. likely less than once per month). I am merely planning to send messages out to keep you informed of new documents on my www.naftalaw.org web site or of other important NAFTA Chapter 11 arbitration developments. Moreover, since it is the first, this message may be larger than future ones.

I apologise for sending you this e-mail in an unsolicited manner, but I have sent such e-mails to the vast majority of you in the past anyway (the only difference is that I'm now calling these messages "NAFTA News"). Nonetheless, if you don't want to receive any more such messages, just let me know.

New Documents:

All of the pleadings and memorials in the UPS v. Canada claim are now available on [my web site](#). They were made public earlier this week.

The Tribunal hearing the resubmitted Waste Management v. Mexico claim issued an award on jurisdiction in June 2002, which just became public, and can be found on [my web site](#).

All of the post-hearing submissions in the Group ADF v. USA claim are now available on [my web site](#).

The combined Notice of Arbitration and Statement of Claim in Canfor Corp. v. USA has just been made available on [my web site](#). It is an external link, however, which does not permit your using the "save as" feature. You'll just have to read it on your screen.

The brand new Notice of Arbitration in Kenex Ltd. v. USA is available on [my web site](#), as of today.

The post-hearing memorials in the Loewen v. USA claim (which addressed the implications of Loewen Corp.'s corporate re-organization after emerging from bankruptcy) were recently made public, and can be found on [my web site](#).

NAFTA News:

The damages award of the Pope & Talbot tribunal continues to make waves - not because of its damages findings, but because of the Tribunal's justifiably scathing indictment of Canadian officials (and, by extension, officials from the other NAFTA Parties) in connection with their conduct in arguing about the interpretation of Article 1105

and the NAFTA Free Trade Commission's Statement on Article 1105 made in July 2001. The ADF Tribunal responded to being sent a copy of the award by requesting further submissions by the Parties. At least one other NAFTA Tribunal has welcomed additional submissions as a result of the Pope & Talbot damages award.

The UPS pleadings and arguments suddenly became available because Canada consented to a weeks-old offer by the Claimant to make the hearings completely open to the public. The last-minute agreement by the disputing parties appeared to catch ICSID officials off-guard (given that they had less than a week to make preparations for a "wide open" jurisdictional hearing). To their credit, they did an excellent job (setting up a public room with a live video feed that did not disrupt the proceedings in any way). Approximately 20 people attended the public viewing room at the beginning of the two-day hearing, although that number dwindled to one half dozen by the afternoon and never recovered. Judging from media reports and relatively low attendance at the hearing, the fact that the hearing was open may have caught NAFTA Chapter 11 opponents off guard as well.

The basic question for the UPS tribunal to consider is whether it should treat Canada's motion as really going to the bottom-line question of whether it has any jurisdiction to hear the claim (which it obviously does), or whether it should treat Canada's motion as the UNCITRAL equivalent of a domestic law "motion to strike" -- which involves the question of whether the tribunal has been sufficiently briefed on the facts and law to dispose of some of the claimant's arguments on a preliminary basis.

The USA is the target of two new NAFTA claims, which continue to remain curiously absent from its web site. They are: the claim of Canfor Corp. (involving the treatment it and its US investments have received at the hands of US officials in the long-running Canada-US softwood lumber dispute) and the claim of Kenex Ltd (involving longstanding US Drug Enforcement Agency attempts to ban any and all commerce in hemp seed and oil products -- even though there is absolutely no evidence of any harm caused by use of any hemp-based products).

Canada continues to be the only NAFTA Party that even publishes Notices of Intent to Commence Arbitration under NAFTA Article 1119, thereby giving the public some advanced notice of what NAFTA claims may eventually be filed. Of course, there is no reason to conclude that Canada has made all of the notices of intent it has received public, but the US State Department has apparently chosen not to go even that far. For its part, Mexico does not post any NAFTA claims documents (including awards) on a web site.

Thank you for your continued interest in NAFTALaw.org (a.k.a. www.naftaclaims.com).

Kindest regards,

TJW

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