

# PAC PEYTON & CONNELL

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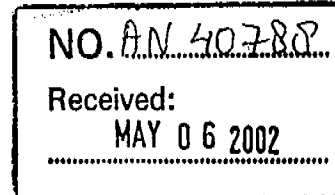
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Secretary General, Tjaco van den Hout  
Permanent Court of Arbitration  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands

April 24, 2002

attachment



Honorable Secretary General,

I representative of 134 US investors in Mexico in a North American Free Trade Agreement (NAFTA) arbitration case against the Mexican government. I am hereby petitioning the Permanent Court of Arbitration at the Hague for assistance with the naming of arbitrators for this case. I would like to take this moment to explain why I am petitioning you at this time and why it is appropriate for me to be doing so.

In October of 2000, 134 US investors were removed by the Mexican government from a resort development where they had invested millions of dollars in improvements. The Mexican Government subsequently expropriated the property in question without compensating my clients. I counseled these investors to pursue a NAFTA arbitration case as described in Chapter 11 of NAFTA. The legal fundament for an investor to pursue this arbitration option is found in Articles 1116 of NAFTA, and the formal consent that all three governments provide that allows for these arbitration proceedings to go forward are found in Article 1122 NAFTA.

On November 10, 2000, I filed a Notice of Intent to Submit a Claim to Arbitration on behalf of these 134 investors with the Mexican Secretary of the Economy and with the US State Department, following the instructions in article 1119 of NAFTA (See attached "Notice of Intent" document). This article requires that that an Intent to Arbitrate be filled 90 days prior to actually and formally filing for arbitration under NAFTA.

On February 16, 2001 just over 90 days from the date of the filing of the Intent to Arbitrate document, I filed an official Notice of Arbitration according to the instructions established in Article 1120.1 of NAFTA which regulates these matters (See attached "Notice of Arbitration" document). Article 1120.1 states that the incident that generates the violation should have occurred at least six months from the formal filing for arbitration, and requires the demanding party to chose one of three options for the rules that will govern the arbitration proceedings from that moment on. I chose the third option which calls for the use of the UNCITRAL Arbitration Rules.

Article 1123 of NAFTA establishes "...unless the disputing parties otherwise agree, the (Arbitral) Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of

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the disputing parties". On May 14, 2001, I submitted the name of Mr. Roger T. Alford as the arbitrator chosen by these 134 US investors, formally advising both the Mexican Secretary of the Economy and the US State Department of this appointment.

Article 1124, Section 2 establishes: "If a Tribunal...has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary General (of the International Centre for Settlement of Investment Disputes - ICSID), on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed....". As of August 1, 2001, over 160 days after the formal submission of the Notice of Arbitration to the Mexican Government, said Government still had not informed me of its choice for arbitrator. As a result, on August 3, 2001, I sent a petition to the ICSID along with a check for \$2500 US and all necessary documents, to request that this previously designated NAFTA appointing body name the arbitrator that the Mexican government had failed to name, and thus allow for the continuation of the process for the constitution of the Tribunal.

After several months of submitting documents to ICSID and patiently waiting for a response, they informed me that they were unable to take any further action regarding our request for the appointment of the second arbitrator for reasons we still don't fully understand. Article 1120.2 of NAFTA establishes: "The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section". Since NAFTA does not provide instructions or any mention about time limits or options if the previously established appointing authority does not act, one must apply any rules which the UNCITRAL Arbitration Rules might establish under these circumstances. Article 7, Section 2 of the UNCITRAL Arbitration Rules establishes these limits and options: "If within 30 days after the receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator he has appointed: (a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or (b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refused to act or fails to appoint the arbitrator within 30 days after receipt of a party's request therefore, the first party may request the Secretary General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator....".

Using this legal fundament and the explanation above, I am making this petition to you to designate a new appointing authority so that the process of the naming of the second arbitrator in this NAFTA arbitration case can go forward.

Following the procedural guidelines, as established on your website: [www.pca-cpa.org/BD/guidelinesaa.htm](http://www.pca-cpa.org/BD/guidelinesaa.htm), I am including with this petition the following documents and information:

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1. NAFTA, Chapter 11, Article 1120.1 contains the agreement establishing the applicability of the UNCITRAL Arbitration Rules. I am enclosing a copy of Article 1120.1 of Chapter 11 NAFTA. (See Annex 1).

2. There have been two Notices of Arbitration served upon the respondent: (a) the Notice of Intent to Submit a Claim to Arbitration, duly filed with the appropriate official within the Mexican government on November 10, 2000 (See Annex 2); and (b) the Notice of Arbitration, duly filed with the appropriate official within the Mexican government on February 16, 2001 (See Annex 3). I am enclosing a copy of both of these documents.

3. The nationality of the demanding parties is the United States of America. The nationality of the accused party is Mexican.

4. The Name of the arbitrator appointed by the demanding parties is Roger T. Alford, a citizen of the United States of America. The accused party chose not to appoint the second arbitrator.

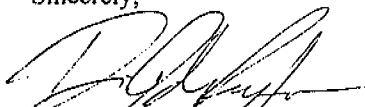
5. The name of the institution that NAFTA Chapter 11 establishes and therefore that the parties accept as the appointing authority which rejected our request to appoint the second arbitrator is the International Centre for Settlement of Investment Disputes, also known as ICSID, which is based in Washington D.C..

6. I recently spoke to Anne Wallemacq, Senior Legal Counsel, at your offices and she indicated that a power of attorney evidencing my authority to make this request was not necessary given that we are a law firm and considering the large number of investors filing for this action. However, I am enclosing a copy of the Affidavit which was sent to ICSID (See Annex 4).

Finally, I have enclosed a check for \$750.00 as indicated at your website under fees for DESIGNATION OF APPOINTING AUTHORITY.

If you have any questions about these documents or this information, or need additional documents or information from me, please let me know.

Sincerely,



Dennis John Peyton