

S. James Anaya
1201 East Speedway Blvd.
Tucson, Arizona 85745
Tel. +1 520 626 6341 * Fax +1 520 621 9140

October 31, 2007

By Email

Nassib G. Ziadé
Deputy Secretary-General
International Centre for Settlement
of Investment Disputes
1818 H Street NW
Washington, D.C. 20433

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

Dear Deputy Secretary-General:

I beg your indulgence to allow me to comment briefly on the latest communication of the Respondent United States, of October 30, 2007, in which its attorneys once again attempt to build their argument that I should be treated as generally adverse to the United States because of my human rights work. Ms. Menaker and her colleagues at the U.S. Department of State's Office of the Legal Advisor attempt to enhance their characterization of me as not only adverse but also as being evasive of the truth. Arguing on behalf of the Respondent, they fault me for declining to reveal, in response to information you requested in your letter to me of October 23, 2007, my role in a range of procedures in which I have been involved that implicate United States federal and state authorities.

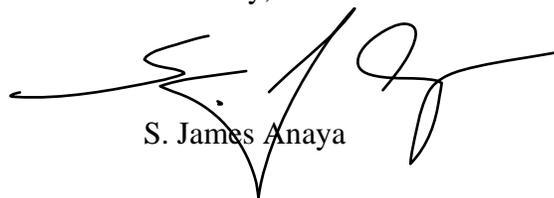
The fact is, as you are aware, in your letter you pointed only to my involvement in the procedures before the Inter-American Commission on Human Rights and the Committee on the Elimination of Racial Discrimination (CERD) as being problematic, not my involvement in other procedures I previously revealed, and you were very specific in asking me about any continued involvement in the procedures before those two institutions only. I fully disclosed to you the information you requested as to the Inter-American Commission and CERD procedures. The attorneys for the Respondent mischaracterize your letter as having put directly into question my involvement in a range of procedures beyond the ones you specified, and suggest that your inquiry of me extended to those other procedures as well. Not only is the premise of their accusation of evasiveness unfounded and misleading, it continues to suggest that *any* stand I take against the United States or its subdivisions *in any forum* renders me unacceptably

adverse to the United States as a general matter, a hardly tenable position that cannot be sustained in practice or by sound policy.

I realize that by making these comments I risk that Ms. Menaker and her colleagues will now use them as further evidence of my alleged partiality and lack of independence. It is striking how in their latest communication these government attorneys attempt to bolster their charge that I am hostile to the United States by characterizing statements I have made in my defense as themselves manifestations of that hostility. Even my statement that I am a patriot without subversive designs on the United States has become grounds to render me partial against the United States, on the theory that by asserting my patriotism I have implied that the attorneys for the Respondent have accused me of being unpatriotic. Even if I had implied as much, and I have not, such statements can hardly be the basis for finding me generally adverse to the United States. At most, Ms. Menaker and her colleagues can say that I have been acting in an adversarial manner as to *them*, which is of course true in the present proceedings in which they are challenging my qualifications, just as these same government attorneys have been acting (very much so) adverse to me; but that has nothing to do with my being partial or not against the United States as a general matter.

One might well conclude that the Respondent attorneys' assertions of bias, and now their attacks on my reactions, are designed to provoke me to show bias in the absence of a showing of *actual* bias before – an ingenious litigation tactic, but one that in fairness should not be allowed to succeed. The question of my partiality or impartiality should be resolved by reference to the circumstances which gave rise to the Respondent's challenge in the first place, not by reference to my reactions to provocations by government attorneys made in the course of that challenge. The Respondent United States should not be permitted to benefit in this way from my defense of sweeping assertions against me.

Sincerely,



S. James Anaya

Copies to:

Mr. Fali Nariman
Mr. John Crook
Ucheora Onwuamaegbu
Mr. Mark Clodfelter and Ms. Andrea Menaker
Mr. Todd Wieler, Esq.
Mr. Leonard Violi, Esq.
Ms. Chantell MacInnes Montour, Esq.
Mr. Robert Luddy, Esq.
Aril Ali, Esq.