

BAKER BOTTS LLP

1818 H STREET, N.W.
WASHINGTON, D.C.
20006
TEL: 202 697 7000
FAX: 202 697 7890

BAO
DACA
HONG KONG
LONDON
MOSCOW
NEW YORK
WASHINGTON

June 19, 2000

HAND DELIVERED

Dr. Ibrahim F. I. Shihata
Secretary-General
International Centre for
Settlement of Investment Disputes
1818 H St., N.W.
Washington, D.C. 20433

Re: Request for Arbitration of Claim Previously Administered as ICSID Case
Number ARB(AF)/98/2

Dear Secretary-General Shihata:

The Tribunal in the arbitration proceeding administered as ICSID Case Number ARB(AF)/98/2 ("Prior Proceeding") rendered an award on June 2, 2000. In that award (hereinafter "the June 2 Award"), a majority of the Tribunal concluded that the waiver submitted by Waste Management, Inc. ("Claimant") under NAFTA Article 1121 was deficient, and that therefore the Tribunal lacked jurisdiction to address on the merits the claim made against the United Mexican States ("Respondent"). (A copy of the June 2 Award is enclosed herewith as Enclosure A.)

Claimant immediately took steps to address the deficiencies in the waiver identified in the June 2 Award and, by letter dated June 6, requested the Tribunal to reinstate a procedural schedule that required a timely filing of Respondent's Counter-Memorial on the merits. (A copy of Claimant's June 6 letter is enclosed herewith as Enclosure B.) In your letter dated June 8, responding to Claimant's June 6 letter, you stated that an award in which a tribunal declines jurisdiction over a dispute normally represents that tribunal's final disposition of a case. (A copy of your June 8 letter is enclosed herewith as Enclosure C.)

Although the June 2 Award found that Claimant's conduct in domestic proceedings in Mexico rendered the waiver given by Claimant deficient, that conduct by Claimant does not prevent Claimant from submitting the same claim in a new, separate

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NAFTA arbitration. There is nothing in NAFTA that precludes an investor from resubmitting a claim after an initial submission was deemed invalid, even on the grounds that the investor pursued domestic proceedings that invalidated the required waiver. The question is whether Claimant today meets the requirements for submitting a claim to NAFTA arbitration. Article 1121 clearly permits investors to pursue domestic proceedings prior to commencing NAFTA arbitration, by requiring an investor only to waive the right to "initiate or continue" any such domestic proceedings.

Therefore, consistent with your June 8 letter, Claimant hereby requests that a new, separate proceeding for arbitration of the same claim made by Claimant in the Prior Proceeding be instituted under the Additional Facility Arbitration Rules.

In support of Claimant's request and pursuant to Chapter XI of NAFTA and the Additional Facility Arbitration Rules, Claimant states as follows:

1. The Dispute. The parties and the issues in dispute, including the claim of breaches by Respondent of obligations imposed by Chapter XI of NAFTA, are identical to those in the Prior Proceeding, and are described in the Memorial filed by Claimant in the Prior Proceeding, a copy of which is enclosed herewith as Enclosure D.

2. Representation of Claimant and Acaverde. Claimant resubmits this claim to arbitration on its own behalf and on behalf of Acaverde, S.A. de C.V. ("Acaverde"). Claimant owns and controls Acaverde as an indirect subsidiary, as evidenced by the corporate certificate enclosed herewith as Enclosure E. Baker Botts L.L.P. is authorized to represent both Claimant and Acaverde in the requested arbitration proceeding, as evidenced by the letter from the President of Claimant enclosed herewith as Enclosure F. An accompanying certificate demonstrating the corporate power on which this authorization was based is enclosed herewith as Enclosure G. Additionally, enclosed herewith as Enclosure H is a letter from the Sole Administrator of Acaverde authorizing Baker Botts L.L.P. to represent Acaverde.

3. Notice to Respondent. As required under Article 1119 of NAFTA, Claimant provided Respondent with written notice of Claimant's intention to submit this claim to arbitration more than ninety days prior to this submission. A copy of the notice, provided to Respondent on June 30, 1998, is enclosed herewith as Enclosure I. Respondent's receipt of that notice was recognized in the June 2 Award at ¶ 11. There is nothing in NAFTA or the Additional Facility Rules that precludes Claimant from relying upon the June 30, 1998 notice in a new, separate proceeding. The notice is phrased in general terms, stating on its cover page that Claimant "intends to submit a claim to

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arbitration under [NAFTA] against the Government of the United Mexican States," without reference to any specific arbitration proceeding.

4. Consents by Claimant. Consistent with NAFTA Article 1121, Claimant hereby affirms its consent to arbitration of this claim in accordance with the procedures of NAFTA. Second, consistent with NAFTA Article 1125, Claimant hereby agrees to the appointment of each individual member of the Tribunal. Third, consistent with Article 4 of the Additional Facility Rules, Claimant hereby affirms its consent to arbitration of this claim under Article 25 of the ICSID Convention, in the event the jurisdictional requirements *ratione personae* of that Article shall have been met at the time a proceeding is instituted.

5. Waiver. NAFTA Article 1121 also requires delivery of a waiver to the disputing NAFTA Party and inclusion of that waiver with the submission of a claim to arbitration. The June 2 Award confirms, at ¶ 23, that the language of the waiver provided by Claimant in the Prior Proceeding was not defective. The June 2 Award also states, however, that that waiver was rendered deficient by subsequent conduct by Claimant. In order to eliminate any doubt that Claimant has met the waiver requirement with respect to the resubmission of this claim to arbitration, Claimant has enclosed herewith a new waiver as Enclosure J. A duplicate original of that waiver has been transmitted to Respondent, and a copy of the transmittal letter, which includes Claimant's consent to this arbitration, is enclosed herewith as Enclosure K.

6. Time Limits. NAFTA imposes two time limits on when an investor may allege NAFTA violations.

First, Articles 1116(2) and 1117(2) require that an investor "make a claim" within three years after first acquiring knowledge of the alleged NAFTA breach and knowledge that the investor incurred loss or damage. Here, Claimant alleges that Respondent breached Articles 1110(1) and 1105(1) by committing a series of hostile acts designed to force Claimant to abandon its rights under a long-term concession for waste management operations in the City of Acapulco. Through this series of hostile acts, which culminated in the City's arbitrary demands on November 3, 1997 that Claimant cancel the City's debts, pay an additional sizable concession fee, and accept a new arrangement of short-term contracts with no set fee structure, Respondent effectively expropriated Claimant's investments. See Memorial (Enclosure D) at ¶¶ 3.71-3.76.

Since Claimant seeks damages under Article 1110(2), which provides for compensation equivalent to the fair market value of an expropriated investment, the three-year limitation period under Articles 1116(2) and 1117(2) did not begin to run until

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Claimant learned of the expropriation and the resulting damages. This occurred on November 3, 1997. During the life of the concession, Respondent repeatedly indicated that it would honor its concession obligations, and Claimant harbored hopes of being compensated for Respondent's hostile acts. These hopes continued up until November 3, 1997, when Respondent's arbitrary demands effectively revoked the concession, and it was then that Claimant acquired knowledge of loss or damage arising out of Respondent's NAFTA breaches.¹

Claimant originally "made a claim" under Articles 1116(2) and 1117(2) when Claimant initiated the Prior Proceeding on September 29, 1998, which was well within three years after November 3, 1997. Even if Claimant's filing in the Prior Proceeding is not viewed as "making a claim" for purposes of this proceeding, today's resubmission of that exact same claim is still within the three-year limitation period.

Second, Article 1120(1) requires a six-month waiting period before an investor "may submit the claim to arbitration." Claimant initially submitted this claim to arbitration on September 29, 1998, more than six months after November 3, 1997, and the current resubmission of that exact same claim also satisfies the six-month waiting requirement.

7. Access to Additional Facility. In the Prior Proceeding, Claimant requested and received your approval of the agreement between Respondent and Claimant providing for arbitration proceedings administered by the ICSID Additional Facility. A copy of Claimant's request in the Prior Proceeding is enclosed herewith as Enclosure M. The arbitration agreement invoked in the Prior Proceeding is identical to the arbitration agreement invoked here—the same parties provide the same consent with

¹ A letter Claimant sent to ICSID on November 13, 1998 should not be misconstrued as suggesting that the three-year limitations period began to run on November 15, 1995. On the contrary, in that November 13, 1998 letter, Claimant identified November 15, 1995 as an early estimate "of the date of the first acts which, along with the acts on later dates, constituted NAFTA breaches resulting in economic injury." (A copy of the November 13, 1998 letter is enclosed herewith as Enclosure L.) Claimant thus was informing ICSID that Respondent's hostile acts began almost immediately after the concession commenced. The precise November 15, 1995 date was only listed to demonstrate that, even if a NAFTA breach had somehow occurred as early as the commencement of concession operations (which Claimant does not allege), the three-year limitation period still had not run as of the date of Claimant's letter. The letter did not state when that three-year limitation began to run, which was on November 3, 1997.

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respect to arbitration of their dispute arising from the exact same claim of NAFTA breaches. Although the Tribunal in the Prior Proceeding found Claimant's waiver to be deficient, the Tribunal also found that the language of Claimant's waiver as submitted with the notice of arbitration was not defective. Claimant now requests access to the Additional Facility. This request is based on the identical arbitration agreement invoked in the Prior Proceeding, and Claimant respectfully requests that you confirm your approval of that agreement providing for arbitration proceedings administered by the ICSID Additional Facility.

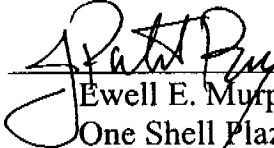
8. Filing Fee. The required filing fee of US\$2,000 for institution of an arbitration proceeding with the ICSID Additional Facility is enclosed herewith as Enclosure N.

In requesting this new, separate arbitration with respect to the claim made in the Prior Proceeding, Claimant notes its compliance with the procedural schedule established in the Prior Proceeding, which required Claimant to submit its Memorial on the merits over eight months ago. Respondent has thus enjoyed the distinct advantage of having far more time in which to prepare its response on the merits than the Tribunal in the Prior Proceeding originally contemplated. Although some delays may be expected in an arbitration subject to the relatively untested procedural provisions of NAFTA, every additional delay in hearing this dispute on the merits imposes additional prejudice on Claimant. For this reason, Claimant respectfully urges that Claimant's current request for the arbitration of this claim be handled on an expedited basis.

If you require additional information or have any questions concerning these submissions, please do not hesitate to contact us at the addresses set forth below.

Dated: June 19, 2000

Signed: _____


Ewell E. Murphy, Jr.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995

B. Donovan Picard
J. Patrick Berry
The Warner
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004