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7 August 2009

BY ELECTRONIC MAIL

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Prof. S. James Anaya
Mr. John R. Crook
c/o Katia Yannaca-Small
Secretary of the Tribunal
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Dear Members of the Tribunal

Re: *Grand River Enterprises et al v. United States of America - NAFTA/UNCITRAL Arbitration Rules Proceeding*

On Claimants' behalf, I write further to the Tribunal's communication of July 31, 2009, where the parties were requested to confer on availability for a two week period between November 9 and 30 of this year for the rescheduled hearing in the above-referenced arbitration.

The parties conferred yesterday on this subject. In that conference, we communicated to the Respondent our inability to schedule the hearing for November due to pre-existing and unavoidable obligations that were established before June of this year, well before any need to reschedule the hearing in the present arbitration arose. These compelling circumstances are described below. Because we were unable to alter these prior duties, Claimants and their counsel cannot be available for a November hearing in this arbitration. We therefore respectfully request that the Tribunal consider its availability after January 2010 for the hearing. While we understand that Respondent might be available in November for a rescheduled hearing, we also note that neither do they insist on that time, nor do they oppose another date for the hearing after January in 2010.

As the Tribunal is aware, since 2002 Claimant Grand River Enterprises ("GRE") has had pending a federal court action against various of the Respondent's constituent States (the "Federal Action"). At issue in that case is the conformity of the Master Settlement Agreement ("MSA") with the United States' antitrust laws and its Constitution. Two of the Claimants' counsel in the present arbitration – Messrs. Violi and Luddy – are also GRE's counsel in the Federal Action. The briefing schedule on dispositive motions in this Federal Action was established prior to June 2009 (the "Federal Motion Schedule"). This Federal Motion Schedule stretches from August 12, 2009, to November 6, 2009. Its requirements are such that GRE's counsel would be precluded from preparing for a hearing in this arbitration

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during the November window identified by the Tribunal. Furthermore, the defendants in the Federal Action have requested additional briefing in that matter. This additional briefing, called a Daubert Hearing in U.S. parlance, if permitted by the U.S. federal court, would extend the existing end point of the Federal Motion Schedule well beyond November 6.

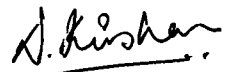
Separately, another of Claimants' counsel – Mr. Krishan – has a hearing in another arbitration scheduled for the period November 17-19, 2009, in London. This date was set sometime in 2008 and it is highly unlikely that that hearing date will change. Mr. Krishan is scheduled to prepare with counsel and witnesses in London for about a week prior to November 17.

Finally, the third week identified by the Tribunal (November 23-30) is not a full business week. The Thanksgiving Holiday celebrated in the United States falls on November 26 and 27. This is an important holiday for most of the counsel and arbitrators involved in the arbitration.

In addition, the Respondent's Department of Justice yesterday issued a superseding criminal indictment naming, among others, two of the Claimants in this proceeding. This indictment alleges a miscellany of charges associated with the distribution of Native American tobacco products and statements made in connection therewith. A consequence of this action by the Respondent is that the implicated Claimants and their counsel (including at least two of the counsel in this arbitration proceeding) are compelled to devote substantial time through at least the early part of 2010 to responding to these criminal charges.

In light of the above, and given the fact that the Respondent does not oppose a hearing date after November 2009, Claimants respectfully request that the Tribunal consider its availability sometime in early 2010, preferably not earlier than February 2010.

Respectfully submitted



Devashish Krishan

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