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ROLL NUMBER

DESCRIPTION

3040

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3040

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3040

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2968

Committee Clerk Signature

Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on HCR 3040.

Rep. James Kerzman, District 31: I'm bringing HCR 3040 before you on behalf of the Dakota Resource Council. It was brought to my attention to get involved in these multinational trade negotiations. We're starting to see some of the affects that they have on us. This resolution consistently refers to the NAFTA, the North American Free Trade Agreement. A complaint has been filed under the North American Free Trade Agreement by Canadian cattelman pre trading against the United States Department of Agriculture for loss of profits under rules that we went through, mainly cattle from being imported into the United States, because of mad cow disease. I've got a file here with cases done, and that's one of them that there working on now, and the Canadian cattelman are looking for about \$200 million. If you're like me you have to get involved in litigation, because it costs the taxpayers a lot of money. It ties up the courts for details on trading, and the World Trade Organization had a meeting here awhile back, and it didn't come to a lot of resolve on our issues, but this could be a goal for these guys. You have a company say, in China, and for whatever reason you curtail their imports, they can bring a lawsuit against ND, the United States. This could be very damaging, and I just think we have to do something to get their negotiators to represent our best interest.

There are a lot of businesses out here, and if ND farmers and ranchers had to open the doors to the Canadian cattle it would have been very detrimental for our industry.

Rep. Ruby: On page 2, line 3, you want the assembly to urge the United States Trade Representatives to negotiate changes, provisions in the North American Free Trade Agreement, which appears to impose liability on government bodies in this country.

Rep. Kerzman: That was the language that was brought to me.

Rep. Johnson: The United States Trade Representatives, is that the individuals you keep talking about?

Rep. Kerzman: They are the appointed individuals that sit at the table for us, but a lot of the times, they're not really involved in the industry responsible.

Cindy Klein, Dakota Resource Council: See written testimony #1.

Rep. Kasper: Aren't the trade agreements and treaties in the United States Constitution?

Cindy: That one I do not know the answer to.

Rep. Ruby: If we limit this ability, and I'm all for countries having this sovereignty, but under the agreement that this could possible be used against us, is it possible that we could sue say the European Union for not accepting it?

Cindy: I don't know that we are in a figural agreement with the European Union, but we can in turn use Mexican companies.

Rep. Ruby: That would be North America then.

Cindy: Mexico, Canada, and the US, but with NAFTA in the Central American countries, these provisions are chapter 10 of NAFTA, but they are also included.

Rep. Keiser: If you look at the 3rd sheet of your handout, you've got one side of cases and claims against the United States, then you go into almost 2 ½ pages where we're suing them. What's wrong with our suing them?

Cindy: I guess it all goes to show that it's all about sovereignties, and about this legislature being able to tell why that looks bad to us. The case on the sheet about putting the landfills into Mexico, they have laws in that particular area to prevent having landfills. I believe that we'd have to say if it happened here in ND, and you got sued by Mexico and won, therefore this little township in Mexico now has a hazardous dump in there area. It does go both ways, but it's about us being able to pass our own laws that protect our area.

Rep. Keiser: On page 2 of the bill which appears to impose liability upon governing bodies in this country. Is the country being sued, or are the businesses being sued?

Cindy: It's a cooperation that sues the government.

Rep. Keiser: So, the US cooperation's are not suing Mexican cooperation's, they are suing the Mexican Government, and visa versa?

Cindy: Yes.

Link Reinhiller, Hazen, ND: See written testimony #2. I am speaking in favor of HCR 3040. A question was asked about whether cooperation's are being able to sue the other countries. This provision in the Free Trade Agreements takes away the sovereignty of any country that is involved in that Free Trade Agreement. We like to have the idea that under our constitution, or under the other nations constitution, we have laws that deal with our citizens of our country, and having a trade agreement that jeopardizes, weakens, or takes away those laws, whether it's our country or the other countries that we have these trade agreements with. Is that what free trade is all about? The 3 person tribunal, is it appointed by our government, by the other governments, or is it appointed by the cooperation's affected. You have one member who is representing the defending side, and another who's representing the suing side, and then they pick a third person. They are for the most part Trade Agreement lawyers, and they answer to nobody. There is no testimony given by the public, no questions asked, and no appeal

process. We'd be able to look at this provision of comments or rules under this chapter 11 investors agreement, talking about whether our constitutional rights are under eminent domain, are they overruled by this World Trade Organization, or by the Free Trade Agreements. What we've had happen already is that the constitutional protections that we have are overruled, they don't mean anything. That doesn't mean that I'm speaking in opposition to the Free Trade Agreements, but pointing out the provisions in these Free trade agreements that take away all of the rights, take away the rights of citizens of the other countries. Litigation does not go through our court system, and the jurisdiction on our domestic courts means nothing. They had no power, so our power rests in the three person tribunal. Our court system is already overruled. In the 1995 session a bill that was introduced in the House Education committee writing and developing standards for qualifications to be able to teach in the state of ND, and as I recall it did come out of the committee with a unanimous do pass recommendation, and as the responsibility of the majority leader he came back and said this bill violates the NAFTA Trade Agreement. Those are local government entities that this chapter 11 takes away, my responsibility as a representative of the citizens, and it intimidates me in decisions that I would be making.

Rep. Keiser: Have you ever done business in Mexico?

Link: No.

Rep. Ruby: In this handout, it almost seems like the cases brought against the United States weren't as successful as the cases the American companies had against the Canadians and the Mexicans. If we send this resolution on, and it removes the ability for companies to sue other American companies, it also removes the ability for American companies to sue the countries that are involved, and it seems we almost had a better record with our companies

contesting some of their provisions, then they have contesting ours. Are we creating a situation where we put ourselves at a disadvantage?

Link: Why are our cooperation's more successful in suing? I think because they don't have the financial resources, and the other countries say it's not worth fighting for, because I don't think they have the strongest desire, and will that we do here.

Rep. Kasper: It appears what you're trying to do is get at the sovereign immunity problem that NAFTA and everything else imposes, which appear to impose liability upon governing bodies in this country. I don't think this resolution is written that well to do what you want it to do. I think that it's that we want our sovereign immunity either back, or not exploited, or not open to nations or companies outside of the United States.

Link: That's the point we're making.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3040

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3029

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HCR 3040, relative to the North American Free Trade Agreement, and the tribunal that mediates these issues.

Rep. Thorpe: I move a do pass.

Rep. Boe: Second.

Rep. Dosch: My concern with this is are we closing the door on the other side, if they're saying that they can't sue us, does that mean we can't go after them. I think we have to be a little bit careful of what we do on things like this, and the consequences it'll create.

Rep. Thorpe: I can understand fairly what you're saying, however this is a resolution, a study.

Rep. Keiser: This is not a study resolution.

Rep. Amerman: From my information, not only on this resolution, but the other ones, to your best knowledge, what happens to them?

Rep. Keiser: Nothing, they get filed, and that's what happens to them. I'm going to oppose this. If you want to buy property in Mexico within 5 or 10 miles from the ocean, you can't own it. If you sell it, they set up a trust. If you have any litigation, or any issues that you want to bring forward, it isn't going to your states attorney, and filing a claim. So, at any rate if you get into a conflict down there, you better have some well structured agreements in place when you

go to negotiate. This tribunal may not be perfect, but think of the difficulties we have with the tribal, the reservations. You may not like NAFTA, you may not like these other things, but if you're a company doing business in Mexico, or Canada, it's a pretty good thing. If you are not a company doing business in those areas, it's not a good thing, so there are two sides to this.

Rep. Kasper: If this concurrent resolution said something to the affect that we would encourage United States Trade Representative to stop negotiating away the sovereign right, and sovereign protection of the State of ND, and the federal government in trade agreements, I would support it, but this is perspective, and it's not going to change anything.

Rep. Keiser: If you're going to have inner country trade, my argument is you better have a system set up.

Roll call vote was taken. Motion Failed, 4 Yeas, 9 Nays, 1 Absent

Rep. Johnson: I move a do not pass.

Rep. Dietrich: Second.

Roll call vote was taken. 9 Yeas, 4 Nays, 1 Absent, Carrier: Rep. Dietrich

Hearing closed.

Date: 2-7-07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. Hcl 3040

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep Thorpe Seconded By Rep Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser		
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 4 No 9

Absent 1

Floor Assignment Rep Dietrich

If the vote is on an amendment, briefly indicate intent:

Date: 2-7-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Act 340

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT Pass

Motion Made By Rep Johnson Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla		X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 9 No 4

Absent 1

Floor Assignment Rep. Dietrich.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 7, 2007 1:24 p.m.

Module No: HR-26-2397
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3040: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).
HCR 3040 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HCR 3040



"Watchdogs of the Prairie"
Organizing North Dakotans Since 1978

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TESTIMONY HOUSE CONCURRENT RESOLUTION 3040

Chairman Keiser and members of the House Industry, Business and Labor Committee. Thank you for the opportunity to submit comments in support of House Concurrent Resolution 3040. I would like to thank Representative Kerzman and the other sponsors for the introduction of this resolution.

My name is Cindy Klein and I am a community organizer for Dakota Resource Council. Created in 1978, *Dakota Resource Council forms citizen groups dedicated to protecting North Dakota's families and its air, water, land and natural resources.*

This resolution addresses the investor-to-state provisions that are currently in place in free trade agreements such as the North American Free Trade Agreement (NAFTA) and the Central American Free Trade Agreement (CAFTA).

Investor to state provisions give un-due preference to foreign companies by over ruling the sovereign immunity of the United States. Sovereign immunity holds that governments cannot be sued unless the law expressly authorizes the lawsuit. Chapter 11 allows Canadian and Mexican companies to sue the U.S. government even in cases where the U.S. law does not afford domestic companies the same right.

It does not matter what laws they contend are impeding their profitability, the investor to state provisions allow them to sue.

Attached to the testimony, is a fact sheet and a list of recent cases filed under these provisions. In NAFTA, they are known as Chapter 11 and in CAFTA, Chapter 10.

As you may know, the Canadian Cattlemen for Free Trade (CCFT), a group of Canadian cattlemen and feed lot operators, has filed a complaint against the United States Department of Agriculture for their loss of profits that occurred when the United States closed our Canadian border to cattle after Canadian cattle were found to be infected with BSE (Bovine Spongiform Encephalopathy), also known as Mad Cow Disease.

The CCFT filed their complaint in August of 2004 claiming \$300 million in damages to their markets. We closed the border in order to protect AMERICAN ranchers and the AMERICAN beef industry. We closed the border because Canadian cattle that may be infected with BSE posed a health risk to AMERICANS. The investor to state provisions undermine our laws that we enact to protect Americans.

Another case that you may be interested in hearing about is the Methanex case. Methanex is a major producer of methanol, a key component in MTBE (methyl tertiary butyl ether), which is used to increase oxygen content and act as an octane enhancer in unleaded gasoline. This very legislature passed a bill (SB 2346) in 2005 banning the use of MTBE in North Dakota.

Methanex filed a chapter 11 complaint against the United States in response to the March 1999 order by the State of California to ban the use of MTBE by the end of 2002. California argued that banning MTBE is necessary because the additive is contaminating drinking water supplies, and is therefore posing a significant risk to human health and safety, and the environment. There was cause to believe that MTBE posed a risk as a cancer-causing agent. The amount of damages that Methanex claimed was \$970 million. The United States government spent over \$3 million on the legal defense for this case. Thankfully the decision was favorable to the U. S. Next time, we might not be so lucky.

Investor to state cases are not heard in the defendant's federal courts. They are held in secret tribunals. These three-person panels arbitrate disagreements and cases related to the trade agreement, not by judges and juries. Each side chooses one member of the tribunal and the third member, who is the presiding officer, is chosen jointly. There is not an opportunity for public input or oversight in these tribunals. It is not even required that Congress be notified.

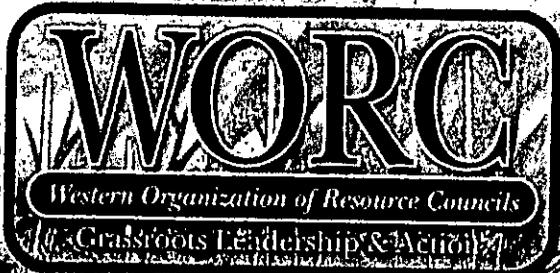
When a tribunal rules in favor of a corporation, the taxpayer's money of the defending country is used to pay the settlement.

We ask that you send a solid message to the President of the United States, the United States Trade Representative, the United States Secretary of Agriculture and our Congressional Delegation saying that North Dakota does not support trade agreements that put at risk, our laws that protect the health, safety and welfare of the citizens of North Dakota. By passing this resolution, we are asking them to exclude the investor to state provisions in future trade agreements in order to protect North Dakota's laws and citizens.

We are also asking them to negotiate changes in the North American Free Trade Agreement ^{What} impose liability upon governing bodies for enforcing our laws that protect the health, safety and welfare of our citizens.

Please give this resolution a Do Pass recommendation

Thank you.



FACT SHEET _____ MAY 2005

INVESTOR TO STATE PROVISIONS:

PUTTING PROFIT BEFORE PEOPLE

Since 1994, foreign companies have used NAFTA's "Chapter 11" to undermine laws and regulations in countries where they have done business. Under Chapter 11, companies from Canada, Mexico and the United States can sue the national governments of the other two countries if environmental, consumer, farm policy or other laws or regulations in that country damage their assets, including projected profits. Now, trade negotiators are including the same provisions in the Central American Free Trade Agreement (CAFTA) under its Chapter 11 extending these rights to corporations in six more countries.

NAFTA's Chapter 11

NAFTA Chapter 11 is one section of the North American Free Trade Agreement (NAFTA). This trade agreement, passed in 1994, includes rules and regulations regarding trade and commerce between the United States, Canada and Mexico. Through NAFTA, tariffs and other "trade barriers" were systematically eliminated, resulting in lower commodity prices, job loss and a system where trade disputes are decided in secret, unaccountable tribunals.

Takings Law

Chapter 11, the "investor to state provision" of the agreement, establishes a new concept of property rights and takings for companies based in one of the three NAFTA countries and that do business in one or more of the other countries. U.S. courts and legislators have rejected the idea that government actions that result in the loss of an individual's or company's potential future profits is a "takings" of property that should be compensated.

Unelected trade negotiators embraced this concept in Chapter 11, however, and have effectively overridden

\$35 billion has already been awarded to foreign investors by NAFTA tribunals or governments as part of a settlement agreement – often over claims that would not have been allowed under domestic law or in domestic courts. Another \$28 billion has been claimed by NAFTA investors.

U.S. law, granting Canadian and Mexican corporations greater rights than U.S. citizens or corporations. Under Chapter 11, there is no limit or guideline concerning the type of laws that can be challenged under Chapter 11. In many cases, a company's right to profit overrides critical issues of human health and safety or environmental protection. Corporations can sue for a law or regulation to be overturned and for monetary compensation for the loss of revenue or projected revenue. When a tribunal rules in favor of a corporation, the taxpayers money of the defending country is used to pay the settlement.

Sovereign Immunity

Investor to state provisions give undue preference to foreign companies by overruling sovereign immunity of the United States. Sovereign immunity holds that governments cannot be sued unless law expressly authorizes the lawsuit. Chapter 11 allows Canadian and Mexican companies to sue the U.S. government even in cases where U.S. law does not afford domestic companies the same right. Passage of CAFTA will give corporations in six additional countries the same rights.

Secret Tribunals

Investor to state cases are not heard in the defendant's federal courts, but in secret, unaccountable tribunals. These three-person panels arbitrate disagreements and cases related to the trade agreement, rather than judges and juries. Each side chooses one member of the tribunal and the third member, who presides, is chosen jointly. There is no opportunity for public input or oversight in these tribunals. It is not even required that Congress be notified.

State and Local Laws

Any state or local law can be challenged by Chapter 11. In a case involving the U.S.-based Metaclad corporation, a NAFTA tribunal ruled in favor of the corporation when a community refused to issue a construction permit, denying expansion of a toxic waste dump.

Central American Free Trade Agreement (CAFTA)

Negotiations are completed for another NAFTA-style agreement that includes six additional countries. This agreement, the Central American Free Trade Agreement (CAFTA) has been signed by the President and awaits introduction to Congress. CAFTA's Chapter 10 will include the same protections for foreign corporations of NAFTA's Chapter 11. This provision will result in a tremendous number of new cases—draining the treasuries of these countries, and weakening health and safety standards for people across the Central and North America.

Contaminated Food

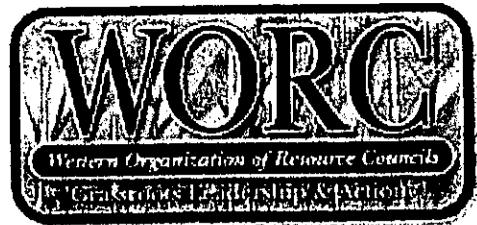
In August of 2004, the newest NAFTA Chapter 11 case was filed. It directly challenges our nation's ability to protect U.S. food safety and to prevent cattle disease in the U.S. cattle herd. A Canadian cattlemen's organization has sued the U.S. Department of Agriculture (USDA) for over \$350 million under NAFTA Chapter 11 provisions. The Canadian group claims they are due payment for loss of profits because of USDA's regulations Canadian cattle imports. This case is being brought even though the USDA regulations are a direct result of mad cow disease in Canada—even though the regulations were put in place to protect the health of U.S. consumers and cattle markets.

What You Can Do

By working together, we can ensure trade that is fair for all farmers, ranchers, consumers and the environment.

- Call your Congressmen and tell them to vote no on CAFTA. Do not to expand the mistakes of NAFTA Chapter 11 into six more countries.
- Write a letter to the editor in opposition of investor to state type trade policy such as Chapter 10 of CAFTA.
- Encourage your local governments to pass resolutions that ensure the laws and regulations they enact will not be challenged by investor to state case.

For more information on how you can play a role in ensuring fair trade policy, log on to the WORC web site at www.worc.org.



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INVESTOR TO STATE PROVISIONS:
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TABLE OF NAFTA CHAPTER 11 INVESTOR-STATE CASES & CLAIMS

February 2005

Key

**Indicates date Notice of Intent to File a Claim was filed, the first step in the NAFTA investor-state process when an investor notifies a government that it intends to bring a NAFTA Chapter 11 suit against that government.

*Indicates date Notice of Arbitration filed, the second step in the NAFTA investor-state process when investor notifies an arbitration body that it is ready to commence arbitration under NAFTA Chapter 11.

The two venues for the adjudication of NAFTA Chapter 11 disputes are the World Bank's International Center for the Settlement of Investment Disputes (ICSID) and the United Nation's Commission on International Trade Law (UNCITRAL).

Corporation or Investor	Venue	Damages Sought (U.S.\$)	Status of Case	Issue
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Cases & Claims Against the United States

Loewen Oct. 30, 1998*	ICSID	\$725 million	Dismissed	Canadian funeral conglomerate challenged large Mississippi state court damage award granted by a jury in a contract dispute suit by a local company claiming Loewen engaged in anti-competitive, predatory business practices. June 2003 – Claim dismissed on procedural basis. Tribunal found that Loewen's reorganization as a U.S. corporation under U.S. bankruptcy law destroyed the firm's ability to bring the NAFTA claim as a <i>foreign investor</i> .
Mondev Sep. 1, 1999*	ICSID	\$50 million	Dismissed	Canadian real estate developer challenged City of Boston's actions in development contract dispute and adverse state supreme court ruling that denied the firm compensation on the grounds that city actions were shielded by principle of sovereign immunity. October 2002 – Claim dismissed on procedural grounds. Tribunal found that the majority of Mondev's claims, including of expropriation, were time-barred meaning that the dispute on which the claim was based predated NAFTA and that court rulings were well founded in state law.
Methanex Dec. 3, 1999*	UNCITRAL	\$970 million	Pending	Canadian corporation which produces methanol, a component chemical of gasoline additive MTBE, challenges California phase-out of MTBE, which is contaminating drinking water throughout the state. August 2002 – Jurisdictional ruling indicates that because Methanex only produces a component ingredient of MTBE, methanol, not the actual product, company is to "distant" from the MTBE ban to qualify as a firm harmed by it, suggesting that certain MTBE producers may be qualified to bring similar NAFTA suits. Methanex allowed to resubmit claim to demonstrate how the MTBE ban was <i>specifically</i> directed toward methanol producers instead of merely affecting them. U.S. government has spent \$3 million on legal defense to date on case, which NAFTA supporters are eager to have dismissed permanently on technical grounds for fear of political ramifications if Methanex wins.
ADF Group Jul. 19, 2000*	ICSID	\$90 million	Dismissed	Canadian steel contractor challenged U.S. Buy America provision in Virginia highway construction contract. January 2003 – Claim dismissed on procedural grounds. Tribunal found that the basis of the claim constituted "government procurement" and therefore fell under the procurement provisions of NAFTA, Chapter 10, not Chapter 11.
James Baird Mar. 15, 2002**	Arbitration has not yet commenced	\$13 billion		Canadian investor challenged U.S. policy of disposing nuclear waste at Yucca Mountain, Nevada site. Investor claims to have patents for alternative waste disposal method and location.
Doman May 1, 2002**	Arbitration has not yet commenced	\$513 million		Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Canfor Jul. 9, 2002*	UNCITRAL	\$250 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.

Kenex Aug. 2, 2002*	UNCITRAL	\$20 million	Pending	Canadian hemp production company challenged U.S. Drug Enforcement Agency regulations criminalizing importation of hemp foods. In 2004 the firm won a U.S. federal court case charging that the agency overstepped its statutory authority when issuing the rules. Status of NAFTA case unclear.
Ontario Limited Sep. 9, 2002**	Arbitration has not yet commenced	\$38 million		Canadian company seeks return of property after its bingo halls and financial records were seized during an investigation for RICO violations in Florida.
Tembec Dec. 3, 2003*	UNCITRAL	\$200 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Glamis Gold Dec. 9, 2003*	UNCITRAL	\$50 million	Pending	Canadian company seeks compensation for California regulation requiring backfilling and restoration of open pit mines that would damage Native American sacred sites.
Albert J. Connolly Feb. 19, 2004**	Arbitration has not yet commenced	Value of expropriated property		U.S. investor claims real estate was expropriated by Canadian government to be used as a park.
Grand River Mar. 10, 2004*	UNCITRAL	\$340 million	Pending	Small Canadian tobacco company seeks damages in claim challenging U.S. tobacco settlements due to the requirement that tobacco companies contribute to state escrow funds set up by state law.
Terminal Forest Products Mar. 30, 2004*	UNCITRAL	\$90 million	Pending	Canadian company seeks damages over May 2002 application by the U.S. of anti-dumping and countervailing duties on Canadian softwood lumber.
Canadian Cattlemen for Fair Trade Aug. 12, 2004**	Arbitration has not yet commenced	\$300 million		Group of Canadian cattlemen and feedlot owners seeks compensation for losses incurred when the U.S. halted imports of live Canadian cattle after the discovery of a case of BSE (mad cow disease) in Canada in May 2003.

Cases & Claims Against Canada

Signa Mar. 4, 1996**	Arbitration never commenced	\$40 million		Mexican pharmaceutical manufacturer filed challenge of Canadian patent law which blocked the manufacture of a generic equivalent to CIPRO, the multi-spectrum antibiotic. Little is known with regard to the disposition of this case.
Ethyl Apr. 14, 1997*	UNCITRAL	\$250 million	Settled; Ethyl wins, \$13 million paid	U.S. chemical company challenged Canadian environmental regulation of gasoline additive MMT. July 1998 – Canada loses NAFTA jurisdictional ruling, reverses ban, pays \$13 million in damages and legal fees to Ethyl.
S.D. Myers Oct. 30, 1998*	UNCITRAL	\$20 million	S.D. Myers wins, \$4.8 million paid	U.S. waste treatment company challenged Canadian ban of PCB exports. Ban was compliant with multilateral environmental treaty on toxic waste trade November 2000 – NAFTA tribunal dismisses S.D. Myers claim of expropriation, but upholds claims of discrimination and equates this violation with a violation of the minimum standard of treatment required by international law. Panel also states that "market share" could constitute a NAFTA protected investment.
Pope & Talbot Mar. 25, 1999*	UNCITRAL	\$381 million	P&T wins, \$450,000 paid	U.S. timber company challenged Canada's implementation of 1996 U.S.-Canada Softwood Lumber Agreement. April 2001 – NAFTA tribunal dismissed claims of expropriation and discrimination, but held that the rude behavior of the Canadian government officials seeking to verify firm's compliance with Softwood Lumber Agreement constituted a violation of the minimum standard of treatment required by NAFTA for foreign investors. Tribunal also stated that "market access" could be considered a NAFTA-protected investment.
UPS Apr. 19, 1999*	UNCITRAL	\$160 million	Pending	UPS claims that Canadian post office parcel delivery service, due to its status as a public service, enjoys NAFTA-illegal subsidies that undermine the market share of foreign private sector competitor UPS.

Sun Belt Oct. 12, 1999*	Arbitration has not yet commenced	\$10 billion	Unknown	U.S. water company challenged moratorium by Canadian province (British Columbia) on bulk water exports.
Ketcham and Tysa Investments Dec. 22, 2000**	Arbitration never commenced			U.S. softwood lumber firms challenged Canadian implementation of 1996 Softwood Lumber Agreement. Case later withdrawn, perhaps due to limited success of similar Pope & Talbot case.
Trammel Crow Sep. 7, 2001**	Arbitration never commenced	\$32 million	Settled	U.S. real estate company filed complaint regarding discrimination over Canada Post's competitive bidding process. Reportedly settled in 2002.
Crompton Nov. 6, 2001**	Arbitration has not yet commenced	\$100 million		U.S. chemical company, producer of pesticide lindane, a hazardous persistent organic pollutant, challenges voluntary agreement established in Canada to restrict production of the chemical.

Cases & Claims Against Mexico

Amtrade International Apr. 21, 1995**	Arbitration never commenced	\$20 million		U.S. firm claimed it was discriminated against by a Mexican firm while seeking to bid for pieces of property, in violation of a pre-existing settlement agreement. Little is known with regard to the disposition of this case.
Metalclad Jan. 13, 1997*	ICSID	\$90 million	Metalclad wins, \$15.6 million paid	U.S. firm challenged Mexican municipality's refusal to grant construction permit for toxic waste dump and governor's declaration of ecological preserve surrounding the site. August 2000 – NAFTA tribunal ruled that the denial of the construction permit and the creation of an ecological reserve are tantamount to an "indirect" expropriation and that Mexico violated the minimum standard of treatment guaranteed foreign investors because the firm was not granted a "clear and predictable" regulatory framework. In October 2000, the Mexican government challenged the NAFTA ruling in Canadian court alleging arbitral error. A Canadian judge ruled that the tribunal erred in part by importing transparency requirements of NAFTA Ch 18 into Ch 11 and reduced award by \$1 million. In 2004, the Mexican federal government's effort to hold state financially responsible failed in Mexican Supreme Court.
Azinlan, et al. Mar. 10, 1997*	ICSID	\$19 million	Dismissed	U.S. investors challenged revocation of solid waste collection contract by City of Naucalpan and Mexican federal court decision upholding the revocation. November 1999 – Claim dismissed. NAFTA tribunal held that the firm made fraudulent misrepresentations with regard to its experience and capacity to fulfill the contract and dismissed claims of expropriation and unfair treatment.
Waste Management Sep. 29, 1998* Resubmitted: Sep. 18, 2000*	ICSID	\$60 million	Dismissed	U.S. waste disposal giant challenged City of Acapulco revocation of waste disposal concession, also implicated Mexican courts and the actions of Mexican government banks. April 2004 – Claim dismissed. Tribunal found that the investor's business plan was based on unsustainable assumptions and that none of the government bodies named in the complaint failed to accord the minimum standard of treatment, nor did the city's actions amount to an expropriation.
Karpa (Feldman) Apr. 7, 1999*	ICSID	\$50 million	Karpa wins, \$1.5 million paid	U.S. cigarette exporter challenged denial of export tax rebate by Mexican government. December 2002 – The tribunal rejected an expropriation claim but upheld a claim of discrimination after the Mexican government failed to provide evidence that the firm was being treated similarly to Mexican firms in "like circumstances." Karpa attempted to bring this ruling into Canadian domestic court, but its case was dismissed by a Canadian judge.
Scott Ashton Blair May 21, 1999**	Arbitration never commenced	Value of property he owns		U.S. investor purchased a residence and restaurant in Mexico and claims he was harassed by Mexican government officials and improperly jailed because he was a U.S. citizen.
Adams, et al. Feb. 16, 2001*	UNCITRAL	\$75 million		U.S. landowners challenged Mexican court ruling that developer who sold them property did not own land and therefore could not convey it.

Lomas Santa Fe Aug. 28, 2001**	Arbitration has not yet commenced	\$210 million		An American real estate development company claimed Mexican government discriminated against him and expropriated land intended for commercial development. Implicated adverse Mexican court decision as well.
Fireman's Fund Oct. 30, 2001*	ICSID	\$50 million	Pending	U.S. insurance corporation alleges that Mexico's handling of debentures issued to capitalize a bank was discriminatory.
Francis Kenneth Haas Dec. 12, 2001**	Arbitration has not yet commenced	\$17 million		American citizen claimed he was cheated out of his rights in an investment firm held with former Mexican business partners. Implicated state government officials as well.
GAMI Investments Apr. 9, 2002*	UNCITRAL	\$55 million	Dismissed	U.S. minority-share investors in Mexican sugar mills challenged failure of government to ensure profitability of mills and September 2001 expropriation of five debt-ridden sugar mills. In Nov. 2004, NAFTA panel dismissed all claims after Mexican Supreme Court reversed the challenged expropriations.
Thunderbird Gaming Aug. 1, 2002*	UNCITRAL	\$100 million	Pending	Canadian company operating three video gambling facilities in Mexico challenges government's closure of facilities. Most forms of gambling are illegal in Mexico.
Robert J. Frank Aug. 5, 2002*	UNCITRAL	\$1.5 million		U.S. citizen challenges government confiscation of vacation property alleged to be his in Baja California, Mexico.
Calmark date not avail.**	Arbitration has not yet commenced	\$400,000		U.S. company challenges Mexican domestic court decisions regarding a development project planned for Cabo San Lucas, alleging company was cheated out of property and compensation by various individuals.
Halchette 1995	No public documents available	Unknown		Halchette, a U.S. firm which operates airport concessions in Mexico, filed a notice of claim. Disposition of the case is unknown.
ADM and A.E. Staley Oct. 13, 2003**	Unknown	\$100 million		U.S. company is leading producer of high fructose syrup HFCS, a soft drink sweetener. Agribusiness giant seeking compensation against Mexican government for imposing an allegedly discriminatory tax against its subsidiary company and HFCS exports to Mexico.
Corn Products Oct. 21, 2003**	ICSID	\$325 million		U.S. company is leading producer of high fructose syrup HFCS, a soft drink sweetener. Agribusiness giant seeking compensation against Mexican government for imposing an allegedly discriminatory tax against its subsidiary company and HFCS exports to Mexico.
Bayview Irrigation Aug. 27, 2004**	Arbitration has not yet commenced	\$550 million		17 water rights holders in the United States challenge Mexico's alleged failure to implement 1944 water-sharing treaty governing water in the Rio Grande.

Summary

Total Claims Filed Against All 3 NAFTA Parties:	42 Cases	\$28 billion		NOTE: This amount excludes cases where there has been a final award, and includes the Baird and Sun Belt claims, which are disproportionately high. Without Baird and Sun Belt, total claims against all three NAFTA parties is \$5 billion.
Total Cases Currently in Active Arbitration:	11 Cases			7 against the United States, 1 against Canada, 3 against Mexico
Dismissed Cases (Won by NAFTA governments):	6 Cases			Loewen, Mondeev, ADF, Azinian, Waste Management, GAMI
Cases Won by Investors:	5 Cases	\$35 million awarded		Ethyl, S. D. Myers, Pope & Talbot, Metalclad, Karpa (Feldman)

**TESTIMONY FOR HOUSE CONCURRENT RESOLUTION 3040
LINK REINHILLER, HAZEN, ND**

Talking Points

1. **The Three person Tribunal**
 - a. **Appointed by whom?**
2. **Property Rights/Eminent Domain**
 - a. **Quick take for the public good?**
 - b. **Would not go through our court system**
3. **What affect does Chapter 11 have on the recently passed Initiated Measure dealing with Property Rights?**

4. *Teaching Standards*