
Canada Loses Big

Canada has been slammed by the North American Free Trade Agreement's (NAFTA) corporate tribunals that empower multinational corporations to sue governments before a panel of three corporate lawyers who can award the corporations unlimited sums of money to be paid by the taxpayers.

Thanks to NAFTA, Canada has now been sued more times through this outrageous "Investor-State Dispute Settlement" (ISDS) mechanism than any other developed country in the world. A majority of the attacks against Canada involve U.S. companies challenging the country's environmental and health laws. Fully 70 percent of the ISDS claims brought under NAFTA in the last decade have targeted Canada. Canadian taxpayers have already forked over \$215 million to corporations. Canadians will be on the hook for up to \$5.5 billion more in recent cases lost and cases that are still pending.

Canada's experience with corporate ISDS tribunals under NAFTA should be a wake-up call to all of us. These are just some examples of multinational corporations that have attacked Canada's environmental laws, toxics bans, medicine policies and more.

Cases Lost or Settled

Bilcon v. Canada: A NAFTA tribunal ruled in favor of a company that planned to blast a basalt quarry and marine terminal in an environmentally-sensitive area in Nova Scotia. The tribunal decided that the impact assessment ordered by Canada's Department of Fisheries and Oceans was a violation of the company's NAFTA rights. A dissenting tribunalist called the decision "a remarkable step backwards in environmental protection."

Mobil/Murphy Oil v. Canada: A NAFTA tribunal agreed with U.S. oil corporations Mobil (of ExxonMobil) and Murphy Oil that a requirement that all domestic and foreign firms with offshore oil concessions contribute some oil revenue to fund research and development in Newfoundland and Labrador – Canada's poorest province – was a NAFTA-barred "performance requirement".

S.D. Myers v. Canada: A NAFTA tribunal ordered Canadian taxpayers to pay \$5.6 million for a temporary ban on the export of a hazardous waste called polychlorinated biphenyls (PCB). Though the ban complied with a multilateral environmental treaty encouraging domestic treatment of toxic waste, the tribunal deemed it to violate the corporation's NAFTA right to a "minimum standard of treatment."

Ethyl v. Canada: The U.S. Ethyl Corporation used NAFTA's investor-state system in the late 1990s to reverse a Canadian environmental ban of the carcinogenic gasoline additive MMT, also banned by numerous U.S. states, while also obtaining \$13 million in compensation from Canadian taxpayers.

AbitibiBowater v. Canada: AbitibiBowater, a paper corporation, used NAFTA's ISDS regime to extract \$122 million from Canadian taxpayers after the Newfoundland and Labrador provincial government took back water and timber rights that the corporation had obtained on the condition that it continue to operate a paper mill. The corporation closed the mill, putting 800 employees out of work, but insisted it still should have control of the water and paper resources.

Other Cases Affecting the Public Interest

Lone Pine v. Canada: In September 2013, Lone Pine Resources, a U.S.-based oil and gas exploration and production company, launched a \$241 million NAFTA claim against Canada to challenge Quebec's suspension of oil and gas exploration permits for deposits under the St. Lawrence River as part of a wider moratorium on the controversial practice of hydraulic fracturing, or fracking. The provincial government had declared a moratorium in 2011 so as to conduct an environmental impact assessment of the extraction method widely known for leaching chemicals and gases into groundwater and the air.

Eli Lilly v. Canada: In September 2013, Eli Lilly and Company, the [fifth-largest U.S. drug company](#), [launched a \\$481 million claim against Canada](#) after Canadian courts ruled that the company had failed to demonstrate that its drugs provided the benefits that the company promised when applying for monopoly patent protection rights. Eli Lilly asked a NAFTA tribunal to second-guess not only the courts' decisions, but Canada's entire legal basis for determining a patent's validity. After years of high-profile campaigning from access-to-medicines advocates, the tribunal dismissed Eli Lilly's claim. However, because the tribunal cited procedural errors it was able to refrain from ruling on many of the substantive issues raised in this notorious case. Even though Canada "won," it will still cost taxpayers \$1.2 million to pay the lawyers for the four-year long case.

Featured Resources:

- [NAFTA Investor-State Claims Against Canada Are "Out of Control": Study from Canadian Center for Policy Alternatives](#)
- [Council of Canadians NAFTA Resource Page](#)