

APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

Toronto Washington DC

**NOTICE OF INTENT
TO SUBMIT A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON,
DOUGLAS CLAYTON, DANIEL CLAYTON
and
BILCON OF DELAWARE**

Investors

v.

GOVERNMENT OF CANADA

Respondent

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement (NAFTA), the Investors, **WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS CLAYTON, DANIEL CLAYTON** and **BILCON OF DELAWARE**, hereby serve Notice of Intent to Submit a Claim to Arbitration for breach by Canada of its obligations under the NAFTA.

A. NAMES AND ADDRESSES OF THE PARTIES

Investors

The Investors are:

William Ralph Clayton
P.O. Box 3015
Lakewood, NJ, 08701

William Richard Clayton
P.O. Box 3015
Lakewood, NJ, 08701

Douglas Clayton
P.O. Box 3015
Lakewood, NJ, 08701

Daniel Clayton
P.O. Box 3015
Lakewood, NJ, 08701

(Collectively referred to as the “**Claytons**”) and

Bilcon of Delaware, Inc.
1355 Campus Parkway
Monmouth Shores Corporate Park
Neptune, NJ, 07753

Each investor is a natural or juridical citizen of the United States of America.

Respondent

The respondent is the **Government of Canada (“Canada”)**, represented through:

Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8
Canada

B. BREACH OF OBLIGATIONS

1. The Investors claim that Canada has violated the provisions of Section A of Chapter 11 of the NAFTA, including:

Article 1105 – International Law Standards of Treatment

Article 1102 – National Treatment

Article 1103 – Most Favored Nation Treatment

causing damage to the Investors.

C. FACTUAL BASIS FOR THE CLAIM

2. This claim pertains to regulatory measures applied to the Investors' investment in a basalt quarry and marine terminal development project (Project) in Whites Point, Nova Scotia, Canada.
3. The measures were applied to the Investors and their investment by officials of the Government of Canada and the Government of Nova Scotia through a government mandated environmental review process and a government appointed environmental review panel, in a manner that was discriminatory, arbitrary and unfair.
4. As a consequence, the administration of the environmental review did not comply with Canada's international law obligations under the NAFTA and its supplemental agreements, including the North American Agreement on Environmental Cooperation, and caused the Investors and their investment to receive treatment far less favorable than that accorded to similar Canadian-owned investments.

The Investment

5. The Investor, Bilcon of Delaware, is a US corporation incorporated under the laws of the State of Delaware. The Claytons are Investors in Bilcon of Delaware, Inc. The Investors collectively own and control Bilcon of Nova Scotia, a wholly-owned unlimited liability corporation established under the laws of the Province of Nova Scotia.

6. Bilcon of Nova Scotia constitutes an investment of investors of another Party to the NAFTA in the territory of a Party as defined by NAFTA Article 1101(1)(b).

Canada's Obligations

7. Canada is responsible for the governmental measures that have caused damage to the Investors and their investment. The flawed measures taken by the Government of Nova Scotia and the Government of Canada include:
 - a. An environmental review of the Project that was not consistent with the rule of law or the principles of due process. The review took an unreasonably long time, and was conducted in a manner that was manifestly :
 - i. not in accord with ordinary or established procedures and assessment criteria;
 - ii. politically motivated; and
 - iii. carried out in a biased and partial manner.

The conduct of the review was a direct violation of Canada's obligations under the NAFTA and the North American Agreement on Environmental Cooperation, which require a level of environmental protection that is consistent with the rule of law and the principles of due process.

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- b. The Project being arbitrarily forced to undergo an environmental assessment by a Federal-Provincial Joint Review Panel ("Panel"). This is the most rigorous type of environmental assessment in Canada, which was not required of Canadian investments in like circumstances in similar projects.
 - c. The Panel making an extraordinary recommendation that the Project be rejected unconditionally, without regard for the time and cost involved and no way of moving forward.
 - d. The Panel's process and recommendation being fundamentally flawed for other reasons as well, including:
 - i. The Panel exceeding and abusing its mandate.
 - ii. The Panel disregarding the well-established analytical framework for environmental reviews.
 - iii. The Panel basing its recommendation on factors that were unprecedented and undisclosed to the Investors as considerations or standards that would be taken into account.
 - iv. The Panel ignoring numerous formal submissions by government representatives in favor of the Project, including representatives of Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada, Health Canada, the Nova Scotia Ministry of Environment and Labour, and the Nova Scotia Ministry of Natural Resources.
 - v. The Panel's conduct and purported reasoning giving rise to a reasonable apprehension of bias against the Investors.

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- e. The refusal of the Nova Scotia Minister of Environment and Labour, and the Federal Minister of the Environment, to allow the Investors an opportunity to be heard about the environmental assessment process before approving the Panel's recommendation, despite their repeated requests, in complete disregard of their rights of due process.
 8. Canada is responsible for ensuring that the Province of Nova Scotia abides by Canada's NAFTA obligations pursuant to NAFTA Article 105.
 9. Nova Scotia has published policy statements affirming the importance of the mining industry to its economy, and inviting foreign investors to invest in the Province. The treatment the Investors experienced was contrary to the legitimate expectations they were led to have, that the Government of Nova Scotia would welcome their business and give them a fair hearing.

D. ISSUES RAISED

1. Has the Canada taken measures inconsistent with its obligations under the NAFTA, including under Articles 1105, 1102 and 1103 of Chapter 11?
2. What amount of compensation is to be paid to the Investors as a result of Canada's failure to comply with its obligations under the NAFTA?

E. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

The Investors respectfully claim:

1. Damages of not less than US\$188 million in compensation for the loss, harm, injury, and damage caused by or resulting from Canada's breach of its obligations under Part A of Chapter 11 of the NAFTA;
2. Costs associated with these proceedings, including all professional fees and disbursements;
3. Fees and expenses incurred to mitigate the effect of the measures;
4. Pre-award and post-award interest at a rate to be fixed by the Tribunal; and
6. Such further relief as counsel may advise and the Tribunal may deem appropriate.

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Counsel for the Investor

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SIGNIFICATION DE COPIE CONFORME

Admitted the 05 day
Acceptée le 05 jour

of Jul 2008
de 2008

for John D. Sims, Q.C.
pour Deputy Attorney General of Canada
Sous-procureur général du Canada