



September 8, 2010

Via E-mail

Professor Hans Van Houtte
Institute for International Trade Law
Colegium Falconis
Tiensestraat 41, 3000 Leuven
Belgium
Hans.vanhoutte@law.kuleven.be

Professor Merit E. Janow
Columbia University
420 West 118th Street, Room 927
New York, New York 10026
United States of America
mj60@columbia.edu

Professor Philippe Sands QC
Matrix Chambers
Grays Inn, London WC1R 5LN
United Kingdom
philippesands@matrixlaw.co.uk

Re: Mobil Investments Canada Inc. & Murphy Oil Corporation v. Government of Canada

Dear Professor Van Houtte and Members of the Tribunal:

Please find attached Canada's response to the Claimants' "Updated Damages Calculation" of August 6, 2010. Specifically, please find attached responsive reports from Richard Walck and Peter Davies.

The Claimants' "Updated Calculation" reduces their damages from \$65.41 million¹ to [REDACTED]². This reduction confirms that the damages claimed are too speculative to be awarded.³ Events in just *one year* since the Claimants submitted their Memorial have reduced their calculation of damages [REDACTED]. It is impossible to speculate on the effect of events over the next *twenty four years*.

¹ First Expert Report of Howard N. Rosen, ¶ 14.

² Pre-Hearing Report of Richard E. Walck, ¶ 46 (hereinafter "Walck Report III").

³ See Counter Memorial, ¶ 340 and Rejoinder, ¶ 294.

While labelled an “Updated Calculation,” the Claimants’ submission is much more than an update. The Claimants submit a fifteen page report on future oil prices by Sarah Emerson which, at paragraphs 4-6, 15 and 19-24, responds to criticism of her previous report by Peter Davies. The submission of these paragraphs is inconsistent with the limits imposed by the Tribunal’s decision of May 10, 2010;⁴ Ms. Emerson’s defence is not an “update” of the “evaluation” of damages. Regardless, Ms. Emerson’s defence has no foundation, as explained in the attached response from Mr. Davies.

The Claimants’ “Updated Calculation” also introduces a new head of compensation. Specifically, they have added a “gross up” for tax that the Claimants allege they will pay on an award of compensation.⁵ This “gross up” of [REDACTED] elevates their claim for damages to over \$60 million. The Claimants’ “gross up” was not included in their previous calculation of damages even though the information on which the Claimants rely to “gross up” their award was available to them at that time. There has been no new information which justifies its inclusion now. It is both a “new head of compensation” and a “methodology not previously used for calculating the level of compensation,” in contravention of the Tribunal’s decision, and should be disregarded.

Regardless, the Claimants’ tax “gross up” has no foundation. The Claimants provide no evidence or authority to support its application or calculation. Moreover, Mr. Walck explains in his attached report that it is entirely inconsistent with principles of valuation.

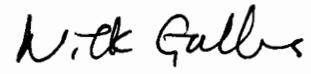
Mr. Walck maintains that the Claimants’ damages are “very uncertain.”⁶ His best estimate is between \$24.6 million and \$27.5 million without including benefits from additional research and development and education and training performed under the Guidelines. Including those benefits may reduce the Claimants’ damages to zero.

⁴ The Tribunal stated: “The Claimants shall be free to state the amount of their claim on the basis of the present method of evaluation, and may update that evaluation in due course but only on the basis of the parameters and methodology used in their current evaluation (that is to say, by way of example, an updating of the interest calculation and completion of information regarding any developments in the period after the filing). In the event that the Claimants wish to introduce any new matters (such as any new head of compensation or the reliance upon any methodology not previously utilised for calculating the level of compensation), these will be treated as new evidence and will only be admissible with the prior authorisation of the Tribunal in accordance with Article 41(1) of the Arbitration (Additional Facility) Rules.”

⁵ Third Expert Report of Howard N. Rosen, ¶ 39.

⁶ Walck Report III, ¶ 120.

Sincerely yours,

A handwritten signature in black ink that reads "Nick Gallus". The signature is written in a cursive style with a large, prominent "N" and "G".

Nick Gallus
Counsel
Trade Law Bureau (JLT)

cc: David W. Rivkin, Debevoise & Plimpton LLP
Martina Polasek, ICSID