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**Originally Submitted January 31, 2005/Amended June 16, 2005**

STATEMENT OF CLAIM  
UNDER THE ARBITRATION RULES  
OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW  
AND  
THE NORTH AMERICAN FREE TRADE AGREEMENT

Contractual Obligations Productions, LLC  
Charles Robert Underwood and  
Carl Phillip Paolino

Claimants/Investors

v.

Government of Canada

Respondent/Party

Pursuant to Article 18 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and Articles 1116 and 1120 of the North American Free Trade Agreement (NAFTA), the Claimants hereby submit their Statement of Claim.

#### **A. NAMES AND ADDRESSES OF THE PARTIES**

##### **Claimants/Investors**

**Contractual Obligation Productions, LLC**  
38-01 23rd Avenue  
Astoria, New York 11105  
United States of America

**Charles Robert Underwood**  
8788 Moorcroft Avenue  
West Hill, California 91304  
United States of America

**Carl Phillip Paolino**  
38-01 23rd Avenue  
Astoria, New York 11105  
United States of America

##### **Respondent/Party**

**Government of Canada**  
Office of the Deputy Attorney General of  
Canada  
Justice Building  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
Canada

#### **B. STATEMENT OF THE FACTS**

##### ***Procedural History of the Dispute***

1. On June 15, 2004 the Claimants served upon Canada a Notice of Intent to Submit a Claim to Arbitration (NOI). The Claimants delivered the NOI at least 90 days before this claim was submitted in accordance with NAFTA Article 1119.
2. This Claim has been submitted less than three years from the date on which the investors first acquired, or should have first acquired, knowledge of the breach and knowledge that the investors had incurred losses or damage, pursuant to Article 1116 of the NAFTA. Pursuant to NAFTA Article 1120, the investors submit this claim on the basis that more than six months have elapsed since events giving rise to the claim.

3. On January 31, 2005 the Investors filed their consents and waivers to the extent required by NAFTA Article 1121(1) with the submission of this claim. A copy of the revised consents and waivers are attached to this statement of the claim.
4. After a consultation with Canada on April 5, 2005, the disputing parties were unable to agree to a resolution of this matter.
5. The Investors submit that they have fulfilled their obligations under NAFTA Article 1118 and that the Government of Canada has waived any right to call for further and subsequent discussions.

#### *Jurisdiction of this Tribunal*

6. The Investors' claims meets the requirements set out in Section B of Chapter 11 of the NAFTA, including UNCITRAL Arbitration Rules, for seeking compensation from a Dispute Settlement Tribunal for any harm caused by the breach of a party's obligations under Section A of Chapter 11.
7. Sections A and B of NAFTA Chapter 11 contain the contract between the disputing parties and the arbitration agreement between them. Pursuant to paragraph one of Article 18 of the UNCITRAL Arbitration rules, a copy of this NAFTA Chapter is annexed to this Statement of the Claim.
8. To bring a claim, a Claimant must be an investor of a party. The Investors, all Claimants, have been illegally prevented from operating in Canada, by operation of Canadian immigration laws and rules, and by the acts and practices of the Canadian Audio Visual Certification Office (CAVCO), an arm of the Government of Canada.
9. Canada's (and its provinces') measures to subsidize certain companies operating in Canada in the production of television programs, and Canada's measures restricting the employment of citizens of the United States on these productions, were measures relating to the investments of investors of another NAFTA Party and to investors of another NAFTA party.
10. Section A of Chapter 11 of the NAFTA sets out the obligations of NAFTA Parties to provide a certain standard of treatment to the investors of another party. Section A includes the obligation to grant national treatment to investors (Article 1102), to meet minimum standards of treatment (Article 1105), not to impose performance requirements (Article 1106) and to pay the fair market value in the case of expropriation or a measure tantamount to expropriation without delay (Article 1110). The Investors have alleged that the Canadian government measures breached these Section A obligations in its Notice of Intent to Submit a Claim and in this Statement of Claim.

11. The Government of Canada (including the actions of its provinces) has caused loss or damage to the investors by reason of, or arising out of, its breach of obligations contained in Section A of NAFTA Chapter 11.
12. The actions of the Government of Canada (including the actions of its provinces) constitute a measure which has resulted in harm to the investors and their potential investment in Canada.

*The Claims*

13. Canada (including its provinces) has acted in a manner inconsistent with at least four provisions of NAFTA as follows:

**Claim I: National Treatment/Equal Treatment**

14. NAFTA Article 1102 sets out NAFTA's national treatment obligation for investment. Under Article 1102(2) the investments of Investors of other NAFTA parties must be given the best in-jurisdiction treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale of other disposition of investments in like circumstances to the investments of Canadian investors. When read substantively, the national treatment obligation ensures that all companies, whether domestic or foreign, are treated equally and without discrimination.
15. The Investors spent considerable time and money developing a television program for AMC, American Movie Classics and others (AMC), called "*The Wrong Coast*," for airing in Canada and other nations.
16. AMC, directly or indirectly, applied to the Canadian Audio-Visual Certification Office (CAVCO) for subsidies for *The Wrong Coast*. CAVCO, and Canadian statutes, rules and regulations, require that only Canadian citizens work on projects that receive these subsidies. Canada and CAVCO has thus violated NAFTA by failing to treat Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Paolino the same as its own citizens.
17. CAVCO approved subsidies for the following Canadian firms to work on *The Wrong Coast*: Blueprint Entertainment, Cuppa Coffee, Curious Pictures and Moving Parts Productions, but failed to provide equal treatment to Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Paolino because it considered them to be ineligible for these subsidies.
18. Canadian statutes, rules and regulations prohibit Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Paolino from working in Canada, and thus have denied them equal treatment with Canadian citizens and companies in violation of NAFTA.

### **Claim II: Minimum Standard of Treatment**

19. NAFTA Article 1105 sets out NAFTA's legal obligations for investment requiring that Canada treat the Investor and its investment in accordance with international law, including fair and equitable treatment.
20. GATT, the General Agreement on Tariffs and Trade, is a part of applicable international law.
21. Canadian and Canadian provincial subsidies concerning the manufacturing of film and television productions are in violation of the GATT.
22. GATT defines a subsidy to be "a financial contribution by a government or any public body within the territory of a Member . . . ." Article One of the Agreement on Subsidies and Countervailing Measures (ASCM), GATT, 1994. Canadian and Canadian provincial rebates and other payments to film production companies constitute a subsidy under GATT.
23. For a subsidy to be illegal under GATT, it must be provided to a specific industry. Section 2.1 of the ASCM. The subsidies in question have been provided only to one specific industry, the film and television production industry.
24. GATT provides "A Member *shall neither grant nor maintain subsidies* referred to above. No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members. . . ." (emphasis added), Section 3.2 of ASCM
25. Canada and the United States are members of GATT.
26. The World Trade Organization (WTO) ruled recently, based on a complaint by Brazil, that agricultural subsidies are illegal under the provisions of GATT.

### **Claim III: Performance Requirement**

27. NAFTA Article 1106(1) prohibits a number of specific governmental activities collectively referred to as "performance requirements." Under Article 1106(1), a Party may not impose or enforce a "requirement, commitment or undertaking" in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment with an Investor.
28. Under subparagraph (1)(a) of Article 1106, a NAFTA Party may not require investors to include in their products or services any amount of goods or services that originate within the Party.
29. The CAVCO requirement of participation by Canadian citizens and companies is in violation of subparagraph (1)(a) of Article 1106.



**Claim IV: Expropriation.**

30. A fundamental obligation contained in NAFTA relates to expropriation. This obligation is contained in Article 1110. It does not define expropriation, but it is clear that it is designed to protect against direct and indirect measures by extending its coverage to "measures tantamount to expropriation."
31. Under international law, expropriation refers to governmental acts that deny use of property.
32. Canada's film subsidies, and the conditions of these subsidies that require Canadian citizenship, are tantamount to expropriation of the property of those, including Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Paolino, who have suffered as a result of these illegal subsidies.
33. *The Wrong Coast* has been expropriated by the Canadian Government.

***Losses Suffered by the Investors***

34. The Investors have suffered or will suffer the following losses:
  - a. Lost sales and profits during the past two years;
  - b. Loss of value of their investment;
  - c. Damage to their reputation caused by the prohibition on Investors participating in film production in Canada;
  - d. Fees and expenses of professional services incurred to defend itself from NAFTA and GATT inconsistent measures.

**C. THE POINTS AT ISSUE**

35. There are three basic points at issue:
  - a. Has the Government of Canada taken measures inconsistent with its obligations under Section A of Chapter 11 of NAFTA?
  - b. Are the subsidies to film and television production provided by Canada and its provinces illegal under GATT and/or NAFTA?
  - c. Are Canada's immigration and work rules that restrict citizens of the United States from participating in film and television projects illegal under NAFTA?

**D. RELIEF OR REMEDY SOUGHT**

36. The claimants seek a declaration that Canadian subsidies to film and television production are illegal under NAFTA and GATT.
37. The claimants seek US \$20,000,000 (TWENTY MILLION UNITED STATES DOLLARS) arising out of the Government of Canada's breaches of its NAFTA and GATT obligations.
38. Claimants seek costs, including professional fees, pre-judgment and post-judgment interest at a rate to be fixed by the Tribunal.
39. Claimants seek further relief as counsel may advise and the Tribunal may deem appropriate.

DATE OF ISSUE: June 16, 2005

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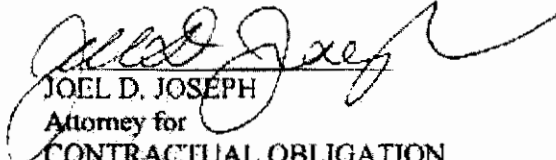
## Notice of Arbitration

and

### **Consent and Waiver Pursuant to Article 1121(1) of NAFTA by Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Phillip Paolino**

1. Consent to Arbitration. Contractual Obligation Productions, LLC, Charles Robert Underwood and Carl Phillip Paolino, by and through their attorney, hereby consent to the arbitration of their claim under Article 1116 of NAFTA in accordance with the procedures set out in NAFTA, and give this notice of arbitration.

2. Waiver. Charles Robert Underwood and Carl Phillip Paolino, by and through their attorney, hereby waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

  
JOEL D. JOSEPH  
Attorney for  
CONTRACTUAL OBLIGATION  
PRODUCTIONS, LLC  
CHARLES ROBERT UNDERWOOD  
CARL PHILLIP PAOLINO