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By E-Mail and Courier

Secretary-General
International Centre for Settlement
of Investment Disputes
1818 H Street, N.W.
Washington, D.C. 20433

Re: Melvin J. Howard, Centurion Health Corp, & Howard Family Trust v. Government of Canada

Dear Secretary-General:

Pursuant to Article 12(1) of the UNCITRAL Arbitration Rules and Article 1124(1) of the NAFTA, Claimants respectfully request that you decide its challenge to Mr. Henri C. Alvarez Q.C , the arbitrator appointed by the Respondents in this matter. The challenge concerns Mr. Alvarez with reference to Article 9 of the UNCITRAL Rules. It requires a prospective arbitrator to disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence, that requirement continues even after appointment. Under IBA Guidelines "Doubts are justifiable if a reasonable and informed third party would reach the conclusion that there was a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented. Such facts plainly give rise to "justifiable doubts as to the arbitrator's impartiality or independence" within the meaning of Article10 of the UNCITRAL Arbitration Rules and, in this case, support the removal of Mr. Alvarez as an arbitrator.

Mr. Henri Alvarez's law firm Fasken Martineau DuMoulin LLP.was counsel for Cambie Surgeries Corporation, Delbrook Surgical Centre Inc., False Creek Surgical Centre Inc., Okanagan Health Surgical Centre Inc and Ultima Medical Services Inc. Against the Province of British Columbia they are all private Canadian surgical facilities and all would-be competitors in this circumstance. As we were not allowed to build our surgical facilities, some of my share and stakeholders are now employees of these same facilities. Considering the relevance of facts in this case and the high profile nature a disclosure should have been made regarding, the activities of the arbitrator's law firm as the arbitrator in principle is considered identical to his law firm. Mr. Alvarez's letter states that he was unaware of his law firm Fasken Martineau DuMoulin involvement in the action commenced in the Supreme Court of British Columbia in the matter of *Canadian Independent Medical Clinics Association, et al. v. Medical Services Commission of British Columbia, et al* until it was raised by me and had no knowledge that the Plaintiffs in the Action were competitors.

This leads the Claimants to a number of troubling issues; one being that Mr. Alvarez would have access to proprietary information that is not in the public domain. Another issue would be our witness testimony about this very same lawsuit that is taking place now in British Columbia filed in court on January 28, 2009 by Mr. Alvarez's law firm. As such I wrote to the Government of Canada on January 7, 2010 to ask that Mr. Alvarez's voluntarily step down as a result of this information as proceedings have yet not started. On January 12, 2010 the Government of Canada informed me that Mr. Alvarez's firm no longer represented the plaintiffs in the referenced suit against the Province of British Columbia and do not require the withdrawal of Mr. Alvarez's. We strongly disagree on a number of fronts and now make this formal challenge for Mr. Alvarez to withdraw from these proceedings as set out in Article 11 of UNCITRAL ARBITRATION RULES. Had we been aware of this prior information we would have never consented to his approval on August 20, 2009 and indeed disqualified him as a candidate to sit on this tribunal.

As illustrated by the recently-disclosed information above, Mr. Alvarez simultaneously sitting in judgment of the Claimants as an arbitrator in theses proceedings while his law firm was representing parties in multiple matters relating to private health care in Canada are adverse to the Claimants. Furthermore, Mr. Alvarez did not disclose those representations until requested to do so by the Claimants. As discussed below, under the UNCITRAL Arbitration Rules, which govern this arbitration, as well as the *IBA Guidelines on Conflicts of Interest in International Arbitration* ("IBA *Guidelines")*,the views of respected commentators, the decisions of U.S. courts, and the past practice of ICSID in considering arbitrator challenges, Mr. Alvarez Law Firm's previous relationships warrant his removal as an arbitrator in this case. Even given the fact that Mr. Alvarez's law firm is national in scope the conflict at issue originated from his downtown Vancouver office.

Below, the Claimants first set forth the relevant facts and then outlines the legal basis for its challenge. The documents and authorities cited, as well as a copy of the Notice of Arbitration and its Revised Amended Statement of Claim in this case, are reproduced for your convenience in the accompanying appendix. Arrangements are being made to transfer the requisite fee to ICSID for deciding this matter.

Facts

Respondents nominated Mr. Alvarez to the Tribunal on August 12, 2009. At the time of Mr. Alvarez's nomination, the Respondents provided the Claimants with Mr. Alvarez's *curriculum vitae,* which disclosed his representation experiences and his letter of disclosure. Neither Respondent nor Mr. Alvarez disclosed any post-representation of his law firms representing Private Surgery Clinic's. Nor did Mr. Alvarez or Respondent disclose any post representation of any party in any matter adverse to the Claimants. Since the time of his appointment, Mr. Alvarez has made no further disclosures, other than those contained in his letter.

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1 .*See* Letter from Mr. Henry Alvarez to Shane Spelliscy Counsel to the Government of Canada (Aug. 12, 2009).

2. *See curriculum vitae* of Mr. Henri C. Alvarez attached in Appendix to letter from Mr. Henry Alvarez to Shane Spelliscy Counsel to the Government of Canada.

Recently, however, the claimants in this arbitration learned that Mr. Alvarez law firm Fasken Martineau DuMoulin LLP.was counsel for Cambie Surgeries Corporation, Delbrook Surgical Centre Inc., False Creek Surgical Centre Inc., Okanagan Health Surgical Centre Inc and Ultima Medical Services Inc. Against the Province of British Columbia they are all private Canadian surgical facilities Vancouver Registry No. S-090663.

The facts surrounding the Private Surgical Clinics claims, as we understand them, are as follows. In January 28, 2009 the Private Surgical Centers (the Plaintiffs) filed a writ of summons in the BC Supreme Court of Canada against the Medical Service Commission, Ministry of Health and the Attorney General of BC (the Defendants). The Statement of claim states there are over 50 other independent private surgical facilities in British Columbia. It goes on to say that operations maybe funded under agreements between Provincial Health Authorities and Independent surgical facilities or funded through workmen compensation boards and the Royal Mounted Police.

Before the BC Supreme Court the Plaintiffs alleged that the BC Provincial Government has set restrictions of choice and access to Private health care facilities and that the public health care system diminishes the choices and availability to patients. It further goes on to state that the Canada Health Act and the Hospital Insurance Act is a contravention of the Canadian Charter of Rights and Freedoms. By prohibiting the charging of any facility fees, the intent and purpose by the Defendants is to restrict the possibilities of private facilities being available to patients.

The Plaintiffs argue that waiting periods of medical care in the Province are unreasonable and result in patients receiving inadequate care in the public system. The unacceptable delays in-patient care result in extended suffering, and in some cases death, for patients, worse health outcomes for patients, and increased burden and costs for the public system. In the Statement of Claim it goes on to say the Health Act prohibits or restricts access to private health which is an infringement of the rights of patients under section 7 of the Charter of Rights.

As in our NAFTA challenge the Plaintiffs counters that Canada's various Health Acts are arbitrary in nature and that the prohibitions and restrictions do not apply on a uniform basis and impermissibly vague.

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3. See Canadian Independent Medical clinics, Association, Cambie Surgeries Corporations Delbrook Surgical Centre Inc, False Creek, Surgival Centre Inc., Okanagan Health, Surgical Centre Inc.and Ultima Medical Services Inc. v. Medical Services Commission Of British Columbia, Minister Of Health Services Of British Columbia and the Attorney General of British Columbia Vancouver Registry No. S-090663.

On January 7, 2010 the Claimants wrote to the Respondent and informed them that an important issue of conflict has just come to light regarding Mr. Henri Alvarez's law firm Fasken Martineau DuMoulin LLP. His firm is counsel for Cambie Surgeries Corporation, Delbrook Surgical Centre Inc., False Creek Surgical Centre Inc., Okanagan Health Surgical Centre Inc and Ultima Medical Services Inc. Against the Province of British Columbia they are all private Canadian surgical facilities and all would-be competitors in this circumstance. In fact because we were not allowed to build our surgical facilities for breach of trade rules, some of my share and stakeholders are now employees of these same facilities. As a result, that is how I learned that Mr. Alvarez's firm was representing them.

Soon after learning of these circumstances, the Claimants informed the Respondent that the lawsuit initiated by the private clinics would form apart of the Claimants witness testimony about this very same lawsuit that is taking place now in British Columbia. Which we plan to put under the spotlight for a number of issues, the least of which is discriminatory practice against US health care companies. The Claimants further stated they would like to think this was just a coincidence but the dates of the appointment of Mr. Alvarez becoming the government appointed arbitrator in mid August 2009 and his firm representing the private surgical centers January 28, 2009 leaves the Claimants suspect raising justifiable doubts as to [his] impartiality or independence.

Further more it puzzled the Claimants on the one hand the Respondent appointed Mr. Alvarez as the Government of Canada's party-appointed arbitrator for these proceedings, then on the other, his law firm is suing the Province of British Columbia for some of the same reasons and issues that the Claimants are bringing to this trade dispute. This brings the Claimants to the very core of one of their arguments the confusion and hypocrisy the Claimants faced for 12 years in trying to build health facilities in Canada. With that said the Claimants officially asked that Mr. Henri Alvarez step down from this tribunal.

On January 12, 2010 the Claimants received a response back from the Respondent stating based on the information that have been provided they do not believe that any of the circumstances the Claimants raised requires the withdrawal of Mr. Alvarez. On February 1, 2010 the Claimants responded back a long with copies to the newly formed Tribunal.Considering the relevance of facts in this case and the high profile nature a disclosure as a article that appeared in the LA Times describes should have been made regarding, the activities of the arbitrator's law firm as the arbitrator in principle is considered identical to his law firm http://articles.latimes.com/2009/sep/27/nation/na-healthcare-canada27?pg=2

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4. See Letter from Melvin J. Howard to Sylvie Tabet Deputy Director Foreign Affairs (January 7, 2010).

5.See UNCITRAL Arbitration Rules, art. 11(1).

6. See Letter from Shane Spelliscy Counsel Trade Law Bureau to Melvin J. Howard (January 12, 2010).

7. See Letter from Melvin J. Howard to Sylvie Tabet Deputy Director Foreign Affairs (February 1, 2010).

On November 2, 2009 there was a joint letter sent out by the Respondent and the Claimants asking Judge Peter Tomka, to become the presiding arbitrator along with Professor Marjorie Florestal and Mr. Henri C. Alvarez forming the Tribunal for these proceedings. On November 11, 2009 Judge Peter Tomka accepted the appointment.

- On November 23, 2009 Judge Peter Tomka wrote a letter to the Respondent and the Claimants jointly indicating confirmation of his acceptances and after consulting with the two co-arbitrators, wanted to bring our attention to the following issues. 1. The administration of the case. 2. The date of the agenda for the first meeting. 4. Terms of appointment for arbitrators.

- On December 4, 2009 a preliminary joint agreement was reached between the Respondent and the Claimants agreeing on the issues as described in Judge Peter Tomka's letter dated November 23, 2009.

- On January 7, 2010 in the Claimants letter to the Respondents and members to the tribunal the Claimants officially asked that Mr. Alvarez's voluntarily step down as a result of this information as proceedings has yet not started. This was in order to save time without the formality a formal challenge and keep on our agreed time schedule for the first procedural meeting scheduled for March 19, 2010.

- On February 3, 2010 all interested parties received a letter from the Permanent Court of Arbitration acknowledging receipt of the Claimants letter dated February 1, 2010. In that letter the Respondent and Mr. Alvarez was invited to submit any comments or provide any additional information. Where the Claimants were informed if they wished to request a challenge it should be directed to the ICSID Secretary-General.

- February 2, 2010 the Respondent communicated by letter to members of the tribunal and the Claimants that they informed the Claimants of their position and that Mr. Alvarez's law firm was no longer representing the Plaintiffs in the referenced lawsuit and does not agree to the challenge.

- On February 9, 2010 Mr. Alvarez responded to The Permanent Court of Arbitration in a letter. He states he was unaware of his firms involvement in the action commenced in the Supreme Court of British Columbia in the matter of the Canadian Private Surgical Centres vs. The Province of British Columbia. Mr. Alvarez further goes on to say it is not his practice to search for unrelated parties to the arbitration and that his firm is a large national law firm with a number of Canadian offices.

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8. See Letter from The Permanent Court of Arbitration to all interested parties to these proceedings (February 3, 2010).

9. See. Letter from The Respondent to the Members of the Tribunal and Claimants (February 2, 2010).

10. See Letter from Mr. Alvarez to Mr, Dirk Pulkowskie of the PCA (February 9, 2010)

Mr. Alvarez questioned whether the above matters are material to the issue of his "independence or impartiality in the upcoming arbitration. We strongly disagree as far as the Claimants are concerned the onus is on Mr. Alvarez in regards to this conflict and the size of his firm does not excuse him of disclosure obligations. Especially since the Law Suit was originated out of his downtown Vancouver office. In addition to that the Claimants are now to consider and sign the draft terms of the appointment for arbitrators. The Claimants cannot in good conscious wilfully agree to Mr. Alvarez appointment based on these circumstances. Further to the Claimants request of this challenge we also request that the first procedural meeting be rescheduled to allow sufficient time for the NAFTA challenge to be properly considered especially in the light that there has been no formal procedural orders issued. The Claimants would also like to draw attention to the conduct of the Respondent in a letter dated February 23, 2010 to the Members of the Tribunal and the Claimants. In an effort to distort the issues and cloud the facts the Respondents insisted that the proceedings proceed regardless of this challenge even though procedures have not been agreed to including terms of appointment and confidentiality. We consider this not in the best interest of all parties as such an award could giver rise to be vacated. We strongly disagreed with these tactics.

Mr. Alvarez's Law Firm Representation Of Canadian Private Clinics Warrant His Disqualification

Article 10(1) of the UNCITRAL Arbitration Rules governing this proceeding provides that "[a]ny arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence." Mr. Alvarez's law firm past relationships to the Claimants Canadian competitors give rise to such justifiable doubts and warrant his removal from the panel. Removal is particularly warranted in this instance given the issue of conflict. The arbitrator "should have acceded to [the party's] timely request that he step down as an arbitrator.").

As recognized in a widely-cited article on issues concerning arbitrator challenges, "an adversary relationship with a party" is "so indicative of partiality that [it] can reasonably be treated as generally disqualifying for a party-appointed arbitrator."

The "generally disqualifying" nature of Mr. Alvarez's representations is further supported by the *IBA Guidelines,* which provide that justifiable doubts can arise from situations presenting less serious conflicts than Mr. Alvarez's. The *IBA Guidelines* divide a nonexhaustive list of situations into three categories: Green, Orange, and Red. The Green List sets forth situations that *do not* give rise to justifiable doubts concerning arbitrator independence or impartiality. The Red List sets forth situations that *do* give rise to justifiable doubts, which are categorized as waivable or non-waivable. The Orange List sets forth situations that, in the eyes of the parties, *may* give rise to justifiable doubts.

11. Doak Bishop & Lucy Reed, *Practical Guidelines for Interviewing, Selecting and Challenging Party-Appointed Arbitrators in International Commercial Arbitration,* 14 ARB. INT'L 395, 408, 411 (1998) (listing subject matter of the dispute as one of six grounds that presumptively require disqualification).

The Non-WaivableRed List includes situations deriving from the overriding principal that no person can be his or her own judge. Therefore, disclosure of such situation cannot cure the conflict. The Orange list contains one situation that is similar to – but present less serious conflicts than – the present situation: (i) "[t]he arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

The conflict here plainly is more severe than the scenario contemplated by the *IBA Guidelines* above. Mr. Alvarez's law firm representations are not merely recent ("within the past three years"), but the fact that the original lawsuit originated from his office leads to justifiable doubts. For example, under the *IBA Guidelines,* an arbitrator's representation of a party more than three years prior to the dispute generally does not give rise to justifiable doubts as to his impartiality; a representation within three years may give rise to justifiable doubts, and a representation that is current or just recent presumptively gives rise to justifiable doubts..

Justifiable doubts as to impartiality are further amplified by Mr. Alvarez's failure to disclose the multiple concurrent conflict issues that are present in these proceedings. Article 9 of the UNCITRAL Arbitration Rules governing this proceeding provides that an arbitrator shall disclose to the parties "any circumstances likely to give rise to justifiable doubts as to impartiality or independence. As the *IBA Guidelines* provide, "[a]ny doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favor of disclosure.

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12. IBA Guidelines on Conflicts of Interest in International Arbitration (May 22, 2004) ("IBA *Guidelines"),* Part II, ¶ 3.1.2; *see also* Bishop & Reed, *supra* note 30, at 411 ("[a] significant, unrelated role adverse to a party may create prejudice against the adverse party, thus providing grounds for disqualification").

13. IBA Guidelines, Part II, ¶ 3.4.1.

14. See IBA Guidelines, Part II, ¶ 7 ("Situations falling outside the time limit used in some of the Orange List situations should generally be considered as falling in the Green List.").

15. See also IBA Guidelines, Part I, ¶ (3)(a) ("[I]f facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority . . . and to the co-arbitrators.").

Article 9 "places on the arbitrators a continuing duty to disclose circumstances which arise or become known to them after their appointment. Lack of disclosure of relevant circumstances may provide a separate ground for challenge, and a basis for vacating an arbitral award.

United States courts have vacated arbitral awards where an arbitrator has failed to disclose a concurrent involvement, as counsel or otherwise, in a proceeding adverse to one of the parties. Courts have further vacated an award on the basis of such a nondisclosure, holding that it was "fatal to the arbitration award. In another example the court vacated an award where an arbitrator was participating in an unrelated, contemporaneous arbitration as a witness and agent of a company in a dispute with one of the parties.

In addition, the standard of bias under Article 10 of the UNCITRAL Rules is an objective one, requiring that arbitrators at all times avoid the *appearance* of bias.

The disclosure requirement reflects the reality that "[n]o one knows better than the arbitrator himself whether such circumstances exist"); D. CARON, L. CAPLAN, & M. PELLONPÄÄ, THE UNCITRAL ARBITRATION RULES: A COMMENTARY, 225 (2006) ("Much of the information that would be most helpful in the most egregious cases will be in the control of the arbitrator and not the parties. That the arbitrator may know, better than any other, of likely grounds for challenge, returns us to the importance and desirability of the early disclosure required by Article 9.").

16. See, ; International Bar Association, *Guidelines for International Arbitrators* § 4.1 (1986), *reprinted in* 26 I.L.M. 583, 587 (1987) ("Failure to make such disclosure creates an appearance of bias, and may of itself be a ground for disqualification even though the non-disclosed facts or circumstances would not of themselves justify disqualification."); *id.* § 3.2, *reprinted in* 26 I.L.M. at 586 ("[t]he appearance of bias is best overcome by full disclosure").

17. See Draft Joint Report of the Working Group on Guidelines Regarding the Standard of Bias and Disclosure in International Commercial Arbitration § 2.1 (Oct. 7 & 15, 2002) ("All jurisdictions agree that the standard of bias refers to the *appearance* of bias and not *actual* bias.") (emphasis in original); *see also IBA Guidelines,* Part I, ¶ (2)(c) (providing that doubts are justifiable if a reasonable third person would conclude "that there was a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision").

The same standard applies in U.S. courts: the U.S. Supreme Court has held that arbitrators have a duty to disclose any dealings that "might create an impression of possible bias. Concurrent, undisclosed past relationships give rise to the appearance of partiality, irrespective of the reputation or personal integrity of the arbitrator in question, and notwithstanding any denials of subjective bias, such as Mr. Alvarez's assurance that he has carefully considered the issues by the Claimants "in no way undermines" his independence or impartiality as a member of the Tribunal in this arbitration.

In questioning the materiality of his law firms representations of the Canadian Private Surgical Centers adverse to the Claimants, Mr. Alvarez appears to rely on two factors: (i) the "unrelated" parties to the arbitration and (ii) that his law firm no longer represents the Plaintiffs. But these two proffered grounds do not render his representations unobjectionable.

As the Secretary-General is aware, it is ICSID's practice to notify arbitrators of its intention to uphold a party's challenge before issuing a decision in order to grant the arbitrator an opportunity to resign. Notwithstanding his defense on not knowing that the Plaintiffs his firm represented were competitors of the Claimants. In accordance with the past practice of ICSID in considering arbitrator challenges, Mr. Alvarez's removal is warranted here.

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18. See IBA Guidelines, Part I, ¶ 6.(a) When considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists or whether disclosure should be made, the activities of an arbitrator's law firm, if any, should be reasonably considered in each individual case. Therefore, the fact that the activities of the arbitrator's firm involve one of the parties shall not automatically constitute a source of such conflict or a reason for disclosure. (b) Similarly, if one of the parties is a legal entity which is a member of a group with which the arbitrator's firm has an involvement, such facts or circumstances should be reasonably considered in each individual case. Therefore, this fact alone shall not automatically constitute a source of a conflict of interest or a reason for disclosure. (c) If one of the parties is a legal entity, the managers, directors and members of a supervisory board of such legal entity and any person having a similar controlling influence on the legal entity shall be considered to be the equivalent of the legal entity.

As apart of one of the members of the Working Group of the IBA Guidelines on Conflicts of Interest in International Arbitration (1) Henri Alvarez, Canada; (2) John Beechey, England; (3) Jim Carter, United States; (4) Emmanuel Gaillard, France, (5) Emilio Gonzales de Castilla, Mexico; (6) Bernard Hanotiau, Belgium; (7) Michael Hwang, Singapore; (8) Albert Jan van den Berg, Belgium; (9) Doug Jones, Australia; (10) Gabrielle Kaufmann-Kohler, Switzerland; (11) Arthur Marriott, England; (12) Tore Wiwen Nilsson, Sweden; (13) Hilmar Raeschke-Kessler, Germany; (14) David W. Rivkin, United States; (15) Klaus Sachs, Germany; (16) Nathalie Voser, Switzerland (Rapporteur); (17) David Williams, New Zealand; (18) Des Williams, South Africa; (19); Otto de Witt Wijnen, The Netherlands (Chair). Mr. Alvarez knows better then anyone the appearance of bias would be evident to a third party in these proceedings.

* * *

Mr. Alvarez's ongoing adverse representations give rise to justifiable doubts under the UNCITRAL rules and warrant his removal from the Tribunal.

The Claimants' Challenge Is Timely

Finally, the Respondent mischaracterizes the Claimants' challenge as "belated and untimely. It was not until January 6, 2010 the Claimants learned that Mr. Alvarez's Law Firm representation of the Canadian Private Surgical Centres against the BC Provincial Government . On January 7, one day after learning of the events of Mr. Alvarez's Law Firm representation of the Canadian Private Surgical Centres the Claimants wrote to the Respondent, confirming this information and to acceded to [our] timely request that he step down as an arbitrator."). On January 12th the Respondent wrote back to issue a statement that Mr. Alvarez's firm is no longer representing the plaintiffs against the Province of British Columbia and does not require him to step down. On January 27, the Claimant and the Respondent received terms of Appointment of Arbitrators for the first Procedural Meeting. On February 1st the Claimants informed the Tribunal that it could not sign the terms of appointment based on the issue on the above subject matter. On February 3rd the Respondent and Mr. Alvarez were invited by Tribunal to make further comments requesting Mr. Alvarez to step down by the Claimants by February 17, 2010. After reviewing comments from both the Respondent and Mr. Alvarez the Claimants on February 15th informed the Tribunal that its challenge still stands and that Mr. Alvarez should step down. On February 17th the Tribunal confirmed to the other members and the Respondent that the Claimants challenge still stands. The Claimants were further instructed to file the challenge with the Appointing Authority the Secretary-General office challenge. The Respondent accretion that the Claimants were aware of this potential conflict months ago because of the Claimants blog post dated October 14th is totally false and untrue. Our October 14th blog post was based on news articles and media statements. It was not until the Claimants blog post was posted for several months that we received information about Mr. Alvarez's law firm. Our challenge is accordingly, consistent with UNCITRAL Arbitration Rule 11(1), the Claimants sent notice of its challenge "within fifteen days after" the circumstances giving rise to the challenge "became known" to the Claimants. Contrary to the Respondent' assertions, therefore, there is nothing "belated" about the challenge.

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The Claimants holds Mr. Alvarez in high regard and respect his accomplishments. However it is critically important to the institution of investor-State arbitration under NAFTA, that such proceedings are conducted in a manner that is immune from appearances of bias. The **MELVIN J. HOWARD, CENTURION HEALTH CORPORATION & HOWARD FAMILY TRUST** Tribunal, unfortunately, cannot conduct its proceedings in such a manner with Mr. Alvarez's continued participation as an arbitrator under these circumstances. Accordingly, the Claimants respectfully requests that its challenge be sustained.

Respectfully submitted,

Melvin J. Howard

Enclosures

Copies w/enclosures:
President Judge Peter Tomka (through ICSID)
Professor Marjorie Florestal (through ICSID)
Mr. Henri Alvarez QC (through ICSID)
The Government of Canada (through ICSID)

Copies w/out enclosures (by e-mail only)
Dirk Pulkowski Legal Counsel