

## **BILCON WINS NAFTA CLAIM AGAINST CANADA FOR UNFAIR TREATMENT DAMAGES TO BE HEARD IN SECOND HEARING**

**Toronto – March 20, 2015** – An international tribunal announced that Canada has lost a long contested trade dispute under Chapter Eleven of the North American Free Trade Agreement (NAFTA) involving the Whites Point Quarry expansion in Nova Scotia. Bilcon, an American company, had sought to expand that site's existing gravel quarry operations but was subjected to a failed and unfair regulatory process on the part of the Canada – Nova Scotia joint review panel tasked with considering the expansion request.

Records from the NAFTA Tribunal confirmed that the Canada – Nova Scotia Joint Review Panel failed to apply Canada's high level of environmental standards in evaluating the project. The Tribunal determined there was a failure of international law because the Joint Review Panel considered factors outside Canada's environmental law that were not disclosed to Bilcon during the review process.

In its decision, the Tribunal noted: "It was unjust for officials to encourage coastal mining projects in general and specifically encourage the pursuit of the project at the Whites Point site, and then, after a massive expenditure of effort and resources by Bilcon on that basis, have other officials effectively determine that the area was a 'no go' zone for this kind of development rather than carrying out the lawfully prescribed evaluation of its individual environmental merits."

"We're very pleased with the Tribunal's decision. We had a responsible plan to expand our existing mining facility, creating new jobs and economic activity for Nova Scotia. We followed the proper regulatory process and simply expected to be treated fairly," said William Richard Clayton, CEO of Bilcon of Delaware. "Unfortunately, that wasn't the case, and as a result, it not only hurt our business, but it prevented the creation of 225 construction jobs and 34 full-time good jobs in the local community."

In its review of the case, the NAFTA Tribunal determined that the Joint Review Panel ignored scientific and environmental evidence and instead imposed arbitrary requirements unrelated to the actual conditions at the quarry. This unfairness violated NAFTA's fair and equitable treatment requirements. By comparison, the Tribunal found other environmental proponents who sought similar permissions to operate quarries were treated in a more transparent and fair manner. This violated NAFTA's national treatment obligations.

Barry Appleton, Toronto-based Managing Partner of Appleton & Associates International Lawyers was counsel for Bilcon. Mr. Appleton added: "The Tribunal concluded that Canada engaged in a clear violation of the rule of law and fairness. The Tribunal made clear that governments are required to meet their promises. The Joint Review Panel dropped the ball. The failure to treat Bilcon fairly stands in stark contrast with the clear protections provided by the NAFTA. We are pleased that an international tribunal has confirmed Canada's obligation to meet high level environmental protection standards."

A damages phase will now commence. Bilcon is seeking at least USD \$300 million in damages from Canada in the next phase of the hearing.

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