

**REDACTED**

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

**JML HEIRS, LLC and J. M. LONGYEAR, LLC**

**Investors**

v.

**GOVERNMENT OF CANADA ("CANADA")**

**Party**

Pursuant to Articles 1117, and 1119 of the North American Free Trade Agreement ("NAFTA"), the Investors hereby serve this Notice of Intent to Submit a Claim to Arbitration, on behalf of J.M. LONGYEAR CANADA, ULC, for breach of the Party's obligations under the North American Free Trade Agreement.

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**A. NAME AND ADDRESS OF DISPUTING INVESTORS AND ENTERPRISE**

INVESTORS: JML HEIRS, LLC  
210 N. FRONT STREET, 1ST FLOOR  
MARQUETTE, MI 49855

J. M. LONGYEAR, LLC  
210 N. FRONT STREET, 1ST FLOOR  
MARQUETTE, MI 49855

ENTERPRISE: J.M. LONGYEAR CANADA, ULC  
2401 TD TOWER, 10088 102 AVENUE,  
EDMONTON ALBERTA, T5J 2Z1

**B. BREACH OF OBLIGATIONS**

Canada has breached the following NAFTA obligations, contrary to Section A of Chapter 11 of the NAFTA:

- (i) Article 1102: National Treatment
- (ii) Article 1105: Minimum Standard of Treatment

The relevant texts of these two provisions are as follows:

**Article 1102: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

**Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

**C. FACTUAL AND LEGAL BASIS FOR THE CLAIM**

*The Investors and the Investment*

1. JML HEIRS, LLC is a corporation established under the laws of State of Michigan. JML HEIRS, LLC is the sole shareholder of J. M. Longyear, LLC, which is a corporation established under the laws of State of Michigan. Both corporations maintain their primary offices in Marquette Michigan (the "Investors").
2. J. M. Longyear, LLC is the sole shareholder of J.M. Longyear Canada, ULC (the "Investment Enterprise"), which was established under the laws of Alberta, Canada (the "Enterprise").
3. On May 27, 2011, the Investment Enterprise acquired ownership of property in approximately 63,000 acres of forestry land (the "Investment") from a third party, Domtar Inc., for the sum of CDN \$17,266,822.00. The landmass of the Investment extends over the borders of six townships in the Province of Ontario, near the

Town of Bancroft, namely: Centre Hastings, Tudor and Cashel, Madoc, Marmora and Lake, Limerick, and Wollaston.

4. The Enterprise operates a woodlot on its Investment, initially cutting and producing 20,000 to 32,000 cord equivalent units (CEUs)<sup>1</sup> of wood per year from mid-2011 to 2013. The Enterprise will increase its harvest volumes to 50,000 to 60,000 CEUs annually, which it has calculated to be sustainable for the next ten (10) years [2024]. Thereafter, from years 2025 onwards, the amount of timber available on the land, which constitutes the Investment, is sufficient to sustain an annual production of 30,000 to 40,000 CEUs of wood per year. Wood produced from the Investment is sold to purchasers located both within Canada and in the United States.
5. The manner in which the Enterprise has operated its woodlot qualifies as a "Managed Forest Plan," as this term is defined by the Government of Ontario's Managed Forest Tax Incentive Program (MFTIP).
6. The MFTIP provides that land being utilized pursuant to a Managed Forest Plan has been maintained shall be taxed at a rate of 25 percent of the applicable tax for the residential use of the same or similar land. The Government of Ontario purports that purpose of the MFTIP has been to encourage the implementation of Managed Forest Plans by landholders, by means of according an appropriate tax rate to them.
7. Notwithstanding the fact that the Investment Enterprise operates its woodlot in a sustainable manner that is consistent with a Managed Forest Plan, it is not eligible for the property tax treatment accorded under the MFTIP. The Investment is ineligible because nationals of Canada do not hold a majority of shares in the Investment Enterprise.
8. Article 9(2) of Ontario Regulation 282/98 under the *Assessment Act* provides:

(2) Land that is covered by a forest, and including outbuildings used for forest operations, is eligible land if the following requirements are satisfied:

1. The land is owned by,

i. an individual who is a Canadian citizen or has been lawfully admitted to Canada for permanent residence,

i.1 two or more individuals as joint tenants or tenants in common if 50 per cent or more of the beneficial interest in the land is held by persons described in subparagraph i,

ii. a corporation that has issued and allocated shares to which are attached more than 50 per cent of the voting rights ordinarily exercisable at meetings of the shareholders and that are owned by individuals described in subparagraph i,

iii. a partnership of which more than 50 per cent of the income or loss of the partnership is allocated to partners who are persons described in subparagraph i or ii,

iv. a conservation authority, or

v. a trust established by a person described in subparagraph i or ii, a partnership described in subparagraph iii or a conservation authority, but only if 50 per cent or more of the beneficial interest in the trust property is held by those persons, partnerships or conservation authorities.

9. The Government of Ontario's unwillingness to accord the same property tax treatment under the MFTIP that it accords to other similarly situated investors is inconsistent with Article 1102(1) of the NAFTA, because more favourable treatment has been granted to those similarly situated investors.

10. The Government of Ontario's unwillingness to accord the same property tax treatment under the MFTIP that it accords to other similarly situated investors is also inconsistent with Article 1105 of the NAFTA, because the Investment's ineligibility is a manifestation of governmental discrimination on the basis of nationality. When governmental discretion is exercised in a manner intended to

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<sup>1</sup> A cord of wood occupies a volume of 128 cubic feet (3.62 m<sup>3</sup>). This corresponds to a well stacked

discriminate on the basis of nationality, rather than for a valid public purpose, the result will be inconsistent with the international law standard of fair and equitable treatment contained within NAFTA Article 1105.

11. The Enterprise has incurred loss and damage as a result of Canada's breach of its NAFTA Chapter 11 obligations.
12. As per the terms of NAFTA Article 105 and the applicable customary law of State responsibility, the Respondent shall be held responsible for the conduct of sub-national governments, including the Province of Ontario.

**D. ISSUES**

13. Has the Respondent acted in a manner inconsistent with its obligations under Article 1102 of NAFTA Chapter 11?
14. Has the Respondent acted in a manner inconsistent with its obligations under Article 1105 of NAFTA Chapter 11?
15. If the answer to either, or both, of these questions is yes, what is the quantum of compensation to be paid to the Enterprise under Article 1135 for the Respondent's failure to accord treatment consistent with its obligations under Chapter 11 of the NAFTA?

**E. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED**

16. The Investor claims damages on behalf of the Enterprise for the following:
  - (a) Each year, the application of a proper tax rate based on the use of property subject to a Managed Forest Plan results in a tax saving currently of [REDACTED] per year;
  - (b) Based on a lifespan of the property of thirty years, these tax savings amount to \$12,000,000.00
  - (c) costs associated with these proceedings, including all professional fees and disbursements;
  - (d) Pre-award and post-award compound interest at a rate to be fixed by the Tribunal;

- (e) Tax consequences of the award to maintain the integrity of the award.
- (f) Such further relief that counsel may advise and that this Tribunal may deem appropriate.

DATE OF ISSUE: February 14<sup>th</sup>, 2014

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