A. Endemic Delays in Providing Compensation for Expropriation
[Articles 10.5(1) and/or 10.7(2)(a)]

Does sub-paragraph (a) of Article 10.7(2) constitute a discrete prohibition against delay, in relation to the CIL obligation memorialized in Article 10.7(1)?

Yes → No →

Could endemic delays in the provision of compensation for expropriation, in spite of the seeming availability of a process ostensibly designated to provide prompt access to it, constitute a continuing breach of Article 10.7?

Yes → No →

Could endemic delays in the provision of compensation for expropriation, in spite of the seeming availability of a process ostensibly designated to provide prompt access to it, constitute a continuing breach of Article 10.5(1)?

Yes →

Does Article 10.1(3) preclude a tribunal from finding - as a background fact - that expropriations occurred prior to 1 January 2009, when it determines whether conduct that occurred after that date violated the Article 10.7(2)(a) prohibition against delay?

Yes →

Does Article 10.7(2)(a) prohibit a CAFTA Party from imposing or allowing the kinds of delay experienced by the Claimants?

Yes → Assess Damages

No → Dismiss
B. Failure to Pay Fair Market Value for Past Expropriations [Articles 10.7(1) and 10.7(2)(b) & (c)]

Do sub-paragraphs (b) & (c) of Article 10.7(2) represent discrete compensation obligations in relation to the CIL obligation memorialized in Article 10.7(1)?

Yes

No

Could the eventual failure to pay sufficient compensation constitute a continuing breach of Article 10.7?

Yes

No

Does Article 10.1(3) preclude a tribunal from finding - as a background fact - that expropriations occurred prior to 1 January 2009, when considering whether conduct that occurred after that date violated the Article 10.7(2) prescriptions for valuation?

Yes

No

Was the amount actually paid to any of the Claimants sufficient to satisfy the compensation standards set out in Article 10.7(2)?

Yes

No

Has the Respondent proved that, as of 10 June 2010, every Claimant knew, or should have known, that the Respondent breached its obligations under Article 10.7(2)(b) & (c), by not providing sufficient compensation for the expropriation of any of their investments in 2013, 2014 or 2015?

Yes

No

Assess Damages

Dismiss
C. New Measures That Have Further Delayed Payment of Compensation
[Articles 10.7(2)(a) and/or 10.5(1)]

Did the Respondent’s decisions to suspend the official expropriation process for designated PNMB landholders constitute “measures” within the meaning of Article 2.1?

- Yes
- No

Were the measures a proximate cause of the loss or damage alleged by the Claimants in relation to their respective investments?

- Yes
- No

Does Article 10.1(3) preclude the Tribunal from finding, as a background fact, that expropriations had occurred, to which these measures were directly related?

- Yes
- No

Did the dispute over this particular claim arise after 10 June 2009, such that a Claimant knew, or ought to have known, that adoption of the measures would breach a Chapter 10 obligation, and that he/she/it would suffer loss or damage arising from their adoption, earlier than that date?

- Yes
- No

Was the adoption of these measures inconsistent with either of the standards set out in Article 10.7(2)(a) or Article 10.5(1)?

- Yes
- No

Assess Damages

Dismiss
D. Arbitrariness of Municipal Expropriation Regime

[Article 10.5(1)]

1. Did the Respondent’s conduct constitute “treatment” as per Article 10.5(1)?
   - No
   - Yes

   2. Did the dispute over this treatment arise before 10 June 2009, such that any of the Claimants already knew, or ought to have known, that the treatment being received was inconsistent with Article 10.5(1) and that loss or damage was suffered as a result, by that date?
   - No
   - Yes

   3. Has the treatment the received by one or more of the Claimants, in relation to the subjection of an investment to Costa Rica’s municipal expropriation regime, fallen below applicable international standards?
   - No
   - Yes

   **Assess Damages**

   **Dismiss**
Are legitimate expectations relevant to the host State’s obligations towards foreign investors under Article 10.5(1)?

Yes

Is this the right kind of case for a detrimental reliance claim?

Yes

Did the Respondent frustrate the Claimants’ legitimate expectations as to how their investments would be treated by not ensuring that they received FMV compensation on a timely basis?

Yes

Did the Respondent frustrate any Claimant’s legitimate expectations before 10 June 2010?

Yes

Evaluate Damages

No

Dismiss