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

ST. MARYS VCNA, LLC

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement (NAFTA), the Investor, **St. Marys VCNA, LLC**, hereby serves its Notice of Intent to Submit a Claim to Arbitration for breach by Canada of its obligations under the NAFTA.

March 23, 2012

I. OVERVIEW

1. Founded in 1912, St. Marys Cement Inc. (Canada) is Canada's longest operating cement business. The company is owned and controlled by, St. Marys VCNA, LLC (the "US Investor"), a Limited Liability Corporation organized in the state of Delaware.

2. The US Investor is a part of the Votorantim Group of Brazil. The Votorantim Cement North America Group of Companies, which include both the US Investor and Investment, has almost 1200 employees in Canada and another 1700 in the United States.

3. On May 13, 2011, the US Investor initiated a NAFTA Chapter 11 arbitration against the Government of Canada by filing a Notice of Intent regarding a number of fundamental violations of the rule of law taken by the Province of Ontario, Canada.

4. On December 22, 2011, Canada capriciously threatened the US Investor with a denial of benefits under NAFTA Article 1113. This action constituted a government measure as defined by the NAFTA.[1]

5. On March 1, 2012, Canada notified the US Investor that it was retroactively denying benefits to it pursuant to NAFTA Article 1113. In flagrant disregard of the requirements of Article 1113(2), Canada deliberately ignored the clear and overwhelming evidence provided by the US Investor confirming that it had "substantial business activities" in the United States. In its letter setting out the denial, Canada said that the US Investor failed "to demonstrate substantial business activities in the United States at the relevant time or at all". Canada's wrongful denial of the NAFTA rights of the US Investor capriciously prevented the NAFTA claim against Canada from continuing.

[1] A "measure" is broadly defined by NAFTA Article 201 as including "any law, regulation, procedure, requirement or practice."

II. DENYING THE BENEFITS UNDER NAFTA

6. NAFTA Article 1113(2) permits a NAFTA Party to deny the benefits of the NAFTA to an Investor of another Party only in the following extraordinary circumstances:

   a. The denying Party must prove that the investor is owned or controlled by persons of a non-Party; and

   b. The denying Party must prove that the investor has "no substantial business activities" in the territory of the Party where it is established.

   There is no question that St. Marys VCNA, LLC is ultimately owned by a Brazilian multinational. But in respect of this US Investor, the second condition cannot possibly apply.

7. Only if it is reasonable to conclude that the US Investor has no substantial business activities in the United States could Canada ever be permitted to deny St. Marys VCNA, LLC its vested benefits under the NAFTA.

8. Canada raises no question that the US Investor was organized in the United States. Because of the express wording of NAFTA Article 1113(2), the US Investor was entitled to expect that it could rely on the benefits of NAFTA Chapter 11 when it issued its Notice of Intent and when it submitted its Claim to Arbitration.

9. Under NAFTA Article 1113(2), Canada was only entitled to examine whether the US Investor had, or had not, any substantial business activity at the time that the denial was proposed on December 22, 2011. Instead, Canada asserted its powers on a retroactive basis, purportedly going back to 2008 without any authority in the NAFTA.

III. THE EVIDENCE

10. On January 10, 2012, and on February 8, 2012, the US Investor provided Canada with incontrovertible evidence of its huge and substantial business activities in the United States, including:

    a. That the US Investor is the parent holding company of many United States subsidiary companies, with various personnel employed in the United States, and having assets of over $1.6 billion, and a $450 million credit facility in relation to its business activities in the United States and Canada, with a syndicate of global banks led by Bank of America Merrill Lynch;

    b. The US Investor possesses a bank account in the United States held with Comerica Bank and has an active balance demonstrating ongoing business operations;

    c. The US Investor has active and ongoing business activities in the United States, by the development, acquisition and expansion of business operations in the states of Nevada, Iowa, Wisconsin, Washington State and Florida;

    d. The US Investor has active business activities in the United States, by engaging consultants to assess further business operations in various American states, such as Wisconsin, Illinois, Indiana, Ohio, Pennsylvania and New York;

    e. The US Investor has a business license in Nevada, where it has an office. The US Investor also operates through facilities owned and operated by some of its subsidiaries in various locations in the United States; and

f. The US Investor has engaged in purchasing activity since its inception to develop new business operations in the United States.

Much of this information is readily available through ordinary searches in public registries and was always available for Canada to see.

11. In the face of this evidence, Canada's denial of benefits to the US Investor is not only patently unreasonable, but it is obviously contrived, and in bad faith.

12. Canada also relied on irrelevant criteria, such as the absence of bankruptcy filings or private aircraft registrations, to substantiate a conclusion that the US Investor had no substantial business activities in the United States. Such irrelevant, arbitrary and capricious acts are in contravention of NAFTA Article 1105.

13. Canada also acted prior to the constitution of a NAFTA Tribunal. The failure to constitute a NAFTA Tribunal occurred as a result of Canada's unwillingness to make proper and timely appointments as required by the NAFTA. As a result, the US Investor has been denied its due process right to have the evidence considered by an independent NAFTA Tribunal.

14. Canada made irrelevant inquiries that exceeded the scope of a reasonable assessment pursuant to NAFTA Article 1113. Furthermore, the timing of Canada's request was unreasonable. While Canada had months to raise their threat to deny benefits to the US Investor and the Government of the United States after the filing of the Notice of Intent on May 13, 2011, instead Canada waited until the eve of the holiday season, knowing that government offices would be unavailable and staff would be away. These issues as to scope and timing should have been addressed by a tribunal that was appropriately constituted, but Canada denied the US Investor any opportunity to raise these issues by

failing to carry out its NAFTA obligation to make timely appointments to permit a tribunal to be constituted.

15. Inherent in the NAFTA is a fair and transparent legal process designed to adjudicate claims by an independent international tribunal constituted for that purpose. Canada is obligated under NAFTA Article 1105 to provide natural justice, fairness and due process to the Investment of the US Investor.

16. Canada is obligated under NAFTA Articles 1102 and 1103 not to take measures less favourable against this US Investor than provided to investors or to investment of investors from Canada or other states. Canada is prohibited from taking measures that are equivalent to protectionism, in order to disproportionately benefit Canadian investors. Consequently, Canada is required to provide the US Investor treatment no less favourable than that accorded to domestic investors in like circumstances, that being other investors filing Notices of Intent and commencing NAFTA Chapter 11 dispute resolution arbitration.

17. The effect of Canada's measure has caused loss and damage to SMC and to the US Investor's business, including the substantial deprivation of the US Investor's vested rights to pursue its claim under Chapter 11 of the NAFTA.

IV. NAMES AND ADDRESSES OF THE PARTIES

The US Investor

18. The US Investor, **St. Marys VCNA, LLC**, is organized in the State of Delaware in the United States of America. It owns and controls a variety of cement and building related investments in Canada and in 10 States of the United States.

The Investment has its registered office at:

2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

The Investment also has an office in Henderson, Nevada located at:

871 Coronado Center Drive, Suite 200-236
Henderson, Nevada 89052

The Respondent

19. The Respondent is the **Government of Canada ("Canada")** represented through:

Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8 Canada

V. BREACH OF OBLIGATIONS

20. The US Investor claims that Canada has violated at least the following provisions of Section A of NAFTA Chapter 11:

Article 1102 – National Treatment
Article 1103 – Most Favoured-Nation Treatment
Article 1105 – International Law Standards of Treatment
Article 1113 – Denial of Benefits

These breaches have resulted in damage to the US Investor.

21. The Applicable provisions of the NAFTA are set out in Annex I to this Notice. The applicable provisions of the NAFTA include, but are not limited to, NAFTA Chapters 1, 2 and 11.

VI. ISSUES RAISED

22. Has Canada taken measures inconsistent with its obligations under Section A of the NAFTA, including Articles 1102, 1103, and 1105 Chapter 11 of the NAFTA? What amount of compensation is to be paid to the US Investor as a result of Canada's failure to comply with its obligations under the NAFTA?

VII. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

23. The US Investor respectfully claims:

a. Damages in the minimum amount of US$275 million as compensation for the loss, harm, injury, loss of reputation and damage caused by, or resulting from, Canada's breach of its obligations under Part A of Chapter 11 of the NAFTA;

b. All costs incurred by the US Investor from the initial Notice of Intent to Canada's decision to deny benefits to the US Investor;

c. Subsequent costs with respect to this claim against the Government of Canada;

d. Pre-award and post-award interest at a rate to be fixed by the Tribunal; and

e. Further relief as counsel may advise and the Tribunal may deem appropriate.

DATE OF ISSUE: March 23, 2012

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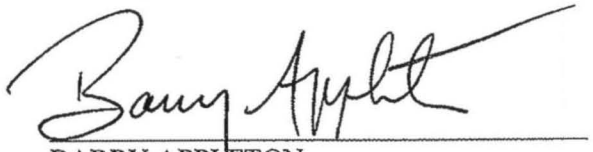

BARRY APPLETON
Counsel for the US Investor

SERVED TO: Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8, Canada

Annex I- Applicable NAFTA Provisions

The applicable provisions of the NAFTA include Chapters 1, 2, and 11, and include, but are not limited to the following:

Chapter One: Objectives

Article 102: Objectives

1. *The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:*

   a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

   b) promote conditions of fair competition in the free trade area;

   c) increase substantially investment opportunities in the territories of the Parties;

   d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

   e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

   f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. *The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.*

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

Chapter Two: General Definitions

Article 201: Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

Commission *means the Free Trade Commission established under Article 2001(1) (The Free Trade Commission);*

Customs Valuation Code *means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes;*

days *means calendar days, including weekends and holidays;*

enterprise *means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;*

enterprise of a Party *means an enterprise constituted or organized under the law of a Party;*

existing *means in effect on the date of entry into force of this Agreement;*

Generally Accepted Accounting Principles *means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;*

goods of a Party *means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;*

Harmonized System (HS) *means the Harmonized Commodity Description and Coding System, and its legal notes, and rules as adopted and implemented by the Parties in their respective tariff laws;*

measure *includes any law, regulation, procedure, requirement or practice;*

national *means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;*

originating *means qualifying under the rules of origin set out in Chapter Four (Rules of Origin);*

person *means a natural person or an enterprise;*

person of a Party *means a national, or an enterprise of a Party;*

Secretariat *means the Secretariat established under Article 2002(1) (The Secretariat);*

state enterprise *means an enterprise that is owned, or controlled through ownership interests, by a Party; and*

territory *means for a Party the territory of that Party as set out in Annex 201.1.*

2. *For purposes of this Agreement, unless otherwise specified, a reference to a state or province includes local governments of that state or province.*

Chapter Eleven: Investment

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.*

Article 1103: Most-Favored-Nation Treatment

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

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).*

Article 1113: Denial of Benefits

1. *A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party:*

   (a) does not maintain diplomatic relations with the non-Party; or

   (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. *Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.*