

### ***Centurion Health v Canada (NAFTA Chapter 11)***

AREAS OF POLICY AFFECTED: health care (public health insurance), privatization (health care).

CASE SUMMARY: The claimant, a U.S. national, and his company Centurion Health sued Canada under NAFTA Chapter 11. The lawsuit arose after the claimant's plans to open a private health care facility in Vancouver, Canada, fell through. The centre was to offer private surgical services ranging from cosmetic and reconstructive plastic surgery to general surgery. According to the claimant, federal, provincial, and municipal measures had prevented the project from proceeding. The claimant argued that Canada had breached several NAFTA Chapter 11 provisions, including national treatment and the minimum standard of treatment, and sought (U.S.) \$160,000,000 (plus interest and costs) in compensation.

The tribunal never decided the claim. The proceedings were terminated because the investor did not pay a (U.S.) \$100,000 deposit, as required by ICSID for the arbitration to proceed. Canada never filed any submissions in response to the claimant's substantive allegations.

COMMENT: This was the first case in which NAFTA Chapter 11 was used to challenge the *Canada Health Act* and, by extension, publicly-funded health care services in Canada. It is not clear whether the claim would have succeeded, had the tribunal decided it. It demonstrates, however, that public health care is open to investment treaty claims, especially as some provincial governments move to increased privatization of health care services.

Source: [www.iiapp.org](http://www.iiapp.org) (May 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see [www.italaw.com](http://www.italaw.com)). This report was produced by a research team coordinated by professor Gus Van Harten ([gvanharten@osgoode.yorku.ca](mailto:gvanharten@osgoode.yorku.ca)) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at [www.iiapp.org](http://www.iiapp.org). © Gus Van Harten 2011. *You may forward or re-publish the information in this report with attribution to [www.iiapp.org](http://www.iiapp.org).*