

Court File No. 03-CV-23500

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**UNITED MEXICAN STATES**

**Applicant**

**- and -**

**MARVIN ROY FELDMAN KARPA**

**Respondent**

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**MARVIN KARPA'S REPLY SUBMISSIONS ON COSTS**

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December 17, 2003

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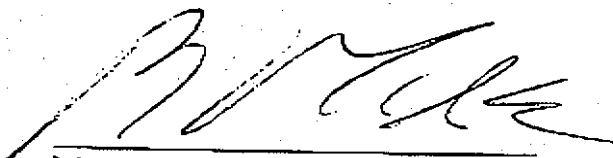
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1. Mexico takes issue with Mr. Karpa's claims for disbursements relating to the Loperena affidavit and the fee for Mexican counsel. Through inadvertence, the invoices for these disbursements were not included in Mr. Karpa's original materials, and are now attached. Mexico raised the issue of the applicability of Mexican law and article 2105 of NAFTA. Mr. Karpa was obliged to respond to those arguments in case this Honourable Court decided that it was necessary to consider these issues. The charges for the affidavit and Mexican counsel's time are reasonable and were entirely necessitated by the position Mexico took (unsuccessfully) on this application. Mr. Karpa should not have to bear any of these costs.
2. Mexico also argues against substantial indemnity costs. Mexico should have accepted Mr. Karpa's September 17<sup>th</sup> offer for at least two reasons. Most importantly, had Mexico settled before the hearing, this proceeding would have remained a private matter of no binding force except between the disputing parties and in respect of this particular case. Now, Mexico is faced with binding precedent against its position on the applicability of article 2105 of NAFTA.

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3. Mexico should have accepted Mr. Karpa's offer because it would have cost less than what Mexico must now pay. The offer agreed to forego interest on approximately \$ 2.2 million (Canadian). The interest rate provided for in the arbitral award is fixed every Thursday, and was fixed on Thursday, September 18, 2003 at 4.77%. Accordingly, interest on the principal amount was 1,236.89 pesos per day. The 77 days between the offer and this Court's decision resulted in an additional 95,240.00 pesos owing, or \$11,124.14 Canadian dollars. As of today's date, there is an additional \$2,022.56 Canadian dollars owing for a total interest foregone of \$13,146.70 which Mexico could have saved itself had it accepted the offer<sup>1</sup>. By contrast, the difference between Mr. Karpa's substantial indemnity costs and his partial indemnity costs is only \$6,364.36 (see paragraphs 1 and 2 of original submissions). Mr. Karpa clearly bettered his offer in both a monetary and moral sense.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>TH</sup>, DAY OF  
DECEMBER 2003**



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<sup>1</sup> In the *Walker Estate v. York Finch General Hospital* case, cited by Mexico, the plaintiff's offer only removed \$100 from the agreed-upon damages.

UNITED MEXICAN STATES  
Plaintiff  
and  
MARVIN ROY FELDMAN KARPA  
Defendant

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Proceeding commenced at Ottawa

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COSTS**

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