

Corporate Attacks: Energy

Case Study: Research & Development

Investor-State Dispute Settlement (ISDS) grants corporations shocking powers to attack the laws we rely on for a clean environment, financial stability, affordable medicines, safe food and decent jobs. ISDS empowers multinational corporations to sue our governments before panels of three corporate lawyers. The corporate lawyers can award the corporations unlimited sums to be paid by America's taxpayers, including for the loss of expected future profits the corporations claim they would have earned if the domestic law was never enacted. The corporate lawyers' decisions are not subject to appeal and the amount they can order taxpayers to give corporations has no limit.

ExxonMobil and Murphy Oil v. Canada *Investor Win (awarded \$13.2 million plus interest, additional claims pending)*

In 2007 Mobil Investments Canada, owned by U.S. oil giant ExxonMobil, and U.S.-based Murphy Oil Corporation [used NAFTA to launch an ISDS case against a Canadian province's policies relating oil exploration contracts](#). The "Canada-Newfoundland Offshore Petroleum Board's Guidelines for Research and Development Expenditures" require oil extraction firms to pay fees to support research and development in one of Canada's poorest provinces, Newfoundland and Labrador. [The guidelines apply to domestic and foreign concession holders alike](#). Offshore oil fields in the region, developed after significant infusions of public and private funds, were discovered to be far larger than anticipated, prompting a [variety of new government measures](#) that applied to all concession holders.

In their NAFTA claim, the oil corporations argued that the new guidelines violated NAFTA's prohibition on performance requirements. In 2012, a tribunal majority ruled in favor of Mobil and Murphy Oil, deeming the requirement to use larger-than-expected oil revenue to fund research and development as a NAFTA-barred performance requirement. That the policy applied to both domestic and foreign investors was irrelevant. NAFTA's investment chapter, like those of most ISDS-enforced agreements, includes among the substantive rights it guarantees investors a flat ban on signatory nations' establishment or maintenance of various requirements that investors must meet.

The [tribunal's order for Canada to pay \\$13.2 million plus interest](#) for damages incurred until 2012 was made public in February 2015. The Canadian government attempted to have the award “set aside”, arguing that the tribunal had exceeded its jurisdiction in making the award – but [that application was denied](#). Furthermore, in its ruling, the tribunal determined that, as long as the Offshore Petroleum Board’s guidelines remained in place, Canada would be in “[continuing breach](#)” of its NAFTA obligations “[resulting in ongoing damage](#)” to the oil company’s interest, so Mobile [launched another case demanding even more damages](#) since 2012, so Canada may end up having to pay much more.

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