

*Reply Attention of*     *Robert Wisner*  
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*Our File No.*         *0093739*  
*Date*                     *September 8, 2009*

**DELIVERED**

Hon. David J. H. Thompson  
Prime Minister and Minister of Finance  
Government Headquarters  
Bay Street  
St. Michael  
Barbados

Dear Prime Minister

**Re:    Mr. Peter Allard**

We are the solicitors for Mr. Peter A. Allard. Please find enclosed a written notice of an investment dispute pursuant to Article XIII(2) of the Agreement between the Government of Canada and the Government of Barbados for the Promotion and Reciprocal Protection of Investments.

Mr. Allard and his representatives are available to meet with representatives of the government of Barbados at a mutually convenient place and time in order to pursue an amicable settlement of this dispute, to the extent possible, as required by Article XIII(1) of the Agreement.

Yours truly,



Robert Wisner

/ped  
Attach.

cc:     Sen. Hon. Darcy W. Boyce  
         Minister of State  
         Government Headquarters  
         Bay Street  
         St. Michael  
         Barbados

Sen. Hon Maxine P.O. McClean  
Minister of Foreign Affairs and Foreign Trade  
#1, Culloden Road  
St. Michael  
Barbados

The Hon. Denis Lowe, M.P., Minister  
Ministry of Environment, Water Resources and Drainage 1st Floor, S.P. Musson Building Hincks Street  
Bridgetown, Barbados

Her Excellency Ruth Archibald, High Commissioner Designate  
Canadian High Commission Bishop's Court Hill St Michael Barbados

**IN THE MATTER OF THE AGREEMENT BETWEEN  
THE GOVERNMENT OF CANADA AND  
THE GOVERNMENT OF BARBADOS  
FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

BETWEEN:

**PETER A. ALLARD**

Investor

and

**THE GOVERNMENT OF BARBADOS**

Contracting Party

**NOTICE OF DISPUTE**

**McMILLAN LLP**  
Barristers and Solicitors  
Brookfield Place, Suite 4400  
Bay Wellington Tower, 181 Bay Street  
Toronto, Ontario, Canada  
M5J 2T3

Robert Wisner  
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Counsel to the Investor

Pursuant to Article XIII(2) of the *Agreement between the Government of Canada and the Government of Barbados for the Promotion and Reciprocal Protection of Investments* (the "Agreement"), Mr. Peter A. Allard hereby delivers notice in writing to the Government of Barbados of the existence of a dispute under the Agreement. The Agreement was signed at Bridgetown on May 29, 1996 and entered into force on January 17, 1997.

**I. Mr. Allard's Investments in Barbados**

1. The Investor, Mr. Peter A. Allard, is a Canadian citizen. He is a retired attorney, businessman and philanthropist.
2. Mr. Allard has invested approximately US\$35 million to acquire and develop a world-class eco-tourism project in Barbados known as the Graeme Hall Nature Sanctuary (the "Sanctuary").
3. The Sanctuary consists of 34.25 acres of natural wetlands situated within the 240 acre Graeme Hall green space on the south coast of Barbados. It is the last significant mangrove forest and migratory bird habitat in Barbados.
4. Mr. Allard acquired the land for the Sanctuary in 1994 and 1995 through his indirectly wholly owned corporation, Graeme Hall Nature Sanctuary Inc. ("GHNSI"), formerly Graeme Hall Bird Sanctuary Inc. GHNSI is incorporated under the laws of Barbados.
5. Following its acquisition of the land and receipt of all necessary approvals, GHNSI developed the Sanctuary into an eco-tourism facility that attracted tens of thousands of visitors from the time of its opening in April 2004 until its closing in March 2009 due to the measures of Barbados described below.
6. GHNSI has contributed to the sustainable development of Barbados by:
  - (a) performing environmental studies of the Graeme Hall wetlands;
  - (b) building boardwalks and visitor facilities at the Sanctuary;
  - (c) restoring the natural environment of the Sanctuary;
  - (d) training and employing administrative staff, technical staff and educators; and
  - (e) providing tourism and educational services to both Barbadian residents and foreign tourists.
7. Mr. Allard acquired his interests in the Sanctuary in the expectation that GHNSI would eventually earn revenues from its tourism and educational services that would offset the costs of acquiring, developing and operating the Sanctuary. The purpose of his investment was to create a financially self-sustaining enterprise that would be able to conserve the environmental heritage of Barbados in perpetuity.

8. Thus, Mr. Allard is a Canadian “investor” in Barbados as defined in Article I(g)(i) of the Agreement and his interests in the Sanctuary are “investments” in the territory of Barbados as defined in Article I(f) of the Agreement. In particular, though not exclusively, Mr. Allard indirectly owns or controls:

- (a) all movable and immovable property in the Sanctuary; and
- (b) shares, stock and debentures in GHNSI, a private, for-profit business enterprise.

## II. The Actions and Omissions of Barbados Giving Rise To The Dispute

9. The dispute arises out of actions and omissions of Barbados that have caused or permitted environmental damage to the Sanctuary, thereby destroying the value of Mr. Allard’s investments in Barbados.

### A. *The Legal Framework Governing The Sanctuary*

10. The Sanctuary is located within the Graeme Hall wetlands, a site protected under the *Convention on Wetlands of International Importance* (the “RAMSAR Convention”).<sup>1</sup> Barbados ratified the RAMSAR Convention on April 12, 2006 and designated Graeme Hall on the List of Wetlands of International Importance. It thereby became obligated to formulate its planning so as to promote the conservation of the Graeme Hall wetlands.<sup>2</sup>

11. Barbados’ treatment of the Sanctuary is also subject to obligations contained in the *United Nations Convention on Biological Diversity* (the “Biodiversity Convention”).<sup>3</sup> Barbados became a party to the Biodiversity Convention on December 10, 1993 and has acknowledged that the Graeme Hall wetlands (including the Sanctuary) are a major biodiversity resource for Barbados.<sup>4</sup> Barbados thereby became obligated to integrate, as far as possible, the conservation of the Graeme Hall wetlands into its relevant plans, programmes and policies.<sup>5</sup>

12. In recognition of the environmental sensitivity of the Graeme Hall wetlands, Barbados agreed to maintain the surrounding Graeme Hall green space as an agricultural area and urban open space in its 1988 National Physical Development Plan.<sup>6</sup>

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<sup>1</sup> *Convention on Wetlands of International Importance especially as Waterfowl Habitat*. Ramsar (Iran), 2 February 1971. UN Treaty Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987.

<sup>2</sup> RAMSAR Convention, Article 3

<sup>3</sup> *Convention on biological diversity*. Concluded at Rio de Janeiro (Brazil) on 5 June 1992. UN Treaty Series No.30619

<sup>4</sup> Government of Barbados Report to the Convention on Biological Diversity, *A National Biodiversity Strategy & Action Plan for Barbados*, July 2002 at pp.35, 53-54 and 62

<sup>5</sup> Biodiversity Convention, Article 6

<sup>6</sup> The *Town and Country Planning Act* (cap.240) provides for the preparation of a Physical Development Plan which provide for the allocation of lands as open spaces, bird and other sanctuaries.

13. The Sanctuary is also subject to the protections and obligations of, *inter alia*, the *Marine Pollution Control Act*, L.R.O. 1998, CAP.392A (the “Pollution Act”). The Pollution Act creates the offence of polluting the environment and establishes a Director to investigate the environment and prevent, reduce and control pollutants. At the same time, the Pollution Act creates potential liabilities to occupiers of land who fail to reduce levels of pollution - even if they are not the source of the pollution itself.

*B. Barbados’s Failure to Provide Full Protection and Security*

14. Barbados has consistently failed to enforce its domestic environmental laws and abide by its international treaty commitments with respect to the Sanctuary. In particular, Barbados has failed to:
- (a) prevent its state agency, the Barbados Water Authority, from repeatedly discharging raw sewage and other effluents into the Graeme Hall wetlands from its South Coast Sewage Treatment facility. Barbados is responsible for the actions of the Barbados Water Authority under international law;
  - (b) repair, maintain or adequately operate drainage structures into the Graeme Hall wetland that regulate water levels, mosquito infestations and the biologic health of the wetland;
  - (c) construct or maintain the bisecting canal in the Graeme Hall wetlands and other roads using appropriate wetland roadbed technologies, causing interruption of wetland water flows and silting of the wetland;
  - (d) investigate or prosecute the sources of runoff of grease, oil, pesticides, herbicides and other effluents from neighbouring areas; and
  - (e) investigate or prosecute poachers that have threatened the wildlife at the Sanctuary.
15. Barbados has failed to take any such measures despite formal offers of technical and financial assistance from GHNSI.
16. Barbados’ actions and omissions have severely damaged the natural ecosystem that GHNSI relies upon to attract visitors. They have also unfairly exposed it to substantial environmental liabilities under the Pollution Act as the occupier of the land. As a result, they have violated Barbados’ obligations under the Agreement to provide full protection and security to investments of Canadian investors.

*C. Barbados’ Failure To Provide Fair and Equitable Treatment and Compensate for Expropriation*

17. In making his investment in the Sanctuary, Mr. Allard reasonably relied upon, *inter alia*, the existence of upland environmental buffers in the 1988 National Physical Development Plan. He was assured by government authorities that the “Planning Office has a very stringent policy on significant environmental areas, whose fragility is in need

of protection. It is felt that such areas require management as opposed to development and should be left for posterity”.<sup>7</sup>

18. Notwithstanding these assurances, in early 2008, the Parliament of Barbados formally adopted a new National Physical Development Plan. The Amended National Physical Development Plan, which had first been announced in 2003, revoked the previous commitments and legal framework that had been the basis for Mr. Allard’s investment. It did so by permitting development of most of the Graeme Hall green space. This land use change has caused, and will result in, further damage to the Sanctuary through increased run off of pollutants.
19. The actions of Barbados in revoking the environmental buffers for the Graeme Hall wetlands in the 1988 National Physical Development Plan violate its obligations to provide fair and equitable treatment in accordance with principles of international law. The resulting re-zoning of the lands has also led to an indirect expropriation of Mr. Allard’s interests in the Sanctuary without payment of compensation.
20. As a result of Barbados’ actions and omissions, Mr. Allard has suffered substantial losses. Mr. Allard will provide further particulars regarding the amount of his monetary losses to Barbados in future consultations to achieve an amicable settlement pursuant to Article XIII(1) of the Agreement.

#### **IV. Applicable Provisions of the Agreement**

21. These measures taken or not taken by Barbados have resulted in breaches of Articles II(2) and VIII(1) of the Agreement which provide that:

Article II – Establishment, Acquisition and Protection of Investments

2. Each Contracting Party shall accord investments or returns of investors of the other Contracting Party:

- (a) fair and equitable treatment in accordance with principles of international law, and
- (b) full protection and security.

...

Article VIII – Expropriation

1. Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the fair market value of the investment or returns expropriated immediately before the expropriation

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<sup>7</sup> Letter dated July 1995 from Mark Cummins, Chief Town Planner, to Peter Allard.

or at the time the proposed expropriation became public knowledge, whichever is the earlier, shall be payable from the date of expropriation with interest at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

**V. Legal Representative and Service of Documents**

22. Any correspondence and notices regarding this dispute should be directed to:

**McMILLAN LLP**  
Barristers and Solicitors  
Brookfield Place, Suite 4400  
Bay Wellington Tower, 181 Bay Street  
Toronto, Ontario  
M5J 2T3

Robert Wisner  
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**VI. Relief Sought**

23. Mr. Allard requests that Barbados provide restitution to GHNSI of its property interests in the Sanctuary, in accordance with Article XIII(9)(b) of the Agreement, by taking measures to fully repair all damage to the Sanctuary caused by its breaches of the Agreement.
24. In the alternative, Mr. Allard requests that Barbados pay monetary compensation in the amount required by the Agreement.
25. Mr. Allard and his representatives are available to meet with representatives of Barbados to pursue an amicable settlement, to the extent possible, as required by Article XIII(1) of the Agreement.



Date: September 8, 2009



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Counsel for the Investor

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