

**October 24, 2001**

# **PETITION**

**on**

**Labor Law Matters Arising in the United States**

**submitted to the**

**National Administrative Office (NAO) of Mexico**

**under the**

**North American Agreement on Labor Cooperation (NAALC)**

**Regarding the Failure by Governor George Pataki, the United States of America, the State of New York, the New York Workers' Compensation Board (the "Board"), and Board Chairman Robert Snashall to Provide Timely and Adequate Compensation for Occupational Injuries and Illnesses and to Implement Standards to Minimize the Causes of Occupational Injuries and Illnesses in the State of New York.**

**submitted by:**

**Chinese Staff and Workers' Association (CSWA), National Mobilization Against SweatShops (NMASS), Workers' Awaaz, Asociacion Tepeyac, Mussa Abdulkader, Aleksandra Baran, Tomas Carillo, Lan Mei Chan, Juan Flores, Eva Herrera, Stanislawa Kocimska, Huang Sheng Ku, Maria Labuz, Zhi Hua Qian, Agueda Santana, Arkadiusz Tomaszewski, Jinen Zhou**

## PRELIMINARY STATEMENT

Because the State of New York administers a claim system for occupational injuries and illnesses that provides inadequate and untimely compensation to workers, it is inconsistent with the labor-side agreement to the North American Free Trade Agreement ("NAFTA"). The NAFTA labor-side agreement mandates that each signatory nation "effectively enforce its labor law"<sup>1</sup> and "ensure that its administrative. . .proceedings for the enforcement of its labor law are fair, equitable and transparent"<sup>2</sup> and, "that such proceedings are not unnecessarily complicated and do not entail. . .unwarranted delays."<sup>3</sup> The State of New York violates the United States' obligations under these Articles. In addition, the State of New York contravenes the United States' promise under the NAFTA labor-side agreement to promote Labor Principle (10), which mandates compensation for occupational injuries and illnesses, and Labor Principle (9), which requires the implementation of standards to minimize the causes of occupational injuries and illnesses.<sup>4</sup>

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<sup>1</sup>The North American Agreement on Labor Cooperation (the "NAALC"), Article 3.

<sup>2</sup>NAALC, Article 5.

<sup>3</sup>Id.

<sup>4</sup>NAALC, Annex 1.

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## LIST OF EXHIBITS

- A. Affidavit of Chinese Staff and Workers' Association
- B. Affidavit of National Mobilization Against SweatShops
- C. Affidavit of Asociacion Tepeyac
- D. Affidavit of Workers' Awaaz
- E. Affidavit of Mussa Abdulkader
- F. Affidavit of Aleksandra Baran
- G. Affidavit of Tomas Carillo
- H. Affidavit of Lan Mei Chan
- I. Affidavit of Juan Flores
- J. Affidavit of Eva Herrera
- K. Affidavit of Stanislaw Kocimska
- L. Affidavit of Huang Sheng Ku
- M. Affidavit of Maria Labuz
- N. Affidavit of Zhi Hua Qian
- O. Affidavit of Agueda Santana
- P. Affidavit of Arkadiusz Tomaszewski
- Q. Affidavit of Jinen Zhou

LIST OF RELEVANT ATTACHED MATERIALS

New York Workers' Compensation Law §§ 1, 2, 10 (2001)

*Workers Comp. Falling Down on the Job*, Consumer Reports 2 (Feb. 2000)

New York State Bar Association, *Report of the Special Committee on Administrative Adjudication* (Oct. 21, 1999).

I. Introduction and Summary of the Case

A. Introduction

In contravention of the international obligations of the United States, the New York Workers' Compensation system imposes unwarranted delays on workers seeking compensation for occupational injuries and illnesses. These delays severely impact a vulnerable population of workers suffering from employment-related injuries and illnesses. Workers do not receive adequate compensation for the whole or partial loss of their livelihoods. They are unable to seek necessary medical care in a timely manner, thereby worsening their injuries and illnesses. In some cases, they are forced to go back to work to make ends meet. Delays in adjudication exhaust the resources of working families, undermine a worker's ability to raise children (with young children often having to care for injured parents), and force healthy family members into the workforce to support their injured relatives. Finally, delays in the adjudication of claims remove incentives for employers to prevent occupational injuries and illnesses. The New York Workers' Compensation system is in violation of international law and imposes physical and psychological pain and economic destitution on injured and ill workers and their families.

Delays occur in the claim system at the behest of parties with a direct financial interest in the postponement and/or minimization of compensation awarded for occupational injuries and illnesses. Delays are tolerated by administrators because the system remains unaccountable to workers. Workers have little recourse when their claim proceedings are delayed. In some cases, workers have been forced to attend up to 20 hearings over as much as a 10 year period in pursuit of compensation for occupational injuries and illnesses.

Pursuant to the labor side agreement, negotiated by the United States government as a

condition of supporting the North American Free Trade Agreement ("NAFTA"), persons in one signatory country may file a petition to protest another signatory nation's failure to uphold minimum standards of protections for workers. Because the unwarranted delays in adjudication of Workers' Compensation claims in New York result in harm to a vulnerable and growing population of injured and ill workers, the United States is in violation of the NAFTA side agreement on labor.

B. Summary of Case

When a worker suffers an injury or illness in the course of her employment, she submits a claim to the State of New York Workers' Compensation Board, an agency of the executive branch of the state government of New York (the "Board"), in accordance with New York State Workers' Compensation Law<sup>5</sup> and the rules and regulations promulgated under such law. These claims are subject to a quasi-judicial process, in which administrative law judges employed by the Board determine whether a worker presents a valid claim, the extent to which a worker has been injured or made ill due to their employment, and the amount and configuration of compensation payments for such injury or illness. This system is the exclusive remedy for workers with occupational injuries and illnesses in New York, replacing the common law tort action,<sup>6</sup> and is an important component of the occupational health and safety regime in the United States.<sup>7</sup> New York courts have recognized that the provision of a "swift and sure" source

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<sup>5</sup>N.Y. Workers' Compensation Law §§ 1 et seq.

<sup>6</sup>See infra Section III.B.

<sup>7</sup>See infra Section VI.A.

of benefits is the central purpose of the Workers' Compensation laws.<sup>8</sup> The North American Agreement on Labor Cooperation (the "NAALC")<sup>9</sup> reflects commitments by the signatory nations to provide compensation to workers or their dependents in cases of occupational injuries and illnesses<sup>10</sup> without unwarranted delays.<sup>11</sup>

Delays occur in the Workers' Compensation system because administrative law judges routinely postpone cases, on their own initiative or on the request of insurance companies and employers. A significant number of employers in New York pay insurance premiums to private insurance companies on a per-employee basis so that they are indemnified against liability for occupational injuries and illnesses; some employers self-insure; and others are covered by the State Insurance Fund, an entity created by the State of New York to cover smaller businesses. Thus, workers' claims are usually opposed by the lawyers of insurance companies (who assume liability for compensation claims) and certain employers (who self-insure). These entities earn interest on unpaid compensation through various investment vehicles and force workers to accept low monetary settlements of their claims out of sheer desperation. Insurers and employers routinely request to delay proceedings; the Board routinely grants those requests, and fails to block such tactics and award compensation in a timely manner.

Specifically, this submission challenges a pattern and practice of the United States which

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<sup>8</sup>E.g., O'Rourke v. Long, 41 N.Y.2d 219, 359 N.E.2d 1347, 391 N.Y.S.2d 553 (1976)("It is well recognized that the compensation statute was designed to provide a swift and sure source of benefits to the injured employee or to the dependents of the deceased employee.").

<sup>9</sup>North American Agreement on Labor Cooperation, 32 I.L.M. 1499 (1993).

<sup>10</sup>NAALC, Annex 1.

<sup>11</sup>NAALC, Article 5(1)(d):

subjects workers to unwarranted delays, as they attempt to gain compensation for occupational injuries and illnesses. Workers have little recourse when the Board demands that they make multiple appearances before administrative law judges, produce evidence and testimony for their cases over multiple hearings, and repeatedly submit themselves to medical examinations by doctors hired by opposing parties. Workers have little recourse when administrative law judges make procedural and factual errors that add many years to the pendency of their claims. The individual petitioners<sup>12</sup> have had up to 20 hearings over as much as 10 years as they have navigated the adjudication process administered by the Board.

This submission also concerns the prevention of injuries and illnesses, because the Workers' Compensation system is an integral element of a legal regime in which insurers penalize employers with multiple injured workers by imposing higher insurance premiums.<sup>13</sup> The threat of higher monthly insurance premiums for employers whose employees frequently report injuries and apply for Workers' Compensation is supposed to create an incentive for employers to prevent illnesses and injuries. However, because claims are delayed, forcibly settled at low amounts, or dismissed by the Board, the incentive structure is rendered ineffective and workplaces remain unsafe.

Petitioners seek action from the National Administrative Office (NAO) of Mexico in an effort to bring the United States into compliance with its obligation under the NAALC. Petitioners aim to ensure that the administrative proceedings governing compensation for

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<sup>12</sup>See Exhibits E-Q.

<sup>13</sup>See infra Section VI.A.

occupational injuries and illnesses and the underlying statutes do not subject claimants to unwarranted delays, that such compensation be awarded fairly, equitably, and transparently, and that such compensation system implement standards that minimize the causes of such injuries and illnesses.

## II The Petitioners

Petitioner Chinese Staff & Workers' Association ("CSWA") is a membership-based community organization and workers' center in New York City composed of workers of all trades, particularly from the garment, restaurant, domestic, and construction industries. Founded in 1979, it is one of the oldest workers' centers in the country. With over 1,300 members and two centers in Manhattan's Chinatown and Brooklyn's Sunset Park, CSWA organizes workers to advance rights and dignity in the workplace and community, to speak as a voice that challenges sweatshop conditions, and to promote workers' leadership in efforts for economic and social justice.

Petitioner National Mobilization Against SweatShops ("NMASS") is a membership-based group organizing injured and not-yet-injured workers to pressure the Workers' Compensation system to recognize and compensate them for their work-related injuries in a timely fashion, to pay interim benefits while workers await decisions of the Board, to provide good health care, and to be accountable to working people. NMASS is also pressing for the legal right of workers to refuse overtime hours without risking any penalization by employers, in order to prevent more workers from suffering occupational-health problems.

Petitioner Asociacion Tepeyac is a non-profit community based-organization whose

mission is to promote the social welfare and human rights of Mexican immigrants, specifically the undocumented in New York City. The Association informs and educates immigrants and their families about their rights and resources. Founded in September, 1997 by Mexican community leaders, the Association is the only public resource dedicated to organizing Mexican immigrants in the five boroughs of New York City. Through its grassroots structure and leadership the Association serves and influences over 10,000 members.

Petitioner Workers' Awaaz is a membership-based community organization of South Asian women workers, particularly domestic workers, in New York City. Founded in 1997, it is one of the first South Asian workers' centers in the country. Workers' Awaaz organizes workers to advance their rights and dignity in the workplace and community, to expose sweatshop conditions, and to build worker leaders to fight for economic and social justice. During our work in the past few years, it has organized what has so far been an invisible workforce of domestic workers - hidden behind the closed doors of employers' private homes. Workers' Awaaz is a member of the "It's About Time" Campaign for reform of the Workers' Compensation System in New York, along with CSWA and NMASS.

Petitioner Mussa Abdulkader immigrated to the United States from Eritrea in 1979 and currently resides in New York, New York. Mr. Abdulkader heard a loud crack and suffered from intense lower back pain as he lifted a 45-pound trash bag while carrying out his duties as a custodian at Public School 126 in the Bronx, New York in September 1995. At the emergency room he discovered that he had suffered a hernia and a herniated disc and required surgery. Mr. Abdulkader filed a Workers' Compensation claim on September 14, 1995. The medical witness for the insurer missed at least four hearings which were consequently adjourned by the Board.

Petitioner Aleksandra Baran currently resides in Brooklyn, New York. Ms. Baran, a home attendant with Family Homecare Services, was hit by a car while shopping for a client in January 1994. She lost consciousness and suffered fractures in her knee and ankle, as well as injuries to her hand, left shoulder, back, and neck. During the first five years that Ms. Baran worked as a home attendant, she worked 24-hour shifts at approximately \$5.00 per hour. Later, she worked 12-hour shifts, seven days a week, at a wage of approximately \$7.00 per hour. Ms. Baran filed a Workers' Compensation claim soon after her accident. Her case was closed for unknown reasons in 1997, at which time her benefits were also terminated. On Ms. Baran's initiative the case has been reopened but benefits were not reinstated. She continues to wait for a final decision on her claim, 7 and a half years after filing it, and remains unable to work.

Petitioner Juan Flores, a car mechanic, currently resides in Long Island City, New York. Mr. Flores was hit by a rolling car from behind and pinned to a wall in 1992 as an employee at the F. Gomez Service Station in Brooklyn, New York, where he had been working for 11 years. Mr. Flores received injuries to his neck, lower back, and both legs, has not been able to participate meaningfully in the workforce, and now has a degenerative condition called chronic spinal stenosis. He filed a Workers' Compensation claim in June 1992, has had 10 hearings over 9 years, and continues to await a final decision on his claim. The Board terminated Mr. Flores' benefits in 1993.

Petitioner Stanislaw Kocimska has no permanent home. Ms. Kocimska, formerly a home attendant in New York, was injured as she caught a client who was falling from his bed to the floor. Ms. Kocimska's back and knee were immobile for some time after the accident. She filed a Workers' Compensation claim shortly after her accident in 1994. The Board did not grant

Ms. Kocimska any benefits and she only received medical treatment for 3 months after the accident. During the 4 and a half years that Ms. Kocimska waited for a decision from the Board, she lost her apartment and became homeless. She survives by begging for money at Polish Churches in New York.

Petitioner Huang Sheng Ku immigrated to the United States from China in 1987 and currently resides in New York, New York. Ms. Ku was walking backwards, supporting a stack of boxes on a forklift, when she fell over a protruding machine part on the factory floor of a packaged food company. She broke her left leg and injured her lower back and two of the fingers of her left hand. Ms. Ku filed a Workers' Compensation claim shortly after her accident in 1993. She has been subjected to 21 hearings over 7 and a half years and currently does not receive Workers' Compensation benefits.

Petitioner Maria Labuz immigrated to the United States from Poland and currently resides in Brooklyn, New York. Ms. Labuz was working as a office cleaner in 1988 when she slipped and hit her head on a waxed floor, losing hearing in her left ear and injuring the entire left-side of her body. She filed for Workers' Compensation in 1988 and her benefits were cut off after 8 months. A doctor told Ms. Labuz to return to work, which she did for three years, before suffering a second workplace injury when she was hit by a loaded cart in a factory. Her case has been open since 1991 and there have been 20 hearings over 10 years. Ms. Labuz has been forced to borrow money to receive ongoing medical treatment for her condition.

Petitioner Agueda Santana currently resides in Ridgewood, New York and used to work as a home attendant with Institute Home Care Services. Ms. Santana, six months pregnant at the time, was pushed down the stairs by a client with Alzheimer's Disease in September 1996. She

was confined to her bed for three months until the birth of her baby and then filed a Workers' Compensation claim shortly thereafter. Ms. Santana suffered permanent injuries to her legs, shoulder, back, and arm, has been unable to work, and has lost her apartment. Ms. Santana's case remains open, after 15 hearings over 5 years.

Petitioner Arkadiusz Tomaszewski immigrated to the United States from Poland in 1986 and currently resides in Brooklyn, New York. Mr. Tomaszewski removed asbestos from walls and ceilings. In 1992, working at worksite with inadequate ventilation and under other unsafe conditions, he inhaled fumes from an industrial glue, started to feel nauseous and began vomiting. Mr. Tomaszewski checked in to an emergency room with one of his co-workers and has suffered from headaches, cold sweats and rashes since the date of the accident. He received a small payment in 1994. Mr. Tomaszewski has had 30 hearings over the 7 year pendency of his case.

Petitioner Zhi Hua Qian immigrated to the United States from China in 1992 and currently resides in Sunnyside, New York. Mr. Qian worked at the Marriot Marquis at Times Square in New York City, lifting piles and bags of linens from the floor to metro-carts, pushing the bundles into the carts, and then moving them. Mr. Qian was ordered to do approximately 7 hours of work in 6 hours and had to work quickly and constantly in order complete his assigned tasks. As a result of the pace and physical difficulty of the work, Mr. Qian suffered from repetitive stress injuries in his legs, lower back, hands, and wrists. In March 1998, he realized that his hands were numb and in severe pain, rendering him unable to work. Mr. Qian applied for Workers' Compensation in May 1998. Mr. Qian received benefits for only four and a half months in 1998 and has since been subject to 7 hearings over three years.

Petitioner Jinen Zhou immigrated to the United States from China in 1989 and currently resides in Ridgewood, New York. Until 1996, Mr. Zhou worked with the Sing Tao newspaper company, approximately 8 to 9 hours per day, seven days a week without any breaks. He labored in unsafe conditions in the backs of delivery trucks, driving through the streets of Manhattan, surrounded by tall, teetering stacks newspaper bundles. In October 1996, as the truck was taking a sharp turn, Mr. Zhou fell to the floor and got up dizzy and suffering from pain in his neck, back, and both knees. He currently does not receive any Workers' Compensation benefits and he has had 9 hearings over 4 and a half years. This is the second workplace injury suffered by Mr. Zhou; his thumb was smashed by a truck door in 1993, after which he underwent surgery and was forced to return to work by his boss before the healing was complete. He is unable to provide for his family and suffers from severe depression and suicidal ideation.

### III. Relevant United States Law and Policy

"Workers' compensation is rare among the major social insurance programs in that it was from the beginning legislated at the state level with no federal involvement and has remained a state responsibility ever since."<sup>14</sup> The New York State Workers' Compensation Law was enacted in 1914 "to provide a swift and sure source of benefits to the injured employee or to the dependents of the deceased employee." O'Rourke v. Long, 41 N.Y.2d 219, 222 (1976). The system was designed to compensate injured workers regardless of fault and to return them to employment without risking their health or welfare. Workers and employers are required to

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<sup>14</sup>Price V. Fishback and Shawn Everett Kantor, A Prelude to the Welfare State: The Origins of Workers' Compensation 5 (Univ. Chicago Press 2000).

participate in the workers' compensation system, which is an exclusive remedy for workplace injuries and illnesses, replacing the common law tort action. Employers may self-insure, contract with private insurance carriers, or join the state-run insurance fund.

A. New York State Workers' Compensation System

The Board is the state agency responsible for the administration of the Workers' Compensation system in New York, which includes the processing and adjudication of individual claims. The Board is composed of 13 Commissioners, all of whom are appointed by the Governor of the State of New York and confirmed by the New York State Senate for terms of seven years. The agency is currently chaired by Robert Snashall. Workers' compensation hearings are conducted before administrative law judges (the "Judges") who are appointed by the Chair of the Board through a Civil Service competitive process. Hearings are held before an administrative law judge but do not follow Anglo-American common law, statutory rules of evidence, or formal rules of procedure.<sup>15</sup> A Judge's decision is deemed the decision of the Board unless the Board modifies or rescinds such decision. Reviews or appeals of their decisions are held before a panel of three members of the Board. Decisions of the Board may only be appealed to a particular intermediate appeals court in New York State: the Appellate Division, Third Department.<sup>16</sup>

In 2000, the Board indexed and scheduled for review 171, 397 cases. 2000 NEW YORK STATE WORKERS COMPENSATION BOARD ANNUAL REPORT (hereinafter 2000 ANNUAL REPORT) at

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<sup>15</sup>See N.Y. Workers' Compensation Rules and Regulations § 300.9.

<sup>16</sup>N.Y. Workers' Compensation Law §§ 11, 23; see Empire Insurance Co. v. Workers' Compensation Bd., 607 N.Y.S.2d 675 (1<sup>st</sup> Dep't 1994).

App. III. Overall, the district offices held a total of 475,964 "hearings". 2000 ANNUAL REPORT, at App. V. Of the claims filed in 2000, 26,492 were controverted, or contested by insurers/employers. Id. at App. IV.

B. Recent Reforms Limit Access to Medical and Cash Benefits

Throughout the 1990's, legislatures in various states, under the pressure of national insurance carrier corporations and business interests, enacted numerous reform laws that lowered premiums for employers and raised profits for insurance carriers. In 1996 alone, 37 states (including the State of New York) enacted comprehensive reforms in their respective workers compensation systems.<sup>17</sup> The Consumers' Union, a respected nonpartisan research foundation, recently examined workers' compensation systems nationwide and concluded that the recent reforms had "clamped down on benefits, raised eligibility requirements, and put medical treatment mainly in the hands of insurance companies, which can delay or deny medical care or income payments." *Workers Comp: Falling Down on the Job*. 65 CONSUMER REP. 2, 28 (Feb. 2000). The Consumers' Union report outlined the costly, methodical campaign promulgated by insurance carriers to justify cuts in workers compensation benefits.<sup>18</sup>

In the State of New York, Governor George Pataki has followed the national trend and focused his reform efforts on reducing the costs of workers' compensation to employers and

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<sup>17</sup>See Charles A. Berreth, *State workers' compensation legislation enacted in 1996*, MONTHLY LABOR REPORT (Jan. 1997) (outlining the major changes in each state).

<sup>18</sup>The reduction in availability of workers' compensation benefits to workers also reflects the evisceration of the safety net for poor women and children, especially immigrants, stemming from the 1996 welfare reform and other government-administered benefits. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified in scattered sections of 8, 42 U.S.C.).

insurance companies. In a May 14, 1999 press release, Governor Pataki proposed to cap benefits for workers with permanent partial disabilities at 700 weeks (approximately 13.5 years). For business, the costs of permanent partial disabilities are the most expensive component of the workers' compensation system. By enacting the 700 week cap on benefits which are currently paid for life, the Governor advocates the shift of the costs of workplace injuries from employers to Social Security Disability or some other form of taxpayer-funded assistance. Pataki's goal, as stated in his press release, is to cut employers' insurance rates by 24 percent. During the last four years, those rates have fallen 38 percent, while insurance companies in New York State remain amongst the most profitable in the United States. Further, Governor Pataki has pushed to keep the minimum weekly compensation at a level amongst the lowest in the nation, \$40.00 per week,<sup>19</sup> providing insurers and employers with further incentive to earn interest on unpaid compensation rather than completing adjudication.

In a series of decisions, New York courts have endorsed the policy of treating workers' compensation as an exclusive remedy for damages due to workplace injuries and illnesses. The executive, legislative, and judicial branches of New York State government have firmly closed the door on the possibility that damages due to workplace injuries and illnesses may be recovered through any means other than the Workers' Compensation system. While costs to employers and insurance companies have been a primary focus of recent reform efforts, workers continue to suffer unreasonable delays in the adjudication of their claims, without any recourse.

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<sup>19</sup>See CSWA Aff. (Exh. A), ¶ 12; NMASS Aff. (Exh. B) ¶ 6.

IV. The State of New York and the Workers' Compensation Board violate Articles 3 and 5 of the NAALC

The NAALC requires that each signatory nation "effectively enforce its labor law."<sup>20</sup> The NAALC also includes certain procedural guarantees with regard to the administration and enforcement of each party's labor law. According to the NAALC, "[e]ach party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and. . .such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays."<sup>21</sup> The NAALC goes on to require that "[e]ach party shall provide that final decisions on the merits of the case in such proceedings are. . .made available without undue delay to the parties to the proceedings and, consistent with its law, to the public."<sup>22</sup> Workers' Compensation proceedings in New York State entail unwarranted delays and there is undue delay in the availability of final decisions on the merits of cases.

A. The Delays in Claim Adjudication for Occupational Injuries and Illnesses are Extreme and Widespread

Labor and immigrant advocates<sup>23</sup> report that members await final adjudication of their claims for up to 20 years, with an average case open for approximately six years, during which

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<sup>20</sup>NAALC, Article 3.

<sup>21</sup>NAALC, Article 5(1)(d).

<sup>22</sup>NAALC, Article 5(2)(b).

<sup>23</sup>See Exhs. A-D.

time Workers' Compensation payments and medical reimbursements are suspended.<sup>24</sup>

Individual petitioners, who are representative of thousands of other injured workers in New York, have had up to 20 hearings in their cases over a period of up to 10 years.<sup>25</sup>

Judges frequently adjourn hearings in order to allow insurer/employers to acquire a medical report or because of the nonappearance of insurer/employers' counsel or witnesses.<sup>26</sup> The duration of many hearings is less than fifteen minutes and only a single procedural issue is dealt with by the judge in those hearings.<sup>27</sup> Identical issues are discussed repeatedly in multiple hearings.<sup>28</sup> The gaps of time between hearings are often as long as one year, during which time injured workers must survive without a job or Workers' Compensation benefits.<sup>29</sup> Injured workers are required to answer the same questions at hearings spread out over many years. Further, many immigrant workers are unable to comprehend the hearings due to the lack or inadequacy of translation services.<sup>30</sup> Judges summarily adjourn hearings and dismiss cases

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<sup>24</sup>See Tomaszewski Aff. (Exh. P), ¶¶ 19-20.

<sup>25</sup>See Flores Aff. (Exh. I), ¶ 8 (10 hearings over 9 years); Ku Aff. (Exh. L), ¶ 13 (21 hearings over 7 and a half years); Labuz Aff. (Exh. M), ¶ 11 (20 hearings over 10 years); Qian Aff. (Exh. N) ¶ 11 (7 hearings over 3 years); Santana Aff. (Exh. O), ¶ 8 (15 hearings over 5 years); Tomaszewski Aff. (Exh. P), ¶ 15 (10 hearings over 7 years); Zhou Aff. (Exh. Q), ¶ 14 (9 hearings over 4 and a half years).

<sup>26</sup>See e.g., Abdulkader Aff. (Exh. E), ¶ 14.

<sup>27</sup>See, e.g., Ku Aff. (Exh. L), ¶ 16.

<sup>28</sup>See, e.g., Labuz Aff. (Exh. M), ¶ 13.

<sup>29</sup>See, e.g., Kocimska Aff. (Exh. K), ¶¶ 9-10.

<sup>30</sup>See, e.g., Kocimska Aff. (Exh. K), ¶ 15; Ku Aff. (Exh. L), ¶ 17; Labuz Aff. (Exh. M), ¶ 16; Qian Aff. (Exh. N), ¶ 12; Santana Aff. (Exh. O), ¶ 12.

because of their procedural errors.<sup>31</sup> Decisions by judges in favor of workers are most likely to be appealed to the Board by insurer/employers, thus extending the period of time during which Workers' Compensation payments and medical reimbursements are suspended.<sup>32</sup>

Following up on a 1988 report which studied administrative hearing effectiveness, the New York State Bar Association's Task Force on Administrative Adjudication issued a second study in 1999 to determine whether sufficient safeguards are now in place to ensure the integrity of agency hearings at five state agencies, including the Workers' Compensation Board.<sup>33</sup>

Focusing on the Workers' Compensation system in New York, the task force stated:

It is clear that the review delays described in the 1988 Task Force Report are still occurring. Moreover, those delays are being used by insurance carriers and employers to obtain unfair advantage over claimants. Workers' Compensation attorneys report that the dilatory review process is used by attorneys for employers and carriers to "cower" claimants' attorneys. The threat of a long contested claim proceeding followed by a long review process is potent enough to force many claimants to settle for less than they might otherwise be entitled to receive, especially in light of the automatic stay of benefits pending the outcome of an administrative review.<sup>34</sup>

The State Bar Association report highlights the endemic problem of delays in adjudication, while also unearthing the profit motive underlying the deprivation of due process. While the attention of the state bar has been much-needed, the delays in adjudication and the suffering of injured workers and their families has only worsened since 1999.

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<sup>31</sup>See, e.g., Qian Aff. (Exh. N), ¶ 11; Ku Aff. (Exh. L), ¶ 14.

<sup>32</sup>See, e.g., Tomaszewski Aff. (Exh. P), ¶ 17.

<sup>33</sup>NYSBA, *Report of the Special Committee on Administrative Adjudication* (October 1999).

<sup>34</sup>NYSBA at 92.

B. Delays in Claim Adjudication Lowers Compensation for Workers

The Board cuts off benefits well before a final decision is rendered in a case, usually on the motion of the insurer/employer and often without substantial evidence.<sup>35</sup> Thus, many adjournments occur at a time when workers are not receiving any benefits, for living expenses or medical care.<sup>36</sup> Further, the Board often dismisses cases after years of minimal factual development at trial or upon appeal, leaving workers relying upon the possibility of benefits in even more difficult straits than when they lost their job due to injury or illness.<sup>37</sup> Finally, workers suffering from workplace injuries and illnesses do not file for Workers' Compensation because of the procedural dysfunction of the system.<sup>38</sup> Faced with the choice of continuing to work in a hard-earned job with an injury or illness or with falling out of the labor market on the promise of Workers' Compensation benefits that are never granted or that are granted after many years of minimal factual development and/or appeals, workers opt to continue in their job, often with a great deal of pain and resulting in recurring injuries and illnesses.<sup>39</sup>

Because workers are partly or wholly disabled from participating in the market for labor, the delays in adjudication and consequent lack of Workers' Compensation benefits impose heavy costs, with formerly productive workers suffering from pain, poverty, hunger, and homelessness.

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<sup>35</sup>See CSWA Aff. (Exh. A) ¶¶ 9-10; NMASS Aff. (Exh. B) ¶ 5.

<sup>36</sup>Id.

<sup>37</sup>Id.

<sup>38</sup>See NMASS Aff. (Exh. B) ¶ 7.

<sup>39</sup>Id.; Workers' Awaaz Aff. (Exh. D), ¶ 7.

Workers are unable to support their families in the United States and in their countries of origin. Family resources are drastically diminished by medical and living expenses. Healthy family members are forced into the work force, while injured workers suffer from physical and mental ailments and are unable to provide necessary care for spouses, children, and elders. Moreover, some workers eligible for Workers' Compensation are ineligible for other governmental benefits for various reasons, including immigration status.<sup>40</sup> Even when injured workers are awarded weekly benefits, some receive as low as \$40.00 per week. The Board has arbitrarily slashed weekly benefits in a number of cases to well below \$100.00.

C. Many Workplace Injuries and Illnesses Occur in Trade-Related Industries Characterized by Long Hours and Low Pay

Petitioner Zhi Hua Qian moved bundles of linen at a large hotel in New York City owned by the multinational Marriott Corp. He was forced to work without breaks for less hours than others, but to complete as much work as they were assigned. His intense work schedule, as well as the difficult work of picking up and transporting large, heavy bundles of linen, led to numerous repetitive stress injuries all over Mr. Qian's body. The pace at which his bosses drove him, along with the severe dysfunction of the Workers' Compensation system in New York, has led to a complete physical and now mental breakdown for Mr. Qian.

Petitioners Aleksandra Baran served as a home health care attendant in the New York area, caring for elderly clients at extremely low wages. She worked for well under the minimum wage with no overtime. Ms. Baran worked 24 hour shifts caring for clients through her early

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<sup>40</sup>See Bill Ong Hing, Don't Give me Your Tired, Your Poor: Conflicted Immigrant Stories and Welfare Reform, 33 HARV. C.R.-C.L. L. REV. 159, 162 (1998)(describing changes in eligibility of immigrants for federal benefits programs).

years in the industry. She earned \$5.00 per hour for the first five years in her job and then made \$7.00 per hour with no overtime pay.

Petitioners NMASS and CSWA echo and expose the stories of these workers' lives. According to organizers at NMASS, for garment factory workers, a 40-hour per week schedule is considered part-time by factory bosses.<sup>41</sup> The members of these organizational petitioners work upwards of 70 to 100 hours per week often at minimum wage or less.<sup>42</sup> According to The Overworked American by Harvard Professor of Economics Juliet Schorr, on average, employed mothers work more than 80 hours each week, including housework, childcare, and paid work.<sup>43</sup> Overtime hours have jumped 48 percent since 1991 and immigrant workers are commonly forced to work 80 to 90 hours per week.<sup>44</sup> The United States leads the world in the number of hours worked per year and that rate is rising while it falls in other industrialized nations.<sup>45</sup>

D. Statement of Violations of the NAALC

The Workers' Compensation Board in New York State delays the adjudication of claims for workplace injuries and illnesses and does not provide compensation to many injured and ill workers. The systematic failure to provide fair, equitable, and transparent proceedings for

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<sup>41</sup>See NMASS Aff. (Exh. B), ¶ 2.

<sup>42</sup>See Id.; CSWA Aff. (Exh. A), ¶ 4.

<sup>43</sup>Juliet Schorr, The Overworked American: the unexpected decline of leisure (Basic Books 1991).

<sup>44</sup>Ron L. Hetrick, *Analyzing the recent upward surge in overtime hours*, Monthly Labor Review (February 2000).

<sup>45</sup>Jill Andresky Fraser, White-Collar Sweatshop: The Deterioration of Work and Its Rewards in Corporate America (Norton 2001).

injured and ill workers and to implement standards for the prevention of workplace injuries and illnesses constitutes a violation by the United States of its obligations pursuant to Articles 3 and 5 of the NAALC.

Injured and ill workers suffer for many years without financial support and medical care due to unwarranted delays, in direct contravention of the U.S. obligations to provide compensation to injured and ill workers and to prescribe and implement standards that minimize the causes of occupational injuries and illnesses.

E. The Continuing and Extreme Delays in Adjudication of Workers' Compensation Claims in the State of New York Demonstrate a Persistent Failure by the United States to Enforce its Labor Standards Effectively

The Board, either on its own initiative or at the behest of insurers and employers, delays the adjudication of Workers' Compensation cases for many years, sometimes as much as a decade or more. During the long pendency of these cases, workers are left without income for living expenses or medical treatment. Many are compelled to attempt to return to work, worsening their injuries. Others watch family members add hours and jobs in an effort to support injured workers. Insurers and employers are permitted to appeal cases repeatedly, searching for any reason to delay payments to injured workers. Additionally, insurers and employer sometime deny payments to doctors, who in turn refuse to provide treatment to injured workers.<sup>46</sup> Many workers who have sustained injuries or developed occupational diseases have their claims dismissed without just cause, after many years of delay.<sup>47</sup>

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<sup>46</sup>See CSWA Aff. (Exh. A) ¶ 9; NMASS Aff. (Exh. B) ¶ 5.

<sup>47</sup>See CSWA Aff. (Exh. A) ¶ 10.

In 1999, close to 6 million people reported work-related health problems in the United States.<sup>48</sup> More than 600,000 workers had serious injuries due to overexertion and repeated motions – almost one-third of all serious job-related injuries.<sup>49</sup> Sixty thousand people in the U.S. died from work-related illnesses in 1998.<sup>50</sup> The actual number of workers suffering from occupational diseases and injuries is much higher, as many workers do not report such problems, recognizing that there is no remedy or that it is part of the nature of low-wage work.<sup>51</sup> Long hours lead to chronic stress and anxiety, sleep deprivation, depression, high-blood pressure, cardiac problems, and digestive problems.<sup>52</sup> Workers are highly susceptible to accidents and injuries as a result of exhaustion from long hours. The pace and intensity has also escalated, forcing many workers to labor faster and produce more in a shorter length of time.

V. Statement of Jurisdiction

A. National Administrative Office Jurisdiction

NAO jurisdiction to review this submission is provided by Article 16(3) of the NAALC authorizing each NAO to review public communications on labor law matters arising in the territory of another party, in accordance with domestic procedures. This submission involves

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<sup>48</sup>Jack Barnes, Working Class and the Transformation of Learning: The Fraud of Educational Reform Under Capitalism (Pathfinder 2000).

<sup>49</sup>Id.

<sup>50</sup>Id.

<sup>51</sup>See CSWA Aff. (Exh. A) ¶ 7.

<sup>52</sup>See NMASS Aff. (Exh. B) ¶ 5.

labor law matters, as defined in Article 49 of the NAALC, arising in the territory of the United States. The NAO of Mexico has adopted procedures for such reviews under a regulation published in the Diario Oficial de la Federacion of April 28, 1995.

The unwarranted delays in the adjudication of Workers' Compensation claims in New York State prevents the United States from providing compensation for occupational injuries and illnesses and from preventing such injuries and illnesses, in violation of Principles 10 and 9, respectively, in Annex I of the NAALC. These unwarranted delays are a result of (1) inequitable laws that benefit insurers and employers and (2) an ineffective, unjust processing method. The Petitioners and other organizations have attempted to make changes in the New York State Workers' Compensation system through administrative and legislative means, without success.<sup>53</sup>

Petitioners affirm that neither this matter nor any other matter which forms the subject of this complaint is pending before any international body.

Under Article I, the objectives of the NAALC include (1) the improvement of working conditions and living standards in each Party's territory; (2) the promotion, to the maximum extent possible, of the labor principles set out in Annex 1; (3) the promotion of effective enforcement by each Party of its labor law; and (4) the fostering of transparency in the administration of labor law. Review of this submission by the Mexican NAO would further these objectives of the Agreement.

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<sup>53</sup>Petitioners CSWA, NMASS, and Workers' Awaaz have met with Board officials and state legislators to bring their attention to the problem of delays in adjudication. See CSWA Aff. (Exh. A), ¶¶ 15-16; Workers' Awaaz Aff. (Exh. D), ¶¶ 8-9. Through petitioners' lobbying efforts, a bill was introduced in the New York State Assembly on June 21, 2001 to reform elements of the Workers' Compensation system, including provisions to eliminate delays in the adjudication of claims. A. 9270, 2001-02 Regular Sessions (NY 2001).

B. Ministerial Review Jurisdiction

Jurisdiction lies with the Secretary of Labor and Social Welfare of Mexico under Article 22 of the NAALC to request consultations with the Secretary of Labor of the United States regarding any matter with the scope of the Agreement. The matters raised in this submission are within the scope of the Agreement.

C. Evaluation Committee of Experts Jurisdiction

Under Article 23 of the NAALC, jurisdiction lies with an Evaluation Committee of Experts (ECE), at the request of any consulting party, to analyze patterns or practices by the United States in the enforcement of its technical labor standards, in matters that are trade-related and covered by mutually recognized labor laws.

1. The Submission Includes Technical Labor Standards

Under Article 49, "technical labor standards" means "laws and regulations, or specific provisions thereof, that are directly related" to "the establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment" and "standards to minimize the causes of occupational injuries and illnesses." This submission is "directly related" to compensation for occupational injuries and illnesses in the United States, as well as to the negative consequences of unwarranted delays in such compensation for prevention of injuries and illnesses in the workplace.<sup>54</sup>

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<sup>54</sup>See infra Section VI.A.

2. The Matters Addressed in the Submission are Trade-Related

"Trade-related" means "related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services" traded between the territories of the signatory nations or that compete with the goods or services produced or provided by persons of signatory nations in the territory of the nation against which the petition has been filed, according to Article 49. Workers in New York with Workers' Compensation claims subject to unwarranted delays produce goods and provide services that are traded between the United States and Canada and Mexico and that compete in the United States with the goods and services of Mexican and Canadian companies.<sup>55</sup>

3. The Matters Addressed in the Submission are Covered by Mutually Recognized Labor Laws

The United States, Mexico, and Canada each have laws and rules related to the provision of compensation for and prevention of occupational injuries and illnesses.<sup>56</sup> This submission concerns unwarranted delays in the provision of such compensation in the United States, as a result of unfair laws and a fault-ridden administrative process in New York State that is not fair,

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<sup>55</sup>See, e.g., CSWA Aff. (Exh. A), ¶ 5; Chan Aff. (Exh. H), ¶ 3; Ku Aff. (Exh. L), ¶ 4; Qian Aff. (Exh. N), ¶ 4.

<sup>56</sup>Mexico maintains a federal workers' compensation system administered by the Instituto Mexicano del Seguro Social (Mexican Institute of Social Security or "IMSS"). See NAALC, Income Security Programs for Workers in North America § 2, ([www.naalc.org/english/publications/ispwna4.html](http://www.naalc.org/english/publications/ispwna4.html)). Canada and the United States maintain individual state, province, or territorial boards, which administer the system in a political subdivision. *Id.* In all three nations, workers' compensation systems are components of expansive occupational health and safety legal regimes. See Federal Labor Law, Articles 472-515 and Diario Oficial de la Federacion, January 21, 1997, 23 Daily Lab. Rep. (BNA) D-20 (February 4, 1997) (Mexico); see International Labor and Employment Laws 21-44 to 46 (Canada); see, e.g., 29 U.S.C. §§ 651-678 (2001) (United States).

equitable, or transparent. This submission also concerns the prevention of injuries and illnesses, because in the United States, the Workers' Compensation system is an integral element of a legal regime through which employers with multiple injuries are penalized with higher insurance premiums.<sup>57</sup>

4. The Submission Analyzes a Pattern of Practice by the United States in its Prevention of and Compensation for Occupational Injuries and Illnesses

The matter that forms the subject of this Petition is not a single instance or case, but is rather a sustained and recurring pattern of practice of the Board administering the Workers' Compensation system in New York State, in violation of the obligations of the United States under the NAALC. The State of New York and the Board are responsible for the endemic unwarranted delays in compensation to workers for their occupational injuries and illnesses. Administrative law judges employed by the Board are responsible for the efficient and fair resolution of claims, but have consistently forced workers to bear with multiple hearings and submit to repeated medical examinations by insurance company and employer doctors.<sup>58</sup> Further, the endemic delays in adjudication of claims has caused a breakdown in the preventive occupational health and safety legal regime.<sup>59</sup>

D. Dispute Resolution Jurisdiction

In accordance with Article 29 of the NAALC, a two-thirds vote of the Council may confer jurisdiction on an Arbitral Panel to consider the subject of this submission because the

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<sup>57</sup>See infra Section VI.A.

<sup>58</sup>See supra Section IV.A.

<sup>59</sup>See infra Section VI.A.

United States has engaged in a "persistent pattern of failure" to effectively enforce laws pertaining to occupational health and safety standards,<sup>60</sup> and that failure is trade-related<sup>61</sup> and the subject of mutually recognized laws.<sup>62</sup>

VI. The Board's failure to Implement Standards to Minimize the Causes of Occupational Injuries and Illnesses Requires the Appointment of an Arbitral Panel

A. Workers' Compensation is a Key Component in the Occupational Health and Safety Regime of the United States

Workers' Compensation law was established at least partly to provide incentives for employers to make their work environments safer and healthier. All but five U.S. states adopted Workers' Compensation laws between 1910 and 1921.<sup>63</sup> While employers were already required by common law to compensate injured workers when the employer was at fault, Workers' Compensation laws put the entire onus of responsibility for the maintenance of safe work environments on employers, by shifting from fault-based negligence liability to no-fault strict liability.<sup>64</sup> "The liability rules, by determining who is responsible for the damage, determine the

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<sup>60</sup>See infra Section VI.A.

<sup>61</sup>See supra Section V.C.2.

<sup>62</sup>See supra Section V.C.3.

<sup>63</sup>See supra note 14 at 3.

<sup>64</sup>See id. at 3-4. It is important to note that workers continued to have significant incentive to minimize unsafe workplace conditions due to the fact that the cost of accidents to workers remains much higher than any possible monetary reimbursement and compensation, particularly because such reimbursement and compensation was limited to two-thirds of wages and often much less. See id.

incentives to prevent accidents for the parties involved in a relationship."<sup>65</sup>

In exchange for the imposition of no-fault strict liability for workplace injuries on employers, the government decreed that Workers' Compensation would be the exclusive remedy for injured and ill workers, and that they could not make independent claims under the common law due to such injuries and illnesses. "The Workers' Compensation Law was enacted to guarantee an injured employee scheduled compensation regardless of fault in exchange for reduced costs and risks of litigation." Reich v. Manhattan Boiler & Equipment Corp., 91 N.Y.2d 772, 779, 678 N.E.2d 939, 942 (1998).

1. The Workers' Compensation Insurance Scheme Operates so as to Prescribe Standards for the Minimization of the Causes of Occupational Injuries and Illnesses

New York Workers' Compensation Law requires that employers be insured for workplace injuries and illnesses.<sup>66</sup> Approximately 20 percent of the state's employers administer self-insurance programs, 35 percent of employers insure themselves through the private insurance market, and the remaining 45 percent of employers are covered through the State Insurance Fund.<sup>67</sup>

Insurers determine premium levels on the basis of state and national data collected and analyzed by the New York Compensation Insurance Rating Board (the "NYCIRB"), a non-profit association of insurance carriers established pursuant to New York Insurance Law § 2315. A

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<sup>65</sup>Id. at 4.

<sup>66</sup>N.Y. Workers' Compensation Law § 2.

<sup>67</sup>See [www.wcb.state.ny.us](http://www.wcb.state.ny.us).

central focus of the NYCIRB is "to help provide a safer workplace for all employees"<sup>68</sup> and "to encourage employers to become active in reducing the number and severity of accidents in the workplace."<sup>69</sup> To determine optimal premium rates for large employers, the NYCIRB engages in "experience rating," an evaluation of a employers' track record to determine how much the cost of insurance will differ for an individual employer from the average in the future.<sup>70</sup> A large employer with a bad health and safety record and higher than average Workers' Compensation costs will be charged higher premium rates than an employer with a better record.

New York Workers' Compensation and Insurance Law operate together to create an insurance scheme that is supposed to penalize employers with relatively bad health and safety records with higher premium rates, while rewarding employers with relatively good records. This legal regime was intended to have a central preventive purpose.

2. Through Delays in the Adjudication of Workers' Compensation Claims the Board Fails to Implement Standards for the Minimization of the Causes of Occupational Injuries and Illnesses

The establishment of Workers' Compensation law placed strict liability on employers, and the insurance scheme subsequently adopted by the state imposed a system of premium rate standards with the intention of minimizing the causes of occupational injuries and illnesses. However, the Board undermines the implementation of these standards through delays in the adjudication of claims and a reduction in the total amount of benefits awarded to injured workers.

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<sup>68</sup>See [www.nycirb.org](http://www.nycirb.org).

<sup>69</sup>Id.

<sup>70</sup>Id.

The data used by the NYCIRB to set insurance premiums fails to include unpaid, underpaid, and delayed claims, thus distorting experience rating analysis. The Board allows employers to avoid strict liability for workplace injuries and illnesses by artificially suppressing the cost of unhealthy and unsafe workplaces through delays and arbitrary suspensions and terminations of benefits. Workers, meanwhile, are in legal limbo as they await claim adjudication over many years and are pushed out of employment or into even more marginal sectors of the economy to earn desperation wages. The Board undermines the implementation of standards for the minimization of the causes of occupation injuries and illnesses.

B. Enforcement of Procedural Guarantees of Article 5 Requires the Appointment of an Arbitral Panel

The signatory nations have agreed, through the NAALC, to "ensure" that certain procedural rights in labor proceedings are protected. Article 3 requires that hearings comply with due process of the law, remain open to the public, provide parties with the opportunity to be heard and present evidence, and that such hearings not be complicated, expensive, or delayed. Article 5(1). Other procedural rights required by NAALC include compulsory written decisions of decision-makers and judicial or administrative review. Article 5(2)-(3). The specificity of these requirements differs from other sections of the NAALC and indicate a primary focus of the signatory nations on the procedural soundness of the proceedings in which the substantive labor law of each nation is applied. Indeed, such specificity reflects an understanding that an acceptance of the Labor Principles and even codification of such principles by each signatory nation would be drastically undermined by procedural faults in the proceedings in which such principles are enforced.

The arbitral panel mechanism pursuant to Article 29 of the NAALC was reserved for an examination of violations of certain areas of labor, both important enough to warrant the greatest sanctions and also explicitly valued in each signatory nation's law. See International Labor and Employment Laws 20-22,23 (BNA 1997). The procedural guarantees outlined in Article 5, such as due process, are a central element of each signatory nation's constitutional and statutory law and warrant the greatest possible NAO oversight.

VII. Action Requested

Compliance with the U.S. responsibilities under the NAALC requires that the Board (i) render final decisions on all claims within 3 months of filing, (ii) provide immediate interim living expenses within one week of the filing of a claim and ensure that the minimum benefits level is equal to the minimum weekly wage under state and federal law, (iii) provide translation services at each compensation hearing, (iv) report regularly to the legislature and the public on its compliance with the preceding time requirements, (v) undertake a widespread public education program in the State of New York to inform workers of their right to receive Workers' Compensation in an expedient manner, and (vi) recruit injured workers, community members, lawyers, elected officials, and doctors for participation in its decision-making and to monitor implementation of the aforementioned actions.

For the foregoing reasons, the petitioners respectfully request that:

A. The NAO of Mexico:

1. Undertake cooperative consultations with the NAO of the United States as

stipulated under Article 21 of the NAALC;

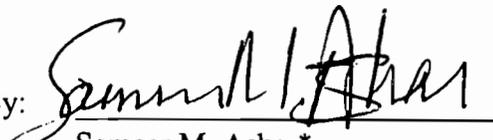
2. Pursue investigative measures, in accord with Section 6 of the Regulation published in the Diario Oficial de la Federacion of April 28, 1995, by:
  - a. Accepting additional information from other interested parties,
  - b. Engaging an independent Mexican expert in the matters of compensation for and prevention of workplace injuries and illnesses in the U.S. to assist the NAO with the review,
  - c. Arranging for on-site investigations by the expert of labor rights violations and working conditions in industries characterized by relatively long hours and low rates of pay, and
  - d. Arranging for detailed study by the expert, of the operations of the New York Workers' Compensation Board and the New York Compensation Insurance Rating Board, and
3. Hold public information sessions with workers, worker advocates and government officials affected by the Board's delays in adjudication, in locations that would allow the maximum number of workers, other participants and expert witnesses involved to provide testimony and additional information to the NAO without incurring undue personal expenses or hardship, having first made adequate arrangements for translation and having provided adequate notice to petitioners, including, at a minimum, hearings in New York City;

- B. The Secretary of Labor and Social Welfare of Mexico begin consultations at the ministerial level with the Secretary of Labor of the United States on the matters raised in this submission in accord with Article 22 of the NAALC, and formally include the organizations and individuals who filed this submission in those consultations;
- C. If ministerial consultations do not resolve these issues, the Secretary of Labor and Social Welfare of Mexico require the establishment of an Evaluation Committee of Experts (ECE) under Article 23 of the NAALC regarding all matters that may be properly considered, and that such proceedings be transparent and involve public participation of employees, employers, worker advocates, and government officials;
- D. If after a final ECE report the matter remains unresolved, the Secretary of Labor and Social Welfare of Mexico request consultations under Article 27 of the NAALC, and utilize the mechanisms specified in Article 28 of the NAALC to reach a satisfactory resolution, and that such a Dispute Resolution Action include the participation of those organizations which participated in earlier public communications;
- E. In the event that the matter remains unresolved after these consultation, the Secretary seek the support of the Minister of Labor of Canada to request an arbitral panel under Article 29 of the NAALC to consider the Board's persistent failure to ensure that Workers' Compensation proceedings do not entail

unwarranted delays, as well as its undercutting of standards to minimize the causes of occupational injuries and illnesses.

Respectfully submitted,

CHINESE STAFF AND WORKERS'  
ASSOCIATION  
NATIONAL MOBILIZATION AGAINST  
SWEATSHOPS  
WORKERS' AWAAZ  
ASOCIACION TEPEYAC  
MUSSA ABDULKADER  
ALEKSANDRA BARAN  
TOMAS CARILLO  
LAN MEI CHAN  
JUAN FLORES  
EVA HERRERA  
STANISLAWA KOCIMSKA  
HUANG SHENG KU  
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October 23, 2001