# Corporate Attacks: Environment
## *Case Study: Quarry Mining*

**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. The cases are decided by tribunals composed of three private attorneys, some of whom rotate between serving as "judges" and bringing cases against governments. The tribunalists are paid by the hour and are unaccountable to any court system or electorate. Under U.S. trade and investment pacts alone, corporations have already won more than $3.6 billion in taxpayer money, with $34 billion still pending.**

## Bilcon v. Canada
### *Investor Win (award amount pending)*

In May 2008, members of the U.S.-based Clayton family – the owners of a concrete company – and their U.S. subsidiary, Bilcon of Delaware, launched a NAFTA challenge against Canadian environmental requirements affecting their plans to open a basalt quarry and a marine terminal in Nova Scotia. The investors planned to blast, extract and ship out large quantities of basalt from the proposed 152-hectare project, located in a key habitat for several endangered species, including one of the world's most endangered large whale species. Canada's Department of Fisheries and Oceans determined that blasting and shipping activity in this sensitive area required a rigorous assessment given environmental risks and socioeconomic concerns raised by many members of the local communities. A government-convened expert review panel concluded that the project would threaten the local communities' "core values that reflect their sense of place, their desire for self-reliance, and the need to respect and sustain their surrounding environment." On the recommendation of the panel, the government of Canada rejected the project. The Clayton family argued that the assessment and resulting decision was arbitrary, discriminatory and unfair, and thus a breach of NAFTA's "minimum standard of treatment," national treatment and most favored nation obligations.

In a March 2015 ruling, two of the three ISDS tribunalists decided that the environmental assessment's concern for "community core values" was "arbitrary" and frustrated the expectations of the foreign investors. This, they asserted, violated a broad

interpretation of the “minimum standard of treatment” obligation, which they imported from another ISDS tribunal (Waste Management). The tribunal majority also declared a national treatment violation. The tribunal has yet to determine the final amount it will order Canadian taxpayers to pay to the quarry investors, who are seeking $300 million.

The dissenting tribunalist explicitly warned of the chilling effect the decision would have: “Once again, a chill will be imposed on environmental review panels which will be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages under NAFTA Chapter 11. In this respect, the decision of the majority will be seen as a remarkable step backwards in environmental protection.”