Corporate Attacks: Health

Case Study: Toxic Fuel Additive

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 $38 billion still pending.

Ethyl v. Canada

Case Settled (investor paid $13 million, ban reversed)

Ethyl Corporation, a U.S. chemical company, launched a NAFTA investor-state case in 1997 over a Canadian ban of MMT, a toxic gasoline additive used to improve engine performance. MMT contains manganese – a known human neurotoxin. Canadian legislators, concerned about MMT's public health and environmental risks, including its interference with emission-control systems, banned MMT's intra-provincial transport and importation in 1997. Given that Canadian provinces have jurisdiction over most environmental matters, such actions are how a national ban of a substance could be enacted in Canada. When the law was being considered, Ethyl explicitly threatened that it would respond with a NAFTA challenge. MMT is not used in most countries outside Canada. It is banned by the U.S. Environmental Protection Agency in reformulated gasoline. Making good on its threat, Ethyl initiated a NAFTA claim against the toxics ban, arguing that it constituted a NAFTA-forbidden "indirect" expropriation of its assets.

Though Canada argued that Ethyl did not have standing under NAFTA to bring the challenge, a NAFTA tribunal rejected Canada's objections in a June 1998 jurisdictional decision that paved the way for a ruling on the substance of the case. Less than a month after losing the jurisdictional ruling, the Canadian government announced that it would settle with Ethyl. The terms of that settlement required the government to pay the firm $13 million in damages and legal fees, post advertising saying MMT was safe, and reverse the ban on MMT. As a result, today Canada depends largely on voluntary restrictions to reduce the presence of MMT in gas.