

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC-CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHOLENO, GIACOMO A BUSCEMI, DAVID A. JANNEY AND
ROGER RAGUSO (United States of America) (Claimants)**

vs.

THE REPUBLIC OF COSTA RICA (Respondent)

**FIRST WITNESS STATEMENT
OF MANUEL ENRIQUE VENTURA-RODRIGUEZ**

I, **MANUEL ENRIQUE VENTURA-RODRIGUEZ**, resident of San José, Costa Rica, **SAY** as follows:

1. I make this statement in support of the Claimants' Memorial in these proceedings.
2. The information contained in this witness statement is true to the best of my knowledge and understanding. The facts and circumstances contained in this statement are within my own knowledge or derived from information and documents provided to me by my subordinates, in which case I refer to the corresponding source of information.
3. I confirm that counsel for the Claimants, Vinson & Elkins RLLP, have assisted me in preparing this statement, but I also confirm that its contents set out my evidence to the Tribunal in these proceedings.

4. For the avoidance of doubt, in making this statement I do not waive privilege or confidentiality in the legal advice I have given, and continue to give, Mr. Aven, with regard to his investments in general and the Las Olas project in particular.

Background

5. I graduated from the University of Costa Rica Law School in 2002. Afterwards, I obtained my LL.M in Law and Government from the Washington College of Law of the American University in Washington, D.C., in 2003. Finally, I obtained my Doctorate in Law, with emphasis in Public Law, from the *Universidad Carlos III de Madrid*, in 2010.
6. I have practised law for a total of over 13 years and have specialized in Administrative and Constitutional Law. Throughout my career, I have worked in Project Finance, Real Estate Planning and Urban Development, Environmental Law, Government Procurement, and Litigation. Currently, I am a Partner in Facio Abogados, in San José, Costa Rica.

My contact with Mr. Aven

7. I have served as David Aven's personal attorney since January, 2012. I was first contacted by him in November, 2011, when he asked me for a proposal for representation. During the first meeting, he discussed, in general terms, his project, Las Olas, and the difficulties that he was encountering. As an attorney, I have considerable experience in these kinds of cases, mostly from the failed Playa Pelicano Project in Guanacaste (also known as Mar Serena), when I worked with BLP Abogados. Specifically, that project was affected by interventions from the Environmental Division of the Prosecutor's Office in San José, because they questioned the technical analysis made by MINAE. MINAE had determined that several areas in the project site were not a forest. However, the Prosecutor's Office insisted that it could be a forest and started taking criminal action against MINAE and, eventually, shut down the project. Moreover, I had to work closely with MINAE, Municipal authorities,

SETENA, and several other technical offices, in order to obtain the necessary permits.

8. Firstly, Mr. Aven retained me for personal issues and investments in Costa Rica and abroad. However, in late April, early May, 2012, he asked me to recommend an attorney for his criminal defense, and for me to assist him in translation and in legal issues that could arise and where I could offer my expertise. I recommended Nestor Morera, a colleague of mine who specializes in criminal law, as well as in environmental related issues. We met with Mr. Morera in his office, and discussed the situation regarding the project, the shutdown notices that existed, and trial strategy. We agreed that we would all go together to Quepos, where the criminal court handling the case was located, in late June, 2012, for the preliminary hearing.

The criminal trial and assassination attempt

9. We went together to the preliminary, along with Jovan Damjanac, early on the day of the hearing; another attorney, José Miguel Villalobos was also present. The hearing lasted for over three and a half hours, and the Judge requested that it be expedited, due to the fact that a body had been found in the vicinity, and his presence was required. I recall that the overall defense strategy was very well founded and substantiated and the general impression was that the case should not go to trial.
10. The Judge, however, later determined that the case would go to trial, and scheduled it for December, 2012. In the meantime, I met and spoke almost weekly with Mr. Aven, about the case, its strategy, possible outcomes, evidence, and tactical issues with Mr. Morera. Before the trial took place, I was in charge of investigating with SETENA, any information and/or documents, which could be useful for the trial. As a result, we obtained a certified copy of the SETENA file, reviewed the documents which supported Mr. Aven's case, and started setting up meetings with personnel that could verify Mr. Aven's version of events.

11. SETENA indicated that the person that we should meet with was Mr. Esaú Chaves. Mr. Chaves was the person in charge of compliance at SETENA, so a meeting, in early December, 2012, was set up with him in order to discuss the situation regarding Las Olas. During the meeting, which Mr. Aven and I attended, the following points were discussed:
 - a. General description of the Las Olas project and its environmental viability.
 - b. Mr. Chaves was informed that there were criminal complaints against Mr. Aven and Mr. Damjanac in relation to alleged crimes against forests and wetlands.
 - c. Mr. Aven asked if SETENA had been duly informed about the complaints and about the obligations of other agencies of informing it about claims against projects with environmental viabilities.
 - d. Mr. Aven indicated that there was a contradiction in the wetlands issue because none had been found, and, later on, agencies claimed that some existed.
 - e. Mr. Chaves indicated that SETENA was the agency in charge of environmental issues and that they had to be informed of everything related to a project; also, all inspections had to be reported to them.
 - f. Mr. Chaves stated that this was a legal issue, not a matter to be determined by an engineer such as himself.
 - g. Mr. Chaves stated that the technical aspects of the application are analyzed by the environmental consultants hired by the developer; if later a problem arises, it must be determined who is at fault - the Government or the private environmental consultants.
 - h. Mr. Chaves recommended that a careful review of the SETENA filed be made.

12. Mr. Aven and I met with Mr. Chaves on two more occasions in December 2012 and January 2013 and during each meeting, he reiterated that our position was solid, and that he felt that we should indicate the contradictions existing between SETENA's findings and SINAC's. Mr. Damjanac accompanied us to the third and final meeting.

13. Moreover, I went to Parrita twice, to meet with the Municipal Council, and later on, with members of the Council to discuss the case. The Municipality favored the project and considered that the claims against it were baseless.
14. When we arrived for the trial, we were told that the case would have to be delayed for a day, due to the Judge being sick. Mr. Morera and I met with the Judge, and he was adamant that the case had to be settled; he did not want the case to go trial. This was relayed to Mr. Aven, but Mr. Aven was adamant that he would not allow his name to be damaged because of this criminal complaint and wanted to be cleared of all charges.
15. The trial began with a series of witnesses presented by the Prosecution. Most witnesses were beneficial to Mr. Aven – including Alberto Mora, a local resident - and the rest either presented inconclusive or confusing statements, or, clearly, seemed to be making an effort either to distort existing facts or implicate Mr. Aven's project. This was particularly evident in the wetlands issue. The SINAC officials were particularly confusing and evasive in their answers, particularly when confronted with technical information provided by INTA, the National Institute for Agriculture. Later on, defense expert witnesses from INTA and forestry consultants determined that SINAC's claims lacked substantiation. Also, during recess, Mr. Aven and I visited the SINAC office in Quepos, in order to find more documents and information; it was said that the Puriscal office had an official file related to Las Olas; Puriscal is more than an hour away from the project, in San José's outskirts.
16. Due to the Court's schedule, the trial was postponed and rescheduled for early January, 2013. When the trial resumed, Mr. Aven gave his personal statement. The Judge immediately ordered the prosecutor to give his summation. However, the prosecutor, Luis Gerardo Martínez Zuñiga, stated that he would need at least four hours for his summation, and that he had another case to be tried the next day at the other end of Costa Rica. Thus, he requested that the Court grant him a continuance. Mr. Morera, when asked by the Judge, indicated that the defense would have no problem in agreeing his

request for a continuance, as a matter of professional courtesy to Mr. Martínez.

17. Nonetheless, the day before the trial was to resume, the Judge stated that he was sick, and that the case would have to be suspended indefinitely. Due to the long delay, and Costa Rica's rules of criminal procedure, the entire case was annulled. Immediately, I filed a writ of habeas corpus on behalf of Mr. Aven, but it was rejected by Costa Rica's Constitutional Court.¹ Mr. Morera made several efforts with the criminal court in Quepos, but none bore fruit. He filed several motions, cited case law in support of Mr. Aven's position, but the Quepos court, and later on, the San Ramón Tribunal, maintained the position that trial had to be annulled.

18. In April, 2013, Mr. Aven was visited by his friend and fellow investor, Jeffrey Scott Shioleno. Mr. Aven introduced me to Mr. Shioleno and told me that he would take him to the project and stop by Puriscal to pick up the file related to Las Olas. Mr. Aven called me when he was in Puriscal so I could help him ask around for the information he needed.

19. Later that day, at around 5:30 in the afternoon, Mr. Aven called me from his car and told me that he and Mr. Shioleno had been shot at. I asked him to come to my office immediately and called Mr. Morera; we agreed to meet at the OIJ (Judicial Police) office in downtown San José. When we arrived at the OIJ offices, we filed the police report and detailed the incident.² Afterwards, the car was inspected, and the bullet remains were retrieved. Photographs were taken of the car which showed the damage.³ Since the car was rented, I assisted Mr. Aven in calling the rental car office so the car could be picked up later that day. Even though Mr. Morera later followed up on the investigation, the local police told him that they had not come up with anything.

¹ Exhibit C158, Writ of Habeas Corpus, January 29, 2013

² Exhibit C162, Police Report of shooting, April 15, 2013

³ Exhibit C163, Photographs of damage to car, April 15, 2013

20. As a result of the shooting incident, I went with Mr. Morera to meet with the prosecutor, Mr. Martinez's, superior, Sergio Valdelomar. The issues that were discussed included:
- a. Background of the case was provided to Mr. Valdelomar.
 - i. Story of the case and the interruptions it has received.
 - ii. Steve Bucelato's testimony was described, as well as his general appearance and reputation.
 - iii. Mr. Valdelomar was upset that there were so many interruptions.
 - iv. He considers that interruptions are a problem for all parties, as they affect the resources of all parties.
 - v. Mr. Valdelomar was informed that the Judge, prosecutor, and Government attorney insisted on settling the case.
 - b. Injunction
 - i. The injunction was discussed; the situation with the Court awarding the injunction without allowing the defense to respond was also mentioned.
 - ii. Mr. Valdelomar considered that the Judge in charge was not being diligent.
 - iii. Mr. Valdelomar was told that the injunction practically bankrupted the project.
 - c. Mistrial
 - i. Mr. Valdelomar was informed that case was dismissed as a result of the 10 day rule established in article 336 of the Rules of Criminal Procedure.
 - ii. Mr. Valdelomar understood the frustration, but said he understood why the prosecutor acted the way he did; Mr. Valdelomar considered that law in question is murky and unclear.
 - iii. Mr. Valdelomar believed his prosecutor acted in the best interests of the prosecutor's office.
 - iv. Mr. Valdelomar understood how frustrating the situation is for Mr. Aven.
 - d. Shooting Incident
 - i. Mr. Valdelomar was informed of the attempt on Mr. Aven's life.
 - ii. He was glad that the incident was reported.

iii. He guaranteed that his office would do their utmost in order to provide protection and guarantee that a speedy trial would take place.

e. Merits of the case

i. The permitting situation was discussed in detail.

ii. The unnamed prosecutor who was also in attendance at the meeting, indicated that it was possible that SETENA or the other environmental agencies had not evaluated important biological aspects that the prosecutors do consider.

iii. The issue of intent was widely discussed and both prosecutors considered that if the environmental permits existed (which they did), intent was very difficult to prove and the prosecutor in charge could very well decide to ask for an acquittal.

iv. The prosecutor's office's position is that they should try the case and if once tried, there is no indication of a crime having been committed, then an acquittal should be requested from the Judge.

v. Mr. Valdelomar indicated that he would remove Mr. Martínez, the prosecutor in charge of Mr. Aven's case, from the case.

f. Conclusions

i. Mr. Aven may decide not to appear before the Court in July, 2013.

ii. If so, the case could not be tried and eventually, the statute of limitations would run.

iii. If Mr. Aven appears,

1. Protection would be provided.

2. The prosecutor's office would do its best to act diligently.

g. Settlement options

i. Mr. Aven can repair environmental damage and the charges would be dropped.

21. Throughout the criminal process, and this was discussed in detail with Mr. Morera on several occasions, I was stricken by the lack of evidence and the zeal shown by the Prosecutor to continue with the criminal proceedings. Even though a reasonable and objective analysis of the evidence demonstrated that Mr. Aven could not possibly have acted with the intent to drain wetlands,

injunctions were maintained, and that he could be innocent was never even remotely considered by the Prosecution. The case seemed to be based on a rush to judgment and it was too late to turn back.

22. Moreover, the figure of Steven Bucelato seemed to be everywhere; there were several complaints filed by him, but none appeared to be particularly damning and all were dismissed. He always seemed to be ranting against the project, but with no particular objective reason as to why it could not go forward. Additionally, he was a figure that was feared in the community and considered to be quite odd; during the trial, his testimony cited highly strange details that appeared to have no relation to the Las Olas Project; for example, he talked about seeing flamingos and jaguars, which are species that, by their nature, could not have been at the site.

Recent developments on site

23. In mid-October, 2015, a large group of invaders went onto the property and started building huts and attempting to take over the project site. Moreover, reports of crime were also made by local residents. As a result, immediate attempts were made with the Municipality, the local Police, the Ministry of Security in San José, and the Constitutional Court, to have the authorities evict these trespassers. Concretely, two eviction notices were filed with the Ministry of Security, the Municipality of Parrita was informed and asked to intervene – they initially shut down the constructions of the huts-, and a constitutional writ of *amparo* was filed with the Costa Rican Constitutional Court.⁴
24. As of November, 2015, the authorities have made only vague attempts to impede the construction of the huts, and the police and Ministry of Security have yet to take action. I have been in contact with neighbors and property owners from the town of Esterillos Oeste and they are very concerned. Specifically, they mention the growing violence, robberies, and crime in


⁴ Exhibits C175, Eviction Notice, October 27, 2015; C180, Eviction Notice, November 11, 2015; C178, Notice of trespassers to municipality, November 2, 2015; and C181, Constitutional Writ of *amparo*, November 13, 2015

general that is now plaguing the area. They also state how frustrated they are as to the lack of action on the part of the authorities.

25. In conclusion, as an attorney that specializes in Administrative Law, Constitutional Law, and Public Law in General, in my years of experience I do not recall seeing a case in which the developers were pursued so aggressively in light of evidence that scientifically does not withstand even the slightest scrutiny. Among the issues that are most striking in this case is the fact that the developer himself was personally pursued; historically, the authorities went after the persons granting the permits, the technical criteria that were used to obtain the permits or the project personnel in general. However, in relation to Las Olas, the developer was personally targeted and criminally pursued.
26. Another issue that is particularly bewildering about this case is the modification of technical criteria regarding wetlands; authorities usually determine the status of a property and it is maintained. However, in this case, a new issue that no one had practically considered appeared several months after the permitting process had started. Concretely, no allusion had been made as to wetlands in several reports related to the project site. However, with no logical or reasonable technical justification, wetlands were reported as present, even though the project had been properly permitted and no such issue had ever been reported.
27. Finally, Las Olas has been haunted by the authorities' failure to resolve all apparent complications related to the project in a professional and diligent manner. Over the course of the past five years, numerous investigations have been made and reports have been prepared, all dealing with the same issue – the alleged wetland. Throughout all this, there never seemed to be a concern that the developer could very well go out of business or be in a difficult situation as a result of Government actions. In my view, the way in which the authorities have dealt with the Las Olas project is unacceptable and allowing

28. the current situation with the trespassers to continue is only serving to make the situation worse.

I believe the facts stated in this WITNESS STATEMENT are true.

Signature.....

Manuel Enrique Ventura-Rodríguez

Date.....11/17/2015.....