MEMORANDUM ON MALPRACTICE CASE AGAINST VINSON AND ELKINS (VE) for SOLICITOR NEGLIGENCE, INCOMPETENCE AND LACK OF DUTY AND CARE.
VE lead Attorneys were George Burn, Louise Woods, Alex Slade and Jim Loftis.

INTERNATIONAL ARBITRATION: David Aven et el vs Costa Rica.
Trial held at the World Bank in Washington, DC form December 5-12, 2016 and February 7, 2017
RULING RENDERED: September 18, 2018

By David Aven

I am considering to engaging the services of your firm to ultimately represent me in my Solicitor Negligence Case against Vinson and Elkins in London, England. However, the first step is to decide whether the Venue will be Arbitration or Litigation. There were two engagement agreement signed by me and VE, on in January of 2015 while we were seeking litigation funding and one in May of 2015 after we had obtained litigation funding from Vannin Capital. The January 2015 agreement had no mention of Arbitration, however, in the May 2015 agreement, George Burn slipped in a one sentence comment on page 6 under heading OTHER that said the following:

"Disputes relating to this engagement letter shall be resolved in accordance with the Disputes Procedure set out in the Funding Agreement."

I don't believe the above meets the threshold under UK law requiring all arbitration clauses to be clear and unmistakable, so the client is certain they are giving up their rights to seek redress in a UK court when a client signs that agreement. However, I do believe that Burn and VE have nailed down that the jurisdiction for the case will be in London in either venue. I think we can choose what venue we want to be in and need to decide what's the better venue. I therefore need your legal opinion on that?

We also have UK jurisdiction for the case in the CAFTA agreement as well since both parties agreed it would be London, UK would be the seat of the arbitration.

Once the above is decided then the next step is looking at the facts and evidence to get to where the litigation funders have a minimum 60% chance of winning our case. I think it's much higher and will get into that shortly. There's no one that knows more about this case than I do. Therefore, I want to take the time a lay that out for both you, and the funder, with evidence and commentary so you both will see clearly that it does reach the 60% plus threshold. This will save me both time and money to get an litigation funder to say yes and get the funder engaged so we can begin. This is a 100 plus million-dollar case and getting the first step done serves both of our best interests. George Burn did the very same thing, but they didn't charge me to get the funder on board, and told me if he couldn't get a funder, then we would owe them nothing. Burn was successful in obtaining litigation funding for the case and as it turned out that was his only success, which is why we're here today.

The purposed of this writing is to put together a documentary binder with evidence which clearly lays out, dot by dot for you and the funders showing the most demonstrative examples of gross negligence and incompetence. I don't want to swamp you with documents at this point, but rather laser in and focus on the best evidence that can be clearly seen and understood. Once we get the funder engaged, then we can get other many documents for you.

There's no one that knows more about this case than me since I have lived it. I am therefore doing the paralegal work on this case since there is no one better that has the knowledge to do it. Let me start with a clause in the May agreement that clearly shows George Burn's agreement which he signed where he said

he would take instructions from me. Here it is on page 5 and paragraph 4 of the May 2015 Engagement agreement:

"Although each of you, of course, may communicate with us, all of you agree that we will take directions and instructions from David Aven under the power of attorney that each of you has executed. If, despite this agreement and the power of attorney, we receive conflicting directions from one or more of you, we immediately will try to convene a telephone conference to work out any differences. If we face an upcoming deadline, even in the face of conflicting directions or instructions, we are expressly permitted by this agreement coupled with the power of attorney to follow the directions and instructions that we receive from David Aven."

The above is a clear acknowledgement that Burn and VE will follow both my directions and instructions that receive from me. It identifies no exceptions, but simply and plainly said VE will follow the directions and instructions they receive from David Aven. To be clear, there never was any instructions from anyone else other than me.

MEMORANDUM ON MALPRACTICE CASE AGAINST VINSON AND ELKINS (VE) for SOLICITOR NEGLIGENCE, INCOMPETENCE AND LACK OF DUTY AND CARE.
VE lead Attorneys were George Burn, Louise Woods, Alex Slade and Jim Loftis.

INTERNATIONAL ARBITRATION: David Aven et el vs Costa Rica.
Trial held at the World Bank in Washington, DC form December 5-12, 2016 and February 7, 2017
RULING RENDERED: September 18, 2018

I am considering to engaging the services of your firm to ultimately represent me in my Solicitor Negligence Case against Vinson and Elkins in London, England. However, the first step is to decide whether the Venue will be Arbitration or Litigation. There were two engagement agreement signed by me and VE, on in January of 2015 while we were seeking litigation funding and one in May of 2015 after we had obtained litigation funding from Vannin Capital. The January 2015 agreement had no mention of Arbitration, however, in the May 2015 agreement, George Burn slipped in a one sentence comment on page 6 under heading OTHER that said the following:

"Disputes relating to this engagement letter shall be resolved in accordance with the Disputes Procedure set out in the Funding Agreement."

I don't believe the above meets the threshold under UK law requiring all arbitration clauses to be clear and unmistakable, so the client is certain they are giving up their rights to seek redress in a UK court when a client signs that agreement. However, I do believe that Burn and VE have nailed down that the jurisdiction for the case will be in London in either venue. I think we can choose what venue we want to be in and need to decide what's the better venue. I therefore need your legal opinion on that?

We also have UK jurisdiction for the case in the CAFTA agreement as well since both parties agreed it would be London, UK would be the seat of the arbitration.

Once the above is decided then the next step is looking at the facts and evidence to get to where the litigation funders have a minimum 60% chance of winning our case. I think it's much higher and will get into that shortly. There's no one that knows more about this case than I do. Therefore, I want to take the time a lay that out for both you, and the funder, with evidence and commentary so you both will see clearly that it does reach the 60% plus threshold. This will save me both time and money to get an litigation funder to say yes and get the funder engaged so we can begin. This is a 100 plus million-dollar case and getting the first step done serves both of our best interests. George Burn did the very same thing, but they didn't charge me to get the funder on board, and told me if he couldn't get a funder, then we

would owe them nothing. Burn was successful in obtaining litigation funding for the case and as it turned out that was his only success, which is why we're here today.

The purposed of this writing is to put together a documentary binder with evidence which clearly lays out, dot by dot for you and the funders showing the most demonstrative examples of gross negligence and incompetence. I don't want to swamp you with documents at this point, but rather laser in and focus on the best evidence that can be clearly seen and understood. Once we get the funder engaged, then we can get other many documents for you.

LET ME START SHOWING YOU THE DOT TO DOT OF THE SOLICITOR NEGLIGENCE. I have 14 items to demonstrate the key points of Gross Negligence and incompetence.

(1) no one that knows more about this case than me since I have lived it. I am therefore doing the paralegal work on this case since there is no one better that has the knowledge to do it. Let me start with a clause in the May agreement that clearly shows George Burn's agreement which he signed where he said he would take instructions from me. Here it is on page 5 and paragraph 4 of the May 2015 Engagement agreement:

"Although each of you, of course, may communicate with us, all of you agree that we will take directions and instructions from David Aven under the power of attorney that each of you has executed. If, despite this agreement and the power of attorney, we receive conflicting directions from one or more of you, we immediately will try to convene a telephone conference to work out any differences. If we face an upcoming deadline, even in the face of conflicting directions or instructions, we are expressly permitted by this agreement coupled with the power of attorney to follow the directions and instructions that we receive from David Aven."

The above is a clear ackowledgement that Burn and VE would follow both my directions and instructions that receive from me. It identifies no exceptions, but simply and plainly said VE will follow the directions and instructions they receive from David Aven. To be clear, there never was any instructions from anyone else other than me.

(1) VE Responsibilities Under the Vannin Agreement, which Burn signed.

24 The Solicitors' Responsibilities

24.1.1 Prepare a Budget Plan and keep it up-to-date by revisiing it no less frequently than quarterly (and in this regard to take into account the matters et out in subparagraph 6.2 herein):

24.1.2 use their best endeavours to Win the Claim;

24.1.3 not work in an improper or unreasonable way;

24.1.4 not deliberately mislead the Funders, or anyone acting on their behalf;

24.1.5 not exaggerate the Claim or its prospects of success;

24.1.6 cooperate with the Funders

24.1.7 Cooperate with the Insures and discharge all the relevant obligations set out in the body of this agreement

22.1 The responsibilities set out in the paragraph above must be performed in utmost good faith.

AVEN: Burn ending up running up a bill for 8.5 million and was 5.6 million over budget. VE ended up losing over 3 million, Vannin lost 3.4 million, unpaid venders are owed 1 million, investors in Las Olas lost 3 million, US investors were charged 1 million in arbitration fees and lost 100 plus million. All because of gross negligence and incompetence.

In the end, Burn breached most of the obligations he agreed to fulfil under the terms and conditions of both the engagement letter and the Vannin agreement. He failed to follow my instructions on a number of things, had no effective case strategy or an order of proof to present relevant evidence and cross key witness on said evidence. The areas that Burn, Weiler, Woods and other VE attorneys wrote to me that they needed to cover to win, were never covered. I will show you that shortly. Burn cross and redirect questions were irrelevant, ambiguous and confusing. Below is a direct quote from the ruling that clearly shows that. Burn never used any of the relevant and compelling evidence, they said they would use, to win. They took a simple case and confused and complicated it with their gross negligence and incompetence. Keep in mind this is a case where all the permits were issued by the relevant Government agencies and we were nine months into infrastructure construction. The legal opinion by Freshfields for Vannin clearly saw that this was a simple case that was winnable which I will go over shortly. But look at the arbitrators said about the case in their ruling below, which puts a big question mark on how a simple case was complicated and confused by gross negligence and incompetence.

(2) How a simple case was tuned into a complex and ambiguous case that confused that confused the arbitrator. Here's their own words.

From ruling: (***Para 762) "The complexity of the issues may be considered as another potential factor of particular "circumstances of the case". The Tribunal thinks that the issues that were submitted to its judgment, although showing some technical complexity, by themselves are not especially complex from a legal point of view. The complexity of this case arises rather from the actions and omissions of the parties than from the litigated issues. The Tribunal already has observed above (Section VI. Background, above) it is clear that there are inconsistencies in documents and contradictions among various Costa Rica's authorities during the period comprised between the dates Claimants decided to make the investment and the time at which injunction was issued and criminal charges were brought against Mr. Aven and the Marketing and Sales Director, Mr. Damjanac. Costa Rica also brought before this Tribunal some alleged wrongdoings of Claimants regarding the Concession and the development of Las Olas itself, but the State omitted the application of domestic law to such situations. Moreover, the complexity of environmental legislation and the number of agencies enabled to apply it can explain the contradictions mentioned above, but also can misguide the people dealing with environmental issues. All this confusion has been, to some extent, an invitation to litigate."*** (see full ruling attached)

Aven comment: Look at what the arbitrators are saying here. (1) ***The Tribunal thinks that the issues that were submitted to its judgment, by themselves are not especially complex from a legal point of view.*** (2) "***The complexity of this case arises rather from the actions and omissions of the parties than from the litigated issues."***

AVEN: What were the omission of the parties? Clearly it was the omissions of the Claimants since we were the ones who lost. Burn and VE failed to follow the Vannin legal opinion blueprint to a win. They failed to focus on the relevant evidence that showed a clear breach of the CAFTA Treaty, they failed to understand that the SETENA RESOLUTION became laws everyone was required to comply with. They end the paragraph with this final comment:

"***Moreover, the complexity of environmental legislation and the number of agencies enabled to apply it can explain the contradictions mentioned above, but also can misguide the people dealing with environmental issues. All this confusion has been, to some extent, an invitation to litigate."***

Aven comment: Why are the arbitrators confused? Who were the ones that caused the confusion? It clearly was Mr. Burn, by his inability to properly explain the case in a clear and understandable way, through an effective cross examination of the State witnesses. That created the confusion in the minds of the arbitrators. The attorney's job is to present their case in a clear and understandable way correctly using the evidence to do that. BURN/VE NEVER DID THAT.

(3) What Burn never got was that was that SETENA was the top Environmental Agency in Costa Rica and you need to understand this very key point.

When SETENA issues a "RESOLUTION" clearing the project property environmentally for development, it becomes a law that everyone has to comply with, and it's incorporated into the Resolution. Here it is from the Resolution in our June 2, 2008 EV permit. Further, before they signed that resolution, they had to get a clearance letter from MINAE another top environmental agency in Costa Rica, saying the land was free of wetlands and forest. It was a must check the box that SETENA had to get from MIANE before they issued their EV permit. That MINAE clearance letter was sent in April of 2008. Here's the specific language in the permit saying that the SETENA Resolutions becomes laws that have to be complied with by all.

FROM JUNE 2008 SETENA RESOLUTION: Article 19 of the Organic Law of the Environment states, *"The resolutions of the National Environmental Technical Seretariat must be well founded and reasoned. They will be binding on both individuals and public entities and agencies."*

The problem was none of the agencies MIANE, TAA, MUNI and the PROSECUTOR Luis Martinez followed Costa Rica Law and complied with the SETENA Resolution. Burn never got this so I need to make sure YOU DO GET THIS. Burn never grilled any state witness about this law and never asked each state witness the simple question about **why they never complied with the findings in the SETENA Resolution as required by Costa Rica Law?** I instructed him to do that but again, Burn failed to do that at trial in his cross and make it crystal clear for the Tribunal. I made it clear in my testimony, but that's not the same as grilling the state witnesses about this in the cross.

It's the lawyer's job to create a coherent case strategy, get an effective order of proof for their key evidence, and then clearly explain their case using the facts and evidence to the triers of fact. If attorneys do their job correctly, the Judges will clearly see that and rule in your favor. It's that simple. Mr. Burn failed to articulate the facts of the case in an un-confusing manner in order for the Arbitrators to rule in our favor. Instead he made me look like a liar when he didn't put in the bribery recording into evidence.

According to the ancient philosopher Aristotle, "**Nature abhors a vacuum**." In the vacuum of Burn not telling the truth about having the audio recording and putting it into evidence, not making the above clear about SETENA Resolution having the force of law requiring compliance and not grilling all the state witnesses about this, you had the Respondent attorney filling up that vacuum with lies, false narratives and fake stories that I duped SETENA and engaged in all manner of illegalities, none of which was proving. You see the result of that incompetence on the part of Burn and the other VE attorneys in the above statement, but the ruling is filled with similar such statements. So something very simple got twisted into confusion and ambiguity. Notice this in the above statement: ***Costa Rica also brought before this Tribunal some alleged wrongdoings of Claimants regarding the Concession and the development of Las Olas itself, but the State omitted the application of domestic law to such situations.***

That's true, but that was something that Burn never argued at all, it was just a bone the Tribunal threw to us because it didn't matter in their overall ruling where they found a way for us to lose because they didn't like us as perceived liars.

(4) That leads me the Vannin Legal opinion which is another very key document which was a key document for our case since it was the document that both Vannin and VE relied upon to put their money where their mouth was and provide serious funding for our case.

The legal opinion was done by Freshfield and Brackhaus for Vannin Capital. The initial 44-page Legal Opinion stated there was a likelihood that the case could be won, and it laid out the blueprint of what had to do done to win. It talked about key and relevant points at the heart of our case and how VE needed to structure the case around those documents. Burn then sent me an email shortly after he got the Freshfields report covering many of their points and asked me to respond to them and I did that very same day. However, Burn failed to use those facts and evidence in that Legal Opinion, as he said he would to, to clearly show the Tribunal that actions by the Government of Costa Rica in shutting down a fully permitted project was a breach of the CAFTA Treaty and was not fair or equitable treatment.

Let me now lay out some key points in the Legal Opinion, that will show how the Mr. Burn failed to follow Legal Opinions road map. (see full Legal Opinion in binder)

From Legal Opinion: "**You have asked us for advice in connection with the UNCITRAL arbitration claims brought by Mr. David R. Aven and his partners (the *Claimants)* against the Republic of Costa Rica *(Costa Rica)* under the Central American Free Trade Agreement-Dominican Republic *(Treaty* or *CAFTA)* in relation to a project to build and operate a hotel, beach club, and villas as well as sell lots in Costa Rica (the *Project).* In particular, you have asked us to: *(a)* analyze the jurisdictional and merits arguments of the Claimants and assess their likelihood of success and identify any weaknesses, including in relation to the documentary evidence; *(b)* identify issues to be addressed by local counsel; and *(c)* opine on the damages methodology in light of existing case law."**

From Legal Opinion: "**After reviewing the documents you provided, we conclude that "A tribunal is more likely than not to assert jurisdiction over the Claimant's claims under the Treaty, including, "assert that Claimants are protected investors under the Treaty, pending questions of dual nationality of Mr. Aven, who appears to also be an Italian national. If this is the case, for the purposes of establishing jurisdiction, Mr. Aven will need to show that his U.S. nationality is "dominant and effective"; and" "assert that Claimants have "covered investments" under the Treaty, provided they can supplement the evidence presented in their Notice of Arbitration with respect to their ownership of several local enterprises and their shares in La Canicula S.A. or, alternatively, obtain favorable opinion from local counsel that the evidence already submitted is adequate under Costa Rican law."**

AVEN: Tribunal found I was a dominantly a US Citizen. Also notice (a) ("**assess their likelihood of success and identify any weaknesses, including in relation to the documentary evidence")**

From Legal Opinion: *Merits* **(notice underlined road map suggestion below)**

From Legal Opinion: **Claimants are more likely than not to succeed in asserting a breach of FET on the basis of arbitrary treatment and violation of legitimate expectations. Arbitral tribunals have found that inconsistent behavior between different organs or agencies of the state, in particular, revocation or non-renewal of permits, especially when politically motivated, constitute breach of the FET standard and violate legitimate expectations. There is evidence in the record that seems to show that Claimants followed the required administrative processes to obtain the necessary permits from the relevant authorities, but notwithstanding the courts ordered the Claimants to halt the Project. Claimants' case would be strengthened if they can provide evidence of bribery, unfair trial and threats to Mr. Aven, or other elements that would indicate political motivation behind the measures. We note, however, that the Claimants' claim may be affected if Costa Rica were to prove that the Claimants have violated the law by cutting down trees without authorization.**

AVEN: I told George over and over again to submit the audio of the Bribery into evidence since it was a key fact for us and it shows corruption. It was mentioned it in our Notice of Arbitration (NOA) and I mentioned it in my witness statement. Competent attorneys know that they must produce what they say they have in their pleadings. I even know that and I told Burn if we don't produce it the Judges will think David Aven is lying and that could be fatal to our case since liars don't win in Court. George refused to follow my direct instruction to enter it into evidence and it was the KILL SHOT for our case. Here's what the arbitrators said about not producing that audio in their ruling on Sept 18, 2018:

From Legal Arbitration Ruling: Paragraph 635. ***"Although the solicitation of bribes is indeed a punishable crime in Costa Rica, and should not be tolerated under any jurisdiction, there is no corroborating evidence to the fact that there was such a solicitation except for the statement made by Mr. Damjanac. Even though in their Notice of Arbitration, Claimants stated that "The Investors have in their possession a tape recording of the solicitation of this bribe" such supposed tape recording was never produced as evidence during the arbitration. There is also no evidence that there was retributory action against Claimants for having failed to comply and pay the bribe. (End of arbitrator's comment)***

AVEN: Not doing that was the **KILL SHOT** the "**coupe de grace"** to our case. If a Judge thinks you are lying, you will lose because it ruins your credulity. It doesn't matter what you say or write, it's over. If this audio was incidental and not important to the Arbitrators, they wouldn't have mentioned it. The fact was that it was mentioned speaks loud and clear for itself. Underlying what they say is the tone that we were lying. Mr. Burn to put that bribery audio into evidence, and he just refused to put it into evidence over my direct instructions to do so. He just didn't understand the seriousness of not producing it, nor did he recognized the huge benefits of producing and then hammering Costa Rica for their corruption. To me this is the shear definition of incompetence and gross negligence.

He could have gone on the offense and pounded the state hard over this audio bribery recording and drive the point home to the Tribunal that is why there was a 180 turn from no wetlands to a wetland. In not doing that he snatched defeat from the jaws of victory and took a huge positive and turned it into a monster negative. There Is no question this was the KILL SHOT to our case. George didn't follow the opinion letter road map. Again, from Legal opinion, "**Claimants' case would be strengthened if they can provide evidence of bribery, unfair trial and threats to Mr. Aven, or other elements that would indicate political motivation behind the measures."**

AVEN: There was evidence of that, but Burn never used it. Instead of strengthening our case Burn terribly weakened our case and was the key reason we lost. AGAIN, LIARS DON'T WIN IN COURT AND MY OWN ATTORNEYS MADE ME LOOK LIKE A LIAR. This was major gross negligence and in competence in not following the Legal Opinion's strong suggestion.

(5) The Importance of the Legal Opinion

The legal opinion was a key piece of evidence since it was relied upon by both Vannin and convince them the case was winnable causing them to put millions to fund the litigation. Below is a summary from the legal opinion and what they said needed to be done to win. They were assuming competent attorneys would be handling this case.

Legal Opinion paragraph 36: "**Provided that evidence is submitted and accepted by the Tribunal, the following facts would likely serve to reinforce the Claimants' arguments with respect to the unlawfulness of the measures above:"**

a. **The fact that the Environmental permits for the Villas and Hotel did not mention the presence of wetlands or call for any particular action from the Claimants in that respect.**
b. **The fact that at least four follow-up reports prepared by authorities from the Ministry of Environment (MINAE) and SETENA up to August 2010, many of which were based on site inspections, expressly confirmed there were no wetlands on the Las Olas Project (together with above, the *Resolutions and Reports),***
c. **The fact that government officials presumably requested bribes from Mr. Aven on two opportunities: one time by Mr. Christian Bogantes (the Director of the MTNAE office in Quepos) during a site visit, and another by the Municipality of Parrita;**
d. **the fact that MINAE, where Mr. Bogantes worked, suddenly changed its stance as to the presence of wetlands in Las Olas only *after* Mr. Aven refused to pay the abovementioned bribes;**
e **The fact that Steven A. Bucelato, the neighbor who filed the complaint that led to the Administrative Injunction, was a competitor allegedly "acting in cahoots" with MINAE to close down the Project;**
f. **The fact that Claimants Mr. Aven and Mr. Shioleno were victims of a murder attempt preceded by threatening emails, presumably tied to their activity in Costa Rica."**

AVEN: All of what the legal opinion out was key things to cover. None of the above was aggressively argued and was completely ignored by Burn. The Legal opinion was right on point with their suggested case strategy. In my 18-page November 2016 email to George, (see attached) I laid out suggested questions for Mr. Martinez's cross examination. In fact, I told George that he ask every State witness the same key questions and grill them all on our key and relevant evidence, including the 5 SETENA Resolutions, the INTA inspection report the SETENA and MAINE inspection reports all saying there were no wetlands. I told him to show every key document to every State witness and ask them over and over again the same questions about our key pieces of evidence so the Tribunal would get it and it would be engrained on their brains. Why? So, the arbitrators would hear it over and over again and clear understand what happened But Burn failed to do it since he had no idea what he was doing. In the vacuum the Respondent attorney wove a web of false narratives and fake stories that I duped SETENA without providing any proof. Burn was totally disorganized in his cross-examination approach wasting his 35 hours to prove up our case by asking irrelevant and meaningless questions that were confusing. In fact, I recall the arbitrators and some witness asking what point was trying to make or I don't understand the question. Even his redirect questions to his own witnesses, including me, were not geared to making points to prove up our case and

were confusing and hard to answer. It's all on video and in the transcripts. It was the most shocking display of horrible lawyering I ever seen in all of the various trials I was involved with previously. It's all on video and the links are above.

Legal Opinion Paragraph 41: **Subject to our observations below, and in light of existing case law, we believe that Claimants are more likely than not to prevail in an FET claim with respect to the injunctions that halted the work on the Project, ignoring that Claimants had followed the required procedures and obtained the necessary permits (which were reaffirmed by the competent authority SETENA in its decision of November 15, 2011). The evidence in the record generally supports these allegations and prior tribunals have found that these types of measures constitute a breach of the FET standard. This conclusion should be irrespective of whether new inspections and expert assessments ultimately determine that the Project area did have wetland**s.

AVEN: Actually, it was also confirmed in the September 1, 2010 SETENA Resolution as well. The above is a really a key point in the Legal Opinion that George failed to follow and aggressively argue. George asked no probing questions of any key witness using our relevant key documents. Burn just totally ignored the above. It obviously was not part of his case strategy to win and consequently we lost.

Legal Opinion Paragraph 42: **"The Claimants' case might be further strengthened if: they can provide tangible evidence of the bribery allegations (and this evidence is accepted by the Tribunal); the evidence submitted in the criminal trial supports the Claimants' position; they can provide evidence of the alleged assassination attempt of Messrs. Aven and Shioleno and its link with governmental action; and they can produce evidence that Mr. Steven Bucelato, who filed the claim that resulted in the Administrative Injunction, was a direct competitor acting with government officials to shut down Las Olas."**

AVEN: That evidence was definitely available but, again Burn failed to follow this directive as well and didn't focus on any of that or ever mentioned it. How can you win when you ignored the road map to a win? The answer is, you don't.

Legal Opinion Paragraph 44: "**Finally, Costa Rica may claim that it issued its initial determinations on the absence of wetlands based on misleading information furnished by Claimants. The methodology to issue the Resolutions and Reports must be examined by a domestic law expert. Nonetheless, it is our understanding that the Resolutions and Reports were primarily based on site visits, and not on documents provided by Claimants. To obtain environmental permits, however, the investors did provide Costa Rican authorities with two Environmental Impact Assessments, copies of which have not been made available. Claimants' representations in the Environmental Impact Assessments may have a bearing on their legitimate expectations claims."**

AVEN: Again, the Legal Opinion was right on point and it was covered by a local law expert Batalla Salto Luna in their June 2016, 48-page report to Mr. Burn. But Burn just ignored all their suggestions and failed to aggressively ask any state witnesses about these key pieces of evidence in the Batalla Legal Opinion. Aristotle once said, "**Nature abhors a vacuum**." Although, the facts and evidence were on our side of the case, Mr. Burn failed to effectively use it. In the vacuum that was created by our non-evidence, Costa Rica's attorney's created a false narrative to take up the space and created a fabricated fake narrative that

I duped SETENA with no evidence from any state witness that I did. It all was lawyer testimony with no objection by Burn. Not vigorously to the fake narrative caused the arbitrators to believe the lie was the truth. Just another example of gross negligence. End result **THEY WON WE LOST. THERE ARE REASONS CASES ARE LOST AND IN OUR CASE IT'S CLEAR IT WAS DUE TO SOLITCITOR NEGLEGENCE.**

Legal Opinion Paragraph 50: "This case could be instructive if Mr. Aven could support his allegation that both the Prosecutor and the Judge that ordered the Criminal Injunction were clearly prejudiced against him or the Project. We note that there is no evidence in the record that would support such an allegation."

AVEN: There was plenty of evidence showing the prosecutor, Luis Martinez, was prejudice against me and the Project, which I pointed out to Burn. But Burn never used presented it, because it simply wasn't in George's case strategy toolbox. Therefore, he never asked Martinez or any other STATE witness any questions about it when he cross examined them. Instead, George wasted hour are after hours asking irrelevant questions and not following the Legal Opinion road map.

Legal Opinion Paragraph 57-B: "The Criminal Injunction forbids Mr. Aven from building works that "affect the natural resource and wetlands that exist where Residential Horizontal Condominium Las Olas [i.e., the Villas] is taking place," and also forbids construction permits from being issued for plots nos. 6-79209-F-000 to 6-79496-F-000.[113] However, the Criminal Injunction expressly rejected the Prosecutor's request that provisional measures be extended to "all Project areas and all other areas administered by the Accused." The injunction seems therefore to have left some parts of the project unaffected, although it is unclear to us at this juncture which parts."

AVEN: That's exactly right, and the areas affected by wetlands was about 1 hectare and was designated as a green area that was not going to be built upon. Nelson Morea, our criminal attorney in Costa Rica testified very clearly that the state never presented a mitigation plan for the 1 hectare. We did present a mitigation plan, but George again completely ignored it and didn't even get into that plan at the hearing. Mr. Morea also said that Costa Rica never followed the law in getting the SETENA permits legally annulled by the Court.

Legal Opinion Paragraph 62: "Claimants argue that Costa Rica treated similar, neighboring investments of Costa Rican nationals more favorably, in breach of CAFTA's national treatment and MFN standards. To prove such a breach, Claimants must: (z) identify one or more domestic and foreign-owned investments which are comparable or "in like circumstances" to the Project; and (/'/') provide evidence that the Claimants' investment was treated less favorably. Arbitral tribunals have also required evidence that there were no reasonable considerations, such as legitimate policy or environmental goals, that would justify the difference in treatment. Overall, the inquiry is rather case-specific. Some tribunals have found that investors "in like circumstances" are only those carrying out exactly the same economic activity, such as direct competitors. Other tribunals have accepted broader comparisons to investments in the same sector or industry."

Paragraph 63: "**We believe that an arbitral tribunal will likely find that hotel or timeshare developers which properties adjacent to or neighboring the Project are investors "in like circumstances." But this claim will likely turn on whether Claimants can prove that the**

environmental and topographic features of their land is sufficiently similar to that of the investors "in like circumstances." The documents provided to us do not identify any such investors."

AVEN: The above is probably one of the more egregious omissions by BURN. Right next to Las Olas was a 95 home development owned by a Costa Rican. In the criminal trial, Costa Rican, Beto Mora, testified that this was owned by his cousin, and it use to be part of Las Olas, and it was in the lowest part of the property. Yet there were 95 illegally built homes on the property right next to each other. Which were on very small lots that were not up to code. Monica Vargas, who worked for the Municipality and testified against us, lived in that complex. I took drone videos of that development along with the entire Las Olas Property and gave it to George and told him to use the drone videos to show Vargas and the arbitrators this project next to Las Olas and ask Vargas why she was living in an illegally built project? Ask why was this not a wetlands that was in the lowest part of the land and Las Olas was being at a higher elevation. I told him to show it to every witness and aske them the same question. Again, Burn was just brain dead and did not even mention that project when he cross examined Ms. Vargas or anyone else about this illegal project. Every witness should have been shown the pictures and asked why that project, owned by Costa Ricans, was okay, but Las Olas right next door wasn't. Below is a link to the drone video of those homes and Las Olas is right next to it, facing away from the ocean. How could George not make a strong argument about that?

(See link below:
https://www.youtube.com/watch?v=uP1k2JJPT8U Also there are more videos and information on our website at http://www.lasolascr.com/

AVEN: Burn and the other VE attorneys never used the legal opinions road map to victory and nailed done any of the above things mentioned by the legal opinion attorneys to cover. Why? It's another inexplicable!

(7) Look at the email sent to me by a VE attorney immediately after VE got the legal opinon. In that email VE put the above points to cover in an outline and asked for my comments. Notice, I got back to them with in three hours. Below is VE's email and below that is my response.

Grunberger-Kirsh, Ben <bgrunberger-kirsh@velaw.com> Tue, Dec 23, 2014, 9:20 AM

to me, George, Louise

Dear David,

Yesterday Louise mentioned that I would be in contact regarding Annex A of Freshfields' legal opinion (the 'Opinion'). Essentially, to strengthen our case it has been recommended that we obtain a number of documents from you. These have been detailed at Annex A of the Opinion, and reproduced in abridged form below. In the fourth column, entitled 'Documents we need from you', there is a brief description of the documents required **highlighted in bold**. We would be very grateful if you would be able to send us any documents you have which match these descriptions.

Louise has already been in touch today with enquires about, amongst other things, the tree permits and similar projects. There is some overlap with the information sought in Annex A below. However, the purpose of Louise's query was to provide answers to Vannin, whereas the point of this exercise is to obtain actual documents which will help strengthen the case.

#	*Evidence to be obtained*	*Reason*	*Documents we need from you*
1	Proof of Mr. Aven's Italian nationality, and proof of his dominant and effective nationality.	**To assess whether Mr. Aven is an "investor" under CAFTA.**	**Please provide proof of your Italian nationality** (a passport scan will do). For CAFTA purposes we also need to show that your 'dominant and effective nationality' was that of the United States (Italy after all is not a signatory to the agreement). Although there's no one way to do this**, your answers to the following questions will help us to show that your 'dominant and effective nationality' was that of the US. If you have any evidence which supports your answers please do send it to us**. ▪ **How long have you lived in the US?** ▪ **What are your ties with Italy?** ▪ **Are you registered to vote in Italy and the US, or just the US?** ▪ **Is the majority of your wealth concentrated in Italy or the US?** ▪ **Do you pay tax in Italy?** ▪ Do you own property in Italy?
2	Corporate documents of the Enterprises and La Canícula.	**To strengthen Claimants' statement that they own shares in the enterprises and in La Canícula.**	Concerns are raised in the Opinion regarding the status of exhibit C-4 to the Notice of Arbitration. I have attached this exhibit for your reference. Freshfields note that the relevant Costa Rican records were checked on 1 March 2013. Do you have any more recent records of ownership, or actual copies from (rather than affidavits of) the relevant company register(s)?
3	Environmental Impact Assessments prepared by La Canícula and	**To better assess legitimate expectations arguments. These might need to be reviewed by local counsel.**	**Please provide copies of the Environmental Impact Assessments.**

	Inversiones Costco C&T, S.A.		
4	Pre-approval to cut down trees.	**To better assess legitimate expectations arguments.**	Paragraph 7 of the Environmental Permit for the Villas states that permits must be obtained prior to cutting down any trees on the property. To the extent such permits were obtained, please provide copies. If you/Jovan did not obtain any such permits before cutting down trees, please explain why.
5	"Actualización del plan de gestión ambiental para el Proyecto de condominio horizontal residencial Las Olas".	**To assess Claimants' claims for breach of fair and equitable treatment, specifically a frustration of Claimants' legitimate expectations. This might need to be reviewed by local counsel.**	**Please provide a copy.**
6	"Informe consolidado de la situación actual del Proyecto".	**Same as above**.	**Please provide a copy.**
7	"Informes regenciales" required by Res. No. 1597-2008-SETENA.	**Same as above.**	**Please provide a copy.**
8	Evidence of the two bribery attempts including that of Mr. Bogantes of MINAE that was allegedly recorded on 27-28 August 2010 [sic].	**Would bolster claims of breach of fair and equitable treatment, and potentially moral damages.**	**Please provide evidence, to the extent there is any, of the first bribery attempt**. **We have the audio recording of the second bribery attempt.**
9	Proof that the murder attempt was linked to Costa Rican authorities.	**To bolster Claimants' claims of unfair and inequitable treatment and moral damages.**	The emails we have were sent from an email address unconnected with the government. Aside from the reference to "gringos" in the email from the Court, do you have any evidence that could support our claim that the threatening emails you received and the attempt on your life were the work of the Costa Rican authorities?
10	**Recordings of the criminal trial.**	**To assess denial of justice claim.**	We have 1.2GB of video files of the 2012 trial
11	Oficio SINAC 67389RNVS-2008.	**An administrative document alleged to be fraudulent, and which**	Please confirm that the attached document entitled 'Alleged forged

		MINAE contended was the base for granting the Environmental Permit of Inversiones Costco C&T S.A. Would bolster Claimants' claims of a breach of their legitimate expectations. This document might need to be reviewed by local counsel.	document' is indeed the one to which the Opinion refers.
12	Complete Administrative Environmental Proceedings File No. 34-11-01-TAA.	**To understand the outcome of these proceedings, and whether the injunction was lifted or remains in place.**	**Please provide a copy.** You have sent us a file of documents which we believe may constitute the TAA file that Freshfields have identified. Please see the attached document entitled 'TAA frontsheet' and confirm whether or not this cover page is indeed the first page of the relevant file.
13	**Complete Criminal Court File No. 11-000009-611-PE**.	**To further understand the criminal proceedings against Claimant Mr. Aven**.	**Please provide a copy.** We have received an unbound collection of documents behind numbered tabs (28 to 134). Do you recall if this was part of the criminal court file?
14	Evidence of investors with investments "in like circumstances," as discussed above.	**To substantiate Claimants' MFN and national treatment claims.**	(This is question 2 in Louise's email earlier today).
15	**All third-party agreements in relation to the Las Olas Project.**	**To assess contingent damages.**	We currently have 4 of the 16 sales agreements with third party customers who pre-purchased lots. Please provide copies of the remaining 12.
16	**Evidence of reputational harm to Mr. Aven.**	**To bolster moral damages claim.**	**Please provide any evidence you might have of the reputational harm you have suffered, for example are you aware of any negative publicity surrounding the criminal trial against you**? Have you been asked to resign from any executive or non-executive positions as a result? Have you been refused any credit or declined any investment opportunities as a result?

All the best over the festive season.

Many thanks,
Ben

AVEN: All of what was mentioned above was provided to Burn and VE, but none of it was used at the trial in Burn's cross. See my response I less than three hours.

(8) AVEN RESPONSE TO VE EMAIL
KW <david3a@gmail.com>
Dec 23, 2014, 11:56 AM
to Ben

Ben

Answers to you questions

1. All my life
   No ties with Italy, I got my Italian Citizenship because of my grandfather being born there.
   Just registered to vote in the US
   The US, none in Italy
   Don't pay any taxes in Italy
   Don't own any property in Italy

2. Each Costa Rican corporate vehicle that was used for the US investment had each of the US Investor listed in that vehicle as share holders. I can check with Manuel Ventura to get you what you are requiring, but tell me exactly what you want.

3. My recollection is that we did have impact studies done that were required by SETENA and they should be in the SETENA file. I will have to check with Manuel Ventura about getting those from the SETENA file if you don't have them in the ones that I sent to you.

4. I explained this one in my email to Louise. We never cut any trees that required any permits to be issued. Here is what I just wrote her:

We never cut any trees in Las Olas that ever required us to get a permit to cut them. See attached forestry reports which clearly establishes there is no forest at Las Olas. Jovan was found not guilty at a trial in January of 2014 of cutting a forest or cutting trees without a permit. Neither Jovan of the project ever got one letter, citation or a fine for illegally cutting any trees. Other projects that did illegally cut down trees were fined and equipment confiscated. None of that happened as Las Olas, this was never an issue until the false charges were filed by the prosecutor and they started to try to allege that we were cutting trees without permits, it just never happened. So that allegation is simply false and it was proven at trial to be false.

I requested on my own the first forestry report in Sept of 2010 from Minor Solano, who testified at trial that there was no forest. We are required by law to keep the property clean so that a potential forest does not grow up on the property. So we were continually cleaning the property and cutting the grass to keep it looking good for potential buyers. Las Olas did not have any trees that would classify it as a forest, as stated in the forest engineers report. You are legally permitted to cut down any small tree under 15 centimeters without getting any permits. We never cut down any trees since trees are a good selling point.

That is what MINOR'S September 2010 report stated since my question to him was what could we do and not do in the cleaning process for the project.

In the criminal charge, we were charged with cutting down 400 trees, When I specifically asked the prosecutor, when he was inspecting the property before he filed his criminal charges against me and Jovan, to show me where the 400 trees where cut down, he was unable to show me any trees that were cut down and we walked the entire area. Esteban Bermudez, our environmental representative, was with us and can testify to that fact. The only thing he pointed out was a small tree stump about 3 inches in diameter. I said that is a small tree that is permitted to be cut during the cleaning process. The prosecutor then made this remarkable statement to me, well if you kill a 5 year old child, is not that murder. I was stunned, and said are you comparing murdering a child with cutting down a small tree and he said yes. So what do we have here an objective criminal prosecutor or an environmental fanatic? Esteban can testify to that as well since he interpreted that comment from the prosecutor. As I said, everytime I talk and write about this, it's like reading a John Grishom novel, but all this really happened. Believe me, I get no joy in reliving this every time I have to write or talk about it. For me the Pura Vida country was more like a nightmare on Elm Street.

This charge of cutting a forest by the prosecutor was an after thought and piling on the charges of me violating wetlands. Also, a very important person to the project was the environmental representative, Esteban Bermudez. This was a Government licensed agent who every developer must have on every project. They are required by the Government to inspect the property every two months and to file a report with SETENA about their findings. This is to ensure that the project was adhering to all the laws and regulations. Our environmental representative, Estaben Bermudez of Dappat, filed reports as required by law and never reported anything going on that was against the law. So the company that is licensed by the Government that we were required to have as our environmental representative, never reported any violations of the law. See his attached letter to MINAE which he specifically addresses the issue of a wetlands and forest. He would be an important witness to our case. As I said when you start digging deeper into this most everything Freshfields was questioning falls to our side and in most cases heavily falls to our side.

5 Not sure what you want here or what you are requiring a copy of, please clarify. The reasonable expectation was that if we followed all the rules and regulations set up by the Government of Costa Rica to get a project building permit, that once we got it done that the Government would honor their permit and let us build the project per the permits that they issued. We spent a huge amount of time and money following all the requirements and then after getting the permits and six months into infrastructure construction, the project was shut down. That was not a reasonable expectation on our part. It would have been in Cuba, Venezuela or Iran and that is why we would never go there to do business.

6 Not sure what you want here or what you are requiring a copy of, please clarify.

7. Not sure what you want here or what you are requiring a copy of, please clarify.

8. The first bribery attempt was made to me in 2009 in the municipality of Paritta and was for 200,000 dollars. I do have a recording of that bribery attempt. The second on was made at our office in Las Olas, I do not have a recording of that, but I think I sent you a complaint that I filed with the prosecutor in Quepos and also filed a verbal complaint with Luis Martinez, the prosecutor in San Jose as well. Neither of these were investigated**. Again I talked about the bribery audio**

9. I never said the that attempt on my life was carried out by Costa Rica authorities, I have no proof or knowledge about who carried out the attempt on my life and the other US investor. I only said that based

upon the emails that I received before and after the attempt on my life, that it seemed to have been tied to the problems I was having with the Governemnt of Costa Rica.

10 Do you have the trial videos of the first trial or do you want me to send them to you?

11. Yes this is the one in question, please see my answer to this in my previous email to Louise, in fact here is what I stated

When I gave my statement to the Prosecutor and I mentioned the alleged false document, the prosecutor stopped me and said he wasn't going to take that up since there was no way to prove I had anything to do with that document. However, I told him that I wanted to prove to him right there and then that it was not a forged document. I then showed him a letter from Christian Bogantes from MINAE in Quepos, to another Government agency where he is listed all the documents that MINAE had in the Las Olas file and the very first document listed is the alleged forged document. I asked the prosecutor, how did a forged document find its way into the official MINAE files? Any other alleged forged documents, out of the thousands in the MINAE files? NONE. see attached document, page one number 1) I then asked the Prosecutor to call the police and have them investigate this alleged forged document since it was a crime, he said he would, but never did. Also when I mentioned the bribe by Christian Bogantes, I asked him to have that investigated as well. He never investigated any of those two crimes, although they are serious offenses. Also the prosecutor I filed the complaint with in Quepos about Christian Bogantes attempted bribe, never was investigated that either. So two prosecutors did nothing to investigate any crimes by Government officials. Then when he officially filed criminal charges against me, he included the alleged forged document charge. I said all that to say this. Three people and three people only made an issue of the alleged forged document, Steve Bucelato, Luis Picardo (MINAE) and Luis Matinez (the prosecutor). To be clear, there was ever a judicial ruling that the document they alleged was forged was actually a forgery. They never called the police to investigate this crime even though I specfically requested an investigation when I gave my statement to the prosecutor, The charge was only an allegation that was never proven up by the MINAE.

12. See attached TAA shut down notice. Again to be clear, TAA failed to follow their own rules and regulations and never notified us about (1) that they were conducting an investigation and giving us an opportunity to replay and (2) Never notified us about their shut down notice, we had to find that out later by third parties. Batalla will be invaluable in getting all of this information. All relevant documents are in the SETENA, MINAE, TAA, Municipality and the Prosecutor files. I got certified copies and you should have those, but Batalla would be able to verify exactly what is there.

13 My recollection is that I got a copy of the complete criminal file from the court and it should be in the files that I sent to you. Again, Batalla would be the one to get this for you to make sure it's complete and certified since this is what they do.

14. This was my answer to Louise that I just sent her.

Those are the two primary comparable with the scope of Las Olas. There are other smaller projects in the area, but not at the size and scope of either Las Olas, Mistico, or Los Suenos, with condos, homes, time shares, hotel/condos and rental programs. I also sent you a list of recent lot prices in the area and the lot prices at Mistico is now 150,000 for a 500 sq meter lot. Los Suneos had a lot that was selling for 1.2 million. I sent you a web site of a realtor in Jaco Beach that had a number of lot prices near the ocean and they are in the 150,000 dollar range. With the power of the pen the Government has the power to make a property worth millions or worth nothing. They choose to make the Mistico project, run by Costa Ricans, worth millions by honoring their permits. However, they made the Gringo project worth nothing by claiming the property had a wetlands and a forest. Their big problem however, is that they did that affect

the project passed all the requirements for a project and had legally issued Government permits, one of which said there are no wetlands and no forest.

15. I will get copies of what I have of the other sales agreements

David

END OF MY EMAIL

(9) The next example of is truly an unbelievable account showing Burn's incompetence and gross negligent on display at the trial. In 2015 I was very adamant about the fact that we should not engage in an after the fact de facto battle of the wetlands experts. The Respondent had ordered an expert to inspect the site to determine if there were wetlands. I said that was irrelevant since it wouldn't be an objective report since the state would be paying hundreds of thousand for the report and the expert would give them the answer they were looking for. I told Burn that we would rely on the various Government SETENA, MINAE and the INTA reports in 2008, 2010 and 2011 a total of 6 reports all saying there were no wetlands. Burn was actually screaming at me over the phone telling me that decision would ruin our case. I told him their expert would come back saying there was a wetland and what if our expert said there was a wetland, Burn said that wouldn't happen. Not wanting to risk the case being lost for that reason I relented. It cost us an extra $700,000 thousand and our expert did come back and said there were wet areas, which there were and that we had set aside as greens areas not to be built on, but the respondent then was able to say their own expert said there were wetlands. It was a total distraction that actually hurt our case.

I told Burn that it was totally irrelevant. Why? Because the appropriate agencies, both SETENA and MIANE, had made a determination in 2008, 2010 and 2011, that there were no wetlands. Therefore, it would be a waste of hundreds of thousands of dollars. If Costa Rica wanted to go down that road and get an expert to say there were wetlands, then our position should simply be the aforementioned, and we should not engage in this exercise and waste huge amounts of money. I told him that is was not necessary, would pose a real risk that our expert could say there were wetlands and an additional risk of making the irrelevant become relevant for the panel. We would fall into the Respondent's trap of causing their strategy that the panel spend a huge amount of time focused on the irrelevant, rather than spending time on the real facts and evidence in our case. It would cause confusion and there was only a down side and no up side. But Burn was insistent in getting his own expert wetland expert.

The following is what Burn told the when we had the damages presentation in February 2017 in DC with no time left. I just above fell out of my chair. Here it is in his own stupid words in the transcript:

BURN STATEMENT TO Tribunal in his closing statement on the very last day of the trial. I was just stunned when I heard this. **BURN: And I think I have one minute to capitalize on Dr. Weiler's very eloquent observations. And just to bear that out, much of this hearing--most of this hearing--has been taken up with hearing evidence relating to the arguments put by the Respondent that--and you'll recall I said this in opening--it's irrelevant--strictly speaking it's irrelevant. And we could have refused to engage with it. Now, tactically maybe we made a mistake by engaging with it because it presents it to you on the basis that there is somehow something that is relevant. It is no less irrelevant than it was last Monday.**

The environmental issues/the Costa Rican law issues are irrelevant. Why are they irrelevant? Because it's ex post facto. This is a reworking of what happened. This case, as I said at the outset, is

about permits that were applied for, that were issued, and that were relied upon.

And after the event, the Respondent seeks to unpick all of that with hindsight trying to say--make all sorts of arguments about noncompliance that were

12/839471_1
Page | 2004

not reflected at the time. There were all sorts of opportunities that the various agencies had at the time to do things.

And, in fact, they did look at things at the time and right through to 2011, everything was fine. All complaints that were--were being introduced by reason--for reasons of a vendetta were dismissed.

So it's only in early 2011 in the chronology that you really see things start to change. On March 7th March, 2011, Bucelato meets with the Municipality. Suddenly the next day the Municipality, on the basis of one meeting with three people, issues a freeze order on--on the construction permits. A little while later material is filed with SETENA. SETENA, an agency we have always respected and said "This is the agency that should be in charge here," should--is the one that issues the EVs that understands, that interrogates these things. They said in April 2011, "Stop. We need to investigate."

The Investors didn't like that fact. They didn't think there was good reason for that. But they respected it. They respected the stop--the

12/839471_1
Page | 2005

allegations of doing works during that time are completely without merit and no evidence before you to bear them out.

It took seven months for SETENA to get to the conclusion that the Investors were right. There was nothing to worry about. There was no breach. And on the 15th of November 2011, that is the crucial moment in respect of this claim. If the Respondent had accepted what SETENA said at that moment, and had just--had said, okay, this has been looked at, it's been examined, and no problem has been found, we wouldn't be here today. There wouldn't be an international law claim. But what happened? The Respondent and two or three of its agencies, to use the vernacular, doubled down. The Muni ignored SETENA's 15 November 2011 lifting of the--of the suspension of the EV. The--and Martínez and the prosecutor's office criminalized the matter.

You heard the evidence. The allegations of a forged document are completely ludicrous. The allegations of wetlands abuse--again, he went to INTA. He went to INTA and said, "Please tell them go and

12/839471_1
Page | 2006

examine this and tell me."

And they said, "There's no wetland soil."
And--
MR. LEATHLEY: I'm sorry to interrupt, sir. I really am sorry.
MR. BURN: I just--just. Sorry--
MR. LEATHLEY: No, no, this is not a question oriented at you, sir. It's just a clarification that we will be able to go past 7:45 because we have a half hour of submission to make.

MR. BURN: I have 30 more seconds, and then I'll happy hand it over.
PRESIDENT SIQUEIROS: 30 seconds.

MR. BURN: The--and at that point Martínez commissioned an injunction--a criminal injunction which remains to this day, and there are all sorts of other acts at that point in time, and that's when the Project was destroyed. That's when the Respondent exposed itself to these claims.

I'm going to stop there, but there is much more to be said, of course.

PRESIDENT SIQUEIROS: Thank you.

(10) Notice how BURN ends his statement, **"but there is much more to be said of course".** Yes, of course there was much more to say and it should have been said during the trial, not rushed at the end with no time left on the clock, and having to be interrupted by opposing counsel and arbitration chair. Burn had 35 hours to make our case, more than enough time, but he wasted his time with irrelevant questions, no case strategy to put on the all the evidence we had properly during his cross and then desperately tries to save a losing case at the end with seconds left on the clock and no time outs. Please take note of what he didn't say in the above and it's what he should have been saying throughout the trial. He should have told the truth with this statement. SETENA RESOLUTIONS are Government orders that need to be complied with, let me read the clause to you one more time from the SETENA resolution which refers to Article 19 of the Organic Law of the Environment**. *"The resolutions of the National Environmental Technical Seretariat must be well founded and reasoned. They will be binding on both individuals and public entities and agencies."*** In fact you read in Mr. Julio Juarado, the Attorney General of Costa Rica stay that they must be complied with by all public and private people and organizations. But instead of complying with the law the MUNI, TAA, MINAE and the Criminal prosecutor just ignored law and did an end run around SETENA and law. I read earlier from the Memorialization letter that Mr. Aven's attorney, Manuel Ventura, wrote to summarize what was said at meetings they had with the director of operations for SETENA regarding the problems they were having with the SETENA EV Permits. As stated in the memo, SETENA is the one to investigat any any complaints about a SETENA EV Permit. SETENA did that in July of 2010 when Mr. Bucelato made the very same complaint to SETENA. SETENA followed the law and sent *Biologist Juan Diego Pacheco-Polanco,* to carry out another inspection. That inspection determined there were no wetlands and SETENA rejected Bucelato's compliant. You heard Mr. Aven testify at this trial that when Bucelato made the same complaint to the criminal prosecutor in February of 2011, a mere 6 months prior to his complaint to SETENA, instead of Mr. Martinez telling Mr. Bucelato that he couldn't pursue his compliant because SETENA had already ruled on that In Septemeber of 2010. You also heard Mr. Aven say that what Mr. Martinez should have told Bucelato that they both are required to comply with duly issued SETENA RESOLUTIONS. Therefore he has must comply and reject Bucelato's new compliant. He should have added that if Mr. Bucelato continued to break the law in not complying with legally issued SETENA Resolutions, then as a

prosecutor he would have to file charges against him for noncompliance of a Costa Rica law. But Mr. Martinez didn't say any of that, and instead disregarded the law, failed to comply with SETENA resolutions and filed criminal charges Against Mr. Aven.

But Burn never got any of the above and stated silent on the above issues and never grilled any state witness about why they didn't comply with SETENA Resolutions. He wasted his time on irrelevant questions that had did nothing to prove up our case in chief which he was hired to do and said he would do. The above is a stark example of just how incompetent Mr. Burn prosecution of the entire case was. All one needs to do is understand the facts and evidence, read my witness statements, then read the transcript of the 35 hours Mr. Burn and VE attorneys had to put on the case and you will find all of his words, questions and statements are much like the meaningless rambling as above. Why Burn was so incredibility insipient and grossly negligent is again inexplicably, but the record is crystal clear that he was.

(8) Another glaring example of incompetence and gross negligent.

One more unbelievable example of the gross negligence and incompetence. In the transcript below, Burn is asking me re-direct questions. The early part of his questioning are meanlingless questions, but then the Protti Report comes up. This was a report that the Costa Rica attorney said proved I duped SETENA because he it said it showed I knew that Las Olas had a wetland. However, the Protti Report never said there were wetlands. Further, this was not a report that either we or SETENA ordered and was not a required report. This report was ordered by Tecnocontrol, who was a contractor hired by our architect/engineer to do work for our infrastructure construction. During Burns redirect of me and it's on video here the exchange between between us about the Protti Report per the transcript:

872

Burn Q. Now, Mr. Leathley took you to some questions about the so-called "Protti Report." It's a report on the headed paper of an outfit called Geotest.

Do you remember that?

Aven A. Yes.

Q. Is it your understanding of that report--or what do you understand that report says about wetlands on the site?

A. Well, what I read about that report in terms of later--I didn't find--I really didn't become aware of that report until the Respondent brought it up. I've never seen that report.

But after becoming aware of it and reading it, I--I didn't find anywhere--and I think I got a translation--I got--it was translated in English for me. I didn't see anywhere that it mentioned in that report that there's a wetlands.

So I really--I really was befuddling about what they were talking about and relying so heavily in that report saying that there's a wetlands. And 54

873

duped SETENA.

Look, I don't--I didn't dupe anybody. You know, duping the federal government is a very serious crime. Deceiving a government is a very serious crime.

And what I would say is this: I think--I still think SETENA is a governing--an agency that is still in business in Costa Rica. I haven't heard that it's closed its doors. And when you--when you make a serious charge like that, where is SETENA? Where is their statement?

Where is somebody--you know, they could--the government could go--they work for the government.

They could go to their office--SETENA office and say, "Look, we have evidence that David Aven duped you. We want do get a statement from you to confirm that."

Isn't that what you do normally when you try to--before you start accusing somebody of serious crimes? Go get your evidence to prove it. Everything I read in the memorial statement, in all the witness statements and everything thing in this--from what the Respondent said that I've heard is what I would call

874

fabricated, fake stories. Like you've heard about fake news. They just create it. None of this stuff that they're saying now was in the criminal trial record.

Q. Okay.

A. This is all newly created stuff. So--

Q. Well, I think anybody who has been following Donald Trump's election campaign will be very familiar with fake news.

We have a 100 million dollar case going on. Instead of following up and go into the Protti report and talk about why it didn't say that there was wetlands and why it was a joke that the state was trying to use it to prove I knew there was wetlands, didn't tell SETENA and therefore duped them, Burn throws a political hand grenade in the court room by mentioning Trump that just won a very divisive Presidential election. One arbitrator is from Venezuela, one is from Mexico who probably hated Trump. Is this what they teach in UK law schools bring politics into the court room and make jokes about a key document in the case. All you need to do to show gross negligence and incompetence is to show that video. So why did he do it. Burn is a left-wing progressive who hated trump and was sending me emails about that hate. Here are a couple of those hate filled emails.

(9) So why did burn do that. Well lets look at an email he sent me about trump and see if that sheds some light on the subject.

Burn, George gburn@velaw.com via bounce.secureserver.net Tue, Dec 8, 2015, 1:32 PM

to info@mylobc.com

Hi David

Thanks for this. Pat Buchanan is no fool, I'm happy to read what he writes. I have no idea what position the US liberal media (if there is such a thing) takes on Trump, or what might explain any position they take. But as a proud liberal (albeit from a European tradition of liberalism), I can say that I take an entirely negative view of Trump and am anything but neutral.

In my eyes, the man is a racist, a misogynist, and an Islamophobe; he demeans those he purports to represent by driving everything down to the lowest common denominator, by appealing to the least informed, least developed, meanest minded, most selfish aspects of humanity. He is a loudmouth, who appears to know little of what he speaks and revels in that state of ignorance. Seeing him ridicule someone's physical disability was revolting. Has he no shame at all? Apparently not.

The fact that Trump has now indicated that he might stand against the Republicans if he isn't chosen as their candidate, despite having signed a written undertaking that he would do no such thing, establishes that he is also a liar, and one who is happy to lie to the American public. So he has no honour either.

By way of international comparison, he is like Vladimir Putin and Marine le Pen, someone who hides their intellectual and philosophical limitations behind a cloak of simplistic nationalism.

His election in the US would be terrible for the wider world, but it would be especially bad for the US.

All the best

George

AVEN Here's one more he wrote me

Burn, George gburn@velaw.com via bounce.secureserver.net Tue, Dec 15, 2015, 7:02 AM

to info@mylobc.com

Hi David

Seems to me US politics is fracturing: Trump speaks for a rump of disaffected Americans who seem ever-more impressed by his intemperate, aggressive, ill-informed, intolerant and provocative speechifying (it almost seems to be a cult of stupidity, where the stupider Trump's words, the more popular he becomes); but the more that rump supports Trump for the Republican nomination, the more Hilary Clinton seems to benefit with the US public at large more enthusiastic about her when the alternative is Trump than for pretty much any of the other Republican candidates. I am ever more convinced that Trump will (a) win the Republican nomination and (b) Clinton will be the next US President, partly as a result of (a). If conservatively minded Americans really don't want Hilary Clinton in post, they would do much better to choose Rubio, Cruz, Carson or even Bush than go for the buffoon that is Donald Trump. That's my view anyway, but then I'm a foreign liberal, so I would be happy for Trump to win the nomination and hand the post to another liberal! From what I've seen, Rubio looks a good candidate, he really would be a threat to Clinton. I also liked what I saw of Fiorina, but she seems to have disappeared now.

All the best

George

What do the two emails from Burn tell you? He hates Trump. First, is it even ethical for an attorney to write such emails to a client. What's the old saying don't talk about Religion or politics? Why? There to divisive. Families are broken up and people get divorced over religion and politics. Secondly, Burn hatred of Trump was so great he couldn't resist making fun of him in our trial in our 100 million dollar case. Whenever it is appropriated to make this kind of inflammatory statement when you have one arbitrator from Venezuela and one for Mexico, who very likely hate Trump. So Burn just throws a bombshell in the court room and mentions Trump. I hope you understand how grossly negligent and incompetent his whole behavior was in this area.

(10) One last email and this goes to understanding what George Burn and Todd Weiler needed to do to win that

On Tue, Apr 19, 2016 at 5:46 PM, Todd Weiler <todd@treatylaw.com> wrote:

Hi David.

Just on the "denial of justice" point, you're correct that we didn't plead it directly. Your recollection is also correct that we didn't plead it directly because we would have likely lost if we did attempt to plead it. It's the exhaustion principle that would likely have tripped us up, which is why you see it prominently featured in the Respondent's pleading. The bottom line on that is that normally a complaint about the way someone has been treated by the prosecutor and/or courts of a host State will not be considered "ripe" for a tribunal's consideration until the complainant has exhausted all of his appeals locally.

The answer that it takes a long time for criminal trials in Costa Rica wouldn't cut much ice, unfortunately, because the same is true for about 3/4 of all countries. Unless the delay is in the range of a decade (and has actually happened), tribunals just don't bite on the delay argument.

The answer that you had good reasons to fear for your life is better, although not so much so that any of your lawyers have wanted to pursue a denial of justice claim head-on. We've instead used the fact that you were made to fear for your life, as it relates to your criminal prosecution, as part of the larger narrative of your case: i.e. the State's ultimate "interference" with your investment (expropriation and fair and equitable treatment).

Proving that you had a legitimate fear for your life in Costa Rica allowed us to reposition the criminal prosecution and trial as a good explanation as to why SETENA's lifting of its stay did not end the interference that ultimately destroyed the investment. In other words, the criminal prosecution prevented the project from proceeding long enough to kill it, and the Claimants were in no way responsible for that prolongation. It was thus essential for us to attack the legitimacy of the criminal proceedings — not because they were unfair, in and of themselves — but rather because they prolonged the work stoppage long enough so as to kill off the commercial viability of the project.

Had the prosecutor done his job properly, or had the judge does his job properly, maybe things would have been different. But that's not something that a second trial or an appeal could have fixed. By the time your first trial ended, the die was already cast. That's our story, and the Respondent wasn't to prevent us from sticking to it. That's why they are claiming that we have actually made a denial of justice argument — which we fully expected them to try. Their best case scenario would have both sides arguing at length about how you were treated by the prosecutor, and at the trial, because the don't want the arbitrators to stay focused on the fact that permits were granted and then effectively yanked without just cause.

Opposing counsel's thinking will accordingly be something like this: "Even if we lose on our arguments that the investors did a bunch of things wrong before getting the permits, we still win - ultimately - if we can convince the arbitrators that the project could have proceeded if only Aven would have allowed the second trial to proceed and then exhaust his appeals as needed."

We win by making sure that the Tribunal keeps its eye on the permitting process; the fact that you did everything right in how you went about making the investment; and the fact that there just weren't any so-called wetlands on site anyway. We potentially get into trouble if we allow the Respondent to make this case either about whether you (and the other Claimants) broke CR law, or whether CR was given a proper chance to correct any "mistakes" its officials may have made in relation to the Las Olas project [as required under the exhaustion principle].

So when it comes to how we present your criminal prosecution and trial, we have to keep threading the needle carefully:

1. We need to attack your criminal prosecution enough to demonstrate how it aided in termination of your investment, but not so much that the focus of discussion is on whether you were denied justice personally).
2. We need to ensure that the arbitrators understand how the timing of the events that befell you rendered the investment commercially unviable, disproving any notion that everything could have been all right had the Claimants only given the "system" a chance to sort it all out.
3. We want to illicit the arbitrators' sympathy for how you were personally treated [i.e. how the State failed you both because it couldn't protect you and because it actually came after you using criminal law], without dwelling on your treatment so much that it allows the Respondent to re-focus their attention on whether the ways in which you were treated violated the CAFTA in and of itself (i.e. as a denial of justice).

All of that being said, this email is about framing strategy. It comes into play only when we sit down to draft the reply. The majority of the work to be undertaken here will be in evidence gathering, in order to answer all of the many bullshit allegations that have been raised by the Respondent, especially as regards the proper interpretation and application of CR law, regulations and administration to your project. I just wanted to make sure you knew why we would expect counsel for the Respondent to keep chanting "denial of justice" from here on in.

Dr. Todd Weiler, LL.M. (Michigan)
Barrister & Solicitor (Ontario)

www.treatylaw.com
www.naftaclaims.com
www.investmentclaims.com

George saw this email and none of this was done.

Here was my response email sent to Burn with the above email attached.

Sd Vg <david3a@gmail.com> Apr 19, 2016, 7:06 PM

to Todd, bcc: George, bcc: Louise

Todd

Thanks for the explanation and it sounds right on. That fact is that if they didn't bring in the criminal law suit, we may have been able to work something out. But because they charged me with a crime when they knew I hadn't committed one due to the fact that they issued the permits, all the reports and that the prosecutor requested an additional study from INTA that came back saying no wetlands, clearly shows that there wasn't an intent to commit a crime.

What I don't get is how can they please denial of justice for us if we didn't plead it? That's brazen and I would think we could easily slam them for that move.

Keep me posted and if you any input from me, just ask and I'll do my best respond.

Thanks again.

D

(14) AVEN: Burns response to above emails.

Burn, George gburn@velaw.com via bounce.secureserver.net Wed, Apr 20, 2016, 1:13 PM

to info@mylobc.com

Hi David

Agreed re Houston, they've had a bad old time of it! Sorry to hear you're not feeling well, I hope you make a rapid recovery.

Thanks for forwarding me your discussion with Todd. On everything that matters, he and I are completely aligned on issues relating to the CR court proceedings, denial of justice arguments etc. As he says, we need to tread carefully in this area of the case, always keeping a focus on the real point, namely the permits and the impact on the project. You will have seen that one of the arguments that CR has made (and one that was to be expected) is that you still own the land, so nothing has been taken from you. As Todd says, the criminal proceedings are important in supporting the proposition that, regardless of retaining title, the project was killed by CR in commercial terms. That is the gateway to full compensation.

Perhaps the one thing on which I would take a slightly (but only slightly) different tack from Todd is on the utility of other international law instruments and norms in all of our debates. Having argued cases before using international human rights law, I feel more comfortable about basing some of our arguments on those instruments. But this is a relatively minor difference – I would still agree with the broad sweep of Todd's take on this area of the case.

On damages, you will have seen that the CR Counter Memorial is very light on argument in that area. We set out the position on damages in significantly more detail in the Memorial, both on the law and the analysis. But ultimately, the Tribunal will expect to hear far more on damages from the quantum experts than from the lawyers. It is not unusual for hearings to feature relatively little discussion with or argument from the lawyers on damages, with the quantum experts often "hot tubbed" in a shared evidence session, in which the experts on the two sides sit together before the Tribunal, debating the methodological, evidential and analytical issues with minimal intervention from the lawyers. All of which underlines that the main places in which you would expect to find the case on damages is in the damages expert reports, from each side. The note on the Counter Memorial reflects the fact that the Counter Memorial itself is light on damages issues, and there is an express reference (I think) to further work to be done with Compass Lexecon on the damages issues. There will be plenty of work in that area of the case, but the Reply itself will not feature enormous quantities of text on it; the detail will (as is usual) be found in the expert report.

On moral damages, I have not had much of a chance to discuss matters with Jim but I am waiting for a note of the meeting, which should give me what I need.

Speak soon.

Kind regards,

George

AVEN: Look what he said: . As he says, we need to tread carefully in this area of the case, always keeping a focus on the real point, namely the permits and the impact on the project. You will have seen that one of the arguments that CR has made (and one that was to be expected) is that you still own the land, so nothing has been taken from you. As Todd says, the criminal proceedings are important in supporting the proposition that, regardless of retaining title, the project was killed by CR in commercial terms. That is the gateway to full compensation.

Neither Burn or Weiler ever did any of this and just ignored. They got it right, but failed to do what they said they were going to do.

AVEN: Here's another email from Weiler about case strategy:

T.J. Weiler <tgw@naftaclaims.com> Thu, Nov 10, 2016, 9:34 AM

to info@mylobc.com, George, Louise, Todd, Peter, Robert, James

Just as in your case, the parties are arguing both jurisdiction and merits in a single hearing, rather than doing one hearing on jurisdiction, getting the result, and then going forward to merits. It's ore cost effective for both sides.

The jurisdictional arguments are completely different in the two cases though. In the Spence cases, CR'a argument was that the expropriation process started before all of the land was purchased and even before the CAFTA came into force. It also argued, paradoxically, that the claimants also took too long to bring their claims. In other words, they were both too late and too early.

The jurisdictional objections in your case have nothing to do with timing. They are: 1. David Aven has no standing because he's really an Italian; and 2. the investment was made contrary to CR law and is therefore invalid. The first one should fail on the facts. The second one should fail on both the facts and the law (because it is not a legitimate ground for jurisdictional objection in this context).

The surprise result in Spence does hold a lesson for us here. No matter how justified the claimants and their lawyers may believe their case to be, the only opinions that matter are those of the three arbitrators. If they have a gut feeling that the claimants are really to blame for their own situation, or if they just don't like the claimants' personality, they will find a way to have them lose. The lesson, accordingly, is to make sure they like us. The second lesson is the same one that has to be learned by almost all pollsters in the wake of the US election: second-guess what you think is obvious, because it might not be obvious to the people who actually do the voting (here: the three arbitrators).

So we take nothing for granted, and make sure that we can fully answer the objections in this case, while also ensuring that the tribunal likes and empathizes with all of our claimants.

T

Aven Comment. Here it is, in the attorney's own words. We lost because my attorneys made me look like a liar by not putting in the bribery recording so they found a way for us to lose.

My response to Weiler's email:

nfo@mylobc.com Nov 10, 2016, 11:34 AM

to T.J., George, Louise, Todd, Peter, Robert, James, bcc: Jovan

Todd

Thanks for that, just getting Jovan an answer about that. I know you and the team are all on this like white on salt. The witness statement from Jorge Brieceno is fantastic and should really put the stake through their heart. We didn't need it to win, but it sure was a good find and congrats to the attorney's for getting that jewel. I think we have very conclusive evidence that this problem was not one of our making. What is obvious in our case is the facts and the evidence, it's out job to present that in a way to make it very clear and obvious to the panel so they will take note of it.

I agree with your conclusions and the like-abilty factor is all important. I use to ask people I hired, what makes a good salesman? I would get a lot of different answers, but very seldom got the right one, which is the like-ability factor. If they don't like you they won't buy anything from you. We are selling our case to the panel and we do need to be like-able, believable and persuasive. I think we come off like that. We have a good case, good facts, good evidence and good attorney's and therefore we will.

We need to keep alert so we don't get blindsided by anything. They said I was born in Italy, a blatant lie, here is my birth certificate, we should get this into evidence, I would like to hold it up at the hearing.

David

AVEN: One last comment, even it Burn would have done all of the above, by not putting the birbery recording into evidence, I don't think we would have won. That tainted the entire case, made me look like a liar, liars don't win and are not like by any Judges, Juries or Tribunals.