DAVID AVEN VS VINSON AND ELKINS
PROFESSIONAL NEGLIGENCE By David Aven

BREIF ON PROFESSIONAL NEGLIGENCE 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.

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

The Purpose of this Brief is to provide you with the most compelling information about why there was Solicitor gross negligence and incompetence. To do that I going to tell you my once upon time story in my dealings and interactions with George Burn, lead attorney, Louise Woods, his right hand, Jim Loftis, their boss and Todd Weiler a VE contract attorney.

SETENA RESOULTIONS and Their Authority, the Most Important Information Burn Missed. This once upon a time story will give context and commentary to the facts and documentary evidence that was missed by George Burn and VE Attorneys. For example, if I sent you a binder of relevant documents, the documents would speak for themselves, but you wouldn't know the back story about those documents. For example, I could send you SETENA RESOLUTIONS about Environmental determinations from 2004, 2006, 2008, 2010 and 2011, all clearing the site environmentally for development. But unless I gave you the back story you wouldn't know that SETENA is the highest Environmental authority in Costa Rica. They are the only Governmental Agency been given the authority by the Government and the courts that makes SETENA RESOLUTION Environmental (EV) RESOLUTIONS LAWS requiring compliance by all private and public institutions, including Prosecutors and Judges. Burn never got that and didn't grill anyone about why they didn't comply with the law in the SETENA RESOLUTIONS.

This once upon a time story brief will show you that no one complied with any of the SETENA LAS OLAS RESOLUTIONS EV's. Further, the law also states that anyone that challenges a SETENA EV RESOLUTION, must notify SETENA, and then SETENTA becomes the investigative authority that's in charge of the investigation and the one that rules on the finding. That's exactly what happened in 2010 when a competitor by the name of Steve Bucelato made a complaint about their being wetlands on the project site. SETENA conducted the investigation, determined there was nothing to it and issued another resolution rejecting the Bucelato's complaint. However, none of the Government agencies, MINAE, TAA, SINAC, MUNI or the Criminal prosecutor complied with SETENA RESOLUTION findings as required by law.

I go into great detail about the back story about the relevant evidence so you will get a complete picture and crystal-clear picture about the evidence, its relevance and why there was (100%) Solicitor Negligence and incompetence. You will see that this once upon a time story BRIEF, is filled with the smallest to greatest negligence at all levels.

ATTORNEY CLIENT RELATIONSHIPS IN THE UK. I am assuming that the UK has similar requirements regarding Attorneys duty of care to their client and regarding their legal and ethical conduct during the relationship. The client must at all times be honest with the Attorney about the case. They must always tell the Attorney the truth and provide the relevant documentary evidence and facts to the attorney to use so the Attorney can win their case for the client.

The Attorney must be honest with the client and the court. The attorney must recognize this is the client's case and must follow the clients instructions at all times. If for some reason the attorney determines he can't, or won't, follow clients instructions, he must immediately withdraw from the case. Under no circumstances does the Attorney have the option to refuse to follow clients instructions and still remain on the clients cases.

The Attorney must use the evidence in the client's case effectively to win. The Attorney must be certain that at no time can they do anything that diminishes the credibility of their client with the court. The Attorney must discuss all aspects of the client's case thoroughly and talk about both its strengths and weaknesses. The attorney must develop a case strategy of using an order of proof of the relevant evidence to win his case. He must vigorously object if opposing counsel attempts to alledge false and misleading testimony without providing direct testimony to support the allegations. This is commonly referred to as "lawyer testimony", which is not permitted. The attorney must challenge all attempts by opposing counsel to diminish his clients credibly with the court by make false assertions and allegations about the client, without a basis in either facts or evidence, that can hurt the client's case. The Attorney must at all times be honest with the court and always represent the facts and evidence truthfully, and with clarity to avoid any confusion, at all time for the court.

By the time you finish reading this brief I hope you will clearly see that George Burn, Louise Woods, Jim Loftis and Todd Weiler failed their client in every way imaginable way in performing any of the above described duties.

SIDE NOTE: In describing my once a time story with INTERPOL in the following pages, I make a statement that I think I may have a Guinness Book World Record, I may be the only one ever that had an INTERPOL RED NOTICE put out for their name without being convicted of a crime. Of course Burn never mentions that or even talked about that in our trial to gain sympathy of the Judges and show that this was a revenge filing by the Prosecutor of Costa Rica. Ironically, George Burn sent me a book call "RED NOTICE" written about an American by the name of Bill Browder, living in London. It's about his once upon a time corruption story in Russia. However, Mr. Browder left Russia before there was an assassination attempt on his life. As you will read, I wasn't that lucky.

This brief is being written in the course of engaging the services of your firm to ultimately represent me in the above referenced Solicitor Negligence Case against Vinson and Elkins, London, England with jurisdiction in the UK. However, the first step is to decide whether the Venue for said case to be Arbitration or Litigation. There were two engagement agreement signed by me and VE, one 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 client, upon executing an agreement, is certain they are giving up their rights to seek redress in a UK court. 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 therefore need to decide which is the better venue. I therefore need your legal opinion on that?

UK jurisdiction for the case is also codified in the CAFTA agreement as well since both parties agreed that London, UK would be the seat of the arbitration and a place where all disputes are resolved. So it looks like we are locked and loaded for this to happen in London.

Once the above is decided then the next step is get an overview of the facts and evidence to litigation funders to secure litigation funding for this case which we require. There's no one that knows more about this case than I do. Therefore, I want to take the time and lay that out for both you, and the funder, with evidence and commentary, so you both will clearly understand that it does reach the 60% plus threshold for funding. This advance work will save both time and money in being able to get to the litigation funders, get and approval and get on with the case. This is a 100 plus million-dollar case and getting the first step done serves both of our best interests. George Burn, the lead attorney for VE, who should be disbarred for his incompetence and gross negligence, did the very same thing with the underlying case. I sent Burn the relevant documents, he got them together and sent them to four different funders and they all liked the case and agreed to fund it. However, VE didn't charge me and in fact said if they didn't get the funding, I wouldn't owe them anything. 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.

Combined with this Brief, I also put together a documentary binder with evidence which clearly lays out a dot to 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 clearly shows professional negligence. Once we get the funder engaged, then we can get many other documents for you as necessary.

The Once Upon a Time Story Begins.

I will lay out the Brief in the following 20 examples that will show a clear record of Professional Solicitor Negligence. Let me start with No 1, a clause that clearly shows why this case was lost. It's a quote from the executed engagement agreement between VE/George Burn and myself, dated in May of 2015. That agreement clearly stated that Burn would take the directions and instructions from David Aven. However, he failed to do that. Here's what it said:

(1)-Statement by Burn in our engagement letter he knew, represented and confirmed that he would follow David Aven's directives and instructions.

"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 they received 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. No 2 sets forth the KILL SHOT instruction Burn failed to follow.

(2)-The KILL SHOT instruction Burn and VE failed to follow. George Burn and VE failed to follow a number of instructions I gave them about using our key relevant evidence to prove up our case per the Freshfields Legal Opinion written for Vannin Capital the litigation funder. The KILL SHOT instruction that I gave Burn, and VE that they refused to follow, was to put the

attempted Bribery Recording I made into as evidence. Why was it the KILL SHOT? Because our Notice of Intent to Arbitrate (NOI) and our Notice of Arbitration. (NOA) stated that we had a recording of an attempted Bribery. All competent attorneys know the consequences for not producing the evidence they say that have in their pleadings. What were the consequences for the failure to follow my direct instruction to put that into evidence? My own attorneys ruined my credibility, made me out to be a liar in them minds of the Tribunal, and liars don't win in court. Although there were many more examples you will see in this brief, this was the fatal one and why I call it the KILL SHOT.

Below is a letter, in part, that was written by my Costa Rica Attorney, Manuel Ventura , in January 2019, with his similar conclusion. (see full letter attached below)

"my conclusion Is that the arbitrators ruled against the US Investor's, in particular, because the audio recording of a bribery attempt cited In the notice of arbitration and made available by Mr. Aven, was not exploited; the fact the audio was mentioned in the complaint, but it was not produced, was a critical factor in the ruling against the US Investors, based on the ruling. This omission may have affected Mr. Aven's credibility and the issues that he presented before the Tribunal."

This is exactly what happened. Because Burn refused my instruction to put the audio bribery recording into evidence, it ruined my credibility and tainted the entire case and the Tribunal disregarded everything else I said. All because of Burn's gross negligence and incompetence in not following my instruction to put this cornerstone piece of our case into evidence.

(3)-The Solicitors' Responsibilities per the Vannin Funding Agreement.

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

24.1.2 use their best endeavors 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 promised in the Funding Agreement he would do the case for 2.9 million. However the final bill was 8.5 million, 5.6 million over budget. Burn was responsible for VE losing over 3 million, Vannin losing above 3.4 million, unpaid venders are owed 1 million, people investing in the Las Olas project lost 3 million and the US developers were charged 1 million in arbitration fees and the lost 100 plus million in damages. All because of gross negligence and incompetence by the UK Solicitors.

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, no order of proof to present relevant evidence in cross examining

State witness. Although Burn, Weiler, Woods and other VE attorneys wrote to me over a two-year period stating they would indeed use the relevant evidence in trial in December of 2016 at the World Bank in Washington, DC, they simply failed to do it. 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 said this case was simple and winnable. Below is a direct quote by the Tribunal from the ruling that clearly shows that this simple case was confused by the incompetence of Burn and VE attorneys.

(4)-How a simple case was tuned into a complex and ambiguous case that confused the Arbitrators. Here it is in 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 omissions and party are they talking about that confused the Arbitrators? Clearly it was the omissions of the relevant evidence, including the bribery recording, of the Claimants, since we were the ones who lost. Burn and VE simply 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 RESOLUTIONS become laws everyone was required to comply with and they failed to follow my instruction to put the bribery audio into evidence. The tribunal ends 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: The above statement clearly shows that the Tribunal didn't understand that SETENA was the highest authority that since their RESOLUTIONS, once issued, become Costa Rica laws that everyone is required to comply with. Both myself and Jeff Shioleno, told that to Burn a number of times and during the trial. My Costa Rica attorney Manuel Ventura told that Burn as well, but Burn never got it or just didn't understand it. Burn and the VE attorneys simply failed to properly explain our case in a

clear and understandable way, using the relevant evidence in an effective cross examination of the State witnesses. (2) They failed to follow the blueprint for a win spelled out in the Freshfields legal opinion, (3) Burn made me out to be a liar by not putting into evidence the Bribery recording and liars don't win so we lost.

(5)-I Can't Stress this Enough. What Burn never got that SETENA was the top Environmental Agency in Costa Rica because their EV RESOLUTIONS become Costa Rica Laws requiring compliance. Since Burn never got that he failed to explain SETENA's authority to the Tribunal in a way that would tell them SETENA is the NO 1 Wetland authority. Here is what Julio Juardo, the Attorney General of Costa Rica, said in his first witness statement on page 6 spelling out the legal authority and SETENA RESOLUTIONS.

"National Technical Environmental Secretariat (SETENA)

9. SETENA is one of the more decentralized bodies of the MINAE, whose purpose, consistent with Article 83 of the Environmental Organic Act, 3 is harmonization of the environmental impact with the productive processes. In order to carry out this function, the law itself allocates among its functions the analysis of environmental impact assessments and their resolution, as well as the determination of the actions necessary to minimize the impact on the environment, among other functions.
10. "SETENA is staffed by representatives of various public institutions, such as MINAE, the Ministry of Health, the Water and Sanitation Institute, the Ministry of Agriculture, the Ministry of Public Works and Transportation, the Costa Rican Electricity Institute and the Public Universities."

11. "Moreover, the Environmental Organic Act assigns to SETENA responsibility for the approval of the environmental impact assessments prepared by the managed entities, as requirement essential to the initiation of any activity that might alter environmental factors. Specifically, Article 17 of this law provides that, "Human activities that alter or destroy environmental factors or create residue, toxic or hazardous material, require an environmental impact assessment by the National Technical Environmental Secretariat established in this law. The prior approval of the Secretariat shall be a necessary condition for the initiation of the activities, works or projects. The laws and regulations shall indicate which activities, works or projects require the environmental impact assessment". 4 Similarly, the law clearly provides that both private and public institutions must comply with SETENA's resolution in relation to these environmental impact assessments. Accordingly, SETENA is a technical body legally designated to analyze and resolve the environmental impact assessment as well as to monitor compliance, such that in the event of a breach of its resolutions, it may order the stoppage of works."

This is from the Attorney General of Costa Rica that is saying very clearly that when SETENA issues a "RESOLUTION" clearing a project property environmentally for development, it becomes a law that everyone has to comply with, and it's incorporated into the Resolution. Here's an abbreviated statement of that authority in the Las Olas Resolution issued to us on June 2, 2008 EV permit.

Article 17 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."*

This is announcing to all that SETENA Resolutions become laws that all have to comply with. **Burn never mentioned that key law in our trail, even though I told him to do so as the trial was going on!**

Further, before SETENA signed that resolution, they had to get a clearance letter from MINAE, a staffed environmental agency under SETENA. It was a must check the box requiring a clearance letter from MINAE that there were no wetland or anything else environmentally sensitive, before SETENA would issue their EV permit. That MINAE clearance letter was sent to our architect/engineer in April of 2008.

Burn never got this and he failed to make sure that the Tribunal got it. So I need to make sure YOU DO GET it. Burn never grilled any state witness about this law and never asked each witness this simple question: "**why didn't you comply with the findings in the SETENA Resolution as required by Costa Rica Law?"** I instructed him to do that with ever witness, but Burn failed and refused to do that at trial in his cross. He failed to make it crystal clear and understandable for the Tribunal and they never got it as well. I made it clear in my testimony, but that's not the same as grilling the state witnesses about this in the cross.

To make matters worse, At the end of the trial, the Tribunal ask both attorneys to write and tell them who they thought the top EV ENVIORMENTAL AGENCY WAS. I told Burn it was clearly SETENA given their EV determinations become laws. Instead of Burn telling the Tribunal that, per my instruction, Burn agreed with Costa Rica's attorney and said it was MIANE. It's just another inexplicable act carried out by Burn against my direct instruction to tell the panel it was SETENA. It was almost like Burn was advocating more for Costa Rica than he was for us. That incompetent decision by Burn in not following my instruction that SETENA was the top environmental agency was an important reason the panel was not clear when they made that statement. Here it is again.

"***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."***

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 for the triers of fact. If attorneys do their job correctly, the Judges will clearly see the simple truth and will rule in your favor. 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. He denigrated SETENA authority and the authority of their RESOLUTOINS when he didn't tell the truth that SETENA was the top authority and instead agreed with Costa Rica's counsel that it was MINAE. An inexpliable. Do you see what I mean what I say who was Burn really advocating for in our case? Every decision he made hurt our case instead of help it. How could a competent Attorney ever do that over and over again?

You need to think about this case from this perspective. From the very beginning, everyone thought we would win this case, Vannin, VE and Freshfields and based upon that belief, Vannin and VE put up millions of dollars to fund our case. The questions is, then why did we lose? There was no later surprise negative relevant evidence that came up that the developers withheld that hurt our case. The reason the case was lost was simply due to the fact that Burn and VE failed to make the case with the facts and evidence, failed to follow my instructions and the instruction's in Legal opinion.

According to the ancient philosopher Aristotle, "**Nature abhors a vacuum**." Burn's was grossly negligent and incompetent in not following my instruction to put the bribery audio recording into evidence, not following my other instructions, and not following the Legal opinions instructions; in that vacuum, Respondent's attorney filled up the space with lies, false narratives and fake stories that I duped SETENA and engaged in all manner of illegalities None of which was true or proven and Burn helped in fill in the blank spaces as well by not aggressively pushing back on any of the Respondents attorenys

false allegations. The result of that gross negligence and incompetence was why we lost, when everyone at the beginning thought we would win. It's that simple. So, something very simple, got twisted into confusion and ambiguity.

(6)-That leads me the Vannin Legal opinion which is another very key document for our case since it was the document that both Vannin and VE relied upon to put up millions on our case. This clearly shows that Burn never followed the blueprint he said he agreed with.

The 44-page Legal opinion was done by Freshfields and Brackhaus for Vannin Capital. It found that there was a likelihood that our case could be won, based upon the facts and evidence we presented to VE. However, it was conditioned upon the fact that the FRESHFIELD's blueprint they wrote in the opinion would be followed. It talked about key and relevant points at the heart of our case and how VE needed to structure the case around those point with relevant evidence. 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. I responded within hours the very same day. However, Burn failed to use any of the directives in that Legal Opinion in advocating for our case. You can't win if you don't use relevant evidence in an order of proof to show the Judge and or Jury why you should win.

Let me now lay out some key points in the Legal Opinion, that will clearly show how the Mr. Burn failed to follow Legal Opinions road map and in doing so committed Solicitor Professional Negligence. (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 highlighted 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: That's exactly right. However, Burn never used the relevant evidence he had in an order of proof, to prove that to the Tribunal. The Tribunal in their own words tell you it confusing to them. 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. By Burn incompetently refusing 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: The above statement is clear that the Tribunal thought I was lying about having the bribery recording, because it would have been natural for them to think that if we had that KILL SHOT piece of evidence, we would surely would have used it. Therefore we must be lying about it. The fact that the Tribunal wrote the above statement speaks loud and clear for itself. It's inexplicable why Burn didn't recognize the huge upside in producing it and the huge downside in not producing it. That is the shear definition of incompetence and gross negligence.

Here's what the Legal opinion said: "**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 clear evidence for all of the above mentioned, but Burn never provided it in the trial. Again, another inexplicable. He could have gone on the offense and pounded the state hard over this audio bribery recording, driving the point home to the Tribunal that because we refused to pay a bribe to a MINAE employee was the reason MIANE did a 180 turn from no wetlands to a wetland within a six-month period and tried to shut the project down. In not doing that Burn and VE snatched defeat from the jaws of victory. They took a huge winning positive and turned it into a monster losing negative. There Is no question this was the KILL SHOT to our case. AGAIN, LIARS DON'T WIN IN COURT AND MY OWN ATTORNEYS MADE ME LOOK LIKE A LIAR. This was the NUMBER 1 MAJOR GROSS NEGLIGENCE AND INCOMPETENCE ACT COMMITTED BY BURN, in not simply following the Legal Opinion's strong suggestion and my instruction to put it into evidence.

(7)-The Importance of the Legal Opinion

The legal opinion was a key piece of evidence since it was relied upon by both Vannin and VE in convincing them the case was winnable. It was the reason they were motivated to put up millions to fund the litigation. Below is a summary from the legal opinion and what the Freshfields Attorney said needed to be done to win. They were assuming competent attorneys would be handling this case per paragraph 37 of the opinion.

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 Paritta;

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

f. down the Project;

g. 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 laid out were key points the attorneys needed to cover to win. None of the above was aggressively argued and instead was completely ignored by Burn. Again another inexplicable? 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 engrained in their brains. Why? So, the arbitrators would hear it over and over again and clearly understand so they wouldn't be confused. In that vacuum of not presenting the relevant evidence for the Tribunal to hear, the Respondent attorney wove a web of false narratives and fake stories that I duped SETENA without providing any proof. Burn never objected once to Counsel for Costa Rica providing lawyer testimony. He was totally disorganized in his cross-examination approach wasting his 35 hours on irrelevant and meaningless questions instead of talking about relevant evidence to prove up our case. In fact, I recall the arbitrators and some witness asking what point he was trying to make, and witnesses saying they didn'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 was the most shocking display of horrible lawyering I ever seen in all of the various trials I was involved with previously. Is that what they teach attorneys to do in UK law schools? Burn's incompetently and pathetic performance is all on video and in transcripts for all to see.

UK law schools should use these videos in a special class in law schools to show their students what not to do in a trail.

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 Burn 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. Although, the facts and evidence were on our side of the case, Mr. Burn failed to effectively use it. In the vacuum created by our non-evidence, Costa Rica's attorney's created a false narrative to take up the space that I duped SETENA with no evidence from any state witness that I did. It all was lawyer testimony with no objection by Burn about the fake narratives, causing the arbitrators to believe their lies were the truth.

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: Again there was plenty of evidence showing the prosecutor, Luis Martinez and Costa Rica Judges that were prejudice against me and the Project, but Burn never used it. Another grossly negligent and incompetence committed by Burn was not hiring a QC Criminal Barrister to advocate on my behalf. I was falsely accused of duping and defrauding the Costa Rica Government in the CAFTA case by Costa Rica's attorneys. That was a very serious crime and Burn had no qualifications for defending me from those criminal charges. Nor did he object to the lawyer testimony from opposing counsel when he made those statement. There was no one from the State who were called by opposing counsel to say I duped anyone. But Burn never objected when opposing counsel made those false charges. Further, Burn never asked Martinez the criminal prosecutor, Julio Jurado, the Attorney General for Costa Rica, and every STATE witness should have been asked this simple question. ***"Do you have any evidence that David Aven dupe or defrauded SETENA or any other Government official? If so, what is that evidence that led you to that conclusion?*** There was no evidence, if there was then the STATE would have gotten a STATEMET from SETENA and other agencies to testify to it, but they never did. But Burn was to incompetent to hire a criminal Barrister to properly defend me and the case and left us to the wolves as we got beat up by Costa Rica lawyer false testimony without any defense. Again, is this what they teach in UK law schools?

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 again we had evidence of that should have been argued, but again Burn never presented is to prove up our case in chief, it all went without objection and was accepted as the truth by the Tribunal. Again my attorneys job was to prove up our case to the Tribunal using the facts and evidence and blueprint in the legal opinion. That was NEVER DONE and is why we lost.

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 project 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 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 show the drone videos to Vargas and the arbitrators and ask Vargas why she was living in an illegally built project? Ask why was this not a wetlands yet Las Olas right next to it, at a higher elevation, was a wetland? Ask the criminal prosecutor if he ever investigated that project to determine if it was built in a wetlands? I told him to show the drone videos to every witness and ask the same questions. Again, Burn was just brain dead and did not even mention that project when he cross examined Ms. Vargas, Martinez 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: Conclusion: Neither Burn or any other VE attorneys ever used the legal opinion road map to victory. They never used the relevant evidence in the cross examination of the States Witnesses. During the breaks and at the lunch hour, I remember a number of times myself and Jeff Shioleno spoke to Burn about why he wasn't using the relevant evidence in grilling the States Witnesses. I especially remember when he was cross examining Julio Jurado, the Attorney General of Costa Rica, I got with Burn and pointed out what Jurado said in his first witness statement that SETENA RESLOUTIONS have to be complied with by everyone. Why didn't he have Jurado read what he wrote to the panel and then show him each of the SETENA Resolutions and ask him why didn't MINAE, TAA, MUNI and the Prosecutor comply with those resolutions? Why did the Prosecutor file criminal charges against me for violating a wetland, when the SETENA resolutions said there were no wetlands? Why did he file criminal charges against me when there was evidence that there wsa no intent on my part to commit a crime since every report from 2008 to 2011 I read by SETENA, MAINE and INTA all said there were no wetlands? Burn told me it's not important this is a submissions case.

During a break when Luis Martinez, the criminal prosecutor was being cross examined, again Jeff and I got with Burn and told him to read Jurado's statement to him and then ask him why he didn't comply with the SETENA Resolutions? Another question to ask is why he accepted the same complaint from Bucelato in February of 2011, that he filed with SETENA in July of 2010, after SETENA investigated and rejected Bucelatos complaint? I also told Burn to show Martinez the INTA report and ask him, did you order that

report? He would say yes. Then ask him if he told me that he didn't believe that report? Either answer he gave would hang him in follow up questions. I said George, I sent you and email last month with suggested cross examination questions for Martinez and you have asked him nothing of what I suggested. He just gave me a blank stare and said this is not your typical kind of trial, the panel pays more attention to written submission than the oral hearing. I said well obviously Christian Leathley didn't get that message because he is acting like a real litigator and from what I'm hearing and seeing we are getting out lawyered.

I also did the same after he cross examined Monica Vargas and again Jeff and I got with him and I asked him George, why didn't you show her the drone videos I gave you and ask her why the MUNI has no permits for that project? Why are the houses in violation of the building code since they are supposed to be on 500 sq meter lots instead of 150 sq meters? Is it true that buyers couldn't get a deed for the house because the lots are too small? Why didn't you ask her those questions? Again just a blank stare. Jeff told me Dave, I don't know if we're going to win this with this kind of weak presentation. George is getting total out lawyered. I was hoping the Burn was right when he said that the arbitrators rely more on the submission than oral testimony. But as it turned out Jeff was right.

During the hearing both Jeff and I told George that we needed to put in the audio bribery recording because we put it in our pleadings and if he didn't put it in, it would cause the Tribunal to think we are liars and liars don't win in court. Burn just refused every instruction I gave him and acted if he was the client who had the last word in how the case was to be prosecuted. His conduct is just another inexplicable!

(8)-Look at the email sent to me by a VE attorney immediately after VE got the legal opinion. 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 Inversiones Costco C&T, S.A.	**To better assess legitimate expectations arguments. These might need to be reviewed by local counsel.**	**Please provide copies of the Environmental Impact Assessments.**
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 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**	Please confirm that the attached document entitled 'Alleged forged document' is indeed the one to which the Opinion refers.

		expectations. This document might need to be reviewed by local counsel.	
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 front sheet' 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.

(9)-AVEN RESPONSE TO VE EMAIL

Dec 23, 2014, 11:56 AM

KW <david3a@gmail.com>

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 shareholders. 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:

AVEN: 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, every time 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 afterthought 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 Government 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

AVEN: 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 Martinez (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 specifically 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.

AVEN: 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

(10)-The next example 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 witness 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 report they were looking for. I told Burn that we would instead rely on the various 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 Attorney then said oave and over that their own expert said there were wetlands. It was a total distraction which actually hurt our case.

I told Burn in the beginning 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 downside and no upside. But Burn was insistent in getting his own expert wetland expert.

The following is what Burn told the Tribunal when we had the damages presentation in February 2017 in DC with no time left on the clock and no times outs. I just above fell out of my chair when Burn admits to his own incompetence in his following desperate and pathetic rant. Here it is in his own insipid words from 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

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

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

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.

(11)-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. Burn had 35 hours to make our case, more than enough time, but he wasted his time with irrelevant and meaningless questions with no case strategy to use the relevant evidence in an orderly and methodical way to prove up our case to the tribunal. Instead he desperately tried to cram it all in with seconds left on the clock an 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.

BURN SHOULD HAVE SAID SOMETHING LIKE THIS TO THE TRIBUNAL DURING THE TRIAL ABOUT SETENA BEING THE TOP WETLAND AUTHORITY

"**The Tribunal must understand that SETENA is the highest Environmental authority in Costa Rica. WHY? Because "SETENA RESOLUTIONS, once issued, becomes a law requiring everyone one to comply with and that includes people who work in Costa Rica Government agencies, Judges, Prosecutors and I have to add, even the Tribunal that are Judges in this case. You heard Mr. Nestor Morea testify that the EV permits were never legally cancelled or annulled as required by law and therefore are still valid today. Therefore, this Tribunal must comply with them as well by complying with their findings that there are no wetlands on the project site. The defense of course is providing all kinds of false narratives and fake stories that David Aven duped SETENA. But have you heard any witness from SETENA of any other witness from the STATE tell you that at this trial? NO. They could have been called, but they were hidden from this trial probably because they told Costa Rica lawyers, they wouldn't lie for them. The Tribunal must conclude by their absence that if they could have gotten a statement from SETENA saying David Aven duped them they would have. So all this Tribunal is hearing in this trial is unlawful lawyer testimonial and that is just not permitted in any court in any democratic society. Yet we are hearing it over and over again from Respondents attorneys, in this trial being held at the World Bank in Washington, DC and frankly it's outrageous for this kind of conduct is going on in this building and under the auspices of this revered organization. Costa Rica should be sanctioned for their outrageous behavior and this Tribunal should order opposing counsel right now to stop providing lawyer testimony with no direct evidence to back it up. My client has the right to face his accusers but as we all know none are here at this trial. This outrage must not stand and we look to this tribunal to put a stop to it.**

Let me get back to the fact that this Tribunal under Costa Rica law is required to comply with SETENA resolutions. Here is the Article 19 of the Organic Law of the Environment of Costa Rica Law that this panel must comply with that found there are not wetlands on the Las Olas Project site: "*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." **Again, this Tribunal must comply with this law as well since the SETENA EV permits are still in force.**

You heard Mr. Julio Jurado, the Attorney General of Costa Rica say 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, SINCA 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 memorialization summary of what was said at meetings they had with the Director of Operations for SETENA in December of 2012 regarding the problems they were having with the SETENA EV Permits. As stated in the memo, SETENA is the one that must investigate 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 it in September of 2010. You also heard Mr. Aven say that what Mr. Martinez should have told Bucelato was that both of them are required to comply with duly issued SETENA RESOLUTIONS. Therefore, Martinez should have also complied with SETENA's findings and rejected Bucelato's new compliant. Martinez 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 for violating a non-existence wetlands with no proof the Mr. Aven had any intent to commit a crime." You need to ask yourself why Martinez didn't follow the law, but instead acted outside the law in falsely charging Mr. Aven with a crime he didn't commit? You need to question, was Martinez, MIANE's Picardo and Bogantes and Bucelato in a conspiracy to shut down the Las Olas project? You must question was is just a coincidence that in the first of February just 6 days apart, both Bucelato and Luis Cubillo from MINAE both filled complaints to shut the Las Olas project down, when just six months earlier both MINAE and SETENA did inspection reports both saying there were no wetlands. This is a simple case for this Tribunal. SETENA EV RESOLUTIONs are a law that require compliance and this panel must comply with the June 2008 Resolution saying there was no wetland, the September 2010 Resolution saying that there were no wetlands, and the November 2011 SETENA resolutions that there were no wetlands. These are three resolutions this Tribunal must comply with that found there are no wetlands on the Las Olas project site.

But Burn never said any of the above at any time during the trial. Instead he stayed silent on all of 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 do with proving 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 Burn's prosecution was of the entire case. 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 the above statement he made to the tribunal. They had more time to put on our case than the attorneys did in Trumps impeachment trial. Why Burn was so incredibility insipient and grossly negligent is again inexplicably and unknown, but the record is crystal clear that he was.

(12)-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 meaningless questions, but then the Protti Report comes up. This was a report that the Costa Rica attorney said proved I duped SETENA because he said it showed I knew that Las Olas had a wetland and I didn't tell SETENA. That was again a false statement with no proof. 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's the exchange 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.

AVEN: I WAS SHOCKED AND STUNNED WHEN I HEARD BURN SAY THE ABOVE. We have a 100-million-dollar case going on. Instead of following up and getting into the Protti report and talking 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; and showing how ridiculous that was. 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 and they very likely 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 clip and that will tell the whole story of Burn's gross negligence and incompetence. So why did he do it. Was it just a stupid comment or did Burn just hate Trump? Here are a couple of email that Burn sent me that could shed some light on that subject. .

(13)-So why did burn say what he said? Well let's look at an email he sent me about Trump and see if that sheds some light on the subject.

Burn, George gburn@velaw.com 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.comt 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

AVEN: 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? They're to divisive. Families are broken up and people get divorced over religion and politics. Secondly, Burn's hatred of Trump was so great he it was hindering and interfering with his judgement and duty to his client. He had a choice, pay attention to the case and talk about the key Protti report and make fun about Trump and his fake news accusations. In choosing the latter he hurt his client's case 100 million dollar plus case. Whenever it is ever appropriate to make this kind of inflammatory statement ever in any court room when you trying to win a high value case for your client not knowing who hates of loves Trump. What kind of insanity is that anyway? Burn should be disbarred for this outrageous conduct and I would like to file something with the proper authorities in UK about his aberrant conduct and recommendation for disbarment. I hope you understand and appreciate how grossly negligent and incompetent his whole behavior was in this area and also hope you are as outraged as I am about his unforgivable and incompetent conduct

(14)-Email that states what George Burn and Todd Weiler stated what needed to do, but never did any of it. "By your Words you'll be justified and by your Words you'll be condemned". Judge if Burns Words justify or condemn him.

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 they 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

AVEN: All that sound great and is true, but neither Burn, Weiler or any other VE attorney ever did any of the above. **NADA DE NADA**. George saw this email, agreed with it and then never done any of it. Below was my response to Weiler's email and where I forward Weiler's email to Burn.

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

to Todd, bcc: George, bcc: Louise (AVEN: George is Burn)

Todd

Thanks for the explanation and it sounds right on. That fact is that if they didn't bring in the criminal lawsuit, 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

(15)-AVEN: Burns response to above emails.

Burn, George gburn@velaw.com 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.**

AVEN: The criminal proceedings against me were never talked about in any organized and coherent way. Yet he says, "That is the gateway to full compensation.

BURN Continues: 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 damage's 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 damage's 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 Burn said: . "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 what they said they were going to do and the Gateway to full compensation. 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 that is very prophetic in that it turned out just like he said it would if certain things weren't done.

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 more cost effective for both sides.

The jurisdictional arguments are completely different in the two cases though. In the Spence cases, CR's 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). **AVEN: Both 1 ad 2 were rejected by the Tribunal.**

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 ABOVE attorney's own words. We lost because my attorneys made me look like a liar by not putting in the bribery recording so the Tribunal 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 our 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 likeability factor is all important. I used 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 likeability 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

(16)-Assassination attempt on the life of David Aven and Jeff Shioleno April 15, 2013

Paragraph 44 in the Vannin Legal Opinion "***(iii) they can provide evidence of the alleged assassination attempt of Messrs. Aven and Shioleno and its link with governmental action;"***

The following email from Todd Weiler about eliciting arbitrators sympathy

On Tue, Apr 19, 2016 at 5:46 PM, Todd Weiler <todd@treatylaw.com> wrote:
"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 your using criminal law]"

All of the above should have been talked about during the trial since trial are all about persuading the Judges or Jury that you are right and the other side is wrong based upon the facts and evidence and the attorneys ability to tell the once upon time story in Costa Rica. Burn had no idea about how to do that and was incompetent in two huge ways. (1) Attempting to try a case he wasn't qualitied to try and it was like a nurse's aide talking a patient into letting them do a brain surgery and then killing the patient during the operation, and (2) Incompetent for not recognizing that and getting a top-notch Barrister to Litigator this case for him. Burn was from the UK; this case jurisdiction was in the UK and Burn was familiar with the process of getting top rated AC Barristers to try cases in their areas of competency

(17)-Being Illegality Reported to INTERPOL by Costa Rica and having a Red Notice put out for me never having been convicted of a crime.

AVEN: I would dare say this may be the first and could probably qualify for the Guinness Book of World Records. This was nothing more than a revenge act by the criminal prosecutor for being embarrassed about my ripping him to shreds during my 60-minute defense of myself during my criminal trial for violating a wetlands in Costa Rica. Martinez admitted at the trial in a question asked to him by Burn if he was the one that requested INTERPOL to put a red notice out on me.

During my testimony in the trial, stated that the RED NOTICE was illegal since I was never convicted of any crime and it was like someone being reported to INTERPOL who stole a candy bar at 7/11. Interpol is

for serious crimes not petty crimes and the person actually has to be convicted of a crime. In this case the trial was mis-trialed and there was no conviction.

Here is what INTERPOL told Costa Rica in April of 2016
From: Elias Carranza Naxera
Sent on: Tuesday, October 27, 2015 02:59 p.m. To: Silvia Soils Dâvila
Subject: DAVID RICHARD AVEN-Criminal case number 14-000002-0588-TP Importance: High

I take this opportunity to tell you that on September 9, 2015, the Office of Legal Affairs of the Secretary General of INTERPOL informed the following through the messenger of this police international, message that was provided to this fiscal representation by the INTERPOL Officer San José Gilberth Monge Arguedas:

"We hereby refer to your request for red notification of June 26, 2015 against AVEN, David Richard.

As you know, it was referred to the Office of Legal Affairs in order to examine its compliance with the Statute and other regulations of INTERPOL.

On August 28 of the current year, additional information was requested in order to finalize the legal assessment of your request. We appreciate your prompt response and the information provided in your message of the same date.

We would like to highlight article 83.1.a) of the INTERPOL Regulation on data processing (RTD), under which only red notices will be published when the act in question constitutes a serious crime of common law. In this sense, the ordinal (i) of the same article excludes the publication of red notifications for crimes derived from both the infringement of laws or not of administrative nature, unless the criminal action is aimed at facilitating a de / it to serious or suspected of being connected to organized crime.

In the present case, it is clear from the information provided that the above-mentioned individual is accused of draining a wetland and invading said conservation area without the proper permission of the National System of Conservation Areas. Such events could constitute a crime of violation of the Wildlife Conservation Law, Law No. 7317 of October 21, 1992, in the modality of drainage and drying of wetlands.

After reviewing the request in detail and in light of the foregoing considerations, it is concluded that your solicited does not meet the seriousness requirements of the crime required in Article 83.1.a) .i) of the RTD, given that the facts and crimes charged have a preponderantly administrative character. Therefore, the red notification cannot be published and the information contained in the broadcast cannot be kept in the INTERPOL databases. Consequently, all data related to the requested will be deleted from INTERPOL databases.

Also, since your request was circulated via IPCQ, all NCBs will be informed of this decision.

Yours sincerely,
General Secretary

AVEN: There you have it. Initially, Martinez convinced the INTERPOL Office in San Jose Costa Rica to put the red notice out for me and I was entered in their data base. I was told of this by Louise Woods a VE attorney in one of my calls with VE who saw the RED NOTICE in the INTERPOL data base. We complained and INTERPOL dug deeper into the facts and evidence and realized they made a horrible mistake and advised Costa Rica they were deleting my name from the INTERPOL data base. But it's like

closing the barn door after the horses run out. That data gets picked up daily and put into commercial data bases where it stays forever. This revenge act by a criminal prosecutor had caused harm to me forever. One business opportunity that was destroyed was a partnership with Google. After doing a background check they discovered the INTERPOL RED NOTICE information in a commercial data base. They immediately cancelled the partnership deal that was worth millions. I have a statement from an associates = that was working with Google on that deal. We filed a moral damage claim for defamation and reputational harm, but Burn never pursued it or talked about it. I want to see if we can get damages on this since Burn was again incompetent and negligence in not putting this forcefully before the tribunal. Again this goes to the above statement by Weiler where they said they would do it, but just failed carry through. Here it is again.

(19)-Todd Weiler prophetic email explaining how we could lose our case.
On Tue, Apr 19, 2016 at 5:46 PM, Todd Weiler <todd@treatylaw.com> wrote:

"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 are using criminal law]"

Weiler and Burn identified what they needed to do, but never did it.

AVEN: One final comment, even it Burn would have done all of the above, by not putting the bribery recording into evidence, I don't think we would have won. Not doing 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. **As Todd Weiler prophesied about this in his email to me, here it is again for remembrance:**

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

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

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**

Burn, Weiler and all the other VE Attorneys fulfilled their above prophecy. The Tribunal found a way for us to lose because they believed we were dishonest liars and liars don't win in court. My own attorneys actions caused the Tribunal to draw the totally wrong conclusions in ruling against us. There is no doubt that from the very beginning both Vannin, VE and FRESHFIELDS believed this case could be won, but it was lost due to the worse kind of incompetence and gross negligence that may also qualify for a place in the Book of Guinness World Records.

(20)-IN CONCLUSION--Proof that not putting audio bribery recording into evidence was the KILL Shot to our case.

On the first day of the hearing on December 5, 2016. Counsel for the Defense Christian Leathley says the following in his opening statement on page 264. (from the transcript)

By August 2010, we come to the point that Mr. Bogantes is accused of soliciting a bribe. No credible evidence exists to support this. Certainly, under Costa Rican law, no criminality could be established.

Claimants allege that they had a tape recording of the solicitation of this alleged bribe. They make that in page 7 of their Notice of Intent to Submit a Claim to Arbitration on the CAFTA back in 2013.

I'm sorry.

PRESIDENT SIQUEIROS: Please go ahead. When we conclude this section and you go into what, the Defensoria, could we take a break--small break?

MR. LEATHLEY: Absolutely, sir.
PRESIDENT SIQUEIROS: Thank you.
MR. LEATHLEY: Let me just take one step back.
PRESIDENT SIQUEIROS: Sorry for my interruption.
MR. LEATHLEY: No. Of course, sir.

Claimants say they had a tape recording of this alleged bribery incident. They said this in 2013 at the time King & Spalding were representing them. As of today there is no recording. Such a cornerstone of their entire case is inexplicably missing.

Sir, if you wish to stop now for a short break, I would be very happy to. I'm about to move into the Defensoria part of these.
PRESIDENT SIQUEIROS: Thank you. So, let's take a 10-minute break.
MR. LEATHLEY: Thank you.
PRESIDENT SIQUEIROS: Thank you.
(Brief recess.)

Leathely's above statement was absolutely true. However, when Burn heard him make it he knew the following; (1) I had given Burn and VE an audio recording of a bribery attempt made in April of 2009 and they listened to it and knew it existed, (2) It wasn't Bogantes that I had a recorded, but a person in the MUNCIPALITY I recorded in April of 2009, who was issuing construction permits. Bogantes asked me and Jovan Damjanac for a bribe in August of 2010 at our Las Olas office. (3) that is was alleged in our Notice of Intent NOI and Notice of Arbitration (NOA that we had a recording of a bribery attempt, (4) by not producing it could make me out to be a liar and that could have serious consequences to the outcome of our case, (5) that I had instructed Burn to put that into evidence because it was the truth, (6) Burn knew that not telling the truth in court and not being honest would hurt our credibility with the Judges, (7) if the judges didn't believe you were being honest and telling the truth, they would not rule in your favor.

Right after Leathley made that statement we took a short recess. I and Jeff Shioleno spoke with Burn during the recess and told him that he must tell the Tribunal that he had that recording, but again he failed to follow my instructions and stayed silent. What should have happened is when we came back after the break Burn should have stood up and simply told the truth and said something like this to the Tribunal.

"Regarding the last statement made by Mr. Leathley just prior to our break, I have to tell the Tribunal that the audio recording does exist. Mr. Aven gave it to us at the very beginning our engagement, we listened to it and Mr. Aven is asked for a bribe in that recording, Mr. Aven gave us instruction to put it into evidence. However, for our own case reasons we decided not to enter it into evidence. However, based on what the Respondent attorney said, we have to be honest with the court and tell the truth since we don't want to give the impression to the court that Mr. Aven was lying about having that

audio. Therefore, we will produce that audio recording to the Tribunal so you can listen to it for yourselves just the purpose of knowing that it exists."

Burn had a duty to just tell the truth. By not doing so he deceived the court by withholding the truth fro them. That led to them believing we were liars. After not correcting the record immediately, wrote Burn and his boss Jim Loftis. I told them they must write the Tribunal immediately during their deliberations and tell them they have the recording and can produce it just for the purposes to show the Tribunal that it exists. They again failed to follow my instruction and didn't respond to any of my emails. Here is the result of that terrible decision from the words of the Tribunal in their ruling:

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)***

As I said before, every decision that Burn made was the wrong. After a while one has to wonder just who was he advocating for? Whether there was something else going on behind the scenes other that incompetence is unknown, but what is clear is that all those bad decisions represented gross Solicitor negligence and was the reason we lost our case. Again, at the beginning of this case both VE, Vannin and FRESHFILED'S (Legal opinion) believed we could win. However, we lost, so the question is who was responsible for that loss? It has to be laid at the feet of our attorneys whose job it was to use the solid evidence in a competent way to win our case. Because of their gross negligence in not doing that the case was lost.

Another big factor was that Burn let the respondents attorney provide lawyer testimony that I duped SETENA using a Protti report they falsely asserted there were wetlands since the report never said that However, the state alleged that report proved I knew there was wetlands and never told SETENA. Therefore, I duped SETENA into issuing me the EV Permit which in effect nullified it. Burn failed to object to that false allegations by pointing out the STATE failed to call any one from SETENA to say that I duped them and never got a statement from Protti to confirm the State allegation, Burn also failed to provide me with a criminal Barrister who could have provided me with a aggressive defense against their outrageous, defaming and damaging false and fake allegations that caused me great reputation damage. Another inexplicably bad decision that damaged me and helped the STATE with their case.

David Aven
AVEN vs VINSON and ELKINS
March 12, 2020