

info@mylobc.com

Apr 20, 2016,
11:12 AM

to George

George

Hope all is well.

Boy it's lucky I didn't try to meet with Jim the following week in Houston. They got a Noah experience they are still trying to dig out from under and there has been billions in damages. I picked up a cold from that trip or at least I got it after getting back and it's really hanging on and I'm not feeling that well.

Here is some back and forth with Todd, he initiated it and it's good, just to tell you. Want to get your input on what he is saying here since this is a key strategy that he is laying out and first question is are you on board with this? I responded to this, but this is really out of my wheel house, so I want to make sure you and Todd are on the same pager. It seems to me that he may be overly cautious and tenuous on this, but as I said, this is not my wheel house. As you will see Todd is completely silent on a damage strategy, which is okay since that is not his wheel house, at least that's my perception.

I also got your 12 page overview memo laying out the key things you want to counter in the CR response and I responded to that. That memo was also rather silent on damages.

Second question is this. As I said before I am very concerned that there is an overwhelming amount of work being done to address the liability part of the case and not much to develop a damage strategy, at least that is my perception from what I have been seeing. I just want to know where is our is the case we are going to make on our damage strategy being laid out. I have seen nothing but the damage expert report. Are you going to develop a vigorous damage strategy, one that you will argue at the hearing. How does that generally work in this kind of arena.

Have you had an opportunity to talk to Jim about our meeting and getting his thoughts on moral damages strategy?

All the best,

David



Todd Weiler

5:46 PM (17 hours ago)

to me

Hi David.

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

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

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

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

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

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

We win by making sure that the Tribunal keeps its eye on the permitting process; the fact that you did everything right in how you went about making the investment; and the fact that there just weren’t any so-called wetlands on site anyway. We potentially get into trouble if we allow the Respondent to make this case either about whether you (and the other Claimants) broke CR law, or whether CR was given a

proper chance to correct any “mistakes” its officials may have made in relation to the Las Olas project [as required under the exhaustion principle].

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

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

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

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

d
Vg

7:06 PM (15 hours ago)

Todd Thanks for the explanation and it sounds right on. That fact is that if ...



Sd Vg <david3a@gmail.com>

8:27 PM (14 hours ago)

to Todd, bcc: George, bcc: Louise

Todd

Quick question. Can we get any mileage out of claiming human rights violation in the blatant act of the prosecutor filing criminal charges against me when he knew I had not committed a crime. That was evidenced by the fact that I had a meeting with him prior to his filing the charges and showed him all the reports and permits as well as the Mussio contract for shepherding the project through SETENA. So it was obvious that I had not intent to commit a crime. Further, he ordered another report done by INTA

an that report came back no wetlands. When I asked him about getting the his investigation dropped due to all INTA report stating no wetlands, he told me he didn't believe that report. Then in CR response they through INTA under the bus claiming that INTA is really not a wetlands expert, but deal with agriculture. That's false since INTA actually teaches MIANE how to determine wetlands. Further, I understand that it is now a requirement that every project needs to get an INTA clearance. So it begs the question, if INTA was not the right agency, then why did the prosecutor order a report from them and in light of that report a person in prosecutor 101 would know not to file criminal charges with all the exculpatory evidence. So can we make a case for human rights violations since the panel has already raised that flag in their procedural #3 ruling? Just curious.

D



todd@treatylaw.com

8:45 PM (14 hours ago)

to me

That's part of the needle-threading exercise. Because there appears to be a potential opening for citing human rights norms to be considered by these particular arbitrators, I'd certainly like to draw their attention to applicable human rights standards in our arguments. What we wouldn't want to do is come right out and say "they violated" this human rights rule or that human rights rule, for two reasons. First, of course, we have to be mindful of keeping the focus away from something that looks like a de facto denial of justice argument. Second, and more relevant to your question, we wouldn't want to be accused of trying to prove a breach of the CAFTA by citing a breach of some other law (here the Inter-American Convention on Human Rights). It's the same reasoning as to why proving that the Government broke its own rules doesn't prove that it breached a CAFTA rule.

All of that being said, it's basically a game of finesse, because the CAFTA standard is "fair and equitable treatment" and so we can at least demonstrate the unfairness of CR's conduct by referring to the standards to which it has otherwise promised to adhere (e.g. its own administration and constitutional law rules and rules contained in international human rights law).

From: Sd Vg [mailto:david3a@gmail.com]

Sent: Tuesday, April 19, 2016 8:27 PM

To: Todd Weiler <todd@treatylaw.com>

from:info@mylobc.comto:"Burn, George" <gburn@velaw.com>
date:Apr 20, 2016, 11:12 AMsubject:Questionmailed-by:gmail.com:Important according to
Google magic.

Wed, Apr 20, 2016,
11:12 AM

info@mylobc.com

to George

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All the best,

David

Comments on go forward strategy and Lying Martinez

Inbox



info@mylobc.com

Sun, Apr 24, 2016,
9:18 PM

to George, Louise, Justine, Peter, Roger, Raul, Todd, bcc: Samuel, bcc: Roger, bcc: DAVID, bcc: Carol, bcc: Eric, bcc: Jovan, bcc: Manuel, bcc: Manuel

George and all: PLEASE, PRINT, READ AND FILE. VERY IMPORTANT STUFF HERE.

I re-read the KECE Environmental report and spoke to Todd and Roger about it. I thought the report was very thin, not well written and not very well documented. He makes statements like Claimants filled in the wetlands, like they witnessed it. We should ask him if in fact he personally witnessed anyone of the claimants filling in the wetlands or cutting the forest? If not then on what basis can he make that statement? There was nothing presented at our criminal trial that proved anyone associated with the Las Olas project had anything to do with filling in a wetlands or participated in cutting a forest, since none existed. No one was arrested, we received no citations, or fines, never got a cease-and-desist order from anyone, never had any of our equipment confiscated that was involved in cutting a forest illegally. NOTHING. So in the absence of all the above just exactly on what authority can KECE, or anyone else, say that we filled in a wetlands and cut the forest? Is just preposterous these kinds of statements can be made without any kind of substantiation.

KECE also makes a statement the alleged forged documents was proved to be a forgery. That is totally false. It was never proven to be a forgery, either by the Police or a court. In fact, when I gave my statement in April of 2011, I told the prosecutor that if he thought it was a forged document then he should call the police and report it and have them investigate and find out who forged the document, since forgery is a serious crime in Costa Rica. The prosecutor never acted on that. Question is why? The answer could be that instead of wanting to all the police and start an investigation that would have to take them inside MIANE, the prosecutor raised a distraction and just falsely charged me with that forgery after telling me at the preliminary hearing he wasn't going to follow up on that since he had no way to prove that I had anything to do that forged document. However,

after tell me that, he then went ahead charged me with that crime in November of 2011 and dismiss the charge at the preliminary hearing on June 19, 2012. In doing that he gave the same reason that he had no way to prove I have anything to do with it, which is what he told me at the time I gave him my statement. The question is why did he lie to me and charge me with that crime when he told me he wasn't going to do it. I brought that up in my 1 hour and 45 minute declaration and George and Roger you need to watch that.

Here is what Martinez said in his witness statement and I must say I had to read this a number of times to actually believe what he is saying here so let me step you through this and I want to you read the following carefully.

588 In his witness statement, Prosecutor Martínez has discredited each one of Claimants' defamatory accusations. As to his alleged "discriminatory animus" against Mr Aven, Prosecutor Martínez explains:

"In this regard, it also caught my attention that in the Claimants' Memorial and the witness statement of Mr Aven, it was suggested that I had something personal against him or an illegitimate purpose in connection with the investigation of the case because I had made the accusation without any evidence. That is not true and I strongly reject such an unjustified accusation. **AVEN OKAY WHAT EVIDENCE DID HE HAVE, HE HAD NOTHING. HE DOES NOT STATE WHAT EVIDENCE HE HAD DID HE, YET HE LIES AND INTIMATED THAT HE HAD EVIDENCE. HE GOES AND SAYS THE FOLLOWING:**

If that were true, then it is incomprehensible why I decided to drop the charges against Mr Aven on the basis of the use of a forged document, which is a very serious crime with penalties of up to 6 years in prison. Of course even if one has well-founded suspicions, in accordance with the principle of presumed innocence, one can never accuse a person without having enough evidence that he or she has committed a crime. That is why the investigation into the use of a forged document did not allow us to determine with probability that Mr Aven used this document or that Mr Madrigal developed or used it before the SETENA. Therefore I decided to dismiss the charge.

AVEN: THE PROBLEM IN WITH WHAT MR. MARTINEZ IS SAYING HER IS THIS. HE IS ADMITING THAT HE HAD NO EVIDENCE WHICH IS EXACTLY WHAT I SAID IN MY WITNESS STATEMENT AND WHICH HE JUST SAID HE WAS AN UNJUSTIFIED ACCUSATION.

NOW GET WHAT LYING MARTINEZ IS SAYING HERE. AND SEE IF THIS MAKES ANY SENSE AT ALL. IF A PERSON FORGES A DOCUMENT, THAT IS THE CRIME. USING IT IS ANOTHER CRIME, I THINK EVERYONE KNOWS THAT, BUT APPARENTLY MARTINEZ DOES NOT. THERE ARE ONLY TWO POSSIBLE EXPLANATIONS HERE. EITHER MARTINEZ IS JUST PLAIN INCOMPETENT OR HE IS LYING. HE TALKS ABOUT WELL FOUNDED SUSPICIONS. YOU DON'T FILE CHARGES ON BELIEFS OF WELL FOUNDED SUSPICIONS. YOU FILE CRIMINAL CHARGES ON HARD EVIDENCE AND I AM THE ONE STATING THAT HE HAD NO EVIDENCE. HE REJECTS THAT AS AN UNJUSTIFIED ACCUSATION, BUT IS UNABLE TO STATE ON WHAT EVIDENCE HE HAD THAT CAUSED HIM TO FILE CRIMINAL CHARGES AGAINST ME FOR FORGERY. SO WHO IS RIGHT AND WHO IS WRONG HERE?

Far from what is suggested by the claimants, my intention was never to punish Mr Aven with a long prison sentence, because of a personal issue. My role as an environmental prosecutor is to enforce Costa Rican environmental legislation and especially, if there has been environmental damage, that the person responsible repairs it. My investigation and prosecution of the case in all instances had that as the sole objective.

AVEN: NOW LISTEN TO THIS TWISTED STATEMENT HERE. THIS MAKES NO SENSE WHATSOEVER. HE SAYS THAT IT HIS ROLE TO ENFORCE COSTA RICAN ENVIRONMENTAL LEGISLATION AND ESPECIALLY, IF THERE HAS BEEN ENVIRONMENTAL DAMAGE THAT THE PERSON RESPONSIBLE REPAIRS IT. IS THAT WHAT HAPPENED? NO. WHAT HAPPENED IS THAT HE FILED CRIMINAL CHARGES AGAINST ME WITH NO EVIDENCE I EITHER COMMITTED CRIME OR HAD ANY INTENT TO COMMIT A CRIME. I SPOKE TO HIM AND SHOWED HIM ALL THE GOVERNMENT

PERMITS AND REPORTS, I SHOWED HIM THE MUSSIO AGREEMENT. HE HAD CLEAR EVIDENCE THAT I HAD NO INTENT TO COMMIT A CRIME, YET HE FILED CRIMINAL CHARGES AGAINST ME WITH NO EVIDENCE AND THAT IS EXACTLY WHAT I ACCUSED HIM OF AND HE REJECTED THAT, BUT GAVE NO EVIDENCE THAT HE HAD THAT WOULD LEAD HIM TO FILE CRIMINAL CHARGES. I NEVER GOT A LETTER FROM MARTINEZ STATING THAT DAMAGE WAS DONE TO THE ENVIORNMENT AND THAT HE WOULD LIKE ME TO REPAIR IT. BUT NOW HE IS STATING THAT WAS HIS SOLE OBJECTIVE. THE FACTS DO NOT SUPPORT HIS OUTRAGEOUS CONDUCT AND LIES HE IS TELLING HERE. I SAID THE FOLLOWING IN MY DECLARATION AT THE END OF THE TRIAL AND LYING MARTINEZ HEARD IT BUT APPRENTLY DIDN'T GET IT. THE STATEMENT WAS THIS, "BY YOUR WORDS YOU WILL BE JUSTIFIED AND BY YOUR WORDS YOU WILL BE CONDEMNED". DO MARTINEZ WORDS, A TOTAL OF 286, JUSTIFY OR CONDEMN HIM? THEY CLEARLY CONDEMN HIM. IS ANYONE SEEING THIS EXCEPT ME?

I should add that prior to the initiation of this proceeding, I have never met Mr Aven or Mr Damjanac, and I have never in my life seen or met the other claimants." [637](#)

AVEN: Further, Luis Picardo, also told two lies to SETENA, when they sent SETENA a copy of the forged documents and told him that it was forged and that it was the document that they relied upon in issuing their environmental permit. **SO NOW WE HAVE EVIDENCE OF TWO GOVERNMENT EMPLOYEES LYING.** We objected to that and said that to our knowledge that document wasn't forged, and in fact told them why. We knew nothing about this alleged forged document and it said nothing all the other documents said, no wetlands or forest on the project site. We also stated that it was not the document SETENA rely upon in issuing their EV permit. We provided the Real document they relied upon, which was in both the SETENA and the MINAE files. Once SETENA confirmed with MINAE that the document we provided to them was in fact the real one that they in fact relied upon, SETENA wrote a resolution rescinding their temporary suspension, re-instated and re-confirmed the project and rebuked MINAE for lying to them. The Prosecutor was also aware of this resolution,

however, he went ahead and filed his criminal charges at the very same time that SETNEA was re-instating and re- confirming the project. Again with no evidence that we committed any crime or had an intent to commit a crime. So how screwed up is that. On one hand SETENA is reconfirming their permit and on the other hand the criminal prosecutor is filing criminal charges against us for violating the environment.

KECE also makes a statement about INTA and said they were told by the government that INTA was not in fact a wetlands agency, but had more to do with agriculture. This is obviously a bold face lie and we need to confirm that. In fact I would suggest that Roger call Dr. Cubero, who now is the head of INTA, and have a talk to him about the slander that was said about him and INTA in Costa Rica's response and let him read it. Keep in mind that Costa Ricans are very proud people and don't take kindly to people who called them incompetent. Roger should see if Dr. Cubero will give them a formal statement that would state exactly what INTA's role was in doing that report for the prosecutor and have him comment on his competence in being to determine what a wetland is. We should also see if they would confirm that they in fact teach MINAE how to determine wetlands. Now I do understand it is very unlikely for a person that works for the government to testify against the government. However, we should not speculate what people will or will not say, our job is to ask questions and see if we can get any answers. As I said, Dr. Cubero may be so pissed off when he reads what was said about the agency when he learns what the government said and threw him and INTA under the bus, that he may very well decide to speak up and tell the truth and straighten out the record.

HERE IS WHAT THEY SAID IN THEIR RESPONSE:

399. "The methodology used by INTA to analyze the soil is based on land issues for agricultural purposes, related to the Law on the Use of Land. The fact that this methodology determines that the land is not typical of a wetland, does not imply that there is no wetland in the area. This is confirmed by Prosecutor Martínez's testimony":

"In addition, the defense placed significant emphasis on the report prepared by INTA that determined that the land of the area at issue was not typical of a wetland. Nevertheless, INTA does not have any jurisdiction regarding the issue of wetlands. INTA is the national agricultural and livestock institute, under the Ministry of Agriculture and Animal Livestock. The methodology used by INTA is based on issues of land for agricultural

purposes. The fact that this methodology determines that the land is not typical of a wetland, does not imply that there is no wetland in the area. INTA was not requested to determine whether there was a wetland on the site (it could not have issued a determination on the issue because it does not have any jurisdiction in this regard), but rather it was requested to determine whether the type of land satisfied the Law on the Use of Land. The visit by INTA that led to the report that the defense referred to, was prepared together with the Coordinator of the 'Programa Nacional de Humedales' of SINAC, who did have jurisdiction to determine the existence of wetlands and who confirmed that there was a palustrine wetland in the area."⁴⁵⁵

400. In fact, Mr Cubero in his witness testimony given in the criminal trial against Mr Aven also stated that as a specialist from INTA he used the methodology for classification of types of land

with agricultural and livestock purposes, which is not intended to be used for real estate purposes and that he did not have jurisdiction to determine the existence of a wetland.⁴⁵⁶

401 Soil is just one of a series of environmental aspects that are considered when determining the existence or not of a wetland. What is clear is that it is not determinative in and of itself.

AVEN: I am not sure Dr. Cubero said that. You see they call him Mr. and not Dr., why? They don't want to give him that dignity and authority and Mr. is a way to lower his credibility and authority. As I said, when we point that out to Dr. Cubero, he will be really pissed off. We need to point that out and nail them on it. We need to get Nestor and Manuel to respond to this as well and you need to pull Dr. Cubero's testimony and get a transcript of exactly what he said. The only way you can tell if anyone from Costa Rica is not lying is that their mouth is not moving. You can't believe a word that they say here they are constantly are lying, is anyone upset about this other than me? This is good for our case and we need to expose these lies and list each and every one of them for the panel to plainly see. Once they are discredited and exposed as liars before the panel

that's the end of the ball game and we win, but we need to win big on damages and remember that.

We should also seek the correspondence that the prosecutor sent to Dr. Cubero in requesting that INTA do a wetland study. We need to see what the scope of the work was in that communication to see if it comports with what lying Martinez is saying here. From what I know from my perspective is that this is a vast difference between what the prosecutor was saying at trial and what he is saying now. THE PROSECUTOR IS LYING AND I THINK WE CAN PROVE IT.

I have to stress the fact that there is a criminal trial record that's on the video and we simply have to use it and not let this criminal government rewrite THE historical facts. Here is the fact. At no time did the prosecutor objective to anything that Dr. Cubero testified about at my criminal trial when he clearly said that Las Ola was not a wetlands, did not have a wetland soil and did not contain the three specific things that were needed for an area to be determined a wetlands. MARTINEZ is obviously lying in his statement when he states that INTA is not really a wetlands authority, but was one making determinations about agricultural LANDS.

This is a bold faced lie on its surface. I was called to the prosecutor's office to respond to possible criminal charges of violating wetlands. Not violating some agricultural law. The prosecutor told me that he was going to order two more wetlands studies. One by MINAE and one by INTA. So there is no reason for him to order a study on some agricultural determination. We were not applying for agricultural permits. There was never any mention before about any agricultural considerations. This is the first I am hearing this one and it's a bold face lie just on its surface. However, let's say for arguments sake that the prosecutor was confused about what he did and when Dr Cubero gave his testimony at trial and started talking about wetlands, and said there was no wetlands at Las Oas, that there is a difference between a wet land and a wet area. He clearly said what the prosecutor was looking at was a wet area because water was draining off of the Hills and the roads into this lower bowl like Area. He said that did not make it a wetlands. Again it's necessary to get the video and transcripts of Dr. Cubero's exact testimony because we can absolutely prove that the criminal prosecutor's is lying.

So if the prosecutor was confused about what Dr. Cubero was saying at trial why didn't he object or try to fix it on cross

examination. None of that happened. AGAIN WE NEED TO USE THE CRIMINAL TRIAL RECORD AND SHOW THE VIDEO SO THE PANEL CAN CLEARLY SEE THE GOVERNMENT IS ENGAGED IN A BIG COVER UP AND TRYING TO LIE THEIR WAY THROUGH THIS. WE CANNOT LET THEM GET AWAY WITH THIS AND NEED TO EXPOSE THEM FOR THE BIG LIE THEY ARE TELLING. IT'S DISGUSTING.

KECE just dismisses everything that our experts stated and really doesn't refer to anything specific. What I would suggest is that we get, Nestor Moreau, Maurico Mussio, Esteban Burmedez, Geradon Barboza, Igofer and Minor Salano to refute what they can refute. This doesn't have to be a lengthy and costly statements. We just need to get enough to destroy what KECE said and effectively use their statements to destroy the credibility of the respondent's statement.

In speaking with Todd, he told me that he was surprised that this guy from KECE only had a bachelors degree and seemed to be not a very good expert. It begs the question, why did Costa Rica have to go outside the country to get an expert opinion on the Environment? They spent two days on site, have no knowledge of Costa Rica's environmental laws and a very small data base about Costa Rica. While on the other hand we are totally relyong on in-country experts. So what is wrong with this picture? The claimants are using Costa Rica environmental experts and the Government is use sub par foreign experts. Shouldn't that be the other way around????

I'm sure you all are picked up a lot more than I have but the above are my thoughts about how we should proceed with this. As I said I wouldn't spend a lot of time or money in getting these witness statements updated, just enough to destroy their credibility. Once that is done then the ball game is over.

George, I know the legal team will do a good job on this. Let me know if there is anything can do.

David

Costa Rica Rejoinder

**info@mylobc.com**Oct 31, 2016, 3:22
AM

to George, Louise, Todd, James

George

I spent hours reading the rejoinder and attached is the first part of my response and eval. It will take me many hours to get you my input on the other stuff that they wrote. But here are my thoughts in a nutshell. They threw tons of shit at us and most all of it was false and distorted and mostly accusations, allegations and heresy evidence on every aspect of their response. They were intentionally vague on their allegations and on many things gave no dates or time lines on events described. They didn't get a witness statement from Bucelato, Bogantes, Curbero, or Picado, but that didn't stop them from giving a lot of heresy testimony which should be thrown out. The only thing they didn't say I did was molest children and they may get there before there done. Do you understand that you are dealing with an organized crime family here?

However, our big problem is this, we have very little time to thoroughly address the reams of things they put in their rejoinder. I was always concerned that the fuse was too short in from the time we got their second submission and to the date of the hearing which is really about 4 weeks to counter all the falsehoods in their submissions and also get the expert witnesses up to speed. In fact, we spent a lot of time doing witness preparation and now given the volumes of story telling they did I'm not sure what good all that witness preparation really was since they really waited until their last submission to throw everything in there not only including the kitchen sink, but the shit house as well. I am now concerned that we will not have enough time to properly address all this shit they threw at us and that appears to be their **strategy** to win and it very well may work. I just don't think we have enough time to get our arms around all of it, address and rebut it and prepare our expert witnesses so they can be effective.

What I told you would happen if we got into a pissing contest over the wetland issue happened and they used out expert statement against us where he said there were wetlands. We are now on the defense with that with only 4 weeks to the hearing.

One thing that has to be done is to get a look at all the documentary evidence that they use in making all of their outlandish statements. To give

you just one brief example, I have found a document they produced and said it was a note from Jovan (a picture of which they put in the rejoinder) which they say stated that we were not interested in moving forward with the eviction of the squatters. I then sent that to Manuel and he told me that was a note saying we wanted them to take action. So there you have a directly opposite statement they are making and everything is like that. If true they are intentionally lying and their **strategy** is that we won't have enough time to counter all their lies. To run this all to ground would represent a massive effort on our part and I just don't think we have enough time to do it and to do it right. I hope I'm wrong, but I don't think I am on this one. I think we got out played here.

Here is what I say in my eval that is attached and this is how I will respond to their assertions. **Please provide me with the documents in evidence that support what your position and assertion.** To properly prepare for our hearing we should have enough time to get all that together, but I don't think we do. I hope this is not a fatal mistake we made in scheduling the hearing too close to the time we got their rejoinder. I kind of feel like we got played and out lawyered here. I think they saw this from the very first and set up a **strategy** to do a big second dump, make all kind of false and wild statements, knowing we couldn't cover everything. They saw that by getting there rejoinder in on October 28, it would not give us an opportunity to properly prepare for the hearing so they planned to do a light first response and then unload on us with the second submission knowing that there was no way we would have enough time to properly address all of the shit they threw at us. We won't even be getting the English translations for two more weeks. Going though each one of them takes hours. So what have we really gotten ourselves into here George? I'M VERY CONCERNED ABOUT THIS and our ability to properly prepare for the hearing on Dec the 5th. Please call me first thing tomorrow so we can talk about this I need to know what your game plan here is and if we can win with it. We need to get on this ASAP.

David
Attachments area

Burn, George gurn@velaw.com via bounce.secureserver.net Oct 31, 2016,
6:38 AM

to info@mylobc.com, Louise, Todd, James

Hi David

Thanks for the email. Let's speak tomorrow, and take our planning from there. How about 8h30 Eastern time?

All the best

George

Oct 31, 2016,
10:16 AM

info@mylobc.com

to George, Louise, James, Todd, bcc: Manuel, bcc: Jovan, bcc: im4, bcc: lisa

from: **info@mylobc.com**
to: "Burn, George"
<gburn@velaw.com>
cc: "Woods, Louise"
<lwoods@velaw.com>,
"Loftis, James"
<jloftis@velaw.com>,
"Dr. Todd Weiler"
<todd@treatylaw.com>
bcc: "Manuel E. Ventura"
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<im4hope@hotmail.com>,
lisa greeson
pgllcfl@gmail.com

date: Oct 31, 2016, 10:16 AM

subject: Re: Costa Rica Rejoinder

mailed- gmail.com

by:

George and all.

Call me anytime at 813-408-4916, 8:30 NY time is 5:30 LA time, no problem, I'm not sleeping much anyway.

Look, I know the legal team has done a good job and I am happy with the work product thus far, but I think we are in a bind here with what I am

reading and time is our enemy right now and we need to really think of a **strategy** that will counter their's.

I'm just very pissed right now on the slanderous and lying riddled rant novel I am reading through. How are we ever going to effectively respond to this? This really reminds me of the kind of dirty trick tactics going on right now in the election. Have you ever seen anything like this before, I mean in the arbitration arena. We really need to come up with a **strategy** that works and can cut them to the bone.

One caveat for you, after late 2011 Sebastian Vargas was no longer representing me and I was using Manuel Ventura. However, what CR is saying, and I can't verify any of this happened since this is the first I am hearing about it, is that Sebastian was trying to get the concession transferred to him (and they say for me) in an attempt to avoid paying back taxes. That never happened. If what they are saying is true (see email that I sent to Manuel and copied you on yesterday) that are asserting that Sebastian Vargas, my X attorney, in October and November of 2013, was trying to get the concession transferred to his name along with a guy name Fernando Morales, who I don't know. If that's true, then he was trying to steal the concession from us. But given the fact that again we have no statement from Sebastian, we just don't know what he said or didn't say, or did or didn't do. This allegedly happened in October and November of 2013 and I was no longer in the country. I left in May of 2013. At that time Manuel was handling all my affairs. The letter that Paula was supposed to have written, were she said it was okay for Sebastian to transfer the concession in his name, if written as alleged, had to be forged because Paula only would have written that with Manuel's supervision and he would have been involved with that and he wasn't. Nor did I tell her to write such a letter. From my end I know nothing of these machinations.

They are also saying that we made tax payments in 2013 for the concession taxes for years 2008 and 2009, that never happened as well, since at that point they breached their agreement and I wasn't going to pay taxes on a project they killed. We in fact were getting ready to file an action against them, and at that point in time King and Spalding was working on it and we filed our NOA in Jan of 2014. If any of this would have happened then Manuel would have been involved with that as well. I don't know if Sebastian paid the taxes in an attempt to get the concession, but how would that be good for his plan to steal the concession? Or is this just another lie being told by the Government in an effort to create a story line that we were doing something illegal. You really have a situation evolving here along the same lines as Red Notice, but scaled down to Costa Rica's level of competency, capability and creativity. I hope you are seeing that. This presents a serious

problem for us to deal with, along the lines of Bill Browder trying to deal with all the criminality of the Russian Government. I have been telling people that after reading Red Notice, that's my story, only a scaled down version. Now after reading their rejoinder, I find that is really what's it's becoming.

Also did you take note that the only reason they sent the cops in force on Sept 27th to evict the trespassers, was so they would be able to put in their rejoinder they submitted on the 28th that the squatters were evicted on the 27th and now our hands are clean. This clearly shows you that HS and their clients were working hand in glove to carry out that eviction with other government officials so at the last minute they could manipulate the justice system to gain an advantage in the arbitration. I think that goes to show everyone that it was orchestrated by high levels of Government in order to clean it up for their rejoinder. That could very well work against them because it was done, not to render justice, but in order to manipulate the outcome of the arbitration and it just shows how duplicitous they really are. So what we have is the selective rendering of justice when it benefits them, it's just another despicable example of an abusive use of the criminal justice system. If done with that intent in mind then they violated their own squatter laws in order to gain an advantage of an arbitration they are scared to death of losing, but emboldened by their win in the Spence arbitration. Which also was rendered at the worst possible time, because we now have to read that as well.

There appears to be two big nerves that I struck with them. One was my rant about them not enforcing their laws and taking no action to evict the squatters. My second rant was they were not following their own laws in refusing to comply with SETENA Resolutions. I find them taking the bait like Trump often does and they went after me just like Trump attacks his detractors and it show just how sensitive they are to these issues. The first one they resolved by organizing an eviction of the squatters one day before their rejoinder was due. The second nerve was this:

para 726

"The truth is Claimants solely rely on Mr Aven's misinterpretation of the law. Therefore, it is fundamental to address what is clearly the cornerstone of Claimants' case – this mischaracterization of Dr Jurado's testimony and the agencies' involvement in the Las Olas Project. Respondent bases its response in the objective laws, not a contorted narration".

There statement that the law is objective its true and so are facts and evidence. This is the whole problem with the state, they think the law is

fungible and can be manipulated to fit whatever scenario they want to spin. However, here is what Juardo says, in para 727

"Dr Jurado, in his second witness statement, states what is the correct interpretation of Article 19 and explains why Claimants' interpretation lacks in precision and logic"

Now look what the first 7 words out of Juardo's mouth is:

"The Environmental Viability certainly binds public authorities; however, it cannot be understood to limit the power of public authorities to protect the environment where they observe that the Environmental Viability is causing environmental harm. To interpret otherwise would be to imply negative implications about the obligatory nature given to an Environmental Viability through the Regulation.

[A]n environmental viability is not granted as a guarantee for the execution of the project or construction work, given that is only one of the requirements of the authorization procedure. It should not be forgotten that an environmental viability is strictly linked to environmental law, and thus operates under the precautionary principle and compels the administration to take action in this direction.

Therefore, the Administration can carry out an audit to follow up on mitigation measures to which the developer agreed in the environmental impact assessment, thus ensuring a healthy and ecologically-balanced environment as enshrined in Article 50 of the Constitution, and may act in any instance of risk of environmental damage.

Are we all getting this? The objectivity of the law is confirmed by Juardo when he clearly confirms what I said in my statement was absolutely correct, and in fact they are right that it's one of the cornerstones of our case. When Juardo says **"The Environmental Viability certainly binds public authorities;** what does it bind them to do do? If the law is objective and not subjective, it has to bind them to conduct that requires them to comply with the law at all times. Then Juardo uses that word, however. It's like saying Miss Jones you are pregnant, however. There is no however, you either are pregnant or not. However, the state is trying to make a creative argument of ways that certainty would become fungible and uncertain, which would them leave to unbind what is meant to be bound. Is this operating under the good

faith principle that is inherent in all agreement and which is the foundation stone of this arbitration?

Under their theory, where a state can arbitrarily unbind themselves from to a law they admit they are bound to, how can any investors investment be safe and secure in that type of arbitrary and uncertain environment. You either have laws that protect you and your investment or you don't. He says this, **the Administration can carry out an audit to follow up on mitigation measures to which the developer agreed in the environmental impact assessment**, is that what they did? No what they did was commit capital punishment on the project, shut it down and filed criminal charges against me. In fact, one could argue that the "audit" that Juardo refereed to, in fact took place. In January, February and July of 2010, MINAE conducted an "audit"/inspection of the project site when they inspected the property and found no wetlands and determined that there were no problems and confirmed that in written reports. What about the audit that SETENA did on Sept 1, 2010 where they confirmed the very same thing. What about the audit that INTA did confirming the same, which Martinez then said he had no confidence in? Martinez's conduct clearly show that he contorted and twisted the outcome the INTA report to conform to his predisposed belief system. Is this being "objective; and being bound by the law, facts and evidence? So even in trying to do their best to twist and contort the facts right here, they are only proving themselves to be more despicable contorted liars. This is called projection and what they are accusing me of is really a reflection of themselves as they develop their own "**contorted narration**". Our job is to clearly show that to the panel in a profound way and it's absolutely necessary that we do that.

This is only the tip of the iceberg in drilling down to respond to all of their twisted deception of the state just throwing shovels of shit up against the wall. We then have to figure a way to clean that up for the panel or leave it to the panel to try to clean up and figure it out, which is never a good idea and dangerous. But I hope you are seeing this is their **strategy** and it could be a very effective one for them. We need to counter this effectively or we won't win.

I really think we should try to get Jim to give us a hand on this one George, we need all hands on deck on our march to Dec 5th to the DC swamp. Trump is right once again and our job on Dec 5th is to go to DC and drain the swamp. So we need to get our boots on as they say in the UK. Right now we need to figure out the best approach of taking them down and taking them down hard. I hope we all are up for this battle.

David

Hearing on Dec 5th



info@mylobc.com

Nov 6, 2016,
12:43 PM

to George, Louise, James, bcc: Sam, bcc: Carol, bcc: Eric, bcc: Roger, bcc: Don, bcc: im4, bcc: li

George

In reading Costa Rica's rejoinder, they are continuing their slanderous and defaming assault on me and others and accusing me of illegal activity and are doubling down on their illegal INTERPOL referral. I should be given an opportunity to respond to this outrage at the hearing prior to my cross examination. For example, they are alleging the above, I would like to counter that Costa Rica accuses me of alleged illegal activity, while at the same time they have engaged of illegal activity in our case and have also engaged in all kinds of illegal activities. Every year there are reports of police being arrested for drug dealing, even judges arrested and sentenced to prison and even X Presidents put on trial for corruption. I sent you a number of articles of about this, did you put those in as evidence, if not I would like those put in as evidence so I can talk about that, we need to go on offense here and not try to play defense. So what is the **strategy**? I have asked about this many times and really have not gotten a good answer. As stated, we need to nail down documents in evidence that either proves or disproves their allegations and proves our side of the case. All of their allegations are false with out any basis in either facts or evidence and we need to nail down each of their false statement and prove it's false with the documentary evidence that is in evidence.

As stated how effectively put on our case will determine if we win or don't win. We all have skin in the game here and so we all should be focused like a laser beam on getting our offense in order to aggressively prosecute our case. So can you please get back together get me a blue print on our game/case **strategy**? Do we have one? I hope we do and I would like to hear what it is.

Per our discussion this past week, the Spence Claimants lost there case because the claimants attorney's has a failed case **strategy** and failed to effectively prosecute their case. It's that simple. Todd said they lost because the panel, "failed to take note of something". If that's true then it was because the attorney's failed to bring that "note" effectively before the panel. So we need to make sure that doesn't happen in our case. We should list every strength of our case and every weakness and then come up with ways we will make sure we properly advance the main points of our case and make sure the panel "take note" of those main points. We also

need to come up with a effective **strategy** to deal with whatever weaknesses there are in our case. As I have been saying fro the very beginning, you don't win on defense, you will playing offense and we need to go on the offense aggressively and if we don't will won't win.

As we discussed in our conversation this past week, I watched all of the trial web cast of the Spence case and I told you at the time that I was very critical of how the claimants attorney's put on their case and that I would be very surprised if they won. My judgement was right on the spence case and it's right now so I hope you have reviewed that case and will learn something from that decision.

To get back to my original question, do we have that material I sent you showing vast corruption in Costa Rica. If you live in glass house you shouldn't throw stones. So I would like to point out their history of corruption when they are falsely alleging that I am corrupt. They have no proof that I am corrupt, but there is a lot of proof they are corrupt. I am hopefully able to give a response to their rejoinder.

Can you address and respond to the about.

All the best,

David

PS Did you get any answer from Jim whether he can get his hands on deck on Dec 5th.