Jim

Pursuant to our conference call with you, Louise and Todd this past Thursday, (10-11-18), I would like to comment on several matters.

1. You will not be proceeding with any kind of appeal, nullification, or annulment on the Arbitrators ruling issued on September 18, 2018 where they found against the Claimants.
2. Louise spoke to Yasmin, from Vannin Capital "VC", and was told they don't want to put anymore money in this case in having VE file any nullifications against the ruling.
3. The conclusion reached by VE and "VC" are that it's more likely than not that a UK Court would uphold the ruling.
4. You will be getting a letter from "VC" telling you of their above decision and that you will forward a copy of that letter to me.

As you will remember, we talked about that fact that before either "VC" or VE committed to their representation of the US Investors, "VC" commissioned a Legal Opinion by Freshfields Bruckhaus Deringer US LLP, (BDL) a Law Firm in New York; regarding the likelihood, that the US Investors prevailing in a CAFTA Treaty Claim against Costa Rica.

In the Legal opinion letter dated December 17, 2014, they said it was likely the US Investors could prevail in their law suit against Costa Rica. In their legal opinion (BDL), gave a road map to victory and said, **"the US Investors were more likely than not to win the case."** I will get into the Legal Opinion Victory road map in more detail shortly, but let me give you this anecdotal parable for more clarity of the following the Legal opinion road map to a Victory destination.

A man goes to Triple A and tells them he wants to take a group of people on a bus trip from Kansas City, Mo to Disneyland in California. He asked the Triple A representative what's the likelihood of him getting the group there in a few days? The Triple A representative said prospects are excellent if you follow this road map which he gave the bus driver. The man paid him for the map and left. The bus driver tells the people that he has a road map to get them to their destination. Then next day the bus driver and the people, board the bus and begin their journey. Everyone is having a good time, enjoying the ride and each other as the bus driver merrily drives the bus with the road map in hand.

A few days later the bus driver tells the people they have reached their destination. He opens the door of the bus, the people debark thinking they were at Disneyland, but were shocked to find out that instead they are in Harlem, New York. They are all robbed and beaten and their possessions stolen. Who was at fault? Was it Triple A, the people on the Bus or the bus driver. The answer is clear; it was the bus driver who had the road map, but failed to follow it. In the above antidote Triple, A was the attorney who generated the Legal opinion road map, the people on the Bus were the US Investors and the Bus driver was Georg Burn the attorney from VE who was in charge of getting the US Investor to their victory destination per the Legal opinion letter. On September 18, 2018, the US Investors discovered their their victory destination turned out to be a nightmare on Elm street. The bus driver, George Burn, quit

driving for the VE Bus Company and went to work for another company. Based upon the incompetency of the Bus driver, the question is should George Burn ever be permitted to take another group of unsuspecting travelers on another disaster trip into hell?

As you know, George was seeking $5,000,000 from "VC", to take the US Investors case through the legal process from beginning to end. Based upon the the Legal opinion letter, "VC" said they would put up $3,000,000. In exchange, "VC" would earn a percentage of the award, plus being paid back their initial investment. Further, VE also agreed to participate in providing the additional $2,000,000 by agreeing to take half of their billable hours up front and the other half on the back end. As we discussed on our call, both "VC" and VE had a high degree of confidence that the US Investors would prevail and were so confident that they both put up millions of dollars upon a conviction that the US Investors would prevail in their law suit.

As you will remember, I ask you, Louise and Todd a simple question in our conference call. With such a high degree of confidence from "VC", VE, and the US Investors that we would win this case, and with the facts and evidence on our side of the case, how did we lose?

As you all will remember, all of you said they thought we didn't win because the arbitrators bought into the false narrative by Costa Rica attorney's that I duped SETENA in not telling them of potential wetlands. Therefore, the permits were obtained unlawfully and were nullified due to David Aven's deception. However, that wasn't alleged in David Aven's criminal trial nor did Costa Rica ever ever file a proper "due process" law suit with the court to nullify the SETENA resolutions properly.

Now let me give you my analysis of why we didn't win.

I agree with your conclusion that we lost this case due to the answer you gave above, but the follow up simply question is why and how did the arbitrators reach that conclusion. That allegation was never asserted by Luis Martinez at my criminal trial. Knowing that, George should have grilled Martinez about that during in his cross examination, but he failed to mention one word about that. Why didn't Martinez assert that in his criminal trial? Because neither SETENA, MINAE, SINCA or INTA ever made the assertion that David Aven duped them. In fact, I said that in my both my witness statement, and oral statement, prior to George's cross examination of Martinez. That false narrative was newly created as a case strategy by Costa Rica Attorneys, as a way to nullify the relevance of the six different KEY SETENA RESOLUTIONS , issued by SETENA from 2004 to 2010 and all the inspection reports, all saying there were no wetlands.

I also stressed strongly in my witness statements, and in my oral testimony, that Mr. Martinez, and other Government functionaries, never followed the law in complying with the SETENA Resolutions Law. Therefore, Costa Rica's attorneys had to come up with a response as to why none of the Government functionaries complied with the SETENA Government orders. They latched onto the Protti report, that was a third party report that was ordered by Technicontrol, who was engaged by the devlopers Arichitect and Engineering frim Mussio

Madrigal. Techincontrol was to help with the engineering work on the infrastructure for the master site plan that was presented to SETENA for approval. The Protti report was to help them with the information necessary for their infrastructure work. The report never said there was a wetland, but they did identify wet areas on the project, which were in the 30% of land that was set aside for green areas. But once again, Geroge never made that clear to the arbitrators.

In their submission statements, Costa Rica attorneys, came up with a case strategy and created a false narrative that David Aven duped SETENA. I rejected that false narrative very clearly when Christian Leathley made that false allegation during his opening statement on live stream video that was broadcast to the world. I told George, when Leathley made those false statements in his opening statement, he should have immediately gotten up and strongly objected to those slanderous, defaming and false statement; and telling the arbitrators there is no statement from SETENA saying that David Aven duped them. The state failed to call SETENA for a statement or produce them at this oral hearing . Therefore, the STATE cannot now make false hearsay statements that David Aven Duped SETENA without direct testimony from SETENA. Therefore, I respectfully request the panel instruct Mr. Leathey and any other Costa Rica attorney from making false assertions and allegations David Aven duping SETENA.

The Bus driver, George, failed to make that objection. Because George didn't object to those false statements by Leathley, I told him that I needed to respond myself to his false allegation, asking him to ask me a question before my cross examination by Leathley, giving me an opportunity to deny those false allegation, prior to my cross examination by Leathley.

George did ask me that question and I clearly told the Arbitrators and Leathley that I categorically denied Duping SETENA and I specifically asked this question, where's a statement from SETENA saying I duped them? Why aren't they here telling you that? The fact is that the STATE failed to call any of their key witness to back up any of their false Allegations they were making throughout proceeding, in their submission statements, and in their witness statements and at the oral hearing. Their entire case was built on hearsay assertions and allegations with no direct testimony from the key witnesses. Costa Rica hid there key witnesses from the entire arbitration proceedings. George should have been consistently berating Costa Rica for hiding those key witness, but he failed to contest it during the oral hearing. Instead of aggressively contesting the STATE every time they tried to use that false narrative over and over again, George kept silent not objecting one time. I only remember George making one very mild remark to the panel saying something to the effect, ***"that the tribunal should take note that Costa Rica did not produce their key witnesses to testify at the hearing."*** Based on the ruling that obviously wasn't good enough to get the US Investors a win.

Further, as you will remember I told you that George did not have a organized case strategy and clear road map of an order of proof, to prove up our case. In fact, after our call I read the "VC"'s Legal Opinion letter and would just like to post some of the things they said in that Legal Opinion letter since it clearly indicated a road map early for George and the other VE Attorneys' to follow, but it was not followed. Here was the heart of our case that George Completely ignored.

1. This case was actually very simple and the key points were correctly covered in the Legal Opinion memorandum. The developers acquired all the legal permits. There were a number of inspection reports from SETENA, MINAE, SINAC and INTA, all saying there were no wetlands.
2. In fact, INTA, which is the highest ranked Government Wetland authority, said the following in their report, that was generated in April of 2011. Dr. Diogenes Cubero Fernandez' who is the director of INTA said this in, in part, in his INTA report:

3. **"These *include as rendered in the following official reports can be respected: which support the conclusions that have been detailed here. That such decisions provide the approval for the project to advance normally with regards to the environmental part. It is clear that there was no invasion by the project of an area previously and technically defined as a wetland. On the contrary it is based on the technical reports and inspections, and the project members should continue to develop the works in question. <u>The developer is not under the obligation of knowing technical criteria for the definition of a wetland ecosystem, because it should be provided by studies of the corresponding offices."</u>***

4. Not only did Dr. Cubero say there were no wetlands, notice what he said in the underlined. At that point in time, the prosecutor never made any allegations that I duped SETENA. There was nothing in the SETENA file that the prosecutor seized that said anything about that and that's why that charge was not part of his criminal accusation he filed against me in November of 2011. However, George failed to ask one question about that.

5. In the underlined above Dr. Cubero, was just pointing out that it was the agencies duty to make those determinations, not the developer. At that time there were no allegations that it was up to the developer to tell SETENA of suspected wetlands. Dr. Cubero also said at our criminal trial, that Las Olas didn't have wetland soils and there is a difference between a "wet area" and a "wetlands." After the State made their allegations in their witness statements, long before the trial, George should have dug up Dr. Curbero's statements made at the criminal trial and grilled Martinez on those statement and on his above conclusions. NOT ONE WORD FROM GEORGE ABOUT ANY OF THE ABOVE. I told George about to obtain Dr. Cubero's statement from the criminal trial record and use them in our arbitration case, but he never did. Jim, how in the hell can you explain George's failure to use any of the really valuable facts and evidence in our case and not following the Legal Opinion road map. It's quite shocking and inexplicable, but it completely understandable how we lost our case with such incompetent representation.

6. As I told you in our conference call, I told George that we needed to stick to our key evidence, which the Legal Opinion identified, and show all the relevant SETENA Permits, inspection reports and construction permits to every STATE witness and grill them on the conclusions and determinations made in each and every document and even them read

the determinations made by the Permits and inspection reports of no wetlands; so the panel would hear it over and over and over again so it would be burned into their brain. He should have spent 90% of his time asking questions and talking about all of these key documents that were at the heart of our case. Instead he spent 90% of his time talking about irrelevant cross examination question while making no memorable points.

7. The attorneys, who did the Legal Opinions expected that a competent attorney would be trying the case, would have a clears case strategy that would focus on the key evidence and was an experienced litigator who would be able to aggressively carry out an effective cross examination. Unfortunately, George Burn provide no such representation for either the US Investors or VE. The question is this, how in the hell was this colossal screw up able to happen? Why was there not case management or supervision about what George was doing? Were spending millions of dollars, have a 90 million dollar claim and we have a Captain Queeg at the Helm of or case with no supervision. How in the hell did you expect to win?

8. Our CAFTA Case was not a complex case with legal obstacles. This actually was a fairly easy case to prove if George would have just stuck to the facts and evidence and the raod map in the Legal Opinion. As we discussed in our conference call, I commented that you are a lawyer, and you confirmed to me that when you go to trial you have to have an effective case strategy and an order of proof that will present the established facts and evidence in an order that will prove up our case. I discussed this with George and wrote him about this very thing many times. George just never got it.

9. However, Costa Rica's attorneys used the following as their case strategy and won. "***If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell."*** That's exactly what Leathley did, he pounded the table and yelled like hell that David Aven duped SETENA and George was to incompetent in his non-respons.

Hear are excerpts from the Legal Opinion which shows the extent of George Burns incompetence representation of our case. Again, this Legal Opinion from lawyers, expected that a competent attorney would be trying our case.

To: Matthew Cox, Director

Vannin Capital
Yasmin Mohammad, Senior Counsel
From: Noiana Marigo, Leon C. Skornicki Sofia Klot
Date: 17 December 2014

Subject: Legal Opinion for "Vannin Capital"
Analysis of claims asserted by David R. Aven, et al against the Republic of Costa Rica under CAFTA

Introduction and Executive Summary

1. **"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."**

2. "After reviewing the documents you provided, we conclude that:"

(a) "A tribunal is more likely than not to assert jurisdiction over the Claimant's claims under the Treaty, including:"

i) "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"

(writers comment: Tribunal found David Aven was a dominantly a US Citizen)

(ii) "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."

(writers comment: That was accomplished)

Merits (notice underlined road map suggestion below)

"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. <u>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.</u> 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."

(Writers comment: Please take note of all the times the Lawyers, who wrote up the Legal Opinion, mentioned the bribery evidence. Here it is.

(1) at the very beginning in the Merits. (see above)

(2) Paragraph 36-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 MINAE office in Quepos) during a site visit, and another by the Municipality of Parrita

(3) in footnotes on paragraph 37.

64. There is an outstanding question of whether the recordings of the bribery attempt may be admissible as evidence in this arbitration, especially if Costa Rican law forbids recordings of third-parties without their consent.

64. If Costa Rican law applies, and if it prohibits recordings without consent, there is the potential that, under Rule 9.2(b), the tape of the bribery-attempt may be found inadmissible. In any event, local counsel should be consulted to determine whether Costa Rican law allows this type of evidence.

(4) Paragraph 37-a.

Here, the Municipality and Mr. Bogantes' alleged bribery attempts and the suspension of the project when it had already been cleared by the relevant authority seem to provide support for arguments of political motivations.

(5) Paragraph 42: "The Claimants' case might be further strengthened if: (z) 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;"

(6) Footnote Paragraph 43: Establishing a link between the bribery attempts and the process that led to the Injunctions would certainly give Claimants' case the political flavor that normally pervades arbitrary treatment in the context of FET violations. See Abengoa v Mexico, ^ 649-651. For a discussion of the evidentiary value of the recordings see footnote 64 above.

(7) Page 38-39: Detailed list of all the evidence to gather for the case. ***"We suggest that you obtain the below additional documents or information to further assess the strength your clients' case against Costa Rica.***"

None of the above road map was effectively presented and argued by George. As you know I told George over and over again to submit the the audio tape of the Bribery into evidence since it was a good fact for us. We mentioned it in our Notice of Arbitration. I also mentioned it in both of my witness statements, never thinking he would not enter it into evidence. I told George, if we don't enter it, after saying we had it, the ARIRATORS would think we were lying and that could be devastating to our case. Here is the specific instruction in the Legal opinion: "**Claimants' case would be strengthened if they can provide evidence of bribery, unfair trial and threats to Mr. Aven, or other elements that would indicate political motivation behind the measures."** Did George or any of VE attorney's ever recognize the importance of the recommendation made in this Legal Opinion? Apparently not, because, it appears George never paid much attention to the Legal Opinions. If he did, he rejected every instruction contained within it. George also failed to follow the instructions of the US Investors, who all wanted that audio taped entered into evidence. He could have gone on the offense and forcefully argue the corruption of the state for asking for the bribe and then when it wasn't paid, shutting the project down and criminally charging David Aven with a crime. However, Geroge never knew what an offense was and was always playing defense. This incompetent decision not to enter the bribery audion into evidence had the effect of capital punishment being committed on our case by our own attorney; being evidenced by the Arbitrators adverse ruling against the US Investors on Sept 18, 2018. Here is Arbitrators comment about George's failure to produce the audio bribery tape in their ruling below)

(Arbitrators Comment from the 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)

(Writers comment: Jim there is simply no excusing this kind of incompetence by George Burn. Was there ever any case management or was Captain Queeg free to do whatever the hell he wanted to with no supervision or any one to answer to? You have my emails where I said he must submit the audio tape or we would be deemed as lairs and that's exactly what happened. He totally disregarded the instructions in the Legal opinion and the instructions from his client to enter it into evidence and you see the results of his failure. Not only should it have been put it into evidence, George should have been pounded the state for their corruption in asking for a bribe and then when it wasn't paid, shutting down the project and charging me with a crime. He took a big positive and turned it into a big negative, that was one of many reasons we lost our case. Read the Legal opinion once again: "**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."** George just ignored that road map advice and did nothing to provide any evidence regarding the above, even though we had it. This was a major, major mistake not putting the audio in evidence.

Instead of recognizing the importance of the Audio Bribery evidence, George instead engaged in a losing battle of the wetlands, were he unnecessarily spent $700,000 and caused the Arbitrators to focus on the after the fact battle of wetlands, thereby not focusing on our more relevant evidence that George failed to introduce.

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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 (a) above, the Resolutions and Reports),
c. The fact that government officials presumably requested bribes from Mr. Aven on two opportunities: one time by Mr. Christian Bogantes (the Director of the MTNAE office in Quepos) during a site visit, and another by the Municipality of Parrita;
d. The fact that the MTNAE, 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 neighbour who filed the complaint

that led to the Administrative Injunction, was a competitor allegedly "acting in cahoots" with MINAE to close down the Project;
(f) The fact that Claimants Mr. Aven and Mr. Shioleno were victims of a murder attempt preceded by threatening emails, presumably tied to their activity in Costa Rica."

(Writer Comment) Another right on point suggestions that George failed to follow. Although, the Legal opinion was right on point with their suggested case strategy, none of the above was aggressively argued by George and mostly was completely ignored. In my 18 page November 2016 email to George, I suggested most of the above for Luis Martinez's cross examination. In fact, I told you in our conversation that I told George that he ask every State witness key questions about all of our our key and relevant evidence, the 6 SETENA Resolutions, the INTA inspection report saying no wetlands, the SETENA and MAINE inspection reports saying there were no wetlands. But he just didn't listen and hardly mentioned them in any of his ineffectual cross examination questions that he spent hours on.

As I told you, he was total disorganized in his cross examination in using our key pieces of evidence and instead spent hours cross examining witnesses asking irrelevant questions. In fact, a couple of times the arbitrators asked him what point he was trying to make. When you have judges asking what point you are trying to make, you know you are not being affective with your questions. Ninety five percent (95%) of the time his questions were not really relevant to proving up our case per the "VC"'s Legal Opinion letter. Even his redirect question to his own witnesses, including me, were not geared to making points in proving up our case, but rather were confusing and hard to answer. A couple of people said they didn't understand the questions. It's all on video and in the transcripts, it was quite a shocking display of really poor lawyering that I had never seen in all of my various trials I was in previously. If you watch George on video during the questions and answers, he looked like he's in La La land and totally disengaged and he was constantly sipping on a water bottle.)

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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 wetlands."

(Writers comment: Again, the Legal opinion is right on point, but George failed to follow the road map. Although it was very important, none of this was aggressively argued. George asked no probing and sustained questions of any key witness using our relevant key documents. He just totally ignored the above and it was not part of his case strategy to use our key evidence over and over again with every witness to win and that's why we lost.)

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42. "The Claimants' case might be further strengthened if: (z) 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."

(Writers comment: Again, right on point and we had tangible evidence, but George failed to follow this directive as well and did not focus on any of that or even mentioned it. How can you win when you ignored the road map to a win? Answer, you don't.

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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."

(Writers comment) Again the Legal Opinion letter was right on point, but George just ignored all their suggestions and failed to aggressively ask any state witnesses about these key pieces of evidence. Aristotle once said "Nature abhors a vacuum. Although, the facts and evidence were on our side of the case, George failed to effectively use it. In that vacuum, Costa Rica's attorney's created a false narrative to take up the space. Costa Rica's attorney's were aggressive in coming up with ways to win. In the absent of our attorney's using the solid evidence we had to win, expressed in the Legal opinion. The end result is that we get dumped off in Harlem instead of Disneyland. They won and we lost. THERE ARE REASONS CASES ARE LOST and what you are hearing in this letter are blatantly reasons our case was lost do to attorney incompetenece.

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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."

(Writers comment: There was plenty of evidence showing the prosecutor, Martinez, was prejudice against me and the Project and the MINAE and Christian Bogantes was prejudiced, but that evidence was never used, because it simply wasn't in George's case strategy. Therefore, he never asked Martinez any questions about it when he cross examined him, Instead, George spent hours asking him irrelevant questions and not following the Legal Opinions road map. Two examples: (1) Nestor Morea said during

is testimony that Martinez preliminary statement he took from me was flawed. I wrote about that in my witness statement as well, but George never used it because of his incompetence. (2) MINAE in the person of Christain Bogantes, hid the MIANE report generated in July of 2010 and I only obtained a copy because our environmental regent saw a reference to it in another report. I had to fight to get it from Christian Bogantes, who at first said he didn't have it. I didn't get that report until March of 2011, 8 months after it was issued. Details of that was in my witness statement, but Geroge failed to use it and again didn't follow the road map.

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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**."

(Writers comment: That's exactly right, it was clearly stated that only about 1 hectare. But again, George failed to follow the road map and point that out to the panel via his cross examination questions. Mr. Morea also said that Costa Rica never followed the law in getting the SETENA permits legally annulled by the Court) But George never aggressively pointed that out either.

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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."

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."

(Writers comment: The above is probably one of the more egregious omissions by George. Right next to Las Olas was a 75 home development owned by Costa Rican. In the criminal trial, Costa Rica Beto Mora testified that this was owned by his cousin. He also stated that it use to be part of Las Olas and was in the lowest part of the property. Yet there were 75 homes built on the property. Monica Vargas, who

testified against us, who worked for the Municipality, lived in that complex. I took drone views of that development along with the entire Las Olas Property and gave it to George and told him to use that to show every witness, especially Ms. Vargas. Then ask each witness why are these homes in this project right next to Las Olas, not a wetlands and Las Olas is. Again, George was just brain dead and did not even mention it and never asked Ms. Vargas any questions about it or any other witness. Every witness should have been shown the pictures and asked why that project was okay, but Las Olas right next door wasn't. Here is the drone video shot of those homes and Las Olas is right next to it. How could George not make a strong argument about that especially in light of the Legal Opinion road map recommendation? Below is the drone video of the above mentioned homes that I told George to use, but he didn't/

https://www.youtube.com/watch?v=uP1k2JJPT8U

Jim, I could fill up a book with emails about really stupid things George did in this case. One example is when he played right into Costa Rica attorney's hands and got into an after the fact battle of the experts. I was adamantly against him engaging in that battle by hiring a wetland experts in 2016 trying to determine there is a wetland in 2008. I told him that the relevant objective inspections were done for 2004 to 2010 when SETENA issued six different SETENA Resolutions. I told him not to engage in that battle because it would only take away the emphasis of our legitimate permits in causing the panel to spend a lot of time focusing on after the fact wetland permits. I also told him that our expert could state there were wetlands on the project site, but George reject that notion. Instead George went down the rabbit hole and then what I said might happen, happened. Ou own expert said there may be some wet lands and then Leathley said to the panel, even the Claimants expert said there were wetlands. It totally distracted the arbitrators away from the really relevant evidence and that was the SETENA Resolutions and the inspection reports and forced them to focus on the new wetland reports, and it cost an additional $750,000 in additional cost just on our side of the case and it caused the arbitrators to conclude there were wetlands on the project site.

But to make matters even worse, during his closing statement in February 2017, he told the Arbitators this, **"the after the fact wetland inspections were completely irrelevant and maybe we shouldn't have engage the Respondent in that exercise."** My mouth just dropped and I couldn't believe what he said, because that's exactly what I told him. I thought what in the world are the arbitrators thinking about that statement? Jim that was just another example of George's gross incompetence and total misstatement of or case. Costa Rica had a good case strategy and they executed it and won. George had no case strategy and didn't follow the Legal opinion road map and we lost.

You would think that a legal opinion that was used by both "VC" and VE to resulting in them putting millions into this case, should have been followed very strictly, and the evidence assembled in a way to prove up the client's case. But Mr. Burn just ignored all the relevant evidence and never put it together in clear and coherent do that the Arbitrators were able to get it and understand it and rule for the Claimants. It's one thing to get out lawyered, but it's quite another thing for the lawyers on the losing side to get chopped to pieces. However, when that happens, the Claimants suffered the same fate.

Again, please get me a copy of that letter from "VC" when you get it.

David

PS: I wish you would have let me know on September 19th or 20th that we only had 28 days to respond to the ruling. We might have decided to engage another law firm to file an appeal for us, but finding out on October 10 didn't give us any opportunity to do that

DO YOU THINK I SHOULD ADD THIS INTO THE EMAIL TO VE

To put a big explanation point on the incompetence of Mr. Burn, you only have to look at paragraph 762 in the ruling where the arbitrators say this:

(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."

(Writers comment:) Look at 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.***

(Writers comment:) The arbitrators clearly say that the case is not that legally complex, but then they add this☺ (2) "***The complexity of this case arises rather from the actions and omissions of the parties than from the litigated issues."***

(Writers comment: What were the omission of the parties? Clearly it was the omissions of the Claimants since we were the ones who were ruled against. They end the paragraph with this final comment:) (3) "***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."***

(Writers comment: Why are the arbitrators confused? Who were the ones that caused the confusion? It is clearly was Mr. Burn who was causing the confusion for the arbitrators since he

didn’t proper explain the case through an clear use of the evidence in an effective cross examination of the State witnesses.

It’s the lawyer job to clearly explain their case using the facts and evidence in the documents and illicit testimony from witness so the Judges can clearly see the conclusions in that support our case. This just show another example of Mr. Burn failing to follow the road map to clearly show Arbitrators the facts and evidence in an un-confused way so they would rule in the claimant favor. in an effective and clear way so the Arbitrators would rule in our favor.

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