TO: BCLP Law Firm
Ms. Rebecca Foreman
From: David Aven
Date: December 18, 2018
RE: Merry Christmas Email from George Burn Former Attorney
David Aven et el vs Costa Rica

Dear Ms. Foreman

BCLP's unsolicited email dredged up all the horrible experiences I had with Mr. Burn and put him back in in the forefront of my mind once again. Therefore, I feel compelled to respond and inform you, and your firm, about my knowledge and experience with Mr. Burn and his demonstrable incompetence in our case. I could write a book about Mr. Burn's and VE's numerous acts of gross negligence, incompetence, and breach of fiduciary duty, from my two and half years of experience working with him, but this is neither the time or place. I want to keep this concise and comprehensive since I think my frank and honest client review of Mr. Burn will be quite informative to your firm, it's partners and employees.

Our agreement with VE was executed on or about April of 2015 and the budget was set, by agreement, at $3,000,000. Mr. Burn was able to get a contingency funder from Paris to invest $3,000,000, and VE agreed to participate in the funding as well by taking half of their fees up front and the other half on the back end once we received the award. Both the funder and VE believed this case was winnable. However, before the funder and VE committed to our case, they hired Freshfields Bruckhaus Deringer, (FBD) to write a legal opinion on the Claimants chances of prevailing in their CAFTA Arbitration. I'm sure you're well aware of FBD's stature and reputation in the UK. FBD issued a 44-page legal opinion for the funder and VE. The legal opinion was favorable and stated why FBD thought the case was winnable and detailed a step by step case strategy of how to use the facts and evidence, including providing the evidence of a bribery, to prevail. Based on FBD's favorable Legal Opinion, both the funder and VE agreed to put up substantial sums of money in a contingency fee arrangement with the US Investors. However, Mr. Burn failed to follow any of FBD's suggestion in their 44-page legal opinion and its road map to victory. (See attached copy of the FBD's Legal opinion)

A Glaring Example of Mr. Burns Incompetence: From April of 2015 to April of 2017 Mr. Burn burned through (excuse the pun) approximately $8,500,000 and went over budget by $4,000,000. At the end of the hearing, the Tribunal ask the parties to submit their legal costs, we reported the 8.5 million as our legal costs and Costa Rica reported $2,300,000 as their costs. Costa Rica spent $6,200,000 less than we did and won. What does that tell you about Mr. Burns financial and case management competence? Further, in late summer and early fall of 2016, just prior to our hearing in DC on December 5, 2016, Mr. Burn was running out of money and was franticly searching for funders who would lend him more, but his efforts were not successful. Instead of focusing on our hearing scheduled for December 5th, Mr. Burn was focused on looking for more money. He even asked me if I knew anyone that could loan us $2,000,000. Does that sound like a normal attorney client relationship? Never had that happen to me before with any other attorneys I had dealings with over the last 30 years.

After losing our case, the funder wrote off $3,450,000, VE wrote off $3,250,000, and there's still a million dollars in unpaid bills supposed to be paid for by VE. This one act clearly demonstrates Mr. Burns incompetence and gross negligence in both monetary and case management. This was only made possible by VE managements failure to provide proper case management oversight of Mr. Burn. It also shows the

incompetence of VE Management by allowing one rouge unsupervised attorney to cause VE to write off over $3,250,000 and the lose a 100-million-dollar lawsuit.

However, the primary reason the US Investors lost their case, was due to the failure of Mr. Burn and VE to enter an audio bribery recording into evidence. I made the recording of a Government employee asking me for a 200,000 USD bribe. This bribery audio recording was mentioned in my first witness statement, that was approved by Mr. Burn. It was also mentioned in the Letter of Notice of Intent to Arbitrate (NOI) and the Notice of Arbitration. (NOA) Here are excerpts from those filings:

1. This is what I stated in my first witness statement which I swore was accurate and true: **"In 2009, I had another experience with an attempted bribery by the Municipality of Parrita. I went there for a meeting that was presided over by the city manager named "Oviedo". At that meeting he asked me to pay a bribe of US$ 200,000. He said it was not all for him, he was just the front man and it would be distributed between ten other people. I told them that it was a crime to pay a bribe and was told by the city manager that the way it worked was than "when it rained everyone got wet". I later found out that this is a famous saying that is only used when bribes are asked for. I refused to pay the bribe. I was naturally upset about this attempted bribery and called Mr. Zumbado and told him what had happened. We live near each other and he immediately came over to my place. Mr. Zumbado was upset about what happened and told me he would see what he could do. Later I learned that Mr. Zumbado called the President's brother, who had a high level position with the Government."**

2. **Excerpt from the our Notice of Intent to Arbitrate (NOI) filed in September 2013: (see compete filing of NOI attached):**

   "The Municipality of Parrita had previously solicited a $200,000 bribe for continuation of the Las Olas Project. The Investors have in their possession a tape recording of the solicitation of this bribe."

   "Mr. Aven—an Investor and the Las Olas Project representative—flatly refused to pay either bribe. In fact, Mr. Aven filed a criminal complaint about the bribe solicitation, which the local Prosecutor's Office in Quepos ignored. Indeed, when Mr. Aven checked the status of his complaint over a year later, there was nothing in the file."

3. **Excerpt from our Notice of Arbitration (NOA) filed in January, 2014: (see compete filing of NOA attached)**

   31. The Municipality of Parrita had previously solicited a US$200,000 bribe for continuation of the Las Olas Project. The Investors have in their possession a tape recording of the solicitation of this bribe.

   32. **Mr. Aven—an Investor and the Las Olas Project representative—flatly refused to pay either bribe. In fact, Mr. Aven filed a criminal complaint regarding the bribe solicitation, which the local Prosecutor's Office in Quepos ignored.[1] Indeed, when Mr. Aven checked on the status of his complaint over a year later, there was nothing in the file. Worst yet, as further discussed below, far from investigating Mr. Bogantes, the Prosecutor called him as a witness against Mr. Aven**.

Although, the audio bribery recording was mentioned in my first witness statement, and in both of our pleadings, the NOI and NOA, for some inexplicable reason Mr. Burn negligently disregarded all of the above. He refused to enter the cornerstone piece of our case, the audio bribery recording, into evidence to

show Government corruption. Most attorneys understand the importance of making sure that when they file pleadings, affidavits and witness statements, with the Judge, they better be accurate, producible and provable. I think all competent attorneys would agree, if they don't produce key evidence mentioned in their pleadings and witness statements, they risk losing their case and seriously damaging their clients. Failure by attorneys to produce key evidence mentioned in their pleadings and witness statement is never a good case strategy, as clearly seen by the Tribunals comments in their adverse ruling against us. However, for some inexplicable reasons, neither Mr. Burn or Mr. Loftis apparently ever learned that at law school.

Since Mr. Burn and Mr. Loftis failed and refused to introduce that key piece of evidence into the Arbitration hearing, per the NOI and NOA and my direct instruction to do so; of course Costa Rica Attorney, Mr. Christian Leathley jumped on that error like white on salt and made the following comments in his opening statement in Washington, DC. On December 5, 2016:

Page 205 and 206: **"Bribery allegations. This is the second distraction that is the cornerstone of Claimants' case, which is utterly unproven. And that is this allegation of bribery. No credible evidence whatsoever exists to suggest any bribery occurred."**

Page 264 in the hearing transcripts lines 8 through 13: ***"Claimants say they had a tape recording of this alleged bribery incident. They said this in 2013 at the time King & Spalding were representing them. As of today there is no recording. Such a cornerstone of their entire case is inexplicably missing."***

Not only was Mr. Burn grossly negligent and incompetent in refusing to enter the audio into evidence, he was guilty of concealing critical important exculpatory evidence from the Tribunal which was intentionally injurious and damaging to our case. At the time we executed the engagement letter with VE in April of 2015, Mr. Burn was well aware that the audio bribery claim was in our NOI and NOA. Mr. Burn also had approved incorporating information about the bribery audio into my first witness statement. Therefore, he had a fiduciary duty to his clients to enter that recording into evidence.

However, Mr. Burn inexplicably failed and refused to enter that evidence, over my strong instructions to do so. In so doing, he made me appear to be a liar in the minds of the Tribunal. That perception caused the Tribunal to enter an adverse ruling against the US Investors resulting in the loss of our 100 million dollar lawsuit. What's the difference if an attorney lies to a Judge or conceals critical evidence from the Judge, which causes the Judge, to rule against the attorney's client? Both actions are wrong, incompetent, maliciously damaging and derives the same result; a loss!

I was quite upset with Mr. Burn for failing to introduce the audio into evidence and was equally upset with him when he failed to make a strong objection to Mr. Leathley's false statements, during Leathley's opening statement. Mr. Burn should have immediately stood up and objected to Mr. Leathey's statements telling the Tribunal that he had the audio recording and would produce it for the panel. Although I wasn't at the hearing the first day because of a Migraine headache, I was watching it on closed circuit TV in my hotel room. I saw Mr. Burn after dinner and expressed my displeasure to him for not objecting to Mr. Leathley's statements and not telling the Tribunal that he had, and would produce, the audio for the Tribunal. However, Mr. Burn acted like a para God and his response was, it's no big deal, it's not important. I insisted that it was important because if we didn't produce it the Tribunal would conclude I was lying and we would lose our case. But he continued to persist it wasn't important. Mr. Burn, as an officer of the court, was sworn to tell the truth, but instead, he concealed and buried the truth. Is that ever a good case strategy? Well let's read on and find out.

Ms. Foreman, do you know what the word inexplicably means? It means "incapable of being accounted for or explained." Here's what the Tribunal thought about Mr. Burn's inexplicable behavior, revealed in their adverse ruling against us on September 18, 2018, in 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."

Why didn't Mr. Burn and Mr. Loftis understand that not producing that bribery audio, per the representations in my witness statement, the NOI and NOA, would result in a death blow to our case? It's inexplicable!

Below are excerpts from three emails where I pleaded with Mr. Burn and Mr. Loftis to notify the panel and tell the Tribunal, during their deliberations, that he had the audio and would produce it.

Email: August 8, 2017 to Mr. Burn (see entire Email attached)

"What is really continually disturbing and upsetting to me is the fiasco regarding your decision not to enter the audio tape about the attempted bribery into evidence."

"Then Costa Rica told the panel that the Complainants said they had an audio tape of a bribery attempt, they didn't produce it and you can draw your own conclusions about that. Interpretation, David Aven is a liar. George, when you heard Leathey say that, you had a duty and responsibility to speak up and tell the truth and set the record straight with the panel, so they wouldn't think I was a liar. But you sat there like a bump on a log and didn't say a word. I was defamed and slander by Costa Rica with the insinuation that I was lying about having a bribery audio tape. The panel was waiting for an explanation; something, anything that would tell them what the truth was. Your silence told them I was a liar and that is just not acceptable."

"You should have told the panel the truth George. Isn't that what lawyers and their clients are supposed to do in court TELL THE DAMN TRUTH?"

"GEORGE YOU HAD A DUTY TO MAKE THAT TRUTHFUL STATEMENT TO THE PANEL, BUT YOU FAILED TO DO THAT. WHY DIDN'T YOU JUST TELL THE TRUTH AND SET THE RECORD STRAIGHT? In not doing that, you let the panel believe that David Aven is a liar. You were complicit in causing the panel to believe a lie about me and THAT WAS JUST FLAT OUT WRONG. At this point no one knows the damage your poor decision could have on the outcome of our case."

"George, we had a very strong case with strong facts and evidence on our side. Everyone believed in our case enough to fund it. But my conclusion is that you failed to use the facts and evidence in an effective way that would clearly show the strength of our case. Costa Rica's attorney's, however, were very aggressive in advancing their big lies and selling it as the truth, and that may have worked. I am hopeful that the panel sees the picture clearly and gives us a win we deserve. They very well may do that. But we have the burden to prove up our case and the way I see it, we failed to do that in an effective and clear manner. I am just hoping that the panel will see through the fog of war and give us the win we're looking for. As I told you before, if we don't get that win, then who is to blame? I have to lay it at the doorstep of the attorney's, since making an effective case and getting a win for their clients is their job!"

Email August 13, 2017 to Mr. Burn (see entire Email attached)

"You know my position that it was a huge mistake not putting that audio into evidence. However, a bigger mistake was made when Mr. Christian Leathey told the panel on Feb 7th, "The complainants said there was an audio tape of a bribery and they failed to produce it. Draw your own conclusions about that". The inference being that David Aven is a liar...and you did not object to his statement and tell the panel the truth that the audio does exist and you have it and have heard it.

"I hope you are understanding the potential serious damage this dark cloud over my head can have on our case. If the panel thinks I am a liar, they could throw the case to Costa Rica. The panel could reason, if David Aven is lying about the audio tape, then maybe he is lying about everything else. If the audio does exist, then why didn't they produce that powerful piece of evidence. The fact

that they did not produce it seams to clearly indicate the David Aven was lying about it's existences. If they get there, then is just a short hop for them to get to, I did dupe SETENA and also did all the other stuff the Respondent alleged that I did. DO YOU WANT TO TAKE THE CHANCE OF THAT SCENARIO NOT HAPPENING? I DO NOT."

You can tell the panel that I asked you to petition them to clear my name and to rebut their false allegation about me lying to them. We have to counter this big lie ASAP. As I told you before, the currency in all legal matters before judges, juries and arbitrators, is truthfulness and honesty. If you lose that currency, you bankrupt your case. Right now my truthfulness and honesty is in question and the panel is very likely thinking that David Aven is a liar. THE PANEL NEEDS TO BE TOLD, AND NEEDS TO HEAR THE TRUTH. I NEED YOU TO TELL IT THEM THEM NOW!!!!!"

"I need you to listen to these words of wisdom and stop thinking you know everything, you don't. You need to clear this up for the panel for the sake of our case and my good name…and get rid of the DARK CLOUD that's hanging over my head and the case. You can fix this by just telling the simple truth."

"This is not a suggestion, this has to be done ASAP for the good of our case and my name."

Email August 17, 2917 to Mr. Jim Loftis (see entire Email attached)

"George should have cleared that incorrect statement up immediately after Leathey made it by simply telling the panel the truth, which is what we all were supposed to be doing, by saying the following: "As an officer of the court, I can attest that the audio does in fact exist and I have heard it. For reasons of my own choosing, I decided not to enter it into evidence". That's all George needed to say to deal with Leathey false statement. End of story no cloud over David Aven or the case. Why he didn't clear that up immediately, I have no idea. But there is no doubt, not doing so was a huge mistake that if not corrected, could possibly seriously affect the outcome of our case."

"What I would like you to do, is get this email before the top management of VE and have them give it their most serious attention. It's my call we clear this up now, while we have a chance. If your top management thinks differently then I want to know the exact basis of that decision and their reasoning. I would think your top management would want to consider the ramifications, if we do not act to clear this up, and the panel comes out with an adverse decision and mentions the fact that we didn't produce the audio of the attempted bribery; and they drew adverse conclusion that I was, in fact, lying. That conclusion then would affect their decision and their damage award. Do you really want to risk this whole case on keeping silent and hoping it will all work out right for us? It reminds me of a saying that due to the lack of a nail the shoe was lost, due to the lost of the shoe the horse was lost, due to the lost of the horse the battle was lost, and due to the lost of the battle the war was lost. For George, it seems to be a small thing like a nail. To me, this is what could happen if positive action is not taken to put a nail in the horse-shoe while we still can. This is not a hoping game right? Do not underestimate a small thing turning into a big disaster for our case. So get the nail into the horse-shoe NOW."

Neither Mr. Burn or Mr. Loftis had the temerity, moral compass, legal ethics or understanding of their Judicial Duty to their clients to do the right thing! They never responded to my emails, and never told the truth to the Tribunal about having the bribery audio recording; although I instructed them to do so over and over again. What I predicted in those emails came to pass because, you will never win if the Judge thinks you're a liar, and that's why we lost!

Freshfields Legal Opinion, specifically stated this in paragraph 42: The Claimants' case might be further strengthened if: (i) **they can provide tangible evidence of the bribery allegations** (and this evidence is accepted by the Tribunal); (ii) the evidence submitted in the criminal trial supports the Claimants' position; (iii) they can provide evidence of the alleged assassination attempt of Messrs. Aven and Shioleno and its link with governmental action; and (iv) 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. (see attached copy of that report)

Mr. Burn never address any of FDB's recommendation, and just ignored their blue print to victory. The facts and evidence were on our side of the case, but Mr. Burn failed to properly argue it. Instead Mr. Burn torpedoes our case by not providing the **"tangible evidence of the bribery allegations**" that he had in his

possession and was instructed to use in the Legal Opinion. Why didn't Mr. Burn and or Mr. Loftis not understand the serious legal jeopardy they were putting their clients, and the case in, by not producing the bribery recording to the Tribunal? It's shockingly inexplicable! Competent attorneys understand if they say they have a cornerstone piece of evidence in their pleadings and witness statements, and don't produce it, it's very likely they'll lose, and that's precisely what happened. Why didn't Mr. Burn and Mr. Loftis understand that? Again, inexplicable! Here's a copy of the audio bribery recording that we put on YouTube, it's the same one I gave to Mr. Burn in 2014. It's in Spanish.

https://www.youtube.com/watch?v=8KAKVDVCp3E&t=186s

One more glaring demonstration of Mr. Burn's incompetence was when he shockingly brought politics into the hearing room in our 100-million-dollar lawsuit. He did that while he was asking me re-direct questions. Here are excerpts from the hearing transcript. The following is specifically referring to the false allegations that I duped SETENA.

Paragraphs Page 873 line 20, 21, and 22 and Page 874 lines 1-13

Aven: "**Everything I read in the memorial statement, in all the witness statements and everything thing in this--from what the Respondent said that I've heard is what I would call fabricated, fake stories. Like you've heard about fake news. They just create it. None of this stuff that they're saying now was in the criminal trial record."**
Burn: Okay
Aven: **This is all newly created stuff. So…**
Burn: **"Well, I think anybody who has been following Donald Trump's election campaign will be very familiar with fake news. Suffice it to say--I would like to take you back, though, to the Protti Report. And you'll remember that Mr. Leathley took you the document at Tab 4 in the file."**

Can you imagine any competent attorney ever doing that to their client in any case, especially in a multi-million-dollar lawsuit? I was able to give Mr. Burn a perfect opportunity to question me about the false allegations that I duped SETENA. Instead of taking that opportunity to introduce our key evidence that would refute the State's lies, Mr. Burn makes a joke about Donald Trump and fake news and doesn't produce any evidence to impeach the duping allegations. Is that good lawyering? Of course not and his conduct is ethically indefensible. It was grossly negligent for Mr. Burn to make a joke about a President-elect who had just won a very divisive US election. One arbitrator was from Venezuela, and another was from Mexico and conceivably they could have hated Trump. Mr. Burn had no presence of mind and incompetently throws a hand grenade into the hearing room with his outrageously incompetent and out of place remark.

Below is the video clip of the above exchange. Please watch the first 10 minutes and see Mr. Burn's shocking comment. It's at the nine (9) minute mark in the video. There's a split screen in the video of me and Mr. Burn. Watch and listen to his feckless questions and observe his body language as he appears completely unengaged with his witness. He's looking around talking to people on his left and right and is just not paying attention. This one incident speaks volumes of Mr. Burns complete lack luster performance and weak and ineffective questioning. He's the same throughout the entire hearing with everyone he cross examined. Mr. Burn was very weak, not forceful and not energized. Mr. Leathley on the other hand was the exact opposite, in fact, he stood up when he gave his opening and closing statements. He totally out lawyered Mr. Burn in every way. Also Mr. Leathley and their attorneys would stop our witnesses from rambling on with their answers, which is what they should be doing, but Mr. Burn and our attorneys would let their witnesses ramble on. Evidence of no case preparation. When you only have so much time in the hearing to prove your case, every minute counts. All the hearing videos are on crbuzz.com for all to see. Here's the YouTube link:

https://www.youtube.com/watch?v=Uh0V0U5uNPU&t=3274s

I could continue writing for hours about numerous incompetent actions by Mr. Burn and Mr. Loftis, like their failure to follow the 44-page legal opinion, their failure to show each state witness our relevant evidence, their failure to effectively counter the lie that I duped SETENA, their failure to use the permits and inspection reports, with Power Point Presentation exhibits, and grill each state witness on each document. However, I will end here, because I think anyone that reads this and looks at the above video will get it.

Therefore, Ms. Foreman, regarding your Merry Christmas wish email to me. I can only say this; it will not be a Merry Christmas in 2018 for me or the other US Investors who had the unfortunate experience to cross paths with Mr. Burn, who was responsible for our 100-million-dollar loss. No Merry Christmas for VE who wrote off $3,250,000, and would not be receiving their success fee bonus for Christmas. No Merry Christmas for the contingency funder who wrote off $3,450,000 million and would also not be receiving their success fee bonus for Christmas. No Merry Christmas for the companies who are still owed close to one million dollars for the work they provided for our case, no money under their tree. No Merry Christmas for people who lost 3 million in investing money to buy Las Olas lots, that we promised to refund if we won. Nothing under their tree. Is it any wonder why Mr. Burn is no longer with VE?

Mr. Leathley nailed it when he told the panel it was a cornerstone piece of their evidence and was inexplicable missing. However, what wasn't inexplicable missing was Mr. Burn's gross negligence, incompetence and lack of fiduciary duty to his clients. That was fully operational and on full display!!!

Lastly Ms. Foremen, let me close this email by wishing you a Merry Christmas. I understand that neither you or any one in your firm, other than Mr. Burn, had any part in this tragedy. I presume you drew the lucky straw and assigned to send out the Merry Christmas emails. I'm sorry that I felt compelled to write such an email just before Christmas and apologies to you for having done so. I also want to extend my wishes to you for a Happy and Healthy New Year and wish the same for all the people working at BCLP.

All the best,

David Aven
US Investors Representative
David Aven el vs Costa Rica