

**UNDER THE UNCITRAL ARBITRATION RULES AND
SECTION B OF CHAPTER 10 OF THE DOMINICAN REPUBLIC -
CENTRAL AMERICA - UNITED STATES FREE TRADE AGREEMENT**

CASE NO. UNCT/13/2

BETWEEN:

**SPENCE INTERNATIONAL INVESTMENTS, LLC, BOB F. SPENCE,
JOSEPH M. HOLSTEN, BRENDA K. COPHER, RONALD E. COPHER,
BRETT E. BERKOWITZ, TREVOR B. BERKOWITZ,
AARON C. BERKOWITZ AND GLEN GREMILLION**

Investors/Claimants

AND:

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Party/Respondent

**FIRST WITNESS STATEMENT OF
MARIANELA PASTOR VEGA**

Submitted 25 April 2014

1. My name is Marianela Pastor Vega and I am a Costa Rican citizen currently resident in Matapalo. I have lived in or near Playa Grande since about 1987.
2. This witness statement was prepared at the request of the attorneys for the Claimants in this proceeding. This statement accurately reflects my knowledge and recollection of the facts described herein. Although Spanish is my native language, this testimony was drafted in English, which is the language that I would be prepared to testify in, if necessary.
3. The province of Guanacaste is very poor. In the early 1980s, it was almost deserted. The area was mainly agricultural and rice and sorghum were produced. Some locals would mine for salt in the estuary and there were a few tourists who would come from the United States to sport fish or to hunt for white-winged doves. There were also nature lovers who came to go birding in the estuary and were also interested in watching the turtles lay their eggs on Playa Grande.
4. I recall that the locals thought that it was ludicrous that anyone would be willing to pay to watch the turtles nesting. Especially because those tourists were not interested in eating the turtle eggs. From the time I was very young, I knew that the Leatherback turtles and Olive Ridley turtles nested on Playa Grande. I loved the turtles, but somewhat took them for granted. It was part of

the local culture to collect and eat turtle eggs. They were a source of protein and part of the local diet. People would share recipes for turtle eggs and they were preferred over chicken eggs in '*reposteria*' or pastries. They were also considered to be an aphrodisiac, so you would sometimes see people selling the eggs locally and in nearby towns.

5. In the 1980s, the situation began to change. I heard stories of outsiders from towns further away coming to the beach to collect turtle eggs for commercial purposes and they were staking out sections of the beach and aggressively protecting their 'territory'.
6. At about the same time, I met my future husband, Louis Wilson, who was a US citizen working out of Tamarindo offering sport fishing tours to tourists. There were a number of tourists coming from nearby resorts who were interested in seeing the turtles. In those days, there were no guides or park rangers, so I used to take them to see the turtles and explain what I knew about the local area and the turtles' habits. I became interested in protecting the turtles and helping the local community find jobs in tourism and to be proud of the resource.
7. Louis introduced me to Peter Pritchard, a biologist who was studying the turtles in Costa Rica and French Guyana. Louis invited me to translate certain documents into Spanish and that is how I got involved with their project to protect the turtles. We started thinking about taking care of the turtles and how we would get the local people to give up something (turtle eggs), especially if they were receiving nothing in return. So we thought of eco-tourism, which didn't have a name then. We did not call it eco-tourism, but our idea was to educate and give something back to the local community. We decided to build a small hotel on Playa Grande that could host tourists interested in seeing the turtles and that would also provide training and employment for the local community. We also tried to protect the turtle nests from those taking the eggs.
8. A few years ago, I ran into a local in the post office who reminded me of what we used to do in those days. He said "hello" and then said, "you don't remember me, but I remember you." When I asked him why, he said, "because you took a picture of me and my uncle coming across with all the sacks of turtle eggs, and when you took a picture you told us that you were letting us go this time, but that we had better stop taking the eggs because you have our picture now." He told me that they were so scared that they stopped collecting turtle eggs. I thought the story was funny, especially that he thought that me and my camera were scary, but it is a good example of how things started to change when we began communicating with the local community about the turtles.
9. I also went to San José to find someone to help with protecting the turtles. I was interested in having the government create a wildlife refuge in Playa Grande. I identified Mario Boza, who was then the director of the Fundación Neotropical and the Fundación de Parques Nacionales ("National Park Foundation"). The National Park Foundation is not a government entity. It is a private NGO that seeks funding for parks in Costa Rica. People in San José were willing to help, but the government had limited resources and staff.
10. In 1987, as a result of our efforts in San José, the National Assembly issued a Decree stating that the first 50 metres inland from the mean high tide mark (the inalienable zone) in Playa Grande plus the estuary would be a wildlife refuge.¹ Access to the beach was not allowed without the

¹ Exhibit C-29, 870223 Decree 17566 Refugio Nacional de Vida Silvestre Tamarindo, also see Exhibit C-30 Law 7149 creating the Refugio Nacional de Vida Silvestre Tamarindo (1990).

presence of a park ranger and exploitation of the mangroves was not permitted. I received support from Guillermo A. Canessa Mora, Commissioner of the Wildlife Service,² and was able to make connections in Santa Cruz with the chief of police who used to give us the police men during the weekdays, so we had policemen there during the weekdays during nesting season keeping people away from the turtle eggs.

11. Coincidentally, there was a private project on Costa Rica's other coast - near Limón - related to turtles. Peter Pritchard suggested that the woman who was behind that movement, Maria Teresa Koberg, come to Playa Grande to help. She had been organizing boy scout groups to help patrol the beaches to protect the turtle nests. Maria Teresa was also known to the then President, Oscar Arias, as her project had attracted the attention of the First Lady.³
12. Around that time, a British donor donated \$5,000, which was used to send biologists to the area to study the turtles and to send a local resident to park ranger school.
13. During the same period, Louis and I decided to go ahead with our plans to build a small hotel on Playa Grande. Louis had the experience of living in Tamarindo in an area where there were concessions and thought that building in Playa Grande would be appealing because it was private property beyond the 50 meter inalienable zone.
14. Because we knew about the plan to create a wildlife refuge and did not want to make a stupid investment, we specifically asked for confirmation that the property we wished to purchase was not going to be subject to any future restrictions. The minister confirmed that although the area was an important one for conservation, as long as the government did not have funds to purchase the private property, it would not promote the creation of a new park. A number of our neighbours requested and received similar assurances.⁴
15. We bought the land and built the Hotel las Tortugas, a small boutique hotel, which opened in late 1990. We kept up to date on research related to the turtles and their nesting habits and learned that lights were not good for the turtles, for the baby turtles especially. So we planted trees in front of the hotel, to put in a buffer. I also used to paint the street lights to reduce the light that would be visible from the beach.
16. Around 1990, Mario Boza became Vice Minister of Environment and Maria Teresa Koberg was appointed as the Director of the National Sea Turtle Protection Program. Soon thereafter, the decree creating the Tamarindo Refuge became a law.⁵ In this period there was tension between Maria Teresa and the local community. She began aggressively targeting "poachers". I do not like the use of the word poacher to describe the locals who collected turtle eggs for their own use, because they had been doing this for generations. In my experience, it was necessary to engage and educate the locals so that they would understand the value of the turtles beyond just their eggs as a food source.
17. Although I did not understand her to have any authority for doing so, Maria Teresa used to close the roads and try to charge people money to go see the turtles.

² Exhibit C-31, 870903 Letter from Commissioner of the Wildlife Service (MINAE).

³ Exhibit C-32, 881103 Letter from Sea Turtle Rescue Program to MINAE.

⁴ Exhibit C-33, 901211 Letter from Minister Bravo of MINAE to R. Medaglia Gomez.

⁵ Exhibit C-30, Law 7149 - Refugio Nacional de Vida Silvestre Tamarindo.

18. In 1991, I heard that the government had issued a decree creating the park. We were concerned that the wording of the decree, if it became law, would allow the expropriation of our property. However, we made inquiries and were reassured that private property would not be expropriated unless the government had the funds to purchase it. Thus, we understood that the decree provided that private property was not considered to be part of the park unless it had been expropriated. On June 17, 1992, MINAE's park services division confirmed that our property was not within the park.⁶
19. At the time we built the hotel, I recall that there were about three or four houses on the beachfront in Playa Grande. In the early 1990s, there was further development and more houses were built on the beachfront in both Playa Grande and Playa Ventanas. The real estate market in Playa Grande started to heat up. Within 10 years, the lot appreciated in value from \$7000 to \$84,000. By the early 2000s, most of the houses that are in Playa Grande today had already been built.
20. Between 1990 and 1994, we ran guided tours of the beach with slide shows. The local residents also started acting as tour guides. The park rangers were not allowed to guide the tours.
21. Maria Teresa and Clara Padilla, who had been Mario Boza's Secretary at the National Park Foundation, founded La Gran Chorotega, which we consider to be the predecessor organization to the Leatherback Trust. I understand that the organization was created to collect money in order to begin buying property.⁷ The Leatherback Trust is a US NGO that keeps a scientific station and rooms in its facility on Playa Grande.⁸ Biologists from US universities perform research on the turtles from this facility. I recall that by about the end of 1992, Maria Teresa had left Playa Grande.
22. In 1995 when the Park Law was passed, there was a meeting to discuss the creation of the park. The Park Law clearly mentioned the creation of a marine park, which made sense because of the existing refuge and the private property along the beach. Unlike most areas in Costa Rica, in Playa Grande the beachfront is privately titled and not municipal property. The description of the Park as set out in the 1995 Law made sense to me, as it provided protected beaches for the turtles and also respected the private property owners along the beach. It was also consistent with what we had been told when the park decree was issued - that the government did not intend to expand the park to include private property.
23. Later on I heard that the government was planning to expropriate the private property as part of the park. When I heard this, I was surprised. I also felt betrayed, as I considered the developers to be people that we, as Costa Ricans, had invited to put their money here and trust us. The municipality of Santa Cruz used to invite me to talk to possible investors and encourage them to invest in our area. These possible investors had been identified as good ones. They were people who saw the beauty of the local area and were not interested in high density development.

⁶ Exhibit C-34, 920617 Certification that Hotel Las Tortugas was not within the park.

⁷ Exhibit C-35, 920000 Update Article Regarding the Creation of the Park.

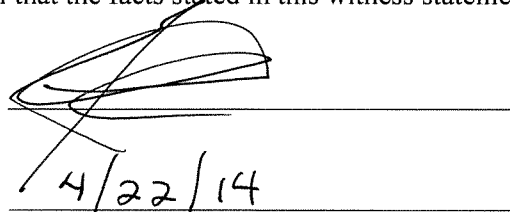
⁸ See http://www.leatherback.org/las_baulas_national_park.html

24. In 2008 to early 2009, I was involved in some meetings with members of the government who were interested in passing a law to correct the interpretation of the 1995 Park Law. In particular, it was suggested that the bill interpret the words “aguas adentro” to mean “aguas adentro”.⁹ To my knowledge, a number of draft bills were prepared and presented, but none were passed.¹⁰
25. I am still a resident of Playa Grande and own property there, but it is not within the 75 meter strip that the government now says forms part of the Park. My property has not been noticed for expropriation.

I confirm that the facts stated in this witness statement are true.

Signed: _____

Date: _____

Handwritten signature and date. The signature is a cursive scribble above a horizontal line. The date '4/22/14' is written below the signature line and above the date line.

⁹ See Draft Law 16.916.

¹⁰ Also see Draft Law 16.417 and Draft Law 17.383.