

**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

STATEMENT OF KIRT RUSENKO

Submitted April 25, 2014

1. I am a Marine Conservationist with a doctoral degree in Zoology from Clemson University.¹ I have been directly involved in sea turtle conservation and biology, including the Leatherback turtle, since 1991. Since 1995, I have been employed as a Marine Conservationist by the City of Boca Raton, Florida. My primary responsibility is to direct the Boca Raton Sea Turtle Conservation and Research Program. Our program is responsible for:
 - Conducting sea turtle nesting surveys on five miles of Boca Raton beaches;
 - Sea turtle stranding incidents for the southern third of Palm Beach County;
 - Maintaining and monitoring beach renourishment projects; and
 - Reviewing plans attached to applications for beachfront lighting.
2. As Boca Raton is located in a highly developed urban area, I have had many years of experience dealing with both new developments and redevelopment on the beach. It is my responsibility to ensure that developers have addressed our concerns with respect to lighting and dune integrity, and with minimizing negative beachfront impacts to nesting sea turtles and their hatchlings. In implementing the sea turtle conservation policies of Boca Raton, I have worked on many beachfront projects – from a major renovation of our beachfront hotel to the new construction of 4 beachfront condominium complexes, as well as numerous smaller scale renovations and lighting designs.
3. My work with local condominium managers, to minimize impacts on sea turtles, became the chapter of a book published in 2006 by Carl Safina, called “Voyage of the Turtle.”² In 2012, I was awarded a “Lighting Design” award from the International Dark-Sky Association for lighting retrofits. I worked on for two of our beachfront condominiums. In 2013 the same organization awarded a “Dark-Sky Defender” to me for helping the International Dark-Sky Association retrofit lighting in and near beachfront public parks in the Florida Panhandle. I am attaching a recent copy of my curriculum vitae for your consideration.
4. Sometime late in the summer of 2007, I was contacted by a woman named Ana Facio. She had questions about lighting and development on sea turtle nesting beaches and told me that she had read about my work in the Carl Safina book mentioned above. She told me that she was from Playa Grande, Costa Rica and began to describe the situation to me. She indicated that her group was looking for someone who could help them design a plan for controlled development that would not negatively impact the sea turtles nesting in the Las Baulas Park of Playa Grande.
5. Over the next two months, we spoke several times over the phone about writing a code that would restrict how the area would potentially be developed. In November of 2007, she offered to fly me down to see the site. On November 24, I flew to San Jose and then on to Tamarindo where I met Ana Facio and her husband, Manfred Marshall. They had me stay at their house in Playa Grande and showed me about the area, including Tamarindo and the mangrove forest behind Playa Grande. I spent extensive time on the beach and attended a guided walk to view a nesting

¹ Curriculum Vitae attached as Ex. 1.

² See: Chapter 3, Moonlight in the Sunshine State, at pages 45-72, attached as Ex. 2.

leatherback sea turtle. Since individuals were not allowed on the beach at night, that tour gave me the chance to see the lighting conditions in Playa Grande and Tamarindo.

6. I met with a handful of residents during my stay: I believe a couple of US citizens, and Australian, and a family from Belgium, but unfortunately I do not remember their names. They had given me a draft of their proposed development code and asked for me to edit it to insure minimizing negative impacts to nesting sea turtles in the Park. On my way back home, I stopped in San Jose and was able to meet with President Oscar Arias and other government officials on November 28th. They asked me about my opinion about whether there could be development in the Playa Grande area. In answering them, I basically said that if the area were allowed to develop as Tamarindo did, there would be no nesting in the area in the future. A code with teeth would be needed that would restrict lighting, building heights, and building density in the area. If the 50-meter “inalienable” zone was respected, in addition to these other restrictions, I thought that the area could be developed with minimal impact to nesting sea turtles and their hatchlings. I also encouraged the President and his officials to engage in a national effort to keep records of sea turtle strandings in Costa Rica, as well as a training program for beach monitors – so they could know what nesting activity exists before they allowed further development. As most of the meeting was conducted in Spanish, I did not understand most of what was being discussed outside of my direct questions.
7. I returned to Boca Raton on November 29, 2007. Following the trip, I sent my edits for the code and wrote a report entitled: “Evaluation of Playa Grande and Surrounding Area,” which I completed in January 2008.³ I remained in contact with Ana Facio irregularly for the next year, by phone and occasional e-mails, during which time she sent further descriptions and drawings of the group’s plans for development based on the code we were working on. An example of one of the documents she sent me is attached. I edited this zoning document to take into account issues related mainly to lighting but also included my opinions on building height, minimum lot size, and allowable building footprint on each lot.⁴ During these same communications, I also told her that development restrictions, alone, would not necessarily be the only answer, suggesting that a public educational facility should be developed to teach tourists and residents in the area about the importance of the beach and its surroundings, for sea turtles as well as other wildlife in the area.
8. In 2009, Ana Facio asked me to return to Costa Rica and I flew down again, at my own expense, on January 13, 2009. I stayed once again with Ana Facio and Manfred Marshall at their house in Playa Grande. I took part in another night tour, to see a nesting leatherback and to see how the lighting was in the area. Manfred Marshall drove me around the coast, showing me different development projects and areas of proposed development. Many of the large hotel projects had not respected the 50 meter inalienable” zone, nor did it look like they had taken any consideration of lighting. It is doubtful that there was any knowledge of nesting activity prior to construction, as it is my understanding that most beaches in Costa Rica are not monitored for sea turtle nesting activity.

³ Attached as Ex. 3

⁴ Attached as Ex. 4

9. Manfred also took me to several small “pocket” beaches nearby, where I noticed as many as 15 recent green turtle nests on a beach that was only 150 meters wide. We talked more about an educational facility in the Playa Grande area and Ana Facio said they were considering working on a small nature center for the area. She asked me if I would be interested in running such a place, I told her I was a bit too old to make such a change.
10. Also during this trip I met with Randall Arauz of the Costa Rican environmental NGO, PRETOMA. I had been encouraging the Marshalls to work with Randall regarding the park area and development. I wanted to meet with Randall to see if he would be willing to provide his input, since he was far more familiar with the local situation than I was. While Randall was not keen to hear about development in Playa Grade, he also was not vehemently opposed, so I felt he could be an asset in the situation. During this trip, I had seen a newsletter article about Randall Arauz and Manfred Marshall and others meeting at the University of Costa Rica to talk about the future of Las Baulas Park.⁵ I remember thinking that their meeting could begin a process of understanding and progress in the park area. My overall impression from everyone I met was that things could go very wrong there if the development issue were not addressed. I do not recall meeting with any other government official during that trip.
11. In July 2009, I received a letter from the Minister of the Environment, sent by Jorge Rodriguez, which asked me eleven questions regarding potential development of the Park.⁶ I responded with my answers in a letter dated August 27, 2009.⁷ After my trip to Costa Rica in 2009, they sent me the final revision of the development code they were working on.⁸ Ana Facio also sent two items that showed pictorially and graphically, the boundaries of the park and the areas to be developed, which I had asked for so I could visualize how the boundaries related to each other.⁹
12. When I first arrived in Costa Rica, in 2007, my suspicion was that the residents of Playa Grande would just be looking for a way to justify out-of-control development, such as I have seen in Florida. I was accordingly very surprised to hear of their plans for controlled development, and about the adherence they had displayed to existing rules, such as the 50 meter “inalienable” zone. When I first saw the proposed code of development I was very happy to see how much detail had already been covered in it. It actually required little editing on my part and most of my editing was to address lighting and the building footprint that should be allowed on each lot, as well as a minimum lot size. The people I met in Playa Grande seemed genuinely interested in maintaining their area in a more natural state rather than seek large-scale development. The only improvement they seemed eager to have was paved (or at least improved) roads.

⁵ “Forum of Experts Discuss Bill to Demote Leatherback National Park,” December 5, 2008, attached as Ex. 5.

⁶ Letter from Jorge Rodriguez, MINAET, to Kirt Rusenko, July 15, 2009, attached as Ex. 6.

⁷ Letter from Kirt Rusenko to Jorge Rodriguez, MINAET, August 27, 2009, attached as Ex. 7.

⁸ Attached as Ex. 8.

⁹ Attached as Ex. 9.

13. The northern end of the Las Baulas beach has older houses that were apparently built before the 50-meter inalienable zone was established, as some were situated very near the beach. I was able to speak with a couple of residents of those houses, so I could point out improvements they could take to eliminate stray lighting from their houses – to keep the beach as dark as possible. They were amenable to changing their lighting without argument and, as in Florida, most people will do the right thing if somebody can tell them how and why. That is why the education aspect I was keen to discuss was – and remains - so important.
14. During my time at Playa Grande, I learned that the Leatherback Trust also had a house and hatchery located at the north end of the beach. I see that they note on their website that turtles nest more to the south because the houses in the south are not right on the beach and the lighting is not so bad.¹⁰ I should note that the Marshalls, and most other people I met, in Playa Grande appeared to have lots located towards the south end of the beach. In light of my experience with these people, I am confident that they never intended to over-develop that area. On the contrary, they seemed just as interested as I was in keeping their beach safe for continued nesting. Unfortunately, that area of beach will become less attractive to nesting sea turtles unless the lighting and development in Tamarindo, which is located south, across the estuary, is not addressed.
15. The mere fact that they all seemed to be such strong proponents for the adoption of a development code with teeth leaves me feeling that they would have liked to see development in Costa Rica, in general, to be brought under control. In their own small way, I believe they hoped that their code would be adopted elsewhere in Costa Rica. As I spent most of my time with the Marshalls, I feel most strongly they see great value in the uniqueness of the area and in its laid-back lifestyle, but their views did not seem at all out of place with the other people I met who were also interested in adopting the code. In fact, throughout my time with the residents of Playa Grande I never received any opposition to my suggestions or challenges to my evaluation of the site.
16. It is the communities with these kinds of residents that will have the best chance of achieving proper, sensible development that would have minimal impact on the environment attract interest from other developers. Even today, I still believe a properly developed Playa Grande would serve as an outstanding example for the rest of Costa Rica as well as the world.



Kirt W. Rusenko, PhD
9500 SW 3rd. St., APT C-255
Boca Raton, FL 33428
April 22, 2014

¹⁰ <http://www.leatherback.org>, last visited April 18, 2014, attached as Ex. 10.