

**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 ANA FACIO**

Submitted February 4, 2015

Introduction/Personal Background

2. My name is Ana Catalina Facio. I am a citizen of Costa Rica and reside in San Jose, Costa Rica.
3. I submit this witness statement on behalf of Spence International Investments, LLC (“Spence Co.”) in support of the Claimants’ Rejoinder on Jurisdiction in connection with a DR-CAFTA claim brought by the Claimants against the Republic of Costa Rica (the “Respondent”) pursuant to the UNCITRAL Arbitration Rules and seated in Washington, D.C.
4. This witness statement was prepared in collaboration with the attorneys for the Claimants in this proceeding, following several meetings and consultations with me. This statement accurately reflects my knowledge and recollection of the facts described herein. This

testimony was drafted in English, but as Spanish is my native language, I am prepared to testify in either English or Spanish.

5. I have a degree in Interior Design from Inchbald School of Design in London, England. Upon completion of my studies, I began working in real estate and eventually started my own real estate company, which I now own with my husband and two sons. Our company makes real estate investments mostly in Costa Rica.
6. My husband and I own 500 meters of beach front property in the southernmost tip of Playa Grande, before the estuary. He inherited the property in 1990 from his father, who built a house in 1984, which we currently use as a secondary home. In 1993, he also built an ecofriendly hotel on the same property, which has been up and running ever since it was built. In 2003, we were issued another building permit to build yet another house, which we later sold with no issue. We eventually sold a few lots to some of our friends to build houses. The rest of our property remains untouched.
7. In this witness statement, I will describe some of the consultations landowners like myself had with various Government officials about the *Las Baulas* National Marine Park (the “Park”) boundaries.

Government Negotiations

8. In or about 2008, while expropriation proceedings for some of the lots in Playa Grande were already underway, the Government had not yet paid for any of the expropriations and the Government had announced publicly that they had no money to expropriate. There was much confusion amongst the landowners in Playa Grande as to the boundaries of the Park and whether we were allowed to develop our land if the Government intended to expropriate our properties. There appeared to be no consensus amongst the public entities. As a result of the confusion, I reached out to the Government to try and get some clarification. I was referred to the Ministry of the Environment and eventually met with President Óscar Arias to discuss the issue. The President was interested in consulting with the landowners in the area and promised to try and fix the dilemma caused by the 1995 Park Law. His main concern was that there was no money to pay the landowners for the expropriations.
9. We had many meetings throughout 2008 to 2010, which took place at the Presidential House with the President, the Vice President, various ministers, congressmen, lawyers, environmentalists, and landowners.¹ Included in the group of lawyers was counsel for the Claimants, Vianney Saborío Hernandez. The Government officials attending the meetings were very high-ranked and had the authority to bind Costa Rica to any

¹ Exhibit C-118: emails from 2008 and 2009 between Jorge Rodríguez Quiros (MINAE), Zaida Trejos (Vice President of MINAE), Emel Rodríguez (Director of the ACT), Marucio Méndez Venegas (sub-director of the ACT), counsel for the Claimants, Ana Facio and other landowners regarding the Bill; Exhibit C-119: working group drafts and presentations from the various meetings regarding the Bill.

agreement made through consultations, subject to approval by the legislature. I recall that the President himself attended approximately four of these meetings.

10. I attended most of the meetings, but on occasion my sons would attend on my behalf. Some of the landowners who attended the meetings included Jacques Fostroy, Salah Hawila and his wife, Luis Medalia and Julio Saenz. The meetings were held in Spanish, so many of the foreign landowners in Playa Grande did not attend. Nonetheless, they were aware of the negotiations and kept informed by those of us attending the meetings.
11. The proposed solution was that the landowners would work with the Government on land-use restrictions that would still permit us to develop our lands without harming the environment or the turtles. The President liked this idea because the Government could be relieved from having to pay out an extremely large sum to the landowners that the country did not actually have. As result of these consultations, he tried to have legislation passed to change the rules to implement the agreed solution.
12. We spent approximately two years negotiating and drafting a law to reflect this, which was known as the *Proyecto de Ley 17383* (the “Bill”)². The Bill titled “Law to rectify the Leatherback Marine National Park’s Boundaries and Creation of Guanacaste’s Leatherback National Wildlife Refuge” was supposed to be the solution to the problems caused by the interpretation of the 1991 Decree and the 1995 Park Law. The terms of the Bill were to turn the Park into a mixed refuge, so that there was no need to expropriate the properties which fell within the boundaries of the Park. Houses and landowners could remain on the property, but there would be regulations in place to protect the environment. We felt very confident as landowners that the Government was acting in good faith and that they would be able to convince the legislature to pass the Bill.
13. The Bill was presented to the legislature in 2009. Unfortunately, the Bill received very strong opposition from environmental groups, such as the Leather Back Trust. In May 2010, Laura Chinchilla was elected into office as President and distanced herself from the Bill as she did not support the President’s vision for the Bill. We were never informed about whether the project had been dropped, but it was quite obvious that our Bill was never filed.

Park Boundaries

14. The Respondent provides a map of the Park at Annex A of their Reply on Jurisdiction and Rejoinder on the Merits (the “Map”). In this Map, there are three large coloured dots which are supposed to represent the Park boundaries. The pink coloured dot falls on my property and is located at the coordinates of N 255.000 and E 335,050 (the “Set Point”).
15. The 1995 Park Law was created without accurately defining the boundaries of the Park. No one knew whether the coordinates of the Park were on land, or underwater. In June 2009, due to the confusion caused by the 1995 Park Law, I had a study conducted to

² Exhibit C-1zj.

clarify the location of the Set Point.³ On the Respondent's Map, the Set Point appears to be on land. However, depending on the tide, the area covered by the Set Point is actually underwater.

16. The Set Point is located in an area that is part of the estuary and has three mangrove trees within the area, which causes the Set Point to be influenced by the tide. The land appraiser who conducted the study buried a two-meter high orange phosphorescent wooden stick at the Set Point at about 95 cm. According to his measurements, once the tide rises 30 cm, the Set Point floods and falls underwater. Thus, the Set Point is only on land when the tide is low and the only land it encompasses at that point is beach sand.

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

Signed: 
Ana Facio

Date: Feb 3, 2015

³ Exhibit C-120.