

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

- - - - - x
 In the Matter of Arbitration :
 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, : ICSID Case No.
 and GLEN GREMILLION, : UNCT/13/2
 :
 Claimants, :
 :
 and :
 :
 REPUBLIC OF COSTA RICA, :
 :
 Respondent. :
 - - - - - x Volume 2

HEARING ON THE MERITS AND JURISDICTION

Tuesday, April 21, 2015

The World Bank
1818 H Street, N.W.
Conference Room 4-800
Washington, D.C.

The hearing in the above-entitled matter came
on, pursuant to notice, at 9:30 a.m. before:

SIR DANIEL BETHLEHEM, QC, President of
the Tribunal

MR. MARK KANTOR, Co-Arbitrator

DR. RAÚL E. VINUESA, Co-Arbitrator

Also Present:

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Secretary to the Tribunal

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C O N T E N T S

PAGE

PRELIMINARY MATTERS:

EL SALVADOR ORAL SUBMISSIONS:

By Mr. Parada 229

QUESTIONS FROM TRIBUNAL: 243

WITNESSES:

ROBERT REDDY

Direct examination by Mr. Cowper 260
Cross-examination by Mr. Alexandrov 272
Redirect examination by Mr. Cowper 326
Questions from the Tribunal 330

BRETT E. BERKOWTIZ

Direct examination by Mr. Cowper 344
Cross-examination by Mr. Alexandrov 353
Questions from the Tribunal 453

KIRT RUSENKO

Direct examination by Mr. Cowper 464
Cross-examination by Mr. Alexandrov 469

09:31:13 1 with an international tribunal adjudicating a claim by
2 foreign investors against a sovereign State is because
3 seven States, seven sovereign States, came together,
4 negotiated, signed and ratified a Treaty that we
5 called CAFTA. In more propriety, we should be calling
6 it CAFTA-DR-US because the Dominican Republic and the
7 United States are also parties, but, in short, I will
8 just refer to CAFTA.

9 Now, under the Vienna Convention on the Law
10 of Treaties, as well as under customary international
11 law, States are considered to be the masters of their
12 Treaties. So, the CAFTA Parties reserved for
13 themselves a role in the interpretation of the Treaty,
14 and they did so because they firmly believe in
15 protecting the integrity and the long-term viability
16 of their Treaty. And in this case they do so by
17 filing non-disputing party submissions under
18 Article 10.20.2 of CAFTA.

19 Now, it is important to note that a
20 non-disputing party does not take sides in an
21 arbitration, it does not have an interest in the
22 outcome of a particular case, and does not express an

P R O C E E D I N G S

1 PRESIDENT BETHLEHEM: Ladies and gentlemen,
2 if everyone is ready.

3 (Pause.)

4 Welcome, ladies and gentlemen. We start out
5 our second day of Hearing. In a moment I'll invite
6 the counsel for El Salvador to make submissions on
7 behalf of the non-disputing party. We'll then move on
8 to the Claimants' witnesses of fact.

9 Mr. Parada.

EL SALVADOR ORAL SUBMISSIONS

10 MR. PARADA: Good morning, Mr. President,
11 Members of the Tribunal. It is my pleasure to be here
12 today on behalf of the Republic of El Salvador as a
13 non-disputing party in this arbitration to discuss the
14 issues of Treaty interpretation that were treated in
15 more detail in El Salvador's written submission filed
16 this last Friday.

17 But before going into the substance of this
18 submission, I would like to take a moment to talk a
19 little bit about the role of the non-disputing parties
20 in a CAFTA arbitration. The reason we are here today

09:32:27 1 opinion on how the interpretations of the Treaty being
2 expressed are applied to the facts in the case. This
3 is because each CAFTA Party understands that the
4 Treaty must be interpreted in the same manner
5 regardless of whether the CAFTA Party is before a
6 Tribunal as a Respondent in an arbitration or as a
7 non-disputing party, or if one of his Nationals is
8 before a Tribunal as the Claimant in a case.

9 Now we'll turn to the main points of
10 El Salvador's submission, and I'm going to touch on
11 three points. I'm going to expand on one a little
12 more because this is the first CAFTA arbitration
13 regarding environmental measures that reaches the
14 merits stage.

15 There have been two before that ended on
16 jurisdiction; so because in this one jurisdiction is
17 joined to the merits, I'm going to refer a little bit
18 more about the importance that CAFTA gives to
19 environmental protection. And I will also refer to
20 one issue where there's a specific influence of that
21 preeminence for the protection of the environment on
22 the issue of expropriation.

09:33:33 1 Second, I will speak about the temporal
 2 application of CAFTA. And third, I will speak about
 3 the concept of fair and equitable treatment as part of
 4 the Minimum Standard of Treatment under customary
 5 international law.

6 With regard to the environmental protection,
 7 as I mentioned, this is the first CAFTA arbitration
 8 that reaches the merits that deals with environmental
 9 protection. Now, we're here under Chapter 10 of
 10 CAFTA, but Chapter 10 cannot be read in isolation from
 11 the rest of the Treaty. And it is important to note
 12 that there's an entire chapter, Chapter 17 in CAFTA,
 13 that deals with environmental protection.

14 And there are some provisions that the
 15 Tribunal may want to refer to later--for example, in
 16 Article 17.1--where the CAFTA Parties have recognized
 17 their right to establish their own levels of
 18 environmental protection and even to change them,
 19 keeping in mind, though, that they have to have a high
 20 degree of protection for the environment, and they are
 21 encouraged to continue improving that level of
 22 protection. Article 17.2 even includes a commitment

09:34:44 1 from the CAFTA Parties that they will not subordinate
 2 environmental protection to policies designed to
 3 encourage investment.

4 So, this priority that CAFTA gives to the
 5 environment also applies to Chapter 10, the investment
 6 chapter. For example, Article 10.11 clarifies that
 7 Chapter 10 does not in any way prevent a CAFTA Party
 8 from adopting, maintaining, or enforcing measures
 9 related to the protection of the environment.

10 I will note that, in addition to this
 11 article, I understand that there is a Letter of
 12 Understanding between the United States and Costa Rica
 13 in relation to the specific protection and preeminence
 14 of the environment on issues of regulation regarding
 15 to zoning and land use.

16 Now, what happens, then, in the case if there
 17 is any inconsistency between Chapter 10 and any other
 18 chapter of CAFTA? Article 10.2 specifically says that
 19 in the event of an inconsistency between any provision
 20 of Chapter 10 with any other provision in another
 21 chapter of CAFTA, the provision in the other chapter
 22 prevails to the extent of the inconsistency.

09:36:07 1 Now, talking on the specific issue of
 2 expropriation, the one thing that I would like the
 3 Tribunal to pay particular attention is Annex 10-C
 4 where the CAFTA Parties made it clear that
 5 nondiscriminatory regulatory actions by a party do not
 6 constitute indirect expropriation except in rare
 7 circumstances. If a Claimant is going to argue that
 8 there are rare circumstances that merit departing from
 9 this very strong rule, the Claimant will have the
 10 burden to prove the existence of these rare
 11 circumstances.

12 I want to switch now to the second point, the
 13 temporal application of CAFTA. And here there are two
 14 very separate and independent issues that need to be
 15 considered independently of each other, even in cases
 16 like this one where it seems like they converge
 17 because of the timing of the facts of the case. One
 18 is the nonretroactive application of CAFTA, and the
 19 other one is the three-year time limit to bring claims
 20 under CAFTA.

21 Regarding the nonretroactive application of
 22 CAFTA, it is clear in the text of the Treaty and as is

09:37:28 1 fully discussed in El Salvador's written submission,
 2 that the consent of a CAFTA Party does not extend to
 3 any measure, any facts, events, that happen before the
 4 Treaty entered into force for each particular Party.
 5 And I am saying "for each particular Party," because,
 6 for example, for El Salvador the Treaty entered into
 7 force in 2006, whereas for Costa Rica it entered into
 8 force in 2009.

9 So, this is true even if the effects of that
 10 measure of that event continue after CAFTA entered
 11 into force as it would be, for example, in a case of
 12 expropriation.

13 So, summing up, there's nothing that happened
 14 before CAFTA entered into force that can be a breach
 15 of CAFTA because there was no CAFTA obligation before
 16 the Treaty entered into force.

17 Now, I want to speak about the three-year
 18 statute of limitations or the three-year time limit to
 19 begin a claim. And here it's important to note the
 20 exact wording of the Treaty. This three-year time
 21 limit begins from the date when the Claimant first
 22 acquired or should have first acquired knowledge of a

09:38:48 1 breach and knowledge that there is damage or harm as a
2 result of that breach. And here there are three
3 points I would like to make:

4 The first one is that, for the three-year
5 time limit to begin, it is not necessary for the
6 Investor to hire a lawyer to tell the Investor what
7 specific provision of the Treaty is in breach. It is
8 sufficient for the Investor to have knowledge or that
9 the Investor should have had knowledge of the measure
10 that is later alleged to constitute a breach of CAFTA.

11 Second, it is sufficient that the Investor be
12 aware that there has been some harm or damage as a
13 result of that measure, even if the exact amount of
14 the harm or damage is not known.

15 And, third, it is important to know that,
16 because of the specific wording of the Treaty by the
17 use of the word "first knows" or "should have known"
18 is that the time limit now is from the--that time when
19 the Claimant first knew or should have known. So the
20 use of the word "first" in CAFTA means that it is
21 completely irrelevant whether one characterizes the
22 alleged breach as a continuing nature, as an act of

09:40:13 1 continuing nature.

2 Now, with regard to the specific application
3 of this three-year time limit to expropriation cases,
4 I note that the United States filed a nondisputing
5 Party submission this last Friday that I believe would
6 be very helpful to understand how this would play out
7 in those situations. But the most important thing
8 that I would like to leave with you with regard to the
9 second point of the temporal application of CAFTA is
10 that these two issues, the nonretroactive application
11 of the Treaty and the three-year time limit, are
12 completely separate and independent of each other.

13 Now, I'm ready to move to the last point,
14 which is the Minimum Standard of Treatment, and here
15 there are three main issues that I would also like to
16 mention that are developed in the written submissions
17 filed by El Salvador and the United States this past
18 Friday. The first one is the CAFTA Parties made it
19 clear that in Article 10.5, they were referring to the
20 Minimum Standard of Treatment under customary
21 international law.

22 They also made it clear in Annex 10B that

09:41:35 1 customary international law must be proven through the
2 general and consistent practice of States, that they
3 follow from a sense of a legal obligation. In other
4 words, citing arbitral decisions is not how you prove
5 the existence of a norm of customary international
6 law. It is looking at the general and consistent
7 practice of State that they follow from a sense of a
8 legal obligation.

9 And, again, under international law, if the
10 Claimant alleges the existence of a norm under
11 customary international law, it is the Claimant that
12 has the burden to prove the existence of that norm.

13 The second point I want to make in relation
14 to the Minimum Standard of Treatment is that this
15 concept of expectations of the Investor, legitimate or
16 otherwise, has absolutely no role in an analysis of
17 whether a State has breached its obligations under the
18 Minimum Standard of Treatment. This has been pointed
19 out in El Salvador's written submission, the United
20 States' written submission, and it's been accepted by
21 at least five of the seven CAFTA Parties.

22 And the third point in relation to the

09:42:58 1 Minimum Standard of Treatment is, perhaps, the most
2 important one of all, and I would like to really
3 request your attention on this. In the previous cases
4 that have discussed this standard--this Minimum
5 Standard of Treatment or the concept of fair and
6 equitable treatment as part of that standard, a lot of
7 time and effort has been devoted to the degree of
8 conduct from the State that would breach that
9 obligation, but nothing has been said about something
10 that is even more important, and that is the context,
11 the area of application for each one of these concepts
12 to apply the Minimum Standard of Treatment.

13 So with regard to the level of the State
14 conduct, I will refer you to El Salvador's written
15 submission. But basically under the Minimum Standard
16 of Treatment, because that is a floor for the
17 acceptable conduct of a State, to the extent that that
18 compares to the national treatment that the State
19 gives to foreign investors with regards to its
20 nationals, only very serious and excessive levels of
21 conduct would breach that standard.

22 But what I really want to focus about is on

09:44:17 1 the context in which the Minimum Standard of Treatment
 2 can be applied. As the United States and El Salvador
 3 noted in its written submissions last Friday, there
 4 are only a few areas that have been established and
 5 accepted where the concept or the standard of Minimum
 6 Standard of Treatment applies in customary
 7 international law.

8 And the two Parties listed those areas, and
 9 there were three: One is expropriation. The other
 10 one is full protection and security, and the third one
 11 is denial of justice. Well, as you know, CAFTA deals
 12 with expropriation in Article 10.7, and full
 13 protection and security is dealt with in
 14 Article 10.5.2(b). Therefore, that leaves denial of
 15 justice as the only area that the Parties have
 16 recognized that applies to this concept of fair and
 17 equitable treatment as part of the Minimum Standard of
 18 Treatment in CAFTA Article 10.5.2(a).

19 So, unless and until a claimant can come
 20 before a Tribunal to prove the existence of another
 21 area of application for the Minimum Standard of
 22 Treatment under customary international law, beyond

09:45:39 1 denial of justice for this concept of fair and
 2 equitable treatment, and it does so with reference to
 3 the general and consistent practice of States that
 4 they follow from a sense of legal obligation, the area
 5 of application of this concept of fair and equitable
 6 treatment in Article 10.5 to be considered restricted
 7 to denial of justice.

8 And I would like to make something very clear
 9 in this regard. When we speak about denial of
 10 justice, we're only talking about actions of the
 11 judicial branch of the Government, contrary to what
 12 you may have heard yesterday.

13 So, when Article 10.5 refers to criminal,
 14 civil, and administrative adjudicatory proceedings,
 15 all of these three actions are actions of the
 16 judiciary. I think it is clear to everyone that
 17 criminal and civil actions are actually judiciary, but
 18 there might be some question about this reference to
 19 administrative adjudicatory proceedings. So, I want
 20 to make it clear that this reference in English as
 21 "administrative adjudicatory proceedings," which in
 22 Spanish is "procedimientos contencioso

09:46:50 1 administrativos" refers to proceedings of the judicial
 2 branch of the Government.

3 I would really ask the Tribunal to consider
 4 the nondisputing Parties' submissions at this point.
 5 This submission, as you can see from El Salvador's
 6 previous submission in the previous CAFTA case that
 7 dealt with the merits on Article 10.5, was
 8 unfortunately not addressed by the Tribunal, which
 9 went all the way to make a finding on liability
 10 without addressing this issue. And so I would like
 11 the Tribunal to please review this concept as
 12 explained in the nondisputing Parties' submissions,
 13 and along these lines, when we're talking about denial
 14 of justice, as you know, one of the requirements is
 15 the exhaustion of local remedies.

16 So, in conclusion, I would like to end by
 17 noting that in this nondisputing Party written
 18 submission filed last Friday, El Salvador attached as
 19 annexes copies of the last four nondisputing Party
 20 submissions filed in the previous CAFTA arbitration,
 21 in part because El Salvador did not believe that the
 22 nondisputing Parties would have enough time to submit

09:48:16 1 nondisputing Parties in this case because of the short
 2 time limit that was allowed. At the time El Salvador
 3 did not know the United States would file also a
 4 nondisputing Party submission, so I would direct the
 5 Tribunal's attention to that last submission as a
 6 reflection of the United States' interpretation of
 7 CAFTA.

8 So, this concludes El Salvador's
 9 presentation, and I would like to thank you for your
 10 attention.

11 PRESIDENT BETHLEHEM: Mr. Parada, thank you
 12 very much, and thank you to El Salvador and to the
 13 United States for their written submissions in this
 14 case, and, of course, we will take account of those
 15 very carefully as required under the CAFTA. So, thank
 16 you very much, indeed.

17 MR. PARADA: Thank you, sir.

18 QUESTIONS FROM THE TRIBUNAL

19 PRESIDENT BETHLEHEM: Before we turn to the
 20 testimony of the Witnesses, which will take up most of
 21 the day, as I signaled to you yesterday, we have a
 22 number of questions that we would like to put to you

09:49:12 1 now. We will give you an opportunity to respond
 2 immediately, if you'd like to do so. We don't
 3 anticipate that you're going to want to make immediate
 4 and detailed responses, but you may want to make some
 5 initial reactions. The questions are of some length,
 6 so we've got them written out for you, and also for
 7 the assistance of the interpreters and the court
 8 reporters. I'll invite the Tribunal Secretary to hand
 9 those out to you now.

10 Mr. Kantor will go through the first set of
 11 questions, eight questions, and then I will come up
 12 with--will follow him with a number of others. And
 13 if, in the course of this, Mr. Vinuesa has additional
 14 questions, he will add those. So, let me turn now to
 15 Mr. Kantor.

16 ARBITRATOR KANTOR: Shall we give counsel a
 17 moment or two to digest what they have been handled,
 18 or shall I proceed?

19 PRESIDENT BETHLEHEM: No. No. I think read
 20 them into the record. They will follow as you go
 21 along. I think that's fine.

22 ARBITRATOR KANTOR: Very good, Mr. President.

09:50:22 1 Then I will simply read the question as written, pause
 2 for a moment, and see if anybody wishes me to explain
 3 any of the questions that may be less than clear.

4 Claimants have asserted that SINAC undertook
 5 "measures" to suspend or continue suspension of
 6 expropriation proceedings in relation to the
 7 March 2010 Contraloría Report, which "measures"
 8 continue to date. Claimants further assert that those
 9 "measures" were either part of a continuing breach or
 10 one component of a series of acts or omissions
 11 breaching (i) the customary international law
 12 "promptness" requirement for expropriation; (ii) the
 13 "without delay" requirement of CAFTA
 14 Article 10.7(2)(a); or (iii) the Article 10.5(1)
 15 obligation to accord fair and equitable treatment.

16 Claimants also argue that these matters were
 17 only disclosed first upon receipt in July 2014 of
 18 Respondent's Memorial on Jurisdiction and
 19 Counter-Memorial on the Merits, Paragraphs 84-91.
 20 Therefore, say Claimants, Respondents have waived any
 21 right to object to Claimants raising these matters as
 22 breaches or, alternatively, that Claimants should be

09:51:45 1 entitled to amend their Statement of Claim.

2 Respondents reply that the purported
 3 "measures" were, in reality, a "lingering effect" of
 4 an earlier expropriation and/or predate the time bars
 5 in this dispute. Moreover, Respondents assert that
 6 Claimants have not raised the matter in a timely
 7 matter.

8 In that light, I would be grateful for
 9 further information from both of the Parties about
 10 this matter, including responses to the following
 11 questions.

12 I then list eight questions. They candidly
 13 overlap in some respect. My apologies for the
 14 imprecision.

15 First, exactly what conduct was taken by the
 16 Contraloría, and when? By SINAC and/or MINAE and
 17 when?

18 Second, if the matter has resulted in
 19 continuation or establishment of a suspension of
 20 expropriation proceedings, is there evidence of the
 21 expected duration of that suspension?

22 Third, what (if anything) is the impact of

09:52:54 1 this matter for purposes of the time bars at issue in
 2 this dispute?

3 Fourth, would this matter have a differential
 4 impact as between the direct expropriation claims and
 5 the indirect expropriation claims, or not?

6 Fifth, what standards should the Tribunal
 7 employ to distinguish between so-called "measures" and
 8 so-called "lingering effects" of earlier conduct, and
 9 what evidence is relevant to determine the category
 10 into which this matter should be placed?

11 Sixth, is the assertion by Claimants with
 12 respect to this matter an allegation of further facts,
 13 learned as part of the adversarial process, in support
 14 of claims already made by Claimant in its Statement of
 15 Claim?

16 Seventh, or, alternatively, is the assertion
 17 by Claimants with respect to this matter a new claim
 18 for which an amendment to the Statement of Claim is
 19 required.

20 And last, eighth, do the circumstances in
 21 which this matter was disclosed to Claimants affect
 22 how the Tribunal should treat the assertion and, if

09:54:06 1 so, how?
 2 PRESIDENT BETHLEHEM: Thank you very much.
 3 This is an intricate set of questions, so I don't
 4 imagine that there will be an inclination to respond
 5 in any great detail. I'll go through the questions
 6 that I'd like to put, and then I'll invite the
 7 Parties, whether you'd like to make any initial
 8 comments.
 9 Just as a prelude to my set of questions, let
 10 me caution the Parties not to try and read the tea
 11 leaves and to try and identify where the Tribunal is
 12 going. The Tribunal does not itself know where it's
 13 going at the moment. These are simply questions that
 14 have occurred to us on the basis of your written
 15 submissions and your opening submissions yesterday.
 16 I have five questions. Both Parties have
 17 already made submissions that go in some form to the
 18 issues that are raised in the questions. The purpose
 19 of the questions is really an invitation to both
 20 Parties to provide responses that focus more directly
 21 on the points of the inquiry.
 22 So, the first question is, assuming that an

09:55:24 1 expropriation of property is lawful at the point at
 2 which it is announced, in the sense that it meets all
 3 of the requirements under Article 10.7.1 of the CAFTA,
 4 including a commitment to pay prompt, adequate, and
 5 effective compensation, and provides a mechanism for
 6 doing so, does a subsequent failure to pay
 7 compensation promptly, or the subsequent payment of
 8 compensation that is inadequate or ineffective,
 9 constitute a self-standing, independently actionable,
 10 breach of Article 10.7.1, or does it simply taint the
 11 initial act of expropriation ab initio?
 12 Second question, assuming arguendo that a
 13 subsequent failure to pay prompt, adequate, and
 14 effective compensation constitutes a self-standing,
 15 independently actionable breach of Article 10.7.1, at
 16 what point does that breach become actionable--in
 17 respect of allegations going separately to promptness,
 18 adequacy, and effectiveness? In other words, at what
 19 point can it be said that the alleged breach in
 20 respect to the failure to pay compensation promptly,
 21 adequately, and/or effectively crystallized?
 22 Third question, in the case of an

09:56:45 1 expropriation, is the breach in contemplation in
 2 Article 10.18.1 of the CAFTA--that's the limitation
 3 clause--an expropriation contrary to Article 7 of the
 4 CAFTA or is it the conduct amounting to the taking of
 5 the property, whether or not such conduct was
 6 actionable under CAFTA? In other words, is a
 7 Claimant's knowledge of the alleged breach contingent
 8 on the existence of a right under the CAFTA?
 9 Fourth question, assuming arguendo that, in
 10 the case of an expropriation, the breach in
 11 contemplation in Article 10.18.1 is a breach of
 12 Article 10.7.1, what impact does the entry into force
 13 of the CAFTA on the 1st of January 2009, for purposes
 14 of these proceedings, have on the date on which the
 15 knowledge of the alleged breach could first have been
 16 acquired?
 17 And fifth and last question, assuming
 18 arguendo that for purposes of Article 10.18.1, the
 19 data on which knowledge of the alleged breach in the
 20 present case could first have been acquired is the 1st
 21 of January 2009, what impact, if any, does this have
 22 on the operation of the three-year limitation period

09:58:08 1 in this case?
 2 So, those are the questions. Let me see
 3 whether Raúl Vinuesa wants to add anything to those.
 4 ARBITRATOR VINUESA: I'm very sorry to
 5 disappoint the Parties and the President, but I don't
 6 have questions now. I will have it probably later on
 7 for me. The positions of the Parties are quite clear,
 8 but it doesn't mean that it couldn't be extra
 9 questions later on. But I'm satisfied with what I
 10 have read and what I have now heard during yesterday.
 11 Thank you.
 12 PRESIDENT BETHLEHEM: I can't imagine that
 13 that amounts to a disappointment the Parties in the
 14 light of the questions we've just given to them.
 15 Let me just pause then here for a moment to
 16 invite each of the Parties, first the Claimant and
 17 then the Respondent, if you would like an opportunity
 18 to give any immediate response and, if not, this won't
 19 be held against you. You can save these up and
 20 respond at a later stage.
 21 So, Mr. Cowper.
 22 MR. COWPER: Thank you, Mr. President and

09:59:12 1 Members of the Tribunal. And we'll hold back our
2 disappointment that we don't have questions from all
3 three Members of the Tribunal, but thank you very much
4 for these, and they are detailed and helpful.

5 A couple of things arise, though, one of them
6 is that I can confirm that, having read the detail of
7 them, I think they would be best honored and responded
8 to in some written form, and so we'll undertake to do
9 that during the course of the hearing. I expect we'll
10 be able to give you written answers to the questions
11 from the Claimants before the close of the hearing
12 this week. I promise that without having asked my
13 team members, but we will be able to do that.

14 There is a procedural question that arises
15 out of some of the questions raised by Mr. Kantor that
16 I think we would benefit from thinking about and,
17 perhaps, addressing from a procedural perspective
18 because some of the questions he's asked of the State,
19 I think, can't be answered in the context of the
20 current record, and so I think we probably need to
21 think about that. It might be useful to address that
22 briefly this morning or to wait until later in the

10:00:31 1 hearing. If you wanted us to address procedural
2 consequences, I'd need a little bit of a break so that
3 we could caucus and come back and develop that
4 question for you.

5 PRESIDENT BETHLEHEM: Thank you, Mr. Cowper.

6 Before I turn to the Respondent, I think
7 probably now is not the moment to break and consider
8 procedural questions. If we have time at the end of
9 today's session after the testimony of the fact
10 witnesses, we may, perhaps, address those issues then.
11 You made a suggestion, which I think the Tribunal did
12 not necessarily have in mind, that is that you would
13 respond in written form during the course of this
14 week.

15 I will invite Mr. Alexandrov to indicate
16 whether he thinks--or whether he would agree with that
17 suggestion, and then we will consider this further and
18 come back to you. I think we were anticipating that
19 these would be questions that would be dealt with in
20 the course of your response on Friday, but--

21 MR. COWPER: I'm sorry. Just to be clear,
22 we'll deal with them on Friday, but we won't just deal

10:01:36 1 with them in oral form. I think, I expect some kind
2 of form in writing. I wasn't suggesting any other
3 submission other than what we'll be entitled to make
4 on Friday.

5 PRESIDENT BETHLEHEM: Mr. Alexandrov.

6 MR. ALEXANDROV: Mr. President, a couple of
7 quick points. First, we accept your admonition.
8 We're not reading the tea leaves, and it's the unique
9 of prerogatives of Tribunals like this one not to know
10 where they're going until they get there, so we accept
11 that.

12 We strongly object to any submissions in
13 writing in response to the Tribunal's questions. This
14 is an oral hearing. The time for the written
15 submissions has gone. The Parties have agreed that
16 there is no need for Post-Hearing Briefs. If that is
17 to be revisited, we can revisit it on Friday, if
18 necessary, even though, as of right now we don't see
19 the need for such briefs. And so on behalf of
20 Respondent, we insist that the questions that the
21 Tribunal asked be addressed orally during the closing
22 argument.

10:02:34 1 In that regard, my question which can be
2 addressed later--and it's a procedural question--is
3 whether the time will take to address the Tribunal's
4 questions will be time that will count against the
5 Parties' time or whether it will be counted against
6 the time for the Tribunal, and that question can be
7 addressed later when we prepare our closing arguments.

8 But to sum up, the most important point is we
9 would like, and we believe that's the only appropriate
10 way is to address the questions by the Tribunal in our
11 oral argument on Friday.

12 And my last point is probably a clarification
13 in relation to Mr. Kantor's questions. The first two
14 questions are factual. That's a point related to the
15 point that counsel for Claimants made. Are we invited
16 to address them on the basis of the existing record?
17 If the answer is yes, we obviously will need some time
18 to pull from the record the relevant information and
19 address Questions 1 and 2. If we are invited to
20 adduce additional evidence, then that is a very
21 different proposition, and we'll need some direction
22 on how to handle that.

10:03:47 1 PRESIDENT BETHLEHEM: Let me respond
 2 immediately with a holding response, and, as I say, we
 3 can address this procedural issue at the end of today,
 4 which will also afford the Tribunal an opportunity to
 5 reflect both on this procedural issue and also on the
 6 question of written submissions. We haven't yet--the
 7 Tribunal has not yet made up its own mind about
 8 Post-Hearing Briefs. That, as we know, is to be
 9 addressed on Friday. So, it is our expectation at
 10 this point that, insofar as it's possible to address
 11 these questions, that both Parties will address them
 12 in the course of their oral submissions. I do take
 13 the objection by the Respondent to the suggestion, if
 14 I am, indeed, the Respondent, understanding correctly
 15 from the Claimant, that you were proposing to submit a
 16 written document rather than, as it were, pieces of
 17 paper in response or in assistance to your oral
 18 submissions, but we will come back to that this
 19 afternoon.
 20 Just on the question of whether the time
 21 taken in response to these questions is the Tribunal's
 22 time or is the Parties' time, I think as I indicated

10:05:01 1 right at the outset when I flagged the possibility of
 2 these questions, responses to questions from the
 3 Tribunal goes to the Tribunal's time, not the Parties'
 4 time.
 5 Now, that being said, there is going to be a
 6 challenge of timekeeping if you roll up your responses
 7 in the course of your concluding submissions. So, it
 8 will be important that you indicate that you are
 9 responding to questions, and it may be that you want
 10 to take the response to the questions in a block of
 11 time. One of the issues that we can consider on
 12 Thursday afternoon is the allocation of time for the
 13 Friday. We have intentionally built in a little bit
 14 of flexibility to allow some greater time for response
 15 to questions from the Tribunal, but we may have to
 16 look at the hearing schedule for the Friday just to
 17 ensure that we cover all of that ground.
 18 So, I think we will return to the procedure
 19 points.
 20 MR. COWPER: I have just one matter arising,
 21 if I may, Mr. President, and I take on board my
 22 friend's objection, and so we'll deal with it in oral

10:06:10 1 submissions and trust to the transcriber to read what
 2 I'm reading well so that you can have something in
 3 writing that reflects what I'm saying to you. So, I
 4 think at the end of the day, you'll be satisfied that
 5 we've answered the questions.
 6 To be clear, in respect of my friend's
 7 question to the Tribunal, the Claimants do formally
 8 object to any introduction of new evidence. In our
 9 view, those questions need to be answered on the
 10 record, particularly as the Claimants' submissions
 11 made it formally clear that there was no satisfactory
 12 answer to those questions on the record, and so we
 13 would object to any expansion of the record,
 14 particularly as any procedural ability to test any
 15 supplemental factual answers is essentially missing
 16 from the process at this point.
 17 MR. ALEXANDROV: Mr. President, if I may,
 18 there is nothing to object to. I did not make an
 19 application to the Tribunal to expand the record or to
 20 adduce additional evidence. I was simply asking for a
 21 clarification and seeking instructions from the
 22 Tribunal. We are perfectly content to stand on the

10:07:21 1 existing record.
 2 PRESIDENT BETHLEHEM: Thank you very much. I
 3 understood it to be the case that this was really a
 4 question to the Tribunal and, indeed, to Mr. Kantor,
 5 but that's something that we will reflect on and we
 6 will come back to you at the end of today.
 7 Now, I think in deference to a change of
 8 voice, I propose that we break for 15 minutes. The
 9 Witness chair needs to be reorganized. Screens need
 10 to be put up and so on.
 11 So, we will reconvene in my new American
 12 timekeeping, let's say, at 25 minutes past 10:00.
 13 Thank you.
 14 (Brief recess.)
 15 PRESIDENT BETHLEHEM: Mr. Cowper, are you
 16 ready to proceed?
 17 ROBERT REDDY, CLAIMANTS' WITNESS, CALLED
 18 PRESIDENT BETHLEHEM: Mr. Reddy, welcome.
 19 You have in front of you a witness declaration. I
 20 would be grateful if you would read that into the
 21 record, please.
 22 THE WITNESS: I solemnly declare upon my

10:28:48 1 honor and conscience that I shall speak the truth, the
 2 whole truth, and nothing but the truth.
 3 PRESIDENT BETHLEHEM: Thank you very much. I
 4 think you should have in front of you copies of your
 5 Witness Statements.
 6 THE WITNESS: I do.
 7 PRESIDENT BETHLEHEM: Mr. Cowper.
 8 MR. COWPER: Thank you, Mr. President.
 9 And just for the purposes--since this is our
 10 first Witness and we are being webcast, I'll just
 11 record that pursuant to the Procedural Order, it is
 12 not in order for me to ask questions-in-chief in the
 13 normal trial sense but, rather, to ask a limited
 14 number of introductory questions, and then we'll
 15 primarily be dealing with cross-examination.
 16 DIRECT EXAMINATION
 17 BY MR. COWPER:
 18 Q. Mr. Reddy, you have three Witness Statements
 19 in this proceeding; correct?
 20 A. Correct.
 21 Q. And you wish to make some minor corrections
 22 to each of them relating to dates. So if you could

10:29:31 1 turn to Witness Statement 1, you had a change to
 2 Paragraphs 12 and 16 you wanted to make?
 3 A. That is correct. We negotiated the sale of
 4 the Playa Grande properties in 2004, but they did not
 5 close until early February of 2005.
 6 Q. Okay. And our Witness Statement Number 2 at
 7 Paragraph 5, is there a similar correction?
 8 A. Correct. Same correction, sale was
 9 negotiated in 2004; it didn't close until February of
 10 2005.
 11 Q. Okay. And Paragraph 42 of the Second Witness
 12 Statement.
 13 A. On the South Playa Grande Lots, it says we
 14 purchased them in December 2006. They actually closed
 15 in May 2006.
 16 Q. And turning to your Third Witness Statement
 17 in Paragraph 22, you had a correction there?
 18 A. It calculates a 16-month period from October
 19 of 2011 to February of 2012, and that is a four-month
 20 period.
 21 Q. Thank you.
 22 So, just by way of general statement, your

10:30:43 1 position with Spence Company is what?
 2 A. Chief Financial Officer.
 3 Q. Okay. When did you first become involved in
 4 conducting due diligence in Costa Rica?
 5 A. 2004.
 6 Q. How did that come about?
 7 A. Bob Spence asked me to go. He had purchased
 8 a condo. Personally, he had purchased some land in
 9 Ventanas. Both of them had appreciated rapidly, and
 10 so he thought it would also be a good business
 11 opportunity for us to look at development
 12 possibilities down there.
 13 Q. Okay. And before you get to the negotiation
 14 of the purchase, describe the due diligence you
 15 performed while evaluating the investments in Costa
 16 Rica.
 17 A. I flew down to Costa Rica. I looked at
 18 properties in the Guanacaste region from Playas
 19 del Coco area in the north through Flamingo, through
 20 Tamarindo, through Hacienda Pinilla, Playa Vianas. I
 21 visited with almost every real estate office I could
 22 find.

10:31:44 1 I went to San José to interview an attorney
 2 that was recommended to me, and I also went to Stewart
 3 Title in San José.
 4 Q. Okay. And with respect to the particular
 5 investment opportunity at issue in these proceedings,
 6 what did you learn through your due diligence?
 7 A. The plot properties in Playa Grande and Playa
 8 Ventanas are very special properties. So less than
 9 5 percent of the coastlands of Costa Rica is privately
 10 titled. The remaining 95 percent is concession
 11 properties. So those 5 percent are just rare for that
 12 alone.
 13 When you combine it's a white sand beach,
 14 accessible by road--a lot of this coastline is not
 15 accessible by road--has water from municipal system,
 16 it has electricity from municipal electricity, and
 17 then is one of the best surfing sites in, I hear, all
 18 over the world, so it had just many features going for
 19 it that made it extremely rare and valuable to us.
 20 Q. What was your view of the impact of a
 21 concession rather than a free title on potential
 22 purchasers?

10:32:52 1 A. American buyers are used to titled
 2 properties, and we thought our purchasers would be
 3 American buyers. They're not used to a concession
 4 property and property that you could potentially lose.
 5 So Mexico had some concession property. Made
 6 a lot of American buyers struggle to keep their
 7 titles, had their titles taken away, so they are just
 8 not comfortable buying concession property. So, we
 9 really stayed and focused on privately titled
 10 properties, which are very rare in Costa Rica.
 11 Q. What type of buyers in general were you
 12 looking to resell to in relation to the properties?
 13 A. We thought our customers would be American
 14 with more money looking for the paradise retirement
 15 spot. So a tropical environment, warm water, white
 16 sand beach, surfing.
 17 Q. Now, with respect to the Las Baulas National
 18 Park, what did you learn about the national park in
 19 the context of your--in the course of your due
 20 diligence?
 21 A. There was a project to expand the Park at the
 22 time in front of the legislature. That project did

10:33:55 1 not pass. I had heard Costa Rica runs a large budget
 2 deficit, like many countries do. They really didn't
 3 have the money to fund an expansion of the Park.
 4 I learned the history of the Park, so the
 5 1991 Decree where there was a Park inland. It was
 6 told to me the 1995 Park Law superseded that Decree
 7 and made it into law; and when that change was made,
 8 that the Park was seaward and not inland, and so all
 9 of our properties were privately titled properties up
 10 to the 50-meter line.
 11 Q. And in the course of that, did you review the
 12 property surveys and obtain professional advice?
 13 A. Yes, I did. I reviewed each of the surveys,
 14 as did our attorney, and we got title policies from
 15 Stewart Title.
 16 Q. Now, could you just outline in general terms
 17 the Development Plan to the extent that you progressed
 18 to that stage?
 19 A. We had different properties with different
 20 plans. But in the Playa Grande properties, we
 21 developed the area. So there was a dirt road heavily
 22 rutted, we paved it so it was nice and smooth. Gave

10:35:06 1 us easier access. We fixed water lines so that--you
 2 know, water is precious in California as well as Costa
 3 Rica.
 4 We put in fire hydrants in case there was a
 5 fire. It doesn't rain there for six months, so fire
 6 hazard is high. We fixed drainage issues. They have
 7 water accumulation. It gets mosquitoes, it gets
 8 dengue, so we tried to take care of that.
 9 We cleared the vegetation so you could see
 10 the property. We marked all the corners of the
 11 property so you could see exactly what you were
 12 buying.
 13 Q. Okay. And in terms of proceeding to
 14 building, what was necessary, in your understanding,
 15 to obtain a building permit?
 16 A. You need to get a water availability letter
 17 from the local ASADA, or the water agency; you need
 18 get an environmental viability through SETENA; and in
 19 this area, you needed to get a stamp from MINAE that
 20 would tell you whether you are inside or outside of
 21 the Park.
 22 Q. Did you proceed to obtain building permits?

10:36:06 1 A. Yes, we did. We applied for four building
 2 permits. We received all four.
 3 Q. And what happened with respect to your
 4 development after that? Take us later into the course
 5 of the history.
 6 A. So we cleared all the Lots. We put markers
 7 up to define all the boundaries. We labeled them so
 8 people knew exactly what they were looking at. We had
 9 a price list. We had a real estate agent selling them
 10 for us.
 11 And then soon thereafter, SETENA issued a
 12 suspension of environmental viabilities, which is a
 13 suspension of building permits, and so that kind of
 14 slowed things down after that point in time. Later
 15 on, SENARA put in another, you know, suspension of
 16 viability--environmental viability, you couldn't
 17 build, you know, in 2009.
 18 So we've just had a lot of roadblocks thrown
 19 in front of us that has inhibited the development of
 20 the property.
 21 On South Playa Grande, those properties, we
 22 bought those, we submitted a development plan to

10:37:07 1 create 44 Lots on that property. We went to get a
 2 stamp from MINAE so they could say which ones were in
 3 the Park and which ones were out of the Park. MINAE
 4 refused to stamp our Development Plan.
 5 We had to sue. That lawsuit took a few
 6 years. We finally won that lawsuit that said they had
 7 to stamp it whether it was inside or outside the Park,
 8 whatever their opinion was, but we won negligible
 9 damages.
 10 At the end of that Development Plan, the
 11 rules had changed as to what a Development Plan had to
 12 include, and our Lot sizes had to change, and so we
 13 would have to resubmit a new Development Plan to
 14 develop South Playa Grande.
 15 Q. Okay. Now, with respect to the presence or
 16 the locality of these properties adjacent to the
 17 marine park, what was your thinking at the time about
 18 how that played into your development plans and your
 19 prospects for sale to American buyers?
 20 A. It's an attractive bonus. Americans like
 21 national parks. They want to be some place that is
 22 desirable and clean. Everybody is supportive of the

10:38:10 1 turtles, so the Park only extended to the 50-meter
 2 line, only the sand and out to sea. The Park did not
 3 extend inland.
 4 Q. Okay. Now, with respect to some of the facts
 5 that are in the record--and I'm going to have to skip
 6 to only a few of them--do you recall hearing about the
 7 Puerto Rican (sic.) Supreme Court Decision in 2008?
 8 A. What?
 9 Q. The Puerto Rican Supreme Court Decision.
 10 A. Puerto Rican?
 11 Q. I'm sorry, Constitutional Court.
 12 A. Constitutional Court, okay.
 13 Yes, I did hear about the Decision in 2008.
 14 Q. What was your reaction to that and
 15 understanding of what was going to happen?
 16 A. That the Court ordered MINAE to immediately
 17 begin expropriating properties. So the process of
 18 expropriation hadn't started on many of our Lots. I
 19 believe we had eight Lots that had not even the first
 20 Notice of Public Interest, never mind a Decree of
 21 Expropriation. The Ventanas Lots, which is another
 22 nine Lots, there was a Notice of Public Interest that

10:39:13 1 was not followed up by a Decree of Expropriation.
 2 So on very few Lots had anything moved, but I
 3 expected with that Court Order that started in January
 4 '09, the Costa Rican Government would finally begin an
 5 expropriation process.
 6 Q. Now, changing direction, were you involved in
 7 the discussions about a mixed refuge later in the
 8 period?
 9 A. I was involved in a mixed refuge discussion
 10 starting from 2006 and it continued into 2012 and
 11 2013.
 12 Q. What eventually happened to those
 13 discussions?
 14 A. They did not result in anything. We had a
 15 bill in front of the Legislature that President Arias
 16 had promised to support. We thought it was going to
 17 get passed very late in his administration. At the
 18 last minute, he did not pass it.
 19 His protégé, Laura Chinchilla, took office
 20 immediately after him. We thought that she would pass
 21 it, being his protégé. There is a bunch of stuff that
 22 happens early with a new administration, that our

10:40:18 1 project of law was not at the top of that list. So we
 2 had to wait for some time for it to come back up, but
 3 it never came back before the Legislature. I think it
 4 just died in committee.
 5 Q. So overall, Mr. Reddy, could you just express
 6 to the Tribunal what has been your experience with the
 7 expropriation process in Costa Rica in general terms?
 8 A. It's been--it's just extremely frustrating.
 9 It takes an extremely long time. We're not being
 10 offered fair and adequate compensation; and, you know,
 11 the delays have just been ongoing and exist to this
 12 day. We expect much more prompt justice.
 13 Q. Do you continue to own titles?
 14 A. We do continue to own titles, we continue to
 15 pay property taxes every year, and we continue to
 16 maintain the properties we still have possession of.
 17 So effectively nothing has changed other than not
 18 being able to build on those properties.
 19 MR. COWPER: Those are my questions-in-chief.
 20 PRESIDENT BETHLEHEM: Thank you, Mr. Cowper.
 21 Mr. Alexandrov.
 22 MR. ALEXANDROV: Thank you, Mr. President.

10:41:25 1 Mr. President, as a preliminary point before
 2 I turn to the Witness, some of the evidence adduced in
 3 direct was not in the three Witness Statements. We're
 4 not objecting to that because you've admonished us
 5 that we need to be flexible, and we don't object to
 6 the admissibility of the evidence just adduced.

7 I want to make that point because we should
 8 be allowed in our direct, if necessary, the same
 9 flexibility.

10 CROSS-EXAMINATION

11 BY MR. ALEXANDROV:

12 Q. Good morning, Mr. Reddy.

13 A. Good morning.

14 Q. Mr. Reddy, we will be distributing a binder
 15 with documents, and I'll be referring to some of those
 16 documents during your cross-examination. So give us a
 17 second to do that.

18 A. Okay.

19 (Pause.)

20 Q. Mr. Reddy, behind Tabs 1, 2, and 3 are your
 21 three Witness Statements. And I ask you to turn to
 22 Tab 1, your First Witness Statement, Paragraph 9. The

10:43:16 1 fifth line, you see at the end of the fifth line a
 2 sentence beginning with "Expropriating."

3 Do you see that?

4 A. Okay.

5 Q. Could you read into the record the rest of
 6 the paragraph beginning with "Expropriating
 7 undeveloped property"?

8 A. "Expropriating undeveloped property would
 9 provide little to no help to endangered turtles, and
 10 thus, expropriating valuable white sand, great
 11 surfing, beachfront property would make no sense as
 12 there is no benefit to the endangered turtles."

13 Do you want me to continue?

14 Q. Yes, please, to the end of the paragraph.

15 A. "The turtles nest on the sandy beach where
 16 they are able to dig. They do not nest on the private
 17 properties that have bushes and tree roots where the
 18 turtles cannot dig. Expropriating the private
 19 property would not increase the turtle nesting grounds
 20 but solely provide an additional buffer zone of
 21 limited benefit. For business people such as
 22 ourselves, for the Government to spend hundreds of

10:44:20 1 millions of dollars to expropriate undeveloped land
 2 that would not substantially benefit the endangered
 3 turtles made no sense whatsoever. Thus, we always
 4 expected that we would eventually be able to
 5 responsibly develop and sell these beautiful and rare
 6 properties."

7 Q. Is it fair to summarize your testimony,
 8 Mr. Reddy, that you believe a buffer zone around the
 9 nesting grounds would make no sense?

10 A. No, it would not be fair.

11 Q. Well, aren't you saying here that a buffer
 12 zone makes no sense?

13 A. I said it was of limited benefit.

14 Q. Well, you say expropriating valuable property
 15 would make no sense and there was no benefit to the
 16 endangered turtles?

17 A. I said of limited benefits in those senses.
 18 I can point it out to you, if you like.

19 Q. Well, I'm reading the sentence that says,
 20 "Expropriating undeveloped property would provide
 21 little to no help." And the sentence ends that
 22 "expropriating valuable white sand, great surfing,

10:45:33 1 beachfront property would make no sense as there was
 2 no benefit to the endangered turtles." These are your
 3 words.

4 A. Let me restate those to you. I say "limited
 5 to no benefit." So "limited benefit" is included in
 6 that answer. If you read the sentence, it says,
 7 "Expropriating the property would not increase turtle
 8 nesting grounds, but solely provide an additional
 9 buffer zone of limited benefit."

10 And so I've responded to "limited benefit"
 11 multiple times here.

12 Q. So you're saying limited to no benefit?

13 A. Correct.

14 Q. What qualifies you to make that statement,
 15 Mr. Reddy? Are you a scientist?

16 A. I'm not a scientist.

17 Q. What is the basis of your understanding that
 18 there will be little to no benefit to the turtles from
 19 the buffer zone?

20 A. I read articles, I'm interested in this area,
 21 so anything that is public information.

22 Q. Okay. So this statement is based on public

10:46:21 1 information?
 2 A. Based on information I've read, yes.
 3 Q. Okay. Could you turn to your Second Witness
 4 Statement and behind Tab 2, Paragraph 4.
 5 A. Okay.
 6 Q. You say there, "Spence Co. is an experienced
 7 property developer with over 30 years of real estate
 8 development experience and involvement in more than 50
 9 real estate development projects." Is that correct?
 10 A. That's correct.
 11 Q. That's extensive, isn't it?
 12 A. That is extensive.
 13 Q. And then you continue, "Before making such a
 14 large investment in Costa Rica, which was a new market
 15 for us, I performed due diligence with respect to the
 16 properties that were to be purchased."
 17 A. That is correct.
 18 Q. And, in fact, you testified on direct about a
 19 due diligence that you performed; correct?
 20 A. Correct.
 21 Q. Okay. Well, let's go over the dates of the
 22 purchase of the property. Because you corrected some

10:47:25 1 of the statements that you had made, so I want to make
 2 sure we have those dates correct.
 3 With respect to Lots V61A, B, and C, as I
 4 understand your testimony, they were purchased on
 5 February 4, 2005?
 6 A. Correct.
 7 Q. Okay. C71, also February 4, 2005?
 8 A. Correct.
 9 Q. A39, February 22, 2005?
 10 A. Correct.
 11 Q. A40, February 22, 2005?
 12 A. Correct.
 13 Q. C96, June 28, 2005?
 14 A. Correct. It was part of a Contract at the
 15 same time, February 4, but closed at a later date.
 16 Q. Let me make sure.
 17 A. So it closed in June. The Contract was dated
 18 February.
 19 Q. Okay. If you look at your First Witness
 20 Statement, Paragraph 22, please. "On June 28, 2005,
 21 Spence Co. acquired Lot C96 on Playa Grande." So is
 22 this the date, or is this not the date?

10:48:39 1 A. Could you refer me to the paragraph again?
 2 Q. I'm sorry. Paragraph 22 of your First
 3 Witness Statement, and I just read it into the record.
 4 I'll do it again. "On 28 June 2005, Spence Co.
 5 acquired Lot C96."
 6 A. That's correct.
 7 Q. It is correct. Okay.
 8 The SPG Lots, SPG1, 2, and 3, you testified
 9 were acquired in December 2006 in your Witness
 10 Statement. You have now corrected it to May 2006?
 11 A. That's correct.
 12 Q. And what was the basis for that correction?
 13 A. I think it was just a long time ago, so I
 14 misremembered the date by a few months. On review of
 15 the documents, we saw that it closed in May 2006.
 16 Q. Okay. What documents did you review to
 17 correct your testimony?
 18 A. The purchase documents for the purchase of
 19 that lot.
 20 Q. More specifically, what are the purchase
 21 documents that you reviewed?
 22 A. It was a Purchase and Sale Agreement and a

10:49:39 1 title policy.
 2 Q. Have you given those documents to your
 3 lawyers?
 4 A. Have I given those documents to my lawyers?
 5 Q. In this arbitration.
 6 A. I do not recall giving them the purchase
 7 agreements to those properties.
 8 Q. Mr. Reddy, when you testified about the
 9 purchase of the SPG Lots, you didn't consider it
 10 relevant to give your lawyers or to submit to the
 11 Tribunal the purchase agreements?
 12 A. If my lawyers requested anything of me, I
 13 would provide it.
 14 Q. So they didn't request?
 15 A. To my knowledge, I don't remember a request
 16 for the purchase agreements, no.
 17 Q. And your testimony about the date of the
 18 purchase is based on those documents?
 19 A. Correct.
 20 Q. And I represent to you they are not in the
 21 record of this arbitration.
 22 A. Okay.

10:50:25 1 Q. Okay. So your current testimony is May 2006?
 2 A. That's correct.
 3 Q. Do you recall the price of the purchase of
 4 the SPG1, 2, and 3 Lots, the purchase price?
 5 A. In an approximate amount, yes.
 6 Q. When did you last consult those documents,
 7 the purchase documents that you referred to?
 8 A. I would say a couple months ago.
 9 Q. Well, why didn't you correct your testimony
 10 then? If you consulted those documents and you
 11 corrected the date of the purchase from December 2006
 12 to May 2006, why didn't you correct your testimony
 13 several months ago when you discovered the mistake?
 14 A. I was reading the--my Witness Statement. I
 15 checked the dates. I looked at the purchase
 16 documents. When I saw the discrepancy, I immediately
 17 notified my attorneys.
 18 Q. And that was several months ago?
 19 A. It was a couple months ago.
 20 Q. A couple months ago.
 21 So you said you remembered the purchase price
 22 approximately?

10:51:33 1 A. Correct.
 2 Q. Could you give those approximate numbers now?
 3 A. I could.
 4 Q. Could you please, for Lots SPG1.
 5 A. Doing them individually may be a little
 6 tougher; but doing them in total, about \$3 1/2
 7 million.
 8 Q. Dollars?
 9 A. Yes.
 10 Q. For all three?
 11 A. Correct.
 12 Q. And that's based on your review of the
 13 Purchase Agreement?
 14 A. And my memory, yes.
 15 Q. Okay. V56, your testimony is that it was
 16 acquired May 11, 2007; is that correct?
 17 A. V59?
 18 Q. I'm sorry. Did I misspoke? V59 is what I
 19 meant.
 20 A. Could you restate the question, please.
 21 Q. You've testified that it was acquired on
 22 May 11, 2007; is that correct?

10:52:21 1 A. That's correct.
 2 Q. Okay. Mr. Reddy, you've testified that the
 3 Declaration of Public Interest with respect to Lot A40
 4 was issued on February 1, 2006; correct?
 5 A. Correct.
 6 Q. After the Declaration of Public Interest for
 7 Lot A40 was issued on February 1, 2006, you've
 8 acquired all three SPG Lots plus V59; correct?
 9 A. Correct.
 10 Q. So help me understand your due diligence
 11 then. You have a Declaration of Public Interest with
 12 respect to one of your properties, which says it will
 13 be expropriated. It initiates the expropriation
 14 process. And after that you purchase four more
 15 properties?
 16 A. That's correct.
 17 Q. And you performed due diligence after the
 18 Declaration of Public Interest was issued with respect
 19 to A40 before you purchased the three SPG Lots and the
 20 V59 lot?
 21 A. That's correct. We reviewed the Attorney
 22 General's decision with my attorney, and he said it

10:53:39 1 was binding upon MINAE but not anybody else. We knew
 2 the history of the 1995 Law saying the property was
 3 out to sea. No Declaration of Public Interest had
 4 been issued on the South Playa Grande Lots or V59. So
 5 we continued to buy private property outside the Park
 6 at that time.
 7 Q. Well, you've testified that A40 was also
 8 outside the Park; right? That was your belief at the
 9 time; correct?
 10 A. That is correct.
 11 Q. But you received the Declaration of Public
 12 Interest with respect to that property?
 13 A. Correct.
 14 Q. That didn't raise a question in your mind
 15 about whether you've done sufficient due diligence
 16 with respect to all those properties, and you
 17 nevertheless proceeded to purchase four other
 18 properties; correct?
 19 A. It raises the question, and I addressed the
 20 question with my attorney to say "What do you think of
 21 this?" He didn't think that ruling would stand in
 22 light of the legislative history of the 1995 Park Law

10:54:38 1 and that I would still be entitled to full use of the
2 property pursuant to the 1995 Law and full Fair Market
3 Value of my property until the time it was
4 expropriated, if it was ever expropriated.

5 So, besides the legal side, the real estate
6 market here was just absolutely booming, you know,
7 skyrocketing. And so these properties were growing in
8 value at an exponential pace. We thought we were in
9 early, and so we thought it was still a good
10 investment opportunity for us to buy at that time.

11 Q. All right. And so to summarize your
12 testimony: All that in spite of the fact that on
13 February 1, 2006, there was a Declaration of Public
14 Interest with respect to A40; correct?

15 A. Correct. We investigated it. We did our due
16 diligence on it, and we just didn't find it
17 persuasive.

18 Q. You've testified that the Declaration of
19 Public Interest with respect to SPG1 was issued on
20 April 17, 2007; correct?

21 A. Correct.

22 Q. And the same with respect to SPG2?

10:55:38 1 A. Correct.

2 Q. And after that you proceed to purchase V59;
3 correct?

4 A. Correct.

5 Q. So you will say that the Declaration of
6 Public Interest with respect to SPG1 and SPG2 did not
7 affect in any way the due diligence you performed
8 before you acquired V59?

9 A. No. You know, any time we get a Declaration
10 of Public Interest, we would go back through the same
11 procedure and say, "What do we think? Will that
12 ruling stand, or do we think we're outside the Park
13 entitled to full and fair Market Value?"

14 We thought that the law was--plainly said
15 "seaward." We were allowed to rely on that law. And
16 that property could be ours in the fair Market Value
17 until such time as the Government expropriates it, and
18 the Government had already taken 20-plus years and
19 hadn't done it; right?

20 Q. Well, it's MINAE that issues the Declaration
21 of Public Interest; right?

22 A. Yes.

10:56:31 1 Q. So at least before acquiring all those other
2 properties, you knew that MINAE had taken a position
3 by issuing the Declaration of Public Interest that the
4 properties were inside of the Park. Correct or not?

5 A. That is correct.

6 Q. You knew that they had taken that position?

7 A. That is correct.

8 Q. Okay. Could I ask you to turn to your First
9 Witness Statement, Paragraph 29.

10 A. I'm there.

11 Q. Could you read that into the record, please.

12 A. "In about 2005, SETENA started refusing to
13 review environmental impact assessments for any
14 properties within 75 meters of the inalienable zone.
15 They also refused to review assessments for properties
16 within 500 meters until an environmental study was
17 performed. I then started hearing about the
18 Government having issued notices of expropriations for
19 some of the Lots within 75 meters of the inalienable
20 zone."

21 Q. Thank you.

22 So with that knowledge, Mr. Reddy, you

10:57:40 1 proceeded to acquire properties SPG1, 2, and 3, and
2 V59; correct?

3 A. Correct.

4 Q. Let me ask you to turn to your Second Witness
5 Statement behind Tab 2, Paragraph 36. You see on
6 Page 8 the carryover of that paragraph?

7 A. Page 7 to Page 8? Yes.

8 Q. Yeah. I want to ask you a question about a
9 statement on Page 8, beginning on the fourth line,
10 which says--and I'm reading it into the record--"I
11 became aware of the Attorney General's Report on or
12 around January or February 2006."

13 Do you see that?

14 A. Yes.

15 Q. You confirm that testimony?

16 A. Yes.

17 Q. Well, let me point you to that document.

18 It's behind Tab 11. And I'm not going to ask--we have
19 the English first and then the Spanish. You can
20 consult whichever, but I'm asking you to turn to the
21 last page, whether you want the English or the
22 Spanish. There is a Roman III that says "Conclusion."

10:59:18 1 That's the very end of the document.
 2 A. Conclusions.
 3 Q. Roman III, Conclusions, the very last
 4 paragraph, or two paragraphs, if you will, above the
 5 signature. I think you're not there yet. Just go to
 6 the very end of the document, please.
 7 A. Okay. I got it now.
 8 Q. Yes. Yes.
 9 A. Okay. What would you like?
 10 Q. I'd like to draw your attention to the fact
 11 that the conclusion of the Procuraduría Opinion, which
 12 we referred to as the Attorney General Opinion, is
 13 that the Park runs on land at a distance of 125 meters
 14 from the normal high tide.
 15 Do you see that conclusion?
 16 A. Yes, I do.
 17 Q. And that's what you've testified in
 18 Paragraph 36 of your Second Witness Statement you
 19 became aware of January or February of 2006; correct?
 20 A. Correct.
 21 Q. And you bought the SPG properties, the three
 22 properties, and V59 after you became aware of that?

11:00:35 1 A. Correct.
 2 Q. When you performed due diligence with respect
 3 to those four purchases, the views of the Procuraduría
 4 that the Park extended 125 meters inland did not play
 5 a role; correct?
 6 A. No. It played a role, but we did our
 7 analysis to believe that this opinion would not stand,
 8 and we were still comfortable to go through with the
 9 purchase, that it would be our private property until
 10 such time as it was expropriated, if that ever came to
 11 pass. It still hasn't come to pass today.
 12 Q. Right. So, to summarize, then, your
 13 testimony, you performed due diligence, and you
 14 purchased at least four properties when, one, you know
 15 that MINAE, which is the relevant Ministry, has issued
 16 Declarations of Public Interest with respect to other
 17 properties in so-called "buffer zone," and when you
 18 know that the Procuraduría has issued a report that
 19 says the Park extends inland 125 meters.
 20 With that knowledge, you purchased four
 21 additional properties; correct?
 22 A. Correct. We thought that interpretation was

11:01:41 1 wrong.
 2 Q. I'm sorry. You thought--
 3 A. The interpretation was incorrect.
 4 Q. Incorrect.
 5 And you thought it wouldn't stand in court?
 6 A. A legal challenge.
 7 Q. So were you planning at that time to initiate
 8 a legal challenge?
 9 A. We weren't planning to initiate it, but if it
 10 was initiated against us, we would defend with that
 11 challenge.
 12 Q. Well, what was initiated against you already
 13 was an expropriation proceeding with respect to other
 14 properties with a Declaration of Public Interest.
 15 A. But that was all we received, was the
 16 Declaration of Public Interest. Everything else
 17 happened much later.
 18 Q. Well, yes, but is it correct, Mr. Reddy, that
 19 it is the Declaration of Public Interest that
 20 initiates the expropriation proceeding?
 21 A. Yes, it is correct.
 22 Q. It is correct.

11:02:24 1 So, you already had an expropriation
 2 proceeding with respect to some properties; correct?
 3 A. Correct. Very initial, yes.
 4 Q. Well, yes, it had been initiated?
 5 A. Yes.
 6 Q. And so is it then your testimony that you
 7 were planning to fight that in court, and in that
 8 process you would also defeat the argument that the
 9 Park extended inland?
 10 A. Yes.
 11 Q. In the context of the other expropriation
 12 proceeding?
 13 A. If we had to, we felt confident our position
 14 would stand.
 15 Q. Well, yes. What I don't understand,
 16 Mr. Reddy, is when you say "if we had to," because it
 17 seems to me, given that the expropriation proceedings
 18 had already been initiated, you had a choice: Either
 19 accept the valuation and not fight the expropriation,
 20 per se, or fight the expropriation in court. So, help
 21 me understand your testimony "if we had to."
 22 You already had to because the expropriation

11:03:18 1 proceedings were initiated with respect to some
 2 properties; isn't that correct?
 3 A. We had an expropriation proceeding with
 4 respect to one property, and all we got was a low
 5 appraisal. We turned it down, and we were waiting for
 6 a day in court to fight it.
 7 Q. And isn't it correct that what you fought in
 8 court was the amount of the compensation?
 9 A. We did fight the amount of the compensation.
 10 Q. Did you fight the legality of the
 11 expropriation in court?
 12 A. I think by the time that arose, the Supreme
 13 Court had made another decision to say that, even if
 14 the 1995 wasn't necessary for expropriation, that they
 15 could expropriate pursuant to the 1991 Decree.
 16 Q. And that was the December 2008 Decision?
 17 A. I know it was 2008, but I couldn't tell you
 18 what the particular date within 2008.
 19 Q. So, the short answer to my question is, you
 20 did not fight in court the legality of the
 21 expropriation as such, what you were objecting to in
 22 the judicial proceeding was the amount of

11:04:19 1 compensation; correct?
 2 A. I really can't--you know, I wasn't present at
 3 those court proceedings in Costa Rica, so I can't tell
 4 you exactly what he fought and what he didn't fight.
 5 But I know as soon as that court decision became
 6 effective in 2008, that the Supreme Court said they
 7 could expropriate pursuant to a 1991 Decree, I would
 8 no longer fight that it's outside the 1995 Law because
 9 the 1991 Decree was considered adequate and effective.
 10 Q. Mr. Reddy, you testified that you are the CFO
 11 of Spence Co.?
 12 A. Correct.
 13 Q. And you are saying you did not know what was
 14 the object of the judicial proceedings?
 15 A. Oh, no, I know what the object of the
 16 judicial proceedings were, but I was not in attendance
 17 at those proceedings to know what was defended, other
 18 than I know we tried to get our purchase price or our
 19 fair value.
 20 Q. Oh. If you know what the object of the
 21 judicial proceedings were, then I'm asking you, isn't
 22 it correct that the judicial proceedings were about

11:05:18 1 the amount of compensation?
 2 A. Yes, the judicial proceedings are about the
 3 amount of compensation.
 4 Q. Okay. Could you go to your Third Witness
 5 Statement, which is behind Tab 3. And I draw your
 6 attention to Paragraph 12.
 7 A. I'm there.
 8 Q. What you're saying there is that "building
 9 permits were being issued for lots inside the
 10 currently designated Park boundary right until 2008."
 11 And that stopped in 2008; correct?
 12 A. Building permits inside the Park, the
 13 75 meters contested Park, did stop until 2008. Other
 14 building permits outside the 75 meters continued.
 15 Q. Right. But within the 75-meter strip of
 16 land, issuing building permits was no longer an option
 17 after 2008--
 18 A. After 2008--
 19 (Overlapping speakers.)
 20 THE WITNESS: Very sorry.
 21 MR. ALEXANDROV: Yeah. Both of us need to be
 22 patient. I apologize.

11:06:53 1 BY MR. ALEXANDROV:
 2 Q. So your testimony is that, within the
 3 75 meters, issuing building permits stopped sometime
 4 in 2008?
 5 A. Correct.
 6 Q. And you've testified that you knew that?
 7 A. Correct.
 8 Q. Okay. Mr. Reddy, I want to go over a couple
 9 of registry drawings with you.
 10 A. Okay.
 11 Q. So, if you turn to Tab 16, and for the
 12 record, this is Exhibit C-12a. You have the Spanish
 13 original behind Tab 15, if you want to consult that.
 14 On tab--behind Tab 16, we have only translated the
 15 stamps into English, so you can consult both
 16 documents. Just so that you have the complete
 17 document in Spanish behind 15, behind Tab 15.
 18 This is the registry drawings for Lot V59
 19 purchased in 2007; correct?
 20 A. Tab 16?
 21 Q. I'm sorry. You're asking which tab?
 22 A. On Tab 16, I don't see the registry drawing.

11:08:30 1 Q. Well, Tab 15 is the Spanish document. On
 2 Tab 16, you'll see the translation of the stamps only.
 3 A. Okay.
 4 Q. I'm sorry for the misunderstanding.
 5 So, you can consult Tab 15 for the document,
 6 and behind Tab 16 is the translation into English of
 7 the stamps.
 8 So my first question is, Mr. Reddy, this is
 9 the registry drawing for Lot V59; correct?
 10 MR. COWPER: I'm sorry. I don't want to
 11 interrupt, Mr. Alexandrov, but in my Tab 16, I don't
 12 see a translation. You may not need it, but I'm not
 13 able to locate the translation you've referred to in
 14 Tab 16. The Witness may well be able to answer
 15 under--
 16 MR. ALEXANDROV: It's a translation just of
 17 the stamp.
 18 MR. COWPER: That's not the document in our
 19 binder, but I may have the wrong Tab 16.
 20 MR. ALEXANDROV: If that's a mistake, I
 21 apologize.
 22 MR. COWPER: We have a translation of

11:09:41 1 Exhibit C-12b under our Tab 16. I don't know what the
 2 Witness is looking at. I'm just trying to be helpful.
 3 I'm sorry to interrupt.
 4 MR. ALEXANDROV: Could I ask, Mr. President,
 5 that my colleague check to make sure there is no error
 6 in that binder?
 7 PRESIDENT BETHLEHEM: Please do. In my
 8 binder, it looks as if it's the correct one, but
 9 please do check.
 10 (Pause.)
 11 BY MR. ALEXANDROV:
 12 Q. Have you reviewed the document?
 13 So, let me repeat the question. Is that the
 14 registry drawing for Lot V59?
 15 A. I believe it is.
 16 Q. So this is a map registered in January 2003,
 17 and there is a stamp saying that the properties inside
 18 the Park. Do you see that?
 19 You can turn to the English translation, if
 20 you prefer.
 21 A. Okay. On Page 4, I can see the English
 22 translation.

11:11:43 1 Q. Yes. So, there is a stamp, and what's the
 2 date of the stamp? The MINAE--there is a stamp of
 3 MINAE. What is the date of that stamp?
 4 A. September 3, 1996.
 5 Q. And it says that the property is outside or
 6 inside of the Park?
 7 A. It says the property is located inside the
 8 Las Baulas National Marine Park, according to
 9 Executive Decree of 1991.
 10 Q. Okay. So, Point 1, in 1996, MINAE certifies
 11 that the property is inside of the Park; correct?
 12 A. Pursuant to a 1991 Decree.
 13 Q. We'll get to that point. Let's first start
 14 by MINAE certifies in 1996 that the property is inside
 15 of the Park. That's correct, isn't it?
 16 A. Correct.
 17 Q. And it says that on the basis of the 1991
 18 Decree?
 19 A. Correct.
 20 Q. Okay. And your argument will be that because
 21 it refers to the '91 Decree and not the '95 Law, in
 22 your due diligence that you performed, you disregarded

11:13:00 1 that statement of MINAE that the property is inside of
 2 the Park. Is that your testimony?
 3 A. I would state my testimony to say pursuant to
 4 the 1991 Decree, Ventanas is not included in the Las
 5 Baulas Marine Park, and I would--
 6 Q. I don't think there is a disagreement on
 7 that.
 8 A. Okay.
 9 Q. Do you agree that Playa Ventanas was included
 10 in the Park with the 1995 Law?
 11 A. No.
 12 Q. Because of the word "seawards"?
 13 A. The word "seaward," all the legislative
 14 history, it is a marine park. There is lots of
 15 support to say that Park was always meant to be out
 16 sea.
 17 Q. Well, let's focus on that. When you are
 18 focusing on "seawards" versus "inland," but there was
 19 no question that the '95 Law extended the Park north
 20 to cover Playa Ventanas, whether seawards or inland?
 21 A. Correct.
 22 Q. So, Playa Ventanas, as a general notion, was

11:13:54 1 included in the Park. The question is whether it was
 2 towards the sea or towards the land.
 3 A. Okay.
 4 Q. You agree with that?
 5 A. I agree with that my land is outside the
 6 Park, correct.
 7 Q. Yeah. We understand your testimony.
 8 A. Okay.
 9 Q. Whether we agree with it is another matter,
 10 but I want to take this in baby steps. So, Point 1,
 11 Playa Ventanas was included in the Park in 1995.
 12 Whether the Park extended seawards or inland, Playa
 13 Ventanas was included; correct?
 14 A. Correct.
 15 Q. Okay. Second point, the stamp is dated '96,
 16 after the '95 Law was adopted; correct?
 17 A. Correct.
 18 Q. And the stamp is of MINAE, the relevant
 19 Ministry?
 20 A. Correct.
 21 Q. So if you see that document, you know that
 22 the MINAE takes the position that the property is

11:14:39 1 inside of the Park because that's what the stamp says?
 2 A. Pursuant to a '91 Decree.
 3 Q. Yes. So, MINAE takes the position that the
 4 property is inside of the Park pursuant to the 1991
 5 Decree?
 6 A. Correct. And that, to me, is an incorrect
 7 interpretation.
 8 Q. Well, yes. So, you say this is an incorrect
 9 interpretation, but you know that this is the
 10 interpretation of MINAE; correct?
 11 A. I see that there's a stamp that says that.
 12 Q. Okay. So that's my question. When you see
 13 that stamp, whether or not you agree with that
 14 interpretation, you know that this is MINAE's
 15 interpretation; correct?
 16 A. I see a stamp. I don't know that MINAE would
 17 try to defend that this land is included in the Park
 18 pursuant to 1991 Decree. To me, it's an obvious
 19 error.
 20 Q. Well, whether MINAE would defend it or not,
 21 my question, Mr. Reddy, is, when you see that document
 22 with that stamp, you know, don't you, that in 1996,

11:15:35 1 MINAE's interpretation was that the property was
 2 inside of the Park?
 3 Whether you agree or not with that
 4 interpretation is irrelevant to my question. My
 5 question goes to your knowledge: Did you know that
 6 MINAE, in 1996, took the position that the property
 7 was inside of the Park?
 8 A. No. And the reason for that is, the 1991
 9 Decree, I felt, was superseded by the 1995 Law, and so
 10 the 1995 Law said the property was seaward, and so I
 11 did not know at that time that there existed a dispute
 12 as to whether Ventanas was inside the Park or outside
 13 the Park. I had also seen "catastros," surveys, for
 14 other Ventanas Lots that were stamped to say that
 15 those lots were outside the Park, and I expected those
 16 Lots to be identical to those; that is, outside the
 17 Park.
 18 Q. Well, okay. Let's look at some other Lots.
 19 So, let us look at Tabs 27 and 28. Again, 27--and for
 20 the record, this is Exhibit C-20a, is the Spanish
 21 document, and 28 is the translation of the stamps in
 22 English.

11:17:04 1 And my first question is, this is the
 2 registry drawing for Lot SPG1; correct?
 3 A. I believe that's correct.
 4 Q. Okay. Well, then you can look at the stamps
 5 in Spanish, or I am looking in English because we
 6 translated them in a legible way.
 7 So, let's look at the MINAE stamp. What is
 8 the date of that stamp?
 9 A. January 13, 2003.
 10 Q. 2003.
 11 And it is correct, isn't it, that the stamp
 12 says that the property is located inside the Park?
 13 A. Pursuant to the '91 Decree.
 14 Q. Yes. Well, let's--
 15 A. Correct, pursuant to the '91 Decree.
 16 Q. So, you agree that the stamp says that the
 17 property is inside of the Park?
 18 A. Pursuant to the '91 Decree.
 19 Q. Well, I'm not trying to avoid that.
 20 A. But there is two different definitions, so
 21 I'm trying to get to which definition--
 22 Q. Well, I'll ask you two questions, Mr. Reddy,

11:18:01 1 and so I ask you to answer. So, Question 1: Is it
 2 correct that the stamp says the property is inside of
 3 the Park?
 4 And Question 2 will be: And that's pursuant
 5 to the '91 Decree?
 6 So I ask you to answer both questions
 7 "correct" or "incorrect."
 8 So, Question 1: Does the stamp say the
 9 property is inside of the Park?
 10 A. Yes, it does.
 11 Q. Question 2: And it says that on the basis of
 12 the '91 Decree; correct?
 13 A. Correct.
 14 Q. Okay. So with respect to that property,
 15 which is SPG1, did you understand MINAE to take the
 16 position at the time with respect to that
 17 property--and at the time, this time is 2003--that the
 18 property was inside of the Park pursuant to the '91
 19 Decree?
 20 A. Could you restate that question for me,
 21 please.
 22 Q. I'm not going to restate it. I'm going

11:18:52 1 repeat it.
 2 Did you understand, by looking at this
 3 registry drawing, that MINAE took the position in
 4 January 2003 that the property was inside of the Park?
 5 A. Pursuant to the 1991 Decree, yes.
 6 Q. Okay. So in January 2003, you understood
 7 that MINAE took the position that the property was
 8 inside of the Park, based on the 1991 Decree, and you
 9 purchased that property when?
 10 A. In 2006.
 11 Q. So, three years before that you knew MINAE
 12 had taken that position. Did you have any--
 13 A. I wouldn't see this stamp until the time I
 14 bought it. I didn't see the stamp in 2003.
 15 Q. When did you first see it?
 16 A. 2006.
 17 Q. Before you bought it?
 18 A. Yes.
 19 Q. So before you bought it, you knew MINAE had
 20 taken the position--
 21 A. Correct.
 22 Q. --on whatever legal basis--

11:19:49 1 A. Correct.
 2 Q. --Decree '91--
 3 A. Correct.
 4 Q. --that the property was inside of the Park?
 5 A. Correct.
 6 Q. And that was part of your due diligence?
 7 A. Correct.
 8 Q. And you bought the property nevertheless?
 9 A. Correct.
 10 Q. Let's go to Tab 30 and Tab 31; for the
 11 record, Exhibit C-21a. Again, we have the same
 12 situation. We have behind Tab 30 the Spanish text and
 13 the registry drawing, and behind Tab 31 the stamp.
 14 So, first question, Mr. Reddy, this is the
 15 registry drawing for SPG2; correct?
 16 A. Behind which tab, please?
 17 Q. I'm sorry. Behind Tab 30 is the document in
 18 Spanish. Behind Tab 31, we have translated the
 19 stamps.
 20 A. I believe so.
 21 Q. Okay. And then if you look at the stamps, we
 22 have a stamp from MINAE. This is--I'm now looking at

11:21:24 1 the stamps behind Tab 31.
 2 A. Okay.
 3 Q. So, we have a stamp from MINAE. Again,
 4 that's the relevant Ministry; correct?
 5 A. Correct.
 6 Q. And it's dated January 13, 2003; correct?
 7 A. Correct.
 8 Q. And it says--to avoid back and forth, it says
 9 that the property is inside of the Park, and it refers
 10 to the '91 Decree; correct?
 11 A. Correct.
 12 Q. When did you first see this drawing?
 13 A. 2006.
 14 Q. Before you bought that particular piece of
 15 property?
 16 A. Correct.
 17 Q. So the same question: At the time you
 18 knew--whether you agreed or not--you knew that MINAE's
 19 interpretation was that the property was inside of the
 20 Park; correct?
 21 A. Pursuant to the 1991 Decree, which I thought
 22 was superseded by 1995 Law, so I really at that time

11:22:13 1 did not know MINAE was disputing this being in the
 2 Park.
 3 Q. I'm sorry.
 4 A. I thought this stamp had been superseded by
 5 subsequent information.
 6 Q. After 2003? You thought the stamp was
 7 superseded by information after 2003?
 8 A. No, by the 1995 Law.
 9 Q. Well, but the date of the stamp is 2003, and
 10 so how could the stamp, or MINAE's interpretation, for
 11 that matter, be superseded by a '95 Law when the stamp
 12 was placed in 2003?
 13 A. The Decree, I thought, was superseded by the
 14 Law, so the Decree would not be effective.
 15 Q. We understand your testimony that the Decree
 16 of 1991 is superseded by the '95 Law. My question is
 17 what you knew about MINAE's interpretation because
 18 MINAE has a stamp dated January 2003. MINAE certainly
 19 knows about the '95 Law; correct?
 20 A. Correct.
 21 Q. You could not think at the time that MINAE
 22 was ignorant about the 1995 Law; correct?

11:23:18 1 A. Aware that they're aware of the Law.
 2 Q. Okay.
 3 A. Which direction it went, I don't know what
 4 their interpretation would be at the time.
 5 Q. Well, in 2003, you know they considered the
 6 property inside of the Park, don't you?
 7 A. No.
 8 Q. No?
 9 A. No. I knew that it was considered inside the
 10 Park pursuant to a '91 Decree. I thought that got
 11 superseded in '95.
 12 Q. Well, but MINAE puts a stamp in 2003, so if
 13 MINAE still believes the property is inside the Park,
 14 then MINAE must not think that the '91 Decree
 15 superseded. You couldn't draw that conclusion in your
 16 due diligence?
 17 A. No.
 18 Q. So, is your testimony that because of the
 19 advice of your lawyers, that the '95 Law superseded
 20 the '91 Decree, the stamp was totally irrelevant to
 21 your due diligence?
 22 A. I don't want to say totally irrelevant to my

11:24:10 1 due diligence, but that it was not effective.
 2 Q. It was not effective?
 3 A. Correct.
 4 Q. And so--help me understand what "not
 5 effective" means because I'm not talking about the
 6 legal effect of the stamp. I am talking about what
 7 you knew at the time. And so what you knew at the
 8 time was that MINAE thought the property was inside of
 9 the Park, based on the '91 Decree, which is what you
 10 said numerous times, but you thought that MINAE's
 11 knowledge and interpretation of the legal situation of
 12 the property as inside of the Park was erroneous?
 13 A. It had changed with the adoption of the 1995
 14 Law that said the Park was out to sea.
 15 Q. When did you believe that change in MINAE's
 16 position took place?
 17 A. Effective with the 1995 Law.
 18 Q. But this stamp is dated 2003, and that's
 19 eight years later. So MINAE doesn't seem to have
 20 changed its position eight years after the adoption of
 21 the Law; isn't that correct?
 22 A. If they want to stamp it pursuant to a Decree

11:25:10 1 that doesn't have an effect on me, I thought the
 2 Decree was superseded by the 1995 Law, and so I still
 3 was buying privately titled property that was not ever
 4 going to be part of a Park.
 5 Q. So is it your testimony, Mr. Reddy, that, in
 6 the course of your due diligence, there was no doubt
 7 in your mind that your property was outside of the
 8 Park, even though the registry drawings were stamped
 9 as late as 2003 as inside of the Park? Is it your
 10 testimony that there was no doubt in your mind?
 11 A. That is correct.
 12 Q. Are you familiar with Mr. Berkowitz's
 13 testimony, and, in fact, this was discussed yesterday
 14 by Dr. Weiler when you were in the room--that
 15 Mr. Berkowitz went as far as addressing a question in
 16 2003 to the Minister in charge of MINAE. Are you
 17 aware of that testimony?
 18 MR. COWPER: Sorry. Was he aware in 2003 or
 19 today?
 20 MR. ALEXANDROV: No, today.
 21 MR. COWPER: I object to putting one
 22 Witness's testimony about what that Witness knew in

11:26:10 1 2003 to Mr. Reddy. I don't think that's a proper
 2 question to Mr. Reddy.
 3 MR. ALEXANDROV: I'm not asking him what
 4 Mr. Berkowitz was doing. I'm asking him--he was in
 5 the room yesterday--whether he's aware that there is
 6 such testimony in the record.
 7 PRESIDENT BETHLEHEM: I think you can
 8 proceed.
 9 THE WITNESS: I am aware of his meeting.
 10 BY MR. ALEXANDROV:
 11 Q. So at least one of the Claimants had doubts,
 12 but you, your testimony is that you're an experienced
 13 real estate developer, you performed thorough due
 14 diligence, and it never even crossed your mind, in
 15 light of everything that you knew at the time, that
 16 your understanding that your property was outside of
 17 the Park might be incorrect? That never occurred to
 18 you?
 19 A. That would be correct. And at the time, I
 20 think they were trying to pass a bill to have the Park
 21 expanded to make my property at some point in the
 22 future a part of the Park, but at that point in time

11:27:10 1 it is not part of the Park.
 2 Q. When was it that they were trying to adopt a
 3 bill that would expand the Park to cover your
 4 property?
 5 A. I think they had bills to expand the Park
 6 anywhere from 2002 to 2006.
 7 Q. And what's the basis of your understanding
 8 that they were trying to expand the Park to cover your
 9 property?
 10 A. That the Park would be extended inland.
 11 Q. What is the document you rely on to make that
 12 statement?
 13 A. Newspaper, Internet-type articles.
 14 Q. What we've seen in the record is a proposal
 15 around that time that the Park be extended
 16 1,000 meters inland. We have not seen a bill that
 17 says the Park should be expanded to cover a 75-meter
 18 buffer zone. It talks about 1,000 meters. That's a
 19 different expansion, isn't it, Mr. Reddy?
 20 A. I can't tell you whether it was--I thought it
 21 was also 75 meters expansion as well.
 22 Q. 75 plus 1,000?

11:28:11 1 A. At least the 75, and then an additional
 2 buffer zone was--you know, different issues came up at
 3 different times. But there was always talk about
 4 expanding the Park into what would be the property
 5 that we bought.
 6 Q. Well, are you saying, Mr. Reddy, that a
 7 proposed bill addressed your properties in particular?
 8 A. All the properties in that area, including
 9 mine.
 10 Q. Okay. So, there was no bill that addressed
 11 your individual properties; correct?
 12 A. Correct.
 13 Q. Well, I'll represent to you that we have seen
 14 in the record documents that suggest that there was a
 15 discussion of whether to extend the buffer zone 1 to
 16 1,000 meters. We haven't seen anything else. Is that
 17 consistent with your recollection?
 18 A. I also remember discussions, I believe, about
 19 a 75-meter expansion.
 20 Q. You remember a discussion about an extension
 21 to 75 meters?
 22 A. Correct.

11:29:05 1 Q. With whom did you have that discussion?
 2 A. We've had discussions with different real
 3 estate agents, MINAE offices, newspaper articles.
 4 Q. Well, you remember a discussion that you had
 5 or somebody else had?
 6 A. Myself.
 7 Q. And you had that discussion with whom?
 8 A. I would say real estate agents.
 9 Q. When?
 10 A. 2005 and '06.
 11 Q. And the discussion was that--what?
 12 A. They wanted to expand the Park.
 13 Q. "They," the real estate agents?
 14 A. "They," MINAE.
 15 Q. So the real estate agents told you that MINAE
 16 wants to extend the Park to cover 75 meters?
 17 A. Correct.
 18 Q. Have you testified about that anywhere in
 19 your three Witness Statements?
 20 A. No.
 21 Q. You didn't think that was relevant?
 22 A. It wasn't asked of me.

11:29:58 1 Q. So, your testimony now is that the real
 2 estate agents told you that MINAE wanted to extend the
 3 Park to cover 75 meters, and MINAE's position was that
 4 before that the Park did not extend to cover those
 5 75 meters?
 6 A. Correct.
 7 Q. That was your understanding in 2005 and '06
 8 of MINAE's position?
 9 A. Correct.
 10 Q. Did you show those real estate agents the
 11 stamps on the registry drawings?
 12 A. I personally didn't show them, but they see
 13 them on any property that, you know, that we buy, that
 14 particular real estate agent would see those surveys.
 15 Q. And did those real estate agents already know
 16 that there was a Declaration of Public Interest with
 17 respect to some of your properties within the 75-meter
 18 zone?
 19 A. Those real estate agents wouldn't know of a
 20 Declaration of Public Interest until that declaration
 21 was issued, which wasn't issued until later in 2006.
 22 Q. Well, so, your testimony, Mr. Reddy, is that

11:30:53 1 you believe the real estate agents who told you about
 2 MINAE's position, you didn't believe the stamps, and,
 3 more importantly, you didn't believe the Declaration
 4 of Public Interest that initiated the expropriation of
 5 your properties within the 75 meters.
 6 Is that your testimony?
 7 A. There is multiple questions there. Can we
 8 break those out?
 9 Q. Let me repeat.
 10 Your testimony is that MINAE's position was
 11 the Park did not extend to cover 75 meters after the
 12 public zone inland; correct?
 13 A. Correct.
 14 Q. And you base that testimony on discussions
 15 with real estate agents; correct?
 16 A. Amongst others, yes.
 17 Q. And that is in spite of declarations of
 18 Public Interest issued with respect to your properties
 19 in that 75-meter zone; correct?
 20 A. On the subsequently purchased properties,
 21 yes.
 22 Q. And in spite of the stamps that we went over;

11:31:43 1 correct?
 2 A. Correct.
 3 Q. Okay. Well, Mr. Reddy, for completeness'
 4 sake, I'll show you what I believe is the registry
 5 drawing for SPG3, and you'll find the complete
 6 document in Spanish behind Tab 33 and the translation
 7 of the stamp behind Tab 34. So take a look at those
 8 documents, 33 and 34.
 9 So my first question is, this is the registry
 10 drawing for property SPG3; correct?
 11 A. Correct.
 12 Q. My second question is, let's look at the
 13 stamp together. Again, this is a stamp of MINAE;
 14 correct?
 15 A. Correct.
 16 Q. It's dated February 25, 2003; correct?
 17 A. Correct.
 18 Q. It says the property is inside of the Park?
 19 A. Correct.
 20 Q. Based on the '91 Decree?
 21 A. Correct.
 22 Q. Same question: Did you understand at the

11:33:07 1 time, February 2003, that MINAE took the position that
 2 the property was inside of the Park based on the
 3 '91 Decree?
 4 A. I didn't see the stamp until 2006, but my
 5 understanding at this time was that MINAE did not
 6 consider it part of the Park because the 1991 Decree
 7 was superseded by the 1995 law that created the Park
 8 out to sea.
 9 Q. Let me correct a little bit the timing. I
 10 understand your testimony. You saw this for the first
 11 time in '96 before you purchased SPG3?
 12 A. 2006.
 13 Q. I'm sorry, 2006. I apologize.
 14 But when you saw it in 2006 before you
 15 purchased the property, did you understand that
 16 MINAE's position in 2003 was the property was inside
 17 of the Park based on the '91 Decree?
 18 A. Yes.
 19 Q. Okay.
 20 A. But not based on the '95 Law.
 21 MR. ALEXANDROV: And if you allow me one
 22 minute, Mr. President, just to consult on a matter.

11:34:15 1 (Pause.)
 2 Q. Mr. Reddy, if you could turn to Tabs 18 and
 3 19. We have the same situation here, a Spanish
 4 document, a complete document with the registry
 5 drawing, and then behind--that's behind Tab 18. And
 6 behind Tab 19 is the translation of the stamp.
 7 Do you see that?
 8 A. I see the survey and the catastros in 19.
 9 Q. So Tab 18 first.
 10 A. 18 first.
 11 Q. And that's Exhibit C-13a.
 12 A. Okay.
 13 Q. Which is the registry drawing in Spanish.
 14 A. I don't have a drawing.
 15 Q. That is behind which tab in your binder?
 16 A. 18. I have a drawing in 19.
 17 Q. Well, maybe we switched inadvertently. So
 18 can you look at the drawing behind 19 and see if
 19 that's Exhibit C-13a? If you look at the first page,
 20 I'm trying to establish whether you have the same
 21 document. Go to the beginning of the document,
 22 please, Mr. Reddy.

11:36:25 1 A. Okay.
 2 Q. Does it say Exhibit C-13a?
 3 A. No. That's what it says in Tab 18.
 4 Q. Okay.
 5 MR. ALEXANDROV: Can I ask my colleague to
 6 check if we have switched the documents?
 7 PRESIDENT BETHLEHEM: Please do.
 8 MR. ALEXANDROV: May I ask the Tribunal, do
 9 you have behind Tab 18 Exhibit C-13a?
 10 PRESIDENT BETHLEHEM: I have behind Tab 18
 11 Exhibit C-13a in its Spanish version, and then behind
 12 19, the translations.
 13 MR. ALEXANDROV: Of the stamps. That's what
 14 Mr. Reddy should have. I apologize if he doesn't, and
 15 we'll fix that. So they have been switched in his
 16 binder inadvertently. I apologize.
 17 BY MR. ALEXANDROV:
 18 Q. So let's go back. So, for the record,
 19 Exhibit C-13a is a registry drawing, a copy of the
 20 original document in Spanish, and then we have
 21 attached an English translation of the stamps. And my
 22 first question is, can we establish that this is the

11:37:58 1 registry drawing for property V61A?
 2 A. Yes.
 3 Q. Okay. If we could look at the stamp then.
 4 Do you see a MINAE stamp?
 5 A. I do.
 6 Q. The date is August 14, 2006?
 7 A. Correct.
 8 Q. And it says the property is located inside
 9 the Las Baulas National Marine Park according to
 10 Executive Decree or Law Number 7524.
 11 Do you see that?
 12 A. I do.
 13 Q. Law 7524 is the 1995 Park Law; correct?
 14 A. Correct.
 15 Q. So this time in August of 2006, MINAE is
 16 taking the position that the property is inside of the
 17 Park based on the Decree and on the law; is that
 18 correct?
 19 A. It says "or."
 20 Q. I accept the correction.
 21 So MINAE is taking the position that the
 22 property is inside of the Park based on the Decree or

11:39:22 1 the law?
 2 A. Correct.
 3 Q. When did you see first that stamp, Mr. Reddy?
 4 A. Shortly after the property was registered,
 5 but it was after we purchased the property.
 6 Q. And when you saw that stamp, did that cause
 7 you to reconsider your view that MINAE's
 8 interpretation of the boundaries of the Park was
 9 superseded by the '95 Law?
 10 A. It did not change my view of MINAE's
 11 interpretation. I would say pursuant to this, MINAE's
 12 interpretation was that this property was in the Park,
 13 but I disagree with that interpretation.
 14 Q. You may disagree. That's not the point. I
 15 take your testimony you disagree. But when you saw
 16 the stamp--we'll get back to when you saw it--you
 17 understood, didn't you, that MINAE based its
 18 interpretation either on the Decree or the law?
 19 A. Correct.
 20 Q. You understood that?
 21 A. Correct.
 22 Q. So now--well, now, whenever you saw that

11:40:34 1 stamp, you could no longer have thought that MINAE's
 2 interpretation was incorrect because the law
 3 superseded the Decree because MINAE now is referring
 4 to the law.
 5 A. So the 1991 Decree does not include Ventanas,
 6 so that would not be effective to this property.
 7 Q. Okay.
 8 A. And the 1995 law says "seaward," and so MINAE
 9 may have had an interpretation that this property was
 10 in the Park, but I did not.
 11 Q. I understand.
 12 A. Okay.
 13 Q. You did not have that interpretation. You
 14 have testified about that. But I'm asking you whether
 15 you knew at the time you saw this stamp that MINAE had
 16 an interpretation that the property was inside of the
 17 Park including based on the '95 Law--
 18 A. Yes.
 19 Q. --whether you agree with that or not.
 20 A. Yes.
 21 Q. Well, and now let's go back to the question
 22 of when you saw the stamp for the first time. When

11:41:33 1 was it that you saw this registry drawing for the
 2 first time?
 3 A. I can't specifically recall when I saw it for
 4 the first time.
 5 Q. Can you recall approximately?
 6 A. It could be any time after it was issued in
 7 2006. It could be 2007. Could be--probably no later
 8 than 2007.
 9 Q. 2007 is a whole year. So, no later than what
 10 time in 2007? Early 2007?
 11 A. I really have no specific recollection of the
 12 exact day I saw it.
 13 Q. So could have been late 2006? Could have
 14 been 2007?
 15 A. Correct.
 16 Q. When you saw that stamp, did that affect your
 17 due diligence in purchasing V59, for example?
 18 A. Did it affect? Yes. We considered it, but,
 19 you know, we again considered it an incorrect
 20 interpretation.
 21 Q. You considered this to be an incorrect
 22 interpretation? But you knew that was the

11:42:45 1 interpretation of MINAE at the time.
 2 A. Yes. On this Lot. Yes.
 3 MR. ALEXANDROV: If we can take another
 4 minute.
 5 PRESIDENT BETHLEHEM: Please do.
 6 (Pause.)
 7 MR. ALEXANDROV: No further questions,
 8 Mr. President.
 9 PRESIDENT BETHLEHEM: Thank you very much,
 10 Mr. Alexandrov.
 11 Mr. Cowper, do you have any questions in
 12 redirect?
 13 REDIRECT EXAMINATION
 14 BY MR. COWPER:
 15 Q. Mr. Reddy, you had a number of stamps on some
 16 of the Lots you purchased. All of the stamps my
 17 friend put to you were stamps which he has indicated
 18 on one reason or another talk about being outside the
 19 Park. As part of your due diligence, were there also
 20 stamps on the Lots you purchased stating explicitly
 21 that the Lots were outside the Park?
 22 A. We did see catastros and surveys that said

11:45:11 1 the Lots were outside the Park.
 2 MR. COWPER: No more questions,
 3 Mr. President.
 4 MR. ALEXANDROV: Mr. President, I think I
 5 need to--there were no documents shown, and I need to
 6 probe this further, if you allow me.
 7 PRESIDENT BETHLEHEM: Well, let me in the
 8 first instance invite Mr. Cowper on his direct
 9 examination to identify the documents if there are any
 10 in the record elicited by your question and answer.
 11 MR. COWPER: The documents are already in the
 12 record with respect to all of the registry stamps. I
 13 referred to a number of them in my opening. I don't
 14 think there is a factual question about which were
 15 stamps or not stamps.
 16 MR. ALEXANDROV: There is, Mr. President.
 17 MR. COWPER: I think it's a bit late to
 18 resume cross-examination on the stamp issue. My
 19 friend studiously avoided any Lots in which stamps did
 20 anything other than he indicated. All I was wanting
 21 to establish in re-exam was that there wasn't one form
 22 of stamp on the Lots.

11:46:12 1 MR. ALEXANDROV: Mr. President, with all due
 2 respect, what counsel is doing is testifying. So,
 3 either those documents should be put to the Witness to
 4 see what the stamps say, or testimony by counsel
 5 should be ignored. I can testify in response about
 6 what those documents say, but I don't think that's the
 7 appropriate way to do it.
 8 PRESIDENT BETHLEHEM: Thank you,
 9 Mr. Alexandrov.
 10 Mr. Cowper, you asked a question which
 11 elicited a very short answer. I think in the minds of
 12 the Tribunal there are questions about what those
 13 documents and stamps are. So whether or not these are
 14 questions put by counsel for the Respondent, they
 15 certainly will be a question put by the Tribunal, so I
 16 would invite you to clarify that point. You
 17 presumably asked the question with an anticipation of
 18 what the answer would be, so I imagine that you have
 19 those.
 20 MR. COWPER: I wasn't prepared to put
 21 specific documents to the Witness. Maybe we could
 22 just take a brief break and I'll just find an example.

11:47:12 1 PRESIDENT BETHLEHEM: How long of brief break
 2 do you need to find that?
 3 MR. COWPER: Five minutes I think is fine.
 4 PRESIDENT BETHLEHEM: Well, we'll suspend
 5 just very briefly, and I should indicate that the
 6 Tribunal does also have some questions, Mr. Reddy.
 7 MR. COWPER: To be clear, I
 8 wasn't--notwithstanding my friend's remarks--intending
 9 to testify. I was simply saying that we'll rely on
 10 the documents that are already in the record. I don't
 11 require the Witness to testify about it, neither does
 12 my friend require him to testify, to have it in the
 13 evidence.
 14 PRESIDENT BETHLEHEM: We appreciate that. I
 15 think it would simply, in the minds of the Tribunal,
 16 would like clarity on the point you just raised.
 17 (Pause.)
 18 MR. ALEXANDROV: Mr. President, may I ask
 19 that this not be counted against our time?
 20 PRESIDENT BETHLEHEM: You can be confident of
 21 that.
 22 (Pause.)

11:51:51 1 PRESIDENT BETHLEHEM: Mr. Cowper.
 2 MR. COWPER: I'm sorry, Mr. President. I'll
 3 withdraw the last question. I have a number of
 4 stamps, but we don't have ready translations, and
 5 we'll have to deal with that in argument.
 6 PRESIDENT BETHLEHEM: Okay. Thank you very
 7 much.
 8 The Members of the Tribunal, Mr. Reddy, do
 9 have a number of questions that we'd like to put to
 10 you.
 11 Mr. Kantor, let me turn to you first.
 12 QUESTIONS FROM THE TRIBUNAL
 13 ARBITRATOR KANTOR: Thank you, Mr. President.
 14 Mr. Reddy, thank you. My name is Mark
 15 Kantor, and I'm one of the arbitrators. I appreciate
 16 you taking your time to testify here.
 17 Could I ask you to turn to your Second
 18 Witness Statement, Paragraphs 46--45, 46, and 47.
 19 Do I correctly understand that there are nine
 20 properties in the administrative stage for Spence and
 21 Spence Co., and then there are eight properties that
 22 have gone into the judicial phase? And I understand

11:53:18 1 from Paragraphs 45 and 46.
 2 THE WITNESS: I believe that's correct.
 3 ARBITRATOR KANTOR: The properties that are
 4 in the administrative stage--and they are listed in
 5 Footnote 29 of your Second Witness Statement--do I
 6 correctly understand from Appendix 2 that was handed
 7 out in connection with the Claimants' Opening and is
 8 also found in the Claimants' Rejoinder on
 9 jurisdiction, that the last administrative action for
 10 those nine properties was in each case January 21 of
 11 2009 and consisted of the Spence owner entity
 12 objecting to the administrative appraisal?
 13 THE WITNESS: Could I refer to that exhibit?
 14 ARBITRATOR KANTOR: Oh, indeed, you could.
 15 My apologies. It would be Appendix 2, Claimants'
 16 Rejoinder on Jurisdiction or the Opening Statement. I
 17 wonder if someone could just put that in front of
 18 Mr. Reddy.
 19 THE WITNESS: Thank you.
 20 ARBITRATOR KANTOR: If you are not familiar
 21 with this chart, I believe it's the top nine
 22 properties.

11:55:13 1 THE WITNESS: Okay. If you could ask the
 2 question again, please.
 3 ARBITRATOR KANTOR: Sure. Am I correct that
 4 in each case the last administrative action for those
 5 properties was January 21 of the year 2009 and
 6 consisted of the Spence entity objecting to the
 7 administrative appraisal?
 8 THE WITNESS: For the top three properties,
 9 Spence objected as of that date. For the fourth
 10 property, it has a slightly different date, April 2,
 11 2009, and for the fifth, sixth, seventh, eighth, and
 12 ninth properties, those are not Spence properties.
 13 Those are Copher and Holsten properties.
 14 ARBITRATOR KANTOR: Okay. Thank you. That's
 15 helpful. My apologies for missing the change to the
 16 April 2, 2009, date.
 17 So, the Spence properties then are the first
 18 four out of those nine; is that correct?
 19 THE WITNESS: Bob Spence personal properties,
 20 yes.
 21 ARBITRATOR KANTOR: Okay. Remaining Spence
 22 properties are, therefore, all in the judicial phase;

11:56:22 1 is that correct?
 2 THE WITNESS: That's not correct.
 3 ARBITRATOR KANTOR: Clarify for me, please.
 4 THE WITNESS: The next several entities, V59,
 5 V61A, V61B, V61C, A39, and SPG3 are not in the
 6 administrative or the judicial phase. They haven't
 7 even started an expropriation process.
 8 ARBITRATOR KANTOR: I sit corrected. Thank
 9 you.
 10 THE WITNESS: Okay.
 11 ARBITRATOR KANTOR: I see in Paragraph 47 of
 12 your Second Witness Statement that you've commented on
 13 a purported unilateral suspension of the expropriation
 14 processes for the nine properties I identified. For
 15 the five properties for which no action has been taken
 16 at all, are you aware of any activity related to
 17 expropriation procedures at all, whether marked on
 18 this chart or otherwise?
 19 THE WITNESS: No.
 20 ARBITRATOR KANTOR: Okay. The actions taken
 21 in January and April 2009 for the four properties at
 22 the top, are you aware of any administrative actions

11:57:46 1 taken subsequent to those dates for those four
 2 properties?
 3 THE WITNESS: No.
 4 ARBITRATOR KANTOR: In your Paragraph 47 you
 5 describe a unilateral suspension in reliance upon
 6 statements made in Respondent's Counter-Memorial.
 7 Apart from Respondent's Counter-Memorial, what, if
 8 anything, do you know about the status inside the
 9 operative Costa Rican agencies regarding expropriation
 10 processes for those four properties?
 11 THE WITNESS: I have no knowledge.
 12 ARBITRATOR KANTOR: Did you inquire--did you
 13 or other people within the Spence organization--as to
 14 which you have personal knowledge inquire of the Costa
 15 Rican bodies regarding any further
 16 expropriation-related processes for those four
 17 properties?
 18 THE WITNESS: No.
 19 ARBITRATOR KANTOR: Did you instruct a lawyer
 20 to inquire?
 21 THE WITNESS: No. I would expect he would
 22 advise me when a Decree of expropriation was issued,

11:58:58 1 and that would be the next step in the process.
 2 ARBITRATOR KANTOR: Did you or to your
 3 knowledge anyone within the Spence organization take
 4 any other proactive efforts to try to understand the
 5 status of the expropriation processes for those four
 6 properties?
 7 THE WITNESS: I would ask of my attorney the
 8 status, and there would be no change, no information.
 9 ARBITRATOR KANTOR: Did you discuss with
 10 others in the Spence organization process whether it
 11 would be unusual for no action to be taken from early
 12 2009 up until the beginning of this arbitration?
 13 THE WITNESS: Within the Spence organization,
 14 I talked to Bob Spence, and it's unusual for us to
 15 have these type of delays.
 16 ARBITRATOR KANTOR: Did you seek in any
 17 fashion to discover the reason for the delay?
 18 THE WITNESS: We would ask our attorney, and
 19 he never received an answer.
 20 ARBITRATOR KANTOR: He never received an
 21 answer. Does that mean he inquired on your behalf?
 22 THE WITNESS: I can't answer whether he

12:00:24 1 inquired or not.
 2 ARBITRATOR KANTOR: Very good.
 3 No additional questions, Mr. Chairman.
 4 PRESIDENT BETHLEHEM: Mr. Vinuesa.
 5 ARBITRATOR VINUESA: Yes. Good morning,
 6 Mr. Reddy.
 7 THE WITNESS: Good morning.
 8 ARBITRATOR VINUESA: Just following up Mark
 9 Kantor's arbitrator questions, could you comment in
 10 general terms what were the issues you were interested
 11 in discussing with your local lawyers, the lawyers
 12 that you visited in terms of purchasing property? I'm
 13 interested in the issues you were brought into them.
 14 Could you comment on that in your own terms?
 15 THE WITNESS: Okay. We were new to Costa
 16 Rica, so I wanted a general understanding of how the
 17 Costa Rican real estate worked. They said they had a
 18 central registro that registered all the properties
 19 and would indicate any liens on the properties or
 20 anything of that sort that would affect the title. We
 21 were told that our properties extended to the 50-meter
 22 line and they were outside the Park and that pursuant

12:01:41 1 to the Park Law, if they ever did want to expropriate
 2 us, that we would still enjoy ownership until such
 3 time they expropriated, in the event they
 4 expropriated, that we would get full fair Market Value
 5 at that time.
 6 ARBITRATOR VINUESA: Well, following my first
 7 question, were you satisfied with their answers or
 8 they suggested when they see the development of things
 9 happening to the property, they suggest any actions to
 10 be taken?
 11 THE WITNESS: So, I was satisfied with the
 12 answers--
 13 ARBITRATOR VINUESA: Yes.
 14 THE WITNESS: --that I own privately titled
 15 properties?
 16 ARBITRATOR VINUESA: Yes. Just personally.
 17 THE WITNESS: Right. Yes, I was satisfied.
 18 ARBITRATOR VINUESA: Did you suggest any
 19 actions to be taken for the development of what was
 20 going on with the property?
 21 THE WITNESS: We did get title insurance,
 22 which is standard in United States. I wouldn't tell

12:02:27 1 you it's standard in Costa Rica, but...
 2 ARBITRATOR VINUESA: Thank you very much.
 3 PRESIDENT BETHLEHEM: Mr. Reddy, just a
 4 number of questions from me. And I take it from your
 5 response to Mr. Vinuesa, and we've seen, in any event,
 6 your description of your own expertise, but you don't
 7 have any expertise in Costa Rican law?
 8 THE WITNESS: Correct.
 9 PRESIDENT BETHLEHEM: So you were relying on
 10 the advice that you were getting from your local
 11 lawyers or estate agents or others?
 12 THE WITNESS: Correct.
 13 PRESIDENT BETHLEHEM: You testified in
 14 response to cross-examination--or, perhaps, not in
 15 response to cross-examination, in response to your
 16 direct examination to start off with--that one of the
 17 advantages from your commercial perspective of these
 18 properties was that they had a clean title and that
 19 U.S. purchasers do not like concessions; is that
 20 correct?
 21 THE WITNESS: That's correct.
 22 PRESIDENT BETHLEHEM: In the light of the

12:03:35 1 stamps to which counsel for the Respondent has taken
 2 you which indicates the notation in respect to the
 3 1991 law, in some cases the 1991 Decree, and in some
 4 cases the 1995 Law, did you have any appreciation that
 5 there may have been a risk associated with any onward
 6 sale of those properties in respect of the potential
 7 U.S. purchasers who, perhaps, did not do quite the due
 8 diligence that you did or perhaps did not quite rely
 9 on Costa Rican lawyers but simply saw the annotation
 10 on these stamps?
 11 THE WITNESS: Could you repeat that again
 12 please?
 13 PRESIDENT BETHLEHEM: Yes. Was there in your
 14 mind at the time any appreciation that purchasers
 15 coming after you, those to whom you may have wanted to
 16 sell the property, would not have had the same robust
 17 confidence that you had in your interpretation of the
 18 1991 Decree and the 1995 Law?
 19 THE WITNESS: You know, I don't think I tried
 20 to put myself in their mind. It was very clear to us
 21 that we were buying private property titled to the
 22 50-meter line that, that we'd maintain full use and

12:04:50 1 enjoyment of that private property, that the Park
 2 extended seaward. So I had no issue with that. Any
 3 buyer would be represented by a Costa Rican attorney
 4 and would get their advice and make their own
 5 decision.
 6 PRESIDENT BETHLEHEM: So it wasn't an issue
 7 that you would have addressed yourself at that time?
 8 THE WITNESS: No.
 9 PRESIDENT BETHLEHEM: Your expertise is in
 10 financial matters. Was there any sense in your mind
 11 that you were getting a discounted purchase price on
 12 those properties because of the stamps and the
 13 uncertainty that might have been engendered because of
 14 those notations?
 15 THE WITNESS: No.
 16 PRESIDENT BETHLEHEM: Was there any
 17 appreciation in your mind that you were both assuming
 18 a commercial risk and taking a commercial opportunity
 19 associated with those notations?
 20 THE WITNESS: There's risk in buying any
 21 property as to its--but not specifically related to
 22 the Park, no.

12:05:48 1 PRESIDENT BETHLEHEM: Okay. Thank you very
 2 much, Mr. Reddy. Thank you.
 3 THE WITNESS: Thank you.
 4 (Witness steps down.)
 5 PRESIDENT BETHLEHEM: Counsel, I think we've
 6 reached 5 minutes past 12:00 We've been going for an
 7 hour and a half. I think, subject to any comments
 8 that you each may have, I think the Tribunal would be
 9 reluctant to proceed with the Witness evidence of
 10 Mr. Berkowitz at this stage. So we propose to take
 11 the lunch break early if you're in agreement with
 12 that.
 13 MR. COWPER: Yes.
 14 PRESIDENT BETHLEHEM: Mr. Alexandrov.
 15 MR. ALEXANDROV: We're in the hands of the
 16 Tribunal.
 17 PRESIDENT BETHLEHEM: Well, then may I
 18 suggest that we break now and reconvene at half past
 19 1:00. Thank you.
 20 (Whereupon, at 12:06 p.m., the Hearing
 21 was adjourned until 1:30 p.m., the same day.)
 22

AFTERNOON SESSION
 1 PRESIDENT BETHLEHEM: Okay. Then let's
 2 commence for this afternoon.
 3 Before we move to Mr. Berkowitz's testimony,
 4 let me just address the procedural issues that we
 5 spoke about this morning and one or two other matters.
 6 Just for sake of clarity, I'm not
 7 anticipating that there will be any objection by
 8 either Party, but just to confirm that ICSID will be
 9 posting on its Web site the daily videos that's going
 10 out on the webcasting now. I don't anticipate that
 11 there is going to be any difficulty with that, but
 12 just to inform you.
 13 The pleadings and associated material is
 14 being uploaded on to ICSID's Web site as we speak.
 15 That's quite a pernickety job so it's going to take a
 16 little bit of time. Just to confirm that we will
 17 not -- ICSID will not be posting the exhibits that we
 18 use during the course of the hearing on the Web site.
 19 Everything should be in the record.
 20 As regards the procedural issues in respect
 21 of the questions that we put this morning, we would
 22

01:32:19 1 like the questions to be responded to orally, please,
 2 in the course of your closing on Friday.
 3 As regards Mr. Kantor's questions--and I
 4 think there were two questions which -- the first two
 5 questions which raised issues of material in the
 6 record, we would like those replies to Mr. Kantor's
 7 questions, please, to be by reference to the material
 8 that is in the record including in the course of the
 9 hearing this week. So not any extraneous material.
 10 I think that's it in terms of the procedural
 11 and housekeeping issues. And with that, I think we
 12 move to the Witness evidence, the testimony of
 13 Mr. Berkowitz; is that right?
 14 MR. COWPER: That is right, Mr. President.
 15 MR. BERKOWITZ, if you could come and take the
 16 Witness seat.
 17 BRETT E. BERKOWITZ, CLAIMANTS' WITNESS, CALLED
 18 PRESIDENT BETHLEHEM: Good afternoon,
 19 Mr. Berkowitz. Welcome. You have a witness
 20 declaration in front of you. I would be grateful if
 21 you could read that, please.
 22 THE WITNESS: I solemnly declare upon my

01:33:41 1 honor and conscience that I shall speak the truth, the
 2 whole truth, and nothing but the truth.
 3 PRESIDENT BETHLEHEM: Thank you,
 4 Mr. Berkowitz.
 5 Mr. Cowper.
 6 DIRECT EXAMINATION
 7 BY MR. COWPER:
 8 Q. Thank you, Mr. Berkowitz.
 9 I just have four areas I want to ask you in
 10 chief for a few minutes. Firstly, if you could just
 11 outline how you originally came to Costa Rica and how
 12 you came to purchase the properties which are the
 13 subject of your claims in these proceedings.
 14 (Comment off microphone.)
 15 PRESIDENT BETHLEHEM: You need to press the
 16 button each time.
 17 THE WITNESS: Can you hear me?
 18 I originally came to Costa Rica in 1991 on a
 19 surf trip, and, like many others, I fell in love with
 20 the country, and most particularly the Ticos, the
 21 people of the country. It is very unique.
 22 I was very impressed on the genteel nature of

01:34:43 1 the people and the focus on environmentalism. It felt
 2 like home. And so it was early on, I was one of the
 3 pioneers in Costa Rica and I knew that this was a
 4 place I wanted to return to.
 5 Q. How did you come to purchase the properties,
 6 just in general terms?
 7 A. It was presented to me as an opportunity that
 8 somebody was in financial duress and that would I be
 9 interested in taking a look at a property that
 10 seemingly was a bargain? And I responded, yes, that I
 11 would be interested. That's when I first looked at
 12 the property in Playa Grande.
 13 Q. Okay. Now, I'd like to take you next to just
 14 deal--because you've dealt with a lot of other things
 15 in your Witness Statement, but I'd like you to talk
 16 specifically about your meeting with Minister
 17 Rodriguez. Can you tell the panel, I think in the
 18 evidence that's in the spring of--why don't you tell
 19 the panel what happened in that meeting?
 20 A. Well, I have done real estate investing in
 21 the past, and I wanted to vet out the risks. I was
 22 aware of an existing conflict between a Decree from

01:36:17 1 1991 and a Park Law from 1995, and I sought legal
 2 advice to sort out, really, two things: The seeming
 3 conflict between the Decree and the '95 Law, and also
 4 there was afoot a project to expand the Park that my
 5 attorney explained to me that the folks that wanted to
 6 expand the Park had stated that there is no
 7 terrestrial component existing in the Park from the
 8 '95 Law. So there was a project of law that was
 9 placed in line for consideration of Congress in order
 10 to expanded the Park, I believe, 1,000 meters, which
 11 would have, no doubt, included a terrestrial portion
 12 rather large and have adversely--greatly
 13 adversely--affected the purchase of the property, the
 14 potential purchase of the property.
 15 So, I went right to the top, and I requested
 16 a meeting with Mr. Carlos Manuel Rodriguez, who at the
 17 time was the Environmental Minister. He had the
 18 office on the top floor.
 19 I remember going into the MINAE building, and
 20 all I remember was I was told that he was an avid
 21 surfer. And having grown up as a surfer, I thought
 22 that, perhaps, we could share that experience.

01:38:01 1 When I walked into his office, he had
 2 pictures of he surfing large waves, and we spoke a
 3 little bit where we'd surfed. Very pleasant
 4 gentleman.
 5 I was clear with Don Carlos that this was a
 6 huge chunk for me in terms of the amount of money that
 7 I was considering spending. Even though it was a
 8 bargain on the surface, for me, it was a lot of money.
 9 It was well over \$1 million, and literally it was half
 10 my lifesavings as a chiropractor.
 11 So I really wanted to know--pardon the
 12 expression--direct from the horse's mouth. I wanted
 13 to know what the position of the Pacheco
 14 Administration was and what his position as
 15 Environmental Minister was on those two issues, on the
 16 seeming disparity between the '91 Decree and the '95
 17 Law and on his position on whether they favored the
 18 expansion of the Park terrestrially.
 19 And I also asked him for his--if he could
 20 possibly give me an opinion in writing in order to
 21 base my decision. So, his response to me was quite
 22 candid, and he told me that unfortunately Costa Rica

01:39:37 1 did not have the funds to go through an expropriation,
 2 but what they wanted was they wanted a voluntary
 3 regimen of conservation, low density development, low
 4 illumination of the beach, and a complete respect for
 5 the sensitive ecosystem in and around the nesting
 6 grounds of the Las Baulas.

7 You're speaking my language. I'm trained in
 8 biology, my heart was in that place, and my intent was
 9 to completely develop--let me backtrack for one
 10 moment.

11 When I purchased the property, it was already
 12 subdivided into 24 large two-acre parcels, which was
 13 perfect for me. Because what my plan was was to
 14 create a very low density, highly respectful
 15 environmental community--we say in Spanish--(in
 16 Spanish)--environmentally friendly and high end that
 17 would appeal to a very high-end buyer. And I ran that
 18 by him in terms of that his vision and my vision were
 19 compatible. And he told me that, while he could not
 20 put in writing what he was communicating to me, that
 21 there would be something forthcoming within a short
 22 period of time from his Ministry that would explain

01:41:07 1 their position on both issues, on the '91/'95 conflict
 2 and on whether or not they were in favor of the
 3 project--pending project to expand the Park.

4 Subsequent to that there was a meeting in
 5 June, and he met with all the heads of his department,
 6 as per his promise, and all the NGOs, the
 7 nongovernmental organizations. And it was to discuss
 8 their position on the Las Baulas Marine National Park
 9 and the expansion thereof and the conflict between the
 10 '91 and '95 Law.

11 He--during the course of the meeting, we
 12 actually got into specifics talking about how much of
 13 a setback that he would like to see on my private
 14 property in order to build my dream home, which was in
 15 front of a surf break. And we had a tête-a-tête and
 16 he, of course, wanted more meters and I wanted so many
 17 meters. In the end I agreed to have a voluntary
 18 setback of between 15 and 20 meters from the 50-meter
 19 line, which is the public zone, in order to build my
 20 house that had--I had every intent and then with my
 21 Environmental Impact Report put it in writing
 22 of--completely to the maximum that a human can,

01:42:44 1 mitigate my impact on the environment on the
 2 Las Baulas nesting grounds--elonged eaves, vertical
 3 illumination, the use of a sewage treatment plant, an
 4 individual sewage treatment plant.

5 I was prepared to do everything in my power
 6 to demonstrate in real ways that I am for the turtle
 7 and that we want to live in harmony with this sacred
 8 grounds.

9 For me, it was a very positive factor that we
 10 were bordering a Park and that the turtles laid their
 11 nest in front of our land. It was--to me it--I was
 12 had already had inquiries from one Hollywood magnate
 13 to purchase the property. This is just the type of
 14 client that we had envisioned.

15 So, I'll leave it there. I apologize for
 16 being verbose but I wanted to give the entire history
 17 of why I went to the Minister, what my intentions
 18 were, and what I was of the impression when I left.

19 Q. I'm not going to ask you any other questions
 20 about that meeting. There are some things that you
 21 haven't spoken of in your answer that are in respect
 22 to the meeting in your Witness Statement. Do you

01:44:04 1 confirm your Witness Statement in respect to the
 2 meeting and other matters?

3 A. Yes. My Witness Statement is truthful, but
 4 there is one change that I would like to make on the
 5 Witness Statement 3.

6 Q. Okay.

7 A. May I?

8 Q. Yes. What paragraph, sir?

9 A. Well, I need to find it first.

10 Q. I may be able to help.

11 A. On Witness Statement 3, there's something
 12 that says "1991--"

13 Q. If you go to Paragraph 14.

14 A. Paragraph 14. Thank you. It says--a mistake
 15 typo in the "'91 Law." It should say "'95 Law." And
 16 I just want a point of clarification in my Statement
 17 that that following sentence, when it says, "Deputy
 18 Williams," that doesn't refer to a law enforcement
 19 officer. "Diputado" in Spanish means Congressperson,
 20 Congresswoman in this case. So please interpret the
 21 word "deputy" as "diputado," which means
 22 Congresswoman, and not an officer of the law as it

01:45:22 1 reads in English.
 2 Other than that, I'm comfortable with my
 3 Witness Statement.
 4 Q. And the final question, Mr. Berkowitz, is
 5 what's been your experience with the expropriation
 6 process affecting your Lots?
 7 A. I started off in Costa Rica wanting to do
 8 something very special, a model community of low
 9 density, high quality, major measures taken to
 10 mitigate our impact on the environment in the
 11 sensitive nature of the area. And total good faith.
 12 And love Costa Rica, love the Costa Rican people, and
 13 love the Baulas and wanted to be part of it.
 14 So my experience feels--pardon the
 15 expression--feels very frustrating. I feel on a
 16 certain level I've been baited and switched. I feel
 17 like I was encouraged, on the one hand, to build a
 18 low-density, responsible, uniresidential community
 19 respecting everything that Costa Rica asked of me,
 20 and, on the other hand, I feel like I got slapped in
 21 the face and broadsided; surprised that Costa Rica,
 22 rather than pass a zoning regulation, which we were

01:46:47 1 all willing to adhere to, decided that they wanted to
 2 expropriate our land and create a terrestrial portion
 3 of the Park.
 4 Please understand that the turtles that nest
 5 in front of my property nest on the sand. And between
 6 the sand and my border line, there are these dense
 7 madera negra trees and cornizuelo. Cornizuelo are
 8 plants with sticker bushes and they have horrible ants
 9 that sting. You would be very careful walking through
 10 it. No turtle would ever walk through it.
 11 So I fully understand the concept of
 12 illumination. Was fully prepared in any way, shape,
 13 or form, to live up to my--to the mitigating promises
 14 that I made in my environmental impact report.
 15 MR. COWPER: Those are my questions, and I
 16 think that's our time.
 17 PRESIDENT BETHLEHEM: Mr. Alexandrov.
 18 MR. ALEXANDROV: Thank you, Mr. President.
 19 CROSS-EXAMINATION
 20 BY MR. ALEXANDROV:
 21 Q. Good afternoon, Mr. Berkowitz.
 22 A. Good afternoon.

01:48:08 1 Q. Mr. Berkowitz, you have a binder in front of
 2 you, and I'll be referring to documents in that
 3 binder. To start with, your three Witness Statements
 4 are there behind Tabs 4, 5, and 6 respectively. And
 5 I'll be asking you to look at them from time to time,
 6 although not necessarily right now.
 7 Well, you can look at your First Witness
 8 Statement behind Tab 4, Paragraph 7, where you say
 9 that you acquired a piece of property that comprised
 10 more than 17 hectares in early 2003.
 11 Do you see that?
 12 A. Yes.
 13 Q. And is it correct, Mr. Berkowitz, that you
 14 acquired that property from a company called
 15 Corporación Hotelera Playa Tortuga?
 16 A. Yes, that's correct.
 17 Q. And you acquired it as a general
 18 representative of a company called Rancho Ecológico
 19 Las Baulas; correct?
 20 A. That is correct.
 21 Q. And then subsequently in September 2003 you
 22 acquired--sorry. Let me take a step back.

01:49:30 1 So the property that you acquired in early
 2 2003 included eight B Lots; B1, 2, 3, 4, 5, 6, 7, 8;
 3 correct?
 4 A. That is correct.
 5 Q. Okay. And then in September 2003, Lots B1,
 6 B5, 6, 7, 8 were acquired from that company by you and
 7 your sons?
 8 A. I believe that what happened in September of
 9 2003 is that the properties were transferred from
 10 Rancho Ecológico into individual companies.
 11 Q. All right. Indirectly, you and your sons
 12 acquired those pieces of property through other
 13 companies?
 14 A. At the time, to me.
 15 Q. To you?
 16 A. Exclusively. It was later that I
 17 trans--passed them to my sons.
 18 Q. So let me, then, correct the question.
 19 So you acquired on behalf of--in January of
 20 2003, you acquired all the B Lots, all eight Lots, on
 21 behalf of a company called Rancho Ecológico Las
 22 Baulas?

01:51:03 1 A. Yes.
 2 Q. And then in September you acquired, through
 3 another company, B1, 3, 5, 6, 7, 8; correct?
 4 A. Several other companies.
 5 Q. Several other companies?
 6 A. Yes.
 7 Q. All controlled by you?
 8 A. Yes.
 9 Q. Thank you.
 10 When you did that, you conducted due
 11 diligence; correct?
 12 A. Could you be more clear, sir? When I
 13 transferred the second time or prior to the purchase?
 14 Q. I'm sorry.
 15 Let's talk about the purchase in early 2003.
 16 Before that you conducted due diligence; correct?
 17 A. To the best of my ability, yes.
 18 Q. Of course.
 19 And you actually have testified about that in
 20 your Second Witness Statement, Paragraph 11. That's
 21 behind Tab 5. And you say there--you refer to your
 22 First Witness Statement, and you say, "I conducted

01:52:26 1 significant due diligence before deciding to purchase
 2 the B Lots."
 3 Do you see that?
 4 A. This is the same paragraph where I said I
 5 find the Respondent's allegations offensive?
 6 Q. Yes.
 7 A. Down below that?
 8 Q. Yes. In the third sentence.
 9 A. Yes, okay.
 10 Q. And, again, "I conducted significant due
 11 diligence before deciding to purchase the B Lots."
 12 A. Correct.
 13 Q. Okay. Is it correct that the conclusion of
 14 your significant due diligence was that the B Lots
 15 were outside of the Park?
 16 A. That is a correct statement.
 17 Q. Okay. Well, and let's look, just to be
 18 clear, what you've said about that. So, let's look at
 19 Paragraph 8 of your Second Witness Statement, which is
 20 behind the same Tab 5. And what you say there, last
 21 sentence, on Page 3, "I purchased my property with a
 22 clear understanding that it fell outside of the Park

01:53:40 1 boundaries defined by the '95 Law."
 2 Correct?
 3 A. That's an accurate statement.
 4 Q. Okay. Let's look at Paragraph 10 just below.
 5 Somewhere in the middle--well, the sixth line at the
 6 end, the word "The." "The '95 law as written did not
 7 include any of my property."
 8 Do you see that sentence?
 9 A. Yes.
 10 Q. And that was the conclusion you reached as a
 11 result of your due diligence; correct?
 12 A. Yes, sir.
 13 Q. Let's look at Paragraph 13 of the same
 14 Witness Statement. And you say there, "At the time I
 15 purchased my property, there was no doubt surrounding
 16 the boundaries of the Park."
 17 Do you see that?
 18 A. Yes.
 19 Q. You maintain that statement?
 20 A. I had no doubt.
 21 Q. Okay.
 22 A. I would like to say I had no doubt

01:54:54 1 surrounding the boundaries of the Park. I've already
 2 testified that, in fact, as part and parcel of doing
 3 my due diligence, there was a doubt that existed. But
 4 after conducting my due diligence, I had no doubt.
 5 Q. Okay. So to better understand the
 6 correction, you had no doubt; but other people, you
 7 established, did have doubts about the boundary of the
 8 Park. Is that your testimony today?
 9 A. That's correct.
 10 Q. Okay. Well, Mr. Berkowitz, we will go
 11 through a number of documents that I think will
 12 illuminate for us your state of mind at the time.
 13 Let's start with Tab 37. Actually, again,
 14 the same exercise that we went through with Mr. Reddy.
 15 You have behind Tab 36 the Spanish document and behind
 16 37 an English translation of the stamp.
 17 MR. ALEXANDROV: For the record, this is
 18 Exhibit C-23a. Please refer first to the registry
 19 drawing which is behind Tab 36.
 20 Q. My first question is, is this a registry
 21 drawing for Lot B1?
 22 A. I'm sorry, I don't have my reading glasses

01:56:43 1 and so I can't read the name that's on this plano.
 2 Could somebody tell me the name that is on this plano
 3 that we're referring to? You're asking me to identify
 4 it, and I'm very sorry, but I can't read this.
 5 PRESIDENT BETHLEHEM: Do you want to get your
 6 reading glasses?
 7 MR. ALEXANDROV: Well, if the Witness cannot
 8 read the documents we have a problem.
 9 THE WITNESS: All I need is a pair of reading
 10 glasses.
 11 PRESIDENT BETHLEHEM: Do you have those
 12 glasses there?
 13 THE WITNESS: This plan is not independently
 14 identified as Lot B1, so it would be identified by
 15 name.
 16 Q. No, it won't be, I submit to you.
 17 A. No?
 18 Q. B1 would not be on that plan. But I'm asking
 19 you if you can use the glasses to look at the
 20 document--
 21 A. Much better.
 22 Q. --and tell me whether you recognize this

01:57:39 1 registry drawing as the registry drawing for Lot B1.
 2 A. Yes, it does have a name on it. Aceituno Mar
 3 Vista Estates, so, yes, as such I do recognize it as
 4 B1.
 5 Q. Okay. So it is B1. So let's look at the
 6 stamps that we have translated in English behind
 7 Tab 37. And I ask you to start with the second stamp,
 8 which is on the back of the page, because I want to do
 9 that chronologically. It's a stamp of the Ministry of
 10 the Environment and Energy, that is MINAE.
 11 Do you see that stamp, Mr. Berkowitz?
 12 A. Yes.
 13 Q. The date is September 9, 2002; correct?
 14 A. Correct.
 15 Q. And the stamp says that the property is
 16 approximately 40 percent inside the Park. And to
 17 avoid a lengthy discussion, it refers to the 1991
 18 Decree; correct?
 19 A. That's what this stamp says, yes.
 20 Q. When did you first see this stamp?
 21 A. Late 2002, early 2003.
 22 Q. It was before you purchased the B Lots?

01:59:21 1 A. Yes.
 2 Q. And you saw that the view of MINAE at time
 3 was that 40 percent of the property was inside the
 4 Park based on the '91 Decree; correct?
 5 A. I saw the stamp.
 6 Q. And that stamp--
 7 A. I cannot independently corroborate whether
 8 MINAE was of the view that it was in the Park. As far
 9 as the intimacies of the Decree in 1991, my attorney
 10 informed me that in that Decree it said in the Decree
 11 itself that no lands would be part of the Park until
 12 they were expropriated.
 13 Q. Well, Mr. Berkowitz, I'm not asking you to--
 14 A. So, I cannot independently corroborate
 15 whether MINAE was of the opinion that it was legally a
 16 Park or not.
 17 Q. That's not my question, Mr. Berkowitz.
 18 My question is the following: You have
 19 testified, as we established a moment ago, that you
 20 had no doubt--no doubt--that your property was outside
 21 the Park. And I'm asking you, when you saw this stamp
 22 before you purchased the property, did that stamp

02:00:29 1 introduce any doubt in your mind?
 2 A. None whatsoever.
 3 Q. Could you look at the first stamp on the
 4 first page? It's a stamp of MINAE, too, isn't it?
 5 A. Yes.
 6 Q. The date is May 13, 2005; correct?
 7 A. Yes.
 8 Q. It says that the property described is
 9 located inside Las Baulas National Marine Park;
 10 correct?
 11 A. That's what it says.
 12 Q. And it says, according to Executive Decree of
 13 July 9, 1991, and Law 7524 of August 16, 1995;
 14 correct?
 15 A. That's what it states.
 16 Q. So at least on May 2005, the MINAE stamp
 17 indicates that the basis for MINAE's determination
 18 that the property was inside of the Park was both the
 19 Decree and the Law. Is that what the stamp says?
 20 A. That is what the stamp says.
 21 Q. When did you first see this stamp?
 22 A. A considerable time after that. I cannot

02:01:50 1 remember when.
 2 Q. Approximately?
 3 A. Sometime later in 2005.
 4 Q. And when you saw the stamp later in 2005, you
 5 still had no doubt whatsoever that your property was
 6 outside of the Park?
 7 A. This stamp in my mind shows that MINAE was of
 8 the opinion that it was in the Park. That was not my
 9 opinion.
 10 Q. I understand that you had an opinion that
 11 your property was outside of the Park. MINAE, as we
 12 just established, had an opinion that the property was
 13 inside of the Park, both on the basis of the Decree
 14 and the Law. And my question is: Whenever you saw
 15 that stamp in May 2005, did that introduce any doubt
 16 in your mind that your property might be inside of the
 17 Park?
 18 A. It's the same issues that came up--that will
 19 come up over and over again, is that my attorney
 20 informed me that I had sacrosanct property rights
 21 until I was paid for my property. That I maintained
 22 full "usufructo" and "pleno dominio" over my property

02:02:58 1 until such time as I was paid.
 2 I had a high level of certainty that Costa
 3 Rica would act in good faith and that, in fact, in
 4 their wisdom--if they wanted the property, it was
 5 fully within their right to take the property,
 6 providing they paid me a reasonable amount of
 7 recompense indemnification in a reasonable amount of
 8 time.
 9 Q. You may be right, Mr. Berkowitz, that it will
 10 come to that point, but we are not at that point yet.
 11 Right now we're talking about whether the property is
 12 inside or outside of the Park. So, that was my
 13 question.
 14 Let's look at the next property. If you turn
 15 to Tab --and now we have this time in Tab 40 both the
 16 full Spanish document and the English translation of
 17 the stamp. So if you look at the registry drawing,
 18 I'd like you to confirm, if you could, that this
 19 relates to Lot B3.
 20 A. Where might I find the plan here?
 21 Q. I'm sorry. Tab 40.
 22 A. I'm in Tab 40.

02:04:09 1 Q. Okay. There is a blue sheet in between.
 2 After the blue sheet you will see the plan.
 3 "Propiedad de Guacimo Mar Vista Estates"?
 4 A. The plan that I see here, sir, is
 5 2,736 meters. That is not the size of Guacimo Mar
 6 Vista Estates. I did not--this is not one of my
 7 plans.
 8 Q. It is not?
 9 A. No. I did not make this plan. This plan was
 10 made, I believe, by MINAE. It measures 2,736. All of
 11 my properties measured at least 7,000 meters.
 12 Q. Well, if you look below, "area of registro,"
 13 it says 7,117 square meters.
 14 A. I did not make this plan.
 15 Q. Well, regardless of who made this plan, is it
 16 a registry drawing of property B3?
 17 A. It looks to be part of B3, but it certainly
 18 isn't the Plan B3 that I purchased.
 19 Q. Well, we'll have to go through an exercise,
 20 then, to establish that this is B3. It will take some
 21 time, but we'll have to do it.
 22 A. As I said, it's part of the--it looks to be

02:05:54 1 the westernmost part of B3, but it's not the property
 2 that I purchased. I didn't make this plan.
 3 Q. I take your testimony you didn't make it.
 4 A. Okay.
 5 Q. It covers, you say, part of B3?
 6 A. Yes.
 7 Q. Okay. And the westernmost part of B3?
 8 A. Yes.
 9 Q. And is that the part that is closer to the
 10 sea?
 11 A. Yes.
 12 Q. Okay. Well, I think that's sufficient. We
 13 can go through the exercise of establishing that
 14 because we have the documents, but I think that's
 15 sufficient for present purposes because, if you look
 16 at the stamps, the stamps say that that property, that
 17 is reflected on this registry drawing--and that's part
 18 of your B3 property--is inside of the Park. So, let's
 19 look at the second stamp first, which is dated
 20 September 2002. It's on the right-hand side.
 21 Do you see that? That's the stamp of MINAE?
 22 A. Yes, I do. Uh-huh.

02:07:00 1 Q. Yes? I'm sorry, do you see that,
 2 Mr. Berkowitz?
 3 A. Yes.
 4 Q. Do you see the date September 9, 2002?
 5 A. Yes. What plan does this relate to, sir?
 6 Q. The same one that is behind that tab. We've
 7 just--
 8 A. This plan relates to the Guacimo Mar Vista
 9 Plan, which is 7,000 meters, or the 2700? I believe
 10 this stamp existed on the Guacimo Mar Vista Plan,
 11 which I don't see here in its entirety. This was the
 12 stamp that was on that plan. This stamp, I believe,
 13 is the stamp that is on the abbreviated plan that I
 14 did not make. So, I just want to--I just--since we're
 15 on the record, I want to be very accurate.
 16 Q. Well...
 17 A. I'm not trying to be difficult.
 18 Q. No, no.
 19 A. I want to--for purposes of being accurate, I
 20 want to be completely clear that this stamp that you
 21 show me, in September 12, 2002, existed on my original
 22 Guacimo Mar Vista Plan, which measured in excess of

02:08:04 1 7,000 meters.
 2 Q. Okay. Well, please turn to the second part
 3 of the document. If you go to the plan--
 4 A. Yes.
 5 Q. --leave the stamp. We need to clear this
 6 first before we go to the stamp.
 7 So, go to the Spanish language document
 8 first.
 9 A. The 2,736-meter plan?
 10 Q. Well, let us do this. There is--in the
 11 left-hand side, bottom corner of the drawing, a
 12 Number 13101.
 13 Do you see that?
 14 A. Yes.
 15 Q. Okay. So that, we established, is the
 16 western part of B3?
 17 A. Yes.
 18 Q. Okay. If you look further two pages--
 19 A. Yes.
 20 Q. --you will see a registry drawing that says
 21 "Propiedad de Corporación Hotelera Playa Tortuga"?
 22 A. Yes.

02:09:19 1 Q. And if you see it somewhere right in the
 2 center of the document, just below the drawing, there
 3 is a date, 26 September 2003. That says "Hoy de:
 4 Guacimo Mar Vista States."
 5 A. Yes, I agree.
 6 Q. So, today it is the same owner that we see on
 7 the first registry; correct?
 8 A. This is my original plan, yes.
 9 Q. Okay. And it is for the 7,000 meters?
 10 A. Yes.
 11 Q. Okay. And it has a stamp of
 12 9 September 2002?
 13 A. Yes, it does.
 14 Q. Okay. And that stamp--you can refer to the
 15 Spanish or the English.
 16 That stamp of 9 September 2002 is a stamp of
 17 MINAE; correct?
 18 A. Yes, it is.
 19 Q. And that stamp says that the property is
 20 located inside the Park; correct?
 21 A. That's what this stamp says, yes.
 22 Q. Approximately 45 percent. Yes?

02:10:26 1 A. Yes, that's what this stamp says.
 2 Q. And it refers to the 1991 Decree; correct?
 3 A. Yes.
 4 Q. Okay. And then we established that on a
 5 drawing of part of B3 property--that is, the part that
 6 is closest to the water--we have a 2005 stamp of
 7 MINAE, dated May 13, 2005.
 8 Do you see that stamp?
 9 A. Yes.
 10 Q. It doesn't give the percentage because it's
 11 part of the property now. It just says the property
 12 described is located inside the Park.
 13 Do you see that?
 14 A. Yes.
 15 Q. And it refers to the 1991 Decree and the 1995
 16 Law.
 17 Do you see that?
 18 A. Yes.
 19 Q. That did not introduce any doubt in your mind
 20 that the property might be inside of the Park?
 21 A. No. No. I did not believe at that time,
 22 after consulting with my attorneys, that the process

02:11:39 1 that was in the process of being, creating an
 2 expansion of the Park, I was of the opinion as a
 3 result of consulting with counsel that this would not
 4 come to fruition.
 5 Q. So, is it your testimony that you consulted
 6 with your lawyer after you saw this stamp and
 7 requested an opinion from your lawyer about the
 8 significance of this stamp?
 9 A. Correct.
 10 Q. Did you share--
 11 A. That is correct.
 12 Q. And you obtained an opinion from your lawyer
 13 in Costa Rica?
 14 A. Several lawyers.
 15 Q. In writing?
 16 A. Not to my recall.
 17 Q. So it was an oral discussion?
 18 A. Yes.
 19 Q. And the conclusion of that discussion was the
 20 stamp does nothing to create any doubt that your
 21 property might be in the Park?
 22 A. For MINAE's purposes, they are trying to show

02:12:38 1 and signal that they are--would like to exercise their
 2 right as a sovereign country to expropriate property.
 3 That's what it shows, that they are in the process of
 4 an expropriation process. But I was also told that
 5 until I am paid, that that expropriation is not
 6 complete. And so I was told by my attorneys that this
 7 is something for MINAE's purpose. There's a stamp
 8 showing they would like this to be part of the Park.
 9 For my purpose in terms of as an investor, I was--I
 10 thought I was told that that was premature.
 11 Q. Well, those are two different points. So,
 12 first, the MINAE stamp seems to indicate not that they
 13 would like to think this is inside of the Park, but
 14 they do think it's inside of the Park, which you
 15 confirm. But I think you didn't address my question.
 16 My question was different. It was not about whether
 17 the property would be expropriated, and if it is
 18 expropriated you would be paid compensation, and
 19 that's what you expected. The question goes to a much
 20 narrower point, which is whether the property was in
 21 the Park or not.
 22 If your lawyer told you that the property

02:14:10 1 might be expropriated, but if it would be
 2 expropriated, you would receive compensation, that
 3 would suggest that the property is inside of the Park,
 4 doesn't it?
 5 A. Quite the contrary. My attorney informed me
 6 that in the Costa Rica, according to laws of
 7 expropriation, that the property title did not
 8 transfer until the expropriation came to a completion,
 9 until I was paid.
 10 Q. Mr. Berkowitz, I apologize, that I insist on
 11 that, but I am confused. If you had no doubt this
 12 property was outside of the Park, why would the
 13 subject of expropriation arise in the first place? It
 14 would not be subject to expropriation; isn't that
 15 correct?
 16 A. Because there were notices of expropriation.
 17 It was clearly signaled by the Costa Rican Government
 18 that they were preparing to start an expropriation
 19 process. It was no secret.
 20 Q. On the basis of the Costa Rican Government's
 21 understanding that those properties were inside of the
 22 Park; right?

02:15:12 1 A. On the basis of Costa Rican law, where--which
 2 is the Costa Rica Law of Expropriation.
 3 Q. Well, the Costa Rican Law of Expropriation is
 4 a general law, but the properties inside of the Park
 5 were subject to expropriation based on law--the law of
 6 1995; isn't that correct?
 7 A. They were subject to expropriation. I'm not
 8 arguing that.
 9 Q. Okay. But you understood that they were
 10 expropriation--
 11 A. Absolutely. Costa Rica has every sovereign
 12 right to expropriate that property.
 13 Q. I'm sorry. You have to wait for me to finish
 14 my question.
 15 A. Sorry.
 16 Q. They were subject to expropriation under the
 17 law of 1995; correct?
 18 A. That's a legal question that I cannot answer.
 19 Q. Well, I'm asking--I just--I thought--I agree
 20 with you, but I thought you testified that your
 21 understanding was that the property was subject to
 22 expropriation. You actually stated the Legal Opinion

02:16:13 1 that that would be under Costa Rican Law of
 2 Expropriation in general, and I'm asking whether it is
 3 not correct that the property in that area was being
 4 expropriated because it was the Government's
 5 understanding that it was inside of the Park.
 6 A. It's a fine line, sir, between what my
 7 recollection of what my attorneys advised me and me
 8 trying to give or cite Costa Rican Law, which I'm not
 9 qualified to do. So you're asking me to--I believe
 10 you're asking me to interpret Costa Rica Law, which
 11 I'm not qualified to do. I have testified what my
 12 attorneys told me and what my understanding was, to
 13 the best of my ability.
 14 Q. What I'm trying to establish, Mr. Berkowitz,
 15 is not your legal view, because you're not a lawyer,
 16 and we understand that. What I'm trying to establish
 17 is this: You have seen stamps that say the property
 18 is inside of the Park, based on the Decree and the
 19 Law. Have you seen expropriations or at least the
 20 initiation of expropriation procedures, and you're
 21 still testifying that there was no doubt in your mind
 22 that your property was outside of the Park?

02:17:36 1 And I'm trying to reconcile your
 2 understanding, your conviction without any doubt that
 3 your property was outside of the Park with the facts,
 4 of which you are aware, that MINAE's view was that
 5 your property was inside of the Park and that
 6 expropriation procedures had already been initiated,
 7 and I'm submitting to you that it seems difficult to
 8 agree with a statement that you had absolutely no
 9 doubt that your property was outside of the Park with
 10 your knowledge that property as yours was being
 11 expropriated and that MINAE had taken a position that
 12 it was inside of the Park.
 13 A. I agree with almost everything that you said
 14 with the exception of the very last sentence, which is
 15 that I am stating that I agree that my property was
 16 inside the Park. I agree that MINAE was signaling to
 17 expropriate. I agree that they have the right to
 18 proceed to expropriate. I agree that I was informed
 19 that this process was starting, but you're asking me
 20 to state something that I'm unwilling to state, which
 21 is I did not believe at that time that my property was
 22 inside the Park. I cannot say something that I don't

02:18:58 1 believe.
 2 Q. And when you say "at that time," you mean
 3 what time?
 4 A. The time that you're referring to here when
 5 you're asking me to read these plans.
 6 Q. Well, I'm referring to--
 7 A. The date on these stamps.
 8 Q. Well, I'm referring to stamps in 2002 and
 9 2005, so let me ask you: In 2002, did you believe
 10 your property was inside of the Park?
 11 A. No.
 12 Q. In 2005, did you believe that your property
 13 was inside of the Park?
 14 A. No.
 15 Q. When did you come to believe that your
 16 property was inside of the Park?
 17 A. My belief is that the property will be inside
 18 the Park at the completion of the expropriation
 19 process, when I'm paid.
 20 Q. Well, okay. You are now making a legal
 21 distinction so we need to--
 22 A. I'm not qualified to do so, sir, and I

02:19:50 1 apologize. You asked me my belief.
 2 Q. All right.
 3 A. That's my belief.
 4 Q. Let me probe that further.
 5 Technically, your property is not part of the
 6 Park until it is expropriated and the Government owns
 7 it, and that is something that I represent to you.
 8 The question is whether your property is within the
 9 boundaries of the Park. So let me restate my question
 10 to avoid the legal discussion.
 11 Did you believe in 2002 that your property
 12 was within the boundaries of the Park?
 13 A. No.
 14 Q. Did you believe in 2005 that your property
 15 was within the boundaries of the Park?
 16 A. No.
 17 Q. When did you come to believe that your
 18 property was within the boundaries of the Park?
 19 A. I'm still waiting to be paid in order to be
 20 expropriated, and at that point, the property will be
 21 within the boundaries of the Park.
 22 Q. Okay. Mr. Berkowitz, we went through Lots B1

02:20:53 1 and B3. I represent to you that we have the exact
 2 same situation with respect to the registry drawings
 3 with respect to Lots B5, 6, 7, and 8. We have the
 4 exact same stamp in 2002, referring to the '91 Decree,
 5 and the exact same stamp of MINAE of 2005, referring
 6 to both the Law and the Decree.
 7 Would you accept that, or would you like to
 8 review all those documents?
 9 A. It's not necessary, sir. And, again, I'm not
 10 trying to be difficult. I'm giving you my true
 11 belief.
 12 Q. No. No. No. I'm not asking--
 13 A. And it would be the same for each one of
 14 those properties.
 15 Q. I'm not asking about your belief. I'm asking
 16 you, would you accept my representation that the exact
 17 same two stamps appear on the registry drawings of the
 18 other B Lots--5, 6, 7, 8--
 19 A. Yes, I would.
 20 Q. Okay. That makes it unnecessary to go
 21 through the same exercise with respect to each Lot,
 22 and I appreciate your cooperation in saving some time,

02:21:48 1 which allows me to go to another document.
 2 Could you look at Tab 59. There is--this is
 3 a document in Spanish behind the blue sheet and a
 4 partial translation in English.
 5 MR. ALEXANDROV: For the record, this is
 6 Exhibit R-16.
 7 BY MR. ALEXANDROV:
 8 Q. And this is a MINAE resolution of June 2003,
 9 and it's addressed to you, Mr. Berkowitz, in response
 10 to a formal application you made to MINAE. If you
 11 look at the very first paragraph, it says "first" in
 12 English. In Spanish, it says "primero." If you're
 13 looking at the Spanish, it says that, on March 24,
 14 2003, you filed a formal application seeking a permit
 15 for the felling and pruning of 74 trees.
 16 Do you see that?
 17 A. Yes.
 18 Q. And we have in second, Number 3, the
 19 description of the property certification. So, I will
 20 represent to you that this includes Lots B1, 3, 6, and
 21 7. Is that correct? Would you agree with that?
 22 A. I recognize this permit, and it is quite

02:24:14 1 familiar to me. So, I would agree with that.
 2 Q. Okay. Well, let us look at--in Spanish, it
 3 is Page 7. In English, it is the last page of the
 4 translation.
 5 Are you looking at the English?
 6 A. Yes.
 7 Q. Okay. Where it says "five," it says, "To
 8 comply with the provisions of Executive Decree
 9 Number 2518 of July 9, 1991, and of Law 7524 of
 10 August 16, 1995, where the Las Baulas Marine National
 11 Park and the protective area include an area of
 12 125 meters of land from the ordinary high tide line."
 13 Do you see that language?
 14 A. Yes, I see it.
 15 Q. All right. So, then, Mr. Berkowitz, isn't it
 16 correct that, in response to your formal application
 17 to MINAE in March of 2003, MINAE issued a resolution
 18 in June of 2003, and in that resolution, relating to
 19 the felling and pruning of trees, it also stated that
 20 the Las Baulas Park, under Decree of '91 and Law of
 21 '95, extends 125 meters inland from the high tide.
 22 Is that what MINAE said in that resolution--

02:26:19 1 (Overlapping speakers.)
 2 A. Yes, that's what they said.
 3 MR. ALEXANDROV: I'm sorry. You have wait
 4 for me to finish the question.
 5 THE WITNESS: I'm sorry.
 6 BY MR. ALEXANDROV:
 7 Q. Is that what the resolution that was
 8 addressed to you said?
 9 A. As you stated, that is what it said.
 10 Q. In June of 2003, when you saw this
 11 Resolution, did that introduce any doubt in your mind
 12 that the B properties were inside of the Park?
 13 A. Sir, I'm not sure about the timing of the
 14 National Geographic Society of Costa Rica's study. In
 15 the course of going for my environmental permits and
 16 my Environmental Impact Report--and I was asked, as
 17 part and parcel, as I think Mr. Reddy testified, to
 18 have a pronouncement for water and building permit and
 19 whether or not my property was inside or outside of
 20 the Las Baulas National Park. And somewhere around
 21 that date, the National Geographic association came
 22 out with an official decree that my property was

02:27:36 1 outside--completely outside the boundaries of the
 2 Las Baulas National--Marine National Park.
 3 Q. We'll get to the National Geographic
 4 Institute.
 5 A. So I had doubt seeded in my mind from
 6 official documents, and I don't remember the interplay
 7 of the dates.
 8 Q. Okay. Well--
 9 A. So, this is in June. Somewhere around that
 10 time this came in, you're asking me--please repeat
 11 your question. I'm sorry.
 12 Q. Well, turn to the last page of the Spanish
 13 document. There is a stamp.
 14 A. What page?
 15 Q. The very last page of that document, the
 16 Spanish document. The very last page is behind
 17 Tab 59. The very last page.
 18 A. Yes. I believe I'm on the page.
 19 Q. The very last page.
 20 A. Uh-huh.
 21 Q. Please keep turning the pages. The very last
 22 page, Mr. Berkowitz, there is a stamp. Your name,

02:28:39 1 having received this document, and it says June 2003.
 2 Do you see that?
 3 A. Yes.
 4 Q. Okay. So you received this document in
 5 June 2003. It was addressed to you, and I'm asking
 6 now about this document, which was an official
 7 resolution of MINAE in response to your formal
 8 application. And this official resolution states
 9 quite explicitly that the Las Baulas Marine National
 10 Park extends 125 meters of land of the ordinary high
 11 tide, and I'm asking you, when you saw this Resolution
 12 in June of 2003, did it create any doubt in your mind
 13 that your property might be inside of the Park?
 14 A. It's the same answer; no, it did not.
 15 Q. Okay. You testified in your Witness
 16 Statements and in direct examination that around that
 17 time you went and saw Mr. Carlos Rodriguez; correct?
 18 A. Correct.
 19 Q. And you testified that he told you that the
 20 Government was willing to avoid expropriation and
 21 impose strict regulation of the properties in the
 22 area; correct?

02:30:16 1 A. That is correct.
 2 Q. Did he tell you that his belief was that the
 3 Park did not extend towards the land?
 4 A. Sir, in the meaning, I was very clear that I
 5 want to build my home in front of this surf break,
 6 which existed within this 75-meter line. I was very
 7 clear, and the answer was--is that we want to see a
 8 low density development that is respectful of baulas.
 9 And we were talking--as I described how far
 10 of a setback from the 50-meter line, and I certainly
 11 was told by my attorney that, if that was Park, that
 12 there would be no way that I could build within the
 13 75-meter line and have to go through an entire
 14 Environmental Impact Report, which was extensive, a
 15 large book--it took me a year, tens of thousands of
 16 dollars--if I did not have the right to build within
 17 that. We were talking whether it was going to be
 18 15 meters or 30 meters.
 19 But in any event, it was within this 75-meter
 20 strip that was in dispute, and if it was in National
 21 Park, nobody could have given me any indication that I
 22 could have built there, no less the head--the Minister

02:31:37 1 of the Environment. So, I was very much led to
 2 believe that I could go ahead and that I should go
 3 ahead with my Environmental Impact Report, which, by
 4 the way, was preliminarily approved to build my house
 5 20 meters from the--from the 50-meter line from the
 6 public zone.
 7 So, to answer your question, again, I don't
 8 mean to be argumentative--I was very definitely given
 9 the impression that I could build 20 meters from my
 10 borderline, as long as it was an environmentally
 11 responsible home, and I went and spent \$30,000
 12 preparing an Environmental Impact Report. It went
 13 through SETENA, who is the--
 14 Q. Mr. Berkowitz, I'm sorry, I have to interrupt
 15 you.
 16 A. Okay.
 17 Q. And if you don't answer my questions, I'll
 18 have to seek instructions from the Tribunal.
 19 A. Did I not answer your question?
 20 Q. No, you did not.
 21 A. I'm sorry.
 22 Q. Let me repeat my question, and please focus

02:32:35 1 on the answer to the question.
 2 A. I thought I had.
 3 Q. I was not asking you what you discussed with
 4 your attorney, and what you believe was at the time of
 5 whether you could construct and where. I was asking
 6 you specifically.
 7 In your meeting with Minster Carlos
 8 Rodriguez, did he tell you that the Park extended
 9 seawards from the high tide, or did he tell that the
 10 Park extended inland from the high tide, or did he
 11 tell you anything about this?
 12 A. Yes, he did.
 13 Q. Did he tell you that the Park extended
 14 seawards from the high tide line?
 15 A. My recollection of what he told me was in the
 16 lands that are in dispute, the private zone of the
 17 lands of the 75 meters, that what they want is a
 18 comanagement plan, a proper zoning to protect the
 19 turtles where the owners of that property, in order
 20 for Costa Rica to avoid expropriation and the
 21 tremendous expense, what he wanted was a voluntary
 22 regimen of adhering to logical, very sensible

02:33:41 1 mitigation factors to live in harmony with the
 2 sensitive environment around the turtles, and that, by
 3 all means, that we could build in that 75-meter zone.
 4 Q. You've testified in your Witness Statement,
 5 and you repeated that on direct, that
 6 Minister Rodriguez informed you that a directive would
 7 be forthcoming from MINAE as to the position of the
 8 Government on the rights of private landholders in the
 9 75-meter zone; correct? You remember that?
 10 A. Yes, sir.
 11 Q. That directive never came, did it?
 12 A. Pardon me?
 13 Q. That directive never came; is that correct?
 14 A. I don't understand your question. Are you
 15 asking me, was there ever anything in writing that
 16 came of that meeting? I don't understand.
 17 Q. Okay. Let's look at Paragraph 12 of your
 18 First Witness Statement behind Tab 4. Paragraph 12 of
 19 your First Witness Statement, Tab 4, the fourth line,
 20 (reading): He informed me--you testified--that a
 21 directive would be forthcoming from his Ministry as to
 22 his administration's position in writing on the rights

02:35:20 1 of the private land bordering the Park immediately
 2 following an upcoming meeting that he planned with his
 3 heads of department, et cetera.
 4 Do you see that?
 5 A. Yes.
 6 Q. That's your testimony. And I'm asking you,
 7 did that directive in writing ever come?
 8 A. Yes.
 9 Q. There was a directive in writing from MINAE?
 10 A. Yes.
 11 Q. Can you point me to a document in the record
 12 that is--
 13 A. It's called Ayuda de Memoria.
 14 Q. The Ayuda de Memoria is the minutes of the
 15 meeting. It's not a directive, but when you say
 16 "directive," you refer to those minutes; is that
 17 correct?
 18 A. That is what I saw as the--he couldn't
 19 respond to me in writing. It was--it would be immoral
 20 for him to give me--I'm a single person just trying to
 21 build my home.
 22 Q. You testified about that. My question is--

02:36:13 1 A. But he told me there would be a directive
 2 forthcoming from his Ministry that would make
 3 everything clear. A few weeks later--
 4 Q. And that directive is the minutes--
 5 (Overlapping speakers.)
 6 A. Yes.
 7 Q. Is that directive the Ayuda Memoria?
 8 A. Yes.
 9 Q. Okay. Let's turn to that, then.
 10 A. I don't know where it is.
 11 Q. I will show you.
 12 It's Tab 54.
 13 MR. ALEXANDROV: For the record, it is
 14 Exhibit C-53. We have English and Spanish.
 15 BY MR. ALEXANDROV:
 16 Q. Is that the document you're referring to as
 17 the directive in writing?
 18 A. Yes.
 19 Q. Okay. Well, I'll be referring to the
 20 English. You can refer to the Spanish, if you prefer.
 21 I'm looking at the English translation, which is
 22 submitted by your counsel. And if you look at the

02:37:12 1 second page of the English translation, the second
 2 bullet, which says, "MINAE does not encourage the
 3 expansion of this national park up to 1,000 meters
 4 from the public zone."
 5 Do you see that?
 6 A. Yes.
 7 Q. So the Minister is not talking about the
 8 75 meters from the public zone. What he's saying
 9 here--or what the Ayuda Memoria is saying here, is
 10 that MINAE does not encourage the expansion up to
 11 1,000 meters; correct?
 12 A. That is what this says.
 13 Q. It says nothing about 75 meters; correct?
 14 A. Correct.
 15 Q. Okay. Let's look at the fourth bullet from
 16 the top. It says, "In the private areas declared as a
 17 National Park in '91 and '95, we would like to promote
 18 voluntary conservation regime instead of resorting to
 19 the respective expropriations."
 20 Do you see that text?
 21 A. Yes, I do.
 22 Q. So, let's see what we can make of that.

02:38:34 1 First, it seems the Ayuda Memoria refers to the
 2 National Park established both under the '91 Decree
 3 and the '95 Decree; is that correct?
 4 A. Yes.
 5 Q. And then it says we would like in that area
 6 declared as a National Park.
 7 A. Where does it say that?
 8 Q. Same bullet point. "Private areas declared
 9 as a National Park." That would be the 75 meters
 10 because the 50 meters are not private areas. It's a
 11 public zone; correct?
 12 A. It's not--it doesn't state that here. I
 13 don't see any mention of 75 meters here.
 14 Q. I am not saying that there is a mention. I'm
 15 saying the reference to "private areas" cannot be a
 16 reference to the 50 meters because the 50 meters is a
 17 public zone; correct?
 18 A. The 50 meters public zone, that is correct.
 19 Q. So, the reference of to "public areas" must
 20 be to something in addition to the 50 meters; correct?
 21 A. That is correct. I would agree with that
 22 statement.

02:39:33 1 Q. And then they say "We propose an alternative
 2 to resorting to respective expropriations," which
 3 suggests that unless that alternative happens, there
 4 will be respective expropriations of that--of those
 5 private areas; correct?
 6 A. Instead of resorting to respective
 7 expropriations.
 8 Q. Right.
 9 A. Uh-huh.
 10 Q. So doesn't that suggest that Minister Carlos
 11 Rodriguez and his staff understood the Park, under
 12 both the Decree and the Law, to be extending inland
 13 from the public zone?
 14 A. Are you asking is that my understanding or
 15 what my understanding is? Of that? Of interpreting
 16 this?
 17 Q. Mr. Berkowitz, you have testified about this
 18 document.
 19 A. Please ask me the question. I'm just not
 20 clear on what it is.
 21 Q. I will. I want to lay the foundation. You
 22 have testified about this document. You have stated

02:40:39 1 in your testimony a certain understanding. You were
 2 not at the meeting, so what you understood happened in
 3 meeting, you base your testimony on that document, so
 4 I'm trying to see what your understanding of that
 5 document is, and I'm pointing you to this bullet
 6 point, which says there is private property which is
 7 obviously not in the 50-meter zone, and it is subject
 8 to the expropriation under the Decree and the Law
 9 unless a different regime can be put in place. And
 10 I'm asking you if that understanding is your
 11 understanding of the document.
 12 A. May I feel free to answer?
 13 Q. Yes. I asked you a question.
 14 A. Okay. My understanding is, I based my
 15 understanding of my meeting with the Minister--
 16 Q. It's not your understanding of the meeting of
 17 the Minister.
 18 A. On this document you're--
 19 Q. It's your understanding of the document--
 20 (Overlapping speakers.)
 21 Q. My question is about--you've testified about
 22 the document. You were not at the meeting. We're

02:41:38 1 talking, now, not about your meeting with the
 2 Minister, Mr. Berkowitz, but the meeting the Minister
 3 had with his staff, including the head of department.
 4 You have seen this document, and you're drawing
 5 conclusions in your testimony from this document. So,
 6 I'm asking about this document and one particular part
 7 of it, and I'm suggesting to you what conclusions can
 8 be drawn, and I'm asking you to say whether those
 9 conclusions are correct or incorrect. I'm not talking
 10 about the meeting you had with Minister Rodriguez.
 11 A. Am I free to speak? I feel that I--I don't
 12 want to do anything improper. Am I free answer?
 13 PRESIDENT BETHLEHEM: Please do. I'd like to
 14 avoid this becoming more argumentative than is
 15 necessary, but please do, Mr. Berkowitz. Please do
 16 respond.
 17 THE WITNESS: I would just like to speak. In
 18 leading up to my understanding of what was
 19 forthcoming, the project, which had then become a
 20 project of law presented to expand the Park by
 21 1,000 meters was published in the legal document
 22 called the Gaceta of Costa Rica, and in therein there

02:42:42 1 was a paragraph that said legal aspects of the project
 2 to expand the law, which I spoke to the Minister
 3 about. This was one of my prime reasons for going in.
 4 And it said legal aspects that we're aware,
 5 that there is no terrestrial component to the
 6 Park 7594. We're aware of that, and as such, we want
 7 to remedy that. And so I asked Carlos Manuel to help
 8 me so I did not spend half of my life savings
 9 frivolously. And so going into this meeting, they
 10 were aware that it had been published in the Gaceta
 11 and that they knew that there was no terrestrial
 12 fragment to the Park 7594, and this project of law was
 13 trying to remedy that. And he stated for the record
 14 he was opposed to it.
 15 Furthermore, in the next paragraph, he said
 16 what he would allow would be a low density--he would
 17 allow a low density proper use and management of
 18 lighting, "green curtain," and use of an
 19 implementation, among others. That's exactly what I
 20 wanted to do. It was completely conducive to what I
 21 planned to do, exactly. It was completely harmonious
 22 with our plans.

02:43:56 1 PRESIDENT BETHLEHEM: Mr. Berkowitz, I think
 2 the question that was put to you by
 3 Mr. Alexandrov--I'm not going to put his question
 4 other than to clarify my understanding of it--is to
 5 seek your views on what you understand by the phrase
 6 "in the private areas declared as the national park in
 7 1991 and 1995." What do you understand to be the
 8 private areas to be declared as the national park in
 9 1991 and 1995?
 10 THE WITNESS: There were none. There were
 11 none. In 1991 it was until paid. Yes, in writing
 12 there was a private area defined, but not until paid.
 13 In '95 it was a park that was seaward. And as such,
 14 we reached an agreement informal that the best way to
 15 proceed to save Costa Rica the extreme expense and to
 16 protect the turtles was a voluntary regimen of proper
 17 development, low density, green curtains, no
 18 illumination, which is exactly what we wanted to do.
 19 PRESIDENT BETHLEHEM: So what do you
 20 understand by the phrase "in the private areas"?
 21 You've just suggested that there were no private
 22 areas.

02:45:12 1 THE WITNESS: They were referring to the
 2 private areas in the zone, the conflicted zone, the
 3 75 meters. They admitted it was a conflicted zone.
 4 And in the Project of the law, they admitted that
 5 there was no terrestrial fragment to the law as
 6 written, 7594, and they were trying to correct that.
 7 PRESIDENT BETHLEHEM: Mr. Alexandrov.
 8 MR. ALEXANDROV: Thank you, Mr. President.
 9 BY MR. ALEXANDROV:
 10 Q. Mr. Berkowitz, hold onto that document, but I
 11 want to ask you to look your Second Witness Statement
 12 at Tab 5, Paragraph 19.
 13 A. Which paragraph?
 14 Q. I'm sorry. Second Witness Statement behind
 15 Tab 5, Paragraph 19. You say there that the
 16 minutes--and I assume you're referring to this Ayuda
 17 Memoria--confirm the MINAE position at the time also
 18 communicated to you by Minister Rodriguez: "that the
 19 border of the Park was, in fact, at the limit of the
 20 50-meter public zone and that the Government was not
 21 going to pursue the expropriation of privately held
 22 properties," et cetera.

02:46:37 1 So my question is going back to the--you
 2 refer to the minutes for that statement that the MINAE
 3 position was--the Park was limited to the 50-meter
 4 public zone. And my question is, is your
 5 understanding based on that Bullet Point Number 4 on
 6 Page 2 or not?
 7 A. Number 19 on one side and Bullet 4 on Page 2
 8 of the Ayuda? Of the Memorial?
 9 Q. Yes. This is the text that we just
 10 discussed. I'm looking at the English. In Spanish,
 11 it is--it is the third on Page 4 "En las areas
 12 privadas." You can look at whichever. On the next
 13 page, Mr. Berkowitz, in Spanish. "En las areas
 14 privadas declaradas como Parque Nacional en 1991 y
 15 1995," et cetera.
 16 So, my question is your understanding that
 17 MINAE saw the Park was limited to the 50 meters public
 18 zone is based on this text; correct?
 19 A. Yes, sir.
 20 Q. Okay. We will move on.
 21 Could you look at look at Tab 61, please.
 22 This is Exhibit R-100. Tab 61 is the English. If you

02:48:31 1 look at--if you want to look at the Spanish, it's
 2 behind Tab 60. And this is a letter from MINAE of
 3 May 7, 2003. So, it was just a month before the
 4 June 2003 meeting, and it's a letter to the
 5 Municipality of Santa Cruz signed by Mr. Carlos Manuel
 6 Rodriguez, the Minister.
 7 Do you see that?
 8 A. I'm reading it, yes. I see it.
 9 Q. Well, let's establish, first, from whom to
 10 whom and the date, and then I'll point you to the text
 11 I want to discuss with you.
 12 So, can we agree that this is a May 7 letter,
 13 May 7, 2003, from MINAE signed by Minister Carlos
 14 Manuel Rodriguez--
 15 A. Yes.
 16 Q. --to the Municipal Council of Santa Cruz?
 17 A. Yes.
 18 Q. Okay. You can take a look at the letter, but
 19 I want to ask you about the first paragraph. If you
 20 see, the end of the first paragraph says, "This Park
 21 and protected zone cover a strip that reaches inland
 22 125 meters from the shoreline at high tide on the

02:50:05 1 aforementioned beaches in addition to the entirety of
 2 El Morro Hill, the hill behind Ventanas Beach in Isla
 3 Verde."
 4 Do you see that language?
 5 A. Yes, I do.
 6 Q. Doesn't this letter signed by Mr. Carlos
 7 Manuel Rodriguez to the Municipality of Santa Cruz
 8 indicate his understanding and the understanding of
 9 MINAE that the Park extended 125 meters inland?
 10 A. According to this letter, that is what he is
 11 conveying to Dinia Villafuerte.
 12 Q. And this was a month before the meeting
 13 reflected in the Ayuda Memoria. Let us continue.
 14 Please turn to Tab 63.
 15 MR. ALEXANDROV: For the record, this is
 16 Exhibit R-101. The Spanish translation is at 62. At
 17 63 we have the English.
 18 BY MR. ALEXANDROV:
 19 Q. So let's first establish what it is. This is
 20 a letter signed by Minister Carlos Manuel Rodriguez to
 21 the owners of residential homes in Playas Ventanas y
 22 Grande. It is to the neighbors, to the residents of

02:51:29 1 Playa Ventanas and Playa Grande. And the date is
 2 May 5, 2003.
 3 Do you see that?
 4 A. Yes, I see that.
 5 Q. Okay. Let us look at the English, and I'm
 6 looking at the beginning of the second paragraph. Let
 7 me read it into the record. It says--again, this is
 8 addressed to the residents in Playa Grande and Playa
 9 Ventanas and it says, "If you are willing to submit to
 10 the forestry regime based on what is set forth in
 11 Article 37 of the Organic Environmental Law, you could
 12 continue to live indefinitely in the homes you reside
 13 in, even though you are within the 75-meter strip that
 14 was declared to be the Las Baulas Protected Zone and
 15 National Park."
 16 So the gist of the letter is, if you submit
 17 to a certain regime, you may stay in your homes, even
 18 though the Minister says they are within the 75-meter
 19 strip that was declared to be the Las Baulas Protected
 20 Zone and National Park.
 21 I submit to you, Mr. Berkowitz, that this
 22 letter and the previous document that I showed you

02:53:00 1 clearly state the understanding of Minister Rodriguez
2 in May of 2003, that the 75-meter strip was part of
3 the National Park.

4 And I'm asking you, in view of these
5 documents just a month before your meeting and the
6 meeting reflected in the Ayuda Memoria, do you still
7 maintain your testimony that Minister Rodriguez
8 believed that the Park did not extend to the 75-meter
9 zone?

10 A. I cannot testify what Minister Rodriguez
11 believed. I can only testify what he told me. And I
12 can only testify what you've asked me to testify in
13 the Ayuda Memoria where it's clear that he wanted
14 everyone in the private lands to submit to a regimen
15 of responsible development, low density, low impact,
16 low illumination, and that was clear in his Ayuda
17 Memoria.

18 I cannot speak to the fact that there is a
19 seeming--again, I have to say--disparity here between
20 what he wrote in May to two different parts and what
21 he communicated to me in May. So, there is a
22 disparity. And in June when his Ayuda Memoria or in

02:55:35 1 brief break. I'm going to leave it up to you, but I
2 think that we should take a break of ten minutes or so
3 in the course of the next little while. You tell me.
4 I don't want to break the thread of your
5 cross-examination. You tell me when it's going to be
6 convenient.

7 MR. ALEXANDROV: Absolutely. I have one more
8 topic, which hopefully will not take long, and then
9 the thread will break a natural way.

10 PRESIDENT BETHLEHEM: Please proceed.

11 BY MR. ALEXANDROV:

12 Q. So if you could turn to Tab 4, your First
13 Witness Statement, Paragraph 7, where you testify that
14 in early 2003 you purchased a property.

15 A. Tab 4?

16 Q. That is your First Witness Statement,
17 Paragraph 7. We already referred to that paragraph.
18 I'm just coming back to that point.

19 A. Yes.

20 Q. And you testified during the
21 cross-examination that you purchased that property
22 from a company called Corporación Hotelera Playa

02:54:23 1 July when it came out, there is a disparity between
2 what he's communicating and he communicated to me and
3 these letters, which I've never seen until today.

4 So, consequently when you asked me how did I
5 feel, I said on a certain level--and pardon my
6 expression--I felt like I had been bait and switched.
7 I was doing everything I could, very sincerely. I'm a
8 doctor. I wanted to live in harmony with the
9 environment. I served my patients for 20-some-odd
10 years. I'm not a monster to destroy the environment.
11 To the contrary, I've always acted in an exemplary
12 fashion in Costa Rica and very respectful of the Costa
13 Rican commitment to the environment and the Costa
14 Rican people, but there is a disparity here and it's
15 frustrating to me.

16 Q. It was that disparity that I'm referring to.
17 Please turn to Tab 4, which is your First
18 Witness Statement.

19 PRESIDENT BETHLEHEM: Mr. Alexandrov, can I
20 just interject for a moment? At some point I think it
21 is going to be in the best interest of the sanity of
22 everyone and well-being of everyone that we take a

02:56:49 1 Tortuga for the company that you were the general
2 representative, and that company is called Rancho
3 Ecológico Las Baulas. You remember that testimony and
4 our discussion about that point?

5 A. Yes.

6 Q. Okay. And you also confirm that that
7 transaction involved all the B properties, 1-8;
8 correct?

9 A. Yes.

10 Q. Okay. And that was January of 2003; correct?

11 A. Correct.

12 Q. Okay. And, Mr. Berkowitz, is it correct that
13 the document reflecting that transaction stated that
14 the properties were inside of the Park?

15 A. That's incorrect.

16 Q. Is it correct, Mr. Berkowitz, that the
17 document reflecting that transaction provided that
18 you, as the purchaser, would not have a claim against
19 the seller in case the properties were expropriated in
20 the future?

21 A. That is correct.

22 Q. So coming back to the first question, you

02:58:21 1 said it is incorrect that the document provided that
 2 the properties were within the Park?
 3 A. That is an incorrect statement.
 4 MR. ALEXANDROV: Mr. President, at this point
 5 I'd like to make an Application to the Tribunal, I
 6 think it's probably fair to the Witness, and I think
 7 we can take a break after that. I think it's fair to
 8 the Witness if I make that Application in his absence,
 9 so that it doesn't taint his testimony.
 10 PRESIDENT BETHLEHEM: Mr. Cowper, do you have
 11 any comment to that?
 12 MR. COWPER: I think the--is my friend
 13 renewing his Application that was rejected earlier
 14 this week?
 15 PRESIDENT BETHLEHEM: I think let's proceed
 16 on the basis that you--that Mr. Berkowitz is asked to
 17 retire for a moment. You can make that Application to
 18 us then.
 19 Mr. Berkowitz, may we excuse you for a brief
 20 moment and then we will immediately take--
 21 THE WITNESS: If I was asked what it said, I
 22 would be happy to say. But as the question as asked,

02:59:31 1 it's inaccurate. I'm not denying there is verbiage.
 2 But as the question as asked, it is inaccurate.
 3 PRESIDENT BETHLEHEM: I don't know what
 4 Mr. Alexandrov's Application is going to be.
 5 THE WITNESS: Okay.
 6 PRESIDENT BETHLEHEM: And we will immediately
 7 then adjourn for a brief period of ten minutes and
 8 then reconvene.
 9 MR. ALEXANDROV: If I can make the
 10 Application before that so you can consider?
 11 PRESIDENT BETHLEHEM: Yes, indeed.
 12 So, Mr. Berkowitz, we'll excuse you for just
 13 a moment. Thank you.
 14 (Witness leaves the Hearing room.)
 15 MR. ALEXANDROV: Mr. President, I didn't
 16 answer counsel's question because my answer would have
 17 required me to tell you what the Application would be.
 18 Yes, this is a document that was already at issue, and
 19 you ruled that it would not be admissible. I am
 20 renewing the Application to admit it on a somewhat
 21 different ground. Mr. Berkowitz testified about the
 22 existence of this document. I asked him two questions

03:00:43 1 about it; one, whether the purchase agreement provided
 2 that, if there would be an expropriation, the
 3 purchaser would have no claim against the seller. He
 4 remembered that correctly. He, however, said that it
 5 is incorrect that the document said the properties,
 6 B1-8, were inside of the Park. I don't submit that
 7 he's lying. I would like to refresh this recollection
 8 because the document says what it says.
 9 PRESIDENT BETHLEHEM: Mr. Alexandrov, before
 10 I invite Mr. Cowper to make a response, let me just
 11 make sure that I and my colleagues understand the
 12 position correctly and then put a point to you.
 13 So, you are renewing your Application to
 14 introduce into the record the 2003 Sales Contract, the
 15 Application that you made earlier on that we rejected
 16 for purposes of the hearing; is that correct?
 17 MR. ALEXANDROV: That's correct. And I'm
 18 renewing this Application on a different basis.
 19 PRESIDENT BETHLEHEM: I understand that.
 20 Let me ask you, in our pre-hearing telephone
 21 meeting, which was followed then by the correspondence
 22 from the Tribunal of April 7, 2015, we identified in

03:02:09 1 Paragraph 19 of that correspondence, which also
 2 referred to Paragraph 17.3 of Procedural Order
 3 Number 1, that we would want to know the reason why
 4 the material was not previously produced, the asserted
 5 relevance of the material, and of its public
 6 availability. Why was this material not previously
 7 produced?
 8 MR. ALEXANDROV: Because counsel was not
 9 aware of this document until two days before Friday
 10 when the issue came up. We looked for this document
 11 in response to a different issue.
 12 You will recall, Mr. President, that
 13 Claimants sought to update the status of the payments.
 14 You know that our position--and I don't want to
 15 reargue it now. You'll hear argument about that--is
 16 that the purchase price is relevant, and we looked for
 17 documents that we thought should be submitted by
 18 Claimants because those are their Contracts, and we
 19 found this document. We looked for it then because it
 20 became relevant then, at least in our view. We
 21 understand the view of Claimants, that it is not
 22 relevant.

03:03:25 1 When we reviewed this document, and we did
 2 that for the purposes of establishing the purchase
 3 prices for the B1-8 properties, which is why we sought
 4 to submit it in the first place, but then Claimants
 5 withdrew their request to submit the other documents.
 6 We also read the rest of the document obviously, hence
 7 my questions to Mr. Berkowitz, who has actually
 8 testified about this transaction. And the reason I'm
 9 seeking leave to submit this document in the record
 10 now is because he answered the question relating to
 11 the content of this document about which he has
 12 testified.

13 PRESIDENT BETHLEHEM: Right.

14 MR. ALEXANDROV: And I want to--confront is
 15 not the right word, because, again, I'm not suggesting
 16 that he is not telling the truth, but perhaps to
 17 refresh his recollection.

18 PRESIDENT BETHLEHEM: I understand that. Let
 19 me ask you another question. The Respondents and the
 20 Claimants disagreed about the introduction of this
 21 document. In the period prior to that disagreement
 22 crystallizing, there was evidently an exchange between

03:04:36 1 the Parties in which the Parties in line with the
 2 e-mail, I think, from Ms. Cicchetti indicated that you
 3 were seeking to reach agreement and that the Claimants
 4 had not had sight of that document, and one of the
 5 issues they identified was the hardship being away
 6 from their legal base in making an assessment of that
 7 document. Respondent evidently chose not to share
 8 that document with the Claimant. Why not?

9 MR. ALEXANDROV: Mr. President, we applied
 10 that that document be admitted in the record in
 11 compliance with the Tribunal's instructions that the
 12 document not be attached. Subsequent to that, there
 13 were actually no discussions between counsel before
 14 Claimant--

15 MR. COWPER: That's wrong.

16 MR. ALEXANDROV: I'm sorry. Can I finish?

17 PRESIDENT BETHLEHEM: Mr. Cowper, I'll give
 18 you an opportunity.

19 MR. ALEXANDROV: Between--subsequently to
 20 that, Claimants withdrew their documents.

21 PRESIDENT BETHLEHEM: That still I don't
 22 think addresses the question of why when you sought to

03:05:45 1 admit the document and engaging with the Claimant you
 2 didn't provide a copy of the documents to the
 3 Claimants rather than to the Tribunal because the
 4 injunction against identifying the document is to the
 5 Tribunal--why you didn't provide that to the Claimants
 6 just as a matter of courtesy in particular in the
 7 course of the prehearing organizational meeting, and
 8 we identified this in the correspondence of April 7 as
 9 well, the Tribunal indicated that it was going to be
 10 guided by the principle of "no surprises." And the
 11 Tribunal, I should indicate, was struck by the grit
 12 that seemed to enter into the exchanges between the
 13 Parties at around about this time. So I'm wanting to
 14 know why there was not simply an accommodation to
 15 provide that document to the Claimants at that stage.

16 MR. ALEXANDROV: Well, Mr. President, I may
 17 need to consult to reconstruct the whole sequence of
 18 events. But my understanding at the time--and that's
 19 subject to consultation with my colleagues--is that we
 20 applied to the Tribunal to admit this document in
 21 response to documents that Claimants wanted to submit.
 22 We assumed at that time that they had it. After all,

03:07:01 1 as we pointed out, Mr. Berkowitz testified about this
 2 transaction. It is his document with his name on it,
 3 and we assumed that it is in the possession of
 4 Claimants. In fact, as we've argued all along in our
 5 written submission, they should have provided the
 6 purchase Contracts. And we operated on the basis of
 7 that assumption.

8 When we received note that it was difficult
 9 for Claimants to identify the document, before we
 10 could react, we understood that they had already
 11 withdrawn the request for their documents to be
 12 admitted into the record.

13 PRESIDENT BETHLEHEM: They had withdrawn
 14 their requests, but you maintained your request. And,
 15 indeed, it was yesterday morning at the start of the
 16 proceedings that you reminded the Tribunal of your
 17 outstanding requests. So, it would still have been
 18 the case that, with you maintaining your request to
 19 introduce the document, it would have been
 20 appropriate--I put it no higher than that--to provide
 21 a copy of the document to the Claimants, would it not?

22 MR. ALEXANDROV: Mr. President, I don't quite

03:08:07 1 agree. I don't think it would--it is inappropriate
 2 that we didn't provide a copy of the document. One,
 3 they didn't renew their request after they withdrew
 4 their documents, after they withdrew their request to
 5 admit their documents; and, two, again, after all,
 6 it's a document that Mr. Berkowitz has testified
 7 about. So, he has full knowledge of that document,
 8 and he was not sequestered until he took the stand.
 9 PRESIDENT BETHLEHEM: Mr. Cowper, do you have
 10 any observations that you would like to make?
 11 MR. COWPER: I'll try to be brief. In my
 12 submission the course of action that my friend has
 13 taken flies in the face of your procedural orders,
 14 your general direction, courtesies between counsel,
 15 and notions of fair play. We asked on at least two
 16 occasions over the weekend while we were preparing for
 17 this hearing for my friend to send us the document
 18 which he wanted to have admitted. We asked him that
 19 first in response to our Application because you'll
 20 recall my response was, "We'll try to work it out."
 21 They replied and said essentially we assume
 22 you have it. You're not going to get it from us.

03:09:17 1 They then renewed their Application. We noted that we
 2 still hadn't received the document. We are now on the
 3 second day of the hearing. I still don't have it. I
 4 see my friend holding it in various places. That is
 5 unsatisfactory, and it's an unsatisfactory way to then
 6 try to lift by bootstraps and put to a Witness a
 7 document that is not in the record that, hasn't been
 8 given to his counsel, and then when he has an answer
 9 he disagrees with to say, aha, now I can renew my
 10 Application. That is, with respect, totally out of
 11 order.
 12 Now let me say this and that is the proper
 13 approach to this, frankly, for my friend to have done
 14 that, he's stuck with the answer. And he's now said
 15 by my count three times the Witness is telling the
 16 truth. That means the only reason that the document
 17 is coming in is for you to look at the document and
 18 draw a different conclusion. He's foreclosed from
 19 taking that step. The Witness has answered
 20 truthfully. The counsel has now said he accepts that
 21 answer as truthful. It is not a question of
 22 refreshing. It has to be a question of contradiction

03:10:26 1 and in circumstances where we're still without
 2 possession of the document he's about to try to use.
 3 And my submission, that ought to be refused.
 4 And, quite frankly, putting aside any other
 5 doubt, when we received your ruling yesterday, if my
 6 friend--I will say this candidly--there's no way my
 7 friend didn't plan on pursuing this after getting your
 8 ruling. And if he had intended to do that, then he
 9 was required to give us any documents he intended to
 10 use during cross-examination that he would then seek
 11 to enter into--so in my submission, the Application
 12 should be rejected.
 13 PRESIDENT BETHLEHEM: Mr. Cowper, I'm not
 14 going to entertain the sort of speculations as to what
 15 the motivation of counsel for the Respondents is. I
 16 propose that we proceed in the following fashion:
 17 First of all, Mr. Alexandrov, I'd like you to share
 18 that document with counsel for Claimants. I think
 19 it's appropriate that, if you're renewing that
 20 application, that they have sight of that document.
 21 So I think the first step is that you should share a
 22 copy of that document for counsel for Claimants.

03:11:29 1 Second, I'm going to in just a moment invite
 2 Mr. Berkowitz back in before we adjourn for the break
 3 because I'd like to explain to him that the debate
 4 we're having out of his sight or out of his hearing
 5 has to do with the introduction of a document, that it
 6 doesn't have to do with anything that he has said or
 7 done. I think that that's an appropriate reassurance
 8 to give him.
 9 Third, we're going to adjourn for a period of
 10 15 minutes, and I think everybody needs that
 11 adjournment, and the Tribunal will then consider the
 12 Application that you made. And we'll come back and
 13 give you the Response after the adjournment.
 14 MR. ALEXANDROV: Mr. President, very quick
 15 points, not necessarily substantive. The record will
 16 show I didn't say the Witness is telling the truth or
 17 not the truth. It is not up to me to say that. I was
 18 just saying what was consistent and inconsistent with
 19 the document, and I said that in the absence of the
 20 Witness. So, I'm not saying his answers were truthful
 21 or not truthful as represented by counsel.
 22 Second, is--the second point is I don't think

03:12:41 1 it's an appropriate--and speaking of intentions, I
 2 don't think it's appropriate for counsel
 3 cross-examining the Witness to confront the Witness
 4 with a document after the Witness has given an answer
 5 in relation to that document which may not be
 6 consistent with the document. I'm not suggesting I am
 7 planning to impeach Mr. Berkowitz. All I'm saying is
 8 when the Witness gives an answer and there is a
 9 document, even if not in the record, that is different
 10 from the answer the Witness gives, it is not
 11 inappropriate to impeach the credibility of the
 12 Witness by introducing this new document.
 13 And my third point is purely procedural,
 14 Mr. President, which is, after the break, I'm happy to
 15 proceed with my cross-examination on other matters and
 16 leave this aside until you determine what you wish
 17 to--how you wish to proceed.
 18 PRESIDENT BETHLEHEM: Thank you very much.
 19 And let me just clarify then in response,
 20 Mr. Alexandrov, to the points that you've just made.
 21 First of all, we don't take it as any
 22 impropriety in putting to a Witness a point that

03:13:48 1 arises in respect of his or her testimony. So there
 2 is no difficulty there. The issue that arises is in
 3 respect of a document that's not in the record, and
 4 that's a point that we will consider. We appreciate
 5 as well on the--and the record will show--that you did
 6 not make any allegation nor, for that matter, any
 7 admission in respect of the testimony of
 8 Mr. Berkowitz.
 9 So, we will now invite Mr. Berkowitz to come
 10 back in. I will give the brief point of
 11 clarification. Giuliana, just hold on a moment
 12 please.
 13 MR. COWPER: I'm sorry, Mr. President. Just
 14 a point of clarification so that we are operating on
 15 the same text. I go back, Lines 18 to 21, my friend
 16 said a few moments ago, I'm not suggesting that he is
 17 not telling the truth, and he then says, but, perhaps,
 18 it is to refresh his recollection.
 19 My point on that was the introduction of a
 20 document after a Witness has given an answer to obtain
 21 a different answer is a process of confrontation.
 22 It's a process of correction. And my point about that

03:14:54 1 was it is seeking to introduce independent evidence
 2 other than the answer he has received so far. That's
 3 the point I'm making.
 4 PRESIDENT BETHLEHEM: Mr. Cowper, I don't--my
 5 colleagues and I will consider this. I don't think
 6 that there is any impropriety in going back to a
 7 Witness particularly with a document that he may not
 8 have direct mind. Hold on a moment. Mr. Berkowitz
 9 has already testified that there are a number of
 10 documents which are just being drawn to his attention
 11 for the first time. I understand this
 12 cross-examination, which has become argumentative--and
 13 that's not intended as a criticism, just as an
 14 observation--is designed to address questions of
 15 appreciation which are of some difficulty because they
 16 relate to documents on the record which the Witness
 17 has not seen, but they also relate to the Witness'
 18 recollection of a personal meeting that he had with
 19 the Minister. The line of questioning is entirely
 20 appropriate.
 21 The only question that arises now is the
 22 question of an admission of a document that is not in

03:15:55 1 the record, and that's what we'll reflect upon.
 2 So, Giuliana, could you bring in
 3 Mr. Berkowitz, please.
 4 (Witness returns to the Hearing room.)
 5 PRESIDENT BETHLEHEM: While Mr. Berkowitz is
 6 coming in, just for the court reporter, I note that
 7 you are referring to our Tribunal Secretary, as
 8 "Julian." You may wish to correct that.
 9 (Pause.)
 10 PRESIDENT BETHLEHEM: Mr. Berkowitz, I'm
 11 going to come to you in just a moment.
 12 I think there are a number in the room who
 13 have their mobile telephones on, and apparently they
 14 are ringing and being picked up. So, could you please
 15 mute your telephones or turn them off?
 16 Mr. Berkowitz, thank you very much for
 17 excusing us for just a moment, and thank you very much
 18 for coming back in. We're going to take a break in
 19 just a moment, but I wanted you to come back in before
 20 we took this break just to explain to you what's gone
 21 on because I didn't want you to be under any
 22 misapprehension. Counsel for the Respondent sought to

03:17:14 1 make an application to introduce into the record a
2 document that is not in the record. So, it was simply
3 a technical application that he wanted to make. But
4 in your absence, so as not to sort of taint your
5 thinking about it either way, he was not making an
6 application in respect of anything you had said. And
7 I just wanted to give you that reassurance.

8 Put the microphone on when you speak. You
9 can repeat.

10 I will repeat that the Witness simply
11 responded thank you for that consideration.

12 THE WITNESS: Thank you for your
13 consideration.

14 PRESIDENT BETHLEHEM: Thank you.

15 Now, it is now just after 15 minutes past.
16 Let us reconvene--I'm going to suggest a slightly
17 longer break--at 35 minutes past 3:00. That is
18 25 minutes to 4:00. And, Mr. Berkowitz, and also to
19 other Claimants in the room and Claimants' counsel,
20 let me just say for good order that you are still in
21 the Witness seat. Your Declaration remains, as it
22 were, intact, and I would ask you please not to

03:39:58 1 withdrawing the Application.

2 MR. ALEXANDROV: Mr. President, may I just
3 clarify? I was advised of the continued objection by
4 counsel for Claimants to the admission of the
5 document. And in light of that continued objection,
6 after they took a look at the document, we have
7 decided to withdraw the Application and to rely on the
8 testimony given by Mr. Berkowitz without the benefit
9 of the document.

10 PRESIDENT BETHLEHEM: Thank you very much,
11 Mr. Alexandrov. And I simply remind you that our
12 ruling in respect of the document as given yesterday
13 morning then remains the ruling. Excuse me.

14 (Pause.)

15 PRESIDENT BETHLEHEM: Mr. Alexandrov, back to
16 you.

17 MR. ALEXANDROV: Thank you, Mr. President.

18 BY MR. ALEXANDROV:

19 Q. Mr. Berkowitz, we continue.

20 Mr. Berkowitz, when you purchased in early
21 2003 the B Lots, you registered them and the purchase
22 price that you registered for the purchase of the

03:18:31 1 discuss your evidence with your Co-Claimants or with
2 counsel.

3 THE WITNESS: Should I remain here?

4 PRESIDENT BETHLEHEM: You are free to stretch
5 your legs, to do whatever is required for reasons of
6 humanity. We'd just like to have you back in pristine
7 order with the thoughts in your head, not the thoughts
8 in anybody else's head.

9 THE WITNESS: Next door to LA Fitness, a few
10 laps, and come back.

11 PRESIDENT BETHLEHEM: That's entirely it. So
12 we will reconvene in 16, 17 minutes, at 25 to. Thank
13 you very much.

14 (Brief recess.)

15 PRESIDENT BETHLEHEM: Thank you very much.

16 Just before we recommence the
17 cross-examination and I hand over to counsel for the
18 Respondent, let me just note for the record that in
19 the recess, counsel for Claimants and Respondent
20 approached the Tribunal jointly to indicate that they
21 had discussed the issue of the introduction of a new
22 document and that counsel for Respondent was

03:41:19 1 B Lots was half a million colones for each; is that
2 correct?

3 A. I don't have access to the documents that you
4 have in front of you, sir. But if you provide me
5 those, I didn't do the registration. The attorneys
6 did, so...

7 Q. Fair enough. I'll point you to the document.

8 A. Is it in my file here?

9 Q. Yes.

10 A. Okay.

11 Q. Tab 38. We have an English translation and
12 then the Spanish document. You can look at, if you
13 will, the Spanish, or the English, whatever you
14 prefer.

15 Which one are you looking at so I can point
16 you to the page? Are you looking at the English?

17 A. I'm on 38, the first few pages.

18 Q. Okay. Look at Page 2.

19 A. Yes.

20 Q. On top of it--I'm sorry. Yes. So if you
21 look on the second page down, the fifth line from
22 bottom, you see a "Registration date."

03:42:30 1 A. Yes.
 2 Q. 9-22-2003?
 3 A. Yes.
 4 Q. And then two lines or three lines above that
 5 you see "Estimate of price, 500,000 colones."
 6 A. Yes.
 7 Q. I submit to you that this is in relation to
 8 B1. We can verify that, if you have any doubts.
 9 A. No, I have no doubts in what you're stating.
 10 Q. Okay. Shall we go through the same exercise
 11 with respect to B3, 5, 6, 7, 8?
 12 A. It's not necessary.
 13 Q. So you can confirm then that Lots--with
 14 respect to Lots B1, 3, 5, 6 and 8, they were
 15 registered or reported to the registry as purchased
 16 for half a million colones each?
 17 A. Apparently so.
 18 Q. Okay. Let's talk about the administrative
 19 appraisals. You have received administrative
 20 appraisals with respect to each one of B1, 3, 5, 6,
 21 and 8; correct?
 22 A. I believe so, yes. Yes.

03:43:54 1 Q. Yes. Okay. The administrative appraisal for
 2 B1 is 20 million colones plus; is that correct? An
 3 amount exceeding 20 million colones; is that correct?
 4 A. I concur, that sounds accurate.
 5 Q. The administrative appraisal for B3 is
 6 19,900,078 colones; is that consistent with your
 7 recollection?
 8 A. Yes.
 9 Q. The administrative appraisal for B5 is over
 10 20 million colones; correct?
 11 A. Yes.
 12 Q. The administrative appraisal for B6 is
 13 19,900,000 plus, so almost--just almost 20 million
 14 colones; is that correct?
 15 A. Yes.
 16 Q. B8 is in excess of 20 million colones;
 17 correct? The administrative appraisal?
 18 A. Yes.
 19 MR. ALEXANDROV: Okay. And for the
 20 convenience of the Tribunal, I'm saving some time here
 21 walking through the documents, but there are many
 22 documents--well, several documents in the record that

03:45:09 1 I could point to. I think the easiest way for the
 2 Tribunal to refer to those numbers would be Appendix 2
 3 of Claimants' Reply, which, for your convenience, you
 4 can find here behind Tab 8--I'm sorry, Claimants'
 5 Rejoinder, and it's behind Tab 8.
 6 So if you want to refer to those numbers and
 7 have those exact numbers which I have here and can
 8 read into the record but I don't think it's necessary
 9 because you have them.
 10 Q. Mr. Berkowitz, half a million colones, would
 11 that be about, give or take, \$1,000?
 12 A. That's correct.
 13 Q. And if the administrative appraisal is
 14 20 million, give or take, in some cases above
 15 20 million, in some cases just below 20 million
 16 colones, then the administrative appraisal is about 40
 17 times higher than the purchase price; is that correct?
 18 A. Forty times higher than what the purchase
 19 price was registered --
 20 Q. Yes.
 21 A. -- on those books.
 22 Q. Is that correct?

03:46:30 1 A. Of what you're stating. Not the purchase
 2 price, but of 40 times higher than what you're
 3 stating.
 4 Q. Let me ask you two questions in that regard.
 5 Let me ask you, first, is it correct that the
 6 administrative appraisals are approximately 40 times
 7 higher than the purchase price that has been
 8 registered for the B Lots?
 9 A. The purchase price that was registered as
 10 you're reading in the public registry--as was the
 11 tradition of that day--was to register at book value,
 12 the attorneys registered them at book value, does
 13 not--is not a fair rendition of what the purchase
 14 price of the property was.
 15 But they registered at that because that was
 16 very typical for Costa Rican attorneys at the time to
 17 register them at book value rather than the Actual
 18 Value of the escritura.
 19 Q. Mr. Berkowitz, again, you're not answering my
 20 question. Whether the price registered in the
 21 registry is correct or not, my question is whether
 22 that price, the purchase price as reported to the

03:47:45 1 registry, is about 40 times less than the
 2 administrative appraisals for the each of the B Lots?
 3 MR. COWPER: I'm sorry. I object. My
 4 Witness actually did answer one of my--he has answered
 5 all of my friend's questions. And the "40 times" is
 6 just an exercise of mathematics, and I don't want the
 7 Witness to be confused between what we're multiplying.
 8 And I think the Witness has actually answered
 9 because my friend didn't restrict his earlier
 10 question, as I read the transcript, to "as
 11 registered." Because then he asked both questions,
 12 and the Witness was fairly answering both questions.
 13 PRESIDENT BETHLEHEM: I think in the course
 14 of the questions and answers the point has been
 15 clarified. Thank you.
 16 BY MR. ALEXANDROV:
 17 Q. Mr. Berkowitz, my next question is, following
 18 up on your answer: So you are saying that the price
 19 reported to the registry--well, let me not put words
 20 in your mouth because your counsel will object.
 21 You are saying the price reported to the
 22 registry is not the purchase price? Is that what

03:48:43 1 you're saying, the actual purchase price?
 2 A. That is what I'm saying.
 3 Q. What was the actual purchase price for those
 4 Lots?
 5 A. \$1,500,000.
 6 Q. \$1,500,000 for each of the B Lots?
 7 A. No, total.
 8 Q. Total.
 9 Mr. Berkowitz, have you reviewed the Report
 10 of the Damages Expert for Claimants in this case?
 11 A. I read through it. I don't claim to
 12 understand it. It is a bit above my pay grade.
 13 Q. Do you know, Mr. Berkowitz, sitting here,
 14 what the Damages Expert for Claimants stated in their
 15 Report as the purchase price for the B Lots?
 16 A. No.
 17 Q. Okay. When you answered my question about--
 18 A. I don't recall. I'm sure I read it, but at
 19 this point I don't recall. That's my honest answer.
 20 Q. Understood. We'll take that with the Expert.
 21 A. Okay.
 22 Q. I asked you a question about 1.5 million and

03:50:15 1 you said "total." Did you mean total for the 24 Lots
 2 that you purchased in early 2003 or only for the eight
 3 B Lots?
 4 A. My total purchase price for the entire
 5 property was 1.5 million.
 6 Q. So the B Lots would obviously be a portion of
 7 that?
 8 A. That is correct.
 9 Q. Okay. Could you turn to your First Witness
 10 Statement behind Tab 3?
 11 THE WITNESS: Could I ask for a short break?
 12 I was sequestered here during the break. May I take a
 13 short break, please?
 14 PRESIDENT BETHLEHEM: Yes, please do.
 15 THE WITNESS: Sorry for the inconvenience.
 16 (Pause.)
 17 PRESIDENT BETHLEHEM: Thank you. We'll just
 18 wait for counsel for the Respondent.
 19 Mr. Alexandrov.
 20 MR. ALEXANDROV: Thank you, Mr. President.
 21 BY MR. ALEXANDROV:
 22 Q. Mr. Berkowitz, so we established that

03:56:38 1 1.5 million was for the whole property, not just for
 2 the B Lots; correct?
 3 A. Correct.
 4 Q. Okay. Do you recall how much of that was
 5 just for the eight B Lots?
 6 A. It was not a separate Contract.
 7 Q. It was not separate?
 8 A. It was one purchase Contract.
 9 Q. You sold B7 to Mr. Gremillion; correct?
 10 A. Correct.
 11 Q. And you sold it for \$425,000; correct?
 12 A. In that range. I don't have his Contract in
 13 front of me, but it was in the range of 400,000.
 14 Q. Well, I point you to--
 15 A. I can't remember the exact number. It's in
 16 my Witness Statement.
 17 Q. It is in Paragraph 15 of your First Witness
 18 Statement, in fact. So, let's look at that.
 19 A. Which Witness Statement am I in?
 20 Q. First one, which is behind Tab 4, and it's
 21 Paragraph 15. So let's look at the carryover of
 22 Paragraph 15 on Page 5.

03:57:53 1 So you have here towards the end you
 2 say, "Around February and March 2004." Do you see
 3 that?
 4 A. Yes.
 5 Q. "I sold three of my beachfront Lots, Lots B2,
 6 B4, and B7, in order to acquire funds to develop my
 7 other Lots."
 8 Are you with me, Mr. Berkowitz?
 9 A. Yes.
 10 Q. And then you say, "I sold Lot B2 for
 11 \$425,000, Lot B4 for 400,000, and Lot B7 for 425,000."
 12 A. Yes, I see that.
 13 Q. How many Lots was the initial transaction
 14 for, do you recall?
 15 A. Could you be more clear in terms of this
 16 transaction that you're referring to or the total
 17 purchase?
 18 Q. I'm sorry, the initial purchase in January of
 19 2003.
 20 A. 24 Lots.
 21 Q. 24.
 22 And here you sold, as you've testified, three

03:59:06 1 B Lots for a total of \$1,225,000; correct?
 2 A. Correct.
 3 Q. Okay. Please look at Paragraph 20 of this
 4 Witness Statement, the first one. Could you read that
 5 paragraph into the record, please.
 6 A. "Our intention to develop the land," is that
 7 paragraph you're asking for?
 8 Q. Yes, please.
 9 A. "Our intention to develop the land was
 10 finally barred by the issuance of SETENA Resolution
 11 2238 of 2005. The Resolution suspended the
 12 environmental evaluation for all land located within
 13 the 125 meters inland. Therefore, I was deprived of
 14 building the home envisioned for me and my family in
 15 Lot B5, and none of the B Lots that I had originally
 16 purchased could be developed."
 17 Q. Okay. Let's look at Paragraph 46 of the same
 18 Witness Statement, which is on the last page. Let me
 19 read the first sentence into the record, and then I'll
 20 ask you a question about it. You say, "In 2008"--do
 21 you see that?
 22 A. Yes.

04:01:06 1 Q. "In 2008, I was informed of the Supreme
 2 Court's decision by which pursuant to Article 50 of
 3 the Constitution, it ordered MINAE to initiate the
 4 expropriation proceedings of the private property
 5 within the Park and required it to pay compensation
 6 for any undue delay in the expropriation proceedings."
 7 You confirm that testimony, Mr. Berkowitz?
 8 A. Yes.
 9 Q. When in 2008 you were informed, do you
 10 recall? You were informed of the Supreme Court's
 11 decision?
 12 A. I'm not certain whether I knew about it
 13 because it came in around Christmas, as I recall, and
 14 I believe I was on vacation. So, I'm not sure whether
 15 I knew about it around Christmas or whether I--when I
 16 came back in January. But thereabouts, within that
 17 30-day period, I knew about it.
 18 Q. Okay. Have you actually seen it and reviewed
 19 it, or you were just informed of it?
 20 A. I was informed of it. It's in Spanish. It's
 21 a bit technical. I do read Spanish, but it is
 22 somewhat technical.

04:02:14 1 Q. Were you informed also, then, that same
 2 Supreme Court decision also ordered a definite
 3 suspension of the environmental permits inside the
 4 Park?
 5 A. I was informed. I was so informed.
 6 Q. Okay.
 7 MR. ALEXANDROV: For the record, this
 8 decision is Exhibit C-1j.
 9 BY MR. ALEXANDROV:
 10 Q. Can we go back to your First Witness
 11 Statement, Tab 4.
 12 A. Which paragraph?
 13 Q. I haven't yet said, but I will.
 14 A. Oh, okay. I'm sorry. I thought I didn't
 15 hear you.
 16 Q. Tab 4, Paragraph 46: Somewhere in the middle
 17 of the paragraph, we looked at the first sentence.
 18 You're welcome to look at the whole paragraph, but the
 19 sentence--the part of the paragraph I want to draw
 20 your attention to begins with "however."
 21 And you say, "However, it has been more than
 22 six years, and after having the title and possession

04:03:28 1 of my property usurped from me with a complete
2 disregard for this ruling and, for that matter, the
3 country's expropriation law, I was left with no
4 alternative than to seek remedy through international
5 arbitration."

6 Do you see that?

7 A. Yes, I do.

8 Q. And this statement is dated April 21, 2014;
9 correct?

10 A. Correct.

11 Q. So when you say "it has been more than six
12 years," we're looking at 2008 or earlier; correct?

13 A. To 2014, yes.

14 Q. Yes.

15 Behind Tab 6 is your Third Witness Statement.
16 Towards the end, Paragraph 14. And you've testified
17 in the first sentence why you did not file for this
18 arbitration earlier, "because you are hopeful" that
19 the problems--"the confusion and the problems caused
20 by the '95 Law would be rectified"; correct?

21 A. Yes. I was intimately involved in an
22 alternative proposal which we hoped would solve

04:06:21 1 making a point as we came too late, we were also told
2 that, "Don't go too early. Give the host country a
3 chance to show that they are, in fact, sincere and
4 that we will get prompt and adequate compensation that
5 we'll be treated fairly."

6 So, we're not big companies; we're
7 individuals. And so you're asking me to respond to a
8 question, and I'm just coming from the heart. I'm
9 just going to tell you how it feels. It feels like,
10 how do you know when that magic time is; that all of a
11 sudden you throw your hands up in the air and you go,
12 "Hey, I'm paying taxes on a lot of money on these
13 properties, and they're going to pay me
14 \$13-and-some-odd-cents a meter for white beachfront
15 property in front of white sand and this incredible
16 environment?"

17 And that doesn't feel fair. That really
18 feels inequitable. That really felt--and at that
19 point, when it became clear, that is when I felt that
20 there was no good faith on the part of the host
21 country to compensate us appropriately, that I finally
22 made the decision that it was time as a last resort to

04:04:57 1 everybody's problems and save Costa Rica the expense
2 of expropriating and still protect the turtles.

3 Q. Thank you. And this was the reason, you've
4 testified, why you did not initiate this arbitration
5 earlier; correct?

6 A. As a human being, just--do I have? May I
7 speak? As a human being, I find myself damned if I
8 do, damned if I don't. I find myself in between a
9 rock and a hard place. I came in good faith to Costa
10 Rica. I did everything as I promised I would. I was
11 prepared to do everything in good faith to protect the
12 turtles. When--at what point do you know that the
13 host country is not going compensate you in a prompt
14 and adequate matter?

15 At what point does that magical something
16 light up and go, "Okay, I've got to go and spend a
17 huge amount of money to go into international
18 arbitration in order to be able to be paid?"

19 Because if you go too early, then you'll be
20 coming back to me and saying "You didn't give the
21 process enough time to play out, to mature."

22 And so just at the same way that you're

04:07:35 1 go international. It's a very expensive endeavor.

2 Q. Mr. Berkowitz, when you say--and I'm looking
3 at the transcript, "We were also told that, 'Don't go
4 too early. Give the host country a chance to show
5 that they are, in fact, sincere,'" are you referring
6 to legal advice?

7 A. Yes. Extensive legal advice from several
8 different types of attorneys.

9 MR. ALEXANDROV: Mr. President, before I
10 engage in this line of questioning that I'm
11 considering, I want to ask you and opposing counsel,
12 he seems to have waived privilege, and I wonder
13 whether you will permit me to ask.

14 PRESIDENT BETHLEHEM: No, Mr. Alexandrov.
15 I'm not going to take his statement now as a waiver of
16 privilege.

17 MR. ALEXANDROV: Thank you. I'm glad I
18 asked.

19 THE WITNESS: I don't know what any of that
20 means.

21 PRESIDENT BETHLEHEM: Don't worry,
22 Mr. Berkowitz. That is just lawyers talking to one

04:08:42 1 another.
 2 THE WITNESS: Okay. Okay.
 3 MR. ALEXANDROV: That was not a question.
 4 THE WITNESS: It is above my pay grade also.
 5 MR. ALEXANDROV: It wasn't a question to you,
 6 Mr. Berkowitz.
 7 THE WITNESS: Okay.
 8 BY MR. ALEXANDROV:
 9 Q. Mr. Berkowitz, as we established, you have
 10 received administrative appraisals for your B Lots;
 11 correct?
 12 A. Yes. I have.
 13 Q. So the B Lots are now in the--what we refer
 14 to as the "judicial stage"; correct?
 15 A. That is correct.
 16 Q. What this means is that you have objected to
 17 the administrative appraisals and you are disputing
 18 now before the courts of Costa Rica the amount of
 19 compensation for the B Lots; correct?
 20 A. We did dispute up until the Y in the road
 21 when we had to opt for international arbitration. At
 22 that point, we were barred from disputing it any

04:09:31 1 further, and it's at that point that the final
 2 appraisals came in at \$13 a meter, after the Y in the
 3 road.
 4 Q. Okay. Well, you're referring, again, to
 5 legal advice, but I'm not going to seek to understand
 6 what the legal advice is. My point is slightly
 7 different, which is you're no longer in the
 8 administrative process or the phase of the
 9 administrative process. You're--the discussion or the
 10 dispute about the amount of compensation with respect
 11 to the B Lots is before the courts, wherever that
 12 procedure is; correct?
 13 A. I agree with that.
 14 Q. Okay. And then would you agree that any
 15 suspension or delay or whatever you call it relating
 16 to the administrative procedure does not concern your
 17 B Lots?
 18 A. I plead ignorance. I read that one of my
 19 Lots is in delay because of a ruling by the--I
 20 believe, the Contraloría, that they stopped
 21 everything, and I was reading a summary that it's in
 22 delay. I don't know if that's administrative or

04:10:45 1 judicial. I don't know, but one of them is in delay,
 2 and then the rest of them are in judicial.
 3 Q. Which one is in delay?
 4 A. I have to look at my Witness Statements.
 5 Q. Please do. And I'm asking about delay with
 6 respect to the Administrative Procedure.
 7 Maybe I can--you can still look at your
 8 Witness Statement, but let me clarify the question.
 9 Any suspension of the Administrative Procedure after
 10 that was completed with respect to the B Lots would
 11 not affect you; isn't that correct, because the B Lots
 12 are now subject to a judicial procedure?
 13 A. I plead ignorance of the law. Once again,
 14 sir, I believe that all the Lots had administrative
 15 appraisals, and if that means that all the Lots went
 16 into the judicial phase, then they are in the judicial
 17 phase. All I know is that in reading over, one of
 18 them was in "zombie land." One of them was affected
 19 by not going any further. It was in--it's no longer
 20 actively being pursued, and I believe it's Lot B1, if
 21 I'm not mistaken. I believe that's the one, but I
 22 wouldn't--that's by recall.

04:12:12 1 And I don't know if that's
 2 administrative--I'm not trying to avoid your question.
 3 I don't know if it's in the administrative or judicial
 4 phase, but one of them was affected by the ruling that
 5 said nothing else until you finish these 13 points
 6 that was discussed yesterday.
 7 Q. Would you like a minute to consult your
 8 Witness Statement to find where you're talking about
 9 this?
 10 A. I don't think it's on my Witness Statement.
 11 It's from recall. Or maybe it is--may I read it?
 12 Q. Certainly.
 13 A. Okay. I'm sorry.
 14 Q. And, Mr. Berkowitz, I didn't mean to
 15 interrupt. You can still look at your Witness
 16 Statements, but I want to point you to tab--I think it
 17 was 8, which is a document--
 18 PRESIDENT BETHLEHEM: Mr. Alexandrov, I think
 19 if you're affording Mr. Berkowitz an opportunity just
 20 to recollect his memory from reading his Witness
 21 Statement, let's just give him a moment to do so
 22 before you send him to another document.

04:13:16 1 MR. ALEXANDROV: Certainly.
 2 MR. COWPER: Mr. President, if I can be of
 3 assistance, I actually think my friend has a good idea
 4 because the status of Lots are shown on the document
 5 he was going to take the Witness to. I don't object
 6 to that. I think that might--
 7 PRESIDENT BETHLEHEM: That's fine. I would
 8 just like the Witness to have the courtesy of being
 9 able to read through without being drawn to another
 10 document.
 11 MR. COWPER: Yes, of course.
 12 THE WITNESS: I think it's B1, Counsel, on
 13 Number 32, on Page 8 of my Witness Statement. It
 14 says, "Since the second judicial appraisal of 2009,
 15 the expropriation proceeding has not moved forward."
 16 So it's kind of in never-never land, that
 17 lot. So, I think that's the one I'm referring to, but
 18 I don't know if it's judicial or administrative.
 19 Q. I'm sorry; you're referring to your--
 20 A. On my Witness Statement, Page--
 21 Q. The first one?
 22 A. Page 8, Line Number 32, the first line on

04:14:15 1 Page 8.
 2 Q. I'm sorry, which Witness Statement?
 3 A. It's B1. First Witness Statement.
 4 Q. Okay. Paragraph 32?
 5 A. Yes. And it shows the whole process that B1
 6 went through, and then it hit 2009 and nothing. That
 7 would be consistent with what I understand, that there
 8 was some sort of a freeze subject to 13 points being
 9 fulfilled, of which nine have been done.
 10 Q. Okay.
 11 A. Anyway, nothing has happened on Lot B1 since
 12 2009. Whether that's administrative or judicial, I
 13 will leave that up to the Court to determine.
 14 Q. Well the Court will determine every issue in
 15 dispute in this arbitration, but let's focus on what
 16 you are saying, Mr. Berkowitz, and you are
 17 saying--you're beginning this sentence--Paragraph 32
 18 is one sentence, and you're saying "Since the second
 19 judicial appraisal since 2009, the expropriation
 20 proceeding has not moved forward."
 21 So, whatever you are testifying about as
 22 being suspended or in "zombie land," to use your word,

04:15:28 1 it happened after the second judicial appraisal--
 2 A. Yes.
 3 Q. --which means you understand that this is in
 4 the judicial proceeding; correct?
 5 A. That would be consistent with what my Witness
 6 Statement states, yes.
 7 Q. Okay. And so to use your language,
 8 Mr. Berkowitz, none of the B properties are--I'm using
 9 your wording--in the "zombie land" of the
 10 administrative proceedings, they are all--again, I'm
 11 using your language--in the "zombie land" of the
 12 judicial proceeding; correct?
 13 A. Correct.
 14 MR. ALEXANDROV: If I can take just a minute.
 15 PRESIDENT BETHLEHEM: Please do.
 16 BY MR. ALEXANDROV:
 17 Q. Mr. Berkowitz, I still want to ask you to
 18 look at Tab 8, which is a document submitted by your
 19 lawyers.
 20 MR. ALEXANDROV: For the record, it is
 21 Appendix 2 to Claimants' Rejoinder On Jurisdiction.
 22 PRESIDENT BETHLEHEM: We'd like to give the

04:17:50 1 Witness the large copy. It is easier to read.
 2 THE WITNESS: Thank you.
 3 BY MR. ALEXANDROV:
 4 Q. It's in relation to your testimony about
 5 Lot B1. So, if you find Lot B1.
 6 A. Yes.
 7 Q. And you look to the right, the last box that
 8 has yellow and purple, the date is July 31, 2013, and
 9 the exhibit is R-36. You see the column says "appeal
 10 judgment"?
 11 A. Yes.
 12 Q. So, Mr. Berkowitz, is it correct that at that
 13 point in time you, through your lawyer, suspended the
 14 appeal that you had lodged?
 15 A. My belief is--again, I'm not intimately
 16 familiar with the process that my lawyers followed,
 17 but my belief is is that we opted for a Y in the road
 18 where we were forbidden from pursuing any domestic
 19 appeals once we opted to go to international
 20 arbitration. My belief is that that's the truth of
 21 the suspension here, but I don't know.
 22 Q. And, Mr. Berkowitz, just to be clear, I'm not

04:19:33 1 asking you to give me a legal answer as to the legal
 2 grounds. My point is, to the extent that something
 3 was suspended on that date, whether it's in the PO or
 4 a challenge to the appraisal, the point is it was the
 5 choice made by you and your lawyer in view of these
 6 proceedings. It was not a suspension by the
 7 Government of Costa Rica; is that correct?
 8 A. That is correct.
 9 Q. That was my question.
 10 MR. ALEXANDROV: Mr. President, I have no
 11 further questions.
 12 PRESIDENT BETHLEHEM: Thank you very much,
 13 Mr. Alexandrov.
 14 Mr. Cowper.
 15 MR. COWPER: Just a moment, please.
 16 THE WITNESS: That's good because this seat
 17 was getting hot.
 18 (Pause.)
 19 PRESIDENT BETHLEHEM: Mr. Cowper.
 20 MR. COWPER: No questions arising,
 21 Mr. President. Thank you.
 22 PRESIDENT BETHLEHEM: Mr. Berkowitz, there

04:20:37 1 may be a question from the Tribunal. So, let's just
 2 pause there.
 3 You don't have any questions?
 4 ARBITRATOR VINUESA: Yes, I do have just a
 5 question just to know how your lawyers were working on
 6 in Costa Rica.
 7 QUESTIONS FROM THE TRIBUNAL
 8 ARBITRATOR VINUESA: My question relates to
 9 if someone instructs you about the legality of
 10 property registration below real and affected
 11 purchases prices and the impact that this registration
 12 amount implies on taxes you had to pay for property.
 13 It is just a problem of if you were instructed or not.
 14 THE WITNESS: It's a two-phase question. And
 15 the first phase was, to answer your question, I placed
 16 myself in my attorney's hands, and the normal
 17 procedures in Costa Rica of the day were to register
 18 property sales at book value. That's no longer the
 19 case. It was kind of a tradition back then.
 20 And the second answer to your question is, I
 21 voluntarily increased my valuations to be in keeping
 22 with the sales that I made back in 2004, which were in

04:21:49 1 the 400,000 range. I believe that I valued my part--I
 2 filled out the forms and valued my property to the
 3 municipality at \$450,000 per each lot in order to be
 4 in compliance with the sales of the other Lots.
 5 ARBITRATOR VINUESA: And next question is the
 6 payment you went through bank transactions, cash? The
 7 money was coming from the States? American--
 8 THE WITNESS: Bank transactions.
 9 ARBITRATOR VINUESA: From American States?
 10 Sorry, from banks in the United States?
 11 THE WITNESS: I don't think so. I think it
 12 could have been a combination, but if I recall, I
 13 think it was a bank from here.
 14 ARBITRATOR VINUESA: From the States.
 15 THE WITNESS: No. I think it was a Costa
 16 Rican bank. I've been here since 1991. I've been
 17 here a long time.
 18 ARBITRATOR VINUESA: Okay. So you have
 19 accounts in Costa Rica where you place your money.
 20 THE WITNESS: Yes, I do.
 21 ARBITRATOR VINUESA: This is foreign
 22 investment. So, it is money coming from abroad Costa

04:22:51 1 Rica, that's what I'm asking.
 2 THE WITNESS: All of my money came from my
 3 earnings as a chiropractor--
 4 ARBITRATOR VINUESA: Okay. Fine.
 5 THE WITNESS: --post-tax dollars.
 6 ARBITRATOR VINUESA: Okay.
 7 THE WITNESS: Yes.
 8 ARBITRATOR VINUESA: Thank you.
 9 THE WITNESS: Thank you.
 10 PRESIDENT BETHLEHEM: Mr. Berkowitz, just a
 11 number of questions from me just to clarify some
 12 points. The first one I don't think is really a
 13 question, but just to ask you to confirm, you began
 14 your testimony by stating that you do not dispute that
 15 Costa Rica has a right to expropriate. So I just want
 16 to be clear about that.
 17 THE WITNESS: I don't dispute that Costa Rica
 18 is a sovereign country. I don't dispute that Costa
 19 Rica has the right to declare any property of public
 20 interest. I'm completely respectful of that. If they
 21 want to put a freeway through someone's farm, they
 22 have the right to do so. If in their wisdom they

04:23:42 1 determine that expropriating 75 meters of my property
 2 is going to save the species of the baulas turtle,
 3 then I certainly wouldn't oppose that. I completely
 4 respect that right.
 5 PRESIDENT BETHLEHEM: Thank you. You gave
 6 some evidence about your meeting with the Minister in
 7 2003, and counsel for the Respondent, Mr. Alexandrov,
 8 took you to letters from the Minister subsequent to
 9 your meeting, which you indicated you were seeing or
 10 at least paying attention to for the first time.
 11 Can I just confirm that that was the first
 12 time that you had paid attention to those letters?
 13 THE WITNESS: This is the first time I've
 14 seen the letters.
 15 PRESIDENT BETHLEHEM: First time you've seen
 16 the letters.
 17 THE WITNESS: No less pay attention to them.
 18 PRESIDENT BETHLEHEM: This may seem to be a
 19 strange question, but I'd just like to have a clear
 20 sense of what your answer is. You placed reliance on
 21 what the Minister said to you in your meeting as you
 22 recounted it; is that correct?

04:24:45 1 THE WITNESS: That is correct.
 2 PRESIDENT BETHLEHEM: Why did you place
 3 reliance on what the Minister said to you?
 4 THE WITNESS: He had good eye contact with
 5 me. He was a sincere individual. He seemed to be an
 6 individual of exceptionally good faith. We were both
 7 surfers. He came in with a passion to try and solve
 8 the dilemma of not costing his country--not putting
 9 his country into the position of having to spend a lot
 10 of money in order to expropriate property when it was
 11 possible that there was an alternative where all the
 12 owners would adhere to a zoning regulation and
 13 everyone could have their cake and eat it too. And I
 14 believed he fervently believed that that was possible.
 15 PRESIDENT BETHLEHEM: I understand from what
 16 you just said and from your testimony earlier that you
 17 believed the Minister because it was a good meeting, a
 18 personal meeting. But from your testimony, you also
 19 indicated that he was not in a position to put
 20 anything down in writing, and you made reference to
 21 the directive of the minutes that came subsequently.
 22 So my question was really trying elicit whether you

04:25:55 1 felt that you had enough because of the personal
 2 dimension of the meeting, notwithstanding that there
 3 were going to be no formalities that followed, that
 4 you would rely on what he said.
 5 THE WITNESS: I did. I chose to--and I own
 6 that. I chose to rely on what he said. I believed
 7 him. I proceeded in good faith. I saw him as an
 8 individual of good faith, very intelligent, capable.
 9 He seemed exceptionally sincere, and I am
 10 exceptionally sincere. And I just said, okay. I'm
 11 going to believe him, and I'm going to pull the
 12 trigger. I'm going to buy this property.
 13 PRESIDENT BETHLEHEM: You had no subsequent
 14 meetings with the Minister? It is just this one that
 15 you've recounted in your evidence?
 16 THE WITNESS: That's correct.
 17 PRESIDENT BETHLEHEM: Just two, then, last
 18 questions, and this is really in an attempt on my part
 19 to try to disentangle some of the aspects of the
 20 evidence that we've heard, and the entanglement may
 21 only be in my mind rather than anyone else's mind. I
 22 understood from your evidence that you are of the view

04:27:05 1 that the expropriation of property only crystallizes,
 2 only becomes good, if you like, once the payment of
 3 compensation is made, once the process is complete; is
 4 that correct?
 5 THE WITNESS: I'm fervently of that opinion.
 6 PRESIDENT BETHLEHEM: So, in circumstances in
 7 which property is taken or diminished in value but the
 8 payment has not been made--and I'm not asking you for
 9 a legal answer because the legal answer may very well
 10 be different--but it would be your lay understanding
 11 that the expropriation has not been completed; is that
 12 correct?
 13 THE WITNESS: That is absolutely correct.
 14 PRESIDENT BETHLEHEM: And then in respect of
 15 the Park, from your evidence I understand you to
 16 understand--so, I think this is a question of
 17 appreciation, again, rather than a question of
 18 law--that it is your appreciation, your understanding
 19 that the boundaries of the Park change as property is
 20 expropriated and added to it, and that, therefore,
 21 your understanding is that the properties are not part
 22 of the Park until the expropriation is complete and

04:28:25 1 the compensation is paid. Am I understanding your
 2 position correctly?
 3 THE WITNESS: There are two answers. One
 4 answer is what the Law 7524 states. The Law 7524
 5 states when the properties are expropriated, they
 6 become the Park. And then there's the Costa Rica law
 7 of expropriation, which says expropriation doesn't
 8 occur until we're paid. So how do you reconcile those
 9 two?
 10 Essentially that's why I'm fervently of the
 11 opinion that until we're paid, it is not, as you say,
 12 crystallized. We need to--the act has to happen. We
 13 need to be paid, and then everything else follows, and
 14 the expropriation is terminated. The title can be
 15 transferred because we've been paid. We have not been
 16 paid.
 17 PRESIDENT BETHLEHEM: I'm really just trying
 18 to clarify, and, perhaps, there is no clarification to
 19 be had. But on the exchanges that you had with
 20 Mr. Alexandrov where he was taking you to the stamps
 21 which indicated the understanding of the Ministry that
 22 the property was part of the Park, and your response

04:29:41 1 to him was, no, your understanding is that property
 2 was not part of the Park. And I'm really just trying
 3 to understand whether your appreciation arises from
 4 your understanding that property only becomes part of
 5 the Park once the expropriation is complete.
 6 THE WITNESS: That's what I've read and my
 7 attorneys have put in front of me in terms of my
 8 protection under Costa Rican Law is that I have
 9 protection, and that's exactly what I've read is that
 10 that--exactly what you've stated, until we're paid,
 11 the expropriation has not crystallized and it's not a
 12 completed act, as I've read in this and that
 13 absolutely that is my belief.
 14 PRESIDENT BETHLEHEM: Well, Mr. Berkowitz,
 15 thank you very much. This has been a long evidence
 16 session on your behalf. The Tribunal is very
 17 grateful, indeed, for your time.
 18 THE WITNESS: Thank you. I'm honored that
 19 you heard me, and I've waited a long time to have my
 20 day in court. Thank you very much.
 21 PRESIDENT BETHLEHEM: Thank you.
 22 (Witness steps down.)

04:30:52 1 PRESIDENT BETHLEHEM: May I ask counsel for
 2 both sides, we have one more witness of fact on behalf
 3 of Claimant. I don't know where Dr. Rusenko is,
 4 whether he's--
 5 MR. COWPER: He's standing by.
 6 PRESIDENT BETHLEHEM: He's standing by.
 7 Mr. Alexandrov, if we can complete that--if
 8 we can complete Dr. Rusenko's evidence today, and I
 9 appreciate that this may be asking how long is a piece
 10 of string--but it would be desirable to try and
 11 complete that evidence today. So, the question to you
 12 is, do you think that you are likely to--I'm not going
 13 hold you to this--but likely to need more than the
 14 time that we've got before the end of the session?
 15 MR. ALEXANDROV: Can we have a brief
 16 discussion with the Tribunal and counsel off the
 17 record so that I can answer that question to the best
 18 of my ability?
 19 PRESIDENT BETHLEHEM: Yes, please do so.
 20 So, we will suspend the session just for a
 21 few minutes and have a brief conversation.
 22 (Brief recess.)

04:31:58 1 KIRT RUSENKO, CLAIMANTS' WITNESS, CALLED
 2 PRESIDENT BETHLEHEM: Thank you very much.
 3 Dr. Rusenko, welcome. You have in front of
 4 you a witness declaration. I would be grateful if you
 5 could read that. And I should say--because I think
 6 this is the first time you've been in the room. Let
 7 me introduce myself. I'm Daniel Bethlehem, sitting in
 8 the chair for these proceedings. To my right--your
 9 left--is Mark Kantor, and on my left--your right--is
 10 Raúl Vinuesa as the Tribunal. Opposing counsel, the
 11 Respondents, are to your right, Mr. Alexandrov and his
 12 team.
 13 Now, with that, I would be grateful if you
 14 could read the Witness declaration, and then we'll go
 15 on to the examination-in-chief.
 16 THE WITNESS: Okay. I solemnly declare upon
 17 my honor and conscience that I shall speak the truth,
 18 the whole truth, and nothing but the truth.
 19 PRESIDENT BETHLEHEM: Thank you very much.
 20 Mr. Cowper.
 21 MR. COWPER: Thank you, Mr. President.
 22 DIRECT EXAMINATION

04:43:48 1 BY MR. COWPER:
 2 Q. And Dr. Rusenko, we have your Witness
 3 Statement before you, and so I won't be taking you
 4 through your Witness Statement, but it's useful,
 5 perhaps, to simply tell the Tribunal what you do for a
 6 living. What's your professional qualification and
 7 calling?
 8 A. I am the marine conservationist for the City
 9 of Boca Raton, in Florida, and I'm the principal
 10 marine turtle permit holder for the city and have been
 11 for 19 years. I have more experience with sea turtles
 12 as well, but I'm responsible for all the sea turtle
 13 monitoring, stranding and salvage, and other
 14 activities within the city, such as construction
 15 permits and lighting issues.
 16 Q. And just to ask you the obvious question,
 17 does Boca Raton have nesting turtles?
 18 A. Boca Raton is actually one of the most
 19 densely nested urban areas in Florida. In the last
 20 few years, we've had upwards of about 1,000 or more
 21 nests in our five-mile area or eight-kilometer area.
 22 Q. Now, you traveled to Costa Rica in the summer

04:44:58 1 of 2007, and what I'd like you to communicate to the
 2 Tribunal--and you've said this in your Witness
 3 Statement--but summarize what you found when you went
 4 to Costa Rica by way of the beaches at Playa Grande
 5 and Playa Ventanas and what measures you concluded
 6 would have to be considered for protecting the sea
 7 turtle nesting capacity in that area.
 8 A. When I arrived in Playa Grande, the very
 9 first thing I noticed was Tamarindo, and that scared
 10 me an awful lot. Here was a city that just appeared
 11 almost out of nowhere, and that's an example of
 12 development you definitely don't want to see in that
 13 area. Playa Grande itself was very sparsely developed
 14 when I was there in 2007, low houses, lots of
 15 vegetation. It's really a beautiful area. The beach
 16 was just gorgeous.
 17 Seeing the difference between Tamarindo and
 18 Playa Grande, I thought that the people that had asked
 19 me to come to Playa Grande were reaching out to me to
 20 help develop a code of development that would allow
 21 them to develop without affecting nesting on the
 22 beaches of Playa Grande, and for that, I definitely

04:46:31 1 pointed out that Tamarindo is not the direction you're
 2 going in, because if you are, I'm not going to be
 3 here.
 4 But they were very--they were okay with
 5 having height restrictions, having minimum lot sizes.
 6 We did not want that area to just--there is so much
 7 wildlife there beyond turtles, the howler monkeys, and
 8 the birds and everything. It's an area that we don't
 9 want to see damaged or destroyed. So, it's really
 10 more than just the turtles. It's--the whole area is
 11 just something that really needs to be preserved.
 12 Q. Okay. Now, in 2009, did you--I'm sorry, at
 13 one point you met with President Arias?
 14 A. Yes. That was 2007, I believe.
 15 Q. Okay. I'm sorry. So before we get there,
 16 then, did you address the question of development
 17 behind the beach, assuming that the 50-meter zone was
 18 the only actual protection? And what was your advice
 19 in that respect?
 20 A. Yeah. At the time, my understanding was that
 21 the 50-meter zone was not to be violated whatsoever,
 22 and the other properties were beyond that, and in

04:47:55 1 areas where the 50-meter zone was heavily vegetated,
 2 that would be good to block any activity or lighting,
 3 bad lighting, if they had any, from the beach. So,
 4 that would have been a good thing.
 5 I suggested that they start replanting the
 6 northern end, where some of the houses had
 7 actually--either the vegetation was naturally taken
 8 out, or somehow the development itself removed the
 9 vegetation, but my suggestion was to revegetate that
 10 area within the 50-meter zone.
 11 Q. Okay. And was your discussion about
 12 development contemplating that there would be
 13 development beyond the 50-meter zone?
 14 A. My experience has been that, if there's an
 15 area that people are interested in, it is going to end
 16 up being developed if nothing is done, so there do
 17 need to be controls.
 18 Q. Okay. And just briefly, tell the panel what
 19 controls you had in mind by way of a development code
 20 then?
 21 A. Most of my expertise was in lighting, so I
 22 definitely had suggestions as to what not to do for

04:49:06 1 lighting. They actually took me around to a few of
 2 the properties at the north end, and I did point out
 3 some of the houses that had lighting that was
 4 potentially harmful to the beach and was really
 5 useless.
 6 They brought out a plan they were working on
 7 that talked about no more than one or two stories
 8 closer to the 50-meter zone, and as they moved back
 9 away from the beach, the height restriction would go
 10 up to maybe three stories, but nowhere beyond that.
 11 So no high-rises, no big building complexes. So,
 12 that's pretty much where we were going with that.
 13 I also talked about minimum lot size. We
 14 didn't want it packed in with these tiny little lots
 15 where you could barely fit a structure on. And, also,
 16 within that lot size, there was a maximum area that
 17 they could build a building on so that there would be
 18 vegetation around that.
 19 Q. Okay. And then just moving on to 2009--and
 20 we do have your Witness Statement, but what was your
 21 involvement with the issue of development in and
 22 around that Park in 2009?

04:50:25 1 A. In 2009, to the best of my recollection, we
 2 were honing the Code, trying to make people understand
 3 that something like that would at least keep a
 4 "Tamarindo" from happening once more, and a lot of it
 5 was talking to some of the people that were there and
 6 also viewing other properties in the area that had
 7 been developed. And in most cases, big development
 8 projects I saw in the area did not really come out
 9 good.
 10 MR. COWPER: These are my questions,
 11 Mr. Chairman.
 12 PRESIDENT BETHLEHEM: Thank you very much.
 13 Mr. Alexandrov.
 14 MR. ALEXANDROV: Thank you, Mr. President.
 15 CROSS-EXAMINATION
 16 BY MR. ALEXANDROV:
 17 Q. Good afternoon, Dr. Rusenko.
 18 A. Good afternoon.
 19 Q. You weren't in the room when I introduced
 20 myself on Monday, so let me introduce myself. My name
 21 is Stanimir Alexandrov. Our team represents the
 22 Republic of Costa Rica, and I'll be asking you a few

04:51:36 1 questions relating to your Witness Statements. We
 2 will distribute the binder with a couple documents
 3 that we will be referring to.
 4 (Pause.)
 5 BY MR. ALEXANDROV:
 6 Q. Tab 1 and 2 of the binder are your First and
 7 Second Witness Statements, Dr. Rusenko. I just want
 8 to confirm your testimony which you've given and you
 9 gave a moment ago on direct, that you're employed as a
 10 marine biologist by the City of Boca Raton, in
 11 Florida?
 12 A. That's correct.
 13 Q. Can you look at your Second Witness
 14 Statement, Tab 2, Paragraph 2, please.
 15 A. Yes, sir.
 16 Q. I'll ask you to read that paragraph into the
 17 record, please.
 18 A. "Rotney Piedra is a respected sea turtle
 19 biologist with many outstanding years of experience,
 20 and I am happy to say that we see eye-to-eye on most
 21 of the facts. With this statement, I will focus on
 22 the areas which we do not appear to share consensus."

04:53:30 1 Q. Thank you. I am not a scientist, I'm only a
 2 lawyer. And I will--when I make representations to
 3 you, I may not be quite accurate, so please bear with
 4 me. But as I understand the gist of your testimony,
 5 what you're saying is, urban development may be
 6 harmful to the nesting of the turtles, and, in fact,
 7 in most cases, is unless it is careful and strictly
 8 controlled. Is that generalization more or less
 9 correct?
 10 A. It's very close to being correct, yes.
 11 Q. Okay. And then you're saying, as I
 12 understand it, that, if urban development is careful
 13 and strictly controlled, then expropriation may not be
 14 necessary because some urban development consistent
 15 with the standards of protection may be allowed. Is
 16 that more or less correct?
 17 A. Yes, sir.
 18 Q. Now, there has been a dispute about the areas
 19 of the Park and all that, and I'm not going to get
 20 into that, but if we assume that the Government of
 21 Costa Rica decided, in addition to the 50-meter public
 22 zone, to expropriate private properties in the

04:54:55 1 adjacent 75-meter strip, that would mean, presumably,
 2 that no further urban development would be allowed in
 3 that area; right?
 4 A. Correct.
 5 Q. And so in a way, would you agree that,
 6 whether or not it's necessary, the Government of Costa
 7 Rica is going a little bit beyond of what you call a
 8 strict and--well, strictly controlled urban
 9 development in saying "I would not want to see any
 10 development in that area to protect the turtles"?
 11 A. Yes.
 12 Q. What I'm trying to understand is, your
 13 position is that that is not necessary because there
 14 are other ways to protect the turtles, but, as I
 15 understand from your testimony, you do agree that
 16 expropriating private property within the 75 meters is
 17 a measure that does protect the turtles?
 18 A. That's correct.
 19 Q. So, in a way, it is a stronger measure than
 20 controlling development. It may be unnecessarily
 21 stronger, but it is stronger?
 22 A. It is stronger, but you need still need to

04:56:19 1 control development beyond that 125 meters.
 2 Q. So, you're saying in addition to whatever is
 3 done within the 75 meters, whether a prohibition of
 4 urban development or strict control, you need to do
 5 more than beyond the 125 meters?
 6 A. That's correct.
 7 Q. Could you turn to Tab 1, which is your First
 8 Witness Statement, Paragraph 7.
 9 A. Yes, sir.
 10 Q. At the end of that paragraph, you're
 11 describing here a discussion you had with Ms. Ana
 12 Facio, and you say, "I also told her that development
 13 restrictions alone would not necessarily be the only
 14 answer suggesting that the public educational facility
 15 should be developed to teach tourists and residents in
 16 the area about the importance of the beach and its
 17 surroundings for sea turtles and other wildlife in the
 18 area."
 19 Do you see that?
 20 A. That's correct.
 21 Q. To your knowledge, does the Park staff headed
 22 by Mr. Piedra engage in such an educational effort

04:57:34 1 with tourists and residents?
 2 A. They do on a smaller scale from what I'm
 3 talking about.
 4 Q. Okay. Could you turn to Tab 5?
 5 MR. ALEXANDROV: For the record, that is
 6 Exhibit C-70.
 7 BY MR. ALEXANDROV:
 8 Q. Now, that's a letter from you to Minister
 9 Jorge Rodriguez. That's the Minister of MINAE?
 10 A. Right.
 11 MR. ALEXANDROV: For the record, Members of
 12 the Tribunal, that is not Carlos Manuel Rodriguez but
 13 Minister Jorge Rodriguez.
 14 BY MR. ALEXANDROV:
 15 Q. The date is August 27, 2009; correct?
 16 A. Correct.
 17 Q. In this letter--well, you are attaching to
 18 this letter your responses to the Minister's
 19 questions; correct?
 20 A. Yes, sir.
 21 Q. So as you've testified--the Government of
 22 Costa Rica, through the Minister, engaged in a

04:58:35 1 discussion with you on what you considered the
 2 appropriate measures to protect the turtles?
 3 A. That's correct.
 4 Q. Do you have any reason to doubt, Dr. Rusenko,
 5 that the Government of Costa Rica was willing and
 6 interested in making a genuine effort to protect the
 7 turtles?
 8 A. No, I don't.
 9 Q. Let's look at some of the responses you've
 10 given. If you look at--we have--if you look at the
 11 top right-hand side corner, we have Page X of Y. I
 12 want to refer to those page numbers to avoid
 13 confusion. So I'm asking you to refer to Page 5 of
 14 12. At the very bottom, the paragraph at the bottom,
 15 you have stated--you see the text that begins with
 16 "development that occurs"?
 17 A. Yes.
 18 Q. Could I impose on you to read that, the text
 19 that begins with that through the end of the
 20 paragraph, please?
 21 A. "Development that occurs under well-enforced
 22 environmental codes or laws will insure that the

05:00:07 1 environment and the development can coexist in the
 2 future to the benefit of Costa Rica. It is important
 3 to maintain large areas of pristine park for many
 4 species of wildlife in Costa Rica; smaller, more
 5 fragmented parts are not effective for many types of
 6 wildlife that require large forage areas. In the case
 7 of Playa Grande, only a narrow strip of beach is
 8 national park area, which is fine for the sea turtles
 9 that go to sea to forage. Controlled, low-impact
 10 development as described in the bill of law can ensure
 11 protection of the nesting beach and protection of many
 12 native species of plants and animals that make use of
 13 this dry forest."
 14 Q. Could I ask you--so you're saying large areas
 15 of pristine park for many species is necessary?
 16 A. Correct.
 17 Q. And fragmented parks are not effective in
 18 many cases?
 19 A. That's correct.
 20 Q. Did you consider Playa Grande a large area of
 21 pristine park or a fragmented park? Did you put it
 22 into one of those two categories?

05:01:21 1 A. As it exists right now, it's an important dry
 2 forest area. I would say in respect to the size and
 3 dry forests in the area, that it would be a large
 4 park. It also has a very nice estuary to the south of
 5 it with beautiful growth of mangroves which, again, is
 6 a very important area to protect.
 7 Q. And it's your concern that urban development
 8 could bring it to a situation, if it were to be
 9 allowed, would bring it to a situation that you
 10 consider disastrous in the neighboring towns such as
 11 Tamarindo?
 12 A. That's correct.
 13 Q. If I can ask you--we're still in the same
 14 document--to turn to Page 8 of 12. And I'm looking at
 15 Section 6, and the text below that. So, you're
 16 saying--I'm reading now from that
 17 paragraph, "Obviously, the more land available for any
 18 park, the better it would be for the wildlife of that
 19 park. Unfortunately, the 75-meter strip has been
 20 disputed from the Park's beginning resulting in
 21 confusion and so far a small-scale development in the
 22 Playa Grande area."

05:02:52 1 And you find that bothersome; correct,
 2 Dr. Rusenko?
 3 A. Correct.
 4 Q. Let's look at the end of that paragraph.
 5 When you say "residents are strictly not allowed on
 6 the beach at night," and then you say, "I was asked to
 7 leave the beach while photographing the lights of
 8 Tamarindo on three separate occasions." So, you--it
 9 is your testimony that there is enforcement on the
 10 beach, at least, where tourists or visitors are asked
 11 not to be there at night?
 12 A. Correct.
 13 Q. Do you know that this enforcement effort is
 14 made by the Park rangers led by Mr. Piedra?
 15 A. Yes, I do.
 16 MR. ALEXANDROV: No further questions,
 17 Mr. President.
 18 PRESIDENT BETHLEHEM: Thank you very much.
 19 Let me just see whether any of my colleagues want to
 20 ask questions.
 21 Dr. Rusenko, thank you very much. We have no
 22 further questions for you. Thank you very much for

05:04:05 1 your assistance to the Tribunal.
 2 THE WITNESS: Thank you, sir. I appreciate
 3 it.
 4 PRESIDENT BETHLEHEM: My apologies. I jumped
 5 straight ahead before you go.
 6 MR. COWPER: Nothing arising. Thank you,
 7 Mr. President. Thank you, Mr. Vinuesa.
 8 PRESIDENT BETHLEHEM: My apologies to
 9 Claimants' counsel for missing that.
 10 Thank you very much, Dr. Rusenko.
 11 THE WITNESS: Thank you.
 12 (Witness steps down.)
 13 PRESIDENT BETHLEHEM: To both Parties, I
 14 think that concludes the agenda that we wanted to
 15 cover for today. We'll finish a little bit early now.
 16 We start tomorrow at 9:30, and we have Respondent's
 17 fact witnesses. My understanding is that the
 18 Respondent's fact witnesses are going to be testifying
 19 in Spanish, so that will be done through
 20 interpretation.
 21 Just to note for the room as a whole, we've
 22 given latitude--the Tribunal has given latitude to the

05:05:13 1 Parties, if there is time available tomorrow, at least
 2 a reasonable block of time available tomorrow, to use
 3 that time to respond to the questions from the
 4 Tribunal, but we will reassess that tomorrow to see
 5 whether that time will be well spent or whether you
 6 simply to want reserve that until Friday.

7 I think with that, let me thank everyone
 8 here, the interpreters, the reporters, thank you very
 9 much, and we will adjourn until tomorrow morning.

10 (Whereupon, at 5:06 p.m., the Hearing was
 11 adjourned until 9:30 a.m. the following day.)

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CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter,
 do hereby certify that the foregoing proceedings were
 stenographically recorded by me and thereafter reduced
 to typewritten form by computer-assisted transcription
 under my direction and supervision; and that the
 foregoing transcript is a true and accurate record of
 the proceedings.

I further certify that I am neither counsel
 for, related to, nor employed by any of the parties to
 this action in this proceeding, nor financially or
 otherwise interested in the outcome of this
 litigation.

Dawn K. Larson
 DAWN K. LARSON