

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 4

HEARING ON THE MERITS AND JURISDICTION

Thursday, April 23, 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:

MS. GIULIANA CANÈ  
Secretary to the Tribunal

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C O N T E N T S

PAGE

PRELIMINARY MATTERS:

WITNESSES:

MICHAEL HEDDEN

Direct examination by Ms. Cohen	716
Cross-examination by Ms. McCandless	747
Redirect examination by Ms. Cohen	820
Questions from the Tribunal	822

BRENT KACZMAREK

Direct examination by Ms. McCandless	864
Cross-examination by Ms. Cohen	889
Questions from the Tribunal	967

09:32:33 1 don't manage to answer the Tribunal's questions, we'll  
 2 take time out of our closing, because we believe  
 3 addressing the Tribunal's questions is the most  
 4 important task of counsel.  
 5 If there is time today and the Tribunal is  
 6 willing to hear from us today, we'll be ready to take  
 7 additional time. If not, we'll deal with the time  
 8 allotted to us tomorrow.  
 9 PRESIDENT BETHLEHEM: Thank you. As I  
 10 indicated yesterday, if we have time today, we'll  
 11 certainly be happy to give that over to the Parties'  
 12 responses to the questions.  
 13 So I think, without more ado, then, I think  
 14 we have the start of the Expert evidence today. We  
 15 have Mr. Hedden, I believe.  
 16 MICHAEL P. HEDDEN, CLAIMANTS' WITNESS, CALLED  
 17 PRESIDENT BETHLEHEM: So, Mr. Hedden, I  
 18 invite you to take the Witness seat, please.  
 19 Good morning, Mr. Hedden. My name is Daniel  
 20 Bethlehem. I'm presiding in these proceedings. To my  
 21 right, your left, we have Mark Kantor. To my left,  
 22 your right, we have Raúl Vinuesa. The counsel, whom

P R O C E E D I N G S

1  
 2 PRESIDENT BETHLEHEM: Let's then make a  
 3 start.  
 4 Before we invite the Witness into the Witness  
 5 seat, let me just return to the issues we closed with  
 6 yesterday on timing. And I ask both Parties whether  
 7 you've had any further thoughts about timing for  
 8 tomorrow, Friday. As regards the rest of today, we  
 9 will wait and see how that progresses.  
 10 The point I put to you both is whether you  
 11 thought that the extra half an hour, or effectively 45  
 12 minutes, of time during your closing submissions would  
 13 be sufficient for you to be able to address the  
 14 questions of the Tribunal, or whether you thought you  
 15 needed more time.  
 16 Mr. Cowper.  
 17 MR. COWPER: We won't require more time.  
 18 PRESIDENT BETHLEHEM: Mr. Alexandrov.  
 19 MR. ALEXANDROV: Mr. President, we appreciate  
 20 the Tribunal's willingness to give us that  
 21 opportunity, and we'll take the time that the Tribunal  
 22 is willing to give us, and we'll do our best. If we

09:33:36 1 you don't know, I'm sure, will introduce themselves  
 2 when they have an opportunity to do so.  
 3 You have a witness declaration sheet in front  
 4 of you. I'll be grateful if you would read that into  
 5 the record, please.  
 6 THE WITNESS: Yes, sir.  
 7 PRESIDENT BETHLEHEM: You'll have to press  
 8 the microphone each time you speak, please.  
 9 THE WITNESS: I solemnly declare upon my  
 10 honor and conscience that I shall speak the truth, the  
 11 whole truth, and nothing but the truth.  
 12 PRESIDENT BETHLEHEM: Thank you very much.  
 13 Ms. Cohen.  
 14 DIRECT EXAMINATION  
 15 BY MS. COHEN:  
 16 Q. Good morning, Mr. Hedden.  
 17 A. Good morning.  
 18 Q. You have in front of you a number of binders  
 19 and documents. If you could look first at the two  
 20 white binders, and Volume 1 of the white binder, at  
 21 the first tab?  
 22 PRESIDENT BETHLEHEM: May I just ask, do we

09:34:32 1 have the binders?  
 2 MS. COHEN: I apologize. This is his Expert  
 3 Report, so I did not intend to hand out new copies of  
 4 the Expert Reports.  
 5 PRESIDENT BETHLEHEM: Sure. No problem.  
 6 THE WITNESS: Yes.  
 7 BY MS. COHEN:  
 8 Q. And at Tab 1 of the Expert--sorry, of the  
 9 white binder, I believe is your Expert Report dated  
 10 April 23, 2014. Is that correct?  
 11 A. Yes, it is.  
 12 Q. And does this--do these two binders  
 13 constitute the entirety of your First Report in  
 14 relation to the matters in issue in this proceeding?  
 15 A. Yes, it does.  
 16 Q. Subject to any clarifications that you may  
 17 make in the course of your direct evidence this  
 18 morning, does it accurately reflect your Opinion on  
 19 the appraisal of the subject Lots in issue in this  
 20 proceeding?  
 21 A. Yes.  
 22 Q. And if I could ask you to look at the

09:35:31 1 Cerloxed volume in front of you. The paper-clipped  
 2 copy in front of you, I believe, is your Second Report  
 3 in relation to this proceeding, and it is dated  
 4 October 1, 2014.  
 5 Do you have that?  
 6 A. Yes.  
 7 Q. And does this constitute your Second Report  
 8 prepared in the course of these proceedings?  
 9 A. Yes, it does.  
 10 Q. And again, subject to any clarifications that  
 11 you may make in the course of your direct evidence  
 12 this morning, does that accurately reflect your  
 13 Opinion with respect to the subject Lots in issue in  
 14 these proceedings?  
 15 A. Yes.  
 16 Q. Now, Mr. Hedden, I understand that you have  
 17 prepared some slides for the purposes of taking the  
 18 Tribunal through your Expert Reports this morning; is  
 19 that correct?  
 20 A. Yes. It is.  
 21 Q. If you'd like to proceed and take the  
 22 Tribunal through those slides, that would be much

09:36:40 1 appreciated. Thank you.  
 2 We'll just hand them out if you could just  
 3 wait one moment.  
 4 (Pause.)  
 5 Thank you, Mr. Hedden.  
 6 A. The first slide on Page 2 after the title  
 7 goes to my qualifications. I'm a recognized and  
 8 accredited real estate appraiser with over 30 years of  
 9 relevant real estate appraisal experience. The  
 10 relevancy goes to the fact that during my entire  
 11 career, I have spent working in matters involving what  
 12 we call here "expropriation," when in the U.S. in my  
 13 experience we've called it "imminent domain." So from  
 14 now on, I'll use "expropriation" as the appropriate  
 15 term. Much of my career has been spent in that area.  
 16 I hold a Member of the Appraisal Institute  
 17 designation as well as a Counselor in the Real Estate  
 18 Counselors organization of the National Association of  
 19 Realtors; and I'm a Fellow of the Royal Institution of  
 20 Chartered Surveyors, the leading valuation  
 21 organization in the world; and I hold the Fellow  
 22 designation, which is the highest designation there.

09:37:59 1 I have a master's of city and regional planning from  
 2 Rutgers University as well.  
 3 So, given that, I also have prepared my  
 4 Report in conformity with appraisal and--with industry  
 5 standards and all the accepted methodologies of those  
 6 organizations here identified as the Appraisal  
 7 Institute, the Uniform Standards of Professional  
 8 Appraisal Practice, and the International Valuation  
 9 Standards with relevant and appropriate market  
 10 information to conclude opinions of Fair Market Value.  
 11 Fair Market Value is the basis of value that  
 12 we've used and, again, the market information I deem  
 13 to be relevant in this matter.  
 14 In my April 23 Report, I set forth the  
 15 purpose of the Report was to appraise the Fair Market  
 16 Value of these 26 parcels of land--of certain vacant  
 17 parcels in Playa Grande and Playa Ventanas, 13 of  
 18 which are in Playa Ventanas. We have four sole  
 19 takings in Playa Grande as well as nine additional  
 20 partial takings in Playa Grande.  
 21 The interest appraised in each one of these  
 22 cases is a fee simple estate, meaning all the bundle

09:39:20 1 of rights that are associated with a fee position in  
 2 real property. The date of value used in each one of  
 3 the Lots was May 27 of 2008.  
 4 The Lots were physically inspected by me  
 5 during my visit there on February 11-14 of 2014, and  
 6 it was determined that the highest and best use of the  
 7 subject properties was for single-family residential  
 8 development.  
 9 Given this Report, I had certain  
 10 extraordinary assumptions; and to that extent, the  
 11 properties were subject to a partial taking and the  
 12 Government surveys provided it did not extend the full  
 13 75 meters. We'll talk about that a little later, but,  
 14 in fact, we're short of the 75 from the 50-meter high  
 15 water line, the private--the public property.  
 16 With respect to the SPG Lots, the  
 17 expropriation takes approximately 66 meters of depth.  
 18 With regards to the Berkowitz--we refer to the  
 19 Berkowitz as the B Lots--the expropriation takes  
 20 approximately 71 to 73 meters. And that's what the  
 21 survey showed, or the plano.  
 22 However, we know that the 75 meters was then

09:40:31 1 to be expropriated and, therefore, my calculations  
 2 later here will show the values to the extent to the  
 3 75-meter expropriation.  
 4 Therefore, the summary of values provided  
 5 both conclusions on the assumption that the part taken  
 6 is consistent with the Government surveys, and on the  
 7 basis that the amount taken is actually intended to  
 8 extend to 75 meters.  
 9 In assessing the Fair Market Value, appraisal  
 10 standards for an expropriation requires that the  
 11 scheme--which we call the scheme or project, the  
 12 influence of the project or scheme--its imminence and  
 13 everything flowing from the scheme must be ignored in  
 14 ascertaining the highest and best use before the  
 15 taking and in the estimate of value.  
 16 Therefore, based on my personal interviews,  
 17 extensive, market data research and inspections, I  
 18 selected comparables that appeared to be reflective of  
 19 Market Value rather than those that appeared to be  
 20 affected by intended expropriation.  
 21 The valuation methodology was a Sales  
 22 Comparison Approach, which is the most appropriate

09:41:38 1 when you're valuing vacant parcels of land. The  
 2 Development Valuation Model, which is used in the  
 3 SPG1, 2, and 3 Lots, was used only to support the  
 4 Sales Comparison Approach. For--and that's used for  
 5 the property that has development potential in a  
 6 larger scale other than a single family and a single  
 7 Lot.  
 8 For Lots partially taken, the proper  
 9 methodology requires an analysis of the parcel before  
 10 and after the taking, with an analysis of severance  
 11 damages as appropriate for the remaining parcel.  
 12 In that regard, the severance damage reflects  
 13 the portion taken and the value of that that is  
 14 allocated over the remaining piece, and that's what we  
 15 talk about with regards to severance damage.  
 16 So the proper valuation methodology for an  
 17 expropriation--expropriatory taking requires the  
 18 valuer to ignore the impact of the expropriation  
 19 scheme on the value of the property. The comparables  
 20 that were influenced by the expropriation scheme were  
 21 not selected. Comparables within the Park that were  
 22 used by me in this valuation are generally reflective

09:42:46 1 of land valuation.  
 2 PRESIDENT BETHLEHEM: Mr. Hedden, may I just  
 3 stop you for a moment. I think that you may be  
 4 speaking a little bit too quickly for the  
 5 interpreters.  
 6 THE WITNESS: Sure. I'll slow down.  
 7 PRESIDENT BETHLEHEM: Thank you.  
 8 THE WITNESS: The Federal Rule. So, part of  
 9 your analysis in doing expropriation follows a Federal  
 10 Rule, what we've adopted as a Federal Rule in our  
 11 nomenclature in the appraisal standards. That means  
 12 that the damages are calculated by valuing the  
 13 property before the taking, less the value of the  
 14 remainder property after the taking.  
 15 And this is the key point. It is the  
 16 property owner's right to receive the Market Value of  
 17 the land taken, and the before and after taking  
 18 valuation methodology will account for the  
 19 contributing value of the part taken. It's about the  
 20 contributing value of the part taken, which is my  
 21 primary focus here.  
 22 We also in valuation methodology, which is

09:43:53 1 part of the standard protocol and theses that have  
 2 been written regarding this topic, is a theory known  
 3 as the larger parcel theory. That's a parcel taken  
 4 through condemnation/expropriation is not a complete  
 5 parcel, right? So the part taken is not a complete  
 6 parcel; it's part of a larger parcel where the owner  
 7 is entitled to damages from the severance as well as  
 8 the value of the parcel taken.

9 The parcel takings that cannot be directly  
 10 valued must have their value estimated as a function  
 11 of the value of the larger parcel. So in the  
 12 Berkowitz case and in the SPG case, those parcels  
 13 cannot individually be valued and have to be part of  
 14 the larger parcel because they are separated and don't  
 15 subdivide easily.

16 So, here I'd like to take you through an  
 17 example of my valuation methodology or the valuation  
 18 of a Playa Grande Lot, C96.

19 Q. Mr. Hedden, just before you move into that,  
 20 would it assist to have Page 61 of your First Report  
 21 in front of the Tribunal?

22 A. Yes, it may.

09:45:08 1 Page 61 of my Report, if you could refer to  
 2 my Report--or if you actually look on Page 10, you'll  
 3 see a summary of the chart that I'm going describe.  
 4 So, you can look at the Report or you may flip ahead a  
 5 little bit as I talk through Slide Number 9.

6 The data for each one of these three  
 7 comparables is set out in my Report.

8 PRESIDENT BETHLEHEM: I'm sorry, Mr. Hedden.  
 9 I'm just--I'm looking at your First Report, you said  
 10 on Page 10?

11 THE WITNESS: I think I said Page 61.

12 MS. COHEN: I think he meant Page 10 of the  
 13 slides.

14 PRESIDENT BETHLEHEM: Page 10 of the slides  
 15 and Page 61 of the report.

16 THE WITNESS: Yes, sir.

17 PRESIDENT BETHLEHEM: Thank you.

18 THE WITNESS: So the data for each one of  
 19 these three sales is set forth later in the Report  
 20 that is not necessary to look at now, but it's in the  
 21 back of the Report, Pages 83-85.

22 Now, there's a wide disparity in the

09:46:04 1 unadjusted and adjusted sales prices for what would  
 2 appear to be similar properties. And this was a  
 3 problem in--or a challenge, I should say--in valuing  
 4 these properties that there was a wide verity or  
 5 dissimilarity in terms of some of the pricing. And  
 6 that's attributable to a lack of an efficient and  
 7 transparent marketplace, which I believe was  
 8 adequately discussed in my Report.

9 The market condition adjustment is related  
 10 solely to the monthly appreciation determined to be on  
 11 market-based conditions as analyzed. So we've  
 12 analyzed all of these based upon the inflation or the  
 13 market appreciation that was going on for these Lots  
 14 during the time in question.

15 BY MS. COHEN:

16 Q. And Mr., Hedden, sorry to interrupt you, but  
 17 just look at Page 61 of your Report. The market  
 18 conditions adjustment that you're referring to are in  
 19 the middle of the box on the second half of the page;  
 20 is that correct?

21 A. Yes.

22 Q. Thank you. Please continue. And perhaps

09:47:16 1 continue in reference to just pointing out where in  
 2 this portion of Page 61 you're referring. Thank you.

3 A. So you can see on Page 61 in the middle of  
 4 the adjustment process in the lower portion of the  
 5 pages the line item that goes to market conditions.  
 6 And you can see then that there's an adjustment of,  
 7 say, 10 percent to Sale Number 1, an upward adjustment  
 8 of 8 percent to Sale Number 2, and an upward  
 9 adjustment of 45 percent to Sale Number 3.

10 And those are based upon the market condition  
 11 adjustments that you see and discussed on Page 24 of  
 12 my Report. Meaning that there was a 2 percent  
 13 adjustment for a period of time, and then it moved to  
 14 a 3 percent per month adjustment, and then slowed down  
 15 to a 1 percent per month adjustment during 2007. No  
 16 appreciation was viewed during the 2008 time frame.

17 So no adjustment was necessary for the  
 18 influence of the expropriation scheme as the  
 19 comparables used did not consider the scheme.

20 So, on Page 10 of my presentation that I have  
 21 here today, you will see then that summary and  
 22 explaining the adjustment process. Because these

09:48:37 1 appraisals were done on all of these parcels with a  
 2 computer model, and there were certain rules that were  
 3 built into the model that allowed me then to develop  
 4 the valuations throughout these 26 parcels uniformly  
 5 and some reference of homogeneity, if you will,  
 6 between parcels. And that's why some of the numbers  
 7 appear consistent throughout.

8 And the model and the rules of the model are  
 9 shown on Slide 11, which we'll talk about momentarily.  
 10 But let me walk you through Slide 10 now so you  
 11 understand how the process worked.

12 As counsel had alluded to, this is similar to  
 13 Page 61 in my Report. However, you'll see now on  
 14 Page 10 in the presentation here today, there are  
 15 additional line items with some numbers in the middle  
 16 of the page. So, the narrative that was as shown on  
 17 Page 61 is now amplified with the adjustments that you  
 18 see here.

19 And the rules said that in Playa Ventanas,  
 20 which was 6 percent superior to then this land in  
 21 Playa Grande, was applied uniformly across, so there  
 22 was a negative 6 percent. It was superior, and so

09:49:47 1 that the adjustments work contrary to the narrative  
 2 definition, you adjust from that property to the  
 3 subject, and Playa Ventanas is viewed as superior to  
 4 Playa Grande.

5 And then there's a size formula. And so to  
 6 the extent now that these parcels are all smaller,  
 7 there's an economy of scale and it's cheaper by the  
 8 dozen. So larger parcels usually sell for smaller  
 9 than big parcels. So, all of these smaller parcels  
 10 then had a higher unit value, and, therefore, it was  
 11 adjusted downward, all right, so that the smaller  
 12 parcels had a higher unit value. But also we then  
 13 adjusted downward by 6 percent.

14 So that it's a negative 12 percent, negative  
 15 12 percent, and zero percent adjustment, all right?  
 16 Because that last line for the physical is similar, so  
 17 it got zero adjustment. So that overall, you then had  
 18 a negative 12 percent, negative 12 percent.

19 Which then takes you to the next line down,  
 20 which is adjusted sales price per meters squared,  
 21 which was \$681 for Sale Number 1, \$548 for Sale Number  
 22 2, \$994 for Sale Number 3.

09:50:58 1 Now, part of this process is to correlate or  
 2 put weight on the various comparables that you believe  
 3 have the most influence in the valuation of your  
 4 property. In this case, there was a 40 percent weight  
 5 subscribed to Sale Number 1, 40 percent to Sale 2, and  
 6 20 percent to Sale Number 3.

7 And when you apply those various weights to  
 8 those unit indicators, the ultimate conclusion here  
 9 for this value was \$690 per square meter, resulting in  
 10 a value of the Lot of \$1,343,386. And then that was  
 11 rounded to US\$1.343 million.

12 Now, underlying this model, we can flip to  
 13 then Slide 11 to look at all of the nuances to our  
 14 model. And this is the rules that the entire model  
 15 followed throughout the valuation.

16 So, these rules were established through my  
 17 analysis of all the market data that was in the market  
 18 adjustments. And then in analyzing all of the sales  
 19 information, we abstracted adjustments, and they were  
 20 used as the basis for these adjustments in the model.

21 So Playa Ventanas was determined to be  
 22 25 percent superior to Playa Grande; Playa Ventanas

09:52:29 1 was determined to be 6 percent superior to Playa  
 2 Grande; a 66 percent upward adjustment if the Lot is  
 3 beachfront compared to an interior Lot.

4 Under size, under the economies of sale that  
 5 we've discussed, when a difference was less than  
 6 10,000 meters, there was a 60 percent adjustment. So,  
 7 if the sale was, again, 1,000 meters and the  
 8 comparable sale was 14,000 square meters, then there  
 9 would be a 60 percent adjustment. So it was the  
 10 differential between the two sizes that resulted in an  
 11 adjustment.

12 So, when the difference was less than  
 13 10,000 meters but greater than 5,000 meters, there was  
 14 a 25 percent adjustment. When the difference was  
 15 between 5,000 square meters and 500 square meters,  
 16 there was a 6 percent adjustment. And if the  
 17 difference between the two comparables was less than  
 18 500 meters, there was no adjustment at all from the  
 19 size criteria.

20 And then in physical, the descriptions are  
 21 such that, when you had interior topography of the  
 22 Playa Flamingo Lot, it was adjusted downward

09:53:36 1 10 percent. The topography there was inferior to the  
 2 subject properties because all our properties were  
 3 level.  
 4 The undersized B Lots adjusted downward by  
 5 65 percent and/or 25 percent. We'll talk about the  
 6 undersized nature of the remainder of the B Lots later  
 7 in my discussion. And so that they were adjusted down  
 8 because they were not conforming to zoning.  
 9 And then the B entitled Lots are considered  
 10 5 percent superior to unentitled remnants. So, when  
 11 we had in this case certain Lots that were  
 12 entitled--which we'll talk about a little  
 13 later--versus comparison to land that was not  
 14 entitled, then there was a 5 percent superior  
 15 adjustment made.  
 16 And the before B Lots have inferior frontage,  
 17 all right, so the B Lots had an inferior frontage  
 18 ratio to the Lot V61 when that was compared, and that  
 19 required a downward 25 percent adjustment. Therefore,  
 20 the V61 was superior because it had much more beach  
 21 frontage or beachfront frontage as compared to the B  
 22 Lots.

09:54:45 1 So those were the rules that were underlying  
 2 that entire model. So as those properties--as the  
 3 subject properties were laid into the model, those  
 4 adjustments were mechanically made and these were the  
 5 results we found. Again, focusing on the portion  
 6 taken and the balance of the ultimate value of the  
 7 Lots relative to the balance that we found for the  
 8 compensation for the parts that were taken.  
 9 So, here, in weighting the estimated value  
 10 conclusion, I used professional judgment to assess and  
 11 analyze the relative similarities of these properties,  
 12 and they varied from certain properties based upon the  
 13 weight that I was giving to the various  
 14 comparables--whether it was more proximate to the  
 15 sale, whether it had greater or less adjustments, and  
 16 that was part of the weighting process that I put into  
 17 the model.  
 18 And the disparity between the resulting  
 19 adjusted prices of the comparable transactions after  
 20 market-based adjustments is symptomatic of a lack of  
 21 an active, efficient, and transparent marketplace.  
 22 Again, lack of multiple listing, for instance, would

09:55:49 1 be one where you don't have as much information  
 2 available, and you would expect in those markets that  
 3 you have greater disparity between the prices because  
 4 of that factor. It is just not as efficient as we  
 5 have here in the U.S.  
 6 So, in the valuation of Lot 39 and Lot 40, in  
 7 doing my work before I'd come here today, I realized  
 8 that there was a problem looking at those comparables  
 9 to the extent that, if you look at Page 58 and 59,  
 10 you'll see that in the Report--we're still referring  
 11 to the Report now--where my adjustment for Playa  
 12 Grande Lot A39 and A40 in the Comparable Number 2 was  
 13 identified as an interior Lot, but yet there was no  
 14 adjustment made for that.  
 15 Clearly inferior to the subject property  
 16 which was beachfront. And notwithstanding the time  
 17 spent, it was in my preparation here today that I  
 18 identified that error and I have corrected it here in  
 19 my slides, and we're discussing here in Slide 13.  
 20 And then on 14 and 15, there will be an  
 21 adjustment here for--thank you--for that interior Lot  
 22 in Sale 2, which is now 66 percent inferior to the

09:57:06 1 Playa Grande A39, which is, in fact, a beachfront Lot.  
 2 So, an upward adjustment of 66 percent is made.  
 3 And the same in Lot 15--I'm sorry, Slide 15,  
 4 where we have an identified Lot A40 and, again,  
 5 adjusted the oversight by upwards of 66 percent to  
 6 Sale Number 2.  
 7 The variance between those two transactions  
 8 is identified on Slide 13, which in Sale 40--I'm  
 9 sorry. In Lot A40, it went from \$537,000 to \$570,000  
 10 for Lot A39. And for Lot 40, the value was revised  
 11 from \$532,000 to 564, a relatively small valuation  
 12 change overall in the scheme of things. And the unit  
 13 value went from \$596 per meter in the A39 to \$632 per  
 14 meter. So, again, not a significant, but meaningful,  
 15 difference when you realize that I erred in not  
 16 valuing for the interior Lot in Sale Number 2 as  
 17 relates to a beachfront lot--  
 18 PRESIDENT BETHLEHEM: Mr. Hedden.  
 19 THE WITNESS: --in A39 and 40.  
 20 PRESIDENT BETHLEHEM: May I just for the  
 21 formality of it, just make sure that we understand for  
 22 the record that you have just said to us now that your

09:58:39 1 slides at Page 14 and 15 are intended to be a  
 2 substitute, a correction, for the slides at Page 58  
 3 and 59 of your First Report; is that correct?  
 4 THE WITNESS: Yes, it is, sir.  
 5 PRESIDENT BETHLEHEM: Thank you very much.  
 6 THE WITNESS: Moving on to the SPG situation.  
 7 I have identified on Slide 16 the beginning of the  
 8 understanding of how the larger parcel theory and how  
 9 this severance damage results, and so that is from the  
 10 Federal Rule as well as the larger parcel theory are  
 11 exemplified then in Slide 16. It will help you  
 12 understand as we have these partially taken Lots how  
 13 this theory works.  
 14 You have the valuation of Lot SPG1 as an  
 15 individual parcel now. All right. We're going to  
 16 talk a little bit--when we talk about the unity of use  
 17 and the unity of title as a highest and best use when  
 18 all of these properties are assembled, but here we're  
 19 talking about just individual SPG1.  
 20 And the valuation based upon the comparables  
 21 shown in my reported is for--again, this is based on  
 22 the assumed correct land area to the 75 meters. We've

09:59:51 1 assumed now that the 75 meters is controlling and this  
 2 is the larger Lot of 16,801.73 square meters. And  
 3 we've developed from our comparable analysis a unit  
 4 value of \$207 per square meter. That results in a  
 5 value which you see here of 3.478 million.  
 6 Now, the value of the 3,000 meters that were  
 7 taken has to be part of the larger parcel. The value  
 8 that is ascribed to the part taken is the value of the  
 9 larger parcel because that's what it is, it is part of  
 10 a larger parcel. However, when you look at the value,  
 11 then, remaining under that same \$207 a meter, you see  
 12 that it's \$2.857 and 66--\$2,857,066.  
 13 Now, the contributing value of the remainder  
 14 is then that of the remaining parcel having lost the  
 15 most valuable component to the front. All right. And  
 16 the value of that is then allocated over the remaining  
 17 parcel. And you can see as a result here that the  
 18 total value of the taking is \$2,046,000 when you added  
 19 the severance damage back to the part taken, so that  
 20 the compensation then--or the value of the part taken,  
 21 shall we say--is \$682 per square meter. So the  
 22 indicated value per meter is the part taken is

10:01:26 1 comparable with the unit values of the parcels that  
 2 have been taken in their entirety.  
 3 Consistent with our valuation methodology,  
 4 this is the amount that the property owner would have  
 5 received for the part taken had it been sold on the  
 6 open market on the Valuation Date. And that's the  
 7 theory that goes in here.  
 8 It is just an allocation. This idea of  
 9 severance value is nothing more than an allocation of  
 10 the value of the part taken that's spread out over the  
 11 larger parcel.  
 12 So, that's what is consistent with the  
 13 Federal Rule and the larger parcel theory and why one  
 14 considers then the highest and best use and other  
 15 issues that I've talked about in how this theory  
 16 works. And this is all a peer-reviewed theory and is  
 17 part of the Appraisal Institute that I've been  
 18 teaching, not only to other appraisers but also to  
 19 other lawyers as part of continuing education in  
 20 eminent domain seminars or expropriation seminars.  
 21 So moving on then. In Slide 17 we see that  
 22 the before value has been enhanced by the unified

10:02:28 1 ownership of the larger parcel. So here we go to then  
 2 a larger parcel, because SPG1, 2, and 3 are all owned  
 3 by one individual. They can all be a unity of use,  
 4 unity of title and then physical continuity; and those  
 5 are the three things that you look at when you're  
 6 looking at highest and best use in this context of a  
 7 part a larger parcel.  
 8 And in this case the Spence Co. had prepared  
 9 a subdivision plot for 44 residential Lots. So,  
 10 collectively you have 87,317.26 square meters with  
 11 over 200 meters of beach frontage. And then this--the  
 12 property is level, generally open, frontage offers a  
 13 view of the ocean. And then the taking removes eight  
 14 oceanfront Lots--and we'll have a map showing it  
 15 momentarily--from the subdivision layout.  
 16 But here is the calculation, and you can see  
 17 that there's 17 percent of this parcel is taken,  
 18 15,000.75 square meters is ultimately taken, which  
 19 constituted the eight front Lots.  
 20 A map now, you see on the next slide, on 18,  
 21 then indicates the nature of the taking. And you have  
 22 the inalienable zone of the first 50 meters, and then

10:03:41 1 there is the 75-meter strip behind, and then the  
 2 interior Lots behind that.  
 3 The remainder of the subdivision--it's  
 4 125 meters more removed from the water line. The  
 5 remainder is damaged by not having the associated  
 6 prime oceanfront land associated with it. The access  
 7 and view of the beach, ocean, and sunsets would be  
 8 lost by the 75-meter setback of the beachfront Lots,  
 9 and the buffer vegetation inside that beachfront will  
 10 grow undisturbed.  
 11 The pro rata share of value of the ocean--and  
 12 this is the key point--the pro rata share of the value  
 13 of the oceanfront land far outweighs the value of the  
 14 land now 125 meters back from the water line.  
 15 Therefore, the remainder value has a lesser unit value  
 16 (dollar per square meter) than the unit value before  
 17 and the remainder suffers a severance damage as a  
 18 result of the taking.  
 19 So, when you take the green area here, which  
 20 is the most valuable portion, that, as you can see  
 21 from the prior slide, was reflective of about \$682 per  
 22 square meter. And then that loss of that portion,

10:04:44 1 that higher void, is spread out over the remaining  
 2 lands. Next slide, please.  
 3 So, the severance thing is just an allocation  
 4 of the loss of value over the remaining lands. And,  
 5 again we've proven through our comparable analysis  
 6 that the 104 meters in the after was the appropriate  
 7 number.  
 8 Remainder does not become--and the  
 9 SPG--right. The remainder does not become beachfront.  
 10 Lots closer to the beach will sell at a premium to  
 11 Lots that are further from the beach. This is a  
 12 simple economic concept that just says if you're  
 13 closer to an amenity as compared to farther back,  
 14 there is obviously more value in that land that's  
 15 closer to the amenity.  
 16 Loss of beach access also results in a  
 17 decrease in value to the remainder. Assuming the  
 18 correct land area is taken, 15,000.75 square meters,  
 19 the resulting total taking value is a very reasonable,  
 20 again, \$8,472,000, or \$564.77 per square meter.  
 21 So, as you can see from even looking at the  
 22 Ventanas Lots where we were \$805 per square meter,

10:05:51 1 here we're on 15,000 square meters and eight  
 2 beachfront Lots, we're only talking about \$564 per  
 3 square meter. Next slide, please.  
 4 So it takes us to the B Lots and how we look  
 5 at the B Lots now in B1, 3, 5, 6, 7, and 8, the taking  
 6 places, the property like in SPG, 125 meters away from  
 7 the water line and removes the subject property's fee  
 8 simple titled lands most proximate to the oceanfront  
 9 location. The pro rata share--I'll slow it down a  
 10 little bit. Too late probably, but I'm trying to walk  
 11 through this in a time frame.  
 12 The pro rata share of value of the oceanfront  
 13 land far outweighs the value of the land now  
 14 125 meters back from the water line without access.  
 15 Therefore, the remainder value has a lesser per unit  
 16 value (dollars per meter) than the unit value before,  
 17 and the remainder suffers a severance damage as a  
 18 result. Very similar to what we just talked about.  
 19 All right. Same economic concepts.  
 20 The severance damages are more severe for  
 21 these Lots and there's a higher adjustment for that.  
 22 And why? Because the remainder properties are now

10:07:03 1 undersized, and they're remnant parcels. There is  
 2 less than 5,000 square meters for the remaining  
 3 portions that cannot be independently developed.  
 4 In the SPG Lots, you had land that could be  
 5 independently developed. You still had a subdivision  
 6 that could be created. Here, where you have  
 7 undersized building lots that are not--don't have  
 8 unity in use--they are all used, but unity in title  
 9 except for B5 and 6, they can be combined. And we'll  
 10 talk about that.  
 11 Lots 5 and 6 are under common ownership and  
 12 can be merged and, therefore, the damage to these  
 13 remainders is less severe. So you have higher damage  
 14 in 1 and 3, and 7 and 8 because those are uneconomic  
 15 remnants that are left behind. So that there's more  
 16 damage to that front--that is allocated to the loss of  
 17 the front.  
 18 But 5 and 6 could be merged because  
 19 Mr. Berkowitz still owns them commonly, and they could  
 20 be merged together. So, they are still damaged  
 21 somewhat but not as severely as the others.  
 22 So, in these B Lots we talk about here, you

10:08:09 1 can see the magnitude of the take. The properties are  
 2 level and generally open and offer access and views of  
 3 the ocean. The size of the individual parcels before  
 4 and after and the parts taken is shown in the chart  
 5 below.

6 After the correct land area is taken, all  
 7 right? So that's 18,274.50 square meters, the  
 8 resulting total take is \$14,176,000 or \$775 per square  
 9 meter, still within reason for oceanfront property,  
 10 yet indicative of the greater severance damage  
 11 suffered by these Lots.

12 You can see in the after condition that none  
 13 of them are at the 5,000 square meters as required by  
 14 zoning, and you can see that they're on average, say,  
 15 40 percent taken.

16 So, in summary then, on Pages 22-24, you'll  
 17 see here--what I want you to focus on is the total  
 18 value of the taking and the value expropriated per  
 19 square meter. And you can see that there is a  
 20 reasonable balance between actual taking of the total  
 21 take and the severance damage when you look at the  
 22 expropriated value per square meter.

10:09:25 1 Again, we're focused and reflecting on the  
 2 portion of the property that was taken, and what its  
 3 values are. And notwithstanding the way we've arrived  
 4 at it using the larger parcel and/or the Federal Rule,  
 5 you can see that overall there is balance and  
 6 consistency in the analysis.

7 And so in summary on Page 24, you'll see that  
 8 when you add up all the values of the parts taken for  
 9 these 26 Lots, you end up with \$36,608,000 or \$710 per  
 10 square meter for all of the lands. Again, given the  
 11 analysis that we've shown, even in the Ventanas Lots  
 12 at \$805 per square meter, you can see that at 710.

13 And not only that, it is not only the land  
 14 that we've appraised and shown in my document, but of  
 15 all the data that's also contained in all the  
 16 exhibits, from the interviews and all the other market  
 17 data I've analyzed, I believe that that is the true  
 18 value of the part taken.

19 MS. COHEN: Thank you, Mr. Hedden. If you  
 20 could answer any questions that the Respondent may  
 21 have for you.

22 PRESIDENT BETHLEHEM: Ms. McCandless.

10:10:40 1 MS. McCANDLESS: Thank you, Mr. President.

2 CROSS-EXAMINATION

3 BY MS. McCANDLESS:

4 Q. Mr. Hedden, we're going to pass around a  
 5 binder for cross-examination purposes. I'll wait a  
 6 minute until the binder is passed out.

7 (Pause.)

8 Good morning, Mr. Hedden. My name is  
 9 Jennifer Haworth McCandless, and I'm representing the  
 10 Respondent in this case, and I'll ask you a few  
 11 questions related to your Report.

12 A. Thank you.

13 Q. Behind Tab 1 is your First Report, and in  
 14 Section 2.3--

15 PRESIDENT BETHLEHEM: Can you give us a page?

16 MS. McCANDLESS: It's on Page 9.

17 BY MS. McCANDLESS:

18 Q. Section 2.3, which is toward the bottom of  
 19 the page, you have identified the date of value that  
 20 you are using to calculate damages, May 27, 2008;  
 21 correct?

22 A. Yes.

10:12:16 1 Q. And you state that that date--the basis for  
 2 that date is the Chamber of the Supreme Court Decision  
 3 of 2008; correct?

4 A. Yes.

5 Q. And this is a Decision in which the  
 6 Constitutional Chamber of the Supreme Court ordered  
 7 MINAE to expropriate land or asked them to do it  
 8 quickly within the Park; is that correct?

9 A. That's my understanding.

10 Q. And you selected that date because that was  
 11 the date that Claimants' property was expropriated or  
 12 that you were informed that that was the date that  
 13 they were expropriated?

14 A. That was the date that I was instructed to  
 15 value the properties on.

16 Q. Were you told the reason why you were  
 17 instructed to use that date?

18 A. No. Counsel informed me that that was the  
 19 date that we were to--that I was to value this  
 20 property; and it coincided with the date of the  
 21 Supreme Court Decision, as you've said.

22 Q. Thank you. If you look at the next--the page

10:13:19 1 preceding that on Page 8 of your Report, which is  
2 under 1.6, Section 1.6, and you're talking about  
3 "extraordinary assumptions." And you say in the  
4 highlighted text or the bolded text there that it is  
5 your understanding that the expropriation in this  
6 matter was to include 75 meters inland from the mean  
7 high tide water line; is that correct?

8 A. Yes.

9 Q. Is that--do you know if that's consistent  
10 with the Park Law from 1995 as to what the 75 meters  
11 constitutes that is part of the Park?

12 A. That was my understanding.

13 Q. So that would mean that the 75 meters are  
14 from the high tide line? It would just be 75 meters  
15 inland from the high tide line as opposed to further  
16 inland from that?

17 A. No. It was 75 meters from the 50-meter  
18 inalienable zone from the "mojones."

19 Q. Okay. So this is a typo, the way you've  
20 described it here, because I think you have it  
21 75 meters inward from the mean high tide water line;  
22 and you're not mentioning the 50 meters there, are

10:15:51 1 A. What it means is, when I looked at the planos  
2 for those parcels, based on the Government surveys,  
3 they did not extend back 75 meters from the mojones.  
4 It was only--again, my paperwork said 68 feet or  
5 71 feet--excuse me, meters. It was only going back 66  
6 or 68 meters and didn't go back the full 75 meters  
7 from the 50-meter inalienable zone, and that's what I  
8 meant here.

9 Q. Okay. And in the sentence that follows, you  
10 said, "FTI adjusted the areas to be included in the  
11 parts taken and calculated alternative values based on  
12 the adjusted area."

13 And by that, you mean that you,  
14 notwithstanding the fact that the Government was  
15 taking less than the 75 meters, you calculated a value  
16 assuming that the full 75 meters were taken; is that  
17 correct?

18 A. It was unclear to me as to whether the  
19 planos, which did not show the full 75 meters, was, in  
20 fact, correct. And given the indication that there  
21 was going to be an expropriation of 75 meters, I then  
22 adjusted it to mean the 75 meters versus what was

10:14:32 1 you?

2 A. That is correct. You have identified a  
3 problem with the language there, and it was 75 meters  
4 from the--yeah, after the inalienable zone, right.  
5 So, it was back from the mojones.

6 Q. Okay. So you're not assuming that the  
7 property is--that you weren't valuating, then,  
8 property that was right up next to the high tide line?  
9 You were evaluating the property that was back  
10 50 meters from that; is that correct?

11 A. Yes.

12 Q. Okay. Thank you.

13 In the sentence that follows that one, in  
14 that same paragraph, you say, "However, for those  
15 properties that are subject to a partial taking, the  
16 Government surveys provided did not extend 75 meters  
17 from the mean high tide water line."

18 Is that correct?

19 A. Yes.

20 Q. And did you mean that in some instances Costa  
21 Rica did not actually expropriate the entire 75 meters  
22 that were subject to being expropriated?

10:17:05 1 shown in the planos. So, there was uncertainty, and  
2 we had adopted the 75 meters as the appropriate  
3 benchmark for valuation.

4 Q. Okay. As opposed to going the other  
5 direction and being a little bit more conservative and  
6 taking the amount that you actually saw that was  
7 indicated?

8 A. I just went by Letter of the Agreement that  
9 it was to be 75 meters, and I thought that was more  
10 appropriate.

11 Q. In Section 2 of your Report, which we'll go  
12 to Page 9, which you have indicated in that first  
13 paragraph that you are to provide your Expert Opinion  
14 "regarding the value of vacant lands taken from the  
15 Claimants as part of an expropriation from the  
16 Respondent."

17 Is that correct?

18 A. Yes.

19 Q. So you were not calculating damages for a  
20 breach of fair and equitable treatment provision or  
21 for any other provision in CAFTA; is that correct?

22 A. I was only focused on the Market Value of the

10:18:07 1 parts taken from the property.  
 2 Q. But--and in the context with respect to  
 3 expropriation; correct?  
 4 A. Yes.  
 5 Q. If you could turn to Section 3.1 of your  
 6 First Report, which is on Page 10, and you state in  
 7 that first paragraph that Market Value is "the  
 8 estimated amount for which a property should exchange  
 9 on the date of valuation between a willing buyer and a  
 10 willing seller in an arm's-length transaction after  
 11 proper marketing wherein the Parties had each acted  
 12 knowledgeably, prudently, and without compulsion."  
 13 Is that correct?  
 14 A. Yes.  
 15 Q. So, you would agree, would you not, that the  
 16 Market Value takes into consideration the knowledge  
 17 the Parties had at the moment of sale regarding the  
 18 property that's being sold?  
 19 A. No. The definition of "Market Value" assumes  
 20 a hypothetical willing buyer and willing seller both  
 21 actually prudently and with fair knowledge. So, the  
 22 Market Value of the properties that I've assumed, that

10:19:25 1 I have valued, assumes a knowledgeable buyer and  
 2 seller.  
 3 Q. Correct. So it's the knowledge that the  
 4 buyer and seller have that is taken into consideration  
 5 when determining the value of the property; correct?  
 6 A. It's assumed in the estimation of Market  
 7 Value in valuing the properties, that's correct.  
 8 Q. Yes. That's what we're talking about.  
 9 Were you present during the hearing? I'm not  
 10 sure if I noticed you were here or not. Obviously,  
 11 you could have attended, but I wasn't sure you were  
 12 here.  
 13 A. Specifically, no, I was not here. I just  
 14 arrived yesterday, last night.  
 15 Q. Okay. And did you listen to testimony in  
 16 advance of your arrival?  
 17 A. Yes.  
 18 Q. Okay. So were you aware of the testimony of  
 19 one of the property owners in this case, that of  
 20 Mr. Brett Berkowitz?  
 21 A. I was aware that he testified.  
 22 Q. Okay. And Mr. Berkowitz has property--he

10:20:31 1 purchased property in the B Lots, as you mentioned  
 2 earlier in your direct--B1, B3, B5, B6, B7, and B8; is  
 3 that correct?  
 4 A. Yes.  
 5 Q. So, I don't know if you recall, but  
 6 Mr. Berkowitz had stated in his--in response to a  
 7 question from cross-examination--and I will point you  
 8 to that in the binder in front of you. It's behind  
 9 Tab 9, and it's Page 407, if you could turn to  
 10 Page 407 of the transcript.  
 11 Do you have that?  
 12 A. No. Behind Tab 9 only goes from Page 396 to  
 13 399.  
 14 Q. You just need to turn the page. Sorry,  
 15 there's a blue sheet in between?  
 16 A. Oh.  
 17 Q. And sorry, I should have explained that. So,  
 18 if you turn after the blue sheet, then you'll have, I  
 19 think, 407. Do you have that?  
 20 A. Yes, I do see it.  
 21 Q. Okay. And in Lines 16, beginning with  
 22 Line 16, Mr. Berkowitz was answering a question--or

10:21:59 1 here's the question to Mr. Berkowitz in  
 2 cross-examination:  
 3 Question: "Is it correct, Mr. Berkowitz,  
 4 that the document reflecting that transaction"--and  
 5 that was a sale for the purchase of the B Lots, among  
 6 others, that we just discussed--"provided that you, as  
 7 the purchaser, would not have a claim against the  
 8 seller in case the properties were expropriated in the  
 9 future?"  
 10 Answer: "That is correct."  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. So, Mr. Berkowitz, when he purchased the  
 14 B Lots, he's admitting in his testimony that the  
 15 property that he was purchasing was subject to being  
 16 expropriated; isn't that correct?  
 17 MS. COHEN: I object to the question.  
 18 PRESIDENT BETHLEHEM: Do you want to  
 19 elaborate on your objection?  
 20 MS. COHEN: The basis of the objection is  
 21 that it is not appropriate to put testimony of another  
 22 witness to this Witness and ask him to interpret it.

10:22:55 1 MS. McCANDLESS: It is relevant to what  
 2 information Mr. Berkowitz had at the time that he's  
 3 purchasing the Lots, and we just established that  
 4 knowledge of the purchaser is important in determining  
 5 the valuation, and that goes to assumptions, certain  
 6 assumptions that were made by Mr. Hedden in his  
 7 damages valuation.

8 PRESIDENT BETHLEHEM: I don't think that you  
 9 can ask the present Witness anything relating to  
 10 Mr. Berkowitz's state of mind. I think you can ask  
 11 the present Witness in relation to information that he  
 12 considered for purposes of his valuation.

13 MS. McCANDLESS: Okay.

14 BY MS. McCANDLESS:

15 Q. So, Mr. Berkowitz is indicating here that he  
 16 has--that the property was subject to being  
 17 expropriated, and that was included in the sales  
 18 Contract. Isn't that the exact type of information  
 19 that is necessary to consider when determining the  
 20 Fair Market Value of property?

21 A. No.

22 Q. Doesn't it go to the knowledge of the

10:25:05 1 component of the value of that property; isn't that  
 2 correct?

3 A. Yes.

4 Q. Okay.

5 A. However, you're alluding to that "price" is  
 6 equal to "Market Value" and that's not true.

7 Q. What I'm asking you is, do you have to take  
 8 into consideration or is it part of the determination  
 9 as to what the Market Value is, the knowledge of the  
 10 willing buyer and the willing seller at the time of  
 11 the transaction?

12 A. Yes, and as I testified, the definition of  
 13 "Market Value," assumes, under a hypothetical  
 14 transaction between a willing buyer and willing  
 15 seller, knowledge, and that's the key word there, was  
 16 "hypothetical." Price that we're talking about here  
 17 is not reflective of Market Value, and it was not  
 18 considered.

19 Q. Right. But knowledge is important to take  
 20 into consideration, the knowledge of the willing buyer  
 21 and willing seller at the time is important to take  
 22 into consideration when determining the Market Value

10:23:56 1 purchaser with respect to the purchasing of the land,  
 2 and isn't that something that we just established was  
 3 part of the determination of what the willing buyer  
 4 and willing seller have in their minds when they're  
 5 purchasing the land that affects the value of the  
 6 land?

7 A. I think the Statement would indicate  
 8 Mr. Berkowitz's knowledge; however, that is not  
 9 reflected in Market Value. The definition of "Market  
 10 Value" here in this case does not refer to  
 11 Mr. Berkowitz's knowledge at that time.

12 Q. We just discussed--and we'll go back to  
 13 Page 10 of your Report in 3.1--and the definition of  
 14 Market Value that we discussed is--and I'm quoting  
 15 from your Report: "Market Value is the estimated  
 16 amount for which a property should exchange on the  
 17 date of valuation between a willing buyer and a  
 18 willing seller? An arm's-length transaction after  
 19 proper marketing wherein the Parties each had acted  
 20 knowledgably, prudently, and without compulsion."

21 So knowledge is a component of determining  
 22 the--knowledge of the buyer and the seller are a

10:25:58 1 of the property; correct?

2 A. Yes.

3 Q. In collecting information regarding the Costa  
 4 Rican real estate market in 2008, you state, on  
 5 Page 19 of your First Report, that you relied on  
 6 conversations with brokers in Costa Rica; is that  
 7 correct?

8 A. Yes.

9 Q. One such broker was Ms. Penelope Lent; is  
 10 that correct?

11 A. Yes.

12 Q. And Ms. Lent is a realtor in the Guanacaste  
 13 area; is that correct?

14 A. Yes.

15 Q. If we turn to your Second Report, which is  
 16 behind Tab 2 of the binder in front of you, in  
 17 Section 2.1, Page 11.

18 A. Yes.

19 Q. At the end of the second paragraph, you say  
 20 that during my interview with Ms.--with Penelope--it's  
 21 the last line there--"During my interview with  
 22 Penelope, she said that she continued to sell in this

10:27:12 1 area, as did others, despite her concerns, and she  
 2 was--confirmed that the values ranging from \$500 per  
 3 square meter to \$1,000 per square meter during this  
 4 time"; is that correct?  
 5 A. Yes.  
 6 Q. And you have attached to your Report a letter  
 7 from Ms. Lent; is that correct?  
 8 A. Yes.  
 9 Q. And let's take a look at that letter, which  
 10 is behind Tab 3 in the binder in front of you.  
 11 A. I am--I'm there.  
 12 Q. Okay. And if you look at the middle of that  
 13 letter, it states, does it not that--in the fifth line  
 14 down?  
 15 A. Yes.  
 16 Q. It says, "From 2005 to 2008, beachfront land  
 17 property values ranges anywhere from \$500 per square  
 18 meter to over \$1,000 per square meter, depending on  
 19 the market, location, and specific characteristics of  
 20 a lot. However, during this time, between 2005 and  
 21 2008, I only sold one beachfront lot in the Playa  
 22 Grande area due to concerns over the legal and

10:28:19 1 expropriation risks upon the creation of the National  
 2 Park."  
 3 Is that correct?  
 4 A. Yes.  
 5 Q. So although she did continue to sell land  
 6 during this time, as you were suggesting in your  
 7 Report, in fact, she only sold one lot in the period  
 8 of three years; is that correct?  
 9 A. No.  
 10 Q. Isn't she saying here that she sold only one  
 11 beachfront lot in the Playa Grande area?  
 12 A. That's what she said here.  
 13 Q. Okay. And she says here also that the reason  
 14 she did not sell more was because of "concerns over  
 15 the legal and expropriation risks due to the creation  
 16 of the National Park."  
 17 Is that correct?  
 18 A. That's why she didn't sell any more lots that  
 19 were inside the Park in Playa Grande, that is correct.  
 20 Q. So the fact that certain land in that area  
 21 was considered part of the Park had an impact on the  
 22 ability to sell that land; is that correct?

10:29:12 1 A. It had an impact on the ability to sell land  
 2 that was subject to expropriation, that is correct.  
 3 Q. Yes. Okay. Thank you.  
 4 And if you could turn to your First Report,  
 5 on Page 58 and 59, where you were discussing earlier  
 6 today in your direct, and you were pointing us to a  
 7 correction that you were making with respect to the  
 8 sale of Lot C71; correct?  
 9 A. Yes.  
 10 Q. And Lot C71 was property that was sold by  
 11 Spence Co. to a buyer, and isn't it correct that that  
 12 was sold in 2007?  
 13 A. Yes.  
 14 Q. And is it correct that that Contract, that  
 15 sale, was conditional and actually came back to  
 16 Spence Co. because they were unable to get the  
 17 building permits that they were saying was a condition  
 18 of the sale?  
 19 A. I am unfamiliar with the condition. I do  
 20 know that the land reverted back to Spence Co., but  
 21 the exact reason for its reversion is not clear to me.  
 22 Q. Okay. If it were because of an inability to

10:30:40 1 get a building permit because the land is in the Park,  
 2 would that mean that that has--that that fact has an  
 3 effect on the salability of that land?  
 4 A. The inability to obtain a building permit  
 5 clearly would affect the salability of that land.  
 6 Q. Thank you.  
 7 In your damages calculations, you are not  
 8 taking into consideration the account of Claimants'  
 9 actual knowledge or the fact that the property is  
 10 located inside the Las Baulas National Park, are you?  
 11 A. Under appropriate valuation methodology, one  
 12 is to ignore the impact of the scheme prior to the  
 13 date of value, so that is correct.  
 14 Q. That may be true under most circumstances  
 15 where the property is unaffected until that scheme, as  
 16 you're calling it, comes into play, but it's here as  
 17 we're talking and establishing through various points  
 18 that we have just discussed the property that is  
 19 already in the Park prior to this--prior to the  
 20 purchase, then that information of the buyer, that  
 21 knowledge, as we've discussed earlier, is relevant for  
 22 the purposes of valuing that property, is it not?

10:32:03 1 A. In the cases of properties that I've used,  
 2 the knowledge did not impact the price paid for the  
 3 parcel, and, therefore, it was not considered.  
 4 Q. You, though, in your valuation expressly  
 5 state--and we can turn to Page 18 of your First  
 6 Report. And in the second full paragraph, first line  
 7 on Page 18, you say, "In valuing the property before  
 8 the taking, the influence of the scheme is ignored."  
 9 Is that correct?  
 10 A. Yes.  
 11 Q. But ignoring information that a buyer knows  
 12 when he's purchasing the land is inconsistent with  
 13 your own definition of "Market Value"; isn't that  
 14 right?  
 15 A. Could you repeat that question?  
 16 Q. Sure.  
 17 Ignoring information that a buyer knows when  
 18 he is purchasing the land is inconsistent with your  
 19 own definition of "Market Value"; isn't that correct?  
 20 A. No. And the reason why is that--two reasons:  
 21 Under the definition of "Market Value," you have a  
 22 hypothetical willing buyer and willing seller acting

10:33:24 1 in full knowledge. In this case, any impact of the  
 2 scheme was to be ignored, as we've called out, because  
 3 that's consistent with standard appraisal protocol in  
 4 the valuation for eminent domain, and in this case,  
 5 expropriation, to then ignore any impact of the  
 6 scheme. And that's why we have called that out  
 7 specifically for that purpose.  
 8 Q. I understand that, and I understand that a  
 9 normal--  
 10 MS. COHEN: I'm sorry. The Witness said he  
 11 had two reasons, and he was not allowed to give the  
 12 second.  
 13 BY MS. McCANDLESS:  
 14 Q. Sorry. Please go ahead.  
 15 A. And in regards to estimating Market Value in  
 16 this case, we were careful to select only those  
 17 comparables where the knowledge did not impact the  
 18 price that was paid for the sites or for the Lots, so  
 19 we have, as you stated, that is correct from my  
 20 Report. However, that was not included in the  
 21 valuation analysis because the comparables were sure  
 22 to include only those sales where the knowledge didn't

10:34:28 1 impact the value paid.  
 2 Q. Yes. So, with respect to your first point,  
 3 that assumption you're making is valid--it might be  
 4 valid in circumstances in which the knowledge of the  
 5 scheme, if you will, happens after the transaction  
 6 date, once you've already purchased the land, and that  
 7 affects the value of the land.  
 8 But this situation is different, as we've  
 9 just discussed, with respect, in particular, of  
 10 Mr. Berkowitz and his knowledge at the time of  
 11 purchasing the land. And in this case, in these  
 12 situations, the buyer has knowledge about the scheme  
 13 and nevertheless purchases in light of that knowledge,  
 14 that--if we're looking at the full knowledge that a  
 15 buyer has in the transaction, then it is inconsistent  
 16 with your definition of "Market Value" to ignore that  
 17 information that that willing buyer has at the time of  
 18 purchase.  
 19 Do you agree?  
 20 MS. COHEN: I apologize, but I object to the  
 21 question. It appears that Ms. McCandless is making  
 22 submissions to the Witness that are not questions.

10:35:39 1 PRESIDENT BETHLEHEM: I think that there is a  
 2 question there.  
 3 MS. McCANDLESS: There was a question, there.  
 4 Yes.  
 5 PRESIDENT BETHLEHEM: Ms. McCandless can put  
 6 that as a question. I think this is a point that she  
 7 can pursue.  
 8 BY MS. McCANDLESS:  
 9 Q. So my question was, with respect to the  
 10 definition of "Market Value" that you have in your  
 11 Report and which we've discussed, where the Market  
 12 Value is the--the date of valuation is--information  
 13 that the willing buyer and willing seller have at the  
 14 moment of that transaction, the knowledge that they  
 15 have, the fact that the buyer has knowledge of the  
 16 scheme and nevertheless purchases the property, that  
 17 information that the buyer has, the fact that he has  
 18 it, if you ignore that, aren't you being inconsistent  
 19 with your definition of "Market Value"--  
 20 A. No.  
 21 Q. -- which you have in your Report?  
 22 A. No.

10:36:27 1 Q. For the reasons that you had given before?  
 2 A. Yes.  
 3 Q. On Page 24 of your First Report, which is  
 4 behind Tab 1--we'll turn to Page 24. In the paragraph  
 5 under the heading "Market Conditions," you state that  
 6 the overall monthly appreciation for real estate in  
 7 the Playa Ventanas and Playa Grande region was  
 8 approximately 3.5 percent; is that correct?  
 9 A. Yes.  
 10 Q. And for the purposes of determining Fair  
 11 Market Value of Claimants' properties you applied that  
 12 monthly market trend until the date of valuation; is  
 13 that correct?  
 14 A. I applied a monthly trend, based on the  
 15 information shown on Page 24, to the comparable  
 16 transactions that we identified in estimating Market  
 17 Value.  
 18 Q. Okay. Thank you.  
 19 And if you turn to Page 19 of your Report, in  
 20 the second full paragraph, the last sentence, you  
 21 state that, "The inflationary trends that were evident  
 22 in the market in 2003 continued until early 2007 when

10:37:58 1 the real estate recession commenced worldwide";  
 2 correct?  
 3 A. Yes.  
 4 Q. So, therefore, there was a--by your own  
 5 description, an effect or a drop on the market price  
 6 in 2007; correct?  
 7 A. No.  
 8 Q. There was no drop in marketplace after--when  
 9 you entered--when real estate entered into a  
 10 recession? Is that what you're testifying?  
 11 A. I'm testifying that the market trends that we  
 12 identified from the actual information provided to us  
 13 is shown on Page 24 of my Report.  
 14 Q. I understand, but I'm talking about specific  
 15 points in time, and what we were just discussing  
 16 before was a trend; right? So, the trend of  
 17 3.5 percent increase in value. Here, I'm talking  
 18 specifically about the market in the Guanacaste area,  
 19 and you were saying that "the market in 2003 continued  
 20 until early 2007 when the real estate recession  
 21 commenced worldwide."  
 22 And that affected, did it not, the

10:39:05 1 properties, sales, and transactions in the Guanacaste  
 2 region?  
 3 A. No, it did not.  
 4 Q. So, your testimony is notwithstanding the  
 5 fact that there was a real estate recession worldwide  
 6 in 2007, that property values in the Guanacaste region  
 7 continued to increase at a rate of 3.5 percent?  
 8 A. No.  
 9 Q. Okay.  
 10 A. You're linking the worldwide recession to the  
 11 properties in Guanacaste, and we have identified, as  
 12 you've shown, on Page 19, that there was a worldwide  
 13 recession. We all understand that. However, what's  
 14 overriding to all of that was the information provided  
 15 by the brokers relative to the price appreciation and  
 16 what they saw in the local market, coupled with the  
 17 analysis that we've shown on 24, and then our ultimate  
 18 conclusion as to my monthly inflation factors, which  
 19 shows no appreciation during 2008.  
 20 Clearly, the market is slowing during 2007,  
 21 and we have stabilized and used a trend line, a  
 22 straight line trend line, in understanding--or not so

10:40:16 1 much straight line because it moves. It goes from  
 2 2 percent to 3 percent, back down to 1, and then flat  
 3 lines. So we do recognize that the market has slowed  
 4 down, and that is what I'm testifying to today.  
 5 Q. So I understand it you are--you have  
 6 indicated and sorry to jump around--but on Page 24 the  
 7 overall monthly appreciation from April 2004 to  
 8 March 2007 was approximately 3.5 percent, but you're  
 9 not talking about what is happening thereafter here,  
 10 are you? You're not indicating that that is also  
 11 increasing at that same rate?  
 12 A. No. What you can see is when you look at  
 13 Playa Ventanas Lot V52 and that sentence specifically  
 14 that you're alluding to from April of 2004 to March of  
 15 2007 goes from the price change of \$255,000 to  
 16 \$575,000 over that time span, and that is the  
 17 approximate appreciation on a monthly basis that was  
 18 calculated from that transaction.  
 19 Q. So you're not showing the effect of the  
 20 decline in the market that you just mentioned after  
 21 the point of 2007 here; is that fair?  
 22 A. There is no, from my estimation, a decline in

10:41:49 1 the market after 2007. The market has now, not  
 2 appreciated, but there is no decline in any of the  
 3 data that I saw relative to the properties in question  
 4 in Ventanas or in Guanacaste.  
 5 Q. And this is notwithstanding the worldwide  
 6 recession in real estate that happened beginning in  
 7 2007, as you mentioned in the earlier paragraph; is  
 8 that correct?  
 9 A. Correct.  
 10 Q. And you're aware that Lots of the purchasers  
 11 in the Guanacaste area are coming from the United  
 12 States?  
 13 A. Yes.  
 14 Q. And in the United States, was there a  
 15 recession with respect to real estate from 2007,  
 16 beginning of 2007/2008?  
 17 A. Yes.  
 18 Q. And do you think--is your understanding that  
 19 there was a link between the United States market,  
 20 real estate market and the real estate market in Costa  
 21 Rica, given that the purchasers were the same, more or  
 22 less?

10:43:00 1 A. No one has said that they're the same "more  
 2 or less" relative to the target audience or the target  
 3 buyers, target market for these properties. So, no, I  
 4 am not in agreement that your correlation between the  
 5 American market or the North American market or the  
 6 U.S. market had an effect on the values of these  
 7 subject properties.  
 8 Q. So your testimony is that, notwithstanding  
 9 the fact that there was a recession in the real estate  
 10 market in the United States, and the United States and  
 11 the individuals from the United States are--constitute  
 12 a substantial portion of the purchasers in the  
 13 Guanacaste area, it's your testimony that that had no  
 14 effect on the market, of the real estate market in  
 15 Guanacaste; is that correct?  
 16 A. Relative to the target audience for these  
 17 Lots, which are in the top 1 percent or however  
 18 you--1 percenters or 5 percenters--they were not  
 19 affected by the recession in the same order of  
 20 magnitude that you're alluding to here so that the  
 21 subject properties, or the beachfront lots, at this  
 22 caliber were not affected by the house prices in the

10:44:07 1 U.S.  
 2 Q. And what is the basis for that--for your  
 3 Statement?  
 4 A. The interviews that I've had with the  
 5 numerous brokers, and it's set forth in my Report.  
 6 Between Penny Wheeler, whether it's Bob Davey,  
 7 whether it's--and, again, the names are all in my  
 8 Report, so I don't have to repeat them. But it was  
 9 confirmed with the brokers that this buyer, the class  
 10 of buyer that was coming in here was not affected  
 11 by--and it was proven by the data set that they were  
 12 not affected by this recession.  
 13 Q. Let's turn to your sales comparison approach.  
 14 In your damages calculations, you use the  
 15 sales comparison approach to value Claimants'  
 16 property; is that correct?  
 17 A. Yes.  
 18 Q. And this is a situation where the value of  
 19 property is related to the prices of comparable  
 20 competitive properties; is that correct?  
 21 A. Yes.  
 22 Q. And in Section 5.2 of your First Report,

10:45:24 1 which is on Page 22, in the second full paragraph, you  
 2 indicate that the reliability of the technique that  
 3 you're employing depends on "the degree of  
 4 comparability of the property appraised with each  
 5 sale, the length of time since the sale, the accuracy  
 6 of the sales data, and the absence of unusual  
 7 conditions affecting the sale."  
 8 Is that correct?  
 9 A. Yes.  
 10 Q. So, for example, the closer in time to sale  
 11 transactions are, the more comparable they are; is  
 12 that correct?  
 13 A. That's one factor, but you would not say it's  
 14 the most comparable, but it's definitely relevant to  
 15 your analysis.  
 16 Q. And you have selected, in doing the  
 17 comparables, three transactions for each of Claimants'  
 18 properties in order to determine the value of their  
 19 property as of May 2008; is that correct?  
 20 A. Relative to the properties that were taken in  
 21 their entirety, yes. For those properties that were  
 22 partially taken, there are six comparables because

10:46:43 1 there's a "before" and "after," and in each one of  
 2 those situations, there were three sales identified.  
 3 Q. Okay. Fair enough.  
 4 And if you turn to Page 63 of your Report,  
 5 your First Report. And, again, this is to make a  
 6 valuation with respect to the date of May 2008. You  
 7 are choosing, among those three, it's listed, three  
 8 different sales. If you look at the top box, which is  
 9 the three different sales there. There's a date for  
 10 the first sale, '06; a date for the second sale, '06;  
 11 and date for the third sale, 2003; correct?  
 12 A. Yes.  
 13 Q. But isn't 2003--it's not particularly close  
 14 in time to 2008, is it?  
 15 A. It is as stated. It's the difference between  
 16 August 19, '03, and then May 27, '08.  
 17 Q. Right. So, that would be approximately  
 18 five years; is that correct?  
 19 A. Approximate.  
 20 Q. And in real estate time, is there a lot of  
 21 fluctuation in a market that occurs in a period of  
 22 five years?

10:47:59 1 A. In this case, you can see that there's a  
 2 market condition adjustment of 118 percent, so you  
 3 would suggest from the data itself that there was a  
 4 doubling of this property over that time frame.  
 5 Q. In determining the value of these properties,  
 6 you didn't consider the purchase price of the  
 7 properties, did you, their original purchase--their  
 8 purchase price, their most recent purchase price?  
 9 A. In two cases where the sales--that I can  
 10 recall at the moment--where the sales were, in fact,  
 11 used as comparables, then there was an inclusion, but  
 12 as it relates to the Claimants, no, their purchase  
 13 prices were not reflected or indicative of the Market  
 14 Value.  
 15 Q. But wouldn't you agree that one factor--one  
 16 factor you consider in your sales comparison approach  
 17 is the degree of comparability of property appraised  
 18 with the sales transaction you are using; correct?  
 19 A. I'm sorry. Could you repeat the question?  
 20 Q. Sure.  
 21 One of the factors you consider in your sales  
 22 comparison approach is the degree of comparability of

10:49:07 1 the property appraised with the sale transaction you  
 2 are using; correct?  
 3 A. Yes, that's correct.  
 4 Q. You would agree, would you not, that you  
 5 cannot find a more comparable property to compare than  
 6 comparing the same property at two different points in  
 7 time; correct?  
 8 A. No, I would not agree.  
 9 Q. Would you agree that the value of the  
 10 property, of the property that you're assessing, that  
 11 its latest price is relevant for determining the  
 12 valuation of that property?  
 13 A. No, I don't agree.  
 14 Q. So, when somebody is selling property or  
 15 buying property, you don't think it's relevant that  
 16 they look at the latest sales transaction that  
 17 occurred prior to the property being on sale? So, for  
 18 instance, if I'm buying property that's valued at  
 19 \$100,000, you don't think it's relevant that that  
 20 property sold 2 years before for \$3,000? Is that your  
 21 testimony?  
 22 A. It depends on the market conditions and the

10:50:18 1 conditions of your acquisition and whether or not that  
 2 was reflective of a Market Value at the time.  
 3 Q. Fair enough.  
 4 But what my question is, is it relevant--do  
 5 you think it's relevant--or you would agree that it's  
 6 relevant that, to consider for that particular  
 7 property, the latest purchase price of that property  
 8 when you're considering the valuation of that  
 9 property?  
 10 A. Again, it depends on the exact situation that  
 11 you're involved with, so, yes, if the acquisition was  
 12 deemed relevant and reflective of a Market Value, then  
 13 one would consider it. If, in your analysis, it is  
 14 not deemed to be relevant and not reflective of a  
 15 Market Value, then one wouldn't consider it.  
 16 Q. But in your view, is it correct that it is  
 17 worth considering to determine the value or assess the  
 18 value of that particular property?  
 19 A. Not as a determinate, no.  
 20 Q. No. But to say take into consideration--I'm  
 21 not saying that it's an absolute, I'm just saying that  
 22 it's something, a factor you would take into

10:51:27 1 consideration in determining the value of that  
 2 property.  
 3 A. And one would understand it and consider it,  
 4 but you keep using the word "to determine the market."  
 5 No, you don't use "it" to determine, you look at it  
 6 and you make your own assessment. But it's not  
 7 determinate, no.  
 8 Q. Okay. So, you would take it into  
 9 consideration? Do you think it's relevant to take  
 10 into consideration the latest purchase price or sale  
 11 price of that property that you're assessing?  
 12 A. Again, if it's within a relevant time frame  
 13 in the same--under same market conditions, then one  
 14 would consider it, but if it's not and not reflective  
 15 of a Market Value that you can use in valuing your  
 16 subject property, then, no, you don't consider it.  
 17 Q. And you did not look at the Sales Contracts  
 18 for the Claimants' properties in determining your  
 19 value of the properties; is that correct?  
 20 A. But for my analysis of the option agreement  
 21 for Lot V61, I did not.  
 22 Q. Thank you.

10:52:33 1 In Section 9.5 of your First Report, which is  
 2 on Page 83, you list a number.  
 3 I'm sorry, I'll wait till you get there. Are  
 4 you there?  
 5 A. Yes.  
 6 Q. I'm sorry. You list a number of sales  
 7 comparables; correct?  
 8 A. Yes.  
 9 Q. And these are properties that you used as  
 10 comparable properties for the purposes of valuing  
 11 Claimants' property; correct?  
 12 A. Yes.  
 13 Q. And a number of those properties were in  
 14 Playa Grande and Playa Ventanas areas; is that  
 15 correct?  
 16 A. Yes.  
 17 Q. And, in fact, some of those properties are  
 18 Claimants' properties; is that correct?  
 19 A. Yes.  
 20 Q. In looking at those properties that you were  
 21 relying on that are Claimants' properties--and I think  
 22 you answered this question with respect to, for

10:53:48 1 instance, Lot V71--but you also considered, in 9.5.4,  
 2 Lot V59; and in 9.5.5, Lot V61; and in 9.5.8,  
 3 Lots V30, 31, 32, 33, and 34.  
 4 For all of those you did not take into  
 5 consideration the sale and purchase agreements for  
 6 those properties; is that correct?  
 7 A. I did not see the purchase and sale  
 8 agreements on those Lots but for, as I testified, in  
 9 9.5.5, I did see the option agreement where Spence and  
 10 Wake Up Call had an agreement.  
 11 Q. And you would agree, would you not, that  
 12 sales and purchase contracts contain and can contain  
 13 useful information about the specific terms of a  
 14 particular sale?  
 15 A. Yes.  
 16 Q. But you, nevertheless, did not take any of  
 17 those or look, even, at the sales purchase agreements  
 18 in your analysis; is that correct?  
 19 A. They were not provided.  
 20 Q. Did you ask for them?  
 21 A. No.  
 22 Q. So you didn't think it was relevant, the

10:55:15 1 information that was contained in those Contracts?  
 2 A. Based on the verification with Bob Davey, who  
 3 was the selling agent in most of those cases, he  
 4 informed me that those Contracts wouldn't be available  
 5 and provided to me enough detail that I was  
 6 sufficiently satisfied that they were reflective of  
 7 Market Value, and there were no extraordinary terms  
 8 and conditions.  
 9 Q. You said that they wouldn't be available--or  
 10 valuable? I'm sorry. I'm not sure I understood.  
 11 A. Available. I'm sorry.  
 12 Q. Available.  
 13 Did he give a reason for why?  
 14 A. They were considered confidential.  
 15 Q. Did you say with respect to C71, did you see  
 16 that Contract that was--you said you had--you  
 17 understood it was reverted back, but you didn't--and  
 18 you knew that there was a condition that hadn't been  
 19 met. Did you see that Contract or no?  
 20 A. I did not.  
 21 Q. So once you identified the value, you--based  
 22 on the three comparables, you then adjusted that value

10:56:33 1 that you calculated--just that value. And part of  
2 that adjustment, among other things, were physical  
3 traits, such as beach frontage topography, et cetera;  
4 is that correct?

5 A. Topography and frontage in the one case.  
6 Whatever I set forth in my Report here that I provided  
7 earlier to the Tribunal and yourselves on Slides 11,  
8 where the adjustments in physical were topography,  
9 the--whether the lot had entitlements or the frontage,  
10 as you described, or also, then, in the  
11 after-condition for the B Lots, you know, their  
12 undersized nature in the after-taking.

13 Q. Okay. And if--just for sake of  
14 simplification, if you could turn to Tab 6, which is  
15 Navigant's First Report. And if you look at Page 19.

16 Do you have that in front of you?

17 A. I do.

18 Q. And in the Table 3, Navigant has identified  
19 the percent change on the right-hand column, and that  
20 percent change is the percent change, the range, I  
21 guess, of change with respect to the adjustments that  
22 you applied. Is that how you understand that chart?

10:58:16 1 A. Yes.

2 Q. So according to Navigant's calculations, the  
3 percent change ranged from--well, included as much as  
4 125--121 percent increase to as much as--actually, if  
5 you look at the second chart, it goes all the way down  
6 to 74 percent--a decrease--from your initial  
7 valuation; is that correct?

8 A. I think that's what the chart shows, but I  
9 don't agree that it's--accurately reflects the nature  
10 of the adjustments that were undertaken in my Report.

11 Q. Do you have a sense of the high and low range  
12 of the percentage adjustments from your Report, if you  
13 disagree with what Navigant has here in their Report?

14 A. I know that when I look at the sales in  
15 Ventanas, and I look for all the adjustments for the  
16 comparable transactions, you will only see minimally  
17 adjustments for those comparables for those parcels in  
18 Ventanas; and I don't believe that, when you look at  
19 those charts, which were only adjusted--again, those  
20 comparables, that negative 12 percent for most of  
21 those, and they are very lightly adjusted--that this  
22 chart would then suggest what the magnitude of

11:00:19 1 adjustments were to those comps.

2 The resultant value that you see may have a  
3 wide disparity, as I indicated, because of the  
4 inefficiencies and the lack of transparency in the  
5 market, and the way this is calculated between maximum  
6 and minimum, it is showing this wide range, and I  
7 think distorting the nature of the level of  
8 adjustments that were undertaken.

9 What you do see, though, is that the resulted  
10 adjusted values do have a wide range, and, from that,  
11 I made an educated conclusion relatively to the  
12 ultimate value of the subject property. But the level  
13 of adjustments on a per-comparable basis throughout  
14 the Ventanas Lots is not as shown here in this chart.

15 Q. But I think that--and maybe I misunderstood  
16 you, but did you--didn't you say that there was at  
17 least--and maybe we're not talking the exact numbers  
18 here, but there was a wide range in adjustments, in  
19 the amount of adjustments that needed to be made to  
20 the properties, as a general matter, that you had  
21 initially valued; is that correct?

22 A. A wide range in the complex properties in SPG

11:01:28 1 and in the B Lots. Here, you're looking at adjusted  
2 value, highs to low, and it doesn't go to the number  
3 of adjustments. The number of adjustments is  
4 relatively small. All we're doing in this Table 3 is  
5 showing the disparity between the ultimate adjusted  
6 values and the range from which then I had to select  
7 the subject properties' value after weighting --

8 Q. Okay.

9 A. -- so that the distortion here is just  
10 showing the wide range of disparity in sale prices for  
11 the comparables that I had to select from. It doesn't  
12 go to the number of adjustments that had to be made to  
13 those comparables, especially in the Ventanas Lots.

14 Q. Would you agree that there were a large  
15 number of adjustments that you needed to make to the  
16 comparables that you had--that the value had reached  
17 based on the comparables that you had used?

18 A. No. Only the adjustments got large, if you  
19 will, for the complex properties in southern--or in  
20 the Estate Lots, for SPG and the B Lots, because of  
21 the issues, because of size and everything else. But  
22 clearly, there was much more uniformity and

11:02:44 1 consistency in Ventanas and in the Guanacaste  
 2 Lots--Playa Grande Lots, that were not subject to  
 3 partial expropriation.  
 4 Q. With respect to those that had the disparity  
 5 and the large number of adjustments or the significant  
 6 number of adjustments that were made, doesn't that  
 7 suggest that the comparable transactions were not  
 8 particularly comparable; and, as a result, the  
 9 calculation is not particularly accurate?  
 10 A. They were the best comparables that were  
 11 found in the marketplace. You cannot fabricate data.  
 12 So, to the extent that it was the best data available,  
 13 that's what was used.  
 14 Q. So, you would agree--you mentioned that the  
 15 valuation of the property is--there are lots of  
 16 different values of property in the Guanacaste region.  
 17 So, you would agree, would you not, that it is a  
 18 common in that Guanacaste region for various  
 19 properties or for a property to have--for there to be  
 20 great differences in valuation of properties in that  
 21 area.  
 22 Would you agree with that statement?

11:03:52 1 A. No. I don't agree with your Statement  
 2 because you have substituted the word "value" for  
 3 "prices." There are many different prices because of  
 4 the transparency and because of the efficiency of that  
 5 market, but you cannot say that there were many  
 6 different "values." There were many different  
 7 "prices."  
 8 Q. Okay. But there are different prices, that  
 9 can affect the value; isn't that correct?  
 10 A. The collection of prices in a market, then  
 11 you interpret to indicate a value for a property. So,  
 12 that is how the process goes.  
 13 Q. Right. So, if there are a wide range of  
 14 prices in the area, then it can affect--it suggests  
 15 that there would be a wide range of values for  
 16 property in that area; correct?  
 17 A. As I've testified to and as you can see in  
 18 the data set that we've used, there are wide  
 19 variations and disparities in the adjusted sales  
 20 prices for these Lots after adjustments, and that is  
 21 indicative of the market. And from that, one selects  
 22 the appropriate or indicates the appropriate value to

11:05:09 1 ascribe to the subject property with professional  
 2 acumen and judgment, and that's the process. And then  
 3 what you do is you step back and you say, "Does that  
 4 make sense and reasonable, in light of all the  
 5 information that you've analyzed?" And that's what  
 6 we've done in this case.  
 7 Q. Would you say, Mr. Hedden, that it is  
 8 difficult to value properties in the Guanacaste  
 9 region?  
 10 A. I think it's challenging. I think my Report  
 11 goes to say that. That, Difficult? No. After 35,  
 12 34 years of experience, it was challenging, but I felt  
 13 that, given the information and the interviews and the  
 14 body of work that I now can show in all of my  
 15 exhibits, I accepted the professional challenge and  
 16 feel that I have rendered a credible opinion.  
 17 Q. And do you think that, given the difficulty  
 18 or the challenge that you faced, do you think it's  
 19 fair to say that different--people could come up with  
 20 different conclusions of the valuation for properties  
 21 in the area? Given how difficult it is or what a  
 22 challenge it is to determine the value, is that a fair

11:06:16 1 assumption?  
 2 A. Yes. Professional valuers often come up with  
 3 different opinions of value.  
 4 Q. Thank you.  
 5 Can I just have you turn to Slide Number 10  
 6 of your presentation. And here you--in the middle of  
 7 the box, where you have adjustments for physical  
 8 characteristics, and you list them out, and you list  
 9 out what effect that had, you know, the adjustments  
 10 you made, so that in the column up above, where it  
 11 says "market conditions adjustment," you have a  
 12 summary there. That's the 10 percent, 8 percent,  
 13 45 percent, and then down below you are breaking that  
 14 all out, if I'm understanding this correctly, into  
 15 more detail. And here in particular, you're talking  
 16 about adjustments for physical characteristics; is  
 17 that correct?  
 18 A. Yes.  
 19 Q. Did you provide that information--  
 20 A. Excuse me, yes.  
 21 Q. I'm sorry. Okay. Sorry.  
 22 Did you provide that detailed information in

11:07:33 1 your Report?  
 2 A. The numbers that you see here were not  
 3 contained in the report.  
 4 Q. And did you not think that was important to  
 5 include in your Report?  
 6 A. That's correct.  
 7 Q. Isn't it important for the sake of  
 8 transparency that people who are evaluating your  
 9 Report to determine the assumptions that you are  
 10 making have full knowledge of the assumptions that  
 11 you, in fact, are making in making--in your--when  
 12 doing your analysis?  
 13 A. Could you repeat that question, please?  
 14 Q. I don't know why you ask.  
 15 Isn't it fair to assume that it's important  
 16 that you provide, in the interest of transparency, all  
 17 of the assumptions, all the information, the  
 18 assumptions that you made in valuing the property?  
 19 A. Not necessarily, no.  
 20 Q. You don't think it would be important for  
 21 somebody to forward--to include information, the  
 22 assumptions that you're making here, where you break

11:08:39 1 it down as specifically as you are, in order for  
 2 somebody to evaluate whether or not they agree or  
 3 disagree with the assumptions that you made?  
 4 You don't think that is important to include  
 5 that information in your Report?  
 6 A. There are no appraisal standards that require  
 7 one to disclose that type of arithmetic in one's  
 8 report, and given the knowledge of the Tribunal and  
 9 the venue that we're here, for the sake of simplicity,  
 10 without complexity, I didn't feel it was necessary.  
 11 And given the fact that I have now presented the rules  
 12 underneath the model, one can clearly understand the  
 13 rational way I have approached this problem and  
 14 explained the situation here.  
 15 Q. But, Mr. Hedden, notwithstanding your  
 16 Statement, you clearly thought it was important to  
 17 share with the Tribunal at this moment, didn't you;  
 18 otherwise, you wouldn't have included it on your  
 19 slide, would you?  
 20 A. That's correct.  
 21 Q. So, in fact, you do think it's important for  
 22 the Tribunal and for the Parties to understand the

11:09:34 1 underlying assumptions that you made in your Report?  
 2 A. Yes.  
 3 Q. But you, nevertheless, did not include it  
 4 earlier in time than now; is that correct?  
 5 A. That's correct.  
 6 Q. And just to clarify, the line further down on  
 7 weight, you also, in Slide Number 10, are breaking it  
 8 down by weight, and how you weighted each of the  
 9 properties. You did not include that information in  
 10 any of your reports; is that correct?  
 11 A. That's correct.  
 12 Q. And, again, to clarify, but you do think that  
 13 information is useful and valuable to share with the  
 14 Tribunal and the Parties at this time; is that  
 15 correct?  
 16 A. Yes.  
 17 Q. And to just be clear, on Slide 11, where you  
 18 go into great detail about size and economies of scale  
 19 and physical characteristics, you also did not include  
 20 that kind of detail in your Report; is that correct?  
 21 A. Some of that detail was included in my  
 22 Report, but not all of it.

11:10:39 1 Q. And, again, to clarify, you thought it was  
 2 important to raise with the Tribunal and the Parties  
 3 at this time; is that correct, but not earlier in your  
 4 Report?  
 5 A. I thought it would be beneficial to the  
 6 Tribunal if they attempted to replicate the logic and  
 7 the math that I had undertaken in this analysis. It  
 8 was fair to share with them at this time.  
 9 Q. But, again, you didn't think it was important  
 10 to share at an earlier point in time in which people  
 11 could analyze what they had done, and the assumptions  
 12 you had made; is that correct?  
 13 A. I think that minimizes the point that I was  
 14 making. I thought that the ultimate conclusions then  
 15 are pretty evident and rational, and so that the  
 16 ultimate conclusion and credibility of the document is  
 17 not jeopardized by the fact that I didn't show the  
 18 arithmetic.  
 19 Q. I'm sure it's rational and evident to you  
 20 since you did it, but it may not be evident and  
 21 relevant to those who have not actually conducted that  
 22 analysis.

11:11:33 1 MS. McCANDLESS: But, nevertheless, I think,  
 2 Mr. President, perhaps, this might be a good time for  
 3 a break.  
 4 PRESIDENT BETHLEHEM: If that's consistent  
 5 with your cross-examination.  
 6 MS. McCANDLESS: Yes. We're at a point where  
 7 we're going to switch to a different topic.  
 8 PRESIDENT BETHLEHEM: Let's do so.  
 9 Mr. Hedden, may I remind you that you're  
 10 still under oath, as it were in the Witness seat.  
 11 We'll break now for 15 minutes. Please don't discuss  
 12 your testimony with counsel, with anyone--with any of  
 13 the Parties until we resume the cross-examination.  
 14 THE WITNESS: Understood.  
 15 PRESIDENT BETHLEHEM: Thank you. We'll break  
 16 now until 25 minutes past.  
 17 (Brief recess.)  
 18 PRESIDENT BETHLEHEM: Ladies and gentlemen,  
 19 just before we recommence the cross-examination, let  
 20 me once again urge both Parties, please, to provide to  
 21 the interpreters as early as possible all the bundles,  
 22 all the slides. It makes it extremely difficult for

11:25:57 1 the interpreters if they do not have this information  
 2 beforehand. It is causing real, real problems.  
 3 The information is available, so please make  
 4 sure you provide it to the interpreters beforehand.  
 5 They will not distribute it to anybody else, they will  
 6 observe the confidentiality, but it's absolutely  
 7 essential that these folders are provided in advance.  
 8 And I'm making the point now because this is  
 9 going to be absolutely essential as well for any  
 10 slides or other documents that you're going to use in  
 11 response to your questions to the Tribunal and for  
 12 your presentations tomorrow.  
 13 I really do not want to be in a position  
 14 where we're going to have to raise this question  
 15 again. The interpreters really need to be on notice.  
 16 Please.  
 17 So, without more ado, Mr. Hedden, you're  
 18 still in the Witness seat.  
 19 Ms. McCandless, over to you.  
 20 MS. McCANDLESS: Thank you, Mr. President.  
 21 BY MS. McCANDLESS:  
 22 Q. Mr. Hedden, we're talking about severance

11:26:52 1 damages. And if you look at your First Report on  
 2 Page 21, which is under Tab 1 of--well, you can look  
 3 at it wherever you wish. But if you're looking at it  
 4 in the black binder, it is under Tab 1 and Page 21.  
 5 And the second full paragraph, in the middle  
 6 of that paragraph, you're describing severance  
 7 damages. And according to your description, severance  
 8 damages occur when a parcel is only partially  
 9 expropriated; correct?  
 10 A. That's when it may occur.  
 11 Q. Okay. Fair enough.  
 12 And severance damages are the damages that  
 13 result from a decrease in value to the unexpropriated  
 14 part of the land due to the expropriation of part of  
 15 the land; is that correct?  
 16 A. Yes.  
 17 Q. And to calculate severance damages you  
 18 analyze the parcel before the taking and then after  
 19 the taking, and then you subtract the expropriated  
 20 portion and compare the value of the remaining parcel  
 21 before the taking with the value of the remaining  
 22 parcel after the taking. And the difference is the

11:28:08 1 severance damage; is that correct?  
 2 A. I believe what you said: If you value the  
 3 property before and you value the property after, and  
 4 you take a subtraction, if you will, between those two  
 5 positions, the resultant number is the value of the  
 6 part taken, which may include severance damages.  
 7 Q. Right. For the purpose of calculating the  
 8 severance damages, then you are taking--you subtract  
 9 out the expropriated portion and you compare the value  
 10 of the remaining parcel before the taking with the  
 11 value of the remaining parcel after the taking. Once  
 12 you've already taken out the expropriated portion,  
 13 then that difference is a severance damage; is that  
 14 correct?  
 15 A. Yes. You take the expropriated portion of  
 16 that out at the before-value, and then the remainder  
 17 then becomes the allocation to severance damage,  
 18 that's correct.  
 19 Q. Okay. Thank you.  
 20 To calculate the before-taking value of the  
 21 Lots that are allegedly partially expropriated, you  
 22 used comparable transactions of other beachfront

11:29:21 1 properties; is that correct?  
 2 A. Yes.  
 3 Q. And let's look at an example. If you could  
 4 please turn to 62 and 63 of your First Report. This  
 5 is with respect to Lot SPG1; correct?  
 6 A. Yes.  
 7 Q. Look at the table on Page 63, on the top, the  
 8 top square, is the before-taking value; correct?  
 9 A. Yes.  
 10 Q. And the bottom square is the after-taking  
 11 value; correct?  
 12 A. Yes.  
 13 Q. And in the before-taking value we're kind of  
 14 in the middle of box, it says "physical" and you have  
 15 beachfront, beachfront, beachfront, beachfront. So,  
 16 there you're assuming--you used comparable beachfront  
 17 properties to value the entire Lot before taking; is  
 18 that correct?  
 19 A. Yes.  
 20 Q. The before-taking value of properties  
 21 reflects their location on the beach; is that right?  
 22 A. Yes.

11:30:37 1 Q. And a beachfront location is generally more  
 2 valuable than a location that is not beachfront;  
 3 correct?  
 4 A. Yes.  
 5 Q. Okay. And that is because the beachfront  
 6 location assumes a beach view or beach access; is that  
 7 right?  
 8 A. Generally speaking that is correct. However,  
 9 it really goes to the proximity of the amenity that is  
 10 part of the valuation theory.  
 11 Q. If you subtract the beachfront portion of the  
 12 parcels because of the expropriation, you are left  
 13 with the remainder parcel; correct?  
 14 A. Excuse me just a second.  
 15 (Comment off microphone.)  
 16 THE WITNESS: Can you please repeat the  
 17 question?  
 18 BY MS. McCANDLESS:  
 19 Q. Yes, I will.  
 20 If you subtract the beachfront portion of the  
 21 parcels because of the expropriation, you are left  
 22 with the remainder parcel; correct?

11:31:31 1 A. As was expropriated in this case, we have  
 2 expropriated in the partial takings the most proximate  
 3 land to the beachfront, and then the remainder is not  
 4 as proximate, that's correct.  
 5 Q. And to determine the value of that remainder  
 6 parcel after the taking, you used interior properties  
 7 as comparable transactions; correct?  
 8 A. Yes.  
 9 Q. And the second table on Page 63 reflects  
 10 that, and it says "physical," and the line there has  
 11 interior Lot, interior Lot, interior Lot, interior  
 12 Lot; correct?  
 13 A. Yes.  
 14 Q. And to be clear, interior Lots have less  
 15 value than beachfront Lots; correct?  
 16 A. Yes.  
 17 Q. So we have the complete Lot before the taking  
 18 valued as beachfront property, a portion of that  
 19 beachfront property is expropriated, which leaves a  
 20 portion of a property that is still valued as  
 21 beachfront property; is that correct?  
 22 A. Could you repeat that question?

11:32:30 1 Q. Sure.  
 2 So we have a complete Lot before taking  
 3 valued as beachfront property, as beachfront--and a  
 4 portion of that beachfront property is expropriated,  
 5 which leaves a portion of property that is still  
 6 valued as beachfront property; is that correct?  
 7 A. I believe it's not correct because the  
 8 remainder land is valued as interior Lots.  
 9 Q. Well, in your--  
 10 A. Interior land in the second section here.  
 11 Q. I'm sorry. To be clear, I'm talking about  
 12 the first part in the before-taking part. So--and I'm  
 13 talking about the portion that's not been  
 14 expropriated, and I'm talking about your--how you're  
 15 applying your severance calculations.  
 16 So, you take--you have a complete Lot before  
 17 the taking valued as beachfront property, and a  
 18 portion of that beachfront property is expropriated,  
 19 which leaves the remaining portion of the property.  
 20 And for your calculation of severance damages, you are  
 21 assuming for that that the before-taking value of the  
 22 nonexpropriated portion is beachfront property. The

11:33:47 1 value you give to that is beachfront property; right?  
 2 A. No. The value in the after-take is valued as  
 3 interior Lots as shown in the lower portion of this  
 4 Page 63.  
 5 Q. Yes, after the taking. When you're  
 6 subtracting the value one from another, the second  
 7 amount is the amount calculated as an interior Lot.  
 8 But you're subtracting that from a value of the Lot  
 9 that I believe you're giving as the beachfront value.  
 10 The difference is the severance; isn't that correct?  
 11 A. Again, we've gone around this a couple times,  
 12 but it's shown clearly in my presentation earlier on  
 13 one of the slides.  
 14 So, it's the before value at the larger Lot  
 15 theory and the before value at the 207. And then in  
 16 this case, with this parcel there were 3,000 square  
 17 feet expropriated, so that that was ascribed at the  
 18 \$200--\$207 per square meter.  
 19 And then after that has been subtracted, then  
 20 the remaining land is then ascribed as interior. Then  
 21 when you do that arithmetic, then the resulting value  
 22 is then considered the severance.

11:35:15 1 Then when you add them back together, you get  
 2 the total compensation for the part taken as well as  
 3 the remaining land, which now has to absorb the lost  
 4 value from the front portion.  
 5 Q. Okay. It may be a little bit easier to take  
 6 a look at a visual for this. If you look at  
 7 Navigant's Reports, and the Second Report behind Tab 7  
 8 at Page 30, this is based on a development plan for  
 9 SPG Lots; is that correct?  
 10 A. Yes, it is.  
 11 Q. And it's in the record as Exhibit C-40.  
 12 The 75-meter strip is valued as beachfront,  
 13 and the interior, this part behind that, is considered  
 14 interior Lots. And for your initial before taking,  
 15 the entire portion, the 75-meter and the interior  
 16 Lots, are all valued as beachfront Lots; is that  
 17 correct?  
 18 A. Not beachfront Lots, but it's valued under  
 19 the larger parcel theory as one unified parcel at one  
 20 unit rate, that's correct.  
 21 Q. Correct. And the unit rate is beachfront?  
 22 A. We used beachfront comps, but they were

11:36:44 1 significantly adjusted downward to the \$207 per meter  
 2 value that was ascribed to the entire parcel. Even  
 3 though we used beachfront comps, you'll notice that  
 4 there's a significant price reduction in our  
 5 adjustment downwards to the \$207 per square meter,  
 6 reflective of the entire Lot using beachfront  
 7 comparables adjusted.  
 8 Q. If you look at Figure 10, which is on the  
 9 next page, on Page 39, assuming a partial  
 10 expropriation of the 75-meter strip of land that is  
 11 located within the National Park, the remaining parcel  
 12 begins with a section marked "new beachfront," so the  
 13 parcel now would be new beachfront plus interior Lots;  
 14 correct?  
 15 A. I would not characterize the green area as  
 16 new beachfront, but it is then the green plus the  
 17 remaining yellow that are considered interior Lots in  
 18 my analysis.  
 19 Q. Okay.  
 20 A. Interior land. I shouldn't say "Lots."  
 21 Interior land.  
 22 Q. And for the purposes of that valuation for

11:37:47 1 the post taking, then the green plus yellow is valued  
 2 in your severance damages calculations as being  
 3 interior Lots; is that correct? The comparables you  
 4 used were for interior Lots?  
 5 A. Yes. We valued that as interior land using  
 6 interior Lot values.  
 7 Q. But as a practical matter, the space that  
 8 constitutes the green and yellow in the Figure 10 and  
 9 the space that constitutes the yellow in Figure 9,  
 10 they haven't moved, have they?  
 11 A. No. It is stationary.  
 12 Q. So they are as close--in Figure 10, that land  
 13 is as close to the beach before the taking as they  
 14 were after the taking; correct?  
 15 A. And what land are you alluding to?  
 16 Q. In Figure 10, the green plus yellow.  
 17 A. Is the same distance physically--  
 18 Q. Yes.  
 19 A. --as what you have in Figure 9, that's  
 20 correct. They haven't moved. Only the Lot--only that  
 21 the buffer has, that the pink area has moved,  
 22 encroached on the remaining land.

11:39:05 1 Q. Well, it hasn't physically moved, though, has  
 2 it?  
 3 A. No.  
 4 Q. And the Government--so you're as close to the  
 5 beach before the taking as they were after the taking;  
 6 correct?  
 7 A. They are physically as close, but it's been  
 8 detrimentally impacted by the insertion of that pink  
 9 space.  
 10 Q. And that pink space is the 75-meter strip  
 11 that the Government expropriated because it's a Park,  
 12 which means that there is not going to be any  
 13 development there, no buildings, no houses; isn't that  
 14 correct?  
 15 A. That is correct. There will be no buildings.  
 16 There will not be any access, and there will just be  
 17 continued growth of vegetation.  
 18 Q. So the new beachfront Lots, the ones that are  
 19 in the green strip in Figure 10, have all the same  
 20 qualities as all the old beachfront Lots; isn't that  
 21 correct?  
 22 A. No, it is not.

11:39:56 1 Q. They are physically in the same location.  
 2 They are not any further away from the water, are  
 3 they?  
 4 A. They are not physically further from the  
 5 water, but they are clearly further away from the  
 6 amenity that one would think that, again, in  
 7 valuation, it's clear from an economic perspective, if  
 8 you're closer to the amenity, you have a higher value.  
 9 Like any sporting arena, if you're sitting close to  
 10 courtside, you pay higher for the seat close to the  
 11 court than you do to the back.  
 12 If you think about it here, if my land was  
 13 only at 50 meters away, if you're a golfer, that's an  
 14 easy lob shot. And if you're now 125 meters away,  
 15 that's a 9 iron.  
 16 If you're a soccer player, I'm at mid-field  
 17 or I'm behind the net now watching from behind the  
 18 goalie--or a football player, I should say.  
 19 So the end of the story is physically that  
 20 they haven't moved, but from an economic perspective  
 21 dynamically the land clearly in the green now is not  
 22 as valuable as the area in the pink, even though they

11:41:09 1 physically haven't moved. And there's this buffer now  
 2 in front of them where I can't access--I have  
 3 vegetation growth that I can't control. Yes, there's  
 4 a diminution to the area in green and yellow.  
 5 Q. So the interior Lots are less valuable than  
 6 beachfront Lots is what you're saying; correct?  
 7 A. The land further removed from the amenity is  
 8 less valuable, and that's a standard valuation premise  
 9 in depth table that's been going on since the '40s in  
 10 terms of land valuation. And economically I think  
 11 it's a pretty well-proven principle that anything  
 12 further from an amenity is less valuable.  
 13 Q. And so the resulting difference between  
 14 beachfront and "interior," that calculation is higher  
 15 than it would have been if you had compared beachfront  
 16 before expropriation to beachfront after  
 17 expropriation; isn't that correct?  
 18 A. The values were adjusted accordingly so that  
 19 the spread between the values before and after made  
 20 sense relative to the adjusted comparables. And then  
 21 when one steps away and looks at the total value of  
 22 being paid for the part acquired, as consistent with

11:42:22 1 my theory, it makes sense that that is the difference  
 2 in value between the before and after. And it's in  
 3 valuing the total part taken that one is looking at in  
 4 the overall analysis here.  
 5 Q. And in your direct examination you discussed  
 6 properties, and you made a distinction between the SPG  
 7 Lots and the B Lots. And the SPG Lots, you said they  
 8 were--notwithstanding the fact that a portion of the  
 9 lot was taken, because of the size of the lot, you  
 10 said that--and the ownership there--you say--and this  
 11 is on Page 733 of the transcript, beginning at  
 12 Line 7, "We see that the before value has been  
 13 enhanced by the unified ownership of the larger  
 14 parcel."  
 15 So here we go on then to a larger parcel  
 16 because SPG1, 2, and 3 are all owned by one individual  
 17 and they can all be unity of use, unity of title, and  
 18 then physical--well--anyway. So unity of use and  
 19 unity of title; correct?  
 20 A. And physical contiguity, the physical  
 21 collectiveness, yes. So yes, that is correct. Those  
 22 are the three economic principles relative to an

11:43:31 1 after-parcel assemblage and highest and best use.  
 2 Q. And you indicated that it was different for  
 3 the B Lots because, when you take away a portion of  
 4 the B Lots, that it left a portion that couldn't be  
 5 developed and, therefore, that had a larger severance  
 6 damage calculation that you made; is that correct?  
 7 A. Correct.  
 8 Q. Are you aware--let's see. If you turn to  
 9 Page 26 of your First Report, which is behind Tab 1.  
 10 And the B Lots are there in the lower portion of the  
 11 map; and it's actually kind of hard to see on this  
 12 map, but behind the B Lots are properties. Are you  
 13 aware that those Lots behind the B Lots are also owned  
 14 by Mr. Berkowitz?  
 15 A. No. I have no information that led me to  
 16 understand that they were owned by it. There was a  
 17 conversation that he owned other land in the area, but  
 18 I did not know exactly where they rested.  
 19 Q. If you had that knowledge, would you make an  
 20 adjustment to your damages calculation such that you  
 21 would not give the greater value for severance that  
 22 you did to the B Lots with the understanding that

11:45:06 1 there was no unity of owner and no unity of title?  
 2 A. Can you repeat that question, please?  
 3 Q. Sure.  
 4 If you had the understanding that--if you  
 5 knew that those Lots behind the B Lots that are shown  
 6 in this picture here belonged to Mr. Berkowitz, would  
 7 you feel the need to adjust your severance value to  
 8 reflect it more along the lines of what you did with  
 9 the SPG Lots because, in that instance, there would be  
 10 unity of title and unity of ownership?  
 11 A. I would have to take that under advisement.  
 12 But if it met the test of unity of use, unity of  
 13 title, and physical contiguity and they weren't  
 14 separated and could in fact be joined, they would get  
 15 similar treatment then to then the SPG Lots and/or,  
 16 you know, how I ascribed a value to B Lots 5 and 6,  
 17 where they were adjoining and could be assembled to  
 18 create one plus or minus 8,000 square foot Lot.  
 19 Q. Okay. Thank you.  
 20 Let's go back to the issue of beachfront  
 21 view. And as we had discussed earlier, you valued  
 22 some of these properties as beachfront properties, and

11:46:24 1 you provided photos in your first Reports of views of  
 2 the beach. Let's turn to those photos on Page 88 of  
 3 your First Report.  
 4 At the first photo, which is entitled "North  
 5 view of the beach from Lot V32," in these photos you  
 6 see the dark vegetation that follows that line on the  
 7 beach?  
 8 A. In the bottom south view or in the top north  
 9 view?  
 10 Q. Actually in both. But in the top north view,  
 11 as well as the bottom south view.  
 12 A. Yes. I see vegetation in the distance.  
 13 Q. All right. That is the berm or tree line or  
 14 the beginning of the vegetation; is that correct?  
 15 A. In the northerly view on the top of Page 88,  
 16 that rise or elevation is significantly off the  
 17 property line. That is a beach view, so that is not  
 18 of question.  
 19 But I think that what you might be alluding  
 20 to is in the south view where you see the vegetation  
 21 to the left--to the rear of the photograph, yes. That  
 22 is the rear--that is the line where vegetation begins

11:47:47 1 to commence.  
 2 Q. And a large hedge-like mass of vegetation at  
 3 the edge of the beach, the same berm--the same berm  
 4 that Claimants claim keeps the turtles from being  
 5 disturbed by the lights and noise of the urban  
 6 development; isn't that correct?  
 7 A. Could you repeat that question, please?  
 8 Q. Actually, I will withdraw that question.  
 9 Claimants' properties are located on the land  
 10 side of the berm; is that correct? On the other side  
 11 of the berm?  
 12 A. You allude to a "berm." I would call it the  
 13 50-meter inalienable zone.  
 14 Q. Well, I guess I'm trying to call it the tree  
 15 line, the vegetation line.  
 16 A. Yes. Looking south on Page 88 in the  
 17 southerly picture, you'll see a row of vegetation in  
 18 the distance. And, yes, the Claimants' property lies  
 19 to the other side of what you can see in that  
 20 photograph.  
 21 Q. Would it surprise you to learn that  
 22 Mr. Berkowitz, during his cross-examination, described

11:48:51 1 that vegetation as a "green curtain"?  
 2 MS. COHEN: I object to the question.  
 3 MS. McCANDLESS: It's just a question as to  
 4 whether or not he would be surprised if he learned  
 5 that information.  
 6 PRESIDENT BETHLEHEM: I think you can put it  
 7 in terms that don't go to Mr. Berkowitz's testimony.  
 8 MS. McCANDLESS: Okay.  
 9 BY MS. McCANDLESS:  
 10 Q. So, there is a large amount of vegetation  
 11 that is there behind which the property exists; is  
 12 that correct?  
 13 A. There is vegetation behind which the  
 14 properties exist.  
 15 Q. And from Claimants' properties, let's take a  
 16 look at a picture. If you go to Page 62 of your First  
 17 Report?  
 18 A. Yes.  
 19 Q. That is Lot SPG1; correct?  
 20 A. That is correct.  
 21 Q. Is that a picture looking towards the Pacific  
 22 Ocean, or is it looking from the Pacific Ocean? It

11:49:54 1 doesn't say.  
 2 A. It is a picture looking westerly from the  
 3 road on the back of Lot SPG1 towards the west and  
 4 towards the ocean.  
 5 Q. So, you would agree, would you not, that from  
 6 that perspective, there is not much of a beach view  
 7 there, is there?  
 8 A. Standing on the ground at the rear of the  
 9 Lot, there is not much beach view, correct.  
 10 Q. The total amount of severance damages that  
 11 you have valued is \$13,045,005; is that correct?  
 12 A. Can you be more specific?  
 13 Q. The total amount of severance damages that  
 14 you have valued is \$13,045,005. Perhaps--well, let me  
 15 take you to that amount and you can tell me if you  
 16 disagree with that.  
 17 In Navigant's First Report, which is behind  
 18 Tab 6 of the binder in front of you, at Page 20,  
 19 there's a table, Table 4. Do you see that?  
 20 A. Yes, I do.  
 21 Q. And if you follow the column, the second to  
 22 the right, it's entitled "Severance Damages." And you

11:51:20 1 go down to the bottom, and Navigant has identified the  
 2 values of severance damages based on your Report, and  
 3 then come up with the total value at the bottom of  
 4 \$13,045,005; correct?  
 5 A. That's what the number shows; and if that's  
 6 an accurate reflection of what my Report shows, then I  
 7 will agree that that's what that says.  
 8 Q. Okay. And the total amount that you have  
 9 valued for damages in U.S. dollars is  
 10 \$36,000,203--\$36,203,000; correct?  
 11 A. Based on my earlier testimony, I think we  
 12 amended that given the recalculation of Lot A3 and  
 13 A40. And I believe that on Slide 23, we now show a  
 14 total compensation or adjusted value of the parts  
 15 taken at 36 million--sorry. This is value of the land  
 16 taken with severance damages of \$36,608,000, U.S.  
 17 Q. Okay. So even with that revised calculation,  
 18 your severance damages constitute about one-third of  
 19 your total damages calculation; isn't that correct?  
 20 A. If you were to do the math, yes, that is  
 21 probably about one-third of the value that is then  
 22 ascribed to the lost value of the front portion that

11:52:45 1 is now allocated over the rear portions of those  
 2 lands.  
 3 MS. McCANDLESS: Thank you. I have no  
 4 further questions.  
 5 PRESIDENT BETHLEHEM: Thank you very much.  
 6 Ms. Cohen.  
 7 MS. COHEN: I do have just a couple of  
 8 questions arising. If I may just have one moment.  
 9 REDIRECT EXAMINATION  
 10 BY MS. COHEN:  
 11 Q. Mr. Hedden, if I could ask you just to look  
 12 at Page 62 of your Report. You were asked a moment  
 13 ago about the photograph on Page 62 of the Report, and  
 14 you said standing from the rear--I think you said  
 15 standing from the back--on the ground from the rear of  
 16 the Lot. I can't remember your exact language, but I  
 17 think you said there wasn't much of a beach view.  
 18 Can you tell me from your observation if you  
 19 were standing elsewhere on the lot what the view from  
 20 that Lot was?  
 21 A. Standing at a different portion of the Lot  
 22 where you might have a building envelope and the

11:54:25 1 property would be constructed, you can see this is a  
 2 winter shot and there is the madero negro of probably,  
 3 let's just say, 15, 20 feet, with a building could be  
 4 built up to nine meters and 36 feet. So, with the  
 5 height--and so if you looked at Mr. Gremillion's plans  
 6 of a second story and a set of appropriate building  
 7 envelope with a reasonable setback from the 50-meter  
 8 inalienable space, zone, one would be able to see over  
 9 the madero negro of sunsets and hear the lapping of  
 10 the water and possibly see beach views and the beach  
 11 itself and the ocean.

12 Q. Mr. Hedden, one other question, and  
 13 conveniently it's on Page 63 of your Report. You were  
 14 asked about the second portion of the analysis on  
 15 Page 63, and you were referred to the fact that you  
 16 have used interior Lots as comparables with respect to  
 17 the after taking?

18 A. Yes.

19 Q. And with respect to those interior Lots, can  
 20 you tell me from your observation and from your  
 21 analysis at the time, what is currently in front of  
 22 those comparable Lots that you've used?

11:56:38 1 A. They are on the other side of the road, so  
 2 across the road from them would then be this new  
 3 75-meter setback, and then in front of them now are  
 4 other properties that are now currently beachfront.  
 5 And so it's behind the road and there is some other  
 6 vegetation and development in front of them.

7 Q. And when you say that there's other  
 8 vegetation in front of them, did you--in your  
 9 knowledge, was there any--you also indicated that  
 10 that's now part of the 75 meters beyond the 50-meter  
 11 inalienable zone. Do you know whether the Lots in  
 12 front of these Lots that you've used here have also  
 13 been expropriated?

14 A. Yes, they have. Or intended to be.

15 MS. COHEN: Thank you. Those are my  
 16 questions.

17 PRESIDENT BETHLEHEM: Thank you.  
 18 We have a number of questions from the  
 19 Tribunal.

20 Mr. Kantor.

21 QUESTIONS FROM THE TRIBUNAL

22 ARBITRATOR KANTOR: Mr. Hedden, thank you for

11:57:57 1 attending. My name is Mark Kantor, and I'm one of the  
 2 Arbitrators.

3 First, I understand from your Reports that  
 4 you prepared them in conformity with the Code of  
 5 Professional Ethics and the Standards of Professional  
 6 Practice of the Appraisal Institute.

7 What is your understanding of the  
 8 responsibilities that you owe to this Tribunal in  
 9 light of that code and those standards?

10 THE WITNESS: To be ethical, to have no bias,  
 11 to represent in my best professional judgment a  
 12 credible opinion of value.

13 ARBITRATOR KANTOR: Does it include a  
 14 responsibility to provide this Tribunal--to owe a  
 15 primary duty to this Tribunal rather than to the Party  
 16 who instructed you?

17 THE WITNESS: The only instruction that I may  
 18 have received was the date of value; and to the extent  
 19 that I agree with that date of value, that is the only  
 20 instruction that I may have received. The rest of the  
 21 conclusions, opinions set forth in my Report are my  
 22 own.

11:59:04 1 ARBITRATOR KANTOR: Thank you.  
 2 Does the Code and the Standards--do they  
 3 include a responsibility on your part to owe a primary  
 4 duty to this Tribunal rather than to the Party who  
 5 instructed you?

6 THE WITNESS: Yes. Part of the Code of  
 7 Ethics that we ascribe to is for public trust and to  
 8 be as impartial as possible; and, therefore, in that  
 9 sense I have presented my--what I believe to be a fair  
 10 opinion of value to this Tribunal today.

11 ARBITRATOR KANTOR: Thank you.  
 12 You have used the phrase "scheme" to describe  
 13 that conduct of the State that you did not take  
 14 account of in determining any reduction in value  
 15 because it's attributable to the scheme. Do I  
 16 correctly understand that?

17 THE WITNESS: Yes.

18 ARBITRATOR KANTOR: Could you describe to me  
 19 your understanding of what that scheme is.

20 THE WITNESS: The scheme in the context of my  
 21 understanding as it relates to this matter would be  
 22 then the expropriation of the property that is part of

12:00:12 1 the 75-meter request of expropriation. And to that  
 2 scheme, it was for a period of time.  
 3 And so that when starting back as early as  
 4 2003 through our date of value, through 2008, there  
 5 was this involvement, if you will, in the marketplace  
 6 that has been evidenced by broker behavior, as we  
 7 discussed before with Penelope Lent, that would insert  
 8 some market resistance to the transactions.  
 9 And so it was as a result of this  
 10 involvement, if you will, of the plan, of the scheme,  
 11 then to interfere with the actions of buyers and  
 12 sellers and allow certain discrimination to occur is  
 13 what I allude to as trying to ignore, if you will,  
 14 "the scheme" and the influence of the scheme in the  
 15 marketplace.  
 16 ARBITRATOR KANTOR: In any marketplace, there  
 17 is a certain level of government involvement,  
 18 Regulatory Measures, that is lawful, and there is a  
 19 certain level of Government Regulatory Measures that  
 20 is not attributable to expropriatory conduct. You  
 21 would agree with that?  
 22 THE WITNESS: Yes.

12:01:38 1 ARBITRATOR KANTOR: Did you make an effort in  
 2 analyzing what you describe as the scheme to  
 3 distinguish between Government conduct here that would  
 4 be lawful and would not be part of expropriatory  
 5 conduct and Government conduct that you could identify  
 6 or was identified to you as unlawful or part of a  
 7 scheme of expropriation?  
 8 THE WITNESS: Not being an expert at law and  
 9 do not practice law, the "lawful" or "unlawful" is  
 10 something I cannot comment on. What I can comment on  
 11 is my Expert valuation and the denial of building  
 12 permits and the experiences that the property owners  
 13 had gone through with submission of plans--or  
 14 submissions and requests for permits that were not  
 15 issued, the behavior of some of the brokers to not  
 16 show or sell properties. That type of market  
 17 interference affected the value, and that's what I can  
 18 talk about.  
 19 The lawlessness or the--excuse me--the  
 20 unlawful nature of what was done, I am familiar with  
 21 police power and Government's ability to expropriate,  
 22 and so those issues I am aware of. However, my only

12:03:02 1 concern and the Expert Opinion here goes to its effect  
 2 on value.  
 3 ARBITRATOR KANTOR: Appreciate that. What  
 4 I'm trying to understand is in determining that effect  
 5 on value did you seek to distinguish between any  
 6 category of regulatory conduct that was, if you will,  
 7 permissible and a category of regulatory conduct that  
 8 should be excluded from your analysis of the amount of  
 9 compensation?  
 10 THE WITNESS: No. I made no distinction.  
 11 ARBITRATOR KANTOR: What methodology would  
 12 you use for the purpose of trying to draw such a  
 13 distinction?  
 14 THE WITNESS: What I can--what I will testify  
 15 to today and what I have viewed in the market, it  
 16 would be then the fact that in other markets, in  
 17 Hacienda Pinella or further up in Las Catalinas or  
 18 some of the other markets where you had value growth,  
 19 in Langosta, where there was--in my exhibits here  
 20 you'll see--and even from the evidence from the other  
 21 brokers, what they believe then the values of these  
 22 oceanfront Lots would be as compared to what actually

12:04:19 1 was occurring in terms of Playa Grande and Ventanas.  
 2 So trying to make the distinction, we can  
 3 only see that there was market resistance because of  
 4 the problems that came from the clarity or lack of  
 5 clarity, I guess, from the Government authorities so  
 6 that the expropriation didn't move forward because of  
 7 various rulings. And, therefore, the uncertainty and  
 8 the cloud that existed, again, causes loss in value.  
 9 So the only way I would think of being  
 10 available to allocate, differentiate or try to measure  
 11 that would be just to look at certain control  
 12 neighborhoods in the subject property area and try to  
 13 distinguish the loss in value that's attributable to  
 14 that behavior. That's the only thing I can think of.  
 15 ARBITRATOR KANTOR: Would that methodology  
 16 treat all Government Measures directed to the  
 17 relationship between the Park and the surrounding  
 18 private lands as part of the scheme?  
 19 THE WITNESS: I'm not sure about your  
 20 question. Could you repeat it, Mark, please--excuse  
 21 me, Mr. Kantor. Give me some clarity on that?  
 22 ARBITRATOR KANTOR: Let me back up then.

12:05:49 1 You've used a couple phrases to describe "the scheme."  
 2 One is "involvement" and the other is a "cloud." I'm  
 3 trying to see if there is a distinction between  
 4 involvement of the Government that lies short of  
 5 either unlawful conduct or expropriation and  
 6 involvement of the Government that is unlawful or  
 7 expropriatory, and I appreciate that it is not your  
 8 task to draw that line for me.

9 But I am trying to understand how one would  
 10 go about trying to identify a diminution in value  
 11 attributable to conduct that was unlawful or conduct  
 12 that was expropriatory, as opposed to regulatory  
 13 conduct that may have been interference with value  
 14 but, nevertheless, was lawful or not expropriatory.  
 15 Your answer--and I'm finally getting around to trying  
 16 to clarify the question I asked.

17 Your answer to me appeared to say "I would  
 18 look at conduct in other areas, and I would compare it  
 19 with conduct here." Those other areas, however, do  
 20 not border the Park. The conduct at issue here  
 21 relates to the Park, and I'm trying to understand  
 22 lawful Government conduct related to the Park,

12:07:24 1 Government conduct related to the Park that is not  
 2 expropriatory, on one side, and Government conduct  
 3 related to the Park on the other side that is unlawful  
 4 or is expropriatory, how--what methodology you would  
 5 use to distinguish between those two categories for  
 6 purposes of a valuation.

7 THE WITNESS: In listening to your retort  
 8 then, I now have gotten some clarity relative to an  
 9 inappropriate response in my experience, and that  
 10 would be the immediacy of the Government action to  
 11 execute the plan. And in saying that, it's been my  
 12 experience in many other expropriatory or eminent  
 13 domain issues, and it would be that the Government  
 14 comes with a plan, they move forward, they  
 15 expropriate, they compensate, and the plan moves  
 16 forward in redevelopment or whatever the plan is. In  
 17 this case, it's a Park.

18 When it's drawn out over a period of time and  
 19 the market is allowed to then languish with  
 20 uncertainty, it is then--so--so getting back to that,  
 21 it's the immediacy of coming up with a plan and moving  
 22 forward so that the market is now--and the property

12:08:38 1 owners are compensated in that point in time, but when  
 2 it's drawn out is where the damages or the  
 3 unlawfulness, if you will--you know, and, again, I  
 4 can't only use the word "lawfulness," but where the  
 5 complications occur, but it's now caused a delay in  
 6 the highest and best use--the ability for the property  
 7 owners to enjoy all the fruitful benefits of that  
 8 property because of a protracted period.

9 So, how would you measure that? So, the  
 10 measurement would then be some time value of money.  
 11 That's what I'm thinking off the top of my head, from  
 12 a methodology perspective, because it really goes to  
 13 the risk and the delay that has been caused as a  
 14 result of the uncertainty of the Government to move  
 15 forward and execute the plan consistent with the law.

16 So, whether it's--you know, again, issuing  
 17 the certificates of interest, of then moving on  
 18 the--the eminent domain, or the expropriation,  
 19 compensating the owners, and taking title and  
 20 fee--because that way, then, the property owners, in  
 21 fact, have their compensation, and they can use those  
 22 dollars and that--colones--to do whatever they want,

12:09:42 1 or they move on. But the fact that there's been this  
 2 no-man period of time has really been the more  
 3 damaging issue, I think. I wish I could be more  
 4 clear.

5 ARBITRATOR KANTOR: Thank you.

6 In thinking about a "scheme" here, I want to  
 7 read you some words, and I want you to see if it in  
 8 any way affects your thinking about what conduct does  
 9 or does not get taken into account in valuing property  
 10 for expropriation purposes:

11 Compensation shall not reflect any change in  
 12 value occurring because the intended expropriation had  
 13 become known earlier. If you like, I can repeat that  
 14 language to you again.

15 THE WITNESS: Yes, one more time, sir. Thank  
 16 you.

17 ARBITRATOR KANTOR: Compensation shall not  
 18 reflect any change in value because the intended  
 19 expropriation had become known earlier.

20 THE WITNESS: Okay.

21 ARBITRATOR KANTOR: You'll appreciate that  
 22 language, the word "intended" expropriation and the

12:11:01 1 phrase "had become known," a knowledge test, or  
 2 "operative provisions of that language." Does that  
 3 alter in any way the way you would think about the  
 4 impact on value here?  
 5 THE WITNESS: No.  
 6 ARBITRATOR KANTOR: Why not?  
 7 THE WITNESS: Under my definition of "Market  
 8 Value," and to the extent that we have then selected  
 9 comparables that were reflective of users of the  
 10 property who were going and intending to acquire the  
 11 property for their use, and ignoring, then, the  
 12 possibility, if you will, or that the property would  
 13 be expropriated in terms of the value that was  
 14 indicated, and then, in fact, then notwithstanding the  
 15 intention having been for a protracted period of time,  
 16 that influence was ignored in my Market Value  
 17 conclusion; and, therefore, what you have read, I  
 18 believe, is consistent with the value set forth in my  
 19 Report.  
 20 ARBITRATOR KANTOR: My next question, I'm not  
 21 asking for a legal answer, I am going to ask for a  
 22 valuation answer. If, immediately before the

12:12:20 1 acquisition of an individual item of property, the  
 2 prospective acquirer had known of the intended  
 3 expropriation, would that affect your thinking about  
 4 value for purposes of the expropriation, the later  
 5 expropriation?  
 6 THE WITNESS: Can you just repeat it again,  
 7 Mr. Kantor, only because you said the "acquirer."  
 8 Would it be the "condemnor," or the acquiring  
 9 Government agency, or are you saying in the  
 10 arm's-length transaction between a willing buyer,  
 11 willing seller? I'm confused.  
 12 ARBITRATOR KANTOR: I'm referring to the  
 13 arms-length transaction.  
 14 THE WITNESS: Okay.  
 15 ARBITRATOR KANTOR: I'm sorry. No. Let me  
 16 back up. Neither. I'm referring to the landowner,  
 17 the prospective landowner, immediately before  
 18 acquiring the land, that later became the subject of  
 19 an expropriation. So, I'm looking at the date of the  
 20 purchase, the initial purchase.  
 21 And what I was asking--if immediately before  
 22 the acquisition, by that prospective private sector

12:13:43 1 landowner of an individual item of property--for  
 2 example, a lot in this proceeding--that prospective  
 3 private sector acquirer had known of "the scheme," as  
 4 you put it, the intended expropriation, and then  
 5 consummated the acquisition of that lot, would that  
 6 affect your thinking about value for purposes of the  
 7 later expropriation by the Government body?  
 8 THE WITNESS: Not when it can be shown like  
 9 in the acquisition of Ventanas Lot 61, where there was  
 10 a willing buyer willing to pay what I consider to be a  
 11 Market Value for that lot with the understanding that  
 12 if they didn't get a building permit, it would be  
 13 rescinded. So, there was knowledge of the acquirer  
 14 prior that there was a risk of expropriation, but was  
 15 willing to go forward and apply for a building permit;  
 16 and to the extent that the permits were not approved,  
 17 then there was a reversionary provision.  
 18 So, there was full disclosure, full  
 19 knowledge, but the price paid was reflective of what I  
 20 felt to be Market Value for that property at that  
 21 time. So, that it would not have--and, therefore, it  
 22 did not affect my value conclusion because of that

12:15:04 1 market-based transaction.  
 2 ARBITRATOR KANTOR: A couple of questions  
 3 based on that: First, there could, of course, be  
 4 another category of property, where the acquirer did  
 5 not include in the purchase Contract any right to put  
 6 the property back to that seller. Therefore, the  
 7 acquirer was, in commercial terms, taking the risk  
 8 that there would be a later expropriation. Does that  
 9 alter your thinking for that type of property?  
 10 THE WITNESS: Yes. It would.  
 11 ARBITRATOR KANTOR: How?  
 12 THE WITNESS: Because if without the "put,"  
 13 if you will, without the ability to revert, I would be  
 14 speculating that I would be awarded a Fair Market  
 15 Value for my property if, in fact, the expropriation  
 16 went forward and whether or not I would, in fact,  
 17 receive the amount of money that I spent to acquire  
 18 that asset.  
 19 ARBITRATOR KANTOR: Thank you.  
 20 You testified that the marketplace for these  
 21 properties in this particular area over the relevant  
 22 period, there was a lack of an efficient marketplace,

12:16:28 1 a lack of a transparent marketplace, and later you  
 2 used the phrase "lack of active efficient transparent  
 3 market." I understand your methodology here to have  
 4 largely been to try to overcome those weaknesses in  
 5 the marketplace by identifying properties that were as  
 6 close to comparable as you could find and then to make  
 7 adjustments to try to establish comparability.

8 Is that a correct understanding of what you  
 9 sought to do?

10 THE WITNESS: Yes. And at the same time,  
 11 just to elaborate briefly, and to compensate for the  
 12 part that was taken, to arrive at an appropriate value  
 13 for the part that was taken.

14 ARBITRATOR KANTOR: In light of the  
 15 weaknesses in the market that you identified for  
 16 trying to find comparables, what methodologies, other  
 17 than the approach you took, would be available for the  
 18 purpose of trying to identify a Fair Market Value of  
 19 that property at the time of the alleged  
 20 expropriation, taking into account the language that I  
 21 read you about an exclusion not reflecting any change  
 22 in value because the intended expropriation had become

12:19:25 1 coupled with the news reports, coupled with all the  
 2 other publicity about the excitement in the Guanacaste  
 3 area as part of my methodology, if you will, to  
 4 survey, and to then use that anecdotal information,  
 5 combined with the hard evidence that we've shown in  
 6 the Report, to ultimately conclude to my value. And  
 7 that's an appropriate methodology, in my expertise.

8 ARBITRATOR KANTOR: I follow that testimony.  
 9 I was asking, is there an alternate methodology?

10 THE WITNESS: Than the one I have just  
 11 described?

12 ARBITRATOR KANTOR: Correct.

13 THE WITNESS: Not that I believe is in any of  
 14 the treatises or any of the training that I've ever  
 15 had in terms of real estate valuation.

16 ARBITRATOR KANTOR: I've seen proposed, in  
 17 connection with valuations, in circumstances where  
 18 comparables are not available and the property does  
 19 not lend itself to an income method such as a  
 20 Discounted Cash Flow. The one means of estimating  
 21 Fair Market Value in those circumstances would be to  
 22 identify the original purchase price and then seek to

12:18:07 1 known earlier, but otherwise a Fair Market Value  
 2 measure?

3 THE WITNESS: The information that I received  
 4 during my interview process. So, to complement the  
 5 data that we have described here, the comparables,  
 6 there was significant time spent interviewing market  
 7 participants and when it's--as an appraiser who  
 8 reports the market, appraisers don't make a market  
 9 report. We report the actions of the buyers and the  
 10 sellers and, specifically, the brokers that are  
 11 involved with trading those properties.

12 And through the, say, five interviews that I  
 13 conducted with the "market makers," if you will, the  
 14 brokers that are most active in that market, all of  
 15 them came back to me with, again, the letters that  
 16 we've shown in the exhibits, confirming those numbers,  
 17 and telling me--and I truthfully believe them that  
 18 they were, in fact, truthful--that those were  
 19 reflective of the values, and that there was this  
 20 cloud in the market that precluded an active market  
 21 and somewhat of a stigma.

22 And, therefore, I took that information,

12:20:45 1 calculate over the duration of the entire period, from  
 2 the original purchase until the Valuation Date, an  
 3 average Rate of Return on that profit.

4 That is obviously not property-specific  
 5 methodology because it's an average Rate of Return for  
 6 the relevant market. Is that an approach for which  
 7 data is or could be obtained for these properties, in  
 8 your professional view?

9 THE WITNESS: Yes. I believe that--again,  
 10 relative to these specific properties, I believe it  
 11 would be very difficult, in listening to your  
 12 description of an alternate valuation methodology,  
 13 which I would then characterize as what we call "trend  
 14 and bend," the using of a prior asset price and then  
 15 trending and then seeing if that is reflective of a  
 16 current Market Value, is a methodology that I wasn't  
 17 thinking of before, but, yes, it is done. It's done  
 18 with fixed assets. It's done in other types of asset  
 19 classes.

20 In the specific case, as I've talked about in  
 21 my reports, trying to do that from prices that are not  
 22 necessarily reflective of a Market Value at that time,

841

12:22:13 1 you can try to calculate return on investment and to  
2 determine whether or not that's an appropriate return  
3 or not, but I'm not sure that that would really work  
4 in the case because of trying to "trend and bend"  
5 value prices, prices that were paid, unless you were  
6 able to establish that they were market values at the  
7 time, don't necessarily get you to the right point in  
8 a conclusion because then they are not supported by  
9 the Market Value.

10 And I'll say this about the market, being in  
11 Guanacaste and what I've learned about Playa Grande  
12 and Ventanas, was that the market was appreciating so  
13 differently and drastically and not--there was  
14 no--again, the transparency, the homogeneity, the  
15 whole--all that. I'm not sure that would be a valid  
16 methodology in the subject case. It's a valid  
17 methodology in other cases, in other locations maybe,  
18 but I don't think that in this case it would be  
19 probative.

20 ARBITRATOR KANTOR: Leaving to one side your  
21 bottom line conclusion, that you're troubled as to  
22 whether it would be probative, the starting place for

842

12:23:14 1 that kind of an approach, that kind of a  
2 method--excuse me--would be the purchase price of the  
3 properties. Would that need to take account of any  
4 unusual provisions in the purchase contracts; for  
5 example, the existence of a "put" or the nonexistence  
6 of a "put"?

7 THE WITNESS: Yes. I think that that would  
8 be part of the consideration. And along the same  
9 lines of your questioning here, when you look at the  
10 price that was paid for Lot C71, in terms of the  
11 transaction price and then my ultimate value  
12 conclusion, you can see that there is a slight  
13 increase consistent with my value trend.

14 If you look at Lot V61, which was acquired at  
15 \$3.1 million and now appraised at \$3.8 million--I'm  
16 using round numbers--3.8 when you add V61 A, B, and C  
17 together, from 3.1 to 3.8, and then you look at the  
18 time variation between those to what I valued it today  
19 and what it was acquired for, you'll see that it's  
20 consistent with the value trends that we've applied.  
21 So, in those two situations, that "trend and bend," if  
22 you will, holds up under your theory.

843

12:24:40 1 However, in the earlier cases--and, again,  
2 that, in V61, we talked about, that there was a "put,"  
3 but that didn't seem to reflect the value that it was  
4 paid at 3.1 million, other than the fact that there  
5 was the assumption that there would be a building put  
6 on it and that there was the ability to escape in the  
7 event that the permit wasn't issued. But in the  
8 subject cases, because of the variation in prices, I'm  
9 not sure the "trend and bend" universally applies to  
10 the subject market.

11 ARBITRATOR KANTOR: I realized I should have  
12 said something at the very beginning for the benefit  
13 of everybody who is listening, which is that we all  
14 appreciate that no one on the Tribunal has made any  
15 decisions about jurisdiction or Merits. The reason  
16 why I'm asking questions about damages is not because  
17 I have a view of whether damages are or are not  
18 appropriate, but it is important at this stage to  
19 clarify the damages' evidence, if it ever became  
20 relevant to the decisions of the Tribunal. I just  
21 want everybody to appreciate that point.

22 Two other very quick points: First, you

844

12:25:46 1 calculated value here as of the date in 2008, based on  
2 an expropriation theory. As you will appreciate,  
3 there are also claims here that are not based on  
4 expropriation theory, and whether expropriation is the  
5 proper theory or those other claims are the proper  
6 theory, there may or may not, under applicable law, be  
7 different valuation dates. Did you calculate values  
8 for any date other than the date you were instructed  
9 to use in 2008?

10 THE WITNESS: No.

11 ARBITRATOR KANTOR: Did you obtain  
12 information that would enable you to calculate values  
13 for, by way of example, either the end of 2010 or a  
14 date roughly contemporaneous with the arbitration  
15 Award?

16 THE WITNESS: No. Until I--unless I were to  
17 go back and redo all of my work again, I am--no,  
18 I'm--not at this time.

19 ARBITRATOR KANTOR: And on the last topic,  
20 the severance topic that you were discussing with  
21 Ms. Haworth McCandless, I wonder if you can just turn  
22 to that map we were looking at, which was on Page 18

12:26:59 1 of your slides and also on Page 30 and then 31 of  
 2 Mr. Kaczmarek's Second Report. It doesn't matter for  
 3 my purposes which of them you're looking at.  
 4 THE WITNESS: I'm looking at the slide, my  
 5 presentation this morning, Page 18.  
 6 ARBITRATOR KANTOR: Very good.  
 7 And that's the equivalent of the map that's  
 8 found on Page 31--no, excuse me, on Page 30 of  
 9 Mr. Kaczmarek's Second Report--  
 10 THE WITNESS: That's correct.  
 11 ARBITRATOR KANTOR: The first set of Lots in  
 12 the yellow, after giving effect to the asserted  
 13 expropriation, those would then become the Lots  
 14 closest to the beach, the ocean, and the turtles;  
 15 correct?  
 16 THE WITNESS: Yes.  
 17 ARBITRATOR KANTOR: Do you know what that  
 18 plan contemplated by way of height for buildings built  
 19 on that line of Lots?  
 20 THE WITNESS: No, I do not.  
 21 ARBITRATOR KANTOR: Do you know whether that  
 22 line of Lots, even if there was no purported

12:28:23 1 expropriation and the 75-meter strip remained in the  
 2 property, would have views of the beach, the ocean,  
 3 and the sunset?  
 4 THE WITNESS: It's my understanding, from  
 5 looking at other two-story dwellings in that location,  
 6 in that proximity to the water, that you could, in  
 7 fact, have those views. The Code that I was referring  
 8 to earlier allows for 9 meters of height. Looking at  
 9 Mr. Gremillion's plans, his second story would go to  
 10 about 20--it was about 22 or 23 meters. So, I  
 11 believe, then, that there was 12--I think it was a  
 12 12-meter and then a 12-meter height. Again, my best  
 13 recollection--I would have to look at the plan. But  
 14 the point is that I believe that a view would be  
 15 possible.  
 16 ARBITRATOR KANTOR: Do you know whether there  
 17 would have been a difference in view if the 75-meter  
 18 strip, the eight Lots that were contemplated for  
 19 there, had been built up to the size permitted by the  
 20 applicable codes in comparison with a situation where  
 21 those houses are not built, but, rather, you have the  
 22 forest of the nature of the scrub trees we've seen in

12:29:44 1 the photographs?  
 2 THE WITNESS: I believe that it would be  
 3 as--not as favorable. Again, the fact that the  
 4 vegetation would grow unabated as compared to now,  
 5 where you can clear some of the madero negro with  
 6 permitting and to keep that vegetation down, and so I  
 7 would believe that it's not only that. It's the  
 8 denial of the access, where I was able to walk to the  
 9 beach from the B Lots without just cutting through the  
 10 inalienable zone. Again, walking for another  
 11 75 meters, in addition to the 50, is clearly not as  
 12 desirable. So, it's a couple of things.  
 13 ARBITRATOR KANTOR: Looking at that map,  
 14 unless I'm mistaken, there was only one contemplated  
 15 unblocked access for the second, third, and et cetera,  
 16 rows of lots. And that was an access road cut through  
 17 the middle of the green area marked by two lines right  
 18 in the middle. Do you see that?  
 19 THE WITNESS: Yes. If you're looking at  
 20 Page 31 of--  
 21 ARBITRATOR KANTOR: Correct.  
 22 THE WITNESS: Yes. I see how-- there's a

12:30:50 1 bump out in the middle of the green area that kind of  
 2 cuts across some lots there. And the question would  
 3 be, how would you access those interior lots, based on  
 4 this plan? Because you can see, then, that  
 5 there's--for those Lots, the line just kind of cuts  
 6 right across, and so...  
 7 ARBITRATOR KANTOR: So, is the difference in  
 8 access, rather than the difference in view, for the  
 9 Lots in the yellow, only the question of whether one  
 10 could build a private access between two private Lots,  
 11 as is drawn in the green on that page, versus walking  
 12 through Park land to get to the beach? Is that the  
 13 difference in access?  
 14 THE WITNESS: It's all--it's the walk, but  
 15 then there is also the fact that, you know, crossing  
 16 it, my understanding was that now the access for the  
 17 beach for those remaining parcels would be then  
 18 further down into Guanacaste--excuse me, further down  
 19 into Playa--Playa Grande, at a public access point.  
 20 ARBITRATOR KANTOR: Is it your understanding  
 21 that one could not walk through Park land from this  
 22 development to the beach directly?

12:32:25 1 THE WITNESS: Yes. I believe it was my  
 2 understanding that the 75-meter strip would not permit  
 3 direct access.  
 4 ARBITRATOR KANTOR: I'm asking about walking  
 5 access, of course. I'm not asking about automobile  
 6 access.  
 7 THE WITNESS: I am unclear on that, sir. I  
 8 don't know.  
 9 ARBITRATOR KANTOR: Okay. Other than ocean  
 10 views, sunset views, site of the beach, the white  
 11 sand, and access to the beach, as we've just  
 12 discussed, are there any other attributes of  
 13 beachfront property, in your view, for purposes of  
 14 this land?  
 15 THE WITNESS: I think that sums it up, sir.  
 16 ARBITRATOR KANTOR: For the first row in the  
 17 yellow, if there are not eight lots in front of that  
 18 first row, privately owned, but, rather, Park land,  
 19 after giving effect to expropriation, would that have  
 20 any positive impact on the value of the first row of  
 21 eight Lots, putting them next to Park land?  
 22 THE WITNESS: Yes. I believe access to does

12:33:51 1 have some benefit, but there is also the detriment to  
 2 the extent that it's not going to--who would maintain  
 3 it? All right. So it's Park land, but it is left to  
 4 grow--again, it would--with the madero negro and the  
 5 underbrush, just to grow unabated, and, therefore, it  
 6 just becomes additional separation, if you will, from  
 7 the amenity being the beach. But so that it would be  
 8 offsetting considerations, for sure.  
 9 ARBITRATOR KANTOR: Would I be correct to  
 10 assume that, for some purchasers, having land abutting  
 11 a Park is an attractive feature --  
 12 THE WITNESS: Yes.  
 13 ARBITRATOR KANTOR: -- rather than a  
 14 negative?  
 15 THE WITNESS: Oh, yes, you would, sir. Yes.  
 16 ARBITRATOR KANTOR: Mr. Hedden, thank you for  
 17 your patience.  
 18 Mr. Chairman, no additional questions.  
 19 PRESIDENT BETHLEHEM: Thank you.  
 20 No questions for you?  
 21 ARBITRATOR VINUESA: No.  
 22 PRESIDENT BETHLEHEM: Mr. Hedden, just three

12:34:40 1 very brief questions from me to clarify one or two  
 2 issues, two of which go to points that Mr. Kantor has  
 3 already put to you, but I'd just like to clarify a  
 4 point further.  
 5 As Mr. Kantor identified, there are a number  
 6 of heads of claim in these proceedings, not only in  
 7 expropriation claim, but also heads of claim on other  
 8 bases. Just to be absolutely clear, the valuations  
 9 that you have undertaken are only contingent on an  
 10 issue of expropriation, not on any other head of  
 11 claim?  
 12 THE WITNESS: Yes. The values attendant to  
 13 the expropriation for the property taken.  
 14 PRESIDENT BETHLEHEM: All right. Thank you  
 15 very much.  
 16 The second question, just to return to the  
 17 issue of the date of value--May 27, 2008, as you've  
 18 identified here--you've testified that that date was a  
 19 date which you were instructed upon, but a moment ago  
 20 in response to the question, again, from Mr. Kantor, I  
 21 think you said to the extent that you agreed upon  
 22 this, may I just inquire whether you addressed your

12:35:59 1 mind to the issue of the May 27, 2008, date, and the  
 2 effect of the Costa Rican Supreme Court Decision?  
 3 THE WITNESS: I have.  
 4 PRESIDENT BETHLEHEM: And did you form the  
 5 view that that was an appropriate date for an  
 6 assessment of value?  
 7 THE WITNESS: Yes.  
 8 PRESIDENT BETHLEHEM: And can you indicate  
 9 why that was the case? And, in particular, I'd like  
 10 to know whether you took the view--and, perhaps, that  
 11 was also your--whether this was also your  
 12 instruction--that this was the date on which the  
 13 expropriation crystallized?  
 14 THE WITNESS: It was my view that this was  
 15 the date when it became the law of the land, and in  
 16 looking at the sequence of events, I agreed and  
 17 concurred with the instructions given to me by  
 18 counsel, that that would be an appropriate date.  
 19 PRESIDENT BETHLEHEM: You are aware, I  
 20 imagine--but you can confirm this or otherwise--that  
 21 the relevant language of the Treaty, which addresses  
 22 expropriation and compensation, Article 10,

853

12:36:56 1 Paragraph 7, talks about the payment of prompt,  
2 adequate, and effective compensation, and then in  
3 respect of compensation, it says, "Compensation shall  
4 be equivalent to the Fair Market Value of the  
5 expropriated investment immediately before the  
6 expropriation took place."

7 So, are you then expressing a view that the  
8 date immediately before the expropriation took place  
9 was the date of May 27, 2008?

10 THE WITNESS: Given that that was the date of  
11 the Decree, it would be May 26, 2008, which would be  
12 immediately before, so the day before, but it would  
13 not have changed my value because of the one-day  
14 differential. You know, the value would still be the  
15 same one day later. So, that's how I would answer  
16 your question.

17 PRESIDENT BETHLEHEM: Fine. Thank you.

18 And then the last question, which is to take  
19 you back to the language in Paragraph 3.1 of your  
20 First Report, where you talk about Market Value, and I  
21 think this goes to some of the issues in which you had  
22 an exchange with counsel for the Respondent. You

855

12:39:19 1 compiling your Report, this is the same kind of due  
2 diligence inquiry that you would have made,  
3 presumably?

4 THE WITNESS: Yes.

5 PRESIDENT BETHLEHEM: I don't imply anything  
6 by this question. It is really just a point of  
7 clarification. I think in response to questions put  
8 to you by counsel for the Respondent in respect of the  
9 sales contracts, you mentioned that you were informed  
10 of them, but you were not provided with those sales  
11 contracts because they were--I think the word you used  
12 was "confidential"; is that correct?

13 THE WITNESS: That's correct. The broker,  
14 when I inquired, said that he was unable to share them  
15 with me because they were confidential.

16 PRESIDENT BETHLEHEM: Do you have any sense  
17 of why he regarded those sales contracts to be  
18 confidential?

19 THE WITNESS: Well, to the extent that  
20 he--again, the broker I'm talking about is a Robert  
21 Davey--didn't feel that it was in his ability to share  
22 them with me because he did not have permission to do

854

12:38:06 1 spoke there about "acted knowledgeably," and I  
2 appreciate we're talking about a hypothetical willing  
3 buyer and hypothetical willing seller.

4 I'd just like to clarify what you mean by  
5 "acted knowledgeably." Is this objective knowledge on  
6 the basis of due diligence?

7 THE WITNESS: Yes.

8 PRESIDENT BETHLEHEM: Would you expect that  
9 inquiries would be made more widely about, for  
10 example, whether property was inside the Park or  
11 outside the Park, was subject to any blight, whether  
12 of law or any other basis?

13 THE WITNESS: It goes to the reliance of a  
14 purchaser to then inquire of their realtor, broker,  
15 attorney, who act in a fiduciary manner to that  
16 individual, that any of those issues affecting their  
17 value would have been disclosed. So, that's how,  
18 again, in the context of a Market Value, one would  
19 expect a knowledgeable buyer to have been informed,  
20 based on their reasonable due diligence in the  
21 marketplace.

22 PRESIDENT BETHLEHEM: And for purposes of

856

12:40:15 1 so. So, in that regard, giving that type of  
2 confidential information to a third-party like myself  
3 is just not usually done. I had asked him, but he  
4 said he could not.

5 PRESIDENT BETHLEHEM: Did you form a view as  
6 to whether there might have been any information in  
7 those sales contracts which you had not seen, which  
8 might have been relevant to the due diligence that  
9 would need to have been undertaken to form a  
10 reasonably knowledgeable view of the circumstances?

11 THE WITNESS: Based on my inquiry of  
12 Mr. Davey during the process, I asked him for the  
13 pertinent facts of disclosure of any relevant terms  
14 and conditions, and based upon what I assumed to be  
15 truthful answers, I did not pursue it any further, and  
16 so, therefore, my inquisition--my inquiries, I  
17 thought, were appropriate. He gave me reasonable  
18 responses. I took them at their face as being  
19 truthful and moved on.

20 PRESIDENT BETHLEHEM: Thank you.

21 And turning to the issue of--again, sticking  
22 with the point of knowledge--to the issue of the

12:41:14 1 Government's appreciation as to whether properties  
 2 were within the Park or outside of the Park or any  
 3 intention or inclination to expropriate, would that  
 4 have been part, in your assessment, part of the  
 5 reasonable knowledge assessment that a hypothetical  
 6 willing buyer would have undertaken?  
 7 THE WITNESS: I'm sorry. I got lost in your  
 8 question. Could you repeat it? I'm sorry.  
 9 PRESIDENT BETHLEHEM: Well, the question is  
 10 simply whether the appreciation--an appreciation of  
 11 the Government, as to whether the property remained  
 12 within the Park or was outside of the Park, whether  
 13 there was an intention to expropriate. To the extent  
 14 that that kind of information would have been  
 15 available to a hypothetical reasonable purchaser,  
 16 would you expect that that information would have been  
 17 sought?  
 18 THE WITNESS: It's reasonable to expect that  
 19 that information would have been provided by attorneys  
 20 and/or title company and/or broker. So, you say  
 21 "sought." If it was unknown, you wouldn't know to  
 22 ask. However, you would have expected through the

12:42:23 1 process that that would have been divulged.  
 2 PRESIDENT BETHLEHEM: In your calculations  
 3 and your analysis, were you--or for purposes of your  
 4 calculations and analysis, were you advised at all on  
 5 the legal issues and the risks of expropriation?  
 6 THE WITNESS: No. I was not advised, other  
 7 than from the discussions that we had--I had with the  
 8 various Parties that there was always some uncertainty  
 9 as to whether or not it was ever going to take place.  
 10 PRESIDENT BETHLEHEM: May I just ask you to  
 11 turn up the letter again from Penelope Lent, which is  
 12 at Tab 3.  
 13 THE WITNESS: Yes.  
 14 PRESIDENT BETHLEHEM: And I'd just like to  
 15 take you back, I think, to a sentence in the middle of  
 16 that letter, which was a sentence to which you were  
 17 taken to before: "However, during this time, I only  
 18 sold one beachfront lot in the Playa Grande area due  
 19 to concerns over the legal and expropriation risks  
 20 upon the creation of the National Park."  
 21 Is that the kind of information that one  
 22 would have expected would have been in the mind of a

12:43:45 1 hypothetical willing purchaser?  
 2 THE WITNESS: If the purchaser wasn't  
 3 knowledgeable about the local market. You know, I  
 4 came in from North America, I would not have known.  
 5 So, to the extent that the broker here, in Penelope  
 6 Lent, would have disclosed it then, and in this case,  
 7 in this lot that she sells, it was her brother who  
 8 sold the lot to another person, and so, you know,  
 9 there was full disclosure on her part that this risk  
 10 could have occurred.  
 11 So, it's not on the purchaser maybe to have  
 12 known because they come from different areas in these  
 13 cases. However, they are relying upon the local  
 14 broker or the attorneys who have local knowledge then  
 15 to have shared that with them and appraised them of  
 16 the risk.  
 17 PRESIDENT BETHLEHEM: You would expect that,  
 18 as she has disclosed this in correspondence here and  
 19 as we spoke about just a moment ago, we're talking  
 20 about knowledge, we're talking about objective  
 21 knowledge reasonably acquired, that a professional  
 22 broker/realtor would have disclosed that information,

12:44:55 1 "the expropriation risks upon the creation of the  
 2 National Park."  
 3 THE WITNESS: Yes. So, that was, I believe,  
 4 disclosed through that transaction.  
 5 PRESIDENT BETHLEHEM: Thank you very much.  
 6 Thank you very much, Mr. Hedden.  
 7 THE WITNESS: Thank you.  
 8 (Witness steps down.)  
 9 PRESIDENT BETHLEHEM: I think that brings  
 10 your examination to an end. So, Mr. Hedden, thank you  
 11 very much, indeed. I'm happy to be able to excuse you  
 12 from the Witness seat.  
 13 THE WITNESS: Thank you.  
 14 (Witness steps down.)  
 15 PRESIDENT BETHLEHEM: I think that brings us  
 16 to the end of our morning session. We can break now.  
 17 It is now is 15 minutes to the hour. We will break  
 18 now until a quarter past 2:00.  
 19 Yes, Mr. Alexandrov.  
 20 MR. ALEXANDROV: Mr. President, may I make a  
 21 very brief point in response to Mr. Kantor's  
 22 admonition about the questions be asked by the

12:45:45 1 Tribunal in relation to damages. I just want to state  
 2 for the record, on behalf of Respondent, that this is  
 3 a unitary proceeding which captures jurisdiction,  
 4 liability, and damages. This may be--this hearing may  
 5 be the last opportunity for the Tribunal to interact  
 6 with Witnesses, Experts, and for that matter, Counsel,  
 7 and we appreciate that the Tribunal will want to have  
 8 a complete record in front of the Members of the  
 9 Tribunal before deciding on any of those issues. And,  
 10 therefore, we appreciate that the Tribunal will ask  
 11 any questions that the Tribunal wishes to know about  
 12 in any of the areas of jurisdiction, liability, and  
 13 damages, and on behalf of Respondent, we do not draw  
 14 any conclusions as a result of that.

15 PRESIDENT BETHLEHEM: Thank you very much,  
 16 Mr. Alexandrov. I take that, and no need for  
 17 Mr. Copher to echo your words. As I said at outset,  
 18 don't assume that we know where we're going. We're  
 19 not sure where we're going at the moment. But as you  
 20 say, this is an opportunity in a composite proceeding  
 21 for Members of the Tribunal to ask the questions of  
 22 Witnesses who are currently in front of them. So,

12:46:52 1 thank you very much.  
 2 We'll adjourn now until a quarter past 2:00.  
 3 Thank you.  
 4 (Whereupon, at 12:47 p.m., the hearing was  
 5 adjourned until 2:30 p.m., the same day.)  
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1 AFTERNOON SESSION  
 2 PRESIDENT BETHLEHEM: Okay. Everybody is  
 3 here. We're not waiting for anyone else on either  
 4 side?  
 5 Then, welcome back.  
 6 BRENT C. KACZMAREK, RESPONDENT'S WITNESS, CALLED  
 7 PRESIDENT BETHLEHEM: Mr. Kaczmarek, welcome  
 8 to the Witness seat. You've been in the room up until  
 9 now, so you know who we all are. We're not going to  
 10 do any more introductions.  
 11 You've got a witness declaration in front of  
 12 you. I would be grateful if you could read that into  
 13 the record, please.  
 14 THE WITNESS: Yes. And I did notice this is  
 15 the fact witness declaration. I'll read the Expert  
 16 one, I know that one, if you'd like me to.  
 17 PRESIDENT BETHLEHEM: There should be two.  
 18 (Comment off microphone.)  
 19 THE WITNESS: I solemnly declare upon my  
 20 honor and conscience that my statement will be in  
 21 accordance with my sincere belief.  
 22 PRESIDENT BETHLEHEM: Thank you very much.

02:22:12 1 Ms. Haworth McCandless.  
 2 MS. McCANDLESS: Thank you, Mr. President.  
 3 DIRECT EXAMINATION  
 4 BY MS. McCANDLESS:  
 5 Q. Mr. Kaczmarek, we have passed around a binder  
 6 which is in front of you and have given it to the  
 7 Tribunal and the translators and opposing counsel and  
 8 the transcribers.  
 9 Could you please look behind Tabs 2 and 3.  
 10 Do you recognize those documents?  
 11 A. Yes. They are my first two Expert Reports.  
 12 Q. Do they reflect the--do they accurately  
 13 reflect your professional opinion?  
 14 A. Yes, they do.  
 15 Q. I understand that you have a presentation  
 16 that you would like to give?  
 17 A. I do.  
 18 Q. Please proceed.  
 19 A. Thank you.  
 20 So, I'm going to divide my presentation up  
 21 into four sections. First we'll talk about the real  
 22 estate market, the relevance of purchase prices and

02:23:04 1 dates in this case, flaws I've identified in FTI's  
 2 appraisals, and then severance damages.  
 3 So turning to the first slide in Section 1,  
 4 Slide 4, basically as you have seen, I believe there's  
 5 a correlation between the real estate markets in the  
 6 U.S. and in Costa Rica. It's agreed between the  
 7 Experts that Costa Rica and Guanacaste, in particular,  
 8 is influenced by North American buyers.  
 9 North American buyers are the same buyers of  
 10 properties in Texas, or California, or Florida. The  
 11 Gold Coast in Costa Rica is just like another state.  
 12 And I'll show you a little bit more about the  
 13 correlation as we go through.  
 14 This was a market from 2003 until about 2006  
 15 really that experienced bubble prices. It was, if you  
 16 will, there was a mania about prices in the area. And  
 17 you can see that from the quotes here. I won't read  
 18 them all to you. There is many more I've put in my  
 19 Reports; but I think if you look at those publications  
 20 and listen to what and read what the realtors were  
 21 saying, this was a very hot market for several years.  
 22 Then it crashed. It crashed harder than the

02:25:53 1 in the Unglaube case. In fact, they valued their  
 2 property in mid-2006 precisely because it was the  
 3 peak. So that had been agreed before.  
 4 And this is what Mr. Hedden's index looks  
 5 like. You can see no correction at all in '07 and  
 6 '08. He has it going up and then flatlining.  
 7 You can see I put another quote here from the  
 8 same--I think it's the same publication talking about  
 9 how sellers were cutting their prices by 20 to  
 10 40 percent compared with three years ago, again  
 11 indicating the market had peaked prior to the selected  
 12 valuation date of Claimants.  
 13 So, in that sense, as I've said in my  
 14 Reports, Mr. Hedden's valuations are all overstated  
 15 because I think he has misanalyzed the market.  
 16 So, purchase prices and dates. I may spend a  
 17 little time on this slide because I do think it's very  
 18 important. I said in as many ways as I can think of  
 19 saying and I'm going to say them in my presentation of  
 20 why I think the Claimants' claim for damages that  
 21 they've put forward is improper.  
 22 And the way I've put it here is simply that

02:24:34 1 U.S. market did because I think the bubble prices were  
 2 even--even higher.  
 3 And what you can see--I'll read you the first  
 4 quote at the top here on Page 6. "Prices for vacation  
 5 homes and condominiums in the Central American  
 6 country--that is, Costa Rica--have dropped by as much  
 7 as 40 percent from their peak a few years ago, and  
 8 sales have slumped 30 percent over the past six  
 9 months, they say."  
 10 That's a publication from August 2008. So,  
 11 when they say "a few years ago," they're talking about  
 12 a peak clearly before 2008. They're talking about a  
 13 peak really in 2006.  
 14 If you look at the Case-Schiller Index, an  
 15 index of real estate in the United States, it goes up  
 16 pretty sharply, it peaks in 2006, and then falls. So  
 17 clearly a correlation with the Gold Coast property  
 18 market. Not a one-to-one correlation probably. It  
 19 could still be a correlation if for every dollar the  
 20 Case-Schiller Index goes up, \$3--you know, properties  
 21 go up in the Gold Coast. It is still a correlation.  
 22 I would add too, that that was not in dispute

02:27:20 1 the Claimants cannot or should not be able to benefit  
 2 from, one, the existence of the Park or the  
 3 controversy by getting a lower price for the property;  
 4 and then in this arbitration, assume away that the  
 5 Park exists or the controversy exists and get a higher  
 6 value in its claim.  
 7 And I've put here a quote from RosInvestCo  
 8 versus Russia. This was a case about a shareholder  
 9 who had invested in some Yuko shares, and I think it's  
 10 worth reading. It says (reading): "The LECG Report  
 11 assumes that the taxes were imposed on Yukos,  
 12 enforcement actions announced and expected by the  
 13 markets, and the Claimants bought shares in Yukos at a  
 14 price in which the market had taken these events into  
 15 account or had overestimated the impact of these  
 16 events on the price, meaning the price was really  
 17 depressed.  
 18 "The LECG Report also then assumes that  
 19 following Claimants' purchase of the shares, the  
 20 taxes, enforcement measures and auctions would not  
 21 have taken place. This approach is divorced from  
 22 reality."

02:28:37 1 And I think you have the very same situation  
 2 here in this case. The risks existed on the date when  
 3 Claimants purchased. As we have said, they knew or  
 4 should have known about these risks. And then they're  
 5 doing a valuation assuming those risks don't exist.  
 6 I think there was a discussion about  
 7 sometimes there's differences of when you would take  
 8 risks like this of expropriation or such into account.  
 9 In the Unglaube case, for example, the Unglaubes had  
 10 purchased their properties in 19--in the 1980s, before  
 11 the '91 Decree. And so there, because they could have  
 12 no idea, of course, about a Park Law coming into  
 13 being, they didn't get the properties cheaply because  
 14 of the existence of the Park.  
 15 And so in that case, there was no argument by  
 16 myself or the Respondent that Mrs. Unglaube--the value  
 17 of her property needs to have taken into account the  
 18 Park. We fully agreed it shouldn't because she  
 19 purchased before knowledge of the Park existed.  
 20 This case is very different. This case the  
 21 Claimants definitely knew the Park was there, that  
 22 they could be expropriated, and I think those risks

02:31:10 1 Mrs. Unglaube's Phase 2 property being declared in the  
 2 public interest in July 2003. That was then published  
 3 in November 2003.  
 4 So then you see in August purchases by  
 5 Mr. Spence in the Ventanas area, and then Mr. and Mrs.  
 6 Copher. Now, you'll see I have some data points--the  
 7 lot, the size, the price, the per square meter price,  
 8 and then the value ascribed by FTI.  
 9 The purchase price for Mr. and Mrs. Copher is  
 10 very low. That's because we took the price from the  
 11 certificate at the registry in Costa Rica which said  
 12 500,000 colones. Same thing for Mr. Berkowitz's  
 13 purchases. In fact, in the first FTI Report, they  
 14 said that he purchased every lot, the eight B Lots,  
 15 for \$500,000 each.  
 16 We said that doesn't seem to be right.  
 17 There's a mistake, we think. And Mr. Hedden said,  
 18 Yes, you're right, it actually is 500,000 colones,  
 19 which is why I've prepared it assuming 500,000  
 20 colones.  
 21 But now I've heard Mr. Berkowitz say, No, I  
 22 got all the B Lots, not just one through 8, but 24,

02:29:57 1 need to be taken into account in the valuation  
 2 process.  
 3 So, we said because of that the purchase  
 4 prices are relevant. And, of course, you'll see there  
 5 is many inconsistencies unfortunately in the purchase  
 6 prices and purchase dates. In fact, we continue  
 7 to--even the last few days I heard about new purchase  
 8 prices I had not known about before. And, of course,  
 9 we wanted to see the Sales and Purchase Agreements but  
 10 they were not submitted by Claimants to review,  
 11 because I think the terms of those agreements would be  
 12 quite helpful.  
 13 Turning to Slide 12. What I thought would be  
 14 helpful is if I walked through a timeline and the  
 15 purchases together because I think that will help you  
 16 see some interesting aspects of the data. I don't  
 17 submit that I'm going to hit every relevant event on  
 18 the timeline in my discussion. But obviously starting  
 19 out and in the shaded areas, these are sort of the  
 20 events.  
 21 You know about the Decree and the Law, and  
 22 then, as you'll see in my Report, we talk about

02:32:35 1 for 1.5 million. I still haven't seen any evidence of  
 2 that, any documentary evidence, but it indicates it's  
 3 a very low price. Higher than what I have represented  
 4 here, but still clearly a low price. And as I think  
 5 he indicated in his testimony, he knew there was a  
 6 risk of expropriation.  
 7 And then you see at the bottom,  
 8 September 2003, Mr. Spence purchases two V Lots for  
 9 about \$250 a square meter. Just put that, those  
 10 numbers, in your head, the 250, because I want to come  
 11 back to that.  
 12 You then have in February 2004 the Attorney  
 13 General Opinion. Now the seaward issue is being dealt  
 14 with, that the Park really does run inland. You see  
 15 more purchases by the Claimants.  
 16 And the first one, Mr. Gremillion from  
 17 Mr. Berkowitz at B7, we're told it's at \$425,000.  
 18 It's five months later after Mr. Berkowitz had  
 19 purchased all of the B Lots. So in five months he  
 20 flips all of the Lots along the beach and gets back  
 21 about I think it's 83 percent of his purchase price  
 22 for the whole B Lots.

02:33:58 1 We look at that purchase and we say, It looks  
 2 like Mr. Gremillion probably did not know those  
 3 properties--his property he bought was in the Park.  
 4 Because you can't really explain whatever value of 1.5  
 5 you want to ascribe to the beachfront lots that  
 6 Mr. Berkowitz purchased. This would be an incredible  
 7 jump in value. So it looks like to me he was unaware  
 8 of the Park.  
 9 Then you see a few other purchases continuing  
 10 throughout 2005. You see C71 for 230,000 in  
 11 February 2005, put that number in your head. I'll  
 12 come back to it as well.  
 13 Then a series of additional events take  
 14 place. The B Lots are declared in the public  
 15 interest. The Supreme Court issues an initial  
 16 Decision about the Park extending inland. The  
 17 Attorney General issues its Opinion again, and Spence  
 18 Co. says it knows about the Attorney General's  
 19 Opinion, and we have more purchases.  
 20 We have Mr. and Mrs. Copher and Holsten  
 21 purchase two V Lots. And what you can see--remember I  
 22 said I'm going to come back to that average per square

02:35:22 1 meter. These are roughly again around 250. One is a  
 2 little closer to 300, but the other one is lower than  
 3 the others.  
 4 So this indicates that from 2003 to 2006, the  
 5 V Lots aren't going up in value. That makes sense.  
 6 The V Lots are subject to being expropriated and being  
 7 part of the Park. There would be no reason for it to  
 8 increase in value if that risk is still attached to  
 9 it. Okay.  
 10 Then you have a sale of V61 by Spence Co.  
 11 which we said had the boomerang clause, meaning, they  
 12 could basically get a refund or put the property back  
 13 in case they couldn't go through with it. So here,  
 14 you know, Spence Co. clearly knows other people in the  
 15 market are aware that the Park exists.  
 16 And then you have Spence Co. purchasing the  
 17 SPG Lots in late 2006 and then the V59 Lot. Then  
 18 finally you see in October 2007, the C71 Lot goes on  
 19 the market from Spence Co. at the same price they say  
 20 they purchased it at several years ago, 230. So,  
 21 again, it's an indication that properties in the Park  
 22 are not increasing because they are subject to these

02:36:52 1 risks.  
 2 So, FTI has said in its Second Report the  
 3 purchase prices and purchase dates are completely  
 4 irrelevant. I couldn't disagree with that opinion  
 5 more. Obviously, these are the exact Lots to be  
 6 valued, and knowing when and at what price they were  
 7 purchased is important.  
 8 If I understood Mr. Hedden's testimony, what  
 9 he said was, you could use a purchase price and index  
 10 it but not in this case because the properties were  
 11 purchased below Market Value. And I think we need to  
 12 tweak that just a bit because it's not that they were  
 13 purchased below Market Value, there is a Market Value  
 14 for a price or for a Lot that has a risk of being in a  
 15 Park and expropriated but it not being fully clear  
 16 yet.  
 17 So, I would say the purchase prices could be  
 18 indicative of Market Value with those risks attendant  
 19 to it. What he says as Market Value is none of those  
 20 risks exist. So, I'm just saying the Market Value is  
 21 lower because it has those risks attached to it.  
 22 And you know--I think you've heard from the

02:38:16 1 Witnesses, you've read the testimony. I won't read  
 2 all these quotes. But these quotes all indicate  
 3 Claimants were aware that there was a Park. In fact,  
 4 as Mr. Reddy has stated, he assumed that there was no  
 5 way Costa Rica was going to go through with this, that  
 6 they would never expropriate.  
 7 So effectively making investments on a bet  
 8 that they wouldn't follow through and establish the  
 9 Park, in that sense, as we said in our Reports, it's  
 10 as if they are claiming damages because Costa Rica  
 11 didn't repeal the Park instead of actually enforcing  
 12 the Park, because that's what he was hoping for.  
 13 And then quickly on Slide 17, you see--as I  
 14 just went through in the timeline--definitely Spence  
 15 Co. is making investments in properties well after it  
 16 was abundantly clear to anyone that the properties  
 17 were in the Park.  
 18 So, Slide 18 is a diagram that was in my  
 19 Second Report. Again, it is just to explain the  
 20 concept here that Claimants are purchasing and getting  
 21 the benefit through a low purchase price of the risks  
 22 that their properties are in the Park, and now they're

02:39:40 1 claiming in this arbitration that they are entitled to  
 2 the value of the properties as if the Park never  
 3 existed and there was never any risk of expropriation.  
 4 And I just think that's wrong. I've said  
 5 that is like a form of double-counting. It's a form  
 6 of double recovery, double compensation, or just  
 7 illogical divorce from reality as the RosInvestCo  
 8 Tribunal said and shouldn't be a proper form of  
 9 compensation in this case.  
 10 What we have said is the purchase prices are,  
 11 to some extent, the right way to go. They would  
 12 reflect Fair Market Value unless, for example, like  
 13 Mr. Gremillion, he purchased his at a very high price  
 14 above what Mr. Berkowitz paid for that lot, B7. We  
 15 would say we would probably need to adjust that price  
 16 down because it seems like he was uninformed about the  
 17 Park and Fair Market Value is an informed Party.  
 18 So that's why we've always said in our  
 19 Reports, the most they should recover is their  
 20 purchase price, and we would want to reduce the  
 21 purchase price for anybody who made an uninformed  
 22 investment decision. And to do that, we needed the

02:40:57 1 Sale and Purchase Contracts to see the terms and to  
 2 understand the deal.  
 3 And Mr. Hedden could have requested those  
 4 from Claimants. They clearly--Mr. Reddy, if I recall,  
 5 consulted with those agreements to change some of his  
 6 testimony, his Witness Statement. So they could have  
 7 been provided and I think would have been very  
 8 helpful.  
 9 So, we have done an alternative calculation  
 10 for you. It is here on this table. And I believe the  
 11 total is 4.5 million. But again, I think that needs  
 12 to be reduced, and the quality of the evidence before  
 13 you is not very good.  
 14 The purchase prices continually change. They  
 15 have changed throughout this proceeding without hard  
 16 documentary evidence and have changed during the  
 17 course of this week. So that's unfortunately where  
 18 the evidence stands for you.  
 19 And I would just also note, to end this  
 20 section, the Claimants effectively are seeking nearly  
 21 eight times the supposed amount they invested, which  
 22 is obviously a significant profit.

02:42:18 1 So, flaws in the appraisals. Mr. Hedden went  
 2 through--he actually went through this exact table in  
 3 his presentation, SPG1. And what I want to just point  
 4 out was, rather than using the purchase price of SPG1,  
 5 he used different properties at different dates,  
 6 including going back as far as 2003, coming up with  
 7 various and disparate sales prices per square meter,  
 8 and then made market adjustments to that.  
 9 Slide 22, this is the same SPG. He then  
 10 made, besides the market adjustments, physical  
 11 characteristic adjustments--which I just saw this  
 12 morning--data that wasn't shown in this table before  
 13 to indicate how those were made, and then came up with  
 14 adjusted sales price.  
 15 Turning to the next Slide, 23, this is V31.  
 16 This is not SPG1, just to alert you to that. What I  
 17 wanted to show here was in the red box, you see he's  
 18 saying, Well, I've got three comparable properties to  
 19 V31. It could be either \$623 a square meter or as  
 20 much as \$1,053 a square meter. Quite a spread of  
 21 prices for comparable Lots.  
 22 I usually would want to see very narrow

02:44:05 1 dispersions, not very wide dispersions. Narrow  
 2 dispersions add confidence, wide dispersions add  
 3 doubt. And he came up with an average; and again, for  
 4 the first time this morning, he revealed how he had  
 5 placed weights on particular properties. That was not  
 6 evident at all in his Reports.  
 7 So, I think, because he's relying so much on  
 8 other properties rather than the properties at issue  
 9 in this case and getting such wide spreads, that not a  
 10 lot of confidence can be had in the valuation  
 11 approach.  
 12 So Slide 24, here was a graph from my First  
 13 Report. What it shows is we did an analysis and we  
 14 said, Let's look at the purchase price that they've  
 15 told us is the purchase price. And that's the blue  
 16 bars. We just normalized everything to be equal to  
 17 one. And then we said, Let's apply Mr. Hedden's index  
 18 that you've seen of market increases in prices to the  
 19 purchase price, and that's the red bar. And then,  
 20 let's look at his actual valuations of the properties,  
 21 that's the green bar.  
 22 What you can see is, except with Mr. Copher's

881

02:45:35 1 properties, Mr. Hedden is valuing the properties  
 2 significantly greater than his own market index, which  
 3 would not seem to be rational. And he says in his  
 4 Second Report, Well, it's because these things might  
 5 be below Market Value.

6 Again, I would say it's not that they're  
 7 below Market Value. They're at a Market Value  
 8 reflecting the risks attendant to these Lots.

9 And so we did this analysis, and this  
 10 analysis is basically doing the reverse, taking his  
 11 valuation back at the market index and then comparing  
 12 it to the purchase price, and you see almost every  
 13 instance the blue bar, the purchase price, is less  
 14 than the red bar. But there's some anomalous stuff in  
 15 the data, too, I think reflecting the lack of  
 16 confidence in the reported purchase prices.

17 So turning to now some other flaws in his  
 18 valuations. So that's really--I think in the way he's  
 19 gone about it, he's ended up with values that are much  
 20 greater than I think would suggest from a strictly  
 21 indexation approach, not to mention that his market  
 22 assessment, I thought, was wrong.

882

02:47:01 1 But there's other characteristics I think  
 2 he's applying in his valuations which also inflate  
 3 them. And this is the alleged views of the beach and  
 4 the ocean. And that's exactly sort of the crux of why  
 5 the Park was created in the first place was to not  
 6 disturb the nesting grounds of the turtles. That is  
 7 not only noise but, most in particular, lighting.

8 So Mr. Hedden tells you people are going to  
 9 build very tall houses with lovely views over the top  
 10 of the vegetation there. That was not going to be  
 11 allowed. That would just defeat the whole purpose of  
 12 trying to protect the turtles because then there are  
 13 lights are on in the windows in the second floors and  
 14 then the turtles see the lights and are distracted  
 15 from actually coming to the beach and nesting.

16 So I just think he's valuing it under that  
 17 characteristic when that characteristic wouldn't have  
 18 been allowed. It wasn't even allowed back as early as  
 19 1992.

20 The Unklaubes basically, as I said, bought  
 21 their property in the '80s, the Park Law came out, and  
 22 very quickly after the Park Law came out, they offered

883

02:48:26 1 to donate 50 meters of the 75-meter strip in the  
 2 Phase I development and signed an agreement with the  
 3 Government about doing that specifically to increase  
 4 the setback and get the houses away from the beach so  
 5 the lighting would not affect the turtles.

6 So if you walk along that part of the beach  
 7 maybe someday--I have--there is no wonderful great  
 8 views. There is a lot of vegetation between the  
 9 houses and the beach. So, these views just don't  
 10 exist.

11 This is a view in the--I've been there. I've  
 12 been to the area three times, twice in 2010 and then  
 13 again in 2014. So I've been there in the dry and the  
 14 rainy season. This is the rainy or non-dry season.  
 15 You can see there's a pretty tall set of vegetation  
 16 between the beach and where the properties would have  
 17 been built.

18 Importantly, there's quite a bit of the  
 19 50-meter inalienable zone, the public zone. A lot of  
 20 that, most of it, is in this vegetation. It hasn't  
 21 been evident to you, but high tide comes up nearly to  
 22 the vegetation. So mean high tide is a little lower

884

02:49:59 1 than that, closer to the ocean. So a lot of this  
 2 50-meter inalienable zone contains this vegetation.  
 3 I'm on Slide 28 now. Within the vegetation  
 4 looking out, you can see it's a pretty thick canopy.  
 5 On the right it looks like there's an opening. That  
 6 is an opening. That is an access point to get through  
 7 the vegetation to the beach that has been established.

8 Always done, for example, in an S shape so that, if  
 9 you're on the beach, and even though there's an  
 10 opening, it looks like there is vegetation right  
 11 behind the opening. So maintaining a curtain, if you  
 12 will.

13 This is another view and that marker is the  
 14 50-meter marker. So you can see, here's quite a bit  
 15 of vegetation between that and the beach. This is  
 16 Mr. Hedden's photo in the dry season. You can still  
 17 see there's a bunch of foliage even though its dry,  
 18 and so the views are still quite obstructed and don't  
 19 offer, I would say, the lovely beach and ocean views.

20 Then there is a number of other issues, of  
 21 course, in valuing these properties. We've talked  
 22 about them: The density restrictions, height

02:51:36 1 restrictions as I just went over. Those are problems.  
 2 And I think maybe most importantly to--you've  
 3 asked a question earlier about, Well, what if we had a  
 4 different Valuation Date? I had done that analysis  
 5 original in the Unglaube case, the assessment of the  
 6 market. The market has been awful since the peak.  
 7 MS. COHEN: I'm sorry. I object to this.  
 8 The Witness is going well beyond the scope of his  
 9 Report. He's given now on a number of occasions  
 10 evidence about what happened in the Unglaube  
 11 proceedings. None of his Expert Reports from that  
 12 proceeding have been produced, nor has any of the  
 13 documentation or evidence, and I don't think it's  
 14 appropriate for the Witness.  
 15 I've given him a lot of latitude already, and  
 16 I object.  
 17 PRESIDENT BETHLEHEM: I think it's fair  
 18 enough. I mean, the Unglaube Report is in the record.  
 19 There's a lot of material that is there, but I think  
 20 it's fair that you keep your presentation now to your  
 21 Report.  
 22 (Comment off microphone.)

02:52:53 1 PRESIDENT BETHLEHEM: No, not the Expert  
 2 Report. I meant the Award.  
 3 THE WITNESS: Correct. The Award. And a lot  
 4 of this, of course, I'm saying is in the Award about  
 5 the '92 agreement and all that.  
 6 PRESIDENT BETHLEHEM: The objection, though,  
 7 is well made in the sense that the intention of this  
 8 presentation is to enable you to present your Report  
 9 to us rather than to go beyond it.  
 10 THE WITNESS: Certainly. In that respect, I  
 11 then will just refer--I did talk about the market, the  
 12 current market, in my Report in this case extending  
 13 what I had done before. And what I had written to you  
 14 and said was, We went through the properties and  
 15 looked throughout the region again. Nothing has  
 16 happened in this area, absolutely nothing. No  
 17 development.  
 18 In fact, all we saw were more Lots on the  
 19 market and Lots on the market at a significant  
 20 discount.  
 21 The Unglaubes, as I referred to, they had  
 22 lowered their prices, I think, 60 percent from what

02:53:58 1 their previous asking point was. Still no buyers. So  
 2 what happened was an incredible bubble of prices and,  
 3 as I said, a lot of buyers who never intended to  
 4 really develop.  
 5 They were caught up in the ever-increasing  
 6 price escalation in the mid-2000s and got left holding  
 7 a property that they paid a lot for that they cannot  
 8 sell but for a loss today. And so that mania has  
 9 really had a bad impact on development in the area.  
 10 Last topic, severance damages. It's been  
 11 talked a lot about already, so I can minimize my  
 12 comments. It is correct that Mr. Hedden has valued in  
 13 the But-For Scenario the whole of like the SPG Lots  
 14 using beachfront properties. And then in the Actual  
 15 Scenario or after taking, everything is valued using  
 16 interior Lots.  
 17 He did say today, in all fairness, that he  
 18 made a large adjustment to the beachfront Lots. This  
 19 was again something that was not in his Report or his  
 20 table. It was, again, new to us, new information, not  
 21 explained. But I still think the approach does not  
 22 make sense to me just logically.

02:55:29 1 You've seen these two diagrams or the  
 2 diagrams that we put in our Second Report, and the  
 3 simple explanation I think we're giving is that the  
 4 Lots, particularly those that now border the Park, are  
 5 frankly improved because they're the closest ones,  
 6 both to the Park and the beach.  
 7 And so just the whole concept I think  
 8 Mr. Hedden has applied to severance damages in this  
 9 case is flipped on its head. So I would think the  
 10 green at the bottom, the green Lots, the ones now  
 11 closest to the beach and bordering the Park, would be  
 12 more valuable than they were before, and I don't  
 13 really think the other ones would change in value much  
 14 because they're still the same distance from the beach  
 15 as it was before.  
 16 And if you look at Mr. Hedden's development  
 17 model for SPG, which is sort of his DCF model, he  
 18 actually recognizes, of course, those Lots beyond the  
 19 ones that would border the 50-meter zone would have a  
 20 much different value. The interior Lots in his  
 21 development model, I think he has an assumption of  
 22 selling them at \$420,000 a square meter--not a square

02:56:52 1 meter--total for the Lot, whereas the alleged  
 2 beachfront Lots would go for 1.2 million. So a  
 3 significant difference in value that I think actually  
 4 is a contradiction between what he's now saying  
 5 regarding severance damages.  
 6 So Slide 35, the final slide, this is the  
 7 severance damages calculation by Lot. And as we've  
 8 indicated, it totals more than \$13 million or more  
 9 than a third of the total amount claimed in this case.  
 10 And that's the end of my presentation.  
 11 PRESIDENT BETHLEHEM: Ms. McCandless, go  
 12 ahead.  
 13 MS. McCANDLESS: I have no further questions.  
 14 PRESIDENT BETHLEHEM: Ms. Cohen.  
 15 I'm happy to say that these bundles have  
 16 already been provided to the interpreter.  
 17 CROSS-EXAMINATION  
 18 BY MS. COHEN:  
 19 Q. Mr. Kaczmarek, I assume by this point,  
 20 Mr. Kaczmarek, that you're aware my name is Tracey  
 21 Cohen, and I am counsel for the Claimants and we'll  
 22 asking you some questions about your two Expert

02:58:35 1 Reports that have been in this proceeding. You  
 2 understand that?  
 3 A. Yes.  
 4 Q. Mr. Kaczmarek, you're not a licensed or  
 5 certified appraiser; is that right?  
 6 A. No. I hold the designation of Chartered  
 7 Financial Analyst.  
 8 Q. And you don't hold any designation as an  
 9 appraiser; is that right?  
 10 A. That is an appraisal credential, absolutely.  
 11 Q. You're not a licensed or certified appraiser?  
 12 A. No. I don't have a designation other than  
 13 Chartered Financial Analyst.  
 14 Q. And you're not a lawyer?  
 15 A. Of course not.  
 16 Q. You don't have any--you're not a member of  
 17 any Appraisal Institute; correct?  
 18 A. Again, I would regard the CFA Institute and  
 19 its satellite organizations as appraisal institutes,  
 20 absolutely. So I am a member.  
 21 Q. You're not a member of any specific Appraisal  
 22 Institute?

02:59:28 1 A. If by "specific" you mean for a particular  
 2 industry, like real estate or mining or oil and gas,  
 3 no.  
 4 Q. And you don't describe yourself as a real  
 5 estate appraisal Expert in particular; is that  
 6 correct?  
 7 A. That's correct. My background covers all  
 8 asset classes, as I've explained, so I don't  
 9 characterize myself as a specialty in any one  
 10 particular area.  
 11 Q. You did not apply the Uniform Standards of  
 12 Professional Appraisal Practice in the preparation of  
 13 your Report; is that correct?  
 14 A. No. It's not--those principles aren't  
 15 necessarily applicable to me. What I did in this case  
 16 was provide a damages analysis. That's first and  
 17 foremost what we're here to do, and provided evidence  
 18 of values that could help the Tribunal resolve this  
 19 case in a fair way.  
 20 Q. Mr. Kaczmarek, I would appreciate if you  
 21 would just answer my questions.  
 22 I asked you whether you applied the Uniform

03:00:32 1 Standards of Professional Appraisal Practice, and I  
 2 take it the answer to my question is no, you did not;  
 3 is that right?  
 4 A. Correct.  
 5 Q. And you didn't apply the requirements of the  
 6 Code of Professional Ethics of Appraisal Institute in  
 7 the preparation of your Report or the carrying out of  
 8 your engagement in this proceeding; is that correct?  
 9 A. I don't know what those ethical requirements  
 10 are. I didn't apply those. There are significant  
 11 ethical requirements for the CFA.  
 12 Q. And in fairness to you, you haven't done an  
 13 appraisal of any of the subject Lots in this  
 14 proceeding; is that right?  
 15 A. I have done an evaluation of the market and  
 16 of the properties in this case. And based upon my  
 17 valuation, I have come up with what I think is the  
 18 appropriate way to compensate Claimants should the  
 19 Tribunal get there.  
 20 Q. Again, Mr. Kaczmarek, I would ask that you  
 21 listen to my question and answer the question that  
 22 I've asked. You did not perform an appraisal with

03:01:24 1 respect to the subject Lots in this proceeding, did  
 2 you?  
 3 A. I disagree with that. I did do an appraisal.  
 4 I did assess prices in the market, specifically  
 5 Claimants' purchase prices. My view is, as I just  
 6 went through, those prices wouldn't have increased and  
 7 so those are the relevant prices to be dealt with by  
 8 the Tribunal in this case. So that technically is an  
 9 appraisal as of May 2008.  
 10 Q. Were you instructed to do an Appraisal  
 11 Opinion?  
 12 A. No. I was instructed to assume that the  
 13 Claimants' properties have been expropriated and to  
 14 determine the appropriate amount of compensation in  
 15 this case.  
 16 Q. Were you instructed as to what date to assume  
 17 the Claimants' properties had been expropriated?  
 18 A. No. I wasn't instructed on that. Obviously  
 19 Mr. Hedden had already indicated a date the Claimant  
 20 wished to be compensated. I was using the same date.  
 21 Q. You haven't performed--the Reports that you  
 22 have performed, that you have provided are, in part,

03:02:38 1 responses or comments on the Reports that have been  
 2 tendered by Mr. Hedden; is that correct?  
 3 A. Correct.  
 4 Q. In responding to those two Reports provided  
 5 by Mr. Hedden, you haven't followed the--again, the  
 6 same Uniform Standards of Professional Appraisal  
 7 Practice in providing a Critique Report; is that  
 8 right?  
 9 A. I don't know what the--those practices are.  
 10 It's possible my approach could be congruent with  
 11 those principles, but I didn't have them in mind when  
 12 I conducted my analysis, no.  
 13 Q. If I could ask you to look at your First  
 14 Report, which I believe you have in front of you in  
 15 the binder that was handed up by my colleagues. I'd  
 16 like you to look at your First Report.  
 17 Sir, just before I take you to that, you've  
 18 made a number of remarks about the Un glaube  
 19 proceedings in your presentation this afternoon. Do  
 20 you recall that?  
 21 A. Yes.  
 22 Q. You understand that the Un glaube proceedings

03:03:49 1 were not public proceedings?  
 2 A. I know the Award is public. But, no, it  
 3 wasn't like this particular proceeding; correct.  
 4 Q. You understand that the only thing that has  
 5 been made public with respect to those proceedings is  
 6 the Award?  
 7 A. Yes.  
 8 Q. And did you give consideration to that before  
 9 giving your comments this afternoon in this  
 10 proceeding?  
 11 A. Absolutely.  
 12 Q. And if I could ask you to look at Page 4 of  
 13 your Report.  
 14 A. First Report?  
 15 Q. Yes. You indicate in paragraph--sorry,  
 16 Page 2 of your Report, Paragraph 4.  
 17 A. Yes, I'm there.  
 18 Q. You say in Paragraph 4 that you led a team of  
 19 professionals at Navigant in preparing your Report.  
 20 Can you tell me how many individuals from Navigant  
 21 have worked on this Report?  
 22 A. Besides myself, probably three others.

03:05:17 1 Q. And they're not named in this Report; is that  
 2 correct?  
 3 A. That's correct.  
 4 Q. And if I could ask you, who took the  
 5 photographs that are provided with your Report?  
 6 A. I took some of the photographs; and my  
 7 colleague, Andrew Preston, who is in the room, took  
 8 photographs.  
 9 Q. Do you recall specifically which photographs  
 10 you took?  
 11 A. No, I don't.  
 12 Q. Thank you.  
 13 And can you tell me with respect to--sorry.  
 14 Before I get to that, you've been retained by  
 15 Sidley Austin in a number of other arbitration cases  
 16 to provide an Expert Opinion; is that correct?  
 17 A. Yes, that's correct.  
 18 Q. You set out the documents that you relied  
 19 upon in preparation of your Report in Appendix Number  
 20 2; is that correct?  
 21 A. Correct.  
 22 Q. And if I could ask you to just look at

03:06:09 1 Paragraph Number 7 of your Report that you have in  
 2 front of me. You say here that you don't speak  
 3 Spanish; is that correct?  
 4 A. That is correct.  
 5 Q. And a number of the documents that are  
 6 referred to in Appendix 2 are in Spanish. You  
 7 understand that?  
 8 A. Yes, I do.  
 9 Q. And they've not been translated into English;  
 10 is that right?  
 11 A. I believe that's the case, yes.  
 12 Q. Just coming back to Appendix 2, if you could  
 13 just turn to the back of your Report to Appendix 2,  
 14 which starts just after what is Page 25 of Appendix 1.  
 15 This lists the entirety of the documents that you  
 16 relied upon in the course of preparation of your  
 17 Initial Report; is that correct?  
 18 A. Yes, I believe that's correct.  
 19 Q. And just, if I could ask you to confirm while  
 20 we're on this point, if you could turn to your Second  
 21 Report, Appendix 1 to your Second Report, which is  
 22 just after Page 53, this lists the entirety of the

03:07:39 1 documents that you relied upon in the course of  
 2 preparation of your Second Report; is that correct?  
 3 A. Correct.  
 4 Q. There weren't any documents that you relied  
 5 upon for the preparation of your Report that have not  
 6 been listed here; is that correct?  
 7 A. I believe that's correct. To the extent, of  
 8 course, that I may have referred to something already  
 9 submitted by Claimants or Respondents referring to the  
 10 laws or decrees, I may not have referenced that here.  
 11 I think this was an attempt to put in additional  
 12 evidence which supported our opinions.  
 13 Q. If I could ask you to look at the  
 14 document--sorry, the binder in front of you, the blue  
 15 binder. And if I could ask you to look at Tab 9.  
 16 This is one of the documents that you've referenced in  
 17 your Report; is that correct?  
 18 A. Yes. Probably for the definition of "Fair  
 19 Market Value," I presume.  
 20 Q. And that was what I was going to get to, but  
 21 just if I could ask you to confirm that this is the  
 22 only extract from the American Society of Appraisers

03:09:10 1 standards that you have referred to or relied upon in  
 2 the course of preparation of your report; is that  
 3 correct?  
 4 A. Correct.  
 5 Q. And you already answered what was going to be  
 6 my question, and that is, I assume that the only  
 7 purpose for which you referred to it was the  
 8 definition of "Fair Market Value"?  
 9 A. Yes. That's the source I use in all of my  
 10 Expert Reports to refer to the definition of "Fair  
 11 Market Value."  
 12 Q. And if I could ask you while we're still in  
 13 this binder to turn to Tab 12, and this is another  
 14 document that you relied upon in the course of  
 15 preparation of your Second Report; is that correct?  
 16 A. I believe that's correct, yes.  
 17 Q. And you did not refer to this in the course  
 18 of preparation of your initial report; is that right?  
 19 A. I think that's correct, yes.  
 20 Q. And I note that this is the proposed new  
 21 International Valuation Standards that was published  
 22 in June 2010. Do you see that on Page 1?

03:10:20 1 A. Yes. I think there's been an update to this.  
 2 I think there's a--there may be a 2013 or '14 that  
 3 came out.  
 4 Q. This is indicated as being a draft; is that  
 5 right?  
 6 A. Right. Exactly, proposed exposure draft.  
 7 Q. Do you know--sorry, just before I ask you the  
 8 next question, I assume again that the purpose for  
 9 which you relied upon this is limited to the pages  
 10 that you've included in your document production; is  
 11 that correct?  
 12 A. Correct.  
 13 Q. And so you haven't relied on the  
 14 International Valuation Standards beyond what you've  
 15 included in this tab; is that right, for the purposes  
 16 of preparation of your Report?  
 17 A. In terms of footnoting a statement, no. Of  
 18 course, I'm familiar with the IDS, and it's always, of  
 19 course, in the back of my mind in doing my analyses,  
 20 but I don't think I specifically referenced anything  
 21 else within this document.  
 22 Q. And do you know with respect to the

03:11:24 1 definition of Market Value, which is what I assume you  
 2 relied upon this extract for, do you know whether  
 3 there were any changes to this definition in the  
 4 context of the--what you believe was the 2013 version  
 5 of the International Valuation Standards?  
 6 A. I don't recall, but sitting here today, I  
 7 don't think there was any change.  
 8 Q. If I could ask you to turn back to your  
 9 initial report, Page 4 of your Report. Looking under  
 10 the heading "Executive Summary" to start with. Do you  
 11 see where I'm at?  
 12 A. Yes.  
 13 Q. And, in particular, I'm commenting upon  
 14 Paragraphs 10 and 11. With respect to those two  
 15 paragraphs, you make a number of statements concerning  
 16 the factual matters that are at issue in these  
 17 proceedings. Do you see that?  
 18 A. Yes.  
 19 Q. And were you provided--was this Executive  
 20 Summary something that was provided to you by counsel  
 21 for the Respondent?  
 22 A. Absolutely not, no.

03:12:53 1 Q. Was this an Executive Summary that you wrote  
 2 having regard to the Witness Statements and the  
 3 Memorials that have been filed in this proceeding?  
 4 A. Yes.  
 5 Q. You understand that, in your role as an  
 6 expert in this proceeding, your role is not to be a  
 7 finder of fact. You understand that?  
 8 A. I am not supposed to decide facts, but  
 9 certainly facts are important for conducting an  
 10 analysis.  
 11 Q. And how did you decide which facts to choose  
 12 to include as the basis for your assumptions of your  
 13 Report? Was that something you decided on your own,  
 14 or was that something that you were instructed by  
 15 counsel?  
 16 A. For--I decided pretty much what I thought was  
 17 relevant. Counsel didn't really tell me what was  
 18 relevant, because as a Quantum Expert trying to figure  
 19 out a damage analysis or a valuation, I don't know if  
 20 counsel really knows exactly what would be relevant  
 21 for a damages Expert or a valuation Expert.  
 22 Q. And in preparing this Executive Summary, if

03:14:04 1 any of the facts, as you have set them out here, are  
 2 found not to be accurate, is it possible that that  
 3 would change the opinions that you've expressed in  
 4 your Report?  
 5 A. Yes. Such if purchase prices aren't correct,  
 6 that could change my opinion. Absolutely.  
 7 Q. And what about if the factual issues with  
 8 respect to knowledge of the Claimants are found to be  
 9 different than how you've set them out in your Report?  
 10 Would that potentially affect your opinions?  
 11 A. No, it would not.  
 12 Q. It wouldn't?  
 13 A. It would not because, as we have said,  
 14 there's enough information in evidence that Claimants  
 15 knew or should have known. As I indicated, there is  
 16 definitely some evidence, Mr. Gremillion, that he may  
 17 not have known, but as I said, he should have known,  
 18 and the compensation analysis ought to take into  
 19 account a valuation of his property, assuming the  
 20 risks that it was in the Park and could be  
 21 expropriated.  
 22 Q. Well, with respect to Mr. Kaczmarek, you

03:15:08 1 understand that it's the purview of the Tribunal to  
 2 decide whether or not the Claimants knew or ought to  
 3 have known whether their properties were within the  
 4 boundaries of the proposed Park?  
 5 A. Of course. They're free to agree with my  
 6 opinions or disagree with my opinions.  
 7 Q. And if the Tribunal were to find that the  
 8 Claimants did not know or ought not to have known that  
 9 the Lots that they purchased at the time they  
 10 purchased them were within the boundaries of a  
 11 proposed park, is it possible that that would affect  
 12 the opinions that you've given in your reports?  
 13 A. Yes. I would agree with that. As I  
 14 indicated in the Unglaube case, the--it was impossible  
 15 for them to know a park was coming. If you were to  
 16 put Claimants in the same shoes as them, not being  
 17 able to at all predict a park, their properties would  
 18 be in a park and expropriated then, then it would  
 19 change my analysis, yes.  
 20 Q. And in preparing your summary of the facts  
 21 and the law, were you told to assume that the 75-meter  
 22 inland strip from the 50-meter inalienable zone was

03:16:21 1 always, since 1991, within the proposed boundaries of  
 2 a park?  
 3 A. I was told that the initial Decree in '91  
 4 established the Park, and that the coordinates  
 5 indicate that it is inland.  
 6 Q. Were you instructed that by counsel?  
 7 A. Yes. That's what I said. I was told that.  
 8 Q. By counsel?  
 9 A. Correct.  
 10 Q. And were you told to assume that the  
 11 Claimants knew or ought to have known that their  
 12 properties were within the boundaries of a proposed  
 13 Park at the time they purchased them?  
 14 A. No, I was not told to assume that.  
 15 Q. You don't identify clearly in your Reports  
 16 anywhere where you've been given assumptions by  
 17 counsel with respect to the facts for the law. Were  
 18 you given any assumptions to rely on in the course of  
 19 preparation of your Reports?  
 20 A. Well, I would disagree that I don't lay out  
 21 assumptions. I typically write a "we understand" when  
 22 I'm being told something. That's my way of doing it.

03:17:30 1 If it is something of a fact that I deemed relevant  
 2 myself from doing my analysis, I footnote it. But  
 3 clearly, Respondent has taken a position about the  
 4 Park, as has Claimant. I don't think that there's a  
 5 lot of controversy, except for whether or not we take  
 6 into account that Claimants knew or should have known  
 7 that their properties they purchased were in the Park.  
 8 Q. Do you say anywhere in your Report that when  
 9 you refer to "we understand" that means it's an  
 10 instruction from counsel?  
 11 A. I just don't use those terms, "instruction  
 12 from counsel." I've never used those terms in my  
 13 entire career as an expert. I use "we understand."  
 14 Q. Does it say anywhere in your Report that when  
 15 you use the words "we understand," that's something  
 16 that you have been told by counsel?  
 17 A. It could also mean when I write those words  
 18 that it's something I'm told by the Party who has  
 19 retained me, a witness has told me this, and so I  
 20 can't confirm it through any documentary evidence. If  
 21 I could, I would footnote the sentence, and I would  
 22 attach a document.

03:18:45 1 Q. So, as a reader of the Report, one is not  
 2 able to tell when you say "we understand" how it is  
 3 that you've come to that understanding; is that right?  
 4 A. You could ask any question, and any counsel  
 5 that's ever cross-examined me could ask any question  
 6 about a "we understand" to say "where did you get that  
 7 information?" And I'd be happy to say where I got it.  
 8 Q. And you'll agree with me that you cannot  
 9 ascertain that from the document itself?  
 10 A. It depends upon the context of the sentence.  
 11 In many instances, I think you could infer that it's  
 12 from counsel. In other instances, depending upon the  
 13 Statement, you could infer it's from a witness.  
 14 Q. Well, perhaps, I'll take you to a few  
 15 examples later on, but we'll move on.  
 16 If I could ask you to look at Paragraph  
 17 Number 12 in your Report. In Paragraph Number 12 of  
 18 the Report, you make a number of statements with  
 19 respect to factual matters, and, in particular, you  
 20 say in the last--sort of the middle of the paragraph,  
 21 you're talking about the administrative appraisals,  
 22 but below that you say, "particularly when factors

03:20:06 1 affecting the value of the properties are taken into  
 2 account, such as the limited water supply available to  
 3 the area, the density restrictions, the building  
 4 height restrictions, and the lack of any view of the  
 5 ocean due to mangroves within the 50-meter inalienable  
 6 zone from the mean high-tied that cannot be cut down."  
 7 So, just breaking that down, you've got a  
 8 number of factual issues there with respect to water  
 9 supply, for example. Where did you get the  
 10 information that you've included in your Report with  
 11 respect to the limited water supply available in the  
 12 area?  
 13 A. Certainly. I just think it's worth noting,  
 14 to help answer your question, this is an Executive  
 15 Summary, so it summarizes everything that's in detail  
 16 in the report. So, the water supply issue is  
 17 addressed later, and probably has some "we  
 18 understands" about the water supply issues.  
 19 Q. I'm asking you about Paragraph 12 your Report  
 20 right now, and I'm asking you, in particular, were you  
 21 given any instructions by counsel, for example, with  
 22 respect to the statement that there is limited water

03:21:14 1 supply available in the area?  
 2 A. Yes. I was told that. If we could turn to  
 3 Paragraph 124, that's where I address it. It's on  
 4 Page 44. And so here, as I would have expected, I  
 5 wrote, "Third, we understand that there was an  
 6 environmental concern with regard to the impact of  
 7 these developments and could have on the groundwater  
 8 source for the region."  
 9 And then I attached or cited the document  
 10 that I was provided and told that this study would  
 11 reveal that there was groundwater problems. I can't,  
 12 of course, with my expertise comment on that. That's  
 13 why I said "we understand" that this is what this  
 14 Report says.  
 15 Q. Who specifically told you that? Was it  
 16 counsel?  
 17 A. Probably. I don't recall. I know on site  
 18 visits we went around with some of the park rangers.  
 19 I've met Mr. Piedra four years ago, so sometimes I  
 20 forget what I did on each trip, but I know they  
 21 addressed the water supply issues on our visit in  
 22 2014.

03:22:39 1 Q. And as you candidly admitted, you don't have  
 2 any expertise in the area, and so you can't comment  
 3 specifically on whether or not it's accurate that  
 4 there are, in fact, limited water supply affecting the  
 5 value of the property--  
 6 A. Correct.  
 7 Q. --available in the area?  
 8 I'm sorry. Is that right?  
 9 A. Correct.  
 10 Q. In Paragraph Number 15 of your Report, you  
 11 state--I'm just trying to find the sentence. Sorry,  
 12 I'm just trying to find the reference here.  
 13 Well, perhaps, I'll just ask you the question  
 14 and see how familiar you are with your own Report.  
 15 You say in your Report that most of the  
 16 purchases of the properties in the area took place  
 17 without proper due diligence. Do you recall making  
 18 that statement in your Report?  
 19 A. Can you direct me to a paragraph, or are  
 20 you--is that why you're wondering if I knew my Report  
 21 well?  
 22 Q. I'm sorry. It's Paragraph Number 16.

03:24:17 1 A. Great.  
 2 Q. It's the first sentence of Paragraph  
 3 Number 16. Do you see that statement?  
 4 A. Yes.  
 5 Q. And with respect to the comparables that  
 6 Mr. Hedden has used in his Report, you haven't done  
 7 any independent verification or analysis with respect  
 8 to the purchasers of those comparables to assess  
 9 whether or not they had done proper due diligence with  
 10 respect to their reports? In other words, you haven't  
 11 spoken to them?  
 12 A. I haven't spoken to them, but the terms of  
 13 them do reveal due diligence that they performed. For  
 14 example, the C71 and V61 Contracts were provided, and  
 15 you can glean what information the buyers and sellers  
 16 knew at the time the transaction took place from  
 17 those.  
 18 Q. Is that the extent of your knowledge with  
 19 respect to those purchasers?  
 20 A. Yes. Because all of the other sale and  
 21 purchase contracts were not submitted by Claimants  
 22 into the record.

03:25:23 1 Q. Sorry, but I'm speaking with respect to the  
 2 purchasers of those comparables. The extent of your  
 3 knowledge about those particular purchasers and their  
 4 intentions with respect to the purchase of the  
 5 property, you gleaned from those purchase contracts;  
 6 is that correct?  
 7 A. Yes. Of course, I also was trying to assess  
 8 the status of the market around the time when these  
 9 properties were acquired by Claimants. A market  
 10 analysis is necessary for an expert to do any time  
 11 they're doing a valuation or damages calculation. And  
 12 so my own analysis of the market is also supporting my  
 13 view that an investor looking at those properties  
 14 should have known about the risks of the properties  
 15 being in the Park and possibly being expropriated.  
 16 Q. But you haven't spoken to those purchasers;  
 17 correct?  
 18 A. I have not spoken to any of the purchasers.  
 19 Q. And if you could turn to Page 8 of your  
 20 Report--sorry, Page 22 of your Report. In Paragraph  
 21 Number 22 and following, you set out the history and  
 22 purpose of the 1991 Decree and the 1995 Park Law.

03:26:52 1 Do you see that?  
 2 A. Sorry. Are we on Page 22 or paragraph?  
 3 Q. Page 22. Page 22 of your First Report.  
 4 A. Right. I'm sorry. I thought you introduced  
 5 the question saying Paragraph 22. So which paragraph  
 6 are you referring to?  
 7 Q. Starting at Paragraph Number 68.  
 8 A. 68. Okay.  
 9 Q. You set out the history and purpose of the  
 10 1991 Decree and the 1995 Park Law, the 2004 Opinion,  
 11 and the Supreme Court and Constitutional Court  
 12 Decisions. Do you see that?  
 13 A. Yes.  
 14 Q. Paragraphs--I'm referring to  
 15 Paragraphs 68-73.  
 16 A. Correct.  
 17 Q. And, again, was this section--was this  
 18 analysis given to you by counsel to rely upon?  
 19 A. It's not--well, if you call it analysis, it's  
 20 certainly my own. Obviously, I discussed with counsel  
 21 the nature of the issue and the documents reflecting  
 22 the creation of the Park, and then all of that goes to

03:27:54 1 an assessment of the market for real estate in this  
 2 particular area, so it's important for the valuation.  
 3 Q. I'm focused specifically on these paragraphs  
 4 which deal with what I would consider to be matters of  
 5 legal issue, and I'm asking whether the specifics  
 6 paragraphs were written by you or whether you were  
 7 given this information by counsel.  
 8 A. I specifically wrote, so we can set doubt  
 9 aside, every word in this Report, with help from my  
 10 colleagues. The attorneys did not write any sections  
 11 of this Report. This reflects my understanding of how  
 12 the Park was created and when, which is important,  
 13 again, for valuation.  
 14 Q. And my question is, was your understanding  
 15 obtained from discussions with counsel, or did you  
 16 actually read and analyze the Park Law and come to  
 17 your own conclusions?  
 18 A. Usually when I'm told of facts that are  
 19 important, I would like to verify them. And so we  
 20 would certainly look at and confirm that the initial  
 21 Decree was issued in 2000--or 1991. That would be  
 22 important for me in my analysis to make sure that

03:29:09 1 that's correct, but I wouldn't go so far as to  
 2 interpret a section of it legally and satisfy myself  
 3 that counsel's position on it legally is correct.  
 4 Q. You understand that the--with respect to  
 5 Paragraph Number 68, you understand that, with respect  
 6 to the 1991 Decree, the proposed boundaries of the  
 7 Park did not include Playa Ventanas?  
 8 A. Correct. That's my understanding, it did not  
 9 include Playa Ventanas.  
 10 Q. And similarly, with respect to the Supreme  
 11 Court and the Constitutional Court Decisions, did you  
 12 write the summary with respect to those two  
 13 paragraphs, based on information that you obtained  
 14 from counsel, or did you read those decisions and  
 15 write your own conclusions about what they concluded?  
 16 A. Again, these documents were given to me.  
 17 They were made available to me. I confirmed simply  
 18 part of what these documents say. I don't think some  
 19 of these are really issues that are in contention  
 20 between the Parties, but it was to fully set out the  
 21 context under which my opinion was formed.  
 22 Q. And if you could look at Page 27 of your

03:30:42 1 Report, in the chart at Table 5, you've got a  
 2 timeline. And some was this was in the presentation  
 3 that you gave this afternoon, but with respect to the  
 4 bullet or the timeline, February 10, 2004, you  
 5 write, "Attorney General Decree establishing BNMP  
 6 boundaries 125 meters inland."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. And you use the word "Decree." You  
 10 understand that the Attorney General's Opinion is not  
 11 a Decree?  
 12 A. It may not. I don't frankly know the  
 13 difference between Laws and Decrees, the precise  
 14 difference. I know there is a difference, but that's  
 15 not my domain.  
 16 Q. Was it your understanding in writing your  
 17 Opinion that the Attorney General's Opinion was a  
 18 matter of law?  
 19 A. To me, what I was preparing this timeline for  
 20 was to establish what research could have been  
 21 developed in doing due diligence in order to make a  
 22 proper assessment of the value of the properties.

03:32:13 1 Q. Did you understand, in preparing your  
 2 Opinion, that the Attorney General's Opinion was  
 3 binding on anyone other than the Ministry?  
 4 A. I didn't form a conclusion one way or the  
 5 other. To me, the existence of such a decision, a  
 6 Decree, whatever it may be, would, in the minds of a  
 7 buyer, create doubt and risk about buying a property  
 8 in the area.  
 9 Q. I'm just turning back to Page 22 of your  
 10 Report, Paragraph Number 66, you state midway through  
 11 the paragraph, "In our view, several of the Claimants'  
 12 actions and statements indicate that they were aware  
 13 or should have been aware before purchase that the  
 14 properties were reserved for the BNMP."  
 15 Do you see that?  
 16 A. I do.  
 17 Q. And you use "Claimants" in plural. Do you  
 18 see that?  
 19 A. Yes.  
 20 Q. And so you're referring to all the Claimants  
 21 in that paragraph?  
 22 A. I'm not referring necessarily to all of the

03:34:49 1 Q. If you could look at Paragraph Number 75 on  
 2 Page 24 of your Report. You say in the  
 3 first--sorry--the second sentence of Paragraph  
 4 Number 75, "Even though the 1995 Law was inconsistent  
 5 with the 1991 Decree due to a typographical error, the  
 6 Claimants should have been aware that the BNMP's  
 7 boundaries extended 125 meters inland."  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. Were you told to assume that it was due to a  
 11 typographical error?  
 12 A. I wasn't told to assume that. That is the  
 13 outcome, as I understand it, from the ultimate  
 14 determination by the Supreme Court, that this was a  
 15 typo.  
 16 Q. Is that--you're referring to the Decision  
 17 that was ultimately in May of 2008?  
 18 A. And the series of decisions leading up  
 19 thereto; that this is what was the basis for changing  
 20 amending the law, was that the "seaward" reference was  
 21 a typo.  
 22 Q. I'm sorry. You've referred expressly a

03:33:42 1 Claimants, no. As I indicated in my presentation, it  
 2 appears Mr. Gremillion was unaware of the  
 3 risk--sorry--of the property being in the Park.  
 4 Q. And you say "in our review." Who were you  
 5 referring to when you say "our"?  
 6 A. That's a stylistic way in which I've always  
 7 written my reports. I use the terms "we" or "our"  
 8 instead of "I" and "my" to reflect the contributions  
 9 of my colleagues.  
 10 Q. So, again, this was not something that you  
 11 were asked to assume in the preparation of your  
 12 reports? This is something that you wrote on your  
 13 own; is that right?  
 14 A. That's definitely something I wrote on my  
 15 own. I was, again, trying to do an assessment of what  
 16 the market would look like for properties at the time  
 17 of purchase. As I indicated, there's a number of  
 18 indications that there's a high degree of risk about  
 19 those properties being in the Park and subject to  
 20 expropriation, and I just added here that it even  
 21 seems from Claimants' own statements that they knew  
 22 that to be the case.

03:36:10 1 moment ago to a decision that indicated that it was as  
 2 a result of a typographical error, and I'm trying to  
 3 understand which specific decision you're referring  
 4 to. Is it the May 2008 Decision?  
 5 A. Well, I think it may have started with the  
 6 Attorney General's decision, but what I'm expressing  
 7 to you is which document it's in or it's not is really  
 8 not that relevant, from my point of view, from a  
 9 valuation perspective.  
 10 Q. Well, you formed the conclusion that, even  
 11 though the 1995 Law was inconsistent with the 1991  
 12 Decree due to a typographical error, the Claimants  
 13 should have been aware that it was within the  
 14 boundaries of the Park. And I'm asking you, based on  
 15 what specific decision you've formed that conclusion?  
 16 A. Sure. And it's perhaps--I should have added  
 17 the word "potentially" in the Park as opposed to "in  
 18 the Park" because I think I've been consistently  
 19 saying in my Reports that there was risk. "Risk"  
 20 means uncertainty.  
 21 Q. And you can't now tell me which specific  
 22 decision you're relying on in drawing that conclusion?

921

03:37:35 1 A. No, I don't think there--of my understanding  
2 of that, it's as much in contention that it was  
3 ultimately decided in that way, that there was a  
4 typographical error, whichever document it's in.

5 Q. Were you instructed to take into  
6 consideration the Claimants' knowledge as to whether  
7 their properties fell within the boundaries of the  
8 Park in rendering your Opinion?

9 A. No, I was not instructed to do so.

10 Q. You're aware, of course, that there were  
11 individuals who bought properties completely within  
12 the 75-meter strip during the period from 2003 to 2008  
13 for substantial sums of money?

14 A. It depends upon what you mean by "substantial  
15 sums of money," but I would agree; people bought  
16 properties within the 75-meter strip.

17 Q. Well, if I can take you to, perhaps, one  
18 example. If you look at your Reply Report, Paragraph  
19 Number 33. You refer to a lot in the Palm Beach  
20 Estates being sold for 800,000--sorry, U.S. dollars;  
21 is that right?

22 A. Listed.

922

03:39:07 1 Q. Listed.

2 A. Not sold. Listed for sale.

3 Q. And do you know how much it sold for at that  
4 time?

5 A. It didn't.

6 Q. It was listed for sale at \$40 per square  
7 meter; is that right?

8 A. Yes. One of the parcels was listed at that  
9 price.

10 Q. And if you turn back to Page 8 on Page 3 of  
11 your Reply Report--sorry, before I get to that point,  
12 were you instructed to assume that to the extent of  
13 any windfall the Republic of Costa Rica should get the  
14 benefit of that, even if the purchase price were  
15 discounted because of the intended taking becoming  
16 known in the marketplace?

17 A. Was I instructed that Costa Rica should get a  
18 windfall as a result of that?

19 Q. Yes.

20 A. No, I wasn't instructed on that, and in my  
21 view--and this is a damages concept--I don't think  
22 Costa Rica is benefiting in the way that a Government

923

03:40:23 1 would when it expropriates a business and keeps it for  
2 itself. Here, obviously, they're taking land to  
3 protect the turtles and get nothing more out of it  
4 than protection of an endangered species.

5 Q. If I could ask you to look at  
6 Paragraph Number 69 of your Reply Report. You refer  
7 to this analysis in Paragraph Number 69 of your  
8 Report, and you say about halfway through the  
9 paragraph, at Paragraph 69, "Rather, the sellers of  
10 the properties incurred the loss," and you're  
11 referring there to the sellers of the properties to  
12 the Claimant; is that correct?

13 A. Correct.

14 Q. And to your knowledge, has Costa Rica  
15 compensated the sellers of the properties?

16 A. Of course not, because they sold the  
17 properties rather than seeking compensation. They  
18 told them at a discount. The Claimants got them  
19 cheaply because of the risks.

20 Q. Do you--

21 A. And so now Claimants are here seeking  
22 compensation.

924

03:41:59 1 Q. Do you know if the sellers of the properties  
2 purchased those properties prior to 1991?

3 A. I don't know.

4 Q. If I could ask you to look at the binder in  
5 front of you, the blue binder. You've indicated both  
6 in your Report and in the presentation that you gave  
7 this morning that, in your view, the real estate  
8 market in the area in question is correlative to the  
9 U.S. real estate market; is that right?

10 A. Yes.

11 Q. And you rely on a number of articles in  
12 support of that proposition; is that correct?

13 A. Correct.

14 Q. And if I could ask you to turn to Tab 5. And  
15 this is Exhibit R-65. This is one of the articles  
16 that you relied upon in support of that conclusion; is  
17 that correct?

18 A. Yes. I recognize the first sentence of the  
19 second paragraph, in particular.

20 Q. And if I could ask you to look at the fourth  
21 paragraph down. And it starts, "The person willing to  
22 buy in Costa Rica."

03:43:56 1 Do you see that?  
 2 A. Yes.  
 3 Q. And she says, "The person willing to buy in  
 4 Costa Rica, on the other hand, must understand that  
 5 our market will not see a fall in prices as in the  
 6 U.S. The reason being that most owners own their  
 7 property outright. Few property owners used credit to  
 8 purchase, and before losing money on their assets,  
 9 they would rather wait for the market to pick up.  
 10 Again, those urged to sell are willing to make a  
 11 smaller profit but hardly a loss. This is the reason  
 12 why the time for buyers is to act now, because the  
 13 U.S. has experienced signs of recovery, and the  
 14 numbers in Costa Rican tourism are rising again."  
 15 Do you see that?  
 16 A. Yes. It's a predictive statement, a  
 17 forward-looking statement the person is making.  
 18 Q. And if I could ask you to turn to the next  
 19 tab, this is Exhibit R-66. This was another article  
 20 that you relied upon in support of your opinion that  
 21 the markets were correlative; is that right?  
 22 A. Yes, I believe so.

03:45:03 1 Q. And on the first page midway--it looks like  
 2 the second article, it says, "Surcharge still around  
 3 Guanacaste"? Do you see that?  
 4 A. Yes.  
 5 Q. And it's dated June 2, 2010.  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. And it says "In Guanacaste the land prices  
 9 are still high, so high that real estate business is  
 10 not taking off as realtors waiting to happen after the  
 11 hardest stage of the economic crisis last year."  
 12 Do you see that?  
 13 A. I do.  
 14 Q. It says, "For example, in Tamarindo, square  
 15 meter in 2007 was 1,000, is now at 600".  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. And so what this article is indicating--she  
 19 says that last year, which would be 2009. Do you see  
 20 that? Sorry, just going back to the sentence I read  
 21 immediately before that. She refers to the--  
 22 A. I'm sorry, where does it say "last year"?

03:46:08 1 Q. It says at the end of the first sentence "of  
 2 the economic crisis last year." She refers to an  
 3 economic crisis being in 2009.  
 4 A. Thank you. Yes, I see it.  
 5 Q. And then about halfway down the second page,  
 6 there's a reference to the Executive Director of the  
 7 National Chamber of Tourism, and it says about halfway  
 8 down the page, "He believes that after the crisis,  
 9 property prices did not fall nowhere near the  
 10 proportions who experienced the real estate market in  
 11 the U.S., where they were as low as 30 percent in  
 12 middle class housing."  
 13 Do you see that?  
 14 A. Yes, and I can easily explain that.  
 15 Q. I didn't ask you to explain that.  
 16 If I could ask you to look--  
 17 MR. ALEXANDROV: Mr. President, I think it's  
 18 fair to allow Mr. Kaczmarek to provide a very brief  
 19 explanation.  
 20 PRESIDENT BETHLEHEM: I think that  
 21 it's--excuse me. I think that it's appropriate to  
 22 allow counsel for the Claimants to develop the

03:47:11 1 premises for a question that she may want to put in  
 2 just a moment.  
 3 MS. COHEN: I was going to move on to a  
 4 different document.  
 5 PRESIDENT BETHLEHEM: Well, I think that you  
 6 should then give Mr. Kaczmarek an opportunity to  
 7 respond to the issue you've just put to him.  
 8 THE WITNESS: Yes. Thank you.  
 9 What happened, and what makes it difficult to  
 10 do valuations post the peak of the market in the areas  
 11 is many people continue to their properties at the  
 12 inflated levels, at the peak of the bubble, because  
 13 they didn't want to take losses. And so there was a  
 14 long period of time whereby the prices remained high,  
 15 and no activity took place. And that's what these  
 16 people are seeing. They are still seeing high listed  
 17 prices but no activity. That's what those comments  
 18 mean.  
 19 BY MS. COHEN:  
 20 Q. Mr. Kaczmarek, you understand that, in  
 21 preparation of an appraisal, that is why you look at  
 22 contemporaneous information, not information that is

03:48:11 1 obtained with the benefit of hindsight; correct?  
 2 A. Well, if you're doing a contemporaneous  
 3 valuation, then you would look at contemporaneous  
 4 information. If you're doing a valuation at a  
 5 historical date, you would not take that into account.  
 6 But I was explaining--and this is a document just  
 7 outlining and trying to help the Tribunal to  
 8 understand how the market evolved, including after the  
 9 Valuation Date in this case.  
 10 Q. So you acknowledge that you're relying on  
 11 information that would not have been available in 2008  
 12 with respect to somebody who was purchasing property  
 13 at that time; correct?  
 14 A. No. I'm not relying on that information in  
 15 offering a view as to what I think would be proper  
 16 compensation in this case. I'm relying on the  
 17 purchase prices, which clearly don't reflect what  
 18 happened post the real estate crash.  
 19 Q. If I could ask you to look at Tab 13 in the  
 20 binder. This is Exhibit R-161, which, again, is an  
 21 article that you relied upon in coming to the  
 22 conclusion that the markets were correlative; is that

03:49:36 1 correct?  
 2 A. Yes. It may have been.  
 3 Q. And if I could ask you to look at the first  
 4 paragraph of--and this is an article that appears to  
 5 be dated September 12, 2008; is that right?  
 6 A. Correct.  
 7 Q. And it says, "The mortgage crisis and  
 8 subsequent economic downturn in the United States  
 9 would portend a reciprocal slowdown in Costa Rica's  
 10 coastal properties, but experienced real estate agents  
 11 here are pragmatically optimistic."  
 12 Do you see that?  
 13 A. Yes. I see that as, again, a forecast or a  
 14 prognostication of what this person thinks may happen.  
 15 Q. And there's no indication that, at that point  
 16 in time, it had already happened. Do you see that?  
 17 Do you agree with that?  
 18 A. That it doesn't indicated what actually did  
 19 happen?  
 20 Q. That it had already happened.  
 21 A. No. It's not an article necessarily focused  
 22 on what already had happened. It's an article, in my

03:50:42 1 view, that talks about what they think may happen with  
 2 the market moving forward. So, it's a forecast, if  
 3 you will.  
 4 Q. And you see in the third paragraph, it  
 5 says, "The Pacific coastal real estate market has  
 6 bombed over the last five years."  
 7 Do you see that?  
 8 A. Yes, I do. And I would agree that there  
 9 was--it was booming. If you go to the third-to-last  
 10 paragraph, by Bob Davey, who apparently Mr. Hedden  
 11 talked to, he says, "The sky is not falling. There is  
 12 just a healthy correction going on." What does that  
 13 mean? That means a correction in prices, prices  
 14 falling.  
 15 So, that is a backward-looking statement  
 16 about what has happened thus far.  
 17 Q. It doesn't say when it started falling or by  
 18 how much?  
 19 A. No. But I have other articles that I put in  
 20 and I showed in my presentation that indicate most  
 21 everyone viewed the peak to be mid-2006.  
 22 Q. If I could ask you to look at next page. The

03:51:53 1 last full paragraph from the bottom, it says, "On the  
 2 whole--and it's referring to Mr. Nuñez, an owner of  
 3 First Realty Pacific Beach Properties in Playa  
 4 Hermosa. And he says, "on the whole"--he says,  
 5 "single-family homes in Costa Rica have not been  
 6 affected by the U.S. mortgage crisis, although he  
 7 cited two families from the U.S. who were forced to  
 8 sell here because of mortgage finance problems back  
 9 home."  
 10 Do you see that?  
 11 A. Yes. I would agree with that statement, that  
 12 there wasn't a mortgage crisis in Costa Rica like the  
 13 United States, so that factor did not materialize and  
 14 drive prices down.  
 15 Q. Now, you've said a number of times that it's  
 16 your Opinion that its correlative also in terms of the  
 17 timing of the downturn in the market. And if I could  
 18 just ask you to look at Tab 3 in this binder. This  
 19 was another article that you relied upon in  
 20 preparation of your Report; is that correct?  
 21 A. I believe so, yes.  
 22 Q. And in the third paragraph, it says, "The

03:53:17 1 property market is by no means back to where it was in  
 2 the boom years of 2006 or 2007."  
 3 Do you see that?  
 4 A. Yes, I do.  
 5 Q. So it refers to the boom years in Costa Rica  
 6 including 2007. You acknowledge that?  
 7 A. I acknowledge that, yes.  
 8 Q. And, again, it refers in the next line to the  
 9 recession being last year, again, by reference to the  
 10 article that would be 2009; is that right?  
 11 A. Yes. That would be correct. The recession  
 12 came in late 2008 in the United States and really took  
 13 hold in early 2009. But the property markets were  
 14 already in decline before the recession came about.  
 15 Q. If you could turn to the next tab, Tab 4.  
 16 Again, if you look at--this is Exhibit R-63. This is  
 17 another article that you relied upon.  
 18 A. Yes. The third paragraph was quoted in my  
 19 presentation today.  
 20 Q. And, again, this is an article that's dated  
 21 August 2008. So quite late in 2008; is that right?  
 22 A. Right. And as the third paragraph indicates,

03:55:00 1 it says, "Prices were down in 2008 from their peak a  
 2 few years ago," meaning--"few" usually means two when  
 3 I see the word "few." So 2006.  
 4 Q. But you didn't actually do an analysis of  
 5 sales of properties in 2007 in the Guanacaste Province  
 6 beyond these articles; is that correct?  
 7 A. I did analyze the market overall in all years  
 8 from 2003, I think, up to present day. And in my view  
 9 based upon my research and analysis, the property  
 10 prices began to decline in 2007 and then declined  
 11 further in 2008, and then the market just completely  
 12 shut down. There were no transactions taking place  
 13 whatsoever after that.  
 14 Q. And the only--as I indicated with you at the  
 15 beginning of your testimony, the only documents that  
 16 you've relied on in the preparation of your Report are  
 17 the ones that are referred to in your Report; is that  
 18 correct?  
 19 A. Correct.  
 20 Q. And the documents that you included in your  
 21 PowerPoint are all documents that were referred to in  
 22 your appendices; is that correct?

03:56:29 1 A. That's correct.  
 2 Q. And those form the basis for your conclusion?  
 3 A. Well, certainly, yes, I did site visits. I  
 4 did talk to people, but I don't put hearsay testimony  
 5 in the record to rely on it as evidence. I get an  
 6 understanding talking to people, I go out and I look  
 7 for documentary evidence that supports what I'm being  
 8 told.  
 9 Q. And you haven't included in the documentary  
 10 evidence any purchase prices from 2007 unrelated to  
 11 the subject Lots?  
 12 A. Right. I don't think in 2007, to my  
 13 recollection, there were much, if any, that we could  
 14 find. I certainly have done a very exhaustive--  
 15 Q. I'm sorry; in all of Costa Rica?  
 16 A. No, no. Just in that area that would be  
 17 relevant. I'm certainly not looking for properties in  
 18 areas that wouldn't be deemed comparable, like San  
 19 José or something like that.  
 20 Q. If you could look at Tab 7. Again, this is  
 21 another article that you relied upon in support of  
 22 your Opinion; is that correct?

03:57:59 1 A. I believe so, yes.  
 2 Q. And on the second page of the article--I'm  
 3 sorry, this is an article that is also dated  
 4 October 2010, but on the second page of the article at  
 5 the top, it says, "We are a few years away from the  
 6 height of the market in 2006 and 2007."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. And you acknowledge that this article refers  
 10 to the height of the market being in 2006 and 2007  
 11 with respect to Costa Rica?  
 12 A. Yes, it does. I mean, obviously I look at  
 13 all of the articles combined and form a view. And my  
 14 view is that mid-2006 was the peak of the market based  
 15 on all the evidence I have seen.  
 16 Q. And can I ask you to look at Exhibit 68,  
 17 which is the next tab, Tab 8. This document is the  
 18 Central Bank of Costa Rica 2008 Annual Report dated  
 19 March 2009, and it's entirely in Spanish.  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. I take it that you could not read this Report

03:59:17 1 or understand it without it being translated to you;  
 2 is that correct?  
 3 A. Correct. I would have had one of my team  
 4 read it and tell me what the document says.  
 5 Q. Would they have sat down and read the  
 6 entire--the document in its entirety to you in  
 7 English?  
 8 A. The entire document to me in English? No,  
 9 but they probably read the vast majority of the entire  
 10 document. Otherwise--we don't typically go looking  
 11 for documents. Having never read the document before,  
 12 we don't know what it contains, so you have to read it  
 13 to figure out what its contents are and if it's even a  
 14 relevant document that might be useful for the  
 15 Tribunal.  
 16 Q. I'm asking whether you've read the entirety  
 17 of the contents. And I take it that you have not?  
 18 A. I have not, and it's not unusual in  
 19 proceedings with documents in foreign languages.  
 20 Q. Now, I take it your view is that the market  
 21 was higher in 2007 than it was in 2008?  
 22 A. Yes. I would agree that prices were higher,

04:00:29 1 but you have to also understand that there was a  
 2 slowdown in market activity and refusal by property  
 3 owners looking to flip or sell their properties to  
 4 reduce prices. So that's kind of a headwind in  
 5 analyzing the market down in that area of the country.  
 6 Q. But, generally speaking, you would agree that  
 7 market prices, fair market prices would have been  
 8 higher in 2007 than 2008, in your view?  
 9 A. Yes.  
 10 PRESIDENT BETHLEHEM: Just a small point, at  
 11 some point over the next 10, 15 minutes, I believe--  
 12 MS. COHEN: This is a convenient time for a  
 13 break.  
 14 PRESIDENT BETHLEHEM: Okay. Let's take a  
 15 break now, and we'll reconvene at quarter past 4:00.  
 16 Mr. Kaczmarek, may I remind you, you're in  
 17 the Witness seat. Please don't discuss your testimony  
 18 with your colleagues or with counsel for the  
 19 Respondent.  
 20 THE WITNESS: Absolutely.  
 21 (Brief recess.)  
 22 PRESIDENT BETHLEHEM: Well, ladies and

04:14:43 1 gentlemen, we'll recommence with the  
 2 cross-examination.  
 3 Ms. Cohen.  
 4 BY MS. COHEN:  
 5 Q. Mr. Kaczmarek, in your Report you refer to  
 6 what is known as the administrative appraisals.  
 7 Do you recall that?  
 8 A. Yes, I do.  
 9 Q. And with respect to the administrative  
 10 appraisals, do you know what valuation date they used  
 11 to conduct the administrative appraisals?  
 12 A. I don't recall all of them offhand, but I  
 13 believe it was around 2008.  
 14 Q. And do you know how they determined the date  
 15 to use for the purposes of the valuation?  
 16 A. I'm assuming they were instructed as to which  
 17 date to use for their valuation.  
 18 Q. Did you consider whether the date that was  
 19 chosen was appropriate?  
 20 A. No, I did not evaluate the whole process of  
 21 the administrative appraisals.  
 22 Q. Did you review the administrative appraisals

04:16:15 1 and assess the comparables that they had chosen to use  
 2 in the administrative appraisals?  
 3 A. No, I did not.  
 4 Q. Are you aware that, with respect to a number  
 5 of the Lots that are at issue in this proceeding,  
 6 there was a judicial process that followed the  
 7 administrative appraisals?  
 8 A. Right. It is my understanding that if it's  
 9 challenged by the property owner, it goes into a  
 10 judicial process.  
 11 Q. And you're aware that, in fact, in this case  
 12 there were a number of Lots that went into the  
 13 judicial process?  
 14 A. Yes. I believe that's the case, that there  
 15 are a number of them there, yes.  
 16 Q. And you understand that in the context of the  
 17 judicial process, there is an appraisal that is  
 18 provided to the Court that is different from the  
 19 administrative appraisal.  
 20 You understand that?  
 21 A. Yes. My understanding is that it can't be  
 22 lower, but it could be higher, I believe, the

04:17:21 1 appraisal and the judicial process.  
 2 Q. And the appraisals from the judicial process  
 3 are not in the record.  
 4 Do you understand that?  
 5 A. I don't recall if they are or they aren't in  
 6 the record.  
 7 Q. You didn't review the judicial appraisals  
 8 prior to providing your Opinions, either in your First  
 9 or your Second Report; is that right?  
 10 A. Correct. I did look at the administrative  
 11 appraisals, but I don't believe we referred to  
 12 judicial appraisals, to my recollection.  
 13 Q. You're aware that with respect to the  
 14 judicial appraisals, a number of them resulted in an  
 15 appraisal of the property that was substantially  
 16 higher than the administrative appraisals.  
 17 You understand that?  
 18 A. I don't know if I've done that comparison.  
 19 It wouldn't surprise me if my understanding is correct  
 20 that they could only be higher and not lower, that it  
 21 could be that someone came up with a higher appraisal.  
 22 Q. Now, you didn't consider the basis upon which

04:18:22 1 those appraisals used in the judicial context came up  
 2 with a higher valuation than the administrative  
 3 appraisals; correct?  
 4 A. I did not, no.  
 5 Q. You understand that the principle entrance of  
 6 Playa Grande is about 650 meters from the beach?  
 7 A. I've not paced it off. I will take your  
 8 representation that it's 650 meters.  
 9 Q. You've been there a number of times. It's a  
 10 substantial distance from the beach. You agree with  
 11 that? About almost a mile?  
 12 A. I guess it just depends on where you consider  
 13 the entrance to the Playa Grande area.  
 14 Q. There are properties within the Playa Grande  
 15 area that are a distance of about a mile away from the  
 16 beach.  
 17 You understand that?  
 18 A. Oh, certainly there are. People have homes  
 19 further away than that from the beach, yes.  
 20 Q. And you don't know whether the comparables  
 21 that were used in the administrative appraisals were  
 22 properties that were in close proximity to the beach

04:19:38 1 or a mile away from the beach; correct?  
 2 A. I did not analyze the comparable properties  
 3 they chose nor how they made any adjustments to those,  
 4 if any. I did not analyze that.  
 5 Q. And you'll agree with me that lots closer to  
 6 the beach will sell at a premium to lots further from  
 7 the beach; correct?  
 8 A. Agreed.  
 9 Q. If you look at your Report on Page 56 and 57,  
 10 you set out a summary of the administrative appraisals  
 11 in--on Page 56 as Playa Ventanas on Page 57 for Playa  
 12 Grande.  
 13 Do you see that?  
 14 A. I do, yes.  
 15 Q. And if you look at the administrative  
 16 appraisal date for the Playa Grande properties, you  
 17 see that the administrative appraisal amounts are  
 18 substantially lower per square meter than the  
 19 appraisal--than the appraisals for the Playa Ventanas  
 20 Lots that were conducted with an administrative date  
 21 of September 2008.  
 22 Do you see that?

04:21:45 1 A. So we're on Table 7?  
 2 Q. Looking at Table 7 compared to Table 8.  
 3 A. Right. So, for Ventanas--again this is--I'm  
 4 doing a comparison here of administrative appraisal  
 5 versus purchase price to the extent the purchase price  
 6 is even correct. I presume so in the First Report,  
 7 and many of them are higher, as you can see, than the  
 8 purchase price in Ventanas. I agree with you, if you  
 9 go on to Table 8 on Page 57, the administrative  
 10 appraisals look much lower, but what you can see is  
 11 that several of these are purchases by Mr. Berkowitz,  
 12 and at the time we were told he was buying these  
 13 properties for \$500,000 a lot, and that is the figure  
 14 we used. So clearly I would have to change this  
 15 entire table and use the appropriate purchase price,  
 16 which is some fraction of 1.5 million for all eight  
 17 beach lots, which would change this table quite a bit.  
 18 Q. Well, we'll come back to that, but my  
 19 understanding is that you have taken the  
 20 administrative appraisal amounts and used the  
 21 administrative appraisal amounts in these two tables,  
 22 in reference to the square footage; correct?

04:23:19 1 A. Yes. I've done a comparison of the square  
 2 footage for each property--or square meter, excuse me.  
 3 Q. So, I'm not concerned for the moment with the  
 4 comparison between the purchase price that you have  
 5 indicated in your tables as being the appropriate  
 6 purchase price. I'm just looking at the appraisal  
 7 amounts.  
 8 Do you know whether the administrative  
 9 appraisals took into account the purchase prices with  
 10 respect to the properties in coming to the Fair Market  
 11 Value for those properties?  
 12 A. I do not know. I don't know. I would  
 13 assume--  
 14 Q. Well--  
 15 A. I would assume no, only because if they had,  
 16 they would have had to submit the Sale and Purchase  
 17 Agreements, and Costa Rica would have them. So, the  
 18 logical presumption is that no, they did not have that  
 19 information.  
 20 Q. Okay. So now just looking at the comparisons  
 21 between the appraisal amount per square meter--that's  
 22 the only purpose I'm looking at it the moment. You'll

04:24:22 1 agree with me that for the administrative dates that  
 2 are indicated as being 2006 and 2007, the price per  
 3 square meter in Playa Grande is substantially lower in  
 4 the administrative appraisals than the price per  
 5 square meter that is given to the properties in Playa  
 6 Ventanas in September 2008?  
 7 A. Yes.  
 8 Q. Do you have any understanding of why that is  
 9 the case?  
 10 A. I can speculate and provide an answer.  
 11 Q. Do you know?  
 12 A. I don't know for a fact.  
 13 Q. If I could ask you to look at Page 10 of your  
 14 Reply Report. This is Paragraph 32 and 33 of your  
 15 Report. You make reference to the Berkowitz Lots,  
 16 and, in particular, you make reference to B8 being  
 17 listed in 2003 contemporaneously with a beachfront lot  
 18 that was listed for US\$40 per square meter.  
 19 Do you see that?  
 20 A. Yes. I was comparing the apparent purchase  
 21 prices of Mr. Berkowitz with the parcel of property  
 22 immediately to the south and bordering Mr. Berkowitz's

04:26:27 1 properties that was owned by the Unglaubes.  
 2 Q. Mr. Kaczmarek, I suggest to you that you  
 3 didn't actually believe that the amount that was paid  
 4 for the Lots was \$1,200 per lot; is that right?  
 5 A. Well, it's not implausible, in my view. It  
 6 is exactly what FTI said in their Second Report. They  
 7 said, "FIT stands corrected that the correct purchase  
 8 price is 500,000 colones." How a buyer prices the  
 9 risk if the property is in the Park and the risk of  
 10 expropriation is--one could imagine a wide range of  
 11 potential prices on how someone prices that kind of  
 12 risk.  
 13 Q. Could I ask that the Witness be given the  
 14 binder that was used for the cross-examination of  
 15 Mr. Berkowitz?  
 16 MS. MCCANDLESS: I don't think we have a copy  
 17 of that right with us.  
 18 BY MS. COHEN:  
 19 Q. Mr. Kaczmarek, I'm going to suggest to you  
 20 that, given the evidence that you've given today and  
 21 based on the evidence in your Reports, that in your  
 22 professional Opinion it was not reasonable for you to

04:27:55 1 conclude that the amount paid for those Lots was  
 2 \$1,200 per Lot.  
 3 Do you disagree with that?  
 4 A. It's what FTI concluded was the amount paid  
 5 for those Lots.  
 6 Q. I'm asking for your Opinion.  
 7 A. I would have preferred to see the Purchase  
 8 and Sale Agreements, as I said in my First Report, to  
 9 confirm it, but this is what I was told; that it was  
 10 wrong. We had pointed out there's a discrepancy here  
 11 in the registry amount and the amount claimed.  
 12 \$500,000 at the time seemed exorbitant and out of  
 13 line, but if you know the property is in the Park and  
 14 it could be expropriated, it could be a plausible  
 15 price, absolutely.  
 16 Q. Well, you've been here throughout the  
 17 proceedings and you heard--perhaps what I will do is  
 18 first show you the document. Did you do any due  
 19 diligence to find out what the actual price paid was?  
 20 A. The only way I could really know is either  
 21 look at the registry--it's the only public document  
 22 available--or look at Sale and Purchase Agreement, but

04:29:10 1 I didn't have the latter.  
 2 Q. Do you know whether the Sale and Purchase  
 3 Agreement has been formally requested at any point?  
 4 A. I'm not aware of that, but I clearly made my  
 5 views well established that I felt proper evidence  
 6 needed to be submitted on purchase price in my First  
 7 Report. It is certainly something I would have  
 8 absolutely asked for had I been retained by Claimants.  
 9 Q. And if I could ask you to look--  
 10 MS. COHEN: Is it the same binder, same tab?  
 11 I don't know if the Tribunal still has that  
 12 cross-examination binder. My apologies.  
 13 MS. COHEN: What I would like to show the  
 14 Witness is at Tab 38 of that binder, which is  
 15 Exhibit C-23b.  
 16 MS. COHEN:  
 17 Q. Now, Mr. Kaczmarek, I believe you did say in  
 18 your Report that you referred to the documents that  
 19 had been filed in the registry; is that correct?  
 20 A. Yes.  
 21 Q. And looking at Exhibit C-23b, this is one of  
 22 the documents that you would have relied upon; is that

04:30:56 1 right?  
 2 A. This is a document, yes, that we looked at  
 3 and said it does not appear to be correct.  
 4 Mr. Berkowitz paid \$500,000 per lot. He listed in the  
 5 registry at 500,000 colones.  
 6 Q. And you--this is the document with respect to  
 7 Lot B1. You understand that?  
 8 A. It could be. I don't know if I could confirm  
 9 that just looking at it, but I'll take your  
 10 representation of it.  
 11 Q. And you understand that there would have been  
 12 similar documents, and you reviewed similar documents  
 13 with respect to each of the B Lots; is that correct?  
 14 A. Yes. It's my understanding that when a  
 15 property changes hands, it needs to be listed with the  
 16 registry.  
 17 Q. And you looked at those documents with  
 18 respect to each of the B Lots; is that correct?  
 19 A. Yes, exactly.  
 20 Q. And if you turn over to the second page of  
 21 the document, the reference to 500,000 colones is seen  
 22 towards the bottom of the page where it says "estimate

04:32:14 1 or price."  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. And that's the figure that you referred to a  
 5 moment ago that you were relying upon in preparing  
 6 your Expert Report; is that right?  
 7 A. To clarify, when I prepared my First Report,  
 8 I identified this discrepancy, and as I said, I still  
 9 did some calculations assuming \$500,000 was correct.  
 10 FTI came back and said, "We stand corrected, 500,000  
 11 colones is the correct purchase price." So, at that  
 12 point in time, I have no other information to believe  
 13 otherwise that that was the correct price.  
 14 Q. So your belief was that US\$500,000 was more  
 15 likely the real price; is that right?  
 16 A. Oh, no. I mean, that figure jumped off the  
 17 page at me as being out of line with all the other  
 18 purchases so I want to see Sale and Purchase Contracts  
 19 so we could get the actual evidence properly into the  
 20 record and be assured of what prices we're talking  
 21 about.  
 22 Q. Sorry; I'm not sure I'm understanding your

04:33:26 1 evidence.  
 2 Are you suggesting that the \$1,200 number  
 3 jumped off the page at you or the \$500,000 number?  
 4 A. The \$500,000 figure jumped off the page at  
 5 us, and we said, "It looks like there's a discrepancy  
 6 here. Hopefully we can resolve it."  
 7 Q. I suggest to you, Mr. Kaczmarek, that  
 8 \$500,000 was based on your analysis of the market and  
 9 more likely purchase price than \$1,200 for beachfront  
 10 property in that area.  
 11 A. You're certainly free to make whatever  
 12 suggestion you like. I completely disagree with the  
 13 suggestion that, if one is purchasing beachfront  
 14 property that is subject to and possibly in a national  
 15 park and could be expropriated, I would expect the  
 16 price to be discounted. How big that discount is is a  
 17 bit in the eye of the beholder because it's taking  
 18 exceptional risk.  
 19 Q. I suggest to you, Mr. Kaczmarek, that you  
 20 didn't think for a moment that \$1,200 was the price  
 21 that anybody would pay for that lot.  
 22 Do you disagree that?

04:34:32 1 A. I absolutely disagree with that. I've said  
2 in many other arbitrations about companies being  
3 subject to expropriation, not just land, but if you  
4 know there's a high degree of risk that a company or  
5 land might be expropriated, a nominal price wouldn't  
6 be surprising to see.

7 Q. I'd ask you to look further in the document  
8 that I--that you have open in front of you to Page 6  
9 of that document. The numbers are in the very small  
10 print on the top right of the page.

11 Do you see that?

12 A. I do.

13 Q. And you see, Mr. Kaczmarek, that in the same  
14 document that you reviewed, there's an indication that  
15 there were two mortgages on the property: One in the  
16 amount of \$370,000 and one in the amount of \$80,000.

17 Do you see that?

18 A. I see the \$370,000, yes.

19 Q. And then if you look towards the top of the  
20 page--

21 A. I see it, yes. I see that reference.

22 Q. So, are you suggesting to me that when you

04:37:24 1 A. I don't know for certain, but I would be very  
2 surprised if it didn't include the comparable sales  
3 approach, particularly for properties that encompass  
4 one lot for a single-family home.

5 Q. But you don't know?

6 A. As we discussed earlier, I have not analyzed  
7 how they came about, their appraisals, what properties  
8 they may have used, how they deemed them comparable,  
9 how they adjusted them. I have not examined that in  
10 detail.

11 Q. You agree that the CAFTA Article 10.7(2) is  
12 the proper measure of compensation for lawful  
13 expropriation?

14 A. That's clearly a legal question. I'm aware  
15 of what it says. I don't disagree that Fair Market  
16 Value is an inappropriate standard of value in this  
17 case. It is just a question about how one actually  
18 measures it. Do you include the risk that it's in the  
19 Park in expropriation, or do you exclude it?

20 Q. On Page 15 of your Initial Report, you refer  
21 to the CAFTA Article 10.7 in Footnote; is that right?

22 A. Footnote 32?

04:35:50 1 looked at this document and saw that somebody had  
2 mortgaged in excess of \$400,000, U.S. dollars, on the  
3 property, that you actually believed that the purchase  
4 price was \$1,200?

5 A. Well, this is in July 2018, right--sorry,  
6 2008. I don't know when those were entered, but I  
7 agree it's a conflict. Why then list the value of the  
8 property at some fraction of what it's really worth  
9 when I understand these registrations are supposed to  
10 be for tax-paying purposes?

11 Q. Did you understand when you reviewed the  
12 document that there was a mortgage registered on the  
13 property for in excess of \$400,000?

14 A. I'm not sure at the time when we looked at it  
15 and prepared our First Report if that is a fact we  
16 looked into. We just identified the conflict that the  
17 document says 500,000 colones. And Mr. Hedden said,  
18 "You're right, that's what the value is. That's what  
19 the purchase price was."

20 Q. Do you know on what basis the administrative  
21 appraisals assess Fair Market Value? And by that, I  
22 mean what methodology they used.

04:39:18 1 Q. Yes. Footnote 32 of your Report on Page 15.  
2 You say, "We understand DR-CAFTA defines that Fair  
3 Market Value should be the standard of value that is  
4 applied in the case of expropriation."

5 Do you see that?

6 A. Yes.

7 Q. Did you look at Article 10.7(2) of the CAFTA  
8 in preparing your Report?

9 A. I don't recall. I'm familiar with it,  
10 though.

11 Q. Did you apply the definitions set out in  
12 Article 10.7(2) in assessing the value or compensation  
13 for the properties in this case?

14 A. In my view, my approach is far more  
15 consistent with that clause. I think it is the clause  
16 Mr. Kantor read about the knowledge of the  
17 expropriation should not be taken into account, which  
18 means, if Claimants had already known about it, we're  
19 in a situation where we need to go back and do a  
20 valuation before there was any knowledge about an  
21 expropriation of the Park, but they purchased their  
22 properties after that fact.

04:40:35 1 So, if I were to apply that, strictly  
 2 speaking, it would seem to me I would have to move  
 3 even further back in time than their purchase prices  
 4 and come up with a valuation at that point in time  
 5 before it became known that there was likely to be  
 6 expropriations.  
 7 Q. I think in a very roundabout way, you've  
 8 answered my question, which is that you did not apply  
 9 the definition of "compensation" as set out in  
 10 Article 10.7(2) in preparing your Report; is that  
 11 right?  
 12 A. I have erred to the side in Claimants' favor  
 13 in applying that, that I did not go back before  
 14 expropriation became known, knowledge of this, and  
 15 take an appraisal of their properties at that time,  
 16 say, in 1990--1990, before any knowledge--that could  
 17 be a possibly--as a valuation date and appraise their  
 18 properties there, and then information about a park  
 19 and if possible expropriation doesn't exist. I didn't  
 20 do that. I said it would be fair to give them their  
 21 purchase price back, which would clearly be higher  
 22 than it was back in 1990.

04:41:52 1 Q. Perhaps I can try again.  
 2 In preparing your Reports, was it your  
 3 intention to follow Article 10.7(2) of the CAFTA?  
 4 A. If that's what Claimants are seeking  
 5 compensation on, then I don't disagree with it, then I  
 6 would follow it. Absolutely.  
 7 Q. That wasn't my question.  
 8 Was it your intention in preparing your  
 9 Report to follow Article 10.7(2) of the CAFTA?  
 10 A. The way you phrase the question is if I just  
 11 am doing it by myself for the first time almost like a  
 12 Claimant-appointed Expert. Do I get into that? I  
 13 didn't consciously get into it. I was aware of it. I  
 14 saw what was being claimed, and I prepared a  
 15 calculation that I think most reflects and is  
 16 consistent with that particular clause.  
 17 Q. You agree with the concept of severance  
 18 damages as described by Mr. Hedden in his Initial  
 19 Report; is that right?  
 20 A. Yes. I agree with the concept that a partial  
 21 taking can leave the remaining less valuable. In  
 22 principle, I agree with that.

04:43:26 1 Q. If I could ask you to look at Page 53 of your  
 2 Report. Paragraph 151 and 152, you refer to, in  
 3 Paragraph 152, amount of compensation being already  
 4 received.  
 5 Do you see that?  
 6 A. I do.  
 7 Q. And I take it that you don't mean that the  
 8 amount of compensation has actually been paid in that  
 9 amount to date?  
 10 A. I know that amounts have been offered. I  
 11 don't recall if--there may have been withdrawals made  
 12 by Claimants. I understand they need to make their  
 13 request for the payment, but here I'm listing out my  
 14 understanding of monies that has been set aside to be  
 15 paid to Claimants, which has not been taken into  
 16 account by FTI in its analysis.  
 17 Q. So, you'll agree with me that there's a  
 18 distinction between being set aside and being  
 19 received?  
 20 A. Yes. As I explained, my understanding is you  
 21 can request it, and it will be transferred to you, and  
 22 they simply have chosen not to make the request in

04:44:53 1 several instances.  
 2 Q. And you're not aware what amount within the  
 3 number that you've included in your Report has  
 4 actually been paid out; is that correct?  
 5 A. I don't recall, sitting here, how much  
 6 Claimant has actually requested to be paid and what  
 7 has been paid, no.  
 8 Q. And if I could ask you to look at the  
 9 presentation that you gave this morning. Do you have  
 10 it in front of you. Sorry; it's not in the blue  
 11 binder.  
 12 Looking at what is Page Number 7 of your  
 13 Report--sorry, of your presentation.  
 14 A. Right. The Case-Schiller Index; correct.  
 15 Q. This is the index that you included in your  
 16 Report; is that right?  
 17 A. Yes.  
 18 Q. And turning over to the page, you've done a  
 19 graph of the--what you call the FTI Index. This is  
 20 something that you've prepared; is that right?  
 21 A. Yes.  
 22 Q. And it ends as of December 8 on your timeline

04:46:31 1 because that is after the date of valuation of  
 2 the--the Valuation Date; is that right?  
 3 A. Correct. Mr. Hedden did not provide any  
 4 indexation values after 2008.  
 5 Q. If you could look at Page 11 of the  
 6 presentation that you gave this morning. This is a  
 7 summary that you have prepared based on your review  
 8 and consideration of the evidence; is that right?  
 9 A. Yes, absolutely.  
 10 Q. Sorry; when I say the "evidence," I mean the  
 11 evidence in this proceeding.  
 12 A. Of course.  
 13 Q. And if you could turn to the next page, which  
 14 is your timeline on Page 12. You reference a date of  
 15 July 2003 here being the date upon which  
 16 Ms. Unglaube's property is declared in the Public  
 17 Interest.  
 18 Do you see that?  
 19 A. I do.  
 20 Q. You understand that that declaration was not  
 21 published until November 2003?  
 22 A. I said that in my presentation, yes.

04:48:02 1 Q. And you understand that that declaration was  
 2 successfully challenged a number of times?  
 3 A. I absolutely understand that, yes.  
 4 Q. You didn't include that in your timeline.  
 5 Why is that?  
 6 A. Because the Declaration, to me--if you would  
 7 like me to actually talk about why they were--this was  
 8 challenged--we're in the Unglaube issue now.  
 9 Q. I'm not asking you why it was challenged.  
 10 PRESIDENT BETHLEHEM: Let me make a point.  
 11 The evidence in the Unglaube case is not before us,  
 12 and we're not inviting you to go there.  
 13 BY MS. COHEN:  
 14 Q. I'm not asking you why it was challenged.  
 15 I'm asking you why you didn't put in the date of the  
 16 successful challenges.  
 17 A. Because, to me, that's not really relevant.  
 18 What was relevant was the authorities were declaring  
 19 her property to be within the Park. That is an  
 20 indication to anybody in the marketplace that there's  
 21 risk of buying properties within the 75 meters of the  
 22 50-meter zone.

04:49:04 1 Q. And if you turn to Page 15 of your  
 2 presentation.  
 3 A. 15?  
 4 Q. 15. You quote from the FTI Report, and you  
 5 quote, "FTI is not an expert in terms of the Claimants  
 6 motivation or perception of value."  
 7 Do you see that?  
 8 A. I do.  
 9 Q. And I take it you'd agree that you are also  
 10 not an expert in terms of assessing motivation.  
 11 A. I wouldn't characterize myself as such, but  
 12 certainly in doing a valuation, one wants to  
 13 understand if you're looking at whether it's Fair  
 14 Market Value was there compulsion? Was it a  
 15 distressed sale? And so you do need to look at the  
 16 motivations of the Party and try to understand the  
 17 transaction better to see if it conforms to Fair  
 18 Market Value.  
 19 Q. You refer in your First Report at  
 20 Paragraph 169 to the interest calculator that you used  
 21 to reveal the legal rate of interest in Costa Rica.  
 22 Do you see that?

04:50:38 1 A. Yes.  
 2 Q. That was the extent of the investigation that  
 3 you did with respect to an applicable rate of  
 4 interest; is that right?  
 5 A. I made the comment here that Claimants were  
 6 claiming this rate of interest. It's a legal rate of  
 7 interest in Costa Rica, but also asking for it to be  
 8 compounded quarterly and so I made the point here that  
 9 it's actually not applied that way. If you put it  
 10 into the Web site, it's applied on a simple interest  
 11 basis, and that's consistent with my own experience  
 12 about how legal rates of interest are applied.  
 13 Q. Well, you have, in other proceedings,  
 14 recommended or advocated in favor of compounded  
 15 interest; correct?  
 16 A. Yes, but those are market rates of interest,  
 17 which are usually substantially lower than legal rates  
 18 of interest.  
 19 Q. In your summary presentation this morning,  
 20 you referred to RosInvestCo in Russia. You referred  
 21 to a decision in your presentation.  
 22 Do you recall that?

04:52:02 1 A. I did, yes.  
 2 Q. There's a related case, Yukos Universal  
 3 Limited (Isle of Man) and the Russian Federation.  
 4 You're familiar with that case, I assume?  
 5 A. I'm definitely familiar with that case.  
 6 Q. And you were an expert in that--Expert  
 7 Witness in that arbitration; is that correct?  
 8 A. Yes, I was.  
 9 Q. And in that arbitration, you recommended or  
 10 you opined that the appropriate rate of interest was  
 11 compounded interest; is that right?  
 12 PRESIDENT BETHLEHEM: Can I just ask whether  
 13 this is in the record? You objected previously to  
 14 evidence in the Unglaube case. So is this evidence  
 15 that's in the record?  
 16 MS. COHEN: It is not. I objected on the  
 17 basis that the Unglaube proceedings were confidential,  
 18 and there was evidence that was beyond what was  
 19 contained in the Award. I am referring only to what  
 20 is contained in the Award.  
 21 PRESIDENT BETHLEHEM: What's in the Award.  
 22 Okay.

04:52:58 1 THE WITNESS: My recollection was, which is  
 2 typical of what we do in most cases, the Russian  
 3 sovereign bond yield was an option and LIBOR plus  
 4 4 percent probably and prime plus 2. Those are the  
 5 typical rates I recommend.  
 6 BY MS. COHEN:  
 7 Q. You recommended compound interest.  
 8 A. Right, on an interest rate that is a  
 9 market-based rate and much lower than legal rates.  
 10 For example, if my recollection is correct, in New  
 11 York, the legal rate of interest is 9 percent, simple.  
 12 And if I were to apply LIBOR plus 2, LIBOR is about a  
 13 half percent. I get 2 1/2 percent as the interest  
 14 rate.  
 15 MS. COHEN: If I may just have a few moments.  
 16 (Pause.)  
 17 MS. COHEN: Thank you, Mr. Kaczmarek. Those  
 18 are my questions.  
 19 PRESIDENT BETHLEHEM: Thank you.  
 20 Ms. Haworth McCandless.  
 21 MS. McCANDLESS: If I may just confer with my  
 22 colleagues for a moment.

04:54:27 1 PRESIDENT BETHLEHEM: Sure.  
 2 (Pause.)  
 3 MS. McCANDLESS: We have no further  
 4 questions.  
 5 PRESIDENT BETHLEHEM: Thank you.  
 6 The Tribunal does have some questions.  
 7 Mr. Kantor.  
 8 QUESTIONS FROM THE TRIBUNAL  
 9 ARBITRATOR KANTOR: Good afternoon,  
 10 Mr. Kaczmarek. Thank you for attending. I don't  
 11 think I need to introduce myself any longer, and I  
 12 will not repeat my statement about why I'm asking  
 13 questions about damages.  
 14 THE WITNESS: Of course.  
 15 ARBITRATOR KANTOR: But I did ask Mr. Hedden  
 16 at the very beginning of my questions if he could  
 17 describe his understanding of his responsibility to  
 18 this Tribunal.  
 19 Could you please describe your responsibility  
 20 to this Tribunal?  
 21 THE WITNESS: Yes. My primary duty is to  
 22 assist you. That's always my duty. It's frankly why

04:56:03 1 I don't tend to use the word "instruction." Clients  
 2 instruct lawyers. I don't like to take instructions,  
 3 per se. I know it's a term used, but I'm sensitive to  
 4 it because I want to be putting forward my own views  
 5 to the Tribunal and not necessarily the view of the  
 6 Party may adopt.  
 7 ARBITRATOR KANTOR: Before I ask more  
 8 substantive questions, I have a technical question  
 9 that I could have addressed to Mr. Hedden but candidly  
 10 forgot to do. So I'm going to address it to you and  
 11 see if you can help me with it.  
 12 In looking through both Expert Reports here,  
 13 I was struck that they appear to be a pre-tax basis.  
 14 As I review the land registry records and the  
 15 summaries of them, it appears the properties are held  
 16 in the name of corporations, and according to the  
 17 Memorials in this case, those may have been  
 18 corporations serving as trust vehicles. It's not  
 19 clear from the record whether there are any  
 20 intermediaries between those trust vehicles and the  
 21 Claimants here, but the Claimants in each case are  
 22 U.S. nationals. The trust vehicles in each case are

04:57:18 1 Costa Rican nationals.  
 2            Could you help me understand treatment of  
 3 Costa Rican taxation for purposes of valuing claims by  
 4 the Claimants here?  
 5            THE WITNESS: Absolutely a topic with which I  
 6 routinely deal with. My view is I don't think you  
 7 need to worry about it. Taxes need to be paid in the  
 8 ordinary course of business. If you were to make an  
 9 Award assigning a value to those properties and there  
 10 is, let's say, perhaps capital gains tax to be paid,  
 11 the capital gains tax should be paid by the Claimants,  
 12 not set off in any way in this case. If they have  
 13 vehicles in between in which they have tax havens and  
 14 are able to limit or avoid taxes, that's fine. But to  
 15 me taxes ought to always be done post-Award not within  
 16 the Award.  
 17            ARBITRATOR KANTOR: If the property that is  
 18 the object of the alleged expropriation is owned by a  
 19 vehicle and the Costa Rican Government pays an  
 20 expropriation amount, do you know to whom they pay  
 21 under Costa Rican Law?  
 22            THE WITNESS: To whom they pay taxes?

04:58:52 1            ARBITRATOR KANTOR: No, to whom they would  
 2 pay the expropriation sum.  
 3            THE WITNESS: Very good question. My  
 4 presumption would be that the amount would have to go  
 5 to Claimants, one of which is a corporation, Spence  
 6 Co. But I am aware of other Awards that have been  
 7 settled and agreed in different ways, and so that's a  
 8 possibility too.  
 9            ARBITRATOR KANTOR: Okay. And if it develops  
 10 that Claimants' Expert has a different view and could  
 11 communicate it to Claimants' counsel, I'd be glad to  
 12 have that information provided because I really should  
 13 have asked that first of Claimants' counsel.  
 14            MS. COHEN: We will certainly do so. Thank  
 15 you.  
 16            ARBITRATOR KANTOR: Thank you.  
 17            So the Case-Schiller Index, my understanding  
 18 is that real estate prices in the United States, the  
 19 impact of the recession, which began in December of  
 20 2007 and ended in June of 2009, was disproportionately  
 21 felt by four particular states: Arizona, California,  
 22 Florida, and Nevada. Why in those circumstances would

05:00:17 1 an overall United States real estate measure be useful  
 2 in understanding particular property in Costa Rica?  
 3            THE WITNESS: Sure. And just to clarify, I  
 4 think you were absolutely right, the recession began  
 5 in '07. It wasn't really known, however, until much  
 6 later in '08 that the economy had entered a recession.  
 7            ARBITRATOR KANTOR: For the record, I just  
 8 finished reading Tim Geithner's memoirs, and he  
 9 disagrees with that.  
 10            (Laughter.)  
 11            THE WITNESS: Okay. He's entitled to his  
 12 opinion for sure, given his stature. But obviously  
 13 California, Florida, to the extent the recession had  
 14 much--and I assume you're talking about real estate  
 15 because--yeah, Miami got crushed in this, and, of  
 16 course, I think those are perfectly appropriate  
 17 markets to look at. These are warm climates with  
 18 beaches in which people would buy property, and they  
 19 would have choose to choose an alternative. Do I want  
 20 to buy in Florida? Do I want to buy in Costa Rica?  
 21 Do I want to buy in California? So I absolutely  
 22 think, because of that characteristic, it makes that

05:01:36 1 index highly relevant.  
 2            ARBITRATOR KANTOR: Let me ask the question a  
 3 different way because I wasn't quite thinking about  
 4 the weather-and-sand states. I was, instead, trying  
 5 to understand why a--given that purchasers of  
 6 property, buyers in the Gold Coast of Costa Rica,  
 7 might not necessarily come from the four states that  
 8 disproportionately affected real estate prices in the  
 9 United States. Why shouldn't indexation, if any, to  
 10 U.S. properties look at the geographic location of  
 11 U.S. or Canadian buyers, not treating the entire  
 12 United States or the entirety of Canada as the proper  
 13 measure?  
 14            THE WITNESS: Sure. The Case-Schiller Index,  
 15 you can break it out. They do regional indices as  
 16 well, and, of course, we're looking at single-family  
 17 homes. If we could hone in--or second homes, right.  
 18 This is really the market--and I think both sides  
 19 would agree--in Guanacaste. So, if you could break it  
 20 out, that finally I would absolutely agree with you,  
 21 you have a better measure. It would be more  
 22 correlated, I think, in that regard, but, you know. I

05:03:01 1 think the same trends--when you see prices in one  
 2 market, and it's being driven by the same buyers in  
 3 another market, the United States, and they follow the  
 4 same trends, to me, it's clear there's a correlation.  
 5 If I had really good data, I could do a Regression  
 6 Analysis and see how correlated they are, but I just  
 7 don't have really good data to do that indices in  
 8 Costa Rica.  
 9 ARBITRATOR KANTOR: Prices dropped more  
 10 precipitously in the four states that I mentioned than  
 11 in the rest of the United States, and all four of  
 12 those states are famous for being second-home states.  
 13 Does that suggest to you that the buyers from  
 14 the United States, at least, in Costa Rica weren't, as  
 15 a proportionate matter, less likely to come from those  
 16 four states than they are from other states because  
 17 they would be seekers of second homes rather than  
 18 holders of second homes?  
 19 THE WITNESS: I think where the buyer resides  
 20 to me is not as important because, clearly, any person  
 21 in New York could be looking to buy a property in  
 22 Florida as a second home, just like Costa Rica. So,

05:04:15 1 the buyers could kind of reside anywhere in North  
 2 America, but what I do think is the fact that those  
 3 markets being more likely to be second-home markets  
 4 and the impact they felt is more akin to what I have  
 5 observed through my analysis, that happened in  
 6 Guanacaste.  
 7 ARBITRATOR KANTOR: You testified a bit about  
 8 the Unglaube Award, and I want you to answer this  
 9 question only by reference to the Award, which in the  
 10 record.  
 11 Is it possible to determine from the Award,  
 12 the Award amount, a price per square meter for the  
 13 Unglaube properties?  
 14 THE WITNESS: I believe so, yes.  
 15 ARBITRATOR KANTOR: Do you have any  
 16 recollection of what that would be?  
 17 THE WITNESS: I do not sitting here.  
 18 ARBITRATOR KANTOR: Do you have a ballpark  
 19 recollection?  
 20 THE WITNESS: My recollection was the  
 21 frontage of the parcel along the 50-meter strip was  
 22 100 meters, and so 75 times 100--I think it was 7,500.

05:05:24 1 That's my recollection.  
 2 ARBITRATOR KANTOR: So 7,500 meters divided  
 3 into the principal amount of the Award?  
 4 THE WITNESS: Correct.  
 5 ARBITRATOR KANTOR: And then taking in  
 6 account the interest? I think I can do that sum.  
 7 Thank you.  
 8 THE WITNESS: Correct.  
 9 ARBITRATOR KANTOR: Does the face of the  
 10 Award include information about what your client in  
 11 that proceeding advocated as the price per square  
 12 meter?  
 13 THE WITNESS: Yes.  
 14 ARBITRATOR KANTOR: Do you have a  
 15 recollection of that?  
 16 A. It should be in the Award. You should be  
 17 able to--it should reference the total nominal price.  
 18 I just caution that--and you can see this in the  
 19 Award--there were claims for things beyond the  
 20 75 meters, and so some prices are going to reflect  
 21 that.  
 22 ARBITRATOR KANTOR: Do you recollect the

05:06:24 1 Valuation Date?  
 2 THE WITNESS: It was mid-2006. That's  
 3 clearly stated, and the Award clearly states the  
 4 Parties had no disagreement about that being the peak  
 5 of the market.  
 6 ARBITRATOR KANTOR: And which of the  
 7 properties at issue in this proceeding would you  
 8 regard as most comparable to the Unglaube property?  
 9 THE WITNESS: Obviously the B Lots, given  
 10 they're adjacent to the property, would be most  
 11 comparable.  
 12 And if I could just add, and it's clear from  
 13 the absence of any dispute about it again, we did not  
 14 dispute what Mrs. Unglaube was entitled to, which was  
 15 a value absent any risk of the property being in the  
 16 Park.  
 17 ARBITRATOR KANTOR: You've made that point in  
 18 your testimony. Thank you.  
 19 You may recall that I inquired of Mr. Hedden  
 20 about a methodology the Tribunal might use to try to  
 21 separate out the nature of regulation by the  
 22 Government that would either be lawful or would not be

05:07:36 1 expropriatory from Regulatory Measures that would be  
 2 unlawful or expropriatory.  
 3           Could I have your answer to that question as  
 4 well?  
 5           THE WITNESS: Sure. I deal with it all the  
 6 time, but obviously I deal with it in ways in which  
 7 Claimants formulate this. A Claimant will typically  
 8 identify a number of measures the State has undertaken  
 9 which they believe are unlawful or in breach of a  
 10 treaty. My job is to calculate the quantum of the  
 11 loss. It is really then for the Tribunal to figure  
 12 out--not for me to figure out. I can make my own  
 13 personal judgment in a case, but it's not for me to  
 14 offer that to the Tribunal. But the Tribunal is  
 15 really then--has the task of deciding which Measures  
 16 fall into the unlawful bucket and which Measures are  
 17 reasonable exercises of regulatory authority.  
 18           ARBITRATOR KANTOR: Again, a question of  
 19 methodology. Mr. Hedden has offered principally a  
 20 comparative properties methodology, and you take two  
 21 positions on that: First, you assert that the  
 22 comparative methodology was improperly applied; and,

05:09:10 1 second, you assert that, by virtue of knowledge, the  
 2 purchaser held at the time of initially entering into  
 3 the purchase, that is not an appropriate methodology  
 4 but, rather, purchase price itself at that time is a  
 5 proper methodology brought forward on the basis of  
 6 legal rate of interest.  
 7           Are there methodologies other than those two  
 8 methodologies that this Tribunal could use for  
 9 purposes of determining Fair Market Value in these  
 10 circumstances?  
 11           THE WITNESS: So, just to clarify, any other  
 12 methodologies other than comparable sales or purchase  
 13 price adjusted with a return?  
 14           ARBITRATOR KANTOR: Well, adjusted with  
 15 interest.  
 16           THE WITNESS: Right. Obviously--if it  
 17 helps--and I may not answer your question directly.  
 18 I'll get to it indirectly--because I see the decisions  
 19 before you, if you get to the quantum stage. I don't  
 20 see that there is that big of a dispute between us and  
 21 what you have to decide. For example, the threshold  
 22 issue, in my mind, is you need to decide are they

05:10:21 1 entitled to a value with the risk of expropriation of  
 2 it being in the Park or without?  
 3           Mr. Hedden has clearly offered a view that it  
 4 shouldn't affect the valuation, and we say it should;  
 5 right? If you say it should affect the value, the  
 6 risk of it being in the Park, I think what I have  
 7 prepared, other than the fact that I really can't be  
 8 confident in the purchase price data, is the  
 9 appropriate approach in this case. If you decide his  
 10 view is appropriate, then I think you're into a  
 11 different set of what I tried to describe in my  
 12 disagreements, the markets being--he misanalyzed the  
 13 market. His implementation of the comparable  
 14 approach, I think, has got some flaws, et cetera. So,  
 15 there's really two tracts to take, I think, to resolve  
 16 the issues, and I don't think there are that many  
 17 decisions before you to figure it out.  
 18           ARBITRATOR KANTOR: Thank you for that  
 19 advice.  
 20           Let me try this a different way. I think we  
 21 all would accept that there are some properties here  
 22 that would be outside the 75-meter band, but,

05:11:43 1 nevertheless, subject to the same nonexpropriation  
 2 regulatory and physical risks, for example, water,  
 3 permitting, unrelated to the Park and the like. Would  
 4 that be correct?  
 5           THE WITNESS: I think there are some issues  
 6 there, but I don't understand Claimants to be making  
 7 any kind of claim about that.  
 8           ARBITRATOR KANTOR: Bear with me.  
 9           THE WITNESS: Sure.  
 10           ARBITRATOR KANTOR: I'm taking it step by  
 11 step.  
 12           Do you agree there would be properties like  
 13 that?  
 14           THE WITNESS: Yeah.  
 15           ARBITRATOR KANTOR: Not claimed in this  
 16 dispute, but properties like that?  
 17           THE WITNESS: Absolutely. There would be  
 18 properties outside the 75-meter strip that might have  
 19 density, building-height restrictions, as such, yeah.  
 20           ARBITRATOR KANTOR: Right. For purposes of  
 21 trying to determine a value of that kind of a property  
 22 in a market that is illiquid, very few transactions

05:12:46 1 and subject to high-price uncertainty because of  
 2 economic circumstances, if you were to take the  
 3 purchase price for the date the property was initially  
 4 purchased at some point after, in your Opinion, that  
 5 purchaser would be aware of the existence of the Park.  
 6 So, it would be comparable but not subject to  
 7 expropriation risk. That property would,  
 8 nevertheless, remain subject to the more ordinary  
 9 development risks of any property, but it would still  
 10 be, in general, in the same geographic location, so it  
 11 would be subject to risks, such as water and the like.  
 12 So it would be a roughly comparable, in that sense,  
 13 property--might not benefit from the views--something  
 14 like that.

15 THE WITNESS: Agreed.

16 ARBITRATOR KANTOR: If you took that purchase  
 17 price, would it be appropriate in thinking about the  
 18 value of that property in the hands of the holder to  
 19 think about the appreciation in value of that property  
 20 on the basis of an annual Rate of Return up to the  
 21 date one sought to value it?

22 THE WITNESS: Yes, you could do that, either

05:14:17 1 like an interest rate or a market index of some sort,  
 2 if you felt you had one. But, yeah that's an  
 3 appropriate approach, yes.

4 ARBITRATOR KANTOR: Typically an interest  
 5 rate would be lower than the owner's interest,  
 6 wouldn't it be, because the owner's interest is an  
 7 equity interest?

8 THE WITNESS: Well, if you're holding equity,  
 9 sure. Here you're holding an asset. The most  
 10 appropriate index would be a real estate index. Had  
 11 you sold this--well, sold it and put it somewhere  
 12 else, right, took the money and put it somewhere else  
 13 that has same kind of risk characteristics as the  
 14 investment that was actually made.

15 ARBITRATOR KANTOR: And that would typically  
 16 be higher than a, say, a statutory rate of interest in  
 17 Costa Rica?

18 THE WITNESS: Depends upon the circumstances.

19 ARBITRATOR KANTOR: I understand that, but  
 20 more often, one might expect real estate, if it was  
 21 going to appreciate, the value of real estate, over  
 22 the long run, subject to variations from year to year,

05:15:25 1 would appreciate at a rate higher than a statutory  
 2 rate of interest. Would you agree with that?

3 THE WITNESS: I agree entirely with you, over  
 4 the very long run real estate does go up, 100 percent.  
 5 It really depends upon the timeline. I'd have to run  
 6 the numbers because some of the legal rates of  
 7 interest that I see are quite high. It's just  
 8 comparing one that's not compounding with one that is  
 9 compounding. But likely, I think, is--it's likely to  
 10 be higher.

11 ARBITRATOR KANTOR: In light of what you just  
 12 said then, would an appropriate alternative way of  
 13 thinking about how to calculate value for these  
 14 properties be to find the initial purchase price for  
 15 these properties, taking into account the  
 16 characteristics, if any, that are outside the  
 17 ordinary, the Purchase Contract, and then appreciate  
 18 it over whatever time period the Tribunal considered  
 19 to be appropriate up to the valuation date, at an  
 20 average Rate of Return for properties similarly  
 21 situated but not subject to the expropriation risk?

22 THE WITNESS: Yes.

05:17:01 1 ARBITRATOR KANTOR: Severance. In looking at  
 2 discussions of severance, most of the testimony by  
 3 Mr. Hedden on examination and cross-examination and  
 4 your own testimony seems to have focused principally  
 5 on the properties that are shown in Figures 9 and 10  
 6 of your Report. If I recollect the testimony about  
 7 the B Lots correctly, though, in some cases a portion  
 8 of a lot that Claimants characterize as beachfront  
 9 property was taken, the beach side of that property.

10 Why wouldn't there be a reduction in value  
 11 for the remaining portion of that property because it  
 12 is no longer as close to the beach, and, at least on  
 13 Claimants' evidence, it is said that it cannot be  
 14 developed as easily because of zoning restrictions?

15 THE WITNESS: Right. In that case, you can  
 16 think of it, and it's really a continuum, but they are  
 17 fairly sizable Lots, and you can say that the first 10  
 18 meters is the most available and then it decreases  
 19 thereafter.

20 So, from that perspective again, the part  
 21 that is remaining, you could say, has the same exact  
 22 value as it had before because you have an average

05:18:35 1 value for the whole lot; some that is higher close to  
2 the beach, some that is lower away from it. And in  
3 that sense again, there is no severance damages, in my  
4 view.

5 Also, as was discussed today, I guess and  
6 throughout, Mr. Berkowitz does own properties behind  
7 and can, you know, submit a different plan and  
8 organization for those Lots. And so, in my view, I  
9 still think they retain the same value that they had  
10 before the taking.

11 ARBITRATOR KANTOR: Would it be correct,  
12 though, that the remaining portion of those, the  
13 unexpropriated portion of those Lots that were  
14 characterized as beachfront, if the Claimants evidence  
15 that the zoning regulations make it harder to develop  
16 are both farther away from the beach than the Lot  
17 originally was--and it's a single lot--and more  
18 difficult to develop, and that would either directly  
19 affect the remaining portion of the lot or would have  
20 an impact by forcing combination with other Lots that  
21 could have a follow-on impact on the value of those  
22 other Lots. Do I correctly you understand that?

05:20:00 1 THE WITNESS: I think I understand what  
2 you're saying, yes. If Claimants are right, that this  
3 creates zoning problems for the remaining portion, and  
4 there is no other portion to be joined to these  
5 remaining portions. If that evidence is correct, per  
6 se, then it's possible that those remaining portions  
7 could suffer some diminution in value.

8 I would--I mean, the easiest example in my  
9 mind--that comes to my mind about severance is you can  
10 imagine someone has a home and they want to widen the  
11 street and they encroach on their property, so they  
12 take a portion of their property. But the remaining  
13 portion now, maybe the house is situated very close to  
14 the road, which does not make that remaining portion  
15 as desirable as it used to be. That's severance  
16 damages. I'm just not sure, from what I've seen, that  
17 it exists, but, yes. There's problems to develop  
18 those remaining portions. In principle, there could  
19 be some loss in value.

20 ARBITRATOR KANTOR: One last question, just  
21 clarification. Can you turn to Page 24 of your  
22 slides. There were times in your testimony that I

05:21:27 1 thought I understood what the FTI Index was, and there  
2 were times where I thought I didn't understand what  
3 the FTI Index was. Could you please explain for me in  
4 simple words?

5 THE WITNESS: As it applies to this chart  
6 here?

7 ARBITRATOR KANTOR: Correct.

8 THE WITNESS: Okay. So what we did here to  
9 create this chart is the blue bar is the purchase  
10 price, and we just normalized everything and put it at  
11 one. Here is the starting point, and then we said,  
12 Okay, if we apply their index, the one I graphed on  
13 Slide 8--if we apply that index to the blue bars, you  
14 get to the red bar. And then we compared the red bar  
15 with the green bar, which represents the change in  
16 value according to what Mr. Hedden's valuations are of  
17 the properties in his Report and made the observation  
18 that, other than for Copher's Lots, all the green bars  
19 are substantially higher than simply applying the  
20 index to the actual purchase prices.

21 ARBITRATOR KANTOR: And going back to  
22 page--Slide 8, can you describe what you understand

05:22:59 1 that "index" to be?

2 THE WITNESS: Right. So, what Mr. Hedden did  
3 is he did what he calls a paired sales analysis, and  
4 he took the same property, a purchase price at one  
5 date and observed a purchase price at a different  
6 date, and from that said, Okay, I think the market was  
7 going up 2 percent a month and this year 3 percent a  
8 month and this year slow as to 1 percent and then  
9 zero. And from that--that's how I understand his  
10 analysis. And then that was the basis for him to make  
11 adjustments for any properties he deemed comparable at  
12 different dates and time.

13 ARBITRATOR KANTOR: Let me put this in my own  
14 words to see if I correctly understand what you're  
15 calls the "index" here. It's the incremental increase  
16 in value for the Claimant properties over the relevant  
17 time period?

18 THE WITNESS: The incremental increase in  
19 market prices, not necessarily for--Claimant  
20 properties, but market prices. That's his view.

21 ARBITRATOR KANTOR: Okay. Thank you for that  
22 explanation, and thank you for your patience.

05:24:09 1 No additional questions, Mr. Chairman.  
 2 PRESIDENT BETHLEHEM: Mr. Kaczmarek, just one  
 3 question for me, and it's the most basic and practical  
 4 point of clarification. On Page 19 of the slides that  
 5 you provided to us at the start of your testimony, you  
 6 source this as coming from your Second Report, Tables  
 7 8 to 10, and I just wanted to be clear what the slide  
 8 is because Tables 8 to 10 of your Second Report are  
 9 both slightly different in format and try to address  
 10 rather different things.  
 11 Is there any correction that this slide is  
 12 making, or have you just reorganized the material in  
 13 Tables 8 to 10 to present them in a slightly different  
 14 format?  
 15 THE WITNESS: It's just a slight  
 16 reorganization of the data, yes.  
 17 PRESIDENT BETHLEHEM: So we're not going to  
 18 find any inconsistency between Tables 8 to 10 in your  
 19 Second Report and this Table? We can consult them  
 20 both?  
 21 THE WITNESS: There shouldn't be. I will  
 22 double-check that, though, since you raise it, as a

05:25:19 1 possibility.  
 2 PRESIDENT BETHLEHEM: Okay. Thank you very  
 3 much. Thank you very much, Mr. Kaczmarek. Thank you  
 4 for assisting the Tribunal, and you're excused from  
 5 the Witness seat. Thank you.  
 6 THE WITNESS: Thank you.  
 7 (Witness steps down.)  
 8 PRESIDENT BETHLEHEM: Counsel, I'd like just  
 9 to take the briefest of recesses just for two minutes.  
 10 I don't invite you to leave your seats. I would just  
 11 like to confer with my colleagues about proceedings.  
 12 Thank you.  
 13 (Pause.)  
 14 PRESIDENT BETHLEHEM: Thank you very much.  
 15 We're now approaching 5:30. We've been going since  
 16 2:30. We had speculated that it may be possible to  
 17 use whatever follow-up time there was at the end of  
 18 today to answer questions. I don't propose that we do  
 19 that now because I think, in any event, it would be  
 20 appropriate to take a little bit of a breather were we  
 21 to continue, and that would mean we would be coming  
 22 back with 15 minutes. So, I'm proposing that we

05:27:01 1 adjourn shortly for the day.  
 2 As regards tomorrow, I propose, again, that  
 3 we keep to the timetable that I put to you yesterday,  
 4 and that is that we will have a 9:30 start and then  
 5 run through until 12:30 for the Claimants' Closing  
 6 Submissions. We will then break from 12:30 to 2:00.  
 7 We'll then reconvene from 2:00 to 5:00 for the  
 8 Respondent's Closing Submissions, and then we'll have  
 9 a break for the Tribunal to confer and come back for  
 10 Closing formalities. That will allow a block of time  
 11 of approximately three hours with a brief coffee break  
 12 in between for both Parties to respond to questions  
 13 from the Tribunal and to make the Closing Submissions.  
 14 I understand, from the Tribunal Secretary,  
 15 that both Parties have more or less used up a similar  
 16 amount of time but that we do have a comfortable  
 17 period of time, so there is no issue of inequality  
 18 between the Parties. Unless I hear an objection from  
 19 either Party, what I'm proposing is that we simply  
 20 afford you each that three-hour block of time tomorrow  
 21 to use as you see fit to respond to questions and to  
 22 make your Closing Submissions rather than invite you

05:28:18 1 to pop up and down and say when you're responding to  
 2 questions for purposes of timekeeping. I don't think  
 3 we're in that zone.  
 4 So, if you're content with that, you've each  
 5 got three hours left, less a coffee break, for your  
 6 Closing Submissions tomorrow. The reason for just  
 7 wanting to suspend briefly was just to check with my  
 8 colleagues whether there were any general questions  
 9 that we would like to put to you, in addition to the  
 10 ones that we raised already, to give you notice of  
 11 them tomorrow. I think the only general question--and  
 12 it's not a question with anything specific in mind,  
 13 and it's put to both Parties, is that it comes from  
 14 me--that is that we heard from counsel for El Salvador  
 15 in his nondisputing statement that we out to have  
 16 regard to Chapter 17 of the CAFTA, the environmental  
 17 chapter. That wasn't been part of the Parties'  
 18 pleadings. So, it's really simply an invitation to  
 19 both Parties to take any opportunity that you may have  
 20 tomorrow to draw our attention to whether you consider  
 21 that Chapter 17 is important. This is not a proposal  
 22 to change the nature of the case at the last moment.

05:29:34 1 But as the matter was put on the agenda in the oral  
 2 submission from El Salvador, I wanted to ensure that  
 3 you had an opportunity to comment, if you wanted to do  
 4 so.

5 And I think, with that, unless there are any  
 6 submissions, procedural points, or other  
 7 practicalities that either Party would like to raise,  
 8 I'm going to draw the proceedings for today to an end,  
 9 and we'll reconvene tomorrow at 9:30. But let me just  
 10 give each Party an opportunity to raise any issue.

11 Mr. Cowper, anything from you?  
 12 MR. COWPER: Not on the behalf of the  
 13 Claimants.

14 PRESIDENT BETHLEHEM: Mr. Alexandrov.

15 MR. ALEXANDROV: We are in agreement,  
 16 Mr. President.

17 PRESIDENT BETHLEHEM: Thank you very much.  
 18 We will see you tomorrow at 9:30, and I know the  
 19 stresses and strains that come with the preparation of  
 20 Closing Submissions overnight. So, I won't wish you a  
 21 happy evening, but we look forward to seeing you both  
 22 and to be illuminated further tomorrow. Thank you.

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

05:30:36 1 (Comment off microphone.)

2 PRESIDENT BETHLEHEM: No, but that's a very  
 3 good point that you remind me of: Please make sure  
 4 that whatever slides and other exhibits you're going  
 5 to put up in front of us, that they are made available  
 6 to the interpreters when you come into the room so  
 7 they have an opportunity to see those and to prepare.  
 8 So thank you very much.

9 (Whereupon, at 5:31 p.m., the Hearing was  
 10 adjourned until 9:30 a.m. the following day.)

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