

Exhibit RWE-009

Second Witness Statement of Sabrina Loáiciga Pérez

December 22, 2014

English Translation

**UNDER THE UNCITRAL ARBITRATION RULES (2010) AND SECTION B OF  
CHAPTER 10 OF THE UNITED STATES – CENTRAL AMERICA – DOMINICAN  
REPUBLIC FREE TRADE AGREEMENT**

*Spence International Investments, LLC, Bob F. Spence,  
Joseph M. Holsten, Brenda K. Copher,  
Ronald E. Copher, Brett E. Berkowitz,  
Trevor B. Berkowitz, Aaron C. Berkowitz and Glen Gremillion  
(Claimants)*

vs.

*Republic of Costa Rica.  
(Respondent)*

**ICSID Case No. UNCT/13/2**

**Second Witness Statement of Sabrina Loáiciga Pérez,  
Registrar of the Industrial Property Registry**

**December 22, 2014**

**I. INTRODUCTION**

1. My name is Sabrina Loáiciga Pérez, and I am an Attorney and a Notary. I am currently the Registrar at the Trademarks Department of the Industrial Property Registry, which is part of the National Registry of the Ministry of Justice and Grace. I have held this position since August 2011 to the present date. I worked at the Ministry of Environment and Energy from June 2004 to June 2006 in the Human Resources Office. I also worked as Legal Coordinator of the National System of Conservation Areas [*Sistema Nacional de Areas de Conservación* (“SINAC”)] from July 2006 to May 2010.

2. This Statement supplements the one submitted on June 14, 2014. In my previous statement, I explained SINAC’s functions and powers in terms of the management of environmental protection in Costa Rica, as well as SINAC’s policy with respect to the consolidation of the *Las Baulas* National Marine Park. In this statement, I will respond to Claimants’ allegations submitted in their Reply on the Merits and Counter-Memorial on

Jurisdiction (“Reply”).

3. In their Reply, Claimants submitted two allegations concerning the issues discussed in my first statement. First, Claimants allege that the decision to suspend the expropriation proceedings as a result of the Report from the *Contraloría* of 2010 was arbitrary.<sup>1</sup> In this context, Claimants assert that I submitted a statement about facts that were beyond the time in which I was involved with SINAC.<sup>2</sup> Secondly, Claimants allege that the government of Costa Rica has not allocated a budget for the payment of expropriations.<sup>3</sup> Neither of these claims is true.

## II. THE SUSPENSION OF THE EXPROPRIATION PROCEEDINGS

4. Claimants allege that SINAC’s decision to suspend the expropriation proceedings was arbitrary.<sup>4</sup> In particular, they allege that the *Contraloría’s* report did not call for the suspension of those proceedings, and thus, that SINAC did not have the authority to execute that suspension.<sup>5</sup> This is incorrect.

5. First of all, it should be noted that the decision to suspend the expropriation processes was made during the period when I was working at SINAC. Therefore, I can submit a statement about what happened at SINAC at that time and on the reasons that motivated that suspension. In my first statement, I described the facts of which I had first-hand knowledge due to the position I held at SINAC between 2006-2010, or otherwise facts which I knew by virtue of my position in SINAC in general.

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<sup>1</sup> See Claimants’ Reply on the Merits and Counter-Memorial on Jurisdiction, October 2, 2014 (“Claimants’ Reply”), paras. 18, 133.

<sup>2</sup> See Claimants’ Reply, paras. 199-200.

<sup>3</sup> See Claimants’ Reply, para. 19.

<sup>4</sup> See Claimants’ Reply, paras. 18, 133.

<sup>5</sup> See Claimants’ Reply, paras. 14, 133.

6. As I explained in my first statement, the suspension of the expropriation proceedings was a result of the audit performed by the *Contraloría*. In 2008, the *Contraloría*'s audit process began.<sup>6</sup> The *Contraloría*'s period of analysis was from January 1, 2008 to December 31, 2008.<sup>7</sup> From the beginning of the audit process, *Contraloría* employees met several times with SINAC's staff. I participated in those meetings. Based on those meetings, it became apparent that it would be necessary for SINAC to suspend the expropriation processes in order to comply with the *Contraloría*'s recommendations. Consequently, SINAC decided to suspend the expropriation proceedings as soon as it became aware that it would have to perform several activities in order to comply with the recommendations of the *Contraloría*, and these activities also had deadlines to be met. At that time, it was understood that once the *Contraloría*'s recommendations had been met, the expropriation proceedings would resume, as needed.

7. In the report from February 2010, the *Contraloría* effectively recommended that SINAC take a series of actions related to park management and expropriation proceedings. This confirmed that SINAC should continue with the suspension of the expropriation proceedings. Thus, contrary to Claimants' allegations,<sup>8</sup> it was necessary to suspend the expropriation proceedings based on the *Contraloría*'s recommendations.

8. Claimants allege that the *Contraloría*'s recommendations are not binding on the entity to which they are issued.<sup>9</sup> This is incorrect. In fact, under Costa Rican law, such recommendations are mandatory and must therefore receive priority, even more so if they are to be

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<sup>6</sup> See Letter from the *Contraloría* to MINAE, August 5, 2008 [Exhibit R-030].

<sup>7</sup> See Report of the *Contraloría General* of the Republic, Report No. DFOE-PGAA-IF-3-2010, February 26, 2010, p. 1 [Exhibit C-1zk].

<sup>8</sup> See Claimants' Reply, para. 92.

<sup>9</sup> See Claimants' Reply, para. 133.

carried out by deadlines established by the aforementioned authority.<sup>10</sup> Thus, SINAC's decision to suspend the expropriation processes which are currently in an administrative phase was not arbitrary. To the contrary, it was the direct result of the expected recommendations received by the *Contraloría*.

### III. PAYMENT OF EXPROPRIATIONS

9. Claimants also allege that Costa Rica suspended the expropriation proceedings in order to avoid expropriation payments to owners.<sup>11</sup> This is not correct. As I explained in my first statement, during the period in which I was an employee of SINAC, the entity had a designated budget for the payment of expropriations.<sup>12</sup> It is to my understanding that it continues to have such budget allocations. In any case, as I mentioned previously, the suspension decision was not made to avoid the payment of any expropriation. The suspension was necessary to comply with the *Contraloría's* recommendations; and, once this process had been completed, SINAC would continue with the expropriation proceedings and would compensate the owners the amount established in the process to be the appropriate compensation.

10. It is important to note that the facts which I have described occurred specifically during the period when I was at SINAC. I have not commented on any facts from before or after my time in management at that institution.

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<sup>10</sup> See Organic Law of the *Contraloría General* of the Republic, Law No. 7428, September 7, 1994, Art. 12 [Exhibit R-059].

<sup>11</sup> See Claimants' Reply, para. 19.

<sup>12</sup> See First Witness Statement of Sabrina Loáiciga, July 14, 2014, para. 16 [Exhibit RWE-003].

The facts contained in this statement are true to the best of my knowledge and belief.

[signature]

Sabrina Loáiciga

Date: December 22, 2014