

IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF ARBITRATION OF THE
INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES, THE CENTRAL AMERICA-UNITED STATES-DOMINICAN
REPUBLIC FREE TRADE AGREEMENT AND THE FOREIGN
INVESTMENT LAW OF EL SALVADOR

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In the Matter of Arbitration      :
Between:                          :
                                   :
PAC RIM CAYMAN LLC,              :
                                   : Case No.
      Claimant,                  : ARB/09/12
                                   :
      and                        :
                                   :
REPUBLIC OF EL SALVADOR,         :
                                   :
      Respondent.                :
- - - - -: Volume 2

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HEARING ON JURISDICTION

Tuesday, May 3, 2011

The World Bank
MC Building
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 9:00 a.m., before:

- MR. V.V. VEEDER, President
- PROF. BRIGITTE STERN, Co-Arbitrator
- PROF. GUIDO SANTIAGO TAWIL, Co-Arbitrator

Also Present:

MR. MARCO T. MONTAÑÉS-RUMAYOR
Secretary of the Tribunal

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MR. THEODORE POSNER
MS. ASHLEY R. RIVEIRA
MS. MARGUERITE C. WALTER
MS. KASSI TALLENT
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MR. DEREK SMITH
MR. ALDO BADINI
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1 P R O C E E D I N G S

2 PRESIDENT VEEDER: Good morning, ladies and
3 gentlemen. We will start Day 2 of this jurisdictional
4 hearing.

5 Before we turn to the first witness, are
6 there any housekeeping matters which we need to
7 address?

8 We ask the Respondents first.

9 MR. SMITH: Yes, Mr. President. There are
10 two issues I would like to address briefly. The first
11 is that El Salvador waives the confidentiality of all
12 of the exhibits to Mr. Parada's Witness Statements, so
13 they can be brought up on the screen today, and the
14 Tribunal may refer to them and quote from them in its
15 Decision.

16 PRESIDENT VEEDER: Thank you very much.

17 And the second...

18 MR. SMITH: And the second is we would like
19 to ask the Tribunal's indulgence, if we could have an
20 extra 10 minutes on the direct of Mr. Parada, so it
21 would be 25 minutes rather than 15, and we would try,
22 of course, to do it in less time than that.

09:02:53 1 PRESIDENT VEEDER: If we could address the
2 second matter first and ask the Claimants if they have
3 any comments on the application to extend time for
4 direct examination from 10 to 25 minutes.

5 MR. SMITH: We would of course be willing to
6 deduct that time from our cross of Mr. Shrake.

7 MR. ALI: That's all fine and good, but we do
8 object to Mr. Parada being given any additional time
9 on direct. Everything that he has to testify on
10 direct is already in his Witness Statement, and those
11 were the rules of the game that were established by
12 the Tribunal. There is no reason why he should be
13 allowed to testify for longer on direct. And
14 certainly he should not be allowed testify on anything
15 that is not within the scope of his Witness Statement
16 that's already been tendered.

17 PRESIDENT VEEDER: Could we ask you to
18 comment on that, because what is it that he will add
19 beyond the 10 minutes? If it's in his Witness
20 Statement, it's there. He will no doubt be
21 cross-examined on it. He can be then re-examined by
22 you. But if it's not in his Witness Statement, is it

09:03:55 1 something new that we need to have advance notice of.

2 MR. SMITH: There is nothing new. It is
3 simply that we feel for a proper introduction within
4 the direct examination, we would require 25 minutes
5 rather than 15.

6 PRESIDENT VEEDER: Just give us two minutes.

7 (Tribunal conferring.)

8 PRESIDENT VEEDER: I may have misspoken. I
9 think the original time allowed was 15 minutes; I said
10 10 minutes, but we decided to maintain it at 15
11 minutes. So we will have 15-minute direct
12 examination, cross-examination, but then obviously
13 there will be redirect examination arising from the
14 cross-examination.

15 MR. SMITH: Thank you, Mr. President.

16 PRESIDENT VEEDER: Any more housekeeping from
17 the Respondent?

18 MR. SMITH: Nothing further.

19 PRESIDENT VEEDER: And from the Claimants?

20 MR. ALI: Not from the Claimant just a
21 request, Mr. Chairman. We are going to be doing
22 closings either tomorrow afternoon or tomorrow

09:05:36 1 morning. I haven't had an opportunity to discuss this
2 with Mr. Smith, but it would be helpful if the
3 Tribunal could give us some direction at the end of
4 today as to what are the issues that you would like us
5 to address so that we aren't really regurgitating
6 everything that we have said in openings and in our
7 extensive written submissions.

8 PRESIDENT VEEDER: Well, we can certainly
9 indicate that was our intention already. We will hear
10 the two witnesses, and then we might take a short
11 break, but then we would plan for the future, and we
12 would include tonight questions that have arisen in
13 our minds from your opening oral submissions from
14 yesterday. So, that's the plan, and we hope there
15 will be enough time to do that at the end of the oral
16 evidence, and then we'd plan as to what exactly we
17 need to do tomorrow.

18 We need to check whether there are any oral
19 submissions by the non-disputing parties which have to
20 be started in either this evening or tomorrow morning,
21 but perhaps we will come to that after we hear the two
22 witnesses, if that's convenient to both sides.

09:06:39 1 MR. ALI: Indeed. From Claimant's
2 standpoint. Thank you.

3 MR. SMITH: Yes, from Respondent as well.

4 PRESIDENT VEEDER: Without any more, let's
5 proceed to the first witness.

6 LUIS ALBERTO PARADA, RESPONDENT'S WITNESS, CALLED

7 MR. ALI: Mr. Chairman, Mr. Posner will be
8 conducting the cross-examination from our side.

9 PRESIDENT VEEDER: Good morning, Mr. Parada.

10 THE WITNESS: Good morning, Mr. Chairman.

11 PRESIDENT VEEDER: You have before you a form
12 of oath, and we would like you to formally state your
13 full name followed by the words on the sheet of paper
14 before you.

15 THE WITNESS: I, Luis Alberto Parada,
16 solemnly declare upon my honor and conscience that I
17 shall speak the truth, the whole truth, and nothing
18 but the truth.

19 PRESIDENT VEEDER: Thank you very much.

20 DIRECT EXAMINATION

21 BY MR. BADINI:

22 Q. Good morning, Mr. Parada.

09:07:44 1 A. Good morning.

2 Q. Are you currently employed?

3 A. Yes.

4 Q. And who is your employer?

5 A. Dewey & LeBoeuf.

6 Q. And you are representing El Salvador in this
7 arbitration; correct?

8 A. Correct.

9 Q. Now--and you have put in a witness statement
10 in this arbitration that I believe you have before you
11 as Annex 1; correct?

12 A. Correct.

13 Q. Now, it seems to us and I'm sure the Tribunal
14 shares this view, that it's quite extraordinary for a
15 counsel for a Party to also put in a witness
16 statement--

17 MR. ALI: Mr. Chairman, I don't wish to
18 interrupt Mr. Badini's direct examination right when
19 he is starting out, but on direct examination I don't
20 believe that leading questions are permitted, nor is
21 testimony by counsel permitted. So I do think that
22 there are some rules of the game that we ought to

09:08:39 1 observe, and Mr. Badini knows those all too well.

2 MR. BADINI: I will rephrase the question.

3 BY MR. BADINI:

4 Q. Mr. Parada, what prompted you to put in a
5 witness statement in this case?

6 A. I had personal knowledge directly from
7 Mr. Ali and Mr. de Gramont that their law firm and
8 they, themselves, were already working on this case
9 before the change of nationality of Pac Rim Cayman,
10 and so when they started denying that there was even a
11 dispute that had crystallized in this arbitration
12 before the change of nationality--and this was back in
13 August--that's what prompted me to suggest that we do
14 discovery requests on Pac Rim Cayman so that they
15 would reveal they had already been hired. They
16 refused. And then later, when I saw in Mr. Shrake's
17 Witness Statement that they even denied that they had
18 any idea that there was a dispute before the change of
19 nationality, which I knew that was not correct, then I
20 felt compelled to come forward with the knowledge that
21 I had.

22 Q. Mr. Parada, what is the nature of the

09:09:50 1 personal knowledge that you acquired that led you to
2 conclude that Mr. Shrake's Witness Statement was
3 incorrect?

4 A. Back in October of 2007, I was contacted by a
5 recruiter on behalf of Crowell & Moring that invited
6 me to consider transferring to work at the
7 international arbitration practice of Crowell &
8 Moring, and I, in fact, had a series of interviews at
9 the end of November of 2007, and among them I spoke
10 with Mr. Ali and Mr. de Gramont, and they told me that
11 they were already working on the case, that the client
12 had been denied for a long time or had not been
13 granted the Concession that it was seeking in El
14 Salvador and that if they didn't--client didn't get
15 it, they would start arbitration under ICSID.

16 Q. Let me put in front of you Annex S1 to your
17 Witness Statement, and perhaps we can put it on the
18 screen as well.

19 I don't see it on the big screen.

20 But while we are waiting so we don't waste
21 any time, can you identify what Annex S1 is.

22 A. That is an entry in my personal agenda, where

09:11:15 1 I normally keep my schedule and my meetings, and it
2 reflects that on November 27, 2007, it has an entry
3 that says "9:30-meeting."

4 Q. And that's your handwriting?

5 A. Yes.

6 Q. And who was this meeting with?

7 A. As--to the best my knowledge, I have placed
8 that this is the meeting when I went to Crowell &
9 Moring and I met with Mr. Ali and Mr. de Gramont among
10 others.

11 Q. And let me show you Annex A, which is also
12 attached to your Witness Statement. Can you identify
13 this for the record?

14 A. Yes. That is the e-mail that I received from
15 the legal recruiter following up a phone call that she
16 made to my office in which she introduced the
17 international arbitration practice of Crowell &
18 Moring.

19 Q. And did she attach anything to that e-mail?

20 A. Yes. She had copied and pasted from, I
21 believe, the Crowell & Moring Web site information
22 about their practice overview and the biographies of

09:12:24 1 the main attorneys in that practice.

2 Q. Now, at this November 27, 2007, meeting, who
3 did you meet with at Crowell & Moring?

4 A. I met with, I believe, five attorneys from
5 Crowell & Moring, among them Mr. Ali and Mr. de
6 Gramont.

7 Q. And what did they tell you during that
8 meeting?

9 A. Specifically it was Mr. Ali who gave me more
10 information. He said that the--they were--of course,
11 he knew I was from El Salvador, and in our
12 conversation, you know, I'm sure they were aware of my
13 many contact with El Salvador. So he told me that
14 they were working on a case, on a potential case, in
15 which the client had not been granted a mining permit,
16 and that if they were not granted it, they would go to
17 arbitration.

18 Q. Did you have any subsequent meetings in or
19 about this time with either Mr. Ali or Mr. de Gramont?

20 A. Yes.

21 Q. When was that?

22 A. The following week, I received a call from

09:13:33 1 Mr. de Gramont, inviting me to a breakfast follow-up
2 meeting with himself and Mr. Ali.

3 Q. And let's put in front of you Annex S2 to
4 your Witness Statement.

5 Can you identify that document?

6 A. Yes, that is another entry in my personal
7 agenda that reflects that in November 7--I'm sorry--on
8 December 7, 2007, at 8:30 a.m., I had marked "Les
9 Halles, Penn" and something.

10 Q. So, what does that entry indicate?

11 A. That is the--Les Halles is a restaurant that
12 used to be on Pennsylvania Avenue, and that's where
13 the meeting took place.

14 Q. And did you, in fact, have a breakfast
15 meeting with Mr. de Gramont and Mr. Ali on that date?

16 A. Yes, I did.

17 Q. What was said during that breakfast meeting?

18 A. Among other things, because they were trying
19 to recruit me to go work for them, of course, there
20 were many things said, but of interest is arbitration.
21 Mr. Ali confirmed that they had been working on this
22 case, and again he said that if their client did not

09:14:38 1 get the permits, they would initiate arbitration
2 against El Salvador, and they were confident that they
3 would win.

4 Q. Now, to your knowledge, have either Mr. Ali
5 or Mr. de Gramont ever denied meeting with you on that
6 day?

7 A. To my knowledge, they have never denied
8 meeting with me on that date or the other date.

9 Q. Now let's talk about the substance of what
10 was said during that day.

11 You were here yesterday, were you not, when
12 Mr. Ali gave his preliminary remarks?

13 A. Yes.

14 Q. Did you hear him make the following--ask the
15 following rhetorical question to the Tribunal: "Do
16 they truly believe in good faith that the chair and
17 vice chair of a leading international arbitration
18 practice would have been so inexperienced as to have
19 discussed a client's business and legal strategy with
20 a potential associate candidate in the course of a
21 screening interview?"

22 Did you hear Mr. Ali ask that question?

09:15:37 1 A. Yes, I did.

2 Q. Did you hear him give an answer to that
3 question?

4 A. No, he did not answer that question.

5 Q. Has Mr. Ali or Mr. de Gramont have--did they
6 have an opportunity to put in Witness Statements in
7 this case to deny the accuracy of what you recounted
8 as the conversation--

9 PRESIDENT VEEDER: I don't think that's a
10 question for this witness.

11 MR. BADINI: I will withdraw the question.
12 Thank you.

13 BY MR. BADINI:

14 Q. Putting aside the Witness Statement, to your
15 knowledge, have they ever denied the substance of what
16 you said they said to you at those two meetings?

17 A. To my knowledge, they have never denied it.

18 Q. What, if anything, did you do in reaction to
19 what you learned from them during those two meetings?

20 A. After some time had passed and after I had
21 informed Mr. de Gramont at an international
22 arbitration conference in New York that we happened to

09:16:34 1 attend that I was not the person that they were
2 looking for to hire; and after deciding that I had no
3 duty of confidentiality regarding the information they
4 had given me and knowing that I was planning a trip to
5 El Salvador to attend the special award, the highest
6 award the country of El Salvador can give to anyone,
7 to my former boss at the Embassy of El Salvador and at
8 the Ministry of Foreign Affairs, then I decided that
9 it was time to take action.

10 And then I contacted a friend at the Embassy
11 of El Salvador, got the contact information for the
12 Attorney General for El Salvador, and I sent a--I made
13 a phone call and then sent an e-mail.

14 Q. So let's show you Annex D to your Witness
15 Statement and ask whether that was one of the
16 communications you made with El Salvador.

17 A. Yes, that is the first e-mail that I sent to
18 the assistant--to the administrative assistant to the
19 Attorney General for El Salvador.

20 Q. And this is dated March 7, 2008; is that
21 correct?

22 A. Yes, correct.

09:17:38 1 Q. And can you read the last sentence that's
2 highlighted on the screen.

3 A. It says: "The purpose of my meeting with the
4 Attorney General is to offer the services of our firm,
5 generally, and specifically to update the Attorney
6 General on a possible international dispute in the
7 making at this time that may result in an
8 international ICSID arbitration against El Salvador."

9 Q. And did you send any subsequent e-mails to El
10 Salvador on this topic?

11 A. Yes, I did.

12 Q. Let me show you Annex F to your Witness
13 Statement and ask if this is another e-mail that you
14 sent on or about April 8th, 2008.

15 A. Yes, it is.

16 Q. And can you read the highlighted sentence
17 into the record, please.

18 A. Yes. This is a subsequent e-mail I sent
19 because we were not able to meet at that time, and I
20 say: "As I mentioned to you prior to Easter week, it
21 would be a pleasure for my boss, Derek Smith, and me
22 to meet with you briefly to introduce ourselves, offer

09:18:38 1 you our services in any future matter related to
2 international arbitration, and specifically, to
3 discuss an area in which an ICSID arbitration against
4 the Republic of El Salvador might be initiated under
5 the CAFTA framework."

6 Q. Now, what was--you reference a CAFTA
7 framework as a potential arbitration.

8 Do you see that?

9 A. Yes.

10 Q. What was your source of information about the
11 fact that a CAFTA arbitration was contemplated?

12 A. Because Mr. Ali told me that.

13 Q. Did you have any other source for that
14 information?

15 A. Absolutely not. At that time, knowledge that
16 Crowell & Moring and Pac Rim Cayman and Pacific Rim
17 Mining Corporation was planning any arbitration
18 against El Salvador, much less under CAFTA, was not
19 public knowledge.

20 Q. And what was the date that they gave you that
21 information that it would be a CAFTA arbitration?

22 A. They gave that information to me at the very

09:19:37 1 latest on the second meeting we had on December 7th of
2 2007.

3 Q. And now that you've been Party--that you've
4 been counsel in this arbitration, you know the date
5 that the Claimant became a U.S. national company;
6 correct?

7 A. Correct.

8 Q. And what is that date?

9 A. December 13, 2007.

10 Q. So, your meeting with Mr. de Gramont at Les
11 Halles restaurant was before or after that?

12 A. My meeting with Mr. Ali and Mr. de Gramont at
13 Les Halles restaurant was before the change of
14 nationality.

15 Q. Did there come a time when the arbitration
16 became public? Right?

17 A. Yes.

18 Q. And let me show you Annex I to your Witness
19 Statement.

20 Did you draft this e-mail?

21 A. Yes, I did. I drafted and sent it to the
22 Attorney General.

09:20:34 1 Q. And read--look at the first sentence which
2 we've highlighted, and can you tell us what you
3 intended to convey when you wrote that to the Attorney
4 General.

5 A. I had been, since my first e-mail to him on
6 March 7, trying to obtain a meeting with the Attorney
7 General. I had not been able to get the meeting. So,
8 I was trying to convey to him that--what the dispute
9 and the potential arbitration that I had been wanting
10 to talk with him about finally had resulted in a
11 public threat of arbitration against El Salvador.

12 Q. Did you also have internal communications
13 with partners of the Dewey & LeBoeuf firm about the
14 arbitration when it became public?

15 A. Yes, I did.

16 Q. Let me show you Annex R to your Witness
17 Statement, and can you tell me what this is.

18 A. Well, actually, that's one of the latest
19 e-mails that I sent, and that was on December 2008,
20 and that was when not only the arbitration had been
21 public since July, but also after the Claimant filed a
22 Notice of Intent. In that one, I am responding to an

09:21:47 1 earlier e-mail from Mr. Eric Schwartz, who was
2 co-chair of the Dewey & LeBoeuf international
3 arbitration practice, noted in the filing of the
4 Notice of Intent, and I'm say we had been on top of
5 that dispute since last December when I first learned
6 that opposing counsel was preparing for arbitration.

7 Q. Now, during the time of all of these
8 communication, namely your meeting with Messrs. Ali
9 and de Gramont, your follow-up communications with the
10 Government of El Salvador, did you have any reason to
11 believe in that time period, in December of '07
12 through the beginning of '08, that the Claimant would
13 take the position here in this arbitration that the
14 dispute did not arise until after President Saca's
15 statement in March of 2008?

16 A. No, at that time I did not have that
17 knowledge.

18 MR. BADINI: Your witness.

19 PRESIDENT VEEDER: Thank you.

20 MR. BADINI: Thank you.

21 CROSS-EXAMINATION

22 BY MR. POSNER:

09:22:56 1 Q. Good morning, Mr. Parada.

2 I want to start by asking you about the two
3 interviews you had with Mr. Ali and Mr. de Gramont.
4 Those two meetings occurred only 10 days apart;
5 correct?

6 A. Yes.

7 Q. Isn't it the case that those meetings
8 happened in such close proximity because Mr. Ali was,
9 in fact, was not able to meet with you at the first
10 time--at the first interview on November 27th?

11 A. No, it's not.

12 Q. So, Mr. Ali was, indeed, present at the
13 November 27th, interview?

14 A. I believe so.

15 Q. And you were interviewing for an associate
16 position; correct?

17 A. I don't know what I was interviewing for
18 because the actual person who got hired was hired as
19 counsel.

20 Q. When the legal recruiter approached you about
21 doing this interview, did she indicate what position
22 you would be considered for?

09:23:52 1 A. I don't think so.

2 Q. Did you have reason to believe you were being
3 considered for something more senior than an associate
4 position?

5 A. No.

6 Q. So, you believed you were being considered
7 for an associate position; correct?

8 A. I don't--I did not know.

9 Q. You had no belief about that one way or the
10 other.

11 A. Correct.

12 Q. And it's correct, isn't it, that that meeting
13 on November 27th was, in effect, a screening
14 interview?

15 A. Correct.

16 Q. So, you had never met Mr. Ali previously;
17 correct?

18 A. Correct.

19 Q. And you had never met Mr. de Gramont
20 previously, had you?

21 A. Correct.

22 Q. And you said in your direct testimony that

09:24:28 1 you met other lawyers at the firm; correct?

2 A. Yes.

3 Q. Who were the other lawyers you met?

4 A. I do not remember the names exactly. I just
5 remember one of them was Baiju Vasani, and then I met
6 with who I believe was the co-chair of the practice,
7 and then I met with a female senior associate.

8 Q. And when you met with Mr. de Gramont and
9 Mr. Ali, did you meet with them together or
10 separately?

11 A. Separately.

12 Q. And when you met with Mr. Ali, was there any
13 other lawyer present or was Mr. Ali alone?

14 A. He would have been alone.

15 Q. And when you met with Mr. de Gramont, was he
16 with another attorney or was he alone?

17 A. Alone.

18 Q. And did you understand at the time that
19 Mr. Ali was the chair of Crowell & Moring's
20 international arbitration practice?

21 A. Yes.

22 Q. Did you understand that Mr. de Gramont was

09:25:16 1 the vice chair of that practice?

2 A. No.

3 Q. Did you understand that each lawyer was--had
4 over 15 years of experience practicing law when you
5 met with them?

6 A. I don't believe so.

7 Q. Had you read the biographies of them that the
8 recruiter sent to you before showing up at the
9 meeting?

10 A. I had looked at them.

11 Q. So, you were aware of the contents of those
12 biographies; correct?

13 A. Yes.

14 Q. So, just so I'm clear on this, Mr. Parada,
15 it's your contention that in the course of a screening
16 interview, these two senior partners at Crowell &
17 Moring each separately revealed to you their plan to
18 start ICSID arbitration against El Salvador? Is that
19 correct?

20 A. I believe so. I'm not sure if Mr. de Gramont
21 went into as much detail as Mr. Ali.

22 Q. But in any event, each of them independently

09:26:07 1 of the other revealed this client confidential
2 information to you; correct?

3 MR. BADINI: Objection.

4 MR. POSNER: On what grounds?

5 MR. BADINI: Characterization of the
6 information. You're testifying:

7 MR. POSNER: I don't believe that's correct.

8 PRESIDENT VEEDER: You might want to
9 rephrase--

10 MR. POSNER: I'm just trying to confirm--

11 PRESIDENT VEEDER: One second. There's a
12 microphone problem.

13 (Pause.)

14 PRESIDENT VEEDER: Whether that's right or
15 wrong, you might want to separate out the question
16 into two parts--

17 MR. POSNER: Okay.

18 PRESIDENT VEEDER: --dealing with each
19 particular person.

20 MR. POSNER: Okay.

21 BY MR. POSNER:

22 Q. So, just so we're clear on this, Mr. Parada,

09:26:40 1 Mr. Ali revealed to you the information about his
2 plans to initiate arbitration against El Salvador that
3 you describe in your Witness Statement; correct?

4 A. Correct.

5 Q. And Mr. de Gramont, separately from Mr. Ali,
6 also revealed that information to you; correct?

7 A. It may have been that I mentioned to him what
8 I had been told and he confirmed it, but yes.

9 Q. And you're certain that you learned this
10 information at that first meeting on November 27;
11 correct?

12 A. I believe so.

13 Q. Even though in your direct testimony a moment
14 ago you said that you learned this information at the
15 latest at the second meeting; correct?

16 A. Correct.

17 Q. Now, in your meetings with Mr. de Gramont and
18 Mr. Ali, did you discuss your professional background?

19 A. Yes.

20 Q. Did you tell them that you had spent 15 years
21 of your career working for the Government of El
22 Salvador?

09:27:30 1 A. Yes.

2 Q. Did you tell them that you had been a
3 paratrooper in El Salvador?

4 A. Yes.

5 Q. Did you tell them that you had worked at El
6 Salvador's Embassy to the United States?

7 A. Yes.

8 Q. And, in fact, you had spent four years there;
9 correct?

10 A. Yes.

11 Q. Did you tell them that you had been
12 Secretary-General to the Ministry of Foreign Affairs?

13 A. I believe so, yes.

14 Q. Did you talk about your career as a lawyer?

15 A. Yes.

16 Q. And, by the way, Mr. Parada, regarding your
17 career as a lawyer, if I understand correctly, you got
18 your J.D. degree from Georgetown Law Center in 2001;
19 is that right?

20 A. Correct.

21 Q. And when did you--when were you admitted to
22 the bar?

09:28:07 1 A. 2001.

2 Q. Also in 2001.

3 Now, your first job out of law school was at
4 law firm of Arnold & Porter; correct?

5 A. Correct.

6 Q. Did you discuss your work at Arnold & Porter
7 with Mr. Ali and Mr. de Gramont?

8 A. Yes.

9 Q. And one of the matters you worked on when you
10 were at Arnold & Porter was a case known as Inceysa
11 Vallisoletana versus El Salvador; correct?

12 A. It's not pronounced that way.

13 Q. Okay, I apologize for the pronunciation, but
14 you know the case I'm referring to?

15 A. Yes.

16 Q. I will refer to it as the Inceysa case, okay?

17 A. Yes.

18 Q. And you represented the government of El
19 Salvador in that case; correct?

20 A. Correct.

21 Q. Did you discuss your work on the Inceysa case
22 with Mr. Ali and Mr. de Gramont?

09:28:47 1 A. Yes.

2 Q. And the Inceysa case was initiated around
3 July 2003; correct?

4 A. Yes.

5 Q. So you were just about two years out of law
6 school when that case got started; right?

7 A. Right.

8 Q. Now, I would like to go back to Annex D to
9 your Witness Statement, which Mr. Badini had on the
10 screen and we posted our own copy of it up there on
11 the screen.

12 So, as I believe you testified earlier, this
13 is your March 7, 2008, e-mail to an assistant to El
14 Salvador's Attorney General; correct?

15 A. Yes.

16 Q. And in this e-mail you say that you--and I'm
17 quoting--"had the privilege of being an active
18 participant in our selection"--meaning Arnold &
19 Porter's selection--"as the attorneys for the Attorney
20 General's Office in the Inceysa Case"; correct?

21 A. Yes, that is correct.

22 Q. In your meeting with Mr. Ali--in your

09:29:45 1 meetings, the December--the November 27th and December
2 7th meetings with Mr. Ali and Mr. de Gramont, did you
3 discuss your role as an active participant in Arnold &
4 Porter's selection as the attorneys in Inceysa?

5 A. I believe I may have.

6 Q. And do you know or you believe?

7 A. I believe.

8 Q. In that same e-mail, a little bit further
9 down, you state that you were--and again I
10 quote--"honored to have conceived and proposed the
11 legal argument that eventually resulted in an
12 important victory for El Salvador in the Inceysa
13 Case."

14 Do you see that statement?

15 A. Yes, that's correct.

16 Q. That's pretty impressive to come up with the
17 winning argument only two years out of law school;
18 isn't it.

19 A. Not really. I actually came up with the
20 winning argument on another case when I was still in
21 law school.

22 Q. So, not terribly impressive, then.

09:30:36 1 A. I don't think so.

2 Q. Okay. In your meetings with Mr. Ali and
3 Mr. de Gramont, did you discuss your role in
4 conceiving and proposing the legal argument that
5 resulted in an important victory for El Salvador in
6 Inceysa?

7 A. I believe so because I had discussed that I
8 felt so strongly about that, that theory of the case,
9 that I actually--it actually led to my departure from
10 Arnold & Porter.

11 Q. I see. So, that was--that's what prompted
12 your departure from Arnold & Porter was your theory of
13 the case in Inceysa?

14 A. Not my theory of the case but the resistance
15 from the senior partner at Arnold & Porter to continue
16 with that legal theory.

17 Q. I see. And you told Mr. Ali and Mr. de
18 Gramont about this in the course of your meetings with
19 them?

20 A. I believe so. I told them the reason why I
21 departed from Arnold & Porter.

22 Q. And when did you depart from Arnold & Porter?

09:31:24 1 A. In August of 2004.

2 Q. And that was just when that case was getting
3 started; right?

4 A. It was after the First Session of the
5 Tribunal.

6 Q. But it was before Objections to Jurisdiction
7 were filed; right?

8 A. Correct.

9 Q. And so, having been an active participant in
10 Arnold & Porter's selection and having conceived and
11 proposed what would become the winning argument, you
12 left just as the Inceysa Case was getting off the
13 ground; correct?

14 A. Correct.

15 Q. And, by the way, following your departure
16 from Arnold & Porter, have you ever formally
17 approached that firm for purposes of possible
18 reemployment?

19 A. Yes.

20 Q. And when you left Arnold & Porter, you went
21 to the firm of LeBoeuf; correct?

22 A. Correct.

09:32:07 1 Q. And that firm subsequently merged with Dewey
2 Ballantine and is now Dewey LeBoeuf; right?

3 A. Correct.

4 Q. And that's where you're currently employed?

5 A. Yes.

6 Q. Now, was there any other work for the
7 Government of El Salvador that you discussed in the
8 course of your meetings with Mr. de Gramont and
9 Mr. Ali?

10 A. Yes. I am very sure that I talked about my
11 previous work for the Government of El Salvador, as we
12 had mentioned before, being a member of the army of El
13 Salvador and having been assigned as a diplomat in the
14 Embassy of El Salvador in Washington, D.C. for four
15 years, and having been the Secretary-General of the
16 Ministry of Foreign Affairs of El Salvador, which is
17 the third highest position in the Ministry.

18 Q. Did you discuss any other legal work that you
19 had done on behalf of the Government of El Salvador?

20 A. I do not believe so.

21 Q. Now, I want to go--I want to turn now to your
22 Witness Statement, Mr. Parada, and in particular to

09:33:08 1 Paragraph 6 of your Witness Statement, if we can put
2 that up on the screen and maybe expand that. That's
3 good.

4 So, in your statement, you say that at your
5 first meeting, the one in November of 2007, and again
6 I'm going to quote here: "Mr. Ali and Mr. de Gramont
7 explained that they were trying to resolve a mining
8 dispute in El Salvador, and that if El Salvador did
9 not grant the Concession, they would start ICSID
10 arbitration against El Salvador."

11 Do you see that?

12 A. Yes.

13 Q. Now, in your recollection, Mr. Parada, did
14 Mr. Ali and Mr. de Gramont explain this to you before
15 or after you told them about your past work on behalf
16 of the Government of El Salvador?

17 A. I do not know.

18 Q. So, you don't know whether this statement
19 occurred before they had gone through your
20 professional history?

21 A. I don't know. But again my previous
22 employment with the Government of El Salvador was

09:34:06 1 available on my bio in my Web site, and on the Web
2 site of our law firm, so the fact I had worked for 15
3 years for the Government of El Salvador would not have
4 been unknown to them.

5 Q. Mr. Parada, in your experience, would it be
6 normal for lawyers conducting a screening interview to
7 tell you about the projects that they were working on
8 before they'd ask you a few questions about yourself
9 and your own professional background?

10 MR. BADINI: Objection, foundation and
11 hypothetical.

12 THE WITNESS: I don't mind to answer the
13 question.

14 MR. POSNER: Mr. Chairman, it just goes--

15 MR. BADINI: I need to release--

16 PRESIDENT VEEDER: You do. Otherwise, you
17 veto all of us. It's one way of keeping us quiet.

18 I think there has to be some latitude in the
19 way the question is put, but again if you can rephrase
20 it, I suspect this question you could rephrase.

21 MR. POSNER: Okay, I just--in terms of
22 Mr. Badini's objection with respect to foundation, I

09:35:10 1 believe the witness has already laid the foundation by
2 stating that he couldn't recall whether this client
3 confidential information was revealed to him before or
4 after he talked about his own professional background,
5 and I'm simply asking him in his own experience what
6 would be ordinary in the course of a screening
7 interview where the partners had never met the person
8 at all.

9 PRESIDENT VEEDER: How many screening
10 interviews have you done?

11 THE WITNESS: I may have done five, but I
12 have also conducted interviews myself in which I may
13 have talked about cases I'm working on.

14 PRESIDENT VEEDER: Well, if you can answer
15 the question, please try to do so.

16 THE WITNESS: I would say, Mr. Posner, that
17 it depends on what the purpose of the person
18 conducting the screening is, and I asked myself that
19 question at the time, "Why are they telling me this?"
20 And I concluded that perhaps knowing my relationship
21 with El Salvador, they were wanting me to relay that
22 information to El Salvador so El Salvador would know

09:36:09 1 that there was international arbitration law firm
2 already preparing an ICSID case against them, and,
3 therefore, they would try to avoid going to
4 arbitration and give in to whatever the company
5 wanted. That was my conclusion.

6 BY MR. POSNER:

7 Q. And it's your contention, Mr. Parada, that
8 they may well have revealed this information to you
9 before you even told them about your own professional
10 experience.

11 A. I don't know. I don't recall.

12 Q. And you said you drew this conclusion in your
13 own mind as to why they were telling you this
14 information. Did you ask them why they were telling
15 you this information?

16 A. No, this was thoughts I had after these
17 conversations.

18 Q. Did you say anything in response to this
19 information that was being revealed to you by Mr. Ali
20 and Mr. de Gramont each independently?

21 A. I believe I just acknowledged it.

22 Q. Did Mr. de Gramont or Mr. Ali tell you the

09:37:04 1 identity of the Claimant in the ICSID arbitration they
2 allegedly intended to start?

3 A. No.

4 Q. Did you ask?

5 A. No.

6 Q. Isn't it true, Mr. Parada, that a company
7 called Commerce Group brought a CAFTA claim against El
8 Salvador related to a mining investment in July 2009?

9 A. Yes.

10 Q. In fact, you represented the Government of El
11 Salvador in that arbitration; correct?

12 A. Correct.

13 Q. Did you know that the ICSID arbitration that
14 Mr. de Gramont and Mr. Ali allegedly intended to start
15 was not on behalf of Commerce Group?

16 A. No.

17 MR. BADINI: Objection. The counsel is
18 testifying.

19 MR. POSNER: It's simply a question. I asked
20 him what he knew, and I believe he just answered the
21 question, and I'm prepared to move on.

22 PRESIDENT VEEDER: I'll re-say what I was

09:37:49 1 going to say. We will leave the question and answer
2 as it is. Please proceed.

3 BY MR. POSNER:

4 Q. Did Mr. de Gramont or Mr. Ali tell you the
5 amount of damages they intended to seek in this
6 arbitration?

7 A. No.

8 Q. Did you ask?

9 A. No.

10 Q. Did Mr. de Gramont or Mr. Ali tell you the
11 timing of the ICSID arbitration they intended to
12 start?

13 A. No.

14 Q. Did you ask?

15 A. No.

16 Q. Did either of them tell you that the
17 arbitration they intended to start would be under
18 CAFTA?

19 A. Yes.

20 Q. Although you don't say that in your Witness
21 Statement, do you?

22 A. I believe--I believe I do.

09:38:27 1 Q. Is that in that Paragraph 6? I don't see it.

2 Maybe you can point me to where you said that.

3 A. It's paragraph 7.

4 Q. I see. In Paragraph 7, okay.

5 And did they tell you it would be--it would
6 also be started under El Salvador's Investment Law?

7 A. No.

8 Q. Now, in Paragraph 6 of your Statement, in the
9 sentence that follows the one we focused on a moment
10 ago, you say, and I quote, "I was aware of the issue
11 through the Salvadoran press."

12 What do you mean by "the issue"?

13 A. I had--I'd read the Salvadoran newspapers
14 online almost every day. I was aware that there was a
15 mining dispute in the brewing. I was aware that the
16 company was Canadian. I assumed that was the case
17 they were talking about.

18 Q. On what basis did you assume that was the
19 case they were talking about?

20 A. That was the only case that came to my mind
21 at the time.

22 Q. Did you--did you say to either Mr. Ali or

09:39:37 1 Mr. de Gramont is this the Pac Rim case that you're
2 referring to?

3 A. No, but I do believe that at one of the
4 conversations I volunteered my initial reaction that
5 would have reflected that I was referring--I was
6 understanding they were talking about the--this
7 arbitration because I told--I believe with perhaps
8 90 percent certainty that I told them that I believe
9 this arbitration may be started by the individual U.S.
10 investors because that was what I immediately believed
11 when I first heard.

12 Q. And you say you told that to Mr. Ali and
13 Mr. de Gramont?

14 A. I believe so.

15 Q. And where do you describe that in your
16 Witness Statement?

17 A. I don't. Because I'm not absolutely sure.

18 Q. I see. But you are absolutely sure of
19 everything that's in your Witness Statement; is that
20 correct?

21 A. Correct.

22 Q. Now, at Paragraph 7 of the statement, you

09:40:39 1 say, and again I quote--let's highlight that--"Mr. Ali
2 also mentioned that he had been present at a meeting
3 with President Saca during President Saca's official
4 visit to Washington, D.C., one week earlier."

5 Do you see that statement, Mr. Parada?

6 A. Yes, I see the statement.

7 Q. Did Mr. Ali describe that meeting with
8 President Saca to you?

9 A. Yes, he did.

10 Q. Did he tell you what the purpose of the
11 meeting had been?

12 A. No.

13 Q. Did he tell you that the meeting had anything
14 to do with ICSID arbitration?

15 A. As a matter of fact, yes. And I did not put
16 it in my statement for a reason that I will explain to
17 the Tribunal if they would like to...

18 Q. Well, what's the reason?

19 A. The reason is he gave me more specific
20 information about this meeting. I have tried since to
21 confirm that information. That information has not
22 been confirmed. We are in the process of trying to

09:41:34 1 confirm the information. And therefore I would not--I
2 would prefer not to mention the specific information
3 that he gave. It's unconfirmed. We are in the
4 process of trying to confirm, and I would not want to
5 prejudice the Tribunal with the specifics of that
6 information unless instructed to.

7 Q. Mr. Parada, on becoming hired as counsel in
8 this case, did you attempt to obtain notes from the
9 meeting that Mr. Ali had with President Saca?

10 A. No.

11 Q. Wouldn't that have been--wouldn't that have
12 been a duly diligent thing to do if you knew the
13 counsel for the investor had had a meeting with the
14 Head of State of your client?

15 A. I don't know.

16 Q. You don't know if that would have been a duly
17 diligent thing to do?

18 A. The duly diligent thing, no, I don't.

19 Q. In preparing for this case, in representing
20 the Government of El Salvador and knowing that counsel
21 for the Claimant had had a meeting with the President
22 of El Salvador, you didn't think to try to obtain the

09:42:24 1 notes from that meeting, Mr. Parada?

2 MR. BADINI: Objection as to Mr. Parada's
3 role as counsel in this case. I think the questions
4 should go to Mr. Parada as a fact witness, not what he
5 did in preparing for this case.

6 MR. POSNER: Well, Mr. President, as fact
7 witness, Mr. Parada has told him that Mr. Ali revealed
8 that he had a meeting with President Saca on the very
9 subject of this case. One would think that upon being
10 hired as counsel if, in fact, he really had learned
11 that information from Mr. Ali, he would have said,
12 "Counsel for the Claimant told me you had this
13 meeting. I'd like to--were there any contemporaneous
14 notes kept of that meeting?"

15 PRESIDENT VEEDER: We are getting into an
16 area where there may be legal privilege, and this is a
17 very difficult area, given that this is a lawyer
18 giving fact evidence for the Respondent, so, let's
19 take this very slowly.

20 Could you please wait a moment. Just back up
21 to the answer that the witness didn't give to your
22 earlier question.

09:43:22 1 MR. POSNER: Okay.

2 PRESIDENT VEEDER: Now, that's a puzzle
3 obviously to the Tribunal. We don't know what the
4 witness is referring to, but do you?

5 MR. POSNER: I do not know what the witness
6 is referring to. He's testified that Mr. Ali told him
7 about a meeting that Mr. Ali supposedly had with the
8 President of El Salvador. I posed the question upon
9 being hired as counsel, did you endeavor to obtain any
10 notes from this meeting that Mr. Ali supposedly had.

11 PRESIDENT VEEDER: Let's go back to your
12 first question because you didn't pursue it.

13 MR. POSNER: Yes.

14 PRESIDENT VEEDER: Do you want to ask this
15 witness what Mr. Ali told this witness, which is what
16 he says he's in the process of checking and we don't
17 understand how that checking is taking place, but you
18 want to pursue the question about what--

19 MR. POSNER: Yes.

20 PRESIDENT VEEDER: --Mr. Ali told him?

21 MR. POSNER: Yes. Well, let's back up to
22 that.

09:44:11 1 PRESIDENT VEEDER: Let's go back to the
2 witness.

3 We understand, obviously, that you don't want
4 to give information if you possibly can that hasn't
5 been checked, but what is the difficulty in answering
6 counsel's question as to what you say Mr. Ali told
7 you?

8 THE WITNESS: The difference, Mr. Chairman,
9 is that it's very precise information that, if true,
10 would completely undermine everything, and I would not
11 like to prejudice the Tribunal with that information
12 because everything I have been able to do so far to
13 confirm it has not confirmed it, but we are still in
14 the process of trying to obtain confirmation and,
15 therefore, not only I will not want to prejudice the
16 Tribunal with saying very specific information that is
17 unconfirmed, but also because I don't want to reveal
18 what we are trying to do in the future.

19 PRESIDENT VEEDER: Well, I think we have to
20 divide your role and be very careful. We are not
21 asking you here to give evidence about what you do or
22 don't do as a legal representative of the Respondents,

09:45:13 1 but you are here as a fact witness. Now, if you can
2 testify, to the best of your recollection, truthfully
3 what Mr. Ali said to you, and you are going to be
4 asked that question, as we understand, by counsel for
5 the Claimant, you should answer that question as a
6 fact witness.

7 THE WITNESS: If the Tribunal so directs, I
8 will answer that question.

9 And, Mr. Chairman, all my answers are
10 truthful.

11 (Tribunal conferring.)

12 PRESIDENT VEEDER: We are all struggling with
13 the somewhat unusual situation, and we have the
14 greatest sympathy with counsel on both sides and,
15 indeed, the witness.

16 Now, as we understand it, you would like to
17 ask this witness this question to which I referred,
18 namely what did the witness understand Mr. Ali to say
19 to him about this apparent meeting with President
20 Saca. That's the question you wish to pursue; is that
21 right?

22 MR. POSNER: That's correct. That's correct,

09:47:07 1 Mr. President.

2 PRESIDENT VEEDER: And--

3 MR. POSNER: As Mr. Ali correctly says, I
4 would like to pursue this line of questioning a little
5 bit further. I mean, he said in his Witness Statement
6 that Mr. Ali told him about this meeting. He's made
7 certain innuendos on the witness stand what may have
8 been revealed to him in that meeting, so I would like
9 to probe that a bit further, Mr. President.

10 PRESIDENT VEEDER: Well, I think rather than
11 talk about his role as a lawyer since, if you can go
12 back to the meeting, and again we are in your hands.
13 You ask the questions you choose to ask. We're not
14 telling you--

15 MR. POSNER: Okay.

16 PRESIDENT VEEDER: --to pursue this if you
17 don't wish to do so.

18 MR. POSNER: I do wish to pursue it. Thank
19 you, Mr. President.

20 PRESIDENT VEEDER: Please pursue it.

21 BY MR. POSNER:

22 Q. So, Mr. Parada, what precisely did Mr. Ali

09:47:49 1 tell you about the meeting he had with President Saca?

2 A. Well, in fact, he said that he had met with
3 President Saca, that he had talked to President Saca,
4 and that he had told President Saca that if El
5 Salvador did not issue the Concession they will
6 initiate arbitration against El Salvador, and then El
7 Salvador would lose.

8 Q. And where did this meeting with President
9 Saca take place?

10 A. I don't know.

11 Q. Did he tell you who else was at the meeting?

12 A. No.

13 Q. Did he tell you anything else about the
14 meeting?

15 A. No.

16 Q. So, when you say--when you said earlier,
17 Mr. Parada, that you had been trying--you had been
18 endeavoring to find other information about the
19 meeting, what is that other information you have been
20 endeavoring to find?

21 MR. BADINI: Same objection as to the
22 Witness's role now as counsel rather than as a fact

09:48:39 1 witness.

2 MR. POSNER: I will withdraw the question.

3 Bear with me just a moment, Mr. President.

4 (Pause.)

5 BY MR. POSNER:

6 Q. Mr. Parada, when Mr. Ali told you what he had
7 said to President Saca, did he tell you what President
8 Saca's reply was?

9 A. No.

10 Q. Isn't it the case, Mr. Parada, that the
11 meeting with President Saca to which you're referring
12 was actually a luncheon attended by about 300
13 attendees at which President Saca was the keynote
14 speaker?

15 A. I have no way of knowing. What I know is
16 that finally, about two weeks ago, counsel for Pac Rim
17 came and confirmed that Mr. Ali was present at a
18 meeting, at a luncheon meeting, on November 28th of
19 2007, in which President Saca was the keynote speaker.
20 I have no way of knowing that that was the meeting
21 that he was referring to.

22 Q. Do you have any reason to believe that there

09:50:15 1 was a separate meeting he was referring to?

2 A. If what Mr. Ali told me on December 7th was
3 true, and it is true that they did not speak at that
4 meeting like a letter from your law firm expressed,
5 then there must have been another meeting.

6 Q. Was Mr. de Gramont present when Mr. Ali told
7 you that he had personally spoken to President Saca?

8 A. Yes.

9 Q. Did Mr. de Gramont say anything in response
10 to Mr. Ali's communicating that information to you?

11 A. I don't recall. I don't believe so.

12 Q. Now, other than the two meetings that we have
13 been talking about, the November 27th and December 7th
14 meetings, did you have any other discussions with
15 Crowell & Moring lawyers about prospective employment
16 at that firm?

17 A. I don't--I don't believe so.

18 Q. Did you have any other discussions with
19 Crowell & Moring recruiting personnel about employment
20 at Crowell & Moring?

21 A. I do not believe so, no.

22 Q. And did you have any other communications

09:51:27 1 about employment at Crowell & Moring with the
2 recruiter who had set up the interview in the first
3 place?

4 A. No, I did not.

5 Q. Now, in your Witness Statement at
6 Paragraph 8, you state that you were invited to join
7 the Crowell & Moring international arbitration team;
8 is that correct?

9 A. Correct.

10 Q. Now, you've attached various documents as
11 annexes to your Witness Statement, but you did not, in
12 fact, attach an offer letter from Crowell & Moring,
13 did you?

14 A. No. There was no offer letter.

15 Q. So, Crowell & Moring didn't actually make you
16 an offer, did they?

17 A. Not a formal offer in writing, but that's not
18 the way these things work.

19 Q. What's your basis for saying that's not the
20 way these things work?

21 A. My basis, for example, is when I moved from
22 Arnold & Porter to LeBoeuf Lamb, I did not get my

09:52:17 1 letter, my formal offer, until after I had had serious
2 number of--series of discussions with the main
3 partners at LeBoeuf, Lamb, Greene & McCrae, and they
4 had invited me to join and I'd said yes, and then they
5 sent me the formal letter, so the conversations
6 precede the formal letter.

7 Q. So you understood an offer was being made to
8 you even though you hadn't received a formal offer
9 letter.

10 A. No, I understood that an invitation to
11 consider joining their law firm was being made, and,
12 as a matter of fact, Mr. de Gramont told me that they
13 were trying to build up their Latin American practice,
14 and they believed that I was the perfect person to
15 help them build up that practice.

16 Q. Did Mr. de Gramont tell you what compensation
17 you would be paid?

18 A. No.

19 Q. Did he tell you what position you would be
20 hired into?

21 A. No. We didn't get to that level because I
22 never expressed an interest in joining them.

09:53:06 1 Q. I see.

2 A. And normally there has to be an initial
3 meeting of interest and then you start discussing
4 details. I had not even decided I was interested in
5 joining them. I had not even started doing due
6 diligence on themselves or on the law firm, asking
7 questions about it, asking about what position will
8 be. I wasn't even really thinking about leaving my
9 law firm.

10 Q. So, you didn't ask what your compensation
11 would be.

12 A. No.

13 Q. You didn't ask what position you would be
14 hired into.

15 A. No.

16 Q. And you say in your Witness Statement that at
17 a conference in February of 2008 you told Mr. de
18 Gramont that you were not the person Crowell & Moring
19 needed for its international arbitration team; right?

20 A. Correct.

21 Q. Now, let's go back to that first meeting in
22 November of 2007. When Mr. de Gramont and Mr. Ali

09:53:58 1 each independently told you of their intention to
2 start ICSID arbitration against El Salvador, did you
3 immediately communicate that information to anyone in
4 the Government of El Salvador?

5 A. No, I did not.

6 Q. Did you tell anyone at your law firm?

7 A. No.

8 Q. And on December, at that second meeting, when
9 you say that Mr. Ali again said that they would
10 initiate ICSID arbitration if El Salvador did not
11 grant the Concession, at that time did you immediately
12 communicate that information to anyone in the
13 Government of El Salvador?

14 A. No, I did not.

15 Q. Did you tell anyone at your law firm?

16 A. No.

17 Q. So, just so I'm clear on this, Mr. Parada,
18 it's your testimony that you had learned information
19 about an impending arbitration against a client you
20 had previously represented, for whom you had conceived
21 a winning argument in the Inceysa Case and with whom
22 you had extensive ties from an earlier partner in your

09:54:48 1 career, and yet you told no one at your law firm about
2 this pending arbitration.

3 A. Not at that time, that's correct.

4 Q. I see.

5 And on February 1st, after--February 1st of
6 2008, after you told Mr. de Gramont that you were not
7 the person Crowell & Moring needed for their team, did
8 you immediately advise the Government of El Salvador
9 then that an investor was about to bring an ICSID
10 arbitration against it?

11 A. No. I first advised Mr. Smith what I had
12 learned.

13 Q. So you--

14 A. Just to expand it a little bit, I have--I
15 take very seriously my different duties of
16 confidentiality; and, for example, I felt that I would
17 not--until I told Mr. de Gramont on February 1st, that
18 I was not interested in the law firm, that I was at
19 liberty to discuss what they had told me with anyone
20 else. And after I told him that, then I felt that
21 then I was at liberty to tell the people, and the
22 first people I told were Mr. Smith and others in the

09:55:52 1 law firm.

2 Q. And when did you tell Mr. Smith this
3 information?

4 A. Sometime before March 7th. I do not have an
5 exact date.

6 Q. And where is that described in your Witness
7 Statement, Mr. Parada?

8 A. It's not described because it's not relevant
9 to my Witness Statement.

10 Q. I see.

11 And when you came to the conclusion that
12 after having told Mr. de Gramont--after you came to
13 the--after you told Mr. de Gramont that you weren't
14 the right person for Crowell & Moring, how did you
15 come to the conclusion that it was okay at that point
16 to reveal the information you had learned in the
17 course of these interviews?

18 A. Because they would no longer be considering
19 me as a potential attorney that would join their law
20 firm and, therefore, I was at liberty--just, for
21 example, if you look in my e-mails, it wasn't until
22 after I left Arnold & Porter that I contacted the

09:56:44 1 Attorney General of El Salvador to express my views
2 about continuing with the legal strategy that had been
3 devised from the beginning. I didn't say anything
4 before while I was still employed at Arnold & Porter.
5 I waited until after I left so I could feel that I had
6 no duty of being a lawyer with Arnold & Porter before
7 saying something in which I was at disagreement with a
8 senior partner.

9 Q. So the duty you're referring to is sort of a
10 personal duty that you felt.

11 A. Yes.

12 Q. It wasn't something you had consulted with
13 ethics counsel about, for example.

14 A. No.

15 Q. Now, I want to go back to Annex D to your
16 Witness Statement, and again, just to make sure we are
17 all on the same page here, Annex D is that March 7th,
18 2008, e-mail to the assistant to the Attorney General;
19 correct?

20 A. Correct.

21 Q. And you send this e-mail just over a month
22 after you told Mr. de Gramont that you were not the

09:57:40 1 right person that Crowell & Moring needed for its
2 team; correct?

3 A. Correct.

4 Q. Now, I want to explore the substance of this,
5 e-mail a little bit more deeply, Mr. Parada.

6 In that e-mail, you don't get to the subject
7 of a potential ICSID arbitration until the very end;
8 correct? Until that third paragraph; right?

9 A. Correct.

10 Q. And that's after describing your own
11 qualifications and your having conceived the winning
12 argument in the Inceysa Case; right?

13 A. Right.

14 Q. And in referring to the potential ICSID
15 arbitration, you say you want to, and again I'm going
16 to quote here, "update the Attorney General on a
17 possible international dispute in the making at this
18 time that may result in an international ICSID
19 arbitration against El Salvador"; right?

20 A. Correct. That's the English translation. I
21 sent the original e-mail in Spanish.

22 Q. Right.

09:58:32 1 And for ease of everyone's reference, I will
2 continue focusing on the English version, if that's
3 all right with you.

4 A. The English translation, correct.

5 Q. Now, that statement about a possible dispute
6 in the making that may result in arbitration, that was
7 based on information you say you learned in your
8 meetings with Mr. de Gramont and Mr. Ali; correct?

9 A. Correct.

10 Q. But in your e-mail you don't say that that's
11 the basis for the update you want to give the Attorney
12 General, do you?

13 A. The knowledge that I--

14 Q. In other words, you don't say that you want
15 to give the Attorney General an update based on
16 information you've learned from counsel for a
17 potential claimant. You don't say that in the e-mail,
18 do you?

19 A. I don't see that, but there is no
20 other--there is no other source that I could have
21 learned that from other--except from counsel working
22 on that case.

09:59:19 1 Q. But you don't advise the Attorney General of
2 that, do you?

3 A. No, I don't. I normally do not reveal the
4 sources of my information.

5 Q. Isn't it possible, by the way, Mr. Parada,
6 that the possible dispute in the making that you're
7 referring to here is the possible dispute in the
8 making between Commerce Group and El Salvador?

9 A. No, it's not.

10 Q. But you don't identify the possible Claimant
11 here, do you?

12 A. No, I don't, but it's not possible that it
13 was Commerce Group because I was specifically that
14 told the company had not been granted the permit, and
15 the Commerce Group Case was very different. Commerce
16 Group already had an Exploitation Concession,
17 something that Pacific Rim never had. So, it could
18 not have possibly been the same arbitration. Commerce
19 Group was--case was about the revocation of the
20 environmental permits. Pacific Rim's case was that
21 their application for the environmental permits and
22 for the Concession was never granted.

10:00:10 1 Q. I see. And you knew that at the time of this
2 March 7, 2008, e-mail?

3 A. No, I did not. I know it now.

4 Q. And, in fact, you don't mention the
5 nationality of the investor in this possible dispute
6 in the making, do you?

7 A. No.

8 Q. Nor do you mention the sector in which this
9 possible dispute in the making would occur, do you?

10 A. No.

11 Q. Yet, in your Witness Statement, you say that
12 Mr. Ali and Mr. de Gramont told you that the ICSID
13 arbitration they intended to start involved a mining
14 dispute; correct?

15 A. Correct.

16 Q. Now, in fact, you don't even indicate in this
17 e-mail, do you, Mr. Parada, that the possible dispute
18 in the making would be a dispute under CAFTA, do you?

19 A. No.

20 Q. And just so I'm clear, the update that you're
21 proposing to give the Attorney General is an update
22 that, in fact, would be based on three-month-old

10:00:59 1 information, isn't it?

2 A. Yes, and, you know, an update may not be the
3 most correct translation, if we look at the Spanish
4 version, I--but it's probably the information to
5 get--provide information to the Attorney General on a
6 possible international arbitration.

7 Q. Or are you saying this isn't an accurate
8 translation, Mr. Parada?

9 A. Let's look at the Spanish and I can tell you.

10 Q. Well, did you review the translation before
11 you submitted this as part of your Witness Statement?

12 A. I did.

13 Q. You did.

14 And you confirmed that the translation was,
15 indeed, accurate.

16 A. There is a difference between--this update
17 can also suggest--and maybe we will just agree on the
18 meaning of the word "update." "Update" may mean that
19 I have said something before and I am updating the
20 information, and that was not the case. This was the
21 first time I was telling the Attorney General.

22 Q. Okay.

10:01:51 1 A. But if we don't understand that, the word
2 "update" is correct.

3 Q. Okay. So, in fact, giving that you were
4 seeking to win business from the Government of El
5 Salvador, if you really had learned about this
6 possible dispute in the making from counsel for the
7 potential Claimant, wouldn't you have said that in the
8 e-mail?

9 A. Not necessarily.

10 Q. Wouldn't you at least have given a little
11 more detail about this possible dispute in the making,
12 Mr. Parada?

13 A. No.

14 Q. Now, you received a reply from the Attorney
15 General, in fact, within hours of sending this e-mail;
16 correct?

17 A. Correct.

18 Q. And that's Annex E to your Witness Statement;
19 right?

20 A. Yes.

21 Q. Let's put Annex E up on the screen there.

22 Now, this reply from the Attorney General

10:02:38 1 didn't mention the possible dispute in the making,
2 does it?

3 A. No, it doesn't.

4 Q. And, in fact, it doesn't ask for the identity
5 of the investor in that possible dispute in the
6 making, does it?

7 A. Correct.

8 Q. Nor does it--nor does the reply ask in what
9 sector this possible dispute in the making was
10 occurring, does it?

11 A. No, it doesn't.

12 Q. In fact, the Attorney General in this reply
13 doesn't even mention ICSID arbitration at all, does
14 he?

15 A. Correct.

16 Q. And you mentioned earlier that he wasn't able
17 to meet with you when you put in this request. In
18 fact, he doesn't even set up a date for a meeting in
19 the future, does he?

20 A. No.

21 And I actually sent a subsequent e-mail that
22 was not an annex to my Witness Statement in which I

10:03:19 1 offered to move my trip either at the beginning or the
2 end so I could meet with him, and he did not reply.

3 Q. And why didn't you attach that subsequent
4 e-mail as an annex to your Witness Statement,
5 Mr. Parada?

6 A. Because I did not believe it was necessary.
7 I was not required to do so. But if you would like, I
8 can give you a copy of it.

9 Q. Well, so you selectively attached certain
10 e-mail correspondence to your Witness Statement; is
11 that what you're saying, Mr. Parada?

12 A. That's correct. That's correct.

13 Q. And you decided what was relevant and what
14 wasn't relevant; is that correct?

15 A. Yes.

16 Q. So, in fact, there was other correspondence
17 concerning this pursuit of business with the
18 Government of El Salvador that you chose not to
19 include with your Witness Statement; is that correct?

20 A. Yes.

21 MR. POSNER: Thank you.

22 And, Mr. President, I think we would request

10:04:02 1 that ask at the close of this session, that additional
2 correspondence be produced to Claimant.

3 PRESIDENT VEEDER: Let's address that right
4 now because it may be you need it for
5 cross-examination.

6 Do we have these documents or document
7 available?

8 THE WITNESS: No--

9 PRESIDENT VEEDER: I'm not asking you,
10 forgive me. I have got to deal with this through
11 counsel.

12 MR. SMITH: Mr. President, we do not have the
13 documents with us at this time. We would certainly be
14 able to produce them later on, but they would
15 have--there--we do not--we would not have copies at
16 the moment because a determination was made that
17 weren't relevant to the response and so they were not
18 provided, but there--we would certainly have no qualms
19 about providing all of the additional documents.

20 PRESIDENT VEEDER: Where are these documents
21 as we speak?

22 MR. SMITH: Well, they would be in--if

10:04:54 1 they're e-mails, they would be in the e-mail system of
2 the law firm and would have to be searched out and
3 printed.

4 PRESIDENT VEEDER: Could that exercise be
5 begun now with one of your colleagues?

6 MR. SMITH: Yes.

7 PRESIDENT VEEDER: Let's do that.

8 MR. SMITH: Yes, okay.

9 THE WITNESS: I would like to say that I have
10 those e-mails already separated in case the Tribunal's
11 order was more inclusive than it was. I was going to
12 present all those e-mails. They are already separated
13 in an electronic file in my laptop, so I believe I can
14 produce those e-mails this afternoon.

15 PRESIDENT VEEDER: Well, where is your laptop
16 as we speak?

17 THE WITNESS: Right there.

18 PRESIDENT VEEDER: Could you forward them on
19 to the Secretary of the Tribunal and he can print them
20 out?

21 THE WITNESS: At this moment?

22 PRESIDENT VEEDER: Yes.

10:05:42 1 THE WITNESS: If I can establish an Internet
2 connection.

3 PRESIDENT VEEDER: Now that's not so easy in
4 this fourth-floor basement but we'll try.

5 THE WITNESS: That's what I understand.

6 PRESIDENT VEEDER: Let's just stop for a
7 second. How many documents are we talking about?

8 We'll sort it out and then we'll take a
9 break.

10 THE WITNESS: We're talking about perhaps
11 10--

12 PRESIDENT VEEDER: 10 documents.

13 THE WITNESS: --10 documents, mostly e-mails
14 to other Government officials, for example, the
15 Minister of Foreign affairs of El Salvador, and the
16 Legal Secretary to the President of El Salvador.

17 PRESIDENT VEEDER: What do you suggest?

18 MR. POSNER: You know, the documents that
19 Mr. Parada is describing and saying that he made his
20 own determination weren't relevant to his Witness
21 Statement, at least from the description here, sound
22 like they are entirely within the scope of the

10:06:32 1 Document Production Request that Claimant made to the
2 Tribunal and that the Tribunal ordered Respondent to
3 turn over. You know, the fact that these documents,
4 the existence of which we just learned about, are
5 being produced to us here on the spot at this
6 cross-examination, naturally that handicaps Claimant
7 quite a bit. We will certainly take the time to
8 review them and incorporate them into our
9 cross-examination, if we are able, but I would simply
10 point out that this really does prejudice Claimant's
11 ability to cross-examine this witness.

12 PRESIDENT VEEDER: What do you suggest the
13 Tribunal orders?

14 MR. POSNER: At this point, Mr. President, I
15 think probably the best solution would be for me to
16 resume with the cross-examination now, review the
17 additional documents to the extent I'm able over the
18 lunch break, and perhaps--

19 PRESIDENT VEEDER: Do not speak with
20 anybody--

21 MR. ALI: I'm not sure what that was all
22 about.

10:07:34 1 PRESIDENT VEEDER: Let's calm down.

2 Please don't speak to anybody from your
3 counsel.

4 Please continue.

5 MR. POSNER: What I was going to suggest,
6 Mr. President, was we could review the documents over
7 the lunch break. I don't know how voluminous, I mean
8 10 could be 10 single e-mails; 10 could be a lot of
9 pages, obviously. Also depending on the contents of
10 those 10 documents, they may require additional
11 research and investigation on our part, which we may
12 or may not be able to complete over the course of the
13 lunch break. But, you know, assuming we are talking
14 about a relatively small volume of documents that we
15 can absorb, assimilate, and then resume with the
16 cross-examination on, then as a sort of, you know,
17 least bad solution, I would suggest that we be allowed
18 to continue with the cross after the lunch break.

19 PRESIDENT VEEDER: One further question for
20 you, Mr. Parada: Your laptop is here.

21 THE WITNESS: Yes.

22 PRESIDENT VEEDER: If we broke now for 10

10:08:32 1 minutes, do you think you could forward the documents
2 you are describing to the Tribunal Secretary, at least
3 to start the printing process. They could then be
4 disclosed to the Claimant. We wouldn't necessarily
5 admit them in evidence until we heard the Parties
6 further, but before we talk about whether that's right
7 or wrong, would that be physically possible for you to
8 do in a few minutes?

9 THE WITNESS: Perhaps 15 at most.

10 PRESIDENT VEEDER: Fifteen.

11 THE WITNESS: And perhaps we'd prefer,
12 because the internet connection might be a problem, if
13 we could have a memory stick, I could just transfer
14 them.

15 PRESIDENT VEEDER: We can do memory stick
16 straightaway.

17 THE WITNESS: And just to clarify, Mr.
18 Chairman, we are talking about documents that are not
19 responsive to the Tribunal's procedural order. It's
20 documents that--

21 PRESIDENT VEEDER: Let's not argue that for
22 the moment. We're just talking about logistics. USB,

10:09:15 1 we could take a short, early break now and get that
2 moving and then we could continue with the
3 cross-examination. Is there any objection to that
4 course from the Respondent?

5 MR. SMITH: Respondent has no objection to
6 that course.

7 PRESIDENT VEEDER: And the Claimant?

8 MR. POSNER: No, we have no objection,
9 Mr. President.

10 PRESIDENT VEEDER: Well, what we'll do is
11 we'll break early for coffee now, and I appreciate
12 it's in the middle of your cross-examination and I
13 know that's awkward, but this is the least of two
14 evils. We will give you a USB stick, and if without
15 talking to anybody else except the Secretary to the
16 Tribunal, you could download these documents onto the
17 USB stick, the Secretary will then get them printed
18 out for both sides but not yet the Tribunal, and then
19 we can take it from there. You can start your review
20 whenever you want and we can see what happens. You
21 may decide not to pursue it. You may think some
22 documents are relevant. You may think none are. But

10:10:09 1 at least we'd get over this hurdle.

2 So we'll break now for 15 minutes. It's now
3 5 past 10:00 and we'll go onto 10:20.

4 There is one matter which I have just been
5 reminded of, I assume these e-mails are in Spanish?

6 THE WITNESS: Yes.

7 PRESIDENT VEEDER: Is that going to cause any
8 difficulty? I hope not, on your part.

9 MR. POSNER: It will, for me, personally;
10 however, we do have Spanish-speaking colleagues who
11 can step in, fill the gap.

12 PRESIDENT VEEDER: Fine. Well, let's break
13 now and allow the Secretary to--

14 MR. ALI: If you could please give the
15 witness the customary instruction about not speaking
16 to anyone.

17 PRESIDENT VEEDER: During the break, please
18 only speak to the Secretary to the Tribunal. We will
19 say this to all witness, but when witnesses are being
20 cross-examined, during their time at the table, we do
21 not wish them to talk about the case to anybody except
22 in the presence of the Tribunal.

10:11:08 1 THE WITNESS: Mr. Chairman, may I add just a
2 short statement? Just for the record?

3 PRESIDENT VEEDER: Please do.

4 THE WITNESS: What I communicated to counsel
5 while you guys were dis--while you were discussing was
6 merely what I just said to you, that these e-mails are
7 outside the temporal scope of the Tribunal's order,
8 just to clarify.

9 PRESIDENT VEEDER: Fine. For the moment, to
10 avoid any possible misunderstandings, please don't
11 speak to anybody, except for this purpose, to the
12 Secretary of the Tribunal.

13 Thank you very much. So, we will break for
14 15 minutes.

15 (Brief recess.)

16 PRESIDENT VEEDER: Let's resume.

17 Before we take any further step, I'm going to
18 now call upon the Secretary of the Tribunal to
19 describe what has been achieved during the break.

20 SECRETARY MONTAÑÉS-RUMAYOR: Thank you very
21 much, Mr. President, and on behalf of ICSID, I can
22 confirm that I received from Mr. Parada a USB drive

10:32:24 1 containing 12 documents. I have provided a copy, an
2 electronic copy, to each Party, and we are also
3 providing a hard copy in a few minutes to both
4 Parties.

5 PRESIDENT VEEDER: These documents have not
6 been at our request shown to the Tribunal. They are
7 at the level of disclosure between the two Parties.
8 Whether they should come into evidence will be the
9 subject of a further application to be considered by
10 the Tribunal in further consultation with both
11 Parties.

12 Now, is there anything that needs to be
13 raised?

14 The Respondent, first.

15 MR. SMITH: Yes, Mr. President.

16 I would just like to point out that we have
17 now had a chance to briefly review these documents.
18 They are all documents from between March 7, 2008, and
19 December 22nd, 2008. The Tribunal's order for
20 production of documents indicated all documentation of
21 whatsoever nature coming into existence during the
22 period from 30 October 2007 to 31 December 2007.

10:33:32 1 Therefore, they were not produced because they were
2 not responsive to the Tribunal's order.

3 PRESIDENT VEEDER: Just to make sure there is
4 no misunderstanding, we understand that this
5 production was a voluntary production by the
6 Respondent. It was not subject to an order made this
7 morning by the Tribunal. That's correct, isn't it?

8 MR. SMITH: This production was a voluntary
9 production from Respondent, yes.

10 PRESIDENT VEEDER: Now, turning to the
11 Claimants, we understand that, Mr. Posner, you're
12 willing to proceed further with your cross-examination
13 subject to coming back when you and your team have had
14 a chance at the end of your cross-examination to look
15 at these documents; is that correct?

16 MR. POSNER: That's correct, Mr. President.

17 PRESIDENT VEEDER: Now, we have a further
18 request to all of us--and I mean all of us--from the
19 shorthand writers and the translators. Could we
20 please, all of us, speak more slowly.

21 I hope that lesson is well-taken.

22 Let's proceed.

10:34:30 1 MR. POSNER: Thank you, Mr. President.

2 BY MR. POSNER:

3 Q. Mr. Parada, when we broke, we were looking at
4 Annex E to your Witness Statement, and I'd like that
5 put back up on the screen.

6 And again, just to make sure that we're all
7 on the same page, this is an e-mail that you received
8 from the Attorney General of El Salvador on
9 March 7, 2008; correct?

10 A. Correct.

11 Q. And in this Reply, the Attorney General
12 doesn't mention the possible dispute in the making
13 that you had referred to in your e-mail; correct?

14 A. Correct.

15 Q. And he doesn't ask for the identity of the
16 investor in that possible dispute, does he?

17 A. No, he does not.

18 Q. In fact, he doesn't even mention ICSID
19 arbitration at all, does he?

20 A. No.

21 Q. And I think we established earlier that he
22 doesn't even set up a date for a future meeting with

10:35:22 1 you; right?

2 A. Correct.

3 Q. Now, Mr. Parada, if there was actually a
4 dispute with the prospect of arbitration coming
5 imminently, wouldn't the Attorney General have wanted
6 to set up a meeting with you right away?

7 MR. BADINI: Objection as to the thinking of
8 the Attorney General which is outside of the
9 competence of Mr. Parada's knowledge.

10 MR. POSNER: I will withdraw the question,
11 Mr. President.

12 BY MR. POSNER:

13 Q. It would appear from the Attorney General's
14 response, would it not, Mr. Parada, that the prospect
15 of impending arbitration against El Salvador was not a
16 concern of his at this time, was it?

17 A. I would have no way of knowing.

18 Q. Well, I'm simply asking you to tell me how
19 you understood this e-mail.

20 A. I understood the e-mail saying that he could
21 not meet with me on those dates.

22 Q. Mr. Parada, let's turn now to Annex F to your

10:36:21 1 Witness Statement.

2 And this is another e-mail you sent to the
3 Attorney General one month later; correct?

4 A. Correct.

5 Q. And in that e-mail you asked for a brief
6 meeting between you and your boss, Mr. Smith, and the
7 Attorney General; correct?

8 A. Correct.

9 Q. And here one of the things you propose to
10 discuss in that meeting is, and again I quote, an
11 ICSID arbitration against the Republic of El Salvador
12 that might be initiated under the CAFTA framework;
13 correct?

14 A. Correct.

15 Q. Now, again, you don't identify the investor
16 that might initiate that arbitration, do you?

17 A. The e-mail does not, no.

18 Q. Are you saying that that information was
19 communicated outside of the context of this e-mail?

20 A. No, I'm just answering your question. You
21 asking me if I'm communicating, and I'm saying the
22 e-mail does not reflect it.

10:37:12 1 Q. I see.

2 Now, again, isn't it possible that your
3 reference to an ICSID arbitration that might be
4 initiated really is a reference to the Commerce Group
5 arbitration?

6 A. No, it's not.

7 Q. But that's not evident from the context of
8 the e-mail, is it, Mr. Parada?

9 A. I suppose not.

10 Q. Now, you don't even identify the nationality
11 of the investor that might initiate this arbitration,
12 do you, in this e-mail?

13 A. No, I don't.

14 Q. Nor do you identify the sector involved in
15 that arbitration that might be initiated, do you?

16 A. No.

17 Q. Nor do you indicate when that arbitration
18 might be initiated, do you?

19 A. I have no way of knowing that.

20 Q. And you didn't receive a response to this
21 e-mail, did you?

22 A. I believe not, but in the e-mails that you

10:38:01 1 will receive shortly, there are a lot of--several of
2 those are e-mails in between the ones I have
3 submitted. I do not believe this particular one may
4 have been, but there will be perhaps a response.

5 There, just to clarify, there are further
6 responses from the--trying to set up this meeting with
7 the Attorney General between me and the administrative
8 assistant to the Attorney General. I'm not sure if
9 this particular e-mail was are replied to, but you
10 will be able to see that in the document.

11 Q. But presumably if you had piqued the Attorney
12 General's interest with your April 8th e-mail and he
13 said, yes, I want to learn more about this impending
14 ICSID arbitration, you would have attached that
15 response to your Witness Statement, would you have
16 not?

17 A. Correct.

18 Q. Now, this e-mail, this April 8, 2008 e-mail,
19 was sent about a month after publication of press
20 accounts in which President Saca was quoted as saying
21 that he was not in favor of granting those permits,
22 meaning mining-related permits, correct, which we've

10:39:04 1 discussed with some frequency in this arbitration; is
2 that correct?

3 A. I'm not sure I will agree with your
4 characterization, but this was sent after the March 11
5 newspaper articles that reported some statements by
6 President Saca.

7 Q. Isn't it the case, Mr. Parada, that it's
8 those articles that prompted you to send this e-mail
9 to the Attorney General?

10 A. Not at all.

11 Q. Let me turn to Annex J to your Witness
12 Statement, and this is a July 9th, 2008 e-mail you
13 sent to somebody named Ms. Elizabeth--and I may be
14 mispronouncing the name--Villalta; is that correct?

15 A. Ms. Villalta.

16 And she was the Legal Adviser to the Ministry
17 of Foreign Affairs.

18 Q. I see. And in that e-mail you say, and again
19 I'm going to quote. This is the first highlighted
20 quotation here: "I became aware of this dispute and
21 that the company was contemplating arbitration since
22 January."

10:40:02 1 Is that correct?

2 A. That's what the e-mail says.

3 Q. But you don't say how you became aware of the
4 dispute in January, do you?

5 A. No, I don't.

6 Q. You mentioned earlier, I believe, in your
7 direct testimony or maybe it was during the course of
8 my cross-examination that you had been following press
9 accounts about mining in El Salvador; correct?

10 A. Following press accounts about anything in El
11 Salvador, and I had been aware of--that it was a
12 dispute brewing.

13 Q. And you were aware, weren't you, that in
14 January 2008 Pacific Rim Mining Corp., that is the
15 parent of the Claimant in this case, had issued a
16 Press Release referring to protections under CAFTA,
17 weren't you?

18 A. Not at the time.

19 Q. You only became aware of that Press Release
20 after this case began?

21 A. Yes.

22 Q. Let's turn to Annex K to your Witness

10:40:54 1 Statement, Mr. Parada.

2 And this is another July 9th, 2008 e-mail to
3 the same Ms. Villalta; correct?

4 A. Correct.

5 Q. And in that e-mail you say that you had, and
6 again I quote, "just completed preliminary research
7 and found that the company in question (Pacific Rim
8 Mining) is Canadian, not a U.S. national; correct?

9 Do you see that statement?

10 A. Correct.

11 Q. Now, earlier when you were testifying about
12 your meetings with Mr. Ali and Mr. de Gramont in 2007,
13 you said that they had told you that the investor in
14 this possible dispute in the making was Pacific Rim
15 Mining; correct?

16 A. That's not correct.

17 Q. That's not what you testified earlier?

18 A. No.

19 Q. So, you're saying, and I'm sure we can all go
20 back and confirm this in the record, but you're saying
21 that when you met with Mr. Ali and Mr. de Gramont,
22 neither of them told you who the investor was in this

10:41:57 1 potential dispute in the making?

2 A. That is correct.

3 Q. So, was this the first time in this
4 July 9, 2008 e-mail, was the first time that you were
5 aware that the company in question was Pacific Rim
6 Mining?

7 A. Perhaps not with the name, but what caught my
8 attention was that this E mail was sent two days after
9 the existence of the dispute, the hiring of Crowell &
10 Moring, and the mention of potential arbitration
11 became public knowledge, and that Global Arbitration
12 Review article where I learned that said that the
13 company was U.S., and so that led me to double-check
14 deeper, and that's when I confirmed that it was not
15 U.S., that it was Canadian.

16 Q. Let me ask my question again, Mr. Parada,
17 because I don't think you answered it.

18 Was this the first time that you were aware
19 that the company in question was Pacific Rim Mining?

20 A. I do not believe it's the favorite time, but
21 I cannot tell for sure because the press reports that
22 I had read before may have mentioned the name Pacific

10:42:58 1 Rim Mining.

2 Q. But just to be clear, just so I'm absolutely
3 sure about this, you're saying you didn't learn that
4 the company at issue was Pacific Rim Mining when you
5 met with Mr. Ali and Mr. de Gramont; correct?

6 A. I did not learn it from them, no.

7 Q. And you may have learned it at some point
8 between those meetings in 2007 and this July 9, 2008,
9 e-mail; correct?

10 A. Or I may even have learned it before if I
11 read it in the newspaper, the press. I was just aware
12 that it was a Canadian mining company that had an
13 issue with the Government of El Salvador. I'm not
14 sure if I remember or knew the name of Pacific Rim
15 Mining.

16 Q. But in any event, you just completed your
17 preliminary research in July of 2008; correct?

18 A. I completed a preliminary research, yes.

19 Q. I see.

20 So, you had not done any preliminary research
21 on the company before sending your e-mail to the
22 Attorney General in March 2008; correct?

10:43:48 1 A. I may have done some preliminary.

2 Q. What preliminary research did you do before
3 sending that March e-mail?

4 A. I am not--I'm not sure.

5 Q. Did you--did you investigate the ownership of
6 the investor at issue?

7 A. No.

8 Q. Did you investigate the size of the
9 investment?

10 A. No.

11 Q. Did you investigate when the investment was
12 made?

13 A. No.

14 Q. So, let me pose the question again,
15 Mr. Parada: Did you do any preliminary research
16 before sending that March 2008 e-mail to the Attorney
17 General?

18 A. I may have.

19 Q. But you don't recall what kind of research
20 you did?

21 A. Not at the level that you mentioned, no. If
22 I conducted any research, it would have been a more

10:44:35 1 general level than what you mentioned.

2 Q. And this was general--general research you
3 were conducting in order to give the Attorney General
4 an update on information concerning a possible dispute
5 in the making; correct?

6 A. Just to know, because I wasn't really going
7 to go in to do a more in-depth research until I get an
8 appointment with the Attorney General, which I never
9 did--

10 Q. I see.

11 A. --until December 2008.

12 Q. Now, let's turn back to this Annex K. I'm
13 looking a little bit further down. In that same
14 paragraph we were examining before, and focusing in
15 particular on the very last sentence in that
16 paragraph, where you say, and I quote, "It definitely
17 seems like they're laying the groundwork to initiate
18 arbitration in the medium term if their plans are not
19 approved."

20 Do you see that statement?

21 A. Yes.

22 Q. So, am I correct, Mr. Parada, that it was

10:45:27 1 your understanding at this point, in July of 2008,
2 that the prospect of arbitration was still
3 speculative; correct?

4 A. I'm not--I'm not sure what you mean by
5 "speculative."

6 Q. I'm asking based on this statement, is it
7 fair to say, based on this statement, Mr. Parada, the
8 one that's just been highlighted, that your
9 understanding here in July 2008 was that the prospect
10 of arbitration was still speculative? It may--it
11 could happen? It might not happen?

12 A. I will not say speculative. I will say it
13 was possible, but not certain.

14 The announcement itself said that if the
15 company did not receive the permits, they would
16 initiate arbitration, so there was no certainty that
17 there would be arbitration.

18 Q. I see.

19 Now, just to be clear, even though in this
20 e-mail from July 2008 you do give some detail and
21 analysis based on your preliminary research, you still
22 don't mention anything about your having learned about

10:46:22 1 this dispute from counsel for the company; correct?

2 A. Correct.

3 Q. And let me just ask again, just so I'm clear
4 on this, Mr. Parada: If you were trying to get hired
5 by the Government of El Salvador, wouldn't it have
6 made sense to let them know at this point that you had
7 information about the impending dispute from the
8 lawyers representing the company?

9 A. No.

10 Q. And why wouldn't that have made sense,
11 Mr. Parada?

12 A. I did not normally reveal the sources of my
13 information. I just revealed the information.

14 Q. Don't you think it would have made you more
15 attractive as a potential lawyer for the Government if
16 they knew that you had special information you had
17 learned from counsel for the would-be claimant?

18 A. No.

19 Q. Let's turn to another annex to your Witness
20 Statement, Mr. Parada, and this time I'm looking at
21 Annex L. Let's magnify that a little bit.

22 So, Mr. Parada, this is a July 11, 2008

10:47:23 1 e-mail you sent to a partner at Dewey & LeBoeuf,
2 Mr. Don Picard, regarding upcoming travel to El
3 Salvador; correct?

4 A. Correct.

5 Q. And in that e-mail you say, and this is
6 highlighted, that you are going to, "meet with
7 Government officials regarding a dispute I have known
8 about for a couple of months." Correct?

9 A. Correct.

10 Q. So, you learned about the dispute a couple of
11 months before July 11, 2008; right?

12 A. That is a figure of speech, "couple of
13 months," "a few months." The point that I was trying
14 to make is that for the first time, that dispute had
15 been become public knowledge in the nine days since
16 July, and that I had known about this dispute before,
17 so the expression "a couple of months" is just enough
18 to say that I had learned about this dispute before it
19 became public knowledge.

20 Q. So, you weren't being very precise in your
21 language here; right?

22 A. Correct.

10:48:14 1 Q. But you were being precise in your Witness
2 Statement, I take it?

3 A. Yes.

4 Q. Let's turn to Annex N to your Witness
5 Statement, Mr. Parada, and let's magnify that a little
6 bit more.

7 This is a trip report you sent to partners at
8 Dewey & LeBoeuf in July of 2008, after your travel to
9 El Salvador; correct?

10 A. Correct.

11 Q. And here you say--and again this is the
12 sentence that's highlighted--"I had learned about the
13 dispute a few months ago." Right?

14 A. Correct.

15 Q. Was that also imprecise language, Mr. Parada?

16 A. Yes.

17 Q. Now, Mr. Parada, we have gone through a
18 series of e-mails between you and officials in the
19 Salvadoran Government and between you and your
20 colleagues at Dewey LeBouef, and in not a single one
21 of them do you refer to your meeting with Mr. Ali and
22 Mr. de Gramont in 2007, do you?

10:49:14 1 A. No.

2 Q. In fact, the only time you say that you
3 learned about this dispute from Mr. Ali and
4 Mr. de Gramont is in the Witness Statement you
5 submitted in this report in which you were counsel for
6 Respondent; isn't that correct?

7 A. There is no other way I could have learned
8 about this dispute but from them. That is the only
9 time that I say it is in my Witness Statement in
10 writing. I had told Mr. Smith before that I had
11 learned it from Mr. Ali and Mr. de Gramont.

12 Q. But you don't reveal that in your Witness
13 Statement, do you?

14 A. No.

15 Q. So, the first time you've told us that you
16 told anybody that's how you learned about this dispute
17 is just now in this hearing; correct?

18 A. Can you ask that question again.

19 Q. Sorry.

20 You testified a moment ago that in none of
21 the writings that we've reviewed do you reveal that
22 the way knew about this dispute was from your

10:50:01 1 conversation with Mr. Ali and Mr. de Gramont?

2 A. That's correct.

3 Q. And you do say in your Witness Statement that
4 that's how you learned about this dispute?

5 A. Yes.

6 Q. And you testified a moment ago that,
7 notwithstanding the absence of that reference from
8 these various written communications, you did tell
9 Mr. Smith that that's how you were aware of this
10 dispute; correct?

11 A. Correct.

12 Q. But you don't say in your Witness Statement
13 that you had these conversations with Mr. Smith, do
14 you?

15 A. No.

16 Q. Okay. Now--sorry.

17 MR. POSNER: Mr. President, may I have a
18 moment just to confer with my colleague.

19 PRESIDENT VEEDER: Certainly.

20 (Pause.)

21 MR. POSNER: Mr. President, I'm nearing the
22 end of this portion of the cross-examination, subject

10:51:33 1 to, of course, the review of the additional documents
2 we have just received, so if I may proceed, I just
3 have a few more questions for Mr. Parada.

4 PRESIDENT VEEDER: Please proceed.

5 BY MR. POSNER:

6 Q. Mr. Parada, I wanted to go back and revisit a
7 couple of the lines of questioning we've pursued this
8 morning.

9 First, I want to go back to what you
10 testified earlier about your departure from Arnold &
11 Porter. You said--and correct me if I'm
12 misremembering here--I believe you said you left
13 Arnold & Porter over disagreements about strategy in
14 the Inceysa Case; correct?

15 A. That's correct.

16 Q. But isn't it also correct that they ended up
17 adopting the strategy that you had advocated?

18 A. Yes.

19 Actually, a strategy had already been
20 adopted, and people were trying to change it, and I
21 was advocating to continue the strategy. So, after I
22 left Arnold & Porter, I communicated with the Attorney

10:52:37 1 General of El Salvador, advocated with him directly to
2 continue the strategy. He then told Arnold & Porter
3 to continue the strategy, and that is the strategy
4 that was continued, and that's the strategy how the
5 case was won.

6 Q. So, your testimony is that Arnold & Porter
7 continued with that strategy because of your
8 intervention with the Attorney General?

9 A. Because of the Attorney General's decision to
10 continue with that strategy.

11 Q. On the basis of your communication with him;
12 correct?

13 A. Yes.

14 Q. So, it's because of your intervention that
15 Arnold & Porter resumed with that strategy?

16 A. It was never abandoned--

17 MR. BADINI: Objection. I don't see how
18 Mr. Parada can know the thinking of Arnold & Porter
19 after he was no longer there. Competence.

20 PRESIDENT VEEDER: That's a fair objection,
21 isn't it?

22 MR. POSNER: That's fine. I'll let that go,

10:53:27 1 thank you.

2 BY MR. POSNER:

3 Q. The second line of questioning I'd like to
4 revisit briefly, Mr. Parada, is the meeting with
5 President Saca that Mr. Ali told you he had.

6 Now, Mr. Parada, you've worked extensively in
7 the Salvadoran Government; correct?

8 A. I worked for 15 years as member of the Army
9 of El Salvador. During that time I had assignments at
10 the Embassy and the Ministry of Foreign Affairs, if
11 that's what you mean.

12 Q. That's what I mean, indeed.

13 And in your experience, Mr. Parada, when a
14 meeting--when the President holds a meeting with
15 somebody, there's normally a formal agenda that's
16 kept; correct?

17 A. That's not correct.

18 Q. That's not correct.

19 Are there any documents that are normally
20 kept in the ordinary course of business to document
21 that a meeting was had by the President with a private
22 citizen?

10:54:25 1 A. Depends what type of meetings that is. When
2 I was assigned to the Embassy of El Salvador in
3 Washington, D.C., for four years, I had the privilege
4 of accompanying the President of El Salvador on
5 several of his visits, and this is not President Saca,
6 but President Cristiani, and I know for a fact that in
7 addition to the scheduled meetings in the agenda,
8 there were numerous meetings that happened that are
9 not on the agenda that are one-on-one and in which
10 records are not kept.

11 Q. And when those meetings that are not on the
12 agenda are held, are minutes kept of those meetings?

13 A. Under President Cristiani, that's the only
14 personal knowledge that I have. Meetings that he had,
15 for example, at the hotel where he was staying,
16 meetings I participated on, there was not records kept
17 of those meetings.

18 Q. There wasn't even a note taker present at
19 those meetings?

20 A. No.

21 Q. So, is it your testimony, Mr. Parada, that
22 when Mr. Ali told you he had was one of these informal

10:55:24 1 private meeting with President Saca?

2 A. First of all, I have no way of knowing if
3 what Mr. Ali told me is true.

4 Second, in other words, I don't know if he
5 actually met with President Saca or not, but second, I
6 have no way of knowing if he--if it was one of these
7 meetings or not.

8 Q. Now, Mr. Parada, at the beginning of your
9 testimony when we were talking about this information
10 that you say Mr. Ali and Mr. de Gramont told you about
11 impending ICSID arbitration, you said, I believe, that
12 you thought they had told you this with the
13 expectation that you would communicate that
14 information to people in the Government of El Salvador
15 in the hope of possibly resolving the case; correct?

16 A. Correct.

17 Q. Now, can you tell me, Mr. Parada, why, why
18 you would have come to that conclusion if you
19 understood that Mr. Ali had personally communicated
20 that information to President Saca?

21 A. When I--and I have already been in this
22 situation where somebody is trying to convey a message

10:56:31 1 to a high Government official on something that would
2 happen, and normally when that is done, it's done
3 through multiple avenues. One example the Ambassador
4 of the United States in El Salvador once asked me to
5 convey a very serious message to the Ministry of
6 Defense of El Salvador, and put me in a very difficult
7 position. I went and conveyed the message. Minister
8 of Defense thanked me for not having been afraid to
9 convey the message, and he said that I was the second
10 person that was giving him the same message.

11 Q. But even though you understood Mr. Ali had
12 communicated personally with the President of El
13 Salvador, you felt he was reaching out to you to
14 supplement that communication? Is that your
15 understanding?

16 A. I felt that may have been a possible reason
17 why he was telling me this.

18 Q. And why would he have needed to tell you this
19 if he had personally communicated this to the
20 President of El Salvador?

21 MR. BADINI: Objection. Calls for
22 speculation.

10:57:26 1 MR. POSNER: Well, Mr. President, Mr. Parada
2 has already testified about why he thought this
3 communication was being made to him. I'm just trying
4 to probe that a little bit further.

5 PRESIDENT VEEDER: If you want to pursue
6 this, you ought to rephrase the question. The way it
7 was put is not a question for this witness.

8 BY MR. POSNER:

9 Q. Mr. Parada, just so I understand, you
10 testified earlier that Mr. Ali told you about a
11 personal meeting he had had with President Saca;
12 correct?

13 A. Correct.

14 Q. And I take it it was your understanding that
15 in that meeting Mr. Ali had talked about this possible
16 dispute in the making; correct?

17 A. That he had told President Saca that there
18 was a potential arbitration in El Salvador, that he
19 threatened arbitration if El Salvador would not give
20 the permit.

21 Q. So, my only question is whether you have a
22 view as to why Mr. Ali would have revealed this

10:58:26 1 information to you with the view of your communicating
2 to the Government of El Salvador if Mr. Ali had
3 already communicated that information to President
4 Saca, as you understood it.

5 A. My view will be again that if he was--if that
6 was the reason he would be telling me that because
7 there might be other possible reasons. Another one
8 would be to entice me to join their law firm because
9 he was having all these contacts at high level. But
10 if that was the reason, I believe it would have been
11 to have the same message get through different levels,
12 different Ministries of the Government. For example,
13 who I would have given this information to, had I
14 given it to, would have been to somebody at the
15 Embassy of El Salvador who would pass it to the
16 Ministry of Foreign Affairs, or, as I did, pass it to
17 the Attorney General.

18 Q. And if you believed that that's why Mr. Ali
19 and Mr. de Gramont each independently revealed this
20 information to you, why did you wait until March of
21 2008 to say anything to officials in the Government of
22 El Salvador?

10:59:31 1 A. Until February 1st I did not feel personally
2 at liberty to reveal any of the information that I was
3 being given because they were still considering me.
4 Like Mr. de Gramont, for example, wanted to hire me
5 with the or wanted to invite me to be hired with the
6 expectation that I would build up their international
7 arbitration practice in Latin America.

8 So, first, I had to wait until I definitely
9 gave him a no answer that I was not interested.

10 Q. But you said, did you not, that you believed
11 at the time the reason Mr. Ali and Mr. de Gramont were
12 revealing this information to you was precisely so
13 that you would go out and tell officials of the
14 Government of El Salvador; right?

15 A. I don't think I said that I believe that's
16 why they were telling me. I was speculating that
17 might be a reason why they were telling me.

18 And again, I didn't have a duty, either, to
19 do what they told me or they wanted me to do when they
20 wanted to do it.

21 Q. Mr. Parada, just a small factual point that
22 you testified about earlier in your testimony, I

11:00:36 1 believe you said you were admitted to the Bar in 2001;
2 is that correct?

3 A. I was admitted to the Virginia Bar in 2001.
4 I believe then I was admitted to the Bar of the
5 District of Columbia subsequent to that; it may have
6 been in 2002.

7 Q. I see.

8 So, you were admitted to the Bar in Virginia
9 in the same year that you graduated from law school;
10 is that correct?

11 A. Correct.

12 Q. Are you admitted to any other Bars?

13 A. The district of Columbia Bar.

14 Q. Any other Bars?

15 A. As far as states, no. If that's what I
16 understands what you understand by Bar.

17 Q. That's what I understand by Bar, correct.

18 Mr. Parada, I have one last question to you:
19 I submit to you, Mr. Parada, that what Mr. Ali and
20 Mr. de Gramont said to you in their screening
21 interview of you in November and December 2007 is not
22 what you describe in your Witness Statement, but that

11:01:28 1 rather knowing about your extensive work on behalf of
2 El Salvador they asked whether, in principle, you
3 would be uncomfortable representing a client with
4 interests adverse to El Salvador. Isn't that what
5 really happened, Mr. Parada?

6 MR. BADINI: Objection. Counsel is
7 testifying.

8 PRESIDENT VEEDER: I don't think he was
9 testifying. He was putting to a witness a statement
10 which the witness can agree with or disagree with, so
11 please proceed.

12 THE WITNESS: I do believe that at some point
13 they asked me if I would be uncomfortable working in a
14 case against El Salvador.

15 BY MR. POSNER:

16 Q. And isn't that, in fact, what happened,
17 Mr. Parada, rather than the characterization that you
18 give in your Witness Statement?

19 A. No, that is, in part, consistent with what
20 happened.

21 Q. Well, if they did pose this question to you
22 about whether you would be uncomfortable representing

11:02:13 1 a client adverse to El Salvador, how did you respond?

2 A. I believe I may have responded that I
3 probably would be uncomfortable, that perhaps, you
4 know, I would be fine with assisting, trying to solve
5 a dispute before resulting to arbitration, but I would
6 be uncomfortable, and that's one of the main reasons
7 why I would not even consider joining them. I would
8 be extremely uncomfortable working on an ICSID
9 arbitration against El Salvador.

10 Q. And did you tell them that you had this
11 discomfort? Did you say that at the November 27th
12 meeting?

13 A. I don't recall which one.

14 Q. So, it's your contention, Mr. Parada, that
15 Mr. Ali and Mr. de Gramont invited you to join Crowell
16 & Moring even though you had told them you would be
17 uncomfortable representing a client adverse to El
18 Salvador; is that your testimony?

19 A. That might be.

20 Q. It is your testimony or it might be your
21 testimony?

22 A. It might be that they told me that in spite

11:03:09 1 of--I don't know what you're--

2 Q. I'm asking what your testimony is. Is it
3 your contention, Mr. Parada, that you were invited to
4 join this law firm, Crowell & Moring, notwithstanding
5 the fact that you had told Mr. Ali and Mr. de Gramont
6 that you would feel uncomfortable representing a
7 client with interests adverse to the Government of El
8 Salvador? Is that your contention?

9 A. Yes, because that was not their only case,
10 and Mr. de Gramont actually told me--and he's free to
11 deny it if he would like, that they wanted to build up
12 a Latin American practice, which goes beyond this
13 particular case.

14 MR. POSNER: Mr. President, bear with me one
15 moment. I may have one or two further questions.

16 (Pause.)

17 MR. POSNER: Mr. President, I have no further
18 questions at this time.

19 Of course, after reviewing the new documents
20 that have been produced to us, I may have further
21 questions and would ask the Tribunal for its
22 indulgence so that I might be able to resume the

11:04:27 1 cross-examination this afternoon.

2 PRESIDENT VEEDER: Would it be more
3 convenient to you to take time out now to review the
4 documents and then you can complete your
5 cross-examination before we have redirect examination
6 from the Respondent?

7 MR. POSNER: I actually haven't seen the
8 documents yet, so I don't know how voluminous they
9 are.

10 MR. ALI: This is the pile. Mr. Chairman, it
11 isn't a very large pile, but it probably will take us
12 about 20 minutes to review them. I think that if we
13 took a half an hour break.

14 PRESIDENT VEEDER: Let's take a half an hour
15 break, and if you need longer, let us know. If
16 shorter--let's take half an hour break. If you need
17 longer, let us know, and if you need less time when
18 you finish, let us know, too. That would cause no
19 difficulty, I hope, to the Respondents. It would seem
20 to us better to finish the cross-examination before we
21 had the redirect.

22 MR. SMITH: The Respondent agrees.

11:05:19 1 PRESIDENT VEEDER: If you have different
2 view, tell us.

3 MR. SMITH: No, no, Respondent agrees.

4 PRESIDENT VEEDER: Good. We are going to
5 break now for half an hour, and we're going to ask you
6 again please don't discuss the case with anybody until
7 you come back before the Tribunal in about half an
8 hour's time.

9 THE WITNESS: Mr. Chairman, I would like to
10 just address one small issue with regard to the
11 documents that I provided to the Secretary of the
12 Tribunal. Those documents are numbered, and there is
13 a break in the sequence of the numbers. It goes from
14 9 to, I believe, 16. There are documents in between
15 those that I did not give a copy because those
16 involved the actual negotiations of the contract with
17 the Government of El Salvador that I would prefer not
18 to disclose.

19 PRESIDENT VEEDER: We understand that. If
20 necessary, we will come back to that.

21 Let's break now for 30 minutes and let us
22 know what the position is when you know.

11:07:32 1 (Recess.)

2 PRESIDENT VEEDER: Let's resume.

3 What's the position? We ask the Claimants.

4 MR. POSNER: Mr. President, we have had a
5 chance to review the documents that Mr. Parada has
6 provided. There is one which is an e-mail I guess
7 from March 7, 2008, continuing--I guess it's connected
8 to an e-mail that comes on March 10, 2008. I would
9 like to ask the witness a couple of questions about
10 that document, and for that purpose would like to have
11 that admitted into the record.

12 There is a second document which is an e-mail
13 exchange that begins on December 17, 2008, and
14 continues through December 22, 2008. I may or may not
15 want to ask Mr. Parada about that document, depending
16 on what he's able to recall independently
17 without--without that document before him.

18 PRESIDENT VEEDER: And then I take it at
19 least you'd like to put the documents into evidence
20 before the Tribunal?

21 MR. POSNER: At a minimum the first
22 one--well, yes. To make it easier, yes, I'd like to

11:47:38 1 put both into evidence.

2 PRESIDENT VEEDER: Is there any objection to
3 that application from the Respondent?

4 MR. SMITH: No objection.

5 PRESIDENT VEEDER: Well, let's receive copies
6 of those two documents. We don't need copies of the
7 others.

8 And is it appropriate or convenient for you
9 to continue your cross-examination now along those
10 lines?

11 MR. POSNER: It probably would be best for
12 the witness to have at least the first document before
13 him.

14 PRESIDENT VEEDER: It certainly would, as
15 always.

16 Thank you for your patience. We seem to have
17 sorted it out, but it's been time well spent.

18 MR. SMITH: May I just make one comment.

19 Since the document being referred to is in
20 Spanish, and Mr. Badini does not speak Spanish, I
21 would ask the permission of the Tribunal to be
22 momentarily the person who would be defending

11:48:29 1 Mr. Parada during this.

2 PRESIDENT VEEDER: Well, even better than
3 that, we are going to put these documents before the
4 interpreters, and we would like the interpreters to
5 read into the transcript their translation of at least
6 the first document.

7 MR. SMITH: Okay.

8 PRESIDENT VEEDER: We'll see if counsel is
9 going to cross-examine on the second document.

10 MR. SMITH: Thank you, Mr. President.

11 PRESIDENT VEEDER: So, the document shall be
12 given to the interpreters and to the witness and to
13 the Tribunal.

14 MR. POSNER: Mr. President, do you want it
15 read in before I proceeding with my questioning?

16 PRESIDENT VEEDER: Well, I was going to ask
17 you just to help us, now that we've received the
18 exhibits marked C-93 and C-94, the document on which
19 you're going to cross-examine for certain, is that
20 C-93?

21 MR. POSNER: That's correct.

22 PRESIDENT VEEDER: And how much of that would

11:49:23 1 it be appropriate to translate? The whole thing or
2 just a paragraph?

3 MR. POSNER: Well, I'm not going to ask
4 Mr. Parada about particular statements in the e-mail.
5 I'm going to ask him generally about the e-mail and
6 how it fits in with correspondence that I questioned
7 him about earlier.

8 PRESIDENT VEEDER: I think nonetheless it may
9 be appropriate to have the whole e-mail translated
10 into the transcript.

11 I'm speaking to the interpreters, but I can't
12 hear what they're saying, but have the interpreters
13 got C-93 before them?

14 SECRETARY MONTAÑÉS-RUMAYOR: Yes.

15 PRESIDENT VEEDER: Could we ask the
16 interpreters then to look at C-93, and we see it's an
17 e-mail to Mr. Parada, and if we can start with the
18 lines below "Subject" and have that interpreted up
19 until Mr. Parada's name at the bottom of the page
20 translated.

21 THE INTERPRETER: "Dear Mr. Safie, thank you
22 very much for a kind message. I'm sorry that our

11:50:34 1 travel plans did not really match. I could change my
2 plans to arrive in El Salvador on Tuesday, the 11th,
3 in the Continental flight that arrives at midday. If
4 it were possible, we could meet on that day after 4:00
5 p.m.

6 "I could also try and change the return
7 flight to travel on Tuesday, the 18th, and then we can
8 meet on Monday, the 17th.

9 "However, I understand that you are going to
10 have a very full agenda both the day before the trip
11 and the day in which you're coming back.

12 "So, I deem that the most wise thing to do
13 would be for you to tell me of other possible dates
14 for us to schedule a meeting in the next few weeks.

15 "I would then travel again to El Salvador,
16 perhaps in the company of my boss, Derek Smith, who
17 speaks Spanish, and we could meet there with greater
18 convenience.

19 "On the other hand, in connection with the
20 success of immigrants of Salvadoran origin have had, I
21 would like to tell you the law firm in which I work
22 has given me the opportunity to conduct legal work

11:52:00 1 that is gratuitous in nature or pro bono for the
2 immigrant community. Through the work that we have
3 conducted, we have helped a number of Salvadoran
4 students so that they can go to the university because
5 we feel that that is one of the best paths to success.

6 "The work has--our work has focused in--has
7 been focused on the access of immigrant students to
8 universities in the State of Virginia because there
9 are many legal obstacles on their way, particularly in
10 the State of Virginia. Thanks to this effort last
11 year, state authorities will--state authorities
12 changed the regulations to allow all students with
13 TPSs that reside in Virginia, most of them of
14 Salvadoran origin, to attend university paying for
15 university fees as if they were state residents.

16 "This change favors 200 students per year.
17 For most of them, this change represents a difference
18 between attending university and not attending because
19 the cost of university studies is drastically
20 increased from \$6,000 a year, which is the amount paid
21 by state residents, to \$18,000 a year, which is the
22 amount paid by nonresidents.

11:53:38 1 "I'm writing--I'm including here the Internet
2 link of an article that was published in the Hispanic
3 newspaper of the Washington area to give notice to all
4 students of the area of this favorable change. The
5 link is the following," and then a link, an Internet
6 link, follows.

7 "This article also appeared in The Washington
8 Post, and Internet link follows.

9 "At this time, we are working on a draft bill
10 to give students the opportunity--to give opportunity
11 students who have not received permanent residence the
12 opportunity to attend universities in Virginia. The
13 bill was approved by the State Senate, and it is being
14 negotiated with the State Chamber of Representatives
15 or House of Representatives.

16 "I await your news in the next few days about
17 what the best dates are for a meeting. Meanwhile,
18 please receive a very warm greeting, and I would like
19 to wish you success in your trip.

20 "Cordially, Luis Parada."

21 PRESIDENT VEEDER: Just for completion, could
22 we ask the interpreter to translate the "gracias" line

11:55:17 1 at the top of the e-mail as well, please. Then I
2 think it will be fully translated, and we're going to
3 ask Mr. Smith whether he's content with the
4 translation on his side.

5 THE INTERPRETER: Thank you for your e-mail.
6 Definitely, it will have to be later on.

7 MR. SMITH: Respondent has no objection to
8 the translation.

9 (Tribunal conferring.)

10 PRESIDENT VEEDER: Let's proceed.

11 BY MR. POSNER:

12 Q. Mr. Parada, you have before you Exhibit C-93;
13 correct?

14 A. Correct.

15 Q. And I'd like to just put this into context.
16 Earlier today we talked about an e-mail exchange
17 between you and the Office of the Attorney General in
18 El Salvador. This was Annexes D and E to your Witness
19 Statement; correct?

20 A. Correct.

21 Q. And am I correct to understand that this new
22 Exhibit C-93, that is there are actually two e-mails

11:56:46 1 in here. I'm referring to the one from March 7, 2008,
2 at 4:07 p.m. This is your Reply to what was in effect
3 Annex E to your Witness Statement; correct?

4 A. That's correct.

5 MR. SMITH: Mr. President, I believe that the
6 e-mail he's been referring to has not been translated.

7 MR. POSNER: C-93 is what was just
8 translated.

9 PRESIDENT VEEDER: C-93 is two e-mail
10 messages, and counsel was referring to the second one
11 on that page which has been translated.

12 MR. POSNER: Right.

13 BY MR. POSNER:

14 Q. Just so I understand, Mr. Parada, the March
15 7th e-mail within C-93, that's your reply to the
16 Attorney General's e-mail which is Annex E to your
17 Witness Statement; is that correct?

18 A. That is correct.

19 Q. Now, Mr. Parada, earlier you testified that
20 after the February 2008 conversation with
21 Mr. de Gramont in which you said that you weren't the
22 right person for the Crowell & Moring team, that after

11:57:46 1 that point you felt no obligation to hold confidential
2 the information you had learned in your meetings with
3 Crowell & Moring; correct?

4 A. Correct.

5 Q. And, in fact, I believe you testified earlier
6 that at that point you jumped into action--those were
7 your words; correct?

8 A. I don't remember. It wasn't at that point.
9 It was actually several weeks later--

10 Q. Okay. But at that point--

11 A. --action actively trying to contact the
12 Government of El Salvador.

13 Q. And the first active attempt to contact the
14 Government of El Salvador was the e-mail from earlier
15 on this day, March 7th, that was Annex D to your
16 Witness Statement; correct?

17 A. The first--the first attempt to contact the
18 Government of El Salvador was the e-mail I sent to
19 Mr. Luis Aparicio at the Embassy of El Salvador trying
20 to get the contact information for the Attorney
21 General.

22 Q. I see.

11:58:36 1 But the first--am I correct that the first
2 substantive contact once you received--the first
3 substantive contact once you received the e-mail
4 information was your Annex D to your Witness
5 Statement; is that correct?

6 A. Yes.

7 Q. And just to refresh my memory, that's the one
8 in which you referred to the possible dispute in the
9 making that may result in arbitration; correct?

10 A. Correct.

11 Q. Now, Mr. Parada, in the e-mail that we have
12 just examined from later that day on March 7, the
13 document that's now been marked C-93, you make no
14 information--you make no reference to the possible
15 dispute in the making that you had learned about from
16 Mr. Ali and Mr. de Gramont, do you?

17 A. I make no further reference to that dispute,
18 no.

19 Q. Isn't it--isn't it the case, Mr. Parada, that
20 if you had had significant information at your
21 disposal and you were keen to get this representation
22 from the Government of El Salvador, wouldn't it have

11:59:36 1 made sense to reveal in this further e-mail exchange
2 with the Attorney General the significant information
3 that you had in your possession?

4 A. No.

5 Q. Mr. Parada, I'd like to ask you one last
6 question: When did you finally meet with the Attorney
7 General of El Salvador?

8 A. December of 2008.

9 Q. Thank you, Mr. Parada.

10 MR. POSNER: In light of Mr. Parada's
11 testimony, Mr. President, we won't need to pose
12 questions about the document that's been marked as
13 C-94.

14 PRESIDENT VEEDER: Thank you very much.

15 MR. POSNER: And I believe that's all we have
16 at this time, subject to recross.

17 PRESIDENT VEEDER: Well, let's proceed to the
18 re-examination or the redirect by the Respondent.

19 MR. BADINI: Thank you, Mr. President.

20 REDIRECT EXAMINATION

21 BY MR. BADINI:

22 Q. Mr. Parada, thank you for your patience.

12:00:30 1 I would just like to go back over some of the
2 subject areas that Mr. Posner asked you about.

3 But before I do that, let me just ask, how
4 old are you, Mr. Parada?

5 A. 51 years old.

6 Q. And I think you testified that you graduated
7 from law school at--what year?

8 A. 2001.

9 Q. So, how old were you when you graduated from
10 law school?

11 A. 41.

12 Q. Okay. Now, let's go back to your Witness
13 Statement, and in particular I'd like you to look back
14 at Paragraphs 6 and 7, where you talk about these two
15 meetings in November and December of 2007 with Crowell
16 & Moring attorneys.

17 Are you looking at those paragraphs?

18 A. Yes, I am.

19 Q. Now, Mr. Posner asked--well, let me back up.

20 Did you put in your Witness Statement your
21 best recollection of what happened during the times
22 that you reference in that Witness Statement?

12:01:42 1 A. What do you mean by my best recollection?

2 Q. Well, did you put your best recollection at
3 the time based on what you remembered and any
4 documents that you reviewed?

5 A. No, I did not.

6 Q. Okay. Why not?

7 A. Because there was one particular--well,
8 actually there were several things I didn't put in.
9 Some were not relevant. The one that was relevant,
10 which was what Mr. Ali told me at the meeting in Les
11 Halles, I did not put it in--

12 Q. No, perhaps you misunderstood my question.
13 I'm not--I don't want to talk about at this point--we
14 may get there--what you did not put in. Let me just
15 focus on what you did put in, okay?

16 With respect to what you did put in in your
17 Witness Statement, was it your best recollection based
18 upon what you remembered and documents that you
19 reviewed?

20 A. Yes. What is there is my best recollection.

21 Q. Okay. Now, Mr. Posner asked you a series of
22 questions about whether it was possible that Mr. Ali

12:02:40 1 was not at the first meeting on November 27 at Crowell
2 & Moring. Do you remember those questions?

3 A. Correct.

4 Q. Okay. Let me ask you this: Is there any
5 doubt in your mind that you met with attorneys of
6 Crowell & Moring on November 27, 2007 at their
7 offices?

8 A. No, there is not.

9 Q. And let me show you what you have attached to
10 your Witness Statement as S-10.

11 Can you identify this document for the
12 record.

13 A. It is an e-mail dated December 4th, 2007,
14 from Mr. Alex de Gramont to me in which it says, "Dear
15 Luis, I enjoyed seeing you recently. Here is the
16 ICSID in the Americas article that I mentioned to
17 you."

18 Q. Did you say Mr. de Gramont says, "I enjoyed
19 seeing you recently"?

20 A. Yes.

21 Q. This is on December 4, 2007; correct?

22 A. Correct.

12:03:45 1 Q. And this is between those two meetings in
2 time?

3 A. Yes.

4 Q. Now, when Mr. de Gramont says, "I enjoyed
5 seeing you recently," do you know what he was talking
6 about?

7 A. He was talking about the meeting, the
8 interview that we had the week before.

9 Q. Okay. Now, let me ask you about Mr. Ali.
10 Is there any doubt in your mind that you met
11 with Mr. Ali in at least one of those two meetings,
12 November 27th or December 7th?

13 A. No, there is not.

14 Q. Now, how do both of those dates, November 27,
15 2007, and December 7, 2007, relate to the
16 nationalization of the Claimant? Are they before or
17 after?

18 A. Those both dates are before the date in which
19 the Claimant became a U.S. enterprise.

20 Q. Now, let's go back to your Witness Statement,
21 Paragraph 7, because you have a specific comment about
22 what Mr. Ali said, and I have reference to the last

12:04:56 1 sentence of Paragraph 7.

2 Now, this paragraph is about the December 7th
3 breakfast meeting; correct?

4 A. Correct.

5 Q. And in the last sentence you say, "Mr. Ali
6 also mentioned that he had been present at a meeting
7 with President Saca during President Saca's official
8 visit to Washington, D.C., one week earlier."

9 Do you see that?

10 A. Yes.

11 Q. Had you heard from any other source the
12 suggestion that Mr. Ali had had a meeting with
13 President Saca during that visit?

14 A. No.

15 Q. Okay. Do you know whether in this
16 arbitration the Claimant has ultimately admitted that
17 Mr. Ali was at that function during that week?

18 A. Claimant finally admitted in one letter that
19 Mr. Ali, among others, was present at a function
20 during President Saca's visit to Washington a week
21 before our breakfast meeting.

22 Q. All right. Let's put in front of you

12:06:14 1 Claimant's April 22nd letter.

2 MR. BADINI: And, for the record, the
3 Tribunal will find this attached to our April 27th
4 letter to the Tribunal, and I have highlighted a
5 section of that letter.

6 BY MR. BADINI:

7 Q. Can you read the highlighted sentence into
8 the record.

9 A. Yes.

10 It says, "On 28 November 2007, Messrs. Arif
11 H. Ali and R. Timothy McCrum attended a large ticketed
12 luncheon in Washington, D.C., which was sponsored by
13 the International Republican Institute, (IRI) and
14 where then-President Saca was a keynote speaker."

15 Q. Okay. And I think you have in your--I'm
16 going to stand up so that the person in the Booth
17 knows that the mike can be turned on. I'm going to
18 put on the board a 2007 calendar, which I think you
19 should also have in front of you, and I just want to
20 mark these dates.

21 Tell me again when your breakfast meeting was
22 with Mr. Ali and Mr. de Gramont.

12:07:27 1 A. On Friday, December 7th.

2 Q. Okay. I'm going to write--I'm just going to
3 put small B there for breakfast in a box because it's
4 a small box.

5 And let's look back to your Witness Statement
6 can you pull that off the board without destroying the
7 B? If not, I'll put it back.

8 Let's just look at your Witness Statement
9 again. And you say in Paragraph 7, "Mr. Ali mentioned
10 he had been present at a meeting with President Saca
11 one week earlier."

12 A. Correct.

13 Q. Okay. Let's put the calendar up again. Here
14 is the breakfast on December 7th. One week earlier,
15 we are talking about which week?

16 A. We're talking about the last week in
17 November.

18 Q. The week of November 25th; correct?

19 A. Correct.

20 Q. And, in fact, in the letter that the
21 Claimants submitted to the Tribunal, when did they say
22 that Mr. Ali attended this function with President

12:08:32 1 Sacas?

2 A. They said it was in November--on
3 November 28th.

4 Q. During the week that you had reference to in
5 your Witness Statement; correct?

6 A. Correct.

7 Q. And again, did anyone other than Mr. Ali tell
8 you that he had attended that meeting?

9 A. No.

10 Q. Now, let's look at Annex D again, which I
11 believe you testified was an e-mail that you sent to
12 the Attorney General on March 7th; correct?

13 A. Well, that e-mail itself is addressed to the
14 Administrative Assistant to the Attorney General.

15 Q. I stand corrected. Thank you.

16 And what is the date of this?

17 A. Date is March 7th, 2008.

18 Q. And was this before or after the article
19 attributing various comments to President Sacas about
20 an alleged mining ban?

21 A. This was before that article.

22 Q. Okay. Now, do you remember Mr. Posner asked

12:09:54 1 you a series of questions suggesting that the phrase
2 "possible international dispute" in your e-mail was a
3 reference not to the dispute that we are now here
4 talking about today, but to another dispute called the
5 Commerce Group dispute. Do you remember those
6 questions?

7 A. Yes.

8 Q. Did you have any role in the Commerce Group
9 arbitration?

10 A. Yes.

11 Q. What was your role?

12 A. Counsel for El Salvador.

13 Q. And who was the other Party in that
14 arbitration? I take it it was the Commerce Group?

15 A. Yes.

16 Q. Who was counsel for the Commerce Group?

17 A. Counsel for Commerce Group was a
18 family-related law firm, Machulak, Robertson & Sodos.

19 Q. I'm sorry, can you say that again for the
20 court reporter?

21 A. Machulak, spelled M-A-C-H-U-L-A-K, Robertson
22 & Sodos.

12:11:03 1 And they also had also as counsel Mr. Andrew
2 Newcombe.

3 Q. Were you involved at all phases of the
4 Commerce Group arbitration?

5 A. Yes.

6 Q. Who was the Attorney General of El Salvador
7 when Dewey was hired to represent them in the Commerce
8 Group?

9 A. It was the current Attorney General,
10 Mr. Romeo Benjamin Barahona.

11 Q. And who was the Attorney General when Dewey
12 was hired to represent El Salvador in this
13 arbitration?

14 A. It was the previous Attorney General, Felix
15 Garrid Safie.

16 Q. Okay. Now, in your role in the Commerce
17 Group arbitration, I take it you had access to the
18 filings that the Parties made to the Tribunal?

19 A. Yes.

20 Q. Did you ever see in the entire course of that
21 arbitration Crowell & Moring appear on behalf of any
22 Party in the Commerce Group?

12:12:20 1 A. No.

2 Q. Did you ever hear from any source that
3 Crowell & Moring ever did any work at all for anybody
4 in connection with the Commerce Group arbitration?

5 A. No.

6 Q. Now, you were asked a direct question: Was
7 it possible that this dispute that you were talking
8 about was really the Commerce Group arbitration and
9 that you misunderstood or misinterpreted what you
10 heard from Messrs. de Gramont and Ali? Do you
11 remember being asked that question?

12 A. Yes.

13 Q. And I believe your answer was it was not
14 possible.

15 A. Correct.

16 Q. Why was it not possible that the reference
17 was to the Commerce Group arbitration?

18 A. Because the description of the dispute in
19 both cases is entirely different and inconsistent with
20 the chore. It could not have been the Commerce Group
21 dispute because Commerce Group was alleging
22 expropriation based on the rejection or termination of

12:13:27 1 the revocation of the environmental permits that they
2 already had, and they already had an Exploitation
3 Concession.

4 Pacific Rim, on the contrary, was merely
5 applying for the environmental permits and applying
6 for the Exploitation Concession, so they could not
7 have been asking the Government to approve those
8 permits because those permits had already been--I
9 mean, Commerce Group could not have been asking the
10 Government of El Salvador to approve those permits
11 because those permits had already been approved.
12 Their dispute would have been trying to get the
13 revocation removed.

14 Q. So, based on your discussions with Mr. Ali
15 and Mr. de Gramont, was it your understanding that the
16 dispute was about obtaining permits or revoking
17 existing permits?

18 A. It was about obtaining the permit.

19 Q. You were also shown a series of e-mails where
20 you talked about how you had learned of the dispute a
21 few months ago or a couple of months ago. Do you
22 remember those e-mails?

12:14:42 1 A. Yes.

2 Q. And I think they were dated in the spring
3 sometime of 2008. Do you remember that?

4 A. Yes.

5 Q. Okay. At the time you wrote those e-mails
6 when you used the term "a couple of months ago" or "a
7 few months ago," did you have any belief when you were
8 composing those e-mails that you needed to be precise
9 as to when you actually learned of the date that the
10 dispute arose?

11 A. No.

12 Q. In fact, when did you first learn that that
13 was an issue at all in this arbitration?

14 A. After El Salvador filed their Objections to
15 Jurisdiction.

16 Q. Yes.

17 And there was one e-mail in that sequence
18 about when you learned of the dispute that Mr. Posner
19 did not put in front of you, and I'd like to put in
20 front of you again, and that's Annex R.

21 A. Correct.

22 Q. Now, you sent this e-mail on December 10,

12:16:02 1 2008; is that correct?

2 A. Yes.

3 Q. And tell me again the circumstances of you
4 sending this e-mail.

5 A. This e-mail was in response to a previous
6 e-mail from Mr. Eric Schwartz, partner at Dewey &
7 LeBoeuf in the Paris office, who had sent the e-mail
8 to the recipients of my Reply, including--and to
9 myself, alerting us that there had been a Notice of
10 Arbitration filed against El Salvador, and then I
11 replied to him and thanked him, and I don't know if
12 you would like to me to read what I said.

13 Q. Sure. Can you read the highlighted sentence,
14 please.

15 A. Kay. Well, it says, "We have been on top of
16 that dispute since last December, when I first learned
17 that opposing counsel was preparing for arbitration."

18 Q. And by December, you have reference to
19 December of 2007?

20 A. Yes.

21 Q. And by opposing counsel, do you have
22 reference to the gentlemen sitting at Claimant's table

12:16:56 1 there?

2 A. Yes.

3 MR. BADINI: No further questions on
4 redirect.

5 PRESIDENT VEEDER: Thank you very much.
6 Are there any further cross-examination
7 questions?

8 MR. POSNER: I do have a handful of
9 questions. I expect no more than five minutes' worth
10 of questions if I can have a moment to confer with my
11 counsel.

12 PRESIDENT VEEDER: Of course you can.

13 (Pause.)

14 MR. POSNER: Mr. President, as I said, just a
15 handful of questions, if I might.

16 RE-CROSS-EXAMINATION

17 BY MR. POSNER:

18 Q. I'd like to start, Mr. Parada, with the last
19 exhibit or document that Mr. Badini had you look at.

20 This is Annex R to your Witness Statement.

21 Do you have that in front of you?

22 This is your e-mail to Mr. Schwartz.

12:19:05 1 A. Yes.

2 Q. And what's the date on this e-mail,
3 Mr. Parada?

4 A. December 10, 2008.

5 Q. And, in fact, this is after Pac Rim came in
6 and had filed its Notice of Intent in this case; isn't
7 that right?

8 A. Correct.

9 Q. Now, Mr. Badini asked you a series of
10 questions about the Commerce Group case.

11 Did you know back in the fall of 2007--that
12 is in November and December 2007--who would be
13 representing Commerce Group in that arbitration?

14 A. No.

15 Q. Did you know anything about the Commerce
16 Group dispute back then?

17 A. I don't believe so.

18 Q. So, you didn't know at that time that that
19 case involved a revocation of permits, whereas this
20 case involves a failure to grant permits; correct?

21 A. Not at the time I did not know.

22 Q. And you didn't know that when you sent your

12:19:58 1 March 2008 e-mail to the Attorney General, did you?

2 A. No.

3 Q. One last question, Mr. Parada, if we could go
4 back to I think it was Exhibit S, as in Samuel, 10.

5 This is the December 4th, 2007 e-mail from
6 Mr. de Gramont to you.

7 Do you see that?

8 A. Yes.

9 Q. And Mr. de Gramont attaches to that e-mail an
10 article from Global Arbitration Review; correct?

11 A. Correct.

12 Q. And that article was co-authored by
13 Mr. de Gramont and Mr. Ali; correct?

14 A. Yes.

15 Q. Wouldn't it--and presumably--well, do you
16 know why Mr. de Gramont was sending you the e-mail
17 with this article?

18 A. He mentioned it during our conversation.

19 Q. And wouldn't it have made sense if Mr. Ali
20 was also part of that conversation for Mr. de Gramont
21 to have copied Mr. Ali on this e-mail?

22 MR. BADINI: Objection. Competence.

12:21:01 1 THE WITNESS: I'm sorry, could you repeat the
2 question.

3 MR. BADINI: I'm simply asking--

4 PRESIDENT VEEDER: It's not a question for
5 this witness. It's a fair comment to the Tribunal as
6 a submission, but not for this witness.

7 MR. POSNER: Okay. I will withdraw the
8 question, then, and I have nothing further.

9 PRESIDENT VEEDER: Any further questions from
10 the Claimant?

11 MR. BADINI: I have nothing further,
12 your--Mr. President. Sorry. Your Honorable
13 President.

14 PRESIDENT VEEDER: Usually it's "members of
15 the jury," but we will take anything we can get.

16 Well, thank you very much indeed for your
17 patience this morning. We've now come to the end of
18 your testimony. The Tribunal has no further
19 questions.

20 THE WITNESS: Thank you, sir.

21 (Witness steps down.)

22 PRESIDENT VEEDER: So, we will adjourn now

12:21:41 1 and we'll resume at 1:30 for the next witness. Thank
2 you.

3 (Whereupon, at 12:21 p.m., the hearing was
4 adjourned until 1:30 p.m., the same day.)

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01:39:20 1 Q. I'm going to refer you to the Witness
2 Statement that is at Tab 1 of the witness binder that
3 I've placed in front of you.

4 Have you reviewed it since it was submitted?

5 A. I have.

6 Q. Is it complete and accurate?

7 A. It is.

8 Q. Is there anything you would like to add or
9 change about your Witness Statement?

10 A. Forgive my manners. I have a cold.

11 I'm sorry?

12 Q. Is there anything about your Witness
13 Statement that you would like to add or change?

14 A. Yes, on Paragraph 124 there is a mistaken
15 date. It should be 2008, not 2007.

16 Q. All right. Now, I'm going to ask you about
17 the facts covered in your Witness Statement, but
18 first, Mr. Shrake, did you hear the testimony that
19 Mr. Parada gave this morning?

20 A. I did.

21 Q. Do you recall the mention of a November 2007
22 lunch with President Saca?

01:40:05 1 A. I do.

2 Q. Did you attend that lunch?

3 A. I did.

4 Q. Did Mr. Ali attend that lunch?

5 A. He did.

6 Q. Did you speak to President Saca?

7 A. No, I didn't.

8 Q. Did Mr. Ali speak to President Saca?

9 A. No, he didn't.

10 Q. Did you authorize Mr. Ali to speak to

11 President Saca?

12 A. No, I did not.

13 Q. Has Mr. Ali ever represented to you that he

14 has spoken to President Saca?

15 A. It would have been extremely difficult to

16 speak to President Saca in that meeting. He came in

17 with security, and he left with security. He did not

18 really--he was not really accessible. I was hoping to

19 shake his hand and introduce myself and hoped to

20 arrange a meeting with him, so, no, it was impossible.

21 Q. At any time subsequent to that lunch, has

22 Mr. Ali represented to you that he has spoken to

01:40:51 1 President Saca?

2 A. No, he has not.

3 Q. Has any Crowell & Moring employee represented
4 to you that they have spoken to President Saca?

5 A. No, they have not.

6 Q. Okay. Now, in 2002, in your Witness
7 Statement, you--you discuss that you focused the
8 company's exploration and investment activities on the
9 El Dorado gold deposit in El Salvador. Can you please
10 explain why the interest in the El Dorado deposit.

11 A. In about 2001, we launched a new strategic
12 business initiative in which--and at that time gold
13 prices were very low. They were at about \$270 an
14 ounce. We launched a new business initiative with the
15 intent of looking for a specific type, geologic type
16 of gold deposit that offered high margins, meaning
17 they could operate in that price environment, but also
18 offered the additional benefit of extremely low-risk
19 in terms of environmental contamination of any kind.

20 And also because it has margins allowed us to
21 pursue our third objective in that strategic business
22 initiative, which was to raise the bar for social

01:42:03 1 responsibility.

2 Q. Now, was there anything about El Salvador
3 that you found attractive?

4 A. This type of gold deposit that I referred to,
5 geologically this is called low sulfidation epithermal
6 deposit. These types of deposits occur in the
7 circum-Pacific. They occur not everywhere in the
8 circum-Pacific, but they occur in specific volcanic
9 terrains, and so El Salvador is fortunate enough to
10 have that type of volcanic terrain, and they are
11 fortunate enough to have deposits which are extremely
12 clean.

13 Q. Now, I'm going to fast forward to December of
14 2007.

15 How was the regulatory process with respect
16 to your applications proceeding in 2007?

17 A. In December of 2007, we were--we believed we
18 were making progress. In October of that same year we
19 had conducted a tour of a very environmentally
20 progressive mining operation in Chile called Mina
21 Florida in which a number of Salvadoran authorities
22 attended that visit. We were very encouraged by the

01:43:18 1 response we got from the authorities that we took on
2 that trip.

3 Further, in December of 2007, the Congress
4 had formed a special commission on mining, and that
5 commission was beginning its meetings for public
6 consultation basically to discuss the issues
7 surrounding mining, so we were--although we had
8 suffered delays--and believe me delays are very common
9 in El Salvador and as well as other jurisdictions--we
10 were very confident we were going to get a permit at
11 that point.

12 Q. And so you had meetings--did you have
13 meetings with the Government officials?

14 A. In...

15 Q. In late 2007.

16 A. In late 2007, I met--in early--in
17 January 2008 I met with the congressional Majority
18 Leader Guillermo Gallegos, and Mr. Gallegos, who was
19 involved with the special commission on mining, told
20 me that he thought that the--that the commission would
21 move forward on the revamping of the Mining Laws and
22 that eventually that we would see a permit.

01:44:36 1 Q. Did you have any reason to believe at that
2 time that you would not be obtaining the permits?

3 A. No, I did not.

4 Q. Now, Mr. Shrake, can you please explain the
5 reasons underlying the corporate reorganization that
6 was undertaken in late 2007.

7 A. There were numerous reasons. The companies
8 that merged were both largely focused in Latin
9 American exploration, and we had redundancies in some
10 subsidiaries and some holding companies, and we
11 had--as we sold off assets to finance El Salvador,
12 including our Chilean asset and our Argentine asset,
13 we did section off that part of the corporate
14 organization in the sale process.

15 But we also--at that point cash flows from
16 our operating mine in Nevada were diminishing. We
17 were looking for ways of decreasing costs. That was
18 certainly a major part of it.

19 We also were looking at--we also recognized
20 that because the company's assets were so attractive
21 in El Salvador that the chances that we would have to
22 section off that asset were extremely limited.

01:46:01 1 So--and also, we, you know--as I was looking
2 for ways of potentially protecting the company in the
3 event that we did have some kind of legal problem in
4 the future, so we did consider protections in that
5 reorganization as well.

6 Q. Now, you just testified a few moments ago
7 that in early 2008 you believed you would be obtaining
8 your permits. Did anything happen in 2008 that
9 changed your opinion?

10 A. In March of 2008, we were surprised to see
11 the quote we have all seen now once from President
12 Saca stating that he was not in favor of granting
13 mining permits. So, yes, that caused us great
14 concern. This was while the congressional hearings
15 were going on.

16 Q. Now, why did that statement change your
17 views?

18 A. Well, the majority Party in Congress was the
19 Arena Party, and Saca was the first President that not
20 only was President of the country, but he was also
21 President of the Party. So, that caused us concern
22 that these congressional hearings were not exactly

01:47:19 1 going to bear fruit.

2 So, we were quite concerned at that point.

3 In fact, I enlisted the help of the U.S. Embassy at
4 that point to try to arrange a meeting with President
5 Saca.

6 Q. And were you successful in arranging the
7 meeting with President Saca?

8 (Witness sneezes.)

9 A. This is going to be awkward.

10 PRESIDENT VEEDER: Remember you are on TV.

11 (Laughter.)

12 BY MS. RIVEIRA:

13 Q. No pressure.

14 A. I'm sorry, what was your question?

15 Q. Were you successful with your attempts to
16 meet with President Saca?

17 A. Yes. The Ambassador was sympathetic, and we
18 did. He did pressure President Saca to meet us in
19 late June of that year.

20 Q. And can you describe that meeting.

21 A. Well, the meeting was attended by the U.S.
22 Ambassador Glazer. It was attended by President Saca.

01:48:12 1 It was attended by the Minister of Economy at the
2 time, Yolanda de Gavidia. It was attended by the
3 Minister of MARN at the time, Minister Guerrero. It
4 was attended by Sacca's--ex-President Sacca's former
5 secretary, myself, and there may have been one or two
6 others.

7 (Tissues handed to the witness.)

8 A. Thank you. I have two. Hopefully I won't be
9 here as long I will need them.

10 That's all I recall being present in the
11 meeting.

12 I went through a bit of a presentation with
13 President Sacca explaining the environmental and
14 economic benefits of the mine. The fact that we are a
15 small company is not really represented by the people
16 on our Board of Directors and the technical strength
17 that we have within the company and that we were very
18 capable of building this mine which we had designed,
19 which would set new environmental precedents
20 throughout the Americas, and tried to impress upon him
21 that we were the right people to establish the bar for
22 the mining industry in El Salvador, that President

01:49:25 1 Sacca's response was that he would grant us the permits
2 after the presidential election in the lame-duck
3 period, and he instructed Minister de Gavidia,
4 Minister Guerrero, and myself to meet later to try to
5 find a solution.

6 Q. And did you meet with Minister de Gavidia and
7 Minister Guerrero?

8 A. I did meet with Minister Guerrero. Minister
9 de Gavidia did not show up at the meeting and, in
10 fact, resigned her position the next day. I have no
11 idea if there was any correlation, but she did resign
12 her position the next day.

13 And I also took an attorney with me.

14 And in this meeting, we didn't exactly--that
15 meeting didn't exactly bear fruit, let's just put it
16 that way.

17 Q. Could you explain what you mean.

18 A. Well, it became again obvious that we were
19 not going to get a permit.

20 Q. Now, I'm going to ask you to turn to Tab 2 in
21 your binder, which is Claimant's Exhibit C-61, and
22 this is a July 2008 Press Report describing President

01:50:48 1 Sacca's statements about mining permits.

2 What did this Press Report signify to you?

3 A. These were--this was especially, let's just
4 say, discouraging, especially after the June meeting
5 in which again President Sacca stated publicly that he
6 would not be issuing permits.

7 Q. What actions did you undertake with respect
8 to the companies at this time?

9 A. Well, at that point, we really didn't see
10 that we had a lot of options, and so we began to
11 pursue legal options as a solution.

12 We didn't close--I mean at that point--we
13 never really tried to close the door on dialogue, and
14 we did continue to maintain a dialogue with--tried to
15 maintain a dialogue with the administration.

16 Q. Now I'm going to ask you to turn to Tab 3 in
17 your binder, and this is Claimant's Exhibit C-76, and
18 this is a letter from MARN to PRES, and on the back
19 page you will see that it says that the letter is
20 intended to, "resolve your application for the
21 environmental permit for your mineral exploitation
22 project."

01:52:11 1 In your mind, what was the purpose of this
2 letter?

3 A. From a technical standpoint, practically
4 everything in that letter was already achieved, so we
5 just saw this as another attempt--we saw this as an
6 attempt to stop us from pursuing legal action and just
7 continue to stall.

8 Q. In December 2008, had you directed Crowell &
9 Moring to take any steps to prepare legal action
10 against El Salvador?

11 A. Yes, at that point we filed our Notice of
12 Intent.

13 Q. If I could just have one moment to confer
14 with my colleagues.

15 (Pause.)

16 MS. RIVEIRA: No further questions.

17 PRESIDENT VEEDER: Thank you. There will now
18 be questions from the Respondent.

19 MR. SMITH: Thank you, Mr. President.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Good afternoon, Mr. Shrake.

01:53:33 1 A. Good afternoon.

2 Q. Thank you for being here today.

3 My name is Derek Smith. I'm an attorney with
4 Dewey & LeBoeuf representing the Republic of El
5 Salvador in this proceeding, and I will be asking you
6 some questions concerning the Witness Statement you
7 submitted in this arbitration signed on the 31st of
8 December 2010. You have just been handed a binder
9 which contains your Witness Statement and some of the
10 evidence produced by the Parties in this arbitration.

11 Your Witness Statement is at Tab 1. Please
12 feel free to confirm that, in fact, Tab 1 is your
13 Witness Statement.

14 A. It certainly appears to be.

15 Q. Okay.

16 A. I take it you don't want me to read the whole
17 thing? I certainly recognize it.

18 Q. No, I assure you that we have done everything
19 possible to ensure that is what's in there is your
20 Witness Statement.

21 During my questions I will ask you to refer
22 to Tabs in the binder by number. If you consider any

01:54:45 1 of my questions unclear, please feel free to indicate
2 that to me and I will rephrase.

3 A. I certainly will.

4 Q. Are you ready to begin?

5 A. Yes.

6 Q. Okay. Mr. Shrake, you took an oath at the
7 beginning of your testimony. What does that oath mean
8 to you?

9 A. It means that I'm to tell the truth, but I
10 would do that anyway.

11 Q. So, you will be truthful to this Tribunal?

12 A. Absolutely.

13 Q. What is your position at Pacific Rim Mining
14 Corp. of Canada?

15 A. I hold the titles of Chief Executive Officer,
16 President, and I'm on the Board of Directors as well.

17 Q. Are you also a stockholder of Pacific Rim
18 Mining Corp. of Canada?

19 A. I am.

20 Q. And approximately how much stock do you hold?

21 A. Approximately?

22 Q. Yes.

01:55:54 1 A. Approximately a half million a shares.

2 Q. And how many total shares are there in the
3 company, approximately?

4 A. There are today 167.x million shares out.

5 Q. Okay. Thank you.

6 Do you have stock options as well?

7 A. I certainly do.

8 Q. Would you please now take a look at Tab 1 of
9 your binder, which is your Witness Statement.

10 You have affirmed that this is the statement
11 that was filed by your attorneys with the
12 Counter-Memorial on December 31, 2010?

13 A. Yes.

14 Q. Can you turn to the last page.

15 Is that your signature?

16 A. It is.

17 Q. Above your signature it indicates, "Being in
18 full agreement with the statement contained in this
19 document, I hereby sign it and acknowledge its
20 consents on this 31 day of December 2010."

21 A. Yes.

22 Q. So, you read this statement before you signed

01:57:09 1 it; is that correct?

2 A. Yes.

3 Q. Okay. And you agree with its contents?

4 A. I do.

5 Q. As this language suggests, was this statement
6 prepared for you to review and sign?

7 A. Was this--

8 Q. Let me rephrase it in a more simple way.
9 Did you write this statement, yourself?

10 A. Parts of it, certainly.

11 Q. And who drafted the other parts?

12 A. I was interviewed for, I don't know, tens of
13 hours. This statement was produced based on those
14 interviews, and then I edited it personally.

15 Q. Thank you.

16 I would now like to refer you to
17 Paragraph 114 of your statement, and I'd like to ask
18 you some questions about this. Please, on the screen
19 is highlighted language.

20 A. Okay.

21 Q. That indicates--where you indicate that, "We
22 were advised that the proposed amendments to the

01:58:31 1 Mining Law were likely to pass in 2008, meaning (among
2 other things) that we would not have to revise our El
3 Dorado application for a smaller Concession area or
4 try to buy or acquire authorization to use all of the
5 surface area overlaying the Concession area included
6 in our pending application."

7 Is it accurate to say that you supported new
8 mining legislation in El Salvador?

9 A. It would depend on the legislation. There
10 were two different bills in front of Congress. One of
11 them was to abolish mining, and I certainly didn't
12 support that one.

13 Q. But you supported the other bill?

14 A. I supported--yes, I supported that other
15 bill, for the most part.

16 Q. Now, you indicate in the highlighted language
17 that the proposed new legislation would have removed
18 the surface land requirement so that you would not
19 have to buy or acquire more authorization to use all
20 the surface area; is that correct?

21 A. Yes.

22 Q. Okay. So, if the legislation passed, you

01:59:50 1 would not have to meet the requirement; is that
2 correct?

3 A. That's a gray area, actually.

4 The way that the Mining Law is written, it's
5 very ambiguous--

6 Q. I'm not asking about the current Mining Law.
7 I'm asking about the situation if the new legislation
8 passed.

9 A. If the new legislation passed, then the
10 question was...

11 Q. Well, would you have--if the new legislation
12 were to have passed, would you have been required to
13 meet the surface--meet the requirement to own or have
14 authorization for the entire area--

15 A. That's the problem.

16 Q. --to use the entire area of the Concession?

17 A. That's why I stopped before. I don't agree
18 with that statement. We don't agree necessarily that
19 we needed to own the entire surface area of the
20 Concession. This is an underground mine, and the
21 owner of the surface is unaffected. The owner of the
22 surface, the owner of the soil is unaffected when the

02:01:03 1 mine is below the surface.

2 So, our opinions were that--legal opinions
3 were that this was not a legal requirement. Having
4 said that, we worked with the Ministry in mines, and
5 basically I said to them if that is the way that
6 you're interpreting the law, then just let us know.
7 We just want to know what the rules are. If we had to
8 own or have contractual rights on the surface area
9 within the Concession, then we will simply reduce the
10 size of the Exploitation Concession and fill around it
11 with exploration Concession.

12 Q. But you indicated here that the proposed
13 amendments to the Mining Law were likely to pass in
14 2008, meaning that we would not have to revise our El
15 Dorado application for a smaller Concession area.

16 A. Yes, and again, if they had required us to
17 own the surface above a mine that was well below the
18 surface, then we would be forced to reduce the size of
19 the Concession.

20 Q. Or, if the new legislation has passed--

21 A. Correct.

22 Q. --you would not have been forced to do that;

02:02:12 1 is that correct?

2 A. Correct.

3 Q. Okay. Now, I draw your attention to the
4 language in the parenthetical. It reads: "And again,
5 we would have reduced the Concession size of our
6 pending application, if necessary." You've just
7 mentioned that; correct?

8 A. Yes.

9 Q. Is it true that you only owned or had
10 authorization to use, I would say, approximately
11 13 percent of the surface area of the Concession?

12 A. Without a map, I'd have a hard time
13 estimating what percentage of the surface that we
14 would have to own or have contractual rights over, but
15 we did have contractual rights or surface ownership
16 rights for all of the surface installations--

17 Q. Okay.

18 A. --in the Concession.

19 Q. Just to help you out, this is a map that's in
20 the record as R-29, and it is Figure 14 of your 2008
21 Annual Report submitted by PRES to the Government of
22 El Salvador in February of 2009.

02:03:45 1 Forgive me that this was not in the binder,
2 but it is already in the record, however, as R-29.

3 PRESIDENT VEEDER: I just query it because my
4 figure is 28 on this Bundle, but it is R-29, is it?

5 MR. SMITH: My understanding, although there
6 is a small 28 on here. Perhaps I should confirm that
7 with--

8 PRESIDENT VEEDER: What do the experts say?

9 MR. SMITH: Okay, it's R-29.

10 (Comment off microphone.)

11 BY MR. SMITH:

12 Q. Would you say that this map is a fair
13 representation of the surface area that you owned or
14 had authorization to use?

15 A. Yes. Yes.

16 Q. Now, and it's clearly a small subset of the
17 entire area; that is, the pink line outlines your
18 entire Concession you applied for?

19 A. The pink line on my map doesn't have a bottom
20 to it, so it's very difficult to say exactly where the
21 limit of the Concession is.

22 Q. Okay, you're correct, but it is the lateral

02:04:55 1 and northern limit; would you agree?

2 A. Yes.

3 Q. Okay. Now, isn't it also true that you did
4 not have ownership or authorization for the land over
5 the entire mine you wanted to exploit?

6 A. Over the entire--

7 Q. The find--I'm not a geologist, so the area
8 underground in which you want the--

9 A. The deposit.

10 Q. The deposit, thank you.

11 A. Yeah. It covers the vast majority of the
12 deposit, the vast--the majority of the ounces, and
13 several other deposits as well which are not part of
14 the development as submitted because we hadn't found
15 them yet, but they're underneath the--what color is
16 that?--orange, pink area to the south.

17 Q. And are there--and there are other deposits
18 within the Concession area that are not covered by
19 these areas that you owned?

20 A. There are.

21 Q. So, reducing the size of the Concession would
22 have resulted in a significant loss of value to the

02:06:14 1 Concession.

2 A. You're assuming we couldn't get any more
3 surface rights. And most of the feasibility Study
4 deals with the area underneath the blue and the green
5 areas and the deposits that we found later aren't even
6 part of the application.

7 Q. Thank you.

8 Now I would like to ask you about Pac Rim
9 Cayman.

10 A. Okay.

11 Q. When did you create Pac Rim Cayman? If you
12 need a moment to drink water or something--

13 A. No, I'm good. I may need a moment to cough
14 on occasion.

15 Pac Rim Cayman was added to the chart almost
16 immediately after I took--took the responsibility of
17 Chief Executive Officer. We put a Cayman shell
18 together or a Cayman sandwich together, two holdings
19 companies in the Cayman Islands to--as an intermediary
20 between the parent company and the subsidiary in
21 Argentina at the time.

22 Q. Okay. I'd direct you to Paragraph 40 of your

02:07:30 1 statement. You indicate that Pac Rim Cayman was
2 created as a holding company for tax reasons; is that
3 correct? That's the purpose of creating a Cayman
4 sandwich?

5 A. Yeah, it's for tax reasons. It's in case we
6 want to slice off assets in the company, then you sell
7 them at the holding company level.

8 Q. Without any tax consequences, in your home
9 State?

10 A. Correct.

11 Q. Thank you.

12 So, why did you choose the Cayman Islands?

13 A. Habit, basically. I worked for a number of
14 years for Placer International Exploration and Placer
15 International Exploration--this is basically the way
16 that we structured almost all holding--all
17 subsidiaries in other jurisdictions.

18 Q. Now, I direct you now to Paragraph 107 of
19 your statement.

20 Now, this indicates that you moved Pacific
21 Rim El Salvador to be held by Pac Rim Cayman for tax
22 reasons as well; is that correct?

02:09:06 1 A. That's correct.

2 Q. Now, how many employees did Pac Rim Cayman
3 have while it was registered in the Cayman Islands?

4 A. It's a holding company. It doesn't have
5 employees.

6 Q. Okay. Did it lease any office space?

7 A. For no employees? No, it didn't lease office
8 space.

9 Q. Did it own anything other than the Shares in
10 the company it held on behalf of Pacific Rim Mining?

11 A. The verb being held, it's a holding company.
12 Its purpose is to hold.

13 Q. But it did nothing else. It held those
14 shares. It didn't own any?

15 A. That's what a holding company does.

16 Q. Okay. Did it have annual board meetings?

17 A. Yes, I believe.

18 Q. Were minutes kept of those board meetings?

19 A. I don't know, actually, for sure.

20 Q. Okay. Did it have a bank account?

21 A. Oh, no, it did not have a bank--

22 Q. So, pretty much it just existed on paper?

02:10:07 1 A. No--well, no. It's a holding company. The
2 purpose of the company is to hold assets.

3 Q. Right. But what physical existence, what
4 existence did it have other than on the documents that
5 exist perhaps in your office and registered with the
6 corporate Registry in the Cayman Islands?

7 A. None.

8 Q. Okay. I now refer you to Paragraphs 110 and
9 111 of your Witness Statement. And I refer to the
10 entire paragraph, so if you want to take a moment now
11 to read them both, and then I will have some questions
12 for you.

13 (Witness reviews document.)

14 Q. If I understand this correctly, you first
15 decided to de-register Pacific Rim Caribe which was
16 the holding company for your Mexican and Peruvian
17 subsidiaries in order to save money by getting rid of
18 these assets which you were no longer working assets;
19 is that correct?

20 A. Yeah, and the companies that held them.

21 Q. Right. And then that led you to look at Pac
22 Rim Cayman to see if you could save money by also

02:11:57 1 de-registering Pac Rim Cayman from the Cayman Islands
2 or changing its nationality?

3 A. Yeah, definitely to save money.

4 Q. Okay. And is it correct to say that the
5 primary savings you obtained in de-registering Pacific
6 Rim Caribe and Pac Rim Cayman in the Cayman Islands
7 was to stop paying annual fees in the Cayman Islands,
8 perhaps including attorneys' and registration fees?

9 A. I'm sorry, would you repeat that question.
10 Which company was it?

11 Q. Eight--both of them, actually. Pacific Rim
12 Caribe and Pac Rim Cayman, the savings were on the
13 costs of having them registered in the Cayman Islands,
14 including the fees.

15 A. I believe--I believe Pacific Rim Caribe was
16 sold as part of the liquidation sale of an asset, and
17 that's not why we moved Pac Rim Cayman.

18 I mean, the tax consequences are so that you
19 can peel off the asset and not bring the sale money
20 back to the parent company.

21 Q. But what did you sell? You said that there
22 was no operations in Mexico or Peru?

02:13:22 1 A. In that case that's the company that held
2 Mexico and Peru.

3 Q. Yes.

4 A. We were no longer operating in Mexico and
5 Peru and did not foresee operating in Mexico and Peru.
6 The potential of what we had already found was so
7 spectacular that we didn't see going back to those
8 countries in the near future, so that was one of
9 the--that was one of the legs that we eliminated.

10 Q. So, you wanted to save money, and
11 specifically with regard to Pacific Rim Caribe, what
12 was the source of the savings?

13 A. Administrative costs. Filing costs were
14 cheaper in Nevada. It's easier to deal with. I mean,
15 dealing with the Cayman Islands is cumbersome at best.

16 Q. Okay. Now, we are talking here about Pacific
17 Rim Caribe, which was not reregistered, and we get to
18 Pacific Rim Cayman in a moment.

19 A. Right.

20 Q. Do you recall how much it cost to
21 maintain--well, let me get to Pacific Rim Cayman.

22 And the cost savings for Pacific Rim Cayman

02:14:25 1 were essentially from the same source for moving
2 Pacific Rim Cayman were essentially the same source of
3 the cost of savings for Pacific Rim Caribe; that is
4 administrative costs?

5 A. The costs of maintaining Caribe and Pacific
6 Rim Cayman were the same?

7 Q. No, no, that the source of cost savings for
8 de-registering Pac Rim Caribe and moving Pac Rim
9 Cayman were the same; that is, the source was
10 administrative costs of having them registered in the
11 Cayman Islands; is that correct?

12 A. Yes.

13 Q. Now, do you recall how much it cost to
14 maintain these companies as a Cayman Islands company?

15 A. Thousands. I don't remember exactly. I
16 think it was four or 5,000. I don't know exactly, so
17 I shouldn't speculate.

18 Q. For each of them?

19 A. Correct.

20 Q. Relatively similar for each?

21 A. Correct.

22 Q. Okay. Do you know how much it cost to

02:15:28 1 maintain Pacific Rim Cayman as a Nevada company?

2 A. Hundreds.

3 Q. Now, when did you--when did you de-register
4 Pacific Rim Caribe?

5 A. Is it in my witness statement?

6 Q. No, it's in--I have--if you don't recall, I
7 can remind you.

8 A. I don't remember.

9 Q. Could you pull up Footnote 170 to Page 76.
10 This is the Counter-Memorial filed by your client. It
11 says the employee at Pacific Rim Mining Corp. who was
12 supposed to prepare the necessary paperwork to
13 dissolve Pacific Rim Caribe failed to do so and was
14 let go in 2008 as a part of the company-wide layoffs.
15 Pacific Rim Mining Corp. only discovered this omission
16 as counsel was preparing this Counter-Memorial. It
17 has since taken the requisite steps to dissolve
18 Pacific Rim Caribe. So, when was Pacific Rim Caribe
19 dissolved?

20 This Counter-Memorial is dated December 31,
21 2010.

22 A. I don't know that it has been resolved.

02:17:00 1 Q. So you continue to they pay the fees in the
2 Cayman Islands?

3 A. I would assume--actually I don't know, so I
4 can't speculate.

5 Q. Thank you.

6 And when did you de-register Pac Rim Cayman
7 and transfer it to Nevada?

8 A. December of 2007.

9 Q. So, your decision process was, we decided to
10 de-register Pacific Rim Caribe in order to save costs,
11 and that led us to look at Pac Rim Cayman, and the--on
12 what date did the company--here in this it says for
13 the December Board Resolution, did that Board
14 Resolution authorize both operations?

15 MR. de GRAMONT: I will object to the
16 question as mischaracterizing the testimony, and also
17 compound and confusing.

18 MR. SMITH: Okay. I will rephrase.

19 Can you pull up what is C-58.

20 BY MR. SMITH:

21 Q. This is the Board Resolution of 4
22 December 2007. Do you recognize it?

02:18:39 1 A. I will have to read it.

2 Q. Okay.

3 A. It's pretty hard to read here.

4 Q. It's also in your binder at Tab 3, yes.

5 Let me draw your attention to make it easier.

6 Do you recognize it?

7 A. Yes.

8 Q. Okay. Take a look at the dispositive part

9 that begins at the bottom of the first page, "Now,

10 therefore be it resolved that."

11 A. Where is it?

12 Q. At the bottom of the first page where it

13 begins "to be numbered."?

14 A. Yeah.

15 Q. Okay. Now, the first one is, "to move and/or

16 continuation of Pac Rim Cayman into the State of

17 Nevada, USA, is hereby approved."

18 A. Correct.

19 Q. And then if we go to number four on the next

20 page, if we could, it says, "The subsequent

21 dissolution of Pacific Rim Caribe, Minera Pacific Rim

22 S.A.I., and Exploradora Pacific Rim Peru.

02:20:33 1 So, this one resolution approved the change
2 of nationality of Pacific Rim Caribe and Pac Rim
3 Cayman; is that correct?

4 A. It changed the national--

5 Q. It approved the change of nationality of Pac
6 Rim Cayman and the dissolution of Pacific Rim Caribe?

7 A. Yes.

8 Q. But you didn't dissolve--well, perhaps
9 Pacific Rim Caribe has not even yet been dissolved.

10 A. Perhaps.

11 Q. And when did you change the nationality of
12 Pac Rim Cayman?

13 A. In December of 2007.

14 Q. Within less than two weeks of this
15 resolution?

16 A. Correct.

17 Q. Thank you.

18 A. So--and probably logically so. They were
19 holding the assets in El Salvador. There was the
20 drivers of the company. There was a little bit more
21 on the radar screen.

22 Q. More on the radar screen, but the savings.

02:21:37 1 A. But we weren't--

2 Q. So--

3 MR. de GRAMONT: Could counsel let the
4 witness complete his answer.

5 MR. SMITH: I'm sorry.

6 THE WITNESS: But basically the--I forgot
7 what the question was already.

8 BY MR. SMITH:

9 Q. I didn't expect any further answer.

10 You took an oath at the beginning of this
11 process.

12 Is it your position, your truthful position,
13 that the primary reason for changing the nationality
14 of Pac Rim Cayman was to save these few thousand
15 dollars in fees?

16 A. No. There were numerous reasons to not--you
17 said "primary reason."

18 Q. Right.

19 A. There were numerous reasons to move it to
20 Nevada.

21 Q. So, saving money was not the primary reason?

22 A. It was one of the reasons.

02:22:32 1 Q. What--okay. Now, I want to ask you about the
2 tax consequences of the change of nationality.

3 Is the Cayman Islands considered a tax haven,
4 in your opinion?

5 A. Yes.

6 Q. Is the United States a tax haven?

7 A. The United States is not considered a tax
8 haven, but in this case Pac Rim Cayman is an LLC. It
9 was a flow-through company, so it was a holding
10 company in Nevada.

11 Q. Right, okay.

12 A. And our tax advice was that it did not suffer
13 tax consequences.

14 Q. Okay. I want to ask you about that LLC
15 status, so it was a pass-through company or in the
16 words of U.S. Tax Law, a disregarded entity?

17 MR. de GRAMONT: The witness is not a lawyer.
18 He's certainly not--

19 BY MR. SMITH:

20 Q. Okay. I will ask you in terms of the tax
21 advice you received, so please disregard my last
22 question.

02:23:48 1 You said it was a holding company, a
2 pass-through company, and, therefore, was not subject
3 to Federal tax. Is that your understanding?

4 A. I'm not an accountant.

5 Q. Okay. But you did--

6 A. The advice was that there were no tax
7 consequences to move Pac Rim Cayman to Nevada.

8 Q. Okay. And from whom did you get that tax
9 advice?

10 A. KPMG.

11 Q. And was it in writing?

12 A. And Dorsey & Whitney.

13 Q. Okay. And was it in writing?

14 A. I don't know. I don't remember.

15 Q. Okay. And approximately on what date did you
16 get this advice?

17 A. I don't recall.

18 Q. Can you give me a year?

19 A. Well, obviously before we made the move.

20 Q. Right.

21 I guess what I'm trying to get at is how much
22 before you made the move? Was it two weeks before? A

02:24:43 1 month before?

2 A. I really don't remember. I have no idea.

3 Q. Okay. Now, was it explained to you in that
4 advice that an LLC is only tax exempt if it has no
5 trade or business in the United States?

6 MR. de GRAMONT: I will caution the witness
7 not to reveal the substance of any attorney-client
8 communications.

9 MR. SMITH: This was accountant advice, not
10 attorney advice, I believe.

11 PRESIDENT VEEDER: The witness, in fact,
12 mentioned a second group of legal advisers, so I think
13 you may want to limit your question.

14 BY MR. SMITH:

15 Q. Okay. Did your accountants--the advice from
16 accountants and not from attorneys include advice
17 that, in order to maintain the tax status as a holding
18 company pass-through, it could not conduct any trade
19 or business in the United States?

20 A. Again, this is not my area of specialty, so I
21 can't answer that question.

22 Q. Okay. Now, you did mention and your counsel

02:25:47 1 mentioned yesterday the concept of a Cayman Islands
2 sandwich.

3 A. Yes.

4 Q. Which you seem to understand. And I think I
5 understand.

6 Now, the purpose of the Cayman Islands
7 sandwich is to avoid home country tax consequences
8 when you sell off a foreign asset; right?

9 A. Well, the general--the general reason is if
10 you're a publicly held company that has assets in
11 numerous jurisdictions and you sell one of those
12 assets, you don't want to bring that money back into
13 the parent company and then use it to invest in
14 another country on another asset. The idea is to be
15 able to sell that asset, keep the money in the holding
16 company, and then redeploy it into another--on to
17 another project.

18 Q. And you gave up that benefit when you moved
19 Pac Rim Cayman to the United States.

20 A. We did, and we did consciously. I mean, as I
21 stated, we had--the assets we had in El Salvador were
22 so spectacular that we recognized that we could drill

02:27:00 1 in El Salvador for five years today with the number of
2 rigs that we shut down in 2008. So, there really--and
3 we did not anticipate this happening. So, we
4 really--we considered that when we made that decision.

5 Q. But you clearly lost that potential tax
6 benefit?

7 A. Well, we lost that tax benefit if we were
8 going to sever off the El Salvador assets and sell
9 them, but--

10 (Simultaneous conversation.)

11 PRESIDENT VEEDER: We have to be disciplined
12 indeed. Because unless we speak once at a time, one
13 person at a time, it doesn't get recorded, so all of
14 us I think have to be very careful, indeed, just to
15 pause and make sure we don't overspeak when somebody
16 else is speaking. This is not addressed to you,
17 Mr. Shrake, because you're probably doing this one of
18 the few occasions, I suspect, but professionally we
19 must be very careful not to do that.

20 MR. SMITH: Thank you.

21 THE WITNESS: My apologies.

22 BY MR. SMITH:

02:28:10 1 Q. Please refer to Paragraph 112 of your witness
2 statement.

3 Here you indicate that, "As a part of this
4 overall assessment of the companies' organizational
5 structure, I also considered the companies' potential
6 avenues of recourse if a dispute with El Salvador were
7 ever to arise in the future."

8 Was this a reference to the potential
9 jurisdiction under the Central American Free Trade
10 Agreement?

11 A. It's a--well, potential, yes.

12 Q. So, you considered CAFTA jurisdiction when
13 you changed the nationality of Pacific Rim Cayman; is
14 that correct?

15 A. I'm sorry, restate the question?

16 Q. You considered the possibility of arbitration
17 under CAFTA as you were deciding to change the
18 nationality of Pac Rim Cayman?

19 A. Yes.

20 Q. And when did you learn that you could gain
21 CAFTA jurisdiction by changing Pac Rim Cayman's
22 nationality?

02:29:28 1 MR. de GRAMONT: I'll object to the question
2 as mischaracterizing the testimony.

3 PRESIDENT VEEDER: You can easily rephrase
4 the question.

5 BY MR. SMITH:

6 Q. When did you become aware of the possibility
7 of arbitration under CAFTA?

8 MR. de GRAMONT: Objection. Vague.

9 PRESIDENT VEEDER: If you can answer the
10 question, please do so.

11 THE WITNESS: Consider the possibility?

12 MR. SMITH: Yes, of arbitration under CAFTA
13 as a consequence of the change of nationality.

14 THE WITNESS: We considered various--at this
15 point we considered various remedies to the situation.
16 I mean, I talked to counsel in El Salvador I was
17 lobbying. I was lobbying in the United States to
18 pressuring El Salvador. I was doing
19 numerous--numerous things at that point, so yeah.

20 BY MR. SMITH:

21 Q. But when--when did you come to consider and
22 come to understand that--when did you consider that

02:30:51 1 jurisdiction specifically under CAFTA was a
2 possibility as a result of changing the nationality of
3 Pac Rim Cayman? On what date did that become an idea?

4 A. I don't recall.

5 Q. Can you give a general idea? Was it--

6 A. As I stated earlier--sorry. As I stated
7 earlier, the potential of a legal dispute was
8 considered in the restructuring, so before we did the
9 restructuring.

10 Q. How much before?

11 A. Again, it was a while ago, and I got a lot of
12 other--I got a lot of things that I have to remember.
13 I don't remember every--

14 Q. And how did you come to know that by changing
15 Pac Rim Cayman's nationality you would be able to
16 acquire CAFTA protections?

17 MR. de GRAMONT: I caution the witness not to
18 reveal the substance of attorney-client
19 communications.

20 PRESIDENT VEEDER: Being asked about your own
21 understanding and in answering that question, if
22 you're minded to, please don't refer to anything that

02:32:08 1 a lawyer may or may not have told you. Just for your
2 own understanding. Can you answer this question?

3 THE WITNESS: Well, I never had any
4 understanding that I needed to move Pac Rim Cayman to
5 be able to file an arbitration. I mean, we had
6 U.S.--other U.S. entities, and clearly we have U.S.
7 business, so I didn't know that that was a necessary
8 step.

9 BY MR. SMITH:

10 Q. That wasn't the question. The question was:
11 When did you come to know that transferring the
12 nationality of Pac Rim Cayman to the United States
13 would provide protections under CAFTA? Or how did you
14 come to know? I'm sorry, not when. How?

15 A. How did I come to know?

16 Q. Yeah.

17 A. That moving--I'm sorry, repeat the question.
18 I'm really getting confused here.

19 Q. I'm sorry.

20 Are you aware that because Pac Rim Cayman is
21 a national of the United States this has allowed
22 your--Pac Rim Cayman to assert jurisdiction under

02:33:38 1 CAFTA?

2 A. Yes.

3 Q. How did you become aware of that?

4 MR. de GRAMONT: Again, I'll caution the
5 witness not to reveal the substance of attorney-client
6 communications.

7 BY MR. SMITH:

8 Q. If you can't answer, please let us know that
9 you can't answer.

10 A. I've just been advised not to answer.

11 Q. So, how you came to know that--okay, that's
12 fine.

13 In your Witness Statement you recount a
14 number of meetings with Salvadoran officials; is that
15 correct?

16 A. That's correct.

17 Q. I'd like to draw your attention to Tab 2 in
18 your binder. Tab 2 is a letter dated April 22nd, 2011
19 from your counsel to counsel for El Salvador. It was
20 put in the record as an attachment to El Salvador's
21 letter to your counsel of April 27, 2011.

22 Do you see that it makes reference to trips

02:34:59 1 in December 2007 and February 2008?

2 A. Yes, I do.

3 Q. Okay. Now, I direct you to your Witness
4 Statement at paragraph 101.

5 You indicate there that you traveled to El
6 Salvador in January of 2008.

7 A. Correct.

8 Q. And I just want to clarify, your counsel has
9 said that there was a trip in February 2008. You have
10 said that there was a trip in January 2008. Did you
11 take two trips or is this actually a reference to one
12 trip?

13 A. No, I take very frequent--I was taking very
14 frequent trips at that point.

15 Q. Okay. And do you see where it makes
16 reference to trips, a trip in December 2007?

17 Can you go back to the letter of April--

18 A. I'm sorry.

19 Q. Going back to Tab 2.

20 A. Okay. What was the question again? I've got
21 the letter.

22 Q. Okay. It makes reference to a trip in

02:36:15 1 December 2007.

2 A. December 2007, yes.

3 Q. You didn't mention the December 2000 meeting
4 in your witness statement; is that correct?

5 A. I'll take your word for it.

6 Q. Okay. Are there any other meetings that
7 we're missing?

8 A. I'm sure. I met with anybody and everybody
9 that would listen to me. My--if I had to do it one
10 person at a time in El Salvador, I was going to do it.

11 I mean, my mission was to lobby, but most of
12 the lobby was just an educational exercise. I was
13 trying to explain the science behind what we were
14 trying to do, the science behind why gold mining in El
15 Salvador is so environmentally benign, and so I was
16 reaching out to anybody and everybody, all Parties,
17 all segments of society, so I made very frequent
18 trips.

19 Q. Can you specifically identify any additional
20 meetings that are not in your Witness Statement or in
21 your counsel's letter?

22 A. With anyone?

02:37:38 1 Q. With high-level Salvadoran officials?

2 A. Oh, high level Salvadoran Government
3 officials? I can't think of anything specific.

4 Q. Okay. Thank you.

5 A. I can't say for sure, but I'm sure that there
6 were other meetings.

7 Q. Now, at the meetings in December of 2007 and
8 January and February of 2008, did anyone mention
9 arbitration at any time?

10 A. In...

11 Q. December 2007, which is the meeting referred
12 to in your counsel's letter; January 2008, which is
13 the meeting referred to in your Witness Statement; or
14 February 2008, also in your counsel's letter.

15 A. I have no recollection of that.

16 Q. Okay. Now, let's look again at Tab 2 in your
17 binder. Now, in this letter from your counsel to El
18 Salvador, it indicates that you were accompanied by
19 the co-chair of Crowell & Moring's arbitration
20 practice when you attended a luncheon at which
21 President Saca of El Salvador spoke on November 28,
22 2007; is this correct?

02:39:09 1 A. Yes, that's correct.

2 Q. And this took--how long were you in
3 Washington at the time you came for this luncheon?

4 A. I travel almost every week.

5 Q. I know the feeling.

6 A. Yeah, I don't have any recollection how long
7 I was in Washington.

8 Q. Was this luncheon the main purpose of your
9 visit to Washington?

10 A. I'm sure I did other things while I was here.

11 Q. Who else was--accompanied you to the
12 luncheon?

13 A. Tim McCrum was there, Arif was there, and
14 Paul Behrends was there. I don't remember anyone
15 else.

16 Q. And while you were in Washington, who else
17 did you meet with?

18 A. I--I guess--I said I travel a lot. I don't
19 recall that specifically who else I might have met
20 with that week, but I doubt I would have flown all the
21 way here for the luncheon without trying to make
22 other--I mean, at that time I was lobbying extensively

02:40:17 1 with U.S. Congress, with El Salvador Congress. Around
2 that point in time, I was seeking the help of a U.S.
3 Senator in contacting the Salvadoran Embassy to push
4 for meetings. I mean, I did a lot--I do a lot of
5 traveling, I've had a lot of meetings and dates and
6 exactly when was what, but I would bet that I had
7 other meetings, and I was actively pushing, trying to
8 get help from the United States in pressuring El
9 Salvador to--

10 Q. In pressuring El Salvador to issue your
11 Exploitation Concession?

12 A. Well, the first step is to get an
13 environmental permit, so that was, yeah, but
14 ultimately, yes.

15 Q. Do you recall the date of your trip to El
16 Salvador in December 2007?

17 A. December 2007? No.

18 Is that in this exhibit?

19 Q. It is--

20 A. Yeah, I got it. Page 2.

21 Q. In December 2007 and again in February 2008
22 you traveled with Mr. Behrends to El Salvador?

02:41:48 1 A. Yeah, I met Mr. Behrends in El Salvador.

2 Q. Okay. Do you recall the approximate date? I
3 mean, was it the first half of December, the second
4 half of December?

5 A. Well, it wasn't over Christmas holiday. I
6 know that. That's the one time I take off.

7 Q. And it would have been after your board
8 meeting of December 4th, 2007. Presumably you were in
9 Nevada for that?

10 A. That's not a safe assumption. Most of my
11 board meetings I can participate by telephone. I
12 travel enough without--

13 Q. Do you recall how you participated in this
14 board meeting?

15 A. I do not.

16 Q. Thank you.

17 Do you recall if there were minutes from this
18 board meeting?

19 A. I don't recall, but I'm sure there were.

20 Q. And are those minutes available?

21 A. Are they available?

22 Q. Could they be produced for the Tribunal?

02:42:43 1 A. I'm sure they're somewhere.

2 Q. I would like to refer you to Tab 3, which is
3 the Board Resolution from your December 4th, 2007
4 board meeting, and it's C-58, and I'd like to draw
5 your attention to the third paragraph.

6 It indicates that you received both tax and
7 legal advice in your decision to move Pac Rim Cayman
8 to the United States; is that correct?

9 A. Correct.

10 Q. And on what topic did you receive legal
11 advice?

12 PRESIDENT VEEDER: Wait a minute.

13 Is there an objection to that question?

14 MR. de GRAMONT: Yes, Mr. Chairman. There is
15 an objection.

16 PRESIDENT VEEDER: What you might want to
17 clarify is the witness has already referred to legal
18 advice that was not legal advice from the certain firm
19 with which you're immediately concerned, and you might
20 want to explore that, if that's a reference to that
21 law firm.

22 BY MR. SMITH:

02:44:20 1 Q. From whom, from what law firm did you acquire
2 the legal advice referred to in this--

3 A. Dorsey & Whitney.

4 Q. Any other law firms?

5 A. Not to my knowledge. Not that I recall.

6 Q. Thank you.

7 I'd like to direct your attention now to
8 Paragraph 93 of your Witness Statement.

9 This refers to a meeting you had in 2006 with
10 the Minister of the Economy, Ms. De Gavidia; is that
11 correct? Take your time to look at it.

12 A. I'm sorry, what paragraph is that?

13 Q. Paragraph 93.

14 And this is near the end of the paragraph
15 what is highlighted here.

16 A. Thank you.

17 Yes.

18 Q. Okay. It indicates here that
19 Minister de Gavidia indicated that the administration
20 supported the project and intended to comply with El
21 Salvador's applicable laws; is that correct?

22 A. Yes.

02:45:50 1 Q. So, part of what Salvadoran officials were
2 assuring you in your meetings was that they would
3 comply with the laws of El Salvador; is that correct?

4 A. Yes.

5 Q. Did you ever receive any assurances that your
6 Concession application would be approved if it did not
7 comply with the existing law?

8 A. No.

9 Q. Now I would like to draw your attention to
10 Tab 4 in the binder which is R-125 in the exhibits.

11 Now, this is a Press Report from March 12,
12 2008, regarding by--regarding--I'm sorry, regarding
13 statements by President Saca. If you would just take
14 a moment read the article.

15 A. I can't read this green--

16 Q. It's not well printed there.

17 A. Yeah, I can't read that. My eyes are not
18 very good. I'm sorry.

19 Q. We can pull it up on the screen?

20 A. Then I could read it. Everything in here is
21 on there, then I'm good.

22 PRESIDENT VEEDER: Why don't you read the

02:47:22 1 English translation.

2 THE WITNESS: Yeah.

3 PRESIDENT VEEDER: It's a few pages on.

4 THE WITNESS: Yeah, much better.

5 (Witness reviews document.)

6 BY MR. SMITH:

7 Q. Do you see the word "ban" or "mining ban"
8 anywhere in the text of this article?

9 A. No.

10 Q. Now, let's go to Tab 5 of your binder which
11 is a letter you wrote, I think it was Annex 8 to the
12 Notice of Arbitration, and it's a letter you wrote to
13 President Saca on April 14, 2008, in response to the
14 statements in the press of March 12, 2008.

15 Now, take a look at the second and third
16 paragraphs of the second page, and the highlighted
17 text says, "Through the media, we have learned that
18 you have stated that you oppose our being granted
19 operating permits." This indicates that you
20 understood President Saca was referring to your
21 permits in his statement; is that correct?

22 A. Yes.

02:49:28 1 Q. And you noted that he expressed concern for
2 the environment, the environmental impact of mining in
3 El Salvador; is that correct?

4 A. Yes.

5 Q. And you attempted to convince him that your
6 project, quote-unquote, does just what he asks and
7 would not harm the environment; is that correct?

8 A. That is correct.

9 Q. Okay. Does your letter mention the words
10 "ban on mining" or "ban" anywhere?

11 A. No, it does not.

12 Q. Okay. Do you have any other evidence from
13 March 2008 that there was a ban on mining? Again,
14 from March 2008, I'm asking about a specific--

15 A. In March 2008?

16 Q. When at the time--when at the moment this
17 letter came out.

18 A. No.

19 Q. So, your conclusion, the conclusion that has
20 been stated in these proceedings and the conclusion
21 stated in your Witness Statement that there was a ban
22 at this time was based solely on the press article

02:50:59 1 from President Saca--about President Saca?

2 A. I'm not sure I'm understanding. Could you
3 restate the question?

4 Q. You have--no, I will move on, thank you.

5 I draw your attention to Tab 18 of your
6 binder. We are going to skip ahead at this point, and
7 your binder will have to come back. This is Annex H
8 to the Witness Statement of Mr. Luis Parada.

9 Now, this is a press statement issued by
10 Pacific Rim Mining Corporation; is that correct?

11 A. Yes.

12 Q. And what is the date of this Press Release?

13 A. July 3rd, 2008.

14 Q. Now, you're quoted in this statement; is that
15 correct? You can see on the screen the paragraph
16 where you're quoted.

17 Could you read for the Tribunal the
18 highlighted portion.

19 A. Unfortunately, the Government of El Salvador
20 is now stalling the process without regard to the
21 company's rights deriving from its substantial
22 investments in the country. While we would vastly

02:52:26 1 prefer the negotiated--prefer the negotiated solution
2 we seek, we are being forced to consider all options
3 in order to pursue our rights under El Salvador law
4 and international treaties, specifically CAFTA."
5 Treaties, sorry, it's plural.

6 Q. Now, did you make this statement?

7 A. Yes.

8 Q. Okay. So, at this point in July 2008,
9 according to your statement, your problem was that the
10 Government was, quote-unquote, stalling the process;
11 is that correct?

12 A. Correct.

13 Q. And this statement is from July 2008, which
14 is approximately just under four months after the
15 article from President Saca that we just saw; is that
16 correct?

17 A. That's correct.

18 Q. Okay. Now, you indicate that if in the quote
19 you just read that if you're unable to solve your
20 dispute through negotiations, you would consider all
21 options, including rights under CAFTA; is that
22 correct?

02:53:50 1 A. What I said was we would in order to pursue
2 our rights under El Salvador law and international
3 treaties, specifically CAFTA.

4 Q. Right.

5 And did the options under CAFTA include
6 arbitration?

7 A. Yes.

8 Q. So, you were considering arbitration under
9 CAFTA to resolve your dispute with El Salvador over
10 the Government's, quote-unquote, stalling the process;
11 is that correct?

12 A. I mean, there--yes. The constant stalling--I
13 mean, there was really no indication that we were ever
14 going to see a permit at this point. I mean, even
15 after the meeting with the Ambassador, the night after
16 the meeting with the Ambassador, when I met with
17 Minister Guerrero, it was very obvious there were no
18 permits coming, and that they were again going to
19 continue to just drag us down the lane and--

20 Q. But when you, in writing and publicly,
21 indicated what the issue was in El Salvador, you
22 indicated that it was--that it--excuse me--that was

02:55:08 1 because the Government was stalling the process.

2 A. I'm going to read the news release in its
3 entirety instead of just the highlighted quote.

4 Q. Okay. That you are certainly entitled to do.
5 (Witness reviews document.)

6 A. Could I get a pen?
7 (Witness reviews document.)

8 A. Okay.

9 Q. Okay. The question was that, in this public
10 statement, you indicated that the problem with the
11 Government of El Salvador was that it was delaying--it
12 was stalling the process and that you were--you would
13 seek arbitration under CAFTA to solve that dispute.

14 A. Yes.
15 There are other things stated in here as
16 well.

17 Q. That's correct. I'm not asking about those.
18 Now, does--you have read the entire Press
19 Release now; is that correct?

20 A. I've read everything except--I've read up to
21 the work reductions part.

22 Q. Okay. There's probably no relevant

02:58:02 1 information in the work reductions part.

2 A. And in Paragraph 2, it says: "Pacific Rim is
3 not abandoning its El Salvador assets and is
4 continuing in earnest in its wide-ranging diplomatic
5 efforts to secure a mining pit permit for its flagship
6 El Dorado gold project."

7 Q. We were--

8 A. "The company will continue to conduct the
9 exploration work necessary to maintain its El Salvador
10 properties in good standing. However, the company
11 cannot continue to invest millions of dollars annually
12 in advancing its El Salvador gold project,
13 particularly El Dorado, until such time as the
14 Government of El Salvador signals its willingness to
15 proceed with the development of El Dorado by granting
16 the mining permit. The company's rights in El
17 Salvador are being ignored by the Government of El
18 Salvador through its independent operating
19 subsidiaries, and we will continue to pursue those
20 rights relying both on El Salvador law and the Central
21 American Free Trade Agreement."

22 Q. Thank you.

02:59:05 1 You read through it. Did you notice anywhere
2 in there that there was a mention of the statements of
3 President Saca from March 2011? March 2008. I'm
4 sorry. March 2008.

5 A. No.

6 Q. Thank you.

7 Now, you've indicated that you read the press
8 statements about President Saca as creating a de facto
9 ban on mining; is that correct?

10 A. Yes.

11 Q. So, it's your position that on March 12,
12 2008, you knew there was a ban?

13 A. No.

14 Q. So, the March 12, 2008, the date of the
15 letter, you did not know there was a ban?

16 A. No.

17 Q. Okay. But on that date--but immediately
18 thereafter you threatened arbitration in a letter of
19 April 14, 2008; is that correct?

20 A. That's correct.

21 Q. Okay.

22 A. I did not know that every mining Concession

03:00:26 1 in El Salvador was eventually going to be
2 expropriated. I didn't know that at that point in
3 time, but what I did know is that our efforts to get
4 the Government to follow the law with our particular
5 asset had not been followed, and the indications were
6 with numerous consultations was that they were just
7 going to continue to dangle and withdraw the carrot.

8 Q. So, you viewed this as something very
9 specifically directed at your permits as opposed to a
10 broader measure?

11 A. "This" being...

12 Q. The letter of March 12, 2008.

13 A. No.

14 Q. The letter--I'm sorry, the--I will withdraw
15 the question.

16 MR. de GRAMONT: Mr. President, the witness
17 has been going for about an hour-and-a-half. Would
18 this be a good time to take a break?

19 PRESIDENT VEEDER: We were going to break at
20 315, but the witness I can see is suffering from quite
21 a heavy cold. Are you okay or would you find it
22 better to--

03:01:39 1 THE WITNESS: I don't think it's going to get
2 better before 3:15.

3 PRESIDENT VEEDER: Is it going to get worse?

4 MR. BADINI: Mr. President, there might be
5 another reason to accede to Mr. de Gramont's
6 suggestion. We had discussed with him at a break the
7 possibility of dividing the cross-examination, and I
8 believe, unless Mr. Smith has an additional couple of
9 questions, that we may be at the point where we can
10 change examiners, and I will need the portable mike,
11 so we may want to take a short break in any event.

12 PRESIDENT VEEDER: If the witness can stand
13 it, let's finish with Mr. Smith's questions. Shall we
14 do that? And then we will take a break.

15 MR. BADINI: Sure.

16 BY MR. SMITH:

17 Q. I just have one more question. Well, it may
18 turn into a couple of questions, but one more issue.

19 I draw your attention to Tab 6 in your
20 binder, and this is Exhibit R-107. And it's a list of
21 cash transfers to El Salvador from Pacific Rim, and
22 I'd like to draw your attention to those listed from

03:03:03 1 March 17 to September 30.

2 So, is it correct to state that you continued
3 to transfer funds and invest in El Salvador on these
4 dates?

5 A. We shut the drill rigs down in July of 2008.
6 We conducted--we conducted--unfortunately had to
7 reduce significantly at great pain, I must add, it's a
8 very difficult decision, but we stopped drilling in
9 July of 2008. And much of the money after that was--I
10 mean, we drastically reduced our exposure in El
11 Salvador after the date of September 30 of 2008, which
12 is at the bottom of that--

13 Q. After that date, but these are all the
14 accurate reflections of your continued investment?

15 A. That is correct, but it takes time to wind
16 down. There are severance costs. There are many
17 other--I mean, bills don't come in overnight; right?
18 We shut it down in July, and it takes a while to wind
19 it down.

20 Q. Thank you.

21 A. You're welcome.

22 MR. SMITH: That concludes my questions, and

03:04:30 1 after the break I will hand it over to Mr. Badini.

2 PRESIDENT VEEDER: Let's break now for 15
3 minutes, and we'd ask you, as we did with another
4 witness, not to discuss the case with anybody until
5 you come back before the Tribunal after the break. Do
6 you understand that?

7 THE WITNESS: Yes. I could stay in this
8 room?

9 PRESIDENT VEEDER: If you like. You can do
10 what you like, but please don't talk about the case.

11 (Brief recess.)

12 PRESIDENT VEEDER: Let's resume.

13 BY MR. BADINI:

14 Q. Good afternoon, Mr. Shrake. My name is Aldo
15 Badini, as you may have heard, and I'm going to be
16 asking you some questions on behalf of Respondent as
17 well.

18 Mr. Smith and I focused on different aspects
19 of this dispute, so I will try my best not to be
20 repetitive, and I may need--in fact, I think I will
21 need to stand up and go to the board for some of my
22 questions, so I'm not trying to be rude, but bear with

03:26:14 1 me.

2 A. Feel free.

3 Q. I would like to start with Page 3 of your
4 Witness Statement, Paragraph 8, which again should be
5 in front of you, and in particular the last bullet at
6 the bottom of that page, which we will put up on the
7 screen. There is a sentence that begins, "Since at
8 least 2005, nearly all of the financial capital
9 invested by the companies in El Salvador was made
10 through Pac Rim Cayman," and then it goes on to talk
11 about management issues which we will get to in a
12 second.

13 I want to focus on the first half of that
14 statement relating to the investment of financial
15 capital through Pac Rim Cayman, okay?

16 A. I will answer them as best I can, but again
17 I'm not an accountant.

18 Q. Fair enough.

19 But this is your Witness Statement; correct?

20 A. Correct.

21 Q. And Pac Rim Cayman, you understand, is the
22 Claimant in this arbitration?

03:27:21 1 A. Yes.

2 Q. All right. Now, let's go back to the Press
3 Release that was Annex H--actually, it's also at
4 Exhibit or Tab 18, I should say, of the book in front
5 of you. And I'm not remembering the exhibit number.

6 Yes, this was Annex H to the Parada Witness
7 Statement, and it was the Press Release we were just
8 talking about before we had the break. Do you
9 remember reading this?

10 A. Yes.

11 Q. And Mr. Smith directed you to a certain part
12 of the Press Release, and you, in fact, read a
13 paragraph into the record, yourself. I think it
14 was--not that paragraph--the second paragraph which
15 begins, "Pacific Rim is not abandoning its El
16 Salvadoran assets."

17 Can we blow up that so it's legible.

18 Yes, do you remember reading that into the
19 record?

20 A. Yes.

21 Q. Okay. And I think one of the sentences you
22 read into the record was the third one, which states:

03:28:43 1 "However, the company cannot continue to invest
2 millions of dollars annually in advancing El Salvador
3 gold project," and then it goes on.

4 Do you see that?

5 A. Yes.

6 Q. And you see how the Company is capitalized
7 company, C, company?

8 A. Yes.

9 Q. And let's go back to the first paragraph of
10 this Press Release and see how the company is defined.

11 So, will you agree with me that the company
12 is defined as Pacific Rim Mining Corp.; correct?

13 A. Correct.

14 Q. That's the Canadian corporation; correct?

15 A. Correct.

16 Q. So, when you said, "The Company cannot
17 continue to invest millions of dollars annually in
18 advancing its El Salvador gold projects," the company
19 you were talking about was the Canadian company;
20 correct?

21 A. Yes.

22 Q. And look at the next paragraph, the third

03:29:52 1 full paragraph. Can we blow that up, please. The
2 first sentence of that is a quote attributed to you.

3 Do you see that?

4 A. Yes.

5 Q. And that the language that's attributed to
6 you is, "'Pacific Rim and its predecessors have
7 invested approximately 77 million on gold exploration
8 and development in El Salvador with exceptional
9 results,' says Tom Shrake, President and CEO. "

10 Have I read that correctly?

11 A. Yes.

12 Q. And again, Pacific Rim in that sentence is
13 the parent company, the Canadian company; correct?

14 A. Yes. This is a news release for the parent
15 company.

16 Q. Okay. And is it correct that the parent
17 company and its predecessors were the ones who had
18 invested approximately 77 million on gold exploration
19 and development?

20 A. By predecessors, we are speaking to the
21 company that existed prior to the merger whose assets
22 were combined with our company.

03:31:08 1 Q. And that was the Dayton Company; correct?

2 A. Correct.

3 Q. Which is also a Canadian company; correct?

4 A. Correct.

5 Also a Canadian company with significant U.S.
6 Shareholders.

7 Q. Right. But the predecessor of Pacific Rim
8 that you were referring to here was the Canadian
9 company Dayton?

10 A. That's correct.

11 Q. Now, can we put up the Memorial Page 51,
12 please. And if you can blow up the first two lines so
13 they're a little more legible, please.

14 Just so you know, I don't think that's in
15 your book, Mr. Shrake, and I apologize for that, and
16 let me give you the context so you know exactly what
17 document we're looking at.

18 A. Could you provide me a copy of the document.

19 Q. Sure.

20 While he's looking for the document, let me
21 tell you what it is. It is a document prepared by
22 counsel for El Salvador in this proceeding, namely us.

03:32:21 1 Okay. So, this is not something that you or your
2 counsel have said. Fair enough?

3 A. Fair enough.

4 Q. And in this document we wrote, "Pac Rim
5 Cayman has no Board of Directors. Instead it has two
6 managers, Tom Shrake and Catherine McLeod-Seltzer, who
7 are also officers of Pacific Rim Mining Corp."

8 I understand you now have a copy of the
9 document in front of you?

10 A. If I could look at it, please.

11 Q. Sure.

12 Do you know whether your counsel has ever
13 denied in this arbitration the statement we made here
14 that Pac Rim Cayman has no Board of Directors?

15 A. No.

16 Q. I believe you testified in response to a
17 question Mr. Smith asked you that you believed that
18 Pac Rim Cayman had a Board of Directors. My question
19 to you is, are you absolutely sure of that?

20 A. Apparently, I was incorrect.

21 Q. Well, I'm not--I don't want to put words in
22 your mouth. I'm asking you whether you were

03:33:47 1 absolutely sure of that.

2 A. What was the question again?

3 Q. Whether you were absolutely sure that Pac Rim
4 Cayman at any time had a Board of Directors.

5 A. No.

6 Q. Are you able to point to any documentation
7 you're aware of that suggests that Pac Rim Cayman ever
8 had a Board of Directors?

9 A. Pac Rim Cayman, again, is a holding company.
10 The Board of Directors of Pacific Rim Mining Corp.
11 is--and myself as the Chief Executive direct Pac Rim
12 Cayman as a holding company.

13 Q. You say the Board of Directors of Pacific Rim
14 Mining Corp. direct Pac Rim Cayman. You're talking
15 about the Board of Directors of the Canadian
16 Companies; correct?

17 A. Yes.

18 Pacific Rim or Pac Rim Cayman is a holding
19 company. It apparently has no Board of Directors.
20 I'll take your word for that. It has two--apparently
21 only has two managers.

22 But again, this is a company designed solely

03:35:00 1 to hold assets. There is no exploration activities
2 directly through that holding company. This is, as
3 the name suggests, strictly a company to hold assets.

4 Q. And you may have saved me some time because I
5 wanted to take you through some organizational charts.
6 Let me just ask this question: During all relevant
7 times, to your knowledge, was Pac Rim Cayman
8 100 percent owned by the Canadian company Pacific Rim
9 Mining Corp.?

10 A. Yes.

11 Q. And you just said, I believe, there are no
12 exploration activities directly through that holding
13 company.

14 A. The exploration activities were through the
15 U.S. company, the exploration company. I mean, that's
16 the function--the function of that company is to
17 conduct exploration.

18 Q. I'm going to stand up for a second, just so
19 we know what we're talking about.

20 And I could put up variation charts for
21 various time periods, but let's start with C-57, which
22 should be in your packet. Bear with me one second. I

03:36:28 1 think it's Tab 17.

2 Okay, we can do this one.

3 Can you identify what Exhibit C-57 is.

4 A. This is C-57?

5 Q. The document we marked it as, can you tell us
6 what it shows.

7 A. Yes. It's the organizational chart
8 post-December restructuring.

9 Q. Right.

10 And when you refer to the exploration company
11 that performed the activity, are you talking about
12 this company, which I will circle in green, Pacific
13 Rim Exploration, Inc.?

14 A. That's the operating entity that pays the
15 geologists and pays for our offices in Nevada, yes.

16 Q. And employs the geologists?

17 A. Employs the geologists that are based in
18 Nevada.

19 Q. Correct.

20 And the operating company that is in charge
21 of overseeing the technical work like the
22 pre-Feasibility Study; correct?

03:37:54 1 A. Yes.

2 Q. Okay.

3 A. Well, that's actually not completely correct.

4 The Feasibility Study was partly managed as well by

5 Fred Earnest, who at the time was working for the

6 Salvadoran sub most of the time and part of the time

7 for the U.S. sub.

8 Q. Let's talk about that in a second. But this

9 company that I've circled in green, the exploration

10 company, is a different company than the Claimant

11 which is circled in red here, Pac Rim Cayman LLC

12 (USA); correct?

13 A. Yes, they're different companies.

14 Q. Okay. And the one circled in green is the

15 one that the exploration activities are conducted

16 through?

17 A. Yes.

18 Q. All right. And that's not the same company

19 as the Claimant; correct?

20 A. Correct. It's not the same company as Pac

21 Rim Cayman.

22 Q. Now, you mentioned a Mr. Earnest was his

03:39:02 1 name?

2 A. Yeah, not at that time. Fred wasn't there.

3 Q. Let me see if I can find something about him.

4 Wasn't he involved with some of the technical
5 work in El Salvador?

6 A. Fred is a mining engineer, a mine operator,
7 and a mine developer. He was--until his departure,
8 was in charge of the engineering side of the technical
9 work, but he reported to me.

10 Q. Right. So, let me put a couple of documents
11 in front of you, which I think have Mr. Earnest's name
12 on them. Let's look first at C-37, and in your book
13 it is Tab 12.

14 Now, if you could--can you move down
15 the--pull out a little so we can see the address.

16 You see this is a letter from Vector
17 Colorado, LLC to Mr. Frederick Ernst?

18 A. Earnest.

19 Q. Earnest, excuse me.

20 A. Yes, it is.

21 Q. Now, in fact, you talk about Vector
22 Engineering in your Witness Statement at Pages 23 and

03:40:49 1 24, if you want to reference it, and you say they,
2 "performed all the hydrogeologic work regarding
3 aquifers, designed the tailing impoundment design, and
4 took the lead in preparing the Estudio de Impacto
5 Ambiental (Environmental Impact Statement) submitted
6 by the companies in conjunction with the environmental
7 permit application."

8 Do you see that?

9 A. Where is that?

10 Q. It's in your Witness Statement at
11 Paragraph 65.

12 A. Yes.

13 Q. Now, can you put C-37 back on the screen.

14 Now, this letter to Mr. Earnest from Vector
15 Colorado relates to that engineering work that Vector
16 was doing that you just described in your Witness
17 Statement; correct?

18 A. Correct.

19 Q. And it's addressed to Mr. Earnest at Pacific
20 Rim El Salvador; do you see that?

21 A. Yes.

22 Q. And he was the project manager for the El

03:42:15 1 Dorado project; isn't that right?

2 A. Yeah, Mr. Earnest was managing the activities
3 in El Salvador, yes.

4 Q. And if you look at the first sentence, it
5 says, "Pursuant to receipt of your letter dated 26
6 November 2003, we understand that Pacific Rim Mining
7 Corporation (Pac Rim) has selected Vector Colorado LLC
8 to perform the services described," and it goes on to
9 give a proposal number.

10 Do you see that?

11 A. Yes.

12 Q. And that entity that selected the vendor
13 Vector Colorado LLC was the parent company, Pacific
14 Rim Mining Corporation; correct?

15 A. Yes.

16 Q. It was not the Claimant in this case; right?

17 A. Again, Pac Rim--you're slicing out individual
18 companies, and Pacific Rim--Pac Rim Cayman is a
19 holding company, and so, yeah, they didn't have--there
20 is no people working for Pac Rim Cayman, if you're
21 going to treat it that way.

22 Q. Well, pac Rim Cayman, the Claimant, doesn't

03:43:26 1 hold Pacific Rim Mining Corporation?

2 A. No.

3 Q. It's the other way around?

4 A. No, it holds the assets.

5 Q. And let's look at your Witness Statement
6 again. Another vendor you discussed using in respect
7 of the El Salvador work is Call and Nicolas, that's
8 also at Paragraph 65 who you say performed the rock
9 mechanics and stability testing.

10 A. It's Call and Nichols.

11 Q. Call and Nichols. I apologize. Is it
12 spelled right in your Witness Statement there?

13 A. No.

14 Q. Okay. It should be N-I-C-H-O-L-S.

15 A. Yes.

16 Q. Okay. Did they in fact perform the rock
17 mechanics and stability testing with respect to the El
18 Dorado project?

19 A. Yes, they did.

20 Q. Now, let's look at C-38, which is Tab 13.
21 And do you see that this is another letter involving
22 Mr. Earnest. This time it's from Mr. Earnest, and

03:44:31 1 it's addressed to Call &--well, it says "Nicolas" on
2 this letter.

3 A. Sorry.

4 Q. I don't know what it is. Maybe Mr. Earnest
5 got it wrong, dated February 13, 2004.

6 Do you see that?

7 A. Yes, I do.

8 Q. And can we blow up the first sentence,
9 please.

10 You see he's writing on behalf of Pacific Rim
11 Mining Corporation; right?

12 A. Yes.

13 And it's actually Pacific Rim Mining Corp.

14 Q. Either way, whether it's Corp. or
15 Corporation, that's the Canadian company; correct?

16 A. That's correct.

17 Q. And I could take you through more of these
18 vendors, but do you have any doubt that none of these
19 vendors were directed to do their work by the Claimant
20 in this case?

21 A. Correct.

22 Q. Okay. Now, with respect to the finance,

03:45:56 1 marketing, and administrative functions of the entire
2 family of companies, they were all performed in
3 Vancouver, Canada; correct?

4 A. Could you give me that list again.

5 Q. The finance, marketing, and administrative
6 functions of the Pac Rim family of companies.

7 A. Correct.

8 Q. Now, in response to a question Mr. Smith
9 asked you, I think you referenced a Feasibility Study.
10 Do you remember responding that way?

11 A. Yes.

12 Q. Let's look at C-9, which is Tab 9.

13 Is this the document you had reference to
14 dated January 21, 2005?

15 A. Yes.

16 Q. Okay. Now this, in fact, is entitled "Final
17 Pre-Feasibility Study"; correct?

18 A. Yes, sir. The term pre-feasibility is a term
19 used in the financial community and by the regulators
20 to--unlike oil, there is very strict requirements of
21 what qualifies as pre-Feas and Feas. In this case,
22 the only thing that would not make this a full

03:47:30 1 feasibility by financial terms but in the market terms
2 is that it didn't have the--it didn't have an updated
3 or didn't have a thorough costing study attached to
4 it. But we didn't anticipate that the turnaround was
5 going to be very quick, and you don't do these costing
6 studies knowing that you are going to redo them
7 because they're quite expensive.

8 So, in all other regards this Feasibility or
9 this pre-Feasibility Study has the level of accuracy
10 sufficient to qualify as a Feasibility Study except we
11 didn't spend the money to do the costing until--we
12 weren't going to do it until after we had the--

13 Q. So, you didn't spend money to do what was
14 would qualify as a Feasibility Study?

15 A. In financial terms.

16 Q. Right. Okay.

17 A. I think--I know where you're leading, but in
18 terms of what qualifies as a Feasibility Study in El
19 Salvador, this document is definitely qualified in El
20 Salvador. We have submitted this without the costing,
21 and we let the regulators know that they'd just have
22 to--when we have a date.

03:48:38 1 Costing studies only have--they have a shelf
2 life, so if you produce one that you know is going to
3 go extinct, then there is no sense producing it.

4 And again, in all other aspects of this
5 study, it is clearly of the accuracy level for a
6 Feasibility Study.

7 Q. I was merely trying to determine whether this
8 was the document that you referenced in response to
9 Mr. Smith's question, and the answer is yes?

10 A. I don't remember what Mr. Smith's question
11 was.

12 Q. I don't remember the question either, but you
13 said there was a Feasibility Study.

14 A. Yes.

15 Q. And this is the document you were
16 referencing?

17 A. Yes.

18 Q. Okay.

19 A. In Salvadoran terms it was a Feasibility
20 Study. In financial terms, this is a pre-Feasibility
21 Study.

22 Q. Now, I think I have just one more area

03:49:22 1 because you have enabled me to shorten my examination.

2 If you look at your Witness Statement at Paragraph 58
3 you talk about stock ownership issues, and in the
4 first paragraph you say, "Moreover, as a result of the
5 merger, the company now had a majority of Shareholders
6 based in the United States. Do you see that?"

7 A. Yes.

8 Q. Now, you're talking about after the Dayton
9 merger; correct?

10 A. Correct.

11 Q. Let's--let me stand up again and put up an
12 organizational chart that I think reflects the status
13 of the companies after the Dayton merger. C-54, which
14 I believe is Tab 16. You see this chart at top says
15 the Pac Rim companies' organizational structure
16 immediately following the 2002 merger with Dayton;
17 right?

18 A. Yes.

19 Q. And this is an accurate structure of what it
20 looked like after the merger with Dayton?

21 A. Yes.

22 Q. Okay. So, in your declaration you said--in

03:50:53 1 your Witness Statement, rather, you said the companies
2 now had a majority of Shareholders based in the United
3 States.

4 Now, the Claimant, Pac Rim Cayman, still is
5 100 percent owned by Pacific Rim Mining Corporation
6 Canada at this time; correct?

7 A. Correct.

8 Q. And if you fast-forwarded to how they looked
9 immediately prior to the December 2007 restructuring,
10 can we look at C-55, Tab 15, is it correct that
11 immediately prior to the December 2007 restructuring,
12 again the Claimant, Pac Rim Cayman, is still
13 100 percent owned by the Canadian company Pacific Rim
14 Mining Corp.?

15 A. That's correct.

16 Q. So, this is immediately prior to the
17 December 2007 restructuring. Let's finally go to
18 immediately after the 2007 restructuring, which is
19 Tab 17, Exhibit C-57.

20 Do you see that?

21 And you will agree with me--I'm sorry, what
22 tabs are these?

03:52:32 1 Sorry. This is C-57, which is Tab 17.

2 A. Okay. And the other one?

3 Q. The other one we just looked at was Tab 15,
4 which was C-55, I believe.

5 So, tell me when you're ready.

6 A. I'm ready, sir.

7 Q. Thank you, sir. So, will you agree with me
8 that even after the--before the December 2007
9 restructuring, the Shares of the Claimant, Pac Rim
10 Cayman LLC now in Nevada, were still a hundred percent
11 owned by the Canadian company?

12 A. Yes, which is 60 percent owned or more by
13 U.S. Shareholders.

14 Q. Well, you anticipated my next question.

15 So, when you said in your witness statement
16 that the companies now had a majority of Shareholders
17 based in the United States, you were talking about
18 this relationship up here, the Shareholders of the
19 Canadian parent company; correct?

20 A. Can I draw my circle up there?

21 Q. Sure.

22 Let me erase this green one.

03:54:01 1 PRESIDENT VEEDER: But you can't talk because
2 you don't have a microphone, so whatever you want to
3 say, come back to the table.

4 BY MR. BADINI:

5 Q. Before you talk, you have to go back to the
6 table.

7 A. Pacific Rim Mining Corp. owns all of the
8 companies, all of the holding companies, all of the
9 operating companies, all of the local subsidiary
10 companies. And Pacific Rim Mining Corp. is owned a
11 majority by U.S. Shareholders.

12 Q. And does Pacific Rim Mining Corp. also
13 control all of these companies you just circled?

14 A. Yes.

15 Q. Now, when you say in your Witness Statement
16 that majority of the Shareholders are based in the
17 United States, what are you relying upon?

18 A. We are relying on reports, usually post-proxy
19 services that identify the geographic location of the
20 shares, at least the beneficiary Shareholders.

21 Not all shares are registered. Not every
22 Shareholder wants to be specifically identified by

03:55:27 1 name, but he has to identify his residence.

2 Q. Right. So, your statement is based on
3 information about residents of the Shareholders;
4 correct?

5 A. That's correct. That's all the information
6 you can get. I mean, by law, there is no way to go
7 directly to every Shareholder. That's part of
8 the--part of the system.

9 Q. Well, Mr. Shrake, I'm not going to ask you
10 what the law requires because then your lawyer will be
11 upset, and so will the Tribunal, but I will--

12 A. As a practical matter leaving law aside,
13 there is no way you can determine exactly who these
14 people are, but you can determine where they reside.
15 That's the best you can do.

16 Q. Instead of asking you whether there is any
17 way to determine it, let me ask you what you know. Do
18 you have information as to whether these 60 percent
19 U.S. shareholders that you say own the Shares of the
20 parent, do you have information as to whether they are
21 nationals of the United States?

22 A. Citizens?

03:56:33 1 Q. Well, I said nationals because that's what
2 the--that's what my understanding is of the
3 requirement.

4 A. As I said--sorry. As I said previously,
5 there is no way to specifically identify whether they
6 are citizens or residents or not, but, I mean, that's
7 the best you can do. That's all that's available.

8 Q. So, let me take your term, "citizens."
9 Do you have any information as to whether
10 these Shareholders are citizens of the United States?

11 A. No, and I have no indication that they're
12 not.

13 MR. BADINI: May I have one minute.

14 (Pause.)

15 MR. BADINI: We have no further questions at
16 this time.

17 PRESIDENT VEEDER: Thank you very much.

18 Are there any questions by way of redirect
19 examination?

20 MR. de GRAMONT: May we take a short break,
21 Mr. President?

22 PRESIDENT VEEDER: How short is short?

03:57:50 1 MR. de GRAMONT: Five minutes.

2 PRESIDENT VEEDER: Five minutes, yes.

3 (Brief recess.)

4 PRESIDENT VEEDER: Before you resume, are you

5 feeling all right?

6 THE WITNESS: I'm feeling fine.

7 MR. de GRAMONT: Thank you, Mr. President.

8 We have just a few more questions for the witness.

9 REDIRECT EXAMINATION

10 BY MR. de GRAMONT:

11 Q. Mr. Shrake, Mr. Badini asked you a number of

12 questions about Pacific Rim Mining Corp.

13 Does Pacific Rim Mining Corp. have any

14 subsidiaries?

15 A. Yes.

16 Q. Did any of those subsidiaries--well, let me

17 ask you this: Do you have any positions in any of

18 those subsidiaries?

19 A. Two.

20 Q. Which ones?

21 A. Pac Rim Cayman LLC and Dayton Mining (U.S.).

22 Q. Do you have any position in Pacific Rim

04:05:25 1 Exploration?

2 A. Yes.

3 Q. What is that portion?

4 A. President, Secretary, and Treasurer.

5 Q. And what is your position in Pac Rim Cayman?

6 A. President, CEO--Pac Rim Cayman I'm a Manager.

7 Q. Okay. And what's your position in Dayton?

8 A. Treasurer.

9 Q. Now, did any of those subsidiaries have
10 anything to do with the investment made in El
11 Salvador?

12 A. All of them.

13 Q. Can you tell me what the role of Dayton was.

14 A. Dayton is the--was the holding company for
15 the Denton Rawhide Mine located in Nevada, which
16 provided about 22.5 million dollars to the El Salvador
17 investment from gold sales in the United States.

18 Q. And what was the role of Pacific Rim
19 Exploration?

20 A. We're the mine finders. We are the wealth
21 creators. We are the intellectual property of the
22 company.

04:06:28 1 Q. And how did that contribute to El Salvador?

2 A. It contributed everything to El Salvador.

3 Q. Do you know how the Companies accounted for
4 their direct financial investments into El Salvador?

5 A. No.

6 Q. Do you know whether those investments were
7 kept on the books as investments of Pac Rim Cayman?

8 A. I don't.

9 Q. Okay. Do you know if the companies filed any
10 registration with the Office of National Investment in
11 El Salvador?

12 A. Yes.

13 Q. Do you know which company was listed, which
14 of the subsidiaries was listed as the investor at the
15 Office of National Investment?

16 A. No.

17 Q. Okay. Now, you testified that Pac Rim Cayman
18 made a number of acquisitions and dispositions over
19 the years. Do you recall that?

20 A. Yes.

21 Q. And so, for example, in 2001, Pac Rim Cayman
22 decided to sell its Argentine assets. Do you recall

04:07:37 1 that?

2 A. Yes.

3 Q. And whose decision was that?

4 A. Mine.

5 Q. And then it took the proceeds from the
6 Argentine sales and reinvested them in El Salvador.
7 Who decided that?

8 A. I did.

9 Q. And then in 2004, Pac Rim Cayman became the
10 100 percent owner of Pacific Rim El Salvador. Who
11 decided that?

12 A. I did.

13 Q. And then in 2005, Pac Rim Cayman became the
14 100 percent owner of the other Salvadoran subsidiary
15 DOREX; do you recall that?

16 A. Yes.

17 Q. And who made that decision?

18 A. I did.

19 Q. And then in 2007, Pac Rim was domesticated
20 from the Cayman Islands to Nevada. Who made that
21 decision?

22 A. I did.

04:08:29 1 MR. de GRAMONT: I have no further questions.

2 Thank you.

3 THE WITNESS: Thank you.

4 PRESIDENT VEEDER: Are there any further
5 questions from the Respondent?

6 MR. BADINI: Just one moment.

7 Mr. President, I have a couple of questions
8 that are mostly in the nature of housekeeping. It
9 will just take a couple of minutes, if that's okay.

10 PRESIDENT VEEDER: Do you want to do it with
11 the witness?

12 MR. BADINI: Yes, with the witness.

13 PRESIDENT VEEDER: Let's see where it goes.

14 RECROSS-EXAMINATION

15 BY MR. BADINI:

16 Q. Mr. Shrake, I asked you a couple of questions
17 about C-57, which we had up on the chart, and in
18 response to those questions you went up to the board
19 and made a big blue circle.

20 Do you recall that?

21 A. Yes.

22 Q. Unfortunately the board is not capable of

04:09:28 1 copying what you put on the board, so I would request
2 if it's okay with the Tribunal for me to approach the
3 witness that put a copy of Exhibit C-57 in front of
4 you and ask you if you can circle that.

5 May I?

6 PRESIDENT VEEDER: Of course. If you told us
7 earlier, we do have a technical facility for taking a
8 photograph and making a PDF version of the document.

9 MR. BADINI: My fault, sorry.

10 PRESIDENT VEEDER: We can also reproduce it
11 apparently from the live stream.

12 BY MR. BADINI:

13 Q. So my question is clear, I'm just asking you
14 to reproduce to the best extent possible the blue
15 circle you made in response to my questions.

16 Have you now done that, sir?

17 A. Yeah.

18 Q. Thank you.

19 PRESIDENT VEEDER: Do you want to mark it
20 with a special exhibit number?

21 MR. BADINI: Yes. I don't know what
22 the--what the convention is. Maybe C-57 A to avoid

04:10:29 1 confusion?

2 PRESIDENT VEEDER: C-57 A.

3 MR. BADINI: I'm sorry, what I was going to
4 suggest, Mr. de Gramont, is that after you've had a
5 chance to examine it, we provide it to the Secretary
6 of ICSID to make copies and put it in the record.

7 PRESIDENT VEEDER: We tell the Parties if
8 there is any controversy about this, we will lift the
9 original of the live stream where we have a copy
10 electronically. So if there's any difficulty, we can
11 resolve it later without this witness.

12 What was your other housekeeping matter?

13 MR. de GRAMONT: That's fine. I think it
14 should be admitted as the Respondent's exhibit,
15 though.

16 MR. BADINI: That's fine. Can we agree on a
17 number, though, so we don't quibble about it later?

18 PRESIDENT VEEDER: Let's not waste time about
19 this now, please. We could sort it out.

20 MR. BADINI: We'll sort it later.

21 PRESIDENT VEEDER: Next housekeeping?

22 MR. BADINI: I don't have any further

04:11:37 1 housekeeping.

2 PRESIDENT VEEDER: Any further questions from
3 the Claimants?

4 MR. de GRAMONT: Nothing further,
5 Mr. President. Thank you.

6 PRESIDENT VEEDER: The Tribunal has a few
7 questions. I'm sorry, we are going to keep you a few
8 moments longer. I'm going to ask my colleague to
9 begin with her questions.

10 QUESTIONS FROM THE TRIBUNAL

11 ARBITRATOR STERN: Not questions. I have
12 just one very short and naive question.

13 You explained one of the reasons, not only
14 one of the reasons, that you introduced Pac Rim Cayman
15 into Nevada was to save costs, but if you wanted to
16 save costs, why didn't you keep just one company in
17 Nevada dealing with all the Salvadoran assets? I
18 mean, for example, why didn't you keep exploration and
19 make the two Salvadoran company subsidiary of this. I
20 mean, it's a very naive question, but to save costs,
21 if you have one company, it's less expensive than if
22 you have two.

04:12:50 1 THE WITNESS: Yes. It's a fair question.

2 Dayton was the holder of the Rawhide Mine,
3 and we did eventually sell the Rawhide Mine, so it
4 would have--I mean, the bottom line is that we did
5 save costs, and your question is a good one, but we
6 still have the flexibility of slicing off when we have
7 the tier above the holding company. I mean, sorry,
8 the assets, the Salvadoran companies.

9 ARBITRATOR STERN: Could you explain this a
10 little bit better.

11 THE WITNESS: It's just a whole lot cheaper
12 to manage the holding company in Nevada. It requires
13 less administrative time.

14 I mean, we live in Nevada. We live in Reno.

15 ARBITRATOR STERN: I understand this, but if
16 you had dealt with through Pacific Rim Exploration,
17 that was also in Nevada?

18 THE WITNESS: Yes, we could have done that.

19 ARBITRATOR STERN: Why didn't do you it?

20 THE WITNESS: We just wanted to still have
21 the flexibility of slicing off the asset at the Nevada
22 holding company level.

04:14:05 1 ARBITRATOR STERN: Okay.

2 THE WITNESS: Because I mean the other assets
3 that we acquire in the future will have a holding
4 company as well, so we can slice those off as well.

5 ARBITRATOR STERN: Okay.

6 THE WITNESS: Did I do a decent enough job of
7 explaining that?

8 ARBITRATOR STERN: I'm not sure I am
9 completely convinced or completely understood, but
10 thank you for your answer.

11 THE WITNESS: You're welcome.

12 PRESIDENT VEEDER: Any questions?

13 ARBITRATOR TAWIL: No.

14 PRESIDENT VEEDER: I just have two brief
15 questions. Is there an application?

16 Can I explain our procedure, which I hope is
17 understood, is that after we finish our questions, we
18 shall give both sides an opportunity of asking any
19 further follow-up questions arising from the
20 Tribunal's questions. So, we are not closing the door
21 yet. So, the questions may continue. But I only have
22 two.

04:15:02 1 THE WITNESS: Okay.

2 PRESIDENT VEEDER: I want to ask you about
3 something which is a technical question, and it may
4 have nothing to do with the issues in this case at
5 this stage, but out of curiosity I'm going to ask you
6 anyway. If there is some objection, we'll hear it.

7 You need the bundle you were given this
8 morning and turn to Tab 5, which is your letter to the
9 President of the 14th of April of 2008. If you could
10 open that to Page 2. And then if you could turn to
11 your Witness Statement, if you have it separately, I'm
12 going to turn to that second, but let's start with the
13 letter.

14 THE WITNESS: Okay. Where is the letter?
15 I'm sorry.

16 PRESIDENT VEEDER: It's Tab 5, it's the
17 letter of the 14th of April, 2008. It's the black
18 book you had earlier. It's Exhibit 8, I think, to the
19 Notice of Arbitration.

20 If you turn to the second page, you quote
21 something you attributed to the President.

22 THE WITNESS: Tab 5?

04:16:17 1 PRESIDENT VEEDER: Tab 5.

2 THE WITNESS: I apparently don't have the
3 right letter.

4 PRESIDENT VEEDER: Somebody help the witness.

5 THE WITNESS: Yes, okay. I see it. I'm
6 sorry.

7 PRESIDENT VEEDER: Turn to the second page.

8 THE WITNESS: I've got it.

9 PRESIDENT VEEDER: It's a paragraph saying:
10 "Through the media, we have learned that you have
11 stated that you oppose our being granted operating
12 permits."

13 THE WITNESS: Yes.

14 PRESIDENT VEEDER: In these public statements
15 you said in principle I do not agree with granting
16 these permits, and you were asked about that.

17 THE WITNESS: Yes.

18 PRESIDENT VEEDER: And then the quotation
19 goes on attributed to the President, "But if it is
20 demonstrated to me through the studies done by the
21 Ministry of the Environment and the Ministry of the
22 Economy that gold can be produced thus growing the

04:17:09 1 economy without damaging any resources like water from
2 the use of cyanide, I'm willing to work with the
3 assembly on a law to establish things properly." And
4 that's the end of the quotation.

5 And then you continue, "Our project,
6 Mr. President, does just what you asked. In response
7 to your concern, modern mining technology does not
8 damage water tables and also denatures the cyanide so
9 that it does not produce any harmful effects."

10 That's the first passage.

11 And I'd like you to turn to your Witness
12 Statement to Paragraph 80 at Page 29. In
13 Paragraph 80, you say that, "In December 2006, we
14 presented MARN with a design for a state-of-the-art
15 water treatment facility and reservoir. This is one
16 of the aspects of the mine design that I'm most proud
17 of. When we arrived in El Salvador in 2002, the river
18 system near the El Dorado site was already severely
19 polluted with fertilizers, insecticides, defoliates,
20 detergents, and bacteria. These waters serve for
21 farming, laundry, bathing, and sanitation."

22 Now, my comment is or my question is simply

04:18:32 1 this: When you referred to modern mining technology
2 does not damage water tables and also denatures the
3 cyanide so that it does not produce any harmful
4 effects, are you or were you referring to what you
5 state in Paragraph 80 of your Witness Statement,
6 namely this state-of-the art water treatment facility
7 and reservoir, or are you referring to something more?

8 THE WITNESS: It's much more than that.

9 Do you want a technical explanation?

10 PRESIDENT VEEDER: Please try.

11 THE WITNESS: I will try to be as brief and
12 use as few technical words as possible, but the mine
13 design that we had submitted to the authorities of El
14 Salvador, as I said previously, would set new
15 precedents in all the Americas. There is only one
16 mine on the globe that I know of that has taken the
17 steps that we have taken for environmental protection.
18 The way--the ways in which we protect the water are
19 numerous. The first way that we protect the water was
20 by after numerous community consultations which are
21 not--it's not a process isolated in time. These
22 consultations happen all the time, but that's another

04:19:50 1 subject, sorry.

2 The way--the first way in which we protect
3 water in this area is that rather than using water
4 wells and even tapping into the aquifers, we designed
5 a tailings impoundment system, the system that holds
6 the residual rock after the gold has been extracted,
7 we use that as a reservoir system as well.

8 So, in this ecosystem, it's subtropical.
9 There's about--there is no shortage of water. There's
10 two plus meters of rainfall a year, but it happens
11 over six months, and the other six months it's almost
12 like a desert.

13 So, the way that we--that our Vector
14 Engineering group, and Fred Earnest as well, he
15 deserves credit for this as well, what they elected to
16 do was to collect the water during the rainy season in
17 the tailings impoundment system and then use it for
18 use during the dry season. As part of that, there is
19 a significant amount of recycling, et cetera.

20 Now, this impoundment system also is
21 precedent setting in that we use what's called the
22 inco process to denature the cyanide, to neutralize

04:21:06 1 it, to make it nonhazardous before it goes into this
2 impoundment system.

3 We also use a double liner, double
4 impermeable liner beneath this tailings impoundment
5 system, so we use about a foot of compacted clay. And
6 then on top of that we put a synthetic liner in case
7 that--in case one--the top liner failed, there would
8 be a second liner underneath it that would hold the
9 solution.

10 So, this is creating a closed system so all
11 the residual rocks after they have been ground up and
12 after the gold has been extracted from them and after
13 the cyanide has been leached or has been denatured, we
14 put this material into this impoundment system, and it
15 completely protects it from coming in any contact with
16 the surrounding environment.

17 The other aspect of our design, which
18 is--again I'm very proud of this, but is that when
19 this water that we store and release after--any water
20 discharged out of the system will go through a water
21 treatment plant, so it actually leaves the site
22 cleaner than it drained into the site when we

04:22:22 1 collected it in the reservoir. And by the way, the
2 rainfall is so high, this water is runoff. It's going
3 to the Pacific Ocean if you don't store it, if you
4 don't have some kind of storage and distribution
5 system for it.

6 And finally, during the dry season is when
7 water is most critical in this area. The rivers
8 especially in this area we're working dry up in really
9 dry years, so by storing, processing, and cleaning and
10 discharging during the dry season, we are actually
11 making more water available in the river system
12 downstream for the use--for local use.

13 Is that what you're asking?

14 PRESIDENT VEEDER: Certainly is.

15 But again in Paragraph 80 you refer to the El
16 Dorado site already being severely polluted.

17 THE WITNESS: Yes.

18 PRESIDENT VEEDER: Now, polluted from what
19 activity? Are you referring to other mining
20 activities or is it farming? What is the description?

21 THE WITNESS: Sorry to step--I told him I was
22 going to buy him [the Court Reporter] a peashooter. I

04:23:34 1 apologize.

2 I'm sorry, what was your question again? I'm
3 getting tired.

4 PRESIDENT VEEDER: You already referred to
5 the El Dorado site as already being polluted. Why?

6 THE WITNESS: The reality--the reality of
7 subsistence farming in tropical environments is that
8 the crops compete with the tropical foliage, and the
9 way that they are able--and the way that you're able
10 to farm is first you burn off the local vegetation and
11 then you use--make extensive use of basically
12 herbicide, and paraquat is one of the chemicals that's
13 used commonly.

14 In addition, there's a great deal of--I'm not
15 trying to get too technical. There is a great deal of
16 fertilizer. Obviously it's tropical, so there's a
17 bunch of insects. There's insecticides. There's also
18 the E. coli bacteria count in the system are some of
19 highest counts we have ever seen in 23 years of
20 working in Latin America, so--so in the end, if you
21 compare the two industries environmentally, there's
22 really very little impact that can happen from this

04:24:57 1 mine. There's very little environmental--first of
2 all, we are only mining in processing at least
3 according to this what we have proposed in the
4 pre-Feasibility Study or Feasibility Study, however
5 you want to tag it, we are only mining
6 three-and-a-half million tons of material, and that's
7 just a very tiny--the Millennium Highway, which is
8 going to cross the northern half of the country, will
9 in effect be a 300-kilometer long cut into the sides
10 of the hills to go in. That's a whole lot bigger
11 impact and a whole lot more material move and affected
12 than what we would do.

13 And also, I would add that in the history of
14 western mining, there has never been a fatality from
15 cyanide. I realize "cyanide" is a scary word, and if
16 we played name association with cyanide, it creates
17 some images that are not pleasant. But the reality is
18 that, first of all, the mining industry uses only
19 17 percent of all the cyanide produced on a worldwide
20 basis, so we are not the biggest consumers of cyanide.

21 The other reality is that there has never
22 been a fatality related to--from cyanide within with

04:26:18 1 western mining companies in the western mining
2 industry as opposed to these--as opposed to
3 agriculture in the tropics, which is very dangerous.
4 1,500 people a year are killed in El Salvador from
5 exposure to these very harmful and dangerous
6 chemicals, and that doesn't count long-term potential
7 for other diseases that result from these very
8 dangerous chemicals.

9 PRESIDENT VEEDER: I will turn to my second
10 topic. Again, if you could turn to your Witness
11 Statement to Paragraph 110. It's at Page 40. And in
12 Paragraph 110 you describe how at some point in 2007,
13 obviously significantly before December, the idea for
14 deactivating subsidiaries in certain jurisdictions--we
15 understand Cayman--you said came from Mrs. or
16 Ms. April Hashimoto.

17 Where is she now?

18 THE WITNESS: Unfortunately, in September of
19 2008, as a result of the curtailment of our
20 activities, we had to--I mean, we had to lay her off
21 you. Ms. Hashimoto was a very high level CFO who we
22 needed to build a mine. Part of the process of

04:27:54 1 gaining financing is the quality of the people, the
2 officers that are in the organizational structure, and
3 we needed a very high powered Chief Financial Officer
4 at that point in time. But that obviously is a cost,
5 and it's a cost we don't need right now, so we have
6 replaced her with a part-time or a contract CFO.

7 PRESIDENT VEEDER: Do you know where she is
8 today?

9 THE WITNESS: I think she's living--still
10 living in Washington, the State of Washington.

11 PRESIDENT VEEDER: I can show you, if it
12 helps, but do you remember being shown a footnote in
13 the Counter-Memorial from the Claimants, referring to
14 an employee who had been laid off? Was that
15 Ms. Hashimoto?

16 THE WITNESS: I don't--I don't.

17 PRESIDENT VEEDER: Let me show you the
18 passage. It's Page 67 of the Claimant's
19 Counter-Memorial, and if you could be supplied with a
20 copy, I will take you to Footnote 170. If you turn to
21 Page 67, and you can see Footnote 170, and there's the
22 second sentence. The employee of Pacific Rim Mining

04:29:26 1 Corporation who was supposed to prepare the necessary
2 paperwork to dissolve Pacific Rim Caribe failed to do
3 so and was let go in 2008 as part of company-wide
4 layoffs.

5 THE WITNESS: Yes. That's unfortunately how
6 we dropped the ball on severing off the other Cayman,
7 but yes, that is April Hashimoto.

8 PRESIDENT VEEDER: Well, that concludes the
9 questions if the Tribunal.

10 We now ask counsel as to whether they have
11 any questions, and we will start obviously with the
12 Claimants.

13 MR. de GRAMONT: Mr. President, in response
14 to Professor Stern's question, there's an answer to
15 that question in the Witness Statement of Stephen
16 Krause, the part-time CFO, and if I could just refer
17 the Tribunal to that paragraph. As I understand, it's
18 Paragraph 32 of the Krause statement. If I understand
19 Professor Stern's question, it was why not simply
20 consolidate, why not simply move the Salvadoran
21 subsidiaries under one of the existing Nevada
22 entities, and the reason is that that would be

04:30:43 1 considered a taxable event, so it says Paragraph 32,
2 "for tax reasons"--

3 MR. SMITH: Can I interrupt for just half a
4 second? Is it appropriate for him to be doing this
5 with the witness on the stand?

6 MR. de GRAMONT: That's fine.

7 PRESIDENT VEEDER: Any further questions?

8 MR. de GRAMONT: I do not.

9 MR. SMITH: Yes, just a couple of questions
10 following on the questions from the Tribunal.

11 FURTHER RECROSS-EXAMINATION

12 BY MR. SMITH:

13 Q. In response to Professor Stern you indicated
14 that you maintained the structure with Pac Rim Cayman
15 as a separate entity because it would still be
16 beneficial to the company to be able to sever off the
17 assets at some point; is that correct?

18 A. We still could, yes.

19 Q. You still could.

20 But if you were to do that have it as a
21 Nevada entity, you would have lost all of the tax
22 benefits that you would have had had you maintained it

04:31:46 1 as a Cayman entity; is that correct?

2 A. It depends where you invested it. If you
3 invested it in the United States, I'm not sure that is
4 correct. And that's our primary focus right now is a
5 project called the Hog Ranch project in the United
6 States.

7 Q. Thank you.

8 Just two more questions--well, probably
9 three.

10 If you were to cut it off and sell it and you
11 made investments in El Salvador, then you would not
12 get the tax benefit; is that correct?

13 A. That is correct.

14 Q. Thank you.

15 Now, I have a question regarding the
16 reservoir that you talked about. You said it has a
17 double lining, clay and then synthetic lining, and the
18 purpose for the lining is so what is in the reservoir
19 does not get out?

20 A. It's so that what's in the reservoir does not
21 have any contact with the ecosystem outside of those.

22 Q. Outside.

04:33:04 1 And why do you need to prevent the contact
2 from the ecosystem?

3 A. That's a really good question. The reality
4 is that the rocks--this is going to take me a couple
5 of minutes. This is chemistry. The rocks that
6 contain the gold, and the rocks that--I mean,
7 basically what these deposits are is they are quartz
8 calcite gold-silver veins that fill cracks basically
9 in rocks. The average width of this vein, the vein
10 that's in the Feasibility Study averages 3.2 meters
11 wide, so we are not talking about a huge amount of
12 material, but the reality is that the chemistry of
13 that vein, the arsenic content, the lead content, the
14 mercury content, all of the accessory metal contents
15 within that vein is actually significantly less than
16 the accessory metal content of the rocks that occur
17 adjacent to the vein, and those rocks that occur
18 adjacent to the vein are the most common rock type in
19 the country of El Salvador.

20 So, you could argue that this is extreme
21 overkill, but our mission is to--is to create a
22 company that raises the bar environmentally; and, by

04:34:43 1 doing this, we are creating an environmental--a system
2 of environmental protection that can have very, very
3 little impact.

4 Q. And El Salvador, geologically, is an area
5 prone to earthquakes; is that correct?

6 A. Yes. The same processes that form these gold
7 deposits and copper deposits in Chile and Argentina
8 and elsewhere is related to the subduction of the
9 oceanic plate beneath the continental plate and the
10 resulting vulcanism. So, volcanoes occur around the
11 Pacific and circum-Pacific, and earthquakes occur
12 around the Pacific and so do copper mines and gold
13 mines. So, it's very--as an industry we are very used
14 to designing mines in seismically active areas. In
15 fact, El Salvador is not nearly as active as Chile is,
16 for example, and mines are obviously built there all
17 the time.

18 So, we've designed for a level--we've taken
19 significant--we've taken--we've designed the mine to
20 handle an earthquake that's significantly greater than
21 any earthquake that has ever occurred in Central
22 America.

04:36:06 1 Q. Not unlike the nuclear power plants in Japan?

2 A. Completely unlike the nuclear power plants.

3 That's just an absolute bogus comparison.

4 Q. Thank you.

5 MR. SMITH: I have no further

6 questions--well, one further question.

7 BY MR. SMITH:

8 Q. Two questions.

9 With regard to Ms. Hashimoto being released,
10 did that have to do with the failure to de-register
11 Pacific Rim Caribe?

12 A. No. Ms. Hashimoto was released for cost
13 savings.

14 Q. And was she replaced by Stephen Krause, who
15 also now is a part-time--on a part-time contract
16 basis? Does Stephen Krause hold the same position
17 that she did?

18 A. That's correct.

19 Q. Thank you.

20 MR. SMITH: No further questions.

21 PRESIDENT VEEDER: Final opportunity, any
22 further questions from the Claimants by way of

04:37:12 1 redirect examination?

2 MR. de GRAMONT: No, thank you,
3 Mr. President.

4 PRESIDENT VEEDER: Well, again, thank you for
5 your patience. We have come to the end of your
6 testimony. You may leave the table.

7 THE WITNESS: Thank for you for bearing with
8 my glasses and my cold.

9 (Witness steps down.)

10 PRESIDENT VEEDER: Now, we come to a
11 different part of the procedure. And we understand
12 there are representatives from Costa Rica and from the
13 United States of America, and we're going to ask them
14 whether they have any oral submissions they wish to
15 make to this Tribunal as non-disputing parties. We
16 ask Costa Rica first, and we would like them also to
17 introduce themselves, using a microphone. Preferably
18 switched on.

19 MR. QUIRCE: My name is Jose Carlos Quirce.
20 I'm with the Embassy of Costa Rica.

21 So far we have no comments to add. We
22 reserve the right to do it in writing later, using the

04:38:22 1 term that we have. Thank you.

2 PRESIDENT VEEDER: Thank you very much for
3 that. Of course, we acknowledge that right, and we
4 will build into the timetable a procedure for that.

5 Could we pass the microphone to the
6 representatives of the United States of America. And
7 we ask the same question.

8 MS. CATE: Alicia Cates. I'm an
9 Attorney-Adviser at the Department of State, the
10 Office of the Legal Adviser, and as we submitted in
11 right writing last week, we will not be making an oral
12 submission today. However, we do reserve the right to
13 make a written submission. I believe the timeline is
14 designated for May 20, and we appreciate the Tribunal
15 having designated such a timeline.

16 Thank you.

17 PRESIDENT VEEDER: Thank you, too.

18 I take it there is no other representative
19 from any other nondisputing Party present at this
20 hearing today.

21 (No response.)

22 PRESIDENT VEEDER: Let's move on to the next

04:39:13 1 stage, which is that we need to plan for tomorrow and
2 what happens after tomorrow. What we suggest is that
3 we break now. The Tribunal will complete the exercise
4 it undertook to do yesterday for tonight, which is to
5 give some guidance to the Parties as to the particular
6 areas, questions, issues, that we would wish the
7 Parties to address if they can do so tomorrow. But if
8 they need more time, obviously in writing. It will be
9 fairly rough and ready because we've had other things
10 to do today, so have you, but we thought it would
11 nonetheless be helpful to give you some general idea
12 of where we think we need a little bit more assistance
13 from the parties' counsel. While we're doing that,
14 and we can do this in 15 or 20 minutes during the
15 break, we would very much encourage the Parties
16 themselves to talk to each other as to what they see
17 from their perspective as the most useful exercise for
18 tomorrow. We now know that we don't have oral
19 presentations by the non-disputing parties tomorrow
20 morning, so that time is available to us, but we also
21 understand that you may want to make use of tomorrow
22 morning or part of it to prepare for your oral

04:40:29 1 submissions. We have all day.

2 How long do you need for oral presentations?
3 Will you do it all tomorrow, or will you do some of it
4 in writing at a later date? And we need to establish
5 a timetable, given not only the deadline or the date
6 for the submissions by the non-disputing parties, but
7 we also have a date for the submissions made by the
8 I'm going to call them amicae, but that's not the
9 technical word, but I think you know what I mean.

10 So, is there anything else we need to address
11 on the Tribunal's side over the next, say, 20 minutes
12 before we resume this hearing? The Respondent first.

13 MR. SMITH: Nothing from Respondent.

14 PRESIDENT VEEDER: And Claimants?

15 MR. ALI: Mr. Chairman, there is a document
16 that we would like to use in closing tomorrow which we
17 gave to Mr. Smith and his colleagues to review. We
18 don't know whether they're going to have any--if
19 they've had a chance to review it or not. Or perhaps
20 if they haven't, they could look at it over the break,
21 and we can make our submissions for entry of that
22 document into the record after the break.

04:41:44 1 PRESIDENT VEEDER: If you have that document
2 you could look at it and tell us what the position
3 might be after the break.

4 MR. SMITH: Yes, we will.

5 PRESIDENT VEEDER: Let's do that. Let's
6 break for 20 minutes then and we will resume at 5:00.

7 (Recess.)

8 PRESIDENT VEEDER: Let's resume.

9 Well, first of all, the exhibit over which
10 there was a dispute is now R-126. Secondly, there was
11 an application about a further document to be produced
12 to us tomorrow. Has that been resolved, or is that
13 something we are going to need to address?

14 MR. ALI: Unfortunately, Mr. Chairman, it is
15 something that you are going to need to address. It
16 is a document that is in the public record. It's a
17 document that we would like to rely upon tomorrow in
18 our closings.

19 And would it be permissible for us to explain
20 what the document is?

21 PRESIDENT VEEDER: Let me hear from the
22 Respondent first.

05:19:37 1 I take it this is not evidence, and it's not
2 in the evidential record.

3 MR. SMITH: It's not in the record; and from
4 the Respondent's point of view, it is far too late to
5 be putting forth a new document which is relatively
6 lengthy which we have not had a chance to deal with to
7 give it to us today so that they could refer to it
8 tomorrow many months, obviously, after the pleadings
9 have already been completed.

10 PRESIDENT VEEDER: There is a difficulty
11 about whether or not to admit a document for the
12 Tribunal. Until somebody tells us what the document
13 is, we are completely in the dark. Can we at least be
14 told what it is.

15 MR. SMITH: I would say--

16 MR. ALI: If I may explain--

17 PRESIDENT VEEDER: Wait a second.

18 MR. SMITH: Without advocating its content, I
19 would ask.

20 PRESIDENT VEEDER: Do your best. Please tell
21 us what the application is.

22 MR. ALI: I will ask--Mr. Posner has the

05:20:32 1 document, and I will just ask him to describe what it
2 is to you without advocating the content, but again to
3 emphasize that it is a public record.

4 MR. POSNER: Thank you, Mr. President.

5 The document is an excerpt from what is known
6 as the Foreign Affairs Manual of the U.S. Department
7 of State. It's a chapter from that manual entitled
8 "Assistance to Citizens Involved in Commercial
9 Investment and Other Business Related Disputes
10 Abroad," and it pertains to the argument we discussed
11 yesterday on the timeliness of the Notice of Intent to
12 deny benefits.

13 PRESIDENT VEEDER: Is this also related to
14 the ICSID Convention?

15 MR. POSNER: It is relevant to that, yes.

16 PRESIDENT VEEDER: To Article 27?

17 MR. POSNER: Correct.

18 PRESIDENT VEEDER: Are you in a position to
19 deal with this application now, or do you want to deal
20 with it tomorrow morning, when you said you hadn't
21 time to look at the full document?

22 MR. SMITH: I would prefer to deal with it

05:21:28 1 tomorrow morning.

2 PRESIDENT VEEDER: In the circumstances, we
3 will adjourn this application until tomorrow, and we
4 will fix the time. Whether it's before or during your
5 closing oral submissions we will decide later, but for
6 the moment we will put it aside.

7 Now, have you had a chance to discuss how you
8 want to deal with matters tomorrow? Is that something
9 that you've come to any form of agreement or
10 nondifference?

11 MR. ALI: We have, Mr. Chairman.

12 And Mr. Smith, if you would like to do the
13 honors.

14 MR. SMITH: Yes. The Parties have agreed
15 that we would like to maintain the schedule as it was
16 originally fixed by the Tribunal, which means nothing
17 scheduled in the morning in terms of presentations to
18 the Tribunal, and two hours for each Party in the
19 afternoon, with each Party having the opportunity to
20 reserve a part of that time for response afterwards.

21 In addition, the Parties have agreed that it
22 would be useful to have one round of Post-Hearing

05:22:49 1 Briefs so that we may respond in writing to your
2 questions, and that it would--because there may be
3 submissions from non-parties to CAFTA, we would
4 suggest that the Post-Hearing Submissions and the
5 response to those would be submitted together on the
6 10th of June.

7 PRESIDENT VEEDER: We understand we are going
8 to get the written submissions possibly from the
9 non-disputing parties on the 20th of May, and we are
10 almost certainly going to receive the substantive
11 submission by the NGOs, the amicae, also on the 20th
12 of May in the form that we already have it as a draft.

13 Do you think that gives you enough time by
14 the 10th of June to respond?

15 MR. SMITH: Yes.

16 PRESIDENT VEEDER: Obviously you do. Good.

17 MR. ALI: Yes.

18 PRESIDENT VEEDER: What do you want to do
19 about costs? On one view we may have to address
20 costs; on another view, you may not. But what are you
21 going to do about legal costs? Is that also to be
22 built into your submissions for the 10th of June?

05:24:16 1 MR. ALI: We haven't actually specifically
2 discussed the issue of cost submissions for the 10th
3 of June, but I think we should be able to make it for
4 the 10th of June, as well.

5 PRESIDENT VEEDER: In that case, you may want
6 to have a short reply or a right to reply simply to
7 costs because you won't have seen the materials from
8 the other side before you receive them on the 10th of
9 June, so you might want to think about that, too. But
10 we could deal with this detail tomorrow.

11 Is there anything else we need to address by
12 way of housekeeping before we give you our list of
13 questions?

14 MR. ALI: Mr. Chairman, if I may, my
15 colleagues are reminding me of what I think would be a
16 rule of extreme prudence and probably one that we
17 should think about collectively, and that's one of
18 page limits. We've had some extremely lengthy
19 submissions, and we, after all, an environmentally
20 conscious mining company, and I think that that it
21 probably does make sense especially in light your
22 guidance to us as to what you want to hear that we

05:25:24 1 think about at least 30 pages, 40 pages.

2 PRESIDENT VEEDER: Could I suggest we look at
3 that of the end of your oral submissions tomorrow. It
4 may be that that's appropriate to have a page limit,
5 but it may depend a little bit in light of what
6 happens between now and tomorrow afternoon, and we
7 would certainly, I think, encourage the suggestion
8 that there should be a page limit because these
9 submissions are very full and they have been extremely
10 helpful, but it's difficult to imagine we would want
11 another 300 pages from each of you.

12 You laugh, but we can see what might happen.

13 So, is that okay? We will look at it again
14 tomorrow, but the page limit we would encourage.

15 MR. SMITH: Yes, that's fine.

16 PRESIDENT VEEDER: Anything else you want to
17 raise at this stage?

18 MR. ALI: Nothing from Claimant's side.

19 PRESIDENT VEEDER: And from the Respondent's
20 side?

21 MR. SMITH: Nothing from the Respondent's
22 side.

05:26:19 1

QUESTIONS FROM THE TRIBUNAL

2 PRESIDENT VEEDER: Well, first of all, before
3 we go through out list of topics and questions, it has
4 to start with an explanation and an apology. The
5 apology is we have done our best to make it coherent,
6 but I can't guarantee that we have succeeded, but we
7 think it important at least to get this material as
8 points out to you even in an incoherent form to allow
9 you to address them tomorrow.

10 Secondly, please don't think that we've
11 decided the case. Don't try and read into the
12 questions that we are asking or not asking; we're not
13 that clever. These are the points where we need your
14 assistance, and that is for the purpose of later
15 deciding this case.

16 Also, we may well want to ask you further
17 questions. It may be that you will answer them
18 tomorrow; it may be that we think you will and you
19 won't; and later we may, in fact, be writing to you to
20 address certain points in your written Post-Hearing
21 Briefs.

22 We are going to do this in order of the

05:27:20 1 challenges to our jurisdiction made by the Respondent,
2 so we are going to start with the heading of "abuse of
3 process"; and then we are going to go to the denial of
4 benefits; thirdly, *ratione temporis*; fourthly, consent
5 under the Investment Law; and then we have lastly,
6 fifthly, certain miscellaneous questions. And I'm
7 going to ask my two colleagues to chip in if they
8 think that I haven't got quite the point right or
9 stated fully.

10 Now, on abuse of process, if I can begin with
11 our understanding now of what the Claimant's case is
12 on the merits, and we heard Mr. Ali say yesterday, and
13 the reference to the transcript is Day 1, Page 137:
14 "The actual measure at issue here is the practice of
15 the Government of El Salvador in direct contravention
16 of the country's laws to withhold permits and
17 concessions in furtherance of the exploitation of
18 metallic mining investments; in other words, El
19 Salvador's *de facto* mining ban."

20 "This ban, this 'practice,' this 'practice'
21 was publicly confirmed for the first time by President
22 Saca in March 2008 and then reaffirmed several times

05:28:37 1 by President Saca, his successor, President Funes, and
2 by other Government officials."

3 "The acts and omissions which Respondent
4 keeps bringing up all of which occurred prior to 2008
5 are not the measures on which our claims are based."

6 And a similar statement was made by
7 Mr. Posner yesterday afternoon. The reference is at
8 Day 1, Page 219.

9 Now, are we correct in understanding the
10 Claimant's case, then, to be based upon a measure in
11 and after March 2008 and not anything which took place
12 prior to 2008; I.e., although they might be described
13 as measures, they're not measures on which the
14 Claimant's claims are based.

15 And if that understanding is correct, if, to
16 the extent that there are any inconsistent submissions
17 made in the Notice of Intent or the Notice of
18 Arbitration, or, indeed, in the other written
19 submissions we've heard, we should read those passages
20 subject to the statement made by Mr. Ali at Day 1,
21 Page 137; and by Mr. Posner at Day 1, Page 219. We
22 don't need an answer now nor, indeed, to any of these

05:29:57 1 questions, but it's important we have a very clear
2 idea of what the Claimant's case is.

3 We remind the Claimants that we got into a
4 certain difficulty as to whether the Notice of Intent
5 was fully incorporated into the Notice of Arbitration;
6 and, as a result of our decision, as we understand the
7 present state of play, the Notice of Intent was then
8 incorporated into the Notice of Arbitration pursuant
9 to an application to amend the Notice of Arbitration,
10 if necessary, to that effect. Again, I just state
11 that as a matter of our understanding of the
12 procedure.

13 Let's move on to the next topic, still "abuse
14 of process." As we understand it, there was not an
15 issue in this case, but we would like express
16 confirmation, that there was any change in the
17 Claimant's legal personality before and after the 13th
18 of December 2007, obviously a change of nationality,
19 but not a change or break in the legal personality of
20 the Claimant. If that's wrong, we need to know.

21 The next topic--and I will give you the
22 references without turning them up--is that we have

05:31:14 1 various different phrases--and I don't criticize
2 anybody; this is forensic advocacy--about the genesis
3 of a dispute. The Respondent has referred us to Mobil
4 which uses the phrase "a dispute is born." Well,
5 that's quite difficult as a concept to understand, and
6 we may need a bit of help as to what the birth of a
7 dispute means exactly in practice. The Claimants, of
8 course, go the other way and talk about a dispute
9 being crystallized. We're not aware of any specific
10 explanation in legal materials as to how a dispute is
11 crystallized and exactly what that signifies.

12 What we have been referred to is the dictum
13 in Maffezini. It's the Claimant's Legal Authority 81,
14 and it's Paragraph 94 onwards, and that was produced
15 in Claimant's Slide 10 yesterday. Now, is that
16 something on which the Respondent wishes to comment
17 positively or adversely, at least forms the beginning
18 of common ground as to what is the relevant beginning
19 of a nonagreement, difference, dispute, and so forth?

20 A point was made by Mr. Ali yesterday--it's
21 Day 1, Page 193 to 194--about the private placement
22 financing and the fact that wouldn't have happened

05:32:44 1 because it would have posed a risk to the reputations
2 of some very distinguished and senior figures if there
3 had been, to their knowledge, in existence a dispute
4 or a claim. I won't read it out, but the passage is
5 there, Day 1, Pages 193 to 194. As we understood that
6 submission, it related to Paragraph 38 of
7 Ms. McLeod-Seltzer's Witness Statement; it's
8 Page 13--that obviously we have read and
9 considered--but is there anything else in the evidence
10 before us which goes further than that particular
11 paragraph in Ms. McLeod-Seltzer's Witness Statement?

12 MR. ALI: Sorry, Mr. Chairman, is there
13 anything else further in Ms. McLeod-Seltzer's--

14 PRESIDENT VEEDER: Obviously we have a
15 Witness Statement. If you find--

16 MR. ALI: To that point?

17 PRESIDENT VEEDER: Yes. If there is
18 something else in her Witness Statement, please draw
19 it to our attention, but I think that was the passage,
20 Mr. Ali, that you had in mind.

21 Well, that deals with the abuse of process.
22 Let's move to denial of benefits, and it's a question

05:33:58 1 addressed to the Respondent.

2 When did the Respondent first know that it
3 was in a position to exercise its CAFTA right to deny
4 benefits to the Claimant? This is obviously on the
5 issue of timeliness. And there were various different
6 timelines. As we know from Annex 3 to the Notice of
7 Arbitration, it was notified of a change of
8 nationality. Was there anything that came up in the
9 meetings with the U.S. Ambassador or, indeed, any
10 other meetings at that high level? Having received
11 the Notice of Intent on the date of the 9th of
12 December 2008, was it then in a position to know that
13 it could deny benefits to the Claimant? This was some
14 four months before the arbitration proceedings began
15 with the Claimant's Notice of Arbitration dated the
16 30th of April 2009.

17 Now, next topic, we obviously understand well
18 the point made that under CAFTA Article 10.12.2 there
19 was a denial of both substantive protection and also
20 the procedural right to bring an ICSID arbitration.
21 We are now dealing with the latter. We would like to
22 hear more from the Respondent about the timeliness of

05:35:28 1 its consent to ICSID arbitration made after the
2 commencement of ICSID arbitration proceedings given in
3 particular Article 25(1) of the ICSID Convention.

4 Now, if the Respondent says that they can
5 withdraw their consent because it's inherently
6 qualified after the commencement of arbitration
7 proceedings to deny an ICSID tribunal any
8 jurisdiction, would the same arguments apply after the
9 ICSID Tribunal had made its Final Award? And, if not,
10 why not?

11 Okay. Next topic, we have, of course, in
12 mind the denial-of-benefits letter to the United
13 States of America the 1st of March 2010 from the
14 Respondent, Exhibit R-111. That was not actually, as
15 we read it, an invocation. It was simply a
16 declaration of an intent in the future to invoke at an
17 appropriate time. And again we hope we properly
18 understood that invocation took place with the
19 Respondent's letter of the 3rd of August 2010, which
20 was five months later. And what we would like is an
21 explanation from the Respondent why they waited from
22 the 1st of March 2010 to the 3rd of August 2010.

05:37:14 1 Now, a different topic under this same
2 heading, we need to refer to Day 1, Page 262, and this
3 is the submission of Mr. Posner. I will read it out:
4 "And precisely because it is difficult to determine
5 with any precision the citizenship of the Shareholders
6 of a publicly held company, we proposed a rule of
7 thumb, and we haven't just chosen that rule of thumb
8 at random. It happens to be a rule of thumb that's
9 applied by U.S. Government agencies when they are
10 confronted with this very same problem. There are
11 U.S. statutes that make certain companies eligible for
12 certain trade-related benefits, and from time to time
13 those benefits are conditioned on a company's being
14 majority-held by U.S. citizens."

15 "So, the U.S. Government agencies that are
16 tasked with administering those statutes have posed
17 this question to themselves from time to time, how do
18 we determine whether the company, the publicly held
19 company, is held in the majority by U.S. citizens?"

20 We would like a little bit more help on the
21 legal material side of the submission. What are these
22 U.S. Government agencies, and what are these U.S.

05:38:28 1 statutes?

2 The last question under the second heading is
3 that we understand that the U.S. State Department or,
4 indeed, any other agency of the United States has, in
5 fact, responded to the Respondent's letter of the 1st
6 of March 2011--I hope that's correct--but what we
7 might want to do, and we would like the Parties to
8 comment as to whether we should be inviting the United
9 States of America, in its written comments to us, to
10 indicate whether it would wish to respond to that
11 letter; that is, a response to this Tribunal.

12 So we now turn to the third heading, "ratione
13 temporis."

14 MR. ALI: Mr. Chairman, would you mind
15 clarifying the letters again.

16 PRESIDENT VEEDER: Yes.

17 The denial-of-benefits letter from the
18 Respondent to the United States of America is dated
19 the 1st of March, and it's Exhibit R-111, but that's
20 only a declaration of an intent in the future to
21 invoke the denial-of-benefits provision in CAFTA. As
22 we understand it, the actual invocation was by letter

05:40:03 1 in these proceedings dated the 3rd of August 2010.

2 I'm not sure that's been given an exhibit number. If
3 it has, perhaps you could tell us. So, those are two
4 the documents.

5 If you're shaking your head because I got it
6 wrong, do say something.

7 MR. BADINI: Mr. Chairman, while they're
8 discussing that, we may have misunderstood you or you
9 may have misspoken. Did you mean to say the United
10 States had, in fact, responded to that letter?

11 PRESIDENT VEEDER: We understood they had not
12 responded to the letter.

13 MR. BADINI: All right. That clarifies it.
14 The transcript had you saying that they had responded.

15 PRESIDENT VEEDER: No, no. Sorry, it's a
16 long way, and this is his revenge for what happened
17 this morning and yesterday.

18 I said "had not responded" because otherwise
19 there is no point in the further point we were
20 raising, which is having had no response from the
21 United States to that letter of the 1st of March,
22 should we be inviting the United States as a

05:41:12 1 non-disputing Party in these proceedings--and they're
2 here--to respond if they wish to. We would like some
3 comments from the Parties about the wisdom or lack of
4 wisdom in that particular approach.

5 MR. BADINI: Thank you. We understand the
6 question now.

7 PRESIDENT VEEDER: So, *ratione temporis*.
8 Section 38 of the Mining Law, we would like the
9 Respondents to address the issue as to why the
10 Respondents did not simply reject the applications by
11 the Claimant, and that's linked to the submission made
12 by the Claimants, that basically they were being--I
13 forget this phrase that was used, but the carrot and
14 being the carrot being dangled and then withdrawn.
15 Another aspect of the Mining Law is simply this: As
16 we stand today, going back in time to March 2008, has
17 any foreign company been given an exploitation permit
18 for underground mining, first of all as regards any
19 foreign company and, separately, as regards any
20 local--that is, national--company. And if no
21 such--and if none have been granted, either none to a
22 foreign company or none to a local company or both,

05:43:18 1 what is the reason for that?

2 So, we now move to the fourth heading, the
3 consent issue under the Investment Law of El Salvador.
4 Again, as we understand the Claimant's case--and we
5 would like confirmation--the measure on which all
6 their claims are based, including the claims under the
7 Investment Law, are as described by Mr. Ali at Day 1,
8 page 137, from March 2008 and not before
9 December 2007.

10 Another point under this heading, the
11 Respondent has made several submissions about the
12 indivisibility of these proceedings based upon certain
13 paragraphs in our decision, principally at Page 86,
14 and we understand the point they're making, but we
15 want to make sure that it's not being advanced as an
16 argument based upon res judicata or issue estoppel or
17 collateral estoppel or anything else which prevents
18 the Tribunal from looking at the merits of the point.
19 It's our understanding that's not been raised by the
20 Parties. We want to make absolutely clear that that
21 is not an issue that we're being asked to consider, at
22 least not by the Respondent.

05:45:07 1 Now we come to the last category, and these
2 are miscellaneous points which you may well have in
3 mind already. Yesterday, we heard submissions made by
4 Mr. Ali--it's Page 267 of the transcript, Day 1--about
5 certain missing witnesses who had not been called by
6 the Respondent. This afternoon, the Tribunal asked a
7 question about Ms. Hashimoto.

8 Now, we would like, if any point is being
9 made about witnesses who should have been made
10 available before this Tribunal and have not been made,
11 if we are being asked to draw an adverse inference, we
12 would like to know exactly why that submission would
13 be made and what the effect of that submission would
14 be at this jurisdiction stage of these proceedings.

15 Well, that's as best we can do to give you
16 some idea of the particular points we want you to bear
17 in mind, but as we indicated during the telephone
18 conference call before we had this hearing, before we
19 had this resumed hearing, we would very much like you
20 to focus on the significance of the oral evidence and
21 the submissions, the new submissions maybe that we've
22 heard today and yesterday rather than regurgitate what

05:46:45 1 we have already over very many pages. We are not
2 complaining about that; these are very clear and good
3 submissions from both sides, but you certainly chopped
4 down a few trees, and we don't want you to do any
5 more.

6 Now, unless we could help you further, we
7 propose to adjourn and resume at 12:30 tomorrow in
8 accordance with your agreement, and we will finish
9 this hearing by tomorrow evening.

10 Is there anything from the Respondent's side
11 that we need to address at this stage?

12 MR. SMITH: Nothing further from Respondent.

13 MR. ALI: Nothing further from Claimants.

14 PRESIDENT VEEDER: And I'm going to look in
15 the far distance, nothing from the non-disputing
16 Party, either? Nothing from the United States?

17 MS. CATE: No.

18 PRESIDENT VEEDER: And nothing from Costa
19 Rica.

20 Well, we will adjourn until 12:30 tomorrow.
21 Until then...

22 (Whereupon, at 5:47 p.m., the hearing was

05:47:31 1 adjourned until 12:30 p.m. the following day.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, 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.

DAVID A. KASDAN

