

IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE
AGREEMENT, SIGNED ON AUGUST 5, 2004 ("CAFTA-DR")

AND

UNDER THE UNCITRAL ARBITRATION RULES
(AS ADOPTED IN 2013)
(the "UNCITRAL Rules")

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:
In the Matter of Arbitration Between: :
MICHAEL BALLANTINE, LISA BALLANTINE, :
:
Claimants, : PCA Case No.
:
and : 2016-17
:
THE DOMINICAN REPUBLIC, :
:
Respondent. :
:
-----x Volume 2

ORAL HEARING

Tuesday, September 4, 2018

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

The hearing in the above-entitled matter came
on, pursuant to notice, at 9:13 a.m. (EDT) before:

PROFESSOR RICARDO RAMÍREZ HERNÁNDEZ,
Presiding Arbitrator
MS. MARNEY L. CHEEK, Co-Arbitrator
PROFESSOR RAÚL EMILIO VINUESA, Co-Arbitrator

ALSO PRESENT:

MR. JULIAN BORDAÇA HAR
Secretary to the Tribunal

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P R O C E E D I N G S

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Morning, everyone.

2

3 I think we will start with the witnesses. But the Claimant

4 wanted to say something or--

5 MR. BALDWIN: Yes, Mr. President. Good morning to

6 everyone. The Parties had a discussion right after the

7 hearing yesterday, and there was some question about the

8 timing issue. Because you had mentioned about, you know,

9 doing closings on Friday. According to the Procedural

10 Order, the Parties are allocated 12 hours each, so we

11 wanted to see if we could get some additional clarification

12 as to what you expected.

13 PRESIDENT RAMÍREZ HERNÁNDEZ: I guess that the

14 Tribunal's view is that we--of course you will have the 12

15 hours that you--for each Party. And the idea that we had

16 is that maybe we would need to go a little bit further in

17 time to finish up.

18 But if the question is whether you will keep your

19 allocated time, each Party--that's the question. The

20 answer is yes. Each Party will have their 12 hours.

21 MR. BALDWIN: Thank you, Mr. President. One other

22 question, just sort of a process question. In terms of the

23 experts, they're going to give their presentations. Are we

24 still going to introduce them and have them confirm their

25 Expert Reports prior to doing that?

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

2 MR. BALDWIN: Okay. Thank you.

3 PRESIDENT RAMÍREZ HERNÁNDEZ: Please, could you

4 identify yourself and read the piece of paper you have

5 there. You have to identify yourself first.

6 THE WITNESS: My name is Michael Ballantine. And

7 I solemnly declare upon my honor and conscience that I will

8 speak the truth, the whole truth and nothing but the truth.

9 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much.

10 Claimant.

11 MICHAEL BALLANTINE, CLAIMANTS' WITNESS, CALLED

12 DIRECT EXAMINATION

13 BY MR. ALLISON:

14 Q. Good morning, Mr. Ballantine. Good morning

15 members of the Tribunal. I will be brief.

16 Mr. Ballantine, did you submit witness testimony

17 in this matter?

18 A. Yes.

19 Q. And how many Witness Statements did you provide?

20 A. Three.

21 Q. And do you affirm the testimony in those Witness

22 Statements are true and accurate to the best of your

23 knowledge?

24 A. With two modifications, but yes.

25 Q. And can you tell the Tribunal what those

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1 modifications are?

2 A. One of them states that my oldest son, Joshua,

3 left the Dominican Republic in 2010. That was, actually,

4 2007. And the second one, it said--I forgot which

5 number--but that I had all the titles in 2009.

6 In theory--in technicality, I did. But I had what

7 was called a Carta de Constancia, which was a government

8 document assuring that I owned the property, but then the

9 subdivision had to be done. So, I had the title, but then

10 I had to make the subdivision. So, the final titles

11 actually came out in August of 2010 as opposed to 2009.

12 Q. And Mr. Ballantine, did you submit a Witness

13 Statement that concerned the issue of your dual nationality

14 for this proceeding?

15 A. Yes.

16 Q. And do you stand by all the statements you made in

17 that document?

18 A. Yes.

19 Q. And why did you obtain dual nationality?

20 A. I obtained dual nationality because I was

21 concerned about our family and the investment. And in case

22 of my demise or Lisa's, I felt like that would be a better

23 process to leave with my children in terms of probate. And

24 I had faced discriminatory treatment prior to that and some

25 people wouldn't buy because I was an American, and I

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1 thought that would help for business purposes.
 2 Q. And did your attainment of dual nationalization
 3 reduce any of those biases?
 4 A. No.
 5 MR. ALLISON: Could we put up Exhibit C-175.
 6 (Video played.)
 7 BY MR. ALLISON:
 8 Q. Mr. Ballantine, did it bother you when you were
 9 repeatedly referred to as "the American" or "the gringo"?
 10 A. No.
 11 Q. And why is that?
 12 A. Because that was the habit, and that's how I was
 13 referred to.
 14 Q. When did you take the citizenship oath?
 15 A. February of 2010.
 16 Q. And at that time, how many of your children lived
 17 with you in Jarabacoa?
 18 A. At that time, my youngest children--I have four
 19 children. My youngest children, Josiah and Tobi, lived
 20 there at that time.
 21 Q. And where were your other two children?
 22 A. Rachel was in Canada. I think she had just gotten
 23 married. And my oldest son, Joshua, was at Florida
 24 National University.
 25 Q. And when did your two youngest children move back

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1 to the United States?
 2 A. In June of 2010. Four months subsequent.
 3 Q. Permanently?
 4 A. Permanently, never to reside in the Dominican
 5 Republic again.
 6 Q. So, within six months of your citizenship oath,
 7 all of your children had returned to the United States; is
 8 that correct?
 9 A. Yes.
 10 Q. And then what happened in October of that year?
 11 A. October of 2010, I--my wife and I, we rented a
 12 townhouse in Elk Grove Village, Illinois.
 13 Q. And why did you rent a home in Illinois in 2010?
 14 A. By that time, my company was established, and we
 15 wanted to spend much more time with our family and friends
 16 and our social network.
 17 Q. And how many times did you return to the United
 18 States between 2010 and 2014?
 19 A. 30 times or more.
 20 Q. Yesterday we learned there was some confusion with
 21 respect to some of the words you used in your
 22 communications with the Respondent.
 23 MR. ALLISON: Can we pull up Exhibit C-10. Can we
 24 blow up the second half of that big paragraph.
 25 BY MR. ALLISON:

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1 Q. I guess I should have you identify this document.
 2 Can you identify what this document is, Mr. Ballantine?
 3 A. It appears to be either my appeal for
 4 reconsideration for either the second--or the first or
 5 second denials.
 6 Q. And you write, "The reason we were given is that
 7 in accordance with Article 122 of Law 64-00, development is
 8 not permitted in area where the slope is greater than
 9 60 degrees and this is correct. However, the slope we are
 10 trying to create--where we are trying to create a simple
 11 access road is only 34 degrees, and it is therefore within
 12 the permitted margin."
 13 Do you see that?
 14 A. Yes.
 15 Q. And what were you communicating here?
 16 A. I was communicating that I understood that there
 17 was a law regarding 60. I subsequently--you know, I
 18 understood it was 60 degrees. I wrote that at that time.
 19 But I was clearly demonstrating that there was a ratio that
 20 we were significantly under, but I used the term "degree"
 21 as opposed to "percentage."
 22 Q. And that was a mistake?
 23 A. That was an innocent mistake, yes.
 24 MR. ALLISON: Can we pull up Demonstrative Exhibit
 25 17.

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1 BY MR. ALLISON:
 2 Q. What is this document, Mr. Ballantine?
 3 A. This is a Google image of Jamaca de Dios Phase 1
 4 and Jamaca de Dios Phase 2.
 5 Q. And Phase 2 is on the bottom, even though it's at
 6 the top of the mountain?
 7 A. That is correct.
 8 Q. Could you have avoided areas with
 9 60-degree--60 percent slopes in your development of
 10 Phase 2?
 11 A. Absolutely. And that is indicative by Phase 1, in
 12 which we accomplished that. And Phase 1 is steeper than
 13 Phase 2.
 14 Q. And could you have built a safe road up to the top
 15 of the mountain?
 16 A. It would be very safe and easy.
 17 Q. And in your communications with the MMA, did the
 18 MMA ever tell you what percentage of your land exceeded the
 19 slope law?
 20 A. Never.
 21 Q. Did any of the MMA rejection letters specifically
 22 identify the road as the reason why your permit was being
 23 denied?
 24 A. Never.
 25 Q. Do any of their denial letters even mention the

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1 road?

2 A. No.

3 Q. Did the MMA ever make any suggestions or
4 recommendations to you about your Phase 2 development
5 plans?

6 A. They never once made any recommendation.

7 Q. Did the MMA ever ask you to submit a different
8 plan for your Phase 2 land to address any of their
9 concerns?

10 A. No. They suggested I move the project.

11 Q. And were you willing to revise your development
12 plans if necessary?

13 A. I would have done anything possible to continue
14 the development.

15 Q. And did you continue that willingness to the
16 Dominican Republic?

17 A. I think we communicated that in most every
18 communication.

19 MR. ALLISON: Thank you, Mr. Ballantine.
20 PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.
21 MR. Di ROSA: Thank you, Mr. Chairman. Good
22 morning to you and Members of the Tribunal. Good morning
23 to everybody.

24 CROSS-EXAMINATION
25 BY MR. Di ROSA:

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1 Q. Mr. Ballantine, good morning.

2 A. Good morning.

3 Q. I'm going to be asking you a few questions. We
4 will periodically refer to different documents that you
5 will have in your--in the binder that's being handed to you
6 and other documents that will be handed to you from time to
7 time or put up on the screen as necessary.

8 Before we start, I wanted to mention a couple
9 things. First of all, the cross-examination is being
10 transcribed by a stenographer, and it's also being
11 translated. So the one thing we can't do is overlap in our
12 speech.

13 So, you know, you have to finish--you have to wait
14 until I finish my questions, and I have to wait until you
15 finish your answer; otherwise, that creates a problem for
16 the stenographers and the interpreters. So, we'll--it's
17 see to forget that. We'll try to be mindful of that. I'll
18 do the same.

19 Also, if you at any point don't understand a
20 question or just want me to repeat it for whatever reason,
21 feel free to ask me that. And if you ever want to take a
22 break, also feel free to ask me.

23 So let me start by asking you a couple of
24 questions about the attestations that you gave in the three
25 Witness Statements that you just mentioned along with your

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1 counsel. I notice that in two of those declarations, you
2 said, "I attest that this is correct," and then in the
3 third one you said, "I affirm that this is correct."
4 I just want to ask you: In your mind, was there a
5 difference--is there a reason that you used the word
6 "affirm" in the third one but "attest" in the previous two?

7 A. I looked at those as synonyms, I would say. I
8 don't think I was trying to manipulate anything.

9 Q. No, I'm not saying you were just--manipulating
10 anything. I just asked if there was a difference in your
11 mind since you used a different word. Maybe your lawyers
12 used a different word. I'm not sure.

13 A. No. I wrote my testimonies.

14 Q. You did. Okay. All right.

15 In any event, you know, since there conceivably
16 could be a difference between affirming something and
17 attesting to something and saying the whole truth and
18 nothing but the truth, as you did this morning with respect
19 to your testimony today, can I just ask you, did you tell
20 the truth, the whole truth, and nothing but the truth in
21 the three Witness Statements?

22 A. I believe I did to the best of my ability.

23 Q. Okay. Good.

24 We understand that you did not provide a CV or bio
25 with any of your submissions in this proceeding. So I

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1 wanted to ask you a few questions about your background.
2 First of all, did you obtain a university degree?

3 A. No, I did not, but I'm four classes short of
4 having a bachelor's degree.

5 Q. Okay. So you did go to college for a while and
6 then stopped? Or you took classes later in life? Or how
7 did that work?

8 A. I did both. But in college, my wife and I, we
9 ended up having our first child, and I committed myself to
10 my family.

11 Q. Okay. So after high school, can you just tell me
12 what your professional trajectory was, you know, what your
13 first job was and successively what you did professionally.

14 A. Yes. Being a new family and having a child, I got
15 a job as a production coordinator in a printing company.
16 Subsequent to that, I went to another printing company and
17 I saw that the people--that I was doing all the work. I
18 learned the business, but the people making the money were
19 the salespeople. And I felt like I had a personality to
20 sell, I knew the product, and so I got into sales.

21 I did quite well in sales at the company I
22 represented. And then I realized that they were limited in
23 what they could offer my clients. I had a very strong
24 client base, and so I decided to branch off on my own. And
25 I became a broker and developed a print brokerage company,

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1 which became one of the more successful ones in Chicago.
 2 And it was a brokerage one. We didn't--I had a decision to
 3 buy machinery and go that route, but I felt like that would
 4 require a lot of overhead, and so I managed my accounts and
 5 did it that way.
 6 Q. Okay. So your first job was in the printing
 7 industry?
 8 A. That's all I ever worked prior to coming to Jamaca
 9 de Dios.
 10 Q. Oh, okay. So that--so you had a whole career
 11 exclusively in the printing industry?
 12 A. Yes, sir.
 13 Q. And these first few jobs that you mentioned, how
 14 long were you in each one of those?
 15 A. The first two were two years, and then--and then I
 16 became a salesman and a broker. And I did invest in what
 17 became one of the largest advertising agencies in Boston as
 18 a silent partner.
 19 Q. Okay. And then at some point did you form your
 20 own company? Is that what you--
 21 A. Yes, it was my own brokerage company. It was
 22 called Reconciled Images, and I was a 100-percent
 23 shareholder.
 24 Q. Okay. And all of these jobs were in the United
 25 States; correct?

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1 A. That is correct.
 2 Q. And you said Boston. Was it exclusively in Boston
 3 or in other cities as well?
 4 A. No, I was just an investor. There's three
 5 partners, and I was part of that.
 6 Q. But all in Boston. So, basically, your whole
 7 professional career was in Boston or--
 8 A. No, it was all in Chicago, but the operations of
 9 the advertising agency was in Boston.
 10 Q. Okay. Got it.
 11 Prior to your business venture in the Dominican
 12 Republic, then, you didn't have any experience doing
 13 business in any foreign country?
 14 A. Never. No, this was the first experience.
 15 Q. And prior to your business venture in the
 16 Dominican Republic, you didn't have any experience building
 17 homes for commercial purposes, did you?
 18 A. No, sir.
 19 Q. And you also had no experience building roads; is
 20 that right?
 21 A. That is correct.
 22 Q. And the same is true of building mountain lodges.
 23 You had no experience with that?
 24 A. That's correct.
 25 Q. How about building hotels?

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1 A. No. But I would like to just simply say I'm 53
 2 years old now. And when somebody becomes 53, they
 3 recognize what they're good at and not so good. Everyone
 4 has strengths and weaknesses. And I'm a pretty good
 5 entrepreneur, and I'm very good at connecting people and
 6 leadership and providing vision and getting people to
 7 participate in that.
 8 So the answer to all those questions is no.
 9 Q. Okay. So no experience building hotels. But, you
 10 know, you--I hear your answer.
 11 How about apartment buildings? Any experience
 12 with those--
 13 A. No.
 14 Q. --building those? No.
 15 And same with restaurants?
 16 A. No, that was the first venture.
 17 Q. Did you have any experience in construction at
 18 all, of any sort?
 19 A. No.
 20 Q. So you hadn't built anything at all for commercial
 21 purposes or otherwise prior to your investment in the
 22 Dominican Republic; is that right?
 23 A. Yes, sir.
 24 Q. How about operation as opposed to construction?
 25 Did you have experience operating a hotel?

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1 A. To get to the point, I was only in the printing
 2 industry. So I had no experience in operations nor
 3 construction in any of these areas.
 4 Q. Okay. So you didn't have any experience operating
 5 a hotel or a spa or a restaurant; correct?
 6 A. That is correct.
 7 Q. Do you have any background in engineering?
 8 A. I do now.
 9 Q. But you didn't at the time that you went to the
 10 Dominican Republic?
 11 A. That is correct.
 12 Q. Okay. And the same would apply to environmental
 13 science or biodiversity, hydrology or soil management?
 14 A. I learned considerably. However, prior to¹ going
 15 to the Dominican Republic, I had no knowledge.
 16 Q. Okay. So you indicated in your Witness Statement
 17 that at some point--and this is the First Witness Statement
 18 at Paragraph 2. You're welcome to look at your Witness
 19 Statements if you ever want to see--confirm what I'm
 20 saying.
 21 A. Are those contained in this binder? Are they?
 22 Q. I guess she will hand you--my assistant here,
 23 Kaila, will hand you the binder with your Witness

¹ English Audio Day 2 at 00:18:49

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1 Statements.

2 A. Thank you.

3 Q. So, from time to time, I'm going to make reference

4 to your Witness Statements. But, you know, if--you're

5 welcome to check to confirm or to look at it in context.

6 Some of them, you know, you'll just know off the top of

7 your head but, you know, as you wish.

8 You did indicate in Paragraph 2 of your First

9 Witness Statement that you had developed a sense of

10 restlessness, that you had grown restless at some point in

11 your professional career; correct?

12 A. That is correct.

13 Q. And do you remember roughly what year that was?

14 A. That was after I purchased the mountain.

15 Q. Which--and what year was that?

16 A. I believe I made my first purchase in 2003.

17 Q. 2003. Okay.

18 And how old were you at that point?

19 A. 53 minus 15 would be 38 or 39. Something like

20 that.

21 Q. Okay. And you also indicated in the same

22 paragraph that you had developed this sense of restlessness

23 "after a successful career in the printing industry."

24 Do you remember saying that?

25 A. That is correct.

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1 Q. So to your mind, by age 38, you had already

2 completed a successful career in the printing industry; is

3 that right?

4 A. Yes. I had earned a substantial amount of money,

5 but I realized there was more important things in life, and

6 I felt bored, actually.

7 Q. Okay. I can relate to that.

8 You indicated in 2000 that you and your wife

9 decided to have a sabbatical and move to Jarabacoa in the

10 Dominican Republic with your children; is that right?

11 A. Yes, sir.

12 Q. And how did you happen to pick the Dominican

13 Republic?

14 A. At that time, I noticed within my children--and it

15 was primarily for them--that they just had a singular

16 mindset of America. And I recognized it was a big world.

17 I wanted them to learn another language, and I wanted them

18 to experience a bigger world.

19 Q. Right. But before that visit--

20 A. But the answer to that question--forgive me.

21 A friend of mine, we went down to the Dominican

22 Republic to Jarabacoa specifically because we felt like

23 that would be a baby step in terms of living

24 internationally, very close to Miami, and our closest

25 friends were the Pauls--Lynn and Larry Paul. And Lynn had

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1 actually served in Jarabacoa years prior--previous to that.

2 And there was a very large established expat community of

3 Americans, so we felt like that would be a good place to

4 go.

5 Q. Okay. Before that visit to the Dominican

6 Republic, had you been to any other Latin-American country?

7 A. Mexico.

8 Q. Okay.

9 A. And I don't remember if I was in any other

10 country.

11 Q. But you had never established residence in any

12 other country?

13 A. No, sir. Singular, America. Average citizen.

14 Q. Once you arrived in the Dominican Republic, you

15 indicated that you started doing missionary work; is that

16 correct?

17 A. Yes, I did.

18 Q. But when you first arrived for your missionary

19 work, you did not have any plan yet to invest in the

20 Dominican Republic, did you?

21 A. I did not have any plans, but I saw what I thought

22 were many opportunities. But I did not act on any of that

23 because I felt like I was singular in the focus of what we

24 were doing.

25 Q. Okay. On behalf of what church did you do

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1 missionary work?

2 A. Being an entrepreneur, we started our own group.

3 Q. You started your own church? Is that--when you

4 say "group"--

5 A. Well, we started a United States-based 501(c)(3)

6 with many friends and a board of directors and others. But

7 I was the director of it.

8 Q. Right. In your Amended Statement of Claim, you

9 said at Paragraph 18 that it was a ministry that you had

10 founded. Is that what you're referring to?

11 A. A ministry to reach out to people. Yeah, to help

12 minister to the needs of the community and people. Yes,

13 sir.

14 Q. I see.

15 And you indicated in your written testimony that

16 you put up a large blue and white tent in the middle of

17 Jarabacoa. Is that correct?

18 A. That was over the evolution of time. Yes, sir,

19 that is correct.

20 Q. And what was the purpose of that blue and white

21 tent?

22 A. To--the purpose of the blue and white tent was to

23 gather people together from the community in order to reach

24 out to them and encourage them and--

25 Q. Would you characterize these as religious services

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1 or not?

2 A. Yes. It was Christian and faith-based, yes, sir.

3 Q. I see.

4 So were you giving sermons or conducting services

5 at these events?

6 A. Oftentimes. But there was a team, and there was

7 native Spanish-speaking people that carried a bunch of that

8 burden, but then I would do that with a translator.

9 Q. You weren't ordained as a pastor anywhere, though,

10 were you?

11 A. I--no.

12 Q. Okay. So you mentioned this non-profit that you

13 formed. Is that the Jesus For All Nations--

14 A. Yes, sir.

15 Q. --organization? Okay. And one of the purposes of

16 that organization was to promote your religion; correct?

17 A. Well, I wouldn't say "my religion." I feel like

18 there's a universal religion of Christianity, and I was

19 part of that.

20 Q. What do you mean by "universal"? There are other

21 religions.

22 A. When you define "religion"--I'm not trying to be

23 argumentative nor parse words--there's different sects.

24 There's different groups. There's different institutions.

25 And ours was more, I would say, organic, providing hope and

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1 love and encouraging people. But it was definitely

2 Christian and faith-based, but it wasn't institutionalized

3 like oftentimes religions are.

4 Q. I see.

5 All right. So then you said after 14 months of

6 this sabbatical in the Dominican Republic, you returned to

7 the United States to your day-to-day business routine. Do

8 you remember saying that?

9 A. Yes, sir.

10 Q. And do you remember what year that was in that you

11 returned?

12 A. That was in 2001.

13 Q. And what was the day-to-day routine that you

14 returned to?

15 A. It was--the day-to-day return was I had an

16 established a company, I had production managers, I had an

17 office staff. And then what my job was, was to do client

18 management and account management and a lot of entertaining

19 and just being out with people securing business for my

20 company.

21 Q. This is still the printing company?

22 A. This is a print brokerage company.

23 Q. Print brokerage. Correct.

24 And you just mentioned that when you went to the

25 Dominican Republic, you said you saw a lot of business

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1 opportunities; right?

2 A. Yes. Being an entrepreneur, I can see those kinds

3 of things.

4 Q. And you also mentioned that in 2003, a friend of

5 yours showed you some property, a large tract of mountain

6 land in Jarabacoa with spectacular views; right?

7 A. Yes, sir.

8 Q. And you also indicated in your written testimony

9 that you and your wife agreed that this would make for an

10 excellent spot for a luxury gated community development;

11 correct?

12 A. That is correct. There--we felt like it was a

13 good investment, but the vision took--it wasn't like today

14 we're going to do this. It took a little bit of time to

15 mature, the vision. But yes, sir.

16 Q. But you just told us that--you just told us that

17 you had no experience in residential real estate or in

18 construction or in doing business in a foreign country.

19 So, on what basis did you make this assessment that a

20 luxury gated community development in that particular spot

21 would be a good investment or a very successful one, as you

22 put it?

23 A. In my life, I have never had experience in a lot

24 of endeavors that I created things from out of nothing in

25 terms of entrepreneurship. So I felt confident. I felt

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1 peace in my heart that this could be achieved.

2 Also, I recognized that in the City of Jarabacoa

3 itself, there was very high price points in the community

4 itself. And at that time, the mountain, which didn't have

5 any access--I felt if I could get a road and I could

6 develop it, the views are spectacular, and the price points

7 would be subsequently higher than what they are in the

8 city.

9 Q. I see. So if I understand correctly, you had no

10 business doing--had no experience doing business in any of

11 these fields that you would need to put up a residential

12 community.

13 It's a foreign country. You go there. You see

14 this mountain. You have this vision. You just used that

15 word. We'll come back to that because it's a term that you

16 and your lawyers used a lot.

17 So you saw this mountain. You just had a vision

18 that there--it would be a great spot for a residential

19 community; correct? I mean, is that essentially what

20 happened?

21 A. That is exactly what happened, yeah.

22 Q. Exactly what happened. Okay.

23 A. And I saw something. And I actually got lucky.

24 Because Dominicans knew that that area was very violent,

25 and there was a lot of social problems in that community.

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1 And because I had no local knowledge or custom there, I
2 just saw the beauty of it and the potential, whereby people
3 that were in that culture were more afraid of that. So in
4 my being a little bit naive, I got lucky.

5 Q. And at this point in 2003, had you ever heard of a
6 community project--a residential project of this nature
7 being built on a mountain in the Dominican Republic?

8 A. At that time, what I saw was individual homes
9 going up throughout the mountains. And those required
10 individual roads, electric, security for the homes, as well
11 as all those aspects. And so I don't remember anything
12 like the concept that I conceptualized.

13 I had traveled extensively, and I had seen these
14 types of concepts in other areas, and I felt that that was
15 a prime location for something like that.

16 Q. Okay. So you just said that, you know, it had
17 pretty views and that you--based on your experience as an
18 entrepreneur, generally, you thought that this would be a
19 good opportunity?

20 A. Yes, sir.

21 Q. But you also said that you were aware that it was
22 a violent area; right?

23 A. No.

24 Q. You said--

25 A. I was unaware.

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1 Q. You were unaware.

2 A. And local knowledge was that it was. I was naive.
3 As a matter of fact, I remember I was on another mountain,
4 and I was talking to a family there, and they were telling
5 me what their price points were.

6 And I'm, like, "Well, I just bought that mountain
7 cheaper."

8 And they said, "You should know better. That's a
9 dangerous town."

10 I'm, like, "Well, I just thought it was
11 beautiful."

12 Q. I mean, did it concern you at all that, you know,
13 you had no experience at all? You didn't really speak the
14 language. You just said you had no local knowledge of the
15 local customs and so forth or local culture.

16 Did it worry you at all to just decide, like, I'm
17 going to buy this mountain? You know, I mean, I admire
18 your courage. I would never go to some country that I had
19 never been to before really, or that I had only lived
20 briefly in, and, you know, just do it on an impulse like
21 this.

22 A. Impulse, that word--I wouldn't use that word.
23 "Impulse" implies perhaps immaturity and impetuosity.

24 There was an abiding peace and a vision. And being an
25 entrepreneur, I felt confident that we could do this. And

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1 so I felt peace about it. I felt like let's go for it.
2 It's going to be a new adventure, and it's something
3 totally different and it would shake up my world view and
4 stimulate me in a way that the printing industry had become
5 boring.

6 Q. Okay. So you just--you went for it and you bought
7 land; is that--

8 A. Yes, sir.

9 Q. At that point you're still living in the U.S.,
10 though?

11 A. That is correct.

12 Q. But you were visiting the Dominican Republic
13 periodically?

14 A. That is correct. We had set up some churches and
15 there was pastors, and we were part of a group that we had
16 founded, and we were just providing support and friendship.

17 Q. So in 2003, when you bought this land on the
18 mountain, you hadn't commissioned any engineering studies
19 concerning a potential real estate project on the building,
20 had you?

21 A. No, sir.

22 Q. And at that point when you bought the land, you
23 also had not commissioned any ecological or environmental
24 studies concerning a potential real estate project on the
25 mountain; right?

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1 A. No, sir.

2 Q. How about a commercial feasibility study?

3 A. Just a gut feeling.

4 Q. Just a gut feeling. So no legal memorandum.

5 Did you consult with any government official
6 about, you know--it's on a mountain. It's a tropical
7 country with, you know, ecological sensitivities,
8 environmental sensitivities. Did it occur to you that
9 maybe you should check with, you know, the environmental
10 authorities or at least the municipal authorities to see
11 like, you know, could I actually do this? Could I put a
12 residential community on this mountain?

13 A. I would say no. But let me just respond by saying
14 at that time, there was absolutely no formality. It was
15 the Wild West. And at that time, I don't think one company
16 had any type of environmental permit whatsoever.

17 And I was highly encouraged--I had met with the
18 then-president, Hipólito Mejía. He invited me to lunch at
19 his estate in Jarabacoa. He gave me great encouragement.
20 He felt like it would be good for the area. I met with the
21 mayor, Joselito Abreu, and he said that this type of thing
22 was needed in Jarabacoa.

23 So I had oral encouragement from both the
24 president of the country as well as the mayor of the town.

25 Q. But that was after you bought the land, though;

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1 right?

2 A. That was after I bought the land. And I felt even

3 if we didn't develop it, with the boom-up that was going on

4 in Jarabacoa, even if I just land bank it through the

5 appreciation, it would be a good investment.

6 Q. Sure.

7 So you just--you just referred to it as "the Wild

8 West." I mean, what do you mean by that? Was it your

9 understanding that there were no laws or regulations, for

10 example, in the environmental space?

11 A. I have found in the Dominican Republic there are

12 laws and regulations; however, they're arbitrarily applied.

13 So I recognized that this was happening in the Dominican

14 Republic as well at that time.

15 Q. Okay. So there were laws and regulations; you

16 just feel that they weren't applied properly. Is that it?

17 A. Yes. And nobody, as far as I know, ever had an

18 environmental permit at that time. I think the first one

19 in the history of Jarabacoa was Paso Alto in 2006, and I

20 think we were the second one to even go through that

21 process even though the law was on the books from--law

22 64-00 in the year 2000.

23 Q. So when you went--when you first had this vision,

24 did you--were you able to perceive that the area seemed

25 violent or not?

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1 A. No, because people thought "Man, there's a gringo

2 in our neighborhood and they were nice to me." So I had no

3 idea. I wasn't there at night. I wasn't getting drunk

4 with them. I didn't see all the domestic problems and the

5 sociological problems. I just thought, "Wow." I was just²

6 absolutely naive.

7 Q. So you didn't ask anybody about the area or--

8 A. No, I did not.

9 Q. So it was all about the mountain and the views and

10 the beauty of it; is that right?

11 A. Yes.

12 Q. You also said in your First Witness Statement at

13 Paragraph 18, "I had heard from people that the Dominican

14 Republic can be a difficult place to do business and a

15 risky place to invest."

16 A. Yes.

17 Q. Do you remember saying that?

18 Did that worry you at all? I mean, had you never

19 done business anywhere outside of the U.S.

20 A. Sure, it worried me.

21 Q. But you didn't--you didn't--I mean, you didn't

22 care? I mean, didn't--

23 A. "Didn't care" is not the right word. I tried to

² English Audio Day 2 at 00:35:54

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1 manage my risk. But I felt like it was the right thing to

2 do. I felt a vision. I felt an awakening within my

3 spirit. And I felt like it was the right thing to do.

4 And a man in his life needs to follow the leading

5 that is put in his soul. And so I did exactly what was

6 going on internally.

7 Q. Okay. Who was it who had given you this warning

8 that it was a difficult place to do business and a risky

9 place to invest? Do you remember that?

10 A. No, sir. That was so long ago. But it was a

11 genuine--people had expressed to me that, but I don't know

12 who specifically. We are³ talking 14 years ago. But there

13 was an undertone about some of the risks involved.

14 Q. So you said that you didn't quite apprehend the

15 violence. But did you perceive that it was an economically

16 depressed area?

17 A. Oh, it was. There was no electricity in that town

18 until the year 2000. There was no access to the mountain.

19 It was a very poor area.

20 Q. I see.

21 And that didn't worry you either in connection

22 with your investment?

23 A. No. It did not worry me.

³ English Audio Day 2 at 00:37:21

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1 Q. Lack of infrastructure, that sort of thing.

2 You said no electricity?

3 A. Yeah. I felt by bringing those services, it would

4 add value. I know it might sound strange, but that's

5 exactly what happened.

6 Q. So in your Third Witness Statement at Paragraph 7,

7 you quote from a letter in which you had said, "The

8 community outside of Jamaca de Dios has a horrible

9 reputation of being the most violent community in

10 Jarabacoa."

11 And then similarly, one of your own witnesses,

12 Mr. Francisco Rivas, stated in his Witness Statement at

13 Paragraph 2, "I met Michael Ballantine in 2006. He

14 mentioned to me that he was working to develop a project in

15 the mountain in an area called Palo Blanco in Jarabacoa. I

16 was very surprised and thought that he did not know that

17 this neighborhood had a history of violence and conflict."

18 Do you--by the time that you met Francisco Rivas,

19 do you recall if you were already aware of that history of

20 conflict and violence?

21 A. I don't think so, because I was living primarily

22 in the United States at that time. But I might have--I

23 might have, but I don't recall that exactly.

24 I did know that people thought I was absolutely

25 insane to put a restaurant and a development in that

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1 community, and they never--nobody thought it would work.
2 And I was warned, "Don't do it because it's going to fail,"
3 and I went ahead anyway.

4 And this was not government people. These are
5 just local people from Jarabacoa.

6 Q. So when do you think you first became aware that
7 it was, you know, sort of a violent area?

8 A. When I came home and heard that somebody was
9 stabbed right outside our gates. When I heard other people
10 were killed. When I heard--

11 Q. When was that in relation to your purchase of the
12 land?

13 A. Perhaps 2008, I would guess, somewhere around
14 there. After we lived in Jarabacoa.

15 Q. So you bought land in 2003 and you didn't realize
16 until five years later that it was a violent area?

17 A. That's when I knew firsthand about the violence.

18 Q. When do you think you heard about it? At what
19 point did you--at any point did you sort of worry, okay,
20 shoot, I bought this land, but it turns out it's kind of a
21 risky area?

22 A. No, I wasn't worried about that, because we were
23 building a gated community. We were intending to have
24 security.

25 Q. You mentioned that you--a lot of people told you

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1 you were insane. I think that's the word you used.

2 A. That's an overstatement. Maybe it was
3 "imprudent." I don't remember the words that were used.

4 Q. I mean, I think the word "crazy" was used in one
5 of the Witness Statements, I think from Lisa. But you also
6 mentioned that people didn't think you would succeed in
7 opening a restaurant, and one of those people was your
8 witness, Mr. Rivas, who stated in Paragraph 2 of his
9 Witness Statement, "The truth is, I did not believe that he
10 would succeed in opening a restaurant in Palo Blanco."

11 A. Many people said that.

12 Q. Okay. And Mr. Rivas also said, "Mr. Ballantine
13 made a decision to open a restaurant in Palo Alto without
14 seeking good advice."

15 That's paragraph 2. Do you recall him saying that
16 in his Witness Statement?

17 A. I don't recall him saying that. I'm sure
18 that--but that is correct, yes. There was numerous people
19 that said, "That's not going to work."

20 Q. And when you say that is correct, do you mean also
21 that you did this without seeking good advice? I mean, you
22 didn't seek advice, basically. I mean, it sounds like it
23 was more internal.

24 A. It was totally internal, and I heard from people
25 that it wouldn't work, but I believed it would, and that's

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1 what I endeavored to do. And that's the nature of being a
2 pioneer and an entrepreneur. You push forward.

3 And I saw a vision, and it didn't bother me that
4 local people didn't see what I saw. I was--my target
5 market were not people from Jarabacoa. They were people
6 from the capital primarily. And I went forward.

7 If the business model was so clear and so clean
8 and black and white, we would have seen what Jamaca de Dios
9 was all over the place. That only sprung up after.

10 Q. Okay. In her First Witness Statement at Paragraph
11 4, your wife, Lisa, made the following comment. She said,
12 "When we began, it seemed that most of the government and
13 community just thought we were crazy."

14 And that sort of tracks the word "insane." You
15 used "imprudent," whatever it may be.

16 A. Yes, sir.

17 Q. But then you stated in your Witness Statement--and
18 this is consistent with what you're saying here today--that
19 you were "determined to develop the property."

20 That's correct, isn't it?

21 A. Yes, sir.

22 Q. So you decided to create this luxury mountain
23 resort in the heart of the Cordillera central mountain
24 range; correct?

25 A. Yes, sir.

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1 Q. Before we move on, I just want to probe this
2 vision issue. That's something that gets repeated over and
3 over. You know, your wife said that, you know, it was a
4 perfect location for our vision of a luxury residential
5 community.

6 It said a lot in the pleadings. The Notice of
7 Arbitration said "They had a vision for a residential
8 project. The Ballantines' vision was to develop a mountain
9 residential project," you know, on and on and on in
10 Paragraphs 30, 31. 38 has one too. 34--44. Sorry. And
11 then the pleadings continue.

12 And most recently, in the Rejoinder on
13 Jurisdiction, the Ballantines went to the Dominican
14 Republic to pursue Michael's vision of creating a beautiful
15 mountain resort or--sorry--mountain residential
16 community--literally from the ground.

17 Explain this vision to me a little more. I'm
18 still having trouble understanding it. And forgive me for
19 this, but--so it's like an inspiration that you had when
20 you saw--was it this particular mountain, or was it just--I
21 mean, was that what triggered it? Was it just the beauty
22 of the Dominican Republic generally? Was this one spot
23 that just kind of captured your imagination?

24 A. It was specifically that one spot.

25 And I would just like to make the aside--and I am

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1 in no way comparing myself to this person, but Walt Disney
2 saw something in Florida in a swamp and created something
3 out of nothing. It's been shown by sociologists that in
4 all cultures of the world, 10 percent of the population are
5 visionaries or entrepreneurs, and I have that ability to
6 see something and create something out of nothing.

7 And having confidence in that, having confidence
8 in my abilities--and I have great weaknesses too, but I do
9 recognize that I've got an ability to start something out
10 of nothing.

11 Q. I see. So--I mean, so you consider that because
12 you're a visionary and you have this sort of intuitive
13 sense about business that you could just go to a foreign
14 country and buy this mountain, set up a big residential
15 project there?

16 A. That is correct.

17 Q. Okay.

18 A. And I was encouraged by President Hipólito Mejía.
19 I was encouraged by the local mayor. And I recognized that
20 what our plans were would be in harmony with the
21 socioeconomic goals and impact of a very needy community.

22 Q. All right. So this vision and this conclusion
23 that you arrived at that you could do this business venture
24 led you to buy more land over time in Jarabacoa; is that
25 right?

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1 A. Yes, because I didn't want our efforts to drive up
2 the valuations, and so I bought the land cheap, and I told
3 my assistant--I said, "Line up everybody you can. Offer
4 them this price." There was nobody in line behind me
5 offering what I was offering.

6 And so I bought up as much as I could at the time,
7 because I recognized that once the infrastructure started
8 coming in, those prices naturally, as a result of our
9 efforts, would be increased. So I continued to acquire the
10 property that was available.

11 Q. All right. So after you first--after you bought
12 the first piece of land, how much time elapsed before you
13 bought another parcel?

14 A. I think it was less than a year. I would have to
15 check the exact dates. They're in the record in terms of
16 the purchases. But it was quickly thereafter.

17 Q. And in the course of that year, did you consult
18 with any environmental consultants or government officials
19 about a potential project there, or not yet at that stage?

20 A. Well, as I had said, I had spoken with the
21 president of the country as well as the mayor of the city.
22 But beyond that, I do not recall.

23 Q. And at this point you're still not living in the
24 Dominican Republic. You just bought the land, kept coming
25 back and forth, and then you bought more land--

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1 A. Yes, sir.

2 Q. --about a year later?

3 So let's talk about the project itself for a
4 while. From the very outset of the project, you were--or
5 the planning of the project, you were aware of the
6 importance of the construction of the road up the mountain;
7 correct?

8 A. Yes. Yes, sir.

9 I would add as well, we didn't even have titles to
10 this property.

11 Q. I'm sorry, say that again?

12 A. I would add, we did not have titles to this
13 property.

14 Q. You didn't have titles?

15 A. I just had a letter of ownership rights, and we
16 had to do a process on parcel 1541 called "saneamiento"⁴ to
17 determine who actually owned what and--so, yeah, it does
18 seem absurd, but that's exactly what happened.

19 Q. And so what point did you actually acquire title?

20 A. Well, there's a--and I'm sure the Dominican
21 lawyers here would know much better what I'm talking about,
22 that there's a letter called a "Carta de Constancia," and
23 parcels 1541 and 1542 were assigned back in probably the

⁴ English Audio Day 2 at 00:48:31

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1 '40s that this person owned a certain amount. He would
2 pass away and then leave that to his children or his wife,
3 and they would pass away. So 1541 or 1542, which are large
4 parcels, would be portioned off and given to children.

5 But the land process was quite antiquated.
6 Ownership rights were not real clear. And then there was a
7 land reform in 2009 which--which really helped the
8 Dominican Republic in terms of making sure the titles had
9 GPS coordinates and helped to modernize that process.

10 Q. But you don't remember exactly when you actually
11 owned the land, when you first acquired title to it? Or do
12 you?

13 A. Well, I owned⁵ it in the sense that I bought
14 ownership rights. So that person that had an ownership
15 right that was registered by the government had transferred
16 that ownership right to me.

17 And another thing that was a real obstacle for
18 sales in the beginning, some of the difficulties, is I was
19 an American doing business there, on land that I
20 technically didn't have a title to, and I would not sell to
21 anybody who would come in unless they came in and they
22 committed to start construction in two years, which was a
23 huge obstacle that I'm expecting somebody to not only pay

⁵ English Audio Day 2 at 00:49:45

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1 for the land, but then also to commit to building houses on
2 land that I couldn't even produce title to, nor did I have,
3 and they had to just trust that I was going to get that to
4 them.

5 And that's why you'll see in our prices that
6 the--that in the beginning the prices were very low. But
7 then subsequent to gaining titles actually in August of
8 2010, there was a great uptick in terms of valuation.

9 Because without a title, you can't get a bank
10 loan. You don't technically own the property. And there's
11 a high degree of risk for the buyer, especially buying
12 property from a foreigner.

13 Q. Okay. Let me return to this subject of the road.

14 So in your Witness Statement, you emphasize
15 that--and you said, for example, in Paragraph 11 of your
16 First Witness Statement, "I knew the primary thing I needed
17 to do was build a great road."

18 Is that correct?

19 A. Yes, sir.

20 Q. And then same in Paragraph 12 of the First Witness
21 Statement, "I was very conscious that the key to success
22 for Jamaca de Dios was the road."

23 What you had in mind was not just a narrow
24 mountain path, but a fairly big road up the mountain;
25 correct?

1 A. Well, there's mountain roads, such as the
2 Odebrecht Road, that connects Jarabacoa and Constanza,
3 which is quite wide. And that's a mountain road.

4 We designed a road that we felt was appropriate to
5 convey the traffic to substantiate the traffic for weekend
6 homes for both Phases 1 and 2. I think that's
7 approximately 6 meters wide on average, which is enough for
8 two trucks to pass.

9 I knew that the road for Phase 1 would have to be
10 a little bit wider than Phase 2 because there would be more
11 traffic. And that Phase 1 road would have to also
12 facilitate the access for Phase 2 as well.

13 Q. But this is not a dirt or a gravel road. It's a
14 fully paved road; correct?

15 A. It's not paved. It's--there's--it was gravel in
16 the beginning, but then there's a thing called--a process
17 called double-berm, which means that it's almost like an
18 asphalt spray. And it's not as high of a quality as an
19 asphalt road, not as expensive, but it does provide a very
20 nice surface area.

21 And there was actually a lot of people in my
22 client base, primarily from the capital, that remember
23 going to Jarabacoa from their youth where there weren't
24 asphalt roads and they felt like they wanted to go into the
25 country.

1 And so in the beginning, people loved just the
2 gravel road. But then we decided to--through the homeowner
3 association to--everybody chip in and do this next stage
4 which is a lower stage than asphalt. Not as durable.
5 Won't last as long.

6 Q. Right. And you just mentioned, then, you had
7 emphasized also in your Witness Statement that it had to be
8 wide enough for two large trucks to pass each other in both
9 directions at all points.

10 That's how you phrased it in Paragraph 11 of your
11 Witness Statement; is that right?

12 A. Yes, because I anticipated a lot of construction
13 with the homes, and for trucks--they'll pass each other as
14 opposed to having to stop and wait for one guy to come by,
15 but then they could both comfortably drive by. That road
16 actually, in reality, that was my goal. But there are a
17 couple of areas where it's a little bit thinner and, you
18 know--narrower. I'm sorry. But in general, that is
19 correct, and that's what exists today.

20 Q. And you believed at the time that the mountain
21 road that you were planning to construct was unprecedented
22 in the Dominican Republic; correct? There was no similar
23 road to the one that you were planning to construct?

24 A. I would say for a private road, yes. Because what
25 I saw was most Dominican developers would just take a

1 bulldozer, race it up the mountain without any planning.
2 And what I wanted to do was something of substance and
3 quality.

4 Because it wasn't just the land sales I wanted.
5 That adds no value to the property. I wanted people to
6 invest a half a million dollars in a home. And if they
7 don't have good access and competent and sure access,
8 they're not going to buy the land, nor will they make a
9 significant investment, in order to have problems accessing
10 their properties.

11 So that was the key. That is the lifeline to the
12 project.

13 Q. You actually emphasized that in your Witness
14 Statement at Paragraph 15. The first one, you said, "I do
15 not believe that the type of mountain road we were creating
16 had ever been attempted by a private enterprise in the
17 Dominican Republic."

18 Do you remember saying that?

19 A. Yes. And I was referring specifically to our
20 Phase 1 road. And from my knowledge, I--at that time, I
21 did not think it had been. And I never observed anything.
22 And I'm very familiar with the entire area.

23 Q. All right. Did it worry you at all that no road
24 like this had ever been built?

25 When you say "private road," you mean constructed

1 by a private party as opposed to the government or what?
 2 You said "private road."
 3 A. No. It was energizing. It was fun. It was
 4 something I really wanted to do.
 5 Q. I understand that, but I'm asking you about this--
 6 A. You asked me if I was worried, and I was not
 7 worried.
 8 Q. No. Let's back up a little bit. Let me probe
 9 first this word "private" that you used. You said, you
 10 know--here earlier you said that it was a private--you
 11 know, the largest private road of this sort that you
 12 had--that you were aware of.
 13 And you said the same thing in your Witness
 14 Statement. You said the type of mountain road we were
 15 creating had--"I don't believe that the type of mountain
 16 road we were creating had ever been attempted by a private
 17 enterprise in the Dominican Republic."
 18 Is that a distinction you're drawing between a
 19 private individual or a company as opposed to the
 20 government or as opposed to what?
 21 A. Yes. I'm referring to--there's companies such as
 22 Falcondo. There's companies such as Barrick Gold. These
 23 are large multinational corporations, and they have
 24 significantly more capital at their disposal to build a
 25 wider road in the mountains.

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1 Q. But they did not have a wider road? I mean,
 2 you're saying--
 3 A. No. I'm saying--I specifically said "a private
 4 road."
 5 Q. Right.
 6 A. And so what I mean by "private road" is a private
 7 individual versus a corporation.
 8 Q. I see.
 9 A. I don't know exactly--I didn't do all the
 10 demographics and the studies of the multinational
 11 corporations that had built mountain roads. I was
 12 referring specifically to one family building a road.
 13 Q. I see. And the reason that you needed a road that
 14 was big enough to have two trucks going back and forth was
 15 because you were planning to build a real estate
 16 development on the mountain; right?
 17 A. That is correct, sir.
 18 Q. And your goal was to build a road that avoided
 19 significant steepness while still gaining altitude? That
 20 was the goal, the objective; correct?
 21 A. Yes, because a steep road is unsafe, and
 22 therefore, I felt it would be an obstacle to sales.
 23 Q. So even though the mountain itself was steep, the
 24 road that you had to construct had to be not too steep;
 25 right?

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1 A. Yes. That way any car can drive. It didn't
 2 matter how hard it rained. And the quality of engineering
 3 and the quality of the road, I can now say, 14 years later,
 4 I'm not aware of one accident or incident as a result of
 5 the safeness and the security of that road.
 6 Q. So to turn the road into a relatively flat road on
 7 a steep mountain, you needed to cut into the mountain quite
 8 a bit, in other words, to excavate a certain amount of
 9 earth, because you essentially needed to carve the road out
 10 of the side of the mountain; correct?
 11 A. In some places, yes. In many places, no. But
 12 being a mountain, the angle or the slope, whatever term you
 13 use, varies. And so in some areas there's more; in some
 14 areas there's less.
 15 Q. But when you're carving a road into the mountain,
 16 you necessarily have to dig out earth and excavate trees
 17 and vegetation and strip off soil from the surface of the
 18 mountain; correct?
 19 A. That is correct. In every single development,
 20 there is some level of human intervention into the--in the
 21 nature.
 22 Q. So that means that necessarily, if you're
 23 constructing a paved two-lane road, you're inevitably
 24 altering the face of the mountain to some extent; correct?
 25 A. That's the case of every mountain development on

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1 the planet.
 2 Q. Right. Let me just ask you a few other questions
 3 about this vision. I'm still troubled by the vision thing.
 4 So you were obviously aware that it was a tropical
 5 island; correct?
 6 A. Yes.
 7 Q. And tropical islands are subject to hurricanes and
 8 huge storms, as we just saw with the Puerto Rico and the
 9 storms a couple years ago. Did that aspect of it trouble
 10 you at all?
 11 I mean, you have this mountain. You're not really
 12 aware of a project of this sort that you are envisioning.
 13 You hadn't really consulted with anybody. It's a new
 14 country. It's a tropical country. And you just have this
 15 vision for a big residential project on a mountain, but
 16 it's--you know, it's a hurricane-prone area.
 17 Did that aspect of it worry you?
 18 A. It was a concern. But knowing that we were in the
 19 mountains and a Category 5 hurricane that would possibly
 20 pass maybe once every 20 years, or a Category 4 maybe every
 21 10 years is significantly broken down by the mountain
 22 ranges, most people--you know, as we've heard about the
 23 hurricanes in the past 10 years, as they hit landfall they
 24 significantly reduce their velocities.
 25 But there were never--I think it would be nearly

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1 impossible that a Category 5 or Category 4 hurricane would
2 not be greatly diminished as it passed inland through the
3 mountain range.

4 Q. I see. So that aspect didn't worry you?

5 A. It did not worry me, no.

6 Q. And what about--leaving aside the big storms, the
7 hurricanes and such, were you aware--I mean, it's a
8 tropical island, so it rains a lot; correct?

9 A. Yes.

10 Q. And were you aware that Jarabacoa in particular is
11 one of the rainiest, if not the rainiest, part of the
12 Dominican Republic?

13 A. At the time, I did not--I was not aware. And
14 actually--I mean, what I've learned and I did not know at
15 the time, that it's not the hurricanes that do the damage.
16 It's when there's a tropical depression that parks over the
17 island and provokes a lot of rain. But at that time I was
18 not aware.

19 Q. And when it rains, the earth gets soaked; right?
20 So rain makes soil more unstable than when it's dry. Is
21 that fair to say, just as a matter of common sense?

22 A. Yeah. That's right.

23 Q. And unstable soil is more susceptible to
24 landslides; correct?

25 A. Correct.

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1 Q. Constructing a two-lane road on a mountainside
2 would make it more susceptible to erosion and landslides
3 than if you didn't have a road; is that fair to say too?

4 A. That is fair to say.

5 Q. In your First Witness Statement, you stated the
6 following in respect to the road. You said, "I believed
7 that it needed to be no more than an 8-degree slope."

8 That's at Witness Statement Number 1, Paragraph
9 11.

10 Q. And what troubles me about that Statement is you
11 just told us that you don't have any of that--you didn't
12 and don't have--well now you do, you say.

13 But back then you didn't have any background in
14 engineering or construction or road construction,
15 specifically. And no real formal education in any of the
16 fields that I mentioned to you. So how did you--how did
17 you decide that it had to be precisely 8 degrees slope?

18 A. I was taking on a very large investment, as I've
19 said. And I can't underscore enough, the importance of it
20 was the road. Before investing huge amounts of sums, I did
21 some private investigation in terms of what needs to be
22 done. When I'm referring to the 8-degree slope, I'm
23 talking about the horizontal grade.

24 Q. Right.

25 A. Whenever you drive in America and you go through a

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1 steep area, it'll--there will be warning signs, "Oh, steep
2 grade up ahead, 12 percent/15 percent."

3 And so I did the research necessary. I didn't
4 just willy-nilly run a bulldozer up the mountain. And I
5 have also stated that we tried many different routes using
6 computer models and analytics to choose the safest route
7 and the one that was the least invasive. And I probably
8 spent at least \$50,000 throwing plans in the garbage in
9 order to choose the one that we chose. But that is not a
10 hard exercise.

11 Q. What's not a hard exercise?

12 A. To determine that an 8 percent grade is
13 appropriate and--

14 Q. Really?

15 A. No, it's not.

16 Q. And even--I mean, doesn't it depend on the actual
17 topography? I mean, you know, a road in Kansas where it's
18 super flat would be different than a road on a steep
19 mountain; is it not?

20 A. That is correct. But if you refer to
21 Mr. Navarro's statement, he says, "It's 7 percent grade,
22 maximum 15 percent grade."

23 So there's a lot of written information about
24 building roads. And so I very much acquired the knowledge
25 necessary of what the standards are and what I should be

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1 looking for to accomplish the goal that I had. Knowing
2 that I was spending a very significant amount of money, I
3 did do the research necessary and the due diligence about
4 what it takes to build a road.

5 Q. I see. So when you say you did research, did you,
6 like, Google it or what?

7 A. Yeah, pretty much.

8 Q. Okay. At some point you hired an environmental
9 lawyer, Mr. Freddy González from Jarabacoa; right?

10 A. That is correct.

11 Q. Do you recall when it was that you first retained
12 him?

13 A. Probably 2004, I would guess. 2005, something
14 like that.

15 Q. Okay. And you hired him to advise you on certain
16 aspects of the lower mountain road construction that you
17 were planning; is that right?

18 A. Yes. What I needed to do in terms of the
19 permitting process. And I talked to him about what I would
20 like to do, and I--because I didn't know what I needed to
21 do. And he's a very well-respected lawyer in Jarabacoa and
22 he's an environmentalist, and he has a lot of experience
23 with forestry and forestry roads.

24 Q. Okay. So you didn't know what you--you said you
25 didn't know what I needed to do with respect to

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1 environmental regulation, but you did know about the road
2 construction? Is that it? How did you decide--

3 A. I don't know about the timing of that. I
4 just--when I learned. I just don't know the correct answer
5 to that. But I know that I solicited with--to Mr. González
6 on what would be the process. How do I do this?

7 Q. You said earlier that nobody really had permits
8 and it was sort of the Wild West. Why did you feel that
9 you had to get a permit if nobody else really had permits?

10 A. Because I wanted to do things correctly, and I
11 didn't want to be exposed to future problems.

12 Q. So with respect to the legal aspects, you felt
13 that you needed informed or professional advice but not
14 with respect to the construction of the road at the
15 beginning; is that--

16 A. No, that's not what I'm saying. I said that I
17 went to a lawyer and I solicited from him what I needed to
18 do from a legal perspective.

19 Q. And I'm saying--right. But, you know, I'm saying
20 on the legal stuff you felt that you were on sort of shaky
21 ground on your own so you needed professional advice but
22 not with respect to, you know, the road, at least at the
23 beginning of the construction of the road?

24 A. Yeah. At that point there was a
25 Dominican-certified engineer. His name is Rafeal Peralta.

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1 And he's got a CODIA certificate, which is a Dominican--I
2 forgot what it's called. It's recognized. It's a code for
3 topographers and engineers. I don't know the exact wording
4 of that.

5 So he was a licensed engineer to oversee the
6 production or the work. And there was also a man named
7 Merito who had a lot of firsthand experience in building
8 roads. And then there was also an American engineer, his
9 name was Chad Wallace, who was living in Jarabacoa at the
10 time. And so I felt confident between this team we
11 could--and my topographer, who did all the computer models,
12 that we could execute the road properly.

13 Q. I mean, there were all these people, but had you
14 hired them? Were they--had you hired them?

15 A. I hired them subsequent to getting the permit to
16 do that.

17 Q. I see. So kind of further down the road, so to
18 speak. So later in time. But when you first started
19 constructing the road, at that point you were just basing
20 stuff on your own research. Is that what you said?

21 A. No, I didn't say that. I said that we had done a
22 lot of computer models. I had studied. I had spoken with
23 them. It was all staked out. And then I hired them for
24 the execution.

25 And just a step ahead, that was the process we did

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1 in Phase 1. By then we had acquired a ton of knowledge at
2 ARK, and I thought it would be the same simple process for
3 Phase 2.

4 Q. Okay. Let's go back to your lawyer, Freddy
5 González.

6 A. Yes, sir.

7 Q. So you hired him after you had already purchased a
8 significant amount of land; correct?

9 A. Yes, sir.

10 Q. And this lawyer, Mr. González, advised you on the
11 permit application process for the construction of the
12 lower mountain road; right?

13 A. Of the permitting process. Not the construction.

14 Q. Did I say construction? I'm sorry. Yeah,
15 permitting process.

16 The lower mountain road was the first stage of the
17 development of your project; is that correct?

18 A. Yes, sir.

19 Q. And your lawyer, Mr. González, specifically told
20 you, and I'm quoting from his First Witness Statement--from
21 your First Witness Statement at Paragraph 14--that your
22 lawyer told you that "the road would have the biggest
23 environmental impact."

24 Do you remember that?

25 A. Yes, that is what he told me.

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1 Q. And what did you mean by "biggest"? Bigger than
2 what?

3 A. A road would have more environmental impact than
4 building low-density houses.

5 Q. By "low density," do you mean light materials or
6 what?

7 A. I mean by any international standard, one house
8 per acre is a low-density development.

9 Q. I see. Okay.

10 So the road--the road is a bigger deal in a sense
11 than the actual houses. Is that roughly what you're
12 saying, or am I misinterpreting?

13 A. Bigger deal?

14 Q. This says, "Biggest environmental." That's your
15 and his term, your lawyer, "biggest"--

16 A. I was just referring to the word "deal."

17 Yes, there is more environmental impact in cutting
18 a road than building a home.

19 Q. All right. So at what point did you first go to
20 the Ministry of Environment to ask whether or not you could
21 build this road? Do you remember that?

22 A. I don't know, and I don't recall if I went to the
23 Ministry of Environment. Because at that time--and I can
24 be incorrect and I can be wrong because there's
25 environmental lawyers here. But I think at that time there

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1 was a--like a Ministry of Forestry. And, please, I might
2 be wrong on this.

3 The Ministry of Forestry wasn't like formally
4 involved with the Ministry of Environment, and they merged
5 together. So I do--I think I went to the Ministry of
6 Forestry or the Department of Forestry and got the permit
7 through them, but I might be wrong on that.

8 Q. Do you remember roughly what year that was?

9 A. Well, it was in 2005. That's when we started.

10 Q. All right. So you said that you bought the land
11 in 2003, and then you bought more land in about 2004, and
12 then periodically you bought--

13 A. Yes, sir.

14 Q. --bits and pieces of land?

15 A. I would just simply add, I wasn't even sure--I
16 felt like it was a good investment even if I just held the
17 land. So I felt confident in making that purchase. But as
18 time went on, that's what I said. You know, "I want to do
19 this." It took a couple years to really--

20 Q. Okay. So that confuses me because you said at the
21 beginning that from the very first moment you saw this
22 mountain, it was the vision that you and Lisa had to put up
23 a residential project up there.

24 A. That is correct. But I needed to do due
25 diligence, the research, make sure I felt secure on the

1 investment. I just wasn't going to willy-nilly cut up, you
2 know, subdivide land.

3 Q. But you just told us that you sort of did it
4 willy-nilly. I mean, you said that you bought it without
5 any studies/without any due diligence when you first bought
6 the land. I'm talking about the purchase of the land, you
7 know, the--that part of the investment. Is that right?

8 A. The purchase of the land is one thing. That's a
9 land investment. And it took maybe 18 months to formulate
10 and mature the actual vision, what it would like look like,
11 the concept. And I felt like I was managing my risk in the
12 sense that if through legal aspects/if through the
13 economics of it I determined later it was not viable, I
14 still felt like it was a very good investment just in the
15 land itself. That's what I'm referring to.

16 Q. Okay. And I understand that.

17 But the vision was from the outset someday to put
18 up a residential real estate project. So that's in 2003.
19 You buy the land. Then you buy more land, 2004, 2005. And
20 then finally in 2005 you approach the Ministry of
21 Environment or Forestry, whatever government authority it
22 is that you first resorted to. And do you remember what
23 you told them about your project and what they said?

24 A. I do not remember. I specifically remember that I
25 did not personally have any contact. But that was from my

1 lawyer, Freddy González, and he approached them.

2 Q. I see. So you yourself never went to the
3 authorities and said "Hey, I'm thinking about putting up
4 this project on this mountain?"

5 A. No, I wasn't living in the Dominican Republic at
6 the time and so--

7 Q. So you just--okay. Didn't do it.

8 And Mr. González also put you in touch with this
9 German foundation called PROCARYN; correct?

10 A. Yes. But there was⁶ also another man named Pablo
11 Pérez who worked with me. And between the two of them,
12 they did that.

13 Q. And this foundation, PROCARYN, was doing a
14 reforestation project in the area; correct?

15 A. That is correct.

16 Q. So you entered into a contract with PROCARYN to
17 plant trees on your property; correct?

18 A. Yeah. They were really promoting reforestation,
19 and they were giving subsidies. So people that
20 were--interested⁷ in reforesting, they would participate so
21 they have a vested interest. But then PROCARYN would
22 provide a subsidy to participate in the cost.

⁶ English Audio Day 2 at 01:14:51

⁷ English Audio Day 2 at 01:15:18

1 Q. All right. And this project for the planting of
2 the trees was supposed to complete--to be completed within
3 the span of a year; is that right?

4 A. I don't remember the time limit, but that might
5 have been. I don't--I'm sorry.

6 Q. That sounds about right to you?

7 A. That seems reasonable, yes, sir.

8 Q. So it was only after you entered into this
9 contract with PROCARYN that you approached the Ministry of
10 the Environment in connection with the road; is that right?

11 A. That is correct. Well, not--I don't know if I
12 was--I don't know if I remember--I don't know if I
13 approached the Ministry of Environment for a permit for the
14 road because the road was built, but I did approach them
15 specifically for the permit for subdividing some homes and
16 build homes. But I might be--I might be off on that. I
17 don't have the records in front of me.

18 Q. Okay. So you just said, "I don't know if I
19 approached the Ministry of Environment for a permit for the
20 road because the road was built." What do you mean?

21 A. We received permission from Forestry--I think it
22 was Forestry--to build the road and to do the reforestation
23 project in accordance with the German foundation, which the
24 Dominican government was appreciative that the German
25 foundation was doing this throughout the country.

1 And from what I recall, I was granted permission
2 to build the road along with doing the reforestation
3 project.

4 This process was specifically related to the steps
5 that my--being new to the country, that my environmental
6 lawyer told me I should undertake at the time.

7 Q. Right. But you also just said that your
8 environmental lawyer warned you that building the road
9 would have the biggest environmental impact. But you
10 didn't seek a permit from the Ministry of Environment
11 despite that?

12 A. I don't remember if I sought a permit from the
13 Ministry of Environment. He was managing that. I think it
14 was through the Ministry of Forestry which at that time,
15 from what I remember--and I might be wrong. From what I
16 remember, they were independent, and they had the authority
17 to grant the cutting of a road in conjunction with
18 reforestation.

19 Q. In conjunction with reforestation, did you tell
20 the Ministry--I mean the Forestry Ministry--is it for a
21 ministry or Forestry Department?

22 A. Yeah.

23 Q. The forestry authorities, did you inform them that
24 you were planning on building a real estate development?

25 A. I do not believe we did.

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1 Q. And did you inform the forestry authorities that
2 you were planning on building a two-lane road paved or
3 asphalted?

4 A. Well, a two-lane road--I didn't say "asphalted."
5 I mean, I didn't--I never did an asphalted road. At that
6 time, we were just looking to get access so I could
7 subdivide and do properties. After--and he said to me
8 specifically, "The biggest environmental impact is the
9 road. Do the reforestation. Once they see that you've
10 done a good job with that process, the process from the
11 Ministry of Environment is going to be much more simple."

12 And so I just simply followed his advice. That's
13 specifically what he told me. And that was the guidance
14 that I was given, being new to the country.

15 Q. So, you know--I mean, you approached the forestry
16 officials with this plan to do a reforestation project.
17 And so you told them "I need a road to go up the mountain
18 to plant trees essentially"; is that it?

19 A. That is true. And that's exactly what we did.

20 Q. Right. But the road that one would need to just
21 go up the mountain to plant trees would not need to be a
22 particularly wide road; correct? I mean, you would just
23 need essentially like a dirt road for a pickup truck to
24 take a bunch of seeds in the back.

25 I don't know what you--what you transport to a

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1 reforestation project, but I imagine it's not heavy
2 machinery; correct?

3 A. The road we built was--as a matter of fact, I do
4 think the Ministry of Environment came out and inspected
5 what we were doing, and there was never any obstacle,
6 either directly or indirectly, to the work that we had--we
7 were doing.

8 Q. All right. But you didn't tell the forestry
9 officials that you were planning on building a two-lane
10 road--I mean a road that was wide enough to have two trucks
11 pass each other?

12 A. It's not necessarily a very wide road. It's
13 6 meters, and that accomplishes the exact same goal.

14 Q. Okay. But my question is, did you tell them that
15 you were going to build a 6-meter road, if that's what
16 you're saying is--

17 A. I don't believe I did.

18 Q. All right. Let me go back to the environmental
19 lawyer. So aside from the lawyer, did you have any
20 environmental consultants advising you at the time of
21 this--you know, the first road and the first permit
22 application to the Ministry of Environment? At what point
23 did you first involve--

24 A. Well, I started with Freddy. Freddy González.

25 Q. Who's a lawyer.

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1 A. The lawyer. And he was--had very good
2 relationships with a certified environmental company
3 called--Antilles, I believe, is the name of it. And so he
4 made the connection between me and them. And then what
5 they did is they did the work necessary with the
6 communications with the Ministry of Environment to get the
7 referenced terms to do the Environmental Impact Study in
8 order to get the--secure the permit for the first phase of
9 development.

10 Q. All right. So when you first proposed this road,
11 you did not yet have an environmental consultant hired
12 directly; correct?

13 A. I don't think I did. I don't--I'd have to check
14 the dates. I don't think we did.

15 Q. And did it occur to you that it might be prudent
16 to--when your lawyer--when your environmental lawyer told
17 you, "Hey, you know, the road is what is the big deal here,
18 what has the biggest environmental impact," at that point,
19 did it occur to you it might be a good idea to hire an
20 environmental consultant to see what the deal would be with
21 the road and the construction and the--you know, the soil
22 and so forth?

23 A. I don't even know if there was--I was aware that

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1 there⁸ was a Ministry of Environment at that time. I was
2 working with my lawyer, and he guided me through the
3 process to get the permit and the road. I don't recall
4 exactly. This is 13, 14 years ago, so I'm sorry.

5 Q. So you didn't even know there was a Ministry of
6 the Environment?

7 A. I don't recall. I was doing exactly what I was
8 told to do by my lawyer. Maybe I was aware. I just don't
9 recall that. I'm sorry.

10 Q. All right. Okay.

11 A. But the forestry area--and that might have been
12 the part of the Ministry of Environment at the time. But
13 they were authorized--they were the government institution
14 authorized to allow me to build the road.

15 Q. And you mentioned an environmental consultant that
16 your lawyer had a relationship with called--you said
17 something like an Antilles or some such.

18 A. Yes. And I would have to check the documents to
19 see if they were involved at that time. I do not recall
20 the time sequence at that time.

21 Q. You hired them at some point directly, did you
22 not?

23 A. I did, yes, through the recommendation of Freddy

English Audio Day 2 at 01:22:04

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1 González, a lawyer, who had relationships with them, to do
2 the environmental impact study for the approval for
3 Phase 1.

4 Q. But you don't remember their actual name?

5 A. Antilis or Antiles or Antilas. It's something
6 like that.

7 Q. Yeah. It's Antilia.

8 A. Oh, Antilia.

9 Q. Just a reminder.

10 A. I think I only worked with them for that permit
11 and then decided to move to Empaca Redes, who we've worked
12 with for ten years now.

13 Q. When you say "that permit," which permit?

14 A. For the--the permit to subdivide through our
15 resort.

16 Q. Just to be clear, for the permit authorization for
17 the construction of the first road, the lower mountain
18 road, you did not have an environmental consultant
19 involved?

20 A. I might have. I don't remember. If I could
21 review the documents if they're here, that would answer
22 that question. I do not remember specifically on that, but
23 I do know that my lawyer worked with the Forestry
24 Department. But I don't if that was in conjunction with
25 the environmental company as well. I just do not remember

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1 that.

2 Q. But it wouldn't surprise you if I told you that
3 there's nothing in the record--

4 A. No, that would not surprise me. That would not
5 surprise me.

6 Do you have the dates in terms of my engagement
7 with Antilles or Antilia?

8 Q. We might get to that.

9 A. Okay.

10 Q. I'm not sure if we have a specific date, but we
11 will talk about Antilia in a second.

12 A. Okay.

13 Q. So, sorry to insist on this, but I'm still
14 troubled by this a little bit.

15 So you had a lawyer who told you that the road is
16 the big deal in these environmental--I mean on a mountain,
17 the road is the big environmental impact thing. And you
18 didn't have an environmental consultant.

19 Did you have an engineer involved in the
20 construction of the first road, the reforestation road?

21 A. Yes. I've already said that. A man named Rafael
22 Peralta who is the--who is a licensed engineer recognized
23 by the Dominican Republic. I also had a man named Merito
24 who has--although not an engineer, has tremendous amount of
25 experience in mountain roads. And I worked with an

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1 American engineer whose name is Chad Wallace, who had been
2 living there at the time who is also a certified engineer
3 from Texas A&M University. So they were the ones that
4 built the road.

5 Q. Is there a reason that you didn't mention any of
6 these people in your Witness Statements or anywhere?

7 A. Because we're discussing the issues of Phase 2, I
8 didn't--

9 Q. I mean, we talk a lot about Phase 1 as well, do we
10 not, in your Witness Statement and this whole business of,
11 you know, the first road and the lower mountain project and
12 the environmental impact assessment and so forth. It's
13 all--that's all Phase 1; is it not?

14 A. Well, I feel like you're trying to say something
15 I'm not trying to say. There was a lot of history in Phase
16 1. This is a lot of development. And so the fact that I
17 don't mention that in the Witness Statement does not imply
18 that there's any deception on any level.

19 Q. No, I'm not suggesting deception. I'm just asking
20 you why that wasn't mentioned. You just didn't think it
21 was relevant to this proceeding?

22 A. That's exactly right. Yeah.

23 Q. So that's also why none of these people are
24 witnesses in this proceeding?

25 A. No, I just didn't think it was relevant, important

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1 and--I mentioned Eric Kay because he had significantly more
2 experience. And some of my problem areas he fixed and gave
3 me good advice. And he was the one that was planning Phase
4 2 along with the development of Paso Alto. And so I felt
5 at this proceeding Eric Kay would be more appropriate,
6 especially in light of the fact that there was no obstacle
7 whatsoever from either Forestry nor the Ministry of
8 Environment on what we had done on Phase 1 at all.

9 Q. All right. So let's go back to the lower mountain
10 road and the forestry authorization.

11 So you said you--(a) you did not have an
12 environmental consultant at that point and (b) you had not
13 checked with the Ministry of the Environment. In fact, you
14 are not even sure you knew of the existence of the Ministry
15 of the Environment.

16 So when you built this road, were you just kind of
17 hoping for the best in terms of the environmental impact of
18 the road even though your lawyer had told you that the road
19 has the biggest environmental impact, or you were confident
20 from your research that it would be okay?

21 A. The mountain at that point was largely deforested,
22 and that was the reason why PROCARYN agreed to subsidize
23 the reforestation. There was slash-and-burn agriculture
24 throughout the mountain through the former farmers. And I
25 also felt very confident in the engineers and the design to

1 make a minimal environmental impact while preserving the
2 commercial values of the property as well as building a
3 safe road.

4 So we were juggling all those aspects at one time
5 while avoiding steep slopes, which are indicated by both
6 experts in the mapping.

7 Q. You know, when you say--yeah, you said you were
8 confident that the design was going to have a minimal
9 environmental impact. How would you know that if you
10 didn't have an environmental consultant and you weren't
11 consulting with the Ministry of the Environment?

12 A. I was consulting with my environmental lawyer who
13 is probably--I would--I don't want to overstate it, but one
14 of the--one of the most respected lawyers in Jarabacoa,
15 which is a large forestry area, and he was consulting me
16 and guiding me along the way.

17 Q. But he's an environmental lawyer, though. I mean,
18 what does he know about slopes and soils and such like? I
19 mean, he doesn't know about those, does he?

20 A. I'm sure he does.

21 Q. Really? Like about the technical things? So he's
22 not just a lawyer but like, you know, a biodiversity
23 expert, for example, or a soil expert?

24 A. I can't speak for him on his knowledge. But there
25 are different lawyers. There's international arbitration

1 lawyers, there's divorce lawyers, there's civil claims
2 lawyers, and they all have their specialty. And being a
3 forestry expert, I'm sure his knowledge is very broad.

4 Q. Right. But, you know, there are lawyers who
5 specialize in medical malpractice, but they're not doctors,
6 you know.

7 A. Yes, sir, you're correct.

8 Q. Is there a reason that your lawyer didn't provide
9 a witness testimony in this proceeding? He comes up a lot
10 on your Witness Statements.

11 A. We brought forth 20 witnesses, and I felt if we
12 brought forth 100, maybe we wouldn't have an efficient
13 process. There was no reason--there's no reason why I
14 didn't--

15 Q. But you thought the headmaster of the school where
16 your children went was the more relevant witness than your
17 environmental lawyer, the only environmental counsel you
18 had in connection with the first part of the project?

19 A. The Respondent had brought forth a jurisdictional
20 argument requesting bifurcation, and we felt that it was
21 very important to address that, the first question.

22 Q. All right. So you said that your environmental
23 lawyer was one of the most respected, et cetera. And I
24 don't have a basis to doubt that.

25 But if--you know, you would expect a prudent

1 environmental lawyer to tell you--if he's telling you that
2 the road has the biggest environmental impact, you would
3 expect him to say, "So if you're going to put up a road,
4 maybe you should hire an environmental consultant and/or
5 maybe you should consult with the Ministry of the
6 Environment since it's an environmental thing."

7 Did he not do that?

8 A. I don't think he did. The results speak for
9 themselves. The Ministry of Environment approved fully
10 Phase 1, and we have done 18 environmental reports since
11 then. The only company in Jarabacoa to do that. And not
12 one time was anything mentioned about our road and the
13 execution of it.

14 MR. Di ROSA: All right. Mr. Chairman, I'm about
15 to move to another subject. I don't know if you want to
16 take a break now.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: I think it's good to
18 take a break. I will advise the witness that--to refrain
19 from discussing anything with counsel, please.

20 THE WITNESS: Oh, okay.

21 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

22 (Brief recess.)

23 MR. Di ROSA: Thank you, Mr. Chairman.

24

25 BY MR. Di ROSA

1 Q. Mr. Ballantine, before we move on from the subject
2 of the reforestation road, I just wanted to ask you a
3 couple questions about--about that--the formal process for
4 that. And let me take you, if I can, to a document in your
5 binder, which is C-033. It's also on the screen if that
6 helps you, but you would have to blow it up.

7 (Comments off microphone.)

8 BY MR. Di ROSA:

9 Q. Do you see that document?

10 MR. BALDWIN: Do you have an English version?

11 THE WITNESS: I do have an English version, yes.

12 BY MR. Di ROSA:

13 Q. All right. So this is your request for
14 authorization to build the reforestation road; is that
15 right? I mean, this person who signs this letter, Pablo
16 Pérez Abreu, was acting on your behalf; correct?

17 A. I don't see the signature page, but I'm assuming,
18 yes.

19 Q. Okay. Well, you see the name at the bottom. If
20 you want to look at the Spanish and--

21 A. Oh, Pablo. I see that, yes, sir.

22 Q. Okay. And he was your representative or adviser?

23 A. He was a man from Jarabacoa that was--while I was
24 living in the States, he--you know, he kind of oversaw
25 things when we didn't have any--

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1 Q. Right. But when he writes this letter he's acting
2 on behalf of your project, right, Jamaca?

3 A. Yes.

4 Q. All right. And so here what they're saying is--or
5 what you're saying was that you were requesting a road of a
6 length of 2200 meters. Do you see that in the first
7 paragraph?

8 A. Yes, sir.

9 Q. And then in the second paragraph it says, "It is
10 necessary to state that this"--and I'm quoting. "It is
11 necessary to state that this farm is being reforested in a
12 large part of its area, and that in order to carry out this
13 work, it is necessary to build the aforementioned access
14 road."

15 Correct? Do you see that?

16 A. Yes, sir.

17 Q. So you were--and in your First Witness Statement,
18 you said that "After finalizing"--I'm quoting here again.
19 "After finalizing the reforestation agreement, the Forestry
20 Department granted us the permission to build a 3-kilometer
21 private main road plus an additional 1-kilometer public
22 road to access the property."

23 That's at Paragraph 14 of your First Witness
24 Statement. Do you remember saying that?

25 A. I believe I did say something like that. I'd have

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1 to look at that. But, yes, something like that I did say.

2 Q. All right. So let's--let's take a look at the
3 letter that the government authorities sent to you in
4 response to this, which was C-034, which is also in your
5 binder. Exhibit C-034. Do you see that? It should be the
6 next one.

7 And here what they're saying is, in the first
8 sentence, "We inform you that this office has no objection
9 to you being able to build an access road inside the
10 Applicant's property. The Commission has no objection to
11 granting the charge of use of the land if there will be no
12 cutting of trees."

13 And then in the final paragraph it says, "There
14 being no objection does not signify an authorization for
15 any activity of cutting, removal and/or transplanting of
16 trees of any type nor the extraction and transport of sand
17 or gravel."

18 Do you see that?

19 A. Yes, sir.

20 Q. So, basically, they were agreeing to the
21 construction of the road but with a good number of
22 conditions; right? And earlier you said that, you know,
23 you can't construct a road without cutting trees and moving
24 earth and such.

25 I mean, do you--was that something that you just

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1 sort of did afterwards, or were you planning all along to
2 put up this--you know, this--you said it's a 3-kilometer
3 road, and you had initially asked for a 2.2-kilometer road.
4 And then you say in your Witness Statement "plus an
5 additional 1 kilometer public road to access the property."

6 But I don't see that anywhere either in your
7 request or their response. So what accounts for that
8 difference, like the additional kilometer road and the
9 3 versus 2.2 length of the road?

10 A. Well, first of all, I was living in the United
11 States at that time. And from what I remember regarding
12 the kilometer public road--this is just what I
13 remember--Pablo went through the Ministry of Public Works,
14 and then they solicited permission from the landowner
15 saying, "Look, we're going to build a nice road here."

16 And then every landowner thought that that was a
17 good idea because they would have an actual road, and all
18 the neighbors gave a few meters of land on both sides of
19 the road.

20 And from what I recall--I was living in
21 Chicago--that was authorized by the Ministry of Public
22 Works locally in Jarabacoa with the approval of the local
23 property owners. Regarding the 2.2 or 3, I don't have an
24 answer for you.

25 Q. All right. But you--I mean, is--none of those

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1 documents that you're mentioning are in the record, are
2 they? I mean, is that because also you didn't think they
3 were relevant or what?

4 A. These--well, they are in the record. They're the
5 Claimant documents that you're citing here.

6 Q. Oh, so you're referring just to these?

7 A. I thought that's what you were--I'm sorry.

8 Q. I mean, you made reference to other--other things
9 in the Statement that you just made. You know, like Pablo
10 went through the Ministry of Public Works and then
11 solicited permission from the landowners, et cetera. I
12 mean, those were presumably written permissions, were they
13 not?

14 A. No, I don't believe they were.

15 Q. Oh, I see. Okay.

16 A. I think they were just happy they were going to
17 get a road built and they took down the barbed wire, and we
18 built the road.

19 Q. All right.

20 A. So I don't think there was anything formally
21 written, but that might have been. I don't have those.

22 Q. So you're not sure what the--accounts for this
23 difference between what you say here about the 3-kilometer
24 road and the additional 1-kilometer road as compared to
25 what was actually requested and authorized; is that right?

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1 A. That is correct.

2 Q. All right. Let's talk a little bit about permit
3 application process for project 2, which is the lower
4 mountain housing development and restaurant. Is that--I
5 mean, that's what we refer to as project 2, I guess. It's
6 the first part of--is this the first part of your Phase 2;
7 is that fair to say?

8 A. Yes, sir, that's fair.

9 Q. First of all, did your permit application for
10 Phase 2 request authorization for any road?

11 A. I don't--I don't recall. I think the road was
12 built.

13 Q. For Phase 2.

14 A. Well, my Phase 2.

15 Q. Right. So the road--

16 A. The permit application itself did not. However,
17 the letter of solicitation after the first inspection, it
18 did indeed on several occasions.

19 Q. But what about for the Phase 1 housing
20 development? When you first requested the permit for the
21 housing development in the lower mountain, was there a
22 permit application for that, for the road that was there?
23 I mean, you said that it was already constructed; right?
24 It's the same road that you had that was authorized in the
25 reforestry--reforestation project we just saw; right?

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1 A. That's correct. Are you asking--I solicited to
2 build the road a second time?

3 Q. No, no, no. I'm saying--I guess what I'm saying
4 is, the Ministry of Environment never authorized that road
5 that you built. It was the forestry officials; correct?

6 A. I believe so. I was out of the country, and I'm
7 just making a guess because I remember them talking about
8 forestry.

9 Q. And was that--I mean, your Witness Statement also
10 referred to your lawyer, Freddy González, advising you that
11 the way to do this would be kind of in two phases; right?
12 You would have the reforestation project, shall we call it,
13 and a road for that, and then after that to apply for the
14 housing lot subdivision.

15 Do you remember saying that?

16 A. Yes, that's what he advised me.

17 Q. And so that's pretty much what happened; right?
18 You applied for the reforestation road for a project that
19 was just to plant trees, essentially. You got that permit
20 to build that road. And then you--you know, you put up the
21 road that you put up. And then when you applied to the
22 Ministry of the Environment for the first housing project,
23 the road was already there. It was a fait accompli; right?

24 A. It was what complete?

25 Q. Sorry. It was already there?

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1 A. Yes, sir, I believe so. I believe if you look at
2 the dates, I think so.

3 Q. So the Ministry of Environment, as such, never
4 actually received an application for authorization from you
5 to build the road because it was already built at that
6 point; is that right?

7 A. I don't remember. But that could be plausible.

8 Q. Right.

9 A. I don't have those documents. I don't know for
10 sure.

11 Q. Okay. I mean, I'm just asking you from your
12 memory whether--when you applied for the permit for the
13 housing launch, did that--did that application also request
14 authorization for the road, as such?

15 A. I don't know.

16 Q. Okay. All right. Let's--so you have the lower
17 mountain road at this point, and you presented an
18 application for a permit to construct a lower mountain
19 housing development. So we're still in Phase 1. I want to
20 get through the Phase 1 part first.

21 A. Yes, sir.

22 Q. And so--you know, this is what we call Project 2.
23 It's still Phase 1 of your thing, the lower mountain
24 housing development and the restaurant. Is that--that was
25 the first permit that you asked for in terms of the housing

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1 development from the Ministry of the Environment; correct?
 2 A. Yes, for Phase 1.
 3 Q. And so when you presented this permit application
 4 for the housing development, you received what's called
 5 "Terms of Reference" from the Ministry; correct?
 6 A. Yes, sir.
 7 Q. All right. So let's take a look at that document
 8 which is C-036 in your binder. And this is a letter that's
 9 dated 18 August 2006 from the Ministry of the Environment
 10 and--which at that time was called the Secretariat of State
 11 of the Environment as well as--
 12 And this is the letter through which they
 13 transmitted to you the terms of reference for the lower
 14 mountain housing project. Is that a fair characterization?
 15 A. I'm on C-36. Is that what I'm looking at?
 16 Q. Yeah, c-036. Correct?
 17 A. These are the reference terms?
 18 Q. No, it's just the cover letter for the reference
 19 terms.
 20 A. Okay. Yes. It seems like that's what it is.
 21 Uh-huh.
 22 Q. All right. And in the second paragraph, the first
 23 sentence says, "According to the documentation deposited,
 24 the project consists of the development of division into
 25 lots where cabins will be constructed oriented towards

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1 relaxation and recreation in an area of 550,000 square
 2 feet." Do you see that?
 3 A. Yes.
 4 Q. Now, when it says--
 5 A. Meters, but yes.
 6 Q. Sorry. Square meters, correct.
 7 And then when it says "according to the
 8 documentation deposited," that would have been deposited by
 9 you or by Jamaica; correct? That's what they're referring
 10 to?
 11 A. Yes, I believe that we solicited the reference
 12 terms in order for--to provoke the Ministry to analyze the
 13 site and then determine the magnitude of the study, what we
 14 needed to undertake to ultimately obtain permission. This
 15 is what it's referring to.
 16 Q. So here the Ministry is expressing the
 17 understanding that what you were going to construct there
 18 were cabins. In Spanish, that's "cabañas"; right?
 19 A. Yes, sir. Uh-huh.
 20 Q. And that's because you had told the Ministry that
 21 the project would consist of mountain cabins; correct?
 22 A. Yes, sir.
 23 Q. All right. So after you received the terms of
 24 reference, you prepared an Environmental Impact Assessment;
 25 correct?

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1 A. Yes.
 2 Q. And an Environmental Impact Assessment--and for
 3 convenience, let's call it EIA. That's a document that a
 4 proponent of a project submits to the Ministry of the
 5 Environment; correct?
 6 A. Yes, sir.
 7 Q. And in an EIA, the promoter of the project
 8 explains the potential impact of the project on different
 9 aspects of the environment; is that right?
 10 A. That's correct.
 11 Q. And so Jamaica first submitted to the Ministry a
 12 five-page EIA in February--on February 14th of 2007. Do
 13 you recall that?
 14 A. I do not recall that.
 15 Q. The precise date is not important. But you do
 16 remember that there was a first EIA submitted that was a
 17 short five-pager?
 18 A. I do not remember that.
 19 Q. You don't remember that? Okay. All right. I'm
 20 going to represent--we don't need to go there because I
 21 don't want to ask you about that one. But I'm going to
 22 represent to you that there was this document and that
 23 it--there's a cover letter for it in the--in the record at
 24 C-037.
 25 So--but, you know, that--you know, that was an

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1 Environmental Impact Assessment that you submitted to the
 2 Ministry in February of 2007, and that was rejected. Do
 3 you remember that at all, that they rejected your first
 4 EIA?
 5 A. I do not remember that it was rejected. My
 6 environmental company was handling all aspects of that, and
 7 I was not aware it was rejected. So if it was, they were
 8 still managing it internally between the company and the
 9 Ministry of Environment.
 10 Q. All right. I'm just going to read from the
 11 rejection letter to your first EIA from the Ministry, which
 12 is in the record at R-064. It says, "You are hereby
 13 informed that the final review of your EIA for Jamaica de
 14 Dios has yielded the determination that it has omissions
 15 and defects--and relevant defects impeding a decision from
 16 being made for the processing of the corresponding
 17 environmental permit. In this sense, we are returning the
 18 study that was given that some fundamental aspects of the
 19 assessment process must be improved such as"--and it
 20 includes a long list of things that needed to be addressed
 21 in the Environmental Impact Assessment.
 22 A. Excuse me. I heard you say C-064, and that
 23 appears to be a different document.
 24 Q. It's R-064.
 25 A. Oh, R. Okay. Is that in this binder?

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1 Q. Yeah. Feel free to take a look at that.⁹

2 A. I just have C documents, I think.

3 Q. Underneath there's a binder with the R.

4 A. Oh, this other binder. I'm sorry.

5 Yes, sir.

6 Q. And so in this letter--does this refresh your

7 recollection about the first Environmental Impact

8 Assessment that you submitted?

9 A. No, it does not.

10 Q. Do you remember this letter, though?

11 A. I do not remember this letter.

12 Q. Okay. So, in this letter, though, they said that

13 the Environmental Impact Assessment that you submitted the

14 first time, in February 2007--which is the one that I'm

15 representing to you was a five-pager which we have, but

16 it's not in the record so I'm not going to refer to it--had

17 certain deficiencies, and this letter does refer to those

18 deficiencies.

19 And they say you have to improve the EIA by

20 addressing issues such as description and calculations for

21 the wastewater treatment plant, drinking water,

22 construction and operational activities, the environmental

23 monitoring program, including monitoring parameters,

⁹ English Audio Day 2 at 02:04:27

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1 mechanisms and frequency; restructuring of the

2 identification and assessment of impacts caused by

3 construction and operational activities, and restructuring

4 of the description of the impacts. And that's all done

5 pursuant to the Environmental Law. Do you see that?

6 A. I do.

7 Q. And this letter was addressed to you personally,

8 in addition to Mr. Pérez, but you don't recall it?

9 A. It appears to me that it was signed for by the

10 environmental company. And so I do not recall the specific

11 letter. But I do believe there's a high likelihood since

12 they were managing it. They went to the Ministry of

13 Environment and they received it. They realized there were

14 deficiencies. They were under contract with us to complete

15 and do what was necessary to obtain the environmental

16 permit.

17 So it is plausible that they realized that there

18 were some deficiencies, they themselves, and then they

19 worked directly with the Ministry of Environment to get

20 into compliance.

21 So I don't recall seeing this letter. We might

22 have, but that might be a plausible explanation as well.

23 Q. So you--okay, fair enough. So you just weren't

24 involved really with this. I mean, you were--

25 A. I was not.

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1 Q. All right. So after this was rejected due to the

2 lack of detail, you then had to present a new Environmental

3 Impact Assessment. And for that project--for that

4 assessment, you hired this company that you were referring

5 to earlier called Antilia. Do you remember that?

6 A. I don't know--I thought I hired them for the whole

7 thing.

8 Q. But for this one as well? So you mean the first

9 one was prepared by Antilia as well?

10 A. Yes. From what I recall, they were my

11 environmental company. I entered into a contract with

12 them, and they were preparing the Environmental Impact

13 Study, and then they brought it to completion. And they

14 were the ones that actually delivered to us the license.

15 Q. Okay. All right. So they did the five-pager.

16 They got this letter. They said, "Okay. We're going to

17 have to redo this thing."

18 And they prepared a revised Environmental Impact

19 Assessment that was then submitted in August of 2007. And

20 my question to you is, were you involved at all in the

21 preparation of the Environmental Impact Assessment that was

22 submitted in August, the revised one?

23 A. I don't think I was involved on any level

24 whatsoever in that process. I might have been. I don't

25 recall. From what I remember, I hired that company, and

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1 they brought it through to the end. They managed the

2 entire thing, from what I recall.

3 Q. Okay. So they prepared this document, the new

4 EIA, which we'll--might as well go to it. It's Exhibit

5 R-103 in your binder.

6 Do you see that?

7 A. Yes.

8 Q. Okay. So this is a--the revised EIA, and it's 119

9 pages long, at least in the Spanish version.

10 So your environmental impact--your environmental

11 consultants went from presenting a five-page EIA to

12 119-page EIA.

13 Do you recognize this as the EIA that was

14 submitted in August 2007?

15 A. It appears to be. I do remember seeing the

16 Environmental Impact Study. So from--yes, this seems like

17 the one that was approved.

18 Q. So this EIA, like the one before that that was

19 rejected, related to your application for a permit for the

20 lower mountain housing project; correct? Including the

21 restaurant.

22 A. I thought that this was the one that was approved.

23 Maybe it was rejected and they continued to get it right.

24 I'm not sure.

25 Q. This one was approved. The one you're looking

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1 at--

2 A. Yeah, this one was approved.

3 Q. Yeah, that's the one that was approved. There was

4 a previous one that was rejected, but they both related to

5 the lower mountain road?

6 A. Yes, sir.

7 Q. All right. So let me--and at this point in time,

8 the only permit that you had received was for the

9 construction of the road on--the only authorization you had

10 received was the one for the construction of the road on

11 the lower mountain that you had received from the forestry

12 officials; is that right?

13 A. I believe so. Yes, sir.

14 And I think maybe the City at this point had given

15 me a no-objection letter, I think.

16 Q. Let me direct your attention to Page 7 of this

17 document that you have before you.

18 Using the numbering on the far lower right, the

19 extreme lower right where it says "Page 7 of 119." Do you

20 see that?

21 A. Yes.

22 Q. All right. At Point 8 of this page--in the middle

23 of the page in the English version, it says--there's a

24 heading that says "Type of Project." Do you see that?

25 A. Yes.

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1 Q. And there your EIA describes the project as

2 follows in the first paragraph. It says, "Jamaca de Dios

3 is a subdivision project consisting of 82 lots of land for

4 sale to be used for the purpose of building homes in the

5 mountain villa style."

6 And then it goes on. Do you see that part?

7 A. I do. It's in Spanish, but I--

8 Q. Well, but you have an English version, as well, do

9 you not?

10 A. But I'm 75 percent good.

11 Q. You're comfortable in Spanish. Okay. Either way.

12 MR. Di ROSA: It should be behind him.

13 THE WITNESS: Oh, okay.

14 BY MR. Di ROSA:

15 Q. Are you there?

16 A. Yes. In English.¹⁰

17 Q. It says "mountain villa style" in the English.

18 And the Spanish, just to be clear, it says "viviendas tipo

19 villas de montaña"¹¹ (in Spanish.)

20 Do you see that?

21 A. Yes.

22 Q. All right. Now, by "mountain villa," did you mean

¹⁰ English Audio Day 2 at 02:12:19

¹¹ English Audio Day 2 at 02:12:27

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1 mountain cabin?

2 A. I meant--I'm unsure.

3 Q. All right. Because you said--you know, we saw

4 earlier that you--that you have characterized to the

5 forestry officials that you were going to do mountain

6 cabins; right? Is that what you told somebody before, the

7 government officials before, that you were going to do

8 mountain cabins? We saw a reference to that earlier.

9 A. Are you referring to the first rejection that we

10 received from the Ministry of Environment that was not

11 complete?

12 Q. Let me just--what did you understand by "mountain

13 villa" when you used it here?

14 A. I meant houses--in the mountains.¹²

15 Q. Because, I mean, what troubles me about that--you

16 know, when most people think of a mountain cabin, they

17 think of like a rustic wooden structure surrounded by

18 trees. Is that--I mean, am I wrong about that being kind

19 of a general understanding of what a mountain cabin is? Or

20 can it just be any kind of house?

21 A. Well, I think in English, a cabin might refer to

22 primarily a wood structure.

23 Q. Primarily a wood structure. Yeah. Most English

¹² English Audio Day 2 at 02:13:34

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1 dictionaries would define the term "cabin" as a--and this

2 is when you look at different dictionaries. It has

3 different variations of the following: A small, roughly

4 constructed, shelter or house typically made of wood and

5 typically situated in a wild or remote area.

6 A. A villa would have a different connotation.

7 Q. Okay. Let's take a look at the next paragraph

8 here, which is on Page 8, the following page of the English

9 version. So Page 8 of 126. Do you see that?

10 A. Yes.

11 Q. All right. So there too--I mean, there, you know,

12 there's a reference to mountain cabin-type structures;

13 right?

14 So you just told me that in your mind, mountain

15 villas are different from mountain cabins in that mountain

16 villas can be--can be houses.

17 A. I'm sorry. What paragraph?

18 Q. Point 13 there. Do you see where it says "The use

19 of the land will be for the development of a semi-urban

20 real estate project with construction of mountain

21 cabin-type structures being expected, no more than two

22 stories high with designs and materials that maintain

23 affinity and harmony with the natural environment."

24 Right?

25 A. Yes, sir.

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1 Q. And then--and, you know, earlier--and the part
2 that we saw on the preceding page in the--under the
3 subheading "Type of Project" that we just saw, there was
4 something similar. In fact, that one said--and you can
5 refer back to the previous page if you want.

6 The second paragraph says, "The architectural
7 guidelines for construction are intimately associated with
8 the environment, with wood and other lightweight materials
9 prevailing as the structural and construction elements."

10 And then it says, "Colors and forms are also
11 adapted to the environment, in order to create a harmonic,
12 integrated whole."

13 So here you are telling the Ministry that
14 basically it's going to be, you know, kind of wooden
15 mountain cabins type thing or lightweight materials anyway.
16 Were you not?

17 A. Yes.

18 Q. And that's consistent with this sort of composite
19 that I made of the dictionary definitions of a cabin;
20 correct?

21 A. Yes.

22 Q. And it's sort of consistent with what I initially
23 told you was the--my understanding of the general
24 conception of a mountain cabin; correct?

25 A. Correct.

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1 Q. All right. So let's take a look at R-2. We'll
2 project it on the screen as well. Oh, yeah, it's not in
3 the binder. Are you at R-2? You're not on R-2 because
4 it's not in the binder.

5 A. It's here. I was just handed it.

6 Q. So--and just--you know--by the way, there were
7 several references to the term--the term "cabin" in the
8 Environmental Impact Assessment, including--sorry; I'm
9 losing my voice--including at Page 7, Point 14; at Page 32
10 Point 1.1.1, the first paragraph, and on Page 54, 1.5.2 in
11 the second paragraph. These are all references to the EIA
12 that we were looking at, which is our R-103.

13 So with respect to R-2, let me ask you first--I
14 mean, based on¹³ what you said here in the EIA, the Ministry
15 reasonably believed or interpreted that you were planning
16 to build mountain cabins made of wood and other lightweight
17 materials; correct?

18 A. Yes.

19 Q. And the Ministry, in fact, granted you a permit
20 for this project; correct?

21 A. Correct.

22 Q. So let's take a look at that permit. And that's
23 what's at R-2. This permit was granted on December 7,

¹³ English Audio Day 2 at 02:19:22

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1 2007. That appears on the bottom of Page 2.

2 And it says here on Page 1, "The Ministry of
3 Environment and Natural Resources grants this environmental
4 permit for the construction of the project Jamaca de Dios."

5 Do you see that?

6 A. Yes.

7 Q. But then immediately below it says, and it
8 cautions, "with the following specifications."

9 Do you see that?

10 A. Yes.

11 Q. And after that, it describes the specific location
12 of the project followed by a section entitled,
13 "Characteristics." Are you there where it says
14 "Characteristics"?

15 A. Is that in the same paragraph, "Pursuant to
16 Article 45"?

17 Q. It's right--right, you know, on the second
18 paragraph. It's highlighted on the screen, if that helps
19 you.

20 A. Okay. Yes.

21 Q. All right. And there the permit says--under the
22 heading "Characteristics," it says, "The project has as its
23 objective the construction of buildings of a mountain cabin
24 type with two levels."

25 Do you see that?

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1 A. Yes, sir.

2 Q. All right. And it doesn't say anything at all
3 about the road, does it?

4 A. I don't see that, so I would assume no.

5 Q. Just see if I understand this right. You first
6 told the Ministry in the permit application that we saw
7 earlier that you were going to be building mountain cabins.
8 In the Spanish "cabañas de montaña." That's the document I
9 was referring to earlier.

10 On that basis, the Ministry then issued you terms
11 of reference. And then, you know, in the cover letter for
12 the terms of reference, the Ministry expressly mentioned
13 its understanding that they were going to be--that you were
14 going to be building mountain cabins.

15 And then in your Environmental Impact Assessment,
16 which is R-103, you once again told the Ministry that you
17 were going to be building "mountain cabins." And on that
18 basis, the Ministry issued you a permit for a housing
19 project for mountain cabins; correct?

20 A. Yes.

21 Q. And that permit also, in fact, expressly
22 articulated the Ministry's understanding that they would be
23 mountain cabins; right? That's what we just saw?

24 A. That's what it says, yes, sir.

25 Q. All right. So after you received this permit, you

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1 began the process of developing the lower mountain project;
2 correct?

3 A. Correct.

4 Q. So you sold a bunch of lots then, and houses were
5 built on them; correct?

6 A. Yes.

7 Q. Would you characterize the houses that were built
8 on them as mountain cabins?

9 A. I would characterize the first ones were more like
10 that, and then there were others that were not subsequent.

11 Q. So some of them were and some of them weren't; is
12 that it?

13 A. Yes, sir.

14 Q. Do you think it's something that was in your
15 discretion to decide, okay, the Ministry authorized me to
16 make--to construct mountain cabins, but some of them could
17 be and some of them couldn't be? Did you feel that you had
18 that discretion?

19 A. No.

20 Q. So it's basically illegal to disregard a condition
21 that's imposed on one of these permits; is it not?

22 A. When I received my environmental permit, I
23 believed it allowed me to build the houses that I was
24 requesting. I wasn't parsing the word "villa" or "cabin."
25 I wasn't thinking at that time that that was the

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1 authorization.

2 Q. Well, you weren't--

3 A. So I was assuming that I was allowed to build
4 that.

5 Q. Well--but they said mountain cabins, and earlier
6 we saw that you had said that they were going to be wooden
7 structures, lightweight structures that blended well into
8 the environment, et cetera, et cetera; right?

9 I mean, that was part of the application that you
10 submitted to the Ministry. And we just saw--I just walked
11 you through all the instances in which the Ministry said,
12 you know, "We understand this is going to be mountain
13 cabins so you're authorized to build mountain cabins."

14 A. Yes, sir.

15 Q. All right. Let's just take a few--a look at a few
16 of these photographs. Again, this is from C-28. And we'll
17 put some on the screen. I mean, so this one, would you say
18 that counts as a mountain cabin?

19 A. I would say that I wouldn't classify that as a
20 cabin.

21 Q. You would?

22 A. I would not classify it as a cabin.

23 Q. You would not? Okay.

24 How about--

25 MR. Di ROSA: Do you have others?

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1 BY MR. Di ROSA:

2 Q. How about this one. Mountain cabin?

3 A. A big mountain cabin. No.

4 Q. This is a mountain cabin?

5 A. I would--I would say no.

6 Q. No. Okay.

7 A. So we have two.

8 Q. We have two, neither of which is a mountain cabin.
9 We showed a bunch of them--you showed a bunch of them
10 earlier. We saw videos, et cetera.

11 A. Yes.

12 Q. I mean, most of them really are like this, are
13 they not? I mean, we can--we don't have to go back through
14 them. I think the Tribunal can look at the pictures that
15 were shown in the openings.

16 But the bottom line is a lot of these houses are
17 not wooden structures. They're not lightweight structures.
18 I mean, would you say this blends naturally into the
19 environment, into the surrounding area?

20 A. Kind of, yeah. It's beautiful. It's nature.
21 It's open. Beautiful views. It opens up the views. In
22 many ways, I would.

23 Q. I agree with you that the views from the house
24 must be beautiful. But does the structure itself blend
25 nicely into the surrounding--for somebody--say you're like

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1 a naturalist, a person who really loves the outdoors and
2 loves nature and natural beauty, and they sort of come up.
3 Do you think that they would think of this as blending into
4 the natural surroundings? I mean, do you think this is
5 part of nature?

6 A. I would not say that that would qualify as a
7 mountain cabin, according to my understanding of mountain
8 cabin.

9 Q. Well, we agreed on that earlier. But I'm asking
10 you now if it blends into the surroundings, and you said
11 sort of because of the beauty and so forth.

12 And I'm just saying, it's not a--it's not a piece
13 of nature. I mean, you said--yeah, you said, "It's
14 beautiful. It's nature."

15 But this structure is not nature, though, is it?

16 A. Yeah, I would agree with you.

17 Q. Okay. Now, in your First Witness Statement at
18 Paragraph 62, you said, "Juan José Domínguez was destroying
19 the mountain."

20 And I wanted to show the Tribunal exactly what it
21 is that Juan José Domínguez did.

22 And he's the owner of the Aloma project; correct?

23 A. Yes, sir.

24 Q. The one that's right next--adjacent to your
25 project; correct?

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1 And--all right. So are we going to do this? It's
2 Exhibit C-129. It's a video that we're going to show you
3 of the Aloma Mountain--it's not a project. That's part of
4 the issue that we want to explore. It's property. It's
5 the Aloma property.

6 MR. Di ROSA: Okay. So let's go with this video
7 here.

8 (Video played.)

9 BY MR. Di ROSA:

10 Q. So they have a dirt road, other dirt roads. You
11 know, that's--this is Aloma, is it not?

12 A. Yes.

13 Q. And do you see any housing structures of the sort
14 that you had?

15 A. I do not.

16 Q. Do you see a road there that's comparable to your
17 road?

18 A. No.

19 Q. Do you see any housing project on this mountain?

20 A. There is a housing project on the mountain.

21 Q. Oh, really? Is it not--is it a commercial real
22 estate project?

23 A. To my understanding, it is. There is years of
24 attempted sales without success.

25 Q. They have lots. How many houses do they actually

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1 have? You must know.

2 A. I believe there's three houses.

3 Q. Three houses. And one of them is owned by
4 Domínguez; right?

5 A. Yes, sir, from what I understand.

6 Q. Right. And would it surprise you if the other
7 structures are not actually houses as such?

8 A. I think there's a--like a clubhouse, and I do
9 believe there's two other houses, but I might be wrong
10 because I haven't been on that property for several years.

11 Q. Would it surprise you if I told you there's
12 Mr. Domínguez's house, and then there's a clubhouse and a
13 gazebo?

14 Do you know what a gazebo is?

15 A. I know what a gazebo is, yes.

16 That would surprise me, because I'm pretty sure
17 when I was up there, I saw two or three houses. But I
18 might be wrong.

19 Q. I mean, there are two or three structures for
20 sure.

21 But he didn't get to build a real estate project
22 because he didn't get authorization; isn't that right?

23 A. I would not characterize it as that. I would
24 characterize it as he has a failed commercial project
25 because he built a horrible road.

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1 Q. But he did get his permit denied, though, did he
2 not?

3 A. That was subsequent to many institutions bringing
4 much pressure on the Ministry of Environment.

5 Q. Right. But his permit was denied?

6 A. There was no choice.

7 Q. It was denied?

8 A. It was denied in 2017 or '18, it appears.

9 Q. My assistant here says that it's December 2013.
10 He asked for reconsideration and then the project--the
11 application was not closed until 2017. But the permit
12 itself was denied in December 2013.

13 I mean, does that surprise you?

14 A. No. I think there was no other choice for the
15 Ministry but to formally close his file or deny his permit.

16 Q. Right. So, basically, he applied, got his permit
17 denied. He asked for reconsideration. That too was
18 denied, just like you. And they closed his file, just like
19 you, except you got an extra two reconsiderations.

20 I mean, is that factually correct?

21 A. I don't know how many reconsiderations he has.
22 But, yes, I did get three reconsiderations.

23 Q. Right. And he had at least one, is what I'm
24 representing to you.

25 A. At least one, yes, sir.

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1 Q. Do you call this "destroying the mountain"?
2 There's a dirt road there.

3 A. The access road that was cut up through 18
4 switchbacks through the soils absolutely destroyed the
5 mountain. When the rains came, you could see nothing but
6 brown flowing into the creeks and rivers, and it was seen
7 from everywhere in the area.

8 So, yes, there was a great amount of environmental
9 destruction on the road cut.

10 Q. But brown--at least brown is still part of nature;
11 right? I mean, do you think that some people could
12 reasonably say that you destroyed the mountain more than
13 Mr. Domínguez here, based on those photos we just saw?

14 A. At the top of the mountain. But I think what he
15 has done is fine. I'm saying the roads that he built going
16 up the mountain created a huge environmental impact.
17 Sedimentation arose in affected waterways, yes.

18 Q. But you were denied the permit for the top of the
19 mountain also; right? This is the top of the mountain
20 that's adjacent, and they too got their permit denied.
21 But, you know--well, how many houses were constructed on
22 your lower mountain project in the end? How many are
23 there?

24 A. They're not done being constructed. I think
25 there's probably about 65 that are completed, maybe a

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1 couple more in different degrees of construction, but that
2 would be an estimate.

3 Q. 65? Is that what you said?

4 A. Maybe 60, 65, 67. I don't have--I haven't been
5 there very much in the last several years.

6 Q. So, that's a lot of houses on the mountain, is it
7 not? I mean, certainly more than two or three, whatever it
8 is that--structures that Domínguez has.

9 A. Yes. There is more in Jamaca de Dios.

10 Q. And you said that the roads that Mr. Domínguez had
11 constructed were generating a lot of erosion; is that
12 right?

13 A. It was a massive environmental impact seen from
14 everywhere.

15 Q. Including erosion?

16 A. Massive erosion.

17 Q. Massive erosion because of the roads?

18 A. Because of the horrible road and design, yes, sir.

19 Q. All right. Because that's--that's what was
20 causing the erosion, in your view, is the badly constructed
21 roads; right?

22 A. Without any environmental consideration
23 whatsoever, yes, sir.

24 Q. All right. Now, let me take you now to Page 2 of
25 the permit. And we're still talking about the permit for

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1 Project 2, which is the lower mountain project.

2 And let me read to you the next-to-last paragraph
3 of the permit, starting with where it says "This
4 environmental permit."

5 Do you see that in R-2?

6 A. Yes, I do.

7 Q. So, in the English translation, it says, "This
8 environmental permit is exclusively for the aforementioned
9 activities carried out in the specified area. Any change
10 of technology, substantive inclusion of new works or
11 expansion must be submitted to the environmental impact
12 assessment process in accordance with Law 6400."

13 Do you see that?

14 A. Yes.

15 Q. So this permit--this is the permit--explicitly
16 warned you that the permit applied only to the particular
17 construction project that was authorized in the permit. Is
18 that a fair characterization?

19 A. Yes, sir.

20 Q. And it specifically warned you that any change of
21 technology and any expansion project would be subject to a
22 new environmental impact assessment process; correct?

23 A. Yes, sir.

24 Q. All right. Now, at the end of this
25 document--sorry.

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1 Do you recall signing this document, the EIA,
2 yourself? I mean, you said that your environmental
3 consultants prepared it, but do you remember signing it?

4 A. I don't remember signing it. But if my signature
5 is there, then it's mine and I did sign it. But I don't
6 remember specifically signing it.

7 Q. Right. Let me--it's at Exhibit C-4 on Page 3.
8 So it's being explained to me that it's the same
9 document at Exhibit C-4. The version that your counsel
10 submitted included the signature page which appears on the
11 screen here. It's at the end of C-4.

12 A. Yes. This is my signature.

13 Q. Do you see that?

14 A. Yes, sir.

15 Q. All right. So what this document says is, "I,
16 Michael Ballantine"--and I'm just free-translating here.
17 But "I, Michael Ballantine," and then it goes on to
18 say--"me comprometo en nombre del mismo a dar fiel
19 cumplimiento a los requisitos establecidos en el permiso
20 ambiental "(in Spanish.)"¹⁴

21 MR. Di ROSA: Do you have that?

22 (Comments off microphone.)

23 BY MR. Di ROSA:

¹⁴ English Audio Day 2 at 02:36:35

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1 Q. All right. So what this says--and you can correct
2 me if I'm wrong. It says: "I commit on behalf of del
3 mismo"--which is the project--"on behalf of the
4 same"--which is the Jamaca de Dios project--"to give
5 faithful compliance to the requirements established in this
6 permit."

7 Is that a fair translation?

8 A. Yes, sir.

9 Q. And then you go on to say at the end, "which I
10 have read and understood" is part--I mean, you see that
11 part that says "I have read and understood it"?

12 A. Yes.

13 Q. All right. And you say that that--that those
14 requirements are an integral part of the approval of the
15 permit; is that right?

16 A. Yes.

17 Q. Let me direct your attention now to Page 26 of 126
18 on this EIA document. Again, that's the reference to the
19 lower right-hand number.

20 And this is still R-103, for the benefit of the
21 Tribunal.

22 Are you there?

23 A. Page 26.

24 Q. 26 of 126.

25 So in this section of the EIA, you are essentially

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1 articulating your own understanding of what the
2 environmental impacts would be of your lower mountain
3 project; correct?

4 A. Is that the hierarchy of impacts? Is that what
5 you're referring to?

6 Q. Yeah, the hierarchy of impacts.

7 A. Okay. Yes, this appears to be correct. Yes, sir.

8 Q. Okay. So this is your own environmental
9 consultants and your assessment, because you signed this
10 thing, of what would be the different kinds of impacts.
11 And they're classified in high significance, medium
12 significance, and low significance.

13 And I think in the Spanish it said "alta
14 importancia," right? "Mayor importancia."¹⁵ Okay. That's
15 what it said. "Impactos de mayor¹⁶ importancia" in Spanish.
16 High significance impact is how it's translated in the
17 English.

18 So let's focus on the high--the high significance
19 impact in the construction phase. It's divided into
20 construction phase and operation phase.

21 In the construction phase, there are six impacts
22 that you--environmental impacts that you classified as high

¹⁵ English Audio Day 2 at 02:38:48

¹⁶ English Audio Day 2 at 02:38:50

1 significance that are listed here. Do you see that?

2 A. Yes, sir.

3 Q. And two of those are described as negative. Do
4 you see that?

5 A. Yes.

6 Q. All right. And the two negative ones are change
7 in land use and increased erosion caused by earth moving
8 and vegetation removal.

9 Did I read that correctly?

10 A. You did, yes.

11 Q. All right. For the medium significance impacts,
12 which start at the very bottom of that page, also in the
13 construction phase, you identified six impacts of medium
14 significance; correct?

15 A. Yes.

16 Q. And you said all of them are negative; right?

17 A. Yes.

18 Q. And these impacts included increased contamination
19 of the surface water and groundwater sources. Second,
20 modification to the patterns of surface flow and
21 infiltration into the land. Third, increased consumption
22 of water. Fourth, elimination of 30,000 square meters of
23 primary forest. Five, increased risk of occupational and
24 traffic accidents. And six, increased consumption of
25 aggregates for construction.

1 Do you see that?

2 A. Yes.

3 Q. And for the low significance impact, also in the
4 construction phase, you identified four low significance
5 impacts, all of which are also negative.

6 Do you see that?

7 A. Yes.

8 Q. Those impacts are, first, increased emissions of
9 gases and particulates caused by earth moving and operation
10 of heavy equipment; increased noise levels and vibrations
11 caused by heavy equipment; impact on the habitats of forest
12 fauna from removal of vegetation; and temporary impacts on
13 the landscape while the construction work is taking place.

14 Is that correct?

15 A. That is correct.

16 Q. So these are all risks to the environment that
17 you're--that you and your environmental consultants
18 identified in connection with the proposed lower mountain
19 property; right?

20 A. Yes, sir.

21 Q. So this didn't relate at all to the potential
22 impact on the upper mountain. This is just the lower
23 mountain; correct?

24 A. Yes.

25 Q. And as it happened, in the end, you never actually

1 presented an environmental assessment for the upper
2 mountain project because you didn't get that far in the
3 permitting process for that project; is that correct?

4 A. Yes.

5 Q. All right. Let me take you now--and still in the
6 same document here--to Page 61 of 119.

7 Sorry. 62, I guess, in the English.

8 Do you see at the bottom of the page there it says
9 "Construction Phase"?

10 A. Which page?

11 Q. Sorry. 62 of 126 in the English.

12 Right? Do you see that? Are you there?

13 A. Yep.

14 Q. So the heading there two-thirds of the way down
15 the page is "Construction Phase."

16 And then it says "Construction"--the
17 subheading--"Construction of the project's access roads and
18 internal roads."

19 Do you see that?

20 It's right below the heading.

21 A. Yes, sir.

22 Q. So this is the part on which the EIA is focusing
23 specifically on the impact of the roads; is that right?

24 A. Yes.

25 Q. All right. So, let's just take a quick look at

1 the list below it, the enumerated items starting with 1.1,
2 tree cutting; right?

3 So you have--1.1 is tree cutting; 1.2 is land
4 clearing; 1.3, operation of heavy equipment; 1.4 is earth
5 moving: excavation, cutting, filling, and compacting. And
6 1.5 is asphalt paving of roads and other road-related
7 constructions (curbs, gutters, culverts, etc.)

8 Is that right?

9 A. Yes, sir.

10 Q. All right. Now, all of this refers to the
11 internal roads of the housing development; right?

12 A. Yes.

13 Q. Because you had already constructed the main road
14 leading up the mountain; right?

15 The main road leading up the mountain had been
16 approved by the forest officials--

17 A. Yes, sir.

18 Q. -- forestry officials, not by the Ministry of
19 Environment.

20 And the road--the main road was the one that was
21 shown in the video during the opening arguments yesterday;
22 correct?

23 A. Yes.

24 Q. For the construction of the first road, you also
25 had to cut trees, use heavy equipment, conduct excavations,

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1 et cetera, all these things that are listed here; is that
2 right?

3 A. Yes.

4 Q. Now, in connection with the lower housing project,
5 aside from the environmental impact assessment that you
6 were required to present and prepare to the Ministry, which
7 is this document that we're looking at, you also had to
8 prepare a document known as an Environmental Management and
9 Adaptation Plan; right?

10 "Plan de manejo y adecuación ambiental"¹⁷(In
11 Spanish.) Is that right?

12 A. Where is that at?

13 Q. Well, we're going to go--it's R-103. But do you
14 remember the concept itself of the "Plan de manejo
15 ambiental"¹⁸(in Spanish)?

16 A. An environmental management plan?

17 Q. Yeah, right.

18 A. Isn't that what this was?

19 Q. No. This is the Environmental Impact Assessment.
20 There's a separate requirement for something called the
21 Environmental Management and Adaptation Plan.

22 But let's just go and look at it. Maybe that will

¹⁷ English Audio Day 2 at 02:45:16

¹⁸ English Audio Day 2 at 02:15:29

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1 refresh your recollection.

2 Do you see R-103?

3 A. Okay. I've got that one.

4 Q. So let's go to Page 79 and 80.
5 (Comments off the microphone.)

6 MR. Di ROSA: It's a document--it's a plan that's
7 inside the--in this case you put it in the actual
8 environmental impact assessment. My apologies.

9 ARBITRATOR CHEEK: So it's the same document we
10 were looking at?

11 MR. Di ROSA: It's the same document. It's
12 Chapter 3. I unilaterally created this confusion.

13 THE WITNESS: Was this the same date as the other
14 one?

15 MR. Di ROSA: Yeah. It's the same document,
16 essentially. It's just--

17 THE WITNESS: I mean the date. I'm asking the
18 date. Or is this a separate document on--

19 MR. Di ROSA: No. It's a chapter of the same
20 document.

21 THE WITNESS: Okay. Gotcha.

22 MR. Di ROSA: Sometimes it's represented
23 separately. You guys did it together. And that's fine.

24 THE WITNESS: Sure. I just want to understand.

25 BY MR. Di ROSA:

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1 Q. So, basically, this chapter, this plan, is a plan
2 that the project promoter--in this case you--prepares to
3 mitigate the adverse environmental impacts of the project
4 that are identified in the Environmental Impact Assessment;
5 right?

6 A. Yes, I got that. I'm assuming what you're saying
7 is true. Yes.

8 Q. So you don't know what purpose of--

9 A. I'm sorry. I've got the Spanish version again. I
10 didn't--

11 Q. So you don't remember this plan, in any event?

12 A. I don't remember the plan.

13 Q. The English is behind your blue sheet there, if
14 you wanted to--

15 A. Yeah. And it's R--

16 Q. On the Spanish version, it's Page 78.¹⁹

17 A. R what again?

18 Q. R-103. It's the same document we've been looking
19 at.

20 A. Yeah. But I was looking at the Spanish. I'm
21 sorry.

22 Q. I guess it starts at Page 80 of the English
23 version. 80 of 126 is in the lower right-hand number.

¹⁹ English Audio Day 2 at 02:47:35

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1 A. Okay. I just have the Spanish version. I don't
2 have that one. I'm sorry.

3 Q. All right. Well, we'll figure it out here.

4 A. Oh, there it is. Yes, sir. Page 80.

5 Q. All right. So, it starts at Page 80. And the
6 general objective that's identified at the top of this plan
7 is, "To protect the soil from pollution and deterioration
8 of its physical-chemical properties."

9 And then also it says, "To contain and prevent
10 erosion by applying effective measures."

11 That's--sorry. That's at Page 95. So you're
12 going to have to skip ahead a little bit.

13 Are you there?

14 A. I'm on Page 95. Yes, sir.

15 Q. So, at the top it²⁰ says "General Objective"--and
16 this is the General Objective of the Environmental
17 Management Program, they call it here. In Spanish, it's
18 "Plan."

19 And it says, "To protect the soil from pollution
20 and deterioration of its physical-chemical properties; to
21 contain and prevent erosion by applying effective
22 measures."

23 Right?

²⁰ English Audio Day 2 at 02:48:52

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1 A. Yes.

2 Q. So the purpose of this plan here is essentially to
3 mitigate or contain the adverse impacts that you identify
4 elsewhere in this Environmental Impact Assessment; is that
5 right?

6 A. That is correct.

7 Q. All right. In fact, below that--immediately below
8 that it says "Environmental Impacts"--that's the
9 heading--"Environmental Impacts to be Mitigated."

10 A. Yes.

11 Q. And below that it focuses specifically on the
12 impacts on the construction phase--in the construction
13 phase on--and the measures that--it summarizes the actual
14 impacts that you expect in that regard. And then it
15 identifies certain measures that are going to be taken to
16 mitigate those impacts; right?

17 A. Yes.

18 Q. So, you know, it says with respect to the two
19 negative impacts that you have to mitigate under this plan,
20 the first one is change in land use. The second one is
21 increased risk of erosion caused by vertical land cutting
22 for construction of the highway; right?

23 A. Yes.

24 Q. All right. And then there's a third one,
25 increased consumption of aggregates. So that implies more

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1 extraction; right?

2 A. Yes, it does.

3 Q. Then you have the actual measures that you propose
4 for mitigating these impacts; right? Immediately below
5 that. Do you see that?

6 A. Yes, I do.

7 Q. "Measures proposed."

8 And it says for the first one, there are no
9 possible measures. That's it. You're stuck with the
10 change in land use; right?

11 A. Is that as a result of the assumption that the
12 road has already been built? Is that what that's referring
13 to? I'm just trying to understand it.

14 Q. I mean, I don't know. I'm asking you. This is
15 your document; right?

16 A. I'm assuming it's because the road was already
17 built. But that's just a guess. I don't know, though.

18 Q. This is the whole project, not just the road;
19 right?

20 But in any event, then you have "Development of a
21 pilot plan for containing erosion, with installation of
22 living barriers made from plants installed in a laddered
23 arrangement."

24 Right?

25 A. Yes.

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1 Q. So that was your plan to deal with the erosion
2 problem. And then further down, you have the actual
3 measures against erosion that you proposed to take; right?

4 A. (No audible response.)

5 Q. So let's go now to the actual Environmental Law,
6 which is in your binder at R-3. That's in your binder,
7 Exhibit R-3. In particular, Article 122 is what we want to
8 focus on.

9 A. Yes.

10 Q. Let's put up the Spanish, because in the original
11 apparently there are some minor discrepancies in the
12 translation. So, I mean, I'll read the English version,
13 but we have the Spanish on the screen for the Tribunal's
14 benefit.

15 All right. So Article 122 in the English version
16 says, "Using mountainous land with slopes equal to or
17 greater than 60 percent for intensive plowing, tilling,
18 removal, or any other work that increases the erosion and
19 sterilization thereof is prohibited. Only the
20 establishment of permanent plantings of fruit bushes and
21 timber-yielding trees is permitted."

22 Right?

23 And because this is a key clause, I'm going to
24 read it into the record in the Spanish version as well

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1 which says " artículo 122 se prohíbe dar..²¹(in Spanish.)
 2 "Article 122: Using mountains land with slopes
 3 equal to or greater than 60 percent for intensive plowing,
 4 tilling, removal, or any other work that increases the
 5 erosion and/or sterilization thereof is prohibited. Only
 6 the establishment of permanent plantings of fruit bushes
 7 and timber-yielding trees is permitted."
 8 Do you see that?
 9 A. I see that.
 10 Q. All right. And are you generally familiar with
 11 this law?
 12 A. Quite specifically.
 13 Q. Right.
 14 And at what point did you--as early this morning
 15 you told us that you weren't really familiar with the
 16 regulations and laws. And so at what point did you kind of
 17 become seized of the law? Do you remember roughly in
 18 connection with what phase of development of your project?
 19 A. September 12th, 2011.
 20 Q. All right. 2011?
 21 A. In respect to the slope. That's the
 22 context--that's what you're referring to and that's what
 23 you're asking me.

²¹ English Audio Day 2 at 02:53:46

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1 Q. No. I was asking you generally when you became
 2 aware of this law.
 3 A. This particular article, on that date, yes, sir.
 4 Q. And so you bought this land--you started buying
 5 this land in 2003, and you didn't become aware of the
 6 environmental law until 2008--eight years later, until
 7 2011?
 8 A. No. I knew there was an environmental law. I
 9 didn't know when. Look, I'm sorry. The context was
 10 Article 122 I was responding to. Maybe I misunderstood
 11 you.
 12 But, yes, I did--I was aware there was
 13 environmental laws.
 14 Q. But this particular article you essentially just
 15 became familiar with or more aware of when the permit was
 16 denied in September 2011; is that--
 17 A. That is correct. I had never at any point read
 18 the entire law.
 19 Q. And this clause, it focuses on intensive plowing,
 20 tilling, removal, or any other work that increases the
 21 erosion of the land; is that right?
 22 A. That is correct.
 23 Q. So, that's--I mean, that's a key part of the
 24 concern here that the legislator was expressing as we want
 25 to protect the land from intensive tilling, plowing,

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1 removal, because of the erosion; right?
 2 A. That is correct.
 3 Q. All right. After receiving the permit that we
 4 just looked at a moment ago from the Ministry for your
 5 lower mountain housing project, what we call Project 2,
 6 what other government approvals did you obtain?
 7 A. I obtained a letter of no objection from the City.
 8 I obtained the land use permit from the City of Jarabacoa.
 9 I subsequently received a permit from the Ministry of
 10 Tourism.
 11 Could I--you moved away from that law. Could I
 12 say anything on that?
 13 Q. Sure. Absolutely.
 14 A. Okay. I'm passing.
 15 Q. Sorry?
 16 A. No, thank you. I'm done.
 17 Q. You don't want to comment on the law?
 18 Sorry. I'm confused.
 19 A. No, I'm not going to comment on the law.
 20 Q. You wanted to but--
 21 A. I changed my mind. I'm not a lawyer.
 22 Q. Some would say you're fortunate.
 23 Okay. After you received--all right. So, you
 24 said you received a number of permits or authorizations, I
 25 should say, after the initial Ministry of Environment

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1 permit. And then--and then at that point you were able to
 2 move forward with your mountain housing project; right?
 3 A. Yes.
 4 Q. So, you sold the lots and the houses were built on
 5 those lots on the lower mountain; right?
 6 A. Yes.
 7 Q. And you said that between 60 and 65 houses were
 8 built in the end; right?
 9 A. Well, there's projected more. But I think
 10 currently as of today, that's about where we're at.
 11 Q. And you also built the Aroma Restaurant; right?
 12 A. Yes, sir.
 13 Q. And once the houses on the lower mountain were
 14 built and once you had--I see you're getting tired. We'll
 15 stop.
 16 A. No. No. Keep going.
 17 Q. Let me just ask this--
 18 A. Just nervous.
 19 Q. Let me just ask this last question and then maybe
 20 I'll propose a lunch break.
 21 So you constructed the houses on the lower lots--I
 22 mean on the lower mountain lots, or you sold them and
 23 houses were constructed. Then you built the
 24 Aroma Restaurant. And that completed what you call
 25 Phase 1; right?

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1 A. Yes. Yes, sir.

2 Q. And in our nomenclature--

3 A. Excuse me. That--that completed what I was

4 authorized to do. For me, there was two condo projects

5 planned as well in Phase 1.

6 Q. And in our nomenclature that means--that refers to

7 the completion of Projects 1 and 2, the road and the lower

8 mountain housing development; right?

9 A. (No audible response.)

10 MR. Di ROSA: So, I think, maybe with this, we can

11 stop, Mr. Chairman, and take a lunch break.

12 PRESIDENT RAMÍREZ HERNÁNDEZ: I guess it will be

13 an early lunch.

14 THE WITNESS: We can keep going.

15 MR. Di ROSA: It's 12:15. We can keep going. He

16 looked a little tired, but if--

17 THE WITNESS: No, I'm good.

18 PRESIDENT RAMÍREZ HERNÁNDEZ: But you tell us.

19 THE WITNESS: No. I'm fine.

20 MR. Di ROSA: Okay. Then well keep forging ahead.

21 BY MR Di ROSA:

22 Q. So, you know, we're going to start on the topic of

23 the permit process for Project 3, what we call Phase 2, the

24 upper mountain road.

25 So, you know, once were your lower mountain

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1 project was up and running, you began to focus on the upper

2 mountain project; right?

3 A. Yes, sir.

4 Q. Phase 2.

5 So, let's start with your permit application for

6 the upper mountain housing development. This was a

7 development that included internal roads; right?

8 A. Yes.

9 Q. All right.

10 A. Is there a particular document or are we just--

11 Q. Not yet.

12 A. Okay.

13 Q. I'm just asking you general questions. I mean,

14 we'll go to a document.

15 So, you're--well, let's just go to it, then.

16 Exhibit R-106 is your permit application for

17 the--what we call Project 3.

18 Do you see that?

19 A. Yes.

20 Q. All right. And it's a document dated

21 30 November 2010, Exhibit R-106.

22 And you submitted that to the Ministry of the

23 Environment; correct?

24 A. That is correct.

25 Q. And was Freddy González still your lawyer when--

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1 A. No, he was not. This was Empaca Redes.

2 Q. Sorry, who?

3 A. Empaca Redes.

4 Q. All right. Empaca Redes. Which is an

5 environmental consultant; right?

6 A. I'm pretty sure this came from them. Because I

7 made a--

8 Q. I guess my question is, it's not--I mean, did you

9 have a different lawyer at that time other than Freddy

10 González?

11 A. Yes. Freddy helped me with Phase 1. I--this is

12 the application for the--it says here, the extension of

13 Jamaca de Dios? Is that what it's saying?

14 Q. Yeah.

15 A. That's the one that I'm on that we're--okay. Yes.

16 That was filled out by²² Empaca Redes, who had become our

17 environmental consulting company that--that we moved from

18 Antilia to--to them.

19 Q. Fair enough. But my question is--you said that

20 Freddy González was no longer your lawyer, so I'm asking

21 you if you had a different lawyer at that time, a different

22 environmental lawyer?

23 A. I did not have an environmental lawyer. I felt

²² English Audio Day 2 at 03:01:47

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1 like the Empaca Redes--the nature of their company was more

2 than capable of handling what we needed.

3 Q. Okay. So, you're going to go up the mountain and

4 you're submitting a permit, but you no longer have an

5 environmental lawyer. You do have an environmental

6 consultant.

7 A. I did secure one later. But at that point, no, I

8 did not have one.

9 Q. All right. And your lawyer, Mr. González, at an

10 earlier point, as we had discussed, had warned you that in

11 connection with the lower mountain road, the lower mountain

12 project, the road would have the biggest environmental

13 impact; correct?

14 A. That is correct.

15 Q. Is it fair to say that the road going from the

16 middle of the mountain to the top of the mountain would

17 also have the biggest environmental impact?

18 A. It would have--yes. But it would be a smaller

19 road.

20 Q. All right. So at this time you're working with

21 different environmental consultant, the Empaca Redes

22 people; right?

23 Did these consultants, environmental consultants,

24 warn you about any aspect of the upper mountain road?

25 A. Well, they--prior to applying, there was that

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1 email exchange, but there was nothing specific, and they
2 had no knowledge of, you know, that.

3 Q. None of your environmental consultants, either
4 Empaca Redes people or Antilia people, are among the 20
5 witnesses that you presented; right?

6 A. No.

7 Q. So once you submitted this request to the Ministry
8 of Environment, the Ministry sent out a technical team to
9 conduct a site visit; right?

10 A. Yes.

11 Q. And the technical team completed an inspection
12 form and produced a site visit report.

13 Are you aware of that?

14 A. I have only become aware of any internal document
15 as a result of this arbitration.

16 Q. All right. Fair enough.

17 Let me direct your attention to the site visit
18 report. Well, actually, this is a different--this is a
19 form that was filled out by the site inspection team,
20 R-108.

21 So let's take a quick look at these different
22 factors. If you could scroll down a little bit. It says
23 there are--this is filled out by the--you know, the site
24 visit inspection team--the technical team from the
25 Ministry. And basically, they're kind of marching through

1 a checklist of different environmental features of the
2 property. And looking at the document over all, we're
3 highlighting certain parts on the screen. But if you look
4 at the document overall, it has 39 different questions,
5 sort of topics that the technical team has to go through.
6 Just scroll back to the beginning. Thank you.

7 And so you see they start off right off the bat by
8 saying "topografía del terreno muy escarpada"²³(in Spanish);
9 right? So that's the topography of the land. Very steep.
10 Over 40 percent.

11 And we'll come back to this topic, obviously. But
12 then it says--you know, the soil it characterizes as
13 moderate.

14 MR. Di ROSA: I'm not sure. Is there an English
15 version?

16 BY MR. Di ROSA:

17 Q. And then it says, you know, the land is clay--clay
18 and sand-ish; is that right? Clayey and sand-ish.

19 Sorry. Let me get--calcareous and sandy clay, I
20 guess, is the translation.

21 Do you see that? Do you see that?

22 A. Are you asking me?

23 Q. Yeah.

²³ English Audio Day 2 at 03:05:54

1 A. Yes, sir, I see it.

2 Q. So--and then skipping down to Point 5, it talks
3 about earth removal is to be carried out in the
4 construction phase. So this is the site inspection team
5 saying that the earth removal that would have to be carried
6 out in the construction of this project would be very
7 large. See that, Point D. Over 500 cubic meters. And
8 then in Point 6 --

9 A. Could we just look at Point 4 as well.

10 Q. Sure. Point 4, "Bodies of water inside the land
11 project, none observed." Right. Then six says, "Location
12 of the place where the earth"--"removed earth will be
13 disposed of." And then it says "inside the project area."

14 All right. So going down to nine, it says
15 "magnitude of the impacts of the construction and
16 facility," and it says "high." Are you there? Are you
17 following me?

18 A. Yes, sir, I see that.

19 Q. And then Number 10 says, "Does the project
20 contaminate the soil and subsoil?"

21 And they say, "Yes, significantly," Point D. Do
22 you see that?

23 A. Yes, sir.

24 Q. All right. Now, let me take you now to another
25 technical--this is a checklist, I guess, that they went

1 through. Now, let me take you to a report that they had
2 that is located at R-109. Do you see that?

3 A. Yes.

4 Q. On Page 2. You're there; right?

5 A. Yes.

6 Q. In this report, the technical team identifies a
7 number of problems with the site that you were proposing
8 for the upper mountain project. And they say--let's go to
9 the conclusions and recommendations at the end on Page 2.
10 It says, "Because of the area's environmental
11 susceptibility and natural risk, the topography of the
12 slopes, which, in a large part of the area, are greater
13 than 60 percent, the geomorphology, the natural torrents,
14 the existing vegetation, the characteristics of the
15 buildings being constructed in the project area," and it
16 says, "and possible infringement of Article 122 of Law
17 64-00."

18 This English version has a grammatical flaw that
19 I'm trying to determine if the Spanish one has. No, it
20 looks like the Spanish one also is, as far as I can tell,
21 grammatically incorrect. But it does identify all
22 these--all these problems with the project; is that
23 correct?

24 A. Yes.

25 Q. All right. And see, it says, "The characteristics

1 of the buildings being constructed." Had you already
2 started constructed some of that? Is that what that refers
3 to?

4 A. I had not begun anything that was not approved for
5 construction.

6 Q. All right. So at this point, the Ministry is
7 under the impression that you're going to build mountain
8 cabins; right? We talked about that earlier. And even
9 that was problematic to them sort of given the context.

10 So, they go out and they inspect, and they come
11 back with this conclusion that the characteristics of the
12 buildings would be problematic.

13 Let me just refer here to your First Witness
14 Statement. In Paragraph 55, you say, "Because we were
15 developing to the top of the mountain and it is virtually
16 impossible to make the subdivision map without first
17 cutting the road, the head of the Ministry inspection team
18 agreed that we should obtain permission for the road, cut
19 the road, make the subdivision plan, and submit it
20 accordingly."

21 Do you remember saying that?

22 A. Yes.

23 Q. All right. So the idea was, "Look, this is kind
24 of complicated. But the road is going to be critical";
25 right?

1 So let's focus on the road first. Is that what
2 everybody agreed would make sense?

3 A. Yes, that was the recommendation. That's what we
4 did in Phase 1 as well.

5 Q. Right.

6 A. And we felt like that was logical.

7 Q. And that's because the road has the biggest
8 environmental impact, I suppose; right?

9 A. It was--no, that's a false characterization.

10 Q. That's what your lawyer said. Remember that?

11 Freddy González.

12 A. That. But in terms of what my conversation was,
13 was I didn't know exactly how the lots would be laid out.
14 By then, we had a different technology. We had a different
15 engineer. And we were ready to create various options at
16 the top of the mountain.

17 But for esthetics and land usage. And would it be
18 70 home sites, 64, 82? You know, we just didn't know,
19 esthetically, what the best lay out and what we would be
20 specifically requesting at that point. Because by then we
21 had different technologies in place.

22 Q. Right.

23 A. But I'm not denying there would be an
24 environmental impact, if that's the thought behind the
25 question.

1 Q. Okay. Right. Because that's what your lawyer had
2 said, is that the road is always a big deal. It has the
3 biggest environmental impact.

4 And so here, the road is sort of, you know, a big
5 thing, isn't it? I mean, in the context of your project
6 over all?

7 A. Yes, sir, there is an environmental impact related
8 to it.

9 Q. You just said something that I wanted to clarify a
10 little bit. So I asked you--people said let's focus on the
11 road, is that what everybody agreed would make sense? And
12 you said, "Yes, that was the recommendation. That's what
13 we did in Phase 1 as well."

14 But you just told us earlier that in Phase 1, you
15 didn't actually get the Ministry of the Environment
16 permission to build the road and here you are. So it's not
17 quite the same; right?

18 A. Well, yes, you're exactly right. We--at that
19 point, we had the environmental license for Phase 1, and we
20 simply did not know what would be required for Phase 2.
21 For instance, a full environmental impact study requires
22 community participation, socioeconomic evaluation. And
23 there was--many of these things were already done, so we
24 didn't know if it would be a simple extension, or if it
25 would be something more robust that was needed. So that's

1 why we were requesting the reference terms for the Ministry
2 to tell us.

3 Q. Right. Thank you.

4 All right. So let me take you then to an
5 inspection report--another inspection report that was done
6 in connection with this particular project which is at
7 Exhibit R-4. And this is the same.

8 So what we're looking at here is--you know, you
9 had--you said that you--they recommended to you that you
10 pursue the road first. You then apply for a permit for the
11 road. They then send an inspection team just to study the
12 road aspect; right?

13 So the previous team had gone to inspect the whole
14 site for the whole project, and now we've kind of narrowed
15 down the scope. And these people--this new inspection team
16 goes out, inspects the land with a view to the road
17 specifically. And this is the report that's produced. And
18 I wanted to take you to Page 6 of this nine-page document.
19 At the bottom. It will be Page 6 of 9.

20 And you see that--where it says, "Potential
21 Environmental Impacts That May Be Caused by the Jamaca de
22 Dios Project"?

23 A. Yes, I do.

24 Q. All right. And so here they say--this is the
25 Ministry technical people saying, "Impacts on the

1 geomorphology of the land, impacts on soils, impacts on the
2 region's flora and fauna, impacts on water courses and
3 underground waters."

4 And then it lists a number of factors. And a
5 little bit further down, in the final paragraph, there on
6 the second line it says, "In the case at hand"--let me just
7 start at the beginning of that paragraph there. The final
8 paragraph, it says, "This sad truth"--I'm sorry. Let me
9 back up entirely.

10 It says, "Renowned foreign and Dominican
11 scientists have demonstrated that the origin of our country
12 is the result of the collision of tectonic plates. This
13 characteristic makes our country highly dangerous for the
14 lives of all of its inhabitants (rational and irrational).
15 This sad truth forces rational beings"--by which I assume
16 they mean humans--"to seek solutions to this important
17 problem, and one of the solutions is to avoid, at all
18 costs, building in vulnerable places."

19 And then this is the part that I was leading to.
20 "In the case at hand, the owners of the project in question
21 have ignored this important point given that they are
22 building villas"--right, they're still under the impression
23 of the villas--"on highly unstable land without taking the
24 necessary precautions. The project's access roads are
25 narrow and with inadequate inclination. The construction

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1 of the project is executed at a height of over 900 meters
2 above sea level. The ascent and descent is highly
3 dangerous. It is also built with inadequate material, and
4 some buildings have up to three floors built with blocks
5 and concrete"--we saw one of those in the photo we showed
6 you earlier, the three stories--"ignoring the fundamentals
7 and principles of science, given that we were able to
8 observe inadequate excavations for this type of building.
9 No work was observed on the land for the protection of the
10 access roads of the villas in a zone of high natural risks
11 where the layers of sedimentary rock and volcanic rock that
12 lie on the surface do not have a high degree of cementation
13 and their resistance to breakage has been diminished by
14 natural phenomenon which alter the region's safety factor,
15 increasing the power of driving forces and weakening
16 resistant pull."

17 And then it says, "The alteration of these natural
18 parameters causes landslides resulting in damages, loss of
19 life and properties. Driving forces and resisting pull are
20 also interrelated with variables such as: slope and
21 topography, climate, vegetation, water and time."

22 And then it goes on to say, "Environmental
23 Violations: The project owners violated Article 122 of Law
24 64-00."

25 "Conclusion: Institutional weakness in the

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1 veracity of economic interests combine to deliver a heavy
2 blow to nature in the Municipality of Jarabacoa, and
3 currently plans are in place to construct a similar project
4 to the one under construction, without having completed the
5 one for which a permit was granted in an environmentally
6 fragile zone. It is not necessary to be a genius in
7 environmental sciences to see this. This zone of high
8 environmental fragility and of high natural risk should not
9 be inhabited by humans given that it is unstable and highly
10 dangerous. The zone has large natural watercourses, which
11 have been intervened, and a water deposit has been
12 constructed in the foothill measuring 2 meters in height
13 and 10 meters in width with tubing comprised of a 4-inch
14 inlet and a 2-inch outlet."

15 So they're saying you haven't completed yet--so
16 the project for Phase 1 was still kind of ongoing in the
17 sense that all the villas--all the houses weren't built
18 yet. But at that point, you're moving to Phase 2.

19 And what these inspection technicians said is, you
20 know, you were granted a permit for the lower mountain
21 construction in an environmentally fragile zone. And it
22 sounds like the person who wrote--or the people who wrote
23 this thought you shouldn't have even gotten--received a
24 permit for the lower mountain project; right? Is that what
25 that suggests?

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1 A. That's what he's suggesting here.

2 Q. And it says, "This zone of high environmental
3 fragility and of high natural risk should not be inhabited
4 by humans given that it is unstable and highly dangerous."

5 Now, that's your--so what troubles me is that, you
6 know, you or your lawyers repeatedly in this arbitration
7 said, "Oh, you know, the only thing they talked about was
8 the steepness of the slope and the--you know, they never
9 said anything about the environment or safety ever." Like
10 they have in multiple parts of the pleadings where they
11 emphasize that, you know. "They never, ever, ever said
12 anything about all these other factors other than the
13 steepness of the slopes."

14 And here we see that they actually analyze these
15 things in some depth.

16 MR. ALLISON: Objection. Is there a question
17 there or testimony from Mr. Di Rosa?

18 MR. Di ROSA: No, I'm getting to a question.

19 BY MR. Di ROSA:

20 Q. So, the question is (a) were you under the
21 understanding that the Ministry had to keep you--was there
22 a legal requirement for the Ministry to keep you informed
23 step by step of what they were analyzing? Was that your
24 understanding of what the legal regime required?

25 A. Yes, because we did environmental compliance

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1 reports every six months and nothing on any level--but what
2 we had done was--and any violation whatsoever of the
3 Environmental Law and anything at any point they would ever
4 mention, we would respond to. The same thing with the
5 second phase. Whatever they wanted us to do, we would be
6 happy to complete.

7 Q. But the environmental compliance reports related
8 to the project that had already been approved and that was
9 ongoing; right? It didn't relate to the project that you
10 were asking to receive a permit for because that hadn't
11 been built yet; right?

12 A. You laid a strong foundation about cabins and
13 villas.

14 Q. Right.

15 A. And you were bringing that out in reference to
16 Phase 1.

17 Q. Right.

18 A. And I'm saying if at any moment whatsoever in any
19 of my environmental reports there had been any notification
20 whatsoever, we would have immediately said, "Oh, we will
21 comply. We will do whatever we need to."

22 That information never came, and so I was unaware
23 that we weren't completing what was expected. The same
24 thing with the second phase. If they were concerned about
25 certain things--we received not one document, not one

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1 correspondence on any level whatsoever other than the
2 rejection letters that were CEI-RD.

3 Q. Right. And that's what I'm asking you about. Is
4 it your understanding that the Ministry had a legal
5 obligation to kind of send you interim reports, so to
6 speak, to keep you apprised of what they were thinking on a
7 technical level?

8 A. I don't know about a legal, but I think ethical
9 and I think they demonstrated that with other projects.

10 Q. Ethical obligation?

11 A. Yeah, because environment and business need to
12 work together, you know, and look for a way forward for
13 both objectives to be met in a symbiotic relationship. The
14 developer completing with the environmental objections
15 along with the developer, you know, to provide the economy
16 and jobs for people, and you come together and you work on
17 a plan. This you can do. This you can't do.

18 There was no communication or transparency on any
19 level whatsoever. I never saw a document until now.

20 Q. Right. So you're not aware of any legal
21 requirement that the Ministry had to kind of keep you
22 abreast of what they were thinking about, you know?

23 A. I am not aware of anything legally, but it's
24 obvious by the documents with every other project that--

25 Q. Right. But, see, what troubles me is that we

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1 had--maybe you were under that impression when you first
2 received this denial, that it was all about the steepness.
3 Although we showed in the opening, it wasn't only about the
4 steepness because they had identified three different
5 factors; right? The steepness of the slopes and really the
6 focus on erosion, and then they had also said environmental
7 fragility which is what they were talking about in this
8 report. And they said safety, which what they're talking
9 about in this report.

10 But what troubles me is you say, well, you know, I
11 didn't know that and now I'm seeing these reports. But we
12 submitted these reports into evidence before your last one
13 or two submissions--you know, your last one or two
14 pleadings in this arbitration, and yet you're still saying
15 this even as late as the opening.

16 And so my question to you is: Looking at this
17 now, do you agree that it was a mistake to say that the
18 Ministry was only thinking about the steepness of the
19 slopes, that that was the only issue, so to speak?

20 A. Yes, sir. Because in the same document that you
21 referred to, my second and third denials where you
22 laboriously indicate that I indicate angle versus percent,
23 you--in the first of--the Respondent in the first denial
24 mentions slopes and environmental fragility.

25 Q. Right.

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1 A. But then in the second and third, in the same way
2 the Respondent makes a point that we indeed explained what
3 slope and angle was to Mr. Ballantine, you lay out, from my
4 perspective of those analyses, what the Ministry meant by
5 environmental fragility, citing Articles 86 and 87.

6 And so I'm dealing blindly, shooting arrows into
7 the dark, thinking, "Okay, this is what they mean by
8 environmentally sensitive," because they amplified both the
9 law on the slope and angle, that was clarified, but also
10 what they were interpreting was environmentally sensitive.
11 That was my perception.

12 Q. Right. So you just said now that they did--I
13 mean, you are conceding that they did mention the
14 environmental fragility from the very beginning of
15 their--you know, their denial letter; right? Before the
16 reconsideration?

17 A. At the--at the very first, I read that to mean as
18 a result of the slopes, it's environmentally fragile.
19 That's the way I read it.

20 Q. So you read it to be kind of all part of the same
21 thing?

22 A. Yes. As a result of the slopes, it's
23 environmentally fragile. That's what I believed it to

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1 mean. Because²⁴ it was in Spanish, and that's the way I
2 read it.

3 Q. And the same with the safety factor that was
4 listed there?

5 A. In the first rejection?

6 Q. Yeah.

7 A. I thought it only applied to slopes at the time.
8 But then in the second and third rejections, they pointed
9 out different articles that were not applicable to Jamaca
10 de Dios and were laid out in our third appeal very clearly.

11 Q. All right. So--

12 A. And with the submission of the Empaca Redes report
13 as well as a well-thought-out letter responding to those
14 particular interpretations that we had based on the second
15 and third rejections.

16 Q. All right. Let's take a look at C-8. If you
17 could turn to that.

18 (Comments off microphone.)

19 BY MR. Di ROSA:

20 Q. All right. We were just talking about the
21 permanent denial, so we want to just kind of pull it up on
22 the screen.

23 Now, just to--so we have clarity about what this

²⁴ English Audio Day 2 at 03:27:43

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1 permit applied to and what, you know, you have requested
2 permission for and what you have not. At this point, when
3 you get rejected, the permit for the road, you had not
4 submitted any permit application for the mountain lodge; is
5 that correct?

6 A. At that point, I had not. It was not in the
7 second phase.

8 Q. It was not in the second phase?

9 A. The mountain lodge was not in the second phase.
10 In our pleadings, it clearly says it's right above the
11 restaurant which is in the first phase.

12 Q. Oh, so you're defining "phase" as the altitude on
13 the mountain?

14 A. We're defining "phase" the way we've consistently
15 defined Phase 1 and Phase 2.

16 Q. I see. But you had not yet received a--you hadn't
17 submitted permit application, therefore, had not received a
18 permit for the mountain lodge; correct?

19 A. It was at a different location that was approved
20 for development previously. So at that point, yes, sir, we
21 had not applied for the mountain lodge on that--until
22 subsequent to this date.

23 Q. All right. And you also never ended up submitting
24 any permit application for the lower apartment complex; is
25 that right?

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1 A. That is correct.

2 Q. All right. And at this point in time, you also
3 had already abandoned your plan to acquire Paso Alto;
4 right? In fact that happened even before this rejection
5 letter for the upper mountain project permit that we're
6 looking at; is that right?

7 A. I had not abandoned it. I had delayed it. Even
8 as late as 2012, I was intending to buy it as soon as I got
9 my approval.

10 Q. Let me quote from your First Witness Statement at
11 Paragraph 36.

12 It says, "Due to the continuing delay in getting
13 approval from the Ministry of Environment for the second
14 phase approval, I began to feel insecure about acquiring
15 Palo Alto"--I'm sorry--"Paso Alto as a stand-alone
16 development. I knew that my ability to turn Paso Alto into
17 a success was contingent upon my ability to expand my own
18 project further up the mountain, and I could not justify
19 buying it without our Phase 2 permission. I decided not to
20 execute the final sale and stock transfer while still
21 waiting for the Phase 2 approvals."

22 Correct? That's what you said?

23 A. Yes, that's correct.

24 Q. And you're still--I mean, you never received the
25 Phase 2 approval so--

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1 A. That's correct.

2 Q. Okay. So basically, it was a business decision
3 not to pursue the Paso Alto. You could have done it, but
4 you know, you didn't because the permit for your own
5 project had been denied; right? Or had not been granted at
6 that point?

7 A. Yes. It would not have made sense. I was--at
8 that point, there was increasing government pressure on
9 many different levels, and I felt that with the treatment
10 of Jamaca de Dios, with the increasing mistreatment that
11 I've received from the government, that although Paso Alto
12 was permitted, that I was not secure that this kind of
13 ongoing mistreatment would not continue.

14 Q. Right. Okay.

15 So let's focus on this letter then, the previous
16 paragraph. This is still C-8, which is the permit denial
17 letter; right?

18 And the second paragraph is the substantive one
19 that says, "In this sense, we inform you that the Jamaca de
20 Dios Expansion Project, which consists of the construction
21 of ten cabins"--we're still talking about cabins--"and the
22 sale of 19 lots for the construction of villas"--the
23 mountain villas--"was evaluated and submitted to the
24 Technical Assessment Committee on May 18, 2011, which, by
25 means of Resolution 169-11, deemed the project Not

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1 Environmentally Viable." And then it goes on to explain
2 the reasons.

3 It says, "Due to being located in a mountain area
4 with a slope greater than 60 percent where the only
5 permitted use is the establishment of permanent fruit tree
6 and timber tree plantations, in accordance with Article 122
7 of Law 64-00."

8 Then it says, "Likewise"; right? "Likewise, it is
9 deemed an environmentally fragile area and an area of
10 natural risk."

11 So you're saying that you sort of interpreted the
12 likewise part--the two factors after the "likewise" as just
13 kind of being part of the first one?

14 A. As a result of. And then the Ministry in the
15 second and third denials defined, from my perspective,
16 specifically what they--because I was appealing officially.

17 Q. Right.

18 A. And then they responded specifically with what
19 they defined as environmentally fragile.

20 Q. Right. But they are flagging environmental
21 fragility as an issue here, not just the steepness of the
22 slope; right?

23 A. Yes, and they define what they interpret as
24 environmentally fragile in the second and third one.

25 Q. In the second and third; right? Yeah.

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1 And they also are mentioning here that it's an
2 area of natural risk, are they not? That's what it says?

3 A. Yes, sir, that is mentioned.

4 Q. Correct. And it's an area of natural risk because
5 it's, you know, as we saw in those technical reports, it's
6 subject to landslides and, you know, all those different
7 factors that we just read.

8 A. And at this point, I had no idea what they were
9 referring to. Was it all the project, part of it? And is
10 there something I can do?

11 Q. Right. So, you know, I mean, that's the part
12 where I sort of get stuck as a matter of just, you know,
13 plain logic in how governments work; right? I mean, you
14 know, when you apply for something, you don't always get,
15 you know, an explanation from a government agency.
16 Sometimes they just say even yes or no. Here, you're
17 actually getting an explanation. They didn't just say, no,
18 your project is rejected. They articulated the grounds for
19 it.

20 And then in the next paragraph they say, "In
21 conclusion, we inform you that the ministry is more than
22 willing to perform the pertinent activities for the
23 assessment should you decide to submit any other place with
24 viable potential, in view of which we request that you
25 inform us thereof to send the technical committee for the

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1 corresponding assessment."

2 So in this final paragraph, they're saying to you,
3 "Look, you can't do it in this particular place. You have
4 to do it in another place."

5 I mean, it happened that you didn't have land
6 anywhere else and that was unfortunate, but, you know, you
7 could have bought land somewhere else, could you not have?

8 A. At that time, Jamaca de Dios represented by far
9 the largest FDI in the history of the area. When you
10 multiply the value of the infrastructure and all the
11 investment dollars in the area, it was by far the largest
12 investment in the history of Jarabacoa and still is to this
13 day. It didn't make sense. I was not going to bring the
14 mountain to Mohammed. That's where we were.

15 Q. So you just wanted to do it on the mountain
16 regardless?

17 A. No.

18 Q. And that was--

19 A. Yes, I wanted to do it on the mountain that we had
20 worked so hard to develop, did something beautiful, became
21 a landmark in the country. Incredibly impacted and
22 transformed the local economy. And, yes, I wanted to
23 continue in that area while complying with all the
24 environmental laws and regulations and was willing to
25 adjust on any level whatsoever to complete in order to

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1 continue. And I communicated that several times to the
2 Ministry as well.

3 Q. Right. But what if you can't--you know, what if
4 it just can't be done on the upper mountain because it's
5 too steep and too environmentally fragile and too unsafe?
6 You know, in those circumstances, it just can't be done and
7 you're saying, well, they had to find a way just because
8 it's the biggest investment in the area?

9 A. No, I'm not saying that. But in the area for
10 development, according to both Navarro's maps--Witness
11 Navarro, as well as the cave slope maps, there's one little
12 part up in the northwest quadrant that has slopes over
13 60 percent. Your own witnesses provided maps, the
14 northeast side and going up to the little hotel. It wasn't
15 some big Hyatt. We were doing little tiny cabins,
16 ecofriendly. That's what the hotel plan was.

17 And all that area, none of it has 60 percent. All
18 usable, all developable, and it was all thrown in the
19 garbage.

20 Q. That's fine. But, you know, I mean, that would
21 make sense--I suppose if you could--if you could bring, you
22 know, a bunch of houses on a helicopter and just deposit
23 them on the mountain, you know, maybe that would work. But
24 you have to build a road; right?

25 So if the road necessarily has to go through

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1 because it's physically impossible to construct a road
2 going up the top of the mountain without carving into areas
3 that are steeper than 60-percent slopes, then you have a
4 problem that affects all the houses; right? You know, you
5 can't have the houses without the roads--I mean, without
6 the road. And the road, you know, is--I mean, there's only
7 so many ways you can take it up there.

8 A. 85 percent of it is developable. The first part
9 is 100 percent developable and would not pass through any
10 slopes. That's indicated in the imagery produced by both
11 witnesses from both Parties.

12 Q. We're going to have --

13 A. So there would not be any slopes at all
14 whatsoever.

15 Q. We'll have the technical people testifying this
16 week.

17 A. Yes, sir.

18 Q. So we'll hear what they have to say about that.
19 But, you know, what I hear you saying is--I mean, earlier
20 today you said, you know, "I saw this mountain. I had a
21 vision. I didn't check with any government authorities or
22 with any environmental consultants or with any
23 environmental lawyers. I didn't do due diligence. I
24 didn't do engineering studies. I didn't do anything. I
25 had a vision. I had an instinct. I'm an entrepreneur, and

1 I just knew that I could do this."

2 And then you discover that, you know, you were
3 able to do the lower mountain. And we saw this person at
4 least had a doubt about whether you should have even gotten
5 that. But then they told you, "You just can't do it in the
6 upper mountain because it's too dangerous."

7 But you say, "Well, it's the biggest investment,
8 and I had a vision." And--

9 A. I was responding to moving the project. That's
10 what I was responding to.

11 Q. Well, right. I mean, so, you know, there are
12 people, including--my understanding is that one of the very
13 witnesses who is going to testify this week, who had a
14 similar situation where he--who had a project that he was
15 proposing to the Ministry of the Investment--of
16 Environment, and he got denied initially. He was told
17 pretty much this.

18 They said, you know, "If you can come back with
19 another place, fine, we'll take another look at it." And
20 he did that.

21 And it happened that his property did have, you
22 know, because of its topography --

23 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, could you
24 try to focus on questions regarding the testimony?

25 MR. ALLISON: Thank you. This is argument from

1 counsel, not questioning.

2 MR. Di ROSA: All right. Fair enough. You know,
3 I'm just getting him to interpret some of these terms--

4 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

5 MR. Di ROSA: --and how he understood them and,
6 you know, why he thinks that he was entitled. Despite this
7 specific invitation to submit a different place, that he
8 insisted on his mountain.

9 So--but, you know, we can--let's move on to the
10 reconsideration process.

11 BY MR. Di ROSA:

12 Q. You have this denial. You have this invitation to
13 submit another place. You say, "I don't have another
14 place. I want to do it on the upper mountain the way that
15 I proposed it."

16 And so instead of submitting a new place as they
17 had asked you to do in this letter, you submitted a
18 reconsideration request.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: Sorry, Counsel. Are
20 you moving to another--

21 MR. Di ROSA: To the reconsideration process.

22 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

23 MR. Di ROSA: And maybe this would be a good time
24 to take a break.

25 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah, that's what I

1 was going to ask. So we can take a break. And if we can
2 reconvene at 2:00, will that be fine for everyone? Okay.

3 THE WITNESS: Excuse me, Mr. President. Am I
4 sequestered, or what can I do?

5 PRESIDENT RAMÍREZ HERNÁNDEZ: I think you are.

6 THE WITNESS: Okay.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: But you can eat.

8 (Whereupon, at 12:56 p.m., the Hearing was
9 adjourned until 2:00 p.m. the same day.)

AFTERNOON SESSION

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you. Please,
2 Respondent.

3 MR. Di ROSA: Thank you, Mr. Chairman. And good
4 afternoon, Mr. Ballantine.

5 BY MR. Di ROSA:

6 Q. So, you know, we were talking before the break
7 about the reconsideration process. And as we were
8 discussing at the end of the previous session, the Ministry
9 had invited you to submit an alternative proposal, but you
10 did not do that. Is that right?

11 A. Yes, sir.

12 Q. Yes, you did not do that?

13 A. Wait. No, I did not--I did not submit an
14 alternative site proposal.

15 Q. Thank you. Instead, you submitted a request for
16 reconsideration of the permit denial; correct?

17 A. Yes, sir.

18 Q. All right. So, let's take a look at your first
19 reconsideration request, and that's Exhibit C-10 in your
20 binder.

21 I should note for the record that we're using the
22 Dominican Republic's translation of this document because
23 the Ballantines did not submit an English version.

24 MR. Di ROSA: C-010, yes.
25

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1 Put it up on the screen. It's on the screen.
2 It's just a one-page document.

3 BY MR. Di ROSA:

4 Q. So, this is the first reconsideration request that
5 was submitted on behalf of Jamaca de Dios. Do you remember
6 who did this letter? Did you do it yourself or--it's
7 signed by you.

8 A. Yes, I believe I drafted this letter myself. I
9 think so. Yes, sir.

10 Q. All right. And in this letter, you did not offer
11 to the Ministry any change in your original proposal, did
12 you?

13 A. I did not because I thought the basis was a
14 mistake.

15 Q. So, instead, you simply insisted on the original
16 project and emphasizing the mistake which related to, in
17 your view, the steepness of the slopes on the part of the
18 property that you were proposing for the project; right?

19 A. Yes, sir.

20 Q. All right. And then specifically, you said that
21 there was an error in the slope because--and I'm quoting
22 here, "Development is not permitted in areas where the
23 slope is greater than 60 degrees, and this is correct.
24 However, the slope where we were trying to create a simple
25 access road is only 34 degrees and is, therefore, within

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1 the permitted margin."

2 Do you see that?

3 A. I do.

4 Q. And you have explained that that was a mistake.
5 You confused the degrees with the percent, and Ms. Cheek
6 did that yesterday, and I've done it, you know, a hundred
7 times in the course of the last few months, as my team will
8 attest. So, that part I understand.

9 A. Yes, sir.

10 Q. The part that I'm struggling with a little more
11 is--so you got this permit denial, and you wrote this
12 letter, and you say you wrote it yourself.

13 Did it occur to you to run it by an environmental
14 consultant or environmental lawyer? I mean, were the
15 Empaca Redes consultants still under your employment?

16 A. Well, sir, at this point, I just had the
17 perception and the feeling that the previous Minister was
18 not being fair to me in a lot of ways, and it's expressed
19 in the second paragraph.

20 And he left, and then there was a new Minister,
21 and I thought I'd get a better evaluation. And so there
22 was no--I calculated the slopes. I didn't know exactly
23 what they're referring to. And according to the top of
24 Phase 1 to the top of Phase 2, it is a 34 or a 32 percent.
25 And so I didn't know if they were talking about a certain

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1 area or the whole thing. And so I'm saying the overall
2 area is not that. Because that's all I had to go on.

3 And so that's what I was responding to. Could you
4 please appeal, could you please review this because I think
5 there's an error in the math.

6 Q. Right. But at this point you no longer had an
7 environmental consultant that you were discussing this
8 stuff with; is that right?

9 A. At this point--well, yeah, I was working with
10 Empaca Redes. They were in the process. I had an
11 agreement with them that they would do the steps necessary
12 to get to the place of an approval. So, I don't think they
13 wrote this. I thought this was just me because I felt like
14 it was a mathematical error and . . .

15 Q. So, when you say, then, "I measured," do you
16 literally mean you measured it? Did you--you personally
17 measured it, the slopes?

18 A. Yes. It's a simple function on Google imagery
19 where you just take the one point to the next, and then
20 you--it has a distance, and then it has an elevation gain,
21 and it simply shows what it is.

22 And that does bear out. That is a reality, that
23 the average slope--and I think Mr. Navarro responds to
24 that, that that's just not the way they do it in the
25 Ministry, so--

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1 Q. Doesn't it depend on variations in the topography
2 on different part of the mountain?

3 A. I was --

4 Q. I mean, you said like you took an average. So, if
5 you have, you know, part of the mountain that's flat and
6 then the mountain--I mean, I'm not saying this is the case,
7 just hypothetically.

8 A. Right.

9 Q. Say it's -- you know, you've got a flat part and
10 then a really steep part. The average will be, you know,
11 say, whatever, 34 degrees. But if your road is going to go
12 from here to the top--

13 A. 34 percent.

14 Q. Yeah. If it's going to go from here to the top,
15 though, that might be--that part might be steeper there;
16 right? I mean, it's not the average that counts?

17 A. I did not know what they were looking for at the
18 time. I just calculated it because I thought they were
19 talking about the entire area was that. And so I was just
20 demonstrating that it wasn't that.

21 Q. Did you have an environmental lawyer employed at
22 this time?

23 A. I did not.

24 Q. Okay. So, you did have Empaca Redes. Why didn't
25 you ask them to do the calculations of the slope?

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1 A. I could have. I did not.

2 Q. All right.

3 A. They ultimately did do that after the third
4 denial, and they wrote a very nice technical letter that's
5 laid out, along with a letter explaining other things.

6 Q. So, when you submitted this letter and you said,
7 "Hey, you know, Ministry, you've made a mistake, the slope
8 is actually not as steep as you say," the Ministry sent out
9 a technical team, right, to conduct another site visit--

10 A. Yes.

11 Q. --agreed?

12 And were you there when the Ministry's technical
13 team did its site visit?

14 A. I remember I was there for the first two. I don't
15 recall on the third one. I'd have to look at the notes on
16 that and see if I recognize a name. I don't know.

17 Q. All right.

18 A. I might have been out of the country at that time,
19 I don't know.

20 Q. Do you recall that the technical team was
21 composed--that was sent by the Ministry was composed of an
22 entirely new group of technicians from the Ministry's
23 national office, none of whom had been involved in the
24 previous site visit?

25 A. I don't recall who was involved.

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1 Q. Okay. You know, just for the record--and we don't
2 need to go there, but just for the record, Exhibit R-105
3 lists the people who attended the January 2012 site visit,
4 and Exhibit R-108, on page 5, lists the Ministry officials
5 who attended the February 2011 site visit.

6 The list shows that the only overlapping member of
7 the site visit team was the Director of the Province
8 Office. So, everybody who came from Capital was a
9 different person, a different technician.

10 The technical team that visited the site visit
11 after your first reconsideration request produced a site
12 visit report that I want to take you to, which is
13 Exhibit R-105.

14 If you go to Page 3 of R-105, and if I could ask
15 you to read the first paragraph because my voice is failing
16 me. If you don't mind, Mr. Ballantine.

17 A. Under "Brief Introduction"?

18 Q. No. So, where it says--sorry. Where it says "In
19 the field visit," starting where it says "Field
20 Evaluation," the heading "Field Evaluation," and then it
21 says "In the field visit."

22 A. Is it on the first page?

23 Q. Page 3. Sorry.

24 A. Oh, I'm sorry.

25 "In the field visit, using a clinometer, we could

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1 verify that the slopes in the project area were of various
2 ranges, with slopes between 20 and 37 degrees, which, in
3 percentage terms, would be 36 percent and 75 percent
4 respectively.

5 "Regarding what was expressed in the
6 communication"--

7 Q. So--sorry.

8 A. Yes, sir.

9 Q. Let me just stop you there.

10 There's a reference here to a clinometer. Do you
11 know what that is?

12 A. Yes. It's a device to measure slopes.

13 Q. Right. But you said you used Google Earth to
14 measure the slopes; right?

15 A. In the first one, yes. But subsequent to that, we
16 used many different calculations. And that particular one,
17 referring to the first denial, I did use Google Earth.

18 Q. So, the time that you used Google Earth is the one
19 that yielded the 34 degrees that really is 34 percent --

20 A. Yes, sir.

21 Q. -- right?

22 Okay.

23 A. But we did many subsequent studies because of the
24 urgency and the pressure we were feeling of being denied.

25 Q. Right. So, I mean, is it possible that because

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1 you did not use a clinometer that first time but, rather,
 2 Google Earth, that your measurement was inaccurate?
 3 A. No, it's not possible.
 4 Q. Not possible?
 5 A. No. Because we subsequently confirmed what I was
 6 saying in my letters²⁵ using a clinometer, amongst other
 7 measuring devices.
 8 Q. Let's skip ahead to Page 6. There's a section
 9 there called "Comments."
 10 Can you read that section into the record for me,
 11 Mr. Ballantine? Thank you.
 12 A. "After carrying"--
 13 Q. Yeah. Sorry, go ahead.
 14 A. "After carrying out the field visit to the Jamaca
 15 de Dios Expansion project, we were able to verify that
 16 slopes are, for the most part, very steep, and that the
 17 construction of the road entails a great deal of movement
 18 of soil in a fragile area where we would observe landslides
 19 in some areas."
 20 Should I continue?
 21 Q. Yes.
 22 A. "Moreover, the type of construction proposed by
 23 the developer is not appropriate for the location. The

²⁵ English Audio Day 2 at 04:05:30

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1 number of stories is very exaggerated, proposing villas of
 2 up to three stories, and most of the materials being used
 3 are"--it should be "not suitable for this area."
 4 Q. Right.
 5 A. "We reiterate that what is started in Article 122
 6 of Law 64-00: "The only permitted use on slopes greater
 7 than 60 percent is the establishment of permanent
 8 plantations of fruit trees and shrubs."
 9 Q. Thank you for reading that, Mr. Ballantine.
 10 So, this is a new technical team from the Ministry
 11 reaching the same conclusion that the previous team did.
 12 And this team is saying that they observed landslides in
 13 some of the areas, and they also observed that the type of
 14 construction was not appropriate for the location.
 15 I mean, was there--was the plan essentially to
 16 build houses in the upper mountain similar to the lower
 17 mountain ones? I mean, did you have any limitations on the
 18 type of construction you would have up at the--in the upper
 19 mountain?
 20 A. We would have done anything that the Ministry of
 21 Environment would have allowed us to do. The intention was
 22 to continue the successful Phase 1 for the extension of
 23 Phase 1. But if they would have said, "No, you can't do
 24 that, you can do this," then we'd have gladly accepted
 25 that. But there was never, at any point, any communication

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1 or options given.
 2 Nor did we propose any specific houses in Phase 2.
 3 And according to this, they're saying what I'm proposing
 4 for Phase 2 doesn't qualify. I never proposed villas of up
 5 to three stories. And as a matter of fact, the one slide
 6 you saw was a two-story house. There was a basement--a
 7 walk-out basement. So, that's not three stories,
 8 technically.
 9 Q. All right. After this technical visit, the site
 10 visit from the technical team, the Ministry sent you a
 11 letter denying the reconsideration request.
 12 Do you remember that?
 13 A. This is a second denial letter, correct, or the
 14 first one? Well, they sent me--this is my appeal, yeah,
 15 January. Yes. And then I think in March I received my
 16 second denial letter, and that's--
 17 Q. Right.
 18 A. --where they outline the charge.
 19 Q. So, the first was the permit denial itself, and
 20 the subsequent letter is--the one that we're about to talk
 21 about is the first reconsideration. Denial shall we call
 22 it?
 23 A. Yes, sir.
 24 Q. All right. Now, earlier you were asked--at the
 25 beginning of this session today, you were asked by your

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1 lawyers on direct examination, "Did any of the MMA
 2 rejection letters specifically identify the road as the
 3 reason why your permit was being denied?"
 4 And you answered, "Never."
 5 Do you remember that?
 6 A. Yeah. I might have made a mistake. I thought I
 7 didn't talk about the road. Did I misremember?
 8 Q. Well, that was--I mean, I'm looking at the
 9 transcript 263:19-22. And the question was: "Did any of
 10 the MMA rejection letters specifically identify the road as
 11 the reason why your permit was being denied?"
 12 And your answer was, "Never."
 13 A. I thought--
 14 Q. Is that a mistake?
 15 A. I might have made a mistake. If you have evidence
 16 that the rejection letter is due, then it did, and I was
 17 wrong. I don't remember that, though. I thought, you
 18 know, that it never mentioned the road.
 19 Q. When he asked you that, you didn't say, "I don't
 20 remember." You said, "Never."
 21 A. From what I--at the time--yes, I--yeah. I
 22 answered that thinking that it never did. If I
 23 contradicted myself just now, then perhaps--I wasn't trying
 24 to be deceptive.
 25 Q. No, I'm not--

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1 A. Does the rejection letter say that? I haven't
2 seen that.

3 Q. Well, we'll take a look at it, but let me just
4 understand first. Did you not read these letters, the, you
5 know, various reconsideration denials and so forth, in
6 preparation for this hearing?

7 A. Yes, but not in the last week or two. I didn't
8 read these specifically.

9 Q. All right. Let's go to Exhibit C-11. This is the
10 letter that the Ministry sent.

11 ARBITRATOR CHEEK: Mr. Di Rosa, I'm very sorry to
12 interrupt. Is the Tribunal only supposed to have one
13 binder? There's just a lot of documents you refer to that
14 aren't in our binder. So, are we supposed to have
15 two binders or one?

16 MR. Di ROSA: Let me ask about that because I
17 don't know.

18 (Comments off microphone.)

19 MR. Di ROSA: Yeah. I apologize, Ms. Cheek. It
20 appears that a few of these documents were not in the
21 binder, so we're showing them to the witness from the
22 binders of the record, which means that you would have to
23 rely on what's on the screen or pull it up if you have the
24 ability to do that. I apologize.

25 ARBITRATOR CHEEK: Okay. Thank you.

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1 BY MR. Di ROSA:

2 Q. So, Exhibit C-11 is where we are. This is the
3 first reconsideration denial. And, you know, if you could
4 look at Page 2, Mr. Ballantine, the last bullet
5 point--sorry. Is it Page 1?

6 Yeah, Page 2, the last bullet point at the top of
7 the page there.

8 A. Do you want me to read that?

9 Q. Yeah, if you could read into--

10 A. "The cuts and leveling of lots required to
11 establish the path requested in the constructions would
12 have a great pressure over the mountain ecosystems proposed
13 to be executed."

14 Q. Right. And in the Spanish, the term that's used
15 is "camino"; right?

16 A. I don't--

17 Q. Oh, you don't know, but let me represent to you
18 that's what the Spanish says there. So, that's a reference
19 to the road, though, is it not?

20 A. Well, I read this to be the creation of the lots
21 for the homesite. But on closer reading, yes, sir. But
22 that was not intentional on my part.

23 Q. All right. So, they did mention the road to you?

24 A. Reading closely into this particular sentence,
25 yes, I would say that it does refer to the path requested.

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1 But the context is--I was worried more about the--you know,
2 the build. But you were right.

3 Q. All right. Now, in this letter, the Ministry
4 reiterated to you the problems with your proposed site; is
5 that right?

6 A. I believe this was the first time they mentioned
7 anything about--besides the slope law, to me, they defined
8 what they meant by "environmentally fragile," and they
9 named some specific laws.

10 And so on the basis of these specific
11 laws--because the four rejections were the only
12 communication whatsoever we ever received from the
13 Ministry, we began to respond to what was written here and
14 the only thing we received.

15 So, in my perspective, they amplified the slope
16 law and then they defined what they meant by
17 "environmentally fragile."

18 Q. Right. So, basically what they were doing is they
19 were saying you--your proposed site still has the same
20 problems, but let us explain in a little more detail why
21 it's a problem. Is that fair?

22 A. That's the way I interpret it, yes, sir.

23 Q. Yeah, okay.

24 So, let me see. So, on Page 1 they have an
25 enumeration of the reasons that the project is not viable.

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1 And they say--and this is the bullet point listed--starts
2 at Page 1 and spills into Page 2, and I'm quoting. "The
3 project is located in lots with slopes between 27 and
4 37 degrees. In percentage terms, that means between
5 36 percent and 75 percent respectively."

6 And then in the second tick it says, "The area
7 where the extension is proposed, in case of being
8 authorized, would modify the natural runoff of the area and
9 the local hydrological condition and the condition of the
10 micro basin since this is an area where streams are born."

11 Do you see that?

12 A. I do.

13 Q. All right. And then the third one, it says, "The
14 request," meaning your request, "presented deals with the
15 construction and operation of ten cabins, sale of 19 lots
16 for the construction of villas, which, due to the
17 conditions of the soil, has been considered not viable.
18 But at the moment of the visit, it was informed about the
19 construction and operation of 50 lots to build the
20 50 villas, and it was observed that regarding the
21 authorized parts, some buildings have been construed"--I
22 think it should say "constructed"--"breaching the
23 authorization issued."

24 And then the third--the final tick there is the
25 one that you just read about the road.

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1 So, in the preceding tick, though, they're talking
2 about the condition of the soil; right? That's their
3 explanation of the--one of the issues that they found.

4 And in passing, they mention that some of the
5 buildings that were constructed were not constructed in
6 accordance with the authorization that was issued by the
7 Ministry in the permit for Phase 1; right?

8 A. Yes, sir.

9 Q. All right. So, the Ministry basically rejects
10 your proposal again, but despite that, you didn't make any
11 changes to your proposal. Instead, you simply submitted a
12 new reconsideration request, a second reconsideration
13 request; is that right?

14 A. Yes, we did ask for that.

15 Q. And let me take you--let's look at the second
16 reconsideration request, which is at C-12.

17 If you look at it on the screen, it's a letter
18 sent from Jamaca de Dios to the Minister at the time,
19 Mr. Ernesto Reyna. And in the third paragraph--so if you
20 can scroll up--

21 MR. Di ROSA: Just keep it there. Scroll down a
22 little bit. Sorry. Up.

23 BY MR. Di ROSA:

24 Q. All right. In the third paragraph you say, "We
25 understand there are parameters established, and we are not

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1 asking you to question in any way, we are just saying that
2 the extension of our current project is located in a zone
3 with a pitch of 32, and not 60."

4 Now, earlier, in the previous letter, you had
5 said, you know, 34 degrees, and here you're saying
6 32 degrees. So, is that because you remeasured; is that
7 it?

8 A. That could have been. I might have taken like
9 from one part or the next. But either way, it's about half
10 under the requirement of the law. So, my assumption is--I
11 double-checked, and depending on the measurement, it was
12 that.

13 Q. So, you did the measurement yourself; right?

14 A. At this point, yes, because I didn't understand
15 what they meant or where they were talking about, and in
16 this meeting in particular, it was a meeting that I
17 attended with the Mayor of Jarabacoa. She said that--she
18 implied that she would talk to Ernesto Reyna, who--they
19 were in the same family.

20 She said that she was going to push forward the
21 approval of Mirador del Pino because he had donated an
22 ambulance to the city and that she would put in a good word
23 on my behalf.

24 And she had arranged the meeting where I could sit
25 down and talk with him and explain what Jamaca was, and he

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1 was very positive and he said, "Michael, just send me a
2 letter, and that will start the process."

3 And so it was more of an informal way
4 that--through relationships, I guess, which is common in
5 the Dominican Republic.

6 Q. So, you just assumed that the problem could be
7 resolved politically, so to speak?

8 A. I thought being the grandmother of the biological
9 children of the President, that that might be some
10 influence. She had demonstrated that she had a lot of
11 power and influence before. And it was the same family.
12 And I thought that that might help, you know.

13 And so it was, "Could you please"--and he said,
14 "Please give me a formal letter and we'll take a look at
15 this." And so that was--there was more of a context than
16 just black-and-white letters so--

17 Q. Right. But the part that I find confusing still
18 is--so this is the second letter in which--I mean, you got
19 a second denial, which was the first reconsideration
20 denial, which told you that, you know, you had this error
21 of the degrees.

22 And at that point you are on notice that the slope
23 is an issue, in particular the steepness of the slope, but
24 you still didn't run this by an environmental consultant?
25 Right? Instead, you decided to go the political route, and

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1 so you basically just submitted kind of the same
2 reconsideration request as the first one; is that right?

3 A. Yes, sir.

4 Q. All right. And despite the fact that you had been
5 told--you know, you got the degrees and the percentages
6 confused in the--you know, you were told that in the
7 previous letter, you did it again this time?

8 If you look at the Spanish--unfortunately--this is
9 an unfortunate translation. If you look at the Spanish, it
10 says, where it says here "of 32 and not 60," in the Spanish
11 it says, "It's only at 32 degrees of grading and not 60."

12 Do you see that part? If you can highlight it in
13 yellow. So, the part at the very end there, it says
14 "grados," which is degrees, isn't it?

15 A. Yes, sir.

16 Q. And so why did you make the same mistake in the
17 second reconsideration request? You were told that was a
18 problem. Did you not pay attention, or did you not think
19 it was important, or was it just the issue that you
20 thought, "Well, okay, now we got the grandmother of the
21 President, whoever it is, the relative of the President,
22 who is going to solve the problem for you?" Is that--which
23 of those was it?

24 A. It was--when I read the denial, I didn't read as
25 deeply into it that the Ministry was trying to clarify

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1 degrees or percent. I didn't think that was what they were
2 doing.

3 And he specifically asked me to send him a letter
4 tomorrow, and that's exactly what I did. I responded to
5 what the Minister of Environment had said to me. And he
6 said, "Send me a letter tomorrow and we'll redo it."

7 So, this is the letter I sent.

8 Q. So, you didn't think they were making an issue of
9 the degrees or percent, but the very first point is about
10 the steepness of the slopes, and they tell you that that's
11 the issue. It's the very first point of the four bullet
12 points, the very first issue.

13 But you didn't think it was about the percentages
14 or the degrees? It was about the steepness of the slope,
15 was it not?

16 A. But the relation is the same. And I don't know if
17 it's in the record, but it was in the discovery, that map,
18 indicating clearly--that the Respondent received during
19 discovery, the map indicating the actual steepness.

20 And then when I met with Witness Navarro, I showed
21 him the maps, I showed him the maps of the area, I showed
22 him aerial footage, I walked it through with him, and that
23 was prior to the fourth denial.

24 So, he was well aware of what the context was, and
25 so he gave me no options at that point either, even though

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1 he could have said "Okay, this area you can develop; this
2 area, no."

3 There was none of that dialogue, none of that
4 collaboration.

5 Q. All right. I mean, I--you know, I'm not
6 questioning you for getting the terminology wrong.

7 A. Yes, sir.

8 Q. I'm just questioning the fact that you got it
9 wrong again after you had been specifically told that that
10 was the error.

11 A. To me, it wasn't that clear. It wasn't like,
12 "Michael, you got this wrong, this is what it's saying."

13 I didn't read that.

14 Q. But it said--it said it's not viable in the
15 selected place--

16 A. Yes.

17 Q. --because the slopes are between 27 and 37 degrees
18 but then in percentage terms means 36 and 75. So, I mean,
19 essentially they were saying, "Look, you know, you--

20 A. I see that.

21 Q. --if you think about it in percentages, it's--you
22 know, you were wrong. So, it was a mistake, in any event,
23 that you repeated.

24 Now, did you--so you told us earlier that you
25 drafted your Witness Statements; right?

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1 A. I did.

2 Q. And did you have a hand in drafting the pleadings
3 as well, or was that done by your lawyers?

4 MR. ALLISON: I'm going to object to the extent it
5 calls for attorney-client privilege.

6 Please don't answer that question.

7 MR. Di ROSA: I withdraw the question.

8 BY MR. Di ROSA:

9 Q. In Reply Paragraph 365, the pleading, you know,
10 your pleading, the lawyer's pleading, whoever's pleading it
11 was, it says, "It defies credulity that had the Ballantines
12 been told that they had to consider a revised plan, that
13 they would not have done so."

14 And then it says--period--"How silly is that?"

15 And that's close quote.

16 MR. ALLISON: Is there a question there, or is
17 Mr. Di Rosa doing his summation as part of his testimony?

18 MR. Di ROSA: No, no. I'm leading to it. It's
19 just a question about drafting and terminology.

20 BY MR. Di ROSA:

21 Q. So, the term "silly" there is one that has been
22 used by counsel a lot.

23 And you say in your Witness Statement, in
24 Paragraph 2 of your Third Witness Statement, that "It's
25 silly that anybody would have understood that you meant

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1 percent rather than degrees."

2 Is that just a coincidence, your use of the word
3 "silly" and the use of the word "silly" in the Claimants'
4 pleadings?

5 MR. ALLISON: I'm going to object to this line of
6 questioning as trying to equate Claimants' pleadings to
7 Claimants' Witness Statements. We heard Mr. Di Rosa,
8 ten minutes ago, say "degrees" instead of "percent." We
9 spent enough time on this issue. Can we move on?

10 MR. Di ROSA: That's--I'm just trying to
11 determine--you know, I'm testing the veracity of his
12 assertion that he drafted his Witness Statements,
13 Mr. Chairman. I think it's perfectly legitimate.

14 PRESIDENT RAMÍREZ HERNÁNDEZ: Could you limit
15 yourself to the extent that you are referring to the
16 statement of the witness? I mean, this issue about
17 percentage and degrees, I think everybody in the room now
18 understands.

19 MR. Di ROSA: No, I've moved on from that. I've
20 moved on to the terms that are being used, which are
21 "unusual coincidences." That was the "silly" part, and I'd
22 like to point out something else which caught my attention.

23 MR. ALLISON: Ask a question. Quit testifying
24 about the similarities between Witness Statements and
25 Replies. You pick one word out of one document to compare

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1 it to another word out of another document. It's
 2 astonishing. Can we move on?
 3 BY MR. Di ROSA:
 4 Q. In the--in the pleadings, there was a statement in
 5 the Reply at Paragraph 202 that says, "Valerio has damned
 6 [sic] the natural spring."
 7 And I assume that that refers to the construction
 8 of a dam; right? I mean to the erection of a dam.
 9 A. Not sending them to hell, no. I was--
 10 Q. Correct. Right. And that's my question, though.
 11 It's spelled d-a-m-n-e-d, which is sending them to hell;
 12 right? So it's--
 13 MR. ALLISON: I will admit, I may have misspelled
 14 something in the Reply. I mean, what--
 15 MR. Di ROSA: So you misspelled it. Can I just
 16 finish my question, Mr. Allison.
 17 MR. ALLISON: Well, what is the question other
 18 than trying to accuse me of intellectual disrigour, which
 19 you did yesterday during your opening.
 20 MR. Di ROSA: No, that's not what I'm saying at
 21 all. If you would just let me finish.
 22 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel.
 23 MR. Di ROSA: If he can let me finish the
 24 question, Mr. Chairman. Just one more question.
 25 PRESIDENT RAMÍREZ HERNÁNDEZ: You have some

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1 others?
 2 MR. Di ROSA: I have one more question, if that's
 3 okay.
 4 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. But please
 5 refer to the Statement, please.
 6 MR. Di ROSA: I am referring to the Statement
 7 right now.
 8 BY MR. Di ROSA:
 9 Q. In your Witness Statement, you say--in your Third
 10 Witness Statement at Paragraph 64, you say, "Valerio has
 11 damned (sic) the natural spring," and you have the same
 12 error, damned, d-a-m-n-e-d. Is that a coincidence or does
 13 that mean that Mr. Allison drafted that part of your
 14 Statement?
 15 A. I wrote my Witness Statement. I think if you look
 16 at the context of all the Witness Statements, they're
 17 authentic and genuine voice. I wrote my Witness
 18 Statements, period.
 19 Q. All right. Because I could see the word "silly"
 20 being a coincidence, although it's not usually used in
 21 formal documents. But "damned" with an N when you mean--
 22 PRESIDENT RAMÍREZ HERNÁNDEZ: Hold on, Counsel. I
 23 mean, you are free to point this out about this
 24 coincidence.
 25 MR. Di ROSA: All right.

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: You are entitled.
 2 MR. Di ROSA: That's what I'm trying to test,
 3 Mr. Chairman, if it is a coincidence or not. But let's
 4 move on.
 5 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.
 6 THE WITNESS: I can unequivocally state that Mr.
 7 Valerio has dammed off the spring which is an important
 8 water source for the Baiguate River.
 9 MR. ALLISON: Mr. Ballantine, there is no question
 10 pending.
 11 BY MR. Di ROSA:
 12 Q. I wasn't asking you about that, Mr. Ballantine.
 13 So let's just--
 14 A. Yes, sir.
 15 Q. Let's just move to a different subject, shall we?
 16 All right.
 17 Let's talk about the creation of the park. In
 18 particular, about when you became aware of the creation of
 19 the park. Do you remember when that was?
 20 A. I became aware that there was a park that affected
 21 part of my property from my environmental consultants.
 22 Q. But my question was--
 23 A. September of 2010. I think it was September 20th,
 24 around there.
 25 Q. All right. And that--you learned about the

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1 creation of the park from an email that you received from
 2 your environmental consultant; is that correct?
 3 A. That is correct.
 4 Q. And this environmental consultant is Miriam Arcia;
 5 correct?
 6 A. The company is Empaca Redes, and she's an
 7 employee.
 8 Q. All right. So let's take a look at that email.
 9 It's Exhibit R-170.
 10 And are you there? It's also on the screen, if
 11 that helps you.
 12 A. I see it.
 13 Q. All right.
 14 MR. ALLISON: Is it in the binder?
 15 MR. Di ROSA: I'm not sure. It's not. Okay. If
 16 you can just look at it on the screen, Mr. Allison. Can
 17 you blow it up a little bit or not?
 18 All right.
 19 BY MR. Di ROSA:
 20 Q. So this is an email dated 22 September 2010, which
 21 is roughly what you had indicated that you remember from
 22 your consultant. And it's addressed to you personally; is
 23 that correct?
 24 A. Yes.
 25 Q. And in this email, your environmental consultant

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1 is notifying you that this park was created, the Baiguate
2 National Park, and that part of your property falls within
3 the limits of the park; right?
4 A. Yes.
5 Q. And she tells you that because the park is a
6 Category II park, it is subject to certain use constraints;
7 correct?
8 A. Yes.
9 Q. And she tells you that the part of your property
10 that falls within the park can only be used for ecotourism
11 purposes; right?
12 A. There's several things mentioned, but ecotourism
13 is emphasized by them. That red is from them.
14 Q. So the red is in the original?
15 A. In the original by them. It was not something--
16 Q. So they were emphasizing that henceforth--I mean,
17 that part of the property that you--that fell within the
18 park limits was going to be limited to ecotourism. Is that
19 a fair characterization?
20 A. We didn't know for sure. They didn't know. They
21 said the best thing to do was to just submit it to the
22 Ministry of Environment, which we did.
23 Q. So, you know, despite this warning, you went ahead
24 with your plans to develop the upper mountain project in
25 the way that you had originally envisioned; is that right?

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1 A. I did exactly what they asked me to do. And they
2 said to send--send it to--that we're going to send this to
3 the Ministry of Environment. And there's a subsequent
4 letter from Mario Méndez.
5 Q. Right. But my question was a different one.
6 A. I'm sorry.
7 Q. My question was, did you alter your--you know,
8 your plan in any way to take account of the fact that now
9 you had this ecotourism limitation, or was the plan just to
10 kind of go with the proposal that you originally had?
11 A. I had no idea what ecotourism was allowed or not.
12 And I did exactly what the environmental company told me to
13 do because it was not clear.
14 Q. And you also purchased more land after this email
15 was sent to you; is that right?
16 A. A little bit, yes, sir.
17 Q. What do you mean by "a little bit"? Do you know
18 how many roughly?
19 A. I don't know the amount. Maybe 25 percent of the
20 Phase 2 land.
21 Q. Okay. 25 percent. And you also went ahead and
22 made plans to buy excavators to use on that land; is that
23 right? Do you remember that?
24 A. We were doing Phase 1 development as well, and an
25 excavator was a perfect machine for the work that we were

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1 doing in Phase 1. It would have been perfect for Phase 2
2 as well as the future acquisition of Paso Alto. But we
3 used that machinery significantly in Phase 1 as well. That
4 was approved.
5 Q. And you were planning on using it for Phase 2
6 also?
7 A. Yes, that would be logical.
8 Q. All right. And you also at this point engaged
9 consultants to formulate a road engineering design; is that
10 right?
11 A. Yes, I was talking to Eric Kay, who is a witness
12 here, about creating a nice road up to the top that would
13 be a good one that would work.
14 Q. Okay. And in January 2011, you requested a permit
15 to construct a project on the upper mountain--upper part of
16 the mountain; right?
17 A. Yes. And--yes, sir.
18 Q. So this new project proposed the creation of 70
19 lots; is that right?
20 A. Yes, sir.
21 Q. And you just told us earlier today that on the
22 lower mountain, you had about 60 to 65 houses; right?
23 A. Well, no. Currently, that's how many are built.
24 But it's been approved for development for 90, but not all
25 the homes have been built yet.

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1 Q. Okay. So about the same number of houses, then,
2 you envision for the upper mountain as well as the lower?
3 A. No, there's a difference between 90 and 70. It's
4 probably about 25 percent less, yes, sir.
5 Q. Okay. All right. So 70 homes. But--so in that
6 sense, it's, you know, maybe a smaller scale. But you also
7 were intending to put a hotel at the top of the mountain
8 and then a spa; right?
9 A. When you use the concept hotel, I was talking
10 about little tiny standalone cottages that were upscale.
11 Nothing heavy at all. So it's not like a hotel, like a big
12 one. It was just stand-alone bohios, they were called.
13 Q. So those were going to be sort of cabin-like
14 unlike the homes or--
15 A. Very small. Very small.
16 Q. Small.
17 A. Maybe 60 or 70 square meters, but with like a
18 little plunge pool and a hot tub. Very elegant. That's
19 what Rafael Selman designed for me.
20 Q. And what about the apartment complex, what was
21 that going to consist of?
22 A. The apartment complex was not in the second phase.
23 It was in the first phase. What that was, was 12
24 two-bedroom units right across the street from the
25 restaurant in the approved area, which there were two lots

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1 that were approved for development, no park restrictions,
2 and it was just going to be a change of plans.

3 Q. All right. So in this email, you were told in
4 September 2010 that your--part of your property was inside
5 the park. Did you ever ask the Dominican authorities about
6 the implications of the fact that part of your property was
7 inside the park?

8 A. What happened--no.

9 Q. So you never brought it up yourself? You were
10 just hoping that the issue would kind of not be an issue
11 essentially?

12 A. That's a false characterization. I did not bring
13 it up. It was a very, very important meeting that I had
14 with Minister Jaime David. And present in the meeting
15 were--I waited in his office for a couple of hours. I was
16 with Omar Rodriguez. I was with--you know, in that meeting
17 were the Vice Minister in charge of protected areas as well
18 as the Vice Minister in charge of management.

19 I knew that ecotourism was allowed. It was a
20 stressful meeting in the sense that there was this question
21 about the fine on the table, that the Minister would not
22 meet with me until I paid the fine.

23 And we were in the position of acquiring Paso Alto
24 at the same time. And it was a very brief meeting, and
25 there was maybe seven Vice Ministers there. And Omar spoke

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1 very highly of Jamaca and our future planned joint venture,
2 and the fact that the Vice Minister of the protected areas
3 as well as the man--I don't know if he's a Vice
4 Minister--but in charge of management for protected areas
5 were present.

6 And it just seemed absolutely logical that we were
7 there. And it was maybe a 20-minute meeting. And so there
8 was--and in between that, I had received the CONFOTUR
9 signed off by the Ministry of Environment allowing, without
10 any restriction whatsoever, in December, right around
11 Christmastime, all of my--all of my projected plans for
12 Phase 2. And that was in between this. So when I received
13 that, I'm like, "All right. We're going forward."

14 Q. All right. I didn't ask you about any of that,
15 but that's fine. I mean, you know, I was just asking you
16 whether you brought up the--whether you consulted with
17 anybody about the implications of the park.

18 A. Yes, sir.

19 Q. But you did know about it from your consultant and
20 they had mentioned the ecotourism thing. Is it your
21 position that the project that you were proposing, in fact,
22 qualified as ecotourism?

23 A. Yes, I did.

24 Q. Would you characterize the photos that we just saw
25 earlier today as ecotourism?

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1 A. There was no legislation regarding ecotourism.
2 And I didn't see why not. My neighbor was building.
3 Rancho Guaraguao, I knew, was ecotourism. They were
4 building big houses. There was many projects going on in
5 the protected areas. And so I was waiting for the Ministry
6 to come back and let me know if there would be any
7 restrictions. They were silent.

8 Q. Okay. So you were just waiting for them to bring
9 it up or make an issue of it? Is that it?

10 A. My environmental company said it's the Ministry of
11 Environment that decides. And their recommendation was to
12 submit the project to them and ask for reference terms, and
13 I did exactly what they asked me to do.

14 Q. Okay. And so around this time in June of 2013,
15 the government renewed your permit for the lower mountain
16 housing development for another five years; is that right?

17 A. Yeah, that seems about right.

18 Q. So if the government had been conspiring against
19 you as you have alleged in this arbitration, wouldn't it
20 have been more logical for the government to have just
21 denied you the permits for Phase 1?

22 A. They would have had a huge problem facing very
23 powerful Dominicans, very politically influential, if they
24 would have not renewed that permit because they would have
25 had no basis to not renew it. So they wouldn't have the

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1 problem with me. They would have had the problem with
2 their own citizens.

3 Q. We just saw a document where one of the inspection
4 technicians said that there were irregularities in the
5 construction of the houses due to the material that was
6 used. Do you remember that?

7 A. Yes. If they would have communicated to me
8 exactly what they wanted from Day 1, 18 environmental
9 reports, more inspections than I--than you can even
10 imagine. Never once do they specify, "Michael, you need to
11 use more wood. You've got to change something."

12 We would have done whatever they said.

13 Q. Right. But if they were inclined to conspire
14 against you, wouldn't that be the first thing they would
15 have brought up? You know, we saw earlier how each of the
16 applications that you filed said mountain cabin and
17 mountain this and that and wood and lightweight materials
18 and blending into the environment and so forth. And they
19 consistently granted you authorizations from the forestry
20 officials, you know, to build the path to the reforestation
21 project. And then the first permit to--from the Ministry
22 of Environment to construct the lower mountain.

23 And they all said, "Okay. Well, you know, we
24 grant you authorization to do these mountain cabins."

25 So wouldn't it have been more logical if they had,

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1 in fact, a conspiratorial bent to just tell you, "Hey, you
2 know, your permit is revoked" or "We're not renewing your
3 permit because look at these, you know, McMansions that
4 you've built on the mountain as opposed to mountain
5 cabins"?

6 A. They would have had big problems with the powerful
7 Dominicans that own in Jamaca. And at that time, with the
8 acquisition of Paso Alto as well as Jamaca de Dios, my
9 neighbor was in checkmate. He had no hope at all
10 whatsoever. And I had a plan where I had absolute control
11 over the entire mountain ridge and all of the mountains of
12 Jarabacoa.

13 And so I feel that I was treated unfairly by not
14 allowing me to continue.

15 Q. Right. But they--maybe they treated you more
16 fairly than you deserved to when they didn't, you know,
17 decline to renew your permit because of the type of
18 construction that you had made; right?

19 A. I feel if that would have happened, that would
20 have been quite arbitrary and would not have been fair
21 without giving me a warning or saying, "Hey, Michael, you
22 guys are not doing this right. You're violating your
23 permit."

24 They were more than content to give me a big fine
25 for things that were already approved in my permit, and

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1 they were absolutely silent on this issue. And so they
2 would have had big problems if they would have--and not
3 from me, but from their own citizens.

4 Q. You have stated in your pleadings and perhaps in
5 your Witness Statements that the owner of the property that
6 was adjacent to yours, Aloma, Mr. Domínguez, was sort of
7 part of the conspiracy; right? Or at least that he was one
8 of the people who stood to benefit from you not doing well.
9 Is that fair?

10 A. Yes. Absolutely.

11 Q. Fair characterization?

12 A. I would say that.

13 Q. And so Aloma was the project that we showed on the
14 screen that had the dirt roads, and we talked about the
15 fact that they had three structures on it but no housing
16 development as such. Domínguez is also the person who is
17 the--at the time, you know, was the son of the mayor of
18 Jarabacoa; is that correct?

19 A. Yes, sir.

20 Q. And you characterize him as the son-in-law of
21 President Fernández?

22 A. No, I characterize him as the ex-brother-in-law.

23 Q. Ex-brother-in-law. Okay. So in any event, fairly
24 influential; right?

25 A. Yes, he controls Jarabacoa. He did at the time.

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1 Q. Right. And his property was also inside the
2 National Park; is that correct?

3 A. Yes, he is inside the National Park.

4 Q. And his property had a permit denied; is that
5 correct? We established that earlier today. But do you
6 remember that?

7 A. Yes, sir.

8 Q. So if there is a conspiracy and you have this
9 influential person who is literally next door to your--to
10 your mountain and your project, how do you explain the fact
11 that his permit was denied and that he didn't have his
12 property carved out of the park and so forth, all these
13 allegations that you've made? Isn't that kind of
14 inconsistent with your theory?

15 A. He worked with impunity for years. And what began
16 to happen, after he led the revolt on the town and tore
17 down our gates, I reached out to many different
18 institutions outside of the Ministry of Environment. I did
19 not at any point do a negative campaign against the
20 country. I was contacted by Nuria. Nuria Piera is one of
21 the most respected journalists in all of Ibero-America.²⁶
22 She contacted me, and then she did a report and about a
23 week after he applied for his permit.

²⁶ English Audio Day 2 at 04:46:03

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1 Concurrent with that, there was a lot of pressure
2 being brought to bear on the Ministry by the United States
3 Embassy, by the Center of Export and Import who also wrote
4 the president at the time, the American Chamber of
5 Commerce.

6 And so the Ministry of Environment was really
7 getting a lot of pressure. Not only that, the Zeta, which
8 is the program The Government of the Morning. There was a
9 lot of external pressure.

10 They took no action against Domínguez until
11 massive pressure came to bear on the Ministry of
12 Environment for their inequitable treatment.

13 Q. But this is in 2013, though, that he got --

14 A. This is all in 2013. Everything I stated. It's
15 all on the record.

16 Q. Yeah. But his permit was denied in 2013.

17 A. They had no choice.

18 Q. Now, you--there was--the Minister at the time that
19 you filed your permit application was Jaime David
20 Fernández; right?

21 A. That is correct.

22 Q. And then by the time that your last
23 reconsideration request was denied a couple years later,
24 there was a different Minister; right?

25 A. Yes. Bautista Gomez Rojas was the Minister. And

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1 I don't think it's in the pleadings, but he was a campaign
2 manager for Leonel Fernández for the 2016 and is now the
3 pre-candidate campaign manager for the 2020 election.

4 Q. All right. And between the two of them, there was
5 a third Minister, Ernesto Reyna; is that right?

6 A. Who is the biological uncle of Leonel Fernández as
7 well.

8 Q. Right. So there are three different Ministers
9 throughout the span. And, you know, your position is that
10 all three of these Ministers were essentially conspiring
11 against you; is that it?

12 A. Yes. There was no way I wasn't in checkmate. It
13 was verified by many different sources. And that's when I
14 knew I was in checkmate and I was done.

15 Q. All right. And is it your position also--I mean,
16 you know, the Ministry has this policy of sending out a
17 different technical team to do inspections for
18 reconsideration requests. And in your case, they didn't do
19 just one. They didn't do just two. They didn't--you know,
20 they did three different reconsiderations, a total of five
21 site visits, and a total of 21 different people--different
22 technical people from the Ministry went to do site visits.

23 Is it your position that all 21 of those people
24 were also in on the conspiracy?

25 A. That would require speculation. I can speak to

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1 what I know.

2 Q. Right. In the end the Ministry conducted five
3 different site inspections; is that correct? I mean, do
4 you know that?

5 A. Yes. There was--there was five different site
6 visits.

7 Q. All right. And they kept doing these things even
8 though nothing was changing in your application, basically?
9 You know, they were--

10 A. That is not correct. Between the third and
11 fourth, we drafted a very well thought out, very
12 well-organized letter. We submitted that with the Empaca
13 Redes report along with the slope maps. The Empaca Redes
14 report, my environmental company, laid out as well as the
15 letter, all the plans, what we had done, what we're gonna
16 do.

17 And in that letter, we said we will do anything
18 possible to make Jamaca de Dios a great ecotourism offer
19 for the country. So the concept of ecotourism and Jamaca
20 de Dios is longtime standing.

21 Q. All right. So you have five site inspections, and
22 the last one is conducted by the full Technical Evaluation
23 Committee; is that correct?

24 A. Yes, sir, according to what I understand. I
25 didn't know them, but that's my understanding.

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1 Q. And have you ever heard of the Technical Committee
2 ever going out and personally doing an inspection either
3 before or since?

4 A. I don't know who goes to inspect projects. It was
5 a first time for us that it happened, yes, sir.

6 Q. All right. And this happened after the U.S.
7 Embassy called on your behalf; is that right?

8 A. And they met. And then they were ignored and they
9 followed up. And then there was a letter from Jean-Alain
10 Rodriguez, who is now the Attorney General of the country,
11 who is the Minister of the Center for Export and Import,
12 with a copy of the letter to the president at the time.

13 Q. All right.

14 A. The person that arranged that meeting for me was
15 Victor Pacheco, the grandson of Dr. Mendez Capellan, who is
16 very well aware of our situation because Domínguez was in
17 the middle of our properties. He saw the whole thing and
18 he went to bat for us because he saw the mistreatment and
19 how we were being treated.

20 Q. All right. So going back to the conspiracy of the
21 three ministers, you said, you know, it came from different
22 sources. But, you know, these are just things that you
23 heard basically; right?

24 A. You need to understand the context of what Jamaca
25 de Dios is. It's a very highly visible project. The upper

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1 class--

2 Q. Yeah, we saw that. Yeah.

3 A. Yes, exactly. The restaurant, it's--primarily the
4 business is on the weekends. And the people from the
5 higher society, government officials, they come up. And so
6 my conversations included many high-ranking officials,
7 extremely powerful people. For example, Rafael Selman who
8 is one of the most respected architects in the country, his
9 father, Eduardo Selman, is on the Central Committee of the
10 PLD.

11 He said, "Michael, you have no hope. This is
12 political."

13 And I can name ten more and go on and on. And I'm
14 not going to unless you request that. It was overwhelming
15 that my battle was nothing but political and competing
16 economic interests. It was made known to me because I was
17 there. I lived it. I lived under the threat. I
18 experienced it. My family experienced it, and I know it to
19 be true. And there is nothing--

20 Q. You know it to be true. But that's just kind of a
21 deep sort of conviction that you have. I mean, you have no
22 actual proof because none has been presented in this
23 arbitration. I mean, there's a lot of statements that are
24 like the one you just made that go, "Oh, sources say"--

25 A. I'm testifying--

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1 MR. ALLISON: Paolo--
 2 MR. Di ROSA: Yeah.
 3 MR. ALLISON: --you can make your legal arguments
 4 at the end of the case.
 5 MR. Di ROSA: No. I'm asking him a question.
 6 Like, you know, do you have any evidence about that other
 7 than what you say you heard.
 8 MR. ALLISON: What we presented in the case, which
 9 you say is not evidence and not proof and we say is.
 10 MR. Di ROSA: And he's just saying--he's saying
 11 that as a fact--
 12 MR. ALLISON: And is this a memory test where he
 13 has to remember all of the exhibits that we've submitted
 14 that support that?
 15 MR. Di ROSA: You know what, Mr. Allison--
 16 MR. ALLISON: We can argue this at the end of the
 17 case.
 18 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsels.
 19 MR. Di ROSA: He's making a very serious
 20 allegation, Mr. Allison. He's making a very serious
 21 allegation against three ministers and impugning the whole,
 22 you know, reputation of the government. And he's just
 23 making these allegations without any proof is what we're
 24 saying.
 25 MR. ALLISON: Well, you've asked for the proof,

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1 and he's described the conversations that he's had, and you
 2 don't like that proof.
 3 MR. Di ROSA: No.
 4 BY MR. Di ROSA:
 5 Q. My question was, do you have any evidence other
 6 than what you're saying? And I gather the answer is no; is
 7 that correct?
 8 MR. ALLISON: You can answer the question,
 9 Mr. Ballantine.
 10 A. We presented the proof we had in black-and-white
 11 writing.
 12 BY MR. Di ROSA:
 13 Q. All right. Okay. So let's go back to the issue
 14 of the creation of the park. In Paragraph 1 of your third
 15 statement, you mentioned that you had known--if you had
 16 known that the creation of the park would be used as a
 17 justification to deny the expansion of your project, you
 18 never would have become a Dominican citizen; is that right?
 19 Do you remember saying that?
 20 A. Yes, that is the case.
 21 Q. Now, the creation of the park--the park issue did
 22 not become a basis invoked for the denial of your permit
 23 until the very last reconsideration letter; right? The
 24 fourth denial; is that correct?
 25 A. That's correct.

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1 Q. So the first--the original permit denial invoked
 2 three other grounds; is that correct?
 3 A. Yes.
 4 Q. Not the national park. And the first--so the
 5 first three consideration requests did not mention the
 6 National Park at all; right?
 7 A. That's correct.
 8 Q. So if you had never requested a reconsideration,
 9 the National Park would not have become an issue at all;
 10 right?
 11 A. If I could rephrase that. If I would have known
 12 that my expansion permit would have been denied on any
 13 basis, I would have never become a Dominican citizen. And
 14 the only reason why I became a Dominican citizen is because
 15 I was concerned about our asset protection for our family.
 16 And I became a citizen in February of 2010 as I
 17 was gearing up to expand. And we were highly concerned in
 18 case of the demise of Lisa and myself, what would happen
 19 with Dominican probate? What would happen to our children?
 20 Q. Right. And so I'm not asking so much about--
 21 A. So the park or the land.
 22 Q. I'm not so much asking about the naturalization
 23 aspect as kind of your understanding of the basis on which
 24 your permit was denied.
 25 So I asked you, you know, in the original permit

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1 denial, there was no reference to the National Park, but
 2 the permit was denied. So your project was dead at that
 3 point; right?
 4 A. I didn't believe it was dead, but I had become a
 5 citizen prior to that. I thought you were referring--
 6 Q. Let's leave aside the citizenship. I'm just
 7 asking your understanding of the basis on which your permit
 8 was denied because the Claimants--I mean, your counsel
 9 confirmed yesterday that, you know, the creation of the
 10 park as a grounds for denial is still part of their claim
 11 even though they've abandoned the claims that are related
 12 directly to the creation of the park.
 13 And --
 14 MR. ALLISON: I would simply ask Mr. Di Rosa to
 15 quit characterizing what the legal arguments are in
 16 testimony before he asks a question.
 17 MR. Di ROSA: All right. Fair enough.
 18 MR. ALLISON: Is that fair?
 19 MR. Di ROSA: This one is fair, Mr. Allison. I'll
 20 withdraw that one.
 21 BY MR. Di ROSA:
 22 Q. But let me ask you this: You--your permit was
 23 denied. So at that point your project is, in fact, dead,
 24 is it not?
 25 MR. ALLISON: Asked and answered.

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1 MR. Di ROSA: No, he never answered that one.
 2 MR. ALLISON: He said he didn't believe his
 3 project was dead.
 4 MR. Di ROSA: He said he was hoping that it would
 5 not be.
 6 BY MR. Di ROSA:
 7 Q. But it was dead, was it not, as a legal and
 8 factual matter? I mean, your hopes are subjective. This
 9 is--objectively it's been denied; correct?
 10 A. There is a mechanism of appeal which I exercised,
 11 and that was under the reasonable assumption that perhaps
 12 not all of my land would be denied, but maybe I could do
 13 something. Something like right across the street.
 14 Something 20 meters away.
 15 It was 100 percent denied. Nothing could be used.
 16 So I assumed that they would work cooperatively with us to
 17 help us to complete their environmental objectives, to at
 18 least do something. Maybe not everything I wanted, but
 19 something.
 20 Q. Right. I'm just trying to establish, you know,
 21 your understanding of the--you know, again, of the grounds
 22 on which your permit was denied. And --
 23 MR. ALLISON: We've been through that.
 24 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Di Rosa, let me
 25 encourage you to limit your questions to statements of fact

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1 made by the witness and try to avoid, to the extent
 2 possible, these introductory remarks.
 3 MR. Di ROSA: Fair enough, Mr. Chairman.
 4 PRESIDENT RAMÍREZ HERNÁNDEZ: That sounds like
 5 argument in your questions, so--
 6 MR. Di ROSA: Fair enough, Mr. Chairman. I mean,
 7 I did refer to a Witness Statement assertion by
 8 Mr. Ballantine in which he said "Had I known the creation
 9 of the park," X and Y. But that's fine. Let's move on. I
 10 agree that we--you know, we should move on.
 11 BY MR. Di ROSA:
 12 Q. Let's talk a little bit about some of your
 13 witnesses, Mr. Ballantine. So you have presented in this
 14 arbitration Mr. Kay and Mr. Peña as experts; correct?
 15 A. Yes, sir.
 16 Q. But they also are fact witnesses; right? They
 17 were present for --
 18 MR. ALLISON: Mr. Kay and Mr. Peña will be here to
 19 testify later.
 20 PRESIDENT RAMÍREZ HERNÁNDEZ: What is the
 21 relevance?
 22 MR. Di ROSA: It's relevant in the following way,
 23 Mr. Chairman. I'm trying to establish the independence of
 24 the experts. If they're presented as experts rather than
 25 fact witnesses, they're supposed to be independent.

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1 MR. ALLISON: They will be here, and you can
 2 question them about their expertise and their independence.
 3 MR. Di ROSA: Yeah, but I can ask Mr. Ballantine.
 4 PRESIDENT RAMÍREZ HERNÁNDEZ: But Mr. Ballantine
 5 is appearing here as a factual witness regarding what he
 6 has stated. So please refer to that.
 7 MR. Di ROSA: He's here to testify about what he
 8 knows, Mr. Chairman.
 9 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.
 10 MR. Di ROSA: And so he knows whether he's paying
 11 these experts or not, and I want to ask him that.
 12 BY MR. Di ROSA:
 13 Q. Are you paying these experts?
 14 MR. ALLISON: Mr. Ballantine is a claimant
 15 represented by counsel. If he wants to ask the question
 16 whether or not he's paying his experts, he can do so. But
 17 this insinuation and questioning about what decisions you
 18 made and who did what with respect to the arbitration are
 19 inappropriate, respectfully.
 20 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.
 21 MR. Di ROSA: Mr. Ballantine has also approached
 22 some of the Dominican Republic's witnesses to offer them
 23 compensation. And I think that's a perfectly valid line of
 24 questions, Mr. Chairman.
 25 PRESIDENT RAMÍREZ HERNÁNDEZ: Please proceed.

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1 BY MR. Di ROSA:
 2 Q. Mr. Ballantine, did you approach Ms. Francis
 3 Santana, the former director of the Jarabacoa Municipal
 4 Office of the Ministry of the Environment in connection
 5 with this arbitration?
 6 A. I personally did not.
 7 Q. You personally. But somebody on your behalf did?
 8 A. I asked Mr. Peña if he would talk to Ms. Santana
 9 and if she would be willing to put in a report what she had
 10 orally stated to me prior.
 11 Q. And Mr. Peña was a consultant of yours at that
 12 point, was he not?
 13 I asked you, Mr. Peña was a consultant of yours,
 14 was he not? Did you answer that or--
 15 A. Well, I got interrupted. I'm sorry. A consultant
 16 or--
 17 Q. Well, you know, was he--were you paying him to do
 18 anything?
 19 A. Very, very nominally. He was spending a lot of
 20 time and research, and he's an expert on environmental law
 21 in the Dominican Republic.
 22 Q. So you were paying him at least something?
 23 A. Nominally. And I was living out of the country.
 24 Q. Now, Mr. Peña approached Ms. Santana, who is now a
 25 witness for the Dominican Republic, and he offered her a

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1 consultant job if she would testify on your behalf in this
2 proceeding; is that right?

3 A. I am unaware of any conversation that he had with
4 her directly. I wasn't part of that.

5 Q. I see. So he just went out and did this on his
6 own?

7 A. I asked him if he would speak with her, because they²⁷
8 were both former local directors of Jarabacoa. She had told me
9 several things that I thought would be relevant to this hearing.
10 And I asked him if he would confirm that she would be willing
11 make a declaration on our behalf.

12 Q. Did you know that Mr. Peña sent her a draft Witness
13 Statement?

14 A. Yes, I've heard about that. Mm-hum.

15 Q. Did you see the draft Witness Statement before it was
16 sent to her?

17 A. It wasn't a draft Witness Statement. It was something
18 along those lines. But she would have to write whatever she
19 wanted to write. It was something--those were the facts as she
20 told me, but then she would have to do her own research if she
21 was willing to do that. She had orally communicated to Mr. Peña
22 that she will do anything she can to support Michael, according
23 to what Mr. Peña told me. And there was nothing nefarious about

²⁷ English Audio Day 2 at 05:01:42

1 any of this.

2 Q. You don't think there's anything irregular about
3 approaching a government official and asking him or her to
4 testify on your behalf and send a draft Witness Statement?
5 That's acceptable to you?

6 A. I--is she a government employee? I don't know.

7 Q. Well, you know, you're asking--

8 A. I don't know--I don't know if she's a government
9 employee.

10 Q. Well, she was. She was in connection with your
11 project. She was a municipal Ministry of Environment person.
12 She was--I mean, that's why you're asking her to testify on your
13 behalf, she because she was involved and--

14 A. Yes, because she was involved.

15 MR. BALDWIN: Mr. President, can we have clarification
16 if counsel is stating that she was a government official during
17 this time, because counsel stated you approached a government
18 official to ask for something, and I would like some
19 clarification.

20 THE WITNESS: Fair enough. Former government official.

21 BY MR. Di ROSA:

22 Q. She was a former government official when you
23 approached her, but you approached her because she was a
24 government official at the time of the relevant events, is it
25 not?

1 A. Is that a question?

2 Q. Right. I'm asking you. That's why you approached her,
3 because she was a government official at the time?

4 A. She had a lot of local knowledge. She experienced what
5 she saw. And Mr. Escarraman is a former employee. Mr. Peña is
6 a former employee. And I think there might have been another
7 one that was a former employee. I think former employees have a
8 right to tell the truth from--in a private capacity.

9 Q. Right. But were you aware that Mr. Peña offered her to
10 be a consultant for you?

11 A. I wasn't aware that he offered to be a consultant.

12 Q. He just did that on his own?

13 A. Well, I was aware that the offer--that she had said
14 that she would be willing to tell the truth and that she would
15 help me in any way that she can.

16 Now, that's different--and please forgive me. I don't
17 know the difference between a consultant, exactly the parameters
18 of a fact or expert witness. I just simply wanted her to tell
19 the truth and state the truth about her experiences, which might
20 require some research and time, and simply speak the truth.

21 Q. Right.

22 A. Based on what she had orally told me.

23 Q. But, you know, typically you don't pay fact witness. I
24 mean, at least that's not the custom.

25 What about Mr.--I mean, you said there was two or

1 three. Did you approach all of them?

2 MR. ALLISON: Is that a question or is that testimony
3 from Mr. Di Paolo [sic] again?

4 MR. Di ROSA: What do you mean?

5 MR. ALLISON: Well, you say typically you don't pay
6 fact witnesses and then stop and then you continue on with
7 something else. You can make your arguments, Mr. Di Paolo--

8 MR. Di ROSA: It's Di Rosa.

9 MR. ALLISON: Mr. Di Rosa. I apologize.

10

11 BY MR. Di ROSA

12 Q. So, you know, you did mention that there were two or
13 three of these people that were in the municipal office.

14 Did you--you know, did you ask someone on your behalf
15 or did someone on your behalf approach all of them or just
16 Ms. Santana?

17 A. Mr. Escarraman is somebody that I know from Jarabacoa.
18 I know him from my time there. So I spoke with him directly.
19 He is no longer in the capacity of a government employee. He's
20 independent. And Mr. Peña no longer works with the Ministry, as
21 well as--I don't remember who else it might have been.

22 But I understand the burden of proof of this is on me,
23 and I'm living in Chicago. The people that have communicated
24 things to me, I just simply asked if they would be willing to
25 put that in writing.

1 Q. All right. You know, you--both you and Mr. Eleuterio
2 Martínez, who is a witness for the Dominican Republic, refer in
3 your respective Witness Statements to a meeting that you just
4 had--that you had with him.

5 Do you remember testifying about that?

6 A. Yes, that meeting.

7 Q. And he says that you said that you were confident that
8 you would win this arbitration, essentially; is that correct?

9 MR. ALLISON: Can you point him to the Witness
10 Statement--the paragraph so that you don't mischaracterize it
11 and we can see exactly what you're referring to?

12 MR. Di ROSA: Paragraph 22 of Mr. Martínez's First
13 Witness Statement.

14 MR. ALLISON: So you're referring to what Mr. Martínez
15 said. Can you put that up so he can review what Mr. Martínez
16 said?

17 ARBITRATOR CHEEK: I'm sorry. Is this in
18 Mr. Ballantine's Witness Statement?

19 MR. Di ROSA: No. It's what Mr. Martínez is saying
20 about the meeting that Mr.--that Mr. Ballantine also testified
21 about.

22 ARBITRATOR CHEEK: Okay. Can you give the Tribunal a
23 moment to pull up this other Witness Statement?

24 MR. Di ROSA: Sure. It's Paragraph 22 of
25 Mr. Martínez's First Witness Statement.

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1 ARBITRATOR CHEEK: Okay. One moment, please.

2 MR. Di ROSA: It's on the screen now, if that helps
3 you.

4 BY MR. Di ROSA:

5 Q. So in the second sentence of paragraph 22, it says, "I
6 told him"--meaning Mr. Ballantine. This is Martínez speaking.
7 "I told Mr. Ballantine that it was very difficult for him to
8 question the creation of Baiguarte National Park, because the
9 park was established to protect the environment. He replied
10 that he had a winning strategy and was confident of his triumph
11 under the theory that there was political favoritism against
12 him."

13 Now, do you dispute that characterization or is that
14 roughly consistent with what you remember you saying?

15 A. I dispute that characterization.

16 Q. You dispute it in what way?

17 A. Well, I feel--and I wouldn't be here if I didn't--I
18 don't--you know, I don't understand the customary international
19 law with arbitration, but when I just read "fair and equitable
20 treatment," I don't think I was treated fairly and equitably,
21 and I do believe that my property was expropriated and therefore
22 deserves compensation.

23 So based on that and based on just the English reading
24 of the Central American Free Trade Agreement, I do feel like
25 there has been breaches, and I do feel like they're compensable.

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1 And so I did mention to him that I did feel confident that we
2 would win; otherwise I wouldn't have taken these steps to be
3 here or waste anybody's time.

4 Q. All right. Fair enough. Let's move on to a different
5 subject, if we can.

6 So you moved to the Dominican Republic in 2000; is that
7 right? Do I remember that correctly?

8 A. It was a short-term time, yes.

9 Q. And then you returned after--to the United States after
10 14 months; right?

11 A. Yes, sir.

12 Q. That's the time when you became dissatisfied and we had
13 that discussion.

14 And when you moved to the Dominican Republic to live
15 there was 2006; correct?

16 A. Yes, sir.

17 Q. And your wife, Lisa, moved there as well; correct?

18 A. Yes. We're very close.

19 Q. And your children moved there as well?

20 A. My two oldest children moved there for one year. It
21 was a gap year out of high school. And then my two younger
22 children stayed with us for a few years.

23 Q. In 2006, you also chose to become a permanent resident
24 in the Dominican Republic; right?

25 A. Actually, that's not the case. I know the documents

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1 have been submitted. In 2006 I was a temporary resident, but in
2 2008 I became a permanent resident.

3 Q. So, Exhibit R-25--

4 A. I know that. I know that document, but it's just not
5 the case. I've got my temporary sello²⁸(in Spanish) from 2007,
6 which was presented.

7 Q. Is it your position that the document is wrong?

8 A. Yes. My position is--and I can show you 2007 temporary
9 sello²⁹(in Spanish). But, yes, that's irrespective of this. I
10 was a permanent resident in 2008.

11 Q. All right.

12 A. You don't become a permanent resident when you first
13 move to a country in the Dominican Republic.

14 Q. And your wife, Lisa, also chose to become a permanent
15 Dominican resident; correct?

16 A. That is correct.

17 Q. And so in 2008, you were both--

18 A. Yes, sir. That is correct.

19 Q. --permanent residents?

20 And then after that, you decided to become a Dominican
21 citizen; is that correct?

22 A. Yes, sir.

²⁸ English Audio Day 2 at 05:10:16

²⁹ English Audio Day 2 at 05:10:23

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1 Q. And Lisa also chose to become a Dominican citizen?

2 A. Reluctantly, but she did.

3 Q. And you naturalized in the hope that Dominicans would

4 see that you were making a commitment to the Dominican Republic;

5 is that fair?

6 A. Yes, because we had--from a commercial standpoint,

7 there is--we had already endured a lot of discrimination, a lot

8 of nationality-based discrimination, and it was strictly for

9 commercial purposes.

10 There was many people--even though we had an excellent

11 product, they were insecure about buying from an American. It

12 was a very simple process. I paid \$2,000 and I bought a

13 passport. And I used it just strictly for business. And I

14 wanted to protect my family's inheritance, because--

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Can I interrupt there?

16 THE WITNESS: Sure.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Because I wanted to ask

18 you something on that, Mr. Ballantine.

19 THE WITNESS: Yes, sir.

20 PRESIDENT RAMÍREZ HERNÁNDEZ: And getting a

21 nationalization, it's for many people maybe a big step. It's

22 like having another flag. It has a lot of emotional--aside

23 from--I understand your economic point, but it also entails an

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1 important--an important decision, I³⁰ think. Because one thing

2 is you become a resident, you live in one country. But another

3 one is to become a national of a country.

4 So I was--I was--as I was going through your statement

5 and the pleadings, I wanted to understand exactly why you took

6 that decision and together with your wife to make this step to

7 become a national of any country.

8 I mean, just--I'm just trying to understand that part.

9 It's something that I had since I've been reading the case. So,

10 please.

11 THE WITNESS: Yes. Primarily, at that time I thought

12 that I owned a very valuable piece of property in the mountains

13 of the Dominican Republic. And I³¹ felt very insecure, in case

14 of my demise or my wife's, what would happen through an

15 arbitrary court ruling or my children having to pick up the

16 pieces, and I thought that it might help protect our estate.

17 Secondly, I felt like it was important for a business

18 decision in order--for the commercial aspects. There were

19 oftentimes people that wouldn't buy from me, for example,

20 because they didn't think that I was committed and they were

21 afraid to buy from a gringo and they would feel more

22 comfortable. And so I lost sales.

³⁰ English Audio Day 2 at 05:12:09

³¹ English Audio Day 2 at 05:13:01

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1 It was a very simple process. There³² was no

2 renunciation of anything. I lost nothing as a United States

3 citizen, and I just simply became a Dominican citizen.

4 And from my understanding, I gained no other right

5 other than the right to vote. And so that was--it was only--had

6 to do with economics and it had to do with estate protection. I

7 did not integrate with the culture. I was an investor. And we

8 spent most of our time, as much as possible, away.

9 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

10 Please.

11 BY MR. Di ROSA:

12 Q. Mr. Ballantine, your children also were naturalized

13 Dominican, were they not?

14 A. My two oldest were not. My two youngest were--were on

15 their way out, and I said, "Hey, do you guys want to become

16 Dominican too? I can get you a passport for a souvenir."

17 That's all it was. There was no commitment.

18 It was just like, "Hey, you guys can have a passport

19 too, because we're Dominicans." That was the extent of the

20 conversation, like, "Yeah, I'll take one." That was it.

21 Q. So that was a right that you had pursuant to Dominican

22 nationality, correct? I mean, to travel as a Dominican was one

23 right?

³² English Audio Day 2 at 05:13:40

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1 A. I never traveled as a Dominican, but--

2 Q. You never used your passport?

3 A. The only travel benefit that we ever received

4 was--which is the same right afforded to a resident--is that I

5 pay a \$10 entrance tax or be penalized for staying in the

6 country too long. But that same right is given to residents as

7 well.

8 So, there's no benefit to traveling using a Dominican

9 passport, nor did we ever.

10 Q. You never used a Dominican passport ever?

11 A. Only entering and exiting the country, but not in--

12 Q. But that is traveling with a Dominican passport, is it

13 not?

14 A. Yes. We saved \$10. You're correct.

15 Q. So--

16 A. Domestically.

17 Q. So you're saying you had your two children acquire the

18 nationality of a different county so they could get a passport

19 as a souvenir?

20 A. Yeah.

21 Q. Are you really saying that?

22 A. Yes, sir.

23 Q. So it wasn't because of the business or anything else?

24 A. It was just like a gift to them because they were

25 leaving the country. Like, "Hey, you guys want a passport too?"

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1 I'll get you one." That was the extent of it.

2 Q. All right. And you said that you acquired it because

3 of the asset-protection aspect. Is there anything that you

4 contributed by way of documentary evidence supporting that,

5 whether norms that you thought were relevant that would protect

6 you somehow if you were--protect your assets somehow if you were

7 Dominican?

8 I mean, did you show any--you know, any emails or

9 whatever that showed that, yeah, you were worried about your

10 asset protection and that's why you became a Dominican national?

11 A. I don't have documentation, but it is well-known that

12 there's a tendency for the judicial branch to be not

13 independent. There was a huge case recently where a man was

14 found to have a lot of money. It was clean. United States

15 Government responded--

16 Q. I'm not asking you about that, Mr. Ballantine.

17 A. Well, that's an important aspect because I was afraid

18 of what would happen to our assets. I had a judicial branch

19 that may not treat my family fairly.

20 Q. All right. Let's go to Exhibit R-17. This is the

21 cover letter to your naturalization application. We'll put it

22 up on the screen.

23 All right. So, this is a letter submitted by a lawyer

24 on your behalf to the government, requesting naturalization; is

25 that right?

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1 A. It appears to be that letter, yeah.

2 Q. All right.

3 A. And it says at the bottom there, "The aforementioned

4 individuals identify closely with Dominican sentiment and

5 customs, given their longstanding respect for, and period living

6 in, our country, for which reason they would be happy to confirm

7 legally the Dominican sentiment."

8 Starting with "aforementioned individuals," this is his

9 own letter--his lawyer's letter on his behalf.

10 Q. So, this is something that basically was said by your

11 lawyer on your behalf, correct, presumably with your approval?

12 A. Yes. This is a standard boilerplate form. I did sign

13 it. I'm sure I did. These were not my words, but this is a

14 standard procedure.

15 Q. So you just said this, but, you know, you had your

16 lawyer say it, but you didn't mean it; is that what you're

17 saying?

18 A. I can't deny that I have sentiment for the Dominican

19 Republic and there was good experiences and, you know, that

20 there was positive things in the Dominican Republic. It wasn't

21 like it was all conspiracy and bad and evil. There was good

22 times and, you know, there's some very nice people. So, I can't

23 deny that.

24 Q. Right. So--but you're telling the government something

25 in order to have them grant you the special privilege of being a

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1 national of that country, and presumably you meant that.

2 MR. ALLISON: Asked and answered. I mean, do we have

3 to--he answers a question and then he repeats his question

4 before in hopes that he will say something different this time.

5 MR. Di ROSA: It's a slightly different question,

6 Mr. Chairman, and I'm asking him if these words reflect his, you

7 know, genuine thought and belief at the time that he applied for

8 naturalization, so I think that's a fair--

9 MR. ALLISON: And that's what his last answer just was.

10 MR. Di ROSA: I think the question was slightly

11 different.

12 So you don't want to answer that question?

13 PRESIDENT RAMÍREZ HERNÁNDEZ: I think that's been asked

14 and answered.

15 MR. Di ROSA: All right. Fair enough.

16 BY MR. Di ROSA:

17 Q. So in the Rejoinder, you said--quote, in Paragraph 2,

18 Rejoinder on Jurisdiction, "The Ballantines attained Dominican

19 nationality not because of any enduring cultural bond with that

20 country."

21 MR. BALDWIN: Where is that from, Mr. Di Rosa?

22 MR. Di ROSA: Rejoinder on Jurisdiction, Paragraph 2.

23 MR. BALDWIN: But you said "You said that." That's in

24 the Rejoinder on Jurisdiction.

25 MR. Di ROSA: He's the Claimant, Mr. Chairman.

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1 I mean, you're speaking on his behalf, are you not?

2 MR. BALDWIN: Well, there's two Claimants here, first.

3 He's one of two Claimants. And I just didn't understand where

4 you were--

5 MR. Di ROSA: You were speaking on behalf of both of

6 them, were you not, when you wrote this brief?

7 PRESIDENT RAMÍREZ HERNÁNDEZ: I think at this point

8 he's referring to the last Rejoinder.

9 MR. Di ROSA: To your Rejoinder on Jurisdiction.

10 PRESIDENT RAMÍREZ HERNÁNDEZ: On admissibility and

11 jurisdiction.

12 MR. Di ROSA: Right.

13 BY MR. Di ROSA:

14 Q. Isn't that statement somewhat inconsistent with what

15 you told the Dominican naturalization authorities?

16 A. I'm sorry. I got confused what the question was.

17 Q. Sorry. I'll repeat it. No problem.

18 The Rejoinder on Jurisdiction in Paragraph 2 says, "The

19 Ballantines attained Dominican nationality not because of any

20 enduring cultural bond with that country," and then it goes on.

21 But that statement seems inconsistent with what the

22 lawyer that you had submit this naturalization request said in

23 the naturalization request that was submitted.

24 A. Could you put the lawyers' back up? Because I can't

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1 see that.

2 Q. Sure. There it is again.

3 "The aforementioned individuals"--meaning you and

4 Lisa--"identify closely with Dominican sentiment and customs

5 given their respect for and period living in the country."

6 So is that different from cultural, in your conception?

7 It's not a cultural bond?

8 A. Can you put back up the other one so I can compare

9 them? I wasn't ready, that you were going to do this.

10 MR. Di ROSA: Can we go back?

11 A. That is not contradictory. I see in the Rejoinder we

12 talked about enduring bonds. And there is no reference in this

13 letter to enduring bonds.

14 And I think that's been demonstrated by our actions

15 subsequent to the filing of Notice of Arbitration and what the

16 habit of our life has been. I think I've been to the Dominican

17 Republic two or three times since then. And so there's been

18 nothing enduring about it. There's some relationships, some

19 people I still keep in contact with. But there's nothing

20 cultural that's been enduring whatsoever.

21 And so I stand by what was written in the Rejoinder on

22 Jurisdiction, because there's nothing enduring. It's been

23 broken.

24

25 BY MR. Di ROSA:

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1 Q. All right. You say in Paragraph 4 of your Second

2 Witness Statement that you "did very little to assimilate into

3 the Dominican culture."

4 And you have said words to the same effect in this

5 testimony today.

6 In that same paragraph you say--Paragraph 4 of the

7 Second Witness Statement, you say "We never felt like we were

8 Dominicans, never acted like Dominicans."

9 What does a Dominican act like? What does that mean,

10 that statement?

11 A. Well, on a lot of levels, there's cultural norms and

12 mores and the way people interact with each other. And--for

13 instance, conflict, how to enter into a conflict, how to avoid

14 it, how to resolve it. There are so many cultural things,

15 holidays, and the way people relate. It's a high-context

16 culture where what's not said is often more the message.

17 I just acted like an American. I would confront things

18 head on, and I made a lot of cultural errors.

19 And so the way things are done in the Dominican

20 Republic are way different. I mean, I did certain things. Like

21 I would have a big party for the homeowners, and I'd say, "Man,

22 we're doing great." They'd say, "No, you don't say you're doing

23 great. You always say you're doing bad." I'm like--I'm

24 inspiring people.

25 There are so many differences in terms of business

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1 operation and political relationships. And nobody perceived me

2 as Dominican, and I didn't even intend to become Dominican or

3 identify. I was very proud of being an American, and I always

4 acted like an American. I run my company like an American. And

5 everybody knew that. Everybody. Everybody here knows that.

6 Q. In Paragraph 45 of the Rejoinder on Jurisdiction, you

7 also refer to your home not being a "Dominican home," and you

8 actually used those quotation marks yourself.

9 What, in your conception, is a Dominican home as

10 opposed to--

11 A. Dominican homes are often designed where there is a

12 separation, where there's a maid and a servants' area. And ours

13 is a big American open floor plan. We spoke English. We made

14 American food. We entertained like Americans. And so there's

15 cultural differences in the way the home runs.

16 And we lived completely as Americans in the Dominican

17 Republic, the food we ate, the way we entertained. Our home was

18 totally Americanized, and it was an obstacle to sell it because

19 Dominicans didn't like that American style of home.

20 Q. You said in Paragraph 8 of your Second Witness

21 Statement that you "continuously maintained at least one

22 residence and sometimes two residences in the United States";

23 correct?

24 A. Yes, sir.

25 Q. And you go on to identify certain addresses, mainly in

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1 Illinois; is that correct?

2 A. Which one?

3 Q. You say--you identify certain addresses for those

4 residences and they're in Illinois primarily; is that correct?

5 A. Yes. I had four or five residences during the period.

6 Q. And when you say "residences," do you mean houses or

7 what?

8 A. Houses or--I did rent a townhouse as well, and a

9 condominium I purchased.

10 Q. All right. But, you know, the place of residence is

11 the place where your permanent home is, is it not? Where your

12 permanent home is?

13 A. Well, like the Florida house, I was there frequently,

14 but my kids lived there. I said that in my Witness Statement.

15 I bought it and they--they lived there.

16 Going back to Chicago, we would stop in Florida and

17 then come back and stop in Florida. I owned it. We sold that,

18 but it was still a residence. My kids lived there.

19 Q. Well, right. But, you know, you only have one--you

20 were a permanent resident of the Dominican Republic, were you

21 not?

22 A. I was a permanent resident of the Dominican Republic

23 and a citizen of the United States of America.

24 Q. Okay. So, you're not saying that you actually lived in

25 Illinois in 2010; is that right?

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1 A. I did live in Illinois in 2010. And I rented a
2 townhouse. Was it 2010 or 2011? I--

3 Q. Well, I mean, you didn't live there in the sense of
4 being a permanent resident at that time; right?

5 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel--

6 MR. ALLISON: Is this a legal argument?

7 PRESIDENT RAMÍREZ HERNÁNDEZ: --could you just refrain
8 from those comments and just go to the questions, please.

9 MR. Di ROSA: Mr. Chairman, I'm trying to establish,
10 you know, what his permanent residence was. It's highly
11 relevant to the issue of dominant and effective nationality.

12 THE WITNESS: I'd like to request just a bathroom
13 break, if I could.

14 PRESIDENT RAMÍREZ HERNÁNDEZ: Why don't we take all a
15 break and come back 3:50.

16 (Brief recess.)

17 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. We can
18 resume. Some arrangement comments.

19 First of all, I believe they consulted with
20 Parties, and I believe that we--the Tribunal and the
21 Parties agree that we will go until 6:30 today. And
22 tomorrow, we might go until 7:30 at the latest.

23 Let's agree on that. Are we fine with that?

24 MR. BALDWIN: That's agreeable to the Claimants.

25 MR. Di ROSA: Yes, that's fine, Mr. Chairman.

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Two points of
2 order.

3 I will kindly ask Claimants, if they have some
4 objection to some of the comments and questions made, to
5 please direct them at the Chair of the Tribunal so that we
6 can make a call of whether the objection is sustained and
7 that.

8 And I will ask Respondent to please refrain from
9 making the responses by the witness arguments or remarks
10 and try to state--or to address, as much as possible, the
11 factual aspects.

12 And finally, to both Parties, I mean, this is a
13 Tribunal that has been very diligent in reading all your
14 submissions and all the statements. So we know the case in
15 a nutshell.

16 So any way that you could help us elucidate better
17 the case and not be repetitive, because we know, we have
18 read the arguments, we know the--we have read the
19 witnesses, we have read the expert testimony.

20 So if you could help us in that, elucidate and get
21 a more clear picture of the case, it would be good for the
22 Tribunal.

23 So, Respondent, please.

24 MR. Di ROSA: Thank you, Mr. Chairman. And I'll
25 do my best to abide by your guidance.

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1 BY MR. Di ROSA:

2 Q. Mr. Ballantine, let's talk a little bit about
3 damages. You hired Mr. Farrell as your damages expert;
4 correct?

5 A. Yes, sir.

6 Q. And at the time that you hired him, did you give
7 him Jamaca's financial statements or other financial
8 records?

9 A. The Jamaca statements, yes, sir.

10 Q. When you hired him, you gave him those?

11 A. I believe I did.

12 Q. Are you aware that Mr. Farrell did not attach any
13 financial documents, whether statements or otherwise, to
14 either of his expert reports?

15 A. I'm not aware of that. I'm not sure--I knew that
16 there was a concern about something, but I don't know what
17 he used and didn't.

18 Q. Okay. We'll ask him.

19 Did you also, at the time that you hired him, give
20 him--aside from financial records, did you give him
21 Jamaca's contracts for the lot sales for the lower mountain
22 project?

23 A. Yes. Well, I'm not sure. I submitted them in the
24 discovery and to--yeah, I'm pretty sure I did. I'm not
25 sure, though.

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1 Q. Are you aware that Mr. Farrell did not attach any
2 of those contracts to either of his reports?

3 A. I'm not aware of that.

4 Q. All right. Now, did you give him the contracts
5 that you eventually provided to this Tribunal or the
6 contracts that you signed and that were submitted to the
7 Dominican tax authorities?

8 A. If I gave him the contracts, it would have been
9 the real contracts.

10 Q. I see. So, let's call them "the real contracts."
11 And the ones that were the Dominican ones, the tax
12 authority contracts, as "the tax contracts" for
13 convenience. Okay?

14 A. Could you repeat that? I'm sorry.

15 Q. Yeah. You referred to them as the real contracts,
16 so let's just for convenience call them "the real
17 contracts" and the tax contracts just--

18 A. Yes, sir.

19 Q. Okay. In the prayer for relief of³³ your Statement
20 of Claim, the original one dated September 11, 2014, at
21 Paragraph 94.2, you ask for damages of "not less than
22 20 million."

23 But in the Amended Statement of Claim that was

³³ English Audio Day 2 at 05:45:00

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1 submitted a couple years later, dated January 4th, 2017, at
2 Paragraphs 275 and 276, you ask for 37.5 million in damages
3 plus 4 million in moral damages, for a total of
4 41 million--41.5 million.

5 Is that about right? Is that consistent with your
6 understanding?

7 A. Yes, sir.

8 Q. So the amount that you claimed in the Amended
9 Statement of Claim is more than double the original
10 Statement of Claim damages amount. And my question is:
11 What changed in the interim?

12 MR. ALLISON: I'd like to make an objection that
13 that mischaracterizes the testimony--or the--not the
14 testimony, but the document that states more than
15 \$20 million. And then the later one defines that.

16 And just so it's clear, it's not 20 and 37.

17 PRESIDENT RAMÍREZ HERNÁNDEZ: More than that, I
18 think we will hear from the damages expert. Isn't that a
19 question for the damages expert?

20 MR. Di ROSA: Okay. We can ask him as well.

21 BY MR. Di ROSA:

22 Q. Now, you know, referring--let's go back, then, to
23 the issue of the tax versus what you've called "the real
24 contracts."
25

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1 Are you aware that both the real and the tax
2 contracts were submitted in this arbitration for the sale
3 of many of the same Phase 1 lots? So, same lot, two
4 different contracts, different price--the same--you know--

5 A. I am aware of that.

6 Q. Okay. All right. And your attorney said that the
7 reason there were parallel contracts for the same lots was
8 because one of the sets of contracts was done specifically
9 for tax purposes; correct?

10 And I can quote the transcript, Page 24 at Line 18
11 through 20. He said, "But Respondent knows those Parallel
12 19 contracts don't reflect the economic"--sorry.

13 "The Respondent knows that parallel contracts
14 don't reflect the economic benefit that was received by the
15 Ballantines. They are tax documents only."

16 Is that consistent with your understanding as
17 well?

18 A. Yes, sir.

19 Q. And the ones that were done for tax purposes had
20 the lower price of each pair; right? So same lot, tax
21 document is lower price, and the real document is a higher
22 price. Is that--

23 A. Yes, sir. That's a fair, accurate assessment.

24 Q. And this was--and the reason that a lower amount
25 contract was submitted to the tax authority was essentially

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1 to try to limit the amount of the transfer tax; is that
2 right? And that's why people do it?

3 A. Yes, sir.

4 Q. And so your lawyers have said in this arbitration
5 that the real figures of the Phase 1 lot sales were not the
6 ones reflected in the tax contracts, but rather the higher
7 prices reflected in the parallel set of contracts, what you
8 were calling "the real contracts."

9 So that's consistent with what you're saying here;
10 correct?

11 A. Yes, sir.

12 Q. Now, the actual revenues from Lot 1 sales counted
13 as income to Jamaca; correct?

14 A. That would be income, yes, sir.

15 Q. Right.

16 And so those--the actual revenues are the revenues
17 that should have been reported by Jamaca as income to the
18 Dominican tax authorities; is that right?

19 A. We reported the--the assessed value of the
20 properties to the tax authorities.

21 Q. I see. But income tax refers to actual income,
22 not to assessed. That's not income. The assessed value is
23 not--in other words, you got a certain amount that was
24 income, and what you're supposed to report to the tax
25 authorities is the actual income; right? Or is that not

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1 your understanding?

2 A. That's not my understanding and that was not my
3 decision unilaterally. That was advised to me by my
4 Dominican accountant who is also a government employee, as
5 well as an attorney.

6 Q. All right. So you were advised by your Dominican
7 advisers, lawyers, et cetera, tax accountants, that you
8 could submit to the Dominican tax authorities an income tax
9 return that reflected not actual revenues, not--in other
10 words, not the real price, but lower revenues. Is that
11 what you said?

12 A. Yes. And I specifically used the word "custom."

13 Q. And is that your understanding of the custom in
14 the United States as well?

15 A. Absolutely not.

16 Q. Not. Okay.

17 So, are you saying that the revenues that were
18 based on the amounts in the tax contracts were not the ones
19 that you reported to the U.S. income tax authorities?

20 A. That--you must be referring to the Form 5471 which
21 is the foreign corporation.

22 Q. I'm not referring to any particular form. I'm
23 just asking you whether you reported to the U.S. tax
24 authorities the actual revenues that you got from the sale
25 of the lots.

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1 A. I did not receive those revenues. With the United
2 States tax authorities, I declared all of my income. Over
3 half of the transactions were done in U.S. Dollars in the
4 United States banking system. They were reflected either
5 as loan repayment, loan back, or interest income,
6 accurately.

7 Q. All right. But, so, in your income tax returns in
8 the U.S., when you have income from a foreign company that
9 you own--in your case, Jamaca was 100 percent owned by you;
10 right? Or you and Lisa; is that--

11 A. Yes, sir. We're 50/50 shareholders.

12 Q. Right. So the two of you combined had 100 percent
13 of Jamaca, and there's a special schedule in the U.S.
14 income tax return that you have to fill out when you've had
15 income from a foreign company that you own; correct?

16 A. That reports the activity of the corporation. It
17 does not become a taxable event until I take that money out
18 and I personally receive that money or the economic
19 benefit, which were--was declared appropriately on my
20 United States tax returns.

21 Q. So when you actually got the income from these
22 sales, you would have at that point reported them to the
23 U.S. tax authorities? I mean, you know--

24 A. Yes, on a personal level, but it was within the
25 corporation.

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: Can I ask Respondent
2 what is the relevance of this line of questioning?

3 MR. Di ROSA: I'm trying to establish,
4 Mr. Chairman, that the amounts that were submitted to the
5 U.S. income tax authorities were not, in fact, the amounts
6 of the actual sales.

7 PRESIDENT RAMÍREZ HERNÁNDEZ: And what is the
8 relevance for this arbitration?

9 MR. Di ROSA: Just that he was being--you know,
10 it's highly relevant to the damages issue, Mr. Chairman,
11 because if he's saying that the--you know, the amounts that
12 were reported to the tax authorities were one amount and
13 the real amount were a different amount, then we have to
14 kind of get to the bottom of that right now.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: And I think we all
16 understood, and it was stated by counsel, Claimants'
17 counsel, on the first day, yesterday, that they use for the
18 damages purposes what they call "the real contracts" for
19 purposes of damages.

20 MR. Di ROSA: All right.

21 PRESIDENT RAMÍREZ HERNÁNDEZ: But I'm trying to
22 see what is the relevance, whether--if you would allow me
23 to finish.

24 MR. Di ROSA: Sure.

25 PRESIDENT RAMÍREZ HERNÁNDEZ: I'm trying to

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1 understand the relevance of the line of questions of
2 whether those incomes were reported or not to tax
3 authorities. For our purposes, the relevance or not has to
4 do with the damages determination.

5 Am I correct?

6 MR. Di ROSA: Yes, Mr. Chairman.

7 Let me just add to that one comment, which is
8 Mr. Ballantine--the Ballantines jointly are asserting a
9 claim against the Dominican Republic under an international
10 treaty, claiming for a certain amount that's a substantial
11 amount of money that is based on what they claim is the
12 actual sales. But at the same time, they told the
13 Dominican tax authorities that they had a lower amount.

14 So they're trying to essentially cheat the
15 Dominican Republic out of tax assessments but then charge
16 the Dominican Republic on the basis of the higher amounts
17 that they did not use for purposes of the tax documents.
18 And the same would apply for the U.S. income taxes.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: I fail to see the
20 relevance. And at the end, I think it has to establish
21 what was the basis to have made a damages determination.
22 And what flows from that, what consequences of having
23 two--of submitting two contracts but not submitting to tax
24 authorities either of the Dominican Republic or the
25 United States is beyond what this Tribunal can do with

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1 those.

2 So I will ask you to go to another line of
3 questioning, please.

4 MR. Di ROSA: All right, Mr. Chairman. I think I
5 sense that we're all getting tired.

6 BY MR. Di ROSA:

7 Q. So let me just ask Mr. Ballantine one final
8 question, which is the following: Mr. Ballantine, do you
9 have any type of external financing or third-party funding
10 for this arbitration?

11 A. Do I need to answer that question?

12 PRESIDENT RAMÍREZ HERNÁNDEZ: (Nodded.)

13 A. Yes, sir.

14 Q. Since when have you had that funding in place?
15 Don't look at your lawyers.

16 A. I just want to--I have a contractual obligation,
17 and I just don't know if I'm violating the terms of that by
18 getting into this.

19 So, I'm happy to do that under the order of the
20 President. I'm happy to answer any questions. But the
21 third-party funder and I have an agreement, and I don't
22 know what my limitations are, if I'm violating that. We
23 could have a private discussion or something, but--

24 PRESIDENT RAMÍREZ HERNÁNDEZ: I think we will need
25

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1 to discuss this. And I think that we may be dealing with
2 confidential information that may not be--we are being
3 publicly broadcast, so it may not be proper.

4 So, Claimant, how--

5 MR. ALLISON: Yes. We would also argue that the
6 funding of this case is irrelevant to the claims that are
7 brought. But we'd be happy to discuss that off the record
8 after we--

9 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah. I mean, it
10 has been answered, there has been third-party funding,
11 but--

12 MR. Di ROSA: At a minimum, Mr. Chairman, they
13 would have to disclose the identity of the funder for
14 conflicts purposes.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

16 MR. Di ROSA: And it could be relevant to other
17 issues like costs.

18 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah. And I see
19 that. So why don't we let us take a break on this, and
20 maybe the Tribunal will want to discuss this with my
21 colleagues. But I think there are some confidentiality
22 issues that maybe we may need to address.

23 MR. Di ROSA: Thank you, Mr. Chairman.

24 (Brief recess.)

25 PRESIDENT RAMÍREZ HERNÁNDEZ: We'll wait a little

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1 bit, because we want to make sure that this is not
2 broadcasted.

3 (Pause in proceedings.)

4 PRESIDENT RAMÍREZ HERNÁNDEZ: The Tribunal has
5 deliberated on this issue and has decided that we will
6 direct the witness to disclose to the Tribunal only the
7 contract that you signed with the third party.

8 After that, we will decide whether that contract
9 should be disclosed to the Respondent or not. But we want
10 to see the contract first. My clear instructions.

11 And I was going to ask Respondent whether, aside
12 from knowing who was the third-party funder, is there any
13 question regarding this issue?

14 MR. Di ROSA: Yes, sir.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Additional
16 questions.

17 MR. Di ROSA: I do have a few questions,
18 Mr. Chairman. Not many. Just a handful.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: But not on this
20 topic.

21 MR. Di ROSA: Oh, no. I thought you were inviting
22 me to ask on this topic.

23 PRESIDENT RAMÍREZ HERNÁNDEZ: No. No.

24 MR. Di ROSA: No, I don't have any questions.

25 PRESIDENT RAMÍREZ HERNÁNDEZ: So we will

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1 continue--we will ask them to be back tomorrow morning.

2 THE WITNESS: Yes, sir.

3 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay.

4 THE WITNESS: You want the contract, not just the
5 name of the company; right? The physical contract?

6 PRESIDENT RAMÍREZ HERNÁNDEZ: We want the
7 contract.

8 THE WITNESS: Yes, sir.

9 MR. Di ROSA: Just for clarity, Mr. President, are
10 you telling me I can't ask the questions about the subject?

11 PRESIDENT RAMÍREZ HERNÁNDEZ: No.

12 MR. Di ROSA: I can.

13 (Brief recess.)

14 ³⁴

15
16
17
18 PRESIDENT RAMÍREZ HERNÁNDEZ: The problem is that
19 if the questions relate to the--

20 MR. Di ROSA: They relate exclusively to that,
21 Mr. Chairman.

22 PRESIDENT RAMÍREZ HERNÁNDEZ: So, I guess that we

³⁴ Deleted text is duplicative of text included above. The original exchange continues after eliminated text. English Audio Day 2 at 06:08:00

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1 will need to make a call of whether--

2 MR. Di ROSA: I mean, some of them, you know, are
3 primarily about the timing--the timing and the reason that
4 it was not disclosed earlier.

5 MR. ALLISON: Mr. Ramirez, we would propose
6 Mr. Ballantine will be here all week. After the Tribunal
7 has reviewed the contract and decided what's appropriate
8 and inappropriate and heard from counsel on both of those
9 issues, if he needs to come back and give additional
10 testimony, we'll present him in any order that's convenient
11 for the Respondent.

12 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So, let me
13 ask the Respondent if they are okay.

14 I understand you have additional questions.

15 MR. Di ROSA: Right.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: So, let us first see
17 the contract, and then if we need--or the Tribunal thinks
18 we need to go back to questioning about these subjects in
19 specific, we will allow the Respondent to question on that.
20 I think Mr. Ballantine will be here all week, so we can--

21 MR. Di ROSA: Perhaps we can do that, or maybe an
22 easier option, Mr. Chairman, would be to just pose my
23 questions to the Tribunal and you assess them--

24 PRESIDENT RAMÍREZ HERNÁNDEZ: Perfect.

25 MR. Di ROSA: --and we don't ask the witness about

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1 them.

2 So, my questions were, since when has that funding
3 been in place.

4 Secondly, was it after the third-party funding
5 started that there was the switch in counsel from Crowell &
6 Moring to their current counsel, Baker McKenzie.

7 And, you know, the reason that the funding was not
8 disclosed earlier.

9 And I think that's it, Mr. Chairman.

10 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. Claimant.

11 MR. ALLISON: I'd be happy to debate now the
12 relevancy of those questions, but would you like to see the
13 contract first and then have us discuss it, or are you
14 going to consider whether you think those are appropriate
15 questions?

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Let's hear your--

17 MR. ALLISON: As to the third one--

18 PRESIDENT RAMÍREZ HERNÁNDEZ: --arguments--

19 MR. ALLISON: As to the third question, which is
20 the reason why the funding was not disclosed earlier, I
21 don't think that's a relevant question. I'm unaware of any
22 duty that requires a Claimant to disclose that,
23 attorney-client privilege issues related to that.

24 The question as to the switch in counsel, I don't
25 understand what the relevance of that question is and how a

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1 switch in counsel and a funding agreement impacts the
2 Claimants' claims against the Dominican Republic here. I
3 think it's appropriate to--for them, if they wish to ask
4 when the funding contract was in place.

5 So, I have no objection to the first one, but I
6 think the second two are entirely irrelevant to the issues
7 before the Tribunal.

8 MR. Di ROSA: Can I just respond briefly to that
9 for the Tribunal's consideration?

10 PRESIDENT RAMÍREZ HERNÁNDEZ: Please.

11 MR. Di ROSA: On the issue of the timing of the
12 disclosure and the duty to disclose, I mean, I think it's
13 fairly well established in arbitration these days that if
14 you have a third-party funder, you have to disclose it in
15 order to ensure that there's no conflict of interest with
16 any of the Tribunal members or the Parties.

17 And, secondly, you know, we think that the issue
18 of the change of counsel and the timing is relevant to the
19 question that I was posing to Mr. Ballantine about the
20 increase in the amount of damages, and the question that
21 I'd like the Tribunal to consider is whether the amount of
22 damages doubled between the time that they filed their
23 Statement of Claim originally and the time that they got
24 their third-party funding.

25 And in that regard on the disclosure issue, I

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1 would refer the Tribunal to the IBA Guidelines on Conflict
2 of Interest, General Standard Number 6. You know, my
3 understanding is that third-party funders have a certain
4 minimum amount that they are willing to fund. And that's
5 why the--you know, the relevance--that's the relevance of
6 the question relating to when the damages increased.

7 Thank you, Mr. Chairman.

8 PRESIDENT RAMÍREZ HERNÁNDEZ: Any last comments?

9 MR. ALLISON: Yes. Again, I debate the notion
10 that the damages increased. I think it's a
11 mischaracterization of the pleadings to say that.

12 Questions about what damage amounts are included
13 and aren't included in the claim are at the heart of the
14 attorney-client privilege and is entirely inappropriate
15 line of questioning.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: We'll take this
17 under advisement, and we will see the contract and make a
18 call on these three requests that I see--three questions
19 that were posed.

20 Do you have any more questions for Mr. Ballantine?

21 MR. Di ROSA: I do not, Mr. Chairman.

22 Thank you, Mr. Ballantine.

23 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you,
24 Mr. Ballantine.

25 MR. ALLISON: I have just a few questions for

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1 redirect. I'm sorry, Michael.

2 REDIRECT EXAMINATION

3 BY MR. ALLISON:

4 Q. We spoke at some length this morning--you spoke
5 with Mr. Di Rosa this morning about the request for the
6 permit for the road, and then the request for the permit
7 for the subdivision.

8 Do you recall that testimony?

9 A. Yes.

10 Q. And can we put up what we saw earlier, which is
11 C-33, which is your application for the road.

12 And there was some confusion, or you expressed
13 some confusion as to whether you had applied to the
14 Ministry of Environment, to the Ministry of Forestry.

15 I just want to look at the address line here. If
16 you can blow up to whom that was written.

17 It's to a Mr. Ernesto Reina, Deputy Secretary
18 Ground and Water, Subsecretariat Ground and Water, Santo
19 Domingo National District.

20 Is that the same Ernesto Reyna who was later the
21 director of the MMA?

22 A. I assume so, but that would be speculation. But I
23 think so.

24 Q. And you don't know whether the Subsecretariat of
25 Ground and Water was in the Forestry Department or the

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1 Environmental Department; is that right?
 2 A. I do not know. I think Rafael could speak to
 3 that.
 4 MR. ALLISON: Okay. If you would blow up the
 5 first paragraph.
 6 BY MR. ALLISON:
 7 Q. Mr. Di Rosa read a part of this. The length of
 8 the 200 meters. Do you see how wide you requested the road
 9 to be?
 10 A. Do I see it? I see it.
 11 Q. Yeah. Can you read how much--how wide a road you
 12 wanted?
 13 A. 6 meters.
 14 Q. And so there was a lot of debate this morning
 15 about a two-lane road and the like. But you indicated that
 16 you intended to build a 6-meter road; correct?
 17 A. The second phase would be a 5-meter wide road with
 18 1 meter for gutters. But yes, it would be 6 meters in
 19 total.
 20 Q. And did you build a 6-meter road in the first
 21 phase?
 22 A. Is this Phase 1?
 23 Q. This is Phase 1.
 24 A. Yes.
 25 Q. Okay.

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1 A. Some of the curbs are a little wider, but the road
 2 itself is 6.
 3 Q. And then let's look at the permit that was
 4 granted, which is the next exhibit, C-34.
 5 And let's look at who the permit letter came from.
 6 It's signed by Ernesto Reyna, and the stamp is from--if I'm
 7 reading it correctly--is that Medio Ambiente?
 8 I see that.
 9 And is that the Ministry of the Environment?
 10 A. Yes, it is.
 11 MR. ALLISON: And could we go up to the top of the
 12 letter and see the heading? Keep going. Yeah.
 13 BY MR. ALLISON:
 14 Q. It's on the letterhead of the MMA, is it not?
 15 A. Yes, it is.
 16 Q. So, the MMA knew about your road, didn't it?
 17 A. It appears that way, yes, sir.
 18 Q. So, then, let's look at your--at Exhibit C-36,
 19 which I believe is the--and if we can blow up the first
 20 two paragraphs, this was the response to your request
 21 for--could you go to the English version. My Spanish is a
 22 little bad. Page 1, please, of the English version.
 23 All right. If you could blow up the first
 24 two paragraphs.
 25 We saw this earlier. This is MMA's response

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1 saying you have to present an Environmental Impact
 2 Statement; is that right?
 3 A. Yes, sir.
 4 Q. And it describes the project. And it says down at
 5 the bottom that you were going to construct relaxation and
 6 recreation areas. And it says, "At the same time, will
 7 have asphalted road."
 8 Do you see that?
 9 A. Yes, I see that.
 10 Q. So, the MMA knew you'd have a road; right?
 11 MR. Di ROSA: Mr. Chairman, I've been patient with
 12 this, but, you know, he keeps asking the witness leading
 13 questions. Every question that ends in "is it not" or
 14 "wasn't it" is a leading question, and on redirect or
 15 direct he should not be doing leading questions.
 16 MR. ALLISON: I've refrained as best I can from
 17 objections to the form of questions. I'm trying to be
 18 quick to get through these as quickly as we can.
 19 I will attempt to ask non-leading questions, but
 20 they're direct points that counter the issues that were
 21 raised earlier this morning by Mr. Di Rosa, who tried to
 22 insinuate the MMA didn't know there was a road in Phase 1.
 23 So, I'll be guided by your instruction.
 24 BY MR. ALLISON:
 25 Q. We had a lot of debate earlier today about

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1 mountain villas and cabins and the homes that were built in
 2 Phase 1.
 3 Do you remember that testimony?
 4 A. Yes.
 5 Q. And you also testified that the MMA came out to
 6 inspect Phase 1 on several occasions; right?
 7 A. Yes.
 8 Q. And at any of those inspections, was there any
 9 discussion from any MMA officials about the size of the
 10 house or the construction material of the house, or
 11 anything in that regard?
 12 A. Never.
 13 Q. And when the MMA renewed the Phase 1 permit, which
 14 was in 2012 or 2013, did the renewal of that permit include
 15 any statements of concerns or conditions or limitations
 16 about the design of any of the homes that had been built in
 17 Phase 1?
 18 A. I don't remember. I'd have to look at that. I
 19 just don't remember it.
 20 Q. Okay. We looked a little bit at Juan José
 21 Domínguez' property with Mr. Di Rosa--Mr. Di Rosa.
 22 And I want to put up Slide 20 from the Claimants'
 23 opening PowerPoint, which is a screen capture from
 24 Claimants' Exhibit 93. I don't want to subject the
 25 Tribunal to the entire video. But I just want it to be

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1 clear that--or ask you, did you have a permit to subdivide
2 and develop Phase 1 of Jamaca de Dios?

3 A. Yes.

4 Q. Did Mr. Domínguez have a permit to build any of
5 the three structures that you were debating earlier today?

6 A. Apparently not.

7 Q. And are you aware whether Mr. Domínguez had a
8 permit to deforest the top of his mountain between 2015 and
9 2017?

10 A. It's a National Park, so I would doubt it.

11 Q. We spent a lot of time on the Environmental Impact
12 Statement in which we looked at the hierarchy of impacts
13 when you were proposing Phase 1.

14 Do you remember that?

15 A. Yes, sir.

16 Q. And there were a number of impacts that Jamaca
17 disclosed concerning how construction and operation would
18 impact the environment in that document; correct?

19 A. Yes, we reviewed that.

20 Q. And the MMA--

21 MR. Di ROSA: Mr. Chairman, we just talked about
22 this. You know, he asked a question and he said,
23 "correct?" And then, of course, that induces the answer
24 "yes." You should ask open-ended questions. That's the
25 nature of direct and redirect examination.

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1 MR. ALLISON: I'll try. Thank you. I'll withdraw
2 that question.

3 BY MR. ALLISON:

4 Q. Were you fulsome in describing the impacts that
5 Jamaca de Dios would have on the environment in that
6 document?

7 A. Yes. We identified both strengths and weaknesses.

8 Q. And after the MMA reviewed that document, what
9 happened?

10 A. Well, it was reminded to me today that it was
11 incomplete, and then my environmental company went back and
12 made a more robust study, and that was approved.

13 Q. Well, I think we heard about an unintroduced
14 impact statement that was repeatedly described by
15 Mr. Di Rosa but isn't in the record.

16 But after this more fulsome Environmental Impact
17 Statement, was your project approved?

18 A. Without modification, yes.

19 Q. And I just want to look at one page of this. We
20 were there earlier today, and it's Page 26, I think.
21 Although it may be 25. We'll see.

22 PRESIDENT RAMÍREZ HERNÁNDEZ: What exhibit were
23 you referring to, Counsel?

24 MR. ALLISON: This is Exhibit R-103. I'm sorry.

25 BY MR. ALLISON:

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1 Q. And if we go to Page 26. This is what we saw
2 earlier. This is the hierarchy of impacts; correct?

3 Could you go to the next page? And could you blow
4 up the second paragraph.

5 This is some of the impacts of the operation phase
6 of Jamaca de Dios, is it not?

7 A. Yes.

8 Q. Can you describe the fourth--could you read what
9 the fourth impact of Jamaca de Dios was going to be?

10 A. Yes. We clearly state it was for ecotourism.

11 MR. Di ROSA: Mr. Chairman, he's not asking
12 questions of the witness. As you know, he criticized me a
13 lot for arguing, and he's just sort of walking the Tribunal
14 through evidence. It's not questions to the witness.

15 MR. ALLISON: I object to that. He put up a ton
16 of documents, asked him to read them. I'm asking him
17 questions about these documents just as Mr. Di Rosa was.

18 MR. Di ROSA: Yes, but I was cross-examining him,
19 Mr. Allison. You're doing redirect. There's a difference.
20 I can ask leading questions, I can show him whatever I
21 want, and you can't argue through the witness.

22 MR. ALLISON: Well, Mr. Di Rosa, if you show an
23 incomplete version of a document--

24 MR. Di ROSA: You can--

25 MR. ALLISON: --and don't show everything that's

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1 in there, I'm allowed to show more.

2 MR. Di ROSA: You can show him the document. You
3 can say--

4 PRESIDENT RAMÍREZ HERNÁNDEZ: Counsel, again, if
5 you could direct to the Tribunal.

6 MR. ALLISON: I think it's appropriate for me to
7 show him the same document that Mr. Di Rosa showed him
8 earlier to walk through the hierarchy of impacts in order
9 to try to show how impactful Jamaca de Dios was going to be
10 for the environment.

11 I'm entitled to show other impacts that relate to
12 one of the key issues of the case as to whether or not this
13 was an ecotourism project and what knowledge the MMA had of
14 that and when.

15 PRESIDENT RAMÍREZ HERNÁNDEZ: Respondent.

16 MR. Di ROSA: Mr. Chairman, he's entitled to show
17 the witness a document and to say--for example, to ask the
18 witness, "What else was important here?" or something like
19 that, as opposed to, "Can you go to Point 4 and read that."
20 I mean, that's not a question. That's, you know,
21 essentially, a leading question in a different format.

22 PRESIDENT RAMÍREZ HERNÁNDEZ: Want to move
23 forward, Claimant. Could you try.

24 MR. ALLISON: One last time.

25 BY MR. ALLISON:

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1 Q. Did you disclose to the MMA, in connection with
2 your Environmental Impact Statement, that Jamaca de Dios
3 was an ecotourism project?

4 A. Yes.

5 MR. ALLISON: No further questions.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.
7 I think, finally, Mr. Ballantine. Have dinner,
8 please.

9 THE WITNESS: I'm sorry?

10 PRESIDENT RAMÍREZ HERNÁNDEZ: Have dinner, please.

11 THE WITNESS: Oh, thank you.

12 (Witness steps down.)

13 PRESIDENT RAMÍREZ HERNÁNDEZ: I think the next one
14 is Graviel Peña. Could you call him up.

15 (Brief recess.)

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Good afternoon,
17 Mr. Graviel Peña.

18 THE WITNESS: Good afternoon.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: Would you please
20 read the statement you have in front of you. That is the
21 Witness Declaration.

22 THE WITNESS: "I solemnly declare upon my honor
23 and conscience that I will say the truth, the whole truth
24 and nothing but the truth, and my statement will be in
25 accordance with my sincere belief."

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1 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you very much,
2 Mr. Peña.

3 GRAVIEL PEÑA, CLAIMANTS' WITNESS, CALLED
4 DIRECT EXAMINATION

5 BY MR. BALDWIN:

6 Q. Good afternoon, Mr. Peña.

7 A. Good afternoon.

8 Q. You have before you the binder that you have open
9 there that contains your First Report and your Second
10 Report in this case. Do you see that?

11 (Comments off the microphone.)

12 THE INTERPRETER: I believe it's Channel 3 for
13 Spanish.

14 BY MR. BALDWIN:

15 Q. Is the translation working now, Mr. Peña?

16 A. Yes.

17 Q. Excellent. Excellenté. You don't have to switch
18 back for that.

19 Mr. Peña, you have in your binder there
20 two reports that you submitted in the case.

21 Do you see that?

22 A. Yes, these are my reports.

23 Q. And can you confirm that what are in those reports
24 are your observations and opinions regarding this matter?

25 A. That is correct.

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1 Q. Okay. And are there any corrections that you
2 would like to make to either of those reports?

3 A. No corrections.

4 Q. Now, Mr. Peña, I understand you have a PowerPoint
5 presentation that Ms. Gil is going to run.

6 A. That is correct.

7 I have a degree in law. I have a master's degree
8 in environmental management and high management. And
9 between 1999 and 2013, I was a professor at the Catholic
10 University of Cibao, where I taught ecology and
11 environment, agro-climate, general botanics and systematic
12 botanics.

13 And starting in 2010, I've been working for the
14 agricultural and forestry university, Fernando Arturo
15 de Meriño, where I teach design and project management,
16 management of watersheds and bioclimates.

17 I am also the president of the National
18 Association of Forestry Professionals from the Dominican
19 Republic, and I have been in this position since 2015.

20 I have experience in environmental areas, and I
21 also have experience in the area of law and Dominican
22 environmental proceedings, and I also have experience in
23 environmental management.

24 I reviewed the documents submitted during
25 this--the process of this claim, and in several of the

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1 documents that were provided by the Ministry of the
2 environment I observed that some documents were missing,
3 some data was missing, such as part of the technical
4 evaluation reports and also the environmental declarations
5 for the projects, as well as environmental compliance.
6 These are only some of the documents that are missing.

7 I also reviewed the decree that created the
8 National Baiguata Park. This decree shows that the process
9 did not comply with the various steps necessary for the
10 creation of the Park. The Dominican legal measures were
11 not observed to protect the landowners and also violating
12 the property right.

13 In addition, the process was poorly managed since
14 the Ministry of the Environment did not conduct--did not
15 get involved with the affected Parties prior to the
16 creation of the Park. They issued the management plan
17 five years after it was created by decree.

18 The rationale for the creation of the Park and the
19 establishment of this Park in the decree were not
20 taken--was not taken into account when defining the
21 boundaries because there are criteria such as the type of
22 vegetation, the watershed to be protected that are
23 mentioned in the decree but that were not actually
24 protected.

25 I reviewed that decree, and that's the reason why

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1 I list the rationale.

2 I reviewed the criteria established in the
3 four denials of permits for Jamaca de Dios. And based on
4 the reasons presented in my Report and also by my review of
5 the reports, I consider that they share the same conditions
6 as in the second phase of Jamaca de Dios, and the same
7 criteria could be applied to the other projects so that
8 they would be denied, such as Mirador del Pino, Jarabacoa
9 Mountain Garden, Paso Alto, Quintas del Bosque, among
10 others.

11 I reviewed the data on the Quintas del Bosque
12 project as part of my investigation, and I was able to
13 determine that it has some critical water sources that are
14 flowing towards the Yaque del Norte River, and they also
15 have more significant slopes with a higher percentage as
16 compared to Jamaca de Dios.

17 I also visited La Montaña project for the
18 preparation of my Second Report, and there I was able to
19 see that the percentages of the slopes are also higher as
20 compared to the second phase of Jamaca de Dios. The
21 vegetation is quite vast, and there is a considerable
22 portion of natural forest.

23 They also have, within the mountain terrain, an
24 important hydrological watershed for Jarabacoa because they
25 provide water to some of the residents of the city that is

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1 used as drinking water, and also for agricultural
2 production.

3 As to Jarabacoa Mountain Garden, I visited the
4 project, the Jarabacoa Mountain Garden project, and I
5 understand that this project would create greater impact on
6 the environment than the second phase of Jamaca de Dios
7 because the project has an active river that comes from the
8 Baiguate River. It is the La Artemis stream.

9 And also, the percentage of the slope is higher
10 than the one we have in the second phase of Jamaca de Dios.

11 Also, the amount of vegetation that would need to
12 be removed for the development of this project is higher as
13 compared to the Jamaca de Dios percentage, and this
14 includes the removal of trees or the--such as pines,
15 western pines and yagrumo.

16 The earth movement required for Jarabacoa Mountain
17 Garden would lead to greater impact as compared to the
18 earth movement needed for Jamaca de Dios Phase 2.

19 In the case of Monte Bonito, I visited that
20 project. And this project does not have the environmental
21 permits, but this project has also built several houses and
22 roads on slopes that have--that are greater than
23 60 percent.

24 To conclude, all of these projects hereby listed
25 and also listed in my reports would have negative--negative

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1 impacts that would be more significant than the impact of
2 the second phase of Jamaca de Dios in terms of the
3 affectation or the impairment of water sources, soil
4 erosion, loss of vegetation, impact on biodiversity.

5 However, the permits of these project were not
6 denied, and others have been working without a permit while
7 Jamaca de Dios was denied the permit.

8 If we verify this chart, where we can see aspects
9 such as percentage of the slope, altitude above sea level,
10 the condition of cloud forest and also active water source,
11 as well as the soil classification, we could state that the
12 permit should have been granted to everyone or no permit
13 should have been granted.

14 MR. BALDWIN: Thank you, Mr. Peña.

15 We pass Mr. Peña to Respondent.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Thank you.

17 MS. TAVERAS: Thank you.

18 CROSS-EXAMINATION

19 BY MS. TAVERAS:

20 Q. Good afternoon, Mr. Peña.

21 A. Good afternoon.

22 Q. My name is Claudia Taveras. I will be in charge
23 of asking you some questions this afternoon.

24 Someone has already given you or will be giving
25 you a binder with your Statements and also with some

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1 exhibits that are also included in this record of the case.
2 And I will be occasionally referring to some of these
3 exhibits.

4 And feel free to look at them if you so wish.
5 And, also, if we are referring to a specific exhibit and if
6 you are interested in reading it, please feel free to do
7 so.

8 MS. TAVERAS: We'll be here--does the Tribunal
9 have the binder? How about the other Party? Do you have
10 the material?

11 BY MS. TAVERAS:

12 Q. Then we will be discussing, this afternoon, these
13 topics. And if at some point you'd like to have a break,
14 please let us know, and there shouldn't be any problems.
15 And we will continue with the questions after your break.

16 Then, Mr. Peña, you submitted two reports in this
17 arbitration; is that correct?

18 A. Yes.

19 Q. In the first one, you explain that the owners of
20 Jamaca de Dios asked you to submit a report indicating your
21 knowledge of the facts that led to this arbitration. Is
22 this correct?

23 A. Yes.

24 Q. This implies that, at least partially, you're here
25 as a fact witness; is that correct?

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1 A. Yes, it is.

2 Q. The Ballantines also asked you to express your
3 opinion as an expert on the issues in this arbitration; is
4 that correct?

5 A. Yes.

6 Q. When you said, in your First Statement, that you
7 are an expert on the issues of this arbitration, what were
8 you specifically referring to?

9 A. I was referring to the issues that have to do with
10 the type of project management, the development of this
11 type of project, and also in connection with management
12 plans for the environment in this kind of project and also
13 the type of documents that are presented before the
14 Ministry of the Environment for the approval of this type
15 of project.

16 Q. So, in practice, in the--if you--could you please
17 clarify this?

18 A. Yes. This was in connection with the drafting of
19 the plans and also the granting of the permits.

20 Q. But you're also an attorney; correct?

21 A. Yes, I am.

22 Q. Do you think that your role in this arbitration is
23 the role of an independent expert?

24 A. It could be considered like that in part.

25 Q. Could you please elaborate?

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1 A. The first document that I was requested to draft
2 was requested by one of the affected Parties.

3 Q. Then when you drafted the first document, you were
4 doing so as a party representative, weren't you?

5 A. The answer is no because I was asked to be honest
6 in my answers.

7 Q. Mr. Peña, you stated that on behalf of the
8 Ballantines, you contacted Ms. Francis Santana?

9 A. That is correct.

10 Q. And that was to ask Ms. Santana to present a
11 Witness Statement on behalf of the Ballantines; correct?

12 A. Yes, it is.

13 Q. And you communicated with Ms. Santana that if she
14 accepted to write a Statement in this case, she would be
15 compensated for the time devoted to the case; is that
16 correct?

17 A. Yes. Yes, because time needs to be devoted to the
18 drafting of a document of that sort.

19 Q. And how would you be compensating Ms. Santana?
20 Would you be paying a lump sum, or would you be paying an
21 hourly compensation?

22 A. Well, I told Ms. Santana that I would provide her
23 with Ms. Ballantine's number so that she could agree with
24 Mr. Ballantine.

25 Q. So, you're not aware of the financial terms?

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1 A. No, I did not.

2 Q. You just knew that she was going to get paid?

3 A. Well, it is just logical that if you devote your
4 time to developing a piece of work, you are compensated for
5 that.

6 Q. Do you think that presenting or submitting your
7 Statement is the same as working?

8 A. Well, I was not the one to define the terms.

9 Q. So, that would be as a consulting job?

10 A. Well,³⁵ if you accept, I am going to provide you
11 with Mr. Ballantine's number, and then you agree on the
12 terms.

13 Q. And did you send Ms. Santana a draft of what you
14 suggested she would declare in this arbitration?

15 A. No, that was not a proposal. She asked me, "What
16 are the ideas that should be considered in this case?"

17 I said, "Well, I can give you some guidelines as
18 to what I considered for the drafting of my first document,
19 and from that point onwards you can decide whether you
20 accept it or not, and you can work along these guidelines
21 or accept new ones or adopt new ones."

22 Q. So, when you had that conversation with
23 Ms. Santana, you were acting as an agent for

³⁵ Original in Spanish: "Por eso le dije:".

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1 Mr. Ballantine? You were not acting on your behalf but on
2 his behalf?

3 A. Well, I was asked to contact her because she was
4 witness to the facts of the case.

5 Q. So, you were representing Mrs. Santana--rather,
6 you were representing Mr. Ballantine and acting as his
7 agent to contact Ms. Santana?

8 A. Yes, that is correct.

9 Q. Are we talking--now we're talking about the
10 Statement that she sent you. Do you confirm that you
11 drafted her Statement?

12 A. No, I did not. I did not draft her Statement.
13 When we met in the Agora Mall in Santo Domingo, she asked
14 me about the ideas for that Statement.

15 I said, "I can give you a draft of some concepts
16 that you may use as a guideline."

17 But this is just a sample of some ideas. But this
18 is not what she should have said, just guidelines to be
19 used as a model.

20 (Comments off microphone.)

21 PRESIDENT RAMÍREZ HERNÁNDEZ: Mr. Peña, please
22 continue.

23 BY MS. TAVERAS:

24 Q. Did the Ballantines ask you to approach any other
25 fact witness?

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1 A. No, I do not recall.

2 Q. In the role as an expert, you worked with the

3 expert ³⁶from the Dominican Republic in the visit that took

4 place in 2017 for the area in which the expansion would

5 have taken place; correct?

6 A. Yes.

7 Q. So, as part of the presentation of the statements

8 in this proceeding--so in addition to assisting the

9 Ballantines with the location and the identification of the

10 experts³⁷ and also assisting in the visits of the experts,

11 your scope--what else was included in your scope as an

12 expert?

13 A. I was asked to conduct an assessment of the

14 documents that had been presented, and also a field

15 assessment of some aspects that had to be determined and

16 assessed in the situation. And this was part of the work

17 that was conducted.

18 Q. The Ballantines, are they paying you for your

19 testimony in this arbitration?

20 A. The Ballantines are paying me for consulting work

21 I performed.

22 Q. What does that work consist of?

³⁶ Original in Spanish adds: "al licenciado Sixto Incháustegui".

³⁷ Original in Spanish "contratación de testigos".

1 A. Field information, collection, research,

2 assessment of documents submitted by the Parties,

3 confirmation that the information included in those

4 documents correspond with reality.

5 Q. And those consulting activities, do they have to

6 do with this case?

7 A. Yes, with this case.

8 Q. They only have to do with this case; right?

9 A. Yes, only with this case.

10 Q. Are you providing services to the Ballantines that

11 you're being compensated of in any other capacity?

12 A. No.

13 Q. Have you provided services to them in the past?

14 A. No.

15 Q. In your First Statement, you explain that you were

16 the Municipal Director of the Environment starting in 2010

17 and then until 2013; correct?

18 A. Yes.

19 Q. And this is a position within the structure of the

20 Minister of the Environment; correct?

21 A. Yes.

22 Q. But physically, this is located in the

23 Municipality of Jarabacoa. That is why you're called the

24 Municipal Director?

25 A. Yes.

1 Q. You were in that position uninterruptedly between

2 2010 and 2013?

3 A. No. In 2011, between June and October, I was out

4 of that position.

5 Q. At Paragraph 10 of your First Statement, and you

6 have it in your binder, you say the following: "I have

7 reviewed the four MMA letters to the Ballantines rejecting

8 their expansion permit," and then it describes the letters.

9 "Three of these letters were sent during³⁸ the time I was

10 the local director of the MMA for Jarabacoa."

11 But you just said to us that you were not at the

12 Ministry between June and October 2011. That means that in

13 spite of the fact that in your Statement you indicated

14 this, you were not the Municipal Director in Jarabacoa at

15 this date, 12 September 2011, when the expansion permit was

16 rejected for JDD; correct?

17 A. Yes. But I must clarify that I was suspended

18 because of an administrative proceeding, but under the law,

19 I had to be reinstated. So, the three months that

20 was--that I was out of my position are legally valid for

21 the application of the administrative procedure in the D.R.

22 Q. We're talking about facts, Mr. Peña. You said

23 that you were the Municipal Director--

³⁸ English Audio Day 2 at 06:56:11

1 A. Yes, that's right.

2 Q. --between 2011 and 2013, and that you were the

3 Municipal Director at the time of the rejections.

4 But right now you're saying that you were not the

5 Municipal Director when the first letter was sent?

6 A. Yes, that's right.

7 Q. So, you're saying that there is an error in your

8 Statement?

9 A. Well, there may be an error in that case.

10 Q. In your Witness Statement, you indicated that a

11 large number of projects in Jarabacoa did not have the

12 corresponding environmental licenses; is that correct?

13 A. Yes.

14 Q. You also indicated that during your tenure, you

15 did everything possible to ensure that all projects had the

16 relevant licenses but that that was not possible; is that

17 right?

18 A. Yes, that's right.

19 Q. When you were Municipal Director, how many

20 technicians for oversight purposes had the Ministry sent to

21 the Jarabacoa division?

22 A. 11.

23 Q. Did you consider 11 technicians was not enough?

24 A. No, that was not enough.

25 Q. Mr. Peña, we were talking about your suspension.

1 A. Yes.

2 Q. That suspension had to do with something related
3 to the Ballantines' case?

4 A. Are you talking about the one in 2011?

5 Q. Yes.

6 A. No. The one in 2011 had to do with a permit for
7 forest exploitation. And at the time, the Ministry thought
8 that that permit was ill-grounded. But when the action was
9 assessed, it was shown that it was justified, so they had
10 to go back on their decision to suspend.

11 Q. Was there any other suspension that we are not
12 aware of?

13 A. No, there wasn't.

14 Q. Well, I'm asking you because we did not have any
15 knowledge of this suspension of 2011, so it's a fair
16 question.

17 Anyways, if there is a project that may impact the
18 environment, the law establishes that a promoter, before
19 starting the project, must obtain the relevant
20 environmental license; is that correct?

21 A. Yes, that's correct.

22 Q. That environmental permit can only be issued if
23 after an environmental assessment study--

24 A. Yes.

25 Q. --the Ministry states that it's valid.

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1 Please wait until I finish my questions for
2 transcription purposes.

3 When you prepared for your testimony in this
4 arbitration, you indicated that you looked at this--one of
5 the reports prepared by the MMA in connection with the
6 expansion project of JDD; correct?

7 A. Yes, that's correct.

8 Q. I'm referring specifically to the report presented
9 by Socrates Nivar³⁹. He was in charge of the technical
10 assistance of the Ministry of 21 March 2011. Could you
11 please look at that document. It's in your binder under
12 R-4.

13 In your Statement, you indicated that you are
14 criticizing the content and quality of this report?

15 A. Yes, that's right.

16 Q. At Paragraph 26 of your First Report, you say that
17 the report is so deficient that you don't think that a real
18 assessment took place; is that true?

19 A. Yes, that's correct.

20 Q. You said this because you understand that a
21 correct assessment of the basics of a project must be based
22 on technical and scientific measures and also on
23 assessments; is that correct?

³⁹ English Audio Day 2 at 07:00:56

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1 A. Yes.

2 Q. And that that needs to be conducted by a
3 multidisciplinary team; is that correct?

4 A. Yes.

5 Q. Specifically, you say that Mr. Yarull⁴⁰ should have
6 submitted evidence in connection with the characteristics
7 of the soil, altitude and slopes. Is that true? This is
8 Paragraph 25--at Paragraph 25 on your statement.

9 A. Yes.

10 Q. Do you understand that these aspects are important
11 when conducting an environmental evaluation of a mountain
12 project?

13 A. Yes, that's right.

14 Q. In Paragraph 27 of your Statement, you criticize
15 the fact that Mr. Nivar's⁴¹ report does not define the
16 geomorphologic impacts on the land, impacts on the soil,
17 impacts on the flora and fauna, and impacts on the water
18 runoff and underground water that were brought about by
19 this project. Is that right?

20 A. Yes, that's correct.

21 Q. The assessment of these impacts is important when
22 conducting an environmental assessment; is that correct?

⁴⁰ Original in Spanish: "Nivar".

⁴¹ English Audio Day 2 at 07:02:58

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1 A. Yes.

2 Q. Did you read the First Witness Statement of
3 Zacarías Navarro?

4 A. I think so.

5 Q. Mr. Navarro explains in his statement that when
6 the Ministry assesses mountain projects, it has to take
7 into account several factors: altitude, slope, the amount
8 of rain that falls, the kind of soil, and water issues. At
9 Paragraph 6 of your second statement --

10 MR. BALDWIN: I'm sorry, Mr. President. I hate to
11 object, but she's talking about--she's--Ms. Taveras is
12 talking about what's in the Navarro report. We haven't
13 been pointed to it. The witness hasn't seen it. She's
14 just testifying as to her characterization of what's in it.

15 Could we look at it is as we're talking about it
16 or allow the witness to. If the witness is going to be
17 asked a question about it, I think the witness should be
18 allowed to see that portion of Mr. Navarro's report.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: The way I understand
20 it, Ms. Taveras was taking the witness through the
21 paragraphs. So I don't see anything--maybe if you can go
22 slower.

23 MS. TAVERAS: Yeah, I could go slower.

24 PRESIDENT RAMÍREZ HERNÁNDEZ: I think you were
25 taking--

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1 MS. TAVERAS: He can look at the Report. But he
2 did say he read it, so this is not unknown to him.

3 Kaila, can you please--thank you.

4 THE WITNESS: Very well.

5 BY MS. TAVERAS:

6 Q. Okay. I was saying that Mr. Navarro explained in
7 his statement that when the Ministry assesses mountain
8 projects, it has to take into account several factors:
9 altitude, the slope, rain, et cetera.

10 At Paragraph 6 of your second statement, you said
11 that before looking at the Statement of Defense of the
12 Dominican Republic, you never heard of factors like
13 altitude and others had to be considered at the time when
14 assessing lands with a slope?

15 A. Can I read it? "I have read the statements of the
16 D.R., that they considered things like altitude and other
17 factors when deciding whether to grant a permit for land
18 that has slopes. Seeing that in the Statement of Defense
19 was the first time I have ever heard of that. I never
20 heard before these alleged considerations.

21 I have not seen any documents that advised and
22 inspectors and technical persons to consider all these
23 additional elements while examining the slope issue."

24 What I was explaining in that case is that the
25 issue of the slope and altitude has never been considered

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1 as still-related issues. There's no directly established
2 connection between these two factors.

3 Q. But you just said that it's important to assess
4 the altitude, soil, slope characteristics and to consider
5 the impacts on soil, flora and fauna, water bodies. So
6 your answer seems inconsistent. Because we're not talking
7 about assessing slopes here. We're talking here about
8 assessing projects; right?

9 A. My answer is not inconsistent. I can have a piece
10 of land with a 7⁴²-percent slope at 300 meters over sea
11 level, and I can have a land at 900 meters over the sea
12 level with a 20-percent slope. And those two factors, the
13 relation between those two factors are not necessarily the
14 ones that are going to be used to determine the approval or
15 not of a project.

16 Q. But Mr. Navarro was not talking about only two
17 factors. But you say here yourself, you said, "Altitude
18 and other factors"; right?

19 A. Yes, other factors are considered.

20 Q. Please go to Tab R-236.

21 MS. TAVERAS: Can we show it on the screen,
22 please. Rather, it's R-326.

23 BY MS. TAVERAS:

42 Original in Spanish: "70".

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1 Q. This is a form from the municipal office of
2 Jarabacoa; correct?

3 A. Yes.

4 Q. This is a printed form that is to be completed by
5 hand; correct?

6 A. Yes.

7 Q. And this form shows the findings of the
8 technicians that were part of visits when requests could
9 affect soils and waters were put forth; correct?

10 A. Yes.

11 Q. Had you seen this report before?

12 A. I designed this form.

13 Q. Here we have a date, 1 March 2011. And this is
14 the date on which the municipal office received this
15 document; correct?

16 A. Yes.

17 Q. And the inspection date 6 April 2011 is the date
18 on which the visit was done--made by the technicians;
19 correct?

20 A. Yes.

21 Q. You were the technical director of Jarabacoa on
22 both dates; correct?

23 A. Yes.

24 Q. This form would be presented to you so that you
25 could determine whether an authorization is to be granted

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1 or not?

2 A. No. That form was used to collect field data when
3 an owner requested a permit.

4 Q. Okay. Exactly. As a municipal director, you were
5 submitted this form and then on the basis of the findings,
6 you would decide whether the authorization was to be
7 granted or not granted?

8 A. Well, it was the technical team of the office, not
9 me.

10 Q. Yes. But you were the technical director of the
11 municipal office; right?

12 A. Yes.

13 Q. Can you show, please, the first of these forms.
14 This refers to Lot 67 of JDD; correct?

15 A. Yes.

16 Q. This has to do with cuts in order to build a road
17 50 meters long and 4 meters wide; correct?

18 A. Yes.

19 Q. You agree that JDD is located in slopey land;
20 correct?

21 A. Yes.

22 Q. Well, you say this in your First Statement. When
23 you say that JDD is a land that has slopes of over
24 60 percent; correct?

25 A. Yes.

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1 Q. If you look at six, you're going to see that it
2 refers to general description of the area, and it looks at
3 the soil and climate factors taken into account when
4 requesting a permit. 6.1.1, height. 6.1.2, annual
5 rainfall. 6.1.3, annual mean temperature⁴³. 6.1.4, hold
6 ridge life zone. 6.1.5, type of soil. 6.1.6, topography.
7 6.1.7, water sources.

8 Would you agree with me that in order to assess
9 lands with slopes, such as JDDs, the factors I have just
10 cited are important to sign this form?

11 A. Yes, they are important.

12 Q. I would like to understand how involved you were
13 in the JDD evaluation process. You were not part of the
14 technical visit to assess⁴⁴ the expansion project in
15 February 2011?

16 A. No.

17 Q. You were not involved in the visit that took place
18 on 17⁴⁵ March 2011; correct?

19 A. I did not.

20 Q. You were not involved in the third technical visit
21 on 11 January 2012; correct?

⁴³ English Audio Day 2 at 7:12:37

⁴⁴ English Audio Day 2 at 7:13:33

⁴⁵ Original in Spanish: "18".

1 A. Yes.

2 Q. The field visit on 11 January 2012?

3 A. 11 January 2012, you say?

4 Q. Yes.

5 A. I do not recall, no.

6 Q. We can show the field visit report and your name
7 is not there.

8 A. I do not recall.

9 Q. You were not involved in the fourth and fifth
10 visit by the Ministry in August and September 2013;
11 correct?

12 A. Well, I had been suspended.

13 Q. You had been suspended for a second time?

14 A. Yes, that's right.

15 Q. Two different ministers; right?

16 A. Two different ministers. That's correct.

17 Q. So you were not involved in any of the technical
18 visits made by the Ministry to assess the JDD expansion
19 project; correct?

20 A. I was not.

21 ARBITRATOR VINUESA: When he says no, was he
22 there? Was he not there?

23 THE WITNESS: No, I was not there.

24 BY MS. TAVERAS:

25 Q. Okay. You were not present in any of the visits?

1 You were not present in any of the visits. You say it,
2 please. For the record, please.

3 A. I was not present in any of the visits.

4 Q. You were not present in the Technical Evaluation
5 Committee in 2011--May 2011?

6 A. Yes, I was.

7 Q. Would you like to look at your First Statement
8 when you say that you were not present during the meeting
9 of the Technical Evaluation Committee of 18 May 2011?

10 A. Oh, yes, yes, yes. You're right. I was not there
11 because the provincial director was at the meeting,
12 Mr. Franklin Bautista.

13 Q. And you would agree with me, now that you're
14 saying this to me, that the provincial director is the one
15 that goes to the Technical Evaluation Committee visits?

16 A. Yes, I agree. But the MMA, when it deemed
17 pertinent, and I don't know why it would deem it pertinent,
18 they called on the municipal director or the provincial
19 director.

20 Q. But the regulations at the time only talk about
21 the provincial⁴⁶ director; correct?

22 A. Yes. But that was a decision by the Ministry to
23 call on one or the other of these two officials.

⁴⁶ English Audio Day 2 at 07:16:38

1 Q. In your First Statement, you said that--Paragraph
2 10 of your First Statement, that⁴⁷ the Ministry excluded
3 local personnel in connection with the granting of this
4 license?

5 A. Yes.

6 Q. But you're saying now that the provincial director
7 was there. And by regulation, the provincial director must
8 be there?

9 A. Yes. But this was a customary rule. The Ministry
10 went against that kind of procedure.

11 Q. Please answer the question as asked, please.

12 A. Excuse me?

13 Q. The question was: That you are admitting now
14 that--excuse me--the Technical Evaluation Committee meeting
15 of 18 May 2011--well, the person that was called to attend
16 it was the person that, by regulation, had to be called to
17 attend that meeting, yes or no?

18 A. Yes.

19 PRESIDENT RAMÍREZ HERNÁNDEZ: But, Mr. Peña, when
20 you mentioned that by custom--you said that rule was
21 violated, what are you referring to when you say that?

22 THE WITNESS: The MMA, and I don't know the
23 reasons why they acted that way. When the MMA thought that

⁴⁷ Original in Spanish adds: "que contrariamente a todas las normas".

1 for a certain procedure--well, sometimes they called on the
2 provincial director and sometimes for the assessment of
3 another project, they called on the municipal director.
4 They changed. And they called them one or the other. I
5 don't know the reasons why.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: Was there any legal
7 basis for this; that is, what the lawyer was asking? This
8 was a--simply an issue of practice by the Ministry?

9 THE WITNESS: Yes, this was just a matter of
10 practice by the Ministry.

11 BY MS. TAVERAS:

12 Q. You were not called to attend the meeting of 18
13 May 2011, but you were called to participate at the meeting
14 in February 2012?

15 A. Yes. I think that's right.

16 Q. So it's not that you were not being allowed to be
17 part of the meetings of the committee. But in May, the
18 provincial director went, and then in the next year in
19 February, you attended the meeting; is that correct?

20 A. Well, that depends on when--what you mean by that
21 we're trying to hide information.

22 Q. In your statement, you say that "contrary to our
23 rules, the Ministry excluded local personnel from this
24 meeting."

25 You answered that the provisional director was

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1 included in the first meeting. When you're saying here
2 "excluded," it suggests that they didn't want you to be
3 present. But you were present at one of the committee
4 meetings where discussions were had in connection with the
5 projects?

6 A. Yes, but not in connection with the assessment of
7 the fieldwork.

8 Q. In your First Witness Statement, you said that at
9 those meetings--

10 A. What paragraph?

11 Q. Paragraph 11. We're talking about the TEC meeting
12 of February 2012. You said that no technical issues were
13 discussed at that meeting.

14 A. You're making reference to that right now? At
15 that meeting, the opinion was asked of the person
16 coordinating the field commission and no discussion was had
17 of the information. A decision was made in connection with
18 what he said. That's what I'm making reference to there.

19 Q. In your First Statement, you said that the opinion
20 of Zacarías Navarro was the only opinion that was asked;
21 correct?

22 A. Yes, that's correct.

23 Q. And that that statement was denied by Mr. Navarro
24 in his First Statement. And Mr. Navarro also explained at
25 Paragraph 15 of his First Statement, when he made reference

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1 to the documents, including the files of the Ministry
2 related to JDD.

3 And if you look at Mr. Navarro's statement before
4 you, Paragraph 15 says that "the minutes of the meeting on
5 February 22nd, 2012, Mr. Peña said that he participated in
6 that meeting. And he confirms that in addition to the
7 reports presented, the decisions made in connection with
8 the reservation request had to do with the opinions of the
9 provisional director, D.P."

10 He was represented by Mr. Peña, according to his
11 statements and his statements and the statements of Ramon
12 Villaman, who was then a technician from the Vice Ministry
13 of Soils and Water, and Mr. Mateo, the Director of
14 Biodiversity of the Ministry of Protected Areas and
15 Biodiversity.

16 In your Second Witness Statement, you said that
17 perhaps you were wrong in connection with the participation
18 of Mr. Navarro at that meeting.

19 Is it possible that you're also misremembering the
20 discussions held there?

21 A. I am sure about the discussions held there.
22 Perhaps I was wrong in connection with the participation of
23 Mr. Navarro. Because at that date, many members of the
24 personnel of the MMA had changed positions. We had new
25 staff members coming in. Some people have moved to other

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1 offices. And since we didn't have any idea as to the fact
2 that we were to come to a proceeding such as this, we
3 weren't really taking down each one of the events in a
4 situation like that because we thought that everything was
5 done correctly.

6 Perhaps I made a mistake when I said that
7 Mr. Navarro was there. But not as to what happened at the
8 meeting.

9 Q. So, you're saying, then, when the minutes were
10 drawn up and they make reference to comments made by D.P.,
11 Mr. Navarro said that perhaps it's you representing the
12 provincial director. This does not make reference to
13 comments that you made?

14 A. No.

15 Q. In your First Statement, you indicated that Aloma
16 Mountain is between--

17 PRESIDENT RAMÍREZ HERNÁNDEZ: What paragraph are
18 you referring to?

19 MS. TAVERAS: I am referring to Paragraph 8.

20 BY MS. TAVERAS:

21 Q. In your First Witness Statement, you are saying
22 that Aloma Mountain is between the projects that are
23 developed and that are being operated--or one of the
24 projects that are being operated and developed in Jarabacoa
25 without the permits. When you are saying that the project

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1 is developed and operated in the case of Aloma, are you
 2 referring to the original real estate project or is it a
 3 different one?

4 A. There is only one Aloma Mountain project.

5 Q. Then are you stating now that the Aloma Mountain
 6 project is operating and it has already been developed?

7 A. In our opinion, operation and development is every
 8 single activity that takes place from the very beginning
 9 with the movement of the first stone up to the completion
 10 of the construction. And in Aloma Mountain, roads were
 11 built, the power grid posts were laid out, installed, and
 12 also there was subdivision taking place, and there were
 13 movements inside.

14 Q. So that is--so you're not referring to the
 15 commercial operation, are you?

16 A. Well, there was a proposal to sell. So that is a
 17 commercial operation.

18 Q. But you just said that you are referring to
 19 the--any sort of involvement with the environment; isn't
 20 that correct?

21 A. Yes.

22 Q. You just stated that you--that the streets had
 23 been laid out and the subdivision had taken place. But the
 24 document in your binder labeled R-340 shows some

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1 comparative maps⁴⁸ for Aloma between 2002 and 2017. There
 2 are 40 areas there shown in those maps. And there is no
 3 development within Aloma.

4 We can see the layout of the streets between 2011
 5 and 2017, and then there is not much of a difference.

6 A. There is a difference.

7 Q. Do you see any real estate development?

8 A. I said before that in our opinion, from the point
 9 of view of the management, development goes from the
 10 movement of the first stone to the construction of the
 11 buildings and also the operation of the buildings.

12 So there is development in Aloma Mountain because
 13 roads have been built, vegetation has been moved, so there
 14 is a development.

15 Q. The question was whether there was any real estate
 16 development. Have new houses been built in Aloma?

17 A. There is a house that belongs to the owner of the
 18 development.

19 Q. But that house was there before 2003; correct?

20 A. Well, I don't know how old that building is
 21 because I don't know when that was built. ⁴⁹

22 Q. Could we please look at R-48 in your binder. Page

⁴⁸ Original in Spanish: "And the maps here in this area are for 2002, '06,
 '11 and '17".

⁴⁹ Misplaced text.

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1 4 in this document contains a document dated October 4th,
 2 2012, that was sent to you by technicians from your own
 3 office in connection with a violation in the Jamaca
 4 project; is that correct?

5 A. Yes, it is.

6 Q. Do you remember that violation, what that was
 7 about?

8 A. (No audible answer.)

9 Q. Would you please look at Paragraph 3 on Page 5.

10 A. Yes, I'm looking at it. I will read it for the
 11 rest of the attendees. "The infraction of violation
 12 consists of the opening of an access road approximately
 13 7⁵⁰ meters in length, 5 to 8 meters wide, and cuts between 1
 14 and 5 meters in depth. It borders a ravine, and its middle
 15 part of a distance of 10 to 20 meters.

16 Likewise, it was noted that a large part of the
 17 soil that was cut fell into the water of the aforementioned
 18 water source, and the rest is sliding downhill along the
 19 same road.

20 Q. Your technicians opined that it was preposterous
 21 for Mr. Ballantine to have violated the rules like this
 22 because there has been a refusal or a denial of his intent
 23 to extend the project; is that correct?

⁵⁰ Original in Spanish: "700".

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1 A. Yes, it is.

2 Q. This is stated at Paragraph 2. And this is a road
 3 that was built by Jamaca de Dios after their permit had
 4 been denied towards the south of the property, that is to
 5 say in the upper portion of the mountain?

6 A. That is correct.

7 Q. So contrary to the position that your technicians
 8 put forward, who said that it was an intentional or
 9 voluntary violation when they sent this to the Vice
 10 Minister, you consider some sort of--you're requesting some
 11 sort of consideration for Jamaca when imposing--at the time
 12 of the fine. And even though a street that was about
 13 700 meters long and that had a--and that it was about 5 to
 14 7⁵¹ meters wide, a fine of only 51,000 pesos was determined
 15 established for Jamaca; is that correct?

16 A. Yes.

17 Q. That would have been \$2,500⁵² back then; correct?

18 A. Yes, about that.

19 Q. So is the municipal director charged with the
 20 responsibility to act on behalf of local individuals so
 21 that reductions be assessed to the fines imposed due to a
 22 violation of the environmental law?

⁵¹ Original in Spanish: "8 metros".

⁵² Original in Spanish: "1,500".

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1 A. No, it's not part of his responsibilities.

2 Q. You indicated that Jarabacoa Mountain Garden was
3 approved because of political connections; is that correct?

4 A. Yes, it is.

5 Q. You said that this was communicated to you by
6 Edwin Mejía, who started to work with the Ministry in
7 obtaining the approval?

8 A. That is correct.

9 Q. You communicated with Mr.--did you contact
10 Mr. Mejía to be a witness in this case?

11 A. No, I did not.

12 Q. So you did not contact Mr. Mejía because you
13 thought that he would not be corroborating your story;
14 correct?

15 A. No. I did not ask him to participate because I
16 understood that Mr. Mejía, because of his political ties,
17 would not accept to confirm that version that is not
18 favorable for him.

19 Q. But this is a very serious accusation. You are
20 saying that the Ministry technicians approved a project
21 that they knew was not feasible because of political favor.
22 Don't you think that given the seriousness of the
23 accusation, it was important to verify it?

24 A. It is a serious, severe accusation, and I am
25 ratifying this because of my experience due to that

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1 problem. But I did not ask Mr. Mejía to participate
2 because I am certain that to protect his own interests and
3 the interests of his own political fellows, he would have
4 not accepted to participate in this process.

5 PRESIDENT RAMÍREZ HERNÁNDEZ: If you allow me. I
6 would like to go back to the violation. And I would like
7 to understand the criteria used when a violation of this
8 type occurs. Because you received a report indicating
9 there was a violation. Is it your whole discretion to
10 determine the violation or what are the criteria used to
11 impose the fine? Or to follow a manual, a guideline?

12 THE WITNESS: Those violations are not decided at
13 the level of the local directorate, but they are decided at
14 the headquarters of the Ministry. Then⁵³ we sent the report
15 and the Ministry decided to impose that fine.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: But to be clear, you
17 recommended that fine?

18 THE WITNESS: No, we do not make recommendations
19 of that sort.

20 PRESIDENT RAMÍREZ HERNÁNDEZ: In this case?

21 THE WITNESS: We do not recommend in this case or
22 in any other case. The local director does not recommend
23 any fines. We submit the reports, and the national

⁵³ Original in Spanish: "Nosotros remitimos el informe".

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1 directorate, the Ministry at headquarters, is the one that
2 decides on the fine.

3 I did not decide on 51,000 pesos to be imposed to
4 Michael or whether it was going to be a million pesos. It
5 was not my decision. It was the decision of the
6 technicians with the Ministry based on the reports they
7 received.

8 BY MS. TAVERAS:

9 Q. But you did decide to send that violation report
10 as a violation by Mr. Ballantine rather than a violation by
11 Jamaca de Dios; is that correct?

12 A. I do not recall why we established that
13 difference.

14 Q. Wouldn't it be because there is a formula under
15 the law that applies violations based on the equity that
16 the companies have, and that would have been much higher
17 than the fine that Mr. Ballantine had to pay as a physical
18 person?

19 A. I do not believe that was the case because I don't
20 think there was such a differentiation back then. But I
21 don't know. I cannot be specific why we decided not to do
22 it with Jamaca or to impose it to Michael.

23 PRESIDENT RAMÍREZ HERNÁNDEZ: What law are you
24 referring to?

25 MS. TAVERAS: I am referring to Article 167 of the

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1 environmental law.

2 BY MS. TAVERAS:

3 Q. So let's go back to your criticism of Mr. Nivar⁵⁴.
4 That was R-4, the one we were referring to before.

5 In your First Witness Statement, you made two
6 specific comments/criticisms that I would like to explore.
7 At Paragraph 32 of your First Statement, you say, "In
8 connection with the report by Mr. Nivar⁵⁵--and I am going
9 to read it, and you can look for it in your own statement.
10 The Report indicates that--the Report points out
11 "that on the land, no type of protection of the work was
12 seen nor the access roads or at the villas, which,
13 according to the report, will lead to landslides."
14 And later on the paragraph ends with the
15 statement, "That there has been a clumsy distortion of
16 reality, because those conditions do not exist at the
17 Jamaca de Dios project."
18 What are you referring to? Are you denying that
19 there were any landslides, or are you denying that there
20 was evidence, or are you stating that there was no evidence
21 of any landslides?

22 A. What I am stating at that paragraph is that

⁵⁴ English Audio Day 2 at 07:36:48

⁵⁵ English Audio Day 2 at 07:37:08

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1 Mr. Nivar⁵⁶ said that there was no evidence of protection.
2 But there was evidence of protection with vegetal cover,⁵⁷
3 and there is were also the rows of culverts for the
4 protection from the runoff. And there was--there are
5 elements, but he said that none--no protection was
6 implemented. And that is what I am referring to.

7 Q. But even with that protection, you would admit
8 that there were landslides in Jamaca de Dios?

9 A. All of the mountain projects have those problems.
10 So that's the reason why there is a management--an
11 environmental management program that includes protections
12 as well as mitigation of that type of event.

13 Q. At Paragraph 31 of your First Statement, you state
14 that the report--and this is in connection with the Report
15 at R-4⁵⁸. The report states that "the project is
16 constructed⁵⁹ with inadequate material and some of the
17 buildings have up to three levels made of concrete blocks
18 and cement."

19 And later on you indicated that the Report does
20 not provide any specific evidence of any of these claims.

⁵⁶ English Audio Day 2 at 07:38:10

⁵⁷ English Audio Day 2 at 07:38:26

⁵⁸ English Audio Day 2 at 07:39:13

⁵⁹ English Audio Day 2 at 07:39:18

1 I would like to understand what you are referring
2 to with that comment.

3 Are you denying that the buildings exist or are
4 you criticizing that there is no evidence attached to the
5 report to prove their existence?

6 A. I am questioning that reports were not added
7 because there is no document attached to the Report that
8 determines the type and the quality of the material that he
9 considers inadequate.

10 Q. So it has to do with the methodology?

11 A. Yes, it could have to do--it could be related to
12 methodology.

13 Q. You have presented two reports in this proceeding;
14 correct?

15 A. Yes.

16 Q. And there, you provide prolific information that
17 has to do with the loan, with the agricultural bank, and
18 also your observations and the topographical features of a
19 dozen projects. And today, we saw how in your presentation
20 you referred to projects such as La Montaña, Jarabacoa
21 Mountain Garden, and other projects.

22 My question to you is whether you presented any
23 exhibit or attachment to those reports?

24 A. Yes, I did include exhibits.

25 Q. But those exhibits were not included when they

1 were submitted to the Tribunal. Could you explain why?

2 A. No, because I was not in charge of handling those
3 reports or--I don't know why all the exhibits were not
4 attached when they were submitted, but they did include
5 exhibits.

6 Some reports also indicate Exhibit X. Exhibit X
7 because, for example, they were part of those reports.

8 Q. Would you please state where in your First Report
9 you are referring to an exhibit.

10 A. (Reviewing documents.)

11 The answer is no.

12 Q. Then you confirm that⁶⁰ in your First Report,
13 you're not referring to any exhibit to support the
14 statements in your report?

15 A. Yes, that is correct.

16 MS. TAVERAS: I have no further questions for you,
17 Mr. Peña. Thank you very much for the time.

18 But⁶¹ to answer the question by the president, I
19 would like to refer you to C-7, Page 3. That is the
20 exhibit that shows the fine imposed to Jamaca de Dios in
21 2009, and that fine applies Article 167 of Law 64-00.
22 Thank you.

⁶⁰ English Audio Day 2 at 07:44:20

⁶¹ Word not found in original in Spanish.

1 PRESIDENT RAMÍREZ HERNÁNDEZ: Redirect?

2 MR. BALDWIN: We have no questions, Mr. President.

3 PRESIDENT RAMÍREZ HERNÁNDEZ: Very well. Thank
4 you very much, Mr. Peña.

5 THE WITNESS: Thank you.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: I apologize,
7 Mr. Peña. I need to consult with my co-arbitrators whether
8 they have any questions. I apologize.

9 Thank you, Mr. Peña.

10 (Witness steps down.)

11 PRESIDENT RAMÍREZ HERNÁNDEZ: I'm looking at
12 Respondent. So what's the plan?

13 MR. Di ROSA: Mr. Chairman, I think we should make
14 a push with the next witness. And, you know, with any
15 luck, maybe we get through it, and we'll see what happens.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Yeah.

17 MR. Di ROSA: I mean, if it has to be like five
18 minutes more, can you hold on, or 10? Or is it really a
19 hard stop at 6:30?

20 PRESIDENT RAMÍREZ HERNÁNDEZ: No. I think we can
21 make it 6:40, 6:35. No, it has to be--

22 MR. BALDWIN: I'm sorry. I would like to--the
23 next person is Eric Kay who, likewise, has a report--or
24 likewise has a presentation, and I expect that will take
25 about 20 minutes. So that might take us to the end of 6:30

1 just with that part of that process. So I'd say it's up to
 2 Respondent whether they want that started.

3 MR. Di ROSA: That's fine. Maybe then he presents
 4 and we end there. I don't know that it would make sense to
 5 start the cross-examination immediately after.

6 PRESIDENT RAMÍREZ HERNÁNDEZ: I would rather have
 7 it in one go, the presentation as well as the questions.
 8 So would the Parties be agreeable to waking up a little bit
 9 earlier? Maybe we could start--certainly, the Tribunal is.
 10 I'm looking to Mr. Di Rosa.

11 MR. Di ROSA: I think counsel agreed that we would
 12 not do that.

13 PRESIDENT RAMÍREZ HERNÁNDEZ: Okay. So maybe we
 14 can start earlier, and my proposal will be 8:30.

15 MR. Di ROSA: Okay.

16 PRESIDENT RAMÍREZ HERNÁNDEZ: Well, let's be early
 17 risers. I teach at 7:00, so don't complain. Okay. So we
 18 meet 8:30 tomorrow.

19 MR. BALDWIN: Yes. Thank you, Mr. Chairman.

20 MR. Di ROSA: Thank you, Mr. President.

21 (Whereupon, at 5:54 p.m., the Hearing was
 22 adjourned until 8:30 a.m. the following day.)

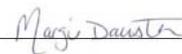
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I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.



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