

BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF  
INVESTMENT DISPUTES

ICSID Case No. ARB/19/6

-----x  
 In the Matter of Arbitration Between: :  
 :  
 ANGEL SAMUEL SEDA AND OTHERS, :  
 :  
 Claimants, :  
 :  
 and :  
 :  
 REPUBLIC OF COLOMBIA, :  
 :  
 Respondent. :  
 -----x

Volume 2

VIDEOCONFERENCE: HEARING ON JURISDICTION AND MERITS

Tuesday, May 3, 2022

The World Bank Group  
1225 Connecticut Avenue, N.W.  
Conference Room C 3-100  
Washington, D.C.

The Hearing in the above-entitled matter  
came on at 9:30 a.m. before:

PROF. DR. KLAUS SACHS  
President of the Tribunal

PROF. HUGO PEREZCANO DÍAZ  
Co-Arbitrator

DR. CHARLES PONCET,  
Co-Arbitrator

ALSO PRESENT:

MS. SARA MARZAL YETANO  
Secretary to the Tribunal

Realtime Stenographers:

MR. DAVID A. KASDAN  
Registered Merit Reporter (RMR)  
Certified Realtime Reporter (CRR)  
B&B Reporting/Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
United States of America

MR. LEANDRO IEZZI  
MR. RODOLFO VALERIO RINALDI  
D.R. Esteno  
Colombres 566  
Buenos Aires 1218ABE  
Argentina

Interpreters:

MR. CHARLES H. ROBERTS

MS. SILVIA COLLA

MR. DANIEL GIGLIO

APPEARANCES:

On behalf of the Claimants:

MR. RAHIM MOLOO  
MS. ANNE CHAMPION  
MS. MARRYUM KAHLOON  
MR. BEN HARRIS  
Gibson, Dunn & Crutcher, LLP  
200 Park Avenue  
New York, New York 10166-0193  
United States of America

MR. PEDRO G. SOTO  
MS. ANKITA RITWIK  
Gibson, Dunn & Crutcher, LLP  
1050 Connecticut Ave N.W.  
Washington, D.C. 20036  
United States of America

MR. ALEJANDRO MEJÍA  
MR. JUAN PABLO PANTOJA RUIZ  
Cáez Muñoz Mejía Abogados  
Cra. 17 ##89-31  
Bogotá, Colombia

Party Representatives:

MR. ANGEL SEDA  
MR. JUSTIN ENBODY  
MR. STEPHEN BOBECK  
MR. JUSTIN CARUSO  
MR. MONTE ADCOCK  
MR. PIERRE AMARILGLIO

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

MR. CAMILO GÓMEZ ALZATE  
MS. ANA MARÍA ORDÓÑEZ PUENTES  
MR. GIOVANNY VEGA-BARBOSA  
MR. CÉSAR RODRÍGUEZ  
MS. ELIZABETH PRADO LÓPEZ  
MS. YADIRA CASTILLO MENESES  
MR. ANDRES FELIPE REINA ARANGO  
MS. MARCELA MARÍA SILVA ZAMBRANO  
Agencia Nacional de Defensa  
Jurídica del Estado  
Carrera 7 No. 75-66 - 2do y 3er piso  
Bogotá  
Colombia

MS. LAURA MARÍA MARÍN MORENO  
Fiscalía General de la Nación

MR. CARLOS SABOYÁ  
Director de Asuntos Jurídicos, Fiscalía  
General de la Nación

MS. SANDRA MARTÍNEZ  
Asesora de la Dirección de Asuntos  
Jurídicos, Fiscalía General de la Nación

MS. SANDRA MONTEZUMA  
Asesora en el Despacho del Vicefiscal,  
Fiscalía General de la Nación

MS. TATIANA GARCÍA  
Directora de Asuntos Internacionales,  
Fiscalía General de la Nación

MS. LILIA ROSA MENDOZA  
Asesora de la Directora de Asuntos  
Internacionales, Fiscalía General de la  
Nación

APPEARANCES: (Continued)

MR. ANDRES FELIPE TINOCO  
Asesor en el Despacho del Vicefiscal,  
Fiscalía General de la Nación

DR. YAS BANIFATEMI  
MS. YAEL RIBCO BORMAN  
MS. PILAR ALVAREZ  
MS. CAROLINA BARROS  
MR. YOUSSEF DAOUD  
Gaillard Banifatemi Shelbaya Disputes  
22 rue de Londres, 75009 Paris  
France

MS. XIMENA HERRERA BERNAL  
Gaillard Banifatemi Shelbaya Disputes  
165 Fleet Street  
London EC4A 2AE  
United Kingdom

C O N T E N T S

PAGE

STATEMENT OF NON-DISPUTING PARTIES

ON BEHALF OF THE UNITED STATES OF AMERICA:

By Ms. Grosh.....381

REACTIONS TO NON-DISPUTING PARTIES STATEMENT

ON BEHALF OF THE CLAIMANTS:

By Mr. Moloo.....397

ON BEHALF OF THE RESPONDENT:

By Ms. Banifatemi.....407

WITNESS:

ANGEL SAMUEL SEDA

Direct examination by Mr. Moloo.....421

Cross-examination by Ms. Banifatemi.....422

Redirect examination by Mr. Moloo.....660

Questions from the Tribunal.....663

P R O C E E D I N G S

1  
2 PRESIDENT SACHS: Good morning, ladies and  
3 gentlemen, Day 2 of our May Hearing. We will start  
4 today with the observations to be given by the  
5 Non-Disputing Party, the U.S., and may I ask the  
6 representative of the U.S. to come closer to us and  
7 take the stand there with the microphone.

8 OPENING STATEMENT BY COUNSEL FOR THE UNITED STATES OF  
9 AMERICA

10 MS. GROSCHE: Good morning, Mr. President,  
11 Members of the Tribunal. Thank you for giving us this  
12 opportunity.

13 Pursuant to Article 10.20.2 of the United  
14 States-Colombia Trade Promotion Agreement, or the TPA,  
15 I will make a brief submission on behalf of the United  
16 States, addressing four questions of treaty  
17 interpretation arising out of the Claimants' Reply on  
18 Jurisdiction and Merits dated September 19th, 2021,  
19 and the Respondent's Rejoinder on Jurisdiction and  
20 Merits dated February 17th, 2022. As is always the  
21 case with our Non-Disputing Party submissions, the  
22 United States does not take a position here on how the

1 interpretations offered apply to the facts of the  
2 case, and no inference should be drawn from the  
3 absence of comment on an issue not addressed.

4           First, I will address the authority of  
5 Non-Disputing Party submissions under Article 10.20.2  
6 in interpreting the TPA.

7           Second, I will address the essential  
8 security interests exception in Article 22.2(b).

9           And third, I will expand on two points  
10 related to claims for indirect expropriation under  
11 Article 10.7.

12           And finally, I will comment on claims based  
13 on judicial or administrative adjudicatory proceedings  
14 in the context of the submission of a claim under  
15 Article 10.16.

16           I would like to begin my remarks by  
17 addressing the weight due to the views of the United  
18 States on matters addressed in a Non-Disputing Party  
19 submission under Article 10.20.2. State Parties are  
20 well-placed to provide authentic interpretations of  
21 their treaties, including in proceedings before  
22 Investor-State tribunals like this one.



1 Article 10.20.2 ensures that the Non-Disputing Party  
2 to a dispute under the U.S.-Colombia TPA can provide  
3 its views on the correct interpretation of the TPA.  
4 The TPA Parties consider Non-Disputing Party  
5 submissions to be an important tool in this respect,  
6 and the United States consistently includes  
7 Non-Disputing Party provisions in its investment  
8 agreements to reinforce the importance of these  
9 submissions in the interpretation of the provisions of  
10 these agreements, and the United States routinely  
11 makes these Non-Disputing Party submissions.

12 Article 31 of the Vienna Convention on the  
13 Law of Treaties recognizes the important role the  
14 State Parties play in the interpretation of their  
15 agreements. And although the United States is not a  
16 party to the Vienna Convention, we consider that  
17 Article 31 reflects customary international law on  
18 treaty interpretation. Article 31, Paragraph 3 states  
19 that, in interpreting a treaty, and I quote, "there  
20 shall be taken into account, together with the context  
21 (a) any subsequent agreement between the Parties  
22 regarding the interpretation of the Treaty or

1 application of its provisions; and (b) any subsequent  
2 practice in the application of the Treaty which  
3 establishes the agreement of the Parties regarding its  
4 interpretation."

5           So, Article 31 is framed in mandatory terms.  
6 It is unequivocal that subsequent agreements between  
7 the Parties and subsequent practice of the Parties  
8 shall be taken into account.

9           First, where the submissions of the TPA  
10 Parties demonstrate that they agree on the proper  
11 interpretation of a given provision, the Tribunal  
12 must, in accordance with Article 31(3)(a), take the  
13 subsequent agreement into account.

14           And second, the TPA Parties' concordant  
15 interpretations may also constitute subsequent  
16 practice under Article 31(3)(b). Any suggestion that  
17 Non-Disputing Party submissions are not entitled to  
18 deference because they are made in the course of the  
19 Arbitration should be rejected. The TPA Parties  
20 expressly included the mechanism to provide  
21 interpretations of treaty provisions to Investor-State  
22 tribunals in the course of an arbitration for a

1 reason. Indeed, the International Law Commission has  
2 commented that subsequent practice may include  
3 statements in the course of a legal dispute.

4 Accordingly, where the TPA Parties' submissions in an  
5 arbitration evidence their common understanding of a  
6 given provision, this constitutes subsequent practice  
7 that must be taken into account by the Tribunal under  
8 Article 31(3)(b).

9           Additionally, in support of this general  
10 position, we note that investment tribunals  
11 constituted under the NAFTA have considered this issue  
12 and have agreed that submissions by the NAFTA Parties  
13 in arbitrations under Chapter Eleven, including  
14 Non-Disputing Party submissions, may serve to form  
15 subsequent practice. For example, the Mobil v. Canada  
16 Tribunal found that arbitral submissions by the NAFTA  
17 Parties constituted subsequent practice and  
18 observed--observe, and I quote, "the subsequent  
19 practice of the Parties to a treaty, if it establishes  
20 the agreement of Parties regarding the interpretation  
21 of the Treaty, is entitled to be accorded considerable  
22 weight." And, I'm quoting from Paragraph 158 of the

1 Mobil v. Canada Decision on Jurisdiction and  
2 Admissibility dated July 13th, 2018, and I would point  
3 you also to Paragraphs 103, 104, and 158 to 160 for  
4 context. The Tribunal in Canadian Cattlemen for Fair  
5 Trade reached a similar conclusion at Paragraphs 188  
6 to 189 of its Award on Jurisdiction, dated  
7 January 28th, 2008.

8 I would note also, in response to comments  
9 on this issue, that TPA Article 10.22.3 which concerns  
10 interpretations by the Free Trade Commission, and  
11 Article 10.20.2 which concerns Non-Disputing Party  
12 submissions, merely establish separate mechanisms for  
13 the Parties to provide interpretations of their  
14 Treaty. Nothing in the TPA text suggests that, in  
15 granting the Free Trade Commission the ability to  
16 issue binding, authoritative interpretations of the  
17 TPA, the Parties intended to preclude themselves from  
18 issuing non-binding but nevertheless authentic means  
19 of interpretation of TPA provisions through their  
20 submissions to investor-State tribunals or to preclude  
21 a tribunal from giving such submissions the weight to  
22 which they would otherwise would be entitled.

1           So, to sum up this point, whether this  
2 Tribunal considers the interpretations presented by  
3 the TPA Parties as a subsequent agreement under  
4 Article 31(3)(a), a subsequent practice under  
5 Article 31(3)(b), or both, on any particular  
6 provision, the outcome is the same. The Tribunal must  
7 take the TPA Party's common understanding of the  
8 provisions of their Treaty into account.

9           Second, I would like to address the  
10 essential security interest exception in  
11 Article 22.2(b). The language of the Article 22.2(b)  
12 is clear, that the exception is self-judging.  
13 Article 22.2(b) states, and I quote, "nothing in this  
14 Agreement shall be construed to preclude a party from  
15 applying measures that it considers necessary for the  
16 protection of its own essential security interests."

17           The ordinary meaning of the word "considers"  
18 is to come to judge or classify. Under  
19 Article 22.2(b), what must be considered or judged or  
20 classified is whether the relevant measure is  
21 necessary to protect the State's essential security  
22 interests. That this determination is made solely by

1 the State Party itself is plain by the use of the word  
2 "it" preceding "considers." Thus, the ordinary  
3 meaning of the phrase "it considers" is that the  
4 exception is for the Party itself to determine--or in  
5 other words, that the exception is self-judging.

6           That Article 22.2(b) is self-judging accords  
7 with the long-standing U.S. position that similarly  
8 worded essential security interests exceptions in U.S.  
9 agreements are to be read as self-judging. Indeed,  
10 Footnote 2 clarifies that, and I quote, "If a party  
11 invokes Article 22.2 in an arbitral proceeding  
12 initiated under Chapter 10 or Chapter 21, the Tribunal  
13 or panel hearing the matter shall find that the  
14 exception applies."

15           In other words, once a State Party to the  
16 TPA raises the exception, its invocation is  
17 non-justiciable, and a Chapter 10 Tribunal must find  
18 that the exception applies to the dispute before it.

19           Further, Footnote 2 to Article 22.2(b) is  
20 prefaced with the phrase "for greater certainty,"  
21 which in U.S. practice confirms that the self-judging  
22 nature and non-justiciability of the essential

1 security interests exception is inherent in the  
2 language of the exception itself. As a general  
3 practice, the United States uses the words "for  
4 greater certainty" in its International Trade and  
5 Investment Agreements to introduce confirmation  
6 regarding the meaning of the Agreement. In other  
7 words, the phrase "for greater certainty" signals that  
8 the text it introduces reflects the understanding of  
9 the United States and the other Treaty Party or  
10 Parties of what the provisions of the Agreement would  
11 mean, even if the text following the phrase were  
12 absent. As a consequence, "for greater certainty"  
13 sentences also serve to spell out more explicitly the  
14 proper interpretation or similar provisions, mutatis  
15 mutandis, "in other agreements." By explaining that  
16 "for greater certainty" a tribunal shall find that the  
17 essential security interests exception applies where a  
18 party has invoked it, the United States signaled its  
19 understanding that this is what the essential security  
20 interest exception has always required, including in  
21 agreements where that "for greater certainty" language  
22 is absent.

1           The United States previously explained the  
2 use and significance of the "for greater certainty"  
3 phrase in other Non-Disputing Party submissions, both  
4 written and oral, including in the Alicia Grace and  
5 others v. Mexico Case, the Legacy Vulcan v. Mexico  
6 Case, Omega v Panamá Case, and Carrizosa v. Colombia  
7 Case. We would be happy to provide those to the  
8 Tribunal, if that would be helpful.

9           Finally on this point, I would like to  
10 address an argument we heard from Claimants yesterday  
11 that Article 22.2(b) merely allows a State to apply,  
12 or continue to apply, measures that it considers  
13 necessary for the protection of its own essential  
14 security interests, but that Article 22.2(b) does not  
15 address the question of liability or compensation.  
16 The United States disagrees. Once the essential  
17 security interest exception is invoked, a tribunal may  
18 not, thereafter, find the relevant measure in breach  
19 of the Chapter 10 obligation and may not,  
20 consequently, order the payment of any compensation in  
21 connection with that measure.

22           Mr. President, Members of the Tribunal,



1 turning to my third topic, I would like to expand on  
2 two points that the United States made in its written  
3 submission on claims for indirect expropriation under  
4 Article 10.7.

5 First, is that in the context of an  
6 expropriation claim, a substantive element of that  
7 claim is that there must exist a permanent deprivation  
8 of the relevant investment. For example, the United  
9 States agrees with the holding of the oft-cited  
10 Burlington Resources v. Ecuador Tribunal that "a state  
11 measure constitutes expropriation under the Treaty if  
12 (1) the Measure deprives the Investor of his  
13 investment; (2) the deprivation is permanent, and (3)  
14 the deprivation finds no justification under the  
15 Police Powers Doctrine."

16 Conversely, it is well-established that a  
17 temporary reversible measure leading to an ephemeral  
18 deprivation does not result in an expropriation. For  
19 example, in Fireman's Fund Insurance Company v.  
20 Mexico, the Tribunal held that one of the elements of  
21 an expropriation is that "the taking must be permanent  
22 and not ephemeral or temporary." Therefore, a

1 non-binding final determination or a ruling that is  
2 subject to challenge cannot cause the kind of  
3 permanent and irreversible deprivation that is  
4 required as a substantive element of expropriation.

5           Second, as we noted in our written  
6 submission, under international law, where an action  
7 is a bona fide, non-discriminatory regulation, it will  
8 not ordinarily be deemed expropriatory. The Disputing  
9 Parties accept this principle, also commonly called  
10 the "Police Powers Doctrine." As this is a doctrine  
11 recognized by customary international law, any  
12 additional elements of the doctrine would have to be  
13 established by reference to both State practice and  
14 opinio juris. However, while the United States  
15 accepts that State practice demonstrates that the  
16 Police Powers Doctrine under customary international  
17 law is subject to non-discrimination and bona fide  
18 limbs, State practice does not support a further  
19 requirement of proportionality, as, for example,  
20 between the policy aim and the regulatory measure  
21 taken.

22           There is no evidence of the kind of

1 widespread consistent State practice necessary to  
2 conclude that proportionality has crystallized into a  
3 component of the Police Powers Doctrine. As reflected  
4 in our written submission and in the 2004 and 2012  
5 U.S. Model BITs, the long-standing U.S. formulation of  
6 the test does not include proportionality. And I  
7 quote: "Under international law, where an action is a  
8 bona fide, non-discriminatory regulation, it will not  
9 ordinarily be deemed expropriatory." The restatement  
10 third of foreign relations of the United States's  
11 discussion of the Police Powers Doctrine similarly  
12 makes no reference to proportionality.

13           So, in sum, there is no widespread  
14 consistent State practice that would be necessary to  
15 conclude that proportionality has crystallized as a  
16 component of the Police Powers Doctrine under  
17 customary international law.

18           Finally, I would like to address claims  
19 based on judicial or administrative adjudicatory  
20 proceedings in context of submission of a claim under  
21 Article 10.16. It is well-established that the  
22 International Responsibility of States may not be

1 invoked with respect to non-final judicial acts,  
2 unless recourse to further domestic remedies is  
3 obviously futile or manifestly ineffective. As the  
4 Tribunal in *Apotex Inc. v the United States of America*  
5 held in its Award on jurisdiction and admissibility,  
6 and I quote, "a claimant cannot raise a claim that a  
7 judicial act constitutes a breach of international law  
8 without first proceeding through the judicial system  
9 that it purports to challenge, and thereby allowing  
10 the system an opportunity to correct itself." As  
11 such, non-final judicial acts cannot be the basis for  
12 claims under Chapter 10 of the U.S.-Colombia TPA,  
13 unless recourse to further domestic remedies is  
14 obviously futile or manifestly ineffective. Rather,  
15 an act of a domestic court (or an administrative  
16 tribunal) that remains subject to appeal has not  
17 ripened into the type of Final Act that is  
18 sufficiently definite to implicate State  
19 Responsibility, unless such recourse is obviously  
20 futile or manifestly ineffective. Thus, absent  
21 finality, no claim based on judicial or administrative  
22 adjudicatory proceedings may be submitted under

1 Article 10.16 unless further recourse is obviously  
2 futile or manifestly ineffective.

3 In concluding, I would just emphasize that  
4 the United States stands by the interpretations set  
5 forth in our written submission, although we did not  
6 address all of those issues today.

7 Mr. President, Members of the Tribunal, with  
8 that final observation, I will close my remarks. I  
9 thank the Tribunal for this opportunity to present the  
10 views of the United States on these important  
11 interpretive issues.

12 PRESIDENT SACHS: Thank you very much.

13 Questions?

14 (No response.)

15 PRESIDENT SACHS: Thank you very much. You  
16 are now released--you may stay in the room or  
17 leave--and we will now start with the examination  
18 of--sorry? Am I wrong?

19 SECRETARY MARZAL: Yeah--no, I think that we  
20 had scheduled 10 minutes for the opportunities for the  
21 Parties to comment.

22 PRESIDENT SACHS: Okay. Yes. So, please,

1 for the preparation of the witness testimony with  
2 short break, yes?

3 SECRETARY MARZAL: No.

4 (Pause.)

5 PRESIDENT SACHS: Oh, okay. Yes, I'm sorry.

6 We were to allow you to make comments in respect of  
7 the observations of the United States. I overlooked  
8 that.

9 We will start with the Claimant.

10 SECRETARY MARZAL: May I ask a question,  
11 since I'm taking the time, these 10 minutes that we  
12 had foreseen as maximum for the Parties to comment, is  
13 that time--should I discount it from the total  
14 16 hours, or should I add it as an extra 10 minutes?

15 PRESIDENT SACHS: Add it as extra.

16 SECRETARY MARZAL: Extra.

17 PRESIDENT SACHS: Yes.

18 SECRETARY MARZAL: Thank you.

19 (Pause.)

20 PRESIDENT SACHS: Did you wish to have a  
21 short break in order to prepare your comments?

22 MR. MOLOO: Would it be okay to have maybe

1 two to five minutes?

2 PRESIDENT SACHS: Five minutes is okay. I  
3 think that's fair enough.

4 (Comment off microphone.)

5 PRESIDENT SACHS: Yes, because experience  
6 shows that five minutes is never five minutes.

7 MR. MOLOO: That's fair enough.

8 PRESIDENT SACHS: So, what shall we say, 15  
9 minutes? Is that too long?

10 MR. MOLOO: That's fine.

11 MS. BANIFATEMI: That's fine.

12 PRESIDENT SACHS: Let's resume at 5 past  
13 10:00, okay?

14 MR. MOLOO: Thank you.

15 (Recess.)

16 PRESIDENT SACHS: Claimant, we give you the  
17 floor.

18 MR. MOLOO: Thank you, President Sachs. It  
19 was, indeed, a productive 15 minutes. Thank you for  
20 that. We did have some sense of what might be coming  
21 this morning, so we did prepare a few slides for your  
22 benefit.

1           A couple of things that we just wanted to  
2 point out for the Tribunal, they will no doubt be  
3 aware of this, but first of all, Colombia and the  
4 United States, in their Treaty, as mentioned this  
5 morning by Ms. Grosh, did specifically provide for a  
6 Free Trade Commission process, where, if there was to  
7 be anything that is an interpretation that was--and  
8 you can see the language--10.22.3, if they wanted an  
9 interpretation to be binding on a tribunal, then they  
10 have a process that they go through the Free Trade  
11 Commission to issue the interpretations of the  
12 provisions of this Agreement. In 20.1, the Free Trade  
13 Commission has that process. It says the Commission  
14 may, among other things (c) issue interpretations of  
15 the provisions of this Agreement. They have not done  
16 that with respect to this Agreement, of course, and so  
17 there is no binding interpretation of any of the  
18 provisions you heard about.

19           If you look at Slide 3, which is up on the  
20 screen here, you can see that the Parties have indeed  
21 entered into specific interpretations of provisions,  
22 and none of them relate to Chapter 10.



1           The Renco v. Peru Tribunal--I think this is  
2 a helpful quote--even if there is subsequent  
3 agreement, which we don't know what precisely that  
4 Agreement is, and that's part of the problem. When  
5 you have an agreement, the reason why the Free Trade  
6 Commission process is usually followed is because then  
7 you have two parties agreeing to specific language,  
8 signing off on it, and you know precisely what the  
9 Agreement is. There is certainty. The Tribunal can  
10 take that into account.

11           But even if you do say there is an agreement  
12 here, the Renco v. Peru Tribunal made it clear that in  
13 accordance with Article 31 of the Vienna Convention on  
14 the Law on Treaties: "The Tribunal is not bound by  
15 the views of either State Party although the Tribunal  
16 may take into account any subsequent agreement."

17           PRESIDENT SACHS: "Must take into account."

18           MR. MOLOO: Sorry, yes, "must take into  
19 account" any subsequent agreement between the State  
20 Parties pursuant to Article 31(3)(a) of the VCLT. The  
21 proper interpretation and how it should be applied to  
22 the facts of this case are tasks which reside

1 exclusively with this Tribunal.

2           And with respect to the essential security  
3 provision in particular, we've given you our  
4 interpretation of this yesterday, one must start with  
5 the ordinary meaning under Article 31, and the  
6 ordinary meaning of the word "preclude," according to  
7 the Oxford English Dictionary, is "to make  
8 impossible," "to prevent from happening." That's the  
9 ordinary meaning of the word "preclude."

10 Issuing--allowing compensation to be paid does not  
11 preclude a party from applying measures. That's our  
12 position, and that was the very same argument in front  
13 of the Eco Oro Tribunal in interpreting a very similar  
14 provision where the Canadian Government came in and  
15 made a Non-Disputing Party submission to agree with  
16 Colombia.

17           And there, if you look on the next slide at  
18 Paragraph 836, the Tribunal specifically said:  
19 "Whilst the Tribunal accepts that the State cannot be  
20 prohibited from adopting," enforcing--"or enforcing an  
21 environmental measure in accordance with  
22 Article 2201(3), it cannot accept Canada's statement

1 that in such circumstances payment of compensation is  
2 not required."

3 Canada came in and made the same exact  
4 argument you heard the U.S. government make this  
5 morning. This does not comport with the ordinary  
6 meaning of the Article when construed in the context  
7 of the FTA as a whole and specifically in the context  
8 of Chapter 8 as analyzed in the preceding paragraphs.

9 So, again, in that case you had a very  
10 similar situation to what you have here. You had  
11 Canada and Colombia articulating the very same  
12 argument that "precluding" meant you can't pay  
13 compensation; and, in that Treaty you can see that the  
14 language is adopting or enforcing measures  
15 necessary--sorry, "the Agreement shall not"--shall be  
16 construed--"shall not be construed to prevent"; so,  
17 instead of the word preclude--they use the word  
18 "prevent," we would say very similar words, "a party  
19 from adopting or enforcing a measure necessary in that  
20 case to protect the environment," and that's the  
21 conclusion that the Tribunal came to after considering  
22 the Canadian Government's submission.

1           Interestingly, what you did not hear from  
2 the U.S. Government submission this morning is whether  
3 or not this provision was subject to a good-faith  
4 criteria, and the reason why you didn't hear anything  
5 from the U.S. Government on this point is because  
6 Colombia has already made a statement in their  
7 Rejoinder on precisely this point. This seemed to be  
8 an alternative argument yesterday, but it's not an  
9 alternative argument in their Rejoinder.

10           In the Rejoinder, the Respondent said as  
11 follows; you can see on the screen, Paragraph 43: "It  
12 is the Respondent's submission that the Tribunal's  
13 scope for review of Colombia's invocation of the  
14 exception is strictly circumscribed to an examination  
15 of whether the exception has been invoked in good  
16 faith." So, they accept that there is still a  
17 good-faith overlay. This is separate and apart from  
18 the argument I've just made about allowing  
19 compensation no matter what.

20           And what is that good-faith overlay? Well,  
21 it's a two-part test, according to the Russia measures  
22 concerning tariff--traffic in transit, WTO panel, what

1 they said. It was a two-part test. The first relates  
2 to the definition of the "essential security  
3 interests," have they defined the essential security  
4 interest in good faith; and the second relates to  
5 whether the measures at issue meet a minimum  
6 requirement of plausibility in relation to the  
7 preferred--proffered essential security interest.

8           Now, you've already heard me on the first  
9 point yesterday, so I won't belabor the point, but by  
10 simply recasting a public purpose originally  
11 articulated in their Counter-Memorial as now an  
12 essential security interest, we believe, is not in  
13 good faith.

14           But more importantly, and I think this is  
15 clear--and you did not hear anything from the U.S.  
16 Government on this this morning--is at what point in  
17 time must the essential security interest be  
18 identified? You did not hear anything about this  
19 despite our submissions about this point yesterday  
20 because it is crystal-clear from the text of the  
21 provision that that essential security interest must  
22 be defined at the time the Measure is taken. Of

1 course that seems obvious. The language itself says  
2 to preclude a party from applying measures it  
3 considers necessary for the protection of its  
4 essential security interest. If you are taking a  
5 measure to protect your security interests, you must  
6 articulate that essential security interest at the  
7 time of taking the Measure. How do we know that  
8 didn't happen here in this case?

9           One, they didn't say so in their  
10 Counter-Memorial. If they would have taken this  
11 measure to protect an essential security interest,  
12 they would have known it in their Counter-Memorial.  
13 That's, by the way, exactly the position in the  
14 Nicaragua v. US case before the ICJ, where the Court  
15 considered a very similar question, and they said the  
16 chronological sequence of events was important; they  
17 must have been at the time they were taking measures  
18 necessary to protect its essential security interests.

19           And what is the position? They confirmed it  
20 yesterday. Colombia said yesterday it was new facts  
21 and circumstances that prompted the invocation of the  
22 essential security interest. This is from their slide

1 yesterday. They're saying it's new facts. It's not  
2 back then what happened. It's new facts and  
3 circumstances that prompted the invocation of the  
4 essential security exception. So they're accepting  
5 it's not something that happened back in 2016. It's  
6 new facts and circumstances today that have given rise  
7 to the invocation of the essential security interest,  
8 so this confirms that the essential security interest  
9 is a post hoc manufacture for this Arbitration, so  
10 essentially a "Get Out of Jail Free" card.

11           The last point I want to make is a point  
12 that relates to this, the good-faith exception as  
13 well. You cannot articulate a good-faith invocation,  
14 in our submission, which contradicts your own law and  
15 your own position.

16           We agree with, I think, what the position  
17 that the President of the Tribunal was taking  
18 yesterday, which is: What is this essential security  
19 interest? Where is it articulated? And it's  
20 articulated in the law. It's reflected in the Asset  
21 Forfeiture Law, and Colombia has articulated it as to  
22 fight against organized crime, money-laundering and

1 drug-trafficking, thus ultimately protecting its  
2 population from the threats of paramilitary and  
3 marginalized groups that have been ravaging the  
4 country for years.

5           But its own law—its own law—accepts that  
6 taking assets, taking property from good-faith third  
7 parties without fault, that is not related. That--  
8 there is no relationship between doing that and  
9 protecting this interest. There is no plausible  
10 connection if your own law says we must protect  
11 good-faith third parties without fault. In order to  
12 accomplish this--an essential security interest, we're  
13 not going to take assets from good-faith third parties  
14 without fault.

15           And over the next two slides, you see  
16 several provisions--Article 3, Article 7, Article 22,  
17 Article 87, Article 117, Article 152--all confirming  
18 this position. Yes, this is an important essential  
19 security interest. We're not saying it's not. What  
20 we're saying--or I should make it clear. We're not  
21 saying that this is not an important public purpose.  
22 We don't think it's a properly articulated essential



1 security interest. But what we are saying is that  
2 taking things from good-faith third parties without  
3 fault does--is not at all related, there is no  
4 relationship between that--no plausible relationship  
5 between that and accomplishing that essential security  
6 interest as reflected in Colombia's own Asset  
7 Forfeiture Law.

8           Those are my brief submissions on the  
9 expropriation and the other points that were raised by  
10 the United States. I think our submissions speak for  
11 themselves, so I won't belabor any of those points,  
12 subject to any questions, those are our submissions.

13           PRESIDENT SACHS: Not at this point of time,  
14 Mr. Moloo, thank you.

15           We will now hear Mrs. Banifatemi.

16           MS. BANIFATEMI: Thank you, Mr. President.

17           Unlike Mr. Moloo, I had not anticipated what  
18 the USA would say, so I do not have any slides to  
19 provide, and I will react both to the U.S.  
20 Government's submissions and to what we just heard.

21           And Mr. Moloo is not addressing some  
22 important submissions by the U.S. that I will also

1 address. But generally speaking--and this is not a  
2 surprise that the U.S. is on the same line, is saying  
3 exactly the same thing as to how you should read and  
4 interpret this provision, and it's not surprising  
5 because, as I argued yesterday, we do have the  
6 travaux, which will be provided to the Tribunal, in  
7 due course. The only reason why we did not provide it  
8 is that the Tribunal asked for an index which will  
9 take time, so we will provide that, but you will have  
10 that on the record.

11 So it's already there. You already know the  
12 intention of the Parties, and this is at least on this  
13 self-judging aspect, it's certainly not a surprise.

14 Now, I want to take in sequence what the  
15 U.S. Government's position is. I don't have much to  
16 say as to the entitlement of the U.S., of course, to  
17 make a submission as a Non-Disputing Party. What is  
18 important, however, is that it is in the context of an  
19 authentic interpretation. This is, I think, what I  
20 started yesterday when we were discussing the common  
21 understanding of the States. As you know--and I want  
22 to refer to two provisions.

1           I want to refer first to the Vienna  
2 Convention itself, Article 31(3)(a), which the U.S.  
3 Government has referred to. I quote: On general rule  
4 of interpretation that "There shall be taken into  
5 account"--that's an obligation--"There shall be taken  
6 into account, together with the context: (a) any  
7 subsequent agreement between the parties regarding the  
8 interpretation of the treaty or the application of its  
9 provisions."

10           Now, the Vienna Convention does not provide  
11 for any requirement of form. It just says "subsequent  
12 agreement" and "subsequent practice." So, "subsequent  
13 agreement," you have a bit more clarification in what  
14 we are submitting or if it has not done in this  
15 morning, you will have it today, it is Exhibit RL-249.  
16 It is one of the new legal exhibits. It's the draft  
17 conclusions on subsequent agreements and subsequent  
18 practice in relation to the interpretation of treaties  
19 of 2018. That is the draft conclusions of the  
20 International Law Commission at the UN. Their  
21 conclusions have been adopted by the General Assembly  
22 as part of the Commission's report covering the work

1 of its sessions in 2018.

2           And you look--if you look at the  
3 conclusions, you will see there is Conclusion 3, for  
4 example, so it's really focused on subsequent  
5 agreements and subsequent practice. Conclusion 3  
6 says, I quote: "Subsequent agreements and subsequent  
7 practice under Article 31(3)(a) and (b), being  
8 objective evidence of the understanding of the parties  
9 as to the meaning of the Treaty are authentic means of  
10 interpretation in the application of the 'General rule  
11 of interpretation' reflected in Article 31." So,  
12 that's a confirmation that it's an authentic  
13 interpretation. Subsequent agreement, it's simply, as  
14 the U.S. Government has explained, there is a  
15 commonality. The two States are telling you this is  
16 our understanding, and both are saying the same thing,  
17 and both have the same understanding as to how you  
18 should read the essential security exception.

19           You also should look at Conclusion 6(2)  
20 where, precisely, the ILC concluded, subsequent  
21 agreements and subsequent practice under Article 31(3)  
22 may take a variety of forms. So it can be

1 disassociated. It's not necessary, as Mr. Moloo is  
2 saying, that you should have only authentic  
3 interpretation as part of the FTC, and that's the only  
4 way that this can happen. No, you can have authentic  
5 interpretation under international law. It suffices  
6 that the two States are providing the same  
7 interpretation, and that commonality makes it an  
8 authentic interpretation of the Treaty.

9           We also have provided in our new Legal  
10 Authorities R-L 244. That's a commentary of the 1969  
11 Vienna Convention on the Law of Treaties by  
12 Mr. Villiger, and I'm quoting--I don't have the page  
13 number, I'm happy to provide that later. The  
14 Parties--quoting--"The parties authentic  
15 interpretation of the Treaty terms is not only  
16 particularly reliable, it is also endowed with binding  
17 force. It provides ex hypothesi the 'correct'  
18 interpretation among the parties in that it determines  
19 which of the various ordinary meanings shall apply."

20           And finally, I would like to refer to  
21 Methanex, that's RL-235, where the Tribunal in a final  
22 award of 2005 said, I quote: "It follows from the

1 wording of Article 31(3)(a) that it is not envisaged  
2 that the subsequent agreement need be concluded with  
3 the same formal requirement as a treaty; and indeed,  
4 were this to be the case, the provision would be  
5 otiose."

6           So, this is first to say that there is no  
7 formality required. "Authentic interpretation" means  
8 simply that there is subsequent agreement between the  
9 two States as to what the agreement means.

10           The U.S. Government specifically referred,  
11 and Mr. Moloo wants to ignore it, to Article 10.22(3)  
12 of the TPA, where the U.S. Government took the  
13 position that a binding authentic authority under this  
14 provision, it does not mean that the Government cannot  
15 otherwise have an authentic interpretation if they  
16 have a common understanding and they express a common  
17 understanding of the Treaty, which is the case here,  
18 and you have our submission on the meaning of the  
19 Treaty, and now you have the U.S. submission on the  
20 meaning of the Treaty. You will also have the travaux  
21 préparatoires, of course.

22           So, one does not exclude the other and, by

1 the way, incidentally, that provision is in the  
2 provision called "governing law," so it is something  
3 that's--does not mean that other types of authentic  
4 interpretation are not possible.

5 I want to go now to, just very briefly  
6 because we argued it yesterday, to what actually the  
7 essential security exception means, and simply this is  
8 exactly the point where there is an identical--I  
9 should not even say "common"--there's an identical  
10 understanding by the U.S. and by Colombia as to how  
11 this provision should be read, and again, you will  
12 have also the travaux préparatoires, which will  
13 confirm that and will confirm the self-judging nature  
14 of the provision. That you will see in the travaux.

15 I want to address briefly a few points that  
16 Mr. Moloo made on the timing of the Measure, which  
17 supposedly the U.S. Government did not address, and I  
18 think there's a reason for that, but the U.S.  
19 Government actually did address it. You have to  
20 understand what the submission we heard earlier means.

21 First of all, I want to make a sort of  
22 parentheses on the time and to remind the Tribunal

1 what our position is:

2           First of all, it's reducing our position to  
3 the law. We're not saying that the measures are the  
4 law. We're saying that the measures are the Law on  
5 Asset Forfeiture, the measures that the Government,  
6 that Colombia has taken in relation to the Meritage,  
7 so the ongoing asset forfeiture proceedings, the  
8 ongoing criminal investigations, I argued that  
9 yesterday. So, the measures are all of those, and you  
10 remember there's a broad meaning of "measures" in the  
11 TPA. So all of those are measures.

12           There is no time limit. I argued that  
13 yesterday. The TPA, Article 22.2, does not impose any  
14 time limit. There is no waiver. So States have the  
15 ability to raise the exception whenever they deem they  
16 consider that their national interest, their essential  
17 security interest, is at stake, but that's a  
18 determination for the States to do, both Colombia and  
19 the U.S., in their common understanding of this  
20 provision.

21           So--and I also remind you, Mr. Moloo kindly  
22 referred us to Colombian law. If anything, this shows



1 one thing is that Colombia is governed by the rule of  
2 law. Colombian courts are governed by the rule of  
3 law. There are processes. There are guarantees. And  
4 there also are the guarantees of the Constitution.

5           And the constitution itself--and that's also  
6 part of the regulatory framework that we're talking  
7 about here. Article 34 of the Constitution, which I  
8 relied on yesterday, does make a distinction between  
9 asset forfeiture and confiscation. It's not the same  
10 thing. Why? And that now is something that the U.S.  
11 argued, and I will come back to that very briefly,  
12 because it's not a Final Decision, it's not a final  
13 court decision. You are sitting in a case where it  
14 simply is not right, nothing is right. No final  
15 decision has been made in that regard.

16           Now, coming back to the timing and the good  
17 faith. Mr. Moloo said it's an issue. The U.S.  
18 Government is not saying if it has to be determined in  
19 good faith or not. Remember, when we argued the good  
20 faith, that's in the alternative. Should the Tribunal  
21 not find that this is self-judging, which it should,  
22 now you are faced with an authentic interpretation by

1 the two State Parties to the TPA would say this is  
2 self-judging. And the U.S. Government has given meat  
3 to that, what this means, and again the travaux will  
4 give some more meat to that as well.

5           The U.S. Government is saying  
6 'non-justiciable'. We actually refer to that concept  
7 in our written pleadings. Justiciability is, we said  
8 yesterday, I argued jurisdiction. Jurisdiction is the  
9 technical word to say that you do not have  
10 jurisdiction to determine and to--actually looking at  
11 the criteria and determining whether or not you have  
12 jurisdiction.

13           Justiciability is above that.  
14 Justiciability is as just like arbitrability but in an  
15 international law world. It means that you do not  
16 have the power. It's a question of power. It's not  
17 even a question of jurisdiction. You do not have the  
18 power because if the States say this is outside the  
19 scope of what you can do, this is non-justiciable and  
20 therefore it cannot be adjudicated at all.

21           So this is the concept that we heard. This  
22 is certainly the way that Colombia understands it as

1 well. Now we can translate it into also jurisdiction,  
2 but the simple matter is that it is self-judging,  
3 therefore, you cannot adjudicate that.

4           And the consequences that, and we agree,  
5 with respect, but this is also what I argued  
6 yesterday, that once the exception is raised, the  
7 Tribunal cannot find the measures to be in breach and  
8 cannot, as a consequence, grant compensation because  
9 compensation is the only consequence of a finding of  
10 breach and responsibility under international law.

11           And the U.S. Government specifically said  
12 this morning--and you heard it that the interpretation  
13 provided by the Claimants is wrong. So, the U.S.  
14 Government, I think, knows what the U.S. Government  
15 meant when the U.S. Government entered into this  
16 Treaty with Colombia, and so did Colombia.

17           Now, on the indirect expropriation, I just  
18 refer the Tribunal to our submissions. Here, again,  
19 there is a common understanding that there is no final  
20 determination subject to challenge. If there is no  
21 final determination and the measures are subject to  
22 challenge, simply there cannot be an expropriation.

1 And also the "no requirement of proportionality," I  
2 refer the Tribunal back to our submissions.

3 And also, my final point is my pre-final  
4 point is that--and this is what I argued all along  
5 yesterday and the U.S. Government here today referred  
6 to Article 10.16, I believe, you are here present with  
7 non-final judicial acts. It is not final. The  
8 Colombian courts are working. The Colombian court are  
9 looking at these issues, which Colombia has determined  
10 to be its essential security.

11 Now leaving aside essential security, simply  
12 this is not ripe. You cannot make any determination  
13 because it's all before the Colombian courts, and they  
14 will determine in the future whether or not there has  
15 been a--the Newport, which is now an affected party,  
16 is a bona fide, without fault third party.

17 One final word because I forgot it earlier,  
18 Mr. Moloo referred to Eco Oro, still on essential  
19 security, and here I'm looking at his slide, and he  
20 says it's a similar--if you look at--I don't think I  
21 have a number for the slide--if you look at the slide  
22 on Eco Oro with the Canada-Colombia FTA, with respect,

1 this is not a similar provision at all. Mr. Moloo  
2 said it's a similar provision, very similar. It's not  
3 similar. You just look at it. It says, on top of the  
4 page, it says Canada-Colombia FTA Article 2201(3), for  
5 the purpose of Chapter 8, "Investment." So, it's an  
6 actual provision for the purpose of the investment  
7 chapter.

8           And then you have a number of requirements,  
9 which is the measures are not arbitrary or  
10 unjustifiable. They're not disguised restriction on  
11 international trade, and then you have the list that  
12 you have also in the GATT Article XXI, which I argued  
13 yesterday.

14           So, this is anything but a similar provision  
15 to what you have in front of you in the TPA because  
16 that is a provision that is at the end of the Treaty,  
17 and you remember the context. That says nothing in  
18 this Agreement, so it captures the entirety of the  
19 Treaty, and again the travaux préparatoires you will  
20 see say this is the whole Treaty that is trumped, and  
21 it's enough for the States to raise and to invoke--and  
22 that invocation is not just a chapeau--to invoke the

1 exception for the Tribunal to not be in a position to  
2 find that the measures are in breach.

3           So, whatever the Eco Oro Tribunal found was  
4 based on very different provisions, so the analogy  
5 again does not work at all.

6           I had said that yesterday, Mr. Moloo goes  
7 back to it, I'm not sure why, but you just have to  
8 look at the actual text and what the actual text says  
9 and how it's interpreted by the Eco Oro Tribunal.

10           I think I'm exhausting my time, so I will  
11 stop here. Thank you very much.

12           PRESIDENT SACHS: Thank you very much.

13           Questions?

14           (Tribunal conferring.)

15           PRESIDENT SACHS: Okay.

16           Mr. Seda, witness, would you kindly take a  
17 seat.

18           (Brief recess.)

19           ANGEL SAMUEL SEDA, CLAIMANTS' WITNESS, CALLED

20           PRESIDENT SACHS: So, good morning, once  
21 again, Mr. Seda. In front of you is a declaration  
22 that we would ask you to read for the record aloud.

1 THE WITNESS: Good morning.

2 I, Angel Seda, solemnly declare upon my  
3 honor and conscience that I shall speak the truth, the  
4 whole truth and nothing but the truth.

5 PRESIDENT SACHS: Thank you, Mr. Seda.

6 You submitted in these proceedings three  
7 Witness Statements, the first one dated 15 June 2020,  
8 the second 7 September '21, and more recently a third  
9 one on April 25. Is there anything in any of these  
10 three Witness Statements that you would wish to  
11 correct at this point in time?

12 THE WITNESS: No.

13 PRESIDENT SACHS: Thank you.

14 Then there will be direct, limited as we  
15 agreed, to the contents of the three Witness  
16 Statements.

17 MR. MOLOO: We'll keep it very brief,  
18 Mr. President.

19 DIRECT EXAMINATION

20 BY MR. MOLOO:

21 Q. I just want to confirm, Mr. Seda, that you  
22 have your three Witness Statements in front of you and

1 also a binder of exhibits that was provided.

2 A. I have my three Witness Statements. I do  
3 not see a binder of exhibits.

4 Q. Okay. Unless you have no corrections, as  
5 you confirmed for the President, so there is nothing  
6 further from us.

7 MS. BANIFATEMI: Thank you very much. May  
8 I, Mr. President?

9 PRESIDENT SACHS: Yes, you may now proceed  
10 to cross-examination.

11 CROSS-EXAMINATION

12 BY MS. BANIFATEMI:

13 Q. Good morning, Mr. Seda.

14 A. Good morning.

15 Q. Nice to meet you. I've seen your name a  
16 lot.

17 A. I'm sorry?

18 Q. I've seen your name a lot. It's good to  
19 meet you in person.

20 A. Likewise.

21 Q. Thank you.

22 So I'm Yas Banifatemi. As you know, I will



1 ask you questions on behalf of Colombia, today. We  
2 are going to actually give you the binder of exhibits.

3 So, there is one binder that we have today,  
4 and can you please provide this to the Witness?

5 And, Mr. President, we also have prepared  
6 one version for you, I think that you prefer to have  
7 the paper version.

8 So, I will take you through this binder. I  
9 will give you the tab numbers, of course, and you  
10 should feel free to look at the documents, and  
11 probably you are familiar with them, but take your  
12 time.

13 And just for the record, we also have, of  
14 course, the electronic bundle that we will be using on  
15 the screen, and the Witness and the Chairman will be  
16 following, I guess, on paper. We will be--the rest of  
17 us will follow on the screen.

18 So, Mr. Seda, the binder actually also  
19 includes your Witness Statements, but please feel free  
20 to use those that are in front of you, so I will start  
21 with your First Statement, Paragraph 10.

22 So, this is in relation to arrival in

1 Medellín, in July 2007. This is the start of your  
2 adventure in Colombia, right?

3 A. Correct.

4 Q. Can you confirm to me that you speak  
5 Spanish?

6 A. Yes, I speak Spanish.

7 Q. Fluently?

8 A. I mean, that's opinion, but yeah, sure, I  
9 think I do.

10 Q. Okay. So, if we look at what you say at  
11 Paragraph 10--I'm just reading for the record--"In  
12 July 2007, I arrived in Medellín. I soon recognized  
13 that it was ideal for the type of project I was  
14 considering. The civil war that had ravaged Colombia  
15 finally appeared to be coming to an end and the  
16 newfound peace was generating new economic  
17 opportunities." And then you refer to then-President  
18 Uribe.

19 So, there had been a civil war ravaging  
20 Colombia, right?

21 A. Yeah. I don't think that's in denial. I  
22 understood that from popular cinema and movies and TV

1 shows, yes.

2 Q. Right. And it was ongoing, the civil war  
3 back then?

4 A. I--can I add context to my answer?

5 Q. Of course. But please answer my question  
6 first, and then you can provide context.

7 A. Okay.

8 I do not believe it was ongoing. If I had  
9 believed it was still the same it was before, I  
10 wouldn't have gone to Colombia. I thought that  
11 Colombia was at a different point and stage in its  
12 history.

13 Part of the reason why I decided to go to  
14 Colombia was reading an interesting article called  
15 "Extreme investing in Colombia," and they talked about  
16 the dramatic changes, 95 percent decrease in  
17 assassinations and over 96 percent decrease in  
18 kidnappings, so I thought that the country was a  
19 different country.

20 Q. Back then in 2007 when you arrived in  
21 Medellín?

22 A. Correct.

1 Q. But the civil war was ongoing, wasn't it?

2 A. That there was still violence in the  
3 country, yes, but it was, in my opinion, a mere  
4 after-thought of what it was before. I believe the  
5 death toll per 100,000 was over 387, and it had  
6 dropped to, I believe, 24 per 100,000. When I  
7 arrived, that was extremely positive. I saw it as a  
8 different--a new country, a rebirth country. I was  
9 very excited about that.

10 Q. Yeah, I understand that. You're still not  
11 answering my question. The civil war was ongoing,  
12 wasn't it?

13 A. I'm giving my opinion. In my opinion it was  
14 not.

15 Q. It's not an opinion. Do you know if the  
16 civil war was ongoing? "Yes" or "no." If you don't  
17 know, you don't know.

18 A. I don't know. I'm not a professional enough  
19 to be able to opine on that.

20 Q. And do you remember you were in Colombia  
21 then in 2016. That was when the Peace Agreement was  
22 signed between the Government and the FARC, right?

1           A.    I don't know the exact year, but I would say  
2 "yes," a few years ago.

3           Q.    Yeah.

4                    So, looking at some of--you refer--or you  
5 rely a lot on press.  So this is (1)(c), Tab 9 of your  
6 binder.  That is Exhibit C-09bis.  It's an article  
7 from The Telegraph?

8           A.    I'm sorry, what was that?

9           Q.    Tab 9.

10          A.    Oh, on Tab 9.

11          Q.    Look at Tab 9.

12          A.    Yeah.

13          Q.    So I'm just giving it for the record.  It's  
14 Exhibit C--it's your exhibit--Exhibit C-09.

15                   And this refers--just looking at the first  
16 two paragraphs--it refers to 25 years ago, Time  
17 Magazine dubbed Colombia's Medellín the most dangerous  
18 city on Earth, and then the next paragraph, it  
19 says--and this is dated 2008, by the way.  It's--the  
20 date of this Article is 4 January 2018.  So even 10  
21 years ago, that means 2008, "Medellín was a 'bad-ass'  
22 town.  Violence reigned, civil society had been

1 destroyed and no one seemed to know how to put  
2 Medellín back together again." This is one year after  
3 you arrived in Medellín for your investment, correct?

4 A. I'm sorry, let me read the article. I want  
5 to understand it completely. Is that okay?

6 Q. It's okay, but if you're going to read the  
7 entire article every time--

8 A. No just--

9 Q. --these are long documents but--and I'm sure  
10 you're familiar with them. So--

11 A. Just to get a little context--

12 Q. --please take your time.

13 (Overlapping speakers.)

14 A. --to after.

15 Q. Of course.

16 A. Thank you.

17 (Witness reviews document.)

18 A. And I'm sorry, I don't see the date on this  
19 article? What was it?

20 Q. I do not see it on the article itself, but  
21 it is dated 4 January. It's your own exhibit, so it  
22 was provided to us with that date, 4 January 2018.

1           A.    I just want to make sure.  I'm not trying to  
2 obstruct, but I just want to make sure that the date  
3 that you're referring to isn't the date we submitted  
4 but rather the date the article was published.  That's  
5 it.

6           Q.    It is the date of the article.

7                    This is your exhibit.  Your exhibit as  
8 provided was provided with the date of 4 January 2018  
9 for this article.

10          A.    Okay.

11                   I--I arrived in Colombia in 2007, and I  
12 would not characterize the city the way they're  
13 characterizing it here.

14                   Again, 24 murders per 100,000 in what used  
15 to be the murder capital of the world.  I've compared  
16 those numbers to numbers of U.S. cities.  It's not a  
17 characterization of violence reigned and civil society  
18 had been destroyed.  I--that is not what I experienced  
19 on a personal basis living in Colombia and raising  
20 children in Colombia.  That's not what Medellín was.

21          Q.    We're talking about 2008, so that was one  
22 year after you arrived.  We're not talking about

1 today. We're talking about back then.

2 A. Um-hmm.

3 Q. And this article says even 10 years ago, in  
4 2018, so you just don't agree that violence continued  
5 to reign and civil society had been destroyed?

6 A. Well, I believe the numbers--statistics in  
7 Colombia speak differently. In 2008, violence was  
8 very low. In 2008, kidnapping was nothing of what it  
9 was in the '90s, so--

10 Q. It was no longer Pablo Escobar, but it was  
11 still Medellín, with a lot of violence and civil war,  
12 still, correct?

13 A. Yeah. I'm simply giving you the numbers,  
14 the data. The data doesn't support what--what I think  
15 you're trying--

16 (Overlapping speakers.)

17 Q. I don't have the data. I don't know what  
18 data you're talking about. I'm asking about whether  
19 you know that this was still--and this is your own  
20 exhibit--violence reigning and civil society  
21 destroyed. If you do not agree, I'll move on.

22 A. I don't agree.



1 Q. Okay. You do not agree with your own  
2 exhibit.

3 So, then let's look at Tab 10, and this is  
4 also your exhibit.

5 The article, itself, is dated 9 May 2013, as  
6 you can see on it. You see that? So that talks about  
7 luxury living in a bucolic shoreline setting in  
8 Colombia. If you look at the third page of the  
9 document, you see Page 3 of 4, you see in the middle  
10 there's a paragraph that my colleague will now  
11 highlight: Mr. Seda conceded that many of his regular  
12 investors based in the U.S. were spooked by the idea  
13 of putting money into Colombian real estate,  
14 particularly those who remembered the 1980s and early  
15 '90s when Medellín, in particular was dominated by  
16 violent gang--drug gangs.

17 So, this is, of course, the background  
18 against which you are investing in Colombia and  
19 proposing investments to partners, right?

20 A. Well, I believe what it expresses is the  
21 previous history, and I believe that my investors'  
22 concern was is the present--or is the past history,

1 does that show at all what the present is, and my  
2 ability to gain their confidence and give them a  
3 surety that that was not the case was to invite them  
4 to Colombia, and all of my investors took their time  
5 and came to Colombia and were able to see that that  
6 wasn't the case, that it was a very different city  
7 than what the past was.

8 Q. So, you're saying after you arrived in  
9 Colombia in 2008 it was paradise?

10 A. For me, it pretty much was, yes.

11 Q. For you personally. But was it paradise for  
12 the people living in Medellín and being killed by the  
13 drug gangs?

14 A. I think it's paradise for the Colombian  
15 people. I believe they love the place they live in.  
16 It is a very desirable place to live and raise a  
17 family. It's a great place.

18 Q. I'm talking about Medellín.

19 A. I live in Medellín.

20 Q. Yeah.

21 A. I'm talking about in Medellín as well.

22 Q. Yeah. And at the time, there was no

1 violence, no issue of drug-trafficking, no cartel  
2 issues, nothing.

3 A. Well, I believe there's violence in all  
4 cities around the world, and I was comparing  
5 Medellín's security state and Medellín's general  
6 situation to other metropolitan cities. I believe  
7 there's violence. I believe there's drug-trafficking.  
8 I believe there's--this happens in every single city.  
9 I don't think Washington, D.C., or New York or Miami  
10 or Los Angeles are immune to any of the things that  
11 you're talking about.

12 But there was huge opportunity.

13 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 A. Yeah. So, I believe that there is, again,  
20 violence in communities around the world. I believe  
21 that there's violence between those factions that  
22 you're talking about. I'm not an expert. I can't

1 begin to opine on the inner workings of Oficina de  
2 Envigado. I'm not that well-versed on it.

3 I just know that, in general, the general  
4 perspective, Medellín is a great city. Medellín  
5 compares to a lot of U.S. cities when it comes to  
6 violence. Again, U.S. cities, European cities, Asian  
7 cities, cities in Asia, they all suffer from similar  
8 issues.

9 Q. And we agree that the U.S. investors were  
10 concerned, to say the least, with the perception of  
11 violence that they faced, if that's a perception, as  
12 you said.

13 A. I believe anyone who had not visited  
14 Colombia would not be smart to be concerned; and,  
15 until you put boots on the ground--and I do that with  
16 every investor that we have--I think it's  
17 irresponsible to accept investment from investors who  
18 haven't put their eyes on exactly what it is that  
19 you're talking about, what's the concept, what's the  
20 vision, you know, what's the plan; and so, I invite  
21 all my investors to do that, and upon them arriving to  
22 Colombia, arriving to Medellín, as discussed with

1 them, they saw exactly what I saw.

2 Q. Okay. Let's see what you did there.

3 So I'm now looking at your Paragraph 15, and  
4 you described your first project; that is The Charlee,  
5 right?

6 A. Which--which statement are we?

7 Q. Your first--still First Statement.

8 A. Okay.

9 Q. Paragraph 15.

10 You referred to the first projects to build  
11 a high-end luxury hotel with lifestyle elements in the  
12 Lleras Park neighborhood, right? That is in Medellín,  
13 right?

14 A. That is correct.

15 Q. And if we look at Tab 10--this is Exhibit  
16 C-010bis again.

17 So--and this now--and on the previous page,  
18 Page 2, on the top of the page, and it says: The  
19 Guatapé Region was one of the country's many rural  
20 areas being fought over by leftist guerrillas and  
21 rightist paramilitaries during the 90s, but security  
22 improved dramatically after President Alvaro Uribe

1 himself, a native of Medellín, took office. Right?

2           So, this is referring to the fight between  
3 leftist guerrillas and the paramilitaries--right?--in  
4 the 90s. Yeah?

5           A. Yeah, the general situation, correct.

6           Q. And Guatapé is where your other project Luxé  
7 is; right?

8           A. Yes, that's correct.

9           Q. If we can look at Exhibit C-64bis. Let me  
10 give you the tab number. That's Tab 11.

11           Do you recognize this document, Mr. Seda?

12           A. Yes, I do.

13           Q. What is it?

14           A. It is an investment deck for our Prado  
15 Tolima, a land fund project.

16           Q. And do you remember the date of this  
17 document?

18           A. No. The exact date I don't remember.

19           Q. I'm asking because we don't have a date.

20           A. We could get like the exact first creation  
21 date?

22           Q. So, it's an evolving document? Is that what

1 you're saying?

2 A. All of our investment decks, for the most  
3 part, are evolving documents.

4 Q. So this version, do you know when it was  
5 prepared?

6 A. I don't know. This is the fir--I mean, I'm  
7 looking at it right now.

8 Q. Let's look at Page 18. You have the Pages  
9 SP on the bottom of the page, SP-0018. So, you read  
10 Spanish, so I will leave it to you to read the Spanish  
11 for the record. I will read the translation: When  
12 the plot of land of Luxé was bought in 2009, the  
13 region was "seen as unstable and dangerous" before  
14 buyers' confidence--therefore, buyers' confidence was  
15 extremely low.

16 Do you see that? (in Spanish). Do you see  
17 that?

18 A. Yes.

19 Q. 2009.

20 A. Yes.

21 Q. These are your own words.

22 A. I would like to give context.

1 Q. These are your own words that, in 2009, the  
2 region was dangerous, correct?

3 A. No. You're taking--

4 Q. No?

5 A. --what my statement and miscontextualizing  
6 it.

7 Q. It doesn't say what it says?

8 A. If you'd like--if you'd like me to add  
9 context, I can explain exactly--

10 Q. I see from now that the entire day you're  
11 going to give a lot context. Please do, but time is  
12 it scarce, as you know, so...

13 A. Okay. Understood. I appreciate it. Thank  
14 you.

15 So, the Guatapé Region suffered violence,  
16 had issues. I believe it was just two years prior to  
17 this in 2007 or 2006. The Colombian Government made a  
18 huge decision, which was monumental for this region,  
19 and they added sub-military base, a special forces  
20 sub-military base just about 3 kilometers away from  
21 where our--where our asset is.

22 Because of the violence that had happened



1 previously, you couldn't visit this area without being  
2 stopped. They put periodic checkpoints, the guerrilla  
3 forces, and so people simply stopped going to this  
4 region. They just stopped altogether.

5           And when I arrived in 2007, the military  
6 base, the sub-military base had just been installed  
7 maybe a year before, if my memory serves me correctly.  
8 And I visited the area, I talked to local Colombians,  
9 and they all expressed concern about the general  
10 region. After further discussing this with them, I  
11 realized that none of them had visited this region  
12 for, in many cases 10, 15, 20 years. So, even local  
13 Colombians, even local people from Medellín really  
14 didn't understand the changes that had been made in  
15 this beautiful area.

16           So, when I'm making this statement, as you  
17 see the word "vista," "era vista," I'm not saying it  
18 was. I'm saying that it was seen. So, when you're  
19 saying these are my words that I'm saying, this--I  
20 just wanted to help you understand that I'm saying  
21 this is the way Colombian people view it, not the way  
22 that we viewed it. If we had viewed that way, we

1 wouldn't have bought the asset.

2 Q. The Colombians are not paranoid, right? If  
3 they see a region--here we're talking about  
4 Guatapé--as unstable and dangerous, very probably it's  
5 because there's reason that is dangerous, right?

6 A. Very probable that it was dangerous at a  
7 period in time and that they have written that area  
8 off.

9 It was also--used to be a four hour to  
10 five-hour drive. Infrastructure changes and  
11 improvements changed that to an hour-and-a-half.

12 So, what was in the Colombian consumers'  
13 mind was this place that is ultra-far, is what I--and  
14 I'm saying this as if I was a Colombian--what I as a  
15 Colombian remember is five hours to arrive there, it  
16 was dangerous, there were continuous roadblocks by  
17 paramilitary and guerrilla forces, and I haven't been  
18 there for 15 or 20 years. Those were the  
19 testimony--that's what the testimony that I received  
20 from people when I went out to the community and asked  
21 their opinion on--on this region, so that's what I'm  
22 trying to say, their viewpoint.

1 Q. I'm not sure when you say you haven't been  
2 there for 15-20 years. The first time you entered  
3 Columbia is 2007, and this refers to a 2009  
4 determination, that in 2009 the region was seen as  
5 unstable and dangerous.

6 A. I just said that I was expressing this, as  
7 if I was a Colombian. These were the responses that I  
8 was receiving because, whenever we do a project, we go  
9 out, and we do--we knock on the doors, and what I mean  
10 by that is we invite our friends and family and say we  
11 don't blindly do a project. I actually wanted to do  
12 this project at the very beginning when I arrived to  
13 Colombia in 2007, and it was the first project I  
14 wanted to do. And at that period of time, we got a  
15 lot of negative feedback from local people from  
16 Medellín. When we talked to them, we would ask them,  
17 how do you feel about Guatapé, even my own partner  
18 was, like, I don't want to--I don't want to do a  
19 project there. People are not going to want to be  
20 there. And when we asked, we did a roundtable. We  
21 asked 20 Colombians, and they all said I would not buy  
22 real estate there. That was their view. Their view

1 was the historic view in the past. And, it wasn't the  
2 reality of what was happening at the present.

3 Q. But again, in 2009, there was no civil war,  
4 there was no drug-trafficking, there was no danger.  
5 That's your testimony?

6 A. My testimony is that a young American who  
7 was 32 years old could go there without armed guards,  
8 not be stopped by Paramilitary Forces, not be stopped  
9 by guerrilla, go to restaurants in the region, have  
10 fun, buy a piece of property, and never experience any  
11 issues. That to me is safety.

12 Q. Yeah, you got lucky.

13 Let's look at how you did this now.

14 Still the same document, Page 9.

15 So, I'm looking at the second paragraph, and  
16 I will read for the record an English translation, so  
17 RPG is Royal Property Group--right?--your group.

18 A. Royal Property Group is my company, correct.

19 Q. So, the RPG has been historically successful  
20 in the process of identifying land plots in previously  
21 dangerous regions that had stabilized afterwards and  
22 are now well valued by the markets. That perception

1 of danger cause prices to be fixed at a bargain,  
2 opening the doors to bargaining and negotiation that  
3 seeks to reduce the prices as much as possible.  
4 Afterwards, these prices increased rapidly once public  
5 perception of the region increases generating dynamics  
6 of purchases and development, right? This is what you  
7 started explaining, right? You go and finds these  
8 nice regions, previously dangerous, and then you just  
9 buy a piece of land, right?

10 A. Yeah, it's a strategy. It doesn't always  
11 have to be danger. It could be other variables, but  
12 variables in which a certain area is not attractive  
13 for whatever those variables or reasons are. And this  
14 is just general real estate cycle. There's--some  
15 thing's unattractive, you see promise, you see that  
16 there's something that can be made out of it, you are  
17 a first arriver, you come in and you create attractive  
18 developments and usually other people follow. It's  
19 a--it was our strategy.

20 Q. And then, here you referred to previously  
21 identifying land plots in previously dangerous regions  
22 and the perception of danger causes prices to be fixed

1 at the bargain. So, you got them at a bargain; right?

2 Inexpensive, correct?

3 A. From the perception of danger fixes the  
4 prices at whatever the market's going to fix them at.

5 Q. You say "bargain" here.

6 A. We are looking at what's the potential value  
7 could be. When you see a beautiful lake and you see  
8 beautiful landscape, and you see improved security,  
9 you're seeing that there is some sort of disparity.  
10 That there is--that the pricing is not in reality with  
11 what is actually happening.

12 And that happens in a lot of businesses.  
13 There's a lag between when there's change and when  
14 prices actually adjust.

15 Q. That's not the answer to my question, is it?  
16 You are identifying regions that were perceived as  
17 previously dangerous. That's what you say. That's  
18 not what I said, that's what you say. Identify land  
19 plots in previously dangerous region. The perception  
20 of danger causes prices to be fixed at a bargain.  
21 That's what you say, correct?

22 A. Yes.

1 Q. You're a very good businessman, Mr. Seda,  
2 aren't you?

3 A. I hope so.

4 Q. And those beautiful lands, indeed, Colombia  
5 is a wonderful country, absolutely, but you took  
6 advantage of the situation and got those lands at a  
7 bargain, right?

8 A. "I took advantage." I thought I was being  
9 part of something, of the rebuilding of a country. I  
10 didn't think I was taking advantage of the country.

11 Q. Well, let's look at Page 16 of the same  
12 document.

13 MR. MOLOO: Ms. Banifatemi, I don't want to  
14 interrupt, but is it possible to see the English  
15 version as well? Since we don't have hard copies it's  
16 very hard to follow just the Spanish.

17 MS. BANIFATEMI: I don't believe there is an  
18 English version, is there?

19 (Comment off microphone.)

20 MR. MOLOO: There's no English version?

21 Okay.

22 MS. BANIFATEMI: So- we- it's a courtesy

1 translation I am giving on the record.

2 MR. MOLOO: Thank you.

3 MS. BANIFATEMI: I'm sorry, Dr. Poncet?

4 (Comments off microphone.)

5 THE INTERPRETER: No microphone.

6 MR. MOLOO: We just managed to find an  
7 English version, so we're following along on that one,  
8 there is an English version.

9 BY MS. BANIFATEMI:

10 Q. So, now looking at the first paragraph, but  
11 you have it also on paper, if you prefer to--

12 (Overlapping speakers.)

13 A. I prefer reading it right there, if it  
14 doesn't bother anyone.

15 Q. Okay. No, of course. It's--your counsel  
16 asked to have a paper binder, so I thought that was  
17 your preference.

18 Okay. So, I'll--again I will read slowly  
19 for the record the English translation of this first  
20 paragraph: "Taking into account that the Company  
21 believes that it can acquire first-class lands costing  
22 less than 54,000, which is Colombian pesos, per square



1 meter in the Prado Region, Tolima. If one assumes an  
2 average sales price of 40,000 in Colombian pesos, per  
3 square meter, the return on the Investment has a  
4 potential to reach more than 1000 percent during the  
5 Investment phase."

6           So, this is what I call being a good  
7 businessman, right? You buy piece of land in regions  
8 that are either perceived as previously dangerous or  
9 still dangerous and you expect to make a very high  
10 profit out of it, right? And you talk about profits  
11 of 1000 percent.

12           A. So, when we were doing this pitch-stack or  
13 what's called an "investment résumé," we were  
14 copy-pasting. And what I mean by "copy-pasting" is, I  
15 felt a little upset that we hadn't done the same thing  
16 in the region of Guatapé al Peñol. When we came to  
17 the region of Guatapé al Peñol, it was similar to  
18 Prado Tolima. It is a lake front destination, it is  
19 just an hour-and-a-half outside of the City of  
20 Medellín, which has a 4 million person population, and  
21 the prices of land were somewhat similar. And now, we  
22 had identified--I had identified a very similar

1 situation, beautiful lake front destination, but now  
2 with a population of influence of 10 million people,  
3 and it's the City of Bogotá. With huge consumer  
4 power, spending power, and there was this jewel that  
5 no one had done anything with. And exactly how it  
6 happened in Guatapé al Peñol, we purchased the land,  
7 we started development on the Project, the Project  
8 did--was--did very well. We sold very quickly, and I  
9 wanted to kick myself because the land values went up  
10 tremendously as a direct consequence of our singular  
11 development.

12 Q. Um-hmm.

13 A. And so, I said I do not want to make that  
14 mistake again. This time, I think it would be smart  
15 to acquire land before doing an influential  
16 development that will change the landscape and benefit  
17 from that. I mean, my job is to give returns to my  
18 investors, that's the way I can do what I love.

19 Q. But again, the business model is that you  
20 buy for a pittance, gorgeous regions, piece of lands  
21 in gorgeous regions at the very low price, there's the  
22 perception of violence, at the very least, if not

1 actual violence and then you expect a return on  
2 investment of 1000 percent. This is what you say in  
3 your brochure.

4 A. So, I just to want to clarify, we're not  
5 taking advantage of anyone. People are--

6 Q. I'm not saying now. Now, my question was--

7 A. Please let me finish.

8 Q. Now, my question was this is your business  
9 model.

10 A. Well, you're mischaracterizing my business  
11 model. And so, I just would like to characterize it  
12 in the actual light that it is, because what it sounds  
13 like is you're saying that I'm taking advantage of  
14 people, that I'm forcing people to buy. When we come  
15 into a region, when we come into an area, we use real  
16 estate brokers and we say we--"these are the  
17 characteristics of the assets that we're looking for,  
18 can you help us find properties?" And these are  
19 willing sellers say, "we want to sell," and we're  
20 paying Market Value. That is whatever the value is  
21 and whatever properties are selling for in that  
22 region, in that area, it's not--that something is

1 selling for 100 and we're getting it for 10. If it's  
2 selling for 4,000 pesos a meter, then that's the  
3 general price in the region in the area.

4           Consequently, whatever happens to that price  
5 after because we add value, well, those are the fruits  
6 of the rewards of business.

7           Q.    Okay.

8           MS. BANIFATEMI:  Now, I--Mr. President, I  
9 don't know if you want to have a break now or later  
10 because there was--or do you consider the earlier  
11 break to be the morning break?

12           PRESIDENT SACHS:  Please continue.  We will  
13 have another shorter break later.

14           MS. BANIFATEMI:  Okay.  Thank you, Mr.--

15           PRESIDENT SACHS:  If you don't mind.

16           MS. BANIFATEMI:  Of course.

17           BY MS. BANIFATEMI:

18           Q.    So, knowing so well the real estate market  
19 in Antioquia and Tolima, these are Regions where you  
20 have invested, right?

21           A.    I'm sorry, say it again?

22           Q.    Antioquia and Tolima, these are the Regions

1 where you've invested, correct?

2 A. Those are some of the regions that we've  
3 invested in--

4 (Overlapping speakers)

5 Q. "Some of the regions." So, you have  
6 in-depth knowledge of the real estate there, right?

7 A. I don't invest anywhere that I haven't  
8 walked, put boots on and walked the Lots we're  
9 interested in, walked the entire areas, talked to the  
10 mayors, talked to the local Councilmen, stayed in the  
11 hotels however good or bad they may be, eaten the  
12 food, talked to the neighbors. So, yeah, I have  
13 pretty in-depth knowledge of anything that we buy,  
14 yes.

15 Q. Do you call that "due diligence"?

16 A. I would call it due diligence, correct. I  
17 would call it due diligence on the land in the sense  
18 that what do I think--where do I think it's going to  
19 go, what do I think is going to happen there, what  
20 kind of tourism is happening, what's the  
21 classification of the tourist, how much are they  
22 spending, what do their friends say, why do people say

1 they don't want to go there? Do they come and go for  
2 the day or do they go back, stay the night at a hotel?  
3 It's business due diligence with regards to my  
4 business model, yeah.

5 Q. So, it's real estate due diligence; right?  
6 So, you go to the bottom of things to make sure that  
7 what you're buying is something that will give that  
8 Return on Investment that you're hoping, right?

9 A. It's business due diligence.

10 Q. I'm sorry?

11 A. It's business due diligence.

12 Q. "Business due diligence," okay.

13 But you are certainly also acquainted with  
14 the legal requirements and procedures that apply to  
15 real estate, right?

16 A. Yes.

17 Q. And that's the requirements that applied to  
18 buying land parcels, right? You're familiar with  
19 that?

20 A. Yes.

21 Q. And in--if I take again your First Statement  
22 at Paragraph 88.

1           This is in another context. This is not the  
2 context I'm discussing but in the context of  
3 discussions with Mr. López Vanegas, you refer to  
4 having conducted extensive due diligence on Page 88.  
5 In the middle of the paragraph, you say here you  
6 referred to a Newport had transacted in good faith,  
7 and extensive due diligence had been done on the  
8 property. This included four title studies and a  
9 certification from the Fiscalía, all of which have  
10 concluded--sorry, all of which had concluded that  
11 title to the property was clean and free of  
12 encumbrances, right? That is your position?

13           A. Yes, that's my position.

14           Q. So--and you refer here to title studies, and  
15 one of the title studies is the one that was conducted  
16 by the law firm that you commissioned--right?--the  
17 Otero & Palacio?

18           A. That's correct.

19           Q. And that you refer to in Paragraphs 49 and  
20 50 of your first statement.

21           Here you explain that you, starting at 49,  
22 you discuss Corficolombiana and the fact that they

1 were- you retained them as a fiduciary trust for the  
2 Projects, and that in the middle, Corficolombiana  
3 asked for a formal title search of the land from a  
4 third party to ensure that that title was clear, as I  
5 had commissioned similar studies before commencing The  
6 Charlee Hotel and Luxé by the Charlee projects. I was  
7 familiar with the process. On Corficolombiana's  
8 recommendation, Newport engaged a well-known local  
9 firm, Otero & Palacio to conduct the study, right?  
10 That's what we're talking about. Yes?

11 A. I'm sorry, that's what I'm talking about in  
12 reference to...?

13 Q. To the titles--one of the title searches  
14 that gave you the confidence that everything was fine.

15 A. Correct.

16 Q. And the study that came from Otero &  
17 Palacio, as you say, next paragraph, 50, on  
18 7 March 2013, Otero & Palacio issued their study,  
19 confirming clean title to the property. The title  
20 study included checking OFAC and UN sanctions lists  
21 for all natural and juridical persons that appear in  
22 the certificates of the properties herein identified.



1 The firm concluded that none of the prior owners of  
2 the land were on these lists and identified no other  
3 issues with the chain of title. The firm also  
4 concluded the corporate study of the seller, La Palma  
5 Argentina, finding no issues. The firm accordingly  
6 gave a favorable rating to the chain of title  
7 associated with the land, right? This is the  
8 conclusion; right?

9 A. I believe that's the conclusion from the  
10 title study itself, yeah.

11 Q. Yeah. Now, if you can look at Tab 12 of  
12 your binder. This is Exhibit C-216, 216.

13 A. Correct.

14 Q. Are you familiar with this document,  
15 Mr. Seda?

16 A. Vaguely.

17 Q. "Vaguely."

18 So, you have seen it?

19 A. I think--I think you put this on the screen  
20 earlier, was it today or yesterday? I don't know.

21 Q. Have you seen it before this Hearing?

22 A. I have--I have seen so many documents, to be

1 honest with you.

2 Q. I'm sure.

3 A. I'm sorry.

4 Q. So, this is a testimony by your lawyer or  
5 then lawyer Ana María Palacio in the Pinturas Prime  
6 Arbitration. Can you tell us what that was, that  
7 arbitration?

8 A. Sure. The arbitration was a legal claim  
9 brought by several of the—I think— a Unit Buyer that  
10 had several units, who brought a claim against us  
11 because they simply said we did not perform under  
12 Contract. We had a certain delivery date to turn over  
13 the unit, and we obviously weren't able to turn over  
14 the finished unit.

15 Q. So, in the context of that arbitration,  
16 there is an examination of Ms. Palacio, right? And if  
17 I can look first at the first page, which you have in  
18 front of you, the very first page it's called SP-0002,  
19 in fact. And I'm looking at the last third of the  
20 page.

21 "Question: What did the title study  
22 include? You have mentioned deeds. Does this mean

1 you analyzed the chain of title and the property's  
2 prior owners? Would you please explain this issue in  
3 detail?"

4           And she responds: "Yes, here is the  
5 proposal that was sent to them at the time, I do not  
6 know if I may submit it. The proposal talks about  
7 doing a title study going back 10 years, a chain of  
8 title review going back 10 years for the titles that  
9 are included in the property's ownership history. I  
10 was also--it was also proposed to them that a review  
11 be done of lists that are publicly available for all  
12 the individuals appearing in the title history for  
13 that property. As I said, this verification is done  
14 using lists that are publicly available, for example  
15 in Google, in OFAC, perhaps the UN, which deals more  
16 with terrorism-related issues, but a search would also  
17 be done."

18           So I--I will stop here. If you wish to take  
19 a bit of time to familiarize yourself with the  
20 document, I'm happy to give you a few minutes, with  
21 the Tribunal's authorization, of course.

22           (Witness reviews document.)

1 Q. Yes?

2 A. Yes.

3 Q. So, here we see in this excerpt that I read  
4 from, Ms. Palacio confirms having looked into 10 years  
5 of chain of title. You see that, right?

6 A. Yes.

7 Q. Is that something you knew at the time?

8 A. I'm sorry?

9 Q. Is that something that you knew at the time?  
10 She was your lawyer, so did you retain her and say, go  
11 back 10 years?

12 A. I didn't--I didn't--I wouldn't even know how  
13 to tell professional how to do a title search.  
14 They're the professional. We told them to do what's  
15 required, please do a title search for us.

16 Q. So, she did a 10-year search, that's what  
17 you're saying, on her own.

18 A. Of course. We said, well, first off, to add  
19 context, we asked the fiduciary, which was fiduciary  
20 Corficolombiana, part of the largest financial  
21 conglomerate in the country, what was the preferred  
22 firm. We didn't know Otero & Palacio, we had never

1 worked with Otero & Palacio before. I never met  
2 either Ms. Otero or Ms. Palacio. We simply went off  
3 the reference of this huge financial conglomerate and  
4 said who would be the best company to do this title  
5 research. Rather than going out and finding a random  
6 company, we want the Company that you're most  
7 comfortable with.

8           So, the financial entity recommended this  
9 firm which was very highly acclaimed firm. They were  
10 working for Banco de Colombia and were very  
11 well-regarded in the community. So, we said, "Great,  
12 let's use them."

13           Q. I did not say that she was not  
14 well-regarded. I did not take an issue with the law  
15 firm. If you listened carefully to my questions and  
16 answer my questions, I think this will go faster. So,  
17 my question was that she, if you did not tell her do a  
18 10-year, it was her own initiative to do 10 years.  
19 That was my question, so the answer is yes, I assume?

20           A. Yes, I hadn't spoken to her personally.

21           Q. Somebody for you did in your company, is  
22 that what you're saying?

1           A.    Correct.

2           Q.    So, let's look at page--bottom of Page  
3 SP-0007, and here you see again this paragraph where  
4 counsel, cross-examining counsel is asking:  
5 "Counselor Ana María, you mentioned in your narrative  
6 that the title studies are for 10 years. Are you  
7 able, in your recommendations to the client, or in  
8 your comments regarding the title study, tell the  
9 client or recommend to the client that it be done for  
10 more years?"

11                   And she answers, I quote: "Yes, it is  
12 simply a proposal. If the client say no, I want you  
13 to do the entire chain of recordation of titles, it  
14 can be done so it covers the entire chain."

15                   So, that is her answer.

16                   So, what this shows is that the title study  
17 can carry shorter or longer terms, depending what the  
18 client asks, right? That's what she says.

19           A.    So, to be clear, on this title study and  
20 every title study we've ever performed, we have never,  
21 ever directed, suggested or made a reference to a law  
22 firm to perform a title study in one way or another.

1 We have always, always, directed the law firm simply,  
2 please do whatever is necessary under the law and give  
3 us back a fulsome title search.

4 Q. Hmm. But what she says here is that she did  
5 a 10-year search, and here in answer to the question,  
6 she says that, yes, I can go beyond if the client asks  
7 me. The question is: You didn't ask her; right?

8 A. To be completely honest with you, in this  
9 very moment, I have no--would have no thought process  
10 that I would have to ask the most well-regarded title  
11 research firm in the State of Antioquia and tell them  
12 how to do the work. My assumption is they know--they  
13 know what they're doing. I'm relying on their  
14 knowledge.

15 Q. Well, you're familiar with client  
16 instructions, right? I mean, clients give  
17 instructions to the lawyers, your lawyers are given  
18 instruction--are given instruction by you, my clients  
19 are giving instructions to me. That's what happens  
20 all the time with lawyers?

21 A. I can attest to 100 percent fact, we gave  
22 zero instructions, zero recommendations to Otero &

1 Palacio on what to do and what not to do with regard  
2 to this title search. Our assumption was, our  
3 reliance was, they would do everything that was  
4 required under the law to guarantee that we were  
5 qualified good-faith buyers.

6 Q. And once you get that title study in hand,  
7 you don't question if you think it's all good, you  
8 don't say maybe I want to look more, you don't have an  
9 interaction with them and say are you sure this is  
10 done properly, we're talking about a region that's  
11 dangerous with the cartel and so on? You don't ask  
12 them?

13 A. Of course we do. The same is when people  
14 get a second medical opinion. This was one singular  
15 piece of our diligence. This gave me comfort, yes.  
16 But what really gave me comfort was the combination of  
17 this title search, which as we're referencing, went  
18 back 10 years, using Corficolombiana, which is a  
19 nationally recognized a trust fiduciary by the largest  
20 financial conglomerate in the country, them going back  
21 60-some-odd years, writing the Attorney General's  
22 Office, getting a certificate that we relied on and



1 felt very proud about when we received it,  
2 understanding that Corficolombiana is a financially  
3 regulated entity that has obviously approved SARLAFT  
4 and diligence process. I don't know what it is, I  
5 wouldn't even pretend to understand exactly how it  
6 works but our reliance wasn't just on this title  
7 search. This was one piece in a very broader spectrum  
8 of diligence that we relied on.

9           And this together with all of the other  
10 things that we did, the financial entity that we went  
11 to Banco de Bogotá, and Scotiabank, all of them coming  
12 back and all saying the same thing, this property is  
13 clean, this property is clean, this property is clean,  
14 this property is clean. That gave me a huge amount of  
15 comfort, huge amount of comfort.

16           Q. I was not talking about all of the others.  
17 I'm still focused on this one, so in 2013, March 2013,  
18 and this particular law firm recommended to you by  
19 Corficolombiana, they come back, they give you this  
20 title study, and you're satisfied with that. That's  
21 what you're saying. I didn't want to go beyond, I  
22 didn't want to ask them to double-check. I was happy

1 with that. That's your answer.

2 A. Well, I think what you asked me was--and if  
3 I'm right, you said, so you did this title study and  
4 you were, like, I don't have to do anything else, this  
5 is fine. I'm trying to answer your question as --

6 Q. No. Sir, I asked you in relation to this  
7 particular study. When your lawyer gives you back the  
8 title study, I'm asking you whether you looked beyond  
9 this, and you asked them, giving instruction,  
10 double-check, are you certain, and so on. For this  
11 particular law firm on this particular title study.  
12 "Yes" or "no"?

13 A. So, the thing we've learned, particularly  
14 with engineers, for example, if an engineer is bad,  
15 you don't ask him to go do more bad work, right? I'm  
16 not saying that they're bad. That's not what I'm  
17 saying. I'm saying when--if you're concerned about  
18 are the engineering calculations correct, rather than  
19 have the same engineer re-run his calculations, you  
20 get a second opinion. You get a new engineering  
21 report. And if that second engineering report says  
22 yup, the first guy's engineering looks good, that

1 gives me much more comfort than going to the same guy  
2 and saying can you please re-run this.

3 Q. Okay. Now, let's look at other--actually,  
4 no, not yet. I want to finish with this document.  
5 Looking at this time the next page, Page SP-0008. You  
6 see on top of the page starting with second line:

7 Question: "You said that in your title  
8 study you had checked nine deeds and that basically  
9 you, in that 10-year chain of recordation, you stated  
10 here that you checked the individuals that appear in  
11 the entire record of recordation, in the OFAC Lists,  
12 Google. Did you also check their legal  
13 representatives?"

14 She says: "Yes."

15 Question: "Do you remember having checked,  
16 or knowing who is the legal representative of  
17 Sierralta López and Compañía?"

18 Answer: "Yes, it is there."

19 Question: "Do you remember?"

20 Answer: "Yes."

21 Question: "Who was it?"

22 Answer: "Sebastian López."

1           Question: "No."

2           And then there's some back and forth about  
3 whether it's written and whether she brought the right  
4 document. If you go a few lines down:

5           Question: "So then Mr.--so he tells her it's  
6 Mr. Iván López, right?--"when then Mr. Iván López was  
7 the legal representative for that Company at that  
8 time."

9           She says: "I will check--we could check."  
10 I'm sorry. "I did not bring the attachments.  
11 Unfortunately, since the title study was done already  
12 some time ago, perhaps the attachments of that--for  
13 that deed are not among those items, but this person,  
14 Iván López, does not appear on the list that I  
15 provided."

16           So, issue is taken with the fact that she  
17 did not check or she actually checked legal  
18 representatives for Sierralta López, and she doesn't  
19 recognize that the legal representative is Iván López;  
20 right?

21           A. I wasn't present for her testimony. You're  
22 discussing minutiae within the context of a

1 litigation. I don't--I'm not a title study  
2 professional. I know that I've looked at the  
3 information. I know that every single owner,  
4 everybody that was on title had been scrubbed. I went  
5 back, and I looked at the documents. I don't know  
6 what the methodology was. I understand that there is  
7 not a manual written out when it comes to how to do  
8 title research, and thus my assumption is that law  
9 firms do their title research in the different ways  
10 that they do it. I don't know. I can't pretend to  
11 know. All I can tell you is that we relied on her  
12 work.

13 Q. So, when you say, I'm quoting from you, "I  
14 know that everything was on title had been scrubbed  
15 and went back and I looked at the documents," we still  
16 don't have the final Transcript. I understand that  
17 you said that you went back and you looked at the  
18 document; is that what you're saying?

19 A. I had my in-house counsel look at it.

20 Q. Your counsel looked at it, or you looked at  
21 it or both?

22 A. My in-house counsel--at one moment in time,

1 I mean, of course, within this long period of time  
2 between let's call it 2016 until today, of course,  
3 I've pulled the documents, I've looked at the  
4 documents, of course.

5 Q. At the time, did you double-check? Because  
6 what she says here is that she checked nine  
7 deeds--right?--that's what she did.

8 A. That's what it says.

9 Q. Right.

10 Now, let's look at the other title study  
11 that you requested in 2016. That's your Tab 13,  
12 one-three. Exhibit C-160.

13 So, this is another title study that was  
14 commissioned by Colpatria, for purposes of a loan for  
15 the Meritage Project, right?

16 A. That is correct.

17 Q. And it was carried out by another law firm  
18 Osorio & Moreno, right?

19 A. That's correct.

20 Q. Do you remember this document?

21 A. I do remember this document.

22 Q. Have you reviewed it for purposes of the

1 Hearing?

2 A. I reviewed it in general before the Hearing.

3 Q. "Before the Hearing."

4 So, it is dated 17 May 2016. And if we look  
5 at Page SP-0014.

6 You see that there is a number of deeds with  
7 the dates; right? And if you look at the three from  
8 the bottom, you see that there's Deed 1554, and the  
9 date is 12/08/94; right?

10 A. That's correct.

11 Q. You're familiar with that deed by now?

12 A. I might be vaguely familiar with it.

13 Q. 1994. So, looking at what your other law  
14 firm did, Palacio, that was in March 2013; right? If  
15 she did a 10-year search, that would have been from  
16 2013 to 2003; right? So, by definition, a deed of  
17 '94, she would not have picked?

18 A. I assume it wouldn't hit 1994, yes.

19 Q. All right. But these did, this law firm  
20 actually did. They went beyond, and you see that you  
21 have dates, if you look at the fecha column, you see  
22 you have '94, you have '92, a number of different

1 dates; right?

2           So, if we look at the deed that's Exhibit  
3 R-8, Tab 14.

4           A.    Tab?

5           Q.    14, one-four.

6           A.    Uh-huh.

7           Q.    And I have put in the tab both the English  
8 and the Spanish version.  You're free to look--do you  
9 prefer to look at the original Spanish?

10          A.    I'm not that good at looking at deeds, but  
11 sure, if you would like to point me to what you would  
12 like me to review.

13          Q.    Well, have you seen this document before,  
14 Mr. Seda?

15          A.    If I have seen it, I have seen it in  
16 Spanish--

17                   (Overlapping speakers.)

18          A.    But, I can't say I'm super familiar with it.  
19 I mean, is there anything you would like me to review  
20 within this document?

21          Q.    I'm just asking if you recognize it.

22          A.    It looks like a deed.



1 Q. This particular deed.

2 A. Again, I probably reviewed it.

3 Q. So, it's a- so you see that it's a deed  
4 pursuant to which Sierralta López and Compañía  
5 acquired the Las Palmas lots. right? It's pretty  
6 important for you, isn't it? It's the acquisition of  
7 the Lot which became the Meritage Lot; right?

8 A. I'm going to rely on the fact that--

9 Q. Please, you have the paper version--

10 A. If you say so, sure.

11 Q. You have the paper version. Have a look.  
12 Take your time to look at it.

13 A. That's what it appears to be, yes.

14 Q. And if you--so, you see on top, you see the  
15 name is going to be highlighted, Sierralta López and  
16 Compañía. And then if you look at the next page under  
17 (b), (in Spanish) not this one, next page, I'm sorry,  
18 the fourth page of the document you see Iván López  
19 Vanegas, and you see (in Spanish), right?

20 A. Correct.

21 Q. So, that's Mr. López Vanegas signing this  
22 document, this deed, for Sierralta López, right? For

1 the purchase of the land, right?

2 A. That is what it appears.

3 Q. So, had--this is 1994. Had Otero & Palacio  
4 gone beyond 10 years, they would have found this deed,  
5 right?--they would have identified this deed.

6 A. So, for example, if they had gone to 20  
7 year? I don't know. I don't know how many years they  
8 would have gone back. But--

9 Q. For example--

10 A. --for example, if they had gone to 20 years?

11 Q. Yeah?

12 A. My assumption is that they would find this  
13 deed potentially.

14 Q. So, looking back at Exhibit 160, that is  
15 Tab 13, one-three again. I'm looking at the last  
16 page.

17 A. Oh, sorry.

18 Q. Tab one-three.

19 A. SP-001--oh, I'm in the wrong place, sorry.

20 Q. C-160, Tab 13, last page, SP-0015.

21 A. Ah, yes.

22 Q. And you see there is a disclaimer there;

1 right?

2 A. What are you referencing?

3 Q. The "concepto"--so looking at the last page,  
4 "concepto", so you have the English version now. The  
5 study was performed based on the information provided  
6 up until today, thus Osorio & Moreno Abogados--I'm  
7 sorry, are not liable for any information that may  
8 appear thereafter that up to date is not known by this  
9 lawyer's office, such as information regarding asset  
10 forfeiture processes, where such change has not been  
11 recorded within the registration page reviewed.

12 So, this is the second law firm that has  
13 gone actually over to 20 years, identified as we have  
14 seen the deed 1554, and they say that this is the  
15 disclaimer. We can--They don't take responsibility for  
16 information regarding asset forfeiture procedures,  
17 right? That's their disclaimer. And those that are  
18 not recorded, that's to be precise what they say.

19 A. I mean--This is, I believe, to be a  
20 rubber-stamp. I mean, with regards to Osorio & Moreno  
21 doing a title search for a National Bank, who  
22 contracted her was Scotiabank, not us. We hadn't even

1 been privy to this title search until months after we  
2 already closed the loan with Banco de Bogotá.

3 She's affirming in this title search that  
4 there's no issues, and if you look at the findings,  
5 there are no issues with the title, including the deed  
6 that you're referencing, including the individual that  
7 you're referencing.

8 So, in our conversations with her, she  
9 stipulated that she had looked at that deed and looked  
10 at this person on the OFAC List, the UN list, and all  
11 of the essential lists.

12 Q. That's not what she says, is it? The study  
13 was performed based on information provided up until  
14 today, that's 2016--right?--and the firm are not  
15 liable for any information that may appear thereafter  
16 that up to date is not known by this lawyer's office,  
17 such as information regarding asset forfeiture  
18 proceedings.

19 A. Can we see the Spanish version, please?

20 Q. Sure. I think you have it in the binder.

21 A. Where would it be located?

22 Q. Same tab. You don't have it in the same

1 tab?

2 A. I have it now.

3 So, if you look at SP-0013, C-160.

4 Q. What SP page are you referring to?

5 A. SP-0013.

6 Q. Okay.

7 A. And I will read this to you and then give  
8 you the exact context of which our conversation was  
9 directly with the creator of this.

10 It says, "in accordance with the  
11 documentation provided, the real estate property  
12 subject to study is free of any lien and limitation to  
13 the right of ownership. I will translate it to you".  
14 In Colombia it means that the property has no issues  
15 whatsoever. This is the equivalent of a positive  
16 finding and a title study, okay? And then  
17 furthermore, the reason why we added this, where  
18 you're getting this document, and unfortunately, the  
19 date isn't completely correct because this document  
20 was given to Scotiabank at the end of 2015. She  
21 reproduced this document for us to be able to add into  
22 our legal claim in response to Iván López' tutela.

1 And, the reason why we added it was because she says,  
2 this is--we came to a completely favorable finding.  
3 When Scotiabank ran this, we came to completely  
4 favorable finding on the 20-year history of this  
5 title. We were happy about that. We felt it showed  
6 clearly that there were no issues with the title. We  
7 took, we made copies of it. We added it into our  
8 filing, and we sent it to the courts in our response  
9 to Iván López' tutela.

10 Q. So, that was not my question, but since  
11 you're discussing this, the actual translation is that  
12 it's free of attachments, since I'm not a native  
13 speaker, I'm asking my partner, the Lot is free of  
14 liens or attachments over the title. That's what it  
15 says.

16 A. You have to finish the sentence. So, if you  
17 look at the--

18 Q. But that's what it says. I'm correcting  
19 your translation now.

20 A. Well--

21 Q. It is "free of liens or attachments over the  
22 title".

1           A.     (in Spanish) "Limitación al derecho de  
2 dominio"

3           Q.     Okay, but...

4           A.     The right of title, "derecho", the  
5 right of title.

6           Q.     So?

7           A.     That--that is the equivalent of a favorable  
8 finding.  If it was an unfavorable finding, you would  
9 see it in bold, and it would--they would specifically  
10 stipulate this is an unfavorable finding, and they  
11 would say this individual, title number whatever, the  
12 escritura that you're referencing.  And again, I'm not  
13 a professional.  I don't know exactly how this works,  
14 but they would say this individual, we found them on  
15 the OFAC List, our recommendation is that it's not  
16 favorable, should not proceed for acquisition of the  
17 property.

18          Q.     And now, if you go back to the last page,  
19 which is the disclaimer, which is what I was  
20 discussing with you--

21          A.     Hm-umm.

22          Q.     --it is the disclaimer regarding for future

1 proceedings not yet recorded on the deed of title.

2 So, if it's not recorded, they cannot know it; right?

3 That's a disclaimer. They say what they can say based  
4 on the information that they find, but they are making  
5 a very clear disclaimer, right? I'm just talking  
6 about disclaimers. You know what a disclaimer is?

7 A. I do know what a disclaimer is.

8 Q. You're familiar with disclaimers? You said  
9 that earlier.

10 A. Yes.

11 Q. Okay. Can we see another disclaimer?

12 A. Sure.

13 SECRETARY MARZAL: Excuse me for the  
14 interruption, this is for the benefit of the  
15 Interpreters. When you switch from one language to  
16 the other, you could please make sure to wait a few  
17 seconds so that they have time to switch from one  
18 channel to the other.

19 THE WITNESS: Of course. Apologies.

20 PRESIDENT SACHS: And we should now consider  
21 soon to have our morning break, but you're still on  
22 the document or...



1 MS. BANIFATEMI: I'm moving to another  
2 document, so we can have a break now.

3 PRESIDENT SACHS: I would still have a  
4 question relating to this document. I see in the  
5 English version on Page SP-0013, Chapter 3, prior  
6 titles. And when I compare the titles mentioned here  
7 with the titles documents studied under Paragraph 5 on  
8 the next page, not all of the document studies, or the  
9 deed studies mentioned on Page 0014 appear here under  
10 the title "prior titles."

11 And I also see that in the second paragraph  
12 of that Section 3 at the very end when they talk about  
13 the Deed Number 3338, they add, "thus, it's been more  
14 than 10 years since."

15 Do you have an explanation why they are  
16 mentioning the 10 years in this context here?

17 THE WITNESS: I can give you context and  
18 conversations that I've had with title study  
19 professionals.

20 PRESIDENT SACHS: At the time?

21 THE WITNESS: At the time of when we  
22 recovered this title study because I guess the

1 important part is that we had already had our title  
2 study, and we were seeking bank financing, and the  
3 bank is outsourcing to this firm to do the title  
4 search for them. This was not contracted on our  
5 behalf. This is contracted on Scotiabank's behalf.

6 PRESIDENT SACHS: Sorry, who paid for this  
7 title search here?

8 THE WITNESS: Scotiabank.

9 PRESIDENT SACHS: Please go ahead.

10 THE WITNESS: So, when we talked to Osorio &  
11 Moreno--I think that's her name--I only talked to her  
12 once--she said, well, the thing is--because I asked  
13 the same question. She says the thing is that, we're  
14 only required to do a 10-year title search, but banks  
15 are particular about reputational damage, and she says  
16 you know we go back 20 years because the banks ask us  
17 to go back 20 years because they don't want to have to  
18 suffer any reputational damage. It's not about a  
19 legal issue. It's about covering their bases on  
20 potential reputational issues. Obviously, if a bank  
21 gets smeared in bad press, it's irrelevant if they  
22 actually win some case of EDD. They don't want to be

1 involved. That was the explanation that she gave to  
2 me.

3 PRESIDENT SACHS: This didn't give you the  
4 idea to go back to your lawyers and to ask them, well,  
5 the bank said it would be more prudent to go back 20  
6 years, could you do that for me also?

7 THE WITNESS: Well, no, the other thing is  
8 that this was, in 2000--this was the end of 2015, our  
9 due diligence had already been done, due diligence was  
10 a snapshot in a moment in time. We wouldn't even know  
11 to redo the due diligence, first off.

12 And then second off, we had a ton of other  
13 due diligence that we had done. We had the Fiscalía  
14 study which was ordered by Corficolombiana that went  
15 back 65 years. We felt pretty confident. We felt  
16 pretty confident that we were protected under the law  
17 and that we had done more than sufficient due  
18 diligence.

19 PRESIDENT SACHS: Okay. Thank you. Let's  
20 have the morning break now.

21 15 minutes? Meaning we will resume at  
22 quarter past 12:00.

1 MS. BANIFATEMI: Mr. President, can the  
2 Witness be admonished, please?

3 PRESIDENT SACHS: Yes, I'm sorry.

4 You're still under testimony, and therefore  
5 you should not talk to anybody during the break.

6 THE WITNESS: Thank you.

7 (Recess.)

8 PRESIDENT SACHS: Let's resume, please.

9 MS. BANIFATEMI: Thank you, Mr. President.

10 BY MS. BANIFATEMI:

11 Q. Mr. Seda, we have been asked by the Court  
12 Reporter and the Translators to make a pause between  
13 our respective questions and answers so that they can  
14 pick it up. So I will wait after you've spoken, and  
15 please wait after I've spoken--

16 A. Sorry about that.

17 Q. You just did what I asked not to do so...

18 A. Ah.

19 Q. Let's pause in between. Thank you very  
20 much.

21 So, you referred before we went to the  
22 break, you referred to the--I don't know how you call

1 it, the certification. You know our position, of  
2 course. You were here yesterday. You call it the  
3 "certification" or "certificate of legality" or "clean  
4 title," and what this is, as we explain, is that it's  
5 a response by the Fiscalía to whoever is asking--using  
6 their rights of petition.

7           So, you referred to the response provided by  
8 the Fiscalía to Corficolombiana. I want to show it to  
9 you now. It's not in your binder, but my colleague  
10 will now give it to you. It can go--we have one tab  
11 spare, so it can go under Tab 45. And so it's for the  
12 record it's C-32bis. You should have both the English  
13 and the Spanish version. So it's dated 17 September,  
14 2013.

15           And so, what we see is that, on the first  
16 page, it's a response provided to Mr. Sintura, the  
17 Corficolombiana lawyer, right?

18           A.    Correct.

19           Q.    Thank you.

20           And it says--so the first paragraph you see  
21 what the request is: "I am pleased to provide you  
22 with the response offered by the National Prosecutor's

1 Office through the publication number, et cetera, in  
2 response to the request raised by my office, aimed at  
3 establishing whether in relation to the property  
4 identified as real estate file number"--and the  
5 number"--of the Registry Office of Public Instruments  
6 of Medellín, or in relation to its former and current  
7 holders, the national anti-money-laundering and Asset  
8 Forfeiture Unit carried out an investigation of  
9 money-laundering and/or extinction of ownership  
10 proceeding. As can be seen in the attached document,  
11 there is no evidence of any type of investigation  
12 related to this property or its owners in the database  
13 of that unit." Right?

14           So, this is what you refer to when you say  
15 the Fiscalía, itself, gave a certificate that the  
16 title was clean, right?

17           A. That's correct.

18           Q. Okay. So, if we go to the next page, this  
19 SPP1, SP--sorry, SP1, SP2, you see that the response,  
20 so it says: Subject matter right of petition  
21 response, right? And it says: "With the purpose of  
22 responding to the referenced request, I hereby state

1 the following." And it then says: "Having consulted  
2 the consolidated system of information this unit  
3 manages, to date, there is no record of the people or  
4 entities listed below."

5           So, when it says "to date," this means  
6 9 September 2013, right? This is as of  
7 9 September 2013, correct?

8           A. Yeah. As of the date of due diligence,  
9 yeah.

10          Q. Right.

11           And then you see there's a list, and this is  
12 the list that was provided by Corficolombiana, right?  
13 And they take the list and they say for each of the  
14 names and companies listed if they have observations  
15 or not, correct?

16          A. What was the question?

17          Q. That they take the list provided by  
18 Corficolombiana and for the list provided, therefore  
19 each name or each entity, they then say their  
20 observations. That's what we see on the table.

21          A. My understanding is that it is more or less  
22 how it's done.

1 Q. Well, they are being asked to provide  
2 responses to a list, so this is the list that they  
3 have in front of them, right?

4 So, if we look at the next page, we see that  
5 there is a reference to Sebastian López, and it's in  
6 the middle. This is the son of Iván López, right?

7 A. Correct. I assume, though. Yes.

8 Q. Well, you discuss him in your statement.

9 A. Yes. After all of the investigations and  
10 newspaper articles, yes, I assume it's his son, yeah.

11 Q. And on the last page, there is a reference  
12 on the penultimate box, Inversiones Nueve S.A.  
13 corporation.

14 That is the name previously known as Sierra,  
15 the company of Mr. Iván López; you're familiar with  
16 that? Sierralta.

17 A. Yeah, that company rings a bell, yes.

18 Q. So, what they're asked to do essentially is  
19 to provide and to give an answer on the list. It's an  
20 exhaustive list, and this list that we see, doesn't  
21 say "Sierralta." It doesn't say "Iván López", right?

22 A. Was the company Sierralta, its name changed?



1 Q. Yes.

2 A. So it was—it changed to Inversiones Nueve;  
3 right?

4 Q. Well, you tell me. What's your  
5 understanding?

6 A. I don't know.

7 Q. Yes.

8 A. I'm not a title study professional. I'm  
9 just asking a question.

10 Q. No, neither am I.

11 (Overlapping speakers.)

12 A. So, again, with that, taking that in  
13 consideration, I mean I think this document for me  
14 stands on its own. It's--

15 Q. No, that's what I said earlier. This is--

16 A. I don't want to try--

17 (Overlapping speakers.)

18 Q. We're not going to talk over.

19 A. Oh.

20 Q. There is a change of name, so Inversiones is  
21 the former Sierralta, right?

22 (Nods in agreement (yes). No audible

1 response.)

2 Q. So, the Fiscalía, when they respond, there's  
3 two limitations in their response: One, they're  
4 responding only to this list. This list doesn't say  
5 Iván López, and it doesn't say Sierralta. They're  
6 looking--they're not doing a corporate search.  
7 They're looking at their files and whether there is  
8 anything in their files in relation to the entities  
9 and to say on these entities we have nothing, right?

10 And then they say, "to date"; that's as of  
11 9 September. So, that's what they say, right?

12 A. Correct. That's what it says, the document  
13 says, correct.

14 Q. Yeah. So, when you say that you were very  
15 comfortable because everything was confirming that the  
16 title was clean, every time you see that there's  
17 limitations. There's answers provided to certain  
18 questions. It's Corficolombiana defining the list,  
19 and there is disclaimers, as we saw in the second  
20 lawyer, in the Osorio, right? So, the due diligence  
21 requires that there is something going beyond, right?  
22 That's the purpose of due diligence, right?

1           A.    Can I answer your--I thought your question  
2 is was I comfortable with--what exactly is the  
3 question?

4           Q.    The question is:  When you have documents  
5 that have disclaimers or have limitations, by  
6 definition it means that you have either to  
7 double-check or to renew.  If they say "to date," that  
8 is as of 2013.  It may well be that something changes  
9 later.  When Osorio says that they do not have--the  
10 language, these, they have not looked at the  
11 asset-forfeiture processes, not yet recorded on the  
12 deed of title, that means that that's the status at  
13 the time.  So "due diligence" means that you have to  
14 update, double-check and make sure that due diligence  
15 is conducted fully, correct?

16           A.    I think I have to answer this question in  
17 two parts because I think there's almost two  
18 questions.  Okay?

19                        So I think we have a difference of opinion  
20 with regards to what is required with due diligence.  
21 I'd like it put out a disclaimer.  I'm not a title  
22 expert.  This is not what I do.  My expertise is

1 understanding real estate, understanding what  
2 consumers want, what the right thing is to do, the  
3 right property, project, hotel, et cetera. When it  
4 comes to technical issues such as this, engineering,  
5 title studies, I rely on the professionals that we  
6 hire.

7           With that said, my understanding is title  
8 research is--it is a snapshot in time, okay? We  
9 signed a Contract, which bound us to acquire this  
10 property barring that if after we had done our title  
11 research, if we didn't find any issues and we did this  
12 with good faith and with good conscience, and we did  
13 that in 2013.

14           And I relied on--I hired the most premier  
15 companies, financial institutions, banks to do this  
16 research for us, and we went as far as writing the  
17 Attorney General's Office to ask them.

18           So, I looked at the universe of all of these  
19 pieces of evidence, and I said, I feel great. I feel  
20 comfortable. It was not my intention to request to  
21 the--to Corficolombiana team and ask for this 65-year  
22 certificate or whatever we'd like to call it, but it

1 definitely made me feel good at the end of the day  
2 when I got it. I was very proud of it. I didn't know  
3 any other projects that had this.

4           So, what you're referencing in regards to  
5 shouldn't I have kept doing title research? I don't  
6 know. It kind of brings about a question to me that,  
7 well, that then concerns me on the legitimacy of any  
8 title. If you buy your home, are you doing title  
9 research every year? And if you find something in the  
10 future, does it mean you lose your home? My  
11 understanding of the law is--my limited understanding  
12 of the law is "no"; is that a bona fide good-faith  
13 buyer is you look at things at a moment in time. You  
14 get comfort with everything the world of going more  
15 and beyond, as you said, which I feel that we strongly  
16 did, and then you move on, and you hire your architect  
17 and you build the beautiful home that you want to live  
18 in with your significant other or whoever that is, and  
19 you move on. You don't do an annual title study, as  
20 you're mentioning to do, continued research to see if  
21 you find something in the future.

22           That's my understanding.

1           Q.    So, your answering a question I did not ask.  
2 I did not say or ask whether the due diligence has to  
3 be renewed every year. That's not the question.

4                    There's two questions. Question 1: When  
5 you are asking, either directly or indirectly, a title  
6 study, this is important, right? This goes to the  
7 validity of the transaction and whether you can  
8 continue and build the parcel, correct?

9           A.    And I greatly apologize. Please repeat the  
10 question one more time for me.

11           Q.    The exercise is an important exercise. The  
12 title study determines the ability afterwards to  
13 proceed with the building and the construction; right?  
14 This is your--you're in the project. You want to make  
15 sure that your project moves on on a good basis,  
16 right?

17           A.    It's an important step to do exactly what  
18 the law says. Do the steps that are taken for you to  
19 create protection under the law to be a bona fide or  
20 qualified good-faith buyer without fault. It's--if  
21 you don't do those steps, well, then you don't create  
22 that protection.

1 Q. Right. But it's an important step, right?

2 In your line of business, it's a very important step.

3 A. Yes.

4 Q. So, due diligence as a result is a very

5 important milestone in that process, right?

6 A. I agree with you.

7 Q. So, Question 1: When you said earlier in

8 response to the President's question, that you said

9 that at the time, with the Osorio lawyers, went

10 through the findings with them. This means that you

11 can't--even though they were retained, as you say, by

12 Colpatria, you always have the ability to sit down and

13 double-check and make sure and get comfortable on the

14 due diligence; correct?

15 A. I don't know if you're referencing that you

16 have time to get comfortable or time to get

17 uncomfortable because I--again, the time, the way I

18 understand the law, the way individuals rely on the

19 law is--you gentlemen, I don't know if you own homes

20 or you don't, you go and you buy a home five years

21 ago, and you do--you hire a company--I don't know if

22 you guys actually read the title reports yourself. I

1 normally don't go that much into detail on them. I  
2 look at conclusion, but you buy a home five years ago,  
3 you receive a favorable title research report, you  
4 receive another one, you hire a bank, you receive a  
5 favorable report from them or finding. You run it  
6 through an escrow or a fiduciary, that comes out  
7 favorable, and you're in the middle--five years down  
8 the road and you decide to build a pool, if someone  
9 comes and says something, I don't think that you stop  
10 building the pool because someone says 20 years ago I  
11 lived in that house, and I was displaced from that  
12 home.

13           And--if that's what you're getting at. I'm  
14 not sure exactly what you're getting at, but I  
15 definitely say we don't agree on when you're supposed  
16 to do due diligence. My understanding of the law is  
17 due diligence is done at the acquisition of the  
18 property, on the onset of the acquisition. And any  
19 diligence done after the fact, the way I understand  
20 the law is useless. I believe the law pretty much  
21 states is you can't do due diligence after you acquire  
22 the property and have it serve you and do good for



1 you.

2 Q. So, if new circumstances arise you don't  
3 have to update your due diligence, for example.

4 A. Again, I'm not an expert on the law, but my  
5 understanding is no.

6 Q. So, you--and thank you for the full  
7 narrative and monologue. I will ask you to be  
8 shorter, even if you want to give context because  
9 again, we don't have the time. So, my question went:  
10 To the time at which this due diligence was conducted,  
11 so when you sat down with Osorio, you sat down with  
12 Osorio for a purpose; right? You wanted to make sure  
13 that they had done what they were supposed to do,  
14 correct?

15 A. I never sat down with Osorio and Palacio--

16 Q. That was my understanding, in answer to the  
17 Tribunal. At the time, I discussed with them. How  
18 did you discuss with them?

19 A. Are we talking about Otero & Palacio or  
20 Osorio--

21 Q. Osorio.

22 A. Oh, okay. So, again you said at the time of

1 the acquisition of the property or the time of the--

2 Q. At the time of the due diligence. This I  
3 understand, was your testimony earlier. That at the  
4 time when the study was done in 2016, you had  
5 discussions with them, right? That's what you said.

6 A. To be clear, the title research that we're  
7 talking about was not due diligence for title research  
8 for acquisition of the property. This was not title  
9 research that was contracted by us. This was title  
10 research that was contracted by an entity, Scotiabank,  
11 that was interested in financing the property, the  
12 Project. So, for example, if I had bought this  
13 project--if I had bought this property 40 years  
14 before, yet I wanted to get financing today, even  
15 though I've already bought the property 40 years ago,  
16 the Bank would still run title research today for  
17 their own requirements under Federal law.

18 Q. So, when you say that you were comfortable  
19 with all of certifications and title studies and all  
20 of the comfort that you received, now you're saying  
21 the only due diligence that mattered was the one that  
22 you commissioned to Otero? Is that what you're

1 saying?

2 A. No, that's not what I'm saying.

3 Q. So, which due diligence was the right one,  
4 then?

5 A. The due diligence, the way I understand the  
6 law, for example, my understanding is a bank or a  
7 financial entity, they have their own internal  
8 processes. We, Royal Property Group or Newport, we  
9 don't have those systems, and so what we do is we hire  
10 the individuals that do have those system. So, the  
11 due diligence that I did--or let's say that I did in  
12 representation of our investors was to hire a  
13 prominent well-known title research firm and tell them  
14 to please research the title. Whether it was--however  
15 many years it was going to be, they're the  
16 professionals. I relied on their professionalism and  
17 their knowledge. We hired a premier and what we  
18 thought is the best fiduciary in the country, owned by  
19 the largest financial conglomerate, 50,000 employees,  
20 and they did their processes. They recommended  
21 writing to the Attorney General's Office as part of  
22 that package of due diligence that we're discussing

1 now that I relied on, and I was shocked. I didn't  
2 even know you could do that. And when we got the  
3 conclusion back, it made me feel very comfortable.

4 Q. So, it's not--

5 (Overlapping speakers.)

6 A. I apologize, let me just finish the last  
7 thing. So--

8 Q. I will ask that you give quick answers.

9 A. So, what I relied on--to get to the  
10 point--is I relied on the combination of all of those  
11 elements. That's what I relied on for my due  
12 diligence.

13 Q. So, you're a moving target, right? If you  
14 say, I'm relying on all of that universe, and then I  
15 show you the one asked that is not a due diligence is  
16 the Petition by Corficolombiana to the Fiscalía, you  
17 say but this is Corficolombiana, if we discuss the  
18 Osorio one, you say this is Colpatria.

19 So, which are you referring to? Your due  
20 diligence, the one that you commissioned was the  
21 Palacio, right? Otero & Palacio? That's the one that  
22 you commissioned in 2013?

1           A.    So, I think as we know, we didn't--we were  
2 under Contract to purchase the property, but the  
3 acquirer of the property is Corficolombiana, so  
4 they're doing the due diligence that's required by  
5 them, and I'm relying on them doing that due  
6 diligence, so I have a reliance on that they're going  
7 to do that work right. They're going to acquire the  
8 property, that property's going to get deposited into  
9 a Trust structure, so they have to do it. They have  
10 to do it.

11                       (Overlapping speakers.)

12           Q.    So, let's take now the three documents we've  
13 seen, Otero & Palacio, they do a ten-year search.  
14 They have no disclaimer. They just look at OFAC and  
15 Google, and they say, "I haven't seen anything."  
16 Osorio, they actually do see the deed of '94, which is  
17 purchased by Mr. López Vanegas. They have the  
18 disclaimer that says we have not looked at Asset  
19 Forfeiture Proceedings, not yet recorded on the deed  
20 of file. And then we have the Petition to the  
21 Fiscalía in 2013--I'm going back in  
22 time--right?--where Corficolombiana gives a list to

1 the Fiscalía. The Fiscalía responds, as of the time  
2 9th September, this is what I have, and what I have is  
3 a response to Corficolombiana on the list that  
4 Corficolombiana gave; right? I'm just establishing  
5 what was seen at the time. We agree on that, right?

6 A. At the time is 2013--

7 Q. Yes.

8 A. --so the problem is you're adding in a  
9 document from a lapse of time, not at the time.

10 What I'm referring to--what we relied on, to  
11 apply and be protected by the law as qualified  
12 good-faith buyers was the diligence, the realm and  
13 world of diligence that we did at the time of the  
14 acquisition of the property. Those items are: (1)  
15 the study by Otero & Palacio that we contracted; (2),  
16 the petition, certificate, whatever we will call it,  
17 that was positive--received a positive response from  
18 the Attorney General's Office, money-laundering and  
19 Asset Forfeiture Unit.

20 No. 3, the hiring of a nationally recognized  
21 fiduciary that had strict guidelines under the banking  
22 and finance superintendency and which we knew, even

1    though we hadn't necessarily seen their manuals  
2    because they're proprietary in their in-house  
3    documents, we know that they have to do this because  
4    it's regulated by law, but they have to scrub not just  
5    the property, but the counter-party for--who we're  
6    dealing with. That's not just the asset itself but  
7    La Palma, the counter-party who we're buying it from.  
8    And so, considering that they're extremely well-to-do  
9    professionals, all of those elements that I just  
10   described to you, that are those three elements, gave  
11   us a high level of certainty and comfort that we were  
12   doing what was right, what was required by the law.

13        Q.    So, there were two, 2013 documents; right?  
14   One from Otero & Palacio, that's the title study that  
15   you asked. One is the petition by Corficolombiana to  
16   the Fiscalía, with the limitations that we saw. And  
17   another one later in time, Colpatria in 2016 is the  
18   Osorio one, right? Which--with also the disclaimer  
19   that we saw, right?

20        A.    Yeah. I just want to be clear that--

21                PRESIDENT SACHS: I think we're now turning  
22   in circles because the three elements that Mr. Seda

1 mentioned did not include the 2016 study. But the  
2 fact that they--

3 MS. BANIFATEMI: I do not know what is the  
4 third element--

5 PRESIDENT SACHS: Well, I think he was clear  
6 on that.

7 BY MS. BANIFATEMI:

8 Q. What is your third element?

9 A. The third element, while we did not receive  
10 a report, was the mere hiring of a federally regulated  
11 financial institution which had impacted guidelines  
12 and regulations which require it, by law, to run KYC.  
13 The same as if you--

14 Q. The fact of--

15 A. Please let me--

16 Q. The fact of having Corficolombiana--

17 A. Please let me just finish.

18 Q. I would like to have shorter answers.

19 A. Sure.

20 Q. You're having very long ones--so, the fact  
21 of having Corficolombiana--

22 MS. BANIFATEMI: I'm trying to establish,



1 Mr. Arbitrator, what we're talking about.

2 BY MS. BANIFATEMI:

3 Q. So, it's the two documents we saw and the  
4 fact of having Corficolombiana, that's what gives you  
5 comfort? That's your testimony?

6 A. Having hired Corficolombiana.

7 Q. Right.

8 A. Yes.

9 Q. And then you do rely, later in 2016, on that  
10 title study because you refer in your statements to  
11 multiple type of studies. These are the two title  
12 studies that we've seen. This the second one in 2016,  
13 right?

14 A. So, I'm not relying on the title study. I'm  
15 merely drawing your attention to the fact that this  
16 title study, the Project Quartier which we discussed,  
17 and I could go through a list of, I don't know, maybe  
18 five, six, seven, eight, ten other financial  
19 institutions that have all run diligence on Mr. Iván  
20 López, and not a single one has ever had a negative  
21 finding with regards to this gentleman.

22 Q. We'll come back--

1 A. So, I'm not relying--

2 Q. Well, you are.

3 (Overlapping speakers.)

4 Q. Paragraph 88 of your statement, Number 1,  
5 which I quoted earlier that that's in the context of  
6 your discussions with Mr. Mosquera and Iván López.  
7 "Newport had transacted in good faith, and extensive  
8 due diligence had been done on the properties included  
9 four title studies and the certification from the  
10 Fiscalía," so you are relying on the title studies;  
11 right? And that includes Osorio.

12 A. I said four title studies.

13 Q. Okay. But this is one of them?

14 A. This is not one of them.

15 Q. What are the three others, then, if it's  
16 Otero?

17 A. So--

18 Q. Because you don't mention anything.

19 A. We performed an in-house title study, which  
20 we always do. I had my in-house legal counsel, so we  
21 don't--so we don't waste money. The first thing we do  
22 whenever we're going to go into a purchase and sale

1 acquisition is, rather than hire an expensive law firm  
2 to do a title study, we do an in-house title study.  
3 That's important for us.

4 PRESIDENT SACHS: Is that title study on the  
5 file?

6 THE WITNESS: No. It's just--it's an  
7 informal title study we do in-house, so we'll have our  
8 in-house counsel, we will say please review the title,  
9 look at it, make sure it's okay. Once I get the word  
10 back that it's okay, then we go okay, now let's hire a  
11 law firm that's going to do this extensive review.

12 Q. So, we do not have that on record, right?

13 A. No, we do not have that on record.

14 Q. And how did you conduct that due diligence?  
15 Was it a Google search? How did you do that?

16 A. I gave it to our in-house counsel, and he  
17 did whatever I assume is his policy and processes.  
18 The same, I think, that we performed, for example, the  
19 title study on Charlee, and I think Luxé. Charlee we  
20 then subbed out and had a title study done after the  
21 fact. Luxé, I don't remember if we relied on our own  
22 or if we relied on the fiduciary's. I don't remember.

1 Q. And, of course, we don't have the benefit of  
2 that but we have the benefit of another title study  
3 which is not in relation to Meritage. I would like  
4 you to look at Exhibit C-144, that's Tab 15.

5 And this is a title study by the law firm  
6 Rodríguez Azuera--right?--regarding the land for your  
7 Project in Sante Fé de Antioquia. Right?

8 A. That's correct.

9 Q. And it's dated November 30, 2015, as we see.  
10 So, if we look at the first page, they say how they do  
11 it, right? It's a bit different from those that we've  
12 seen so far. "This study is based on the legal  
13 verification or analysis of the legal situation and  
14 background of the premises, obtained from data  
15 extracted from the properties' Public Registry and  
16 from the analysis of the acquisition titles thereof.  
17 The study accomplished with regard to the background  
18 title situation of the premises includes the last 20  
19 years, since any anomaly evidenced before such term  
20 would not affect the legal situation of such  
21 properties given that, should a cause of action arise  
22 based on an act entered into or occurred prior to such

1 term, is bound to be objected adducing the status of  
2 limitations to defend the current legal situation of  
3 the plots."

4           So, they explain the process and here we see  
5 that they do 20 years--right?--in relation to this  
6 property. Right?

7           A. That's what the document says, correct.

8           Q. Do you remember this document?

9           A. Yeah, vaguely, but yes, I remember it, I  
10 reviewed it, yes.

11          Q. And if we look at the next page.

12                   And they actually have a disclaimer, or what  
13 they call here in the English version "Reservation,"  
14 which is much more substantial and substantive than  
15 what we had in the Osorio one. So, I quote from the  
16 Page 2: "The land restitutions civil division of the  
17 highest court of Antioquia Judicial District in  
18 Decision dated 13 February 2014, indicated that a  
19 title study does not suffice to infer good faith  
20 without fault to acquire a premise, and that there  
21 should be extremely diligent inquiries regarding the  
22 social and political context and the effects caused by

1 the internal armed conflict in order to have certainty  
2 that none of the holders of the ownership real rights  
3 was kicked out or forced to abandon their land or that  
4 any of the grounds described herein below have been  
5 configured."

6           And then you see there's a reference to two  
7 laws, first is a victims law, in relation to ownership  
8 real rights that have been deprived or forced to  
9 abandon. And then have you reference to Asset

10 Forfeiture Code and the Law of 2014, which refers to a  
11 number of illegal activities that are listed here.

12 And you finish on that page: "Our firm Rodríguez  
13 Azuera Contexto Legal makes a disclaimer consisting in  
14 that the Report of the title study herein submitted  
15 reflects all relevant legal acts in the ownership  
16 background chain of the premises, without having  
17 inquired on the occurrence of any of the above stated  
18 grounds that may lead to possible asset forfeiture of  
19 the premise subject matter of the study." Right?

20           So, my first question is, you see from the  
21 reservation, if we go back to the previous page, that  
22 sets out the standard for due diligence, and that's

1 based on a judicial decision of February 13, 2014,  
2 right? And it says: There should be extremely  
3 diligent inquiries regarding the social and political  
4 context and the effect caused by the internal armed  
5 conflict in order to have certainty that none of the  
6 holders of the ownership of rights was kicked out or  
7 forced out; right? That is exactly what Mr. López  
8 Vanegas is complaining of, isn't it?

9 A. And apologies, I just want to look at the  
10 Spanish version.

11 Q. Sure.

12 A. Give me one second. Thank you very much.

13 And, I apologize. What page is this where  
14 it says "Reservation"?

15 Q. Two. The second page.

16 A. So, a few things.

17 I agree, if you look at 20 title searches,  
18 they're all going to have different clauses and  
19 qualifiers, and they're going to look quite different.

20 Number 2, what this is referring to is not  
21 EDD. This is a different law. It's restitution of  
22 lands. And it has to do with people being pushed off

1 of lands due to the armed conflict, and it is a huge  
2 problem that's occurring in Colombia. A huge issue.

3 Q. But next you have Asset Forfeiture Code;  
4 right? That's the second one.

5 A. And sorry, I'd like to just make a  
6 correction, when I say "a huge issue," I've seen  
7 similarly a lot of fraud, a lot of people coming back  
8 50, 60, 70 years after the fact and saying--I want--I  
9 want to take that land back. So yeah, of course,  
10 attorneys are very cautious, they're very careful  
11 because as I think you guys mentioned yesterday, you  
12 could even go back 20 years. But apparently you're  
13 saying that even that's not enough. It's not--it's  
14 not prescribable a lot, so.

15 Q. My question again is: If you look at  
16 "Reservation," it's not what the lawyers said. The  
17 lawyers indeed have this disclaimer saying what they  
18 have not and will not certify. What's important here  
19 is that, it's the standard of due diligence and it's  
20 based on a Judicial Decision of '14 where it says that  
21 title studies should be extremely--there should be  
22 extremely diligent inquiries into the social and



1 political context and effect caused by the internal  
2 armed conflict. So this is a very high threshold.  
3 You have to, when you do due diligence is not enough  
4 to just go through a list of names and stop there or  
5 to limit yourself to a number of years, 10 years when  
6 you may have something beyond. You actually have to  
7 be extremely diligent. And the reason for that is the  
8 social and political context, and effects caused by  
9 internal armed conflict. This is the context we're  
10 talking about. We're not in France. We're in  
11 Colombia, Medellín, right?

12 A. Yes, we're in Colombia.

13 Q. So, the high threshold you were familiar  
14 with, right? By definition, if you do so many titles  
15 that is Antioquia, you know what the standard is,  
16 right?

17 A. If your question is when this title study  
18 was done in November 2015, if I remember this  
19 paragraph--to be completely honest with you, no, I  
20 didn't read this particular paragraph. I ordered the  
21 title study, like many title studies in the past, look  
22 over it briefly, get to the conclusion section, see

1 that it's favorable, trust that the professionals I'm  
2 hiring know what they're doing, they're top caliber,  
3 and that gives me comfort.

4 Q. Potentially having discussion with them when  
5 they give disclaimers such as this?

6 A. Again, I just said, I do not remember  
7 reading this specific paragraph.

8 Q. No, I'm asking you what the process is for  
9 you. You do not discuss with them or do you discuss  
10 with them? For you--When you have a law firm saying  
11 I'm doing this title study but you have to be--the  
12 standard is extremely diligent, nobody brings it up to  
13 you, even if you don't read, nobody tells you, this is  
14 serious, we have to be extremely diligent, so we have  
15 to go beyond normal circumstances?

16 A. I can affirm to you as a matter of fact,  
17 when this law firm, Rodríguez Azuero Contexto Legal,  
18 performed this work and gave us this title study, not  
19 a single person came and said here is this title  
20 study, but I would like to add a qualifier to this,  
21 and said any of the things that you said. This thing  
22 was sent to us via email. I called the attorney, and

1 I said, so all is good? And he says, yeah, title came  
2 back great. Clean.

3 Q. And you don't look at the standard and you  
4 don't look at the disclaimer?

5 There is a disclaimer about Asset Forfeiture  
6 Proceedings.

7 A. So, I also don't look at when I get an  
8 engineering report, I don't re-run the calcs, I don't-  
9 -I wouldn't even understand how to do it. I call the  
10 attorney, I said I got the title study. Was it good?  
11 Are we good on Title? And the attorney says, yeah,  
12 ran the title, it's good, we're good to do. And that  
13 makes me comfortable.

14 Q. The question is not you personally,  
15 Mr. Seda. The question is your company, is the  
16 process through which you collectively go. So,  
17 whether or not if you're not satisfied and fully  
18 relying on a lawyer, you lawyer should do that, and  
19 your lawyer should be familiar with disclaimers and  
20 standards established by court decisions, right? So,  
21 this is, as we agreed, this is an extremely important  
22 milestone when you acquire a land in Medellín, in

1 Colombia, against the background of drug-trafficking  
2 and asset forfeiture procedures which is the law. You  
3 know the law when you go to Colombia—right?—the law is  
4 there, you know that there's asset forfeiture  
5 procedures; don't you?

6 A. I do know there's asset forfeiture  
7 procedures. That's why we hire the professionals to  
8 make sure we don't become enshrined in one.

9 Q. Right.

10 And, so, if we look at the law, since you  
11 raised the limitation issue, that's Exhibit 3bis,  
12 Tab 16. And that's the Law of 2014, "Asset  
13 Forfeiture," you see Article 21, Page 6. Right? It  
14 says "Prescription. The Asset Forfeiture Action is  
15 not barred by statute of limitations. Asset  
16 forfeiture shall be declared regardless of whether the  
17 grounds for its applicability have occurred prior to  
18 the entry into force and effect of this law."

19 This shows, if anything, that it is a very  
20 serious matter. If there is no statute of limitations  
21 because it goes to criminal action, correct?

22 A. You're asking me to interpret law.

1           Q.    No.  I'm asking you if this is--I'm  
2 just--you say I don't know if there is a statute of  
3 limitations, and I'm saying well, this is--this law  
4 says there is no statute of limitations.

5           A.    I agree that that's what the text says  
6 there.  I agree that there are individuals that view  
7 it that way.  I'm not going to try to opine or dissect  
8 the law and give you a professional opinion.  I think  
9 we should leave that to the professionals.  I'm not  
10 well equipped to do that.

11          Q.    I understand, and that's fair.  The question  
12 is not whose view it is, it's the objective law.  The  
13 law says there's no statute of limitations, so my  
14 question is:  Did you know that there's no statute of  
15 limitations for Asset Forfeiture Proceedings?

16          A.    No, before these proceedings, no.

17               MS. BANIFATEMI:  Mr. President, shall I  
18 continue?  I'm in your hands as to when you want to  
19 have the break.

20               PRESIDENT SACHS:  I think we should have our  
21 lunch break now and resume at 2:00.

22               MS. BANIFATEMI:  I'm happy with that.  Thank

1 you.

2 PRESIDENT SACHS: Thank you.

3 Again, please do not talk about the case,  
4 with anybody during the break.

5 THE WITNESS: Thank you.

6 (Whereupon, at 12:56 p.m., the Hearing was  
7 adjourned until 2:00 p.m., the same day.)

8 AFTERNOON SESSION

9 PRESIDENT SACHS: Okay. I guess we are  
10 ready to continue.

11 So, please proceed.

12 MS. BANIFATEMI: Thank you, Mr. President.

13 BY MS. BANIFATEMI:

14 Q. So, Mr. Seda, can you please take your First  
15 Witness Statement, Paragraph 62.

16 This now is--we're in 2014, early 2014, and  
17 you describe here the first time that you hear from  
18 Mr. Iván López Vanegas. So, here just to summarize,  
19 62 you say that you received phone messages from an  
20 individual, Iván López Vanegas, who claimed to be the  
21 rightful owner of the land on which the Meritage  
22 Project was being built.

1           On the same topic, I think, if you take now  
2 your Second Witness Statement at Paragraph 7. It's a  
3 long paragraph, so I will start with the second half.  
4 In the middle starting with "thus," so we're in the  
5 same period when--early 2014, so I quote: "That's  
6 when López Vanegas surfaced in 2014 with his claim to  
7 be the rightful owner of the Meritage Property. I  
8 tried to assess what possible basis there could be for  
9 his claim because I had never heard his name before.  
10 It did not appear on the title study. And when I  
11 asked Juan Pablo Lopera, our in-house counsel, to  
12 conduct an internet search of López Vanegas's name, it  
13 revealed that he had previously been convicted of  
14 drug-trafficking charges in the United States. This  
15 gave me further reason to dismiss his claims, as they  
16 came from what I considered to be a highly discredited  
17 source."

18           So, essentially this is straightforward. So  
19 he says he's the rightful owner, right? This is what  
20 he says to you. And then you establish for  
21 yourself--this is your own due diligence, I assume--  
22 that he's a--what you say "convicted of

1 drug-trafficking," right? Drug trafficker,  
2 essentially. That's what you think at the time.

3 A. Just to add clarification. I never spoke  
4 directly to him. He called my offices, and he left  
5 messages with our secretary. Whether it was him or a  
6 representative of him, I can't tell you cause I didn't  
7 talk to him.

8 And the--regarding the diligence or, let's  
9 say, inquiries made, I asked our in-house counsel,  
10 Juan Pablo Lopera, to look at the documents and see if  
11 he was on title. He responded back to me that he  
12 wasn't. I asked him to look--to look and find out--I  
13 didn't say, for example, do a Google search. I said,  
14 figure out who this guy is. And he says, well, this  
15 may be--this may be him. And there was an  
16 article--there were two articles. There was one  
17 article referencing that he had been extradited to the  
18 United States on drug charges, and then there was  
19 another article that said he had been exonerated after  
20 the fact. Nonetheless, he seemed quite shady.

21 Q. Right.

22 But what you established for yourself at the



1 time is that he's based on that search, is that he's a  
2 convicted drug-trafficker, and then it's a highly  
3 discredited source, I'm just reading from your  
4 testimony.

5 A. Yes, I wasn't completely sure what to think  
6 or put together with the whole--he was extradited and  
7 then exonerated. I wasn't sure what to think, but  
8 this wasn't the first extortion claim that we had  
9 received. In every project we receive at least--I  
10 don't know 5 to 10 extortion claims, most very small,  
11 very silly things, run-of-the-mill things, and this  
12 just seemed like another one of those same old things.

13 Q. Okay. So, then, if we look at your First  
14 Statement, if you could go back to it, at  
15 Paragraph 65.

16 A. I'm sorry, paragraph what?

17 Q. 65.

18 A. Thank you.

19 Q. This is where you state that Mr. López  
20 Vanegas went to see the President of Corficolombiana,  
21 right? We have that at the bottom of the page and top  
22 of the next page. That's what you discussed, I

1 presume, with Corficolombiana, that--and you say, I  
2 quote: "We discussed and agreed that López Vanegas'  
3 claim had no merit, that the diligence done had been  
4 more than sufficient, and that such blatant extortion  
5 attempt should be ignored." Right? And then you say  
6 that the harassment ceased for the time being.

7           When you say "we discussed," with whom did  
8 you discuss that at Corficolombiana?

9           A. I'm sorry, what paragraph are you  
10 referencing?

11          Q. 65, top of Page 32.

12          A. I think it's pretty clear that I'm talking  
13 about when I say "we," it's referring to Jaime Toro  
14 and myself.

15          Q. Okay, so the president--right?--of  
16 Corficolombiana.

17          A. Not of Corficolombiana--sorry for  
18 interrupting.

19               Not of Corficolombiana. Of the--at that  
20 time I think he was the head of the real estate--what  
21 does it say here?

22          Q. Right.

1           A.    Real estate, National Director for Real  
2 Estate for Corficolombiana.

3           Q.    Okay.  So, you decided to ignore and that  
4 was it, right?  That's your testimony in 2014.

5           A.    No.

6           Q.    Actually this is middle of 2015, I'm sorry.  
7 Okay.  I look--if I--I want to get the dates right.  
8 So is it the middle of 2015?

9           A.    I believe so that--my recollection is more  
10 or less that.

11          Q.    Okay.  We don't have testimony from  
12 Corficolombiana in this case, do we?  We don't know, I  
13 mean, we have to take your word for it; right?

14          A.    You have to believe my testimony?  I mean, I  
15 don't know if you reached out to Corficolombiana, no.  
16 I've spoken to them, and they stand by these  
17 statements as well.

18          Q.    Did you ask them to provide testimony?

19          A.    No, we didn't ask them--well, that I know of  
20 we didn't ask them to provide testimony.  I know they  
21 were spoken to by--well, I don't know if I'm supposed  
22 to even speak about attorney conversations.

1 Q. Well no, if it's attorney-client privilege,  
2 I don't want you to disclose it.

3 A. Okay.

4 Q. So, now, your Second Statement, Paragraph 9?

5 A. Second statement?

6 Q. Yes.

7 So, this is essentially the reactions after  
8 López Vanegas contacts you; right? So here we have  
9 now La Palma, and you discuss here no more, I quote:  
10 "No more than 24 hours after López Vanegas contacted  
11 Royal Realty, I also reached out to Fanny Giraldo, the  
12 legal representative of La Palma. Giraldo informed me  
13 she had never heard of López Vanegas before either.  
14 La Palma, as the land sellers, looked into López  
15 Vanegas. After this, Giraldo told me that they had  
16 made inquiries with the Fiscalía, which informed them  
17 that López Vanegas had approached them but his claims  
18 were baseless and would not go any further, and that  
19 they were interested in bringing extortion charges  
20 against him in connection with the threats he was  
21 making."

22 So, again, just like for Corficolombiana,

1 you discussed with Ms. Giraldo and she says, not a  
2 problem, you should not be concerned about this,  
3 right?

4 A. So I contacted La Palma, considering they  
5 were the sellers who were conveying title to us, and,  
6 as it says here in my Witness Statement, they said  
7 they had never heard of this individual before. They  
8 advised me that they were going to reach out to the  
9 Attorney General's Office to make further inquiries.  
10 They did, and I believe there's a lot of stuff said  
11 about Mr. López, that he was a criminal, that he  
12 escaped the hands of Colombia, so on and so forth, and  
13 they said that they were looking to go against him.  
14 Yes.

15 Q. So, did you see to--did you ask to see the  
16 response that Fiscalía had provided to Ms. Giraldo?

17 A. My understanding is it was out of a  
18 conversation between their attorney and someone within  
19 the Attorney General's Office.

20 Q. You don't have any details on that. She  
21 just told you that she had spoken to someone at the  
22 Attorney General's Office, right?

1           A.    No.  They didn't provide me with a letter or  
2 written response of their oral communication with the  
3 Attorney General's Office, no.

4           Q.    So, you don't know if that was a formal  
5 request to Fiscalía or just an informal discussion  
6 with someone who's unnamed and you don't know who it  
7 is.

8           A.    My understanding was that they went and  
9 spoke to someone at the Fiscalía, and this was the  
10 response that was given to them.  I didn't ask what  
11 department, what--all the things that you're advising.

12                   This timeline happened very quickly.

13                   Very soon after that matter, I was on  
14 national radio providing all kinds of proofs of what  
15 we had done and addressing the entire world, let alone  
16 the Fiscalía.

17           Q.    That's not my question.  My question is when  
18 you discussed with Ms. Giraldo, what did you ask her?  
19 She told you that she had discussed with somebody at  
20 the Attorney General's Office, but you don't know who,  
21 you don't know if it was formal or informal.  We're in  
22 the world of hearsay now.  We just don't know who and

1 how and when, right?

2 A. That's correct. I do not know exactly who  
3 they spoke to, exactly what the conversation was. It  
4 was a--they gave me a summary of what they had spoken  
5 to their attorney about.

6 Q. And you didn't ask Ms. Giraldo to give an  
7 affidavit in this case, did you?

8 A. I believe--I spoke to her. I  
9 believe--again, I'm not a well-versed attorney. I  
10 don't know how to put this. Without breaking  
11 privilege, I believe my counsel spoke to her?

12 Q. Okay. Let's leave it at that.

13 Now, next paragraph, 10, here you say, and  
14 I'm quoting: "I also disclosed the threats I had  
15 received from López Vanegas to Corficolombiana. I  
16 further arranged meetings with all existing unit  
17 buyers in the Meritage Property and gave them copies  
18 of the Otero & Palacio title study"--that's what we  
19 discussed earlier--"and the Fiscalía's Certification  
20 of No Criminal Activity." That is also what--the  
21 document that we saw earlier, right? The 9th  
22 September 2013.

1           A.    Sorry, one moment.  One moment.

2                    Okay.  Just to put this in context, we were  
3 first talking about immediately hearing from  
4 Mr. López.  Then now we're talking about this between  
5 these two moments in time, there is a W Radio  
6 interview, so just to give context so--

7                    (Overlapping speakers.)

8           Q.    I'm following what you're saying in your  
9 statement so--

10          A.    Yeah.

11          Q.    --here you discuss--in nine you said that  
12 you discussed with Ms. Giraldo, and then you say that  
13 you discussed that with the buyers; right?

14          A.    Correct.

15          Q.    And that to give comfort to the buyers, you  
16 showed them the Otero & Palacio and the Fiscalía's  
17 response to the Right of Petition, right?

18          A.    That's correct.

19          Q.    And then if we go back to Paragraph 7, just  
20 a page before, so essentially to summarize what you  
21 said before, you hear from López Vanegas, you discuss  
22 with your in-house lawyer, he determines based on what



1 he can find that he's a conflict--convicted  
2 drug-trafficker, not exonerated. In fact, just for  
3 the record, he--the court found that they didn't have  
4 jurisdiction, so--but in the U.S., with charges in the  
5 U.S., so you talked to Corficolombiana, you talked to  
6 Giraldo, and you talked to the buyers, right? So  
7 that's what you do, following the charges, right?  
8 Sorry--the contact by López Vanegas--

9 A. Yes. And just to add context, I am not  
10 saying that he was exonerated. I'm simply giving  
11 reference to an article that we found which says that  
12 he was exonerated and/or absolved. That's it.

13 Q. Okay.

14 A. But more or less the chronological order of  
15 what you just said sounds about right.

16 Q. Okay. Now let's look at Paragraph 7, now  
17 this time the top part of the paragraph, and here you  
18 respond to Colombia's Counter-Memorial, and you say, I  
19 quote: "And no, I did not immediately report this to  
20 Authorities in Colombia in 2014 for several reasons.  
21 As a developer"--and that now is what you mentioned a  
22 bit earlier--"as a developer in Colombia, it is a

1 harsh reality that on every project, you will receive  
2 extortion threats from opportunistic individuals,  
3 whether neighbors, city employees, state officials who  
4 claim to have the power to interfere with your  
5 project. If you stopped every project because of  
6 these threats, you would never get anything built. If  
7 you paid every demand, you would never get anything  
8 built as well as likely break the law. And the fact  
9 is that reporting such threats to Authorities can  
10 often make things considerably worse because public  
11 officials are involved in the threats in the first  
12 place or may become so once they are reported. So the  
13 first course of action is almost never to report such  
14 demands to the Authorities, but to reject such demands  
15 and if the perpetrator will cease of " the--"of his own  
16 accord." Right? So these are the reasons for not  
17 reaching out to the Authorities in Colombia, right?

18 A. Correct.

19 Q. So, essentially the course of action is to  
20 ignore and not do anything.

21 A. No. Definitely the course of action is not  
22 to ignore and do nothing. Again, I gathered the due

1 diligence that we had done. I spoke to La Palma. I  
2 made a decision to address the entire nation. I went  
3 on W Radio, which is the largest syndicated radio show  
4 in the country, has the largest viewer base, and I  
5 said look, rather than hide from this, I want to  
6 confront this head on. And I said, I'm going to talk  
7 to every single person that there is. I'm going to  
8 make this as clear as possible. We're not running  
9 from anything.

10 Q. Earlier, Mr. Seda, you responded that you  
11 had your own due diligence in-house, correct?

12 A. Yes, that we had performed preliminary title  
13 study ourself, yes.

14 Q. Yes. So, in 2014, when an individual  
15 approaches you and makes threats and says that he's  
16 the rightful owner of a property that you're building,  
17 that you have not started to build yet but you're  
18 preparing to build, if you are a good-faith,  
19 without-fault buyer, wouldn't the normal course of  
20 action be to check perhaps with a renewed due  
21 diligence? You could have asked your lawyers or  
22 outside lawyers who's this person? Can you do a check

1 on him? Did you do that, other than the Google search  
2 by your in-house lawyer?

3 A. So, again, what we did is we looked at the  
4 title information that we had in the records of the  
5 due diligence that we had done. My in-house  
6 counsel--my in-house counsel reported to me that they  
7 didn't find Mr. López Vanegas on title, that he was  
8 not an owner of the asset. We went on national radio.  
9 I went personally on national radio, and I addressed  
10 the entire nation on the matter, and the due diligence  
11 that we had done was already--I'm not sure what we  
12 were supposed to do. Just simply walk away from the  
13 Project? We had already invested a considerable  
14 amount of money into the Project.

15 And this gentleman seemed like a fraudster,  
16 and he didn't mention extinction of domain. He  
17 actually mentioned bringing reputational damage to our  
18 property, to our project. He said, I'm going to go to  
19 the press. If you don't do this, I'm going to harm  
20 your project by going to the press.

21 And I just simply would like to add one  
22 additional thing. I'm viewing this from the lens of a

1 developer who has been approached by a long list of  
2 people who tried to extort us. This is all kinds of  
3 extortion attempts. None necessarily like this, but  
4 they all come in their own different package. And he  
5 didn't seem credible. He disappeared for an entire  
6 two years after he did what he wanted to do, which is  
7 get this thing on the radio. We confronted it. We  
8 didn't hide. He went away.

9 Q. Did you really confront it? The question  
10 is--and I will ask it again--the question is: When  
11 you have someone claiming to be the rightful owner of  
12 a land on which you're preparing to build, you are  
13 building in Colombia in the region Medellín, in the  
14 context--regulatory context of asset forfeiture, you  
15 know the law, your lawyers certainly know the law, and  
16 you know that there's always a risk that if there's a  
17 title--a claim to the land, that may stop the process.  
18 This is the nature of Asset Forfeiture Proceeding.

19 So, isn't the normal course of action to do  
20 a further due diligence, to look at other than Google,  
21 to ask your lawyers to ask another law firm, maybe, to  
22 do a Google search--sorry, a title study search to

1 make sure that he is, indeed, who he says he is, which  
2 is a prior owner or current owner? Wasn't that the  
3 normal course of action, rather than just ignoring  
4 things?

5 A. So, I did check with counsel. I did check  
6 with out--with in-house counsel and out-house counsel,  
7 and I asked what should we do. And they advised us.  
8 They said, this guy is a fraudster. You guys did  
9 everything within your capacity here. Your diligence  
10 goes far beyond what's necessary. You guys are  
11 good-faith buyers. This guy is talking about a  
12 kidnapping attempt--or excuse me, not attempt. He's  
13 talking about this while he was wrongfully extradited  
14 and in jail. His son was kidnapped and some issue  
15 that had happened more than 10 years before the moment  
16 we're talking about, and our view was, and as I said  
17 on national radio, we are qualified good-faith buyers.  
18 We've done everything that we could have possibly done  
19 on this title.

20 I believe his issue is with whoever the  
21 perpetrators are, if this is even true, who--who did  
22 the crime against him as he supposedly is saying. I

1 said on national radio, he should go to the  
2 Authorities. We said that.

3 Q. The documents that you showed to the buyers,  
4 right? You give them comfort, right? You go on  
5 national TV, like presidents who address the nation.  
6 So you're saying, I'm a good-faith buyer. And you  
7 have two pieces of document that you show to the  
8 buyers, the Otero study, right? Which we saw was 10  
9 years. It actually doesn't look beyond when we know  
10 that asset forfeiture is not subject to statute of  
11 limitations. Your lawyers should have told you that,  
12 correct? It can go beyond 10 years. Did you ask your  
13 lawyers about it at the time?

14 A. I asked my lawyers--

15 MR. MOLOO: Mr. President, if I just may, we  
16 don't want to look defensive in any way, but there are  
17 a lot of questions about what did you ask your  
18 lawyers, what did your lawyers say. I just want to  
19 note that we're getting awfully close to trespassing  
20 on privilege.

21 MS. BANIFATEMI: I'm very sorry. This is  
22 not about these lawyers in this room regarding

1 arbitration. I'm talking about the facts of the case  
2 at the time and how Mr. Seda reacted to what he said  
3 to be extremely serious threats, and I'm not asking  
4 about the substance of the advice.

5 PRESIDENT SACHS: So far, it's still  
6 permissible.

7 MS. BANIFATEMI: Thank you.

8 PRESIDENT SACHS: But we will continue to  
9 observe the further content.

10 THE WITNESS: Again, I believed he was a  
11 fraudster. I wanted to check with counsel. I did.  
12 They made an assessment. They looked and said,  
13 "Listen, we did this due diligence. We believe we did  
14 it honestly. We did it in good faith. This  
15 gentleman--this gentleman doesn't have any true claim  
16 to this title." I did all the things that I told you,  
17 going on the radio. I talked to Corficolombiana.

18 I mean, we didn't simply--I didn't simply go  
19 on the radio and say, this guy's a fraudster, that's  
20 it. I did a lot of work.

21 SECRETARY MARZAL: Sorry for the  
22 interruption, but the Transcript, English Transcript



1 seems to be off.

2 (Pause.)

3 SECRETARY MARZAL: It's working now. Okay.  
4 Sorry.

5 (Comment off the record.)

6 THE WITNESS: And then to add one final  
7 thing. I didn't--we didn't receive this information  
8 in mid-2014 and we ran out and started constructing on  
9 a project. We continued with the normal course of  
10 business. We continued to sell units. Those funds  
11 continued to be deposited in a very safe manner in the  
12 fiduciary trust, not used by us. We continued to use  
13 our own capital to further the Project along, and  
14 years went by before anything transpired. Two years.

15 BY MS. BANIFATEMI:

16 Q. So, you just continued with the normal  
17 course of business, continued--you assured the buyers,  
18 you continued to sell, you continued to prepare the  
19 construction, right? That's what you're saying.

20 A. I continued to move along with the Project  
21 after doing careful analysis. I continued to sell  
22 with the caveat that any of the units sold, any of the

1 monies that were being given to us by Unit Buyers were  
2 given directly to the fiduciary. They were  
3 safe-guarded by the fiduciary. We didn't start  
4 construction for at least a year--well, more or less a  
5 year after this issue transpired.

6 Q. You did not deem necessary, given the  
7 situation, and that you have a claim by someone who  
8 says, I'm the rightful owner, to restart maybe a due  
9 diligence, a serious one, not a Google one, to have an  
10 attorney maybe look at the chain of title, to go as  
11 far as possible far back in time. You did not do  
12 that, right?

13 A. We did not redo diligence. Again, no.

14 Q. Okay.

15 A. We stood by the diligence that we had done.

16 Q. Okay. And what you did not do either is to  
17 actually go and see the Authorities and go see the  
18 Attorney General's Office, right? You didn't do that  
19 either?

20 A. Colombian Authorities scare me profusely.

21 Q. Do they?

22 A. They do.

1 Q. You say that with a straight face when you  
2 invest in Colombia, and you've been there for  
3 15 years?

4 A. I'm saying that with a face of today, 2022,  
5 understanding everything that's transpired in this  
6 situation.

7 Q. For which you have no evidence, do you?  
8 Do you, Mr. Seda?

9 A. I think we have a difference of opinion.

10 Q. Well, I'm looking at the facts and the  
11 evidence on the record.

12 A. I have my testimony. I have the testimony  
13 of Felipe López. I'm not sure what other evidence you  
14 want--

15 Q. So, what you're saying is that you simply  
16 will not raise the matter with the Attorney General's  
17 Office, who is competent to determine when you have  
18 somebody who says they're the rightful owner, to  
19 determine if that is, indeed, a Claim that's valid.  
20 You didn't deem it necessary? As a legal matter.

21 A. No. 1, La Palma Argentina advised me, the  
22 land seller, that they approached the Attorney

1 General's Office.

2           No. 2, Iván López Vanegas wrote a  
3 tutela--which I don't know how to say tutela in  
4 English--lengthy, large, and we responded, our counsel  
5 responded in a fulsome manner to that tutela. I went  
6 on national radio and told the entire world what was  
7 going on. That this gentleman was extorting us. He  
8 was trying to extort us. I don't know what else I  
9 could have done beyond that to alert the whole nation  
10 of Colombia about this. I don't know.

11           Q. Can you look at Paragraph 125 in the First  
12 Statement. I'm jumping a couple of years. We're in  
13 December 2016, still talking about Mr. López Vanegas  
14 and at the end of the Paragraph 125, you say. "On  
15 19 December 2016, I filed a formal complaint with the  
16 Fiscalía reporting López Vanegas' extortion attempts  
17 and his claims of influence over persons in the  
18 Fiscalía."

19           That is C-181 that you refer to, your  
20 complaint of 19 December 2016.

21           So, in fact, you do go to the Authorities,  
22 right? And you know how to file a complaint, right?

1           A.    Yes, with context.

2           Q.    2014 is not context?

3           A.    Is this not 2016?

4           Q.    Yes, but 2014 is also the first time you  
5 hear from Mr. López Vanegas.

6           A.    Definitely not context with regards to this  
7 situation.

8           Q.    But my question is: You know how to make a  
9 complaint, and you know how to go to the Colombian  
10 Authorities when you feel that they need to hear about  
11 extortion attempts, right? You know how to do that?

12          A.    In actuality the Colombian Authorities had  
13 come to me in this specific scenario.

14          Q.    And you file a formal complaint to the same  
15 Authorities that you did not trust? Is that what  
16 you're saying?

17          A.    Again, I believe this singular sentence  
18 requires context for the Tribunal to understand  
19 exactly what happened.

20          Q.    Let's look at Paragraph 77 of your First  
21 Statement. So, this is context, Mr. Seda, for you. I  
22 quote: "Also I knew that López Vanegas' claim were

1 false" now it's 2016, "and I believe Mosquera was part  
2 of López Vanegas' scheme to extort us. I felt I had  
3 the duty to inquire into the proof of evidence.  
4 Mosquera claimed to have, in order to protect the  
5 other investors, the Unit Buyers, the Project and  
6 myself. Accordingly, on 3 May 2016, I told Mosquera  
7 that I was available for a meeting."

8           So, after some back and forth you decide and  
9 that here you refer to Exhibit C-157, right? And I  
10 don't know if I have, but anyway, let me see if I have  
11 it. Yes, Tab 40.

12           40. 4-0. Mr. Seda, Tab 40.

13           A. Yeah.

14           Q. So, the same shady person you decide to  
15 meet--right?--and here you have this exchange of email  
16 with Mr. Mosquera, his lawyer, and you say in your  
17 testimony that you said that you were available for a  
18 meeting. He responded abruptly a few hours later  
19 stating that López Vanegas was no longer interested in  
20 pursuing discussions with me, and that instead he  
21 would proceed with his defense, right? This is the  
22 context we're talking about, right?

1           A.    To clarify your statement, I didn't meet  
2 with Iván López nor did I suggest to--

3           Q.    Precisely. That would be my next question.  
4                    Did you meet with Mr. López Vanegas? You  
5 did not?

6           A.    No, did not.

7           Q.    Following this email.

8                    So, this email is 3 May 2016, right?

9                    6 May 2016, Mr. Seda, is about a month after  
10 the Fiscalía launched investigations against the  
11 assets held by Mr. López Vanegas. Are you aware of  
12 that?

13          A.    I'm sorry, where are you reading from?

14          Q.    I'm asking you a question.

15          A.    Oh, I thought you were reading from--sorry.  
16 What's the question?

17          Q.    6 May 2016, is about a month after the  
18 Fiscalía launched investigations against assets held  
19 by Mr. López Vanegas.

20          A.    6th of May?

21          Q.    2016.

22                    PRESIDENT SACHS: 3 May, no?

1 MS. BANIFATEMI: I'm sorry, 3 May. Thank  
2 you, Mr. President.

3 THE WITNESS: Is about a month after and I'm  
4 sorry apparently I got confused.

5 BY MS. BANIFATEMI:

6 Q. After the launch of the investigations by  
7 the Attorney General's Office, let's look at it.  
8 Maybe that will help you. That is C-153 in  
9 Tab 41--44, I'm told. I'm sorry.

10 Are you with me?

11 A. Yes.

12 Q. So, this is a resolution No. 125, dated  
13 8 May 2016, and you see in the English version, second  
14 paragraph--what did I say? April, I'm sorry. 8  
15 April 2016.

16 So, looking at the paragraph in the middle,  
17 in English: (Reading.) In a report dated April 8,  
18 2016, the Criminal Investigation Division of the  
19 Superintendence of Notaries and Recordation--land  
20 asked this Office--this National Office to assign a  
21 filing number for an investigation into the assets  
22 held by Iván López Vanegas, a member of the Envigado



1 Cartel.

2 In view of the above, and taking into  
3 account Meeting Minutes No. 35 dated 6 April, which  
4 corroborate the pertinent presentation of the case by  
5 the Criminal Investigation Division to the Internal  
6 Working Group on information analysis, prioritization  
7 and statistics led by the Director of the specialized  
8 Attorney General's Office for asset forfeiture, at  
9 which meeting the determination was made to assign a  
10 filing number and priority to this investigation,  
11 given that it involves a criminal organization--

12 REALTIME STENOGRAPHER: I'm sorry. This is  
13 the Spanish Court Reporter. Can you read a little bit  
14 slowly, please?

15 MS. BANIFATEMI: I'm sorry, yes.

16 BY MS. BANIFATEMI:

17 Q. At which meeting the determination was made  
18 to assign a filing number and priority to this  
19 investigation given that it involves a criminal  
20 organization related to the Envigado Cartel.  
21 Accordingly, the assigned prosecutor may attend to the  
22 needs of the present investigation, given that it

1 falls within the central subject matter of emerging  
2 criminal organizations, and may therefore carry out  
3 the pertinent actions related to the specific case and  
4 may also report for this assignment in the month of  
5 April.

6           That's signed by Ms. Ardila, and this is  
7 the--Ms. Malagón, it's filed by Ms. Ardila, I'm sorry,  
8 and signed by Ms. Malagón.

9           So, this is the launch of the investigation  
10 against Mr. Iván López Vanegas, right? His assets;  
11 right?

12           A. I don't know if this is the launch or the  
13 reassignment. I'm not sure. I don't know.

14           Q. Okay. So, let's--I represent to you it's  
15 the launch of the investigation; okay? From a legal  
16 standpoint.

17           So, this is one month before your email  
18 exchange with Mr. Mosquera to meet with Mr. Vanegas;  
19 right?

20           A. Before Mr. Mosquera contacted us via email,  
21 correct.

22           Q. And you referred to the tutela filed by

1 Mr. López Vanegas. I would like to look at it now.  
2 That's Tab 41, but I would need to complete it because  
3 the version that I have in the binder is not the  
4 complete Spanish version, so you will have--

5 MS. BANIFATEMI: And for the record,  
6 Mr. President, there's--and you will be given also the  
7 full document, so it bears 037bis, full document in  
8 Spanish, which will be given to you now.

9 (Pause.)

10 MS. BANIFATEMI: Yes, I don't think it's the  
11 complete version that you have, so now it will be  
12 given to you, the complete version in Spanish. I will  
13 wait for it to be given.

14 Thank you.

15 BY MS. BANIFATEMI:

16 Q. So, there's--what you're receiving is one  
17 complete file in Spanish version and two  
18 interpretations, two translations into English, one by  
19 the Claimants, the other by the Respondents. They  
20 correspond to different sections, to different parts.  
21 So, the one that is provided by the Claimants is the  
22 one that start with SP-0001 and continues with 0017.

1           And the one by the Respondent is SP-001, and  
2 then the next page is 49.

3           So, the tutela is essentially a measure of  
4 protection--right?--as you understand it. Or if you  
5 don't want to--

6           (Overlapping speakers.)

7           Q. If it's legal and if you're not comfortable,  
8 I'm more than happy to--

9           A. It looks like something that--and I'm giving  
10 you a very general understanding of how I understand  
11 it, like, to protect constitutional rights like that  
12 are-- Again, I'm not an attorney. I don't know. More  
13 or less, like, to protect, like, some right that may  
14 be taken from you very quickly or that needs to be  
15 remedied quickly.

16           Q. You raise the tutelas. Are you familiar  
17 with it, with the tutela of Mr. López Vanegas?

18           A. I reviewed it, I mean, it was a big  
19 document, but in general--well, my attorneys handled  
20 it for the most part.

21           Q. You reviewed it at the time, or did you  
22 review it in the context of the Arbitration?

1           A.    No, more so after the fact.  It was a huge  
2 document.  I think the response time was something,  
3 like, just a few days.

4           Q.    So--so, the date is 6th of May 2016, right?  
5 So, the exchange you have with Mr. Mosquera is 3 May,  
6 correct?  We just saw it.

7           A.    I mean, I'm trying to remember.  We're  
8 talking about literally a difference of a day or two,  
9 if you could bring up the email again.

10          Q.    The email is C-157, which is Tab 40.

11          A.    Sorry.

12          Q.    You can look at the top.

13          A.    This is the date that Victor Mosquera  
14 emailed us?

15          Q.    Yes.

16          A.    Okay.

17          Q.    And in your testimony at Paragraph 77,  
18 that's what you explain probably why you did not meet  
19 him.  You say that López Vanegas was no longer  
20 interested in pursuing discussions, and instead on  
21 López Vanegas' instruction Mosquera would proceed with  
22 his defense.

1           So, presumably this is the tutela we're  
2 talking about, because this is three days later, 6th  
3 of May--right?--presumably.

4           A.    Are you saying 6th of May was the date of  
5 the tutela or the date of--

6           Q.    It's the date it's submitted--right?--filed.

7           A.    I don't know. My recollection is I did not  
8 respond to Victor Mosquera's email until after the  
9 tutela. That's my recollection. I don't know the  
10 exact date but I'm happy to review.

11          Q.    Okay. The dates are in the documents.

12          A.    Yeah.

13          Q.    It's not a big issue anyway, so I'm just  
14 trying to establish the chronology.

15                So, if you look at the Spanish version, and  
16 it's probably the best, because you read Spanish and  
17 it's the most complete version. So, if you look  
18 at--and since you have seen it before, Page 18,  
19 SP-0018, in the Spanish version.

20          A.    I'm sorry, where are we--what are we looking  
21 at?

22          Q.    SP-0018 of the Spanish version of the

1 tutela, which is just handed to you.

2 A. This document?

3 Q. I don't know, if you put it in the binder--

4 A. I didn't put it in the binder. Apologies.

5 SP-0018?

6 Q. 18, one-eight.

7 A. All right.

8 Q. So, you see that here he starts discussing  
9 the actual case, right? He describes himself, you see  
10 on the next page at Paragraph 67 he refers to 1995,  
11 the Year 1995, and he describes what happened then.  
12 If you go to the next page, Paragraph 68, that's where  
13 he discusses the consolidation of the parcels. We  
14 discussed that yesterday.

15 Moving to the next page, Paragraph 73, we  
16 discussed that earlier, that's the renaming of  
17 Sierralta López Compañía to Inversiones Nueve. He  
18 discusses that. And then if we go a bit further, Page  
19 SP-0036, that's where he discusses the system of  
20 financing of the "Envigado"--right?--"crimen  
21 organizado," and here he discusses the facts.

22 If you go to Page SP-0039, you see that here

1 there is a recording of a conversation with  
2 Mr. Arboleda, this is the mango seller, the frontman  
3 for the property that's obtained by Mr. López Vanegas  
4 through a private investigator.

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] And then if you look at the last  
8 page, SP-0057, these are the annexes and exhibits and  
9 you see that there's a number of deeds he provides:  
10 Escritura, Exhibit 7, 8, 9, 10, et cetera.

11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] So, this is  
18 what is submitted to the Attorney General's Office—  
19 right?—and this is 6 May.

20 You've read this document before—right?—so  
21 you're familiar with it.

22 A. I've reviewed this document in general. I'm



1 not sure what you're asking me to take at fact the  
2 testimony of, as you've proclaimed it, a known  
3 drug-trafficker who says that he's never  
4 drug-trafficked before, that he's a simple businessman  
5 and an abiding citizen who has been wrongly prosecuted  
6 and has never done drug-trafficking before. You're  
7 asking me to take his written statement and take it as  
8 fact? I don't know what you're asking.

9 Q. No, I'm not asking you to testify to his  
10 facts at all. I'm asking you, first of all, if you're  
11 aware of this, and what you see is that when he files  
12 with the Courts his tutela, he's describing very  
13 specific facts about the chain of property in relation  
14 to what is now the Meritage, right? That's what you  
15 see in the documents.

16 A. He's describing--first off, to be clear, I  
17 don't know this document in depth, okay? There have  
18 been so many documents in this case, it's insane.

19 With regards to what he's describing, he's  
20 describing a narrated story of individuals who are not  
21 on Title. [REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

So, I'm not sure what you want me to get out

7

of this document.

8

Q. I'm trying to establish facts, Mr. Seda.

9

A. You're trying to establish what?

10

Q. Facts.

11

So, if we look at--

12

A. I don't take these as facts, that's for

13

sure.

14

Q. Well, it's a fact that a tutela was filed

15

with the Courts in May 2016--right?--that's a fact.

16

A. That is a fact.

17

Q. This document is a fact.

18

A. The fact it exists, correct.

19

Q. And that the Courts were then seized of this

20

matter, and that the Attorney General would become

21

aware of the substance in this tutela that's also a

22

fact, right? As of then, it's all out.

1           A.    My--Yes.  I believe this tutela after the  
2 fact the Judge made the determination that he was not  
3 going to stop construction, was not going to revoke  
4 our construction license, was not going to take the  
5 property from us.

6                    And I believe--I don't want to  
7 mischaracterize this--he said Fiscalía, I turn this  
8 over to you, and do what you guys are going to do with  
9 it, but do something quickly.

10          Q.    Who?  Mr. López Vanegas?

11          A.    The Judge.

12          Q.    The Judge turns over what to whom?

13          A.    I believe his determination at the end of  
14 this was I'm not, with regards to the request of the  
15 tutela, of Victor Mosquera, the attorney acting on  
16 behalf of Iván López, the requests were to cease  
17 construction, revoke the construction license and take  
18 the property from the existing titleholders or  
19 property holders and give it back to Mr. López.  He  
20 denied, Number 1 and Number 2 and Number 3, and he  
21 took--from my recollection of this, my very, let's  
22 say, high level recollection of this--and he referred

1 it to the Fiscalía and said, here, look at this.

2 Q. And, as we saw, the investigation had been  
3 launched a month before; right?

4 A. I can't confirm if it's been--I don't know  
5 that level of detail into the investigations and when  
6 exactly, and--I don't know.

7 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 A. What--what is the point of your question? I  
14 don't understand. Q. That's my question, it  
15 would not have started if they were so friendly to  
16 Mr. López Vanegas. If they wanted to help Mr. López  
17 Vanegas, no investigation into the assets would ever  
18 have started, isn't that correct, Mr. Seda?

19 A. I think we have a difference of opinion on  
20 how the Fiscalía works.

21 Q. That's a fact, Mr. Seda. Investigations  
22 were started against the assets of Mr. López Vanegas.

1 "Yes" or "no"? You saw the documents.

2 A. I think that what we discussed is they were  
3 looking into this particular asset based on the fact  
4 of a trumped-up kidnapping story, not because he was  
5 this drug-trafficker. I mean, I think we read the  
6 Determination of the Claim yesterday, and it said very  
7 clearly, they started this investigation because of a  
8 kidnapping, a kidnapping that the Fiscalía, the U.S.  
9 Government and many individuals have all said is  
10 simply false.

11 Q. And because Mr. López Vanegas made a lot of  
12 noise about this property being his, right? So, when  
13 prosecutors are confronted with claims, they have--  
14 they are duty-bound to look at those claims,  
15 especially if those Claims come from somebody who is  
16 associated with the cartel, correct?

17 A. I--I--I don't know exactly how the Fiscalía  
18 works.

19 Q. So, you don't know. You cannot assume. You  
20 don't know. You can say you don't know.

21 A. Again, I think that we have a difference of  
22 opinion on why this investigation was started, on what

1 the purpose of starting the investigation was and what  
2 the outcome that the individuals that were involved in  
3 this, including individuals from the Fiscalía, what  
4 they expected.

5 Q. And again, the chronology is not in your  
6 favor, is it? Mr. López Vanegas makes a lot of noise  
7 from February, and that's in his tutela, from February  
8 to April, he brings up new facts, new elements with  
9 deeds that he apparently can find, if your lawyers  
10 cannot find, his can find them. He brings that to the  
11 Courts, he brings that to the Fiscalía, and on that  
12 basis, the prosecutors are duty-bound to have a look,  
13 and they do that exactly on 8 April they start  
14 investigations into the assets of Mr. López Vanegas.  
15 That has nothing to do with cahoots because then that  
16 is not even before he has filed his tutela, so they  
17 start, if they were so friendly to Mr. López Vanegas,  
18 they would never have started investigations; correct?

19 A. I think the chronological order for the  
20 timing of things speaks for itself, very clearly.  
21 Very clearly. And why they would start this is  
22 because this would be a tremendous lever of pressure

1 against a developer like me.

2 Q. And what is exactly the interest of the  
3 Fiscalía in doing that? They're investigating the  
4 cartel. They're duty-bound, when somebody says that  
5 this is a chain of property belonging from A to Z to  
6 cartel people, they're duty-bound to investigate that  
7 that's exactly what they do. What does that have to  
8 do with you? If you are--if you find yourself in that  
9 context because you have bought that piece, then the  
10 natural thing would precisely to go to the Fiscalía  
11 and say I'm a without-fault buyer. You didn't do  
12 that, did you?

13 A. I think you have to understand the context  
14 in which the Fiscalía has been an organization which  
15 has been riddled with corruption, and I don't want to  
16 mis--misspeak. I think we have an article on record  
17 where the Attorney General himself says above  
18 drug-trafficking, the number one issue that we have in  
19 Colombia--this is said by two Attorney Generals, both  
20 Nestor Humberto Martínez who was the acting Attorney  
21 General at the time that this all happened, and  
22 Barbosa who's the next Attorney General. He says,

1 above drug-trafficking the number one issue that we  
2 have in Colombia is corruption, particularly in our  
3 public institutions.

4           So, I mean, he started a special Task Force  
5 just to combat corruption within the Fiscalía. To  
6 pretend that the fiscals are not doing these things  
7 is--I mean, do you know what the DNE is, the  
8 Departamento Nacional de (unclear, in Spanish)?

9           Q.    If the Fiscalía is looking into any  
10 wrongdoing or allegations of wrongdoing, they are  
11 doing their job, aren't they?

12           A.    If they are looking--I'm sorry, I'm just  
13 going to repeat this. If they're looking into  
14 allegations of...

15           Q.    Wrongdoing.

16           A.    Wrongdoing, then they're doing their job.  
17 With a lens that they're not acting in an improper  
18 manner, then yes, I would agree with you.

19           Q.    So, you cannot say the entirety, the  
20 universe of the Fiscalía and entire Colombia these are  
21 corrupt people and, therefore, that entitles you to  
22 not do anything, to not preserve your rights and not



1 to abide by the law, which is that if you want to  
2 establish that you're a good-faith buyer, you have to  
3 play by the rules, and you have to go to the Fiscalía  
4 and raise the matter with them. Otherwise, you run  
5 the risk that there will be an investigation into the  
6 chain of property by the cartel, and that concerns  
7 your property.

8 A. I definitely don't think that everyone in  
9 the Fiscalía are corrupt. God, I hope not. I hope  
10 not, for the country's sake.

11 Again, as I've stated many times, I felt  
12 that we made everyone who we could make aware, aware  
13 of the situation. We responded to legal claims  
14 against us, we went on national radio. We talked to  
15 the fiduciary.

16 We--I mean, I honestly don't know what else  
17 we could have done.

18 Q. Isn't it what you did, Mr. Seda, that you  
19 actually rushed into making sure that the buyers are  
20 comforted and you start the construction in 2015  
21 because you just wanted to start construction? And  
22 that was your risk, starting construction rather than

1 making sure that you actually look into this with the  
2 Fiscalía and make sure that what you say is your  
3 property is taintless and cannot be taken away because  
4 it is a chain of property by the cartel?

5 A. If you characterize going on national radio  
6 and then waiting a year to start construction as  
7 rushing into things, I think we have a difference of  
8 opinion on that as well.

9 Q. Well, you did say earlier that you rushed  
10 into continuing to sell and to prepare for the  
11 construction. So, you didn't stop your business. You  
12 just continued as normal.

13 A. I never said the word rushed into. I  
14 promise you that.

15 Q. Yes, you said not rushed but you said "I  
16 continued business as normal."

17 Is that normal, Mr. López Vanegas coming to  
18 you and extorting you, is that normal?

19 A. Well, to clarify what I said to you was, we  
20 did an analysis. We talked to the fiduciary. We  
21 looked at the world of information that we had. Went  
22 on national radio, and then, and only after then,

1 after we made clear and transparent to everyone that  
2 there was, we opened our doors. We received emails,  
3 we sent out emails, I believe we sent out--and I hope  
4 I'm not misspeaking--I believe we sent out or one of  
5 our staff sent out a blanket email to all the unit  
6 buyers with a copy of the title search and a copy of  
7 the Fiscalía's Report.

8           Then after that, I sat down, I want to say  
9 with at least at a minimum, 85 to 90 percent of all  
10 the Unit Buyers. And we had hundreds of Unit Buyers.  
11 This was--it was an undertaking that I have never done  
12 on any project before. I sat down with every single  
13 person, and I went through all the documents with  
14 them, and I gave them copies of the documents. I  
15 don't know what else we could have done.

16           Q. You gave them copies of a study, title  
17 study, that was incomplete, and of a response to a  
18 limited query, which was also incomplete, right? And  
19 then at the very latest, with the tutela, you--which  
20 it's public, so you should know, it's Mr. López  
21 Vanegas bringing up a number of facts and  
22 circumstances with evidence, and he actually refers to

1 Deed 1554. That's at Page SP-0019 of the Spanish  
2 version. And that is the one that was picked up by  
3 Corficolombiana's lawyers.

4           So, you if had asked someone to look into  
5 that again, you would see that there is a problem at  
6 the very least, correct?

7           A. Are you stipulating that if we had found  
8 that one individual thing and run Mr. Iván López  
9 Vanegas' name through OFAC and the UN sanctions list  
10 and INTERPOL lists and every other list that there is,  
11 that we would have found something? I don't agree. I  
12 believe a world of people have done this analysis that  
13 you're talking about, and not a single one--please let  
14 me finish--not a single one has ever found, including  
15 a myriad of financial institutions, fiduciaries,  
16 government agencies. No one has ever found an issue  
17 with Mr. López.

18           This is my personal opinion. I'm not a  
19 professional, a title-search professional, but I think  
20 you're mischaracterizing--

21           Q. Mr. López Vanegas has found them, right? On  
22 the last page you have the exhibits.



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]





1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22

1 BY MS. BANIFATEMI

2 Q. There are closure orders, Mr. Seda, that  
3 your lawyers have refused to have on record; okay? So  
4 now if we can go back to this document--

5 MR. MOLOO: Mr. President, with respect to  
6 that, we haven't reviewed the 2000 pages from last  
7 week, so it's not that we refused a specific document.  
8 I just want to be clear about that.

9 PRESIDENT SACHS: Let's proceed.

10 BY MS. BANIFATEMI:

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED] [REDACTED] [REDACTED]

█

[REDACTED]

█

[REDACTED] [REDACTED]

█

█ [REDACTED]

█

[REDACTED] █

█

[REDACTED]

█

[REDACTED] [REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED] [REDACTED]

█

[REDACTED]

█

[REDACTED]

20

Now, I would like to go back to--actually,

21

no, it's a new document that is Exhibit C-33bis. This

22

is on Tab 18.

1 A. I'm sorry, Tab 18?

2 Q. 18. Yes, one-eight.

3 You have it?

4 A. I do, thank you.

5 Q. So, this is a petition response from  
6 Corficolombiana to Newport, dated 26 July 2017. Are  
7 you familiar with this document, Mr. Seda? It's  
8 addressed to you.

9 The answer is yes, Mr. Seda?

10 A. I just need a little time. I'm not--

11 Q. It's addressed to you. Are you familiar  
12 with it or are you not?

13 A. I don't remember every single document ever  
14 sent to me, no.

15 Q. This is an important one.

16 A. My memory is limited. Would you like me to  
17 read it?

18 Q. For the record, I will say what this is.  
19 So, this is Corficolombiana responding to your request  
20 for information. And I'm interested at in the English  
21 version, SP-0004.

22 So, reading for the record, in the

1 particular case of establishing trusts related to the  
2 Meritage Project, it is important to note that it was  
3 not Fiduciaria, but the trust or Newport which  
4 directly negotiated the acquisition of the Project's  
5 plots with the company La Palma Argentina, without  
6 intervention by Fiduciaria in said Pre-Contractual  
7 stage. Nor must we lose sight that, according to  
8 Decree 1023 of 2012 and external circular letter of  
9 February 19, 2014, of the Superintendence of  
10 Companies, non-financial companies operating in  
11 Colombia are required to design and implement an  
12 adequate internal system of self-control and risk  
13 management LA/FT, which includes but is not limited to  
14 due diligence in the knowledge of customers or  
15 counterparts. In this regard for establishing trusts  
16 related to the Meritage Project, the applicable  
17 financial legislation does not contemplate the  
18 obligation for the Trustee (Fiduciaria) to have any  
19 type of approval issued by the Compliance Officer of  
20 the entity, but rather to comply with each of the  
21 aforementioned obligations set forth in Part 1, title  
22 four, Chapter 4, et cetera, of the basic legal

1 circular letter of the financial Superintendence of  
2 Colombia obligations that were fulfilled by the  
3 Trustee.

4 For the reasons stated, the approval that  
5 you request to receive at this point does not exist.

6 So, that's three important points. The  
7 first is that they referred to the negotiation for the  
8 acquisition of the property with La Palma having been  
9 done without their intervention, and they say that  
10 Newport has to comply with, you see in the first  
11 paragraph, design and implement an adequate internal  
12 system of self-control and risk management, right?

13 A. I see the paragraph, yes.

14 Q. Do you remember reading this at the time?

15 A. To be honest with you completely, no. But I  
16 understand what it says.

17 Q. So, what it says is that they will not  
18 approve, and that the Responsible Party for checking  
19 the identity of the contracted counter-party is  
20 Newport and not Corficolombiana. That's what this  
21 says, right?

22 A. It says a lot of legal terms, to be

1 completely honest with you.

2 Q. Do you understand?

3 A. More or less.

4 Q. Required to design and implement an adequate  
5 internal system of self-control and risk management?

6 Do you understand that?

7 A. I do understand that. I don't agree with  
8 it. I do understand it.

9 Q. That's what Corficolombiana, your fiduciary  
10 tells you. You like to rely on them, so here this is  
11 what they say to you. It's not my responsibility,  
12 it's yours.

13 A. So, what is the question?

14 Q. That's my question: That you rely on them  
15 the rest of the time but when they say "it's not my  
16 responsibility, it's yours," you choose to just ignore  
17 it?

18 A. I'm not ignoring that. I would be taking  
19 advice of counsel in the sense that what one has to do  
20 for regulated and non-regulated entities, and then if  
21 you are--I think it's--supervised or not supervised,  
22 and if you become regulated, you have more than

1 160,000 minimal salaries.

2           And we looked at this, and our counsel came  
3 to the conclusion that we are not regulated or  
4 supervised entities. And we don't have to--

5           Q. Did you show this--

6                   (Overlapping speakers.)

7           Q. Did you show this to your lawyers when you  
8 received this, since you say it's legal?

9           A. I give all my documents--

10                   What attorneys are we talking about?

11           Q. Your in-house lawyers. I don't know.

12           A. I mean, I give all my documents to my  
13 attorney. Most of the documents, every document that  
14 comes through our office.

15           Q. So they could read this and understand that  
16 it's a legal obligation for Newport to do due  
17 diligence and to implement an adequate internal system  
18 of self-control and risk management, right?

19           A. So, we have reviewed this, and the response  
20 that came back from counsel was we do not, at that  
21 period of time of 2014 and/or 2015, I believe, because  
22 we didn't meet the thresholds, so Newport was not



1 managing more than 160,000 minimum monthly salaries  
2 per month, and so we didn't meet it. That was the  
3 advice of counsel. You do not have to. They are  
4 simply wrong.

5 Q. So, essentially Corficolombiana is telling  
6 you we're not doing this, we're not responsible. It's  
7 your responsibility, so they probably know what  
8 they're talking about. And this is a legal  
9 requirement, and you choose not to do anything, even  
10 assuming that, under your interpretation, you don't  
11 have to. Nobody does any diligence, then on that  
12 basis?

13 A. That's not what I'm saying. You're  
14 mischaracterizing what I'm saying. What I'm telling  
15 you is, you're asking, do you have to do this? Do you  
16 have to implement this? Is that what you're asking?  
17 Maybe I'm answering a question I don't even have to  
18 answer.

19 Q. No, I'm not asking you--

20 A. Okay.

21 Q. --I'm telling you Corficolombiana tells you  
22 it's not their obligation, so they will not have an

1 approval, because they don't have an obligation. It's  
2 your obligation by law.

3 A. Well, let me finish reading the paragraphs,  
4 the previous paragraph and the paragraph thereafter,  
5 and then maybe it will help me get context and  
6 understand exactly what they're saying. I don't view  
7 it the way you're viewing it. If you want me to read  
8 it, I can read it and tell you what my opinion is on  
9 it.

10 Q. I read what Corficolombiana told you, that's  
11 all, and I'm asking you did you actually do something  
12 about it?

13 A. Did I do something about what?

14 Q. What they tell you about your obligation,  
15 Newport's obligation.

16 A. Yes.

17 Q. -But you said that it was not--

18 (Overlapping speakers.)

19 A. Yes, yes, we... we talked to counsel. Hold on.  
20 You're asking me to answer a question, you're asking  
21 me if I did something with regards to this, and I'm  
22 trying to answer that. So, what I'm answering to you

1 is we conferred with counsel, and counsel said this  
2 doesn't apply to you. You do not meet the minimum  
3 threshold, you didn't have to do it. It's not the  
4 situation.

5 Q. So, what did you do then? Did you go to  
6 Corficolombiana and say I don't agree?

7 A. We can discuss counsel conversations? I'm--

8 Q. No. I'm asking what you said, Newport says  
9 to Corficolombiana as a result. If you don't agree  
10 with the interpretation, what did you do? You just  
11 leave it there? Corficolombiana is telling you it's  
12 not my responsibility, it's yours, by law. You  
13 determine it's not your responsibility. On that  
14 basis, do you go back to Corficolombiana and say I  
15 don't agree with your interpretation?

16 A. What we were doing was simply having  
17 Corficolombiana and asking them, I believe--hold on.  
18 In order to even tell you I need to read the letter to  
19 understand.

20 Q. I'm sorry?

21 A. In order to tell you what we were trying to  
22 do--because I'm reading a response to you. Do you

1 have our original letter?

2 (Overlapping speakers.)

3 Q. I told you, you should always take the time  
4 to read if you need to read. Go ahead.

5 A. Can you give us our original letter to this?  
6 Do you have it?

7 Q. It must be there. As usual, after the  
8 colored paper.

9 A. I don't see it. Can you refer me to where  
10 it is?

11 Q. We're checking if there's a Spanish. You  
12 don't have anything in the binder?

13 A. I mean, there's a lot of documents here. I  
14 just like--faster for you, faster for me.

15 (Pause.)

16 Q. You just need to turn the page, Mr. Seda.

17 A. Thanks.

18 Again, this is a response. I would like the  
19 communication that we are asking--you said we wrote to  
20 Corficolombiana, and this is their response, right?

21 Q. Yes.

22 A. This is also from Corficolombiana to us, so

1 that wouldn't be the letter.

2 Q. This is Corficolombiana's response to you,  
3 yes.

4 A. Sorry.

5 Q. This is what we have been talking since five  
6 minutes ago.

7 A. What I'm asking about--

8 PRESIDENT SACHS: Mr. Seda wanted to see the  
9 letter to which this letter replies.

10

11 BY MS. BANIFATEMI

12 Q. You would like to see your petition of  
13 4 July.

14 A. I would like to have context and understand  
15 what we were asking for and what they're replying to.  
16 It's hard for me to respond if I don't have that  
17 context.

18 Q. We're looking if it's on the record.

19 (Pause.)

20 Q. So, apparently it was not filed by your  
21 lawyers, so we don't have it on the record.

22 A. Then taking that into consideration, I

1 apologize, but I just would like to read the entire  
2 letter to understand it, is that okay?

3 Q. Yeah.

4 A. Thank you.

5 (Witness reviews document.)

6 A. And this helps considerably. One more  
7 second.

8 (Witness reviews document.)

9 A. Okay. Would you like me to answer?

10 Q. Yes, please.

11 A. Okay, so what I understand from this letter  
12 is, without seeing the letter that we sent them, it  
13 seems like we were asking for some sort of concept or  
14 opinion; and, from my reading of this letter, what it  
15 says is we did, we'll tell you with regards to these  
16 transactions we did all of these studies, we did all  
17 of these things. We followed our internal SARLAFT  
18 system--(in Spanish)--sorry, sorry, if you could put  
19 the English version back up, please? And go to  
20 SP-0002. If you could go a little further down the  
21 page.

22 And they're saying it's in compliance and

1 they've done all these things and they've gotten all  
2 these studies and they're basically saying that these  
3 are all the things that made us comfortable with the  
4 deal.

5 But then it seems like they're getting very  
6 narrow, and they're basically saying, you know--

7 (Witness reviews document.)

8 A. So, it says they're not issuing a concept.  
9 It doesn't say they didn't do the due diligence or  
10 didn't--I don't see where it says they didn't study  
11 the counter-party.

12 Q. If you look at the passage that I read,  
13 which is Page 4.

14 A. Yeah.

15 Q. They're simply saying that it is for  
16 Newport, who is the direct negotiator with La Palma,  
17 without intervention by Corficolombiana, no?

18 A. You're mischaracterizing--I'm sorry.

19 Q. I'm not mischaracterize anything, Mr. Seda.  
20 This says that Newport has an obligation by law,  
21 right?

22 A. It's saying we didn't do the deal with La

1 Palma, you did. However, nor must we lose sight that  
2 according to Decree 1023 of 2012, and external  
3 circular, Superintendence of Companies, non-financial  
4 companies--so, one is not contingent on the other.

5 I'm not going to try to be an attorney here and say  
6 exactly what this--

7 Q. Right.

8 A. --means, but the way I understand it, you're  
9 asking my opinion. My opinion is it simply saying (a)  
10 we didn't do the deal with La Palma. You negotiated  
11 it, let's be clear there. And second, corporations of  
12 this who are regulated by this must have a SARLAFT  
13 system. I mean, those are --One doesn't require the  
14 other.

15 Q. What it says is that they will not give you  
16 any type of approval issued by the Compliance Officer  
17 of the entity and they conclude that the approval that  
18 you request does not exist, and they say that the  
19 requirement is the requirement on the Company itself,  
20 Newport.

21 A. Where exactly are you reading from?

22 Q. The two paragraphs that you have.



1 A. Okay. When you say "doesn't exist."

2 Q. At the end, the last--last sentence.

3 A. Of the last paragraph? Okay.

4 (Witness reviews document.)

5 A. Yeah, they're saying the concept. They're  
6 saying you're asking for a legal opinion, a concept,  
7 and they're basically saying we're not going to give  
8 you a legal opinion, a concept.

9 Q. Why do you say "concept"? It says the  
10 approval that you request to receive does not exist.

11 PRESIDENT SACHS: It's difficult to further  
12 go on with this because we do not have the letter of  
13 the 4th of July, so I think if we had the letter, the  
14 answer will be clearer.

15 MS. BANIFATEMI: Which I do not have because  
16 it's not on the record.

17 PRESIDENT SACHS: Yes, so it is not so  
18 helpful to go on with this.

19 MS. BANIFATEMI: I'm happy to move on,  
20 Mr. President.

21 PRESIDENT SACHS: Yes, please, but let's  
22 have the afternoon break, then, and resume at 3:48,







1

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

1

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED] And, of

6

course, Ms. Noguera. You refer a lot to Ms. Noguera,

7

so that's in Paragraph 28. And at Paragraph 28, that,

8

I understand, is the first meeting with

9

Ms. Noguera--right?--in December 2019.

10

A. That is correct.

11

Q. And if I look at 29, Paragraph 29, you say

12

that you did not record that first meeting, [REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

A. That is correct.

18

Q. So, let's look at your Second Statement now

19

at Paragraph 30.

20

I'm sorry, we're there.

21

So, this is the meeting we're talking about.

22

I'm sorry.

1

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]







1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

1

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

16

(Drilling sounds.)

17

(Off the record.)

18

19

20

PRESIDENT SACHS: Please proceed.

21

BY MS. BANIFATEMI:

22

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED] [REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED] [REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]



1

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED] [REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]





1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED] [REDACTED] [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

Q. Now, if we can look at Exhibit C-24, that's

8

Tab 28. 24bis, yes. Thank you.

9

Tab 28, Mr. President.

10

That's from the Attorney General's Office,

11

Asset Forfeiture Unit, it's a petition to Asset

12

Forfeiture Court, dated 5 April 2017. And you see

13

here, on the bottom of the first page, the

14

Requerimiento, and then you see on the second page

15

identification on top, identification and place for

16

notifying the impacted parties and intervening persons

17

and (1) there is a reference to Ms. Gladys Lucía

18

Sánchez Barreto, Legal Representative of Sociedad

19

Newport.

20

I'm sorry, that's Page 151 of the document

21

of C-24bis, as you see on the screen.

22

So, you see that, in 2017, on 5 April, the

1 Fiscalía actually recommends that Newport be admitted  
2 as an affected party, right?

3 A. Yeah--I don't know how to translate this in  
4 legal terms. I don't know if this means that they're  
5 recommending that these people are to be third  
6 parties. I don't know if it's saying these are  
7 individuals who are trying to become third parties. I  
8 couldn't give you a perspective on this. I just--I'm  
9 not well-versed enough.

10 Q. It says--can we look at the Spanish version?  
11 And you have it in the binder.

12 A. Oh.

13 Q. As usual. "Identification and place". (In  
14 Spanish).

15 A. Where would it be located?

16 Q. As every time, after the pink page.

17 A. Thank you.

18 Q. Identification and place of notification of  
19 the affected parties. (In Spanish).

20 Do you see that? So, it's a list with  
21 Newport on top, identified by the Fiscalía as  
22 "afectados".



1           A.    Just give me one minute to read it,  
2 apologies.

3           Q.    Yes, I'm just setting out the stage, and  
4 then you can read.

5                   MR. MOLOO:  Mr. President, I think the last  
6 word is important, I don't speak Spanish, but it's not  
7 just affected parties.  It's "and intervenors."

8           A..  So, with regards to this reading, now the  
9 Spanish version--sorry, switching to Spanish now,  
10 identification and place of notice served to the  
11 affected parties and intervening parties.

12                   Again, I'm not an attorney, an EDD attorney.  
13 I don't know exactly what this means, but my  
14 interpretation of it would be people who they think  
15 are affected parties and people--and/or people that  
16 want to be recognized, not necessarily they're saying  
17 they are recognized as afectados.

18                   BY MS. BANIFATEMI

19           Q.    I'm trying--since I didn't hear him, I'm  
20 looking at the transcript to see what you said.

21                   It's a recommendation, is it, it's a  
22 recommendation to the court, right?

1           A.    I can't--again, you're asking me legal  
2 advice.  I can't tell you what the--what would you  
3 call it?--the interpretation of this from a legal  
4 perspective--

5           Q.    No, I'm asking you the very simple question,  
6 and the rest can be done by your attorneys, as legal  
7 matter, and so can we, and--but I can just say for the  
8 Tribunal's clarification, intervening persons as per  
9 the law, as to the Asset Forfeiture Law, concerns what  
10 you have in three and four, the Attorney General's  
11 Office and the Ministry of Justice, so these are the  
12 intervening parties.  And then, the actual afectados  
13 would be here Newport and Corficolombiana.

14           PRESIDENT SACHS:  That makes sense, yes,  
15 but--

16                   (Overlapping speakers.)

17           BY MS. BANIFATEMI:

18           Q.    This is the recommendation--of the  
19 Prosecutors.  So, my question is very simple, not  
20 getting into legalese:  Are you aware that, in  
21 April 2017, the Prosecutor recommended that Newport be  
22 admitted as an affected party?  "Yes" or "no."

1           A.    Again, I'm looking at--I understand the  
2 document--

3           Q.    Were you aware, at the time, Mr. Seda?

4           A.    Was I aware of this document?

5           Q.    Were you aware at the time--somebody told  
6 you--"yes" or "no"--

7           A.    No one--

8           Q.    --that there was a recommendation that you  
9 be admitted as an affected party?

10          A.    No, no one has ever told me that the  
11 Fiscalía recommended us to be an affected party.  
12 Never.

13                   MS. BANIFATEMI:  And, Mr. President, just a  
14 point of reference, it's Article 31 of the Law on  
15 Asset Forfeiture Proceedings of intervening parties.

16                   BY MS. BANIFATEMI:

17          Q.    Then, if we can look at Exhibit C 436.  
18 You're familiar with this, of course, your  
19 lawyers--Tab 29--your lawyers extensively argued this  
20 document yesterday.  This is the Decision of  
21 22 April 2022, by the Superior Court of Judicial  
22 District of Bogotá admitting Newport as an affected

1 party. That you're familiar with, right?

2 A. I'm familiar with the generality of this  
3 document. I've read it, yeah.

4 Q. And when you say in your First Statement,  
5 Paragraph 82, in a different context, admittedly, this  
6 is in the context of López Vanegas, I would never pay  
7 a bribe. I was confident that the Colombian Judicial  
8 System and Authorities would reach the right  
9 conclusion.

10 So, you were right in being confident,  
11 right? Because the Bogotá Court has admitted you as  
12 an affected party now.

13 A. Well, I'm saying that in the context--

14 Q. I did say it in a different context. I'm  
15 just taking your statement that you're confident in  
16 the Colombian Courts?

17 A. You haven't let me finish.

18 I'm saying that in the context, and we had  
19 controls of legality out there. I'm saying this is in  
20 the judicial system, not the court system, that the  
21 Colombian Judicial System, and it's also referring to  
22 the Fis--principally referring to the Fiscalía. I

1 felt that the judicial system in speaking about the  
2 Fiscalía, you know, was not going to--you know, it was  
3 not going to come against us.

4 Q. The judicial system includes the Fiscalía,  
5 right?

6 A. It does.

7 Q. Yeah.

8 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 A. I'm sorry? Again, I don't--I can't contest  
16 that this document is them saying, the Fiscalía is  
17 saying or the Prosecutor saying that we should be  
18 affected parties. I mean, you're asking me to come to  
19 a legal conclusion. I just--I don't know.

20 Q. Let's say it differently. I will present it  
21 to you that this is a document where the Prosecutor  
22 recommends that Newport be admitted as an affected

1 party. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]. That's what

7 this means, isn't it?

8 A. I don't know.

9 Q. So now, let's look at your Third Statement,

10 Paragraph 2.

11 You referred to this--this is a--this is an  
12 important paragraph. I want to spend some time on it.

13 A. Okay.

14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]





1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED] [REDACTED] ■

■

[REDACTED] [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

1

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]





1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]





1

[REDACTED]

18

BY MS. BANIFATEMI:

19

Q. So, I would like now to go to your First

20

Statement, Mr. Seda, at Paragraph 104.

21

A. Paragraph 104?

22

Q. Yes.

1           This concerns your different approaches and  
2 discussions with the U.S. Authorities. So, here you  
3 say it's in relation still to Mr. López Vanegas, and  
4 you say, I quote: "I was particularly concerned at  
5 the apparent fact that corrupt actors in the Fiscalía  
6 were complicit in López Vanegas' extortion and were in  
7 fact extorting me themselves. Not knowing whom to  
8 trust, I sent a desperate plea for help to the U.S.  
9 Embassy and traveled to Bogota to meet with an Embassy  
10 official on 6 September 2016."

11           And here you refer to two pieces of  
12 evidence, C-171 and 172. These are essentially--we  
13 can have a look at them. These are--I don't have any  
14 particular question. I just want to, if you want to  
15 see them, we can see them, C-171. That's Tab 31.

16           If you look at Tab 31, you see that there's  
17 an email from you to the U.S. Embassy, and then on top  
18 starting with the Page 1, they tell you "the American  
19 Citizen Services Unit at the U.S. Embassy Bogotá is  
20 available to meet with you on Tuesday morning  
21 September 6th." So, this is the meeting that you  
22 discuss at Paragraph 104, right? Yes, Mr. Seda?

1           A.    Correct.

2           Q.    And you did meet with someone at the  
3 Embassy, right?

4           A.    Yes.

5           Q.    Then if we go a bit further down, I'm  
6 looking at it chronologically, so still statement one,  
7 Paragraph 116, now we are in October 20, October 2016.

8                    You say that:  "On that day, Mr. Michael  
9 Burdick, the Federal Bureau of Investigation, Legal  
10 Attaché at the U.S. Embassy, requested that I meet  
11 with him.  I agreed, and in an effort to gather  
12 evidence of the extortion which I had been subjected  
13 to turn over to him.  I contacted Mosquera to arrange  
14 for another meeting."

15                   And here we can have a look at the document  
16 that you reference here.  That's C-179.  That's 33,  
17 Tab 33.  It's a very brief exchange with Mr. Burdick,  
18 where he--well, you say first that you spoke with his  
19 colleagues at the Embassy concerning the meeting--I'm  
20 sorry, he says to you:  "I spoke with my colleagues at  
21 the Embassy concerning the meeting you had with them.  
22 I would like to meet with you."  And then further up,

1 he says: "I will be in Medellín on December 13th.  
2 Please advise if you have time to meet." I understand  
3 that you did not meet Mr. Burdick, right?

4 A. No. He never--he didn't follow up for the  
5 meeting.

6 Q. Then still going ahead in time, on  
7 29 November 2016, that's Exhibit C-178, Tab 34, that's  
8 a letter from Richard Walsh, the General Consul of the  
9 U.S. Embassy in Colombia, and essentially he--he's  
10 picking up on your complaints, and he says that he  
11 recognizes that you have met with Ms. Elizabeth  
12 Gracon, I think. And second paragraph he says: "As  
13 you know, the Embassy cannot provide," and this is in  
14 relation to the physical issues and threats that you  
15 had discussed," the Embassy cannot provide physical  
16 security. I understand that Ms. Gracon recommended  
17 that you make arrangements for personal protection if  
18 you believe that the Colombian Authorities cannot  
19 adequately protect you."

20 And then last paragraph: "Regarding your  
21 ongoing legal dispute, the U.S. Embassy can only offer  
22 limited assistance in resolving your civil legal

1 matters. In cases such as these, the Embassy  
2 recommends that you hire an experienced attorney to  
3 pursue your case in the local justice system. I  
4 understand that you have representation in Colombia,  
5 and are satisfied with your legal counsel. You have  
6 alleged serious corruption in the judicial system, but  
7 this too needs to be addressed with Colombian  
8 Authorities."

9           So, that's the U.S. response to you, right?  
10 In relation to those allegations of corruption, right?

11           A. That's the letter that was sent by the  
12 Embassy.

13           Q. And the final approach, as I understand it,  
14 is the December 2016, which I understand to be a  
15 meeting with Mr. Neff, so that's your First Statement  
16 still at Paragraph 126. I quote: "U.S. Authorities  
17 also seemed interested in what I knew about Malagón's  
18 corruption. On 22 December 2016, I received a  
19 WhatsApp message from a person purporting to be a U.S.  
20 Drug Enforcement Agency (DEA) official named William  
21 Neff."

22           And then you go ahead and explain that you

1 were not quite comfortable with that because one of  
2 your colleagues had thought--recognizing Mr. Neff from  
3 the WhatsApp identity, right?

4           And then you say at Paragraph 127, "I met  
5 with Neff at the U.S. Embassy in Bogotá on 27  
6 December 2016; and also present were persons from OFAC  
7 and the FBI. These officials acknowledged that López  
8 Vanegas's kidnapping story was false and the  
9 Precautionary Measures had not been properly imposed  
10 on the Meritage."

11           They also extensively questioned me about  
12 what I could tell them about Malagón's corruption.

13           So, that is the meeting where you were  
14 concerned about the identity of Mr. Neff and he met  
15 you outside the Embassy and took you in, right? It's  
16 my understanding of the context.

17           A. That's the only meeting that I had with  
18 William Neff at the Embassy.

19           Q. And just to be clear, I'm referring to C-182  
20 at your Tab 35. It's a quite long exchange, so, I  
21 don't propose to go there, but it's--you really being  
22 concerned, and saying I don't feel comfortable, I

1 don't know who you are, I need you to clarify your  
2 identity.

3 And then at the end, it stops at he's at the  
4 gate.

5 So, that's when you actually met him and  
6 went into the Embassy, correct?

7 A. Yeah. I had serious security concerns. I  
8 wanted to make sure that who I was chatting with was  
9 actually a DEA Agent, was actually from the Embassy.  
10 I wanted to make sure that I was actually going to  
11 meet--I didn't want to show up to an ambush, so that's  
12 what concerned me more than anything else.

13 Q. And then that's the meeting where OFAC and  
14 FBI were present, and you discussed what I just  
15 mentioned, right?

16 At Paragraph 126, I don't know if it's still  
17 on the screen.

18 A. Correct. It's the only meeting I had with  
19 William Neff.

20 [REDACTED]

[REDACTED]

[REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] ■

■

[REDACTED] [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] [REDACTED]



1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■ [REDACTED] ■

■

[REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

■ [REDACTED]

■

[REDACTED] ■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED] ■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

15

16

BY MS. BANIFATEMI

17

Q. It's related to the land which is seized for

18

Asset Forfeiture Proceedings, isn't it?

19

A. It appears to be referencing the property,

20

yes.

21

Q. Let's look at one last one. This is Exhibit

22

R-123. That's Tab 38. It's a letter of 26 July 2017,

1 and actually you have both the Spanish and the English  
2 version. I would like to look at both because the  
3 English version is, in fact, not a good translation.

4 And again, this time it's signed by  
5 Mr. Burdick, the same, to the Colombian Authorities  
6 again.

7 And it refers to--you see the first  
8 paragraph. It refers to the "United Nations  
9 Convention Against Illicit Traffic and Narcotic Drugs  
10 and Psychotropic Substances" signed in Vienna and  
11 ratified by the U.S., right? This is the basis for  
12 the action. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

[REDACTED] [REDACTED] [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED] [REDACTED]

█

[REDACTED]

█

[REDACTED]

20

Q. Right.

21

And the normal understanding would be that

22

FBI, the OFAC, and all of the U.S. Authorities looking

1 into drug-trafficking DEA, that they would actually  
2 give this information and this is internal to the U.S.  
3 What is the purpose of the U.S. feeding back to  
4 Colombia information that Colombia is giving to the  
5 U.S.? It doesn't make any sense, does it?

6 A. I don't know. I can't comment on that. I  
7 can tell you that they looked into everything, and  
8 nothing came out about it. [REDACTED]

12 Q. Now, you're talking about OFAC?

13 A. I'm talking about everything.

14 Q. You're talking about OFAC?

15 A. The world of everything.

16 Q. Well, there was an investigation by OFAC, as  
17 you say in your statement, and you say that it ended  
18 up with no result, right?

19 A. That's correct.

20 Q. That's the OFAC investigation, right?

21 A. That's what, well, I mean, you're  
22 referencing this, so I'm--.



1

[REDACTED]

█

[REDACTED]

█

[REDACTED] [REDACTED]

█

[REDACTED] [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED] [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

10

A. Well...

11

PRESIDENT SACHS: Okay. I think we should

12

have now another afternoon break, unless you have an

13

ultimate question.

14

MS. BANIFATEMI: I have one ultimate

15

question, Mr. President. Thank you for your patience.

16

PRESIDENT SACHS: Please try to be short

17

because the Court Reporters now need a break.

18

MS. BANIFATEMI: I'm really sorry.

19

20

BY MS. BANIFATEMI

21

█ [REDACTED]

█

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]





1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21

MS. BANIFATEMI: I'm done, Mr. President.

22

Thank you very much for your patience.

1           PRESIDENT SACHS: Very good. We will resume  
2 at 5:45, please.

3           MR. MOLOO: Does that mean you're done your  
4 cross-examination? Or?

5           MS. BANIFATEMI: Yes, I am.

6           MR. MOLOO: Okay. So, we would still like a  
7 break, but I just wanted to make sure whether I should  
8 be preparing some redirect questions during the break.  
9 Okay.

10          PRESIDENT SACHS: You might ask the  
11 question, and so 15 minutes, okay?

12          MR. MOLOO: Thank you.

13          THE WITNESS: And just to confirm that means  
14 I'm still--okay. 15 more minutes, all right, all  
15 right.

16          PRESIDENT SACHS: Mr. Seda, you're still  
17 under the testimony, and the same rule applies.

18          THE WITNESS: Yes, sir.

19          PRESIDENT SACHS: Thank you.

20          (Recess.)

21          PRESIDENT SACHS: We then go to redirect.  
22 Mr. Moloo?

1 MR. MOLOO: Thank you, Mr. President.

2 REDIRECT EXAMINATION

3 BY MR. MOLOO:

4 Q. Mr. Seda, I just have a few questions for  
5 you.

6 Can you see me okay?

7 There's been a lot of innuendo today, so I  
8 just want to clear up a few things.

9 Have there any--have there ever been any  
10 criminal proceedings against you brought in the U.S.?

11 A. Never.

12 Q. What about in Colombia?

13 A. Never.

14 Well--no, never.

15 Q. Had there--there been some investigations,  
16 though--

17 A. Sorry, I'm confusing investigations with  
18 criminal proceedings.

19 Q. But have you ever been charged with any  
20 crime or anything like that--

21 A. Never.

22 Q. --in Colombia?

1

[REDACTED]

2

[REDACTED]

3

A. Never.

4

And when I paused, I was referencing a fraud

5

claim with regards to the Meritage thing brought

6

with--yes.

7

Q. And have you ever been put on any black list

8

that you know of?

9

A. Never.

10

Q. OFAC?

11

A. Never.

12

Q. UN Security Council List?

13

A. Never.

14

Q. Interpol?

15

A. No.

16

I've never been arrested. I've never had

17

any issue in Colombia or in the U.S. Never--

18

Q. Or anywhere else in the world?

19

A. Anywhere, ever.

20

Q. You know, after all of this, it was

21

suggested that you still--Colombia hasn't kicked you

22

out, and you still go to Colombia. How do you still

1 travel to Colombia?

2 (Comment off microphone.)

3 MR. MOLOO: It was raised yesterday. There  
4 was a chart.

5 PRESIDENT SACHS: Let's proceed, please

6 (Comment off microphone.)

7 MS. BANIFATEMI: The re-direct is supposed  
8 to be based on the cross examination not on--(comment  
9 off microphone)

10 MR. MOLOO: I'm in the Tribunal's hands.

11 PRESIDENT SACHS: No, no. Proceed, please.

12 Rephrase the question in a manner that is more  
13 acceptable.

14 BY MR. MOLOO:

15 Q. It's been suggested by the other side that,  
16 you know, there are still activities that you're doing  
17 in Colombia. There are many things that post-2016  
18 that you were referred to, you still are doing several  
19 things in Colombia. A number of them were discussed  
20 today, including today.

21

■



1

[REDACTED]

2

[REDACTED]

3

A. Because I'm defending my name, and because this is gonna follow me no matter where I go. No matter how long it takes, no matter how long I run, this will follow me until I close the chapter on this.

7

So, look, I ran with my children for two years, and there was a moment in time where my children said they wanted to go back to Colombia, and I think--excuse me. I came to the realization that I have to put the final nails in this coffin, this--this issue, and running away is not gonna get this solved. And whatever the consequences are, that's what they are, but I want to put an end to this. I do.

15

MR. MOLOO: I think that's it.

16

PRESIDENT SACHS: Thank you.

17

Please.

18

QUESTIONS FROM THE TRIBUNAL

19

ARBITRATOR PEREZCANO: Thank you, Mr. Seda.

20

I want to follow up on an issue that was raised

21

earlier today--this morning, actually. Counsel for

22

the Respondent took you to Exhibit C-160. This was-

1 this is the Osorio & Moreno Abogados Title Study, so a  
2 subsequent Title Study to the Otero & Palacio one.  
3 This was done in 2016, so you recall that exchange  
4 that you had with counsel for the  
5 Respondent--correct?--this morning.

6 THE WITNESS: I'm sorry. I remember...?

7 ARBITRATOR PEREZCANO: You recall she showed  
8 you--

9 THE WITNESS: Correct, yes, yes, of course.

10 ARBITRATOR PEREZCANO: --the document.

11 And I, I'm not going to take you to this  
12 document, but I will take you, if counsel for the  
13 Respondent can have--oops, sorry, I just closed it,  
14 but the Otero & Palacio, I think it's C-30. Correct.  
15 Thank you.

16 So, anyhow, the--Ms. Banifatemi took you in  
17 the Osorio & Moreno Title Study to a paragraph that  
18 says, and I'll read it in Spanish: In accordance with  
19 the documentation provided, the real estate property  
20 that is under study is free of any encumbrances or any  
21 limitation on the ownership title.

22 Do you recall that?

1 THE WITNESS: I do recall this.

2 ARBITRATOR PEREZCANO: What is, in your  
3 understanding, a gravamen?

4 THE WITNESS: Like--

5 ARBITRATOR PEREZCANO: It was translated by  
6 counsel--

7 THE WITNESS: I'm sorry.

8 ARBITRATOR PEREZCANO: --by counsel as a "lien."

9 THE WITNESS: Yeah, lien. Sorry.

10 ARBITRATOR PEREZCANO: And I appreciate  
11 you're not a lawyer, but you are an expert in real  
12 estate, and this is an issue--this is language that  
13 comes up all the time in real estate, is it not?

14 THE WITNESS: The language with regards to  
15 that paragraph?

16 ARBITRATOR PEREZCANO: Well, the language  
17 with regard to "gravamenes" and "limitaciones de  
18 dominio." This is something you see all the time in  
19 real estate, in purchase and sale of real estate. Is  
20 that correct?

21 THE WITNESS: That's correct.

22 ARBITRATOR PEREZCANO: And it also--it goes

1 on to say, "gravámenes o limitación al derecho de  
2 dominio, "lien or encumbrances or limitations to--  
3 regarding the ownership title."--

4 ARBITRATOR PEREZCANO: And, this morning,  
5 you gave us your understanding of what that language  
6 "limitación al derecho de dominio" was.

7 And, now, I want to take you to C-30.

8 THE WITNESS: In this binder?

9 ARBITRATOR PEREZCANO: I don't know whether  
10 it's in the binder.

11 (Comment off microphone.)

12 ARBITRATOR PEREZCANO: It's on the screen.

13 THE WITNESS: I'm sorry.

14 ARBITRATOR PEREZCANO: I apologize, that binder was  
15 prepared by the Respondent. I don't have a binder for  
16 you, so I'm relying on the arguments that are on the  
17 record, but you recognize this document, correct?

18 THE WITNESS: Yes, I do.

19 ARBITRATOR PEREZCANO: And this is the Otero  
20 & Palacio Title Study that the Claimants, including  
21 you, submitted in this case before us; correct?

22 THE WITNESS: That's correct.

1           ARBITRATOR PEREZCANO: Now, if I can take  
2 you further down to the similar language—and I  
3 apologize I had it on my screen but I closed it, so  
4 Paragraph 4, so there you see in 4, the first bullet  
5 we have very similar language, "El inmueble"—and I'm  
6 switching to Spanish—"the property is free of  
7 encumbrances," you told us those are liens, the  
8 translation was accurate as "liens," conditions  
9 subsequent.

10           Can you give us your understanding of what  
11 are those?

12           And again, I don't want a legal explanation,  
13 but your understanding as a real estate expert or  
14 businessman.

15           THE WITNESS: What was--What does the  
16 English translation say?

17           ARBITRATOR PEREZCANO: Well, I will tell  
18 you, and these are conditions that would terminate an  
19 agreement, such as a Purchase and Sale Agreement. It  
20 may be subject to a condition that would put an end to  
21 that Agreement. And it can be a Purchase and Sale  
22 Agreement or other type of agreement dealing with real

1 estate. Are you familiar with the term or the  
2 concept?

3 THE WITNESS: I think I just saw the English  
4 version, it said "subsequent conditions."

5 ARBITRATOR PEREZCANO: Well, resulotorio, I  
6 haven't seen the—I relied on the Spanish documents. I  
7 haven't seen the English translation, but resolutorio  
8 - something that puts an end to, in this case, a  
9 condition that would put an end to something, like a  
10 contract.

11 THE WITNESS: And I—and I greatly apologize.  
12 I will have to plead ignorance on that—

13 ARBITRATOR PEREZCANO: No need to apologize.

14 THE WITNESS: ---but I honestly don't know.

15 ARBITRATOR PEREZCANO: If you don't know,  
16 that's fine.

17 THE WITNESS: And, I'm sorry, and I know a  
18 lot about real estate, and I just am not familiar with  
19 that specific term.

20 ARBITRATOR PEREZCANO: Okay. And again, we  
21 see "limitaciones de dominio." So again, do you know  
22 what are those?--

1           THE WITNESS: Limitations to property title.  
2 I mean, I think they could be—I think it's speaking in  
3 a general sense, and it's saying--I believe what it's  
4 saying is any limitations that would--for example--I  
5 will throw an example out there--that within the chain  
6 of title, there was a legal representative or the  
7 wrong person signed on title or there was a legal  
8 representative who didn't have--you sign with the  
9 counter-party, and they didn't have the right to sign  
10 because they're legal representative of the  
11 corporation, and they only could sign to a million  
12 dollars, and the property is 10 million dollars. Or  
13 limitations to domain with respect to—I mean it could  
14 be a list of things, I would think.

15           ARBITRATOR PEREZCANO: Okay.

16           THE WITNESS: Easements, you know like--

17           ARBITRATOR PEREZCANO: Now. All right.

18 That's fine.

19           And, but you also told us earlier this  
20 afternoon that almost every document that you  
21 received, you turned it over to your attorney, your  
22 in-house attorney, and he would know for sure what

1 this language means, would he not?

2 THE WITNESS: My assumption is, yes, he's an  
3 attorney that understands real-estate transactions  
4 decently well. He's not a super high-level attorney,  
5 but he has to be well-versed in a little bit of  
6 everything: corporate, real estate, employment. It's  
7 an in-house counsel that can do the initial things. I  
8 would think that he has a decent understanding, yes.

9 ARBITRATOR PEREZCANO: Are you aware--do you  
10 know if these categories, "gravámenes, condiciones  
11 resolutorias y limitaciones al dominio," encumbrances  
12 and all conditions subsequent and limitations to  
13 ownership exist in the Colombian Civil Code, are you  
14 aware of whether they are or not?

15 THE WITNESS: Working on assumption, I would  
16 assume they are--

17 ARBITRATOR PEREZCANO: Okay.

18 THE WITNESS: --but I--it's just an  
19 assumption.

20 ARBITRATOR PEREZCANO: But your counsel  
21 would know?

22 THE WITNESS: I would think so, yes.



1           ARBITRATOR PEREZCANO: And when you received  
2 this Title Study and others that contain very similar  
3 language, did he advise you on what these categories  
4 mean?

5           THE WITNESS: No. We never had a discussion  
6 about these--about these individual things. If we  
7 did, I definitely would have asked what they meant  
8 exactly.

9           ARBITRATOR PEREZCANO: Okay. Fair enough.  
10 All right. Thank you, Mr. Seda.

11           Mr. President, that was my question or my  
12 group of questions. I don't have any others. Thank  
13 you.

14           PRESIDENT SACHS: Thank you.

15           And this in-house counsel, is he a Colombian  
16 lawyer or U.S. attorney?

17           THE WITNESS: Colombian attorney.

18           PRESIDENT SACHS: "Colombian attorney,"  
19 okay.

20           And where is he based, or she?

21           THE WITNESS: In Medellín.

22           PRESIDENT SACHS: In Medellín. Okay.

1 All right. This was it. Thank you for your  
2 testimony. You are now released, but we understand  
3 you will continue to be present during the forthcoming  
4 days.

5 (Witness steps down.)

6 PRESIDENT SACHS: Are there any housekeeping  
7 matters that we need to discuss? Claimant?

8 MR. MOLOO: Just a note, nothing by way of  
9 ask from the Tribunal, but yesterday we did discuss  
10 potential new documents by the Claimant. We have  
11 sent, I think, five documents to the Respondent. It  
12 was very late last night. I don't expect you will  
13 have reviewed them, but I just wanted to tell the  
14 Tribunal there are five documents. We'll try and  
15 resolve it between the Parties.

16 But--oh, sorry, I'm informed it's about 10  
17 documents.

18 PRESIDENT SACHS: "10 documents," okay.

19 MR. MOLOO: But hopefully we won't have to  
20 trouble the Tribunal with it. But I wanted to alert  
21 the Tribunal to that. But nothing else.

22 PRESIDENT SACHS: Respondent?

1 MS. BANIFATEMI: Nothing on our side. Thank  
2 you, Mr. President.

3 PRESIDENT SACHS: All right. And the  
4 program tomorrow will include Mr. Hernández, then  
5 Ms. Ardila, and then Mr. Caro Gómez. That's the  
6 program for tomorrow. And just to remind me, will  
7 they all testify in Spanish?

8 MR. MOLOO: Yes.

9 PRESIDENT SACHS: All three of them? So-

10 MS. BANIFATEMI: Yes, they will,  
11 Mr. President.

12 PRESIDENT SACHS: We will do our best to  
13 cover the whole program tomorrow, counting on the two  
14 of you there, that and the Translators and  
15 Interpreters.

16 Thank you very much. Have a nice evening  
17 and see you tomorrow at 9:30.

18 (Whereupon, at 6:01 p.m., the Hearing was  
19 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

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

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



---

DAVID A. KASDAN