

<p style="text-align: right;">1009</p> <p>Also Present:</p> <p>MS. NATALI SEQUEIRA, Secretary to the Tribunal</p> <p>MR. ALEX BERENGAUT, Assistant to the Tribunal</p> <p>Court Reporters:</p> <p>MR. DAVID A. KASDAN Registered Diplomat Reporter (RDR) Certified Realtime Reporter (CRR) B&B Reporters 529 14th Street, S.E. Washington, D.C. 20003 (202) 544-1903</p> <p>SRA. ANDREA VERÓNICA AMOR D.R. Esteno Colombres 566 Buenos Aires 1218ABE Argentina (5411) 4957-0083</p> <p>Interpreters:</p> <p>MS. SILVIA COLLA</p> <p>MR. DANIEL GIGLIO</p> <p>MR. CHARLES ROBERTS</p>	<p style="text-align: right;">1011</p> <p>APPEARANCES: (Continued)</p> <p>On behalf of the Respondent:</p> <p>MR. GUILLERMO PORRAS OVALLE Attorney General</p> <p>MR. ESTUARDO SAÚL OLIVA FIGUEROA MS. SILVIA CABRERA ESTRADA Attorney General's Office</p> <p>MR. ANÍBAL SAMOYOA SALAZAR Deputy Secretary General of the Presidency</p> <p>MR. LUIS VELÁSQUEZ QUIROA MR. MYNOR RENÉ CASTILLO MR. ROMEO LÓPEZ Ministry of Economy</p> <p>MR. FERNANDO de la CERDA MR. JOSÉ LAMBOUR, Embassy of Guatemala, Washington, D.C.</p> <p>MR. DAVID M. ORTA MR. WHITNEY DEBEVOISE MR. DANIEL SALINAS-SERRANO MS. MARGARITA R. SÁNCHEZ MS. GISELLE K. FUENTES MS. DAWN Y. YAMANE HEWETT MR. MALLORY B. SILBERMAN MR. JOSÉ ANTONIO RIVAS MR. JOSÉ BERNARD PALLAIS H. MS. CAMILA VALENZUELA MR. KELBY BALLENA MS. AMY ENDICOTT MR. PEDRO SOTO MS. NICOLE ANN AARONSON Arnold & Porter, LLP 555 Twelfth Street, N.W. Washington, D.C. 20004 (202) 942-5000</p>
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<p>APPEARANCES: (Continued)</p> <p>CAFTA Non-Disputing Parties:</p> <p>On behalf of the Republic of El Salvador:</p> <p>MR. ENILSON SOLANO Embassy of the Republic of El Salvador</p> <p>MR. LUIS PARADA MR. TOMÁS SOLÍS MR. ERIN ARGUETA Dewey & LeBoeuf, LLP 1101 New York Avenue, N.W. Washington, D.C. 20005-4213 (202) 346-8198</p> <p>On behalf of the United States of America:</p> <p>MR. JEFFREY D. KOVAR Assistant Legal Adviser MR. LISA J. GROSH Deputy Assistant Legal Adviser MR. MARK E. FELDMAN Chief, NAFTA/CAFTA-DR Arbitration Division, Office of International Claims and Investment Disputes MR. NEALE BERGMAN MR. DAVID BIGGE MS. ALICIA L. CATE MR. PATRICK PEARSALL MS. KARIN KIZER MR. GARY SAMPLINER MR. JEREMY SHARPE Attorney-Advisers, Office of International Claims and Investment Disputes Office of the Legal Adviser U.S. Department of State Suite 203, South Building 2430 E Street, N.W. Washington, D.C. 20037-2800 (202) 776-8443</p>	<p style="text-align: center;">C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">WITNESSES:</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td colspan="2">JOSÉ MIGUEL CARRILLO</td> </tr> <tr> <td>Direct examination by Mr. Salinas-Serrano</td> <td style="text-align: right;">1020</td> </tr> <tr> <td>Cross-examination by Mr. Stern</td> <td style="text-align: right;">1030</td> </tr> <tr> <td>Redirect examination by Mr. Salinas-Serrano</td> <td style="text-align: right;">1067</td> </tr> <tr> <td>Questions from the Tribunal</td> <td style="text-align: right;">1077</td> </tr> <tr> <td>Further redirect exam. by Mr. Salinas-Serrano</td> <td style="text-align: right;">1096</td> </tr> <tr> <td>Recross-examination by Mr. Stern</td> <td style="text-align: right;">1101</td> </tr> <tr> <td colspan="2">MIGUEL ANGEL SAMAYOA</td> </tr> <tr> <td>Direct examination by Mr. Salinas-Serrano</td> <td style="text-align: right;">1108</td> </tr> <tr> <td>Cross-examination by Ms. Murchison</td> <td style="text-align: right;">1110</td> </tr> <tr> <td>Redirect examination by Mr. Salinas-Serrano</td> <td style="text-align: right;">1143</td> </tr> <tr> <td colspan="2">ANDREÁS PORRAS</td> </tr> <tr> <td>Direct examination by Mr. Orta</td> <td style="text-align: right;">1146</td> </tr> <tr> <td>Cross-examination by Mr. Foster</td> <td style="text-align: right;">1156</td> </tr> <tr> <td>Questions from the Tribunal</td> <td style="text-align: right;">1188</td> </tr> <tr> <td>Redirect examination by Mr. Orta</td> <td style="text-align: right;">1195</td> </tr> <tr> <td>Recross-examination by Mr. Foster</td> <td style="text-align: right;">1198</td> </tr> <tr> <td colspan="2">RAMÓN CAMPOLLO</td> </tr> <tr> <td>Direct examination by Mr. Orta</td> <td style="text-align: right;">1203</td> </tr> <tr> <td>Cross-examination by Mr. Foster</td> <td style="text-align: right;">1208</td> </tr> <tr> <td>Redirect examination by Mr. Orta</td> <td style="text-align: right;">1247</td> </tr> <tr> <td>Questions from the Tribunal</td> <td style="text-align: right;">1250</td> </tr> <tr> <td>Further redirect examination by Mr. Orta</td> <td style="text-align: right;">1264</td> </tr> <tr> <td>Recross-examination by Mr. Foster</td> <td style="text-align: right;">1268</td> </tr> <tr> <td>Questions from the Tribunal</td> <td style="text-align: right;">1270</td> </tr> <tr> <td>Further recross-examination by Mr. Foster</td> <td style="text-align: right;">1271</td> </tr> </tbody> </table>	WITNESSES:	PAGE	JOSÉ MIGUEL CARRILLO		Direct examination by Mr. Salinas-Serrano	1020	Cross-examination by Mr. Stern	1030	Redirect examination by Mr. Salinas-Serrano	1067	Questions from the Tribunal	1077	Further redirect exam. by Mr. Salinas-Serrano	1096	Recross-examination by Mr. Stern	1101	MIGUEL ANGEL SAMAYOA		Direct examination by Mr. Salinas-Serrano	1108	Cross-examination by Ms. Murchison	1110	Redirect examination by Mr. Salinas-Serrano	1143	ANDREÁS PORRAS		Direct examination by Mr. Orta	1146	Cross-examination by Mr. Foster	1156	Questions from the Tribunal	1188	Redirect examination by Mr. Orta	1195	Recross-examination by Mr. Foster	1198	RAMÓN CAMPOLLO		Direct examination by Mr. Orta	1203	Cross-examination by Mr. Foster	1208	Redirect examination by Mr. Orta	1247	Questions from the Tribunal	1250	Further redirect examination by Mr. Orta	1264	Recross-examination by Mr. Foster	1268	Questions from the Tribunal	1270	Further recross-examination by Mr. Foster	1271
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<p>APPEARANCES: (Continued)</p> <p>On behalf of the U.S. Trade Representative:</p> <p>MS. KIMBERLEY CLAMAN Senior Director</p>	<p style="text-align: center;">P R O C E E D I N G S</p> <p>1</p> <p>2 PRESIDENT RIGO: We are ready to start?</p> <p>3 MR. ORTA: Yes. There are two preliminary</p> <p>4 issues, though, before we start with the witnesses,</p> <p>5 one that we promised you a response on from yesterday</p> <p>6 and one on one of the issues that the Tribunal raised</p> <p>7 at the end of the day yesterday that we'd like to</p> <p>8 address before we begin the examination.</p> <p>9 PRESIDENT RIGO: Okay. Go ahead.</p> <p>10 MR. ORTA: Thank you, Mr. Chairman.</p> <p>11 The first issue is just one that we want to</p> <p>12 make sure that we get sorted out appropriately, which</p> <p>13 is the model that has been--the dynamic model that has</p> <p>14 been submitted on behalf of Mr. Pratt, we promised</p> <p>15 yesterday to have a consult with our Experts and to</p> <p>16 have a response to the Tribunal this morning if we had</p> <p>17 any concerns about the use of that model.</p> <p>18 We have made that consultation, and we do</p> <p>19 have some concerns that hopefully could be remedied</p> <p>20 before that model is utilized either by the Tribunal</p> <p>21 or in any way during the proceedings.</p> <p>22 On that issue, I think Mr. Debevoise is ready</p>																																																						

<p style="text-align: center;">1017</p> <p>09:01:58 1 to address the Tribunal because he had the 2 consultation with our expert, but as I say, it looks 3 as though it's an issue that can be fixed such that 4 the Tribunal can use the model without any objections 5 from us. 6 PRESIDENT RIGO: Mr. Debevoise. 7 MR. DEBEVOISE: Good morning, Members of the 8 Tribunal. 9 Yes, we have asked our experts to take a look 10 at the dynamic model, which is the model that produces 11 Exhibit 12 in Dr. Pratt's Expert Report, and the 12 preliminary analysis indicated that the model is set 13 up in a way which is not symmetric. In other words, 14 it's set up so that the dynamic part only affects the 15 three variables that are in Dr. Spiller's Report but 16 does not permit dynamic manipulation of inputs into 17 Dr. Pratt's analysis. So that, for example, there is 18 no formula for the cost of equity as used by Dr. Pratt 19 and, therefore, no ability to change assumptions on 20 that side. 21 So, in order to cure this asymmetry, one 22 would need to include in three cells missing formulas</p>	<p style="text-align: center;">1019</p> <p>09:04:39 1 Bundles. We understand that perhaps the Tribunal may 2 want to see that in electronic fashion as opposed to 3 in book fashion. We just want to make sure we know 4 exactly what it is that the Tribunal would like for us 5 to produce so that we can collectively produce what 6 the Tribunal most desires. 7 PRESIDENT RIGO: I will ask my colleagues and 8 then come back to you. 9 MR. ORTA: Thank you. 10 PRESIDENT RIGO: On our side, I think we have 11 two things. One, to alert you that we will need to 12 break at 12:40 and we will reconvene at 2:15. 13 And the other matter I wanted to ask the 14 Claimant what you had decided regarding 15 Mr. Barrientos, whether you have decided to 16 cross-examine him or not, because it was pending in 17 this case that you gave us yesterday. 18 MR. FOSTER: The Claimant is not going to 19 cross Mr. Barrientos, and we are moving Mr. Morales 20 until the very end, so that if we have time, we will 21 take him up then. 22 PRESIDENT RIGO: Thank you.</p>
<p style="text-align: center;">1018</p> <p>09:03:30 1 so that that would be possible, and I believe that 2 they've identified the cells where this would be 3 necessary. I don't personally have the ability to do 4 this--I'm sure the experts can do that--but I think 5 unless and until we take care of this asymmetry, we 6 don't think it would be appropriate for the Tribunal 7 to have this model to use because we don't think it 8 would be evenhanded. 9 PRESIDENT RIGO: Thank you, Mr. Debevoise. 10 Mr. Foster, would you add anything at this 11 point? 12 MR. FOSTER: If they will e-mail us the three 13 cells that they need, we'll take it up with our Expert 14 and see if we can't get it to them. 15 MR. ORTA: I think we would be happy to do 16 that to see if we can get this issue resolved as 17 quickly as possible. 18 PRESIDENT RIGO: Very good. So, let's do 19 that. 20 And what's the next issue you mentioned? 21 MR. ORTA: The next issue is just a 22 clarification on the question regarding the A5 Core</p>	<p style="text-align: center;">1020</p> <p>09:05:54 1 MR. FOSTER: That's Mr. Osvaldo Morales. 2 THE WITNESS: Osvaldo Morales. Thank you so 3 much. 4 If there is nothing else, let me say good 5 morning because I started to ask you whether you were 6 ready, and we jumped in already dealing with issues, 7 but good morning to everybody. 8 JOSÉ MIGUEL CARRILLO, RESPONDENT'S WITNESS, CALLED 9 PRESIDENT RIGO: Good morning, Mr. Carrillo. 10 Mr. Carrillo, good morning. 11 THE WITNESS: Good morning. 12 PRESIDENT RIGO: Could you please read the 13 Witness Statement that you have before you. 14 THE WITNESS: I solemnly swear upon my honor 15 and conscience that I will tell the truth, the whole 16 truth, and nothing but the truth. 17 PRESIDENT RIGO: Thank you very much. 18 Messrs. Orta, Salinas? 19 MR. SALINAS-SERRANO: Thank you, 20 Mr. Chairman. 21 DIRECT EXAMINATION 22 BY MR. SALINAS-SERRANO:</p>

<p style="text-align: right;">1021</p> <p>09:06:59 1 Q. Good morning, Mr. Carrillo. 2 A. Good morning. 3 Q. You have before you two declarations which 4 you have submitted in this proceeding, one dated 5 October 1, 2010, and another dated 17 October 2011. 6 Do you have those declarations before you? 7 A. That's right. They're right here before me. 8 Q. Can you reaffirm the contents and the 9 truthfulness of the contents of those declarations 10 before the Tribunal today. 11 A. That's right. I reaffirm them. 12 Q. Thank you, Mr. Carrillo. 13 Now, Mr. Carrillo, we understand that you 14 were part of the Evaluating Board that considered the 15 bid proposals for the Usufruct granted in the context 16 of the railway activities in Guatemala; is that 17 correct? 18 A. That is correct. I did participate in the 19 Evaluating Board. 20 Q. What were some of the most important 21 considerations that the Board considered for when 22 evaluating the bids and ultimately in deciding who</p>	<p style="text-align: right;">1023</p> <p>09:10:09 1 Board also rated the economic proposal, and it was the 2 one that was most on target for the people of 3 Guatemala, management of the rail service, and the 4 most appropriate in that the other bid, in the view of 5 the Board, wasn't the most appropriate. 6 Q. Of the economic proposal, we understand that 7 the--ultimately the relationship between RDC and FVG 8 and FEGUA required the payment of certain Canons or 9 making certain payments by the Usufructary to FEGUA. 10 Can you tell us a little bit about what those payments 11 were. 12 A. Yes. It was the product of the Canon for the 13 Right-of-Way Contract and for use of the equipment. 14 Q. Now, sir, I refer you to Paragraphs 4 through 15 11 of your First Declaration. And without going into 16 the specific details, how do the actual payments made 17 by Ferrovías/RDC under the rubric of payments of Canon 18 for the right-of-way compare just in general terms 19 with what was actually paid? 20 A. The Board made a rating or a scoring on the 21 basis of the Economic Bid and the projections that it 22 had. The annual Canon that was to be paid for the use</p>
<p style="text-align: right;">1022</p> <p>09:08:05 1 obtained the onerous Usufruct that was being bid out? 2 A. Yes, initially in the Board it rated the best 3 bidder, in this case was Ferrovías and RCV were among 4 the two bidders that could be considered as good or 5 sound for making the proposal to the company and to 6 take charge of rail operations. 7 Q. And what were some of those considerations 8 that you mentioned that prompted the Board to grant 9 the Usufruct to Ferrovías or Railroad Development 10 Corporation? 11 A. The rail experience expressed in the Economic 12 Bid and the same considerations that were made with 13 respect to--the benefits that they could bring to the 14 managing of rail service in Guatemala. 15 Q. Now, the first thing you mentioned was the 16 railway experience manifested in RDC's or Ferrovías' 17 Bid Documents. Why would that railway experience be 18 important in the context of evaluating the bid 19 proposals? 20 A. Because otherwise had they had not had rail 21 experience--well, the rail issue is quite complex. 22 One must know what one is doing. Plus, in the bid the</p>	<p style="text-align: right;">1024</p> <p>09:12:01 1 of the right-of-way and equipment wasn't up to the 2 expectations of the bid initially presented and on 3 which the Board relied in order to determine that 4 RDC/Ferrovías was the one that would have Usufruct of 5 the rails in Guatemala. 6 Q. Now, you were about to say--and I'm sorry I 7 interrupted you--that there was a second Canon, and I 8 believe this would be under Contract for the 9 equipment. Can you tell us a little bit about that. 10 A. Yes. In effect, it is a separate Contract 11 from the use of the Right-of-Way Contract, and FEGUA 12 also received a Canon. 13 Q. And how did the amounts received under that 14 Canon compared--compare with what RDC/FVG projected in 15 their bid proposal? 16 And, I'm sorry, just for your clarity and the 17 record's, I refer you to Paragraphs 12 through 22 of 18 your First Declaration. 19 A. The expectation was not--the expectation set 20 forth in the Economic Bid wasn't met. It was much 21 lower. 22 Q. And then there was a third type of Canon?</p>

<p style="text-align: right;">1025</p> <p>09:13:48 1 A. A third type of Canon, no. 2 Q. Do you recall there being any payments owed 3 by Ferrovías under the contracts for non-railway 4 activity? 5 A. No. It had its non-rail activities such as 6 collection on the issue having to do with squatters. 7 That's not reflected in the Canon. 8 Q. Maybe we are miscommunicating. 9 Under the contractual arrangements, was 10 Ferrovías supposed to make payments to FEGUA based on 11 their non-railway activity? 12 A. That's right. 13 Q. Did Ferrovías/RDC ever make such a payment? 14 A. It did not. Non-rail activities it did not. 15 Q. Now, sir, there have been a couple of 16 allegations with respect to you made by Claimant, and 17 I just want to ask you directly. First, Claimant has 18 alleged that you were aware of the existence, contrary 19 to your statements in your First Declaration, of 20 Contracts 143, 158 before the FEGUA Overseer Hugo 21 Sarceno left FEGUA. What do you have to tell the 22 Tribunal about that?</p>	<p style="text-align: right;">1027</p> <p>09:16:46 1 A. There was an exchange of notes initiated by 2 Ferrovías for the use of the rail equipment, and the 3 Overseer at FEGUA, authorized that so long as Contract 4 41 was authorized by the Executive, then the equipment 5 could be used in exchange for a Canon. 6 Q. Were there also or were you aware whether 7 there were also Lease Agreements signed by Ferrovías 8 and FEGUA related to that equipment? 9 A. I did not know of them. 10 Q. Did you learn about the existence of those 11 Lease Agreements at a later time? 12 A. Exactly when Overseer Sarceno left. 13 Q. So, just to make sure that we are getting the 14 story straight, do I understand you correctly that 15 there was an exchange of letters that--through which 16 FEGUA authorized the use of the equipment while 17 Contract 41 was in the process of being approved by 18 the President, and then there were Lease Agreements 19 signed for that same equipment before Contracts 143 20 and 158 were signed? 21 MR. STERN: I'm just going to object to the 22 use of the term "Lease Agreements." I think it's</p>
<p style="text-align: right;">1026</p> <p>09:15:21 1 A. I was not aware of the existence of Contract 2 143 until the Overseer Hugo Sarceno left. 3 Q. There has been evidence presented that there 4 was an audit conducted of certain payments owed by 5 Ferrovías to FEGUA before that time, and it has been 6 suggested that your participation in that audit is 7 proof that you knew of those contracts or the 8 existence of those contracts before Mr. Sarceno's 9 departure. What can you tell the Tribunal about that? 10 A. That's not true. I affirm that I did not 11 have any knowledge of it because the Act did not even 12 mention 143. I did not know about it. The purpose of 13 the Act was to be able to establish the basis of 14 calculating the Canon for use of rail equipment, but I 15 was never told that it was to renegotiate or negotiate 16 a new contract. 17 Q. Now, was it your understanding that at that 18 time Ferrovías was using the equipment? 19 A. Yes, it was using it. 20 Q. What was your understanding as to why or 21 under what instrument Ferrovías was using that 22 equipment?</p>	<p style="text-align: right;">1028</p> <p>09:18:15 1 vague and unclear as to what he's referring to. 2 MR. SALINAS-SERRANO: I think the term is 3 clear, "Lease Agreements." If the witness understands 4 what it is, he can answer. And I think he did. 5 PRESIDENT RIGO: Go ahead. 6 THE WITNESS: Excuse me, could you please 7 repeat the question? 8 BY MR. SALINAS-SERRANO: 9 Q. My question was whether it was your 10 understanding that there was an exchange of letters 11 through which Ferrovías got authorization from FEGUA 12 to use the equipment, and later there were Lease 13 Agreements executed through which Ferrovías again got 14 FEGUA's authorization to use that equipment. 15 A. It was based on the exchange of letters that 16 up until that date it was indicated to me that 17 Ferrovías was going to pay the Canon. I don't 18 remember--2003. Just then. 19 Q. One final question, Mr. Carrillo. There have 20 also been allegations or insinuations that you somehow 21 pressured FEGUA or elements within FEGUA to somehow 22 renegotiate the entire concession that Ferrovías had</p>

<p style="text-align: center;">1029</p> <p>09:19:36 1 specifically, specifically Contract 402, and to use 2 the illegalities of the Equipment Contract to obtain 3 that goal. What do you have to tell the Tribunal 4 about that? 5 A. I don't have the authority to exercise any 6 pressure on the Overseer as the top authority of the 7 company, just to suggest that as Overseer, he's the 8 one who makes the decisions. At some point in time I 9 did say that there would be a possibility of 10 renegotiating, but I did this in good faith so that 11 both one Party and the other Party could understand 12 one another and so that the conflicts not continue. 13 As a former worker of that company, my 14 obligation was to see the rail service up and running 15 and not caught up in problems or disputes. 16 Q. I don't want to use the impolite term in 17 Spanish if the translation is former, but I think you 18 meant that you had been at FEGUA for a long time at 19 that point? I don't want to use the word "old." 20 A. That's fine, yes. I began to work in the 21 railroad in 1977, and I have been there throughout all 22 that time to date. Financial Department.</p>	<p style="text-align: center;">1031</p> <p>09:22:16 1 have been with FEGUA your entire working life? 2 A. That is right, correct. 3 Q. And you started out as a messenger at the 4 company, and you've moved up to--all the way up to the 5 Chief of the Financial Department; correct? 6 A. Exactly. I worked from 1977 as messenger, 7 and now I continue working there now as Chief of 8 Financial Department. 9 Q. And you have been Chief of the Financial 10 Department since 1994; correct? 11 A. That is correct, since 1994. 12 Q. Is it fair to say that you are proud to work 13 at FEGUA? 14 A. To work--very proud to work with the rail 15 service because--well, I have made my career in the 16 railroads. 17 Q. Would it also be fair to say that you were 18 disappointed to see the railway awarded to Ferrovías 19 back in 1997? 20 A. No, it is not correct to say I was 21 disappointed. Quite to the contrary, I was happy, 22 quite pleased because the rail service was going to</p>
<p style="text-align: center;">1030</p> <p>09:21:11 1 Q. Your current position at FEGUA is what, 2 Mr. Carrillo? 3 SECRETARY SEQUEIRA: Excuse me, could you 4 please repeat the response so that it's on the 5 transcript. 6 THE WITNESS: Chief of the Financial 7 Department. 8 MR. SALINAS-SERRANO: Thank you, 9 Mr. Carrillo. I have no further questions. I now ask 10 you that you answer the Claimant's questions. 11 PRESIDENT RIGO: Mr. Stern. 12 MR. STERN: Thank you. 13 CROSS-EXAMINATION 14 BY MR. STERN: 15 Q. Good morning, Mr. Carrillo. 16 A. Good morning. 17 Q. Now, in response to some of the last few 18 questions that Mr. Salinas asked you, you've been with 19 FEGUA since 1977; correct? 20 A. Yes, that is correct, I have been working 21 there since 1977. 22 Q. And is it--am I correct in saying that you</p>	<p style="text-align: center;">1032</p> <p>09:23:43 1 operate with that perspective of the new company that 2 was going to operate it. 3 Q. Did you think that the financial terms of the 4 Usufruct contracts that were negotiated between FEGUA 5 and Ferrovías were fair to FEGUA? 6 A. That's right, because we saw a promising 7 future, a good future, and more employment for our 8 people. 9 Q. And you mean--when you say "more employment 10 for my people," are you referring to the employees of 11 FEGUA? 12 A. Not specifically. 13 Also that more people would be able to work 14 for the rail service, that the rail service was going 15 to be able to provide more jobs. 16 Q. Now, how many employees did FEGUA have while 17 Ferrovías was running the railroad in Guatemala? 18 A. Excuse me, could you repeat the question? 19 Q. Sure. 20 How many employees were working for FEGUA 21 while Ferrovías was running the railroad, 22 approximately?</p>

<p style="text-align: right;">1033</p> <p>09:24:57 1 MR. SALINAS-SERRANO: I'm just going to 2 object on the timeframe. If Mr. Stern can be more 3 specific if he wants a more particular timeframe, I 4 believe that Ferrovías operated for a number of years. 5 BY MR. STERN: 6 Q. Well, on average from, say, 2000 to 2006, 7 approximately how many employees worked--were working 8 for FEGUA during that time period? 9 A. From 2000 to 2006, approximately 70 workers. 10 Q. And did those numbers fluctuate in any way 11 during that time period, or was it always about, on 12 average, about 70 employees at FEGUA? 13 A. It's a figure which has been an average as 14 from the moment that the privatization took place. 15 Q. And could you describe generally what these 16 positions were, what these employees did for FEGUA 17 during that time period? 18 A. Of course. There were employees; there are 19 employees for security, administrative office 20 employees, directing or management positions, 21 secretaries, also supervisors of the rail network, and 22 staff who were working in the various activities and</p>	<p style="text-align: right;">1035</p> <p>09:27:32 1 they were getting enough money pursuant to it, and so 2 I'm trying to let the Tribunal understand the context 3 in which this testimony and the facts take place. I 4 think it's very relevant. 5 MR. SALINAS-SERRANO: Mr. President, just so 6 that the record is clear, the witness has not 7 testified to what Mr. Stern just said. That is 8 Mr. Stern's interpretation of documents that have been 9 submitted, but he referred to testimony. There has 10 been no testimony about that here today. 11 MR. STERN: Well, there's testimony in the 12 statement, and I'm certainly entitled to cross-examine 13 him about our position in interpretation of the 14 evidence. 15 PRESIDENT RIGO: We feel the witness should 16 answer the questions. 17 THE WITNESS: Excuse me, could you repeat the 18 question? 19 BY MR. STERN: 20 Q. Yes, if I recall it correctly, my question 21 was: Was there any reduction in staff or employees at 22 FEGUA after Ferrovías took over operation and</p>
<p style="text-align: right;">1034</p> <p>09:26:27 1 also in the rail museum. 2 Q. Now, after Ferrovías took over the railroad 3 in 1998-1999, were there any--was there any reduction 4 in the number of employees at FEGUA, or did the staff 5 level remain approximately the same as it was prior to 6 that? 7 MR. SALINAS-SERRANO: I'm just going to 8 object to this line of questioning on the grounds that 9 it's outside the scope of the Witness's direct 10 examination--not direct examination, but Witness's 11 statements. He didn't testify about the amount of 12 employees, the organizational structure, anything like 13 that, and I also struggle to see what the relevance of 14 any of this is. 15 PRESIDENT RIGO: Mr. Stern? 16 MR. STERN: Well, I'm going to get to the 17 relevance, but this has to do with Mr. Carrillo's 18 testimony about how they didn't think they got 19 their--enough money from Ferrovías pursuant to the 20 agreements and that he'd want to renegotiate the 21 terms, which is part of the evidence in this case of 22 the Usufruct contracts because he didn't think that</p>	<p style="text-align: right;">1036</p> <p>09:28:44 1 rehabilitation of the railway in 1998? 2 A. In the affirmative, yes, that's right, 3 because before the privatization in 1993, there were 4 nearly 1,500 workers. Then the privatization took 5 place, the benefits were paid to all of the workers. 6 There was a reduction so as to get into the process of 7 privatization of rail services. 8 Then, when Ferrovías took over rail 9 operations, that number was maintained. One of the 10 questions that I have been asked has to do with the 11 average number of workers in FEGUA, which was 70. 12 Q. So, just so I understand your testimony, were 13 there--prior to Ferrovías taking over the railway 14 operations and rehabilitation in 1998, did FEGUA have 15 approximately 70 employees? 16 MR. SALINAS-SERRANO: That mischaracterizes 17 the testimony. I believe the witness said 1,500 18 employees. 19 MR. STERN: His testimony was in 1993 there 20 were about 1,500 employees, and he said that was 21 reduced once the railway operations were shut down on 22 FEGUA's side.</p>

<p style="text-align: center;">1037</p> <p>09:30:11 1 And I'm just asking a simple question. If I 2 misstated his testimony, he can certainly disagree 3 with it. 4 THE WITNESS: Excuse me, was there a 5 reduction? Yes. There was reduction in staff once 6 Ferrovías started operations. 7 BY MR. STERN: 8 Q. All right. And just to close the questioning 9 on this, to this day how many employees does FEGUA 10 currently have? 11 A. Sixty-nine right now. 12 Q. Thank you. 13 Now, you were asked some questions about the 14 Contracts 143 and 158 in your awareness, when you 15 became aware of those contracts. Do you recall that 16 testimony? 17 A. Excuse me, I don't understand the question. 18 Q. Sure. 19 You were asked by Mr. Salinas a question 20 about when you first became aware of Contracts 143 and 21 158, the equipment contracts that were executed in 22 2003. Do you recall that testimony?</p>	<p style="text-align: center;">1039</p> <p>09:33:13 1 statement, well, the amount to be paid by it is set 2 forth there. However, there is a debt still pending. 3 Q. Okay. I'm not sure you understood my 4 question. My question was regarding the Contracts 143 5 and 158 that were entered into by Ferrovías and FEGUA 6 in 2003, so this is the second set of Equipment 7 Contracts. Do you understand what I'm referring to? 8 A. I understand, but I did not have knowledge of 9 that until Sarceno, the Overseer, left. 10 Q. And I understand your testimony, sir. I'm 11 just trying to ask you--my question is: Ferrovías 12 paid FEGUA Canon fees pursuant to those contracts, 13 didn't they? 14 MR. SALINAS-SERRANO: I'm going to object. 15 Loaded question that calls for a legal conclusion 16 insofar as it asks the witness whether the payments 17 were pursuant to a contract. 18 PRESIDENT RIGO: Could you rephrase the 19 question as a factual matter, whether the payment was 20 received or not. 21 BY MR. STERN: 22 Q. Sir, did FEGUA receive--</p>
<p style="text-align: center;">1038</p> <p>09:31:40 1 A. I had no knowledge of the contracts--well, I 2 only gained knowledge of the Contracts when the 3 Overseer, Mr. Sarceno, left. 4 Q. Okay. And so, you became first aware of 5 those contracts in 2004; is that correct? 6 A. I don't remember the date exactly. 7 Q. Okay. But you at some point did become aware 8 of those contracts after Overseer Sarceno left his 9 position; correct? 10 A. That is correct, yes. 11 Q. And as Chief Financial Manager or Chief of 12 the Financial Department of FEGUA, you were the person 13 who was responsible at the organization for receiving 14 the Canon payments paid by Ferrovías pursuant to those 15 contracts; correct? 16 A. Exactly. As the head of the Financing 17 Department, that was my obligation. 18 Q. And Ferrovías did pay FEGUA Canon fees 19 pursuant to those contracts; correct? 20 A. In 2000, if memory serves, it paid 7,500 21 quetzales, and then in 2003, because of the Acta, I 22 think it's Acta Number 11 that I mentioned in my</p>	<p style="text-align: center;">1040</p> <p>09:34:37 1 (Overlapping interpretation.) 2 Q. Did FEGUA receive Canon fees from Ferrovías 3 for use of the equipment after 2003? 4 A. I don't remember. Where in my statement do I 5 say that? 6 Q. I'm not asking you about your statement. I'm 7 just asking you a factual question regarding your 8 position and responsibilities at FEGUA. 9 So, my question again: Did FEGUA receive 10 Canon fees from Ferrovías for use of the equipment, 11 the Rolling Stock, after 2003? 12 A. Yes, that is correct. 13 Q. And FEGUA accepted those Canon payments from 14 Ferrovías without any reservations; correct? 15 A. What do you mean with any reservation? 16 THE INTERPRETER: One moment, sir. One 17 moment. 18 (Phone rings in interpreter booth.) 19 BY MR. STERN: 20 Q. Did you accept those fees without informing 21 Ferrovías? 22 THE INTERPRETER: Just one moment, please.</p>

<p style="text-align: right;">1041</p> <p>09:36:02 1 One moment. Please ask the question again. 2 BY MR. STERN: 3 Q. Did FEGUA accept those Canon fee payments 4 from Ferrovías without informing Ferrovías that it did 5 not believe that the equipment contracts were valid or 6 legal? 7 MR. SALINAS-SERRANO: Objection. Again, it 8 calls for a legal conclusion. 9 MR. STERN: I'm asking him a factual 10 question. It has nothing to do with a legal 11 conclusion. 12 PRESIDENT RIGO: We feel the witness should 13 answer the question. He's the Chief Financial Officer 14 of the company. 15 THE WITNESS: Yes, indeed, that is the case. 16 THE INTERPRETER: We're ready, sir. 17 BY MR. STERN: 18 Q. Now, in your Witness Statements you complain 19 that Ferrovías paid FEGUA only a fraction of the Canon 20 fees that it had originally projected it would pay 21 FEGUA in its bid proposal; correct? 22 A. That is correct.</p>	<p style="text-align: right;">1043</p> <p>09:39:23 1 PRESIDENT RIGO: Mr. Carrillo, please go 2 ahead and answer the question. 3 MR. SALINAS-SERRANO: Just for clarity of the 4 record, in his testimony, both in his Witness 5 Statements and in direct examination was about 6 projections versus reality. There was no testimony 7 about contract content or contract interpretation. I 8 just want the record to be clear and our objection to 9 stand because there is no game being played. It's 10 just a matter of being fair to the witness and what he 11 has already testified to. 12 BY MR. STERN: 13 Q. Sir, do you need me to ask the question 14 again? 15 A. Yes, please. 16 Q. Okay. Based on your knowledge and 17 understanding of the Usufruct contracts--and if you 18 can't answer the question, that's perfectly 19 fine--there's nothing that obligates Ferrovías to pay 20 any specified minimum amount of Canon fees to FEGUA; 21 correct? 22 A. There is a percentage related to the</p>
<p style="text-align: right;">1042</p> <p>09:38:16 1 In connection with the Economic Bid, that is 2 the case, yes. 3 Q. Okay. But you would agree that there 4 was--based on your understanding that there's nothing 5 in any of the Usufruct contracts that obligated 6 Ferrovías to pay FEGUA any specified minimum amount of 7 Canon fees, did it? 8 MR. SALINAS-SERRANO: Objection. If counsel 9 wants to ask him about a contract, he can ask him. 10 There are three lengthy Contracts, and he's asking him 11 to testify about the contents of all of them at the 12 same time. 13 PRESIDENT RIGO: Would you rephrase the 14 question, be more specific. 15 MR. STERN: I'm asking based on his knowledge 16 of all of the contracts, and if he doesn't know, he 17 can't answer the question, that's fine. But if we're 18 going to play this game about whether a lay witness 19 can understand, have an understanding of the terms of 20 the Contract, I think we're going to have a lot of 21 problems going forward, especially what's already been 22 asked throughout this proceeding here.</p>	<p style="text-align: right;">1044</p> <p>09:40:26 1 operation that Ferrovías may have, not for it to 2 comply with the bid, but the bid was taken as a basis 3 for the Contract to be awarded to Ferrovías. 4 Q. And, to your knowledge, FEGUA never accused 5 Ferrovías of being in breach of any of the Usufruct 6 contracts because it had not paid a sufficient amount 7 of Canon fee to FEGUA? 8 A. As far as I can remember, no, it didn't. 9 Q. Okay. Now let's talk about Ferrovías's bid 10 proposal because you were involved in evaluating 11 Ferrovías's bid proposal which resulted in the Award 12 of the Usufruct to them? 13 A. That is correct. I was a member of the 14 evaluating Board of the bids. 15 Q. Okay. And you reviewed--I presume you 16 reviewed Ferrovías's bid proposal when it was 17 submitted? 18 A. Indeed, yes, that is the case. I reviewed 19 the bid. 20 Q. Okay. Could you turn to Exhibit C-15, which 21 is in that binder--does he have his binder? 22 MR. SALINAS-SERRANO: I believe the witness</p>

<p style="text-align: right;">1045</p> <p>09:41:51 1 does not have a binder. Nor do we. 2 MR. STERN: I apologize for that. I thought 3 they'd been distributed. 4 (Pause.) 5 BY MR. STERN: 6 Q. Okay, Mr. Carrillo. Now that you have your 7 binder, could you turn to Tab 3. Do you have that? 8 A. Yes. I'm on Tab 3. 9 Q. Okay. And do you recognize the document in 10 Tab 3 which is Exhibit C-15 as the bid proposal that 11 was submitted by Ferrovías? 12 A. Yes, I do. 13 Q. Okay. And if you turn to the pages which 14 concern the economic offer made by Ferrovías. 15 THE INTERPRETER: Mr. Stern, if you could 16 tell us the pages Spanish and in English, that would 17 help both the interpreter and the witness. 18 MR. STERN: The English version begins 19 RDC000428, and the Spanish version begins on, I 20 believe, on Page RDC000387. 21 BY MR. STERN: 22 Q. And then turn to Page RDC000391.</p>	<p style="text-align: right;">1047</p> <p>09:46:37 1 turnover of each one-year period of said entity. FVG 2 shall not be liable to pay the amounts of money 3 expressed in the column labeled 'payments to FEGUA' 4 but is compelled of respecting the values mentioned in 5 the column labeled 'percentage.' 6 So, here, Ferrovías was telling the 7 Government of Guatemala in its proposal that it was 8 not promising or agreeing to pay any specified amounts 9 of Canon payment to FEGUA pursuant to the Right-of-Way 10 Usufruct; correct? 11 Sir, are you prepared to answer my question, 12 or are you still doing review? 13 A. Could you please rephrase the question. I'm 14 looking at the charts. I was reviewing them. 15 Q. Okay. I think it's a pretty straightforward 16 question, but my question was, in this proposal, which 17 the Government of Guatemala reviewed and accepted from 18 Ferrovías, Ferrovías told the Government of Guatemala 19 that it was not promising or agreeing to pay any 20 specified amounts of use of Canon payment to FEGUA 21 pursuant to the Right-of-Way Usufruct; correct? 22 A. That is correct, but the Board took this as a</p>
<p style="text-align: right;">1046</p> <p>09:44:47 1 Do you see that, sir? 2 A. Yes, I see it. It's right here. 3 Q. And this is the economic proposal that 4 Ferrovías presented with regard to the right-of-way 5 Canon payment, projected Canon payments. 6 A. I see that, yes. 7 Q. And then if you go to Page RDC000394, it 8 states in the second paragraph: "The above-mentioned 9 amounts do not have the quality of any fixed monetary 10 offer, since they are based on estimates contained in 11 the Business Plan." 12 Did I read that correctly? 13 A. Yes, but I would like to clarify something. 14 Q. Let me ask you a follow-up question, and then 15 you can clarify. 16 A. Very well. 17 Q. Okay. And then it goes on to say, "The only 18 obligation that Compañía Desarrollada Ferroviaria," 19 and I apologize for the pronunciation, "Desarrollada 20 Ferroviaria Sociedad Anónima"--again I apologize for 21 the pronunciation--"hereby acquires is to pay as toll 22 the above-mentioned percentages based on the actual</p>	<p style="text-align: right;">1048</p> <p>09:49:03 1 basis to grant the concession, so it was a fantasy. 2 Q. What do you mean by it was a "fantasy"? 3 A. What the Board took as the basis for the 4 Award was the projections that were included in the 5 bids and the economic support that apparently 6 Ferrovías had. 7 Q. Well, let's look at Exhibit R-330, which is-- 8 A. If you allow me to do so, I would like to 9 clarify something in connection with the Board, 10 so--and I as a Member of the Board saw in the-- 11 MR. SALINAS-SERRANO: I'm sorry, the witness 12 had said he wanted to make a clarification, and 13 counsel told him that after a follow-up question he 14 would be allowed to make that clarification. I 15 believe that is what's happening now. 16 THE WITNESS: Yes, thank you. 17 This document was signed by a legal 18 representative, but the Board never had knowledge of 19 this. But what the only thing that the Board knew was 20 about the payment to FEGUA. This was in '98, it says 21 22 million and some. It says payment to FEGUA. It 22 has the original signature of all the Board members.</p>

<p style="text-align: right;">1049</p> <p>09:50:40 1 This other one I did not know of. But if you look at 2 the files, these notes where they say, "payment of 3 FEGUA" in 1998, it says percentage of 5 percent, one 4 point some million. That is not what in the original 5 bid states, which says that in '98 this is the number 6 370, 22 million and some. 7 BY MR. STERN: 8 Q. Okay. Have you fully clarified your answer, 9 sir? 10 A. Yes. 11 Q. Would you turn to Tab 10 in your binder. 12 There is an English translation at the front of that 13 tab, and then behind the blue sheet there is the 14 original Spanish version. 15 Do you see that? 16 A. Yes, I do. 17 Q. And this is Exhibit R-330. This is a 18 document entitled, "Comparative Chart Public Tender 19 Guatemala Railroad System." Correct? 20 A. That's correct. 21 Q. And this chart sets forth the criteria that 22 the ratings board on which you serve used to accept</p>	<p style="text-align: right;">1051</p> <p>09:53:42 1 by Ferrovías. 2 Q. Right, but I just want the record to be clear 3 because this is from your statement? 4 A. Yes, yes, Ferrovías was the one that 5 presented the best bid. 6 Q. Right. But your statement--I'm looking at 7 Paragraph 4 here, and you can look at it yourself--you 8 state, Paragraph 4, "Of the two bids that were 9 submitted, only the offer from Ferrovías met the basic 10 requirements of the Bidding Terms governing the 11 process." Correct? 12 PRESIDENT RIGO: Would you state the 13 paragraph. 14 MR. STERN: I did state it. It's Paragraph 4 15 of his First Statement. 16 PRESIDENT RIGO: Okay. 17 THE WITNESS: Can I read it, then? 18 BY MR. STERN: 19 Q. Paragraph 4? Yes, feel free to read 20 Paragraph 4. 21 (Witness reviews document.) 22 A. Yes I read it. Exactly.</p>
<p style="text-align: right;">1050</p> <p>09:52:14 1 the bids submitted for the Right-of-Way Usufruct; 2 correct? 3 A. That is correct. 4 Q. And this chart shows that there were two 5 formal bids submitted to the Government, one by 6 Ferrovías and one by a group named Agenda 2000; 7 correct? 8 A. Correct. 9 Q. And the bid from Agenda 2000, as you state in 10 your statement--Paragraph 4, I believe--did not even 11 meet the basic requirements of the Bidding Terms; 12 correct? 13 A. Correct. 14 Q. So, the only qualifying bid for the railway 15 Usufruct was from Ferrovías that the Government 16 received? 17 A. Exactly. It was the organization that 18 presented the best bid. 19 Q. Well, it was the only organization that 20 submitted a qualifying bid; correct? 21 A. They both submitted their bids, but the one 22 that was better, according to the Board, was the one</p>	<p style="text-align: right;">1052</p> <p>09:55:41 1 Q. And I'm reading from it--these are your words 2 here, Mr. Carrillo. You wrote in your statement, "Of 3 the two bids that were submitted to the Government, 4 only the offer from Ferrovías met the requirements of 5 the Bidding Terms governing the process." Correct? 6 A. Correct. 7 Q. So, when it came time to award the Usufruct, 8 the railway Usufruct, the ratings Board on which you 9 served had to choose between awarding it to Ferrovías 10 or not awarding it to anyone; correct? 11 A. Correct. If both organizations had failed to 12 meet the Bidding Terms, the process would be--would 13 have been declared unawarded. 14 Q. And if the Usufruct had been awarded to 15 nobody, then FEGUA would not have--the railway would 16 not have been reopened; correct? 17 MR. SALINAS-SERRANO: Objection. Calls for 18 speculation and assumes facts not in evidence. 19 PRESIDENT RIGO: Would you reformulate it. 20 BY MR. STERN: 21 Q. If the Government had decided not to award 22 the Usufruct to anyone, including Ferrovías, did</p>

<p style="text-align: center;">1053</p> <p>09:57:24 1 FEGUA, to your knowledge, have the financial resources 2 to reopen the railway? 3 A. A new process would have been established, 4 and we didn't have the capacity in FEGUA. That is why 5 we wanted to privatize, and we wanted to have a better 6 future for the company and for the railroad to be 7 operational. 8 Q. And is it fair to say that if the Usufruct 9 had not been awarded to Ferrovías or anyone else, 10 FEGUA would not have received any Canon fees from the 11 Usufructuary; correct? 12 A. It should have been a different process, a 13 different bidding process that should have been opened 14 for the railroad to have become active again if the 15 Bidding Terms had not been complied with in this 16 process. 17 Q. How do you know that, sir, that there would 18 been a different process or a new process? 19 A. I don't know what the process is or the 20 proceedings are, but in the way I view things, that's 21 the way it should have been done. 22 Q. So, you're just expressing your personal</p>	<p style="text-align: center;">1055</p> <p>10:01:12 1 Q. If you go to Tab 6 in your binder, this is 2 the letter from Ferrovías that you are addressing in 3 your letter to Dr. Gramajo--correct?--which is Exhibit 4 R-9. 5 A. That is G-06204 dated November 15, 2004. 6 It's not very clear the number up there. 7 Q. Well, you would agree that the letter we were 8 looking at, the November 24 letter that you wrote, 9 Exhibit R-10, was written in response to or addressing 10 what is in Exhibit R-9, this letter from November 15, 11 2004, from Jorge Senn; correct? 12 A. Yes, that is correct. 13 Q. Okay. And in this letter from Mr. Senn to 14 Vice-Minister Diaz, he was requesting the Government's 15 support on three points that were at issue between 16 Ferrovías and FEGUA; correct? 17 A. Correct. 18 Q. And those three points are in the letter 19 rectification of FEGUA's deposits to the Trust for 20 Rehabilitation and Modernization of the right-of-way; 21 official and formal acknowledgement of Usufruct 22 equipment Contracts 143 and 158; and squatter issues</p>
<p style="text-align: center;">1054</p> <p>09:58:56 1 view; correct? 2 A. In connection with the new process, yes. 3 Q. Okay. Let's go to Exhibit R-10, which is 4 Tab 7 in your binder. Do you see that exhibit? 5 A. Excuse me, which one? 6 Q. Tab 7, and again the original version is 7 behind the blue sheet behind that tab, the Spanish 8 version. Do you see that? 9 A. Yes. 10 Q. Okay. And this Exhibit R-10--this is an 11 official letter dated November 24, 2004, that you 12 wrote to the FEGUA Overseer Dr. Gramajo. 13 A. Correct. My signature is there. 14 Q. Right. 15 And you wrote this letter in response to a 16 request from Dr. Gramajo for your views on an official 17 letter designated GG-062-04 from Ferrovías; correct? 18 A. Yes. This is the response to a sheet, a step 19 sheet, and, yes, I did write this answer. 20 Q. Okay. And the letter that is referred 21 to--excuse me. 22 (Pause.)</p>	<p style="text-align: center;">1056</p> <p>10:03:09 1 on the South Coast right-of-way; correct? 2 A. Correct. 3 MR. SALINAS-SERRANO: If he can be shown the 4 entire third point, that's not what's being projected. 5 It takes it completely out of context. 6 MR. STERN: I don't understand. He has the 7 letter in front of him, and he can read it. 8 MR. SALINAS-SERRANO: It's-- 9 MR. STERN: I'm reading from the headings, 10 essentially. 11 MR. SALINAS-SERRANO: It's Mr. Stern's 12 characterization of the third point which, now that 13 the entire text is projected, you can see that there's 14 absolutely no mention of squatters. 15 MR. STERN: And I object to the counsel's 16 effort to coach his witness once he has already 17 answered the question. 18 MR. SALINAS-SERRANO: That the document does 19 not mention squatters is indisputable. It's before 20 you. It's no effort to coach. It's just an effort to 21 preserve the record because that's not what the 22 document says.</p>

<p style="text-align: right;">1057</p> <p>10:04:16 1 BY MR. STERN: 2 Q. All right. Let's move on. Let's move back 3 to your letter, Exhibit R-10, which is again Tab 7, if 4 we could go back to that. 5 Now, in Exhibit R-10, your letter to 6 Dr. Gramajo, you were responding to the points raised 7 in Mr. Senn's letter to Vice-Minister Diaz; correct? 8 A. Correct. I am replying to Mr. Gramajo as 9 Overseer of FEGUA. He is the addressee of this letter 10 in response to 4560--that is, the worksheet 4560. 11 Q. And in your letter with regard to the Trust 12 Fund, you can see that under the terms of Contract 13 402, FEGUA was obligated to contribute to the Trust, 14 regardless of whether Ferrovías was making any Canon 15 payments to FEGUA; correct? 16 A. In particular--what number or what paragraph 17 are you referring to? 18 Q. I'm looking at Item one in your letter, and I 19 can just read the words here, which you wrote: "In 20 other words, FEGUA was to contribute to the Trust even 21 when the Usufructary was not contributing any Canon 22 and FEGUA was not receiving private funds. The</p>	<p style="text-align: right;">1059</p> <p>10:07:34 1 thereof." You wrote that; correct? 2 A. Correct. I wrote that. 3 Q. Now, nevertheless, you go on in your letter 4 to recommend that FEGUA should not comply with its 5 Trust Fund obligations because FEGUA had not received 6 from Ferrovías the amount of Canon payments that 7 Ferrovías had estimated FEGUA would receive in its 8 Economic Bid for the Usufruct; correct? 9 A. If FEGUA had received the Canon payments, 10 they would be in a position to fulfill the payment 11 into the Trust Fund, but in the meantime they did not 12 have the financial capability to do so. 13 Q. If FEGUA was in the financial capability to 14 do so, but you acknowledge they had an obligation to 15 do so? 16 A. But as long as they had the funds to do so. 17 Otherwise it was impossible to do it. 18 Q. Okay. Now, with regard to official and 19 formal acknowledgement of Usufruct Equipment Contract 20 143, you wrote--and I'm looking at Item 5 of your 21 letter--you wrote: "I suggest that this Contract be 22 renegotiated for FEGUA to receive a specific royalty</p>
<p style="text-align: right;">1058</p> <p>10:05:57 1 strategic basis for the operation thereof." 2 Did I read that correctly? 3 MR. SALINAS-SERRANO: I'm just going to 4 object to the line. The Tribunal's jurisdictional 5 ruling has already decided that the issue of Canon 6 payments by FEGUA is outside this Tribunal's 7 jurisdiction--I'm sorry, not Canon payments. The 8 Trust Fund payments by FEGUA is outside the Tribunal's 9 jurisdiction. My apologies. 10 (Tribunal conferring.) 11 PRESIDENT RIGO: That does not mean that 12 there may not be questions on that issue I understand 13 that are relevant in the overall context. That's from 14 the Tribunal's point of view. He should answer the 15 question. 16 THE WITNESS: Would you please repeat the 17 question to me. 18 Q. Yes. Again, in the first Item one in your 19 letter you wrote: "In other words, FEGUA was to 20 contribute to the Trust even when the Usufructary was 21 not contributing any Canon and FEGUA was not receiving 22 private funds, the strategic basis for the operation</p>	<p style="text-align: right;">1060</p> <p>10:09:34 1 and not go back to Ferrovías through the figure of a 2 trust. In accordance with numeral 6.4 of the terms of 3 reference that gave rise to this Usufruct, the 4 Contract signed between the Parties is to be approved 5 by a Government Agreement." 6 Did I read that correctly? 7 A. Yes, you read it correctly. 8 Q. So, correct me if I'm wrong, if I understand 9 what you're saying here, you were suggesting that 10 Contract 143 be renegotiated for FEGUA to receive a 11 better economic benefit from the Contract; correct? 12 A. I was referring in good faith to the fact 13 that both entities should have common agreement on the 14 funds to be received by both. In the case of FEGUA, 15 they did not have the capability to fulfill 16 commitments since Ferrovías was not paying the Canon 17 amounts. 18 Q. Well, Ferrovías was paying the Canon amounts, 19 wasn't it? It's just you didn't think it wasn't 20 paying you enough; is that right? 21 A. It was not enough based on the projections 22 made in the offer.</p>

<p style="text-align: right;">1061</p> <p>10:11:16 1 Q. Is it your testimony that FEGUA didn't 2 perform its obligations to contribute its funds to the 3 Trust because Ferrovías was not paying you enough 4 Canon fee pursuant to the Usufruct contracts? 5 A. That is correct, because the company had no 6 other income. 7 Q. Well, sir, that's not correct. Wasn't FEGUA 8 also receiving income from this time separate from 9 Ferrovías? 10 A. Separate income? Only in connection with the 11 Usufruct Agreement, the right-of-way 12 agreement--Contract. 13 Q. So, you, as Chief of the Financial Department 14 of FEGUA, don't recall that at this time and to this 15 day, I believe, that FEGUA had been receiving income 16 from a lease arrangement with COBIGUA? 17 A. I'm sorry, that is the case, but as part of 18 the general budget for the company we also take into 19 account Canon payments. I'm sorry I did not remember 20 that, but yes, we do receive that amount from COBIGUA. 21 Q. And you weren't putting those monies into the 22 Trust, correct, because you had to pay your employees;</p>	<p style="text-align: right;">1063</p> <p>10:15:25 1 (Witness reviews document.) 2 A. I've read it. 3 Q. Okay. And to summarize--and correct me if 4 I'm wrong--in this letter, you asked the then-FEGUA 5 Overseer that he formally request to Ferrovías that 6 they pay the Canon fees that it owed FEGUA for its use 7 of the railroad equipment since January 2000; correct? 8 A. Correct. 9 Q. Okay. Now, let's look at Exhibit R-198, 10 which is at Tab 9. And this is a letter from the 11 Overseer Minera to Mr. Senn of Ferrovías, dated 12 August 22nd, 2002, which was the same day as your 13 letter to the Overseer; correct? 14 A. That's correct. 15 Q. And you saw a copy of this letter at around 16 the time this was sent; correct? 17 A. I remember my letter. 18 Q. And do you remember seeing this letter as 19 well that Overseer Minera sent to Mr. Senn on the same 20 day as your letter? 21 A. I did not remember it. I just remembered 22 mine.</p>
<p style="text-align: right;">1062</p> <p>10:13:00 1 correct? 2 A. That is for expenses, for the operational 3 expenses based on the expenses the company has and 4 also to pay retirement pensions and also the employees 5 from the company. 6 Q. Okay. Let's change topics here. 7 You've testified, I think, on a number of 8 occasions that you were not aware of the existence of 9 Contracts 143 and 158 as a replacement for Contract 41 10 until after Overseer Sarceno left FEGUA; correct? 11 A. That is correct. 12 Q. Okay. Could you turn to Exhibit C-65 which 13 is Tab 4. And this is an August 22nd, 2002, letter to 14 the then-FEGUA Overseer Minera in which you request 15 that--you ask that he formally request to Ferrovías 16 that it pay FEGUA the Canon fee it is owed for its use 17 of the railroad equipment since January 2000; correct? 18 A. I'm sorry, where do I--is it said? What 19 paragraph number are you referring to? 20 Q. Well, I'm referring to the entire letter, and 21 feel free to read it. It's a fairly short letter. 22 A. Thank you.</p>	<p style="text-align: right;">1064</p> <p>10:18:14 1 Q. Okay. But you were aware that the Overseer 2 had made in response to your request to him that he 3 had followed up with Ferrovías to request payment of 4 the Canon fee; correct? 5 A. I don't remember. That is the Overseer, the 6 one in charge of that, and my signature is not there. 7 I don't remember this letter by the Overseer. 8 Q. So, you were never aware that the Overseer 9 had followed up on your request that Ferrovías pay the 10 equipment fee Canon to FEGUA? 11 A. I knew that he had done so, but I do not 12 remember the communication as such. I did know that 13 he did it, but I don't remember the note as such, the 14 communication as such. 15 Q. Now, in this letter to Ferrovías, Overseer 16 Minera wrote at the end here: "Given the silence of 17 the Higher Authorities for approval of Contract 18 Number 41, we are ready to renegotiate the Contract." 19 Do you recall ever having a discussion with 20 Overseer Minera regarding his offer in this letter to 21 renegotiate the Equipment Contract, given the lack of 22 approval of that contract?</p>

<p style="text-align: center;">1065</p> <p>10:19:58 1 A. I don't remember talking to him about that. 2 Q. So, you were never aware that he made this 3 offer to Ferrovías; correct? 4 A. I'm not saying that. I'm saying--I don't 5 remember it. 6 Q. Let's look at Exhibit C-67, which is Tab 5 in 7 your notebook, your binder. In Exhibit C-65, the 8 original behind the blue sleet, is the written minute 9 entry--it's a handwritten Minute entry Number 11-2003 10 from FEGUA's books; correct? 11 A. That is correct. 12 Q. And it's dated October 1st, 2003; is that 13 right? 14 A. That is correct. 15 Q. And if you turn to the second page, your 16 signature is one of the signatures at the end of the 17 minute entry? 18 A. That is correct. That's my signature. 19 Q. And the minute entry states that the Parties 20 were all in agreement that the total amount of Canon 21 owed for Ferrovías' use of the railway equipment from 22 the beginning of its operations to August 13, 2003,</p>	<p style="text-align: center;">1067</p> <p>10:23:43 1 and it's okay. We recorded the minute, and that was 2 good for the company. 3 PRESIDENT RIGO: Your last question. 4 BY MR. STERN: 5 Q. And when you signed this, you never asked any 6 questions about why the minute--the agreement on the 7 Canon fees only went to August 13, 2003? 8 A. I was just--it was just indicated to me that 9 Ferrovías was going to pay, that we needed to carry 10 out the estimation, and this is the signature of the 11 general auditor of the company, also the financial 12 official and my own, and it was fine. They were going 13 to pay, and that's it. There were no further details. 14 MR. STERN: Thank you. 15 PRESIDENT RIGO: Mr. Salinas. 16 MR. SALINAS-SERRANO: Thank you, 17 Mr. President. 18 REDIRECT EXAMINATION 19 BY MR. SALINAS-SERRANO: 20 Q. Mr. Carrillo, do you recall questions from 21 Mr. Stern regarding the discrepancy between the 22 projections that Ferrovías had made in its bid</p>
<p style="text-align: center;">1066</p> <p>10:22:02 1 was 330,781 and 35 cents or whatever, quetzales; 2 correct? 3 A. That is correct. 4 Q. And that amount was equivalent to 1 percent 5 on the total invoicing of freight transport; correct? 6 A. That is correct. That's stated in the 7 minutes. 8 Q. And if I understand your testimony, you did 9 not know at the time you signed this that the Parties 10 had already negotiated and entered into a new 11 Equipment Contract; correct? 12 A. Up to that date, I did not know. Up to the 13 time this minute of 11/2003 was recorded, I did not 14 know. 15 Q. So, you didn't find it odd that this minute 16 entry that you had signed and agreed to only covered 17 the Canon fees Ferrovías owed to August 13, 2003, and 18 not through the end of the month or the end of 19 September 2003? 20 A. Of course, it caught my attention because we 21 needed money for the company, and it was a good thing 22 that they were going to pay. They were going to pay,</p>	<p style="text-align: center;">1068</p> <p>10:25:06 1 proposal and what Ferrovías actually ended up paying? 2 A. Would you please repeat your question? 3 Q. Sure. 4 Do you recall questions from Mr. Stern 5 regarding the difference between the projections that 6 Ferrovías had made in its bid and the actual payments 7 received by FEGUA? 8 A. Yes, I remember that. 9 Q. To put the matter in context, sir, can we 10 have R-1, please. I'm going to hand you a copy of 11 the-- 12 ARBITRATOR EIZENSTAT: Where could we find 13 that, please? 14 MR. SALINAS-SERRANO: Right now, Secretary 15 Eizenstat, we are going to project the document on the 16 screen, but it's Exhibit R-1, and I will endeavor to 17 get you a physical copy now. My apologies. 18 MR. STERN: Could I have a copy as well. 19 MR. SALINAS-SERRANO: Sure. I will do my 20 best. The document is being projected on the screen, 21 and it is the Bidding Terms for Contract 402. 22 BY MR. SALINAS-SERRANO:</p>

<p style="text-align: right;">1069</p> <p>10:26:42 1 Q. Now, Mr. Carrillo, I direct you to 2 Section 3.5.4 of the Bidding Rules. Section 3.5.4, 3 which in English is entitled, "Process for the Scoring 4 of Offers." 5 A. What number did you say? 6 Q. 3.5.4. 7 MR. STERN: I object to these questions. The 8 issue as to what Ferrovías was obligated or should 9 have paid is contained within the legal documents 10 between the Parties. The question of what they 11 expected to be paid is not relevant to any issue in 12 these proceedings. 13 MR. SALINAS-SERRANO: I think Mr. Stern 14 thought it relevant enough to ask questions about it 15 in cross-examination. 16 MR. STERN: That's because counsel has raised 17 it as an issue in his testimony. 18 MR. SALINAS-SERRANO: Mr. Stern asked 19 questions about it during cross-examination. I think 20 I'm entitled to put the issue in context. 21 PRESIDENT RIGO: Just go ahead and ask the 22 question.</p>	<p style="text-align: right;">1071</p> <p>10:30:24 1 the Bidding Committee, the Business Plan portion of 2 the scoring range was the most important? 3 MR. STERN: Objection. Leading question. 4 PRESIDENT RIGO: Sustained. 5 BY MR. SALINAS-SERRANO: 6 Q. Which was the most important element in the 7 scoring range? 8 A. Within financial capacity. 9 MR. SALINAS-SERRANO: Let me see 10 Mr. Carrillo's First Witness Statement Page 4 in the 11 English version, please. 12 BY MR. SALINAS-SERRANO: 13 Q. Now, I apologize, Mr. Carrillo. Going back 14 for one second, as I was reviewing the transcript, in 15 answer to my question you said "financial capacity." 16 Is that correct? 17 A. Financial capacity? 18 Q. Did can you explain that to me, why 19 there's--and I just want to understand how this 20 works--15 points ascribed to, for example, experience 21 and a maximum of 15 to financial capacity, but a 22 maximum of 70 to Business Plan.</p>
<p style="text-align: right;">1070</p> <p>10:28:35 1 BY MR. SALINAS-SERRANO: 2 Q. Mr. Carrillo, are you located at Section 3 3.5.4 of the document? 4 A. Yes. It refers to the process to qualify the 5 offers or to score the offers. 6 Q. Would you tell the Tribunal what do the 7 numbers to the right of each of the points mean? 8 A. These are scores considered by the Board 9 based on the terms and conditions of the bid to be 10 able to award the bid to the winning company. 11 Q. And what was the range of points that was 12 ascribed to the Business Plan in that scoring range? 13 A. Regarding the range, it says experience in 14 railroad operation and engineering, zero to 15; 15 financial capacity, zero to 15; Business Plan, zero to 16 70. 17 Q. Now, just to make sure we understand, does 18 that mean that the Board weighted the Business Plan 19 between zero and 70 points of the total 100 points 20 possible of the offers? 21 A. That is correct. That was the range. 22 Q. Would it be fair to say, then, sir, that for</p>	<p style="text-align: right;">1072</p> <p>10:32:03 1 MR. STERN: Objection. Is he trying to 2 impeach his own witness here? He's answered the 3 question. 4 MR. SALINAS-SERRANO: I'm trying to 5 understand. If the Witness's answer is the answer, 6 that's fine. I'm trying to understand what the points 7 mean. 8 MR. STERN: I think he's asked several 9 questions on that, and I think he's answered the 10 questions fully and completely. 11 (Tribunal conferring.) 12 PRESIDENT RIGO: We think the witness has 13 already answered, so if you could move on. 14 MR. SALINAS-SERRANO: Just for the record, I 15 was just trying to understand what the points mean. I 16 didn't know this was a gotcha game, but I will move 17 on. 18 BY MR. SALINAS-SERRANO: 19 Q. Now-- 20 (Comment off microphone.) 21 MR. SALINAS-SERRANO: I could see. 22 BY MR. SALINAS-SERRANO:</p>

<p style="text-align: center;">1073</p> <p>10:33:10 1 Q. Now, going to the Witness's First Statement, 2 Page 4 in the English version, Mr. Stern asked you 3 some questions about whether it was your understanding 4 as a Board that Ferrovías was obligated to make the 5 payments it projected. I want to ask you some 6 questions about that. These Canon payments, what were 7 they based on, the payments, right-of-way Canon 8 payments under Contract 402, what were they based on? 9 A. It was at 5 percent of gross freight 10 transported in the first five years. 11 Q. What was the total projected amount in FVG's 12 economic proposal in quetzales? 13 A. It's in my statement. Can I take a look at 14 it? 15 Q. I'm referring to the chart following 16 Paragraph 7 of your First Declaration. 17 MR. STERN: I'm going to object to this line 18 of questioning. I don't believe it's within the scope 19 of my cross. I did not ask him any questions 20 regarding this type of comparison at all. My question 21 was with regards to the obligations, not the amounts 22 that were paid or not paid.</p>	<p style="text-align: center;">1075</p> <p>10:35:56 1 A. Yes, those are quetzales. 2 Q. How much did Ferrovías actually pay? 3 A. 7,158,000. 4 Q. Now, you also heard questions from Mr. Stern 5 about whether Ferrovías's bid was the only qualifying 6 bid? 7 A. Yes, indeed, I did hear those questions. 8 Q. Did FEGUA have any alternative if it decided 9 that either (a), none of the bids were conforming, or 10 (b), some were, but they weren't to the Committee's 11 satisfaction? 12 A. Excuse me, could you please put the question 13 to me again. 14 Q. What were the Bidding Committee's options if 15 it did not approve of any or all of the bids submitted 16 to it for Contract 402? 17 A. The options that the Evaluating Board had 18 were to declare that there was no winning bidder, if 19 none of the Parties actually satisfied the Bidding 20 Terms. 21 Q. Would the Committee have not awarded the bid 22 to anyone?</p>
<p style="text-align: center;">1074</p> <p>10:34:39 1 MR. SALINAS-SERRANO: Not unexpectedly, it's, 2 in fact, true that Mr. Stern didn't ask him about the 3 number, but he did ask him about the projections and 4 what those were and how those affected the 5 obligations. I would just like to put that issue in 6 context again. He was certainly asked about this 7 issue in cross-examination. 8 MR. STERN: I disagree, and I think the 9 record speaks for itself. 10 PRESIDENT RIGO: If the witness may answer 11 the question. 12 BY MR. SALINAS-SERRANO: 13 Q. Would you like me to repeat the question, 14 Mr. Carrillo? 15 A. Please, if you could do me that favor. 16 Q. What was the total amount of projected 17 payments in FVG's economic proposal for the Canon 18 payments under--for right-of-way under Contract 402? 19 A. From 1998 to 2007, it was to have paid 20 39 million, 39,636,000. 21 Q. And those figures are in quetzales; is that 22 correct?</p>	<p style="text-align: center;">1076</p> <p>10:37:39 1 A. Exactly. If it didn't satisfy the Bidding 2 Condition, that would have to have been done. 3 Q. You were also asked questions about a letter 4 that you sent to Mr. Gramajo in November 2004. 5 Remember those questions? And specifically that's 6 R-10, which is in Tab 7 of the binder that Claimant's 7 counsel gave you. 8 A. Yes, that's right. 9 Q. Did you send this letter to anyone other than 10 Dr. Gramajo? 11 A. No, just to Dr. Gramajo. 12 Q. At Point 5 of that letter, again Tab 7, it is 13 R-10, second page in the English version, Point 5, you 14 referred to a request by Mr. Senn of formal--official 15 and formal acknowledgement of the Contract for 16 Usufruct Railroad Equipment. 17 Do you see that? 18 A. Please give me the chance to read it. 19 Q. And it's Point 5 of that letter. 20 (Witness reviews document.) 21 PRESIDENT RIGO: Your last question, 22 Mr. Salinas.</p>

<p style="text-align: right;">1077</p> <p>10:39:30 1 MR. SALINAS-SERRANO: Yes, Mr. President. 2 Thank you. 3 THE WITNESS: Yes, I see it. 4 Q. At the end of that paragraph you make 5 reference to the Contract having to be approved by 6 governmental agreement. I believe the term in the 7 Spanish version is Acuerdo Gubernativo; is that 8 correct? 9 A. That is correct. 10 Q. Was it your understanding that--did you know 11 whether any such approval had been given? 12 MR. STERN: Objection. Vague. 13 THE WITNESS: No, I did not know about it. 14 MR. SALINAS-SERRANO: I have no further 15 questions. 16 QUESTIONS FROM THE TRIBUNAL 17 ARBITRATOR EIZENSTAT: Mr. Carrillo, permit 18 me to ask you about your First Statement on 19 Paragraph 14, Page 7. And at the last two sentences 20 at the end, it says that, "Contract 41 required 21 approval of the Executive Branch signed by the 22 President and Council of Ministers before coming into</p>	<p style="text-align: right;">1079</p> <p>10:42:29 1 to the Overseer or the various Overseers under whom 2 you worked, or do you, to your knowledge, know if the 3 Overseers in turn asked their superiors to get the 4 Executive to approve Contract 41? 5 THE WITNESS: Yes, not through--I didn't find 6 out through an official note. It just said that it 7 was an obligation of both Parties to make such a 8 request, such that the Contract could enter into 9 force. 10 ARBITRATOR EIZENSTAT: Yes, sir, I'm just 11 asking: Did you ask the Overseer under whom you 12 worked to obtain this approval so the Contract would 13 go into full force and effect? 14 THE WITNESS: I don't recall having said so. 15 ARBITRATOR EIZENSTAT: Do you know whether 16 any of the Overseers under whom you worked sought such 17 approval? 18 THE WITNESS: I don't know. The Overseer is 19 completely independent of my department. 20 ARBITRATOR EIZENSTAT: You were asked some 21 questions what's your Tab 9. It's a letter from you 22 to Mr. Senn of August 22, 2002. Would you be good</p>
<p style="text-align: right;">1078</p> <p>10:41:16 1 effect. However, the Executive never approved 2 Contract 41, so it was never in full force and 3 effect." 4 Do you see that part of your statement? 5 THE WITNESS: Yes, I'm looking at that 6 paragraph. 7 ARBITRATOR EIZENSTAT: Can you explain to the 8 Tribunal why the Executive never approved that 9 contract. 10 THE WITNESS: I don't know. I'm not an 11 attorney. It is something I don't know. I was just a 12 member of the Evaluation Board and Chief of the 13 Financial Department. 14 ARBITRATOR EIZENSTAT: Yes, sir, but you were 15 the Chief Financial Officer of FEGUA, and since you're 16 saying here that the Executive never approved it and 17 it was never in full force and effect, you're coming 18 to a conclusion; correct? 19 THE WITNESS: Yes, but I don't know the 20 reason why the Contract wasn't approved and based on 21 what had to be done. 22 ARBITRATOR EIZENSTAT: Did you ever suggest</p>	<p style="text-align: right;">1080</p> <p>10:44:15 1 enough to see if you can locate that. 2 THE WITNESS: I'm sorry, did you say that 3 it's at Tab 9? 4 ARBITRATOR EIZENSTAT: Yes, sir. It's in 5 Tab 9 of your cross-examination binder. It's--you 6 have been asked about this. This is a letter dated 7 August 22, 2002, from you to Mr. Senn. 8 THE WITNESS: Excuse me, sir, I did not send 9 that note; rather, it was sent by Mr. Minera as 10 Overseer of FEGUA, and his signature appears below. 11 ARBITRATOR EIZENSTAT: Thank you for the 12 correction. 13 The letter says--and if you have no knowledge 14 of this, please just let me know--"Given the silence 15 of the Higher Authorities for approval of Contract 16 Number 41, we are ready to renegotiate the Contract." 17 That's the last full sentence. 18 Do you see that? 19 THE WITNESS: Yes, I see it. 20 ARBITRATOR EIZENSTAT: I believe you may have 21 testified that you don't recollect seeing this letter; 22 is that correct?</p>

<p style="text-align: right;">1081</p> <p>10:45:55 1 THE WITNESS: That is correct. I don't 2 remember it. 3 ARBITRATOR EIZENSTAT: Does this comport, 4 however, with your understanding of what you as the 5 Chief Financial Officer wished to do; that is, to 6 renegotiate the Contract? 7 THE WITNESS: In good faith and under the 8 laws of Guatemala. 9 ARBITRATOR EIZENSTAT: Then there's another 10 letter of October 9th under Tab 8, again it does not 11 bear your signature, to Mr. Senn, and it has similar 12 language at the end: "In view of the administrative 13 silence from the Superior Authorities would grant to 14 the approval of Agreement Number 41, we are prepared 15 to renegotiate this agreement." 16 Do you see that? 17 THE WITNESS: Yes, I see it. 18 ARBITRATOR EIZENSTAT: Did this letter come 19 to your attention? 20 THE WITNESS: I don't remember it. 21 ARBITRATOR EIZENSTAT: Would Mr. Minera have 22 discussed with you before these letters were sent his</p>	<p style="text-align: right;">1083</p> <p>10:49:03 1 fee as the main one that there be a capability to get 2 the trains running in all the phases proposed, and so 3 that with the company up and running that the Canon 4 should be paid to--as committed to, to Ferrocarriles 5 de Guatemala, FEGUA. 6 ARBITRATOR EIZENSTAT: Was there concern that 7 the fee was set at too low a percentage or that it 8 wasn't being paid at all? What was the basis of your 9 concern leading you to conclude there should be a 10 renegotiation? 11 THE WITNESS: There were two: One, that the 12 railway should be up and running; and, second, that 13 there should be economic solvency, not only of the 14 Usufructuary, but also the company that had given the 15 concession. 16 ARBITRATOR EIZENSTAT: Did you want to see 17 the fee changed to a fixed fee to give FEGUA more 18 certainty of payment? 19 Rather than being based on a percentage of 20 revenues? 21 THE WITNESS: No. It would have had to be a 22 percentage, but there should have been more</p>
<p style="text-align: right;">1082</p> <p>10:47:32 1 views about the silence of the Higher Authorities and 2 the need to renegotiate? Is that a discussion you 3 might have had with Mr. Minera? 4 THE WITNESS: The Overseer has his own group 5 of advisers; and, independent of this, it is possible 6 that he discussed it with me as well. 7 ARBITRATOR EIZENSTAT: Do you have a 8 recollection of that? 9 THE WITNESS: No, I don't remember very well. 10 ARBITRATOR EIZENSTAT: Do you, yourself--did 11 you, yourself, believe that the Contract should be 12 renegotiated? 13 THE WITNESS: Yes, I did, but with a mutual 14 agreement as between the Parties and without it having 15 a detrimental effect of one on one or the other and 16 that the problems that had come up around the 17 negotiation should not continue. 18 ARBITRATOR EIZENSTAT: And what was the major 19 item you would like to have seen renegotiated? Was it 20 the fee, or what parts would you, yourself, feel 21 should have been negotiated? 22 THE WITNESS: In addition to the Canon or the</p>	<p style="text-align: right;">1084</p> <p>10:50:21 1 transportation, more trains, more rail traffic, so 2 there could be more Canon and that that way both 3 entities would be better off economically. 4 ARBITRATOR EIZENSTAT: How would a 5 renegotiated contract provide for or assured more 6 revenue? 7 THE WITNESS: Well, I don't know. Looking 8 for solutions--I reiterate, I'm not an attorney--but 9 there must have been alternatives. 10 ARBITRATOR EIZENSTAT: Continuing your 11 statements on Paragraph 17, you mention that in terms 12 of--excuse me. On Paragraph 16, that Overseer Sarceno 13 signed a Lease Agreement, notwithstanding that there 14 had been no Executive approval. 15 So, is it your understanding that this 16 Contract was being performed in the absence of an 17 Executive authority for Contract 41 through these 18 temporary leases? 19 THE WITNESS: Excuse me, could you repeat the 20 question? 21 ARBITRATOR EIZENSTAT: Yes, sir. 22 My understanding is, and I just want to see</p>

<p style="text-align: center;">1085</p> <p>10:52:01 1 if it comports with yours, it seems to be what you're 2 saying, that the Overseer, Mr. Hugo Sarceno, 3 notwithstanding the fact that there had been no 4 Executive agreement, executed these Lease Agreements 5 for the railroad equipment, and Ferrovías agreed to 6 pay those amounts. 7 THE WITNESS: Yes, it was an agreement 8 between the Overseer and the highest level of 9 authority of Ferrovías. 10 ARBITRATOR EIZENSTAT: You mentioned in your 11 statement in Paragraph 17 there was no public bidding 12 on 143 and 158, and no Bidding Terms were elaborated 13 in connection with these railway Equipment Contracts. 14 Do you know why there was no public bidding? 15 THE WITNESS: I don't know why that procedure 16 did not happen. There was an arrangement between the 17 Usufructuary and FEGUA. 18 ARBITRATOR EIZENSTAT: You're saying also 19 that notwithstanding your audit, you were not aware of 20 the existence of 143 and 158 and that you didn't learn 21 about them until Mr. Sarceno left and his successor 22 came in; is that your testimony?</p>	<p style="text-align: center;">1087</p> <p>10:54:59 1 1.25 percent of net sales versus 1 percent of a 2 different base? That's not something you would have 3 been aware of? 4 THE WITNESS: With respect to Contract 41, I 5 was aware that it was 1 percent based on the gross 6 total handled. And on learning of the change to 7 1.25 percent, this with respect to 143 and 158, and 8 looking at the calculations that there were, we didn't 9 see an improvement for the company because the basis 10 of the calculation was different. And the one, it's a 11 gross--it's a percentage on gross and in the second of 12 1.25 percent it's based on net. 13 ARBITRATOR EIZENSTAT: Yes, sir, I understand 14 that. 15 So, you knew that there was a different 16 calculation for the revenues, but you didn't know it 17 was based on a new contract; is that what you're 18 saying to the Tribunal? 19 THE WITNESS: No. I found out about the 20 1.25 percent--I didn't learn about it until Sarceno 21 departed. 22 ARBITRATOR EIZENSTAT: And what was it about</p>
<p style="text-align: center;">1086</p> <p>10:53:42 1 THE WITNESS: That's right. I was not aware 2 of the existence of those contracts. 3 ARBITRATOR EIZENSTAT: But didn't those 4 contracts provide a certain revenue to FEGUA and that 5 revenue would have been on your jurisdiction, so you 6 didn't know whether the terms had changed, the amounts 7 s had changed because the terms of 143/158 are 8 somewhat different than 41. That's not something you 9 would have been aware of; that is, the payments were 10 based on a different basis? 1.25 percent-- 11 THE WITNESS: Excuse me, could you repeat the 12 question? 13 ARBITRATOR EIZENSTAT: Yes, sir. 14 I'm just asking you, in your capacity as 15 Chief Financial Officer, regardless of whether you 16 knew of the existence of 143 and 158, you monitored 17 the payments coming in, I would suspect, from 18 Ferrovías to FEGUA, did you not? 19 THE WITNESS: That's right. 20 ARBITRATOR EIZENSTAT: And did you have any 21 understanding that the payments were being based on a 22 different percentage than the earlier Contract,</p>	<p style="text-align: center;">1088</p> <p>10:56:25 1 his departure and Mr. Gramajo's accession to the job 2 that enabled you to learn about the new contracts and 3 the terms of the new contracts? How did it come to 4 your attention? 5 THE WITNESS: Through the adviser to the 6 Overseer who undertook an analysis when he looked at 7 the document. He was the one who suggested to Gramajo 8 that it wasn't correct. 9 ARBITRATOR EIZENSTAT: And what is his name, 10 sir? 11 THE WITNESS: He is no longer alive. His 12 name was Carlos Alberto Moino, he was an engineer, and 13 he was an adviser to the international rail in FEGUA. 14 ARBITRATOR EIZENSTAT: You mentioned in your 15 statement in Paragraph 17 that these new contracts, 16 contrary to Contract 41, eliminated the requirement of 17 Presidential approval which seemed highly irregular. 18 Is that your statement and your recollection? 19 THE WITNESS: Yes, that is what my statement 20 says, and that is what I remember. 21 ARBITRATOR EIZENSTAT: If it was highly 22 irregular, can you inform the Tribunal why it is that</p>

<p style="text-align: right;">1089</p> <p>10:57:49 1 FEGUA would have executed the Contract. 2 THE WITNESS: That, I don't know. It's a 3 legal matter and a matter going to the intervention in 4 FEGUA. 5 ARBITRATOR EIZENSTAT: Why do you say it 6 seemed highly irregular? 7 THE WITNESS: Because it should be approved 8 by the Executive-- 9 THE INTERPRETER: The interpreter confesses 10 there was some extraneous noise and missed the last 11 clause. Sorry. 12 Could you repeat the answer, please? 13 THE WITNESS: Because it should have been 14 approved by Executive agreement or by the President 15 and Council of Ministers, and this wasn't. When the 16 Parties signed Contract 41, this should have had this 17 requirement of being approved by the Executive. In 18 this case, it didn't happen, and in this case, neither 19 in this one. 20 ARBITRATOR EIZENSTAT: The negotiation which 21 was talked about with respect to Contract 41 back in 22 2002, was that a separate issue from the issue of</p>	<p style="text-align: right;">1091</p> <p>11:00:52 1 PRESIDENT RIGO: This is the binder of the 2 Respondent statements. 3 MR. SALINAS-SERRANO: And just for the 4 record, if I may, Secretary Eizenstat, I believe in 5 the binder that was handed to the witness, his Second 6 Statement corresponds to Tab 2. 7 ARBITRATOR EIZENSTAT: Thank you. 8 I'm sorry. Do you see this now? 9 Paragraph 4, please. 10 And if I may-- 11 THE WITNESS: Yes, I do see it. 12 ARBITRATOR EIZENSTAT: Let me read just you 13 the sentence in English, of course, for me: "Indeed, 14 I was surprised by the execution of Contract 143/158 15 because as Chief of the Finance Department of FEGUA, I 16 was not informed or much less consulted prior to the 17 execution of this agreement and its amendment as it is 18 usually done in FEGUA with contracts with the scope 19 and financial impacts such as that which Contract 20 143/158 would have had." 21 Do you see that statement? 22 THE WITNESS: Yes, I do.</p>
<p style="text-align: right;">1090</p> <p>10:59:18 1 getting Presidential approval? When you were talking 2 about the need for renegotiation, were the issues that 3 led you to think there should be a renegotiation, were 4 they separate from the requirement of a Presidential 5 approval? 6 THE WITNESS: It was thought that both 7 Parties should have had the ability to agree and solve 8 the problems that they had, the disputes that they 9 had. I suggested this because of the problems that 10 existed at the time. It was just a suggestion. 11 Decisions are not made by the Financial Department, 12 but rather by the Overseers and the adviser to the 13 Overseer. 14 ARBITRATOR EIZENSTAT: Would you be good 15 enough to turn to Tab 9, which is your Second 16 Statement, at Paragraph 4. 17 THE INTERPRETER: Did you mean Tab 2, sir? 18 ARBITRATOR EIZENSTAT: No, sir. I meant 19 Tab 4. I think that's your Second Statement, I 20 believe. It's my Tab 9, at least. 21 THE INTERPRETER: What paragraph, sir? 22 ARBITRATOR EIZENSTAT: Paragraph 4, please.</p>	<p style="text-align: right;">1092</p> <p>11:02:34 1 ARBITRATOR EIZENSTAT: So, your experience, 2 going I think you said back to 1977, was that on major 3 contracts you would have been consulted on this type 4 of issue, you would have been given a copy of the 5 Agreements and an opportunity to put your financial 6 input in? 7 THE WITNESS: Possibly, that--it is possible 8 that I could have been consulted, but sometimes 9 Overseers don't do that. They do it via their 10 advisers. 11 ARBITRATOR EIZENSTAT: Yeah, but you said 12 it's usually done in FEGUA, and here it wasn't done. 13 THE WITNESS: It was not done. 14 ARBITRATOR EIZENSTAT: Do you know why you 15 weren't informed or even consulted prior to the 16 execution of the Agreement, as would have been 17 customary? 18 THE WITNESS: I don't know why I wasn't 19 consulted. 20 ARBITRATOR EIZENSTAT: One of the documents, 21 which is my Tab 5, and I'm sorry if--this is the 22 document folder. It's these Minutes Number 11-2003 of</p>

<p style="text-align: right;">1093</p> <p>11:04:02 1 August 13, I think it is. 2 Do you find that document? 3 THE WITNESS: Yes, yes, I did find it. 4 ARBITRATOR EIZENSTAT: This is a document, 5 where, as I understand it, there was a summing up of 6 how much was owed through August 13 or perhaps through 7 the end of August. There was an agreement on an 8 amount to 330,781; isn't that correct? 9 THE WITNESS: Yes, that is correct. 10 ARBITRATOR EIZENSTAT: Did FVG ever pay that 11 amount? 12 THE WITNESS: Not in full. 13 ARBITRATOR EIZENSTAT: Do you know why? 14 THE WITNESS: I do not recall. 15 ARBITRATOR EIZENSTAT: I have only one last 16 set of questions, and that is, again my Binder 17 Number 7, it's a letter of November 24, 2004, from 18 yourself to Mr. Gramajo, obviously after he became the 19 Overseer. 20 THE INTERPRETER: Sir, this is the 21 interpreter to guide the witness. What is the exhibit 22 number?</p>	<p style="text-align: right;">1095</p> <p>11:08:19 1 158 being renegotiated to get a specific sum rather 2 than perhaps the percentage agreement that was in the 3 original Contract? Is that what you're suggesting? 4 THE WITNESS: That is what Paragraph 5 says. 5 ARBITRATOR EIZENSTAT: So, your view was to 6 have more certainty for FEGUA, they should receive a 7 specific royalty rather than base it on a percentage 8 of projected revenues; is that what you're suggesting? 9 THE WITNESS: I was referring to the fact 10 that the Trust--well, if FEGUA had to pay it, it would 11 not be able to meet the obligations that it has. 12 Now, in connection with the renegotiation, it 13 should be a mutually agreed renegotiation. This does 14 not mean that the Usufructuary is going to accept it. 15 ARBITRATOR EIZENSTAT: Yes, sir, I 16 understand, but the object from your standpoint is for 17 FEGUA to receive a specific royalty so you would have 18 more certainty of the payments you're getting. Is 19 that what you're saying in this paragraph? 20 THE WITNESS: From the position I was in, 21 yes, because FEGUA was in a very bad economic 22 condition.</p>
<p style="text-align: right;">1094</p> <p>11:06:25 1 ARBITRATOR EIZENSTAT: That's a very good 2 question. I just have a tab. Yes, it's R-10. R-10. 3 THE INTERPRETER: Thank you. 4 ARBITRATOR EIZENSTAT: Can you find that now? 5 THE WITNESS: I found it, yes. 6 ARBITRATOR EIZENSTAT: Thank you very much. 7 This references Contract 402, at least in 8 part, in Paragraph 1, and then in Paragraph 4--it 9 says, "One alternative would be to renegotiate the 10 Contract for the figure of the Trust to be revoked." 11 So, which Contract are we talking about? Are 12 we talking about the Trust Contract, the Trust for 13 Rehabilitation? Is that the Contract that you're 14 referring to there? 15 THE WITNESS: That is correct. 16 ARBITRATOR EIZENSTAT: Then in Paragraph 5, 17 you also suggest that this Contract, which is the one 18 for railroad equipment be renegotiated for FEGUA to 19 receive a specific--mine then becomes very blurry. I 20 can't--it looks like a specific amount, and not go 21 back to the figure of the Trust. 22 So, here you're referring to Contract 143 and</p>	<p style="text-align: right;">1096</p> <p>11:10:04 1 ARBITRATOR EIZENSTAT: Okay, thank you very 2 much, sir. 3 THE WITNESS: I was going to ask the same 4 exact thing. 5 PRESIDENT RIGO: We are going to take a 6 10-minute break, yes. 7 MR. FOSTER: Mr. President, I just would like 8 to make sure it's clear that the witness is not 9 allowed to talk to the lawyers during the break. 10 PRESIDENT RIGO: Ms. Sequeira already told 11 the witness. I understood for the record that's the 12 case. 13 MR. SALINAS-SERRANO: Yes, Mr. President. 14 (Brief recess.) 15 PRESIDENT RIGO: Mr. Salinas, on the 16 Tribunal's question. 17 MR. SALINAS-SERRANO: Yes, Mr. President. On 18 Secretary Eizenstat's questions. 19 FURTHER REDIRECT EXAMINATION 20 BY MR. SALINAS-SERRANO: 21 Q. Mr. Carrillo, Secretary Eizenstat asked you 22 questions about Exhibits R-198 and R-42 which are</p>

<p style="text-align: center;">1097</p> <p>11:23:21 1 located at Tabs 9 and 8 of your binder respectively. 2 Do you remember those questions? And I will give you 3 a second to actually look at the documents. 4 A. You said 9 and 8? 5 Q. Yes. 6 Do you remember Secretary Eizenstat's 7 questions about those documents, or rather, do you 8 remember Secretary Eizenstat asking you questions 9 about those documents, not the questions themselves? 10 A. Yes, I do remember. 11 Q. Now, would you tell the Tribunal--first we 12 could show, please, Kelby, R-198, which is Tab 9. 13 What is the date of this letter, 14 Mr. Carrillo? 15 A. August 22nd, 2002. 16 Q. And if you could, Kelby, also show R-42, 17 which is Tab 8 in the binder. What is the date of 18 that letter, Mr. Carrillo? 19 A. October 9, 2002. 20 Q. Both letters, sir, are signed by René Minera, 21 the then Overseer of FEGUA. 22 Did René Minera come before or after</p>	<p style="text-align: center;">1099</p> <p>11:27:11 1 Q. You told the Tribunal that you're not a 2 lawyer; correct? 3 A. Correct. 4 Q. Does--if you know, does FEGUA have a separate 5 Legal Department? 6 A. Yes. It has a Legal Department, yes. 7 Q. And if there were any legal issues involving 8 the contracts that had to be renegotiated, would you 9 have been involved in that, or made privy of those 10 legal issues? 11 A. No. I'm not a lawyer, and I should not have 12 been involved in connection with the drafting of legal 13 issues. 14 Q. You were asked questions about your 15 statements in your Second Declaration about it being 16 normal or usual that you were involved in the 17 evaluation of contracts of the magnitude involved 18 here. Would you have been involved in legal issues 19 regarding those contracts? 20 A. No, I wouldn't have been involved. I'm not a 21 lawyer. 22 Q. Now, sir, Secretary Eizenstat also asked you</p>
<p style="text-align: center;">1098</p> <p>11:25:21 1 Intervenor or Overseer Sarceno? 2 A. Before. 3 Q. Now, the Contract whose renegotiation or 4 which renegotiation is mentioned in these two letters 5 both--in both last paragraphs of these two letters 6 respectively is Contract Number 41; correct? 7 A. That is correct. It is Contract Number 41. 8 Q. Now, to your knowledge, who renegotiated that 9 contract, if anyone? 10 A. Contract 41? 11 Q. Yes, sir. Who renegotiated it, if anyone, as 12 is mentioned in these letters? 13 A. When Sarceno, the Overseer, left, I found out 14 about the existence of another Contract. 15 Q. Stated differently, if you know, sir, who 16 negotiated Contract 143, which came after Contract 41? 17 A. Yes. Sarceno, the Overseer. 18 Q. Now, Secretary Eizenstat also asked you 19 questions regarding what you thought should be 20 renegotiated in the contracts. Do you remember those 21 questions? 22 A. Yes. Specifically what would it be.</p>	<p style="text-align: center;">1100</p> <p>11:28:27 1 questions about Paragraph 17--let me just confirm if 2 it was the First or Second Declaration, with the 3 Tribunal's indulgence. Of your First Declaration, 4 Paragraph 17 of your First Declaration, which is 5 located at Tab 1 of the binder you have in front of 6 you. And perhaps just to direct your attention more 7 specifically, Secretary Eizenstat asked you why it had 8 seemed--or about your testimony that it seemed highly 9 irregular that Contract 41 eliminated the requirement 10 of Presidential approval. Do you remember that 11 question? 12 A. I do remember. I do remember. 13 Q. If you know, sir, if you remember, was the 14 requirement of executive approval included or required 15 by the Bidding Rules that led to Contract 41? 16 A. Yes. At all times it should have been 17 approved by the Executive Branch of Government. 18 Q. Now, did the Bidding Rules require that 19 approval? 20 A. That is correct. 21 MR. SALINAS-SERRANO: I have no further 22 question, Mr. President.</p>

<p style="text-align: right;">1101</p> <p>11:30:01 1 PRESIDENT RIGO: Mr. Stern. 2 MR. STERN: Thank you. 3 REXCROSS-EXAMINATION 4 BY MR. STERN: 5 Q. Mr. Carrillo, you're going to get a document 6 here in just a second. But I want to address one of 7 your responses you gave to Secretary Eizenstat 8 regarding the payments of the Canon fees that were 9 agreed to between the Parties in the minute entry 10 which is Exhibit C-67, Tab 5. In response to 11 Secretary Eizenstat's question about whether Ferrovías 12 had paid the amounts that had been agreed to in the 13 minute entry, which was 330,781 quetzales, do you 14 recall your testimony about that? 15 A. Yes, I remember. 16 Q. And you testified in response to Secretary 17 Eizenstat's question that Ferrovías did not pay the 18 full amount that had been agreed to; correct? Do you 19 recall saying that? 20 A. Yes, I do recall. As I understood, the 21 question was at that date. 22 Q. So, they did pay the full amount. They just</p>	<p style="text-align: right;">1103</p> <p>11:33:14 1 Q. Okay. But is it your testimony that he was a 2 lawyer? 3 A. No. He was not. He was an engineer who had 4 ample experience in the railway sector, and he was 5 also part of the Bidding Commission. 6 Q. But he was the one who informed you about the 7 alleged irregularities in Contracts 143 and 158; 8 correct? 9 A. He did not inform me directly, rather the 10 Overseer. He informed the Overseer. 11 Q. And then the Overseer informed you; is that 12 your testimony? 13 A. Yes, I heard through the Overseer of the 14 irregularities. 15 Q. And the Overseer was Dr. Gramajo; correct? 16 A. That is correct. 17 Q. Now, again I just want the record to be 18 clear. Even though you were informed about these 19 irregularities in Contracts 143 and 158, you 20 continued, meaning your department, of which you were 21 the head of, the Financial Department, continued to 22 accept Canon payments from Ferrovías; correct?</p>
<p style="text-align: right;">1102</p> <p>11:31:32 1 didn't pay it on October 1st, 2003; is that what 2 you're saying? 3 A. It was paid as of the 17 October 2003. 4 Q. And Ferrovías paid the full amount; correct? 5 A. In connection--if you look at the records, 6 yes. 7 MR. STERN: Okay. And just for the record, 8 for the Tribunal's assistance, this is Exhibit C-68, 9 which we handed to you which confirms the Witness's 10 testimony on that. 11 BY MR. STERN: 12 Q. Okay. Now, I just want to make sure the 13 record is clear. Again, Secretary Eizenstat asked you 14 a question about how you became aware of the alleged 15 irregularities in Contracts 143 and 158, and I recall 16 you testifying that you heard about it from an 17 engineer named Moino; is that correct? 18 A. It is not correct. It's Carlos Moino. 19 Q. And Carlos Moino--he's not a lawyer; correct? 20 A. He was. He's no longer alive. He was an 21 adviser on--an adviser to Overseers with 22 specialization in the railway sector.</p>	<p style="text-align: right;">1104</p> <p>11:34:45 1 A. It is not up to the Department to continue to 2 accept it, but up to the Overseer. He's the one 3 giving the instructions. 4 Q. Okay. So, Dr. Gramajo advised you that 5 notwithstanding the irregularities that he was aware 6 of in the Contracts, he advised you to continue to 7 accept the Canon payments from Ferrovías; correct? 8 A. Not--he did not in particular because the 9 intension behind the Department of Finance is to 10 receive resources based on equipment use. 11 Q. So, again, I'm trying to understand your 12 testimony. Did Dr. Gramajo, after advising you of the 13 irregularities, the alleged irregularities, in 14 Contracts 143 and 158 ever tell you to not accept any 15 Canon payments from Ferrovías pursuant to those 16 Contracts? 17 A. I don't remember him indicating that to me. 18 Q. Now, you also were asked some questions from 19 Secretary Eizenstat about some of the differences 20 between the financial terms between Contract 41 and 21 Contracts 143 and 158. Do you recall your testimony 22 about that?</p>

<p style="text-align: right;">1105</p> <p>11:36:25 1 A. Yes. I indicated that the basis for 2 calculation was different. 3 Q. Isn't it true that one of the other 4 differences between the financial terms of the two 5 agreements, Contract 41 and 143, is that, under 6 Contract 41, Ferrovías was to pay the Canon fee for 7 use of the equipment to the Trust as opposed to FEGUA; 8 correct? 9 A. That is correct, but they were paying it to 10 FEGUA. 11 Q. And then in Contract 143, that term was 12 changed from Contract 41, and Contract 143 now 13 required Ferrovías to pay the Canon directly to FEGUA 14 as opposed to the Trust; correct? 15 A. There was no change. They continued to pay 16 the same way. 17 Q. Well, again, let me show you--refer you again 18 to Exhibit R-10, which is Tab 7. It's your letter to 19 Dr. Gramajo. And I'm referring to Item 5. 20 And in this paragraph, in this letter that 21 you wrote to Dr. Gramajo, you suggested that the 22 Equipment Contract be renegotiated for FEGUA to</p>	<p style="text-align: right;">1107</p> <p>11:40:08 1 MR. SALINAS-SERRANO: Mr. President, we're 2 getting the next Witness from downstairs. 3 (Pause.) 4 PRESIDENT RIGO: While we are waiting for the 5 Witness, you asked as a question whether what type of 6 format we wanted the Core Bundle. The preference of 7 the Tribunal is for the A5 with the spiral back. 8 MR. ORTA: Okay. Thank you. 9 PRESIDENT RIGO: Thank you. 10 MIGUEL ÁNGEL SAMAYOA, RESPONDENT'S WITNESS, CALLED 11 PRESIDENT RIGO: Good morning, Mr. Samayoa. 12 I'm going to ask you to read the statement you have in 13 front of you. 14 THE WITNESS: Good morning, honorable Members 15 of the Tribunal, and good morning to the rest of the 16 participants. 17 I solemnly declare upon my honor and 18 conscience that I shall speak the truth, the whole 19 truth, and nothing but the truth. 20 PRESIDENT RIGO: Thank you very much. 21 Mr. Orta, Mr. Salinas? 22 MR. SALINAS-SERRANO: Thank you,</p>
<p style="text-align: right;">1106</p> <p>11:38:15 1 receive a specific royalty and not go back to 2 Ferrovías through the figure of a Trust; correct? 3 A. Allow me to read Item Number 5. 4 (Witness reviews document.) 5 A. That is correct, and also to be approved by a 6 Government Agreement. 7 Q. So, just to be clear, you thought it was 8 important in terms of renegotiating the Equipment 9 Contract that the terms reflect that the payments from 10 FVG/Ferrovías for use of that equipment go directly to 11 FEGUA and not to the Trust as provided in Contract 41; 12 correct? 13 A. That's what they had been doing so far, and 14 that was part of the terms, so that Ferrocarriles de 15 Guatemala could work--could operate since the 16 conditions had not been fulfilled as stated in the 17 bid, in their bid. 18 MR. STERN: Thank you. 19 PRESIDENT RIGO: Thank you very much, 20 Mr. Carrillo. You are excused. 21 THE WITNESS: Thank you. 22 (Witness steps down.)</p>	<p style="text-align: right;">1108</p> <p>11:46:18 1 Mr. President. 2 DIRECT EXAMINATION 3 BY MR. SALINAS-SERRANO: 4 Q. Mr. Samayoa, good morning. Yes, still good 5 morning. 6 A. Yes, good morning. 7 Q. Mr. Samayoa, can you tell the Tribunal how 8 long you have worked at FEGUA. 9 A. I started in 2000, about 11 years. 10 Q. What position do you hold at FEGUA? 11 A. I am the Chief of the Department of 12 Engineering. 13 Q. And in general terms, can you tell the 14 Tribunal, as head of the Engineering Department, what 15 your duties include. 16 A. I have to watch for the maintenance of the 17 tracks and also to conduct reports--to develop reports 18 for my supervisors. 19 Q. And what do you do to watch for the 20 maintenance of the tracks and conduct the reports for 21 your supervisors? 22 A. We have constant visits to the railroad. We</p>

<p style="text-align: right;">1109</p> <p>11:48:03 1 walk the area so as to be more objective in our 2 assessment. And based on what we see, we draft 3 reports, and these reports are sent to the 4 supervisors. 5 Q. Do you make these visits to the railroad to 6 the rail line alone, or do you go with other people 7 from FEGUA? 8 A. These visits are conducted by the Department 9 of Engineering that I am in charge of. 10 Q. When you say that you conduct those visits 11 with the Engineering Department, you go with other 12 people employed at FEGUA at the Engineering 13 Department? 14 A. Correct. 15 Q. Now, on what basis, sir, do you draw from--is 16 it educational or experience--in order to conduct 17 these reports? 18 A. I was trained on railroads of Guatemala at 19 the very beginning, and then I have the experience of 20 knowing the railroad in Guatemala, and the 21 infrastructure. Yearly, we have visits throughout the 22 Republic. 60 or 74 miles, and then we have 300</p>	<p style="text-align: right;">1111</p> <p>11:51:38 1 Q. Good morning, Mr. Samayoa. We are providing 2 to you a book of documents. We may refer to some of 3 these documents during the questioning. There are 4 numbered tabs in the binder we are giving you. You 5 will see the Spanish version of each document after a 6 blue tab. The English appears first, and then the 7 Spanish after the blue tab in the binder. 8 For purpose of this questioning, we will be 9 referring to the English, and you can refer to the 10 Spanish that's in your binder. Do you understand? 11 A. Correct. 12 Q. Now, sir, you're not a railway engineer, are 13 you? 14 A. Correct. 15 Q. You're an agricultural engineer; right? 16 A. Yes, agricultural engineer. 17 Q. You have never done any railway track design, 18 have you? 19 A. Correct. 20 Q. You've never been responsible for any actual 21 railroad rehabilitation, have you? 22 A. Starting when I began working for FEGUA,</p>
<p style="text-align: right;">1110</p> <p>11:50:13 1 kilometers of railroads monthly that are covered, and 2 we have different starting points, and the reports are 3 documented with the accurate positioning along the 4 railroad. Sometimes we have GPS coordinates, and all 5 the documents have pictures, photographs of the area. 6 Q. You said at the very beginning you were 7 trained. Has that training continued? Do you 8 take--have you taken courses or seminars that expand 9 upon your knowledge and experience with regards to the 10 railroad? 11 A. Correct. I have participated in various 12 seminars. We were able to attain a certification by 13 the Latin American Association of Railroads, given the 14 experience gathered over the last 10 years of 15 experience with the Guatemalan infrastructure of 16 railroads. 17 MR. SALINAS-SERRANO: Thank you, Mr. Samayoa. 18 I have no further questions. 19 PRESIDENT RIGO: Ms. Murchison. 20 MS. MURCHISON: Thank you. 21 CROSS-EXAMINATION 22 BY MS. MURCHISON:</p>	<p style="text-align: right;">1112</p> <p>11:53:15 1 FEGUA was in charge of the railroad system, which is 2 verified fulfillment with the Contract compliance with 3 the Contracts, but they were not in charge of the 4 operations of the railroad; therefore, that was not 5 done by us. 6 Q. Sir, you became Head of FEGUA's Engineering 7 Department in January 2000, didn't you? 8 A. In January 2000, I started to work with FEGUA 9 as adviser to the Department of Engineering. In 2002, 10 I became the Chief of the Department of Engineering, 11 and I received different training by Mr. Moino 12 Gonzalez who was certified by AREMA and other agencies 13 within the railroad sector. 14 Q. So, in 2002, you became Head of or Chief of 15 the Department of Engineering for FEGUA; is that 16 right? 17 A. Correct. 18 Q. And when you became Chief of FEGUA's 19 Engineering Department, FEGUA wasn't providing any 20 railroad operations or services, was it? 21 A. Correct. 22 Q. During the entire time that you've worked for</p>

<p style="text-align: right;">1113</p> <p>11:54:59 1 FEGUA, it never provided any railroad operations or 2 services, did it? 3 A. Correct. 4 Q. So, you've never been responsible for any 5 actual operation of a railway, have you, sir? 6 A. FEGUA did not operate railroads; therefore, I 7 was not in charge of doing it. 8 Q. And you didn't do it anywhere else, did you, 9 Mr. Samayoa? 10 A. Correct. 11 Q. Okay. Let's go to Tab Number 5 in your 12 binder, please. That's Exhibit R-111. This is an 13 exhibit of FEGUA's Engineering Department presentation 14 from--it says, 2001 to 2007. It purports to be a 15 documents that is the worst derailments, or documents 16 the worst derailments which occurred between this 17 period, 2001 to 2007. 18 Do you see that exhibit in your binder? 19 A. Correct. 20 Q. Was this presentation Exhibit R-111 prepared 21 under your direction and supervision, sir? 22 A. Correct.</p>	<p style="text-align: right;">1115</p> <p>11:58:37 1 railroad accident investigations, sir? 2 A. As a matter of fact, between 2000 and 2002, I 3 was a member--I participated in the training--in the 4 training program and what could lead to a derailment 5 and its consequences. 6 Q. Isn't it true that you have only one 7 certification in the area of railroads, Mr. Samayoa? 8 A. At the International level, yes, that is 9 correct. 10 Q. At any level; is that right, sir? 11 A. I have participated. I have attended several 12 seminars on trains and metro systems in Guatemala. 13 Q. So, is that a yes, you only have one 14 certification in the area of railroads? 15 A. Correct. 16 Q. And you received that one certification in 17 2010; right? 18 A. Correct. This certification was awarded 19 after the work carried out during my tenure as a Chief 20 of the Department of Engineering for the railroad of 21 Guatemala. 22 Q. So, you received your one certification in</p>
<p style="text-align: right;">1114</p> <p>11:56:33 1 Q. Who asked you to prepare it? 2 A. This was part of the responsibilities I had. 3 That was part of the responsibilities I had. I had to 4 report back to the supervisors by summarizing the 5 activities, and that's the reason why this is one of 6 the most important documents because we had several 7 derailments on a daily basis. 8 Q. So, my question is, sir: Who asked you to 9 prepare Exhibit R-111? 10 A. My supervisors, or the Higher Authorities. 11 Q. What are their names, please? 12 A. I don't remember who was in 2007, whether it 13 was the Overseer back then, Mr. Martinez. 14 Q. So, you don't remember? Is that your answer? 15 A. I do remember, but I don't remember the name. 16 I think it is Elder Martinez. I think that he was the 17 supervisor back then. 18 Q. So, Overseer Martinez, you think he asked to 19 you to prepare this Report; is that right? 20 A. Correct. 21 Q. Now, before you prepared or caused Exhibit 22 R-111 to be prepared, had you had any training on</p>	<p style="text-align: right;">1116</p> <p>12:00:16 1 the area of railroads after you had prepared this 2 Worst Derailments Report documenting incidents in 2001 3 to 2007; right? 4 A. Yes. 5 Q. Isn't it true, sir, that Exhibit R-111 was 6 created solely for the purpose of aiding the 7 Respondent in this arbitration? 8 A. Could you please repeat the question? 9 Q. Sure. 10 Isn't it true that you created Exhibit R-111 11 solely for the purpose of aiding the Respondent, the 12 Government of Guatemala, in this arbitration 13 proceeding? 14 A. No, that is not true. 15 Q. Well, when you prepared this presentation 16 back in July 2007, you knew that the Claimant, RDC, 17 had already filed its CAFTA arbitration claim against 18 the Government of Guatemala on June 2007; right? You 19 knew that. 20 A. I knew it, but that issue wasn't all that 21 significant for us. That corresponded to the Legal 22 Department of FEGUA, and we in the Engineering</p>

<p style="text-align: right;">1117</p> <p>12:01:46 1 Department just based ourselves on supervision and 2 information on results. At no time was it thought in 3 the Engineering Department that this would be part as 4 you've mentioned but merely a technical report. 5 Q. Sir, when you prepared this 2007 Report, you 6 knew that Ferrovías Guatemala--and I'm going to refer 7 to them as FVG--was planning on shutting down its 8 railroad operations in September 2007; correct? 9 A. No, I didn't know that. 10 Q. Well, you know that FVG shut down its 11 operations in September 2007, don't you? 12 A. What was well-known was that Ferrovías was 13 gradually providing less and less service. 14 Q. Sir, as Head of FEGUA's Engineering 15 Department, you didn't know that FVG shut down its 16 railroad operations in September 2007? 17 A. Yes, but once they had completely shut down 18 the operations and made it public, but prior to that 19 date it was only known they were diminishing the rail 20 service. 21 Q. So, at the time that you prepared this 2007 22 Report, you knew that FVG was diminishing its railroad</p>	<p style="text-align: right;">1119</p> <p>12:05:26 1 to Ferrovías to provide that information. 2 Q. So, is it your testimony that you know that 3 Exhibit R-111 was provided to FVG before this 4 litigation? Is that what you're saying? 5 A. No. What I'm saying is that the reports, 6 which are the basis for summary, which is this R-111, 7 were the basis for this. These are just the most 8 important incidents because derailments were daily. 9 The Engineering Department reported and made 10 recommendations that were forwarded either to the 11 Legal Department or to Ferrovías asking them for 12 information in this regard. 13 Q. So, my question is: Isn't it true that this 14 Report, Exhibit R-111 which has, what you call the 15 most important incidents, was never sent to FVG? 16 MR. SALINAS-SERRANO: Objection. I believe 17 this is the third time the question has been asked and 18 answered. 19 MS. MURCHISON: It hasn't, and I would like 20 the Witness to answer, please. 21 MR. SALINAS-SERRANO: I believe the Witness's 22 last answer started with no to Counsel's question, and</p>
<p style="text-align: right;">1118</p> <p>12:03:36 1 operations at that time, didn't you? 2 A. It was well-known in the field work that we 3 would do that there was less rail service than 4 normal--not then normal, but that there was a 5 significant decline. But it wasn't until they made it 6 public did I find out that they were shutting down 7 operations. 8 Q. So, that's a yes, it was well-known, and you 9 knew when you prepared this 2007 Report, that there 10 was a significant decline, as you said--right?--in 11 FVG's operations at that time. Right? 12 A. Correct, diminution or reduction. 13 Q. Sir, FEGUA never shared this Report, Exhibit 14 R-111, with FVG before this litigation, did it? 15 A. This Report was prepared based on different 16 prior reports. This is a summary of the most 17 important ones. I prepared the reports, the 18 Engineering Department prepared the reports, and they 19 were sent to the immediate superior, and the 20 recommendation--well, I recall at the end they were 21 always forwarded to the Legal Department for them to 22 do as they saw fit, and in others they were forwarded</p>	<p style="text-align: right;">1120</p> <p>12:06:45 1 then he explained what he had said before. It's been 2 asked and answered three times at least. 3 MS. MURCHISON: I don't see that reflected on 4 the transcript. So if it's a no, he can say no now, 5 then we can move to the next question. 6 MR. SALINAS-SERRANO: (Reading): 7 "QUESTION: So is it your testimony that 8 you know that Exhibit R-111 was provided to 9 FVG before this litigation? Is that what 10 you're saying? 11 ANSWER: No. What I'm saying is" et 12 cetera. 13 MS. MURCHISON: That's not my question. My 14 question now is: It was not sent to FVG; isn't that 15 correct? He hasn't answered that question. The 16 question he answered was whether he was saying that he 17 knew that it had been sent. He said no, he didn't 18 know that it had been sent. So I'm clarifying for the 19 record: it was not sent, was it? 20 PRESIDENT RIGO: Please answer the question. 21 THE WITNESS: It wasn't up to me to know 22 whether it was sent or not. I would just take it to</p>

<p style="text-align: center;">1121</p> <p>12:07:46 1 my immediate superior. And so I don't know whether it 2 was sent or not. I can't say yes or no. 3 BY MS. MURCHISON: 4 Q. Sir, you don't dispute that FEGUA was 5 obligated to remove squatters from the right of way, 6 do you? 7 A. It was not FEGUA, but rather the Guatemalan 8 State. 9 Q. So you agree that it was the Government of 10 Guatemala's responsibility to remove the squatters 11 from the right of way, don't you? 12 MR. SALINAS-SERRANO: Object on the grounds 13 that it calls for legal conclusion. 14 THE WITNESS: Correct. 15 PRESIDENT RIGO: Speak up if you would like 16 to make a comment. 17 MS. MURCHISON: I think he answered the 18 question that he thought it was the Government's 19 responsibility. 20 PRESIDENT RIGO: I thought so. 21 BY MS. MURCHISON: 22 Q. So let's go to Paragraph 34 of your Second</p>	<p style="text-align: center;">1123</p> <p>12:11:27 1 work was done, there would--squatters would reoccupy 2 the prices as has happened elsewhere. 3 Q. You knew that squatters had been occupying 4 the right of way for some time, even before FVG took 5 over operations; right, sir? 6 A. That is right. Evictions were carried out 7 before Ferrovías began to work; and, where work was 8 done, there was no problem. There was an eviction in 9 1999 in the southern part of the Central Station among 10 other evictions for rehabilitation of the railway. 11 And then there were subsequent evictions, but 12 Ferrovías did not work in those areas, and so there 13 was no point in having a new eviction. We had to have 14 the assurance that they would be working right--right 15 after that to develop the railway in order to take the 16 pertinent actions. 17 Q. So, then, sir, you were aware of the 18 evictions that were occurring; is that your testimony? 19 A. Yes. Indeed, I participated in several of 20 them which were carried out by FEGUA or promoted by 21 FEGUA. 22 Q. Okay. Let's take down this exhibit, please.</p>
<p style="text-align: center;">1122</p> <p>12:08:52 1 Statement. That is in the binder under Tab 2. 2 I would like you to read silently to yourself 3 the first sentence in Paragraph 34 and look up to me 4 to let me know when you have finished, sir. 5 A. Who am I to look to? Or read? I'm sorry. I 6 didn't understand. 7 Q. I'll repeat. 8 If you would please look at Paragraph 34 in 9 your Second Statement, it's under Tab 2 in your 10 binder. And I would like you to read to yourself 11 silently the first sentence of Paragraph 34 and then 12 look up to let us know when you have finished. 13 (Witness reviews document.) 14 Q. Now, isn't it true, sir, that even though you 15 agree that it was the Government's responsibility to 16 remove the squatters, you believe there was no point 17 spending time and resources to carry out evictions of 18 squatters if FVG, the company that was compelled to 19 develop the railroad did not carry out rehabilitation 20 work on the evacuated areas? That was your belief; 21 correct? 22 A. Yes. Since--if no immediate rehabilitation</p>	<p style="text-align: center;">1124</p> <p>12:13:08 1 Sir, you're aware that after the Lesivo 2 Resolution, FEGUA Overseer Roberto Martinez expressed 3 concern to FVG about the increase in the squatter 4 problem on the right of way, aren't you? 5 A. Yes. 6 Q. Let's go to Tab 6, Exhibit R-182, which is a 7 chart that was prepared by the Government. 8 Now, sir, this document, which is Exhibit 9 R-182, purports to summarize the criminal proceedings 10 brought by the Government to remove squatters or 11 trespassers from the right of way; correct? 12 A. Correct. 13 Q. You don't dispute the accuracy of the 14 information contained in Exhibit R-182, do you? 15 MR. SALINAS-SERRANO: Objection. There is no 16 foundation, it hasn't been established that the 17 Witness prepared it, much less reviewed the contents 18 or the details or the accuracy of this information. 19 MS. MURCHISON: There's foundation about his 20 ability to testify. Indeed, he testified that he knew 21 about the eviction, and he participated in them, and 22 he told us about some of them a few questions ago.</p>

<p style="text-align: center;">1125</p> <p>12:14:51 1 MR. SALINAS-SERRANO: I'm sorry, he said he 2 participated in some evictions and that he knew about 3 some evictions. Yet there has been no testimony about 4 the Witness's knowledge of this document. 5 MS. MURCHISON: This is the Respondent's 6 document. 7 MR. SALINAS-SERRANO: That makes no 8 difference whatsoever. 9 MS. MURCHISON: This is cross-examination, 10 and I would like to be able to inquire what he says is 11 his knowledge. 12 PRESIDENT RIGO: Would you start by asking if 13 he has any knowledge about these documents? 14 BY MS. MURCHISON: 15 Q. Mr. Samayoa, have you ever seen Exhibit R-182 16 before? 17 A. No. I had not seen this. That data is 18 handled by the Legal Department, as it says in the 19 title. It says "Criminal Files, Legal Department, 20 Crime of Trespassing." 21 Q. You were reporting squatter crimes to the 22 Legal Department, weren't you?</p>	<p style="text-align: center;">1127</p> <p>12:17:38 1 in Escuintla. Those are the ones that come to mind 2 right now. 3 Q. Do you have knowledge about how many 4 evictions the Government of Guatemala brought from the 5 time that the Lesivo Declaration was published in 6 August 2006 until FVG shut down operations in 7 September 2007? 8 A. In total, I don't remember. 9 Q. Isn't it true that the Government of 10 Guatemala only brought two actions to remove 11 squatters? Do you remember that? About two? 12 A. I do remember those, the ones that I 13 mentioned. Nonetheless, there were small individual 14 trespassing that occurred during the time that FVG was 15 operating the rails. And for certain reasons, for 16 example, the location of electricity poles in the 17 middle of the right of way, and this expanded the 18 invasions because people adduced that since the posts 19 were between the two rails, that the railroad would 20 not be passing through again. 21 So, this led to more situations of squatters, 22 and the posts ran from the Atlantic to the Pacific in</p>
<p style="text-align: center;">1126</p> <p>12:16:11 1 A. When new invasions were detected, yes. 2 Immediately the Legal Department would take the 3 actions that they considered appropriate. My only 4 duty was to report. 5 Q. Okay. And why don't you take a minute to 6 look at the Exhibit R-182 and tell me if you have any 7 reason to believe that the information contained in it 8 is inaccurate, based on what you know about the 9 evictions. And you do know something, is what I 10 understand your testimony was earlier. 11 MR. SALINAS-SERRANO: Objection. Same 12 question, same objection, no foundation as to the 13 Witness' prior knowledge of this document. 14 MS. MURCHISON: I'm asking him about that 15 now. 16 PRESIDENT RIGO: Objection is sustained. 17 BY MS. MURCHISON: 18 Q. Sir, do you know how many evictions the 19 Government brought against squatters during the time 20 that FVG operated the railway? 21 A. The first eviction took place in the capital 22 city, in Zone 4 and Zone 8 of Guatemala City, another</p>	<p style="text-align: center;">1128</p> <p>12:19:12 1 the middle of the railway. 2 Q. When you said "I do remember those", are you 3 referring to those two? 4 A. Those two, yes, it seems to me that the first 5 one--I'm not certain about the date. I note this. It 6 was 1999 before I went to work with the railroad, and 7 the other I don't remember the date. 8 Q. So, is it your testimony that you remember 9 only two squatter evictions being brought by the 10 Government; is that your memory, only two, as far as 11 you can recall? 12 MR. SALINAS-SERRANO: Objection. Misstates 13 the Witness's testimony. The Witness said he recalls 14 two. He has not testified that he recalls that those 15 were the only ones made. 16 MS. MURCHISON: My question is if he only 17 recalls two. 18 PRESIDENT RIGO: Would you reformulate the 19 question, please. 20 BY MS. MURCHISON: 21 Q. Mr. Samayoa, you don't remember any more than 22 two evictions that the Government of Guatemala brought</p>

<p style="text-align: center;">1129</p> <p>12:20:33 1 to remove squatters during the time that FVG operated 2 the railroad, do you? 3 A. I only remember those two evictions because 4 they were massive evictions with the advantage that 5 they were not violent but included the participation 6 of all entities, including human rights in order to 7 avoid any problem, the police. These were the larger 8 scale ones because then there would be trespassing by, 9 say, a family and a series of acts which is handled by 10 Legal Department. I remember these because there were 11 so many families that had to be moved. 12 Q. So, you do remember that there were many more 13 than two squatters that needed to be removed while FVG 14 was operating the railway, don't you? 15 MR. SALINAS-SERRANO: Objection. Misstates 16 the testimony. The Witness has not testified that 17 there were only two single squatters. He has 18 testified that there were two massive removals of 19 squatters, not two squatters. 20 MS. MURCHISON: I'm not misstating testimony. 21 I'm asking the question. I'm not asking about his 22 testimony. I'm asking whether he remembers that there</p>	<p style="text-align: center;">1131</p> <p>12:23:33 1 duty was just to report the new squatter situations. 2 Q. So, you don't know anything about the legal 3 action that the Government of Guatemala was taking to 4 remove the squatters? 5 A. No. 6 Q. Do you know anything about any action that 7 the Government was taking to remove the vandals? 8 MR. SALINAS-SERRANO: Objection. There has 9 been no testimony about vandals. 10 BY MS. MURCHISON: 11 Q. Well, sir, there were vandals on the right of 12 way, weren't there? There was lots of theft, wasn't 13 there? 14 A. Yes, there was theft because there was no 15 constant supervision by those who had the use, 16 enjoyment of the rail infrastructure. 17 Q. Do you know whether there were constant 18 arrests of the people who were stealing on the right 19 of way? 20 A. Yes. FEGUA--I don't have hard figures 21 because this also corresponds to the Legal Department, 22 but there were reports, and reports continued of any</p>
<p style="text-align: center;">1130</p> <p>12:22:00 1 were much more than two squatters, many more than two 2 squatters that needed to be removed while FVG was 3 operating the railway. 4 MR. SALINAS-SERRANO: Again it misstates the 5 Witness's testimony. There were not two squatters. 6 PRESIDENT RIGO: If you refer to the squatter 7 removal that the Witness had told us that he recalls, 8 he recalls that there were more than two squatters. 9 And in terms of how it is phrased, the question, I 10 don't quite understand, then, how that follows from 11 your previous question and the answer of the Witness. 12 BY MS. MURCHISON: 13 Q. Mr. Samayoa, while you were inspecting the 14 railway as Head of FEGUA's Engineering Department, you 15 observed many squatters along the right of way, didn't 16 you? 17 A. Yes, that's right. 18 Q. You didn't observe the Government removing 19 them, did you? 20 A. As I repeat, I participated in the two 21 largest-scale evictions. The other actions were legal 22 actions that were beyond the scope of my duties. My</p>	<p style="text-align: center;">1132</p> <p>12:25:04 1 illegal activity that might be seen in the railway. 2 FEGUA has several cases in which there are 3 persons who have been accused of such offenses, and it 4 wasn't just from the moment that Ferrovias halted 5 operations. This came from the time I began 6 supervising the rails, the Year 2000. Persons were 7 arrested, we participated in hearings, and the whole 8 judicial process. 9 And there are also persons who have been 10 convicted. How many, that I can't tell you. 11 Q. Are you prepared to testify about the number 12 of criminal actions that the Government brought 13 against vandals or people who were engaged in theft on 14 the right of way while FVG was operating it? Can you 15 testify to that? 16 A. No, because it wasn't the role of the 17 Engineering Department, nor is it today. That's a 18 legal matter that doesn't correspond to a technical 19 matter. 20 Q. Now, Mr. Samayoa, you believe that FVG failed 21 to properly repair, maintain and rehabilitate the 22 right of way, don't you?</p>

<p style="text-align: right;">1133</p> <p>12:26:48 1 A. Yes. 2 Q. And you talk about that in your statement, 3 don't you? 4 A. In my statements, what's done--what's there 5 is based on reports. There was rehabilitation of the 6 railway, but in a deficient manner. It was just to 7 complete a phase, but it wasn't a sure or safe--it 8 wasn't assuring safe and efficient transport as was 9 hoped would be the case in Guatemala. 10 Q. Sir, you knew that FEGUA, for whom you 11 worked, was supposed to pay money into a Trust that 12 FVG would have used to help rehabilitate, maintain, 13 and operate the railway, don't you? 14 MR. SALINAS-SERRANO: Objection. Goes beyond 15 this Witness' direct testimony. There is absolutely 16 no testimony from him in his Written Statements about 17 Trust Fund payments. 18 MS. MURCHISON: This Witness talks about all 19 of the things in his statements that he believes FVG 20 should have done and then does not talk about the 21 money that would have been used to do these things, 22 and the money that was supposed to be paid, and I'm</p>	<p style="text-align: right;">1135</p> <p>12:29:08 1 MS. MURCHISON: This is a factual question 2 about what he knows, and this is cross-examination. 3 PRESIDENT RIGO: Just for the time, et 4 cetera, you have about 20 minutes left on the 5 cross-examination. I said early in the morning that 6 we need to break at 20 minutes to 1:00. It's 10 7 minutes left. I don't know--but it would be helpful, 8 I think, if--maybe if you could finish with the 9 cross-examination at least this morning and that you 10 concentrate on the engineering side rather than 11 whether he knew or not the issues of finance. 12 MS. MURCHISON: Okay. So no inquiry on-- 13 PRESIDENT RIGO: Well, I'm not telling what 14 to do in terms of cross-examining, but that you are 15 aware of the time available and we can continue in the 16 afternoon, if so we prefer, I don't want to deprive 17 you of the time allotted for that, but also within the 18 overall testimony of this person and the Report he has 19 written. He was the head of the Engineering 20 Department, and please bear that in mind in terms of 21 the question. 22 BY MS. MURCHISON:</p>
<p style="text-align: right;">1134</p> <p>12:28:11 1 just highlighting that. 2 MR. SALINAS-SERRANO: She might want to 3 highlight it, but that's not the proper subject for 4 cross-examination of this Witness. 5 (Tribunal conferring.) 6 MS. MURCHISON: He can say if he doesn't know 7 this fact. 8 PRESIDENT RIGO: Why don't you rephrase your 9 question in a factual manner. 10 MS. MURCHISON: Okay. 11 BY MS. MURCHISON: 12 Q. Did you know that FVG was supposed to 13 pay--let me ask you this: FEGUA didn't pay any money 14 into a Trust, did it, as far as you know? 15 MR. SALINAS-SERRANO: Objection. Goes beyond 16 this Witness direct testimony in this proceeding. No 17 testimony about this Witness' knowledge of payments or 18 anything of the sort. He's the head of the 19 Engineering Department. 20 MS. MURCHISON: He knows about it. 21 MR. SALINAS-SERRANO: They had a chance to 22 talk to the finance manager just before Mr. Samayoa.</p>	<p style="text-align: right;">1136</p> <p>12:30:46 1 Q. Please answer the question. 2 MR. SALINAS-SERRANO: I'm sorry. The 3 objection stands. This Witness--it's beyond the scope 4 of the direct examination, and I don't believe there 5 was a ruling on my objection on the record. 6 PRESIDENT RIGO: You are correct. I didn't 7 rule on it, and the objection stands. 8 MS. MURCHISON: Okay. 9 BY MS. MURCHISON: 10 Q. When you complain about FVG's work on the 11 railway, you say one of the things that you found was 12 that the tracks were of a different gauge, and I'm 13 talking about when you completed these inspections 14 back before you got your certification; is that one of 15 the things you complained about? 16 A. The gauge varied everywhere, and the sample 17 is taken, it was 300 meters to the south of the Las 18 Vacas bridge, and it was taken there because 19 80 percent of the material for anchoring a railway was 20 missing; that is to say, the nails, the boards. And 21 being missing, just as a matter of temperature, the 22 rails could open or close. When the rails open up,</p>

<p style="text-align: center;">1137</p> <p>12:32:06 1 this causes--well, it's the main cause of a 2 derailment. That's why the sample was taken there. 3 There are places where it was much more. And much 4 more than that is permissible if one has all of the 5 anchoring required, it could be up to two or 3 inches. 6 But in this case, where elements for keeping it fixed 7 to the ground are missing, it's a dangerous situation. 8 Q. Sir, gauge, all that means is the distance 9 between two rails; right? 10 A. It is the distance from the top section of 11 each rail. 12 Q. Okay. And you say that during one of your 13 inspections or during your inspections you found that 14 the distance between the rails, or the gauge, ranged 15 between 912 to 916 millimeters; right? 16 A. Correct. That is where the sample was taken, 17 and it was observed that the anchoring system was 18 missing. This is what I said in the response to your 19 previous answer. 20 Q. Sir, you believed that the distance between 21 the rails should have been 914 millimeters; right? 22 A. Theoretically, it's 914, but it can change.</p>	<p style="text-align: center;">1139</p> <p>12:35:43 1 existed. 2 There are photographs that show that there 3 are no nails, that the crossties are rotten, and that 4 was in the Report. Where the sample was taken, well, 5 a few days later, there was a problem with the train. 6 The train derailed, and it damaged the crossties and 7 the railway and the equipment. There are reports as 8 well. I don't know if those reports are included in 9 this document. 10 Q. Sir, is the one certification in the area of 11 railway that you have, is that an International 12 certification? 13 A. Yes, the Latin American Association of 14 Railways is an International organization dedicated to 15 railways. It includes all of the railways in Latin 16 America and the Caribbean. FEGUA was interested in 17 providing training and keeping up on railway matters, 18 and it was the Under-Secretary of that association, it 19 was appointed Secretary of that association, FEGUA 20 was, about a month ago. 21 Q. So, when we're talking about this 2 22 millimeter variation in the gauge, I want to know if</p>
<p style="text-align: center;">1138</p> <p>12:33:48 1 Perhaps not lower, but perhaps higher when the railway 2 has all its elements, not in the way that we saw the 3 rail at the time it was inspected. 4 Q. But surely, Mr. Samayoa, you understand that 5 some amount of variation in the gauge is acceptable. 6 It's not dangerous or doesn't constitute a deficiency. 7 Some amount is okay; right? 8 A. A variation is acceptable if, like I said 9 before, you have all the anchoring elements for a 10 rail. 11 Q. A gauge variation of 912 to 916 millimeters 12 really means that you found a variation of 2 13 millimeters narrow and 2 millimeters wide on the rails 14 that you inspected; isn't that right? 15 A. That is correct. There was no anchoring for 16 the railway. 17 Q. Mr. Samayoa, 2 millimeters is tiny, isn't it? 18 A. That is correct. 2 millimeters can vary just 19 by the action of the temperature because the 20 anchoring, the appropriate anchoring wasn't there with 21 the passage of the train, the rails open. At that 22 point and in other points, no anchoring lengths</p>	<p style="text-align: center;">1140</p> <p>12:37:28 1 you're aware that the Federal Railroad Administration 2 of the United States of America allows a variation of 3 12 millimeters narrow and 25 millimeters wide. Do you 4 know about that? 5 THE INTERPRETER: Could you repeat the 6 numbers, please. 7 BY MS. MURCHISON: 8 Q. Yes, I'm asking you if you're aware that the 9 Federal Railroad Administration of the United States 10 allows for a gauge variation of 12 millimeters narrow 11 and 25 millimeters wide. 12 MR. SALINAS-SERRANO: This time I'm fairly 13 certain it's exactly the same question that the 14 Witness answered. 15 MS. MURCHISON: I thought he asked me to 16 repeat the question. 17 THE INTERPRETER: It was the interpreter who 18 asked you to repeat the question. I apologize, ma'am. 19 MS. MURCHISON: Oh. 20 MR. SALINAS-SERRANO: I apologize. I didn't 21 hear that part. 22 PRESIDENT RIGO: Please answer. It's the</p>

<p style="text-align: center;">1141</p> <p>12:38:36 1 problem of understanding both sides at the same time. 2 So, go ahead. 3 THE WITNESS: Yes, that is correct. 4 Again, when the railway is perfectly anchored 5 and there is no lateral movement related to the 6 passage of a train, well, AREMA, the Association that 7 you mentioned, says this, and this happens in the 8 railways in the United States where all the anchorings 9 are there and all the security regulations are in 10 place, but that's not the way in which the railway was 11 working in Guatemala. There were no planks, no bolts. 12 The crossties were in a very poor state, no ballast, 13 no drainage. The weeds were there. Also, the wheels 14 were used up, and there were problems with the wheels 15 and the wheels sometimes tend to derail. 16 MS. MURCHISON: No further questions. You 17 answered yes. 18 MR. SALINAS-SERRANO: I just want to object 19 to counsel's last characterization of the Witness' 20 testimony. The Witness certainly answered a lot more 21 than just yes. 22 MS. MURCHISON: I was saying that he answered</p>	<p style="text-align: center;">1143</p> <p>12:41:01 1 PRESIDENT RIGO: So, just ask the question, 2 then. We have no questions. 3 MR. SALINAS-SERRANO: Then, very briefly, if 4 the Tribunal will allow me. 5 REDIRECT EXAMINATION 6 BY MR. SALINAS-SERRANO: 7 Q. Mr. Samayoa, remember Ms. Murchison asked you 8 a question about whose obligation it was to remove 9 squatters from the right of way. 10 MS. MURCHISON: Objection. That question was 11 objected to. The Tribunal did not allow me to ask 12 that. I rephrased to do a factual question, so I 13 object to any reference to it here in this redirect. 14 MR. SALINAS-SERRANO: I believe the Tribunal 15 actually allowed it, and the answer from the Tribunal 16 is the Witness has answered the question. The 17 Tribunal ultimately did not rule and pointed out that 18 the Witness had answered the question. I think at 19 this point I'm entitled to cross examine on it--sorry, 20 to redirect on it. 21 MS. MURCHISON: My objection stands 22 concerning any questioning of this Witness about the</p>
<p style="text-align: center;">1142</p> <p>12:40:08 1 yes to my question. And I see the rest. 2 No further questions. 3 PRESIDENT RIGO: You have no further 4 questions? 5 MS. MURCHISON: No further questions. 6 PRESIDENT RIGO: Thank you. That's well 7 within the schedule of the Tribunal that's 8 appreciated. 9 MS. MURCHISON: We do our best. 10 PRESIDENT RIGO: So, as with the prior 11 Witness, during the recess, the lawyers, for that 12 matter from either side, should avoid talking to the 13 Witness. 14 MR. SALINAS-SERRANO: Mr. President, I'm 15 sorry to interrupt you, go ahead. 16 PRESIDENT RIGO: No, no, no. What were you 17 going to say? 18 MR. SALINAS-SERRANO: I don't know if the 19 Tribunal will have questions for Mr. Samayoa, but I 20 have one question for Mr. Samayoa. So if you would 21 allow me to ask that question, we might be done with 22 Mr. Samayoa before the break.</p>	<p style="text-align: center;">1144</p> <p>12:41:58 1 obligations of FEGUA inasmuch as I wasn't allowed to 2 inquire about this. 3 MR. SALINAS-SERRANO: Then, Mr. President, 4 before you rule, I would just--if that is the case, I 5 would ask the Tribunal to strike the Witness' answer 6 to Ms. Murchison's question from the record. 7 MS. MURCHISON: And I ask that any answer to 8 the factual question remain because I rephrased the 9 factual question. 10 ARBITRATOR CRAWFORD: One of the purposes of 11 having a Tribunal is to listen to what the witnesses 12 have to say as distinct from striking or suppressing. 13 PRESIDENT RIGO: Mr. Salinas, could you ask 14 the Witness whether he knew as a matter of fact, et 15 cetera. 16 MR. SALINAS-SERRANO: My question was only 17 going to be, since I wasn't allowed to finish it, 18 whether whatever he answered to Ms. Murchison's 19 question was as a matter of his lay opinion and fact 20 and not based on a legal interpretation of the 21 Contracts. 22 PRESIDENT RIGO: I think we are going to cut</p>

<p style="text-align: right;">1145</p> <p>12:43:38 1 it off and sustain the objection, and just leave it 2 here. 3 So, thank you very much, Mr. Samayoa, for 4 being here. You can step down. 5 (Witness steps down.) 6 PRESIDENT RIGO: We will resume at 2:15. 7 (Whereupon, at 12:43 p.m., the hearing was 8 adjourned until 2:15 p.m., the same day.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">1147</p> <p>02:17:47 1 Statement, please, for the Tribunal. 2 A. Yes, it is. 3 Q. You ratify the contents of that Declaration 4 here before the Tribunal? 5 A. Yes, I do. 6 Q. I have just a few questions for you before 7 counsel for Claimant asks you questions. 8 First of all, back when FEGUA first put out 9 to bid the railway project, were you then the FEGUA 10 Overseer? 11 A. Yes, I was. 12 Q. Were you, in fact, the first Overseer that 13 FEGUA had? 14 A. I was not the first one. 15 Q. Could you describe for the Members of the 16 Tribunal what the purpose was of the international bid 17 that RDC and Ferrovias Guatemala eventually won. What 18 was the State attempting to accomplish through that 19 bid? 20 A. Basically, the goal was in this railway 21 corporation process to obtain a national or 22 international company that would have the capability</p>
<p style="text-align: right;">1146</p> <p>1 AFTERNOON SESSION 2 ANDREAS PORRAS, RESPONDENT'S WITNESS, CALLED 3 PRESIDENT RIGO: Good afternoon, Mr. Porras. 4 We are going to resume our hearing, and I am going to 5 ask you to read the statement you have in front of 6 you. 7 THE WITNESS: I solemnly declare upon my 8 honor and conscience that I shall speak the truth, the 9 whole truth, and nothing but the truth. 10 PRESIDENT RIGO: Thank you very much. 11 Mr. Orta? Mr. Salinas? 12 Mr. Orta. 13 MR. ORTA: Thank you. 14 DIRECT EXAMINATION 15 BY MR. ORTA: 16 Q. Mr. Porras, you may want to put on your 17 earphones so that you can hear the translation. 18 Good afternoon, sir. How are you? 19 A. Very well, thank you. 20 Q. Mr. Porras, first of all, you should have in 21 front of you a copy of your Witness Statement. Can 22 you please confirm that that is a copy of your Witness</p>	<p style="text-align: right;">1148</p> <p>02:19:32 1 to set--to put the railway in operation. The idea was 2 to have a nationwide railway system for freight, 3 passengers, so that the company that had the Usufruct 4 could, based on their abilities and capabilities as 5 businesspersons offer this, and the idea was to avoid 6 for third parties that could be intermediaries without 7 the capability to operate the railway be excluded from 8 the process. That was one of the main bases to launch 9 the bid the way it was launched. 10 Q. Now, in this arbitration in which you're 11 appearing, Claimant has suggested that it was not 12 responsible under the Contract that eventually came 13 out of this public bid that we were just discussing 14 for the railway project. And just to ensure that 15 we're talking about the same thing, I'm talking about 16 what eventually became known as Contract 402. 17 The Claimant in this case, RDC, has suggested 18 that it did not have the responsibility to carry out 19 the restoration of the railway in each of the five 20 phases that were proposed in its Business Plan. 21 My first question is: Were you involved in 22 negotiating Contract 402 on behalf of the Government?</p>

<p style="text-align: center;">1149</p> <p>02:21:33 1 A. Yes. I was the main person for the 2 negotiation of that contract. I had the opportunity 3 to negotiate the Contract with the local attorney for 4 RDC back then, Mr. Pedro Mendoza. He's the person who 5 conducted the negotiation the most. 6 Q. How do you respond to the allegation made in 7 this case by Claimant that they had no obligation 8 under Contract 402 to carry out the restoration of the 9 five phases that were projected in their Business 10 Plan? 11 A. Based on the principle guiding the 12 negotiation, Ferrovías had the obligation to comply 13 with the phases stated in the Business Plan because 14 that included the Bidding Terms where a Business Plan 15 was required, and that had to be complied with. It 16 represented five phases, and those five phases, based 17 on the Contract, established the tasks to be 18 accomplished throughout the schedule. 19 And clearly, all those phases had to be 20 rehabilitated so that the railway would be operational 21 throughout its infrastructure. 22 Q. To your recollection, sir, if for any</p>	<p style="text-align: center;">1151</p> <p>02:25:13 1 understand that there was a separate public bidding 2 process in relation to the railway equipment that was 3 given in Usufruct to Ferrovías Guatemala. Is that 4 your understanding? 5 A. That is correct. 6 Q. Can you explain why there was a separate 7 bidding process for the railway equipment. 8 A. First, because in the Bidding Terms for the 9 bidding process that led to Contract 402, it was said 10 that the railway equipment or the Rolling Stock was 11 going to be auctioned later on in a separate process 12 which was separate from the result of 402. 13 Second, because one of the intentions was as 14 good desire of those who participated in the process 15 as Guatemalans was to have the ability to attract an 16 offeror who could provide the standard gauge 17 equipment. Let's remember that Guatemala has a 18 narrower gauge, and this ends in Tecún Umán towards 19 the south of the country, so the idea would be for 20 someone to be interested in continuing with this 21 narrow gauge so that the exchange of goods would be 22 more efficient, and that's one of the reasons, based</p>
<p style="text-align: center;">1150</p> <p>02:23:06 1 reason-- 2 (Beeper beeps, and pause.) 3 Q. Sir, it might be useful, just because it 4 causes interference, if you could turn the phone off. 5 Great, thank you, sir. 6 Let me begin the question again. 7 To your understanding, if for any reason 8 Ferrovías Guatemala did not carry out the restoration 9 of one of the phases that--in terms of the land that 10 was given to them in Usufruct, if they didn't carry 11 out the restoration of the railway in those lands, was 12 there any recourse or penalty applicable to them that 13 you negotiated in the Contract? 14 A. Based on the Contract and what I can remember 15 is that as part of the sanctions or penalties in case 16 Ferrovías did not provide the railway service as some 17 portion of the national railway, as a consequence that 18 part of the land or that right-of-way had to be 19 returned to the State of Guatemala that had reserved 20 the right to have a third party in the Bidding Terms 21 to provide for this service--to provide the service. 22 Q. I want to turn to a different topic. I</p>	<p style="text-align: center;">1152</p> <p>02:26:49 1 on my recollection, why we separated goods--we 2 separated the fixed assets from the Rolling Stock. 3 Q. Do you recall whether the public Bidding 4 Terms, Terms of Reference for the public bid for the 5 equipment required that after the Contract was signed 6 by the Parties that it would have to be approved by 7 the President and his Cabinet? 8 A. Would you please repeat your question because 9 I am listening to you and to the interpretation at the 10 same time, and I got a little bit confused. 11 Q. Sure. 12 Do you recall whether in the separate public 13 bidding for the railway equipment it was a necessary 14 condition that the President and his Cabinet approve 15 that contract once it was signed by the Parties in 16 order for that agreement to enter into force? 17 A. Definitely, it was one of the conditions 18 established in the terms of the bidding process for 19 the railway equipment. The Contract, upon being 20 signed by the Parties, had to be approved by the 21 President of the Republic. It was stated in the terms 22 of the bidding, and that's the way we proceeded.</p>

<p style="text-align: center;">1153</p> <p>02:28:39 1 As Overseer, I had to request the President 2 to approve the Contract signed by governmental 3 agreement. 4 Q. And to your understanding, would the 5 Equipment Contract come into force if the President 6 did not approve it through an Executive Resolution? 7 A. Definitely, it would not enter into force if 8 there was no approval by governmental agreement of the 9 President of the Republic. The Contract had a 10 suspension clause that meant that until the approval 11 was granted by the President, it would not enter into 12 force. 13 Q. You mentioned that you made a request or 14 requests to the then-President of Guatemala to approve 15 the Equipment Contract; is that correct? 16 A. Yes, indeed. I requested in writing to the 17 President of the Republic to draft, issue, and sign 18 the Government Agreement, and I also did so by calling 19 his private secretaries and the staff from the 20 President's Office. And up to the day or moment 21 before the change of administration, I remember that 22 was January 2000, I remember being at the President's</p>	<p style="text-align: center;">1155</p> <p>02:32:16 1 by Ferrovías. Ferrovías via these requests--and I'm 2 sure they are included in the record--they asked me, 3 in my capacity as Overseer, to cooperate with them to 4 try and move forward with this project which was so 5 important for Guatemala. They wanted to be allowed to 6 use the traction and hauling equipment. 7 If I remember correctly, there are two 8 letters issued by me, both of them, at a request, 9 prior request, that was put forth by Ferrovías. I was 10 just cooperating in that regard. 11 Additionally, these letters were not issued 12 out of a unilateral decision by me. I was advised by 13 a group of lawyers and experts in FEGUA who told me 14 how to draft and then sign these letters. 15 Q. The letter agreements that are in the record 16 and to which you've made mention talk about a fee or a 17 Canon fee for use of the equipment that was equivalent 18 to the Canon fee that was set forth in Contract 41. 19 Can you tell the Tribunal whose idea it was to put 20 that Canon fee in those letter agreements, to your 21 knowledge. 22 A. As I mentioned before, it was just a Reply to</p>
<p style="text-align: center;">1154</p> <p>02:30:18 1 office trying to have him sign this. 2 Q. Do you have any knowledge as to why the 3 then-President of Guatemala did not approve Contract 4 41 based on your requests? 5 A. I don't have the faintest idea. I don't know 6 the reasons why he did not sign that. 7 Q. I have one remaining area of inquiry, just a 8 few questions about this. You mentioned that Contract 9 41 did not come into force because it had not been 10 approved by the President through an Executive 11 Resolution. I understand from reading your Witness 12 Declaration that you authorized, as the then-Overseer 13 of FEGUA for Ferrovías Guatemala, to use the railway 14 equipment through a series of letter agreements. Can 15 you please explain for the Tribunal the origin of 16 those letter agreements and what you were, as the 17 then-Overseer of FEGUA, attempting to accomplish by 18 signing those letter agreements. 19 A. I think a clarification is in order here, for 20 starters. The reason why those letters or those 21 authorizations were issued by me in my capacity as 22 Overseer at the time had to do with requests put forth</p>	<p style="text-align: center;">1156</p> <p>02:34:09 1 a request put forth by Ferrovías. If, in the letter 2 that I signed, it was established that a payment of a 3 Canon was accepted for use of the equipment or the 4 railway equipment, it was there because Ferrovías 5 requested it. 6 MR. ORTA: Thank you. I have no further 7 questions. 8 PRESIDENT RIGO: Thank you. Mr. Foster. 9 MR. FOSTER: Thank you, Mr. President. Thank 10 you, Adrian. 11 THE INTERPRETER: This is the interpreter, 12 Mr. Foster. Can you please speak closer to the mike. 13 MR. FOSTER: Sure. 14 CROSS-EXAMINATION 15 BY MR. FOSTER: 16 Q. Mr. Porras, I'm Allen Foster, and I will be 17 asking you a few questions this afternoon. You have 18 been given a book that contains some documents that I 19 may ask you about. 20 You were the FEGUA Overseer from 1997 to 21 2000; correct? 22 A. That is correct.</p>

<p style="text-align: right;">1157</p> <p>02:35:17 1 Q. And you're a lawyer; correct? 2 A. By training, yes, I'm a lawyer. 3 Q. And you're a Notary Public as well, aren't 4 you? 5 A. Yes, also. 6 Q. And you have a Master's of business 7 administration; correct? 8 A. That is correct. 9 Q. And you told Mr. Orta that you, on numerous 10 occasions, once in writing and several times orally, 11 you urged the President of the Republic to ratify the 12 terms of Deed 402; correct? 13 A. Of Deed 402 I did not mention that. He 14 talked about-- 15 Q. I apologize. 16 A. --Number 41. 17 Q. --Deed 41. I apologize. I misspoke. 18 You urged him on numerous occasions to ratify 19 Deed 41; correct? 20 A. Please repeat the question. Because of the 21 interruption I don't understand where we're going. 22 Q. Certainly.</p>	<p style="text-align: right;">1159</p> <p>02:38:04 1 submitted it to the President for its approval. 2 Q. Thank you. 3 Now, turning to another subject, it's true, 4 is it not, that while you were the FEGUA Overseer, you 5 told Mr. Posner words to the effect that, "You're a 6 hero for what you're doing for Guatemala." You said 7 that to him, didn't you? 8 A. I had many conversations with Mr. Posner. I 9 cannot assure that I told him that at a given point in 10 time. 11 Q. You don't deny you said that to him, do you, 12 sir? 13 A. I cannot deny it, and I cannot affirm it, 14 either. I had many conversations with Mr. Posner. I 15 do not have a clear recollection of each of those 16 conversations. Because of the way I am, I don't see 17 how that could be a statement made by me. I am not a 18 boastful person that would like to stand out by saying 19 such things, but we need to believe--well, I don't 20 consider that I said that. 21 Q. Well, I wasn't saying--suggesting that you 22 were boasting about yourself. I was suggesting that</p>
<p style="text-align: right;">1158</p> <p>02:36:30 1 You told Mr. Orta that, once in writing and 2 on numerous occasions orally, including one just 3 before the President went out of office, you urged the 4 President to ratify the terms of the Contract 41; 5 correct? 6 A. Yes, that is correct. 7 Q. And you certainly wouldn't have done that if 8 you thought there was anything wrong with the 9 Contract, would you? 10 A. The Contract met all the negotiation and bid 11 requirements, and that's why I, myself, submitted to 12 the President to be approved under an Executive 13 Resolution. I don't see any reason to say that the 14 Contract had something weird in it. 15 Q. Or improper in it. You didn't think there 16 was anything in Contract 41 that was improper, did 17 you? 18 A. If by "improper" you mean illegal, no. 19 Q. And you didn't think there was anything in 20 Contract 41 that caused lesion to the interest of the 21 State, did you? 22 A. Definitely not. If not, I wouldn't have</p>	<p style="text-align: right;">1160</p> <p>02:39:25 1 you were being complimentary to Mr. Posner. That's 2 what you were, in fact, complimentary to Mr. Posner 3 about what he was doing with the railroad, weren't 4 you? 5 A. First, you said that I said that I considered 6 myself a hero. So, to give a compliment, to be a 7 hero, that's from my viewpoint very different. 8 I fulfilled my obligations when I sent the 9 President of the Republic the Contract for him to 10 authorize it. 11 Q. I'm sorry, perhaps you misunderstood me. I 12 asked you if you hadn't told Mr. Posner that he was a 13 hero because of what he was doing for Guatemala in 14 connection with the railroad. Didn't you say that to 15 him? 16 A. I repeat: I held many conversations with 17 Mr. Posner. What I can say is what Mr. Posner and his 18 company did and the intentions they had at the 19 beginning of the negotiations with Guatemala, well, it 20 was a very good opportunity for the Guatemalan people 21 to have the railway, which is what both Parties were 22 seeking at the time. What happened later I don't</p>

<p style="text-align: center;">1161</p> <p>02:40:54 1 know. If Mr. Posner considers that he is a hero for 2 Guatemala, that's a very good thing. Unfortunately we 3 are here, and that heroism apparently is over. 4 Q. Let's turn to Contract 402. 5 PRESIDENT RIGO: May I interrupt just a 6 second. It's a matter for the record and for the 7 translation, there has not been interpreted correctly. 8 The compliment has been interpreted as Mr. Porras 9 being cumplido, that he understood that he was 10 fulfilling his duties. Well, here, really, in English 11 what was being said, it was a compliment, which is 12 totally different. Just I wanted to clarify that, you 13 may want to check the record to correct it 14 accordingly. 15 MR. ORTA: I invite Allen to re-ask the 16 question if he wants to get a sort of more accurate 17 record on that line of questioning. 18 MR. FOSTER: I'm sorry, I wasn't looking at 19 the--what was being translated here, but thank you. 20 BY MR. FOSTER: 21 Q. What I was asking you is not whether you told 22 Mr. Posner that he had completed the railroad, but</p>	<p style="text-align: center;">1163</p> <p>02:43:51 1 this was the result of a long negotiation process of 2 four to six months. The Contract could have changed 3 substantially in connection with certain terms during 4 the negotiations that took place. 5 Q. And you've already told us that you were the 6 principal negotiator on FEGUA's part; correct? 7 A. That is correct. 8 Q. And you were advised by lawyers when you were 9 negotiating; correct? 10 A. Of course. 11 Q. And you, of course, as we've discussed, were 12 a lawyer, yourself; correct? 13 A. I'm a lawyer by training, but in my functions 14 as FEGUA Overseer, I was an administrator, not a 15 lawyer. I wasn't acting as a lawyer. 16 Q. But you had the benefit of your legal 17 training, didn't you? 18 A. The benefit of my legal training, if it's for 19 my own benefit, yes, that's what I studied at the 20 university, but when I was acting for FEGUA, I always 21 followed the advice of FEGUA's lawyer, FEGUA's 22 lawyers.</p>
<p style="text-align: center;">1162</p> <p>02:42:18 1 whether you complimented him as being a hero for what 2 he was doing in the renovation of the railroad? 3 A. Yes. I gave him a compliment because we had 4 a very good relationship. You could see that because 5 I greeted Mr. Posner today, in spite of the 6 circumstances today. I considered that he did what he 7 did, and I say again he had good intentions at the 8 moment on the part of the Government of Guatemala. If 9 you want to consider that heroism, so be it. 10 Q. Let's turn to Contract 402. You, as 11 Overseer, entered into this agreement on behalf of 12 FEGUA; right? 13 A. That's correct. 14 Q. And the terms of the agreement were drafted 15 by the Government lawyers; correct? 16 A. That is correct. On the Bidding Conditions 17 and terms, there was a model agreement with which we 18 started the negotiations of the Contract-- 19 Q. And--I apologize. I thought you were done. 20 Please complete your answer. 21 A. The final version of the Contract is similar 22 to the one that is included in the Bidding Terms, but</p>	<p style="text-align: center;">1164</p> <p>02:45:18 1 Q. Surely, you're not telling us that when you 2 were negotiating the Contract you consciously blotted 3 out all your knowledge as a lawyer. You always were 4 informed in what you were doing by the fact that you 5 had a law degree; isn't that so, sir? 6 A. Could you please repeat the question? I 7 didn't understand it. 8 Q. Yes. 9 When you were doing the negotiations, you 10 didn't put your legal training aside and say, "Well, 11 I'm going to forget everything I learned in law 12 school, I'm just an administrator today." You didn't 13 do that, did you, sir? 14 A. Human nature does not allow that to happen. 15 Q. Yes, thank you. 16 And how long had it been before you conducted 17 this negotiation that you graduated from law school? 18 A. In Guatemala, there are two phases for one to 19 obtain his or her degree as a lawyer. When I started 20 negotiations, I had completed my studies at the 21 university, and I was in the process of writing my 22 thesis. I had passed the exams, and I, however, did</p>

<p style="text-align: right;">1165</p> <p>02:46:47 1 not have the possibility of practicing law. In the 2 Contract, it says that I was an executive person. If 3 I had been a lawyer and a notary, it would have been 4 stated there like it happened in 41, but I was not 5 able to practice law in Guatemala at that point in 6 time. 7 Q. But when you were negotiating the Contract, 8 unlike myself who had been 43 years out of law school, 9 you were literally a few months out of law school, and 10 you had the full benefit of everything you had learned 11 in law school, didn't you, sir? 12 A. You're wrong. I finished university in '93. 13 Q. And that was your legal studies? 14 A. That's correct. 15 Q. So you have been out of law school for four 16 years; right? 17 A. I had finished my studies, had completed my 18 courses of study at the university, yes, in '93. In 19 '94, I passed my first exam. 20 I don't know if you understand how the system 21 works in Guatemala to obtain a professional degree. 22 You have to understand this because this is going to</p>	<p style="text-align: right;">1167</p> <p>02:49:45 1 A. If you can show me in my statement--where do 2 I talk about Phase II, to know exactly what I 3 declared? 4 Q. I'm not asking you about that. I'm asking 5 you: Do you contend that under Contract 402 Ferrovías 6 was required to complete the entirety of the 7 rehabilitation of Phase II? 8 A. Again, you were talking about Phase II. 9 Q. The South Coast part. 10 THE INTERPRETER: The interpreter missed 11 that, sir. 12 BY MR. FOSTER: 13 Q. Yes, the South Coast corridor. 14 Do you contend that Ferrovías under Contract 15 402 was required to complete the renovation of the 16 entirety of Phase II? 17 A. What I stated is that when Ferrovías started 18 the rehabilitation process of any of the phases, that 19 entailed the obligation for that rehabilitation in 20 that phase to be completed. One has to take into 21 account the circumstances under which the negotiations 22 took place.</p>
<p style="text-align: right;">1166</p> <p>02:48:21 1 allow to you understand my position. 2 Q. I'm learning, thank you. 3 A. Very well. 4 Q. Now, in any event, before you signed Contract 5 402 on behalf of FEGUA, you read it carefully, didn't 6 you? 7 A. Several times. 8 Q. And you wanted to make sure that the words of 9 the Contract effectuated the intent of the Parties, 10 didn't you? 11 A. Definitely. 12 Q. Now, you contend, do you not, that FVG 13 breached Contract 402 by not completing the Phase II 14 rehabilitation; correct? 15 MR. ORTA: I'm sorry, that mischaracterizes 16 the Witness's testimony. 17 MR. FOSTER: Okay. 18 MR. ORTA: He never testified to that. 19 BY MR. FOSTER: 20 Q. Okay. And I will ask you. Do you contend 21 that under the Contract Ferrovías was obligated to 22 complete the restoration of the entirety of Phase II?</p>	<p style="text-align: right;">1168</p> <p>02:51:16 1 This is very important. I don't see here the 2 person with whom I negotiated mainly, which was 3 Mr. Pedro Mendoza. He was my interlocutor. When we 4 negotiated the terminations or the lack of 5 terminations, it was understood that this was going to 6 take time, and it was very difficult to establish that 7 time. The important thing was to start. 8 But, ultimately, what was negotiated and 9 interpreted was that they had to finish the 10 rehabilitation of all the phases included in the 11 Bidding Terms and in their business proposal. That is 12 what we negotiated with them. Why? Because it would 13 be absurd to allow someone to manage state property 14 for 50 years and to allow that person to have that 15 after completing five or 10 kilometers. 16 So, what would us Guatemalans have 17 ultimately? We wanted a railroad. What is the main 18 purpose of this process? For the Guatemalan people to 19 have access to a railroad. This is what we were 20 seeking for every single kilometer of the railway that 21 had been awarded to Ferrovías. 22 Q. Can you show me anything in Contract 402 that</p>

<p style="text-align: center;">1169</p> <p>02:52:41 1 requires Ferrovías to complete the renovation of, as 2 you just put it, every single kilometer of the 3 railroad? 4 A. I go back to the same thing. The Contract 5 sets forth that in a specific period of time they have 6 to start different phases: I, II, III, IV, V, okay? 7 That is what the Contract says literally, initiate, 8 start. However, there is one clause called penalties 9 to the Usufructuary which states that if the 10 Usufructuary does not render the railway service in a 11 certain portion of the right-of-way, well, if they 12 don't render the service, the State of Guatemala needs 13 to be surrendered back that portion of the land or the 14 property. 15 So, I go back to the same thing. If we go to 16 the dead letter of the Contract, like you're saying, 17 just the obligation, the obligation is to start; 18 otherwise, it wouldn't make any sense. 19 I go back to my initial position. It would 20 be intensely absurd--okay. That is what was drafted, 21 but the intentions that the representatives of the 22 Parties negotiated was they begin, they finish. We</p>	<p style="text-align: center;">1171</p> <p>02:55:53 1 in Contract 402? It's not in there, is it, sir? 2 A. Yes, it's there. We can look for it, if you 3 want. There is a section called "early termination" 4 of the Contract. I'm sure the word "termination" is 5 there. 6 Q. You're saying the word "termination" means 7 finish? 8 A. To terminate means to conclude something, to 9 start something and then to finish it. 10 Q. Okay. Let me ask it this way: Can you show 11 me a single place in Contract 402 where it requires 12 Ferrovías to finish any phase of the rehabilitation of 13 the railroad? 14 A. The Contract does not say that. I explained 15 the circumstances under which I was negotiating. 16 We go back to this absurd situation where it 17 was said that no rehabilitation had to be completed. 18 Q. Okay, thank you, sir. 19 And you also know, do you not, that 20 Ferrovías--I'm sorry--that FEGUA acknowledged in 21 writing to Ferrovías that Ferrovías had complied with 22 its obligations in connection with Phase II of</p>
<p style="text-align: center;">1170</p> <p>02:54:23 1 know that completion is going to take time, but your 2 argument would be absurd. It would be absurd for 3 Guatemala to accept such a thing if Guatemala did not 4 know or have certainty of the completion of the work. 5 This was done under complete good faith of the 6 Parties, and the Parties knew what they could do and 7 they could not do according to what the contracts and 8 the instructions contained therein allowed them to do 9 and not to do. 10 Q. Can you show me where the word "finish" 11 appears in Contract 402? 12 A. We could spend all afternoon here, and that's 13 what I'm going to say. That is what I negotiated. I 14 insist: The person with whom I conducted 15 negotiations, Mr. Pedro Mendoza Montano, and he and I 16 drafted the provisions of the Contract--those 17 provisions of the contracts, and I'm going back to the 18 beginning to what was negotiated and to the absurdity 19 of the argument that-- 20 Q. Excuse me, sir. I asked you a very simple 21 question, and I think it's one you can answer yes or 22 no. Can you show me where the word "finish" appears</p>	<p style="text-align: center;">1172</p> <p>02:57:37 1 Contract 402? 2 MR. ORTA: I object to the characterization 3 of the letter or the exhibit that was just mentioned 4 in the question. 5 BY MR. FOSTER: 6 Q. Okay. Let me try it this way: You know, do 7 you not, sir, that FEGUA acknowledged to Ferrovías 8 that Ferrovías had met the requirements of the 9 Contract concerning the railway restoration plan for 10 Phase II? 11 A. I don't know that. 12 Q. Okay. Let's look at Exhibit C-61. 13 PRESIDENT RIGO: I was going to ask you if 14 you could show the document. 15 MR. FOSTER: Yes. 16 BY MR. FOSTER: 17 Q. This is at Tab 3 of your notebook. 18 A. Just one moment. I'm going to look for the 19 document in Spanish. 20 Q. It should be the page after the blue sheet. 21 A. I'm going to try and look at this document 22 because the first thing that I see is that it is dated</p>

<p style="text-align: right;">1173</p> <p>03:59:09 1 28 November 2001. 2 If you remember in my initial statement, I 3 finished my duties as FEGUA Overseer in March 2000, so 4 give me a few minutes to read this letter and to 5 understand its contents because you are asking me to 6 talk about a letter that shows the letterhead of 7 Ferrocarriles de Guatemala, it is addressed to Gerald 8 Brunelle. I had no idea that he was a Ferrovías 9 officer, and then the Overseer is René Minera Perez. 10 I don't know if the name René Minera Perez is my name 11 in a different language. 12 (Witness reviews document.) 13 A. Okay. 14 Q. Now, Mr. Minera Perez succeeded you as 15 Overseer; is that correct? 16 A. I understand that that's the case. 17 Q. And the document you're looking at is an 18 official letter from FEGUA; correct? 19 A. I understand that it is, based on the 20 letterhead. 21 Q. And in the final paragraph it says, has it 22 not, that, "the Overseer's office considers that</p>	<p style="text-align: right;">1175</p> <p>03:03:38 1 Phase II, and those are the terms of Article 13 which 2 he drafted. So, surely he can answer whether or not 3 he thinks that the Overseer was incorrect. 4 PRESIDENT RIGO: The witness should answer 5 the question. 6 THE WITNESS: I think that having concluded 7 my reading of the paragraph because the paragraph 8 doesn't end where you stopped reading it. It says: 9 "and this Overseer's office can do nothing but 10 acknowledge that such railway operations have properly 11 commenced". 12 So, once again, it talks about beginning or 13 commencement, not about completion or termination. 14 So, this supports the argument that there was 15 an awareness of the conclusion of the phases once they 16 had begun. 17 BY MR. FOSTER: 18 Q. Doesn't he also say that the requirements of 19 Clause 13 of Deed 402 have been met with regard to 20 Phase II? 21 A. In the start-up phase, yes, and this is where 22 he says at the end can do nothing but acknowledge that</p>
<p style="text-align: right;">1174</p> <p>03:02:00 1 Ferrovías has complied with the terms and obligations 2 by supplying and rendering cargo railway 3 transportation services at least partially for a 4 six-month term following the initial date of Phase II; 5 accordingly, the terms of the second paragraph, 6 subsection three, Clause 13 of the Contract, regarding 7 the Railway Restoration Plan have been met." 8 You see that; correct? 9 A. Yes, I can read that. 10 Q. And you certainly don't suggest that the 11 Overseer was incorrectly stating FVG's compliance with 12 the terms of Clause 13, do you? 13 MR. ORTA: I'm just going to object. I think 14 he's asking him for now what I believe to be maybe an 15 expert opinion on whether the other Overseer was 16 correctly stating that the phase had been met. 17 MR. FOSTER: He drafted the Contract. The 18 Overseer sets forth the reason for compliance, and 19 that is that Ferrovías has complied with the terms and 20 obligations by supplying and rendering cargo railroad 21 transportation services at least partially for at 22 least six months's term following the initial date of</p>	<p style="text-align: right;">1176</p> <p>03:05:08 1 such railway operations have properly commenced. 2 Let's recall that here the argument begun, completed. 3 For me the only thing the Overseer did was to say yes, 4 you have begun, but it didn't say you have completed 5 or finished it. I think that's the only thing that he 6 didn't say. 7 Q. Are you aware of any time that any Overseer 8 of FEGUA has ever contended that Ferrovías has not met 9 the terms of Article 13 of Deed 402? 10 MR. ORTA: Sorry, I'm going to object. This 11 witness has testified. If the Tribunal wants to hear 12 this, that's fine, but the witness has testified he 13 stopped being the FEGUA Overseer in the Year 2000. I 14 mean, he wants to ask him about any FEGUA Overseer 15 from 2000 until the present day, it seems a bit 16 speculative to me. 17 PRESIDENT RIGO: He's a factual witness, and 18 the objection is sustained. 19 BY MR. FOSTER: 20 Q. You just told me that to you, "completion" is 21 the key; correct? 22 A. Beginning and completion of the phase.</p>

<p style="text-align: center;">1177</p> <p>03:06:41 1 Beginning or start-up at the date agreed upon, which 2 is clearly stipulated in the Contract, and completion 3 within a prudential and reasonable timeframe. 4 Q. And you can't show me anything in Deed 402 5 that requires completion within any time frame, can 6 you, sir? 7 A. No, but I go back to the same point. It is 8 an issue for negotiation and understanding because if 9 you want to go to the source, which is myself, one of 10 the negotiators, I repeat: The interpretation, the 11 terms what was agreed upon in good faith as between 12 the parties whereas beginning and completion at a 13 given point in time, neither more or less than that. 14 Why? Because it's absurd for me that the 15 argument that you're trying to push forward is that we 16 were going to sign a contract, accept a contract in 17 which there was no principle of good faith as between 18 the Parties that would make it possible for the rail 19 service to be reestablished in Guatemala. That is the 20 truth. That is what was negotiated. I was there. A 21 person who you don't have here, I don't know if he 22 might have done that, but I negotiated with him, and</p>	<p style="text-align: center;">1179</p> <p>03:09:43 1 Q. Yes. 2 You said in your statement--I believe it's in 3 Paragraph 16--that Ferrovías had the right to 4 terminate the Contract if it was unable to acquire the 5 FEGUA equipment that it needed to fulfill its 6 obligations; correct? 7 A. I'm going to refresh my memory with the notes 8 that I have here. 9 (Witness reviews document.) 10 A. I think you're mistaken about what I say in 11 this Paragraph 16. 12 Q. Don't you say, while it is true that under 13 class 18 of Right-of-Way Contract 402 the Usufructuary 14 reserved the right to terminate the Contract if it 15 were unable to obtain the railroad equipment"? You 16 see that, don't you, sir? 17 A. I was paraphrasing what is found in Contract 18 402. I am not asserting that. If you continue 19 reading, it says, "This does not change the fact that 20 in any event it would have the obligation to 21 rehabilitate the entire railway network given Usufruct 22 until--duly exercising that right of termination."</p>
<p style="text-align: center;">1178</p> <p>03:08:13 1 that was the agreement. 2 Q. But you did sign a contract that did not 3 contain an obligation to complete any phase of the 4 railroad; isn't that correct? 5 A. That is not correct. 6 ARBITRATOR CRAWFORD: Obviously we 7 simply--construction in terms of the applicable law of 8 this Contract in terms of interpretation. The 9 contractual interpretation I'm used to is a question 10 of law and not of evidence. One can argue with 11 individual witnesses about what they think the object 12 and purpose was, but in the end it's a matter of what 13 the Contract says and that's a matter for submission 14 and not examination. I just wonder whether we're 15 actually getting anywhere. 16 MR. FOSTER: All right, sir. Thank you. 17 BY MR. FOSTER: 18 Q. Now, you said in your statement that 19 Ferrovías had the right to terminate the Contract if 20 it was unable to acquire the FEGUA equipment that it 21 needed to fulfill its obligations; correct? 22 A. Could you please repeat the question.</p>	<p style="text-align: center;">1180</p> <p>03:11:49 1 So, it had the obligation to do it. 2 Q. So, you're saying that even if Ferrovías had 3 not gotten the railway equipment, it's your view that 4 this Contract required them to complete the renovation 5 of the entire five phases of the railroad; is that it? 6 A. Clearly. 7 Q. You told Mr. Orta that the Government 8 structured the bidding process the way it did so that 9 another company might obtain the railroad equipment 10 and start a new railroad; is that what you're 11 suggesting? 12 MR. ORTA: That mischaracterizes his 13 testimony on direct. 14 MR. FOSTER: I'm asking him to clarify it. 15 BY MR. FOSTER: 16 Q. You recognize that Ferrovías got the right of 17 way under Contract 402, but then you told Mr. Orta 18 that the Government had structured it so that the bid 19 was separate for the equipment with the idea that 20 someone else might win the bid on the equipment. 21 Didn't you say that? 22 MR. ORTA: I'm sorry, again I think, Allen,</p>

<p style="text-align: center;">1181</p> <p>03:13:15 1 that's not what he testified to on direct. I have no 2 problem with you asking him the question, just not 3 characterizing what was said on direct because I think 4 that's incorrect. I just don't want to create a 5 record that's not correct. 6 BY MR. FOSTER: 7 Q. Is that what you're trying to tell us? 8 Let's try the question again so we will get 9 there. 10 You said the Government structured separate 11 bids for the right-of-way versus the railway 12 equipment; right? 13 A. That is right. 14 Q. And you said, I think, that even after 15 Ferrovías had won the right-of-way, the Government 16 thought that some other bidder might get the railway 17 equipment. Is that what you told us? 18 A. Let me see if I understand the question 19 because I think you might be distorting what I said. 20 I don't know. I'm going to go back and try to tell 21 you my ideas about that situation. 22 From the genesis of the process of</p>	<p style="text-align: center;">1183</p> <p>03:16:21 1 had the right-of-way? 2 A. The answer is so simple. The fact that there 3 was an auction for the real equipment and there might 4 be a third person, well, it wasn't the Government's 5 interest to determine whether it was going to 6 be--well, let me rephrase this. 7 The Government had carried out a first 8 important part of the process of disincorporation, 9 which was to grant to an operator, a rail operator, 10 Ferrovías, that it had shown that it had the capacity 11 to get the rails up and running in Guatemala. The 12 Government in Guatemala had the intent for the bidder 13 who might come forward to have the capacity to 14 modernize and rehabilitate the rail system in 15 Guatemala. That is why there is this separation. 16 Because if you're not familiar with this, Mr. Posner 17 is very familiar with it. The traction and hauling 18 equipment in Guatemala dates from the 19th Century, 19 with the exception of some locomotives that were 20 obtained in the 1960s, but all of the Rolling Stock 21 was very old. What was sought, as I already said 22 here, was the modernization to go from narrow to a</p>
<p style="text-align: center;">1182</p> <p>03:14:42 1 disincorporation of the railways in Guatemala, the 2 intent was always to have a contract or a bidding 3 process for the real property and another for the 4 movables, movable property. 5 It has to be clear that the Government of 6 Guatemala was respecting what Ferrovías had in terms 7 of access by way of 402. The fact of having a bid for 8 the railway equipment did not entail any violation of 9 the right already acquired by Ferrovías in 402. So, 10 at the end of the day, the Government of Guatemala 11 understood that there might be someone interested in 12 the equipment, that it could be used on any other land 13 that was not FEGUA's, which was already adjudicated to 14 Ferrovías. That was very clear. 15 Q. And in Paragraph 11 of your statement, you 16 say there was the possibility of two different bidders 17 winning the bid for the Usufruct of railroad equipment 18 and the bid for the Right-of-Way Usufruct. 19 So, my question is: If someone other than 20 Ferrovías obtained the equipment, where did you 21 anticipate that they were going to run that equipment? 22 What tracks were they going to run it on if Ferrovías</p>	<p style="text-align: center;">1184</p> <p>03:17:58 1 standard gauge. So, for the Government--well, this 2 was the main reason for separating the two out from 3 one another because we thought that it wasn't all that 4 useful for one who had the--that that equipment was 5 not of interest for whoever acquired the right-of-way 6 for FEGUA. 7 Q. You say in your statement, "FEGUA will 8 reserve the right to grant a separate concession to 9 build a new railroad track to another entrepreneur, 10 provided that the new railroad system was set up 11 outside the railroad corridor granted to the first 12 Usufructary." 13 So, are you telling me that this other bidder 14 who might obtain the equipment, you were contemplating 15 that they would build a new railroad line outside of 16 the right-of-way that Ferrovías had in order to run 17 this 19th Century equipment on it? 18 A. If someone wanted to do it, yes, but the 19 lands that the government had was the existing FEGUA 20 right-of-way, which was the one that had true 21 potential because why was that the one with the true 22 potential because it's the one that runs through the</p>

<p style="text-align: right;">1185</p> <p>03:19:19 1 entire Economic Zone of the entire country. It cuts 2 the country in two, it runs from the Atlantic to the 3 Pacific, so that was really the one that was going to 4 have true potential. 5 Q. So, this other railroad that would be built 6 outside of Ferrovías' right-of-way and which would use 7 the equipment would have to have been a narrow gauge 8 railroad; correct? Because the equipment is narrow 9 gauge equipment, isn't it, sir? 10 A. If you will, the Government in Guatemala was 11 not, if that's what you're insinuating, seeking a 12 different bidder to develop another railway network. 13 That was left open to any third person who might want 14 to do so. It was not a plan of the Government of 15 Guatemala. It did not want to do it. FEGUA or no one 16 wanted to do that. So I don't think we are 17 understanding one another. It was simply left open 18 such that anyone who had interest in using it could 19 use it. 20 Under what principles? Under what 21 conditions? Well, that was up to whatever person 22 might come forward and participate in that. It's that</p>	<p style="text-align: right;">1187</p> <p>03:21:45 1 Q. But my question was a factual one, and surely 2 as the Overseer you knew what the obligation was, and 3 surely you know whether or not FEGUA paid any amount. 4 Did FEGUA, while you were Overseer, make any 5 payments into the Trust Fund? Yes or no? 6 A. I don't know whether it did. 7 Q. As Overseer of FEGUA, did you not think it 8 was your responsibility to see that FEGUA complied 9 with its obligations under its contracts? 10 A. That's correct. 11 Q. But you didn't think it was important to see 12 whether or not FEGUA was complying with this 13 obligation? 14 A. Clearly, and that obligation was under the 15 responsibility of the Financial Manager. 16 Q. And the Financial Manager reported to you, 17 didn't he? 18 A. That's right. 19 MR. FOSTER: I don't have any more questions. 20 Thank you. 21 PRESIDENT RIGO: Thank you, Mr. Foster. 22 Mr. Orta.</p>
<p style="text-align: right;">1186</p> <p>03:20:38 1 simple. 2 Q. Okay. Let's turn to another subject, sir. 3 You knew that under the terms of the Railroad 4 Equipment Contracts FEGUA was supposed to pay money 5 into the Trust Fund for the rehabilitation of the 6 railroad; correct? 7 A. That is correct. 8 Q. While you were Overseer, did FEGUA ever pay 9 money into the Trust Fund? 10 MR. ORTA: I object. That's outside the 11 scope of his direct examination. He doesn't talk 12 about Trust payments or Trust Fund at all in his 13 Declaration. 14 MR. FOSTER: He was the Overseer. He drafted 15 the contracts which gave the obligation. 16 PRESIDENT RIGO: The witness should answer 17 the question. 18 THE WITNESS: What I remember is that one had 19 to assign the respective trust Contract, and I don't 20 have any information about FEGUA having paid anything 21 into that Trust. 22 BY MR. FOSTER:</p>	<p style="text-align: right;">1188</p> <p>03:23:14 1 MR. ORTA: I have no questions. 2 QUESTIONS FROM THE TRIBUNAL 3 ARBITRATOR EIZENSTAT: I would like to please 4 take you back to Contract 41. 5 And as I understand it, Contract 41 did have 6 a public bid, but there was no executive agreement 7 ratifying it; is that correct? 8 THE WITNESS: Contract 41 was entered into, 9 and it had a suspension clause until the executive 10 agreement that would give life to that contract were 11 to be issued. 12 ARBITRATOR EIZENSTAT: And you described 13 efforts you made up to the waning moments of the 14 outgoing Presidential administration to get that 15 executive agreement. You did your very best, 16 obviously, to get that; is that correct? 17 THE WITNESS: That is correct. 18 ARBITRATOR EIZENSTAT: And you also said that 19 you have no idea as to why the President would not 20 have agreed to it. You were never given a reason for 21 that; is that correct? 22 THE WITNESS: Correct.</p>

<p style="text-align: right;">1189</p> <p>03:25:32 1 ARBITRATOR EIZENSTAT: When the new 2 administration came into office, did you stay for any 3 length of time, or did you leave immediately with the 4 outgoing President? 5 THE WITNESS: No, I stayed until my 6 replacement came, which was March of 2000, and the new 7 Government had come in 14 January 2000. 8 ARBITRATOR EIZENSTAT: During that period of 9 month and a half or two, did you then reinitiate your 10 efforts with the new administration to get this 11 executive approval? 12 THE WITNESS: It was no longer done because 13 it was a transition period from one administration to 14 the next, and it was really a more political issue in 15 that situation. What I was waiting for was the 16 arrival of my replacement for the new administration 17 to continue with the process. 18 ARBITRATOR EIZENSTAT: Now, I realize that 19 you left in March of 2000 and that the contracts which 20 succeeded and replaced 41--that is, Contracts 143 and 21 158--came after your time, and I understand that. So, 22 I'm just asking you if you have any knowledge as at</p>	<p style="text-align: right;">1191</p> <p>03:28:43 1 please repeat the question? 2 ARBITRATOR EIZENSTAT: Yes. 3 You obviously were knowledgeable about 4 Contract 41, and you tried to get the President to 5 execute it. What I'm asking is: Did you know of 6 deficiencies from FEGUA's standpoint in 41 that might 7 have necessitated later Overseers wishing to have a 8 subsequent amended contract? 9 THE WITNESS: From my point of view, and 10 based upon what was analyzed with the legal advisers I 11 had at FEGUA during my administration, it didn't. 12 I reiterate, had we considered that there was 13 something that was not valid, we never would have 14 forwarded for the President's approval by way of an 15 executive agreement. 16 ARBITRATOR EIZENSTAT: Again, I notice this 17 is after you left, so I'm just--because of your 18 knowledge of 41 and the efforts you made to get it 19 ratified, if you could accept as a condition of this 20 question that the Lesivo Declaration that was issued 21 that brings us here as a tribunal related to Contracts 22 143 and 158, and one of the deficiencies that was the</p>
<p style="text-align: right;">1190</p> <p>03:26:59 1 that time the former Administrator who may have been 2 called upon for their advice as to what was required 3 for 143 and 158 to go into effect. 4 THE WITNESS: None. With my replacement, 5 Mr. Minera, there was no transition. There was no 6 handover. I was notified like a day like today in the 7 afternoon, and that same day I turned over everything 8 that was under my responsibility, and the next day I 9 did not go back to FEGUA. 10 So, I don't know whether these Overseers 11 afterwards did anything. 12 ARBITRATOR EIZENSTAT: I had a similar 13 experience on January 20 of several years, so I 14 appreciate it. 15 Do you understand from your knowledge of 16 Contract 41 what it is about Contract 41 that may have 17 necessitated subsequent contracts, even though they 18 occurred after you left, deficiencies that you may 19 have spotted in 41 from FEGUA's standpoint might have 20 again necessitated subsequent agreements? 21 THE WITNESS: I think that the translation 22 didn't convey the intent of your question. Could you</p>	<p style="text-align: right;">1192</p> <p>03:30:25 1 basis for the Lesivo Declaration was again that there 2 was no executive ratification or agreement. Is there 3 something that we're missing here as to why that step 4 might not have been taken by the President under whom 5 you served and then subsequent Presidents? What was 6 it that was preventing this simple--seemingly simple 7 act of getting the President to check a box and 8 approve the Contract? 9 THE WITNESS: Mr. Eizenstat, unfortunately, I 10 wasn't in the shoes of the President of the Republic 11 at that time. I don't--I don't know. I really don't 12 know. Despite the efforts I made, which were many, I 13 don't know the reasons why the President did not agree 14 to sign the executive agreement. 15 I can say that the Agreement may have been 16 drafted, but he didn't want to sign it. I don't know. 17 ARBITRATOR EIZENSTAT: You mentioned that one 18 of the sanctions, I think as you put it, for a failure 19 to properly develop subsequent phases was that the 20 land could be taken back by FEGUA; is that correct? 21 That's part of what you had negotiated. 22 THE WITNESS: That's correct.</p>

<p style="text-align: center;">1193</p> <p>03:32:17 1 ARBITRATOR EIZENSTAT: Do you know why that 2 might not have been a remedy here, if there was a 3 belief that Ferrovías had not properly developed 4 subsequent phases? Would that have been an option, 5 and was that, to your knowledge, exercised, or did you 6 consider exercising that sanction? 7 THE WITNESS: I think that we need to go back 8 to the history of the various works carried out by 9 Overseers. During my administration, we had the very 10 best relationship with the people from Ferrovías. I 11 wouldn't say that it was like honey, but we both acted 12 in good faith. But that was the principle that guided 13 our relationship. 14 If that would have been the case, we would 15 have looked for a relief or a remedy so as not to get 16 to that situation, but as Andrés Porras, the Overseer 17 at a specific historical point in time would have 18 looked for a solution, but what happened afterwards I 19 cannot tell you what it was. I'm not aware. I don't 20 know whether good faith was lost or what. 21 ARBITRATOR EIZENSTAT: I have one last 22 question, which goes to a line of questioning that's</p>	<p style="text-align: center;">1195</p> <p>03:35:54 1 have been the healthiest. We are not aware, and this 2 is where you're going to decide that. 3 But hypothetically, that's what we thought 4 could have happened. 5 ARBITRATOR EIZENSTAT: Okay. You got a law 6 degree and had the good judgment to get an MBA and not 7 practice law. I got a law degree and, unfortunately, 8 practiced law, so I'm not going to go into any legal 9 questions at all, and I appreciate your testimony. 10 PRESIDENT RIGO: Mr. Orta? 11 MR. ORTA: Thank you, Mr. Chairman. 12 REDIRECT EXAMINATION 13 BY MR. ORTA: 14 Q. Mr. Porras, I have just one area of 15 questioning. It may be just one question. 16 Secretary Eizenstat asked you whether or what 17 deficiencies in Contract 41 might have necessitated 18 the need for a subsequent Contract to be executed for 19 the railway equipment, and I think he asked you what 20 deficiencies might there have been in that contract 21 that would have necessitated entering into new 22 agreements.</p>
<p style="text-align: center;">1194</p> <p>03:34:05 1 already been asked, but I just as someone who is not a 2 railroad person I want to get a firmer understanding. 3 There were obviously two separate contracts, 4 as you very articulately mentioned, one for the 5 right-of-way, and then a second for the equipment. 6 As a practical matter, can you imagine a 7 situation in which company A wins the Contract to 8 develop the right-of-way, but then a separate company, 9 Company B, gets the right to operate equipment on that 10 right-of-way, or the other way around? And you work 11 for FEGUA. I'm just trying to understand as a 12 non-railway person. Is this a practical outcome? 13 THE WITNESS: The issue of being practical or 14 not might not apply here. 15 Once again, the right-of-way that had been 16 awarded to Ferrovías was going to be respected and 17 would be respected as long as Ferrovías complied with 18 their obligations. The Usufruct Contract for 19 Equipment, I would say that it was just the good 20 intention or a good idea by the Government because our 21 intention was to rehabilitate and to update. You can 22 call us dreamers, maybe, but the criterion might not</p>	<p style="text-align: center;">1196</p> <p>03:37:15 1 And my question is: Would the failure of 2 obtaining Presidential approval of Contract 41 and the 3 subsequent entry into an agreement by FEGUA and 4 Ferrovías terminating Contract 41, would that be 5 something that would or a circumstance that would call 6 for the need for a new contract for the equipment, the 7 railway equipment? 8 MR. FOSTER: Objection. Leading. Ask him to 9 speculate on things that what happened after he was no 10 longer Overseer. 11 MR. ORTA: Well, with all due respect, 12 Secretary Eizenstat put the question to him, and it's 13 very fair for me to ask about that very issue. If you 14 would have objected to Secretary Eizenstat's question, 15 I wouldn't have to ask my follow-up question. 16 MR. FOSTER: I'm dumb, but I'm not that dumb. 17 MR. ORTA: Now, I'm not objecting to his 18 question. His question was fine. Yours is leading 19 your witness, and it's asking him about things that 20 happened after he was Overseer. 21 MR. FOSTER: If you're going to sustain a 22 leading objection, I will ask it a different way.</p>

<p style="text-align: right;">1197</p> <p>03:38:34 1 Otherwise I think it's fair. 2 PRESIDENT RIGO: The bell has already been 3 rung. 4 (Tribunal conferring.) 5 PRESIDENT RIGO: Would you rephrase the 6 question. 7 MR. ORTA: You're going to make it tough on 8 me, fine. 9 BY MR. ORTA: 10 Q. Okay, Mr. Porras, we're going to try this a 11 different way, okay. If Contract--if there was no 12 Presidential approval for Contract 41, could that 13 agreement ever come into effect, based on your 14 understanding? 15 A. Definitely because the Contract had a 16 suspension clause that stated clearly that this 17 Contract shall not enter into effect until a 18 Government Agreement is signed. The Contract did not 19 say, "If President Alvarado Azur says this, he's the 20 one that has to approve it, no. That was not the 21 case. It is the President of the Republic, regardless 22 of who is in the administration.</p>	<p style="text-align: right;">1199</p> <p>03:40:51 1 I'm correct or not, that in your view, the lack of 2 Presidential approval could have been remedied by the 3 next President signing the Resolution; correct? 4 A. As long as it was a Government Agreement 5 because the process had to be complied with that had 6 been stated with--within the previous Government. 7 There were terms and conditions for the bidding 8 process. 9 So, there was a contract, and once signed by 10 the Parties, it needed to be approved with the 11 signature of the President. It could have been done 12 by Alvarado Azur, Alfonso Portillo, Alvarado Colon, 13 and even Alberto Molina. 14 Q. And even President Berger; right? 15 A. Of course, yes, I forgot about President 16 Berger. 17 Q. But let's not forget about him. He was in 18 there before the new President. 19 One other question. You referred in response 20 to Secretary Eizenstat's question to the termination 21 provision Article 16 of Contract 402. We can put it 22 up on the Board if you need to, but I think you</p>
<p style="text-align: right;">1198</p> <p>03:39:42 1 In my opinion, the next President, 2 Mr. Portillo, could have resumed the situation and 3 drafted--not used the old draft but used a new draft 4 for the Government Agreement and approved it. 5 Q. Executive approval to be a deficiency that 6 would prevent Contract 41 from coming into force? 7 A. But Contract 41, in my opinion, never entered 8 into force. 9 Q. That wasn't my question. 10 A. Sorry. 11 Q. Let me try again. 12 Would you consider the lack of Presidential 13 approval of Contract 41 to be a deficiency that would 14 prevent that Contract from coming into force? 15 A. Yes. 16 MR. ORTA: No further questions. 17 PRESIDENT RIGO: Mr. Foster. 18 MR. FOSTER: Thank you, sir. Just a couple 19 of questions. 20 RECCROSS-EXAMINATION 21 BY MR. FOSTER: 22 Q. I gather from what you said, and tell me if</p>	<p style="text-align: right;">1200</p> <p>03:42:07 1 probably will remember, and so I'll just ask you the 2 question. 3 You are aware, are you not, that the 4 termination provisions of Article 16 are phrased in 5 terms of compliance with the obligations under 6 Article 13? 7 A. If you would like to review both clauses, we 8 can do so to see where you would like to go. 9 Q. Okay. Let's put Article 16 up on the board, 10 please. Can you blow up Article 16 so that we can 11 read it. 12 You see that Article 16, in the last sentence 13 here, if it is verified that the restoration projects 14 have not begun--now, that's the same terms that are 15 used in Article 13; correct? 16 A. If you allow me to read it, just a second. 17 Q. And let me ask you another question first. 18 The 16th Clause begins by referring to the 13th Clause 19 of the Contract; right? No, you had the one I wanted. 20 You had it. 16. There you go. 21 Penalties may arise from (1) Usufructuary's 22 delay in the term set for railway restoration,</p>

<p style="text-align: right;">1201</p> <p>03:44:48 1 pursuant to Section 1, 13th Clause; right? 2 A. Indeed, that's what you can read. 3 Q. Then in the last line on the blown-up page, 4 it talks in terms of whether the restoration projects 5 had not begun, and it is the beginning of the 6 restoration in the phases that is covered in 7 Article 13; correct? 8 A. I would like for you to be more specific with 9 the question because I am not understanding. Do you 10 want me to tell you what the Contract says? We can 11 all read it, so I would like for you to be more 12 specific with your question because I fail to 13 understand, and I am going back and forth here 14 with--in the Contract, but do you want me to read? I 15 can read. 16 Q. No, thank you. I agree with you that we can 17 all read the Contract, and so it's not necessary to 18 have another question. 19 MR. FOSTER: Thank you, Mr. President. 20 PRESIDENT RIGO: Thank you so much, 21 Mr. Foster, and Señor Porras, thank you very much for 22 appearing before this Tribunal, and thank you for also</p>	<p style="text-align: right;">1203</p> <p>04:04:00 1 whole truth, and nothing but the truth. 2 PRESIDENT RIGO: Thank you very much. 3 Mr. Orta. 4 MR. ORTA: Thank you, Mr. Chairman. 5 DIRECT EXAMINATION 6 BY MR. ORTA: 7 Q. Mr. Campollo, good afternoon. 8 A. Good afternoon, David. 9 Q. You have before you what should be two 10 Declarations that you have presented to the Tribunal 11 in this case. I would like to ask you to review them 12 or just take a look at them and make sure that they 13 are, in fact, your Declarations, confirm that for the 14 Tribunal, please. 15 A. Because of time constraints, I can tell that 16 they appear to be. They bear my signature, and this 17 other one, it's an English version; right? 18 Q. It may be that we have a translated copy. 19 Oh, bear with me. I'm sorry. 20 A. My two statements are here, and they're 21 English versions of each. 22 Q. This proceeding is being conducted in</p>
<p style="text-align: right;">1202</p> <p>03:46:30 1 helping us. You are excused. 2 THE WITNESS: Thank you very much. 3 (Witness steps down.) 4 PRESIDENT RIGO: This is a good point to take 5 a break and start at 4:00 of that clock. We have a 6 new clock. 7 MR. ORTA: One that works. 8 PRESIDENT RIGO: It works. I will ask that 9 the screen be removed because I can't see Mr. Orta 10 when he moves into punching the button from here, so I 11 have to go backward. 12 (Brief recess.) 13 RAMÓN CAMPOLLO, RESPONDENT'S WITNESS, CALLED 14 PRESIDENT RIGO: Good afternoon. We are 15 going to resume our session. 16 Good afternoon, Mr. Campollo. I'm going to 17 ask you to read the Witness Statement--the Witness 18 Declaration, rather, that you have in front of you. 19 Please press the button so that the microphone is on 20 and you can be recorded. 21 THE WITNESS: I solemnly declare upon my 22 honor and conscience I shall speak the truth, the</p>	<p style="text-align: right;">1204</p> <p>04:05:25 1 English, so we have also provided English translations 2 of your Declarations to the Tribunal. 3 Mr. Campollo, I would like to ask you a few 4 questions in relation to some of the issues in 5 contention in this case. Before doing that, could you 6 explain to the Members of the Tribunal what your 7 primary business is that you conduct in Guatemala. 8 A. We have a family business that operates a 9 sugar mill, and we have dealt in this issue for the 10 past 30 years. 11 Q. Do you consider yourself to be in the 12 railroad or railway industry? 13 A. No. 14 Q. There has been some mention in this case that 15 in a sugar plantation that you own, operate, or have 16 some ownership interest in in the Dominican Republic 17 that there is an internal railway that is operated 18 there. 19 Do you consider yourself by virtue of having 20 that railroad, do you consider yourself to be an 21 expert in railroad transportation or restoration? 22 A. No.</p>

<p style="text-align: right;">1205</p> <p>04:07:04 1 Q. One of the principal allegations in this case 2 that has been made by RDC is that you exerted some 3 kind of influence over the Government of Guatemala in 4 order to take away the concession, the Usufruct 5 concession, that Claimant was given pursuant to a 6 public bid that it participated in in Guatemala. Can 7 you, in your own words, respond to that allegation for 8 the Members of the Tribunal. 9 A. That is totally false. At the inception, I 10 can say this: We in our family have worked a sugar 11 mill. This is work that requires a lot of blood, 12 sweat, and tears, a lot of effort, a lot of control, 13 and we're not accustomed to, neither have we ever, 14 sued anybody or been sued by anybody. It's the first 15 time that we find ourselves in such a situation such 16 as this, that this is unheard of. 17 Q. Several members of RDC's team--Mr. Posner, 18 Mr. Senn, Mr. Duggan--have stated to this Tribunal 19 that in their presence you have made statements to the 20 effect that you wanted to take a controlling interest 21 in their concession or take their concession from 22 them. Have you ever made any such statements to</p>	<p style="text-align: right;">1207</p> <p>04:10:34 1 (Pause.) 2 Q. Did you ever ask anyone else to inquire from 3 the Government of Guatemala whether they could grant 4 to you Claimant's rights under their Concession 5 Agreement? 6 A. No. I never did any such thing. 7 Q. As we sit here today, do you have any rights, 8 any interest in obtaining rights to the railroad 9 concession in Guatemala? 10 A. No. I never went to them. I never found out 11 what was going on. I have no interest, no 12 participation whatsoever in the railroad. 13 Q. You have, in essence, answered this question 14 implicitly, but I want to ask it to you directly. 15 Did you ever--first of all, do you know who 16 Mr. Héctor Pinto was? 17 A. Of course. Yes, yes, perfectly well. 18 Q. Mr. Pinto worked for you at some point? 19 A. Yes, of course. 20 Q. Did you ever authorize Mr. Héctor Pinto to 21 make any statements to Ferrovías Guatemala, anybody at 22 RDC, or anyone in the Government to the effect that</p>
<p style="text-align: right;">1206</p> <p>04:08:59 1 anyone? 2 A. No, never. 3 If you want, I can expand on this. I don't 4 understand why, for what purpose I would want to take 5 away a railway or have that intention when I was told 6 that the local partners, the cement company, did not 7 want to put up capital because every year they had 8 lost money, and they did not want to put in money, 9 either. 10 So, I don't know what the reason would be for 11 me to get a business that was going downhill. 12 And then I never had any kind of 13 rapprochement or any intention of dealing with 14 railroad, nor am I interested in that. 15 Q. Did you ever take any action whatsoever to 16 request that the Government of Guatemala grant to you 17 the rights that Claimant was given pursuant to the 18 Usufruct, the railway Usufruct Agreements or the Rail 19 Equipment Usufruct Agreement? 20 A. No, I never did that. I never had any 21 communication with the Government of Guatemala. 22 Excuse me, I haven't turned off my phone.</p>	<p style="text-align: right;">1208</p> <p>04:12:20 1 they either agreed to any proposed businesses or any 2 businesses you were proposing to them or you would 3 take away their concession rights under the Usufruct? 4 A. I never authorized Mr. Pinto to do that, and 5 he had no capacity to do that, and I doubt that he 6 would have done it. 7 Q. There has been some mention in this case of a 8 project which has been called "Ciudad del Sur." Are 9 you familiar with that project? 10 A. Just to correct something, what you were 11 saying, it is not a project. It is a notion. There 12 is no company named Ciudad del Sur. There are no 13 plots of land identified as Ciudad del Sur. There is 14 no Secretary working for Ciudad del Sur. It is a 15 notion that was being developed by Mr. Pinto and that 16 was getting my support just in case it came to 17 fruition. 18 MR. ORTA: All right. I have no further 19 questions at this time. 20 PRESIDENT RIGO: Mr. Foster. 21 MR. FOSTER: Thank you, Mr. President. 22 CROSS-EXAMINATION</p>

<p style="text-align: right;">1209</p> <p>04:13:58 1 BY MR. FOSTER: 2 Q. Mr. Campollo, I'm Allen Foster, and I'll be 3 asking you some questions this afternoon on behalf of 4 the Claimant in this case. Mr. Snead is giving you a 5 notebook. I may ask you some questions about some 6 documents; and, if I do, it will point out to you 7 where the documents are, okay? 8 A. Okay. 9 Q. When we began, Mr. Campollo, when Mr. Orta 10 began, I think you referred to him as David; correct? 11 A. Yes. 12 Q. And you have met with Mr. Orta before; 13 correct? 14 A. Of course. 15 Q. And you met with Mr. Orta in connection with 16 the preparation of your statements; right? 17 A. No. He came to visit me in Guatemala to 18 investigate my participation. 19 Q. And he did not participate at all with you in 20 the preparation of your statement? 21 A. No. I prepared this statement, and I signed 22 it.</p>	<p style="text-align: right;">1211</p> <p>04:16:58 1 this process is about. It was quite a novelty to me. 2 Q. But he is representing you; correct? 3 A. No. I am representing myself. 4 Q. Are you paying him for his services? 5 A. When I stopped using you as lawyers, they 6 have always been our base lawyers. 7 Q. But that wasn't my question. My question is: 8 Are you paying him for his services coming here today? 9 MR. ORTA: Object. What is the relevance of 10 whether Mr. Campollo is paying his lawyers or not? 11 MR. FOSTER: He said the lawyer wasn't 12 representing him. I'm entitled to question him about 13 the absurdity of that statement. 14 (Tribunal conferring.) 15 PRESIDENT RIGO: The objection is sustained. 16 BY MR. FOSTER: 17 Q. Okay. Let's turn to a topic. 18 You met with Mr. Duggan and Jorge Senn of 19 Ferrovías in December 2004 in Miami to discuss 20 Ferrovías development plans for the South Coast 21 railway segment; correct? 22 A. They told us that they were going to present</p>
<p style="text-align: right;">1210</p> <p>04:15:33 1 Q. Did anyone help you in connection with the 2 preparation of your statement? 3 A. I reviewed the information with my lawyers. 4 I prepared it, and I signed it. 5 Q. Okay. You reviewed it with your lawyers in 6 Guatemala; is that correct? 7 A. Yes, because my lawyer is in Miami were you, 8 and I could no longer do it with you. 9 Q. And did you meet with the lawyers for the 10 Government in connection with your testimony today? 11 A. No, sir. 12 Q. You did not discuss at all anything about 13 coming here to testify with the lawyers for Guatemala; 14 is that correct? 15 A. About coming here to what? 16 Q. About substance of your testimony that you 17 would give here; is that correct? 18 A. Not at all. That is correct, not at all. 19 Q. Now, you have a lawyer here today 20 representing you; correct? 21 A. Yes--well, no. Let me correct myself. There 22 is a lawyer that has accompanied me to tell me what</p>	<p style="text-align: right;">1212</p> <p>04:18:32 1 the Ferrovías project to us in Miami, and I invited 2 them after you offered us a space in the Greenberg 3 offices. I offered them a place to meet with them. 4 Q. Well, just to clear up the "you" there, so 5 there's no misconception, you and I have never met 6 before, have we? 7 A. When I say "you," I refer to the offices of 8 Greenberg Traurig. I assume that you're from 9 Greenberg. 10 Q. Yes, I just want to make sure that nobody had 11 any conception that I had ever been you lawyer or that 12 you and I had ever even met; that's correct, is it 13 not? I have never been your lawyer, and we've never 14 met? 15 A. That is correct. 16 Q. Okay. Thank you. 17 Now, just a few months prior to your 18 December 2004 meeting with Mr. Duggan and Mr. Senn, 19 you had hired Mr. Duggan to provide consultancy work 20 for you on your railroad in the central--in the 21 Dominican Republic; right? 22 A. I asked him--well, the relationship we had</p>

<p style="text-align: center;">1213</p> <p>04:19:51 1 with Mr. Duggan was that Mr. Steffan Lehnhoff, who is 2 a person who closely cooperates with us, well, he came 3 up with the idea that when we took up the sugar mill 4 in the Dominican Republic, well, we found ourselves in 5 the situation of having an internal railway that we 6 were to operate or we would have to use trucks to 7 transport cane. When we started operating trucks, we 8 had a relatively negative reaction from the 9 population, from the surrounding areas because they 10 were used to using the train. 11 So, Mr. Lehnhoff came up with this idea that, 12 well, since Ferrovías had bought a train such as 13 Guatemala's or like Guatemala's, rather, perhaps they 14 would be interested in a train from the Dominican 15 Republic, a train that carried much more than what 16 they were at the time carrying. We offered it to 17 them, and regrettably they were not interested in it. 18 And part of this trip, as far as I understand it, 19 well, part of this trip was to get to know this 20 railway, well, if they were not interested in it, I 21 asked him whether he could provide a report to me and 22 advice on that matter, and he did that, during that</p>	<p style="text-align: center;">1215</p> <p>04:23:12 1 answer to that question. 2 MR. FOSTER: If he doesn't know that 3 Ferrovías had to renovate the railroad in Guatemala 4 before they could run trains on it, he can say he 5 didn't know what the condition of the railroad was in 6 Guatemala. 7 PRESIDENT RIGO: The Tribunal thinks that the 8 Witness should Reply to the question, should answer. 9 THE WITNESS: With pleasure. 10 I have no idea what the obligations of 11 Ferrovías were or what it had to do. I know very well 12 what we had to do. This was a railway that had no 13 crossties. I don't know if you understand what 14 crossties are, and, in part, what it was done was that 15 when we found relatively straight branches of trees, 16 well, they served as crossties, and this is a railway 17 that covers about--well, that runs at about eight 18 kilometers an hour. This is an internal railway only 19 for us, exclusively for us. 20 Q. Your railroad has locomotives; right? 21 A. Yes, correct. 22 Q. Are they steam or diesel?</p>
<p style="text-align: center;">1214</p> <p>04:21:50 1 trip, there was a single trip he made, I think, and he 2 referred to me a person for me to hire this person. 3 That was my relationship with him. The payment given 4 to Mr. Duggan covered his costs. We hadn't talked 5 about this before, but he very kindly showed me his 6 invoice, and I very gladly paid it. 7 Q. Now, this was a railroad in the Dominican 8 Republic that you owned and operated; correct? 9 A. No. This was a railroad in the Dominican 10 Republic that was the property of the sugar mill in 11 the Dominican Republic, and I'm a shareholder of the 12 sugar mill, and that was not operational. We needed 13 to make it operational. 14 Q. Well, you needed to rehabilitate it; right? 15 A. Yes, yes, that's correct. 16 Q. Just like Ferrovías needed to rehabilitate 17 the railroad in Guatemala; right? 18 MR. ORTA: I've got to object. Bear with me. 19 He's got to lay a foundation that Mr. 20 Campollo has any idea what are the obligations that 21 Ferrovías had to take on to rehabilitate the railway 22 in Guatemala before he could ever hope to get a fair</p>	<p style="text-align: center;">1216</p> <p>04:24:53 1 A. It's a combination, it's a diesel engine with 2 a generator and electric engines that the locomotive 3 has. 4 Q. Now, in August 2004, when Mr. Duggan visited, 5 you were using eight locomotives; correct? 6 A. No. We were using two. They were the only 7 ones that were operational. 8 Q. Okay. You had eight, but only two were 9 operational? 10 A. That is correct. 11 Q. And as of August of 2004, you had 12 approximately 400 wagons; right? 13 A. There were 400 wagons, and about 150 were 14 operational. 15 Q. And your railroad transports sugar cane; 16 correct? 17 A. Correct. 18 Q. Does it also at some point transport the 19 finished sugar product? 20 A. Never. 21 Q. Your railroad in the Dominican Republic is a 22 narrow gauge railroad; correct?</p>

<p style="text-align: center;">1217</p> <p>04:26:30 1 A. It is the gauge that it is. I don't know if 2 it's a narrow or not. It is--I know that the one in 3 the United States is much wider. 4 Q. Do you know whether or not the railroad in 5 Guatemala is a narrow gauge railroad? 6 A. I have no exact knowledge of that. 7 Q. According to your Second Statement, when you 8 acquired the sugar mill in the Dominican Republic and 9 the railroad, the railroad had not been operating for 10 about five years; is that correct? 11 A. That is correct. 12 Q. And I think you told me that you 13 rehabilitated the railroad to move your sugarcane by 14 railroad rather than by truck; correct? 15 A. I didn't say that I had done it. I said that 16 it was a process. Well, it is our organization who 17 did that, yes, yes, that's correct. 18 Q. Okay. Now, at the time Mr. Duggan visited 19 your sugar plantation in the Dominican Republic, the 20 railroad was transporting approximately 400,000 metric 21 tonnes of sugar cane a year; is that correct? 22 A. That is correct.</p>	<p style="text-align: center;">1219</p> <p>04:29:59 1 was uneconomical. I don't know what other business 2 they had, other freight business they had. They never 3 submitted any documents to me or any kind of amounts 4 or figures. 5 Q. Now, in Guatemala, Mr. Campollo, it is true, 6 is it not, that you have interest in companies in the 7 real estate business? 8 A. Yes. I have interests in one company in the 9 real estate business, just one. 10 Q. What is the name of that company? 11 A. Desarrollos Manatí. It is in the northern 12 part of the country. 13 Q. And Mr. Héctor Pinto was an employee of yours 14 who worked in the real estate aspects of your 15 business; correct? 16 A. It is not correct when you put it in the 17 plural. He worked in the administration of this 18 company, which is a company that in the last 10 years 19 has sold \$50,000 in each of those years, and Héctor 20 Pinto administered the site and earned \$3,500 a month 21 from us for doing that. 22 Q. So, you paid Mr. Pinto \$30,000 a year to do</p>
<p style="text-align: center;">1218</p> <p>04:28:09 1 Q. And one of your objectives in connection with 2 Mr. Duggan's visit was that you wanted your railroad 3 to be able to move as much as 600,000 metric tonnes a 4 year; correct? 5 A. That is not correct. 6 The objective that I had was to see whether 7 we could or not make a railway operational. I had no 8 idea whether that could be done or not. 9 Q. How many metric tonnes per year is your 10 Dominican Republic railroad transporting right now? 11 A. Last year, we went from the east state to the 12 sugar mill 700,000 metric tonnes of sugar cane, which 13 is about a 30 kilometer span. 14 Q. Do you know how many metric tonnes of product 15 Ferrovías transported on the railway in Guatemala? 16 A. I don't. 17 What I know is that we offered Ferrovías that 18 same opportunity because there were some friends of 19 ours that had a coal plant to transport coal from the 20 port to the power plant--this is the distance of 30 21 kilometers--and this equates 400,000 tons a year, and 22 they said no after a study was conducted because it</p>	<p style="text-align: center;">1220</p> <p>04:31:46 1 \$50,000 a year worth of business? 2 A. I think that it's not the first business in 3 which my costs didn't turn out, and I think that you 4 and your clients know that very well. 5 Q. So, if Mr. Pinto represented that he was 6 acting on behalf of Corporación Manatí, that would 7 have been truthful; correct? 8 MR. ORTA: I'm going to ask for a 9 clarification. Represented in what regard? 10 MR. FOSTER: If he represented to third 11 parties that he was acting on behalf of Corporación 12 Manatí, that would have been a truthful 13 representation, wouldn't it? 14 MR. ORTA: Same objection. For any purpose? 15 I mean, I'm just trying to understand what the point 16 of the question is. 17 MR. FOSTER: I'm confident the Witness can 18 qualify it, if necessary. 19 THE WITNESS: It's incorrect. It's 20 incorrect. He administered the place, there's a small 21 club, one has to pay dues, and there's a small sales 22 office that has to be administered, and that's what he</p>

<p style="text-align: right;">1221</p> <p>04:33:18 1 dedicated himself to. 2 BY MR. FOSTER: 3 Q. Did he have a business card that indicated he 4 had an official position with Corporación Manatí? 5 A. I'm not aware of that. 6 Q. What is his position with Corporación Manatí? 7 A. I don't know if he had an official position. 8 What he did there was administer the operation of the 9 development of Manatí. 10 Q. In Paragraph 23 of your Statement, you say 11 that Mr. Pinto was a Corporación Manatí executive. 12 What was his executive position? 13 A. To administer. 14 Q. Was there any person in Corporación Manatí 15 who was his boss? 16 A. Of course. Of course. Us. My family, 17 myself and my brother. 18 Q. To whom did Mr. Pinto report? 19 A. To us. 20 Q. Did he not report directly to you, sir, as 21 opposed to anybody else? 22 A. The way we were set up in the family is that</p>	<p style="text-align: right;">1223</p> <p>04:37:31 1 the one and the other. 2 In the north of the country, we had this 3 development, that was a failed one, and we were 4 trying--Pinto had the idea of trying to develop 5 something in the south. Since the South Coast was 6 undergoing a lot of development, and we were giving 7 him an opportunity to go forward with some sort of an 8 initiative. 9 Q. So, in his capacity as an executive of 10 Corporación Manatí with the business in the north, 11 you're telling us that Mr. Pinto was also working on 12 this concept of Ciudad del Sur; is that correct? 13 A. That is correct. 14 Q. Now, you owned the land on which the concept 15 Ciudad del Sur was going to be developed, if it had 16 gone forward; correct? 17 A. Those of us who had the largest farm, yes, it 18 wasn't the only one that was included within this 19 planning. 20 Q. Mr. Juan Esteban Berger has testified in this 21 case in his Written Statement, says, "the purpose of 22 the Ciudad del Sur project was to transform</p>
<p style="text-align: right;">1222</p> <p>04:35:32 1 I'm much more on the side of other areas of the 2 business, and my brother is much more the operational 3 person and the management person, and there was much 4 more interaction with him, and with myself as well. 5 Q. But that wasn't my question. My question 6 was: Didn't Mr. Pinto report directly to you as 7 opposed to other members of your family? 8 A. I don't know when you say the "pendia," the 9 word the translator used to say "reported to." He 10 received money from the Corporación Manatí, and I 11 imagine he reported his monthly visits that he made to 12 my brother. I don't remember having had any report on 13 Manatí, and I repeat we didn't have such major 14 activity since one lot a year was sold, and it was a 15 relatively failed development. 16 Q. What was the relationship, if any, between 17 Corporación Manatí and Ciudad del Sur? 18 A. Hello? I repeat, Ciudad del Sur is a 19 concept, and I accept that as what you are referring 20 to but there was no Ciudad del Sur. There is no 21 company called Ciudad del Sur, as far as I know. 22 Therefore, there was no relationship between</p>	<p style="text-align: right;">1224</p> <p>04:39:25 1 agricultural activities performed in an area which is 2 part of Mr. Campollo's sugar refinery, into a real 3 estate project, where the link to the soil becomes a 4 commercial, industrial and housing interest." 5 Do you agree with that statement? 6 A. I would like to see his statement so as to 7 see point-by-point what he said. 8 Is this it on the screen? 9 Q. Yes, it is. You see it says, "the purpose of 10 the Ciudad del Sur project was to transform 11 agricultural activities performed in an area which is 12 part of Mr. Campollo's sugar refinery, into a real 13 estate project, where the link to the soil becomes a 14 commercial, industrial, and housing interest." 15 Do you agree with that? 16 MR. ORTA: I'm sorry, before the Witness 17 answers that, I ask that he be provided with the 18 original Declaration in Spanish so that he can review 19 what Mr. Berger said in his native tongue. 20 THE WITNESS: On which page? 21 BY MR. FOSTER: 22 Q. It's Paragraph 10.</p>

<p style="text-align: right;">1225</p> <p>04:41:10 1 A. It skips from 9 to 13. 2 In any event, I think I can read this. 3 Q. Turn on to the other side of the page. It's 4 double-sided. 5 A. Okay. Thank you very much. 6 Q. No problem. 7 (Witness reviews document.) 8 A. I was a bit hesitant to answer because this 9 of this question where it says "transforming 10 agricultural activities." The sugar cane area in the 11 South Coast is immensely much larger than what the 12 development Ciudad del Sur was going to represent. 13 This could be a, say, 2 percent of the area that we 14 occupied and administer for the sugar harvest. 15 Q. With that qualification, do you agree with 16 Mr. Berger's statement? 17 A. In general, it seems correct to me. 18 Q. Now, the right of way for the South Coast 19 line of the railroad runs right through the planned 20 Ciudad del Sur development; correct? 21 A. That is correct. 22 Q. And the right of way of the railroad on the</p>	<p style="text-align: right;">1227</p> <p>04:44:45 1 come to Guatemala and really offer a rail line that 2 would give us a direct connection to Mexico and the 3 United States and that would offer cheap 4 transportation in Guatemala, in that transportation 5 was going to be very cheap, and I was very 6 enthusiastic. 7 To understand that the new means of 8 transportation were going to be very expensive, 9 obviously I wasn't going to be very enthusiastic. In 10 the wake of that, I can tell you, Mr.--excuse me, I 11 can't quite see your name plate--Foster--Mr. Foster, 12 Mr. Foster, the sugar industry has opened up 13 approximately 3,000 kilometers of roads and 14 internally, and as these are not public roads we can 15 have means of transport that are pulled by trucks that 16 would pull as much as six cages or cage cars 17 equivalent to train cars in these internal roads 18 without having to be concerned about the weight on the 19 highways. 20 And it has become an extremely economical 21 system for the sugar industry from the highway where 22 all the sugar mills are located, and the train line</p>
<p style="text-align: right;">1226</p> <p>04:42:58 1 South Coast is also very close to your Madre Tierra 2 Sugar Mill in Santa Lucia, isn't it? 3 A. That is correct. 4 Q. And it would be fair to say, would it not, 5 that your sugar mill and the Ciudad del Sur project 6 stood to benefit from the reopening of the South Coast 7 line of the railroad? 8 A. What is correct--that is, all of us 9 Guatemalans were very excited when the railway 10 announced that it was going to come into Guatemala and 11 open up a line along the South Coast, and 12 announcements were made from Guatemala to Mexico, and 13 the truth is we were all very enthusiastic about it. 14 It's obvious that we are very much invested 15 in Guatemala. We have many investments, fortunately. 16 And the difference in why the assets of Guatemala and 17 everyone--and ours as well--are not worth more, are 18 worth the same as those in Switzerland is because we 19 don't have the infrastructure that one finds in the 20 other countries. 21 Therefore, as a Guatemalan and as a 22 businessman, I was very excited that the rail would</p>	<p style="text-align: right;">1228</p> <p>04:46:32 1 runs parallel to the highway to the sea. 2 And I was very excited about the idea of 3 having cheaper freight charges, but unfortunately it 4 didn't happen. 5 MR. FOSTER: Mr. President, could you please 6 ask Mr. Campollo just to answer my question. 7 PRESIDENT RIGO: Your specific question now 8 or in general? 9 MR. FOSTER: Just in general if he would 10 answer my question, we can move along. 11 PRESIDENT RIGO: Mr. Campollo, Mr. Foster has 12 limited time for his questions, so I would ask that 13 you be as direct as possible in your answers and as 14 concise as possible. 15 THE WITNESS: I thought it would be important 16 to point this out because he was putting a great deal 17 of emphasis on the question of just how beneficial it 18 was, and how excited we were, which we thought we 19 were. 20 BY MR. FOSTER: 21 Q. Turning back to your meeting in December 2004 22 in Miami with Mr. Duggan and Mr. Senn, this meeting</p>

<p style="text-align: right;">1229</p> <p>04:48:00 1 was also attended by Juan Esteban Berger; correct? 2 A. That is correct. It is correct. 3 Q. And Mr. Berger is the son of the President 4 Oscar Berger; correct? 5 A. That is correct. 6 Q. And he's also a well-known lawyer in 7 Guatemala; correct? 8 A. That's right. 9 Q. And you were the person who invited 10 Mr. Berger to the meeting; correct? 11 A. Correct. I was very interested in him being 12 there to hear the presentation that Duggan and 13 Mr. Senn were going to make to me. 14 Q. What presentation did you think Mr. Duggan 15 and Mr. Senn were going to make to you? 16 A. The one which they state in their letter, 17 that they were going to make that presentation to me. 18 My enthusiasm was because a client had appeared from 19 South Korea, who Juan Esteban, Mr. Berger represented, 20 and it was like part of our question of telling the 21 country that we were working very hard to create an 22 infrastructure in the country, and work was being done</p>	<p style="text-align: right;">1231</p> <p>04:51:20 1 Q. Yes, sir, but my question is a very simple 2 one. Did you tell Mr. Duggan and Mr. Senn that Juan 3 Esteban Berger was not there as your lawyer? Yes or 4 no. 5 A. Mr. Foster, I'm sorry, I had not finished my 6 answer. I didn't tell him that Mr.--that he was there 7 representing me or much less I hadn't even said the 8 name. They asked, "Who is that gentleman?", and 9 that's when we answered with--stating his first name 10 and last name. 11 Duggan asked, and what is his relationship 12 with the President? And we had to say--we never 13 wanted to impose that relationship that he was the son 14 of the President. 15 Q. I'm not sure you answered my question. Did 16 you answer the question as to whether or not you told 17 Mr. Duggan and Mr. Senn that Mr. Berger was not your 18 lawyer but was, instead, there on representing some 19 South Korean businessmen? 20 A. I don't remember whether I specifically told 21 him. I don't remember. 22 Q. Now, it's true, is it not, that Mr. Berger's</p>
<p style="text-align: right;">1230</p> <p>04:49:43 1 in Ciudad del Sur, and it was going to pass through 2 there, so I had an interest in the potential users of 3 Ciudad del Sur, hearing a presentation of this sort. 4 Q. You didn't take any Korean investors with you 5 to the meeting, did you? 6 A. That is correct. I did not bring them. Juan 7 Esteban, I understand, was representing them, and I 8 understand this because Mr. Juan Buitron went on a 9 trip to South Korea and reported this to me. 10 Q. And Mr. Juan Buitron is your personal lawyer; 11 correct? 12 A. No, that is not correct. He's the son of my 13 personal lawyer, and he's my godson. 14 Q. Okay. Thank you for the clarification. 15 Now, at this meeting, you didn't tell 16 Mr. Duggan or Mr. Senn that Mr. Berger was not there 17 as your lawyer, did you? 18 A. I would like--well, I don't want it to seem 19 for the members of the Tribunal that I'm drawing out 20 my answer. I just want to try to get you to 21 understand the situation as well as possible to the 22 best of my possibility.</p>	<p style="text-align: right;">1232</p> <p>04:52:54 1 family, the Whitman's, own two large sugar mills in 2 Guatemala? 3 A. No, it is not correct. 4 Q. What interests do they have in sugar mills in 5 Guatemala? 6 A. Mine? 7 Q. No, sir. What interests into the Whitman's 8 have in the sugar mill in Guatemala? 9 A. With all due respect, you should ask them. 10 Q. Do you not know, sir? 11 A. The--Whitman is a very wide open field. 12 There are several Whitman, and they're not necessarily 13 in business together, and they have Minority 14 Shareholdings, I understand it, in other actions. I 15 don't know what their businesses are. 16 Q. Now, did the Whitman's have any interest 17 whatsoever in Madre Tierra? 18 A. I'm glad that you'd asked me that question. 19 That's an assertion you made in a public record which 20 is totally false. 21 Q. So, the Whitman's don't have any Bearer 22 Shares, they don't have any interest in Trusts, they</p>

<p style="text-align: right;">1233</p> <p>04:54:41 1 have absolutely no economic interests whatsoever in 2 the Madre Tierra Sugar Mill; is that what you're 3 telling us, sir? 4 A. That is entirely correct. 5 Q. Has that been true consistently during the 6 past 10 years? 7 A. That has been the case over the last 10 8 years. The Madre Tierra Sugar Mill is exclusively 9 owned by the--owned exclusively by the Campollo 10 family. 11 Excuse me, excuse me, could you tell me once 12 again the list of things that you said in which the 13 Whitmans had nothing to do with us? Trucks? I don't 14 know if there might be a tractor that we lent them, 15 but in the business of the Madre Tierra Sugar Mill the 16 Whitman family has no interest whatsoever, and it is 17 very daring to have put that into a public record. 18 Q. Now, in Paragraph 3 of your First Statement, 19 you assert that you are a 25 percent Shareholder in a 20 company with a 6 percent share in Guatemala's sugar 21 production. You're referring to Madre Tierra; is that 22 correct?</p>	<p style="text-align: right;">1235</p> <p>04:58:26 1 that right? 2 A. The truth is that I don't know about that 3 situation. 4 Q. Are you denying it? 5 A. No, I am not denying it. I'm telling you 6 that I don't know that that has happened. 7 Q. Did you intend for it to happen? 8 MR. ORTA: That's been asked and answered. 9 If he doesn't know that it happened, how could he have 10 intended it for it to happen? 11 MR. FOSTER: He might have intended it, but 12 he doesn't know whether it happened or not. 13 PRESIDENT RIGO: Objection is sustained. 14 BY MR. FOSTER: 15 Q. Mr. Pinto was still in your employ at the 16 time he died; isn't that correct? 17 A. He continued working for the Corporación 18 Manatí. 19 Q. And Mr. Pinto's office was in a building in 20 which you have a beneficial ownership interest in; 21 correct? 22 A. The building is a condominium, and we have</p>
<p style="text-align: right;">1234</p> <p>04:56:29 1 A. That is correct. It is correct. 2 Q. And you have just told us that your family 3 owns a hundred percent of Madre Tierra; right? 4 A. That is correct. 5 Q. Your family has an ownership interest in the 6 El Pillar Sugar Mill, does it not? 7 A. El Pillar? 8 Q. Yes, sir. 9 A. That's not the case. El Pillar belongs to a 10 first cousin whose name is Rudy Eisenberg Campollo, 11 and we don't have any interests in my cousin's sugar 12 mill. 13 Q. Let's talk a minute about Mr. Héctor Pinto. 14 Mr. Pinto worked for you for over 30 years, 15 didn't he? 16 A. He had relationships with us for a long time, 17 not in a continuous fashion. There was a period of 18 about five years when he had his own businesses 19 separately, but he was always close to us. 20 Q. Now, when Mr. Pinto died in the car accident 21 in January 2008, you were kind and generous to his 22 personal Secretary by paying her severance pay; isn't</p>	<p style="text-align: right;">1236</p> <p>05:00:01 1 approximately 40 percent of the area. I have no 2 personal knowledge of Pinto's apartment being ours--I 3 believe it isn't. I believe that he had purchased it 4 independently because on the main floor he had all of 5 the motorcycles, tires and such that he sold. 6 Q. Now, how long have you known Mr. Pinto's 7 Secretary of 32 years, Ms. Olga de Valdez? 8 A. Yes. I had known her for a long time. I 9 don't know if I had known her for 32 year, I call her 10 Olgita, and we hold her very dearly. 11 Q. Now, based upon your dealings with her over 12 this long time, did you consider her to be an honest 13 and truthful person? 14 A. I have nothing bad to say about Olgita. 15 Q. Now, have you read the Written Statement that 16 Mrs. De Valdez has given in this proceeding? 17 A. No, I did not. 18 Q. Now, in your First Statement, you say that 19 you vouch unequivocally that you never once authorized 20 Mr. Pinto to negotiate with Ferrovías or RDC on your 21 behalf or to represent you or any of your companies; 22 correct?</p>

<p style="text-align: right;">1237</p> <p>05:02:10 1 MR. ORTA: I'm sorry, Allen, where are you? 2 Can you just refer me to where you are? 3 MR. FOSTER: Paragraph 24. 4 MR. ORTA: First Statement; right? 5 MR. FOSTER: Yes. 6 BY MR. FOSTER: 7 Q. Is that correct, sir? 8 A. What should I do with this paper? 9 Q. Let me just ask you this, sir. 10 A. Okay. 11 Q. Do you remember saying in your First 12 Statement, I quote, that you used word "vouch 13 unequivocally," that you never authorized Mr. Pinto to 14 negotiate with Ferrovías or RDC on your behalf or to 15 represent you or any of your company; is that a true 16 statement? 17 A. It is a true statement. 18 Q. So, even though Mr. Pinto was responsible for 19 the Ciudad del Sur concept, you never authorized him 20 to negotiate with Ferrovías or RDC with regard to it; 21 is that what you're telling us? 22 A. Of course. Mr. Pinto, based on my</p>	<p style="text-align: right;">1239</p> <p>05:06:00 1 Q. But he was authorized to be speaking to 2 Ferrovías and RDC personnel on your behalf; correct? 3 (Pause.) 4 A. Could we go back to the question, please? 5 I'm sorry. 6 Q. The question was: When Mr. Pinto had those 7 conversations with Ferrovías in connection with Ciudad 8 del Sur, he was authorized by you to have those 9 conversations, wasn't he? 10 A. I remember the last question, whether he had 11 my authorization to speak on my behalf, and I don't 12 know whether it was the legal--the American legal 13 aspect; that is to say, to have authorization to speak 14 on my behalf. That is not something that is easily 15 granted. We need to be very specific and, clearly, he 16 did not have the authorization to speak on my behalf. 17 That is something like saying that I'm giving him a 18 check--a rain check. 19 Q. You don't think that Mr. Pinto would have 20 been there talking to Ferrovías and RDC personnel if 21 he didn't think you had authorized him to do it, do 22 you?</p>
<p style="text-align: right;">1238</p> <p>05:03:58 1 understanding, he was trying to develop for us a 2 concept that could be implemented in the South Coast 3 of Guatemala, and he was reporting to me about the 4 progress made. 5 Now, as for him to have the ability to 6 negotiate or the capacity to negotiate on my behalf 7 our own assets with third parties, he was not able to 8 do that. 9 Q. So, did you ever authorize Mr. Pinto to have 10 any discussion whatsoever with Ferrovías or RDC about 11 the railroad and its potential connection to Ciudad 12 del Sur? 13 A. Back when Mr. Posner had the pleasure to 14 welcome him at home, and we sent a letter terminating 15 the relationship we had, if there was any, about--that 16 was about 2005--Pinto was trying to speak to different 17 people, including people from Ferrovías, to see the 18 services that they could offer us. 19 Q. And did you authorize him to do that? 20 A. I was aware that could be happening, that is 21 the case, but I did not know of any day-to-day process 22 or the topics being discussed.</p>	<p style="text-align: right;">1240</p> <p>05:08:24 1 MR. ORTA: I think that calls for speculation 2 on what was in Mr. Pinto's mind. 3 MR. FOSTER: In Mr. Campollo's answer to 4 Mr. Orta's question, he said--about Mr. Pinto--and 5 whether or not he would have done something without 6 authorization, he said, "I doubt that he would have 7 done it." So, this is a follow-up to the very issue 8 that he--that Mr. Orta addressed with him. 9 MR. ORTA: I think you could ask him that 10 question; in other words, you could ask him about that 11 testimony. But the question you just posed him was a 12 different one. It called for speculation for what was 13 in Mr. Pinto's mind. 14 BY MR. FOSTER: 15 Q. Based upon your relationship with Mr. Pinto-- 16 MR. ORTA: If you're moving on, Allen, fine. 17 I thought they were deliberating. 18 MR. FOSTER: I will try it a different way. 19 PRESIDENT RIGO: We were deliberating, I 20 wanted to check with my colleagues, but why don't you 21 try it a different way. 22 BY MR. FOSTER:</p>

<p style="text-align: center;">1241</p> <p>05:09:27 1 Q. Based upon your relationship with Mr. Pinto, 2 do you believe that he would have done something that 3 you had not authorized him to do? 4 A. Obviously, if someone is out there, we hope 5 for that person to behave in the same--best possible 6 way, but now to assure something--is something that we 7 cannot do that often. 8 Q. You also assert in your Second Statement that 9 you never authorized Mr. Pinto to participate on your 10 or your company's behalf in the Government-formed 11 Railroad Commission. 12 You said that, didn't you, sir? 13 A. I don't know if I said it in my Statement, I 14 do not remember, but I can tell you now I did not know 15 that there was a Commission to negotiate; therefore, I 16 never authorized him. 17 Q. So, if Mr. Valenzuela and Ms. Hernández 18 testified that Mr. Pinto said that he was acting on 19 behalf of Ciudad del Sur, that would just be 20 incorrect; is that correct? 21 A. What is incorrect? The statement by 22 Valenzuela and the other lady, or by Mr. Pinto?</p>	<p style="text-align: center;">1243</p> <p>05:13:11 1 reading from? 2 MR. FOSTER: Paragraph 25 in his First 3 Statement. 4 MR. ORTA: It would be a lot quicker if you 5 tell us, that way I wouldn't have to interrupt you. 6 Thank you. 7 MR. FOSTER: Well, David, you know you can 8 trust me. 9 BY MR. FOSTER: 10 Q. Do you believe that this e-mail and its 11 attachment is not legitimate and that it was not sent 12 or received by Mr. Pinto? Is that what you're telling 13 us? 14 MR. ORTA: I think there might be a problem 15 with the translation into English of the statements. 16 THE WITNESS: I don't have a need to believe 17 whether this is true or not. I am not reading here 18 that I said that this was legitimate or not. 19 BY MR. FOSTER 20 Q. The translation of this Statement says that 21 he is declaring that it's not legitimate and it was 22 not sent or received by Mr. Pinto.</p>
<p style="text-align: center;">1242</p> <p>05:11:17 1 Q. No, the statement by them. They were just 2 not telling the truth if they said Mr. Pinto wasn't 3 telling them that; isn't that what you're telling us? 4 A. I don't know Mr. Valenzuela or the lady that 5 you just mentioned, but I don't know whether they 6 would be lying or not. I'm not familiar with them. 7 I'm not familiar with any of their statements. 8 Q. Now, let's turn to Exhibit C-41. That is 9 Tab 6 in your book. 10 And the first page is an e-mail; correct? 11 A. Yes. 12 Q. And that--the attachment is this Desarrollos 13 G Proposal that you talk about in your Statement; 14 correct? 15 A. If I have to tell you "correct," I have to 16 read it completely, and then you're going to complain 17 that I am using up your time. 18 Q. Well, didn't you say in your Statement that 19 you're absolutely sure that this Proposal was not 20 legitimate and it was not sent or received by 21 Mr. Pinto? 22 MR. ORTA: Can you point us where you're</p>	<p style="text-align: center;">1244</p> <p>05:14:10 1 Now, let's forget the word "legitimate." 2 Are you trying to tell us that it is your 3 assertion that this e-mail was not sent or received by 4 Mr. Pinto? 5 MR. ORTA: And just for clarification 6 purposes, Allen--I'm not trying to get in the way of 7 your questioning--the Spanish version says "no me 8 consta que," which is "I have no personal knowledge 9 whether..." That's what Mr. Campollo said in his 10 Statement. I think there's a problem with the 11 translation. 12 MR. FOSTER: Well, it's your translation, 13 isn't it? 14 MR. ORTA: Yep, well, apparently it's a bad 15 one. 16 MR. FOSTER: All I'm asking him is, is his 17 testimony today before this Tribunal that he doesn't 18 think that this statement was sent or received by 19 Mr. Pinto. 20 THE WITNESS: I don't know that Mr. Pinto 21 sent it. He was not authorized by me, and I don't 22 know what statement you're referring to.</p>

<p style="text-align: center;">1245</p> <p>05:15:16 1 Based on this e-mail, if you would like me to 2 read it, I'm going to take the time I need to read it. 3 BY MR. FOSTER: 4 Q. Let me just ask you another question. You 5 see one of the recipients on this e-mail is shown as 6 being Juan Buitron. I think the gentleman you said 7 was the son of your personal lawyer and also your 8 godson; correct? 9 A. His name is Juan Buitron. He is my godson, 10 and that is correct. I had the understanding that he 11 had received an e-mail by Mr. Pinto. I don't know 12 which one you're referring to. 13 Q. Can you explain to us how Mr. Buitron would 14 be receiving this e-mail if Mr. Pinto was not 15 authorized to send it on your behalf? 16 A. Mr. Juan Buitron had just finished his 17 Master's degree in business, and we were working with 18 Mercury Finance. This company belongs to one of--the 19 foundation that belongs to me, and this company was in 20 charge of obtaining long-term capital for Guatemala 21 because we thought that a way to help people in depth 22 was by the area of housing, and we went to OPIC, where</p>	<p style="text-align: center;">1247</p> <p>05:18:49 1 PRESIDENT RIGO: Mr. Orta. 2 MR. ORTA: Thank you, Mr. Chairman. 3 REDIRECT EXAMINATION 4 BY MR. ORTA: 5 Q. Mr. Campollo, I just have a couple of 6 follow-up questions. 7 On this last issue you were being asked about 8 this e-mail and Proposal--for the record that is--bear 9 with me. So, it is, for the record, Document C-41. 10 At the time that this e-mail was sent, 11 assuming, you know, its contents are authentic, it 12 says on the face of the document it was sent on 13 March 9, 2005, at 6:22 p.m., was Mr. Juan Buitron an 14 employee of yours? 15 A. He's more of a relative. He did not have a 16 fixed appointment with us. He was an advisor. 17 Q. Are you aware that Mr. Pinto was 18 sending--assuming he did send it, were you aware that 19 Mr. Pinto was sending this proposal to anyone at this 20 time? 21 A. No, I was not aware of that. 22 Q. Was Mr. Buitron--to look at this Proposal at</p>
<p style="text-align: center;">1246</p> <p>05:17:11 1 we requested guarantees to invest on mortgages based 2 in Guatemala that would guarantee the American money 3 to be invested in Guatemala. 4 And it is the first time--the first time we 5 approached them, they laughed at us. Eight years 6 later, about a year ago, OPIC announced for the first 7 time that they were going to offer guarantees for 8 Guatemalan money by buying mortgages in Guatemala, and 9 they were going to do so through Mercury Finance for 10 up to \$100 million. 11 This young person is brilliant. He's a 12 brilliant young person, and he was working with me on 13 several projects, and I had even asked him to keep an 14 eye on this. And I imagine that as part of the 15 enthusiasm, Mr. Pinto sent the e-mail to Juan Buitron. 16 PRESIDENT RIGO: Thank you very much. 17 Mr. Orta. 18 For the record, Mr. Foster, please say you 19 have no more questions. I'm not I'm cutting you out. 20 I'm indicating you are out of time. 21 MR. FOSTER: I have many, many, many more 22 questions, but I gather I'm out of time.</p>	<p style="text-align: center;">1248</p> <p>05:20:18 1 this time, at the time that it was sent? 2 A. No, I did not ask him to do that. 3 Q. Were you aware this Proposal existed back in 4 March of 2005? 5 A. I assume that this is the e-mail I read 6 before, but I don't know what you're referring to. 7 Q. You're answering based on the document. I 8 think you're holding it. It's a document marked C-41. 9 There is an e-mail at the front of it dated March 9, 10 2005, and then what follows is a document that, in 11 Spanish says, "Acuerdo Preliminar." 12 And your translation--which I don't seem to 13 have in front of me, but it's Draft Agreement. And it 14 says, at the very top, "Comentarios Héctor Pinto." 15 THE INTERPRETER: Héctor Pinto's comments. 16 A. I was not aware of this document, and this 17 was not authorized by me. 18 Q. One other issue that I wanted to ask a quick 19 question about, you were asked by Mr. Foster about the 20 possibility of the train opening up to the Southern 21 Coast and whether that could be of benefit to your 22 sugar business, and I had just a couple of quick</p>

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05:21:58 1 questions about that.
 2 First of all, sitting here today, do you have
 3 any idea what the transportation costs would have been
 4 that Ferrovías Guatemala would have offered your sugar
 5 business if they had reopened the Southern Coast
 6 route?
 7 A. I was never given a figure.
 8 Q. Without knowing what the freight cost would
 9 have been that they would have offered in the
 10 hypothetical situation that they would have reopened
 11 the Southern Coast route, are you in a position today
 12 to tell the Tribunal whether that would have provided
 13 a benefit for your business, your sugar business, in
 14 the south?
 15 A. I'm sorry, I got distracted a little bit.
 16 Q. Without knowing what freight cost--what the
 17 freight costs would be that would be offered by
 18 Ferrovías Guatemala in the hypothetical situation
 19 where they reopened the Southern Route and were
 20 offering rail service, can you tell the Tribunal
 21 whether rail transport to the south offered by
 22 Ferrovías would have been a benefit for your sugar

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05:25:24 1 to operate or begin negotiations for the operation of
 2 a railway in Guatemala?
 3 THE WITNESS: No, definitely not.
 4 ARBITRATOR EIZENSTAT: Has any Government
 5 official approached you about investing in any such
 6 operation?
 7 THE WITNESS: No.
 8 ARBITRATOR EIZENSTAT: The statements and
 9 recollections of Mr. Posner with respect to the 2001
 10 meeting, and Mr. Duggan and Mr. Senn with respect to
 11 the 2004 and 2005 meetings with you, are, to my
 12 recollection, at great variance with your Statement in
 13 terms of their assertion of your desire to control the
 14 railroad, of Mr. Pinto's actions and, as they've
 15 characterized them, threats.
 16 Do you have any insight--you're an
 17 experienced businessman. Do you have any insight as
 18 to why their recollections might be so distinctly
 19 different in such crucial points than yours?
 20 THE WITNESS: Mr. Eizenstat, I think that
 21 this whole situation is very surprising. It seems
 22 that it is a hobby for me to manipulate the

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05:23:18 1 business? Or not?
 2 A. We could not have any idea of the benefit
 3 without knowing the cost.
 4 PRESIDENT RIGO: Thank you.
 5 QUESTIONS FROM THE TRIBUNAL
 6 ARBITRATOR EIZENSTAT: Since Ferrovías
 7 terminated their operations in September 2007, have
 8 you taken any steps to try to acquire any interests
 9 they might have had or to develop any railway to the
 10 South Coast?
 11 THE WITNESS: None.
 12 ARBITRATOR EIZENSTAT: Have you approached
 13 any Government officials since they terminated their
 14 operation to try to open discussions with the
 15 Government about operating or controlling a railway in
 16 Guatemala?
 17 THE WITNESS: I didn't do it in 2007 or
 18 before. I never approached any Government official.
 19 Never.
 20 ARBITRATOR EIZENSTAT: I'm asking after they
 21 left, 2007, until this day until December 2011, have
 22 you or anyone operating with your authorization sought

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05:27:30 1 Government, something that I don't do for business
 2 purposes where we have an interest, and not even--I'm
 3 not even going to do this for businesses where we have
 4 no interest and we're not even interested in having
 5 any sort of participation.
 6 So, these would be personal--this would be
 7 personal speculation, and given the situation in which
 8 were facing, Guatemala and myself, I would not
 9 speculate here. I would rather not give my opinion
 10 about what they are doing before this Tribunal, but
 11 their intention and my intention, I think, was very
 12 different.
 13 ARBITRATOR EIZENSTAT: And what might--from
 14 your meetings with them, what might their intention
 15 have been be that would lead to this rather
 16 significant difference in recollection?
 17 THE WITNESS: The meetings we had were--the
 18 first one with Mr. Posner, and we were very
 19 enthusiastic to welcome someone in Guatemala who was
 20 investing, during the period of happiness in
 21 Guatemala, we had several--several monopolies had come
 22 to an end. There was participation in Guatemala. I

<p style="text-align: right;">1253</p> <p>05:29:01 1 had also approached other countries for investment, 2 and I understood how pleasant it is for the private 3 sector of another country to welcome you. 4 And Mr. Posner, back then, while visiting 5 Guatemala, mentioned all his projects and how 6 interested he was in taking this forward, and in the 7 participation of the private sector. 8 At some point we said that we were willing to 9 listen to what he had to say, but clearly he was 10 welcome, and we would be helping him as far as we 11 could, so much so that our first recommendation was to 12 conduct the study with the carbon plant in Guatemala 13 that transported 400,000 tons of coal from the port to 14 the plant, 30 kilometers--a 30-kilometer distance. 15 They surveyed the situation with the coal 16 company, and it turned out that they were not willing 17 to invest in the link that had to be introduced in the 18 plant. So, it was not economically viable or it was 19 not profitable; therefore, I started to see that these 20 people were having some problems, they were not 21 clearly looking at the business that they could have 22 with these assets.</p>	<p style="text-align: right;">1255</p> <p>05:32:37 1 THE WITNESS: Excuse me, the translation, I 2 wasn't able to follow it. It was too fast. 3 ARBITRATOR EIZENSTAT: I have never been 4 accused of speaking fast, but I will slow down. 5 Have you had a history, in Guatemala, of 6 attempting to acquire companies that have not yet 7 produced a balance sheet and a profit-and-loss 8 statement that demonstrates a solid profit, or do you 9 sometimes acquire companies in early stages before 10 that has occurred in the hope that you can acquire 11 them inexpensively and make them profitable? 12 THE WITNESS: Definitely I've had the 13 experience of dealing in companies that were not 14 profitable and continued being not profitable, 15 unfortunately. What I have never done is, after that, 16 to bring the suit against someone. 17 ARBITRATOR EIZENSTAT: But your testimony is 18 that with respect to this particular railroad, that 19 was not your intention at all. You had no intention 20 of either investing until you saw more data or 21 controlling this railroad. Is that what you're 22 telling the Tribunal?</p>
<p style="text-align: right;">1254</p> <p>05:30:59 1 ARBITRATOR EIZENSTAT: I believe you 2 mentioned that in the three meetings in which you 3 participated, they were all rather short, 30 minutes 4 or so. Is that your recollection of your Statement? 5 THE WITNESS: That is correct. 6 ARBITRATOR EIZENSTAT: And you were never 7 given a business plan, any economic data that might be 8 the basis for a decision to invest in the railroad. 9 THE WITNESS: Absolutely nothing. We are 10 accustomed to looking at financial 11 projectors--projections, unit costs, overheads, what 12 you may consider normal in any kind of operation. 13 It seems here there was a lot of enthusiasm, 14 but I saw no numbers, Mr. Eizenstat. 15 ARBITRATOR EIZENSTAT: Have you acquired or 16 attempted to acquire any businesses in Guatemala which 17 had, at the time of your interest in acquisition, not 18 demonstrated a profit? Do you have a business of 19 taking over companies that are perhaps startups or 20 that haven't yet produced a profit to try to develop 21 that? Is that part of your business plan for your 22 different enterprises?</p>	<p style="text-align: right;">1256</p> <p>05:34:13 1 THE WITNESS: That is correct, sir. I had no 2 intention of doing that. 3 ARBITRATOR EIZENSTAT: I just want to probe a 4 bit on Mr. Pinto. 5 He worked for you, I think, going back to 6 1977, is my recollection. Is that roughly accurate? 7 THE WITNESS: I couldn't tell you exactly, 8 but yes, it seems to me that after I graduated from 9 university, I set up one of those failed businesses 10 that never came to fruition. 11 ARBITRATOR EIZENSTAT: And this one company, 12 Corporación Manatí, that Mr. Pinto worked for, that 13 was one of your companies, but I think you said it was 14 not a significant revenue generator; is that correct? 15 THE WITNESS: That is correct. 16 ARBITRATOR EIZENSTAT: He--over the course of 17 almost 30 years, 25 years, had he operated any other 18 businesses for you, any other branches of your 19 company? 20 THE WITNESS: Yes. 21 ARBITRATOR EIZENSTAT: And which ones, 22 please?</p>

<p style="text-align: center;">1257</p> <p>05:35:35 1 THE WITNESS: At a given point in time, we 2 came back from university from the United States, and 3 we were very enthusiastic, and we wanted to build or 4 establish, rather, a shoe factory, and leather was 5 necessary for the manufacturing purposes. And he 6 bought leather from the different slaughterhouses, and 7 he was a very deft person in this activity, and he 8 ended up having a strong influence in tannery--tannery 9 business. And that business closed down about 20 10 years ago. 11 Fortunately, my father rescued us because it 12 was a business that owed a lot of money. 13 ARBITRATOR EIZENSTAT: And other than that 14 and this one company, in the ensuing 20 years or so, 15 were there other activities that he carried on on your 16 behalf, Mr. Pinto? 17 THE WITNESS: Yes, of course. Before 18 that--wait. Before or during? Well, before that, my 19 father had a representative office for the sale of 20 tractors, and he was in charge of collections because 21 these were sold in installments, and he was in charge 22 of the sales and also of the collection of the</p>	<p style="text-align: center;">1259</p> <p>05:39:37 1 parallel, if you will, not necessarily against our 2 interests, but sometimes conflicting interests. 3 ARBITRATOR EIZENSTAT: Was he still in your 4 employ, or was this during a period somehow he had 5 left your employ? 6 THE WITNESS: I am making reference to a 7 process of transition when he was leaving the company. 8 ARBITRATOR EIZENSTAT: When was that? How 9 long before his unfortunate demise? 10 THE WITNESS: Okay. That would be perhaps 15 11 years. 12 What brought us together again with Mr. Pinto 13 was the fact that, curiously enough, this ingenuity he 14 had, he was a very active person. He also had that in 15 the social arena, and he supported social issues quite 16 a bit, social issues that we put forth. 17 We had a problem, and because of the good way 18 in which he managed social things, he was able to 19 solve the problem that we had. 20 ARBITRATOR EIZENSTAT: May I just ask, 21 please, for you to turn to Paragraph 20 of your First 22 Statement. Excuse me. This may be--the Second</p>
<p style="text-align: center;">1258</p> <p>05:37:51 1 installments. 2 ARBITRATOR EIZENSTAT: Any other activities 3 in addition to those? 4 THE WITNESS: I cannot remember any other, 5 sir. 6 ARBITRATOR EIZENSTAT: There are rather 7 serious allegations that have been made by some of the 8 Claimant's witnesses about what Mr. Pinto did 9 allegedly on your behalf. 10 Do you remember, in the years in which he 11 worked for you, any other occasions where people might 12 have come to you and said, "Mr. Pinto has been 13 acting--throwing your name around," or was this the 14 first time you can remember a situation in which he 15 purportedly and allegedly--and I underscore 16 those--acting on your behalf in ways that have been 17 indicated by the Claimant's witnesses? 18 THE WITNESS: Not exactly that he was acting 19 on my behalf, but definitely there was a period in 20 time where he wasn't working with us. He was an 21 individual who did not meet our precise expectations. 22 And, yet, he had personal interests that were</p>	<p style="text-align: center;">1260</p> <p>05:41:28 1 Statement, pardon me. My Tab 2. My Tab 2. 2 Paragraph 20 of your Second Statement. 3 And you mentioned that-- 4 THE WITNESS: I see it. 5 ARBITRATOR EIZENSTAT: --he "was an 6 entrepreneurial man and, on his own initiative and 7 without consulting me, became involved in the issue of 8 the railroad in an attempt to put together a specific 9 proposal he could then present to me." 10 So, are you suggesting that it came to your 11 knowledge that without informing you he was, in fact, 12 negotiating with respect to the railroad to put 13 together a proposal he could then bring to you, 14 perhaps for the development of the South Coast? 15 THE WITNESS: What I could tell you is what I 16 know today about what happened, and what I knew when 17 it was happening. Well, these two things are not so 18 divorced in my mind. I don't know for sure whether 19 Mr. Pinto was negotiating with Ferrovías something 20 else apart from the freight and, well, trying to 21 organize a system that was cheaper for Ciudad del Sur, 22 well, that was not something that was authorized by</p>

<p style="text-align: right;">1261</p> <p>05:43:13 1 us.</p> <p>2 I understand that he and Mr. Senn were very</p> <p>3 close friends, and at a given point in time at the end</p> <p>4 of the relationship, well, it seemed to me that Pinto</p> <p>5 was trying to get a job, and Senn was trying to keep</p> <p>6 his job. And they were trying to create something at</p> <p>7 all costs when they realized that this was a failed</p> <p>8 company.</p> <p>9 ARBITRATOR EIZENSTAT: Last question. And</p> <p>10 this is with reference to the same paragraph. Maybe</p> <p>11 I'm reading more into it, and you tell me. Is</p> <p>12 Mr. Senn the kind of person who might have, on his</p> <p>13 own, based on your knowledge of him for many years,</p> <p>14 have tried to give the impression that he was acting</p> <p>15 on your behalf, hoping to reach a deal that he could</p> <p>16 then present to you in the hope that you might later</p> <p>17 accept it?</p> <p>18 Is he the kind of person that might have done</p> <p>19 that?</p> <p>20 MR. ORTA: Secretary Eizenstat, I think you</p> <p>21 said "Mr. Senn."</p> <p>22 ARBITRATOR EIZENSTAT: Everywhere I said</p>	<p style="text-align: right;">1263</p> <p>05:46:04 1 interest.</p> <p>2 ARBITRATOR EIZENSTAT: Did he ever present</p> <p>3 such a proposal to you? That he was suggesting--</p> <p>4 THE WITNESS: No.</p> <p>5 ARBITRATOR EIZENSTAT: --he was negotiating?</p> <p>6 THE WITNESS: No. Apart from the fact we had</p> <p>7 this enthusiasm that was Ciudad del Sur, I never knew</p> <p>8 that he was negotiating anything. "Anything" is a</p> <p>9 broad term. I knew that he was in communication with</p> <p>10 Ferrovías, but I don't know to what extent this is</p> <p>11 represented in these documents.</p> <p>12 ARBITRATOR EIZENSTAT: And I'll ask one last</p> <p>13 question only because 20 years from now, if I'm still</p> <p>14 here, I will have an interest in knowing whatever</p> <p>15 happened to Ciudad del Sur?</p> <p>16 Has anything developed since then?</p> <p>17 THE WITNESS: Unfortunately, for the time</p> <p>18 being, the answer is no. An educational center was</p> <p>19 developed, a very important educational center, and we</p> <p>20 had provided higher education to 5,000 teachers a</p> <p>21 year. And together with other industries and the</p> <p>22 sugar industry in Guatemala, we established a fund,</p>
<p style="text-align: right;">1262</p> <p>05:44:33 1 "Senn," insert "Pinto."</p> <p>2 THE WITNESS: Yes, yes, I understand.</p> <p>3 I could see Mr. Pinto at a given point in</p> <p>4 time would have been more enthusiastic than he should</p> <p>5 have been in using my name, yes, sir, yes.</p> <p>6 ARBITRATOR EIZENSTAT: In the hope that,</p> <p>7 perhaps, he could get a deal he could then bring it to</p> <p>8 you?</p> <p>9 THE WITNESS: (Witness nods head.)</p> <p>10 ARBITRATOR EIZENSTAT: Did he ever bring such</p> <p>11 a deal to you?</p> <p>12 SECRETARY SEQUEIRA: Mr. Campollo--</p> <p>13 THE WITNESS: That my--</p> <p>14 PRESIDENT RIGO: You have to say "yes" or</p> <p>15 "no" and say it verbally for your answer to be</p> <p>16 recorded in the record.</p> <p>17 THE WITNESS: Yes, with pleasure.</p> <p>18 Yes, in order to submit the deal to me or if</p> <p>19 it was something that required a small investment</p> <p>20 because Mr. Pinto was a very smart man, but he did not</p> <p>21 have a lot of equity; perhaps if this was not a large</p> <p>22 investment, perhaps he could have had some personal</p>	<p style="text-align: right;">1264</p> <p>05:47:28 1 which is approximately 1 million-dollar fund, for</p> <p>2 scholarships, yearly amount, and this is coming</p> <p>3 together, and we are starting to work with it, and</p> <p>4 that, thanks to Mr. Pinto. Not everything thanks to</p> <p>5 Mr. Pinto, but his participation allowed for much of</p> <p>6 this to happen.</p> <p>7 ARBITRATOR EIZENSTAT: Well, that's, to mix</p> <p>8 metaphors, a sweet way to end the discussion. Thank</p> <p>9 you.</p> <p>10 THE WITNESS: With pleasure.</p> <p>11 PRESIDENT RIGO: Mr. Orta.</p> <p>12 MR. ORTA: I just have a follow-up question</p> <p>13 on that last point.</p> <p>14 FURTHER REDIRECT EXAMINATION</p> <p>15 BY MR. ORTA:</p> <p>16 Q. You mentioned that there was an educational</p> <p>17 center that you somehow have a part in. Is that a</p> <p>18 for-profit business?</p> <p>19 A. No. It is not a business. It is an</p> <p>20 institution that has five different activities. Has</p> <p>21 the Technological University of Guatemala; it's called</p> <p>22 the Universidad del Valle. And there is an American</p>

<p style="text-align: center;">1265</p> <p>05:48:47 1 school, and there is a research center, and it is not 2 for profit--fully not for profit. 3 Q. Do you own that educational center that you 4 were just testifying about in response to Secretary 5 Eizenstat's last question? 6 A. No. It is an educational center that belongs 7 to an NGO, and it is owned by five different 8 not-for-profit institutions. 9 Q. Could we put up R-173. 10 Sir, we have up on the screen, there should 11 be--let's see if we could get you a Spanish version of 12 it, the original version. 13 Sir, this is a letter--for the record it's 14 Exhibit R-173. It's a letter sent--well, dated 15 April 15, 2005. 16 First question is: Is this a letter you sent 17 to Mr. Jorge Senn on this date? 18 A. Yes. 19 Q. And the purpose of the letter--what was the 20 purpose of the letter? 21 A. This-- 22 MR. FOSTER: Excuse me, Mr. President. I'm a</p>	<p style="text-align: center;">1267</p> <p>05:52:37 1 A. This is the end of the contacts we had with 2 Ferrovías because of a phone call that I got from Juan 3 Esteban Berger, a bit unfortunate because he was quite 4 upset with me, and he told me that we were using his 5 name--I don't know where, I don't know for what 6 purposes either, but I knew there was a problem 7 because of the tone of the conversation. 8 Because of that, I called Pinto, and I 9 prepared this letter, and I signed it before him for 10 there to be no doubt whatsoever that we had no 11 interest in participating in anything related to the 12 railway. 13 It was said that I was the one who was trying 14 to look for the business of participating in the 15 railway. With all due respect to the Tribunal, but it 16 seems that we are talking about an oilfield that 17 everyone wants to lay hands on. 18 What we're talking about, really, is a failed 19 business. I had no interest in participating in it, 20 and that had already been clear in my mind. 21 I was also upset at the fact that my name was 22 being used in some kind of negotiation, and I wanted</p>
<p style="text-align: center;">1266</p> <p>05:51:15 1 little bit at a loss to see how this letter relates to 2 Secretary Eizenstat's questions. 3 MR. ORTA: I can clarify. 4 PRESIDENT RIGO: Please do. 5 MR. ORTA: Secretary Eizenstat--and maybe I 6 should have laid that foundation first--Secretary 7 Eizenstat asked some questions about whether Mr. Pinto 8 was ever authorized to communicate with Ferrovías and 9 whether Mr. Campollo was aware of any communications 10 he might have had with--I'm sorry, with Ferrovías, and 11 I believe that the record is that Mr. Campollo was 12 aware of some communications regarding quotes for 13 potential freight transfer. And so the question 14 relates to that in this letter. And, in particular, 15 whether there were any communications after this 16 letter that he's aware of. 17 PRESIDENT RIGO: The witness may answer the 18 question. 19 THE WITNESS: The question is why this 20 letter-- 21 BY MR. ORTA: 22 Q. Yes.</p>	<p style="text-align: center;">1268</p> <p>05:54:38 1 to leave it as clear as I knew how, and the clearest 2 way for me was to send this letter to Mr. Senn. 3 It seems that there was a lot of upsetting 4 feelings against me because I was acting against their 5 interests; however, in their reply letter, it is clear 6 that they had invited me to negotiation, and I 7 understand that because I read it that way, that Senn 8 understood that, that I had been invited to the 9 project they were going to share with me in Miami. 10 Q. Sir, up to this date, do you have any 11 knowledge of Mr. Pinto having any further 12 communications with Ferrovías that you authorized? 13 A. I had no knowledge, and he denied that to me, 14 because, in a couple of occasions, I asked him to know 15 that the relationship with Ferrovías and us was 16 completely terminated, and I wanted nothing to do with 17 it. 18 PRESIDENT RIGO: Mr. Foster. 19 MR. FOSTER: Thank you. Put the letter back 20 up again, please. 21 RECCROSS-EXAMINATION 22 BY MR. FOSTER:</p>

<p style="text-align: right;">1269</p> <p>05:56:28 1 Q. Nowhere in this letter do you tell Mr. Senn 2 that Mr. Pinto was not authorized to speak on your 3 behalf, did you? 4 A. That is true. 5 Q. Now, Secretary Eizenstat asked you about the 6 startlingly disparate recollections of the meetings 7 between you and the people from Ferrovías. 8 You don't have any written memoranda or other 9 notes to reflect your recollection what happened at 10 those meetings, do you? 11 A. What meetings are you talking about? 12 Q. You met--you had at least two meetings with 13 representatives of Ferrovías; and, as Secretary 14 Eizenstat said to you, that the Ferrovías people had 15 very, very different recollections of what went on at 16 those meetings than you've testified to. 17 And my question to you is: You don't have 18 any written memoranda or notes or e-mails or any other 19 contemporaneous document to reflect what you're 20 telling the Tribunal happened at those meetings, do 21 you? 22 A. I don't have any kind of memorandum.</p>	<p style="text-align: right;">1271</p> <p>05:59:24 1 intention was. 2 ARBITRATOR EIZENSTAT: Thanks. And one last 3 question, and that is Tab 6. We have gone over this 4 Desarrollos G Proposal, and I understand you didn't 5 know anything about it, and so I will ask you one 6 factual question. 7 The cover e-mail has an address of 8 Maprisol@Intellnet.com. Is that an e-mail of which 9 you're aware? Is that one of your company's e-mails? 10 THE WITNESS: No, sir. No, Mr. Eizenstat. 11 ARBITRATOR EIZENSTAT: Thanks. 12 PRESIDENT RIGO: Any questions on that? 13 MR. ORTA: None from the Respondent. 14 MR. FOSTER: One, thank you, sir. 15 FURTHER RECROSS-EXAMINATION 16 BY MR. FOSTER: 17 Q. You know that Maprisol@Intellnet.com is an 18 e-mail address of Mr. Pinto, don't you, sir? 19 A. No, I don't have knowledge of that. 20 I hope that this Tribunal does not purport to 21 believe that I know by heart the e-mail addresses of 22 everyone. I'm not quite an electronic person. And if</p>
<p style="text-align: right;">1270</p> <p>05:57:57 1 Q. Have you ever seen any document or other 2 memorandum reflecting Mr. Pinto's recollection of what 3 happened at any meeting with Ferrovías that he 4 attended? 5 A. To the ones that Mr. Pinto attended? None. 6 MR. FOSTER: No further questions. 7 QUESTIONS FROM THE TRIBUNAL 8 ARBITRATOR EIZENSTAT: I have two quick 9 factual questions. 10 With respect to this Paragraph 22 of your 11 statement about calling Mr. Pinto in while writing the 12 letter you referred to, it is because Mr. Juan Esteban 13 Berger was informing you that Ferrovías 14 representatives were saying that you, through 15 Mr. Pinto, was using his name without obtaining his 16 permission. 17 Did you ask Mr. Pinto, indeed, he had been 18 using your name improperly? 19 THE WITNESS: Yes. We had a discussion. He 20 denied it to me immediately. Now, if that is true or 21 not, well, I didn't want to delve further into it. 22 What I wanted to lay clear on the table was what my</p>	<p style="text-align: right;">1272</p> <p>06:00:54 1 this is one of Mr. Pinto's e-mail addresses, I don't 2 recall it by heart. 3 Q. If Mrs. De Valdez, in her Statement, says 4 that it is Mr. Pinto's e-mail address, you would have 5 no reason to question that, would you, sir? 6 A. It is true that I have no reason to dispute 7 what Olgita says--or Olgita said. 8 MR. FOSTER: Thank you. 9 PRESIDENT RIGO: We don't have any more 10 questions for you. I thank you for having come here 11 and having spent this time with us and having 12 cooperated with the Tribunal. 13 THE WITNESS: Thank you. I thank you for the 14 role that you're playing in elucidating a dispute as 15 in this case. 16 Personally, I really didn't have any 17 obligation to come. This has been a very serious 18 matter for us, some false allegations have been made, 19 and also I couldn't allow Guatemala to run the risk of 20 losing that quantity of money just because I didn't 21 necessarily feel like coming. Thank you. 22 PRESIDENT RIGO: Thank you.</p>

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06:02:25 1 (Witness steps down.)
2 PRESIDENT RIGO: We will adjourn now, and we
3 will start at 9:00 tomorrow morning.
4 Do you have any pending questions?
5 MR. ORTA: I hasten to say that I do, but it
6 relates to the issue of the Core Bundles. I
7 understand that there have been some other
8 conversations while we were at lunch about that, where
9 I was not present, and I just would like to understand
10 what the direction is from the Tribunal.
11 I understand that perhaps the Tribunal now
12 wants electronic copies, but I'm quite frankly not
13 sure. So just let us know.
14 PRESIDENT RIGO: Neither myself, that's why
15 we have to come back to you, and discussions we had
16 have been with the Secretary, and each one of the--one
17 of the persons of your team who handle this type of
18 matter. And we learn of various options, because I
19 had asked the A5, and it seems that the A5 will be
20 ruled out anyway, but it's more what type of
21 electronic device we would need, and in what order we
22 would need the documentation.

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter,
do hereby certify that the foregoing proceedings were
stenographically recorded by me and thereafter reduced
to typewritten form by computer-assisted transcription
under my direction and supervision; and that the
foregoing transcript is a true and accurate record of
the proceedings.

I further certify that I am neither counsel
for, related to, nor employed by any of the parties to
this action in this proceeding, nor financially or
otherwise interested in the outcome of this
litigation.

DAVID A. KASDAN

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06:03:56 1 But I need to consult my colleagues. We had,
2 today, really no time. So if you allow us, we will
3 get back to you early tomorrow.
4 MR. ORTA: Thank you, Mr. Chairman.
5 PRESIDENT RIGO: So, we shall adjourn now,
6 and thank you very much, and have a good evening.
7 (Whereupon, at 6:03 p.m., the hearing was
8 adjourned until 9:00 a.m. the following day.)
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