

BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

ICSID Case No. ARB/19/6

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 In the Matter of Arbitration Between: :
 :
 ANGEL SAMUEL SEDA AND OTHERS, :
 :
 Claimants, :
 :
 and :
 :
 REPUBLIC OF COLOMBIA, :
 :
 Respondent. :
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Volume 4

VIDEOCONFERENCE: HEARING ON JURISDICTION AND MERITS

Thursday, May 5, 2022

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

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

PROF. DR. KLAUS SACHS
President of the Tribunal

PROF. HUGO PEREZCANO DÍAZ
Co-Arbitrator

DR. CHARLES PONCET,
Co-Arbitrator

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P R O C E E D I N G S

1
2 PRESIDENT SACHS: Good morning, ladies and
3 gentlemen. I wish to flag something as regards
4 today's program. I was told by the Court Reporters
5 that we should strive stopping at 6:30 because it's a
6 very long day, it has been very long days for them,
7 for all of us, but particular for them, so I would ask
8 you to contribute to it, that we try to keep with that
9 schedule; and so, without further ado, we would then,
10 at least you have housekeeping matters from your side.

11 Claimant, do you have anything you would
12 wish to address?

13 MR. MOLOO: No.

14 PRESIDENT SACHS: Respondent?

15 MS. BANIFATEMI: No housekeeping,
16 Mr. President. Just to flag we are encountering
17 difficulties with the translation, sometimes, and that
18 does slow the process.

19 PRESIDENT SACHS: Yes.

20 MS. BANIFATEMI: And we will continue to
21 bring it up when we see there's an error, but I wanted
22 to flag it because--

1 PRESIDENT SACHS: Yes.

2 MS. BANIFATEMI: --the rest of the day will
3 be in Spanish again.

4 PRESIDENT SACHS: Yes.

5 MS. BANIFATEMI: Thank you.

6 PRESIDENT SACHS: So, let's see. Okay?

7 MS. BANIFATEMI: I will go get Dr. Caro.

8 PRESIDENT SACHS: Dr. Caro, please.

9 JOSÉ IVÁN CARO GÓMEZ,

10 RESPONDENT'S WITNESS, RESUMED

11 PRESIDENT SACHS: Good morning, Dr. Caro.

12 Please make yourself comfortable, to the extent that
13 is possible. And we will continue with the
14 cross-examination.

15 CONTINUED CROSS-EXAMINATION

16 BY MR. MOLOO:

17 Q. Thank you, Mr. Caro. I'm sorry you had to
18 eat dinner alone yesterday evening.

19 Can you hear the translation? Is it
20 working?

21 THE INTERPRETER: I don't think he's hearing
22 the translation into Spanish.

1 (Pause.)

2 THE WITNESS: I can now hear the translation
3 perfectly. Thank you.

4 BY MR. MOLOO:

5 Q. Okay. Perfect.

6 I was apologizing that you had to eat dinner
7 alone yesterday or at least without any of your
8 colleagues in this room. But I can promise you,
9 you'll be able to eat lunch with them.

10 Can you hear me okay?

11 Okay. All right.

12 A. I can hear you very well.

13 Q. It was just that my joke wasn't funny.

14 (Laughter.)

15 A. I'm very used to having dinner alone. I'm
16 accustomed to it.

17 Q. I see. Okay. Well, I'll give you a smile
18 for your joke.

19 Now, yesterday, we were talking about in
20 your Requerimiento, your analysis of Corficolombiana's
21 good faith, and I think we had discussed that
22 Newport's good faith was not discussed in here, but

1 let's go--we can go back to that document.

2 Before we put it up, I do want to ask you a
3 question about the standard of determining diligence
4 and good faith without fault.

5 You agree that it is not possible to define
6 one single model for a prudent diligent person;
7 correct?

8 A. Excuse me could you please locate me in the
9 document we are reading from? What document are you
10 making reference to?

11 Q. I'm just asking whether you agree with that
12 statement: It is not possible to define one single
13 model for a prudent diligent person; correct?

14 A. It is not possible. It is easier to say who
15 is not a good-faith third party. That's easier than
16 saying who is a third party of good faith. The law
17 and case law establishes who is a good-faith third
18 party. It is a concept of good faith, but it is not
19 stated who can be a good-faith third party.

20 (Pause.)

21 Q. Okay. And it must be observed from the
22 perspective of the person who you're assessing ex ante

1 at the time that they conduct their diligence;
2 correct?

3 A. Yes, of course. That's right.

4 At the time you conduct the assessment,
5 that's ex ante and when you are conducting
6 investigations or studies in connection with a
7 good-faith third party.

8 Q. And any analysis cannot be done in the
9 abstract and must answer to the specific qualities of
10 each subject by virtue of their knowledge, skills,
11 tools, and instrument at their disposal; correct?

12 A. Yes, of course. The study is conducted on
13 the basis of the evidence and the documents that are
14 included in the proceedings to assess whether the
15 requirements are met for the individual to be a
16 good-faith third party.

17 Q. Right. But it's not the same standard for
18 everybody. You put yourself in the position of the
19 person who's actually conducting the diligence;
20 correct?

21 A. Of course. The thing is, the standards are
22 different. This same standard does not apply to a

1 regular individual, a regular Tom, Dick or Harry than
2 for a financial institution. A financial institution
3 is obligated to abide by the SARLAFT, which is a
4 system to fight terrorism and money-laundering. In
5 that case, the standard is higher in the case of that
6 entity.

7 Q. Right. So, Corficolombiana, for example is
8 subject to SARLAFT; correct?

9 A. It must be subject to SARLAFT.

10 Q. Right. But Newport would not be subject to
11 SARLAFT; correct?

12 A. Also, Newport has to be subject to SARLAFT
13 because it is a juridical person, an entity. In
14 accordance with the directives of the Superintendence
15 of Companies, it must meet standards for the due
16 application of the SARLAFT.

17 Q. You told me earlier that SARLAFT applied to
18 financial institutions. Do you know if Newport is a
19 financial institution?

20 A. As I said, in spite of the fact that Newport
21 is not a financial institution, it is a company; and,
22 as such, it must meet SARLAFT regulations, this in

1 accordance with the provisions set forth in or by the
2 Superintendence of Companies.

3 Q. Okay. Let's look at--one second--we go to
4 24bis, which is the Requerimiento. If we go to 136
5 and 137.

6 So, here you quote the Financial Organic
7 Statute. Do you see that on 136 at the bottom? This
8 is the Requerimiento. 136 at the bottom. It's up on
9 the screen as well.

10 A. Yes, sir.

11 Q. And this is where the SARLAFT obligations
12 are contained; correct?

13 A. Yes, sir.

14 Q. And you see in (1) it says: "Obligation and
15 oversight of criminal activities. Institutions under
16 the oversight and monitoring of the Financial
17 Superintendence or whomever acts in such a role shall
18 be obligated to adopt appropriate and sufficient
19 oversight measures..."

20 Do you see that?

21 A. Yes, I do see that.

22 Q. And then it lists four things in terms of

1 the oversight mechanisms that those entities, under
2 the jurisdiction of the Financial Superintendence,
3 must do.

4 Do you see that?

5 A. I do see that, sir, yes.

6 Q. And your conclusion was that Corficolombiana
7 did not meet these four things; correct?

8 A. That was the conclusion that I arrived at in
9 the asset forfeiture Requerimiento that I submitted to
10 the Court. However, one must clarify that the
11 statement included in this Requerimiento is what needs
12 to be discussed during the asset forfeiture trial
13 before a tribunal in Colombia.

14 Q. Right. You hadn't asked Corficolombiana
15 what they did; correct? This is just your assumption.

16 A. I didn't really have to ask anything of
17 Corficolombiana as to whether it met the SARLAFT
18 requirement or not. They know the rules that they
19 have to abide by. If they don't abide by those
20 regulations, then they may be subject to a SARLAFT
21 breach.

22 It was not my obligation. The rules didn't

1 require that of me. I didn't have to ask
2 Corficolombiana whether it met the requirements of
3 SARLAFT or not. That was the subject matter to be
4 discussed during the asset forfeiture trial that we're
5 going to put to the Court.

6 Q. Understood.

7 And let's go through these requirements.
8 The first one is: "Adequately know your client."
9 Correct? Type of economic activity, its breadth, the
10 basic features of their regular transactions; correct?

11 A. Yes.

12 Q. And the second is determine the frequency,
13 volume, and features of their users' financial
14 transactions; correct?

15 A. Correct.

16 Q. And the third is to determine again their
17 clients' volume and movements of funds to ensure
18 they're in line with their economic activities;
19 correct?

20 A. That's right.

21 Q. And the fourth is that they must report to
22 the Information and Financial Analysis Unit any

1 information that they find out about their clients
2 that would be in breach of the law or things like
3 that; correct?

4 A. That's right.

5 Q. Now, all of these requirements are with
6 respect to their own clients; correct?

7 A. The clients and the users of the financial
8 system. Well, they must know their clients and their
9 users, and they must abide by all of the provisions of
10 the--this financial statute.

11 But I repeat, and this should be made clear
12 in this diligence, what you're asking, counselor, is
13 exactly what is going to be discussed during the
14 trial, so I cannot anticipate my criteria when I have
15 a case pending before the Colombian courts. This
16 could be something counter-productive in connection
17 with my claim for asset forfeiture and the claim of
18 asset forfeiture that the State has.

19 Q. I understand your position on that.

20 And Corficolombiana was contracting with two
21 parties; correct? One was Newport, and the other was
22 La Palma; correct?

1 A. I don't know who they did that with; but, in
2 this case, Corficolombiana had signed a Trust
3 Agreement with La Palma Argentina. And in the La
4 Palma Argentina agreement, Newport was also there.

5 Q. So, they would have to do the SARLAFT
6 process with respect to those two entities; correct?

7 A. Those and also the ones belonging to the
8 financial users.

9 Q. Let's go to--just give me one second--138,
10 at the bottom of 138.

11 Do you see that?

12 A. Yes, sir, I do see it.

13 Q. At the top of 139--and you can see that the
14 ultimate conclusion is that, because, in your
15 view--it's C-24 still?

16 Yes, sorry.

17 THE INTERPRETER: Counselor, are you talking
18 about C-24. You're talking about Page 24?

19 MR. MOLOO: C-24, Page 139. 139. Thank
20 you.

21 BY MR. MOLOO:

22 Q. Here you're talking about the fact--again,

1 you're saying--you're talking about Iván López, you're
2 talking about José Varela Arboleda. You can see on
3 139, for example, regarding the next holder of
4 ownership rights Mr. Varela Arboleda, the financial
5 entity could have confirmed that this person lacked
6 assets in the financial system. And in the next
7 paragraph, you say the same situation applies to
8 Cardona, Tatiana Gil, Mónica Rendón Gil.

9 So, your objection is that Corficolombiana
10 did not run the SARLAFT process with respect to
11 everybody on title and their legal representatives.
12 Is that--am I understanding correctly?

13 A. If financial institutions such as
14 Corficolombiana, with the prestige that it must have,
15 it was its obligation to carry out those verifications
16 due to the appropriate SARLAFT proceedings and it had
17 to verify that the business was transparent and
18 risk-free, in order to establish who preceded in the
19 ownership transfer history of a property they were
20 going to receive under a Trust agreement. That was
21 their obligation.

22 Q. We just saw SARLAFT obligations. The

1 obligation is just to know their client, not every
2 person on title with respect to a transaction that
3 they're involved in. They have to know their client.
4 They can find out information about their client,
5 about their financial information, how frequently--you
6 know, the volume of their transactions, etcetera.

7 But how are you supposed to do that, and
8 where is the requirement in what we just read to do
9 that on every entity on title?

10 Are you allowed to go and find out financial
11 information? How do you even do that for someone
12 who's not your client? How much money do they have in
13 their bank account? How do I find that out from
14 someone who is on title in 1998?

15 A. I just wanted to make something clear. All
16 of these circumstances are going to be discussed
17 during a lawsuit before the Colombian courts.

18 Now, however, to respond to your question, I
19 must indicate that it was the obligation of
20 Corficolombiana to carry out all these inquiries,
21 since SARLAFT establishes that politically exposed
22 persons must be specifically looked at in order to

1 carry out a transaction of this nature.

2 For example, if Shakira, who is a famous
3 individual, she's a wealthy individual, if she could
4 be a politically exposed person, if Shakira buys
5 property of the drug-trafficker, then she is going to
6 ask for initial leverage of a financial institution in
7 Colombia. So because it was transferred to Shakira,
8 who we know has financial capabilities, and the
9 financial institution providing the financial
10 leverage, is not going to ask where the property comes
11 from? Well, I would think that would reflect badly on
12 the State allowing assets to be laundered in those
13 conditions, because precisely that is a modality, that
14 is a typology typical of money-laundering, as
15 established in the 40 recommendations of the Financial
16 Action Task Force.

17 Q. Mr. Caro, please just listen to the question
18 and answer the question, and this will go a lot
19 faster.

20 You did not identify, on 138 and 139, any
21 concerns with La Palma or Newport, did you? You don't
22 list them as having any issues; correct?

1 A. I don't specify these because, mindful of
2 the progressive nature of the investigation at that
3 time, I could still not establish whether or not La
4 Palma Argentina or other persons might be engaged in
5 illicit activity. I only make reference to those that
6 could be falling under grounds for asset forfeiture or
7 on which the attention of financial entities had to be
8 fixed, and that is the Judgment of Reproach that I
9 precisely state in the Requerimiento, the filing for
10 asset forfeiture.

11 Q. So, I think the answer was "no"; right?

12 A. Not with respect to the persons you're
13 indicating, but it is an obligation of a financial
14 institution.

15 Now, it just wasn't any property. This was
16 a very costly property. And if Corficolombiana is a
17 financial institution with a well-known reputation, it
18 was under its obligation to undertake a proper
19 SARLAFT.

20 Q. I understand, you've told me this several
21 times. Yes, that's exactly what we're discussing:
22 What was a proper SARLAFT?

1 A. Well, I can't tell you what would have been
2 a proper SARLAFT. They need to meet certain
3 parameters; and, if they don't, then they might not be
4 fully carrying out their obligations as a supervised
5 institution, supervised by the Financial
6 Superintendence.

7 Q. And nowhere in here do you say what
8 Newport--that Newport was at fault, did you? You just
9 say Corficolombiana was at fault; right? Nowhere in
10 here do you say Newport was at fault.

11 A. Of course, I don't mention it because
12 Newport speaks through Corficolombiana because it is
13 the natural spokesperson of the property that was
14 affected.

15 Q. Okay. I'd like to bring up a document, and
16 I want to know if you've seen it. It's C-219.

17 Now, this is the testimony of Ms. Margarita
18 Betancourt Gúzman, who is a Legal Director--although,
19 I don't think she's the owner--of Fiduciaria
20 Corficolombiana.

21 Do you see that?

22 A. Yes, I see it.

1 Q. And in a 2018 arbitration, she gave
2 testimony, sworn testimony, about all of the steps
3 that Corficolombiana took prior to the acquisition.
4 Were you aware of that?

5 A. I have not seen this statement, and I have
6 no reason to have seen it, because the following is
7 also clear: The Asset Forfeiture Action is autonomous
8 and independent of any other action or exercise. It's
9 totally autonomous.

10 Now, it's natural, of course, that she,
11 before a tribunal, would have to testify as to the
12 actions she took . But I reiterate, that's going to
13 be a matter to be debated in the proceeding that we
14 find ourselves in.

15 Q. I understand it's completely autonomous of
16 engaging in any process with the people who are
17 subject to it, but let's just see if you knew some of
18 the things that were ultimately--that she told--that
19 she answered under sworn testimony. Let's see if you
20 knew of some these things.

21 So, if we go to Page 4, the bottom third,
22 she was asked did the fiduciary hire that law firm,

1 Otero & Palacio.

2 And she said: "The fiduciary has a list of
3 firms who can conduct title studies for us, and we
4 recommend them to clients; and they hire those firms."

5 So, were you aware that Otero & Palacio was
6 recommended to Newport by Corficolombiana at the time
7 when you did this Requerimiento? Were you aware of
8 that?

9 A. Of course, I am aware of it, and I am also
10 familiar with the opinion that was given by Otero &
11 Palacio.

12 Q. And then, the next--not the next question
13 but the one after, says: What are the parameters that
14 the fiduciary requires for a title study back in 2013?
15 So, what's normal? What do you normally do?

16 And she answers: In our title study, we
17 verify the transfers of title of the property for the
18 past 10 years. The attorney conducting the title
19 study who submits the studies to us with all of its
20 appendices verifies that each transaction leading to
21 the transfer of ownership rights is free from any
22 grounds of nullity or any error in the transfer of the

1 Real Property. That is with regard to the civil
2 aspect and in the Department, both outside attorney
3 and ourselves do it. In the SARLAFT Department, a
4 list is checked of all persons whose name appear in
5 the title transfers of the Real Property both in the
6 supplement and the annotations.

7 Do you see that?

8 A. (No response.)

9 Q. So, were you aware that that was
10 Corficolombiana's general practice with every single
11 case that they handle?

12 A. No, I can't tell you whether that was
13 Corficolombiana's practice. Just that for this
14 transaction, and in keeping with the particular
15 conditions in which it was presented, one notes some
16 omissions which allow me to establish that it might
17 not be a good-faith third party. But let me
18 reiterate, I don't decide that right now. That will
19 be decided upon by a judge in an Asset Forfeiture
20 Trial.

21 Q. So, you did not determine the good-faith
22 status of Corficolombiana. Did I understand that

1 correctly?

2 A. That is not correct.

3 Q. Okay. Well, were you aware that
4 Corficolombiana has a SARLAFT Department? That's the
5 next question. And they have a compliance officer
6 that deals with all of the SARLAFT issues. And if you
7 go on to the next page, what they do is conduct a
8 study and verify information regarding the persons
9 with whom the fiduciary will have some sort of ties,
10 whether it's clients or they're entering into an
11 agreement with.

12 Do you see that? It's the top of Page 4.
13 And they run them through various lists and it goes on
14 and on about all the things they do.

15 Were you aware of any of this when you filed
16 your Requerimiento? And you spent all day and night
17 and every weekend putting it together?

18 A. Of course. It was my responsibility to be
19 able to file the Requerimiento to establish whether
20 certain minimum standards of SARLAFT were met so as to
21 present it to the Judge.

22 Q. And if we go to Page 15 for a second. This

1 comes back to the Otero & Palacio study--the very top,
2 so she's being asked by the Arbitrator: Was it you or
3 was it the attorney who decide it should go back
4 10 years?

5 And the answer was: No, the attorney
6 drafted it, and when we received it, we determined
7 that it was fine to go back 10 years, for that reason
8 I'm giving you, because in civil actions that is what
9 you do for title studies. In civil action is the
10 statute of limitations is 10 years. They performed
11 it. We received it, and asked for the supplemental
12 information on the last part on a deed, but we
13 accepted it going back 10 years.

14 And then, the next question: In other
15 words, that title study was satisfactory for the
16 fiduciary?

17 And she says: Yes, it was complete. It was
18 submitted with appendices, all the reviews were
19 conducted on the issue of the civil chain of title
20 transfers.

21 And then at the bottom, again the Arbitrator
22 says: Do you mean to say that the search and the list

1 is not limited to those shown over the past 10 years?

2 And then the answer is: For the last
3 10 years, no. That is performed for all. So, what do
4 we do? The commercial officer who was assigned to the
5 client takes the certificate of transfer of title and
6 enters it into an Excel sheet and runs all the
7 individuals, et cetera.

8 So, that's the fiduciary's process.

9 Were you aware of that? Were you aware that
10 this was the process that they undertook with respect
11 to the title study?

12 A. Of course, I understand that situation. And
13 here, the first failing of that title study, any
14 Colombian lawyer who is familiar with asset forfeiture
15 and who comes to learn--and they must know the Asset
16 Forfeiture Action, is atemporal, has no statute of
17 limitations. As this is the case, it was an
18 obligation of a company performing the title study to
19 have conducted a more in-depth study, a more rigorous
20 study. Why? Because, if one noticed that there were
21 several transfers and transformations of the property,
22 both legal and physical, that should have set off the

1 alarms for those lawyers who were performing the title
2 study. That is why they should have undertaken a
3 study going back to the origin of that real estate
4 registration folio; that is to say, from the origin of
5 the property. Of course, that was an obligation. For
6 those who know about asset forfeiture cannot merely be
7 content to undertake a study of a title or those who
8 may be subject to asset forfeiture for only--going--in
9 a study going back only 10 years.

10 And I'd like to explain it better so that
11 the Tribunal can understand exactly what I'm driving
12 at.

13 At present, we are still taking property
14 from--

15 PRESIDENT SACHS: We understand, and please
16 go on with your questions.

17 MR. MOLOO: Thank you, Mr. President.

18 BY MR. MOLOO:

19 Q. If we could just stick to answering the
20 questions, that's the purpose of this. Thank you. We
21 understand your position.

22 And are you aware that, in 2014, there was a

1 W interview that was done by Mr. Seda? Were you aware
2 of that? W Radio interview.

3 A. I have no reason to have any knowledge of
4 that interview because I stick exclusively to what is
5 in the process in the proceeding record.

6 Q. Are you aware that Mr. Iván López approached
7 Mr. Seda in 2014? Well, you haven't interviewed
8 Newport, so you may not know that, but I'm just asking
9 if you are aware.

10 A. Yes, I am aware of it because it is in the
11 file of the Asset Forfeiture Case.

12 Q. And are you aware--if we go back to C-219,
13 that, in 2014, when Mr. Iván López approached
14 Mr. Seda, that he told the fiduciary and everybody
15 else that he had been approached, and you can see the
16 bottom half, there is a question: "Did you know," on
17 Page 6, "did you know or did the fiduciary know of any
18 radio interview given by Mr. Angel Seda?"

19 And the answer is: "Yes, we knew. We
20 didn't listen to the interview itself, but we did
21 learn of the interview subsequently because he," Angel
22 Seda, "sent a notice to the area of beneficiaries

1 informing to them of that interview and about the
2 situation that arose. We had already begun seeking
3 information, we verified once again how the business
4 deal had taken place, we verified the title studies,
5 we verified the searches that Mr. Sintura had
6 performed, and once again the tool we have is to
7 search in the list for people whose name appear in the
8 title transfer of the property and those who appear,
9 especially for La Palma Argentina, that was generated.
10 In other words, La Palma Argentina transfers it to me,
11 there is clear title, and so they rechecked it again
12 in 2014, and everything turned up clean."

13 Were you aware of that?

14 A. What I am aware of is what is in the record
15 of the Asset Forfeiture Proceeding, and I limit myself
16 to that because, for me, what is not in the record of
17 the proceeding doesn't exist.

18 Q. So--and if you look a little bit above
19 that--and you haven't interviewed anybody at
20 Corficolombiana; right?

21 A. That is right, but I have no reason to
22 interview them because they are represented by a

1 lawyer who is going to attend an Asset Forfeiture
2 Trial, and they will have to speak there to say what
3 they might say to defend their interests.

4 Q. Right. They can tell the Court.

5 So, I assume, then, you're not
6 aware--because this was asked of them: "Has a
7 fiduciary ever been called into question for having
8 entered into a business deal involving the company La
9 Palma?

10 And they said: No. And in fact, when this
11 came up, we reviewed what had been done at the time,
12 and we reviewed La Palma, and everything was clean.

13 Do you see that? That's in the middle of
14 the page, on 06: "There's no impediment to working
15 with La Palma Argentina. In fact, when the situation
16 arose, we crosschecked the list again for people
17 affiliated with La Palma Argentina and those involved
18 in the transfer of title of that Real Property, and
19 they don't show up. There's no impediment to working
20 with La Palma Argentina nor with those who appear on
21 the transfer of title of the property."

22 Do you see that?

1 They check that again. When this all came
2 up, they said, and still nothing turns up.

3 Are you aware of that?

4 A. Very well. I'm just now finding out about
5 this interview with the legal representative, no
6 doubt, of Corficolombiana. But within the evidence
7 that I requested in the Asset Forfeiture Proceeding,
8 it's precisely a matter of asking the Financial
9 Superintendency, which is the one oversees the
10 financial institutions in Colombia, so as to establish
11 whether they have some non-conforming products or
12 results with respect to the SARLAFT, and that will be
13 the subject of debate in an Asset Forfeiture Trial.

14 Q. Okay. One last question about this
15 document. On the next page, I assume again you're not
16 aware of this because you haven't had the chance to
17 speak to a representative of Corficolombiana, but they
18 were asked, when this interview had happened, you
19 know, was there anything you did in terms of
20 contractual, trying to terminate any agreements or
21 anything like that, and they said: When that
22 interviewed happened, the Agreement continued in force

1 because there were no contractual grounds or any legal
2 grounds for terminating it. On the contrary, the
3 interview is there. The genter--sorry--the gentleman
4 explained, the gentleman informed the area of
5 beneficiaries--and I think they're talking about Angel
6 Seda there--he made all the information available,
7 which is the same information that we must review in
8 order to enter into the Agreement in the first place.

9 And on the contrary--sorry, I should make
10 clear, in the first place, is not actually in the
11 text, that's just my clarification--and on the
12 contrary, that we confirmed was that there was no
13 impediment to the transfer of title of the properties
14 that would permit claims against the fiduciary that it
15 must return the Lot or anything that would affect the
16 real estate Project. Since no legal or contractual
17 grounds were present, the Agreement carry--continued
18 being carried out. Terminating it would have meant
19 breach of agreement by the fiduciary because there was
20 no just cause to terminate it. On the contrary, we
21 would have been targ--the target of claims, obviously
22 from Newport, such as those pending today. Those

1 would be against the fiduciary from all the area of
2 beneficiaries.

3 So, had you interviewed Corficolombiana, you
4 probably would have understood this position; correct?

5 A. Let me reiterate that Corficolombiana will
6 have to provide its explanations before the natural
7 Judge, the asset forfeiture judge. Therefore,
8 guaranteeing those rights, well, it will have to
9 appear and explain how it is that this fiduciary deal
10 went forward. It was not my obligation to call
11 Corficolombiana because the natural scenario for this
12 debate is the trial which we are before a judge in
13 Colombia.

14 Q. So, it's not your obligation to call
15 Corficolombiana, and it wasn't your obligation to call
16 Newport as well? I assume that's your position?

17 A. Newport, yes, of course. In fact it made
18 itself present in the Asset Forfeiture Proceeding, it
19 has filed tutela actions, several. It has filed the
20 documents. That is why I recognized it as an affected
21 party in my Requerimiento of asset forfeiture.

22 Q. Right. I'm just asking, so you didn't

1 collect evidence in Corficolombiana, but you also
2 didn't collect evidence from Newport; is that right?

3 A. From Newport yes- they are in the
4 proceedings file , and Corficolombiana has also
5 presented its arguments. In the procedural stage
6 where that is going to be debated, is in a trial.

7 Q. Right, but just to confirm, that's going to
8 happen in the trial. You haven't collected
9 information from them; correct?

10 A. Of course, it was collected, and it's going
11 to be presented at that trial, what they produced, in
12 the legitimate exercise--

13 (Overlapping interpretation with speaker.)

14 Q. -I'm asking if you collected information
15 directly from Newport or not? "Yes" or "no." Did you
16 collect information from Newport?

17 A. I didn't have to do so at that procedural
18 moment.

19 Q. Let's go to C-003bis. This is the Asset
20 Forfeiture Law. And if we go to Article 118, the
21 initial stage is the stage leading up to the
22 Requerimiento; is that correct? The initial Stage.

1 Is my understanding correct?

2 So, just go to first page of 118.

3 A. I'm sorry. I've not been able to find the
4 document, what document is it can you repeat please?

5 Q. If you just go to the first page of C-003.
6 C-003.

7 This is the Asset Forfeiture Law; correct?
8 This is the Asset Forfeiture Law?

9 A. yes, it's the Asset Forfeiture Law.

10 Q. And the initial stage is the stage leading
11 up to the Requerimiento; correct?

12 A. That is correct.

13 Q. If we go to Article 118. Go to Article 118
14 on Page 34--are you there?

15 A. Yes, sir.

16 Q. The initial stage is intended to achieve the
17 following purposes.

18 Do you see that?

19 A. Yes, I see it.

20 Q. And you see Number 5: "Search for and
21 collect the proof which makes it possible to
22 reasonably conclude there is no good faith without

1 fault."

2 You had to do that leading up to the
3 Requerimiento, didn't you?

4 MS. HERRERA: Sorry, translation again.

5 "Infer," not "conclude."

6 MR. MOLOO: Okay.

7

8 BY MR. MOLOO

9 Q. To reasonably infer that there is no good
10 faith without fault; correct?

11 A. Yes, that's what it says there.

12 Q. And so, you did search. In your position,
13 you searched for and collected the proof to make this
14 determination, "no good faith without fault," without
15 talking to the Parties whose good faith without fault
16 you were trying to assess?

17 A. Of course. The evidence was so clear, that
18 had been collected for the asset forfeiture, that with
19 the documents that were collected, I was able to
20 establish with total clarity that absence of good
21 faith without fault.

22 Q. I understand the position.

1 Are you aware that the Constitutional Court
2 has recently confirmed that good faith does not
3 require the sort of diligence that you're calling for?
4 Are you aware of--I'll pull up the decision, C-329.

5 Oh, sorry--yeah, it is C-39--329.

6 Are you aware of this Decision? From 2020?

7 A. Just a second while I find the document.

8 How do you have it titled here?

9 Q. 329.

10 A. Yes, I am familiar with this Decision by the
11 Constitutional Court.

12 Q. Then you're aware, if we go to--I think I
13 know what your position is going to be on this, but
14 Page 42, this Decision--and apologies, there's no page
15 numbers on this, but it's--I think it's the third page
16 from the back. On the right-hand side, it says
17 "decision." It's the last full page and the one
18 before that.

19 And on the left--so, you can see there's the
20 third full paragraph that starts with "moreover."

21 Do you see that?

22 And, are you aware--

1 A. Yes, I see it.

2 Q. Are you aware that the Constitutional Court
3 found in this case that the good faith and diligence
4 that may be required of third party acquirers refer
5 exclusively to assets that are the object of a legal
6 operation but not to those persons who transfer domain
7 over them?

8 In fact, when someone intends to acquire an
9 asset, it is up to that person to ascertain the legal
10 status of such asset in order to establish the history
11 and the chain of title and tradition but not to
12 inquire into the history or personal details of the
13 Party that transfers the respective assets to him,
14 especially when, in many cases, the transfer occurs
15 when the State itself has not been able to prove or
16 penalize the perpetration of illegal activities.

17 Do you see that?

18 A. Yes, I do see it.

19 Q. I want to go to--now, Newport and
20 Corficolombiana, for that matter, would have conducted
21 their due diligence in 2013; correct? 2012-2013,
22 that's when they conducted their due diligence?

1 A. They should have done it for their due
2 diligence, but it is necessary here to clarify
3 something in connection with the Judgment that you are
4 referring to. This Judgment issued by the
5 Constitutional Court was for a very specific and
6 concrete case whereby the Constitutional Court had to
7 study Grounds 10 and 11 of Article 16 on asset
8 forfeiture. It is a completely different case,
9 different from the one we are currently dealing with.

10 Q. I expected that to be your position, and we
11 will see what the Experts have to say about it
12 tomorrow, but I think the Judgment speaks for itself,
13 and I didn't have any questions about it for you other
14 than to know whether or not you were aware of it, in
15 that specific paragraph.

16 A. I certainly know it. And once again, it is
17 for a particular specific case that is completely
18 different from asset forfeiture process I am in
19 charge --in the Meritage Case. Two specific ground of
20 equivalence That is the one precision that I want to
21 make clear at this point in time.

22 Q. I appreciate your clarification, thank you.

- [REDACTED]
- [REDACTED]
- ■ [REDACTED]
- [REDACTED] [REDACTED] ■
- [REDACTED]
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■ [REDACTED]

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

6 MR. MOLOO: I have no further questions.

7 PRESIDENT SACHS: Thank you.

8 Thank you, Mr. Moloo.

9 Yes, I'm sorry, we should have a break--

10 MS. BANIFATEMI: Yes.

11 PRESIDENT SACHS: --before we have redirect.

12 And how long do you think your redirect will

13 be? You have 10 minutes, no?

14 MS. BANIFATEMI: Do you mean how long the

15 break or how long--

16 PRESIDENT SACHS: Your redirect.

17 MS. BANIFATEMI: I would assume it would be

18 10-15 minutes.

19 PRESIDENT SACHS: Okay. Let's resume at

20 11:20, please.

21 MS. BANIFATEMI: Just how are we doing with

22 time, just to have an assessment of the time that has

1 passed already. We will look at our emails.

2 PRESIDENT SACHS: Okay, good. 11:20,
3 please, and Dr. Caro, same rules as yesterday: Please
4 do not talk to anybody since your testimony is still
5 ongoing during the break. Thank you.

6 THE WITNESS: I will do that, Mr. President.

7 (Recess.)

8 PRESIDENT SACHS: So, we go to redirect,
9 please. Ms. Herrera.

10 MS. HERRERA: Thank you, Mr. President.

11 REDIRECT EXAMINATION

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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█ [REDACTED]

13 Q. Sir, if you look at C-31bis, if you can
14 please look at it.

15 A. Yes, I'm looking at it.

16 Q. At C-31bis, this is the response by the
17 Fiscalía to the right to petition for information by
18 Corficolombiana.

19 You were asked if you knew that
20 Corficolombiana had asked for a review of 65 years
21 in --in the chain of title and that the name of Iván
22 López was not in the chain of title for Meritage? You

1 were shown a list of the legal entities and legal
2 representatives and entities at C-31bis. Can we see
3 the response from the Fiscalía, which lists the
4 representative legal entities with respect to which
5 the Fiscalía requested a response? You should be able
6 to see it.

7 A. I'm looking at the document.

8 Q. Do you know whether the Fiscalía, when
9 providing this response, had the obligation of looking
10 at the corporate history of the entities listed here,
11 or was it limited to only provide an answer in
12 connection with the entity named therein?

13 A. Only in connection with the entity named
14 therein.

15 Please note that in this response a
16 clarification is made. Here it in capital letters,
17 in bold and underlined. To date, the record of the
18 legal and natural persons, this doesn't appear that
19 are listed as follows. As I said yesterday, this is an
20 exact snapshot of the time when the information is
21 requested.

22 This, to mean, that a day later, a week

1 later, a few years later, well, an investigation can
2 be commenced, including by the individuals asking for
3 this information given that

4 the function of the Prosecutorial Office, as
5 I indicated in the Requerimiento, its mission is not
6 to certify. It cannot be held as an approval to
7 conduct acts with legal effects.

8 What is more, those who know about asset
9 forfeiture know that it is not a good practice,
10 through a right to petition, to ask whether properties
11 are undergoing Asset Forfeiture Actions.

12 Q. Thank you, sir.

13 You were asked a number of times in this
14 cross examination about the relationship that
15 Corficolombiana had with Newport, and you answered a
16 number of times under the Trust agreement that they
17 had. Let's look at this irrevocable real estate
18 trust, C-208bis.

19 Claimants, could you please show 20.9 of
20 C-208?

21 MR. SOTO: Our technician doesn't speak
22 Spanish.

1 MS. HERRERA: Would you be so kind to
2 project on the screen C-208bis, and specifically
3 Clause 20.9 of that exhibit.

4 MR. MOLOO: It's not in the binder, by the
5 way.

6 MS. HERRERA: It is not?

7 MR. MOLOO: No.

8 (Comments off microphone.)

9 MS. HERRERA: C-208bis. 208.

10 MR. MOLOO: It's not a document we asked
11 about, so that's why it's not in the binder.

12 MS. HERRERA: Can we project it? This
13 relates to your questions about the relationship
14 between Newport and Corficolombiana and the Trust...

15 MR. MOLOO: I will leave it to the Tribunal
16 if they find it helpful.

17 But this is not a document we asked any
18 questions about, Mr. President.

19 PRESIDENT SACHS: Please, go ahead.

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

21 Just for the record, it's about a question
22 you asked.

1 VOICE: Ah, 28.

2 MR. MOLOO: We can put it up? It's C-28;
3 correct?

4 MS. HERRERA: Yes.

5 MR. MOLOO: Franz, can you put up C-28?

6 MS. HERRERA: Maybe--did you find it? Okay,
7 thank you. Thank you very much.

8 BY MS. HERRERA:

9 Q. Mr. Caro, could you please read--or I'll
10 read it--Clause 20. It says: "General obligations of
11 the fiduciary." If we look at Number 9, it says:
12 "Respond before the Trustor for any damage caused in
13 the performance of this Contract," and that's this
14 fiduciary contract; correct?

15 A. That's right.

16 Q. Mr. Caro, do you know whether there have
17 been any actions filed against Corficolombiana by
18 Newport at the domestic level in Colombian courts or
19 elsewhere?

20 A. With respect to the obligation arising from
21 this Contract, correct. I don't believe there's any.

22 Q. Okay. Thank you, sir.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

4 MS. HERRERA: No further questions.

5 PRESIDENT SACHS: Thanks.

6 My colleagues have questions?

7 Yes, Mr. Poncet has questions.

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR PONCET: Good morning, Dr. Caro
10 Gómez. I have a few questions for you.

11 THE WITNESS: Good morning.

12 ARBITRATOR PONCET: In the line of the
13 questions I asked Dr. Ardila Polo yesterday, my main
14 concern being the various considerations revolving
15 around due process in this case.

16 And I would like to discuss the next steps
17 with you, if you can help me in this respect.

18 My understanding is that we now have this
19 Decision of--recent Decision of April 22, if I'm not
20 mistaken, admitting Newport as a party with an
21 interest within the meaning of the Law on Asset
22 Forfeiture.

1 So, if we can look at the law for a second,
2 am I right that C-003bis, the next--well, you probably
3 know the law by heart; right?

4 THE WITNESS: That's right.

5 ARBITRATOR PONCET: Okay. So, the next step
6 is to determine in legal proceedings in Colombia if
7 Newport and/or Corficolombiana are bona fide owners of
8 this considerable real estate; am I correct?

9 THE WITNESS: That is right, and that is
10 precisely what will be at issue in the trial that is
11 going forward, Asset Forfeiture Proceeding. Newport
12 and Corficolombiana have full guarantees, mindful of
13 due process, to show before the Judges of the Republic
14 of Colombia that they are good-faith third parties
15 without fault. That is a guarantee that the Colombian
16 State provides for affected parties in an Asset
17 Forfeiture Proceeding and in any other proceeding.

18 Q. I understand, but my question was whether
19 the next step is to determine if they are, indeed,
20 good-faith owners. This is the case, isn't it?

21 A. That's right.

22 ARBITRATOR PONCET: All right. There are

1 two possibilities, if I understand correctly: Either
2 at the end of this process it will be decided that the
3 assets, the property, the land involved was bought,
4 was acquired with money that is tainted or it was--it
5 will be decided that it should go back to its owners;
6 am I correct?

7 THE WITNESS: That's right.

8 ARBITRATOR PONCET: Okay. If it is decided
9 that the land was acquired with money that is--that
10 was tainted originally, that would be presumably under
11 Article--would be under Article 16(3) of the law;
12 right? If you can take a look at 16(3). Which seems
13 to me to contain a definition of assets acquired for
14 the purpose of money-laundering. This is what we're
15 talking about.

16 THE WITNESS: That's right.

17 ARBITRATOR PONCET: Okay. So, if that is
18 the case, there will be forfeiture of the land,
19 extinction of domain--there will no longer be any
20 property rights and the land and the other assets will
21 go to the State of Colombia; right?

22 THE WITNESS: If the Judge so decides, then

1 that is what will be done. That is the procedure.

2 ARBITRATOR PONCET: Now, conversely, let's
3 see what happens if the opposite conclusion is
4 reached. And my first question in this respect would
5 be, with regard to Article 29(3) of the law--and
6 please, Dr. Caro Gómez, feel absolutely free not to
7 answer the question if it is an embarrassing one or if
8 it involves policy decisions that the Attorney
9 General's Office may have to take in future, but I see
10 there that--let me show off my Spanish a little bit
11 here, which is so limited that I would like to show it
12 off: "To correct at its own initiative or at the
13 request of a party, irregular acts that may have
14 carried out in the initial phase."

15 So that means you have the authority to
16 revoke those attachments, don't you? Autonomously?

17 My question is: Are you planning to do it?
18 And again, please feel free not to answer the question
19 if you feel it shouldn't be answered.

20 THE WITNESS: Within the asset forfeiture
21 process, that correction of irregular acts can be done
22 in an initial phase--in the initial phase.

1 Now, as the proceedings before the Judge, it
2 is the Judge who should decide whether to Decree the
3 forfeiture or not. Because I lose any judicial
4 competence to determine the fate of the assets as soon
5 as I file the Requerimiento before the Court.

6 ARBITRATOR PONCET: So, once the
7 Requerimiento is filed, you lose the powers you have
8 under Article 29?

9 THE WITNESS: That's right, because then I
10 have become a party to the proceeding within the
11 process--s.

12 ARBITRATOR PONCET: So, this will have to
13 go--I'm waiting for the interpretation--this will have
14 to go through the Court the process, and at the end,
15 there will be as is hoped by the Claimants, there will
16 be a decision releasing the assets and making them
17 available again to Corficolombiana and to Newport;
18 right? That would be the second possible issue,
19 either there is complete forfeiture or it is released.

20 THE WITNESS: Of course. And the Judge is
21 the one who decides--whether to decree or declare
22 asset forfeiture or not.

1 ARBITRATOR PONCET: Okay. As an experienced
2 Prosecutor obviously involved in several similar
3 proceedings, could you give me an estimate, in your
4 view, of the time frame of these proceedings, whether
5 they reached the ultimate conclusion that the assets
6 should be forfeited or whether they reached a
7 conclusion that the assets should be released? How
8 long is that likely to take?

9 THE WITNESS: The time frame- depends on the
10 complexity of the cases. There are some cases that
11 might last two years, others four or five years. That
12 depends on the complexity of the matter. The Asset
13 Forfeiture Law is designed for it to be a shorter
14 period. Indeed, that is why, with the Amendment to
15 the Asset Forfeiture Code, through 1849 of 2017,
16 procedural stages were abbreviated in order to make
17 the overall procedure more expeditious.

18 ARBITRATOR PONCET: And when you say two
19 years or four or five, that is the Final Decision, or
20 is it the First Court's Decision which could be
21 appealed either by your office or by the Claimants?

22 THE WITNESS: That could even take--that

1 time frame would take one to the end once an Appellate
2 Court decides.

3 ARBITRATOR PONCET: Okay. So, the
4 optimistic vision is two years from now, which will
5 bring us to 2024; right?

6 THE WITNESS: I don't think it would take so
7 long because this proceeding is well along. I already
8 filed the Requerimiento, and I have requested
9 evidence, since the Claimants' Appeal went to a court,
10 and the Court decided well, now, it goes to the Judge
11 of First Instance, and the trial will begin very soon.

12 ARBITRATOR PONCET: So, what is your
13 expectation of the time by which there will be a final
14 decision and--the Final Decision in this case as far
15 as Newport is concerned?

16 THE WITNESS: I would estimate one year it
17 could be less, we will already deciding or rather the
18 Judge will be deciding, the fate of the property
19 that's associated with that Asset Forfeiture
20 Proceeding.

21 ARBITRATOR PONCET: Okay. So, that takes us
22 to some time in 2023; right? The best possible

1 estimate.

2 THE WITNESS: It is possible.

3 ARBITRATOR PONCET: Okay. Assume, Dr. Caro
4 Gómez, assume that the Colombian courts do not share
5 your views and they find in favor of Newport. What
6 does a developer do when he recovers assets from
7 construction sites, buildings that have been attached
8 for seven years? How does one recover from that?

9 THE WITNESS: As soon as the Judge decides
10 that he's not going to decree asset forfeiture, what
11 the Colombian Authorities have to do is return the
12 property immediately.

13 ARBITRATOR PONCET: I understand that the
14 property is returned--but what does a developer, an
15 investor for the purposes that we are discussing
16 here--what does he do with assets that are returned to
17 him after seven years?

18 THE WITNESS: I believe that he should
19 continue forward with the Project on that property.

20 ARBITRATOR PONCET: So, your view is that,
21 if they prevail, they should simply carry on with the
22 Project, after seven years? That is the view of the

1 Attorney General's Office?

2 THE WITNESS: If the property's returned,
3 then the investors or owners of the property are
4 autonomous in terms of what they're going to do with
5 it, whether they're going to continue to move forward
6 with the construction of the Project or whether they
7 decide to use it for some other activity.

8 ARBITRATOR PONCET: Thank you, Dr. Caro
9 Gómez.

10 THE WITNESS: Thank you.

11 PRESIDENT SACHS: I have a few questions to
12 you, Dr. Caro. I would like to go back to the
13 Requerimiento. This is C-024bis. I look at the
14 English version and to Pages 138 and 139.

15 All right. Now, what we have seen--are you
16 with me?

17 THE WITNESS: Yes, Page 138 and 139.

18 PRESIDENT SACHS: That's the part of the
19 document which deals with good faith, and I would like
20 to start with the individuals that are named on the
21 Page 139.

22 When I look at them, Mr. Arboleda--that's

1 the mango vendor--Mr. Cardona Rodríguez, Mrs. Muñoz,
2 and Mrs. Rendón Gil. These individuals were named in
3 the list that was part of the petition to the Attorney
4 General's Office of August 2013. We can check it, if
5 the operator would please, in parallel, if possible,
6 show us C-031bis, and that would be Page 42.

7 So, in other words, my first question was:

8 In 2003--'13, sorry--when you received this petition
9 and you responded to it, those individuals were
10 commented as not listed in the information system.

11 So, in other words, I conclude from this that, at the
12 time, you were not aware that, for example,

13 Mr. Arboleda who was, according to the Respondent's
14 position, a frontman and a former mango vendor. Do I
15 understand that correctly, that you were not in
16 possession of such information in 2013?

17 THE WITNESS: The thing is that I'm not the
18 one to give this answer. It is given by the Chief of
19 the Unit at that time. I did not even--had not even
20 seen this document in 2013.

21 PRESIDENT SACHS: Okay. Fair enough.

22 On Page 138 of the Document C-24bis, your

1 main complaints seemed to be to say that, had the
2 title study covered a longer period than 10 years,
3 then the '94 deed would have been studied, and it
4 would have showed that the Company that was then named
5 Sierralta López had a legal representative, namely
6 Mr. López. But you say in this document on Page 139
7 that in '94, the Company was titleholder.

8 Do I understand that correctly?

9 So, in other words, here you say Mr. Iván
10 López Vanegas was the legal representative of
11 Sierralta, and records titleholder in '94. So, do I
12 understand correctly that you say here it was the
13 Company that was the titleholder in '94?

14 THE WITNESS: Of the property where the
15 Meritage real estate project was being built in the
16 chain of title as you've indicated, and I affirm this
17 in the Requerimiento. The legal representative of
18 this company was Iván López Vanegas. He was legal
19 López--legal representative of Sierralta López and
20 Company. Now, if the Study of Titles had looked at
21 these Public Deeds, and had they compared it with or
22 matched it up with a search in the Google search

1 engine, then the name Iván López Vanegas would have
2 come up, as in 2003, it was publicly--a matter of
3 public knowledge nationwide that Iván López Vanegas
4 had been sought in extradition and extradited to the
5 United States to face drug-trafficking charges.

6 PRESIDENT SACHS: What would be Iván López
7 in 2000--I'm sorry, in 2013, was he on the OFAC List,
8 the UN list? Do you know that?

9 THE WITNESS: No. As of 2003, the date
10 you're asking me about, I don't know if he would have
11 been.

12 PRESIDENT SACHS: '13. 2013.

13 THE WITNESS: 2013? I don't know if he was
14 still on the Clinton List or was or is still on the
15 Clinton List. That I don't know.

16 PRESIDENT SACHS: Okay. Let's assume he was
17 not on the list. Is it your position that the
18 acquiring Party should Google every legal
19 representative of any company that appears in the
20 chain of title?

21 THE WITNESS: Yes, if one undertakes a
22 careful study, it should have been done in that

1 manner, particularly in this case with respect to that
2 property, where one could see any number of
3 transformations, both physical and legal, of the
4 property, which would require any normal person who
5 might acquire that property to conduct those
6 additional verifications because this is even
7 established by the case law of the Constitutional
8 Court going back to Judgment C-1007 of 2002.

9 PRESIDENT SACHS: Okay. Thank you very
10 much.

11 THE WITNESS: Okay.

12 PRESIDENT SACHS: We have no further
13 questions. You are now released as a witness.

14 MS. HERRERA: Sorry--

15 PRESIDENT SACHS: Ah, a follow-up question?

16 MS. HERRERA: Yes. Thank you. Thank you,
17 Mr. President.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. HERRERA:

20 Q. Mr. Caro, to be precise, could you explain
21 me that the illegality of this lot is in connection
22 with the acquisition in '94 or in 2013?

1 A. Going back to the acquisition in 1994, it is
2 from there that it is tainted by illegality.

3 Q. Mr. Caro, you have been asked with respect
4 to--about the duration of proceedings; and, in that
5 regard, bearing in mind the COVID situation, what
6 impact has that had in Colombia?

7 A. These are aspects to be taken into account,
8 first of all, we have the complexity of the case
9 toward the temporal nature of the case. Second,
10 COVID-19 clearly obviously delayed the proceedings or
11 the progress in judicial proceedings, but we should
12 also bear something else in mind, and that is the
13 following: Judges are only 11 for all of Colombia.
14 Each judge may have about 200 cases, and a Tribunal
15 may have about 80 cases.

16 Q. Mr. Caro, at this stage of COVID in
17 Colombia, were there any agreements to extend
18 deadlines?

19 A. Yes, there was an agreement.

20 Q. Thank you.

21 You were asked if you get to the end of the
22 Asset Forfeiture Proceeding, and it is decided that

1 Newport is--or if it is decided that there are
2 good-faith third parties and the asset forfeiture is
3 not carried out, the question is what would be the
4 situation of the builder that receives this Lot after
5 seven years. And you told us that construction could
6 continue. My question is: What other actions does
7 Newport has, can Newport do something else when the
8 State recognizes that the asset forfeiture should not
9 proceed? Can the State compensate? Or how does it
10 work?

11 A. If the Judge and the Tribunal decide to
12 proceed or not with the asset forfeiture, clearly
13 Newport and Corficolombiana have all of the actions
14 available to them to enforce them if any harm has been
15 caused.

16 Q. And the last question, Mr. Caro, Sierralta
17 López y Cia., it is a limited joint-stock company;
18 correct?

19 A. Yes.

20 Q. What type of company is it?

21 A. All of the members have share in this
22 partnership. Each have a share percentage based on

1 their contribution and participation.

2 Q. Thank you very much.

3 A. Thank you.

4 PRESIDENT SACHS: Thank you very much,
5 Mr. Caro.

6 THE WITNESS: Thank you very much.

7 (Witness steps down.)

8 PRESIDENT SACHS: You are now released as a
9 witness. You may leave the room or stay with us.

10 MS. BANIFATEMI: Mr. President, before we
11 move on to the first expert, if the Tribunal would
12 allow me to just make a point on the record in
13 relation to something that happened just before.

14 PRESIDENT SACHS: Yes, please.

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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10 PRESIDENT SACHS: Dr. Martínez Sánchez.

11 WILSON ALEJANDRO MARTÍNEZ SÁNCHEZ,

12 CLAIMANTS' WITNESS, CALLED

13 PRESIDENT SACHS: So, are we ready?

14 Mr. Moloo?

15 MR. MOLOO: I think we're ready.

16 MR. SOTO: Good morning, Mr. President.

17 Yes, we are.

18 MR. MOLOO: I'll introduce my colleague.

19 Mr. Soto will be handling the Witness.

20 PRESIDENT SACHS: Great.

21 So, good morning, Dr. Martínez Sánchez. You
22 are here as an expert witness. In front of you should

1 be a declaration that we would ask you to read out for
2 the record, please.

3 THE WITNESS: Good morning to all of the
4 Arbitrators of this Tribunal. Good afternoon for all
5 of the persons here in attendance, and I have the
6 statement here.

7 I have a little bit of an echo.

8 (Pause.)

9 THE WITNESS: I solemnly declare upon my
10 honor and conscience that I shall speak the truth, the
11 whole truth, and nothing but the truth and that my
12 statement will be in accordance with my sincere
13 belief.

14 PRESIDENT SACHS: Thank you very much.

15 So, we have agreed that you first give us a
16 summary of your findings, and we invite you to do so.

17 DIRECT PRESENTATION

18 THE WITNESS: Thank you very much, Members
19 of the Tribunal.

20 I would like to start by
21 underlining--underscoring some aspects of my
22 professional career that I believe enabled me to

1 appear as an expert on asset forfeiture and
2 interpretation of the Colombian Asset Forfeiture Law.
3 You have all of my résumé.

4 And I would just like to highlight that,
5 after working at the Office of the Attorney General,
6 in 2012, I was hired by the UN Office on Drugs and
7 Crime to develop the project of the Asset Forfeiture
8 Law that became Law 1708. I was in charge of the
9 commission that was in charge of drafting the
10 regulations that became the draft presented by the
11 Attorney General. I was with him throughout the
12 discussion of this draft before Congress. And when
13 the law was approved in 2014, I was also hired to help
14 with the Asset Forfeiture Code in Colombia.

15 After this, I was hired by the U.S. Embassy
16 to provide training to all of the judicial personnel
17 in Colombia to deal with asset forfeiture.

18 And later on, I was hired by the UN and
19 World Bank as part of the Asset Recovery Project, to
20 support the drafting of an Asset Forfeiture Code in
21 Costa Rica. This is still under discussion.

22 I was also invited to support the

1 implementation process in El Salvador for the Asset
2 Forfeiture Law.

3 And I also trained the members of the
4 judiciary on the implementation of this.

5 I also supported the review and the drafts
6 of the Asset Forfeiture Law in the State of Chihuahua,
7 Mexico.

8 I was also hired by the European Union in
9 2020 to carry out an evaluation of the process
10 regarding illicit proceeds of the crime.

11 REALTIME STENOGRAPHER: I apologize. This
12 is the Court Reporter. Could you please slow down so
13 that we can interpret you and record what you are
14 saying properly.

15 THE WITNESS: I was hired by the Pan
16 American Development Foundation to support the asset
17 forfeiture project or draft that was discussed in
18 Ecuador, and that became law last year.

19 I have been supporting the asset forfeiture
20 project in Panamá. I was hired by international
21 narcotics law enforcement by the Embassy of that
22 country to support training to the judiciary in the

1 area of asset forfeiture.

2 And I currently work as consultant with the
3 World Bank under the Asset Recovery Project, to
4 provide Technical Assistance to the Dominican Republic
5 and their asset forfeiture process.

6 With this background, I introduce myself so
7 as to be recognized as expert on asset forfeiture and
8 also for you to allow me to interpret properly the
9 Asset Forfeiture Law in my country.

10 I'd like to start by indicating the purpose
11 of asset forfeiture not only in Colombia but also in
12 any Latin American country. We have an international
13 standard that is the Model Law on asset forfeiture for
14 Latin America, which was developed by the UN office on
15 drug and crime. If you review that law and the others
16 that have been issued in Latin America, you will see
17 that asset forfeiture is a tool for the--in terms of
18 the policy implemented to fight organized crime, and
19 the intent of the law is to help countries to go after
20 the proceeds that fund criminal organizations.

21 Nevertheless, in our countries, and that is
22 the case of Colombia, have security and economic

1 problems as a result of the high percentages of the
2 population that are below the poverty threshold. This
3 means that the law on asset forfeiture, in addition to
4 being a tool to fight organized crime, should also
5 offer a legal framework that is the adequate one to
6 provide the certainty and security to have sustainable
7 economic development in our countries.

8 As you can see here on this slide, asset
9 forfeiture is intended to balance both purposes, to
10 become a tool to pursue criminal proceeds, and also to
11 provide legal certainty regarding the rights and
12 economic transactions in the country.

13 Asset forfeiture is not expropriation. But
14 when it violates the rights of those individuals that
15 are affected--it may become expropriation. So, this
16 is the reason why the second purpose is so important.
17 We need to make sure that we apply asset forfeiture
18 carefully and rigorously because, when we fail to do
19 so, we may fall into expropriation, and this may
20 entail a severe violation of the interests of all
21 Colombians.

22 Now, something important to understand is

1 that asset forfeiture is something that has an asset
2 content but, at the same time, is related to Real
3 Property rights. This has to do with assets, but the
4 State sent after the assets themselves; rather, the
5 asset that is part of the property. So, the assets
6 are the object--that is to say, these are limits that
7 are--can be assessed from an economic point of view,
8 beyond the asset that could be the subject of asset
9 forfeiture, the State is interested in going after the
10 asset inside those goods. That is the patrimonial
11 content.

12 So, when we manage to differentiate between
13 the good and the asset and also the importance of the
14 assets as part of the asset forfeiture, we can
15 understand not only its nature but also many of the
16 grounds and the limitations.

17 Indeed, when carrying out an asset
18 forfeiture investigation, the first thing we run into
19 are assets, --and first thing that is investigated is
20 the origin, and the destination of those assets to
21 determine whether they are tainted by illegality. If
22 that is the case, they can move on with the

1 investigation; but, if not, that asset forfeiture
2 action has to come to an end.

3 Now, the fact that an asset is tainted by
4 illegality be it because it is the product of the
5 activity or because it is destined for an illegal
6 activity does not entail that asset forfeiture has to
7 be applied automatically because the second goal is to
8 protect the rights of third parties that are involved
9 in the economic operation. So, we need to see whether
10 there is a good-faith third party that is the owner of
11 that asset.

12 When the investigator, the operator finds
13 that the tainted asset is in the hands of a third
14 party, a good-faith third party, clearly, they cannot
15 go after that asset. The State recognizes a status
16 of protection to that third party, but that doesn't
17 imply that the State is frustrated in their
18 expectation to fight organized crime because the law
19 provides for a rechanneling of the investigation
20 towards other assets, and that's the reason it is
21 important to understand the difference between the
22 good and the asset. So, it doesn't mean that if you

1 are not going after going one good, you're not going
2 to go after an asset, so there is something that the
3 offender receives in exchange, and the State has the
4 authority, under the Asset Forfeiture Law, to go after
5 that asset that was received as part of the economic
6 transaction.

7 As you may see, the right--the third-party
8 rights are very important in this process because they
9 limit the capacity of the State to go after those
10 goods. Asset forfeiture is a legal limit to the
11 State's authority to declare the asset forfeiture.

12 How can we assess that good faith? How can
13 the member of the judiciary assess that good faith?
14 Good faith should be assessed based on the information
15 that the persons have when carrying out the
16 transactions because we are assessing the conduct of
17 that third party when carrying out the transaction,
18 when acquiring the right.

19 The information, gentlemen, is the raw
20 material of the diligence, as well as the prudence,
21 that has to be used by the party when carrying out any
22 legal transaction So, the information that is

1 available is critical to determine whether a person
2 has acted in good faith or not.

3 And that must be assessed based on the
4 information available at the time of the transaction.
5 It is not fair to assess the good faith of a person
6 based on the information available today, based on
7 information that emerged after the transaction.
8 That's the reason why, in all of the trainings that we
9 offered not only in Colombia but also in Latin
10 America, we always informed, and we always told
11 judicial operators that they need to objectively
12 forecast the situation a posteriori.

13 And what is that objective post-forecast?
14 It means that the judicial operator has to move in
15 time to the moment that the transaction took place,
16 and there should be an attempt to establish whether at
17 that point in time the person carrying out the
18 transaction had the possibility to have access to
19 information so as to know that the property they were
20 acquiring was contaminated. But if the information
21 was not available, if the information was wrong, then
22 those situations may not be transferred to the person,

1 and do not impact, as a matter of fact, their good
2 faith.

3 This is based on the regulation. This is
4 based on the law, and this is Article 3 of Law 1708 of
5 the Asset Forfeiture Law, and I would like to explain
6 it in a very simple fashion for you to understand.

7 Asset forfeiture is based on a very
8 elementary principle that can be based on any rule of
9 law, and that is that the crime does not produce
10 rights. One cannot claim an ownership right obtained
11 through a crime. That's why this is not an
12 expropriation because the Judge is not removing a
13 property. The Judge is stating that the person never
14 owned a specific asset.

15 When a criminal acquires the piece of real
16 estate as a consequence of or as product of a crime
17 and then signs a public document conveying that
18 property to a third-party, as a matter of fact, this
19 is not a conveyance of anything because one cannot
20 convey what you do not have. If you are not the owner
21 of the asset, if you do not have a right that should
22 be recognized by the State, then you cannot convey it.

1 You cannot assign it. So, that's the reason why this
2 third party is not acquiring any right that has been
3 originated on that public document for the transfer of
4 the asset.

5 But, if the third party has acted in good
6 faith, if the third party has acted with the required
7 diligence, the State of Colombia, on the basis of
8 these legal regulations of the asset forfeiture code
9 brings about a legal fiction. And it pre-supposes as
10 a result of that legal fiction that that individual is
11 the holder of the right that the person thought it was
12 acquiring. So, that individual is protected as the
13 holder of a property right.

14 Now, the right is not born out of the
15 document or the contract signed between the individual
16 and the wrongdoer. The right protected by the State
17 is the one that is born of good faith and of the due
18 diligence that was complied with during the
19 negotiations. That is why it is a new right. This is
20 a pure right. This is originated by good faith. That
21 is why this good faith that Article 3 of 1708 speaks
22 about is a good faith without fault. It is also known

1 under Colombian law as a good faith that creates
2 rights.

3 This provision indicates that there was a
4 status of a social contract here. This provision
5 provides for a social contract in which the State
6 imposes on the individual certain burdens, and tells
7 the individual: "You have to follow this due-diligence
8 obligations; and if you follow that due diligence, I
9 will recognize a certain status." And that legal
10 fiction is the one that protects Colombian economy.
11 It is fundamental for Colombia to have an economy that
12 has a minimum level of legal certainty in all of the
13 transactions.

14 This is so important that this was precisely
15 one of the main reasons why the Law Forfeiture Act was
16 amended in 2013. Law 1708 provides protection for
17 good faith third parties, a protection level that is
18 much greater than the one once in the laws that
19 preceded it. You can look at any asset forfeiture law
20 before 1708, and you will find that the focus of the
21 law was to create extraordinary capacities for the
22 State to go after illicit property.

1 Now, the other preceding law, 793, indicated
2 in its Article 13 that at the time the investigation
3 was opened, together with the order to commence the
4 proceedings, the prosecutor had to order Precautionary
5 Measures.

6 So, first, the property was seized, and then
7 the investigation commenced. That model brought about
8 many problems in Colombia. When you first seize and
9 then investigate, when you have seized an asset
10 without an investigation, the probability of judicial
11 error is very high, and this may lead to a high
12 probability of impairing the rights of the affected
13 parties--or the third parties. And this delegitimizes
14 this legal figure of asset forfeiture and the national
15 authority. It exposes the State to grave
16 compensations for the damages caused.

17 The second reason is that when property is
18 seized without investigation, there is an abusive use,
19 an exaggerated use of Precautionary Measures. This
20 means that the inventory of assets administered by the
21 State increases substantially.

22 The inventory of seized property in Colombia

1 grew significantly. It overflowed the capacity of the
2 administrator of the property which was the National
3 Department of Anti-narcotics, and also the capacity of
4 the oversight agencies to control this National
5 Directorate of Drugs , and this, of course, created
6 enormous corruption cases that led to the dissolution
7 of that government agency.

8 Today, the Administration of Property is in
9 the hands of the Special Assets Corporation because of
10 all these problems.

11 Also, third, there were economic problems.
12 When Precautionary Measures are taken, the financial
13 institutions, when they are notified of the existence
14 of Provisional Measures, must do accounting provisions
15 to cover for that contingent liability, and they have
16 to make provisions in their treasury to cancel the
17 loans or carry them forward because they cannot be
18 collected on, and this impacts the profit and loss
19 statements; and this, of course, reduces their
20 technical patrimony, the creditworthiness, the
21 liquidity margins, and consequently it makes loans
22 more expensive, and interest rates rise.

1 These macroeconomic and financial impacts
2 were analyzed. The banking association of Colombia
3 participated actively in the review of this draft law.

4 The standard of guarantee was enhanced to
5 try and solve all these problems. That is why, if you
6 look at Law 1708, you are going to see that the
7 Precautionary Measures are no longer taken without an
8 investigation. The philosophy behind Law 1708 is that
9 Precautionary Measures are to be taken once the
10 investigation is finished. Article 87 indicates that
11 the time for Precautionary Measures is the time when
12 the claim is provisionally determined.

13 The determination, the provisional
14 determination of the Claim disappeared because there
15 was an amendment in 2017, but back when this case came
16 about, that existed, and that was the right time for
17 the Provisional Measures to be taken.

18 If you look at Article 118, or, rather,
19 Article 87 of 1708--I don't know if you can see it on
20 the screen--there is a standard here that is
21 established. It says that Precautionary Measures must
22 be taken--and here it says--in any case, in connection

1 with the rights of third parties acting in good faith.
2 This was the purpose of the provision, to prevent
3 Provisionary Measures to be used in an indiscriminate
4 manner, and 87, Article 87 has been enhanced with
5 Article 112(2). What does Article 112(2) say? That
6 the addressee of this provision is the asset
7 forfeiture judge. And it says "Mr Asset Forfeiture
8 Judge : you must revoke Precautionary Measures" when
9 it considers they are unreasonable, unnecessary, and
10 that they lack proportionality. Reasonableness,
11 necessity and proportionality, these are substantial
12 conditions for the admissibility of a Precautionary
13 Measure in Colombia.

14 And reasonableness, as defined by the
15 Constitutional Court, makes reference, no less, to the
16 fact that asset forfeiture must be deemed to have a
17 probability to be successful. A determination of
18 Asset Forfeiture must be reasonably provable. Hence
19 to determine if a measure is reasonable, at a
20 minimum, one has to find out whether there is a
21 good-faith third party that can allege a better right
22 on that property.

1 Now, in this case, the Fiscalía made use of
2 an exceptional power under Article 89. Article 87,
3 together with 118, says that the time which
4 Precautionary Measures are taken, well, that is the
5 time when the Claim is determined. But article 89
6 exceptionally indicates that the Fiscalía may take the
7 Measures beforehand. If the Fiscalía decides to make
8 use of this exceptional power, the standard of
9 guarantee does not go down. It is enhanced. It is
10 enhanced because, as you can see, there were two
11 provisions included here:

12 First, that the Measure must be urgent.
13 Apart from it being necessary, reasonable, and
14 proportionate, the Fiscalía has to show that the
15 Measure is urgent in nature.

16 The second thing that was introduced was a
17 time limitation to six months. If the Prosecutor
18 decides to take the Measure beforehand, it has
19 six months to determine the Claim. We cannot be in a
20 state of lack of definition, and we cannot impair the
21 rights of the citizen for whatever period of time.
22 And that amount of time went longer in this case.

1 Now, let us look at the due-diligence
2 standard that must be considered to determine whether
3 an individual is a good-faith third party or not. It
4 is important to indicate that the standard in
5 Colombia--and this happens as well internationally,
6 not only in Colombia; this happens in the democracies
7 of all Latin American countries--the standard is not
8 that the citizen must carry out the diligence that is
9 possible. It is not that the citizen has the burden
10 of doing everything that is possible in abstract.
11 We're talking about due diligence here. That is to
12 say, those verification actions, those objective and
13 possible actions, imposed to the citizen by the law.
14 And we are going to see now - I will mention it in
15 more detail that Judgment 327 of 2020 clarified this
16 matter quite well.

17 It is very important to understand this in
18 this case. One cannot say that the citizen has the
19 obligation of obtaining any kind of information that
20 it is obtainable, and that has to consult any database
21 that can be possibly checked. We have to be very
22 careful with that because otherwise we would be

1 putting on the citizen a number of burdens and
2 obligations that, under the Constitution, cannot be
3 placed on the citizen.

4 Also, we have to look at the legal
5 limitations. In Colombia, these are born of the law on
6 the protection of personal data. We have a Habeas
7 Data Law in Colombia that was created following
8 international standard centers for the protection of
9 data, and this is Law 1581 of 2002 that states that no
10 Colombian can process personal data without the
11 authorization of the owner of the data.

12 What is the processing of data? Well, that
13 is to say you collect data, you store data, you
14 classify data, or you use data or you share data.
15 This is very important when we're talking about due
16 diligence. This is the reason why banks, in their
17 client forms, include authorization provisions for the
18 bank to be able to process data of those clients or of
19 potential clients. I cannot have access to a database
20 using the name and the intended document of an
21 individual just because I can do it, just because
22 there is a web page where I can introduce that data.

1 No, I cannot do that, because if I do it, I can be
2 violating the right of privacy of that individual.
3 There is information that is confidential in nature,
4 and to have access to it, I need the authorization of
5 the individual.

6 I insist: We're not talking about possible
7 diligence. We're talking about due diligence, and
8 that's very important to underscore.

9 Also, in Colombia, there are two
10 due-diligence standards. One thing is the due
11 diligence that I can ask of a company that is
12 obligated to having asset-laundering prevention
13 mechanisms. We know of them in Colombia as obligated
14 subjects. And then, a different standard is the one
15 that I can ask of an individual or person that does
16 not have that obligation.

17 These are two different standards.

18 And I'm going to make a difference between
19 these two for them to be well-understood.

20 First, vis-à-vis the citizen, the standard
21 is not perfection. The law does not expect a common
22 citizen to conduct a perfect due diligence and to

1 always find the correct information. Information, as
2 we have indicated here, is the raw material of due
3 diligence. Without the information, or if the
4 information is not available or if the information is
5 incorrect, perhaps the individual can make the wrong
6 decision. Error is possible.

7 Civil law in Colombia recognizes that there
8 is a legal figure called "common error." Common
9 error, in Colombian law, is an error that anyone could
10 have made acting equally as prudently and diligently
11 in accordance with the standard set forth by the law.

12 Now, if an individual in those
13 circumstances, and respecting the standards set by the
14 law, makes the mistake, that is a common error. The
15 legal effect is that it is a common error and, because
16 it is common, it does not hurt the good faith in which
17 the individual acted, the good faith that subsists in
18 spite of the error. This has to be this way because
19 we have to ensure certain stability in economic
20 transactions, and to provide the citizens with a
21 minimum level of legal certainty. We could not ad
22 infinitum review all the contracts that we make every

1 time new information comes up.

2 PRESIDENT SACHS: I have to inform you that
3 your time is nearly up, so please try to go quickly
4 through the remaining pages.

5 MR. SOTO: And Mr. President, if I may,
6 Dr. Sánchez evidently--Martínez has evidently a whole
7 lot of slides left. We realize we will not have time
8 to cover them all. If we could ask for five minutes
9 of the Tribunal's indulgence, we're, of course, happy
10 to offer the same courtesy to Dr. Reyes. And if it's
11 of assistance to the Tribunal, given that so many
12 questions have been raised about the standard of
13 diligence, I propose two specific slides for the
14 Tribunal's benefit to hear from Dr. Martínez on them.
15 It would be Slides 18 and 20 and I offer this in the
16 spirit of expediting the process.

17 PRESIDENT SACHS: Agreed?

18 MS. BANIFATEMI: Confirm, yes.

19 PRESIDENT SACHS: Okay, good.

20 MR. SOTO: Thank you.

21 THE WITNESS: In this connection--and I'm
22 going to try to be brief--I would like to make

1 reference to Decision C-327 of 2020. This is a very
2 important Court Decision for this case. I'm not going
3 to explain the contents of the Decision. You are
4 going to be able to read it, but I'm going to refer to
5 the controversy that has existed between me and the
6 Colombian Expert in connection with applicability of
7 this Decision to this case.

8 If you look at the Decision, the subject
9 matter discussed is whether Grounds No. 10 and 11 of
10 the Asset Forfeiture Code, whether those are
11 constitutional in nature. They refer to the
12 possibility that Colombia has to go after lawful
13 pieces of property when the illicit properties are
14 held by bona fide third parties or when the illicit
15 property has been destroyed, lost, consumed, et
16 cetera. I don't think there is any controversy in the
17 sense that the Constitutional Court declared that that
18 provision was, indeed, constitutional. Here, we see
19 where the Court says that those two provisions are
20 constitutional. In Colombia, it is constitutional to
21 go after lawful property when they're equivalent to
22 unlawful property in the same conditions.

1 The Court conditioned the interpretation of
2 this provision, and the condition is very clear. The
3 Court says you can go after this piece of property
4 only if that property is held by the individual that
5 participated in the illegal activity.

6 The Court limits the scope of these
7 provisions. It says this cannot be applied vis-à-vis
8 third parties. It can only be applied when the person
9 holding the property participated in the illegal
10 activity.

11 Now, that is not important for this case.
12 The important thing for this case is how is it that
13 the court arrive at that conclusion; and, if you look
14 at the Decision, you're going to see that you have a
15 "CONSIDERATIONS" section where the Court exposes its
16 arguments. But if you look at Number 7 of that Court
17 Decision, you are going to find what's known as the
18 ratio decidendi. That is to say the specific reasons
19 why the Court reached that conclusion. You're going
20 to find there, the legal syllogism of the Court.

21 Now, what is the reasoning followed by the
22 Court? Well, the Court starts with a very interesting

1 assumption: Not all of the asset forfeiture grounds
2 are the same. There are two sets of groups--rather,
3 two sets of grounds. One through nine are based on
4 the tainting of the property, and the tainted nature
5 of the property, the property is illicit or it is
6 destined to illicit activity. The basis for the
7 grounds is that this is a tainted piece of property.

8 Then, you also have Grounds 10 and 11. In
9 connection with them, no problem exists with the piece
10 of property. The piece of property is legal, and it
11 is perfect. What is tainted is not the asset but
12 rather the whole estate to which that asset belongs.

13 So, these are asset-related grounds. That
14 is what the court says.

15 Now, having drawn this distinction, the
16 Court asks itself--and this is very important--what is
17 the due-diligence standard that, in accordance with
18 the Constitution, we must ask of a citizen. That is a
19 question that the Court posed upon itself: What is a
20 standard that, in accordance with the Constitution, we
21 could ask of a citizen?

22 Then, the Court clarifies precisely that.

1 It says, well, the only thing that we can ask of a
2 citizen is for the citizen to conduct the necessary
3 verifications to find out about the track record of
4 the property, the history of the property. Due
5 diligence must be related to the property being bought
6 and the ownership transfer history or title history.
7 You have to make sure that whomever is selling things
8 to you is, indeed, the owner, that your property is
9 encumbrance-free, and also to look for the reasonable
10 information to determine that this is not a property
11 that is born of a crime or use for a crime.

12 So, no individual can be asked to do a
13 meticulous and profound inquiry of the assets of the
14 seller. I cannot find out whether the seller's assets
15 increased or augmented in an unjustified manner. This
16 type of inquiry exceeds constitutional authorization.
17 For that reason, the Court's syllogism is impeccable.
18 The Court says, if Grounds 10 and 11 are
19 asset-related, if the Constitution does not allow us
20 to ask the person to conduct asset-related
21 investigations, then these grounds can't be applied to
22 the third party. I can only apply the grounds to the

1 owner of the property.

2 So, the controversy arises because they say
3 that that standard only applies to Grounds 10 and 11.

4 That is not true:

5 First and foremost, we cannot find a
6 different standard in the case law of the Court.

7 Second, there is no different due diligence
8 that can be required in connection with Grounds 10 and
9 11. What would be the standard in connection with 10
10 and 11?

11 Third, to say that there is more than one
12 due-diligence standard, well, that would lead us to
13 state inevitably that the citizen would have to know
14 ex ante what is the ground that can be impairing the
15 property. Do you know what kind of due diligence to
16 apply?

17 So, I think the Decision applies in its
18 entirety to this case when we have to take into
19 account the due diligence and that of the individuals
20 involved in this transaction used.

21 THE INTERPRETER: No microphone.

22 PRESIDENT SACHS: --shortly, Page 20, that's

1 your conclusion applied to the present case.

2 THE WITNESS: Okay.

3 PRESIDENT SACHS: One minute.

4 THE WITNESS: This one right here, okay.

5 As I said, these are two different
6 standards: One for the individuals that are obligated
7 subjects and non-obligated subjects. My position
8 after looking at the documents in this case, is that
9 the only obligated party I have found in this case,
10 well, is the fiduciary, Corficolombiana. In this
11 connection, the applicable regulation is the Organic
12 Statute of the Financial System, which governs the
13 relations between the institution and the clients and
14 the counterparts.

15 Now, we have to draw a difference between
16 the due diligence of Corficolombiana should have in
17 connection with its clients and Newport and La Palma,
18 and also the due diligence that it should have
19 vis-à-vis third parties. The only due diligence that
20 it had regarding their clients and counterparts is the
21 due diligence that we call enhanced or heightened,
22 which consists in doing everything possible to

1 identify not only directors, administrators and
2 representatives, but also partners, shareholders,
3 beneficiaries, and controlling shareholders of these
4 companies regarding their clients and counterparts as
5 well.

6 In my opinion, Corficolombiana did not have
7 to do an enhanced due diligence regarding third
8 parties with whom it did not hold a contractual
9 relationship as clients or counterparts.

10 Now, if we look at the chain of title and we
11 find in it a company that's there, then
12 Corficolombiana, according to the legal provisions in
13 Colombia, it is not obligated to conduct a due
14 diligence in connection with that person that is not
15 its client, is not its counterpart, and it's only
16 mentioned in the chain of title. It doesn't have to
17 look at who his shareholders are, beneficiaries are,
18 or administrative directors or representatives. This
19 would exceed, by far, what a financial institution can
20 do, and this will block the Colombian financial
21 system, if that were the standard applied.

22 MR. SOTO: Thank you, Mr. President. And

1 thank you to Colombia for the extra indulgence of a
2 few minutes.

3 PRESIDENT SACHS: It's close to 1:00. I
4 think we should have our lunch break now of one hour,
5 and resume at 2:00, please.

6 MR. SOTO: Thank you, sir.

7 PRESIDENT SACHS: Mr. Sánchez, you're an
8 expert and a lawyer, so you know that you should not
9 talk to anybody about the case during the break.

10 THE WITNESS: I understand.

11 MR. MOLOO: Mr. President, just in terms of
12 the overall timetable, not to infringe on folks'
13 lunch, but does it make sense to shorten our lunch a
14 bit to try and catch up? I'm in--completely in your
15 hands and obviously the Court Reporters' hands but I
16 thought I would ask the question.

17 PRESIDENT SACHS: 45 minutes? Yes? Yeah,
18 so a quarter to 2:00.

19 (Whereupon, at 12:58 p.m., the Hearing was
20 adjourned until 1:45 p.m., the same day.)

21 AFTERNOON SESSION

22 PRESIDENT SACHS: So, can we proceed to

1 cross-examination, Ms. Herrera?

2 MS. HERRERA: Yes, thank you, Mr. President.

3 CROSS-EXAMINATION

4 BY MS. HERRERA:

5 Q. Good afternoon, Mr. Martínez. How are you?

6 My name is Ximena Herrera. You're very
7 familiar with the dynamics of cross-examination. I'm
8 going to put some questions to you. I think we both
9 speak quite quickly, so we need to try to slow down a
10 bit to make sure that the interpretation can go well.

11 A. Fine.

12 (Pause.)

13 Q. Mr. Martínez, as you were telling us, you
14 have an impressive background, and you've held many
15 positions. You have been advising different agencies.

16 If you could be so kind as to turn to your
17 CV, which is Appendix A to your First Witness
18 Statement.

19 A. Which number?

20 Q. Appendix A. It's together with your First
21 Statement. In the first tab.

22 A. First tab?

1 THE INTERPRETER: The Interpreter notes that
2 the Expert is not speaking into the microphone making
3 it almost impossible to interpret. If he could be
4 instructed to speak into the microphone, much
5 appreciated. Thank you.

6 BY MS. HERRERA:

7 Q. You need to speak more closely to the
8 microphone.

9 A. Okay. Here it is.

10 Q. Thank you.

11 You are a graduate of Colegio Mayor de
12 Nuestra Señora del Rosario in May 2002; correct?

13 A. Yes.

14 Q. Thank you. And tell me a bit because I see
15 on your CV that there are some parts of your work
16 history that I don't understand very clearly, so if we
17 could look. You say that from 2006 to 2009, you were
18 Assistant Professor of criminal law; correct?

19 A. Yes.

20 Q. And you also say that you were a Judicial
21 Assistant to Professor Francisco José Sintura Varela,
22 this from January 2000 to December 2001; correct?

1 A. Yes, that is correct.

2 ARBITRATOR PEREZCANO: Ms. Herrera, excuse
3 me.

4 Mr. Martínez, could you speak up and into
5 the microphone, please, because I can hardly hear you.

6 Thank you very much.

7 Excuse me, ma'am.

8 MR. SCHIMPER: Yes.

9 BY MS. HERRERA:

10 Q. Sir, in the Colombian usage, when you refer
11 to "Judicial Assistant," before graduation, is that
12 what one would call "Patinar," say, "to skate"
13 literally?

14 A. Yes, dependent clerk

15 Q. So, that is, prior, Prior of getting
16 your law degree; correct?

17 A. Yes.

18 Q. Thank you.

19 And subsequently, you as an associate, as a
20 criminal lawyer, January 2002 to December 2010 at the
21 law firm of Sintura Varela y Abogados Asociados;
22 correct?

1 A. Yes, yes, that's right.

2 Q. And Sintura Varela is obviously the law firm
3 of Francisco José Sintura; right?

4 A. Yes, that is right.

5 Q. An afterwards it's not so clear to me,
6 Mr. Martínez, you had several positions, I understand,
7 in the Government, and when did you return to private
8 practice?

9 A. I was a staff number of the Office of the
10 Attorney General from January 2, 2011 to March of
11 2012, and then I went to work for the Office of the
12 Inspector General, if my memory serves me well, in
13 September of 2017 up until the December 2019.

14 Q. And during the period from 2013 to 2017,
15 where were you working, just to clarify?

16 A. I was--well, I have--ever since I graduated,
17 I have been a professor at the Universidad Rosario. I
18 was always a staff professor at that university, and
19 there you can teach and practice.

20 So, in addition to my teaching activity and
21 research at the university, I have also been engaged
22 in the--in a law practice, essentially the law office

1 on the issues--or in consulting on issues such as
2 we're discussing here, and these have been interrupted
3 by the periods in which I served as a public official.
4 There is a legal incompatibility to practice the
5 profession while being a public official . . .

6 REALTIME STENOGRAPHER: Sorry, could you
7 slow down, please, because now it's interfering with
8 the interpretation.

9 THE WITNESS: There is a legal
10 incompatibility in Colombia that stands in the way of
11 a public official practicing the profession. That
12 means that during those periods I have not practiced
13 the profession. Apart from those periods, I have
14 always been in consulting.

15 BY MS. HERRERA:

16 Q. Thank you, Mr. Martínez, but to be more
17 specific, from 2013 to 2017, September 2017, you
18 served as a professor but in addition you say you had
19 private practice.

20 A. Yes, that's right.

21 Q. At what private practice were you working at
22 because it doesn't say here.

1 A. No. I've practiced law in two ways. First,
2 because, as I mentioned here, I have had large number
3 of consulting contracts with international and
4 multilateral organizations, for example the United
5 Nations Office on Drugs and Crime, World Bank,
6 Pan-American Development Foundation, National Center
7 for State Courts, U.S. Department of Justice. They
8 all contract consultants as a natural person, so I've
9 have always contracted with them as such.

10 Now, apart from that, in Colombia, I
11 established a company that provides legal advisory
12 services, Leximas Colombia S.A.S. There, 50 percent
13 of the capital is mine; the other 50 percent--I'm
14 sorry, maybe I'm speaking too quickly. The other
15 50 percent is my--belongs to my wife, and, basically,
16 it's a company that provides legal advisory services
17 to small and medium enterprises.

18 Q. Thank you, Mr. Martínez.

19 So, from 2013 to 2017, you were not--did not
20 have a working relationship with Francisco José
21 Sintura?

22 A. Francisco José Sintura and myself are the

1 two Shareholders of a company that is devoted to
2 providing advisory services having to do with risks of
3 asset laundering and terrorism financing. Now I don't
4 remember the exact date when it was incorporated, but
5 it must have been around 2013. He has his law firm,
6 as you see there, where I worked up until 2010, and
7 after that I had no link or ties with that law firm.

8 Through that firm, he provides legal
9 representation. He practices corporate criminal law
10 and things of that sort. I am not a partner. I'm not
11 a director or administrator or consultant with that
12 law firm in any way.

13 Q. Thank you, Mr. Martínez.

14 You say--and I'm referring to your Witness
15 Statement, the First Witness Statement--you say at
16 Paragraph 10 that recently, you say you have more than
17 10 years of experience in the private practice of law,
18 recently as a principal partner at the
19 Sintura-Martínez law firm in Bogotá; correct?

20 A: Where, excuse me?

21 Q: It's the First Witness Statement. I think
22 you may have found it, but, otherwise, you'll find it

1 at Tab 1.

2 A. Yes, I see. I have it right here. That's
3 the firm I'm referring to, Sintura-Martínez.

4 Q. Recently, you say "recently," or "most
5 recently." And you told me since 2017 no--

6 A. Since 2013 more or less I believe

7 Q. Well, you say "recently" as a principal
8 partner at the Sintura-Martínez law firm.

9 Is recently 2013 to 2017?

10 A: No

11 Q: Explain to me

12 A: I'm a partner at that firm when the firm was
13 created. The fact that one is a partner may--well,
14 first of all, it is not a litigation or legal advice
15 firm. It has to do with consulting for risk
16 management.

17 I have been a partner of the firm since it
18 was founded in 2017 to this day, whereas--and when
19 I've been in public service, that firm has continued
20 to operate and I continue to be a shareholder of the
21 firm even though I don't participate in any of its
22 activities or didn't during that period.

1 PRESIDENT SACHS: Slow down. Please slow
2 down. Desperate faces.

3 REALTIME STENOGRAPHER: I suggest that you
4 speak more slowly and that you speak up. It seems
5 that you're speaking more softly and more quickly.

6 THE WITNESS: So, when I left the Office of
7 the Inspector General in December 2019, I resumed my
8 consulting activities with the firm.

9 BY MS. HERRERA:

10 Q. Fine, thank you.

11 But then you, I would understand that, up to
12 a certain point, you have grown with Mr. Sintura. He
13 is been like a mentor for you or something of the
14 sort.

15 A. We're partners.

16 Q. You're partners, of course. But you were
17 a--his junior before, when you started out in your
18 career.

19 A. Well, many people have been very important
20 in my career.

21 Q: I imagine, but I'm asking you about Mr. Sintura.

22 A: If you ask whether he's been an important figure in

1 my career, I would say "yes," like many other persons.

2 Q. Fine, thank you.

3 And tell me, Mr. Sintura was Deputy Attorney
4 General; correct?

5 A. I understand that the answer is yes.

6 Q. And that was around the early '90s?

7 A. I understand that the Office of the Attorney
8 General in Colombia emerged in 1991. Gustavo de Greiff
9 was the first Attorney General, and my understanding
10 is that he was the first Deputy Attorney General.

11 Q. Thank you very much.

12 And you, too, held the position, you were
13 telling us, of Deputy--Attorney General of the
14 Republic; correct?

15 A. Briefly, yes.

16 Q. Briefly is like for about six weeks; right?

17 A. No, I think it was something like three
18 months.

19 Q. Three months? Excuse me. I have it here:
20 It says June of 2012 to 5 March. Pardon me.
21 24 January 2012, 5 March 2012.

22 Mr. Martínez, and you graduated in March of

1 2002; correct?

2 A. Um-hmm.

3 Q. Mr. Martínez, to be Deputy Attorney General,
4 how many years of experience as a attorney with the
5 degree are required for that position?

6 A. At that time 10 years of experience were
7 needed.

8 Q. So, since you had graduated in March of
9 2002, you did not meet this criterion; correct?

10 A. In effect, that matter was a point of
11 discussion because the Administrative Department of
12 Public Service at that time had a regulation that made
13 it possible for graduate studies to be counted as time
14 of professional experience. And since I had a
15 Master's degree and a Doctorate, that allowed me to
16 accredit more time; and the Legal Department of the
17 Office of the Attorney General in due course was the
18 Legal Department of the Ministry of Justice and the
19 Administrative Department of Public Services, all
20 accredited that I did have enough time to serve as
21 Deputy Attorney General.

22 Q. I didn't have such luck at the court though

1 Now, Mr. Martínez, you say--or you state in
2 your Witness Statement--I'm still in the same
3 statement--that you have submitted an opinion as an
4 independent expert on asset forfeiture and asset
5 laundering--or money-laundering, and you say that even
6 the Fiduciaria Corficolombiana retained your services
7 to present an independent expert report on asset
8 forfeiture laws as part of the process on legality
9 review of the precautionary measures over the
10 Meritage lot.

11 A. Yes, in effect.

12 Q. What year was that, sir?

13 A. I don't know. 2016, I believe.

14 Q. Could you please turn to C-173, and that's
15 at Tab 16.

16 A. A moment, Here I am.

17 Q. Thank you very much.

18 It is C- 173, the second page, that is your
19 opinion; correct?

20 A. That's right, September 12, 2016.

21 Q. And, I see, it is directed to Fiduciaria
22 Corficolombiana and also to Mr. Angel Samuel Seda,

1 representative of Newport. Correct?

2 A: That is so.

3 A the Representative of Newport. Who asked
4 you for that opinion? Corficolombiana or Mr. Seda?

5 A. It was the fiduciary company, directly. I
6 was hired by the fiduciary, and we signed a
7 consulting contract with the fiduciary, and
8 they paid for the opinion.

9 Q. So, then, why--if you could turn to
10 SP-0025--and you will correct me if I'm mistaken--but
11 here it says that the client is Newport S.A.S.

12 A. Where is this, I'm sorry?

13 Q. If you go, in the --you could turn, in the
14 same document, C-173, SP-0025, towards the end.

15 A. Yes.

16 Q. This is a sales invoice; correct?

17 A. Um-hmm, yes that's right.

18 Q: and I assume it is for services

19 ... A; of course

20 Q. And the client is Newport. Not
21 Corficolombiana.

22 A. The fiduciary asked me to send the invoice

1 to Newport.

2 Q. So, your client was Newport and not
3 Corficolombiana.

4 A. Not necessarily,. The one who is the client
5 is not the one who pays but the one who asks for the
6 information.

7 Q. Okay. Let's continue.

8 If you could remind me, please--well, this
9 opinion which you presented in the Meritage case
10 specifically was attached, and you tell me--with the
11 Memorial that was submitted, it was submitted by
12 Corficolombiana with respect to the Precautionary
13 Measures; correct? Legality.

14 A. Yes, I understand that they were.

15 Q. Thank you.

16 Do you know who Corficolombiana's lawyer was
17 at that time? Who presented it?

18 A. Of course I do. It was Francisco Sintura.

19 Q. With whom you had a company on the date on
20 which submitted this opinion was submitted.

21 A. Yes, indeed. It's my understanding that
22 when Corficolombiana took note of--that it had a

1 problem with the Meritage Project, they sought help
2 from Francisco Sintura. He's been their lawyer for a
3 long time. He's been a lawyer with Grupo Aval for
4 many years, going back to the 1990s or so, and they
5 asked him to take on the case (overlapping
6 interpretation and witness) that we need someone to
7 analyze this, and he says where--where do we stand and
8 what the--what the fiduciary asks me, and that is why I
9 say that my client is the fiduciary company because
10 they were the ones who asked me. I had a meeting with
11 the fiduciary . They're the ones who said we need
12 someone to objectively analyze--what the company asked
13 me to do was to carry out a study and to tell them,
14 objectively speaking, what is their risk of asset
15 forfeiture in this case, and that is why I issued an
16 opinion to the Vice President. I understood that, as
17 the project involved Newport, they asked me to send it
18 to him as well, to direct it to him as well.

19 Q. Thank you very much.

20 A. And if you may allow me, when I delivered
21 the opinion as normal, one invoices for--

22 (Overlapping speakers.)

1 Q. Yes, I understand. You don't work for free.

2 A. That's true. I don't work for free.

3 And that is the reason why the fiduciary
4 told me please issue the invoice to Newport.

5 Q. Thank you, Mr. Martínez.

6 And you tell me if I'm right, that this was
7 a report by an independent expert on the Asset
8 Forfeiture Law in the Meritage matter, you as an
9 independent expert.

10 So, at that time, you had a relationship
11 with Mr. Sintura, in the same company yet you
12 considered even so that it was an independent opinion?

13 A. Of course. Because what they're asking me
14 to do was to assess the situation objectively so that
15 Francisco Sintura, whoever their lawyer might be,
16 could develop a legal strategy.

17 I was not asked to study how to validate the
18 company's acts. They did not ask me to issue an
19 opinion to validate Corficolombiana's actions. They
20 did not tell me we need you to help us, evaluate
21 whether we did this properly. What I was asked to do
22 was come up with an assessment of what happened, what

1 is our risk, and objectively tell us where we stand.

2 Q. But you gave your opinion on due diligence,
3 the due diligence of Corficolombiana; correct?

4 A. Yes, of course because that was part of the
5 documentation they provided to me on the--

6 (Overlapping speakers.)

7 Q. On the time frame in relation to good faith;
8 correct?

9 A. Yes, that's right.

10 Q. And specifically on this case and the
11 studies that had been done in the Office of the
12 Registrar on Meritage, the Meritage Property; correct?

13 A. Yes, that is right.

14 Q. Mr. Martínez, you state--in your Expert
15 Report, you state: In addition to my public service,
16 I have more than 10 years of experience in private
17 practice, principal partner of Sintura-Martínez in
18 Bogotá, specialized in issues on asset-laundering. In
19 this capacity, I served as an independent expert.

20 Are you saying that, as a partner of the
21 Sintura-Martínez law firm or law office?

22 A. I don't understand your question, but I can

1 tell you the following, which is that I'm an expert to
2 be able to give that opinion is the trajectory that I
3 have had on asset forfeiture issue, money-laundering
4 prevention, designing risk management and management
5 of systems to reduce risks or man--systems for risk
6 management in relation to asset forfeiture and
7 money-laundering.

8 Q. Yes, I understand that you're explaining to
9 me that you are authorized. What I am asking you is
10 why do you say that you are...

11 PRESIDENT SACHS: I'm sorry, this is too
12 quick. Both sides, please.

13 Your question again?

14 BY MS. HERRERA:

15 Q. I understand, Mr. Martínez, that you are
16 talking to me about what authorizes you to be expert.
17 What I'm saying is that you submit an opinion as
18 principal partner of the Sintura-Martínez Office.
19 Mr. Sintura is representing Corficolombiana. Now, you
20 tell me that it's an independent opinion, and now you
21 also believe you are present here as an independent
22 expert; is that correct? That you are appearing

1 before this Tribunal as an independent expert?

2 A. I was called before this Tribunal as an
3 expert witness on behalf of the Claimant.

4 Q. As an expert witness?

5 A. Correct, that's what I understood.

6 Q. Not as an expert?

7 A. As an expert. I am called expert. I
8 understand that I attend as an expert in Colombian
9 law.

10 Q. In Colombian law, not as a witness of facts?

11 A. No, I don't know the facts. I have no
12 personal knowledge of them.

13 Q. But you told me you're appearing as an
14 expert witness. So, were you expert of the facts in
15 the Meritage Case? Do you make references to it? Did
16 you study the legality control? I imagine that you
17 have some familiarity with the facts at least in
18 relation to the legality control.

19 A. I understand that in order to be a witness,
20 one must have direct knowledge of certain facts. I
21 have not had direct knowledge of any of the facts that
22 are the subject matter of this discussion. The

1 knowledge I have had is mediated by--or is by way of
2 certain documents, certain information that was
3 provided to me. And, based on those elements, I
4 provided an opinion based on my knowledge and
5 experience in respect to the asset forfeiture.

6 So, beyond the semantic discussion about
7 what an expert witness is or if it is an expert, what
8 I can tell you is that, technically speaking, I am not
9 a witness to the facts because I am not aware of them.
10 I didn't sign those agreements, I was not there when
11 they were negotiated. I don't know what was going on
12 there. I was given certain documents, and based on
13 those documents, just like any expert who analyzes the
14 situation, that has certain elements in respect of
15 which one can issue an opinion, and that's the basis
16 of my opinion.

17 Q. Understood. So, I would assume that you did
18 come to learn about the Precautionary Measures, their
19 legal content thereof at least?

20 A. Yes. The documents that contained the
21 Precautionary Measure, yes. I am familiar with them.

22 Q. And here, you say that you appear as an

1 expert witness, independent expert. No matter your
2 associations with Corficolombiana or the work you've
3 done with Mr. Sintura.

4 A. Well, your question--

5 (Overlapping speakers.)

6 A. --is whether I'm an expert witness or
7 independent expert?

8 Q: No, no, we have already spoken
9 about that

10 A: Well, you're asking about independence.

11 Q. Yes, I'm asking you about independence.

12 PRESIDENT SACHS: This is very hard for the
13 Interpreters and the Court Reporters to follow your
14 dynamic dialogue. I appreciate the Latin American
15 temperament, but please slow down.

16 MS. HERRERA: It's compounded by the
17 Colombian element.

18 THE WITNESS: So, your concern is about my
19 independence?

20 BY MS. HERRERA:

21 Q. Correct.

22 A. Well, let's clarify it.

1 At the time when I gave an opinion to
2 Corficolombiana, and once I assumed a legal position
3 in that case, I have in one way another lost my
4 impartiality because I have already taken a position.

5 Basically, what I'm doing is explaining at
6 length--and I will explain it in this forum or any
7 other forum that I might be called before--the legal
8 basis of my opinion.

9 Q. Understood. Thank you.

10 Mr. Martínez, once again referring to your
11 First Witness Statement, you state at Paragraph 63
12 that it is my professional opinion is that Newport had
13 standing as an affected party and should have been
14 accepted as a procedural subject in the Asset
15 Forfeiture Proceeding. I understand that it was not,
16 which was a violation of its procedural rights;
17 correct?

18 A. Yes, that's what it says there.

19 Q. Mr. Martínez, do you know if Newport was
20 included as an affected party by the Office of the
21 Attorney General?

22 A. I understand that it was not, to the point

1 that the pronouncement by the Superior Court of Bogotá
2 in April of this year did recognize Newport as an
3 affected party. Now, if Newport had already been
4 considered affected party, why would there be another
5 decree or decision recognizing that status?

6 Q. Thank you.

7 Could be so kind as to turn to Annex C-24.
8 And it's Table 6. Volume 1, I'm told. Or Tab 6, not
9 table.

10 Yes, it's Volume 1, and it's Number 6. It's
11 Exhibit C-24.

12 A. Okay. I'm here.

13 Q. Thank you.

14 If you could go to the end of the document
15 or perhaps you might want to look at the cover page to
16 see what I'm talking about.

17 A. Just a second, please.

18 Q. This is the filing or Requerimiento for
19 asset forfeiture of 16 April 2017. And it is the 53rd
20 Prosecutor who issued this.

21 Excuse me, I'm going to draw your attention
22 to a part that's at the end of the document. Indeed,

1 it's the last page, it is Page SP-0151.

2 A. Yes, I see it.

3 Q. Thank you.

4 Now, you see at the top of that page, it
5 says: "Identification and place of notification of
6 Affected Persons and intervening persons." And the
7 first--

8 A. Yes, I see it.

9 Q. Thanks. The first says Gladys Lucía Sánchez
10 Barreto in her capacity as legal representative of
11 Newport, correct?

12 A: That is correct.

13 Q: so it seems that it is included there as an
14 affected party.

15 A. It appears including in the in the filing
16 for asset forfeiture. That is true.

17 Q. Correct. There's two categories, and tell
18 me if I'm wrong: One is either an affected party or
19 Intervening Party; correct?

20 A. Yes.

21 Q. And the ones who are intervening parties are
22 the Ministry of Justice and the Office of the

1 Inspector General.

2 A. Yes.

3 Q: Hence, the affected party would be
4 Newport.

5 A: Yes.

6 Q. Thank you very much.

7 Now, you're telling me--so, I understand you
8 are taken by surprise by this because it's not
9 consistent with what you said in your statement;
10 right?

11 A. No. The thing is, there's a point that
12 needs to be clarified. When the Prosecutor presents
13 the filing for asset forfeiture, the Requerimiento,
14 the Judge has to issue an Order in which he admits
15 that filing. And once he does so, he should Order
16 that notice thereof be made to the persons affected.
17 And once one is given notice, one takes on that
18 capacity. It's not just because the Office of the
19 Prosecutor says it here, rather it's because they have
20 been so notified of that status and they can intervene
21 in the proceeding or be involved in the proceeding in
22 that capacity.

1 Now, my understanding is that was not
2 recognized. And indeed, my understanding is had it
3 been recognized, why did the Tribunal of Bogotá issue
4 a notice saying it recognizes it? It--there would be
5 no need to say I recognize Newport as an affected
6 party if it's already been recognized in the
7 proceeding.

8 Q. Well, it's my understanding that there's two
9 phases, but my question was whether the Office of the
10 Prosecutor had included it as an affected party, and
11 here we established that the answer is yes. So, if
12 there is an Order, I suppose it's because the Judge,
13 and you say so yourself can afterwards decide whether
14 to recognize that status or not.

15 Now, let's move on to the second point. You
16 were mentioning the Decision, the Tribunal's Decision,
17 Court's Decision, in the judicial stage.

18 Mr. Martínez, when you say that you did not
19 know and that it had not been included, this--are you
20 referring to the Decision by the Second Judge?

21 A. I'm referring to the Chamber for Asset
22 Forfeiture of the Superior Court of Bogotá.

1 Q. Yes. That was on appeal; right?

2 A. I understand that it is appealing an Order
3 in which certain evidence was not taken into account
4 and recognition was denied.

5 Q. But are you aware that there was a Decision
6 by the Second Judge of the Medellín Circuit, in
7 which--and here if you'd like, you could look at C-57.

8 A. I'm sorry, which one?

9 Q. It's at Tab 15.

10 A. Yes.

11 Q. Mr. Martínez, were you familiar with this
12 Decision?

13 A. Let me take a moment.

14 Q. Sure.

15 (Pause.)

16 A. Yes, it's right here.

17 Q. Mr. Martínez, could you please go to Page
18 SP-0059 of that document?

19 Yes, 59.

20 A. Okay, I'm there.

21 Q. Thank you, sir.

22 You'll see that here there is a question

1 raised by the Second Judge, which is what right,
2 whether of a real or a pecuniary nature, may be
3 burdened against NEWPORT S.A. TIN 900313924-9, if as a
4 first step it is not registered in the real property
5 recordation documents for the assets to be forfeited?.

6 Now, a company that appears in the folios of
7 real estate registry, appears there because it has a
8 right in rem principal or ancillary; correct?

9 A. Yes.

10 Q. And here it doesn't appear.

11 A: No

12 Q: And do you know why the Court
13 concluded--I'm sorry, why the Second Judge
14 concluded that Newport was not an affected
15 party?

16 A. Yes, because it made a mistake.

17 Q. It made a mistake?

18 A. Yes. Because the thing is, that the general
19 rule to be an affected party states one must be the
20 holder of a Real Property right. Nonetheless,
21 Article 32 of Law 1708 establishes that a person may
22 also be an affected party who does not have a Real

1 Property right on the condition that they have a
2 personal right, which gives them a patrimonial right
3 over the property affected. Why does this provision
4 exist?

5 Now, it's important to clarify this because
6 it often happened in Colombia that a person would sign
7 the public document to transferring title,
8 transferring the right to property. But in Colombia,
9 the right to property cannot be acquired by merely
10 signing the public act or the sales Contract. Rather,
11 it must be entered--that right must be entered in the
12 registry of the Property Registry. So, until the
13 right is registered in the Registry, one is not really
14 the owner.

15 So, it would often happen in Colombia that
16 one would sign a contract, the public document would
17 be granted, and before it's registered, a
18 Precautionary Measure would come in from the Fiscalía
19 in an Asset Forfeiture Proceeding, so much so--and
20 this would make it such that the person would be
21 unable to obtain the Real Property right. Many people
22 had suffered serious negative impact because they paid

1 for the property, they signed the Contract but then
2 they could not actually acquire the property nor would
3 they admit it in the Asset Forfeiture Proceeding
4 because they didn't have a Real Property right.

5 That is why Number 2, Clause 2, of
6 Article 30 was included, and this situation is similar
7 to this case because not a Sales Contract but it's a
8 Trust Contracts

9 Q. Please, first answer the question and then
10 you can clarify.

11 A. But I'm answering your question. You're
12 asking me why I said they made a mistake, and I'm
13 telling why the court made the mistake.

14 Q. You already answered that you believe that
15 it's because they correspond to patrimonial rights,
16 correct?

17 A. Yes, exactly. Personal with pre-patrimonial
18 content.

19 Q: Personal with pre-patrimonial
20 content, right. And nonetheless, if you
21 look at your First Witness Statement at
22 Paragraph 44, you say that all affected

1 persons must be given an opportunity to
2 participate in forfeiture actions. That
3 is all persons who hold Real Property
4 rights?

5 A. Yes.

6 Q. So, that is the Judge's explanation that
7 there need to be Real Property rights and they would
8 be the affected parties. That is feasible, at least
9 it coincides with your own in that First Opinion?

10 A. The thing is, that that first phrase must be
11 understood in context. I am explaining the general
12 rule, and, as such, I've said it here: The general
13 rule is that the affected parties are the holders of
14 the Real Property rights, that is the general rule.
15 Now, that's not an obstacle to their existing as in
16 all legal systems' exceptions, and one of the
17 exceptions is what I just mentioned.

18 Q. We're talking about Law 1708 of 2014;
19 correct?

20 A. Yes.

21 Q. So, Article 30--and I can let you know where
22 it is, but I imagine that you know it by heart.

1 A. Mhmm.

2 Q. So, what is being affected here? Is it a
3 plot of land?

4 A. Yes, it is a plot of land .

5 Q. And if we go to 31 and I read "affected," it
6 says: (Reading.) "In the case of corporeal assets,
7 real property or chattels, any natural or legal
8 person affected that alleges to have a right in rem
9 over the assets to be subjected to Asset Forfeiture
10 Action is considered an affected party" Right?

11 A: That's what it says.

12 Q: And that was the basis for the Second
13 judge's decision?

14 A. Yes clearly, but you need to read the second
15 paragraph.

16 Q. Yes. In the case of personal rights or
17 rights to credit, affected persons are the legal or
18 natural persons who alleged to have standing to claim
19 the performance of the corresponding obligation., But
20 here we're not talking about the forfeiture of
21 personal rights but of personal rights are not
22 extinguished; rather, in rem rights.

1 A. Yes. What the rule says--what the law says
2 that a person who is not the holder of a right in rem,
3 but of a personal right, may appear as an affected
4 party as long as they have a personal right to have
5 that Real Property right transferred, and this is what
6 happens here. There is a Trust Contract, and
7 Corficolombiana, as the administrator and the
8 spokesperson of an autonomous asset, has the
9 obligation to transfer the ownership of the asset to
10 Newport if certain conditions are met. One of those
11 conditions is for the Project not to be carried out.
12 And these are not my words; these are the Superior
13 Tribunal of Bogotá's words. This is why it recognized
14 it as affected party.

15 Q. And if we go back to 30, it says affected
16 parties, and here we include any natural or juridical
17 person that is, is the holder of the assets that is
18 the subject matter of the action. So here, once
19 again, we're talking about the Lot, and I understand
20 that you do not agree with the Second Judge, but there
21 is a basis here.

22 A. I differ from the opinion of the Second

1 Judge because I think he was wrong.

2 Q. He was wrong? According to you. But
3 according to that there is a basis.

4 A. If you tell me, in my opinion, the mistake
5 by the Second Judge is not a reasonable, a plausible
6 mistake because, if he had applied the second
7 paragraph, he would have realized they had the right.
8 It had to do with a literal interpretation of the law.
9 They did not need to consult the spirit of the
10 decision-maker nor the case law, it is part of the
11 rule.

12 Q. So, it is necessary to read the law in its
13 literal terms, and at that moment it was the lot--it
14 was perfectly plausible -that was the asset.

15 A. Of course, the question you must ask is
16 whether Newport has some right for the property to be
17 assigned to it at some point in time, and the answer
18 would have been yes, that is in the Trust Contract.
19 Therefore, it is an affected party.

20 Q. Yes, but in the future--so, this the way it
21 could be interpreted.

22 A. Yes, and look at what it says here, it says:

1 "To claim for the compliance of the obligation." The
2 rule itself is saying it is towards the future.

3 Q. So we are in agreement: it is not at the
4 present when we have the asset is the lot.

5 A. Right.

6 Q. Mr. Martínez, here we were--you speak about
7 the SARLAFT --and, you're a specialist in
8 money-laundering, you know this topic. Let me present
9 a hypothesis to you. Let's assume that Rodríguez
10 Orejuela, the Mexican, a former drug-dealer, who is
11 dead, from the Medellín Cartel, obtains a property,
12 and he doesn't want to have it under his name.

13 A. Correct.

14 Q. So, he uses the name of a third party that
15 is not the actual owner. It would be his frontman.
16 Let's call it frontman X. And I imagine that you
17 have seen several instances in which that frontman
18 transfers it to another frontman; correct? Let's say
19 Y. Yes?

20 A. Yes, please go ahead.

21 Q. And if that frontman, Y, the one that we
22 call Y, asks the Office of the Attorney General,

1 please--let's say that there is a petition that is
2 presented, tell me if there is a criminal proceeding
3 against frontman X, and the Office of the Attorney
4 General says no, and all of this is just done to
5 appear to be acting in good faith. Do you think that
6 that is not an abuse of the request for information?

7 A. You're asking me about the right of
8 petition, if that is an abuse of the right of
9 petition??

10 Q. No. I'm asking you about the right that ,
11 specifically you say in your statement, 1, at 48,
12 you're refer to the fact that Corficolombiana sent as
13 part of the due diligence a request for information to
14 the Office of the Attorney General, and you're saying
15 that this is also an extraordinary situation that
16 really shows the good faith of the buyer of Newport
17 and the Fiduciary, and my question is: The fact that
18 I present a Request for Information to the
19 Prosecutor's Office in connection with a list of
20 individuals, does that really show in full the good
21 faith of a person?

22 A. The answer is the following, and that is:

1 If your question is, whether the only--the fact that
2 there is a request for information to the Office of
3 the Attorney General, and if that is a condition to
4 prove good faith, the answer is "no." If the question
5 is whether that consultation with the Office of the
6 Attorney General together with other positive acts
7 that fall within the requirements of due diligence
8 under the law, I would say "yes." It shows that the
9 person is acting in good faith because he or she is
10 going beyond the standard. The person is requesting
11 A, B, C, and the person did A, B, C, and D, but on top
12 of that also requested information of the Office of
13 the Attorney General.

14 Q. Yes, but I'm saying that you are very
15 emphatic when you're saying that that request shows
16 the good faith of Newport. I am just referring to you
17 back to what you said.

18 A. Yes, but--because before I also clarified
19 that all of the other obligations were exhausted.

20 Q. I am just referring--I am repeating your
21 words that this is undoubtedly proven. Mr. Martínez,
22 I imagine, as other Colombians, you must have heard

1 about the scandals with the Rodríguez Orejuela who
2 went and presented requests for information to a
3 Prosecutor's Office regarding whether there were
4 criminal proceedings against them, and in that unit
5 they were told "not in this unit," and--then they used
6 that to be able to go all over the country without
7 being detained by the police. Do you recall that?

8 A. I do not recall that specific situation. I
9 know that criminals resorted to several tactics, that
10 could have been one.

11 Now, if you're asking me if I remember
12 specific instance of that, I'm saying no.

13 Q. And if I tell you that this happened in
14 early Nineties, does that seem feasible?

15 A. It wouldn't seem strange or unusual.

16 Q. And more specifically in '92-'94?

17 A. No, I wouldn't say that it is unusual.

18 Q. And that was when Mr. Sintura was the Deputy
19 Attorney General of the nation; correct?

20 A. How is that related? I do not see the
21 relationship.

22 Q. I asked you a question. Please Answer.

1 A. What is your question?

2 Q. I asked you whether in '92 to '94,
3 Mr. Sintura was the Assistant Attorney General.

4 A. I understand that that must have been when
5 he took office. The exact dates in which he took
6 office and resigned I do not know.

7 Q. Thank you. Mr. Martínez, would you please
8 look at Tab 25, C-31.

9 A. I'm looking at it.

10 Q. Thank you.

11 This is the Request for Information
12 presented by Francisco José Sintura to the Office of
13 the Attorney General. And here it says "Sintura
14 Abogados Consultores". Do you see that?

15 A. Yes. Yes.

16 Q. This is a request for information. Right to
17 petition for information.

18 And then would you please look at Page
19 C-031bis.

20 A. Yes.

21 Q. SP-002, second paragraph, it says: "In the
22 exercise of the right to petition for information and

1 in fulfilment of high standards of prevention, the
2 company seeks to know information incorporated in the
3 Unit's systems that could identify whether there are
4 actions underway against the real properties or their
5 current or former owners. In accordance with Article
6 74 of the Constitution, Law 57 of 1985, and Article 18
7 of Law 906 of 2004 there is no reserve set by law on
8 said information."

9 And then you see a list of individuals. You
10 see a list of persons.

11 A. Yes.

12 Q. Could you please tell me, in this document
13 you are being asked about a number of people. You were
14 aware of this request. Correct?

15 A. Yes.

16 Q. Aha. And he was not here,--you know who Mr.
17 López Vanegas is. Correct?

18 A. Yes, I do.

19 Q. And here he was not included; correct?

20 A. No, he was not listed, no.

21 Q. But the idea was to cover the current and
22 former owners; correct?

1 A. Yes.

2 Q. So, we could say that this was not complete,
3 the list was not complete.

4 A. I think that it is important a
5 clarification, if you allow me. May I?

6 Q. Yes.

7 A. In Colombia, we do not have a unified
8 Registry of legal representatives, shareholders or
9 final beneficiaries or controlling Parties for the
10 companies, so when a company is carrying out due
11 diligence in connection with Real Property, they only
12 have the certificate issued by the Registry Office
13 where they see the holders of the property right. If
14 in the ownership transfer history of the property
15 there is a legal person, a company, establishing who
16 was the legal representative when that transaction
17 took place is the issue. Because I can go to, first,
18 that certificate doesn't tell me who the
19 representative was. I have the name of the Company,
20 so I need to go to the proper Chamber of Commerce. We
21 have several in Colombia, and I need to request a
22 certificate of existence and legal representation-of

1 that company.

2 So, they do have that certificate of
3 existence and representation, but it is up to date, so
4 I see who the legal representative is today.

5 So, if I want to know who the legal
6 representative was back then, I would have two ways.
7 I would first have to request a Chamber of Commerce to
8 provide the historical data on all of the Company
9 legal representatives. And in the case of some
10 Chambers of Commerce, that is an option, but it is
11 more difficult in the case of others.

12 If the Chamber of Commerce provides the
13 information, I say okay, now I can--I know who the
14 legal representative was back then. But if the
15 Chamber of Commerce does not have that information,
16 the only way I can do that is by looking at the act of
17 incorporation and the changes to that Act of
18 Incorporation to try to see--to try to go to the
19 notary offices that recorded that and ask for a copy
20 of the deeds to see who the legal representative would
21 be.

22 So, that's the reason why in my presentation

1 I referred to the due diligence that we need to carry
2 out in connection with the client and the other Party
3 and also the due diligence in connection with the
4 other individuals that are included in the chain of
5 title, and so sometimes it is exaggerated if we have
6 it that way.

7 Q. Thank you very much.

8 A. And for that reason, I understand that for
9 that reason as part of this Request for Information,
10 information is being requested in connection with
11 individuals that are currently included as registered,
12 but to go beyond this would have been--and I
13 apologize--an absurd standard because it would have
14 entailed to use excessive resources that are not
15 demanded by the law.

16 Q. So, according to the standard, it is just 10
17 years.

18 A. 10 years of what?

19 Q. 10 years. 10 years of going back?

20 A. I never said 10 years.

21 Q. But I understand--I'm telling you--do you
22 know what is the basis for this list?

1 A. No, please let me know.

2 Q. I'm sorry, what?

3 A. What is the basis? You're going to tell me.

4 Q. No, I thought that you knew--

5 (Overlapping speakers.)

6 Q. --since you had studied this. Since you had
7 studied the due diligence carried out and you issued
8 an opinion, I imagine that you saw the study by Otero
9 Palacio?

10 A. No, but we're talking about Otero Palacio.
11 Let me tell you where that is. You're confusing me
12 because you're asking about a document, you're citing
13 a different one.

14 Q: No, I can imagine, you do not know these
15 documents..

16 PRESIDENT SACHS: Once again, this is
17 impossible. Please slow down.

18 And can we get back to the case at hand?
19 So, we have seen documents--to be more precise, we
20 have seen documents, for example, the deed in 1994.
21 It shows that Mr. López acted as the legal
22 representative of that company. It also appears from

1 those documents that apparently it was the general
2 partner in the Company that was at the time
3 titleholder of the property in question, Sierralta
4 López y Cia. together with Sebastian López Betancourt.

5 So, all of this is in the record. Could we
6 start from there, please.

7 MS. HERRERA: Thank you, Mr. President.

8 BY MS. HERRERA:

9 Q. Mr. Martínez, as it was said the deed
10 showed Sierralta López y Cia.

11 A: In what deed is that reference?

12 Q: Specifically in deed 1554.

13 A. And what year are you referring to?

14 Q. 1554. That is the deed of 1994.

15 A. That is--let's see if I can understand you.

16 So, you're saying that they did not look for
17 a deed of 1994 to determine who signed that deed. Is
18 that your reproachment?

19 Q. Am I talking to you about any sort of
20 reproach? I'm asking you whether the name is there or
21 not.

22 A. And I'm telling you it does not appear

1 there, and according to my opinions in spite of the
2 fact that it's not there, it does not undermine the
3 good faith because the standard is not perfection.
4 The standard is to show caution, to be careful
5 reasonably.

6 And also to look for a document of 1997 to
7 see who the legal representative was and to request
8 information to the Office of the Attorney General, and
9 there is no law requesting that is unreasonable in
10 Colombia and anywhere in the world.

11 Q. And --do you think it unreasonable to look
12 for the company Sierralta-

13 A. Clearly, they didn't need to conduct
14 enhanced due diligence in connection with Sierralta.
15 Sierralta was not a party. They were not clients.
16 They were just mentioned in the chain of title.

17 And I have indicated that, in connection
18 with the chain of title, we need to only find the
19 general information that we can find in that way.

20 Q. Please tell me something, Mr. Martínez. When
21 a request for information is submitted to the Office
22 of the Attorney General regarding a list of

1 individuals, please tell me if the individuals and
2 companies, does this mean that the Attorney General's
3 Office will only answer as regards these specific
4 persons and these specific names?

5 A. Yes. The answer is circumscribed by the
6 request

7 Q. So the Office of the Attorney General
8 doesn't have to carry out a corporate study?

9 A. No, not at all.

10 Q. Thank you. Just a second, please. May I
11 refer you now to Tab 9, and let me tell you the
12 binders that is in No. 1, Binder No. 1.

13 A. Did you say nine?

14 Q. Yes. Correct.

15 This is C-33bis.

16 A. Yes, I have it here in front of me.

17 Q. Thank you very much.

18 Would you please look, and just to offer
19 some context, this is an answer by Corficolombiana to
20 a request for information from Mr. Angel Samuel Seda,
21 dated July 26, 2017. Do you see it on top?

22 A. Yes, I do.

1 Q. Would you be so kind as to look at SP-0004,
2 almost towards the end. The second-to-last page.

3 A. Yes.

4 Q. And after the numbers that go up to 10, you
5 see a paragraph, "as it can be seen" and the next
6 paragraph says, "in the particular case of the
7 establishment of the trusts related to the Meritage
8 Project, it is important to note that it was not
9 Fiduciaria but the Trustor Newport which directly
10 negotiated the acquisition of the project plots with
11 the Company La Palma Argentina S.A.S. without
12 intervention of the Fiduciary in said pre-contractual
13 stage. Nor must we lose sight that according to
14 Decree 1023 of 2012, an external circular letter,
15 304-000001 of 19 February 2014 of the Superintendence
16 of Companies, Non financial companies operating in
17 Colombia are required to design and implement an
18 adequate internal system of self control and risk
19 management LA-FT, that includes but it is not limited
20 to, and this is important, that is to say, includes
21 but is not limited to due diligence and the knowledge
22 of customers or counterparts".

1 Newport is a non-financial company; correct?

2 A. Yes.

3 Q. But it is compelled to implement a system,
4 and here it says, or at least in the opinion of
5 Corficolombiana--

6 A. In a wrong opinion by Corficolombiana. It is
7 not obliged to do so.

8 Q. So, Corficolombiana was also wrong in that.

9 A. Well, if you're asking me for my expert
10 opinion, my expert opinion is that they were wrong,
11 and I can explain why, is that okay?

12 Q. I think that you already explained before.

13 A. If the Tribunal deems it adequate--

14 PRESIDENT SACHS: Why do you think it is
15 wrong that non-financial companies operating in
16 Colombia are required to design and implement an
17 internal system of "control management and risk
18 management, LA-FT" which includes but is not limited
19 to "due diligence and the knowledge of customers or
20 counterparts." Why do you think precisely that this
21 is wrong?

22 THE WITNESS: Not all of the corporations in

1 Colombia are compelled to have a money-laundering
2 prevention mechanism. Only some that meet two
3 requirements, the first one that they need to have the
4 oversight of the Superintendency of Corporations, and
5 the second requirement is that by 2013--that is to say
6 the previous year--they had revenue equal or higher
7 than 160,000 minimum salaries that, as I estimated,
8 would be about \$41 million at current value.

9 In my opinion, based on my information,
10 Newport did not have that level of revenue, and they
11 did not have the oversight of the Superintendency of
12 Corporations. Therefore, this Circular did not apply
13 to Newport.

14 PRESIDENT SACHS: That was an explanation
15 that was clear, whether it's correct, we will see.

16 Please proceed.

17 BY MS. HERRERA

18 Q. Mr. Martínez, would you be so kind as to now
19 go to Tab 10, C-34bis.

20 A. Yes.

21 Q. This is--and I don't know if you have seen
22 this before, but let me tell you for your benefit,

1 this is a Presales Trust Agreement, Meritage Trust
2 Agreement, signed between Newport S.A.S. and
3 Corficolombiana S.A., which is on the first page.

4 Would you be so kind to go to Page 0012.

5 A. Yes.

6 Q. At Clause 11, it says "obligations of the
7 Trustor or rights of the Trustee.

8 Who is the trustor here?

9 A. I understand it is Newport.

10 Q. Thank you.

11 And if we read Subparagraph (d), it says to
12 comply with prevention rules that relate to the
13 laundering of assets for which the Trustor agrees to
14 update the information requested by the Trustee upon
15 request by the latter, and in any case at least once a
16 year.

17 And at (e) we read: To submit to the
18 Trustee within a term not to exceed 30 calendar days,
19 the "know your client" form duly filled out by each
20 one of the buying investors with their requisite
21 supporting documents so that the Trustee may carry out
22 the corresponding review, validation and analysis and

1 verification of the information provided and going
2 through the process of knowing the client by the
3 Fiduciaria. Is that correct?

4 A. That's what it says.

5 Q. So, that means that there are some
6 obligations?

7 A. Yes there are several obligations

8 Q. There are several obligations but I'm asking
9 you in connection with information and
10 money-laundering.

11 Who is in charge of the know the client?
12 Newport or Corficolombiana? I'm talking about knowing
13 the client of the other Party; right? La Palma,
14 Newport or Corficolombiana?

15 A. Whose client, ma'am?

16 Q. I'm asking in connection with this promise
17 to purchase, between Newport and La Palma. Who has to
18 do the due diligence on the other Party? That is to
19 say on the other contracting party.

20 A. Let's clarify a number of things. I think
21 your question is a little bit confusing. I'm going to
22 try and respond to your question.

1 We have a number of Parties in this
2 Agreement. So, we need to see who is the counterpart
3 of whom. Here, we have a contract linking two
4 parties: Corficolombiana and Newport. In accordance
5 with this Agreement, a fiduciary, Corficolombiana, has
6 a client, Newport. Who must do the client's due
7 diligence? Well, I'd say Corficolombiana has to do
8 the due diligence.

9 It has to do the due diligence in connection
10 with Newport because Newport is its client.

11 Now, if you're saying that there is a sales
12 agreement between Newport and La Palma--right?--that's
13 what you said.

14 We have to clarify something that's
15 important. One thing, is a promise to purchase
16 agreement and a different thing is a purchase
17 agreement. In the promise to purchase agreement, what
18 the Parties undertake to do is to sign or execute a
19 sales agreement in the future. The promise to
20 purchase agreement does not give any right to the
21 Parties to claim any in rem right over an asset. I
22 cannot demand for them to transfer the property or

1 just please sign the Contract.

2 Q. In the future. I understand the promise to
3 purchase agreement and the Purchase and Sale
4 Agreement.

5 A. Yeah, but I don't know if the Tribunal knows
6 about this.

7 Q. I think that they must know about it, but
8 I'm in the hands of the Tribunal.

9 PRESIDENT SACHS: Yes, we know it, we know it.

10 A. So, given the nature of this Contract,
11 Newport is a non-obligated subject; right? So,
12 Newport has no due diligence obligation at the time
13 because it is signing a promise to sell Contract. La
14 Palma is undertaking to later on in the future to
15 execute a Purchase and Sale Agreement with the final
16 holder of the property right. For this purpose, it
17 was Corficolombiana. It was a financial institution
18 that is supervised and it has the obligation to
19 conduct a due diligence as it did, indeed.

20 Q. Thank you, Mr. Martínez.

21 Supervised entities by the Superintendence
22 of Companies, don't they have to have some kind of

1 system for money-laundering?

2 A. Well, that depends on whether they meet the
3 requirements in the circular letter.

4 Q. Circular letter 304, says that supervised
5 companies by the Superintendency are not excluded from
6 the provision of the circular letter. Those that are
7 excluded from that one, they have to--they have to
8 abide by the applications of another circular letter.

9 MR. SOTO: Mr. President, do we have a
10 document you can show the Witness? We're just saying
11 a number to him.

12 PRESIDENT SACHS: What would be the other
13 document you were referring to, Ms. Herrera?

14 MS. HERRERA: Actually, I was referring to
15 the opinion with which you engaged with of Mr. Reyes.

16 MR. SOTO: Could you please direct him
17 somewhere? He's hearing a long string of numbers and
18 **no** documents.

19 BY MS. HERRERA:

20 Q. Can we please put it on the screen.

21 PRESIDENT SACHS: We had come before, the
22 requirements were stated by the Expert, and now you

1 seem to refer--I have an echo. You seem to refer to
2 another circular.

3 MS. HERRERA: Yes, that was referred to by
4 Mr. Reyes in his Report.

5 I should show it?

6 PRESIDENT SACHS: Well, if you intend to
7 pose a question, then yes, show it.

8 BY MS. HERRERA:

9 Q. Do you see it? I think it's being shown on
10 the screen.

11 A. No, I can't see anything.

12 Q. You know Mr. Reyes's Expert Report; correct?

13 A. Yes, I read it.

14 Q. Okay, thank you.

15 I'm making reference to the top paragraph,
16 and the reference made to a second circular, and the
17 provision--and I can't see the document, I'm sorry.
18 It says the external circular letter, and we saw that
19 it made reference to the response letter by
20 Corficolombiana, and it looks at the entity supervised
21 by the company's Superintendency that are not included
22 in this circular must abided by the provisions of

1 circular letter 100-004 of 2009. So, I understand--
2 and correct me if I'm wrong, that the ones that remain
3 - the ones that are not included are those that meet
4 the requirements that you just told us about minimum
5 wage numbers. Correct?

6 A. Yes, but this one, 100-004, doesn't really
7 impose the obligation of adopting systems for managing
8 and administering risks in connection with
9 money-laundering and financing of terrorism.

10 Q. And there are no recommendations or steps?

11 MR. SOTO: They're asking him a question
12 about Dr. Reyes' Expert Report, where he makes
13 reference to a document that I don't believe is an
14 exhibit. And as I, on a quick check, don't believe
15 that Dr. Martínez, in his report, made any reference
16 to Circular 100-004 of 2009. So, he's an expert and
17 he can certainly opine on the subject, but it would be
18 great if we could show him a document so that he can
19 see what he's being asked about, given that he did not
20 actually speak about this particular circular in his
21 Report.

22 MS. HERRERA: Thank you, counsel. I'm

1 referring to it because Mr. Martínez said there were
2 some exclusions. - but let see if we have it

3 Ah, one minute. It seems it is in the
4 record,

5 BY MS. HERRERA:

6 Q. Do you recognize the circular letter?

7 A. Can I look at the document, please? Where
8 is the document?

9 PRESIDENT SACHS: Can we also see it in
10 English.

11 THE WITNESS: I would like to manipulate it.
12 I would like to see it.

13 PRESIDENT SACHS: Thank you.

14 MS. HERRERA: Would it be possible to take a
15 break to bring the paper copies and then we can
16 continue?

17 PRESIDENT SACHS: We don't need paper
18 copies. We can look at it.

19 MS. HERRERA: But the expert asked for it.

20 PRESIDENT SACHS: Ah.

21 THE WITNESS: I rather look at the document
22 physically in hard copy.

1 PRESIDENT SACHS: No problem, but maybe
2 somebody of your team could copy it.

3 MS. HERRERA: They're doing it, but just
4 (inaudible).

5 PRESIDENT SACHS: You will move to another
6 subject, then.

7 MS. HERRERA: Yes.

8 BY MS. HERRERA:

9 Q. Sir, you were explaining to us that there
10 was an important change, and that now the control of
11 the Precautionary Measures, the legality control
12 happens later, and it is done -by the Courts, correct?
13 And you said that this was positive, at least that's
14 what you say in your testimony.

15 A. Well, yes. In my presentation, I made
16 reference to the fact that Law 1708 enhanced the
17 standard of protection in connection with a good-faith
18 third party. So, I don't think I said anything in
19 connection with the legality control.

20 Q. But in your opinion, you do mention this--
21 (Overlapping speakers.)

22 A. Are you making reference to my original

1 Report?

2 Q. Your original Report.

3 A. Oh, okay.

4 Q. Sir, who can ask for illegality control when
5 Precautionary Measures are imposed?

6 A. The persons that have been affected by the
7 Precautionary Measures.

8 Q. And you say that Newport was affected by the
9 Precautionary Measures?

10 A. Yes, that's right.

11 Q. Do you know if Newport asked for a legality
12 oversight?

13 A. I understand it didn't.

14 Q. Why do you think that was like that?

15 A. I don't know.

16 Q. Okay. You don't know.

17 Only Corficolombiana has submitted one;
18 right?

19 A. Yes.

20 Q. Corficolombiana--

21 PRESIDENT SACHS: Excuse me, excuse me. Not
22 too fast, please.

1 BY MS. HERRERA:

2 Q. Corficolombiana did ask for a legality
3 control , and your Expert Opinion was included there?

4 A. Well, I don't know the whole file. I don't
5 know if that was the only one.

6 Q. I will represent to you that Corficolombiana
7 is the only one that did it. I ask you:
8 Corficolombiana, is it the spokesperson of the Trust
9 of the Meritage Lot ?

10 A. Yes. I understand that the Trustee is
11 Corficolombiana.

12 Q. So, Corficolombiana has to defend that
13 asset.

14 A. Yes, that's right.

15 Q. Thank you. And in that legality
16 oversight--and I represent to you because I know you
17 don't know this, but you don't know the file from A to
18 Z, but I just represent to you--that Newport did not
19 submit an legality control request but Corficolombiana
20 did so.

21 In that request, did Corficolombiana say
22 that what should have been done, and this is in line

1 with what you said, was to have the fiduciary right
2 seized?

3 A. Yes. That's right. That's what I recall.

4 Q. Can you show me where? You have the
5 document there.

6 This is Tab 16.

7 A. Yes, this is right here behind 16. Do you
8 want me to look at mine?

9 Q. Well, I was talking about Corficolombiana's.

10 A. Here what I have behind 16 is a document.

11 Q. Well, let us refer to your opinion. Do you
12 see--you say here that the measures should have not
13 been imposed on the Lot but on the fiduciary rights.
14 That's your opinion. Do you say that here?

15 A. I do not recall saying that here.

16 Q. But in this Arbitration that's your opinion;
17 right?

18 A. Yes.

19 Q. At that point in time, you didn't think of
20 that.

21 A. At that point in time that was not the
22 question. The question was whether the due diligence

1 was good or not.

2 Q. Yes, but you didn't analyze the particular
3 case of the Precautionary Measures.

4 A. I wasn't asked to opine on Precautionary
5 Measures. The opinion that Corficolombiana asked me
6 to provide had to do with the legal situation and the
7 risk of asset forfeiture.

8 Q. You said that this opinion was asked in
9 connection with illegality control of the
10 Precautionary Measures.

11 A. I never said that I was asked to issue an
12 opinion in connection with the legality control.
13 Corficolombiana asked that I provide an opinion where
14 they wanted to know impartially and precisely to
15 understand what risks they were running. They didn't
16 say bring an opinion so that we could attach it to the
17 legality.

18 Q. At Paragraph 10 of your First Expert Witness
19 Report, you say that you have been in this capacity as
20 an experts in matters of asset forfeiture and
21 money-laundering. In fact, Corficolombiana engaged me
22 to present an independent expert report on asset

1 forfeiture laws as part of the control of the legality
2 process of the Precautionary Measures of Meritage
3 Projects Lot. That's what you say.

4 A. Yes, what they understand and what they're
5 trying to understand is their legal status to assess
6 their legal options. If later on Corficolombiana
7 considered that some or parts of my opinion could help
8 in connection with the legality control , well, that's
9 fine. That's why they included that in there.

10 Q. Tab 11, please.

11 That's in the second binder.

12 A. Yes. I see it. It's right here.

13 Q. Okay, thank you.

14 In this document, Corficolombiana--and this
15 was prepared specifically by Mr. Francisco José
16 Sintura Varela as the attorney for Corficolombiana,
17 well, in this document, is there any kind of
18 representation in the sense that the measure that
19 should have been adopted was not an attachment measure
20 on the Lot but rather on the fiduciary rights?

21 A. In my understanding, no.

22 Q. So, it wasn't so obvious that that is what

1 the rule should be.

2 A. What do you mean that it should be obvious?

3 Q. In your opinion, sir, you say that what
4 should have been done is to attach the fiduciary
5 rights and not the Lot.

6 A. Of course. And let me explain why.

7 Article 112 of the Asset Forfeiture Law says
8 that measures need to be reasonable, necessary, and
9 proportional. In connection with proportionality, the
10 Attorney General's Office has to assess the impact
11 that the Precautionary Measures should have with
12 respect to third parties.

13 I think, here we had more than 100 people
14 that had invested their savings in this project. This
15 was known, as far as I know, by the Attorney General's
16 Office. The Attorney General's Office should have
17 assessed the impact of imposing a Precautionary
18 Measure on the Lot and the suspension of the
19 implementation of the Project, and to have deprived
20 the Investors of the possibility of having the right
21 that they were acquiring.

22 Additionally, something else that has to be

1 born in mind is that the fiduciary wouldn't have been
2 affected by the attachment of the fiduciary rights.
3 That is simply a legal measure, and the Attorney
4 General's Office orders the fiduciary to carry out the
5 Project and the Contract and to maintain the
6 situation. And the idea was for the fiduciary to keep
7 the profits and transfer them to the assets
8 administrator.

9 Q. Thank you, sir.

10 Your Expert Opinion, you're referring to the
11 elements that you talked about, reasonable. That is to
12 say that are elements of judgment only based on the
13 evidence gathered that would lead us to think that the
14 affected property is the subject of some asset
15 forfeiture cause, also necessary that the
16 Precautionary Measure is the only measure in order to
17 avoid that the pursued asset isn't lost, hidden,
18 transferred, destroyed, devalued, or, in general, put
19 outside the scope of profit, and, finally,
20 proportional...

21 PRESIDENT SACHS: We soon need a break.

22 MS. HERRERA: I'm almost done. That's my

1 last point.

2 BY MS. HERRERA:

3 Q. It's proportional, which means that the
4 order for Precautionary Measure does not cause any
5 harm to third parties that could be affected.

6 Where are these definitions? You do not
7 indicate that these definitions are in the Asset
8 Forfeiture Law?

9 A. They are not in the definitions of the Asset
10 Forfeiture Law. That they can be inferred from a
11 number of cases from the Constitutional Court. You
12 can look at C-357 of 2019. The Court refers to
13 proportionality, necessity and reasonableness.

14 Q. So, when you issue an opinion, you do not
15 cite your sources?

16 A. Yes. I usually do.

17 Q. But you didn't do it here.

18 A. Well, I don't have any problem in making
19 adjustments to my opinion in that regard, to my Expert
20 Witness Statement.

21 Q. Thank you very much. I have no further
22 questions.

1 PRESIDENT SACHS: Thank you.

2 We will have a break now. We will resume at
3 3:35.

4 And, Mr. Martínez, you are still under
5 testimony, witness testimony, so do not talk to
6 anybody during the break about the case. Thank you.

7 (Recess.)

8 PRESIDENT SACHS: Okay. Will there be
9 redirect?

10 MR. SOTO: Thank you, Mr. President. We
11 have only a couple of questions if that's okay?

12 PRESIDENT SACHS: Please go ahead.

13 MR. SOTO: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. SOTO:

16 Q. Dr. Martínez, earlier today, you were asked
17 about prior court rulings that denied Newport
18 affected-party status, and I believe they were
19 referring to the Antioquia Court's Decision of
20 June 2019 on asset forfeiture. Do you recall that,
21 sir?

22 A. Yes, I do remember.

1 Q. And, Dr. Martínez, I think you testified
2 today that you believe that court got it wrong on the
3 issue of affected-party status; isn't that right, sir?
4 Do you recall that testimony?

5 A. That is what I said.

6 Q. Dr. Martínez, are you aware, sir, of a more
7 recent court decision regarding this status and, if
8 so, do you know, sir, what that court determined?

9 A. Yes. In my statement I made reference
10 to--in my statement, I made reference to a recent
11 decision from April of this year by the Chamber for
12 Asset Forfeiture of the Superior Tribunal of Bogotá
13 that was shared with me, and, on reading it, I
14 understand that there, the Tribunal had recognized
15 Newport as an affected party.

16 Q. So, just to confirm, Dr. Martínez, when you
17 testified earlier today that you thought the Court got
18 it wrong, in your analysis of that April 22nd
19 Decision, is that the same conclusion that the
20 Appellate Court reached, sir?

21 A. Yes, that is to say, in the arguments that I
22 put forward, where they coincide in large measure,

1 which work was presented to the Court in this case.

2 Q. Counsel for Colombia also asked you about a
3 particular document, and maybe I'll ask my colleague
4 if he could pull up the exhibit.

5 MR. SCHIMPER: We need the screen back, Mr.
6 Soto.

7 MR. SOTO: I apologize. If I could ask the
8 Centre for some help activating the projection
9 screens.

10 BY MR. SOTO:

11 Q. Dr. Martínez, I apologize for the
12 interruption.

13 There was a--you were asked earlier today
14 about this document. For the record, Exhibit
15 C-034bis. Do you recall those questions, sir?

16 A. Yes, I slightly remember them

17 Q. Dr. Martínez, let me--I think there may have
18 been a little bit of confusion around this issue. So
19 let me ask you one or two questions to see if we can...

20 Dr. Martínez, I apologize. I think we had a
21 bit of a technical translation issue. I'll just ask
22 very simply, do you recall that you were asked about

1 this document, sir?

2 A. Yes, I do.

3 Q. And, Dr. Martínez, I think there was a
4 little bit of confusion around this document, what it
5 was and the clause that you were shown, so I'm hoping
6 we can clarify that a little bit.

7 This document that you have in front of you
8 is titled "PRESALES TRUST AGREEMENT," and I believe
9 you also see the Spanish version on the screen; is
10 that right, sir?

11 A. Which tab?

12 Q. I don't have the tab number. It's C-34.

13 MS. HERRERA: 10.

14 MR. SOTO: Thank you.

15 THE WITNESS: Yes, I have it right here.

16 Q. Dr. Martínez, prior to this afternoon's
17 testimony, had you reviewed this particular Trust
18 Agreement, sir?

19 A. I did.

20 (Overlapping speakers.)

21 Q. I apologize, Doctor. Do you have something
22 else to say?

1 A. No.

2 Yes, I did read it.

3 Q. When it says "pre-sales," does this refer to
4 units, apartment sales, or something else? Do you
5 know, sir?

6 A. Yes. I understand that it makes reference
7 to the Trust that was created to receive the funds
8 paid by the Unit buyers.

9 Q. And, Dr. Martínez, if I may, I'd like to
10 take you to Page 12 of the document, which is the--and
11 the particular clause is (e), which I believe counsel
12 for Colombia asked you about.

13 Do you see the clause in front of you, sir?

14 A. Of course I do.

15 Q. Dr. Martínez, with this context that you
16 just provided that this relates to money being
17 received from the Unit buyers--I believe you just said
18 that--can you please help us understand what the
19 diligence obligation reflected in Clause (e) refers
20 to, sir?

21 A. When this question came up, I mentioned that
22 one would have to clarify whose client it was because,

1 clearly, this tells us about a relationship which is
2 not the relationship between Newport and the Fiduciary
3 but, rather, between the Trust and the Investors, the
4 people who are going to turn over funds in order to
5 purchase areas.

6 So, what is being said here is that the
7 Trustor must send to the Fiduciary within maximum 30
8 days a know-your-client form to be filled out.

9 Now, what do I make of this? Well,
10 normally, in real-estate projects, there is a sales
11 room, the person who is interested goes there,
12 expresses their interest in buying a given property.
13 Normally, that sales room is directed by the
14 commercial area of the Project Manager, the person who
15 structured the project, the builder; it all depends on
16 who is behind it all, and the person who is there
17 states their interest and usually needs to fill out
18 paperwork in order to develop a link to the project,
19 and part of that is filling out the know-your-client
20 form.

21 This know-your-client form is a form that is
22 a standard form provided by the Fiduciary, which is

1 basically following the guidelines of the Legal Basic
2 Circular Letter, in which you have know your client in
3 order to be able to pick up any money-laundering. So
4 the person who has to fill out this form and the
5 Trustor in this case, the person who's in the sales
6 room receiving all this, must forward it to the
7 Fiduciary; and the Fiduciary, based on that
8 information that it receives and which is contained in
9 the forms, undertakes a process of diligence to take
10 stock of all these person, mindful that--in order to
11 avoid a person who tied up in illegal activities
12 becoming an investor in the project.

13 Q. That's a long answer, so let me make sure I
14 got the gist of it.

15 So, a potential Unit Buyer completes a form,
16 and then it's the responsibility of the sales team to
17 get that form out to the Fiduciary. Is that roughly
18 what you've explained, sir?

19 A. That's how it works.

20 Q. Thank you, Dr. Martínez.

21 MR. SOTO: Mr. President, we've got nothing
22 further.

1 PRESIDENT SACHS: Thank you.

2 QUESTIONS FROM THE TRIBUNAL

3 ARBITRATOR PEREZCANO: Thank you,
4 Mr. President, and thank you, Mr. Martínez.

5 I'd ask if you could help me understand a
6 few things relating to the standard of diligence that
7 we've been discussing today and this week. In your
8 statement, the first one at Paragraph 33, you refer to
9 a decision by the Constitutional Court. I suppose
10 it's a judgment in which it speaks of the concept of
11 good faith, and good faith exempt of fault, and the
12 Court describes it as good faith with superior
13 consequences or effects, and it says that, for that
14 reason it is called "qualified." Correct?

15 THE WITNESS: Correct, that is right, sir.

16 ARBITRATOR PEREZCANO: Further on, the
17 Constitutional Court in the next paragraph refers to
18 the aphorism *error comunis facit ius* that--basically
19 what it explains, as you indicated in your statement
20 this afternoon, in your testimony this afternoon,
21 there may be some error and, in this specific case, an
22 error because it has to do with a right or, perhaps

1 more precisely in the context of this case, an
2 apparent situation. And the Court said but where it
3 is impossible to discover falsehood--I think, in the
4 context of this case, it would be rather the
5 non-existence of such an apparent situation that we
6 find ourselves before the so-called--before so-called
7 "qualified good faith"; right?

8 A. Yes's that right.

9 THE WITNESS: Yes, that's right.

10 ARBITRATOR PEREZCANO: So this is where I
11 would ask you to help me out. This leads me to
12 understand that due diligence must be such that it is
13 impossible for any prudent person--and this is what
14 the Decision of the Court itself says--to discover the
15 non-existence of the apparent situation.

16 Let me ask if I understand this right. It
17 must be such that for any prudent person would find it
18 impossible to consider that there is, indeed, an
19 apparent situation.

20 (Lost interpretation.)

21 THE INTERPRETER: Okay. Apologies. The
22 interpreter is back.

1 PRESIDENT SACHS: I think we have to start
2 with the answer that you were trying to give, and then
3 you referred to where. Start again your answer.

4 THE WITNESS: Yes. I was saying that the
5 answer to the question---I could answer by saying that
6 you could well be right, but the term "impossible"
7 requires clarification or precision.

8 ARBITRATOR PEREZCANO: That's where I had
9 interrupted you because the term "impossible" is not
10 mine. That is in the Decision by the Constitutional
11 Court, where it says where it is "impossible" to
12 discover.

13 So, just to situate ourselves in--that it's
14 the Court that uses this word.

15 THE WITNESS: Yes. So, it's precisely
16 because of that that I raised the most recent judgment
17 by the Constitutional Court in this area, which is
18 Judgment C-327. Why? Well, if you read the beginning
19 of that judgment, you're going to realize that the
20 Court begins by saying that it considers it necessary
21 to specify certain concepts in relation to asset
22 forfeiture, and it says there are a number of

1 facts--I'd like to cite it textually, but there is one
2 part at the beginning of the Judgment where it says
3 there are different concepts that one finds scattered
4 throughout the Judgments of the Court that could lead
5 to misunderstandings. That is why in this Judgment we
6 want to spell out certain things.

7 That's what the court says in a paragraph at
8 the beginning of its Decision; and so, basically what
9 the Court is saying in that Decision is it's not a
10 question of requiring of the citizen everything which
11 in the abstract or hypothetically would be possible to
12 do. Would it be possible to go and get information
13 from 1920? Well, with a very lengthy and exhaustive
14 investigation, no.

15 ARBITRATOR PEREZCANO: I understand that and
16 you've explained that, but here the Court itself is
17 characterizing it, saying, first, it's not an abstract
18 matter. Second, the Court is referring to a prudent
19 person, so we're not talking about something which is
20 totally ethereal, and it's not just us but the Court.
21 So, I understand that.

22 So, let me put this in somewhat different

1 terms. If for a prudent person, a contrario of what
2 the Court says, if for a prudent person it is possible
3 to take note of such a situation, then the standard
4 wouldn't be met.

5 THE WITNESS: Of course. If you review this
6 standard of qualified good faith and--I should clarify
7 that's not just the Constitutional Court. There are
8 judgments on good faith.

9 ARBITRATOR PEREZCANO: No, excuse me. It
10 says here. Your testimony: "the Constitutional Court
11 described" and then the Court is quoted. So it is the
12 Constitutional Courts, no?

13 THE WITNESS: Yes, yes. I just want to
14 clarify for you that the concept of good faith in
15 Colombia goes back to civil case law, so the standard
16 most likely used is the standard that if a prudent man
17 or a prudent person in those same circumstances are
18 applying due diligence called for by the law had made
19 that mistake, then we can say it is a common mistake.

20 ARBITRATOR PEREZCANO: Fine.

21 And here we are at a higher level of
22 diligence because we're talking about qualified good

1 faith.

2 THE WITNESS: Yes.

3 And so, here we have look at what are the
4 duties of diligence to each of the parties,

5 ARBITRATOR PEREZCANO: and we've already
6 spoken about those.

7 Now, you also said--referred to this morning
8 in your presentation, to the moment when good faith
9 must be assessed, and you said more or less, to
10 paraphrase what you said based on my notes, you said
11 that good faith is evaluated based on the information
12 available at the moment of entry into the transaction.

13 And my question for you is: What is that
14 transaction? What is the relevant transaction? When
15 does that arise?

16 THE WITNESS: That is the moment when the
17 act or contract by which the property is transferred
18 is perfected.

19 ARBITRATOR PEREZCANO: Well, that clarifies
20 this for me. Thanks a lot.

21 Now, I was going to put a question to you
22 about promise and purchase and sale, and I thank you

1 for your explanation because this clarifies what I was
2 going to ask you, but continuing with that clear
3 difference that you indicated, well, one thing is the
4 promise of the Contract, and the other is the actual
5 sales Contract. But here there was no purchase and
6 sale; correct?

7 THE WITNESS: Mhm Mhm.

8 ARBITRATOR PEREZCANO: I've read the civil
9 code--I think it's under Title VIII, if my memory
10 serves me well--regulates the Contract for sale, the
11 promise to enter into the Contract is at a different
12 article.. There was no sales Contract here; correct?

13 THE WITNESS: No. There was no sales
14 Contract, that's right. There was a Trust Agreement
15 where there was a transfer of the property, and, in
16 one of those, that's where the transfer is.

17 ARBITRATOR PEREZCANO: Agreed.

18 And you referred to one of those Trust
19 Agreements in terms of the right--and correct me if
20 I'm wrong, but it seems to me that you said the
21 patrimonial right that arises on behalf of Newport,

22 THE WITNESS: That is right

1 ARBITRATOR PEREZCANO: --there are three to
2 distinguish them: the pre-sales Contract, which is
3 what the lawyer showed you a few moments ago; the
4 property trust, which is with La Palma Argentina--I
5 don't know if you have seen them.

6 THE WITNESS: Yes, I've seen them.

7 ARBITRATOR PEREZCANO: That has been called
8 the Parqueo Trust, but it is the property itself.

9 And you were referring to the third
10 one--right?--the development of the Project one;
11 right?

12 So, here, if I understood your testimony,
13 both your written statement and your statement this
14 morning and this afternoon, that patrimonial
15 right--and this is the focus of my question--if I
16 understood properly, what you told us would come up
17 because Newport at some point in the future could come
18 to receive the assets in two situations: Either the
19 Contract is not performed upon--you say that in your
20 written statement, and you said that this morning--or
21 rather that the Project is not carried out, or that
22 the Project or the Trust is liquidated; right? And

1 that's what you say in your written testimony. I
2 don't think you referred to it this morning, but that
3 is where that property right arises. I have
4 understood correctly?

5 THE WITNESS: Yes, you have.

6 ARBITRATOR PEREZCANO: Now, this patrimonial
7 right--and here I would like to have some clarity on
8 your opinion--is contingent on the property trust;
9 correct?

10 THE WITNESS: Yes.

11 ARBITRATOR PEREZCANO: Because, first, even
12 though contracts were entered into in a different
13 chronological order, and to use the term that you used
14 a couple of minutes ago, for them to be able to
15 perfect the Contract first, we would need to transfer
16 the property to the property trust, then there would
17 be a need to transfer the property to the project
18 development trust. Am I understanding it correctly?

19 THE WITNESS: I would understand--I would
20 share the understanding with you.

21 ARBITRATOR PEREZCANO: And are you familiar
22 with the three trust contracts?

1 THE WITNESS: I have read them.

2 ARBITRATOR PEREZCANO: Because the property
3 title is transferred in the property trust in full, la
4 Palma transfers the title in full that is over the
5 whole lot, is this is your understanding?

6 THE WITNESS: Yes.

7 ARBITRATOR PEREZCANO: And then the Lot was
8 subdivided, and it would be transferred little by
9 little, depending on a series of future events. Is it
10 true?

11 THE WITNESS: Yes.

12 ARBITRATOR PEREZCANO: And the only thing
13 that happened is that a small portion was transferred
14 that would be for Stages 1 and 6. This is a small
15 portion of a larger lot, less than 10 percent; is that
16 correct?

17 THE WITNESS: Yes.

18 ARBITRATOR PEREZCANO: And the rest would be
19 little by little as other conditions were met in the
20 future. So, am I correct?

21 THE WITNESS: Yes. That was the same
22 understanding I had.

1 ARBITRATOR PEREZCANO: So a final question
2 or there may be a line of additional questions. This
3 afternoon, you were referring to the things that had
4 to be complied with in the due diligence, the simple
5 due diligence, and you said it briefly, but the law
6 has the requirements A, B, C, and D. And in this
7 case, Newport or Corficolombiana did A, B, C, and D,
8 whatever was required by the law, and in consultation
9 with the Office of the Attorney General; correct?

10 THE WITNESS: Yes.

11 ARBITRATOR PEREZCANO: Now, this
12 consultation to the Office of the Attorney General
13 happened in September 2013. However, the Property
14 Trust was set up in November 2014, more than a year
15 after. Then, the doubt I have is how is it that you
16 freeze--and I don't know if you were here yesterday--
17 it was referred to as if we were taking a snapshot
18 today, and it is good forever, and I'm asking you
19 because La Palma Argentina took another picture,
20 another snapshot in 2007 before La Palma was acquired,
21 so that leads me to a doubt: If La Palma had a
22 snapshot in 2007, which is already good, what sense

1 does it make to take another snapshot? That is, if
2 I understand your opinion correctly, it would have to
3 go from 2007 and 2013, but whatever happened before
4 would be covered by the consultation of the Office of
5 the Attorney General of 2007. And if it's sold later,
6 you need to take from 2013 up to the date of sale and
7 subsequently. That is not clear at all to me.

8 THE WITNESS: As to the persons that are
9 obligated--so, we have a difference between obligated
10 persons and persons that are not obligated. And if we
11 are referring to obligated persons, and in this case a
12 Fiduciary, the law provides for taking their own
13 snapshot. You cannot trust in someone else's
14 snapshot, you need to take your own snapshot. So
15 we're talking about two different snapshots. Let's
16 say that these are two snapshots with a different
17 resolution. The snapshot that you are taking with
18 your client, with your counterpart, has to be a high
19 resolution snapshot, high resolution, clear, and that
20 is the enhanced due diligence. But from that point
21 backwards, you do not need to use the same quality.
22 You can take a snapshot that includes everyone that

1 you can see their faces clearly, but you do not need
2 to take a snapshot with a super expensive Canon camera
3 to see whatever is behind them.

4 And this is what I was trying to explain.
5 If we demanded the financial institutions, that level
6 of diligence, to go back forever in the chain of title
7 and to enhance the due diligence to include all of the
8 companies in the chain of title, the truth of the
9 matter is that the financial institutions would have
10 to bear an excessive burden, which would not be proper
11 for the financial system. That would have an impact
12 on the real estate market. That would have an impact
13 on the mortgage market. And in essence, the areas of
14 compliance would not be able to work.

15 ARBITRATOR PEREZCANO: Thank you. Thank
16 you, Mr. Martínez. These are my questions.

17 PRESIDENT SACHS: Just so that I'm also
18 clear, you said earlier as regards the promise of a
19 Purchase Agreement, that is C-19bis, so that's a
20 promise of Purchase Agreement. If I understand it
21 correctly, it leaves it--it leaves an option to Royal
22 Realty to acquire all or part of the properties. It

1 assumes the obligation to set up a trust in a certain
2 deadline, but is it your view that this promise is
3 optional, meaning that for 60 months, according to
4 paragraph--there is no number in the English
5 translation--it was up to Royal Realty to decide
6 whether or not to exercise the option.

7 THE WITNESS: No. The promise does not
8 contain an option. The promise contains obligations
9 but the obligations included in the promise of
10 Purchase Agreement are different from the obligations
11 included in the Purchase Agreement because in the
12 promise of Purchase Agreement, the Parties buying to
13 signing and performing a public document, a deed in
14 which you transfer the property and another party
15 receives it, but the promise as such does not include
16 that transfer of the property. It is just a
17 commitment to sign at some future date that document.
18 And one could make a promise of purchase for someone
19 else, and rather one could have a promise of purchase
20 on an asset that is not your own. This is allowed
21 under the Colombian law, and that is the difference in
22 between both documents.

1 PRESIDENT SACHS: So, when you say the
2 decisive moment to consider good faith is the
3 perfection of the Contract. Just to be clear, we have
4 seen it's a procedure in steps. There is first the
5 promise of Purchase Agreement, and then there are
6 subsequent agreements that ultimately lead to the
7 trust arrangement, and they stretch over certain
8 period of time. If I'm not mistaken, the third and
9 final Trust Agreement was entered into in
10 November 2014. So, we have a certain period of
11 perfection, if I may say so. So, what would be the
12 relevant point of time to consider that this
13 Transaction has been perfected?

14 THE WITNESS: In my opinion, the decisive
15 moment is when the Act, the Contract or public act is
16 perfected when La Palma transferred the property to
17 the Trust. At that point in time, that is when the
18 legal contractual relationship between both parties
19 materializes, and it is at that point in time when you
20 need to assess the good faith of the acquiring party.
21 In this case the Fiduciary. From that moment onwards,
22 the following trust contracts to be signed are the

1 implementation of a project that had already been
2 structured.

3 PRESIDENT SACHS: Okay. Thank you.

4 Thank you very much. Your expert testimony
5 has been--

6 MR. MOLOO: May I--

7 PRESIDENT SACHS: You have further
8 questions?

9 FURTHER REDIRECT EXAMINATION

10 BY MR. MOLOO:

11 Q. We've talked a lot about this April 22nd
12 Decision, maybe we can pull it up, it's Exhibit C-46.
13 If we go maybe to Page 31, Page 31 and 32. This is
14 where the Court decides that Newport has
15 affected-party status.

16 I guess one question I have for you is what
17 is the Court's decision with respect to the date on
18 which Newport's affected-party status was--came into
19 effect?

20 A. Would you allow me to read this?

21 Q. Yes, please.

22 (Witness reviews document.)

1 A. What is your question again?

2 Q. So, what is the date of the agreement that
3 gives rise to Newport's affected-party status,
4 according to the Court?

5 A. I do not see that here. I do not see that
6 quote here on the page, but it is the Trust Contract
7 that transfers the property right from La Palma to the
8 Trust.

9 ARBITRATOR PONCET: How should we understand
10 the language at the bottom of Page 32, which says:
11 "Therefore, the appellant is correct to base its claim
12 on the 'Sales-Purchase Agreement'?"

13 BY MR. MOLOO:

14 Q. And if you look on Page 31, it says the date
15 of the Sale-Purchase Agreement in the middle of the
16 page.

17 A. I apologize.

18 What I understand here is that, clearly,
19 there is a promise of purchase that was signed
20 initially that Royal Realty, and I understand that as
21 part of that promise of purchase, the right is
22 acquired for La Palma to subsequently sign a sale

1 purchase agreement and transfer the property. What it
2 says there is that there was an assignment from Royal
3 Realty to Newport; and that, based on that assignment,
4 Newport entered into the Trust Agreement, and it
5 obtained the rights as a trustor to perform those
6 rights.

7 But then this is the transfer to the Trust,
8 and the Trust acquires the right over the Lot. That
9 is my understanding.

10 MR. MOLOO: I have no questions.

11 PRESIDENT SACHS: You are now released.

12 THE WITNESS: Thank you very much.

13 (Witness steps down.)

14 PRESIDENT SACHS: Before we turn to the next
15 expert, maybe we should say why we are interested in
16 the moment of time where the Transaction in question
17 has been perfected. We have seen that it went in
18 steps, we had first the promise of the Purchase
19 Agreement, then two first Trust Agreements in
20 October 2013 and then later in November 2014 the third
21 and final Trust Agreement. So, it is of interest to
22 the Tribunal to better understand your perspective

1 views as to the relevant time to determine the
2 good-faith issue of the acquirer because it may be
3 that during this period, certain things have developed
4 and happened that could trigger, so to say, a new due
5 diligence aspects and efforts, and to that extent it
6 would also be important to exactly know to which
7 extent the contractual arrangements were already
8 binding or optional. I think you will understand the
9 context, and therefore we ask these questions.

10 So, we wanted to openly tell you why we are
11 asking these questions so that you can reflect on them
12 and then we can hear you on that. Okay?

13 MR. MOLOO: That's understood and helpful.
14 Thank you, Mr. President.

15 (Witness steps down.)

16 MS. BANIFATEMI: Mr. President, may I
17 address a housekeeping matter for the remainder of the
18 day?

19 PRESIDENT SACHS: Yes.

20 MS. BANIFATEMI: So, if we are to stop at
21 6:30, that leaves about two hours, so I just wanted to
22 know how long our friends opposite are planning on

1 examining Professor Reyes, so that we tell CBRE to
2 come or not come. This would be a matter of
3 logistics.

4 MR. MOLOO: I think our expectation is
5 probably--we will definitely get them done. I'm not
6 sure--I would expect if we're going to 6:30, we may
7 have some time remaining. I think we might be able to
8 do their presentation today, for example, at the very
9 least.

10 MS. BANIFATEMI: So, they should come, then?
11 CBRE?

12 MR. MOLOO: Subject to the Tribunal's view,
13 I think that would--

14 PRESIDENT SACHS: Yes, we should not sit
15 much longer than 6:30 because it was a very stressful
16 day again for all the participants.

17 MR. MOLOO: Yes, I would expect that we
18 would definitely start them today.

19 MS. BANIFATEMI: Okay. We will do that.
20 Thank you.

21 PRESIDENT SACHS: Okay. Let's have five
22 minutes to invite the new expert.

1 MR. MOLOO: JLL is going first; right? So I
2 don't think we will get to CBRE, just to be clear.
3 Sorry.

4 (Brief recess.)

5 YESID REYES, RESPONDENT'S WITNESS, CALLED

6 PRESIDENT SACHS: So, good afternoon, Prof.
7 Reyes.

8 THE WITNESS: Good afternoon.

9 PRESIDENT SACHS: In front of you is a
10 declaration. Could you please read this declaration
11 for the record.

12 THE WITNESS: I solemnly declare upon my
13 honor and conscience that my statement shall be in
14 accordance with my sincere belief.

15 PRESIDENT SACHS: Thank you very much.

16 And we now invite you to give us your
17 presentation.

18 DIRECT PRESENTATION

19 THE WITNESS: Thank you very much.

20 In the 1980s and the 1990s of the last
21 century, well, those were decades that were quite hard
22 for Colombia in the drug war. At that time, Ernesto

1 Samper became President. His campaign was under
2 suspicion of being financed with drug money. This
3 created a lot of pressure within Colombia and also
4 internationally, specifically by the United States.
5 They wanted to see what the determination was
6 Mr. Samper going to have in this fight against
7 drug-trafficking.

8 Amongst Mr. Samper's measures was to
9 appoint, as Minister of Justice, Carlos Medellín with
10 the purpose, amongst other things, of trying to solve
11 one of the most complicated problems that existed in
12 the fight against drug-trafficking at the time, which
13 had to do with the fact that the assets of
14 drug-traffickers could only be seized after they had
15 been criminally convicted for their crimes.

16 And since criminal proceedings in Colombia
17 are usually very long, this gave the drug-traffickers
18 time to create new mechanisms to conceal their assets;
19 so, when they were convicted, they did serve time, b
20 they kept all or part of their assets, which were put
21 in the name of third parties.

22 Mr. Samper and Mr. Medellín decided to

1 create a committee to draft a bill regarding asset
2 forfeiture. Since the matter comprised both criminal
3 aspects and civil-law aspects, a committee was
4 created and presided over by two experts, a private
5 law expert, William Namén and a criminal-law expert,
6 myself. We presided over this committee that drafted
7 the text of the first Asset Forfeiture Law in
8 Colombia, Law 333 of 1996.

9 Let me quickly mention the main features of
10 this law. Those are still current today.

11 First, an in rem action was created,
12 independent from the criminal proceedings. At the
13 time there was only one limitation: the in rem action
14 could not be started if there were criminal
15 proceedings pending against the holder of the
16 property.

17 Jurisdiction in connection with this action
18 was vested on prosecutors and criminal judges, and the
19 procedure was inquisitorial in nature. This was the
20 kind of procedure that was used in Colombia at the
21 time. This was a very short law because, procedurally
22 speaking, everything was remitted to the civil and

1 criminal procedure codes. There was a protection to
2 bona fide third parties but no specifications were
3 provided, and the statute of limitations for this
4 action was 20 years.

5 At the time, the Prosecutor had the
6 possibility--or, rather, the power of commencing the
7 action, adopting Precautionary Measures, ordering and
8 collecting evidence, hearing the submissions of the
9 parties; and if they considered that the action was
10 inadmissible, the Prosecutor could put an end to the
11 proceedings; but, if they considered that the action
12 was admissible, then they had to send a case to the
13 Court for the Court to make a decision.

14 The original law was then replaced by, in
15 2002 law, and then again by another law of 2014. The
16 original law had an independent action from the
17 criminal proceedings, as I indicated, the new law
18 removed this limitation, and the action may now be
19 brought even though a criminal action may be pending
20 against the holder of the property.

21 Reference is made in both laws to property
22 rights, but in Law 1708, the rights of third parties

1 are more widely protected because it talks about
2 faultless good-faith third parties, so we have
3 qualified good faith. The jurisdiction is still
4 assigned to criminal prosecutors and courts. Since
5 these courts and prosecutors are trained in criminal
6 law, and as a general rule not all of the courts and
7 prosecutors know about the Asset Forfeiture Law, nor
8 the proceedings, specific units of judges and
9 prosecutors had to be created which were given special
10 training.

11 Now, we went from an inquisitorial set of
12 proceedings to an adversarial type of proceedings
13 because, in 2004, a law was established implementing
14 the adversarial system in Colombia. Also, the Asset
15 Forfeiture action was no longer subject to a statute
16 of limitations.

17 On the grounds for asset forfeiture, I would
18 like to make an initial precision. Article 16 refers
19 to three groups of grounds for asset forfeiture.

20 The first is to be found in Nos. 1 to 7, and
21 it refers to assets whose origin is illicit, be it
22 directly or indirectly.

1 The second group, comprised by numerals 8
2 and 9, refers to legal assets that fulfill one of two
3 conditions (a) that are mixed with assets of illicit
4 origin; or (b) that have been used to conceal illicit
5 assets.

6 And, finally, there is a third group of
7 causes, numerals 10 and 11, which refer to assets of
8 legal origin but prosecuted as property equivalent to
9 that of illicit origin. In relation to these assets,
10 the protection of the rights of third parties is
11 reinforced because it requires diligence regarding the
12 lawful origin of the assets, but not regarding the
13 conduct of those who transferred them, as indicated by
14 the Constitutional Court in its Decision.

15 In general terms, Law 1708 refers to
16 procedural subjects and intervening parties in the
17 process. Procedural subjects are the Prosecutor's
18 Office and the affected parties. In accordance with
19 this law, the affected parties are those who claim to
20 have a right in rem over the assets.

21 The Office of the Attorney General, very briefly,
22 has the duty to investigate, secure the assets subject

1 to forfeiture, and file, or abstain from filing, a
2 request for asset forfeiture before a judge. The
3 intervening parties are parties who have the power
4 but not the duty to intervene in the Asset Forfeiture
5 Proceedings, and are the Office of the Inspector
6 General, which is a control body in the Colombian
7 State, and the Ministry of Justice.

8 A very general structure of Law 1708 shows
9 two sections. First there is an initial stage, of
10 which the Fiscalia is in charge, which is known as
11 pre-procedural or preparatory phase and which is the
12 stage in which the determination of the Claim is
13 prepared; then there is a second stage, a trial stage,
14 which is in the hands of a judge.

15 In the pre-procedural stage that prepares
16 the case for the determination of the Claim, the
17 Prosecutor investigates and collects evidence, orders
18 Precautionary Measures, issues the provisional
19 determination of the Claim, and may close the
20 investigation or file a request to the Judge.

21 In the trial phase or in the phase that
22 corresponds to the judges, a trial is held and then a

1 ruling is handed down.

2 Now I want to briefly refer to the
3 evidentiary standard. To open an investigation in a
4 case of asset forfeiture, there need to be elements
5 that allow to infer the probable existence of assets
6 that could be subject of asset forfeiture. The
7 requirement is solely probable existence.

8 To issue Precautionary Measures something
9 else is needed: serious, well-founded reasons that
10 allow the Precautionary Measure to be considered
11 essential and necessary.

12 To proceed with the provisional
13 determination of claim, the grounds for asset
14 forfeiture need to exist ; and in order to render a
15 judgement ordering the asset forfeiture, evidence is
16 needed showing that the asset forfeiture must take
17 place. As regards the burden of proof, there is a norm
18 that states that the facts need to be proven by the
19 party that is in the best position to do so.

20 Now, in connection with the provisional
21 determination of the Claim, I have a few
22 clarifications: First, this is an action that has to

1 be brought by a party; that is to say, no appeal can
2 be made against this decision. A second precision is
3 that with the provisional determination of the claim,
4 the reserved or secret stage of the investigation
5 ends. Up until that point, the investigation is
6 secret. And, consequently, from that point on, the
7 affected parties are allowed to formulate oppositions
8 and submit evidence before the prosecutor. The
9 prosecutor, based on the evidence that he or she have
10 collected, and what the affected parties submit to
11 them, makes a decision that may be: to request the
12 judge to declare the inadmissibility of the asset
13 forfeiture action, or to recognize the affected
14 parties and to order the forfeiture of assets.

15 That request opens the trial stage. In the
16 trial stage, the Court recognizes the affected
17 parties. The affected parties may provide evidence or
18 ask for evidence. Then the Court weighs the evidence
19 as it deems pertinent. The parties--that is to say,
20 the prosecution, the affected parties and the
21 intervening parties submit their allegations, and then
22 finally the Judge rules on the matter, and decides two

1 things:

2 First, if the a ground for asset forfeiture
3 has been established; and second, if there are bona
4 fide third parties without fault. This is the scope
5 of the judgment handed down by the Judge.

6 In the pre-procedural stage, in preparation
7 for the determination of the Claim, the prosecutor
8 investigates and collects evidence. The law provides
9 the scope of that investigation and evidence
10 collection stage. First, they have to look for
11 possible owners of in rem rights over the assets, and,
12 second, they have to look for evidence that allows for
13 the inference of lack of good faith without fault.
14 At the end of the investigative work that was ordered,
15 the Prosecutor may decide to archive the
16 investigation or file a request before the asset
17 forfeiture judge. And I want to make some precisions
18 about the archiving of the investigation.

19 The investigation can be archived at any time.
20 After the investigation is opened, the prosecutor can
21 archive the investigation at any point in time, but
22 this archiving is provisional in nature. The decision

1 to archive the investigation must be communicated to
2 the Office of the Inspector General, which is the
3 control entity I referred to moments ago, and to the
4 Ministry of Justice. Since this is a provisional
5 archiving of the investigation, the investigation can
6 be resumed at any time at the request of one of the
7 parties or the intervening parties . If the
8 prosecutor refuses to resume the investigation, the
9 party making the request may ask for a legality review
10 before the competent court to oblige the prosecutor
11 to reopen the investigation. If the prosecutor
12 decides to file a request before the Judge, then, as I
13 mentioned, it can be a request for the purpose of
14 declaring the asset forfeiture or declaring the
15 inadmissibility of the asset forfeiture action.

16 In the pre-trial or preparatory stage of the
17 determination of the claim, I stated that the
18 prosecutor investigates and collects evidence, issues
19 the provisional determination of claim, archives
20 provisionally , if he so decides, or files a request
21 to the Judge.

22 But, in addition, the prosecutor may order

1 exceptional precautionary measures before the
2 provisional determination of the claim or may order
3 ordinary precautionary measures after the provisional
4 determination of the claim. These Precautionary
5 Measures seek to prevent the assets from being
6 transferred or traded and becoming part of the
7 economic transit and being diluted in legal
8 transactions, which implies that the State loses their
9 possibility to forfeit these assets.

10 There is a legality control over the
11 provisional measures before a supervisory judge. That
12 legality control concerns two issues: the formal
13 legality of the measure, and the material legality,
14 which has to do with contents of the measure.

15 When is a precautionary measure illegal?
16 Article 112 of the law states that a precautionary
17 measure is illegal for one of four reasons :

18 because there is no sufficient reasoning;
19 because it is based on illegal evidence; because there
20 is no evidence of judgment that allow to consider the
21 assets can be the subject matter of an asset
22 forfeiture measure; or when the measure is not

1 necessary, reasonable and proportional vis-a-vis the
2 aim pursued.

3 The Court's decision regarding legality
4 control of the measure may be appealed before a
5 Chamber of the Superior Court made up of three judges
6 as a last judicial review matter.

7 Law 1708 was amended. When studies were
8 being conducted for the amendment to the law--and
9 I arrived at the Ministry of Justice in 2004--I
10 found a draft bill to amend Law 1708; and, as
11 minister, I had to close the National Department
12 of Anti-narcotics, which was the agency in charge
13 of handling the assets that were subject to asset
14 forfeiture. This agency was closed because it
15 was subject to great corruption, and I had to
16 determine the creation of a new agency, which is
17 the Special Assets Corporation (SAE) that
18 controls, deals and administers the assets under
19 asset forfeiture.

20 I retired from the Ministry of Justice in
21 April 2016. I did not present the bill that led to
22 the new law, to Law 1849. That was done by the

1 Minister of Justice who succeeded me, who presented it
2 in October 2016 and which gave rise to the issuance of
3 that law 1849 of 2017. That law changed the reference
4 made to rights in rem under 1708, and referred to
5 patrimonial rights, "derechos patrimoniales."

6 Now, this made necessary that a transition
7 regime be put in place and this was provided for under
8 Article 57 of that law. Article 57 draws a
9 distinction between proceedings with Provisional
10 determination of the forfeiture claim and proceeding
11 without Provisional determination of the forfeiture
12 claim.

13 In connection with the proceedings with
14 Provisional determination of the asset forfeiture
15 claim, Law 1708 of 2014 is still applicable. And for
16 those proceedings, without Provisional determination
17 of the forfeiture claim, Law 1849 of 2017 must be
18 applied.

19 On the basis of this general structure as to
20 how the law works, I wanted to refer to seven
21 conclusions related to the case at hand.

22 First conclusion: The applicable law in

1 this case is 1708 of 2014, pursuant to the
2 transitional provision of Law 1849 of 2017.

3 Second: The Precautionary Measures that
4 were imposed were necessary, reasonable, and
5 proportionate. They were issued by a prosecutor.
6 They were subject to the legality control by a judge
7 who approved those measures. The Judge's decision was
8 appealed, and ultimately upheld by three Superior
9 Justices of the Superior Court of Bogotá. The
10 Ministry of Justice was an intervening party, and it
11 requested that the Precautionary Measures be
12 maintained. The Inspector General's Office did not
13 oppose the imposition nor the confirmation of the
14 Precautionary Measures. So the necessity,
15 reasonableness, and proportionality of the
16 Precautionary Measures, were known and supported by
17 seven public officials of a number of agencies such as
18 the Attorney General's Office, the Judiciary, the
19 Ministry of Justice, and the Office of the Inspector
20 General, which is the supervising agency of the
21 Government.

22 Third conclusion: Regarding tangible

1 property--that is to say, real estate and chattels,
2 the affected parties are those who claim to have an in
3 rem right over the property.

4 Fourth: The fact that Newport was not
5 recognized as an affected party, is based on a Trial
6 First Instance Court Decision which was appealed.

7 Fifth: The arguments advanced in this First
8 Instance Court Decision were based on the analysis of
9 the evidence gathered during the investigation and are
10 developed within parameters of legal interpretation.

11 Sixth: In its Decision of April 22, 2022,
12 the Superior Court of Bogotá, on appeal, repealed
13 partially the Decision of the Trial Court. Well,
14 there are three aspects that one needs to underscore:

15 First, it does not challenge the first
16 instance court argument which was the loss of
17 beneficiary status that Newport had, but it puts forth
18 a new argument. The new argument is the existence of
19 an assignment agreement of the sale promise agreement
20 from Royal Realty to Newport over the asset subject to
21 the forfeiture, it refers to the matter that was also
22 analyzed by the Trial Court.

1 Third: The First Instance Court addressed
2 this issue and rejected it fundamentally due to lack
3 of legitimacy in the provision of evidence. The
4 Appellate Court addressed it without questioning the
5 validity of the evidence.

6 Seventh conclusion: The Trial Court
7 Decision was appealed, but since in that Decision,
8 evidence was also denied; the appeal stayed the
9 proceedings until the Tribunal issued a decision on
10 appeal.

11 Thank you very much. That's it.

12 PRESIDENT SACHS: Thank you very much.

13 Who would be in charge of the
14 cross-examination?

15 MR. SOTO: I will be, Mr. President.

16 PRESIDENT SACHS: Please.

17 MR. SOTO: Could I ask for a brief
18 five-minute break? I promise to keep it to five.

19 Thank you, sir.

20 (Brief recess.)

21 MR. SOTO: Okay. Mr. President, we're ready
22 to proceed, if you like.

1 PRESIDENT SACHS: Please proceed.

2 MR. SOTO: Thank you, sir.

3 CROSS-EXAMINATION

4 BY MR. SOTO:

5 Q. Dr. Reyes, good afternoon.

6 THE INTERPRETER: No microphone on the
7 expert.

8 THE WITNESS: Good afternoon.

9 BY MR. SOTO:

10 Q. Dr. Reyes, my name is Pedro Soto. I'm an
11 attorney representing the Claimants in these
12 proceedings, and if it's okay with you, sir, I'd like
13 to ask you a few questions about the two Expert
14 Reports that you submitted in this Arbitration.

15 Dr. Reyes, you're an expert on penal law
16 matters in Colombia, aren't you, sir?

17 A. Yes.

18 Q. You've written extensively on issues of
19 penal law; isn't that right?

20 A. Correct.

21 Q. Dr. Reyes, the law that was applicable--your
22 presentation covered a series of statutes that have

1 been amended over time--the law that was applicable to
2 the Meritage Asset Forfeiture Proceeding, that was
3 Law 1708 of 2014, wasn't it, sir?

4 A. That's right.

5 Q. Were you involved in drafting that law?

6 A. No.

7 Q. You were not a member of the Drafting
8 Committee for that one.

9 A. No.

10 Q. And I assume, then, that means you did not,
11 for example, testify before Congress on the adoption
12 of that statute; is that right?

13 A. Correct.

14 Q. Now, Dr. Reyes, this Tribunal is interested,
15 has expressed interest, in knowing the relevant date
16 that Newport's rights in this project crystallized, so
17 I'd like to walk you through some of the materials
18 that we have in this case and ask for your view on
19 which of these would be the correct date. Is that all
20 right?

21 A. That's fine.

22 Q. So, let's first turn to Exhibit 436.

1 And while it's getting pulled up, I will
2 represent to you, sir, that it is a court decision
3 issued on April 22nd of this year by the Superior
4 Court of Bogotá.

5 Do you have it in front of you, sir?

6 A. Yes, now I have it.

7 Q. Let me draw your attention to Page 32, which
8 should be towards the very back of the document. We
9 also, Dr. Reyes, will put it up on the screen for your
10 convenience if that's easier for you, but, of course,
11 you're welcome to review the hard copy, if you prefer.

12 A. Page?

13 Q. 32.

14 A. Which page? 32?

15 Q. I apologize, Doctor. Let's go back to 31
16 for just a second. I want to make sure that you have
17 the context.

18 See, this is why context is important. Very
19 well wasn't the right page, either. It's 29. Let's
20 try that one.

21 So, let's go to 29, and there is a paragraph
22 in the English translation--it's the second paragraph

1 on the page, first full paragraph, that says: "With
2 respect to the company Newport S.A.S."

3 And the Court here indicates that, on
4 November 1st, 2012, the Company Royal Realty S.A.S,
5 and the Company La Palma Argentina signed a document
6 that we're calling the Sales-Purchase Agreement or
7 "promesa de compraventa," in Spanish. Do you see that
8 reference, sir?

9 A. Yes.

10 Q. And then now let's do go to Page 32.

11 And the last full paragraph on this page
12 begins: "Therefore, the appellant is correct to base
13 its claim for" affected-party status--and just for the
14 record, I added the words "affected-party status--"the
15 appellant is correct to base its claim on the
16 Sales-Purchase Agreement (promesa de compraventa)."

17 Do you see that, sir?

18 A. Yes. It's on Page 31.

19 Q. It's on 32 in the English, so we might just
20 have a slight discrepancy here.

21 But you see the text I'm referring to;
22 right?

1 A. Yes.

2 Q. So, Dr. Reyes, what the Court here is
3 saying, the basis on which it would recognize
4 Newport's affected-party status was, in fact, anchored
5 on the Sales-Purchase Agreement; isn't that correct,
6 sir?

7 A. That's right.

8 Mr. President, if I could make a brief
9 observation?

10 PRESIDENT SACHS: Brief, yes.

11 THE WITNESS: This is the issue I was
12 referring to a moment ago where both the Judge and the
13 Court saw this sales agreement that the Judge did not
14 attribute value to it because the documents showing it
15 or proving it were neither authentic nor original, and
16 the law requires that such documentary evidence meet
17 one of those two requirements. That's why the Judge
18 did not take this document into account.

19 Now, the Court has a different opinion, and
20 it does attribute value to the documents, and it
21 reaches this conclusion.

22 BY MR. SOTO:

1 Q. Thank you for your clarification, Dr. Reyes.

2 So, to make sure I understood what you're
3 saying is the lower court did not find that this
4 Sale-Purchase Agreement was the anchor to
5 affected-party status because it had an unofficial
6 copy of that agreement in front of it and not a
7 certified copy. Is that the distinction you're
8 making?

9 A. Yes, that's what the Judge says.

10 Q. Dr. Reyes, you've read the reports, of
11 course, by Drs. Martínez and Medellín--right?--in this
12 matter.

13 A. Correct.

14 Q. If I could draw your attention, sir, to
15 Dr. Martínez's Second Report and, in particular,
16 Paragraph 60(d), as in "David," which is on Page 17 of
17 the Report; and again, we'll put it up on the screen
18 for your convenience.

19 Do you have it in front of you, sir?

20 A. I see it on the screen.

21 Q. It should only be a couple of questions
22 about it. So I think you can look at it on the screen

1 if you're comfortable with that.

2 In the third paragraph under the header of
3 60(d), Dr. Martínez is commenting on the date on which
4 he believes this transaction, a legal transaction was
5 conducted and, therefore, the relevant date for due
6 diligence purposes, and I'll read to you from
7 Paragraph 60(d) where he says, and I quote: "On this
8 point, it is important to recall that a person's good
9 faith must be assessed with the information available
10 at the time the legal transaction is conducted, not on
11 information that appears afterwards."

12 And he makes reference to October 13th,
13 2013. Do you know what that reference is to
14 October 13th, 2013?

15 A. I believe to recall that is at the signature
16 of a fiduciary agreement.

17 Q. Dr. Reyes, let's show you, just for your
18 context, the immediately preceding paragraph.

19 MR. SOTO: Franz, if you have that.

20 BY MR. SOTO:

21 Q. And in that one, Dr. Martínez explains that
22 date of October 13, 2013. Dr. Martínez says, and I

1 quote: "The commercial trust agreement for
2 administration and payments that gave rise to the
3 MERITAGE Trust was signed on October 13, 2013."

4 Do you see that one, sir?

5 A. Yes.

6 Q. Do you agree with Dr. Martínez that this was
7 the date on which--by which Newport's rights had
8 crystallized, sir?

9 A. Not for purposes of an evaluation of good
10 faith.

11 Q. Let me show you Dr. Medellín's Second
12 Report, and we will put it up on the screen as well,
13 sir, and in particular I would direct you to
14 Paragraph 86 of that second report.

15 And at the end there--

16 MR. SOTO: Pull up the Spanish version as
17 well.

18 BY MR. SOTO:

19 Q. But at the end there, you can see that
20 former Minister Medellín says: "Demanding that the
21 Request for Information whose value is being
22 discredited continued to be made subsequent to the

1 signing of the commercial trust agreement entered into
2 the year"--"entered into in the Year 2013, is to
3 demand that the person who already holds patrimonial
4 rights to an asset indefinitely conduct due diligence
5 over an asset over which it already has a legitimate
6 interest. As I stated before, the analysis must be ex
7 ante."

8 Do you see that reference on the screen,
9 sir?

10 A. I do see it.

11 Q. Dr. Reyes, what Minister--what Dr. Medellín,
12 also a Minister like yourself--what Dr. Medellín is
13 saying is that once you've signed that commercial
14 trust agreement, you've acquired some rights,
15 patrimonial rights, and you already have a legitimate
16 interest in the project. So we focus on what you
17 did--due diligence you did ahead of that. Do you
18 agree with that, sir?

19 A. No, and I wish to specify something. Had
20 this been the only act for evaluating, then both
21 experts might be right. But this was neither the
22 only nor the last act that unfolded in this project.

1 In 2014, there was information about the
2 possible illicit origin of the asset because of the
3 dispossession of that asset of a drug-trafficker by
4 the Oficina de Envigado; that means a new information
5 that must be taken into account for due diligence
6 analysis if in the future acts were going to be
7 continued to be carried out with respect to the
8 project, and I recall at least two related to the
9 project in 2014.

10 First, the request to a curators' office in
11 Envigado to authorize the division of this property,
12 to divide it into lots; and, second, the signature of
13 another trust contract. Those two acts took place in
14 the second half of 2014 once there was already
15 information about the possible illicit origin of the
16 property, and that makes it obligatory for the
17 persons to update their information about good faith.

18 Q. Thank you for your clarification, Dr. Reyes.

19 But there are always going to be subsequent
20 acts that occur with this property; right? Eventually
21 it goes to a Unit Buyer, an individual person who will
22 pay for a unit. But for purposes of analyzing

1 diligence, for purpose of analyzing good faith, I
2 believe you testified a minute ago that you thought
3 the Superior Court of Bogotá was correct when it
4 anchored the new--the affected party, standing as an
5 affected party on the promise to Purchase Agreement of
6 November 1st, 2012; isn't that correct, sir?

7 A. No, it's not correct. I said that the Court
8 had analyzed the same evidence as the Judge and
9 reached a different conclusion. I didn't say that it
10 decided incorrectly.

11 Q. Just a simple question, then: So, when did
12 Newport gain any rights here? 2012 or 2013?

13 A. Let me reformulate it in other terms. Each
14 time a new act is to be carried out, the diligence
15 must be updated. You cannot have a report from the
16 Office of the Attorney General of 2007 and put it
17 forward as valid in 2016 or 2017 when one has, for
18 example, information that a drug-trafficker has--had
19 contact with that asset and had--even had it taken
20 from him by a recognized criminal organization in
21 Colombia.

22 Q. Understood, sir.

1 So, let me take a step back here.

2 Newport, in 2012, identifies a piece of
3 property that it wishes to purchase for a project.

4 Are you with me?

5 A. Yes.

6 Q. And before it moves forward with that, it
7 signs a promise agreement and then conducts diligence
8 because it wants to know the history of the title and
9 the other requirements under Colombian law; is that
10 right, sir?

11 A. Yes, I am continuing to follow you.

12 Q. At that point, Newport forms a state of
13 mind, a perception as to whether the asset that it is
14 interested in acquiring is tainted by illegality or
15 not; right?

16 A. I continue following you.

17 Q. And if I understand your testimony, I've got
18 to keep doing that exercise all the time; and so any
19 time there's one more step being taken in the
20 commercial project, which is a big project, you gotta
21 do it again. So it's not just when I go to buy the
22 lot that I'm trying to make sure that I'm not buying

1 it from dirty hands. I gotta do my diligence in 2012
2 and refresh it in '13, and refresh it in '14, maybe
3 even refresh it in '15. Is that your testimony, sir?

4 A. If that person has information that changes
5 their perception regarding good faith, then they're
6 under an obligation to review their opinion regarding
7 good faith.

8 Q. Dr. Reyes, let's maybe take a step back
9 here. Basic principles.

10 When I do diligence, that diligence has to
11 be based on materials, information; right?

12 A. Correct.

13 Q. And that information has to be both
14 available, meaning the information exists, and
15 accessible, meaning a reasonable person can reach that
16 information, a potential buyer can reach this
17 information. Surely, we can agree on that; right?

18 A. Right.

19 Q. Dr. Reyes, in its pleadings in this matter,
20 Colombia has argued that Newport should have detected
21 that a person who received the property in 2004, who
22 was four purchasers removed from Newport--and I'm

1 referring to Mr. Varela Arboleda, commonly known as
2 the "mango seller," lacked the means to buy the
3 property.

4 MR. SOTO: And we can put it up. It's
5 Colombia's Counter-Memorial, in Paragraph 161 in this
6 Arbitration.

7 BY MR. SOTO:

8 Q. Are you familiar with what I'm describing,
9 sir?

10 A. Yes.

11 Q. And at Paragraph 161, you see there that at
12 the end of it, Colombia asserts that, after the police
13 interviewed Mr. Varela, as part of a formal
14 declaration that he gave, he declared, quote, "not
15 knowing any of the parties in the transaction nor
16 participated in the process and made plain that he
17 lacked the funds to buy any type of property as for
18 the last 30 years of his life he had worked as a
19 street vendor of mangoes and declared to be associated
20 with the SISBEN in Colombia which provides social
21 programs to low-income people."

22 Do you see that, sir?

1 A. I don't see it in Spanish.

2 Q. You don't see it in Spanish?

3 A. I don't speak English.

4 Q. Of course. We don't have it at the moment,
5 but I believe a moment ago you said you were familiar
6 with the issue of the mango seller; right? And the
7 fact that Colombia has asserted that he lacked the
8 means to buy--

9 MS. HERRERA: I'm sorry, can you show him
10 the paper?

11 MR. SOTO: We're absolutely working on it.

12 MS. HERRERA: Before you question him.

13 MR. SOTO: I'm sorry?

14 MS. HERRERA: Just before he can--

15 (Overlapping speakers.)

16 MS. HERRERA: Thank you.

17 MR. SOTO: Absolutely.

18 I'm just setting the stage that a minute ago
19 he said he familiar with the argument, so we're, of
20 course, happy to show him the text.

21 Oh, you know what? I apologize. There is
22 no Spanish version of the Counter-Memorial. We can't

1 produce it even if we tried to so the--

2 PRESIDENT SACHS: Maybe somebody could
3 translate it or--

4 (Overlapping speakers.)

5 MR. SOTO: There is an interpreter, and, of
6 course, Dr. Reyes has now heard it in Spanish.

7 BY MR. SOTO:

8 Q. Dr. Reyes, let me just take a step back.

9 Are you aware, sir, whether the person that
10 we've been discussing, Mr. Varela, was he a
11 counter-party to Newport in this transaction, sir?

12 A. No.

13 Q. No, you're not aware or no, he was not a
14 counter-party?

15 A. As far as I know, he was not a
16 counter-party.

17 Q. You would agree with me, wouldn't you, sir,
18 that a person's banking information, including how
19 much money they have, is Confidential Information;
20 right?

21 A. Right.

22 Q. I can't go to a bank and ask them how much

1 money does Mr. Varela have. I can't do that; right?

2 A. That's right.

3 Q. So, to be sure, Dr. Reyes, you would, of
4 course, agree with me that, in 2013, when Newport is
5 conducting diligence on the property, it can't
6 possibly go to a bank and ask how much money did the
7 fruit seller have in 2004? Can't be done; right?

8 A. Right. But as I already pointed out a
9 couple of times, if the information that the person
10 has changes, and this change means the appearance of
11 evidence as to the possible illegal origin of the
12 property, then they can no longer be content with the
13 initial inquiries into good faith.

14 Q. Understood, and I certainly understand your
15 position on that issue.

16 I'm just asking very simply that--whether
17 you would agree and I believe your answer was
18 yes--that in 2013, I had no way of going back to 2004
19 and figuring out how much money someone had in their
20 bank account in 2004 who's not my counter-party. That
21 person is not there for me to ask. We agree on that;
22 right?

1 A. We agree on that, specifying that that is
2 not--does not suffice, as I see it, to characterize
3 the conduct of a person as good faith and no fault.

4 Q. Understood. Thank you, Dr. Reyes.

5 Now, Dr. Reyes, in your First Expert Report,
6 you indicate that the response to the right of
7 petition that the Attorney General provided to
8 Corficolombiana--we've been calling it the "Attorney
9 General's Certification," and if it's okay with you,
10 I'm going to refer to it as that during this line of
11 questions. You said that that document has what you
12 have described as several limitations. Do you recall
13 that, sir?

14 A. Yes.

15 Q. And let me show you one of them, Dr. Reyes.
16 It's at Paragraph 57 of your Report, your First
17 Report.

18 Now, in this section--and you have hard copy
19 if you'd like, sir. It's at the very beginning of
20 your binder. Or--actually, I apologize. It's the
21 small binders in front of you are copies of your
22 statement, if you'd like to review those in hard copy.

1 So, in this section, just to set the stage,
2 you're talking about why it was unreasonable for
3 Newport to have relied on this Corficolombiana
4 certification. Is that--does that comport with your
5 understanding of what you said?

6 A. Yes.

7 Q. And so, in this paragraph, you
8 indicate--again, I'm reading from 57--"if the Attorney
9 General's Office wants to maintain the
10 reservation--and I would translate as
11 confidentiality--the reservation or confidentiality of
12 the actions of asset forfeiture," further down, "it
13 should abstain from providing information through
14 documents such as those that have been provided in the
15 process of asset forfeiture over which this concept is
16 issued."

17 Do you see that, sir?

18 A. (In Spanish.)

19 REALTIME STENOGRAPHER: I didn't get the
20 interpretation.

21 A. After the coming to force of the 2014 Law,
22 yes.

1 BY MR. SOTO:

2 Q. Understood, sir.

3 You further note, and I quote: "If the
4 Attorney General's Office did not proceed in this way,
5 it would be very easy to circumvent the reservation,"
6 or confidentiality, "mandate enshrined in Article 10
7 of Law 1708 of 2014."

8 Do you see that, sir?

9 A. Yes.

10 Q. So, Dr. Reyes, just to make sure we're all
11 on the same page. You're saying that a limitation to
12 relying on the Attorney General's Office certification
13 is that there might have been a confidential
14 investigation about which the Attorney General could
15 not release information, given the Article of the Law
16 that you mentioned. Is that a fair characterization
17 of what you've said, sir?

18 A. There could not have been a confidential
19 investigation. By mandate of Article 10 of that law,
20 all asset forfeiture investigations are confidential,
21 and I quote, "even for the procedural subjects or
22 intervening parties, the parties of the procedure and

1 other intervening parties." So, a person who is
2 familiar with that law during that initial phase
3 should not send any request to the Prosecutor for
4 information that the law classifies as confidential,
5 even for Parties to the proceeding and the intervening
6 parties, and I place emphasis on the intervening
7 parties because that means that neither the Ministry
8 of Justice, nor the Office of the Inspector General,
9 which is an oversight agency of the State, can demand
10 or request that information of a prosecutor in the
11 Asset Forfeiture Unit.

12 Q. Understood.

13 So, we're talking about very Confidential
14 Information, not even other prosecutors can know about
15 it; is that fair, sir?

16 A. It is confidential.

17 Q. So, Dr. Reyes, when you say that a
18 limitation on my ability to rely on the letter is that
19 there might be hyper Confidential Information that not
20 even other prosecutors could have access to, you're
21 talking about information that I couldn't possibly
22 have access to; right?

1 A. When you are saying "I," who were you
2 referring?

3 Q. The purchaser in this transaction.

4 A. Agreed.

5 Q. But in any event, Dr. Reyes, what we're
6 talking about in Paragraph 57 is a hypothetical
7 concern; isn't it, sir? I mean, you've seen no
8 evidence, have you, sir? That in this matter, there
9 was some Confidential Information that was going on
10 that the Attorney General's Office did not reveal that
11 could have somehow affected our diligence. You
12 haven't seen that evidence, have you?

13 A. I am saying that it is not evidence of due
14 diligence to request information that one knows one
15 cannot obtain.

16 Q. Dr. Reyes, let's turn to Paragraph 58 of
17 your First Report. It continues on your list of
18 limitations.

19 And in this paragraph, while we pull it up,
20 I will summarize for you that you noted that, in 1994,
21 there was a scandal in Colombia because Cali Cartel
22 members were obtaining certifications from the

1 Attorney General's Office and exhibiting them as
2 certificates that no criminal investigations were
3 under way against them. Do you remember this, sir?
4 We'll look at the specific text, but do you remember
5 this generally?

6 A. I do.

7 Q. And in Paragraph 58, you explained, and I
8 quote, that "since then, the Attorney General's Office
9 has been very careful in the way that it responds to
10 these rights of petition."

11 Do you see that, sir?

12 A. Yes.

13 Q. So, sir, the point is, after 1994, given
14 this history, the Attorney General's Office is very
15 careful when it responds to rights of petition.
16 That's what you're saying; right?

17 A. Yes.

18 Q. And I dare ask the basic chronological
19 question: The certification in this matter was well
20 after 1994; isn't that right, sir?

21 A. Yes, and when I am referring to the careful
22 nature of the certifications by the Office of the

1 Attorney General, I am referring to two things:

2 The first limitation is that certifications
3 usually include a legend that indicates that the
4 certification does not guarantee that, in the future,
5 there could be or not investigations.

6 And second, that that certification does not
7 show that any Office of Attorney General may have a
8 proceeding underway about that person whose
9 information is being requested.

10 Q. So, let's look **at** it, Dr. Reyes.

11 Do we have C-32 available, please.

12 Now, I'll represent to you, sir, I believe
13 you've seen this before--I apologize. You don't still
14 have it in hard copy. Please take a moment.

15 Do you have it in front of you, sir?

16 A. Yes, I see it, but I haven't finished
17 reading it.

18 Q. Well, Dr. Reyes, this is not the
19 certification. This, let me represent to you, is the
20 letter from Dr. Sintura Varela, transmitting the
21 certification to Corficolombiana and the certification
22 itself, sir, begins on Page 2, so perhaps we can turn

1 to that one.

2 And the certification runs from Page 2
3 through Page 4.

4 Dr. Reyes, could you please show me where on
5 this document it contains all the disclaimers that
6 you've mentioned?

7 A. Yes. It is highlighted and in upper case
8 where it says, "To date".

9 Q. Of course. Because if I asked someone to
10 search a database for information, they can only tell
11 me whether information actually exists as of that
12 date. That's a pretty basic matter; right?

13 A. Yes, which means that, on the next day or
14 the following month or the next year, that person may
15 have an investigation underway, and the only way to
16 know whether that is the case or not is by requesting
17 a new certification.

18 Q. But you would agree with me, of course, that
19 facts that have not yet happened can't be reasonably
20 attributed to someone who's just asking a question
21 today. If something's going to happen six months from
22 now, I'm just asking about today. You would agree

1 with that; right?

2 A. I agree, except that in the future, a person
3 might tell me I have been dispossessed of an asset by
4 the Oficina de Envigado, and I will be presenting a
5 complaint before the Office of the Attorney General,
6 for the Office of the Attorney General to start an
7 Asset Forfeiture Action. So, in that situation, I
8 would have reasons to think two things: First, that
9 the origin of the asset on which I'm developing the
10 Project may be illegal; and second, that if that
11 person did what they said they were going to do,
12 certainly he or she may have presented a complaint
13 before the office of the Attorney General, and a asset
14 forfeiture procedure may have been started. If I have
15 that information and if I want to be diligent, I
16 should go back to the Office of the Attorney General
17 and present a request for an update on the
18 information.

19 Q. Dr. Reyes--I apologize. So, as I understood
20 what you were saying, Dr. Reyes, you're saying I
21 should be asking the Attorney General. I just need to
22 do it every--what's the standard, is it every six

1 months I go back and ask? How about every year?

2 Maybe every 18 months? What's the standard, sir?

3 A. Every time a drug dealer tells you that a
4 criminal office has dispossessed you of an illicit
5 asset, and that this fact will be informed to the
6 Office of the Attorney General.

7 Q. Dr. Reyes, we were talking here about the
8 language, the disclaimers, that the Attorney General's
9 Office put on its certification.

10 And let me--let me just do a slight compare
11 and contrast exercise here. Could we look at C-331.

12 Now, C-331, I'll represent to you, is a
13 certification issued by the Attorney General's Office
14 on September 30, 2020. Now, it relates to a right of
15 request or a petition for information for a project
16 called "Mayorquin." And I'll represent to you,
17 Dr. Reyes, that Mayorquin is not related to the
18 Meritage matter.

19 Do you see the document in front of you,
20 sir?

21 A. I see first page.

22 Q. Let's go to Page 2. And the second-to-last

1 paragraph there says: "The foregoing does not mean
2 that a process is or is not being carried out within
3 the Directorate. It simply states that it is NOT
4 possible to agree to provide information of any kind
5 on the cited legal grounds."

6 Do you see that text, sir?

7 A. Yes.

8 Q. Dr. Reyes, that language, that specific
9 disclaimer, that's not in the Meritage certification,
10 is it, sir?

11 A. No.

12 Q. And let's look at the last paragraph. The
13 last paragraph says, and I quote: "Per the above
14 terms, your request is deemed to be answered, and you
15 are reminded that this document," and now this part is
16 in all caps as you can see, sir, "DOES NOT CONSTITUTE
17 CERTIFICATION, nor is it an obstacle to an extinction
18 process being brought forward in the future, in the
19 event that any of the causes of the extinction of
20 ownership code coincide."

21 Do you see that language in front of you,
22 sir?

1 A. Yes.

2 Q. Dr. Reyes, that language was not in the
3 Meritage one either, was it, sir?

4 A. Correct. That is a good example of the
5 thoughtfulness of the Office of the Attorney General
6 later on for issuing certification. Here they are
7 saying that, first, this is not a certification. This
8 is the response to a Right of Petition, and that it
9 does not guarantee that in the future no Asset
10 Forfeiture Proceedings may not be initiated.

11 So, if in the future, there were any news
12 reports, evidence that there could be an Asset
13 Forfeiture Action initiated against an asset, I think
14 it would be necessary to request a certification
15 again.

16 This is not related to timing, whether to do
17 it monthly, quarterly, or every six months. It is
18 only whenever the conditions change.

19 Q. See, Dr. Reyes, I knew by the end of the day
20 we would agree on a lot of things. Because I
21 certainly agree with you that this is a very good
22 example of how much more careful the Fiscalía has

1 become in responding to these. I agree with you, sir.

2 Dr. Reyes, I would like to draw your
3 attention to Paragraph 8 of your First Expert Report.
4 In it, you state--and I apologize it's a long
5 paragraph, so it will be a little bit challenging to
6 find the exact reference, but in it you state: "When
7 the conditions set out in the law are met, the
8 Attorney General's Office is obliged to initiate the
9 action for asset forfeiture." And that's the first
10 sentence, first and second lines.

11 Do you see that, sir?

12 A. Yes.

13 Q. And I would note that you bolded and
14 italicized the word "obligation."

15 Do you see that?

16 A. Yes.

17 Q. Dr. Reyes, it's your position that if the
18 Attorney General's Office thinks the facts are there,
19 that the grounds are met for asset forfeiture, it has
20 to--it is legally required--to initiate an Asset
21 Forfeiture Proceeding; isn't that right, sir?

22 A. No, it is not true because those conditions

1 do not need to be met.

2 (Overlapping interpretation with speaker.)

3 A. That's the reason why in my presentation I
4 referenced the evidentiary threshold, and I also
5 indicated that for initiating an investigation it is
6 sufficient to be able to infer the likely existence of
7 assets that could be subject to asset forfeiture.

8 Q. So, Dr. Reyes, would it be your testimony,
9 then, that if I can reasonably infer the probable
10 existence of grounds for asset forfeiture, then the
11 Fiscalía is obligated--your word, not mine,
12 "obligated"--to move forward, is that fair, sir?

13 A. Can we look at the law? I think it is in
14 the binder.

15 Q. Sir, in the interest of time, I'm going to
16 move on. I think we can all read the bolded
17 italicized "obligation" that you have identified. And
18 if counsel for Colombia would like the opportunity for
19 him to clarify, there is a period of redirect that is
20 set aside in the Procedural Schedule for just that. I
21 don't have a question pending.

22 Dr. Reyes, I'd like to turn your attention--

1 A. Just to be specific, if the President
2 authorizes it.

3 PRESIDENT SACHS: All right.

4 THE WITNESS: As far as I recall, the law
5 establishes that if there is evidence that allows
6 inferring the likely existence of assets that could be
7 subject to asset forfeiture, the Judge "shall," and
8 this is imperative of the verb, that there is an
9 obligation.

10 BY MR. SOTO:

11 Q. That sounds like a very long way to say,
12 "yes," in other words, they shall, they are obligated
13 to start the obligation; isn't that correct, sir?

14 A. It is a way to specify that it is not me the
15 one who says it is an obligation but it is the law.

16 Q. Understood, Dr. Reyes.

17 Dr. Reyes, I would like to turn your
18 attention to the recent decision by the
19 Constitutional Court of Colombia regarding the
20 constitutional challenge to certain provisions of
21 the Asset Forfeiture Code, it's Decision 327 of
22 2020, which has been designated by Claimants as

1 Exhibit C-329 in this Arbitration. We don't have
2 to look at the Decision just yet. I was just
3 identifying it for you, sir.

4 Let's turn first to your Second Expert
5 Report. In it, you address this Decision; is that
6 right?

7 A. True.

8 Q. Dr. Reyes, in Paragraph 7(x) and 7(y) of
9 your Second Report, for example, you explain, although
10 you certainly do it at more than one paragraph, you
11 explain that you do not believe that the holding of
12 this Court Decision applies to the facts of this case.

13 Do you recall that, sir?

14 A. Yes.

15 Q. Dr. Reyes, Article 16 of Law 1708 lays out
16 the grounds for Asset Forfeiture Actions; isn't that
17 right, sir?

18 A. That is correct.

19 Q. And, in this Decision, the Court was
20 reviewing a challenge to the constitutionality of
21 Grounds No. 10 and 11 identified in Article 16; isn't
22 that right, sir?

1 A. That is correct.

2 Q. So, let's look at those grounds. The
3 exhibit is C-3. Article 16. I believe you have it in
4 front of you, sir. Article 10 says that the Attorney
5 General's Office may attempt to forfeit, to seek in
6 forfeiture "assets of legal origin whose value is
7 equivalent to any of the assets described in the
8 proceeding numbers whenever the action is inadmissible
9 due to the recognition of the rights of a third party
10 acting in good faith without fault."

11 Do you see that, sir?

12 A. Yes.

13 Q. So, let's make sure I understand Ground
14 No. 10.

15 It talks about the State's ability to seize
16 a legal asset if it's unable to seize an illegal asset
17 because that asset is now in the hands of a good-faith
18 third-party buyer. That's what it says, in a
19 nutshell; right?

20 A. To be more specific, it says that whenever
21 it is inadmissible because of the recognitions of the
22 rights of a third party acting in good faith without

1 fault.

2 Q. So, let's take an example. If I sell you a
3 vehicle and the--and I purchased the vehicle with
4 tainted assets--I'm a drug dealer--and you do your
5 diligence and you have no idea that I'm a drug dealer
6 and you bought the car from me. What Ground No. 10
7 says is the Government can't take the car away from
8 you. You're a good-faith third party buyer, so what
9 they have to do is go seize my other assets, even if
10 they are of legal origin, that are in the equivalent
11 value of the car. That's roughly what we're doing
12 here; right?

13 A. No, you said, and you said now again that
14 this applies when the State cannot go after that
15 asset, and I told you that what it says there is that
16 equivalent assets could be pursued whenever it is
17 inadmissible because of the recognition of the rights
18 of a good-faith third party without fault.

19 Why is it important to be this specific?
20 Because the only one that can recognize rights of a
21 good-faith third party is the fault in the Judge in
22 the Judgment. So whenever there is a final judgment

1 that says that it is not possible to forfeit an asset
2 because it is in the hands of a good-faith third party
3 without fault, that proceeding comes to an end, and
4 the Office of the Attorney General may initiate
5 another one, another proceeding to pursue assets of
6 equivalent value.

7 Q. So, Dr. Reyes, you've argued--and I will
8 show you the paragraph in your statement just to
9 refresh your recollection--you've argued that the
10 Court, in this Constitutional Court Decision--go back
11 to C-329, please--is setting out a different standard
12 of diligence for assets of legal origin versus those
13 of illegal original. And I'll direct you to
14 Paragraph 7(z), "Z" as in "Zulu," of your Second
15 Report. Thank you.

16 In Paragraph 7(z), you say: "The parameters
17 for assessing good faith without fault of a third
18 party differ if they refer to assets directly or
19 indirectly linked to illegal activities, or if they
20 refer to assets whose origin is lawful."

21 Do you see that, sir?

22 A. Yes, I do see it.

1 Q. Dr. Reyes, diligence has to occur before a
2 purchase; right?

3 A. Before any legal act, not necessarily a
4 purchase.

5 Q. And, of course, the entire purpose of doing
6 diligence is to determine whether the asset that I'm
7 acquiring is legal or illegal; right?

8 A. Yes.

9 Q. And yet, under your interpretation, sir, the
10 Court has set out a different standard that I need to
11 apply if it's legal versus illegal; isn't that right?

12 A. In part.

13 Q. Please clarify.

14 A. It has to do with a 44-page long decision.
15 And I mentioned this because the Judgment or the
16 Decision is made in the last 10-and-a-half pages.
17 What does the Court do in the other 30 pages? It
18 addresses the key issue of the debate, which was
19 whether the Court had already said that all of the
20 grounds for asset forfeiture enshrined in the law were
21 in keeping with the Constitution.

22 So, through Pages 28 to 30 of that decision,

1 the Court states that there is only one topic that has
2 not been addressed, one subject matter that has not
3 been addressed by the Court. And it has to do with
4 the assets, equivalent assets, of licit origin, and
5 they offer an example.

6 If a drug dealer or a criminal also has a
7 licit job from which a salary is received and that
8 salary is used to pay a loan, to pay off a loan, that
9 is an asset of a licit origin that may only be pursued
10 as equivalent asset if it is in the hands of the
11 person that carried out the illicit conduct.

12 So, the Constitutional Court is just
13 referring to one of the specificities of the last
14 grounds for asset forfeiture that is pursuing
15 equivalent assets whenever they are of licit origin.

16 Q. Thank you, Dr. Reyes. I'm not sure that
17 responded to my question, but let's again, basic
18 principles here: Do you believe the Constitutional
19 Court in this Decision set out a different standard of
20 diligence for assets of legal origin versus illegal
21 origin?

22 A. Yes.

1 Q. Dr. Reyes--

2 A. Let me sum up what I just said because about
3 all of the other aspects it had already addressed, so
4 the only constitutional possibility that the Court had
5 was to address a subject matter that it had not
6 addressed before.

7 And once it makes a decision about something
8 that it has not addressed before, it establishes a new
9 rule. It have never addressed that.

10 Q. Thank you, Dr. Reyes. And I will apologize,
11 sir, that's not just the question I'm asking.

12 You have said that you believe there is a
13 different standard of diligence for assets of legal
14 origin versus illegal origin, and I guess I just have
15 one question: If, before buying the asset and I'm
16 trying to decide what diligence I need to do, I knew
17 that the asset was illicit, I couldn't buy it at all,
18 could I, Dr. Reyes? There is no amount of diligence
19 in the world I could do that would allow me to
20 knowingly buy an illicit asset, and yet your analysis
21 seems to suggest that, before I buy it, I need to know
22 that it's legal or illegal to then decide what

1 standard of diligence to do?

2 A. If you are referring to the Judgment of the
3 Constitutional Court, it has to be with examples, that
4 first, where the proceeding is pursuing equivalent
5 assets; that is to say, proceedings that start after
6 an asset forfeiture judge has said that that asset is
7 not pursuable because there is a good-faith third
8 party.

9 And second, they need to be equivalent
10 assets of absolutely licit origin.

11 Q. Dr. Reyes, before we wrap up, I just want to
12 ask one final concept here to clarify.

13 Is it your position, sir--let me rephrase.

14 The position I have heard from you today,
15 sir, is that I have to redo diligence, every time I
16 sign a new contract for the same conflicts real estate
17 Development Project, every unit sale, every Mortgage
18 Agreement, every subdivision, every time somebody
19 tries to extort me, I need to run diligence again; is
20 that right, sir?

21 A. Only if the circumstances have changed, and
22 that the change in circumstances would lead a good

1 pater familias, or a good average citizen, to see that
2 the no fault good-faith third party circumstances
3 could have changed. That is what the good faith
4 third-party without fault concept refers to. You
5 cannot have a conduct that is different from whatever
6 individual in your place would have adopted. One
7 could wonder what would a person have done if it
8 wanted to develop real estate, and if a
9 drug-trafficker comes to that person and says, look, a
10 criminal group in Medellín dispossessed me of my
11 property and I am going to let the Prosecutor's Office
12 know about this. Could they do nothing? Well, my
13 opinion is that diligence must be conducted again to
14 verify that that piece of property does not have an
15 illicit origin.

16 Q. So Dr. Reyes, is there ever a point that I
17 will have certainty that I can keep my investment?

18 A. When there are no circumstances that change
19 the conditions on which the first good faith
20 assessment was drawn, in that case, yes.

21 Q. 20 years down the line, a new circumstance
22 arises as you said that changes my understanding of

1 the initial diligence, I still can't have legal
2 certainty, then?

3 A. If you are referring to an Asset Forfeiture
4 Action, you're right. The law indicates that the
5 Asset Forfeiture Action cannot be time-barred. You
6 mentioned that period of 20 years. So, within that
7 period, the person should be conducting new actions,
8 if new actions are going to be conducted
9 (in relation to the property), and the person has
10 information that the circumstances have changed, then
11 an update is in order.

12 Q. Thank you, Dr. Reyes. Appreciate your time
13 and your availability.

14 MR. SOTO: Mr. President, we have no further
15 questions at this time.

16 MS. HERRERA: Mr. President, just very
17 quickly.

18 REDIRECT EXAMINATION

19 BY MS. HERRERA:

20 Q. Sir, mention was made of the promise of sale
21 of the Lot. Does Newport have to date rights in rem
22 over the Meritage Lot?

1 A. Not that I know of.

2 MS. HERRERA: No further questions. Thank
3 you.

4 QUESTIONS FROM THE TRIBUNAL

5 PRESIDENT SACHS: I have a question that is
6 not yet clear to me.

7 Assume I buy a property in Colombia and
8 there is no problem, nothing turns out, I do a due
9 diligence that you would consider sufficient, and 10
10 years later I learned that a relative of Escobar was
11 involved in the initial—at the origin of the property.

12 Now, does this affect my property rights?

13 THE WITNESS: Absolutely not.

14 PRESIDENT SACHS: Okay. If I want to resell
15 the property in the year thereafter, so the new
16 circumstance has arisen, and I want to sell my
17 property, and now it is known that there was at the
18 origin an illicit circumstance: Would I be able to
19 sell the property to somebody else? Would that
20 somebody else be a good-faith purchaser? Because he
21 would know, wouldn't he—probably he would know—of that
22 illicit origin.

1 THE WITNESS: Yes, you can sell it.

2 PRESIDENT SACHS: Thank you.

3 ARBITRATOR PONCET: Picking up on the
4 President's question, Dr. Reyes, could you give us a
5 specific example of the kind of circumstance that
6 would require one to go over the books again, so to
7 speak? I was thinking, as I was listening to you
8 answering questions of my counsel, I was thinking of
9 an obvious thing. If you're selling units in your
10 property and suddenly three people turn up with
11 suitcases of cash. Obviously that will call for very
12 great attention, but that would be limited to the
13 facts, to the immediate fact, who are these people who
14 want to purchase with cash? Other than that, can you
15 give me a specific example of something that would be
16 a reason for going back several years, particularly in
17 view of the answer you have just given to the
18 President because you've stated in effect that
19 learning X years later that there was tainted money in
20 the beginning is no reason to affect one's good faith,
21 one's status as a good faith owner.

22 So, could you please give me an example?

1 THE WITNESS: Before giving you an example,
2 sir, I wanted to clarify something. The facts that I
3 have had the opportunity to know are a good example
4 because they show a continuous negotiation in which
5 the Project continues to have actions that require
6 that good faith be assessed. That is why I don't
7 think that that stage has been closed.

8 In the example given to me by the President,
9 the negotiation ended. He bought the piece of
10 property as a no fault good-faith third party, and the
11 only thing that the Fiscalía could eventually do is to
12 go and prosecute an equivalent asset of the person
13 that committed the illegal act.

14 But in this specific case, a number of
15 actions continued taking place. I understand that the
16 Project is still pending, it hasn't been finished.
17 That is why there is this obligation of reviewing good
18 faith on that project or a new one, of course, if the
19 circumstances change.

20 ARBITRATOR PONCET: So, that would mean, in
21 effect, wouldn't it, that mentioning taking up again,
22 picking up again my example of units sold, if I sell a

1 unit to some Fellow who is going to pay with
2 installments over five years, every time I get an
3 installment, I have to conduct a new due diligence?

4 THE WITNESS: As described in the example,
5 I would say that you could be committing a crime of
6 money-laundering.

7 ARBITRATOR PONCET: What is the
8 money-laundering in this case? It's the fact that the
9 24th installment might be paid up—paid for with bad
10 money? So, every time my purchaser gives me \$3,000
11 for the weekly or the monthly installment, I have to
12 conduct a new due diligence?

13 THE WITNESS: If I'm understanding your
14 example correctly, a person who has origin - sorry,
15 who is aware of the illicit origin of some money,
16 sells a property and receives that money of illicit
17 origin. Did I understand correctly?

18 ARBITRATOR PONCET: No, no.

19 THE WITNESS: Excuse me then

20 ARBITRATOR PONCET I am, by hypothesis, a
21 perfectly honest operator. Okay?

22 (Pause.)

1 ARBITRATOR PONCET: By hypothesis, assume I
2 am a perfectly honest operator. I sell a unit for USD
3 200,000 payable over three years in monthly
4 installments. If I read you--if I understand you
5 correctly, this is a relationship that extends over
6 time, so the consequence would be every time I get an
7 installment, I have to carry out a new due diligence?

8 THE WITNESS: What I don't see in your
9 example, sir, is the relationship that exists with the
10 illicit property.

11 ARBITRATOR PONCET: The illicit property or
12 the illicit asset in this case is not mine, by
13 hypothesis, because we're in the hypothesis that the
14 President mentioned before. But the Fellow who's
15 purchasing might make the first three purchases with
16 legitimate money, and then start a relationship with a
17 drug dealer of some kind and pay me five, six, ten,
18 twenty installments with dirty money. So, that means
19 considering that the suspicion would be lingering, I
20 would have to carry out a new due diligence every
21 time?

22 THE WITNESS: No, I fail to see the

1 relationship with the property. Here, you would have
2 an illicit source of the resources you intend to use
3 to buy the property, and that could be a different
4 situation of acts of laundering or illicit use of a
5 frontman. But this does not impair the condition of
6 the property.

7 ARBITRATOR PONCET: But you will agree with
8 me that using dirty money to purchase real estate is a
9 classical, classical, money-laundering scheme.

10 THE WITNESS: Definitely.

11 ARBITRATOR PONCET: So, if somebody starts
12 borrowing half my property or one-tenth of it, I do
13 have to conduct a due diligence, I have to be careful
14 to whom I am selling. KYC, "know your client"; right?

15 THE WITNESS: Yes.

16 ARBITRATOR PONCET: But if that client is
17 paying in installments, according to what you've just
18 explained to counsel, I have to do a new due diligence
19 every time I get an installment. And that doesn't
20 make any sense.

21 THE WITNESS: If I become aware during the
22 installment payments that the conditions have changed,

1 yes.

2 Let me explain: if for the first
3 installment, there was nothing to indicate the illicit
4 origin of the money, if due diligence was conducted on
5 that money, there would be no problem. But if for the
6 third, fourth, or fifth installment a person sees on
7 television that the buyer was captured, prosecuted for
8 drug-trafficking , and that the money product from
9 these illicit activities is being used to buy assets,
10 I think the information on the diligence should be
11 updated.

12 ARBITRATOR PONCET: I agree with you.
13 That's clearly a case where one would have to check
14 again. But that means, does it not, that the duty of
15 "new due diligence" is limited to new facts becoming
16 suddenly known. It doesn't require a constant effort
17 of my part to go and investigate everything because
18 otherwise all I will be doing is to investigate my
19 purchasers. We agree on that?

20 THE WITNESS: Fully agree.

21 ARBITRATOR PONCET: Okay. Thank you very
22 much.

1 PRESIDENT SACHS: Thank you, Dr. or
2 Professor Reyes for your expert testimony.

3 We will have a short break now. Who is
4 next?

5 MS. BANIFATEMI: Except that it's 6:15.

6 THE WITNESS: May I step down,
7 Mr. President?

8 PRESIDENT SACHS: Sorry?

9 THE WITNESS: May I step down,
10 Mr. President?

11 PRESIDENT SACHS: Yes. **You are released.**
12 Thank you very much.

13 (Witness steps down.)

14 MS. BANIFATEMI: Maybe to make progress we
15 could have--I mean, David it's your call.

16 PRESIDENT SACHS: There will be another
17 presentation.

18 MS. BANIFATEMI: I think there's another
19 presentation.

20 MR. MOLOO: Two points. One is the
21 presentation is meant to be 30 minutes.

22 PRESIDENT SACHS: Yes.

1 MR. MOLOO: And given that cross-examination
2 is going to be immediately thereafter, for two reason,
3 I think it's cruel and unusual punishment to keep
4 someone in purdah overnight.

5 But the second, is also I think it would be
6 beneficial to have the presentation directly before
7 the cross-examination, for two reasons, one is that
8 it's fresh in your gentlemen's mind, but second of
9 all, just for fairness, that's the position we're
10 going to be in is have a presentation directly before
11 the cross-examination for their experts. Since we
12 only have 15 minutes left--14 minutes now, I would
13 suggest we just wait until tomorrow morning. It looks
14 like we're going to end up here Saturday morning,
15 unfortunately, in any event. So, I just don't see,
16 although I see some surprise.

17 (Comments off microphone.)

18 ARBITRATOR PONCET: Off the record, David.

19 (Pause.)

20 PRESIDENT SACHS: Let's try our best for
21 tomorrow, but we shouldn't feel under time pressure.

22 MS. BANIFATEMI: The proposal of starting at

1 9:00, we're fine if the Tribunal is fine, and if David
2 is fine.

3 THE INTERPRETER: The Interpreters are also
4 on board?

5 PRESIDENT SACHS: It will be fine for us,
6 yes? No problem for the Tribunal. Interpreters?

7 THE INTERPRETER: The Interpreters are fine,
8 Mr. President. Thank you.

9 PRESIDENT SACHS: Thank you very much. Then
10 see you tomorrow. Have a nice evening.

11 (Whereupon, at 6:15 p.m., the Hearing was
12 adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

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

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

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written above a horizontal line.

DAVID A. KASDAN