

April 17, 2017
(Second letter)**By email**

Messrs. Brett, Aaron and Trevor Berkowitz
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c/o Ms. Adriana González
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**Re: Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v.
Republic of Costa Rica (UNCT/13/2)**

Dear Mesdames and Sirs,

I write on the instructions of the presiding arbitrator on behalf of the Tribunal. The Tribunal acknowledges receipt of the Respondent's letter of March 28, 2017, in which it objects to the publication on ICSID's website of the following documents:

- Claimants' letter to ICSID of 28 November 2016 confirming no corrections to award, informing ICSID of counsel change and withdrawing further claims;
- Respondent's letter to ICSID of 28 November 2016 confirming no corrections to award;
- Respondent's letter to ICSID of 14 December 2016 requesting termination of Claimants Spence and Gremillion claims with prejudice and an order of costs;

- Claimants' response of 23 December 2016 to Respondent's 14 December 2016 request for termination and order of costs;
- Berkowitz Claimants' request to suspend the arbitral proceedings dated 25 January 2017;
- Respondent's response of 8 February 2017 to Claimants' 25 January 2017 request to suspend the arbitral proceedings;
- Email from the Berkowitz Claimants dated 10 February 2017;
- Letter to the parties from ICSID of 13 February 2017; and
- Letter from Respondent to ICSID of 16 February 2017.

The Respondent objects to the publication of these documents as they are general correspondence rather than exhibits, and, in Respondent's view, do not fall within the scope of Article 10.21 of CAFTA.

The relevant provision of CAFTA states as follows:

Article 10.21: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

- (a) the notice of intent;
- (b) the notice of arbitration;
- (c) **pleadings, memorials, and briefs submitted to the tribunal by a disputing party** and any written submissions submitted pursuant to Article 10.20.2 and 10.20.3 and Article 10.25;
- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) **orders, awards, and decisions of the tribunal**. [Emphasis by the Tribunal]



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The Tribunal has reviewed the above listed documents and the relevant CAFTA provision and finds that the documents listed fall either within the categories of Article 10.21.1(c), constituting pleadings or briefs submitted by a disputing party, or Article 10.21.1(e), being a decision of the tribunal. As such, and pursuant to CAFTA Article 10.21, the above listed documents will be published on ICSID's website.

Yours sincerely,

A handwritten signature in black ink, which appears to read "Anneliese Fleckenstein". The signature is written in a cursive style and is positioned below the text "Yours sincerely,".

Anneliese Fleckenstein
Secretary of the Tribunal

cc: Members of the Tribunal