

Filed on behalf of:	Interested Party
Deponent:	M. Caruso
Affidavit No.	1
Exhibits:	MC1
Date sworn:	.12. 2010
Date filed:	.11. 2010

IN THE SUPREME COURT OF BELIZE AD 2010

CLAIM NO. 550 OF 2010

BETWEEN

**PENINSULA CITIZENS FOR SUSTAINABLE
DEVELOPMENT LIMITED**

Claimant

AND

DEPARTMENT OF THE ENVIRONMENT

Defendant

PLACENCIA MARINA LIMITED

Interested Party

**FIRST AFFIDAVIT OF
MARCO CARUSO**

I, MARCO CARUSO, of Placencia, Stann Creek District, Belize, being duly sworn, MAKE OATH AND SAY as follows:

1. I am a Director of Placencia Marina Limited, a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, whose

registered office is situate at 15A Street, Kings Park, Belize City, Belize and I am duly authorized to swear this Affidavit on behalf of the Interested Party herein.

2. The facts contained in this affidavit are, save where is otherwise stated or appears from the context, within my own personal knowledge and are, to the best of my belief, true and correct.
3. The Environmental Impact Assessment (**EIA**) for the Placencia Marina Limited was recommended by the National Environmental Appraisal Committee (**NEAC**) on 24th February, 2010 as evidenced in the minutes of the NEAC meeting of that same date and approved by the Department of the Environment (**DOE**) as evidenced in a letter from the DOE to the Placencia Marina Limited dated 1st March, 2010. Copies of the minutes of the meeting held on 24th February 2010 and the letter dated 1st March, 2010 are exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF10” and “IF11”, respectively.
4. The NEAC recommended that environmental clearance be granted to the Placencia Marina Limited subsequent to the signing of an Environmental Compliance Plan (**ECP**) with the Department of the Environment with the following conditions:

“The project is granted approval in three (3) phases:

- a) Phase 1 shall consist of Oceanographic Data Collection as stipulated in the Terms of Reference for the development of the EIA, for a minimum of 6 months.*
- b) Phase 2 shall consist of the approval of the Detailed/Technical Engineering Designs for the proposed marina. The technical designs will be developed using the findings gathered by the data collection exercise. The final designs shall be vetted and approved by the Ministry of Works, with input from the Belize Port Authority, Geology and Petroleum Department, and the Department of the Environment.*
- c) Phase 3 shall encompass all the construction activities above water, which shall commence only after Phase 1 & Phase 2 has (sic) been completed.*

The NEAC recommend[s] that a performance bond is required for this development.”

The ECP which was duly executed between the Placencia Marina Limited and the DOE is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF12”.

5. The ECP itself is a legally binding document developed by the DOE which consists of a set of legally binding environmental conditions, guidelines, policies and restrictions which Placencia Marina Limited as the developer agrees to in writing to abide by as conditions for project approval.
6. The ECP specifically states in the section on “Purpose” that the ECP “*was prepared based on the best available information on the project*” and that “*the Department of the Environment reserves the right to make modifications to [the] ECP, with prior notification to the Developer, as the project develops and more information becomes available.*” In the ECP, the Project Developer agrees to adhere to binding conditions during all stages of the development of the project in respect of which the DOE as well as other relevant agencies are mandated to conduct compliance monitoring. The ECP also provides that the “*ECP is a dynamic one and may be reviewed and revised from time to time as the project develops and more information becomes available.*”
7. The Placencia Marina Limited has duly complied with the provisions of the ECP since its execution. In particular, the Placencia Marina Limited has commenced “*on a pilot project/experimental basis*” the construction of the first 700 feet long breakwater with boulders as per design on the north side of the project pursuant to Phase 1 of the ECP and has thus far completed the 700ft core for the breakwater which is the first of two phases for the breakwater construction.
8. Also pursuant to Phase 1 of the ECP, Mr. Ramon Frutos, a Consultant of Eco Solutions and Services Limited and a former Chief Meteorological Officer of Belize was retained by Placencia Marina Limited in April, 2010 to collect the site-specific oceanographic information and he has duly provided the raw data/oceanographic information obtained thus far to the DOE on 14th October, 2010. Mr. Ramon Frutos has also prepared a report and analysis in respect of the oceanographic information. A copy of the site

- specific oceanographic data under cover of letter summarizing the findings and dated 14th October, 2010 is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF13”.
9. Phase 2 of the Marina Project has also been finalized in respect of the submission and approval of the detailed technical/engineering designs of the proposed marina.
 10. In May, 2010, the Placencia Marina Limited submitted to the DOE a copy of the proposed engineering designs and technical information in respect of the Marina Project. A copy of the engineering designs submitted in May, 2010 is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF15”.
 11. I am informed and verily believe that on 19th May, 2010 the DOE submitted a copy of the proposed engineering designs and technical information in respect of the Marina Project to the Ministry of Works for their review (from an engineering perspective) and duly requested that the Ministry of Works submit their comments and recommendations in respect of the designs.
 12. The proposed engineering designs were also submitted to the Belize Port Authority for input with respect to the navigational and port state issues.
 13. I am informed and verily believe that the designs were duly approved by both the Belize Port Authority and the Ministry of Works and that the DOE was notified of such approvals. A copy of the letter of approval of the engineering/technical designs from the Belize Port Authority dated 17th June, 2010 is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF16”. A copy of the letter of approval of the engineering/technical designs by the Ministry of Works to the Chief Environmental Officer, DOE dated 5th November, 2010 is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF17”.
 14. Based on the recommendations of the Belize Port Authority and the Ministry of Works in respect of the engineering designs, the Placencia Marina Limited made changes to the

designs and resubmitted the revised designs to the DOE. A copy of the final approved designs incorporating the recommendations of the Ministry of Works and Belize Port Authority is exhibited to the First Affidavit of Ismael Fabro dated 18th November, 2010 as “IF18”.

15. The marina project is only one of the six active components of our development group in respect of the development of tourism on the Placencia Peninsula. The projects in the development are interdependent and vital to each other and comprise the Placencia Marina itself, the Copal Resort and Casino, Rendevouz Island, the Placencia Airport, the Placencia Residences, and the Panther Golf Course. These development projects are financed and controlled by 4000 investors under a Canadian trust fund structure which is based on the simultaneous development of these six projects.
16. The temporary suspension or permanent revocation of permits to any of these projects is likely to result in a debilitating failure and adverse impact to the development of the particular tourism product which the development group is creating on the Placencia Peninsula with losses exceeding US\$140 million already invested. The loss of the permits and clearance in respect of the marina project will also cause an immediate breach of contract with the trust itself.
17. Investments in respect of land for the purpose of the marina amounts to approximately US\$4.4 million soft costs which includes preparatory works for the various projects. The costs for the breakwater construction and preparation of the land component amounts, since commencement, to approximately US\$1,000,000.00.
18. Additionally, the interdependence of these various components of the development project is such that a halt in the development of the marina, which will invariably affect the other projects, will force a projected lay-off of hundreds of Belizean employees who are employed in various capacities in the six components of the development projects and cause the suspension of business dealings with various businesses which are retained

- by the projects to supply materials, goods and services to the project's employees and the projects themselves.
19. The loss of the marina project will also directly affect government revenue in terms of collections of General Sales Tax, Import Duties, Income Tax and Belize Tourist Board taxes. The projected revenue in sales for marina slips and condominiums over a three to four year period is projected to exceed US\$750 million with an economical impact to the Government of Belize Treasury in respect of collection of revenue from General Sales Tax and Income Tax projected at US100 million over that same period.
 20. The development group is working assiduously with the DOE in the phasing of the project as the group, as good corporate citizens, intend that the marina project and all other interconnected projects are executed in accordance with the law and mindful of all environmental concerns which need to be properly addressed at all such phases. To date, the development group has fully complied with its binding legal obligations in respect of the ECP and intends to fully work with all stakeholders and Government agencies involved in the execution of the marina project.
 21. Ultimately, the DOE as the enforcement agency has full authority and responsibility to closely monitor the marina project and to amend the ECP for the project as the need arises and additional information becomes available and to impose additional phasing requirements if the need arises. The development group fully intends to work closely with all government agencies and concerned parties to ensure that the development is executed in full compliance with the laws of Belize.
 22. The Placencia Marina Limited and its investors will undoubtedly suffer severe financial hardship and loss if this Honourable Court were to grant the relief sought by the Claimant. It is also the case, however, that this impact will also adversely affect the socio-economic development of the Placencia Peninsula and Belize as a whole.

23. I therefore pray that this honourable court will refuse the Claimant the relief sought.

SWORN at Belize City by)
Marco Caruso) _____
This day of) **MARCO CARUSO**
2010)

Before me,

COMMISSIONER OF THE SUPREME COURT

This Affidavit is filed on behalf of the Interested Party and it is intended that this Affidavit will be used at the hearing of the claim herein.