

FROM THE EDITOR



Steve Fiscor/Editor-in-Chief

Ness Awaits a Verdict

During early February, Rick Ness spoke at a luncheon in Washington, D.C., hosted by USINDO and the U.S. ASEAN Business Council. Readers might remember Ness as the Newmont executive who is accused of allegedly polluting Buyat Bay in North Sulawesi, Indonesia. The *New York Times* and several money-grubbing environmental NGOs wrongly accused Newmont of dumping mercury in the bay. He and five other managers from the now closed Minahasa gold mining operation were jailed for 30 days during September 2004.

This was the first chance Ness has had to travel since the criminal trial began 18 months ago. Prior to coming to the U.S., Ness filed his defense argument. The prosecution has to respond to those arguments. By mid- to late-March they should have a judgment at the district court level. If convicted, he faces a sentence of up to three years in jail.

The lack of evidence has been overwhelming. Even though the prosecution continues to pursue this case vigorously, it has not been able to provide one solid witness or piece of evidence that supports their allegations. One-by-one the witnesses caved under cross examination. "I know for darn sure that we did not pollute Buyat Bay," Ness said. "If they rule on the merits of the case, we should win hands-down."

During their defense arguments, Ness and his team presented all of their evidence for the first time. They were denied that right during the investigative and prosecution stages. "While I would say the investigation and prosecution didn't follow the rules, I can't say the court has been unfair," Ness said. "They allowed us the full latitude to present all of our witnesses and evidence, which we have done now, and write our defense arguments. We await the prosecution's response. Then it's up to a panel of judges to decide."

The Indonesian legal system is an inquisition-type court based on the Dutch system. "The system is not all bad," Ness said. "It gave me the right to cross examine witnesses directly. And as an executive, I also had the right to write my own defense arguments. At the conclusion of my defense arguments, and my request before the court, I asked the court to order an investigation of three individuals and one government official that was responsible for a bogus technical team report. This is a criminal trial and they have committed a criminal act. I feel that there's enough evidence to investigate this further." In a worst case scenario, where Ness is wrongly convicted, he can appeal to a higher court and then eventually the Supreme Court.

After the luncheon, Ness had a chance to visit with family in Minnesota before heading back to Indonesia. He is fond of the country and proud of the gains in the surrounding community. But, most of all, he wants to clear the name of his coworkers and company. "Many people have been damaged by these baseless allegations," Ness said. "Five of my coworkers were incarcerated in a rat-infested jail. These false allegations hurt the community's economy. It has since rebounded, but a lot of people suffered hardship as a result." This nightmare has also consumed 30 months of his life. For readers that would like more information, his son Eric has maintained a blog throughout the past two years (<http://www.richardness.org/>).

Ironically, while Ness awaits a verdict, the North Sulawesi tourism board is promoting Buyat Bay as one of the four premier dive spots in the region. Should justice prevail, and Ness, his coworkers, and Newmont be found innocent, he should sue the NGOs and the *New York Times*. Multi-national corporations doing business in the developing world should note how this case got attention based on no facts and no crime, as well as the personal impact it has had on this executive and his family.

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