

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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**ICSID CASE NO. ARB/16/42**

**OMEGA ENGINEERING LLC**

and

**OSCAR RIVERA**

*Claimants*

v.

**REPUBLIC OF PANAMA**

*Respondent*

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**SECOND WITNESS STATEMENT OF NESSIM BARSALLO ABREGO**

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**18 November 2019**

**TRANSLATION**

I, **NESSIM BARSALLO ABREGO**, state:

**I. INTRODUCTION**

1. I make this second statement in connection with the arbitration commenced by Omega Engineering LLC and Oscar Rivera, (collectively, the “**Claimants**”) against the Republic of Panama (“**Panama**”).
2. Except as otherwise stated, I make this statement on the basis of my personal knowledge and from documents that I have reviewed. All of the matters set out in this witness statement are true to the best of my knowledge and belief. This statement has been prepared in Spanish and English. I anticipate giving testimony in Spanish.
3. As an update on my professional background, in August of 2019, I left my position as the Sub-Director of the Administration of Special Projects at MINSAs. I am now working as an attorney at Arosemena Attorneys & Business Consulting Group.
4. As set forth in my first statement, I understand that certain claims submitted by the Claimants relate to their contracts with the Ministry of Health (“**MINSAs**” or the “**Ministry**”) to design, construct, furnish, and finance three health care facilities: the Rio Sereno Project, Kuna Yala Project, and Puerto Caimito Project (collectively, the “**Projects**” or “**Omega’s MINSAs CAPSI Projects**”).<sup>1</sup> In my second statement, I will address the allegations that Claimants’ make in their Reply on the Merits and Counter-Memorial on Preliminary Objections and supporting witness statements related to Omega’s MINSAs CAPSI Projects, including their contentions regarding: (1) the progress of the Projects during the Martinelli Administration; (2) approvals and endorsements of addenda during the Varela Administration; (3) payment applications presented by Omega during the Varela Administration; (4) MINSAs’s commitment to the Projects; (5) Omega’s

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<sup>1</sup> Contract No. 077/2011 dated Sept. 22, 2011 (**C-0028**) (“**Rio Sereno Contract**”); Contract No. 083/2011 dated Sept. 22, 2011 (**C-0030**) (“**Kuna Yala Contract**”); Contract No. 085 (2011) dated Sept. 22, 2011 (**C-0031**) (“**Puerto Caimito Contract**”).

abandonment of the Projects; and (5) the Presidency's alleged political influence over the Projects.<sup>2</sup>

## II. PROGRESS DURING MARTINELLI ADMINISTRATION

5. In describing the progress of the Projects during the Martinelli Administration, Claimants make several incorrect statements and mischaracterizations of my first statement. I address these issues below.
6. I understand that Claimants say, “[a]ll of the delays in the three MINSAs CAPSI projects were eventually resolved *prior* to the change in Administration by the signing and endorsement of new [addenda].”<sup>3</sup> This is inaccurate. As I explained in my first statement, Omega and MINSAs signed addenda for the three Projects on May 7, 2014 (during the Martinelli Administration) but these addenda were not endorsed during the last two months of Martinelli’s presidency or under the Comptroller General appointed by the Martinelli Administration, who remained in office until the end of December 2014.<sup>4</sup> The addenda were, therefore, in the office of the Comptroller General during the Martinelli Administration for two months and in the office of the Martinelli-appointed Comptroller General for seven months without endorsement. Contrary to Claimants’ statement, the addenda were not endorsed and all of the delays on the Projects had not been resolved prior to the change in administration.
7. Claimants also mischaracterize my first statement when they claim that I confirmed that Omega’s MINSAs CAPSI Projects “were progressing as expected in the construction industry during the Martinelli Administration.”<sup>5</sup> To clarify, I did not say that the projects

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<sup>2</sup> See generally Claimants’ Reply on the Merits and Counter-Memorial on Preliminary Objections dated May 30, 2019 (“Reply”).

<sup>3</sup> Reply ¶ 45 (emphasis added).

<sup>4</sup> See Barsallo I ¶ 40; Addendum No. 4 to Contract No. 077 (2011) (May 7, 2014) (C-0106); Addendum No. 4 to Contract No. 085-2011 (May 7, 2014) (C-0171); Addendum No. 3 to Contract No. 083 (2011) (May 7, 2014) (C-0107) (as a correction to my first statement, this addenda would have extended the Kuna Yala Project to September 27, 2014 not June 2014. See Barsallo I ¶ 39).

<sup>5</sup> Reply ¶ 43.

were progressing “as expected,” but rather describe a series of issues on all three projects.<sup>6</sup> While delays on large commercial projects are not uncommon, that does not mean that Omega’s projects were progressing as expected. Claimants do recognize some of these; but incorrectly state that the Puerto Caimito Project “generally progressed as planned.”<sup>7</sup> As described in my first statement, there were multiple delays on the Puerto Caimito Project – by the time President Varela took **office there had already been the two addenda approved for extensions of time and one additional addenda** pending in the Comptroller General’s office.<sup>8</sup> The parties experienced similar delays on the Rio Sereno and Kuna Yala Projects.<sup>9</sup>

8. I understand that Claimants also argue that they “agreed on shorter extensions than the ones requested just to be able to continue working and finish the contracts.”<sup>10</sup> *First*, Claimants do not cite any examples of this allegedly occurring on Omega’s MINSA CAPSI Projects. They instead just cite to the general proposition mentioned by Mr. Lopez in his witness statement without any documentary evidence or corroborating examples.<sup>11</sup> *Second*, just because Omega “requested” a certain number of days for an extension of time, does not mean that was the appropriate number of days due to them under the contract. All contractors can ask for additional time but it does not mean that MINSA has to agree to the number of days they have requested. The technical team at MINSA must review the requests and assess the true number of days that the contractor is due.

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<sup>6</sup> Barsallo I § V.

<sup>7</sup> Reply ¶ 44.

<sup>8</sup> Addendum No. 2 to Contract No. 85 (2011) (Feb. 22, 2013) (**C-0268**); Addendum No. 3 to Contract No. 085 (2011) (Aug. 2, 2013) (**R-0031**); Addendum No. 4 to Contract No. 085-2011 (May 7, 2014) (**C-0171**). This Project was initially to be completed in January 2013 but was extended through August 2014, providing Claimants with almost a year and a half of additional time.

<sup>9</sup> Barsallo I § V.

<sup>10</sup> Lopez ¶ 42; Reply ¶ 45.

<sup>11</sup> *See* Lopez ¶ 42 (“When the Omega Consortium requested time extensions due to the aforementioned factors, we had to negotiate with the Government agency’s personnel, even though these delays were not attributable to the Omega Consortium. When we agreed with the Government on a certain amount of days (generally fewer than the original number), it was not because we admitted responsibility for the delays, but simply because the Omega Consortium wanted to continue working and finish the Contracts.”).

### III. APPROVAL AND ENDORSEMENT OF ADDENDA DURING THE VARELA ADMINISTRATION

9. Claimants try to argue that there was something suspicious about the way requests for addenda were handled during the Varela Administration. As I explain below, there was nothing abnormal about this process. MINSAs continued to operate in the same manner as it did under the prior administration, albeit a little slower while the transition was taking place, as I described in my first statement.<sup>12</sup>
10. *First*, Claimants insinuate that there was something unusual about the Comptroller General sending a letter to the new Minister of Health after the administration change, requesting the new Minister review a pending addendum.<sup>13</sup> It is common practice, however, when there is a change in administration, for the Comptroller General's office to return pending addenda to the relevant ministries for their review and is part of MINSAs review process. I worked through three changes in of ministers in at MINSAs and in my experience, this was a common practice for the MINSAs projects with pending addenda when a new minister took over.
11. *Second*, Claimants argue that the reasons that the Comptroller General returned the pending addenda on the Projects during the Varela Administration were pre-textual and unusual.<sup>14</sup> This is not true. To begin, the majority of letters that Claimants allege are examples of the Comptroller General's office returning addenda for pre-textual reasons as part of the Varela Administration's "multi-flanked attack against Mr. Rivera and the Omega Consortium"<sup>15</sup> were actually drafted during the Martinelli Administration, dated in May and June of 2014.<sup>16</sup> In fact, only three of the seven letters that Claimants point to were sent during the

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<sup>12</sup> Barsallo I ¶¶ 42-45.

<sup>13</sup> Reply ¶ 120 (citing Letter No. 3340-2014-DFG-UCEF (July 31, 2014) (C-0685)).

<sup>14</sup> Lopez ¶ 112. *See* Claimants' Reply ¶¶ 118-123.

<sup>15</sup> Reply § V ("President Varela and His Administration Begin a Multi-Flanked Attack Against Mr. Rivera and the Omega Consortium as Part of President Varela's Anti-Martinelli Vendetta"); Claimants' Reply § V.4.4.

<sup>16</sup> Reply ¶ 119-123. *Compare* Memorandum No. 4243-LEG-F.J.PREV from Legal Division to Director of General Auditing (Jun. 26, 2014) (C-0737); Memorandum No. 3247/2014-DMYSC-R.P. from Accounting Director to Economic Director (Jun. 5, 2014) (C-0738); Memorandum No. 3702-2014-DMYSC-R.P. from the Accounting Director to the Legal Director (Jun. 17, 2014) (C-0739) Memorandum No. 1480-2014-

Varela Administration. Moreover, the three addenda pending with the Comptroller General when Varela took office were returned for a series of valid reasons that were routinely raised by the Comptroller General's office. It is common for the Comptroller General's office to return addenda for corrections. In fact, this is one of the essential functions of the Comptroller General's office, to ensure the contracts and addenda that the Panamanian government executes are complete, accurate, and in compliance with Panamanian laws.<sup>17</sup> At times, the corrections and requested revisions can seem minor and can be frustrating for the Ministry and its contractors; however, this is how the system works, and it helps ensure that the Ministries and contractors are abiding by all commercial, contractual, and legal requirements.

12. Contrary to Mr. Lopez's statement that "[t]hese types of [] requests from the Comptroller had never been made during the approval of the previous change orders," Omega was well aware of this system.<sup>18</sup> In fact, Omega experienced this before with the several addenda that were returned during the Martinelli Administration for corrections and revisions – many of which could be considered minor or, on the surface, insignificant corrections.<sup>19</sup> For example, the Comptroller General's office returned Addenda No. 2 for all three Projects for minor scrivener's errors, such as, to correct the spelling of Omega Engineering from "Omega Enginering, LLC" to "Omega Engineering, LLC"; to change the name of the legal representative of Circacet Corp. from Francisco Feliu Nigaglioni to Leonidas Pretelt-

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DAEF from Economic Director to Legal Director (Jun. 5, 2014) (C-0750); with Letter No. 3340-2014-DFG-UCEF from Comptroller General to MINSAs (July 31, 2014) (C-0685); Letter No. 3081-2014 (July 10, 2014) (C-0686); Note No. 695-15-LEG-F.J.PREV from Comptroller General's Office to MINSAs (Apr. 17, 2015) (C-0176).

<sup>17</sup> See First Witness Statement of Dr. James Edward Bernard Véliz ¶¶ 9-15.

<sup>18</sup> Lopez ¶ 112. See Claimants' Reply ¶¶ 118-123.

<sup>19</sup> See *infra*. ¶¶ 13-15.

Kieswetter; and to request a copy of Mr. Pretelt-Kieswetter's passport.<sup>20</sup> After several rounds of returns and corrections, these addenda were approved.<sup>21</sup>

13. Similarly, in October 2013, the Comptroller General's office returned Addendum No. 3 to the Puerto Caimito Project for minor corrections; namely, to correct (a) a scrivener's error in the number of days for project completion which had been mistakenly written as "six hundred and fifty four" days instead of "seven hundred and ninety four" days; (b) the length of time the completion bond was valid; and (c) to attach the renewed completion bond.<sup>22</sup> Again, after several corrections, the addendum was endorsed in January 2014 – five months after it was originally delivered to the Comptroller General's office.<sup>23</sup>
14. Addenda No. 3 to the Rio Sereno Project likewise was returned for the same scriveners error (a discrepancy between the number of days in letters and numbers in the addendum), for a missing document from the folder, and for the need to extend the validity of the bonds among other items.<sup>24</sup> Omega clearly had experience with the Comptroller General's office returning addenda for "minor" corrections. This was part of the regular course of business and did not change with the Varela Administration. Also, while Omega characterizes these types of errors as "minor," they in fact can have significant contractual and commercial ramifications. In particular, an error in the number of extension days can end up giving a contractor more or less time than they are due. By insisting on correcting these types of

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<sup>20</sup> Director of the Legal Dep't of the Comptroller General's Office to General Services Dep't of Comptroller General's Office, Memorandum Num. 3096-LEG.F.J.-PREV (May 1, 2013) (**R-0131**); Comptroller General to MINSA, Nota Num. 2516-2013-DFG-UCEF (May 10, 2013) (**R-0132**); MINSA to Comptroller General, Letter DVMS-N. 1364-2013 (June 4, 2013) (**R-0133**); MINSA to Comptroller General, Letter DVMS N. 613-2013 dated June 21, 2013 (**R-0134**).

<sup>21</sup> Addendum No. 2 to Contract No. 083 (2011) (**C-0263**) (the addendum for the Kuna Yala Project was endorsed three months after delivery to the Comptroller General); Addendum No. 2 to Contract No. 077 (2011) (**C-0169**) (addendum for the Rio Sereno Project was endorsed five months after delivery to the Comptroller General); Addendum No. 2 to Contract No. 085 (2011) (**C-0268**) (addendum for the Puerto Caimito Project was endorsed four months after delivery to the Comptroller General).

<sup>22</sup> Economy and Finance Dep't to Legal Dep't of Comptroller General's Office, Memorandum No. 2583-2013-DAEF (Oct. 7, 2013) (**R-0135**).

<sup>23</sup> Addendum No. 3 to Contract No. 085 (2011) (Aug. 2, 2013) (**R-0031**).

<sup>24</sup> Comptroller General to MINSA, Letter No. 4420-2013-DFG-UCEF (Oct. 28, 2013) (**R-0136**).

errors, the Comptroller General's office is working to minimize commercial disputes that might arise at a later date.

15. Just as it had done in the past, the Comptroller General's office returned the three addenda pending when the administrations changed – Addendum No. 3 to the Kuna Yala Project, Addendum No. 4 to the Rio Sereno Project, Addendum No. 4 to the Puerto Caimito Project – for legitimate reasons.<sup>25</sup> The rationale provided by the Comptroller General's office for returning these addenda was in no way distinct from the reasons given for returning prior addenda. For example:

- a. *Addendum No. 3 to the Kuna Yala Project:* The Comptroller General's office returned Addendum No. 3 to the Kuna Yala Project on the basis of legitimate concerns and necessary revisions. In June 2014 – during the Martinelli Administration – the legal division of the Comptroller General's office observed that the addendum needed to be revised because: (1) the addendum modified the object of the contract, which is not legally permitted (Art. 77, paragraph 1 of Law No. 22 (June 27, 2006)); (2) Clause 1 of the addendum made reference to additional expenses but did not link specific expenses to the various addenda that had been submitted; (3) there was a blank space in Clause 6 of the addendum which modified the number of the budget item to which the expenses would be charged; (4) the contractual equilibrium report was not signed by inspection representatives of MINSA; and (5) the report supporting Omega's extended presence on the project was not signed by inspection representatives of MINSA.<sup>26</sup> All of these corrections required by the legal department were legitimate and necessary for a valid contract.

In addition to the legal division's observations, the Comptroller General's office noted that there were proposed corrections from various departments within the Comptroller General's office including, the engineering department (dated May 29,

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<sup>25</sup> Addendum No. 3 to Contract No. 083 (2011) (May 7, 2014) (C-0107); Addendum No. 4 to Contract No. 077 (2011) (May 7, 2014) (C-0106); Addendum No. 4 to Contract No. 085 (2011) (May 7, 2014) (C-0171).

<sup>26</sup> Memorandum No. 4243-LEG-F.J.PREV from the Legal Division to the Director of General Auditing (Jun. 26, 2014) (C-0737); See Article 77(1) of Law 22 (June 27, 2006) (R-0026), p. 2.



2014), economic and finance department (dated June 20, 2014), and accounting department (dated June 5, 2014). In the accounting department's memorandum of June 5, 2014, it states that the addendum "is not admissible from a budgetary perspective" because it "extends the time and the amount of the contract. However, it does not show the budget allocation for 2014."<sup>27</sup> The failure to show the budget allocation for an addendum requesting additional costs is certainly a legitimate issue in a contract requesting millions of dollars in additional payments.

It was no wonder that, after all of these issues had been identified, the Comptroller General's office sent a letter to MINSAs asking whether MINSAs wanted to continue with this addendum.<sup>28</sup> Notably, the Comptroller General's office requested these corrections in May and June during the Martinelli Administration, prior to President Varela taking office on July 1, 2014.

- b. *Addendum No. 4 to the Rio Sereno Project:* The Comptroller General's office returned Addendum No. 4 to the Rio Sereno Project, which requested US\$ [REDACTED] in additional costs and an extension of time, for legitimate concerns and necessary revisions. For example, the Comptroller General informed the Minister of Health that MINSAs must explain the methodology used to calculate the additional costs due to the extended deadline and Omega's financing of the advanced payment.<sup>29</sup> Additionally, the Comptroller General noted that it needed MINSAs to add an explanation of the events that occurred and reasons to modify the contract's time and costs.<sup>30</sup>

The Economic and Financial Division of the Comptroller General's office prepared an evaluation report dated June 10, 2014, which was attached to the above described letter from the Comptroller General to MINSAs, explaining the issues with the

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<sup>27</sup> Memorandum No. 3247/2014-DMYSC-R.P. from Accounting Director to Economic Director (June 5, 2014) (C-0751).

<sup>28</sup> See Letter No. 3340-2014-DFG-UCEF from Comptroller General to MINSAs (July 31, 2014) (C-0685).

<sup>29</sup> Letter No. 3081-2014 (July 10, 2014) (C-0686).

<sup>30</sup> Letter No. 3081-2014 (July 10, 2014) (C-0686).

addendum and why it could not assess its economic and financial viability at that point. This report was drafted before President Varela took office. In the report, the Economic and Financial Division explains that the amount of US\$ 865,518.04 requested by Omega for its extended presence on the project was based on the administrative costs the company assumed due to delay in validation of Addenda Nos. 2 and 3. However, the Comptroller General's office found that monetary compensation was unjustified, because the delay in formalizing Addenda Nos. 2 and 3 did not impact the work schedule, so Omega was not contractually entitled to these costs under Clause 64(b).<sup>31</sup> Additionally, the Comptroller General's report found it needed additional detail regarding Omega's work (past and future) on the project; the addendum was missing the number of the budget item designated for the additional costs in 2014; the reports for time and costs and contractual balance were not signed by MINSAs officers; the price adjustment chart for 2013 was missing from the file, and a note signed by the Minister of Health supporting and explaining the increase in costs and the validity of the addendum was not attached.<sup>32</sup> The merits of the addendum could be addressed only after these material problems were fixed.<sup>33</sup> Again, these requested modifications and concerns were justified and legitimate and were of similar character to those experienced by Omega in the past.

- c. *Addendum No. 4 to the Puerto Caimito Project:* The Comptroller General also returned Addendum No. 4 to the Puerto Caimito Project several times for corrections. As I explained in my first statement, there were many items that needed to be corrected or that needed additional information before the addendum could be endorsed.<sup>34</sup> For example, the accounting division noted that the addendum was not admissible from a budgetary perspective because it was missing the budget

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<sup>31</sup> Memorandum No. 1541-2014-DAEF Evaluation Report of Addendum No. 4 issued by the Comptroller's office (Jun. 10, 2014) (C-0687), at 2; *see* Rio Sereno Contract (C-0028), Cl. 64 (the Contractor is only due compensation if "a delay in to the work schedule is caused" by the Government).

<sup>32</sup> Evaluation Report of Addendum No. 4 issued by Comptroller's office (Jun. 10, 2014) (C-0687), at 2.

<sup>33</sup> Evaluation Report of Addendum No. 4 issued by Comptroller's office (Jun. 10, 2014) (C-0687), at 2.

<sup>34</sup> Barsallo I ¶ 59.

allocated for the payments that were to be made in 2014 and the amounts registered in the National Integrated System of Financial Administration of Panama (SIAFPA), where MINSA keeps its financial records, did not match the amount of increase in the addendum.<sup>35</sup> This memorandum was drafted in June 2014 during the Martinelli Administration.

On June 5, 2014, again during the Martinelli Administration, the economic and financial division of the Comptroller General's office noted that the addendum was missing several items: the addendum did not mention the new budget line that would be used to pay for the increase in costs; one of the clauses needed to be modified because the amount listed was internally inconsistent; the addendum did not include a summary of the prior addenda with their respective amounts; the technical justification from Omega for the increase in US\$ [REDACTED] to the contract was not attached; and a note from the Minister of Health explaining the increase in costs and validity of the addendum was not attached to the file.<sup>36</sup> The economic and financial division stated it could address the merits of the addendum only after these items were remedied.<sup>37</sup>

Additionally, the addendum needed a change order indicating the medical devices that were to be purchased, supplemented by a technical data sheet; an explanation of why those devices and equipment were needed; information related to the contractor's incorporation and certification to do business in Panama; and endorsement of the compliance bond to ensure its validity corresponded with the period of execution of the contract prior to endorsement.<sup>38</sup> These are legitimate reasons to return a contract extension for corrections, as well as reasons similar to those provided by the Comptroller General in the past.

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<sup>35</sup> Memorandum No. 3702-2014-DMYSC-R.P. from Accounting Director to Legal Director (June 17, 2014) (C-0739).

<sup>36</sup> Memorandum No. 1480-2014-DAEF from Economic Director to Legal Director (June 5, 2014) (C-0750).

<sup>37</sup> Memorandum No. 1480-2014-DAEF from Economic Director to Legal Director (June 5, 2014) (C-0750).

<sup>38</sup> Note No. 695-15-LEG-F.J.PREV. from the Comptroller General to MINSA (Apr. 17, 2015) (C-0176).

16. These addenda may have taken longer for the Comptroller General's office to review but as I describe in my first statement: this was a function of a new administration which first conducted a review of the projects to understand their progress and issues; the illness of the Comptroller General from the Martinelli Administration; the transition between Presidents in July 2014 and Comptroller Generals at the end of 2014; as well as the change in the fiscal year.<sup>39</sup>
17. These addenda also took longer to review due to the magnitude of the amounts being requested. Omega requested: (a) an additional US\$ [REDACTED] in Addendum No. 3 to the Kuna Yala Project (84% of the total original contract price); (b) an additional US\$ [REDACTED] in Addendum No. 4 to the Rio Sereno Project (59% of the total original contract price); and (c) an additional US\$ [REDACTED] in Addendum No. 4 to the Puerto Caimito Project (26% of the total original contract price).<sup>40</sup> It is reasonable that requests for so much money would require greater review and scrutiny.

#### **IV. PAYMENT APPLICATIONS PRESENTED BY OMEGA AND REVIEWED BY PANAMA DURING THE VARELA ADMINISTRATION**

18. I understand that Omega also alleges that the failure of MINSA and the Comptroller General to endorse various of Omega's payment requests made after the change in administration was part of the "attack" on their Projects.<sup>41</sup> To support this allegation, they point to several payment applications that they claim were not signed by MINSA or endorsed by the Comptroller General's office during this period.

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<sup>39</sup> Barsallo I ¶¶ 42-45.

<sup>40</sup> Addendum No. 3 to Contract No. 083 (2011) (May 7, 2014) (C-0107) (requesting US\$ [REDACTED] in additional costs as compared to the original contract price of US\$ [REDACTED] Addendum No. 4 to Contract No. 077 (2011) (May 7, 2014) (C-0106) (requesting US\$ [REDACTED] in additional costs as compared to the original contract price of US\$ [REDACTED] Addendum No. 4 to Contract No. 085 (2011) (May 7, 2014) (C-0171) (requesting US\$ [REDACTED] in additional costs as compared to the original contract price of US\$ [REDACTED]

<sup>41</sup> Reply, § V, ¶¶ 95-96 (alleging that "[t]he Comptroller General stopped approving change orders and payment applications..." and that this was part of President Varela's "multi-flanked attack against Mr. Rivera and the Omega Consortium"); see also Reply ¶¶ 140-142.

19. To clarify the record, in some instances, Omega mischaracterizes when the last payments were made on certain projects. I understand Mr. Lopez states that “[t]he [new] Comptroller did not endorse any of the CNOs.”<sup>42</sup> This is clearly incorrect. The Comptroller General endorsed CNO No. 15 in March 2015 on the Rio Sereno Project and Omega was paid US\$ [REDACTED]<sup>43</sup> This is a significant amount of money and shows that although the process was deliberate, Omega was being paid. Moreover, on the Kuna Yala Project, Omega was paid well into the Varela Administration. In October and November of 2014, the Comptroller General approved three CNOs for the Kuna Yala Project totaling US\$ [REDACTED]<sup>44</sup>
20. Regarding unapproved payment applications and CNOs, MINSA and the Comptroller General did not approve these for a multitude of reasons, including those discussed in my first statement.<sup>45</sup> There was nothing nefarious, unusual, or politically motivated about MINSA or the Comptroller General’s decisions not to approve these payment requests.
21. *First*, many of these payment applications (for a total of US\$ [REDACTED]) were for work allegedly done under the pending addenda for additional costs on the Projects.<sup>46</sup> The addenda for additional costs, however, had not been approved by the Comptroller General’s office and were not binding contracts.<sup>47</sup> Omega, therefore, was not entitled to

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<sup>42</sup> Lopez ¶ 115; Reply ¶ 92 (inaccurately saying that the last payments received for the Rio Sereno Contract was August 2014); *but see* Reply ¶ 140, n. 419 (noting in a footnote that the Comptroller General’s office did endorse CNO No. 15 for the Rio Sereno Project during the Varela Administration).

<sup>43</sup> *See* Certificates of No Objections for Contract No. 077 (2011) (C-0252), at 71.

<sup>44</sup> Certificates of No Objection for Contract No. 083 (2011) (C-0260) (CNO No. 22 endorsed on Oct. 8, 2014 for US\$ [REDACTED]; CNO No. 23 endorsed on Oct. 13, 2014 for US\$ [REDACTED]; CNO No. 24 endorsed on Nov. 11, 2014 for US\$ [REDACTED])

<sup>45</sup> Barsallo I ¶¶ 42-45.

<sup>46</sup> Puerto Caimito Project: Pay App. No. 20 for US\$ 2,079,971.57 and Pay App. No. 22 for US\$ [REDACTED]. *See* McKinnon Report, Annex 1, p. 12; Addendum No. 4 to Contract No. 085-2011 (May 7, 2014) (C-0171) (never endorsed); Kuna Yala Project: Pay App. No. 24 for US\$ [REDACTED]. *See* McKinnon Report, Annex 1, p. 8-9; Addendum No. 3 to Contract No. 083 (2011) (May 7, 2014) (C-0107) (never endorsed). Rio Sereno Project: Pay App. No. 15 for US\$ [REDACTED] and Pay App. No. 17 for US\$ [REDACTED]; *See* McKinnon Report, Annex 1, p. 4-5; Addendum No. 4 to Contract No. 077 (2011) (May 7, 2014) (C-0106) (never endorsed).

<sup>47</sup> *See* Expert Report of Greg A. McKinnon (“**McKinnon Report**”), Annex 1, p. 4-5, 8-9, 12.

these payments and would only have been if the addenda had been approved. Likewise, since these were not binding contracts, MINSA could not approve payment applications for work completed under these pending addenda.

22. *Second*, many of these requests were for very large sums of money, far greater than had been requested in prior payment applications. On Omega's Projects, payment applications generally ranged between US\$ 100,000 and US\$ 300,000.<sup>48</sup> However, three of the four unapproved payment applications on the Puerto Caimito Project were each over US\$ [REDACTED]<sup>49</sup> Similarly, all three of the unapproved payments for the Rio Sereno Project were for over \$1 million.<sup>50</sup> Likewise, on the Kuna Yala Project two of the three unapproved payment applications were for drastically larger amounts than had been requested previously on the project; Payment Applications No. 20 and No. 24 were for \$ [REDACTED] and US\$ [REDACTED] respectively.<sup>51</sup>
23. Requests of this size are carefully reviewed and in practice, take longer to approve than smaller requests. CNO No. 15 to the Rio Sereno Project is a good example of this. Omega presented MINSA with its payment application for CNO No. 15 (Payment Application No. 14) on April 8, 2014 for US\$ [REDACTED]. Up to that point, that payment application was by far the largest requested on Omega's MINSA Projects. This request was ultimately endorsed, and Omega was paid.<sup>52</sup> Notably, it took a year for this large request to be processed.
24. *Third*, Omega made most of these large requests on October 31, 2014 – the same day that Omega sent a letter to MINSA stating that it would be reducing personnel on the Projects

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<sup>48</sup> See McKinnon Report, Annex 1, pp. 4, 8, 12 (prior to this point, the largest payments on the Projects were for around \$500,000 and these were few and far between).

<sup>49</sup> Pay App. No. 19 of US\$ [REDACTED], Pay App. No. 20 of US\$ [REDACTED], and Pay App. No. 21 of US\$ [REDACTED]. See McKinnon Report, Annex 1, p. 12 (prior to these three payment applications, the largest request was for US\$ 345,048.51).

<sup>50</sup> Pay App. No. 15 for [REDACTED], Pay App. No. 16 for US\$ [REDACTED], and Pay App. No. 17 for US\$ [REDACTED]. See McKinnon Report, Annex 1, p. 4.

<sup>51</sup> See McKinnon Report, Annex 1, p. 8.

<sup>52</sup> CNO No. 15 for Contract No. 077 (2011) (C-0252), at 71.

until the contractual issues were resolved.<sup>53</sup> On October 31, 2014, Omega submitted US\$ [REDACTED] in payment applications on the Puerto Caimito Project; US\$ [REDACTED] in payment applications on the Rio Sereno Project;<sup>54</sup> and US\$ [REDACTED] in payment applications on the Kuna Yala Project.<sup>55</sup> This amounts to US\$ [REDACTED] in payment requests presented to MINSA by Omega on October 31<sup>st</sup>. Such large requests made on the same day as Omega's letter stating that it would be reducing personnel would have been reviewed with scrutiny.

25. *Fourth*, the Comptroller General's return of a few of the CNOs with requests for corrections were legitimate and not pre-textual. For instance, on the Puerto Caimito Project, the Comptroller Generals during both the Martinelli and Varela Administrations returned CNO No. 20 (corresponding to Payment Application No. 19) for the same reason: because it was submitted for endorsement after its expiration date. I understand Claimants allege there is an inconsistency between the Comptroller Generals about whether CNO. No. 20 complied with Executive Decree No. 1433.<sup>56</sup> On reviewing the letters from the respective Comptroller Generals, it is clear that they were both describing the same issue. While they use slightly different language, the letters both explain that the CNO is being returned to MINSA because it was submitted for endorsement after its expiration date.<sup>57</sup>

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<sup>53</sup> Letter No. MINSA-54 from the Omega to MINSA (Oct. 31, 2014) (C-0173).

<sup>54</sup> I understand Claimants allege that Payment Applications Nos. 15, 16, 17 on the Rio Sereno Project were signed by MINSA but not endorsed by the Comptroller General's office. Reply ¶ 140. However, this is incorrect. MINSA did not sign any of these payment applications. *See* Rio Sereno Payment Applications 15 – 17 (C-0255) (the payment applications are signed by Omega but none are signed by representatives of MINSA).

<sup>55</sup> *See* McKinnon Report, Annex 1, p. 8.

<sup>56</sup> Reply ¶ 142.

<sup>57</sup> *Compare* Letter from Comptroller General under Varela Administration (C-0601) (The CNO “does not comply with the provisions in Executive Decree No. 1433 of December 13, 2010; since, it is being submitted for endorsement after the expiration date thereof. Therefore, it is the responsibility of the agency under your charge to define any administrative actions....”) with Letter from Comptroller General under Martinelli Administration (C-0698) (“In this regard, we hereby inform you that said [CNO] complies with the Executive Decree No. 1433 of December 13, 2010; however, it is being submitted for endorsement after its expiration date (March 30, 2014). Consequently, the entity you are in charge of shall define administrative actions regarding the process of these documents before the financial entities....”).

26. Another example of a legitimate correction requested by the Comptroller General was on Payment Application No. 20 to the Kuna Yala Project. I understand that Claimants insinuate that somehow meetings held between counsel for the Presidency, Rogelio Saltarín and his colleagues, and officials from MINSA related to all the MINSA CAPSI projects and MINSA's five hospital projects were the reason Payment Application No. 20 on the Kuna Yala Project was not endorsed.<sup>58</sup> I have no knowledge of Mr. Saltarín having any influence over Omega's Projects. Moreover, it is odd for Claimants to suggest that Mr. Saltarín's meeting with MINSA would impact the decision of the Comptroller General – a separate governmental entity – to endorse or not endorse a payment application. In fact, the Comptroller General returned Payment Application No. 20 to MINSA for legitimate corrections.<sup>59</sup> We commonly see payment applications and contract addenda returned for scrivener's errors and similar issues. It is particularly important the paperwork for a payment of this size – nearly a million dollars – is correct. As I explained above, this is an essential part of the checks and balances that the Comptroller General's office provides to the government and is in no way suspicious or unusual.<sup>60</sup>

## V. MINSA'S COMMITMENT TO THE PROJECTS

27. I understand Claimants allege that MINSA's attitude changed toward their Projects after July 2014.<sup>61</sup> This is untrue. As I explained in my first statement, MINSA and its employees maintained a collaborative relationship with Claimants throughout the Projects and continued to work towards a solution even after Claimants filed this arbitration. In the

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<sup>58</sup> Reply ¶ 92.

<sup>59</sup> Comptroller General to Minister of Health, Note No. 5053-2014-DFG-UCEF (Sept. 16, 2014) (C-0682) (requesting a correction to the number of the note referred to in the first paragraph of the CNO, requesting a comparative chart of the amount the contractor requests against the total amounts presented in the advancement charts approved by MINSA, and requesting a list of the medical equipment presented in the contractor's original proposal as well as the current list with the amounts); Comptroller General to Minister of Health, Note No. 2785-15 DFG (April 20, 2015) (C-0697) (requesting the attachment of a list of the medical certificates related to the technical specifications of the biomedical equipment and a list of where the equipment was located).

<sup>60</sup> *See supra* § III.

<sup>61</sup> Reply ¶¶ 146, 151.



following paragraphs, I address Claimants' allegations regarding MINSA's commitment to the Projects.

28. *First*, Claimants try to support this contention by saying that MINSA's response to Omega's communications "became much slower and, in many instances, non-existent."<sup>62</sup> This is incorrect. Claimants allege that MINSA failed to communicate with Omega between October 2014 and December 2014.<sup>63</sup> They do acknowledge that they were able to formalize contractual addenda to the Rio Sereno Project during this period; however, they failed to note that Addendum No. 5 to the Puerto Caimito Project and Addendum No. 3 to the Kuna Yala Project were also formalized then.<sup>64</sup> MINSA was also in contact with Omega during this period by email, phone, and in-person meetings. Omega's real complaint is just that it supposedly sent two letters to MINSA that went unanswered.<sup>65</sup> While regrettable, that is irrelevant, as there was a continuing stream of contact; MINSA remained responsive and continued to work with Omega to complete the Projects.
29. Again, Claimants try this tactic with regard to a letter they sent to MINSA in October 2015, stating "that in October 2015, Omega told MINSA that it was owed ██████████ for Rio Sereno and Kuna Yala but MINSA ignored this communication."<sup>66</sup> At this point, Omega had abandoned the project almost a year prior and no agreement could be reached by the

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<sup>62</sup> Reply ¶ 151.

<sup>63</sup> Lopez ¶ 109 (citing Letter No. MINSAs-KY-82 from Omega to MINSAs (Oct. 28, 2014) (C-0575); Letter No. MINSAs-RS-62ET from Omega to MINSAs (Nov. 28, 2014) (C-0584)).

<sup>64</sup> *See* CNOs for Contract No. 083 (2011) (C-0260) (CNO Nos. 22, 23, and 24 to the Kuna Yala Project were endorsed in October and November of 2014); Addendum No. 4 to Contract No. 077 (2011) dated Nov. 17, 2014 (C-0249) (Addendum No. 4 to the Rio Sereno Project was signed by MINSAs in November 2014 and endorsed by the Comptroller General in December 2014); Addendum No. 4 to Contract No. 085 (2011) dated 2014 (C-0257) (Addendum No. 5 to the Puerto Caimito Project was signed by MINSAs in November 2014). *See* Claimants' Reply ¶ 123); Addendum No. 3 to Contract No. 083 (2011) dated Nov. 17, 2014 (C-0522) (Addendum No. 3 to the Kuna Yala Project was signed by MINSAs in November 2014 and endorsed by the Comptroller General in December 2014).

<sup>65</sup> Lopez ¶ 109 (citing Letter No. MINSAs-KY-82 from Omega to MINSAs (Oct. 28, 2014) (C-0575); Letter No. MINSAs-RS-62ET from Omega to MINSAs (Nov. 28, 2014) (C-0584)).

<sup>66</sup> Letter No. MINSAs-60 from Omega to MINSAs (Oct. 27, 2015) (C-0588).

parties on how to move forward. MINSA's decision not to respond to this letter is hardly evidence of bad intent.

30. *Second*, I understand Claimants allege that the budgetary issues that MINSA was experiencing with regard to the MINSA CAPSI Projects were “mere pretext” or “a result of the Comptroller General’s endorsement delays.”<sup>67</sup> This is untrue. As described above, many of the addenda were returned to MINSA due to non-compliance with budgetary issues, for example, they failed to indicate the budget item allocation for the additional costs.<sup>68</sup> Additionally, as I explained in my first statement, there were budgetary issues caused by the carryover of addenda and payment applications into the next year.

## **VI. OMEGA ABANDONED THE PROJECTS**

31. In my first statement I say that the “Omega Projects have not been worked on since 2015.”<sup>69</sup> I understand that Claimants interpret this statement to mean that Omega continued work through 2015 and did not abandon the project in 2014.<sup>70</sup> This is not the case. My meaning here was that, per my memory, Omega did not work on the Projects after 2014. I understand Claimants allege that Omega was still working on the Projects in October 2015.<sup>71</sup> This is false. While Omega and MINSA were still attempting to agree on a solution to the Projects via correspondence, Omega did not present any further requests for payment for work completed as of the end of October 2014.

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<sup>67</sup> Reply ¶ 113.

<sup>68</sup> *See e.g.*, Memorandum No. 3702-2014-DMySC-R.P. from Accounting Director to Legal Director (Jun. 17, 2014) (C-0739); Memorandum No. 1480-2014-DAEF from Economic Director to Legal Director (Jun. 5, 2014) (C-0750); Evaluation Report of Change Order No. 4 issued by the Comptroller’s office (Jun. 10, 2014) (C-0687); Memorandum No. 4243-LEG-F.J.PREV from Legal Division to Director of General Auditing (Jun. 26, 2014) (C-0737); Memorandum No. 3247/2014-DMySC-R.P. from Accounting Director to Economic Director (Jun. 5, 2014) (C-0751).

<sup>69</sup> Barsallo I ¶ 14.

<sup>70</sup> Reply ¶ 22.

<sup>71</sup> Reply ¶ 22.

32. Payment Application No. 23 to the Kuna Yala Project shows that Omega had completed 67.82% of the project by June 30, 2014.<sup>72</sup> In its next payment application (No. 24, submitted on October 31, 2014) Omega again reported completion of 67.82%, so the Claimants' reported a 0% advance in the work between July 1 and October 31, 2014. Payment Application No. 25 (submitted on December 31, 2014) reported that a total 67.83% had been completed.<sup>73</sup> Claimants, therefore, reported only a 0.01% advance in the six-months between July 1 and December 1, 2014. Omega did not submit any further payment applications on the Kuna Yala Project.
33. Similarly, on the Puerto Caimito and Rio Sereno Projects, the Claimants stopped presenting requests for payment for work on October 31, 2014, and did not thereafter submit any payment applications for work on either of these projects.<sup>74</sup>
34. On October 31, 2014, Omega made it clear that it was quitting the Projects when it (1) submitted a letter to MINSAs that it would be reducing personnel on the Projects until the contractual issues were resolved and (2) presented an extraordinary payment request for US\$ [REDACTED] to MINSAs. Then, in December 2014, Omega informed MINSAs that it would be suspending work, suspending the purchase of products, and reducing personnel.<sup>75</sup> There could not have been a clearer signal of Omega's position: it was done with the Projects unless Panama signed the three pending addenda which included additional costs of over US\$ [REDACTED] and paid Omega's unapproved payment applications of over US\$ [REDACTED].<sup>76</sup>

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<sup>72</sup> CNO No. 24 to the Kuna Yala Project (C-0260) (covering the period between June 1, 2014 and June 30, 2014 showing an advance of 67.82% in the work).

<sup>73</sup> Pay Apps. Nos. 23, 24, 25 to the Kuna Yala Project (C-0336), pp. 1, 147 – 167.

<sup>74</sup> McKinnon Report, Annex 1, p. 4 (Claimants' last Pay Apps on the Rio Sereno project, were Nos. 15, 16, and 17, which were all submitted on Oct. 31, 2014); McKinnon Report, Annex 1, p. 12 (Claimants' last Pay Apps on the Puerto Caimito Project, were Nos. 20, 21, and 22, which were all submitted on Oct. 31, 2014).

<sup>75</sup> Letter MINSAs-55PC from Omega to MINSAs (Dec. 18, 2014) (R-0092); Letter MINSAs-55RS from Omega to MINSAs (Dec. 18, 2014) (C-0371); Letter MINSAs-55KY from Omega to MINSAs (Dec. 18, 2014) (R-0093).

<sup>76</sup> See Addendum No. 3 to Contract No. 083 (2011) (May 7, 2014) (C-0107) (US\$ [REDACTED] in additional costs); Addendum No. 4 to Contract No. 077 (2011) (May 7, 2014) (C-0106) (US\$ [REDACTED] in

**VII. THERE WAS NO POLITICAL INFLUENCE FROM THE PRESIDENCY ON THE PROJECTS**

35. I have seen that Claimants have included excerpts of my personal WhatsApp conversations with Frankie Lopez as exhibits in this case, apparently in an attempt to support their allegations that President Varela was trying to destroy their Projects. However, the excerpts of these conversations are taken out of context and do not mean what the Claimants say they mean.
36. As background, I initially met Mr. Lopez when Omega executed its contracts for its MINSA CAPSI Projects with MINSA. Over the years, I developed a friendship with Mr. Lopez, as well as the Omega team. We regularly socialized together outside of work and had conversations via WhatsApp, with inside jokes, personal conversations, and the rare comment about the Projects.
37. Claimants focus on the following excerpt of my March 3, 2016 messages with Mr. Lopez:
- [3/3/16, 7:31:05 PM] Frankie J. Lopez@: I know you fag, but when I think everything is getting resolved, all of a sudden it gets complicated  
[3/3/16, 7:43:47 PM] Nessim Barsallo: What's happening at the Comptroller [General's Office]?  
[3/3/16, 7:43:54 PM] Nessim Barsallo: Is it a conspiracy?  
[3/3/16, 7:58:16 PM] Frankie J. Lopez@: It looks like it  
[3/3/16, 7:58:35 PM] Nessim Barsallo: I conclude they have orders  
[3/3/16, 7:58:50 PM] Frankie J. Lopez@: They say they're verifying in legal blah because of the case  
[3/3/16, 7:59:03 PM] Frankie J. Lopez@: It sucks bro  
[3/3/16, 7:59:07 PM] Nessim Barsallo: [Bluff]  
[3/3/16, 7:59:57 PM] Frankie J. Lopez@: Why?  
[3/3/16, 8:01:22 PM] Frankie J. Lopez@: Do you [know] anything?  
[3/3/16, 8:01:27 PM] Frankie J. Lopez@: Know\*  
[3/3/16, 8:01:34 PM] Nessim Barsallo: That comes from the Presidency<sup>77</sup>
38. I understand that Claimants say that this exchange supports their contention that the "Comptroller General's Office had orders from the Presidency ... to ignore all requests by

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additional costs); Addendum No. 4 to Contract No. 085 (2011) (May 7, 2014) (C-0171) (US\$ [REDACTED] in additional costs).

<sup>77</sup> WhatsApp message between Frankie López and Nessim Barsallo dated 3 Mar. 2016 (C-0681).

the Omega Consortium.”<sup>78</sup> However, the fact is that I made this statement solely on the basis of my prior conversations with Omega team members. Omega’s team would tell me their suspicions about why the Comptroller General’s office had taken a long time to endorse addenda on the Projects.<sup>79</sup> I had and have no knowledge of any involvement of President Varela or his administration in Omega’s Projects. My lack of knowledge is clear when I ask Mr. Lopez, “[w]hat’s happening at the Comptroller?”<sup>80</sup> My WhatsApp comments were made only to echo what Omega’s team had been telling me and were made in gest to support to my frustrated friend. In the same vein, when I said to Mr. Lopez that “I conclude they have orders” and “[t]hat comes from the Presidency,” I am just continuing to echo what I had heard from Omega’s team.<sup>81</sup> Again, I had no knowledge of any orders from the Presidency or anyone to the Comptroller General’s office.

39. I did not know at the time of the WhatsApp exchange quoted above that Omega was preparing to commence this arbitration, serving their notice of intent to arbitrate on Panama only a week after I had this conversation with Mr. Lopez.<sup>82</sup> It is clear that Omega was manipulating me to make statements that they hoped to use in this arbitration.
40. I additionally want to explain one of the WhatsApp messages that Claimants presented with their Reply, where I comment to Mr. Lopez that the Anti-Corruption Prosecutor was investigating three MINSa CAPSI projects, including Omega’s Rio Sereno and Kuna Yala Projects.<sup>83</sup> The prosecutors’ office had requested documents from these projects based on

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<sup>78</sup> Reply ¶ 104.

<sup>79</sup> Lopez ¶ 108 (claiming my WhatsApp messages confirmed Mr. Lopez’s “suspicions” about the Comptroller General and the President).

<sup>80</sup> WhatsApp message between Frankie López and Nessim Barsallo dated Mar. 3, 2016 (C-0681).

<sup>81</sup> WhatsApp message between Frankie López and Nessim Barsallo dated Mar. 3, 2016 (C-0681).

<sup>82</sup> Reply ¶ 104 (“Claimants submitted to Respondent their Notice of Intent to Arbitration on 11 March 2016”).

<sup>83</sup> WhatsApp message between Frankie López and Nessim Barsallo dated Mar. 10, 2016 (C-0681):

[3/10/16, 8:07:28 PM] Nessim Barsallo: Sorry

[3/10/16, 8:07:38 PM] Nessim Barsallo: The Anti-Corruption Prosecutor jumped on me

[3/10/16, 8:07:55 PM] Nessim Barsallo: They are investigating the tender for the capsis

[3/10/16, 8:08:10 PM] Nessim Barsallo: Capsis de cuipo rio sereno and kuna yala

[3/10/16, 8:14:52 PM] Frankie J. Lopez@: Shoot

[3/10/16, 8:14:59 PM] Frankie J. Lopez@: And so?

a news article published by La Prensa stating that MINSA had approved addenda for additional costs of extraordinary high numbers for some of the MINSA CAPSI projects, including two of Omega's Projects. It was discovered that the article was erroneous and in fact, has been removed from La Prensa's website.<sup>84</sup> After this, I did not hear anything else from the prosecutor's office on this issue.

41. I understand that Claimants allege that Rogelio Saltarín "targeted" Claimants' MINSA CAPSI projects.<sup>85</sup> I have no knowledge of Mr. Saltarín or anyone associated with the Presidency targeting Omega or its Projects. I understand that Claimants contend that Mr. Saltarín had one meeting with the Minister of Health and a follow up meeting with the head of MINSA's legal department about their MINSA CAPSI projects and that these meetings are evidence of "targeting."<sup>86</sup> That is incorrect. It is clear in the Activity Report from Saltarín, Arias y Asociados that the topic of these three meetings was the status of all of the hospital and MINSA CAPSI projects.<sup>87</sup>
42. As described in my first statement, the Health Ministry had 20 MINSA CAPSI projects throughout the country worth nearly half a billion dollars.<sup>88</sup> There is nothing suspicious or

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[3/10/16, 8:15:01 PM] Nessim Barsallo: Since Tuesday

[3/10/16, 8:15:05 PM] Nessim Barsallo: until today

[3/10/16, 8:15:16 PM] Nessim Barsallo: They asked me for everything

[3/10/16, 8:19:59 PM] Frankie J. Lopez@: But ours or all 10 [MINSA CAPSI contracts]?

[3/10/16, 8:20:29 PM] Nessim Barsallo: Those 3.

<sup>84</sup> See Eric Ariel Montenegro, *Proyectos millonarios, sin concluir en Panamá Oeste*, LA PRENSA (March 2, 2016) <https://www.prensa.com/buscador/?text=omega+engineering> (last visited Oct. 18, 2019) (**R-0146**) (the caption for the article can still be seen when a search is conducted of the La Prensa website).

<sup>85</sup> Reply ¶ 89.

<sup>86</sup> Reply ¶ 88-91 (citing Activity Report from Saltarín, Arias y Asociados to Ministry of the Presidency dated June 25, 2018 (**C-0617**), p. 5, 12). (The Claimants are inconsistent in their Reply regarding the number of meetings held related to the MINSA CAPSI Projects – they first say that there were two and then that there three, including one in July 2014. On review of the documents, it appears a July 2014 meeting was held between the Minister of Health and Saltarín, Arias y Asociados for the "coordination of work" but there is no mention of the MINSA CAPSI projects).

<sup>87</sup> Activity Report from Saltarín, Arias y Asociados to Ministry of the Presidency dated June 25, 2018 (**C-0617**) (the topics of the August 2014, November 2014, and March 2014 meetings were described as "[a]ssessment of the status of hospitals and MINSA CAPSIS. All the contracts of each of the 5 hospitals and 20 MINSA CAPSIS in question are received for later review.").

<sup>88</sup> See Barsallo I at Section III.

unusual about a new administration having a representative attend meetings with the head of a ministry to discuss and evaluate the progress of such a large government investment in healthcare. I participated in one of these meetings and Omega's projects were not targeted in that meeting.

Dated: November 18, 2019

Panama City, Panama

/s/ Nessim Barsallo Abrego  
Nessim Barsallo Abrego