

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES

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 In the matter of Arbitration :
 between: :
 :
 OMEGA ENGINEERING LLC AND :
 MR. OSCAR RIVERA, :
 :
 Claimants, :
 : ICSID Case No.
 and : ARB/16/42
 :
 REPUBLIC OF PANAMÁ, :
 :
 Respondent. : Volume 1
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HEARING ON JURISDICTION, MERITS AND QUANTUM

Monday, February 24, 2020

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C1-450
Washington, D.C.

The hearing in the above-entitled matter
came on at 9:00 a.m. before:

MR. LAURENCE SHORE, President

PROF. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

ALSO PRESENT:

On behalf of ICSID:

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Secretary of the Tribunal

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P R O C E E D I N G S

1
2 PRESIDENT SHORE: Good morning, everyone.
3 Welcome to the first Hearing day of the first Hearing
4 week of the final Hearing in ICSID Case
5 Number ARB/16/42, Omega Engineering LLC and Mr. Oscar
6 Rivera, Claimants, v. the Republic of Panamá,
7 Respondent.

8 Before we start with introductions of, let's
9 say, some of the attendees in the room--because there
10 are many, and we have the participant list--on behalf
11 of the Tribunal, I'd like to thank the Parties for
12 their cooperation in getting to this Final Hearing
13 stage and for the excellence of their submissions, in
14 what has been a meticulously argued and presented case
15 over a lengthy, though not necessarily overly lengthy,
16 Procedural Timetable.

17 I would also like to thank, on behalf of the
18 Tribunal, the United States Department of State,
19 Office of the Legal Adviser, for the submission of the
20 United States as a non-disputing Party dated the
21 3rd of February 2020.

22 Pursuant to one of the clarifications that

1 the Tribunal gave to the Procedural Order Number 3,
2 the Parties, just to remind you--I'm sure you haven't
3 forgotten--will have the opportunity to comment on the
4 submission of the United States in post-hearing
5 written submissions and if they are held
6 post-evidentiary hearing Oral Closings.

7 There are a couple of issues that the
8 Tribunal wishes to raise with you. I know that
9 there's one issue that the Parties have--at least one
10 issue on moderated testimony--but, first, I should
11 mention at this table, I have my distinguished public
12 and private international law colleagues:
13 Professor Naón and Professor Douglas; my distinguished
14 ICSID Legal Counsel, Ms. Kettlewell; and we're
15 grateful for the Court Reporters and Interpreters who
16 are also here today.

17 Ms. Gorsline, on behalf the Claimants, I
18 leave it to you to decide how many people you wish to
19 introduce, and you needn't feel compelled for it to be
20 the full complement.

21 MS. GORSLINE: Thank you, Mr. President.

22 With me here today is Charles Kotuby, from

1 Jones Day; Carlos Concepción, from Shook,
2 Hardy & Bacon--you'll be hearing from both of them
3 this morning as well--Paloma Cipolla from Jones Day;
4 Ricardo Ampudia from Shook, Hardy & Bacon; and
5 Mr. Oscar Rivera, who is, of course, the Claimant, the
6 individual Claimant in this action. The others you
7 see are largely some of our Expert Witnesses who will
8 be appearing before you later in the proceedings.

9 PRESIDENT SHORE: Thank you, Ms. Gorsline.

10 Mr. Weisburg, for Republic of Panamá.

11 MR. WEISBURG: Good morning and thank you.

12 We're very pleased to be here. I'm Henry Weisburg,
13 with Shearman & Sterling, and with me is Chris Ryan,
14 Anna Stockamore, Ricardo Alarcon, and Carlton Mosley,
15 and also Adrian Stoute, all from Shearman & Sterling.
16 And way down there at the end is Daniel Flores, who
17 you'll be hearing from later in the week. At some
18 point later this morning, we will be joined by a
19 representative of the Republic from the Embassy. I
20 think it is going to be Francisco Olivardía, but he's
21 not here yet.

22 PRESIDENT SHORE: Thank you, Mr. Weisburg.

1 So, let me address the issue of the
2 correspondence this weekend and then another issue on
3 overall timing, both this week and in Week 2 of the
4 Hearing. So, the Tribunal has seen, as you know, the
5 correspondence of the Parties, and we have a
6 suggestion that may address completely the issue of
7 moderated evidence and testimony. And the suggestion
8 is this: I leave it as a suggestion only, but I
9 should say the Tribunal thinks it's a pretty good
10 suggestion, so you might wish to take that into
11 account.

12 The suggestion is that Ms. Kettlewell informs
13 us that very few people--as in three people--have
14 signed up for the streaming room. Now, one of those
15 persons turns out to be a Shearman & Sterling
16 attorney. Another person is a student, and without
17 wishing to diminish studentry, that's another thing to
18 take into account.

19 It does occur to the Tribunal that, in view
20 of the potential for disruption and the back and forth
21 between the Parties, the very few people who have
22 signed up for the streaming room and the, of course,

1 procedure whereby everything at a later time--and not
2 such a great later time--can be as fully transparent
3 as possible, as is required by at least one of the
4 treaties, that it might be a very useful thing to
5 terminate the streaming room, certainly in the course
6 of the proceedings this week. It can always be
7 revisited for Week 2. And if the streaming room is
8 terminated then--and I'll come to the United States of
9 America in a moment--then it does seem to the Tribunal
10 that that would solve the issue of red signs and green
11 signs and any disruption whatsoever in the course of
12 the proceedings this week.

13 So, you needn't decide right now. We've
14 still got an hour before the streaming room takes
15 effect, and, of course, you've already--there is even
16 more time than that because the Openings have been
17 agreed by the Parties to be fully moderated, and, of
18 course, the Witness today is going to be fully
19 moderated. So, I know it was a concern on the
20 Claimants' side so that they could prepare their
21 cross-examination for Mr. Villalba tomorrow afternoon,
22 but it would be a good thing if we could decide

1 promptly, and if you have an immediate reaction,
2 either for or against, it would be helpful to know.

3 Ms. Gorsline.

4 MS. GORSLINE: Thank you, Mr. President.

5 On behalf of Claimants, we would agree to the
6 Tribunal's proposal to end the streaming for this
7 particular session. We have not given great thought
8 to the second session and how much moderation it would
9 require, but I think it's a very sensible suggestion.
10 Thank you.

11 PRESIDENT SHORE: Thank you, Ms. Gorsline.

12 Mr. Weisburg.

13 MR. WEISBURG: Fully agreed.

14 PRESIDENT SHORE: All right. Thank you very
15 much.

16 So, then there is one issue, and she's in the
17 back of the room right now, and that is Ms. Thornton
18 in the guise of the United States of America. Now,
19 there is still the issue of protected information. It
20 has been agreed that, of course, the United States is
21 sitting in, but if the Parties are untroubled by the
22 United States of America in the form of Ms. Thornton

1 and any of her colleagues, Mr. Blanck and others who
2 might arrive in the course of today or this week,
3 hearing the information that might otherwise be
4 protected.

5 Would that be a concern, Ms. Gorsline?

6 MS. GORSLINE: No, Mr. President. We have no
7 concern.

8 PRESIDENT SHORE: Thank you.

9 Mr. Weisburg.

10 MR. WEISBURG: No. We think it should be--it
11 is appropriate for the U.S. to be here.

12 PRESIDENT SHORE: Very well. Thank you.

13 Well, Ms. Kettlewell will then notify the
14 requisite people for the streaming room, and the
15 Tribunal thanks you for your assistance. We think it
16 will be a much smoother hearing week, and counsel have
17 a million things on their minds, and it's, of course,
18 very difficult to have the first thing after the
19 million things to also take into account.

20 So, the second issue is overall hearing time.
21 Now, I'm going to ask my distinguished co-arbitrators
22 to weigh in and help if I make a mistake here. Even

1 if I don't make a mistake, they can weigh in, of
2 course. And it's this: We have seen the potential
3 package for Week 2. We have also seen that one
4 Witness, who might be an important Witness, was unable
5 to attend Week 1, and hopefully can attend Week 2.

6 The Tribunal, as you know, offered up three
7 out of four days, and then the Parties wanted a
8 clarification about which of those days there would
9 be, and we said 30, 31 March and 1 April. However,
10 the Tribunal Members are agreeable, if this will be of
11 use to the Parties, to have April 2 also
12 available--and it could be called a reserve day--so
13 that in Week 2, especially with the possibility of a
14 new Witness who might be a lengthy witness, that that
15 could be accommodated.

16 So, again, you needn't commit really on that
17 right now or even today. But I think in the course
18 early this week, it would be useful if the Parties
19 indicated that the schedule for Week 2 would be or
20 could be adjusted to take into account a fourth day.

21 Now, having said that, we do note that on the
22 afternoon of Thursday of this week, there does appear

1 to be some open space which was not filled. Now, we
2 have two reactions to that. One is fine, Counsel--it
3 is very hard to predict. Your examinations may go
4 longer than you've anticipated, and maybe you'll need
5 that Thursday afternoon time in any event.

6 Secondly, we are a little concerned because
7 there was a discussion in the prehearing conference,
8 the Tribunal Members lessened the amount of time that
9 the Parties thought they had to share, and, yet,
10 somewhat curiously we see that time has even been
11 lessened further by the Parties themselves in the
12 schedule that we were given for Week 1. We are not
13 completely sure why about that, but in any event, it
14 does occur to the Tribunal that you could have the
15 flexibility on the Thursday afternoon, but we want to
16 make sure that there's--because there was discussion
17 that each side anticipates with the schedule that we
18 have and with the possibility of a reserve day,
19 that--and leaving aside post-hearing Oral
20 Closings--there will be post-hearing written
21 briefs--that you've had a proper opportunity to date
22 anticipating to present your case.

1 Ms. Gorsline for Claimants.

2 MS. GORSLINE: Thank you, Mr. President.

3 As to the curiosity with the existing agenda,
4 we--when we were discussing the agenda, took the
5 Tribunal's suggestion that a realistic number of
6 hearing hours per day was 6.5 hours. So, while the
7 Hearing is, in fact, scheduled to go until 6:00 p.m.
8 each day, we have, by and large, ended it on the
9 schedule at 5:00 to allow for that estimated hour of
10 overrun every day.

11 With respect to the second week, we have
12 spoken initially about that, and Claimants had sent to
13 Respondent a proposed schedule for the second-week
14 Hearing. It is Claimants' position that it is still
15 possible, we think, to do everything that needs to be
16 done in the second week, including slotting in
17 Mr. Varela, in three days, but we appreciate the
18 Tribunal's offer to hold the fourth day in reserve,
19 which definitely seems sensible to us.

20 PRESIDENT SHORE: Thank you, Ms. Gorsline.

21 Mr. Weisburg.

22 MR. WEISBURG: Yes. The early break time on

1 Thursday was the direct result of Mr. Varela's move,
2 of course. And we weren't able to move anybody from
3 the second week up to the first week. So, that's the
4 way this first week developed. Yeah. I think we
5 really appreciate the offer of that fourth day in the
6 second week. My guess--my 50/50 estimation is we
7 won't need it--maybe it is 75/25, but it is not wholly
8 up to us. And so, I think it's a great thing, and I'm
9 sure if we go into that fourth day, I'm sure it won't
10 be the whole day, but it is very good to have the
11 morning or something like that.

12 PRESIDENT SHORE: All right. Thank you both.

13 Let me also ask this about Thursday: In the
14 event that your predictions are correct and that
15 around lunchtime you don't have a further Witness on
16 Thursday because of the change in the former
17 President's schedule, is there a possibility of moving
18 up the Witness who would be an expert witness from the
19 Friday morning to the Thursday afternoon?

20 The only concern we have in that, of course,
21 is that it would be unuseful to have limited time so
22 that you would simply have a Direct Presentation

1 without the cross on the Thursday afternoon. Maybe we
2 should just see how we go, but, in principle, if you
3 did finish at lunchtime on Thursday, would there be
4 with Buendia, would there be a possibility that your
5 Expert Witness would be available?

6 MS. GORSLINE: Thank you, Mr. President.

7 I believe Mr. Zadicoff would likely be
8 available. I have some concerns about possibly
9 starting his testimony and breaking it up, as you
10 said.

11 PRESIDENT SHORE: Right.

12 MS. GORSLINE: So, I would like to reserve
13 our position on that, if I might, but I believe, in
14 principle, he is available, yes.

15 PRESIDENT SHORE: All right. Well, we can
16 see how we go.

17 Any comment, Mr. Weisburg?

18 MR. WEISBURG: Mr. Ryan.

19 PRESIDENT SHORE: Mr. Ryan.

20 MR. RYAN: So, from our perspective, we could
21 be prepared to start conducting the cross-examination
22 on Thursday afternoon, and I guess I'm curious as to

1 whether your concern is just the Direct Presentation
2 without any cross being started or a concern that the
3 cross might carry over into Friday because, depending
4 on the time--since the Direct Presentations are only
5 30 minutes, it is unlikely that we would get to a
6 stage that the Parties would agree that the Direct
7 Presentation would be the only thing that occurred.
8 But from our perspective, we could certainly be
9 prepared to start the cross-examination of the Expert
10 on Thursday.

11 PRESIDENT SHORE: All right. Thank you,
12 Mr. Ryan. We'll see how we go. I'm not sure we would
13 want the cross to be interrupted overnight, but we'll
14 see.

15 Let me ask, then, before we get to
16 Openings--that's all initially on the Tribunal's list.

17 Ms. Gorsline, any procedural issues that
18 Claimants wish to raise right now?

19 MS. GORSLINE: Just one very minor
20 housekeeping matter, Mr. President, and that is that,
21 as you are aware, we now have two of Respondent's Fact
22 Witnesses who are not going to be testified until the

1 second hearing session, and pursuant to the Procedural
2 Order, of course, Fact Witnesses are sequestered, with
3 the exception of Claimant, Mr. Rivera. So, we would
4 just ask for the Tribunal to reiterate that it is
5 important that no one speak to those Fact Witnesses
6 about the events that occur at this Hearing session in
7 advance of their testimony in about a month.

8 PRESIDENT SHORE: All right. Thank you,
9 Ms. Gorsline.

10 Mr. Weisburg.

11 MR. WEISBURG: We will conduct ourselves
12 appropriately.

13 PRESIDENT SHORE: Thank you, Mr. Weisburg.

14 In that event, I think we can start
15 Claimants' Opening a few minutes early, if that's
16 okay.

17 I believe we did receive, by email, the
18 Opening Slides. I don't know if you have hard copies
19 to distribute.

20 MS. GORSLINE: We do, Mr. President.

21 PRESIDENT SHORE: That would be great.
22 Please. Thank you.

1 Ms. Gorsline, an Opening Statement for
2 Claimants.

3 MS. GORSLINE: Thank you very much,
4 Mr. President.

5 OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

6 MS. GORSLINE: Members of the Tribunal, good
7 morning.

8 Claimants are grateful to be here before you
9 today. Mr. Rivera and Omega have waited over
10 five years for this opportunity and are grateful to
11 finally have their day in court. My name is Melissa
12 Gorsline, and I, together with others, have the
13 pleasure of representing Claimants Omega
14 Engineering LLC and Mr. Oscar Rivera in this
15 Arbitration.

16 I recognize that we have only one hour for
17 this Opening Statement, so I will necessarily be
18 brief. That being said, we do invite any questions
19 the Tribunal might have. These proceedings are for
20 the benefit of the Tribunal, and Claimants' intention
21 is to be as helpful as possible.

22 I would like to begin by introducing the

1 Claimants, their business in the United States and
2 investment in Panamá, and where they stood in
3 mid-2014, when Respondent began to target their
4 contracts, their operations, and their reputation. I
5 will then take the Tribunal through the chronology of
6 Respondent's wrongful acts, beginning with President
7 Varela's demands for Claimants to prove their loyalty,
8 his election to the Presidency, and ending roughly
9 nine months later with the complete demise of
10 Claimants' investment in Panamá. My part of the
11 Opening Statement will end with addressing
12 Respondent's corruption allegations.

13 From there, my colleague, Charles Kotuby,
14 will briefly address the Respondent's other
15 jurisdictional challenges as well as certain issues of
16 law and quantum. All of these issues have been fully
17 briefed in our written submissions, and Mr. Concepción
18 will then finish our Opening by summing up our
19 affirmative case.

20 Sitting here today in about the middle of our
21 table is Mr. Oscar Rivera, the individual Claimant in
22 this Arbitration. He is the sole owner of Omega

1 Engineering LLC, a Puerto Rico-registered company that
2 we refer to as Omega-U.S. for purposes of this case,
3 Omega-U.S. being the other Claimant.

4 Omega-U.S. was a family business started by
5 Mr. Rivera's father in 1980. It had an excellent
6 track record and decades of experience in complex
7 construction projects when the events underlying this
8 Arbitration began. The slide I have on the screen and
9 which you will have before you in your binders shows
10 just some of the impressive projects in Omega-U.S.'s
11 portfolio.

12 Mr. Rivera has been the President and sole
13 owner of Omega-U.S. since 2006. In 2008, Mr. Rivera
14 and Omega-U.S. became interested in opportunities in
15 Panamá, which was experiencing a construction boom.
16 To take advantage of this opportunity, Mr. Rivera
17 registered Omega Engineering Inc., or Omega-Panamá, as
18 it is referred to in this case, with the Panamanian
19 Companies Registry in October of 2009. He also
20 registered Omega-U.S. as a foreign entity in Panamá in
21 May 2010.

22 Leveraging the Omega brand name, as well as

1 the portfolio of experience and financial backing,
2 Omega-U.S. had earned over its decades in operation,
3 Claimants competed for a variety of public works
4 contracts in Panamá through the Omega Consortium,
5 which always included both Omega-Panamá and Omega-U.S.
6 Claimants thus made an investment of capital,
7 know-how, and goodwill into Panamá which, in turn,
8 drew valuable Government contracts. This was the
9 plan, and this was precisely what happened. The value
10 of this investment rested upon three pillars, which I
11 will go through one by one.

12 The first pillar was the experience and
13 expertise of Omega's principals and, in particular,
14 Mr. Rivera. Over a 30-year career, he has
15 successfully completed hundreds of complex
16 construction projects as a general contractor,
17 partner, or subcontractor. He has overseen the
18 construction of metro stations, stadiums, symphony
19 halls, medical facilities, correctional facilities,
20 hotels, condominiums, commercial buildings, and
21 industrial facilities, mostly in Puerto Rico and the
22 U.S. Virgin Islands.

1 The second pillar of the investment was
2 Omega-U.S.'s valuable goodwill, reputation,
3 experience, and financial and bonding capacity. As
4 you might imagine, it would be very difficult to start
5 a brand-new company and then successfully bid on large
6 public works contracts. In Panamá, as most everywhere
7 else, bidding companies are required to meet specific
8 financial, experience, capacity, and other
9 qualifications. This can take decades to build,
10 Members of the Tribunal. Omega-Panamá was a brand-new
11 company, and thus largely unable to build alone for
12 significant projects, but with the backing of
13 Omega-U.S., with its excellent track record, its
14 extensive portfolio of experience, its bonding and
15 financial capacity, and with the two companies working
16 together as a consortium, Claimants were able to meet
17 the requirements and secure valuable public contracts.

18 Now, to be sure, lending this backing to
19 Omega-Panamá carried inherent risk. Claimants were
20 risking their brand and their reputation. They risked
21 their own assets, too. For example, to obtain bonding
22 for Omega-Panamá's projects, both Mr. Rivera and

1 Omega-U.S. were required to enter into a General
2 Indemnity Agreement with surety companies. Under
3 those agreements, if Omega-Panamá's projects were to
4 default or be canceled, Mr. Rivera and Omega-U.S.
5 would face liability to the sureties.

6 This brings us to the third pillar of the
7 investment, those public contracts. Between 2010 and
8 2013, the Omega Consortium bid on 42 public contracts;
9 it won ten of them, signed nine of them, and completed
10 one of them. Put in relative terms, the Omega
11 Consortium won one out of every four bids it submitted
12 in Panamá. The Award of each and every one of them
13 was fully transparent and awarded based on the
14 bidders' previous experience, financial strength,
15 proposed design, schedule, and price.

16 By the end of 2013, the Omega Consortium had
17 eight ongoing contracts for three medical facilities,
18 three public markets, a large educational complex, a
19 municipal hall, and a courthouse. And these were
20 precisely the sort of public infrastructure projects
21 that Mr. Rivera and Omega-U.S. had been accustomed to
22 handling in the United States.

1 Four years after this investment was made, it
2 was a proven financial success. In 2011, Omega-Panamá
3 showed [REDACTED] in revenue. By the end of 2013,
4 two years later, its revenue had reached nearly [REDACTED]
5 [REDACTED], and going forward, its contracts were
6 valued at over [REDACTED].

7 Now, the story of Omega's projects in Panamá
8 prior to President Varela's election in May 2014 was
9 fairly straightforward. The various Government
10 agencies with which the Omega Consortium interacted
11 had a cooperative attitude toward the Consortium and
12 its projects. When issues arose, as they often do
13 with large-scale construction projects, the relevant
14 Panamanian Ministries and agencies worked together
15 with the Omega Consortium to resolve them.

16 But that all changed when President Varela
17 was elected. From that date forward, the Comptroller
18 General endorsed virtually no change orders or
19 payments to the Omega Consortium, even for work that
20 had already been performed, was invoiced and approved
21 by the relevant Ministry or Agency. The budget for
22 one project--Omega's largest--was slashed by the

1 Ministry of Economy and Finance. The contracts
2 governing that project and one other were terminated
3 by Administrative Resolution. Every other contract
4 lapsed due to Respondent's intentional delays, leaving
5 ██████████ in unpaid invoices and Omega in a financial
6 stranglehold. Claimants were legally banned from
7 further bidding in Panamá, and Mr. Rivera found
8 himself subject to criminal investigations which have
9 since proven to be baseless, but which were
10 nevertheless heavily publicized by Respondent's
11 officials, including its Attorney-General.

12 The personal detention orders and account
13 seizures that accompanied those investigations remain
14 in force today, notwithstanding the fact that
15 Respondent's own Courts have nullified or suspended
16 the underlying investigations, and the statute of
17 limitations on the alleged predicate crime has run
18 without any prosecution of Mr. Rivera, let alone a
19 conviction.

20 Unfortunately, or perhaps fortunately for
21 you, I do not have time to walk through all of Omega's
22 projects today. So, I will be focusing on just one of

1 them: The Ciudad de las Artes Project, which was the
2 Consortium's largest project, representing nearly a
3 third of the value of the contracts that Claimants
4 won. The story of this Project illustrates the sharp
5 contrast in attitude and egregious treatment that
6 occurred once the Varela Administration came to power.
7 While I will be focusing on the Ciudad de las Artes
8 project, I need to be clear that this same type of
9 conduct was being employed by every single contracting
10 agency on every single project held by Omega. And
11 this was no mere coincidence, Members of the Tribunal.
12 This was a targeted sovereign campaign of harassment
13 and destruction.

14 I'd like to begin with a bit of background.
15 The Ciudad de las Artes Contract was signed in
16 July 2012, and the Comptroller General endorsed it
17 less than two months later. An order to proceed with
18 the Project was issued on September 27, 2012, but
19 because the INAC needed to develop the rules for the
20 payment mechanism, a second order to proceed was then
21 issued on April 22, 2013. For the next 14 months,
22 this Project progressed well.

1 This Tribunal will find nothing in this
2 record to evidence any material problems with the
3 Project before President Varela was elected and took
4 office. And this is so despite the fact that
5 Respondent has proffered two Witnesses--Ms. Buendia
6 and Ms. Chen--who would have been privy to any
7 documents evidencing such problems had they existed,
8 which they did not.

9 This is proven by the unrebutted testimony of
10 Ms. Maria Eugenia Herrera, who was the Director of the
11 INAC until the summer of 2014. Ms. Herrera has
12 confirmed in her testimony that there were no problems
13 with the Omega Consortium's performance of the
14 Contract during her tenure as the Director of the
15 INAC. The letter that was sent from the INAC to the
16 Omega Consortium in December 2013, which is in front
17 of you on the slide in the small box at the bottom,
18 which praised the Omega Consortium's work, says it
19 all.

20 So, then what happened? The last endorsement
21 of payment from the Comptroller General came in
22 June 2014. President Varela took office on the 1st of

1 July 2014, and he appointed a new Director of the
2 INAC, Ms. Mariana Nuñez. From that point forward, no
3 more change orders were endorsed and no more payments
4 were made to Omega for work it had already done.
5 Ms. Yadisel Buendia, the Project Inspector and
6 Respondent's own Witness, admits in her testimony that
7 the INAC started withholding approval of payment
8 applications; this despite the Inspector's clear
9 warning to the INAC that withholding Omega's payment
10 applications would negatively affect Omega's cash
11 flow.

12 Then, in September 2014, the Ministry of
13 Economy and Finance, with the approval of President
14 Varela's cabinet, slashed the original
15 USD 54 million allotment for the Ciudad de las Artes
16 Project from the national budget. What was the
17 reasoning? The Ministry had sua sponte declared the
18 project "high-risk" and "behind schedule."

19 Now, remember that this was September 2014,
20 and Ms. Herrera, the prior Director of the INAC, has
21 testified that, just two months earlier, the Project
22 was on track and that Omega was doing excellent work.

1 So, what could have changed so quickly?

2 And if a project is "behind schedule,"
3 exactly how can slashing the Project's budget and
4 requiring the Contractor to work for months without
5 pay possibly speed things up? Say what it will about
6 budgetary constraints, in early 2015, Respondent still
7 managed to pay Credit Suisse, which was another
8 creditor to the INAC on this very project. So, the
9 only party going entirely unpaid was Omega. Three
10 months later, on December 23, 2014, the INAC
11 terminated the Ciudad de las Artes Project by
12 Administrative Resolution, singlehandedly depriving
13 Claimants of close to 30 percent of the value of the
14 contracts they won.

15 Now, it needs to be said: We are not talking
16 about a simple commercial termination of a contract by
17 its terms. This was a sovereign act which not only
18 terminated the Contract, but also prevented the Omega
19 Consortium from bidding on any further public works
20 contracts in Panamá for years. This was a death
21 sentence for the Omega Consortium. And, in case there
22 was any doubt that this was an intentional targeting

1 of a foreign investor, just before that ban on bidding
2 expired, Panamá chose to terminate yet another of the
3 Omega Consortium's contracts by yet another
4 Administrative Resolution, extending the ban on
5 bidding for another three years and through just last
6 week, February 15, 2020.

7 As I mentioned before, the Ciudad de las
8 Artes Project is emblematic of what happened to Omega
9 on all of its projects, and it was no coincidence that
10 Omega received no material payments after July 2014.
11 This was ordered from the top down, and there is ample
12 proof of it. As revealed in WhatsApp messages that
13 were published last November, decisions over money
14 allocated to particular public projects came directly
15 from the President. Mr. Varela would personally give
16 instructions to Panamá's Minister of the Economy and
17 Finance, among others, regarding which projects were
18 to be funded. In other words, President Varela was
19 bestowing and removing funding at will and through the
20 use of his executive powers.

21 This matches what Omega was being told
22 contemporaneously. With respect to the Municipality

1 of Colón Project, Mr. Almengor, an attorney at the
2 Municipal Council of Colón, told Mr. López that
3 Mr. Varela wanted to rescind the Omega Consortium's
4 contract. Mr. Policani, the mayor of Colón, also told
5 Mr. López that he had received instructions from the
6 Presidency to cancel the Municipality of Colón
7 Project. With respect to the La Chorrera Project,
8 Mr. López was told that the Decision to terminate that
9 contract had come from above.

10 And at least one of these statements was
11 actually put in writing. Mr. Barsallo from MINSA,
12 with which Omega had three Contracts, told Mr. López
13 in March 2016 that there were orders coming from the
14 Presidency to the Comptroller General's office to
15 interfere with the Omega Consortium's contracts, and
16 you will hear from both Mr. Barsallo and Mr. López
17 this week. This text that you see on the screen was
18 received just a few weeks before Claimants filed their
19 Notice of Intent to Arbitrate this case.

20 So, why was this pressure coming from the
21 Presidency? The Tribunal will have read about the
22 meeting at the La Trona Restaurant, which was attended

1 by Mr. Rivera and Mr. Varela, among others. This
2 meeting was not Mr. Rivera's idea, but rather the
3 result of then-Vice President Varela's repeated
4 chasing. At that meeting, Juan Carlos Varela sent
5 everyone out of the room except for Mr. Rivera and
6 solicited a large campaign contribution.

7 This was apparently a test to determine
8 Mr. Rivera's loyalty. You see, there was a bitter
9 feud between then-President Martinelli and then-Vice
10 President Varela, and in Mr. Varela's world, there
11 were only two camps: Those allied with then-President
12 Martinelli and those allied with then-Vice President
13 Varela. If you were not with Mr. Varela, you were
14 presumed to be against him. That day at La Trona,
15 Mr. Varela made it crystal clear to Mr. Rivera that
16 his investment in Panamá would suffer if he refused to
17 make the requested \$600,000 campaign contribution, but
18 Mr. Rivera declined.

19 Now, in its pleadings throughout this case,
20 Respondent has defended itself by implying that the
21 meeting never happened, and President Varela has
22 remained conspicuously silent about this meeting in

1 his Witness Statement. But after Mr. Varela's
2 WhatsApp messages were published a few weeks ago, we
3 now know that the La Trona meeting did happen, because
4 Mr. Varela admits it. He even remembers who was at
5 the meeting.

6 Now, we should be clear that at the time he
7 was writing the publicly available chats, this
8 arbitration was well underway, and Mr. Varela was
9 asked to provide information to defend Panamá. So, of
10 course, he does not admit to the full truth. But even
11 in the course of attempting to hide the extent of his
12 actions, Mr. Varela lets the truth slip. He notes
13 that he never asked for money from Mr. Rivera "again."
14 Now, Members of the Tribunal, the word "again" makes
15 no sense in this text if Respondent's version of
16 events is to be believed.

17 What else do the various WhatsApp chats in
18 this record show? Quite a bit, but I would like to
19 highlight just one specific point now. On the 20th of
20 May 2015, Ms. Medina, who was one of Claimants'
21 Panamanian lawyers at IGRA, sent Mr. López a text
22 message 

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This was a message that Claimants had in their records and which they introduced at the start of this case. Its true significance, however, became clear just recently with the publication of the Varela Leaks documents, because in his chats with

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Attorney-General Porcell in 2018, Mr. Varela is seen to be closely coordinating the prosecution of "the RM kids," that same phrase, the Ricardo Martinelli kids. Omega and Mr. Rivera were perceived as allied with the previous administration of Ricardo Martinelli and were punished for it by Mr. Varela and his government.

By the Varela government's coordinated acts, the Omega Consortium's contracts were toppled one by one, and, with them, the first pillar of Claimants' investment toppled as well. That fall would soon take down the next pillar, too.

As I already noted, by virtue of two administrative terminations, Omega was banned from

1 bidding on future public contracts for a period of
2 more than five years, and the effects of these acts
3 have reverberated beyond Panamá.

4 Within a few months of the first
5 administrative termination, Omega's surety company
6 informed Claimants that it would no longer support
7 bids by Omega-U.S. A few weeks later, on the 3rd of
8 March 2015, the surety company demanded that
9 Omega-U.S. provide it with a collateral guarantee for
10 USD 38 million in order to keep its backing.

11 Now, by that point, it been almost a year
12 since the Omega Consortium had received any material
13 form of payment from Respondent for the work it had
14 already performed. The outflow of cash to keep
15 Omega-Panamá alive had drained Omega-Panamá and
16 Omega-U.S.'s reserves, as well as those of Mr. Rivera.
17 By the end of 2015, without cash flow or the required
18 collateral or surety backing, Omega-U.S. lost its last
19 two remaining contracts in the United States. The
20 domino effect from the loss of its largest contract in
21 Panamá was devastating. The goodwill that Omega-U.S.
22 had earned over decades and invested in Panamá was

1 gone.

2 Respondent would soon take down the last
3 standing pillar of Claimants' investment as well:
4 Mr. Rivera's personal reputation. Recall Respondent's
5 position with respect to its criminal files in this
6 Arbitration: Respondent told Claimants and this
7 Tribunal that those files were off-limits, cloaked in
8 secrecy, and for the prosecutors', investigators', and
9 involved Parties' eyes only. Yet, in early 2015,
10 Panamanian officials began to leak Mr. Rivera's name
11 as one of Justice Moncada Luna's alleged
12 co-conspirators. In June 2015, Panamá's Prosecutor
13 General issued a statement to the press naming
14 Mr. Rivera as directly related to the Moncada Luna
15 investigation.

16 This sort of targeted behavior would spread
17 beyond Panamá, too. In August 2015, Panamá issued a
18 detention order and an Interpol Red Notice for
19 Mr. Rivera for the alleged crime of money laundering,
20 preventing him from traveling to and from Panamá to
21 manage Claimants' investment there. And I should
22 note, as you can see on the screen, that that Red

1 Notice was canceled after Claimants contested it.

2 Nonetheless, these events were heavily
3 publicized and reported in the press. For the
4 President and owner of an international construction
5 company, this was the death knell for Mr. Rivera's
6 career and his business, not just in Panamá, but
7 elsewhere.

8 Now, I will discuss in a moment the fact that
9 the investigations against Mr. Rivera have now been
10 shut down, both by the Panamanian Courts and other
11 States, but it is important to note here that,
12 remarkably, as we sit here today, the Panamanian
13 detention order against Mr. Rivera is still in effect,
14 the seizure of Claimants' bank accounts has still not
15 been lifted, and Panamá is here before this Tribunal
16 still pressing the baseless allegation that Claimants
17 are criminals. These actions ultimately took down the
18 last standing pillar in Claimants' investment.

19 And I would hope that there is now no
20 question, Members of the Tribunal, that Respondent's
21 description of its conduct in this Arbitration as
22 merely "commercial" and of this case as merely

1 involving eight separate breaches of contract is
2 entirely false. What Respondent did to Claimants was
3 nothing short of a concerted campaign of targeted
4 sovereign harassment that was designed to destroy a
5 foreign investor and his investment.

6 Next, I would like to spend a few minutes of
7 our time addressing Respondent's so-called
8 "corruption" or "illegality" objection in a bit more
9 detail, but before I get into those details, I think
10 it is important to note three key points that are
11 undisputed between the Parties.

12 First, it is common ground between the
13 Parties that Respondent bears the burden of proving
14 this allegation. That burden, Claimants submit, is a
15 high one. It requires clear and convincing evidence,
16 not just a mere balance of the probabilities. And
17 while the Parties have agreed not to address the
18 United States' submission in detail at this stage, I
19 will note that the U.S. agrees.

20 Second, it is common ground between the
21 Parties that the only corrupt acts alleged purportedly
22 took place in November 2012, which is more than

1 three years after Claimants incorporated Omega-Panamá
2 and signed the bulk of their public works contracts in
3 Panamá. Accordingly, it is undisputed that Respondent
4 has raised allegations about Claimants' conduct only
5 during the operation of the investment, which by law
6 does not raise a jurisdictional issue. And no
7 Tribunal has ever utilized a contagion theory or the
8 unitary investment principle as Respondent suggests,
9 such that corruption in the operation of one aspect of
10 an investment taints the making of the entire
11 investment at its inception.

12 Third, it is common ground between the
13 Parties that, after more than five years and three
14 separate investigations, Claimants have never been
15 tried or convicted of anything.

16 So, allow me to summarize Respondent's
17 position with these undisputed points in mind.
18 Respondent would have this Tribunal be the first
19 arbiter of criminal guilt under Panamanian law when no
20 relevant domestic court or authority has found
21 sufficient evidence or ability to convict after years
22 of investigation, and they are asking this Tribunal to

1 dismiss this case under an entirely novel theory of
2 international investment law in the process. It is,
3 frankly, an unprecedented position to take.

4 Let's now take a closer look at the actual
5 factual allegations that Respondent has raised against
6 Claimants. At its core, Respondent alleges that
7 Claimants paid bribes to Justice Moncada Luna in
8 exchange for the Award of the La Chorrera Contract.
9 Where do they find evidence that a thing of value was
10 exchanged for this official act? These are their own
11 words: By "the overwhelming proof of the bank
12 transfers that moved money from Omega to Justice
13 Moncada Luna and the fatal imperfections in the fake
14 real estate documentation relied upon by the
15 Claimants."

16 Now, there is a lot of hyperbole there, so
17 let's dissect these two points.

18 To start, no money ever moved directly
19 between Claimants and Moncada Luna. This is common
20 ground. Claimants paid money to a real estate lawyer,
21 Ms. Maria Gabriela Reyna, who was the legal
22 representative for the seller in connection with a

1 land transaction for a potential commercial
2 development. Ms. Reyna was bound by the sales
3 agreement to deposit the money into an escrow, and she
4 allegedly then funneled about half of that money to
5 Moncada Luna.

6 Now, Ms. Reyna gave repeated testimony to
7 Panamá's prosecutors who were investigating these acts
8 in which she ultimately admitted her guilt in the
9 Moncada Luna scheme. But while inculcating herself
10 and others, Ms. Reyna made clear that she was aware of
11 no links between Omega and the Moncada Luna scheme.
12 She also admitted to Panamá's prosecutors that she
13 routinely commingled legitimate and illegitimate funds
14 in her bank accounts, so that monies she held for
15 Omega relating to the land transaction are entirely
16 fungible with any monies she transferred to Moncada
17 Luna for other purposes.

18 From here, Respondent's theory stands only if
19 Respondent can show that the land transaction truly
20 was fake and contrived for a nefarious purpose. But
21 as Ms. Reyna contemporaneously told Panamanian
22 prosecutors, it was a perfectly legal and legitimate

1 transaction. And Justice Troyano, a former Chief
2 Justice of Panamá's Supreme Court, will be here in the
3 next session to confirm this.

4 Claimants pursued the acquisition through a
5 special-purpose vehicle, Punela Development, which was
6 newly created and had no bank accounts. So, the
7 payments were made by Omega-Panamá and PR Solutions,
8 one of Mr. Rivera's companies that had previously done
9 public contracting work for the Panamanian government.
10 As you will hear from Claimants' Panamanian Real
11 Estate Expert, Mr. Fidel Ponce, the Contract was for a
12 coveted piece of development property with an ocean
13 view at market prices and following the proper
14 procedures under local law and custom.

15 Indeed, Mr. Rivera secured counsel for the
16 transaction from one of the most prestigious
17 Panamanian law firms at the time, IGRA. Thus, when
18 the designated prosecutor finished his investigation
19 of these acts for the National Assembly, he noted that
20 Omega-Panamá and PR Solutions were not linked to the
21 unjustified assets of Moncada Luna according to the
22 theory of the case of the prosecution.

1 Now, even if there was an exchange of money
2 between Omega and Moncada Luna, which there was not,
3 the crime of bribery requires proof of an "official
4 act" done by the recipient of the bribe in favor of
5 the party who gave the bribe. Here again,
6 Respondent's bold assertions are unsupported.

7 Omega submitted a proposal for the
8 La Chorrera Project to a three-person vetting
9 commission, along with three other bidders. After
10 reviewing the bids, the Omega Consortium not only
11 received the maximum amount of points from the
12 Commission, but it also offered the lowest price by
13 almost \$1 million. Claimants' Public Contracting
14 Experts, whose Expert Report Respondent has not
15 challenged, by the way, have performed a blind review
16 of the bids and concluded the same thing, that the
17 Omega Consortium was the winner of the bid for the
18 La Chorrera Contract fair and square.

19 Ms. Ríos, a witness in this arbitration who
20 oversaw the bidding process, has testified that
21 Moncada Luna personally selected Omega as the winner.
22 And, yet, even she admits that Moncada Luna did so

1 "taking into consideration the report from the
2 evaluation commission." But Ms. Ríos' testimony is,
3 perhaps, most remarkable not for what it says, but for
4 what it doesn't say. She makes no allegation that
5 there was anything untoward or illicit in the bidding
6 process. She makes no allegation that Mr. Moncada
7 Luna rigged the process for Claimants nor does she
8 ever state that she had any knowledge or even
9 suspicion that Claimants bribed Moncada Luna.

10 Ms. Ríos has had multiple opportunities to
11 accuse Claimants of illegally obtaining the
12 La Chorrera Contract, but she has never done so and
13 her silence speaks volumes.

14 Moreover, if Moncada Luna corruptly
15 interfered with the work of the vetting commission,
16 which seems to be the allegation at the heart of
17 Respondent's theory, where are the members of this
18 commission who would presumably have the most direct
19 knowledge of Claimants' alleged illicit influence? We
20 understand that they are still government employees.
21 So, why have they not been proffered as Witnesses
22 before this Tribunal and why have they not even been

1 interviewed by Panamanian prosecutors? Why have they
2 never once been accused by Respondent of being
3 conspirators in this alleged bribery scheme?

4 Respondent would apparently prefer to just
5 sling conspiracy theories in the dark rather than
6 undertake the more difficult work of truly
7 investigating and proving the grave allegations that
8 it has raised.

9 Claimants' Expert on financial crime,
10 Ms. Alison Jimenez, who is here today and whom you
11 will hear from the next session, identifies the
12 various ways in which Respondent's illegality and
13 corruption allegations fall far short of the mark.

14 Respondent's Expert, Mr. Pollitt, at best
15 identifies some red flags for corruption, which prove
16 nothing and are only useful to provide cause for
17 domestic authorities to investigate.

18 And what did Panamanian authorities
19 investigate? Despite having the entire police powers
20 of the State at their disposal and over the course of
21 five years, Panamá's investigators failed to unearth
22 even a single phone record, text message, or other

1 type of corroborating evidence of a bribe or intent to
2 bribe Moncada Luna by Mr. Rivera. Is it any wonder,
3 then, that Respondent's own criminal justice system
4 has shut down the investigations of Claimants?

5 With respect to the bribery investigation, in
6 June 2018, the Panamanian anticorruption prosecutor
7 moved for a provisional dismissal. This request was
8 based on Article 2208(1) of the Criminal Code, which
9 allows a dismissal when the "evidence gathered in the
10 process is not sufficient to prove the punishable
11 act." This request was granted by the Court in
12 November 2018 and confirmed by an edict one month
13 later, evidencing that after four years, 18 volumes,
14 and thousands of pages of an investigation record, the
15 prosecutor was not able to gather sufficient evidence
16 to bring bribery charges against Mr. Rivera.

17 And as of last summer, the prescription
18 period for any crime of corruption has run.

19 With respect to the money-laundering
20 investigation, it ended much earlier. In
21 September 2016, a Panamanian court declared "the
22 nullity of every act in the criminal proceedings for

1 the allegations of money laundering" against several
2 individuals, including Mr. Rivera. We understand that
3 the prosecutor submitted an appeal and that this
4 appeal is still awaiting resolution by the Court. In
5 any event, under Panamanian law, no charge of money
6 laundering can be made without a predicate act, which
7 here would have been corruption, and Panamanian
8 authorities have all but admitted that this act never
9 occurred. As one of my partners said to me the other
10 day, these are zombie allegations, they are dead, but
11 they are still walking around for purposes of this
12 case.

13 One more point on the timeline is relevant.
14 The Tribunal will recall that Respondent originally
15 balked at opening its criminal files on Mr. Rivera for
16 review in this Arbitration. Respondent told Claimants
17 and this Tribunal that it was against Panamanian law
18 to do so, and Claimants have been hamstrung in trying
19 to prove a negative, that Panamá never had meaningful
20 evidence that Mr. Rivera or Omega committed a crime.
21 Then, in Respondent's final pleading in this case,
22 Panamá presented its Financial Crimes Expert,

1 Mr. Pollitt, who candidly admitted that he had
2 conducted a detailed review of the documents generated
3 during the investigations. Thereafter, this Tribunal
4 rightly ordered Respondent to produce everything
5 reviewed by Mr. Pollitt.

6 So, some portion of Respondent's files were
7 opened for Claimants in December 2019. And what did
8 that reveal? Well, this is how we learned that, in
9 December 2015, Respondent sought the extradition of
10 Mr. Rivera from the United States purportedly to stand
11 trial for a money-laundering investigation that would
12 ultimately close nine months later. This is how we
13 first learned that the United States denied Panamá's
14 request because it "did not contain sufficient factual
15 support linking Rivera Rivera to the money-laundering
16 charge."

17 In particular, the United States listed some
18 of the types of evidence it found lacking, including
19 Witness Statements that show that Mr. Rivera knew that
20 the money was laundered--that was laundered was
21 obtained through illegal means or a summary of any
22 other evidence which clearly indicates that Mr. Rivera

1 knowingly participated in the money-laundering
2 operation described in the provisional arrest request.

3 Unsurprisingly, these are the same criticisms
4 that Ms. Jimenez has raised in her Expert Report.

5 And more to the point, we now know that
6 Respondent still cannot provide such evidence because
7 it never filed a second and supplemented extradition
8 request. Panamá, likewise, made no effort to
9 extradite Mr. Rivera on the bribery charge, which was
10 also still ongoing at the time, probably because it
11 knew it had insufficient evidence of that allegation
12 too.

13 Against these very recent developments, it is
14 frankly astonishing that Respondent has told this
15 Tribunal no fewer than eight times in its Rejoinder
16 that it has proven--that's its word--"proven" that
17 Claimants bribed Moncada Luna in return for the Award
18 of the La Chorrera Contract. These sorts of
19 allegations, when so carelessly made, work additional
20 injustice against an already slandered and distressed
21 investor. Panamá intentionally abused its criminal
22 justice system to harm a foreign investor and his

1 investment, and, for that, it must be held liable.

2 And with that, unless there are any questions
3 from the Tribunal at this time, I will pass the floor
4 to Mr. Kotuby.

5 MR. KOTUBY: Thank you, Ms. Gorsline,
6 Mr. President. Yes.

7 ARBITRATOR GRIGERA NAÓN: My first question
8 is regarding the episode at La Trona restaurant, what
9 standard of evidence should this Tribunal use to
10 evaluate what actually happened there?

11 MS. GORSLINE: Thank you, Professor Naón.
12 Yes.

13 So, to be clear, we are not alleging that
14 incident as a breach of the Treaty. That incident is
15 evidence of motivation, it is background evidence that
16 supports an explanation of why Panamá engaged in the
17 conduct it did against Mr. Rivera and his investment,
18 but it is, to be clear, not an allegation of a breach
19 of the Treaty and not an allegation that we believe we
20 must prove in order to succeed on the merits of our
21 claims.

22 Mr. Kotuby will be discussing those, the

1 alleged breaches, a little bit later. So, to answer
2 your question, a balance of probabilities would apply
3 because we are not alleging that that is corruption
4 that breached the Treaty.

5 ARBITRATOR GRIGERA NAÓN: Okay. My second
6 question--thank you. My second question is, you have
7 mentioned that even today that a number of measures
8 concerning Mr. Rivera or his assets in Panamá. At the
9 same time, the way I understood what we heard from
10 you, is that many of these criminal actions is that
11 the statute of limitations have expired or those
12 actions are not anymore around. Maybe the laundering.
13 I didn't understand that. But if none of these
14 measures, actions, are no longer applicable, what kind
15 of actions were taken by Mr. Rivera to try to lift
16 these measures? Were there any actions or reasons for
17 why those actions were not taken?

18 MS. GORSLINE: Yes. So, it is in the record,
19 Mr. Rivera has taken action to try to submit evidence
20 on his behalf to prove that his actions were
21 legitimate. In one instance, the Panamanian courts
22 actually denied him the ability to submit such

1 evidence. They said it wasn't relevant. He has taken
2 action in order to try to get these investigations
3 closed. In terms of the specifics of all the actions
4 taken, I would need to go back and put together a list
5 for you, and we can do that, if that would be
6 acceptable to you and, perhaps, submit it in writing.

7 ARBITRATOR GRIGERA NAÓN: Okay. Would that
8 be acceptable, Mr. Chairman?

9 Okay. And my last question, this transaction
10 regarding this Finca as a result of which there was a
11 down payment of \$250,000, what is the present state of
12 that transaction?

13 MS. GORSLINE: So, the present state of the
14 transaction is actually in dispute between the
15 Parties. Claimants' position, based on the Expert
16 Witness opinion of Justice Troyano, is that the
17 statute of limitations has not yet run on Mr. Rivera's
18 right to bring claims to recover that money. You will
19 hear from Mr. Rivera himself, I suspect. He has
20 talked about that in his Witness Statements, that he
21 has been under so much pressure trying to defend
22 against the assaults on his name, the assaults on his

1 character, the criminal accusations and investigations
2 against him that he has not yet pursued his rights,
3 but he is very clear that there's an intent to do so
4 and he still has the ability to do so because the
5 statute of limitations has not yet run.

6 ARBITRATOR GRIGERA NAÓN: Okay. Thank you.

7 PRESIDENT SHORE: Thank you, Professor Naón.
8 Mr. Kotuby.

9 MR. KOTUBY: Thank you, Ms. Gorsline,
10 Mr. President, and the Members of the Tribunal.

11 I will now turn briefly to the Respondent's
12 other jurisdictional objections. In the short time I
13 have, I will simply highlight the key points in
14 dispute and try to give the Tribunal a basic legal
15 construct against which to view this evidentiary
16 hearing.

17 As Ms. Gorsline said, Claimants consist of
18 two juridical entities--Omega Engineering, a U.S.
19 company, and Oscar Rivera, a U.S. citizen. There is
20 little dispute between the Parties on the
21 jurisdictional calculus that flows from these facts.
22 Both are U.S. nationals, both have made admitted

1 investments in Panamá. There is likewise no space
2 between the Claimant and the claims here. Both
3 Claimants bring all claims in parallel with complete
4 overlap.

5 To address the issue of temporal
6 jurisdiction, I need to address the timing of the
7 treaties vis-à-vis these claims. The BIT between the
8 U.S. and the Panamá entered into force in 1991, well
9 before this investment was made and the acts
10 underlying these claims occurred, and it remains in
11 force today. I will come back to this point in a
12 minute.

13 The TPA between the U.S. and Panamá entered
14 into force in October 2012. That is after Claimants
15 made their investment in Panamá and signed some of
16 their contracts, but before the events underlying
17 these claims occurred.

18 In a case like this one, the intended
19 coexistence of the treaties is clear: Article 1.3(1)
20 of the TPA says that "the BIT remains in force." The
21 next two subprovisions provide that the BIT's
22 dispute-resolution provisions "shall be suspended."

1 However, until October 2022, the suspension does not
2 apply to "investments covered by the BIT as of the
3 date of the entry into force of the TPA." Claimants'
4 investment falls precisely within this category.

5 As for the TPA, Article 2.1 says that it
6 "protects investments that were in existence as of
7 October 2012, as well as those investments that were
8 established, acquired, or expanded thereafter." An
9 investment "in existence" in October 2012 and
10 "expanded thereafter" is precisely this case.

11 So, what does this all mean? It means that
12 Claimants' entire investment and all of their claims
13 are covered by both treaties. Claimants have an
14 investment covered by the BIT as of the date of the
15 entry into the force of the TPA so their claims can
16 proceed under the BIT. But that investment was also
17 "in existence" in October 2012 and "expanded
18 thereafter."

19 So, under Article 2.1 of the TPA, the
20 entirety of the Treaty also applies to the entirety of
21 this investment. It likewise applies to the entirety
22 of this investment dispute, which postdates the entry

1 into force of the TPA by at least a year and a half.

2 Accordingly, all of these claims are
3 protected by both Treaties. I will note that, in its
4 Jurisdictional Reply, Respondent does not dispute this
5 point, so it should be understood as agreed.

6 So, against this backdrop, Respondent raises
7 four preliminary objections it characterizes as
8 jurisdictional, most of them are partial objections
9 and I'll be sure to note that in my discussion. So,
10 we have already addressed and rebutted Respondent's
11 allegations of corruption, so I will not re-plow that
12 ground. I will instead endeavor to cover the other
13 three objections clockwise in the figure above.

14 First, Respondent contends that this
15 arbitration is really just a consolidation of eight,
16 run of-the-mill commercial disputes, which have no
17 business before this Investment Tribunal. But as
18 Ms. Gorsline has already traced above, this is not
19 just a case of a contractor seeking past-due payments
20 from a property owner. Here we have U.S. investors
21 who made a foreign investment in the Republic of
22 Panamá. They were operating smoothly before a change

1 in the presidential administration. They were,
2 thereafter, targeted with bureaucratic obstacles, a
3 lack of cooperation, and outright stonewalling of
4 payments and change order approvals once the local
5 politics changed. Their projects were slashed from
6 the national budget and their largest contract was
7 terminated by an administrative resolution. They were
8 banned from bidding for any new public works contracts
9 and were besieged by criminal investigations, asset
10 seizures, and detention orders. These complaints are
11 plainly leveled against the Respondent qua State and
12 not a Ministry or agency acting simply as a commercial
13 contracting party.

14 ARBITRATOR DOUGLAS: So, just to interrupt
15 there, I have a question really for both Parties, but
16 obviously I'm not going to ask you to respond to what
17 the Respondent is pleading, how it is pleading its
18 case. But what wasn't clear to me from both Parties'
19 pleadings is whether there is an alternative case?
20 So, your positive case depends upon establishing a
21 factual predicate, which is that there is a
22 coordinated campaign of harassment.

1 If that allegation fails as a factual matter,
2 do you then accept that they are just commercial cases
3 or commercial claims?

4 MR. KOTUBY: I don't think so, no. Because
5 it's the way these were breached. It's the way these
6 were breached by sovereign Decree. It's the way they
7 were breached by having budget slash from the national
8 budget. It was not simply a lack of payment. Please
9 pay us, no, we won't pay you. There is a lot more
10 here and a lot more sovereign activity here. Even if
11 you sort of strip away the overarching campaign of
12 criminal accusations aside, is that this is a
13 sovereign activity.

14 ARBITRATOR DOUGLAS: Okay. So, your primary
15 case is that it's a coordinated campaign?

16 MR. KOTUBY: Sure.

17 ARBITRATOR DOUGLAS: If that fails on the
18 evidence, then you have a secondary case which is
19 that, nonetheless, the particular Acts that were taken
20 in relation to each Contract are sovereign Acts and
21 they violate the Treaty.

22 MR. KOTUBY: Absolutely. Exactly.

1 ARBITRATOR DOUGLAS: Okay.

2 MR. KOTUBY: Second, I'll get on to the next
3 jurisdiction objection. Respondent seeks solace in a
4 provision of the BIT which says that investment
5 disputes shall be settled in accordance with the
6 applicable dispute settlement procedures upon which
7 the Parties have previously agreed. Respondent admits
8 that this is just a partial objection aimed at the
9 five Contracts that predate the TPA, which include
10 various Dispute Resolution Clauses.

11 But as we just discussed, this objection
12 should fail on the temporal point alone. It is
13 undisputed that the entire TPA applies to the entire
14 investment and the entirety of these claims, and it is
15 common ground that the TPA contains no such
16 restriction. Accordingly, this case can proceed
17 completely under the dispute-resolution provision of
18 the TPA, making the limitation of the BIT entirely
19 irrelevant.

20 Now, even if this language were deemed to
21 apply to some of these claims, it does not undercut
22 the Tribunal's jurisdiction. Let's take a close look

1 at the language. The "dispute" we have here, as
2 referred to in that sentence, can only mean the
3 "investment dispute," which Article VII(1) defines as
4 "a dispute involving an alleged breach of any right
5 conferred or created by this Treaty with respect to an
6 investment."

7 Everyone here agrees that this case does not
8 involve the interpretation or application of an
9 Investment Agreement, an Investment Authorization, a
10 Concession Agreement, or the like. From there, let's
11 return to the language that Respondent has pointed
12 out.

13 All it says is that "applicable dispute
14 settlement procedures between the Parties should be
15 followed." And who are the Parties here? The
16 provisions below and above the sentence make it clear:
17 It is the State Party and the investor, or, in other
18 words, the "Parties to the investment dispute."

19 Are there any "applicable" and "agreed"
20 dispute settlement procedures for this investment
21 dispute? No. Looking at the five Contracts that
22 predate the TPA, none of them say anything about the

1 forum for investment disputes, for international law
2 claims, or for Treaty claims, let alone do they
3 contain an explicit waiver thereof.

4 They are each textually limited to disputes
5 regarding the execution, enforcement, development or
6 termination of the specific Contracts in which they
7 are found. Nothing in these Agreements link these
8 investors to this Respondent or to these Treaty claims
9 that are before this Tribunal.

10 Third, Respondent would have this Tribunal
11 decline its jurisdiction to assess the conduct of
12 criminal investigations into Claimants. In its view,
13 because Panamá initially investigated Justice Moncada
14 Luna, and only thereafter stumbled cross Claimants'
15 alleged involvement in his crimes, Respondent cannot
16 be held accountable for the consequences of its
17 actions against Claimants.

18 Again, this is only a partial jurisdictional
19 defense, and, again, it is entirely wrong. How can
20 Respondent argue that the alleged corruption and
21 illegality with respect to the La Chorrera Contract
22 were endemic to Claimant's entire investment, but also

1 argue that any criminal investigation into that
2 supposed corruption had nothing to do with the
3 investment?

4 As a legal matter, Respondent's only real
5 basis for this objection is Article 25(1) of the ICSID
6 Convention, namely that the "jurisdiction of the
7 Centre shall extend to any legal dispute arising
8 directly out of an investment." Claimants are
9 admitted investors, with an admitted investment, and
10 the La Chorrera Contract is admittedly part of that
11 investment.

12 It strains credulity, Members of the
13 Tribunal, to argue that a State's criminal
14 investigation into an investor, regarding part of that
15 investment, does not arise directly from it. And to
16 separate the two as a jurisdictional question would
17 require this Tribunal to find that the Respondent's
18 criminal investigations were appropriate and
19 justified, which is a core merits question before the
20 Tribunal. With respect, Respondent's argument simply
21 puts the cart before the horse.

22 With each of these preliminary objections

1 addressed in jurisdiction under the BIT and TPA should
2 be clear. In the interest of time, I will not take
3 the Tribunal through the nuances of the substantive
4 Treaty standards. I will likewise not trespass on the
5 evidence by trying to connect the facts and the law in
6 the short time that I have, but I would like to
7 provide this Tribunal with a very brief framework to
8 assess the evidence they are going to hear this week
9 and in the next session.

10 On the screen we have cataloged the key Acts
11 and events that breached the Treaties. As you can
12 see, we have adopted *arguendo* even the narrow legal
13 standards that Respondent has espoused. The point is
14 this: Under any reasonable standard, there was a
15 breach here that demands full reparation.

16 So, with that, I'm going to turn very quickly
17 to the issues of quantum. I will start by discussing
18 the legal standard of full reparation under
19 international law, and then give the Tribunal an
20 overview of what it will hear this week from the
21 Experts.

22 On the legal standard, there is little

1 dispute between Parties. If there is a violation of
2 international law, the Tribunal must wipe out all
3 consequences of that Act. This means that Claimant
4 should be placed where they would have stood but for
5 Respondent's wrongful acts. So, a violation of fair
6 and equitable treatment or an illegal expropriation,
7 demands full reparation.

8 The same is true for any successful umbrella
9 clause claims. These are violations of international
10 law, and not simple breaches of contract for which
11 damages may be limited to unpaid sums according to the
12 contract's terms. The failure or refusal of
13 Respondent to "honor its obligations" certainly
14 precipitated these unpaid invoices, but it also led to
15 a crippling loss of cash flow and the inability of
16 Omega-Panamá and Omega-U.S. to continue as a going
17 concern.

18 It precluded Claimants from bidding on future
19 contracts, and it destroyed their reputations
20 globally. In other words, the failure or refusal of
21 Respondent to "honor its obligations" inflicted
22 injuries that went well beyond breach of the specific

1 contracts for which full reparation is required.

2 Now, an important aspect of full reparation
3 is choosing the proper Valuation Date. Here, both
4 Parties used December 23, 2014, and for good reason.
5 And I want to linger here for a brief moment. This is
6 when the INAC terminated Claimants' largest Contract
7 and first banned them from bidding on future
8 contracts.

9 This Act, coming at a time when Claimants
10 were already cash-strapped with unpaid invoices on
11 nearly every Project was a pointed act of
12 expropriation. Not only did it single-handedly
13 deprive Claimants of close to 30 percent of the value
14 of their existing Contracts, but it also prevented the
15 Omega Consortium from bidding on any further public
16 works contracts, and, thus, any future revenue for a
17 period of years.

18 And while the ban was still in place, Panamá
19 issued yet another administrative Resolution extending
20 the ban on future bidding for another three years.
21 These two sovereign Acts deprived a construction
22 company of things to construct.

1 Omega was like a bakery without bread, and
2 with its only customer refusing to pay for what it had
3 already bought, the business was completely useless.
4 These two administrative Resolutions doomed the
5 entirety of the investment.

6 Having discussed the legal framework and the
7 Valuation Date, I would now like to provide the
8 Tribunal with a basic construct of what is being
9 valued and how that valuation is being performed.

10 Here, moving from the right to the left, we
11 are valuing, first, the damages resulting from the
12 loss of the existing Contracts, the damages resulting
13 from the loss of the invested goodwill and the ability
14 to generate future contracts, and, finally, moral
15 damages. Of course, interest must be applied to these
16 amounts in order to provide full reparation.

17 I would like to note that Respondent and its
18 Expert, Mr. Flores, do not dispute much of this in
19 principle. They simply quibble over some of the
20 assumptions made by Claimants' Experts. To walk
21 through these calculations, let's start on the right
22 where there is the least dispute and the easiest math,

1 the value of eight existing Contracts.

2 Claimants' Experts have computed the actual
3 losses suffered in each of these eight Projects by
4 determining the Present Value of the unpaid Billings
5 and the Present Value of the cash flows that Claimants
6 would have earned, less any advance payments.

7 The total losses under this heading is almost
8 \$9 million, which does not include interest. While
9 there are differences of opinion on the actual
10 calculations, Respondent does not dispute that this
11 Head of Damages is owed, in principle.

12 From there, we need to calculate the lost
13 value of the Omega Consortium itself. Much of this is
14 reflected in the intangible assets that Omega-U.S.
15 invested in Panamá, such as its valuable goodwill and
16 its bonding capacity, and the income Omega-Panamá
17 would have generated in the future but for
18 Respondent's Acts.

19 Given the Omega Consortium's track record of
20 success in winning bids and generating revenue, it is
21 reasonable to assume that Claimants would have
22 continued to succeed in obtaining new contracts. And

1 because Omega-Panamá was a going concern, we can
2 determine its but-for value through a DCF analysis.
3 Compass Lexecon has done this and arrived at a value
4 of just over \$42 million. This too does not include
5 pre-award interest.

6 Now, Respondent has tried to attack the
7 assumptions in Compass Lexecon's analysis, but as
8 Mr. Zadicoff will explain later this week, these
9 criticisms are without merit. Respondent ignores
10 important performance data and discounts Claimants'
11 track record of success in the Panamanian market to
12 propose that its investment had zero value apart from
13 the existing Contracts. The truth is that the value
14 of Claimants' lost investment in Panamá was
15 substantial, and they must be compensated accordingly.

16 Finally, for Omega-U.S. and especially
17 Mr. Rivera himself, Respondent's acts caused
18 significant moral damages which they are entitled to
19 recover as a matter of full reparation.

20 Moral damages under international law are not
21 limited to mere "mental suffering." They include
22 things like "injury to credit and reputation." When

1 such reputational harm is compounded by intentional
2 and reckless acts, criminal charges, detention orders,
3 and limitations on a person's accounts and freedom of
4 movement, the need for full reparation through moral
5 damages becomes acute.

6 Mr. Rivera has had the best and most
7 productive years of his life stolen from him. Moral
8 damages for this harm should be no less than
9 [REDACTED]. That the BIT and TPA protect only
10 investments and not investors does not categorically
11 bar an award of moral damages.

12 In all cases of Treaty breaches, an
13 investment Tribunal like this one will be tasked with
14 valuing not just the entity qua investment, but,
15 rather, Claimants' interest in that investment.

16 In a case like this one, where Claimants' own
17 goodwill, their corporate and individual reputation,
18 and their hard-earned financial and bonding capacity
19 has been leveraged into the investment and then
20 decimated globally, moral damages are necessarily a
21 part of full reparation. And the jurisprudence
22 supports this as well.

1 In many cases that have awarded moral
2 damages, the applicable Treaty only purported to
3 protect investments and not investors.

4 But none of those Tribunals demurred their
5 jurisdiction to award moral damages to an investor
6 when the Host State caused moral damages by virtue of
7 its breach of an obligation to the investment.

8 Finally--this is my last point--Claimants are
9 entitled to pre- and post-award interest. This is
10 part of the full reparation standard as well. As
11 provided by the relevant treaties, the interest rate
12 should be a commercially reasonable one, which Compass
13 Lexecon explains should be the Cost of Equity in the
14 Panamanian market for a stake in a general contracting
15 company. That Cost of Equity is just over 11 percent.

16 Now, Respondent complains about the interest
17 rate, relying on Mr. Flores' Opinion that pre-award
18 interest should be set at the risk-free rate. But
19 this is incorrect. Mr. Flores ignores the
20 jurisprudence rejecting the use of the risk-free rate,
21 and, perhaps, more importantly, he ignores the fact
22 that Compass Lexecon's proposed rate is consistent

1 with Respondent's own law.

2 When a Panamanian government agency defaults
3 on a contract in Panamá for reasons not attributable
4 to the contractor, the outstanding invoices will
5 accrue an immediate 10 percent surcharge and
6 thereafter at a specific market reference rate. In
7 2014, that computation meant that the Government had
8 to pay interest to an aggrieved investor at just over
9 9 percent. When combined with the 10 percent
10 surcharge, this is roughly in line with the Cost of
11 Equity.

12 When all this is added together, the total
13 damages calculated as of April 1, 2020, including
14 pre-award interest, is just over [REDACTED].

15 With that, I will pass the floor to
16 Mr. Concepción and the time that we have left to sum
17 things up.

18 PRESIDENT SHORE: A little over our time, but
19 Mr. Concepción, we want to hear from you, so you will
20 get extra time.

21 MR. WEISBURG: Fine. We don't object.

22 PRESIDENT SHORE: All right. Thank you.

1 ARBITRATOR DOUGLAS: Just before you hand
2 over, I just have a follow-up question to my last one,
3 really.

4 MR. KOTUBY: Yes.

5 ARBITRATOR DOUGLAS: If you go back to
6 Page 69 of your Slides and, again, I'm just probing
7 you a little bit on your alternative case in the event
8 that the coordinated campaign theory is not there.

9 MR. KOTUBY: Yeah.

10 ARBITRATOR DOUGLAS: When we look at these
11 individual breaches, what is your position on the
12 significance of the Contracts? So, take the first
13 one, for example. If it turns out that there's a
14 contractual justification for refusing to sign a
15 change order, is that a complete answer to the Claim,
16 or is there something else that nonetheless might
17 attract the responsibility of the State, even if it's
18 within its contractual rights?

19 MR. KOTUBY: Well, I think it depends on how
20 this is being done, Professor Douglas. I think
21 it--when it's done through refusing to sign change
22 orders that are within a Government agency, then you

1 have something that is very sovereign happening. It
2 is not just contractual at that point.

3 The specific things that become very, very
4 clear are Number 4 and 5 for instance. These aren't
5 things that a private party can do, slashing budgets
6 out of a national budget for instance.

7 Administratively terminating contracts through
8 legislative Decrees. These are things that are
9 inherently sovereign.

10 We get into a grayer area, I think, when we
11 talk about refusing to sign change orders, admittedly,
12 but we will still say that the way this was all set
13 up, that had to go through these specific Government
14 agencies in a regulatory and regulated manner, still
15 involves the State responsibility.

16 ARBITRATOR DOUGLAS: But what's the theory of
17 responsibility in this alternative scenario, though?
18 Just because something is sovereign doesn't mean it's
19 a breach, obviously. It has to be a--it has to breach
20 an obligation.

21 MR. KOTUBY: Sure.

22 ARBITRATOR DOUGLAS: And what's the--if

1 there's a contractual justification or, perhaps, even
2 in relation to the budget situation, what's the theory
3 of responsibility in the absence of a coordinated
4 campaign?

5 MR. KOTUBY: Yeah. Tied to the Treaties?

6 ARBITRATOR DOUGLAS: Yeah.

7 MR. KOTUBY: Oh, I think the theory of
8 responsibility there could be certainly an
9 expropriation. I mean, you have a situation where
10 this 30 percent of our Contracts was taken away from
11 us, and with that, with that administrative
12 termination, we were precluded, Omega was precluded
13 from bidding on any future contracts for years.

14 And we can also go to the fair and equitable
15 treatment standard, which under any standard, includes
16 arbitrary treatment. And if this was slashed from the
17 budget in an arbitrary and capricious manner, then I
18 think you have State liability, State responsibility
19 under the Treaties.

20 ARBITRATOR DOUGLAS: So, that's the test,
21 then, it's arbitrary, it's--

22 MR. KOTUBY: Sure. Arbitrary--and we will be

1 going into this in--in quite detail in our
2 Post-Hearing Submissions now that the United States
3 has weighed in on the Treaty standards. I didn't want
4 to trespass on that here. But I think that's the core
5 of what you are asking for here.

6 ARBITRATOR DOUGLAS: Okay. Thank you.

7 (Interruption.)

8 MR. CONCEPCIÓN: Mr. President, and Members
9 of the Tribunal. It has been a long road for
10 Claimants to clear their name and vindicate their
11 rights. Six years ago, at the dawn of 2014, they had
12 a profitable and successful investment in Panamá with
13 lucrative contracts and a strong working relationship
14 with the country's Government, Ministries, and
15 Agencies. They were all set to service the
16 construction boom that was contributing to Panamá's
17 development.

18 Within a year it all came to a grinding halt,
19 and within two years, by the end of 2015, virtually
20 nothing was left. As early as 2008, Claimants went to
21 Panamá willing to invest in Projects that contributed
22 to the country's development. But due to the actions

1 of Respondent since May 2014, Claimants instead were
2 left with a business and reputation destroyed
3 worldwide and with a litany of problems.

4 First, due to the bogus detention order and
5 Interpol Red Notice based on no credible evidence,
6 Claimants' surety companies removed Claimants' bonding
7 capacity for all operations in Panamá and the U.S.
8 Similarly, due to Respondent's sabotage of Claimants'
9 Projects since May 2014, Claimants face actual and
10 potential third-party claims from financing entities
11 and surety companies.

12 And on a personal level, for more than
13 four years since the start of Respondent's attacks,
14 Mr. Rivera, a father of four, could not even get a job
15 back in the United States to support his family.
16 Respondent's actions in this matter have been nothing
17 short of shocking and egregious.

18 Administrations come and go everywhere around
19 the world, but the political transition is not
20 supposed to leave in its wake the shattered assets of
21 the foreign investors who came before.

22 This was a paradigmatic investment, lawfully

1 established and operated, and destroyed through
2 quintessential sovereign conduct from the highest
3 reaches of the Panamá government. It is this type of
4 wrong that the investment regime was designed to
5 right, and we look forward to having this Tribunal's
6 attention as we ask it to do so. Thank you.

7 PRESIDENT SHORE: Thank you, Mr. Concepción.

8 Thank you, Counsel for Claimants, for your
9 Opening. Very much appreciated.

10 We now have a slightly early, but a 15-minute
11 break before Respondent's Opening statement. So,
12 let's reconvene at whatever 15 plus the time is now.
13 Thank you.

14 (Brief recess.)

15 PRESIDENT SHORE: Back on the record.

16 Mr. Weisburg, over to you for Respondent's
17 Opening Statement.

18 MR. WEISBURG: Thank you, Mr. Shore.

19 OPENING STATEMENT BY COUNSEL FOR RESPONDENT

20 MR. WEISBURG: So, I'll be sharing the duties
21 with Mr. Ryan, to my left, and, of course, we're going
22 to address jurisdiction and the merits and damages.

1 And we have--accompanied by some slides, a far lower
2 number than we have seen before and which you should
3 have.

4 And just to start at the beginning, of
5 course, Respondent is the Republic of Panamá, a
6 constitutional republic with an elected president
7 serving on a single five-year term. The population of
8 Panamá is about 4.2 million people. And so, it's
9 roughly, very slightly larger than Puerto Rico but not
10 by much. It has two major cities: Panama City, which
11 is on the Pacific side, and Colón, on the Caribbean or
12 Atlantic side, and it's--of course, it's most famous
13 feature, the Panamá Canal runs roughly between Panama
14 City and Colón. Panamá is 400 miles, east to west,
15 being from Colombia to Costa Rica.

16 And, of course, the Claimant, as to whom, I
17 must say, we have about as different a view as one
18 could have, is Omega, a contractor with--to put it
19 politely--a mixed reputation, and its sole owner,
20 Mr. Rivera. Omega, we would say, fled Puerto Rico for
21 Panamá in approximately 2010. It has occasionally
22 been portrayed in Claimants' papers as "adding

1 Panamá," but it is clear, as we'll show in a second,
2 that Omega exited Puerto Rico under a cloud. The
3 proof for that transition is multiple. First of all,
4 of course, Mr. Rivera, previously a permanent resident
5 and, I guess, a child of Puerto Rico moved to Panamá
6 in 2010 after his lifetime in Puerto Rico.

7 Further proof, numeric proof is, as of 2013,
8 Omega's backlog, which is, of course, is the remaining
9 income on their incomplete contracts, was
10 94.17 percent in Panamá and only 5.83 percent in
11 Puerto Rico. So, they had almost nothing left in
12 Puerto Rico, and the business had virtually completely
13 transitioned.

14 Further proof is that Omega had big problems
15 in Puerto Rico. And primarily it was losing a lot of
16 money, as we've shown on this slide. Just a note, and
17 you probably know this, unlike the usual structures we
18 see in cases like this, Omega-Panamá is not a
19 subsidiary of Omega-U.S. Both Omega-U.S. and
20 Omega-Panamá are each directly owned by Mr. Rivera.
21 But as this slide shows, this business was suffering
22 badly, and one notes, to compare this to the damage

1 claim articulated, I think, by Mr. Kotuby of
2 [REDACTED], we suggest that even if we're talking
3 about liability and damages here, it's just outlandish
4 to think that this business could ever generate a
5 damage claim of [REDACTED]. And Mr. Ryan will
6 address that further.

7 And why was the Claimant losing so much money
8 in Puerto Rico? Well, as the record makes clear--and
9 this is evidence produced by our Accounting Experts,
10 they were guilty in Puerto Rico of shoddy work. They
11 had a poor reputation, their bank pulled its financing
12 and sued it, so a long and sorry history in Puerto
13 Rico being replicated, we would say, in Panamá. This
14 was, frankly, just not a sustainable business.

15 On top of the difficulties in Puerto Rico,
16 which led it to flee to Panamá, after a very short
17 flash in the pan, Omega was abandoning Panamá as well.
18 And this is a critical point. Its last bid, the last
19 bid made by this contractor, was in 2013, and it had
20 been in decline even before that. So, here's the
21 history of Panamá's bids in Panamá--I mean of Omega's
22 bids in Panamá.

1 First of all, what is not here, there is some
2 very mysterious--and we'll find out about this, I'm
3 sure, in the examinations--references to the fact that
4 Omega's initial bids--and the Compass Lexecon Report
5 suggests there were eight of them--were for
6 commercial, not governmental projects. We don't have
7 the precise date for those, but the suggestion is they
8 were in 2009. So, excluded from this are eight
9 commercial bids which--all of which were lost. They
10 were not successful bids.

11 Also excluded from this is the one bid that
12 was done in the name of PR Solutions and not in the
13 name of Omega. So, what's left are these 42 bids.
14 And this is where we hope that this handout that we've
15 given you will be helpful, just because we think that
16 there will be a lot of discussion of the various bids,
17 and we think this is a good chronological presentation
18 of those bids.

19 And to go through this quickly, so the
20 remaining 42, so axe the one PR Solutions' bid and axe
21 the commercial bids, which we don't know too much
22 about, we have these 42 bids. We've put a timeline on

1 here, which shows you that 35 of the 42 bids, which is
2 83 percent, were made in 2010 and 2011, and only a
3 handful, a very small number, were made in 2012 and
4 2013, and there were no bids thereafter.

5 Of course, all this focus on Varela and what
6 he did and put the hammer down when he became
7 president, well, he didn't take office until
8 July 2014. So, in terms of the majority of the bids,
9 they were 2.5 years--the last bid of 2011 was
10 2.5 years before Mr. Varela took office, and the
11 number of bids made in the closer-in years, 2012 and
12 2013, as they said, are just a handful.

13 Of these 42 bids, two were canceled, so they
14 never got to contract. One is Number 3, and for some
15 reason--and these are coming from the way that the
16 Claimant catalogs them--Number 28 was also canceled.
17 It shows as a one, but they never got to contract, so
18 that was canceled precontractually. 31 of the
19 remaining bids were lost; in other words, they didn't
20 get the Contract. And the remaining--subtract all
21 that from 42, and you get the eight that are the
22 subject of this proceeding. So, I hope this is

1 helpful.

2 So, again, our main point here that we think
3 is to be drawn from this is that this business was in
4 rapid decline a couple of years before Mr. Varela ever
5 got close to being president. Also, a critical fact
6 in terms of our understanding that this business was
7 actually in decline and close to being shut down is
8 that Mr. Rivera himself moved to Miami. As he said,
9 on a sort of part-time basis in 2013 and as soon as
10 school was out--because some or all of his children
11 were with him in Panamá--he moved full-time to Miami.
12 So, that's mid-2014. So, again, that's before
13 Mr. Varela even took office.

14 Now, I'm going to address--both Chris and I
15 will do some various portions of corruption as our
16 main defense in our jurisdictional challenge, and then
17 Chris will talk more about the Projects and damages.

18 Of course, the ICSID law and other public
19 international law is now clear that proof of--and the
20 contractual setting that proof of corruption and the
21 procurement of the Contract deprives a Claimant of
22 jurisdiction. And I would note that a lot of these

1 cases, most of these cases, do not involve anything
2 like a criminal conviction, and in some of these
3 cases, in fact, both Parties have denied that there
4 was corruption, while the Tribunal concluded that,
5 nevertheless, there was.

6 We also--at the outset here, we take issue
7 with the Claimants' statement as to what--and,
8 actually, the United States' position, in its
9 Memorial, as to what the standard of proof is, and we
10 think it's a reasonable standard and not a clear and
11 compelling or clear and convincing standard.

12 As to the corruption itself, we think the
13 proof is incontrovertible. The fingerprints or the
14 paw prints and the signature and the participation of
15 Mr. Moncada Luna is all over this, and we need to
16 emphasize that how unusual this case is that the bribe
17 recipient has pled guilty and served three years in
18 the penitentiary so--and lost his job, of course, and
19 lost the Project, the apartments that he bought with
20 the proceeds of the corruption. So, it makes for
21 something of an unusual case.

22 To just go through that and to show how this

1 corruption operated, the contract for the construction
2 of what we all call "La Chorrera Courthouse,"
3 La Chorrera is sort of suburban Panama City. We were
4 actually out to see this Project, but--or this
5 incomplete Project, but here is the Contract, at C-48,
6 and it provides for a 15 percent advance payment. It
7 is clearly signed by both Mr. Moncada Luna and
8 Mr. Rivera, and the participation of Mr. Moncada Luna
9 in this contract was not remote and, frankly, is not
10 in debate.

11 Ms. Ríos, our Witness from the judiciary, who
12 the Claimants have declined to call here, has provided
13 unchallenged testimony as to Mr. Moncada Luna's role,
14 and she said--and this is from R-127: "He called me
15 the first day of his work and told me that he operated
16 differently and that I was the administrative
17 secretary and that he was the one who made all the
18 Decisions."

19 So, he clearly took charge, and once this
20 Contract took effect and was triggered, that first
21 initial payment was made on April 3 of about
22 2.4 million. It went to, of course, Omega

1 Engineering. Later that same month, Omega Engineering
2 took 250,000 from the same account into which the
3 payment had been made and sent it to Mr. Rivera's
4 other company, PR Solutions, which then passed it on
5 to the infamous Ms. Reyna.

6 There is no doubt that Ms. Reyna is on the
7 wrong side of the law, and maybe in Hollywood
8 terminology, she's a bad lady. She is somebody whose
9 job is to facilitate corrupt transactions, and that is
10 something that she herself essentially has admitted
11 to. And Ms. Reyna, whose account was empty--it had, I
12 think, \$1,800 in it at the time that the 250
13 arrived--without any further deposits, she then moved
14 125 of that 250 to Sarelan. Sarelan is the company of
15 Mr. Moncada Luna.

16 And one of the Witnesses in the investigation
17 that was subsequently done in Panamá, Ms. Ana Bouche,
18 who was the judge's secretary, testified that: "As
19 for Sarelan, I'm aware of its existence because
20 Mr. Moncada Luna, being a court justice, asked me to
21 help him process its establishment and asked me to
22 support him by listing one of his family members as

1 its president and legal representative since his
2 intention was to use it to establish an estate for his
3 minor son. For this reason, I began the process to
4 draft the Corporate Articles of Incorporation and send
5 them to Notary Two by email in order for formalization
6 for a public document."

7 She goes on to say: "I was to coordinate by
8 email with the office of--another functionary--for the
9 issuance of a Sarelan Corporation Share Certificate
10 for 100 percent of the shares for Alejandro Moncada
11 Luna, the Chief Justice."

12 So, no question that Sarelan was the Chief
13 Justice's vehicle and into which as that first payment
14 flow showed \$150,000. That money then went straight
15 to buy a co-op or a condo unit called Ocean Sky.
16 There was then a second funds flow out of the second
17 payment made by the Judiciary to Omega, the payment a
18 couple months later, \$587,000, \$250,000. So, a huge
19 percentage of that payment went to PR Solutions. PR
20 Solutions--I think this is over a weekend, so
21 virtually the next business day--sent it to Reyna.
22 Reyna broke it into two payments. Again, she had

1 insufficient funds in her account to do this but for
2 the receipt of the payment from PR Solutions, and she
3 sent a further \$150,000 to Sarelan.

4 This did not ultimately escape notice of the
5 authorities, and, as you know, in Panamá, when it
6 comes to senior government officers, the National
7 Assembly acts, says the Court--they are not subject to
8 prosecution before the regular criminal courts but
9 before the National Assembly, so this proceeding
10 involving Moncada Luna was before the National
11 Assembly. He pled guilty to two crimes. He was
12 sentenced to 60 months, and he suffered the
13 confiscation of the two apartments that were purchased
14 with funds that had come from Omega. Pretty much
15 clear as a bell.

16 Now, as we have said, and I think it was
17 essentially admitted, Reyna admits that this Omega
18 money was paid to Sarelan, and Mr. Rivera is coy about
19 it. I don't think he--he sometimes denies it, and he
20 sometimes seems to admit to it while denying
21 responsibility. We'll just have to see what he has to
22 say about that when he takes the stand.

1 Claimants' excuses for all this: First of
2 all, they rely on Ms. Jimenez, who I understand is
3 here today, which I would suggest--who presents what I
4 would suggest is a very unconvincing opinion. She
5 seems to say--and it's not--spent a lot of time
6 looking at it, it is not clear to me, but she seems to
7 say that an Omega to Moncada Luna transfer is okay
8 absent proof of corrupt action. I think it speaks for
9 itself. I don't know if any further proof is
10 required, but we'll have to see.

11 She adds to that proof of corrupt action, she
12 says only a Rivera confession is good enough. We all
13 know that--we don't usually get confessions from the
14 bad guy. And so, I would debate whether that is the
15 law that applies in any kind of arbitral setting, but
16 that's what she seems to say. She also says it's
17 irrelevant that Sarelan belonged to Moncada Luna. I
18 don't quite understand that.

19 And then she also says that the fact that
20 Ms. Ríos didn't receive a confession herself from
21 Moncada Luna renders Ms. Ríos' testimony irrelevant as
22 well. We'll have to see.

1 Claimants' primary excuse, which we heard
2 something about this morning is the--we have different
3 names for it, but we call it the Tonosí land purchase
4 and--which we think is, frankly, pretextual rubbish.
5 It is admitted. It is shared that the money didn't go
6 to the seller, the seller never got anything, and the
7 title never passed. So, those things don't seem to be
8 the subject of debate. But there is reliance by
9 Claimants on the Contract for the sale of the Tonosí
10 property, but we think the Contract itself is proof
11 that this was all bogus and spurious.

12 First of all--and we have the Contract up.
13 It's a very short document, I think it's 2.5 pages.
14 First of all, the purchase price is itself suspicious
15 because we know and it's in the record that just
16 five years previously, the purported seller had
17 purchased this land for \$30,000, and now they were
18 selling it for 1 million. So, that itself raises some
19 question marks.

20 Second, there was a 50 percent advance
21 payment. So, of the million dollars, 500,000 of it
22 was to be paid before we got anywhere near a closing,

1 which is extraordinary and itself suspicious. Those
2 of us who live in New York and, I guess, the United
3 States generally, we are used to 10 percent, seems to
4 be the rule of thumb in the United States. And
5 Mr.--Judge Arjona, our Expert on Panamanian law has
6 also testified that the standard in Panamá is 10 to
7 15 percent. Even ARC, the Claimants' real estate
8 Expert agrees that it is not 50 percent, and they
9 suggest it is 20 to 30 percent, but they agree it is
10 not 50 percent. So, that's an extraordinary payment.

11 Second or third, we have this also
12 extraordinary typo, unbelievable typo, where in one
13 place, in terms of these advances, they talk about
14 500,000, but then they say in the second line in
15 numerically 750,000, and Mr. Rivera says: "Oh, that's
16 irrelevant." I mean, it is pretty shocking, I would
17 say.

18 Next, this Contract provides for the posting
19 of a Letter of Credit, irrevocable Letter of Credit.
20 Never posted. Also, there is a blank--there's a spot
21 where the identity and the telephone number and the
22 fax number and all that for the seller was supposed to

1 be added, and it was not added, so it's blank.
2 Perhaps another crucial, maybe one of the most crucial
3 errors, is this is supposed to be dated, and it has a
4 month and a year, but it does not have the date, and
5 that is critical because there are four or five events
6 including, for example, the posting--the delivery of
7 the deposit, the posting of the LC, et cetera, that
8 were key to this day, but this day is not here. So,
9 again, a totally de facto instrument.

10 The signatures are not authenticated--I mean,
11 are not notarized, so we don't know if these people
12 actually signed them. Mr. Rivera says, well, he
13 trusted Ms. Reyna; he didn't know her, but he trusted
14 her. But there is no notarization. There's
15 also--even if they were notarized, there's no proof of
16 authority. How do we know that Ms. Reyna or the
17 lawyer who signed on behalf of Mr. Rivera's vehicle
18 had authority to sign? No proof of that. And the
19 whole document is not in the form of a deed as
20 recognized in Panamá and, therefore, not capable of
21 being filed in the Public Registry. So, totally
22 spurious proof, we think, of an effort to create a

1 screen or a pretext to say that there was no
2 corruption.

3 One of--we've heard this discussed earlier.
4 One of Mr. Rivera's main defenses is: "Well, I hired
5 the Freshfields, the Wachtell Lipton, the Jones Day of
6 Panamá, and the IGRA Law Firm, and there is no way
7 they would be involved in anything inappropriate."
8 And he refers to it, like, eight to ten times: "They
9 negotiated for me. They advised. They drafted. They
10 structured." These are all the verbs that he used.

11 What did they really do? The first thing is
12 we know they got the Contract only on April 22, 2013.
13 On April 25, Ms. Ana Graciela, another person who one
14 would have expected to testify here who hasn't, writes
15 back to Mr. López, who we are about to meet, and
16 says: "[REDACTED]

17 [REDACTED]
18 [REDACTED]." Well, as we've seen, [REDACTED]
19 [REDACTED], but anyway--and the next day Mr. López
20 passes it on to Mr. Rivera. So, that's the extent of
21 the scrutiny by the IGRA law firm.

22 Furthermore, as that level of activity

1 suggests, their bill was \$850, so just not likely to
2 have involved any kind of in-depth work.

3 PRESIDENT SHORE: Sorry, Mr. Weisburg.
4 Professor Naón?

5 ARBITRATOR GRIGERA NAÓN: Yes, just one
6 question. My understanding is that the Claimant is
7 saying: Where is the quid pro quo? To use a
8 politically charged expression, what is the quid pro
9 quid here? On one hand, the payment took place months
10 after the Contract was really awarded to Mr. Rivera.

11 MR. WEISBURG: It took place--the first
12 payment was basically at the point in time when work
13 was instructed to be done. Work was about to
14 commence.

15 ARBITRATOR GRIGERA NAÓN: But not when the
16 Contract was awarded?

17 MR. WEISBURG: No. The Award process is
18 protracted; right? So, first it's awarded by the
19 appropriate Ministry--in this case, the Judiciary.
20 Then, as we've heard--and we will, no doubt, hear a
21 lot more--it then has to be countersigned by the
22 Comptroller General before it's a fact.

1 ARBITRATOR GRIGERA NAÓN: Yes.

2 MR. WEISBURG: And then--I forget the exact
3 name of the document, but the agency has to give a
4 final supply--supply a final document which is
5 basically "start work." And it's in that--it's in the
6 period of that instruction, the "start work"
7 instruction, that this first payment was made and the
8 first money was recycled.

9 ARBITRATOR GRIGERA NAÓN: But after the
10 Comptroller General had approved?

11 MR. WEISBURG: Correct, because until the
12 Comptroller General approves, the Contract is not in
13 effect.

14 ARBITRATOR GRIGERA NAÓN: Okay. Thank you.

15 MR. WEISBURG: Also missing from this real
16 estate transaction: There was no survey done on this
17 undeveloped land, there was no appraisal, and there
18 was no topographical study. And if you've seen the
19 pictures of this land from the sky, you can see there
20 are very steep sections of it, and you would have
21 expected a topographical study.

22 Of course, and we've had reference to this,

1 there has been no pursuit by Mr. Rivera of the
2 \$500,000, with shifting excuses as to why, and I would
3 suggest the Tribunal compare Paragraph 98 from his
4 first Witness Statement to Paragraph 17 of his Third,
5 where he gives a very different picture about what he
6 plans to do. In the first one, he says, "As soon as I
7 can get back to Panamá, I'm going after this hammer
8 and tongs," and the third one says, "Well, I may never
9 do it. I've got too many other things to do." So,
10 that's that. So, we believe that this corruption is
11 proven beyond debate and provides a complete defense.

12 I'm going to very briefly address one other
13 jurisdictional point. I'm doing it sort of out of
14 order, but I don't want to interrupt Chris when he
15 takes over, which is the point that Mr. Kotuby also
16 addressed, that claims--those contract claims that
17 arise under the BIT, which are five of the eight, must
18 be resolved through the previously agreed contractual
19 dispute-resolution provisions. And we think that that
20 is quite clear. The BIT itself says that where it
21 says, in the second line, "the dispute shall be
22 submitted for settlement in accordance with the

1 applicable dispute-settlement procedures upon which
2 the Parties have previously agreed." And, as we've
3 seen, for example, in the three health Ministry--the
4 so-called "MINSA CAPSI contracts," all three of them
5 have an arbitration clause, which is in front of you.
6 And the other two contracts as well have
7 dispute-resolution provisions. So, we think that
8 those disputes, and particularly in view of how
9 contractual these disputes are, clearly appropriately
10 belong before the Parties' previously agreed
11 dispute-resolution provisions.

12 And, with that--

13 ARBITRATOR DOUGLAS: Could I just ask you the
14 mirror image of the question I asked the Claimants?

15 MR. WEISBURG: Sure.

16 ARBITRATOR DOUGLAS: If it is proven that
17 there was a coordinated campaign against the
18 Claimants, would you accept that that is not a dispute
19 that would need to be submitted to the contractual
20 form in the contracts?

21 MR. WEISBURG: No. We think that, under the
22 terms of this perhaps unusual BIT, these contractual

1 mechanisms are what would dictate.

2 ARBITRATOR DOUGLAS: Even in circumstances
3 where it could be proven that there was a conspiracy
4 at the highest level of Government to target the
5 Claimants?

6 MR. WEISBURG: We hope you won't reach that
7 conclusion, but yes, even in that circumstance.

8 ARBITRATOR DOUGLAS: Okay.

9 MR. WEISBURG: So, Chris--if we can have two
10 seconds, we will switch places.

11 MR. RYAN: Thank you, Henry.

12 Mr. President, Members of the Tribunal, my
13 name is Chris Ryan. I'm going to continue with our
14 Opening Statement, and will touch briefly on the other
15 jurisdictional challenges that have been raised by the
16 Republic as well as to cover, like Claimants did, the
17 structural framework for assessing the merits of the
18 case, and then talk about quantum at the end.

19 So, our second jurisdictional challenge is
20 that the Claimants have asserted commercial claims.
21 We've heard today from the Claimants that it's absurd
22 that we could characterize this as merely a series of

1 commercial claims under an ordinary contractual
2 relationship. But that is, in fact, what we have
3 here, and the most instructive thing to look at,
4 perhaps, is the words of the Claimants themselves and
5 how they have characterized their claims.

6 And as we can see on this slide, when you
7 look at how they have characterized their claims under
8 the four headings that they have raised--and I will
9 note that in their memorial, they had a fifth
10 stand-alone heading of "unreasonable arbitrary
11 discriminatory claims"; that was abandoned in their
12 reply submission, so we have not addressed that
13 specifically here. But when you look at each of the
14 heads of claim that they have asserted here and look
15 at the language they have used to characterize their
16 claims, you can see that these are fundamentally
17 commercial in nature.

18 Once the Varela Administration took charge,
19 each of the Government entities with which the Omega
20 Consortium had contracted breached their respective
21 obligations almost simultaneously. Fair and equitable
22 treatment, an important and legitimate expectation of

1 any foreign investors that the State will comply with
2 its contractual obligations, full protection and
3 security, contractual right to payment for work
4 performed under the Contracts, was a cornerstone of
5 the financial security that the Claimants enjoyed.
6 And then, obviously, the umbrella clause itself is
7 predicated on the notion of breach of contract.

8 The difficulty, of course, is that
9 International Investment Law does not apply to protect
10 foreign investors or foreign investments against
11 ordinary commercial disputes. It is not a substitute
12 for domestic law in terms of resolving commercial
13 claims. It is not a vehicle by which foreign
14 investors can take commercial claims out of domestic
15 courts in the hope of getting before what they may
16 perceive as a more independent and neutral dispute
17 resolution forum. Indeed, the BIT, the TPA, and ICSID
18 Article 25 itself made clear that the scope of the
19 Parties' consent to arbitrate and the jurisdiction of
20 this Tribunal extends solely to investment claims.

21 The Claimants have not done that. They have
22 asserted claims with a motivation of political intent

1 and political motivation, but when you look at the
2 unlawful actions that they set forth, when you look at
3 the Claims themselves, they relate to the failure to
4 pay invoices, the failure to timely agree to,
5 extensions of a contract, decisions by an owner to
6 terminate a contract or to allow a project to expire.
7 These are inherently commercial actions.

8 States have the ability, when they contract,
9 to act in a commercial capacity, and in so acting,
10 they have the ability to act in a commercial capacity,
11 so, when a State breaches a contract, if a State at
12 all has breached a contract, that action must be
13 looked at to see whether it is equivalent to one that
14 an ordinary owner could take, an action that could be
15 taken in the ordinary course of a commercial
16 relationship.

17 The allegations that we see underlying each
18 of the Claimants' Claims are predicated on standard
19 actions that arise in ordinary construction disputes
20 between owners and contractors: Payment, extensions
21 of time, and whether the Contractor in the face of
22 clear defaults should be allowed to continue

1 performing or not. The way that Claimants try to get
2 around this is that these are--they say these actions
3 were politically motivated, and you can see this in
4 their pleadings themselves: "When Mr. Varela assumed
5 the office of the Presidency in 2014, the new
6 Government promptly targeted Mr. Rivera and Omega with
7 a number of hostile measures. Outstanding invoices
8 from the Omega Consortium went completely unpaid.
9 Respondent failed to provide permits and change orders
10 and declared default on their largest contract and
11 terminated or abandoned others."

12 The Claimants themselves have linked the
13 commercial actions to political motivation. So,
14 Professor Douglas asked the question: If the
15 political motivation falls away, the Claimants
16 themselves have put forward--by their own words, have
17 put forward simply ordinary commercial actions that do
18 not fall within the scope of consent to arbitrate and
19 do not fall within the scope of protections provided
20 under the BIT, the TPA, or ICSID.

21 ARBITRATOR DOUGLAS: The question is, though,
22 if the political campaign can be proven, does that

1 take it outside the commercial context then?

2 MR. RYAN: If the political campaign can be
3 proven, it does not automatically and necessarily
4 create liability for the State. If the political
5 campaign is proven, then, at most, you could perhaps
6 ascribe sovereign responsibility to the actions, but
7 sovereign action against a foreign contractor is not,
8 per se, violative of a treaty.

9 You would have to measure each of the actions
10 and the consequences of those actions against the
11 relevant Treaty standards, and we submit that, when
12 you do, you would find that those actions do not rise
13 to the level of having breached the standards for
14 expropriation, fair and equitable treatment, and full
15 protection and security.

16 ARBITRATOR GRIGERA NAÓN: But following up on
17 that, are you excluding the possibility of specific
18 State actions--for example, the Comptroller General
19 not approving certain payments or what have you--those
20 acts of a State cannot be an interference with
21 contractual obligations and, because of that, give
22 rise to a claim under the Treaty?

1 MR. RYAN: Well, I think you need to look at
2 the context in which the Comptroller General, just
3 taking your example, is acting. The Comptroller
4 General acts in a capacity as sort of the last line of
5 defense, the last vetting mechanism, on payments and
6 on extensions of contract, and the way--what the
7 Comptroller General's office does is that it assures
8 that requests for extensions of contract meet all the
9 contractual requirements: That they are commercially
10 and technically sound, that they have satisfied--that
11 claims for payment are sufficiently supported in terms
12 of the work that is done. And there is a component
13 that says--forces them to ask whether, on a going
14 forward basis, there is a sufficient budget to allow
15 for these projects to go forward.

16 There are a variety of reasons why the
17 Comptroller General may deny, may delay, may return a
18 payment application or an addenda, that have to do
19 with the commercial insufficiency of the Project
20 itself. In that situation, I don't think you can--you
21 could ever say that those actions, while they may have
22 an effect on the contract because it would delay

1 payment beyond what would be provided for, rises to
2 the level of impugning international liability on the
3 State.

4 ARBITRATOR GRIGERA NAÓN: But what about if
5 the budget, the national budget, precisely excludes
6 the possibility of that payment?

7 MR. RYAN: So, you have a situation
8 where--and as Mr. Zarak in his Witness Statement
9 explained, the budgeting process is iterative. It is
10 one that evolves over time. It one where, on the day
11 the budget is passed, there is an expectation that
12 that budget will change over time, because the budget
13 is really based off of--particularly with respect to
14 construction projects--is based off of payments that
15 are known to be due in that particular fiscal year,
16 but there will be exceptions, there will be changes,
17 there will be horse trading among projects that will
18 allow for the extension of a budget.

19 In circumstances where, perhaps, a Government
20 changes a priority, I don't see how that, per se,
21 gives rise to international liability. I don't see
22 how that--the Decision of a Government to say: "I no

1 longer want to continue with a particular project"
2 would be any different than a CEO of a corporation
3 coming in and saying: "We changed our priorities and
4 we are no longer going to invest in-country X. We are
5 going to invest in Country Y. We are no longer going
6 to build this chlorine plant; we are going build
7 this"--whatever. It is--the allocation of budgets
8 among commercial projects is something that, while
9 undertaken through a Government process in this case,
10 is not one that necessarily is inherently sovereign.
11 It is one that can have clear commercial
12 considerations that are driving it.

13 PRESIDENT SHORE: I'm sorry to interrupt.

14 MR. RYAN: Please.

15 PRESIDENT SHORE: So, what would constitute,
16 in your framework, sovereign action as opposed to
17 something in the commercial realm if a Government
18 wanted to ruin a contractor?

19 MR. RYAN: So, in principle, if there was no
20 commercial justification for actions that were taken,
21 that may give rise to sovereign action that could be
22 seen as punitive. I do think in this case, where a

1 Government is acting in respect of commercial
2 operations, in the absence of, for example, the
3 passage of laws, or the passage of regulations that
4 are directly--that directly impair the economic value
5 of that asset, or make it impossible for that asset to
6 continue or that investment to continue, that could be
7 an issue. And I know the Claimants have spent time
8 arguing about process, and their particular focus was
9 on the INAC proceeding, and that process, however,
10 is--the abstract focus on process is not sufficient,
11 because there, for example, INAC, yes, terminated the
12 Contract through resolution. As a Government entity,
13 its obligation--that's the way it terminates a
14 contract: Through resolution.

15 You need to look at the intent behind that,
16 however. The mere fact that they terminated through a
17 Government resolution does not create an inherently
18 sovereign act that can give rise to international
19 liability. If I have a contract with you and I'm a
20 Government agency and I terminate you by resolution
21 for failing to show up for 120 days straight, yes, I
22 will have acted through a Government resolution, but

1 my motivation was commercial and my decisions were
2 commercially driven. And that's what would govern the
3 analysis of whether my conduct was sovereign or
4 commercial for purposes of these proceedings.

5 PRESIDENT SHORE: Thank you.

6 ARBITRATOR DOUGLAS: The dilemma, if I can
7 put it that way, is that you say that these are
8 commercial acts and there's no politically motivated
9 campaign. In order to demonstrate that, we need to
10 determine the rights and obligations under the
11 contracts and see whether or not the Government's
12 actions are commercially justified in that context.
13 So, on the one hand, you are saying these are
14 commercial disputes and, therefore, they should go to
15 another forum; but, on the other hand, your defense of
16 the Treaty claim depends on us looking at the rights
17 and obligations under the contract and what the
18 Government was within its rights to do under these
19 particular commercial relationships. So, there's a
20 bit of a tension, in a sense, and on the one hand,
21 you're saying this doesn't belong here at all.

22 But, on the other hand, you're saying, well,

1 in order to rebut the principal allegation from the
2 Claimants, which is that this is all one big
3 politically motivated campaign, you're looking at each
4 commercial relationship and saying, well, hang on,
5 this was justified because there was delay on the
6 contractor's part and so on and so forth.

7 MR. RYAN: I understand. There is a
8 difficulty in separating the two from the
9 jurisdictional basis from the merits. I understand
10 that.

11 ARBITRATOR DOUGLAS: But we need to address
12 your defense. We need to accept jurisdiction over
13 contractual aspects of the dispute.

14 MR. RYAN: I understand the difficulty, given
15 the nature of the particular claims that have been
16 asserted here.

17 I do want to focus before moving off of this
18 issue, however, is that--the notion that these actions
19 were driven by political motivation. The Claimants
20 have spent a fair amount of time on that in their
21 Opening and we'll hear a lot about that during the
22 course of these proceedings, I'm sure.

1 Claimants have argued that the political
2 motivation in this campaign of harassment that we've
3 heard about was caused either because Mr. Rivera
4 declined to provide a \$600,000 campaign contribution
5 to then-Candidate Varela who received a threat or
6 because of Omega's and Mr. Varela's association with
7 President Martinelli.

8 With respect to the campaign contribution,
9 the problem that we have, of course, is the only
10 evidence of this is the statement by Mr. Rivera in his
11 Witness Statement. There was nobody there. Nobody
12 attended the meeting. He was the only one that could
13 possibly have known of this. But, given the way this
14 has been characterized, given the importance of this,
15 given the way Claimants even today have suggested you
16 are either for Varela or against Varela and the
17 importance of this threat, what you noticeably do not
18 see in the record is any contemporaneous evidence that
19 this actually occurred.

20 Mr. Rivera at no point went back and sent an
21 email to his friend Ana Graciela, who was Omega's
22 lawyers and who purportedly set up the meeting and

1 said this is what just happened. Never sent any
2 emails or letters to anyone saying: "Uh oh, we need
3 to be careful. This is what just happened. I was
4 just threatened. How do we deal with this?" Given
5 the significance that this event purportedly had on
6 Mr. Rivera at the time, the absence of that is quite
7 telling.

8 With respect--and that stands, of course, in
9 contrast to President Varela's direct denial of this,
10 both in his Witness Statement and in the Varela Leaks
11 documents that the Claimants have submitted.

12 With respect to this point, I do want to note
13 one thing, though, and this relates back to Claimants'
14 Slide 23, and Claimants' Slide 23, the title of it is
15 that the Respondent falsely denies the La Trona
16 meeting ever occurred. And I would just ask the
17 Tribunal to take a look at the support that they put
18 for that supposed title. The highlighted section,
19 "according to the Claimants"--and this is taken from
20 the Respondent's Counter-Memorial. "According to the
21 Claimants, they were targeted because Mr. Rivera
22 refused to make a campaign contribution to

1 then-Candidate, now-President Juan Carlos Varela in
2 2012."

3 There is no credible evidence that this
4 request ever happened. Although Mr. Rivera references
5 this request in his Witness Statement, there is not a
6 single contemporaneous email, letter, or document in
7 evidence confirming his account. There is nothing
8 mentioned about the dinner there. There is nothing
9 mentioned about La Trona. There is nothing mentioned
10 about the meeting. It is a fundamental
11 mischaracterization that I submit plagues Claimants'
12 presentation of this information and suggests the sort
13 of caution that should be taken when Claimants are
14 presenting positions.

15 With respect to the Claim that the Claimants
16 were--and Mr. Rivera was targeted because of his
17 association with former President Martinelli, what do
18 we have as evidence? We have statements by either
19 unnamed witnesses or witnesses or individuals
20 proffered by Claimants who are not appearing in this
21 case. There is no opportunity for cross-examination.
22 They have not put forward Witness Statements. These

1 are, at best, hearsay statements that were purportedly
2 made to Mr. López. And we have no ability to test the
3 credibility of those statements by the maker nor do
4 you.

5 Ana Graciela Medina, who the Claimants
6 reportedly rely on and refer to as a friend, is an
7 obvious empty chair here because she was not called to
8 testify.

9 The one Witness that is available with
10 respect to cross-examination, who Claimants cited in
11 their Opening and cite in their Briefs, is
12 Mr. Barsallo, and they use the basis of this WhatsApp
13 communication and seem to pin an awful lot of
14 importance on a functionary at the Health Ministry
15 with respect to his knowledge of what President Varela
16 was doing. But in his Second Witness Statement,
17 Mr. Barsallo expressly denies having had direct
18 knowledge or knowledge of any conduct by Mr. Varela or
19 any knowledge of any campaign of harassment.

20 The criminal investigation does not change
21 the fundamental nature of the Claimants' claims. The
22 criminal investigation is a separate and distinct

1 item. And as Mr. Weisburg made clear, the criminal
2 investigation was predicated on the discovery during
3 the initial investigation of Justice Moncada Luna that
4 Mr. Rivera and Omega-Panamá were persons of interest.
5 So, there was fundamentally a legitimate government
6 basis for it conducting an investigation into
7 Mr. Rivera and into Omega-Panamá that was based on the
8 evidence that was discovered in the corruption
9 investigation of Justice Moncada Luna who ultimately
10 pled guilty. So, the fact of the investigation,
11 therefore, was a perfectly reasonable and legitimate
12 exercise of Panamá's police powers.

13 And second, it is just worth noting that the
14 Claimants have repeatedly mischaracterized what
15 actually happened. There were not multiple
16 investigations into Mr. Rivera and Omega-Panamá.
17 Rather, there was one investigation into Justice
18 Moncada Luna that was conducted by the National
19 Assembly. The National Assembly's jurisdiction
20 extended solely to Justice Moncada Luna due to his
21 position as a Supreme Court Justice.

22 During the course of that, Mr. Rivera,

1 Omega-Panamá, and others were identified as persons of
2 interest. Once the National Assembly's investigation
3 ended, those persons of interest were referred to the
4 federal prosecutors' office. And once that happened,
5 an investigation was opened by two offices within the
6 federal prosecutors' office: Organized crime and
7 anticorruption, both of which were capable of bringing
8 separate charges.

9 So, Mr. Rivera and the Claimants keep
10 repeatedly talking about a series of investigations
11 that were terminated and where they were proven to be
12 innocent; yet, subsequent investigations were started.
13 That is simply not the case. There was only one
14 investigation that was started by an agency that has
15 jurisdiction over Mr. Rivera and Omega-Panamá.

16 So, touching briefly on--I'm conscience of
17 time--touching briefly on the substantive claims that
18 are made. The Claimants argue that their investments
19 have been expropriated. The facts, however, show that
20 there was not a taking. The Claimants, as we've
21 talked about--and I won't belabor this--but the
22 Claimants have alleged a series of commercial claims;

1 however, even if the actions underlying those claims
2 were breaches of contract, which Panamá denies, the
3 mere breach of a contract by a Government is
4 insufficient to give rise to international liability.
5 A Government may be subjected to international
6 liability only where its breaches are done in an
7 inherently sovereign manner, which did not occur here.
8 There were no laws or regulations passed that caused
9 the alleged breaches; rather, the evidence shows that
10 the various Ministries and Municipalities involved
11 with Omega acted commercially with respect to their
12 individual projects. Projects deemed commercially
13 unviable were ended. Omega was defaulted where it
14 failed to meet its contractual obligations, and
15 throughout each project, the Government agencies
16 treated Claimants fairly and consistently.

17 The Ministries and municipalities acted as
18 ordinary commercial counterparties. This does not
19 rise to the level of a taking.

20 With respect to fair and equitable treatment,
21 it is, without question, that both the BIT and the TPA
22 linked the fair and equitable treatment standard to

1 the customary international law norms of Minimum
2 Standard of Treatment. This was commented on by the
3 United States, and we'll deal with this more directly
4 in the Post-Hearing Submissions, but the United States
5 agrees with this. And the customary international law
6 norms imposed a substantially high standard on
7 Claimants to prove that a Government has acted in bad
8 faith and in a way that their conduct and their
9 actions fall so far short of international standards
10 that a reasonable person would recognize its
11 insufficiency and have acted in a willful neglect of
12 its duty. That has not happened here.

13 But even if the tribunal and what else is
14 clear is that this concept of legitimate expectations
15 that has been argued by the Claimants as applicable
16 here has not risen to the level a customary
17 international law norm. So, if the Tribunal believes
18 and accepts that the customary international law norms
19 govern the application of FET and also full protection
20 and security, the concept of legitimate expectations
21 cannot be applied.

22 But even if the Tribunal were to accept the

1 legitimate expectations standards that the Claimants
2 have suggested here, they have not articulated a
3 single legitimate expectation that gives rise to a
4 violation of fair and equitable treatment. In fact,
5 the only legitimate expectation that they have claimed
6 is that of *pacta sunt servanda*, contracts will be
7 honored.

8 Generic--there are no stabilization clauses
9 here. There were no direct meetings between the
10 Government and the Claimants where promises were made
11 that induced their investment. There was never any
12 clear articulation of a standard that would affect
13 their expectations as to what their investment
14 environment would be in Panamá. The Claimants simply
15 say *pacta sunt servanda* is enough that the breach of a
16 contract gives rise to a breach of fair and equitable
17 treatment. It's an extraordinary claim. It would
18 effectively turn any breach of a contract by the
19 Government into a fair and equitable treatment breach,
20 and no Tribunal has gone that far and the leading
21 commentary on this makes clear that this is not a
22 standard that can be deemed to be part of the fair and

1 equitable treatment analysis.

2 Full protection and security is also governed
3 by the Minimum Standard of Treatment of customary
4 international law. This historically and even today
5 still protects investors against physical harm,
6 against the--requires the Government to take
7 reasonable measures that are designed to protect an
8 investor against physical harm by third parties. That
9 issue is not in play here. There is no allegation of
10 physical harm by third parties. The Claimants were
11 not subjected to physical harm. The Claimants, yes,
12 Mr. Rivera has articulated that he was injured as a
13 result of the--not physically injured, but he was
14 injured in terms of financial harm and reputational
15 harm as a result of the criminal investigation. That
16 criminal investigation, however, was a reasonable
17 exercise of State's legitimate police powers. State
18 cannot be told it cannot investigate somebody or it
19 will violate full protection and security. That just
20 simply does not comport with the requirements of what
21 full protection and security means.

22 Full protection and security does not, under

1 the customary international law standard, rise to the
2 level of protections against financial harm or
3 protections against, as we saw in the earlier slide,
4 the contractual right to payment for work performed.
5 It simply does not rise to that level.

6 The umbrella clause, the umbrella clauses do
7 not, per se, protect States against breaches of
8 commercial contracts. As was articulated in the
9 *El Paso v. Argentina Case*, the Tribunal there held
10 that the concept of an umbrella clause does not extend
11 to an ordinary commercial contract but it will extend
12 where a State has provided additional investment
13 protections on a contractual basis, such as through
14 the inclusion of a stabilization agreement in a
15 contract or a separate stabilization agreement. We
16 simply do not have that here.

17 Even if the Tribunal were to consider that
18 the umbrella clause applied, we note that the TPA does
19 not contain an umbrella clause, and to the extent that
20 Mr. Kotuby has articulated and that the TPA governs
21 everything, there is no umbrella clause in the TPA.
22 And if the umbrella clause is applied and the Tribunal

1 accepts that its applicable, Tribunals have held that,
2 where the umbrella clause is applied to deal with
3 contractual breaches, then the quantum must be limited
4 to that which would have been recoverable under the
5 Contract.

6 So, at best--at best, even if the umbrella
7 clause applies, the first pillar of the quantum, which
8 is losses under existing contracts, would be the upper
9 limit of what the Tribunal could award here.

10 Now, I'd like to talk--there has been
11 questions, so I don't know how you want to deal with
12 my timing. I'm going to go into quantum, and I'm
13 sensitive to time.

14 PRESIDENT SHORE: You've got 15 minutes.

15 MR. RYAN: Okay. Fine. The Claimants have
16 put forward a quantum case that asks for three pillars
17 of damages: Losses on future contracts, losses on
18 existing contracts, and moral damages. In each case,
19 the Claimants have failed to establish their
20 entitlement to the claimed losses and, frankly, the
21 amounts stated are--claimed are grossly overstated.

22 What's more troubling from our perspective

1 though is what we heard this morning from Claimants
2 about their quantum claim was a story of a quantum
3 analysis that perhaps they would have liked to have
4 done, but it is not the quantum analysis that they
5 did. It is not the--they put forward a quantum story
6 that is divorced from what their Damages Expert did
7 and divorced from what they have, in fact, asked you
8 to compensate them for.

9 So, I want to focus on, first, losses on
10 future contracts. Compass Lexecon said: "Losses on
11 new contracts estimated at USD 46.7 million as of
12 December 13, 2014, these losses relate to
13 Omega-Panamá's capacity to generate new contracts."

14 Claimants have focused--Claimants have
15 focused in their Opening Statement on the supposed
16 value of Mr. Rivera's goodwill and the intangible
17 assets contributed by Omega-U.S. They claim that
18 those must be compensated. It is important to note
19 and remember, however, that's not what the Claimants
20 asked for in their damages claim. They are saying
21 their entitlement to \$46.7 million is dependent upon
22 Omega-Panamá's capacity to generate new contracts.

1 Compass Lexecon says: "In order to
2 compensate Claimants for these losses suffered as a
3 result of the measures, the value of the Claimants'
4 interest in Omega-Panamá"--remember, we heard that
5 term from the Claimants this morning--they are seeking
6 to value their interest in Omega-Panamá--"the
7 Claimants' interest in Omega-Panamá should be
8 calculated using the Fair Market Value standard,
9 namely the value that a Willing Buyer and a Willing
10 Seller would have given to Omega-Panamá in a
11 hypothetical transaction as of December 2014."

12 So, according to the Claimants' Expert and,
13 therefore, the Claimants themselves, the value of
14 their interest is how much a hypothetical Seller would
15 have paid for Omega-Panamá as of December 2014.

16 When we look at the Claimants themselves, in
17 their Memorial--I'm sorry, in their Reply on the
18 Merits, the Claimants confirm the analysis that was
19 done by Compass Lexecon and the methodology and the
20 foundation of their interest, which they say is the
21 key to the issues of Omega-Panamá's ability to
22 generate valuable business into the future. Okay.

1 Now, what Compass Lexecon did, it says that
2 in their valuation, it says the evidence shows that
3 Omega-Panamá had a track record as well as competitive
4 advantages, and the use of titles here is important.
5 Omega-Panamá is a defined concept. Omega-Panamá is
6 Omega Engineering Inc., which is the local entity
7 incorporated into Panamá.

8 Throughout their pleadings, the Claimants
9 refer to Omega-U.S., Omega-Panamá, and the Omega
10 Consortium, and they differentiate when they need to
11 and they use those things very clearly. So, when they
12 are talking about the "consortium," they say the
13 Consortium. When they are talking about Omega-Panamá,
14 they say Omega-Panamá.

15 Evidence shows that Omega-Panamá had a track
16 record as well as competitive advantages.
17 Omega-Panamá showed competitive advantages due to its
18 financial capacity, bonding capacity, and experience
19 in construction works. Okay. So, that potentially
20 goes in as part of the valuation of what a
21 hypothetical Buyer would pay for Omega-Panamá.

22 However, if you look at the Memorial, the

1 Claimants themselves have said, while it carried the
2 Omega name, Omega-Panamá was a newly registered
3 Company without its own track record. This created
4 issues for Omega-Panamá when bidding. Omega-Panamá
5 was a drag on Omega's ability to win anything.

6 As we heard from Mr. Weisburg and we'll hear
7 throughout this, Omega-Panamá bid on a number of
8 Projects itself. It lost every single one. Claimants
9 go on to say, thanks to Omega-U.S.'s bonding capacity,
10 solid financials, track record, project portfolio and
11 other specifications customarily used by Project
12 owners to evaluate bid proposals, this arrangement
13 allowed Mr. Rivera to bid for larger Panamanian
14 Projects.

15 Okay. So, what we see here is that Compass
16 Lexecon's conclusion that Omega-Panamá showed
17 competitive advantages due to its financial capacity,
18 bonding capacity, and experience in construction works
19 is false. That was not Omega-Panamá. That was
20 Omega-U.S. in the background, providing through a
21 consortium, perhaps, the ability to secure financing
22 or to post bonds. There is no indication that

1 Omega-Panamá itself had the ability to do any of this.

2 Compass Lexecon also states: That, in fact,
3 during its participation in Panamanian market for
4 public works, Omega-Panamá competed in 42 bids for
5 public infrastructure tenders, winning 10 of them.
6 This too is false. If we look at the table of
7 Quadrant Economics, Panamá's Damages Experts, put
8 together, Omega-Panamá--this one has 41. Claimants
9 had 42.

10 We know both of those numbers don't reflect
11 the private bids that were made but keep that aside
12 for the moment. But even out of this number,
13 Omega-Panamá, without a partner, made 10 bids and lost
14 all 10. Omega-Panamá partnering with a third Party
15 made three bids, lost all three. The only bids that
16 were successful was where they entered into a
17 consortium with Omega-U.S.

18 And that is important, because in a Fair
19 Market Value analysis, when a hypothetical Buyer is
20 going to consider how much it is going to pay for
21 Omega-Panamá, it is not paying for the Consortium. It
22 is not buying this consortium. It is not buying

1 Omega-Panamá--or Omega-U.S.'s historical record. It
2 is not buying Omega-U.S.'s continued assistance.

3 The Buyer will take Omega-Panamá as it stands
4 on its own and will make or break its investment in
5 Panamá based on what value Omega-Panamá can bring to
6 it and, perhaps, what value it independently it can
7 bring to supplement what Omega-Panamá has itself.

8 So, the problem, of course, then is that
9 Claimants are attempting--Claimants' Experts and
10 Claimants are attempting to value Omega-Panamá. They
11 are now telling you that they want compensation for a
12 level of interest that is not what they valued before,
13 and the methodology that was applied to give a value
14 is fundamentally and fatally flawed. And the
15 absurdity, frankly, of their analysis is reflected in
16 the tables on Slide 30.

17 The red dotted line on the table on the left
18 is a reflection of Compass Lexecon's forecast for
19 Omega-Panamá of its values from 2015 to 2030, and
20 under Compass Lexecon's analysis, a hypothetical buyer
21 would pay for the value that is completely on the
22 shaded area. This is out to 2030. What this says is

1 that Compass Lexecon will give you a value above and
2 beyond what you could have had if you entered the
3 market on your own of up to \$6 million.

4 There is simply no factual support for that
5 as we've just shown. At most--at most, and this is
6 what Dr. Flores says in the table on the right. At
7 most, a Willing Buyer may be willing to give you a
8 slight ramp-up period.

9 And as Dr. Flores said, maybe if you give
10 them a ramp-up period, maybe a hypothetical Buyer
11 would pay for the shaded area on the right, but that,
12 of course, assumes that there is some value to
13 Omega-Panamá beyond the fact that it was a locally
14 incorporated Company capable of satisfying the local
15 incorporation requirements. And as the evidence
16 shows, that is not the case.

17 Losses on existing Contracts, principally my
18 concerns and my problems with respect to the
19 Claimants' Claims for losses on existing Contracts is
20 that they are dealing with time value of money in a
21 way that overcompensates the Claimants at each turn.

22 So, what we see here is the Claimants are

1 asking for \$8.7 million with an upward adjustment to
2 account for interest and time. The problem is,
3 Dr. Flores has pointed out, is that in doing so they
4 have compensated the Claimants for the time value of
5 money in a way that overstates the value. They have
6 applied an update factor that deals--that provides too
7 much money because it takes into account risks that
8 were not encountered.

9 It discounts Expected Cash Flows using a Cost
10 of Equity that does not properly measure risks, it
11 discounts the value of advance payments, which were in
12 hand in the Claimants' possession as if they were
13 future payments to be received and, therefore,
14 subjected to a level of risk that never existed, and
15 it includes amounts that were not due and payable
16 under law, and Dr. Flores will be able to explain that
17 in substantially more detail than I can in this
18 limited period of time.

19 PRESIDENT SHORE: Mr. Ryan, you are a fast
20 talker, and the interpreters will require less fast
21 talking, and, in addition, we'll give you a couple of
22 more minutes. So, don't try to race through it. You

1 actually have five more minutes.

2 MR. RYAN: Okay.

3 PRESIDENT SHORE: So, if you are slower, it
4 is better. Your volume is good, because I'm deaf in
5 one ear, and I'm hearing you fine.

6 MR. RYAN: Okay. I appreciate that, and I
7 offer my apologies to the Tribunal and the
8 interpreters and my sincerest apologies, because this
9 will not be the first time that I have to say I'm
10 sorry.

11 PRESIDENT SHORE: I had a feeling.

12 MR. RYAN: So, but thank you.

13 Finally, the Claimants have asked for at
14 least [REDACTED] in damages. And it is interesting
15 that the Claimants only specify this request for
16 [REDACTED], at least [REDACTED] in their Reply. They
17 make reference to moral damages in their Memorial but
18 they don't ask for it in their Request for Relief and
19 they don't articulate an amount in their request for
20 Memorial. It is only in the Reply that they have come
21 forward now with this notion of at least [REDACTED].

22 Claimants seek moral damages to compensate

1 for injuries to themselves as investors, and
2 Mr. Kotuby addressed this, and we obviously have a
3 fundamentally different view, which is that with
4 respect to the claims that have been articulated, the
5 protections provided under the TPA and the BIT apply
6 to investments only.

7 And whether you look at the expropriation
8 standard, or the fair and equitable treatment
9 standard, the full protection and security and the
10 umbrella clause, these are protections that are
11 accorded to investments. In fact, in the Treaties
12 themselves, the only investment, the only provisions
13 that apply to investors is national treatment. And we
14 do not have a claim for national treatment.

15 Yet, despite this, Mr. Rivera and
16 Omega-Panamá have come forward and said "we should be
17 compensated as investors for breaches of our rights
18 under the Contract." I submit that the Claims they
19 have asserted do not accord them specific compensable
20 rights as investors, and--the United States agrees
21 with this in their submission.

22 And beyond that the concept of moral damages

1 is one that is obviously an extraordinary remedy that
2 can be invoked only in exceptional circumstances, and
3 Tribunals have very clearly talked about the level of
4 harm required to reach the exceptional circumstances
5 necessary to cross that threshold, and we do not have
6 that here.

7 We have commercial Contracts that were
8 canceled on commercial terms. We had a criminal
9 investigation that was grounded in reasonable exercise
10 of police powers, based on legitimate evidence that
11 was discovered in the investigation of a Supreme Court
12 Justice who pled guilty.

13 And with respect to the factual predicate,
14 which is that Omega-U.S. and Mr. Rivera were harmed
15 reputationally or harmed economically as a result of
16 Panamá's actions, the facts show, to the contrary,
17 that Omega-U.S. was a failing Company long before 2014
18 when they--when the Claimants suggest that these
19 unlawful actions occur.

20 That they were subject to, as Mr. Weisburg
21 pointed out, financial losses, a judicial order that
22 seized their assets for failure to pay debts, the

1 cancellation of their lines of credit for having been
2 overdrawn and late. And this is in 2012, 2013, long
3 before any of the unlawful actions in this case,
4 alleged unlawful actions in this case purportedly took
5 place.

6 And then with respect to Mr. Rivera himself,
7 Mr. Burke was put forward as a witness by the
8 Claimants here. Mr. Burke is the owner of Burke
9 Construction Company who hired Mr. Rivera, and in
10 testifying, what Mr. Burke says is that Mr. Rivera
11 told him of his problems in Panamá, despite that, he
12 hired him immediately.

13 Mr. Burke goes on to say that he immediately
14 considered Oscar Rivera to be an essential asset, so
15 much so that he viewed him to be his potential
16 replacement as the CEO of this Company. During the
17 course of Mr. Rivera's employment with Mr. Burke,
18 Mr. Burke says he was instrumental in opening new
19 business in the Caribbean region, the region that
20 Mr. Rivera purportedly says that his reputation has
21 been tarnished.

22 Mr. Rivera stayed with Mr. Burke for a short

1 period of time, because as Mr. Burke points out, he
2 took a job with a new and bigger company, yet,
3 Mr. Burke viewed him more as a partner than as an
4 employee.

5 This is the Claimants' own Witness, and it's
6 remarkable to suggest that Mr. Rivera's reputation has
7 been irreparably harmed and forever harmed when you
8 have such a glowing letter of reference from their own
9 Witness.

10 And, finally, just to conclude, I would like
11 to just take a second to introduce the Witnesses that
12 you will hear from on behalf of the Republic this
13 week. The Tribunal will hear from three of Panamá's
14 Fact Witnesses, and then at the end of the week it
15 will hear from Dr. Daniel Flores, who has prepared two
16 Expert Reports in response to the Claimants' quantum
17 claim.

18 The first Witness for Panamá is Mr. Jorge
19 Villalba. Mr. Villalba was the Chief of the Organized
20 Crime Division for the public prosecutor's office in
21 Panamá. He is a specialist in financial crimes and
22 was seconded to the National Assembly to lead the

1 criminal investigation into Supreme Court Justice
2 Moncada Luna.

3 At the completion of the investigation,
4 Mr. Villalba returned to the public prosecutor's
5 office where he oversaw the investigation into
6 Omega-Panamá, Mr. Rivera, and other contractors
7 implicated in the Moncada Luna investigation.

8 Second Witness is Mr. Nessim Barsallo.
9 Mr. Barsallo was the subdirector for administration
10 for special projects at the Ministry of health. In
11 that capacity, he was involved in the Tender and
12 administration of the three MINSA CAPSI Projects
13 awarded to Omega.

14 And the third is Ms. Yadisel Buendia.
15 Ms. Buendia was the project supervisor of the
16 Ciudad de las Artes Project from November 13 to 2014.

17 With that, Panamá makes its Opening
18 Submissions.

19 PRESIDENT SHORE: Thank you, Mr. Ryan.

20 So, Opening Submissions are concluded. We
21 thank counsel on each side for very helpful Openings.

22 I believe we now adjourn for lunch and should

1 return at 1:15. And we have Mr. López available at
2 1:15?

3 MS. GORSLINE: Yes, Mr. President.

4 PRESIDENT SHORE: All right. Very well.

5 Thank you.

6 (Whereupon, at 12:04 p.m., the Hearing was
7 adjourned until 1:15 p.m., the same day.)

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AFTERNOON SESSION

FRANKIE LÓPEZ, CLAIMANTS' WITNESS, CALLED

PRESIDENT SHORE: Welcome back from lunch,
everyone.

Mr. López, good afternoon.

THE WITNESS: Good afternoon, everyone.

PRESIDENT SHORE: I believe you have in front
of you a statement from--or a declaration from
Rule 35(2) of the ICSID Arbitration Rules. I believe
it's a page right in front of you. And there's a
declaration there, and if you would read it to
yourself and then read it out loud, please.

THE WITNESS: I solemnly declare, upon my
honor and conscience, that I shall speak the truth,
the whole truth, and nothing but the truth.

PRESIDENT SHORE: Thank you, Mr. López.

I believe we have two Witness Statements from
you in this case. They may not be right in front of
you now, but I'll just note them for the record, dated
27 May 2019 and 17 January 2020, and counsel for
Claimants may ask you some questions about your
witness evidence, and then counsel for Respondent will

1 ask you some questions.

2 Do you understand?

3 THE WITNESS: I understand. Yes. Thank you.

4 PRESIDENT SHORE: Very well. Thank you. We
5 have experienced counsel here. I just remind everyone
6 to give the interpreters a chance to fully interpret
7 before you go on to your next comment or question.

8 Okay.

9 THE WITNESS: Understood.

10 PRESIDENT SHORE: So, Ms. Gorsline.

11 MS. GORSLINE: Thank you, Mr. President.

12 DIRECT EXAMINATION

13 BY MS. GORSLINE:

14 Q. I have just one question on direct.

15 Mr. López, is there anything you would like
16 to update with respect to your Witness Statements?

17 A. If you allow me, yes, I do. I wanted to say,
18 as an update that started in July 2019, I stopped
19 working for MCP, and I went back to private practice
20 with the company FL Consulting to date.

21 Q. Thank you, Mr. López.

22 MS. GORSLINE: No further questions from

1 Claimants.

2 PRESIDENT SHORE: Thank you, Ms. Gorsline.

3 Over to Mr. Ryan.

4 Mr. López, Mr. Ryan, Counsel for Respondent,
5 will now ask you some questions.

6 CROSS-EXAMINATION

7 BY MR. RYAN:

8 Q. Mr. López, welcome. Thank you for being
9 here.

10 As the President indicated, my name is Chris
11 Ryan. I am a counsel representing the Republic of
12 Panamá in this case. And we will spend some time
13 together this afternoon with me asking you some
14 questions and you providing me with some answers.

15 A. Understood.

16 Q. Have you ever testified before?

17 A. Yes. I've been in depositions. This was a
18 case involving a claim in connection with a
19 construction project in Puerto Rico.

20 Q. Excellent. So, you understand how this
21 works. If I ask you a question, and you don't
22 understand my question, please, ask for clarification.

1 But if you don't ask for a clarification, I will
2 assume that you understand my question and that you
3 will answer truthfully.

4 A. Understood.

5 Q. Okay. And we may have issues with a few
6 delays because of the simultaneous interpretation. We
7 may have some confusion caused by the interpretation,
8 but I understand that you speak English; is that
9 correct?

10 A. I do have knowledge of the English language,
11 but I feel much more comfortable if I use my native
12 language, which is Spanish.

13 Q. I'm just asking in case there is confusion or
14 uncertainty as to the interpretation, if you would
15 understand my question in English as well.

16 A. Possibly, but I feel more comfortable if I
17 speak Spanish.

18 Q. Understood.

19 So, you just mentioned that you are now
20 working with FL Consulting. What is FL Consulting?

21 A. I am the owner of the company, and I provide
22 engineering services, consulting services, and also

1 claims, inspections, and construction.

2 Q. Okay. And at any point does your
3 company--the work that you do with your company, do
4 you interact with Mr. Rivera?

5 A. No. At a given point in time when I worked
6 for MCP, we worked together in connection with some
7 projects, this in connection with a company where
8 Mr. Rivera worked for. But in my private practice,
9 well, I've offered very little in terms of services in
10 connection with Mr. Rivera.

11 Q. Just to be clear, very little or none?

12 A. It's been very little. I recall that,
13 perhaps, I provided some support to him in connection
14 with a call for bids in Puerto Rico, but,
15 unfortunately, that didn't really go forward.

16 Q. Okay. And were you compensated for the work
17 that you did?

18 A. At that point in time, I worked for MCP
19 Group, so that was part and parcel of my functions.

20 Q. Okay. I guess I want to make sure we're a
21 little bit clear here because you indicated that as
22 part of your work with FL Consulting, you provided

1 services in support of Mr. Rivera's work. But now
2 you've just stated that the services you provided were
3 part of your prior job.

4 Can you please clarify which it is?

5 A. FL Consulting has not offered services to
6 Mr. Rivera. I did provide services when I worked for
7 MCP Group. We were pursuing two projects in Puerto
8 Rico with a company named Burke. That's the company
9 where Mr. Rivera rendered services. I think he was
10 there for about a year or two.

11 Q. Okay. And so, when was this approximately?

12 A. Between 2017 and 2019 approximately.

13 Q. Okay. Are you being compensated for the time
14 that you are spending assisting with this case?

15 A. Not compensation as such. My travel expenses
16 have been covered, my stay has been covered, I've been
17 reimbursed for some of the services or that providers
18 of them were directly compensated.

19 Q. Okay. Mr. López, you began working with the
20 Omega entities in 2000; is that correct?

21 A. That is correct.

22 Q. And, at that point in time, you were working

1 for Mr. Rivera's father; is that right?

2 A. Correct. When I started working at that
3 date, with Omega, Eliezar Rivera was the owner of the
4 Company.

5 Q. Was this your first job out of college?

6 A. Correct.

7 Q. And you worked continuously for the Omega
8 entities from 2000 until roughly 2016; is that
9 correct?

10 A. Correct. 19 February 2019--2016, rather.
11 2016. It ended in 2016.

12 Q. I understand that you feel what happened in
13 Panamá unfairly affected you in your professional
14 career; is that correct?

15 A. Undoubtedly.

16 Q. And this is because it derailed your career
17 with Omega?

18 A. That's correct.

19 Q. And did it have an effect on you financially?

20 A. Certainly. I became unemployed.

21 Q. Okay. But you were able to get a job after
22 that; correct?

1 A. Yes. Not in the position that I held at
2 Omega for 16 years, but practically I had to start
3 from scratch.

4 Q. Okay. And you mentioned in your First
5 Witness Statement that you and Mr. Rivera talked about
6 your future partnership in Omega-U.S.

7 Do you remember that?

8 A. Yes, correct.

9 Q. If Mr. Rivera were to start a new
10 construction firm, would you expect to go and work
11 with him?

12 A. Certainly, I would be able to evaluate that.

13 Q. Have you had any discussions with Mr. Rivera
14 about a future partnership if he were to start a new
15 construction firm?

16 A. Not really. I understand that our
17 relationship goes back many years, and it's gone from
18 professional to a friendship, and undoubtedly I would
19 want to consider that possibility.

20 Q. Okay. So, that partnering with Mr. Rivera
21 going forward is something you would like if he were
22 able to start a new construction firm; is that

1 correct?

2 A. Perhaps. That may be a possibility.

3 Correct.

4 Q. Okay. So, as we said, you started working
5 with the Omega entities in 2000. Between 2000 and
6 2006 you worked on three projects; is that correct?

7 A. Correct.

8 Q. In the first, you were a project engineer for
9 the Roberto Clemente Baseball Stadium?

10 A. Correct.

11 Q. And the second and third projects you were
12 project directors; is that correct?

13 A. Yes, correct.

14 Q. And that was the restoration of a historic
15 building in old San Juan and renovating a 13-story
16 building used for luxury apartments. Correct?

17 A. That is correct.

18 Q. Okay. And so, during this period between
19 2000 and 2006, you worked on one project at a time; is
20 that correct?

21 A. Possibly. There were transition periods, and
22 there was an overlap with two projects, but in general

1 terms, my responsibility had to do with just one
2 project.

3 Q. Okay. So, in Paragraph 12 of your First
4 Witness Statement, when you say: "As you can see
5 during my first years at Omega, I was assigned to a
6 project, and once it was finished, I was assigned to
7 another. During that time, I was not involved in more
8 than one project at a time."

9 That's an accurate statement?

10 A. Yes, correct.

11 Q. Okay. Typically, during this period, how
12 many projects would Omega have going on at the same
13 time?

14 A. When are you referring to? Between 2000 and
15 2006?

16 Q. Yes, sir.

17 A. Perhaps, around six projects were running.

18 Q. Six projects, in total, over the period
19 between 2000 and 2006?

20 A. At a given point in time, we had six projects
21 running simultaneously. Not cumulatively, but at the
22 same time.

1 Q. Okay. And from 2006 to 2010, you moved out
2 of the field, as I understand it, and you were put in
3 charge of estimates and procurement for the Omega
4 entities; is that correct?

5 A. That is correct.

6 Q. Okay. And this was an administrative
7 function?

8 A. That's correct.

9 Q. And all of the Projects that you worked on or
10 dealt with during this period, were they all in Puerto
11 Rico?

12 A. In Puerto Rico or in the Caribbean, in
13 St. Thomas. It's an island.

14 Q. How many projects were done outside of Puerto
15 Rico during the period between 2000 and 2010?

16 A. I think St. Thomas, it was--well, it was
17 after 2010.

18 Q. Okay. Okay. Let me ask the question
19 slightly differently.

20 Outside of the work that was done in Panamá,
21 how many projects, that you're aware of, were done
22 outside of Puerto Rico?

1 A. Please repeat the question.

2 Q. Yes.

3 Other than the work that was done in Panamá,
4 how many projects, that you are aware of, between 2000
5 and the time that you stopped working for Omega-Panamá
6 were done outside of Puerto Rico?

7 A. I can only recall one project that we were
8 looking into in the Dominican Republic, but beyond the
9 acquisition of the land at that point in time,
10 Mr. Rivera and his father, I understand that they sold
11 the Project in the Dominican Republic, just one
12 project.

13 Q. Okay. So, St. Thomas, that's the only
14 project? The Dominican never occurred?

15 A. Correct.

16 Q. From 2011 until 2015, you worked in Panamá;
17 is that correct?

18 A. That is correct.

19 Q. And when specifically did you move to Panamá?

20 A. That was starting in early 2015.

21 Q. Now, I think you may have misunderstood my--

22 A. I apologize. I apologize. It was in early

1 2011.

2 Q. Okay. Thank you.

3 Did Mr. Rivera move to Panamá with you at
4 that time?

5 A. Mr. Rivera, prior to my relocation, he had
6 already been spending a long time in Panamá, six to
7 seven months before I moved or relocated in Panamá.

8 Q. Okay. Did any other employees--sorry. Let
9 me start over, sir.

10 At the time that you moved, you were an
11 employee of Omega-U.S.; is that correct?

12 A. That is correct.

13 Q. Did any other employees of Omega-U.S. move to
14 Panamá with you?

15 A. Yes. About six to seven employees prior to
16 my move. Before my relocation Francisco Feliú had
17 gone, who practically was the first employee from the
18 Omega Group. And about two other engineers and
19 supervisors moved with him. They had moved for a
20 project in Tocumen, and later on, six or eight months
21 later, I relocated in Panamá.

22 Q. Okay. So, in 2011, when you relocated,

1 Mr. Rivera was there with you. Did Mr. Rivera go back
2 to Puerto Rico to take care of operations with
3 Omega-U.S.?

4 A. Mr. Rivera spent a significant amount of time
5 in Panamá, but he was constantly also in control of
6 the operation in Puerto Rico too.

7 Q. Okay. And during this period, was Mr. Rivera
8 also looking for additional opportunities in other
9 countries?

10 A. Correct.

11 Q. What other countries was Mr. Rivera looking
12 at opportunities in?

13 A. I understand that it was in Colombia, Perú,
14 and I don't know whether other efforts were also made
15 simultaneously in the Dominican Republic.

16 Q. Okay. So, when you moved to Panamá, sir,
17 Mr. Rivera asked you to direct the operations of
18 Omega-U.S. and Omega-Panamá that were going on in
19 Panamá at that time; is that correct?

20 A. The proposal or my responsibility was to
21 direct the operations for Omega-Panamá. The
22 responsibility for managing Omega-U.S. continued to be

1 with the people who stayed behind in Puerto Rico.

2 Q. Okay. So, sir, in Paragraph 18 of your First
3 Witness Statement, you say: "At the end of 2010,
4 Oscar asked me to move to Panamá to direct the
5 operations of Omega-U.S. and Omega-Panamá in that
6 country."

7 Is that statement slightly inaccurate then?

8 A. I never ceased working for Omega USA.

9 Q. Okay. But my question, though, is with
10 respect to the accuracy of the statement in your
11 Witness Statement. You indicated that you were
12 responsible for directing the operations of
13 Omega-Panamá and that the operations of Omega-U.S.
14 remained with employees, with others in Omega-U.S.
15 I'm just trying to understand if what you've written
16 here at Paragraph 18 is just, perhaps, slightly
17 inaccurate.

18 A. Just a second. I am rereading to refresh my
19 recollection. I could understand that in the context
20 that I mentioned this, since Omega-U.S. was part of
21 the consortium that was working in Panamá, I was
22 referring to that.

1 Q. Okay. So, you mentioned that when you moved
2 to Omega--when you moved to Panamá, you never ceased
3 to be an employee of Omega-U.S.

4 Did I understand that correctly?

5 A. I was wearing both hats.

6 Q. Who was your official employer though?

7 A. It was a transition from Omega-U.S. to
8 Omega-Panamá.

9 Q. But you never ceased to be an employee of
10 Omega-Panamá? That's what you testified to?

11 A. I never ceased being an employee. Is it
12 something that I indicate here in my Statement?

13 Q. No, sir. It's something that you just stated
14 a couple minutes ago.

15 A. When I was in Puerto Rico, I was offered to
16 move to Panamá, and I became an employee of
17 Omega-Panamá that had the responsibility of working
18 with Omega-U.S.

19 Q. Okay. So, when you stated a few moments ago
20 that you never ceased to be an employee of Omega-U.S.,
21 that was inaccurate?

22 A. I don't think I expressed myself properly,

1 but I never became completely separated from the
2 Omega-U.S. operation.

3 Q. At the time you moved to Panamá, there were
4 still projects that Omega was working on in Puerto
5 Rico; isn't that correct?

6 A. Yes, that is correct.

7 Q. And those projects, were you involved in them
8 at all?

9 A. Yes. I had the opportunity to lead many of
10 those efforts to negotiate projects with the Salvation
11 Army, and some biddings also at the level of Puerto
12 Rico with the Department of Education, and that was
13 for a school.

14 Q. Okay. When you mentioned the Salvation Army,
15 do I understand that's the Kroc Center; is that
16 correct?

17 A. Correct.

18 Q. And that was a project that the Salvation
19 Army sued Omega on; isn't that correct?

20 A. Correct.

21 Q. Now, you said in your First Witness Statement
22 that you never cut ties with Omega when you were in

1 Puerto Rico while you were in Panamá. That's an
2 accurate statement; right? That you never cut ties
3 with Puerto Rico when you arrived in Panama?

4 A. Yes, that is correct.

5 Q. And you just testified that you were able to
6 oversee projects and assist in projects. What I'd
7 just like a little bit more clarity about the type of
8 work that you did in Puerto Rico while you were in
9 Panamá.

10 A. As part of my work in Puerto Rico, I led the
11 Department for Purchases and Estimates, and basically,
12 since I had an important role before the customers, I
13 had to make a transition, and a great deal of the
14 information or documentation that was prepared for
15 those contracts was documentation that I had prepared,
16 and as--I provided some remote support as those
17 projects got underway to provide any additional help
18 with negotiations with the clients and suppliers.

19 Q. So, it's fair to say that the people that
20 were back in Puerto Rico still continued to rely on
21 you while you were in Panamá?

22 A. They consulted me. Correct.

1 Q. Approximately how much of your time while you
2 were in Panamá was spent working on matters in Puerto
3 Rico?

4 A. Well, it was during the day. As the
5 operation was growing in Panamá, I required more of my
6 time to be devoted to the Panamá issues, as opposed to
7 what was going on with Omega-U.S.

8 Q. Okay. Can you give me an estimate, though,
9 as to how much of your time was spent on work
10 involving Puerto Rico while you were in Panamá?

11 A. Some hour during--I don't know. I don't
12 know. During the day. I don't know. It was during
13 peak times and very specific situations.

14 Q. Okay. Did the amount of work that you were
15 working on in Puerto Rico go down over time as the
16 number of projects in Puerto Rico diminished?

17 A. Correct.

18 Q. And that's because, over the time that you
19 went to Panamá in 2011 to, say, 2013, the number of
20 projects that Omega-U.S. was taking on in Panamá went
21 down; is that correct?

22 A. Not in Panamá. In Puerto Rico.

1 Q. I'm sorry. I misstated.

2 The number of projects in Puerto Rico
3 reduced; is that correct?

4 A. Correct. The island was going through
5 difficult times, or it is going through difficult
6 times.

7 Q. Okay. I'd like to just sort of get an
8 understanding of Omega-Panamá a little bit more.

9 Can you take a look at Exhibit C-517?

10 We are going to hand out binders that contain
11 documents that I may show to you during the course of
12 your examination. It will just be a moment as we hand
13 out the binders to the Tribunal.

14 Mr. López, would you mind opening the binder
15 in front of you which contains Exhibit C-17, sorry C-
16 517?

17 So, Mr. López, just so you know, the tab on
18 each of the binders will have a number that starts
19 with the letter "C," the letter "R," or the letters
20 "QE." When I ask you to go to a document, I'm going
21 to point you to a tab number with the specific letter
22 and exhibit number that follows it.

1 A. Understood. Did you say C--

2 Q. One seven. Do you have the right tab?

3 A. I have an org chart.

4 Q. And I understand that this is the
5 organizational chart for Omega-Panamá; is that
6 correct?

7 A. Correct.

8 Q. Mr. Rivera was the President and CEO; you
9 were the Vice President of Operations?

10 A. Correct.

11 Q. Is it fair for me to assume that the blocks
12 where no names are listed, that there were no
13 employees in those positions?

14 A. You would understand that it depends on the
15 date of this document for me to be able to ascertain
16 this, because the CFO was Mr. Roberto López, but I
17 don't know when this org chart was made.

18 Q. Understood.

19 So, I'd just like to walk down this. You
20 list--there's 16 years listed after your name,
21 13 years after Mr. Feliú, and then various dates after
22 other names. What do those numbers represent?

1 A. Those are years of experience.

2 Q. Okay. And that would be experience with
3 other companies, and not with Omega-Panamá, obviously,
4 as Omega-Panamá was a brand-new company?

5 A. I understand that that is the case, but once
6 again, I do not know when this document was drafted.

7 Q. Okay. But you would agree that, regardless
8 of when this document was drafted, Omega-Panamá was
9 never in business for 23 years. So, this could not
10 represent the experience just with Omega-Panamá?

11 A. Yes, that is correct. That is the experience
12 of each individual in their professional career.

13 Q. Okay. And within this organizational
14 structure, I assume that there were certain controls
15 governing the flow of money and things of that nature.

16 Who on this chart would have been responsible
17 for authorizing Omega-Panamá to spend money, whether
18 it was to pay a bill or to transfer funds to a
19 different account?

20 A. That is a complex question. As part of my
21 responsibilities, Omega-Panamá--the responsibility I
22 had was for Omega-Panamá, but Mr. Rivera was in charge

1 of handling accounts or managing accounts.

2 Q. When you say Mr. Rivera was in charge of
3 handling or managing accounts, I'm sorry, can you
4 explain what you mean by that?

5 A. I am answering your question. He was in
6 charge of managing the accounts.

7 Q. So, would Mr. Rivera have had ultimate
8 authority to authorize the transfer of funds from an
9 Omega-Panamá account into a different account?

10 A. Yes, correct.

11 Q. So, looking down the fourth column to the
12 right, this--one of the boxes lists "Project Manager";
13 correct? The third box down.

14 A. Yes. Yes, correct.

15 Q. And these were the four Project Managers that
16 were--with Omega-Panamá that were responsible for
17 overseeing the Projects that are in dispute in this
18 Arbitration; isn't that correct?

19 A. Correct.

20 Q. As I understand it, Mr. Vega was responsible
21 for the MINSA CAPSI Projects; is that correct?

22 A. Among several. He then was also responsible

1 for several projects, depending on the historical
2 moment.

3 Q. Okay. Mr. Mandarakas--he was the Project
4 Manager on the La Chorrera Project as well as the two
5 Projects that occurred in Colón; is that correct?

6 A. That is correct.

7 Q. And Mr. Pacheco was with the INAC Project?

8 A. At that point in time, yes.

9 Q. And then the Juan Díaz and Pacora Markets for
10 the Municipality of Panamá were with Mr. Pezzotti; is
11 that correct?

12 A. José Mandarakas--Mr. Mandarakas was in charge
13 of La Chorrera and Colón project, the municipality,
14 and the market, and Mr. Juan Pezzotti was in charge of
15 the peripheral markets in the Municipality of Panamá.

16 Q. Okay. Thank you.

17 And these Project Managers were responsible
18 for the day-to-day activities on the Project; is that
19 correct?

20 A. Yes, that is correct, among other things.

21 Q. And they were principally the Omega
22 representatives that were on-site at each of these

1 projects; is that correct?

2 A. Not necessarily. The engineers were
3 physically in charge. The Project Managers were in
4 charge of the--of managing the Contract, and also the
5 customer relations, as well as accounts receivables
6 and any sort of coordination.

7 Q. Okay. So, the project engineers were on-site
8 on a day-to-day basis, and they were overseen by the
9 Project Managers.

10 Do I understand that correctly?

11 A. That is correct.

12 Q. So, then it would be the Project Engineers
13 who, on a day-to-day basis, would interact with
14 representatives from the various municipalities and
15 Ministries that were your counterparties on these
16 projects; is that correct?

17 A. Yes.

18 Q. They would attend site meetings, for example?

19 A. Yes, among other things.

20 Q. Okay. And if there were concerns raised
21 on-site, they would be principally responsible for
22 trying to address the concerns so as to keep the

1 Project moving forward; is that correct?

2 A. That is correct.

3 Q. And also, I guess in terms of communicating
4 with the various Ministries and Municipalities, is it
5 fair to say that the Project engineers would be the
6 ones that were principally responsible for letters or
7 emails or phone calls between the Municipalities and
8 Ministries and Omega; is that correct?

9 A. In general, the answer is yes, but as there
10 were more specific cases in terms of importance, I was
11 also involved.

12 Q. Okay. So, on occasion, you may be copied or
13 brought into a line of communications; is that right?
14 But not on every one.

15 A. I would say yes, among the most important
16 ones.

17 Q. Okay. So, sir, in your Second Witness
18 Statement at Paragraph 46, you are talking about the
19 INAC Project. And you said that "Mr. Pacheco was
20 primarily responsible for day-to-day operations." This
21 does not mean that I was not involved in what was
22 happening there. And then you say in the last sentence

1 of that paragraph: "With regard to this particular
2 project I was always"--and, I note, the "always" was
3 emphasized--"copied on the emails and letters, in
4 addition to maintaining frequent communication with
5 Mr. Pacheco."

6 Is that an accurate statement?

7 A. Correct.

8 Q. Even though you just acknowledged that you
9 were only copied on some communications between the
10 Ministries, you still say that this is an accurate
11 statement that, with respect to the INAC Project, you
12 were copied on every single communication?

13 A. Certainly I was copied, but I was aware
14 of--what they were not copying me was not--it was very
15 little what I could be--that could be brought to my
16 attention that I was not aware of or that I was not
17 copied. I was in constant communication, as I clearly
18 state in this assertion that Mr. Pacheco kept me
19 informed of all of the details.

20 Q. I guess, Mr. López, what I'm really just
21 trying to assess is whether what you wrote here--and
22 did you write this statement with regard to this

1 particular project: "I was always copied on the
2 emails and letters"?

3 Did you write that?

4 A. Yes. That is correct.

5 Q. Okay. So, the answer to the question is
6 really yes or no, whether you were always copied or
7 not always copied.

8 I'm asking you which that is, sir.

9 A. Certainly, there may be some communications
10 on which I wasn't copied.

11 Q. Okay. So, this is--you wrote this and you
12 reviewed this. This is, then, inaccurate. Okay.

13 A. Yes, that's right.

14 Q. Part of your responsibilities with
15 Omega-Panamá involved evaluating potential new
16 projects; is that right?

17 A. Correct.

18 Q. How much of your time did you spend on that
19 function?

20 A. Any time that a matter was brought to my
21 attention. It would depend on the particular moment.
22 It could be a couple of hours. I wouldn't be able to

1 tell you exactly.

2 Q. Okay. Do you have recollection as to whether
3 you considered a substantial number of potential new
4 projects?

5 A. Yes. I was part of the group. We would have
6 conversations about that. I would be consulted.

7 Q. Okay. So, after you moved to Panamá and the
8 focus shifted away--as you said, the focus slowed down
9 in Puerto Rico, it's correct, sir, that by the end of
10 2013, there was very little work going on in Puerto
11 Rico? Isn't that accurate?

12 A. We could say that.

13 Q. And it is also correct that during this
14 period of time, 2012-2013, Omega was experiencing
15 problems with the few projects that it had in Puerto
16 Rico; is that correct?

17 A. Generally, the economy on the island was
18 going through a tough moment.

19 Q. In addition to the economy going through a
20 difficult moment, there were specific Project-related
21 problems that were affecting Omega at that time, too;
22 isn't that correct?

1 A. If you could be a bit more specific, because
2 that's a very broad question.

3 Q. So, in 2013, are you aware that Oriental Bank
4 obtained an order from a Puerto Rican Court
5 authorizing it to seize Omega's assets for failure to
6 pay outstanding debts?

7 A. I understand that there was a dispute and
8 that it was worked out.

9 Q. It was by the issuance of an order
10 authorizing the bank to seize assets. Yes, it was
11 worked out.

12 Are you also aware that, as of February 2013,
13 most, if not all--I believe all--of Omega-U.S.'s banks
14 had canceled the lines of credit because they were
15 overdrawn and delinquent?

16 A. I don't think that that's the case. I don't
17 have specific knowledge of this, but I don't believe
18 that was the case.

19 MS. GORSLINE: Counsel, if I may: This is
20 well beyond the scope of Mr. López's Witness
21 Statement, and I don't know that you've established
22 that he has any basis to have any knowledge about

1 these things.

2 PRESIDENT SHORE: So, you should direct your
3 objections to the Tribunal.

4 MS. GORSLINE: My apologies, Mr. President.

5 PRESIDENT SHORE: If the Witness doesn't
6 know, he can say "I don't know."

7 MS. GORSLINE: Yes, Mr. President.

8 PRESIDENT SHORE: Please continue, Mr. Ryan.

9 MR. RYAN: Thank you.

10 BY MR. RYAN:

11 Q. Mr. Rivera, I'm sorry -- Mr. López, I want to
12 talk to you about the period of time when Omega was
13 looking to move into Panamá.

14 You said in your First Witness Statement that
15 Mr. Rivera was looking for opportunities in other
16 countries because the Puerto Rican economy was going
17 through a difficult moment.

18 I think you've reiterated that here; correct?

19 A. That is correct.

20 Q. And did you assist Mr. López [sic] in looking
21 for opportunities outside of Puerto Rico?

22 A. No. I participated in several efforts, but

1 my concentration was really on Panamá.

2 Q. When you say you "participated in several
3 efforts," I'm not sure I understand what you mean by
4 that.

5 A. Because I was aware of conversations about
6 projects in other jurisdictions. I would have seen
7 plans, terms, information about new markets where it
8 was decided not to pursue those opportunities.

9 Q. Were you involved in the decision not to
10 pursue those opportunities?

11 A. It was the prerogative of Mr. Rivera. I may
12 have heard something, but I was really focused on the
13 efforts in Panamá.

14 Q. Okay. So, when you mentioned earlier that
15 there were efforts in Colombia, Perú, and the
16 Dominican, the decision not to go into those
17 countries, you're saying, was Mr. Rivera's decision
18 alone; is that correct?

19 A. Correct.

20 Q. Okay. You mentioned this in your Witness
21 Statement--and I think you mentioned this earlier
22 during your testimony today--that one of the

1 opportunities that was explored was the possibility of
2 a real estate development in the Dominican Republic;
3 is that correct?

4 A. Yes, that is correct.

5 Q. And I understand that this was on property
6 that had been purchased by Mr. Rivera's father?

7 A. Correct.

8 Q. And you also mentioned--we're going to talk
9 about this in a moment--but you also mentioned that
10 Mr. Rivera, in addition to the work that was conducted
11 with Omega, had a long history of entering into
12 personal land-development deals; is that correct?

13 A. Yes, that is correct.

14 Q. So, the opportunity that was being explored
15 in the Dominican Republic, was that part of an
16 opportunity for Omega, or was that part of an
17 opportunity for Mr. Rivera's personal land-development
18 deals?

19 A. Omega worked strictly on construction and
20 execution, and that investment was handled by another
21 kind of real estate company.

22 Q. Okay. So, the opportunities that were being

1 explored in the Dominican were really opportunities
2 involving the personal real estate development that
3 Mr. Rivera was involved in?

4 A. Yes, that is correct.

5 Q. Okay. Now, you mentioned that Mr. Rivera was
6 involved in a number of personal land-development
7 deals. Prior to entering Panamá, do you have any
8 idea, roughly, how many personal land-development
9 projects Mr. Rivera undertook?

10 A. Two projects were carried out, and he had a
11 portfolio of approximately six or seven other projects
12 which, for various reasons, did not materialize.

13 Q. Okay. So, that would include the Dominican
14 Republic project, I presume.

15 A. Yes. The other one he had was in Puerto
16 Rico.

17 Q. Okay.

18 A. There were about six or seven in all.

19 Q. Okay. And you state in your First Witness
20 Statement that Mr. Rivera would acquire the land for
21 these projects; is that correct?

22 A. That is correct.

1 Q. And did money flow from Omega-U.S. to
2 purchase the land that was being developed?

3 A. The matter of where the funds came from was a
4 matter of Mr. Rivera's discretion. I don't know what
5 the vehicles were that were used.

6 Q. Okay. Were you involved in his prior land
7 deals in any capacity?

8 A. Depending on the historical moment,
9 engineering services and cost estimations would come
10 into play.

11 Q. So, you would provide engineering services
12 and cost estimations to Mr. Rivera for use in his
13 personal land-development deals; is that correct?

14 A. Correct.

15 Q. And this is in your capacity as an employee
16 of Omega-U.S.?

17 A. Correct.

18 Q. Would Mr. Rivera compensate you separately
19 for the work that you did on his personal land deals
20 or was this just considered to be part of your job at
21 Omega-U.S.?

22 A. It was part of my responsibilities. In that

1 case, it was the Omega Construction Company that was
2 going to offer the services, the construction
3 services.

4 Q. Right. And you say in your Witness Statement
5 that Omega-U.S. was always the general contractor on
6 these personal land-development deals; is that
7 correct?

8 A. Correct.

9 Q. Did you assist Mr. Rivera in searching for
10 land in Panamá that he could use for personal
11 development?

12 A. One could say that, yes, I did.

13 Q. What role did you play in searching for the
14 properties?

15 A. Mr. Rivera had communicated to me early on in
16 the operation that he aspired to carrying out real
17 estate development projects in Panamá.

18 Q. Okay. But you just said that, yes, you were
19 involved in assisting Mr. Rivera's search for land in
20 Panamá.

21 And my question, sir, is what did you do to
22 assist Mr. Rivera in searching for land in Panamá?

1 A. Basically, I worked on the basis of what he
2 had identified. They might be simple computations of
3 construction costs, investment costs. It was nothing
4 that took much time.

5 Q. Okay. So, you provided construction support,
6 but in terms of actually going out and looking for
7 properties, visiting properties, taking helicopter
8 flights over properties, you did not participate in
9 any of those?

10 A. I may have accompanied him on one or another
11 visit.

12 Q. Okay. With respect to the land that
13 Mr. Rivera attempted--claims to have attempted to
14 purchase in this case, at some point he asked you to
15 get involved in this transaction; isn't that correct?

16 A. That I participate in?

17 Q. Yes. Mr. Rivera asked you to become involved
18 in his attempted acquisition of land in Panamá; isn't
19 that correct?

20 A. Well, particularly in the transaction for one
21 farm, I received instructions from Mr. Rivera to
22 formalize a Promise Agreement with respect to a sale.

1 Q. And you had not seen that property?

2 A. No, I never went there.

3 Q. And did you have any communications with the
4 owner of the property?

5 A. Yes. Once he identified the land and he gave
6 me a copy of the file that had the contact information
7 regarding the person who controlled that farm.

8 Q. Okay. And who was that person?

9 A. Ms. Maria Reyna López, if I'm not mistaken.

10 Q. But she wasn't the owner of the property;
11 correct? She was the agent that dealt with the
12 property?

13 A. I know that she is a U.S. person, if I'm not
14 mistaken, who was living or is living--I'm not really
15 sure--in California.

16 Q. And when did Mr. Rivera ask you to get
17 involved in formalizing this transaction?

18 A. As I recall, it was around February of 2013.

19 Q. So, up to this point you had not been
20 involved in any prior land transactions in Panamá;
21 correct?

22 A. Yes, that is correct.

1 Q. And after your involvement in this, you were
2 not--not been involved in any further land
3 transactions in Panamá; correct?

4 A. No, not in Panamá.

5 Q. Okay. And you admit that you're not an
6 expert in Panamanian real estate; correct?

7 A. Yes, that is correct.

8 Q. Despite this, though, you make a comment in
9 your Witness Statement that the land--despite not
10 having seen the land and despite not being an expert
11 in Panamanian real estate, it is your opinion that
12 this land that Mr. Rivera was going to purchase was in
13 an area that was suitable for development; is that
14 correct?

15 A. Could you please point to exactly which
16 paragraph you're drawing this from or looking at?

17 Q. Yes. Give me one second.

18 PRESIDENT SHORE: 89? Is that what you're
19 looking for?

20 MR. RYAN: Yes. Thank you, Mr. President.

21 BY MR. RYAN:

22 Q. Your First Witness Statement, Paragraph 89,

1 you said: "I am no expert in the Panamanian real
2 estate market, but I do know the property was in an
3 area with the potential for development of summer
4 resort projects"; correct?

5 A. Correct.

6 Q. So, sir, Mr. Rivera suggested that you, in
7 fact, negotiated the transaction for this land; is
8 that correct? Did you, in fact, negotiate the
9 transaction for this land?

10 A. Yes, that is correct.

11 Q. And so, Mr. Rivera, though, gave you a price
12 that he expected you to pay for the land; is that
13 correct?

14 A. That is correct.

15 Q. And did he explain to you the basis for the
16 price that he was willing to pay for that land?

17 A. We didn't get into that level of detail, but
18 I understand that Mr. Rivera was advised by real
19 estate specialists in Panamá.

20 Q. Okay. But you thought you could get a better
21 price; isn't that correct?

22 A. I would always try to do so. That was part

1 of my functions. In this case, I was not able to
2 bring the price down.

3 Q. Had you seen comparables of any other farms
4 that would show what comparable values were?

5 A. I understood that they were in the file, but
6 I can't tell you off the top of my head.

7 Q. So, you never saw them. If they existed, you
8 never saw them.

9 A. It was part of the file that was given to me.
10 There was an analysis of comparables to justify the
11 valuation that was being given at that time.

12 Q. Okay. And with those comparables, you still
13 thought you could get a better price. So, it was your
14 belief that the price that Mr. Rivera was going to pay
15 was--that it was overpriced?

16 A. I don't think that the issue was whether it
17 was overpriced. It was simply a question of--given
18 the nature of my responsibility, I was always ready to
19 negotiate to get some kind of benefit in the
20 transaction.

21 Q. Okay. You mentioned that, and the Claimants
22 have mentioned that, Ms. Graciela was involved in the

1 negotiation and the papering of this transaction.

2 You know who Ms. Graciela is; correct?

3 You know Ms. Graciela or know who she is;
4 correct?

5 A. Yes, she was the lawyer who was practically
6 in charge of a large part of our effort in Panamá.
7 She was with IGRA.

8 Q. Was she a lawyer for Omega-U.S.,
9 Omega-Panamá, or both?

10 A. For both.

11 Q. Okay. What type of lawyer is she? Do you
12 know what her specialty is?

13 A. I understand that she was an immigration
14 lawyer. Her division in the office worked with work
15 permits, ID cards for Omega employees who relocated to
16 Panamá.

17 Q. And you said she was practically in charge of
18 the legal work and the legal advice that was being
19 given to Omega-Panamá in its day-to-day operations; is
20 that correct?

21 A. Well, that she was with a law firm, and
22 you've got the clients. And depending on the

1 specialty, one would identify a specialist or a
2 partner to provide specific assistance on whatever the
3 issue might be.

4 Q. Okay. Now, Mr. López, you said in your First
5 Witness Statement that money was transferred from
6 Omega-Panamá to PR Solutions with respect to the
7 purchase of this land; is that correct?

8 I'm referring specifically to Paragraph 90.

9 A. If you allow me to read it, please.

10 Yes, that is right.

11 Q. Okay. And you had said that Omega-Panamá's
12 accounts were used primarily for public works
13 projects; correct?

14 A. Yes, that is correct.

15 Q. Who authorized the transfer of Omega-Panamá's
16 money from Omega-Panamá to PR Solutions for use in
17 Mr. Rivera's personal land deal?

18 A. Yes, correct.

19 Q. My question--sorry. Maybe it was unclear.

20 My question is who authorized the transfer of
21 this money.

22 A. Mr. Rivera.

1 Q. Okay. What is PR Solutions?

2 A. PR Solutions is a Panamanian company that is
3 owned by Mr. Oscar Rivera.

4 Q. Does it have any employees?

5 A. Do you mean right now?

6 Q. During the period when Omega-Panamá was
7 operating in--so from 2000--let's just say from 2009
8 through 2015, did Omega-Panamá have any employees?

9 A. Yes, I understand that Pancho Feliú,
10 Francisco Feliú, was an employee of PR Solutions
11 throughout the time of the Tocumen Project and there
12 were employees of Omega-U.S. who then went to Panamá.

13 Q. Let me just make sure I understand.
14 Mr. Feliú was an employee of Omega--of, sorry,
15 PR Solutions during the Tocumen Project. The
16 organizational chart that we saw earlier for
17 Omega-Panamá had Mr. Feliú as the preconstruction
18 Director for Omega-Panamá.

19 Did he transfer from PR Solutions to
20 Omega-Panamá?

21 A. Correct.

22 Q. So, at that point he was no longer an

1 employee of PR Solutions.

2 And you said--

3 PRESIDENT SHORE: I'm sorry. Just a second,
4 Mr. Ryan. I think you've been switching back and
5 forth between employee of Omega-Panamá and
6 PR Solutions, or you did once before. You may have
7 done it this time too.

8 So, you've just been asking about one
9 individual, and you say: "So, at that point he was no
10 longer an employee of PR Solutions."

11 Did you mean no longer an employee of
12 Omega-Panamá?

13 MR. RYAN: No, Mr. President. I had asked if
14 PR Solutions had employees and Mr. López said that he
15 understood that Mr. Feliú was an employee of
16 PR Solutions. Then I made a reference to the
17 Omega-Panamá chart, and as I understood it, Mr. López
18 confirmed that he transferred from PR Solutions to
19 Omega-Panamá, and I was confirming that he was no
20 longer an employee of PR Solutions.

21 PRESIDENT SHORE: See, the trouble is we
22 don't have a date for that organizational chart

1 though, do we? So, when we say "he transferred," we
2 don't know what year he transferred; is that right?

3 MR. RYAN: Understood. That's correct.

4 PRESIDENT SHORE: Is that correct, Mr. López?
5 When you're speaking about Mr. Feliú moving from
6 companies, do you know what years he was moving from
7 companies to company?

8 THE WITNESS: I understand that Francisco was
9 an employee of PR Solutions from 2010 to 2012 or 2013.
10 I don't remember the exact date. Possibly until 2011
11 or 2012.

12 PRESIDENT SHORE: Thank you.

13 Sorry, Mr. Ryan.

14 MR. RYAN: Not a problem at all, sir.

15 BY MR. RYAN:

16 Q. Other than the Tocumen Airport, did
17 PR Solutions have any projects that it was involved
18 in?

19 A. PR Solutions for the purposes of the labor
20 question and work in Panamá did not offer a
21 subcontract that was for a project in Tocumen and in
22 La Chorrera.

1 Q. So, Mr. López, once it was decided that Omega
2 would move to Panamá, would begin work in Panamá,
3 would it be fair to say it was relatively easy to
4 enter the market?

5 A. No, to the contrary. It was a great
6 challenge.

7 Q. As a matter of law, there were a very
8 few--there is few restrictions on foreign companies
9 operating in Panamá; correct?

10 A. I didn't really understand the question.

11 Q. Once the decision was taken to move to
12 Panamá, Omega-Panamá was registered relatively easily
13 with the Government; correct?

14 A. Well, yes, the registration was easy. It was
15 a requirement that was met.

16 Q. And you were able to obtain the necessary
17 licenses to operate as a construction company;
18 correct?

19 A. Correct.

20 Q. You were able to open bank accounts in
21 Omega-Panamá's name?

22 A. Correct.

1 Q. And once operations began, you were able to
2 build relationships with local subcontractors and
3 suppliers; correct?

4 A. Yes, correct.

5 Q. And on the projects that were awarded to the
6 consortium of Omega-Panamá and Omega-U.S., you used
7 local suppliers and local subcontractors on each of
8 them; is that correct?

9 A. Yes, that's right.

10 Q. And in making the decision to go to Panamá,
11 part of the decision was based on the fact that there
12 was a--Panamá had recently announced its decision to
13 spend \$20 billion on public works projects over a
14 five-year period; is that right?

15 A. I know that there was a boom in public
16 procurement. We could conclude that, yes.

17 Q. Okay. And you, in fact, used the word "boom"
18 in your Witness Statement, your First Witness
19 Statement. And a boom suggests that there's an
20 increase over something that had been done previously.
21 So, when you entered Panamá, you understood that there
22 would be an increase in the spending on public works

1 projects over the five-year period based on what had
2 been spent in the past; is that right?

3 A. One could say that, yes.

4 Q. And just out of curiosity, were any of the
5 other countries that Mr. Rivera looked at, at that
6 time--you mentioned Colombia, Perú, and the
7 Dominican--experiencing a similar construction boom?

8 A. Possibly.

9 Q. You don't know?

10 A. I did not lead that effort.

11 Q. Okay. So, the fact that there was going to
12 be an increase in the construction spending in Panamá
13 over this period of time was an important factor in
14 the decision to move to Panamá?

15 A. I would understand that that's the case, yes.

16 Q. Now, I understand that the first bids that
17 were put in once Omega entered Panamá were a series of
18 bids for the private-sector contracts; is that right?

19 A. Correct.

20 Q. And when were these bids made?

21 A. Possibly during 2010. I had not as
22 yet--well, I assisted and worked remotely with

1 Mr. Rivera. It must have been at some point in 2010.

2 Q. And these bids were made by Omega-Panamá.

3 A. That's my understanding.

4 Q. Okay. And Omega-Panamá was unsuccessful on
5 all eight of the bids.

6 A. You said eight. Could you be more specific?

7 Q. Yes. Omega-Panamá lost all eight of the
8 private-sector bids; correct?

9 A. I wouldn't be able to say if there were eight
10 or less or more. In point of fact, the contract did
11 not materialize.

12 Q. Okay. Setting aside the number, as far as
13 you were aware, however, Omega-Panamá lost all of the
14 bids that it made for private-sector projects?

15 A. The Contract never materialized.

16 Q. Okay.

17 A. I wouldn't be able to say if it wasn't asked
18 or...

19 Q. Okay. The first Project that was
20 awarded--and we've heard this was the Tocumen Airport
21 Fuel Infrastructure Project; is that correct?

22 A. That is correct.

1 Q. And this was in March 2010?

2 A. I think so.

3 Q. And you state in your First Witness
4 Statement--and I'm referring to Paragraph 31--that
5 this Project was bid on and executed by PR Solutions;
6 correct?

7 A. Which one did you refer me to? 31?

8 Q. Yes, sir. Your First Witness Statement,
9 Paragraph 31.

10 A. Yes, that's correct.

11 Q. Okay. In fact, Mr. Rivera, in his First
12 Witness Statement confirmed that they used PR
13 Solutions as the initial Panamanian vehicle for the
14 Tocumen Airport Project.

15 Sir, isn't it the case that PR Solutions was
16 incorporated in June of 2010?

17 A. I don't have the exact date, but we could
18 establish that, yes.

19 Q. Well, if we look at--if you look at the tab
20 marked C-21. Do you--are you there, sir?

21 A. Yes, correct.

22 Q. Okay. This is a certificate issued by the

1 Republic of Panamá, the Province of Panamá,
2 which--Deed Number 6406, dated June 11, 2010, which
3 states that: "The Company, PR Solutions, is
4 incorporated with its domicile in the City of Panamá,
5 Republic of Panamá."

6 So, this establishes that Omega-Panamá--I'm
7 sorry, PR Solutions was incorporated in June of 2010?

8 A. That's what this document says.

9 Q. It would have been impossible, sir, for a
10 company to bid on a Project in March of 2010 that did
11 not exist until June of 2010.

12 A. It would appear so.

13 Q. Okay. The airport Project was, in fact, bid
14 on by a consortium of Omega-Panamá and the
15 architecture firm of Cedeño Cedeño and Associates and
16 an engineering firm, PBS and J. Caribe.

17 Does that sound familiar to you?

18 A. There was an instance where there was a
19 Project. I don't remember if it was the Tocumen
20 Project or an airport group and that had to do with
21 the civil aviation authority.

22 Q. So, if you turn to Tab C-127, sir.

1 Have you ever seen this form before?

2 A. Yes.

3 Q. Okay. And this is a proposal dated March 15,
4 2010, for the Civil Aviation Authority prepared by
5 Cedeño, Cedeño & Associates, Omega Engineering,
6 Incorporated, PBS and J Caribe.

7 This, sir, is the proposal form that was
8 submitted for the Tocumen Airport Project; correct?

9 A. No. That's not right.

10 Q. Sir, Mr. Rivera in his First Witness
11 Statement says: "In 2010 we used PR Solutions as the
12 initial local Panamanian corporate vehicle to bid
13 through the PanamaCompra portal, for what would become
14 Omega U.S.'s first project in Panamá, the Tucuman
15 Airport Fuel Infrastructure Project." This is
16 Mr. Oscar Rivera's First Witness Statement at
17 Paragraph 23.

18 There is a footnote to that paragraph, to
19 that sentence, Footnote 40, which cites to C-127. So,
20 Mr. Rivera has said that "PR Solutions was used as the
21 local vehicle to bid for the Tocumen Airport Fuel
22 Infrastructure Project," and as support for that

1 statement has cited to C-127, as evidencing that this
2 is the proposal form for the Tocumen Airport
3 infrastructure project. I understand if you're not
4 familiar with Mr. Rivera's Witness Statement, but we
5 can move on at this point.

6 A. I just wanted to clarify that this form is
7 for another Project. It's not for the Tocumen
8 Project, this proposal form, that is.

9 Q. If so, then if that's the case, then
10 Mr. Rivera's Witness Statement is wrong.

11 PRESIDENT SHORE: Maybe not for this Witness
12 to pursue that?

13 MR. RYAN: Understood.

14 BY MR. RYAN:

15 Q. I would just say--so, Mr. Rivera--or, sorry,
16 Mr. López, if you would turn to Tab C-007.

17 (Comments off microphone.)

18 MR. RYAN: C-007.

19 THE WITNESS: One or two? Is Volume 1 or
20 Volume 2?

21 BY MR. RYAN:

22 Q. It should be in Volume 1. It is, perhaps,

1 the first tab, at least according to my volumes.

2 Do you have it, sir?

3 A. Yes, that's right.

4 Q. Are you familiar with this document?

5 A. Yes, that's right.

6 Q. This is the Certificate of Acceptance for the
7 Tocumen Airport Project; isn't that correct sir?

8 A. Yes, one of them.

9 Q. The first Tocumen Airport Project; isn't that
10 correct?

11 A. That's not right. It's the second one.

12 Q. So, can we look at Paragraphs 31 and 32 of
13 your Witness Statement, then. Paragraph 31, you
14 say: "The first public Project that was awarded in
15 Panamá was Tocumen Airport, which was bid and executed
16 by PR Solutions. I do not remember why the bid was
17 made through PR Solutions, but to me that was
18 irrelevant because the execution was going to be made
19 by the same main team."

20 Paragraph 32, you say: "The Tocumen Airport
21 Project's duration was eight months, and we finished
22 it successfully even though there were some delays."

1 Do you recall writing that statement, sir?

2 A. Yes. Of course, that's correct.

3 Q. And in support for that statement, if you
4 look at Footnote 7, you have Certificate of Final
5 Acceptance, Exhibit C-007.

6 A. That is correct. That is what it says here,
7 but it appears that that was a mistake.

8 Q. So, your Witness Statement is wrong?

9 A. No. The Statement is correct. The exhibit
10 number is incorrect.

11 Q. Okay. When Omega entered Panamá, its main
12 objective was to secure public works contracts; isn't
13 that right?

14 A. Could you please repeat the question?

15 Q. Yes. Omega's main purpose in moving to
16 Panamá was to obtain public works contracts; is that
17 correct?

18 A. Initially, the first eight were in the
19 private sector.

20 Q. Understood. But the main objective--even
21 though you bid on, as you now can seem to confirm,
22 eight--even though you bid on eight private-sector

1 projects, you would agree that Omega's main objective
2 was to secure public works projects; correct?

3 A. Yes, but along the way that was a Decision.
4 Yes.

5 Q. I'm sorry. I don't understand "along the way
6 that was the Decision."

7 The answer is yes, Omega-Panamá's main
8 objective was to secure public works projects?

9 A. After making those efforts in the private
10 sector, Mr. Rivera understood or saw fit to do the
11 same thing in the public sector.

12 Q. When Omega entered Panamá, however, its
13 objective was not necessarily focus on private-sector
14 projects; correct?

15 A. Not completely.

16 Q. Okay. So, for example, sir, in Paragraph 19
17 of your First Witness Statement, after discussing the
18 losses of the private-sector projects, you state: "In
19 2010, Omega-Panamá expanded its horizons in order to
20 achieve its main goal, obtaining public works
21 projects."

22 Is that an accurate statement, sir?

1 A. Yes, correct.

2 Q. Okay. And is it fair to say that the desire
3 to obtain public works contracts was based off of the
4 expectation that Panamá was having a boom in public
5 infrastructure works; correct?

6 A. Correct.

7 Q. You mention in your First Witness Statement
8 that--and, again, this is still at Paragraph 19--the
9 Omega Consortium participated in their first group of
10 Tenders with the Ministry of Health; is that correct?

11 A. That is correct, yes.

12 Q. And this was in 2010?

13 A. That is my understanding. That's correct.

14 Q. And were you personally involved in these
15 bids?

16 A. In the preparation of the proposals, yes.

17 Q. Thank you. You mention in your Witness
18 Statement that the Omega Consortium participated in
19 the bids. Isn't it true, sir, that these bids were
20 actually made by Omega-Panamá itself and not the Omega
21 Consortium?

22 A. That is correct.

1 Q. Okay. So, when you say the "Omega
2 Consortium" in your Witness Statement, that is
3 inaccurate?

4 A. Yes, correct.

5 Q. Now, Mr. López, when you entered--when Omega
6 entered Panamá, neither Mr. Rivera nor Omega had any
7 prior experience in Panamá; is that correct?

8 A. Correct.

9 Q. Did you view this lack of experience as an
10 impediment to Omega's chances of succeeding in Panamá?

11 A. Well, that was a challenge to try to overcome
12 those differences. During the learning curve process,
13 and in order to become more successful and more
14 effective in the way in which we submitted offers,
15 well, all that was part of the process.

16 Q. Okay. But you were confident that you could
17 easily achieve that learning goal--curve; correct?

18 A. That was the challenge that we had, and
19 fortunately I understand that we made it.

20 Q. Okay. And there were other foreign
21 contractors working in Panamá at that same time;
22 correct?

1 A. Correct.

2 Q. And those--number of those foreign--other
3 foreign contractors were very successful in obtaining
4 public works contracts; correct?

5 A. Yes. One could say that, yes.

6 Q. And presumably those other foreign
7 contractors would have had to face the same challenges
8 that you faced when Omega entered the Panamanian
9 market; correct?

10 A. That's my understanding, yes.

11 Q. And it would be fair to say that their
12 success in obtaining public works projects showed that
13 they too were able to overcome many of the challenges
14 that you said Omega had to face at the time?

15 A. I don't know the details of the matter, but
16 we could conclude that.

17 Q. Now, you say in your First Witness Statement
18 at Paragraph 28 that you believe that the Omega
19 Consortium had an advantage over other foreign
20 contractors?

21 A. That's correct.

22 Q. And this advantage came, in part, from

1 Omega-U.S.'s years of experience; is that right?

2 A. Yes. It had a track record that was over
3 25 years long.

4 Q. Okay. And part of the advantage came from
5 Omega's ability to offer financing through banks like
6 BBVA and Credit Suisse; is that correct?

7 A. That's right.

8 Q. And part of the advantage was in prior work
9 that Omega did in markets with stringent bidding
10 requirements such as the United States; is that
11 correct?

12 A. Yes. We were financially sound in the
13 organization.

14 Q. And--okay. And you were particularly
15 confident because you had worked in the United States
16 which had stringent bidding requirements?

17 A. Yes, correct.

18 Q. Okay. This is in Paragraph 29 of your
19 Statement. When you say, "such as the United States,"
20 I guess, my question is, what other markets do you
21 consider to have had similar bidding requirements in
22 addition to the United States?

1 A. Excuse me. I'm reading the paragraph.

2 Excuse me, can you please repeat the
3 question?

4 Q. Yes. In addition to the United States, do
5 you believe there are other markets that have
6 similarly stringent requirements?

7 A. Puerto Rico.

8 Q. Which is the United States.

9 A. Correct.

10 Q. Okay. Outside the United States, do you
11 believe there are any other markets?

12 A. Yes, of course.

13 Q. Can you give me some examples?

14 A. I couldn't do it off the top of my head
15 because I didn't really have that advantage to compete
16 in those markets.

17 Q. Understood.

18 You also say that the advantage was based on
19 relationships with subcontractors and suppliers; is
20 that correct? And, again, you can find it in your
21 Witness Statement at Paragraph 27.

22 A. That is correct, yes.

1 Q. Okay. When you say that you had
2 relationships with subcontractors and suppliers, are
3 you referring to the consortium's relationship with
4 subcontractors and suppliers in Panamá?

5 A. Yes, correct.

6 Q. Okay. And presumably other foreign
7 contractors that were working in Panamá would have had
8 similar relationships with subcontractors and
9 suppliers in Panamá; correct?

10 A. We could conclude that. I don't have
11 personal knowledge of that, but I would assume so.

12 Q. Okay. And before Omega-U.S. entered the
13 Panamanian market in 2010, you did not have any
14 relationships with suppliers or subcontractors in
15 Panamá?

16 A. Correct.

17 Q. Now, we've established that Omega-Panamá was
18 incorporated in--it was July of 2010, and over
19 83 percent of the bids that Omega--that were submitted
20 by the Omega Consortium were made by the end of 2011.
21 So, in your view, you were comfortable that between
22 the creation of Omega-Panamá in 2010 and certainly by

1 the time that you were bidding in 2010 and 2011, that
2 you would have made sufficiently strong relationships
3 with subcontractors and suppliers as to allow you to
4 be successful; is that right?

5 A. That interaction developed, yes.

6 Q. Are you aware of a Company called the IBT
7 Group?

8 A. Yes, right.

9 Q. They were one of Omega's competitors in
10 Panamá; correct?

11 A. Correct, yes.

12 Q. And you're you aware that the IBT Group is a
13 company with headquarters in Madrid that has offices
14 in Miami, Paris, and London?

15 A. Yes, correct.

16 Q. And are you aware that they have a physical
17 presence in more than 40 countries and experience in
18 over 500 infrastructure projects?

19 A. If you say so.

20 PRESIDENT SHORE: Mr. Ryan, I realize that
21 we're well in advance of our normal break, but we've
22 been going for a while. It might be useful also for

1 Mr. López to have a break, if that's okay.

2 MR. RYAN: Absolutely.

3 PRESIDENT SHORE: So, let's have a 15-minute
4 break, and, Mr. López, during the break since you're
5 still giving testimony, please have a coffee on your
6 own and don't speak about the case with anyone. Okay?

7 THE WITNESS: Understood. Thank you very
8 much.

9 PRESIDENT SHORE: Thank you.

10 (Brief recess.)

11 PRESIDENT SHORE: Back on the record. Thank
12 you.

13 Back to you, Mr. Ryan.

14 MR. RYAN: Thank you, Mr. President.

15 BY MR. RYAN:

16 Q. Mr. López, at the break we were talking about
17 the perceived advantage that Omega had based off of
18 25 years of experience and its relation with
19 subcontractors and its ability to provide financing
20 from banks like Credit Suisse and BBVA. And I had
21 asked you if you were familiar with the IBT Group, and
22 you had said yes.

1 Do you recall that?

2 A. Yes, correct.

3 Q. Could you turn to the Tab QE-58. It may be
4 in the other binder. I'm not sure.

5 Are you there, sir?

6 A. Yes.

7 Q. This is an exhibit that was the submitted by
8 Quadrant Economics, the Damages Experts for Panamá,
9 and if you look at the top, it says IBT Group
10 infrastructure energy, water, health, and I was going
11 to say education, but I apologize if my Spanish is
12 incorrect there.

13 But, if we were to--just to look at the first
14 page, you see that IBT Group has 40 years of
15 experience in the construction sector.

16 Do you see that?

17 A. Yes. Based on this document, it is correct.

18 Q. And if we go to the third page, you see that
19 it has headquarters in Madrid, Miami, Paris, London,
20 and that it has carried out integrated projects in
21 Africa, America, Asia, and Europe.

22 Do you see that?

1 A. Are we talking about the third page?

2 Q. Yes, sir.

3 A. Yes, I apologize. Yes.

4 Q. Okay. And if you turn to Page 9, you see at
5 the bottom that the IBT Group has experience in more
6 than 500 infrastructure projects and presence in more
7 than 40 countries; correct?

8 A. That's what the document says; correct.

9 Q. And you have no reason to believe that this
10 document is inaccurate, do you?

11 A. No. I don't know who the author is, but we
12 can say that what it says here. We can agree that
13 what you are saying is stated here. It is correct.

14 Q. And if you go to Page 11, it shows that the
15 IBT Group is capable of offering financing from
16 multilateral organizations, including the UN, the
17 World Bank, OPIC, the European Union, and then
18 financing from international banks, such as Deutsche
19 Bank, Bank of America, Merrill Lynch, BBVA, and
20 several other banks that are listed there.

21 Do you see that?

22 A. That's what the document says. I cannot

1 attest.

2 Q. And, again, you have no reason to disagree
3 that what is in this--or to believe that what is
4 stated in this document is inaccurate?

5 A. So far, no.

6 Q. Okay. And IBT was one of Omega's principal
7 competitors in Panamá--correct?--for public works
8 projects.

9 A. Yes. We were together in several bids, yes.

10 Q. Okay. And, sir, if you could turn to the tab
11 marked 64, QE-64.

12 Do you see that, sir?

13 A. Yes.

14 Q. This is another exhibit submitted by
15 Dr. Flores. If you look at the top, it
16 says: "San José Constructora."

17 Are you familiar with "Grupo San Jose"?

18 A. No.

19 Q. You're not aware that they were one of
20 Omega's competitors on certain bids and a contractor
21 in Panamá?

22 A. I do not recall.

1 Q. Okay. So, then presumably you wouldn't have
2 been aware that they have more than 40 years of
3 experience, and if you were to turn the page, that
4 they were ranked at position 140 in the top global
5 international contractors?

6 You were probably not aware of that.

7 A. Unfortunately not.

8 Q. These are the competitors that Omega was
9 facing in Panamá at the time that it was making its
10 bids.

11 PRESIDENT SHORE: You have to ask that in the
12 form of a question.

13 MR. RYAN: I'm going to withdraw the
14 question, sir.

15 BY MR. RYAN:

16 Q. So, I'd like to talk about Omega-Panamá's
17 role. And I think I made a misstatement earlier when
18 I said Omega-Panamá was incorporated in, I think, July
19 of 2010.

20 Omega-Panamá was incorporated, as I
21 understand it, in October of 2009; is that correct?

22 A. Possibly.

1 Q. We can take a look at the incorporation
2 statement if that would be helpful for the Tribunal.

3 Okay. Omega-Panamá was--the primary role
4 that Omega-Panamá played in the bidding process was to
5 satisfy the local company requirement included in many
6 of the tenders and to provide the legal and economic
7 structure to manage construction projects locally.

8 Isn't that correct, sir?

9 A. Yes, correct.

10 Q. And by "economic structure," does that mean
11 that Omega-Panamá had a local bank account and was
12 able to receive payments in Panamá?

13 A. Correct.

14 Q. And Omega-Panamá's account was obviously used
15 for projects that were won in Panamá; is that correct?

16 A. Yes, correct.

17 Q. And payments from the Government went into
18 that account; correct?

19 A. So, you're talking about payments from the
20 Government because of contracts in Panamá that arrived
21 to the Omega-Panamá account in Panamá?

22 Q. Yes, sir.

1 A. Yes.

2 Q. Thank you.

3 So, outside of the role of providing the
4 local company requirement, Omega-Panamá offered very
5 little in the bidding process; isn't that correct?

6 A. Well, it was the local company that for tax
7 purposes had--it was the most convenient vehicle.

8 Q. It had no prior experience?

9 A. Well, it was established that to be able to
10 give this experience to Omega-U.S.A., it had to be
11 registered as a foreign company in Panamá.

12 Q. I'm sorry, sir. Your answer focused on
13 Omega-U.S.A. My question, though, was that
14 Omega-Panamá did not have a track record or experience
15 of performing any projects independently; correct?

16 A. The experience was--the experience came from
17 Omega-USA.

18 Q. Okay. And Omega-Panamá did not have any
19 independent bonding capacity; correct?

20 A. I understood they did, yes. They did have
21 it. They were supported by Mr. Rivera.

22 Q. So, Mr. López, you said that you believe that

1 Omega-Panamá had bonding capacity that it could bring
2 to the table during the bidding process; is that
3 correct?

4 A. Well, that's what I understand. That is the
5 group of companies that was provided by Mr. Rivera.

6 Q. So, my question is--I'm not sure whether
7 you're confused by my question or you're just not
8 answering my question, but my question is not about
9 the group of companies that were presented by
10 Mr. Rivera. My question is about whether Omega-Panamá
11 on its own had the ability to obtain bonding, the
12 bonding necessary for the Projects that were being bid
13 on in Panamá, "yes" or "no"?

14 A. Yes, it did have. It did have. It did
15 contribute.

16 Q. Okay. So, Claimants' Memorial, which is the
17 brief that was submitted by the Claimants here makes
18 the Statement that: "Omega-Panamá was a newly
19 registered company without its own track record, and
20 this created an issue for Omega-Panamá when bidding."

21 It then goes on to say that: "Omega-Panamá
22 satisfied the local company requirement included in

1 many tenders and provided the legal and economic
2 structure to manage the construction project, and that
3 thanks to Omega-U.S.'s bonding capacity, solid
4 financials, track record, and project portfolio,
5 Mr. Rivera was able to bid for larger Panamanian
6 projects."

7 You would agree this is Claimants' Memorial
8 at Paragraphs 32 and 33--33 and 34. Sorry.

9 You would agree that it was Omega-U.S.'s
10 bonding capacity and not Omega-Panamá's bonding
11 capacity that allowed Omega and Mr. Rivera to bid for
12 larger projects; correct?

13 A. Correct.

14 Q. So, I assume, then, that you would then agree
15 that it was--that Omega-Panamá did not provide any
16 independent financial capacity as well to this
17 process?

18 A. Correct.

19 Q. In fact, Omega-Panamá was simply a vehicle
20 through which Omega-U.S. was able to conduct
21 operations in Panamá; isn't that correct?

22 A. We could conclude that.

1 Q. Well, I would submit, sir, that's exactly
2 what you said in Paragraph 27 of your First Witness
3 Statement when you state: "Omega-U.S. had more than
4 25 years of experience in the construction industry
5 and dozens of highly trained technical personnel,
6 often expatriates from Puerto Rico, to execute the
7 Projects through Omega-Panamá."

8 A. Yes, that is correct.

9 Q. And the Omega-Panamá model was part of a--did
10 you understand it to be part of a larger strategy in
11 which Mr. Rivera intended to create local entities in
12 other jurisdictions to expand Omega-Panamá's U.S.
13 footprint?

14 A. Correct.

15 Q. You were involved in the bidding process for
16 the contracts in Panamá. As you said, I think you
17 said you oversaw the economic aspects of the bid;
18 correct?

19 A. Yes, that is correct.

20 Q. And these were separate bids for separate
21 contracts that were made; is that correct?

22 A. Correct.

1 Q. The Ministry that put out the bid would
2 determine the winner and award the Contract.

3 A. Yes. The Assessment Commission.

4 Q. Ultimately, the Contract, though, was awarded
5 by the Ministry?

6 A. Yes, by the Vetting Commission of the bid
7 that I think did report back to the Ministry.

8 Q. Correct. The Vetting Commission made a
9 recommendation, and then there was a decision by the
10 Ministry to select a winner, and the Ministry itself
11 awarded the Contract.

12 A. Correct.

13 Q. Panamá, as a general matter, did not use as a
14 uniform contract among each the Projects that were put
15 out for tender on the PanamaCompra system; is that
16 correct?

17 A. They were very similar. It might not have
18 been, as you say, uniform.

19 Q. We'll talk about some of the similarities and
20 some of the differences, but it is true that each
21 Ministry put forward its own contract with respect to
22 the works that it expected to be completed. Correct?

1 A. Correct.

2 Q. And the bidder had the ability to negotiate
3 directly with the Ministry or municipality for changes
4 to the Contract; is that correct?

5 A. Correct.

6 Q. Just by way of example, as I understand it,
7 the Ciudad De Las Artes Project, when it was
8 originally put out for tender, did not include an
9 advance payment provision. Is that your understanding
10 as well?

11 A. Well, the bid that we submitted to the
12 Institute of Culture did provide for an advance
13 payment, as set forth in our proposal.

14 Q. I understand that you asked for one, but the
15 original contract that was provided by INAC did not
16 permit or did not provide for an advance payment, and
17 in this case, the advance payment had to be agreed
18 through an addenda to the Contract; isn't that
19 correct?

20 A. Well, that first addendum to the Contract
21 reflected other items, but they did include the
22 advance payment as well, that is correct.

1 Q. Okay. And also, as I understand it, the
2 contracts for the MINSA CAPSI Projects, when they were
3 tendered by the Ministry, they contained a provision
4 for an advance payment of 10 percent of the contract
5 price, but Omega ultimately negotiated an advance
6 payment of 20 percent of the contract price?

7 A. I don't recall exactly if, as part of the
8 process, there were some modifications in the way that
9 the State, the Health Ministry, decided to increase
10 financing to 100 percent compared to the 90 percent
11 which had been provided for, and part of the process
12 ended up with a modification with regard to the
13 advance payment.

14 Q. Okay. So, the answer to my question is, yes,
15 that there was a discussion and a negotiation of the
16 advance payment during the bid phase from 10 percent
17 to 20 percent.

18 A. Okay.

19 Q. Who--you said--well, let me ask--who
20 negotiated these issues on behalf of Omega with the
21 Ministries?

22 A. Myself or Mr. Oscar Rivera--and Mr. Oscar

1 Rivera.

2 (Comments off microphone.)

3 A. Yes. Mr. Oscar Rivera and/or myself may have
4 negotiated those modifications to the Contract.

5 Q. Did you have specific areas of responsibility
6 for negotiations, or was it just a function of whoever
7 was available to speak to the Ministry at a particular
8 time?

9 A. Yes, possibly the latter of the--what you
10 just indicated.

11 Q. Possibly or it is the latter? You had
12 specific responsibilities, or there was...

13 A. No. It really depended on the availability
14 of each of us. At the beginning for the Ministry of
15 Health Project, Oscar had a more solid and consistent
16 presence because he was there to start up the
17 operation.

18 Q. And while there were a lot of--while there
19 may have been similarities among some of the
20 Contracts, they were in many ways fundamentally
21 different. For example, certain of the projects were
22 turnkey projects; correct?

1 A. Correct.

2 Q. Other projects were design and build;
3 correct?

4 A. Yes, that is correct.

5 Q. And as a turnkey project, you had
6 substantially more responsibility, from the design, to
7 the construction, to the procurement, to the
8 furnishing; correct?

9 A. Yes. They were different modalities of
10 contracts.

11 Q. And certain of these contracts were financed
12 by the Contractor; isn't that true?

13 A. Correct. In the case of two of them, the
14 Ministry of Health and the INAC.

15 Q. And financing by the Contractor is a common
16 type of financing requirement in public works
17 contracts in Panamá; isn't that correct?

18 A. Yes, correct.

19 Q. And that requires the Contractor to secure
20 financing through a third party from a bank who would
21 then be reimbursed by the Governments for payments
22 that were made from the bank to the contractor; isn't

1 that correct?

2 A. Yes, that is correct.

3 Q. Okay. And each of these contracts had
4 different dispute-resolution mechanisms; isn't that
5 correct?

6 A. I understand that yes, that is right.

7 Q. One of the common elements among these
8 contracts, however, was the requirement that a
9 contractor post a bond securing its performance and
10 also securing any advance payments that were made;
11 isn't that correct?

12 A. Correct.

13 Q. This is a common requirement in
14 infrastructure-type projects; correct?

15 A. Yes, I understand that it is the most common
16 practice.

17 Q. And without these bonds in place, it would
18 not have been possible for the Ministries and
19 Municipalities that were offering you the Award to
20 contract with you; isn't that correct?

21 A. Correct.

22 Q. So, in terms of payment, each of the Projects

1 required Omega to submit a form of Payment
2 Application; is that correct?

3 A. Correct.

4 Q. And the Payment Applications were made based
5 on progress that was achieved by Omega during the
6 relevant payment period; correct?

7 A. Correct.

8 Q. Okay. I would like to have you look at--and
9 maybe one of Omega's counsel can help you get a copy
10 of this behind you--but Mr. McKinnon is one of
11 Claimants' Quantum Experts and has submitted an Expert
12 Report that I would like to refer to in this first few
13 questions.

14 So, this would be Mr. McKinnon's First Expert
15 Report.

16 Do you have that?

17 A. Is there a particular page you're referring
18 me to?

19 Q. Well, before we get there, have you ever seen
20 this Report before?

21 PRESIDENT SHORE: When we say "Report," we're
22 talking about the Expert Witness Statement of Greg

1 McKinnon dated 25 June 2018?

2 MR. RYAN: Yes, sir.

3 PRESIDENT SHORE: Okay.

4 BY MR. RYAN:

5 Q. Mr. López, have you ever seen this Report
6 before?

7 A. Not in detail, but I have seen it.

8 Q. When did you see this?

9 A. I must have seen it at some point through the
10 lawyers.

11 Q. Were you shown this as part of your
12 preparation for today's testimony?

13 A. I had seen it, but I don't have any basis to
14 make any comment on it.

15 Q. My question, sir, was whether you were shown
16 this as part of your preparation for today's
17 testimony.

18 It's really a yes-or-no question.

19 A. I saw it. So, yes, I have seen it, but I
20 repeat, I don't have any specific information
21 regarding its content.

22 PRESIDENT SHORE: When did you see it,

1 Mr. López? Do you recall when you saw it?

2 THE WITNESS: It must have been a couple of
3 months ago in relation with one of my Statements.

4 BY MR. RYAN:

5 Q. Thank you.

6 So, before we get to this--and we're using
7 this mostly for reference, and I'm not asking you to
8 comment on this specific Report--but with respect to
9 the MINSA CAPSI Projects, there were three separate
10 Projects that were reflected in three separate
11 contracts; is that correct?

12 A. That is correct.

13 Q. And the original term for each of those
14 Projects was extended to account for delays that
15 occurred on the Project; correct?

16 A. Correct.

17 Q. And as I understand it, the extensions for
18 the Rio Sereno and the Puerto Caimito Projects expired
19 in December of 2013; is that correct?

20 A. One of them, yes.

21 Q. Which one?

22 A. I understand that some two addendas were

1 signed, or change orders were signed, prior to that
2 date.

3 Q. I understand that there were change orders
4 signed prior to that date, but it's my understanding
5 that the extension of the completion date for those
6 projects under the previously signed addenda expired
7 in December of 2013. Is that consistent with your
8 recollection?

9 A. My best memory is that there were two
10 facilities that had that expiration date. Kuna Yala
11 had a different one.

12 Q. So, the answer is yes, that Rio Sereno and
13 Puerto Caimito, their completion date expired on
14 December 2013. The Kuna Yala Project expired in June
15 of 2014.

16 Is that consistent with your recollection?

17 A. I understand that one of the
18 instances--because there were several change orders,
19 I'm not sure if it was the second or third one that
20 had that date.

21 Q. Okay. Technically, once the extensions
22 expired, Omega would have been operating without a

1 valid contract; is that correct?

2 A. Correct.

3 Q. And as part of the process, Omega and MINSA
4 would attempt to negotiate the terms of a new addenda
5 that would extend the completion period if there was a
6 basis for granting the extension; is that correct?

7 A. Yes. That is what happened.

8 Q. And with respect to the three projects, there
9 were new addenda that were signed by the Parties in
10 May of 2014.

11 Do you recall that?

12 A. Yes, correct.

13 Q. And those were sent to the Comptroller
14 General for endorsement; correct?

15 A. Yes, that is correct.

16 Q. So, if you take a look at Mr. McKinnon's
17 Report, and if you go to what at the bottom says
18 "Annex 1, Page 4"--

19 A. I'm sorry. What page are you telling me?

20 Q. At the bottom it will say "Annex 1, Page 4."

21 A. And which sheet, in particular? Which page
22 specifically?

1 Q. Annex 1, Page 4 in Exhibit--in Mr. McKinnon's
2 Report.

3 A. I think I'm going to need some help.

4 PRESIDENT SHORE: If you can turn the page
5 for Mr. López, someone, I believe it's entitled
6 "Calculation of Outstanding Balance by Project," and
7 we're looking at Annex 1, Table 3; is that right?

8 MR. RYAN: Yes, sir.

9 PRESIDENT SHORE: As Professor Douglas would
10 say, it is easier electronically, which is true,
11 unfortunately.

12 Thank you very much.

13 Do you have it, Mr. López?

14 THE WITNESS: Yes. Thank you very much.

15 BY MR. RYAN:

16 Q. Okay. So, this is a report that was
17 submitted by Claimants' Damages Expert, and this table
18 calculates the contract billings and payments that
19 were made on the MINSA CAPSI Rio Sereno Project.

20 Do you see that?

21 If you look at the top of the chart, it says
22 "MINSA CAPSI Rio Sereno."

1 A. Yes, correct.

2 Q. Okay. And if you look at the third column
3 over, it lists the letters "CNO"?

4 A. Yes, correct.

5 Q. "CNO" stands for Certificate of Nonobjection;
6 correct?

7 A. That is correct.

8 Q. And the Certificate of Nonobjection was the
9 form of Payment Application that was used in the MINSA
10 Projects; correct?

11 A. Yes, correct.

12 Q. And so, each of these were numbered based off
13 of the Application that was submitted, Number 1
14 through Number 15. There are no numbers associated
15 with the CNOs that were filed on October 31, 2014.

16 But you see that there's a list of CNOs from
17 1 to 15; correct?

18 A. Yes, that is correct.

19 Q. Okay. And if we look at CNO Number 1, we can
20 see that it was for an advance payment on this Project
21 of [REDACTED]; is that correct?

22 A. Yes, that is correct, and it's what the table

1 says.

2 Q. Okay. And if we go down the column, we can
3 see that in between Payment Application CNO Number 13
4 and Number 14, CNO Number 13 was submitted on
5 [REDACTED] and CNO 14 was submitted on
6 [REDACTED]; correct?

7 Do you see that?

8 A. Yes, that's what the table says.

9 Q. Okay. And you agreed earlier that the last
10 addenda signed with respect to the Rio Sereno Project,
11 the completion date, that expired on December 20,
12 2013; correct? We just talked about that.

13 A. There was a change order, if I'm not
14 mistaken, Number 3; and, as a result, the completion
15 date was until late December 2013. Subsequently, a
16 change order was signed, as you indicated, in May of
17 2014.

18 Q. Correct. So, between December of 2013--or
19 after December of 2013, there was no contract;
20 correct?

21 A. There was one contract in respect of which
22 there was no change ever made, or that was not

1 revalidated.

2 Q. I'm sorry. I guess I did not understand your
3 question.

4 After December 2013, the Contract for work on
5 Rio Sereno had expired, and the contract would not
6 have been valid--a new contract had not yet come into
7 place because it had not been signed or endorsed by
8 the Comptroller General; is that correct?

9 A. Yes. It was signed, but not endorsed, by the
10 Office of Comptroller General.

11 Q. So, after December of 2013, Omega was
12 operating without a contract on the Rio Sereno
13 Project?

14 A. Correct.

15 Q. And despite not having a contract, in
16 [REDACTED] you submitted Payment Application CNO
17 Number 14, in [REDACTED] you submitted CNO
18 Application 15, and in [REDACTED] you submitted
19 three additional CNOs; correct?

20 A. That was the date of submission. They had
21 not been submitted earlier because the Contract that
22 lapsed had not--in 2013 had not been endorsed. And

1 once it was endorsed, that's when the accounts were
2 submitted that corresponded to the period during which
3 there was a contract in force, which was up to
4 December of 2013, in December of 2013.

5 Q. I'm sorry, sir.

6 In [REDACTED]--when you submitted the
7 application in [REDACTED], there was no addenda
8 that was signed by MINSA or endorsed by the
9 Comptroller General; correct? Yes or no.

10 A. No.

11 Q. And in [REDACTED], there was no addenda
12 signed by MINSA or endorsed by the Comptroller
13 General; correct? Again, yes or no.

14 A. I answered yes. The thing is that the
15 explanation for those accounts to have a date during
16 the period you've indicated when there was no contract
17 in force, well, it was subsequently that we received
18 the approval of that change order, and in [REDACTED]
19 [REDACTED], the accounts were presented corresponding to
20 December 2013, when there was a contract.

21 Q. At the time that you submitted the Payment
22 Application, though, sir, you did not have an endorsed

1 addenda or an endorsed change order. You said
2 subsequently they may have been endorsed, but at the
3 time that you submitted it, you did not have an
4 endorsed change order; correct?

5 A. Not at the moment that I presented it, but
6 yes, for the periods for which I presented it.

7 Q. I understand. But at the time that you
8 submitted it, you did not have an endorsed or signed
9 change order; correct?

10 A. Correct- but-

11 Q. You did not have an endorsed or signed
12 addenda at that period of time, those contracts, those
13 Payment Applications were paid; correct?

14 A. I'd like to make a distinction. I don't know
15 if I'm explaining it properly.

16 Q. Sir, there's a question pending, and I would
17 like you to answer my question, which is: Despite the
18 fact that--in [REDACTED] and [REDACTED], when
19 you didn't have a contract, the Government
20 nevertheless paid your Payment Applications; correct?

21 A. Correct.

22 MS. GORSLINE: Mr. President, I'm sorry to

1 interrupt, but could I ask that the Witness be allowed
2 to answer fully?

3 MR. RYAN: Mr. President, I would be
4 delighted to have him answer fully, if he would answer
5 at least partially. But where I'm trying to step in
6 is when his answers are completely unrelated to the
7 questions that have been asked.

8 PRESIDENT SHORE: Well, we will make a
9 decision about whether they are related or unrelated,
10 but I think that Mr. López is striving to maybe give
11 an explanation before he answers; whereas, Mr. López,
12 give the answer and then we will make sure you have an
13 opportunity to give the explanation.

14 THE WITNESS: Thank you very much.

15 BY MR. RYAN:

16 Q. Mr. López, could you please turn the page to
17 Page 8 in that same annex? And we'll be looking at
18 Table 5.

19 Do you see that?

20 A. Yes, I do.

21 Q. Okay. And we had discussed earlier that the
22 addenda extending the completion date for that Project

1 ended in June of 2014; is that correct?

2 A. Correct.

3 Q. And if we look at the third column, CNO, we
4 see that there are Payment Applications submitted in

5 [REDACTED] and again in [REDACTED].

6 Do you see those? I'm sorry, [REDACTED].

7 A. Yes, I do.

8 Q. And it is true that the Payment Applications
9 that were submitted in [REDACTED] were paid;
10 correct?

11 A. Correct.

12 Q. And [REDACTED] is after when Mr. Varela
13 took office as President of Panamá; correct?

14 A. Well, no. I understand those are not the
15 periods, the corresponding periods, because the date
16 in which it would be in force was up to June of 2014.

17 Q. Mr. López, my question was quite simple.
18 Mr. Varela had taken office in July of 2014; correct?

19 A. Yes, correct.

20 Q. And Payment Applications submitted in [REDACTED]
21 [REDACTED], after President Varela had taken office, were
22 paid; correct?

1 A. Are you making reference to the two
2 applications out of dozens of applications we had?

3 Q. Sir, what I'm making reference to are the two
4 applications that were submitted in [REDACTED],
5 CNO Number 23 and 24, that were submitted on

6 [REDACTED].

7 My question is: Were they paid?

8 A. I cannot confirm that because I, indeed, did
9 not prepare this document, but there was no current
10 contract at the time, so no invoicing would have been
11 prepared. These were endorsed, and it took 24 months
12 for them to get paid.

13 Q. Sir, so you were able to confirm with respect
14 to Rio Sereno that the invoices submitted on [REDACTED]
15 [REDACTED] and [REDACTED] were paid, but you're unable
16 to confirm that the invoices submitted in [REDACTED]
17 [REDACTED], which Mr. McKinnon notes were paid, were, in
18 fact, paid. That's your position? You can't confirm
19 that?

20 A. I have not said that. Excuse me. I have not
21 said that. I said that they were paid, but it took an
22 extraordinarily long time for them to get paid, over

1 24 months, for that payment to materialize.

2 Q. Sir, your testimony was very clear that you
3 said you cannot confirm because you did not prepare
4 this document. So, you previously testified you that
5 couldn't confirm; you've now testified that you can
6 confirm.

7 For the sake of clarity, you can confirm that
8 the payments made in [REDACTED], after
9 President Varela took office, were, in fact, paid?
10 Yes or no.

11 A. No.

12 Q. Okay. Could you please turn to Page 12?

13 A. If you allow me to--

14 Q. There is no question pending, sir.

15 PRESIDENT SHORE: It might be helpful for the
16 Tribunal if you go ahead and say what you want to say
17 on this.

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

20 I'm under the impression that the dates
21 included here have to do with the fact that the
22 payment was made in this period and that is not

1 correct. These were for periods when the Contract was
2 endorsed and signed. So, to say that in [REDACTED],
3 those monies were received, that is not correct.

4 PRESIDENT SHORE: Thank you.

5 Mr. Ryan.

6 MR. RYAN: Mr. President, I'm not quite sure
7 what to do with that because that sort of is a
8 mischaracterization of what is going on here, and the
9 chart shows the dates the Payment Applications were
10 submitted.

11 PRESIDENT SHORE: Well, it's Mr. López's
12 interpretation of what's going on. That's how we
13 would--that's how we will understand it.

14 MR. RYAN: I understand.

15 BY MR. RYAN:

16 Q. Okay.

17 MS. GORSLINE: Mr. President, I'm sorry, but
18 it might be helpful if Mr. López could see the actual
19 documents that he is familiar with as opposed to an
20 expert report that he didn't prepare.

21 PRESIDENT SHORE: Well, you'll have a chance
22 for that on redirect.

1 MS. GORSLINE: Thank you, sir.

2 BY MR. RYAN:

3 Q. So, Mr. López, I understand you're, perhaps,
4 not in a position to confirm this as well, but if you
5 turn to Page 12, this shows the Puerto Caimito Project
6 at Table 7.

7 Do you see that?

8 A. Yes, correct.

9 Q. And we had established earlier that the
10 Puerto Caimito extension date ended in January--or
11 December of 2013; correct?

12 (Interruption.)

13 PRESIDENT SHORE: Sorry, Mr. Ryan. Go ahead.

14 MR. RYAN: Not a problem at all, sir.

15 BY MR. RYAN:

16 Q. Mr. López, we established that the completion
17 date for Puerto Caimito had been extended to 12/2013,
18 December 2013, but at that point it had expired and
19 there was no Addenda that had been signed; correct?

20 A. An Addenda was signed. That's not right.

21 Q. Sir, you had testified earlier that you
22 agreed and understood that the completion date for the

1 Addenda that had been signed expired in December of
2 2013. A subsequent Addenda may have been signed in
3 May of 2014 but was not endorsed by the Comptroller
4 General; is that correct?

5 A. Correct. But the date in which the Contract
6 was in force was limited. This only because of
7 budgetary reasons. It didn't mean that it was
8 understood that the project was going to be ended by
9 that time.

10 Q. Understood. But the completion date for that
11 particular Addenda expired on 12/2013.

12 If you look at Table 7, we can see that CNO
13 Numbers 17, 18--

14 A. In December 2013.

15 Q. Correct.

16 If we look at Table Number 7, we can see that
17 CNOs 17, 18, and 19 were submitted after those
18 contracts expired and were paid by the Government;
19 correct?

20 A. Are we back to Page 4 of Rio Sereno, or where
21 are we?

22 Q. We are on Page 12, sir.

1 A. My apologies.

2 Q. The Puerto Caimito Project.

3 So, you see that CNO 17, 18, and 19 were
4 submitted in [REDACTED],
5 respectively. This is after the Contract period for
6 the Puerto Caimito Project expired; correct?

7 A. Correct.

8 Q. And these invoices also were paid; correct?

9 A. Correct.

10 Q. If you could turn to Page 20, sir.

11 Do you see that? This is Table 11 relating
12 to the Judicial La Chorrera Project.

13 A. Page 20, you said?

14 Q. My apologies. Page 19. I have two sheets on
15 my page. Page 19. I apologize.

16 Table 11, La Chorrera Project.

17 A. Yes, go ahead.

18 Q. And we can see that there were Payment
19 Applications that were made starting in [REDACTED]
20 and extending to [REDACTED]; correct?

21 A. Those are the periods. That is not the time
22 when the monies were received.

1 Q. Understood that's not the time when the
2 monies were received. This is the Payment Application
3 date, the date on which the Payment Applications were
4 submitted.

5 A. I cannot confirm that because I did not
6 prepare this document.

7 Q. Understood.

8 You can see, though, that regardless, each of
9 these was paid; correct?

10 PRESIDENT SHORE: If we say "according to
11 this document," Mr. López, is it your understanding
12 that each of the Payment Applications was paid
13 eventually?

14 THE WITNESS: They were paid. They were not
15 received by the Omega Consortium.

16 BY MR. RYAN:

17 Q. When you say "they were not received by the
18 Omega Consortium," are you stating that the payment
19 for La Chorrera projects--all of the payments for
20 La Chorrera projects, were not received by the Omega
21 Consortium?

22 A. Not all of them. Some specific ones.

1 Q. Which ones?

2 A. The last one.

3 Q. So, one, not multiple. One; correct?

4 A. Yes, correct.

5 Q. And the reason that was not received was that
6 the money was used to offset debts that Omega owed to
7 the National Social Security Program; correct?

8 A. Amongst other agencies, and there's also the
9 DGI.

10 Q. So, in addition to owing debts to the Social
11 Security Administration, there were debts owed to
12 other government agencies and the monies that were
13 paid in the last CNO Application were used to offset
14 those debts; correct?

15 A. Yes. In order to be free and clear vis-à-vis
16 the State, you had to pay independently of whether you
17 got the money or you didn't.

18 Q. And that was a condition for all contractors
19 in Panamá--correct?--that in order to be paid you had
20 to ensure that there were no debts outstanding with
21 Social Security and other social services-types
22 programs? Correct?

1 A. That is correct.

2 Q. And this was not unique to Omega-Panamá.

3 A. The being free and clear? No.

4 PRESIDENT SHORE: I don't think you needed to
5 ask that question, Mr. Ryan, based on his previous
6 answer. Why don't you withdraw it?

7 MR. RYAN: I withdraw the question.

8 BY MR. RYAN:

9 Q. Now, Mr. López, certain of the Payment
10 Applications that Omega had made over the course of
11 the Project were returned for corrections or errors;
12 isn't that true?

13 A. That is correct.

14 Q. Okay. Sir, could you turn to Tab C-698?

15 A. Which one did you say?

16 Q. C-698.

17 A. Go ahead.

18 Q. Okay. So, this is--you see this is a letter
19 dated May 26, 2014, from the Comptroller General's
20 Office to the Minister of Health regarding Certificate
21 of No Objection Number 20, CNO 20, for the Puerto
22 Caimito Project; is that correct?

1 A. That is correct.

2 Q. And the Comptroller General in this instance
3 is returning the CNO to the Health Minister because it
4 had been submitted after the CNO had expired; correct?

5 A. That is what the document says, correct.

6 Q. And was it your understanding that
7 certificates for Payment Applications had a period of
8 time in which they were valid and had to have been
9 submitted?

10 A. That was my interpretation, but a number of
11 consultations were conducted later on through our
12 lawyers, and the Minister of Economy and Finance
13 confirmed that, in spite of the fact that those
14 certificates may have an expiration date that was
15 expected or close in time, they were going to
16 recognize them and they were going to pay them.

17 Q. Mr. López, again, my question--you
18 understood, though, that as a legal matter, each of
19 the certificates of nonobjection had a certain period
20 of time in which it was valid and it was payable;
21 correct? In other words, a CNO could expire; correct?

22 A. Yes. All CNOs had an expiration date, that's

1 correct.

2 Q. And the Comptroller General was within its
3 right to return a CNO that had expired; correct?

4 A. On the basis of interpretation that the
5 Controller gave this at that time, that was the case,
6 but then, unilaterally, they decided to pay CNOs that
7 had been expired and others they didn't pay. I don't
8 know if that's a perogatory--it's a prerogative of the
9 woman that was the controller at the time or whose,
10 but that's what happened.

11 Q. Which CNOs that had expired did they pay?

12 A. Out of the ones that you mentioned, the one
13 from Kuna Yala.

14 If you allow me, I would have to look at them
15 again.

16 PRESIDENT SHORE: I'm not sure of the
17 usefulness of that particular question, Mr. Ryan, I
18 mean, unless you have it to hand Mr. López.

19 MR. RYAN: No.

20 PRESIDENT SHORE: No.

21 MR. RYAN: It was a general statement. I was
22 just trying to assess the accuracy.

1 THE WITNESS: What I would like to--if you'll
2 allow me, what I would like to say is I'd like to
3 explain the context as to when--

4 PRESIDENT SHORE: If you want to explain
5 context, you can do that when Ms. Gorsline asks you
6 some questions a little later. Thank you, Mr. López.
7 Thank you, Mr. López.

8 THE WITNESS: I am looking specifically for
9 the CNOs that he told me were expired. He mentioned
10 some CNOs that were processed, that were endorsed, and
11 I was just looking at the exact number of the document
12 whereby the CNO had expired, but it was paid,
13 nonetheless.

14 PRESIDENT SHORE: So, you can do that with
15 Ms. Gorsline, if she chooses to do that with you.
16 Thank you, Mr. López.

17 THE WITNESS: Thank you.

18 BY MR. RYAN:

19 Q. Sir, can you turn to Tab 682? C-682.

20 A. Go ahead.

21 Q. And so, this is, again, an exhibit submitted
22 by Claimants, a letter from the Comptroller General to

1 the Minister of Health dated September 16, 2014.

2 Have you seen this letter before, sir?

3 A. I think so.

4 Q. Okay. And you see this is a reference to CNO
5 Number 21 on Contract Number 83 with respect to the
6 Kuna Yala MINSA Project; correct?

7 A. That is correct.

8 Q. And this Payment Application also was being
9 returned by the Comptroller General, and if we look at
10 the reasons why, which are in the numbered paragraphs,
11 we can see that they were asking that you correct the
12 first paragraph of the Medical Equipment Application
13 since it mentions Note Number 3358 in 2014, DFG-UCEF,
14 instead of Note 339; correct?

15 So, there is an error in the document, sir;
16 correct?

17 A. You're talking about Item 1; right?

18 Q. Yes. One of the reasons why this Payment
19 Application was returned was that the Comptroller
20 General was asking that an error in the application be
21 corrected?

22 A. That is what the document says, yes.

1 Q. And in Reason Number 2, they are asking to
2 present the comparative chart where the amount of the
3 contractor's proposal is established against the total
4 amounts presented in the advancement charts approved
5 by MINSA.

6 So, the Comptroller General is asking for
7 more information to determine certain financial issues
8 with respect to this Contract--or with respect to this
9 Payment Application.

10 A. Yes, but this was the responsibility of the
11 Ministry of Health. It was not the responsibility of
12 Omega.

13 Q. Understood, but the Comptroller General was
14 still returning this to ask for additional information
15 before the Payment Application could be endorsed;
16 correct?

17 A. Yes, but it was never endorsed.

18 Q. And in the third bullet, this was--they are
19 asking for the provision of medical equipment
20 presented in the Original Proposal; correct?

21 So, again, the Comptroller General is asking
22 for additional information to be provided before it

1 could even consider whether to endorse this Payment
2 Application; correct?

3 A. Correct. That had already been submitted. I
4 don't know why this was stated.

5 Q. And if we look at Exhibit C-0697.

6 Do you see that, sir? Are you there, sir?

7 A. Yes, correct.

8 Q. Okay. Have you seen this document before?

9 A. Yes. I understand that I have.

10 Q. Okay. And this is also a letter from the
11 Comptroller General returning the Payment Application
12 because it still required a list of the medical
13 certificates related to the technical specifications
14 of the biomedical equipment and identify where that
15 equipment is located; correct?

16 A. Yes, that's correct. This has to do with
17 items that had been cured already, as we said, and
18 submitted in an opportune manner to the Comptroller
19 General's Office, and there was no reason why they say
20 that they weren't there.

21 Q. Sir, there is no records in evidence
22 establishing that this information was cured and

1 corrected by Omega-Panamá, is there?

2 A. I understand that part of the file has to do
3 with the change order to the contracts. There's a
4 change order, Number 3 or Number 4--I don't
5 recall--that has to do with Kuna Yala, and all this
6 information was already submitted under them.

7 Q. You understand that, sir, but you don't know
8 that that's, in fact, the case?

9 A. I have personal knowledge that that is the
10 case because that was a change order that had to do
11 with requests for information that we were asked to
12 provide. We did it, we act in accordance with the
13 request, and four or five months after that there were
14 these, well, requests of us that we didn't really
15 understand.

16 Q. Okay. So, in addition to Payment
17 Applications, there were delays with the signing of
18 addenda for extensions of time; correct?

19 A. That is correct, yes. After Mr. Varela won
20 the elections, that never happened in the sense that
21 no Comptroller General endorsed any extensions of time
22 whatsoever.

1 Q. Mr. López, if you could turn to
2 exhibit marked R-132.

3 Are you there, sir?

4 A. Yes, I have.

5 Q. Okay. Have you seen this document before?

6 A. I'm reading it. Excuse me. Yes.

7 Q. This is a letter dated May 10, 2013, from the
8 Comptroller General to the Minister of Health;
9 correct?

10 A. That is correct.

11 Q. And this relates to Addenda Number 2 to the
12 Contract for the Kuna Yala Project; correct?

13 A. That is correct.

14 Q. Okay. And in this the Comptroller General's
15 Office was returning the addenda in order to address
16 the observations of the memo in Memorandum Number 3096
17 from the National Legal Advisory Office; is that
18 correct?

19 A. That is correct, yes.

20 Q. Okay. So, could you turn back one exhibit to
21 Exhibit R-131. Have you seen this document before?

22 A. Yes, that's correct.

1 Q. Okay. This is, in fact, Memorandum 3096,
2 which was referred to in the letter that we just saw.
3 This is a memorandum from the Director of the Legal
4 Advisory Office within the Comptroller General's
5 Office, the Republic of Panamá. And if you--you see
6 here, sir, that the observations that were referenced
7 in the letter at Exhibit R-132 are set out in the
8 three bullet points that we see on that page.

9 Do you see those?

10 A. Yes, correct.

11 Q. Okay. So, it states that in the first
12 paragraph of the addendum, Francisco Feliú--I'm not
13 going to attempt to pronounce the last name--but
14 Francisco Feliú is listed as the legal representative
15 of the foreign company, Ciracet Corporation, however,
16 the Company's Public Registry Certificate found on
17 Page 172 of the case file indicates that the legal
18 representative is "Leonidas Pretelt-Kieswetter.
19 Correct and provide copy of the passport."

20 Do you see that, sir?

21 A. I do see that.

22 Q. And it says in the second: "Provide a copy

1 of the passport of each legal representatives of the
2 Companies making up the Consortium;" correct?

3 A. That is correct.

4 Q. And it says to correct the name of the Omega
5 Engineering LLC, according to the Public Registry
6 certificate, it is Omega Engineering LLC. There is a
7 typo in terms of how "engineering" is spelled;
8 correct?

9 A. That is correct.

10 Q. And you consider these to be legitimate
11 requests for changes made by the Comptroller General's
12 Office; correct?

13 A. They are legitimate, and at the end of the
14 day they were cured and the document was endorsed.
15 Now, the Comptroller General's Office sent other
16 requests, and then they were cured but nothing was
17 endorsed later on.

18 Q. Setting that aside, sir, my question is
19 simply on whether you consider these to be legitimate
20 requests for correction coming out of the Comptroller
21 General's Office?

22 PRESIDENT SHORE: He answered that.

1 BY MR. RYAN:

2 Q. Turn to Exhibit R-133. Have you seen this
3 document before, sir?

4 A. I don't recall, but it seems it is an
5 internal document.

6 Q. I understand.

7 But you don't think you've seen this before.

8 A. I don't recall.

9 Q. This is a letter from the Ministry of Health
10 to the Comptroller General's Office where they are
11 addressing concerns that were raised with respect to
12 Addenda Number 2 to Contract Number 77, and we can see
13 that this addenda had been returned for corrections to
14 issues regarding the commitment to the total amount of
15 the contract, list of the amounts issued in the
16 certificates of no objection, and confirming the terms
17 of extension.

18 So, you understood that this--these were the
19 reasons why Addenda Number 2 to this particular
20 Contract were returned as well; correct?

21 A. It seems to be the case. I don't recall
22 seeing this before.

1 Q. Okay. This was dated June 4, 2013.

2 If we take a look at R-135, have you seen
3 this document, sir?

4 A. Yes, correct.

5 Q. Again, dated October 7, 2013, this is a
6 memorandum from the Comptroller General's Office, the
7 Director of National Economic and Financial Advisory
8 Office, regarding Addenda 3 to Contract Number 85,
9 which is the Puerto Caimito Contract; correct, sir?

10 A. That is correct.

11 Q. And the Comptroller General here is returning
12 these--this addenda because the Performance Bond
13 endorsement has to be corrected and attached to the
14 case file, and Clause Number 1 of Addenda 3 stating
15 the number of days in the execution period should be
16 corrected because it said 754 days instead of
17 794 days; correct?

18 A. That's what the document says.

19 Q. Okay. Can we look at C-751, please.

20 Do you see that, sir?

21 A. Yes.

22 Q. Have you seen this document before?

1 A. I understand I have.

2 Q. You have or you haven't?

3 A. I understand I have, correct. Yes, I have
4 seen it.

5 Q. This is a memorandum, again, from the
6 Comptroller General's Office, this time dated in 2014,
7 June of 2014, where the Comptroller General is
8 referring to Change Order Number 3 to Contract
9 Number 83--correct?--for the MINSA CAPSI Projects?

10 A. Correct.

11 Q. And this change order has been returned
12 because it does not show the budget allocation
13 for 2014; correct?

14 A. That's what the document says.

15 Q. Again, if we could look at Tab C-739.
16 Do you see that, sir?

17 A. I have it.

18 Q. Again, this is a memo from the Comptroller
19 General regarding Change Order Number 4 to Contract
20 Number 85, in which the change order is being returned
21 for errors and corrections; is that correct?

22 A. Yes, but this is not the responsibility of

1 the Omega Consortium. And none of these change
2 orders--none of these change orders was endorsed.

3 Q. Okay. But, sir, you agree that the
4 Comptroller General is returning these due to errors
5 in the documents that were submitted to them that
6 prevented them from making--from endorsing it;
7 correct?

8 A. This is something that had to do with the
9 Ministry of Health.

10 Q. There was an error in the document that was
11 submitted to the Comptroller General; correct?

12 A. That's what the document says, and I am
13 adding that these assertions were the responsibility
14 of the Ministry of Health.

15 Q. Understood, sir.

16 If you could take a look at Exhibit C-685?

17 A. Yes.

18 Q. Have you seen this document before?

19 A. Yes, correct.

20 Q. Okay. And, sir, again, this is a letter from
21 the Comptroller General to the Health Minister
22 regarding Change Order Number 3 to Contract 83;

1 correct?

2 A. Yes, correct.

3 Q. And just so I understand, if you look on the
4 second page, it has the name Gioconda Torres de
5 Bianchini. She was the Comptroller General that was
6 appointed under the Martinelli Administration;
7 correct?

8 A. Yes, correct. The same one that
9 President-elect Varela, the day after the elections,
10 requested the resignation to.

11 Q. Okay. And we've seen the Comptroller General
12 return Payment Applications and addenda over the
13 period between 2013 and 2014; correct? We've just
14 seen that several of the documents where Ms. Bianchini
15 returned Payment Applications and Contract addenda
16 prior to the election of President Varela; correct?

17 A. Correct. The only difference is that these
18 were never approved or endorsed by the Comptroller's
19 Office.

20 Q. Sir, each of the documents that we've just
21 seen between 2013 and 2014 have listed errors and
22 corrections that were required with respect to

1 the--whether a Payment Application or the addenda;
2 correct? You don't take--you don't have any concerns
3 with political motivation with respect to requests to
4 correct Change Order Applications and Payment
5 Applications that were made between 2013 and the
6 election of President Varela; correct?

7 A. It is correct, but it is not that simple.

8 Q. So, sir, if you take a look at
9 Exhibit--again, C-685, we again see that there were
10 change orders that were returned for errors by the
11 Comptroller General's Office, errors regarding
12 corrections to the amounts that were asked for and
13 clarifications as to reasons why the adequacy of
14 certain issues were not considered as part of the
15 change order process?

16 A. It is correct, but throughout the period for
17 the process, for us to cure that, this was never
18 endorsed.

19 Q. So, similar, we've been looking at a number
20 of Projects for a number of these endorsements, but we
21 can see that there were several similar letters that
22 were received with respect to Addenda Number 4 on the

1 Puerto Caimito Project. If we take a look at
2 Exhibit C-750, have you seen this document before?

3 Sir, if you could turn to Tab C-750.

4 A. Yes, I've got it.

5 Q. You've seen this document before, sir?

6 A. Yes.

7 Q. And, again, this is a memorandum from the
8 National Director of Economic and Financial
9 Consultancy within the Comptroller General's Office
10 referring to Change Order Number 4, and the
11 observations state that there are--a new budget line
12 must be used, that there are errors in the amounts of
13 balboas that are listed in the Contract, that the
14 respective change orders detailing the respective
15 amounts must be stated in Clause Number 4 of the
16 change order, the technical justification of the
17 Company for the increase in Panamanian balboas of each
18 submitted line was not attached, and the MINSA note
19 signed by Minister Javier Díaz explaining the increase
20 was not attached to the file.

21 So, these, again, sir, these are errors that
22 were submitted in the Applications themselves that

1 caused them to be returned by the Comptroller
2 General's Office?

3 A. Yes, but they were all the responsibility of
4 the Ministry of Health, not the Consortium. Each of
5 the assertions that you just read.

6 PRESIDENT SHORE: So, let me suggest,
7 Mr. Ryan, so, we have been going for a little while,
8 that we could take a five minute comfort break and
9 then plan to go to 5:15, 5:30. I assume that,
10 according to our schedule, you would be bringing
11 Mr. López back for more cross, a limited amount, but
12 still some for tomorrow morning.

13 So, if we said we'll take a five-minute break
14 and go to 5:15 or 5:30 max, would that assist? And
15 then we'd have Mr. López back for a limited amount of
16 time for cross, and then we go to redirect to
17 Ms. Gorsline tomorrow morning?

18 MR. RYAN: That's fine.

19 PRESIDENT SHORE: So, let's take a
20 five-minute break, then, and let's try to keep it to
21 five minutes. So, a quick comfort break, and then we
22 will go to about 5:20 and, Mr. López, then you'll have

1 a very pleasant quiet dinner all alone tonight. It's
2 a good thing.

3 (Brief recess.)

4 PRESIDENT SHORE: Back on the record.

5 Mr. Ryan.

6 MR. RYAN: Thank you, Mr. President.

7 BY MR. RYAN:

8 Q. Mr. López, I have one more of these documents
9 I'd like to go through with you on this topic. If you
10 could, turn to Exhibit C-176, please.

11 A. Please go ahead.

12 Q. Have you seen this document before?

13 A. Yes.

14 Q. And this is a letter dated April 7, 2015,
15 from the Comptroller General to the Minister of
16 Health, and it is in relation to Addenda Number 4 to
17 Contract 85, for one of the MINSA CAPSI Projects;
18 correct?

19 A. That is correct.

20 Q. And in this letter, the Comptroller General
21 is stating that before the addenda can be considered
22 for endorsement, the following observations must be

1 attended. It is indicated there are medical--in Note
2 Number 1175 of December 5, 2014, it is indicated that
3 there are medical devices and equipment indicated in
4 the change order that is intended to be annexed as an
5 integral part of this Contract, which do not have a
6 technical data sheet because its creation and
7 publication is pending, and, therefore, said change
8 order is incomplete.

9 Do you see that, sir?

10 A. Yes, correct.

11 Q. And in Paragraph Number 2, it says it "must
12 be explained what the legal and technical basis is so
13 that some of the devices and medical equipment are
14 included in the addendum without a technical data
15 sheet"; correct?

16 A. Correct. That's what is stated.

17 Q. Okay. And Paragraph Number 3 talks about
18 errors with respect to the technical criteria, that
19 they must be provided.

20 Do you see that, sir?

21 A. Yes, I do see that, and this addenda is very
22 similar, almost identical to Rio Sereno with the same

1 equipment because it was the same--the facilities were
2 the same, the same clinic. Therefore, one project was
3 endorsed but the other one was not.

4 Q. But, sir, with respect to this Application,
5 the Comptroller General is noting that the specific
6 requirements necessary to consider the Application for
7 Endorsement are missing; correct?

8 A. That's what the document says, but we had
9 presented exactly the same for one facility, and we
10 don't know why it wasn't endorsed.

11 Q. Thank you.

12 Now, sir, I'm going to change topics. One of
13 the projects that Omega was awarded was for the
14 construction of a public market in the Municipality of
15 Colón; correct?

16 A. That is correct.

17 Q. And that project was awarded in August of
18 2011; correct?

19 A. I understand that that is the case.

20 Q. And the Comptroller General's Office endorsed
21 that contract in August of 2012; is that correct?

22 A. I don't recall the date so much, but we can

1 establish that that's the way it is.

2 Q. If it would help your recollection, sir, if
3 you take a look at Paragraph 33 of your First Witness
4 Statement. I realize it's been some time. And in
5 Paragraph 33, you have a table listed that I
6 understand gives the application date and then the--or
7 the adjudication date, which I understand to be the
8 Award date, and the endorsement date, which is the
9 date that the Comptroller General endorsed the
10 contract; is that accurate?

11 A. Yes, that is correct.

12 Q. Okay. So, the Comptroller General's Office
13 took 10 months to endorse the contract for this
14 Project; correct?

15 A. Not necessarily. Because the date of the
16 Award and the signing of the Contract, well, there
17 were some months, and it was as of the signing of the
18 Contract that one would have to count its duration,
19 not from the date of the Award.

20 Q. Okay. But at least as between--as
21 between--I'll withdraw that.

22 The Colón Public Market, this was part of

1 what was called the "Cold Chain Project" in Panamá;
2 correct?

3 A. Yes, correct. I think in all there were
4 seven or eight projects.

5 Q. I understand that the Cold Chain Projects was
6 a series of either markets or storage facilities
7 located throughout Panamá that would have been
8 refrigerated for the purpose of helping to prolong the
9 shelf life of perishable goods as they were
10 transported and sold at market.

11 Is that your understanding as well?

12 A. Yes, correct.

13 Q. And in Colón, the Cold Chain Market, the
14 market that is the subject of your award, was to be
15 built on the site of an existing public market;
16 correct?

17 A. That is correct.

18 Q. And Omega could not begin physical
19 construction on the site until a temporary market was
20 built and the existing residents of the old market
21 were relocated; correct?

22 A. Yes, that is correct.

1 Q. And you understood that these were conditions
2 of your ability to begin physical construction at the
3 time that you signed the Contract; correct?

4 A. Yes, that's right.

5 Q. And you were aware at the time you signed the
6 Contract that the Municipality of Colón did not own
7 the land where the temporary market was to be built;
8 correct?

9 A. I did not have any personal knowledge of who
10 the owner of the facility was. That was beyond the
11 scope of our work.

12 Q. Okay. At some point over the course of the
13 Project, however, did you become aware that the
14 negotiations between the Municipality of Colón and the
15 owner of the land where the temporary market was to be
16 built were delayed and difficult?

17 A. No. We were simply informed that they had
18 not concluded the temporary facilities where the
19 merchants were going to be relocated to.

20 Q. Okay. So, you at least understood that the
21 precondition to your ability to begin physical
22 construction had not been met; correct?

1 A. Certainly, yes.

2 Q. And, as a result of this, the physical
3 construction portion of your contract was suspended;
4 correct?

5 A. Yes, temporarily.

6 Q. Well, presumably what would have been
7 required to remove the suspension was that the
8 temporary market would have been built and the
9 existing customers--the existing vendors in the old
10 market would have been relocated; correct? That had
11 to happen before you could begin physical
12 construction?

13 A. Yes, correct.

14 Q. And you're aware that the temporary market,
15 in fact, was not ever constructed; correct?

16 A. No. It was correct. It was constructed.

17 Q. At the--at what time was this constructed?
18 What period of time?

19 A. The building took approximately two or
20 three years to be built. I think there were different
21 contractors. It wasn't the Ministry of the Presidency
22 or other responsible for building this temporary

1 facility. But in effect, its construction was
2 completed.

3 Q. You're aware that Mr. Duque, who oversaw the
4 Cold Chain Project, indicated that the temporary
5 market was not constructed and the vendors of that
6 market, of the old market, were, in fact, not
7 relocated; correct?

8 A. I don't know why Engineer Duque said that,
9 but the facilities were built. Now, if they weren't
10 used that would have been a prerogative that they
11 decided to change, but it was built.

12 Q. And you are aware that the Cold Chain Project
13 in Colón never moved forward; correct?

14 A. No. To the contrary, our Company--another
15 company ended up doing the work that we were going to
16 do.

17 Q. Sir, you're--are you referring to a--well,
18 the Cold Chain Market was a very specific market, one
19 that entailed the construction of refrigerated
20 facilities to allow for the extension of the life of
21 perishable goods; correct?

22 (Comments off microphone.)

1 A. Yes, correct.

2 Q. And the difficulties associated with the
3 construction of--or the delays associated with the
4 construction of the temporary market and the
5 relocation of the vendors in the old market, this
6 occurred during 2012-2013 when your--when the Project
7 was originally tendered; correct?

8 A. Well, I don't know exactly when these
9 impasses were overcome. The reality is that an
10 addenda was formalized; yet, for reasons that I don't
11 know, it was never endorsed.

12 Q. And the addenda that you are talking about
13 was an addenda that was intended to extend the time
14 for completion of your Project because your works had
15 been suspended; correct?

16 A. That is correct.

17 Q. And at that period of time, Omega Panamá did
18 not have a performance bond or advance payment bond
19 that was valid; correct?

20 A. No, that's not correct. The Omega Consortium
21 had both bonds, and they were delivered, including the
22 list of the documents, the endorsements of public

1 responsibility and the building risk of the Project.
2 All of that was delivered in May of 2014 to Engineer
3 Fernando Duque.

4 Q. Sir, with respect to the market that you
5 believe was--claim was built in Colón, are you aware
6 that what Fernando Duque testified that this market
7 was actually a market that was tendered by the
8 Municipality of Housing, and the Project was for the
9 renovation of the existing old market, but was not the
10 Cold Chain Project that had originally been offered
11 and awarded to Omega?

12 A. I know that that was his testimony, but as of
13 that date, he was no longer in the Secretariat dealing
14 with the Cold Chain Project. Subsequently, I had an
15 opportunity to meet with Engineer Andrés Camargo, who
16 was basically not up to date with all the details of
17 our Project, which gave me the impression that there
18 was not a will to reactivate the Project. In effect,
19 we built the Project that had been awarded to us and
20 that we had signed.

21 Q. Sorry. Sir, you testified that you built the
22 Project that had been awarded and signed. You didn't

1 build anything; correct?

2 A. We, construction activity as such, we did not
3 get around to that. We did take the initiative for
4 purchases. We did redesign, addressing
5 all--incorporating all of the needs that had been
6 indicated to us by the representatives of the Cold
7 Chain Project, but the reality is, in my
8 understanding, that the Project had some change in
9 scope but Odebrecht ended up building it.

10 Q. Sir, as Mr. Duque testified, there was a
11 Tender for a Project by the municipality of
12 housing--or the, I'm sorry, the Ministry of Housing,
13 to refurbish the existing market, and that was awarded
14 to another contractor. That is a fundamentally
15 different Project than was awarded to Omega and the
16 Cold Chain Project did not get completed.

17 You understand that?

18 A. No, I take issue with your--what you have
19 just said.

20 MR. RYAN: Mr. President, I'm going to change
21 topics. Would this be a convenient time to stop?

22 PRESIDENT SHORE: I think so, yes.

1 So, let me make this suggestion. You don't
2 have to decide right now, Ms. Gorsline, but the
3 Tribunal, after Mr. Ryan completes his
4 cross-examination tomorrow morning, we could go with
5 Tribunal questions before your redirect, which might
6 give you a further opportunity to think about what you
7 want to ask on redirect, if that would be agreeable to
8 you.

9 MS. GORSLINE: Yes, Mr. President. Thank
10 you.

11 PRESIDENT SHORE: Okay. So, that will be the
12 plan for tomorrow morning. We will have Mr. Ryan
13 conclude cross-examination, and the Tribunal will have
14 some questions for Mr. López, and then we will go to
15 redirect. And then, as I understand it, according to
16 the schedule, we have Mr. Rivera and then at the end
17 of the Hearing day we have Mr. Villalba; is that
18 correct?

19 MS. GORSLINE: Yes, that's correct.

20 PRESIDENT SHORE: All right. Mr. López, as
21 promised, you get to be on your own tonight. Please
22 don't speak about the case to anyone, and we will

1 reconvene at 9:00 tomorrow morning with the conclusion
2 of Mr. Ryan's cross-examination.

3 Any procedural points, Ms. Gorsline,
4 Claimants want to raise at this point?

5 MS. GORSLINE: No, Mr. President.

6 PRESIDENT SHORE: Mr. Weisburg? Mr. Ryan?

7 MR. WEISBURG: No, we're in good shape.

8 Thank you.

9 PRESIDENT SHORE: All right. Thank you very
10 much. Everyone have a good evening. See you tomorrow
11 at 9:00.

12 (Whereupon, at 5:16 p.m., the Hearing was
13 adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, 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.


Dawn K. Larson