

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES

- - - - -x
 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. :
 - - - - -x Volume 4

HEARING ON JURISDICTION, MERITS AND QUANTUM

Thursday, February 27, 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

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PROF. ZACHARY DOUGLAS, Co-Arbitrator

ALSO PRESENT:

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Secretary of the Tribunal

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YADISEL BUENDIA

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P R O C E E D I N G S

PRESIDENT SHORE: Good morning, everyone.
This is Day 4 of the first week of the Final Hearing,
Case 16/42.

Ms. Gorsline, any procedural points to
raise?

MS. GORSLINE: No, Mr. President.

PRESIDENT SHORE: Thank you.

Mr. Weisburg?

MR. WEISBURG: No, sir.

PRESIDENT SHORE: Thank you.

YADISEL BUENDIA, RESPONDENT'S WITNESS, CALLED

PRESIDENT SHORE: Ms. Buendía, good morning.

THE WITNESS: Good morning.

PRESIDENT SHORE: I think you need to leave
your microphone on. Good.

I believe you have in front of you a
declaration, if you could look at it and then read it
out loud, please.

THE WITNESS: Witness Declaration.

I solemnly declare, upon my honor and
conscience, that I shall speak the truth, the whole

1 truth, and nothing but the truth.

2 PRESIDENT SHORE: Thank you.

3 Now, I believe we have one Witness Statement
4 from you in this case, which you should have on the
5 desk in front of you. Is that right?

6 THE WITNESS: Yes, I have it right here.

7 PRESIDENT SHORE: And, although the front,
8 the title page or the cover page, shows 18 November,
9 I believe that your signature is dated 15 November;
10 is that right?--2019. If you turn to the last page.

11 THE WITNESS: That is right.

12 PRESIDENT SHORE: All right. Very well.
13 I'm sure you've been told about the process, but just
14 to remind you, Mr. Weisburg may have some questions
15 for you, and after Mr. Weisburg, Ms. Gorsline will
16 have questions for you. Please permit the questioner
17 to complete the question before you answer. There is
18 a slight delay, despite the fact that we have
19 outstanding interpreters, and, additionally, the
20 questioner will make sure to let you complete your
21 answer before asking the next question.

22 Do try, when a question is posed to you, to

1 answer the question directly and then, if you have an
2 explanation, give the explanation. The Tribunal
3 wants to hear your full testimony, but the questioner
4 is entitled to have the answer to the precise
5 question before an explanation.

6 Is all that understood?

7 THE WITNESS: Understood.

8 PRESIDENT SHORE: Thank you very much,
9 Ms. Buendía.

10 Mr. Weisburg.

11 MR. WEISBURG: Yes, thank you very much, and
12 I am ceding my time to Mr. Alarcon.

13 PRESIDENT SHORE: Mr. Alarcon, although it
14 is nice to hear Mr. Weisburg's voice, it will be very
15 nice to hear your voice.

16 MR. ALARCON: Thank you very much,
17 Mr. President.

18 DIRECT EXAMINATION

19 BY MR. ALARCON:

20 Q. Good morning, Ms. Buendía. Thank you for
21 being here.

22 A. Good morning. Thank you.

1 Q. I think the President already noted this,
2 but could you please confirm you have a copy of your
3 Witness Statement in front of you.

4 (Overlapping interpretation and speakers.)

5 A. Yes. I confirm that I do have it right
6 here.

7 (Interruption.)

8 MR. ALARCON: Thank you.

9 Mr. President, we have no updates or
10 corrections to make, and we have no further
11 questions.

12 PRESIDENT SHORE: Thank you very much,
13 Mr. Alarcon.

14 Ms. Gorsline.

15 MS. GORSLINE: And I will be ceding my time
16 to Ms. Pradilla Picas this morning, Mr. President.

17 PRESIDENT SHORE: Same point: Although it
18 is always a pleasure to hear Ms. Gorsline's voice, it
19 will be a pleasure to hear yours, Ms. Pradilla.

20 MS. PRADILLA PICAS: Thank you,
21 Mr. President.

22 CROSS-EXAMINATION

1 BY MS. PRADILLA PICAS:

2 Q. Good morning, Ms. Buendía.

3 A. Good morning.

4 Q. My name is Maria Pradilla Picas, and I will
5 be conducting your cross-examination on behalf of
6 Claimants.

7 As Mr. President mentioned, because of the
8 translation, I will endeavor not to interrupt you,
9 and I will try to wait until the translation is
10 finished before I ask the next question, and if you
11 could do the same, that would be great. Thank you.

12 Ms. Buendía, as the President said, you have
13 in front of you your Witness Statement; correct?

14 A. That is correct.

15 Q. In that Witness Statement, you confirmed
16 that everything is either based on your personal
17 knowledge or on documents that you reviewed in the
18 preparation of the Witness Statement; is that right?

19 A. That is right.

20 Q. Thank you.

21 And you have reviewed that Witness Statement
22 and you have confirmed that all of the matters set

1 out in the Witness Statement are true, to the best of
2 your knowledge and belief; correct?

3 A. Correct.

4 Q. Now, Ms. Buendía, you say in your Witness
5 Statement that you understand and speak English; is
6 that right?

7 A. That is correct. I'm not 100 percent fluent
8 in English, but I do speak and understand and read it
9 perfectly well.

10 Q. Excellent. And that is the reason why
11 you've decided to testify in Spanish today.

12 A. Yeah. That's the reason. There may be
13 technical terms, and since English is not my mother
14 tongue, I prefer to make my statement in Spanish.

15 Q. Great. Now, when I go through the
16 documents, are you more comfortable going through the
17 documents in English or in Spanish?

18 A. I would prefer to review them in Spanish, if
19 that's possible.

20 Q. Of course. Ms. Buendía, this question I
21 have to ask is generally a formality, but are you
22 receiving any compensation for testifying in this

1 matter?

2 A. No, none.

3 Q. Are you aware if Sosa Arquitectos is
4 receiving compensation for you testifying in this
5 matter?

6 A. No, they are not receiving anything at all.

7 Q. Thank you, Ms. Buendía.

8 Now, let's talk a little bit about your
9 background. I understand you are a civil engineer;
10 is that correct?

11 A. That is correct.

12 Q. And you work for Sosa Arquitectos
13 Urbanistas; correct?

14 A. That is correct.

15 Q. Can we agree to call them "Sosa" so it's
16 just shorter?

17 A. Yes. No problem.

18 Q. Now, you are a project management consultant
19 for Sosa; correct?

20 A. That's right.

21 Q. And you have been with them since
22 November 2013; right?

1 A. Yes.

2 Q. And your duties, at least in November 2013
3 through December 2014, were to supervise the Ciudad
4 De Las Artes Project on behalf of Sosa; correct?

5 A. Yes.

6 Q. And in those duties, you had to communicate
7 with the Contractor, which in this case is Omega;
8 correct?

9 A. That is correct.

10 Q. And you would do the same thing? You would
11 communicate with INAC?

12 A. That's right, yes.

13 Q. And during that time, was the only project
14 that you were supervising the Ciudad De Las Artes
15 Project?

16 A. Yes. It was the only project I was
17 supervising. I helped Architect Sosa giving him
18 advice or resolving doubts that he might have on
19 other projects, but mainly I was working on Ciudad De
20 Las Artes.

21 Q. Okay. And you mentioned Architect Sosa. Is
22 that Tomas Sosa?

1 A. That's right, Tomas Sosa.

2 Q. What is Mr. Sosa's position?

3 A. He no longer works for the Company. At that
4 time, he was the Director of the Project. That was
5 his position.

6 Q. The Director of the Project, you said?

7 A. That's correct.

8 Q. And when did he stop working for Sosa?

9 A. In July 2014 - I am sorry in July 2019.

10 Q. Thank you.

11 Now, you stopped working on the Ciudad De
12 Las Artes Project in December 2014, when the project
13 was terminated; correct?

14 A. I did follow up on it for the next two or
15 three months in terms of certain administrative
16 issues, but my fieldwork ended in December 2014 when
17 the fieldwork was suspended.

18 Q. But you stayed employed at Sosa through the
19 time when you weren't supervising the Ciudad De Las
20 Artes Project; right?

21 A. Yes, that is correct.

22 Q. And you resumed your role as Project

1 Director or Project Supervisor for Ciudad De Las
2 Artes again; correct?

3 A. That is correct.

4 Q. And when was that?

5 A. The 1st of November 2019.

6 (Overlapping interpretation and speakers.)

7 Q. Of 2019?

8 A. Yes, three months more or less

9 Q. Just two months ago? Could you repeat
10 answer one more time?

11 A. Yes, since November 2019, as of about three
12 months ago.

13 Q. Thank you.

14 Ms. Buendía, could you turn to Paragraph 10
15 of your Witness Statement. On the first line, you
16 say that: "Sosa was never directed by any INAC
17 official to lie or fabricate in its reporting of
18 Omega's performance."

19 Do you see that?

20 A. Yes, I do see it.

21 Q. And that is a very narrow way of confirming
22 that, but have you actually checked with everyone at

1 Sosa?

2 A. Yes, that is right.

3 Q. Thank you.

4 Ms. Buendía, one question regarding a
5 slightly different topic: Do you know who
6 Mr. Rogelio Saltarín is?

7 A. Yes, I do know who that is.

8 Q. In which capacity do you know him?

9 A. A few months ago, news came out in Panamá
10 about him, and obviously we read the news regarding
11 this person. So, in Panamá, if you follow the news
12 closely, you know who he is.

13 Q. Were you aware that he attended some
14 meetings with INAC regarding the Ciudad de las Artes
15 Project?

16 A. I found out--now that we're in the
17 arbitration process, I saw some emails that I was not
18 copied on, but I saw that apparently he was in a
19 meeting where all of the Parties were present in
20 2015.

21 Q. And did you ask what his involvement was in
22 that meeting?

1 A. No. At that time, I did not ask, because I
2 didn't know that he was there.

3 Q. Not at that time. But what about in the
4 preparation for this Arbitration, when you said that
5 you found out that he had attended a meeting in
6 March 2015?

7 A. I consulted it with architect Sosa, because
8 he was at the meeting, and what he said was that he
9 had not played--that Mr. Saltarín had not played a
10 very significant role at the meeting; that he was
11 present, but nothing of any relevance that he could
12 recall.

13 Q. So, he didn't recall what the role of
14 Mr. Saltarín was in that meeting?

15 A. He was present at the meeting, but he
16 doesn't remember anything relevant in which
17 Mr. Saltarín was involved or participated.

18 Q. And when was this conversation you had with
19 Mr. Sosa about Mr. Saltarín?

20 A. Late last year, after I spoke with Panamá's
21 lawyers.

22 Q. Before the process was restarted? Before

1 the Project--sorry--before the Project Ciudad de las
2 Artes restarted? In other words, before November 1,
3 2019?

4 A. The Project resumed in 2018, but, yes, this
5 conversation could have been a bit before I went back
6 in November of 2019.

7 Q. Now, Mr. Sosa is not a Witness in this
8 Arbitration.

9 Do you know the reason why he's not a
10 Witness in this Arbitration?

11 A. I don't know. I suppose that, since I was
12 the person who was 100 percent in charge of the
13 day-to-day workings of the Project, that I would have
14 more information. His role was very managerial, very
15 much a supervisor of my work and the work of my team
16 more than anything else.

17 Q. Thank you, but he was your supervisor. So,
18 you reported to him; correct?

19 A. Yes. He's the owner of the Company, one of
20 the owners, and he was my immediate boss at that
21 time.

22 Q. Great. Thank you.

1 Ms. Buendía, let's talk about the Project
2 now. Let's talk about the time period. I'd like to
3 take you sort of through the timeline, and so, let's
4 talk about the time period before Juan Carlos Varela
5 became president.

6 So, we're talking about the time period
7 before July 1, 2014. Okay?

8 A. Okay.

9 Q. Now, you mentioned in your Witness Statement
10 that, before August 2014, Sosa had not reported any
11 serious problems regarding Omega's performance;
12 correct?

13 A. That is correct.

14 Q. And in the preparation of this Arbitration,
15 have you been shown Ms. Maria Eugenia Herrera's
16 Witness Statement?

17 A. Yes.

18 Q. Would you mind if I could have Ms. Cipolla
19 send you Ms. Herrera's Witness Statement? Let's look
20 at it. Could you please turn to Paragraph 14 of the
21 Witness Statement?

22 Apologies for the delay. I'll be brief on

1 these questions. Sorry about that, Ms. Buendía.

2 Are you at Paragraph 14?

3 A. Yes.

4 Q. And so, you see where Ms. Herrera says: "To
5 my knowledge, the Omega Engineering Consortium was at
6 all times in compliance with its contractual
7 obligations"; right?

8 A. Correct. That's what I read here.

9 Q. And she says: "As Director, I never heard
10 of any noncompliance by them. To the contrary, I was
11 satisfied with their work"; right?

12 In the last sentence, she says: "Neither
13 the Project supervisor"--which that would be
14 Sosa--"nor anybody at INAC notified me of any
15 noncompliance with this contractor"; right?

16 A. That is correct.

17 Q. And, based on your Witness Statement, is it
18 your agreement that prior to August 2014 there was
19 no--there were no issues, no noncompliance with the
20 Contract?

21 A. I agree.

22 Q. Thank you. So, having established that

1 there were no issues with the Contract before Juan
2 Carlos Varela took the Presidency, let's move now to
3 the period after that. So, in order to do that, I
4 would like to take you to R-0042.

5 Let me know when you're there. For the
6 Spanish, it's at Page 3. The English will be at
7 Page 1.

8 This is a letter dated August 4, 2014;
9 correct?

10 A. That's correct.

11 Q. And it is from Ms. Yadisel Buendía, so it's
12 from you, to Ms. Mariana Nuñez, the General Director
13 of the National Institute of Culture; correct?

14 A. Correct.

15 Q. And Ms. Mariana Nuñez is the new Director
16 that was appointed after President Varela took
17 office; correct?

18 A. Correct.

19 Q. So, there's a little bit of a discrepancy in
20 the dates, and I was hoping that you could help
21 clarify.

22 So, the date in the letter is August 4.

1 When we look at the second sentence in the first full
2 paragraph, it reads: "Since last Thursday, August 7,
3 2014, we have seen a significant reduction in the
4 Project's workforce."

5 Do you see that?

6 A. Yes, I do see it.

7 Q. And these things sometimes happen, but which
8 date is the correct date?

9 A. It's likely the letter. I see it was
10 received 18 August. So, it's likely that the correct
11 date was the 14th of August. So, I might have made a
12 mistake when I looked at another note in relation to
13 this. But, yes, it might have been about the second
14 week of August.

15 Q. Perfect. Fine. That often happens when
16 we're using another letter as the basis.

17 The problem is I'm listening to the English.
18 I think I'll change it to the other ones so that I
19 can understand when the interpretation is completed.

20 Okay, Ms. Buendía. So, we've established
21 that this letter was written on August 14, 2014;
22 correct?

1 A. Yes. I'm not sure. It is what I believe
2 based on the day it was received by the person to
3 whom it was sent.

4 Q. So, the August 7 date is the correct date.
5 So, let's read out what you say are the serious
6 problems that arose at that time. And what I'd like
7 to do is take it from the last line.

8 You're talking about that, over the past
9 week, there has been a focus on the Slab 000 of the
10 Plastic Arts Building which was supposed to have been
11 poured earlier this week; right?

12 A. Yes.

13 Q. So, given that this letter talks about
14 Thursday, that delay would not have been more than
15 two, three days; correct?

16 A. That is correct.

17 Q. Is that one of the serious problems that you
18 were reporting?

19 A. No. In late July, the last day of July, the
20 principal subcontractor of Omega withdrew from the
21 works, and there was a dramatic and clear diminution
22 in the number of workers at the site.

1 Now, pouring a slab is an activity that
2 requires a lot of preparation. Among other things,
3 one must contact the concrete supply company to bring
4 the concrete to the site, undertake a number of tests
5 of the systems, in order to be able to approve the
6 pouring of the slab. So, the delay in the pouring of
7 the slab, a three-day delay, might seem like very
8 little, but in the construction industry, since this
9 is an activity that requires prior preparation,
10 specialists have to go and inspectors for
11 electricity, for plumbing, and structural engineers,
12 all to conduct verifications, well, that is a
13 significant delay.

14 But my main concern was the dramatic
15 reduction in the personnel at the Project when Arco
16 withdrew.

17 Q. And you mentioned that Arco pulled out
18 of--on the 31st of July; is that correct?

19 A. Yes, that is correct. They began a sort of
20 transition. They began to pull out personnel. They
21 began to take the equipment from the work site, and
22 then on 31 July, they withdrew completely. So,

1 lethargy set in with respect of the Project, and so
2 we were concerned, and we sent this letter to Luis
3 Pacheco.

4 Q. And when you say that they started this
5 phase approach, did it start before July 31, or are
6 you referring to a moment after July 31?

7 A. No. They began to pull out little by little
8 before, and on 31 July, they pulled out completely.
9 We asked why, and we never received a response. But
10 as of this date, the change in the number of
11 personnel and equipment at the work site was
12 dramatic.

13 PRESIDENT SHORE: Ms. Buendía, excuse me.
14 You're a very fast talker, so if you could just slow
15 down slightly. It may be a Panamanian approach,
16 which we all respect, but it would be easier. Just
17 slow down a touch. Thank you.

18 THE WITNESS: I'm so sorry. Yes. Everyone
19 tells me I speak very fast.

20 BY MS. PRADILLA PICAS:

21 Q. Ms. Buendía, if I can have someone show you
22 R-0048. Are you there?

1 A. Yes. I have it right in front of me.

2 Q. So, this is a letter from Sosa dated
3 October 31, 2014 to Mr. Pacheco, who was the Project
4 supervisor for Omega; correct?

5 A. Correct. The letter was written by
6 Architect Brenda Prados.

7 Q. But you're copied in the letter; correct?

8 A. Yes. That is correct.

9 Q. So, if you go to that second paragraph, the
10 one that starts with "We are," Ms. Prados says: "We
11 are hereby contacting you to express our concern due
12 to the significant decrease in the Project's progress
13 since the departure of your principal subcontractor,
14 Arco"; right?

15 And she said that this occurred at the end
16 of August of that year. That would be 2014; correct?

17 A. Yes. That is what she says, but she should
18 have said July. It is a mistake on Brenda's part.

19 Q. Okay. You mentioned that because of Arco's
20 departure, there was a reduction, a dramatic
21 reduction in the number of employees; correct?

22 A. Yes, that is correct.

1 Q. So, if you would go with me to R-0044--which
2 is Page 2 for the Spanish, Page 1 for the English--I
3 believe this is the letter where you express your
4 concern; right?

5 This is from September 2, 2014. It's from
6 you to Mr. Pacheco? You see that?

7 A. Yes, I see it.

8 Q. And in that first big paragraph, you say
9 that: "Since today"--meaning September 2--"we
10 counted only 38 workers"; correct?

11 A. Correct.

12 Q. Now, you also mention in your Witness
13 Statement--do you have your Witness Statement in
14 front of you?

15 A. Yes.

16 Q. You also mention in your Witness Statement
17 at Paragraph 8, the second sentence, you
18 say: "Together, Sosa and Omega devised a recovery
19 plan in early September 2014 by which Omega would
20 bring productivity and workforce on the Project back
21 to adequate levels."

22 Do you recall that?

1 A. Yes, I do recall it.

2 Q. And you cite in your Witness Statement to a
3 letter from Omega to Sosa, which is dated
4 September 5, 2014; correct?

5 A. Correct.

6 Q. Let's look at that letter. So, let's look
7 at R-0045.

8 And we'll look at this letter a couple of
9 times, but right now I would like to look, please, to
10 Page 8 of the Spanish--Page 9 of the Spanish. My
11 apologies. You should be at Annex B, Summary of
12 Work.

13 Do you see that?

14 A. Yes.

15 Q. So, this is part of the recovery plan that
16 Omega and Sosa had discussed; correct?

17 A. Correct.

18 Q. I'd like to bring your attention to the
19 dates of September 1 through September 15, so that
20 time period.

21 Do you see that?

22 A. Yes.

1 Q. Okay. And the number of employees says 70;
2 correct?

3 A. That is correct.

4 Q. Now, if you would stay at that exhibit--and
5 if I could have someone show you C-0796. If you look
6 at the first page in the English or the sixth
7 page--the eighth page in the Spanish, we can see that
8 this is a biweekly payroll from Omega--right?--on
9 Ciudad de las Artes for the period of September 1 to
10 September 14, 2014.

11 Do you see that?

12 A. Yes, I do see it. I had not received this
13 document, nor had I seen it at that time, but I do
14 see it here and now.

15 Q. Have you seen it--"here" meaning today, or
16 in preparation for this Arbitration?

17 A. I saw it in my preparation for this
18 Arbitration, but I'm also looking at it again today.

19 Q. Thank you. And if you could just flip two
20 pages over--so, you would go to Page 10 of the
21 Spanish or 3 of the English--at the bottom left-hand
22 side, we see that the number of employees for that

1 period is 66; correct?

2 A. That is what the document says, so that's
3 what I see, yes.

4 Q. And we know that in the plan that you have
5 next to you, that R-0045, the plan for that same time
6 period was 70 employees; correct?

7 A. That is correct, but there were fewer than
8 70. 38, as I indicated in my note.

9 Q. But, despite that, in the payroll for Omega,
10 there seemed to have been 66; correct?

11 A. Well, this is actually like a worksheet.
12 So, what the workers do is they sign up. It would be
13 good to see the list that records the signatures of
14 the workers.

15 Q. That is not a document that is in the
16 Arbitration, but thank you, Ms. Buendía.

17 So, at this point, at least according to the
18 documents we have in the record, Omega had only four
19 employees less than what the recovery plan called for
20 that particular time period?

21 A. No, at the time, there were fewer employees.
22 It was really surprising, the small number of

1 employees that they had. It wasn't even close to
2 what this plan said. That's why we were concerned.
3 They didn't really have the number of staff that was
4 included in this recovery plan.

5 Q. But you have not accompanied that testimony
6 with any documentary evidence; correct?

7 A. In my September 2 letter that I submitted,
8 it shows the number of people that they had at the
9 time, the letter sent to Mr. Pacheco. That's what I
10 brought into the case.

11 We didn't receive copies of the worksheets.
12 I know--and this is common in construction
13 projects--they have to sign worksheets or documents
14 to confirm their presence, but we were there at the
15 Site, and--

16 (Interruption.)

17 A. So, I was saying that the Inspector does not
18 receive the worksheet. It's a document that is
19 internal to the contractor, but we are in the field,
20 on Site, and we can take evidence of the number of
21 individuals there that work there. We do a count to
22 have a record of the equipment and the employees that

1 are there at the work Site.

2 Q. Is it possible that on a particular day,
3 there are less employees, even though over the
4 overall time period, the number of employees is much
5 higher?

6 A. It is possible that a few are absent, but
7 absenteeism is never 50 percent or less than
8 50 percent. It is frequent that three or four
9 workers are absent. That's very common. In Panamá
10 workers are absent frequently, but not in such a
11 large amount as the one that we are indicating here.

12 Q. But the letter from September 2 speaks only
13 about that particular day; correct?

14 A. True.

15 Q. Thank you, Ms. Buendía.

16 Now, let's look at some of the other letters
17 to understand why there was what you call "a
18 reduction of employees."

19 If I could take you to Exhibit C-0596. The
20 Spanish is on Page 3.

21 Do you have it?

22 A. I have.

1 Q. So, we're going a few days back in time.

2 We were talking before about the letter from
3 September 2, 2014; correct?

4 A. Yes.

5 Q. Now we're looking at a letter from you to
6 Luis Pacheco from August 21, 2014?

7 A. Yes.

8 Q. And this letter is merely a few days--less
9 than a week--from the first letter that you ever sent
10 about serious problems on August 14; correct?

11 A. Yes.

12 Q. If I may take you to the last long paragraph
13 at the bottom of the page, you say: "Due to the
14 above-mentioned reasons and given that we have
15 already informed the National Institute of Culture
16 about the state of the project, we communicate to you
17 that we would proceed to request both the INAC and
18 the General Comptroller of the Republic to notify the
19 guarantor about the noncompliance of this obligations
20 of the Contractor."

21 Do you see that?

22 A. I do see that, yes.

1 Q. And we had agreed that, prior to August,
2 there were no serious problems whatsoever?

3 A. That's right.

4 Q. But in less than 15 days of what appears to
5 be problems, you are contacting--suggesting to
6 contact the guarantor; correct?

7 A. Yes. Although it may seem a short period of
8 time, it is necessary to proceed in this manner. All
9 of the performance bonds of government projects are
10 exactly the same. This is a single text that is
11 approved by the Controller's Office, and it says that
12 the bonding company has to be notified within 30 days
13 when we gain knowledge of the event of noncompliance.

14 So, that is why I asked Omega during those
15 three weeks what had happened and whether they were
16 going to take up the work again. Well, for an
17 inspector, it's very important to notify her client,
18 in this case the State, of any noncompliance because
19 they cannot lose the right to use the bond. This is
20 standard in the inspection practice to give notice,
21 at least 30 days in advance. It may seem a short
22 period of time, three weeks, but in connection with

1 the bond, you are almost at the limit time-wise.

2 Q. Thank you. Thank you for that. I
3 understand.

4 Would you say that it is equally important
5 for the inspector to notify the owner of the Project
6 when you think the owner of the Project may also be
7 in noncompliance with the contract?

8 A. Yes. It should be the same for both
9 Parties.

10 Q. And, indeed, you do this, to some extent.
11 If we go to Exhibit C-0592. It is Page 4 in the
12 Spanish, if you'd like to go to the Spanish.

13 This is a letter from you to the INAC, to
14 Ms. Mariana Nuñez, the Director; right?

15 A. Yes.

16 Q. It is dated August 21.

17 A. Yes.

18 Q. So, same day; correct?

19 A. Yes.

20 Q. And the first page of this letter is almost
21 verbatim what you told Mr. Pacheco; correct?

22 A. That's right. We wanted to give notice to

1 INAC of what it is that I was going to tell
2 Mr. Pacheco.

3 Q. Exactly. But you provide INAC with
4 additional information and recommendations.

5 So, if you turn the page, there are two
6 numerals, that come sort of in the middle of the
7 page; right?

8 A. I do see them.

9 (Interruption.)

10 BY MS. PRADILLA PICAS:

11 Q. You tell INAC: "We would like to discuss
12 the following topics with you." Yes?

13 A. Yes.

14 Q. And--

15 (Overlapping interpretation and speakers.)

16 Q. --that: "In a meeting held on May 28, 2014,
17 with the previous Director, with Ms. Herrera, the
18 previous Director requested that the Contractor make
19 several changes in the distribution of spaces in the
20 buildings for music, dance, auditorium, and visual
21 arts." Correct?

22 A. Correct.

1 Q. You say that: "These changes were executed
2 in the architectural blueprints and were delivered
3 for revision on July 16, 2014." Right?

4 A. Yes.

5 Q. And then you tell INAC, you tell Ms. Nuñez:
6 "It is extremely important that you provide us with
7 your comments on the blueprints, to notify the
8 Contractor, so the latter"--the Contractor--"may
9 proceed with the corresponding changes in the
10 different special areas." Right?

11 A. Yes.

12 Q. And you tell them that: "The final
13 implementation of these blueprints depends on this
14 review, and it is a critical route for the Project."
15 Correct?

16 A. That's true.

17 Q. But at this point--my apologies. So, at
18 this point, Ms. Mariana Nuñez has had these
19 blueprints for review for at least a month?

20 A. Yes.

21 Q. So, there was blueprints that were awaiting
22 review and approval. And then, on point 2, you say,

1 that: "By means of a note dated July 15, 2014, the
2 Contractor delivered a change order request for about
3 \$7.7 million and an extension of 278 calendar days";
4 correct?

5 A. I do see that, yes.

6 (Interruption.)

7 BY MS. PRADILLA PICAS:

8 Q. And you say that: "Your company"--meaning
9 Sosa--"reviewed this proposal and formally issued
10 recommendations to the INAC," and those
11 recommendations were on August 4; correct?

12 A. That is correct.

13 Q. And you tell the INAC, once again, that you
14 "need to know the position of the Institution as
15 regards the Contractor's request in order to inform
16 the Contractor"; right?

17 A. That's right.

18 Q. So, at this point you are communicating with
19 the INAC in recommending that they approve these
20 different things--right?--the permits, the change
21 orders, the Contractor can't work unless the change
22 order is either approved or rejected in order to know

1 what the scope of work would be; correct?

2 A. That's not true. They could work. Ciudad de
3 las Artes is a very large project, that there were
4 many other things they could work on. But I do
5 recognize that it was necessary to provide an answer
6 to these issues so that the Project could proceed in
7 a more smooth manner, 100 percent.

8 Q. Now, let's look at what Omega responded to
9 you. So, if I may take you to that letter that we
10 were before, R-0045. That's the one that included
11 the plan that Sosa and Omega had discussed.

12 Are you there?

13 A. What page?

14 Q. For the Spanish, let me look. It doesn't
15 have pagination. Page 6. And for the English, it
16 would be Page 1.

17 A. Okay.

18 Q. So, this letter is, like I said, from Omega
19 to Sosa, in particular, you, and its dated
20 September 5, 2014; correct?

21 A. Correct.

22 Q. And the Omega Consortium says to you: "In

1 response to your letter dated September 2, 2014,
2 expressing your concern over the number of employees,
3 we wish to remind you of and, once again, clarify the
4 following."

5 Do you see that?

6 A. I do not.

7 Q. It is the first paragraph right after "Dear
8 Engineer Buendía."

9 A. Yes.

10 Q. Great. So, this letter is three days after
11 the letter that you sent to Omega regarding the
12 38 employees, remember?

13 A. Yes.

14 Q. And let's look at the issues that Omega
15 points out to you that in your Report you say are
16 unjustified--unsatisfactory, my apologies.

17 So, the first one, Omega says: "As we have
18 told you on several occasions, this is a direct
19 consequence of the administrative measures that we
20 have been forced to take due to the lack of answers
21 and delays with respect to the progress payment
22 account submitted to date."

1 And then they continue: "At the moment, we
2 are owed [REDACTED]. All paperwork has been
3 prepared"; right?

4 A. Yes.

5 Q. On the fourth bullet, Omega explains that
6 they "maintain verbal and written communication with
7 you--with your office staff virtually every day."

8 Do you recall that?

9 A. Yes. We were on-site and we met weekly,
10 once a week, with them.

11 Q. Thank you. Now, if you go to the
12 second-to-last bullet point at the bottom of that
13 page, Omega says: "After many meetings and the
14 exchange of highly documented information, on July 7,
15 2014, we submitted a request for additional time and,
16 to date, we have not received either comments or
17 recommendations from your office"; right?

18 A. That's right. By that date we had already
19 examined Omega's request and we had issued the
20 recommendations to the INAC, but INAC had not sent
21 its own recommendations to Omega.

22 Q. Exactly. And this refers to what you were

1 talking about in the August 21 letter with respect to
2 the extension of time; correct?

3 A. Yes.

4 Q. Now, if you would turn the page. So, we are
5 going to Page 2 for the English.

6 Omega says: "The current workforce,
7 equipment and machinery levels on the Site are in
8 accordance with the revised and established work
9 plan, which we find adequate based on the conditions
10 and progress of the Report"; right?

11 A. That is what the letter says, yes.

12 Q. And at this time period, we are looking at
13 September 1 through September 14. We looked at what
14 the proposed plan was and the biweekly pay report,
15 and we agreed that, at least with those documents,
16 there were only four employees less than the 70 that
17 were provided for in the plan; correct?

18 PRESIDENT SHORE: We have the testimony on
19 that. She's not agreed on the number. She's agreed
20 that that's what the document says.

21 THE WITNESS: What the member of the
22 Tribunal has said is correct.

1 MS. PRADILLA PICAS: I didn't mean to
2 mischaracterize. That is correct.

3 BY MS. PRADILLA PICAS:

4 Q. Now, Ms. Buendía, could I please take you to
5 Exhibit C-0593. Let me know when you're there. It
6 is Page 3 in the Spanish. Page 1 in the English.

7 A. Yes.

8 Q. So, this now is 20 days later; right? It's
9 September 25, 2014. And it's from Sosa--in
10 particular, signed by you--to Mr. Pacheco from Omega;
11 correct?

12 A. Yes.

13 Q. And I would like to direct your attention to
14 the first bullet where you said to Mr. Pacheco
15 that: "The design blueprints and administrative
16 changes are still under review by the Executive
17 Directors." That means INAC; right? Mariana Nuñez
18 and the Executive Directors?

19 A. Correct.

20 Q. These are still the same blueprints that
21 were under review in August 21; correct?

22 A. Yes.

1 Q. Thank you. And then, if we could look at
2 the third bullet point, you say: "In the meeting
3 held yesterday with the Legal Affairs Directorate of
4 INAC, we informed them of the importance of
5 responding to Omega regarding the Certificate of
6 Partial Payments Number 13, 14, and 15, which were
7 duly approved by INAC's inspectors"--meaning
8 Sosa--"and comptrollers"; right?

9 A. Correct.

10 Q. And in this letter, you say: "It was
11 explained that the delay in this process is seriously
12 affecting the cash flow of the contractor."

13 Do you see that?

14 A. Yes, I do see that. There were three
15 accounts that were late and evidently we had to call
16 the attention of INAC in this connection.

17 Q. Thank you. If I could take you now to
18 Exhibit C-0524. For the English, it is Page 1. For
19 the Spanish, it would be Page 11. Well, we'll start
20 with page--my apologies. Page 5 of the Spanish to
21 start.

22 Are you there?

1 A. Yes.

2 Q. So, to put this in context, this is a Work
3 Progress Monthly Report from you to INAC; correct?

4 A. We don't have the full report. It is part
5 of the report here, but, yes.

6 Q. Yes. For the arbitration only, an excerpt
7 of it has been included.

8 And this is the type of report that you had
9 to provide to INAC on a monthly basis based on the
10 contract; is that right?

11 A. Yes. I would have liked to see the full
12 report. I understand that this is just a part of the
13 report. This is an excerpt of the
14 report: specifically the introduction, the summary,
15 and the conclusions and recommendations.

16 Q. And this is for the period of October 1 to
17 October 2014.

18 A. Yes. From October 1 to October 31, 2014.
19 (Interruption.)

20 PRESIDENT SHORE: Let's get the date right.
21 Because you asked October 1 to October 14. I think
22 the Witness just said October 1 through--

1 THE WITNESS: Yes, October 31.

2 MS. PRADILLA PICAS: October 1 to
3 October 30, 2014.

4 BY MS. PRADILLA PICAS:

5 Q. Right?

6 A. October 1 to October 31. You can see that
7 on the first page.

8 Q. My apologies. The Spanish says 31 and the
9 English says 30. I take your point.

10 If I could direct you to Page 11 of the
11 Spanish, which would be Page 3 of the English.

12 And I'd like to bring your attention to the
13 first bullet point where you say: "It is essential
14 that the INAC carries out a review and also comments
15 on the architectural plans with the new distribution
16 of spaces requested at the meeting held on May 28,
17 2014, so that the Contractor proceeds to make the
18 relevant adjustments in the specialty blueprints
19 since the works are already on the structure stage
20 and many of the changes have an impact on the
21 activities of such stage."

22 Do you see that?

1 A. I do see that.

2 Q. And not to be redundant, but these are the
3 same blueprints that we've been talking about;
4 correct?

5 A. That is correct.

6 Q. And if I may direct you to bullet point 4.

7 You say: "The construction is at the
8 structure stage"--which you just mentioned--"in the
9 dance, theater, music, plastic arts, and parking
10 buildings. It is important to provide an answer to
11 the Contractor regarding the approval of the partial
12 payment accounts pending payment, as the delay in
13 this approval is affecting the Contractor's cash flow
14 in provoking a reduction in productivity and delay in
15 the Project."

16 Do you see that?

17 A. Yes, yes, I do see that. When this report
18 was prepared at that date, there were three accounts
19 that were pending payment.

20 It is usual for the State to take a long
21 time to approve these things. Panamá is a very
22 bureaucratic government, but we felt it was important

1 at this time to call the attention of the INAC in
2 connection with these pending approvals. And, of
3 course, we told Omega that, in spite of the fact that
4 there was a delay in the approvals--and this is very,
5 very common, specifically when there is a change in
6 the administration. It is very important for them to
7 continue to work in the Project, specifically when
8 they had a financial advance that was larger than the
9 advance in the field because of the advance monies
10 that they had gotten. And although we understood
11 their concern that they were not receiving the
12 approvals on time, and that impaired their cash flow
13 projections and intention of injecting more resources
14 to the Project, it was important for them to go on
15 working to prevent any kind of contract termination
16 clauses and for them to use the money that they had
17 gotten in the advance because these delays are very
18 common in the Government.

19 In fact, today, these changes and these
20 blueprints are still being discussed because we have
21 a new Administration and new Minister and new changes
22 were brought about and today the payments for the

1 current Contractor are still delayed.

2 But yes, we thought it was important at that
3 moment, however, to try to exert some pressure
4 vis-à-vis the owner. We tried to mediate between the
5 owner and the Contractor. This report was sent to
6 INAC, and we wanted to exert some pressure so that
7 these things be approved because this was not a
8 desirable situation for the Project.

9 In the correspondence we sent to Omega in
10 this period of time, we also told Omega that Omega
11 itself was delayed and we wanted to let it know that
12 it was important for Omega not to diminish the pace
13 of the work and not to, of course, delay the Project.

14 Q. Thank you, Ms. Buendía.

15 One thing that I wanted to clarify, because
16 you mentioned that during this same time period--and
17 I do not mean to mischaracterize this. If I'm saying
18 something that you did not say, please correct me.
19 I'm trying to recall as exact as possible.

20 But I understood you to say that, during the
21 same time period--which we are, at latest,
22 October 31--you had communicated to Omega that they

1 had--that they were overfunded and they should use
2 their money from the advance payment?

3 A. Yes. As I indicated, we met with Luis
4 Pacheco weekly, and this was an issue that was always
5 present at those meetings. Ricardo Espino from INAC
6 was also present in those meetings, Pacheco, him,
7 and I. And the delay in the approval of the changes
8 and the request for extensions and the approval of
9 the CPPs by INAC, that was a topic that always came
10 up during those meetings, and I always told Luis--
11 specially because, well, Luis is not Panamanian, and
12 his Panamanian subcontractor was no longer there.

13 So, we provided advice to him. And Sosa was
14 also in the same situation, we were not being paid
15 for our services dating back to April, if memory
16 serves. So, we always told him, please continue your
17 work, because their Contract didn't provide that a
18 delay by the INAC in the approval of the documents
19 was a reason for them to stop work or to diminish the
20 pace of the work.

21 There are Governmental Contracts that do
22 establish that provision if the institution takes

1 more than a certain number of days to respond or to
2 provide an approval, then the Contractor may reduce
3 or suspend the work, or if there is a delay in
4 payment, they can also suspend, but this was not the
5 case in this case.

6 I told Luis, please continue working
7 because, first, you have an advance, a substantial
8 advance, and you can finance yourselves using that
9 advance. And, second, who triggers the breach of
10 Contract clause is you if construction works are
11 stopped or if the construction pace is slowed down -
12 because at that moment the pace was dramatically
13 slow.

14 The Panamanian State, I was telling them,
15 always takes a long, long time to pay, but it always
16 pays. And Sosa got paid for its services for the 13
17 months of work in Ciudad De Las Artes at the end of
18 2015. And, of course, this also impaired our cash
19 flow and everything, but we always had this premise
20 in our work. The State is quite bureaucratic and
21 this was something that we discussed frequently with
22 Luis.

1 Q. You spoke about it, but you never sent them
2 a letter; correct?

3 A. I do think I sent them a letter.

4 Q. Before October 30, 2014?

5 A. I don't recall the date. We can look into
6 it, but, yeah, it could be. It could be before or
7 during the same period of time.

8 Q. Let's see what you actually said in
9 December 5, 2014. So, if I may have you be shown
10 C-0715. And we are looking at Page 1 in the English,
11 or Page 5 in the Spanish.

12 And we have gone through a series of letters
13 up to this point in time, in at least, from what we
14 have looked at, there has been no mention by Sosa in
15 writing about being overfunded; correct?

16 A. Well, I wouldn't say that it is a hundred
17 percent correct because the record does not include
18 all of the letters, all of the emails that may have
19 that information, but I assert, without any fear of
20 being wrong--and I clearly remember this--that it was
21 a topic that we often discussed with Pacheco.

22 It could even be in the minutes of a meeting

1 of those days or in a note or in an email because the
2 record does not include all of the correspondence,
3 which was quite vast. And I remember that very well
4 because I told Pacheco the expression: "The
5 Government is late, but always pays", and I can
6 assure you that it was something that was mentioned
7 and that it was explained to them.

8 Q. If I understand correctly, Ms. Buendía, you
9 are saying that there are other letters and emails
10 and communications that are not in the record that
11 relate to this particular point?

12 A. Yes. I see that not all of the
13 correspondence that I had with Mr. Pacheco is
14 included. You have some of the correspondence, and
15 we also exchange emails and WhatsApp messages.

16 Q. And, Ms. Buendía, in the preparation for
17 this arbitration and in working with Respondent's
18 counsel, did you provide this information to
19 Respondent?

20 PRESIDENT SHORE: Do you mean "documents?"
21 So, say "documents," not "information." Did you
22 provide additional documents to Respondent?

1 THE WITNESS: I presented the documents that
2 were linked to what was mentioned in my Statement,
3 but the file of this Project is quite extensive, and
4 I am not certain that they have everything that
5 resulted from the management of Ciudad De Las Artes.
6 We have books, and books, and books.

7 BY MS. PRADILLA PICAS:

8 Q. But you thought--or at least you think now,
9 it seems to me, that these documents were important
10 to what have you testified in your Witness Statement;
11 correct?

12 A. I don't know if they're important. As a
13 matter of fact, I am now mentioning what Pacheco was
14 told and what the advice was back then. The truth is
15 that I don't know whether to tell you if they are
16 relevant or not. There is a lot of important
17 information in my monthly Reports. All of them are
18 important.

19 We have more than 13, and they are not on
20 the records, so in my opinion all of the Project
21 information is important, but as to legal issues, I
22 don't know. You are the ones to determine whatever

1 is relevant for the record from the technical point
2 of view, all of the information is important.

3 Q. But those documents that you mentioned would
4 say or contain information about your recommendations
5 that the Project was overfunded, your recommendations
6 to Omega prior to December of 2014.

7 Those would be relevant to what you are
8 testifying now, would they not?

9 A. I don't know. I think that what I'm saying
10 should be enough. This is something that was
11 discussed, and I can assure you of that, and it could
12 be on record or not. I don't know. But I think that
13 what I'm saying right now is important.

14 Q. Thank you, Ms. Buendía. Let's actually look
15 at what we have on the record.

16 If you would go--you are at C-0715; correct?

17 A. Yes.

18 Q. Okay. So, this is a letter, as we were
19 mentioning, from December 5, 2014, from you in
20 representation of Sosa to Ms. Marianna Nuñez;
21 correct?

22 A. Correct.

1 Q. And this letter is 18 days before the INAC
2 issued the Administrative Resolution terminating the
3 Contract; correct?

4 A. Yes.

5 Q. I'd like to direct your attention to Page 6
6 of the Spanish, the first full paragraph. And for
7 English we would be at the bottom of Page 1, the last
8 paragraph.

9 You say: "I should add that in Note Number
10 SA-CDA-122, dated November 14, 2014, we also informed
11 you that the Contractor sent us Note Number
12 SOSA-048-2014 indicating to us that the reduction in
13 the work staff is due to the lack of approval of INAC
14 Certificates of Partial payments since April 2014."

15 Do you see that?

16 A. I do see that.

17 Q. Then you say: "We recommend, in this note,
18 to refer the Contractor's communication to your legal
19 department," meaning INAC's legal department;
20 correct?

21 A. Yes.

22 Q. And you continue by explaining: "We

1 consider that, although Contract Number 093-12 was
2 signed between the INAC and the Omega Consortium on
3 July 6, 2012, Clause 6 of the State obligations set
4 forth that the Institute agrees to review and
5 validate the progress Reports within a term of 15
6 calendar days as of their formal delivery, to be
7 extended for 15 additional days at the Institute's
8 criterion." Correct?

9 A. Yes.

10 Q. "And further agrees to execute with due
11 diligence the review, approval, acceptance, and
12 authorization of all accounts submitted by the
13 Contractor to make payments to the latter."

14 Do you see that?

15 A. Yes.

16 Q. And then I'd like to direct your attention
17 to Page 7, which is at the bottom of Page 2 for
18 English. Where there is a chart. Under the heading
19 of "identification, follow up, and risk control."

20 Do you see that chart?

21 A. Yes.

22 Q. Okay. Let's go through that slowly.

1 So, it says here risk Number 11, "the
2 classification of that risk is high, the likelihood
3 of that risk is very likely."

4 Do you see that?

5 A. Yes, I do see that.

6 Q. And we see that you say that the responsible
7 Party is INAC, that the risk description is delays in
8 Contract payments, the impact description is
9 allocation of the contractor's cash flow, which can
10 result in productivity reduction, and, therefore,
11 delays and overcharge in the cost of the Projects;
12 correct? And you say, as a corrective action,
13 "encourage payments to be made within the time frame
14 set out in the Contract."

15 Do you see that?

16 A. I do see that. This is a risk that we
17 usually include for State projects, and it is highly
18 likely because this is what we see with the
19 institutions. There are delays in payments, and this
20 is what we try to warn to the Agencies as inspectors,
21 that they should not to be delayed in payments, in
22 this case with the approvals.

1 In the document I am just referring to
2 payments, because this is what we usually say in this
3 type of projects, but in this case I'm talking about
4 approvals, because that may also lead the constructor
5 to ask for compensation for the time and delays in
6 payments, or there may be a request for moratory
7 interests as established under the public laws.

8 So, we always ask the owner of the Project
9 not to delay, not to incur into any delays in
10 payments, but we include this because we do have
11 delays with the Government, and I've been working on
12 these Projects in 2011, and usually, or at least my
13 company has not received payments within the term of
14 the Contract, and that's the reason why we are always
15 calling attention to this.

16 Q. And that's because the Contract on Clause 6
17 states the timeline on which the owner of the Project
18 has to approve those payments; correct?

19 A. Could you please repeat? Could you please
20 repeat the question? Maybe I understood something in
21 the translation that didn't make sense to me.

22 Q. Of course. Of course. That this risk is

1 included there because Clause 6 of the Contract that
2 speaks about State obligations provides the number
3 of days within which the owner of the Contract has to
4 approve the payments; correct?

5 A. That is correct. Clause 6 establishes the
6 timeline when they have to approve the CPPs. There
7 is no consequence for delays, and that is what I was
8 warning Luis. Some State contracts indicate that, if
9 there are any delays, or if there are any delays in
10 payments or in approval of payments, there may be
11 some actions that the Contractor may enforce, but
12 here the Parties were not informed as to what would
13 happen if INAC would take longer.

14 Q. Understand. And Ms. Buendía, we discussed
15 earlier that you are a civil engineer and not an
16 attorney. And I do understand that, under the
17 Contract, part of Sosa's obligation is to look at the
18 Contract. But as a non-lawyer, you wouldn't be able
19 to know or to advise INAC on whether other laws in
20 Panamá will provide whether a contractor could or
21 could not stop work; correct?

22 A. As engineers, we do need to be familiar with

1 the Contract, the clauses of the Contract, and
2 whenever there is breach of those clauses and also
3 report that. For example, an attorney might not know
4 whether the clause on productivity is being--or the
5 grounds for breach of that clause of productivity is
6 being triggered or not.

7 For example, let's say that we have seven
8 carpenters, three plumbers, two electricians, five
9 people working with masonry, and then we also have an
10 excavator. So, the attorney will not know whether
11 this is--the number of people on-site is enough to
12 maintain the timeline.

13 That's the reason why we do work heavily
14 with the contract documentation, so that we can
15 report whether there is a ground for a breach because
16 this is usually all of these grounds are closely
17 related to the technical aspect, and we do issue
18 recommendations. And, as you saw in the note, I
19 usually say, please discuss this with your legal
20 department. This does have legal connotations or
21 legal consequence, but we go so far.

22 We mention that whenever we think that there is

1 concession for a breach, that is our role. We have to
2 do it. Especially when the breach is closely linked
3 to something technical like the productivity of the
4 works. But at the same time we say "we go up to here"
5 and the Legal Department - I mean, we think that, if
6 we think that the Contract is not being complied with
7 and if there are reasons to trigger the grounds, it
8 is the legal affairs department, the one that
9 examines the situation and makes the final Decision,
10 So, that is what my letter establishes.

11 Q. Thank you, Ms. Buendía.

12 Now, Ms. Buendía, I understand that, but we
13 were discussing about your instruction where you say
14 that it's not clear in the Contract--right?--what the
15 contractor action could be. So, it is something that
16 is outside of the Contract; correct?

17 A. That is correct. That's the reason why I
18 write that it was not included in the Contract, and
19 that's why I recommend talking to the contractor and
20 meeting with the legal affairs department. That's
21 what I recommend.

22 Q. Exactly. Because that would be an issue of

1 Panamanian law, not necessarily the Contract and,
2 therefore, as an engineer, that would not be your
3 area of expertise; correct?

4 A. Yes. We may mention the grounds in all of
5 these causes or grounds that do have a technical
6 underlying concept, but we do recommend for the
7 technical department to look at it. So, the
8 inspector does make recommendations, but it is the
9 institution, the one that makes the final Decision in
10 the case of State contracts, and we may identify a
11 cause, but then the legal department decides that
12 there is none. So, it is important for them to look
13 into it.

14 Q. Understood, Ms. Buendía.

15 Now, with respect to this particular
16 noncompliance that you are discussing in this letter,
17 may I direct you, please, to for the--to
18 Page 8--excuse me, to Page 7. It is right after the
19 chart that you were looking at. And for English
20 would be at the very top of Page 3--we are still on
21 C-0715.

22 Are you there?

1 A. Yes.

2 Q. So, you tell the INAC: "As you may observe,
3 in view of this event, we have recommended to make
4 the payments within the time frame set out in the
5 Contract, so that the Institute complies with the
6 provisions of Clause 6 of the Contract, subscribed
7 between INAC and the Omega Consortium."

8 Do you see that?

9 A. I do see that.

10 Q. So, what you are telling the INAC at this
11 moment is "please make these approvals, so that you
12 are in compliance with the Contract;" correct?

13 A. Yes. Clause 6 established a 30-day period,
14 and clearly more than 30 days had elapsed, and we do
15 ask the institution to do this as, once again, this
16 is very usual with the Panamanian State. We have a
17 lot of red tape, and there are delays with payments,
18 and this is a recommendation that we usually attach
19 to the approvals, but since most the Contracts are
20 paid, this is just a very usual rating of the risk,
21 and this is the recommendation that we usually share
22 with INAC.

1 Q. And at this point in time, which we are
2 talking just to bring everybody back to the time,
3 it's December 5, 2014, your recommendations and
4 your--what you are saying to INAC is you "reiterate
5 your willingness and interest in holding a technical
6 meeting with the legal team of INAC in order to share
7 our knowledge about the Project, to reach a solution
8 to this problem and to determine a road map, so that
9 this important Project can be successfully
10 completed;" correct?

11 A. Correct.

12 Q. So, as of December 5, at least Sosa was
13 still willing to do whatever needed to be done within
14 the confines of reasonability to determine a road
15 map, because this Project can be successfully
16 completed; correct?

17 A. Yes. Even though the Contractor had already
18 triggered the grounds mentioned in the Contract for
19 termination, as an inspector, we are always trying to
20 mediate between the Parties. We wanted to see the
21 Project finish, on the one hand, because it is an
22 important work for our country; and, secondly,

1 because if the Contract was going to be delayed, we
2 are also going to be left without work.

3 So, we were really interested in the
4 Contract to move forward. We did understand the
5 arguments presented by both Parties, and any
6 technical information that we could contribute--it
7 was something that we were willing to do, and as a
8 matter of this Architect Sosa did participate in
9 several meetings with the Parties, but at the end of
10 the day apparently the Parties could not come to an
11 agreement. But we were interested in mediating, and
12 this is what inspectors usually do for this type of
13 work.

14 Q. Thank you, Ms. Buendía.

15 MS. PRADILLA PICAS: Mr. President, is this
16 a good time to break or would you like me to
17 continue?

18 PRESIDENT SHORE: No. This is fine.

19 Let's take a 15-minute break.

20 Ms. Buendía, please don't talk about the
21 case with anyone during the break. Thank you very
22 much.

1 THE WITNESS: Okay.

2 (Brief recess.)

3 PRESIDENT SHORE: Back on the record.

4 Ms. Pradilla Picas.

5 MS. PRADILLA PICAS: Thank you,

6 Mr. President.

7 BY MS. PRADILLA PICAS:

8 Q. Ms. Buendía, hello again.

9 I promise I will be brief for the next part.

10 Do you have your Witness Statement still in front of
11 you?

12 A. Yes.

13 Q. Would you please turn to Paragraph 18 of
14 your Witness Statement. Let me know when you're
15 there.

16 A. Yes, I'm there now.

17 Q. So, you say in Paragraph 18 that: "When the
18 INAC Administration took office in mid-2014, they
19 began to review the entire project, including Sosa's
20 performance."

21 Right?

22 A. Right.

1 Q. And you explained that earlier as well;
2 correct?

3 A. Yes. When I mentioned "review," I mean
4 coming up to date. Whenever a new administration
5 comes in or a new director, because sometimes they
6 change them midway through the Government's
7 administration, they begin to come up to date with
8 all the information. This particular project was a
9 design-and-build-project that means a fast-track
10 project, which means that the design and construction
11 are done in tandem.

12 So, each new administration begins to review
13 how the spaces are distributed. They also begin to
14 review contractual issues with both contractors,
15 Omega and Sosa, especially in these institutions that
16 generally don't deal with large-scale construction
17 projects, so the new Director always begins to come
18 up to date with everything.

19 Now, recently there was a change in
20 Government in Panamá in 2019, and so we have embarked
21 on the same process.

22 Q. And you say in your Witness Statement that

1 soon after that review began, INAC started
2 withholding approval of Payment Applications;
3 correct?

4 A. Yes. They began to take more time in
5 extending the approvals of Payment Applications for
6 Omega and for ourselves as well.

7 Q. But you didn't provide any documentary
8 evidence of any delays in the approvals for Sosa, did
9 you?

10 A. No, because that was a more administrative
11 matter. I am not the person in charge of collecting
12 on the company's billing. That is done by another
13 person. But obviously, I was aware that our payments
14 were behind.

15 Q. And these delays are not anything unusual in
16 your opinion? They are not uncommon?

17 A. No. Indeed, right now the current
18 contractor of Ciudad De Las Artes, well, no payments
19 have been approved for that contractor since April of
20 last year. In another project that the Company has
21 with the State, we began in August of last year, and
22 to this day, we have not received approval of the

1 billing.

2 When there is a change in Government, that
3 generally happens. It is not ideal, but it is common
4 for it to happen.

5 Q. Could I please have you look at C-0715. And
6 as you're turning to it, this is the letter from Sosa
7 to Ms. Nuñez, the General Director of INAC from
8 December 5, 2014, where we discuss the risk table.

9 Do you remember?

10 A. Yes.

11 Q. Let me turn you to the Spanish, Page 7.
12 That would be Page 3 in the English. And in the
13 Spanish version, we are going to be looking at the
14 bottom, the last paragraph, which is incomplete and
15 moves to the next page. And in English, we're
16 looking at the second paragraph.

17 A. Yes.

18 Q. I note that there's a word that seems to be
19 mistranslated, so as I read the English, I will read
20 it with the way in which I believe the translation
21 should have been, and you can correct me,
22 Ms. Buendía, if you disagree.

1 So, that paragraph you say to INAC: "Due to
2 the fact that we do not know the reasons why INAC has
3 not approved the CPPs since April 2014, Sosa
4 Arquitectos has requested a meeting to offer and
5 inquire about any doubt or observation regarding the
6 CPPs approved by our company as inspectors of the
7 Works."

8 Do you see that?

9 A. Yes, I do.

10 Q. And so, on December 5, 2014, you were
11 telling the INAC that you did not know the reasons
12 why the CPPs were not being approved; correct?

13 A. That is correct.

14 Q. Thank you, Ms. Buendía.

15 MS. PRADILLA PICAS: I don't have any
16 further questions. I really appreciate all your
17 answers.

18 PRESIDENT SHORE: Thank you, Counsel.

19 Same offer, Mr. Alarcon, if you want to hear
20 Tribunal questions first.

21 MR. ALARCON: Yes, absolutely. Yes, thank
22 you, Mr. President.

1 PRESIDENT SHORE: Professor Naón.

2 QUESTIONS FROM THE TRIBUNAL

3 ARBITRATOR GRIGERA NAÓN: In connection with
4 the last question that was put to you by counsel, my
5 understanding is that one of the concerns was whether
6 the advance payment that had been made to Omega was
7 sufficient to cover pending work.

8 Is that the case?

9 THE WITNESS: Not entirely. That is to say,
10 the INAC, when the new authorities came in, they did
11 ask about the question of the advance payment because
12 they saw in my Reports that the percentage of
13 financial advances, when I calculate the amount of
14 money that's been approved, was substantially greater
15 than the physical advance that appeared in the time
16 management. And so, there was a difference, and that
17 was something that the attorneys or, rather, the
18 advisors to the new Director--well, since they don't
19 work in the construction industry--didn't entirely
20 understand. So, it was something that I had to
21 explain to the people from INAC, the new authorities
22 from INAC, from time to time why there was a greater

1 financial advance than the advance in the terrain.

2 (Overlapping interpretation and speakers.)

3 ARBITRATOR GRIGERA NAÓN: Oh, I'm sorry.

4 It's okay now? Okay.

5 But in order to make that assessment, you
6 needed to carry out a technical evaluation of how
7 much money had been paid in advance, on one hand, and
8 on the other hand, the other issues, the ones that
9 you mentioned as issues that only engineers
10 understand--we lawyers sometimes do better than that,
11 but I take your point--for instance, level of
12 productivity, how much persons were on the works and
13 so on and so forth.

14 Wouldn't the meeting that was the subject
15 matter of the last question of counsel to the
16 Claimant would have helped in getting to an
17 understanding of that?

18 THE WITNESS: Well, we had several meetings
19 with the INAC advisors to explain all these matters
20 to them. That was the subject of considerable
21 conversation during all of the months when we were on
22 the Project because it is a matter--well, not just

1 the attorneys, but likewise with the accountants,
2 it's hard for them to sometimes understand the
3 numbers. They see them through a different lens than
4 we do.

5 So, the subject of the advance payment was
6 something that seemed to me--I had the impression
7 that they weren't so clear on it, why was the
8 financial payments going forward more than the
9 progress in the field. So, through the months as
10 they came into office, we were discussing these
11 matters with them and explaining them to them very
12 well how one would amortize the advance payment, what
13 it was used for. These are things that were
14 discussed extensively with INAC by the inspectors.

15 (Overlapping interpretation and speakers.)

16 ARBITRATOR GRIGERA NAÓN: I'm sorry.

17 And don't you think that the advance was
18 sufficient taking into account all the technical
19 issues that you referred to, or the advance was not
20 sufficient to cover going ahead with the works?

21 THE WITNESS: No, the advance was 20 percent
22 of the contract amount, so it was far greater than

1 the bills that were pending approval. The advance
2 was for 10 million-plus, and the bills pending
3 approval were for [REDACTED]. So, the Project always
4 had a balance that was favorable to the contractor in
5 view of the advance payment.

6 But this is a practice that is used commonly
7 in construction. It is normal for the Contractor to
8 be made an advance payment. Generally, it's
9 10 percent; in this case, it was 20. But that is not
10 unusual at all. And all of the bills have a
11 20 percent amortization, the same percentage you give
12 the Contractor is the amortization of the account.
13 So, they always amortize--they are paid 80 percent,
14 so as to amortize the advance payment. This a common
15 practice for those of us who work in construction.

16 Now, it's likely that someone who doesn't
17 work in construction, when they see a table on
18 financials and progress in the field, it might seem
19 unusual. But it was explained perfectly well to
20 INAC, and evidently, yes, there was always going to
21 be a balance in favor of the Contractor because it's
22 only in the last billing that the advance finally is

1 totally amortized. The important thing is that the
2 Contractor go forward with the construction work so
3 that the percentage can be discounted of the advance
4 payment.

5 ARBITRATOR GRIGERA NAÓN: Thank you.

6 PRESIDENT SHORE: Professor Douglas?

7 Ms. Buendía, I just have a couple of
8 questions, if you can help me out.

9 One is just a question about dates.

10 If you pick up your Witness Statement,
11 please, you received your degree in 2004; correct?

12 THE WITNESS: Correct.

13 PRESIDENT SHORE: And you joined Sosa in
14 what year? 2013?

15 And then you say prior to joining Sosa--in
16 Paragraph 4--you were a project management consultant
17 at other firms in Panamá for approximately 16 years.

18 Do those numbers match up?

19 THE WITNESS: No. The experience I had as
20 of 2019 was 16 years. So, if you go from 2019 back
21 to 2003, those are the 16 years. That's what I
22 intended to say there.

1 PRESIDENT SHORE: Okay. Thank you.

2 And then can you go to one of the documents
3 that counsel showed you? I think it is C-0524. It
4 was a monthly report, October 2014. And I appreciate
5 that you're not happy with this document because it's
6 an extract, but leaving that aside for the
7 moment--your unhappiness is noted--can you look again
8 at your conclusions and recommendations?

9 Counsel took you to a couple of the
10 conclusions and recommendation, and one that I wanted
11 to ask you about is Conclusion 2, in which you
12 note--and you wrote this; is that right?

13 THE WITNESS: Yes, I wrote it.

14 PRESIDENT SHORE: The work has a delay of
15 13 months according to the last timeline provided by
16 the General Contractor. The Contractor provided
17 justification for the delay for a total of 278 days.
18 The time extension request was reviewed by the
19 inspection and a recommendation was issued; however,
20 the INAC requires the Contractor to deliver the
21 operational expenses related to this time extension
22 in order to issue a comment on the latter.

1 Can you just explain the background of that
2 conclusion: The delay, what period of the delay was
3 justified, and what the significance was, if any,
4 about the operational expenses at this time?

5 THE WITNESS: Yes. In effect, the Project,
6 when we came in to work as Inspectors--you'll recall
7 it began in April, and we were not hired until
8 November. We were informed by the INAC team and by
9 the Contractor itself that certain situations had
10 arisen that had caused delays in the some of the
11 work. The main one of these: At the Work Site there
12 is a museum--there was a museum, and there were
13 pre-Columbian artifacts in that museum, and they had
14 to be moved with all of the State security apparatus
15 to another location, and the process of transferring
16 those pre-Columbian artifacts took a long time.

17 There were other reasons as well. There was
18 a 15-day strike of construction workers nationwide,
19 so there were certain situations which were not
20 imputable to the Contractor, and they presented a
21 request for an extension that had to be approved by
22 INAC and formalized through an addenda to the

1 Contracts--an addendum to the Contract.

2 We received that request, obviously, and we
3 undertook a review of the time that Omega was
4 requesting. They were requesting 278 days, and in
5 our review, we thought that 206 of those could be
6 guaranteed. This was sent to INAC. Every time a
7 contractor requests additional time, this has to do
8 with operational costs, because it means that they
9 need to--the Contractor needs to spend more time at
10 the Work Site than was anticipated, and that's going
11 to generate administrative expenses. One is going to
12 have to pay 206 additional days of salaries for
13 engineers, administrative personnel, 206 more days of
14 security guards, electricity, water, and so on.

15 So, generally, an approval of an extension
16 is associated with and tied to a request having to do
17 with Operating Costs. So, institutions, before
18 approving an extension, ask the Contractor to also
19 submit their Operating Costs, so as to approve both
20 at the same time. So, INAC, after our
21 recommendation, intended to recognize the time, but
22 they needed to know what it was going to cost, and

1 that's what the report hadn't included.

2 We had already indicated to Omega that they
3 should say how much money is the extension going
4 cost, but that never happened--

5 (Interruption.)

6 THE WITNESS: We had advised Omega that,
7 together with the request for extension of those
8 206 days or 278 days, which is what they were asking
9 for, that they should provide the Operating Costs
10 that would correspond to that number of days, but
11 that never happened.

12 PRESIDENT SHORE: Did you have conversations
13 with Mr. Pacheco in the summer of 2014 or the fall of
14 2014 about Omega not having submitted the operational
15 expenses backup?

16 THE WITNESS: Yes. I think it is also in
17 writing that we indicated that it was important that
18 they submit the Costs associated with the extension
19 that they were requesting, because the institution
20 needed that in order to approve it, as did the Office
21 of the Comptroller General of the Republic.

22 PRESIDENT SHORE: Now, when you came onto

1 this Project in November of 2013, who did you meet
2 with from Omega? Who was your principal
3 interlocutor?

4 THE WITNESS: It was always Luis Pacheco.

5 PRESIDENT SHORE: From beginning to end; is
6 that right?

7 THE WITNESS: Yes. From beginning to end,
8 the person who we had permanent contact with
9 was--well, I never met with Mr. Oscar Rivera. And
10 with Frankie López, well, I think I saw him just once
11 throughout the time that the Contract lasted. All of
12 the communications were with Luis, Luis Pacheco.

13 PRESIDENT SHORE: And do you recall whether
14 you saw--do you recall when you saw Mr. López for the
15 only time that you recall seeing him?

16 THE WITNESS: Yes. They had a request to
17 add areas. They wanted to ask that the area or size
18 of the Project be expanded, and that was a
19 particularly large extra, [REDACTED], and we met to
20 review that extra. But it's the only time that I, at
21 least, met with Frankie.

22 The rest of the meetings, which happened on

1 a weekly basis, were with Luis Pacheco.

2 PRESIDENT SHORE: And do you remember when
3 you met with Mr. López to discuss that extension,
4 what time frame?

5 THE WITNESS: It could have been before
6 July 15, which is when they submitted the final
7 extra.

8 PRESIDENT SHORE: And in your meetings with
9 Mr. Pacheco in July, August, September 2014, at any
10 of these meetings did he say words to the effect that
11 "Our situation has changed because we are being
12 treated unfairly, in a way that we hadn't been
13 treated unfairly before, by the new Administration"?

14 THE WITNESS: No, never. Indeed, my
15 relationship with Luis Pacheco was very cordial. We
16 got along very well. We always had open, fluid
17 communication. He never told me that they were
18 treating them differently, and much less because of
19 the change in Administration. We always had a good
20 relationship and good communication.

21 PRESIDENT SHORE: Well, he may well have
22 liked you, Ms. Buendía, but I'm asking about his

1 relationship--what he indicated about people at INAC,
2 whether these people had it--to use a colloquial
3 expression--"had it in" for him and Omega.

4 Did he ever indicate words to that effect?

5 THE WITNESS: As I explained earlier, the
6 two contractors, Omega and Sosa, were in a similar
7 situation. Everything began to take a bit longer.
8 And, of course, he expressed concern, but I explained
9 to him that that is quite common when the new
10 authorities come in. Even though the technical team
11 at INAC was, fortunately, the same, and continues to
12 be the same, when the new authorities come in and the
13 new directors, everything slows down.

14 So, this was something that we discussed,
15 because Omega and Sosa were really in the same
16 situation in terms of delays when it came to
17 responses for--on whatever.

18 PRESIDENT SHORE: Thank you very much,
19 Ms. Buendía.

20 Mr. Alarcon?

21 MR. ALARCON: No further questions,
22 Mr. President.

1 PRESIDENT SHORE: Thank you, Mr. Alarcon.
2 Anything further from Claimants,
3 Ms. Pradilla Picas?

4 MS. PRADILLA PICAS: No, Mr. President.

5 PRESIDENT SHORE: Ms. Buendía, thank you
6 very much for your appearance here today and for your
7 testimony. It is now concluded, and the Transcript
8 writers will probably get feeling back in their
9 hands, having to go so quickly with your testimony.

10 Thank you very much for your testimony. You
11 are dismissed from the proceedings.

12 THE WITNESS: I'm at your disposal, and
13 thank you.

14 (Witness steps down.)

15 PRESIDENT SHORE: Back on the record.

16 Anything procedural that Claimants need to
17 raise, Ms. Gorsline, before we adjourn for the day
18 and have the Experts tomorrow?

19 MS. GORSLINE: No, sir, nothing from
20 Claimants.

21 PRESIDENT SHORE: Mr. Weisburg, anything
22 from Respondent?

1 MR. WEISBURG: No, nothing on behalf of the
2 Republic.

3 PRESIDENT SHORE: Thank you very much. So,
4 we are adjourned for today, and we will see everyone
5 at 9:00 a.m. tomorrow morning.

6 Thank you.

7 MR. WEISBURG: Thank you.

8 (Whereupon, at 11:04 a.m., the Hearing was
9 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