

**IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES**

**OMEGA ENGINEERING LLC
AND
MR. OSCAR RIVERA
*CLAIMANTS***

v.

**THE REPUBLIC OF PANAMA
*RESPONDENT***

WITNESS STATEMENT OF MR. OSCAR I. RIVERA RIVERA

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I, Oscar Iván Rivera Rivera, a U.S. national, born in the town of Ponce, Puerto Rico, on 20 September 1971, and resident in Miami, Florida, hereby declare as follows:

I. INTRODUCTION

1. I make this statement in support of the Memorial on the Merits served by Claimants in these proceedings. To the extent that any of the matters set out in this witness statement are not within my personal knowledge, I have identified the source of information on which I have relied. Otherwise, the facts and matters set out in this statement are within my personal knowledge and experience. References to documents in this witness statement are to Claimants' exhibits (marked as "C-___"). I was assisted in the administrative preparation of this witness statement by Jones Day and International Dispute Resources LLC, counsel for Claimants in this arbitration.

2. I own and control Omega Engineering LLC ("**Omega U.S.**"), a United States-registered, full-service, general contractor previously engaged in the construction business, and specializing in large-scale, complex, commercial projects. I also own and control Panama-registered Omega Engineering Inc. ("**Omega Panama**") (together the "**Omega Consortium**").¹ I am a citizen of the United States.²

3. After my high school graduation and before joining Omega I enrolled as a civil engineering student at the University of Puerto Rico, Mayagüez. Soon thereafter, I transferred to the Florida Institute of Technology. In 1991, following the passing of my mother and prior to my graduation, I returned to Puerto Rico to join my father's company, Omega Engineering S.E.

¹ The Omega Consortium would, as and when particular expertise was required in order to bid on a public Panamanian contract, partner with additional companies with specialist expertise. These companies would become, on a case by case basis for particular contracts, members of the Omega Consortium bidding for a particular project, albeit their share in the consortium was always very small (never exceeding 1%). For the sake of simplicity, references in this Witness Statement to the "Omega Consortium" are limited to the core consortium members which worked on all of the Omega Consortium contracts in Panama, namely Omega U.S. and Omega Panama.

² U.S. Passport of Oscar Iván Rivera Rivera, issued on 9 Mar. 2007 (C-0001).

(“Omega S.E.”),³ in the cost estimating department. I worked as a cost estimator from 1991 through the fall of 1995, when I became head of the department. In this role I would prepare bid estimates, construction schedules, claims and proposals. I would also work with cost analyses for change orders and negotiate contracts with owners and subcontractors, frequently attending the company’s construction project sites. During my tenure as head of the estimating department, I was in charge of all pre-construction efforts for Omega S.E., including negotiating with project owners and subcontractors.

4. As head of the cost estimating department, I led a team of between five and ten cost estimators at any given time. In that role I reported to the Vice-President of the company. After two successful years as head of the cost estimating team I was promoted to Project Executive, a role I held until 1999. In this high-level role I supervised the company’s Project Managers, and regularly interacted and negotiated with clients. At that time, our clients included a number of public Puerto Rican entities (for example, at that time we were working on the first section of Puerto Rico’s new urban rail system (known locally as the “tren urbano”) and a number of the island’s correctional facilities).

5. Around October 1999 I was again promoted, this time to the position of Assistant Vice-President. In this new role, I reported directly to my father, the company’s President, and I represented Omega S.E. in all of its construction projects. At that time, Senior Management also began to focus the company’s efforts on building projects for real estate development owned by affiliated companies.⁴ A year later, around 2000, my father and I began discussing a succession plan. I was ready to assume full leadership of the company, while my father wished to establish an

³ Omega S.E. later became Omega Engineering LLC. *See infra* ¶¶ 6, 8.

⁴ Examples include Omega’s work on the Ridge Top Luxury Apartments and the Plaza de Diego Condominium. *See Omega U.S.’s Corporate Profile*, undated (C-0012), at 7-8, 26, 31.

exit strategy (he was 58 years old by this time and wished to retire). We agreed that I would take over Omega S.E. within the next five years. In accordance with our agreed strategy, by 2001 I had surrendered my performance bonus in exchange for an ownership interest in the company, while in 2002 I was named Executive Vice-President, a position I held until mid-2005. I became Omega S.E.'s President in July 2005. As the final step in the process, I became the company's 100% owner in October 2006 (with my then-wife) and my father ceased all formal involvement.⁵

6. Around four years later, in 2009, after taking the advice of my attorneys, I converted Omega S.E. (at that time a partnership)⁶ into a limited liability corporation, Omega U.S. This was done with the aim of limiting my potential personal liability.⁷ I became the sole owner of the company, as well as its President and CEO⁸ in November 2012, after my then-wife and I divorced.⁹

7. Prior to my business dealings in Panama my professional activities were not limited to my involvement in Omega U.S. I was also a shareholder and partner in several additional companies including mortgage lenders RD Mortgage and Mortgage House,¹⁰ as well as more than a dozen companies that owned, operated and/or developed real estate properties. The mortgage lenders were both financial institutions and, as such, highly regulated by the U.S. Government.¹¹

⁵ In 2006, my then-wife, Cristina Soto Benitez, and I acquired 100% of Omega U.S. See Purchase and Sale of Partnership Interest in Omega Engineering S.E. dated 5 Oct. 2006 (C-0013).

⁶ See Constituting Certificate of Omega Engineering S.E. dated 30 Mar. 1989 (C-0003).

⁷ Certificate of Conversion from Omega Engineering S.E. to Omega Engineering LLC dated 2 Mar. 2009 (C-0004).

⁸ Omega U.S.'s Corporate Profile, undated (C-0012), at 7.

⁹ See Divorce Decree (redacted) dated 8 Nov. 2012 (C-0016).

¹⁰ I was not, however, an officer of either of these two companies.

¹¹ Both RD Mortgage and the Mortgage House were originators of Federal Housing Administration, Veterans Affairs, U.S. Department of Agriculture, Freddie Mac and Fannie Mae home loans. Also, the Mortgage House was a licensed issuer of Ginnie Mae securities. Because these were Government-backed financial products, my role within these companies meant that I was subject to extensive and ongoing regulatory and compliance checks from the U.S. authorities (*viz.* the U.S. Department of Housing and Urban Development, Veterans Affairs, U.S. Department of Agriculture, Freddie Mac, Fannie Mae and the Puerto Rico Commissioner of Financial Institutions).

My involvement with these two companies stemmed from my interest in offering clients alternatives to finance the acquisition of the residential units we were developing. It was the experience garnered from my role as a shareholder in RD Mortgage and the Mortgage House, in addition to my experience in design, construction, procurement and financing real estate deals, that inspired me to become more involved in turnkey projects such as those we ultimately concluded in Panama.¹² I had also built up, by this time, a well-diversified personal investment portfolio, with investments in hotels, shopping malls, banks, bonds, liquid assets and land. This afforded me additional experience in finance that would prove useful once I took the decision to invest in Panama.

II. HISTORY OF OMEGA ENGINEERING LLC

8. The first iteration of Omega U.S. was Omega Engineering Corporation. This Puerto Rican-registered company was created by my father and his business partner in March 1980.¹³ Omega Engineering Corporation was subsequently, in 1989, converted into a Special Partnership (“Sociedad Especial”) named Omega Engineering S.E.¹⁴ The company initially provided electrical and mechanical construction services and worked in both the public and private sectors. It was headquartered in San Juan but participated in projects throughout the territory of Puerto Rico.

9. When I joined the company in the early 1990s, our projects were mostly relatively self-contained electrical and mechanical construction matters. While we had always maintained a small portfolio of general contractor work, over time this side of the business grew significantly.

¹² Omega U.S.’s Corporate Profile, undated (C-0012), at 5 (confirming that “[a]side f[ro]m Omega’s extensive experience as a general contractor, the company has provided high quality services beyond construction to include design services, equipment procurement and financing. Omega’s experience and impeccable reputation has allowed the growth of excellent relations with international financial institutions such as Banco Bilbao Vizcaya Argentaria, Goldman Sachs, UBS and Credit Suisse, as well as the financial support of local banks, where Omega has had successful business relationships. This trust and support has been indispensable in obtaining funding for several major works.”).

¹³ Certificate of Incorporation of Omega Engineering Corp. dated 27 Mar. 1980 (C-0002); Omega U.S.’s Corporate Profile, undated (C-0012).

¹⁴ See Constituting Certificate of Omega Engineering S.E. dated 30 Mar. 1989 (C-0003).

By 2006-2007 the company's portfolio consisted almost entirely of projects on which we had been appointed as general contractor. From the early 1990s through 2007 the company's workforce had grown almost four-fold. By 2007 we had around 100 permanent employees, consisting of engineers, architects, accountants and trade specialists, with approximately a further 1,000 temporary or subcontracted employees working for the company at any one time.¹⁵

10. From its founding up until my 2008 decision to enter the Panamanian market, Omega U.S. (and its predecessor entity) enjoyed an uninterrupted period of growth and success, growing to become one of the leading general contractors in Puerto Rico. Omega U.S. was involved in scores of prominent and high-profile projects, including the construction of several correctional facilities, medical facilities, hotels, shopping centers, residential condominiums, pharmaceutical facilities, athletic facilities and institutional buildings. Just a few of the large-scale, complex Puerto Rican construction projects I led on behalf of Omega U.S. include:

- Construction of the Roberto Clemente Stadium in the City of Carolina (a 300,000 square foot baseball stadium with seating capacity for 12,500 spectators, completed in 2001);¹⁶
- Construction of the Coliseo de Puerto Rico José Miguel Agrelot (a 500,000 square foot multi-use entertainment facility with seating capacity for 20,000 spectators, completed in 2004);¹⁷
- Construction of the Plaza de Diego Condominium (a multi-purpose complex containing 56 apartments, a multi-story parking structure with 328 parking spaces, and approximately 30,000 square feet of commercial space to include restaurants and offices, completed in 2006);¹⁸

¹⁵ Omega Engineering Organizational Chart, undated (C-0109).

¹⁶ Omega U.S.'s Corporate Profile, undated (C-0012), at 35.

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 31.

- Construction of the Goya Distribution Center (a 325,000 square foot industrial building completed in 2007);¹⁹
- Construction of the Fine Arts Symphony Hall of Puerto Rico (a 110,000 square foot performing arts center with seating capacity for 1,262, completed in 2009);²⁰
- The Mayagüez Athletic Stadium (an athletic facility with seating capacity for 11,200 spectators, completed in 2010—the centrepiece of the 2010 Central American and Caribbean Games);²¹
- Construction of the U.S. Salvation Army Kroc Center in Guayama (a 75,000 square foot multi-purpose facility which included indoor and outdoor athletic facilities, adjustable classrooms and meeting spaces, completed in 2013);²²
- Two Walgreens stores constructed in Saint Thomas, U.S. Virgin Islands (in 2013) and Puerto Rico (in 2014).²³

11. By 2013 Omega U.S. had become one of the leading construction companies in Puerto Rico and the fastest-growing Puerto Rican construction company in Latin America.²⁴ Its client list included internationally recognized and prestigious names such as Esso Standard Oil Company, Chase Manhattan Bank, the U.S. Postal Service, SmithKline Beecham Pharmaceuticals, the University of Puerto Rico, the Puerto Rico Infrastructure Financing Authority, the Puerto Rico Aqueduct and Sewer Authority and the U.S. Salvation Army.²⁵

¹⁹ *Id.* at 30.

²⁰ *Id.* at 27.

²¹ *Id.* at 25.

²² *Id.* at 21.

²³ *Id.* at 19, 20.

²⁴ Omega U.S.'s Corporate Profile, undated (C-0012), at 5.

²⁵ *Id.* at 9.

12. I have also, independently of Omega U.S., been a key member of owner/developer teams for residential and mixed-use projects.²⁶ I also own land and/or development rights for several projects in Puerto Rico, which are all currently on hold. I also previously owned several properties that were foreclosed or sold at a fraction of their true value to cover defaulting loans,²⁷ because of the lack of liquidity and lost access to financing I suffered as a direct result of the illegal measures taken by Panama both against me personally and against my companies. In addition to selling the commercial properties referenced above, I was also forced, as a result of Panama's actions against me, to sell the home where my children lived with their mother, as well as my two personal apartments in Puerto Rico.

III. THE DECISION TO ENTER PANAMA'S BOOMING CONSTRUCTION MARKET

A. Background

13. A few months prior to assuming control of Omega U.S., around 2005, I had formed the view that we needed to look for new markets to grow the company's portfolio and diversify away from a reliance on the Puerto Rican and Caribbean markets. By that stage we had become a major player in the Puerto Rican market. That market was, however, relatively small and if we were to achieve the significant growth of which I knew Omega U.S. was capable, we would have to look abroad. In terms of destinations, it made sense to leverage Omega U.S.'s strong reputation as one of the leading construction companies in the hispanophone Caribbean.

14. Our expansion plans solidified around 2007-2008, when I spent a few years exploring opportunities outside of Puerto Rico and the U.S. Virgin Islands in the (generally)

²⁶ These include the Plaza de Diego development (a high-rise mixed-use, luxury residential, commercial and retail development in San Juan, Puerto Rico) and the Ridgetop Villas development (a low-rise luxury residential complex constructed in the city of Guaynabo, Puerto Rico).

²⁷ I owned this land through special purpose vehicles, which is the corporate structure I and my father generally adopted for this type of transaction. *See, e.g.*, Certificate of Registry for The Pointe Development, Inc. dated 26 Sept. 2006 (C-0110); Certificate of Registry for North Bay Development, Inc. dated 27 Feb. 2007 (C-0116); Certificate of Registry for Ridgestone, Inc. dated 22 Feb. 2007 (C-0117).

Spanish-speaking countries and regions of Florida, Colombia, Peru, Chile, Panama and several other Central American countries. Some of these markets we ceased to study based on several factors, including whether we considered them to be sufficiently business-friendly, because they had unhelpful restrictions requiring foreign investors to participate only through local partnerships, and because they were simply too far away from our Puerto Rican base.

15. In the end, I chose Panama because I felt it was the most suitable market in which to begin our expansion, and the Panamanian Government was of particular interest as we understood it was about to initiate a significant public works program.²⁸ This included plans by the Government to invest US\$ 20 billion in public infrastructure projects over the next five years. The aim of this investment was to improve Panama's role as a global logistics hub and increase foreign direct investment. The plan included greater investment in roads, hospitals, sewers, schools and a Panama City metro. As the sole shareholder of Omega U.S., I was ultimately responsible for the decision to invest in Panama, albeit the rest of the company's Senior Management team²⁹ and I were in agreement on this. To support this strategic decision, I started travelling to Panama frequently in 2008 to further explore investment opportunities. From 2010 I began spending the majority of my time in that country to supervise my investment.

16. In order to properly prepare for the planned investment in Panama, we held a number of "kick-off" meetings with local bankers, insurance companies and accountants who had particular expertise in the business sector.³⁰ This included meetings with a number of well-known individuals

²⁸ Despite deciding to place bids in Panama we remained interested in a number of other markets, including Colombia and Peru, among others.

²⁹ Omega U.S. Senior Management consisted of Messrs. Roberto Lopez, Victor Lopez, Jaime Sobrino, Frankie Lopez, and myself.

³⁰ This included Messrs. Jorge Avila at PKF-Panama, Luis (Tito) Chevalier at Coldwell Banker-Panama, Samuel Urrutia at Grupo Semusa (now Marsh), Louis (Tito) Ducruet at L.R. Ducruet e Hijos, Jorge Fistonish at BBVA-Panama (now BAC) and Juan Raul Humbert at Banco General, among others.

in Panama's construction industry, many of whom would go on to work with Omega U.S. as its involvement in the country deepened.³¹ These meetings, indispensable for a new entrant in a foreign market, helped us understand the unique ins-and-outs of the Panamanian construction sector as well as its legal environment. In particular we learned a great deal about the bidding process for the many public procurement projects for which Panama was about to issue requests for proposals ("RFPs").

17. Panama's public procurement RFPs were all issued via the country's electronic Government procurement portal, "PanamaCompra." Using this system, Government agencies prepare their tender documents for a particular project and upload them to the PanamaCompra website. At least one meeting with all the project's prospective bidders is then held, which is the only time they are afforded the opportunity to ask questions of both a representative of the relevant Government agency or Ministry (generally a mid-level person, such as an engineer) and a member of the project's evaluation commission. I did not generally attend these meetings because any questions would generally be answered in writing and uploaded to the PanamaCompra site. Instead Mr. Frankie Lopez, Mr. Francisco Feliu, or someone from the estimating department would represent the Omega Consortium in these meetings.

18. We began bidding on Panamanian public works projects in 2010.³² I would, along with Messrs. Lopez and Feliu,³³ study the RFPs together with our contacts in Panama, to select those

³¹ For example, one of the people I contacted, who later became a dear friend, was Tito Chevalier. Tito was a seasoned Panamanian real estate expert who held the Coldwell Banker franchise there.

³² We looked at some tenders in 2009, but I do not recall bidding on any. At the time, we were still making sure we understood the market properly and had identified good local subcontractors and partners with whom we could collaborate.

³³ Mr. Feliu, as Project Manager of Omega U.S. (though his duties went well beyond project management) and as a key member of my informal advisory committee, took charge of bids and, later, the completion of projects. At that time, Mr. Lopez was the Director of Estimates and Purchasing for Omega U.S. Once the Minsa Capsi bids had been won and the contracts signed, Mr. Lopez moved to Panama and became General Manager of Omega Panama and a Director of Omega U.S.

which best suited Omega U.S.'s particular expertise and objectives. For example, we generally restricted our bids to projects valued at between [REDACTED] and which related to sectors in which we already had significant experience.³⁵

19. While I remained open-minded about completing private construction projects in Panama, as a company, Omega U.S.'s focus in Panama was on public works projects.³⁶ There were two reasons for this. *First*, public projects historically had been where Omega U.S.'s core business was focused. *Second*, although we were later to be proven wrong, at the time we believed that the Government could be counted on to honor its debts, something that would not necessarily have been the case with private owners.

B. First Steps in Panama: PR Solutions S.A. and Omega Engineering Inc.

20. Having decided to invest in Panama, the next step was for me to determine, in conjunction with my colleagues at Omega U.S., how best to do so. We were guided by three overarching objectives. *First*, we wanted to protect as much and for as long as possible, Omega U.S.'s assets in the United States, including most notably its reputation, brand, and goodwill. These were the companies' key assets, which had taken some 30 years to build up and without which Omega Panama would not, for example, have been able to qualify for and win contracts based on its track record, to secure the bonding required to place bids for contracts or to obtain financing.

³⁴ The one exception to this rule was the Mercado de Panama project, a contract worth approximately US\$ 126 million. We decided to bid for this project because it matched our area of expertise and we felt bullish about Panama at that particular time. We came second in this bid, losing to MCM—a large well-known construction company from the United States.

³⁵ We would not, for example, bid on projects for the construction of roads; an area in which we had limited expertise.

³⁶ As I have discussed elsewhere in this Witness Statement, *see supra* ¶¶ 7, 11 & *infra* ¶¶ 24, 95-98. I have always had personal business interests and investments outside of Omega U.S., and those personal business dealings have often involved purely private, commercial contracts and land purchases. I continued this practice in Panama. *See infra* ¶¶ 24, 95-98.

Second, we wanted to gradually test out the local market. *Third*, if everything went well, we wanted to compete for larger and more lucrative projects.

21. In 2009, as a preliminary practical matter, we decided to create and register with the Panamanian authorities a new company, Omega Panama (of which I was the 100% owner), to undertake the public works bidding process. Rather than creating subsidiaries that would share risks and liabilities, I preferred, for liability purposes, to keep my different business endeavors financially and legally independent. My team and I also believed that having a registered local company would increase our presence in-country and provide us with tax and liability benefits.³⁷ A number of bids for public Panamanian construction contracts were therefore placed using Omega Panama as the bidding vehicle.

22. In parallel we also created an “anonymized” local affiliate, which we named PR Solutions S.A. (“**PR Solutions**”). It was registered with the Panamanian Companies registry in June 2010,³⁸ and was also wholly-owned and controlled by me.³⁹ Working through “anonymized” affiliates is a strategy that is common among international construction companies that seek to enter a new market. The key advantage of this approach is, of course, the protection it grants the main company’s brand from the inevitable uncertainties of a new market. If something were to go wrong with a bid or a construction project, as is always a risk for a company operating in a completely new environment, ensuring that the local entity operating in the new country is not, by name at least, associated with the main company can be very beneficial.

³⁷ Public Registry of Omega Engineering Inc. dated 26 Oct. 2009 (C-0017); Share Register for Omega Engineering Inc., undated (C-0018).

³⁸ Public Registry of PR Solutions, S.A. dated 11 June 2010 (C-0021); Resolution of the Extraordinary Meeting of Shareholders, PR Solutions S.A. dated 17 Nov. 2010 (C-0022).

³⁹ See Affidavit regarding Shareholders of Companies dated 24 Jan. 2011 (C-0125).

1. PR Solutions: Protecting the Valuable Omega U.S. Brand While Entering a New Market

23. In line with this conservative approach, in 2010 we used PR Solutions as the initial local Panamanian corporate vehicle to bid, through the PanamaCompra portal, for what would become Omega U.S.'s first project in Panama: the Tocumen Airport fuel infrastructure project.⁴⁰ This was a relatively small project, completed for the Airport's owner, the Aeropuerto Internacional Tocumen S.A., for the construction of infrastructure at the Airport for the distribution of aviation fuel and certain electrical work.⁴¹ PR Solutions won the bid, and the contract was signed in December 2010.⁴² The project proved a great success, although not from an accounting perspective as almost all of our overhead costs (*viz.* the costs of establishing our presence in Panama) were fully attributed to it.

24. This project was completed by PR Solutions on time and on budget, approved by Panama's Comptroller-General on 30 December 2011, and paid in full by Aeropuerto Internacional Tocumen, S.A.⁴³ It therefore constituted a personal milestone, and is a project of which I remain very proud. This was my first project with the Panamanian Government and, as such, it enabled my team and me to become well acquainted with Panama's public procurement bid market. Having served its purpose in allowing me to become comfortable about introducing the Omega U.S. brand in Panama, PR Solutions never assumed any additional front-line role in bidding for contracts.⁴⁴

⁴⁰ See Proposal Form for Malek International Airport dated 15 Mar. 2010 (C-0127); Letter from International Airport of Tocumen to Villarreal Cabrera dated 1 Oct. 2010 (C-0129).

⁴¹ Contract No. 017/10 dated 14 Dec. 2010 (C-0005).

⁴² *Id.*

⁴³ Certificate of Final Acceptance of Contract No. 017/10 dated 24 Jan. 2012 (C-0023).

⁴⁴ As a result of Respondent's breaches of the BIT and the TPA, PR Solutions is currently active but no longer operational. PR Solutions, however, was never closed because it had overpaid the Panamanian Government some interest and taxes ("ITBMS") related to the Tocumen project and, therefore, still held some tax credits, which represented value. Further, PR Solutions was a fully-established Panamanian company with its own bank accounts.

Rather, on occasion it participated in some of the Omega Consortium's Panamanian projects as a sub-contractor, as well as in my personal purchase of land for development in Tonosí (discussed further below).⁴⁵

2. *Omega Engineering Inc.*

25. In parallel, we used the Omega Consortium to submit bids and subsequently complete projects in Panama. Having the Omega Consortium bid for and complete any further projects would assist in growing the overall Omega brand abroad. It made good commercial sense for Omega Panama to build up its business portfolio and résumé and, eventually, for that company to be able to submit bids and fulfill contracts independently of Omega U.S.⁴⁶ We therefore involved Omega Panama in all future bids for public Panamanian projects. That being said, most if not all of Omega U.S.'s assets in the United States were put to use in Panama, as Omega's projects in Panama eventually came to represent the vast majority of Omega U.S.'s operations globally.⁴⁷

26. The bids were made by a consortium consisting of Omega U.S., Omega Panama, and, when necessary, third party companies, to satisfy specific Panamanian Government experience or local ownership requirements. Omega U.S. had vast experience in construction, an outstanding reputation, and excellent credit ratings, which were all essential for the Omega Consortium in securing contracts. Omega Panama was in charge of the actual construction of the projects, Omega U.S. provided the experience, financial strength and bonding capacity. In doing so, Omega U.S. assisted our local affiliate to build-up its own independent experience, capital and bonding capacity

⁴⁵ In this particular instance I used PR Solutions in connection with my personal business simply because it already had a bank account. This came in handy when I needed to pay for the Tonosi land since the corporate vehicle I wished to use to make the payment did not have a bank account. *See infra* ¶ 97.

⁴⁶ There were also, of course, tax and liability reasons for pursuing this strategy.

⁴⁷ Omega U.S. was also registered in Panama to satisfy Panama's requirement that foreign companies intending to participate in public works contract bids in Panama must be registered in Panama. *See* Certificate of Registration of Omega Engineering LLC dated 27 May 2010 (C-0111).

in the Panamanian market. For those projects where Omega U.S.'s experience did not fully comply with the bid requirements, we partnered with companies that were specialists in the field. We were always careful, however, to maintain overall control by limiting the outside participant's share in the consortium to no more than 1%.

27. Once we had decided that Omega Panama would be our principal corporate vehicle moving forward, my team and I proceeded to complete all the necessary corporate formalities. Messrs. Frankie Lopez, Roberto Lopez, Victor Lopez and myself were appointed to Omega Panama's Board of Directors. All of these individuals were, at the time, also members of Omega U.S.'s Board of Directors. Being closely held companies, both Boards were established for statutory compliance purposes, and I retained day-to-day control.

28. In terms of the day-to-day management of Omega Panama, my routine was generally similar to that I had adopted throughout my career. I would speak with my team in the morning, with some people in person and with others by telephone. I would then tend to any urgent matters and afterwards proceed with my scheduled tasks that were mostly administrative and financial matters.

29. There was, however, one difference between my general contracting work in Panama and Puerto Rico. At that time in Panama, most bids for public construction projects required financing from the contractor. This was atypical for us, as most public projects in which we had been involved outside of Panama only required financing if they were structured as concessions or public-private partnerships ("PPPs"), for example a Government concession to build and operate a toll road. In Panama, however, contractor financing was generally required (and, as I understand it, this continues to be the case today). This appears to be an effective mechanism for the State to access financing without going through the process of formally issuing debt. Generally the financing for the project is set up as a type of factoring (*i.e.*, financing through selling accounts

receivable) between the contractor and the bank, with the additional enhancements of: (i) the issuance by Panama of a transferable promissory note with each partial payment application; (ii) payment for said notes being issued directly by Panama to the bearer of the note at maturity; and (iii) absolutely no recourse to any third party buyer of the note. These enhancements ensure the project remains sufficiently attractive for financial institutions to fund the contractor. This was the case for our projects with the Ministry of Health and the National Institute of Culture, discussed in more detail below. Our remaining projects in Panama were owner-financed.

30. As explained, I had a background in construction, real estate development and finance, and consequently this Panamanian model (which in my experience was relatively uncommon) suited me perfectly. I was well-versed in the ways projects could be financially structured and my background in finance, particularly in capital markets, had left me with a number of useful contacts in key financial institutions.⁴⁸ I viewed this as an important advantage over my competitors in the Panamanian market.

31. Using the Timberline accounting software, we would generate job cost reports for each of the Projects.⁴⁹ These reports contain information regarding all transactions that occurred on each Project, including information about the Project, source, cost code, cost code account number, transaction date and type, name of payee, transaction description and amount.⁵⁰

32. From the information extracted from the Timberline system, excel spreadsheets were generated that contained the cost to complete the work for each of the subcontracts on each of our projects (“**Cost to Complete**” document). Using the Cost to Complete document and other

⁴⁸ See, e.g., Letter from BBVA to Authority of Civil Aeronautics dated 7 May 2010 (C-0133) (in which a BBVA risk assessor confirmed to the Panama Civil Aviation Authority that Omega was a customer in good standing).

⁴⁹ See Job Cost Reports, various dates (C-0330).

⁵⁰ This information is provided for all transactions except manual entries, which are labeled “Not Received.” Although some of the details for these items were not entered into the Timberline system, the amounts are accurate.

documents, I generated a comparison of the actual and estimated costs of the work, as well as the remaining cost to complete, as of the date of cessation of the work for each of the Projects (“**Estimate to Actual**” document).⁵¹

33. Omega Panama pays tax to the Republic of Panama. The amount of the taxable income is based upon financial statement income, adjusted for non-taxable income, non-deductible expenses and other timing differences as to when financial transactions are included in taxable income. This taxable income information comes from the cost to complete information. For financial reporting purposes, Omega’s estimates of the cost to complete its contracts in progress was stated conservatively at the beginning of the project’s work and then increased to align with expected final results as the work approached completion.

34. The first project completed by Omega Panama was a second matter at Tocumen Airport, namely construction of a three-story building to house a new security check-point. This building also connected the Airport’s new North Terminal with the rest of the Airport. The contract for this project was signed on 28 February 2012.⁵² It was completed successfully, and fully paid for by the Airport Authority.⁵³

⁵¹ The Estimate to Actual document contains the following categories of information:

- The “Actual Costs” section contains the following information on actual Project costs to date:
 - “Job Cost”, contains information from Omega’s job cost report.
 - “Adjustment” contains adjustments I made to certain entries. The adjustments were intended to account for ITBMS (sales tax), back-charges against subcontractors, duplicative or misclassified costs, and credit card transactions not recorded in Timberline.
- The “To Complete” section contains information regarding Omega’s estimate of the cost it would have incurred to complete each Project as at the time of cessation of work.
 - Additionally, the section contains the expected overhead and profit amount for each Project. This is shown as the difference between total estimated cost at completion and the contract sum, adjusted by change order or change order requests.

⁵² Contract No. 035/11 dated 28 Feb. 2012 (C-0006); Addendum No. 1 to Contract No. 035/11 dated 23 Nov. 2012 (C-0134).

⁵³ Certificate of Final Acceptance of Contract No. 035/11 dated 31 July 2013 (C-0007).

35. The Omega Consortium also won bids for additional projects in Panama, which are discussed in more detail below.⁵⁴ At its peak, in 2013, Omega Panama had dozens of direct employees consisting of engineers, architects, accountants and trade specialists, and close to a thousand subcontracted laborers. In sum Omega Panama was, until it became a victim of the Varela Administration's deliberate interference, detailed below, a highly successful and profitable operation, and by far the Omega Consortium's largest operation globally.⁵⁵ It is now, unfortunately and due entirely to the arbitrary and unfair treatment meted out to it by the Panamanian authorities, nothing but an empty shell whose reputation has been dragged through the mud and stripped of all its hard-earned reputation, brand, and goodwill.⁵⁶

C. The Omega Consortium's Projects in Panama

36. From 2010 through 2013 the Omega Consortium pursued tenders for some [REDACTED] projects and was awarded a total of 9 public contracts. The internal process for deciding whether to compete on a bid was generally the same in every instance. Personnel from Omega Panama's estimating department would constantly monitor the PanamaCompra website and review the RFPs that were being issued. When they saw one that fell within the general scope of our expertise and within our preferred value range, they would notify a superior (usually Mr. Francisco Feliu), who would go over the RFP to make sure that we met all its requirements. If we did, our team would then start the process of making a bid estimate and gathering the required documents after briefly

⁵⁴ See *infra* § III.C.

⁵⁵ By early 2013 Panama had become Omega's key source of revenue and new business. In the early part of 2013 US\$ 91,552,403 (or 94.17%) of Omega's backlog was in Panama, as compared with US\$ 5,669,588.03 (or 5.83%) in Puerto Rico. See Omega Engineering, Inc. Financial Statements as of 31 December 2013 dated 28 Apr. 2014 (C-0135), at 21, nn. 21.

⁵⁶ Omega Panama is, to all intents and purposes, no longer operational. See, e.g., Omega Engineering, Inc. Financial Statements and Supplementary Information as of 31 December 2013 and 2012 and Independent Auditors' report dated 28 Apr. 2014 (C-0136); Omega Engineering, Inc. Financial Statements and Supplementary Information as of 31 December 2012 and Independent Auditors' report dated 5 June 2013 (C-0137); Omega Engineering, Inc. Interim Balance Sheets for the Year Ended 31 December 2014 dated 31 Dec. 2014 (C-0138).

informing me or Mr. Lopez. These bid estimates, which included estimates of project costs and profit, represent a true and accurate reflection of our expectations for the project for which we were bidding.⁵⁷ Where we complied with nearly, but not quite all, of the relevant bid criteria, my team would bring the matter to my attention for a decision as to whether we would team up with someone else or let the opportunity pass.

37. As I explained above, one of these contracts, the second Tocumen Airport project, was completed in 2013.⁵⁸ The remaining 8 contracts (collectively, the “**Contracts**” or the “**Projects**”), worth in excess of US\$ 154 million in revenue,⁵⁹ were for a variety of public infrastructure projects. The award of each and every one of these was fully transparent. They were each subjected to a thorough review by an independent commission that rated each bid proposal according to specific criteria in order to determine the winner (*viz.* the bid proposal with the highest overall score).⁶⁰ These criteria generally included: (i) previous experience in projects of similar scope and size; (ii) the financial strength of the company; (iii) the experience of the individuals to be assigned to the project; (iv) a proposed design (if applicable); (v) a proposed construction

⁵⁷ *See, e.g.*, Bid Estimates for Rio Sereno, various dates (C-0319); Bid Estimates for Kuna Yala, various dates (C-0320); Bid Estimates for Puerto Caimito, various dates (C-0321); Bid Estimates for Mercado de Colón, various dates (C-0322); Bid Estimates for Ciudad de las Artes, various dates (C-0323); Bid Estimates for Ciudad Judicial, various dates (C-0324); Bid Estimates for Palacio Municipal, various dates (C-0325); Bid Estimates for Mercados Perifericos, various dates (C-0326). Furthermore, the subcontracts Omega contemplated at bid (and ultimately awarded) were structured as lump-sum subcontracts that aligned with Omega’s scope of work as set forth in the contracts for the Projects.

⁵⁸ *See* Contract No. 035/11 dated 28 Feb. 2012 (C-0006). This was completed on 31 July 2013. *See* Certificate of Final Acceptance of Contract No. 035/11 dated 31 July 2013 (C-0007).

⁵⁹ This reflects the amendments to some of the Contracts, which increased the total value of the Projects after the projects were awarded.

⁶⁰ The different criteria for each public contract bid were set out in the respective requests for proposals (“*Pliego de Cargos*”) for each project. *See, e.g.*, Request for Proposals Nos. 2012-0-30-0-08-AV-004833 “*Construcción de un Edificio para la Unidad Judicial Regional de la Chorrera*” dated 2012 (C-0024), at 21-24.

schedule; (vi) financing terms (when required); and (vii) a price. The key details pertaining to each of these Contracts are provided below.⁶¹

1. The Ministry of Health Contracts

38. On 7 December 2010 Panama's Ministry of Health issued an RFP for the construction of ten medical facilities in various locations throughout the country (the "**Minsa Capsi Contracts**"). By that time, the Omega Consortium had participated in about ■ public bids, including the first set of Minsa Capsi projects put out for tender. For the original set, the evaluating committee penalized the Omega Consortium for not having direct experience providing medical equipment. That ended up being the reason we were not ultimately awarded the project, as we scored very highly in all the other criteria.⁶² Having learned from that mistake, for the second set of Minsa Capsi Contracts, we included Ciracet Corp.⁶³ As part of the Consortium, to cover the medical equipment experience gap. The Omega Consortium was one of several companies to tender for these projects prior to the Government's January 2011 deadline.⁶⁴ I was thus very pleased, a few months later, when the Omega Consortium was awarded three of the Minsa Capsi Contracts: the Rio Sereno Contract ("**MC Rio Sereno Contract**"), the Kuna Yala Contract ("**MC Kuna Yala Contract**") and the Puerto Caimito Contract ("**MC Puerto Caimito Contract**").⁶⁵

39. On 5 April 2011 the Ministry of Health notified the Omega Consortium that it had not been allocated sufficient funds to cover the advance payments required under the Minsa Capsi

⁶¹ A more detailed summary of the Projects is included in Claimants' Request for Arbitration dated 30 Nov. 2016, § II.A.1.

⁶² See Report by the Evaluating Commission Public Act N° 2010-0-1 2-0-99-LV-000823 dated 2010 (C-0139).

⁶³ Ciracet Corp. is a healthcare engineering firm specializing in medical equipment, see *About Us*, CICARET ENGINEERING HEALTHCARE, undated (C-0140), available at <http://www.ciracet.com/>.

⁶⁴ For these three Contracts, Ciracet Corp. was a 1% partner in the Consortium, with Omega Panama holding a 98% share and Omega U.S. a 1% share. See Temporary Consortium Agreement for MINSA CAPSi Projects dated 15 Jan. 2011 (C-0029).

⁶⁵ See Resolution of Adjudication No. 345 dated 28 Mar. 2011 (C-0027).

Contracts and requested that the Omega Consortium either finance the project itself or help arrange financing.⁶⁶ After discussing the matter internally the Omega Consortium responded and agreed, in return for some commercial concessions from the Ministry for this unexpected change, to provide financing for the entire project itself.⁶⁷

40. All three Contracts were for the design and construction of medical facilities of varying sizes in, respectively, the Rio Sereno, Kuna Yala and Puerto Caimito regions of Panama. In addition to designing and constructing the facilities, the Omega Consortium's duties included providing furniture and medical equipment for each facility.⁶⁸ The total initial price for all three Contracts was around US\$ [REDACTED], although as detailed below, a price increase was subsequently agreed.⁶⁹ Each Contract was signed in September 2011⁷⁰ and they were all, the following day, amended to extend the completion date and clarify that the contractor (*viz.* the Omega Consortium) would finance the project in its entirety.⁷¹ Final Government sign-off was provided around a month later when the Comptroller-General endorsed each Contract.⁷² The Ministry of Health issued notices to proceed very shortly thereafter.⁷³

⁶⁶ Letter No. 759-DMS/DAPE-2011 from the Ministry of Health to the Omega Consortium dated 5 Apr. 2011 (C-0141).

⁶⁷ *Id.*

⁶⁸ *See* Addendum No. 1 to Contract No. 077 (2011) dated 23 Sept. 2011 (C-0142), Cl. 2; Addendum No. 1 to Contract No. 083 (2011) dated 23 Sept. 2011 (C-0143), Cl. 16; Addendum No. 1 to Contract No. 085-2011 dated 23 Sept. 2011 (C-0144), Cl. 2.

⁶⁹ *See infra* § III.D.

⁷⁰ Contract No. 077 (2011) dated 22 Sept. 2011 (C-0028); Contract No. 083 (2011) dated 22 Sept. 2011 (C-0030); Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031).

⁷¹ Addendum No. 1 to Contract No. 077 (2011) dated 23 Sept. 2011 (C-0142); Addendum No. 1 to Contract No. 083 (2011) dated 23 Sept. 2011 (C-0143); Addendum No. 1 to Contract No. 085 (2011) dated 23 Sept. 2011 (C-0144).

⁷² *See* Contract No. 077 (2011) dated 22 Sept. 2011 (C-0028); Contract No. 083 (2011) dated 22 Sept. 2011 (C-0030); Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031).

⁷³ Notice to Proceed for Contract No. 077 (2011) dated 27 Oct. 2011 (C-0145); Notice to Proceed for Contract No. 083 (2011) dated 27 Oct. 2011 (C-0146); Notice to Proceed for Contract No. 085 (2011) dated 27 Oct. 2011 (C-0147).

2. *Mercado Público de Colón*

41. After successfully submitting bids for the Ministry of Health’s Minsa Capsi Contracts, I was very interested in increasing the Omega Consortium’s operations in Panama, and the Omega Consortium therefore continued to bid on suitable public projects. The Omega Consortium was, for example, one of six companies that submitted bids in response to an August 2011 RFP from the Ministry of the Presidency for the construction and furnishing of a public market in Colón as a replacement for an existing building (the “**Mercado Público de Colón Contract**”).⁷⁴ Once again, I was very happy when the Ministry of the Presidency awarded the contract to the Omega Consortium. The owner-financed contract was signed by the parties and approved by the Comptroller-General in August 2012, with an initial completion term of over a year after issuance of the notice to proceed and an initial price of around US\$ 18 million.⁷⁵ The Ministry of the Presidency issued the notice to proceed in September 2012.⁷⁶

3. *Ciudad de las Artes*

42. The next public project that the Omega Consortium was awarded was for the Ciudad de las Artes (“**Ciudad de las Artes Contract**”)—a large cultural and artistic higher education facility in the Llanos de Curundú region of Panama for the country’s Instituto Nacional de Cultura (“**National Institute of Culture**”). This time, the Omega Consortium successfully competed with four other groups for the Contract.⁷⁷ The Ciudad de las Artes Contract was signed in July 2012 for

⁷⁴ See Request for Proposals No. 2011-0-03-0-03-AV-006870 “*Construcción y Equipamiento del Mercado Público de la Ciudad de Colón, Provincia de Colón*” dated 2011 (C-0032); Resolution of Adjudication No. 124-2011 dated 10 Oct. 2011 (C-0033). For this contract, the only members of the consortium were Omega U.S. and Omega Panama, with Omega U.S. only retaining a 1% share of the project. See Temporary Consortium Agreement for the *Mercado Público de Colón* Project dated 14 Sept. 2011 (C-0035).

⁷⁵ Contract No. 043 (2012) dated 17 Aug. 2012 (C-0034).

⁷⁶ Notice to Proceed for Contract No. 043 (2012) dated 7 Sept. 2012 (C-0148).

⁷⁷ See Minutes of the Opening of Proposal Envelopes of INAC dated 21 Mar. 2012 (C-0040), at 1.

a total price of over US\$ 54 million and was approved by the Comptroller-General in September 2012.⁷⁸ As had been the case with the Minsa Capsi Contracts, the RFP required that the contractor provide the financing for this project.⁷⁹ Pursuant to the Contract, the National Institute of Culture issued the corresponding order to proceed at the end of September 2012.

43. Pursuant to this order, the project was due to have been completed and paid for in July 2014.⁸⁰ However, on 20 March 2012, the Ministerio de Economía y Finanzas (“**Ministry of the Economy**”) notified the National Institute of Culture that, to keep in line with the State’s budget, the completion of and/or payment for the contract should be set for fiscal year 2015.⁸¹

44. But in late 2014, to our surprise, the National Institute of Culture informed us that they were looking into the “legality” of the mechanism of progress payments as provided under the Contract—*i.e.*, through the Certificados de Pago Parcial (“**CPP**”).⁸² At the same time, the National Institute of Culture alleged that while it looked into this, the Omega Consortium was somehow still obligated to finish the Project. Worse yet, I later learned that approximately one month before this meeting, the Ministry of the Economy had proposed a budget (which was later approved by the National Assembly) that merely granted some US\$ 33 million to the Institute (as opposed to the US\$ 119 million it had requested).⁸³ This budget effectively killed the Project, as it made it impossible for the National Institute of Culture to pay the Omega Consortium the US\$ 54 million total bill on time, as the Project was scheduled to be completed in 2015. The (extraordinary) truth

⁷⁸ Contract No. 093-12 dated 6 July 2012 (C-0042).

⁷⁹ Contract No. 093-12 dated 6 July 2012 (C-0042), Cl 5.

⁸⁰ See Order to Proceed for Contract No. 093-12 dated 27 Sept. 2012 (C-0113).

⁸¹ See Letter No. DdCP/AL/238 from the Ministry of the Economy to the National Institute of Culture dated 20 Mar. 2012 (C-0149).

⁸² A *Certificado de Pago Parcial* is a financial instrument in the form of a promissory note issued by the National Institute of Culture and the sole method of payment established by the Contract.

⁸³ See *National Institute of Culture requests an additional \$11M for 2015*, LA PRENSA dated 23 Oct. 2014 (C-0114).

of the matter was that at the same time as the National Institute of Culture alleged that it was investigating the “legality” of the CPP mechanism, Panama’s Ministry of the Economy had stripped the National Institute of Culture of the ability to pay for this major Contract.

4. *Unidad Judicial La Chorrera*

45. In October 2012, the Omega Consortium was the successful bidder on a contract with Panama’s Judiciary for the construction of a court building and parking facilities in the La Chorrera region (the “**La Chorrera Contract**”).⁸⁴ The Omega Consortium competed against three other bidders for this project.⁸⁵ The owner-financed contract was concluded in November 2012, for a lump sum of US\$ 16.5 million.⁸⁶ The Comptroller-General signed off in December 2012 and the notice to proceed was issued a few weeks later, in January 2013.⁸⁷

5. *Palacio Colón*

46. In November 2012, the Municipality of Colón requested bids for the construction of a municipal hall and mayoral offices.⁸⁸ I recall that the Omega Consortium was the only bidder for this project, and was awarded the Contract later that month (the “**Municipality of Colon Contract**”).⁸⁹ The Mayor signed the owner-financed contract in January 2013. It was worth around

⁸⁴ Resolution No. 092-DALSA dated 17 Oct. 2012 (C-0047).

⁸⁵ Minutes of the Opening of Proposal Envelopes for La Chorrera dated 1 Oct. 2012 (C-0046), at 2-3. For this bid, the Omega Consortium included Cielo Grande, S.A. as a 1% stakeholder, with Omega Panama holding a 98% share and Omega U.S. a 1% share. *See* Temporary Consortium Agreement for La Chorrera Project dated 17 Sept. 2012 (C-0045).

⁸⁶ Contract No. 150/2012 dated 22 Nov. 2012 (C-0048) (approved by Comptroller-General on 27 Dec. 2012).

⁸⁷ Order to Proceed for Contract No. 150/2012 dated 15 Jan. 2013 (C-0151).

⁸⁸ *See* Request for Proposals No. 2012-5-16-516-03-AV-000218 “*Diseño, Desarrollo de Planos, Demolición del Actual y Construcción con Equipamiento Completo del Nuevo Palacio Municipal Ubicado en la Calle 11 y 12 Santa Isabel en el Distrito de Colón*” dated Nov. 2012 (C-0049 resubmitted).

⁸⁹ *See* Resolution No. 132 from the Municipality of Colón dated 23 Nov. 2012 (C-0050). On this occasion, the Consortium consisted only of Omega Panama and Omega-U.S, which held, respectively, a 99% and a 1% share in the Consortium. *See* Temporary Consortium Agreement for the Palacio Municipal de Colón Project dated 15 Nov. 2012 (C-0052).

US\$ 15 million, and the Comptroller-General approved it in July 2013.⁹⁰ The Municipality issued a notice to proceed later that month.⁹¹

6. *Mercados Periféricos*

47. The final project won by the Omega Consortium was with the Municipality of Panama for the design, construction and equipment of two public open-air markets with enclosed stands.⁹² Six different groups submitted bids for this project, and the Omega Consortium was selected as the winner.⁹³ The owner-financed contract, worth a total of around US\$ 2 million, was signed by the parties and the Comptroller-General in September 2013 (“**Municipality of Panama Contract**”).⁹⁴ The Municipality issued a notice to proceed later in September 2013.⁹⁵

D. The Progress of the Projects Prior to the Assumption of Power of the Varela Administration

48. Prior to the Varela Administration’s formal assumption of power, the Projects were generally progressing as expected. There were, as is inevitably the case in all construction projects, unexpected delays and issues that arose and that needed to be resolved with the various Government contracting agencies. These issues were certainly, however, nothing out of the ordinary for contracts of this order of magnitude. Both the Contracts and Panama’s Public Procurement Law contained tailored mechanisms to deal with delays to a particular project (*e.g.*, delays caused by rain, strikes,

⁹⁰ Contract No. 01-13 dated 24 Jan. 2013 (C-0051).

⁹¹ Notice to Proceed for Contract No. 01-13 dated 31 July 2013 (C-0152).

⁹² See Request for Proposals No. 2013-5-76-0-08-AV-004644 “*Diseños, Planos de Construcción, Estudio de Suelo, Impacto Ambiental, Construcción de obra y Equipamiento de Mercado Periférico de Pacora y Juan Diaz Acuerdo a las Especificaciones Técnicas Establecidas en el Presente Pliego de Cargos*” dated Mar. 2013 (C-0053).

⁹³ See Minutes of the Opening of Proposal Envelopes dated 8 Apr. 2013 (C-0054); Resolution No. C-040 dated 3 May 2013 (C-0055). On this occasion Omega U.S. and Omega Panama bid on the Project as a Consortium with Omega Panama holding a 99% share and Omega U.S. a 1% share. See Temporary Consortium Agreement for the Municipality of Colón Project dated 3 Apr. 2013 (C-0057).

⁹⁴ Contract No. 857-2013 dated 12 Sept. 2013 (C-0056).

⁹⁵ Notice to Proceed for Contract No. 857-2013 dated 18 Sept. 2013 (C-0153).

etc.) which mechanisms we employed as and when necessary. For example, all of the Minsa Capsi Contracts were subject to delays not attributable to the Omega Consortium—including rain delays, labor strikes, changes to the original plans by the owner, and problems gaining access to the construction sites.⁹⁶ Some of these delays and changes increased the costs of the relevant project.⁹⁷

49. Similarly, the Mercado Público de Colón Project was suspended in December 2012 because the Government was experiencing difficulty removing the existing vendors from the construction site. The Ministry of the Presidency nevertheless requested that the Omega Consortium keep all its insurance policies and bonds active, and that the Project's dedicated personnel continue drafting the relevant construction documents and conducting the necessary pre-construction studies.⁹⁸

50. One recurring problem with all of the Projects was that the payments due to the Omega Consortium as the Projects progressed were often delayed, and were hardly ever made in accordance with the terms of the various Contracts. Each of the Contracts envisaged different mechanisms for collecting the monies owed, but all of these involved layers of bureaucracy which often slowed things down. For the owner-financed Contracts—the Mercado Público, La Chorrera, Palacio Colón and Mercados Periféricos projects—the Omega Consortium would file an application

⁹⁶ *See, e.g.*, Letter from the Omega Consortium to the Ministry of Health dated 27 Nov. 2012 (C-0154) (delays attributed to rain, unclear definitions in contract, and environmental review in construction area); Letter from the Omega Consortium to the Ministry of Health dated 6 Mar. 2013 (C-0155); Email from Frankie Lopez to Oscar Rivera dated 21 Apr. 2013 (C-0156) (requesting assistance from the Ministry of Health regarding issues impeding progress on all three projects); Request for additional time and costs submitted by Omega to the Ministry of Health and Republic of Panama dated 19 July 2013 (C-0157) (delay due to rain and the Ministry of Health's delays providing approval, etc.).

⁹⁷ *See, e.g.*, Letter from the Omega Consortium to the Ministry of Health dated 6 July 2012 (C-0158) (Increased costs due to request for additional medical equipment); Letter from the Omega Consortium to the Ministry of Health dated 14 Dec. 2012 (C-0159) (increased costs due to Omega's provision of full financing for the Project); Letter from the Omega Consortium to the Ministry of Health dated 22 Apr. 2013 (C-0160) (increased costs due to the Ministry of Health's changes to structural plans).

⁹⁸ *See* Letter No. 691-SCF-2012 from the Ministry of the Presidency to the Omega Consortium dated 13 Dec. 2012 (C-0036).

for payment with the respective Government agency, the agency would then perform its own internal review and either query the invoice or grant approval.⁹⁹ Upon issuance of Government agency approval, the invoice would be sent to the Comptroller-General for endorsement.¹⁰⁰ Upon issuance of Comptroller-General endorsement the Omega Consortium would receive payment for 90% of the invoice amount, with 10% being held in reserve to be paid at the end of the Contract.¹⁰¹ These Contracts required that payment be made within a certain specific time after receiving the Omega Consortium’s request for payment, as follows:

Contract	Entity/Project	Payment Terms	
077 (2011)	Ministerio de Salud/MNSA CAPSI - Rio Sereno	30	Working Days
083 (2011)	Ministerio de Salud/MNSA CAPSI - Kuna Yala	30	Working Days
085 (2011)	Ministerio de Salud/MNSA CAPSI - Puerto Caimito	30	Working Days
43 (2012)	Ministerio de Presidencia/Mercado Público Colón	30	Calendar Days
093-12	Instituto Nacional de Cultura/Ciudad de las Artes	30	Calendar Days
150/2012	Órgano Judicial/Unidad Regional - La Chorrera	90	Calendar Days
01-13	Municipio de Colón/Palacio Municipal de Colón	90	Calendar Days
857-2013	Municipio de Panamá/Mercados Periferales	90	Calendar Days

51. Payments, however, were often issued after this deadline.¹⁰² For example, we experienced several problems obtaining payment from Panama’s Judiciary for the La Chorrera project. Indeed, on one occasion, in April 2014, the situation became so bad that we were left with no option, due to Panama’s failure to pay the monies owed, but to reduce the number of staff working

⁹⁹ See, e.g., Contract No. 043 (2012) dated 17 Aug. 2012 (C-0034) (approved by the Comptroller-General on 17 Aug. 2012), Cl. 68.6 (“[P]ayments shall be made upon submission of Work Progress and Reports by THE CONTRACTOR and acceptance by THE GOVERNMENT.”); Contract No. 857-2013 dated 12 Sept. 2013 (C-0056), Cl. 8; Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031), Cl. 12; Contract No. 150/12 dated 22 Nov. 2012 (C-0048), Cl. 5.

¹⁰⁰ See Contract No. 01-13 dated 24 Jan. 2013 (C-0051), Cl. 13 (“These Partial Payments shall be effective through the submission of a bill accompanied by a copy of the inspector’s report and approved by the Comptroller-General of the Republic.”).

¹⁰¹ See, e.g., Contract No. 043 (2012) dated 17 Aug. 2012 (C-0034) (approved by the Comptroller-General on 17 Aug. 2012), Cl. 68.4; Contract No. 857-2013 dated 12 Sept. 2013 (C-0056), Cl. 8; Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031), Cl. 14; Contract No. 150/12 dated 22 Nov. 2012 (C-0048), Cl. 6.

¹⁰² Letter No. 2014 04 08 – P007-037 from the Omega Consortium to the Judiciary dated 8 Apr. 2013 (C-0065) (noting that invoice No 6 was still outstanding).

on the project to the bare minimum.¹⁰³ Despite this possibly serious situation, the following month the Judicial Branch resolved the issue by paying the majority of the Omega Consortium's outstanding invoices.

52. For the Ministry of Health's Minsa Capsi Contracts, the mechanism for payment of our invoices was different. First, each month we would issue an application for payment for each Contract, which would be approved by the Ministry of Health's on-site project inspectors. This application for payment then had to be approved and signed off, first by Ministry headquarters and then by the Comptroller-General's office. Upon approval of the application for payment the Ministry of Health had to issue a Certificate of No Objection ("CNO"). After the CNO had been issued, it was then sent back to the Comptroller-General's office for sign-off.¹⁰⁴ Once the CNO was approved, the Omega Consortium had to pick it up and take it to the bank providing the project financing for payment. Without a properly approved CNO, the funding bank would not issue payments. The Ministry of Health was often very late in issuing its CNOs.¹⁰⁵

53. For the Ciudad de las Artes Contract, the National Institute of Culture operated a similar payment mechanism to that required under the Minsa Capsi Contracts. The one difference was that instead of issuing a CNO, the National Institute of Culture would issue a Certificate of Partial Payment ("CPP").¹⁰⁶ The process for obtaining a CPP was similar to that required to obtain a CNO, with both the National Institute of Culture and the Comptroller-General being required to provide an initial sign off on the Omega Consortium's payment requests, and then a subsequent

¹⁰³ Letter from Omega Consortium to the Judiciary dated 16 Apr. 2014 (C-0164).

¹⁰⁴ *See, e.g.*, Addendum No. 1 to Contract No. 077 (2011) dated 23 Sept. 2011 (C-0142), Amendment 4.

¹⁰⁵ *See, e.g.*, Email from Alex Gonzalez to Arnaldo Martinez dated 26 Oct. 2012 (C-0165) (noting outstanding CNOs for the Rio Serena and Kuna Yala projects); Email from Salvador Del Toro to Nessim Barsallo, A. Varela and Gonzalez V Busto dated 6 Dec. 2012 (C-0166) (noting outstanding CNOs on several projects, including a 4-month delay for issuance of the Rio Sereno Contract CNO).

¹⁰⁶ Addendum No. 1 to Contract No. 093-12 dated 16 Apr. 2013 (C-0167), Cl. 35.

sign-off on the certificates.¹⁰⁷ As with the CNOs, without a properly approved CPP, the funding bank would not issue payments.

54. Prior to the Varela Administration's assumption of power, the Government of Panama was sometimes slow in addressing the various payment issues and other delays. For example, the MC Rio Sereno, MC Kuna Yala, MC Puerto Caimito, Mercado Público de Colón and La Chorrera Contracts technically expired before the relevant Ministry or Judiciary was able to execute formal extensions.¹⁰⁸ But this ultimately did not prove an insurmountable hurdle because all parties worked together to find a solution. In the end, by mid-2014, we had managed to successfully negotiate and sign amendments to almost all of the Contracts to extend completion deadlines and incorporate the increased costs.¹⁰⁹ To come into force, these amendments simply required sign-off, or endorsement, by Panama's Comptroller-General.

55. However, as soon as the Varela administration took office in July 2014, the incumbent Comptroller-General refused to endorse any of our pending Contract amendments and payment applications. Not only this but all such documents were returned to the relevant Government Ministries or agencies and the approval process was started again from scratch, *this time with President Varela's newly-installed officers in place*. In Panama the Comptroller-General's term in office ends six (6) months after a new President is inaugurated, so the incumbent

¹⁰⁷ See, e.g., CPP No. 001 dated 16 May 2013 (C-0168) (signed by the National Institute of Culture and the Comptroller-General's office).

¹⁰⁸ See, e.g., Addendum No. 2 to Contract No. 077 (2011) dated 21 Feb. 2013 (C-0169); Request for additional time and costs submitted by Omega to Ministry of Health and Republic of Panama dated 19 July 2013 (C-0157) (noting the absence of a duly executed contract); Addendum No. 3 to Contract No. 077 (2011) dated 13 Aug. 2013 (C-0170), signed-off on 14 January 2014 (noting that between 29 January 2010 and 1 July 2013, there was no valid Addendum extending the period of validity of the Contract).

¹⁰⁹ See, e.g., Addendum No. 4 to Contract No. 077 (2011) dated 7 May 2014 (C-0106), which was never signed-off by the Comptroller, as further detailed below; Addendum No. 3 to Contract No. 083 (2011) dated 7 May 2014 (C-0107), which was never signed-off by the Comptroller-General, as further detailed below; Addendum No. 4 to Contract No. 085 (2011) dated 7 May 2014 (C-0171), which was never signed-off by the Comptroller-General, as further detailed below; see *infra* ¶ 55.

Comptroller-General remained in office until 31 December 2014, when she was succeeded by President Varela's nominee. Ironically, this overlap is intended to avoid disruption to government business and provide for a smooth transition from one administration to the next.

56. Betraying this constitutional prerogative, in an unexpected, swift and utterly unfair manner, the incumbent ignored duly executed and binding commitments to us and required that the newly appointed officials (who were totally unfamiliar with the subject-matter) sign off (anew) on everything with respect to our Projects. This set us back months and effectively strangled our finances.

57. In sum, prior to the Varela administration's assumption of power, the Projects were generally progressing as expected. While they were often, with the exception of the Mercado de Colón, subject to a number of delays that had nothing to do with the Omega Consortium, and payment from Panama was not always forthcoming when it should have been, these issues were resolved sooner or later. As such I had every reason, in the summer of 2014, to expect that the Omega Consortium's ongoing Projects would be successful—as had our prior projects—and that our operations in Panama would go from strength-to-strength. But the Varela Administration did not allow that.

IV. THE 2014 PRESIDENTIAL CAMPAIGN AND MY MEETING WITH CANDIDATE VARELA IN EARLY 2013

58. During the first few years of my involvement in Panama, from 2008 through the end of 2012, although based mostly in the country, I spent a lot of time in Puerto Rico and the U.S. for family reasons. However, by 2010, my marriage began to deteriorate and I found myself spending most of my time in Panama.¹¹⁰ By early 2012, I was officially separated and living full time in Panama, albeit spending every other weekend in Puerto Rico with my children. During that period

¹¹⁰ My divorce was finalized only at the end of 2012 and my children were and are pursuing Higher Education in the United States. Divorce Decree (redacted) dated 11 Aug. 2012 (C-0016).

I became close friends with one of my Panamanian attorneys, Ana Graciela Medina, and her late husband Jorge Velazquez. Although I never got involved in politics, or spent time with politicians, Ana and Jorge were very much involved with the Panameñista Party. Having dinner in the city or at private gatherings at their homes, I would sometimes brush elbows with senior Panameñista Party members.

59. This said, my first ever encounter with a senior Panamanian politician was a conversation with Juan Carlos Varela (“**Mr. Varela**”), then the country’s Vice-President, in 2011. I enjoy boating and at the time owned a boat, the Samaritana, which I tried to make use of as often as I could. In May 2011, the crew of the Samaritana was on their way to Panama from Puerto Rico. Unfortunately, towards the end of this journey, the tow rope for the Samaritana’s tender broke and the tender drifted loose. Fearing the worst I filed the necessary paperwork with the authorities, as well as with my insurance company. Sometime later, however, I received a call from an unknown number. The caller said that the boat was in Cartagena, Colombia, and requested the payment of a ransom in order to take me to it. I shared what was happening with a close friend who had managed an important insurance company in Panama. He told me that the story made no sense to him and that while he worked at the insurance company, he was able to recover a lot of stolen cars and boats from the Colón Municipality, an area known for criminal activity. He convinced me to hire a helicopter and scour the coast for the missing vessel, eventually locating it at a facility operated by Panama’s Servicio Nacional de Fronteras (border patrol). I immediately sent a colleague, together with the paperwork that evidenced my ownership, to claim the missing boat. Much to my surprise the border patrol refused to release the boat, claiming that it now belonged to the two officers that had found it adrift.

60. Coincidentally, that week (in 2011) I had a previously scheduled meeting with the leading Panamanian law firm of Icaza, Gonzalez-Ruiz and Aleman (“**IGRA**”), to explore the

possibility of hiring them to represent Omega Panama. The meeting was with Ana Graciela Medina, who I met that day for the first time. After discussing issues relating to work visas for my employees, she casually mentioned that her father, a partner in the firm, was an expert on maritime law. I took the opportunity to explain to her what had happened with my tender. Ana immediately took me to the penthouse floor to meet with her father. After giving him a summary of the issue, he informed me that I had two options. *First*, I could try to reclaim my vessel through the standard legal processes or, *second*, and doubtless—so he opined—much faster and easier, I could have IGRA reach out to a high-level Government official who would call the border patrol and have them release the boat to its rightful owner. IGRA offered to call their contact in the Panamanian Government, Mr. Varela, and see if he could resolve the situation. I saw little harm in this and agreed to IGRA’s proposal.

61. Much to my astonishment, within an hour of leaving IGRA’s offices, I received a call from a senior border patrol officer who informed me that the issue was nothing more than a “huge misunderstanding,” that I could pick the boat up whenever I pleased, and that his officers had cleaned the boat for me from top to bottom. Later that day I received a call from a friend of mine, Manuela Galindo, who was at the time Mr. Varela’s personal assistant. Manuela told me that the Vice-President wished to speak with me and handed the phone over to him. He asked whether I had been contacted by the border patrol and if the problem with my boat had now been resolved. I confirmed that it had and, naturally, thanked Mr. Varela profusely for his assistance. Mr. Varela said that he was happy to have been of service.

62. As mentioned, following this unusual incident, I developed a close friendship with Ana Graciela Medina. She and her husband, Jorge Velázquez, introduced me to their close circle of friends in Panama. This included a number of good friends and associates of Mr. Varela’s, including in particular his private assistants Rafael Flores and Raúl Sandoval, and Municipal

Legislator Ricardo Domínguez. I became a regular attendee of this group of friends' private parties and other social gatherings, such as birthdays, weddings and christenings. It was at one such gathering, at Panama City's Jaleo restaurant, that I was introduced to Mr. Varela in person.

63. At this first meeting our conversation was very cordial. Mr. Varela asked me how the Omega Consortium was doing with the Minsa Capsi Contracts, and I confirmed they were progressing slowly but steadily. Mr. Varela offered his assistance and I replied that we really were not encountering any major problems at that time, but that I would contact him if any issues arose. I recall that the conversation ended with Mr. Varela saying that he was "putting in a good word for me out there."

64. Over the following months I continued to run into Mr. Varela at social gatherings, where we would do little more than exchange pleasantries. This changed in July 2012 when I attended Ricardo Domínguez's engagement party, again at the Panama City Jaleo. Mr. Varela approached me and asked me to join him at a two-seat table at the bar. Although people would stop by to greet us, we were seated together for over an hour. We began by discussing Mr. Varela's background in the rum distillery business and how he had left all of that behind to focus on his political career. Mr. Varela told me that he did not have to be a politician, but that after experiencing first-hand the excesses and abuses of the Noriega regime, he felt duty-bound to ensure that never again would Panama fall into the hands of someone so ill-equipped to lead. He went on to compare Panama's then-incumbent President, Ricardo Martinelli, to Noriega, and told me he feared that President Martinelli would take drastic measures to stay in power past his single five-year, constitutionally-limited term. Mr. Varela told me he needed help to become President precisely in order to prevent Mr. Martinelli from doing this. At this point I suspected Mr. Varela was going to ask me for some kind of political contribution, something I was uncomfortable with, so I quickly changed the subject.

65. Mr. Varela went on to ask me a lot of questions about my projects in Panama and queried, on a number of occasions, whether I had any kind of business relationship with the IBT Group or an individual named Rogelio Oruña. I confirmed that I had heard of both IBT (which I now know to be another U.S. contractor involved in separate treaty proceedings against Panama) and Mr. Oruña, but that I had never had any dealings with either. Mr. Varela then asked if I had any contacts within the Government who were assisting me. I confirmed that I did not, but Mr. Varela refused to believe me. He lamented that he was not currently able to assist because he had, by that point, left the Government after a falling out with Mr. Martinelli, but sought to reassure me that once he became President he would be able to assist. This made me uncomfortable so I again changed the topic of the discussion. After more small talk we parted ways, although the next morning when I arrived at my office there was a bottle of Mr. Varela's Centuria rum waiting for me along with a note wishing me well.

66. Not long after this encounter I received a phone call from Ana Graciela, who informed me that Mr. Varela had asked her to invite me to dinner with him. I wanted to avoid this meeting as I suspected that Mr. Varela would use it as an excuse to ask me for a political contribution. I therefore informed Ana Graciela that I was very busy over the next few months and would be travelling outside of the country a great deal. In the Fall of 2012, around September, I was contacted by Mr. Varela, but I did not respond—again because I feared this approach was intended to draw me into making a political contribution. In October and the first half of November of that year I was in Puerto Rico finalizing my divorce. Upon my return to Panama towards the end of November 2012, I was again approached by Ana Graciela to schedule a meeting with Mr. Varela. By this point I felt there was no way to escape this meeting, so I agreed to meet the then-Presidential candidate for lunch at a restaurant in Panama City named La Trona.

67. Upon arrival at La Trona, I was informed that Ana Graciela and her husband were waiting for me in the restaurant's wine cellar. They informed me that, as I had feared, Mr. Varela intended to request that I make a significant contribution to his campaign, and that I should feel fortunate that he was coming to me because he generally did not feel comfortable approaching contractors for such contributions. Mr. Varela arrived shortly thereafter, accompanied by his assistants Rafael Flores and Raúl Sandoval, and a bodyguard. After exchanging the usual pleasantries Mr. Varela asked his bodyguard to collect everybody's cell phones. He then proceeded to tell the attendees that we had a lot of friends in common and one common enemy, Mr. Martinelli, and that he was asking for my help to compete with Mr. Martinelli in the 2014 elections. I responded by joking that I would definitely vote for him if I became a Panamanian citizen. Mr. Varela did not laugh; instead he asked everyone else there to leave the room, including the bodyguard. When we were alone he told me he wanted me to make a US\$ 600,000 contribution to his campaign and that, if necessary, we could set up some form of payment plan. Even though I was expecting it, I did not respond well to this request. I informed him that this was simply something I could not do. This angered Mr. Varela. He asked whether I was supporting Mr. Martinelli. I told him clearly and unequivocally that I would not pay him the US\$ 600,000 he was asking from me.

68. Feeling threatened at this point I also sought to extend an olive branch to this powerful politician. I told Mr. Varela that the Omega Consortium would be happy to buy some raffle tickets, or perhaps a table at a fund raiser, but the company could not pay him the US\$ 600,000 he was requesting. This did not calm Mr. Varela. He stated, coldly, that he knew very well that some of my projects would not be finished by the time the new Government assumed power and that, in Panama, it is often very hard to collect on contracts awarded by the previous Administration. This was, I suspected then and I know now, a direct and unequivocal threat to me and my business interests.

V. THE NEWLY-ELECTED GOVERNMENT BEGINS A CAMPAIGN OF HARASSMENT

69. After the Varela Administration assumed power, on 1 July 2014, the business environment in Panama changed dramatically for the Omega Consortium. The Consortium started to experience serious problems with each of its Government Contracts with the various Ministries, Judiciary and Institute. This was alarming because the problems seemed very different from the run-of-the-mill construction issues I had previously encountered in Panama. As detailed above, while the progress of the Contracts with the previous administration had not been perfect, the issues we had encountered were not unusual for these types of construction projects. Following Mr. Varela's assumption of power, the problems we experienced were no longer the usual kind, such as a change to a contract or a late payment, nor were they isolated incidents. Instead, they appeared to form part of a concerted, coordinated effort to stall *all* of the Omega Consortium's Panamanian Projects simultaneously. It is now clear that this was the case.

70. Over the course of 18 to 24 months the Government attacked me and my companies on multiple fronts by hindering progress of the Projects; launching baseless criminal allegations against me, my companies and my colleagues; and ultimately terminating the Projects—ruining my businesses as well as my personal and professional reputation in the process. As a result, on the one hand my businesses are now essentially worthless and I am considered *persona non grata* in professional construction circles, while on the other Panama has benefitted hugely from its egregious actions to the tune of many millions of dollars of work performed by the Omega Consortium in partially advanced construction projects.¹¹¹ Below I will detail how this campaign was orchestrated by the Varela Government.

¹¹¹ Had it not been for the Government's campaign of harassment against me and my businesses, all the Projects would have been completed.

A. The Government Actively Obstructed the Progress of the Construction Projects

71. The Government actively obstructed the progress of the Omega Consortium's Projects in multiple ways, including by refusing to grant necessary amendments to the Contracts, ignoring correspondence and phone calls from the Omega Consortium companies, refusing to grant necessary permits and systematically failing to approve invoices, which meant the Omega Consortium could not be paid.

72. *First*, the Government refused to grant necessary amendments to some of the Contracts. For example, as mentioned, around the time of Panama's change in Administration, we were awaiting Comptroller-General approval for amendments to each of the Minsa Capsi Contracts that provided necessary time extensions and authorized payment to the Omega Consortium for additional costs incurred.¹¹² My expectation, based on my experience prior to this Administration's harassment campaign, was that the requested amendments would have been granted, as had occurred before.¹¹³ These approvals, however, were not forthcoming.¹¹⁴ This placed the Omega Consortium in a difficult position. The existing Contracts had technically expired, and thus the Ministry of

¹¹² Addendum No. 4 to Contract No. 077 (2011) dated 7 May 2014 (C-0106), which was never signed-off by the Comptroller-General as described below; Addendum No. 3 to Contract No. 083 (2011) dated 7 May 2014 (C-0107), which was never signed-off by the Comptroller-General as described below; Addendum No. 3 to Contract No. 085 (2011) dated 2 Aug. 2013 (C-0108), which was never signed-off by the Comptroller-General as described below. *See infra* ¶ 55.

¹¹³ For example, prior to the Varela Administration, Addendum Nos. 4, 3, and 4 relating to MC Rio Sereno, MC Kuna Yala, and MC Puerto Caimito, respectively, had been approved. *See* Addendum No. 4 to Contract No. 077 (2011) dated 7 May 2014 (C-0106); Addendum No. 3 to Contract No. 085 (2011) dated 2 Aug. 2013 (C-0108); Addendum No. 4 to Contract No. 085 (2011) dated 7 May 2014 (C-0171). A similar situation occurred with respect to the Ciudad de las Artes Contract where the Government refused to approve the change order to account for the increased scope of work that the Government itself sought before the harassment, and for which Omega had already submitted change order pricing. I assisted in the preparation of Change Order Proposal Number No. 1, at the Government's request, which was based on the requested increased scope of work, and included pricing from my primary subcontractor, Arco. This change order, if granted, would have included the costs of the additional work, including additional general conditions costs for the extended duration of the work.

¹¹⁴ *See, e.g.*, Letter No. MINSAs-54 from the Omega Consortium to the Ministry of Health dated 31 Oct. 2014 (C-0173), describing Omega's situation as critical due to the pending expiry of the Contracts; Letter No. MINSAs-KY-72R from the Omega Consortium to the Ministry of Health dated 22 Sept. 2014 (C-0174), requesting an amendment to Addendum No. 3 of the Kuna Yala Contract because it had not been signed-off by the Comptroller prior to its expiry; Letter No. MINSAs-KY-83ET from the Omega Consortium to the Ministry of Health dated 28 Nov. 2014 (C-0175), requesting an extension of time re: the Kuna Yala Contract due to its expiration pending Comptroller approval.

Health was refusing to issue CNOs for work performed after the expiration date. Initially, I was not overly concerned about this as I had always suspected that the change in Administration would create delays. Further, the relevant Government agencies, though often slow to respond, had previously been willing to work with the Omega Consortium and seemed genuine in their stated desire for work on the Projects to continue.

73. By the time President Varela's new Comptroller-General assumed office in January 2015, however, it was evident that Panama had no intention of paying the Omega Consortium for its work. The Comptroller-General requested a large number of documents from the Omega Consortium that he already had, and began to reject perfectly reasonable requests from the Omega Consortium on the flimsiest of excuses. For example, in April 2015 the Comptroller-General refused to sign the change order necessary for completion of the Puerto Caimito Contract—a document which had been with the Comptroller-General for almost a year—on the unfounded basis that certain formalities had not been followed.¹¹⁵ It was claimed that a certificate was missing; yet that certificate had been provided during the bidding process and formed an integral part of the Puerto Caimito Contract file which was already in the Comptroller-General's possession. Two weeks later the Comptroller-General rejected the change order extending the deadline for the Rio Sereno Contract. To put this in context, prior to the Varela administration's assumption of power, *all* of the amendments to the Contracts the Omega Consortium had previously requested had been approved without any real problems.

74. The key, fatal issue caused by the Government's failure to approve these amendments was, of course, that the Omega Consortium could not submit certificates to the financing banks for timely payment. Omega was consequently deprived of the cash flow necessary

¹¹⁵ Letter No. 695-15-LEG-F.J.PREV. from the Comptroller-General to the Ministry of Health dated 17 Apr. 2015 (C-0176).

to continue with the Projects. This was a vicious circle entirely of the Government's making in which the Government's unjustified failure to issue timely approvals led inevitably to a failure to timely pay the Omega Consortium funds to which it was unquestionably entitled. After six months in office, as of 31 December 2014, the new Government had managed to accumulate an astonishing US\$ 19,750,455 in unpaid work, as detailed below in Column A:

Contract Project	Outstanding Balance in US\$ [A]	Retention in US\$ [B]
Rio Sereno	██████████	██████████
Kuna Yala	██████████	██████████
Puerto Caimito	██████████	██████████
Mercado Publico, Colon	██████████	██████████
Ciudad de las Artes	██████████	██████████
Unidad Judicial la Chorrera	██████████	██████████
Palacio Municipal, Colon	██████████	██████████
Mercados Perifericos - Jaun Diaz and Pacora	██████████	██████████
TOTAL	██████████	██████████

75. *Second*, the Government began to ignore the Omega Consortium's correspondence and phone calls requesting assistance, including assistance with obtaining crucial construction permits. For example, the City of Colón decided in the summer of 2014 that it wished to change the location of the Palacio de Colón site. The Omega Consortium promptly submitted a revised proposal that included preliminary drawings and costs for the change in location and asked for the City's approval to proceed.¹¹⁶ The Omega Consortium asked the City of Colón to officially decide on changing the location and to obtain final approvals on a number of occasions over a number of

¹¹⁶ See Architectural Presentation to the City of Colón dated 9 Sept. 2014 (C-0177).

months, all to no avail.¹¹⁷ At one point the Mayor's office informed the Omega Consortium that it wanted to formalize a change order to the Contract reflecting the change of location.¹¹⁸ However, despite this confirmation and the Omega Consortium's strenuous efforts to get this order finalized, the Mayor's office ultimately proved uncooperative and non-responsive.¹¹⁹ The reason for this subsequently became clear when the Municipality of Colón's attorney confirmed to my colleague, Mr. Frankie Lopez, that President Varela had *expressly* asked the Mayor to terminate the Contract for default because the Omega Consortium had left and would not be back as they do not have bonding. In what was becoming a familiar pattern, the Omega Consortium's requests for assistance in obtaining the necessary permits for the Mercados Periféricos project were similarly ignored by the Municipality of Panama.¹²⁰

76. *Third*, the single biggest challenge facing the Omega Consortium was that the Government had evidently decided to stop paying for the work conducted on *all* of the Projects. As a result of Panama's breaches, the Omega Consortium was, finally and with regard to each and every one of the Projects, left with no choice but to discontinue working on them. For example, with regard to the Minsa Capsi Contracts, in late 2014 the Comptroller-General had approved a number

¹¹⁷ See, e.g., Letter from the Omega Consortium to the Mayor of the Municipality of Colón dated 2 Oct. 2014 (C-0178) (requesting that the Alcalde make a formal decision about changing the location for the Project); Letter from the Omega Consortium to the Mayor of the Municipality of Colón dated 5 Feb. 2015 (C-0179) (referring to a meeting held on 26 Jan. 2015, and requesting that the *Mayor* formally decide about changing the location of the Project).

¹¹⁸ Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Mayor of the Municipality of Colón dated 19 June 2015 (C-0180).

¹¹⁹ To further complicate the issue, it seems that the City Council was on a different page than the Mayor, because the Council asked us in June 2015 when we were going to start work on the Project in its original location. Letter No. 101-01-149 from the City Council of Colón to the Omega Consortium dated 25 June 2015 (C-0181). The City Council further noted that it had heard that the State had initiated criminal investigations into Omega and requested confirmation that Omega could actually complete the work. *Id.* Omega responded to the City Council by forwarding it a letter that had previously been sent to the Mayor (Letter No. 2015 2 07 P08-014 from the Omega Consortium to the City Council of Colón dated 2 July 2015 (C-0182)).

¹²⁰ Letter No. MAP-5-09-14 from the Omega Consortium to Panama's Office of the Mayor dated 5 Sept. 2014 (C-0071) (asking for assistance in obtaining soil permits); Letter from the Omega Consortium to the City Hall of Panama dated 8 Apr. 2015 (C-0184) (following-up on-going issues with City Hall).

of CNOs, but the maturity date on at least one of these was 6 months earlier than its delivery date. The Omega Consortium was thus unable to convert the CNOs to cash. The same happened with the MC Kuna Yala Contract (Addendum No. 3 expired even before it was signed-off by the Comptroller-General)¹²¹ and the Ciudad de Las Artes Contract (the National Institute of Culture was withholding CPPs for approved work already performed).¹²²

77. Thus, in addition to the US\$ [REDACTED] that was owed by Panama to Omega, detailed in paragraph 74 above, as of 31 December 2014,¹²³ Panama was effectively unjustifiably withholding an additional US\$ [REDACTED] as of that date, as detailed in the Table above.¹²⁴

78. Omega Panama has continued to seek payment for our work on these Contracts,¹²⁵ but to date we have received no new CNOs¹²⁶ (for work already performed) since the Varela Administration assumed office in July 2014.¹²⁷

79. The fact that so many problems with so many of our Contracts—with various different Governmental entities—occurred following Mr. Varela’s assumption of power made me very concerned not only for the future of the Projects but also for the very survival of my companies. It appeared that Mr. Varela was making good on the threats he had made at La Trona, and was now

¹²¹ Letter No. MINSA-KY-72R from the Omega Consortium to the Ministry of Health dated 22 Sept. 2014 (C-0174), noting that Addendum 3 had expired even before being approved by the Comptroller-General.

¹²² Letter from the Omega Consortium to the National Institute of Culture dated 3 Feb. 2015 (C-0185), noting that Omega had not received any payment for approved invoices since 2013.

¹²³ During the work on all of the Projects, Omega Panama submitted pay applications to the Government for payment of Omega’s work. Although most of the pay applications submitted were paid, once the Administration changed the applications went unpaid, as follows: MC Rio Sereno Contract (pay application nos. 15-17), MC Kuna Yala Contract (pay application nos. 24-25), MC Puerto Caimito Contract (pay application nos. 19-22), Ciudad de las Artes Contract (pay application nos. 12-19), La Chorrera Contract (pay application no. 13), Municipality of Colon Contract (pay application nos. 3-4), and Municipality of Panama Contract (pay application nos. 1-8).

¹²⁴ See *supra* ¶ 74, Table Column B.

¹²⁵ See, e.g., Letter from Omega Consortium to Ministry of Health dated 4 June 2015 (C-0186).

¹²⁶ With the exception of Kuna Yala CNOs Nos. 22, 23 and 24, received in late 2014 and totaling merely US\$ 319,346.21.

¹²⁷ Letter from Omega Consortium to Ministry of Health dated 4 June 2015 (C-0186).

using his immense political power to sabotage my business interests in Panama as payback for my perceived betrayal in failing to make the requested US\$ 600,000 contribution to his campaign. Despite these serious misgivings, not in my wildest dreams, however, did I ever imagine that Mr. Varela's vendetta would extend to using the Courts to initiate a series of bogus criminal prosecutions against me, my colleagues and Omega Panama.

B. The Government Used its Courts to Pursue Bogus Criminal Prosecutions

80. Soon after my divorce became final in 2012, my son wanted to live with me. As a result, he joined me in Panama in August 2013, and we remained based there through May 2014, while he attended the Balboa Academy.¹²⁸ My long-term plan had always been to move to Miami in 2014 to open an office and consolidate our back-office operations there. Most of my dealings with U.S. financial institutions, insurance companies, suppliers and some subcontractors were handled by their Miami offices. My ultimate goal was to continue to grow our business throughout the Caribbean and Latin America; culturally and geographically Miami was and is the undisputed U.S. hub for those markets.

81. Pursuant to those plans and with a view to selling it at some point, I had sent my boat to Miami in October of 2013. From that point on, because we had a place to stay, we started spending an increasing number of weekends in Miami.

82. In June 2014, as soon as my son's school year came to an end, I moved to Miami. As a result, when the payments for the Projects began to be unfairly withheld by the Panamanian authorities in late 2014, and when baseless criminal investigations were initiated against me, my colleagues and my companies in 2015, I was already a full time resident of Miami. Of course, every so often I would travel to Panama and Puerto Rico on business. I had, however, by this stage,

¹²⁸ An all-English international middle and upper school in Panama City.

transferred authority for running the business' day-to-day operations in Puerto Rico to Mr. Victor Lopez, and in Panama to Mr. Frankie Lopez, as part of a gradual process of my assuming more of a strategic role that had started several years before my departure from Panama. Below, I discuss the various criminal investigations that were unfairly commenced against me, and that, to this day, prevent me from being able to return to Panama.

1. The First Investigation

83. I first heard the full details about the initiation of the first criminal investigation, involving me and Omega Panama, during the afternoon of 22 January 2015. By this time, I was living in Miami and would handle business from there. I would only travel to Panama on short trips and for specific meetings. I had such a meeting on 16 January 2015 with the National Institute of Culture regarding the declaration of default on the Ciudad de las Artes Contract, and had stayed for a few days after to continue addressing this situation. So I was in my apartment in Punta Pacifica, Panama on 22 January 2015, getting ready to go for a run, when I received a call from Mr. Lopez. I recall that his first words were, “are you sitting down?” He then told me that our bank accounts had been frozen earlier that day by order of the National Assembly in connection with the Moncada Luna investigation. I was, of course, shocked and extremely concerned to hear about this. To be honest, however, my overwhelming reaction was a major sense of confusion: I was simply astonished by the fact that, and had absolutely no idea why, Omega Panama had become mixed up in a high-profile criminal investigation involving Panama’s Chief Justice (the “**First Criminal Investigation**”).¹²⁹

84. The First Criminal Investigation commenced around October 2014, a few months after Mr. Varela had assumed office. This timing was expected because it was popular knowledge

¹²⁹ Email correspondence between Frankie Lopez and others dated 22 Jan. 2015 – 7 Mar. 2015 (C-0188).

that Mr. Varela, while Panama's Vice-President, had publicly sought Mr. Moncada Luna's resignation.¹³⁰ I was, of course, aware of this criminal investigation from reading the newspapers. It was a big story in Panama at the time,¹³¹ but of course I never imagined that my company and I would inadvertently become involved in this high-profile prosecution.

85. The first inkling that something was wrong had come earlier the morning of 22 January 2015. I was, to my absolute shock and complete consternation, informed—by two local employees, Ms. Yadira Campos and Mr. Salvador del Toro¹³²—that both Omega Panama's and PR Solutions' Panamanian bank accounts, which held only around US\$ [REDACTED] between them, had been frozen by judicial order. Initially believing this was related to an action in connection with a civil litigation, something that had unfortunately happened to us before in Panama, we insisted that the bank provide us with a copy of the order. They refused to do so.¹³³ It was only later that day that Mr. Frankie Lopez informed me that, although the bank was continuing to refuse to provide us with a copy of the order, he had finally been told by an officer of the bank that it had been issued by the National Assembly's designated prosecutor (the "**Designated Prosecutor**") as part of the Moncada Luna investigation.¹³⁴ Although to this day I have not seen that order, the reason apparently given by the Prosecutor for taking this action was that I had allegedly made two suspect payments, through PR Solutions' bank account, to Ms. Maria Gabriela Reyna, and that these funds had eventually found their way, supposedly via a chain of payments through several other entities, to Mr. Moncada Luna.

¹³⁰ *Juan Carlos Varela reiterates that Moncada Luna should resign as a matter of honor*, LA PRENSA dated 21 June 2012 (C-0076).

¹³¹ *Varela demands an explanation from Magistrate Moncada Luna regarding his enrichment*, LA ESTRELLA DE PANAMA dated 30 Sept. 2014 (C-0189).

¹³² Email correspondence between Frankie Lopez and others dated 22 Jan. 2015 – 7 Mar. 2015 (C-0188)

¹³³ In Panama, it is very easy to obtain an order to freeze the bank account of a person or entity you are suing. It is an *ex-parte* process where only a sworn statement and a bond is required. The affected party has no opportunity to defend itself until after the account is frozen.

¹³⁴ Email correspondence between Frankie Lopez and others dated 22 Jan. 2015 – 7 Mar. 2015 (C-0188).

This is ridiculous. I have never had any personal contact¹³⁵ or relationship with either Mr. Moncada Luna or Ms. Reyna. And as further detailed below, my companies' sole contact with her was strictly related to a private real estate acquisition I made in Panama.

86. This was, of course, a major problem for Omega Panama both from a practical and a reputational perspective. From a practical perspective, it had a direct effect on Omega Panama's finances and business activities, but perhaps more importantly, from a reputational perspective, this decision was widely publicized, irreparably damaging my and the Omega companies' reputation both in Panama and worldwide.¹³⁶

87. We immediately consulted with a criminal attorney to determine the best way to defend myself and my company. After receiving his advice we hired Cedeño, Morales & Asociados, a Panamanian Law Firm which, a few days later, filed an "Affected Third Party" request with the Designated Prosecutor's office.¹³⁷ The purpose of submitting this request was to clarify that neither I nor Omega Panama or PR Solutions had *any* relationship with Mr. Moncada Luna, and that the payments to Ms. Maria Gabriela Reyna were for a perfectly legitimate commercial transaction (specifically, for the purchase of land for a commercial property development).

88. The very same day we filed this motion, I received an e-mail from the Prosecutor's Office on behalf of the Designated Prosecutor for the Moncada Luna investigation,¹³⁸ requesting

¹³⁵ Other than during the ground-breaking ceremony on the La Chorrera Contract, which took place at the courthouse.

¹³⁶ Varela demands an explanation from Magistrate Moncada Luna regarding his enrichment, LA ESTRELLA DE PANAMA dated 30 Sept. 2015 (C-0189); Over \$500 thousand belonging to Moncada Luna are encumbered, LA ESTRELLA DE PANAMA dated 31 Jan. 2015 (C-0191); Accounts allegedly belonging to Moncada Luna are currently seized, NOTICIAS 24 PANAMA dated 30 Jan. 2015 (C-0192); More seized bank accounts linked to suspended judge, NEWSROOM PANAMA dated 30 Jan. 2015 (C-0193); *Prosecutor seizes accounts linked to Alejandro Moncada Luna*, LA PRENSA dated 30 Jan. 2015 (C-0194).

¹³⁷ Affected Third Party Request dated 29 Jan. 2015 (C-0195).

¹³⁸ Email from the State Attorney Assembly to Oscar Rivera dated 29 Jan. 2015 (C-0196), requesting that I to visit his office.

that I visit his office for an “interview” about that investigation. I responded by confirming that I was happy to assist that investigation in any way and apologizing for not being able to visit the Prosecutor’s office in person as I was, by then, living in Miami.¹³⁹

89. That the Government was accusing me criminally with respect to Mr. Moncada Luna was quite simply preposterous. I could not understand how the Panamanian authorities could reach this conclusion since neither I, nor anyone on my team, had ever had any substantive contact with Mr. Moncada Luna or anyone associated with him, other than a single brief introduction at the ground breaking ceremonies for the Judiciary’s La Chorrera Project and the minimal and sporadic contact Omega Panama employees had with the La Chorrera Project’s Government representatives (a team that Mr. Moncada Luna was never a part of).

90. As has been the case with all of the public construction projects with which I have been involved during my 25-year career, we never met privately with *any* Government representatives with regard to *any* of the projects for which we decided to tender. Instead, if we had questions about a particular RFP, we submitted them in writing to the relevant contracting agency or raised them at a pre-bid Q&A session. If our tender for a given project was successful, then the project documentation would always be drafted by the relevant Government agency. We would be provided with an opportunity to comment on the draft contract to make sure it was consistent with the RFP and our proposal. Only once the Government agency had verified that the Omega Consortium had the correct insurance policies and performance bonds in place,¹⁴⁰ and any Omega Consortium comments on the draft had been addressed, would Omega Consortium representatives

¹³⁹ Email from Oscar Rivera to State Attorney Assembly dated 2 Feb. 2015 (C-0197), informing it that I was not living in Panama.

¹⁴⁰ A performance bond is a surety bond which protects the owner from financial loss in the event the contractor fails to perform the contract in accordance with its terms and conditions. If the Obligee declares the Principal in default and terminates the contract, it can call on the Surety to meet the Surety’s obligations under the bond.

(generally either Mr. Frankie Lopez or I) typically be asked to visit the Government agency in person to sign the contract documentation or, alternatively, the document would be sent to our office by courier and returned to the relevant Ministry after it had been signed.¹⁴¹ Personally, I never witnessed anyone from the Government counter-sign any of the construction contracts we executed with Panama. Normally I would sign on behalf of the Omega Consortium in my office and then receive a duly executed copy from the Government a few days later. This is exactly what happened with the contract for the La Chorrera Project.

91. In fact only twice during the entire course of my professional involvement in Panama did I meet with any of the Panamanian Ministers or other Government officials responsible for the construction contracts concluded with the Omega Consortium. The first such occasion was a meeting with the Minister of Health and a number of other Ministry officials to discuss, once the relevant Contracts had been signed and construction commenced, an addendum to the Minsa Capsi Contracts. The second was at a public “brick-laying” ceremony with Mr. Moncada Luna, when he was still President of the Panamanian Supreme Court, to mark commencement of work on the Judiciary’s La Chorrera Project. Again, this meeting took place only once the Contract between the Omega Consortium and the Panamanian authorities had been signed, and was in the full glare of Panama’s press and other dignitaries. Most importantly of all, it should be underlined that I have *never* met either the country’s former, or incumbent, Comptroller-General.

92. Not only were my connections with Mr. Moncada Luna highly tenuous at best, but the fact remains that the payments I made, through PR Solutions, to Ms. Reyna were perfectly legitimate. Private real estate development projects have, even when my father was the sole owner of Omega S.E., always been a key part of my family’s business model. These projects were never

¹⁴¹ See, e.g. Letter from International Airport of Tocumen to Villarreal Cabrera dated 1 Oct. 2010 (C-0129) (instructing PR Solutions to acquire the necessary insurance etc. in order to finalize the contract).

undertaken under the umbrella of Omega U.S. (or later Omega Panama), but rather were undertaken personally by my father and later by me through the use of special purpose vehicles. The rationale for this was and is to limit Omega U.S.'s liability and keep the ownership of the property straightforward in order to more easily transfer title once the development is ready for sale. I had personally led several very successful private real estate development projects before I set foot in Panama for the first time.

93. In line with this family business model, I had, for some time since my arrival in Panama, been searching for parcels of land that would be well-suited to construction of a new vacation resort and residential home project. We, on a preliminary basis, named the potential project "Verdanza Residences" (the "**Verdanza Project**").¹⁴² The decision to pursue this project was entirely my own, and my team in Panama was not involved in the initial stages. I had planned on bringing them on board once concrete steps had been taken to get the project up and running.

94. I enlisted Tito Chevalier, a colleague who had good connections in the construction and real estate market and with whom I had previously worked on private real estate developments,¹⁴³ to assist me in locating suitable tracts of land for the Verdanza Project. At the time Tito had a franchise with Coldwell Banker, a major US-based real estate company. The relationship with Tito was more that of a friend and partner than of a business associate, and I did not pay him any commission for his services. We simply had an understanding that when the project was developed, he would be in charge of selling the units to third-party buyers. Tito showed me some land near Isla Cañas which, upon inspection, I deemed a good candidate for the Verdanza Project. Despite the fact that a lot of American tourists visit the area to see the sea turtles that nest

¹⁴² Drawing of Verdanza Residences, undated (C-0199); Conceptual Layouts of Verdanza Residences, undated (C-0200); Verdanza Residences Preliminary Financing Executive Summary with diagrams & charts, undated (C-0201).

¹⁴³ Tito owned the rights for the Coldwell Banker franchise in Panama and was the president of Landmark Developers, a real estate development company.

there, it is still somewhat undeveloped. Tito and I subsequently toured the area to look at properties, and Tito made inquiries with his contacts about plots of land for sale in the area.

95. Around that time, Ms. Maria Gabriela Reyna, a Panamanian lawyer who I had never come across before, sent my office a number of pictures and drawings of a farm that was for sale in Tonosi. I do not know how Ms. Reyna came to know of my interest in purchasing land in the area, as her parcel was not one of Tito's Coldwell Banker listings, but I presume she had heard about this through the grapevine as a result of Tito's efforts. A number of people had contacted me directly and out of the blue with information about available land, so it was generally known that I was interested in purchasing land in that area. After receiving the information from Ms. Reyna I drove there, visited the land in person and decided to move forward with the purchase. As discussed, such land purchases formed a key part of my and my family's business plan and while the plot was sizeable, it was no larger and certainly less expensive than my typical land purchase transactions.

96. After deciding to purchase the land, I brought Mr. Lopez up to speed on the project and asked him to work out the details. I recall informing him that I wanted to ensure that we paid whatever purchase price was finally agreed in installments. On my behalf, Mr. Lopez negotiated the transaction with Ms. Reyna, who was acting on behalf of the landowner, a Panamanian company named J.R. Bocas Investment Inc ("**JR Bocas**" or "**Seller**").¹⁴⁴ It was decided that, to complete the purchase, we would set up an affiliate whose sole purpose would be completing the purchase of the land, a system I had employed on all prior occasions for similar projects. Mr. Lopez therefore registered a company named Punela Development Corp ("**Punela**") with the Panamanian authorities at the end of January 2013.¹⁴⁵

¹⁴⁴ Tonosí Land Registration Information, date accessed 31 Jan. 2013 (C-0202), at 2; Email from Ricardo Ceballos to Ana Graciela Medina dated 7 July 2015 (C-0203).

¹⁴⁵ Public Registry of Punela Development Corp. dated 2 Jan. 2013 (C-0077).

97. After a few weeks of negotiations we ended up closing the deal for the land in April 2013, for a purchase price of US\$ 1 million.¹⁴⁶ This was to have been paid in three payments—the first two of US\$ 250,000 and the US\$ 500,000 balance at the end. However, following conclusion of the contract, and after disbursement of the first two installments, we experienced a disagreement with the Seller. This concerned the outstanding mortgage on the land, which was supposed to have been paid off by the Seller by the time the first payment was due, and the lack of certain infrastructure at the site—the Seller had represented to us that this issue would also be resolved by the time the purchase was executed. The Seller asked for an extension of time to cure these issues, but we refused. Rather, Punela paid the first two installment payments on time, with payment of the balance remaining subject to the Seller curing its breaches. Funds for the first two payments were transferred from the bank account of Omega Panama to the account of PR Solutions. The payments for the land were ultimately made from the bank account of PR Solutions for the simple reason that we had not had time to set up a bank account for Punela Development Corp. It had always been our practice to keep Omega isolated from any potential liability not related to its core business, hence my decision to use PR Solutions to fund the transaction on behalf of Punela instead of Omega Panama.

98. All of 2013 and the first half of 2014 went by without the Seller curing its breaches. As previously explained, from July 2014, with the Varela administration taking office, everything had changed for us. We spent the rest of 2014 dealing with the rapidly increasing array of measures taken by Panama against Omega Panama. During that time, I would ask Mr. Frankie Lopez about the status of the land issue, but he always had the same answer: they still haven't complied. We discussed demanding that the monies paid be returned to us, however, after becoming aware of the

¹⁴⁶ Sale and Purchase Agreement between JR Bocas Investments, Inc. and Punela Development Corp. dated Apr. 2013 (C-0078).

investigation in January 2015, everything ground to a halt. As soon as the present case is finished and I am permitted freely to return to Panama I intend to pursue all legal remedies in Panama to have these funds returned to me.

99. For reasons that, to this very day, remain entirely unclear to me, the Designated Prosecutor drew a link between the land purchase transaction, on the one hand, and other wholly unrelated transactions—namely the La Chorrera Contract between the Judiciary and the Omega Consortium, and bank transfers made by people and entities entirely unrelated either to Omega Panama or me—on the other.

100. The (misconceived) premise of the Designated Prosecutor’s case theory regarding Omega Panama’s and my supposed involvement in the Moncada-Luna affair was that the first two payments of US\$ [REDACTED] made by Punela, through PR Solutions’ bank account (from funds received from Omega Panama) under the land purchase contract—to Reyna y Asociados—were ultimately used to purchase the two luxury condominiums which led to the criminal investigation into Mr. Moncada Luna. A small portion of the two land purchase payments supposedly ended up in the hands of the Moncada Lunas following bank transfers made by Reyna to two corporate entities with which I am wholly unconnected and first heard about as part of the First Criminal Investigation, Sarelan Corporation, S.A. and Corporación Cubemu, S.A.

101. When the First Investigation had been completed the Designated Prosecutor understandably decided to dismiss the criminal allegations against Omega Panama and me for a complete lack of proof of any criminality.¹⁴⁷ This decision was confirmed at the public hearing at which Mr. Moncada Luna pled guilty to unjustified enrichment and committing perjury on a public

¹⁴⁷ Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015 (C-0085).

document,¹⁴⁸ after reaching a plea deal with the Designated Prosecutor.¹⁴⁹ The Designated Prosecutor expressly affirmed that neither Omega Panama nor I had anything to do with the crimes committed by Mr. Moncada Luna.¹⁵⁰

102. This was not, unfortunately, the end of my personal and professional nightmare in Panama. The authorities, in spite of the decision of the Designated Prosecutor to drop the charges against me and my company, and my attorneys' repeated urgings,¹⁵¹ unreasonably refused to take the necessary action to release Omega Panama's and PR Solutions' frozen bank accounts.¹⁵² On the contrary, the Government expressly decided to *maintain* the block on these accounts.¹⁵³ My criminal attorney challenged this decision, noting that it was in direct contradiction of express provisions of Panamanian law.¹⁵⁴ But inexplicably and in clear breach of Panamanian law, this challenge was summarily rejected.¹⁵⁵ These bank accounts remain frozen to this very day.

103. So in sum, my bank accounts remain seized as of today as a result of an investigation in which: (i) the Government has not produced any underlying evidence to support their theories, nor have they ever charged me with a crime; (ii) the Designated Prosecutor has absolved me and my companies from any involvement in the wrongdoing; and (iii) there is an abundance of evidence,

¹⁴⁸ *Id.*

¹⁴⁹ Settlement Agreement between Moncada Luna and the Republic of Panama dated 23 Feb. 2015 (C-0205).

¹⁵⁰ Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015 (C-0085); Annex to Letter from Manuel Cedeño Miranda to Special Prosecutor of Organized Crime dated 10 Jun. 2015 (C-209) (“The companies Summer Vent Inc., Meditrex Investment S.A., Reyna y Asociados, having bank accounts in two different banks, PR Solutions, Omega Engineering Inc. and Conceptos y Espacio S.A., *are all in the category of companies not linked to Justice Moncada Luna’s illegal assets under investigation by the State Attorney.*” (emphasis added)).

¹⁵¹ Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015 (C-0085); Motion for Reconsideration dated 3 Mar. 2015 (C-0206).

¹⁵² Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015 (C-0085).

¹⁵³ *Id.*

¹⁵⁴ Motion for Reconsideration dated 3 Mar. 2015 (C-0206).

¹⁵⁵ Verdict on Motion for Reconsideration dated 23 Mar. 2015 (C-0207).

both oral and documentary, confirming that any payments made to Ms. Reyna were for a completely legitimate land purchase. Worse still, further criminal investigations into me and my companies were to follow, based on the same (lack of) evidence as the First Criminal Investigation.

2. *The Second Investigation*

104. In a decision which, to my mind at least, defies belief, even judged by the questionable standards of the Panamanian judicial system, and especially in light of the statements by the Designated Prosecutor, a second investigation was nevertheless subsequently initiated, on 15 June 2015. This investigation focused on, among others, Mr. Francisco Feliu and me,¹⁵⁶ as well as 10 additional individuals, including several close friends of Mr. Moncada Luna (the “**Second Investigation**”).¹⁵⁷ It was, incredibly, based on *the same facts as the First Investigation*,¹⁵⁸ and therefore the very same facts that the Designated Prosecutor in the First Investigation had already found did not amount to criminal activity and had therefore dismissed. This can be seen, for example, from the fact that, in his preliminary financial analysis report of 5 June 2015, the prosecutor who brought the Second Investigation (the “**Second Prosecutor**”) advanced exactly the same theory as had the Designated Prosecutor in the First Investigation regarding the relationship between Omega Panama, Ms. Reyna and the La Chorrera Contract.¹⁵⁹

¹⁵⁶ Mr. Francisco Feliu was dragged into the process solely as a result of having signed the PR Solutions checks, as an employee of the company following my instructions.

¹⁵⁷ Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082), at 1.

¹⁵⁸ *Id.*; Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081).

¹⁵⁹ Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081), at 21-24, 32-34, trying to establish a link between the payments made by Omega Panama to PR Solutions and by PR to Reyna y Asociados, and the La Chorrera Contract.

105. To my mind it is no coincidence that the unjustifiable decision to initiate a new criminal investigation against me and my colleague was made only a few weeks after the Omega Consortium had filed a formal Notice of Dispute against Panama under the BIT.¹⁶⁰

106. My criminal law attorney submitted a memorial to the Second Prosecutor in August 2015 explaining what had happened to Omega Panama's and PR Solutions' bank accounts in the First Investigation, and again requesting termination of the unjustified interim measures freezing those accounts.¹⁶¹ This was, my attorney and I felt, the least the Panamanian authorities could do given that important evidence demonstrating that neither my colleague nor I had anything to do with Mr. Moncada Luna or the purchase of his apartments. For example, in Maria Gabriela Reyna's witness declaration in the First Investigation she had expressly stated that our relationship was purely commercial and strictly limited to the purchase of the Verdanza Project land in Tonosí.¹⁶² Further, as soon as the criminal investigation of Mr. Moncada Luna became public and Ms. Reyna had been interrogated by the Designated Prosecutor, Ms. Reyna sent an e-mail to my colleague, Mr. Frankie Lopez. In this email she confirmed that she had been ordered to testify by the prosecutor in Mr. Moncada Luna's case, that she had explained to the authorities the (entirely innocent) nature of her relationship with me and my company, that she was absolutely unaware of the existence of the La Chorrera Contract, and begged our pardon for having caused us any problems.¹⁶³

¹⁶⁰ Notice of Dispute dated 3 Mar. 2015 (C-0092).

¹⁶¹ See Petition of Habeas Corpus to the Supreme Court dated 28 Aug. 2015 (C-0208); Annex to Letter from Manuel Cedeño Miranda to Special Prosecutor of Organized Crime dated 10 Jun. 2015 (C-0209); Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082).

¹⁶² Supplemental Declaration of Maria Gabriela Reyna Lopez dated 14 July 2015 (C-0089).

¹⁶³ Email from Maria Gabriela Reyna to Frankie Lopez dated 28 Jan. 2015 (C-0210).

107. Despite this, in his “Resolution No 40-15,” the Second Prosecutor included me on the list of people formally subject to his criminal investigation.¹⁶⁴ The next day, on 16 June 2015, I was also ordered to appear before the Second Prosecutor to be interrogated in Panama on 29 June 2015.¹⁶⁵ On 25 June 2015, my attorney submitted a letter to the Second Prosecutor explaining that I was unable to appear on that date because of previous engagements in my place of residence, Miami.¹⁶⁶ The Second Prosecutor informally requested that we reschedule my appearance for 17 July 2015. However, I was notified of this new date just a few days prior. My attorney in Panama transmitted to the Second Prosecutor a second letter from my attorney in the United States indicating that, due to prior commitments, I needed to remain in the United States until 31 July 2015.

108. We did not receive a response from the Second Prosecutor to our second letter. Instead, this was roundly ignored and the Second Prosecutor’s theory of the case was widely publicized.¹⁶⁷ I was portrayed in the press as a criminal whose behavior required punishment.¹⁶⁸ From that moment on my personal and professional reputation was effectively destroyed.

109. As part of my legal defense, after receiving the advice of my lawyers, we submitted evidence in the Second Investigation and requested that the Second Prosecutor gather more

¹⁶⁴ Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082).

¹⁶⁵ See Citation for Oscar Rivera to Appear at the Public Ministry on 29 June 2015 dated 16 June 2015 (C-0211).

¹⁶⁶ Presentation of Motives dated 29 June 2015 (C-0212), at 2.

¹⁶⁷ *Accounts related to money laundering are seized*, LA PRENSA dated 21 June 2015 (C-0213); *Business Officials Summoned*, LA PRENSA dated 13 July 2015 (C-0214); *Ricala and CSJ of Moncada Luna*, LA ESTRELLA DE PANAMA dated 2 July 2015 (C-0215). I was never formally indicted. In fact, the only time the “evidence” against me was ever presented to a judge was when the Designated Prosecutor did so, despite the fact he subsequently decided not to indict me. An order to detain me was issued not in connection with any indictment, but rather for failing to appear before the prosecutor (for allegedly being in contempt of the prosecutor’s order). See *supra* ¶108.

¹⁶⁸ See generally *id.*

evidence.¹⁶⁹ This request was, however, twice rejected.¹⁷⁰ Despite these negative developments I nevertheless remained confident that, as had been the case with the First Investigation, the accusations leveled against me in the Second Investigation would be quickly dismissed. This confidence stemmed in large part from the fact that, according to my lawyers, several of the individuals being investigated by the Second Prosecutor had confirmed that I was in no way involved in any wrongdoing.¹⁷¹

110. I was therefore deeply discouraged when I was informed that the Second Prosecutor had issued an order for my detention¹⁷² and an INTERPOL Red Notice for my extradition to Panama.¹⁷³ Yet again I was in the news for the wrong reasons, this time being portrayed as a fugitive from justice being hunted by INTERPOL.¹⁷⁴ As detailed below, we challenged the Panamanian arrest warrant through a *habeas corpus* submission¹⁷⁵ which we subsequently supplemented with an additional pleading,¹⁷⁶ but this was summarily rejected.¹⁷⁷ On 1 September 2015, we also filed a petition with Panama's Public Ministry requesting revocation of the arrest warrant.¹⁷⁸ A further

¹⁶⁹ See Omega's Evidence Submission to the Prosecutor against Organized Crime dated 7 Aug. 2015 (C-0216), requesting that the Second Prosecutor gather evidence.

¹⁷⁰ Resolution Denying Evidence Request dated 4 Jan. 2016 (C-0217); Decision by 16th Circuit Court of the First Judicial Circuit dated 5 Jan. 2016 (C-0218), rejecting the challenge filed against Resolution dated 13 Oct. 2015.

¹⁷¹ Supplemental Declaration of Maria Gabriela Reyna Lopez dated 14 July 2015 (C-0089).

¹⁷² Resolution of Detention No. 052-15 dated 25 Aug. 2015 (C-0093).

¹⁷³ Letter from Secretariat to the Commission for the Control of Interpol's Files dated 24 Mar. 2016 (C-0219).

¹⁷⁴ *Fiscalia pide a Interpol que emita 'alerta roja' para ubicar a 4 empresarios por caso Moncada Luna*, TVN NOTICIAS dated 2 Sept. 2015 (C-0094). On 23 Mar. 2016, Mr. Rivera filed a request with INTERPOL to have the Red Notice removed from his file. See Letter from Secretariat to the Commission for the Control of Interpol's Files dated 24 Mar. 2016 (C-0219). On 13 December 2016, INTERPOL responded confirming that it had withdrawn the INTERPOL Red Notice. Letter from the Commission for the Control of Interpol's Files dated 13 Dec. 2016 (C-0220).

¹⁷⁵ Petition of Habeas Corpus to the Supreme Court dated 28 Aug. 2015 (C-0208).

¹⁷⁶ Petition of Habeas Corpus dated 23 Oct. 2015 (C-0221).

¹⁷⁷ Decision of Panama's Supreme Court on Oscar Rivera's Habeas Corpus Petition dated 20 Nov. 2015 (C-0222).

¹⁷⁸ Revocation of the Arrest Warrant Request dated 29 Sept. 2015 (C-0223).

request was also filed arguing that the statutory period within which the investigation was required to have been conducted had expired on 20 September 2015.¹⁷⁹ Both this request¹⁸⁰ and a subsequent appeal¹⁸¹ were summarily rejected. Indeed, as I recall, every single petition we filed was summarily rejected by the Panamanian Courts.

111. On 17 November 2015, the Second Prosecutor's division authorized a raid on Omega Panama's offices.¹⁸² During this raid our accounting journals and copies of PR Solutions' checking history were seized. The authorities also tried to take files from our computer servers but were unable to gain access. They also seized one employee's cell phone, took him away in a police car, and detained him for several hours, even though they insisted that he was not under arrest.¹⁸³ Eventually I was informed that he had been detained and I was able to arrange for my attorney to go and pick him up.

112. As with the First Investigation, the Second Investigation eventually concluded without an indictment against me ever being issued. On 23 September 2016 Panama's Second Superior Tribunal for the First Judicial District annulled the Second Investigation.¹⁸⁴

113. Finally, I thought, the nightmare was over. On their ruling, the Second Superior Tribunal had decided that among other defects, the Second Investigation was tantamount to double jeopardy as it was based on exactly the same facts used during the First Criminal Investigation and the matter was, thus, *res judicata*.

¹⁷⁹ Complaint to the 16th Judge of the 1st Judicial Circuit of Panama dated 1 Oct. 2015 (C-0242).

¹⁸⁰ *Id.*

¹⁸¹ Appeal to Honorable Magistrates of the Second Superior Court of Justice of the 1st Judicial District dated 1 Oct. 2015 (C-0224).

¹⁸² Search and Seizure Order issued by the Anticorruption Prosecutor dated 17 Nov. 2015 (C-0095).

¹⁸³ See Email from Salvador del Toro to Giovanni Olmos dated 18 Nov. 2015 (C-0227).

¹⁸⁴ See Judgment of Panama's Second Superior Tribunal for the First Judicial District dated 23 Sept. 2016 (C-0008).

114. Panama, however, seemingly determined to prolong the matter for as long as it could, on 7 December 2016 filed a baseless cassation complaint attacking the Second Superior Tribunal's decision to annul the Second Investigation.¹⁸⁵ Incredibly, three and half years after my accounts were seized, almost three years with an unlawful detention order issued against me, and almost two years after such actions were annulled by a court, Panama's Supreme Court has not ruled on the cassation complaint. Consequently, the Second Prosecutor's measures, which were already rejected, still remain in effect.

3. *The Third Investigation*

115. To my complete and absolute astonishment, a few months after the Second Investigation had started, I learned that yet another criminal investigation involving me was about to begin in Panama, once again based on the very same facts as the First and Second Investigations.¹⁸⁶ This time the investigation was purportedly intended to show that a new crime had been committed: corruption of a public official (the "**Third Investigation**"). To begin with, my name was not, much to my relief, included as a person of interest in the investigation. As a result, I fervently hoped that the Panamanian authorities had finally determined that I was innocent of the made-up charges they were leveling against me and that, try as they might, they could not manufacture any evidence against me that would prove otherwise.

116. Yet again, however, my confidence in the integrity of the Panamanian justice system proved misplaced. On 17 November 2015 both the Second Prosecutor and Panama's anticorruption prosecutor (the "**Third Prosecutor**") authorized a raid on Omega Panama's premises.¹⁸⁷

¹⁸⁵ See Motion to Appeal dated 7 Dec. 2016 (C-0226).

¹⁸⁶ See Summary by the Public Prosecutor First Anti-Corruption Division of the Attorney-General dated 17 Nov. 2011 (C-0086).

¹⁸⁷ See *id.*

117. It is my understanding that the Third Investigation has not been officially closed to this day.

C. The Projects Are Terminated, Suspended, or Allowed to Lapse by the Government

118. Eventually, Panama, through its Ministries or other relevant agencies, terminated, suspended, or allowed to lapse all eight of the Projects. When these actions are looked at holistically, the fact that the Government turned its back on all eight Contracts near-simultaneously leaves me with no doubt whatsoever that these actions formed part of a larger campaign against me and my investment in Panama.

119. All of the Projects have essentially been abandoned by the Government. The relevant Government Ministries have, on occasion, contacted the Omega Consortium supposedly to address pending matters. But these efforts can best be described as half-hearted given that the Omega Consortium *cannot* restart any work until: (i) all the issues hindering the progress of the projects, that Panama has neglected for the past four years, are duly cured, including the baseless declaration of default in the Ciudad de las Artes project and more recently the Municipality of Panama project; (ii) it receives all outstanding payments on the Projects; (iii) it receives satisfactory assurances that future issues and payments will be handled diligently and in strict accordance with the Contracts; and (iv) sufficient measures are put in place to guarantee *fair and equitable treatment* and *full protection and security* for the Omega Consortium and myself, as protected investors under the BIT and the TPA.

120. The Government unfairly terminated two of the Contracts—the Ciudad de las Artes and Municipality of Panama Contracts.¹⁸⁸ With regards to Ciudad de las Artes Contract, in the

¹⁸⁸ Resolution No. 391-14 DG/DAJ from INAC dated 23 Dec. 2014 (C-0044); Letter No. 5527/DS/2016 from Panama's Office of the Mayor to the Omega Consortium dated 19 Aug. 2016 (C-0068).

second half of 2014 the National Institute of Culture inexplicably started withholding CPP's under the Contract and singularly failed to engage with the Omega Consortium to resolve key issues.¹⁸⁹ Subsequently, at the end of 2014, the National Institute of Culture unilaterally terminated the Contract and (falsely) claimed that the Omega Consortium had breached its obligations,¹⁹⁰ despite the fact that it had implicitly admitted that *it* was responsible for the delays in payment on the Contract. I was, by that time of course, not surprised as the Ministry of the Economy had been publicly stating, since September, that the project was “at high risk,” allegedly because of “defects, low execution and questionable necessity.”¹⁹¹ Panamanian press also reported that the Government had changed its mind about the facility and now wanted it turned into an office building.¹⁹² Ironically, the Ministry of the Economy, which manages and allocates the funds to be used by the National Institute of Culture, failed to mention to reporters that, in the fiscal budget for 2015, presented that very same day,¹⁹³ it had already decided not to fund the project.¹⁹⁴ Unfortunately, the Omega Consortium's myriad efforts to amicably resolve the dispute, detailed below, have been resisted by the Panamanian authorities.

121. Finally, as regards the Municipality of Panama Contract, the City totally failed to comply with its obligations to assist the Omega Consortium to address delays, neglected our requests for assistance with permits, and *never* made *any* payments after the initial advance had been paid. Then, on 19 January 2017, the Mayor of Panama City terminated the Municipality of Panama

¹⁸⁹ See *supra* ¶ 44.

¹⁹⁰ See Letter from the National Institute of Culture to ASSA dated 21 Jan. 2015 (C-0229); Resolution No. 391-14 DG-DAJ dated 23 Dec. 2014 (C-0230).

¹⁹¹ See *High risk projects are identified*, LA PRENSA dated 10 Sept. 2014 (C-0231).

¹⁹² See *id.*

¹⁹³ See *The Minister of Economy presents a Budget before the National Assembly's Commission*, LA PRENSA dated 10 Sept. 2014 (C-0233).

¹⁹⁴ See 2015 Budget presented by Panama's National Assembly dated 8 Sept. 2014 (C-0067).

Contract, on the ludicrous grounds that the Omega Consortium had failed to complete the project in a timely manner.¹⁹⁵ I say ludicrous because the Omega Consortium's failure to meet the original deadline was solely and exclusively the result of the City's own failures.¹⁹⁶

122. Incredibly, after neglecting the Project for more than two years and refusing to respond to our communications, the Municipality of Panama sent us, for the first time, a letter threatening to terminate the Contract for default. This was only a month after my attorneys had notified them that we were preparing to file an investor-State claim concerning, *inter alia*, the Municipality of Panama Contract, before ICSID.¹⁹⁷ The Municipality issued a resolution to officially terminate the Contract just 12 days after the case was registered by ICSID.

VI. CLAIMANTS' ATTEMPTS TO WORK WITH THE GOVERNMENT

123. Since Mr. Varela assumed the Presidency and his Government began a concerted harassment campaign against me and my investment, I (along with my team) have tried to engage in discussions with the Government in an effort to resolve whatever issues or disputes Panama has created. In particular, we have made several attempts to resolve the situation relating to the Ciudad de Las Artes Contract. For example, in January 2015, we held various meetings with the National Institute of Culture representatives, as well as representatives of Panama's Ministry of the Economy, Ministry of the Presidency, and bankers from Credit Suisse to try to obtain payment and complete the project.¹⁹⁸ This meeting was, however, unsuccessful due principally to the National Institute of

¹⁹⁵ Resolution No. C-10-2017 dated 11 Jan. 2017 (C-0234).

¹⁹⁶ Letter No. MUPA-5-09-14 from the Omega Consortium to City Hall dated 15 Sept. 2014 (C-0235), requesting additional time due to several factors not imputable to Omega including: (i) failure to issue permit and plan approvals; (ii) a labor strike; and (iii) lack of a soil certificate.

¹⁹⁷ Letter from Jones Day to the Chief of International Trade Negotiations of the Republic of Panama dated 29 July 2016 (C-0236) and Letter from City Hall for the District of Panama to the Omega Consortium dated 19 Aug. 2016 (C-0237).

¹⁹⁸ See Letter from the National Institute of Culture to the Omega Consortium dated 6 Jan. 2015 (C-0238).

Culture's attempts to delay making progress payments to the Omega Consortium for work that had already been performed—something that the Omega Consortium had not agreed to, could not accept, and could not afford.¹⁹⁹ As a further and more egregious indication of the Government's lack of good faith in these negotiations, the Omega Consortium also learned that the funds required for the National Institute of Culture to complete its Projects with us had not even been allocated for that year by the Government.

124. On 27 January 2015, the National Institute of Culture notified the Omega Consortium that it was terminating the Ciudad de Las Artes Contract.²⁰⁰ On 3 March 2015, Mr. Frankie Lopez, on behalf of both Omega U.S. and Omega Panama, filed a Notice of Controversy pursuant to the Bilateral Investment Treaty between the United States and Panama.²⁰¹ That Notice expressly confirmed that neither Omega U.S. nor Omega Panama were waiving any of their international law rights, and that the purpose of the Notice was to initiate negotiations with Panama for its breaches thereunder.²⁰²

125. Similarly, we have tried very hard to resolve the outstanding issues with the Judicial Branch in relation to the La Chorrera Contract.²⁰³ Unfortunately, however, the Judicial Branch's proposed contractual amendments, which did grant us some modest extensions of time,²⁰⁴ were

¹⁹⁹ Notice of Dispute dated 3 Mar. 2015 (C-0092) at 21.

²⁰⁰ Decree No. 001 of the National Institute of Culture dated 27 Jan. 2015 (C-0243).

²⁰¹ Notice of Dispute dated 3 Mar. 2015 (C-0092).

²⁰² *Id.* at 3.

²⁰³ Letter No. P007-062 from the Omega Consortium to the Judiciary dated 1 Apr. 2015 (C-0244) (asking whether the remaining issues related to construction plans and delayed payments could be resolved); Letter from the Omega Consortium to the Judiciary dated 6 Apr. 2015 (C-0245) (requesting a meeting with the Judiciary to resolve pending issues); Letter No. P007-064 from the Omega Consortium to the Judiciary dated 10 Aug. 2015 (C-0246) (requesting a 380-day extension to the contract, citing the lack of approved plans, rain days, lack of contract endorsement by the Comptroller-General, and delays in obtaining necessary permits).

²⁰⁴ Letter from the Supreme Court to Omega Engineering, Inc. dated 25 Mar. 2015 (C-0248), granting an extension of 202 days, but ignoring the rest of the issues raised by Omega; Letter No. P007-064 from the Omega

unacceptable because they failed to address several outstanding budgetary, technical, and physical issues, and hence we would still have had to amend the Contract further before commencing work.²⁰⁵ The Omega Consortium needed to discuss and resolve *all* of the outstanding issues in one amendment, before assuming the risk of posting a new bond for the Project.²⁰⁶

126. After this, the Judicial Branch's approach became somewhat less rigid, and we met with them and had further discussions in October 2015.²⁰⁷ Around that time the Judiciary also issued two additional checks to us for completed work, but the Omega Consortium never received these funds as the Panamanian Authorities used them to offset against alleged debts that the Omega Consortium was and is partially contesting.²⁰⁸

127. I also made persistent efforts to resolve the outstanding criminal issues, all ultimately to no avail. For example, and as discussed above,²⁰⁹ on 1 September 2015, through my counsel in Panama, Giovanni Olmos, I filed a *habeas corpus* request with Panama's Supreme Court, requesting a declaration that the preventive detention order issued pursuant to the First Investigation was illegal.²¹⁰ On 29 September 2015, I also submitted a Complaint to Kenia Purcell, Panama's then-Attorney-General, regarding the illegality of the criminal proceedings that the Panamanian prosecutors had instituted against me and Mr. Feliu.²¹¹ The Complaint sought to inform the Attorney General about the matter and request that she use her authority to address the numerous

Consortium to the Judiciary dated 10 Aug. 2015 (C-0246), attaching Addendum No 3, which granted some additional time but did not address most of Omega's requests.

²⁰⁵ Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sept. 2015 (C-0247).

²⁰⁶ *Id.*

²⁰⁷ Letter from the Supreme Court to Omega Engineering, Inc. dated 25 Mar. 2015 (C-0248).

²⁰⁸ Letter from the Supreme Court to the Omega Consortium dated 19 Oct. 2015 (C-0120).

²⁰⁹ *See supra* ¶ 111.

²¹⁰ *See supra* ¶ 111; Petition of Habeas Corpus to the Supreme Court dated 28 Aug. 2015 (C-0208).

²¹¹ Revocation of the Arrest Warrant Request dated 29 Sept. 2015 (C-0223).

violations of our civil rights.²¹² In the Complaint, to encourage the Panamanian authorities to initiate negotiations and talks, I also mentioned my rights under the Bilateral Investment Treaty between the United States and Panama, and expressly noted that I reserved my right to select the forum in which to bring a dispute under that treaty.²¹³

128. Neither the Notice of Controversy nor the Complaint were ever answered by the Panamanian authorities, even though, as I understand it, they were obligated to do so within 30 days.²¹⁴

VII. CONSEQUENCES OF THE GOVERNMENT'S ACTIONS

A. The Investment in Panama Is Destroyed

129. Panama's actions have destroyed my reputation and my businesses, and caused me to lose nearly all of my accumulated capital—both personal and commercial. As a result of the financial difficulties inflicted on me by Panama, we were left with no option but to abandon some projects in the country in October and the rest in late November 2014. We kept on all of our permanent employees until January 2015, when we were forced to lay everybody off. From then on, only a handful of senior executives remained. In July of 2015, while Mr. Frankie Lopez was in Miami for some meetings in an attempt to obtain financing for our operations, the news broke that I was a person of interest in the Second Investigation. Pursuant to counsel's advice, Mr. Lopez never returned to Panama and Mr. Feliu, who at the time was still in Panama, flew to Miami. From that moment on, only Mr. Del Toro (Omega's accountant) remained in Panama. He eventually left in May 2016.

²¹² *Id.*

²¹³ *Id.* ¶ 193.

²¹⁴ Political Constitution of the Republic of Panama (as amended on Nov. 2004) dated Nov. 2011 (C-0060 resubmitted), art. 41.

B. Omega Engineering LLC and its Projects in Puerto Rico Have Been Adversely Affected

130. Omega U.S. is no longer operational, as a direct result of Panama's actions, having ceased its operations in early 2016. This is the direct result of the financial hardships and issues encountered with obtaining surety bonds and financing that have resulted from Panama's actions.

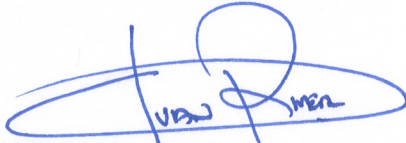
131. My relationship with my surety companies and with the Puerto Rican Government agencies has suffered as a direct result of Panama's actions.

C. My Personal and Professional Reputation Has Suffered

132. As a direct result of Panama's actions, several banks have closed my accounts or credit facilities with them. While none of them have provided written confirmation of the specific reason for this, it can only be as a direct result of the reputational damage done to me and my business by Panama. Further, Panama's unfounded allegations greatly concerned the Government of Puerto Rico, destroying a 35-year relationship with Omega U.S. and its predecessor. I ultimately ended up having to surrender my last project with them to the surety.

VIII. STATEMENT OF TRUTH

Save where otherwise appears, all facts and matters stated in this witness statement are derived from my own knowledge and belief. The facts stated in this witness statement are true and correct to the best of my knowledge and belief.

Signed: 
Oscar I. Rivera Rivera

Dated this 25th day of June, 2018