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PRESIDENT SHORE: Good morning, everyone.
Day 5 of the first week of our Hearing.

Ms. Gorsline, any procedural matters you need to raise?

MS. GORSLINE: None for Claimants, Mr. President.

PRESIDENT SHORE: Thank you.
Mr. Weisburg?

MR. WEISBURG: No, we're good. Thank you.

PRESIDENT SHORE: Thank you very much.

PABLO LOPEZ ZADICOFF, CLAIMANTS' WITNESS, CALLED

PRESIDENT SHORE: Mr. Lopez Zadicoff, good morning.

THE WITNESS: Good morning.

PRESIDENT SHORE: I believe you have the Rule 35(3) Expert Declaration in front of you. Please, could you read it out loud?

THE WITNESS: Sure. My name is Pablo Lopez Zadicoff, and I solemnly declare, upon my honor and conscience, that my statement will be in accordance with my sincere belief.

1 PRESIDENT SHORE: Thank you, sir.

2 I believe we have two Reports from you in the
3 record: The first dated June 25, 2018, and a
4 Supplemental Report dated May 27, 2019; is that right?

5 THE WITNESS: That is correct.

6 PRESIDENT SHORE: Thank you very much.

7 And I believe you have a presentation for us.

8 THE WITNESS: I do.

9 PRESIDENT SHORE: And I see that hard copies
10 are being distributed, if you wait one moment. Thank
11 you very much.

12 So, sir, we're in your hands for the next
13 30 minutes.

14 DIRECT PRESENTATION

15 THE WITNESS: Thank you very much.

16 Good morning, again, Members of the Tribunal.

17 I have prepared this 30-minute presentation,
18 which is divided into four models. The first one
19 deals with what is the valuation purpose, and what was
20 the task that we were asked to do. And if we move to
21 Slide Number 4, here you can see what is the object of
22 our valuation, which is the totality of Claimants'

1 investment in Panamá, otherwise known as the Omega
2 Consortium.

3 Now, the Omega Consortium is composed both of
4 Omega Panamá itself, the local entity which was in
5 charge of the Project implementation, and the
6 intangible assets of Omega U.S. that were invested
7 into Panamá and put at risk in the bidding process
8 within the Omega Consortium.

9 Now, here, I will pause, because I noticed in
10 Respondent's Opening that we agreed there has been, at
11 some point, some confusion or mislabeling on our part
12 when we were referring to "Omega Panamá," and we were
13 ambiguous, and we should have mentioned "Omega
14 Consortium," but this is clear in our letter of
15 instruction, our Reports, analysis, and the
16 methodological discussion: What we have always valued
17 since the beginning is the totality of Omega
18 Consortium. And the reason for that is simple:
19 Because those are all the assets that allow the
20 consortium to win the 10 existing contracts--or,
21 actually, win 10 bids that resulted in 9
22 contracts--and are the same assets that would have

1 allowed the Consortium to continue operating in the
2 public works construction market in Panamá.

3 Now, if we move to Slide Number 5, this is
4 how we approach our valuation exercise, and I don't
5 need to explain to the Tribunal what the Fair Market
6 Value standard is. It's "the price at which a
7 hypothetical Willing Buyer and a hypothetical Willing
8 Seller will exchange the asset for a monetary amount
9 without compulsion to sell." Now, both Dr. Flores and
10 us argue that we apply the Fair Market Value standard,
11 but Dr. Flores does it in a myopic way.

12 First, Dr. Flores is not using a hypothetical
13 Willing Buyer concept. He's using--in his mind, he
14 has a specific buyer in mind that would not be
15 interested in the totality of the assets of the Omega
16 Consortium, in particular, would not be attracted by
17 the intangible assets. And we believe that if you, by
18 definition, exclude the possibility of the Willing
19 Buyer to be interested in parts of the assets and
20 their valuation, you will not be able to achieve full
21 compensation in your valuation assessment.

22 The second difference is that Dr. Flores is,

1 throughout his analysis, only looking at the Willing
2 Buyer perspective, and it's true that any Buyer in any
3 potential transaction will try to pay as little as
4 possible for an asset, but a seller, by the same
5 token, would never let go of a profitable asset for a
6 monetary amount that is less than it can collect by
7 holding the asset and not transacting. So, if you
8 don't look at Willing Seller, it's impossible to have
9 a hypothetical transaction.

10 So, I will now move to the actual
11 calculations we performed, and I will start with the
12 Discounted Cash Flow analysis we performed to value
13 losses on new contracts or future contracts of the
14 Omega Consortium. And in Slide Number 7, you can see
15 here the difference in valuation results, our
16 assessment at \$42.5 million and Dr. Flores' assessment
17 at, in reality, zero, and in the subsidiary position,
18 \$1.1 million.

19 Each of the rows in this table highlights
20 differences in valuation assumptions that I will
21 discuss next. In the right-most column, you can see
22 the stand-alone impact of introducing each of

1 Dr. Flores' assumptions into our calculations.

2 So, for instance, if, regarding the valuation
3 horizon, you assume that cash flows need only to be
4 valued until Year 2019, as Dr. Flores suggests, that
5 would result in a decrease in our value assessment of
6 [REDACTED]. As I said, I will discuss Line Items 1
7 to 3 in detail in the following slides. In the
8 interest of time, I will not discuss in detail 4,
9 "Other Assumptions," which have a stand-alone impact
10 on value of [REDACTED]. I will just mention that
11 Dr. Flores unwarrantedly extends the period in which
12 cash flows are generated for each contract and
13 double-counts the general administrative expenses in
14 2015 and 2016.

15 So, in Slide Number 8, I will now explain
16 why, when looking at the value of the Omega Consortium
17 into the future, you need to look beyond Year 2019,
18 and I will do this by referring to Figure 4 of
19 Dr. Flores' Second Report, and it is here replicated
20 on the left. Here, Dr. Flores explains his
21 calculation methodology, and the red line would be the
22 cash flows from the new contracts that the Omega

1 Consortium would generate into the future.

2 Now, the blue line is what Dr. Flores
3 suggests would be the cash flows that a start-up
4 company, initiating operations in 2015, would achieve,
5 and Dr. Flores assumes that, by 2020, those cash flows
6 would match those of established company Omega
7 Consortium. Dr. Flores then calculates potential
8 damages as the difference between the red and the blue
9 curve, which is shaded in gray.

10 So, there are at least three main problems
11 with this analysis by Dr. Flores. First, it is
12 completely arbitrary. There is no rationale
13 whatsoever of why, potentially, this start-up company
14 will be able to match the Omega Consortium cash flows
15 in five years, and not in seven, not in 10, not in 15.

16 Second, it's inconsistent with the Willing
17 Seller approach, or the Fair Market Value theory. As
18 you can see in the title of Figure 4, that's--the
19 title is--"A Willing Buyer's View."

20 So, Dr. Flores is neglecting the Willing
21 Seller perspective. And if you recall, let's assume
22 that the cash flows that--the person holding the asset

1 are represented, in fact, by the red curve. No seller
2 will be willingly parted with this asset if it is only
3 complicated by cash flows truncated in 2019.

4 Third, even if we were to consider
5 Dr. Flores' Willing Buyer approach, there is no reason
6 why an established company would be valued in the same
7 way as a start-up company. Actually, Dr. Flores is
8 neglecting start-up risks. There are studies--for
9 instance, Dr. Damodaran has done a study saying that
10 around 50 percent of companies fail within the five
11 first years of operations. So, in principle, if a
12 Willing Buyer would be looking to replicate an asset,
13 will factor a start-up risk. And we have not measured
14 that in particular, but here, we are showing it from a
15 theoretical standpoint by adding this orange line,
16 because the cash flows that the analyst would look at
17 when analyzing a start-up company would be, certainly,
18 discounted by the risk of failure. As such, under any
19 theory, it is inappropriate to truncate the analysis
20 by 2019.

21 So, before going into the detail of this year
22 for the cash-flow analysis, first an overview of what

1 is the performance, or what we know about the Omega
2 Consortium before 2014. In Slide Number 9, you see
3 that the Omega Consortium had been awarded contracts,
4 including change orders, for \$159 million. That is
5 the result of winning 10 out of the 42 bids in the
6 public sector contracting that it participated in.
7 Not only that, Omega Consortium was able to achieve
8 the maximum score in financial capacity and experience
9 in most of the bids it participated in, which puts the
10 Consortium in equal footing within the target market
11 to the larger construction companies that Dr. Flores
12 mentions in his analysis. As a result--

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 So, with this track record, how it is that
18 Dr. Flores arrives to a conclusion that the Company
19 was essentially worthless? Well, he does it by
20 changing each of the cash-flow analyses, and I will
21 start in Slide 10 with a target market.

22 As you know, the target market that we are

1 considering in our valuation is small- to medium-sized
2 public infrastructure projects in Panamá, and our
3 assessment is that, based on history, that target
4 constitutes an average 5 percent of the capital
5 expenditures of the central Government. And we have
6 calculated here in the light blue bars what is the
7 5 percent of the central Government's capital
8 expenditures. And as you can see, our assessment,
9 which essentially extends the market by GDP growth,
10 represented in the blue bars, continues the historical
11 trend, while Dr. Flores' assessment reverses it,
12 represented in the red bars.

13 Now, to provide further comfort about the
14 reasonability of our assumptions, what we did in our
15 First Report is what you see in the gray bars here,
16 which is to look in the PanamaCompra website, which is
17 the procurement website of the Government of Panamá
18 where all public tenders are published, and see how
19 many were the bids that would have fit within Omega
20 Consortium's target market? And what we found is
21 that, for 2015, there were \$517 million in bids that
22 would have matched that target market and 674 million

1 in 2016. That is more than double our estimate and
2 provides comfort that our estimation is proper.

3 Second DCF calculation has to do with the
4 success rate, and the success rate is the way we
5 convert the target market into actual profit revenues.
6 So, the target market is where you bid. The success
7 rate, when it is multiplied, is how much projects you
8 will be able to win.

9 And our assessment of the success rate is
10 quite simple. Omega Consortium participated in 42
11 public tender bids. It won 10. That is a straight
12 success rate of 23.8 percent. If we do the same in
13 terms of value, you get a success rate of
14 21.4 percent.

15 Now, Dr. Flores argues that our analysis is
16 inappropriate, and you should only look at
17 certain years when calculating success rates. Now,
18 that is inappropriate, because it neglects first the
19 fact that bidding behavior is strategic. So, bidding
20 is costly. You need to research; you need to prepare
21 a budget; you need to submit a bid. So, you will only
22 present bids in times where you believe your

1 qualifications are aligned with the Projects that are
2 subject to tender. So, in some years, there may be
3 more projects that are aligned with your
4 characteristics, other years less, but you should look
5 at the overall bidding decision as a whole.

6 Second, there is also a resource allocation;
7 right? If you have a backlog of nine projects, you
8 will be less incentivized or less prone to bidding
9 than if you don't have any projects in your pipeline.

10 But, be as it may, even if we were to
11 consider Dr. Flores' premise of only looking at the
12 success rates of 2011 and 2013--and here we have
13 flagged them in red in the first row that we have
14 added below the chart--you can see that the success
15 rate for 2011 in terms of bids is 29 percent, while in
16 2013 it is 25 percent, both numbers confirming the
17 reasonability of our 25 percent success rate.

18 Now, you may also notice that this slide
19 replicates one of Respondent's Opening Slides, and
20 Respondents used this slide to argue that the Company,
21 the Omega Consortium, was failing before the date of
22 valuation or the alleged Measures. We see this in a

1 slightly different way.

2 So, first, it is true that bidding activity
3 decreased in 2012, but if you look at the amount of
4 contracts that were awarded in 2012, that's probably
5 the best year in the Omega Consortium history. So,
6 the proposition that this was a failing company in
7 2012 is not supported by the evidence.

8 Second it, is true that by 2013, you have
9 less bidding activity, but, as I said, bidding is
10 strategic, and by 2013, the Company had nine active
11 projects, and, actually, 2013 continued the increasing
12 trend in profitability and revenues. So, in our view,
13 this shows no evidence of a decaying company before
14 the date of valuation.

15 So, after we calculate the Project's
16 revenues, the next step is to get the gross
17 profitability, and in Slide Number 12 we use a
18 [REDACTED], which is informed by
19 Mr. McKinnon's analysis. First, Mr. McKinnon
20 calculated expected profitability at inception, when
21 the Projects were priced at [REDACTED], and he
22 calculated that the expected profitability of the

1 eight outstanding contracts, when the full cycle of
2 the contracts would be completed, would be
3 13.2 percent. And we understand those numbers have
4 not been challenged.

5 Second, we contrast these with sectoral
6 evidence from international construction companies,
7 again calculated by Dr. Damodaran, who provides a
8 gross margin of 16 to 20 percent for construction
9 companies.

10 And, third, it is also supported by the
11 evidence of the only Contract that the Omega
12 Consortium was able to complete before the Measures,
13 the Tocumen Airport Contract, [REDACTED]

14 [REDACTED]
15 [REDACTED].

16 Now, Dr. Flores points out that the
17 historical profitability, [REDACTED]
18 [REDACTED],
19 [REDACTED], but we have two comments to that.
20 First, as we all know, there are sometimes slight
21 differences between economic and reporting variables;
22 but, more importantly, [REDACTED]

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So, the last topic regarding the new contracts analysis and the Discounted Cash Flow has to do with risk, or the Cost of Equity, which is a way in which risk is calculated in the Discounted Cash Flow, or accounted for.

So, as you know, when performing a Discounted Cash Flow analysis, what we do is look at market variables and calculate the best estimates for each of those variables, as I explained--for instance, a 13 percent profitability rate, the target market, and so on and so forth.

Now, those are expected values. They are not certain. So, that implies that they need to be discounted by the expected volatility that the forecast will have, and the way of doing that in the DCF analysis is through the Discount Rate. Now, both

1 Dr. Flores and us--there is now in the Second Report
2 general agreement that the Discount Rate that would
3 apply to a construction, large company operating in
4 the United States, would be around 10 percent. So,
5 here, in this chart, what we wanted to do is to show
6 you how we account for risk in our valuation or
7 additional risk beyond the U.S. market.

8 So, if you look at the first column, the gray
9 column, that is the result of taking our cash flow
10 assumptions, as-is, and discounting it by the
11 10 percent Discount Rate that would be applicable to a
12 U.S.-based large construction company, and the result
13 of that would be \$54.70 million. We acknowledge that
14 this risk would be insufficient for the Omega
15 Consortium. Why? Because it operates in a smaller
16 economy, more volatile economy, and less developed.
17 So, that warrants the incorporation of a 1.89 percent
18 Country Risk Premium, which is commensurate with the
19 counterparty risk of the Omega Consortium, is
20 commensurate with the volatility in fiscal budgets.
21 And that is what results in our assessment of
22 [REDACTED], which is a discount of 21 percent, had

1 we only considered the risks that these cash flows
2 would have if they were located in the United States.

3 Now, in the third column, what we do is
4 contextualize Dr. Flores' 10 percent-plus Country Risk
5 Premium. And Dr. Flores' country risk effect is
6 compounded of two independent factors: First, a
7 direct, or what he phrases as a direct, country risk
8 measure of 4.52 percent, and that is actually
9 inconsistent with the observation--and here you have a
10 quote from one of our exhibits--that the cost of
11 credit in Panamá is not only among the lowest in Latin
12 America, but has been trending downwards for the last
13 15 years. And, actually, if you look at the Hausmann
14 exhibit, the total cost of credit--which includes time
15 value of money, industry risk, and country risk--is
16 4 percent, on average, for Panamanian companies. So,
17 that can never warrant a 4.52 percent country risk by
18 itself.

19 Second--and here I must clarify that
20 Dr. Flores doesn't believe--or doesn't portray this as
21 a Country Risk Premium, but we will explain why we
22 bundle it up with a country risk--Dr. Flores adds a

1 Size Premium. Now, I would not enter into the
2 discussion as to whether half of the literature says
3 Size Premium is appropriate and half of the literature
4 says it's not. I will just say that the Size Premium
5 that Dr. Flores calculates is referenced to the U.S.
6 market and not to the Panamanian market.

7 The reality is that, once you account for
8 country risk, you have already moved the baseline of
9 your valuation to Panamá, and within Panamá, the Omega
10 Consortium would be a large company. So, no Size
11 Premium should apply. And this is the reason why we
12 say that, by comparing sizes with the U.S., he's
13 duplicating the effect of country risk.

14 I will now briefly touch upon the second
15 component of damages, losses on existing contracts.
16 And here we rely mostly on the opinion of
17 Mr. McKinnon. And, again, in Slide 15--this slide
18 should look familiar now--we are trying to reconcile
19 the valuation gap between our assessment, at
20 \$8.69 million, and Dr. Flores' assessment at
21 \$3.77 million.

22 Here, we only have two differences that

1 explain the valuation gap. The one at the bottom is a
2 legal and factual issue. In his Second Report,
3 Dr. Flores is challenging the validity of some Change
4 Orders. That is something that he only did in his
5 Second Report and has a stand-alone impact on the
6 valuation of \$3.2 million. As this is a legal and
7 factual issue, I will not comment on this, but I just
8 wanted to note that the largest difference in the
9 historical assessment has nothing to do with economic
10 issues but has to do with legal and factual issues.

11 So, the \$1.6 million difference that is
12 explained by economic issues has to do with the time
13 value of cash flows and the risk assessments and, in
14 particular, with Dr. Flores' asymmetric treatment of
15 financing cost. And we can see that in Slide 16.

16 Historical damages on existing contracts are
17 based on three components: First, unpaid progress
18 billings. Those are billings that have been issued by
19 the Omega Consortium before the date of valuation, and
20 they have been unpaid for a time. As we know,
21 companies cannot finance their operations for free.
22 When they are missing cash, they need to replace that

1 cash one way or another, and they pay a financing cost
2 for not having the cash. That is how companies
3 operate in the real world, and that is the essence of
4 why we discount cash flows.

5 To the contrary, Dr. Flores assumes that
6 there is no financial cost whatsoever, zero, for
7 unpaid billings. That is incorrect.

8 The second model of historical or existing
9 contract damages has to do with expected profits, and
10 here, these are the profits of completing the
11 Projects. Here, we agree with Dr. Flores that you
12 need to discount them by the financing costs.

13 Obviously, Dr. Flores uses his excessive Cost of
14 Equity, but at the end of the day, there is conceptual
15 agreement.

16 And third component of existing claim has to
17 do with net advance payments, and this is a deduction.
18 So, the damages for existing contracts are the sum of
19 unpaid bills plus expected profits, and less net
20 advance payments. And we believe that they should be
21 treated in the same way: They should be discounted by
22 the financing costs, because they are cash flows into

1 the future, where Dr. Flores, as we will see in
2 Slide 17, uses--uses an asymmetric treatment.

3 So, as I mentioned, net advance payments are
4 the sum of two components. And you can see this in
5 the first column. First are the actual advance
6 payments--that is, money that the Omega Consortium has
7 collected in advance and is going to be credited or,
8 absent the Measures, was going to be credited against
9 future billings. So, it's money that is owed by the
10 Omega Consortium in the nominal amount of

11 [REDACTED]. To that, you need to subtract
12 withheld payments or retainage--that is, balances from
13 previous invoices that were retained by the owners of
14 the Projects and were only to be reimbursed to the
15 Omega Consortium at completion.

16 Now, the nominal amount of these two
17 quantities is [REDACTED]. In the middle column,
18 you can see our analysis, which recognizes that all
19 these exchanges of cash would take place into the
20 future. So, obviously, they both get discounted, and
21 the net advance payment is lower, at [REDACTED].

22 Now, what does Dr. Flores does? He believes

1 that advance payments that are owed by the Omega
2 Consortium need to be considered at face value, even
3 though they were going to be credited into the future,
4 but the amounts withheld need to be discounted,
5 because they were effectively going to be recovered
6 into the future. As a result, the Net Present Value
7 of the advance payments that Dr. Flores concludes at
8 [REDACTED] is higher than the nominal amount, and
9 that--even now, we know that future amounts need to be
10 discounted cannot be right.

11 So, to conclude, I will briefly touch upon
12 the matter of pre-Award interest. And our view, from
13 an economic perspective, is that the Cost of Equity is
14 the only rate that recognizes the economic harm to
15 Claimants. Why is this? As I mentioned before,
16 companies cannot finance their operations for free.
17 So, if they are missing cash flows--as Claimants have
18 been doing since the date of Measures until
19 today--they had to replace them, and that is the
20 financing cost that needs to be compensated. It's a
21 cost that has already been incurred and it's linked to
22 the asset itself.

1 Second--and this is more in response to a
2 criticism that is usually done against the argument of
3 the Cost of Equity--the Cost of Equity is independent
4 from Claimants' identity. So, the argument goes that,
5 if you would award damages at the Cost of Equity, you
6 would reward a risk-loving Claimant over a risk-averse
7 Claimant. But that is not true, because the Cost of
8 Equity of the Omega Consortium is independent from
9 Claimant's identity. So, it cannot be that it rewards
10 one Claimant over another.

11 Second--or third is commercially reasonable,
12 because, if we were to do a transaction in the
13 Panamanian market for a construction company, this is
14 the rate that we would consider as the relevant
15 financing cost of the operations. So, there are
16 transactions that take place at the Cost of Equity.
17 To the contrary, Dr. Flores' proposition of a
18 short-term risk-free rate does not even compensate for
19 the time value of money, because it's lower than
20 inflation, and it's not commercially reasonable
21 because no company in the world, much less a company
22 in Panamá, can finance its operations at a short-term

1 risk-free rate.

2 With this, I move to Slide 20, where we
3 present or we summarize our damages assessments which
4 have been--remained unchanged since our First Report.
5 In total, damages with interest, as of April 1, 2020,
6 amount to [REDACTED].

7 I thank you for your attention, and I
8 conclude my presentation.

9 PRESIDENT SHORE: Thank you, Mr. Lopez
10 Zadicoff. I believe that is in place of direct
11 examination, Ms. Gorsline?

12 MS. GORSLINE: Yes, sir.

13 PRESIDENT SHORE: And over on Respondent's
14 side?

15 MR. WEISBURG: Mr. Ryan.

16 PRESIDENT SHORE: Mr. Ryan, over to you.

17 MR. RYAN: Thank you, Mr. President.

18 We're handing out bundles of documents that
19 will be used in the examination, so I'll just wait
20 until those are handed.

21 CROSS-EXAMINATION

22 BY MR. RYAN:

1 Q. Mr. Zadicoff, could you please turn to
2 Exhibit C-228 in the bundle that was handed to you?

3 A. Yes.

4 Q. This is the engagement letter that you--or
5 the letter of instruction that you referenced in your
6 Direct Presentation; correct?

7 A. Correct.

8 Q. And I note that this is dated June 25, 2018.
9 That's the date of your First Report; is that correct?

10 A. That's correct.

11 Q. What date was Compass Lexecon actually
12 engaged in this matter?

13 A. I don't recall, but it would be one month
14 before.

15 Q. Okay. So, sir, as I understand your
16 instructions, you were asked to assess the amount of
17 losses, if any, suffered by Claimants as a result of
18 certain actions, inactions, and measures, and the
19 Claimants informed you that the Measures constituted
20 those that are listed at Paragraphs A through C;
21 correct? Or, I'm sorry, A through D.

22 A. Correct.

1 Q. And those Measures consisted of the Republic
2 of Panamá's failure to make contractual payments to
3 Omega Panamá for the completion of certain
4 construction milestones; correct?

5 A. Yes.

6 Q. And in B, we see it's the Republic of
7 Panamá's failure to provide required Construction
8 Permits and Change Orders, which impeded the
9 continuation of construction works by Panamá; correct?

10 A. That's what it says.

11 Q. Okay. And this includes two Projects of the
12 Peripheral Markets, which we've been referring to as
13 the Juan Díaz and Pacora Markets in the context of
14 this Arbitration, that they were delayed with no clear
15 date for reinitiation, and the Ciudad de las Artes
16 Project involved failure to approve a Change Order for
17 additional work it had requested and failed to
18 formalize agreed time extensions and approved
19 construction drawings; correct?

20 A. Yes. It says this includes but is not
21 limited to everything that you have read.

22 Q. Correct. And Item C, the Republic of

1 Panamá's early and unilateral termination of
2 contracts, which includes the Ciudad de las Artes
3 Project, which was early and unilaterally terminated
4 by INAC on grounds of unjustified delays, and the
5 Peripheral Markets Contracts, which were terminated on
6 the grounds of alleged breaches of contract by
7 Claimants; correct?

8 A. That's what it says.

9 Q. And Item D is the initiation of the criminal
10 investigations by Panamá; correct?

11 A. Yes. And continues, but yes.

12 Q. Okay. So, initiation of criminal
13 investigations against Mr. Rivera and Omega Panamá
14 early and unilateral termination of contracts?

15 A. Correct.

16 Q. Is it fair to say that "early and unilateral
17 termination of contracts" may be a typo that is a
18 carryover from what is in C?

19 A. I don't know.

20 Q. Okay. Sir, can you take a look at
21 Paragraph 3 of your First Report.

22 Actually, when we get to your First Report,

1 actually like to start at Paragraph 1 for a moment.

2 So, in Paragraph 1, you define Omega U.S. as
3 Omega Engineering, LLC, and Omega Panamá is defined as
4 Omega Engineering, Inc., and, in the third paragraph,
5 you define Omega Panamá and Omega U.S. together as the
6 Omega Consortium; correct?

7 A. Correct.

8 Q. So, it's fair to say at the time you wrote
9 this Report, you had a clear understanding of which
10 entities were which; correct?

11 A. I had a clear understanding, but, as I
12 mentioned in the first slide of my presentation,
13 unfortunately we have sometimes mislabeled Omega
14 Panamá or assumed that Omega Panamá included the Omega
15 Consortium. But my understanding is clear since they
16 won that what we are valuing is the Omega Consortium
17 as a whole.

18 Q. So, let's take a look at Paragraph 3, at
19 the--so, Paragraph 3, you repeat the instructions that
20 were given to you by counsel; correct?

21 A. I just copied them.

22 Q. You just copied them. Okay.

1 So, then let's take a look at Item C here for
2 a second. Item C states: "The Republic of Panamá's
3 unlawful termination of two contracts and abandonment
4 of the remainder of the contracts obliging the
5 Claimants to voluntarily suspend them."

6 If we were to compare that to Item C in your
7 instruction letter, sir, there's no reference to
8 "unlawful termination of contracts" and there's no
9 reference to the "abandonment of the remainder of
10 contracts," is there?

11 A. Well, these are considered Measures, so.

12 Q. Sir, my question was, in Item C of your
13 instruction letter, there is no reference to "unlawful
14 termination" and no reference to "abandonment," and
15 you stated that you simply copied over your
16 instructions as provided to you in your letter. So,
17 you did not, in fact, copy them over, did you, sir?

18 A. I did not--you're right. I did not copy them
19 over exactly.

20 Q. But instead you made a value judgment as to
21 whether the termination of a contract was lawful or
22 unlawful, didn't you?

1 A. Well, if it is considered a Measure, it has
2 to be unlawful.

3 Q. It has to be unlawful.

4 Isn't that a question for the Tribunal in
5 this case, sir?

6 A. No. I just taken the instructions that it
7 was a Measure, so by my instructions, it was unlawful.
8 I don't know if it was unlawful or not, if that's what
9 you asked.

10 Q. There is no reference in your instruction
11 letter as to the lawfulness or unlawfulness of these
12 Measures, is there?

13 A. Well, if there are Measures--

14 Q. Sir, my question is there is no reference to
15 the lawfulness or unlawfulness of these Measures in
16 your instruction letter, is there?

17 A. I don't see the word "unlawful" in the
18 instruction.

19 Q. And there's no reference in your instruction
20 letters to the "abandonment of the remainder of the
21 contracts," is there?

22 A. Well, I would say that--

1 Q. It's a yes-or-no question, sir.

2 A. Well, you want to say if this is language
3 that is verbatim from one document to the other, the
4 answer is no.

5 Q. Thank you.

6 A. I think that the concepts are the same.

7 Q. Thank you.

8 PRESIDENT SHORE: He can add about the
9 concepts, Mr. Ryan.

10 BY MR. RYAN:

11 Q. Sir, if you could turn to Paragraph 9 of your
12 First Report.

13 Are you there?

14 A. I am.

15 Q. Okay. So, here you state that: "In order to
16 assess the losses suffered by Claimants in Omega
17 Panamá, you compare two scenarios: Counterfactual and
18 this a hypothetical scenario that reflects the value
19 that Claimants' interest in Omega Panamá would have
20 had as of December 23, 2014, in the absence of
21 Measures. And the Actual Scenario reflects the Actual
22 Value of Claimants' interest in Omega Panamá as of

1 December 23, 2014, with the Measures in place";
2 correct?

3 A. You are reading. I would say that this would
4 have been better expressed if we had said "Omega
5 Consortium."

6 (Interruption.)

7 Q. Okay. In Paragraph 10, you go on to
8 say: "In the Counterfactual Scenario, the value of
9 Claimants' interest in Omega Panamá stems from two
10 sources. First, Claimants' value derives from the
11 completion and full collection of payments of eight
12 outstanding contracts awarded prior to December 2014.

13 "Second, Claimants' value derives from Omega
14 Panamá's ability to continue as a going concern,
15 bidding and winning further construction contracts in
16 Panamá from December 2014 onwards in a manner that
17 reasonably reflects its historical track record."

18 Correct?

19 A. You're reading, and, as I mentioned, again,
20 in my first slide, the problem is that Omega Panamá
21 was leveraging from the assets that were contributed
22 to the Consortium by Omega U.S. So, in actuality, to

1 be exactly precise, we should have said Omega
2 Consortium, but the analysis remains unchanged.

3 Q. But, sir, you acknowledge that you knew at
4 the time of writing precisely which entities were
5 which, and despite that knowledge, you continued to
6 repeatedly reference Omega Panamá; correct?

7 A. Well, we made a mistake in these paragraphs
8 that you are citing. If you look at the
9 methodological explanation that we have, constantly we
10 are saying that the ability of generate new business
11 is linked to the fact that the Omega Panamá, through
12 the Omega Consortium, was able to leverage from the
13 intangible assets of Omega U.S.

14 So, that is what we valued. And the numbers
15 that we presented in our First and Second Report are
16 unchanged, and they have to do with the value of the
17 Omega Consortium.

18 And if you look at the title of our Report,
19 it is the "Assessment of Losses of Claimants'
20 Investments in Panamá," which include all the
21 investments in Panamá.

22 Q. Sir, I understand what your title says, but

1 we're going to look at the substance of your Report,
2 both your First and your Second Report, to see what
3 you actually did.

4 So, if you could take a look at Paragraph 84
5 of your First Report as well. You say: "To compute
6 the losses by Claimants, we assess the value of
7 Claimants' interest in Omega Panamá would have had as
8 of December '14"; correct?

9 A. You said paragraph?

10 Q. 84.

11 A. 84. Yes.

12 Q. And to assess the Fair Market Value of Omega
13 Panamá as a going concern--to assess the value of
14 Omega Panamá as a going concern, you applied a Fair
15 Market Value principle; correct?

16 A. Omega Consortium, yes.

17 Q. Well, we've seen statements that say you are
18 assessing the Fair Market Value of Omega Panamá, and
19 you have applied the Fair Market Value principle to
20 assess the value of Omega Panamá; correct?

21 A. Well, if you want to point out the seven
22 instances in the First Report that I mentioned "Omega

1 Panamá" instead of "Omega Consortium," we would agree.

2 But what I'm explaining is that the other
3 hundred references to Omega Consortium that exist in
4 the First Report clearly state that what we are
5 valuing is the Omega Consortium. If you look at, for
6 instance, Paragraph 86 immediately after this, "We
7 estimate the future revenues to Omega Consortium would
8 have generated in the future by analyzing and
9 forecasting two key variables."

10 We write, 88, "We estimate the potential
11 relevant target market for Omega Consortium through
12 market forecasts as Willing Buyer/Willing Seller would
13 do."

14 Q. Sir, I'm sorry. If Claimants' counsel wants
15 to take you through all the references to Omega
16 Consortium, that's their right to do so. But your
17 responsibility here to answer my questions, please.

18 A. Well, you are asking--

19 Q. So, my question to you was--

20 PRESIDENT SHORE: Hang on, Mr. Ryan.

21 Did you want to add something, Mr. Zadicoff?

22 THE WITNESS: What I was saying is that I

1 heard to Respondent's Opening Presentation, that's why
2 Slide Number 1 in my Direct Presentation was to
3 acknowledge the confusion that could have been
4 generated, but in all honesty, the confusion is purely
5 semantic. In some places it is clear that what we are
6 valuing is the Omega Consortium.

7 BY MR. RYAN

8 Q. So, sir, again, that is not what it says in
9 your Report.

10 But it seems that the point you want to make
11 here is that Compass Lexecon's attention to detail,
12 and yours in particular, is so sloppy that throughout
13 both your First and Second Report, you had no idea who
14 you were referencing when you go wrote "Omega Panamá";
15 correct?

16 A. I would completely disagree with that.

17 The issue is that, as I said, the operating
18 company, the one handling the Projects, was Omega
19 Panamá. So, when we say Omega Panamá won the bids, it
20 is technically correct. We should have clarified
21 Omega Consortium.

22 If you look at Dr. Flores' First Report, he

1 constantly refers to "Omega Panamá." He never
2 mentions Omega Consortium, and he even titles his
3 section "Compass Lexecon argues X or Y about Omega
4 Panamá," and then block cites our Report talking about
5 Omega Consortium.

6 So, the understanding, among the Experts, was
7 clear that what we were valuing was a totality of the
8 assets invested in Panamá, which constitute Omega
9 Panamá as the operating entity; but within Omega
10 Panamá, it has the ability to leverage the invested
11 assets of Omega U.S.

12 Q. Sir, so you agree that the Fair Market Value
13 principle is the one that you've applied in this case;
14 correct?

15 A. Correct.

16 Q. And the Fair Market Value requires an
17 assessment of the price a hypothetical Willing Buyer
18 would pay a hypothetical Willing Seller acting without
19 compulsion and with reasonable knowledge of the facts;
20 correct?

21 A. I would phrase it is the price at which a
22 transaction would take place between a Willing Buyer

1 and a Willing Seller.

2 Q. So, you agree with my position; correct?

3 A. I phrase it slightly different. I think it
4 is slightly different.

5 If you want to repeat--

6 Q. So, sir, I'm just going to say at
7 Paragraph 61 of your First Report, you say: "Fair
8 Market Value is defined by the American Society of
9 Appraisers as: 'the price, expressed in terms of cash
10 equivalents, of which property would change hands
11 between a hypothetical willing and able buyer and a
12 hypothetical and able seller, acting at arm's length
13 in an open and unrestricted market, when neither is
14 under compulsion to sell and when both have reasonable
15 knowledge of relevant facts.'"

16 You agree with that standard; correct?

17 A. Yes.

18 Q. And you acknowledge that that is the standard
19 that is required by both the TPA and the Bilateral
20 Investment Treaty applicable in this case; correct?

21 A. We understand and we confirm that with
22 Claimants, with counsel, sorry, as expressed in

1 Paragraph 6.

2 Q. All right. And in this context, the value
3 that a hypothetical--what you were looking for is the
4 value that a hypothetical buyer would pay a
5 hypothetical seller for Omega Panamá; correct?

6 A. No.

7 Q. Can you look at Paragraph 49 of your Second
8 Report.

9 Paragraph 49 you state: "The Fair Market
10 Value standard main purpose is to emulate the price at
11 which a Willing Buyer would agree to buy Omega Panamá
12 and the price that a Willing Seller would have
13 voluntarily agreed to sell it for."

14 Do you agree with that statement, sir?

15 A. I agree with that statement, which also
16 includes a Willing Seller.

17 Q. And for an entity like Omega Panamá, the
18 value is a function of the cash that the entity would
19 be expected to generate in the future; correct?

20 A. Well, again, we are valuing the Omega
21 Consortium. The value of any asset stems from its
22 ability to generate cash into the future.

1 Q. Sir, you just agreed that "The Fair Market
2 Value's main purpose here is to emulate the price at
3 which a Willing Buyer would have agreed to pay Omega
4 Panamá and the price the Willing Seller would have
5 voluntarily agreed to sell for."

6 You agreed to that and you stated that it
7 includes the Willing Seller, which, of course, was
8 within context of what I read to you.

9 So, you would agree that, for an entity like
10 Omega Panamá, the value is a function of the cash that
11 Omega Panamá, the entity, would be expected to
12 generate in the future; correct?

13 A. Like any asset, what we are valuing is the
14 Omega Consortium.

15 Q. We'll talk about that. The Fair Market Value
16 standard assumes that both hypothetical Parties have
17 reasonable knowledge of the facts; correct?

18 A. Correct.

19 Q. And in the context of the going concern,
20 reasonable knowledge of the facts would include basic
21 items that could have been discovered or observed
22 through the diligence process; is that fair to say?

1 A. Yes.

2 Q. So, for example, size of the Company?

3 A. Yes.

4 Q. The assets that the Company held?

5 A. Provided that's relevant, yes.

6 Q. The historical financial statements?

7 A. Correct.

8 Q. Its operating history?

9 A. That's another variable you consider, yes.

10 Q. Okay. So, you're aware that Omega Panama's
11 financial statement shows that it had roughly [REDACTED]
12 in income generating assets as of December 31, 2013;
13 correct?

14 A. Can you repeat that?

15 Q. Well, maybe we can just take a look. Can you
16 take a look at C-136 in the bundle. It's the first
17 tab in your bundle, sir.

18 A. Thank you.

19 Q. You're welcome.

20 This is Omega Engineering, Inc.'s financial
21 statements and supplementary information as of
22 December 31, 2013, and 2012; correct?

1 A. Correct.

2 Q. Have you seen this document before?

3 A. I have.

4 Q. And if you turn to Page 4, there is a balance
5 sheet, and under 2013, if you go just above "other
6 assets" where it says "equipment, net," it shows
7 [REDACTED]; correct?

8 This is the total of assets, income
9 generating assets, that Omega Panamá had as of
10 December 31, 2013.

11 A. No. These are the total physical assets that
12 are registered in the financial statements of the
13 Omega Engineering, Inc., which is Omega Panamá. It is
14 not the totality of the assets that we are looking at
15 here.

16 Q. But these are the total physical assets of
17 Omega Panamá as of that date; correct?

18 A. These are--well, it depends how you define
19 "physical." Total assets worth
20 [REDACTED]. These are the investments
21 in fixed assets that Omega Panamá by itself had.

22 Q. Okay. And there's a reference to Note 6

1 that's there.

2 Could you take a look at Page 12. And you
3 see, it says, at the top, "Note 6, equipments, net
4 (continued)" and then it lists what this covers,
5 right: office equipment, computer equipment, motor
6 vehicles.

7 Do you see that?

8 A. I see that.

9 Q. And if we look at the balance at December 31,
10 2011, it showed office equipment, [REDACTED]; computer
11 equipment, [REDACTED]; motor vehicle is [REDACTED]; and then
12 there are additions that are made that take you up to
13 the balance at December 31, 2012.

14 So, as of December 31, 2011, Omega Panamá had
15 zero office equipment; [REDACTED] in computer equipment;
16 and maybe a truck or two, [REDACTED] worth of motor
17 vehicles; is that correct?

18 A. And still it had [REDACTED] of contracts.

19 Q. But at this point in time, these are the
20 assets that Omega Panamá as a company had?

21 A. Well, again--

22 Q. The equipment--let me clarify. The equipment

1 that it had; correct?

2 A. Those are the physical assets that are
3 registered in the books.

4 Q. Okay. So, a hypothetical buyer would also be
5 aware of the fact that--aware of facts regarding the
6 country where the asset was located; correct?

7 A. Certainly.

8 Q. Issues such as political climate?

9 A. Yes.

10 Q. The regulatory environment?

11 A. Sure.

12 Q. Labor market?

13 A. Yes.

14 Q. Size and nature of the market itself;
15 correct?

16 A. Correct.

17 Q. And, in fact, you're aware that Mr. Rivera
18 based his decision to enter Panamá in large part on
19 the fact that it was--it had committed to spend
20 roughly \$20 billion over a five-year period between
21 2009 and 2014 on public works infrastructure projects;
22 correct?

1 A. I don't recall that specifically, but I have
2 an understanding that he decided that it was a good
3 investment project. I don't recall it specifically,
4 the words.

5 Q. So--

6 PRESIDENT SHORE: Well, the question is
7 rather more precise, that Mr. Rivera based his
8 decision to enter Panamá in large part on the fact
9 that it was--it had committed to spend roughly
10 \$20 billion over a five-year period between 2009 and
11 2014 on public works infrastructure projects.

12 As you sit here today, do you recall that?
13 Yes or no?

14 THE WITNESS: I don't recall those words,
15 line by line, no.

16 PRESIDENT SHORE: Okay. Do you recall that
17 he entered because he believed that there was a boom
18 that might be taking place in Panamá construction,
19 public works contracts?

20 THE WITNESS: I don't recall his
21 characterization as a "boom." I recall that he
22 believed it was an attractive market.

1 PRESIDENT SHORE: Yeah, but do you
2 believe--do you recall anything more specific than
3 that? Because people always invest in attractive
4 versus unattractive markets. Is there anything more
5 specific that you recall, if you do?

6 THE WITNESS: I don't recall it.

7 PRESIDENT SHORE: Okay.

8 THE WITNESS: It may very well be that he
9 said that, but I don't recall.

10 PRESIDENT SHORE: Okay. Thank you.

11 BY MR. RYAN:

12 Q. Let's take a look at what he said, sir.

13 So, in Paragraph 15 of Mr. Rivera's First
14 Witness Statement--I'm not sure it's in front of you,
15 but I'm going to read it and counsel will correct me
16 if I read it incorrectly.

17 PRESIDENT SHORE: Read it rather more slowly
18 than you tend to read other things, Mr. Ryan. There
19 is a speed limit which we're going to soon enforce
20 against you individually.

21 MR. RYAN: I will.

22 BY MR. RYAN

1 Q. "In the end, I chose Panamá because I felt it
2 was the most suitable market in which to begin our
3 expansion and the Panamanian Government was of
4 particular interest, as we understood it was about to
5 initiate a significant public works program. This
6 included plans by the Government to invest
7 USD 20 billion in public infrastructure projects over
8 the next five years."

9 Were you aware of that at the time that you
10 wrote your Report?

11 A. Yes. He does not mention a "boom." He
12 mentions that is an increase in investment, but that's
13 different from a "boom."

14 Q. Okay. And are you aware that Mr. López, when
15 he testified, testified to the existence of a "boom"
16 in the Panamanian market?

17 A. I'm not aware of that.

18 Q. Are you aware that Mr. López, when he
19 testified here in this hearing, said that he
20 understood that that boom meant that there would be an
21 increase in spending on public works projects over
22 that five-year period as compared to what had been

1 spent in the past?

2 A. You should ask Mr. López.

3 Q. I did ask Mr. López. I'm asking if you are
4 aware that he testified to that fact, sir?

5 A. No.

6 Q. Okay. And you were here during Opening
7 Submissions by the Parties on Monday; correct?

8 A. Correct.

9 Q. So, then you would have been here when
10 Mr. Concepción, who is Claimants' counsel,
11 acknowledged in his Opening Submission that Mr. Rivera
12 and Omega U.S. "were all set to service the
13 construction boom that was contributing to Panamá's
14 development"; correct?

15 A. I assume you're citing, so.

16 Q. There's a transcript in front of you. I'm
17 happy to take you to it, if you would like.

18 A. No, no. I have no reason to believe you are
19 misstating the transcript. I just don't recall by
20 heart.

21 Q. Okay. So, you're now aware that the intent
22 underlying Omega's decision to enter into Panamá was

1 to service the construction boom which was, as
2 Mr. López stated, a period of time in which public
3 works spending was expected to exceed the past
4 historical levels?

5 A. I'm aware of what you just read to me. If
6 it's a question about facts, you should ask--you
7 already asked Mr. López, Mr. Rivera. I have nothing
8 to add.

9 Q. Now, sir, one of Compass Lexecon's criticisms
10 of Dr. Flores' analysis is that it was inconsistent
11 with the principle of full compensation because it
12 purportedly ignored the Willing Seller component of
13 the analysis; is that correct?

14 A. Yes, both because he doesn't look at the
15 Willing Seller and because he has a specific notion
16 that the Willing Buyer would not be interested or
17 would not ascribe value to the intangible assets of
18 the Omega Consortium.

19 Q. Okay. So, can we take a look at Paragraph 49
20 of your Second Expert Report, sir.

21 A. 49?

22 Q. Yes, sir. Now, this is a paragraph that

1 we've already seen, in which you state: "The Fair
2 Market Value standards' main purpose is to emulate the
3 price at which a Willing Buyer would have agreed to
4 buy Omega Panamá and the price that the Willing Seller
5 would have voluntarily agreed for it."

6 Then in Paragraph 50 you state: "Dr. Flores'
7 approach contradicts this definition because it
8 assumes that, absent the Measures, there can be no
9 hypothetical transaction between a Buyer, Claimants',
10 were under no compulsion to sell, Claimants would have
11 assigned zero value to their company."

12 And then you go on in Paragraph 51 to
13 say: "This approach does not recognize that
14 Claimants, as a Willing Seller, would have assigned a
15 positive value of several million in their interest in
16 Omega Panamá."

17 So, sir, your criticism of Dr. Flores is
18 based on your insertion of the concept of Claimants
19 into the Fair Market Value analysis, which calls for a
20 hypothetical buyer and a hypothetical seller?

21 A. No. It's based on any Willing Seller. As it
22 is explained here clearly in the block quote in

1 Paragraph 48, this means that the buyer must place
2 either the same or a higher value on the asset than
3 does the seller in order for the transaction to exist.
4 So, it's any--obviously we are talking now, we are
5 personalizing this in Claimants, but the standard is
6 "any."

7 Q. That's precisely it, sir. The standard is
8 "any," and by personalizing it with Claimants, you
9 are, in fact, interjecting variables into the analysis
10 that the hypothetical nature of this standard is
11 intended to strip away. The hypothetical seller is
12 one who is presumed to be willing and able and acting
13 without compulsion.

14 By your statement in here, by interjecting
15 "Claimants" into this, personalizes it in a way and
16 ascribes value to the asset, whether it's through
17 sentiment or history or whatever it may be, that a
18 hypothetical seller in this situation would not, in
19 fact, do?

20 A. No, that's not what it says here.

21 Q. That is, in fact, however, what you are doing
22 by stating that Dr. Flores is ignoring a transaction

1 between a "Buyer" and "Claimants"?

2 A. No. Neither Dr. Flores nor us calculate any
3 sentimental value or any trajectory value that is
4 unrelated to market generation potential. We both
5 value the asset objectively. Now, we disagree on the
6 results of that valuation, but there is no sentimental
7 value. There is nothing that is linked to Claimants
8 in our valuation assessment.

9 Q. Well, sir--

10 PRESIDENT SHORE: I'm sorry, Mr. Ryan. I'm
11 sorry to interrupt.

12 MR. RYAN: Yes.

13 PRESIDENT SHORE: Can I ask, who is the
14 seller?

15 THE WITNESS: The seller in this hypothetical
16 transaction--

17 PRESIDENT SHORE: No, no, in the actual. Who
18 is the seller?

19 THE WITNESS: Well, the seller--there is no
20 Willing Seller, but the seller would be Claimants.

21 PRESIDENT SHORE: Yeah, but that's my
22 question. So, the Claimants would be selling

1 themselves? I mean, would Omega U.S. be selling
2 itself? Because the distinction that you--and you
3 have explained it this morning that you have--in those
4 instances where you refer to "Panamá" you're usually
5 referring to the "Consortium." We've got that.

6 But the question I have is, if it's a Willing
7 Seller and it's not just Omega Panamá that is being
8 sold because it needs to be part of a consortium to
9 have value, then is Omega U.S. selling itself? Is the
10 investor selling itself?

11 THE WITNESS: It's a difficult answer because
12 there is a harm and we are entering into a
13 hypothetical transaction that is a standard to value
14 the harm.

15 Now, I don't know, you can think about it in
16 a way, like, okay, you're selling the boots on the
17 ground organization, and the support via consulting
18 agreement, no compete agreement, no--that all the
19 intangible assets that you were leveraging before in
20 order to win the bids, you will continue to be able to
21 leverage those assets. So, it would be a transaction
22 that compounds management transfer, it compounds

1 support, availability of use, the financial backing of
2 the Company.

3 If you want to take it to the real life, it's
4 challenging. I recognize that. But that's the best
5 way I can conceptualize it as an actual market
6 transaction. You're transacting. You're buying the
7 boots on the ground organization plus a consulting
8 agreement, plus a management transfer, plus all the
9 assets that were effectively allegedly destroyed by
10 the Measures.

11 ARBITRATOR GRIGERA NAÓN: I don't want to put
12 words in your mouth or anybody's, but are you really
13 saying that there is a sort of unincorporated joint
14 venture between Omega Panamá and Omega U.S. so that
15 what is being sold is the interest in the joint
16 venture or not? Is that part of your analysis?
17 Because, if you are talking in those terms, then it is
18 the intangible contribution to the Joint Venture of
19 Omega U.S. or whatever contributions to the Joint
20 Venture could come from Omega Panamá. Is this your
21 analysis or is it not?

22 THE WITNESS: Well, as I said, I did not

1 conceptualize a specific form of the transaction.
2 Eventually, the Omega Consortium bid as a block, so
3 you can think that there was some type of joint
4 venture there and, thus, all the contributions to the
5 joint venture effectively need to be valued because
6 that is what was destroyed.

7 Now, how you do it in a concrete transaction,
8 as the President asked, is a different step. But,
9 conceptually, I would generally agree with you.

10 BY MR. RYAN:

11 Q. Mr. Zadicoff, there is no reference to this
12 notion of a hypothetical joint venture in your Report
13 or in any of the Memorials in this case, is there?

14 A. I don't know about the Memorials. I know
15 about my Report, no.

16 Q. And there are no--what did you
17 say?-- consulting agreements or support agreements on
18 the record in this case, are there, between Omega U.S.
19 and Omega Panamá?

20 A. I think that there is a tacit agreement
21 between the Companies.

22 Q. Sir, my question was whether there are

1 explicit written agreements between Omega U.S. and
2 Omega Panamá for the provision of the types of support
3 and consultation that you just testified to?

4 A. I think that when you bid as a consortium, I
5 think they are--

6 Q. Sir, could you please answer my question?

7 PRESIDENT SHORE: Answer and then explain,
8 Mr. Lopez Zadicoff, if you would.

9 THE WITNESS: Sure. No specific consulting
10 agreements. What I believe is relevant is that the
11 Bidding Documents or the bidding process, through
12 bidding as a consortium, the Parties are jointly
13 liable, and they need--so, effectively, they are
14 providing their support because they are supporting
15 the bidding document, and then they need to respond if
16 that Project does not work. So, implicitly, there is
17 a supporting agreement between the Parties.

18 BY MR. RYAN:

19 Q. Sir, the bids that were submitted by the
20 consortium, they included financial statements in the
21 balance sheets from Omega U.S.; correct?

22 A. Correct.

1 Q. Those were the bases on which the bids were
2 determined; correct?

3 A. I don't know how--which weight was given by
4 the authorities to each of the bids. I know the
5 overall results of all the documents that were
6 presented.

7 Q. But in terms of the financial assessment, the
8 financial assessment that was done by each of the
9 Ministries and municipalities was done based off of
10 the balance sheets that were submitted by Omega U.S.;
11 correct?

12 A. I assume that all the members of the
13 consortiums provided financial statements and the
14 Decisions, how they are made, it is beyond my
15 knowledge.

16 Q. Okay. Well, let's take a look to see whether
17 your assumption is correct. If you take a look at
18 QE-115 in your binder.

19 Have you seen this before?

20 A. Yes, I have seen it.

21 Q. Okay. This is the Report of the evaluating
22 committee for the Municipality of Colón Province;

1 correct? We see this on Page 1 of the Spanish
2 version.

3 A. Okay.

4 Q. And if you could turn to Page 4, this is the
5 letter from Avila & Asociados, stating that attached
6 are the financial statements of Omega Engineering LLC
7 as of February 28, 2010; correct?

8 A. Okay.

9 Q. And Omega Engineering LLC is Omega U.S.;
10 correct?

11 A. That's correct.

12 Q. Okay. And we then see that on the next page,
13 there is a--the English translations are at the
14 beginning. There's a solvency analysis for Omega
15 Engineering LLC, based off of financial accounts, and
16 it looks at the current assets and current
17 liabilities.

18 Do you see that?

19 A. I see that.

20 Q. And those are the current assets and
21 liabilities of Omega Engineering LLC, as represented
22 in this letter; correct?

1 A. As represented in this letter, yes.

2 Q. I can take you to the financial statement if
3 you'd like to see that as well.

4 A. No.

5 Q. Okay. And there's no reference in here to a
6 financial statement submitted as part of this bid of
7 anybody else in the Consortium, is there?

8 A. I've seen many summaries of the valuation
9 commission, and they are multiple pages in most of the
10 cases. I don't know if this is the complete valuation
11 or not. The excerpt that you are showing me here, or
12 if it's complete, is--it doesn't seem to show any
13 financial statements from Omega Panamá itself.

14 Q. And if we look at QE-114, this is the Report
15 of the evaluating committee on the Juan Diaz and
16 Pacora Markets; is that correct?

17 A. Peripheral Market of Pacora and Juan Díaz.

18 (Interruption.)

19 Q. Yes, if you go to Page 6 of this document, we
20 see a letter from the same AVILA & Associates, dated
21 June 18, 2012, attaching financial information
22 regarding Omega Engineering LLC; correct?

1 A. Correct.

2 Q. And there is no reference in that to Omega
3 Panamá, is there?

4 A. As I mentioned, there is no reference, but
5 Omega Consortium got evaluated in many dimensions, and
6 this has to be an excerpt of all the documents that
7 were presented. So, again, as I mentioned, I don't
8 know the basis, the overall basis that the valuation
9 commission took to get the different scores, but
10 certainly I would agree that the Omega U.S. financial
11 statements should have been considered by the
12 valuation commission.

13 But, here, you don't know--experience. You
14 don't have any support about experience, so you don't
15 have any support about any of the other variables, so
16 it has to be that the actual document was much longer
17 than what we are showing here.

18 Q. And we know, sir, that the Omega Panamá
19 financial statements were never the basis for a
20 successful bid; correct? Because we know that Omega
21 Panamá bid in at least 10 public sector--for at least
22 10 public-sector contracts as well as additional

1 private-sector contracts, and you acknowledge that
2 Omega Panamá, as a stand-alone entity, never won a
3 single contract; correct?

4 A. Omega Panamá, without the support of Omega
5 Consortium, never won a single contract.

6 Q. And with respect to the hypothetical
7 transaction that is required as part of the Fair
8 Market Value analysis, once that transaction
9 completed, the Buyer, whomever it may be, would not
10 have been in a position to continue to put forward
11 Omega U.S. financial statements in support of its
12 future bids, would it have been?

13 A. I disagree.

14 Q. It is your position that a new owner of Omega
15 Panamá would have been able to continue to rely on
16 Omega U.S., which was an entire separate Company's
17 financial statements, for purposes of bidding on
18 future projects under the Omega Panamá name in Panamá?

19 A. That's the essence of the Omega Consortium,
20 the transactions should take place, encompassing all
21 the assets of the Omega Consortium, because the
22 position is that those are all the assets that were

1 destroyed by the measures.

2 Q. Sir, you were asked the question earlier by
3 the Tribunal as to whether Omega U.S. was intending to
4 sell itself as part of this process. There is no
5 evidence on the record that Omega U.S. intended to
6 sell itself as part of any hypothetical transaction
7 involving Omega Panamá, is there?

8 A. There is no evidence whatsoever about any
9 hypothetical transaction. The only reason we are
10 discussing a transaction is because there is a
11 measure, so there is no evidence that Omega Panamá was
12 up for sale.

13 Q. And, in fact, Mr. Rivera had a plan in place
14 where he intended to replicate the Omega Panamá
15 structure of incorporating the local entity and then
16 expanding Omega U.S.'s presence in the Caribbean
17 region by opening other similar companies in other
18 countries; isn't that true?

19 A. You should ask Mr. Rivera about that.

20 Q. Okay. Okay. So, just so, I understand, your
21 position is that, after a hypothetical purchaser buys
22 Omega Panamá, it could still have access to and rely

1 on the financial statements of an entirely separate
2 Company that it had not purchased in supporting its
3 future bids?

4 A. The valuation assumption is that we are
5 looking at the Omega Consortium, which includes the
6 totality of Omega Panamá and the support and the
7 ability to provide support that Omega U.S. was
8 providing to Omega Panamá through the Omega Consortium
9 and all the value potential that was going to be
10 generated within Panamá. We are not looking at the
11 value potential outside Panamá. We are looking
12 exclusively at Panamá.

13 Q. So, Omega Panamá is--it's an interesting
14 asset; right? It's not the equivalent--it is not like
15 you're attempting to sell a share of Apple, this is a
16 small, privately held Company, construction Company,
17 in a Central American country. So, the pool of
18 potential Buyers, actual or in this case hypothetical,
19 would be limited to those types of entities that would
20 believe that they could benefit from having--or who
21 are looking to expand into Panamá or believe they
22 could benefit from having an established resource on

1 the ground in Panamá.

2 Would you agree with that?

3 A. No.

4 Q. So, is it your position that the hypothetical
5 analysis assumes that it would be reasonable for a
6 Buyer like me to purchase Omega Panamá, someone who
7 has absolutely no experience in the construction
8 industry?

9 A. No. It's a hypothetical Willing Buyer that
10 would look at the assets and will find value in those
11 assets and will provide a value that would be
12 acceptable to a hypothetical Willing Seller. So, it's
13 not you, me, or no one in particular. It has to
14 fulfill these conditions of desirability for the
15 assets subject to the valuation.

16 Q. There has to be a basis against which the
17 hypothetical buyer standard is measured, isn't there,
18 to determine whether that hypothetical buyer would see
19 value in particular components of what it is
20 purchasing.

21 So, for example, if the hypothetical
22 purchaser was a multinational construction company

1 that had been in existence for 40 years with
2 \$200 million of annual revenues, it would have no need
3 in purchasing Omega Panamá to rely on the financial
4 statements of Omega U.S. in bids going forward
5 because, in that scenario, you would agree, that that
6 purchaser could substitute in its own financial
7 statements and immediately step into the same types of
8 shoes that you claim the Omega Consortium was in as of
9 December 31, 2014; correct?

10 A. That's what I referred when I mentioned the
11 second slide of my Direct Presentation, the second
12 contents slide when I said that is exactly the example
13 Dr. Flores is providing because he has in mind a
14 specific Buyer. Your premise is that the specific
15 Buyer would not be interested in the assets subject to
16 the valuation. So, by definition, they will ascribe a
17 zero value to those assets. So, there is no need for
18 an exercise in valuation. It is, by definition,
19 you're not interested.

20 Q. Well, no, the exercise in valuation is the
21 exercise in value in what you say you are attempting
22 to value in your Second Report, which is the value of

1 Omega Panamá as a physical entity capable of acting as
2 a going concern on a going-forward basis.

3 What value did Omega Panamá itself have to a
4 potential hypothetical buyer?

5 So, I just want to change topics for a
6 second. We've been talking about financial statements
7 and things, but the ability to obtain financing was a
8 particularly important part of the public
9 construction--or the public works bidding process in
10 Panamá; correct?

11 A. Financing and bonding, in particular.

12 Q. Right. And you're aware that Mr. Rivera
13 testified that most bids for public construction
14 projects required financing from the Contractor?

15 A. You can read me his testimony.

16 Q. If we look at Paragraph 29 of Mr. Rivera's
17 First Witness Statement. He states: "At the time in
18 Panamá, most bids for public construction projects
19 required financing from the Contractor."

20 A. Okay. It says that it was atypical, and I
21 don't know what--but, yes.

22 Q. Well--I'm sorry. Sorry, I did not mean to

1 speak over you.

2 The sentence above it: "At the time in
3 Panamá, most bids for public construction contract
4 projects required financing from the contractor. This
5 was atypical for us as most public projects in which
6 we had been involved outside of Panamá only required
7 financing if they were structured as concessions."

8 So, his use of the word "atypical" there is
9 intended to contrast Panamá from the other projects he
10 had been involved with outside of Panamá; correct?

11 A. Well, that's what it says here.

12 Q. Okay.

13 A. I don't know what time; right? At that time.
14 It doesn't say "today."

15 Q. Well, okay. If you read--if we go on then it
16 says: "In Panamá, however, contractor financing was
17 generally required and, as I understand it, this
18 continues to be the case today."

19 A. Happy to work with that assumption.

20 Q. Okay. So, if a company was unable to obtain
21 financing on its own, it is unlikely that it would
22 have been able to score any points, many, if any

1 points in the financial analysis portion of the tender
2 process.

3 Q. Is that a fair statement?

4 A. I don't think "any points" probably would not
5 achieve maximum score, but I wouldn't say "any
6 points."

7 Q. So, you think if a company submitted a bid
8 that had no history of obtaining independent financing
9 for a project, and could not demonstrate its ability
10 to secure financing for a project, you think they
11 would receive some points?

12 A. Well, you just showed me two excerpts of two
13 bids in which what they were doing is stress tests and
14 liquidity ratios. And those were the basis, according
15 to you, to assign the points of financial capacity.
16 So, those points would have been assigned in any case
17 because they have nothing to do--there's an objective
18 criteria to award points, and the points would have
19 been assigned.

20 Q. Okay. So, a company like Omega Panamá, for
21 example, with its financial statements would
22 certainly, on a stand-alone basis, secure fewer points

1 than a company that has a stronger financial history
2 and a larger financial sort of background; correct?

3 A. A company will show that Omega Consortium
4 obtained maximum points within the requirements of the
5 target market in most of the bids it participated in.

6 Q. Sir, my question was about Omega Panamá, not
7 the Omega Consortium.

8 A. Well, I need to look. There are only 10
9 bids. If we look at how much Omega Panamá scored, I
10 don't know, but it depends. You need to look at the
11 bidding qualifications, and they are not the same for
12 a 2 million project that they are for a 100 million
13 project or a billion-dollar project. So, it depends
14 on the guidelines.

15 What I can tell you is what I analyze, and
16 the Omega Consortium obtained maximum score in the
17 largest majority of all the bids it participated. So,
18 no one would be able to outpace the maximum score.
19 They could match it, but they could not outpace it.

20 Q. And as we see, those bids were submitted on
21 the basis of Omega U.S.'s financial statements.

22 A. No.

1 Q. Omega Panamá's financial statements, those
2 financial statements reflected revenues generated from
3 Contracts that were won by the Omega Consortium;
4 correct?

5 A. Yes.

6 Q. And on Omega Panamá's financial statements,
7 there was no revenue or, at most, de minimis revenue
8 that was generated by Omega Panamá itself on a
9 stand-alone basis?

10 A. On a stand-alone basis without the Omega
11 Consortium? That's correct.

12 Q. Okay. Now, to determine Omega Panamá's Fair
13 Market Value, you used a DCF analysis; correct?

14 A. To determine Omega's Consortium Fair Market
15 Value, we use a DCF analysis.

16 Q. Well, we've seen multiple references, and we
17 can go through more multiple references in your Second
18 Report where you have stated that you are valuing
19 Omega Panamá. But you agree that you used the DCF
20 analysis; correct?

21 A. I agree we used the DCF analysis.

22 Q. And the DCF is an income-based valuation that

1 looks--that effectively values a business on its
2 ability to generate future cash flows?

3 A. Correct. That's the meaning of economic
4 value, is the ability to derive value into the future
5 from an asset.

6 Q. And World Bank Guidelines explain that for a
7 going concern, that concern must have been in
8 operation long enough to generate data required for
9 the calculation of future income; correct?

10 A. You can show me that?

11 Q. Sure. If we can turn to QE-19.

12 Are you there, sir?

13 A. I'm here.

14 Q. Okay. So, if we look at the first page, you
15 see this is a document from the World Bank Group,
16 entitled "Legal Framework for the Treatment of Foreign
17 Investment, "Volume II, Guidelines."

18 Do you see that?

19 A. Yes, it's a 1992 document at the World Bank.

20 Q. I understand that. But you see that?

21 A. I see that.

22 Q. Okay. And you're familiar with this

1 document?

2 A. I have seen it, yes.

3 Q. If we turn to Page 42. Are you there, sir?

4 A. I'm here.

5 Q. Okay. Paragraph 6 states: "Without implying
6 the exclusive validity of a single standard for the
7 fairness by which compensation is to be determined,
8 and as an illustration of the reasonable determination
9 by a State of the Market Value of the investment under
10 Section V above, such determination will be deemed
11 reasonable if conducted as follows."

12 (i) states: "For a going concern with proven
13 record of profitability on the basis of the Discounted
14 Cash Flow," and (ii) then says: "For an enterprise,
15 which is not of a proven going concern, demonstrates
16 lack of profitability on the basis of liquidation
17 value."

18 And then if we go down, says: "For the
19 purposes of this provision, a "going concern" means an
20 enterprise consisting of income-producing assets,
21 which has been in operation for a sufficient period of
22 time to generate the data required for the calculation

1 of future income, and which could have been expected
2 with reasonable certainty."

3 Do you agree with that requirement?

4 A. I need to apologize because I was lost. You
5 were--I was at Paragraph 45, and you said Page 45?

6 Or--

7 Q. I didn't say page. I didn't say 45.
8 Page 42?

9 A. Okay.

10 Q. Paragraph 6.

11 A. Okay.

12 Q. So, if we look at--my question--my original
13 question--

14 PRESIDENT SHORE: Why don't you give him a
15 chance to read, Mr. Ryan. And then you can go back to
16 your question. If you take a look through the
17 passages on going concern, Mr. Lopez Zadicoff.

18 THE WITNESS: Okay. I've read it.

19 BY MR. RYAN:

20 Q. Okay. So, you would agree that, for purposes
21 of the DCF, a going concern must have been in
22 operation long enough to generate data required for

1 the calculation of future income; correct?

2 A. I would agree that the legal framework
3 published in 1992 at the World Bank is what it says
4 here. I would disagree that that is what financial
5 and economic practice does, but that's what it says
6 here.

7 Q. Okay. We'll leave that for a moment.

8 Omega Panamá had, I believe, three years of
9 audited financial statements; is that correct?

10 A. Or started--it probably had a partial in '09,
11 '10, '11, '12, '13--four years.

12 Q. Probably had a partial in '09, or it had a
13 partial in '09?

14 A. I don't recall having seen the partial
15 in '09, but--

16 Q. Okay. So, you only recall seeing three?

17 A. Yes.

18 Q. Do you recall seeing any?

19 A. Yes. I recall seeing them.

20 Q. How many do you recall seeing?

21 A. Maybe three.

22 Q. Okay.

1 A. Those are the ones on the record.

2 Q. Okay.

3 A. But one has a comparative; right?

4 Q. Omega--so, Omega Panamá has three years of
5 audited financial statements. It also--Omega Panamá
6 also has a limited bidding history; correct?

7 A. I would not say it has a limited bidding
8 history. It has 42 bids.

9 Q. Omega Panamá, if we were to look at--if you
10 go to the last tab in your binder, which is QE-1,
11 which is a demonstrative that was prepared by Quadrant
12 on the basis of the bid history that Compass Lexecon
13 used, we can see that Omega Panamá as opposed to the
14 Omega Consortium bid on the 10 MINSA CAPSI Projects;
15 correct?

16 A. In 2010.

17 Q. If you look at--if you turn to the first page
18 in that, do you see?

19 A. Okay.

20 Q. You've seen this exhibit since it was handed
21 out at the Opening?

22 A. I've seen it.

1 Q. Okay. So, the fourth column over, fourth,
2 fifth, and sixth columns, indicate whether the bid was
3 made by Omega Panamá itself or a consortium of Omega
4 Panamá and some either Omega U.S. or some third Party.
5 We can see that the only bids by Omega Panamá itself
6 were Numbers 1 and 2--or, I'm sorry, no, that's not
7 true. I'm sorry. It is Numbers 4-13. Correct?

8 Do you see that?

9 A. By itself, yes.

10 Q. Okay. And all of those on this table
11 occurred in one year; correct? They were all in 2010?

12 A. Correct.

13 Q. And Omega Panamá as a stand-alone entity won
14 zero of those; correct?

15 A. Yes.

16 Q. And when we look at the consortium itself,
17 you see that there were 21 bids in 2011, three bids in
18 2012, four bids in 2013, and zero in 2014; correct?

19 A. Correct.

20 Q. And President Varela did not take office
21 until July 2014, yet there were no bids in the first
22 half of 2014; correct?

1 A. Well, that's a little bit disingenuous
2 because the election took place, I think, in May, and
3 there are certain provisions in the Budget Law that
4 Dr. Flores introduced that explain that there are a
5 lot of limitations about what a Government can do in
6 the last six months of the Administration. So, that
7 to ensure a safe transition.

8 So, I would expect that the amount of new
9 Contracts in 2014 would be lower, that is subject to
10 Tender, and also as I explained bidding is strategic.
11 We have nine Contracts outstanding. So, yes, the
12 facts are that 2014 there was no bidding activity.

13 Q. What are the nine Contracts? Because we've
14 been talking about eight Contracts in this case up to
15 this point. You've now introduced a ninth.

16 What is the ninth?

17 A. I need to correct myself: 2014, there were
18 eight contracts outstanding. The ninth contract is an
19 Aeropuerto Tocumen Contract that was completed by
20 Omega Consortium itself, I think, in 2013. And that
21 is the reference that we provide in our Direct
22 Presentation about the [REDACTED] profitability that

1 comes out of the Omega Panamá financial statements.

2 Q. Okay. So, you reference the downward trend
3 in bidding. The downward trend in 2013 and 2014--I'm
4 sorry, 2012-2013, this also coincided with
5 difficulties that Omega U.S. was experiencing in works
6 that were ongoing in Puerto Rico; correct?

7 A. I'm not familiar with that.

8 Q. Were you aware that in 2012, Omega U.S.'
9 lines of credit were canceled as a result of having
10 being overdrawn and delinquent?

11 A. I think that is a factual issue. I've read
12 it in Dr. Flores' Report, but I don't--that's not
13 something that I analyzed. I know that there is a
14 dispute. I don't know what the outcome of that
15 dispute was or the risk.

16 Q. You didn't speak with Omega or Omega's
17 counsel about that in performing your analysis to see
18 the effect that it might have had on your conclusions?

19 A. I confirmed when I noticed it in the Second
20 Report that this was something that did not destroy
21 the intangible assets of Omega U.S., and they told me
22 that it was part of the normal course of business.

1 Q. Okay. In your experience, is it part of the
2 normal course of business for a company to have its
3 lines of credits frozen or terminated?

4 A. It could happen if there are disputes. I
5 don't know if those are the facts, undisputed facts
6 that the lines of credits were frozen or terminated,
7 but you have commercial relationships with banks.
8 Sometimes--even those go sour. Sometimes contracts
9 don't go as planned but that doesn't destroy. It is
10 part of the normal business. On average, you can
11 continue because you source new lines of credits, you
12 source--I don't know. You do other contracts, and
13 that's part of the normal course of business. Okay?

14 PRESIDENT SHORE: Mr. Ryan, when you come to
15 a good point in the next few minutes, it would be, I
16 think, a morning break, when you come to a good point.

17 MR. RYAN: I only have a couple more
18 questions in this area.

19 PRESIDENT SHORE: That's fine. That's fine.

20 BY MR. RYAN:

21 Q. So, sir, were you aware that in 2012
22 Omega U.S. [REDACTED] ?

1 A. I looked at that because you put it in your
2 Opening Presentation, and, yes, the [REDACTED]
3 [REDACTED], but it's not related to contract performance.
4 That is a job--the industry that we are looking at,
5 it's related to investments in other assets.

6 So, you look at the gross margin and the
7 profitability and the Contract works, and that is
8 positive, and then you have a lot of deductions and
9 additional costs because there were some investments
10 that were made and were not profitable. I don't know
11 what those investments are, but regarding the contract
12 business, it was still profitable.

13 Q. So, we saw that with respect to the bids that
14 were submitted, they were submitted on the basis of
15 U.S.--Omega U.S.'s financial statements, and it would
16 be fair to say that the reflection of [REDACTED] for
17 that year would have an effect on the financial
18 statements that would be--be able to be submitted in
19 support of future bids; correct?

20 A. With the [REDACTED] in the future bids that
21 were made, they not impact significantly the overall
22 financial score of the Omega Consortium, because we

1 can see that they had excellent score in most of the
2 bids they participated.

3 Q. And you're aware that, in 2013, a Puerto
4 Rican court issued a judgment attaching Omega U.S.'s
5 assets due to an unpaid debt of [REDACTED];
6 correct?

7 A. Again, I read that in Dr. Flores' Report.
8 That's a factual issue. What I know too is that
9 Omega U.S. was awarded another Contract in 2014 in
10 Puerto Rico, and that is one of other exhibits of
11 Dr. Flores. So, it has to be that it didn't impair
12 the ability of Omega U.S. to continue work.

13 Q. And, again, you're aware that, in 2013, Omega
14 suffered a [REDACTED]--Omega U.S. [REDACTED]
15 [REDACTED]; correct?

16 A. Not on the construction business. In the
17 bottom line, after financial investments are
18 considered.

19 Q. Okay. Sir, one way of addressing
20 speculativeness in terms of the operating history of a
21 company when you're doing the DCF analysis is to
22 adjust upward the Discount Rate to reflect for

1 uncertainties in future cash flows.

2 Do you agree with that?

3 A. I wouldn't characterize--how you said, that
4 there's a way to adjust for speculative assumptions.
5 There is no room for speculative assumptions in our
6 cash flow calculations. We do all our assumptions
7 based on market evidence and how we believe the market
8 will react. Those are expected variables. Then, you
9 adjust for risk that your reasonable expectations
10 would not turn as you have hoped, because that's how
11 businesses are, and that's the role of the Discount
12 Rate.

13 So, if there--more uncertainty in certain
14 valuations, or more risk in certain industries, you
15 look at the market price for risk for that specific
16 industry, and that's what we do by calculating the
17 Discount Rate.

18 Q. Just to be clear, you did not make any
19 adjustments to your Discount Rate calculation to
20 account for the very short operational history of
21 Omega Panamá, did you?

22 A. I don't think--neither of the Experts has

1 done any adjustment for that factor, and because that
2 factor is not appropriate. In the case at hand, we
3 have sufficient certainty to be able to estimate cash
4 flows with reasonable certainty.

5 MR. RYAN: Okay. Mr. President, this would
6 be a good time for a break.

7 PRESIDENT SHORE: Thank you, Mr. Ryan.

8 Let's take a 15-minute break, and, Mr. Lopez
9 Zadicoff, you know the rule: Don't talk to anyone
10 about the case. Thank you.

11 THE WITNESS: Thanks.

12 (Brief recess.)

13 PRESIDENT SHORE: Back on the record.

14 Mr. Ryan.

15 MR. RYAN: Thank you, Mr. President.

16 BY MR. RYAN:

17 Q. Mr. Zadicoff, I'm going to ask you to take a
18 look at Exhibit QE-104, please, which is not in your
19 bundle but will be given to you by my colleague.

20 A. Okay.

21 Q. Do you see that?

22 This is the Consolidated Financial Statements

1 and supplementary information for Omega Engineering
2 LLC and its subsidiary dated February 28, 2013, and
3 February 29, 2012; correct?

4 A. Correct.

5 Q. Have you seen this before?

6 A. I have.

7 Q. Can you turn to Page 7, which is marked in
8 the bottom right-hand corner "C," and it ends in "62"?

9 A. Correct. Yes, I'm here.

10 Q. Okay. So, you had stated earlier when we
11 were talking about [REDACTED]

12 [REDACTED] were unrelated
13 to the construction industry.

14 If you look at 2012, the--I'm sorry. To be
15 clear, the construction business, not the construction
16 industry.

17 If you look at 2012, we see a loss--under the
18 line "Earnings or Loss From Operation," [REDACTED]
19 [REDACTED] correct?

20 A. Yes. It was referring to the gross profit
21 that is positive, and that's what I recalled. But I
22 can see that after general and administrative expenses

1 in 2012, there was this loss.

2 Q. Okay. And, of course, general and
3 administrative expenses are something that you need to
4 account for, generally, when considering whether a
5 company has earned or lost money in a particular year?

6 A. Yes. I don't know how--certainly you account
7 for them, and we account for those in the valuation.
8 Regarding Omega U.S., given that I have not had
9 insight into the projects, what I looked at was the
10 gross profit, and that's the profit you can directly
11 attribute to the construction projects that were in
12 place.

13 Q. When you said you don't have insight into the
14 projects, does that mean you don't have insight into
15 Omega U.S.'s projects, or what were you referring to
16 there?

17 A. I don't have insight into Omega U.S.'s
18 projects that are outside Panamá through the Omega
19 Consortium.

20 Q. Do you know whether there were any projects
21 ongoing outside of Panamá at this time?

22 A. Well, as I mentioned, I think I recall there

1 is one of Dr. Flores' exhibits that mentions a project
2 that was awarded, I think, in 2014. It could be 2013,
3 but I'm pretty sure it was 2014.

4 Q. But you have no personal knowledge of
5 Omega U.S.'s business outside of Panamá, do you?

6 A. Personal knowledge? No, certainly not. I
7 can see the Financial Statements.

8 Q. Okay. If we look at 2013, it shows an
9 earnings of [REDACTED] from operations, but then
10 it also shows bad debt expense, [REDACTED]
11 [REDACTED]. That bad debt, it was associated with
12 the operations; correct?

13 A. I'm sorry. Where?

14 Q. We're on the same page that we were on.
15 Page 7, ending in C-62.

16 Do you see that?

17 A. Well, not really. This is under
18 "Operations." So, it's a bad debt expense that is
19 registered in the same block, that realized gain on
20 sale on the investments. So, this is--my indication
21 is that all this is related to investment activities,
22 so trading activities that are outside the contracting

1 industry.

2 Q. Sir, realized gain on sale of investments is
3 a completely separate item from bad debt expense.
4 They are not linked in this financial statement in any
5 way.

6 A. I disagree. They are all under other
7 revenues and expenses and below earnings from loss--or
8 loss from operations. So, I think that they are
9 linked.

10 Q. [REDACTED]
11 [REDACTED] [REDACTED] ?

12 A. I see that.

13 Q. Okay. So, those would be associated with the
14 construction business; correct?

15 A. There is a reason why they were expressed
16 below the line of [REDACTED].

17 Q. Sir, my question, though, is: You agree that
18 the line [REDACTED] is
19 related to the construction business?

20 A. Well, it could very well, but there is a
21 reason. It's not related to the actual performance of
22 the construction company, because otherwise it would

1 be in the gross profit. It has to be--well, I'm just
2 speculating, but it could very well be that it is just
3 that clients stop paying and then you have a lawsuit,
4 so you register a bad debt, or you have other losses
5 for construction companies, but it's not related to
6 the operations. That's all that I'm saying.

7 Q. Okay. Sir, Compass Lexecon takes the
8 position that if, on a going-forward basis, the public
9 sector demand in Panamá that you had assessed was
10 overstated, there is no reason to believe that Omega
11 Panamá could not fill up its spare capacity with
12 private-sector projects; is that correct?

13 A. We mentioned that that's a possibility and
14 provides further comfort to our numbers, but our
15 assessment is done exclusively by looking at the
16 public works market. So, we don't have any cash flow
17 related to private bids or private projects in our
18 calculations.

19 Q. Okay. So, just to confirm, then, you're
20 aware that Omega Panamá did not win a single private
21 sector bid; correct?

22 A. The Omega Consortium in Panamá did not have

1 any private sector bid.

2 Q. And you're aware that--there were
3 private-sector bids that were made, sir, but they were
4 lost; correct?

5 A. Yes.

6 Q. And you're aware that Mr. Rivera testified
7 that some of these bids were made with owners with
8 whom Omega U.S. had prior relationships in Puerto
9 Rico; correct?

10 A. I'm not aware of what he testified. I was
11 not here for his testimony, but it could very well be.

12 Q. Did you review the Transcript of any of the
13 testimony given to date?

14 A. I think that I reviewed a portion of
15 Mr. Rivera's Transcript where it mentioned--where he
16 was asked about something, or that with it, where
17 Compass Lexecon was mentioned, but I didn't review the
18 whole Transcript, no.

19 Q. Okay. Your Report does not analyze the size
20 or nature of the private sector construction market in
21 Panamá; correct?

22 A. We don't look at the private sector, no.

1 Q. You don't look at growth trends in the
2 market?

3 A. Specifically, no. To the extent that we look
4 at the macroeconomy, that has implications for the
5 construction sector as a whole, but--

6 Q. You make no analysis of the size or nature of
7 the private construction market in Panamá; correct?

8 A. No.

9 Q. You do not analyze how Omega Panamá would
10 have fit into that private sector market, do you?

11 A. No.

12 Q. Now, Mr. Zadicoff, I just want to change
13 topics briefly and focus on an issue that affects
14 losses relating to existing contracts. And you had
15 said in your Opening--and I'm paraphrasing, but you'll
16 correct me if I mischaracterize anything that you
17 said--but you said that one of the issues that is
18 relevant to the difference between you and Dr. Flores
19 is the treatment of advance payments; is that correct?

20 A. That is correct.

21 Q. Now, the advance payments were made to Omega
22 Panamá at a very early portion of their projects;

1 correct?

2 A. I think that's how it works. They collect a
3 portion of the total Project Costs at the onset of the
4 construction.

5 Q. And do you know how Omega Panamá used that
6 money?

7 A. How it used it? I assume it used it to--I
8 don't know for a fact. I didn't trace the money.

9 Q. What do you assume that they used it for?

10 A. Well, they hold it, and they finance--they
11 need to pay contractors. They have the money, and I
12 assume they can use it to perform the Contract. It's
13 part of the idea of providing an advance to your
14 contractor.

15 Q. And while they were holding the money, they
16 would have been free to put it into an
17 interest-bearing type of account; correct?

18 A. I don't know. There are probably regulations
19 that limit what you can do with advance payments, so
20 that they protect the owner, but I don't know, in
21 particular, in this matter.

22 Q. So, you have no idea as to whether there are

1 any such regulations in Panamá that were in effect
2 here, do you?

3 A. I assume they existed, because it's normal,
4 but I don't know.

5 Q. You don't know. Okay.

6 Were you aware that Mr. Rivera, I believe,
7 testified that he used portions of the advance payment
8 to pay for other projects that were unrelated to the
9 construction industry in Panamá?

10 A. I'm not aware.

11 Q. Okay.

12 MR. RYAN: Mr. President, I have no further
13 questions.

14 PRESIDENT SHORE: Mr. Ryan, thank you very
15 much.

16 Ms. Gorsline?

17 MS. GORSLINE: Would the Tribunal prefer to
18 ask their questions first, Mr. President?

19 PRESIDENT SHORE: I think we should hear from
20 you, Ms. Gorsline, and then we will give--given that
21 it looks like we've got adequate time, then the
22 Tribunal will come back, ask questions, if we have

1 any, and give both of you a chance to follow up.

2 MS. GORSLINE: Thank you, sir.

3 PRESIDENT SHORE: So, you won't be confined
4 now, nor will you, Mr. Ryan.

5 MS. GORSLINE: All right. Might I have just
6 a moment to confer with my colleagues?

7 PRESIDENT SHORE: Yes, of course. Yes.
8 Absolutely.

9 MS. GORSLINE: Thank you.

10 (Pause.)

11 PRESIDENT SHORE: Ms. Gorsline.

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

13 Claimants have no questions for the Witness.

14 PRESIDENT SHORE: Professor Douglas.

15 QUESTIONS FROM THE TRIBUNAL

16
17 ARBITRATOR DOUGLAS: I just want to go back
18 to this relationship between Omega U.S. and Omega
19 Panamá. During the bidding process when they bid
20 together, presumably you would describe this as
21 Omega U.S. giving something of value to Omega Panamá
22 and you could monetize that, you could calculate that

1 if you really wanted to. There wasn't an agreement,
2 it seems, in this case, but you could certainly put an
3 economic value on that contribution to the bidding
4 process; is that correct?

5 THE WITNESS: Theoretically you could do it.

6 ARBITRATOR DOUGLAS: And so, when a
7 hypothetical buyer is looking at Omega Panamá, it
8 would be trying to put a value on that contribution.

9 THE WITNESS: So, if we were only looking at
10 Omega Panamá, we should try to parse what's the value
11 of the contribution is and how it contributes to the
12 overall [REDACTED] value. So, [REDACTED] value
13 that we calculate is the sum of all the assets. So,
14 theoretically, you can divide it through certain
15 analytical steps.

16 ARBITRATOR DOUGLAS: And if you can do that,
17 doesn't it make a difference--sorry, if we can do
18 that, doesn't the probability of whether or not that
19 contribution will continue, become relevant to the
20 value of the asset today assessed by its future
21 income-producing potential?

22 THE WITNESS: Well, it depends. Again, I get

1 your question as coming, okay, let's assume that all
2 that it is to value is Omega Panamá and not the Omega
3 Consortium. Is that my correct reading?

4 ARBITRATOR DOUGLAS: Well, it is looking at
5 Omega Panamá, which may have value attached to it by
6 virtue of its relationship with another entity, and
7 the question is whether a buyer is--what value would
8 the buyer put on that value, that is derived because
9 of its relationship with another entity?

10 THE WITNESS: Right. But I'm trying to
11 understand whether you want me to assume that the
12 assets that I'm valuing are the totality that includes
13 Omega Panamá and this relationship or just Omega
14 Panamá. Because if it is the former, it is the
15 totality, given that this is a kind of subsidiary from
16 an international company, I will have no reason to
17 believe that this relationship will stop.

18 ARBITRATOR DOUGLAS: That's the point I was
19 getting to. So, yeah, I was absolutely asking about
20 as a totality, but then don't we need to make an
21 assessment of the likelihood that the relationship
22 will continue? Don't we have to make an

1 evidence-based assessment of whether that's the case
2 because that, in turn, will affect the value of that
3 relationship which is a component of the thing that
4 you evaluate?

5 THE WITNESS: That is correct. As a factual
6 issue, I would suggest that when you're looking at
7 subsidiaries--if this would be an unrelated party with
8 whom you had a consulting agreement for 5 years or
9 10 years or sometime of supporting agreement that is
10 limited in time, then I would agree you would need to
11 assess a probability that that would renew.

12 But given that this is a direct investment in
13 a subsidiary form to capitalize on the same assets and
14 put them at risk to win new projects, I would--the
15 logical assumption in my valuation view is that you
16 would consider that the relationship would continue
17 into the future because the basis for doing the
18 subsidiary, the investment, is to capitalize on these
19 investments in the Panamanian market.

20 ARBITRATOR DOUGLAS: Okay. But if that's the
21 case, then doesn't the financial condition of the
22 parent--isn't that relevant, then, in assessing the

1 probability or the likelihood that the relationship
2 will continue but also have value because
3 suppose--just taking a hypothetical, suppose
4 Omega U.S. becomes insolvent and we know that, at the
5 date of valuation, that that's likely, then obviously
6 the relationship wouldn't be worth much and that would
7 affect the Present Value.

8 So, I'm not saying that it was going to
9 become solvent, but the solvability or the financial
10 condition of the parent in that scenario, doesn't that
11 become a relevant consideration if you're trying to
12 value that relationship going forward?

13 THE WITNESS: Objectively or from an overall
14 standpoint, it does. So, obviously if Omega U.S.
15 would, for reasons that are not related to the
16 Measures won't be able to provide the support to Omega
17 Panamá into the future, that would be--would affect
18 the valuation assessment.

19 Now, I see no indication that, absent the
20 Measures, Omega U.S. would not have been able to
21 continue providing the support because the balance
22 sheet that it had was adequate, as we saw in the

1 Bidding Documents, as of the date of valuation, and
2 the construction profits that it was achieving was
3 still positive and there was a positive equity value.
4 So, there is no reason to believe that Omega U.S.
5 would disappear and stop providing the support to the
6 Omega Consortium.

7 ARBITRATOR DOUGLAS: This may be more of a
8 factual issue in which case you're free not to answer
9 it, but when someone is looking at bids and they are
10 looking at the financial situation of the bidder, and
11 would be both entities in this case, I mean, what sort
12 of view are they taking of the accounts? Are they
13 doing a very careful analysis that you are but
14 distinguishing between its core construction business
15 and other aspects, or are they just looking at the
16 bottom line and saying, well, the operating profit or
17 loss for this year is positive or negative and be
18 satisfied with that sort of high-level analysis?

19 THE WITNESS: Well, it depends on the bid;
20 right? Each of the bids has defined certain criteria.
21 But overall, as we were discussing before, you have
22 certain liquidity ratios and solvency ratios, in which

1 Omega U.S. was able to perform, and you also had the
2 requirement to have bonding capacity or sometimes
3 financing capacity.

4 To obtain bonding capacity, you need a track
5 record with financial institutions in which financial
6 institutions will know that every now and then one
7 project would go sour and you will have a bad debt
8 expense. But they will care about your overall
9 performance, and that's how they will decide to extend
10 letter of credits or not, act as a bonding agent or
11 not.

12 So, there is the objective criteria that is
13 outlined in each of the bidding processes where the
14 Omega U.S. or Omega Consortium was able to excel, so
15 we don't have reason to believe that that would stop.

16 And then you have the existence of bonding
17 capacity, which is also considered by the bid
18 documents, but the rationale that banks follow or
19 bonding agents follow to provide bonding capacity
20 looks at an overall long-term payability of the
21 Project, of the Company--sorry. And based on what I
22 have seen, there is no reason to believe that

1 Omega U.S. would have become insolvent because it was
2 completing its Project. Maybe it didn't have many
3 more projects outside Panamá or--because if you look
4 at the financial statements, they are winding down in
5 projects in a way, but that would not generate a loss
6 by itself. It would just stabilize the financial
7 statement.

8 And the reason why actually you will expect
9 that Puerto Rico would be a stale market in a way is
10 because we need to remember that at this point it was
11 into a very long recession period; right? So, that's
12 why you go into other markets and you rededicate your
13 resources.

14 ARBITRATOR DOUGLAS: Thank you very much.
15 That is very helpful.

16 PRESIDENT SHORE: Professor Naón.

17 I think I just have one question following on
18 from Professor Douglas. It's the comment you just
19 made a minute ago, Mr. Lopez Zadicoff, that you--am I
20 right that you said you would see no reason in a
21 hypothetical sale and purchase that Omega U.S. would
22 refuse to provide support. That is, you would assume

1 that it would continue to provide support. Is that
2 right?

3 THE WITNESS: Right. Given that it is a
4 subsidiary and it was--the Panamanian entity as a
5 subsidiary was created with the purpose of
6 capitalizing on the assets. That I would not expect
7 that support would be interrupted.

8 PRESIDENT SHORE: But it is a separate
9 entity--correct?--Omega U.S., and if it continues to
10 provide support, and a hypothetical purchaser of Omega
11 Panamá would understand that to be the case, would it
12 not also be understood, hypothetically, that it would
13 take a share of something to continue to provide
14 support? I mean, support wouldn't come free.

15 THE WITNESS: Well, I think it goes--it goes
16 to the distinction of what we are
17 valuing--right?--because in my view what you are
18 valuing is the support provided by Omega U.S. that
19 would continue being provided to Omega Panamá. If we
20 were valuing and splitting--so, that's why when you
21 asked me before, I said, okay, this is like buying--if
22 you want to conceptualize this, it is like buying a

1 company that is operating boots on the ground, running
2 the Projects, plus an agreement that is an ironclad
3 agreement that you will continue receiving the support
4 of Omega U.S.

5 PRESIDENT SHORE: I follow that. Thank you.

6 Professor Naón.

7 ARBITRATOR GRIGERA NAÓN: Let me see if I
8 understand where we are after the questions of my
9 distinguished colleagues on the Tribunal.

10 Number one, you were referring to an
11 objective evaluation of the continuing support of
12 Omega U.S. to Omega Panamá, but wouldn't part of that
13 objective evaluation be the terms of the bidding
14 process itself on the basis on which the bids were
15 allocated to the Consortium? That's my question. To
16 which extent do we have to look into the bidding
17 process, the Bidding Documents, and the conditions
18 under which the Contracts were awarded?

19 THE WITNESS: Well, that could be one way of
20 attempting to parse away the value between the two
21 sets of assets that we are valuing within the Omega
22 Consortium. So, if you say, okay, you look at the

1 bidding process as you are mentioning, and you have
2 different characteristics and you will say, okay, I
3 believe that Characteristic Number 1 is won because of
4 Omega Panamá. Characteristic Number 2 is won because
5 of the intangible assets and so on and so forth. You
6 could be able to do kind of an assessment of how much
7 each of the companies is contributing to winning, and
8 then try to attribute value in one way or another.
9 So, that could be one approach.

10 A different approach could also say, okay,
11 let's think about--I don't know if Omega Panamá is a
12 selling agent or a management agent of the assets that
13 were considered. So, you will look at it from another
14 different perspective. But I think that there is not
15 something that we have done and we will need to think
16 about it, how to parse away the value in detail. But
17 certainly there are valuations of intellectual
18 property or other intangible assets that are usually
19 done and they could be--we could attempt to perform
20 them.

21 ARBITRATOR GRIGERA NAÓN: If I understood
22 correctly the question of my Chairman here, he was

1 trying to identify what was the benefit or
2 consideration for Omega U.S.A. to be in the picture.
3 But I don't want to put words in your mouth, but
4 wouldn't that be just the share participation, the
5 interest of Omega U.S.A. and Omega Panamá, because, of
6 course, if Omega Panamá gets money and benefits, it
7 will reflect in the dividends that would be paid to
8 Omega U.S.A.?

9 Wouldn't that be--

10 THE WITNESS: Well, that--that's how things
11 flow from a corporate structure, and it all
12 belongs--all the companies belong to the Claimants,
13 so, at the end of the day, all money goes to the same
14 place, if I understand correctly.

15 So, for me, this is--when I look at this,
16 this is an indivisible investment, because you did the
17 investment in Panamá in order to profit from your
18 capacity to generate new business, and that
19 materialized in the past in nine Contracts and will
20 continue to materialize in the future in more
21 contracts. So, overall, yes, at the end of the day is
22 how all of this would have been valued, generated in

1 Panamá that would have reached Claimants.

2 ARBITRATOR GRIGERA NAÓN: Thank you.

3 PRESIDENT SHORE: So, on that last point,
4 Mr. Lopez Zadicoff, you would be purchasing--the
5 hypothetical Buyer would be purchasing the continued
6 participation of Omega U.S.?

7 THE WITNESS: Yes.

8 PRESIDENT SHORE: Because we're not talking
9 about shares here; right? We're not talking about a
10 normal subsidiary transaction. Let's say, for
11 example, there's a gas consortium, and it's all within
12 one group of companies, and you have a gas supply
13 company, and it has rebates within the group of
14 companies because they can all trade off their own
15 balance sheets.

16 Let's say there is no antitrust issue, and so
17 they can all trade off their own balance sheets, and
18 someone wants to purchase the gas supply portion in
19 that group of companies, but, if they do that, they
20 are not going to get the rebates, are they?--because
21 that can only work within the group of companies. So,
22 they would lower the purchase price; right?--that they

1 would pay for the gas supply company because without
2 the rebates it is not as valuable.

3 And let's say in a hypothetical sale and
4 purchase, someone would know, without that
5 relationship, it's not as valuable.

6 So, in this instance, what you would be
7 purchasing is the continued relationship?

8 THE WITNESS: Yes. The relationship is
9 purchased by the--I would argue that, your example, if
10 I'm holding the segment against the rebates, I would
11 not be able--I would not willingly sell for something
12 that is less, that I can obtain in an objective way
13 because, here, the rebates are objective.

14 PRESIDENT SHORE: You know, the rebates are
15 actually within the--they only work within the group
16 of companies, because you can only trade off the same
17 balance sheets. It's a similar example here. I'm not
18 sure that it is objective in that way.

19 I'm not sure I follow that, because if you're
20 going to sell, you're going to understand that, if--if
21 the Willing Buyer know about the rebates, and let's
22 say there's transparency, you are going to understand

1 that the Company is less valuable without the rebates.
2 Everyone is going to understand that, because the
3 Company has been built up and trading off other
4 balance sheets.

5 Here, it's a similar situation, isn't it?
6 Here, it's a similar situation in the sense that
7 anyone would know that the Company, Omega Panamá as
8 just Omega Panamá, in and of itself, is without the
9 relationship, without real value. Is that, I mean,
10 that's correct, isn't it?

11 THE WITNESS: I wouldn't say "without real
12 value." I would say that there is a value of the
13 boots-on-the-ground organization and the setup, but
14 it's now going to be the full \$40 million. It's going
15 to be--I don't know. Certainly, it would not be the
16 majority of the value. I would agree with that.

17 PRESIDENT SHORE: Okay. Sorry. You're
18 right. There is some value, but not significant value
19 in the way that there would be significant value if
20 you're buying the entire relationship; right?

21 THE WITNESS: Well, it would not be the same
22 as valuing the entire relationship. I don't know

1 if--how significant or how to define "significant."

2 It would not be \$1. That's--so, it would not be--

3 PRESIDENT SHORE: It might not be \$1. I
4 agree with that.

5 THE WITNESS: It would not be 30 million,
6 either, so I know that we haven't done the analysis.

7 We can do it, but I think that the analogy, if I may--

8 PRESIDENT SHORE: Yes.

9 THE WITNESS: --that you are doing is--okay.
10 I have a group of companies; okay?--so, you come and
11 you take out a piece of that group of companies and
12 always invested in Panamá; okay?--or invested in the
13 target market where you're analyzing it.

14 So, what is the damage or the harm that I
15 suffer? Well, I look at the value that I can derive
16 from the full group of companies, and then I calculate
17 what is my residual value. Okay. I now have two
18 segments of the distribution. What is that was taken
19 away? The delta between the two set of assets that
20 I'm left off. So, in that example, I will look at
21 it--that's the economic damage. Now, you can tell me
22 that's not how you would look at it from a legal

1 standpoint or whatever.

2 PRESIDENT SHORE: Right. Right.

3 THE WITNESS: But, from an economic
4 standpoint, if I look at the damage and the harm that
5 I suffered, well, that's the way of looking at it,
6 because before the situation I have the three
7 companies. After the situation I only have two. So,
8 if there are some synergies that are lost, they are
9 part of the damages.

10 PRESIDENT SHORE: Right. And I think you're
11 right. That might be a legal issue, because it might
12 go to what the investment is. Because when you said
13 earlier, I think, in response to one of Mr. Ryan's
14 questions that you are considering the totality of
15 assets invested in Panamá, which can constitute Omega
16 Panamá as an operating entity, you are assuming that
17 the investment is also Omega U.S., because that's the
18 totality of the assets that are being invested in
19 Panamá.

20 THE WITNESS: I would caution, because it's
21 not the totality of Omega U.S., because we are not
22 looking at the potential of the Omega U.S. assets

1 outside Panamá.

2 PRESIDENT SHORE: Yeah, let's say they are in
3 Panamá.

4 THE WITNESS: Okay. If there is nothing,
5 yet--that I would generally agree with you.

6 PRESIDENT SHORE: Okay. As promised, let's
7 go first to Ms. Gorsline. I think if you have
8 questions arising from the Tribunal's questions,
9 Ms. Gorsline.

10 MS. GORSLINE: Mr. President, we have no
11 questions arising from the Tribunal's questions.

12 PRESIDENT SHORE: Okay.

13 Mr. Ryan.

14 MR. RYAN: Yes, sir, I have small number of
15 questions.

16 PRESIDENT SHORE: Arising from the Tribunal's
17 questions?

18 MR. RYAN: Yes. Yes.

19 PRESIDENT SHORE: Only from that.

20 MR. RYAN: Yes.

21 PRESIDENT SHORE: Okay.

22 FURTHER CROSS-EXAMINATION

1 BY MR. RYAN:

2 Q. Mr. Zadicoff, you answered at length to the
3 questions of--actually, each of the Tribunal Members
4 about the prospects that the continued support would
5 go on beyond the hypothetical transaction that we were
6 using as the basis for a valuation, and that it would
7 be reasonable, in this instance, given that there is a
8 subsidiary relationship, to expect this would
9 continue; correct?

10 A. Yes.

11 Q. Okay. Are you aware that Omega Panamá is not
12 a subsidiary of Omega U.S.?

13 A. Is not a direct subsidiary. They are owned
14 by Mr. Rivera, but it is not a subsidiary in the
15 strict form of the corporate relationship link, let's
16 say.

17 MR. RYAN: Thank you.

18 PRESIDENT SHORE: Thank you very much.

19 Mr. Lopez Zadicoff, thank you very much for
20 your testimony and appearance today. The Tribunal
21 appreciates it. And your testimony is concluded, and
22 you are hereby dismissed from that table that you're

1 sitting at. And I understand that you'll continue in
2 the room, so it will be good to see you in the room.

3 THE WITNESS: Okay. Thank you for everybody,
4 for your patience.

5 (Witness steps down.)

6 PRESIDENT SHORE: Thank you. So, I have the
7 wrong time. So, we're at 11:43. May I suggest this:
8 That we put Dr. Flores on for his presentation and
9 then we take a lunch break after Dr. Flores's
10 presentation. Is that acceptable?

11 MR. RYAN: Yes, Mr. President.

12 MS. GORSLINE: Yes, sir.

13 PRESIDENT SHORE: Ms. Gorsline.

14 Dr. Flores.

15 (Pause.)

16 DANIEL FLORES and RYAN McCANN,

17 RESPONDENT'S WITNESSES, CALLED

18 PRESIDENT SHORE: Good morning, Dr. Flores.
19 Mr. McCann, good morning.

20 I understand that since you're both there,
21 that you'll both potentially be speaking. Is that
22 correct?

1 THE WITNESS: (Dr. Flores) Yes. Good
2 morning. My understanding is that, although we will
3 be splitting the Presentation duties, Claimants'
4 counsel will only be asking questions to me.

5 PRESIDENT SHORE: Is that your understanding,
6 Ms. Gorsline?

7 MS. GORSLINE: Yes, sir. Respondent's
8 counsel had requested that Mr. McCann be allowed to
9 participate in the Direct Presentation, and we have
10 agreed to that, on the understanding that only
11 Dr. Flores will be cross-examined, and that Dr. Flores
12 will be capable of answering all questions with
13 respect to the direct Presentation, even if it was a
14 portion delivered by Mr. McCann.

15 PRESIDENT SHORE: Okay. Thank you all very
16 much for that.

17 But, in light of that, let's first have
18 Dr. Flores, if you would read out loud the Expert
19 Declaration in front of you, and then Mr. McCann.

20 THE WITNESS: (Dr. Flores) Yes. My name is
21 Daniel Flores.

22 And I solemnly declare, upon my honor and

1 conscience, that my statement will be in accordance
2 with my sincere belief.

3 THE WITNESS: (Mr. McCann) My name is Ryan
4 McCann.

5 I solemnly declare, upon my honor and
6 conscience, that my statement will be in accordance
7 with my sincere belief.

8 PRESIDENT SHORE: Thank you both. Over to
9 you, Dr. Flores.

10 I assume there is no questions before that
11 from you, Mr. Ryan?

12 MR. RYAN: Correct. This is in substitute of
13 a Direct by us.

14 PRESIDENT SHORE: Thank you very much.
15 Dr. Flores.

16 DIRECT PRESENTATION

17 THE WITNESS: (Dr. Flores) Thank you. In the
18 next 30 minutes we will present a summary of the work
19 that we have done in this arbitration. You have the
20 slides on the screen and in front of you. The
21 Presentation has three parts: I will be in charge of
22 Parts 1 and 3, and Ryan will be doing Part 2.

1 So, if we go to Part 2, the Potential New
2 Contracts Claim, we start at Slide 4, and you can see
3 here is--so, this Presentation was prepared on the
4 basis of what I had seen, or what we had seen in the
5 Compass Lexecon Reports. It was clear to us that what
6 Compass Lexecon was doing, at least, or what it has
7 done in its Report is to value that--the Claimants'
8 interests in Omega Panamá.

9 And the theory being that certain Measures
10 allegedly taken by Panamá destroyed the value of Omega
11 Panamá. It impeded Omega Panamá from continuing as a
12 going concern. That's what Compass Lexecon wrote,
13 reducing its value to zero. So, that's been the basis
14 on which--upon which this Presentation has been
15 prepared, the value of Omega Panamá itself as a going
16 concern in Panamá.

17 We do agree with Compass Lexecon that the
18 proper way to value a company is a Fair Market Value
19 standard. You have a definition here in the middle of
20 Slide 4, and it's a--the well-known standard of what a
21 Willing Buyer and a Willing Seller with reasonable
22 knowledge of all the relevant facts would agree to

1 transact a property.

2 So, then the relevant question that we have
3 sought to answer in this arbitration is: What is a
4 Fair Market Value of Omega Panamá, as of the
5 23 December of 2014, but for the Measures?

6 So, before we go into that, let's take a look
7 at what Omega Panamá was. And in Slide 5, we have two
8 observations that we take from the last set of annual
9 financial statements of Omega Panamá. On the left
10 side you see that Omega Panamá had salaries, of
11 about--salary expenses of about [REDACTED]. And I heard
12 testimony earlier this week that it had a handful of
13 workers, so we are not talking about minimum-wage
14 workers. We're talking about people being paid this
15 [REDACTED].

16 On the right-hand side, what we see is the
17 physical equipment, the physical plant of Omega
18 Panamá. And what we can see is that it had some
19 vehicles, some computers, and some office equipment.
20 This is as of the end of 2013, but we know--is that
21 most of this equipment was bought in 2012, because, as
22 of year-end 2011, it had much less than that.

1 It had about [REDACTED] in vehicles and just
2 about [REDACTED] in computers, maybe [REDACTED]
3 [REDACTED] in computers. So, this
4 is the reality of what Omega Panamá was.

5 So, in Slide 6, we show a little bit more
6 detail. As you know, Omega Panamá was incorporated in
7 October 2009, and five years later, as of December
8 2014, what we know is that it had won just nine
9 Contracts. There was one Contract that it bid for.
10 It had won, but it was canceled, so there was never
11 any work performed.

12 And it had--those nine Contracts that it won
13 had always been done when bidding in a Consortium with
14 other companies, all the times with Omega U.S. and
15 also sometimes third Parties. So, some of the bids, I
16 think five of the winning bids were because there were
17 three companies: Omega Panamá, Omega U.S., and a
18 third Party that contributed some technical knowledge
19 or some other thing.

20 These third-party companies, I understand
21 they are not part of what today Compass Lexecon was
22 referring to as the "Omega Consortium." So, the

1 reality is that when a bid is submitted, if the bid in
2 the requirements has seven specifications about what
3 is required, then you can go out and you can borrow
4 the expertise of someone else on a one-time basis.

5 For example, in the Tocumen Airport Bidding
6 Documents, if you look at them you will see there were
7 three companies, and one of them, which was
8 not--neither of the Omega companies, had prior
9 experience developing an airport or doing some
10 construction work at an airport in Las Vegas and
11 another one in Houston.

12 So, because the parameters of the Tocumen
13 Airport said you need to provide certain experience
14 having worked on airports, they went and they did a
15 consortium, a one-time consortium with a company that
16 did have that experience. So, here we're not always
17 talking about just Omega Panamá and Omega U.S. And
18 that's typical in the construction industry.

19 When you need a specific knowledge that you,
20 yourself, or your parent company doesn't have, you do
21 a temporal union of companies for the purposes of only
22 that contract.

1 Now, we know that as of the Valuation Date,
2 Omega Panamá had only completed one contract, this
3 one, the Tocumen Airport. And for the other eight
4 ongoing contracts, the progress completion was just
5 about 40 percent, and this is from data provided from
6 Mr. McKinnon in his Report. So, it's very hard, as we
7 will see, if we are talking about doing reliable
8 estimates for the future, what do you do when you
9 haven't even completed more than one contract. How do
10 you know what your profit margins are going to be?
11 Because, remember, in these contracts, the deal is
12 that you bid and you win an amount. That's your
13 revenue. That's your top line. And then it is up to
14 you to build a project and to build it under budget.

15 If you go a lot under budget, you're going to
16 have a huge profit margin. If you stay at budget, you
17 make zero dollars in profit. If you go over budget
18 because your work is suddenly--they want to
19 renegotiate their Contract and they want higher
20 salaries, or you realize that the ground is more
21 difficult to treat and you need to spend more money
22 doing the work, you may end up with a negative profit

1 margin. How do we know what Omega Panamá would have
2 done going forward if all we have is one completed
3 project? That's an important point to take into
4 account for valuation purposes.

5 In Slide 7, we show a sample of other
6 companies that also were participating in the
7 public-sector construction, the public construction
8 sector in Panamá competing with Omega Panamá, and what
9 we show is that these are companies that have
10 many years of experience, presence in many countries,
11 and they are many times larger than Omega Panamá.

12 With that brings us to the next point, which
13 is in Slide 8, which is--this is very important for
14 the exercise of valuation. There is no exclusive
15 right to public works contracts in Panamá. That is
16 very determinative. What I do mean by this? If you
17 have a concession to provide mobile telephone services
18 in a country--by the way, my colleague and I were in
19 this same building just a few weeks ago talking about
20 that same issue--a mobile telephone deal in one
21 country. It was a deal for 25 years. That gives
22 inherent value to the company because you are the only

1 one that is going to be able to provide mobile
2 telephone services for the remainder of the 25-year
3 term. So, no one else can provide it.

4 But that's not the case with public works.
5 The only thing you had need to provide public works
6 bids in Panamá is to register at the site that is
7 called PanamaCompra. It's an online website that's
8 publicly available. Of course, you need to be current
9 in your taxes. You don't need to be delinquent with
10 taxes, but most companies--we will assume they pay
11 their taxes on time, and you need to have certain
12 requirements specific to each bid.

13 But there is nothing that says Panamá is
14 going to choose 10 companies, and these 10 companies
15 are the only ones that can bid for public projects for
16 the next 10 years. And one of them was Omega Panamá.
17 That would make Omega Panamá valuable, of course, if
18 you were only one out of 10 that was eligible. But
19 this is not the case. Any of the companies in the
20 prior slide could and did bid for projects whenever
21 they felt they were up their alley, and they wanted to
22 bid.

1 So, that's the thing. So, having prior
2 experience, having bid on nine projects, having won
3 nine projects in the past three years is not a
4 guarantee of anything because at the next bid that you
5 provide, the authority that's going to be awarded in
6 that contract will be who is the best out of the three
7 that have applied for this Contract or out of the
8 seven who have applied for this Contract.

9 So, there is not an acquired history that the
10 fact that I won three contracts with some Ministries
11 or some municipalities in Panamá over the last
12 three years guarantees a stream of income for the
13 future. There is no guarantee whatsoever. So, every
14 new project is like a new enterprise. It's a new
15 project. You're going to be bidding with the best
16 people in the world to get that contract.

17 So, based on this, and based on the limited
18 experience of Omega Panamá, our point of view is that
19 no Willing Buyer looking to start an operation in the
20 public works sector in Panamá would have found any
21 compelling reason to pay anything to acquire Omega
22 Panamá. Why would I pay to buy Omega Panamá for

1 Mr. Rivera if I can do the same and just registering
2 in the PanamaCompra website and start submitting my
3 own bids? What's the advantage of submitting through
4 Omega Panamá? So, that's why our conclusion is Omega
5 Panamá--

6 ARBITRATOR DOUGLAS: Sorry, just to
7 interrupt.

8 THE WITNESS: (Dr. Flores) Yes.

9 ARBITRATOR DOUGLAS: Surely, a track record
10 counts for something?

11 THE WITNESS: (Dr. Flores) I'm sorry?

12 ARBITRATOR DOUGLAS: Surely, the track record
13 counts for something in a bid if you've successfully
14 completed contracts or bid for contracts in the past,
15 surely that has a value going forward.

16 THE WITNESS: (Dr. Flores) If you look--and
17 we have in the record, I think it is
18 Exhibit QE-113--we have the bidding parameters for
19 some of these contracts, and most of them that I
20 recollect--I don't recollect any of them that says
21 shows me evidence that you have submitted prior
22 contracts in Panamá. What I was talking, the one for

1 the airport in Tocumen is that show me evidence that
2 you have completed a project in the airport arena
3 anywhere in the world. But not necessarily in Panamá.
4 No other contracts require prior experience having
5 done a hospital in Panamá. If you did a hospital in
6 Miami, okay, that may check the requirements.

7 So, that's our point. The Fair Market Value
8 of Omega Panamá is zero because Omega Panamá, what it
9 had to offer, what it would be selling, what is it?
10 It's just the right to bid. Well, anyone has the
11 right to bid for Omega Panamá.

12 So, then this is not part of the slides
13 because I wasn't expecting Compass Lexecon to be
14 talking about valuation or something different, but
15 I'll just share a reflection that I had while I was
16 listening to the prior examination, which is this: He
17 says, well, there's an additional value brought by
18 Omega U.S.--right?--the bonding capacity and the fact
19 that Omega U.S. had a series of financial statements
20 that could be provided as support.

21 I'll just make a quick reflection. If it is
22 true that Omega Panamá was worth \$40 million or

1 whatever amount they are saying today, any Willing
2 Buyer of Omega Panamá would be anyone willing and able
3 to dispose \$40 million. Are they really telling us
4 that someone willing to pay \$40 million doesn't have
5 balance sheets and doesn't have bonding capacity? I
6 mean, I cannot conceive of any company in the world
7 that would be willing to pay \$40 million, and we don't
8 have the bonding capacity for a \$2 million contract.

9 PRESIDENT SHORE: What about, Dr. Flores, I'm
10 sure we'll come to this later, but, of course, you
11 know the Compass Lexecon point is--one of their points
12 is that they--that you know they haven't just
13 separated out Omega Panamá, that you know they are
14 talking about the Consortium when they say "Omega
15 Panamá," and so the Willing Buyer/Willing Seller
16 context is the Consortium, not the Company that's
17 incorporated or registered in Panamá?

18 THE WITNESS: (Dr. Flores) But my point is
19 the Willing Buyer would say "I don't need this other
20 company in Puerto Rico. Why would I need a company in
21 Puerto Rico? I can provide a bonding capacity
22 myself." To the extent--we will go to that in the

1 next slide.

2 PRESIDENT SHORE: Sorry.

3 THE WITNESS: (Dr. Flores) Let me go there to
4 answer your question. Because our point is--well,
5 let's imagine what the Willing Buyer would do; right?
6 Say a Willing Buyer says, well let's acknowledge that
7 Omega Panamá has been in business for three, four,
8 five years, submitting bids in Panamá. Maybe it has
9 acquired some knowledge--right?--I don't know, maybe
10 some know-how or what. I don't know what time--what's
11 the best time of day to submit the bid so there's less
12 traffic on the website? I don't know. It's hard to
13 evaluate, maybe, what is the fastest Notary Public in
14 Panama City that can get you the papers done at
15 7:00 p.m. on a Friday? Could that have some value?
16 Well, yes, hypothetically, yes.

17 And that's what we show in this slide,
18 Number 9. In the top graph, we say if you are a new
19 entrant, you know that you have the right to bid for
20 new contracts in Panamá. You can do it on your own.
21 You don't need the help of Omega Panamá.

22 PRESIDENT SHORE: What about the help of the

1 Consortium?

2 THE WITNESS: (Dr. Flores) But what help does
3 the Consortium provide? What does the Consortium
4 provide? Because, remember, Omega Panamá itself
5 didn't do much; right? When it got the Contract, it
6 would merely find subcontractors.

7 So, one thing you could say is that, well,
8 I'm going to need like 5,000 kilograms of cement;
9 right? Where is the best cement supplier in Panamá?
10 That may be some knowledge that may be worth paying
11 someone to pay for that. You wouldn't pay \$40 million
12 for someone to tell you that; right? That's my point.

13 All the value we're talking about, it is
14 miniscule. It is very small because, I mean, if I
15 were--honestly, if I wanted to get into the sector, I
16 wouldn't buy Omega Panamá. I would just make a job
17 offer to Mr. López and say: "Hey, Mr. López, come
18 work with me. I'll pay you \$200,000 a year, and you
19 tell me where the cement provider is and where the
20 best crane operators are and who rents the cheapest
21 and most reliable trucks." Because that's what Omega
22 Panamá was doing. It was just putting together

1 things, and that's why it did have some limited
2 success, but that success--my point is it could be
3 replicated by someone.

4 Remember, Omega Panamá had done nothing in
5 Panamá until 2011; right? And--but whatever success
6 it had by 2014, that's based on three years of
7 experience. So, wouldn't a hypothetical buyer say,
8 well, at most, in three years, I can do the same thing
9 that Omega Panamá has done because that's what you
10 need, the thing that comes from outside Panamá. So,
11 what you need in Panamá is this: The knowledge what
12 is the best cement provider, the cranes, the trucks,
13 and the best workers that you can hire by the day.
14 That's the knowledge that you need to do these
15 projects well in Panamá.

16 What comes from outside is someone with
17 bonding capacity and someone with a balance sheet of
18 three or four years because you don't want to be a new
19 entrant. But my point is, well, I don't need the
20 company in Puerto Rico to provide those two assets.
21 What I need is any company that can provide a balance
22 sheet that is not in default for, like, two or

1 three years, whatever the bidding parameters require,
2 plus then you need the bonding capacity, which my
3 point is any Willing Buyer would have bonding capacity
4 or would be able to acquire bonding capacity without
5 having to go and rely on Mr. Rivera's bonding capacity
6 in Puerto Rico, whatever that may have been. So,
7 that's our point.

8 And that's why we say, at most, you would pay
9 for whatever differential in revenue you could obtain
10 by leaping ahead instead of having to go through the
11 growing pains of establishing a brand-new company in
12 Panamá on your own. You buy Omega Panamá and,
13 hopefully, if all the workers stay--you would buy
14 Omega Panamá, and Mr. López would stay with Omega
15 Panamá because he's the one that has the local
16 knowledge acquired over the last three years. If
17 you're able to do that, then it may be worth paying a
18 little bit for the Company, and that's why we put this
19 differential in the top graph, the shaded area in the
20 top graph, at the right of Slide 9. That's what we
21 think is the most someone would be willing pay.

22 Compass Lexecon says, no, a Willing Buyer

1 would be willing to pay for cash flows in perpetuity.
2 The graph ends in 2030, but, in fact, the model shows
3 that they assume that the Willing Buyer will say Omega
4 Panamá has something so valuable. With or without the
5 Consortium, I don't get, but they say that is so
6 valuable that no one would be able to replicate it,
7 not in three years, not in five years, not in
8 10 years, not in 1,000 years. So, they say that Omega
9 Panamá would be valuable ad infinitum. That's, to us,
10 not reasonable.

11 Now, if you go a little bit into more detail
12 about how Compass Lexecon has valued Omega Panamá, we
13 think that that is not a reliable position at all.

14 Now, we are in Slide 11, and what we can see
15 here is that to establish the pie of revenue for which
16 Omega Panamá could bid, they look at the public
17 spending on capital projects by the Government of
18 Panamá--right?--and what you see, what they assume is
19 that, going forward, starting in 2015 and forever
20 more, that would be 8.5 percent of GDP. And they say
21 that's the average of the last four years--sorry, last
22 five years prior to the valuation date.

1 The first thing a hypothetical buyer would do
2 is look at the history, and then you realize that
3 that's much higher than historically. You see
4 historically it had been under 5 percent. It is true,
5 the last five years were over 8.5 percent, but would
6 that be sustainable? And I'm sure we all have heard
7 the word "boom" several times this week, and this is
8 the boom that you see. That's what the boom looks
9 like.

10 And if you separate that by different
11 Administrations, you hear in the Martinelli
12 Administration spending went through the roof, much
13 higher than the prior four administrations. What
14 Compass Lexecon says is that this high level of the
15 Martinelli Administration, the 8.5 percent, would
16 continue for infinity, forever and ever more. We say,
17 is that reasonable?

18 So, what we do is we look at the
19 contemporaneous expectations as of 2014. Mr. Varela,
20 when he was the presidential candidate--and you can
21 see the date small here in Slide 13--he said that, as
22 that's January 2014, he said the new Government will

1 be obligated to have fiscal discipline. We need to
2 prioritize responsible social spending. So, what he's
3 announcing is, is going to have to come down, and this
4 is in the context that public--that sector had
5 increased by 66 percent during the Martinelli
6 Administration. That's something a hypothetical buyer
7 would look.

8 And that is not only a presidential candidate
9 saying that. In Slide 13, we show that Mr. Moreira,
10 who was the President of the National Association of
11 Economists of Panamá, a little bit later in April
12 2014, says the same thing, said the new Government,
13 whoever it will be, will be obligated to fiscal
14 discipline. And he says that you will need to have
15 the revenues in line with the debt, with the expenses.
16 You cannot spend more than what you are receiving in
17 revenues.

18 And, in fact, then there is the election, and
19 then the Government is to issue, by law, a new
20 strategic plan for the whole administration, meaning
21 for five years. You can see here in the center, that
22 is in December 2014, the new strategic plan is

1 announced. And in fact, now President Varela delivers
2 on what Candidate Varela had said. And if you look in
3 this document, a hypothetical buyer would have
4 projected public spending by the public sector in line
5 with the blue line, that's what we assume for this
6 year were to be done.

7 Compass Lexecon continues assuming a growth
8 according to its red lines, and that's until forever.
9 So, we think it's a major flaw. They are making a pie
10 that is too big. The pie would not be that big, and
11 anyone trying to consider buying Omega Panamá in 2014
12 would know that that pie will not be that big.

13 Now, the next step is a slice of the pie.
14 Once you set the pie, you need to know what the slice
15 of the pie that Omega Panamá may have been able to
16 win. And you know the definition of the World Bank
17 Guidelines. The whole point is about you need a track
18 record that is sufficient to be able to forecast the
19 future, and now it's important point--with reasonable
20 certainty. DCF is very easy to do. Just put numbers
21 on Excel spreadsheet, and it will spit out a result.
22 Anyone can do DCF. But is it reasonably certain?

1 That's the key point.

2 And our conclusion is no. You cannot do a
3 reasonable certainty conclusion about the success of
4 Omega Panamá. Why? Because you can't have here the
5 results, and I don't think anything of this is in
6 dispute.

7 In 2010, they bid for 14 contracts. They won
8 none. In 2011, then they go out--they bid for much
9 more, and they win 15 percent in dollar terms. Then
10 the next year, if you look at the graph, yeah,
11 100 percent success but that's only on three
12 contracts. And the next year they fall again and they
13 only win 3 percent of what they had bid on. That's
14 [REDACTED]. That's one of the municipal markets.

15 And in 2014, they win nothing. And today
16 Mr. Lopez Zadicoff was saying, well, 2014 was a
17 transition and there was maybe less spending. Maybe
18 there was some less spending but the Country still
19 needs to spend money. He doesn't provide any analysis
20 that the spending in Panamá fell to zero. There
21 continues to be spending because public works need to
22 be done, need to be awarded, and the Country cannot

1 grind to a halt because there's an election.

2 But the fact is that if you give this slide
3 to a hypothetical buyer, what will the hypothetical
4 buyer say? Do you project 100 percent as in 2012
5 going forward or 0 percent? Or you say, look, I have
6 no idea.

7 Compass Lexecon tells us that they are very
8 confident that going forward the success rate will be
9 25 percent; of every \$4 bid, they would win \$1.

10 Our position is we have no confidence
11 whatsoever that we can give to you without pure
12 speculation about what the future would look like.

13 And these other things that we also disagree
14 that have a smaller importance, just to mention--for
15 example, the profit margin, I already referred to it
16 in the presentation, that how can you estimate a
17 profit margin if all you have done is to complete one
18 project. That's not a sample. That is nothing you
19 could do. And there is some other errors.

20 Now, we feel very strongly that this is not a
21 case about Discount Rate. As you know, in many
22 international arbitrations, there is big debates about

1 calculating in the second decimal of the Discount Rate
2 because billions of dollars depend on that estimation
3 of the second decimal. We think a hypothetical buyer
4 would not even care whether the Discount Rate is
5 18 percent or 23 percent. We think that that is
6 probably the appropriate range, but the hypothetical
7 buyer would never get there. The hypothetical buyer
8 would say "I cannot just apply any Discount Rate to a
9 projection. That's purely speculation." How do you
10 know? The share of the pie is overestimated. The
11 slice of the pie does not have a track record to
12 project, so we believe that the buyer would not even
13 dare value this based on the DCF analysis.

14 In Slide 18, we just have the conclusion. If
15 we have to do a minimal number of corrections to the
16 Compass Lexecon valuation, you would get to something
17 de minimis in the order of \$1 million, but the main
18 point is we don't even think that the willing buyer
19 would be willing to buy Omega Panamá with or without
20 the Consortium because everything that Omega
21 Panamá--you could do it yourself. That's the main
22 point of our analysis of the future contracts.

1 THE WITNESS: (Mr. McCann) Good morning,
2 Members of the Tribunal. The second part of our
3 presentation will cover the major issues in relation
4 to the existing contracts' claim.

5 As Dr. Flores mentioned a few moments ago, as
6 of the valuation date, Omega Panamá had eight ongoing
7 projects, which were, on average, less than half
8 complete. The Claimants are requesting damages in
9 relation to the existing contracts, and the
10 calculation of those damages are based on three main
11 components.

12 The first component are the unpaid invoices.
13 These relate to invoices for work, which Omega Panamá
14 alleges that it completed prior to the Valuation Date,
15 for which it invoiced the Contracting Parties, but for
16 which it had not yet received payment. Compass
17 Lexecon values these invoices at roughly [REDACTED],
18 and it updates that value by carrying that value to
19 the Valuation Date using an interest rate that it
20 deems as applicable.

21 The second component are the expected future
22 profits on work not yet completed. So, for those

1 projects that were ongoing, Omega Panamá expects that
2 they were going to complete the work for those
3 projects and that they would have generated certain
4 profits. Compass Lexecon values those profits at a
5 little over [REDACTED], and it discounts that amount
6 from the future back-to-the-valuation date using the
7 Cost of Equity that it deems is appropriate.

8 The final amount actually offsets the first
9 two amounts. The advance payments relate to amounts
10 received by Omega Panamá prior to the Valuation Date.
11 Compass Lexecon thinks that it is applicable to
12 discount those amounts as though they were going to be
13 received in the future back to the Valuation Date,
14 even though they had actually been received prior to
15 the Valuation Date.

16 The total requested by Claimants before
17 applying any interest on past amounts or discounting
18 future amounts is around [REDACTED]. And after
19 applying discounting and interest, Compass Lexecon
20 values the existing contracts' claim at around
21 [REDACTED]. I&R assessment, that number should be
22 closer to [REDACTED].

1 There are three main reasons for the
2 difference in our assessment and Compass Lexecon's
3 assessment. The first deals with interest rate, which
4 Dr. Flores is going to take up in Section 3 of our
5 presentation. And I'll be addressing the following
6 two in the slides--in the following slides.

7 As I was explaining, the advance payments are
8 amounts received by Omega Panamá from the Contracting
9 Parties prior to the Valuation Date. Compass Lexecon
10 argues that because these amounts relate to work that
11 was to be done in the future, they should be
12 discounted as though they were going to be received in
13 the future. However, in our analysis, we acknowledge
14 that those amounts had actually been received as of
15 the Valuation Date.

16 Using the value of the advance payments as of
17 the Valuation Date reduces the amount requested by
18 Claimants by [REDACTED]. A reasonable way of making
19 sense of the existing contracts claim is to recognize
20 that the Claimant is stating that it has not yet
21 received amounts of [REDACTED] for work that it had
22 completed, but that it has received nearly [REDACTED]

1 for work that it hasn't yet done. So, a reasonable
2 first step in understanding the existing contracts
3 claim would be to look at the net between the
4 [REDACTED], at which point can you
5 look at the expected future profits, and then that
6 result is not complete without taking into
7 consideration certain amounts that are in question
8 that we present in the next slide.

9 As we noted in our Second Report, Compass
10 Lexecon's calculation assumes that Omega Panamá would
11 perform work relating to a power line that was part of
12 the Kuna Yala Project. However, we've seen evidence,
13 contemporaneous evidence as of the Valuation Date,
14 that, in fact, that work had not been awarded to Omega
15 Panamá. So, it does not make sense to include that
16 work in the claim for the existing contracts. If you
17 remove that work, that reduces the amount claimed by
18 the Claimants by about [REDACTED].

19 We also recognize that there were four
20 addenda for work which did not have the endorsement of
21 the Panamanian comptroller, and we've been instructed
22 to assume that, without the endorsement of the

1 Panamanian comptroller, that work should not be
2 considered as part of the damages calculation.
3 Removing the amounts in relation to the work for those
4 unendorsed addenda, taking into consideration
5 offsetting costs would reduce the amount claimed by
6 the Claimants by [REDACTED], all else equal.

7 Finally, on the next slide, we summarize our
8 results as they are presented in our Second Report,
9 and we note that the amounts in this table may differ
10 slightly from the numbers presented in the last few
11 slides because these amounts take into account
12 interaction affects.

13 THE WITNESS: (Dr. Flores) Okay. And now in
14 the final minute of the presentation, I will deal with
15 the topic of interest. I feel bad that we are only
16 spending one minute on this because if you noticed
17 this morning, the interest portion of the current
18 claim of Claimants accounts for more than 50 percent
19 of what they are asking. They are asking for
20 [REDACTED], and interest alone is in excess of
21 [REDACTED]. So, half of what they are asking is not
22 existing claims, the [REDACTED], as of the Valuation

1 Date.

2 It is not the future work, which they value
3 about 40-something million as of the Valuation Date.
4 The largest part, the lion's share of this is
5 interest. How do they get to an interest claim that
6 is more than half of the total claim apart from moral
7 damages that neither Compass nor us has been asked to
8 quantify?

9 They get that because they compound the
10 valuation. So, they do it as of February--sorry, as
11 of December 2014, using the Cost of Equity of a
12 Panamanian company in the construction sector. We do
13 not agree that that is appropriate. From an economic
14 perspective, what you should use is something that
15 compensates the Claimants for the passing of time
16 between the Valuation Date and the date on which
17 payment is made. There's a famous paper by Fisher and
18 Romaine that addresses with this issue, and it says
19 you need to compensate for the fact that the process
20 of justice takes time. We think that the commercially
21 reasonable rate is the short-term U.S. Treasury Bill,
22 which compensates for the time value of money.

1 The WACC is not an appropriate rate--or the
2 WACC, meaning weighted average cost of capital. Why?
3 Because that rate incorporates ex ante risks, risks
4 that an investor will require when risking its money
5 for a future venture that may go better or worse than
6 expected.

7 For example, if you invest in the Panamanian
8 construction sector, you may have cost overruns, or
9 you may have the Government deciding that the boom
10 times have ended, and you have to spend less; or that
11 you may not be successful in your bids because there
12 is a lot of competition from companies coming from
13 other countries. There is any number of reasons that
14 any projection that you make looking forward a
15 priority may not fulfill. So, that's why you want
16 remuneration for taking that risk. But if you were to
17 decide that there is an amount payable to the
18 Claimants, once you decide that that amount is
19 X dollars, that X dollars is fixed. And it doesn't
20 depend on how many competitors there are in Panamá.
21 So, all business risk is eliminated once you set the
22 amount of the Award at X dollars.

1 And that's why you cannot award damages,
2 then, assuming the Cost of Capital that is enumerating
3 four business risks. This has been widely discussed
4 in the literature. You can have here Fisher and
5 Romaine, Beharry, Kantor, Dolgoff. They make exactly
6 the point that I just addressed.

7 And then we finish here with two quotations,
8 that two Tribunals that capture exactly this economic
9 meaning; right. I like this wording that one Tribunal
10 had that said: "One cannot know what the Claimant
11 would have done had it been paid an amount of money as
12 of the Valuation Date. It may have made a
13 spectacularly good or disastrously bad decisions with
14 the investment of such a sum."

15 And now, that's what you would do, and to
16 that you would apply the Cost of Capital. But the
17 fact is that you have to realize that there is no
18 business risk in an award, as the Tribunal in the
19 Burlington Case said.

20 So, with this, we conclude this presentation.
21 Thanking you for your time.

22 PRESIDENT SHORE: Thank you, Dr. Flores,

1 Mr. McCann.

2 So, let's have an hour for lunch break, and
3 then we will continue with cross-examination,
4 Ms. Gorsline. Both of you know the drill: Don't
5 speak to anyone about the case, and I would say don't
6 speak to each other either.

7 (Whereupon, at 12:24 p.m., the Hearing was
8 adjourned until 1:25 p.m., the same day.)

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AFTERNOON SESSION

PRESIDENT SHORE: Back on the record.

Ms. Gorsline?

MS. GORSLINE: Thank you, Mr. President.

Mr. Hines will be conducting the examination today.

PRESIDENT SHORE: Mr. Hines, good afternoon.

MR. HINES: Good afternoon, Mr. President.
Thank you, Members of the Tribunal.

CROSS-EXAMINATION

BY MR. HINES:

Q. Good afternoon, Dr. Flores.

A. Hello.

Q. As Ms. Gorsline said, my name is Paul Hines.
I'm counsel for the Claimants.

And I see, if I'm not mistaken, you have your Reports there in front of you on the table?

A. Yes, I do.

Q. Okay. Great. I'm going to be primarily referencing those, but from time to time I'll show you other documents, and my colleague Ms. Gharibian is behind you. She will help guide you to those.

1 So, you've already confirmed that you
2 submitted two Reports in this Arbitration; correct?

3 A. Yes.

4 Q. The First was dated the 7th of January 2019?

5 A. Yes.

6 Q. And the Second was dated the 15th of
7 November 2019?

8 A. Correct.

9 Q. And I note from those Reports--I understand
10 that you were assisted in the preparation of them by
11 Quadrant Economics staff, including, presumably,
12 Mr. McCann, from whom we just heard?

13 A. Yes.

14 Q. But they were acting under your supervision;
15 correct?

16 A. In the First Report, yes. In the Second
17 Report, Mr. McCann was not under my supervision. We
18 were just equals.

19 Q. Okay. But as to both Reports, you ensured
20 that everything in them accurately reflected your
21 personal opinions; correct?

22 A. Yes.

1 Q. So, you are prepared and can testify to all
2 aspects of both Reports?

3 A. To the best of my knowledge and recollection,
4 yes.

5 Q. Certainly. Thank you.

6 I'd like to start by going over your
7 curriculum vitae a bit, and that's an exhibit you
8 submitted designated QE-0121.

9 Okay. Do you have that there?

10 A. Yes.

11 Q. Okay. Great. I see this is dated
12 November 2019; correct?

13 A. Yes, in the bottom left corner.

14 Q. Does this still, however, accurately reflect
15 your education, experience, and expertise?

16 A. Yes. There may be a few additional
17 testifying experiences between November of 2019 and
18 today that are not included here, but that would be
19 the only change.

20 Q. Okay. So, looking at your education on
21 Page 2, I note that you got a B.A. in economics from
22 the University of Barcelona?

1 A. Correct.

2 Q. And you got an M.A. in political economy from
3 Boston University?

4 A. Yes.

5 Q. Followed by a Ph.D. in economics from Boston
6 University?

7 A. Yes.

8 Q. So, it would be fair to say, then, that your
9 educational background is in economics?

10 A. Yes.

11 Q. Okay. And professionally, it looks like you
12 started out--some of this was likely during, maybe,
13 your master's or doctoral program, but you started out
14 teaching in the academic system, first at the
15 University of Barcelona?

16 A. Yes.

17 Q. And then at Boston University?

18 A. Correct.

19 Q. And then at Skidmore?

20 A. Correct.

21 Q. And you were teaching economics at those
22 universities?

1 A. Economics. I also did some management
2 classes, and I did some accounting classes also.

3 Q. Okay. And then after that, you went to Econ
4 One Research where you held several positions until, I
5 understand, you founded Quadrant Economics in 2018;
6 correct?

7 A. Correct.

8 Q. And at Econ One and at Quadrant, your role
9 has been that of a consulting economist?

10 A. I would say as an economist, yes.

11 Q. Yes. Okay.

12 So, then it seems fair to conclude, based on
13 this, that you're not a lawyer?

14 A. Correct. I don't have a legal degree.

15 Q. Certainly you're not a Panamanian lawyer?

16 A. Correct.

17 Q. And you don't hold yourself out as being an
18 expert in international law, do you?

19 A. Correct.

20 Q. You also don't hold yourself out as having
21 any particular experience or expertise in Government
22 procurement law or regulations, do you?

1 A. You mean formal training? No.

2 Q. Or experiential training?

3 A. Well, experience, yes, because a lot of my
4 work involves bidding for contracts with States.

5 Q. So, that, then, would constitute you having
6 expertise in Government procurement law and
7 regulations?

8 A. Not law as in having studied the law, but I
9 think you said something like experiential.

10 Q. Sure.

11 A. Yes. So, I have had the experience of having
12 to participate in many public tenders.

13 Q. Fair enough. You've never worked as an
14 accountant; correct?

15 A. Actually, no, that's not true. One of my
16 various jobs was to be the accountant for a hotel in
17 my hometown.

18 Q. Okay. I just note that didn't make it to
19 your CV here. Okay.

20 So, you worked as an accountant for your
21 hotel. Are you a CPA?

22 A. No, I'm not a CPA.

1 Q. Okay. And you did not list--you didn't
2 represent here on your CV that you're an expert in
3 accounting, did you?

4 A. No, but as I told you, I have taught classes
5 in accounting. Part of my undergraduate degree in
6 Spain was very heavy on accounting, so I do hold
7 myself as having sufficient knowledge and expertise in
8 accounting.

9 Q. Okay. But the only actual experience as an
10 accountant you've had was in a hotel in Spain?

11 A. If you want actual full-time, yes. But, for
12 example, now I'm very involved in the accounts of
13 Quadrant Economics and, for example, right now you
14 would think I'm going to relax this weekend and not
15 have to think about anything; well, I have to deal
16 with the closing of the 2019 annual accounts of
17 Quadrant Economics.

18 Q. Sure. Understood.

19 (Comments off microphone.)

20 Q. It would also be fair to say that you're not
21 an engineer; right?

22 A. Correct, I am not.

1 Q. And you've never been employed by a
2 construction company?

3 A. Correct.

4 Q. So, you've never, for example, prepared a bid
5 for a construction contract?

6 A. Correct.

7 Q. And on the flip side, you've never, on behalf
8 of the owner, evaluated bids to select the winning
9 contractor?

10 A. As a full-time job, no, but I have evaluated
11 bids submitted by contractors at that same hotel I was
12 talking to you about.

13 Q. Oh, okay. At the hotel.

14 When did you work at the hotel?

15 A. That was during my years of undergraduate, so
16 that was between 1990 and 1994.

17 Q. Okay. So, I note that, in reviewing this CV,
18 you don't actually claim to have any substantial
19 experience working on construction matters or in the
20 construction sector in your role as a consulting
21 Expert, either?

22 A. I mean, I'm primarily an economist who does

1 valuations, and if--so, there's a specialty within
2 consulting which is construction delays and
3 construction overrides, and so that is not a specialty
4 that I have pursued, but I do have--I have had some
5 cases that involve construction issues.

6 Q. Okay. So, let's first take a look at the
7 second paragraph on Page 1 of your CV, if we could.

8 A. Yes.

9 Q. And if we look at the third sentence, it
10 begins: "His research and consulting activities." It
11 goes on and it describes a variety of industries, and
12 it notes agriculture, chemicals; it notes construction
13 materials, which I'll return to in a minute;
14 electricity generation and distribution, finance,
15 banking, minerals and mining, oil and gas,
16 pharmaceuticals, real estate, semiconductors,
17 telecommunications, and transportation.

18 I note that not included there is
19 construction.

20 A. Well, because I would put construction at a
21 different level, because this was talking mostly about
22 industries. For example, some of the cases I have

1 participated in in the oil and gas industry involved
2 construction disputes. So--I don't know if I'm making
3 sense.

4 Q. No, no. What you say makes sense, but--so,
5 let's take a look at how you describe your testimonial
6 experience. You've listed your testimonial experience
7 here as well as your consulting experience, Pages 3
8 through Page 11, and I note that for each of those you
9 have a line at the bottom that describes the basic
10 nature, industry, topic of that consulting or
11 testimonial experience; correct?

12 A. Yes.

13 Q. And if we look at that--so, on Page 9, there
14 is a reference up at the top to this case, Grupo
15 Cementos de Chihuahua, and in the description you say
16 "construction materials, cement."

17 I'm guessing that is, presumably, what was
18 referenced in your paragraph that we just looked at
19 when it referenced construction materials?

20 A. That's one of them. I think I recall there's
21 another one having to do with construction materials.

22 Q. Okay. Well, I would note that I--perhaps I

1 missed it. I didn't see it here, because when I went
2 through and looked at this, apart from the Omega Case,
3 which is here, the only other time that I see
4 construction mentioned is in regards to the
5 ATCO Pipelines Case on Page 3.

6 And if we look there, it describes the
7 subject matter as construction pipelines, gas, and
8 electricity; right?

9 A. Yes. The ATCO Case, that says "construction
10 pipelines, gas, and electricity."

11 Q. Okay. But is your representation here that
12 there are other engagements that you've had that have
13 involved construction that either are not listed here
14 or are not described here as involving the
15 construction industry or construction?

16 A. Yes. I would say construction issues.

17 Q. Construction issues?

18 A. Yes.

19 Q. And can you elaborate? What do you mean by
20 that?

21 A. For example, to give you an example--there's
22 a case here, for example, the Koch--on Page 8, third

1 from the bottom.

2 Q. Okay.

3 A. There's a case that says "Koch Minerals,
4 et al., against Venezuela." That's a case that
5 involved a fertilizer plant in Venezuela, and a big
6 issue in that case was why had that plant cost so much
7 and why it hadn't been built on time. So, part of the
8 analysis there involved analyzing construction issues.

9 Q. Okay.

10 A. So, it was not about the construction
11 materials, like the other case we were talking about,
12 but this was a case in which I had to study issues
13 relating to construction. And there are other cases
14 like that. If you want, I can go through each one of
15 them.

16 Q. But to be clear, in that case, were you
17 yourself opining on, for example, why it took so long
18 for the project to be built or why it was over budget?

19 A. Yes. Umm-hmm.

20 Q. As an economist?

21 A. Yes. Umm-hmm.

22 Q. Okay. Fair enough.

1 So, we're going to discuss some aspects of
2 your First Report in a moment, but I'd like to just
3 start by discussing the preparation of it, so if you'd
4 turn to your First Report on Page 7.

5 So, I note there in Paragraph 4 you list
6 several instructions you were given by counsel for
7 Respondent?

8 A. Yes.

9 Q. And the first was to analyze and comment on
10 the economic rationale and the methodology employed by
11 Compass Lexecon to value Claimants' interest in Omega
12 Panamá in relation to potential new contracts,
13 including the specific assumptions Compass Lexecon
14 makes regarding the DCF analysis it uses to arrive at
15 such value?

16 A. Yes.

17 Q. And the next one was to analyze and comment
18 on the methodology employed by Compass Lexecon with
19 respect to the existing contracts; correct?

20 A. You skipped a few words, but yes.

21 Q. I'm just summarizing in the interest of time.

22 A. Yes.

1 Q. And then the third--again, just to
2 summarize--is to comment on the appropriate rate of
3 interest if any damages were awarded?

4 A. Correct.

5 Q. Correct. Okay.

6 So, obviously, then, to prepare your Report,
7 you had to analyze the Compass Lexecon Report and
8 supporting documentation; correct?

9 A. Yes.

10 Q. Okay. And with respect specifically to--

11 A. Among other things.

12 Q. Yes. Of course. Among other things. But,
13 at the very least, that.

14 So, with respect to the second instruction,
15 you set forth your analysis of the methodology
16 employed by Compass Lexecon as to the existing
17 contracts' damages, beginning on Page 50 with
18 Paragraph 97 in your Report?

19 A. Yes.

20 Q. I note there, in that paragraph towards the
21 bottom of the page, you say that Compass Lexecon was
22 instructed by counsel for Claimants to rely on the

1 McKinnon Report to compute damages relating to the
2 existing contracts claim; correct?

3 A. Yes.

4 Q. And now, that refers to the First Expert
5 Report of Greg McKinnon; correct?

6 A. Yes.

7 Q. Okay. And if you look down, there's a
8 footnote there, 170, and in that you refer us to
9 Annex B below for comments relating to McKinnon's
10 analysis and the documents supporting it?

11 A. Yes.

12 Q. We don't have to turn there, but Annex B does
13 provide comments and observations on the documents
14 that Mr. McKinnon relies on?

15 A. Yes.

16 Q. So, in addition to reviewing Compass Lexecon
17 and the documents they relied on, you necessarily also
18 analyzed Mr. McKinnon's Report and the supporting
19 documentation?

20 A. Yes.

21 Q. Okay. And I note that both Mr. McKinnon's
22 First Report and the First Compass Lexecon Report are

1 dated 25 June 2018; is that correct?

2 A. I don't recall, but--

3 Q. They are in your binder. We can take a look
4 at them, if you want.

5 A. No, I think it sounds about right. I don't
6 recall the day of the month.

7 Q. Sure. And do you recall--just roughly,
8 approximately--when you first received those Reports?
9 Would it have been around the same time, late June or
10 early July?

11 A. Around that time, yes.

12 Q. Okay. And you reviewed them to prepare your
13 First Report, which was then submitted on the 7th of
14 January 2019?

15 A. Yeah. Now that you say--yeah. I will need
16 to rephrase, because I do not remember having spent,
17 like, six months reviewing all of these. So, I'm not
18 sure if I got everything on that same date or if it
19 was at a later date.

20 Q. Okay.

21 A. Because my recollection is I did not spend,
22 like, almost seven months straight working on this.

1 Q. Okay. Do you have any idea how long you did
2 spend?

3 A. I mean, it was several months, but--so,
4 again, I don't--before, I was very quick to tell you I
5 received it a few days after it was submitted.

6 Q. Sure.

7 A. Now, I don't recall. My recollection is that
8 we did not spend that much time, like half a year,
9 working on our First Report.

10 Q. Understood. Okay. Well, let's--I want to
11 look now at the Opinions with respect to the existing
12 Contracts that you formed during that time and
13 recorded in your First Report.

14 So, let's go to your First Report and to
15 Paragraph 97 again. You may still be there.

16 A. Yes.

17 Q. Okay. So, this is where you begin addressing
18 the existing contracts claim. And, as we just
19 discussed, in valuing Claimants' damages from the
20 existing contracts claim, Compass Lexecon relies,
21 effectively as the inputs for their analysis, on the
22 conclusions from Mr. McKinnon's First Expert Report;

1 correct?

2 A. In part. They also add their own economic
3 expertise to then arrive at a quantification of the
4 damage.

5 Q. Sure. Certainly. So, they add their own
6 economic analysis on top of it, but the primary source
7 of the inputs, the data, the factual background that
8 they rely on, are the conclusions that Mr. McKinnon
9 reaches in his First Report?

10 A. I do not recall exactly, because--so, there
11 were documents in the record. I don't remember the
12 extent to which Compass Lexecon looked at the
13 documents in the record or only took what Mr. McKinnon
14 said.

15 Q. Okay. But you do agree that they do rely on
16 Mr. McKinnon's Report, and they base computations of
17 damages on his conclusions, along with their economic
18 analysis?

19 A. Yes. They do that.

20 Q. Okay. And Mr. McKinnon--just by way of
21 background, you would have seen from his Report that
22 he's an accountant; correct?

1 A. Yes.

2 Q. And that he holds himself out as having
3 substantial experience specifically with accounting as
4 to construction projects; correct?

5 A. I don't recall the exact words that he uses
6 to describe himself, but it rings familiar.

7 Q. Okay. Fair enough.

8 So, Mr. McKinnon in his Report, he analyzes
9 the existing contracts and, you know, the documents
10 pertaining to them--pay requests, change orders,
11 et cetera--and he reaches a number of conclusions, for
12 example, regarding unpaid balances and expected
13 earnings; correct?

14 A. He does have those opinions, yes.

15 Q. And those opinions regarding, for example,
16 unpaid balances and expected earnings, those are
17 specifically part of the inputs that Compass Lexecon
18 relies upon in ultimately computing their view of the
19 damages flowing from the existing Contracts?

20 A. I think that's a fair characterization.

21 Q. Okay. Now, if we look at this Section 4 of
22 your Report--it runs on for a few pages here--I note

1 that you don't actually challenge any of
2 Mr. McKinnon's conclusions in this First Report
3 section here, do you?

4 A. Well, first, you said it goes for a few
5 pages. It is actually a brief section. You see it
6 goes Pages 50, 51, and 52.

7 Q. Right. So, about 2.5 pages?

8 A. Yes.

9 Q. Right.

10 A. I mean, the main thrust of here, I would
11 summarize it in Paragraph 97. It follows into
12 Page 51, and my main point is not that I challenge his
13 calculations, Mr. McKinnon's calculations, but my
14 observation was that he uses, or he used in his First
15 Report, incomplete information on Omega Panamá's
16 operation, and then that he supplemented that with
17 certain assumptions.

18 I'm reading. You see after where it says--

19 Q. Yes. No problem.

20 A. And then I say: "I may update my assessment
21 of the existing contracts claim as more information
22 regarding Omega Panamá's operations becomes

1 available."

2 Q. Right.

3 A. So, I did not so much challenge his
4 calculations as observe that the calculations were
5 based not so much on hard data, but on assumptions.

6 Q. Okay. Fair enough. But let's look at what
7 you do do in these 2.5 pages.

8 You--what you do there is you offer some
9 criticisms of the methodology Compass Lexecon applied
10 to Mr. McKinnon's figures, his conclusions, to compute
11 the damages that Compass Lexecon says is owed;
12 correct?

13 A. Yes.

14 Q. Okay. So, I'm not going to ask you just yet
15 to comment on any particular details of any of these
16 individual criticisms. But just to sort of set the
17 framework, would it be fair to say that, in sum, you
18 take issue with three basic aspects of their analysis?

19 A. Of whose?

20 (Overlapping speakers.)

21 Q. Of Compass Lexecon's analysis.

22 A. It depends how you count them. If you can

1 describe to me what the three are, I can agree or
2 disagree.

3 Q. Certainly. So, the first--and this is
4 Section A--is you take issue with Compass Lexecon's
5 discounting of the value of advance payments; correct?

6 A. That's correct. I take issue with that.

7 Q. And then the second--this is Section B on the
8 next page--you take issue with the particular Discount
9 Rate that Compass Lexecon applied to expected future
10 cash flows?

11 A. Correct.

12 Q. And then the final, this is in Section C on
13 the next page, where the section ends, is that you
14 take issue with the Cost of Equity that they use as an
15 interest rate to calculate the Present Value of unpaid
16 progress payments?

17 A. Not so much, no. That's not what I said.
18 So, they use the Cost of Equity as an interest rate.
19 That's my disagreement.

20 Q. Yes.

21 A. I think on amounts owed that are not subject
22 to risk, and there is just a fixed-dollar amount, you

1 should not apply the Cost of Equity as an interest
2 rate.

3 Q. Right. Yes. And I recall you talking about
4 that during your Direct Presentation.

5 So, those are your three basic buckets or
6 categories of criticisms, and I note that for each of
7 those, you performed some calculations based on those
8 criticisms to arrive at an amount by which you say the
9 damages should be reduced; is that correct?

10 A. Where do I say that they should be reduced?

11 Q. So, for example, we can look first at
12 Paragraph 99.

13 A. Yes.

14 Q. At the end, you say: "Correcting this error
15 alone reduces Compass Lexecon's assessment of damages
16 relating to the Existing Contracts by [REDACTED] to
17 [REDACTED]."

18 A. Yes.

19 Q. And if we look at Paragraph 100, at the end
20 there, you suggest some additional adjustments. In
21 fact, you say that your adjustments would reduce
22 Compass Lexecon's calculation by between [REDACTED] and

1 [REDACTED]; correct?

2 A. No. I don't recall whether this adjustment
3 is what we call everything else being constant or
4 whether it already incorporates the adjustment
5 discussed in Section A. I need to review.

6 Yes. Okay. So, in Paragraph 100, there is a
7 sentence that says "taking into account the correction
8 to advances"--and that's the one discussed in Section

9 A. So, yes, that's a cumulative change--

10 Q. Correct. Yes.

11 A. --on top of the [REDACTED], there would be
12 an additional, within [REDACTED].

13 Q. Correct. And then if you look at
14 Paragraph 101, there at the end, you say by
15 inappropriately applying annual interest rate--

16 (Interruption.)

17 Q. Okay. Apologies.

18 You say that: "By inappropriately applying
19 annual interest of 11.65 percent to the unpaid
20 progress billings, Compass Lexecon improperly adds
21 [REDACTED] in interest"?

22 A. Yes.

1 Q. Okay. And so, if you take those together,
2 that results in an adjustment downwards of about
3 [REDACTED]; is that correct?

4 A. That sounds about right.

5 Q. Yeah. Okay.

6 A. I don't know the exact number, but it sounds
7 about right.

8 Q. Okay. And you're aware that Compass Lexecon
9 computed the existing contract damages at being
10 approximately 8.69 million?

11 A. Sounds about right.

12 Q. Okay. So, then we would adjust that down,
13 through your calculations, and it would be reduced to
14 approximately 7 million, a little over.

15 A. In the First Report, yes.

16 Q. Yeah. Okay. But as I think you're
17 suggesting, by the time of your Second Report, you
18 actually adopt some additional conclusions with
19 respect to the existing contracts; correct?

20 A. Yes.

21 Q. Okay. So, let's take a look at that. It
22 begins, I believe, on Page 72 of your Second Report.

1 So, the introduction is on Page 71, but the individual
2 sections begin on Page 72. And you begin--from
3 Page 72 to about 76, you start by, again, addressing
4 the three, sort of, generalized areas or buckets of
5 criticism that we just discussed that were in your
6 First Report; correct?

7 A. You said this is through page--

8 Q. 72. It looks like that goes through about
9 the top of Page 76 before you get to the summary.

10 A. Yeah. The summary and then the summaries on
11 Page 77, yes.

12 Q. Yeah. Yes.

13 And there you are addressing those same three
14 areas of criticism that we just talked about with
15 respect to the First Report; is that correct?

16 A. Yes.

17 Q. And would it be fair to say that your
18 opinions on those three issues are consistent with
19 those expressed in your First Report?

20 A. Yes.

21 Q. Okay. So now, though, if we turn to Page 78,
22 we look at subsection (c) and then this also continues

1 in subsection (d) on Page 79. Here, you've now added
2 two additional criticisms that you say require
3 adjustment, further adjustments down to the amount
4 these damages; correct?

5 A. Yes. To be clear, one is my own independent
6 opinion reading the documents. The other one is an
7 instruction from counsel for Panamá.

8 Q. Okay. So, one of them, you say, is not based
9 on an instruction from counsel.

10 A. No. I would--based on the proper way to
11 quantify damages, I would say that an adjustment has
12 to be done.

13 Q. Okay. So, let's look first with respect to
14 the first one. And so, if we look at subsection(c),
15 if I'm looking at Page 167--on 179 here, and beginning
16 on the second line, you note that you were--"You have
17 been instructed by counsel for Respondent to consider
18 the above-mentioned contract addenda as not valid for
19 inclusion in the calculation of alleged damages in
20 this Arbitration."

21 Correct?

22 A. Yes.

1 Q. So, that's--this is not based on your Expert
2 Opinion as an economist, this is essentially a factual
3 or legal instruction that you were given by counsel to
4 assume?

5 A. Correct.

6 Q. Okay.

7 PRESIDENT SHORE: I think the Transcript says
8 page. It is Paragraph 167.

9 MR. HINES: Oh. My apologies. Yes,
10 Paragraph 167. Thank you, Mr. President.

11 BY MR. HINES:

12 Q. And now if we look, then, at Paragraph 172,
13 which begins on Page 80 and stretches on to Page 81,
14 you start by saying: "We understand from counsel for
15 Respondent that Addendum Number 4 was meant to replace
16 Addendum Number 3."

17 So, here again, this is a factual assumption
18 that you've been instructed on from counsel; correct?

19 A. Yes.

20 Q. Okay. So, that's the basis, then, for the
21 conclusion that you reach regarding the further
22 downward adjustment, is that factual assumption that

1 you've been instructed on?

2 A. No, it's not. I mean, I wanted to reflect my
3 understanding that one amendment is supposed to
4 replace. So, Amendment Number 4 is supposed to
5 replace Amendment Number 3. But that's not the end of
6 it because I also reviewed a document. Let me see if
7 I can find it.

8 Yeah. It's in Footnote 264. I mention
9 Document QE-106. And that's a document from very late
10 in 2014. I think it was December 20-something in
11 2014, in which it is clear from there that the
12 Ministry representatives have not made any decision to
13 give additional work to Omega Panamá. And based on
14 that, from a valuation perspective, one cannot claim
15 damages for something that has not been awarded to it.
16 So, that was my basis for excluding and making that
17 adjustment.

18 Q. Okay. So, did you a factual assessment of
19 this document. Let me ask you, did you have that
20 document at the time of the First Report?

21 A. No.

22 Q. You did not. Okay.

1 So, you reviewed this document, and on the
2 basis of your expertise, you considered that it
3 demonstrated that Addendum Number 3 was not intended
4 to be implemented?

5 A. No. It is not about that. So, whether
6 Amendment Number 3 superseded by Amendment Number 4,
7 and so that's an understanding.

8 Q. Okay.

9 A. But what I see from the document--and that is
10 not just economic expertise. It's a plain reading of
11 the document. As of December 20-something, 2014, a
12 decision to give some power line work to Omega Panamá
13 had not been done, and there's a line in that
14 document, Exhibit QE-106, that says we have three
15 options. We have been talking to a company that is
16 not Omega Panamá. Let's see if they want to do it,
17 that's Number 1. Number 2, we could give it to Omega
18 Panamá, and, Number 3, we could open a public tender
19 process and then see what offers we get.

20 And that's the words that state what the
21 document says as of very late 2014. And so, then
22 neither Compass Lexecon nor I can assume that that

1 would 100 percent sure have gone to Omega Panamá.
2 There is no document in the record that shows that
3 Omega Panamá had won the right to do that power line
4 work.

5 Q. Okay. So, to be clear, though, your
6 conclusions here rest on that document and your
7 assumed fact that there has been no commitment for
8 that work to go to Omega Panamá?

9 A. I'm sorry. I missed the end. There has been
10 no what? No commitment?

11 Q. There has been no commitment that that power
12 line work would go to Omega Panamá?

13 A. That's correct. As of the Valuation Date, no
14 decision had been made regarding that.

15 Q. Okay. But so, would it be fair to say that,
16 if the Tribunal issues factual or legal findings that
17 are at odds with either your instruction in Section C
18 or your assessment of the evidence underlying
19 Assessment D, that your opinions would revert back to
20 that which is set forth in your First Report?

21 A. As always, if the Tribunals do not agree with
22 the Damages Experts' calculations, then the

1 calculations do not stand.

2 Q. Right. But I'm not so much asking what
3 happens if the Tribunal disagrees with your
4 calculations. What I'm specifically asking is, if the
5 Tribunal finds as to Section C that the instruction
6 you received from counsel, that on either a factual or
7 a legal basis they disagree that that's an appropriate
8 assumption, then this would fall out of your Report;
9 similarly, with Section D, if they find that your
10 factual construction of the evidence is incorrect,
11 this would fall out, and we would essentially be left
12 with the analysis you set forth your First Report?

13 A. I do not agree with the word "similar." I
14 think they are separate. For the adjustment I
15 proposed in Section C--what's the word?--it is based
16 purely on instruction, legal instruction. So, I do
17 not have any Expert Opinion or whatever that should be
18 included or not--otherwise instructed that it should
19 be--the adjustment should be made; right?

20 For Part D, the adjustment in Part D, that is
21 my own personal opinion. Of course, if the Tribunal
22 reads Document QE-106 and they do not read it the same

1 way I read it, then the result would be different.

2 Q. Right. And the result, then, if that
3 happens, would be that your opinion would then
4 effectively revert back to that set forth in your
5 First Report; is that correct?

6 A. Correct.

7 Q. Okay. Great. Thank you.

8 So, I want to shift gears now, and I want to
9 talk about the future--what has been called the Future
10 Contracts claim, the valuation of the value of
11 Claimants' investment apart from the existing
12 contracts.

13 Now, I note that in Paragraph 8(i) of your
14 First Report--we can turn back there. And that is on
15 Page 8. There, you state that: "With regard to the
16 Potential New Contracts Claim"--and this is right up
17 at the top of the paragraph--"the value of Claimants'
18 interest in Omega Panamá is zero."

19 Did I read that correctly?

20 A. Yes.

21 Q. Okay. And then a few sentences later in that
22 same paragraph, you go on to opine that--this, I

1 believe, is part of the basis for the statement we
2 just read--"Omega Panamá had no significant tangible
3 or intangible assets that add value to the company";
4 correct?

5 A. You didn't finish the sentence, but the part
6 that you read is correct.

7 Q. Sure. So, we can finish it: "add value to
8 the company such that a Willing Buyer could be found"?

9 A. Correct.

10 Q. Correct. Okay.

11 And if we turn, then, to your Second Report,
12 you make essentially the same points in Paragraph 8
13 also to that Report. And I'm looking at Page 10 here,
14 Paragraph 8 starts at the bottom.

15 Are you there?

16 A. Yes.

17 Q. Okay. So here, again, you're stating your
18 opinion on the Potential New Contracts Claim. And you
19 state that--and this in the first line: "From an
20 economic perspective, the Potential New Contracts
21 Claim should be dismissed"; correct?

22 A. Yes.

1 Q. And you go on to state: "No hypothetical
2 Willing Buyer would have paid to acquire Omega Panamá
3 because it did not possess any valuable tangible or
4 intangible assets."

5 Correct?

6 A. Yes.

7 Q. And then in that same paragraph but over on
8 the top of the next page where it continues, you state
9 that: "A fundamental conceptual flaw in Compass
10 Lexecon's valuation exercise is its conflation of
11 Omega Panamá with Omega Consortium."

12 Correct?

13 A. Yes.

14 Q. Now, I know this has been a topic of some
15 discussion today already as well as earlier in this
16 Hearing, but I want to spend a little bit of time
17 revisiting this. You read Claimants' Memorial, the
18 Opening Memorial dated 25 June 2018; correct?

19 A. Parts of it, not entirely.

20 Q. Okay. But we do know that you read at least
21 some substantial parts of it because you've cited in
22 footnotes throughout your two reports?

1 A. Yes.

2 Q. So, I'd like to turn to Claimants' Memorial,
3 to Paragraph 154 on Page 89. Let me know when you're
4 there, sir.

5 A. I'm there.

6 Q. Okay thanks, Dr. Flores.

7 PRESIDENT SHORE: Hang on. I'm not there.

8 MR. HINES: Okay. Sorry, Mr. President.

9 PRESIDENT SHORE: The page again.

10 MR. HINES: It's Page 89 and it's
11 Paragraph 154. It begins up towards the top of the
12 page.

13 PRESIDENT SHORE: Thank you.

14 BY MR. HINES:

15 Q. And I'm actually going to be looking down
16 towards the bottom of that paragraph. About four
17 lines from the bottom, it reads: "In the end, the
18 culmination of these actions destroyed not only Omega
19 Panamá, but both Claimants as well. A construction
20 company's goodwill, brand, and bonding ability is
21 essential to its success. Omega U.S. and Mr. Rivera
22 had invested their business goodwill into Panamá only

1 to see it ruined by Respondent's unwarranted,
2 unjustified, and unlawful acts."

3 Do you see that?

4 A. I see that.

5 Q. So, it would be fair to say that this is a
6 pretty clear statement of Claimants' view of how they
7 were impacted or damaged by the Measures, and that
8 that included more than just the loss of Omega Panamá,
9 but it also included the loss of their business
10 goodwill that they had invested into Panamá?

11 A. No. When I read this, to me, I understood
12 that this was the basis for Claimants' asking for
13 moral damages, which is something that neither Compass
14 Lexecon nor I and Quadrant have done. So, I did read
15 this statement, and I understand that that is
16 Claimants' position regarding destruction of
17 Omega U.S. and Mr. Rivera allegedly caused by Panamá,
18 and I understand that that's the basis for your claim
19 for moral damages, but that is something that we have
20 not analyzed from an economic perspective.

21 Q. Okay. Well, let's look a little bit more at
22 that. So, let's turn to Page 132, to Paragraph 216.

1 So, here, you can see that this is in a
2 section discussing the counterfactual but-for
3 situation; right? And this is under--if you flip back
4 a page, it is under a general section on "General
5 Approach to Calculating Damages." And Paragraph 216
6 begins by quoting Compass Lexecon to say that the
7 value of Claimants' interest in the Omega Consortium
8 stems from the value of its eight existing contracts
9 awarded prior to December 2014 and from its ability to
10 continue as a growing concern bidding and winning
11 further public service work contracts from
12 December 2014 on.

13 Accordingly, calculating the but-for
14 situation requires a two-part process.

15 And if you go over to the next page, the
16 second part of that process is that Compass Lexecon
17 applies a Fair Market Value approach to calculating
18 the value of Potential New Contracts in Panamá and,
19 thus, of Claimants' investment but for the
20 Government's unlawful conduct.

21 Do you see that?

22 A. You read it correctly.

1 Q. Okay. So, this, again, is telling you that
2 Claimants' view of the damages from their investments,
3 specifically these two heads of damages, the existing
4 contracts and the Fair Market Value of their lost
5 investment, relates to the value of the Potential New
6 Contracts that their investment would have obtained in
7 Panamá but for the Government's conduct; correct?

8 A. I mean, that is not exactly what this says,
9 this Paragraph 216.

10 Q. Okay.

11 A. So, it says the value of Claimants' interest
12 in the Omega Consortium has two parts; right? There
13 are eight existing contracts. Well, yeah, those eight
14 existing contracts were held by the Omega Consortium.
15 And then it says ability to keep going forward. And
16 then that cites to the Compass Lexecon Report. The
17 Compass Lexecon Report, for the ability to go forward,
18 it reads very clearly in their First Report, they do
19 refer to Omega Panamá.

20 Q. We'll get to that Report in just a moment.
21 But I do note that they are setting here their
22 approach to calculating the damages, the

1 counterfactual situation, they are saying that the
2 value of Claimants' interest in the Omega Consortium
3 stems not just from existing contracts but from the
4 Fair Market Value approach to the Potential New
5 Contracts that would be generated in Panamá. That's
6 what this paragraph says; right?

7 A. That's exactly--so, calculating the value of
8 Potential New Contracts in Panamá.

9 Q. Right.

10 A. That's what it says.

11 Q. Right. Under the topic sentence of the
12 paragraph, how you value the interest in the Omega
13 Consortium.

14 A. I mean, we are going in circles
15 here--right?--because the paragraph states what it
16 states.

17 Q. Okay. Fair enough.

18 A. I mean, it is the Claimants' Memorial. I
19 didn't write it, so it states what it states.

20 Q. Okay. So, let's turn to Compass Lexecon's
21 First Report then. And let's go, in particular,
22 first, to Paragraph 6.

1 Now, this section here is just actually
2 describing some of the information that they've
3 reviewed and relied on or examined in preparing their
4 Report. And down towards the bottom of the paragraph,
5 they state that some of the information that they
6 reviewed was information on public sector investment
7 and infrastructure projects during the period 2009 to
8 2014, as well as information on several tenders of
9 public sector works in Panamá during the period
10 2015-2016, which could have been potential sources of
11 business or targets for the Omega Consortium in the
12 absence of the Measures; correct?

13 A. You read it correctly.

14 Q. Okay. So, here, they are looking at
15 potential sources of business for the Omega Consortium
16 in absence of the Measures?

17 A. That's what they wrote.

18 Q. Yeah. Okay. So, let's turn to Paragraph 12.
19 And I note that you cited the first sentence of this
20 paragraph in your Opening Presentation, the first two
21 sentences. And I will agree that in the first
22 sentence it references Omega Panamá. It goes on,

1 though, to say that this valuation--so, this is how
2 they value it--corresponds to the Omega Consortium's
3 capacity to generate new contracts based on the
4 historical performance of the company, as well as on
5 the observed and expected evolution of public sector
6 investment in infrastructure in Panamá.

7 So, here, they are making a pretty clear
8 statement of how their valuation works. It
9 corresponds to the Omega Consortium's capacity to
10 generate new contracts; right?

11 A. I do not agree that it's pretty clear because
12 if you read the next sentence, it says: "In
13 particular, in absence of the Measures, Omega Panamá
14 would have:" and then it lists what Omega Panamá would
15 have done. And at the end of the day, if you flip the
16 page, Table 1 says: "Claimants' losses in Omega
17 Panamá."

18 So, at the end of the day, I go by tables.
19 And what Compass Lexecon did in the First Report is to
20 look at Claimants' losses in Omega Panamá. So, I took
21 that and I said, okay, well, let's look at the value
22 of Omega Panamá. Is Compass Lexecon right or not

1 right?

2 I thought there was a common understanding,
3 but you mentioned this morning about what it is that
4 Compass Lexecon and I were doing.

5 Q. So, you were here for Respondent's Opening
6 presentation, weren't you?

7 A. Yes, yes.

8 Q. You know that there were four slides whose
9 heading was "Compass Lexecon did not value Omega
10 Panamá"; right? That was--four slides of their
11 presentation made a pretty clear point that what
12 Compass Lexecon has valued here was not simply Omega
13 Panamá; correct?

14 A. Okay. So, I'll change it. I didn't learn it
15 this morning. I learned it on Monday morning.

16 Q. Okay. But you've reviewed all of these
17 reports, and you would agree that when they look at
18 the potential contracts that they are going to--that
19 are the source of the valuation, that they are looking
20 at what would be obtained by the Omega Consortium,
21 which includes with the goodwill of Omega U.S.
22 invested there in Panamá?

1 A. Can you point me in the Compass Lexecon
2 Report where do they talk about "goodwill"?

3 Q. Sure. Let me rephrase that to say the
4 "intangible assets."

5 A. No, but do they talk about goodwill in their
6 Reports.

7 Q. I would have to look, sir, and I'd rather
8 just move on for these purposes. They very well may,
9 but I don't think it's worth spending our time on
10 here.

11 A. Okay.

12 Q. So, let's look at--finally, just for one last
13 point because this, I think, gets to your moral
14 damages point. I'd like to turn to Page 30.

15 And if you're there--

16 A. Page what?

17 Q. Sorry. Page 30. So, here, this is under
18 their damages valuation methodology, principle of full
19 compensation. And they note at the beginning that:
20 "We've been instructed to provide our assessment of
21 the losses suffered by Claimants due to the Measures
22 undertaken by the Republic of Panamá, which first

1 interrupted the completion of eight public works
2 construction projects assigned to the Omega Consortium
3 and, ultimately, resulted in the indirect
4 expropriation without compensation of Claimants'
5 construction services in Panamá restricting their
6 ability to continue operating their business as a
7 going concern."

8 PRESIDENT SHORE: I think you left out one
9 word--construction services investment.

10 BY MR. HINES:

11 Q. Sorry. "Construction services investment."
12 Thank you, Mr. President.

13 It goes on to say: "In addition, Counsel
14 instructed to us assume that the Measures taken
15 against Omega Panamá and Claimants negatively affected
16 Omega U.S.' goodwill in Panamá" but then it goes on to
17 say, "and its reputation abroad, causing Omega U.S. to
18 lose its ability to secure financing for future
19 potential projects, as well as its ability to get new
20 projects in markets other than Panamá."

21 So, the final sentence--and I think this gets
22 to the point you were making regarding moral damages

1 says: "As a result of the Measures, Claimants also
2 suffered a loss for the value of investment
3 opportunities abroad, but we have been instructed not
4 to value these."

5 So, they are saying, as I read this, that
6 we've been instructed to value the loss of the
7 investment in Panamá, but we've been instructed not to
8 value the loss abroad. Would you say that that's an
9 accurate?

10 A. I don't know. At this point you should ask
11 Compass Lexecon what they intended to write here.

12 Q. Fair enough.

13 A. Because, I mean, apparently it is so full of
14 typos, and when they meant one word, they meant the
15 other. So, I'm not going to speak for what they
16 intended.

17 PRESIDENT SHORE: But you can say what you
18 understood this paragraph to be, if you can.

19 THE WITNESS: Yes. I mean, to me this means
20 that certainly that Compass Lexecon does not get into
21 the issue of moral damages. I understood that
22 clearly, and neither did we try to measure any moral

1 damages that may have happened.

2 BY MR. HINES:

3 Q. Okay. But you would agree that, throughout
4 the Compass Lexecon Reports they, as you put it,
5 conflate Omega Panamá and the Omega Consortium in
6 their valuation; correct?

7 A. Yeah. When they look at the history, the
8 fact is that the ten contracts that Omega Panamá won,
9 it won never alone but always in a consortium with
10 other companies. On five instances with Omega U.S.,
11 but in other five instances, with Omega U.S. plus a
12 third party.

13 So, if you want to talk about the history,
14 you are talking about several companies, you're
15 talking Omega Panamá, Omega U.S., and then several
16 third parties that also participated in order to
17 fulfill the requirements of the bidding process.

18 Q. Right. And just before I move on, I just
19 want to direct you, finally, to Paragraph 54 on that
20 same page where it states that: "The value of
21 Claimants' interest in the Omega Consortium stems from
22 the value of its eight existing contracts and from its

1 ability to continue as a going concern, bidding and
2 winning further public service work contracts from
3 December 2014 onwards."

4 So, did you not understand that paragraph in
5 the section on damages meant valuation methodology to
6 suggest that what they are valuing is the value of the
7 Omega Consortium, in part, stemming from its ability
8 to win future public service work?

9 A. Yeah. This paragraph does mention Omega
10 Consortium. But my reading of the entire first report
11 of Compass Lexecon and, especially if you look at the
12 summary table, the summary table is what you want the
13 reader to first see. In the Executive Summary, they
14 refer to Claimants' losses in Omega Panamá, and that's
15 what I went with.

16 Q. Okay. I want to just step back here a bit
17 for a minute. So, the purpose of the Fair Market
18 Value exercise that you and Compass Lexecon
19 discuss--right?--is to determine, you know, the full
20 compensation that would be owed for the losses due to
21 the Measures if there is liability found. Is that a
22 fair statement?

1 A. Sorry, could you repeat the statement?

2 Q. Sure. You and Compass Lexecon both agree
3 that you need to determine the full Market Value;
4 correct?

5 A. Yes.

6 Q. And the purpose of that full Market Value
7 exercise, what you are ultimately getting at here, is
8 what the value of full compensation is that Claimants
9 would be entitled to for their losses if liability is
10 found?

11 A. I mean, I understand full compensation to be
12 a legal term, so I am not in a position to opine what
13 full compensation means.

14 What I know is that the treaties that apply
15 in this case, they do call for Fair Market Value. But
16 I have not gone into legal research about what the
17 standards of compensation are to be. It was common
18 ground between the Parties, the Fair Market Value as
19 of a certain date, is what the Damages Experts ought
20 to calculate and that's what we did, but without
21 pretending that we know what that implies in the legal
22 setting.

1 Q. Okay. Fair enough. Let me ask this. If
2 Claimants' view of what their loss is, is that they
3 lost not only Omega Panamá as a stand-alone entity,
4 but the value of what they had invested in Panamá in
5 totality, which in their view would be the ability to
6 work as a going consortium to gain new public
7 contracts. If that's their view, wouldn't you
8 necessarily assume that, if you're going to value what
9 their losses are, you need to look at what the value
10 of that particular damage is?

11 A. Potentially if that was your position, the
12 Claimants' position, yes, but the fact is that is not
13 what Compass Lexecon did in the end.

14 Q. Well, I think we're going to have to agree to
15 disagree there.

16 So, I want to talk a little bit on this topic
17 regarding--let's assume that that was Claimants'
18 theory--right?--that they lost not only Omega Panamá
19 but also the investment of intangible assets from
20 Omega U.S. that allowed them to gain new contracts and
21 to profit in the Panamanian market.

22 A. Well, if you're asking me to assume, but then

1 you have to identify what are those tangible assets
2 that we are valuing. There is nowhere in the Compass
3 Lexecon Reports where there's an attempt to, first,
4 identify and, second, quantify those intangible
5 assets. So, if you wanted to say let's put a value to
6 that, what would have been the value of those
7 intangible assets in a counterfactual without the
8 Measures, then, sure, we could engage into a
9 conversation to see whether that had been properly
10 quantified. But there's not even an attempt to say
11 these are the intangible assets and this is how much
12 these assets were worth in a counterfactual world.

13 Q. But we did just look where they note
14 that--particularly how they value the Omega Consortium
15 and its ability to obtain new contracts; right?

16 A. No. What they valued is Omega Panamá.

17 Q. Okay. So, let me take you back to something
18 that we just looked at then. So, in Paragraph 12,
19 again, of their Report.

20 A. First Report.

21 Q. First Report. Actually, you know, let's look
22 at 54 of their First Report, which is where we just

1 were. And this was the sentence that I read to you.
2 "The value of Claimants' interest in the Omega
3 Consortium stems from the value of its eight existing
4 contracts awarded prior to December 2014 and from its
5 ability to continue as a going concern bidding and
6 winning further public service work contracts from
7 December 2014 onwards."

8 Right?

9 A. Right what? Are you asking me to agree what
10 you read?

11 Q. Yes.

12 A. You read Paragraph 54 correctly.

13 Q. Okay. So, the point that I'm making here is
14 when they are explaining their valuation methodology,
15 they do very clearly explain that what they are
16 valuing is the ability of the Omega Consortium to
17 continue bidding and winning further public service
18 work contracts from December 2014 onwards?

19 A. But you could replace the word "Omega Panamá"
20 here. So, they say that they have made mistakes in
21 the Report; right? So, I don't know where they stand
22 now. Did they mean that this should be Omega Panamá

1 or Omega Consortium? At the end of the day, it
2 doesn't make a difference because what the numerical
3 exercise they have done is to look at Omega Panamá as
4 a going concern, and that's what their calculations
5 attempt to measure. There is no identification, and I
6 think, honestly, Mr. Lopez Zadicoff seemed to be
7 struggling this morning to answer questions in that
8 regard. He has no way to identify this much is the
9 value of the intangibles contributed by Omega U.S. and
10 this is how much Omega Panamá is worth.

11 So, there has been no attempt whatsoever by
12 the Claimants' Experts to identify and to assign value
13 to that. So, the only thing we have is a valuation of
14 Omega Panamá.

15 Q. Well, in fact, what we have is a valuation of
16 Omega Consortium's ability to win further public
17 service contracts; right?

18 A. That's not what Table 1 in page--that's not
19 what Table 1 in Page 10 of the First Compass Lexecon
20 Report says.

21 Q. Well, I understand you're looking at the
22 heading of the chart. Can I ask you whether you read

1 the complete Report, not just the headings in the
2 chart and the Executive Summary?

3 A. Yeah. I read the entire Report, and what I
4 came away with is that Compass Lexecon had attempted
5 to value Omega Panamá.

6 Q. Even though what they are actually valuing is
7 the stream of contracts that the Omega Consortium
8 would potentially gain in the future?

9 A. We don't know that because, I mean, first, as
10 I mentioned, half of the Contracts that had been won
11 historically was a different Omega Consortium. It was
12 an Omega Consortium comprised of three companies. So,
13 is that what they are valuing?

14 Q. You would agree with me that each of those
15 consortiums that involved another company, that
16 company had a 1 percent or less interest; correct?

17 A. As did Omega U.S.

18 Q. And that--

19 A. And Omega U.S., in all the contracts where
20 Omega U.S. bid, in the bidding parameters, it
21 required--it said if you bid as a consortium, you have
22 to put your consortium documents. What is this

1 consortium about? And that goes to your question you
2 asked earlier today. So, for each one of the winning
3 bids, we have what the interests in the consortiums
4 were. The interest of Omega U.S. and each one of the
5 consortiums where it participated was 1 percent. It
6 is Exhibit QE-113.

7 Q. But you were here for the questioning of your
8 counsel on Mr. Lopez Zadicoff where he focused
9 extensively on the role that, for example, the
10 financials of Omega U.S. played in the Consortium's
11 bids; correct?

12 A. What's the question? Whether I was in the
13 room?

14 Q. Yes, and whether--

15 A. I was in the room.

16 Q. --whether you recall that emphasis that he
17 placed in his questioning of Mr. Lopez Zadicoff?

18 A. I do not recall him--we'll have to look at
19 the text, as to probably how extensive he was or not.
20 But what I recall is that--well, that's fine. That's
21 my answer.

22 Q. Okay. Well, let me ask you this. The track

1 record from which Omega--from which Compass Lexecon
2 builds their Potential Contracts Valuation, that
3 proceeds from the bids made and won by the Omega
4 Consortium; correct?

5 A. Made by different consortiums. Each
6 different contract had different combinations of
7 partners.

8 Q. Understood.

9 A. So, there is not a one Omega Consortium that
10 stayed frozen in time and it never changed. As you
11 know, sometimes Omega Panamá bid on its own, sometimes
12 it bid only Omega Panamá plus Omega U.S., and
13 sometimes Omega Panamá plus Omega U.S. plus a third
14 party. For each bid, depending on the requirement of
15 the bid, they would assemble whoever was needed to
16 qualify for the bidding process.

17 Q. But you would agree that it always included
18 Omega Panamá and Omega U.S.; correct?

19 A. Not always. Sometimes Omega Panamá had bid
20 alone.

21 Q. But that's not the Omega Consortium; right?
22 That's Omega Panamá.

1 My question to you is the Omega Consortium
2 always included Omega Panamá and Omega U.S.; right?

3 A. At least, yes, and sometimes other Parties.

4 Q. Okay. And you would also agree that Compass
5 Lexecon did not attempt to value contracts that Omega
6 Panamá would have won on its own; correct?

7 A. I think what Compass Lexecon tries to measure
8 is how many contracts would have been available to
9 bid.

10 Q. Bid by whom?

11 A. By the hypothetical buyer who would have
12 bought the Company would then have been able to
13 participate in bidding process.

14 Q. Right. But my question is, they are not
15 valuing contracts that they say Omega Panamá would
16 have been bidding on alone without Omega U.S., are
17 they?

18 A. They don't say anything at all. I mean,
19 because the fact is of the 10 contracts that Omega
20 Panamá got, half were two companies, half were three
21 companies. Compass Lexecon never tells us whether
22 going forward what could be the split. Would all of

1 them be two companies, Omega U.S. plus Omega Panamá,
2 or would it be all three companies? Or four
3 companies? They don't make any determination about
4 what would happen in the future.

5 Q. So, as you've pointed out, on a subset of the
6 Omega Consortium bids, they brought in individual
7 third parties to supplement expertise.

8 Do you have any reason sitting here today to
9 doubt that they would have been able to do the same if
10 necessary on contracts in the future?

11 A. Who is "they"?

12 Q. The Omega Consortium, Omega U.S. and Omega
13 Panamá.

14 A. I mean, of course, you could find a third
15 party. But that is precisely my point. My point is
16 any hypothetical buyer would be able to assemble a
17 team of people with the necessary technical,
18 financial, and experience/knowledge to be able to bid
19 for contracts in the PanamaCompra website. That's my
20 point.

21 Q. Let's look at that point for a second because
22 I note that your assumption is that--well, let's just

1 look at the Report. This is your Second Report,
2 Paragraph 30.

3 Okay, so if we are there, this is going to be
4 the--it's going to say--it says: "In the case of
5 Omega Panamá, this was achieved through the Omega
6 Consortium through the participation of Omega U.S., a
7 company that put its reputation in industry standing
8 at risk in Panamá. A hypothetical buyer of Omega
9 Panamá would also need to bring these assets to Omega
10 Panamá"; correct?

11 A. You read it as if I was--as if this is what I
12 said; right? Not that--you read two sentences. One
13 sentence I was quoting Compass Lexecon.

14 Q. Yes.

15 A. For the record.

16 Q. I apologize. You're right. That is fair.
17 The first part was a quote.

18 The operative part I want to focus on,
19 though, was your statement that "a hypothetical buyer
20 of Omega Panamá would also need to bring these assets
21 to Omega Panamá."

22 A. Correct.

1 Q. So, the hypothetical buyer that you're
2 assuming for purposes of your valuation is necessarily
3 a buyer that has those things to bring?

4 A. I mean, yes. Yes. But that's--I mean, it's
5 what I said in my Direct Presentation. If you assume
6 someone is going to get--any hypothetical buyer that
7 is going to get into Panamá, certainly my mother will
8 not go and buy Omega Panamá. It will not. It has to
9 be someone that's a willing hypothetical buyer with
10 reasonable knowledge of the relevant facts with
11 something that has something to do in the construction
12 industry; right? So, that person will have to
13 necessarily--if someone is going to put--

14 Let's assume that Compass Lexecon valuation
15 is correct and it's worth \$40 million. Omega Panamá
16 by itself is worth \$40 million. If anyone willing to
17 put \$40 million on the table is not going to be my
18 mother, I promise you. She doesn't have \$40 million
19 and she doesn't even know what to do with that; right?
20 So, then what necessarily follows is going to be that
21 the hypothetical buyer will be someone that will be
22 able to do something with the Company.

1 Q. Okay. Well, so, I would note again that you
2 were in the room when Plaintiffs' counsel took
3 exception to Mr. Lopez Zadicoff's reference to
4 Claimants' as Sellers because he noted that this
5 injected into the hypothetical particular
6 restrictions; right?

7 I'm sorry, Respondent's' counsel. I've been
8 pointed out I misspoke.

9 A. I'm sorry. I got lost there. Could you
10 repeat?

11 Q. Yes. Well, let me put this a different way.
12 Your assumption, then, is that this
13 hypothetical assumes that the Willing Buyer is a
14 specific narrow type of buyer, the sort of buyer that
15 would have these assets to bring to Omega Panamá;
16 correct?

17 A. No. I wouldn't agree with qualifying the
18 hypothetical buyer as not already defined. But a
19 hypothetical buyer, there is some conditions; right?
20 A hypothetical buyer has to be someone who has, at its
21 disposal, \$40 million, if your valuation is correct.
22 Otherwise, that is--so, you're not taking anywhere in

1 the world, like, out of 7 billion people. No. It has
2 to be someone that at least has whatever you say the
3 valuation is worth. So, you are always going to be
4 restricting the universe of potential hypothetical
5 buyers, but that doesn't mean, as Compass said
6 incorrectly in their presentation, that you are
7 focusing on an individual buyer. That is not what I
8 mean. It is still a hypothetical. It's a
9 hypothetical Willing Buyer. But it has to be someone
10 that is capable of buying the Company.

11 Q. Correct. But my point is that that is the
12 ability to have \$40 million is not the only
13 restriction you place on it. You also place on it the
14 notion that that buyer would be able to bring what you
15 refer to as these assets in this paragraph which
16 refers back to years of experience, et cetera, that,
17 Omega U.S. brought. So, your assumption is that the
18 Willing Buyer that needs to be considered in this
19 hypothetical would have those assets to bring?

20 A. Yes.

21 Q. Okay. So, what you exclude, for example, is
22 a private equity company that has no construction

1 experience but is looking to expand its portfolio into
2 the developing market and says, You know what, I'd
3 like to buy Omega Panamá for you and as apart from
4 you--and as a part of that transaction, I would like
5 embedded in there a contract that requires only in
6 Panamá that you, Omega U.S., continue to participate
7 in the consortium and continue to bring your bonding,
8 experience, et cetera, to the table as part of that
9 Consortium.

10 You exclude that buyer from your
11 hypothetical?

12 A. No, I do not exclude that Buyer because, you
13 are right, that potentially a private equity firm may
14 be interested in, if there were value, to buy a
15 general contractor outfit in Panamá, but what I tell
16 you is like I've worked--we've done cases with private
17 equity firms. Bonding capacity is not an issue for
18 those firms.

19 So, they have no need for the bonding
20 capacity that Mr. Rivera could provide through his
21 other Companies. There will be no need for that. So,
22 why would you pay for something that you wouldn't

1 need?

2 Q. Well, you--

3 A. Let me finish. The private equity firm also
4 has many investments, and one thing that you always
5 need to provide is two years or three years' worth of
6 financial statements. Financial statements--you don't
7 need to show that you have millions and millions of
8 dollars in assets, but at least you need to show that
9 the Company has been in operation and that it's not
10 bankrupt; right?

11 So, it's not illiquid or it's not about to go
12 under. Any private equity firm will be able to
13 provide any subsidiary--the financial statements of
14 any subsidiary, and those financial statements could
15 be used to fulfill the requirements of the bidding
16 parameters.

17 Q. But, Dr. Flores, what they cannot bring,
18 however, is experience--correct?--in the construction
19 industry?

20 A. Experience in the construction industry you
21 could also--so, I mean, what are you talking about?
22 Is what I was saying in my Presentation is specific

1 knowledge about who is the best cement provider in
2 Panamá. Is that what you're referring to?

3 Q. No, I'm not. What I'm talking about is, for
4 example, what surety companies look for when issuing
5 these bonds, which is: Is the Consortium, is the
6 person I'm extending this bond to going to be capable
7 of completing the works? And that is a question as to
8 do they have the experience, am I convinced that if I
9 post this bond and they get this Contract, they will
10 actually be able to fulfill it. And my question to
11 you is, isn't that something that the venture capital
12 company cannot itself bring?

13 A. I don't think that's the case, because
14 private equity firms that would get into this arena,
15 it probably would not be their first rodeo, and they
16 would have other investments in other Latin America
17 companies as well, and then they would say, yes, we
18 can provide a 1 percent partner in a new consortium,
19 and this 1 percent partner has completed six projects
20 in the Dominican Republic or in Colombia or in Perú,
21 and that would serve as the bonding capacity.

22 Q. So, in your hypothetical, you've now just

1 introduced that the Buyer--okay, it could be a venture
2 capital company, but only if this isn't "their first
3 rodeo," to use your term and they also have all this
4 experience throughout Latin America.

5 So, you're excluding a venture capital
6 company where this is the first rodeo?

7 A. No. You are the one who started with the
8 private equity. So, I'm trying to play along with
9 your examples, because--come up with other examples.

10 But private equity firms usually do not have
11 any problems coming up with bonding capacity. The
12 problem with the bonding capacities, where if you have
13 like a very tiny, small company that is brand new in
14 the market. I have a company that is 18 months old,
15 and I can provide bonds and, actually, many of my
16 clients in South America, they ask for bonding, and I
17 have no problems securing that, and I don't have that
18 much experience. I only have 18 months' worth of
19 experience in my company.

20 Q. You're aware, sir, that the sort of bonding
21 and surety that is posted on a construction contract
22 involves a different risk and a different type of

1 analysis than the sort of bond that you, Quadrant
2 Economics, would be interested in that you just
3 discussed; right?

4 A. I mean, but at the end of the day any bonding
5 exercise is an assessment of risks.

6 Q. Right. And in this case it's an assessment
7 of the risks of whether or not the construction will
8 be completed. So, Quadrant Economics, for example,
9 would not be granted a bond to complete a \$12 million
10 construction contract?

11 A. But what I'm telling you is that Quadrant
12 Economics has very little experience completing
13 testifying engagements; right? And it's still, even
14 though when I go to the bonding companies in the local
15 countries in South America, for example, recently I
16 had to do one in Colombia.

17 And they said: Okay. How many cases have
18 you done? And I said 60. And they said no, no, no,
19 no. Those were in another company. How many bonds
20 have you done in--under Quadrant Economics--how many
21 cases have you finished under Quadrant Economics? I
22 said six.

1 They said, oh, well, we'll have to look at
2 it. But eventually you talk to the right people and
3 you get it. So, what I'm telling you, bonding
4 capacity by itself is not such an unsurmountable
5 object that no one could surpass.

6 Q. But my point here is that we're talking, and
7 in 30, your reference back to these assets includes
8 the years of experience and levels of construction
9 projects in the past.

10 And my question was, simply, if the venture
11 capital company is looking for its first entrance into
12 the construction market in Panamá, they cannot bring
13 years of experience and a level of construction
14 projects in the past, can they?

15 A. Well, here I'm quoting what Compass Lexecon
16 says it would be necessary. But, again, what's the
17 value of that? What's the value that you assigned to
18 that. There has been no assessment to--no effort to
19 value those independently and see how much that would
20 be worth. Mr. Lopez Zadicoff said that this morning,
21 that he hasn't been able--or he hasn't done the
22 exercise to quantify how much that would be worth.

1 And you can always replace that by simply getting a
2 new 1 percent partner in a new consortium.

3 Q. Right. But, Dr. Flores, my point here is
4 that the losses--the way that the losses are being
5 valued is based on the ability to generate future
6 contracts. You would agree that, as a part of the
7 bidding contract, bidding process, they are going to
8 look at what experience the Consortium has brought to
9 the table; right?

10 A. What I'm saying to you is that the
11 hypothetical Buyer could, in short order, constitute a
12 new, different consortium, Omega Panamá plus whatever
13 was needed to supplement Omega Panamá.

14 Q. Right. But in that hypothetical, you are
15 necessarily not valuing the experience that Omega U.S.
16 brought to the consortium and on Claimants' view of
17 the case lost in Panamá, because you are assuming that
18 no one is going to purchase that. You are carving out
19 of your valuation part of what Claimants say they
20 lost?

21 A. No, because, I mean, if you are doing a
22 valuation as of 2015, and the contract requires you to

1 provide, for example, five contracts. That's some of
2 the bids here have seen that, that require three,
3 four, five different prior completed engagements, well
4 Omega Panamá, as of that point, had already that. So,
5 it could provide that as evidence of having been in
6 Panamá for a while. Whatever value that had, that I
7 don't think it's very high, but that could be
8 provided.

9 Q. Well, but in point of fact, part of your
10 opinion--and this is just at the page prior on
11 Page 18--is that in the Contracts that were won, Omega
12 Panamá was not the basis for the experience or
13 financial capacity?

14 A. Yes. Correct. The Contracts were won in
15 2011 '12, '13, and--

16 (Interruption.)

17 A. Now, we are doing a valuation as of
18 the--sorry. December 2014.

19 Q. Yes. And if you look at Paragraph 8, this is
20 on Page 10, you fault Compass Lexecon for conducting a
21 DCF analysis of Omega Panamá, and so this is
22 necessarily forward-looking, you would agree; right?

1 This is looking at Future Contracts.

2 A. I'm sorry. Where are you now?

3 Q. I'm sorry. Page 10, Paragraph 8, bottom of
4 the page, you fault Compass Lexecon for conducting a
5 DCF analysis of Omega Panamá, even though Omega Panamá
6 does not have a history of operations or profitability
7 as a stand-alone entity; correct?

8 A. Yes. My assessments--so, I'm trying to move
9 from the framework that Compass Lexecon has followed
10 and my framework. My framework of this has no
11 value; right?--so, all this discussion that we have
12 been doing is under the parameters of Compass Lexecon.

13 Q. Yes. But what you just said a moment ago,
14 sir, is that moving forward with Future Contracts, we
15 don't have to assume they would need Omega U.S.,
16 because by that point Omega Panamá had won Contracts,
17 so they could say, well, we have got, you know,
18 four years and five contracts.

19 That was what you just said; right?

20 A. Yes, and that's the basis for in the
21 Presentation, that under that--that scenario, a
22 hypothetical Buyer--let me see if I can find it. It's

1 what I showed in Slide 9 of my Presentation.

2 Which--yes. Under this parameter, as of 2015, you
3 could say, well, there's going to be some growing
4 pains if I start at it on my own.

5 Buying Omega Panamá may give me access to
6 kind of a more accelerated ramp-up, because Omega
7 Panamá has, as of 2015, has some local knowledge, some
8 local experience that, if you are a brand-new entrant
9 you may not have. So, I have contemplated that
10 possibility, and that's what reflected in this sliver
11 in the top figure in Slide 9 of my Presentation.

12 Q. Yes. And to be clear, your position is that
13 any new entrant that a potential buyer might create
14 could have replicated Omega Panamá's experience from
15 2010 through 2014 and possibly--sorry, and potentially
16 have failed, even better, in its initial
17 start-up years; correct? That's part of the basis for
18 the graph that you just showed us.

19 A. Yes. And, of course. We could discuss
20 whether the--this shaded area in the figure in Slide 9
21 would be smaller or thicker or bigger or faster or
22 slower. That I'm open to quantify. But said at the

1 worst, in the most conservative, the most favorable
2 scenario to Claimants would be to assume that a new
3 entrant would do no business whatsoever for five
4 full years, and that's what I use in the sensitivity
5 to the Compass Lexecon model.

6 Q. But in point of fact, the new entrant A could
7 fail; correct? That happens all the time.

8 A. And so, could Omega Panamá. In fact, based
9 on the pattern that we show in here, and also even
10 based on Omega U.S., a Buyer sitting there at the end
11 of 2014--let me see if I can find it. Right? A Buyer
12 sitting at the end of 2014 looks at the Slide 15 and
13 says, well, the best year that Omega Panamá ever had,
14 although mere consortium if you want was 2012. Since
15 then they have gone downhill. And if I look at the
16 backing, or the financial support of Omega U.S. in
17 Puerto Rico, they don't even exist in Puerto Rico
18 anymore. They disappeared from Puerto Rico.

19 Q. Yes. And you're aware that, on Claimants'
20 case, that is because of the Measures; right?

21 A. I don't know if that's your case. That
22 wouldn't be my assessment of the facts, but that's--

1 Q. Okay. Fair enough. And we're going to get
2 to that in just a moment. But the fact of the matter
3 is that your chart and your assumptions there are
4 really based on no comparative analysis. Your
5 analysis is, essentially, because Omega Panamá did it,
6 anyone else could do it; correct?

7 A. No. I was answering a different question.
8 The question that you asked me is a new entrant could
9 fail. My answer to you was, like, well--it was not
10 clear that Omega Panamá would succeed, either. This
11 morning, Mr. Lopez Zadicoff said that, well, I haven't
12 taken into account--I, Daniel Flores haven't taken
13 into account that start-ups have a risk because they
14 can fail.

15 He said 50 percent of companies fail after
16 five years. That's what he said this morning. Well,
17 how old was Omega Panamá as of the Valuation Date?
18 Less than five years old. So, there's a reason that
19 Omega Panamá itself would have failed.

20 Q. Well, to be clear, sir, you're pointing to
21 these graphs on bids and assuming that that means that
22 they are doing more poorly, but, in fact, they had a

1 backlog of eight Contracts with the
2 Government--correct?--that they were working on.

3 A. They had a backlog of eight Contracts, but
4 they were not experiencing any new additional
5 contracts. I, as a businessperson, I know I always
6 have to be concerned about--so, right now we are
7 working on 10 cases, but I'm not concerned with 10
8 cases, I'm concerned about what's the pipeline--the
9 new pipeline. If you don't get a new case every
10 month, it means by the end of year I won't be able to
11 pay the salaries of my people over here.

12 So, you are always--have to be forward
13 looking. It is very alarming when you don't get any
14 new engagements over 18 months.

15 Q. Well, but they did in fact; right? They got
16 three new engagements in 2012, one in 2013?

17 A. No, I'm talking as of the valuation date.

18 Q. So, 2014--

19 (Interruption.)

20 PRESIDENT SHORE: You are beginning to speak
21 over each other. Kind of slow down a bit. Okay?
22 Thank you both. Thank you.

1 THE WITNESS: So, I was talking as of the
2 valuation date, at the end of 2014, what you know is
3 that in 2013, they bid for--Omega Panamá bid for four
4 cases. Only one won, and that one case was in the
5 amount of \$2 million, which represented 3 percent of
6 everything they had bid for. And then in 2014 they
7 don't get anything.

8 So, you are almost like, as of the end of
9 2014, you are for two years--let me finish. So, two
10 full years, and the only new business that has come in
11 the door of Omega Panamá is [REDACTED]. That would be
12 preoccupying to a potential buyer.

13 BY MR. HINES:

14 Q. Okay. And in 2014, you're aware that the
15 Measures started in mid-2014; correct?

16 A. I understand that's the allegation.

17 Q. Yes.

18 A. But that's only half of the year.

19 Q. And you're also aware that you, yourself,
20 cited and put in the record a law which significantly
21 restricts the ability of the Government of Panamá to
22 enter into new contracts in the six months preceding

1 an election, which would cover the entirety of the
2 first part of 2014; correct?

3 A. I mean, that--there are some restrictions to
4 avoid, for example, that an outgoing Administration
5 would be just giving contracts to their friends and so
6 on. That is correct. But the country doesn't stop
7 working because there is an election. And contracts
8 have to be awarded for things that have to be awarded.

9 So, I have seen no evidence that contracting
10 or the issuing of new bids and new requests for public
11 works, that those fell down to zero in the first six
12 months of 2014. No evidence has have--I don't think
13 there is any evidence on the record to that effect.

14 Q. You haven't but any evidence in of any bids
15 that occurred during that period, did you?

16 A. Because I wasn't aware until Mr. Lopez
17 Zadicoff said that this morning that he was having a
18 contention about that.

19 Q. But you put in the law that actually
20 restricts their bidding. That was your exhibit. It
21 was QE-28.

22 A. Okay. Can we show exactly what it says?

1 Q. Please. Let's go to QE-28.

2 A. Does it say that no new bidding at all will
3 ever occur in the six months before the election?

4 Q. It does not.

5 A. Okay.

6 Q. It restricts it to 50 percent--

7 A. That is my recollection.

8 (Interruption.)

9 A. That is my recollection.

10 Q. The Witness's question was does it say that
11 no new bidding at all will never occur in the six
12 months before the election. I said it does not. If
13 we look at it, what it does is you severely curtail
14 the amount of new Contracts that can be expended on
15 the basis of the current amount of annual accessible
16 budget.

17 And this begins at the beginning, at the
18 bottom of Page 9--or, I'm sorry, at the bottom of
19 Page 8. It is 9 of the PDF, and continues on to the
20 bottom of Page 10 of the PDF, which I think is
21 numbered 9 at the top.

22 A. So, are we looking at the Spanish or the

1 English?

2 Q. This is only in the Spanish. You didn't
3 translate this portion when it was put in.

4 A. I'm sorry. What Article?

5 Q. It's going to be Article 15.

6 A. Let me read it to refresh my memory. Okay.
7 May I translate from the Spanish into the English for
8 the record?

9 Q. Certainly.

10 A. So, the relevant standards that I think you
11 are meaning is that it says: "It is forbidden to the
12 public entities set forth in this law that during the
13 last six months of a Government they will enter into
14 obligations that do not have the sufficient budget
15 appropriation, and that will not be able to be paid
16 during the same fiscal year."

17 This does not say anything about you can have
18 no new contracting. This--what it's saying is that,
19 if you bid for new projects, make sure there is a
20 budget allowed to them.

21 Q. Please continue down to the end of Article,
22 which appears at the top of the next page.

1 A. Well, I'm reading what I think it's--I
2 think; right? Okay. So, it says--I'm going continue.
3 I'm going to read the whole thing.

4 "In the determination of the availability of
5 cash, it will be taken into account the revenues
6 program and the commitments or the budget commitments
7 for the year through the end of the exercise."

8 So, what this is saying is like you cannot
9 make the budget through--spend everything for the
10 whole year through midyear and then leave everything
11 to be paid for the new Administration. It is--you
12 need to be responsible.

13 And then if you turn to Year 1, and it
14 says: "During the last six months of the Government
15 mandate, you cannot use more than 50 percent of the
16 annual budget," which means a year has 12 months, so
17 in the first six months, you can only use half of
18 what's for the whole year. I don't see what dramatic
19 severe restriction is that.

20 Q. Well, can you name for me one single Contract
21 that the Omega Consortium obtained whose budget lasted
22 for less than a year?

1 A. No, no, but you understand, sir, you can have
2 a budget and you can say this is going to be the
3 amount allocated to 2014, and there's going to be
4 amount allocated to 2015, amount located to 2016.

5 So, I have lots of contracts with governments
6 and that's how they work. They don't give you--you
7 cannot spend everything in this year. If I had a
8 First Report, a Second Report, a hearing, and
9 post-hearing, there is different budget allocations.
10 And I cannot spend in 2020 the amount for the Second
11 Report, that has to be filed in 2021.

12 PRESIDENT SHORE: I guess, can I interrupt
13 for a moment, Mr. Hines. But I guess one could look
14 and see what, as a matter of fact actually was bid out
15 in the first six months of 2014, and just to confirm,
16 that's not an exercise that you engaged in, and I
17 understand your explanation. That is not an exercise
18 you thought you needed to engage in. That wasn't an
19 exercise that Mr. Lopez Zadicoff engaged in either.

20 Is that correct?

21 THE WITNESS: Yes. You are correct. The
22 only restriction that I see here, at the end of the

1 day, is that in the first half of the year, you can
2 only spend 50 percent. I think you misunderstood
3 probably from the Spanish that this meant to be--that
4 in that year you can only spend half of the normal
5 amount. No. What this means is in the half year you
6 can only spend half of the total.

7 PRESIDENT SHORE: But, and I understand the
8 theoretical point on what the law says.

9 THE WITNESS: Yes. Yes.

10 PRESIDENT SHORE: But in terms of what was
11 actually bid out, that we don't know.

12 THE WITNESS: We don't know. Yes. If
13 Compass Lexecon was troubled about that point, I think
14 I admit in my First Report the point that they didn't
15 bid anything at all in 2014. If he had replied, I
16 would certainly have gone and dealt with it.

17 PRESIDENT SHORE: Okay. Thank you very much.
18 Over to you, back to you, Mr. Hines.

19 BY MR. HINES:

20 Q. Okay. One last question on that point. You
21 recognize that the question is not just is the
22 Government awarding some contracts in the last six

1 months of the administration; right?

2 The question is whether they are awarding any
3 contracts, or tendering any contracts that fall within
4 the universe or the scope of contracts that Omega
5 actually bids for; right?

6 A. I think that would be a relevant question,
7 potentially, yes.

8 Q. Right. And you have no basis to assume that
9 the reason that they weren't bidding in early 2014 is
10 simply that there were no contracts available. You
11 are simply assuming that it shows a Company in
12 distress?

13 A. I'm not assuming a Company in distress, but I
14 said this would be worrisome. So, if you see in 2013
15 the fact is they bid, they wanted to get [REDACTED]
16 in business. They only got [REDACTED]. That's a
17 [REDACTED].

18 Q. Okay.

19 MR. HINES: Mr. President, I'm about to
20 transition to another topic. If we're planning to
21 take a break soon, this is a good time, but I'm happy
22 to start it, if you'd prefer.

1 PRESIDENT SHORE: I lost track of the time,
2 which is not what I'm supposed to do.

3 I think a 15-minute break now would be fine.
4 Same instruction, Dr. Flores.

5 THE WITNESS: Understood.

6 (Brief recess.)

7 PRESIDENT SHORE: Back on the record.
8 Mr. Hines?

9 MR. HINES: Thank you, Mr. President.

10 BY MR. HINES:

11 Q. So, Dr. Flores--

12 PRESIDENT SHORE: I think we need your
13 microphone, Mr. Hines.

14 MR. HINES: Thank you, Mr. President.

15 BY MR. HINES:

16 Q. Dr. Flores, I'd like to turn to Page 42 of
17 your Second Report. I'm going to transition now to
18 this. What you deal with here is if the Omega brand
19 and the Omega U.S. intangibles were included in the
20 valuation.

21 So, here on Page 42, in Paragraph 80, you
22 state that: "The foregoing examples help establish

1 that, even if it were methodologically correct to
2 include the value of the Omega brand in the valuation
3 of Omega Panamá, it is not. For the reasons set forth
4 above, Compass Lexecon's argument that the Omega brand
5 is one of the intangible assets that supports a
6 [REDACTED] valuation of Omega Panamá is unfounded
7 and contrary to the facts."

8 Correct? That's what you stated there?

9 A. Do you mind if I read? Because it talks
10 about foregoing examples.

11 Q. We're going to get to there.

12 A. No, but--

13 Q. Can you just confirm if I read that
14 correctly?

15 A. You read that correctly.

16 Q. So, let's turn to the top of this section.
17 We'll go through it methodically.

18 So, at Paragraph 74--this is on Page 40; this
19 is where this section starts--in the second sentence,
20 you state the basis for the conclusion we just looked
21 at, which is that, in fact, the reputation of the
22 Omega brand was in trouble long before the Measures

1 due to the problems encountered by Omega U.S. in
2 Puerto Rico; correct?

3 A. Yes.

4 Q. And you go on to cite several facts that you
5 say evidence that as support.

6 So, let's look first at Paragraph 75. This
7 is the first example. Here you cite to a 2010 Report
8 regarding purported issues with the Coliseo de Puerto
9 Rico; correct?

10 A. Yes.

11 Q. Now, I know you were here in the room on
12 Tuesday when Mr. Rivera provided testimony; right?

13 A. Yes.

14 Q. So, you heard Mr. Rivera note that the Report
15 you cite does not mention Omega at all and is not
16 clear as to whether it's discussing design
17 deficiencies or who was responsible for the
18 deficiencies.

19 Do you recall that testimony?

20 A. Not off the top of my head.

21 Q. We can pass out the Transcripts, if you'd
22 like.

1 A. I take your word for it.

2 Q. Okay. Well, in fact, if you look at that
3 Report, which you cite as QE-0092, you, in fact, can
4 see that Mr. Rivera is entirely correct. It never
5 mentions Omega in it at all, does it?

6 A. I would have to verify. It is possible it
7 doesn't mention Omega at all. But I think it was
8 well-known, and we all know, that there was an Omega
9 Project.

10 Q. Sure, but--

11 A. So, if the document says the construction is
12 substandard, the document may not say who constructed
13 it, but if you have another document that tells you
14 who the constructor was, then you can put two and two
15 together.

16 Q. Well, to be clear, did you review Omega's
17 scope of work under the Contract for that Project to
18 see whether any of the deficiencies they are
19 describing related to that scope of work?

20 A. I could not find Omega's scope of work, but I
21 know in this Arbitration, in the Claimants' papers,
22 the Claimants have portrayed themselves as the

1 developers of that Project.

2 Q. Right. Understood, but, to be clear, my
3 point is: You have no idea whether the deficiencies
4 described there actually fell within Omega's scope of
5 work under the Contract or, for example, may have
6 resulted from engineering diagrams that were
7 contracted to an architectural firm or someone like
8 that?

9 A. Yes. I have not verified that.

10 Q. Right. And, to be clear, as we talked about,
11 you're not an engineer, so you really have no personal
12 basis to construe design defects and allocate them to
13 a responsible Contracting Party, do you?

14 A. No. I have not attempted to do that. My
15 only point is that if you show as your biggest
16 accomplishment a certain project, the Coliseum of
17 Puerto Rico, and then this public document says that
18 that project had defects--wrongly or rightly; I'm not
19 making opinions--but at least that's something that
20 puts into question the Omega brand.

21 So, if that's kind of like your showcase, one
22 of your biggest projects, and that project has been

1 heavily criticized, that has to tarnish the reputation
2 of the person that announces that project as its own
3 project.

4 Q. So, to be clear, your construction that it
5 was heavily criticized is based entirely on some
6 assessments in this Report that aren't attributed to
7 Omega Panamá and a couple of articles that relate to
8 the deficiencies in that Report. Is that a fair
9 statement?

10 A. It's an official Report by the Comptroller of
11 Puerto Rico assessing the quality of that Project.

12 Q. Okay. Now, in Footnote 115, where you cite
13 to this Report, you provide the date as April 2010;
14 correct?

15 A. Yes.

16 Q. I'd like to take you to Exhibit C-348.

17 So, you can see from the first page here that
18 this is a document from a bid for a MINSA Project,
19 specifically the credentials of the bidder; correct?

20 A. Yes.

21 Q. So, let's turn to Page 229. And the page
22 numbers are down at the bottom in brackets there.

1 There may be other page numbers scattered throughout
2 it, so I just want to focus on those.

3 Okay. This is a letter from the Puerto Rican
4 Infrastructure Financing Authority; correct?

5 A. It appears to be.

6 Q. Yes. Well, it says that right at the top;
7 right? Next to the logo AFI?

8 A. Yes.

9 Q. Okay. And it's dated December 23, 2010;
10 right?

11 A. Yes.

12 Q. So, that's going to be roughly eight months
13 after the report that we just discussed that you
14 cited; correct?

15 A. Yes.

16 Q. Okay. And the subject of this document, as
17 you can see in the gray line, is a
18 certificate--certification of technical competence;
19 correct?

20 A. Yes.

21 Q. Right. This is something that was presumably
22 solicited so it could be included in these bid

1 documents?

2 A. Yes.

3 Q. Right. And you can see that, in providing
4 this certification of competence--and this is in
5 one--they make reference to an Omega U.S. project in
6 Puerto Rico, an athletic stadium; correct?

7 A. Where does it say "Omega U.S."?

8 Q. Well, Omega Panamá didn't build stadiums in
9 Puerto Rico, did it?

10 A. No. But I don't see where it says--

11 Q. No, no, no. I'm just asking you: It's in
12 reference to an athletic stadium in Puerto Rico;
13 right?

14 A. Athletic stadium Mayagüez, yes.

15 Q. Right. So, presumably, that was not an Omega
16 Panamá project; right?

17 A. I would agree with that.

18 Q. Right. Okay. So, they provide this
19 certification, and if you look down at the bottom on
20 the opinion they provide, the opinion that they
21 provide is "excellent"; correct?

22 A. It says "excelente," yes.

1 Q. And that's an opinion of La Empresa of the
2 Company, not of the specific Project; right?

3 A. I don't know.

4 Q. Well, isn't that what the words tell you?

5 A. I'm not familiar with this document, so I
6 cannot--

7 Q. Well, no, I'm just asking you what the word
8 says.

9 A. The word says "Opinion about the Company
10 Omega Engineering Inc."

11 Q. Okay. And it says "excellent"?

12 A. But Omega Engineering Inc., that's Omega
13 Panamá; right?

14 Q. Correct. And I recognize that--

15 A. So, I'm--I don't know what this means.

16 Q. Okay. But you'll note in the "to" line that
17 they sent it to Omega Engineering Inc. in Panamá,
18 presumably for purposes of this bid; correct?

19 A. So, I don't know. I mean, they are saying
20 that Omega Engineering Inc., which we know as Omega
21 Panamá, is excellent?

22 Q. No, sir. I would submit to you--this is my

1 conclusion--that, given that they are clearly
2 discussing their opinion on a company that built a
3 stadium in Puerto Rico, that this is just an error and
4 they're talking about the Omega entity that actually
5 built the stadium for them?

6 A. I don't know.

7 Q. Okay. But you would agree that they note
8 that it's "excellent"; correct?

9 A. It says "Opinion about Omega Engineering
10 Inc.: Company is excelente."

11 Q. Okay.

12 A. Now, if I were to be reviewing this document,
13 I would ask, "So, what's going on here?" Yes. I
14 don't know. I mean, I cannot opine. I haven't
15 focused on this page before, but I don't know.

16 Q. Okay. But it's fair to say that eight months
17 after the Report you cite as being damaging to their
18 reputation, the Puerto Rican Government is willing to
19 give Omega a certification for purposes of another bid
20 that provides an opinion that the Company is
21 excellent; right?

22 A. I mean, this is what this one page seems to

1 be saying.

2 Q. Okay.

3 A. Again, so--if you will remember the other
4 document, it was a much longer document.

5 Again, I guess the State of Puerto Rico is
6 quite big. This is a gentleman which is the
7 Engineering Director sending a letter that at least
8 would appear to have typos. So, I don't know what's
9 the basis for him saying "excellent." I do not know.

10 Q. Okay. But so, it's your position, then, that
11 the Puerto Rican Government would issue a letter for
12 purposes of bid noting that a company is excellent if
13 another part of that Government had concluded that
14 that company had engaged in shoddy and deficient work?

15 A. No. My position is I don't know. I know
16 that the Comptroller document, it's a very large
17 document, and I reviewed it, and it has a lot of
18 detail and so on. And it is signed off by a person.
19 It is signed by the Comptroller itself. So, it has an
20 official bearing.

21 I don't know what's the--I do not know who
22 would have more weight, whether the Director of

1 Engineering in a letter with a typo, or whether the
2 full Comptroller Report that was issued on the other
3 hand. I'm not able to compare them.

4 Q. Right. So, let's just note again that the
5 comparison you would be doing, if you were to do it,
6 is between a Report that doesn't make mention of Omega
7 anywhere in it and which we have already established
8 you did no analysis to determine whether any of the
9 criticisms were within Omega's scope of work or
10 attributable to them--so, a report that says nothing
11 on its surface about Omega--and a letter from the
12 Government that says Omega, their Opinion of the
13 Company is excellent.

14 A. Again, I would not characterize it like you,
15 the way you did, because you said this is a letter
16 from the Government. I say this is the letter of one
17 person, on the letterhead of an authority, but I don't
18 know whether--so, he seems to be a Director of
19 Engineering.

20 So, the comptroller Report was issued
21 publicly. I don't know if it has some approval by the
22 legislative chamber of Puerto Rico; I don't recall

1 that. But it was probably signed in their presence.
2 So, I don't think this ever went to the press or was
3 publicly done--I don't know what the approval process
4 is. So, I'm not able to give you a legal opinion on
5 which document carries more weight.

6 Q. But do you agree that the Director of
7 Engineering from the AFI did issue this later letter
8 noting that the Company was excellent?

9 A. I did not know that.

10 Q. Okay. Let's move on. Let's turn to--I seem
11 to have lost my place here. Let's turn to Page 41, to
12 the next paragraph, Paragraph 76.

13 Okay. So, here you cite to a lawsuit between
14 Oriental Bank and Omega U.S. in relation to a line of
15 credit.

16 Now, did you do any research on the
17 background of this dispute beyond the one Opinion that
18 you cite to here in your Report?

19 A. No, I did not.

20 Q. Okay. So, you have no idea of the background
21 facts or the relationship between Omega and the bank
22 that gave rise to this dispute, what any of the other

1 details preceding this Appellate Opinion may have
2 been, nor what the ultimate resolution of that lawsuit
3 was?

4 A. No. I just, based on the fact that--I mean,
5 when you do an internet search and the first thing you
6 see is that you have problems with the bank that has
7 sued your company, that, to me, is worrisome. I
8 wouldn't want that to happen to Quadrant, and I hope
9 it never happens.

10 Q. Okay. And you were here on Monday when
11 Mr. Rivera explained that the resolution of the issues
12 with this credit line, and with respect to this
13 lawsuit in particular, could be seen in Note H to
14 Omega U.S.' 2014 audited financial statements?

15 Do you recall that testimony?

16 A. Not in particular, but--

17 Q. I can show it to you if you'd like, or you
18 can accept my representation that he did point to
19 Note H.

20 A. I accept your representation.

21 Q. Okay. So, let's take a look at that note.
22 Let's turn to Exhibit C-386.

1 Okay. So, looking at the first page, we can
2 see that these are the consolidated financial
3 statements for Omega U.S. for the years ending 28
4 February 2014 and 2013; correct?

5 A. Yes.

6 Q. And you reviewed this document in preparing
7 your Second Report; right?

8 A. Yes.

9 Q. So, turn to Page 21.

10 Okay. So, here is the Note H that Mr. Rivera
11 referred to on Tuesday. And the first paragraph,
12 which you can go ahead and read, describes [REDACTED]

13 [REDACTED].

14 A. So, I have read first paragraph.

15 Q. Okay. So, then the next paragraph notes
16 that--this is beginning at the top: "[REDACTED]

17 [REDACTED]

18 [REDACTED]."

19 Do you see that?

20 A. Yes.

21 Q. And it goes on to say that: "[REDACTED]

22 [REDACTED]

1

[REDACTED]

2

[REDACTED],

3

[REDACTED]

4

[REDACTED]"; right?

5

A. Yes.

6

Q. Now, that [REDACTED], that would be the
7 disputed Oriental loan, wouldn't it?

8

A. I'm not sure.

9

Q. Okay. If you want, we can look at the
10 Opinion that you cite, which makes clear what the
11 value of the loan in dispute in that lawsuit is. So,
12 we can take a look at it, if you want, or I can
13 represent to you that it says it's [REDACTED]

14

A. Let's look at it, yes.

15

Q. Okay. It's at QE-0095. You'll want to turn
16 to Page 3 in the Spanish.

17

So, on Page 3, four paragraphs down you'll
18 see two paragraphs in a row. It begins: (In Spanish)
19 "2,400,000." And it goes on to describe the amount of
20 the principal and then interest in about 51,900 and
21 subsequent interest in \$300 a day.

22

So, that would be an amount of 2.45 million?

1 A. Not exactly.

2 Q. But approximately; correct?

3 A. Well, in the financial statements, this
4 refers to a note payable with a balance of [REDACTED]
5 even.

6 Q. Okay.

7 A. Here, it is talking about--in this here,
8 meaning Exhibit QE-0095, it is talking about
9 2.4 million, plus an interest at 51,900, plus then
10 \$300 daily, plus then 10 percent for costs and
11 expenses of lawyers.

12 Q. Right. But Mr. Rivera--again, if you want to
13 see the testimony, we can point you to it
14 there--indicated that this note pertains to the
15 lawsuit in question.

16 Do you have any reason to doubt his testimony
17 in that regard?

18 A. I don't know. We do not have--we only have
19 his word, so that's what we have.

20 Q. Okay. Well, let's then just, I suppose,
21 assume that the [REDACTED] loan addressed here is
22 the same loan as the slightly over 2.45 million in the

1 Opinion you cite. It notes that the Company entered
2 into an agreement with the financial institution in
3 which the company paid [REDACTED] for the
4 cancellation for the total debt.

5 It then goes on to describe a second loan,
6 and it says as to that that the Company entered into a
7 Refinancing Agreement in which the Company paid
8 1 million, and the remaining balance of [REDACTED]
9 was converted into long-term debt; correct?

10 A. Yes.

11 Q. Okay. And the date of these financial
12 statements--I will have to look at Page 4 for
13 these--the date of them is July 10, 2014; right?

14 A. Yes.

15 Q. Okay. So, presumably, the resolution of
16 these issues with the credit lines and the debt
17 happened sometime between year-end 28 February and the
18 date of this document, July 10; correct?

19 MR. RYAN: Mr. President, I'm going to
20 object, because I think we've gotten very far off from
21 what this note actually refers to. We have a
22 discrepancy between the amount that is referenced in

1 the lawsuit as the 2.45 million, a precise number
2 here, and then an amount that is above [REDACTED],
3 as Dr. Flores pointed out.

4 I would also note that in this second
5 paragraph--well--

6 PRESIDENT SHORE: I've got the objection.
7 I'm going to let it continue, because Dr. Flores is
8 capable of doing exactly what you're doing, Mr. Ryan,
9 and looking at the document, which is one of his
10 exhibits, in any event.

11 I would say I think we have the point,
12 Mr. Hines. The critical point may be, for branding
13 purposes, what information is publicly available and
14 what people would publicly look at and be able to
15 research, and that might be something that you would
16 want to put to Dr. Flores--but you don't have to--in
17 order to get at his branding point.

18 But if you're going there, fine, and if
19 you're not, fine. But I would say--I think we have
20 the point on going through these documents.

21 MR. HINES: Absolutely. And I'm moving on
22 from there, because what I'm actually focusing on is

1 the relevant reputation here, which is the one that
2 factors into bidding, which is the reputation in front
3 of those evaluating the bids.

4 PRESIDENT SHORE: All right.

5 BY MR. HINES:

6 Q. So, I'd like you to look at Exhibit C-278.

7 Okay. If you look up at the top, you can see
8 the logo here. You can see that this is a document
9 from the ASSA Insurance Company; correct?

10 A. Yes.

11 Q. If you look down at the bottom above the
12 signature lines, you can see its dated May 5, 2014;
13 correct?

14 It says, "Signed as of today, May 15, 2014"?

15 A. Yes.

16 Q. If we look back up at the top, we can see
17 that this pertains to--and this is next to the word
18 "Contractor"--Omega Engineering Inc., Omega Panamá,
19 and Omega Engineering LLC--Omega U.S., in the parlance
20 of this Arbitration.

21 Now, this is an extension of the Performance
22 Bond issued by ASSA in connection with the City of

1 Colón contract; correct?

2 A. The public market in Colón?

3 Q. Correct.

4 A. Yes.

5 Q. And what this is is an extension of the bond
6 that had been issued by ASSA in connection with that
7 contract; right?

8 A. Can I read it? I don't recall having seen
9 this document before, so I would like to read it.

10 Q. Please. Absolutely.

11 A. Yes, I have read the document.

12 Q. Okay. So, you would agree, then, that this
13 is an extension of the bond issued by ASSA in
14 connection with the City of Colón Contract; correct?

15 A. It seems to be for an extension of 30 days.
16 It says "an additional term of 30 days."

17 Q. "After termination thereof." That would be
18 the termination of the Contract, but if you look up
19 above where there's the performance bond and term, it
20 says 1,170 days as of the date specified in the
21 following cases.

22 A. Okay. So, you're saying that this is an

1 extension?

2 Q. That's really my basic point. It's an
3 extension of the--

4 (Overlapping speakers.)

5 Q. My point is that you can tell from the top
6 that this is a term extension endorsement; right?

7 And it says, in the first paragraph, that
8 it's hereby understood and agreed--and it goes through
9 the bond and what it's for--that they have their term
10 extended; correct?

11 So, my simple question was: This is an
12 extension of the bond that was issued to Omega Panamá
13 and Omega U.S. in connection with the City of Colón
14 Contract?

15 A. Honestly, I haven't seen this document
16 before, so I'm reading it along with you. I don't
17 know.

18 Q. Okay. So, those words, you can't conclude
19 anything from them?

20 A. No, I'm just saying I haven't studied this
21 document before. So, I know it says in English "term
22 extension endorsement," but I don't have the context.

1 I don't know what was the prior document, that this is
2 an extension for two days or for two months, or under
3 what--so, I don't know anything about this document.

4 That's all I can tell you.

5 Q. Okay. But in any event, as of May 5, 2014,
6 their insurance company is willing to extend the bond
7 that had been issued to them. Is that a fair
8 statement?

9 A. It has some conditions here.

10 Q. Certainly. As I'm sure the original bond
11 did.

12 A. It says, like, this is--I see here it says:
13 "The effective nature of this endorsement is subject
14 to the absence of any reported or known breach to
15 date." And then it continues.

16 I don't have the context to tell you whether
17 this was--what this was about. I don't know.

18 Q. You don't have the context to tell me whether
19 or not this was an extension of the bond?

20 A. It would look like that, but I cannot tell
21 you--are we talking about the one-week extension? Or
22 the one-year extension? I don't have the facts.

1 Q. Okay. Well, let me ask you: You're not
2 aware of anything in the record whatsoever that
3 suggests that ASSA or Travelers, Omega's surety
4 providers, raised any issues or concerns with Omega
5 until after the Measures--correct?--when their surety
6 was pulled?

7 A. It's an issue that I have not studied, so I
8 cannot tell you one way or the other.

9 Q. Okay. But earlier, when we were talking, you
10 said that, for purposes of bonding, the important
11 thing is financing; right?

12 You have to be able to show your financial
13 wherewithal, more or less?

14 A. I don't remember if I said that, those exact
15 words. I put them as two separate issues.

16 Q. Okay. Fair enough.

17 But to return to the point: After this
18 lawsuit in 2013, you are not aware of any issues or
19 any evidence suggesting there were any issues or
20 concerns raised by any surety providers of Omega U.S.
21 until 2015, after the Measures had begun?

22 A. I repeat my answer: It is not an issue that

1 I have studied, so I cannot tell you either way.

2 Q. Okay. Then, in Paragraph 77, you cite to
3 purported issues with a bid Omega U.S. submitted for
4 the Puerta de Tierra Project; correct?

5 A. Yes.

6 Q. And you cite to a letter from the
7 Infrastructure Financing Authority submitted as QE-96?

8 A. Yes.

9 Q. Let's look at that.

10 A. You said QE?

11 Q. QE-96.

12 This letter is dated July 21, 2014; correct?

13 A. Yes.

14 Q. And if we look at the bottom, we can see the
15 letter was sent by María L. Santiago Rivera, the
16 President of the Auction or Bid Committee?

17 A. I'm sorry. One second.

18 Sorry. What's your question?

19 Q. My question is just: At the bottom, it is
20 signed by Ms. Maria L. Santiago Rivera, President of
21 the Auction Committee, although I'm informed that that
22 may more accurately be translated as "Bid Committee."

1 A. Okay.

2 Q. And if we look down Page 1, we can see here
3 that the authority cites to Note H in the financial
4 statements that we looked at a few minutes ago; right?

5 A. I'm not sure. So, the ones we are looking at
6 were the statements issued when? I don't recall.

7 Every statement will have a Note H. I don't
8 know if you are talking about the same year or a
9 different year.

10 Q. July 10, 2014; right?

11 And you can see that she references the
12 content of Note H, which matches what we looked at
13 regarding the balances of the line of credit, and she
14 refers to it as "your most recent financial
15 statements."

16 A. So, that's my question: Which ones are the
17 most recent financial statements--

18 (Overlapping speakers.)

19 Q. They would have been the ones that were
20 issued approximately, at that point, 11 days earlier
21 that we just looked at. The ones for year ending
22 February 28, 2014, that were issued in early

1 July 2014, which we just looked at.

2 A. Again, I'm not sure about that, because--

3 MR. RYAN: Perhaps it would be helpful to put
4 the financial statement in front of him again.

5 MR. HINES: Okay. If you need that, you can
6 look at Exhibit C--

7 PRESIDENT SHORE: It is not so much that.
8 Are you saying that you don't know which financial
9 statements were submitted to this particular entity--

10 THE WITNESS: Exactly.

11 PRESIDENT SHORE: --because it might not
12 necessarily have been the most recent in date?

13 THE WITNESS: Yes. Because the fact that--I
14 think it had a seal from an external auditor; right?

15 BY MR. HINES:

16 Q. Yes.

17 A. So, exactly. It has a seal as of July 10,
18 2014. What I don't know is whether a letter sent
19 11 years later, the more recent statements that the
20 person--this Miss Santiago Rivera--would have--would
21 be these that had been issued 10 days before or the
22 ones that had been issued about 365 days before. I do

1 not know that.

2 Q. Fair enough.

3 But let's look at the substance of her point,
4 whether it's that Note H or the Note H. Prior to
5 that, we agree that whatever Note H she is referencing
6 pertains to the statement that the lines of credit had
7 been canceled, just like the Note H we looked at;
8 right? So, regardless of whether it was the financial
9 statements we looked at or not, her concern is with
10 respect to a Note H that describes the cancellation of
11 lines of credit?

12 A. Yeah. Do we have the financial statements
13 for from a year earlier so that I can check them?

14 Q. Sure.

15 PRESIDENT SHORE: I'm not sure you need to
16 for the purposes of this question. Let's see. Maybe
17 we don't have to turn it up. Why don't you continue.

18 THE WITNESS: Okay.

19 PRESIDENT SHORE: If you can't answer, then
20 you'll say, Dr. Flores, that you need those Financial
21 Statements.

22 THE WITNESS: Okay.

1 BY MR. HINES:

2 Q. Okay. So, my question is simply,
3 irrespective of which Note H and which year she's
4 referencing, we can agree that the issue she's raising
5 is that that [REDACTED]
6 [REDACTED]; correct?

7 A. Yes.

8 Q. Okay. And, as a result, she then--at the top
9 of the next page, she goes on to say that the
10 documents in Omega's proposal, in those documents, the
11 principal Executive Officer of Omega informs us that
12 you currently maintain lines of credit with the Banco
13 Popular de Puerto Rico and Doral Bank with available
14 balances of [REDACTED] and [REDACTED] respectively.

15 Do you see that?

16 A. Yes.

17 Q. And she goes to say that: "Given the
18 information presented in Note H of your financial
19 statements, we need this information to be cleared by
20 a certificate from the credit official of the banks
21 where you maintain those lines of credit."?

22 A. Yes.

1 Q. Okay. And this, as you point out in your
2 Report, is a letter issued in connection with a bid
3 that Omega U.S. had submitted for the Paseo Puerta de
4 Tierra Project, which you can also see from the bolded
5 language on Page 1; correct?

6 A. Yes.

7 Q. Okay. Now, you don't mention in your Report
8 in that paragraph whether Omega actually did submit
9 the required certifications proving that they had
10 those lines of credits with those balances, do you?

11 A. According to the available information from
12 Puerto Rico, there was no more information on this
13 point.

14 Q. Okay.

15 A. So, this was a publicly available document
16 that I found on the internet.

17 Q. Okay.

18 A. So, there was no follow-up. I assumed that,
19 if a letter would have been replied, it would have
20 been attached to this same letter here.

21 Q. But you are aware that following this letter,
22 Omega actually received the Contract; right? It was

1 awarded the Contract for this Project?

2 A. Let me check.

3 Q. We know that because in the next paragraph
4 you claim that they abandoned it at some point later.

5 PRESIDENT SHORE: Yes. In the previous
6 paragraph, you say they obtained it, and in the next
7 paragraph, you say they abandoned it.

8 THE WITNESS: Yes.

9 PRESIDENT SHORE: Okay. Next question,
10 Mr. Hines.

11 BY MR. HINES:

12 Q. Okay. So, the answer is, yes, they obtained
13 this.

14 A. I mean, sorry, I was trying to--

15 Q. Right.

16 A. --find my way around the documents.

17 Yeah, it's true, so the Contract was awarded
18 to Omega Panama, sorry - Omega U.S.

19 Q. So, whatever concerns the Contracting
20 Authority had as of the date of that letter,
21 you--clearly, those concerns were not sufficient for
22 them to deny Omega the Contract; correct?

1 A. Apparently not.

2 Q. Yes.

3 Okay. You then go on in Paragraph 78 to say
4 that they abandoned the [REDACTED] contract, and you
5 cite--

6 A. One second. I have too many.

7 Q. I'm sorry. Yes.

8 A. What paragraph?

9 Q. Paragraph 78. So, this is the fourth of five
10 paragraphs in which you set forth the bases for your
11 Expert Opinion that the reputation of the Omega
12 brand--

13 PRESIDENT SHORE: Let's just go to
14 Paragraph 78. We know what the context is.
15 Paragraph 78. If you have a question, ask it.

16 MR. HINES: Okay. Yes, Mr. President.

17 BY MR. HINES:

18 Q. So, you cite here, for purposes of this
19 proposition, that it abandoned the Contract, a letter
20 cited in Paragraph 119, QE-0097.

21 A. Yes.

22 Q. Okay. Let's take a look at that.

1 You there?

2 A. Yes.

3 Q. Okay. So, this is the article that you cite
4 here, and I note that you don't provide a full
5 translation to English, but if we--let's first look at
6 Page 1 of the Spanish, the date of this there is
7 March 8, 2016; correct?

8 A. Yes.

9 Q. Okay. Now, let's look at--you can look at it
10 in the Spanish. I'm going rely on what's translated
11 in the English on Page 2 here. And here we can see
12 that the Infrastructure Financing Authority is quoted.
13 This is in the second paragraph. Sorry. The Director
14 of AFI is quoted as saying: "The CPA, not us, makes an
15 evaluation and assumes a position and says if the
16 Company has enough liquidity to continue."

17 Right?

18 A. Yes.

19 Q. And then the article goes on to note that:
20 "The CPA, Armando Suárez, was the consultant who
21 evaluated the financial statements of the companies
22 that competed for the Contract," and that Mr. Suárez

1 said in his Report: "The proponent (Omega) has
2 adequate liquidity to build any project."

3 Do you see that?

4 A. Yes.

5 Q. Now, I note that the author of the article
6 goes on to criticize that decision below based on his
7 analysis of the financial statements; correct?

8 A. My recollection is, yes.

9 Q. Yeah. So, let me ask you, the author of this
10 article is Joel Cintrón Arbasetti; right?

11 A. Yes.

12 Q. You don't have any idea whether he has got an
13 accounting background?

14 A. No. But, I mean, you don't need much of an
15 accounting background to see whether the P&L reports
16 profits or losses, and I think that's what this
17 journalist was reporting, that the Company had losses.

18 Q. Right. But in point of fact that the CPA
19 specifically hired to look at the most relevant
20 portions of that document for purposes of the bid
21 concluded that what those financial documents showed
22 demonstrated that the proponent Omega had adequate

1 liquidity to build any project; correct?

2 A. Yeah. The CPA made their assessment, and it
3 proved to be a wrong assessment.

4 Q. Okay.

5 Okay. And I'd like to look now at some of
6 the stuff you didn't translate here. The first
7 paragraph in Spanish, if you look at--it begins on
8 Page 1 and continues over to Page 2. The end of that
9 first paragraph is describing the criminal allegations
10 against Omega in Panamá; correct? I should say Omega
11 and Mr. Rivera.

12 PRESIDENT SHORE: I'm sorry, could you help
13 me. I got lost in the paragraph. Remind me where.

14 MR. HINES: Sure. I'm sorry, so this part
15 wasn't translated when they submitted it. It is the
16 first paragraph of the article. It starts at the--the
17 portion I'm referencing starts at the bottom of Page 1
18 and continues over to Page 2.

19 PRESIDENT SHORE: I got it. Got it. Okay.
20 Thank you. Sorry.

21 BY MR. HINES:

22 Q. And you can see--my Spanish isn't great, but

1 I can tell that they are referencing Mr. Rivera,
2 Omega, the Supreme Court's accusations,
3 Justice Moncada Luna, et cetera.

4 So, you would agree that here this first
5 paragraph at the end is describing the criminal
6 allegations against Omega and Mr. Rivera in Panamá;
7 correct?

8 A. It doesn't say Omega. It says--I mean, I can
9 translate from the Spanish, but it is talking about an
10 accusation against Mr. Rivera personally.

11 Q. Who it describes as the principal and
12 executive of Omega; right?

13 A. Yes. But it doesn't say that the Supreme
14 Court--

15 Q. Well, but then if you go to page--

16 PRESIDENT SHORE: Go ahead and finish,
17 Dr. Flores. It doesn't say--

18 THE WITNESS: So, in the first page, it
19 says--so, it says there, meaning in Panamá, the
20 Supreme Court accuses him, meaning Oscar Rivera, of
21 having a part of a money-laundering scheme by which
22 the ex-judge, President of the Supreme Court of

1 Justice of Panamá, Alejandro Moncada Luna, was
2 sentenced to five years in jail. And it said to
3 Omega, there is also an accusation of receiving an
4 advance of [REDACTED] to develop a market, a
5 farmer's market that was never built.

6 BY MR. HINES:

7 Q. So, you would agree that that last sentence
8 that you just read said that there is an accusation
9 against Omega; right?

10 A. It seems so, yes.

11 Q. Okay. Yeah. Right.

12 A. Yeah.

13 Q. And if we look down further through this
14 article, there is a picture of Mr. Rivera. But
15 starting on Page 8, you'll see that basically the rest
16 of the article goes on to describe all of these issues
17 in Panamá. This begins on Page 8.

18 A. So, what's the question?

19 Q. I'm just asking, do you agree that the rest
20 of that article goes on to discuss at length the
21 issues being faced at that point in Panamá?

22 A. No, but it started before--it does mention

1 things in Panamá, but it also discusses all the
2 problems with the linear part--

3 Q. Which I will come to right now.

4 A. Yes.

5 Q. Okay. So, let's look at the first translated
6 paragraph of this article now. You can look at
7 Spanish equivalent, that's fine, but my Spanish isn't
8 good enough. So, I'm going to rely on the English,
9 and you'll see at the very last--starting midway
10 through the second-to-last line of that paragraph, it
11 says that: "The Contract was signed on November 18,
12 2014, and canceled by AFI on December 1, 2015,
13 allegedly due to lack of liquidity in Omega's
14 accounts."

15 Correct?

16 A. Yes. So, you're reading from the first
17 English translated--

18 Q. Correct. Yes. That's correct.

19 And if we look at Page 3 of the Spanish
20 document--and this is right next to the picture of
21 Mr. Rivera--you can see that it says that: "After
22 Omega was in charge of construction for 12 month, AFI

1 sent them a notification to notify them in a formal
2 way that he was incurring serious delays in the
3 execution of the work due to lack of resources and
4 financial capacity and gave him seven days to present
5 a work plan to recover lost days under penalty of
6 canceling the Contract."

7 A. Yes.

8 Q. Okay.

9 A. And then it continues.

10 Q. Yes, it does continue. And if we look down,
11 you--at the very bottom, it said that--it suggests
12 that the Project was delayed by 260 calendar days.

13 A. It doesn't suggest. It states that the
14 Project was delayed by 260 calendar days, and that
15 there were several defects, mostly in the area of the
16 terrace overlooking the sea thus shown in the Annex to
17 the Contract.

18 Q. Fair enough. Fair enough.

19 A. And it continues. So, that was my point,
20 that it doesn't jump to just focus on what had
21 happened or the criminal investigations in Panamá. It
22 goes at great length to say what were the problems in

1 the Project in Puerto Rico.

2 Q. I never suggested it did jump. My point is
3 that this article makes very clear that it's written
4 in the context of the measures, and, in fact, if we do
5 the math, 12 months from when they took over the
6 contract--which was what was referenced there when
7 they received that letter--would have been
8 November 18, 2015; correct?

9 A. I'm sorry. I lost the math. You said--

10 Q. Okay. So, we read in this section we just
11 looked at, it starts saying that they received this
12 letter about the delays, et cetera, 12 months after
13 Omega was put in charge of the construction; right?

14 A. Yes.

15 Q. And we know from the paragraph we looked at
16 before that the Contract was signed on November 2014;
17 right?

18 A. Yes.

19 Q. So, that means that this letter was sent
20 sometime in November 2015; correct?

21 A. Yes.

22 Q. And even if we do the math backwards to this

1 260 calendar days' delay, that only takes us back to
2 sometime in March 2015; correct?

3 A. Yes, correct.

4 Q. So, my point is that all of this happens
5 after the Valuation Date and after the Measures.

6 A. Okay. If what you are telling me is that
7 because of measures in Panamá, then Omega U.S. entered
8 into Contracts that it could not do and that it was
9 doing in--with several defects--I don't know. You
10 cannot blame that on Panamá.

11 Q. Well, I'll note that--and we looked at some
12 of this verbiage earlier, and you ascribed it to moral
13 damages, that, in fact, Claimants' case is that the
14 Measures in Panamá destroyed Omega U.S.' ability to
15 operate far beyond Panamá.

16 A. But then the responsible thing to do for any
17 contractor in the world would be to say, I'm sorry,
18 AFI, the Puerto Rican authority, I'm in a very bad
19 situation. I'm not able to do the Contract. I
20 respectfully withdraw. To instead keep going and then
21 keep accumulating delays and then keep trying to build
22 it but build in a shoddily way, I don't think that's

1 the responsible thing to do.

2 Q. Well, but in point of fact, the article--and
3 I'm looking for it now--describes what happened in
4 the--as characterized by AFI as being an amicable
5 termination, seemingly exactly what you are
6 describing.

7 A. But it is only after a year. And so, the
8 point is that things were built, they were built
9 poorly, and you can see if you turn at the top of
10 Page 4, it says there were problems in the way that
11 the columns were built. They were not made to
12 specification. The length was not what the blueprints
13 indicated. There were problems with the wall, the
14 installation of tubes for the water supply, the
15 waterproofing, and also like some people need to be
16 corrected in intersection with the street.

17 PRESIDENT SHORE: I'm going to stop you
18 there, Dr. Flores.

19 THE WITNESS: Yes.

20 PRESIDENT SHORE: I think we've got the point
21 on this letter. We don't need to hear you gentlemen,
22 as interesting as it may be in other respects, debate

1 the contents of this letter.

2 We have the point on dates from your side,
3 Mr. Hines, and we have the point from your side on
4 what this may or may not have been a consequence of,
5 Dr. Flores.

6 MR. HINES: Yes. Thank you, Mr. President.
7 I was actually looking to get back to his Report as
8 you said that.

9 BY MR. HINES:

10 Q. So, I want to go on now to the last paragraph
11 in this section, Paragraph 79. Okay.

12 Do you see that?

13 A. Yes.

14 Q. Okay. So, here, you state that there are
15 currently 54 cases on the Puerto Rican judicial
16 database where Omega U.S. is listed as a defendant;
17 right?

18 A. Yes.

19 Q. And you go on to say the cases against
20 Omega U.S. include several construction firms and
21 contractors and suppliers and the Salvation Army, a
22 client whose project Claimant counts among its list of

1 accomplishments; right?

2 A. Yes.

3 Q. Okay. So, you were here on Tuesday when
4 Mr. Rivera explained that in his opinion, quite
5 unfortunately, construction is a very contentious line
6 of work?

7 A. I recall him saying that.

8 Q. And he said that most of these were
9 subcontractors, and most of them got settled or thrown
10 out; correct?

11 A. He said something to that effect.

12 Q. Okay. I note in your Report that you don't
13 explain any analysis that you did to determine, on
14 average, how frequently a construction company of
15 Omega's size and productivity generally gets sued, do
16 you?

17 A. Maybe it's not stated, but to us, in
18 analyzing this, it struck us as rather high,
19 especially because the volume of business of
20 Omega U.S. at that time was not that high. So, it is
21 surprising that it would have this level of
22 litigation. I agree that in big construction

1 projects, there sometimes is some litigation. But,
2 for example, when the Panama Canal was widened, there
3 was a big arbitration relating to that. But there's
4 also construction companies that are able to conduct
5 their day-to-day business pretty much with no
6 litigation. Of course, if someone falls and dies at
7 your work site, probably the estate of the deceased
8 will sue you, but that doesn't happen every day.

9 Q. Right. But to be clear here, you present no
10 basis of comparison to determine whether the lawsuits
11 that you are presenting here--which span quite a
12 number of years--would be abnormal in the context of
13 similarly situated construction companies, do you?

14 A. That's true. There is no specific analysis,
15 but to us, we have analyzed other situations, and this
16 seems high to us.

17 Q. And I note that you don't give any
18 explanation in your Report as to what the nature,
19 background, or disposition of any of those cases were?

20 A. No. They are publicly available. You could
21 go into them.

22 Q. Okay.

1 A. We didn't want to go into that all that much
2 level of detail.

3 Q. Okay. Let's look at QE-0053, which you
4 submitted. And in the electronic version, if you're
5 looking at it, it's on a page, or a tab, rather,
6 titled "4-Omega U.S. Lawsuits." In the paper version,
7 there's a title on the first page that says
8 "Supporting Figures, Table 4, Lawsuits involving U.S.
9 and Puerto Rico."

10 A. Yes.

11 Q. Okay. So, I would like to look down to the
12 line that you've numbered 43 here.

13 A. Yes.

14 Q. Okay. So, that's the Salvation Army lawsuit
15 that you referenced in the paragraph of your Report we
16 just looked at; right?

17 A. Yes.

18 Q. Okay. And what's the date next to it that it
19 says it was presented?

20 A. The 24th of September 2015.

21 Q. Okay. So, the 24th of September 2015, again,
22 would be after the Measures; correct?

1 A. Yes.

2 Q. Okay. And I'd like to look at the detailed
3 docket information that you provided, which is in
4 QE--actually, I'm sorry, before we do that, let's just
5 look as a general matter here and note--so, the first
6 date of--the first lawsuit you indicate here dates
7 back to May of 1994; correct?

8 A. That's correct. The three first lines are
9 from the 1990s.

10 Q. Okay. And then the last goes to 10th of
11 August 2017; right?

12 A. Yes.

13 Q. Okay. So, that's a span of over 20 years;
14 right?

15 A. Yes. But if you review distribution, most of
16 them happen between the last--latter part of the first
17 decade and the second decade of this century.

18 Q. Right.

19 A. If you put between 2005 and 2015, that is
20 most of them.

21 Q. Okay. And if, in fact, if we look--so, this
22 would, I guess, be--Row 28 is the last one in 2009, so

1 28 of these, more than half of them, occurred before
2 2010; right?

3 A. Yes.

4 Q. And you would agree with me that Omega
5 Panamá--the Omega Consortium, including Omega U.S.,
6 won a number of bids in Panamá after that date,
7 notwithstanding the 28 lawsuits?

8 A. Yes.

9 Q. And, in fact, Omega U.S. itself, as we know,
10 at least with respect to the 2014 project, continued
11 winning projects into late 2014; correct?

12 A. I'm sorry. Say again?

13 Q. Omega U.S. continued to win projects in
14 Puerto Rico, at least as far as November 2014, based
15 on the article that we just looked at; right?

16 A. I only have--the only evidence I have of
17 Omega U.S. winning a contract outside of Panamá is
18 this one, the linear work, so I wouldn't say projects.

19 Q. Okay. Fair enough.

20 A. I think they only one won, which they
21 abandoned.

22 Q. Okay. And they won that, notwithstanding the

1 fact that at that time--if we're looking at 42--42 of
2 the lawsuits you cited were already on the books in
3 Puerto Rico where they were awarded that contract?

4 A. Yes, the Project that eventually failed.

5 Q. Okay. And then if we look down further, we
6 can see, from Line 43 down, a dozen of these are
7 lawsuits that took place after the Measures had
8 occurred; correct?

9 A. Well, but, again, the fact that the
10 litigation starts after the Measures doesn't mean--of
11 course, this would be obvious--that the underlying
12 event that is being sued pertains to after the
13 Measures. For example, the Salvation Army that you
14 say, yeah, the Salvation Army started the process in
15 September 2015, but there was a project that was
16 completed earlier; right?

17 So, you can have something built, and then
18 four years after it was handed to you, you realize
19 that the foundation is shaking and that the building
20 is about to collapse, and then you start the lawsuit.
21 So, the distinction you're making regarding the time
22 of the filing of a lawsuit, I don't understand why you

1 relate that to before or after the alleged Measures by
2 Panamá.

3 Q. Well, I do that, sir, because you cite the
4 existence of these 54 lawsuits as evidence that the
5 reputation of Omega was in trouble long before the
6 Measures?

7 A. Yes. My main point is--remember what I said
8 this morning. You are someone who wants to enter into
9 bidding for public contracts in Panamá. Do you go at
10 it alone by yourself, or do you buy Omega Panamá?

11 And if you are--if you want the reputation of
12 Omega U.S., you say--my point is, when you say all
13 these things together, which may be true or may not be
14 true, they may be settled out of court or not settled
15 out of court. But the fact is, it is a baggage. If
16 you were to acquire intangibles of Omega U.S., you're
17 getting the good and you're getting the bad.

18 And that's my point. I don't think a
19 hypothetical buyer, seeing all of this evidence would
20 take caution about deciding, yes, it's going to be so
21 good if I can go with it with the brand name and with
22 the reputation of Omega U.S. That's my point.

1 Q. This hypothetical seller, though, would do
2 due diligence; correct? So, it would look into what
3 the nature and disposition of these lawsuits would be?

4 PRESIDENT SHORE: Hypothetical buyer.

5 MR. HINES: I'm sorry. Thank you,
6 Mr. President.

7 PRESIDENT SHORE: It's late in the afternoon.

8 MR. HINES: It is and you'll be happy to know
9 I'm almost done.

10 THE WITNESS: The hypothetical buyer would
11 certainly do due diligence, but, again, so if you see
12 all of this--when you deal with third parties, you
13 have to think, every time I deal with someone, I'm
14 going to have explain, yes, you know, my company was
15 sued last year. There was no merit to that, but I had
16 to go fight it in court. Then the bank came and they
17 called my lines of credit. There was no merit to
18 that. I had to redo it. And, yes, in Puerto Rico, I
19 had to abandon the Project, but that's because of this
20 reason.

21 There is so much baggage that I don't see
22 much economic value to acquiring whatever it is that

1 Omega U.S. were to contribute to Panamá. Start brand
2 new. At the end of the day, most of this--the only
3 thing you need is financial statements, two or
4 three years of financial statements, bonding capacity,
5 and the specific ability that you are required for
6 that particular contract, and that you can put
7 together in the same way that Omega in Panamá started
8 doing that in 2010-2011. That's my main point.

9 PRESIDENT SHORE: I'm sorry, Mr. Hines, if I
10 may. But your conclusion there, isn't it, Dr. Flores,
11 based on--you can only make that conclusion based on
12 your review of bid documents?

13 THE WITNESS: Say again?

14 PRESIDENT SHORE: That your review of the
15 bidding process--

16 THE WITNESS: Yes.

17 PRESIDENT SHORE: --to say that all you need
18 is financial statements here.

19 THE WITNESS: Yes. Of course, yes.

20 PRESIDENT SHORE: It's your review of the
21 bidding process--

22 THE WITNESS: The bidding materials are in

1 the record. They are attached to our--

2 PRESIDENT SHORE: Right.

3 THE WITNESS: --I don't recall the exhibit
4 numbers. We can give them to you later. And you can
5 see what, and in fact, usually every bidding, at the
6 end of the day, comes to 100 points; right? And the
7 100 points are all allocated by different categories,
8 and then you have--the category will have--do you have
9 the right personnel? 15 points. Do you have the
10 bonding? 10 points. Financial statements, and so on;
11 right?

12 So, that is always--and that's--we have those
13 in the record, and you can see what is--what was
14 required and not required. And my point is, the
15 things that Omega U.S. could bring in order to win
16 those bids is not that much.

17 PRESIDENT SHORE: I understand.

18 THE WITNESS: Yeah.

19 PRESIDENT SHORE: I understand that, but--I
20 mean, it does rely on your assessment of how the
21 bidding points are awarded.

22 THE WITNESS: Yes.

1 PRESIDENT SHORE: And you're saying,
2 essentially, it's a very clear-cut lack of discretion
3 point whereby reputation in the industry or experience
4 in completing a project successfully with few change
5 orders, little delay, wouldn't necessarily matter.
6 But are you confident in making that--in reaching that
7 Opinion--

8 THE WITNESS: Yes.

9 PRESIDENT SHORE: --based on your review of
10 the bidding document?

11 THE WITNESS: Yes. Yes. So, if you look at
12 the eight--the bidding those years, for the eight
13 Contracts that the Omega Panamá won, with Omega U.S.
14 and with the third Parties and so on, you can see
15 that--I mean, they all require--for example--I have
16 one in mind--the airport one, the Tocumen
17 Airport; right?--it said the bidding permit says 15
18 points for having completed similar airport
19 construction projects. And Omega Panamá provided that
20 and it got 15 points. Right?

21 But it doesn't like a long history of like,
22 you're the best constructor company, look at my

1 coliseum. For example, having built a coliseum in
2 Puerto Rico, poorly or excellently, does not even
3 appear in the bidding punctuation, the bidding
4 discourse for these contracts that we won. And those
5 are in the record. You can look at them.

6 PRESIDENT SHORE: Did you speak to anyone,
7 for example, as part of your research who actually
8 does make those Decisions?

9 THE WITNESS: I met--

10 PRESIDENT SHORE: In Panamá.

11 THE WITNESS: Yes. Yes. When I was in
12 Panamá, I met with the people that ran PanamaCompra,
13 because I wanted to understand how this bidding
14 platform works, and what they told me is that there is
15 no--there is no, like, historical record, because
16 otherwise if you want to--if you were to give
17 always--so, let me give you an example.

18 If you give more points to someone that has
19 bid already three times that person is going to win.
20 And in the next contract they say, well, that person
21 has won four times. So, would tend to create kind of
22 almost like a dependency and transpiring bidding

1 platforms, and that's where--the World Bank recommends
2 that.

3 You don't want to create systems that would
4 create a--I think it is called "endogamic," that you
5 always have the same people winning, the same people
6 winning, so you want to create mechanisms that would
7 allow for competition. And, of course, you need to
8 know that the person will be able to build the
9 project; right? And that's why you ask, well, can you
10 show me that you or your partners have built three
11 construction projects in the network?

12 But if you ask, "I want someone who has
13 worked with the Government of Panamá 25 times," that
14 will--there is only going to be one guy that's going
15 to fulfill that requirement, and that always exclude
16 the competition. So, that's why the bidding
17 parameters want to incentivate competition.

18 PRESIDENT SHORE: No, no. I get the
19 competition point, I guess, but in your Reports, I
20 don't recall seeing you explain this conversation that
21 you had with the--

22 THE WITNESS: Yes, it's true. I did not. I

1 mean, I think we refer in a paragraph about the whole
2 PanamaCompra works, how the platform works.

3 PRESIDENT SHORE: Okay, but you appreciate
4 that counsel can't really cross-examine on it if it's
5 not in your Reports.

6 THE WITNESS: That is correct, yes.

7 PRESIDENT SHORE: Okay.

8 ARBITRATOR DOUGLAS: Just to continue on
9 that, it is also assuming that this is a very
10 mechanical exercise and is entirely objective? I
11 mean, surely when the people actually sit around the
12 table and award points, there's a level of
13 subjectivity that creeps in there and household names,
14 construction names, maybe, feature in their
15 considerations as opposed to a complete unknown entity
16 they had never heard before. So, one would have to
17 get inside how these processes actually work.

18 THE WITNESS: I mean, most of the bidding
19 results--is usually the bidding result is not
20 so-and-so won; right. That's a memo, and I think we
21 have them in the--I mean, I think they are in the
22 record somewhere. I can look for them. That explains

1 the Decision process followed, and it says for these
2 things they were up to 15 points. We gave only 12
3 points, because A, B, and C. And they explain their
4 reasons why.

5 For example, sometimes--and we discussed that
6 in the Report extensively that, for example, for the
7 financial capacity, you have to submit it in a certain
8 form, and there was a bidder that didn't use the right
9 form. He provided the financial statements, but
10 without the exact form that was needed. And then he
11 got points discounted.

12 So, there is some--of course, there is always
13 subjectivity when you award the points, but the
14 rationale for the arriving at the final points has to
15 be disclosed and explained, and we have that as part
16 of these bidding results.

17 PRESIDENT SHORE: It's like grading, though,
18 a lot of it is post hoc, isn't it?

19 I mean, you know, you have 50 grades in a
20 class and, yeah, you can always justify how you've
21 given the points, especially when you need to justify
22 it, but that doesn't mean that a lot of subjectivity

1 and discretion wouldn't have gone into the actual
2 award of the points, and you would have expected in
3 the--in an infrastructure context where the Government
4 is on the hook for how the country is going to look,
5 that it will be swayed by certain reputational and
6 factors of experience; is that fair?

7 THE WITNESS: Yes. It is a very fair point.
8 And that's why in Slide 7, and in my Report, I mention
9 that to the extent that someone in a decision-making
10 power at the Ministry or the municipality or so on,
11 would be concerned about making sure to choosing a
12 brand name that will make--get it done without
13 defects, on time, on budget. Look at the competitors
14 they are talking about: SES, ACCIONA, FCC, Sacyr.
15 All of those are the Spanish companies, Spain, all of
16 this time of--from Spain--

17 (Overlapping speakers.)

18 PRESIDENT SHORE: Yeah.

19 A. But they are big companies. They have been
20 around for decades, and they have landed heavily in
21 Latin America. And if, to the extent that the
22 Government official in Panamá who says, I want--within

1 the budget, I'm going to give a little bit more points
2 to whoever does it, I think it is going to do the
3 best. I think these brand names would carry much more
4 weight than Omega Panamá or Omega U.S.

5 MR. HINES: So, Dr. Flores--

6 PRESIDENT SHORE: Back to you, Mr. Hines.

7 MR. HINES: Thank you, Mr. President.

8 BY MR. HINES:

9 Q. Dr. Flores, just to close out this discussion
10 of the lawsuits here, I note that you also don't tell
11 the Tribunal that the majority of the lawsuits that
12 you cite here were either withdrawn, dismissed,
13 desisted or revoked, do you? All you note is that at
14 some point someone filed a lawsuit.

15 A. Yes.

16 Q. Okay.

17 MR. HINES: Okay. No further questions.

18 PRESIDENT SHORE: Thank you, Mr. Hines.

19 Mr. Ryan.

20 MR. RYAN: Mr. President, I have no questions
21 for Dr. Flores, but Dr. Flores was referencing the bid
22 documents being in the record, and just for the

1 record--

2 PRESIDENT SHORE: Sure.

3 MR. HINES: --I would note that they are
4 cited at the Second Quadrant Economics Report,
5 Footnote 31.

6 PRESIDENT SHORE: Hang on, Dr. Flores. I
7 think we have a few more.

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR DOUGLAS: I just have one question
10 about something you weren't asked, actually, about the
11 existing Contracts.

12 THE WITNESS: Yes.

13 ARBITRATOR DOUGLAS: And I just--because it's
14 a point that is challenging my comprehension slightly.
15 I didn't say completely. I said slightly, but still.
16 And that is, if I can find the slide on the Compass
17 Lexecon. Right. It is Slide 15, if you have Compass
18 Lexecon's.

19 THE WITNESS: No, this is--I'm sorry, you
20 said the slide?

21 ARBITRATOR DOUGLAS: Slide 15.

22 THE WITNESS: Yes.

1 ARBITRATOR DOUGLAS: And this sets out the
2 differences between you on two levels. I don't want
3 to go into the change orders, because I do think that
4 is more of a legal/factual issue, but the economic
5 issue which is listed here that creates a [REDACTED]
6 difference, I heard the explanation provided this
7 morning. And I just wonder if I could have your
8 response to it in terms of why financial costs are
9 considered consistently or inconsistently in this
10 respect?

11 THE WITNESS: So, the main source of
12 difference, which is about [REDACTED], out of this [REDACTED].

13 ARBITRATOR DOUGLAS: Is discounting the money
14 that was paid on account.

15 THE WITNESS: Exactly.

16 ARBITRATOR DOUGLAS: Yeah.

17 THE WITNESS: And that's--it's for you to
18 decide, but from my perspective, and from my
19 colleague, Mr. McCann's perspective, it is pretty
20 clear. This is money that was given to Omega Panamá.
21 And Omega Panamá, of course, the intended use was to
22 use it to build and complete the Projects; right?--but

1 was the money that was--you had it. It was yours.

2 So, if you had in your checking accounts X
3 million dollars, and the value that--so, I look, I see
4 in the checking account, X million dollars. To me,
5 the value is X million dollars. Compass Lexecon says,
6 no, I have X million dollars in the checking account,
7 but I'm going to assume that I don't have that money.
8 I will be given that money a year or two years from
9 now and I am discounting it from two years from now to
10 the present.

11 That different treatment creates [REDACTED]

12 [REDACTED].

13 ARBITRATOR DOUGLAS: I guess if it was
14 somehow in an escrow and could be released with the
15 permission of--

16 (Overlapping speakers.)

17 THE WITNESS: But the point is that it was
18 not.

19 ARBITRATOR DOUGLAS: I said, if the money was
20 somehow in escrow and its use was restricted by--until
21 consent was given by an agency or something, that
22 might--

1 (Overlapping speakers.)

2 THE WITNESS: Exactly. But the point is that
3 it was not. It was in the checking account of Omega
4 Panamá.

5 ARBITRATOR DOUGLAS: What about the remaining
6 [REDACTED] ?

7 THE WITNESS: The remaining [REDACTED] has to do
8 with the amounts--so, there is about [REDACTED] of
9 work--of profit resulting from work to be completed in
10 the future, in the next 2.5 years or so, because the
11 Project was halfway through, right.

12 And the way it works is it would have a
13 revenue line that would come from payments from the
14 different Municipalities and Ministries, and then
15 Omega would have to pay its costs--workers, cranes,
16 all of that--and then you would have a profit. And
17 then so there would be profit in the future over the
18 next two years or so. We need to discount it back to
19 the Valuation Date.

20 And then the difference here is simply do you
21 use a Discount Rate of closer to 10 percent as Compass
22 Lexecon says or closer to 20 percent as we say.

1 That's the difference.

2 ARBITRATOR DOUGLAS: I see.

3 THE WITNESS: Because, remember, a big
4 point--it is not that money was--that was not money in
5 the bank, right, because it would be money coming, but
6 what if you had to complete the Project and you
7 realize, "Oh, my God"--I don't know, "the
8 foundation--it's rained a lot, the foundation is weak,
9 I need to put 10 tons more cement," and that has extra
10 cost. That--you may have to bear the cost. So,
11 there's business risk there, so that--we think that
12 the proper Discount Rate would be 20 percent. So,
13 that's the second one.

14 And the third one is for the amounts that
15 were owed outstanding. If you considered those
16 amounts outstanding--there is no dispute about what
17 the outstanding amount is. The issue is how do you
18 bring those from the payment date in which they should
19 have been paid through the date of the Award. We say
20 U.S. Treasury bills and they say, no, Cost of Equity
21 or something like 12 percent.

22 So, these are the three differences.

1 PRESIDENT SHORE: Counsel, anything arising
2 from the Tribunal questions? Mr. Hines?

3 MR. HINES: No.

4 PRESIDENT SHORE: Mr. Ryan?

5 MR. RYAN: No, sir.

6 PRESIDENT SHORE: Dr. Flores, thank you very
7 much for your appearance and your testimony today.

8 THE WITNESS: Thank you.

9 (Witness steps down.)

10 PRESIDENT SHORE: So, thank you, Counsel, for
11 getting us in a timely basis to the end of Week 1.

12 There are a couple of points that the
13 Tribunal wants to raise with you, and then, by all
14 means, take five minutes to confer if there is
15 anything you need to raise with us at this stage.

16 One point is the timing for your preparation
17 of documents that go public, the redaction issue. One
18 question is when you want to do that. Do you want to
19 do that before Week 2 or do you want to take the more
20 sensible approach and do it after Week 2?

21 You don't have to tell us now, but you should
22 discuss that with each other on how that would work.

1 MR. WEISBURG: We probably have a shared
2 view.

3 MS. GORSLINE: I think so, too. Go ahead.

4 MR. WEISBURG: After Week 2.

5 MS. GORSLINE: Absolutely.

6 PRESIDENT SHORE: After Week 2.

7 (Comments off microphone.)

8 MR. WEISBURG: I think the Tribunal Chair was
9 suggesting that.

10 PRESIDENT SHORE: You know, I'm happy I don't
11 have to reach that decision.

12 The second issue, and Ms. Kettlewell will
13 help me if I get this wrong, but my understanding is
14 that the streaming room is not available. So, there's
15 no delay that would potentially be available in
16 Week 2.

17 Now, what this means is that, if the matter
18 is to be publicly available, it's got to be publicly
19 available. There is no delay. And, therefore, you
20 would be subject to a lot of the constraints and
21 disruption on material if you're going to have it
22 publicly. We can't have any delay.

1 So, the question is whether you want the
2 hearing--with the possible exception of the United
3 States, which I'm not sure would even want to attend
4 in Week 2. Of course, they are interested in legal
5 arguments solely--whether you want to have anything
6 open to the public on Week 2 or whether, similarly to
7 now, would you make, after you've had a chance to
8 review, you would make the audio or the Transcript,
9 all the documents publicly available. Again, after
10 you've had a chance to review. Because otherwise,
11 without the streaming room, people are here.

12 SECRETARY KETTLEWELL: Internet.

13 PRESIDENT SHORE: Internet. Yeah. The
14 people are live. There is no delay I guess is what I
15 want to say.

16 MS. GORSLINE: I mean, on behalf of
17 Claimants, my sense is that it would be very difficult
18 to conduct an efficient and orderly hearing, given the
19 protected information and the procedures--I suppose I
20 should question how it would work. Would we have to
21 clear the room whenever protected information was
22 about to be raised?

1 SECRETARY KETTLEWELL: No. So, what the
2 President is proposing or what he is explaining is
3 that it would work normally. The session would be
4 closed at the moment that the Parties would address
5 any confidential information. It is not that people
6 are going to be here attending at the Hearing. It
7 will be--the option is to have it streamed online,
8 which would mean that there would not be a possibility
9 of whether confidential information is exposed at some
10 point without closing the session, that we would be
11 able to go back and cut that part, which was basically
12 the purpose of the delay of one hour.

13 MS. GORSLINE: So, as I understand it, any
14 protected information accidentally disclosed would
15 immediately become public? There would be no calling
16 it back?

17 PRESIDENT SHORE: Correct. Maybe you want to
18 think about that, and then the best thing to do is to
19 get in touch with Ms. Kettlewell about that. Because
20 I think it is only--you want to give that some
21 consideration about if you're going to leave things
22 live on the Internet.

1 MR. WEISBURG: I would just suggest that
2 Claimants should think about it--we both think about
3 it, but they should tell us what their position
4 is--report to us what their position is going to be,
5 and then we think about it for 10 minutes further and
6 then we can report to Ms. Kettlewell.

7 PRESIDENT SHORE: That's something I wouldn't
8 want to direct Claimants to do.

9 MR. WEISBURG: Understood.

10 PRESIDENT SHORE: It's a suggestion that
11 Ms. Gorsline is free to consider or not.

12 MR. WEISBURG: Sure. Okay.

13 PRESIDENT SHORE: And, certainly, you can
14 talk to each other, and we can take a short break.

15 Again, you don't need to decide it today, but
16 it may be best if you are both together to do it.

17 MR. WEISBURG: Okay.

18 PRESIDENT SHORE: Okay. Now, we have, again,
19 a very helpful schedule from counsel on what would
20 happen, what will happen in Week 2. We know that
21 there is the issue of, as far as I'm aware, just
22 former President Varela, about fitting him into the

1 schedule in the event that he's appearing in Week 2,
2 and I wonder if you have any further information about
3 this that you can share at this time on his appearance
4 in Week 2.

5 MR. RYAN: Mr. President, at this time, we
6 continue to expect that President Varela will testify,
7 and as we've talked with Claimants' counsel about,
8 subject to a conversation with him about ordering, we
9 would expect that he would go first, he would be the
10 first Fact Witness called, with Mr. Zarak to follow.

11 PRESIDENT SHORE: I'm sorry, say the last
12 part again. He would be--

13 MR. RYAN: --the first Witness to be called
14 on the first day of the second week of the Hearing,
15 with Mr. Zarak to follow immediately after.

16 PRESIDENT SHORE: I see.

17 MR. WEISBURG: Can I direct a question to
18 counsel? Perhaps it didn't go to the Tribunal.
19 Didn't you do an alternative schedule?

20 MS. GORSLINE: I did. I sent it to you, and
21 I understand that we were all preparing for hearing,
22 but I have not received a response. So, that's why it

1 hasn't gone to the Tribunal.

2 MR. WEISBURG: I thought we did respond. I
3 have to look. Let me look at it again. I thought it
4 was fine. I mean--

5 PRESIDENT SHORE: Take a look and come back
6 to us. Again, that needn't be told to us today, but
7 it would be useful to know because--I mean, you've, on
8 both sides, been extremely efficient, and if you are
9 slotting the Witness in then and I see that we have
10 closing--I mean, we have a closing time at 3:15 on
11 Wednesday the 1st, as the Tribunal promised you, we
12 are holding the 2nd in reserve because we appreciate
13 things could change in the interim. But see what you
14 can do on an alternative schedule based on his
15 appearance.

16 MR. WEISBURG: Yeah, I think we'll look at
17 it. I thought the alternative just added one or
18 two hours to that Wednesday and otherwise was the
19 same.

20 PRESIDENT SHORE: All right. That would
21 be--okay. We would be interested in knowing that
22 because based on what you did for first week, that one

1 or two hours looks on the low side. And I don't want
2 anyone to have to commit right now on how much they
3 would want to take on cross.

4 So, that's not something that you should
5 commit to now, I would suggest, and--so, we do have
6 flexibility. We do have that reserve day. But look
7 at the schedule for Week 2.

8 MS. GORSLINE: If I may, Mr. President.

9 PRESIDENT SHORE: Yes.

10 MS. GORSLINE: The revised schedule that
11 Claimants had put together, we had reserved
12 three hours for President Varela.

13 PRESIDENT SHORE: Right.

14 MS. GORSLINE: And so, there is three
15 additional hours in the afternoon on the 1st, so what
16 we had proposed is, you know, if we stay a little bit
17 later than we have been staying during this hearing
18 session each night, that would allow us to make up the
19 time and still only sit for the three scheduled days.
20 But I don't know what the Tribunal's preference would
21 be, if it would prefer not to sit slightly later each
22 night and rather to go into the morning of the fourth

1 day.

2 PRESIDENT SHORE: Let's see the schedule that
3 you both might be comfortable with as an alternative.

4 We should take a couple of minutes' break to
5 see if you--there are any points you want to raise or
6 anything, you can talk to each other, wish to talk to
7 each other about first, but is there something right
8 now that you wanted to raise? Ms. Gorsline?

9 MS. GORSLINE: No, Mr. President.

10 PRESIDENT SHORE: Mr. Weisburg?

11 MR. WEISBURG: Sir, we think this has gone
12 very well, and we expect the next week to go very well
13 as well in terms of organization.

14 PRESIDENT SHORE: We are grateful to Counsel
15 and to the Witnesses and, most of all, to the Court
16 Reporters and Interpreters, but let's give you
17 three minutes to see if there is anything while we're
18 all in the room that you wish to raise. Otherwise, we
19 can adjourn for the day and say that we've adjourned
20 for the first week. But, take a couple of minutes to
21 confer with your colleagues.

22 Back in, let's say, give it eight minutes.

1 (Brief recess.)

2 PRESIDENT SHORE: Back on the record.

3 So the Tribunal just wants to confirm that
4 counsel will confer with each other, but we will plan
5 to have April 2--some portion of examination on
6 April 2 so that the first three days of Week 2 do not
7 go into the early evening in any burdensome way. So,
8 we will await word from counsel, both on a revised
9 schedule and a schedule that shows some part of time
10 on April 2.

11 The Tribunal at this time doesn't have
12 anything more to raise with the Parties.

13 Ms. Gorsline, for Claimants, anything at this
14 time?

15 MS. GORSLINE: No, Mr. President.

16 PRESIDENT SHORE: Mr. Weisburg.

17 MR. WEISBURG: No, sir. No, we have nothing
18 further, and we just want to let you know how much we
19 appreciate the attention we've gotten from the
20 Tribunal.

21 MS. GORSLINE: Yes.

22 PRESIDENT SHORE: Thank you.

1 MS. GORSLINE: Claimants would like to
2 reiterate that, sir.

3 PRESIDENT SHORE: Counsel on both sides, we
4 are very grateful. I know I speak on behalf of the
5 professors, Professor Naón and Professor Douglas, and
6 Ms. Kettlewell, and we look forward to seeing you on
7 the 30th of March, and, of course, we know we'll be in
8 communication before then. Counsel do need to address
9 the issue that we discussed before on open or a closed
10 hearing on the second week, and I understand that
11 counsel have decided, at least to wait past the second
12 week for the redactions in relation to this week's
13 testimony.

14 With that, unless anyone has anything else,
15 thank you all. For those who live outside D.C., have
16 a safe trip. And the first week in our Final Hearing
17 is concluded. Thank you.

18 (Whereupon, at 4:55 p.m., the Hearing was
19 concluded until 9:00 a.m. on March 30, 2020.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


Dawn K. Larson