

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

**OMEGA ENGINEERING LLC**

**AND**

**MR. OSCAR RIVERA**

*CLAIMANTS*

**v.**

**THE REPUBLIC OF PANAMA**

*RESPONDENT*

---

**SECOND WITNESS STATEMENT OF MR. OSCAR I. RIVERA RIVERA**

---

**Counsel for Claimants**

**JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
United States**

**JONES DAY  
21 Tudor Street  
London EC4Y 0DJ  
England**

**Shook, Hardy & Bacon LLP  
Citigroup Center  
201 S. Biscayne Blvd., Suite 3200  
Miami, FL 33131  
United States of America**

**27 MAY 2019**

**TABLE OF CONTENTS**

**I. INTRODUCTION..... 3**

**II. THE OMEGA CONSORTIUM’S CONTRACTS WERE OBTAINED LEGITIMATELY ..... 3**

**III. CLAIMANTS DID NOT ABANDON PANAMA AFTER SEEING THAT AN INVESTIGATION AGAINST JUDGE MONCADA LUNA WAS ONCOMING ..... 7**

**IV. OMEGA PANAMA WAS A SUCCESSFUL AND COMPETITIVE CONSTRUCTION COMPANY . 9**

**V. PANAMA TERMINATED THE PROJECTS OR LET THEM LAPSE IN BAD FAITH AS PART OF ITS CAMPAIGN AGAINST CLAIMANTS..... 11**

**VI. THE CAMPAIGN CONTRIBUTION REQUEST BY MR. VARELA ..... 19**

**VII. STATEMENT OF TRUTH ..... 21**

## **I. INTRODUCTION**

1. I am the same Oscar I. Rivera Rivera who made a witness statement dated 25 June 2018 (“**Rivera 1**” or “First Witness Statement”). I re-affirm the testimony that I provided in my first witness statement. Unless otherwise stated, capitalized terms in this witness statement have the same meaning as in Rivera 1.

2. I am submitting this second witness statement to address certain allegations and matters raised in Respondent’s Objections to the Tribunal’s Jurisdiction and Counter-Memorial on the Merits (“**Respondent’s Counter-Memorial**”) dated 7 January 2019 and the witness statements and expert report associated with it. If this witness statement does not address a particular matter raised by Respondent, its witnesses, or its expert, that does not mean I agree with such matters.

3. To the extent that any of the matters set out in this witness statement are not within my personal knowledge, I have identified the source of information on which I have relied. Otherwise, the facts and matters set out in this statement are within my personal knowledge and experience.

4. References to documents in this witness statement are to Claimants’ exhibits (marked as “C-\_\_”) or to Respondent’s exhibits (marked as “R-\_\_”) submitted in this arbitration. I was assisted in the administrative preparation of this witness statement by Jones Day and Shook, Hardy & Bacon LLP, counsel for Claimants in this arbitration.

## **II. THE OMEGA CONSORTIUM’S CONTRACTS WERE OBTAINED LEGITIMATELY**

5. I want to be absolutely unequivocal. None of my businesses have ever obtained contracts through corruption, not in Panama, not anywhere. For each of the Contracts relevant to this arbitration, my companies entered a competitive bidding process regulated by law and vetted by

an independent committee who ultimately decided that, based on pre-established evaluation criteria, we rightfully won those competitions.<sup>1</sup>

6. Panama's allegations of corruption against me are irresponsible and preposterous, and as I discuss below, these allegations culminate what has been a relentless series of abuses against my companies, my employees, and me. After the Varela Administration took control of the Panamanian government in mid-2014, Panama systematically reneged on all its obligations toward my companies and me. By January 2015, Panama had wrongfully terminated the Ciudad de las Artes Contract – the largest one – and all of the Omega Consortium's Contracts were being negatively affected. When we indicated that we were going to seek protection under the Treaties,<sup>2</sup> and their attacks against me and my companies only escalated. Just a few days later, our bank accounts were seized, and Panama was telling the media that I was a money launderer for Moncada Luna.<sup>3</sup>

---

<sup>1</sup> As I have mentioned previously, my companies won 11 Contracts in Panama, two of which we successfully completed prior to the change in Administration, one was not signed by the Government, and eight were in progress. See First Witness Statement of Oscar Rivera dated 25 June 2018 (“**Rivera 1**”), ¶¶ 23, 34, 36-37. The remaining Contracts were progressing until Mr. Varela came to power and began a campaign of harassment against my companies and me, which eventually destroyed my companies and my reputation.

<sup>2</sup> See, e.g., Email from Carlos Torres to Oscar Rivera and Frankie Lopez dated 26 Jan. 2015 (C-0532) (indicating that ASSA informed the INAC director that Claimants are protected under the Treaties). ASSA was worried that, despite the fact that the bond had technically expired, ASSA might be ordered to pay the bond if Omega sought protection under the Treaties and did not file an administrative appeal. See Email from ASSA to Omega dated 30 Jan. 2015 (C-0535) (discussing the implications of filing an administrative appeal in Panama on Claimants' Treaty rights); Email from Travelers to Omega dated 2 Feb. 2015 (C-0536) (discussing the implications of filing an administrative appeal in Panama). My reference to the treaties did not please Panama. Two days after I submitted a complaint to the Attorney General for the way in which the Omega Consortium and I were being treated that indicated that I was aware of my rights under the Treaties, [REDACTED]

<sup>3</sup> On 30 January 2015, Pedro Miguel Gonzalez, then a congressperson whom the National Assembly designated as the prosecutor for Moncada Luna's political trial, told the press that he seized bank accounts “linked” to the Judge, including Omega Engineering Inc. and PR Solutions, as the Omega Consortium is “a company that received a contract ‘to develop the most important projects for the court,’ and that Omega had received an advance for the project, but for this investigation he said “*the amounts (of the transfers) are not important [ . . . ] eventually, we will ask for a hearing to make the respective charges.*” Prosecutor seizes accounts linked to Alejandro Moncada Luna, LA PRENSA dated 30 Jan. 2015 (C-0530); *Over \$500 thousand belonging to Moncada Luna are encumbered*, LA ESTRELLA DE PANAMA dated 31 Jan. 2015 (C-0191). See also *Los bienes incautados al magistrado separado*, LA

7. Many months and years have passed since Panama ordered Omega Panama's and PR Solutions's bank accounts to be seized and began a public-relations onslaught against me. Throughout this time, Panama has opened multiple investigations against my companies and me. And to this day, Panama has never charged me or any of my companies with any offense.

8. It is important to highlight that *none* of the Panamanian agencies with which we contracted has ever suggested that the reason for ceasing performance of its obligations under the Contract was because the Omega Consortium had allegedly obtained the La Chorrera Contract through corruption. Rather, Panama is making that claim only for purposes of this arbitration, as a means of defending against its illegal conduct.

9. Indeed, Panama now claims that my companies and I procured *all* of the Contracts through corruption.<sup>4</sup> That is patently false. I would like to make the following clarifications with regards to Panama's misleading claims.

10. I have never met the individuals that comprised the independent commission that evaluated the bids presented for the La Chorrera project. I met former Judge Moncada Luna a *single* time, at the ground breaking ceremony for the La Chorrera Project, after the project had *already* been awarded to the Omega Consortium through a public bidding process and the Contract signed. The only conversation I have ever had with him was at that event, it lasted not more than five minutes and was limited to typical pleasantries. For the avoidance of doubt, I have never paid or offered to pay any benefit to Judge Moncada Luna or his wife, either directly or indirectly, nor was I ever part of any scheme to hide money for them. Moreover, I have never paid or offered to pay a bribe

---

PRENSA dated 24 Feb. 2015 (C-0542); *Sentenced to five years*, LA PRENSA dated 6 Mar. 2015 (C-0543); *Prosecutor orders more arrests for money laundering*, LA PRENSA dated 2 Sep. 2015 (C-0585); Infographic, LA ESTRELLA (C-0628).

<sup>4</sup> See, e.g., Respondent's Counter-Memorial dated 7 Jan. 2019 ("**Resp.'s Counter-Mem.**"), § III.A (The Claimants Acquired their Investments Through Corruption.).

to anyone else. In my 28 years in business, I have always carried myself and my companies with the utmost integrity. My purchase of land in Cañas, Tonosí was a completely legitimate and transparent transaction, consistent with my prior business practices, that had nothing to do with Moncada Luna or the La Chorrera Contract.

11. I understand that Panama asserts that there is no evidence that I planned to develop the Cañas, Tonosí land as part of my business,<sup>5</sup> because it could not find any “applications [. . .] for the approval of a project.”<sup>6</sup> There is, of course, nothing unusual or suspicious about this fact – the development of the Cañas, Tonosí land was merely at the conceptual stage.

12. There are many steps that need to happen before you can develop a real estate project. First, you need to complete the acquisition process and obtain fee simple title which sometimes takes years to achieve. That can only happen when all the conditions for purchase have been satisfied, including any conditions related to liens, utilities, and services, and of course payment of the full sale amount. Once we have the land free and clear, my team and I would first need to draft various ideas for those real estate assets, many of which will never become reality.<sup>7</sup> Then, for those ideas that I do decide to pursue, my team would need to take the idea to the market, which includes exploring demand for similar residential units, looking for financing, and conducting feasibility studies. Then, my team would need to find a promoter or a broker to gather enough

---

<sup>5</sup> Witness Statement of Jorge Villalba dated 7 Jan. 2019 (“Villalba”), ¶ 33.

<sup>6</sup> Villalba ¶ 32.

<sup>7</sup> In fact, depending on the market and feasibility studies, we likely would need to re-adjust our concept before moving forward, for example, the size and number of individual units in the concept might need to be adjusted to better meet the kind of demand for such an idea. And sometimes, I might even decide not to do anything with the land until the right moment comes, *i.e.*, when market conditions improve or conditions for development become favorable.

interested buyers (typically 80%). Without taking the idea to the market and without title to the parcel, my team could not even begin to seek permits for a particular project.

13. In this particular case, practically none of the above had yet happened. As I discussed in my First Witness Statement,<sup>8</sup> many of the purchase conditions had not yet been satisfied, including in particular the lifting of a mortgage on the parcel, and so we did not yet have title to the property. And, assuming my team was happy with the concept, we still had to take it to the market. The idea was still very much in its infancy. But that does not make the land purchase any less real or legitimate.

14. That Panama's allegations against me and my companies are baseless is evident from the results of Panama's many investigations. None of them have resulted in the filing of any charges. Nonetheless, my reputation and my businesses have been destroyed. Worse still, my family, my employees (all of whom lost their jobs after working with me for decades), and the communities who were ultimately supposed to be benefited by our projects in Panama, have also suffered greatly.

### **III. CLAIMANTS DID NOT ABANDON PANAMA AFTER SEEING THAT AN INVESTIGATION AGAINST JUDGE MONCADA LUNA WAS ONCOMING**

15. Panama alleges that we abandoned Panama and our projects once the Moncada Luna investigation became public.<sup>9</sup> Again, this is patently false. To start, I was not living in Panama when the investigation began in late 2014. That said, I continued to closely oversee my

---

<sup>8</sup> Rivera I ¶¶ 97-98.

<sup>9</sup> Resp.'s Counter-Mem. ¶¶ 176-77.

investments, making frequent trips to Panama. In fact, my last trip to Panama was until 6 May 2015.<sup>10</sup>

16. Moreover, we maintained our presence in Panama, and continued our efforts to compel Panama to do what was needed to resume work on our Contracts, until late 2015. I had employees in Panama until June 2015. And my team was requesting meetings with Panamanian agencies *months after the 5 March 2015 hearing for Moncada Luna*, including the Municipality of Panama to define a work plan for the Pacora and Juan Diaz markets in April 2015, and the Municipality of Colón to resolve questions and pending claims on 28 September 2015, among others.<sup>11</sup> In fact, under the leadership of Justice Ayú Prado, who replaced Mr. Moncada Luna as President of the Supreme Court, the Judicial Organ continued to work with us to try to restart work under the La Chorrera Contract; in other words, Panama's judiciary was attempting to restart work (although under conditions unacceptable to us) on the very Contract that Panama now argues was obtained through corruption.<sup>12</sup>

17. The true reasons why work eventually had to stop on each of the Projects are well documented: namely, that we were not getting paid for any of the Contracts, the Government was not getting the approvals for extension of time or permits necessary for work to continue, and INAC had terminated the Ciudad de las Artes Contract. But, well into 2015, I instructed my team to try to work with each of the Government agencies and sent countless letters to various government officials asking to be paid or asking for the appropriate amendments so work could

---

<sup>10</sup> Oscar Rivera's Travel Record dated 16 July 2015 (C-0580).

<sup>11</sup> *See, e.g.*, Note. No. MUPA 15-04-15 from Omega to the Municipality of Panama dated 16 Apr. 2015 (C-0568); Letter No. P08-014 from Omega to the Municipality of Colón dated 28 Sept. 2015 (C-0610).

<sup>12</sup> *See, e.g.*, Letter No. 950/DALSA/2015 from Judicial Authority to Omega dated 24 Sept. 2015 (R-0017); Letter No. 150/P.C.S.J/2016 from Judicial Authority to Omega dated 26 Jan. 2016 (R-0020).



resume.<sup>13</sup> Thus, contrary to what Panama falsely claims, my team and I did not flee, and we continued to try to make the Omega Consortium's Projects in Panama work.

#### IV. OMEGA PANAMA WAS A SUCCESSFUL AND COMPETITIVE CONSTRUCTION COMPANY

18. I understand that Panama's expert alleges that Omega Panama's value is zero,<sup>14</sup> and that it is easy for a prospective entrant to enter the Panamanian market because of "low barriers to entry."<sup>15</sup> Again, these assertions are both patently false and misleading.

19. *First*, by the end of 2013, only three years after I incorporated the company, Omega Panama's revenue had reached [REDACTED].<sup>16</sup> Revenues had increased year after year, the company was profitable, and it was on track to continue growing.

20. *Second*, Omega Panama, through the Omega Consortium, was a strong competitor in Panama's public contracts market, which a new company could not easily replicate just because the requirements of creating a company are minimal. In Panama, as in every other jurisdiction, the construction companies bidding for government work are required to meet specific financial, experience, capacity, expertise, and other qualifications that can take decades to build. These are not qualifications that any company that has just registered or entered the market could easily meet. For example, all the public bids for which the Omega Consortium tendered in Panama required the bidders to provide evidence of having successfully completed projects of similar scale and complexity. It is almost impossible for new construction companies to obtain government

---

<sup>13</sup> See, e.g., Letter No. P007-60 from Omega to the Judicial Authority dated 18 Mar. 2015 (R-0015 resubmitted); Letter No. P08-014 from Omega to the Municipality of Colón dated 28 Sept. 2015 (C-0610); Note. No. MUPA 15-04-15 from Omega to the Municipality of Panama dated 16 Apr. 2015 (C-0568); Letter No. MINSA-56 from Omega to MINSA dated 20 Jan. 2015 (C-0583).

<sup>14</sup> Expert Report of Dr. Daniel Flores dated 7 Jan. 2019 ("Flores"), § III.A.

<sup>15</sup> Flores ¶¶ 49, 50.

<sup>16</sup> Second Expert Report of Pablo Lopez and Sebastián Zucco dated 27 May 2019, ¶ 63.

contracts precisely because that is a very common requirement in all markets. Without the Omega Consortium's goodwill, decades of experience, and expertise we would simply not have been qualified to bid for the Projects in the first place. The Omega Consortium's track record, portfolio, and bonding and financing capacity enabled us to meet the bidding requirements.

21. The Omega Consortium's characteristics were ahead, sometimes significantly, of those of several of its competitors, including in particular characteristics such as prior experience and financing capacity. This was reflected in the Evaluation Committee's Reports for the Projects.<sup>17</sup> These reports took into consideration specific criteria such as the number of commercial references, company liquidity (measured by company financing statements), and bank account balances and references.

22. *Third*, Panama's assertion that there are "low barriers to entry" and therefore anyone could have bid for and won projects in Panama is misleading. It is one thing to start a new company, but it is another for that new company to meet bid requirements, let alone win bids. For most of our bids in Panama, the Omega Consortium was competing against several other companies (most often, international companies). The Omega Consortium's goodwill was indispensable in beating these competitors.

23. Competition in the Panamanian public contracting market was strong. Without the goodwill, track record, and experience of the Omega Consortium, we simply would not have won the numerous contracts that we won. Dr. Flores' statements are fundamentally at odds with my

---

<sup>17</sup> See Report from the Evaluation Commission Public Act N° 2010-0-12-0-99-AV-003042, undated (C-0349), at 35-36; Report from the Vetting Commission dated 9 Oct. 2012 (C-0083 resubmitted), at 4; Colon Markets Evaluation Committee Report dated 3 Oct. 2011 (C-0625), at 51-52; Panama Municipality Evaluation Committee Report No. 2013-5-76-0-08-AV-004644 dated 16 Apr. 2013 (C-0626), at 16; INAC Evaluation Committee Report No. 2012-1-30-0-08-LV-002784 dated 21 Mar. 2012 (C-0469), at 27. The Omega Consortium's characteristics also helped us meet the requirements for the Colon Municipal Palace Contract. See Colon Municipal Palace Evaluation Committee Report dated 23 Nov. 2012 (C-0627), at 2.

experience in the public contracting industry in Panama and elsewhere, and with the explicit requirements included in all the Requests for Proposals (or “Pliegos de Cargo”) that we examined during our time in Panama.

**V. PANAMA TERMINATED THE PROJECTS OR LET THEM LAPSE IN BAD FAITH AS PART OF ITS CAMPAIGN AGAINST CLAIMANTS**

24. I understand that Panama alleges that it went out of its way to accommodate the Omega Consortium’s requests for extensions, insinuating that the Omega Consortium was at fault for such requests and that they were unreasonable.<sup>18</sup> This is a misrepresentation of what actually happened. *First*, time extensions can only be granted when project delays are not attributable to the contractor. The extensions that were granted to Omega were not an “accommodation” out of Panama’s generosity; they were granted in accordance with the Contracts and the Law.

25. *Second*, every extension that was ever requested was supported by tangible evidence that Omega was not at fault. Every request required the approval of several different layers of independent professionals and, ultimately, it had to be signed off by the Comptroller General.

26. I understand that Panama now alleges that the Comptroller General’s office delayed in providing approvals after July 2014 because the Comptroller General was battling cancer.<sup>19</sup> I sympathize with her and her family for this. However, no Government agency ever told me that this was the reason for the Government’s delays. Although I did hear about the Comptroller General’s illness at some point, this is the first time that I have heard the Government offer this as an explanation for the delays in Omega’s Contracts. In any event, in the absence of Comptroller General, the Sub-Comptroller General should have fulfilled the Comptroller General’s duties, or

---

<sup>18</sup> See, e.g., Resp.’s Counter-Mem. ¶¶ 29, 31, 41, 42, 61, 89, 290.

<sup>19</sup> Resp.’s Counter-Mem. ¶ 72.

the Comptroller General's Office should have delegated authority to someone else to sign in the interim so the Projects could move forward and Panama would not default on its obligations.

27. I also understand that Panama alleges that many delays in approvals were due to a review by the Varela administration of all the Projects that carried over from the previous administration, and that this was well understood by contractors.<sup>20</sup> In the change of administration, we were indeed told that all of the Projects were returned to the agencies by the Comptroller General's Office for review, but we were certainly not told that a formal audit of all the Omega Consortium's Contracts would ensue. I understand how an incoming administration might want to familiarize itself with the Projects if it is not already familiar with them during the transition period, and how this might cause some minor delays (compensable to the contractor) on the processing of change orders, payments and other approvals. But that is *not* what happened with respect to the Omega Consortium's Contracts, where delays lasted years and, in most instances, have not been resolved to this day. In my view, it is unreasonable to expect that such an administrative review could explain delays that lasted so long. In my experience as a general contractor, no contractor would expect such delays to happen, or think that such delays are reasonable, nor should it be expected to finance such delays and to continue to work on those Projects in the interim.

28. Moreover, at the time – in other words, prior to this arbitration – the Government offered *completely different* explanations and excuses to us for the delays in approvals and lack of payment. For example, in Ciudad de las Artes, the INAC told my team that it was conducting an internal review of the “legality” of the Certificate of Partial Payment mechanism (but that we were still somehow obligated to finish the Project even without any partial payments).<sup>21</sup> Naturally,

---

<sup>20</sup> Witness Statement of Dr. James Edward Bernard Veliz dated 7 Jan. 2019, ¶ 15.

<sup>21</sup> Meeting minutes between Omega and INAC representatives dated 23 Oct. 2014 (C-0595), ¶ 4.

during the first few weeks and months, we worked with the Government and were hopeful that such delays in approvals and lack of payment would only be temporary and would soon get resolved. But as the months passed, we became increasingly worried and it became obvious that the Government was trying to push us out.

29. Perhaps the Government's desire to cut us out occurred most dramatically in the Ciudad de las Artes Project, our largest Project in Panama. Although the Project faced several significant problems since the beginning, the INAC acknowledged that they were the source of all the problems and showed willingness to work together with us to resolve the issues that were hindering our ability advance the Project.<sup>22</sup>

30. But around August 2014, once the administration changed, the INAC became completely uncooperative. Right before terminating the Contract illegally, the INAC insisted that we were obligated to continue work on the Project *without pay* and that we would only get paid upon completion. As I mentioned in my first witness statement,<sup>23</sup> my team and I were puzzled and alarmed by this because it became increasingly clear to us that the INAC wanted to get rid of the Omega Consortium, and was looking for any available excuse to do so. Nothing else could explain the abrupt change in behavior.

31. I understand that Panama now alleges that we were doing a poor job with the INAC Project and bases this assertion on recommendations by Sosa Arquitectos ("**Sosa**"), a firm hired to inspect

---

<sup>22</sup> For example, the Contract with the INAC stipulated that Omega would get paid through Certificates of Partial Payment ("**CPPs**"), which are essentially the same as Certificates of Non-Objection but with a different name (so the steps required for making progress payments were not unfamiliar to the INAC). In 2012, under Ms. Herrera, the INAC realized that it needed to update its internal rules to make them compatible with CPPs, which it did. *See* Resolution No. 016-12 J.D. dated 22 Nov. 2012 (R-0035).

<sup>23</sup> Rivera 1 ¶ 44.

the Project on behalf of the INAC.<sup>24</sup> But this is once again Panama misrepresenting the facts to its own convenience. My team diligently responded to Sosa’s recommendations and letters in good faith,<sup>25</sup> but from the content of their communications to my team and their decision to begin making reference to reasons for termination under the Contract just a month after the Varela Administration took office,<sup>26</sup> it became clear to us that at some point in the second half of 2014 the INAC had instructed Sosa to prepare a case to justify a decision they had already taken – to terminate the Contract.

32. It was clear to us that Sosa’s attitude towards the Omega Consortium had changed with the new administration.<sup>27</sup> Even so, there were some breaches by Panama that even Sosa could not ignore. For example, in September 2015 Sosa even acknowledged to one of the Omega Consortium’s engineers *that the INAC’s delay in approving the CPPs “is severely affecting the Contractor’s liquidity.”*<sup>28</sup> This was not the only time Sosa pointed out that the root cause of the problem in Ciudad de las Artes was the INAC’s own breaches. For example, in a monthly report to the INAC in October, Sosa warned the INAC that “it is important to give an answer to the Contractor regarding the approval of pending Partial Payment Accounts because *the delay in this*

---

<sup>24</sup> Resp.’s Counter-Mem. ¶¶ 95-106.

<sup>25</sup> See Letter No. SOSA-07-D-2014 from Omega to Sosa dated 22 Dec. 2014 (C-0600).

<sup>26</sup> See, e.g., Letter from Sosa to Omega dated 21 Aug. 2014 (“reminding” Claimants of reasons for administrative termination of the Contract under Clause 45) (C-0596); Email chain between Sosa and Omega dated 28 Oct. 2014 (R-0047); Letter from Sosa to INAC dated 10 Dec. 2014 (R-0051), at 2.

<sup>27</sup> Indeed, Sosa itself was among the three panelists that had originally selected Omega as the winning proposal for Ciudad de las Artes. INAC Evaluation Committee Report No. 2012-1-30-0-08-LV-002784 dated 21 Mar. 2012 (C-0469), at 27.

<sup>28</sup> Letter No. SA-CDA-099-14 from Sosa to Omega dated 25 Sep. 2014 (C-0593) (emphasis added).

*approval is affecting the Contractor's cash flow and provoking a reduction in productivity and delay in the Project.*"<sup>29</sup>

33. Sosa was just one part of the Government's multi-flanked assault on us. From the second half of 2014 until 2015, Omega was being attacked from all sides – Sosa, the INAC and the individual Panamanian contracting agencies and municipalities, the Comptroller General, the Ministry of Economy, and the Public Ministry. In one of the emails from the INAC to my team, Sosa, and our surety scheduling a meeting to solve problems with the Project, the INAC representatives copied a person named Rogelio Saltarín.<sup>30</sup> My team and I thought it was peculiar but did not pay much attention to it then. Later, after we filed the ICSID arbitration against Panama, Panamanian press published a copy of a contract between the Ministry of the Presidency itself and Mr. Saltarín's law firm to "gather evidence to bring criminal cases" against contractors from the prior administration – in effect turning Mr. Saltarín's law firm into a parallel Attorney General's office.<sup>31</sup> In his activity report to the Ministry of the Presidency, Mr. Saltarín's law firm itself detailed multiple meetings held with the INAC Director, as early as August 2014, *specifically about the Ciudad de las Artes project.*<sup>32</sup> This same activity report also detailed numerous

---

<sup>29</sup> Monthly Report from Sosa to INAC dated 31 Oct. 2014 (C-0524), at 44 (point 4) (emphasis added).

<sup>30</sup> See Email from INAC to Omega dated 15 Jan. 2015 (C-0531).

<sup>31</sup> Saltarín 2014 Contract No. 063-14 with the Ministry of the Presidency dated 14 Nov. 2014 (C-0529), cl. 1; Saltarín 2015 Contract No. 16-2015 with the Ministry of the Presidency dated 7 Oct. 2015 (C-0613), cl. 1; *The Contract of the President's Lawyer*, LA ESTRELLA DE PANAMA dated 3 Oct. 2018, available at <http://laestrella.com.pa/panama/nacional/contrato-abogado-presidente/24086033> (C-0525).

<sup>32</sup> Activity Report from Saltarín, Arias y Asociados to Ministry of the Presidency dated 25 June 2018 (C-0617), at 6, 17, 33.

meetings with the Ministry of Health regarding the CAPSI projects, and a meeting with the Manager of Cadena de Frío to discuss the public markets.<sup>33</sup>

34. All of this occurred during the Varela Administration's first months in office. Then President Varela's Ministry of Economy recommended a budget for the INAC in 2015 that included not even a fraction of what the INAC needed to pay us later that year.

35. Thereafter, Panamanian press reported that in September 2014, the President put the Ciudad de las Artes Project among a list of projects as "high risk."<sup>34</sup> I also read a press report that President Varela wanted Ciudad de las Artes to be converted to office spaces for public employees.<sup>35</sup> To my team and me, these statements by Varela – in conjunction with the lack of payment, the stonewalling by the various agencies, the arbitrary non-approvals by the Comptroller's Office, the hostile and unreasonable position by the INAC and Sosa, and the non-funding recommendation by the Ministry of Economy – made clear that the Varela Administration simply wanted us out.

36. The INAC made the decision to terminate the project hastily. The INAC was acting so erratically that even representatives of the surety company, ASSA, seemed puzzled by what the INAC was doing. ASSA came to the conclusion that "[a]t the end of the day, we don't have a clear understanding of what the INAC is ultimately looking for. Regardless of what [INAC representatives] have said in the prior meetings with Omega and ASSA, it seems like they do not want to move

---

<sup>33</sup> Activity Report from Saltarín, Arias y Asociados to Ministry of the Presidency dated 25 June 2018 (C-0617), at 6, 18, 33.

<sup>34</sup> *High risk projects are identified*, LA PRENSA dated 10 Sept. 2014 (C-0231).

<sup>35</sup> *Reorganizing spaces in the City for the Arts*, LA PRENSA dated 13 May 2015 (C-0541).



forward with the project.”<sup>36</sup> In fact, *Mr. Sosa himself agreed that there were no technical merits to terminate the Contract by default*, even after his clear change in attitude towards the Omega Consortium, and he recommended that the INAC refrain from terminating the contract, negotiate with Omega any possible differences and to continue the project with Omega.<sup>37</sup>

37. But after we learned that the INAC issued the termination resolution, it was clear to me that we were not going to be treated fairly. We had not been paid in months, and the INAC’s unreasonableness and the arbitrary treatment by every other relevant agency in the government, plus President Varela’s threat against my business for my refusal to make a campaign contribution, all made it clear to me that this was not just a contractual dispute – there was a campaign to destroy my investment. At that point, ASSA threatened legal action against me. I was told that ASSA and Panama entered into an agreement despite the fact that, as ASSA itself indicated, the bonds on Ciudad de las Artes had expired,<sup>38</sup> and ASSA and Panama agreed to assign the CPPs to ASSA, thereby authorizing that ASSA get paid *for work that the Omega Consortium performed*.<sup>39</sup> This shows that our work was satisfactory and therefore that these payments were owed to the Omega Consortium.

38. I also understand that Panama now alleges that we were overpaid relative to the amount of progress in the Projects.<sup>40</sup> This fundamentally misrepresents how these Contracts (and the

---

<sup>36</sup> Email from Travelers to Omega dated 2 Feb. 2015 (C-0536) (“At the end of the day, we don’t have a clear understanding of what the INAC is ultimately looking for. ***Regardless of what they have said in the prior meetings with Omega and ASSA, it seems like they do not want to move forward with the project.***” (emphasis added)).

<sup>37</sup> Email from ASSA to Travelers at 11:04 AM dated 30 Dec. 2014 (C-0527); Email from ASSA to Travelers at 11:46 AM dated 30 Dec. 2014 (C-0528).

<sup>38</sup> See Letter from ASSA to INAC dated 11 Feb. 2015 (C-0538).

<sup>39</sup> Agreement between INAC and ASSA to replace the contractor dated 31 Aug. 2018 (R-0058), at 5.

<sup>40</sup> Resp.’s Counter-Mem. ¶¶ 104, 262.

construction industry generally) work, and it completely ignores the obligations Panama had under the Contracts. Quite simply, the terms of the Contracts included an advance payment component on the payment structure, which is standard in the Central and South American construction markets, is provided by statute, is a consideration in most requests for proposals we encountered in Panama, and is secured by a surety bond provided by the contractor to protect the state.<sup>41</sup> Whether or not Panama had “overpaid” for what had been done in the Projects is a self-contradictory pretext, as that was precisely the intent of the advance payment to which Panama had obligated itself. Nevertheless, Panama’s refusal to process duly accepted change orders and invoices, in addition to the economic burden of having to defend ourselves from Panama’s wide array of attacks while Panama was still forcing us to continue to work, ended up extinguishing the funds we had fittingly obtained on account of the contract’s advance payment provisions. Panama’s insinuation that the Omega Consortium should have to continue work on the Projects because it was paid an advance on each Project contravenes the unequivocal language of the Contracts and completely ignores Panama’s own role as the source of delay.

39. I also understand that Panama contends that I unreasonably refused to sign Addenda No. 3 for the La Chorrera Project.<sup>42</sup> But as indicated in our letters dated 10 August 2015 and 28 September 2015 to the Judicial Organ, there were a number of problems with that addenda, including that it failed to address a proper extension period for delays not attributable to the Omega

---

<sup>41</sup> Law No. 22 (C-0280 resubmitted), art. 102.

<sup>42</sup> Resp.’s Counter-Mem. ¶ 42.

Consortium, the Judicial Organ's failure to obtain approvals for project plans, or compensation for additional work, among others.<sup>43</sup> I therefore must reject Panama's contention.

#### **VI. THE CAMPAIGN CONTRIBUTION REQUEST BY MR. VARELA**

40. I understand that Panama in its Counter-Memorial denies that there was a campaign by the Varela administration against me.<sup>44</sup> I also understand that Panama *does not deny* that President Varela pursued me and met with me in La Trona restaurant. This is because Mr. Varela was indeed actively trying to contact me to request a large campaign donation. In fact, on 17 September 2012, I received a message from [REDACTED] instructing me to accept Mr. Varela's request to add me to his WhatsApp contacts.<sup>45</sup>

41. After my meeting with Mr. Varela in La Trona restaurant, when I denied his request for a large campaign contribution, I never spoke to him again. Once the Government stopped making payments to Omega for its work and when the Government was about to terminate the Ciudad de las Artes Contract, I did reach out to Ana Graciela Medina to see if she could help me convince the President to change his mind. Ms. Medina spoke to various officials in the Varela Administration, including Mr. Alemán and Mr. Varela, but it was no use. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This was not a

---

<sup>43</sup> Letter No. P007-064 from Omega to the Judicial Authority, dated 10 Aug. 2015 (R-0069); Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sep. 2015 (C-0247).

<sup>44</sup> See, e.g., Resp.'s Counter-Mem. § IV.A.

<sup>45</sup> See Invitations from Mr. Varela to join WhatsApp chat dated 17 Sep. 2012 (C-0519); see also [REDACTED]

<sup>46</sup> [REDACTED]

surprise to me, as I had read reports that Mr. Varela himself included Ciudad de las Artes in a list of projects at “high risk.”

42. Months after this, on 20 May 2015, we insisted on trying to move our investments forward. We asked one of our attorneys, [REDACTED], to inquire in the Comptroller General’s office about the status of our pending authorizations for payment. [REDACTED]

[REDACTED]

43. On 9 July 2015, at the request of IGRA, I met with Ana Graciela Medina and Gabriel Gonzalez Ruiz in Miami to discuss all of our problems in Panama. We met in a conference room in the JW Marquis.<sup>48</sup> At the meeting, we went over possible solutions to move the Projects forward. At one point, [REDACTED]

[REDACTED]

[REDACTED]. I rejected that proposal outright, and we never spoke about it again. I later saw in a Panama news source named Telemetro a video of Mr. Varela admitting that he asked contractors from the Martinelli administration who “did not do things properly” to resolve matters by donating a total of US \$40 million to this program.

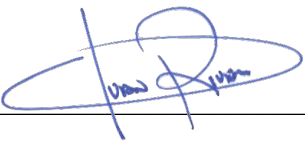
---

<sup>47</sup> [REDACTED]

<sup>48</sup> Travel Reservation for Ana Graciela Medina and Gabriel Cedeño dated 8 July 2015 (C-0570); [REDACTED]; [REDACTED]; JW Marriott Marquis Reservation dated 9 July 2015 (C-0576).

**VII. STATEMENT OF TRUTH**

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

Signed:   
Oscar I. Rivera Rivera

Dated 27 May 2019