

**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***

WITNESS STATEMENT OF MR. TONY BURKE

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I, Tony Burke, a U.S. national, born in Philadelphia, Pennsylvania, on 11 October 1960, and resident of Miami, Florida, hereby declare as follows:

I. INTRODUCTION

1. I co-own and control Burke Construction Group, Inc. (“**Burke Construction Group**”), a United States-registered and privately held firm, providing design-build, general construction, construction management and preconstruction consulting services, based in Doral, Florida. I have served as CEO of Burke Construction Group since 2007. Burke Construction Group is now a 68 employee company with annual revenues in excess of US\$70 million.

2. I started my career in the construction industry as a field engineer. In 1982, I graduated from Indiana State University with a B.S. in Construction Management. Prior to founding Burke Construction Group, I was the founder of The Tower Group, which I owned and managed for twelve years prior to selling the firm to an international company in 2006. Under my leadership, The Tower Group grew to over 250 employees and 185 million in annual revenues. Prior to founding The Tower Group, I served as President of the Construction Division of The Adler Group for five years, where I designed and constructed more than 4.2 million square feet of commercial space. On September 1, 1999, I was appointed to, and served on, the State of Florida’s Construction Industry Licensing Board (CILB) until October 31, 2002, where as a Board Member, I was responsible for assisting the State Attorney General’s office in enforcing, interpreting and amending the Florida Statutes governing all of the licensed contractors for the State of Florida. Since 2002, I currently and presently continue my work with the Board and the Attorney General serving on the CILB Probable Cause Panel. This can be verified with the Board by contacting Ms. Kelly Vickery – [REDACTED]

3. I have known Mr. Oscar Rivera (“**Oscar**”) since mid-2018.

4. References to documents in this witness statement are to Claimants' exhibits (marked as "C__") 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. 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 upon which I have relied. Otherwise, the facts and matters set out in this statement are within my personal knowledge and experience. I have no financial interest in the outcome of these proceedings.

II. RELATIONSHIP WITH MR. OSCAR RIVERA

5. I met Oscar in 2018 when Oscar was referred to me as a potential candidate for our pre-construction department.

6. Upon meeting Oscar, I was immediately impressed by the depth of his knowledge of, and contacts in, the construction industry. In fact, his knowledge and experience surpassed any team member currently employed at our firm, and it was evident that he was over qualified. At that time, I realized this is the perfect individual to take over my position as CEO and run the firm, which would allow me to explore new opportunities. Oscar also shared with me the complex legal dispute with the Panamanian Government and the burdens upon his firm and family caused by this situation. It was obvious that this struggle had consumed him and he was searching for a good firm to lend his talent and attempting to rebuild his life.

7. Realizing that he had a unique set of capabilities, including leadership, the ability to strategize and bring value-added to my company, experience, and contacts in the industry, I promptly offered him a job. Oscar began working at Burke Construction Group in August 2018 in the pre-construction department. In this capacity, Oscar was in charge of identifying potential projects, either bidding for or negotiating contracts for potential projects, and estimating costs and purchasing all materials

necessary for a particular project. In April 2019, Oscar received an offer to work for a larger construction company, which was an opportunity he could not pass up.

8. From the beginning, it was clear to me that Oscar was not just another employee. Oscar has vast experience in the construction industry because he had owned and operated construction companies in Puerto Rico and Panama for many years, working on projects in those locations and in the Caribbean. In addition, Oscar has a deep understanding of the real estate development business and the financial markets, which sets him apart from your typical construction professional. And, importantly, Oscar has a level of initiative, work ethic, and business acumen that is only found in someone who has successfully run a construction business before.

9. During his time at Burke Construction Group, Oscar was instrumental in opening new markets for the company, such as Puerto Rico, Suriname, and the Caribbean. In just a short amount of time, he successfully led negotiations for a new US\$36 million hotel in Bradenton, Florida; identified, prepared and won a US\$6.5 million bid in the U.S. Virgin Islands; guided the company's efforts to establish a subsidiary in Puerto Rico, which is currently expecting the award of two contracts worth US\$7 million and US\$25 million (one of which is a stadium that he built with Omega Engineering LLC, but that was damaged in 2017 by Hurricane Maria); and he is assisting us in our efforts to secure more than US\$50 million of additional work. I see Oscar more like a partner than an employee. In the future, and once Oscar is back leading his own construction company, I look forward to partnering with him in large construction projects.

10. I understand that Respondent has questioned whether Oscar's companies in Panama (*i.e.*, Omega Engineering Inc. and Omega Engineering LLC (together "**Omega**")) had a comparative advantage over other companies or had anything that would make them stand out from other construction companies. Although I did not work with Omega or know about the companies before

I met Oscar, I can certainly attest to the fact that Oscar brought a level of expertise and a breadth of contacts to Burke Construction Group that we did not have before his arrival. In fact, Oscar introduced us to [REDACTED] [REDACTED] who is now working with us in our pre-construction department. [REDACTED], too, has displayed remarkable work ethic and experience. As I have mentioned before, Oscar contributed to Burke Construction Group's growth and continued success. For this reason, I can confidently say that Oscar has the tools to succeed in this business and that he, himself, is a comparative and competitive advantage for any company in the construction industry.

11. I have also come to know Oscar in a personal capacity over the roughly 10 months that I have known him, having shared special occasions with him and his family. Oscar has struck me as an honest, transparent, decent, and generous man who cares deeply about his family and in particular his children.

III. STATEMENT OF TRUTH

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

Signed:  _____
Tony Burke

Dated this 16th of May 2019