

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2013

Public sitting

held on Tuesday, 3 September 2013, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President Shunji Yanai presiding

THE M/V “VIRGINIA G” CASE

(Panama/Guinea-Bissau)

Verbatim Record

<i>Present:</i>	President	Shunji Yanai
	Vice-President	Albert J. Hoffmann
	Judges	Vicente Marotta Rangel
		L. Dolliver M. Nelson
		P. Chandrasekhara Rao
		Joseph Akl
		Rüdiger Wolfrum
		Tafsir Malick Ndiaye
		José Luís Jesus
		Jean-Pierre Cot
		Anthony Amos Lucky
		Helmut Türk
		James L. Kateka
		Zhiguo Gao
		Boualem Bouguetaia
		Vladimir Golitsyn
		Jin-Hyun Paik
		Elsa Kelly
		David Attard
		Markiyany Kulyk
	Judges <i>ad hoc</i>	José Manuel Sérvulo Correia
		Tullio Treves
	Registrar	Philippe Gautier

Panama is represented by:

Mr Ramón García-Gallardo, SJ Berwin LLP, Brussels, Belgium,
as Agent and Counsel;

Mr Alexander Mizzi, SJ Berwin LLP, Brussels, Belgium,
as Co-Agent and Counsel;

and

Ms Janna Smolkina, Ship Registration Officer, Consulate General of Panama,
Hamburg, Germany,

as Counsel;

Ms Veronica Anzilutti, Administration Department, Consulate General of
Panama, Hamburg, Germany,

as Advisor.

Guinea-Bissau is represented by:

Mr Luís Menezes Leitão, Full Professor, Faculty of Law, University of Lisbon,
Portugal,

as Agent and Counsel;

Mr Fernando Loureiro Bastos, Professor, Faculty of Law, University of Lisbon,
Portugal, and Fellow, Institute for International and Comparative Law in Africa, Faculty
of Law, University of Pretoria, South Africa,

as Co-Agent and Counsel;

and

Mr Rufino Lopes, Lawyer, Assessor to the Government,

as Advisor.

1 **THE PRESIDENT:** Good morning. The Tribunal will today continue the hearing in the
2 case concerning the vessel *Virginia G*.

3
4 Before we continue, I wish to inform you that Judge Pawlak, for reasons duly
5 explained to me, is unfortunately unable to sit today on the bench.

6
7 I also wish to inform the Parties of another issue. Yesterday evening the Agent of
8 Guinea-Bissau, Mr Leitão, objected to the display of a number of pictures by
9 Panama during the examination of a witness. The Tribunal will have to identify which
10 of those pictures were already submitted during the written proceedings. Therefore,
11 we have requested Panama to transmit copies of the pictures displayed yesterday.
12 On this basis, the Tribunal will have to decide whether the reference to those
13 pictures in the official records has to be deleted.

14
15 Having said that, yesterday Mr García-Gallardo concluded his examination of the
16 witness Mr Samper Pérez and Mr Leitão indicated his intention to cross-examine the
17 witness. Therefore, I now give the floor to Mr Leitão. You have the floor, sir.

18
19 **MR MENEZES LEITÃO:** Thank you very much, Mr President.

20
21 **Cross-examination by MR MENEZES LEITÃO**

22
23 **MR MENEZES LEITÃO:** I would like to ask you some questions about the situations
24 that you referred to yesterday. First of all, my question is that you worked with
25 Gebaspe. Is that so?

26
27 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Before I answer your question,
28 Mr Agent, I would like to be allowed to clarify one thing that you said, Mr President,
29 about the photographs that were shown yesterday. I presented them and I presented
30 a statement saying that I was submitting those photos precisely to be able to be
31 more specific in my statement. As far as the question is concerned, I was indeed
32 hired by Gebaspe, a Spanish company in charge of the *Virginia G*.

33
34 **THE PRESIDENT:** Please continue the cross-examination. With regard to the
35 pictures, as I explained to you, we will follow the procedure. We first have to identify
36 the pictures.

37
38 Mr Leitão, you have the floor. Please proceed.

39
40 **MR MENEZES LEITÃO:** I would appreciate it if you would answer my questions and
41 not introduce initial declarations that I did not ask about. You said that Gebaspe went
42 bankrupt. Is that so?

43
44 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): I worked for Gebaspe. The
45 company had a contract with Penn Lilac Trading, which was the owner of the
46 *Virginia G* vessel.

47
48 **MR MENEZES LEITÃO:** The company went bankrupt?

1 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Gebaspe, the company I
2 worked for, as a result of the events, went bankrupt and they left a lot of salaries
3 pending, including my own salary and bills by suppliers.
4

5 **MR MENEZES LEITÃO**: It was Gebaspe that was paying the salaries of the crew of
6 the *Virginia G*?
7

8 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Gebaspe paid my salary. The
9 crew salaries were paid by Penn Lilac through whoever made a response. I was paid
10 my salary by Gebaspe and they paid the Spanish Government the social security
11 and pension money.
12

13 **MR MENEZES LEITÃO**: So the crew of the *Virginia G* were being paid by Penn
14 Lilac. Is that so? Is that your testimony?
15

16 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No. I said that Gebaspe paid
17 me, because I was a Gebaspe employee. The *Virginia G* or the *Iballa G* got the
18 money from their own company because the crew members were hired by the Penn
19 Lilac company; and, as normally happens in international trade, companies paid
20 either through their consignees or by transfers, but this is something which I did not
21 know about, because that depended on another department. I can only tell you about
22 what happened to me, and I got my salary through Gebaspe.
23

24 **MR MENEZES LEITÃO**: Would you inform us if Penn Lilac went bankrupt?
25

26 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes, later I think it did, but I can
27 only talk about the period during which I worked for the company. I have not been
28 with the company for many years, so I have no reference and I have no objective
29 information that I can contribute.
30

31 **MR MENEZES LEITÃO**: It was your testimony yesterday that there was no risk from
32 bunkering activities by the *Virginia G*. Do you confirm this statement?
33

34 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes, this is what I said
35 yesterday, but we must clarify that in any operation the risks are minimal. If any risk
36 arises, there are always ways to fight those risks, but not just for the *Virginia G*. For
37 any other ship that conducts bunkering operations there are always minimal risks
38 possible, and that is why MARPOL contemplates measures to minimize those risks.
39 There are certain norms that exist in order to fight those risks inherent in all sorts of
40 operations, not just bunkering but loading and unloading operations. There is always
41 a risk but also there are always preventive measures to minimize those risks.
42

43 **MR MENEZES LEITÃO**: Does the bunker *Virginia G* have a double hull?
44

45 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): As I said yesterday, the
46 *Virginia G* is a single-hull vessel authorized only for non-persistent fuel transport less
47 than 5,000 tonnes dead weight, and therefore the dual hull regulation is not
48 applicable to that vessel. The dual hull regulation is applicable to vessels that are
49 over 600 tonnes of dead weight that transport persistent fuel, and for any ship that

1 weighs more than 5,000 tonnes, regardless of the type of fuel that is transported, so
2 the norm for a double hull is not applicable to the *Virginia G*.

3
4 **MR MENEZES LEITÃO:** Do you recall that the accident to the *Prestige* in Spain also
5 was not caused by a tanker without a double hull?

6
7 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): As I said, and I repeat, the
8 double hull regulation is crystal clear. In order to be able to answer the question put
9 to me, I need to re-state what I said in the past, because he is questioning some
10 issues regarding the MARPOL regulation.

11
12 **MR MENEZES LEITÃO:** Do you recall the accident to the *Prestige* in Spain – yes or
13 no?

14
15 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Of course I remember it, as
16 anybody remembers, and I remind you that when the accident to the *Prestige* took
17 place the double hull regulation was not in force.

18
19 **MR MENEZES LEITÃO:** But your tanker is not a double hull?

20
21 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No. The double hull regulation
22 should be understood, and this is what MARPOL says. It is there to prevent spills,
23 pollution caused by grounding or collision, but the *Prestige* accident was not caused
24 by grounding or collision.

25
26 **MR MENEZES LEITÃO:** You stated yesterday that you received attempts of
27 corruption in Guinea-Bissau according to reports from the captain and Mr José
28 Maldush* of Balmar. Did you report these allegations to the authorities of Guinea-
29 Bissau?

30
31 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): I received information from the
32 captain about a representative of FISCAP who addressed him so that the shipowner
33 would communicate with him, because he would like this, and we told this to the
34 representative in Guinea-Bissau.

35
36 **MR MENEZES LEITÃO:** Why not to the authorities?

37
38 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): If you do not have evidence, if
39 you just have words, there is not much you can do.

40
41 **MR MENEZES LEITÃO:** Yesterday you showed us a lot of pictures and you stated
42 that some were taken in Las Palmas, in the Canaries, in 2009. Who took those
43 pictures?

44
45 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): The pictures that I showed were
46 taken by me of the state of repair of the vessel, and those in Guinea-Bissau were
47 also taken by me.

48

* This and a number of other proper names are unverified and unverifiable.

1 **MR MENEZES LEITÃO:** What is your rank position in the company?
2

3 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): I joined the company to be part
4 of the technical team. As I said yesterday, there were two captains and an engineer.
5 My job was to make sure that the company complied with regulations and took out
6 insurance policies, to advise the owners on matters to do with insurance policies and
7 replace my colleagues if they were not present.
8

9 **MR MENEZES LEITÃO:** You travelled to Las Palmas, in the Canaries, in 2009 to a
10 ship that you use normally?
11

12 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Because my mission also within
13 the company was that when the vessels came into port we had to conduct an audit in
14 compliance with the ISM Code and the ISPS Code, so in the reports that I drew up
15 for the company, apart from the written information, I have also attached
16 photographs to those written documents so that the shipowner could see with his
17 own eyes the condition that the ship was in so as to justify any maintenance work
18 that had to be conducted. As an auditor, I had to justify why said maintenance work
19 had to be conducted, because of course this maintenance work entailed spending
20 money, so this had to be justified.
21

22 **MR MENEZES LEITÃO:** So a big deterioration, according to your statement, in one
23 year to the boat when it was anchored in the port of Bissau without making any
24 operations at all, and why did the crew ---
25

26 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): As I said yesterday, when a
27 shipping company places a vessel in layout a series of maintenance policies is
28 established and the company at that time did not know for how long the vessel would
29 be detained. The studies that we conducted at a legal level indicated that the
30 solution was not going to take too long, and therefore the means on board were the
31 ones used for maintenance work; but when we saw that things protracted and
32 everything started taking longer and longer, then all those internal means were
33 exhausted. As I said yesterday, if you do not maintain steel as it should be
34 maintained, corrosion sets in; and this is not a gradual process, no, it is exponential,
35 everything starts getting rusty all of a sudden. You have to take into account that the
36 vessel is in a saline environment, and in terms of the structural elements the vessel
37 needs to be continually protected. It is obvious, of course, that if a machine does not
38 work properly, it just breaks down.
39

40 **MR MENEZES LEITÃO:** Those are the necessary precautions for maintenance of
41 the ship? Is that so? Is there anything efficient in that?
42

43 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): If it had had economic
44 resources, yes.
45

46 **MR MENEZES LEITÃO:** Lack of economic resources of the company. Now we are
47 all clear. Let me ask one final question. The ship had an inspection in Las Palmas.
48 As I understand it, that inspection was a port State control. Was that so?
49

1 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes. On 5 August the vessel,
2 before it left, was inspected by the Las Palmas control office.

3

4 **MR MENEZES LEITÃO**: That ship has a flag State control?

5

6 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): I cannot recall, but these
7 controls are performed annually.

8

9 **MR MENEZES LEITÃO**: Do you not remember?

10

11 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No, I cannot recall the exact
12 dates but these are annual inspections and the vessel passed all of them, and this
13 information was available to the authorities of Guinea-Bissau.

14

15 **MR MENEZES LEITÃO**: Annual inspections are taken in Panama?

16

17 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No, no, no. The inspections are
18 carried out wherever the ship may be. Ships sail across the world. Ships of Panama
19 or of Spain or of any other country do not have to go to the country of origin for the
20 inspection. It is the inspectors that go to the ships, and very often inspections begin
21 at one port and finish in another. So this is determined by the time that a vessel
22 spends in a certain port.

23

24 **THE PRESIDENT**: May I ask the Agent of Panama whether he wishes to re-examine
25 the witness?

26

27 **MR GARCÍA-GALLARDO**: Mr President, your Honours, I have to ask one question
28 to the witness.

29

30 **Re-examination by MR GARCÍA-GALLARDO**

31

32 Mr Samper, can you tell us, please, whether single-hull vessels like the *Virginia G*
33 were allowed to operate as tankers of gas oil, for the supply of gas oil, in 2009?

34

35 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes, and it is still allowed for them
36 to do so.

37

38 **MR GARCÍA-GALLARDO**: Still allowed?

39

40 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Yes, it is allowed for them to do
41 so.

42

43 **MR GARCÍA-GALLARDO**: So it was allowed to transport heavy fuel in 2009, and still
44 is today?

45

46 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): No, not with fuel because the
47 norm is very clear in this respect, and the vessel is not authorized for transportation
48 of HFOs. For this you need boilers and heating in the tanks, which this kind of vessel
49 doesn't have, so it cannot carry this type of fuel.

50

1 **MR GARCÍA-GALLARDO:** What usually was loaded in the tanker *Virginia G*?

2

3 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): Gas oil with a low content of
4 sulphur, which is what our customers requested, because when vessels come to
5 European ports, to be able to comply with the MARPOL regulations in terms of
6 pollution, they require this type of gas oil, and this is precisely what we supplied to
7 our merchant vessels sailing from South Africa to Europe or from the Americas. This
8 is what we supplied – low-sulphur-content gas oil.

9

10 **MR GARCÍA-GALLARDO** (*Translated from the French interpretation*): I do not know
11 if the Tribunal will accept the information you provided yesterday on the condition of
12 the vessel. In a very short comment, what is the impact of corrosion for a vessel
13 staying 14 months in the hot water in the Bay of Bissau without maintenance?

14

15 **MR SAMPER PÉREZ** (*Interpretation from Spanish*): If there is no maintenance, the
16 effects are tragic for the maintenance of the structure because it is a very humid
17 environment with lots of rain. It rains very, very often and relative humidity is very
18 high in addition to the saline environment, and if you do not have the appropriate
19 means to protect the vessel the consequences are just the ones I showed in the
20 pictures, which is what I wrote in my report.

21

22 **THE PRESIDENT:** Thank you very much, Mr García-Gallardo.

23

24 Mr Samper Pérez, thank you for your testimony. Your examination is now finished.
25 You may withdraw.

26

27 Mr García-Gallardo, how do you wish to continue?

28

29 **MR GARCÍA-GALLARDO:** Thank you, Mr President. I would like to call the witness
30 Mr Pedro Olives, representative of the Panama Ship Registry in Las Palmas.

31

32 **MR PRESIDENT:** Thank you, Mr García-Gallardo. The Tribunal will then proceed to
33 hear the witness-expert, Mr Pedro Olives. He may now be brought into the
34 courtroom.

35

36 I call upon the Registrar to administer the solemn declaration to be made by the
37 witness-expert.

38

39 **THE REGISTRAR:** Thank you, Mr President.

40

41 Good morning, Mr Olives.

42

43 Mr Olives, a witness-expert, is required to make a solemn declaration provided for
44 experts under article 79 of the Rules of the Tribunal before making any statement
45 before the Tribunal. You have been provided with the text of the declaration. May I
46 invite you to make now the solemn declaration?

47

48 *(The witness-expert made the solemn declaration)*

49

1 **THE PRESIDENT:** Thank you, Mr Olives. I wish to remind you of the following. The
2 work of interpreters and verbatim reporters is a very complex one. This is even more
3 so when, as will be the case now, not only English and French, which are our official
4 languages, but also a third language such as Spanish is used. Therefore, I must
5 urge you to speak slowly, and please leave sufficient time after someone else has
6 spoken to you before you answer. As I stated, the statement or question of someone
7 else before you will be translated first into English and then into French, so you have
8 to wait until the interpretation into French has been completed. When the
9 interpretation into French has been completed, I will give you a sign to this effect, by
10 a small gesture like *this*. Only then it will be possible that the interpreters can follow.

11
12 Mr García-Gallardo, you have the floor, sir.

13
14 **MR GARCÍA-GALLARDO:** Mr President, your Honours.

15
16 **Examination by MR GARCÍA-GALLARDO**

17
18 Mr Pedro Olives, could you please introduce yourself?

19
20 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Of course. I am Pedro Olives
21 Socas. I am a captain of the merchant marine. I have got twenty years of experience
22 in audits to do with safety and quality controls of vessels.

23
24 **MR GARCÍA-GALLARDO:** Which delegate powers and authority do you have from
25 the Panamanian Ships Registry?

26
27 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I am inspector appointed by the
28 Panamanian Maritime Authority.

29
30 **MR GARCÍA-GALLARDO:** Are you the sole representative in Las Palmas port?

31
32 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, in the area of Las Palmas
33 and West Africa I am an inspector who is located in that area, yes.

34
35 **MR GARCÍA-GALLARDO:** To whom do you report in Panama, which authority?

36
37 **MR OLIVES SOCAS** (*Interpretation from Spanish*): The Maritime Authority, at the
38 main office in Panama.

39
40 **MR GARCÍA-GALLARDO:** Do you have training sessions? Do you receive training
41 sessions in international conventions, pollution and manning, technical condition of
42 the vessels, regularly by Panama?

43
44 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Of course. The last sessions
45 were to do with the labour relations question and, well, in the last few years I
46 received different training sessions, yes.

47
48 **MR GARCÍA-GALLARDO:** How often do you travel to Panama as surveyor of the
49 Panama Ship Registry or to meet with the Panamanian authorities?

50

1 **MR OLIVES SOCAS** (*Interpretation from Spanish*): About once a year.
2
3 **MR GARCÍA-GALLARDO**: What type of services do you provide in the region of
4 West Africa?
5
6 **MR OLIVES SOCAS** (*Interpretation from Spanish*): We carry out technical
7 inspections, occupational inspections and safety-on-board inspections, and we also
8 issue a positive or a negative report, which is sent to the authorities.
9
10 **MR GARCÍA-GALLARDO**: Is your work statutory work or purely commercial work?
11
12 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Both. I would say both.
13
14 **MR GARCÍA-GALLARDO**: In the last two years you regularly travelled to different
15 ports in the West African region to conduct inspections of Panamanian vessels?
16
17 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, I travelled widely in Africa,
18 the Canary Islands and also on the Spanish mainland.
19
20 **MR GARCÍA-GALLARDO**: Who is the owner of the vessel *Virginia G*?
21
22 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Penn Lilac, I think.
23
24 **MR GARCÍA-GALLARDO**: A company active in Panama. It is registered and duly
25 recorded in the commercial registry of companies of Panama.
26
27 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes. I saw that it is registered,
28 but this is not my field of inquiry really.
29
30 **MR GARCÍA-GALLARDO**: Do you have enforcement powers on Panamanian
31 ships? Do you have enforcement powers to effectively exercise technical jurisdiction
32 on Panamanian ships when conducting your inspections?
33
34 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Of course. Panamanian
35 authorities, local authorities, can detain a vessel as a function of the report I draw up,
36 so my reports are important in that sense.
37
38 **MR GARCÍA-GALLARDO**: What type of power or mandated powers or actions are
39 you able to take upon your authority delegated from the Panamanian Ships Registry
40 on Panamanian ships, vessels?
41
42 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Well, when I find a serious
43 problem with the vessel I report it to my superiors and they tell me what to do. There
44 is always some prior consultation before anything is done.
45
46 **MR GARCÍA-GALLARDO**: Are you able to issue certificates, statutory certificates, to
47 Panamanian vessels, if they do not comply with Panamanian provisions and
48 international conventions ratified by Panama?
49

1 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Of course. I am able to do that
2 and it is my job to issue or fail to issue the pertinent documentation.
3
4 **MR GARCÍA-GALLARDO**: Are you also a labour inspector or auditor?
5
6 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, I am a labour inspector,
7 yes.
8
9 **MR GARCÍA-GALLARDO**: Inspector from Panama or labour inspector in Spain
10 under what category?
11
12 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, I am an international
13 inspector. It is a code that goes back to 2006 and it is international for all sorts of
14 flags.
15
16 **MR GARCÍA-GALLARDO**: What type of convention did you mention?
17
18 **MR OLIVES SOCAS** (*Interpretation from Spanish*): It is a labour maritime
19 convention that goes back to 2006.
20
21 **MR GARCÍA-GALLARDO**: To issue the safe manning certificate, for example on a
22 Panamanian vessel, what type of audit or survey do you conduct? Do you take and
23 keep control about the titles of the seafarers? What type of international convention
24 do you apply?
25
26 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Well, the norms are
27 international – it is SOLAS, MARPOL, the STWC, the Air Pollution Convention, so all
28 the international conventions – but basically SOLAS and MARPOL.
29
30 **MR GARCÍA-GALLARDO**: So have you inspected a lot of tankers?
31
32 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, yes, quite a bit.
33
34 **MR GARCÍA-GALLARDO**: Are there manuals for bunkering on tankers?
35
36 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes. Of course, I know the
37 international regulations because for each ship things are different – but I know the
38 international context.
39
40 **MR GARCÍA-GALLARDO**: What type of international conventions do you apply
41 when inspecting tankers conducting bunkering operations?
42
43 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Bunkering operations are not
44 really the subject of much investigation. Of course there is SOLAS, there is
45 MARPOL, there is Air Pollution and so forth, but there is no special inspection. As
46 long as they keep their transshipment manuals in order, that's enough for us.
47
48 **MR GARCÍA-GALLARDO**: As surveyor of the vessel, the ship *Virginia G*, how many
49 years have you been conducting inspections on this vessel prior to its arrest in
50 Bissau?

1
2 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Since 2006, when these vessels
3 have come within my area of influence I have been called, but if they were not, some
4 other inspector probably did the job.
5
6 **MR GARCÍA-GALLARDO**: You say that you were familiar with the vessel.
7
8 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, of course.
9
10 **MR GARCÍA-GALLARDO**: Can we say that this tanker in particular is a logistic
11 support vessel? What do you understand that a logistic support vessel is?
12
13 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Logistic for what – for fishing you
14 mean – because a tanker is not really a logistic support vessel? A tanker supplies
15 fuel in the high seas but it is not logistic work. Logistics entail movement of certain
16 material by its own means. For example, in fishing vessels logistics is related to
17 reefer vessels that transport fish or vessels that provide logistics support in fishing
18 areas, but an oil tanker is just a cargo ship. I don't really see how it can be
19 considered a logistic vessel.
20
21 **MR GARCÍA-GALLARDO**: I move to other types of questions. Do you consider
22 Panama as a flag of convenience?
23
24 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I never understood what really
25 people refer to when they say "flag of convenience". There are countries of
26 convenience that have a generous fiscal system for shipowners, but technically no
27 flags of convenience because international maritime law is applied across the board
28 to all countries. There may be countries of convenience that apply a specific fiscal
29 system, but technically there are no flags of convenience, as such.
30
31 **MR GARCÍA-GALLARDO**: Do you consider Panama as a maritime nation in
32 comparison with other countries and the number of tonnage for it?
33
34 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, Panama at present has
35 25 per cent of the world tonnage. Between Panama, Liberia and Bahamas they
36 account for over 90 per cent, or 95 per cent, so most of the most important
37 companies in the world are registered in one of these countries. There must be a
38 reason for this.
39
40 **MR GARCÍA-GALLARDO**: Talking about the conditions surrounding the arrest of
41 the vessel in Guinea-Bissau, were you aware of any communication made by the
42 Guinea-Bissau authorities to the Panamanian authorities, directly or through you?
43
44 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, I have no knowledge that
45 Guinea-Bissau communicated anything. The knowledge I have came from Panama
46 and from the shipowner but I am not aware that I received any communication from
47 Guinea-Bissau.
48
49 **MR GARCÍA-GALLARDO**: Mr Olives Socas, you conducted two inspections of the
50 *Virginia G* during the arrest. The first one took place in September, probably a month

1 after the detention, and a second one some weeks after the release of the vessel by
2 the Guinea-Bissau authorities. Will you please let us know why you conducted the
3 first inspection and explain to this Tribunal the conditions of this inspection, your
4 views, and what you reflected in writing?
5

6 **MR OLIVES SOCAS** (*Interpretation from Spanish*): The first inspection conducted in
7 September was at the request of the shipowner, because the vessel had been
8 detained and the documentation had been requisitioned and so an inspection on
9 board was necessary. When I was there in September the vessel indeed was
10 retained, there were soldiers on board, there was no documentation on board, and
11 the ship was in normal navigation conditions and normal sanitation conditions. There
12 was no objection to be raised. At first sight, at least, there was nothing special
13 because, of course, this is normal, because a month before this vessel had gone
14 through an inspection in Las Palmas, which was a very strict inspection. I think this
15 happened 20 days before they left Las Palmas, and this was an independent
16 inspection, independent from the flag and from the shipowner, and no significant
17 deficiencies were raised. So 20 days later it was only normal that the ship would be
18 in good condition. So there was nothing to note really, nothing special to note in that
19 inspection, only that the vessel was without documents because the documents had
20 been requisitioned, but that was not really a deficiency by itself.
21

22 **MR GARCÍA-GALLARDO**: How many days did you spend inspecting this vessel in
23 Guinea-Bissau?
24

25 **MR OLIVES SOCAS** (*Interpretation from Spanish*): A day and a half, I think it was. A
26 day and a half was enough. It is not a large vessel and I already knew the vessel and
27 so, at a single glance, I could tell that the situation was normal. There was no need
28 to go deeper into it. So I did the inspection, I checked the different equipment, and it
29 was rather simple so there was no problem. The vessel was in the same condition it
30 had been in a month before.
31

32 **MR GARCÍA-GALLARDO**: Coming to the second inspection, could you please
33 explain to this Tribunal the conditions of this inspection, when it took place?
34

35 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Really, this was in October 2010,
36 when the shipowner communicated that the vessel had been released and that he
37 wanted to keep the documents up to date because he wanted to use the vessel
38 again, and I was surprised. It was difficult to do anything because the vessel was
39 really completely turned off. All the machines were turned off and there was a small
40 home-made engine on deck that was providing electricity to the vessel, so it was not
41 really a vessel; it was just a piece of steel. So it was impossible for the vessel to sail.
42 The equipment and the machinery had not been used for a year, the vessel had not
43 received supplies or any economic help to buy those supplies, and the personnel
44 had not received a sufficient number of spare parts to be able to do anything. So the
45 vessel was cold and it was at a standstill, so to turn the vessel on again was going to
46 be very difficult, and the electrical panels were very humid and the fuses kept
47 blowing. So everything had to be redone again, the whole piping system had to be
48 re-inspected and they had to do a complete overhaul of the vessel. When the
49 overhaul was completed, we could give them a certificate but for the time being we

1 could not, because that single engine on deck is not really enough for a vessel to be
2 able to sail the seas.

3
4 **MR GARCÍA-GALLARDO:** Under delegated authority from the Panamanian marine
5 authorities, you decided not to issue a statutory certificate before the shipowner
6 repaired the vessel because of the shortcomings that you found and reflected in your
7 second report. Do you agree with this?

8
9 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes. We detected the minimum
10 deficiencies that had to be repaired before any certificates could be issued.

11
12 **MR GARCÍA-GALLARDO:** I have no further questions, Mr President.

13
14 **THE PRESIDENT:** Thank you, Mr García-Gallardo.

15
16 Pursuant to article 80 of the Rules of the Tribunal, a witness-expert called by one
17 party may also be examined by the other party, therefore I ask the Agent of Guinea-
18 Bissau whether he wishes to cross-examine the witness-expert. I give the floor to
19 Mr Menezes Leitão to cross-examine the witness.

20
21 **Cross-examination by MR MENEZES LEITÃO**

22
23 **MR MENEZES LEITÃO:** Mr Olives Socas, I would like to put to you some questions
24 about your deposition. First of all, you are of Panamanian nationality?

25
26 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, Spanish.

27
28 **MR MENEZES LEITÃO:** Are you a public authority of Panama?

29
30 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I represent an authority that is
31 authorized to act on behalf of the Panamanian authorities, the Panama Shipping
32 Registry.

33
34 **MR MENEZES LEITÃO:** Is that a public or a private company?

35
36 **MR OLIVES SOCAS** (*Interpretation from Spanish*): It is a recognized classification
37 society and it has the same entity, for example, as Lloyd's. It is the same kind of
38 company as Lloyd's.

39
40 **MR MENEZES LEITÃO:** A private entity, Panama Shipping Registry, as I
41 understand.

42
43 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I think it may be. I do not know
44 exactly because I have never looked into its origins.

45
46 **MR MENEZES LEITÃO:** As an inspector of that entity, do you consider yourself as
47 vested in authority powers from Panama?

48
49 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, of course.
50

1 **MR MENEZES LEITÃO** (*Translated from the French interpretation*): Are you familiar
2 with the Cana S.A. transport company?
3
4 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes.
5
6 **MR MENEZES LEITÃO**: Do you belong to the board of this company?
7
8 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes.
9
10 **MR MENEZES LEITÃO**: What is the industry of this company?
11
12 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Transport of containers, storage,
13 customs clearance.
14
15 **MR MENEZES LEITÃO**: Do you not consider it to be a conflict of interests having
16 simultaneously authority powers of Panama and being at the same time a member of
17 the board of a company which does exactly the same industry of the entities you
18 inspect?
19
20 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, it has nothing to do, because
21 it is a maritime transport company, a containers company. It has nothing to do with
22 inspections, and also, vessel inspections is a private activity I have. It has nothing to
23 do with the company. There is no relationship whatsoever.
24
25 **MR MENEZES LEITÃO**: Penn Lilac is a Panamanian company and is active or
26 operating in Panama. Do you confirm so?
27
28 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I do not know where it operates.
29 They have a delegation office in Spain and I think they also have a delegation office
30 in Panama, but it is not my mission to know where the companies have their offices.
31 My area is technical, not administrative.
32
33 **MR MENEZES LEITÃO**: Annex 1 of Panama is introduced by me at this point. It is in
34 the Panama annexes of the Rejoinder, which I understand is signed by you. This is a
35 certificate of the Registry of Panama. Is that so? Would you please look at the
36 screen? It has your signature and stamp, Panama Shipping Registry Authority,
37 auditor, Pedro Olives Socas. Is that so?
38
39 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I cannot see what is on the
40 screen but apparently, yes. I cannot really see what it is.
41
42 **MR MENEZES LEITÃO**: It has its headquarters in Seville, Spain? It was written in
43 your certificate issued by Panama.
44
45 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, but I am talking about a
46 certificate that explains that the company's management was going to Seville, not
47 that the shipowner was in Seville, because technically one thing is the owner and
48 another thing is the manager, and what I am saying is that the management is in
49 Seville.
50

1 **MR MENEZES LEITÃO:** What you say is that the management gives the nationality
2 to the company, so it is not true, as you said, that it is considered to be a
3 Panamanian company, not even to a Panama register, as you say that is a
4 Panamanian company. You say that the management of the company is in Spain.
5

6 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, I did not say that. You do not
7 understand the certificate. I will explain it to you. One thing is the shipowner and the
8 company and another thing is the department in charge of the manning. The
9 manning needs to be audited. Shipowners can have their offices to manage the
10 vessel wherever they choose. It is not compulsory for them to have it in the country
11 of registry. It is a technical thing. I certify that the office that is in Seville has the
12 capacity, the administrative capacity and the technical capacity, to be in charge of
13 the safety and the protection of the vessel. I am not saying that any mercantile
14 operations are carried out from there, and it is different. You see, the document of
15 compliance is the document that depends on the ISM Code, and this is a technical,
16 not a mercantile document. So that is what I am saying, that this is where the
17 technical procedures for the vessel are carried out, regardless of where the owner is
18 located, but in this case the same shipowner is at the same time the manager, but
19 this is not a compulsory thing.
20

21 **MR MENEZES LEITÃO:** You stated that there are no flags of convenience. It is an
22 opinion. Do you know of a figure that 86 per cent of the ships registered in Panama
23 belong to foreign companies? Can you confirm these numbers?
24

25 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Panamanian flag vessels do not
26 belong to foreign companies. The companies are Panamanian. The owner may be
27 foreign but the companies themselves are Panamanian. The owners, yes, may be
28 foreign and this is not illegal.
29

30 **MR MENEZES LEITÃO:** Let us see. You testified you did a lot of inspections in
31 Africa, in Las Palmas and so on, and you did an inspection in 2010 stating the poor
32 condition of the *Virginia G*. Did you perform another inspection after the report of
33 2010?
34

35 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, but they were conducted
36 later, when the vessel came into the repairs area of the port. This was a year later
37 and it was performed in Cape Verde.
38

39 **MR MENEZES LEITÃO:** This certificate, it is issued by the services of Panama, and
40 it is also in the Panama annexes, which refer to a certificate granted on 7 December
41 2010, based on the survey "performed by our surveyors at Guinea-Bissau". Is that
42 what we see in that certificate? Apparently the report said that the *Virginia G* was not
43 in such bad condition as to pose a problem to Panama Shipping Registrar
44 Incorporated, because the class machinery certificate, some months after the
45 certificate was issued, if you can show it please - and this certificate has been
46 surveyed in Guinea-Bissau - was considered on 7 December 2010.
47

48 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, that is when the vessel had
49 already complied with all that we had asked it to do, and finally the certificate was
50 issued after it had complied with all the recommendations.

1
2 **MR MENEZES LEITÃO:** Fine, now the second inspection was in Cape Verde, but
3 what the shipping register says is that they are based, in your expression, in Guinea-
4 Bissau, that second inspection.
5
6 **MR OLIVES SOCAS** (*Interpretation from Spanish*): No, in that case I did not
7 understand properly. I referred to another inspection, which was carried out later; a
8 second inspection was performed after 2010 to grant a certification but I understood
9 that you meant years later. So I did not understand what you were referring to.
10
11 **MR MENEZES LEITÃO:** So shortly after. Let us see.
12
13 **MR OLIVES SOCAS** (*Interpretation from Spanish*): It practically was the same
14 inspection, 20 days more or 20 days less.
15
16 **MR MENEZES LEITÃO:** You came to Guinea-Bissau, it was your testimony, in
17 September 2009. Is that so?
18
19 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes.
20
21 **MR MENEZES LEITÃO:** Then you consider yourself an authority of Panama but you
22 did not report the situation of the ship to the authorities of Panama, or did you?
23
24 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, I reported it to my
25 headquarters. I reported what the situation of the vessel was, that it was in perfect
26 condition, it had no technical problems. In September when I went the ship was in
27 mint condition. It had problems with the authorities but this was none of my business
28 really. I just said that the boat was in good condition and that is it.
29
30 **MR MENEZES LEITÃO:** You said you made it in September 2009. It is not signed
31 by you, nor the other one. Is it normal for an inspector to do a report and not to sign
32 it, and give it away without signing or stamping it?
33
34 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, it is signed but perhaps this
35 is the copy I sent to the shipowner. This is not the copy I signed but there must be a
36 signed copy somewhere.
37
38 **MR MENEZES LEITÃO:** It is not an official document. It is an internal document, as
39 we say.
40
41 **MR OLIVES SOCAS** (*Interpretation from Spanish*): I do not know what you were
42 given but I sent everything correctly.
43
44 **MR MENEZES LEITÃO:** No further questions.
45
46 **THE PRESIDENT:** I now ask the Agent of Panama whether he wishes to re-examine
47 the witness-expert. I then give the floor to the Agent of Panama to re-examine the
48 witness-expert. I wish to remind you that the re-examination shall not raise new
49 issues but shall limit itself to the issues raised in cross-examination.
50

1 **MR GARCÍA-GALLARDO:** Thank you, Mr President. Of course not.

2

3 **Re-examination by MR GARCÍA-GALLARDO**

4

5 **MR GARCÍA-GALLARDO:** Mr Pedro Olives Socas, I have one question. With all
6 due respect to the representatives of Guinea-Bissau, it seems that they have an
7 incomplete knowledge of maritime law and business. This particular question is
8 raised to you: it seems that they completely misunderstand that countries like
9 France, Germany, the European Union, Brazil, Japan, Korea, China, South Africa,
10 Canada – a huge list of countries – formally delegate a big part of their statutory
11 powers over ships of their respective flags to classification societies as recognized
12 organizations to supervise and conduct inspections of ships. Can we find you in the
13 list of surveyors duly appointed by the recognized organization in the Panama list
14 that appears in www.segumar.com of the Department of Marine Administration of
15 Panama? Are you a surveyor with delegated authority to issue statutory certificates
16 on Panamanian vessels as an individual, Mr Pedro Olives Socas, and not as a
17 company?

18

19 **MR OLIVES SOCAS** (*Interpretation from Spanish*): Yes, of course. My authorization
20 is just private and not to be transferred.

21

22 **MR GARCÍA-GALLARDO:** Thank you.

23

24 **THE PRESIDENT:** Thank you very much, Mr García-Gallardo. I would like to know
25 how you wish to continue. Do you wish to call the next witness? We still have time.

26

27 **MR GARCÍA-GALLARDO:** I would like to call Mr Alfonso Moya Espinosa. My only
28 question is that maybe I will be disrupted because I will not complete my questions in
29 20 minutes and then I will need to continue.

30

31 **THE PRESIDENT:** I would like to thank Mr Olives. Thank you for your testimony.
32 You may withdraw.

33

34 Thank you, Mr García-Gallardo.

35

36 The Tribunal will proceed to hear the expert, Mr Moya Espinosa. He may be brought
37 into the courtroom.

38

39 I call upon the Registrar to administer the solemn declaration to be made by the
40 expert.

41

42 *(The expert made the solemn declaration)*

43

44 **THE PRESIDENT:** Good morning, Mr Moya Espinosa. I wish to remind you of the
45 following. The work of the interpreters and verbatim reporters is a complex task. This
46 is even more so when, as will be the case now, not only English and French are
47 used but also a third language, Spanish. Therefore, I must urge you to speak slowly
48 and please leave sufficient time after someone else has spoken to you before you
49 answer. As I have stated, questions will first be translated into English and then into
50 French, so you will have to wait until the interpretation into French has been

1 completed. When the interpretation into French has finished, I will give you a sign to
2 that effect. Only then will it be possible for the interpreters to follow.

3
4 Mr García-Gallardo, you have the floor.

5
6 **MR GARCÍA-GALLARDO:** Thank you, Mr President.

7
8 **Examination by MR GARCÍA-GALLARDO**

9
10 Mr Alfonso Moya Espinosa, would you please introduce yourself?

11
12 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I am an economist. I am a
13 controller and an auditor for the Spanish State, and then I set up my own company to
14 carry out fiscal advice work.

15
16 **MR GARCÍA-GALLARDO:** Where are your offices located?

17
18 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In Seville.

19
20 **MR GARCÍA-GALLARDO:** Are you an auditor or an accountant?

21
22 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I am an auditor, an economist.

23
24 **MR GARCÍA-GALLARDO:** Do you have clients in the maritime sector?

25
26 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes, I have customers in
27 Seville and in Huelva; both are ports – ship-owning companies.

28
29 **MR GARCÍA-GALLARDO:** Are you in charge of the preparation of the accounts of
30 the companies we know with a family that is the shipowner and final beneficiary of
31 the vessel *Virginia G*?

32
33 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes, I have a professional
34 relationship with Mr Gamez. I have had this relationship since 1988, which was when
35 I started providing advice to his companies.

36
37 **MR GARCÍA-GALLARDO:** Do you prepare annual accounts and tax forms, tax
38 obligations and accounts obligations, of those companies?

39
40 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.

41
42 **MR GARCÍA-GALLARDO:** Would you please explain to us which companies were
43 affected by the arrest of the *Virginia G* and the damages reflected in your report?

44
45 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Mr Gamez is the chairman of a
46 holding of family businesses which include a Spanish company, Gebaspe, a ship-
47 owning company, Penn Lilac Trading, and the holding company is Penn World. The
48 Spanish company was devoted to selling fuel to vessels in international waters.
49 Afterwards, as the selling of fuel business was doing well, the company bought a
50 vessel through a company called Penn Lilac Trading. They bought their first vessel,

1 which was *Virginia G*. After this, through a different company, Penn World, which
2 was the holding company, which held different properties, they bought a second
3 vessel, which was the *Iballa G*. The three companies I mentioned had a turnover just
4 through the Spanish company of about €8 million-odd. Penn Lilac Trading also had
5 its own customers and it sold its customers fuel. A decision was made by him to sign
6 a contract with an Irish company called Lotus Federation to unify and make the most
7 of the fiscal incentives offered by Ireland for the sale of fuel in international waters.
8

9 **MR GARCÍA-GALLARDO:** What was the instruction given to you by Penn Lilac to
10 prepare your report?
11

12 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): They asked me to make a
13 calculation of the cost involved in the arrest of the vessel just in terms of the contract
14 that Penn Lilac had with Lotus Federation.
15

16 **MR GARCÍA-GALLARDO:** When did you prepare this economic report on
17 damages?
18

19 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In 2011. I completed it on
20 16 March 2011.
21

22 **MR GARCÍA-GALLARDO:** Do you confirm before this Tribunal the content and
23 conclusions of this report?
24

25 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.
26

27 **MR GARCÍA-GALLARDO:** What is the amount of the damages that you reflect in
28 the report?
29

30 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): €4,221,222.54.
31

32 **MR GARCÍA-GALLARDO:** Did you get access to bank statements and tax forms to
33 prepare this report?
34

35 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes, I had access to all
36 documents, and I have them.
37

38 **MR GARCÍA-GALLARDO:** Would you describe the methodology that you followed
39 for the preparation of this report? Which companies fall within the scope of your
40 report?
41

42 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In the study of the costs and
43 economic damages I directly included only the *Virginia G* vessel. I did not include the
44 other vessel that was under an embargo in the port of Las Palmas. The calculations
45 that I made to determine this amount and to arrive at the amount that I mentioned
46 just now comprised direct expenses to do with maintaining the *Virginia G* at the
47 Guinea-Bissau port, the losses incurred during the arrest, because the vessel was
48 not operating, and then the *manque à gagner* resulting from the losses in the
49 contract between the family company and the Lotus Federation company. They
50 controlled the trafficking of 18,000 tonnes at a price of €40 per tonne.

1
2 **MR GARCÍA-GALLARDO:** What was for you the period of inactivity of the ship
3 *Virginia G* reflected in your report?
4
5 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Four hundred and seventy four
6 days.
7
8 **MR GARCÍA-GALLARDO:** How have you calculated that?
9
10 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Mr Gamez gave me the dates.
11
12 **MR GARCÍA-GALLARDO:** The dates between the arrest ... or the date of the
13 arrest?
14
15 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): From the arrest to the release,
16 then putting the vessel back into service.
17
18 **MR GARCÍA-GALLARDO:** To the date of the release, and then you added some
19 extra days?
20
21 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes, until the vessel was able
22 to go back into operation.
23
24 **MR GARCÍA-GALLARDO:** Had you included the salaries of the crew?
25
26 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.
27
28 **MR GARCÍA-GALLARDO:** What other cost had you included as the main point?
29
30 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The costs included are as
31 follows: the payroll of the crew; *per diems*; travelling costs; the cost involved in
32 obtaining the seaworthiness certificates; the proportional costs of the grounding
33 vessels and the periodical evaluations that have to be performed; the depreciation of
34 the vessel; the proportional part of the salaries of the ground staff; P&I insurance
35 policies for the hull; and the administration costs for the group.
36
37 **MR GARCÍA-GALLARDO:** How did you calculate the value of the cargo?
38
39 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): On the basis of the invoice by
40 Lotus Federation.
41
42 **MR GARCÍA-GALLARDO:** Have you also added any indirect costs?
43
44 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): When you say "indirect costs",
45 what exactly do you mean?
46
47 **MR GARCÍA-GALLARDO:** On the last page of your report, the English version, you
48 express the amounts in four categories: direct costs, losses during retention, losses
49 for termination of the chartered contract with the Lotus Federation, and an additional
50 10 per cent.

1
2 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): This includes the direct costs
3 as far as maintenance of the vessel in the port is concerned until it could go back to
4 its bunkering operations. These are direct costs, costs that had to be incurred over
5 the 474 days during which the vessel remained grounded. The rest corresponds to
6 losses that were incurred as a result of the infringement of the contract with Lotus
7 Federation, and the losses incurred during the detention are a *manque à gagner*
8 because, of course, the ship could not be used during those days.
9
10 **MR GARCÍA-GALLARDO**: What was the duration of this contract with Lotus
11 Federation?
12
13 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The contract was signed for
14 four years and it included maximum supply of 90,000 tonnes a year. This 90,000
15 tonnes had to be supplied to both vessels so it included both vessels until the arrest
16 in 2009. Until the arrest in 2009 the *Virginia G* had been supplied 34,000 tonnes,
17 which may indicate that it would supply between 40-50,000 tonnes in 2009. So this
18 calculation of €1.3 million corresponds to the supplies that were not performed by the
19 vessel from August to December 2009 in accordance with the evolution of supplies
20 recorded from January to the time the vessel was arrested.
21
22 **MR GARCÍA-GALLARDO**: At point 14 of the report you mentioned repayment of the
23 vessel, €1 million, purchase price, amortization rate 5 per cent annually. Why did you
24 take this amount to calculate the amortization rates, and why did you apply this rate
25 of 5 per cent annually?
26
27 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I consider that a steel
28 structure, even if it is not operating, should be amortised because a ship is always in
29 a very hostile environment. Salt water is extremely hostile. This was a vessel that
30 was bought second hand and so the lifespan is estimated at 20 years, so the annual
31 amortization is 5 per cent.
32
33 **MR GARCÍA-GALLARDO**: And the price of €1 million? What was the reference to
34 put this price in the report?
35
36 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The acquisition price of the
37 vessel was €600,000. Penn Lilac introduced improvements to the vessel for a value
38 in excess of €1.5 million, and the value assigned by the insurance company was
39 €1.1 million so I took the figure of €1 million because it was a conservative figure so
40 as not to damage either of the two parties.
41
42 **MR GARCÍA-GALLARDO**: €1 million---
43
44 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): €1.1 million approximately.
45
46 **MR GARCÍA-GALLARDO**: This price, the market price?
47
48 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Not at this point in time, no,
49 because of the situation in the market; there has been a reduction in prices of all
50 kinds of vessels.

1
2 **MR GARCÍA-GALLARDO:** In relation to the cost related to the ground staff, what
3 did you calculate the cost?
4

5 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): On the basis of the payroll.
6

7 **MR GARCÍA-GALLARDO:** Fifty per cent ground staff. Does it mean that you cut the
8 cost – it is like a fixed cost between the two vessels owned by the family group, the
9 vessels *Iballa G* and *Virginia G*?
10

11 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No, no. The personnel that the
12 vessel had when it was arrested, which was the full crew – as time went by the
13 number of crew members became smaller and smaller because the company was
14 going through very difficult financial times and at the end only two people remained
15 practically. Afterwards when the vessel was released the full crew was hired again
16 so that the vessel could go back into operation, and that is why there is a variation in
17 personnel costs across the different months. But the crew of the *Iballa* was not taken
18 into account in any way whatsoever.
19

20 **MR GARCÍA-GALLARDO:** Mr President, to try to respect the schedule I would like
21 to suspend the examination and to continue after the break.
22

23 **THE PRESIDENT:** Thank you very much. We have reached almost 11.30 so the
24 Tribunal will withdraw for a break of thirty minutes. We will continue the hearing at
25 11.55. Thank you.
26

27 (*Break*)
28

29 **THE PRESIDENT:** We will continue the examination of the [expert].
30

31 Mr García-Gallardo, you have the floor.
32

33 **MR GARCÍA-GALLARDO:** Thank you, Mr President, your Honours.
34

35 Mr Moya, I still have some questions. Could you please confirm to me that the
36 companies - not just simply Penn Lilac but the other company that owned the second
37 vessel of the family interests, Gamez - comply fully with the accounts and tax
38 obligations of the respective jurisdictions of Panama or other country? The other
39 company was Gebaspe in Spain. Could you please elaborate a little bit to this
40 Tribunal, please?
41

42 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The holding of companies was
43 made up by three companies. There were three companies and two of them were
44 domiciled in Panama and the other one was domiciled in Spain, which was the first
45 company that was set up. The Spanish company declares its taxes in Spain. One of
46 the two Panamanian companies has a permanent establishment in Spain called
47 Penn World, which was the owner of the *Iballa G* vessel – and she was also the
48 owner of the premises in Seville and some other premises in the Canary Islands –
49 and the other company was just the owner of the *Virginia G* vessel, which only
50 declared its taxes with Panama because it had no other obligations. The fiscal

1 statements – we never had any problems to do with taxes or anything, and no
2 amounts were claimed from us either by Spain or by Panama.

3
4 **MR GARCÍA-GALLARDO:** You mentioned before that you are a tax expert. Do you
5 know if Panama is in the list of tax havens of the OECD – the Spanish...

6
7 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No. Panama is not a tax haven
8 where you can conduct money-laundering activities or anything of that sort. Panama
9 is subject to the obligation of conveying information about money-laundering
10 transactions and about currency movements, and so it is not classified as a tax
11 haven. Panama has its vessels that carry its flag, and for those services vessels
12 have to pay every year and that is it; there is no other obligation.

13
14 **MR GARCÍA-GALLARDO:** Did the arrest and long detention of the *Virginia G*
15 directly affect the operations of the second Panamanian company that owned the
16 second vessel of the family Gamez, called *Iballa G*?

17
18 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In this group of family
19 companies the different companies were closely linked with one another. When I
20 was asked to draw up the report I was talking with Mr Gamez and I thought it was a
21 little bit reckless to include all of the collateral financial damage that this arrest
22 caused because Mr Gamez became ill as a result of this and he had to take
23 retirement in order to be able to support his family. If you contemplate all of these
24 situations, then moral damage is very difficult to quantify economically – or at least
25 moral damage is very difficult to quantify. In a family company normally it is very
26 difficult to establish a limit as to how far you can go when you assess damages, but
27 we knew that this is happening and that we were going to have to defend it in court
28 at one point. We wanted to be prudent and we decided to present figures that were
29 conservative and that we could of course support on hard evidence. Of course, there
30 are many people in this company who are hoping for Mr Gamez to re-float his
31 economic situation, to be able to get the money that is owed to them. Of course this
32 compensation is going to be very useful to pay creditors, but some other things are
33 irreversible. For example the seeds of mistrust have already been sown in the
34 shipping sector and in the fuel sector against Mr Gamez because as a result of the
35 news that this company was devoted to smuggling fuel and things like that his
36 credibility really suffered greatly. As a result of this, creditors were relentless in
37 demanding their payments and demanding the money that was owed to them; so it
38 was a real disaster for the company. But it is very difficult at least for me to evaluate
39 damage of that nature. However, I can defend and I can argue, although I don't have
40 any other reports, in favour of the figures I have presented to this Tribunal. That's
41 what I can say.

42
43 **MR GARCÍA-GALLARDO:** Can we say that the arrest by the Guinea-Bissau
44 authorities of the *Virginia G* did not make to sink the *Virginia G* but really sank
45 Mr Gamez's interests?

46
47 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Well, I think, yes.

48
49 **MR GARCÍA-GALLARDO:** I have no further questions, Mr President.

50

1 **THE PRESIDENT:** Thank you, Mr García-Gallardo. I would like to know whether
2 Mr Leitão wishes to cross-examine the expert.

3

4 You have the floor, sir.

5

6 **Cross-examination by MR MENEZES LEITÃO**

7

8 **MR MENEZES LEITÃO:** Thank you, Mr President.

9

10 First, I would like to ask Mr Alfonso Moya: do you consider yourself to be an
11 independent expert to these proceedings of the Parties?

12

13 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In terms of the drawing up of
14 the report, yes.

15

16 **MR MENEZES LEITÃO:** My question of you was, are you independent of this group
17 of companies?

18

19 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I have been paid by them for
20 many years.

21

22 **MR MENEZES LEITÃO:** I do not know if you have the report with you but I will draw
23 your attention to point 17 of the report. In this report you talk about the “no fault”
24 losses of the company. The expression you use is very curious: “Losses...”

25

26 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): This is funny, isn't it?

27

28 **MR MENEZES LEITÃO:** You are not fluent in English?

29

30 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No.

31

32 **MR MENEZES LEITÃO:** You did not supervise the translation of this report?

33

34 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I could not do that, no.

35

36 **MR MENEZES LEITÃO:** I was asking because of the sales figure you said of
37 €8,411,000 in the year 2008. You stated this is the sales figure of the group of
38 companies. It was in your report but in the translation in the beginning of the report,
39 they say it is the sales figures of “the company”. If I am correct to understand this
40 translation, the sales figure of €8 million is not of the company Penn Lilac; it is of the
41 group of companies you talked about. Is that so?

42

43 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The €8.4 million is the turnover
44 for the whole group.

45

46 **MR MENEZES LEITÃO:** Can you tell the Tribunal the sales figures of just Penn Lilac
47 in 2008?

48

49 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In 2008 the sales of Penn Lilac
50 I do not really know. No, I do not have them in front of me.

1
2 **MR MENEZES LEITÃO:** What is the sales figure of Penn Lilac?
3
4 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.
5
6 **MR MENEZES LEITÃO:** The amount? Zero?
7
8 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I do not have them here.
9
10 **MR MENEZES LEITÃO:** You stated to the Tribunal that this report was based on a
11 lot of invoices and you at any time say “attached are copies of the invoices”. Were
12 these invoices, or any one of them, paid by Penn Lilac?
13
14 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.
15
16 **MR MENEZES LEITÃO:** This is an invoice, for instance, Penn Lilac Trading, a
17 stamp. Do you consider this a tax invoice?
18
19 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): This is a list of invoices. This is
20 a list of invoices. The holding of companies has a single cash pooling system.
21
22 **MR MENEZES LEITÃO:** It is the stamp of Penn Lilac but it was Gebaspe who paid
23 these invoices. I notice this is an invoice for legal services, and do you consider it
24 correct? It is legal defence and expert reports. The amount is €151,000. Do you
25 consider it normal that the case of the *Virginia G* in Guinea-Bissau cost €151,000?
26 There was only an interim measure and an action brought before the courts of
27 Bissau. Do you consider this figure to be correct? €151,000 for legal services?
28
29 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): If you allow me, I will answer.
30 Otherwise I cannot. So here, the same as you, I can read “SJ Berwin €50,000”. I do
31 not know how much you are going to get out of this. This is SJ Berwin and it says
32 how much it is going to get.
33
34 **MR MENEZES LEITÃO:** €50,000?
35
36 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Yes.
37
38 **MR MENEZES LEITÃO:** What does this relate to?
39
40 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): It is the legal services of
41 SJ Berwin. So when the whole process finishes, Mr Gamez will see how he can pay
42 all of these bills, but this is my own work, coming all the way to Hamburg, and all the
43 people that have come here, and the different people that have had to participate in
44 a process that has been going on for many years. So how much is all of this worth?
45 Do you think €151,000 is too much? It is a matter of opinion.
46
47 **MR MENEZES LEITÃO:** You are claiming as damages the costs of these
48 proceedings before the International Tribunal and the Tribunal has to make an award
49 on the legal costs. So, according to your report, in these proceedings you are

1 doubling the petition to the Tribunal because you pretend that the Tribunal considers
2 damages as the set costs for the legal costs of the lawyers before this Tribunal.

3
4 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No, I am sorry. I do not know
5 whether the Tribunal will order the other party to pay the costs. This is up to the
6 Tribunal to decide. I am just giving you the facts as a Roman principle – as a lawyer,
7 I am sure you are aware of it – give me the facts and I will give you the law. So I
8 have to say these are the facts, these facts have been proven, and everything is
9 justified. Will Mr Gamez have to pay this? Yes, obviously. With what money? Well,
10 he will see to that. If we are not condemned but are asked to pay the lawyers' costs,
11 we shall see, but these are the expenses that will have to be paid throughout the
12 process, and many of them have been quantified. My bills have been quantified,
13 Mr Gulias's bill has been quantified, SJ Berwin has been quantified, Miranda has
14 been quantified. This is an estimation. It may be 55 or 42 but this is a ballpark figure
15 coming all the way to Hamburg, different people. So all of this is not contemplated
16 but this is going to cost a lot of money.

17
18 **MR MENEZES LEITÃO**: It says here a payment to "análisis tributario", I understand
19 a tax audit. What has a tax audit to do with the arrest of the *Virginia G*?

20
21 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): This €4,500 is for the drawing
22 up of the report and the different tax advisory work conducted since the arrest took
23 place, submittal of declarations of companies that have remained inactive as a result
24 of this process, companies for which we have had to present annual accounts
25 because they are no longer operational in Spain, and the drawing up of this report, is
26 this too much money, €4,500 to draw up this report? Is it too much?

27
28 **MR MENEZES LEITÃO**: I am not contesting the amount. I am contesting the
29 connection with the case.

30
31 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Well, I am telling you that
32 these are the costs that we think are going to be incurred throughout the process. I
33 cannot say more than this.

34
35 **MR MENEZES LEITÃO**: You have already said something about it to my colleague.
36 You said that Penn Lilac is for tax purposes sitting in Panama, or taxed in Panama.
37 Do you know the amount of tax paid by Penn Lilac to the Panamanian authorities?

38
39 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): When we set up the company
40 – I cannot remember. It was a long time ago but an amount was paid in Panama and
41 then, through the Consulate, annual amounts were also paid. I do not know how
42 much, because for this report it is not really relevant how much we paid or how much
43 we failed to pay.

44
45 **MR MENEZES LEITÃO**: So that's the company in Panama, but let me ask you
46 another question. It was your testimony that---

47
48 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The company has a vessel
49 with a Panamanian flag.

1 **MR MENEZES LEITÃO:** The contract with Lotus Federation of Ireland was signed
2 by Penn Lilac. We have here a copy of this contract, which says that it was signed by
3 Gebaspe. Has Penn Lilac signed any charter at all?
4

5 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I can imagine it has an invoice
6 from Lotus, otherwise who is going to pay the crews and who is going to pay all the
7 expenses?
8

9 **MR MENEZES LEITÃO:** Penn Lilac or Gebaspe?
10

11 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Penn Lilac.
12

13 **MR MENEZES LEITÃO:** With what earnings?
14

15 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): What do you mean, with what
16 earnings? With the money that it receives from Gebaspe.
17

18 **MR MENEZES LEITÃO:** In order to put Penn Lilac in condition to pay the workers?
19

20 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): This case, normally in all
21 companies if the supplier does not pay the customer, the customer cannot pay its
22 personnel, and here you have the same situation.
23

24 **MR MENEZES LEITÃO:** Penn Lilac is only a body interposed in this relation to avoid
25 liability in case of, for instance, disasters with an oil tanker.
26

27 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): If it did not pay its insurance
28 and if it did not carry out inspections and if it did not comply with its maritime
29 obligations, you could say that, but a company that has all its insurance policies and
30 that pays all its taxes, why should I presume that it wants to avoid its
31 responsibilities?
32

33 **MR MENEZES LEITÃO:** If there were a big disaster at sea caused by the *Virginia G*,
34 the damaged person has only Penn Lilac to claim this possibility, who has only this
35 ship, and cannot go to Gebaspe because it would say, "We are not the owners of the
36 ship. We are only a bareboat charter."
37

38 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): In the case of the arrest of this
39 vessel, we paid with all of the estate of Mr Gamez, we paid all the debts.
40

41 **MR MENEZES LEITÃO:** What do you feel to be the actual value of the vessel?
42

43 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I cannot answer that question.
44 I am not an expert in the field. It would be reckless of me to answer your question. It
45 would be reckless to give you a figure now. How much is this pen worth? I do not
46 know.
47

48 **MR MENEZES LEITÃO:** Because I read on the internet that this ship actually has
49 only a value of €500,000. Do you think this is correct or not?
50

1 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): If you read this and if you say
2 so, I am not going to contradict what you are saying. Vessels are worth depending
3 on the work they do.

4
5 **MR MENEZES LEITÃO**: How can you manage to get a report saying that the
6 immobilization of a vessel which has a value of €500,000 for a period that is not
7 more than one year can cause €4,221,000? How is that possible according to the
8 good principles of economic evaluation?

9
10 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I am not saying that it is
11 €4 million.

12
13 **MR MENEZES LEITÃO**: It's just on the first page.

14
15 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): One moment please. On
16 page 9 of my report I say that the direct expenses that have been incurred for the
17 vessel were €1.28 million, and then you showed me an invoice which you think is
18 excessive, and then losses during the detention period – this was 474 days the ship
19 could not operate. Taking into account that from 1 January to its arrest it had moved
20 24,000 tonnes at €40 per tonne, then there was a contract with Lotus Federation for
21 90,000 tonnes a year, which cannot be complied with, so there is a breach of
22 contract, but the contract had been complied with the previous two years, and there
23 are two more years in the future in the contract. There is a whole figure of €3.6
24 million a year, and so you are saying that €1.2 million for 484 days is madness. If I
25 told you how much money we have lost as a result of all these things, somebody in
26 this Tribunal might even start laughing.

27
28 **MR MENEZES LEITÃO**: So you are saying that the detention of a vessel which has
29 a value of €500,000 can cause damage, in a little more than one year, that is almost
30 ten times the value of the ship. Do you consider it in any situation even possible to
31 consider in this case the ship value much more?

32
33 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The vessel is not just the
34 vessel itself. You have to consider the activity that the vessel carries out. There is a
35 whole set of companies involved. It is not just the vessel; it is also the cargo that was
36 seized. It is not just the vessel; it is having to keep up a crew that is not working. It is
37 not just a vessel; it is also a series of expenses that have to be incurred, and this led
38 to financial expenses that had to be paid. In addition, there is a breach of contract
39 with a *manque à gagner*. These are companies that were driving a roaring trade and
40 now everything went to pot. We do not even know whether we are going to be able
41 to get our money back. Those of us here do not even know whether we are going to
42 be paid for coming here. So these are concrete figures that appear in documents.

43
44 **MR MENEZES LEITÃO**: This is not the damage to this ship but the damage caused
45 to Gebaspe, which is a third party to the owner of the ship, because it has only a
46 charter contract and is not the owner of the ship. Is that so?

47
48 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I did not understand your
49 question. What did you say?

1 **MR MENEZES LEITÃO:** Penn Lilac.
2
3 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Penn Lilac is not the owner of
4 the vessel.
5
6 **MR MENEZES LEITÃO:** I said Penn Lilac is the owner of the vessel but Gebaspe,
7 which contract you say Gebaspe lost, is not the owner of the ship. So it is a third
8 party to the situation of the arrest of the ship.
9
10 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I have not included any of the
11 damage caused to Gebaspe. Within the expenses I included financial expenses. The
12 fuel, sir, was invoiced by Lotus to Gebaspe because Gebaspe was a company that
13 was financially sounder than Penn Lilac and that is why Lotus Federation preferred
14 to send its invoice to Gebaspe, because the contract was a three-party contract. The
15 company, as I said, is a family company and it is evident that the vessels bear the
16 names of the daughters of the owner, so you cannot really separate the vessel from
17 the cargo as you want to. It is the vessel plus the cargo. How much is the cargo
18 worth? This is something that we can quantify. The cargo was worth almost half the
19 value of the vessel, if we consider the value that you gave us.
20
21 **MR MENEZES LEITÃO:** The ship is considered to be over €1 million – point 14. Is
22 that correct?
23
24 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No, I did not assign that value.
25 The insurance company assigned a value of 1.1 million. I took as a conservative
26 figure the figure of 1 million. I did not want to take the historical value of this vessel
27 from the time it was bought to when it was placed into service to be able to do
28 bunkering operations; I did not take that into account. I just took a figure, which is in
29 my report, and the insurance clause says that the value can never be higher than the
30 actual price of the object that is being insured. This is mercantile law.
31
32 **THE PRESIDENT:** Mr Leitão, our interpreters are having difficulty following your
33 questions. Please wait until the interpretation into French has been completed.
34
35 **MR MENEZES LEITÃO:** You have testified and produced a report before this
36 Tribunal which is supposed to be the truth. Do you consider it true to say that
37 €1 million was the purchase price of the ship when actually it was €600,000?
38
39 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The price of acquisition of the
40 vessel is €600,000. The price of the vessel when it started to operate with Penn Lilac
41 was not €600,000. It was more than this because we had to put in new machines
42 and the engines had to be overhauled, so a lot of money was spent. In addition, since
43 this vessel came from an auction, it had to be subjected to a series of upgrades to be
44 able to obtain seaworthiness certificates, and all of that was done when it had to be
45 done. So I just took a figure that is here in a document published or issued by an
46 insurance company.
47
48 **MR MENEZES LEITÃO:** In that case you should write the insurance value of the
49 vessel. Do you agree with me?
50

1 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): I took a figure that I thought
2 was as conservative as possible. I did not come here to say that the boat cost
3 600,000 and then we spent 800,000, so the value should be 1.4 thousand; I said
4 1 million, which is a conservative figure.

5
6 **MR MENEZES LEITÃO**: So you have invented this figure which does not
7 correspond to any value at all, and it is almost twice the value of the purchase price?
8

9 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): That is your subjective
10 opinion, sir.

11
12 **MR MENEZES LEITÃO**: Let me ask you another question. Why from your
13 perspective should a State that has arrested a vessel for no more than one year and
14 has returned it back pay 50 per cent for the year of the price of the acquisition of the
15 vessel? What kind of damage is that?
16

17 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): A State that arrests a vessel
18 should only pay 50 per cent of the acquisition value – 5 per cent a year? Well, that is
19 the impairment that the vessel suffered while it was stranded in a port. If you place
20 steel in contact with a hostile environment such as salty water, it undergoes
21 deterioration, and that is why fiscal norms throughout the world make it possible for
22 expenses involved in correcting this deterioration from being taken away from the
23 total value from a fiscal perspective.
24

25 **MR MENEZES LEITÃO**: But you have also claimed for the loss of benefits during
26 this period at the same time. It is in your point 16. Should you not have deducted this
27 amount from the loss of the benefits? It is above the point about losses during the
28 period – €83,000 per month – so simultaneously you are charging the payment of
29 the ship and at the same time the loss of benefits. According to my account, you are
30 doubling it and, on the contrary, you should have deducted it?
31

32 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): No, I did not double anything
33 in the report. If you read my report carefully, sir, not from a legal perspective but from
34 an economic perspective, the vessel was arrested and there was a four-year
35 contract, one year and a little of which had elapsed, and there had been 474 days of
36 inactivity. As a reference I took an operational figure for those 474 days, which was
37 the same as the profits shared from 1 January to the day of the arrest, where it had
38 already transported 24,412 tonnes of fuel, which is not to be scoffed at; it is quite a
39 bit of fuel, so we are talking about a lot of fuel. Then the contract with the supplying
40 company was still in force, so the vessel could have sold much more fuel if it had not
41 been arrested, and this is what we call *manque à gagner*. Then there is the two-year
42 period, the 474 days plus the day on which it had operated from January, but the
43 contract was a four-year contract, so there were two more years to go and in that
44 two-year period the vessel would have made a lot more money.
45

46 I did not estimate the losses as high as I could have estimated them. I just reduced it
47 to slightly more than 2 million. I have been very prudent, very cautious, when
48 calculating this. I have been extremely meticulous and careful, and there is no
49 duplicity at all. There is a period of operation, a period of arrest and a contract that
50 was not complied with. Therefore, the turnover figure of these companies of

1 Mr Gamez was €3.6 million, a turnover at €40 per tonne. You may like this or not;
2 you may think this too much or not depending on how you look at it, but that is the
3 figure and that is the contract, and the breach took place not through our own fault
4 but through the fault of some other people.

5
6 **MR MENEZES LEITÃO:** Let me ask you another question. Is amortization of the
7 ship a benefit or a cost to a company?
8

9 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): When the tax authorities allow
10 you to get tax relief for an amortization in your income statement it is because the tax
11 authority wants to compensate you for a loss that you are incurring. It is not a fiscal
12 holiday that you are getting; no, no, no. You have a car and the Portuguese tax
13 authorities will allow you, in your tax statement when you declare your tax, to deduct
14 the depreciation of your vehicle because your vehicle is subject to the rigours of
15 weather conditions, so you will include the amortization of the depreciation of your
16 vehicle in your tax statement. This is not something that has benefited you. What the
17 tax authorities are doing is compensating you for the loss that your vehicle is
18 suffering, and the same thing goes for this ship.
19

20 **THE PRESIDENT:** Mr Leitão, I would like to draw your attention to the fact that you
21 have four more minutes for your cross-examination. If you spend all the remaining
22 time on this cross-examination we will have no time for the next expert.
23

24 **MR MENEZES LEITÃO:** Very well. I will close at this point. Thank you.
25

26 **THE PRESIDENT:** I will therefore ask Mr García-Gallardo whether he wishes to re-
27 examine the [expert].
28

29 **MR GARCÍA-GALLARDO:** Thank you, Mr President. I invite the representative of
30 Guinea-Bissau to show again our Annex 13, please. Will you please show Annex 13
31 in the official version, which is the Spanish version, and not only the English version,
32 to avoid misleading this Tribunal? If you have a technical problem, we can show the
33 same evidence. I am not asking for that. I am asking you to show on the screen
34 Annex 13, please, of my Memorial.
35

36 **MR MENEZES LEITÃO:** Yes, I have that.
37

38 **MR GARCÍA-GALLARDO** (*To Mr Mizzi*): Alex, can you show this in order not to lose
39 time? (*To Mr Menezes Leitão*) No, not the report. I am talking about Annex 13 of the
40 evidence that you showed.
41

42 **MR MENEZES LEITÃO:** The translation, the company Penn Lilac?
43

44 **MR GARCÍA-GALLARDO:** I am not talking about the translation. I repeat again that
45 I am looking for the Spanish version of the evidence at Annex 13, please. I am
46 talking about the charterparty agreement.
47

48 **MR BASTOS:** So you are talking about the contract with Lotus?
49

1 **MR GARCÍA-GALLARDO:** Yes, I am always talking about the same evidence,
2 Annex 13, please.

3

4 **MR MENEZES LEITÃO:** Okay, *this* is what you want.

5

6 **Re-examination by MR GARCÍA-GALLARDO**

7

8 **MR GARCÍA-GALLARDO:** Mr Moya Espinosa, I am sorry for disturbing you again. I
9 will ask you just one question. Would you please read the first line following
10 “Reunidos”, the name of the individual?

11

12 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): One part was Antonio Gamez
13 Sanfiel.

14

15 **MR GARCÍA-GALLARDO:** Can you move to the line following “Attuando”?

16

17 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): The first one in the name of
18 the Gebaspe company SL, henceforth the freighter.

19

20 **MR GARCÍA-GALLARDO:** The freighter means the owner?

21

22 **MR MOYA ESPINOSA** (*Interpretation from Spanish*): Not necessarily.

23

24 **MR GARCÍA-GALLARDO:** The Spanish version, please. I am afraid, Mr President –
25 and this is the reason I read the English translation for the record – it is my fault and I
26 apologize. You can see very easily that at no point is *fletante* mentioned in Spanish. I
27 will change it and send in another. I apologize that, unfortunately, in that case the
28 representative of Guinea-Bissau has been using and spending time before this
29 Tribunal. Thank you very much.

30

31 **THE PRESIDENT:** Thank you for the correction.

32

33 Mr Moya Espinosa, I thank you for your testimony. Your examination is now finished
34 and you may withdraw.

35

36 Mr García-Gallardo, are you ready to call the final expert?

37

38 **MR GARCÍA-GALLARDO:** Yes, Mr President. I would like to call Mr Kenneth Arnott.

39

40 **THE PRESIDENT:** Thank you. The Tribunal will then proceed to hear the expert
41 Mr Arnott. He may now be brought into the courtroom.

42

43 I call upon the Registrar to administer the solemn declaration to be made by the
44 expert.

45

46 *(The expert made the solemn declaration)*

47

48 **THE PRESIDENT:** Thank you, Mr Registrar.

49

50 Mr García-Gallardo, you have the floor, sir.

1
2 **MR GARCÍA-GALLARDO:** I will try to be very brief, Mr President.

3
4 **Examination by MR GARCÍA-GALLARDO**

5
6 Mr Arnott, I will ask very quick questions because we are short of time and I would
7 like to allow some time for my colleague to cross-examine you.

8
9 **MR ARNOTT:** I understand.

10
11 **MR GARCÍA-GALLARDO:** Could you please first introduce yourself?

12
13 **MR ARNOTT:** I am Kenneth Arnott. I am the technical director of a company
14 Braemar, which is a UK company based in London. The consultancy has been in
15 operation a long time. It forms part of the old Salvage Association, which is a global
16 organization going back to 1860.

17
18 **MR GARCÍA-GALLARDO:** Are you an expert on maritime damages investigations?

19
20 **MR ARNOTT:** I am classed as an expert on marine casualty accidents and have
21 been instrumental in giving evidence in the High Court in London and in arbitrations
22 for the London Marine Arbitrations Association.

23
24 **MR GARCÍA-GALLARDO:** Could you give us just one example of an arresting case
25 where you have intervened as an expert?

26
27 **MR ARNOTT:** I have been an expert, as I say, on many cases, but some of the more
28 important ones are involving loss of life. I was instrumental in investigating a casualty
29 called *Alexandros T* which was a sinking of a bulk carrier vessel where there was
30 26 lives lost on that occasion.

31
32 **MR GARCÍA-GALLARDO:** Have you made any particular report in relation to
33 longstanding arrest of vessels?

34
35 **MR ARNOTT:** I have. In fact I am currently involved in three cases where these
36 vessels have actually been arrested for a considerable period of time. I am looking at
37 reactivation of these vessels.

38
39 **MR GARCÍA-GALLARDO:** In which place?

40
41 **MR ARNOTT:** These vessels have been arrested in Somalia and they have been
42 released into Oman where I am looking at the reaction and the reactivation of these
43 vessels so that they can be seaworthy and resume trading.

44
45 **MR GARCÍA-GALLARDO:** What was the instruction given to you by the Agents of
46 Panama to prepare this report?

47
48 **MR ARNOTT:** The instructions were to examine the very high volume of
49 documentation, which involved the invoices, the contracts.

1 **MR GARCÍA-GALLARDO:** Had you been given access to other materials to prepare
2 this report?
3

4 **MR ARNOTT:** I had access to all the reports that had been issued by the Panama
5 inspectorate, which is Captain Socas. I have read and examined his reports at the
6 beginning and at the end of the detention period and I have also, as I say, looked at
7 all the technical damages which reported on that occasion.
8

9 **MR GARCÍA-GALLARDO:** Your report is a confirmatory report. Had you been able
10 to talk to Mr Moya to have any supporting material – bank statements, tax forms,
11 contracts, invoices – anything?
12

13 **MR ARNOTT:** Yes, since I was instructed by the Panama agents I have
14 subsequently during my review of the documentation been in correspondence and
15 communication with the technical superintendent of the owners, with Mr Moya and
16 with the owners and also with the Panama agents, in order to achieve and obtain
17 more information, which was necessary for me to form an opinion on this particular
18 case.
19

20 **MR GARCÍA-GALLARDO:** Can you confirm that you have been able to have a look
21 through the list in appendix 1 of your report?
22

23 **MR ARNOTT:** Yes, I have. I have looked at all of the docs that are in appendix 1 of
24 this report.
25

26 **MR GARCÍA-GALLARDO:** Will you confirm before this Tribunal the content and
27 conclusions of this report?
28

29 **MR ARNOTT:** After careful and forensic examination of this very large amount of
30 documents, I conclude that the damages and costs which owners were faced with
31 this vessel was as a direct result of the 14 months' detention whilst she was at
32 Guinea-Bissau.
33

34 **MR GARCÍA-GALLARDO:** Do you confirm before this Tribunal that the owner of the
35 *Virginia G* suffered substantial costs and damages as a direct result of the actions of
36 the Guinea-Bissau authorities on 21 August and in the 14 months of detention?
37

38 **MR ARNOTT:** Yes, I have concluded through these examinations that the owner did
39 in fact suffer substantial costs and damages as a direct result of this detention over
40 the 14 months' period.
41

42 **MR GARCÍA-GALLARDO:** Do you consider that the damages claimed and
43 subsequently audited are considered fair and reasonable in respect to the owner's
44 efforts to reactivate the vessel at the time?
45

46 **MR ARNOTT:** Yes, I believe that the audited calculation carried out by Mr Moya was
47 correct and reasonable and fair in his approach to the costs and the damages which
48 have been reported.
49

1 **MR GARCÍA-GALLARDO:** Could you just briefly explain the methodology that you
2 followed for the preparation of this report, in particular and just to provide an example
3 to this Tribunal on the calculation of the value of the cargo that was unloaded by the
4 Guinea-Bissau authorities, please?
5

6 **MR ARNOTT:** Yes, the methodology was of course to forensically review all of the
7 documentation, looking at the invoices, looking at the technical aspects of the
8 damage which was reported, to see whether technically it was viable that such
9 machinery had deteriorated over the 14 months without any maintenance; so that
10 was one of the aspects of the methodology of coming to my view and opinion. With
11 Panama – as I say, I have had meetings with all interested parties in terms of the
12 owners, the charterers, the Panama inspectorate; so these are all elements that
13 have contributed to my views on this case.
14

15 **MR GARCÍA-GALLARDO:** Do you think it is normal in this type of damages report in
16 the shipping sector to consider not just the cost or the damages related to the
17 company that come with the vessel, or do you think it is normal to consider in the
18 damages whatever other costs related, strictly linked to the activity of the vessel,
19 such as charterers' costs, fuel costs, maintenance costs, management costs by the
20 management company – whatever the related cost – and, in the case of Panama,
21 moral cost?
22

23 **MR ARNOTT:** Yes, I believe that one has to look at the complete picture of loss or
24 damage which owners were faced with, and that is contributed to not just by, shall
25 we say, the mechanical damage to the vessel but also considerable losses on the
26 operational side. The owners would not be able to trade this vessel for 14 months
27 and also it actually had its overheads to consider. It was important that the vessel
28 had to have a minimum number of crew members on board and so they incurred a
29 cost to the owner. There were also contractual obligations to Lotus and also to the
30 charterers, and so those contracts were probably in breach because of the fact that
31 the owner could not actually comply with the contractual terms after the vessel was
32 detained.
33

34 **MR GARCÍA-GALLARDO:** I do not have further questions.
35

36 **THE PRESIDENT:** Thank you very much.
37

38 I wish to ask Mr Leitão if you want to cross-examine the expert. You have four
39 minutes.
40

41 **MR MENEZES LEITÃO:** I will be very brief.
42

43 **Cross-examination by MR MENEZES LEITÃO**
44

45 I would like to ask what kind of invoices have you seen? You attached a lot of
46 invoices to the report and all are like this. Is this an invoice for you?
47

48 **MR ARNOTT:** Yes, this is the invoices for the cost of legal and expertise.
49

1 **MR MENEZES LEITÃO:** You consider this an invoice, with a stamp and a reference
2 to cover these two actual invoices, 160, which are not presented?

3

4 **MR ARNOTT:** Yes, I looked at a lot of invoices from the suppliers, the service
5 suppliers, spare parts. I looked at invoices---

6

7 **MR MENEZES LEITÃO:** Do you consider fair and reasonable to claim €150,000 for
8 legal services due to the arrest of the ship in Bissau?

9

10 **MR ARNOTT:** There is lots of work entailed regarding this case, a lot of legal input, a
11 lot of legal investigation, a lot of investigation and communication from myself as a
12 consultant, so I think to actually produce a case which can be considered by the
13 Tribunal it needs to have a very good forensic input, and of course this forensic input
14 from the interested parties in support of the Panama case is relevant, and I think it is
15 acceptable and it is fair and reasonable to the Tribunal. I am an independent
16 surveyor; I have got no allegiance to the Panama Government. I am independent,
17 and I work to see the facts. I look at the facts of the case and I present them
18 accordingly to the Tribunal.

19

20 **MR MENEZES LEITÃO:** So, as it results on page 26 of your report, these costs refer
21 to these actual proceedings which we are in, to the proceedings before this Tribunal.
22 Is this correct?

23

24 **MR ARNOTT:** I am sorry, sir, could you repeat that, please?

25

26 **MR MENEZES LEITÃO:** Yes. Let me read page 26 of your report: "As a
27 consequence of the vessel's detention by Guinea-Bissau the owner Penn Lilac
28 suffered significant losses and in order to legally claim for such losses the owners
29 were required to instruct legal counsel and other technical consultants and financial
30 analysts...to assist the Court in their judgment of the claim from Panama." So you
31 are claiming as damages the legal costs of this case. You consider this sound and
32 reasonable?

33

34 **MR ARNOTT:** I think it is sound and reasonable. I think it is very important that the
35 Tribunal can make a judgment on this case, and it was fair and reasonable to have
36 legal counsel to present a case and to collate the case on behalf of Panama and on
37 behalf of the owner, a member of the Panama registration.

38

39 **MR MENEZES LEITÃO:** But it was also, as a separate request, asked that the
40 Tribunal do an award of legal costs; so these are doubling costs. Is that so?

41

42 **MR ARNOTT:** I think in the cases in which I have been involved as an expert
43 witness in 18 to 20 years, counsel and legal representation has always been part of
44 the award in terms of whatever the award is and where the costs have been
45 awarded to whichever case has come to be a reasonable award to the Tribunal.

46

47 **MR MENEZES LEITÃO:** I have no more time.

48

49 **THE PRESIDENT:** Your time is up. Thank you very much.

50

1 Mr García-Gallardo may I understand that you do not wish to re-examine? Thank
2 you very much.

3

4 Mr Arnott, thank you very much for your testimony. Your examination is now finished.
5 You may withdraw.

6

7 **MR ARNOTT:** Thank you, Mr President, thank you, Tribunal.

8

9 **THE PRESIDENT:** We have reached 1.04 p.m. This brings us to the end of this
10 morning's sitting and concludes the first round of pleadings by Panama. The hearing
11 will continue tomorrow at 10 a.m. with the first round of pleadings by Guinea-Bissau.
12 Have a good afternoon. The sitting is now closed.

13

14

(The sitting was closed at 1.04 p.m.)