Dear Spring Semester 2018 Oral Advocacy in International Investment and Commercial Arbitration Seminar Students:

Please read and learn the following materials for the first class:

- *Inola Inc. v. Geothermal Development Corp.*
- Witness Statement of Julius Maladesto; and
- Witness Statement of Italo Romano.

We will be using these fact patterns for the entire semester. Thus, it behooves you to master these factual premises.

Also, please be prepared to deliver a 10-minute opening statement on behalf of either Inola or Geothermal Development.

I look forward to taking this journey together with you.

Professor Pedro J. Martinez-Fraga
Inola Inc. v. Geothermal Development Corp.

Factual Summary

1. Inola Inc. ("Claimant" or "Inola") is a company incorporated under the laws of Mediterraneo. It is among the largest international energy companies and specializes in renewable power. It has facilities around the world and is frequently engaged to construct and/or maintain energy plants. Inola was engaged by GeoDev in 2009 to construct and configure a geothermal power plant in Equatoriana. In order to do so, Claimant engaged a number of subcontractors and suppliers to work on the refurbishing.

2. Geothermal Development Corp. ("Respondent" or "GeoDev") is a company organized under the laws of Equatoriana. GeoDev is controlled by the Geothermal Energy Commission ("GEC") with private investors controlling a minority share of the company.

3. The GEC is an independent commission of the Equatoriana Government. It has been granted management powers by the Equatorian Legislature over the country's geothermal energy resources. The GEC initially contracted with Inola to construct and configure a geothermal power plant. The parties' dispute arises from this contract.

4. Nirvana Corp. is the name of a special purpose entity organized under the laws of Equatoriana for the purpose of developing the power plant. Nirvana Corp. will be owned jointly by Inola and GeoDev.

5. Geothermal energy is a unique form of renewable energy. Many experts believe that if widely deployed, it could replace fossil fuels as the world's primary energy source. It is generally available in areas near tectonic plate boundaries where significant thermal energy is stored below the surface of the earth resulting in high temperatures. Geothermal power plants generate power when steam from below the earth's surface travels directly through a turbine, which drives a generator. The steam eliminates the need to burn fossil fuels to run the turbine (also eliminating the need to transport and store fuels). These power plants emit only excess steam and very minor amounts of other gases. If properly managed, geothermal energy is never depleted because it simply uses the energy the earth naturally and continuously generates. Unlike other energy resources, geothermal energy cannot be stored. The electricity generated by the geothermal power plant must be utilized. Although it can be transported through high-voltage power lines, the greater the distance of transport, the more energy is lost to friction.

6. During its initial studies regarding the construction of the geothermal power plant, which would be the first in Equatoriana, the GEC concluded that it required the participation of a "Strategic Partner" which possessed the experience and technical knowledge necessary to execute the exploration and development efforts required. In July 2007, GEC executives went on a series of "road shows" in order to attract potential candidates to its "strategic partnership."

7. In June 2008, the GEC formally initiated a competitive public bidding process for the selection of the strategic partner. As part of this effort, the GEC developed a detailed Information Memorandum and Terms of Reference for the project with the support of Bank of Berlin. The
Terms of Reference included a draft shareholder’s agreement for the special purpose entity that would be created for the purpose of developing the power plant. During this public bidding process, potential strategic partners were invited to provide observations with respect to this draft, which could in turn be adopted by the GEC.

8. The public bidding process culminated in December 2008 with the selection of Inola as the strategic partner.

9. Inola and the GEC entered into a formal agreement concerning the project in February 2009. This agreement took the form of the Shareholder’s Agreement for Nirvana Corp. Inola was granted an initial share of 8.5% of Nirvana Corp. As part of the Shareholder’s Agreement, Inola and the GEC also established the three mechanisms by which Inola could increase its ownership share in Nirvana Corp. The Shareholder’s Agreement was never formally approved by the National Legislature. However, Equatoriana’s Prime Minister, Maura Faundez, and numerous members of the government, were present at the formal signing ceremony of the Shareholder’s Agreement. Prime Minister Faundez’s political party, the Nationalist Democrats, controlled the Legislature. In the last election, the Nationalist Democrats had advanced the cause of privatizing the national energy industry, including through legislation that gave national commissions, such as the GEC, blanket authorization to enter into agreements with foreign investors to develop the energy sector.

10. The first of these mechanisms, defined in Article 4 of the Shareholder’s Agreement as Phase II, involved Inola’s compensation for exploration and analysis of the power plant’s site.

11. The second of these mechanisms, described in Article 5 of the Shareholder’s Agreement, consisted of the capitalization of Phase II of the power plant’s development, which included the power plant’s construction.

12. The third mechanism, established in Article 6 of the Shareholder’s Agreement, refers to the capitalization of “investments approved by the GEC that are within the normal scope of business, including improvements or modifications to the existing facilities, acquisition of equipment, or investment in other productive assets.” Article 6 of the Shareholder’s Agreement is titled “Capitalization of Other Investments”.

13. Article 14 of the Shareholder’s Agreement established that “all profits resulting from Nirvana Corp.’s operations shall be distributed as dividends.”

14. In October 2009, the GEC’s President, Federico Solone, formally communicated to Inola that it had transferred all of its shares in Nirvana Corp. to GeoDev.

15. The construction of the power plant was scheduled to be completed in the first quarter of 2012. Inola contracted the supply and installation of the various elements of the power plant, including components and technology to a number of firms, including General Energetic Corp. (“General Energetic”).

16. General Energetic was to supply, install and configure the turbines that are critical to the power plant’s operation, working with other specialist suppliers and installers to make sure everything functioned according to plan. General Energetic is considered the foremost
manufacturer of the turbine’s core element: highly specialized blades that must withstand extreme stress.

17. As noted, the Shareholder’s Agreement entered into between the GEC and Inola provided that Inola could obtain an ownership interest in the power plant commensurate to the amount of its investment. The Shareholder’s Agreement did not contain any explicit provision requiring that GeoDev maintain a majority share. Based on estimates at the time the Shareholder’s Agreement was executed, Inola would obtain a 40% share in Nirvana Corp. as a result of its estimated $400 million investment in Phase I and Phase II of the project. Correspondingly, the overall value of the project was projected to be $1 billion.

18. Inola and General Energetic had designed the turbines to use the D-28 “super blades”, which contained novel technology that offered significant improvements over rival turbine blades. As of May 2010 the blade was not yet in production, but was scheduled to begin in August 2010, i.e. in good time for its incorporation in the construction of the power plant.

19. In September 2010 General Energetic telephoned Inola and then confirmed in writing that the blades would not be available to it until at least late November. As a result, delivery of the control systems would be delayed. The explanation given by General Energetic was that final testing on the new D-28 “super blades” indicated a high probability of the blades fracturing if used over an extended period of time. Inola’s President, Italo Romano, immediately demanded prompt delivery in November of blades that “met Inola’s quality expectations”. The D-28 blades were delivered to Inola on November 1, 2010.

20. Despite the delay in obtaining the D-28 blades, Inola remained on schedule for an on-time delivery of the power plant to GeoDev. However, while conducting its own tests on the D-28 blades, Inola discovered that the blades could not withstand even moderate pressure levels and had to be immediately replaced. These tests were directed by Inola’s head engineer, Francesco Lamborghini.

21. Inola immediately contacted another supplier of turbine blades, High Performance Inc., and was able to secure new blades. However, this required an additional investment of $100 million because High Performance had a very limited supply of available blades and the turbines had to be reconfigured for the new blades. Inola informed GeoDev of this additional expense through correspondence to GeoDev’s President, Julius Maladesto.

22. Construction was progressing as planned when in June 2011 Hurricane Katerina struck Equatoriana. Hurricanes are common occurrences in Equatoriana, particularly in the summer months. However, Hurricane Katerina was among the strongest and most devastating hurricanes in Equatoriana’s history.

23. Unfortunately, the construction site was not properly prepared for the effects of the storm. Flooding from the storm caused significant damage to the construction site. Most significantly, a series of deep tunnels constructed to allow steam to vent to the earth’s surface collapsed. The power plant itself, which was nearing completion, also suffered considerable structural damage.

24. Inola’s lead engineer, Mr. Lamborghini, claimed that all appropriate preparations were
undertaken for a storm of moderate strength and that Inola could not have anticipated a storm of the magnitude of Hurricane Katerina.

25. In order to repair the damage sustained by the power plant and dig new tunnels, Inola made an additional investment of $150 million. Inola informed GeoDev of this additional expense through correspondence to Mr. Maladesto.

26. Following years of construction, the power plant was finally delivered over a year behind schedule. During the power plant’s grand opening ceremony, Inola’s President Romano joined Prime Minister Faundez to celebrate the new power plant. In a speech, Mr. Romano affirmed that Inola was proud of its investments in the Equatorianan economy and geothermal sector. He also remarked that he looked forward to a long and productive relationship with the Equatorianan government.

27. Following the ceremony, however, Inola, through its counsel, communicated a demand to GeoDev that its 40% ownership interest in Nirvana Corp. be increased to 65%. It argued that its total investment in the $1 billion project actually amounted to $650,000,000.00:

- $400,000,000.00 (base investment) (Phase I and II)
- $100,000,000.00 (turbine blades) (pursuant to Article 6: “Other Investments”)
- $150,000,000.00 (hurricane repairs) (pursuant to Article 6: “Other Investments”)

28. After receiving this correspondence, GeoDev refused to acknowledge Inola’s proposed distribution of Nirvana Corp. shares and continued to operate the power plant and initially distributed dividends pursuant to the 60%/40% ownership structure. Six of the members of Nirvana Corp.’s Board of Directors were appointed by GeoDev and the remaining four were appointed by Inola.

29. Prior to the next dividend, however, GeoDev’s members on the Board of Directors refused to approve any additional dividends, claiming that those funds were necessary for cash reserves. Inola’s representatives on the Board of Directors have consistently dissented from these decisions. Since the last dividend was issued, Nirvana Corp. has accumulated over $10 million in cash reserves.

30. Inola seeks to recover the dividends it believes it should have been paid, in addition to the remaining 25% share of Nirvana Corp.

**Arbitration Clause and Applicable Law**

31. Article 19 of the Shareholder’s Agreement between Inola and GeoDev provides:

Any dispute, controversy or claim arising out of or relating to this Shareholder’s Agreement, or the breach, termination or invalidity thereof, shall be settled by institutional arbitration administered by the International Court of Arbitration of the International Chamber of Commerce in accordance with the ICC Arbitration Rules.

(a) The number of arbitrators shall be three unless the amount in dispute is less than $100,000 in which case the matter shall be decided by a sole arbitrator;
(b) The language to be used in the arbitral proceedings shall be English;

(c) The seat of the arbitration shall be New York, New York, United States of America;

(d) The arbitral tribunal shall render a reasoned award;

(e) The arbitration shall be confidential;

(f) The parties agree that the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court;

(g) The arbitral tribunal shall apply the most current version of the ICC Rules of Arbitration available at the time of the filing of the Request for Arbitration.

32. According to article 20 of the Shareholder's Agreement:

This Shareholder's Agreement shall be governed by the laws of the State of New York, United States America, without regard to choice of law principles.

33. Equatoriana, Mediterraneo, and the United States of America are all signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

34. Article 39 of the Equatorianan Constitution states that "Natural resources are part of the national patrimony of Equatoriana and cannot be sold or otherwise alienated to any foreign entity or state. All contracts entered into by state entities concerning the exploitation of natural resources must be approved by the National Legislature."
IN THE MATTER OF THE
ARBITRATION BETWEEN

-------------------------------------------------------------------X
INOLA INC. : 
Claimant :
-against-
GEOTHERMAL DEVELOPMENT CORP. :
Defendant :

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WITNESS STATEMENT OF JULIUS MALADESTO

Julius Maladesto affirms as follows:

1. My name is Julius Maladesto. I am over 21 years of age.

2. The facts contained in this witness statement are based upon personal knowledge
   unless otherwise so specified.

3. I am a citizen of Equatoriana, and reside at 3946 SW Green Grove Harbor, in the
   City of Suliman.

4. The declaration contained in this witness statement has been freely and
   voluntarily rendered, without compulsion of any kind.

5. I have not been compensated for purposes of freely and voluntarily testifying in
   the form of this witness statement.

A. Professional Background

6. I am a graduate of the University of St. Bernard, from which I received a B.S. in
7. Subsequent to graduating from the University of St. Bernard in 1983, I enrolled in an M.A./Ph.D. program at the University of Houston, in Houston, Texas, U.S.A. In 1986 I received an M.A. and Ph.D. in Geology from the University of Houston.

8. Immediately upon graduating from the University of Houston I worked as an assistant research engineer with the Westminster Petroleum Company, a subsidiary of the Chevron Oil Company, specializing in the exploration, development, extraction, commercialization, and management of non-fossil fuels. The Westminster Petroleum Company was created with a vision towards the future, as it is charged with the development of technologies for the exploration and commercialization of environmentally friendly alternative sources of energy, i.e. clean fuel. In the capacity of an assistant research engineer I reported to Mr. Joaquin Moreno Pampin. At that time I worked under Mr. Moreno Pampin's supervision in the development of several geothermal power plants in Venezuela, Guyana, and Curacao.

9. In 1993 I joined GeoDev in Equatoriana. My primary responsibility at GeoDev was assisting with the management and development of two small geothermal plants in the northernmost province of Equatoriana, the Province of High Ground.

10. In 1999 I was promoted to the GeoDev Board of Directors ("the Board") and in 2001 the Board elected me as its President and CEO.

11. I am aware of the allegations that Inola has asserted against GeoDev in this arbitration. As more fully set forth below, many of these allegations are without merit and designed to justify Inola's wrongful attempt to take over Equatoriana's principal source of electricity in perpetuity.
B. Geothermal Energy as a Natural Resource

12. A few observations concerning the nature of geothermal energy are in order. Geothermal energy is a natural resource. While the "conventional wisdom" appears to be that geothermal energy cannot be depleted because it simply uses the energy that the earth naturally continuously generates, this proposition is but a working hypothesis at best. In fact, there are a number of geothermal energy sources mapped and monitored globally that have been amply documented as no longer generating steam. Whether these sources ceased to generate energy as a result of mismanagement or natural geological causes beyond the control of science remains unclear. The fact remains that these sources are no longer productive. Thus, there is sufficient empirical evidence from which it may be inferred that geothermal energy is anything but infinite in quantum.

13. Geological mapping also has identified a number of geothermal sources that are wanting in the requisite pressure and, for this reason, these sources are of limited commercial application. Although they generate steam, from an economic perspective they are unproductive and thus akin to depleted. Studies reveal that the low pressure geothermal sources at one point produced steam at commercial levels that were competitive. The diminution of pressure gradually occurred over time.

14. Even though theories abound concerning the loss of pressure, the scientific community is far from reaching a consensus on this point. Accordingly, the possibility that a geothermal well or source may lose sufficient pressure so as to affect its economic viability and commercial application also tends to vest geothermal energy with the "badges" of conventional non-renewable natural resources, the value of which, in part, derives from their exhaustible and non-renewable nature.
15. Irrespective, however, of the extent to which geothermal energy may be inexhaustibly renewable, it is my testimony as both an expert and a fact witness, that geothermal energy constitutes a natural resource in that it is a naturally produced source of energy within the national territory of Equatoriana and, therefore, within the ambit of Article 39 of the Equatoriana Constitution. Moreover, the scarcity or non-renewable character of an energy source does not divest it from classification as a natural resource.

16. I participated in the July 2007 series of “roadshows” that GEC together with GeoDev promoted as part of the effort to attract a “strategic partner”. During one of these “roadshows” I had the pleasure of meeting Mr. Italo Romano, Inola’s President and CEO. Mr. Romano appeared to have been quite impressed with the presentation and himself mentioned that Inola was aware of the expectations that host states, their instrumentalities, agencies, and departments have of a “strategic partner” and, more generally of a “strategic partnership”. In this connection, Mr. Romano explained that Inola served as a “strategic partner” in multiple resource exploration and development projects throughout the world, mostly with respect to developing nations and economies in transition. At that time, I made clear to Mr. Romano that a “strategic partner” is not tantamount or the equivalent to a “strategic owner” or a “strategic majority shareholder”. Mr. Romano agreed.

C. The Shareholder’s Agreement

17. During the June 2008 competitive bidding process, GEC/GeoDev, together with technical assistance from the Bank of Berlin, developed a detailed Information Memorandum and Terms of Reference that included a draft of the Shareholder’s Agreement for the special purpose entity that ultimately became Nirvana Corp. The draft Shareholder’s Agreement was
identical in every regard to the actual Shareholder’s Agreement that GEC and Inola executed in February 2009.

18. Mr. Italo Romano at the time (June 2008) was supplied with a copy of the draft Shareholder’s Agreement. He read it in front of me, as well as in the presence of a Bank of Berlin official, Mr. Holger Hestermeyer, whom actually participated in the conceptual formulation and drafting of that instrument. At no time did Mr. Italo Romano suggest that the draft Shareholder’s Agreement required any changes or amendments.

19. In December 2008, Inola was awarded the contract and selected as the strategic partner. It was not selected as a “strategic owner” or a “strategic majority shareholder”.

20. While indeed the Shareholder’s Agreement was signed in the presence of leading Equatoriana political figures, including Prime Minister Maura Faundez and other notable government officials, at no time was the Shareholder’s Agreement approved by the National Legislature. In fact, the privatization of Equatoriana’s geothermal energy pursuant to the Shareholder’s Agreement, was not even the subject matter of a proposed bill. In this same vein, Prime Minister Maura Faundez never even issued an Executive Decree privatizing this strategic natural resource, or otherwise referencing the Shareholder’s Agreement.

21. Even though Inola asserts that the Equatoriana legislature enacted legislation pursuant to which GEC was accorded “blanket authorization to enter into agreements with foreign investors to develop the energy sector”, that proposition is poles apart from holding that GEC was somehow empowered to privatize Equatoriana’s geothermal resources, and to do so in perpetuity.
D. Contractual Mechanisms for Capitalization

22. The Shareholder’s Agreement provided only three mechanisms pursuant to which Inola would be able to increase its initial 8.5% share of Nirvana Corp. Sustained analysis of all three of these methodologies, however, makes clear that the Shareholder’s Agreement was never intended to serve as a “Sales-Purchase Agreement” that would somehow vest Inola with a majority interest in Nirvana Corp. and therefore a controlling interest in perpetuity as to this strategic resource, which represents an important percentage of Equatoriana’s national electric supply.

23. The first of these three mechanisms is defined in Article 4 of the Shareholder’s Agreement as “Phase I”, involving Inola’s compensation for exploration and analysis of the power plant’s site. Because Phase I only concerned compensation for exploration and analysis of the power plant’s site, two tasks that are limited in time and nature and not ongoing, it cannot be reasonably expected that the capitalization concerning a very temporally limited phase would be such that Inola would attain a majority position as to Nirvana’s shareholdings. Thus, the very limited nature of the project serves as a check and balance against Inola securing a majority shareholder interest in Nirvana. It is not physically possible for the exploration phase to be so protracted as to cause capitalization that would vest Inola with a majority interest in Nirvana Corp.

24. The second methodology pursuant to which Inola may capitalize its investments in the project is described in Article 5 of the Shareholder’s Agreement. That Article addresses Phase II of the power plant’s development primarily consisting in the plant’s construction. Much as with Phase I, the Phase II construction of the plant represented a limited task with a built-in termination timeframe in the form of the power plant’s completion and certification for its
intended use. Both (i) the limited temporal nature of the construction project, and (ii) the budget allocated to the power plant’s construction, clearly established that Inola would not be capable of securing a majority shareholder position in Nirvana Corp. Moreover, had the economics of Phases I and II been such as to reflect that Inola would secure over 50% of the shares in Nirvana Corp., GEC/GeoDev would not have approved of the expenditures. Neither GEC nor GeoDev is empowered to transfer control of the subject geothermal energy resource to non-nationals of Equatoriana.

25. Only the third mechanism, established in Article 6 of the Shareholder’s Agreement, could have at all been construed so as to provide Inola with a means for securing a majority shareholder position in Nirvana Corp. Article 6 of the Shareholder’s Agreement refers to the capitalization of “investments approved by GEC that are within the normal scope of business, including improvements or modifications to the existing facilities, acquisition of equipment, or investment in other productive assets.” [emphasis supplied] Article 6 of the Shareholder’s Agreement is titled “Capitalization of Other Investments”.

26. The safeguard against Inola obtaining a majority shareholder position in Nirvana Corp. contained in Article 6 of the Shareholder’s Agreement is most notably, but not exclusively, in the form of an “approval process”. Any and all such investments falling within the purview of Article 6 would first have to be approved by GEC and presumably its successor in interest, GeoDev. The approval process provided GEC/GeoDev with the requisite control that would at all times keep the Shareholder’s Agreement from being transformed into a “Sales-Purchase Agreement.”

27. Other elements and factors comprising Article 6 further serve as safeguards against the ills of unilateral capitalization that would lead to Inola’s control in perpetuity of
Nirvana Corp. to the detriment of the better workings of the Shareholder’s Agreement. By way of example, any such capitalization must be (i) an “investment”, (ii) “approved”, (iii) within the “normal scope of business”, (iv) including “improvements”, or (v) “modifications to the existing facilities”, (vi) acquisition of “equipment”, or (vii) investment in “other productive assets”. These seven elements considerably limit Inola’s ability to invest unilaterally sums that would provide it with a controlling interest in Nirvana Corp. Inola wrongfully “capitalized” Nirvana Corp. in order to secure control in perpetuity of a strategic resource.

28. Articles 4, 5, and 6 of the Shareholder’s Agreement are intended to limit Inola’s investment and capital/shareholder standing in Nirvana Corp.

29. Based on estimates conducted at the time that the Shareholder’s Agreement was executed, Inola would obtain a 40% share in Nirvana Corp. as a result of its estimated $400 million investment in Phase I and Phase II of the project. Correspondingly, the overall value of the project was projected to be no greater than $1 billion.

30. To the extent that Inola surpassed the $1 billion budget, GEC/GeoDev is not obligated to reward Inola with shares in Nirvana Corp. that would provide Inola with a majority interest in that entity. This proposition is particularly noteworthy where, as here, Inola surreptitiously engaged in unauthorized and wrongfully expenditures.

E. Inola Caused the Expenditures that it Now Seeks to Capitalize

31. Italo Romano rushed the delivery in November of the new D-28 “super blades”, and therefore contributed to damages that GEC/GeoDev suffered, as a reflected by the tests that Francesco Lamborghini ran on the blades.
32. GEC/GeoDev did not approve the $100 million payment tendered to High Performance Inc. Moreover, as previously referenced, Inola negligently contributed to the need to expend these resources.

33. GEC/GeoDev did not approve payment of the $150 million that Inola purportedly spent on the repairs to the damage sustained by the power plant. Furthermore, Inola’s lead engineer, Mr. Lamborghini, himself admitted that all appropriate preparations were undertaken for a storm of moderate strength. Inola directly and through its lead engineer, Mr. Lamborghini, was unreasonable and did not act prudently by failing to undertake the requisite steps to protect the power plant from a storm of the magnitude of Hurricane Katerina. Although strong and devastating, Hurricane Katerina was not a storm of unprecedented magnitude in the annals of Equatoriana.

34. GEC/GeoDev and/or the people of Equatoriana were severely prejudiced because the power plant was finally delivered over one (1) year behind schedule.

35. Inola’s claim is frivolous and only intended to pressure GEC/GeoDev into a settlement. That effort is unavailing because Inola here seeks to profit from an illegal privatization bestowing upon it control in perpetuity of a national strategic resource.

36. GeoDev’s Board of Directors has a fiduciary duty to the company’s shareholders to maintain a certain level of cash reserves. For this reason GeoDev’s Board of Directors has rightfully refused to approve any additional dividends that otherwise would have been distributed pursuant Article 14 of the Shareholder’s Agreement.

I affirm under penalty of perjury that the foregoing is true and correct.


Julius Maladesto
IN THE MATTER OF THE

ARBITRATION BETWEEN

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INOLA INC. : Claimant :
-against-

GEOTHERMAL DEVELOPMENT CORP. : Defendant :

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WITNESS STATEMENT OF MR. ITALO ROMANO

Italo Romano affirms as follows:

1. My name is Italo Romano. I am over 21 years of age.

2. I am a citizen of the country of Mediterraneo. My place of residence in the city of Modena, Mediterraneo, at 1313 Via Magna Road and Savile Avenue. I have resided at this address for 26 years.

3. The facts contained in this witness statement are true and correct, and based upon my personal knowledge unless otherwise so qualified.

4. I am testifying in the form of this witness statement freely, voluntarily, and without compulsion of any kind. I have not been compensated, nor shall I receive any remuneration, for testifying in this arbitration.

5. I am the President of Inola Inc., the Claimant in this arbitration proceeding. I have served in this capacity since June 17, 2005.
A. Professional Background

6. Prior to serving as President of Inola, I headed the Hydraulic Power Reconnaissance Energy Group for Inola during an approximately 7 year timeframe. During this time I supervised approximately 15 engineers who were tasked with the identification, exploration, and development of target pockets of thermal, wind, non-fossil fuel, or cogeneration resources that would be susceptible to commercial development. Part of my responsibilities entailed engaging in fiscal project management, critical pathway deployment analysis, as well as the development and testing of prospective energy reservoirs as previously mentioned.

7. Prior to joining Inola, I was a student at La Universidad de Petrosistemas Sapienza, which is the leading university in Mediterraneo in the field of natural sciences and engineering.


B. Familiarity with the Geothermal Power Plant and Geothermal Energy

9. The Equatoriana Geothermal Energy Plant project is very well known to me. The “new” global order with respect to energy has seen a marked shift away from fossil fuels in favor of clean and renewable forms of energy, such as cogeneration, geothermal, and wind. Accordingly, the development of the project in Equatoriana was of considerable interest to Inola. Inola’s market studies and shareholders appetite have long suggested a necessary market pivot from traditional fossil fuels, to “clean energy” alternatives.

10. Inola’s research reflects that despite Equatoriana’s modest size, it holds a vast and virtually infinite geothermal energy reservoir that far exceeds any rational relationship to its land mass. Based upon our file information research regarding Equatoriana’s geothermal energy
reserves, Inola was certain that it would be able to develop successfully this resource and thus help all concerned with respect to a prospective venture between Inola and Equatoriana directly or through Equatoriana’s agencies, instrumentalities, departments, and/or representatives.

11. Inola has constructed, managed, and actually operated geothermal facilities throughout the world. It is particularly expert in the construction, management, maintenance, and development of such facilities, as Inola engineers actually pioneered the commercialization of geothermal energy.

12. Geothermal plants emit only excess steam and very minor amounts of other gases. If properly managed, geothermal energy is never depleted because it simply uses the energy the earth naturally and continuously generates. Unlike other energy resources, geothermal energy cannot be stored. Electricity generated by a geothermal plant must be utilized contemporaneously with the actual generation of steam that in turn powers the electricity generating turbines. Thus, the electricity generated by a geothermal power plant must be immediately utilized.

13. Although it can be transported through high-voltage power lines, the greater the distance of transport, the more energy is lost to friction. Accordingly, the location of the geothermal energy plant with respect to deployment terminals is critical to maximizing efficiencies. In this case, we opted for an inland location that was close to the energy starved countryside, i.e. ultimate deployment terminal sites. The benefits of this location site were balanced against the plant’s exposure in the event of extraordinary high winds and extreme storm induced humidity. Such risk analysis are common place in this industry. This site also identified the highest needed and, therefore, most robust geothermal market. Demographic studies also
pointed to a rich work force potential. Accordingly, the microeconomic benefits would contribute to actual macroeconomic success.

C. My Participation in GEC/GeoDev’s Roadshow

14. In July 2007 I participated in a “roadshow” that GEC, now GeoDev for all practical purposes conducted in order to attract potential candidates to develop, construct, and operate a geothermal power plant in Equatoriana.

15. The “roadshow” was presented to prospective energy companies by GEC and GeoDev executives, many of whom now serve on the GeoDev Board of Directors. Moreover, GeoDev’s President, Julius Maladesto, and GEC’s President, Federico Solone, were present at that “roadshow”.

16. The presentation discussed numerous historical and geological facts pertaining to Equatoriana. By way of example, it was confirmed that Equatoriana is a poor country by United Nations’ standards. It suffers from a high infant mortality and a general life expectancy 12 years inferior to that of “industrialized states”. Its population has a below average caloric intake. A greater percentage of its population dies from curable diseases than in any industrialized state or even than in most developing states. Its geopolitical territory, however, is rich in geothermal energy and also has considerable potential for the development of extensive clean energy resources in the form of wind power. Moreover, Equatoriana had undergone a deep political transformation according to the presentation, pursuant to which the now three-term Nationalist Democratic Party had sought to eviscerate the centralized planned economy of the Socialist Republican Party that ruled the country during the 50-year timeframe preceding the democratically elected Nationalist Democratic Administration.
17. Thus, participants were told that the Nationalist Democrats had dismantled a centralized planned economy in favor of (i) developing a free market within the national territory that would best comport with the Nationalist Democratic Party’s understanding of economic globalization, (ii) promoting foreign direct investment from industrialized states, and (iii) engaging in an aggressive privatization regime that in turn would make available to foreign and domestic investors access to the state’s principal capital producing assets so that their productivity may be increased and, therefore, yielding exponentially greater than the status quo macroeconomic benefits. This pro-investment environment was the core theme of the “roadshow”.

18. The GEC, now GeoDev executives at the “roadshow” stressed the need to attract a “strategic partner” that would enter into a venture with Equatoriana through the latter’s instrumentalities, agencies, departments, or representatives, conducive to a “strategic partnership”. Even though “strategic partnership” was nowhere defined, the totality of circumstances were made clear that this term meant that Equatoriana was seeking more than just a passive investor. It sought a “strategic partner” that would provide the geothermal rich but currency poor state with know how regarding every important phase of geothermal energy development and plant constructions, including but not limited to (i) exploration, (ii) development, (iii) construction, and (iv) management.

19. My understanding of the term “strategic partnership” is that the term is inclusive and not restrictive.

D. The Shareholder’s Agreement

20. As part of the June 2008 competitive public bidding process for the selection of a strategic partner, I reviewed a detailed Information Memorandum and Terms of Reference for
the project that GEC presumably had developed in connection with and support from the Bank of Berlin. I specifically recall that the Terms of Reference included a draft Shareholder’s Agreement for a special purpose entity that would be created for the purpose of developing the power plant. In fact, that Shareholder’s Agreement was absolutely identical in every regard to the one that Inola actually executed with GeoDev in 2009.

21. Inola and other prospective bidders were asked to comment on the draft Shareholder’s Agreement. Inola did not provide any proposed changes to the agreement. The terms were clear, as far as Inola was concerned. Inola, however, conducted its own legal analysis of the draft Shareholder’s Agreement and concluded that it would allow for the viability of the proposed joint venture in keeping with an economic rubric that made sense and comported with Inola’s contracts throughout the globe. Specifically, Inola did not want any limitations placed on its ability to own shares in the special purpose in-country corporation, Nirvana Corp. Indeed, there were no such restrictive on the plain language of the text.

22. We were awarded the bid and selected as the “strategic partner” for the venture in December 2008.

23. We were comfortable with the February 2009 formal agreement entered into between Inola and GEC in the form of the Shareholder’s Agreement for Nirvana Corp. Even though GEC and GeoDev now dispute it, it was very clear to us at the time that in addition to an initial grant of 1.8% of Nirvana Corp., Inola ultimately would be able to acquire a controlling interest in that company by availing itself of the various mechanisms provided to it under that agreement. Again, the absence of any limitation on Inola’s ability to purchase shares in the country special purpose entity was very important to us as the project’s strategic partner.
24. It is important to note that as part of the Shareholder’s Agreement, Inola and the GEC also established the mechanisms by which Inola could increase its ownership share in Nirvana Corp. The Shareholder’s Agreement defined in Article 4 Inola’s compensation for exploration and analysis of the power plant’s site. I personally reviewed this Article in draft and the final forms.

25. The second of the mechanisms provided for in the Shareholder’s Agreement for Inola to secure capital interest in Nirvana Corp. is contained in Article 5 of the Agreement. That Article addressed the capitalization of Phase II of the power plant’s development, which included the power plant’s construction. I also reviewed this Article in draft and final forms.

26. The third mechanism pursuant to which Inola would be able to increase its equity interest in Nirvana Corp. was pursuant to Article 6 of the Shareholder’s Agreement. That Article refers to the capitalization of “investments approved by GEC that are within the normal scope of the business, including improvements or modifications as to the existing facilities, acquisition of equipment, or investment in other productive assets”. Notably, Article 6 of the Shareholder’s Agreement is titled “Capitalization of Other Investments”. I read the draft and final iterations of this Article.

27. At all times material to this action, GeoDev knew that Inola intended to secure a controlling interest in Nirvana Corp. In fact, the joint venture would not have made economic sense from Inola’s perspective but for the possibility, and actual likelihood, of securing a controlling interest in Nirvana Corp. GeoDev and lead members of the government of Equatoriana were fully aware of this logical economic aspiration, which was central to Inola’s investment in the project in the first instance.
28. Indeed, practically the entire Equatoriana executive branch approved of the (i) execution of the Shareholder Agreement, (ii) Inola’s acquisition of an equity interest in Nirvana Corp., and (iii) the mechanisms pursuant to which Inola would acquire a majority interest in Nirvana Corp., and (iv) Equatoriana’s privatization of the geothermal resources under the auspices of GEC and GeoDev. The approval of the privatization was open, public, notorious, and emanated from the highest levels of government.

29. In fact, GEC enjoyed unqualified authorization to enter into agreements with foreign investors to develop the energy sectors.

30. It is not disputed, because it cannot be disputed, in this arbitration that Inola would secure a 40% share interest in Nirvana Corp. as a direct and proximate result of its estimated $400 million investment in Phases I and II of the project. This investment was tendered and received.

31. Similarly, it is not disputed that Inola tendered a payment in the amount of $100 million to High Performance Inc. in order to secure new blades as covered damages. It similarly cannot be disputed that Inola provided GeoDev’s President, Julius Maladesto, with written orders of this additional expense. Indeed, this payment was tendered and received.

32. Mr. Maladesto never protested the investment. To the contrary, GeoDev accepted the benefit of the new blades without protest until such time as this arbitration ensured. It was upon the filing of the arbitration that GeoDev first raised the issue of the alleged non-approval.

33. Neither Equatoriana nor any of its instrumentalities, agencies, geopolitical subdivisions, agents or representatives dispute that Inola invested $150 million to repair damages that Hurricane Katerina caused. Similarly, it cannot be disputed that Inola advised GeoDev of this expense. Even though Mr. Maladesto received notice of the expense, it did not proffer any
objection to it. To the contrary, he accepted the benefits acquired through this payment and did not protest it until the inception of this arbitration.

34. In addition to withholding wrongfully shares attendant to the referenced $250 million investments with respect to which GeoDev was provided with notice at the time that the investments were made, Inola is entitled to dividend distributions. Even though Nirvana Corp. has stated that it lacks the reserves to issue such distributions, the argument is without merit. Indeed, Nirvana Corp. has accumulated over $10 million in cash reserves since the approval of the initial dividend distribution. Accordingly, its position is motivated by an interest in securing a strategic advantage in this arbitration.

35. Inola is likely one of the most experienced developers and distributors of geothermal energy in the world. Similarly, it is one of the most experienced manufacturers of geothermal power plants in the world. In our opinion geothermal energy is not a natural resource because it is not susceptible to depletion as are other forms of energy, particularly in the fossil fuels space. Consequently, Equatoriana/GeoDev’s Article 39 of the Equatorianan Constitution argument is specious.

36. I have no interest in this arbitration other than the just adjudication of all disputed issues of fact, law, and the application of law to facts.

I affirm under penalty of perjury that the foregoing is true and correct, and based upon personal knowledge unless otherwise qualified.

DATED: __________, 2016.

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Italo Romano

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