ISSUED: June 3, 2016 INR-01-11-16

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL

INSPECTION REPORT

INSPECTION OF THE
PROFESSIONAL SERVICES CONTRACT
FOR THE PURSUIT OF DAMAGES
TO THE SOUTH SHORE OF ST. CROIX, VIRGIN ISLANDS

ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO THE OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL BY:

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EXECUTIVE SUMMARY

The following summarizes the major findings from the Inspection of the Professional Services Contract for the Pursuit of Damages to the South Shore of St. Croix, Virgin Islands (INR-01-11-16).

Finding 1: Professional Services Contract (pages 5 to 12)

- ✓ The Government of the Virgin Islands (Government) did not follow all competitive procurement laws, when they entered into a costly professional services contract to provide expert and specialized advice in connection with the Government's claims for penalties and damages recoverable for harm to the environment and public health arising from contamination by third parties of the natural resources near and located in the South Shore Industrial Area of St. Croix.

Finding 2: Contract Administration (pages13 to16)

- ✓ The Contractor was allowed to take control of the litigation process acting as the "Lead Attorney" without the necessary controls in place for the Department of Justice (DOJ) to direct and monitor all actions of the Contractor per the United States Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) litigation process.

- ✓ The Contractor claimed as fees and expenses a total of $17.9 million of the $27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ.

Finding 3: Contractor Billings (pages17 to 28)

- ✓ Funds were withheld by the Contractor in violation of the compensation terms of the contract.

- ✓ Three summaries submitted by the Contractor were premature and included expenses and fee computations that were not in accordance with the provisions of the Contract.

- ✓ $27.9 million was inappropriately disbursed from the trust account that was to be established for the Government and violated the intent of CERCLA, which prioritizes environmental recovery, restoration and health assessment costs over that of legal expenses.

- ✓ The Contractor miscalculated, by $5.1 million, the potential contingency fees due from the funds received and inappropriately claimed $4.1 million in expenses.

- ✓ The $27.9 million collected should have earned about $761,000 in interest.

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June 3, 2016

Honorable Kenneth E. Mapp
Governor of the Virgin Islands
Office of the Governor
21-22 Kongens Gade
Charlotte Amalie, Virgin Islands 00802

Honorable Neville A. James
President
31st Legislature
Capital Building
Charlotte Amalie, Virgin Islands 00802

Dear Governor Mapp and Senator James:

This final report contains the results of our inspection of the professional services contract for the pursuit of damages to the South Shore of St. Croix, Virgin Islands. The objectives of the inspection were to determine if (i) the procurement procedures used to engage the Contractor were in accordance with the Code and the applicable Rules and Regulations, (ii) proper safeguards were followed to ensure that the contract administration was adequate, and (iii) fees and expenses claimed by the Contractor were allowable, allocable and reasonable.

We found that (i) the Government of the Virgin Islands (Government) did not follow all competitive procurement laws, when they entered into the costly professional services contract, (ii) the Contractor was allowed to take control of the litigation process acting as the "Lead Attorney" without the necessary controls in place for the Department of Justice (DOJ) to direct and monitor all actions of the Contractor per the United States Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) litigation process, (iii) the Contractor claimed as fees and expenses a total of $17.9 million of the $27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ, (iv) funds were withheld by the Contractor in violation of the compensation terms of the contract, (v) three summaries submitted by the Contractor were premature and included expenses and fee computations that were not in accordance with the provisions of the contract, (vi) $27.9 million was inappropriately disbursed from the trust account that was to be established for the Government, and violated the intent of CERCLA, which prioritizes environmental recovery, restoration and health assessment costs over that of legal expenses, (vii) the Contractor miscalculated, by $5.1 million, the potential contingency fees due from the funds received and inappropriately claimed $4.1 million in expenses, and (viii) the $27.9 million collected should have earned about $761,000 in interest.

We made several recommendations dealing with the awarding and legality of the Contract, the need for adequate monitoring and supervisory controls over contracts, and the allowability of funds collected by the Contractor.

An exit conference was held on January 27, 2016, where there was agreement with the findings and recommendations made in the report. A draft report was issued on February 8, 2016, requesting a response by February 26, 2016. A response, dated March 3, 2016, was received on March 7, 2016. The response is included as Appendix I to this report, beginning on page 29. Additional information needed to close the recommendations is included as Appendix II beginning on page 34.

Although not required, we provided a copy of the report to the Contractor giving him the opportunity to submit additional information for us to consider before the issuance of the final report. An attorney representing the Contractor submitted a highly inflammatory and derogatory letter with a baseless statement from a former inspector general and affidavits from two former attorneys general that conflicted with signed interview summaries by each of the individuals. We have commented on this submission at the end of the third finding. The attorney's letter and the attachments are included as Appendix III beginning on page 35. In addition, we have included the signed interview summaries from the two former attorneys general as Appendices IV and V beginning on page 81.

If you require additional information, please call me at 774-6426.

Sincerely,

Steven van Beverhoudt

Steven van Beverhoudt, CFE, CGFM
V. I. Inspector General

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INTRODUCTION

BACKGROUND

On May 7, 2004, the Government of the Virgin Islands (Government), Department of Property and Procurement (DPP), on behalf of the Department of Justice (DOJ), entered into a professional services contract, PC-DJ-081-2004 (Contract), with a Virgin Islands Law Firm (Contractor). The Contractor was to "…assist the [Government] in litigation by providing it with expert and specialized legal representation in connection with any and all of its claims for penalties and damages recoverable under law for harm to any and all protected interests arising from contamination by third parties of the natural resources near and located in the South Shore Industrial Area, located in South-Central St. Croix, Virgin Islands."

The Contract was initiated based on an August 16, 2003, request from the Commissioner of the Department of Planning and Natural Resources (DPNR) to the DPP Commissioner for the Government to enter into a sole source contract without competitive bidding or competitive negotiations. In that request, the DPNR Commissioner claimed that the Contactor "…is the only firm in the Virgin Islands, or elsewhere, with more than ten (10) years of intensive environmental litigation experience directly related to the recovery of natural resource damages in the Territory of the United States Virgin Islands." The DPNR Commissioner further stated that the "… estimate for litigation and expert costs over a 36-month period…" was $1,030,000.

On May 5, 2005, the Government and the DPNR Commissioner, as the Natural Resources Trustee (Trustee) for the Territory, through the DOJ, filed an action for damages in the U. S. District Court (Court) Civil Suit No. 2005-0062 (Civil Suit). The Civil Suit charged eight defendants (one Alumina defendant was later dropped from the Civil Suit) alleging violations under the United States Comprehensive Environmental Response, Compensation, and Liability Act[1] (CERCLA) and Virgin Islands environmental laws found in Title 12, Chapters 7, 9 and 17 of the Virgin Islands Code (Code), for pollution of the South Shore Industrial Area of St. Croix, Virgin Islands. Similar actions citing Virgin Islands environmental laws were filed in the Superior Court of the Virgin Islands (Superior Court).

In a Press Release dated June 8, 2005, the DPNR Commissioner stated that, "The territory is sending a clear message that polluters will be held accountable for damages to our territory's water resources and for harming the environment. The claim [Civil Suit] is based upon unpermitted releases of pollutants to the environment from the Refinery and the former Alumina facility in violation of territorial and Federal law."

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[1] CERCLA was passed in 1980 to protect public health and natural resources from hazardous chemical releases under 42 U.S.C. §9601-9675 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA created two different types of legal actions (cost incurred by the government for Natural Resources Damages response, removal, mediation, payment of contributions actions and health assessments).

On February 16, 2012, the Court ordered, in the first Settlement Agreement and Consent Decree (Settlement Agreement), that three Alumina defendants pay $3,000,000 to the Government as monetary damages. The $3,000,000 was wired to the Contractor on March 9, 2012. The Court required that the funds be placed by the Contractor into an interest bearing trust account for the Government.

A second Settlement Agreement was signed on May 29, 2014, directing two Refinery defendants to pay the Government $43,500,000 in monetary damages. The first partial payment of $3,500,000 was wired to the Contractor on June 2, 2014, and was to be placed into the same interest-bearing trust account. The balance due of $40,000,000 was to be paid to the Government by December 31, 2014.

A final Settlement Agreement was ordered on July 24, 2014, directing the final two defendants to pay $21,375,000 to the Government as monetary damages. Those funds were wired to the Contractor on August 22, 2014.

As a result, the total monetary settlement to the Government was $67,875,000, of which $27,875,000 was to be held by the Contractor on behalf of the Government, with an outstanding balance of $40,000,000 due from the Refinery defendants by December 31, 2014. The Refinery did not pay the $40,000,000 by the due date, therefore; actions to foreclose were filed in 2015. Following the sale and leasing of the Refinery property in early 2016, the outstanding payment issue was settled. Also, as a part of the Settlement Agreements, all other pending lawsuits including the Superior Court lawsuits were dismissed.

The monetary damages were to be used to assist in the restoration of contaminated land and to fund DPNR's supervision of cleanup and repairs at the Alumina and Refinery locations and the assessment of health issues associated with the contamination.

In addition to the monetary damages ordered by the Court, the defendants were to fund the cost of cleaning and restoring the natural resources damaged by the defendants. Those costs were estimated to be as high as $76,000,000 for the Alumina cleanup and based on the United States Environmental Protection Agency (EPA) estimates from a Federal action, as high as $700,000,000 for the Refinery properties.

The following is a summary of the monetary settlement amounts.

Summary of Settlement Amounts

Settlement Date	Settlement Amount
February 16, 2012	$3,000,000
May 29, 2014	$43,500,000
July 24, 2014	$21,375,000
Total	**$67,875,000**

OBJECTIVE, SCOPE, AND METHODOLOGY

The inspection was initiated based on a request by the Governor of the Virgin Islands that we review the professional services contract and the "recapitulations", or summaries, submitted by the Contractor. The objectives of the inspection were to determine if (i) the procurement procedures used to engage the Contractor were in accordance with the Code and the applicable Rules and Regulations, (ii) proper safeguards were followed to ensure that the contract administration was adequate, and (iii) fees and expenses claimed by the Contractor were allowable, allocable and reasonable.

To accomplish our objectives, we examined available Government records and other related documentation for contracting procedures, contract administration and fiscal controls exercised over the monetary damages awarded. We interviewed Government officials, including two former Virgin Islands Attorneys General, who were in office during the awarding of the contract and the period of the three Settlement Agreements. We also examined over 5,700 subpoenaed documents obtained from the Contractor.

We performed our inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency "Quality Standards for Inspections" guidelines between February and October 2015. Due independent professional judgment and adequate working familiarity with organizations, programs, activities, contracting, procurement and functions identified for inspections were used in planning and performing the inspection, obtaining sufficient and appropriate evidence to meet our stated objectives, observing for fraud, waste, and abuse, and in reporting the results. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings, conclusions, and recommendations in our report.

PRIOR AUDITS AND INSPECTIONS

We are unaware of any prior audits or inspections done over the last five years of the professional services contract PC-DJ-081-2004 between the Government and the Contractor.

RESULTS

CONCLUSIONS

We found that (i) the Government did not follow all competitive procurement laws, by entering into a costly professional services contract, (ii) the Contractor was allowed to take control of the litigation process acting as the "Lead Attorney" without the necessary controls in place for the DOJ to direct and monitor all actions of the Contractor per the CERCLA litigation process, (iii) the Contractor claimed as fees and expenses a total of $17.9 million of the $27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ, (iv) funds were withheld by the Contractor in violation of the compensation terms of the contract, (v) three summaries submitted by the Contractor were premature and included expenses and fee computations that were not in accordance with the provisions of the contract, (vi) $27.9 million was inappropriately disbursed from the trust account that was to be established for the Government, and violated the intent of CERCLA, which prioritizes environmental recovery, restoration and health assessment costs over that of legal expenses, (vii) the Contractor miscalculated, by $5.1 million, the potential contingency fees due from the funds received and inappropriately claimed $4.1 million in expenses, and (viii) the $27.9 million collected should have earned about $761,000 in interest.

We made several recommendations dealing with the awarding of the Contract, the need for adequate monitoring and supervisory controls over contracts, and the allowability of funds collected by the Contractor.

FINDING 1: PROFESSIONAL SERVICES CONTRACT

The Government entered into a costly professional services contract to provide expert and specialized advice in connection with the Government's claims for penalties and damages recoverable for harm arising from contamination by third parties of the natural resources located near and in the South Shore Industrial Area, in South-Central St. Croix.

Background

The Code establishes the DPP with the responsibility for the solicitation and competitive procurement of contractual services for the Executive Branch of the Government. Further, the DPP Commissioner must provide a system for procurements and establish the necessary procedures and forms to record contract negotiations, changes to the basic contract, contract amendments, contractor performance, and payments for services.

Negotiated procurements must be on a competitive basis, to the maximum extent practical, to ensure that contracts awarded are in the best interest of the Government. In addition, the DPP Commissioner is required to keep all information dealing with the contract negotiations. The DPP must retain the files for a period of six years after the final payment of the contract.

Title 31, Section 236 of the Code requires competitive bidding on all procurement. Section 239(a)(4) of the Code provides that professional services contracts be selected through competitive negotiations where practicable.

Section 239-8 of the Virgin Islands Rules and Regulations (Rules and Regulations) details the requirements necessary for the DPP Commissioner to appoint a Selection Committee to assist in the evaluation and selection of the contractor. It also details the steps to be used by the Selection Committee in selecting the firm that best meets the established criteria and most likely capable of performing the services in the best interest of the Government. It also details the steps to be taken in negotiating a contract with the prospective contractor.

Section 239(a)(8) of the Code allows contracts to be negotiated in the open market without formal advertising if it is impractical to obtain competition; however, documented negotiations by DPP are still required. Section 239-12 of the Rule and Regulations provides 12 circumstances where this authority may be used. The one circumstance that could potentially be applicable to the contract covered by this inspection is example 1, where the "…services can be obtained from only one person or firm (sole source of supply)."

Title 31, Section 249 of the Code provides redress of any purchase order or contract executed in violation of the procurement laws. The purchase order or contract shall be voided and ineffective. If public funds have been expended, the amounts expended may be recovered for the Government through proper action instituted for such purpose.

Procurement Milestones

Limited documentation prevented us from identifying with certainty the procurement procedures followed in the procurement of this contract. The official files contained virtually no documentation. Using the few documents available and based on discussions with responsible Government officials, we identified the following milestones.

- August 16, 2003 - The DPNR Commissioner wrote to the DPP Commissioner citing "31 V.I.C. §239(a)(4) and (8)" as authority for the Government to enter into a contract without competitive bidding. The correspondence stated that the proposed contractor was "… the only firm in the Virgin Islands, or elsewhere…with…environmental litigation experience directly related to the recovery of natural resource damages in the Territory of the United States Virgin Islands." The letter concludes with the statement that "We have agreed to this contract on a contingent basis." The "…estimate for litigation and expert costs over a 36-month period…" is $1,030,000.

- September 12, 2003 - The DPP Commissioner responded stating that "… Justice has a law firm on retainer to assist them with complex issues; we recommend that you contact the Attorney General and seek his guidance as to whether such a contract is possible. More specifically, the Department of Justice is currently working with specialized attorneys on the Tu Tu (sic) Wells case that may be of assistance to your Department with respect to this matter." It concludes, "If the Attorney General advises that your Department hire counsel to represent the Government on this matter, please resubmit the proposed contract, along with the Attorney General's Opinion, for processing and approval."

- December 4, 2003 and December 10, 2004 (based on the contents of the drafts, it is our opinion that the second date should have been December 10, 2003) - Three draft memorandums were sent from a DOJ Assistant Attorney General to the Attorney General discussing the legality of a contingency fee contract and whether such contracts are permissible by law. The first full draft concludes that regarding the contingency fee contract issue and the potential violation of the appropriation requirements of Title 33 V.I.C. §3317 and the Separation of Powers Doctrine, arguments can be made for either position; however there is precedence in other jurisdictions to justify the interpretation that funds recovered are "not public funds" until after expenses have been deducted. Regarding whether attorney fees can be paid from recovered funds under CERCLA, the memorandum states that the use of the funds could be challenged since the courts have not taken a stand on the issue. The Assistant Attorney General recommended that if the Government decides to proceed with the contract, it should be forwarded to the legislature for approval. The second full draft contains the same basic discussion; however, in the conclusion, all references to acquiring legislative approval had been removed. Regarding the issue with the use of funds under CERCLA, it states that "CERCLA Section 107(f)(1) provides that '[s]ums recovered by [the] trustee shall be retained by [the] trustee without further appropriation for use only to restore, replace, or acquire the equivalent of such natural resources." The draft concludes that since the courts did not rule on the merits of the similar use of CERCLA recovered funds in a prior case, there is no case law forbidding its use. The Government should be aware, however, of the potential for legal challenges.

- February 19, 2004 - A letter was sent from the proposed Contractor to the Attorney General providing "…three (3) original modified contracts…"

- February 24, 2004 - A justification letter was sent from the Attorney General to the DPP Commissioner transmitting the contract for approval, justifying the choice of the Contractor, the contingency fee nature of the contract and identifying the payment terms. It must be noted that the Attorney General stated that "Expenses under the contract shall be limited to One Million Five Hundred Thousand Dollars ($1,500,000.00)."

- February 24, 2004 - An 8-page discussion was sent from the Attorney General to the DPP Commissioner detailing the Attorney General's position that contingency fee contracts are allowable and that CERCLA recovered funds can be used to pay contingency fees. The discussion is a final version of the second December 10, 2003, Assistant Attorney General draft memorandum previously mentioned above. He noted that there were four prior contingency fee contracts let by the Government dating back to 1998.

- March 24, 2004 - A letter was sent from the Attorney General to the DPP Commissioner, resubmitting the professional services contract after "The Cont[r]actor …made the changes to the contract and supplied the insurance information as requested…"

- April 22, 2004 - A letter transmitting Contract No. PC-DJ-081-2004 was sent from the Attorney General to the Governor for consideration. It is again noted that in detailing the contingency fee structure, the letter states, "In addition, the Contractor will be allowed to deduct an amount not to exceed One Million Five Hundred Thousand Dollars ($1,500,000) for expenses incurred in assisting the Government with its claim."

- May 7, 2004 - Contract No. PC-DJ-081-2004 was signed by the Governor of the Virgin Islands.

- June 1, 2004 - A draft of a letter to the Contractor giving the Contractor notice that Contract No. PC-DJ-081-2004 was to be terminated in sixty days. There was no indication why this action was being contemplated, nor was there evidence that it was finalized.

- July 14, 2004 - A letter from the Contractor to an Assistant Attorney General notifying him that, "Per our last meeting in St. Thomas, enclosed is the firm resume of [new co-counsel], which firm I have retained at my own cost to assist in the Natural Resource Damages actions. They substitute for [previous co-counsel], who filed their notice of withdrawal on January 12, 2004. I thank you in advance for bringing this to [previous Attorney General's] attention and for your approval to proceed accordingly".

- March 10, 2005 - A memorandum from an Assistant Attorney General to the Acting Attorney General was sent notifying him that the DPNR Commissioner instructed the Contractor to file a CERCLA complaint in Court against eight defendants relating to the contamination of the South Shore properties on St. Croix. The Assistant Attorney General instructed the DPNR Commissioner that the complaint must be reviewed and approved by the Attorney General before filing.

Contract Awarding Process

The awarding of this contract was questionable from the inception when the DPNR Commissioner submitted the August 16, 2003, letter requesting the sole source contract. The Code and the Rules and Regulations do allow circumstances for sole source contracting; however, sufficient justification must be provided to show that the proposed contractor is the only one capable of providing the desired services. In addition, the Code establishes the DPP Commissioner as the only authorized contracting official for the Executive Branch and contract negotiations are still required to be done by the DPP Commissioner.

The DPNR Commissioner's statement in the August 16, 2003 letter that the Contractor "… is the only firm in the Virgin Islands, or elsewhere…" capable of providing the services is highly suspect[2]. It is difficult to believe that this Contractor was the only firm in the Virgin Islands or the entire United States capable or willing to provide the necessary legal advice sought by DPNR. At a minimum, proposals from other legal firms should have been obtained. Government officials are duty bound to always protect the interest of the Government and people of the Virgin Islands and to get the best price for the Government. What better way than inducing competition for the services sought? As will be demonstrated throughout this report we question whether this was done.

In addition, the DPNR Commissioner's letter stated that "We have agreed to this contract on a contingent basis, with the [Contractor] to advance costs and be reimbursed at settlement or judgment. The estimate for litigation and expert costs over a 36-month period …" is $1,030,000. This statement indicates to us that contract terms had already been discussed and established by the Contractor and DPNR, without the involvement of DPP, contrary to the requirement of the Code and Rules and Regulations. Also, documents submitted by the Contractor to us as a part of this inspection includes costs incurred in 2003 by the Contractor's new co-counsel and claimed by the Contractor as reimbursable expenses. These claimed expenses were incurred before the execution of the contract in May 2004.

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[2] In a May 17, 2016 interview, a former attorney general indicated that at the time of the awarding of the Contract, he expressed concern to the then Governor that there may have been a prior employer/employee relationship between the Contractor and the DPNR Commissioner. Accordingly, he questioned the arms-length nature of the pending agreement.

Contingency Fee Contract

Government officials did not select a contract type that would allow for reasonable fees by the Contractor. By selecting a contingency fee plus cost type contract, the Government allowed a significant amount of funds recovered under the CERCLA complaint to be diverted from the much needed oversight of the required cleanup and restoration of the damaged South Shore of St. Croix and the assessment of public health issues that may have been caused by the contamination. Taking into consideration the millions of dollars in damages being sought and the impact on the environment and public health, the related legal fees placed an undue burden on the Government to find funds to supervise and inspect compliance with the various Consent Decrees and in assessing the public health impact.

The concept of contingency fee contracts is a hotly debated issue especially as it relates to CERCLA complaints. Some Federal courts have ruled that contingency fee contracts are allowable charges against recovered CERCLA funds, while other Federal courts have ruled that they are not allowable charges. In addition, there have been numerous legal articles and opinions on both sides of the issue. One common trend, however, is the position that recovered funds should be used initially for the intended purpose of cleanup and restoration. Remaining funds can then be used for **reasonable** attorney fees. In fact, the American Bar Association in its Rule 1.5 Fees, does allow contingency fees; however Section (a) states that "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

We were informed that the Federal Government only allows attorney's fees to be paid at an hourly rate and not on a contingency in environmental remediation cases because the cleanup funds must be used for remediation.

Contingency fee arrangements between state attorneys general and private special counsels hired to assist have been found permissible by courts if certain criteria are met to ensure the neutrality of the attorneys general and that the interest of the public is being served. The courts have stated that the contract must clearly set controls and assurances that the government's attorney general is the lead attorney in the cases.

It is very difficult to find the best practice for the level of control the attorneys general must maintain over environmental special counsels in litigation processes to satisfy the courts' concerns for neutrality and the public interest being served. The required standard of neutrality for state attorneys general demands that each time a private special counsel is hired to represent a state's interests, the attorney general actually controls the actions of the hired counsel while assisting in the case. The use of contingency fee arrangements to hire outside experts and special counsels may give the appearance of the cost of litigation being totally born by the losing party, but in further review it is noted that the award of damages and costs of the public's interest in the environmentally damaged natural resources cases is diminished by the amount taken up front for attorney's contingency fees and expenses. In some cases the amount of recovery funds left for the government is not enough to restore or replace the damaged natural resources and address public health issues resulting from the contamination of the environment. The law never intended that CERCLA litigation outcome would have high special counsel expenses and contingency fee percentages depleting the funds awarded before remedial actions could adequately address environmental damages and public health concerns. Private law firms hired to assist in the CERCLA litigation are to provide expert knowledge to result in sufficient recovery for repair and restoration of damages, monitoring of the cleanup, and to assess public health issues. Thus, the general claim that it does not cost the people anything to litigate natural resource damage cases with a contingency fee arrangement is not factual.

On May 17, 2007, the President of the United States, concerned with the apparent abuse of contingency fee agreements for legal and expert witness services, issued an Executive Order "Protecting American Taxpayers from Payment of Contingency Fees", forbidding Federal agencies from entering into contingency fee agreements unless the United States Attorney General determines that the agreement is required by law. The President's policy statement states:

> "To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law."

This Executive Order came after numerous state attorneys general used contingency fee based contracts in health and environmental lawsuits, resulting in millions of dollars in legal and expert witness fees. The then President of the United States Chamber of Commerce's Institute for Legal Reform stated that "No lawyer or witness should be able to pocket millions of dollars simply because he or she has the government as a client. These contingency fee arrangements create a perverse incentive, by combining the power of the government with the personal financial interest of some plaintiffs' lawyers. Too often the result is millions of dollars of a government settlement or judgment going to trial lawyers, instead of victims."

By not opening the need for legal advice to competition, the Government eliminated the Government's ability to obtain the best price for the Virgin Islands.

In one of the preambles to the contract, the Government used the claim that funds were not available to pay for reasonable fees and expenses. It states that "…the Government of the Virgin Islands does not presently have the funding to advance expenses and currently pay the customary charges of the skilled counsel involved…" However as seen in the following schedule, the expenses claimed over the 11 years of the Contract averaged $447,837 per year and ranged from $70 in 2004 to a high of $3,113,123 in 2012. Although the Contractor included $65 in expenses from 2003, the Contract was not approved until 2004.

BILLED EXPENSES				
2003	$ 65		**2009**	$ 357,059
2004	70		**2010**	190,080
2005	30,790		**2011**	866,681
2006	71,244		**2012**	3,113,123
2007	77,720		**2013**	275,157
2008	161,045		**2014**	231,006

If we combine the estimated hourly rate for the attorney and support staff identified in the Contract and include the expenses to the Contract-defined limit of $1.5 million, the average total annual expenses should not have exceeded $840,000 per year over the 11-year period. This yearly average was calculated using the combined fees of $675 per hour shown in the termination section of the Contract, and assuming annual work hours of 1040 (or ½ of a 40 hour work week, since we have evidence to show that the Contractor and co-counsel were engaged with other clients during the same time period). The annual attorney and support staff fees would amount to a maximum of about $700,000 per year or a total of $7.7 million for the 11-year period. Averaging the expenses over the 11-year period to the Contract-limit of $1.5 million, total annual expenses should not have exceeded $140,000 per year. As a result, the combined average total in fees and expenses should not have exceeded $840,000 per year, with the earlier years being significantly less. The Government could have established an account that was available until expended to annually appropriate funds to meet the anticipated costs of the pending litigation. Total fees on an hourly basis and expenses combined would have totaled no more than $9.2 million over the 11-year period, which would have cost the Government far less than the contingency based contract.

Unfortunately, with the contingency fee contract, to date the Contractor has withheld more than $12.3 million of monetary collections as fees and claims to be owed an additional $9 million, for a total contingency fee compensation of $21.3 million or 31.4% of the total monetary recovery settlement of $67.9 million. Added to the $21.3 million is a claim for expenses of an additional $5.6 million, resulting in a total claim by the Contractor of $26.9 million or 39.5% of the total monetary recovery.

We will discuss in more detail the contingency fee computation and expenses claimed by the Contractor in our finding on Contractor Billings.

Recommendations

We recommend that the Attorney General of the Virgin Islands:

1.1 Review the entire procurement process of this contract to determine if procurement laws as required by the Code and expanded upon in the Rules and Regulations were violated. Take appropriate action based on the results of the review.

1.2 Taking into consideration the Federal Government's limitations on the use of contingency fee contracts, ensure that the use of contingency fee contracts is limited to special situations.

V. I. Attorney General's Response

The Attorney General in a March 3, 2016 response agreed with the two recommendations made. Regarding the first recommendation, it was indicated that an investigation into the procurement process has been ongoing since January 2015.

Regarding the second recommendation, it was indicated that internal policies have been established to limit the use of contingency fee contracts to "special situations."

V. I. Inspector General's Comments

We consider the responses to the two recommendations to be sufficient for us to resolve them. However, they will remain open until we receive the result of the internal investigation into the procurement process, and a copy of the internal policies limiting the use of contingency contracts.

FINDING 2: CONTRACT ADMINISTRATION

The Government, through the DOJ, failed to adequately administer the professional services contract. The Contractor was allowed to take control of the litigation process, acting as an extension of the DOJ in the civil suit. The Contractor claimed as fees and expenses a total of $17.9 million of the $27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ. Finally, the funds were withheld by the Contractor in violation of the compensation terms of the contract.

Background

Several sections of the Code address the responsibilities of the Attorney General, the appointment of Assistant Attorneys General and the authority of the Attorney General to hire non-government assistance in carrying out the responsibilities of the office:

- The Code in Title 3, Chapter 8 among other things, designates the Attorney General with the authority to represent the Executive Branch of the Government before the courts in all civil proceedings.

- Title 3, Section 113 (a) of the Code establishes the appointment and removal of Assistant Attorneys General by the Governor.

- Title 3, Section 114(a)(5) authorizes the Attorney General "to employ such skilled experts, scientists, technicians, or other specially qualified persons as he deems necessary to aid him in the preparation or trial of actions or proceedings."

- Title 3, Section 114(a)(6) authorizes the Attorney General "to appear for and represent the executive branch of the Government of the United States Virgin Islands, and all departments, boards, commissions, agencies, instrumentalities or officers thereof, before all administrative tribunals or bodies of any nature, in all legal or quasi-legal matters, hearings or proceedings."

The contract, in Addendum I, provides a listing of the services to be provided by the Contractor. In particular, item 1 states, "Contractor shall advise and counsel Government with respect to any claims which Government may have for penalties and damages recoverable under law…"; item 2 states, "Contractor shall advise and counsel Government with respect to settlement and participation in settlement discussions or negotiations between Government and third parties…"; and item 3 states, "Contractor shall represent Government as co-counsel with the Virgin Islands Department of Justice in any court, administrative, or arbitration proceedings instituted by Government on the advice of Contractor…". It concludes by stating, "Nothing contained herein shall abrogate the ultimate authority of the Attorney General nor diminish the obligation of Contractor to aid the Attorney General in fulfillment of statutory duties pursuant to 3 V.I.C. § 114."

Oversight

The former Attorney General, who was in office from 2007 through 2014, allowed the Contractor to take control of the litigation process with no oversight or supervision by an Assistant Attorney General. The Contractor, or the Contractor's co-counsel, was allowed to conduct all depositions, file legal documents, represent the DOJ in settlement talks and in court proceedings, and sign two of the three Settlement Agreements as the representative for the Attorney General.

Prior to 2007, an Assistant Attorney General was assigned to the case to provide supervision as the litigation progressed. For example, in 2005, when the initial complaint was going to be filed, the Contractor was instructed by an Assistant Attorney General to submit the proposed complaint to the Attorney General for review and approval.

When interviewed, the former Attorney General stated that beginning in 2007, there was no Assistant Attorney General assigned to the case. He indicated that he personally maintained control over the case and the actions of the Contractor. Limited documents at DOJ do show copies of some of the filings submitted by the Contractor. Also, in correspondence sent to us from the Contractor, it was indicated that documents were submitted to DOJ. The former Attorney General indicated that he did not attend depositions, but attended planning and mediation meetings in the Virgin Islands, Washington D.C. and New York. However, neither he nor any Assistant Attorney General was present during court proceedings.

In addition, we found no evidence to show that the Contractor was designated as a Special Assistant Attorney General to represent the Government before the courts, as has been the practice of previous Attorneys General.

Recapitulations

The former Attorney General approved the distribution of $27.9 million, with the Contractor keeping $17.9 million, without reviewing any supporting documentation for the fees and expenses claimed.

After each of the three Settlement Agreements was ordered and the funds were received by the Contractor, "recapitulations" or summaries were sent to the former Attorney General distributing the funds in the possession of the Contractor. Each summary submitted to the former Attorney General consisted of 1½ to 2 pages listing the expenses claimed by the Contractor, and a proposed distribution of the funds. The following schedule summarizes the three summaries submitted to the former Attorney General.

Summaries for the Distribution of Settlement Funds Received by the Contractor on Behalf of the Government

Summary	Government	Attorney Fees	Expenses	Settlement Payment
March 9, 2012 Alumina Defendants (3)		$1,924,054.00	$1,075,946.00	$3,000,000.00
May 29, 2014 Refinery Defendants (2)**		$1,341,634.68	$2,158,365.32	$3,500,000.00
August 8, 2014 Alumina Defendants (2)	$10,000,000.00	$9,064,137.60	$2,310,862.40	$21,375,000.00
Total	**$10,000,000.00**	**$12,329,826.28**	**$5,545,173.72**	**$27,875,000.00**
	****Refinery Settlement amount was $43,500,000. Outstanding balance of $40,000,000 had not been collected.**			

The former Attorney General approved each of the summaries within days of their submittal to DOJ.

When interviewed, the former Attorney General stated that he never saw, nor requested to see, any details, or supporting documents, of the summaries' expenses listed. He indicated that he looked over the list of expenses on the first summary to see if they appeared to be normal legal expenses. He approved the first $3 million summary without questioning anything. The former Attorney General explained that he intended to have an audit done of all expenses billed by the Contractor after the entire case was settled. He reasoned that if he started questioning the expenses too soon, it could have caused disruption in the effective and full efforts in handling of the cases by Contractor and his team. The former Attorney General added that had he started questioning or appearing to be "cheap" with the Government's attorneys, it could have sent signals to the defendants' attorneys that the Government was not united and prepared to expend all that was necessary to win the case. The defendants' lawyers, in particular, were very experienced and could not be allowed to see the Government's team arguing over expenses.

As will be discussed in the finding on Contractor Billing had the Contractor's summaries been thoroughly reviewed and compared to the contract terms, numerous discrepancies with the expenses and fee computation would have been identified from the first summary.

Recommendations

We recommend that the Attorney General of the Virgin Islands:

2.1 Establish a procedure to ensure that; (i) outside counsels contracted to represent and perform services for the DOJ are properly designated as Special Assistant Attorneys General, and (ii) proper supervision and control is maintained by DOJ in all matters for which the DOJ has responsibility.

2.2 Ensure that invoices for services submitted to DOJ are adequately documented, and are thoroughly reviewed in a timely manner before payments are authorized.

V. I. Attorney General's Response

Regarding the recommendation that procedures be established to monitor and supervise the activities of outside counsels contracted to perform services for the DOJ, the Attorney General indicated that DOJ "currently has in place procedures for the retention and the monitoring of outside counsel."

Regarding the second recommendation that invoices for services be thoroughly reviewed and substantiated before payment, the response stated that procedures are in place to review and verify invoices and supporting documentation by the lead DOJ attorney before being forwarded to the Attorney General for final approval and then to the administrative division for payment. In addition, all "contracts with the Government are contingent upon the appropriation of funds.

V. I. Inspector General's Comments

The responses to the two recommendations are sufficient for us to consider them resolved. However, they will remain open until we receive a copy of the internal policies for the retention and monitoring of outside counsel, and the policies and procedures for the review and monitoring of invoices.

FINDING 3: CONTRACTOR BILLINGS

The three summaries submitted by the Contractor were premature and included expenses and fee computations that were not in accordance with the provisions of the contract. As a result, $27.9 million was inappropriately disbursed from the trust account that was to be established for the Government. In addition, the Contractor miscalculated, by $5.1 million, the potential contingency fees due from the funds received and inappropriately claimed $4.1 million in expenses. Finally, in accordance with the Virgin Islands Supreme Court rules, trust funds are in fact client funds and should be in an interest-bearing account for the client as stipulated by the Court in the first Settlement Agreement. It is estimated that the $27.9 million collected should have earned about $761,000 in interest.

Background

There are four sections of the contract that have a direct bearing on the contingency fee computation and the deductibility of expenses by the Contractor.

- 3. COMPENSATION - The relevant portions of the compensation section states "…the Government…agrees to pay the Contractor a percentage, as set forth in the schedule found in Addendum II, of any recovery or settlement monies (including penalties and damages) received by the Government for damages resulting from the contamination by third parties on the South-Central St. Croix natural resources. Said percentage shall be calculated on the net amount collected, as a result of an award, judgment, settlement or otherwise." It further states that "The 'net amount collected' shall be computed by deducting from the gross amount collected on the Government's behalf, the expenses and disbursements chargeable to the Government…" It continues that "Payments shall be made of said recovery or settlement monies at the termination of all involved litigation, inclusive of appeals, if any."

- ADDENDUM II-Contingency Fee Percentage Schedule - This section states that the compensation shall be as follows:

    - 25% of the first $25,000,000
    - 20% of the next $15,000,000
    - 15% of any amount over $40,000,000

- 4. EXPENSES - This section states that, " In addition to the compensation for services as specified in Paragraph 3 above, and subject to the provisions set forth herein, the Government authorizes Contractor to incur and agrees to pay reasonable and necessary costs and expenses." It identifies more than 20 examples of types of expenses that can be considered as reimbursable. The section continues, " Any expenditure for a specific type of expense in excess of FIVE THOUSAND DOLLARS ($5,000) shall not be incurred without prior written consent of the Government, provided that in the event no written response is received by Contractor from the Government within fourteen (14) days of

Contractor making a written request by facsimile transmission or hand-delivery to the Department of Justice for approval of such costs, the Government shall be deemed to have provided written consent and accepted the obligation therefor." It further states that "In no event will outstanding and unreimbursed reimbursable expenses, of any nature, exceed a total of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000), exclusive of costs of appeal, if any."

- 9. ASSIGNMENT - This section states "The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government. It is understood and agreed that Contractor, at its expense and risk, may employ other counsel to assist Contractor in this matter, provided, however, that such employment will be via a Subcontract which will incorporate by reference all the terms of this Agreement except those relating to compensation and expenses."

The Office of Disciplinary Counsel of the Virgin Islands Supreme Court (Supreme Court) has published the "Virgin Islands Trust Account Handbook" (Handbook) which provides guidance in conjunction with the Supreme Court Rules of Professional Conduct, Rule 211, for Virgin Islands attorneys in the handling of Trust Accounts maintained for clients. It requires attorneys to keep an accurate accounting of receipts and disbursements of clients funds, and to keep the clients regularly updated on the status of the funds.

Premature Recovery Distribution

The Contractor inappropriately distributed settlement funds after the first Settlement Agreement, and continued to distribute funds after each subsequent Settlement Agreement, in violation of the Contract's Compensation section.

The Compensation section states that "Payments shall be made of said recovery or settlement monies at the termination of all involved litigation, inclusive of appeals, if any." There was only one case filed, Civil Suit No. 2005-0062, with multiple defendants for which the Settlement Agreements applied. The first Settlement Agreement in February 2012 involved only two of the seven defendants. The Court ordered in the Settlement Agreement that the defendants "…will pay to the Government $3,000,000 within 30 days of the Effective Date of this Consent Decree by wiring such funds to the following account:" The account identified was the Contractor's IOLTA (Interest on Lawyer Trust Account).

Shortly after receipt of the settlement funds, the Contractor inappropriately and in violation of the contract terms, submitted to the former Attorney General a summary claiming all of the $3 million settlement funds as fees and expenses. The former Attorney General inappropriately approved the summary before "the termination of all involved litigation", and without reviewing supporting documentation.

The same inappropriate action was done after the second Settlement Agreement funds were received by the Contractor in May 2014. In this instance, the former Attorney General inappropriately allowed the Contractor's proposal to keep the entire $3.5 million partial payment from two of the remaining five defendants. The Government's legal action against these defendants was not resolved, because the $40 million final payment that was due by December 31, 2014 was not made, resulting in the Government filing foreclosure action on the Refinery property used as collateral[3].

Regarding the third Settlement Agreement of $21.4 million, similar actions were taken by the Contractor and the former Attorney General; however, in this instance, the Government requested and received a $10 million distribution of the Settlement funds and the Contractor kept $11.4 million. The $10 million received by the Government was inappropriately deposited into the General Fund, and was not used for environmental purposes as required by CERCLA.

Although the former Attorney General approved the three summaries, their approval was in violation of the Contract, and should have been rejected. The former Attorney General did not have the authority to change the terms of the Contract. Any amendments to the Contract should have been processed through DPP and approved by the Governor. This was not done. Accordingly, the total Settlement funds of $27.9 million received should have been kept in the interest bearing trust account until all of the legal proceedings had been completed, as stated in the Contract.

Contingency Fee Computation

The Contractor overstated the Settlement amounts to be used in computing the contingency fee. As a result, the contingency fee amount was likewise overstated.

The Compensation section of the Contract states that "…the Government…agrees to pay the Contractor a percentage, as set forth in the schedule found in Addendum II, of **any recovery or settlement monies (including penalties and damages) received by the Government for damages**…[emphasis added]". It further states that "Said percentage shall be calculated on the **net amount collected**…." Throughout the Contract, all references to recovery or settlement are to monies received or collected by the Government.

The Contractor erroneously included the estimated costs required of the defendants to restore the damaged natural resources in computing the contingency fee. Documents provided show estimated restoration costs at between $58,285,000 and $76,285,000. These costs are not "recovery or settlement monies" received by the Government, but rather are costs borne by the defendants in restoring the properties (their properties) to their uncontaminated condition. The Contractor, in documentation entitled "ESTIMATED SETTLEMENT VALUES," claims total contingency fees of $21,297,973.94, using the $67.9 million in recovery or settlement monies collected by the Government and the lower estimated value of $58.3 million in the restoration costs of the defendants. As previously shown in the "Summaries for the Distribution of Settlement Funds Received by the Contractor on Behalf of the Government" in Finding 2 of this

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[3] Following the sale and leasing of the Refinery property in early 2016, the outstanding payment issue was settled.

report, the Contractor applied $12,329,826.28 of the settlement monies received to the contingency fees. In addition, the Contractor is claiming that the Government owes an additional $8,968,147.66.

We interviewed the two former attorneys general involved in the awarding of the Contract and the payment of the Contractor's summaries; both indicated that restoration and cleanup costs should not be included as part of the contingency fee computation. They both indicated that was not a correct interpretation of the contract, and those costs to the defendants were never intended to be a part of the computation[4].

In a related Federal case against the refinery defendants, the EPA estimated the cost of restoration and cleanup of the property to be about $700 million. If those amounts were included in computing the contingency fee, it would amount to an additional $105,000,000 in fees, which is more than the total settlement received by the Government. This interpretation goes against the intent of CERCLA, the reasonableness of fees required in the Supreme Court Rule 211, and defies logic.

The following table is our computation of the potential contingency fees that would be owed to the Contractor once all settlement issues have been resolved.

Computation of Potential Contingency Fees Entitled Based on Contract

Description	Basis for Fee Computation	Potential Contingency Fees
Total Settlement Amount	$67,875,000	
Less: Allowable Expenses	-1,500,000	
	$66,375,000	
1st Contingency Fee - 25%	-25,000,000	$6,250,000
	$41,375,000	
2nd Contingency Fee - 20%	-15,000,000	3,000,000
	$26,375,000	
3rd Contingency Fee - 15%	-26,375,000	3,956,250
Total Potential Contingency Fees		**$13,206,250**

Expenses

The Contractor claimed expenses in excess of the amount allowed by the contract. As a result, $4.1 million in unallowable expenses were claimed. Two sections of the Contract are applicable in determining the allowable expenses, as does the Supreme Court Rule 211, which

[4] A counsel to the Contractor submitted statements from the two former attorneys general that conflicted with statements made to us. We have addressed the conflicting statements in our comments to the Contractor's Submittal at the end of this Finding beginning on page 23.

requires an accurate accounting of expenses. The Expense section of the Contract identifies the types of expenses that can be claimed. It further limits the total amount that can be reimbursed. In particular, it states, "In no event will outstanding and unreimbursed reimbursable expenses, of any nature, exceed a total of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000), exclusive of costs of appeal, if any." Another section that affects the allowability of expenses is the section on Assignment. It states that the "…Contractor, at its expense and risk, may employ other counsel to assist Contractor in this matter, provided, however, that such employment will be via a Subcontract which will incorporate by reference all the terms of this Agreement except those relating to compensation and expenses."

The February 24, 2004 contract transmittal letter from the Attorney General to the DPP Commissioner and the April 22, 2004 contract transmittal letter from the Attorney General to the Governor both state that expenses were capped at $1.5 million. These letters support the fact that from the inception of the Contract it was understood that there was a $1.5 million limit on expenses.

This position was further confirmed, when one of the former attorneys general was interviewed. He stated that before the May 2014 invoice, he and the Contractor had been discussing how to increase the reimbursable limit on the expenses. The Contractor had notified him that the expenses had exceeded the contract limit, and he wanted to change the contract so he and his co-counsel could recover their expenses. They continued discussions on raising the expense limit through October 2014; however, there was no approved increase in the limit. Any changes to the Contract would require a change order agreement processed through the DPP and the approval of the Governor. None of these events happened, therefore, the Contract terms had not changed.

As part of our inspection, we requested from the Contractor all supporting documentation for the $5.6 million in expenses claimed in the three summaries. We were forced to subpoena the documentation after the Contractor challenged our authority to review the documents. As a result of the subpoena, the Contractor provided over 5,700 electronic pages of documentation. The documents consisted of expenditure listings prepared by the Contractor's co-counsel, canceled checks, credit card and other receipts. Many of the documents were illegible, others had information redacted, and many had hand-written notation "ss" [presumable for south shore] on them. The documents were not in any logical order, especially those relating to travel, hotel and meal expenses. In addition, the Contractor did not provide all documents subpoenaed; for example, no accounting of the trust funds was provided, nor were copies of contracts and subcontracts awarded in relation to the contract work. The supporting documentation provided totaled $5,374,040 or $171,134 less than what was claimed.

About $4.6 million of the expenses were paid by the co-counsel. Based on the provisions contained in the Assignment section of the Contract, co-counsel expenses are not chargeable to the Government. The Contractor acknowledged this in a July 14, 2004 letter to an Assistant Attorney General when he stated, "Per our last meeting in St. Thomas, enclosed is the firm resume of [new co-counsel], which firm I have retained at my own cost to assist in the Natural Resource Damages actions. They substitute for [previous co-counsel], who filed their notice of withdrawal on January 12, 2004. I thank you in advance for bringing this to [previous Attorney General's] attention and for your approval to proceed accordingly". However, their expenses were still included in the summaries submitted. Our review of the documentation provided, identified about $800,000 in expenses paid directly by the Contractor, of which about $500,000 are considered to be properly documented. The other $4.6 million were expenses charged to or paid by the Contractor's co-counsel, and in accordance with the Contract, should not have been charge to the Government.

The following is a summary of the maximum potential contingency fees and expenses that the Contractor can claim.

Maximum Potential Contingency Fees and Expenses that the Contractor Can Claim

Category	Amount
Maximum Expenses	$ 1,500,000
Contingency Fees	13,206,250
Total	$14,706,250

Interest

As previously stated, the $27.9 million collected by the Contractor for the Government, should have been placed in an interest bearing account and not disbursed until all issues dealing with the lawsuits had been resolved. We were not provided any information from the Contractor of any interest earned.

The Supreme Court's Handbook identifies trust funds as "…other people's money that comes into a lawyer's possession." One example includes "Settlement proceeds held for distribution." It further states that all interest earned on the client's trust account belongs to the client.

We estimate that $761,000 in interest has been lost to date, by the premature distribution of the $27.9 million in funds received by the Contractor.

Recommendations

We recommend that the Attorney General of the Virgin Islands:

3.1 Review the Contractor's actions in distributing the funds obtained to determine if any laws of the Virgin Islands were violated.

3.2 Take the steps necessary to ensure that the compensation provisions of the contract are followed.

V. I. Attorney General's Response

Regarding the first recommendation, the Attorney General indicated that DOJ was currently reviewing the contract and the distribution of the funds obtained as a result of the settlement agreements.

Regarding the second recommendation, it was indicated that DOJ was currently in litigation with the contractor. We were informed that the dispute is currently pending arbitration.

V. I. Inspector General's Comments

The responses to the two recommendations are sufficient for us to consider them resolved. However, they will remain open until we receive the result of the pending litigation and or the arbitration results.

Contractor's Submittal

On March 11, 2016, Attorney Andrew Capdeville (Capdeville) submitted correspondence indicating that his firm represented the Contractor and co-counsel "in a civil arbitration with the Government of the Virgin Islands, and related matters." Capdeville wanted to meet to discuss our draft inspection report before its issuance. He stated that, "We would like to provide important information and context (of which you may not be aware) that is critical to a complete and objective understanding of this matter, and critical to the independence of the Inspector General's Office."

On March 22, 2016, exiting from normal protocol, we provided Capdeville with a copy of the draft report to give him "the opportunity to provide additional information for us to consider before the Final Report is issued."

Capdeville, on April 1, 2016, submitted to the Office of the V. I. Inspector General an extremely inflammatory and derogatory letter basically accusing the Governor of the Virgin Islands, the V. I. Attorney General and the V. I. Inspector General of conspiring to create a false report to be used in support of the Government's pending arbitration between the Government and the Contractor. Capdeville regurgitated statements made by a former inspector general and affidavits created by his client for signature by the two former Virgin Islands attorneys general, as the basis for his allegations.

Although inflammatory in nature, we have included Capdeville's letter and attachments as Appendix III, beginning on page 35 of this report.

V. I. Inspector General's Comments

We were very disappointed in Capdeville's submission for it did not provide any "important information and context that is critical to a complete and objective understanding of this matter". Although it is outside of our normal practice, we feel that we must respond to the submission by Capdeville, first briefly commenting on the 6-page statement by the former inspector general, but more importantly focusing on the two affidavits by the former attorneys general.

Statement by Former Inspector General. The 6-page statement made by the former inspector general does not dignify an in-depth response. However, we must briefly comment on statements made by this individual, who serves as a defense lawyer, "responding to government investigations, audits and reviews."

The statement tries to attack the integrity of the Governor, the Attorney General and the Inspector General of the Virgin Islands. The individual attempts to discredit the inspection done by this office and the professionalism and integrity of the organization without the benefit of knowing what we did, talking to us, or reviewing our work. His comments and conclusions are baseless and are completely disregarded by us; accordingly, they do not dignify further comment.

Contrary to the statements made by the individual, former Attorney General Iver A. Stridiron and former Attorney General Vincent F. Frazer were interviewed by us. Their comments were summarized and presented to them for edit. Each indicated the accuracy of the summaries and each page was initialed by them.

After our review of the two affidavits included in Capdeville's letter, we contacted and interviewed both former attorneys general to clarify the discrepancies between their statements to us and their statements to the Contractor.

The following is our summary of the discrepancies and a summary of their comments to us after they were contacted again. We have included as Appendix IV and Appendix V the signed interview summaries by each of the former attorneys general. Their affidavits are included in Capdeville's submission as Appendix III.

Statements by Former Attorney General Iver A, Stridiron. On March 13, 2015 the V. I. Inspector General and the Chief of Audits interviewed former Attorney General Iver A. Stridiron (Stridiron) at his office on the 2nd Floor of the Virgin Islands Legislature. The purpose of the interview was to determine what Stridiron recalled about the Contract[5].

Stridiron stated that he recalled the contract and had signed it. He stated that he had objected to the Contractor having control over any settlement funds to be received by the Government. However, the then Governor allowed this control over his protest. Stridiron further stated that in his opinion the case was not over, and payments to the Contractor should not have been made. He also stated that expenses were capped at $1.5 million and only the Governor can

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[5] Stridiron resigned from his position of Virgin Islands Attorney General in September 2004, about four months after the Contract was approved by the Governor. The first case filed in the District Court involving the Government and the defendants was in 2005. Accordingly, Stridiron had no involvement in the DOJ administration of the Contract.

approve amendments to the Contract. Regarding the use of cleanup costs in computing the contingency fee, Stridiron felt that the Contract does not allow it, and should not have been used.

A draft Stirdiron's interview was sent to him for review and editing. His changes were made, and he signed the interview summary indicating that it was an accurate summarization of his statements. The interview summary is included as Appendix IV of this report.

Capdeville's April 1, 2016 letter included a March 30, 2016 affidavit signed by Stridiron where he contradicts his March 13, 2015 statement to us. The affidavit also erroneously included at paragraph 30 the statement that "To my recollection, no one from the Inspector General's Office …has ever contacted me to discuss the Contract…."

On May 17, 2016, we again interviewed Stridiron at his office at the Virgin Islands Legislature to discuss the discrepancies between the two statements. We presented him with a copy of our March 13, 2015 interview summary, which he edited, he confirmed as to its accuracy, and he signed each page of the document. He stated to us that he had forgotten about our March 2015 interview when he signed the March 30, 2016 affidavit for the Contractor. He further stated that his March 13, 2015 statement to us was correct and that it reflected his opinion on the Contract and its terms.

Stridiron indicated that he was contacted by the Contractor a few days prior to the March 30, 2016 affidavit and the statements made in it were based on his recollection at the time and may not be totally accurate.

Stridiron elaborated on some of the key issues of the Contract by initially stating that he really does not care about the dispute and really does not want to get involved. He indicated that at times contract provisions are interpreted differently by the two parties, and the differences should be resolved by a judge or an arbitrator. He indicated that he agreed with his initial interpretation that the Contractor's compensation should be based only on the money collected by the Government and cleanup costs should not be a part of the compensation calculation. He also stated that he does recall the fact that expenses were capped at $1.5 million because he was not going to agree to a contract with an open-ended expense clause with no limit on expenses. If expenses exceeded the $1.5 million cap, the contract should have been amended in accordance with the procurement laws of the Virgin Islands. He stated that the Contractor should have been paid for reasonable services and expenses; however, no payments should have been made without the DOJ doing their due diligence and thoroughly reviewing the supporting receipts.

As the legal counsel for the Virgin Islands Waste Management Authority, he attended many of the meetings, depositions, and court hearings. He stated that he was very surprised that no one from DOJ or the V. I. Port Authority attended the various proceedings. He indicated that he recalled on numerous occasions, the Contractor engaged in discussions with the attorneys for the various defendants on the subject of his (the Contractor's) compensation and how he was going to be paid his fees. Stridiron stated that it was his impression that the Contractor's compensation had been identified as an add-on to the settlement money to be paid by the defendants.

Stridiron was shown a copy of the initial justification letter written by the former Commissioner of the Department of Planning and Natural Resources (DPNR). He questioned the claim in the justification letter that the Contractor was the only law firm capable of providing the services, indicating that there were many other law firms that could provide the services requested. He also indicated that he was concerned that there was a potential conflict situation because the Contractor and the former DPNR Commissioner had an employer/employee relationship prior to him becoming the Commissioner of DPNR[6]. Stridiron stated that he had alerted the then Governor of his concerns, and the fact that this agreement may have been less than an arms length relationship; however the Contract was still approved by the former Governor.

At the conclusion of the interview, Stridiron was again asked which of the two documents was accurate, our March 13, 2015 interview summary or the March 30, 2016 affidavit. He reiterated that the March 13, 2015 interview summary was correct.

Statements by Former Attorney General Vincent F. Frazer. On April 14, 2015, the V. I. Inspector General and the Chief of Audits interviewed former Attorney General Vincent F. Frazer (Frazer) in the Conference Room at the Office of the V. I. Inspector General. The purpose of the interview was to determine what Frazer recalled about the Contract and his involvement in its administration, litigation process, expenses, payments and computation of the contingency fees.

The contract was shown to Frazer. He stated that he was aware of the contract conditions even though he did not continuously refer to it as the litigation progressed and payments were made. In April 2007, Frazer began to handle the cases himself rather than have the Solicitor's Office handle the contract and related duties of the cases. He did not attend depositions on the litigations; however, he did attend mediations and planning meetings with the Contractor in the Virgin Islands, District of Columbia and New York. Frazer stated that he did not attend any court hearings. He stated that he did review the various legal documents and motions.

Frazer indicated that he told the Contractor to keep the initial $3 million in monetary damages to cover the legal expenses incurred to date and to keep the case moving forward without delay, indicating that settlement of all fee and expenses would be made when the last monetary damages were paid.

As quoted from Frazer's revision of our interview summary, he stated, "In Attorney Frazer's opinion the $26 million attributed to 'clean up costs' is not monetary damages, so it is questionable whether that amount should be included in the monetary damages base for the contingency fees." He further stated that the cost of cleaning up private property should not be included in the contingency fee computation.

[6] This was the second independent source that claimed that there was an employer/employee relationship between the Contractor and the former DPNR Commissioner prior to him becoming the head of the agency. This allegation needs to be investigated further.

Fazer continued that he did not think that a contingency fee contract for legal assistance was the best for the Government but at the time he took over at DOJ, the cases were well underway, and it was not beneficial to cancel the contract at the time.

Frazer was shown the three "recapitulations" submitted by the Contractor and approved by him for payment. He stated that he never saw, nor requested to see any details or supporting documents. He approved the payment without questioning anything, with the intention of having an audit done after all the settlements had been completed.

The July 14, 2004 letter from the Contractor to the Assistant Attorney General overseeing the Contract at the time was provided to Frazer. The letter indicated that a co-counsel would be retained by the Contractor at his own cost. Frazer did not recall seeing the letter. He also did not recall the specifics of the Assignment Section of the Contract; however, based on what was provided to him in this interview, all expenses and fees incurred by the co-counsel should be paid by the Contractor, and not included in the contingency fee and expenses sections of the Contract.

When asked about the $1.5 million cap on expenses, Frazer indicated that before the May 2014 "recapitulation" was submitted, the Contractor had discussed increasing the cap because expenses had exceeded the limit. Discussions continued into October of 2014; however, the Contractor was attempting to make other significant changes to the Contract terms for which Frazer did not support. As a result, no amendments to the Contract were finalized or approved by the Governor as required.

A draft of the interview summary was sent to Frazer, his revisions were made, and he initialed each page of the revised document. In his correspondence to us, he indicated that, "I have reviewed the report and for the most part it is fair and accurate. However I have the following suggestions". He concludes by saying "Other than the above everything is fair and accurate." The interview summary is included as Appendix V of this report.

As in the case with Stridiron's interview discussed above, Capdeville included a 19-page affidavit dated March 30, 2016, signed by Frazer, contradicting his statements made to us in the April 2015 interview.

On May 18, 2016, Frazer was interviewed again in the Conference Room at the Office of the V. I. Inspector General. The purpose of the interview was to ask Frazer to explain the rationale of the contradictory statements between our initial interview in April 2015 and his affidavit of March 2016.

Frazer was questioned about the discrepancies between the two statements, and he indicated that he reconsidered and changed his opinions related to the Contract. His rationale for the changes were based on information that he was given alleging that the DOJ was using the threat of a criminal investigation in discussions with the Contractor, and he felt that the Contractor should not have been threatened with potential criminal charges. As a result, he reconsidered and changed his original position on issues of contract administration, compensation, and contract interpretations for the calculation of fees and expenses. He now considers the affidavit to be correct. Frazer indicated that the affidavit was prepared by the Contractor; he reviewed, edited, and signed it.

Frazer is now of the opinion that the Contractor is entitled to all fees and expenses incurred, even though he agrees that the $1.5 million cap was in place and had not been changed. He also admitted that he was not familiar with the Assignment Section of the Contract and that the Government has the right and prerogative to audit the expenses paid to the Contractor. If expenses are found to be unallowable, the Government can seek reimbursement. Also, it is now his position that the cleanup costs should be included in the contingency computation; however, any differences in interpretation should be determined by an arbitrator.

He stated that although receipts for expenses may have been available for him to review, he did not request any. Based on his review of the amounts claimed in the "recapitulations" he felt that they were reasonable, and he approved them. He did not want to get into a conflict with the Contractor during the litigation and settlement process.

He felt that the Contractor should have been paid as funds became available, no matter what the Contract required. He reiterated that the Contractor did significant work, disbursed funds and should be reimbursed everything that was spent, even if the Contract had a limit on expenses. He again stated that he had changed his opinions and now supported his statements in the affidavit.

In conclusion, we spent considerable time discussing the discrepancies in the statements made by the two former attorneys general, and we felt it was necessary to present the conflicting and contradictory positions taken by these two individuals. The "waffling" positions taken reinforce our conclusions reached in the report, especially our opinion that the DOJ did not provide sufficient administration of the Contract. The questionable nature in which the contract was awarded and the claim that there may have been at a minimum the appearance of a conflict of interest, warrants further investigation into the awarding of the contract. We do maintain our position regarding the interpretation of the various compensation and expense provisions of the Contract. However, we do agree that the Contractor did provide a service to the Government and should be compensated a **fair and reasonable fee** and reimbursed for **reasonable and allowable expenses**.

V. I. ATTORNEY GENERAL'S RESPONSE

THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

March 3, 2016

Steven van Beverhoudt, CFE, CGFM
Virgin Islands Inspector General
Office of the Virgin Islands Inspector General
2315 Kronprindsens Gade # 75
St. Thomas, Virgin Islands 00802-6468

Re: Response to Draft Inspection Report of the Professional Services Contract for the Pursuit of Damages to the South Shore of St. Croix, Virgin Islands
Issued: February 8, 2016

Dear Inspector General:

I have reviewed the Draft Inspection Report of the Professional Services Contract for the Pursuit of Damages to the South Shore of St. Croix, Virgin Islands ("Report"). In accordance with your transmittal letter dated February 8, 2016, please find the Department of Justice's ("DOJ") responses to your Report Findings and Recommendations set forth below.

FINDING 1: PROFESSIONAL SERVICES CONTRACT

The GVI entered into a questionable and costly professional services contract to provide expert and specialized advice in connection with the GVI's claims for penalties and damages recoverable for harm arising from contamination by third parties of the natural resources located near and in the South Shore Industrial Area, in South-Central St. Croix.

Recommendations

1.1 Review the entire procurement process of this contact to determine if procurement laws as required by the Code and expanded upon in the Rules and Regulations were violated. Take appropriate action based on the results of the review.

Response.

The DOJ concurs with the Auditor's recommendation that the procurement process of this contract be reviewed to determine if there were any violations of Virgin Islands law, and that appropriate action be taken following the review. A rigorous investigation of this

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6040 Castle Coakley • Design Center Bldg. • Christiansted, St. Croix, U.S. Virgin Islands 00820 • (340) 773-0295 • Fax (340) 773-3236

V. I. ATTORNEY GENERAL'S RESPONSE

contract has been ongoing since January 2015, and steps were taken to protect the Government's interests in this contract. In accordance with my statutory duty to enforce the laws of the Virgin Islands, we will take necessary and appropriate actions following the conclusion of our investigation.

1.2 Taking into consideration the Federal Government's limitations on the use of contingency fee contracts, ensure that the use of contingency fee contracts are limited to special situations.

Response:

Historically, most cases of contract fraud in the Virgin Islands involve fixed fee contracts and not contingency contracts. We concur that contingency fees are best utilized in special situations, and have established internal policies reserving the use of contingency fee agreements only in matters involving complex litigation.

FINDING 2: CONTRACT ADMINISTRATION

The GVI through the DOJ failed to adequately administer the professional services contract. The Contractor was allowed to take full control of the litigation process acting as an extension of the GVI in the Civil Suit. The Contractor claimed as fees and expenses a total of 17.9 million of the 27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ. Finally, the funds were withheld by the Contractor in violation of the compensation terms of the contract.

Recommendations

2.1 Establish a procedure to ensure that: (i) outside counsel contracted to represent and perform services for the DOJ are properly designated as Special Assistant Attorney General, and (ii) proper supervision and control is maintained by DOJ in all matters for which the DOJ has responsibility.

Response:

(i) The Department of Justice currently has in place procedures for the retention and the monitoring of outside counsel. Pursuant to Title 3 V.I.C. §114(6), the Attorney General of the Virgin Islands shall appear for and represent the Executive Branch of the Virgin Islands Government in all legal proceedings and, in accordance with Section §114(5) of the same title, the Attorney General may "employ such skilled experts . . . or specially qualified persons as he deems necessary to aid in the preparation or trial of actions or proceedings." In selecting and contracting with outside counsel, DOJ is guided by and subject to the procurement laws,

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rules and regulations, and policies of the Department of Property and Procurement. DOJ and the outside counsel enter into a Professional Service Contract subject to the approval of the Commissioner of Property and Procurement and the Governor. Under the contract, the outside counsel accepts the appointment of "Special Assistant Attorney General" and the Attorney General executes a formal Appointment document specifying the matter for which the outside counsel is authorized to appear for and represent the Government. The court is then provided with a copy of the Appointment to allow outside counsel to appear for the Government in a particular matter under the supervision of DOJ.
(ii) In accordance with 3 V.I.C. §112(c), the Attorney General is statutorily empowered to monitor and administer the Department of Justice. An Assistant Attorney General is obligated to perform all duties assigned to him or her by the Attorney General. 3 V.I.C. §113(b). Either the Attorney General or his designee will monitor and supervise outside counsel with the goal to protect the Government's interest in all matters and proceedings. Any dispositive decisions on cases handled by outside counsel ultimately rest with the Attorney General.

Furthermore, all engagements with outside counsel require acknowledgement and consent to the Office of Attorney General's Outside Counsel Guidelines. These guidelines detail the oversight process of the Attorney General over all outside counsel including the role and responsibility of each party to the engagement.

2.2 Ensure that invoices submitted to DOJ are adequately documented, and are timely and thoroughly reviewed before payments are authorized.

Response:

The Department of Justice requires detailed invoices and documented expenses from outside counsel. This requirement is specifically memorialized in all contracts between DOJ and its contractors. In addition, this requirement of adequate and timely billings is a standard obligation pursuant to standards of professional responsibility of attorneys under the American Bar Association Model Rules of Professional Conduct and the Virgin Islands Supreme Court Rules which govern professional responsibility and discipline. Upon receipt of invoices from outside counsel, the lead DOJ attorney reviews the itemized time entries and supporting receipts for accuracy and reasonableness, and then forwards a recommendation for payment to the Attorney General for final approval. Once final approval is given by the Attorney General, the invoice is submitted to the administrative division for payment processing. Mutually agreed upon deadlines are established and agreed upon in advance and contained in the contracts. DOJ also requires a budget from outside counsel in advance of services being performed. All contracts with the Government are contingent upon the appropriation of funds.

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Additionally, as noted in our response in 2.2, the Office of the Attorney General has instituted policy guidelines for all outside counsel engagements which include billing requirements. These requirements delineate the frequency, the content and detail of billing submissions. Billing procedures of outside counsel must comply with these guidelines.

FINDING 3: CONTRACTOR BILLING

The three invoices submitted by the Contractor were premature and included expenses and fee computations that were not in accordance with the provisions of the contract. As a result, \$27.5 million was in appropriately disbursed from the trust account that was to be established for the GVI. In addition, the Contractor miscalculated, by \$5.1 million, the potential contingency fees due from the funds received and inappropriately claimed \$4.1 million in expenses. Finally, in accordance with the Virgin Islands Supreme Court Rules, trust funds are in fact client funds and should be in an interest bearing account for the client as stipulated by the Court in the first Settlement Agreement. It is estimated that the \$27.9 million collected should have earned \$761,000 in interest for the GVI.

Recommendations

3.1 Review the Contractor's actions in distributing the funds obtained to determine if any laws of the Virgin Islands were violated.

Response:

DOJ is engaged in an ongoing review of the contract and the contractor's distribution of the funds obtained through the natural resource damage litigation, and will take the appropriate and necessary actions to reimburse the Government for any amounts due to it under the Contract, and pursuant to federal and local civil and criminal laws.

3.2 Take the steps necessary to ensure that the compensation provisions of the contract are followed.

Response:

DOJ is currently in litigation with the contractor. Upon learning of the contractor's claims to, and retention of all funds received, and outstanding from the settlements reached in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions, DOJ demanded that the contractor return all retained funds to the Government. Contractor refused to do so and demanded arbitration which the DOJ rejected. During this time, the Hovensa's Chapter 11 case was pending in the District Court of the Virgin Islands, and the contractor sought an order compelling arbitration from the Bankruptcy Judge. DOJ

V. I. ATTORNEY GENERAL'S RESPONSE

is currently defending the Government's interest in this matter, and intends to take all steps necessary to ensure that the contract terms are followed and the Government's interests protected.

In conclusion, thank you for the opportunity to meet with you during the exit interview prior to your issuance of the Draft Inspection Report. Please contact me if you require any additional information regarding this matter.

Sincerely,

Claude Earl Walker

Claude E. Walker, Esq.
Attorney General

ADDITIONAL INFORMATION NEEDED TO CLOSE RECOMMENDATIONS

Recommendation Number and Status	Additional Information Needed
Finding 1:	
1.1 Resolved/Open	Provide a copy of the results of the internal investigation.
1.2 Resolved/Open	Provide a copy of the internal policies limiting the use of contingency contracts.
Finding 2:	
2.1 Resolved/Open	Provide a copy of the internal policies for the retention and monitoring of outside counsel.
2.2 Resolved/Open	Provide a copy of the internal policies and procedures for the review and monitoring of invoices.
Finding 3:	
3.1 Resolved/Open	Provide a copy of the results of the pending litigation and/or arbitration.
3.2 Resolved/Open	Provide a copy of the results of the pending litigation and/or arbitration.

CONTRACTOR'S SUBMITTAL

LAW OFFICES
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April 1, 2016

Via Hand Delivery:

Steven van Beverhoudt
Inspector General of the Virgin Islands
2315 Kronprindsens Gade #75
Charlotte Amalie, St. Thomas, V.I. 00802-6468

RE: Draft "Inspection" Report of Professional Services Contract #PC-DJ-081-2004 (the "Contract")

Mr. van Beverhoudt:

Thank you for the very brief opportunity to review your draft report. In the short time we had to review your draft report, we met with (a) former Attorneys General Iver Stridiron and Vincent Frazer regarding the assumptions and conclusions in your report and (b) Brian Miller, the former Inspector General of the United States General Services Administration, regarding the process by which you made your assumptions and reached your conclusions. Our discussions with the former Attorneys General confirmed what is transparent to truly independent analysis: The conclusions in the draft report are directly contradicted by the documents provided to you, by the Consent Decrees that were made available for public comment and signed by a Federal District Court Judge, and the understanding of the people involved in the negotiation and administration of the Contract and the South Shore litigation. Our discussions with Mr. Miller highlight serious flaws in your inspection: among other things, your failure to interview AG Stridiron or to meet with John K. Dema: The process by which you reached the conclusions in the draft report was egregiously flawed and violated multiple standards that govern your profession. For the reasons set forth in this letter and the accompanying documents, we urge you to take the opportunity to revisit your faulty assumptions and erroneous conclusions in light of the *actual* facts and the *actual* understanding of the parties at the time, and during the administration, of the Contract. Otherwise, you will be doing an even greater disservice to yourself, the Office of V.I. Inspector General, the Office of the Attorney General, the law firm of John K. Dema, P.C. and its associated counsel.

Attached to Mr. Miller's review are the affidavits of former Attorneys General Stridiron and Frazer. The draft report heavily relies on the purported statements of the Attorneys General "who were in office during the awarding of the contract and the period of the three Settlement Agreements." (IG Report at 4.) The report falsely states that those two individuals agree with your legal analysis and conclusions. The AG in office during the awarding of the contract was

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Mr. Stridiron, the current Executive Director of the Legislature. Mr. Stridiron is the person who negotiated the Contract on behalf of the Government of the U.S. Virgin Islands (the "Government" or "GVI").[1] Inexplicably, you never interviewed him, and he strongly disagrees with your assumptions and *each* conclusion in the draft report.

The AG in office during the period of the three Settlement Agreements was Mr. Frazer. Though you did interview him, you did not discover or disclose[2] in the draft report that he similarly rejects your assumptions and *each* of your conclusions. Any reliance on Mr. Frazer to support the conclusions in your report is misplaced.

The sworn statements of AGs Stridiron and Frazer completely undermine the foundation upon which your draft report is based. Only a report consistent with the statements of those former AGs has any credibility. A report that is inconsistent with their statements and based instead upon recent theories or fabrications lacks a factual foundation and has no credibility.

Given the report's major failings, there is no reason to address every inaccuracy at this time. Instead, I urge you to read in full the sworn testimony of AG Stridiron and AG Frazer. Nevertheless, I would like to highlight the following key misstatements in the draft report:

- You claim to have interviewed the former AG in office during the awarding of the contract. (IG Report at 4.) Mr. Stridiron was AG at that time. You did not interview him.

  "*To my recollection, No one from the Inspector General's Office, nor the Department of Justice, has ever contacted me to discuss the Contract, even though I was there during the formation of the Contract, participated in the litigation while at the Waste Management Authority, and personally observed the exceptional performance of the Dema Firm and its associates.*" (Stridiron Affidavit at ¶ 30.)

- You state that both former AGs "indicated that restoration and cleanup costs should not be included as part of the contingent fee computation." (IG Report at 30.) This statement is false.

  "*On behalf of the GVI, I always understood and interpreted the fee structure to include calculation of the cost of the physical restorations to be demanded of the defendants in the calculation of the Dema firm's compensation. That's what was*

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1 On behalf of the Government, AG Stridiron negotiated the Contract with John K. Dema, the President of John K. Dema, P.C. (Stridiron Affidavit at ¶ 16).

2 As Mr. Frazer stated, "[i]n the summer of 2015, Mr. van Beverhoudt and Leo Gardner from the Office of the Inspector General interviewed me regarding the Contract and the litigation undertaken pursuant to the Contract. *The information I provided to those gentlemen is consistent with the statements I have made in this Affidavit*." (Frazer Affidavit at ¶ 61) (emphasis added).

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> *negotiated by the Dema firm and the Government, and anyone who states otherwise is just wrong.*" (Stridiron Affidavit at ¶ 23.)
>
> "*I also have been advised that the GVI more recently has taken the position that the Dema Firm is not entitled to compensation based on the non-cash recoveries in the form of valuable covenants to restore the Virgin Islands' natural resources. I disagree with that interpretation of the Contract. Paragraph 3 of the Contract requires the payment of fees based on 'any recovery or settlement monies.' I interpreted the word 'recovery' to include non-cash recoveries in the form of the valuable restoration services that are memorialized in two Federal Consent Decrees.*" (Frazer Affidavit at ¶ 27.)
>
> "*This [current] administration's allegation that the attorneys' fees violate the Contract is meritless.*" (Frazer Affidavit at ¶ 23.)

- You state that the former AG supported your position that my client is not entitled to reimbursement for the total expenses he advanced on behalf of the Government as you assume that the Contract capped expenses at $1.5 million. (IG Report at 31.) This statement is false as is the assumption upon which it is based.

> "*If the current thinking is that the $1.5 million was a total cap on the amount the Dema Firm would be reimbursed, regardless of how much it agreed to spend for the benefit of the Virgin Islands, the government would simply have kept the language of the Tutu contract.*" (Stridiron Affidavit at ¶ 27.)
>
> "*In his September 23, 2015 letter, Mr. Walker also asserted that the Dema Firm was not entitled to $4,045,173.72 in expense reimbursement, and may not be entitled to the remaining $1,500,00 in expense reimbursement, under the Contract because, under Mr. Walker's interpretation of Paragraph 4 of the Contract, litigation expenses were 'capped' at $1.5 million. I dispute that assertion; it is a misinterpretation of the Contract.*" (Frazer Affidavit at ¶ 32.)
>
> "*The language in Paragraph 4 does not 'cap' litigation expenses, but rather limits the amount of expenses that the Dema Firm could be required to advance. Thus, I interpreted the limitation on "outstanding and unreimbursed" expenses to protect the Dema Firm from being forced to finance all of the litigation expenses throughout years of litigation against multiple defendants. At my request, due to the GVI's lack of financial resources to pay litigation expenses above $1.5 million, the Dema Firm agreed not to enforce the $1.5 million limitation on the amount of 'outstanding and unreimbursed' expenses. Dema was gracious in agreeing not to enforce that limitation and thereafter advancing fees that, from time to time, were outstanding and unreimbursed in an amount in excess of $1.5 million. The Dema Firm's agreement not to enforce the contractual limitation was*

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> *for the benefit of the GVI, which was able to continue the Recovery Actions notwithstanding the GVI's financial limitations.*" (Frazer Affidavit at ¶ 33).

- You state that AG Frazer "allowed the Contractor to take full control of the litigation process, with no oversight or supervision by an Assistant Attorney General." (IG Report at 21.) This statement is false.

> "*The Recovery Actions were some of the most important cases being litigated on behalf of the GVI. I directly oversaw the cases, and I regularly spoke with John K. Dema ("Dema") regarding the status of the Recovery Actions, including without limitation, the progress of the litigation, the preparation and content of expert reports, the progress of other discovery, and the status and progress of settlement discussions.*" (Frazer Affidavit at ¶ 18.)

> "*On behalf of the GVI, I reviewed pleadings and other court submissions and regularly communicated with the Dema Firm regarding litigation strategy, progress of the Recovery Actions, settlement strategy and decision-making. I also attended multiple mediation sessions during which settlement negotiations occurred. In short, during my tenure as Attorney General, I controlled and supervised the prosecution and settlement of the Recovery Actions.*" (Frazer Affidavit at ¶ 19.)

- You state that funds were disbursed prematurely. (IG Report at 27.) This statement is false.

> "*If the Government wanted to wait until the end of all litigation before disbursing any of the individual recoveries, we would have negotiated for that condition in the Agreement. Doing so would not have made any sense, so we did not.*" (Stridiron Affidavit at ¶ 24.)

> "*I have read the letter dated September 23, 2015, from then Acting Attorney General Claude Earl Walker ("Mr. Walker") in which Mr. Walker claims that the Dema Firm should not have received any payment for its services until after all of the Recovery Actions had terminated. I disagree with Mr. Walker's interpretation of the Contract.*" (Frazer Affidavit at ¶ 7.)

> "*The reference in paragraph 4 of the Contract to the 'termination of all involved litigation' (emphasis added) refers to the litigation 'involv[ing]' the defendant that was settling with the GVI. The parties' course of dealing under the Contract was consistent in interpreting the Contract to require payment to the Dema Firm upon termination of all litigation 'involv[ing]' a particular defendant. There were no premature payments to the Dema Firm.* (Frazer Affidavit at ¶ 26.)

Further, it is our understanding that your Office does not employ a lawyer, did not independently retain outside counsel for this inspection and may have relied upon the Office of

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the Attorney General to provide the legal analysis for the report. If true, that fact would mean that you were "directed" by Governor Mapp (as he indicated in a press conference) to conduct the inspection, used the legal analysis supplied by the Attorney General, and then made all assumptions and conclusions as appropriate to the apparent goal of supporting the Government's position in a court-ordered arbitration between the Government and the Dema firm. A proper IG report should disclose the qualified attorney that provided the relevant legal analysis. Please disclose the identity of such attorney(s).

As indicated above, the examples set forth in the letter are illustrative, not exhaustive. There are many other factual errors, bad assumptions, and incorrect conclusions. For the sake of full disclosure, your report also includes incorrect legal conclusions that are based on erroneous assumptions about the facts, misapplication of the Court rulings, and misstatements regarding the nature of the litigation pursued on behalf of the Government.

You now have the benefits of the sworn testimony of AG Stridiron and AG Frazer. You also have the benefit of the process comments from Mr. Miller. You have had the Consent Decrees and Settlement Agreements as well as access to the public rulings of the Federal District Court of the Virgin Islands. If you choose to ignore them and publish the draft report in its current form and substance, you will knowingly be publishing false and defamatory information and violating my clients' constitutional rights. Accordingly, we trust that this time you will strive for independence and revisit all (a) factual "findings" or assumptions that are inconsistent with the sworn statements of AG Stridiron (who negotiated the Contract) and AG Frazer (who administered the Contract), (b) the conclusions based on those findings or assumptions, (c) the statements made regarding the litigation and the legal conclusions based on those statements. If you choose to publish a final report, please attach this letter, the affidavit of AG Stridiron, the affidavit of AG Frazer, and the report of Mr. Miller to the final report.

Sincerely yours,

LAW OFFICES OF
ANDREW L. CAPDEVILLE, P.C.

Andrew L. Capdeville

Enclosures
cc: Honorable Claude E. Walker, Esq., Attorney General
Joseph Ponteen, Esq., Chief Deputy Attorney General

CONTRACTOR'S SUBMITTAL

**Statement of the Honorable Brian D. Miller
Concerning the Draft Report of the
Inspector General of the Virgin Islands**

April 1, 2016

The Honorable Brian D. Miller,
Former Inspector General of
U.S. General Services Administration

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I have been retained by the Law Offices of John K. Dema, P.C., (the "Dema Firm") and Richardson, Patrick, Westbrook & Brickman, LLC, to review the draft Virgin Islands Inspector General Report titled, "Inspection of the Professional Services Contract for the Pursuit of Damages to the South Shore of St. Croix, Virgin Islands" (the "Draft Report"). I was Inspector General of the United States General Services Administration for nearly a decade, where I led an office of over 300 auditors, special agents, lawyers, and support staff in fighting fraud, waste, and mismanagement through nationwide audits and investigations of an agency with over 12,000 employees handling over $50 billion annually. I received many awards for my work as Inspector General, including awards from the United States Comptroller General and the United States Attorney General.

Notably, I received The David M. Walker Excellence in Government Performance and Accountability Award (2012) and the Attorney General's Distinguished Service Award (2008). Prior to serving as Inspector General, I worked in the U.S. Department of Justice for 15 years, including 12 years as an Assistant United States Attorney. In 2008, I was named among "Those Who Dared: 30 Officials Who Stood Up for Our Country," a special report of the Citizens for Responsibility and Ethics in Washington. The United States Congress invited me to testify on many issues facing inspectors general. Last August, the United States Senate Judiciary Committee asked me to testify regarding the Inspector General Act.

My professional opinion is that the Draft Report:[1]

- was not prepared in compliance with the professional standards that govern Inspectors General;
- is directly contradicted by objective evidence and sworn statements of material witnesses;
- is the product of a process that lacked the independence, depth, and integrity expected of an inspector general ("IG") report; and
- seems to be intended as litigation support in the current administration's ongoing civil dispute with the two law firms, rather than as an objective and impartial inspection to improve the efficiency and effectiveness of a governmental program or operation.

The most crucial aspect of any report is its objectivity, evenhandedness, and fairness. An inspector general must ensure that opinions, conclusions, judgments, and recommendations are impartial and will be viewed as impartial by knowledgeable third parties. Any notion of prejudging the issue or using evidence as a pretext to reach a preconceived result has no place in an IG report. The V.I. IG's inspection seems to run afoul of these principles from its very inception. It was announced by the Governor, not the IG, at a press conference in which the Governor suggested that payments made to the law firms may have been improper and

[1] In addition to the Draft Report, this review is supported by an analysis of key documents, including the affidavits of former V.I. Attorneys General Iver Stridiron and Vincent Frazer, the contract, Federal Consent Decrees, signed approvals of the disbursements of litigation recoveries, and communications between the Dema Firm and V.I. Attorneys General and the V.I. Inspector General. The sworn statements of former AGs Stridiron and Frazer are attached as Exhibits A and B.

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that the former Attorney General may have mishandled the matter. These suggestions are the findings sought by the Governor. These are also the allegations that underlay current litigation between the Office of the Attorney General (the "AG") and the law firms. And now these are the conclusions of the Draft Report.

The IG failed to establish an independent basis for conducting the inspection, failed to adequately plan the inspection to ensure a fair and objective process, and ultimately failed to support his findings with sufficient, competent, and relevant evidence. The IG appears to have finalized the report, sent his results to the Office of the AG by early February, and received the AG's response in late February. He failed to interview the actual parties involved in the contract negotiation, and refused to meet with the Dema Firm. The Draft Report was only sent to the Dema Firm after multiple requests from counsel.

My opinion is of the Draft Report, which may change when issued as a final report. As such, I have focused on the fundamental, structural, and procedural aspects of the Draft Report. More details of factual inaccuracies and flaws may follow after the IG releases a final report.

However, certain problems in the Draft Report are so significant that they compromise the integrity and the credibility of the entire process:

- Iver Stridiron was the Attorney General who participated in contract negotiations and was in office during the "awarding of the contract." He was never interviewed, and he disagrees with each of the IG's conclusions. *See* Affidavit of Iver A. Stridiron, Exhibit A at ¶ 30:

    - *"To my recollection, No one from the Inspector General's Office, nor the Department of Justice, has ever contacted me to discuss the Contract, even though I was there during the formation of the Contract, participated in the litigation while at the Waste Management Authority, and personally observed the exceptional performance of the Dema Firm and its associates."*

- Vincent Frazer was the Attorney General during the "period of the three Settlement Agreements." The IG did interview Mr. Frazer. Throughout the Draft Report the IG attributes certain statements to Mr. Frazer and claims that Mr. Frazer agrees with the IG's findings. He does not. Mr. Frazer disagrees with each of the IG's conclusions. *See* Affidavit of Vincent, ¶ 8:

    - *"Statements made by Governor Mapp, Mr. Walker, and Mr. van Beverhoudt demonstrate a complete lack of understanding of the Contract, and of the nine years of major litigation, involving four different cases, undertaken pursuant to the Contract."*

- Federal Consent Decrees, signed by District Court Judge Harvey Bartle after being published for public comment, contradict the findings of the Draft Report. *See, e.g., Commissioner of DPNR v. Century Aluminum Co.*, Civ. Act. #1:05-cv-00062-HB, Agreement and Consent Decree Regarding the Former Alumina Refinery Property, Anguilla Estate, St. Croix, U.S. Virgin Islands, at ¶ 31 (Dkt. #1076) (D. V.I. entered Feb. 17, 2012); *Commissioner of DPNR v. Century Aluminum Co.*, Civ. Act. #1:05-cv-00062-HB, Agreement and Consent Decree Regarding the Former Alumina Refinery Property, Anguilla Estate, St. Croix, U.S. Virgin

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Islands, at ¶ 26 (Dkt. #1521) (D. V.I. entered July 21, 2014); *see also Commissioner of DPNR v. Century Aluminum Co.*, Civ. Act. #1:05-cv-00062-HB, Memorandum Op. at pp. 16-17 (Dkt. #1068) (D. V.I. Feb. 13, 2012).

- The IG never interviewed John K. Dema, the President of the actual contractor. As a participant in the negotiation, Mr. Dema's views are important to a proper and an objective understanding of the contract negotiation and litigation. The Draft Report asserts that Mr. Dema refused to comply with the IG. That is incorrect. Mr. Dema requested to meet with the IG on multiple occasions. Those requests were refused.
- The IG fails to mention that the current administration and the two law firms are currently in litigation to resolve the disputed issues. Later this year, an arbitrator is scheduled to decide the very issues of contract interpretation raised in the Draft Report. This is a failure to disclose an impediment to independence and objectivity. Obviously, the IG would have an incentive not to determine the issues in a way adverse to the Government of the Virgin Islands (the "Government") or otherwise create a record adverse to the Government's position in such litigation.

I. THE IG FAILED TO FOLLOW THE QUALITY STANDARDS FOR INSPECTION AND EVALUATION

The Draft Report states that the inspection was done in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspections (the "Quality Standards"). Draft Report at 4. That is not accurate.

The Quality Standards are designed to ensure the impartiality, reliability, and credibility of an inspection. A failure to adhere to the Quality Standards detracts from the integrity and trustworthiness of both the inspection and inspection report. Such a failure also harms the reputation of the Office of the Inspector General conducting the inspection, and reflects poorly upon the effectiveness of Inspectors General collectively.

II. THE METHODOLOGY OF THE INSPECTION COMPROMISES THE OBJECTIVITY OF THE REPORT

The Quality Standards state:

> *Evidence supporting inspection findings, conclusions, and recommendations should be sufficient, competent, and relevant and should lead a reasonable person to sustain the findings, conclusions, and recommendations.*

See Quality Standards at 12. "Inspection reporting normally should describe the objective(s), scope, and methodology of the inspection . . . ." Quality Standards at 17. The methodology, standards, and evidence should be clearly and fully detailed in the report to ensure objectivity and fairness. The Draft Report does not do this with sufficient detail.

A proper IG report lets the facts lead to an objective conclusion. The IG did not set forth an objective methodology for gathering and assessing evidence. This failure is evidenced in the information missing from the report. The IG failed to interview the former AG who negotiated

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the contract--perhaps the most important person involved in the procurement. Moreover, AG Frazer, who the IG did interview, has submitted a sworn affidavit substantially disagreeing with every one of the IG's conclusions. The fact that the IG reached sweeping conclusions that are contrary to the sworn testimony of the two most important Government representatives – the AGs that negotiated and administered the Contract – suggests that the IG's process for gathering evidence was negligent.

Further, the IG made no attempt to interview the Contractor that is central to the Draft Report. In fact, the IG refused to meet in person with the Dema Firm. Such refusal is not characteristic of an open and fair-minded process or any desire to communicate effectively as provided in the Quality Standards. *See* Quality Standards at 19 ("*Each inspection organization should seek to facilitate positive working relationships and effective communication with those entities being inspected and other interested parties.*") (emphasis in original). By failing to interview Attorney Dema, and compounding his error in failing to interview AG Stridiron, the IG ensured that his report would not benefit from information in the possession of either of the two people who negotiated the Contract. This demonstrates the lack of an objective methodology to gathering and analyzing evidence.

III. **COMPETENCY**

A minimum requirement of the Quality Standards is competency:

> *The staff assigned to perform inspection work should collectively possess adequate professional competency for the tasks required.*

See Quality Standards at 1 (original emphasis). Specifically, personnel conducting an inspection should have the knowledge, skills, abilities, and experience necessary for the assignment. *Id.*

This Draft Report is much more "legal" in nature than evaluative. In fact, each of the IG's eight major conclusions relies on legal interpretation. The IG acknowledges that the report makes recommendations regarding the "legality" of the Contract. See February 8, 2016 Letter from the IG to AG Walker.

My understanding is that the General Counsel position in the IG's office is vacant. According to the IG's own job description for the position, the General Counsel is supposed to provide legal advice and interpretation of law and have complete independence in determining opinions on matters of legal significance. The IG proceeded to draft a report based on conclusions of law, instead of facts, without the skills he acknowledges are necessary to analyze those issues. The Quality Standards state that an IG may need to hire specialists who are skilled in the relevant law of the inspection if they are not already employed. *See* Quality Standards at 2. If the IG used the services of the Office of the Attorney General, or other counsel, it should be disclosed in the Draft Report. Of course, use of the services of the Office of Attorney General, described as the "auditee," would compromise the integrity of the inspection. The failure to identify the source of the legal analysis in the Draft Report leads me to conclude that the report does not meet the standards for competency.

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IV. THE IG FAILED TO REPORT IMPEDIMENTS TO HIS INDEPENDENCE

The Quality Standards emphasize the importance of independence as follows:

> *In all matters relating to inspection work, the inspection organization and each individual inspector should be free both in fact and appearance from personal, external, and organizational impairments to independence.*

See Quality Standards at 2 (original emphasis). "Inspectors and inspection organizations have a responsibility to maintain independence so that *opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial* by knowledgeable third parties." *Id.* (emphasis added.).

As the Draft Report concedes, "The inspection was initiated based on a request by the Governor of the Virgin Islands that we review the professional services contract and the invoices submitted by the Contractor." *See* Draft Report at 4. Whenever a political figure requests that an IG conduct an audit, inspection, or investigation, the IG must be particularly careful to ensure that the review was not undertaken for political reasons. The current V.I. Inspector General's term is due to expire in August 2016. It will be up to the Governor to reappoint him. This creates an obvious impairment to the IG's independence, as the IG's inclination will be to please the Governor so that the IG is reappointed. If an impairment to independence affects the ability to perform the work and report results impartially, the Quality Standards direct that the inspector should decline to perform the work. If it is not possible to decline the work, the impairment must be reported in the scope section of the report. *See* Quality Standards at 3.

The Draft Report fails to do so. Further, as long as the IG lacks its own counsel, the IG is subject to the influence of the outside attorney providing legal analysis. In the current situation, if the Office of the Attorney General provided legal analysis for the Draft Report, while being the stated "auditee," that impairment would present an insurmountable obstacle to independence. The Draft Report, by its very nature, would be the result of a tainted, unfixable process, particularly since the IG's conclusions rely almost entirely on legal interpretation of contractual language.

V. CONCLUSION

Based on my experience, my review of the Draft Report and the sworn affidavits of former Attorneys General Stridiron and Frazer, and other documents related to the contract, it is my professional opinion that the Draft Report reflects a lack of independence stemming from the fact that the investigation was launched and driven by the Governor's request at his press conference. The IG never exercised due diligence in examining whether he had an adequate independent justification to conduct an inspection. He never created an adequate scope for the inspection, never properly staffed it, never formed an adequate plan for collecting and analyzing evidence to support his conclusions, and never interviewed the two key witnesses – AG Stridiron and Attorney Dema – who negotiated the Contract that the IG purports to interpret. Material evidence he did collect, including statements from AG Frazer, appear to be inaccurately reported. The Draft Report does not reflect a proper inspection, one that measures the performance of government programs or operations against best practices or standards. Instead, the Draft Report

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bears all of the hallmarks of a unfair, result-oriented litigation tool that was prepared for the Office of the AG and Governor in their announced civil dispute with the Dema Firm.

By:

The Honorable Brian D. Miller,
Former Inspector General of U.S. General Services Administration

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EXHIBIT A

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AFFIDAVIT OF IVER A. STRIDIRON

I, Iver A. Stridiron, being first duly sworn depose and say:

1. I am over eighteen years of age and am competent to make this Affidavit.
2. I am a resident of the United States Virgin Islands.
3. I have personal knowledge of the facts set forth in this Affidavit.
4. I am a licensed attorney and a member of the bar of the United States Virgin Islands.
5. I have been advised that a Retainer Agreement (Contract) between the Government and the law firm of John K. Dema has been called into question. This Affidavit is a statement of my recollection of the negotiation for, the creation of, the execution of, and the work performed by the Dema Law firm under the Contract. In terms of documentation, the Contract File maintained at the Department of Justice should contain my documents related to the referenced Contract as it was being negotiated, as well as notes of the reports provided to me by the Dema Firm while I was serving as Attorney General. The Waste Management Authority should similarly have the voluminous files which I maintained while serving as the Authority's Legal Counsel and Defense Counsel during the litigation which ensued between the Government and what became known collectively as the HOVENSA and Alumina Defendants.

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6. On July 20, 1999, former Governor Charles W. Turnbull formally swore me in as Attorney General of the United States Virgin Islands. I had served as the Attorney General-Nominee from February 1999, and my tenure ended in September 2004.
7. From December, 2004 to January 2013, I was legal counsel for the Waste Management Authority (WMA), and personally participated in what is known as the St. Croix South Coast Industrial Area Litigation, as the WMA defense Counsel. In keeping with those litigation responsibilities, I personally attended and participated in many depositions taken by the Dema Firm and the Defendants (involving prospective witnesses with information hailing back to the early 1960's), reviewed its Motion practice and quality of briefs, reviewed extensive expert reports and witnessed its conduct in what became a very complex series of litigations.
8. From on or about February 4, 2013 to the present, I have served as the Executive Director of the Virgin Islands Legislature.
9. In 2004, and earlier, the south coast industrial area of St. Croix (the "South Coast Industrial Area") had long suffered from serious environmental pollution; air, land and water, allegedly caused by the alumina processing and oil refining operations. Piles of "Red Mud" and petrochemicals were alleged to be ravaging the natural resources of St. Croix and adversely affecting the residents of the Island (especially those who resided or worked to the west and north of the south coast facilities).

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10. The environmental conditions demanded attention, but I can attest that the Government simply did not have the manpower resources in the Department of Justice to address the issues. Further, the Government did not have the resources to pay outside counsel fees or expenses to pursue the Government's claims against the potentially responsible parties (PRPs) so that we could obtain money damages from the HOVENSA and Alumina Defendants as a result of the contamination, as well as to force the PRPs to restore the natural resources in the South Coast Industrial Area. And it was the restoration of the natural resources which was the principal concern of the then Governor.
11. So, not only did the Government lack the resources to pay for the litigation, we also knew that litigation against well-funded PRPs would be very complicated and would involve difficult questions of proof and law, all of which further added to the uncertainty of a successful outcome.
12. In light of the expense, complexity, and novelty of the litigation, and based on my much earlier experience as an Assistant General Counsel with the Nuclear Regulatory Commission in Washington, DC (litigating environmental issues related to siting nuclear power plants), I conveyed to the Governor, and he accepted, that the Government ran a considerable risk or uncertainty in prevailing in the then contemplated litigation.
13. The considerable risk was compounded by the fact that the PRPs involved some of the Country's largest corporations, and it was likely, given their

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considerable exposures should they lose to the Government, that they would commit significant resources to vigorous defensive litigation. And, again, I can personally attest as the WMA Counsel that this is what occurred.

14. Upon joining the Department of Justice, I was briefed by my predecessor at the Office of the Attorney General, Julio Brady, Esq., that the Dema Firm was successfully representing the Government in litigation relating to damages to the natural resources of the Territory with respect to the Estate Tutu Wells litigation and the AT&T litigation.

15. Because I had assumed the role of Attorney General during the winding down of the aforementioned litigations, and not otherwise being familiar with Attorney Dema or his firm, I did search for another law firm qualified to take on the HOVENSA and Alumina litigation. However after review, I determined that the Dema Firm had prior experience representing the Government in environmental litigation, and that it was singularly qualified to pursue natural resource damage claims, and to assist the Department of Justice. This was all due to both the Dema Firm's expertise in environmental litigation, their success in the referenced environmental litigation, and no less its ability to fund the litigation costs which was a major concern of the Department and the Governor.

16. On behalf of the Government, I then negotiated a Professional Services Contract with the Dema Firm. At all times, I was the primary person, as

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assisted by my Solicitor General Division lawyers, involved in those negotiations on behalf of the Government.

17. On May 7, 2004, the Government's Department of Property & Procurement, on behalf of the Department of Justice, and based on my recommendation that the Contract was "legally sufficient", entered into a Professional Services Contract with the Dema Firm. I further executed the Contract on behalf of the Department of Justice.
18. Pursuant to the Contract, the Dema Firm was hired to aid the Government on a contingency basis with respect to the South Coast Industrial Area Litigation.
19. As stated above, because the GVI had neither the resources to use its own staff nor to advance expenses and pay the fees of counsel, we agreed to retain the Dema Firm to pursue the South Industrial Area Litigation on a contingent fee basis. Specifically, the Dema Firm would advance all litigation expenses. Those expenses would be reimbursed out of any recoveries if the litigation was successful. If the litigation was not successful we agreed in the Contract to reimburse the Dema Firm's expenses, but without interest accruing during the time it made those advancements. However, payment of the Dema Firm's fees, as opposed to the advanced expenses, was to be made only out of the recovery or settlement monies. If the Dema Firm did not prevail in the litigation, it would not be paid any fees for its extensive work. This arrangement allowed the Government to aggressively pursue the litigation, matching the efforts of the several well-funded defense counsel, without the

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necessity of spending the millions of dollars in fees and expenses necessary to pursue these complex claims.

20. It should be noted that the Contract between the Government and the Dema Firm was modified during arms length negotiations for the HOVENSA and Alumina litigation. The Contract was a modification of the Contract drafted by then Attorney General Julio Brady for the Tutu Wells litigation. In the negotiation for the HOVENSA and Alumina Contract, the Dema Firm agreed to reduce its fee percentages due to the potential greater recovery of this larger and more complex litigation, and other slight modifications were made to the Contract.

21. I understand that one of the issues in dispute is at what point in the various lawsuits was the Dema Firm to have received its earned fees and costs. It is my recollection that the Contract provided that as matters were resolved with regard to a particular defendant the Dema Firm would have earned its fees, and would have been entitled to receive compensation at that point. In fact, I recall that in at least the Tutu Wells case that was the compensation procedure followed by the Government and the Dema Firm as provided under that Contract. We did not change that term nor procedure in the HOVENSA and Alumina Retainer Agreement if one was to compare the two or three Retainer Agreements. In short, if all litigation involving a particular defendant was resolved, through judgment or settlement, in the Government's favor, then the Dema Firm would be entitled at that point to

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payment of its fees and expenses relating to that resolved litigation. I in fact recall that at certain intervals in the cases relating to the Alumina defendants, while I was representing the WMA, settlements were reached, and I believe the Dema Firm and the Government agreed to the disbursement of recoveries, whether cash or non-cash recoveries such as the beginning of environmental restoration services for the Government, at those junctures.

22. The parties' historical course of dealing in the earlier cases also was consistent with the Justice Department and the Governor's approval of the various settlements and the approval of the periodic payment of fees. Based on the same language in the Government's contracts with the Dema Firm relating to the HOVENSA and Alumina litigation, periodic payments were made as settlements were obtained with one or more particular defendants, thereby ending that particular litigation. Note that the litigation strategy was to knock off the weaker corporate defendants so as to winnow down the parties and issues, and to thereby focus the Dema Firm's manpower and financial resources on the remaining party defendants. The strategy was also to force the Alumina Defendants to begin the environmental restoration work as quickly as possible in order to best prevent future harm to the St. Croix environment.

23. I also understand that there is a concern or position that the Dema Firm is not entitled to compensation based on the non-cash recoveries in the form of formal agreements to restore the despoiled natural resources of the south

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shore area. If that is an interpretation of the Contract, I disagree. As I set forth above, the then Governor was principally concerned with the restoration of the natural resources; that is, resolving the Red Mud pile and cleaning up the aquifers. Damages in money was actually not the driving force behind the Governor's decision to sue the HOVENSA and Alumina defendants. Rather it was his concern principally for the health of the down-wind and down-stream residents on St. Croix. On behalf of the GVI, I always understood and interpreted the fee structure to include calculation of the cost of the physical restorations to be demanded of the defendants in the calculation of the Dema firm's compensation. That's what was negotiated by the Dema firm and the Government, and anyone who states otherwise is just wrong.

24. To put it succinctly, on behalf of the Government and at all relevant times, we always contemplated and insisted that part of the litigation recovery would come in the form of restoration services, and part would come in the form of money damages. At all times, we understood and intended, on behalf of the Government, that the Dema Firm would be paid on the value of the combined recovery and settlement monies, and that payments would be made as each separate recovery was achieved. If the Government wanted to wait until the end of all litigation before disbursing any of the individual recoveries, we would have negotiated for that condition in the Agreement. Doing so would not have made any sense, so we did not. If the Government wanted to only pay the Dema Firm based on the percentage of cash recoveries, we would

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have similarly negotiated for that condition. We did not. Again, the main purpose of the litigation was to force the defendants to restore the environment. It would not make any sense for the Government to pursue the litigation with that goal, but not pay the Dema Firm for the totality of their work.

25. As a final matter, I also understand that the extent to which the Dema Firm was to advance expenses on behalf of the Government has been raised as another issue. On that matter I do not clearly recall the language in the Agreement, other than my position that if "Jack" Dema was going to sue on behalf of the Government he would have to do so "on his own dime" and then be fully reimbursed because the Government would simply not have been easily able to finance the litigation. In fact, because of my concern about the complexity of the proposed litigation and the costs which we would have had to pay out in real time, I had suggested to the then Governor that he use his good Office to personally reach out to the Chairman of Hess Oil to determine if an amicable resolution could be forged; thereby obviating the need for lengthy and expensive litigation. The Governor rejected that recommendation and opted for litigating the issues. I also know that during the litigation, HOVENSA took the position in writing that the Government had no chance of succeeding in the litigation and, until the Dema Firm began achieving victories in the litigation, refused to offer a single dime to settle the litigation. Given that position by HOVENSA, I think it quite unlikely that any

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settlement beneficial to the Virgin Islands would have been achieved without the extensive litigation which resulted.

26. Generally as it pertained to the expenses issue, there may have been a "Cap" on the amount of fees the Dema Firm was required to advance on behalf of the Government inserted in the Retainer Agreement. Everyone involved knew that this major environmental litigation would be expensive, particularly given the amount of expert work required in environmental cases. We did not have a reliable estimate of the probable costs of litigation, but we agreed that under the Contract, the Dema Firm would not be required to advance more than $1.5 million. It was the intent of the parties that the Government would then pay the additional costs for expert witness fees, inspections, testings, travel related expenses, and the like.

27. In preparing this affidavit, I again reviewed the Contract and the Tutu Wells contract on which it was based so as to refresh my memory of the HOVENSA contract negotiations. To my reading, the plain language of the Tutu Wells contract placed a cap on the amount of expenses the Dema Firm would be reimbursed. This HOVENSA and Alumina Contract specifically modified that language to change it from a fixed cap on reimbursement, to a protection on the amount the Dema Firm would have to advance. If the current thinking is that the $1.5 million was a total cap on the amount the Dema Firm would be reimbursed, regardless of how much it agreed to spend for the benefit of the

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Virgin Islands, the government would simply have kept the language of the Tutu contract.

28. The fact is that I frequently sat at the table with all the litigants at locations throughout Mainland, and can attest that all parties expended large sums in expert witness fees, materials, and all other expenses of litigation.

29. If the truth be told, the only parties to the litigation who did not incur comparable litigation expenses, were my client; the WMA, and the Virgin Islands Port Authority (VIPA) which, though a Party, did not attend nor participate in the litigation at all. There was in truth a commonality of interests as between the Central V.I. Government, the WMA, and the VIPA to the extent that the expert witnesses and Motions Practice provided by the Dema Firm were of benefit to us. We didn't have to retain expert witnesses because the Dema Firm's witnesses, as a matter of the aforementioned commonality of interests, defended our positions, and the Dema Firm paid those expenses. And those expenses were to be reimbursed in their totality to the Dema Firm whether the Government prevailed or not. That agreement was in recognition of the tremendous effort which the Firm would have to put forth in order for the Territory to see its natural resources restored by those who had allegedly caused the state of pollution. Dema could have pulled the plug on advancing costs after the Cap was reached, but I do not believe the Government objected to his agreement to advance additional expenses which were ultimately to our benefit.

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30. To my recollection, No one from the Inspector General's Office, nor the Department of Justice, has ever contacted me to discuss the Contract, even though I was there during the formation of the Contract, participated in the litigation while at the Waste Management Authority, and personally observed the exceptional performance of the Dema Firm and its associates.

31. I was satisfied with the quality and effectiveness of the Dema Firm's work in the South Coast Industrial Area Litigation. I was there; I saw the firm in action, and they prevailed against well financed opposition which adopted a "scorched earth" approach to their collective defense.

Further affiant sayeth not.

DATED: March 30, 2016

Iver A. Stridiron

Subscribed and sworn to before me this 30th day of March 2016.

(NOTARY PUBLIC)

My Commission Expires: At the pleasure Of the Lt. Governor

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EXHIBIT B

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AFFIDAVIT OF VINCENT F. FRAZER

I, Vincent F. Frazer, being first duly sworn depose and say:

1. I am over eighteen years of age and am competent to make this Affidavit.

2. I am a resident of the United States Virgin Islands.

3. I have personal knowledge of the facts set forth in this Affidavit.

4. I am a licensed attorney and a member of the bar of the United States Virgin Islands.

5. On January 22, 2007, former Governor John P. de Jongh, Jr., designated me to the position of Attorney General of the Virgin Islands and on March 20, 2007, my designation was confirmed by the Legislature of the Virgin Islands. I served as the Attorney General of the Virgin Islands until January 2015.

I. Introduction

6. During my tenure as Attorney General, I was responsible for the administration of a Professional Services Contract dated May 7, 2004 (the "Contract"), between the Government of the Virgin Islands ("GVI"), Department of Property & Procurement ("DPP"), on behalf of the Department of Justice, and John K. Dema, P.C. (the "Dema Firm"). In addition, Richardson Patrick Westbrook & Brickman, LLC ("RPWB"), as co-counsel, provided legal services to, and incurred expenses for the benefit of, the GVI pursuant to the Contract.

7. It is my understanding, from public statements, correspondence, and court filings, that Governor Mapp, Attorney General Walker, and Inspector General van Beverhoudt, allege that the Dema Firm violated the Contract. I do not believe those allegations are supported by the facts or have legal support.

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8. Statements made by Governor Mapp, Mr. Walker, and Mr. van Beverhoudt demonstrate a complete lack of understanding of the Contract, and of the nine years of major litigation, involving four different cases, undertaken pursuant to the Contract. That litigation successfully forced defendants to undertake the cleanup of major contamination on the South Shore of St. Croix, including the red mud pile that has plagued the local communities for decades.

9. The retention of the Dema Firm to assist the Office of the Attorney General served the public interest. It was the expressed opinion of my predecessors, my opinion upon taking office, and is still my opinion, that the expertise, specialized skills, and funding provided by the Dema Firm were necessary to achieving a just outcome that served the public interest.

10. I firmly believe without fear of contradiction that such a just outcome was achieved. Working together, the Office of the Attorney General and the Dema Firm prosecuted and settled the following civil actions on behalf of the GVI to recover damages and other relief relating to environmental damage in and to St. Croix (the "Recovery Actions") pursuant to the Contract:

a. *Commissioner of the Dep't of Planning and Natural Resources, et al., v. Century Aluminum Co., et al.,* No. 2005-cv-0062, U.S. District Court of the Virgin Islands, Division of St. Croix (the "First Federal Court Action");

b. *Commissioner of the Dep't of Planning and Natural Resources v. St. Croix Alumina, L.L.C., et al.,* No. 2006-cv-730, Superior Court of the Virgin Islands, Division of St. Croix ("First Superior Court Action");

c. *Commissioner of the Dep't of Planning and Natural Resources, et al., v. Virgin Islands Alumina Co., et al.,* No. 2006-cv-772, Superior Court of the Virgin Islands, Division of St. Croix (the "Second Superior Court Action"); and

United States Virgin Islands Dep't of Planning and Natural Resources v. St. Croix Renaissance Group, L.L.L.P., et al., No. 2007-cv-0114, U.S. District Court of the Virgin Islands, Division of St. Croix (the "Second Federal Court Action").

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11. In the Recovery Actions, the Dema Firm asserted claims for damages to the Virgin Islands' natural resources against the entities that, at various times, owned portions of an industrial area in Kingshill, St. Croix, on which both an alumina refinery and an oil refinery have operated. The defendants included Virgin Islands Alumina Corporation ("VIALCO"), St. Croix Alumina, LLC ("SCA"), Lockheed Martin Corporation ("Lockheed"), Alcoa World Alumina, LLC, ("AWA"), St. Croix Renaissance Group, LLLP ("SCRG"), HOVENSA, LLC ("HOVENSA") and Hess Oil Virgin Islands Corporation ("HOVIC"). In this Affidavit, Lockheed, VIALCO, SCA, Alcoa, and SCRG are referred to as the "Alumina Defendants." HOVENSA and HOVIC are referred to as the "Refinery Defendants."

12. After many years of litigation, the Dema Firm successfully pursued four civil actions (and one appeal)[1] against seven defendants and negotiated settlements with an agreed cash and noncash value of between $126.16 million and $144.16 million. The settlements included $67.875 million in cash and the defendants' agreement set forth in two federal Consent Decrees by Judge Harvey Bartle III, after public hearings, to perform restoration work estimated to cost between $58.285 million and $76.285 million.

13. The Dema Firm successfully ensured the resolution of a long-standing environmental problem that the GVI lacked the resources to address. The Dema Firm obtained substantial cash payments from the defendants and, most importantly, two federal Consent Decrees that insure the restoration of the Virgin Islands' natural resources – thereby placing any risk of expense overruns for the restoration construction activities squarely on the defendants.

[1] See V.I. Dep't of Planning & Natural Res. v. St. Croix Renaissance Group, LLLP, 527 Fed. Appx. 212, 215 (3d Cir. 2013) (reversing dismissal of certain claims).

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The Consent Decrees require the defendants to restore the Virgin Islands' resources regardless of the amount of funds required to do so.

14. Without the Dema Firm's agreement to advance the costs of the litigation, without its expertise in environmental litigation, and without the contingency nature of the fee arrangement, it is my professional opinion as former Attorney General in charge of the administration of the Professional Services Contract that the GVI would not have had sufficient funds and expertise to prevail in the litigation. The GVI might not have received any cash payments for damages caused to the Territory's natural resources, and most importantly, the contamination from the "red mud" in the former Alumina Site would remain unaddressed and continue to plague the surrounding communities for years to come.

II. The Department of Justice had full oversight over the litigation and work of the Dema Firm during the litigation.

15. Upon being designated Attorney General in 2007, I reviewed the Contract and was also briefed on the work the Dema Firm had been performing on behalf of the GVI, under the supervision and control of the former Attorneys General, to prosecute claims regarding the contamination of natural resources in the South Shore Industrial Area.

16. As stated in the Contract, prior to retaining the Dema Firm, the GVI undertook "an analysis of the legal, scientific and factual issues involved in successfully recovering penalties and damages resulting from the contamination of South-Central St. Croix," and recognized "the considerable risk or uncertainty inherent in this litigation." It was further acknowledged by the GVI that "the prosecution of natural resource damage and penalties claims involves many novel and difficult questions of proof and law, all of which further add to the uncertainty of a successful outcome and, therefore, the certainty of a contingent fee agreement."

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17. As Attorney General, I recognized the same risk, uncertainty, expense, and difficulty of the litigation. I also recognized that by agreeing to a contingency fee, the Dema Firm was bearing the majority of that risk, including the risk of never being paid for its many years of work if we did not win. I viewed the Contract as a benefit to the GVI and people of the Virgin Islands. At the time the Contract was executed, the GVI did not "have the funding to advance expenses" of the litigation. It also did not have the funding to "pay the customary charges of the skilled counsel involved." The contingency nature of the Contract, and the expertise of the Dema Firm, allowed the GVI to prosecute claims against some of the largest corporate defendants and law firms in the world on an even playing field.

18. The Recovery Actions were some of the most important cases being litigated on behalf of the GVI. I directly oversaw the cases, and I regularly spoke with John K. Dema ("Dema") regarding the status of the Recovery Actions, including without limitation, the progress of the litigation, the preparation and content of expert reports, the progress of other discovery, and the status and progress of settlement discussions. On several occasions, at meetings where I was present and participating, Dema also spoke to Governor de Jongh and his cabinet regarding the status and progress of the Recovery Actions.

19. On behalf of the GVI, I reviewed pleadings and other court submissions and regularly communicated with the Dema Firm regarding litigation strategy, progress of the Recovery Actions, settlement strategy and decision-making. I also attended multiple mediation sessions during which settlement negotiations occurred. In short, during my tenure as Attorney General, I controlled and supervised the prosecution and settlement of the Recovery Actions. As a result of its exceptional efforts, the Dema Firm recovered an estimated $126.16 million and

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$144.16 million in cash and restoration work for the GVI, and the Firm and its co-counsel earned $21,297,973.94 in attorneys' fees for its 10 years of work.

20. The Dema Firm, and RPWB, also advanced $5,545,173.72 in necessary litigation expenses on behalf of the GVI. Together, between expense reimbursements, and earned fees, and based on the Dema Firm's offer to use the lowest end of the estimated value of the recovery to determine the contingency fee, the GVI owed the Dema Firm a total of $26,843,147.66. I believe that such attorneys' fees and expense reimbursement are very reasonable in light of the total value of the recoveries (between $126.16 million and $144.16 million), the time incurred, and the complexity of and risks associated with the pursuit of the GVI's claims.

21. During my tenure as Attorney General, and on behalf of the GVI, I approved, in writing, the compensation paid to the Dema Firm and every expense for which the Dema Firm was reimbursed during the Recovery Actions.

22. At the end of my tenure, the Dema Firm had fully performed all of its contractual obligations to the GVI. At that time, $8,968,147.66 in professional fees was still owed to the Dema Firm.

III. The GVI was pleased with the quality of the Dema Firm's legal services and the results of the Dema Firm's efforts. Federal district judges had expressly found the settlements to be reasonable and in the interests of the people of the United States Virgin Islands.

A. Attorneys' Fees

23. This administration's allegation that the attorneys' fees violate the Contract is meritless.

24. Pursuant to paragraph 3 of the Contract, the Dema Firm's fees in the Recovery Actions were to be paid based upon a percentage "of any recovery or settlement monies," and the

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GVI would "not be responsible for the payment of any attorneys' fees or other fee compensation if there is no recovery or settlement" in the litigation.

25. On behalf of the GVI, after consultation with the Governor and his Commissioner of DPNR and Trustee of the Natural Resources of the Territory, I advised the Dema Firm that the main goal of the GVI was to force the defendants to address the contamination through provision of restoration services. Such restoration services were better than "all cash" payments to the GVI for restoration because the GVI would then have had the burden, risk, and liability of administering the environmental construction and restoration. Importantly from the GVI's perspective, requiring the defendants to restore the natural resources of the Virgin Islands shifted the burden and risk of expense overruns to the defendants.

26. I have read the letter dated September 23, 2015, from then Acting Attorney General Claude Earl Walker ("Mr. Walker") in which Mr. Walker claims that the Dema Firm should not have received any payment for its services until after all of the Recovery Actions had terminated. I disagree with Mr. Walker's interpretation of the Contract. The reference in paragraph 4 of the Contract to the "termination of all *involved* litigation" (emphasis added) refers to the litigation "involv[ing]" the defendant that was settling with the GVI. The parties' course of dealing under the Contract was consistent in interpreting the Contract to require payment to the Dema Firm upon termination of all litigation "involv[ing]" a particular defendant. There were no premature payments to the Dema Firm.

27. I also have been advised that the GVI more recently has taken the position that the Dema Firm is not entitled to compensation based on the non-cash recoveries in the form of valuable covenants to restore the Virgin Islands' natural resources. I disagree with that interpretation of the Contract. Paragraph 3 of the Contract requires the payment of fees based on

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"any recovery or settlement monies." I interpreted the word "recovery" to include non-cash recoveries in the form of the valuable restoration services that are memorialized in two Federal Consent Decrees. Those recoveries were very valuable and shifted open-ended (unlimited) risk of expense overruns to the defendants. The parties' course of dealing under the Contract was consistent with the interpretation that "recovery" included the valuable restoration services set forth in the Consent Decrees.

28. It also should be emphasized that I specifically requested, after consultation with the Governor and the Commissioner of DPNR, that the Dema Firm seek non-cash recoveries in the form of restoration services, rather than cash. I believe that it would be unjust for the Dema Firm not to be compensated for its services in obtaining the court ordered restoration of the Territory's resources after the GVI's specific instruction to proceed to obtain that result.

29. At the request of the GVI, the Dema Firm also provided many services that were not covered by the Contract. At the GVI's request, the Dema Firm agreed to, and did, provide the following services (the "Additional Services"): (a) defending counterclaims/crossclaims in the Recovery Actions; (b) drafting the underground storage tank regulations for the Virgin Islands, (c) working to qualify the Kingshill Aquifer for a sole-source designation by the U.S. Environmental Protection Agency, and (d) reviewing Resource Conservation and Recovery Act permits and commenting on other permits for the DPNR.

30. In light of all of the Additional Services that the Dema Firm provided for the benefit of GVI, and the significant results achieved in the litigation, I believe the fees to be very reasonable. The Contract was a great deal for the GVI, and I believe that it would be a miscarriage of justice for the Dema Firm not to receive the remaining $8,968,147.66 in

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professional fees owed to the Dema Firm under the Contract that represents years of professional fees for work, undertaken at great risk, that greatly benefits the people of the Virgin Islands.

B. Expenses

31. In his September 23, 2015 letter, Mr. Walker also asserted that the Dema Firm was not entitled to $4,045,173.72 in expense reimbursement, and may not be entitled to the remaining $1,500,000 in expense reimbursement, under the Contract because, under Mr. Walker's interpretation of Paragraph 4 of the Contract, litigation expenses were "capped" at $1.5 million. I dispute that assertion; it is a misinterpretation of the Contract.

32. Paragraph 4 of the Contract provided that the Dema Firm would advance "any and all . . . expenses" of the litigation and would be entitled to reimbursement for all such reasonable expenses advanced by the Dema Firm. In addition, paragraph 4 "authorize[d] and direct[ed]" the Dema Firm "to pay from the proceeds of the recovery in this case, *all* expenses and disbursements incurred but not paid" (emphasis added).

33. The language in Paragraph 4 does not "cap" litigation expenses, but rather limits the amount of expenses that the Dema Firm could be *required* to advance. Thus, I interpreted the limitation on "outstanding and unreimbursed" expenses to protect the Dema Firm from being forced to finance all of the litigation expenses throughout years of litigation against multiple defendants. At my request, due to the GVI's lack of financial resources to pay litigation expenses above $1.5 million, the Dema Firm agreed not to enforce the $1.5 million limitation on the amount of "outstanding and unreimbursed" expenses. Dema was gracious in agreeing not to enforce that limitation and thereafter advancing fees that, from time to time, were outstanding and unreimbursed in an amount in excess of $1.5 million. The Dema Firm's agreement not to

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enforce the contractual limitation was for the benefit of the GVI, which was able to continue the Recovery Actions notwithstanding the GVI's financial limitations.

34. It is illogical to interpret the $1.5 million limit on "outstanding and unreimbursed" expenses as a limitation on all expenses in the Recovery Actions, which involved seven defendants in four civil actions.

35. In addition, I had all information supporting the expenses available to me. From time to time, the Dema Firm provided me with lists of all expenses, which were approved in writing as set forth in the Recapitulations (as defined below). In addition, the expenses for experts, a significant and necessary amount of the total expenses, were set forth in their expert reports and depositions. All of the expense information was available to me. Whatever expense information I requested, the Dema Firm promptly provided to me. I believe that all of the expenses for which reimbursement was paid to the Dema Firm were incurred for the benefit of the GVI and to advance the Recovery Actions.

36. In addition, I specifically discussed, and approved in advance, having the Dema Firm incur certain substantial expenses to advance the GVI's legal theory pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in the Second Federal Court Action. Pursuant to CERCLA, the GVI could obtain a declaratory judgment against the Alumina Defendants if the GVI could establish that it had incurred certain types of expenses to investigate and address the contamination at the alumina refinery. We used experts and the costs of those experts as part of our litigation strategy, and the Dema Firm advanced the costs to the GVI to retain the experts. The expert costs in the Recovery Actions exceeded $1,500,000.00 and the GVI knew of and approved these advancements of expenses by the Dema Firm and RPWB. This strategy ultimately proved effective in obtaining (after an

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appeal to the Third Circuit Court of Appeals) a declaratory judgment holding the remaining Alumina Defendants liable for all response costs, subject to certain requirements, that the GVI had incurred and would incur in the future to address the alumina refinery pollution. This declaratory judgment, which gave the GVI a "blank check" to incur expenses to address the contamination, helped enable the GVI to obtain a very favorable settlement with Lockheed and VIALCO. Without this victory, I suspect that the case could still be in litigation against these two very strong-willed defendants.

37. I did speak with Dema at one point regarding the possible amendment of the $1.5 million limit on the Dema Firm's "outstanding and unreimbursed" expenses, but I concluded that such an amendment was not necessary because the Dema Firm could waive its right to enforce that provision, which was for the Dema Firm's benefit, and the cases were nearing settlement, which would provide for the payment of the outstanding expenses. Moreover, the GVI was not hurt by the Dema Firm's waiving its right to enforce the limit on expenses that the Dema Firm was required to advance. The waiver benefitted the GVI, which otherwise would have been required to come up with funds to pay those expenses.

38. If the Dema Firm were only able to advance $1,500,000 in expenses, the GVI would have had a difficult time, in my opinion, identifying the necessary funds to continue the litigation, and would have severely compromised its claims.

IV. The Settlement of the Recovery Actions and the GVI's Written Approvals of the Payment of Compensation and Expense Reimbursement to the Dema Firm.

A. The Alcoa Settlement and the 3/9/12 Recapitulation

39. After two mediations, a group of the Alumina Defendants (excluding Lockheed and VIALCO) were the first to settle with the GVI. The settling Alumina Defendants included SCA, AWA, and SCRG. That settlement (the "Alcoa Settlement") had an estimated minimum

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value of $29.5 million, including $3.0 million in cash and $26.5 million[2] in environmental restoration work. *See* First Federal Court Action, 1:05-cv-00062-HB, Mem. Op. at 17-18 (D. V.I. Feb. 13, 2012) ("the contractor who will oversee the corrective measures has estimated that the expense to close and vegetate Area A alone will range between $26.5 and $29.5 million").

40. On March 9, 2012, the GVI and the Dema Firm executed a recapitulation (the "3/9/12 Recapitulation"), a true and correct copy of which is attached as Exhibit A, detailing the application of the $3.0 million cash payment from the Alcoa Settlement. I executed the 3/9/12 Recapitulation on behalf of the GVI.

41. Pursuant to the 3/9/12 Recapitulation, a portion of the $3.0 million was applied to litigation expenses as of August 19, 2011, in the amount of $1,075,946. The Dema Firm earned a contingent fee with respect to the Alcoa Settlement in the amount of $6,934,810.80 ($6.25 million, which is 25% of the first $25 million in value; plus $684,810.80, which is 20% of the remaining $3,424,054 in value after subtracting the $1,075,946 paid in expenses). The sum of $1,924,054 was paid to the Dema Firm as partial payment of the contingent fee, leaving $5,010,756.80 ($6,934,810.80 minus $1,924,045) in contingent fees owing to the Dema Firm.

B. The Refinery Defendants' Settlement and the 6/2/14 Recapitulation

42. District Judge Edward N. Cahn (also a former Chief Judge of the Eastern District of Pennsylvania who previously sat by designation in the Virgin Islands) mediated a settlement with the Refinery Defendants in 2014. Pursuant to that settlement, the Refinery Defendants settled for $43.5 million in cash, which included a $3.5 million upfront payment and a second payment in the amount of $40 million that was due no later than December 31, 2014. In addition, the Dema Firm negotiated with my oversight a first priority mortgage on the oil

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[2] This amount does not include the additional $295,000 in oversight costs being paid by SCA. When the oversight costs are included, the value of the work is $26.795 million.

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refinery and security interest in the personal property of HOVENSA at the refinery in order to ensure that the GVI would ultimately receive the second $40 million payment. We insisted on this term of the settlement because we were aware of HOVENSA's precarious financial condition.

43. On June 2, 2014, the GVI and the Dema Firm executed a second recapitulation (the "6/2/14 Recapitulation"), a true and correct copy of which is attached as Exhibit B. I executed the 6/2/14 Recapitulation on behalf of the GVI.

44. Pursuant to the 6/2/14 Recapitulation, the GVI approved payment of the $3.5 million upfront settlement payment to the Dema Firm. Of that amount, $2,158,365.32 was applied to outstanding litigation expenses and $1,341,634.68 was applied toward the $5,010,756.80 contingency fee balance relating to the Alcoa Settlement.

45. The GVI and the Dema Firm agreed that, after the partial application of that settlement payment to the Alcoa Settlement contingent fee, the remaining contingent fee balance relating to the Alcoa Settlement was $3,669,122.12.

C. The Lockheed/VIALCO Settlement and the 8/22/14 Recapitulation

46. Next, the Dema Firm successfully negotiated a resolution of the GVI's claims against the two remaining Alumina Defendants, Lockheed and VIALCO. Lockheed settled the GVI's claims by paying $20.75 million in cash and agreeing to provide at least an estimated $31.49 million in environmental restoration work. This estimate was based upon Lockheed Martin filing with the Court a joint brief with the GVI that estimated that the work Lockheed had committed to perform was estimated to have a present value of $31.1 million to $46.1 million. This value was based upon the Draft Remedial Investigations/Feasibility Studies prepared by the

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GVI's own consultants for the Second Federal Court Action and paid for by the Dema Firm and RPWB. VIALCO settled for the sum of $625,000 in cash.

47. On August 8, 2014, the Dema Firm sent me, by facsimile (a true and correct copy of which is attached as Exhibit C), a proposed final recapitulation and an accompanying summary analysis of the total estimated settlement values, the total fees and expenses paid to date, and set forth the $8,968,147.66 in fees outstanding. I reviewed and analyzed the proposed final recapitulation for accuracy. Then, on August 22, 2014, on behalf of the GVI, I executed the third recapitulation (the "8/22/14 Recapitulation," and together with the 3/9/12 Recapitulation and the 6/2/14 Recapitulation, the "Recapitulations"), a true and correct copy of which is attached as Exhibit D.

48. Pursuant to the 8/22/14 Recapitulation, on behalf of the GVI, I approved in writing the disbursement of settlement monies received from Lockheed and VIALCO. The GVI and the Dema Firm agreed that the $21.375 million in cash would be disbursed as follows: (a) $2,310,662.40 to pay litigation related expenses, (b) $10 million to the GVI, and (c) $9,064,137.60 to pay a portion of the contingent fees outstanding.

49. Notably, the GVI would not have been entitled to receive the $10 million absent the Dema Firm's agreement. Specifically, paragraph 17 of the Contract provided that "any gross settlement or judgment recovered is not considered money of the Virgin Islands Treasury subject to appropriation pursuant to Section 3, Clause 18 of the Revised Organic Act of 1954 *until after the [GVI] has fulfilled its obligation to [the Dema Firm] under this Contract*" pursuant to Paragraphs 3 and 4 (emphasis added).

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50. At my request in order to assist the financially-strapped GVI, the Dema Firm agreed to the GVI's receipt of $10 million even though the GVI was not yet entitled to receive the payment under Paragraph 17 of the Contract.

51. The Dema Firm earned a contingent fee of $8,068,167.94[3] for the Lockheed settlement and $93,750[4] for the VIALCO settlement. Thus, by adding the remaining balance of professional fees due from the Alcoa Settlement ($3,669,122.12) to the professional fees due from the Lockheed ($8,068,167.94) and VIALCO ($93,750) settlements, the aggregate professional fees still owed to the Dema Firm due to settlements with the Alumina Defendants at the time of the 8/22/14 Recapitulation totaled $11,831,040.06.[5] In order to provide the GVI with the $10 million it sought at that time, the Dema Firm agreed to accept a reduced payment of $9,064,137.60 in professional fees at that time (paid pursuant to the 8/22/14 Recapitulation) rather than the full $11,831,040.06 that it was due and owing. Thus, in the 8/22/14 Recapitulation, on behalf of the GVI, I agreed with the Dema Firm that the GVI still would owe the Dema Firm a balance of $2,766,902.46[6] in professional fees for the settlements with the Alumina Defendants and that such amount would be carried forward and paid at the time of the

[3] The $8,068,167.94 was calculated as follows: $11,575,946 times 20% (which then reached the initial $40 million cap for the 25% contingent fee), which equals $2,315,189.20, plus the remaining settlement value of $40,664,054 minus the $2,310,862.40 in paid expenses, which equals $38,353,191.60, times 15%, which equals $5,752,978.74.

[4] The $93,750 was calculated as follows: $625,000 times 15%, which equals $93,750.

[5] The $11,831,040,06 included the $3,669,122.12 remaining contingent fee balance from the Alcoa Settlement, the $8,068,167.94 contingent fee relating to the Lockheed Settlement, and the $93,750 contingent fee relating to the VIALCO settlement.

[6] The $11,831,040.06 in outstanding contingent fees minus the $9,064,137.60 payment leaves a balance of $2,766,902.46.

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second refinery payment together with the fees earned by the Dema Firm ($6,201,245.20)[7] on account of the settlement with the Refinery Defendants. *See* Exhibits C and D.

52. In summary, after application of the cash pursuant to the 8/22/14 Recapitulation, on behalf of the GVI, I agreed that the Dema Firm was still owed total professional fees of $8,968,147.66 ($2,766,902.46 plus $6,201,245.20).

V. Summary of the Settlement Agreements and The Unpaid Contingent Fees Owed to the Dema Firm.

53. In summary, using the lower end of the range of value for the restoration work to be performed by the Alumina Defendants, the Dema Firm negotiated massive settlements totaling $126.16 million in value, including $67.875 million in cash. Those settlements are summarized as follows:

SCA/AWA/SCRG SETTLEMENT VALUE ($26.5 million[8] in work + $3 million in cash)	$29,500,000
LOCKHEED MARTIN ESTIMATED SETTLEMENT VALUE ($31,490,000 in work + $20,750,000 in cash)	$52,240,000
VIALCO Action Settlement Value ($625,000 in cash)	$625,000
OIL REFINERY SETTLEMENT VALUE ($3.5 million in cash + $40 million in cash)	$43,500,000
Total Settlement Value:	$125,865,000[9]

54. Using the upper end of the value of the Alumina Defendants' restoration work, the total value of the cash and noncash components of those settlements would be an even more substantial $144.16 million.

[7] The $6,201,245.20 is calculated as follows: $43.5 million in gross proceeds minus $2,158,365.32 in litigation expenses, leaves a net balance of $41,341,634.68, of which 15% is $6,201,245.20.

[8] This amount does not include the additional $295,000 in oversight costs being paid by SCA. When the oversight costs are included, the value of the work is $26.795 million.

[9] Including the $295,000 in oversight costs being paid by SCA, the total settlement value is $126.16 million.

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55. As of the execution of the last settlement, and as set forth in the Recapitulations, the Dema Firm earned $21,297,973.94 in attorneys' fees as follows: [10]

SCA/AWA/SCRG Settlement	$6,934,810.80
Lockheed Settlement	$8,068,167.94
VIALCO Settlement	$93,750.00
Oil Refinery Defendants' Settlement	$6,201,245.20
Total Attorneys' Fees	$21,297,973.94

56. As of the execution of the last settlement agreement, adding aggregate litigation expenses in the amount of $5,545,173.72 advanced on behalf of the GVI, the Dema Firm was owed a total of $26,843,147.66 for the Dema Firm's services under the Contract.

57. Pursuant to Recapitulations executed by Dema Firm and me, in my capacity as Attorney General and on behalf of the GVI, the Dema Firm received payments totaling $17.875 million, including $12,329,826.28 in professional fees and $5,545,173.72 in reimbursement of expenses.

58. As of the date of the 8/22/14 Recapitulation, the Dema Firm was still owed the sum of $8,968,147.66 ($21,297,973.94 minus $12,329,826.289) under the Contract.

VI. Finality of Recapitulations

59. On behalf of the GVI, I executed the Recapitulations and approved the payment of fees and expenses as provided therein. I believe that the Recapitulations are accurate and entirely consistent with the terms of the Contract and the parties' course of dealing. I believe this because I had extensive discussions and asked Dema many questions upon receipt of the

[10] The Contingent Fee Percentage Schedule provides for fees as follows: 25% of the first $25 million in value; 20% of the next $15 million in value, and 15% of any amount exceeding $40 million in value.

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Recapitulations. Dema answered all of my questions to my satisfaction prior to my execution of any of the Recapitulations.

60. I also believed and intended that the Recapitulations represent the parties' final agreement to the calculations and balances set forth therein. Each of the Recapitulations was intended to constitute an agreement between the GVI and the Dema Firm to the compensation and expenses earned or incurred, the amount of fees and expenses paid or to be paid, and to state the remaining balance of compensation and expenses. I did not believe or intend that the Dema Firm or the GVI would be able to change the agreements set forth in any of the Recapitulations. I believed and intended that the GVI would not have to pay any more – or less – than the amounts agreed upon in the Recapitulations.

VII. Office of the Inspector General Interview

61. In the summer of 2015, Mr. van Beverhoudt and Leo Gardner from the Office of the Inspector General interviewed me regarding the Contract and the litigation undertaken pursuant to the Contract. The information I provided to those gentlemen is consistent with the statements I have made in this Affidavit.

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62. At no time during my tenure as Attorney General did I ever hear any representative of the GVI express an understanding of the Contract that was contrary to the my understanding as set forth in this Affidavit.

Further affiant sayeth not.

Dated: March 30, 2016

Vincent F. Frazer

Subscribed and sworn to before me this 30 day of March 2016.

NOTARY PUBLIC
(NOTARY PUBLIC)
[illegible] Williams, Esquire
My Commission Exp: November 20, 2019
NP Commission #: LNP-19-15
St. Thomas/St. John, USVI District
My Commission Expires: ____________________

MEMORANDUM OF INTERVIEW OR ACTIVITY
IVER A. STRIDIRON, ESQUIRE

Leo Gardner

From:	Steven van Beverhoudt <svanbeverhoudt@viig.org>
Sent:	Monday, March 16, 2015 8:21 AM
To:	Leo Gardner
Subject:	Fw: [SPAM] john dema; fees issue
Attachments:	img-150313170134.pdf

----- Forwarded Message -----
From: Iver Stridiron <istridiron@legvi.org>
To: "svanbeverhoudt@viig.org" <svanbeverhoudt@viig.org>
Sent: Saturday, March 14, 2015 2:42 PM
Subject: [SPAM] john dema; fees issue

Hi Steven: Attached is the referenced Memorandum of Interview or Activity. It was necessary to edit and revise it for greater accuracy. As we discussed, much of my comments were based on my recollection and opinions, and as such i wanted the Memorandum to reflect that they were opinions. You may need for me to decipher my "chicken scratch", so call me as needed. Once the revisions have been made please re-send and I shall initial it.
-Iver

MEMORANDUM OF INTERVIEW OR ACTIVITY
IVER A. STRIDIRON, ESQUIRE

istridiron @ gmail.com

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE V. I. INSPECTOR GENERAL
2315 Kronprindsens Gade #75, Charlotte Amalie, St. Thomas, V. I. 00802-6468
100 Lagoon Complex, Suite 8, Frederiksted, St. Croix, V. I. 00840-3912

STEVEN VAN BEVERHOUDT
V.I. INSPECTOR GENERAL

Tel: (340) 774-3388 STT
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Fax: (340) 774-6431 STT
(340) 773.2501 STX

MEMORANDUM OF INTERVIEW OR ACTIVITY

Interview or Activity: Interview of Executive Director Iver A. Stridiron, Esquire
Conducted On: March 13, 2015
Conducted By: Steven van Beverhoudt, V.I. Inspector General and
Leo L. Gardner, Jr., Chief of Audits
Purposed: Review Professional Service Contract PC-DJ-081-2004
Time: 10 AM
Location: Virgin Islands Legislature, St. Thomas, VI, 2nd Floor
Office of the Executive Director

Statement of Interview or Activity: Writer and V.I. Inspector General met with Executive Director
Iver A. Stridiron, Esquire, in his office on the 2nd Floor of the Virgin Islands Legislature, Capital
Building, St. Thomas, VI, (340) 693-3601. The purpose of the interview was to determine what the
Executive Director recalled about the Professional Service Contract (PC-DJ-081-2004) he signed as
Virgin Islands Attorney General on February 25, 2004, and the Governor approved May 7, 2004.
The contract was shown to Executive Director Stridiron.
or to Attorney Dema for Deposit to his escrow Account
He stated that he recalled the contract and had signed it. He also stated that he recalled a problem he
had with ~~Attorney Dema during~~ the Tutu Well Field Litigation when Attorney Dema took a check
for $9 million made out to the Government as part of the settlement in the case, and that he signed deposited it into
a Trust Account under his control. The Governor allowed this over the protest of Attorney General
Stridiron, ~~and in violation of the contract~~. So, he was ~~not surprised~~ CONCERNED to hear that Attorney Dema had PERHAPS
done the same thing in the South Central Shore, Hovensa litigation.

SETTLEMENT AGREEMENT HAS
STRIDIRON ~~He~~ did remark that in his opinion the case is not over because Hovensa ~~had~~ failed to pay the final
$40 million by December 31, 2014, under the ~~Consent Decree~~. Also, the Government has
IN STRIDIRON'S OPINION
announced that it plans to pursue forfeiture to settle the default. So, no payment to Attorney Dema
should have been made according to the contract. He had heard that Attorney Dema had already
PARTIAL PAYMENT BY HOVENSA
collected $3 million. In his opinion, the ~~funds~~ should have come directly to the Government pending
conclusion of the case. He referred to the contract on page three (3) in the last paragraph; "Payment
shall be made out of said recovery or settlement monies at the termination of all involved litigation,
inclusive of appeals, if any." He also mentioned that the Trust Attorney Dema has for the money
collected should be interest bearing and the interest and ~~principle~~ AL belong~~ed~~ should to the Government.

costs and
Executive Director Stridiron was asked to review Section 4 of the contract. He concluded that it was
his intent as the Attorney General to pay Attorney Dema no more than $1.5 million for expenses
incurred during the litigation. The expenses were capped at $1.5 million as stated in the contract.
SHOULD NOT
He clearly stated that the Contractor ~~can't~~ get more than $1.5 million for expenses, The
Contingency Fee amount is calculated from the monetary settlement ordered by the Court. Attorney

in his opinion

unless the contract was amended to increase the cap.

MEMORANDUM OF INTERVIEW OR ACTIVITY IVER A. STRIDIRON, ESQUIRE

generally the restoration effort is paid for directly by the Defendant. Therefore

Stridiron opined that

Dema can't recover expenses in the Contingency Fee calculation. They are set in Part four (4) of the contract. Executive Director pointed out that if restoration or cleanup is very expensive and the government receives nothing from it then how can they pay Attorney Dema. T~~hat is not reasonable~~.

on a contingency based on the cleanup costs.

during his tenure.

He also said only the Governor can approve an amendment to the contract, and he is not aware that any were made. He had heard that ~~the~~ former Attorney General Frazer had stated that he and Attorney Dema had a "gentlemen's agreement" about some terms in the contract, but said this was not in writing and therefore not appropriate nor legal in his opinion. Any variances to the contract terms and attempts to charge the administration ~~of the contract under the Virgin Islands Code~~ FOR ADDITIONAL FEES will have to be taken to a Judge to rule on if the Attorney General tried to approve changes without the Governor's written approval. He believes Attorney Frazer may have exceeded his authority to not stick within the four corners of ~~this~~ the contract if he made such a "gentlemen's Agreement".

Executive Director Stridiron mentioned that he was told last year that the files and records at the Attorney General's Office were missing Attorneys General Opinions. He sent the copies of his opinions to Attorney General Frazer to help fill the void in publishing the opinions. He did state that there was a document receipt log kept at the Justice Department when he was there. Also, when the South Central Shore Contract and Litigation started a case file was created. He can't imagine that they can't find the file for it must contain ~~volumes~~ years worth of records. Assistant Attorney General Michael Law or Assistant Solicitor General Paul Pacquin may know where the case files are.

because both as AG and General Counsel to the VIWMA HE WORKED WITH DEMA.

Executive Director Stridiron stated that he witnessed Attorney Dema ~~and~~ his team of lawyers from Maryland and South Carolina spend years ~~hours~~ conducting the litigation effort. He believed Attorney Dema and his team earned their money under the contract. ~~but nothing more~~. There DOES NOT APPEAR TO BE ANY ~~is no~~ provision for cleanup costs or restoration expenses by the defendants to be included in Attorney Dema's calculation of Contingency Fees. If the Hovensa Plant is taken over by the Government the Cap on the value for Contingency Fee purposes SHOULD BE ~~is~~ the $40 million in the Consent Decree. The value of the whole plant ~~would~~ should not be used to compute the Contingency Fee, UNLESS FURTHER LITIGATION ENSUES & AND DEMA REPRESENTS THE GOVT.

Executive Director Stidiron added that using cleanup costs to compute Contingency Fees is just not done, and no Court ~~would~~ should permit it. Contingency Fees are not to be so high that they are unreasonable and excessive when compared to hourly or fixed fee contracts. He gave an example. If ~~an Attorney~~ a client agrees to a 33 1/3% Contingency Fee and WITHIN ~~in~~ a week ~~he~~ the lawyer is able to get a settlement, he MAY NOT BE ~~is not~~ entitled to 33 1/3% of the monetary settlement. The Courts have repeatedly found that only reasonable fees should be collected by attorneys, ~~in such big cases~~. in his opinion, and the nature of the dispute.

He also agreed that attorneys are required to keep detailed time and expense records and if the client asks to verify the reasonableness of the bills, the attorney has to produce the records to support the fees claimed. That requirement is in the Virgin Islands Rules of Professional Conduct for Attorneys.

The interview was concluded at 10:45 AM.

Written By: Leo L. Gardner, Jr., Chief of Audits
At: St. Thomas, VI

On: March 13, 2015
Inspection No: PR-03-80-15

MEMORANDUM OF INTERVIEW OR ACTIVITY
IVER A. STRIDIRON, ESQUIRE

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE V. I. INSPECTOR GENERAL
2315 Kronprindsens Gade #75, Charlotte Amalie, St. Thomas, V. I. 00802-6468
100 Lagoon Complex, Suite 8, Frederiksted, St. Croix, V. I. 00840-3912

STEVEN VAN BEVERHOUDT
V.I. INSPECTOR GENERAL

Tel: (340) 774-3388 STT
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MEMORANDUM OF INTERVIEW OR ACTIVITY

Interview or Activity: Interview of Executive Director Iver A. Stridiron, Esquire
Conducted On: March 13, 2015
Conducted By: Steven van Beverhoudt, V.I. Inspector General and
Leo L. Gardner, Jr., Chief of Audits
Purposed: Review Professional Service Contract PC-DJ-081-2004
Time: 10 AM
Location: Virgin Islands Legislature, St. Thomas, VI, 2nd Floor
Office of the Executive Director

Statement of Interview or Activity: Writer and V.I. Inspector General met with Executive Director Iver A. Stridiron, Esquire, in his office on the 2nd Floor of the Virgin Islands Legislature, Capital Building, St. Thomas, VI, (340) 693-3601. The purpose of the interview was to determine what the Executive Director recalled about the Professional Service Contract (PC-DJ-081-2004) he signed as Virgin Islands Attorney General on February 25, 2004, and the Governor approved May 7, 2004. The contract was shown to Executive Director Stridiron.

He stated that he recalled the contract and had signed it. He also stated that he recalled a problem he had with the Tutu Well Field Litigation when Attorney Dema took a check for $9 million made out to the Government, or to Attorney Dema for Deposit to his escrow account as part of the settlement in the case, and that Dema deposited it into a Trust Account under his control. The Governor allowed this over the protest of Attorney General Stridiron. So, he was concerned to hear that perhaps Attorney Dema had done the same thing in the South Central Shore, Hovensa litigation.

Stridiron did remark that in his opinion the case is not over because Hovensa has failed to pay the final $40 million by December 31, 2014, under the Settlement Agreement. Also, the Government has announced that it plans to pursue forfeiture to settle the default. So, in Stridiron's opinion, no payment to Attorney Dema should have been made according to the contract. He had heard that Attorney Dema had already collected $3 million. In his opinion, the partial payment by Hovensa should have come directly to the Government pending conclusion of the case. He referred to the contract on page three (3) in the last paragraph; "Payment shall be made out of said recovery or settlement monies at the termination of all involved litigation, inclusive of appeals, if any." He also mentioned that the Trust Attorney Dema has for the money collected should be interest bearing and the interest and principal should belong to the Government.

Executive Director Stridiron was asked to review Section 4 of the contract. He concluded that it was his intent as the Attorney General to pay Attorney Dema no more than $1.5 million for costs and expenses incurred during the litigation. The expenses were capped at $1.5 million as stated in the contract. He clearly stated that in his opinion the Contractor should not get more than $1.5 million

3/16/15

MEMORANDUM OF INTERVIEW OR ACTIVITY IVER A. STRIDIRON, ESQUIRE

for expenses unless the contract was amended to increase the cap. The Contingency Fee amount is calculated from the monetary settlement ordered by the Court. Stridiron opined that Attorney Dema can't recover expenses in the Contingency Fee calculation. They are set in Part four (4) of the contract. Executive Director pointed out that generally the restoration effort is paid for directly by the defendant. Therefore, if restoration or cleanup is very expensive and the government receives nothing from it then how can they pay Attorney Dema on a contingency based on the cleanup costs.

He also said only the Governor can approve an amendment to the contract and he is not aware that any were made during his tenure. He had heard that former Attorney General Frazer had stated that he and Attorney Dema had a "gentlemen's agreement" about some terms in the contract but said this was not in writing and therefore not appropriate nor legal in his opinion. Any variances to the contract terms and attempts to charge the Administration for additional feeswill have to be taken to a Judge to rule on if the Attorney General tried to approve changes without the Governor's written approval. He believes Attorney Frazer may have exceeded his authority to not stick within the four corners of the contract if he made such a "Gentlemen's Agreement".

Executive Director Stridiron mentioned that he was told last year that the files and records at the Attorney General's Office were missing Attorneys General Opinions. He sent the copies of his Opinions to Attorney General Frazer to help fill the void in publishing the Opinions. He did state that there was a document receipt log kept at the Justice Department when he was there. Also, when the South Central Shore Contract and Litigation started a case file was created. He can't imagine that they can't find the file for the litigation because it must contain several years worth of records. Assistant Attorney General Michael Law or Assistant Solicitor General Paul Paquin may know where the case files are.

Executive Director Stridiron stated that he witnessed Attorney Dema and his team of lawyers from Maryland and South Carolina spend years conducting the litigation effort because both as Attorney General and General Counsel to the VI Waste Management Authority he worked along side of Attorney Dema in the litigation on behalf of the Government. He believed Attorney Dema and his team earned their money under the contract. There does not appear to be any provision for cleanup costs or restoration expenses by the defendants to be included in Attorney Dema's calculation of Contingency Fees. If the Hovensa Plant is taken over by the Government the Cap on the value for Contingency Fee purposes would be the $40 million in the Consent Decree, unless further litigation ensues and Attorney Dema represents the Government. The value of the whole plant at another date should not be used to compute the Contingency Fee.

Executive Director Stridiron added that using cleanup costs to compute Contingency Fees is just not done, in his opinion, and no Court should permit it. Contingency Fees are not to be so high that they are unreasonable and excessive when compared to hourly or fixed fee contracts and the nature of the dispute. He gave an example. If a client agrees to a 33 1/3% Contingency Fee and within a week the attorney is able to get a settlement, he may not be entitled to the full 33 1/3% of the monetary settlement. The Courts have repeatedly found that only reasonable fees should be collected by attorneys. Stridiron also agreed that attorneys are required to keep detailed time and expense records and if the client asks to verify the reasonableness of the bills the attorney has to produce the records to support the fees claimed. That requirement is in the Virgin Islands Rules of Professional Conduct for Attorneys. The interview was concluded at 10:45 AM.

3/16/15

Written By: Leo L. Gardner, Jr., Chief of Audits On: March 13, 2015
At: St. Thomas, VI Inspection No: PR-03-80-15

MEMORANDUM OF INTERVIEW OR ACTIVITY
VINCENT F. FRAZER, ESQUIRE

Leo Gardner

From: Steven van Beverhoudt <svanbeverhoudt@viig.org>
Sent: Friday, April 24, 2015 10:54 AM
To: Leo Gardner
Subject: Fw: VFF's email address

----- Forwarded Message -----
From: VINCENT FRAZER <vin_fra@msn.com>
To: Steven van Beverhoudt <svanbeverhoudt@viig.org>
Sent: Friday, April 24, 2015 10:25 AM
Subject: RE: VFF's email address

Steve,

I have reviewed the report and for the most part it is fair and accurate. However I have the following suggestions :

Page 2

Third full Paragraph. Revise 2nd sentence.

In Attorney Frazer's opinion the $26 million that attributed to "clean up cost" is not monetary damages, so it is questionable whether that amount should be included in the monetary damages base for the contingency fees.

Seventh full paragraph. Revise as follows :

The government settled by mediation the portion of the case pertaining to the Alumna/Renaissance property and the remaining case was with HOVENSA. Attorney Frazer indicated that he initially had reservations about the Contingency Fee arrangement. He express concerns whether a contingency fee contract was a proper contract for government expenditure law. However the Court ruled that the contract was valid, therefore his immediate concern was put to rest. He indicated that notwithstanding traditional government expenditure policies, the contingency fee contract does have some value in that it allows the government to litigate significant cases without the burden of prohibitive cost.

Page 3

First full paragraph, last sentence.

Something seems to be missing in that sentence. *"...ask for or to see..."*

Page 4

Last full paragraph.

Spelling of Ms. Petty's name, *"Merlyn"*.

Other than the above everything is fair and accurate.

Let me express a concern with this process and report. I think the Government needs to be very careful with the release of this report at this time in light of the still pending litigation. In light of the pending litigation over the $40 Million I suggest that the report not be release publicly or do so in a very limited way. HOVENSA's lawyers will use the report to undermine the government's position, if they get their hands on a report that questions the dealings between the government and the lawyer

MEMORANDUM OF INTERVIEW OR ACTIVITY
VINCENT F. FRAZER, ESQUIRE

representing the government. I offer this suggestion only because I believe it is in the best interest of the Government of the Virgin Islands.
Thank You,

Vincent F. Frazer

Date: Thu, 23 Apr 2015 19:19:15 +0000
From: svanbeverhoudt@viig.org
To: vin_fra@msn.com
Subject: Re: VFF's email address

Please find attached

Steve

From: VINCENT FRAZER <vin_fra@msn.com>
To: "SVANBEVERHOUDT@viig.org" <svanbeverhoudt@viig.org>
Sent: Thursday, April 23, 2015 3:18 PM
Subject: VFF's email address

IG,

Hopefully you will get this and you can attach the document to your reply.

Vincent Frazer

2

MEMORANDUM OF INTERVIEW OR ACTIVITY
VINCENT F. FRAZER, ESQUIRE

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE V. I. INSPECTOR GENERAL
2315 Kronprindsens Gade #75, Charlotte Amalie, St. Thomas, V. I. 00802-6468
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STEVEN VAN BEVERHOUDT
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MEMORANDUM OF INTERVIEW OR ACTIVITY

Interview or Activity: Interview of Vincent F. Frazer, Esquire
Conducted On: April 14, 2015
Conducted By: Steven van Beverhoudt, V.I. Inspector General and
Leo L. Gardner, Jr., Chief of Audits
Purposed: Review Professional Service Contract PC-DJ-081-2004
Time: 11 AM
Location: Virgin Islands Inspector General's Office, St. Thomas, VI

Statement of Interview or Activity: Writer and V.I. Inspector General met with Vincent F. Frazer, Former Virgin Islands Attorney General (2007 to 2015), in the Conference Room, 1st Floor, Office of the Virgin Islands Inspector General, St. Thomas, United States Virgin Islands. Attorney Frazer confirmed that he was currently in private practice at the Law Offices of Pedro K. Williams, 5212 Wimmelskafts Gade Suite 200, (340) 774-2100, (340) 513-9404 (c).

The purpose of the interview was to determine what the Former Attorney General recalled about the administration, litigation process, expenses, payments, and how the Contingency Fee payments were to be calculated under the Professional Service Contract (PC-DJ-081-2004), between the Government of the Virgin Islands and the Law Offices of John K. Dema, as was approved by the Governor of the U.S. Virgin Islands on May 7, 2004.

The contract was shown to Attorney Frazer. He stated that he was aware of the contract and that Attorney Dema had provided legal services for the South Shore-Century Aluminum, Alcoa, Hovensa and others litigations through 2014. He had met with them on various occasions and did some work with them on the cases. Attorney Frazer stated that he was aware of the contract conditions even though he did not continuously refer to it as the litigation progressed and the payments were made.

During April 2007 Attorney John K. Dema, lead contract attorney for the South Shore Central St. Croix contamination cases, contacted him and asked to meet and bring him up to speed on the status of the cases and set a course for the future. Attorney Frazer began to handle the cases himself rather than having the Solicitor's Office handle the contract and related duties of the cases.

Attorney Frazer did not attend depositions on the litigations. He did attend mediations and planning meetings with Government contract attorneys in the Virgin Islands, District of Columbia and New York. The Commissioner of the Department of Planning and Natural Resources, Alicia Barnes, MS, received copies of motions and other documents on the cases. There may be some documents in her office.

Attorney Frazer said he had not appeared in court with Attorney Dema to avoid any attempts by the defendants to bring other issues into the process. Attorney Dema was the lead in court matters to his knowledge. Attorney Frazer was involved in discovery and expert witness meetings on Hovensa and

MEMORANDUM OF INTERVIEW OR ACTIVITY
VINCENT F. FRAZER, ESQUIRE

reviewed the many documents and motions they and others sent. At the end of the cases most of the matters, motions and documents left to be handled were with Hovensa. He didn't know how much Attorney Iver Stridrion did in the case representing the Waste Management Authority and Port Authority which had been co-defendants cross sued by Hovensa.

The first two parts of the litigation, Alcoa Aluminum/South Shore, Alcoa, Lockheed Martin, and others, had been mostly settled. In 2012 he had told Attorney Dema to keep the first $3 million in Monetary Damages paid by defendants to cover Legal Expenses incurred to date and to keep the cases moving forward without delay.

Attorney Frazer said he told Attorney Dema that they would settle all Expenses and Fees when the last of the Monetary Damages were paid. He believed that the restoration, cleanup costs, and monetary damages would total around $130 million.

The approximately $26 million for clean up on the South Shore matters, not Hovensa, was not part of the Monetary Damages to be paid to the Government. In Attorney Frazer's opinion the $26 million attributed to "clean up cost" is not monetary damages, so it is questionable whether that should be included in the monetary damages base for the contingency fees. Again, he said the Government did not have the funds to pay the lawyers' fees if they were allowed to claim for cleanup of private property. The defendants would pay for the cleanup.

The South Carolina law firm did a lot of witness, expert and researching work for the cases as far as he knew. They worked for Attorney Dema and he had not directed their efforts in the cases. He was aware of who Attorneys Gordon Rhea and Jerry Evans were in the South Carolina law firm.

There was another attorney working with Attorney Dema from Maryland who was to have been a partner with Attorney Dema. Attorney Frazer said that the defendants had presented motions to the court to disqualify Attorney Dema because of the Contingency Fee contract and the fact that the Government had not appropriated any funds for the cases.

He did not think that a Contingency Fee Contract for legal assistance was the best for the Government but at the time he took over at the Justice Department the case was well underway and it was not beneficial to cancel the contract at the time. After all, the Government did not have to pay for the legal services until the final settlement and the defendants had to pay that. If they had terminated the contract it would have caused the Government to have to find funds to pay the lawyers for incurred expenses with funds they did not have, and he saw a loss of momentum in the cases.

The Government settled by mediation the portion of the case pertaining to the Alumna/Renaissance property and the remaining case was with Hovensa. Attorney Frazer indicated that he initially had reservations about the Contingency Fee arrangement. He expressed concern whether a Contingency Fee contract was a proper contract for government expenditure law. However, the Court indicated that notwithstanding traditional government expenditure policies, the Contingency Fee contract does have some value in that it allows the Government to litigate significant cases without the burden of prohibitive cost.

Attorney Frazer was shown the three "Recapitulation" Expense Lists and correspondence submitted by Attorney Dema:

VFF

MEMORANDUM OF INTERVIEW OR ACTIVITY VINCENT F. FRAZER, ESQUIRE

1. Expense List approved March 9, 2012,
2. August 13, 2013, letter to Attorney Frazer on Lockheed Martin case and other defendants,
3. May 25, 2014, $43.5 million settlement letter,
4. May 29, 2014, $5.3 million Expense List,
5. August 22, 2014, $21.3 million Settlement Expense List

Attorney Frazer stated that he never saw, nor requested to see, any details, or supporting documents, on Attorney Dema's "Recapitulation" Expense Lists. The first Expense List was looked at by Attorney Frazer and he said he was looking to see what appeared to be normal legal expenses for the first case by category, not detailed support of the expenses.

He ok'd the first $3 million Legal Expense List without questioning anything. He explained that he intended to have an audit done of all Legal Expenses Billed by Attorney Dema after all the cases were settled. If he would have started questioning, or nitpicking, the Expense Lists too early it could have caused disruption in the effective and full efforts in handling of the cases by Attorney Dema and his team. Attorney Frazer added that to start questioning or appearing to be cheap with the plaintiff's attorneys could have sent signals to the Defendants' attorneys that the Government was not united and prepared to expend all that was necessary to win the case. Hovensa's lawyers in particular were very experienced and could not be allowed to see the Government's team arguing over expenses. VFF

Attorney Frazer was shown the August 27, 2014, letter to him from Attorney Dema about $3.2 million Bank Wire to Richardson, Patrick, Westbrook and Brickman (LLC), ("RPWB") which were claimed to be co-counsel under the retainer agreement with the Government of the Virgin Islands with regard to the South Shore litigation and is therefore subject to the same constraints and directions from your office as is my firm. Attorney Frazer stated he never received supporting documents for these or other Expense Lists. The items he was shown are:

Attorney Dema IG Exhibits:

A. IG000393 Wire of $1.8 million to RPWB March 16, 2012;
B. IG000396 Wire of $20.7 million to John Dema, IOLTA TRUST, from Lockheed Martin Corp (SS-LM settlement)
C. IG000397 Wire of $625,000 to John Dema from Eckert Seamans Cherin & Mellott LLC for Vialco Settlement July 15, 2014;
D. IG000398 $337,069 Wire to John Dema August 25, 2014;
E. IG000399 thru 405 a $3.2 million Wire to RPWB August 25, 2014;
F. IG000406 $10 million Wire to RPWB August 27, 2014;
G. IG000408 $2.4 million Wire to RPWB June 3, 2014;
H. IG000409 $500,000 Book Transfer from IOLTA TRUST to John Dema June 2, 2014;
I. IG000410 $562,038 Wire Book Transfer From John Dema to John Dema;
J. IG000188 thru IG000191, Richardson, Patrick, Westbrook and Brickman, LLC, Re:NRD-Southshore (201400-0) May 28, 2014, Cost Listing for $3.4 million.

The July 14, 2004, letter from Attorney Dema to Michael Law, Assistant Attorney General, Department of Justice, was shown to Attorney Frazer. He stated that he had never seen it before. The letter stated:

"Per our last meeting in St. Thomas, enclosed is the firm resume of Richardson, Patrick, Westbrook & Brickman, *et.al.*, which firm I have retained at my own cost to assist in the Natural Resource Damages

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MEMORANDUM OF INTERVIEW OR ACTIVITY VINCENT F. FRAZER, ESQUIRE

actions. They substitute for McKenna, Long & Aldridge, LLP, who filed their notice of withdrawal on January 12, 2004. I thank you in advance for bringing this to General Stridiron's attention and for your approval to proceed accordingly."

Attorney Frazer said that in his opinion, based on this and other factors of the Contingency Fee Contract with the Law Office of John K. Attorney Dema, the RPWB mentioned in the foregoing letter quote, and the billing document seen in items IG000188 through IG000191, all expenses incurred by RPWB are to be compensated through the Contingency Fee payments Part 3, and not as direct Expenses Part 4, covered under the contract.

The IOLTA (Interest on Lawyers' Trust Account) held by Attorney Dema for the Government was where the funds were to be deposited until all cases were settled and the lawyers were to be paid. He recalled that the $10 million was transferred to the South Carolina law firm to be later paid to the Government. He was aware that the Government did receive the $10 million.

Attorney Frazer stated that the IOLTA Trust Account held by Attorney Dema could have multiple accounts or clients' funds in it. Each were to be accounted for and any interest earned would be donated to charity or a not-for-profit cause. He did not know how much interest was earned in the account and what happened to it. Attorney Dema would have to account for that.

Also, Attorney Frazer stated that in 2014 before the May "Recapitulation" Expense Billing he and Attorney Dema had been discussing how to increase the Cap on the Expenses. Attorney Dema had notified him that the Expenses had exceeded the contract Cap and he wanted to change the contract so he and the other lawyers could recover their expenses.

They continued discussing raising the Expense Cap up to around October when Hovensa settled, but there was no approved increase in the Expense Cap because of the Hovensa problems and failure to pay the final $40 million to the Government. He suggested we look in the records he left behind for the notes and drafts Attorney Dema did trying to increase the Expense Cap. They were trying to increase the Expense Cap based on verbal representations of Attorney Dema that the attorneys were part of outside hires and that of the Monetary Damages recovered the Government would get $29 million and Attorney Dema would get the rest as Contingency Fees. Attorney Frazer had not seen documentation, precise records, or substantive support for the over $5 million in claimed expenses. As he said before he was going to deal with the final payment with an audit of all expenses after all the cases had been settled.

Attorney Frazer was shown parts of the Civil Action No. 07-114 dated October 16, 2013, USVI DPNR vs St. Croix Renaissance Group, LLLP, et al., were the court denied the motion to have the defendant pay monetary damages to the plaintiffs under CERCLA. The court stated that to obtain relief DPNR had to show that damages occurred before they file the complaint. This had not happened and the motion for summary judgment was denied. Attorney Frazer agreed and stated that he did not believe that Attorney Dema should be able to receive Contingency Fees from the Government for the $26 million in restoration or clean up expenses required of defendants in the Century Aluminum and related cases. It was understood that these were not Monetary Damages and not an amount which the Government would benefit from. There would be no way the Government would be able to come up with the funds if they recovered nothing. This was restoration expenses for private property.

VFF

MEMORANDUM OF INTERVIEW OR ACTIVITY VINCENT F. FRAZER, ESQUIRE

The South Shore DPNR case(s) files were maintained by himself and his secretary Merlyn Petty. Ms. Petty retired in December 2014. She had kept the files in five or six boxes with South Shore, Hovensa, DPNR vs Century Aluminum or similar case names. She also had electronic files on the Justice Department Server under Public Server VIAG file and in the computer Ms. Petty used.

As part of the Transition process Attorney Attorney Frazer had a Binder (black) put together with his briefing information and suggestions about how to handle the last part of the South Shore Central St. Croix and Hovensa cases. Deputy Attorney General Wayne Anderson informed Attorney Frazer that he had given the Binder to Attorney General Designee Diase-Coffelt.

The Binder was reported to have been given to the subsequent Attorney General Designee Terri Griffiths. Attorney Frazer stated again that there must be several marked boxes in the Attorney General's suite of offices of pleadings and correspondence with Attorney Dema and the other attorneys, and courts on these cases.

The Courts have repeatedly found that only reasonable fees should be collected by attorneys. Attorney Frazer also agreed that attorneys are required to keep detailed time and expense records and if the client asks to verify the reasonableness of the bills the attorney has to produce the records to support the fees claimed. That requirement is in the Virgin Islands Rules of Professional Conduct for Attorneys. The interview was concluded at 12:15 PM. * * *

April 23, 2015

VFF

Addendum to MOIA:

Attorney Frazer offered his observation and concern: "I think the Government needs to be very careful with the release of this report at this time in light of the still pending litigation. In light of the pending litigation over the $40 million I suggest that the report not be release[d] publicly or do so in a very limited way. HOVENSA's lawyers will use the report to undermine the government's position, if they get their hands on a report that questions the dealings between the government and the lawyer representing the government. I offer this suggestion only because I believe it is in the best interest of the Government of the Virgin Islands."

Written By: Leo L. Gardner, Jr., Chief of Audits
At: St. Thomas, VI

On: April 15, 2015
Inspection No: PR-03-80-15

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