IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS, Plaintiff, v. HESS CORPORATION, Defendant.	Case No.: SX-15-CV-358 **ACTION FOR DAMAGES** JURY TRIAL DEMANDED

15 SEP 13 P7:28

COMPLAINT

Plaintiff, the Government of the United States Virgin Islands ("Government") hereby states as its complaint against the Defendant as follows:

I. SUMMARY

1. The Government of the Virgin Islands files this complaint alleging a pattern of misconduct by Hess Corporation ("Hess Corp"), approved and undertaken at the highest levels of the company and carried out over decades, that violates the Territory's Criminally Influenced and Corrupt Organizations Act ("CICO") and constitutes various torts, as laid out below.

2. Roughly fifty years ago, in order to catalyze its economic development and develop a stable source of significant employment in the Territory, the Government exercised its statutory authority to provide Hess Corp's wholly owned subsidiary, Hess Oil Virgin Islands Corp ('HOVIC"), with tax concessions, now valued in the billions of dollars, in return for building and operating an oil refinery on St. Croix. Through agreements, enacted into law by the Government of the Virgin Islands, HOVIC was obligated to operate the St. Croix refinery through 2022 and provide various other benefits to the Government and people of the Virgin Islands.

3. At various junctures, as laid out in detail in this Complaint, Hess Corp returned to the Government to seek additional concessions and, ultimately, for permission to convert the oil refinery into an oil storage facility that would provide a fraction of the jobs and other benefits previously promised by Hess. Hess Corp made deceptive representations about the financial straits of the refinery and threatened to close or bankrupt its local operations if the Government did not meet its demands. Hess Corp acted, in violation of law and through improper interference with HOVIC's contractual obligations to the Government, to render the oil refinery inoperable—siphoning off more than $1 billion in assets and burdening it with unsustainable operating expenses. In 2012, for example, Hess Corp caused its local operating company to use needed cash—$356 million—to buy back bonds *on which no principal payments were du*e for another ten years to protect Hess Corp's credit rating, while complaining to the Government that the refinery no longer had the reserves to operate.

4. That same year, despite having drawn hundreds of millions of dollars in profits from the oil refinery, including some hidden self-dealing transactions, Hess Corp announced to the Governor of the Virgin Islands, on one day's notice, its intention to close the oil refinery. Hess Corp's deliberate and fraudulent course of conduct has thrown 2,000 people out of work, wiping out roughly 25% of private income in St. Croix, and, as planned, in order to leave the Government with little choice but to submit to Hess Corp's plan to convert the refinery to an oil storage facility, leaving it with a massive eyesore of a facility, severe environmental damage, and a toll of economic hardship.

5. The Government seeks three times the damages caused by Hess Corp's fraudulent enterprise, disgorgement of Hess Corp's unlawful profits, civil penalties, and injunctive relief to prevent Hess Corp from continuing its violations of law.

II. JURISDICTION AND PARTIES

6. This Court has jurisdiction over this civil matter pursuant to 4 V.I.C. § 76.

7. The Government is an unincorporated territory of the United States, organized and existing pursuant to the Revised Organic Act, 48 U.S.C. § 1541, *et. seq*., and has the right to bring suit.

8. The Government is not a citizen for purposes of establishing diversity jurisdiction pursuant to 28 U.S.C. § 1332.

9. Hess Corporation ("Hess Corp") is a Delaware corporation with a principal place of business in New York, New York. Hess Corp was formerly known as Amerada Hess Corporation and Hess Oil and Chemical Corporation.

10. Hess Oil Virgin Islands Corporation ("HOVIC") is a Virgin Islands corporation and a wholly owned subsidiary of Hess Corp. Hess Corp established HOVIC in 1965 to be the owner in title of the St. Croix oil refinery in order to reap the benefits of tax exemptions only available to Virgin Islands residents.

11. The leadership of HOVIC is dominated by the leadership of Hess Corp. Hess Corp appointed its own officers and directors as officers and directors for HOVIC, which gave it effective control over HOVIC. From at least 1998 through 2012, all directors of HOVIC were also directors and/or officers of Hess Corp, including Hess Corp's Chairman and Chief Executive Officer ("CEO") John Hess (who also served during that time as HOVIC's Chairman, President, and CEO), along with Hess Corp's Executive Vice President, Chief Financial Officer, and General Counsel. From at least 1998 through 2004, all of HOVIC's officers were also officers of Hess Corp, and since 2004 all of HOVIC's officers have been officers or employees of Hess Corp. Since at least 2009, all of HOVIC's officers and directors have listed Hess Corp's

New York, New Jersey, or Houston offices as their business addresses in their annual filings to the Government of the Virgin Islands.

12. Hess Corp has always controlled the operations of the HOVIC refinery through the use of its own employees to perform tasks such as negotiating agreements with contractors, suppliers and the HOVIC employees' union. Hess Corp's Annual Reports described the refinery as "wholly owned" by the Corporation (not HOVIC) prior to 1998 (at which time it transferred ownership of the refinery to a 50% owned limited liability corporation, HOVENSA LLC, described below).

13. Financial results from HOVIC and its refinery were fully consolidated into Hess Corp's financial statements until 1998 (at which time Hess Corp began accounting for the refinery results under the sub-heading of HOVENSA, as described below). In fact, Hess Corp's Annual Reports to shareholders nearly never mention HOVIC, but rather refer to "the Corporation's" (i.e., Hess Corp's) refinery in St. Croix (or, after 1998, "the Corporation's share" in HOVENSA's refinery).

14. HOVENSA LLC ("HOVENSA") is a Virgin Islands limited liability company created as a joint venture between Hess Corp and Petroleos de Venezuela S.A. ("PDVSA") through each of their wholly owned Virgin Islands subsidiaries, HOVIC and PDVSA-VI. Hess Corp and PDVSA agreed to create HOVENSA in 1998 to jointly manage the St. Croix refinery.

15. HOVIC owns 50% of HOVENSA. Nonetheless, Hess Corp has consistently referred to *itself* as the owner of 50% of HOVENSA in its Annual Reports to shareholders from 1999 through 2012, demonstrating both Hess Corp's dominance of HOVIC and its joint control over HOVENSA.

16. Like HOVIC, HOVENSA's leadership is dominated by Hess Corp. Since at least 2004, HOVENSA's Executive Committee has consisted solely of three members from Hess Corp and three members from PDVSA. From at least 2004 through 2011, Hess Corp's CEO John Hess sat on HOVENSA's Executive Committee, joined by at least one other Hess Corp officer, often Hess Corp's Executive Vice President.

17. According to the agreement between HOVIC and PDVSA-VI establishing HOVENSA, all power and authority to manage the company is vested in the Executive Committee, all decisions of which require the approval of at least two HOVIC representatives (who have always also been Hess Corp representatives). The Executive Committee elects HOVENSA's chief officers, and the agreement empowers HOVIC (and PDVSA-VI) to unilaterally dismiss HOVENSA's chief officers on six months' notice.

18. Furthermore, the agreement explicitly states that each Executive Committee member shall act "*solely in accordance with the instructions of*" the party who designated him, and *no Executive Committee member "shall owe (or be deemed to owe) any duty (fiduciary or otherwise)" to HOVENSA*. In other words, the members of the body that holds complete power to manage HOVENSA, including the power to select its chief officers and to dismiss them unilaterally, are *required* to act *solely* in the interests of the parent companies they represent (i.e., HOVIC and Hess Corp), not of HOVENSA, and are forbidden from owing *any fiduciary or other duty* to HOVENSA.

19. In the event of any deadlock of HOVENSA's Executive Committee, HOVENSA's establishing agreement requires the CEO of Hess Corp, *not of HOVIC*, to meet with the President of PDVSA to resolve the issue (though in practice this made no difference,

because through the closure of the St. Croix refinery Hess Corp's and HOVIC's CEOs were both the same person: John Hess).

20. According to the agreement between Hess Corp and PDVSA to establish their joint venture that lead to the formation of HOVENSA, HOVIC did not have independence to manage HOVENSA as it pleased. For example, the agreement only entitles HOVIC to transfer its interest in HOVENSA to another wholly-owned subsidiary of Hess, not to any other recipient. Hess Corp also guaranteed the performance by HOVIC of its obligations under the agreement. All communications pursuant to the agreement were required to be copied to Hess Corp's global headquarters in New York.

21. Financial results of the refinery and HOVENSA are reported by Hess Corp with HOVENSA's finances represented as a line item contributing to Hess Corp's total financial results.

III. THE 50-YEAR RELATIONSHIP BETWEEN THE GOVERNMENT AND HESS CORP

A. Act 1524/the Agreement (1965)

22. Fifty years ago, the Government and Leon Hess (on behalf of Hess Corp) began negotiations to embark on a long-term commercial relationship based on mutual obligations and benefits, involving the construction, maintenance, and operation of a large, world-class oil refinery on St. Croix.

23. Leon Hess sought a location for a large refinery to process crude oil into finished products, such as heating oil and gasoline, in order to significantly expand Hess Corp's ability to sell these products throughout the United States.

24. The Government needed this large project to help grow the then almost non-existent economy on St. Croix.

25. To facilitate the Territory's economic progress, the federal government provided the USVI Government with unprecedented authority in 1954 to grant tax incentives and benefits to companies like Hess Corp to induce them to relocate to the Territory, create jobs, and establish a diversified economy, offering tax advantages not available from any State through agreements signed by the Governor and then ratified by an Act of the Legislature, giving them the force of law.

26. Leon Hess relied on these extraordinary tax benefits in negotiating with the Government to build Hess Corp's much needed refinery on St. Croix.

27. Because the tax laws required the tax exempt entity to be a resident of the Virgin Islands, Hess Corp in 1965 formed a wholly owned subsidiary, Hess Oil Virgin Islands Corporation ("HOVIC"), as the entity which would enter into a tax agreement with the Government that Hess Corp negotiated.

28. The negotiations between Leon Hess and the Government resulted in a formal contract first executed in September of 1965 between the Government and HOVIC, which was adopted as Act 1524 by the Virgin Islands Legislature. The first Appendix to that Act included and incorporated a contractual agreement between the Government and HOVIC (hereinafter referred to as "Act 1524" and the "Agreement").

29. Although the parties to the Agreement were HOVIC and the Government, Act 1524 specifically identified Hess Oil and Chemical Corporation (the predecessor company to Hess Corp), as also having the responsibility to "employ competent professional architects or engineers or both to design and supervise the construction ***and operation***" of the Refinery. In addition, all notices, requests and communications to HOVIC regarding the Agreement were directed to be made to "Hess Oil and Chemical Corporation" in care of its Chairman, Leon Hess.

30. Act 1524 reflected the Government's decision to grant unique tax and other benefits pursuant to a special statutory scheme created by Congress to assist the Virgin Islands in developing its economy, HOVIC agreed to construct, maintain, and ***operate*** a large oil refinery through the term of Act 1524, which would serve as the anchor of the Territory's industrial economy, provide hundreds (and later thousands) of high paying jobs to residents of the Virgin Islands, and create thousands of additional jobs in industries and businesses necessary to service the refinery, its employees, and their families.

31. The first clause of Act 1524 provides that "it is essential to the continued progress, prosperity and stability of the Virgin Islands economy that dependence on tourism be relieved through the establishment of industrial operations capable of providing and sustaining large scale employment."

32. These operations, the law provides, were to be performed by a "modern-designed and engineered oil refinery ..."

33. In Act 1524, the Government committed to help develop berthing and docking facilities, and to offer tax exemptions and subsidies worth hundreds of millions of dollars to "promote the establishment ***and operation***" of the refinery.

34. HOVIC agreed that it would construct and ***operate*** an oil refining facility in exchange for receiving these tax subsidies and benefits for 16 years after the refinery was operational.

35. HOVIC committed to "employ competent professional architects or engineers or both to design and supervise the construction ***and operation***" of the "Oil Refinery and Related Facilities" (as defined in Act 1524).

36. HOVIC further agreed to comply with USVI laws "to the end that the construction ***and operation*** of the Oil Refinery and Related Facilities may be conducted in an orderly manner."

37. HOVIC made these commitments based on the express understanding that the Government "believes that the location of the Oil Refinery and Related Facilities in the Virgin Islands, and their expeditious and economical construction ***and operation***, are ... in the public interest."

38. HOVIC also committed to "commence the construction, and thereafter the operation, of a training school for the purpose of adequately training personnel in the skills necessary for their employment in the Oil Refinery and Related Facilities."

39. In return for performing these and other obligations, Hess Corp's wholly owned subsidiary, HOVIC, received an extraordinary, comprehensive package of tax, regulatory and other benefits worth hundreds of millions of dollars a year.

40. To ensure that the refinery's operations furthered the public interest of employing VI residents, Act 1524 required HOVIC to commit that "not less than seventy-five percent (75%) of the persons employed in the operation and maintenance of the Oil Refinery and Related Facilities . . . shall be legal residents of the Virgin Islands."

41. Under the terms of the law, the only excuse for HOVIC's failure to construct *and operate a refinery* was a "*Force Majeure*" clause, which did not contain any language allowing Hess Corp or HOVIC to cease operations of the refinery simply because they no longer wanted to operate the refinery due to financial or other business factors.

42. In 1966, HOVIC started operating the first part of the refinery, although extensive construction of additional refining units continued.

43. By 1974, the St. Croix refinery had the capacity to refine 650,000 barrels per day ("bpd") of oil and was the largest refinery in the Western Hemisphere.

44. While Act 1524 was in effect, the Government granted even further benefits to HOVIC by permitting the massive expansion of the refinery's harbor and then providing a lease and permits to allow HOVIC to use the newly formed land and submerged land created by the dredging for its refinery operations.

45. The Government fully and faithfully fulfilled all its obligations under every aspect of Act 1524.

46. As the Government and Hess Corp expressly contemplated, the construction and operation of the refinery resulted in the significant expansion and stabilization of the Territory's economy in exchange for the tax and related benefits extended to HOVIC.

47. According to Hess Corp's 1999 Annual Report to shareholders, Leon Hess stated that building the St. Croix refinery was "his proudest achievement in business" and "the biggest project he ever undertook."

B. Act 4538/First Extension Agreement (1981)

48. The tax benefits extended by law were due to expire in late 1981.

49. Prior to its expiration, Leon Hess began to negotiate an extension of the initial Agreement with the Government in order to facilitate Hess Corp's plans to expand the St. Croix refinery, which had been a successful and profitable venture for Hess Corp, allowing it to expand its sales of refined oil products throughout the United States and the world.

50. Leon Hess's apparent strategy in seeking an extension of the term of the Agreement and other amendments to increase HOVIC's benefits and concessions from the Government was to threaten the Government with non-renewal of the Agreement, with the

consequent loss of jobs and its newly industrialized economy if the Government did not consent to favorable new amendments.

51. Indeed, in the late 1970's, Leon Hess had Hess Corp buy land in nearby St. Lucia and negotiated a 50-year tax agreement (called the "Oil Refinery Act of 1977") with the Government of St. Lucia so it could construct a refinery there, with the implied threat that he would move the refinery there if he could not get an early extension to the Agreement. In fact, Hess Corp's annual report for 1980 (issued in early 1981) noted that there were plans to build a 200,000 bpd refinery in St. Lucia.

52. Leon Hess and Hess Corp were highly incentivized to secure the extension of the initial agreement enacted in Act 1524. As noted in a report prepared in 1981 by the U.S. Department of Commerce, in conjunction with the Virgin Islands Planning Office, the refinery was so successful that HOVIC would have been required to pay $400 million in taxes in 1979 without the tax concessions provided by law, instead of the approximately $10 million it paid in taxes that year.

53. The Government was also motivated to extend the term of the Agreement and to approve amendments needed to expand the refinery, in order to keep it operating and to ensure continued (and increased) employment, strengthened industrial infrastructure, and greater economic stability through longer assured refinery operations, which according to the aforementioned 1981 report constituted 11% of the Gross Territorial Product.

54. During these negotiations, the *New York Times* quoted Leon Hess: "When we make money, I want the Virgin Islands to share that money." If we don't make money, I don't want them to suffer." This statement is consistent with the understanding that refinery would continue to operate for the full fixed term even if it was not profitable in any given year.

55. After several failed attempts, the Government and HOVIC reached an agreement to amend and extend the Agreement (the "First Extension Agreement") in 1981. The First Extension Agreement did not replace, but rather amended the parties' obligations under Act 1524 and extended its term for another 16 years. The First Extension Agreement was ratified as Act No. 4538 by the Legislature on May 7, 1981.

56. Upon signing the First Extension Agreement, Leon Hess publicly stated that the next 16 years should be profitable for the people and the company, noting that the company had "an obligation to the Government and the people of the Virgin Islands and that is to proceed immediately with our expansion on St. Croix to provide more employment and make our company a successful and wonderful corporate citizen."

57. In this regard, Section 8(A) of Act 4538 required HOVIC to invest $200 million in capital expenditures to construct a fluid catalytic cracking unit ("FCC Unit") to maximize its refining and production of petroleum products. In Section 8(B), HOVIC declared "its intention" to construct a second FCC Unit as soon as "economically practical," which would entail a capital expenditures of no less than $275 million.

58. Section 5 of Act 4538 also mandated that HOVIC start paying certain fixed property taxes as follows:

> (a) Section 5(A) required HOVIC to pay fixed real property taxes of $10 million per year from the effective date of the law until the first FCC Unit commenced commercial operations and then $12 million thereafter.
>
> (b) Section 5(C) required HOVIC to pay $14 million per year upon the commencement of operations of the second FCC Unit.

59. Section 10 of Act 4538 obligated HOVIC "during the Effective Period" to "pay the Government a fee equal to 2 cents per barrel for each barrel of finished refined products manufactured at the Oil Refinery and Related Facilities and exported from the Virgin Islands."

60. Section 11 of the law obligated HOVIC to "commence the construction of a vocational school on the island of St. Croix," at a cost of $3 million, and upon completion to transfer ownership of the school to the Government.

61. Under the terms of Act 4538, HOVIC also undertook to supply fuel oil to the Water and Power Authority ("WAPA") by bidding to sell such fuel to WAPA at a substantial discount (the "WAPA Fuel Subsidy Obligation").

62. HOVIC promised to "submit bids on an annual basis for sales of residual and distillate fuel oils f.o.b. [*i.e.*, free-on-board, meaning at the expense of the shipper, HOVIC] the Oil Refinery and Related Facilities to [WAPA]."

63. The discount price was set by a formula. Specifically, Section 9 of Act 4538 mandated that "f.o.b. maximum price per barrel for residual and distillate fuel oils pursuant to [its] bids shall not exceed the ***lower*** of:"

> (a) [HOVIC's] average landed monthly crude oil costs per barrel of crude oil charged to the processing units of the Oil Refinery and Related Facilities, without adding thereto any refining costs, for the month of any sales pursuant thereto, or
>
> (b) the Exxon New York Harbor cargo prices per barrel for the same grades of such residual or distillate fuel oils, as the case may be, as published in the *Oil Buyer's Guide* on date of loading, less Two Dollars ($2.00) per barrel (42 gallons per barrel).

64. Further, Act 4538 expressly required that HOVIC maintain sufficient fuel supplies at the refinery to meet the fuel needs of the Virgin Islands, including the fuel oil needs of WAPA (the "Public Fuel Storage Obligation").

C. <u>Act 5588/Second Extension Agreement (1990)</u>

65. While the Government fully complied with Act 4538, it was undisputed that HOVIC failed to timely meet several of its obligations under the law.

66. As one example, in the early 1980's, it was discovered that millions of gallons of crude oil had leaked into the water table below the refinery in violation of environmental law, requiring an extensive environmental clean-up, which is still on-going today. Under Act 4538 § 12(C), HOVIC had committed to comply with all applicable federal and Virgin Islands laws and regulations protecting the environment and creating environmental standards.

67. Moreover, by 1990, HOVIC had failed to construct the *first* FCC Unit as it was obligated to do by Act 4538, claiming that changes in economic conditions made construction of the FCC Unit economically unfeasible. This failure to construct the FCC Unit resulted in a loss to the Government of approximately $2 million per year in real property taxes beginning in 1984, as well as related economic losses as a result of the failure to create the anticipated new jobs.

68. HOVIC had also refused to timely construct the vocational school.

69. These breaches caused grave concern to the Government, but instead of first curing them, Leon Hess had Hess Corp seek further concessions from the Government, leading to negotiations in 1990 regarding these breaches and further amendments to the Government's agreement with HOVIC and law.

70. During contentious Senate hearings in 1990, Hess Corp and HOVIC representatives repeatedly stated that the Government needed to accept Hess Corp's terms, including another extension of the term of the agreement, or face the loss of jobs and related economic benefits.

71. Indeed, Hess Corp and HOVIC representatives let it be publicly known that Hess Corp had bought additional land in St. Lucia.

72. The Government was again highly motivated to reach agreement on these new demands despite HOVIC's substantial breaches of its obligations under the First Extension

Agreement in order to ensure long-term and stable employment and economic activity created by an operating refinery.

73. In order to resolve HOVIC's failures to perform, and the Government's claims related thereto, HOVIC, represented by Hess Corp's Chairman Leon Hess, and the Government agreed to once again amend and extend the term of the Agreement (the "Second Extension Agreement").

74. Under the Second Extension Agreement, HOVIC agreed to commence construction of the long delayed FCC Unit by December 15, 1990, this time agreeing to invest capital expenditures of not less than $550 million to construct the unit.

75. HOVIC also agreed to complete the construction of the previously promised vocational school, covering all costs of construction up to $10 million.

76. To compensate the Government for the loss in real property taxes resulting from HOVIC's failure to timely construct the FCC Unit, HOVIC agreed to make lump sum payments totaling $20 million, in addition to reaffirming its obligation to pay $12 million annually in "real estate taxes" following the commencement of commercial production of the first FCC Unit.

77. For its part, in addition to releasing its claims for HOVIC's failure to construct the FCC Unit and the vocational school as originally promised and required in return for the tax concessions, the Government agreed to extend the Agreement's term to a date "sixteen years from commencement of commercial production from the first fluid catalytic cracking unit" and agreed that certain of HOVIC's exemptions from the payment of gross receipts tax on local sales would be extended to exempt HOVIC's sales of fuel to all vessels calling in the Virgin Islands, including cruise ships and all types of merchant and harbor vessels.

78. The Second Extension Agreement stated: "nothing contained in the foregoing shall be construed so as to release either the Government or Hess from their respective obligations under this Restated Second Extension and Amendment Agreement."

79. This Second Extension Agreement was enacted into law by the Virgin Islands Legislature as Act 5588, on August 30, 1990.

80. Following execution of the Second Extension Agreement, HOVIC began construction of the $550 million FCC unit.

81. After Act 5588 was passed, the Office of the Inspector General of the U.S. Department of Interior ("OIG") conducted an audit of HOVIC's operations and their impact on the Virgin Islands. The OIG issued its report in February of 1992, concluding that HOVIC had received a total of $6.2 billion in tax benefits and exemptions since the inception of refining operations in 1966, while the Government had received only $1.7 billion in benefits for the same period, primarily achieved through increased employment. The OIG report also analyzed Act 5588 and concluded that HOVIC would receive an additional $5.6 billion in benefits over the term of the law, while the Government would only receive $2 billion in benefits. See **Exhibit 1.**

82. In 1993, the Goverment agreed to a clarifying amendment requested by HOVIC regarding the exemption of taxes on the importation and exportation of certain items. The recitals to the amendment expressly affirmed that the intent of the tax concessions was to induce HOVIC to construct ***and operate*** the refinery.

83. In late 1993, the FCC Unit began commercial operations, establishing the term of Act 5588 to run until 2010.

84. Completion of the FCC Unit allowed Hess Corp to significantly increase its sales of refined products throughout the United States. Indeed, by 1993 Hess Corp operated 535

gasoline stations under the "HESS" name; by 2000, there were 929 "HESS" gas stations, with plans to add another 173 stations in the following year. Over 50% of the gasoline products sold by those gas stations were supplied by HOVIC.

D. Act 6231/Third Extension Agreement (1998)

85. In early 1998, Hess Corp entered into a letter agreement with a subsidiary of the Venezuelan national oil company Petroleos de Venezuela S.A. ("PDVSA"), to engage in the joint management of the St. Croix refinery, and to build a delayed coking unit ("coker") to process heavy, high-sulfur Venezuelan oil.

86. The Third Extension Agreement explicitly states that the decision to create a business arrangement between HOVIC and PDVSA-VI and enter into the Third Extension was made not by HOVIC and PDVSA-VI but by their parent companies—specifically, by HOVIC's "parent company, Amerada Hess Corporation (the predecessor to Hess Corp), and Petroleos de Venezuela, S.A. (PDVSA), acting through its subsidiary, PDVSA Petroleo y Gas, S.A."

87. The Hess-PDVSA letter agreement specifically noted that the parties planned to pursue other possible commercial opportunities related to the crude oil reserves in Venezuela, which would allow Hess Corp to further develop its exploration and production plans in Venezuela, then believed to have the largest oil reserves in the world.

88. The Hess-PDVSA letter exposed Hess Corp's complete dominance of HOVIC and the St. Croix refinery, as the letter repeatedly asserted that "Hess [Corp] will cause HOVIC to" conduct or not conduct the refinery's business in certain ways.

89. Upon information and belief, Hess Corp's motivation in signing the Hess-PDVSA letter was to facilitate its long term plans of becoming primarily an exploration and production company, with the untapped crude oil reserves of Venezuela becoming a central part of that long-term strategy.

90. Hess Corp then again approached the Government, seeking to renegotiate and further extend the term of Act 6231 beyond its then-remaining 11 years—in order to incorporate its new plans of adding a Venezuelan owned company to the ownership and operation of the St. Croix refinery.

91. In presenting this new proposal to the Government, Hess Corp officials claimed that the St. Croix refinery had lost $1.1 billion over the previous seven years, which they blamed on changes in the oil industry in general, including new requirements imposed by the federal Environmental Protection Agency ("EPA") that cost the industry $20 billion. Indeed, they noted that 33 refineries had closed in the recent past, including a Hess Corp-owned refinery in Purvis, Mississippi.

92. Of course, part of the refinery's claimed loss was directly due to the cost of the planned $550 million FCC Unit, designed to increase profits for Hess Corp through the sale of gasoline by HESS gas stations across the United States over the term of Act 5588 through 2010. Indeed, none of Hess Corp's 10-K statements for the seven years prior to 1998 indicated any dire state of financial stress in its refining operations, as was represented to the Government.

93. In its proposal, Hess Corp asked for a new concession: that HOVIC be allowed to extend its exceptional tax benefits to a third party through an "agreement with a strong oil producing country partner willing and able to commit to substantial additional investments in the Oil Refinery and Related Facilities and to make other arrangements necessary to strengthen the economic and competitive position of the Oil Refinery and Related Facilities and enhance its future profitability." In particular, HOVIC proposed to sell a 50% interest in the refinery to a subsidiary of PDVSA and then construct a new coker to process the heavy Venezuelan high sulfur crude oil purchased from PDVSA pursuant to a long-term crude oil supply contract.

94. In a presentation to the Senate, Hess Corp stated that the purpose of the proposed amendment was to secure the refinery's crude oil supply.

95. In its presentation to the Senate, Hess Corp threatened that if the coker was not built, the refinery would become completely uneconomic "and will have to shut down."

96. HOVIC official Alex Moorhead stated that even if the new amendment was approved, *the refinery did not expect a profit from this new arrangement until 2011*, but that it expected substantial profits in the years following 2011.

97. During the Senate presentation, Hess Corp noted that the refinery then employed 2,100 workers with an annual payroll of $129 million, but would hire an additional 2,000 workers to build the new coker needed to process the Venezuelan crude oil, adding an additional $150 million in annual payroll during the three year construction period.

98. In considering this requested amendment, the Government's financial advisors, Arthur D. Little ("Little"), represented by Nigel Godley, specifically noted that the new proposed amendments would again significantly extend the term of the Act 6321, then due to expire in 2010, by 12 more years. Little expressly noted that this longer term would safeguard and increase employment benefits to the Virgin Islands.

99. In particular, consistent with the presentation to the Senate made by Hess Corp, Little noted that the proposed extension would preserve 2,000 jobs and add approximately $190 million of annual income to the Virgin Islands economy.

100. Hess Corp proposed that the new 50% partner should be PDVSA's newly formed Virgin Island subsidiary PDVSA-VI, but that PDVSA-VI would be added, not substituted, as a party to the Agreement.

101. The proposed Hess Corp-PDVSA agreement required PDVSA-VI to pay $62.5 million at closing and execute a note for $562.5 million to pay for 50% of the refinery assets out of its profits, payable in installment payments over a ten year period.

102. Hess Corp and HOVIC assured the Government in its presentation to the Senate that the resulting amendment would "confirm" that HOVENSA has "[the] same obligations and liabilities and same benefits" as HOVIC under the Agreement. "Fuel oil sales to VIWAPA at below cost" was one of the obligations that would continue under the proposed third extension.

103. Hess Corp and PDVSA officials made a presentation to the Governor and the Legislature in which they repeatedly assured the Government that the HOVIC and PDVSA-VI would have the same obligations and benefits, including the obligation to make "fuel oil sales to VIWAPA at below cost."

104. Defendant's presentation to the Government regarding the proposed Third Extension Agreement was affixed with the Hess Corp logo, and was delivered by John Hess, then President and CEO of Hess Corp.

105. That presentation repeatedly confirmed that HOVIC would "continue to manage ***and operate"*** the refinery.

106. In its presentation, Hess Corp also insisted that a 20-year extension of the term of the Third Extension Agreement after completion of the planned coker unit was "required" to "to match [the] 20-year term" of the crude oil supply contract to be executed with PDVSA.

107. Hess Corp representatives then drafted the amendment that became the Third Extension Agreement, which specifically referenced the Government's reliance on Little's financial review, which amendment the Government agreed to in order to ensure continued (and

expanded) employment and economic activity created by the Agreement for a new term of twenty (20) additional years after the coker became operational.

108. Act 6231 adopted and expressly confirmed HOVIC's continuing obligations under the preceding amendments and initial agreement. Section 14 of Act 6231 stated that "all terms and conditions of the Agreement shall continue in full force and effect." Indeed, the initial Agreement expressly provided that HOVIC would always remain liable under the Agreement even if the Agreement were assigned to another party. Section 10 of the Agreement provided in section 10 ("Assignment"):

- This Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of the Government and of substantially all of the business of Hess but shall not otherwise be assignable except by Hess (i) in whole or in part to any one or more of its Affiliates, and (ii) as provided below. **No such assignment by either the Government or Hess shall relieve the assignor from any obligations hereunder.** (Emphasis added.)

109. Act 6231 also acknowledged that HOVIC had not constructed the second FCC Unit contemplated by the Acts 4538 and 5588, and that HOVIC's annual real property taxes had accordingly not increased from $12 million to $14 million, as contemplated by those amendments. The recitals then state that at HOVIC's and PDVSA-VI's request, the planned second FCC Unit would be replaced by a coker, the completion of which would trigger the increase in fixed real property taxes to $14 million annually.

110. Section 7 of the Act 6231 set forth HOVIC's and PDVSA-VI's obligation to construct the coker and pay increased annual real property taxes of $14 million.

111. In the recitals, the parties agreed to extend the contract for twenty years after the coker was completed, which Hess and PDVSA had stated was needed to justify their investment. Acknowledging the quid pro quo for the Government, the agreement went on to note that the new arrangement will "afford substantial and continuing benefits to the economy of the Virgin

Islands by strengthening the economic and competitive position of the refinery and enhancing its profitability and by substantially preserving jobs."

112. Hess Corp's public representations and the express language of the Third Extension Agreement provided that the WAPA Fuel Subsidy Obligation originally imposed by Act 4538 would remain unchanged. Indeed, the parties committed to continue the WAPA Fuel Subsidy Obligation "on the terms set forth [in the First Extension Agreement]"—namely, to provide discounted fuel bids to WAPA at significantly below-market prices using an agreed-upon pricing mechanism—in order to provide the Government oil "at prices below market prices," to "afford[] substantial savings" to the Government and to guarantee "an assurance of supply." However, the parties noted that one modification was needed as a referenced industry benchmark for determining one of the alternate calculations for determining the price of the products being sold to WAPA was no longer in existence, requiring a new benchmark.

113. However, without alerting the Government to the change, Hess Corp further modified HOVIC's obligation to supply fuel to WAPA by replacing the phrase "crude oil" with the phrase "*low-sulfur* crude oil" in the provision establishing the method of calculating the price for the fuel oil being sold to WAPA without ever disclosing this change to the Government, which would substantially *increase* the cost of the fuel oil purchased by WAPA by as much as $10 to $20 million dollars a year.

114. Despite the enormous financial consequences of this apparently small change in the formula for the WAPA Fuel Subsidy Obligation, neither Hess Corp nor their representatives—nor anyone else associated with Hess Corp—ever disclosed the change or its effect to the Government, despite the fact that it knew the Government was totally unaware of the significance of this change. The addition of the words "low sulfur" by Hess Corp without

disclosure of their effect on the WAPA Fuel Subsidy Obligation was materially misleading, and on information and belief, was done with the intent to deprive the Government of the full benefit of the subsidy for which it had bargained.

115. Indeed, in their extensive testimony before the Virgin Islands Legislature relating to the proposal and ratification of Act 6231, not once did any representative of Hess Corp reveal any intention to alter the nature, scope, or value of the WAPA Fuel Subsidy Obligation. To the contrary, Hess Corp President John Hess, when specifically asked to explain the proposed changes relating to the supply of fuel oil to WAPA, did not discuss the addition of the phrase "low-sulfur" or disclose its effect on the value of the WAPA Fuel Subsidy Obligation, leading the Government to understand that the agreement to supply discounted fuel to WAPA remained unchanged.

116. Likewise, the Little representative, Nigel Godley, never advised the Government about this change; yet, when the Government sought Godley's assistance later to help address the misuse of the term, it turned out he *was now employed by Hess Corp and was instructed by Hess Corp not to talk to the Government.*

117. In the recitals, the parties reaffirmed that the original agreement between HOVIC and the Government set forth the material obligations for operating the refinery through its term, including the express acknowledgment that, among other things, the Government offered certain tax incentives "to induce Hess to construct *and **operate** the Refinery and Related Facilities in St. Croix.*"

118. The Third Extension Agreement included an additional commitment to provide certain Government agencies, including those charged with critical responsibilities during

emergencies, with gasoline and diesel fuel in "tank trailer quantities f.o.b. the loading rack" at the "posted rack price" (the "Agency Fuel Supply Obligation").

119. In particular, the Department of Property & Procurement supplies fuel for the Government's motor pools, including not only police and emergency vehicles, but also public transit operated by the Department of Public Works.

120. Moreover, the entire island of St. Croix has historically relied on the refinery's loading rack for its supply of gasoline, diesel and jet/aviation fuel.

121. The commitment under the Fuel Rack Obligation was to provide fuel at the "posted rack price" through the end of the term of the Third Extension Agreement.

122. HOVIC, represented by Hess Corp founder Leon Hess, and PDVSA-VI, executed the Third Extension Agreement, as did the Governor.

123. The Legislature ratified the agreement on May 18, 1998, in Act No. 6231.

E. HOVENSA's Arrival

124. On June 30, 1998, HOVENSA LLC ("HOVENSA"), a Virgin Islands limited liability company was created by HOVIC and PDVSA-VI. HOVIC owns 50% of the shares of HOVENSA.

125. As stated above, Hess Corp considers itself to be the owner of HOVENSA in its Annual Reports to shareholders, and reports HOVENSA's financial results as contributing to Hess Corp's total financial results.

126. According to the agreement between Hess Corp and PDVSA to establish HOVENSA, Hess Corp agreed to provide HOVENSA with management, logistical, accounting, legal, environmental, and other support services.

127. On information and belief, HOVENSA never executed the Third Extension Agreement.

128. Four months later, on October 30, 1998, HOVIC, PDVSA-VI and HOVENSA transferred the refinery property to HOVENSA, subject to joint management and operation by HOVIC and PDVSA-VI.

129. At closing, PDVSA-VI paid HOVIC $62.5 million and signed a note for $562.5 million, payable over in annual payments over 10 years at 8.46% interest, in order to purchase 50% of HOVIC's interest in the refinery. On information and belief, the purchase price paid by PDVSA-VI for 50% of HOVIC's interest in the refinery significantly exceeded the fair market value thereof at the time of the purchase. HOVIC was also paid $307 million as reimbursement for existing working capital.

130. Thereafter, HOVIC received $62.5 million plus 8.46% per year (totaling millions of dollars of interest income over the term of the note) on the balance of the note—until February of 2009, when the note was paid off.

131. On October 30, 1998, HOVIC and PDVSA-VI caused HOVENSA to enter into long-term crude oil supply agreements with Petroleum Marketing International (Petromar), an Aruba corporation that is a wholly-owned subsidiary of PDVSA, pursuant to which Petromar agreed to sell to HOVENSA a monthly average of 155,000 bpd of Mesa crude oil and 115,000 bpd of Merey crude oil.

132. In addition, HOVIC and PDVSA-VI caused HOVENSA to enter into a product sales agreement with Hess Corp and Petromar, by which Hess Corp and Petromar each agreed to purchase 50% of HOVENSA's gasoline, distillate, residual fuel and other products after any sales of refined products by HOVENSA to third parties. Under these agreements, during the relevant years, HOVENSA purchased a significant percentage of its crude oil supply from Petromar and sold a significant percentage of its refined oil to both PDVSA and Hess affiliates.

133. Upon information and belief, the crude oil pricing in the HOVENSA/Petromar supply contract was based on a formula that was different from the formulas for crude oil pricing in the supply contracts of competing refineries. A former PDVSA executive stated in a U.S. newspaper article that the HOVENSA/Petromar supply contract pricing resulted in HOVENSA purchasing the crude oil from PDVSA at a price that was higher than the price at which PDVSA sold crude oil to other customers.

134. In addition, upon information and belief, HOVENSA sold its petroleum products to Petromar and Hess Corp at a price lower than the price at which HOVENSA sold such products to other customers.

135. Thus, upon information and belief, the ability to supply and purchase the petroleum products to and from HOVENSA at a price substantially different than the fair market value thereof, allowed Hess Corp to derive billions of dollars of economic benefits from the refinery operation as a result of such non-arm's-length transactions not disclosed to, or apparent to, the Government. It also permitted the company to reduce the amount of net profits and income taxes payable to the Government.

136. As contemplated by Act 6231, in 1999, the Government, through the Department of Planning and Natural Resources ("DPNR"), entered into a lease and issued to HOVENSA Major Coastal Zone Permit No. CZX-6-99W, pursuant to which HOVENSA was authorized to construct a Coke Loading Dock on certain Government-owned submerged lands in order to allow for the operation of the refinery's delayed coking unit. *No other use of the premises is authorized by the lease or permit.* Similarly, other submerged lands permit(s) and/or lease(s) authorize HOVENSA to occupy and use certain submerged lands only for purposes related to the

refinery, but do not authorize HOVENSA to occupy and use such lands for other activities, including the operation of a separate oil storage terminal business.

137. By the terms of Act 6231, the "Effective Period" was extended to run until "a date 20 years after the commencement of the manufacture of commercial quantities of marketable products from the Coker Project . . ."

138. On information and belief, the Government was notified in writing that the "Coker Project" had begun to manufacture commercial quantities of marketable products in August 2002, resulting in an "Effective Period" that runs until August 2022.

139. Neither the initial act, nor any of the subsequent acts, provides for or permits unilateral cessation of the promised operation of the refinery prior to the end of the term of the Agreement in August 2022, except upon the occurrence of acts specifically defined under the Force Majeure clause.

140. The predictions of imminent financial disaster that prompted Hess Corp to seek concessions in the Third Extension Agreement proved to be unfounded, as did the claim that the new coker would not be profitable before 2011. After the coker's completion in 2002, the refinery began selling billions of dollars in refined products to Hess Corp and PDVSA affiliates and reaping massive profits both on those sales and on the related preferential pricing.

141. By 2002, the refinery was financially able to issue and sell two series of bonds in amounts in excess of $136 million, with payments not beginning until 2014 and then continuing until July of 2021.

142. Over the next five years, the refinery's financial strength allowed it to issue and sell three more series of bonds, totaling almost $220 million in value, with payments not due

until 2015 and then continuing until July 1, 2022, at an even lower interest rate than the first two series.

143. The refinery had generated such a large cash flow by 2004 that it did not need to issue additional bonds.

144. For example, according to Hess Corp's 10-K filing for 2004, in that year Hess Corp received a cash distribution of $88 million from HOVIC.

145. Upon Information and belief, PDVSA-VI received the same distribution as HOVIC in 2004.

146. According to Hess Corp's 10-K filing for 2005, in that year Hess Corp received a cash distribution of $275 million from HOVIC.

147. Upon Information and belief, PDVSA-VI received the same distribution as HOVIC in 2005.

148. According to Hess Corp's 10-K filing for 2006, in that year Hess Corp received a cash distribution of $400 million from HOVIC.

149. Upon information and belief, PDVSA-VI received the same distribution as HOVIC in 2006.

150. According to Hess Corp's 10-K filing for 2007, in that year Hess Corp received a cash distribution of $300 million from HOVIC.

151. Upon information and belief, PDVSA-VI received the same distribution as HOVIC in 2007.

152. In 2008, Hess Corp received a cash distribution of $50 million from HOVIC, according to Hess Corp's 10-K filing for 2008, despite the 2008 financial crisis and the effect of Hurricane Omar hitting St. Croix, which forced the refinery to temporarily shut down.

153. Upon information and belief, PDVSA-VI received the same distribution as HOVIC in 2008.

154. In short, between 2004 and 2008, Hess Corp siphoned off cash from HOVIC in excess of $1.1 billion.

155. Upon information and belief, PDVSA-VI's parent took similar cash withdrawals during this same time period, meaning the parents of the HOVIC and PDVSA-VI siphoned off in excess of $2.2 billion from their subsidiaries in this five year time period.

156. These cash withdrawals were in addition to the other direct and indirect benefits Hess Corp received from the operation of the refinery, including, upon information and belief, preferential, non-arm's-length purchases and sales to and from the refinery to the advantage of Hess Corp.

157. These benefits, and the profitability of the refinery, allowed Hess Corp to expand its "HESS" brand to over 1350 gas stations during this time period, generating further profits for Hess Corp by selling the St. Croix refinery's products throughout the United States, as reported in its 10-K statements.

158. Notwithstanding this success, political changes in Venezuela meant that Hess Corp's goal of obtaining access to the large crude oil reserves in Venezuela was no longer realistic. This directly affected the operations of PDVSA and its role in the St. Croix refinery.

159. On July 28, 2006, credit rating agency Moody's Investor Service announced it was removing its standalone ratings on PDVSA because the Venezuelan company would not provide adequate operational and financial information.

160. The Venezuelan Government then expropriated assets of ExxonMobil and ConocoPhillips in 2007 after the U.S. companies declined to restructure their holdings in

Venezuela to give PDVSA majority control. Other oil companies, including Total, Chevron, Statoil and BP, agreed to similar demands and retained only a minority interest in their Venezuelan projects.

161. By 2008, PDVSA-VI's sole representative at the refinery, Marco Corvesi, left the company and was not replaced, leaving only HOVIC representatives on site at the St. Croix refinery. Thus, by 2008, Hess Corp, through HOVIC, had complete effective control of the St. Croix refinery's day-to-day operations.

F. Hess Corp's Plans to Wind Down the Refinery

162. After PDVSA-VI paid its last yearly payment of $63.5 million in February of 2009, Hess Corp had collected its $562.5 million in principal and interest payments from PDVSA-VI and because its concerns about the stability of PDVSA-VI's Venezuelan parent company eliminated any hope of doing further business in Venezuela. Therefore, upon information and belief, the St. Croix refinery no longer had significant strategic value to Hess Corp.

163. That decision lined up with Hess Corp's plan to restructure its operations to focus exclusively on exploration and oil production rather than "downstream" operations like refining and selling refined products.

164. Hess Corp had to sell or close both the refinery on St. Croix as well as its other, smaller refinery in Port Reading, New Jersey—in order to transition into solely being an exploration and production company.

165. Several obstacles prevented Hess Corp from implementing the strategy to cease refinery operations and then re-configure the St. Croix refinery as an oil storage facility, including (1) the agreement between HOVIC and PDVSA-VI regarding the operation of the refinery which included a long term purchase agreement to buy crude oil from PDVSA until

2022, (2) Hess Corp's own supply contracts to third parties, which required the refinery to remain open for some additional period of time to meet those obligations, and (3) *the obligations under the amended Agreement with the Government to "operate" the refinery until July 2022.*

166. Moreover, the lease and submerged land permits issued by the Government did not allow the property to be operated as a separate oil storage facility rather than as a refinery, requiring the concessions with the Government to be renegotiated if the property was to be used or sold as an oil storage facility.

167. As for terminating the agreement between HOVIC and PDVSA-VI, on information and belief, Hess Corp determined that the parent company of PDVSA-VI had also lost interest in the St. Croix refinery and needed cash. Thus, Hess Corp determined that it could persuade PDVSA to agree to cease operating and sell the refinery once Hess Corp was ready for HOVIC to do so.

168. As for its long-term supply contracts, on information and belief, Hess Corp started repositioning these contracts to minimize its obligations to supply refined products, like gas and home heating oil, over the following years. Hess Corp's plans included ultimately selling the "HESS" gas stations, which received approximately 50% of their gasoline from the St. Croix refinery in 2009, though the amounts decreased as the plans to shift away from refining and marketing evolved.

169. As for the Agreement with the Government, on information and belief, Hess Corp decided it would try to get out of this contract before the end of the term by abruptly closing the refinery without notice, believing that this scenario would cause the Government to panic and force it to accept cessation of refinery operations and the conversion of the facility into an oil storage terminal business.

170. As part of its strategy, Hess Corp began to reduce its oil inventory at the St. Croix refinery, effectively reducing the value of the refinery's inventory by $110 million in 2010 and then again by another $268 million in 2011, which reductions were not disclosed to the Government or publicly until 2012, when it issued its 2011 10-K—after the refinery closure was announced.

171. Hess also had HOVIC cancel plans to enter into a long term agreement with an adjacent industrial site to convert its power needs to a lower based fuel, leaving the refinery using its own refined oil to run is power plant at an much higher cost.

172. As another step toward ending operation of the refinery, upon information and belief, Hess Corp caused HOVIC to defer routine maintenance beginning at some point after 2009.

173. That decision ultimately led to a series of operational problems and environmental events in 2010, including (1) a significant release of benzene into the adjacent neighborhood on September 17, 2010, (2) a large fire (50-100 foot flames) in the west refining units, covering the adjacent neighborhoods with soot and smoke, on September 30, 2010, (3) a fire alarm in the FCC unit on October 6, 2010, shutting the unit down, and (4) a chemical release ("chemically filled yellowish plume") released from its coker, causing a nearby high school to close (with 15 students as well as several nearby elderly residents being admitted to hospital) on December 9, 2010.

174. All of these mishaps were the result of Hess Corp's undisclosed plans to cease operating the refinery, pursuant to which it caused HOVIC to cease doing what was needed to maintain the refinery's safety and long term viability.

175. In November of 2010, Fitch ratings downgraded the HOVENSA bonds from BB+ to BB-.

176. However, Fitch stated at that time that it expected refining to return to profitability in the next few years. Indeed, the refining business returned to profitability in late 2012 and remains a very strong earnings component of any oil company still engaged in refining today.

177. With the refinery showing a loss, these events allowed Hess Corp to take an impairment charge of $300 million before income taxes ($289 million after income taxes) to reduce the carrying value of its equity investment in HOVENSA in December, 2010, which was part of Hess Corp's plan to cease operating the St. Croix refinery.

178. The plan to cease operation of the refinery and ultimately market the facility as an oil storage facility accelerated in 2011.

179. Ensuring that the refinery was further burdened with future operating expenses it could not afford if it continued operating as a refinery (and confirming its intent not to operate as a refinery), in 2011 Hess Corp negotiated a settlement with the EPA (the "Consent Decree") of alleged Clean Air Act violations that had been pending for years without a formal enforcement action having been filed against the refinery. Hess Corp disclosed this potential claim against it in its 2003 10-K, indicating that the EPA had contacted Hess Corp about concerns with its compliance with the Clean Air Act, but had not yet made specific assertions. Further inquiries were made by the EPA over the next 7 years. Hess Corp's 2010 10-K stated that the Consent Decree resolved these claims. The settlement required HOVENSA to spend $700 million in capital improvements over ten years, which expenditures would be required *only* if refinery operations continued.

180. The Consent Decree was entered into on January 26, 2011, the same day that the EPA's complaint was filed in the District Court of the Virgin Islands.

181. Although the EPA notices that triggered the negotiations in 2003 were directed to both Hess Corp and HOVENSA, the Consent Decree was only entered into by HOVENSA—leaving Hess Corp off the hook for Clean Air Act liability and clearing the way for Hess Corp to convert the refinery into a storage facility.

182. In fact, not only did *Hess Corp* negotiate this settlement for HOVENSA, but it caused HOVENSA to agree to these onerous terms *for Hess Corp's benefit* while further impairing the refinery's ability to perform its obligations under its Agreement with the Government and the law. In this regard, upon information and belief, neither Hess Corp nor HOVIC (which now controlled HOVENSA's management) ever intended to complete any of these agreed upon $700 million improvements, as Hess Corp intended to shut the refinery and forcibly convert it into an oil storage facility.

183. The settlement terms were agreed to by Hess Corp to justify the refinery closure and reposition the asset as a storage facility for use or sale – thus increasing Defendant's leverage on the Government to modify the Agreement to permit the operation and/or sale of the facility solely as an oil storage business.

184. On the same date the Consent Decree with the EPA was signed, January 26, 2011, HOVIC closed the units in the west part of the refinery, laying off 90 employees and reducing its production capacity from 500,000 bpd to 350,000 bpd, which HOVIC touted as a move to help return the refinery to profitability.

185. However, like the Consent Decree, this partial closure was just another orchestrated step by Hess Corp towards turning the refinery into an oil storage facility, as Hess

Corp had now repositioned some of its reduced supply obligations so that it did not need the refinery to operate at its full capacity.

186. Hess Corp then coordinated other steps by HOVIC in mid-2011 to accelerate the closure process, such as cutting back and then stopping all crude oil purchases.

187. The reduction and then termination of crude oil purchases were all planned by Hess Corp, not HOVIC, while at the same time impairing the refinery's ability to perform its obligations under the Agreement with the Government.

188. Yet, on November 4, 2011, Hess Corp filed disclosures with the SEC stating unequivocally Hess Corp's "inten[tion] to continue providing its share of financial support for HOVENSA" and to "fund its operations" despite its poor financial performance, and further stating that even if that performance were to become worse, Hess Corp "would take steps to protect its financial flexibility" by "pursu[ing] other sources of liquidity," such as "the issuance of debt securities, the issuance of equity securities, and/or additional asset sales."

189. These statements demonstrated that Hess Corp understood that the refining business was cyclical and could return to profitability as it had done previously when it rebounded from significant losses between 1991 and 1998 to reap huge gains between 2003 and 2008.

190. These statements also demonstrated that Hess Corp understood that it could take various actions to keep the refinery operating as required by the Agreement, and indicated, falsely, that Hess Corp intended to take such actions, even though it failed to do so.

191. Despite these public pronouncements, Hess Corp conducted an impairment study for HOVIC in 2011, which, according to Hess's 2012 10-K SEC filing, concluded that the refinery was not financially viable and allowed Hess Corp to record another $875 million ($525

million after income taxes) of losses from its equity investment in HOVENSA. While the refinery generated after-tax distributions in excess of $2.2 billion to the parents of HOVIC and PDVSA-VI during the first five years after the coker was brought on-line, Hess Corp identified the refinery's losses of $1.3 billion over the next three years as the reason for the closure. However, Hess Corp would have known from long experience that this kind of economic cycle is typical in the oil industry.

192. Indeed, upon information and belief, despite Hess Corp's representations to the Government to the contrary, there had been no bona fide attempt to sell the refinery as a going concern while it was still operating, even though a sale would have provided the Government with its end of the bargain—a large, ***operating*** refinery with jobs and related economic benefits.

193. In fact, PDVSA sold a refinery in Louisiana for $322 million in 2015 that was much smaller than the HOVIC refinery.

194. However, upon information and belief, Hess Corp had made a decision that the optimum value for its St. Croix asset would be to sell it as an oil storage facility, not as a refinery, even though its subsidiary, HOVIC, was obligated to operate it as a refinery until 2022 under the Agreement with the Government.

G. Hess Corp's January 18, 2012 Announcement of the Refinery Closure

195. On January 17, 2012, the then Governor of the Virgin Islands received a telephone call from John Hess, then Chairman and Chief Executive Officer of Hess Corp, informing him that *the following day* an announcement would be publicly made stating that the refinery would cease operating.

196. On January 18, 2012, Hess Corp publicly announced that the refinery would "immediately commence shutdown" of the St. Croix refinery, and that "formal shutdown" would be complete by "the middle of February"—just a few weeks later.

197. On January 18, 2012, HOVENSA also publicly announced that it would stop providing fuel oil bids to WAPA based on the discounted "landed cost" price as required by the Act 6231, even though it was required to continue discounted sales through 2022.

198. On January 24, 2012, Hess Corp announced that HOVENSA would use almost all of its remaining cash to buy back all of its outstanding bonds, totaling $356 million, by mid-February, *even though no payments of principal were due on these bonds until near the end of the original term of the Agreement*, rather than using this cash to improve the refinery and return it to profitability.

199. The decision to redeem the bonds was made to facilitate the shutdown by depleting the refinery's operating funds, while protecting Hess Corp's interests, as a default on the bonds would have adversely affected Hess Corp's bond rating.

200. On January 26, 2012, Hess Corp representatives testified before the Legislature of the Virgin Islands regarding the refinery shutdown and its consequences.

201. In that hearing before the Virgin Islands Legislature, HOVIC's consultant, Alex Moorhead, admitted that there was a contractual requirement "to bid annually" to fulfill WAPA's fuel needs "based on the formula in Section 3 of the Third Extension Agreement," but in back-and-forth during the same hearing, Hess Corp representatives admitted that despite this requirement, they "[would] not bid on a contract for the year 2012 to 2013."

202. Further, Hess Corp announced that HOVENSA would stop fulfilling the Fuel Rack Obligation to provide gasoline and diesel fuel to Government agencies on St. Croix, stating that after June 30, 2012, it would become "somebody else's responsibility to secure the fuel supply that subsequently would be sold through [the] rack."

203. On February 2, 2012, Hess Corp representatives, including Lawrence Ornstein, Executive Vice President of Hess Corp and Timothy Goodell, Executive Vice President and General Counsel of Hess Corp, met with the Government, introducing themselves as representatives of Hess Corp and not as representatives of HOVENSA or either of its members.

204. In that meeting, Hess Corp's Lawrence Ornstein admitted that Hess Corp had been seriously exploring the possibility of a shutdown "for several years," and had slowed down and finally stopped purchasing crude oil for processing at the refinery well before the shutdown announcement, even though it had not informed the Government of these facts prior to the shutdown.

205. In or about the third week of February 2012, Defendant caused oil refining operations at the St. Croix facility to cease.

206. This cessation of refinery operations constituted a violation of law and breach of the Agreement with the Government.

207. In or about the third week of February 2012, Defendant caused the operation of the refinery's training and education facilities to cease. This too construed a violation of law and a breach of the Agreement with the Government.

208. On information and belief, in or about February of 2012, Defendant caused the Coke Loading Dock as governed by Major Coastal Zone Permit No. CZX-6-99W to cease operations.

209. In or about February of 2012, HOVENSA also issued notes to HOVIC and PDVSA-VI evidencing indebtedness to each company in excess of $800 million, purportedly in exchange for "financial support."

210. Hess Corp caused HOVENSA to assume such tremendous debt that it could never repay through its direct control over HOVIC's corporate operations and in the sole interest of Hess Corp. This action effectively rendered HOVENSA insolvent, unable to pay its lawful obligations, including those owed to the Government, as well as its obligations to fully fund the pensions owed to its former employees.

211. As part of the closure announcement, Hess Corp representatives affirmed their intent to convert the refinery into an oil-storage terminal business in direct violation of the law and the Agreement, as well as the leases and the permits issued by the Government. This too constituted a breach of law and the Agreement.

212. To achieve Hess Corp's goal of converting the refinery into an oil storage facility, Hess Corp proposed a series of drastic alterations to the Third Extension Agreement it claimed to be necessary to make the terminal operation viable—including, a dramatic reduction in annual real estate taxes from $14 million to $4 million; the elimination of the obligations to provide discounted fuel oil to WAPA and emergency agencies; the settlement of the Government's long-running environmental litigation against HOVENSA and HOVIC for the nominal amount of $3.5 million; and the extension of the duty-free treatment applicable to crude oil and fuel shipments for refining operations to refined oil products and fuel shipments for storage and terminal operations, an entirely new and separate business not contemplated in the Agreement. Hess Corp demanded that the Government immediately approve these revisions to the Agreement and have them ratified by the Legislature by April 30, 2012.

213. The Government rejected the proposed amendments despite Hess Corp's repeated threats to cripple the economy and create havoc in the Territory.

H. Interim Agreements and the Fourth Extension Agreement

214. On March 22, 2012, faced with the immediate loss of its fuel supply and an imminent jump in fuel costs, the Government entered into an interim agreement with PDVSA-VI, HOVIC and HOVENSA ("First Interim Agreement").

215. In that First Interim Agreement, HOVENSA agreed to supply fuel to WAPA and keep open the fuel loading rack through the end of 2012. In exchange, the Government agreed to allow HOVENSA to operate an oil terminal business on a temporary basis by forbearing from enforcing customs duties on third-party shippers bringing oil and petroleum products for storage in its facilities terminal operation through that period.

216. The First Interim Agreement expressly provided that it was made "without prejudice to the rights of either party under" the Agreement.

217. On June 19, 2012, in response to a communication from the General Counsel of WAPA stating that the refinery shutdown did not relieve the HOVENSA of its obligation under the Agreement, HOVENSA's counsel informed the Government of HOVENSA's position that, upon closure of the refinery, HOVENSA was released from its duty to bid to supply WAPA's fuel oil at the "landed cost" of crude—historically, the lower of the two prices specified in the Third Extension Agreement.

218. In this regard, HOVENSA knew that prematurely ceasing refinery operations would eliminate any "landed cost" of crude for purposes of the calculating the value of the WAPA Fuel Subsidy Obligation, permitting HOVENSA to claim (falsely) that performance of the obligation at the historically lower "landed cost" price was impossible.

219. Although it had previously represented that it would not bid to supply fuel oil to WAPA for any period after December 31, 2012, on or about August 22, 2012, in response to WAPA's request for proposal to bid to supply WAPA's needs through most of 2013,

HOVENSA submitted a bid to WAPA. However this was done on the basis of the New York Reseller Contract Barges Price less $2—that is, the price that historically was the *higher* of the two benchmarks in the Agreement and that was higher than the prices available on the spot market.

220. The Government rejected HOVENSA's proposal, which—contrary to the Third Extension Agreement's requirement that HOVENSA sells fuel oil to WAPA at "prices below market prices" so as to "afford substantial savings" to the Government—was made at a price substantially higher than the market price.

221. On December 11, 2012, the Government and HOVENSA entered into a second interim agreement ("Second Interim Agreement"), which extended the First Interim Agreement through February 2013. Like its predecessor, the Second Interim Agreement confirmed Defendants' Fuel Rack Obligation to supply fuel to the island of St. Croix during the extension period through the loading rack, and expressly reserved all "rights and claims either side may have under the Third Extension Agreement."

222. Throughout this period, Hess Corp continued to insist that the property should be converted into an oil storage facility, claiming this was its highest and best use, but in reality was part of their long-term plan to convince the Government to let HOVENSA out of its obligations under the Agreement.

223. Faced with the Government's refusal to allow them to use the property as an oil storage facility, Hess Corp repeatedly threatened the Government with severe actions, including threats to close the fuel rack, which could lead to economic disaster. To avoid this untenable situation, in April 2013, the Government negotiated a Fourth Amendment to the Agreement (the

"Fourth Amendment Agreement") in which Hess Corp relented and had HOVIC and HOVENSA agree to a process to sell the property as a refinery.

224. The Fourth Amendment Agreement set forth a process by which there would be a *bona fide* attempt to sell the refinery to a buyer willing to reopen and operate it, in exchange for, among other things, a mutual release of all parties from their obligations under the Agreement upon completion of a sale.

225. The Fourth Amendment Agreement was subject to ratification by the Legislature, which held a vote on August 7, 2013, and rejected it.

226. On August 9, 2013, the Government informed Defendants by letter that, in light of the Legislature's action, the Interim Agreement would expire, and the Agreement as amended and extended by the Third Extension Agreement would return into full effect as of August 16, 2013, after which HOVIC and PDVSA-VI (as well as HOVENSA) would be expected to comply with all its obligations under that Agreement, including but not limited to the obligation to "maintain in storage sufficient fuel to ensure that there are adequate supplies to meet the local fuel needs of the Territory," and to "supply certain Government agencies with gasoline and diesel fuel at posted rack prices."

227. HOVENSA responded on August 13, 2013, claiming without any lawful basis that most of their obligations under the Agreement were released when Defendants unilaterally chose to breach the Agreement by stopping the operation of the refinery, and again threatening that "when the inventories presently in storage at the refinery are exhausted, they will not be replaced, *and the storage facility and fuel rack will be shut down.*"

228. Faced with the prospect of economic crisis if Defendants followed through on their threats to shut off the Territory's fuel supply in violation of the Agreement, the Legislature

ratified the Fourth Amendment Agreement (as modified by a letter agreement dated October 16, 2013, which clarified certain terms of the Amendment), which was enacted into law as Bill No. 30-0273, on November 5, 2013.

229. In or about December 2013, Hess Corp. and PDVSA retained the investment bank Lazard Freres & Co., LLC ("Lazard") to conduct a process for selling the refinery to a willing operator.

230. However, the belated attempt to sell the refinery almost two years after it had been shut down, was unsuccessful. Only one bidder, the newly formed Atlantic Basin Refining, Inc. ("ABR"), emerged, in July 2014.

231. In August of 2014, the Government entered into discussions with ABR to negotiate a new Operating Agreement to supersede the existing 1965 Agreement as amended.

232. In October of 2014, the Governor and ABR signed a *proposed* Operating Agreement that would govern ABR's future operation of the refinery and its related facilities following ABR's proposed acquisition of the Oil Refinery and Related Facilities (as defined in the Agreement)--expressly conditioned on a number of events, including ratification of the Agreement by the Virgin Islands Legislature and closing of the sale with ABR.

233. The use or sale of the refinery property as simply an oil storage facility would not carry out the objectives of the various laws that extended concessions to HOVIC (and then HOVENSA) in return for substantial employment of its citizens, a robust and diversified economy, and substantial tax revenues through the end of the term of the Agreement. As a result, the Government rejected all proposals to amend the agreement to allow the property to operate solely as an oil storage facility.

234. On December 19, 2014, the Virgin Islands Legislature voted to reject the proposed Operating Agreement with ABR. Legislators explained that the newly created ABR's thin capitalization and lack of any track record in the refining industry or otherwise made the deal too risky and speculative to warrant the extraordinary step of releasing Defendants from their contractual obligations.

235. Upon the Legislature's rejection of the proposed Operating Agreement, the Fourth Amendment Agreement terminated, and the parties' relationship was governed solely by the Agreement and the terms set forth in the previous amendments to the Agreement.

236. In December 2014, HOVENSA announced that it had "been advised by its owners, PDVSA-V.I. Inc. and Hess Oil Virgin Islands Corp., that once its cash ha[d] been depleted no funding [would] be provided by the owners for continued operations," and that if the refinery was not sold in December, "HOVENSA will begin permanently shutting down all operations" and terminate all its remaining employees by March 1, 2015.

237. Hess Corp also sold its "HESS" gas stations in 2014 as well, ending the refining and marketing businesses of Hess Corp, as planned, other than disposing of the St. Croix refinery.

238. In February of 2015, Hess Corp officials met with the Governor of the Virgin Islands and informed him that while they had $40 million that could be used to pay the Government the amount owed arising out of pollution of the groundwater by the refinery, they did not intend to make this payment. Upon information and belief, *this is the first admitted debt owed by any Hess-related entity to a third party that was not paid when due,* demonstrating Hess Corp's intent to again try to strong-arm the Government into a new amendment that would release all obligations owed to the Government under the Agreement.

239. The Governor rejected these wrongful attempts to again coerce the Government into excusing any party from their obligations under the Agreement.

I. Hess Corp Shuts Down the Refinery

240. Beginning in 2014, Hess Corp began to threaten that it would place HOVENSA in a Chapter 11 bankruptcy proceeding. In bankruptcy, except for its $40 million secured but still unpaid claim from its natural resources damages settlement with HOVIC and HOVENSA, the Government would stand in line with other creditors (including Hess Corp) to recover the money promised to it under its Agreement, including but not limited to, the deferred payments in lieu of taxes and its commission on any sale of the refinery as an oil storage facility. Upon information and belief, Hess Corp has used the threat of bankruptcy to force the Government to agree to waive its claims against Hess Corp and to change the lease terms to permit the use of the Government-owned land for an oil storage facility, and not only a refinery.

241. On March 2, 2015, the refinery terminated all remaining employees and ceased storing oil for third-party customers at its oil storage terminal.

242. Upon ceasing to operate the oil storage terminal, HOVIC and PDVSA-VI were obligated to repay the Government all fixed property taxes deferred pursuant to Section 3 of the Fourth Amendment Agreement, which they failed to do.

243. The refinery closure has had, and will continue to have, substantial direct, negative effects on the quality of life of residents of St. Croix and the USVI in general, including (but not limited to): a dramatic increase in unemployment, loss of hundreds of millions of dollars in tax revenue, loss of billions of dollars in economic activity, and increased energy and drinking water costs.

244. The cessation of refining operations directly resulted in the termination of more than 2,000 employees and subcontractors, who together constituted some twelve percent of total

private sector employment in St. Croix and received not less than twenty-seven percent of the gross private sector income on that island.

245. Hess Corp itself has admitted that, as of 1997, HOVIC alone had contributed "$3.3 billion in Virgin Islands taxes and fees, payrolls, local vendor purchasers and VIWAPA savings," or (at that time) "$189,000,000 annually."

246. Hess Corp has also admitted that the benefits of entering into the Third Extension Agreement included "employ[ment] of over 2,000 workers," "annual payroll of $129,500,000" (as of 1997), and extensive training for thousands of Virgin Islanders "for skilled positions" at the refinery's training facility.

247. As a direct result of the refinery closure pursuant to Hess Corp's scheme, in addition to the immediate loss of more than 2,000 jobs, the Government suffered more than a billion dollars in damages and will suffer hundreds of millions of dollars in damages each year of the contract term until 2022, including annual lost tax revenues in excess of $100 million; annual fuel subsidies estimated by Defendant's representatives to be worth at least $50 million; and annual economic activity of more than $500 million, representing a substantial portion of the annual total gross domestic product of the Territory. In short, the economy of the Virgin Islands, particularly in St. Croix, has been devastated by Hess Corp's interference and the abrupt and wrongful closing of the St. Croix refinery, school and fuel racks.

248. Furthermore, as a direct result of Defendants' breach of their WAPA Fuel Subsidy Obligation, as of December 31, 2012, WAPA and the Government lost access to the bargained-for fuel oil subsidy that permitted them to provide the Territory's citizens with less costly electricity and drinking water.

249. The shortfall between the contractual discounted price of fuel oil and the market price has been and will be covered by increased utility prices, unless and until Defendants timely compensate WAPA and the Government for the value of the shortfall.

250. As a direct result of Defendants' breach of the Public Fuel Storage Obligation, WAPA and other fuel users on St. Croix must store their fuel elsewhere and ship it to the island in small quantities, at substantially higher costs.

251. The resulting increase in fuel costs has resulted and will continue to result in higher utility prices and higher retail fuel prices, to the economic detriment of the Government, WAPA, and the people of the Virgin Islands.

252. As a direct result of Defendants' breach of the Agency Fuel Supply Obligation, both Government and private sector purchasers of fuel have been, and will be, forced to obtain bulk quantities of fuel from off-island sources at substantially higher costs, to the substantial economic detriment of the Government and the people of the Virgin Islands.

253. In July of 2015, Hess Corp issued its annual "sustainability" report, touting the social and environmental commitment that it and its affiliated companies have to the communities it serves worldwide, but no such social or environmental commitment has been made in the past year to the Virgin Islands, as even the agreed upon environmental debt remains unpaid.

COUNT I: CIVIL CICO - 14 V.I.C. § 605(a)
Causing HOVENSA to Violate the Law and its Contract with the Government

254. All preceding paragraphs are re-alleged herein by reference.

255. Defendant Hess Corp, along with non-parties HOVIC, HOVENSA, John Hess, PDVSA, PDVSA-VI, Arthur D. Little, Nigel Godley, and Leon Hess engaged in a business enterprise with the purpose of defrauding the Government by siphoning profits out of

HOVENSA and otherwise causing it to fail to satisfy its legal and contractual obligations to the Government. Defendant Hess Corp was associated with and, in fact, led this enterprise.

256. Defendant agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of criminal activity for the unlawful purpose of defrauding the Government.

257. Defendant knowingly used mail and telecommunications to advance, conceal, and further its scheme to defraud the Government.

258. Defendant's false statements and representations and concealment of material facts were within the jurisdiction of the Governor and Legislature.

259. Pursuant to and in furtherance of their fraudulent scheme, Defendant committed multiple related acts in violation of territorial and federal law, including:

(a) Between 2004 and 2008, causing HOVENSA to distribute over $2 billion in cash to Hess Corp and PDVSA for the purposes of siphoning funds out of HOVENSA and rendering it unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(b) On information and belief, between 2009 and 2011, causing HOVENSA to quietly reduce its oil inventory at the refinery by nearly $400 million and to defer routine maintenance at the refinery, for the purposes of ceasing operations at the refinery, reducing the value of the refinery and its inventory, and rendering HOVENSA unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances),

14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(c) Causing HOVENSA to enter into a consent decree with U.S. EPA on January 26, 2011 that would require HOVENSA to spend $700 million on pollution control measures if refinery operations continued, burdening HOVENSA with significant future operating expenses if it continued to operate while ensuring that Hess Corp faced no liability, for the purposes of impairing HOVENSA's ability to continue operating the refinery and rendering it unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(d) Causing HOVENSA to cut back on—and then stop—all crude oil purchases starting in mid-2011 without disclosing this reduction and termination to the Government, while filing disclosures with the SEC on November 4, 2011 stating Hess Corp's intention to continue providing financial support to HOVENSA and to continue funding its operations, for the purposes of rendering HOVENSA unable to satisfy its legal and contractual obligations to the Government while falsely representing that it would support HOVENSA in maintaining its operations, in violation of 14 V.I.C. § 843 (prohibiting false statements to the government), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(e) On January 24, 2012, causing HOVENSA to use nearly all of its remaining cash—$356 million—to buy back outstanding bonds on which no payments were due for years, to avoid harming Hess Corp's credit rating and to facilitate the shutdown of the St. Croix refinery by depleting HOVENSA's operating funds, for the purposes of siphoning funds out of HOVENSA and rendering it unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud); and

(f) In or around February 2012, causing HOVENSA to issue notes to HOVIC and PDVSA-VI evidencing indebtedness to each company in excess of $800 million, purportedly in exchange for "financial support," effectively rendering HOVENSA insolvent, for the purposes of rendering it unable to satisfy its contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(g) On information and belief, threatened in 2014 to place HOVENSA in a bankruptcy proceeding in order to extract additional concessions from the Government, including waiver of its outstanding claims against Hess Corp and permission to use the land on which the refinery sits to operate an oil storage facility, in violation of 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(h) On information and belief, causing HOVENSA to enter into a long-term purchase agreement on October 30, 1998, with Petromar, and until around 2008, to purchase crude oil from Petromar at above-market prices for the purposes of siphoning funds out of HOVENSA and rendering it unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

(i) On information and belief, between1998 and in or around 2010, causing HOVENSA to sell its petroleum products to Petromar and Hess Corp at a price lower than the price at which HOVENSA sold such products to other customers, for the purposes of siphoning funds out of HOVENSA and into Hess Corp and rendering HOVENSA unable to satisfy its legal and contractual obligations to the Government, in violation of 14 V.I.C. § 832 (prohibiting fraudulent conveyances), 14 V.I.C. § 833 (prohibiting fraud on creditors), and 18 U.S.C. §§ 1341, 1343 (prohibiting mail and wire fraud);

260. The acts set forth above in paragraphs 259(a)-(i) constitute a pattern of criminal activity pursuant to 15 V.I.C. § 604(e).

261. Defendant Hess Corp has directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of criminal activity, in violation of 14 V.I.C. § 605(a).

262. As a direct and proximate result of the criminal activities and violations of 14 V.I.C. § 605(a), the Government has been injured in that:

(a) The Government has lost real estate tax revenue that was to be paid by HOVENSA in the amount of $14 million per year through the end of 2022, including the reduced, deferred payments of $7 million per year from October 2013 through the current date;

(b) The Government has lost the opportunity to purchase discounted fuel oil for WAPA and the Government that HOVENSA was obligated to provide through the end of the contract in 2022, resulting in significantly higher fuel costs for the Government, in an amount to be proven at trial, which the Government believes to exceed $50 million per year;

(c) The Government has lost the benefit of the training and education support previously provided by HOVENSA, which ceased operation in February 2012, but which HOVENSA was supposed to provide through the end of the contract in 2022, in an amount to be proved at trial;

(d) The Government has lost additional tax payments resulting from the operation of the refinery and the shipment, storage, and sale of products in the refinery and its related facilities through the end of 2022, in an amount to be proven at trial;

(e) The Government has lost the tax payments it would have received had it not made, broadened, and extended through each of the extension agreements the tax concessions requested by Hess Corp and valued, for example, by the Office of the Inspector General of the U.S. Department of Interior, in an amount to be proven at trial.

(f) The Government has incurred new financial obligations associated with the social cost of and financial support of residents who have lost the opportunity to be employed at the refinery through the end of the contract in 2022, in an amount to be proven at trial;

(g) The HOVENSA refinery has been rendered inoperable and is unlikely to be sold as an operating refinery to a new owner, preventing the Government from having its damages mitigated; and

(h) Certain Government-owned submerged lands are currently occupied by HOVENSA without the Government having received the benefit of its bargain for the lease of those lands, resulting in the lost use of those lands and anticipated remediation costs to return those lands to their pre-leased condition.

COUNT II: CIVIL CICO – 14 V.I.C. § 605(a)
Fraudulently Inducing the Government to Execute the Third and Fourth Extension Agreements

263. All preceding paragraphs are re-alleged herein by reference.

264. Defendant Hess Corp, along with non-parties HOVIC, HOVENSA, Leon Hess, John Hess, Arthur D. Little, and Nigel Godley, engaged in a business enterprise with the purpose of inducing the Government to enter into the Third and Fourth Extension Agreements, both of which had the force of law, that weakened Hess Corp's obligations to the Government, misrepresented Hess Corp's intention to continue to operate the St. Croix refinery, and, in the end and as a result of its fraud, increased Hess Corp's profits and deprived the Government of revenue and other benefits in job creation and economic development to which the Government was entitled. Defendant Hess Corporation was associated with and, in fact, led this enterprise.

265. Defendant agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of criminal activity for the unlawful purpose of defrauding the Government.

266. Defendant knowingly used mail and telecommunications to advance, conceal, and further its scheme to defraud the Government.

267. Defendant's false statements and representations and concealment of material facts were within the jurisdiction of the Governor and Legislature.

268. Pursuant to and in furtherance of their fraudulent scheme, Defendant committed multiple related acts in violation of Virgin Islands and federal law, including:

(a) Misleading the Government about the purpose of the Third Extension Agreement during its negotiations with and presentations to the Government in 1998 by representing that it would result in the refinery continuing to operate for 20 years after the coker unit became operational, that it would extend the then-current agreement and keep the refinery operating for 12 additional years beyond the 2010 expiration date, and that it would safeguard and increase employment benefits to the Virgin Islands, in violation of 14 V.I.C.§ 843 (prohibiting false statements to the Government) and 18 U.S.C. § 1341 and 18 U.S.C. § 1343 (prohibiting mail and wire fraud);

(b) Misleading the Government by making changes to the draft Third Extension Agreement in 1998, replacing the phrase "crude oil" with "low-sulfur crude oil" in the formula for the WAPA Fuel Subsidy Obligation, without disclosing this change—which would increase the cost of the oil sold to WAPA by as much as $10 million to $20 million dollars per year—to the Government, in

violation of 14 V.I.C.§ 843 (prohibiting false statements to the Government) and 18 U.S.C. § 1341 and 18 U.S.C. § 1343 (prohibiting mail and wire fraud);

(c) Misleading the Government through John Hess's testimony before the Virgin Islands Legislature in 1998 relating to the proposal and ratification of the Third Extension Agreement, in which, when he was asked to explain the proposed changes to the prior agreement relating to the supply of fuel oil to WAPA and did not discuss the addition of the phrase "low sulfur" or disclose its effect on the value of the WAPA Fuel Subsidy Obligation, leading the Government to understand that the agreement to supply discounted fuel to WAPA remained unchanged from the prior agreement, in violation of 14 V.I.C.§ 843 (prohibiting false statements to the Government);

(d) Inducing the Government in 1999 to enter into a lease and issue to HOVENSA Major Coastal Zone Permit No. CZX-6-99W, pursuant to which HOVENSA was authorized to construct a Coke Loading Dock on certain Government-owned submerged lands to allow for the operation of the refinery's delayed coking unit, as well as other submerged lands permit(s) and/or lease(s) authorizing HOVENSA to occupy and use certain submerged lands only for purposes related to the refinery, in violation of 14 V.I.C.§ 843 (prohibiting false statements to the Government) and 18 U.S.C. § 1341 and 18 U.S.C. § 1343 (prohibiting mail and wire fraud); and

(e) Inducing the Government in April 2013 to enter into the Fourth Extension Agreement, in which it agreed to further concessions in, among others: suspending the WAPA Fuel Subsidy; accepting reduced payments of $7 million

in lieu of property taxes of $14 million annually for six years from October 2013; and waiving import duties and other taxes on certain oil storage contracts.

269. The acts set forth above in paragraph 268(a)-(e) constitute a pattern of criminal activity pursuant to 15 V.I.C. § 604(e).

270. The Defendants have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of criminal activity, in violation of 14 V.I.C. § 605(a).

271. As a direct and proximate result of the criminal activities and violations of 14 V.I.C. § 605(a), the Government has been injured in that:

(a) The Government over-paid for fuel sold by the refinery to WAPA pursuant to the WAPA Fuel Subsidy Obligation by as much as $10 million to $20 million each year between 1998, when the Third Extension Agreement was executed, and 2013, when the Government was induced to agree to the Fourth Extension Agreement and Defendants stopped supplying fuel to WAPA.

(b) The Government relied, to its detriment, on Defendant's representations inducing it to sign the Fourth Extension Agreement, resulting in a reduction of tax receipts of $7 million per year from October 2013, as well as the forbearance of import duties and other taxes on all oil storage contracts.

(c) The Government agreed to permit Defendant to place the refinery in the hands of a joint venture between Hess and a Venezuelan-owned company, PDVSA, rather than remaining solely owned by the United States companies Hess Corporation and HOVIC. This arrangement subsequently made it possible for the

enterprise to more effectively siphon the profits of the refinery out of reach of the Government, when this joint venture decided to close the refinery.

(d) The Government relied, to its detriment, on the representations by the Defendant that the plant would continue to operate to a date 20 years after the commencement of commercial production from the Coker Project, many years beyond the expiration date of the 1981 Agreement in 2010. This has prevented the sale of the refinery as a going concern.

(e) The Government leased Government-owned submerged land to HOVENSA and issued permits for refinery operations on that land, resulting in 1) the current unauthorized occupation of those lands with refinery buildings, equipment, and/or operations without the operation—or intent to operate—a refinery, and 2) contamination of these lands through the operation of the refinery without the Government receiving the benefit of its bargain.

COUNT III: INTENTIONAL INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS

272. All preceding paragraphs are re-alleged herein by reference.

273. As described above, the Government entered into the Agreement with HOVIC on or about September 1, 1965.

274. In 1981 and 1990, the Government and HOVIC amended and extended that Agreement.

275. In 1998 the Government further amended and extended that Agreement with HOVIC, and added PDVSA-VI as an additional party to the Agreement, although HOVIC remained fully liable to the Government under the terms of the Agreement. While HOVIC and

PDVSA-VI formed HOVENSA to perform their obligations under the contract, they remained—and indicated their intent to remain—fully liable to the Government under the terms of the Agreement.

276. This Agreement required the refinery continue to operate until 2022.

277. Hess Corp knew of this Agreement and all of its amendments and extensions from the initial negotiations of the Agreement through today, including the requirement that the refinery remain open until 2022. Indeed, Hess Corp, through Leon Hess and John Hess, was directly involved in the development and negotiation of each of these agreements, and acted as the primary instigator of the initial Agreement and each of its extensions.

278. The signatory parties to the Agreement, and each extension thereof, had a duty to fully perform the contractual obligations owed to the Government, and to perform those obligations in utmost good faith and fair dealing.

279. The Agreement stated that the Government's decision to provide tax exemptions and other benefits was to induce HOVIC to "construct ***and operate***" the oil refinery for a set term, in order to promote "economic development of the Virgin Islands."

280. Just as the Government could not terminate its side of the bargain before 2022, neither could HOVIC, or any other signatory party, terminate the obligation under the Agreement to operate a refinery prior to 2022, except as permitted by the Force Majeure clause, which allowed termination of the Agreement before the end of the term under specific conditions.

281. Indeed, under the terms of the Agreement, assertions of economic need or justification for the cessation of refinery operations do not excuse the requirement to operate a refinery under the Agreement as they are not conditions listed in the Force Majeure clause.

Absent a specific event delineated in the Force Majeure clause, the signatory parties are obligated to operate a refinery through July 2022.

282. Between 2009 and 2012, Hess Corp decided to, and then took the steps needed to, have this Agreement terminated prior to the end of this term, by intentionally interfering with the performance by the signatory parties HOVIC and HOVENSA, of their contractual obligations to the Government, which Hess Corp did through improper means and with improper motive.

283. Hess Corp's tortious conduct constituting intentional interference with existing contractual relations includes but is not limited to all violations of territorial and federal law referenced above in ¶ 259 under Count I, including siphoning funds out of HOVENSA via a non-arms-length transaction scheme buying and selling crude oil at off-market prices, siphoning over $2 billion in cash from HOVENSA, causing HOVENSA to reduce its oil inventory and defer routine maintenance at the refinery, causing HOVENSA to enter into a consent decree with the EPA requiring $700 million in spending to continue refinery operations, reducing and terminating HOVENSA's crude oil purchases while filing contradictory SEC disclosures, causing HOVENSA to use nearly all of its cash to buy back $356 million of bonds years before any payments were due, rendering HOVENSA insolvent by causing it to issue notes of indebtedness to HOVIC and PDVSA-VI of over $800 million, and threatening to place HOVENSA into bankruptcy, all of which are described in detail in ¶¶ 131-135, 144-156, 169-174, 179-185, 186-190, 198-199, 209-210, and 240.

284. Hess Corp's tortious conduct further includes but is not limited to all of the following, also committed via improper means and with improper motives:

(a) Hess Corp's plan, which it kept secret for years, to cease operation of the St. Croix refinery, rather than at least try to sell it as an ongoing concern, to try to

obtain optimum recovery for its St. Croix asset as an oil storage facility, even though it knew its subsidiary, HOVIC, was contractually obligated to operate it as a refinery until 2022 under the Agreement with the Government;

(b) Hess Corp's secretive plan to abruptly cease operating the refinery without notice prior to the end of the contract term to create panic within the Government due to the ensuing economic crises, with the improper motive to threaten and coerce the Government to accept amendments to the Agreement permitting the cessation of refinery operations and the conversion of the facility into an oil storage terminal;

(c) Hess Corp's decision to have HOVIC defer routine maintenance at the St. Croix refinery so that it would not be able to fully operate in order to meet the refinery's obligations, which also led to numerous environmental incidents in 2010 that harmed and hospitalized neighbors;

(d) Hess Corp's announcement of the closure of the refinery without any advance notice to the Government, after taking the foregoing actions that prevented the refinery from be able to remain operational, to impede the ability to sell the refinery as an alternative means of keeping it operational as required by the Agreement;

(e) Hess Corp's issuance of false and misleading financial information slanted to paint a picture of financial doom for the refinery when in fact it knew the refinery could have remained operational and profitable if Hess Corp had not

removed its capital, curtailed its ability to operate and saddled it with unnecessary financial obligations;

285. All of which, along with additional acts, include multiple misrepresentations, violation of business ethics and customs, as well as conduct that was contrary to the laws of the Virgin Islands, including the laws preventing false statements to the Government and prohibiting fraud on creditors and preventing damage to the environment. Further, Hess Corp's conduct violated the specific laws that enacted the Government's concessions and HOVIC's and HOVENSA's obligations to the Government, in furtherance of the stated public policy of the Virgin Islands in these acts to promote robust and diversified economic development and expanded employment in the Territory.

286. Hess Corp's intentional interference with this Agreement for its own improper ends and without privilege caused the contracting parties to breach the Agreement by ceasing to *operate* the refinery before the end of the Agreement's term in 2022, as well as to thereafter fail to comply with the other obligations under the Agreement as alleged herein (*e.g.*, closing the school, not maintaining a supply of gasoline for the fuel needs of the Virgin Islands, no longer supplying fuel to WAPA, and not making its required real property tax payments), causing substantial financial and other harm to the Government and the people of the Virgin Islands.

287. One of the reasons Hess Corp was able to exercise such improper influence over the operation of the St. Croix refinery by 2009, is that it knew that by then HOVIC was functionally in control of the refinery since PDVSA-VI was no longer actively involved in the day-to-day refinery operations and business decisions.

288. Hess Corp's intentional and improper conduct intentionally stripped the refinery of the operational ability to perform its contractual obligations to the Government, interfering

with the contracting parties' ability to perform their obligations owed to the Government under the Agreement, which Hess Corp did without proper justification or privilege, through improper means, and with improper motive.

289. Moreover, Hess Corp intentionally rendered the signatory parties unable to perform their contractual obligations to the Government by impairing the financial conditions of the refinery and having it undertake other acts, further interfering with the parties' ability to perform their obligations owed to the Government under the Agreement.

290. As such, Hess Corp is liable to the Government for its tortious interference with the existing contractual relations between HOVIC and PDVSA-VI and the Government under the Agreement.

291. In this regard, the acts alleged herein establish that Hess Corp's interference with their performance of the Agreement with the Government between 2009 and 2012 was intentional, with knowledge of but without concern for the contractual obligations of the signatory parties to the Government.

292. Such intentional acts were done with the intent to interfere with the performance of this Agreement by the signatory parties, including but not limited to, intending to have the refinery shut down before the end of its term, which in fact occurred as a direct and proximate result of Hess Corp's intentional and improper conduct.

293. By interfering with and/or causing the signatory parties to breach the Agreement with the Government by terminating the operations of the St. Croix refinery before July 2022 and otherwise, Hess Corp is liable to the Government for the damages caused by its tortious interference with the Agreement between the signatory parties and the Government.

294. As a direct and proximate result of Hess Corp's intentional and improper interference with the contracting parties' obligations under the Agreement, the Government suffered direct and consequential damages, which the Government is entitled to fully recoup from Hess Corp.

295. The acts described are so blatant, outrageous, intentional and offensive to any proper behavior that they require the imposition of punitive damages to protect the citizenry and to deter and prevent similar acts by these defendants, in an amount to be determined by the trier of fact.

COUNT IV: PRIMA FACIE TORT

296. All preceding paragraphs are re-alleged herein by reference.

297. The actions of Hess Corp, as alleged herein, were intentional, wanton, extreme and outrageous.

298. The actions of Hess Corp, as alleged herein, were culpable and not justifiable under the circumstances.

299. The actions of Hess Corp were undertaken without privilege.

300. The actions Hess Corp caused both direct and consequential damages to the Government as a result of the cessation of the operation of the St. Croix refinery prior to the end of the term of the Agreement.

301. As such, Hess Corp is liable for said direct and consequential damages suffered by the Government, as a result of their intentional and unjustifiable misconduct, as well as punitive damages to punish and deter such conduct.

COUNT V: FRAUD IN THE INDUCEMENT

302. All preceding paragraphs are re-alleged herein by reference.

303. The Third Extension Agreement was negotiated by the Government with representatives of Hess Corp, including John Hess.

304. During these negotiations, Hess Corp repeatedly represented to the Government that HOVIC and PDVSA-VI would have the same obligations and benefits, including the obligation to make "fuel oil sales to VIWAPA at below cost" with the exception of one change to update the referenced industry benchmark (the "Index Change") to compute this formula.

305. Further, Hess Corp claimed that HOVENSA had little or no available cash and would not be able to continue to operate the refinery without concessions from the Government, including the waiver or deferral of certain tax liabilities or permission to operate the refinery as an oil storage terminal, in conflict with the limitations of HOVENSA's lease.

306. These representations were material to the negotiations, as the Government wanted to make sure it continued to receive oil at a substantially reduced price based upon the same terms as the prior amendments to the Agreement, except for the index change and hoped to ensure the operation of the refinery through the end of the Agreement's term in 2022.

307. The Government reasonably relied upon these representations in negotiating the Third and Fourth Extension Agreements.

308. Notwithstanding these express representations regarding the single, nonmaterial change, which the Government reasonably relied upon, Hess Corp intended to change the terms of the WAPA Fuel Subsidy by having the words "low sulfur" added to the language it proposed in the Third Extension Agreement to modify "crude oil" in the provision governing the calculation of WAPA's cost of fuel oil (and thus the amount of the WAPA Fuel Subsidy) under the Agreement, which they then had inserted into the Third Extension language, even though the

representatives of Hess Corp knew that the Government did not realize or understand the significance of this undisclosed change.

309. Hess Corp also knew that it has both caused and benefited from various arrangements that siphoned cash from HOVENSA's operations. These include but are not limited to the pre-payment of HOVENSA's bonds and its entry into more than $800 million in notes of indebtedness to HOVIC and PDVSA-VI.

310. As such, the representations made by Hess Corp during the negotiations of the Third and Fourth Extension Agreements were knowingly false when made and were intended to induce the Government to rely upon them to its detriment.

311. The Government reasonably relied upon those false representations to its detriment, thus being fraudulently induced to sign the Third and Fourth Extension Agreements, resulting in damages due to the increased cost of the WAPA Fuel Subsidy which triggered higher fuel costs for its citizens as a result of this fraud well in excess of $10,000,000 annually, and in waiving and forbearing certain taxes for which damages Hess Corp is liable.

312. As such, Hess Corp is liable to the Government for the resulting damages and losses caused by their fraudulent conduct in an amount to be determined by the trier of fact, as well as punitive damages to punish and deter such conduct.

COUNT VI: FRAUDULENT NON-DISCLOSURE, DECEIT AND CONCEALMENT

313. All preceding paragraphs are re-alleged herein by reference.

314. The representatives of Hess Corp knew the Government did not understand the significant change that they intended to accomplish by the insertion of the undefined words "low sulfur" into the section regarding the WAPA Fuel Subsidy in the Third Extension Agreement.

315. The representatives of Hess Corp knew that their failure to disclose this intended change or its significance would lead the Government to unknowingly agree to it.

316. The representatives of Hess Corp knew that if this intentional, significant change were disclosed, the Government would not agree to it, as the parties had expressly stated their intention to keep the WAPA Fuel Subsidy unchanged except for the substitution of the industry reference to the alternate index for calculating this obligation.

317. The representatives of Hess Corp knew that the continuation of the WAPA Fuel Subsidy under the Agreement was a fact basic to the Government agreeing to the Third Extension and that any execution of that amendment by the Government with the insertion of the "low sulfur" language would be based upon a mistaken understanding on its part.

318. These representations were material to the negotiations, as the Government wanted to make sure it continued to receive oil at a substantially reduced price based upon the same terms as the prior amendments to the Agreement, except for the index change and hoped to ensure the operation of the refinery through the end of the Agreement's term in 2022.

319. Hess Corp had a duty to make sure matters were known to the Government that they knew required industry knowledge and to not mislead the Government about the nature or effect of the change that it had proposed. Hess Corp also knew the Government relied upon the company to fully disclose the effect of any industry terms included in the contract, as they had done over the past 50 years in negotiating the initial agreement and extending and amending it from time to time.

320. Based on the history of this commercial relationship, Hess Corp had a duty to make sure the Government was aware of any facts that were basic to the transaction where it knew the Government was about to enter into the agreement upon a mistaken belief about those

facts – as the 40 year relationship between the parties, the applicable business customs between them and other objective circumstances between them required such disclosure.

321. Further, Hess Corp claimed that HOVENSA had little or no available cash and would not be able to continue to operate the refinery without concessions from the Government, including the waiver or deferral of certain tax liabilities or permission to operate the refinery as an oil storage terminal, in conflict with the limitations of HOVENSA's lease.

322. As such, the representations made by Hess Corp during the negotiations of the Third and Fourth Extension Agreements were knowingly false when made and were intended to induce the Government to rely upon them to its detriment.

323. The Government reasonably relied upon these representations in negotiating the Third and Fourth Extension Agreements.

324. Notwithstanding these obligations, Hess Corp opted for non-disclosure, deceit and concealment of this significance of the change in the Agreement by the addition of the terms "low sulfur" in the WAPA Fuel Subsidy Obligation, resulting the Government being fraudulently induced to sign the Third and Fourth Extension Agreements, with ensuing losses well in excess of $10 million annually, as well as other damages resulting from waiving and forbearing certain taxes, for which Hess Corp is liable due to its deceit, concealment and non-disclosure of this significant change in the contract language, as well as punitive damages to punish and deter such conduct.

Wherefore, the Government seeks the following legal and equitable relief against the Defendant in an amount as determined by the jury:

(a) On Count I, an award of three-fold the actual damages sustained, civil penalties, reasonable attorney's fees, and costs of the investigation and litigation

reasonably incurred, enter an injunction ordering Hess Corp to cease its violations of the law and provide such equitable relief, including disgorgement, as may be proper;

(b) On Count II, an award of three-fold the actual damages sustained, reasonable attorney's fees and costs of the investigation and litigation reasonably incurred. The Government also respectfully requests that this Court order Defendants divested of their interest in the lease of the Government-owned submerged lands on which certain refinery operations are or have been conducted, including the Coke Loading Dock;

(c) On Count III an award of direct, consequential and compensatory damages against Hess Corp as well as an award of punitive damages if warranted, as determined by the trier of fact;

(d) On Count IV, an award of direct, consequential and compensatory damages against Hess Corp as well as an award of punitive damages if warranted, as determined by the trier of fact;

(e) On Count V, an award of direct, consequential and compensatory damages against Hess Corp as well as an award of punitive damages if warranted, as determined by the trier of fact;

(f) On Count VI, an award of direct, consequential and compensatory damages against Hess Corp as well as an award of punitive damages if warranted, as determined by the trier of fact;

(g) On all counts, equitable relief, as appropriate, as well as an award of attorney's fees, prejudgment interest where appropriate, and costs; and

(h) Any and all other relief this Court deems appropriate.

The Government of the United States Virgin Islands demands a jury trial on all issues.

Dated: September 14th, 2015

RESPECTFULLY SUBMITTED,

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

By: Claude Earl Walker

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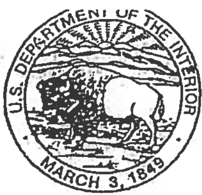

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

February 7, 1992

Honorable Alexander A. Farrelly
Governor of the Virgin Islands
No. 21 Kongens Gade
Charlotte Amalie, Virgin Islands 00802

Dear Governor Farrelly:

Subject: Final Audit Report on Hess Oil Virgin Islands Corporation's Economic Impact on the Virgin Islands (No. 92-I-384)

This report presents the results of our review of the impact on the Virgin Islands of the operations of Hess Oil Virgin Islands Corporation. The objective of the review was to determine whether (1) Hess Oil provided an adequate level of economic benefits to the Virgin Islands in return for the tax exemptions received and (2) the Government of the Virgin Islands exercised an adequate level of oversight of Hess Oil's operations.

We concluded that the value of tax exemptions received by Hess Oil far exceeded the corresponding benefits derived by the Virgin Islands economy. During the 25-year period of Hess Oil's tax incentive agreements with the Government (1966 to 1990), Hess Oil received more than $6.2 billion in tax exemptions while providing $1.7 billion in benefits to the Virgin Islands, or a beneficial ratio to Hess Oil of 3.61 to 1. For the 20-year period 1991 to 2010 (expected expiration of the current agreement), it is estimated that Hess Oil will receive tax exemptions of about $2.80 for each $1 of economic benefits provided to the Virgin Islands economy. We believe that the Government should attempt to negotiate additional tax concessions from Hess Oil in order to reach an agreement that more equitably balances Hess Oil's tax exemptions with benefits provided to the Virgin Islands.

We also concluded that the Government did not exercise an adequate level of oversight of Hess Oil's operations because no Government agency had been assigned oversight responsibility. As a result, the Government did not have timely and accurate information on the status of Hess Oil's compliance with key provisions of its tax incentive agreements.

The Governor's December 17, 1991, response (Appendix 1) to our draft report was considered in finalizing the report. The response concurred with two of the report's three recommendations. The Governor deferred consideration of our recommendation to pursue negotiations with Hess Oil for additional tax concessions until such time as the fluid catalytic cracker is in operation. We agree that any future

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negotiations should be deferred until the fluid catalytic cracker is in operation and we have revised the recommendation to reflect this.

Based on the Governor's response, we consider all of the recommendations resolved and implemented. Therefore no further response to this report is necessary. If you have any questions regarding this report, please contact Mr. Arnold van Beverhoudt, Regional Audit Manager, Caribbean Region, at (809) 774-8300.

Sincerely,

Harold Bloom
Assistant Inspector General
for Audits