GREEN RIVER
ASSET MANAGEMENT, LLC

** Please note that the author of this note is long OMEX shares and warrants.

Arbitration Arbitrage

- $11 million-plus equity financing gets OMEX well past arbitration goal line
- Investor roster sends clear message about strength of claim and wherewithal of claimant
- $3.54 billion NAFTA claim is unusually strong per lawyers and arbitration finance professionals
- Deal helps secure accretion in Don Diego, partially offsetting new equity dilution
- Litigation financiers value the claim at levels far higher than stock implies
- Green River is arbitraging differential with a private equity litigation finance specialist
- Approx. 20% of float is short – arbitrage can help drive short squeeze
- NAFTA claim provides OMEX with access to tens of millions in capital
- OMEX should trade at $10+ today and $20-$80 in 18 months

Summary

We recently helped lead a reverse inquiry to make an investment in OMEX shares, purchasing enough equity to ensure that Odyssey was funded well past the resolution of its NAFTA Chapter 11 arbitration against Mexico. Our belief was that by filling OMEX's balance sheet "hole," our cash injection could erase or substantially reduce OMEX's funding uncertainty discount, and allow the market to more realistically price the risk-adjusted value of Odyssey's claim related to the company's Don Diego phosphate concession. That risk-adjusted value is around $10/share today, prior to any resolution related to Don Diego.

Our investment was dominated by several litigation-oriented investment funds. These investors are highly experienced in evaluating litigation claims. Most of them also employed outside counsel to help evaluate the merits of OMEX's NAFTA claim. Due to the strength of OMEX's claim, our offering was oversubscribed. We were forced to turn away investors as management was not willing to sell additional equity.

Those who know Odyssey well will understand that our deal was done at terms which were relatively favorable to OMEX shareholders. In OMEX's prior large equity deal, struck in November of 2018, the company sold equity with 100% warrant coverage and paid a placement fee on top of that. Our deal was done with 50% warrant coverage plus a placement fee equivalent paid in warrants. While Odyssey's equity still represents expensive financing by most standards, it has become less expensive due to the strength of conviction in OMEX's NAFTA claim shown by the legal experts in our investor group. (Note that warrants in excess of 50% plus fee are indicated in the 8-k, but those are unlikely to be issued as will be discussed later).

As part of our transaction, management developed an "austerity" budget that plans for further operating cuts such that the cash we have provided will be more than sufficient to fund the company past arbitration resolution. The reality is that the austerity budget was designed to keep the company afloat through arbitration resolution when our deal was only projected to provide OMEX with $5 million, so the runway has been extended significantly by the size of our financing. To the extent that OMEX receives the multi-million-dollar payment from the agreement surrounding a shipwreck project it referenced in its last quarterly report, or any cash from selling equity in other ventures (some of which have already been partially monetized), it would have additional cushion with which to operate.

The financing carries with it several secondary goals. The deal earmarks funds to be loaned to OMEX subsidiary, Exploraciones Oceanicas ("ExO") (wholly owned by Oceanica and holder of the Don Diego concession) on the condition that management negotiate fairer financing arrangements with Oceanica such that Odyssey's ownership of the Oceanica entity is increased. We anticipate that these changes could and should result in an increase in OMEX's stake in the Don Diego phosphate concession from today's 53% to somewhere between 70% and 76%. This accretion could offset much of the dilution caused by our equity financing.

Another goal of the financing was to allow for the execution of an arbitrage with respect to OMEX shares. A portion of the equity purchase was made with proceeds from the sale of a derivative that was designed to take advantage of the wide difference between the valuation legal professionals put on OMEX's NAFTA claim, and the valuation that public markets set for that claim. The existence of the trade, and the legal expertise behind it, reflect on OMEX's valuation today and its future return profile. The trade, which is detailed later in this report, also highlights the fact that OMEX has access to significant non-dilutive financing – though it will likely never be called upon before resolution.

Finally, with Odyssey financed through arbitration resolution and well beyond, the Mexican government will need to reassess its strategy with respect to OMEX and the firm's NAFTA claim. This funding as well as OMEX's non-recourse litigation financing should put a flashing red light on the NAFTA claim for Mexico's government. The critical eye of capital markets has evaluated the claim and found that it has both merit and significant value. Mexico may have reasoned that drawing negotiations out over a long enough timeline might lead to OMEX running out of cash and giving up on its claim. By demonstrating plenty of cash, litigation funding, and more funding at the ready, Odyssey may have helped convince Mexico that it is in the country's best interest to grant OMEX the license **and** pay the reparations due to OMEX sooner than later. The bill due to OMEX is large and is compounding at the firm's high cost of capital. Mexico should not get a free ride on shareholders' backs.

With questions regarding OMEX's liquidity answered, the market will train its focus on the two potential paths forward for the company, each with different implications for Odyssey's share price. One involves some sort of agreement with the Mexican government that would grant the company the ability to operate the Don Diego concession. In this case we expect the initial reaction in OMEX shares to reach $20 (with a 24-month target around $37 to $40). The other path results in an arbitration award by the NAFTA Chapter 11 tribunal. In this case the amount of the award will determine share price – a full award would put OMEX around $230 per share. The scatterplot diagram below applies different resolution amounts on an after-tax basis to OMEX's fully-diluted share count to calculate the resulting share value.

(Scatterplot graph represents after-tax cash value of arbitration award in terms of OMEX share price at various arbitration award outcome levels. This is a mathematical equation of NAV; it does not represent a judgment as to OMEX per share value)

This report is detailed. Those who already have a good understanding of the OMEX story and the company's NAFTA arbitration may want to skip certain sections. It is broken down as follows:

<u>Sections</u>

1. Odyssey Background

Odyssey Marine is a publicly traded, small/micro-cap, junior mining & mineral exploration company which focuses on sourcing and developing seabed mining concessions. Odyssey's most important asset is its Don Diego phosphate claim which sits 40 km offshore in 80 meters of water near Baja, Mexico.

The Don Diego phosphate claim is exceptionally large and highly strategic. Its high phosphate concentration, low extraction cost, and proximity to important markets, are key strategic factors which led a global investment bank to value the concession at 3.5 billion USD. Phosphate is a key macronutrient used in fertilizers, and its somewhat tenuous supply dynamics make it a sought after resource – especially in the Americas. Odyssey owns ~54 percent of the claim through its majority stake in Oceanica Resources which wholly owns ExO.

In addition, Odyssey owns several other seabed mining claims and deep-sea shipwreck salvage recovery projects. Shipwreck salvage used to be Odyssey's primary business, but the company shifted its focus several years ago to seabed mineral exploration and development. The firm's extensive experience in deep ocean salvage operations has given it specialized expertise and knowledge that helps to position OMEX as an early leader in the nascent sustainable seabed mining industry.

To begin mining Don Diego, ExO must secure environmental approval for the project from the Mexican environmental agency, SEMARNAT. The agency denied approval of the project in April of 2016 due to its alleged impact on sea turtles, but this denial was declared illegal in a unanimous decision by a panel of eleven judges from the highest administrative court in Mexico (TFJA) in March of 2018. SEMARNAT again denied the project in October of 2018 but failed to follow the court's order in so doing. We now await a new order from the TFJA regarding ExO's request for a judicial review of the second SEMARNAT denial though we view this decision as a side-show at this point.

Due to SEMARNAT's disregard for its own regulations as well as its blatantly discriminatory treatment toward ExO in the evaluation of Don Diego (as corroborated in the TFJA ruling), and due to the Mexican judiciary's inability to appropriately enforce the rule of law in the country, OMEX and ExO filed a $3.5 bn arbitration claim against the Mexican government under the provisions of NAFTA Chapter 11 in March of 2019. You will find a thorough account of the background for the claim in the Notice of Arbitration . The full document is well worth the read, but you can find some highlights later in this report.

The last important piece of this puzzle is the fact that in 2014 AHMSA, a multi-billion-dollar steel and mining firm based in Mexico, signed a Stock Purchase Agreement ("SPA") to buy half of OMEX at $12/share contingent upon the environmental approval of Don Diego. AHMSA has also loaned Odyssey approximately $20 million USD. We do not believe that AHMSA is likely to exercise the SPA for reasons discussed later.

Without dilution from the AHMSA Stock Purchase Agreement, our model shows OMEX valued at approximately $20 immediately following a Don Diego approval, and up to $40 once the first phase of operations begin to generate cashflow (slightly more or less than $40 depending on timing of the agreement). The stock could trade to $20 per share if it becomes apparent that OMEX and Mexico intend to go all the way to arbitration and the arbitration proceedings continue to indicate a favorable award for Odyssey. The stock would be worth $230 per share were OMEX awarded the full value of the arbitration claim with interest.

2. Oceanica Note and Accretion Potential

Odyssey is the majority owner of Oceanica and controls three of four board seats at the subsidiary, with an equity stake in the company equal to approximately 54% of shares. Oceanica is essentially the sole owner of Exploraciones Oceanica (ExO) which is the Mexican company that owns the Don Diego phosphate mining license.

Odyssey has paid all of Oceanica's/ExO's bills since the entities were created. The company sold some of its stake in Oceanica to acquire cash to pay the bills in the early days of the project. Oceanica has had some fairly large expenses along the way for work in exploration and analysis, for expert preparation of its environmental application, and for the mining license it acquired. Since other shareholders were not willing or able to pay their share, Odyssey took a convertible note to reflect the credit it was extending to the entity as the sole bill payer. That note's coupon was set at 18% and the conversion price was set at 2.75 per share (or cuota). At the time of the agreement (approximately 2013) this was a fair deal as there were approximately 100 million shares outstanding and the 2.75 price implied a value of 275 million for the entity.

Time has passed, and OMEX's balance on this note has grown to approximately $56 million. That balance will grow through the accrual of interest to over $80 million at term, extending OMEX shareholder ownership in ExO/Don Diego to around 64%. Yet circumstances have changed, and the terms on the note have not been fair for OMEX shareholders for many years - going back at least as far as the first MIA denial. The loan balance has grown so large that it will result in the issuance of many shares, increasing the implied valuation of the conversion price to around $350 million. While the implied valuation in the conversion price for Oceanica debt has increased, the market value of Oceanica/ExO has declined due to two MIA denials.

As a result, OMEX shareholders have been loaning money to Oceanica at uneconomic rates. The coupon may or may not be appropriate, but the conversion price is far from market (rendering the coupon almost irrelevant). During the time we were negotiating the reverse inquiry, OMEX's share price was implying a value for all of Don Diego somewhere in the range of $70 million. OMEX has been raising equity at its very high cost of capital and turning around and lending that money back to Oceanica at a much reduced, non-market-rate cost of capital. Odyssey's shareholders have in essence been subsidizing Oceanica minority investors so that they would not suffer much dilution – OMEX shareholders have taken substantial dilution as a result. Odyssey shareholders were in no position to subsidize anyone.

The situation is a bit like selling your large six bedroom home in a fire-sale for much less than what you think it's worth, and using all of the proceeds to pay your brother who lives across town five times what he's asking for his tiny efficiency apartment. Your brother feels pretty great about the deal. You probably need to see a therapist and lay off the booze. Everyone in the family can see that the trade was inequitable. Mom and Dad need to step in and correct the situation to restore some fairness.

Odyssey management is in a position to rectify the situation at Oceanica. In fact, we created an incentive in our deal structure so that they have even more immediate motivation to make things right for long-suffering shareholders. Our warrant coverage will increase if they don't negotiate a deal that takes OMEX's ownership in Oceanica to just under 70% at the end of the ExO note term. We are highly confident that they will find a mechanism to make this happen.

We've earmarked up to $4 million that can be used to extend more financing to ExO. The terms of that financing will obviously be fairer to OMEX shareholders and should result in expanded ownership. Yet, it could take other arrangements to get to 70%. We think that management should go further, and that debt could be restructured to get OMEX to 75% ownership. OMEX has the ability to do what it wants to rectify the situation as it controls Oceanica, but we also want to be fair to minority shareholders (some of whom are important contributors to the Don Diego project). So, we will let management wrestle with this one and come up with something that compensates OMEX shareholders appropriately.

Our hope is that this accretion will create a meaningful offset to the dilution caused by our equity deal, such that all shareholders benefit. If management can increase ownership to 70%, the dilution from our deal will be cut from 27% to 19% in terms of ownership in Don Diego. If management can increase ownership to 75%, the dilution from our deal will be cut to just 13%. Either way, increasing OMEX ownership in Don Diego will result in a higher share of economics and ultimately in higher price targets for the stock.

Note that we are not counting our warrants in the dilution analysis because doing so would mean diluting for all other warrants and convertible shares in the company's capital structure to be fair. This would make our deal look less dilutive than the stated 27% - so we take a more conservative route in leaving the warrants out.

One last point with respect to the Oceanica financing. Putting money in Oceanica's pocket will allow the subsidiary to begin paying OMEX in cash for its services. This will help to reduce OMEX's cash burn going forward.

3. NAFTA Arbitration Background

This section provides some background information on NAFTA Chapter 11 claims generally. This information comes from lawyers who are familiar with the NAFTA arbitration process and from online sources.

Odyssey's claim alleges that SEMARNAT's denial was based on political concerns and did not have sound scientific backing. Specifically, OMEX states that the denial violated sections 1102, 1105, and 1110 of NAFTA regulations.

- Article 1102 requires NAFTA members to treat investors from other member nations the way that they treat domestic investors. This would mean that if SEMARNAT denied Don Diego's environmental approval while approving comparable dredging projects that were domestically owned, it could face an adverse arbitration ruling.
- Article 1105 requires member states to treat foreign investors within a minimum standard of treatment according to international law, "including fair and equitable treatment and full protection and security." This would prohibit SEMARNAT from rejecting the project without just cause, or from trying to discredit the Don Diego project publicly.

- Article 1110 prohibits members from nationalizing or expropriating investments by foreign member investors directly or indirectly without paying proper compensation. Denying Don Diego without exercising due process in decision making, doing so in a discriminatory fashion, ignoring a domestic judicial decision, and failing to pay ExO for the asset would be considered indirect expropriation.

The tribunal for NAFTA/UNCITRAL arbitrations (the NAFTA claim will be brought under UNCITRAL procedures, though NAFTA rules will apply) uses three international arbitrators. Stanimir Alexandrov was appointed by OMEX, Philippe Sands by Mexico, and Felipe Serrano was agreed by both sides. Each of these arbitrators comes from a "roster" of approved arbitrators who have been prequalified to serve in UNCITRAL disputes. The careers and livelihoods of these arbitrators are based on their impartiality and objectivity, and they are generally seen as good adjudicators. Some may have a small bias in favor of sovereigns, others may be biased toward commercial interests, but if they become overly biased their reputations will suffer and they may not be included in the roster of approved arbitrators in the future.

Once the tribunal was set it determined procedures and timelines that align with NAFTA rules. In the next step, ExO will file its statement of claim (called a Memorial), and then Mexico will have the opportunity to file a statement of defense or counterclaim. Then a number of steps occur in which documents are requested and exchanged. Either of the parties or the tribunal itself can ask for a hearing to clarify positions and to answer questions the tribunal may have. Each side may offer expert testimony and the tribunal may employ its own expert. Based on the timeline set, all of the evidence and arguments will have been presented by the end of next August which would mean that a decision should be rendered sometime in the fourth quarter of next year.

The average time for ISDS arbitrations is three years and eight months (from date Notice of Arbitration is filed), but that figure is skewed by long-duration outliers which need to be eliminated. These "outliers" can drag on for six or seven years – even longer when an unusual circumstance exists. For instance, some companies end up filing multiple Notice of Arbitration documents as circumstances change. Changing claims or extensive document disclosure can also cause the claimant delays in the length of time until it files its memorial (its main complaint document). Cases where there is a bifurcation in the proceedings between jurisdiction/merits and quantum (measuring the value of damages) can also cause delays.

These delays are almost always caused by the claimant rather than the defendant. Yet, one circumstance where a defendant can cause a delay is a jurisdictional challenge. Jurisdiction refers not to the site where arbitrators sit nor the local laws at that site, but rather the tribunal's authority to make a legally binding decision in the dispute. To make a jurisdictional challenge, Mexico would have to argue that NAFTA did not contain a valid arbitration agreement, that the tribunal was improperly constituted, or that the subject matter contained in the complaint did not fall under the scope of NAFTA's arbitration agreement.

We are told that if Mexico were planning on challenging jurisdiction, it likely would have happened already, so this is less of a concern. The lack of challenge may be due to the fact that contesting jurisdiction would be a risky move for Mexico. The facts support ExO's employment of NAFTA, and since the arbitrators themselves decide on questions of jurisdiction, Mexico might imperil its position further by questioning the arbitrator's authority directly. We feel confident that one of the world's leading international arbitration law firms, Cooley LLC, would not have attached its name to this engagement without high confidence with respect to both the merits of the complaint and the jurisdictional authority of a NAFTA tribunal to resolve it.

There have been no long delays in the proceedings and OMEX is on schedule to file its memorial soon. If you're interested in seeing how long other NAFTA arbitrations have taken to get to a final decision, take a look at the NAFTA site. You'll see that most claims are decided within three years – many quite a bit sooner. The claims that have dragged on for a long time have been delayed for the reasons stated above.

Once the final decision is made it can be challenged in court, but under UNCITRAL rules the claimant can enforce the original decision regardless of a pending annulment proceeding. This means that ExO could recover the award amount before a court ruled on annulment, and it removes the incentive for Mexico to use an annulment proceeding as a mechanism to delay payment. According to lawyers familiar with these arbitrations, an appeal for annulment must be on technical/procedural grounds and there has never been a successful annulment in a NAFTA arbitration.

Mexico will pay the award demanded by the tribunal as they always have. Mexico has a long history of paying awards per the dictate of NAFTA tribunals. As this article notes, "To date, It appears that no investor claimants have had to enforce awards in their favor because Mexico has voluntarily satisfied all awards against it."

Mexico wants to stay in good standing with respect to NAFTA (or USMCA going forward) because it would lose too much business otherwise. The US accounts for 76 percent of Mexico's exports and is its largest source of foreign direct investment. Breaching an international trade treaty and refusing to pay damages awarded under that treaty could irreparably harm Mexico's future business with the US. This would amount to political suicide for Mexico's current administration.

Even if Mexico refused to pay ExO per the tribunal's decision, ExO's remedies would allow it to unilaterally recover the award. The NAFTA rules on enforcement of awards are strict – these awards are treated as commercial transactions under the NY Convention. This gives the claimant legal rights to take certain actions to satisfy payment if necessary. This would include gaining rights to Mexican international receivables or assets. While enforcement of claims against countries that don't have good international standing or significant international trade can be tricky (e.g. Venezuela, Nigeria, Pakistan) Mexico does significant international business which would make asset recovery straightforward.

4. Damages Sought

Some have argued that ExO's claim for damages is unusually high for a mine that hasn't started operating. We only have to look back a few months to an ISDS resolution regarding a Pakastani mine that had yet to break ground to understand that this is a false premise. In the Pakistani case, the developer was awarded $5.8 billion based on the DCF-derived fair market value of the pre-operational concession ($4bn plus interest).

To better get our arms around the issue, it's helpful to look at the framework that determines how ISDS arbitrators assess damages and value.

> *…there is a remarkably solid consensus in ISDS about how damages should be calculated. Four key propositions are now held to be unquestionable. First, the so-called 'Hull formula': expropriation must be accompanied by prompt, adequate and effective compensation. Second, full reparation: investors must be restored to the position they would be in but for the State's breach. Third, 'fair market value' (FMV): compensation for expropriation or damages for a breach should be based on the amount a hypothetical buyer would have paid to acquire the investment in an open market. Fourth, FMV will usually be calculated according to the DCF method (discounted cash flow): the value of the investment will be calculated as equal to its future expected income, discounted through an appropriate discount rate to reflect inflation, uncertainty and the time-value of money.* *Link*

When we talk about an "award" we are combining two different components. One is the FMV of the asset that was expropriated. As stated above, this FMV reflects the amount a buyer would pay for the asset based on a DCF-derived valuation and that FMV would be calculated as if we were back on the day that the expropriation occurred (in OMEX's case, April 2016, so we would use 2016 commodity prices).

The second component is a reparation payment which is technically called "pre-award interest." That reparation or interest payment compensates the company for the fact that it hasn't had access to the expropriated asset's value since the date of expropriation through the date that the award is paid. If the company received the FMV at the date of expropriation it would have invested it at an assumed rate that would cover its cost of capital over the period. Thus, taking the FMV and compounding it over the five-year period at the cost of capital is a method of restoring the claimant to the place it would have occupied had the expropriation not occurred.

For the FMV computation the arbitration panel will be interested in the value of the Don Diego concession *in April of 2016*, when Mexico first expropriated the asset through a denial that was later determined illegal by the Mexican judiciary. Later in this report we look at Don Diego's valuation, but that valuation work takes into account today's lower phosphate prices, it doesn't account for the spot price of $114/ton that prevailed at the time the expropriation occurred. The arbitrators would look at market conditions in 2016 as well as the forecast for future phosphate prices at the time. As this report from the FAO in 2016 notes, the supply/demand balance for phosphate was projected to remain relatively stable through 2020. (Note that a long-term DCF model should not be overly influenced by today's spot prices. Most phosphate is sold under long-term contracts, not at spot rates. Further, the Don Diego asset should be producing phosphate for 100 years, so long-term price forecasts are far more relevant.)

A DCF fair market value for Don Diego was established by investment bankers who specialize in valuing agro-industrial assets. That headline fair market value, of approximately $3.5 billion, has been roughly corroborated by other third-parties as well as comparisons against the pricing of comparable assets and projected cash-flow multiple valuations. This said, FMV can vary widely based on different assumptions such as discount rates, long-term commodity price forecasts, and opportunities for operational integration. Green River's DCF implied values that extended from just over $1bn to over $3.5bn.

It is difficult to know where an arbitration panel and their quantum experts would set their DCF assumptions, but the $3.5bn is probably toward the high end of the range based on our own modeling. Regardless, it's difficult to come to any conclusion but that a buyer would have to pay OMEX/ExO over a billion dollars to convince the company to part with the asset. At the end of the day, that DCF-driven bid is what determines fair market value. A more detailed discussion on valuation of the concession is included later in this report.

In terms of pre-award interest, restoring Odyssey (technically ExO) to its position but for Mexico's breach would mean compensating the company for the costs that the expropriation has imposed on shareholders over the period from 2016 (or returns they have missed – the two should be equal assuming a zero NPV/EVA outcome where returns simply cover the cost of capital) through the date of the ruling - roughly five years.

To calculate pre-award interest, we would take the FMV amount and grow it over five years at ExO's WACC (we'll use OMEX's WACC here as a proxy). At OMEX's 15% cost of capital, the future value would mean doubling the FMV to come to the ultimate award (we detail OMEX's WACC calculation in a later section). As a check on this calculation, we note that over that same period the company's fully diluted share count has more than doubled. This means that an OMEX shareholder from 2016 who simply received the FMV today would only get half of the award that he or she would have had if Mexico had simply given the company the FMV in 2016. Thus, a doubling of the award makes perfect sense not just from the perspective of a theoretical cost of capital exercise, but also explicitly based on the reality of carrying a high cost of capital and having to dilute shareholders each year at that high cost.

We note that there is some debate around the correct interest rate that should be applied to calculate pre-award interest. Some argue that the correct rate is the sovereign's cost of debt. They reason that OMEX was essentially forced to take a loan from Mexico when the sovereign expropriated the asset and need only to be compensated for the risk and time value of making that loan (a rate of 3% to 5%). But their logic is flawed. There was no loan – there was a risky litigation asset instead. And we have proof of such in the litigation financing deal that provided expensive capital to OMEX/ExO. The litigation funder certainly didn't think the asset's risk was similar to that of Mexican debt. So, if the principle is to restore the claimant to where it would have been but not for the breach, then the claimant's costs need to be taken into account – not the sovereign's. The asset in question only becomes a low-risk Mexican debt *AFTER* the arbitration panel's ruling.

An analogy helps to demonstrate the point. Using the sovereign's bond rate to determine pre-award interest is equivalent to saying that your exacta bet on the 6 & 3 horses at the racetrack was as risky as a bond because it won. Imagine going to the window at the track to claim your $1,000 winnings from the exacta pay-off, and the teller explains to you that you actually just made a short-term loan to the track at their cost of debt (8% per annum) so you're only due $25.04 on your $25 wager. The logic behind it makes little sense.

In the name of better accuracy, we should employ ExO's cost of capital in this exercise because they are the entity whose asset was expropriated. ExO's cost of capital will be higher than Odyssey's. ExO is a private company, based in Mexico, with a single risky asset on its balance sheet that produces no cashflow. ExO's cost of capital will be related to OMEX's for obvious reasons, but its liquidity discount and lack of diversification make it a higher risk investment than OMEX. Regardless, we have used

OMEX's cost of capital in this report as a proxy since it may be easier to derive and more conservative. We believe that ExO's WACC is over 20% based on preliminary modeling.

Though ExO's claim is undoubtedly large, it is not all that unusual in the context of ISDS claims more generally. As this United Nations review of Investor-State Dispute Settlement ("ISDS") from June of 2018 notes, the average amount of damage claimed in an ISDS is $1.3 billion. Moreover, the average successful claimant is awarded 40 percent of the amount claimed.

"On average, successful claimants were awarded about 40 per cent of the amounts they claimed. In cases decided in favour of the investor, the average amount claimed was $1.3 billion and the median $118 million. The average amount awarded was $504 million and the median $20 million."

Thus, were ExO's claim to meet an average outcome amongst successful claimants, ExO would expect to receive an arbitration award a bit over $1.4 billion. Assuming that award amount includes interest, it isn't likely to be at a rate that is nearly as high as ExO's cost of capital. Regardless, if you use the $1.4 billion figure, the after-tax, after-NOL, and after-fee, value of Odyssey's share would equate to north of $46 per share on a fully diluted share count. If we assume that interest wasn't included in the $1.4 billion number and we compound interest at OMEX's WACC over five years, the award value would be doubled to $2.8 billion, equating to around $90 per share.

In some cases (such as in the Pakistani matter), investors/claimants who win an award against a state in an ISDS choose to negotiate with the state following the award in an effort to appease the state. This is particularly true when the investor has other business interests in the state that might suffer if the investor did not play nice, or if the investor feels the state doesn't have the means to pay. In the case of ExO, there is no other business and Mexico has the ability to pay, so there wouldn't be a need to negotiate.

5. An Exceptionally Strong Claim

A number of professionals familiar with ISDS have expressed that Odyssey's NAFTA Ch. 11 claim against Mexico is unusually strong. One lawyer who is very familiar with the Odyssey claim and is highly experienced in NAFTA Ch. 11 arbitrations more generally, asserted that it was the strongest claim he had ever seen.

These experts say that investor-state disputes normally involve an investor fighting head-to-head against the government – quite often ***against*** a court decision. Yet, in OMEX's case the government has essentially taken OMEX's side in the dispute against a renegade appointee (the former head of SEMARNAT, Rafael Alaman Pacchiano) who had acted on behalf of the state.

How can the government take Odyssey's side in a claim against itself? Odyssey's claim was validated one year ago by an *en banc* session of eleven federal judges from the highest administrative court in Mexico (TFJA) which ruled unanimously that SEMARNAT acted illegally and arbitrarily when rejecting the Don Diego project's environmental application. OMEX's claim was ***also*** supported by the technical body ***within*** SEMARNAT (DGIRA) which had indicated that the application satisfied their requirements. Further, while Odyssey's filings have painted the former head of SEMARNAT as corrupt and ill-suited to the job, the current Mexican administration has accused the ex-Secretary of "unimaginable acts of corruption" and has called him a "luxury car salesman," implying that he was not qualified for his position as head of the environmental agency. Pacchiano has also recently been accused by Emilio

Lozoya, former CEO of Pemex, of being part of a massive fraud and bribery scheme involving Odebrecht and Ahmsa. In many respects Mexico has already admitted that it is at fault with respect to this dispute.

In addition to the Mexican government's unusual position regarding this claim, experts thought that the fact pattern disclosed in Odyssey's Notification of Arbitration contained information that would be difficult for Mexico to overcome. Some of these facts are highlighted below.

- The Secretary of SEMARNAT admitted that he would reject the project for personal reasons.
- The Secretary of SEMARNAT ignored OMEX's appeal petition after the first denial, never responding to the petition or the new technical report despite a statutory requirement that a response be given within 120 days.
- OMEX's judicial review of SEMARNAT's first denial with Mexico's highest administrative court (TFJA) resulted in a rare unanimous ruling in OMEX's favor as stated previously.
- The ruling specified that the denial was illegal in that it failed to comply with Mexican law because the decision lacked scientific justification, failed to take into account specifics of the project, and did not recognize plans for mitigation of impacts.
- The TFJA's order was ignored by SEMARNAT. Rafael Pacchiano refused to comply with the court's demand that he issue a new decision on the project within four months.
- Rafael Pacchiano only issued a new decision after OMEX filed a request with the TFJA to find SEMARNAT in contempt of the court's order.
- SEMARNAT's second denial, issued in response to the TFJA ruling, failed to comply with the court's order that SEMARNAT respond with scientific proof demonstrating the project's impact on sea turtles or their primary food source. SEMARNAT's original denial was based on impact to sea turtles.
- SEMARNAT's new denial failed to evaluate the project's specific technical aspects, site specific impacts, or mitigation factors, despite a statutory requirement to do so.
- Rather than notify the applicant privately of its new denial as is standard procedure, SEMARNAT took the extraordinary step of issuing a press release outlining details of the denial. The public release contained false and misleading statements and was intended to discredit the project and turn public opinion against it.
- At the same time, SEMARNAT has continued to approve dredging projects that are virtually identical to Don Diego in terms of process, but that are carried out in environments which are far more sensitive than Don Diego's. These approved projects are all owned by domestic companies.

There is more, but even without considering the rest, these facts establish a pattern of clear discriminatory behavior on the part of the Secretary of SEMARNAT against ExO and the Don Diego project. NAFTA Chapter 11 was designed to protect foreign investors from ***exactly*** this kind of abuse.

Dredging projects just like Don Diego are ongoing all over the globe every single day of the year. In Mexico, a single company, Dragamex, has completed over 260 dredging projects in the last twenty-two years. SEMARNAT's Secretary Pacchiano approved several of these projects himself, one of which was within a SEMARNAT-designated protected area. Other Pacchiano-approved projects operate within sensitive national parks that host rich biodiversity and environments that include coral reefs, protected wetlands, and that are home to species at risk of extinction. All of the approved projects were at or near the shoreline, where the seabed environment and water column is most sensitive.

Don Diego, on the other hand, proposes to operate in an area 25-40 km offshore that is known for its relative dearth of plant and animal habitation. The relative scarcity of sea life on the ocean bottom within the Don Diego operating footprint is not only due to the site's remote location and deep waters but is also thought to be due to the high concentrations of phosphate in the sands. Phosphate can be toxic at high levels of concentration. Local fishermen avoid the area.

In terrestrial terms this discrimination is analogous to approving a mine in a tropical rainforest that serves as a water source for an adjacent tourist destination while rejecting the same mining operation in a remote portion of an almost uninhabited desert. It constitutes unusual and obvious discriminatory behavior on the part of SEMARNAT.

6. Mexico's Defense

Odyssey's claim is strengthened by the fact that the Mexican government has painted itself into a corner in terms of the defense it can mount. Mexico would want to steer the case away from the discriminatory and procedural issues that Odyssey/TFJA/DGIRA have exposed and draw arbitrators' attention to matters of the environment. They would argue that the decision was purely based on environmental impact, and that an arbitration panel cannot and should not question decisions that are driven by domestic environmental policy. Odyssey's counsel will argue the opposite; that though OMEX wins the scientific argument with respect to the environment, this arbitration is completely distinct from environmental decisions/policy – instead it is about the fact that Mexico's environmental head acted in a discriminatory manner.

Mexico must overcome two important obstacles in its defense. First, the science doesn't support it. We won't go into this in detail, but Odyssey has some of the best experts in the world behind its environmental claims, while Mexico has relied upon off-the-shelf studies incorrectly applied, as well as weakly supported opinion pieces aired in media outlets. This is a large part of why eleven judges at the TFJA ruled unanimously in OMEX's favor – the first unanimous ruling in almost two decades.

More important, however, is the fact that this line of argumentation is self-defeating for Mexico. The more that the government argues that risks of environmental damage motivated its denial of the project, the more discriminatory it looks in approving dredging operations located in environments far more sensitive than that of Don Diego.

Odyssey's operational footprint is **objectively** in a far less sensitive spot than the projects SEMARNAT has approved. As you get further from shore in this region of Baja California (as in most places), the ocean gets deeper and the sea bottom gets less sunlight, is cooler, generates fewer food sources, offers fewer places to hide, and thus attracts less biodiversity. Don Diego's high concentration of phosphate sands may be toxic to some sea life which helps explain why fishermen are said to intentionally avoid the area. It is deep enough that the water is too cold at the floor for sea turtles to sleep safely – part of the reason SEMARNAT's initial denial was deemed illegal by the court.

The areas where Mexico regularly approves dredging projects (and where Secretary Pacchiano approved numerous projects) are close to shore and are often within national parks and nationally and internationally designated protected marine areas which house endangered species in unique environments. The bays and lagoons where Mexico allows dredging to take place host tropical marshes, mangrove forests, protected wetlands, and are delicate ecosystems that teem with biodiversity and serve as active spawning and mating grounds for many species both endangered and not. In addition, the sediment in harbors and bays where dredging is allowed often contain concentrated levels of toxins and pollutants from human activities that can be disturbed in a dredging operation.

The Mexican government would have to argue that there is something unique to Don Diego that is MORE environmentally important/sensitive than the delicate ecosystems it has designated as "protected" where it has approved dredging projects, ***AND*** it would have to explain why it has kept these arguments secret to this point rather than bringing them to bear in either of its MIA denials or the court proceedings before the TFJA. It would have to make those arguments against a backdrop of empirical evidence that shows that the sea-bottom in Don Diego's footprint is notable for its lack of biodiversity and carbon content and unremarkable in its features relative to the deep ocean floor around Baja California. It would also have to explain where in Mexican environmental law (LGEEPA) we find the statute that allows SEMARNAT to create new reasons for denying projects each time its old reasons for denial are rejected by the judicial system.

The fact is that no real republic sponsors laws and regulations that allow officials to deny a commercial project in a serial manner such that each time a denial is annulled, the government is permitted to find a new reason for denial to see if it will hold up under scrutiny. In fact, this pattern is the essence of discriminatory rejection. Employing the strategy is an implicit admission that the Secretary had a negative bias toward the project and was simply scrambling for justification. We would imagine that OMEX's lawyers will make this point very clear to the arbitration panel.

The whales, the fish, the seabirds, the turtles, the porpoises, the manatee, the mangroves, the crabs, the mollusks and abalone, the fishermen, and the tourists, are all far more endangered by dredging operations in lagoons/bays/shoreline environments than in the low biodiverse 35 km out-to-sea footprint of Don Diego. No expert with international standing would testify to the contrary. The more forcefully that Mexico makes its most logical, strongest argument, the more discriminatory and culpable it looks.

If we've figured this out, you can bet that Mexico has too. They know they're in a difficult spot with substantial money on the line. They know that eleven judges from the highest administrative court in the country could not get past SEMARNAT's discriminatory behavior and the lack of scientific support for its arguments, so the likelihood that an **international** tribunal of arbitrators would be able to is remote. You can bet that Mexico simply wants to get out of this arbitration without losing a lot of money.

7. Settlement

There is an easy way out of arbitration for Mexico. The Mexican government could agree to grant the Don Diego claim to ExO and make its problems go away. In fact, this settlement presents both sides with a "win" ***and*** it would likely save the Mexican government a serious amount of money.

Settlement could take the form of a cash award rather than a granting of full approval, but given OMEX's strong position, shareholders wouldn't want to settle for less than the $1.4 billion average for a successful claim (40 percent of the $3.54 billion – the 40 percent was cited in the United Nations review mentioned earlier in this note) and it's difficult to imagine that the Mexican government would willingly pay that amount (unless they have a large buyer in the wings). So, we view a straight financial settlement as unlikely.

The argument for a grant of the concession is compelling. The Mexican government has a most difficult position to defend in the arbitration, and an operating Don Diego phosphate extraction program helps the government – especially the two agencies that are most vested in this dispute.

The Ministry of Economy oversees the arbitration claim. Its mission is to promote productivity and competitiveness in the economy, to diversify foreign trade, achieve a better business environment, and attract domestic and foreign investment by improving the living conditions of Mexicans. It's also worth noting that the Ministry of Mining is a sub-ministry within Economy. That ministry would certainly have an interest in seeing Don Diego move forward. Don Diego checks just about every box for the Ministry of Economy.

SEMARNAT, the environmental ministry, and the other government agency with a vested interest, has a new Secretary, Victor Toledo. Opportunely enough for OMEX investors, Toledo, who is an academic, has been on a personal crusade to reenergize the small farmers – *"los campesinos"*—of Mexico for many years. He wants Mexico to become food independent (it is now largely dependent on the US) and has written about the fact that this will not happen without increasing the supply of inexpensive fertilizers to *los campesinos*.

Access to fertilizer has become an explosive issue at a national level in Mexico. President Andres Manuel Lopez Obrador ("AMLO") made access to inexpensive fertilizer an important part of his platform. Since he hired Victor Toledo to replace his former SEMARNAT Secretary, AMLO has become even more vociferous about his desire to see Mexico feed Mexicans.

AMLO hasn't delivered very well on his promises, however, and *los campesinos* have protested, sometimes violently, in response. Last year the federal government of Mexico took over the fertilizer delivery program and did a miserable job – there were inadequate supplies for farmers and what was supplied often came too late. *Los campesinos* blocked roads to 40-50 towns, took army personnel hostage, and staged numerous demonstrations all over the country because inexpensive fertilizer was slow in materializing. Many farmers missed the window to fertilize due to these issues and now famine is a real threat in some areas. This conflict is particularly damaging to AMLO because these disadvantaged small farmers are exactly the demographic that the leftist administration said they would help most.

One of the drivers behind this conflict is the fact that Mexico doesn't currently have access to inexpensive fertilizer. In and of itself this is absurd. Mexico has massive nitrogen and phosphorous resources, but it hasn't effectively tapped them. It has historically relied on imports to supply much of its needs but this government doesn't want to pay for expensive imports. The domestic fertilizer production market is not only small but enormously unprofitable and unhealthy. It's sole phosphate mine struggles to produce one million tons per year and is said to be on the brink of collapse, as it produces highly expensive rock from a dangerous underground mine. The industry shouldn't be unprofitable, but it has been strangled by a few corrupt deals, ownership in the form of a distracted state-controlled energy giant, and a host of regulations and other governmental obstructions (e.g. Rafael Pacchiano) that have prevented the country from helping itself.

President AMLO needs victories. He doesn't need a high-profile multi-billion-dollar arbitration judgment against Mexico that he could have avoided. His approval ratings have fallen steeply though they remain relatively high. His economy is in the middle of a "great depression" according to some, with COVID, oil prices, and sovereign debt downgrades combining to create a perfect storm of negativity.

The industrial fertilizer sector is an embarrassment to the Mexican government. The massive unprofitability of Pemex Fertilizantes is a constant reminder of the allegedly fraudulent deals the prior administration cut for the Fertinal (phosphate) and Agro Nitrogenados (nitrogen) assets. One way to make this problem go away, at least in part, would be to approve Don Diego and simply let ExO take over the Fertinal assets. Sure, Pemex paid $250 million for those assets, but they're losing money hand over fist and the original deal was allegedly corrupt, implying inflated asset values and potentially involving payoffs to former Mexican President, Pena Nieto. By negotiating a deal such as this one, the Mexican government could improve Pemex's performance while helping *los campesinos* gain access to more inexpensive phosphate fertilizer.

It wouldn't be a surprise to see a settlement with ExO that involved a guaranteed supply of low-grade, below-market-priced phosphate as part of the deal. In fact, having the government as a large customer might give shareholders some measure of comfort with respect to fair treatment by the government in the future. Regardless, ExO would still sell the bulk of its production under commercial terms to non-government customers.

Because ExO's costs to produce phosphate are well below those that Fertinal shoulders in its San Juan de la Costa mine (a high-cost, underground operation that represents almost all of Mexico's meager phosphate production today), ExO could turn the entire Fertinal operation around. ExO would have to take control of the processing facilities in Lazaro Cardenas and their attendant environmental liabilities, but indemnity could be negotiated as part of the deal. This arrangement could create a Mexican phosphate fertilizer powerhouse that was able to not only supply *los campesinos* with all of the inexpensive phosphate they need but make Mexico an exporter to South America and Asia, and eventually to the US (as Floridian sources of phosphate are mined-out).

Of course, there are obstacles to approval. The Don Diego project is mildly controversial in certain parts of Mexico (though it is largely ignored), and SEMARNAT could face some criticism in approving the project. Yet, this is the case with the approval of any mine, and Don Diego will clearly have fewer negative impacts on Mexican residents and businesses than almost any other approved mine or dredging project in the country given its remote location. All other approved projects have either been onshore or close to shore and have often required the use of toxic solvents, tailings dams, fresh water resources, overburden removal, new infrastructure, forest destruction, etc.. The AMLO administration has the opportunity to position a Don Diego approval as a clear win for society and for the environment. If it does its homework, it will have plenty of empirical data and scientific support to prove its point.

8. Shareholder Strategy – Settlement vs. Arbitration

While it's true that a concession grant would represent a win-win for OMEX and Mexico, a rational shareholder should prefer that management pursue an arbitration resolution over a concession grant in most circumstances. This may seem counterintuitive to some shareholders. After all, we've been trying to gain approval for so long and we know we an approval would lead to impressive returns. So, why should we prefer arbitration? The answer is that our expected returns are higher in an arbitration than they are in a concession grant.

In an arbitration resolution we would receive the fair market value of the concession on day one and we anticipate that we would be compensated for our cost of capital over the last five years. As discussed earlier, the restoration of shareholder value for the preceding five-year period would at least double our award to 2x FMV. It's also true that the market may be unwilling to accord OMEX FMV at the outset if it wins approval – the market has priced the stock irrationally for many years. Part of this is a function of the fact that Odyssey has been the victim of irrational acts itself – such as Rafael Pacchiano's illegal denial – and those irrational acts have led to a stock price that sometimes doesn't reflect the risk-adjusted reality OMEX experiences. Regardless, our model assumes that OMEX trades well below FMV if the project is approved, and our expectation is that it wouldn't trade to full FMV until the company demonstrates cashflow.

An approval of the project would likely result in an immediate 4x return in the stock – to perhaps $20 or just below. Over the long-term, an approval could provide a pathway to returns of 20x, depending on a host of factors including business plan execution, attracting partners and customers, the ongoing relationship with various governmental entities, fertilizer market supply/demand dynamics, as well as numerous macro factors.

While holding out for an arbitration decision creates more uncertainty in the short term, it has the allure of an expected return of $1.4 billion (potentially more depending on pre-award interest) immediately upon resolution. This would translate to a 9x+ return or a $45+ stock price within two years and it would come without all the operational risks attending the Don Diego concession (though these risks would be embedded in the discount rate used to derive the NPV).

Of course, the expected return is not at all assured, and the range of outcomes in an arbitration resolution is from zero to $7 billion+. That said, we could argue that ExO's claim is well above average strength, even amongst successful ISDS claims, and the NPV of the claim should be at least equal to the $1.4bn level, thus we see the potential for a positively skewed probability distribution with respect to the award amount. An award of the full claim amount plus interest over five years would lead to a total payment amount of over $7 billion with around $5 billion of that amount due to OMEX shareholders.

OMEX WACC	
Cost of Equity	Rf + B (MRP)
Rf	0.64%
Beta	2.51
Market Risk Premium	6.0%
Cost of Equity	15.7%
Cost of Debt	
CCC & Lower High Yield Debt	17.4%
State & Fed Tax Rate	25.0%
After tax shield cost	13.1%
Equity Market Cap	41.0
Debt Book Value	42.3
Debt Market Value	31.7
Convert. Equity portion of debt	20%
Debt Market Value Adj.	25.4
Equity Market Cap Adj.	47.3
Enterprise Value	72.7
Equity as % of Cap.	65.1%
Debt as % of Cap.	34.9%
Weighted Avg. Cost of Capital	14.8%

(The above WACC computation makes several assumptions. The Beta was taken from Yahoo Finance. The MRP was an average figure from Market-Risk-Premia.com with a heavier weight for recent data. The cost of debt was taken from the FRED website which used a BofA index on CCC & lower credits. The debt market value assumed that OMEX debt trades at approximately 75% of par. This adjustment was estimated based on market rates as well as specific risk factors. The model assumed 20% of debt value was attributable to convertibility (based on black scholes warrant pricing).

.

Time value of money plays a role in determining strategy, but it doesn't change the outcome. If we assume that ExO could win a grant from the government one year or even 1.5 years ahead of an arbitration resolution, it improves the relative attractiveness of the expected returns in the grant vs. the arbitration resolution. Yet, that differential is so large ($400 mn mkt value vs. $1.4 bn ($1bn to OMEX)) that even using OMEX's 15%+ cost of capital over a 1.5 year period, it only makes the grant scenario slightly less unattractive.

The circumstance where it could make sense for shareholders to take a deal with Mexico is one in which Mexico grants OMEX the ability to operate the concession ***AND*** compensates shareholders appropriately for the damage the government has inflicted upon us. Mexico needs to reimburse OMEX shareholders for the costs it has imposed on shareholders over the last four-plus years while the Mexican government illegally withheld the asset.

OMEX/ExO Reparations Due in Settlement/Award (millions)		
	Concession Grant	$1.4 Bn Arb Award
Legal Costs (NAFTA)	10	60
Legal Costs (TFJA)	5	5
*FV of Forgone After-Tax Cashflow	294	-
Interest on Award	-	1,390
Total Recovery Due OMEX	309	1,455
**FV assumes $70mn after-tax cashflow per year for 3.5 years compounded at WACC*		

The approach we've used in the chart above shows that OMEX is due over $300 million from the Mexican government as restitution in a settlement where the concession is granted today. The bulk of that amount comes from compensating the company for the value of the cashflows it would have received had the project been allowed to proceed after SEMARNAT's first illegal ruling, compounded at the company's WACC. At this point, the reparations due are increasing at a clip of $5 million per month (or around $0.40 per share per month) but that amount will increase due to compounding.

Alternatively, we could ask to be compensated to cover our cost of capital over the period which would result in a higher amount, but this is somewhat problematic in that we wouldn't have a FMV upon which to base the analysis. We would point out to Mexico, however, that $309 million is letting them off the hook vs. the actual damage shareholders have suffered. Even if the stock only traded to $20 after an announced deal, that FMV (roughly $550 mn for ExO at 70% ownership) would imply reparation payment of $500 mn+ depending on when the deal was struck.

If we add that $300 million to the roughly $700 million in value that the market will eventually recognize for the initial phase of production, we narrow the gap between the value of the settlement vs. the expected value in an arbitration award. If we risk-adjust a known settlement valued at $1 bn vs. an uncertain arbitration award at $1.4bn (plus interest) there may be an argument to make for taking the settlement, depending on how much risk shareholders feel is inherent in an arbitration versus how much risk is involved in operating a mine in Mexico.

The Mexican government, however, is not going to willingly part with $300 million of cash in a settlement with OMEX. In fact, this $300 million payable is likely to be the largest impediment to striking a deal. Mexico may be perfectly willing to grant the concession – it knows it was wrong to deny approval in the first place and it will benefit from the project's output – but parting with $300 million could be another matter entirely.

Fortunately, there are creative ways to extract this value from the government so that Mexico's cash outlay is minimized. The value could come in the form of relief from royalty and tax payments, higher throughput allowances, or perhaps through an agreement with respect to the Fertinal/Pemex phosphate processing assets in Lazaro Cardenas and BCS.

At this point, management has indicated that it continues to negotiate with the Mexican government to find an agreement. In a sense, allowing this negotiation to run-on is playing into the hands of Mexico. Even if the government has every intent of granting the concession to OMEX, it also has every motivation to withhold approval until the last possible moment before an arbitration resolution. Governments are famous for kicking the can down the road and avoiding big decisions (maybe the next administration will deal with it) – there is only upside to kicking that can since the government doesn't accept or understand that it will ultimately bear the ever-growing costs associated with the expropriation of the asset.

OMEX management and shareholders are doing Mexico a favor if we agree to operate the concession and drop the arbitration. Even with $300 million in sweeteners, a settlement still doesn't provide a level of return as high as the expected returns from an arbitration resolution. In addition, we don't have good reason to trust Mexico. The rule of law in the country is weak (as we've witnessed first-hand), government officials are fickle, and NAFTA investor protections will be diminished under USMCA (we might demand that the project continue to operate with NAFTA protections since it's a NAFTA-era project). Mexico has not been kind to OMEX shareholders and current indications are that the AMLO administration has made Mexico a less favorable mining jurisdiction than it was under Pena Nieto.

We would have to be convinced by the current government that ExO could operate Don Diego with the conditions as laid out in the MIA and that the government would allow production to proceed in a responsible manner without unnecessary interference. The devil is in the details and negotiating this outcome would be difficult even for large companies with a deep bench of experienced mining professionals at the helm. We are somewhat skeptical of this outcome and would prefer that management not pursue a settlement aggressively. If Mexico wants to settle, let them come to us with a convincing case that aligns our interests with theirs and compensates us for their past transgressions.

Regardless, the further we proceed toward an arbitration resolution, the more difficult it will be to convince shareholders we should settle with Mexico. The reparation payment demanded will reflect this reality, and it will begin to converge on something resembling the 2x+ figure we are due under a WACC formula approach as we get closer to resolution. Management needs to make Mexico aware that it is carrying this liability at ExO's WACC and it is therefore very expensive to delay a settlement resolution.

In summary, a negotiated deal with Mexico offers the appeal of certain short-term returns for shareholders, and the prospect of sizable additional but uncertain returns over the long-haul. Shareholders will weigh this outcome against the uncertain prospect of larger returns offered from waiting approximately one-and-a-half years for an arbitration decision.

Our stance is that shareholders' highest risk-adjusted return comes from proceeding with a full arbitration proceeding and avoiding a settlement with Mexico that grants ExO/OMEX the right to mine Don Diego. The circumstance creates a high bar for any settlement agreement. If OMEX management can negotiate a favorable deal whereby the concession is granted, we are compensated for our time, costs, and damages, and the deal is structured so that we have a reason to believe that that our interests are aligned with those of the Mexican government going forward, then the deal is worth considering. But management should let the Mexican government know that our preferred route is through arbitration and the window for settlement is closing. As we get closer to an arbitration resolution, we would just as soon wait for that outcome and rely on the strength of the fact pattern supporting our position.

We want to keep things as amicable as possible with the current administration because it is the right thing to do and we may have to work with them in the future – after all, they didn't cause this mess. At the same time, shareholders have been mistreated by the former government and we need to be firm in our stance and have conviction in our claim. It is a delicate balance but one that management must strive to maintain.

9. Arbitrage Trade Background

The involvement of litigation finance funds and lawyers was important to our strategy. Litigation finance funds make a living underwriting legal expenses for claims in which they find value. If a party involved in a claim needs money to pay its legal bills, and it has an extremely solid case, litigation funds may step in with a non-recourse financing which compensates the litigation funder with a piece of the ultimate claim award.

There are many large litigation finance funds and they are sophisticated in terms of their understanding of the strength of a claim, the legal background of a claim, the strength of the legal team, the makeup of the adjudicating body, and the probabilities attached to possible outcomes that surround that claim. They generally have very good track records because they avoid underwriting poor risks, they price for strong returns, and the market for litigation funding is somewhat inefficient – allowing them attractive pricing. They are usually staffed by experienced litigators.

The legal and litigation finance firms that have assessed Odyssey's claim find it meritorious, and feel it offers attractive risk-adjusted value. We know of at least five different law firms that completed due diligence on the claim and came away satisfied that it represented a good opportunity to recover damages. This confidence was reflected in robust demand to finance Odyssey's litigation expenses according to a partner with one of the firms that assessed the claim (this litigation finance deal was announced several months ago).

With excess demand for OMEX's claim from sophisticated investors at a relatively high price, and stock available at low prices from public investors, a compelling situation arose for arbitrage. The problem was that to make the trade we would need to sell Odyssey's claim and we didn't own it. Thus, Green River engineered a synthetic right to proceeds from Odyssey's NAFTA Chapter 11 claim, essentially creating a derivative on the claim. We priced the claim at a level that litigation finance firms found attractive, and we successfully sold it to one of these investors. At the same time, we made a reverse inquiry into Odyssey and arranged to purchase primary shares from the company in the recently announced deal. Though this derivative purchase was not the only source of equity in the deal, it was the driving force behind the origination of the purchase and it helped to create significant additional interest from litigation oriented asset purchasers (litigation hedge funds and other litigation investors).

An important aspect of the arbitrage is that the strategy is dynamic. As time passes, the present value of the claim may increase due to both the time value of money and the successful passage of certain milestones in the path toward a positive outcome from arbitration or settlement. If the value of the claim increases, we may be able to sell the synthetic at higher prices. As we reprice the synthetic, the arbitrage model will allow us to buy stock at increasingly higher prices. We can buy these shares on the market, without involving the company.

To help execute our arbitrage, we built a Monte Carlo model which assumes that the arbitration award is a uniformly distributed random variable between zero and 3.54 billion dollars (plus interest). The model was designed to generate 20,000 random arbitration award outcomes. It allows us to look at the payouts from the arbitrage strategy in nearly every possible discrete outcome from the arbitration, including a concession grant, over different time frames. It also helps us to understand the risks and probabilities attached to certain extreme outcomes. The model has helped us understand how far we can push our stock purchases as the price of OMEX rises without turning the trade upside-down.

The nice thing about this trade is that it is virtually riskless from our Partnership's perspective and it is more than likely to be a win-win for both the long and short sides of the trade. If the claim award is above a certain low level or there is a grant of the concession, investors in the derivative will make solid returns and so will our Partnership (which takes profit from the long side of the trade (OMEX share) net against the short side (the derivative obligation)). The larger the arbitration award, the larger our profit and the profit of the derivative purchaser. On the other hand, if the claim award were very small, it becomes a losing proposition for the derivative purchaser and our Partnership makes nothing.

10. <u>The Arbitrage Trade</u>

In general, an arbitrageur earns returns buying and selling the same (or a similar) asset or security at the same time in different markets. He or she looks for wide spreads where the asset can be bought at a lower price than it can be sold. That spread represents the profit that the arbitrageur can expect to make from the trade. There are endless varieties of arbitrage strategies and techniques, and each has its own unique risk profile which can range from completely riskless to highly speculative. The effect of arbitrage is to cause the prices of the traded assets to converge.

We found a large spread between the relatively high price that professional litigation finance funds were willing to pay for Odyssey's NAFTA Chapter 11 claim, and the low price where the public market implicitly valued that claim. From an OMEX investor's perspective that is an interesting statement. Litigation financiers are the experts at pricing claim risk, and they price that risk to win (in other words, they put a low enough value on the claim that they have a favorable risk/reward tradeoff). Even so, the price these experts are willing to pay for OMEX's claim is much higher than where OMEX's stock trades in public markets today.

In technical terms, the differential in prices between the public and private value of the claim is called "basis." That basis differential probably exists for a couple of reasons in the case of OMEX. One is OMEX's lack of cash on the balance sheet and its cash burn. Another is the fact that this microcap equity just doesn't attract much attention from people who can fairly assess its value. Most Odyssey shareholders are still hoping for a big shipwreck recovery and have little desire to understand how to value a phosphate mine let alone a NAFTA Chapter 11 arbitration claim.

Our arbitrage is a "basis trade" and we are said to be "long basis." We are long the spot market value of OMEX stock and short a derivative that in some sense acts like a futures contract on the NAFTA arbitration, as we have agreed to make a payout based on the future outcome of that arbitration. Because each side of the trade uses a different instrument, we cannot simply net the two against one another, claim the basis for ourselves (satisfying the short side with the long security eliminates the basis), and call it a day. Instead, our bet is that there will be an event which will crystalize the value of this claim and force the basis to narrow to very little. Whether that event takes the form of a settlement or an arbitration award doesn't matter. Either way, investors will be given a more objective measuring stick to use for valuation, and the stock will respond (or a new arbitrage opportunity will be created).

One interesting aspect of the arbitrage is that it is self-fulfilling in several respects – that is, it has the potential to diminish the trade's basis in and of itself. Our trade naturally begins to erase some of the basis differential if we buy shares in the open market, forcing the stock higher. Our arbitrage also provides a large source of cash for OMEX, erasing some of the basis risk stemming from the company's lack of liquidity. Finally, the trade and this research note shed light on the fact that professionals value the claim at a level that is in excess of where the public values it. Our view is that the litigation finance professional is more adept at assessing arbitration claim risks and pricing arbitration claims than OMEX's public shareholders. If this view comes to be adopted by the market, more basis will be eroded.

For now, the basis is the reason this trade exists. We benefit from public investors who don't put much value in OMEX's claim, as these investors provide our Partnership with the opportunity to make money – we'd like them to continue selling us their stock on the cheap. If inexpensive OMEX shares are available from short sellers, all the better.

Most readers will want to quantify the discrepancy between the public and private market value of OMEX's claim. The details of our transaction to sell the synthetic claim are private, so you won't know exactly how large of a differential there is in our arbitrage. Yet we can walk through a hypothetical example to show how the math works, and you can adjust the numbers to levels you feel appropriate.

Let's assume that based on extensive due diligence, a litigation finance firm comes to an expected value of OMEX's claim at 20 percent of the total damages sought. At 20 percent of the maximum claim award, this would imply a value of around $700 million (not counting pre-award interest) and would translate to an award of approximately $390 million to OMEX – with that value expected three years from today (3.54bn *0.54 (ownership)*0.2 (discount) = 390 million). Note that $700 million is their risk-adjusted value of the claim, that's the price they feel will allow them the return they demand today. As the claim is de-risked over time, its value would increase. Again, all figures in this example are theoretical.

If the expected value of the claim three years from now is $390 million, the litigation funder will discount that back to a net present value today at a rate that reflects the risks they perceive and that corresponds to the rate of return they demand. This article notes that one of the larger litigation finance outfits in the country, Burford Capital, earns around a 31 percent return annually, so we'll use that rate as a proxy.

If we discount $390 million back three years to today's value at a 31% rate, we get a $173 million present value (390/((1+0.31)^3) = 173). If the litigation funder were to invest $1 million at a $173 million valuation, it would own approximately 0.58% of the claim.

In our hypothetical transaction, the arbitrageur takes $1 million from the litigation funder and invests in OMEX shares at $5/share, purchasing approximately 200,000 shares which is equal to roughly 2.1 percent of OMEX's outstanding equity (note that our arbitrage model did not require warrants to make the trade work – this was a bonus). Thus, the arbitrageur is short 0.58% of the claim to the litigation funder and long 2.1% of OMEX's portion of the claim through OMEX shares. The arbitrageur would have around 3.6x the exposure on the long side versus the short side (2.1/0.58) meaning that for every dollar paid out on the short side of the trade, the arbitrage would generate over $3 on the long side (assuming no basis differential after arbitration resolution).

In the case of a $390 million award to OMEX after three years, the arbitrageur would pay out the $2.25 million to the litigation funder (0.58% of 390 million), generating the 31% annually compounded return, and liquidate approximately $8.15 million in OMEX shares ($390/9.5 million shares = $41/share * 200,000 shares= $8.2 million), netting approximately $6 million in profits. Note that because the DCF valuation is taxed the award is also post-tax money and we won't want to tax it again.

In the case of zero award, the arbitrageur would pay out zero on the short side and liquidate for pennies on the long side, essentially a flat trade. In the case of a maximum award of 1.95 billion to OMEX ($3.54bn * 0.54), the arbitrageur would pay $11.25 million to the litigation funder while the OMEX holdings would be worth approximately $41 million – generating a $30 million gain for the arbitrageur.

An easier way of understanding the arbitrage differential is to recognize that the litigation finance firm is implicitly valuing OMEX shares at just over $18/share today ($173 million present value of the claim/9.5 million shares outstanding pre-deal). This means that the arbitrageur is effectively selling OMEX at $18 while buying it at $5 (demonstrating the 3.6x multiple). Again, this is a hypothetical trade which is simplified for illustrative purposes.

In the likely event that the Mexican government settles with OMEX and allows the company to begin operating the claim, there is a mechanism by which the arbitrage makes money. This scenario is a win-win for all parties involved in our trade.

Some might wonder why litigation financiers don't just go out and buy OMEX shares themselves, since this would allow them to own part of the claim at a lower valuation. That certainly could happen (and it has happened to a certain extent in the recently announced deal), but the reality is that obstacles prohibit it for many of these investors. Many litigation finance firms don't have a mandate to purchase public equities – their investors didn't allocate funds to them for that purpose. OMEX is not a liquid security and most of these funds are very large and would not be able to establish a meaningful position without causing the stock to appreciate significantly. Most litigation finance firms prefer to own private assets whose value remains relatively stable as opposed to an equity like OMEX that exhibits high volatility. Finally, these funds don't know the Odyssey story in great depth, and they might not care to know it. They understand litigation/arbitration risk and they know a good opportunity when they see it.

11. AHMSA and the Stock Purchase Agreement

Mexican steel and mining conglomerate, AHMSA, negotiated a Stock Purchase Agreement ("SPA") to acquire 50% of OMEX at $12/share in 2014. AHMSA also acquired an option to purchase a further 15% at approximately $6/share. Whether any part of this deal happens is an open question. Our belief is that it is no longer in the cards.

Odyssey signed the SPA because AHMSA was to help secure environmental approval for Don Diego. Obviously, that didn't work. Shareholders would be justified in protesting over the dilution that would result in executing the deal. There are a number of additional complicating factors.

Alonso Ancira, Chairman of AHMSA and the man behind the OMEX deal, was arrested on suspicions around AHMSA's sale of the Agro Nitrogenados assets to Pemex several years ago. At the time of the sale of these assets, Pemex was run by Ancira's personal friend, Emilio Lozoya. Lozoya is also being pursued by the current Mexican government in connection with this deal as well as Lozoya's connection with Brazilian contractor Odebrecht. Ancira had been under something close to house arrest in Spain for the last year but his extradition was recently refused by a court and it is unclear whether criminal proceedings will be brought against him. Lozoya was extradited to Mexico and is now pointing his finger at a number of influential politicians, from Pena Nieto himself to Rafael Pacchiano.

We may never know whether Ancira was truly part of a fraudulent deal or whether he was just a convenient political target. Regardless, there isn't much chance that the current government would do any deal that involved AHMSA or Ancira as a potential owner of Don Diego. Regardless, our guess is that AHMSA will not be in a position to exercise the SPA given its relationship with the current government, AHMSA's poor financial health today, and considering the substantial penalties and restitution the firm may have to pay the Mexican government.

Our model removes all impact from a SPA exercise. If you feel that the SPA will be exercised then a shorthand and approximate method for calculating value would be to cut valuation targets by one-third (since there would be over 11 million net new shares issued if the deal was fully executed (vs. 20mn without the SPA) – recall that some existing convertible debt would be included in the deal) and then add $3.50 a share to those targets due to the ~$100 million in cash that AHMSA would have to pay (that figure is net of all debts to AHMSA that OMEX currently owes).

Absent a deal with AHMSA, over time OMEX could negotiate a deal with another large buyer, JV partner, or creditor once Don Diego is de-risked. Presumably that deal would come at much-improved financial terms for shareholders versus the AHMSA deal.

12. Valuation

Understanding how to value the Don Diego concession is key to calculating the upside for OMEX investors. The value of the concession will determine the amount of an arbitration award, just as it will help determine OMEX share price in a concession grant scenario (although an arbitration FMV will use 2016 values). This section will give a somewhat detailed look at the project's economics and the company's business model so that investors can get a sense for how the concession will be valued.

For those new to the story, OMEX's value is dominated by its stake in Don Diego. Its other concessions, shipwreck salvage projects, and its mineral services business are not worth enough to fully offset OMEX's debt. These other concessions and businesses will increase in value in a meaningful way, however, if Don Diego is approved or if OMEX receives a large arbitration award.

We have several datapoints that help establish a value for Don Diego. The global investment bank named in OMEX's Notice of Arbitration has valued the claim at $3.5 billion. Green River published a discounted cash flow model several years ago that established a valuation of around $2.4 bn. The differential between the two valuations is explained largely by discount rate and commodity price assumptions. Transactions of comparable assets support a valuation north of $2 billion, as will be discussed later in this section.

Mosaic has an enterprise value of approximately $11 billion (down from $14 billion a year ago) and cites unofficial reserves of 621 million tons of rock phosphate beneficiated to 29% in its 10K. Don Diego has so far shown reserves of 588 million tons measured, indicated, and inferred at just over 18% grade, which would translate to approximately 345 million tons screen/filtered to 29% (at ~1.7 tons rock per ton of 29% grade ore). Experts familiar with the Don Diego claim believe it will ultimately yield on the order of one billion tons of 18% rock which would create around 588 million tons at 29% -- very close to Mosaic's reserve levels. Of course, mining phosphate is only part of Mosaic's business. Potash normally accounts for 30-40% of Mosaic's business, and it has other assets such as processing plants and distribution facilities and networks that also need to be considered. Even so, a $2.4+ billion valuation does not look out-of-line for OMEX's asset when compared to Mosaic – especially when we consider that OMEX's asset should produce lower cost rock than Mosaic's Florida rock mines.

If the Mexican government granted the mine approval tomorrow, however, we would not expect OMEX equity to immediately reflect Don Diego's $2.4bn to $3.5bn in fair market value. That is the present value of a fully vertically integrated, high throughput Don Diego with a healthy book of customers. There are a number of risks between the project's formal approval and fully integrated production. Thus, we would expect the market to apply a higher discount rate (or lower cashflows) until management carefully explains the model and then demonstrates a margin structure and cashflow stream that will support the valuation.

Another approach to valuation may give a better assessment of how the market would react in the near-term to a Don Diego approval. The market might want to evaluate the amount of cashflow that Don Diego could create in its early stages when running reduced throughput (the MIA allows for around 3.5 million tons of screened rock) and without the benefit of full beneficiation. In an operation where Boskalis is dredging sand that is then run through a simple mechanical screening process to concentrate the P_20_5 content, the project would be worth around $700 to $750 million. This would translate to a 12-18-month target of around $37 per share for OMEX (counting a $309 mn reparation payment) and approximately $20 directly following approval.

Before getting into the details behind the numbers and logic that yields these valuation results, it's worth pointing out that OMEX's strategy for processing rock phosphate will evolve over time to include a wide spectrum of integration, and this has implications for valuation. The company could first simply pull up 18% grade phosphoric sand and offer the low-grade product for sale at a low price. It could soon thereafter process that sand through a filter to increase grading to 27-29%, selling it at a higher price. Finally, OMEX may acquire or partner with a facility such as the one at Lazaro Cardenas (owned by Pemex/Fertinal) to beneficiate the rock to 32 percent concentration using chemical floatation techniques – making it worth approximately $120/ton which is the long-term contract price. Rather than sell the 32 percent rock, however, it would likely be combined with sulfuric acid to produce phosphoric acid and then with ammonia to produce finished products such as DAP, and MAP, which can sell for $350/ton and more.

The further OMEX vertically integrates the operation, the higher the gross margins and the larger the gross profit dollar volume. OMEX's ebitda margins might be around 45% on non-screened sand and 60% on finished MAP/DAP. As the operation becomes more vertically integrated the dollar volume of cashflow generated through the system expands rapidly because not only is there some operating leverage, but the pricing on product sold increases substantially. Regardless, ExO can create a fairly large operation very quickly if they are simply producing filtered rock.

Below are some comments on the relative costs for Don Diego which will be particularly interesting for new investors. Following that are details around the unit cost and unit revenue figures used in our models. These are essential drivers in Don Diego's valuation.

Relative Costs

One of Don Diego's most underappreciated features is the fact that the project offers very low unit costs for the extraction of rock phosphate. This low-cost model is a key reason that Ahmsa became interested in the project. Not only is Don Diego very large, but it is highly economic. This surprises some people because they assume that anything done at sea is going to be more costly than on land.

We know that the concession is cost competitive for several reasons:

- The CEO of OMEX has told us so. On a conference call May 13, 2014, Mark Gordon stated, *"Given the location and the water depth of the deposit, we can use existing technologies and equipment, such as traditional dredge ships, for the extraction process, and engineering studies indicate that we can operate on a very cost-effective basis. In fact, we believe that given these factors, this project could be* ***among one of the lowest production cost phosphate extraction operations in the world****."*

- We also know that Don Diego's specific physical characteristics eliminate or greatly reduce the costliest (both economically ***and*** environmentally) aspect of terrestrial phosphate operations. Because Don Diego has little or no over-burden and inner-burden, the operator will not need to waste time, energy, and money removing and processing this material. Nor will expensive land reclamation be necessary.

- Don Diego is a dredging operation, and dredging is a low-cost extraction method. Marine mining of aggregates has been practiced for 40+ years, and that production process is almost identical to the one used to extract phosphate at Don Diego. Aggregates usually sell for \$7.50/ton to \$12/ton wholesale. Any mining outfit, including a marine mining company, would have to produce rock at unit costs which are below those prices to sell into that market and remain viable over the long run.

- This study from the Dept. of Interior Minerals Management Service cites the average cost of dredging marine aggregates at 5 GBP or \$6.59 per ton in 1997 (page 19). This study cites a sample average cost to dredge 1.25 tons of sand (one cubic yard) at \$1.63 using a clamshell dredge (page 20 - \$1.63 per cubic yard). This study showed a cost of dredging at \$5 to \$8 per 1.25 tons of sand (page O-3).

- We have spoken with consultants and dredging industry executives who have confirmed that the costs to dredge a ton of sand are in the mid single-digit dollars (varying widely based on a variety of factors) and that the contract price is usually in the \$8-\$12 range depending on a number of factors including the size of the project, length of contract, and the logistics of relocating equipment. Given Don Diego's size, the low end of this range could be appropriate.

- Don Diego's average rock concentration of approximately 18% puts it at the upper-end of run-of-mine concentration levels versus most new mines. Higher concentrations translate into lower costs because it means less material needs to be processed to create a unit of finished commercial product.

- Chatham Rock Phosphate, which intends to dredge seabed phosphate off the coast of New Zealand, has historically cited EBIT margins of 50 percent in their models. That project is burdened with unit costs that should exceed those of Don Diego because of its depth (400 meters) which will necessitate customized equipment. It will also operate much further from the nearest port than Don Diego, adding extra costs. Those extra costs may be offset by premium prices Chatham extracts for its specialized phosphate.

Oceanica: A Closer Look contained a description of the issues and costs of over-burden and inner-burden removal. An excerpt of the piece follows:

> *Oceanica benefits from very low extraction costs. This is an important factor in making the project so competitive from an operating perspective. One useful way to understand this is through the stripping ratio. This ratio describes the amount of waste material that needs to be handled to generate a unit of ore. The higher this ratio, the less cost effective the mining operation because a high amount of waste rock is being handled to extract a given amount of ore.*
>
> *Oceanica is a particularly attractive ore body in that it has minimal or no overburden. In addition, it is thought that the ore also has very little "innerburden." Since phosphates are usually sedimentary deposits, they are found in distinct layers, much like a cake. Oceanica has seen uninterrupted phosphorite deposits for perhaps hundreds of thousands of years (being that it has likely been underwater the entire time) making it more-or-less a continuous ore body. The minimal overburden and innerburden makes Oceanica very attractive.*
>
> *Many phosphate projects today report stripping ratios of anywhere from 2:1 to 5:1 with some operating much higher – even up to 18:1. This article mentions the stripping ratio at Vale's Bayovar mine in Peru has been reduced from 11.8 to 5.3. This article cites a goal of an 11.8 stripping ratio at Plains Creek in Africa. Plains Creek shows extraordinarily high levels of phosphate concentration, but moving almost 12 tons of waste rock for every ton of ore creates a large drag on economics. In general, stripping ratios of 2 or 3:1 are considered to be excellent, and highly competitive. We believe that Oceanica may operate at a ratio of less than 1:1 since it has little overburden or innerburden to process. This would imply that Oceanica could achieve relative cost savings in the extraction of ore.*

Contrast the Don Diego operations with those in Florida. In that state, Mosaic must remove approximately 30 feet of overburden before hitting phosphate pay layers. When they do get to the phosphate material, it is often intermittent, with layers of inner-burden between layers of pay, and it generally must be mined below the water table using non-stop water pump systems. Each of those considerations translates into greater costs.

Not only do producers in Florida contend with higher stripping ratios than those at Don Diego, but they also mine rock with far lower concentrations. Most of the high-grade phosphate deposits in Florida have been mined. Operators are migrating south, to areas where concentrations are lower:

> *Mining in central Florida has been moving south since Florida phosphate mining began. As sites mine out, the draglines move to where the contiguous deposit of phosphate pebble is found. The further south one travels, the quality of the rock mined is lower, bringing with it greater technological challenges for the industry.* Link

As the table below notes, phosphate resource concentrations for the southeastern US average at around 11 percent. That would include some production from North Carolina, but it is almost all from Florida.

Table 1. Phosphate Recovery From Producing Mines by Region[a] (Adapted From Fantel et al., 1988)

Region	Feed Grade	Product Grade	Recovery of P_2O_5	Loss of P_2O_5
	(% P_2O_5)	(% P_2O_5)	(%)	(%)
North America				
Southeast United States	10.9	30.4	79.0	21.0
Western United States	22.2	31.2	71.3	28.7
South America	9.6	33.8	58.6	41.4
North Africa	26.0	32.2	69.8	30.2
West Africa	27.1	33.3	40.5	59.5
Middle East	24.7	31.4	71.4	28.6

a. See original text for definitions of terms. Feed grade, product grade and recovery are weighted averages for all deposits in the region.

Again, higher concentrations mean lower costs all else equal. This advantage is especially noteworthy for Don Diego (which contains >18% run-of-mine/feed concentration) because most of the other large-volume phosphate mines in the Americas produce rock at lower run-of-mine concentrations. Rock that comes from Africa and the Middle East is mined at relatively high concentration but is burdened with shipping costs that can add $15-$30/ton when transported to North America. Don Diego's location, concentration, and lack of over/inner-burden give it a substantial cost advantage in serving the Americas and Asia.

You can find more detail in the previously referenced Green River report, but Don Diego enjoys a host of other cost advantages versus Florida mines and terrestrial mines more generally. These would include savings on infrastructure costs such as roads, electrical facilities, freshwater resources (during extraction), transportation to ports, and land reclamation, to name a few. Moreover, because all of Don Diego's extraction-related equipment can be used on other sites (ships are mobile) the operation will not be required to buy equipment but instead can pay only for time used.

Extraction Unit Cost Estimate

Don Diego will initially be mined under what is called a tolling arrangement with a dredging contractor – most likely Royal Boskalis. That arrangement entails Don Diego buying the recovered phosphate rock from a contractor who would provide the equipment, balance sheet, manpower, and expertise to run the dredging (and screening) operation. This form of contract is no different from arrangements that Boskalis and other dredging contractors make all the time, all over the world. The only thing exceptional about this contract is that it would probably have a much longer duration than is typical – which would argue for lower rates. OMEX will not have to build, purchase, or operate a large dredging vessel.

If we conservatively take the high-end estimate of the $8-12/ton contract price discussed earlier and modify this number to account for the fact that the company may have to mine 1.7 to 1.8 tons to get 27-29% concentrations after running the ore through a screen, we arrive at an estimated cost of $21/ton (12*1.75). We will add another $1/ton to that number to account for the screening equipment and labor/movement associated with screening so that we are estimating $22/ton to produce rock with a 27-29% grade.

To that number we should add $3/ton for Don Diego's administrative costs of running the operation including sales and marketing, and general & administrative expenses (note that all of Boskalis's costs have already been taken into account, we are adding whatever costs may be incurred by the Don Diego mining organization which is essentially acting as a prime contractor that has sub-contracted Boskalis to do the heavy lifting). We will add $1/ton for money spent in remediation and helping local communities and fishermen with projects, and we will tack on $4/ton for royalties. At this point, costs are around $30/ton. In the name of conservatism, we can add an additional $5/ton to those costs as a margin of safety. That gets us to around $35/ton as a point estimate for a simple screening operation. We think that point estimate is conservative – but we would all rather a positive surprise than a negative one on cashflow margin.

Don Diego	
Unit Cost to Produce 28-29% Rock Phosphate	
A) Boskalis Contract Price/Ton	12
B) Tons of 18% Rock Required to Produce 28%	1.75
C) Cost/Ton (A*B)	21
D) Screening Costs	1
E) Total Costs 28% Rock (C+D)	22
F) SG&A Costs	3
G) Remediation & Local Projects	1
H) Royalties	4
I) Cushion	5
J) Total Costs/Ton (E+F+G+H+I)	35

Per ton operating costs will decline as volumes ramp on most of the non-Boskalis related costs, but if we assume that the operation will use advanced beneficiation methods as it moves to nine million tons per year of production, unit operating costs will increase by approximately $15/ton to get the rock to 31-32% concentration (see capital expense details in previous valuation work).

Rock Unit Sale Price

Almost all rock phosphate is sold under long-term, fixed-price contracts to fertilizer and chemical companies. The standard grade concentration for these contracts is approximately 32%. The long-term contract price doesn't move much even as the spot price bounces around. Current contract prices take into account carrying costs as well as time value of money and long-term expectations surrounding supply and demand.

Though phosphate spot prices have recently been recorded at ~$75/ton, contract prices have remained stable in a range between $110 and $120/ton (also here (last page) and here) for years. Note that slow moving contract prices can also work against producers as this article points out. In 2009 when spot prices rose to $185/ton, sticky contract prices remained at only $90/ton. The valuation model employed in this report takes a conservative view on contract prices and assumes that 32% beneficiated rock can be sold under contract at only $95/ton. That 15-20% discount is probably appropriate since the Don Diego operator would have to offer a fertilizer manufacturer an economic incentive to switch over to the new rock.

Early in the operation, when ExO might sell rock that is screened to 28-29% concentrations (a 10% discount to standard grade), the unit sales price is projected at $65/ton, an 40% discount to contract prices for standard grade product. This projected sales price for screened rock came from a phosphate marketing consultant who suggested that a price in the upper 60's to low 70's would be appropriate.

OMEX Capitalization

Anyone new to the OMEX story is usually shocked to see the state of the company's balance sheet. It reflects essentially zero assets, over $40 million in debts, plus accrued liabilities, and negative shareholder equity. Those more familiar with the OMEX story have reconciled the unappealing balance sheet and apparent outsized debt load against what are essentially very large "contingent" assets. When those contingent assets are taken into account, the picture improves considerably. The contingency of those assets resolves around the approval of Don Diego or a large arbitration award.

OMEX's largest asset, valued at $3.5 bn by a global investment bank, doesn't appear on the balance sheet, nor does the company's approximately $56 million receivable owed by ExO – that receivable bears interest at 18% and converts to Oceanica ownership (Oceanica owns ExO) – which is essentially equity in the Don Diego concession. In addition, the balance sheet doesn't reflect some of the company's ownership stakes in other concessions, one of which was recently valued in a transaction at $15 million to OMEX.

The chart presented below shows Odyssey's debt obligations. The company owes a total of a bit over $44 million including accrued interest. This chart intentionally omits the litigation funding as that is non-recourse debt that relates to ExO and is secured solely by the NAFTA claim. We are also assuming that the company follows procedures so that its PPP loan is forgiven. The bulk of the debt converts into either shares of OMEX, Oceanica, or another concession, Aldama. In the case of a concession award, our assumption is that all of the OMEX and Oceanica debt will convert as doing so would make economic sense to the creditor. In the case of a substantial arbitration award, the debt would also convert.

OMEX Notes Summary

Note	Par Value	Accrued Int.	Total Due	Coupon	Conversion	Conversion Px	Shares	Notes
Monaco 2014	2,800,000	1,674,621	4,474,621	18%	Oceanica	1	2,800,000	Monaco has option to buy $9.3 mn in ExO debt to OMO
Monaco 2016	1,175,000	904,205	2,079,205	18%	Oceanica, remaining balance non-converting	1	374,603	which converts to Oceanica @2.75/unit
Minosa One	14,750,001	6,117,090	20,867,091	8%	OMEX	12	1,229,167	Secured by OMEX stake in Oceanica
Epsilon (tranche 3 of 2nd note)	1,000,000	373,903	1,373,903	10%	OMEX	3.52	284,091	Pledged Oceanica interest and note
SMOM	3,500,000	1,060,203	4,560,203	10%	$2mn to 20% of Aldama			Secured by 50% of stake in Neptune
Minosa Two (includes Epsilon tranche 4&5)	5,050,000	1,541,296	6,591,296	10%	OMEX	4.32	1,168,981	Pledged Oceanica interest and note
Monaco 2018	1,099,366	270,797	1,370,163	10%	No			Secured by shipwreck recovery work
Promissory Note	1,071,599	170,779	1,242,378	8%	OMEX	4.67	266,034	Awarded warrants convertible into 131,996 shares OMEX
37 North	1,776,700		1,776,700		OMEX	80% 10 day VWAP	213,529	155% of amt due pd fr Shipwreck proceed
EID Loan	149,900		149,900	4%	No			
Totals	32,372,566	12,112,894	44,485,460					

From a liquidity standpoint, OMEX will be in good shape in the case of a concession grant or a large arbitration award. In the case of a grant, almost all of the debt will convert and the company will have access to plenty of additional lower-cost liquidity with a de-risked Don Diego as collateral. In a large arbitration award, the debt would convert, OMEX would pay its other creditors, and a special one-time dividend would probably be made.

In the case of a very small award, OMEX is a creditor to ExO, so the first $56 million or so would flow 100% to OMEX after paying litigation funding costs. In that case, OMEX may or may not be able to pay off its debts depending on the exact size of the award. Regardless, there could be little remaining for shareholders. That said, the creditors are generally friendly and management may be able to restructure a path to develop some of its other concessions.

Odyssey Marine Projected Shares Outstanding Schedule

Deal Name	Conv Px	Shares Added	Shares Out	Debt Reduction	Cash
June 30, 2020 outstanding		9,572,449			
Reverse Inquiry Shares	-	2,553,314	12,125,763		11,300,000
Warrants - Epsilon	3.52	120,000	12,245,763		422,400
Conv debt - Epsilon II	3.52	390,314	12,636,077	1,373,907	
37North	3.70	389,574	13,025,651	1,441,423	
Conv debt - Lit Funder Phase II-A	3.99	513,784	13,539,436	2,050,000	
Conv debt - Minosa $1M from Epsilon	4.13	327,968	13,867,403	1,354,506	
Conv debt - Minosa $1M from Epsilon	4.19	325,163	14,192,566	1,362,431	
Conv debt - Minosa $3M	4.41	878,540	15,071,106	3,874,363	
Reverse Inq Warrants	4.75	1,646,657	16,717,763		7,821,621
Warrants	5.76	196,135	16,913,898		1,128,953
Conv debt	5.76	212,088	17,125,986	1,220,780	
Warrants - 10.31.18	7.16	700,000	17,825,986		5,008,500
Options issued & outstanding	7.25	238,651	18,064,637		1,730,220
Minosa One	12.00	1,738,925	19,803,562	20,867,097	
Potential Restricted Stock Units		343,353	20,146,915		
Calculated fully diluted		20,146,915	20,146,915	33,544,507	27,411,694

The chart above shows a projection for OMEX's fully diluted shares outstanding assuming a positive outcome regarding Don Diego. It accounts for the exercise of all outstanding convertible debt, warrants, and options and the award of all RSUs that have been authorized. This analysis assumes that all of the AHMSA-related debt converts. If the company refinances that debt, the dilution could be changed depending on the deal structure.

We've adjusted the reverse inquiry warrant amount to account for the fact that we believe some of the warrants will never be issued (due to Oceanica accretion). Also note that assuming shares outstanding reaches this level means that most of the company's outstanding debt is removed from the balance sheet and $27 million of cash is added via. warrant exercise.

One way in which shareholders have been badly damaged by the Mexican government's decisions is fairly apparent in this chart. Since March of 2016, just prior to SEMARNAT's initial denial, when there were ~7.5 million shares outstanding, shareholders have been diluted by over 100%. This is true if you compare the fully diluted share count in 2016 vs. today (not counting the SPA exercise for reasons previously disclosed). It doesn't explicitly account for the fact that the company would have continued to dilute shareholders if the mine was approved, but because the funding required in that event would have come in the form of relatively inexpensive debt, it wouldn't change the equation meaningfully. This means that the Mexican government is responsible for effectively taking away more than half of the company from shareholders through its illegal denial and indirect expropriation.

It is only fair that the government of Mexico will need to make shareholders whole for these losses (and others) as part of any deal. This analysis affirms the need for reparations that would effectively double the DCF-determined FMV of the concession in an award scenario.

For the valuation work below, where we are valuing OMEX shares in the case of a concession grant, we increase the shares outstanding to fully dilute for convertible debt conversion as well as all outstanding options, warrants, RSUs, and the shares associated with our reverse inquiry. For valuation work around various arbitration awards we inflated shares outstanding to assume conversions as appropriate based on projected award amounts.

Valuation Calculation

Below is a valuation table which projects the value of Don Diego based on different operating profiles. These calculations take the estimated cashflows resulting from the different operating scenarios and apply a multiple to them to arrive at a projected value.

OMEX Cashflow Multiple Valuation

Tons Per Year	**3,500,000**	**7,000,000**	**10,000,000**
Phosphate Contract Sale Price	65	65	95
Total Revenue	227,500,000	455,000,000	950,000,000
Total Costs per ton (incl. royalty)	35	34	49
Total Costs	122,500,000	238,000,000	490,000,000
Cash Flow	105,000,000	217,000,000	460,000,000
Cash Flow Margin	*46%*	*48%*	*48%*
Cashflow with Ownership at 70%	73,500,000	151,900,000	322,000,000
NOL Shield	(36,750,000)	(75,950,000)	-
Taxable Cash Flow	36,750,000	75,950,000	322,000,000
Corporate Tax at 30% (Mex)	(11,025,000)	(22,785,000)	(96,600,000)
After Tax Cash Flow	62,475,000	129,115,000	225,400,000
8x Multiple on After-Tax Cashflow	499,800,000	1,032,920,000	1,803,200,000
(Implied Value of 100% stake in Deposit)	*714,000,000*	*1,475,600,000*	*2,576,000,000*
Per Share Values			
Don Diego	24.81	51.27	89.50
Portfolio of Future Concessions	0.99	0.99	0.99
Marine Services	0.25	0.25	0.25
Ship Salvage	0.25	0.25	0.25
Debt	(0.46)	(0.46)	(0.46)
OMEX Per Share Value Pre-Reparation	25.84	52.30	90.53
Reparation Pmt $309mn NPV	10.74	10.74	10.74
Total OMEX Per Share Value w/Reparation	36.57	63.04	101.27
Fully Diluted Shares Outstanding	*20,146,915*		
(Assumes all debt converted as well as warrants)			

The current S&P EBITDA multiple for companies in the Materials sector is 10.6x. The valuation work above uses an EBITDA-equivalent multiple of around 6.8x (1,475 million/217 million) but expresses this in a multiple of after-tax cashflow of 8x. Normally, you would expect an after-tax cashflow multiple to be higher than the industry EBITDA multiple, but our valuation model was built to be conservative.

Also note that in the ten million ton-per-year scenario, we haven't assumed a fully integrated operation despite the fact that this is the most likely outcome. Owning an operation that carried production through to phosphoric acid, DAP, MAP, and other finished product sale, would enhance margins and push valuation higher. We assume the company has partial use of its NOLs in the earlier years of the project. This would likely come in the form of tax credits.

This valuation analysis assumes that part of the settlement agreement consists of a reparation award having approximately $300 million in value. As discussed earlier, that $300 million could come in many forms. Whether it's royalty and/or tax abatements, higher throughput allowances, processing assets or a JV with Fertinal, the impact would be a higher valuation to reflect the $300 million in NPV regardless of the form of payment.

The low-end throughput scenario will likely determine near-term value in the case of a concession award by settlement. While this scenario argues for ultimate value around $37/share (and growing fast), it will take 12-24 months for the stock to get there. The company needs to clarify its strategy for investors, provide more guidance on the operating model, give timelines, demonstrate cash generation, and win some business. In the meantime, the stock should trade to the 20's depending, in part, on how much credit the market is willing to accord to OMEX's other prospects.

As noted earlier in the valuation section, we can look at a comparable peer transactions to see if our valuation work is reasonable. The fairly recent example provided by Vale's Bayovar phosphate mine in Peru is a fairly good match. Vale Bayovar reserves are about half the size of Don Diego's, at 278 mT, the mine life is 27 years, and the run-of-mine grading (P_2O_5) is slightly below that of Don Diego. Bayovar margins are likely well below those of Don Diego because of its relatively high stripping ratio of approximately 5:1. Vale Bayovar is producing somewhere between 3.5-3.9 million tpy, and the rock is being sold without the benefit of floatation, at a level of P_2O_5 concentration in the 28-29 percent range.

Both Mosaic and Mitsui invested in Vale's Bayovar project several years ago at a valuation of $1.1 billion dollars. The idea that Don Diego, which will ultimately be 3-4x larger than Bayovar, more profitable, but with a similar grade of rock, could ultimately fetch a valuation of $1.5-$3.5 billion is within reason.

Turning away from Don Diego, the model values OMEX's portfolio of future concessions at $1/share or approximately $20 million. We know from OMEX's releases that its ownership in one of its concessions was recently valued at $15 million. So, our model attributes little value to the rest of OMEX's concessions. Remember that this value projection is post-approval of Don Diego. It is a conservative number because each of OMEX's prospects should increase in value meaningfully assuming that OMEX proves itself capable of securing commercial approvals and developing/operating/managing a mining concession.

One of the properties not accorded value is Odyssey's Lihir Island offshore concession which probably encompasses the subsea section of the Louise Caldera. The terrestrial section of this Caldera hosts one of the largest gold mines in the world, a mine that produces over one million tons of gold per year, and was valued at nearly $9 billion in 2010. The offshore concession may also include this "conical seamount" where, "Grab samples from the summit of Conical seamount contain the highest concentration of gold yet reported from the modern sea floor." As part of the same geologic formation that hosts one of the largest gold mines in the world, the subsea Lihir concession could one day be more valuable than Don Diego. It is still highly speculative at this point, thus we assign it no value.

Some will say that our valuation work on Don Diego is too conservative because of the strategic value of the deposit. After approval, OMEX will control what will likely be the largest and most economic, high-quality phosphate deposit in the Americas. That is important because phosphate is a critical input in commercial agriculture and a foundational element in global food security, and some feel that a supply crisis is not far off.

This article ran in the Guardian several months ago and noted that "use of essential rock phosphate has soared, but scientists fear it could run out in a few decades." The Guardian article is based on this recent study which notes that, "The continued supply of phosphate fertilisers that underpin global food production is an imminent crisis." While rock phosphate spot prices weakened considerably in 2019 due to a poor planting season and some new production coming on-line, the world has relatively few large phosphate reserves, some are contaminated, and the bulk are geographically concentrated in areas which are politically unstable. These issues could prove tricky as three of the most populous countries in the world, China, India, and the US, are due to run out of rock phosphate within the next generation.

The sociopolitical importance of phosphate is particularly relevant in the US and the rest of the Americas because our resources are diminishing in quality and quantity. In fact, the life remaining in US deposits may be even shorter than most believe due to significant environmental barriers (see here, here, here, here). A couple of Mosaic's attempts to replace dwindling reserves in Florida with new mines have been rejected due to public opposition. It is likely that the Don Diego concession will become the dominant, low-cost source of phosphate for the Americas over the next fifty to one-hundred years.

Whether or not a supply crisis is imminent, rock prices may not remain at current low levels. "Well before we run out of phosphate, the resource may become much more expensive" according to Professor Martin van Ittersum of Wageningen University in the Netherlands. If the backdrop for phosphate moving forward is half as tight as these agronomists argue, prices are going to rise and, our 2.4 - $3.5 billion ultimate valuation for Don Diego will prove conservative. Regardless, buying that asset at today's implied valuation of $70-100 million looks like an attractive deal on a risk-adjusted basis for a long-term investor.

> "In a few years' time, it could be a political issue with some countries effectively controlling the production of food by having control of rock phosphate supplies," Dr. Martin Blackwell, Soil Biochemist, Rothamsted Research

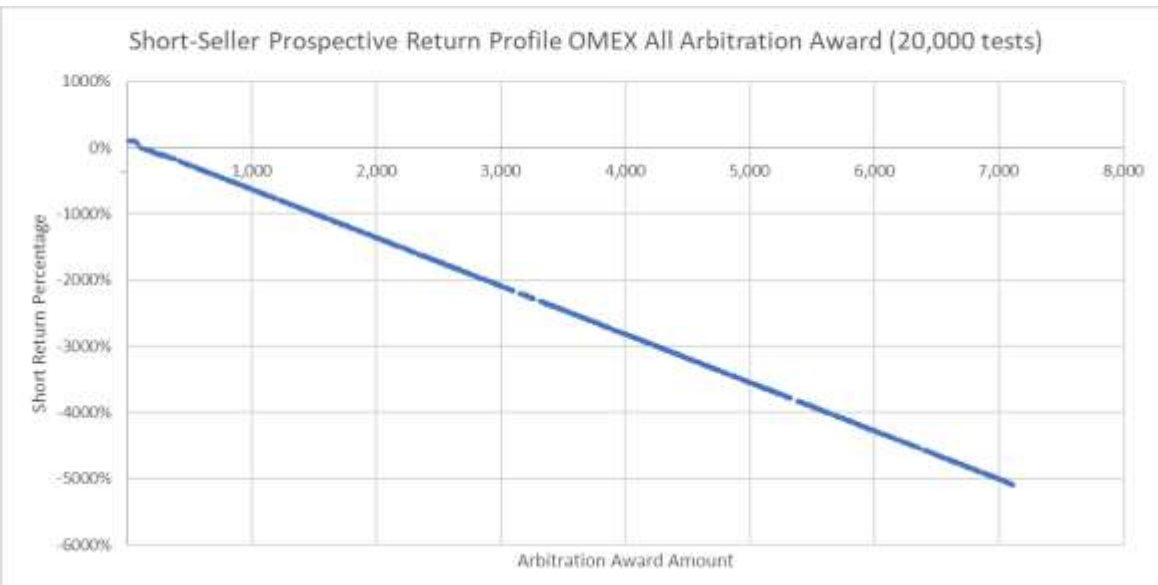
13. <u>Short-Sellers' Plight</u>

Short interest in Odyssey stands at approximately 1.6 million shares, or roughly 20% of the approximately 8 million shares of stock that floated before our deal, or around 15% post-deal. The reality is that a large portion of the OMEX float is controlled by a handful of non-reporting shareholders (such as individuals and family offices) who are in this trade for the long-haul. The actual float may be fewer than 5 million shares which would mean that the short position accounts for more than 30% of the adjusted float. The 1.6 million shares represented approximately 120 days to cover prior to a recent surge in volume.

The short thesis can be boiled down to the following: Odyssey generates no cash; Odyssey burns lots of cash; Odyssey is about to run out of cash; and Odyssey has no assets of value from which to extract cash. This has been the shorts' story for the last decade-plus. It has never worked out completely for short sellers, but the risk that it could has made the stock very inexpensive at times (including now).

The reality is that OMEX has always had the ability to pull a number of non-balance sheet levers to obtain the financing it needs – and this explains why the company still exists. This was true five and ten years ago, and it is obviously true today. Our transaction, as well as the size and background of the NAFTA claim, mean that OMEX will have ample available financing until settlement is reached or the tribunal makes an award.

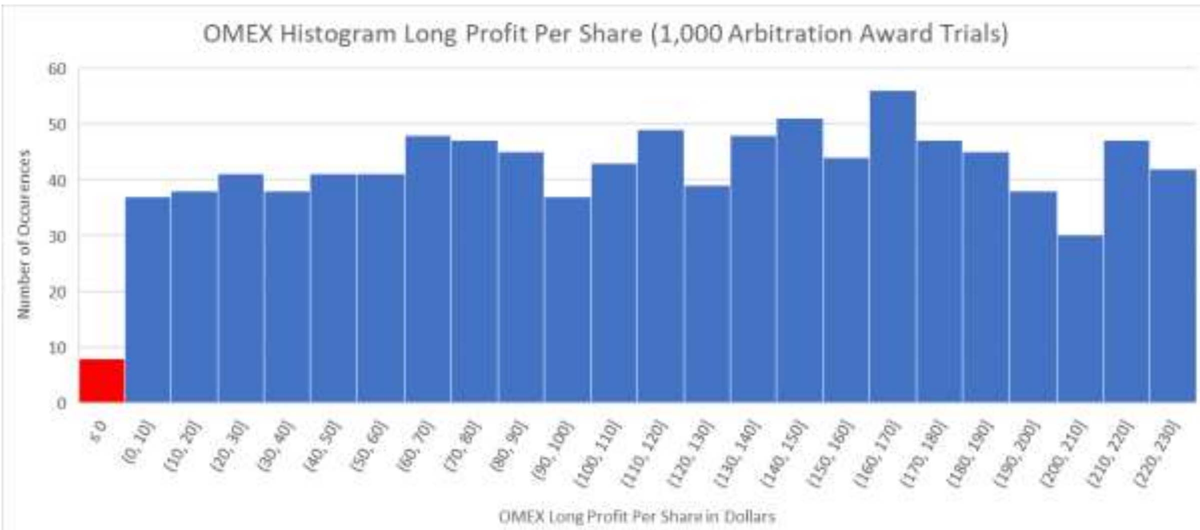
As part of our Monte Carlo analysis, we thought it would be interesting to plot the prospective return profile for a short-seller under different arbitration award scenarios. The scatterplot below indicates the corresponding short return for every arbitration award amount. The chart presented doesn't reflect a subjective interpretation of the upside/downside for short sellers – it's a factual representation of the math behind all award scenarios as expressed in OMEX shares. It clearly presents a bleakly asymmetric prospective return profile from a short-seller perspective.



The reality is worse than this scatterplot depicts. Short sellers are currently paying somewhere on the order of 20% annually to borrow shares. So, short sellers might hope in the best-case scenario to make a maximum return of just 50-70% on their position over the next two years, after the cost of financing. This would occur in the instance that OMEX gets a zero or very low award and fails to demonstrate value in any of its other assets in the intervening two-year period. As a result, the short-seller upside-to-downside ratio is a stunning 1:100.

We don't know how likely a full claim award of $7 billion might be ($3.5bn FMV + $3.5bn pre-award interest), but to dismiss it would be foolish. Many arbitrational tribunals have ruled for multi-billion-dollar awards in Investor State Disputes, and OMEX's claim is viewed by some legal experts as particularly strong. As mentioned previously, several months ago an arbitration claim similar to ExO's resulted in a $5.8 billion award.

A short-seller might make the argument that while the payoff grid seems unappealing, the fact is that the probabilities attached to the different payoffs make it more appetizing to short-sellers. We don't buy this argument. Below is a histogram that shows the profit per share for holders of OMEX based on 1,000 trials with a zero to 7-billion-dollar award range discussed earlier (this is from a shareholder's perspective, not a short-seller). The data is based on a uniform probability distribution which seems like the most objective way to characterize outcome probabilities at this point.



You can see that after conducting 1,000 tests with random award amounts, the model produced various amounts of dollar profit for OMEX shareholders represented by the blue bars. Only in the case of the red bar did OMEX shareholders lose money on the trade. That red bar corresponds, of course, to the case where short sellers make positive returns. Notably, it measures a bit under 10 occurrences per thousand or 1%. So, we can say that as long as a uniform probability distribution applies, short sellers have a 1% chance of making a profit. The number is well below 1% if we account for carrying costs.

Unless a short-seller can demonstrate a better understanding of OMEX's claim than the professional litigation investors who have evaluated this arbitration, then the uniform distribution serves as an appropriate outcome distribution, and short-seller probabilities look as dire as their potential payoffs.

Hopefully, those who are short OMEX are investing their own money and can afford to lose large sums on the position. The return profile of the short OMEX position is so lopsided that one would imagine no professional with a fiduciary duty could hold it without a real fear of being sued, unless it was a very small position.

To put this contingent liability in perspective, the short position stands at roughly 1.6 million shares today with a total market value of around $6.5 million dollars. If the arbitration panel came back tomorrow with a $7 billion award (inclusive of interest), these short sellers would see margin calls to the tune of approximately $380 million the next morning. We have to wonder whether the brokerage firms where these trades sit are aware of this ticking time bomb.

For now, our arbitrage benefits from the short interest in OMEX. We would hope that the short trade grows larger on short-sellers' continued lack of discipline and awareness. Over time, however, it may become increasingly difficult for short sellers to hold their ground, as the arbitrage and other litigation investors are likely to make carrying an OMEX short an increasingly expensive proposition.

14. TFJA

In March of 2018, the TFJA ruled that SEMARNAT had acted illegally when it rejected the Don Diego phosphate project two years earlier, annulling SEMARNAT's denial. The ruling was notable because it was an en banc session with eleven judges presiding, and the ruling was unanimous. It was the first unanimous decision from this court in almost two decades.

The court issued an order that was explicit in its condemnation of SEMARNAT's process and logic in denying Don Diego. The order required SEMARNAT to provide scientific and factual justification for its original refusal (based on sea turtles and their principal food source – red crabs) within four months or approve the project.

SEMARNAT refused to comply with the court's order. Rafael Pacchiano did not to respond to the TFJA order within the four-month window. Only after Odyssey filed with the TFJA to find SEMARNAT in contempt did the agency respond. When it did respond with a second denial in October of 2018, it did not provide the requested scientific or factual evidence to justify its initial denial. It also attempted to introduce new evidence that didn't comply with SEMARNAT's statutory requirement to treat the specific nature of a project and the environment in which it would operate.

OMEX submitted a request for another judicial review of SEMARNAT's denial late in 2018. The TFJA cited a procedural issue in 2019 and asked for a resubmission of the request for a review. We are now waiting for the TFJA to rule on that resubmission.

You don't need to be a Mexican environmental lawyer to understand that SEMARNAT's second refusal did not comply with the TFJA's court order. Not only did SEMARNAT ignore the court's order in terms of timing and content, but the evidence it did supply was superficial, loosely researched, designed to create an emotional appeal, and contained little basis in fact, judging from the agency's press release.

Normally we would expect the court to issue some sort of rebuke to SEMARNAT in response to OMEX's request for a further review. Yet a new Secretary at SEMARNAT as well as the specter of the NAFTA Ch. 11 arbitration claim may have created political interference. With a $3.5 billion-dollar check on the line and a new boss at the environmental agency, our instinct is that the TFJA court may figure out a way to continue kicking the can down the road or refocusing attention elsewhere. In so doing, it will allow this matter to be settled by either the arbitration panel or senior politicians in the new administration.

If the court issues a new ruling that is consistent with its earlier reading of the law, it may provide cover for the new administration to come to a deal with OMEX. If the TFJA renders a shaky ruling or somehow rules against OMEX it will serve as a commentary about the weak rule of law in the country and reinforce our reliance on NAFTA process. Regardless of how any new TFJA order reads, there is no getting around the already-established facts. Any new TFJA ruling will not steer us away from the

NAFTA matter. We are depending on the independence of the NAFTA arbitrators and our ability to enforce compliance with the tribunal's ruling.

15. Final Thoughts

The question we are asked most often by those who are interested in OMEX is 'what am I missing?' The valuation of OMEX is so low compared with the risk-adjusted value of its share of the Don Diego claim that outsiders scratch their heads and wonder what is wrong with the stock that they don't know. The answer is 'you're not missing anything.'

There are several reasons you are getting such a steal. The stock is not followed by Wall Street and barely gets attention from anyone as it is so small and illiquid. The company is in the middle of transitioning its business from shipwreck salvage to seafloor mining which means it doesn't have a natural investor base. It also has a large short position which tends to depress valuation.

More than anything else, however, it is Odyssey's balance sheet and lack of cash cushion that has plagued OMEX shares over the years and resulted in the low valuation. While Odyssey won't have a balance sheet full of cash until this arbitration claim is decided, the company has never had as much cash available to it as it does today. That is largely thanks to the strength of the NAFTA claim and the Don Diego concession's value, with some additional support from a couple of other marine mining concessions.

Our arbitrage shows how disconnected OMEX's share price has become from the company's intrinsic value. It also demonstrates the company's ability to create liquidity as needed until the arbitration is resolved. OMEX doesn't need us to deliver that liquidity, it can sell pieces of the claim directly to litigation funders and avoid issuing shares if that is a more appealing avenue. Regardless, without the need for a funding uncertainty discount, the market should move to value the company in a more traditional fashion – based on the prospect of either a concession grant or the probability of an arbitration award.

OMEX should trade in the low double-digits today. If we assume that the market assigns a 60% or 70% probability that a settlement with Mexico is reached within one year, that gets us to around $10-$12 per share in today's dollars. That price target gives OMEX zero credit for the potential value of the arbitration -- though that value is substantial. We believe the likelihood of a settlement is greater than the probabilities we're using. Our guess is that Mexico will start pursuing an agreement as it comes to better understand its predicament and the reparation tab that is fast accumulating.

A $10 stock price today allows investors the prospect of a one-hundred percent return on the announcement of a grant to $20, and a further one hundred percent return to $37-40+ (depending on timing) over the following 18-24 months as management executes to plan and demonstrates cash flow from the concession.

If there is no settlement in the next six months the stock should gradually trade higher than $10. Each day that passes makes it more expensive for Mexico to settle, and each day shareholders and management are committing more funds and energy to the arbitration which is compounding at ExO's high cost of capital. Each of these factors is helping to drive the bid/ask spread of a settlement wider.

Before long that spread will have become too large to bridge – shareholders will lose any desire to find an agreement with the government and instead will cast their lot with the judgment of the arbitrators, the merits of our case, and the strength of our legal team. If the expected return of this outcome implies a share price between $45 and $90 with potential for upside to these numbers, it is difficult to see how the stock would trade below $15-20 on the day before the resolution decision.