

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re

SH 130 CONCESSION COMPANY, LLC,
ZACHRY TOLL ROAD – 56 LP
CINTRA TEXAS 56 LLC,

Debtors.

SH 130 CONCESSION COMPANY, LLC,

Plaintiff,

-against-

CENTRAL TEXAS HIGHWAY
CONSTRUCTORS, LLC, FERROVIAL, S.A.,
FERROVIAL AGROMAN, S.A., FERROVIAL
HOLDING U.S. CORP., FERROVIAL U.S.
CONSTRUCTION CORP., FERROVIAL
AGROMAN U.S. CORP., CINTRA
INFRASTRUCTURES, S.E., CINTRA
HOLDING U.S. CORP., ZACHRY
INDUSTRIAL, INC., AND
ZACHRY AMERICAN INFRASTRUCTURE,
LLC.

Defendants.

Case No. 16-10262

Case No. 16-10263

Case No. 16-10264

Chapter 11

Jointly Administered Under Case No.
16-10262-TMD

Adversary No.: 18-01030

FIRST AMENDED COMPLAINT

Plaintiff SH 130 Concession Company, LLC (“Plaintiff” or “SH 130”), by its attorneys Quinn Emanuel Urquhart & Sullivan, LLP, brings this complaint against defendants Central Texas Highway Constructors, LLC (“CTHC”); Ferrovial, S.A. (“Ferrovial SA”), Ferrovial Agroman, S.A. (“Ferrovial Agroman”), Ferrovial Holding U.S. Corp. (“Ferrovial US”), Ferrovial U.S. Construction Corp. (“FCC”), Ferrovial Agroman U.S. Corp. (“FAUS”), Cintra Infrastructures S.E. (“Cintra”), and Cintra Holding U.S. Corp. (“Cintra US”) (collectively,

“Ferrovial”); and Zachry Industrial Inc. (“ZII”) and Zachry American Infrastructure, LLC (“ZAI”) (collectively, “Zachry”). SH 130 alleges as follows:

NATURE OF THE CASE

1. This case involves the actual and constructive fraudulent transfer of over \$329 million from an insolvent company owned by Ferrovial and Zachry, SH 130, to a solvent affiliate, CTHC, all to the detriment of creditors that loaned over \$1.1 billion to the insolvent company. It also arises out of breaches of fiduciary duty owed to SH 130, which Ferrovial and Zachry caused to enter into conflicted transactions by which they profited to SH 130’s severe detriment.

2. In 2008, Ferrovial and Zachry caused SH 130 to enter into a \$924 million, fixed-price Design and Construction Contract (the “D&C Contract”) with CTHC for the design and construction of Segments 5 and 6 of Texas State Highway 130 (the “Facility”), a 41-mile link in State Highway 130 intended to alleviate traffic congestion between Austin, Texas and San Antonio, Texas. Cintra, Cintra US, and ZAI also charged SH 130 substantial management and other fees associated with the project. SH 130 largely financed the project by borrowing over \$1.1 billion from its private lenders and the federal government.

3. The D&C Contract expressly prohibited SH 130 from paying CTHC for improperly completed work.

4. By late 2010, after completion of CTHC’s design work and while construction was underway, SH 130’s managers—all of whom were controlled and, in most cases, directly employed by Ferrovial and Zachry—knew that CTHC was seeking payment for work that CTHC had not properly completed. They also knew that CTHC’s improper performance was generating Facility-wide defects, making pavement cracking, heaving, and other problems inevitable.

5. SH 130’s Ferrovial- and Zachry-controlled managers did not disclose to SH 130’s lenders that SH 130 was paying CTHC for improperly completed work or that the deficiencies in

CTHC's work would cause systemic problems on the Facility. Instead, despite the D&C Contract's prohibition on payments for improperly completed CTHC work, SH 130's Ferrovial- and Zachry-controlled managers continued to draw down on SH 130's credit facility and use the funds to pay CTHC, in each instance essentially certifying to SH 130's lenders that the project was proceeding as the D&C Contract required. The email record indicates that top SH 130 managers, in consultation with their masters at Ferrovial and Zachry, regularly sought to keep lenders in the dark about CTHC's improperly completed work and the long-term impact of that work on the Facility.

6. At the same time SH 130's Ferrovial- and Zachry-controlled managers were learning of—and affirmatively concealing—the problems with the Facility's design and construction, it was also becoming apparent to Ferrovial and Zachry that SH 130 was not going to meet the economic projections supporting its debt. Because the Facility generates revenue by assessing tolls in exchange for the use of the road, the key driver of SH 130's profitability is traffic volume on the Facility. When SH 130 first sought financing in 2006 and 2007, it prepared traffic and revenue projections for its lenders. By at least mid-2010, SH 130's Ferrovial- and Zachry-controlled managers strongly suspected that those projections were significantly overstated. By January 2011, SH 130's Ferrovial- and Zachry-controlled managers knew that the methodology used to prepare those projections was fundamentally flawed and that the projections themselves materially overstated. Recognizing the implications of this overstatement, on February 2, 2011, SH 130's Chairman e-mailed SH 130's Chief Executive Officer expressing “shock” at SH 130's “poor income prospects” and stating that “survival projects” needed to be considered in order to “save the sick person”—SH 130.

7. Two months later, in April 2011, a Cintra US executive wrote to SH 130's Chairman and Chief Executive Officer that the methodology used to generate the flawed traffic

projections had been applied on another infrastructure project that had failed completely, and that their projections for SH 130 were “horrible.” They knew that SH 130 was in deep financial trouble. But, consistent with the lack of candor on other issues, the Cintra US representative concluded, “I hope that nobody starts asking questions.” To ensure that no one did, SH 130’s Ferrovial- and Zachry-controlled managers continued to use the flawed projections in SH 130’s reporting to lenders, never disclosing that they knew the projections were based on fundamental errors.

8. Making matters worse, by 2012, new information relevant to traffic projections indicated that SH 130’s financial condition had deteriorated even further. By early 2012, it was clear from traffic on Segments 1-4 of State Highway 130 (to the north of the Facility and parts of which had already opened) would be nowhere close to SH 130’s original, overstated projections. SH 130’s revised projections in 2012—which still were inaccurate—were a mere 25% of what SH 130 had projected in order to obtain financing. SH 130’s Ferrovial- and Zachry-controlled managers knew in 2012 that the Facility, even if properly designed and constructed, would never generate revenue sufficient to repay the more than \$1.1 billion SH 130 owed its lenders. SH 130 was clearly insolvent. Indeed, by early 2013, mere months after the Facility opened, SH 130 had engaged the services of restructuring professionals. SH 130 worked with lenders on forbearances and eventually filed a Chapter 11 case in March 2016.

9. In paying CTHC for improperly completed work as it plunged into insolvency, SH 130 was acting under the direction and control of Ferrovial and Zachry, which also owned and controlled CTHC. The employees and others under the control of Ferrovial and Zachry served as officers and directors of both SH 130 and CTHC. SH 130 regularly conferred with and sought direction from other Ferrovial and Zachry employees in deciding how to respond to CTHC’s defective performance and SH 130’s deteriorating financial condition. CTHC was

similarly staffed by individuals employed by or otherwise under the control of Ferrovia and Zachry, who were in regular consultation with the same personnel whom SH 130 dealt with.

10. At all relevant times Defendants knew, or had reason to know, that SH 130 was insolvent and that CTHC had performed improperly completed work. Particularly as it became apparent that SH 130 was insolvent, it was in Defendants' interest to minimize CTHC's costs in performing the D&C Contract while maximizing the revenue, financed by SH 130's lenders, that CTHC received from SH 130 under the D&C Contract and that Cintra, Cintra US, and ZAI received from SH 130 in fees. And that is exactly what Defendants orchestrated. They caused lender money to be funneled through the insolvent SH 130 into their solvent CTHC. Through SH 130's inevitable Chapter 11 proceeding, Defendants were able to walk away from SH 130 with a fully paid CTHC, and after collecting substantial management and other fees on the project, by subjecting the lenders to substantial losses on the SH 130 debt and saddling them, as the new owners of the post-petition SH 130, with a road that was not properly completed.

11. SH 130, having only recently emerged from bankruptcy as a company untainted and unburdened by the Defendants' control, seeks to avoid and recover payments to CTHC for the benefit of SH 130's creditors, who received just 37 cents on the dollar of the more than one billion dollars they were owed when SH 130 filed for bankruptcy.

12. SH 130's payments to CTHC constitute actual and constructive fraudulent transfers, and must be avoided pursuant to 11 U.S.C. § 544(b) and the Texas Uniform Fraudulent Transfer Act ("Texas UFTA"). SH 130 can recover from CTHC as the initial transferee. SH 130 may also recover from Ferrovia SA, Ferrovia Agroman, Ferrovia US, FCC, FAUS, Cintra, and ZII because, on information and belief, any excess funds CTHC had from payments received from SH 130 were distributed to these Defendants as the owners of CTHC. None of

these Defendants provided any value for such equity distributions, and neither took such payments in good faith.

13. SH 130 also seeks to recover against SH 130's corporate parents, Ferrovia SA, Cintra, Cintra US, ZAI, and ZII for breach of fiduciary duty. These Defendants exercised their control over SH 130 and its managers to cause SH 130 to make gratuitous payments to CTHC, incurring substantial additional debt to do so, all at a time when they knew that SH 130 was insolvent. Because SH 130's transactions with affiliated entities were conflicted transactions, Ferrovia SA, Cintra, Cintra US, ZAI, and ZII were required to ensure that each payment under such contracts were entirely fair. These Defendants failed to do so with respect to the gratuitous payments to CTHC for improperly completed work as well as, on information and belief, the substantial fees paid to Cintra, Cintra US, and ZAI.

14. In the alternative, if it is determined that Ferrovia SA, Cintra, Cintra US, ZAI, and ZII did not exercise the control required for the imposition of fiduciary duties, the conduct described above would establish their liability for aiding and abetting breaches of fiduciary duties owed by SH 130's managers. Ferrovia Agroman and FAUS are also liable for aiding and abetting such breaches. With knowledge that SH 130 was insolvent, and for the benefit of SH 130's and CTHC's common ultimate parents, they prevented CTHC from performing necessary remediation and participated in Defendants' use of CTHC as a conduit through which SH 130's conflicted managers improperly funneled money to solvent affiliates.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, as well under 28 U.S.C. § 1391(b), (c), and (d), because Defendants resided, transacted business, were found, or

had agents in this District, and a substantial part of the events or omissions giving rise to these claims occurred in this District. Counts 1-3 arise under title 11 and are core matters under 28 U.S.C. § 157(b)(2)(H) and (O). Counts 4-7 are non-core matters. Plaintiff consents to entry of a final order on these claims by this Court.

16. This Court has personal jurisdiction over the nonresident Defendants under Texas’s long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042, and Federal Rule of Civil Procedure 4(k)(1)(a).

THE PARTIES

17. Plaintiff SH 130 Concession Company, LLC (“SH 130”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 10800 North US 183 Highway Northbound, Buda, Texas 78610. It was formed pursuant to the “Modified Second Amended Joint Plan of Reorganization of SH 130 Concession Company, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code, dated April 21, 2017” (the “Plan of Reorganization”), which was confirmed by entry of an order dated May 17, 2017. The Plan of Reorganization went effective on June 28, 2017. Before the Plan of Reorganization, SH 130 was owned and controlled by Ferrovial (65%) and Zachry (35%). Ferrovial’s share was held by a Cintra US subsidiary, Debtor Cintra TX 56 LLC (“Cintra Member”). Zachry’s share was held by a ZAI subsidiary, Debtor Zachry Toll Road—56, LP (“Zachry Member”). The emergent SH 130 is owned and controlled by its former senior creditors. Pursuant to the Plan of Reorganization, SH 130 holds the claims of SH 130’s bankruptcy estate.

18. Defendant Central Texas Highway Constructors, LLC (“CTHC”) is a limited liability company organized and existing under the laws of the State of Texas, with its mailing address at P.O. Box 1110, Lockhart, Texas 78644. CTHC has acknowledged proper service in

this proceeding. *See* Dkt. 10. CTHC filed Proof of Claim No. 19 in the Bankruptcy Case, indicating notices should be sent to Langley & Banack, Inc., c/o David S. Gragg, 745 E. Mulberry Street, Suite 900, San Antonio, Texas 78212. At all relevant times, CTHC was controlled by Ferrovial and Zachry, each of which had a 50% stake in CTHC.

19. Defendant Ferrovial, S.A. ("Ferrovial SA") is a corporation organized and existing under the laws of Spain, with its principal place of business located at Ribera del Loira No. 42, Madrid, Spain 28042. Ferrovial SA has waived service in this proceeding. *See* Dkt. 10. At all relevant times, Ferrovial SA controlled Cintra Member through its wholly owned subsidiary, Cintra. Ferrovial SA also holds 50% of the equity in CTHC through its wholly owned subsidiary, FAUS.

20. Defendant Ferrovial Agroman, S.A. ("Ferrovial Agroman") is a corporation organized and existing under the laws of Spain, with its principal place of business located at Calle de la Ribera del Loira, 42, 28042 Madrid, Spain, and its registered office located at Calle Principe de Vergara, 135, 28002, Madrid, Spain. Ferrovial Agroman has waived service in this proceeding. *See* Dkt. 10. At all relevant times, Ferrovial Agroman was a wholly owned subsidiary of Ferrovial SA. Until a Ferrovial corporate reorganization in 2013, Ferrovial Agroman held 50% of the equity in CTHC through its wholly owned subsidiary, FAUS.

21. Defendant Ferrovial Holding U.S. Corp. ("Ferrovial US") is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 9600 Great Hills Trail, Suite 250W, Austin, Texas 78759-6387. Ferrovial US has acknowledged proper service in this proceeding. *See* Dkt. 10. Ferrovial US was formed in 2013 as part of a corporate restructuring that grouped together, under the newly formed Ferrovial US, all of Ferrovial's activities in the United States. Since its formation, Ferrovial US has been a wholly

owned subsidiary of Ferrovial SA and Cintra and an intermediate parent of Cintra Member and FAUS.

22. Defendant Ferrovial U.S. Construction Corp. (“FCC”) is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 9600 Great Hills Trail, Suite 250W, Austin, Texas 78759-6387. FCC has acknowledged proper service in this proceeding. *See* Dkt. 10. FCC was formed in 2013 as part of a corporate restructuring that grouped together, under the newly formed Ferrovial US, all of Ferrovial’s activities in the United States. Since its formation, FCC has been a wholly owned subsidiary of Ferrovial SA, Cintra, and Ferrovial US, an intermediate parent of Cintra Member, and a parent of FAUS.

23. Defendant Ferrovial Agroman U.S. Corp. (“FAUS”) is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 9600 Great Hills Trail, Suite 200E, Austin, Texas 78759-6387. FAUS has acknowledged proper service in this proceeding. *See* Dkt. 10. At all relevant times, FAUS has been a wholly owned subsidiary of Ferrovial SA. Until 2013, FAUS was also a wholly owned subsidiary of Ferrovial Agroman. Since 2013, FAUS has been a wholly owned subsidiary of Cintra, Ferrovial US, and FCC. At all relevant times, FAUS has held 50% of the equity in CTHC through two wholly owned, pass-through subsidiaries, Ferrovial Agroman Texas LLC and Ferrovial Agroman 56, LLC. FAUS has already appeared in the above-captioned bankruptcy proceeding.

24. Defendant Cintra Infraestructuras S.E. (f/k/a/ Cintra Infraestructuras, S.A.U., f/k/a Cintra Infraestructuras S.A.) (“Cintra”) is a corporation organized and existing under the laws of Spain, with its principal place of business located at Plaza Manuel Gómez-Moreno, 2 28020 Madrid, Spain. has waived service in this proceeding. *See* Dkt. 10. At all relevant times, Cintra has been a subsidiary of Ferrovial SA and, with Ferrovial SA, controlled its wholly owned

subsidiary, Cintra Member.¹ Since 2013, Cintra has also held 50% of the equity in CTHC through its wholly owned subsidiary FAUS.

25. Defendant Cintra Holding U.S. Corp. ("Cintra US") is a corporation organized and existing under the laws of Delaware, with its principal place of business located at 9600 Great Hills Trail, Suite 250E Austin, TX 78759-5978. Cintra US has acknowledged proper service in this proceeding. *See* Dkt. 10. At all relevant times, Cintra US has been a wholly owned subsidiary of Ferrovial and Cintra and a parent of Cintra Member. Since 2013, Cintra US has also been a wholly owned subsidiary of Ferrovial US and FCC and an intermediate parent of FAUS.

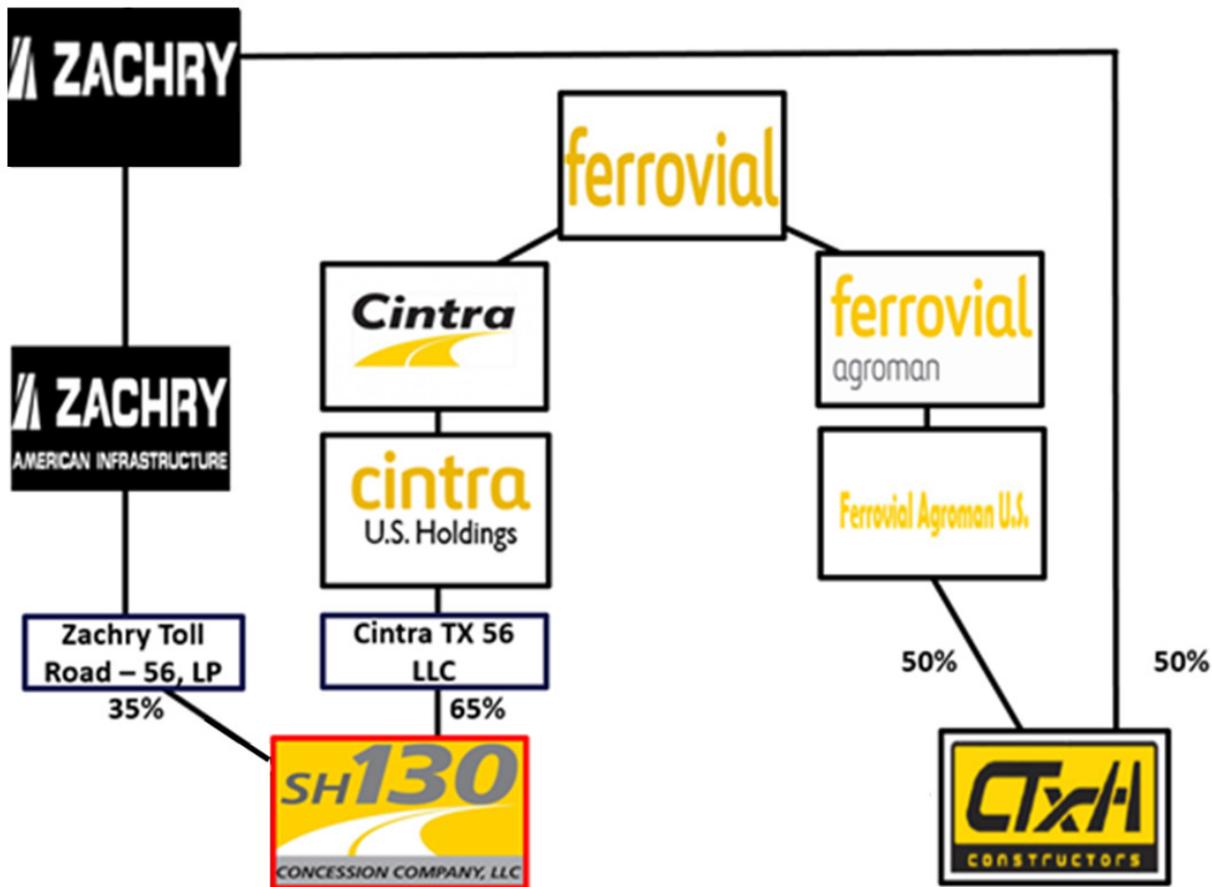
26. Defendant Zachry Industrial Inc. ("ZII") (f/k/a Zachry Construction Corp.) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 527 Logwood Avenue, San Antonio, Texas 78221-1738. ZII has acknowledged proper service in this proceeding. *See* Dkt. 10. Before the Plan of Reorganization, ZII controlled Zachry Member through its subsidiary, ZAI. ZII directly holds 50% of the equity in CTHC through ZAI.

27. Defendant Zachry American Infrastructure, LLC ("ZAI") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 12625 Wetmore Road, Building 3, San Antonio, Texas 78247. ZAI has acknowledged proper service in this proceeding. *See* Dkt. 10. Before the Plan of Reorganization, ZAI was a parent and General Partner of Zachry Member.

¹ Cintra was created in 2009 when Ferrovial, S.A. merged with Cintra Concesiones de Infraestructuras, S.A., in which Ferrovial, S.A. had owned a majority stake. Since the 2009 merger, Cintra has been owned 100% by Ferrovial, S.A.

28. SH 130 dismisses previously identified Defendants Laertida, S.L. and Finecofer, S.L. without prejudice, based on Defendants' representations that these entities are no longer in existence and/or have been absorbed by other entities. *See* Dkt. 20 at 3, n.1; Dkt. 29 at 1, n.1. SH 130 reserves the right to reurge claims against these entities if discovery reveals facts that would support such claims.

29. The graphic below illustrates the basic parameters of Defendants' relation to SH 130 from 2009-2017. It does not reflect a 2013 reorganization in which Ferrovia US and FCC were formed as intermediate parents of FAUS and in which Cintra became part of the ownership chain of CTHC as well as SH 130. The effect of this 2013 reorganization is relevant to SH 130's subsequent transfer claims, because it made Ferrovia US, FCC, and Cintra possible subsequent transferees of CTHC.



30. The exercise of personal jurisdiction over the nonresident Defendants is appropriate because this case arises, in significant part, out of those Defendants’ purposeful contacts with the state of Texas. In 2004, Cintra solicited and ultimately entered into a “strategic partnership” with the Texas Department of Transportation (“TxDOT”) to develop infrastructure in Central Texas. Cintra, with ZAI, then negotiated the 2007 Facility Concession Agreement (“FCA”) with TxDOT, under which SH 130 would be permitted to develop Segments 5 and 6 using FAUS and ZII as the contractors. Ferrovial Agroman’s promise to guarantee FAUS’s work under the D&C Contract was critical to those negotiations.

31. SH 130 was a key strategic initiative for Ferrovial SA. In keeping with the project’s strategic importance, Ferrovial SA diligently informed itself of all developments and

exercised oversight in connection with the Texas-based highway construction project. Executives and employees of Ferrovial SA, as well as Cintra and Ferrovial Agroman, exercised this oversight, in significant part, from Spain. Ferrovial SA's Chairman and its CEO traveled to Texas at least six times and three times, respectively, in connection with the SH 130 project. Ferrovial SA's entire board of directors held a meeting in SH 130's Texas offices in September 2011, as critical decisions were being made with respect to whether SH 130 would continue to pay CTHC for improperly completed work. SH 130's officers and directors were insured under Ferrovial SA's group insurance policy issued in Madrid.

32. Ferrovial SA directly employed a number of individuals with key oversight roles over SH 130. Ferrovial SA's CEO was himself both the Chairman of Cintra, on the one hand, and Ferrovial Agroman, on the other—subsidiaries with substantial oversight over SH 130 and CTHC, respectively. Ferrovial SA's General Director of Highways Division was also Cintra's CEO and an SH 130 board member until June 2010. Ferrovial SA's Head of Toll Roads was also Cintra's Head of United States Operations and the President of Cintra US. Ferrovial SA's Director of Area III – USA and Canada – Construction was Ferrovial Agroman's North American Director, President of FAUS, and the Chairman of CTHC's Board of Managers. Ferrovial SA's Capital Markets and Finance Director was an SH 130 board member until March 2011.

33. A chart reflecting these Ferrovial employees' pertinent roles at subsidiaries is set out below:

Name	Ferrovial SA	Cintra	Cintra US	SH 130	Ferrovial Agroman	FAUS	CTHC
D. Ínigo Meirás Amusco	CEO	Chairman			Chairman		
Enrique Diaz-Rato Revuelto	General Director of Highways Division; Mgmt. Comm.	CEO		Director			
Nicolás Rubio de Cárdenas	Head of Toll Roads; Ops. Director	Head of United States Ops.	President	Chairman			
Belén Marcos Cortés	Head of Toll Roads	Head of United States Ops.	President				
Jorge Gil Villen	Capital Markets and Finance Director			Director			
Ignacio Vivancos Sánchez	Director of Area III – USA and Canada				Director, North America	President, Managing Director	Chairman of Board of Managers

34. SH 130 and CTHC were staffed and managed, in significant part, with personnel controlled and in many instances directly employed by Ferrovial SA, Cintra, and Ferrovial Agroman. Ferrovial SA, Cintra, and Ferrovial Agroman also stationed executives and employees in Texas to oversee construction on both the developer and contractor side. These Texas-based individuals included at least Nicolas Rubio, Javier Gutierrez, Cesar Diaz, and Francisco Galdeano on the SH 130 side, and Ignacio Vivancos, Fidel Saenz, David Daucousse Rodriguez, Ignacio Navarro, Esteban Trigueros, and Gabriel Medel on the CTHC side. Other Ferrovial SA, Cintra, and Ferrovial Agroman executives and employees monitored progress from Spain, with frequent visits to Texas. These individuals included at least Ferrovial SA’s Chairman Rafael del Pino and its CEO Inigo Meiras; Cintra executives Enrique Diaz-Rato,

Carlos Ugarte, Cristobal Martinez, and Francisco Moreno Merino; and Ferrovia Agroman technical advisors Santiago Perez-Fadon, Jose-Emilio Herrero, and Davor Simic.

35. When problems began to appear with the Facility during construction, individuals employed by Ferrovia SA and Ferrovia Agroman (including Ignacio Vivancos, Fidel Saenz, and David Daucousse Rodriguez) performed detailed investigations of the Texas pavement issues, often with the involvement of Ferrovia Agroman technical advisors (including Santiago Perez-Fadon, Jose-Emilio Herrero, and Davor Simic) from Ferrovia Agroman's technical offices in Spain. Along with ZII executives, these individuals dictated to Texas-based CTHC what the technical fixes would be. Despite Cintra's repeated acknowledgement, both internally and to Ferrovia SA, Ferrovia Agroman, and FAUS that the road was being built incorrectly and that the technical fixes dictated by Ferrovia SA, Ferrovia Agroman, and FAUS were inadequate, Cintra executives Enrique Diaz-Rato, Carlos Ugarte, and Nicolas Rubio, along with Ferrovia SA's board of directors and CEO, caused SH 130's Texas-based management to continue paying CTHC for improperly completed work.

36. By January 2011 at the latest, Ferrovia SA, Cintra, and Ferrovia Agroman executives all knew that the traffic projections that they had used to secure loans for SH 130 were hopelessly overstated. Each company knew the dire truth about the future viability of SH 130. And, on that basis, each continued to cause SH 130's Texas-based management to continue to pay CTHC, thereby funneling money from an insolvent subsidiary to a solvent one.

FACTUAL BACKGROUND

A. Defendants contracted with TxDOT to develop SH 130

37. The Facility was one of Texas's first "P3" public-private financing ventures, conceived shortly after passage of a 2003 omnibus highway bill, HB 3588, that paved the way for the state to enter into P3s for the construction of additional highways and other infrastructure

ventures. Cintra became a “strategic partner” of TxDOT in 2004. Cintra and ZAI entered into a Comprehensive Development Agreement (“CDA”) with TxDOT in March 2005, under which the State Highway 130 Segments 5 and 6 project was agreed in concept. Cintra and ZAI then formed SH 130 to be the developer on the project. They held SH 130 through intermediate subsidiaries, Cintra Member and Zachry Member, which served as members of SH 130 and held 65% and 35% stakes, respectively, in the company.

38. On March 22, 2007, SH 130 entered into the FCA with TxDOT, which formalized and finalized the plans for the project. The FCA granted to SH 130 the exclusive right and obligation to “finance, develop, design and construct the Facility as described in Section 1 of the Technical Requirements,” which were attached to and made a part of the FCA. In addition, the FCA required SH 130 to manage, operate, and maintain the Facility. In exchange, the FCA granted SH 130 the exclusive right to impose tolls on users of the Facility for a period of 50 years from the Service Commencement Date of the roadway.

B. SH 130 entered into the D&C Contract with FAUS, ZII, and CTHC

39. On the same day that SH 130 entered in to the FCA, Ferrovial and Zachry caused SH 130 to hire their respective wholly owned subsidiaries, FAUS and ZII, to perform all of the design and construction work under the FCA pursuant to the D&C Contract. The contract was to be performed for a “lump sum fixed price” of \$924,219,214.00.

40. The D&C Contract was entered with the understanding that Ferrovial and Zachry would form a jointly-owned project company that would ultimately perform the D&C Contract. They formed CTHC for that purpose, with FAUS and ZII each taking a 50% stake. On May 15, 2007, FAUS and ZII jointly assigned all of their rights, obligations, interests, duties, and liabilities under the D&C Contract to CTHC, and CTHC assumed all of FAUS’s and ZII’s rights, obligations, interests, duties, and liabilities under the D&C Contract to the same extent as though

CTHC originally had been named as a party to the D&C Contract. Ferrovia Agroman and ZII both signed performance guaranties to backstop CTHC's performance under the D&C Contract. At all times, payments from SH 130 under the D&C Contract were CTHC's only source of revenue.

41. The D&C Contract required CTHC to perform the totality of the design and construction work ("D&C Work") for the Facility. CTHC agreed to do so "free from material defects" and in accordance with, among other things, Good Industry Practice, applicable laws, the FCA, and the FCA's Technical Requirements and Technical Documents. Consistent with these general principles, the D&C Contract provided that CTHC was responsible for the quality of both the design and the construction of the Facility. Specifically, CTHC was "solely and exclusively responsible for the design of the D&C Work," which CTHC was required to carry out with "all due skill, care and diligence" and with qualified, experienced and competent engineers. Similarly, CTHC was "responsible for the quality and performance of the D&C Work," including the quality of materials and workers used in the construction.

42. Importantly, CTHC "assume[ed] all design and construction risk with respect to the D&C Work consistent with [SH 130's] obligations with respect thereto under the [FCA] and in accordance with the terms of this D&C Contract," other than certain explicitly excluded items. CTHC specifically agreed to take on all risk associated with "the conditions of the surface and sub-surface of the Site," including "all risks associated with unknown site conditions."

43. Section 7.5 of the D&C Contract expressly prohibited SH 130 from paying for improper work. The section provides: "No payment shall be made for any improperly completed D&C Work."

44. The D&C Contract had a one-year warranty, called the “Initial Guaranty Period,” that began to run upon Substantial Completion of the Facility. *Id.* § 11.1. The D&C Contract also warranted against latent defects. *Id.* Art. 12.

C. SH 130 secured financing for the Facility

45. With the FCA and D&C Contract in place, Ferrovial and Zachry caused SH 130 to secure over \$1.1 billion in financing from non-affiliate lenders to fund the project. Traffic projections presented in support of this financing projected toll revenues in excess of \$4.7 billion over the life of the Facility.

46. A substantial portion of the total debt was funded by federal taxpayers, through a loan by the United States Department of Transportation under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”), pursuant to that certain “TIFIA Loan Agreement” dated as March 7, 2008.² The TIFIA Lender provided a subordinated term loan credit facility of up to \$430,000,000 (the “TIFIA Facility”). The TIFIA Facility was to mature on June 30, 2047, and interest was payable semi-annually at a rate of 4.46% per annum. Under the TIFIA Loan Agreement, the first interest payment was scheduled for June 2017, and principal repayments were scheduled to begin in June 2018.

47. The TIFIA Loan Agreement included a covenant by which within 60 days after the beginning of each fiscal year, SH 130 was obligated to deliver a “Financial Plan.” Among other things, the Financial Plan required (a) a certificate demonstrating that annual projected project revenues would be sufficient to meet the TIFIA Loan Agreement’s amortization schedule; (b) current estimates of sources and uses and any significant funding changes; (c) cost

² The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance.

containment strategies and risk mitigation plans; and (d) a written narrative report on the progress of the design and construction of the Facility, including “any material matters that may affect the future performance of [SH 130’s] obligations under” the TIFIA Loan Agreement.

48. The remaining debt was raised from private lenders, pursuant to that certain “Initial Senior Loan Agreement” dated as of March 7, 2008, among SH 130, as borrower, lenders from time-to-time party thereto (collectively, the “First Lien Lenders”), BNP Paribas (f/k/a Fortis Bank S.A./N.V. UK Branch), as Administrative Agent (in such capacity, the “Administrative Agent”) for the First Lien Lenders, Banco Santander, S.A., New York Branch as Fronting Bank, and the mandated lead arrangers party thereto.

49. The First Lien Lenders provided to SH 130 a first lien secured credit facility of up to \$720,750,000 in aggregate principal amount of term loan commitments (the “Senior Bank Facility”). The Senior Bank Facility consisted of three tranches, each with a different availability period: (i) Facility A, totaling \$685,750,000 in aggregate commitments, was available to SH 130 through the Facility construction period; (ii) Facility B, totaling \$35,000,000 in aggregate commitments, was available from the service commencement date to the tenth anniversary of the effective date of the Senior Bank Facility Agreement; and (iii) Facility C, totaling \$29,100,000 in aggregate commitments, was available based on certain events relating to the letter of credit issued in favor of TxDOT in connection with the project until the 10th anniversary of the effective date of the Senior Bank Facility Agreement.

50. The Senior Bank Facility was supposed to mature on the last business day of February 2038 and interest thereunder paid semiannually. Pursuant to Section 3.5.3 of the Senior Bank Facility Agreement, an interest payment was due to be made by SH 130 to the First Lien Lenders on the payment date under the Senior Bank Facility Agreement scheduled for June 30, 2014.

51. The Senior Bank Facility Agreement included numerous covenants, including an affirmative covenant requiring SH 130 to “[p]erform and observe in all material respects all of its covenants and obligations contained in the [FCA] and any Material Contract to which it is a party.” One such Material Contract was the D&C Contract. Section 6.3.9 of the Senior Bank Facility Agreement also required SH 130 to provide a Monthly Construction Progress Report that (i) described in reasonable detail the D&C Work carried out during the month; (ii) set forth the amount of loan funds expended to date; (iii) provided an assessment of the overall construction progress of the project; and (iv) provided a description of any material problems encountered or anticipated with the D&C Work. The Senior Bank Facility Agreement also required the appointment of a Technical Advisor to review the progress of the D&C Work and certify its proper completion. *See id.* § 6.3.9.

52. To hedge interest rate risk, SH 130 was party to four swap agreements. Pursuant to Section 2(a)(i) of each of the Swap Agreements and the attached respective Confirmations (as defined in the Swap Agreements), a net payment in each Hedge Counterparty’s favor (the “Swap Obligation”) was due to be made by SH 130 to each such Hedge Counterparty on the payment date under the respective Swap Agreements scheduled for June 30, 2014.

D. SH 130 and CTHC were dominated and controlled by Defendants, who knowingly participated in the conduct that is the subject of this lawsuit

53. At all relevant times, SH 130’s CEO, CFO, and Technical Director were employees of Cintra and/or Cintra US, and SH 130’s Vice President - Infrastructure and Segment Manager were employees of ZII and/or ZAI. A significant majority of SH 130’s board of directors was comprised of executives and employees of Ferrovial SA, Cintra, Cintra US, ZII, and ZAI, who, by virtue of their positions with those parent companies, were beholden and owed conflicting duties of care and loyalty to those parent companies. The Chairman of SH 130’s

board was also the President of Cintra US, Head of United States Operations at Cintra, and Head of Toll Roads at Ferrovial SA. Although beginning in mid 2011 the board had two ostensibly “independent” directors, one was appointed by Cintra only after extensive vetting by Ferrovial SA and the other was employed by ZAI as a senior adviser. Both were retained pursuant to agreements not disclosed to SH 130. Neither of the purportedly independent directors had the right to vote on any issue.

54. As reflected in the chart below, there was a substantial overlap among the executives and employees of Ferrovial SA, Cintra, and Cintra US who had responsibilities at SH 130. These entities often functioned as a unit in their decisions as to SH 130 and took their direction from Ferrovial SA. The overlap between Cintra and Cintra US was so substantial, and their corporate formalities so sparsely observed, that these entities’ shared management repeatedly expressed concern that they were vulnerable to a veil-piercing claim. The concessions overseen by this group, including SH 130, also did not exercise independent decisionmaking authority. As just one example: Cintra and Cintra US imposed management fees on the various concessions. The concessions had little visibility as to what management services were actually provided in exchange for these fees, and had only limited power to reject them.

55. As reflected in the chart below, ZII and ZAI also exercised substantial control over SH 130. ZAI directly employed SH 130’s Vice President - Infrastructure, the executive who directly managed SH 130’s relationship with, and relayed SH 130’s instructions to, CTHC. In his frequent interactions with CTHC regarding improperly completed construction, SH 130’s Vice President - Infrastructure often acted on direct instructions from ZAI’s COO and Executive Vice President (who was also an SH 130 board member), from another ZAI-appointed board member, and from senior ZAI project managers. ZII’s General Counsel and Executive Vice President for Risk management was also the General Counsel and Manager for ZAI. On

information and belief, this individual participated in the decision to cause SH 130 to continue paying CTHC to avoid damage to ZII, and to avoid losing the substantial fees that ZAI enjoyed in connection with SH 130. One of SH 130’s key construction managers was employed by ZII.

56. The following chart describes Defendants’ overlapping roles at SH 130:

Name	Ferrovial SA	Cintra	Cintra US	ZII	ZAI	SH 130
Enrique Diaz-Rato Revuelte	General Director of Highways Division; Management Committee	CEO				Director
Nicolás Rubio de Cárdenas	Head of Toll Roads (former); Ops. Director (current)	Head of United States Operations (former)	President (former)			Chairman
Belén Marcos Cortés	Head of Toll Roads (current)	Head of United States Operations (current)	President (current)			Director
Jorge Gil Villen	Mgmt. Committee					Director
Francisco Baranao		CFO				Director
Carlos Ugarte Cruz-Coke		Director of Corporate Dev.	Manager			Director
Cristina Alvarez		Counsel	General Counsel			Director
Ricardo Sanchez			CFO			Director
Fernando Redondo			CEO of Chicago Skyway			Director
Javier Gutiérrez Villanueva		Vice President				CEO
Cesar Diaz-Plaza Perez		Controller				CFO

Name	Ferrovial SA	Cintra	Cintra US	ZII	ZAI	SH 130
Francisco “Paco” Galdeano Moreno		Director of Constr.				Technical Director
Cristobal Martinez		Technical Director				Technical Advisor
Francisco Moreno Merino	Assistant to Ignacio Navarro (Ferrovial Agroman)		Technical Director			Technical Advisor
Timothy Watt				General Counsel, Exec. VP, Risk Mgmt.	Senior Vice President	Board Member
Jean Abiassi				President and COO	Director	
Klaus “Sonny” Brown				Deputy Project Manager	Vice President and Managing Director	Vice President - Business Dev.
Robert Heitmann					COO, Exec. Vice President	Board Member
Mary Peters					Senior Adviser	Board Member
Gary Kuhn					Senior Project Manager	Consultant
Dario Perdomo					Project Manager	Consultant
Tim Brunette					Employee	Vice President - Infrastructure
Wes Frick				Employee		Segment Manager

57. SH 130’s corporate parents, which included Ferrovial SA, Cintra, Cintra US, ZAI, and ZII dominated and controlled SH 130, and each actively participated in the misconduct that harmed the company:

- (a) **Ferrovial SA** is the ultimate parent company of the Ferrovial entities. It directly employed the Chairman of SH 130's Board of Directors and two other Board members (one of whom was also the CEO of Cintra). Ferrovial SA knew that SH 130 was insolvent and caused SH 130 to continue paying CTHC despite its awareness that CTHC was not properly performing. SH 130's budgets were prepared at Ferrovial SA's direction and in accordance with Ferrovial SA's budget preparation procedures. Ferrovial SA's Chairman and CEO both made multiple visits to the SH 130 project, and Ferrovial SA's entire board visited in September 2011, at a time when SH 130 had proposed to withhold funds from CTHC due to improperly completed work. Ferrovial SA's board received presentations about problems with construction and traffic projections. SH 130's "independent" director was required to meet with Ferrovial SA's Chairman and CEO in March 2011 in Madrid before he could be confirmed.
- (b) **Cintra**, a wholly owned subsidiary of Ferrovial SA, is the developer arm of Ferrovial SA. Cintra's Head of United States Operations was SH 130's Chairman, and Cintra's CEO was an SH 130 board member. Several key Cintra executives, including its CFO, its Director of Corporate Development, and one of its legal Counsel (each of whom also had roles at Cintra US), sat on SH 130's board. Cintra directly employed SH 130's Technical Director and two of its Technical Advisors. Cintra's CEO visited the SH 130 project on at least five occasions. SH 130's Chairman and CEO provided Cintra with regular progress updates, including about problems with construction and errors in traffic projections. For the benefit and at the direction of its parent entity, Cintra participated in and enforced Ferrovial SA's direction that SH 130 continue to pay CTHC. Cintra also earned substantial fees from SH 130, including management fees, fees for tolling services, and fees for back office services.
- (c) **Cintra US**, a wholly owned subsidiary of Cintra, was the entity responsible for overseeing Cintra's toll road operations in the United States and had direct oversight over SH 130. SH 130's CEO regularly updated Cintra US's Management Committee about progress under the D&C Contract. Executives at Cintra US performed traffic projections for SH 130 and commissioned the study that confirmed Defendants' strong suspicions that the base-case projections provided to lenders were overstated. Cintra US's CFO and the CEO of another Cintra US concession sat on SH 130's board. For the benefit of Ferrovial SA and at the direction of its parent entities, Cintra US participated in and enforced Ferrovial SA's direction that SH 130 continue to pay CTHC. Cintra US also earned substantial management fees from SH 130.
- (d) **ZAI**, a wholly owned subsidiary of ZII, employed SH 130's Vice President - Infrastructure. It also directly employed at least two directors on SH 130's board at any given time. ZAI's Vice President -

Infrastructure who interfaced directly with CTHC on operational and technical issues, including construction defects, and ZAI's managers gave him direct orders in that regard. ZAI sent two senior project managers to monitor the progress of construction each month. These consultants noted, and elevated to SH 130's Chairman, CEO, Vice President - Infrastructure, and several board members, multiple serious problems with the design and construction of the Facility. ZAI caused SH 130 to continue paying CTHC because it was concerned about the effect that withholding payment would have on ZAI's parent, ZII. At ZII's behest, ZAI caused SH 130 to cooperate with CTHC in pursuing an insurance claim in lieu of causing SH 130 to enforce its rights against CTHC under the D&C Contract. ZAI earned substantial fees, including management fees, in connection with SH 130.

- (e) **ZII**, in addition to wholly owning ZAI, was a 50% owner of CTHC. ZII's General Counsel and Executive Vice President of Risk Management was also ZAI's General Counsel and Manager and an SH 130 board member. ZII directly employed SH 130's Segment Manager, who assisted the Vice President – Infrastructure in managing SH 130's relationship with CTHC regarding construction problems. ZII knew that the road was not being correctly built yet caused CTHC not to perform necessary remediation, demanding instead that CTHC make only stopgap fixes that the Ferrovial entities also viewed as inadequate. ZII caused SH 130 to cooperate with CTHC on pursuing an insurance claim in lieu of forcing CTHC to perform correctly under the D&C Contract. ZII caused its subsidiary, ZAI, to cause SH 130 to continue paying CTHC.

58. CTHC was also dominated and controlled by Defendants. At all relevant times, CTHC's CEO was an employee of Ferrovial Agroman and its Construction Manager was an employee of ZII. Its Board of Managers was staffed entirely by Ferrovial and Zachry employees, including a Ferrovial SA director and the President of ZII.

59. As reflected in the chart below, there was a substantial overlap in the executives and employees of Ferrovial SA, Ferrovial Agroman, and FAUS who had responsibilities at CTHC. These entities often functioned as a unit in their decisions as to CTHC and took their direction from Ferrovial SA. The overlap between Ferrovial Agroman and FAUS was so substantial that not even their employees were quite sure which entity they worked for. For example, CTHC's Technical Director and Member of its Board of Managers testified that he was

“not sure” which of these entities he worked for, noting that it was a “complicated corporat[e] relationship.”

60. The following chart describes Defendants’ overlapping roles at CTHC:

Name	Ferrovial SA	Ferrovial Agroman	FAUS	ZII	CTHC
D. Ínigo Meirás Amusco	CEO	Chairman			
Ignacio Vivancos Sánchez	Director of Area III – USA and Canada – Construction	Director, North America	President, Managing Director		Chairman of Board of Managers
Alejandro de la Joya	Management Committee	CEO			
Gabriel Medel-Carratalá		Project Manager			CEO and Managing Director (2011)
Jose Daniel Fernandez-Gutierrez		Project Manager			CEO and Managing Director (2012-2015)
Fidel Saenz de Ormijama		Technical Director	Technical Director		Director; Technical Director
David Daucouse Rodriguez		Geotechnical Manager			Geotechnical Manager
Santiago Perez-Fadon		Global Technical Director			Technical Advisor
Davor Simic		Geotechnical Director			Technical Advisor
Ignacio Navarro		Design Manager			Design Manager
Jean Abiassi				President and COO	Board member
Gary Doty				VP of North Texas Operations	Construction Manager

Name	Ferrovial SA	Ferrovial Agroman	FAUS	ZII	CTHC
Scott Cromack				Employee	Segment Manager
Matthew Kalt				Employee	Segment Manager
Mike Kiehnau				Employee	Project Controls Manager

61. CTHC was dominated and controlled by its corporate parents, Ferrovia SA, Ferrovia Agroman, FAUS, and ZII, which made all key decisions on the entity’s behalf. All knowingly participated in the wrongful conduct that caused SH 130’s injuries:

- (a) **CTHC’s** management knew that the road was not being properly built, but CTHC never adequately addressed these risks. CTHC’s CEO later candidly admitted: “[W]e decide[d] to fix what was more risky. *We can not fix all the—the full project.*” CTHC’s management also knew, through at least their attendance at a Ferrovia SA board of directors meeting at SH 130’s offices in September 2011 regarding SH 130, that SH 130 was insolvent due to fundamental errors in its base-case traffic projections. All key decisions at CTHC were made jointly between the partners, FAUS and ZII.
- (b) **Ferrovia SA** directly employed at least one member of CTHC’s Board of Managers. Ferrovia SA was aware of the construction defects and caused SH 130 to pay CTHC for improperly completed work. Ferrovia SA’s Chairman and CEO both made multiple visits to the SH 130 construction project, and Ferrovia SA’s entire board visited in September 2011.
- (c) **Ferrovia Agroman** directly employed CTHC’s CEO and Managing Director, and Ferrovia Agroman’s North America Director was Chairman of CTHC’s Board of Managers. Ferrovia Agroman’s Technical Office played a central, intermediating role between SH 130 and CTHC, fielding detailed complaints from the former and conducting research and dictating solutions on behalf of the latter. Ferrovia Agroman knew that the road was not being correctly built yet caused CTHC to continue demanding and accepting payment from SH 130 and caused CTHC not to perform the necessary remediation. Ferrovia Agroman also knew, through its Chairman (who was also the Chairman of Cintra) and through its executives’ attendance at a Ferrovia SA board of directors meeting at SH 130’s offices in September 2011, that SH 130 was insolvent due to fundamental errors in its base-case traffic projections.

- (d) **FAUS** directly employed CTHC's Technical Director, and FAUS's Managing Director sat on CTHC's Board of Managers. FAUS was a 50% partner in CTHC and was the Ferrovial entity with direct control over CTHC. FAUS was responsible for overseeing construction at CTHC and employed CTHC's CEO and others. As part of those responsibilities, FAUS performed extensive investigation and analysis of the pavement issues, which it shared with Ferrovial Agroman's Technical Office. FAUS knew that the road was not being correctly built yet caused CTHC to continue demanding and accepting payment from SH 130 and caused CTHC not to perform the necessary remediation. FAUS's Management also knew, through at least its President and Managing Director's presence at a Ferrovial SA board of directors meeting at SH 130's offices in September 2011, that SH 130 was insolvent due to fundamental errors in its base-case traffic projections.
- (e) **ZII** was a 50% owner of CTHC and exercised direct control over CTHC. ZII was responsible for managing construction at CTHC and directly employed CTHC's Construction Manager and others. In this capacity, ZII was keenly aware that the road was not being correctly built yet caused CTHC to continue demanding and accepting payment from SH 130 and caused CTHC not to perform the necessary remediation. ZII's management with overlapping roles at ZAI caused SH 130 continue paying CTHC for improperly completed work, with the knowledge that SH 130 was insolvent due to fundamental errors in its base-case traffic projections.

E. The CTHC work for which Defendants caused SH 130 to pay was not properly completed

62. From the outset of construction in 2009, CTHC performed abysmally under the D&C Contract, and Defendants knew it. In both design and construction, CTHC cut corners, failed to follow industry practice, failed to implement its own designs and, in the end, designed and constructed a Facility with significant defects from one end to the other. Problems were evident to Defendants by 2010, continued unremedied through the opening of the road to traffic in November 2012, and have manifested to the present day in a road that will require extraordinary remediation and maintenance expected to be well in excess of \$130 million over original projected costs.

63. Most of the Facility's problems result from CTHC's improper handling and treatment of the subgrade—the native soils underneath the road. These problems were known to all of the Defendants almost from the outset of construction. The Facility was built over diverse topography that includes soils with an extremely high clay content. Such soils expand significantly when wet and contract significantly when dry. High clay content soils also have a high Plasticity Index (“PI”), meaning that they become “plastic” and swell when wet. These problems compound where soils with high clay content are over-compacted. If subgrade high in clay content is not properly treated and stabilized, any pavement laid over top of that subgrade will be prone to significant longitudinal cracking.

64. The soils underlying the Facility are also high in sulfates. When sulfates interact with certain chemicals, they can rapidly form crystals up to 2.5 times their original size. If sulfates are not treated or removed from the subgrade, any pavement laid over top of the subgrade will be prone to heaving. Lime soil stabilization (“LSS”) is a useful treatment for both high clay and high sulfate content, but the proportions of lime applied must be carefully calibrated to the content of the soils.

65. Defendants have known from the outset of construction that CTHC did not properly treat or stabilize the Facility's subgrade. As a result, State Highway 130 Segments 5 and 6 have experienced, and continue to experience, considerable pavement failures in the form of cracking and heaving throughout the entire Facility. At all relevant times, Defendants were well aware that CTHC had made at least the following errors and omissions in its design and construction of the Facility:

a. Design Errors and Omissions:

- CTHC did not do an adequate field and laboratory investigation to determine the characteristics of the Facility subgrade.

- CTHC designed the Facility roadway using a seven-foot active zone instead of at least a twenty to twenty-five-foot active zone, which led to a substantial underestimation of the amount of subgrade heave.
- CTHC used an average PI to calculate the potential vertical rise (“PVR”) when it should have used two standard deviations above the mean PI. As a result, CTHC failed to design the lime stabilized subgrade to the proper depth.

b. Construction Errors and Omissions:

- CTHC over-compacted and over-dried the Facility subgrade. In many areas, the soil was compacted using the Tex-113-E standard instead of the Tex-114-E standard. As a result, CTHC increased the expansive potential of the already-expansive clay soils.
- CTHC did not field verify PI and sulfate content during construction. Design reports required CTHC to perform sampling and testing during construction to confirm design assumptions, but CTHC failed to follow its own design requirements.
- CTHC failed to follow its own design requirements in stabilizing the Facility subgrade during construction. CTHC applied the incorrect amount of LSS in some areas and failed to apply any LSS in others, leaving untreated and undertreated areas of the Facility roadway.
- CTHC failed to remove or properly treat sulfates in the Facility subgrade. CTHC’s failure to properly understand and prepare the Facility subgrade has caused catastrophic cracking and heaving across the Facility.
- CTHC’s failure to properly design and construct the Facility subgrade is a project-wide defect (i.e., not a defect isolated to any one particular area) that will require extraordinary remediation and maintenance costs over the life of the road.

F. Defendants knew that CTHC’s work was not properly completed

66. The problems with CTHC’s design and treatment of the subgrade were known to Defendants soon after construction began on the Facility. As early as March 2010, SH 130’s Ferrovial-controlled Chairman, CEO, and technical advisors were discussing observed issues with pavement distress and ground plasticity and considering how to enforce CTHC’s performance obligations under the D&C Contract. In September 2010, SH 130 received confirmation that the soil was not being properly stabilized and, worse, was being used as a

structural layer of the pavement—a practice that, according to SH 130’s technical director, was not recognized in industry standards and had no precedent in Texas.

67. By November 2010, SH 130’s CEO was so concerned about CTHC’s handling of the subgrade that he sent a letter to CTHC’s CEO to reiterate concerns present “since the beginning of the pavement work,” noting test results indicating “that the soil has fragile characteristics” which, with the margins allowed, would “in all probability lead to the appearance of cracks within the first years of the concession.” He observed that the techniques being applied on the subgrade were “giving all the ingredients to have problems in a short time after opening the highway to traffic.”

68. These concerns went unaddressed. In February 2011, SH 130’s CEO commented to SH 130’s Chairman that the pavement design did “not comply with the technical clauses of the construction contract,” and that “all the pavement put into place to date is in question regarding Good Industry Practices” because of CTHC’s failure to properly treat the subgrade. He commented: “Our belief is that it will give cracking problems in the first years of the concession.”

69. By May 2011, SH 130’s Ferrovial- and Zachry-controlled managers were questioning internally whether it was prudent to allow construction to continue at all. A ZAI-controlled board member forwarded SH 130’s CEO a PowerPoint identifying various pavement defects, noting: “There are photos of deficiencies that have been known to CTHC for several months, but no corrective action has been undertaken. If the root cause of these matters is not known, then it is not logical that the construction should continue” ZAI’s representatives reiterated these same concerns in July 2011, noting that it was “risky (and costly) for [CTHC] to continue with paving operations.” In August 2011, SH 130’s CEO wrote another letter to

CTHC's CEO, reiterating concerns about "[v]arious pavement construction issues related to the Facility [that] have been encountered since the beginning of construction."

70. In September 2011, Cintra's CEO (who was also a member of Ferrovial SA's Management Committee) met with the CEO of Ferrovial SA and Chairman of Ferrovial Agroman to discuss a presentation relating to SH 130. This presentation identified a list of "challenges" facing the SH 130 toll road, including "Construction quality issues," such as "[d]eficiencies in initial pavement," "[p]avement cracking due to swelling clays, deficiently treated expansive clays," and "doubts on future performance (improper long term protection)."

71. Less than three weeks later, on September 30, 2011, Ferrovial SA's entire Board of Directors flew to Texas to visit the SH 130 project. Agendas from the trip show that the Board flew in from Madrid for one night only, and that SH 130 was the only concession whose office the Board visited. These same agendas reflect that the board meeting was also attended by the President of Cintra US (who was also a Cintra executive and the Chairman of SH 130), the President and Managing Director of FAUS (who was also a Ferrovial Agroman executive and the Chairman of the Board of Managers of CTHC), and SH 130's and CTHC's respective CEOs.

72. In December 2011, CTHC finally presented SH 130 with several "pavement repair options" for addressing "premature distress on SH 130" resulting from "sub-grade volume change, sulfates/lime stabilization . . . PI, segregation, other." No one believed the CTHC proposals would be sufficient to fix the problem. ZAI representatives commented that not even the most extensive repair option presented by CTHC addressed "the potential future latent defect with existing subgrade cracks—in other words, none of the solutions go deep enough."

73. Nor did the repairs, once begun, inspire confidence. ZAI's senior project managers noted in March 2012: "[W]e have started to observe the remediation (repair) of the cracked pavement. The more we observe the more we see the need for an extended warranty for

this project,” along with a “revised projected maintenance plan . . . that proactively addresses future performance issues.” SH 130’s technical director informed its CEO in March 2012: “I don’t think [CTHC’s repair efforts] will solve the problem, it just delays the cracking but doesn’t avoid it. Now they are in a hurry so it seems that everything is valid for them.” SH 130’s Construction Manager reported: “My inside sources tell me that CTHC has no intention of repairing these cracks.”

74. Yet the inadequate repairs continued—as did SH 130’s Ferrovial- and Zachry-controlled managers’ recognition of their inadequacy. As late as August 2012, when SH 130 was making plans for Substantial Completion (i.e., the opening up of the road to traffic), its managers were noting construction problems that “will most likely be sources of future cracking.” By December 2012, just one month after the road opened to traffic, new cracks began to appear on the shoulders of the road, and by February 2013, cracks and heaving were evident throughout the project.

75. These issues were no secret to Defendants. Many of the high-level managers at SH 130 and CTHC, including their respective CEOs and much of their technical departments, were Ferrovial employees. Cintra US, Cintra Member, and FAUS shared the same office in Austin, Texas. Virtually all of SH 130’s high-level discussions about construction problems included technical managers at Ferrovial email addresses, including at Ferrovial SA’s headquarters in Madrid. Ferrovial Agroman’s Madrid-based Technical Office played a central, intermediating role between SH 130 and CTHC, fielding detailed complaints from the former and conducting research and dictating solutions on behalf of the latter. In fact, SH 130’s CEO acknowledged in a November 2010 letter that the Technical Office’s role was to “find[] solution[s] that responded to the needs of both Cintra [SH 130’s parent] and [Ferrovial Agroman, CTHC’s parent].”

76. What this meant, for practical purposes, was that Ferrovial (with, as discussed below, Zachry's participation) dictated whether, and to what extent, CTHC would actually remedy the issues that SH 130 identified. SH 130's CEO, Chairman, and technical advisors acknowledged this reality at multiple points. They knew that FAUS was conducting detailed assessments of pavement distress in conjunction with Ferrovial Agroman's Technical Office. In January 2011, they commented internally that Ferrovial Agroman had identified issues with CTHC's work in a Technical Note but provided no "evidence that the construction procedures would be modified." In March 2011, SH 130's managers noted that it would be Ferrovial Agroman, not CTHC, that would provide a "final proposal for . . . repair of the cracked areas." In June 2011, SH 130's Chairman and CEO commented to Cintra's CEO that "discussions with [Ferrovial Agroman regarding pavement issues] continue in a tangle of cross-trials," as Ferrovial Agroman's previously proposed solutions were "clearly insufficient."

77. Zachry participated equally in this activity. ZAI's technical advisors visited the project site monthly, and prepared and circulated extensive reports which recognized that the project suffered from "issues related to cracking (aggregate base and asphalt), inadequate soil stabilization and poor construction practices" that required a "substantial amount of remediation." Yet despite this knowledge, ZAI took no action to fix the problem. SH 130's Vice President - Infrastructure, a ZAI employee with no prior experience on a large highway project, was the SH 130 executive responsible for interfacing with CTHC regarding construction problems. ZAI's management frequently gave SH 130's Vice President - Infrastructure direct orders in that regard. Yet ZAI's managers did not direct remediation that they plainly understood were necessary. And ZAI and ZII joined with Ferrovial in causing SH 130 not to withhold payment from CTHC in September 2011, over concern about "the impact that [this would] have on them." ZAI's COO insisted at the time that the matter be resolved through a

“process that doesn’t raise to adverse reporting for SH 130”—i.e., in a way that would alert SH 130’s lenders to the construction issues.

78. It was also ZAI’s COO and other ZAI and ZII executives who in December 2011 caused SH 130 to cooperate with CTHC in asserting a claim against CTHC’s insurance policy for cracking purportedly caused by “historic drought”—in lieu of forcing CTHC to actually fix the defective construction that was the actual cause of the cracking problem. In furtherance of this claim, ZII caused CTHC not to create, and ZAI caused SH 130 not to insist on, a remediation plan because such proposal would be discoverable by the insurer and would reveal that the cracking problems were not caused by drought but by faulty construction. Because the insurance claim was ongoing, ZII and ZAI caused SH 130 to declare Substantial Completion in October 2012 and Final Acceptance in May 2013 without having seen any remediation plan from CTHC. CTHC’s insurance claim litigated with SH 130’s cooperation until it concluded in 2015.

G. SH 130’s Ferrovial- and Zachry-controlled managers did not inform lenders that SH 130 was paying for improperly completed work

79. None of the systemic problems with the Facility’s construction as described above were disclosed to SH 130’s lenders. To the contrary, SH 130’s Ferrovial- and Zachry-controlled managers took affirmative steps to prevent non-affiliates from learning the truth.

80. Before March 2012, SH 130’s Ferrovial- and Zachry-controlled managers made no mention whatsoever of pavement or subgrade issues in the company’s Annual Financial Plans submitted to TIFIA or in its monthly reports to all lenders. To the contrary, these reports suggested that everything was fine with the construction process. The monthly reports for March through August 2012 contained short, passing references to “pavement repairs,” but they gave no indication that the pavement issues were systemic; that the need for repairs was being driven by fundamental issues with the subgrade; that SH 130’s Ferrovial- and Zachry-controlled managers

had already knowingly caused the company to pay CTHC for improperly completed work that would inevitably require repair; or that SH 130's Ferrovial- and Zachry-controlled managers understood that CTHC's repairs were wholly inadequate. To the contrary, the August 2012 report falsely stated: "The pavement repair is complete."

81. SH 130's Ferrovial- and Zachry-controlled managers also took affirmative steps, sometimes in coordination with CTHC, to ensure that the lenders' technical advisor never learned the extent of the problems. The technical advisor was involved, as a requirement of the Initial Senior Loan Agreement, to monitor construction on the facility. The technical advisor was retained and paid by SH 130 and was not allowed to communicate directly with the lenders. The technical advisor that SH 130 selected did work on a number of other Ferrovial projects.

82. As early as September 2009, SH 130's Ferrovial- and Zachry-controlled managers and CTHC expressed mutual concern about what the technical advisor might learn on a site visit. CTHC's quality manager, a Ferrovial Agroman employee, commented: "I think it is dangerous—imagine if he asks how many NCRs [Non-Conformance Reports] we have open and since when they have been open [I]f he asks about the open NCRs then we will surely have problems in explaining them." SH 130's quality manager responded that they should coordinate before meeting with the technical advisor: "[W]e should not give too many details. You talk about your and I will talk about mine without getting into any discrepancies."

83. After a February 2011 site visit in which the technical advisor learned of some issues with pavement cracking and began asking pointed questions, SH 130's CFO, a Cintra US employee, was furious. In an email to SH 130's technical director, he wrote: "[W]e have to stop [the technical advisor] and deal with this type of topics in a different meeting. . . . Perhaps it would be good to create a special meeting in which everything is beautiful and wonderful for each time they come. . . . We talk how to orchestrate it." In a follow-up letter regarding the site

visit, the technical advisor wrote to confirm its understanding that SH 130 was “confident that the problem reported . . . to date with pavement cracking on sections of the SH 130 [Facility] is a localized issue,” and concurred with SH 130’s view that it was “premature to raise the matter with the Lenders.” The technical advisor was never permitted to learn the extent of the problem, and the lenders were never informed.

84. In fact, consistent with this effort to deceive lenders, by February 2011, SH 130’s Cintra-employed Technical Director and ZII-employed Segment Manager had stopped raising issues with cracking in NCRs, which the lenders’ technical advisor would have reviewed. SH 130 nevertheless continued to quietly discuss issues related to cracking directly with CTHC.

85. In September 2011, when CTHC initiated dispute-resolution proceedings against SH 130 after SH 130 threatened to withhold money for defective construction, ZAI’s COO insisted that the matter be resolved through a “process that doesn’t raise to adverse reporting for SH 130”—i.e., in a way that didn’t elevate the construction issues to SH 130’s lenders.

86. SH 130’s Ferrovial- and Zachry-controlled managers’ statements to the public have likewise never disclosed the extent of the problems. Instead, at various points after the road opened to traffic, they had SH 130’s spokespeople publicly vouch for the quality of the road and concur with public statements by CTHC that problems with the Facility were caused by historic drought followed by historic floods. The documents and emails that form the basis for this complaint were internal to SH 130, and were not available to any parties outside of SH 130’s corporate family. The new SH 130 owners obtained the documents as part of its Chapter 11 reorganization.

H. SH 130’s Ferrovia- and Zachry-controlled managers caused SH 130 to pay for improperly completed work without informing lenders

87. Notwithstanding CTHC’s plainly improperly completed work, SH 130’s Ferrovia- and Zachry-controlled managers caused the company to pay CTHC over \$329 million between 2011 and 2012, including \$77 million within four years of the Petition Date.

88. As stated above, under the D&C Contract, SH 130 was prohibited from paying CTHC for improperly completed work; yet, that is precisely what SH 130’s Ferrovia- and Zachry-controlled managers caused SH 130 to do. Between November 17, 2010 and December 7, 2012, SH 130 paid CTHC a total of \$329,331,923.17. The chart below identifies each transfer (the “Subject Transfers”):

TRANSFER DATE	TRANSFER AMOUNT
February 8, 2011	\$29,049,001
March 7, 2011	\$22,544,174
April 7, 2011	\$25,881,955
May 6, 2011	\$20,977,233
June 7, 2011	\$27,864,275
July 6, 2011	\$19,832,553
August 5, 2011	\$21,312,727
September 7, 2011	\$14,835,032
October 6, 2011	\$23,749,639
November 4, 2011	\$18,133,356
December 6, 2011	\$10,792,116
January 5, 2012	\$11,185,831
February 6, 2012	\$5,841,079
March 7, 2012	\$5,603,481
April 5, 2012	\$5,146,726
May 7, 2012	\$5,014,720
June 7, 2012	\$3,321,811
July 9, 2012	\$9,318,468
August 6, 2012	\$8,428,000
September 10, 2012	\$5,963,177.47
October 5, 2012	\$10,333,617
November 7, 2012	\$14,119,246
December 7, 2012	\$10,083,236

89. Each Subject Transfer was made for work that CTHC had already performed, despite the fact that the work was defective. Each Subject Transfer paid a CTHC invoice for specific, delineated progress items. Each such invoice included pavement- or subgrade-related progress items that were improperly completed. None of the payments were advance payments for work to be performed. Because SH 130's Ferrovial- and Zachry-controlled managers paid CTHC for improperly completed work, which the D&C Contract expressly prohibited, SH 130 received no value for the payments.

90. SH 130 made these transfers to CTHC out of its Operating Account, and CTHC received these funds free and clear.

91. Paying CTHC when CTHC was not entitled to such payments under the D&C Contract put SH 130 in default under the Senior Bank Facility.

I. SH 130 was insolvent or lacked reasonable capital when it made the payments

92. SH 130 was insolvent by at least January 2011, and remained insolvent as each Subject Transfer was made. SH 130's original financial model was based on a traffic and revenue study that Ferrovial and Zachry had commissioned from Maunsell Australia Proprietary Limited ("Maunsell") in 2005, which Maunsell re-validated in 2007. Ferrovial SA, Cintra, Cintra US, ZAI, and ZII used this model to convince prospective lenders to finance the Facility. In mid 2010, Cintra and Cintra US undertook internally to update SH 130's traffic forecast. This was done with significant trepidation. Cintra's Director of Corporate Development commented in August 2010 that his team was "not very happy with the work done" by Maunsell on other projects, and Cintra and Cintra US had significant concerns that SH 130's projections were also substantially overstated. SH 130's Chairman urged that the update should only be done if strictly necessary. By January 2011, when the results of the updated study were circulated, Defendants,

along with SH 130's Ferrovial- and Zachry-employed officers and directors, knew that the projections in the Maunsell study were hopelessly overstated.

93. Among other issues, the January 2011 traffic update indicated that corridor volume in Segments 1-4 of State Highway 130 in 2010 was 10% below projected volume, and that the volume of "heavy" traffic—the large trucks that pay the highest tolls—was almost 50% below. The update also acknowledged that most of the miss was attributable to an error in the original source data: "The source data reported a higher heavy vehicle percentage than reality. The impact of the recession accounts for 20% of this negative difference and the source data error accounts for 80% of the difference."

94. After reviewing the results of the updated traffic study, SH 130's Chairman (a Cintra executive) expressed "shock" at the "poor income prospects of SH 130." He wrote to SH 130's CEO in February 2011 that "[a]lthough we already knew that we had problems due to the effects of the crisis . . . we are much worse than we thought." In particular, "our equity case has a reduction on the order of 30% compared to the forecast of this study." He mused on various possible ways to "save the sick person," but Cintra also began developing a plan to divest part or all of its stake in SH 130.

95. Yet on February 28, 2011, when SH 130 submitted its Annual Financial Plan, as required under the TIFIA Loan Agreement, SH 130's CEO certified that the company's annual projected revenues were sufficient to meet the TIFIA Loan Agreement's amortization schedule. The 2011 annual plan attached, as the bases for this certification, a 2007 traffic forecast report and a schedule of projected revenues as of January 1, 2006. The plan made no mention of Cintra's dire, updated traffic projections.

96. In April 2011, news broke that an Australian toll tunnel was bankrupt after just eleven months of operation due to "horrible" traffic forecasts. A Cintra US executive noted to

SH 130's Chairman and its CEO: "This study was done by the same team as ours from SH 130 . . . and if you realize by the same dates. I hope that nobody starts asking questions."

97. By May 2011, SH 130's Ferrovial- and Zachry-controlled managers and Cintra knew that the traffic forecast was even worse than predicted in January. Cintra prepared a Traffic and Revenue Analysis predicting revenues significantly lower than projected at the outset of the project. It projected 2015 light traffic at 51% below the base case, and 2015 heavy traffic at 79% below the base case. The analysis also projected that, during its first 20 years of operation, SH 130's cash flow before debt service would be \$1.04 billion, compared with a total debt service of \$1.513 billion during that same period. A spreadsheet accompanying the analysis showed only \$1.6 billion in projected revenues over the first twenty years of operation versus the "bid case" of \$3.052 billion. This data was presented at a June 2011 Cintra meeting along with a presentation about the status of construction in the SH 130 project that described "cracking on asphalt and flexible base layers due to higher plasticity and sulfates content than foreseen in design . . . [and] bad industry practices."

98. Later in June 2011, Cintra and ZAI agreed to fund a new traffic study. The parties agreed to "do it outside the concessionaire [i.e., SH 130] (directly the partners, distributing costs proportionately to our participation)" and to "avoid the firms that normally work for TXDOT." SH 130's insolvency was not merely known to its affiliates; it was a central focus for them.

99. It was only a few months later, in September 2011, that the high-level meeting took place between Cintra's CEO and Ferrovial SA's CEO and Ferrovial Agroman's Chairman took place. *See supra* ¶ 70. At that meeting, they discussed not only SH 130's significant construction problems, but also its dire financial condition. And it was shortly after that meeting, also in September 2011, that the full Ferrovial SA board of directors met in Texas to meet with

SH 130's and CTHC's respective CEOs. *See supra* ¶ 71. After these meetings, and with the full participation with ZAI and ZII executives who desperately wanted to keep the issue from reaching the lenders' attention, SH 130 withdrew its remaining objections to paying CTHC for improperly completed work.

100. In February 2012, SH 130's CFO emailed Cintra US's CFO inquiring about "how to report the future revenues of" SH 130 in preparing the company's 2012 Annual Financial Plan for the TIFIA Lender. He noted, in particular, the requirement in Section 21(a)(i) of the TIFIA Loan Agreement that SH 130 provide an updated base case model "based upon assumptions and projections with respect to the revenues . . . of the Project which shall reflect the prior experience and current status of the Project, and the expectations of management with respect to the Project, as of the most practicable date prior to the delivery of such model." Despite this requirement, SH 130 did not provide an updated base case model to the TIFIA Lender in connection with its 2012 Annual Financial Plan, which it submitted on February 29, 2012. Instead, it supplied a forecast that continued to rely on projections from 2006 and 2007, which SH 130 knew were inaccurate.

101. At an April 2012 SH 130 Board Meeting, a Risk Policy presentation identified "lower traffic forecast than initially projected in the bid offer" as a "grave risk" to the viability of the company.

102. The Facility did not open to traffic until October 2012, but as soon as it did (as fully anticipated by Cintra's updated models), traffic volume fell far short of that in the Maunsell study. Once the road was open to traffic, SH 130 repeatedly updated its revenue and EBITDA projections, each time lowering them from the initial budget. The actual revenue for 2012 turned out to be only \$2.379 million, and EBITDA was negative.

103. The same declines happened in 2013. The Maunsell Report projected \$69.9 million in revenue. SH 130's 2013 budget projected \$26.161 million in revenue (and only \$12.237 in EBITDA), far less than the projections relied upon by lenders. SH 130 again repeatedly revised its budget forecasts, and its actual 2013 performance was dismal—\$18.355 million in revenue (and only \$7.578 million in EBITDA).

104. The dramatically lower revenues directly related to lower than projected traffic. The key driver of profitability of the Facility is traffic volume, as the Facility generates revenue for SH 130 by the collection of tolls in exchange for the use of the road. The Maunsell Report projected approximately 22,000 paying trips each month in 2012. When SH 130 prepared its budget for 2012, and even when it revised its forecasts, it projected less than 10,000 paying trips. The Maunsell Report projected approximately 40,000 paying trips each month in 2013. Actual paying trips barely exceeded 5,000 a month.

105. At the end of 2010, SH 130's total liabilities were \$860.792 million. That number ballooned to \$1.302 billion by the end of 2011, with SH 130's long-term indebtedness exceeding \$990 million. By the end of December 2012, SH 130's borrowings had increased to \$1.15 billion.³ According to SH 130's financial statements, by the end of 2012 SH 130 disclosed that its equity was negative \$80 million.⁴

106. Based on SH 130's own projections, there was no way SH 130 would be able to make debt service payments on account of its loan obligations, including interest and swap

³ SH 130 also had recorded on its 2012 financial statements \$291.2 million in liabilities associated with derivatives contracts.

⁴ SH 130's financial statements recorded as assets property and equipment with a value of \$1.22 billion. This figure, however, grossly overvalued the Facility. In reality, SH 130's negative equity was substantially greater than \$80 million.

payments due in 2014, and interest and principal reduction payments coming due in 2017 and 2018.

107. Not surprisingly, by March 2013, less than six months after the Facility opened, SH 130's Ferrovial- and Zachry-controlled managers engaged the services of restructuring counsel. In a presentation made to the Board in May 2013, SH 130 disclosed that a "cash flow shortfall is projected to last until June 2028 and the total amount will be \$212 [million]." This document made clear that there would be insufficient cash to service debt each year until 2028.

108. Nothing changed between January 2011 and May 2013 that would have materially impacted SH 130's financial condition. Therefore, the fact that SH 130 was insolvent and lacked reasonable capital in May 2013 means it was insolvent and lacked reasonable capital in January 2011.

J. SH 130's Ferrovial- and Zachry-controlled managers made the Subject Transfers to hinder and delay creditors

109. SH 130 and CTHC were affiliated entities, with Ferrovial SA and ZII as the ultimate, common parents. Each of the Subject Transfers (along with the D&C Contract generally) was an interested party transaction. At all relevant times, Defendants were aware of the defects in CTHC's work yet caused SH 130 to continue to draw down on its loans, pay CTHC's invoices, and conceal the truth from SH 130's lenders. Defendants had every incentive to do so.

110. As to SH 130, it was clear to Defendants by January 2011 that SH 130's bid case traffic forecasts had been wrong and the company was insolvent. Its cash flow would not be able to cover debt service obligations for at least twenty years, let alone generate revenue for Defendants.

111. As to CTHC, the geology of Segments 5 and 6 had proved much more challenging than Defendants had assumed when developing the original design and construction bid. Because the D&C Contract was for a fixed price and CTHC had assumed the risk of all surface and sub-surface conditions, actually constructing the road properly would have been a costly proposition for Ferrovial and Zachry. Moreover, completing construction properly would have required additional time, effort, and costs, delaying the Facility's Substantial Completion date, and forcing CTHC to indemnify SH 130 for liquidated damages paid to TxDOT for such delay. Substantial Completion, which occurred against the backdrop of numerous unremedied problems with the road, was part of a course of conduct through which SH 130 continued to pay its affiliate for improperly completed work and certify that that work had been properly completed.

112. Although a project developer like SH 130 would normally have no incentive to accept improperly completed work, here, because the contractor was an affiliate, the incentives were legion. From the perspective of the enterprise as a whole, there would have been incredible cost downside, and absolutely no financial upside, had SH 130's Ferrovial- and Zachry-controlled managers stood on SH 130's right to have CTHC perform correctly. From the perspective of the enterprise as a whole, there was an incentive to cause SH 130 to transfer lender money out of the insolvent SH 130 and into CTHC even though CTHC had not properly performed the D&C Contract. That is exactly what Defendants caused SH 130 to do.

K. SH 130 files for Chapter 11 restructuring

113. Almost immediately after the Facility opened, SH 130's revenues were well below what was predicted in the base case presented to lenders, and the road began to experience serious cracking and heaving. While still under Defendants' control, SH 130's managers falsely parroted Defendants' official position that the traffic shortfall arose from the Great Recession

and the road cracking problems arose from severe drought conditions, the full effect of which was not discovered until after the road opened. They never acknowledged that these problems were known to and fully anticipated by them while the road was still under construction.

114. After several years of negotiations with its Lenders, SH 130 commenced its chapter 11 case on March 2, 2016 (the "Petition Date").

115. As of the Petition Date, SH 130 was indebted and liable to the Administrative Agent and First Lien Lenders in the aggregate principal amount of approximately \$720,750,000, plus accrued interest, fees, expenses, charges, and all other obligations incurred in connection therewith to the extent provided in the Senior Loan Agreement. SH 130 owed the TIFIA Lender approximately \$550,757,000, plus accrued interest, fees, expenses, charges, and all other obligations incurred in connection therewith to the extent provided in the TIFIA Loan Agreement.

116. SH 130 recently emerged from bankruptcy, on June 28, 2017. As part of the restructuring, Ferrovial and Zachry walked away from SH 130 with a fully paid CTHC, and having collected substantial management fees, tolling fees, and back-office services fees from SH 130 all the way through 2017. Meanwhile, SH 130's lenders took substantial losses on SH 130's debt and were saddled, as the new owners of the post-petition SH 130, with a defective road that is already expected to require over \$130 million in remediation directly resulting from CTHC's design and construction failures, and could ultimately require tens of millions of dollars more.

117. After bankruptcy, in October 2017, SH 130 initiated arbitration against CTHC for breach of the D&C Contract. CTHC has managed to delay those proceedings through a series of tactics before the International Chamber of Commerce ("ICC") and in Texas state court.

CTHC's answering statement denies that it has responsibility to pay for any remediation of defects in the road.

118. The documents and emails that form the basis for the allegations in this complaint were internal to SH 130, and were not available to any parties outside of SH 130's corporate family until after SH 130 emerged from Chapter 11 reorganization under new ownership.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST CTHC

(Constructive Fraudulent Transfer under 11 U.S.C. §§ 544(b) and 550, and Texas UFTA §§ 24.005(a)(2)(A) and 24.006)

119. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

120. During the four-year period immediately preceding the Petition Date, SH 130 made payments to CTHC, totaling over \$77 million between March 7, 2012 and December 7, 2012 (the "Four-Year Transfers").

121. Before making the first Four-Year Transfer, SH 130 had incurred in excess of \$990 million in long-term indebtedness and incurred a total of \$1.1 billion by the time of the last Four-Year Transfer.

122. SH 130 made each Four-Year Transfer at a time when it was insolvent because the sum of SH 130's debts was greater than all of SH 130's assets at a fair valuation. Further, by making each Four-Year Transfer, SH 130 was engaged or was about to engage in a business or a transaction for which the remaining assets of SH 130 were unreasonably small in relation to such payments.

123. SH 130 received less than reasonably equivalent value in exchange for the Four-Year Transfers. Each Four-Year Transfer was made in violation of the D&C Contract.

124. Each Four-Year Transfer was made within four years of SH 130's bankruptcy petition on March 2, 2016.

125. Under 11 U.S.C. § 544(b) and Texas UFTA §§ 24.005(a)(2)(A) and 24.006, the Four-Year Transfers are avoidable.

126. Pursuant to 11 U.S.C. § 550(a)(1), SH 130 is entitled to recover from CTHC.

127. Each Four-Year Transfer thus should be avoided and recovered pursuant to 11 U.S.C. §§ 544(b), 550(a); Tex. Bus. & Comm. Code §§ 24.005(a)(2); 24.006.

**SECOND CAUSE OF ACTION
AGAINST CTHC
(Actual Fraudulent Transfer 11 U.S.C. § 544(b), 550; Texas UFTA 24.005(a)(1))**

128. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

129. During the four-year period immediately preceding the Petition Date, SH 130 made the Four-Year Transfers to CTHC, totaling over \$77 million.

130. During the period between January 2011 and the end of February 2012, SH 130 made numerous transfers of cash to CTHC, in excess of \$252 million (the "Pre-March 2012 Transfers") (together with the Four-Year Transfers, the "Subject Transfers").

131. Each of the Subject Transfers were made with the intent to hinder, delay, or defraud other creditors. This intent is evidenced by the facts that:

- the Subject Transfers were provided to CTHC, which is an affiliate of SH 130;
- the improperly completed work CTHC performed was concealed from SH 130's creditors;
- SH 130's knowledge that its own traffic and revenue projections were far lower than originally forecast was hidden from creditors;
- the value of the consideration received by SH 130 was not reasonably equivalent to the \$329 million SH 130 paid to CTHC;

- SH 130 was insolvent or became insolvent shortly after the Subject Transfers were made;
- the cash paid to CTHC occurred shortly after a substantial debt was incurred;
- SH 130 did not describe material problems encountered with construction, as it was required in its loan agreements to do; to the contrary, it omitted material information concerning CTHC's improperly completed work, SH 130's continued payments for such improperly completed work, and SH 130's inability to meet its financial obligations; and
- SH 130 delivered to the TIFIA Lenders "Financial Plans" that knowingly did not comply with section 21 of the TIFIA Loan Agreement.

132. SH 130's creditors were harmed as a result of the Subject Transfers.

133. SH 130's creditors, including the TIFIA Lenders and SH 130's private lenders, did not and could not have discovered the fraudulent nature of the Subject Transfers until after SH 130 filed its Chapter 11 cases.

134. Under 11 U.S.C. § 544(b) and Texas UFTA §§ 24.005(a)(1), 24.006 the Subject Transfers are avoidable.

135. Pursuant to 11 U.S.C. § 550(a)(1), SH 130 is entitled to recover from CTHC.

136. The Subject Transfers thus should be avoided and recovered pursuant to 11 U.S.C. § 544(b), 550(a); Tex. Bus. & Comm. Code §§ 24.005(a)(1).

**THIRD CAUSE OF ACTION
AGAINST FERROVIAL, S.A., FERROVIAL AGROMAN,
FERROVIAL US, FCC, FAUS, CINTRA, AND ZII
(Recovery Against Subsequent Transferee Under 11 U.S.C. § 550)**

137. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

138. In 2011-2013, SH 130 made the Subject Transfers. As alleged above, the Subject Transfers are voidable under 11 U.S.C. § 544(b) of the Bankruptcy Code as either actual or constructive fraudulent transfers.

139. Thereafter, CTHC, on information and belief, transferred the Subject Transfers to Ferrovia SA, Ferrovia Agroman, Ferrovia US, FCC, FAUS, Cintra, and ZII (the “Subsequent Transferee Defendants”) in the form of equity distributions, service fees, intercompany transfers, or other transfers or payments.

140. In the alternative, SH 130 may recover against the Subsequent Transferee Defendants on a veil-piercing theory because they dominated and controlled CTHC and made all key decisions for the entity—including, most importantly, whether and to what extent the design and construction defects SH 130 had identified would be remedied. CTHC’s Chairman was employed by Ferrovia SA, its Managing Director was employed by Ferrovia Agroman, and its Construction Manager was employed by ZII. Virtually all of CTHC’s high-level staff was directly employed by one of CTHC’s parents. Ferrovia Agroman’s Technical Office in Madrid directly performed much of the analysis of the design and construction problems and, with ZII, dictated the work that CTHC would perform to address these problems.

141. CTHC had no source of revenue other than SH 130; it had no owners other than the Subsequent Transferee Defendants; and it ceased operations after constructing the Facility. Any transfers that Defendants received from CTHC would, by necessity, have originated as transfers from SH 130.

142. The Subsequent Transferee Defendants received some or all of the Subject Transfers with knowledge that (a) CTHC had performed improperly completed work and was not entitled to receive payment, and (b) SH 130 was insolvent and/or lacked reasonable capital, and thus did not take the Subsequent Transfers in good faith. On information and belief, the Subsequent Transferee Defendants also received the Subject Transfers for no value.

143. The Subject Transfers, or the value of the Subject Transfers, should be recovered from the Subsequent Transferee Defendants for whose benefit the fraudulent transfers were made.

**FOURTH CAUSE OF ACTION
AGAINST FERROVIAL SA, CINTRA,
CINTRA US, ZII, AND ZAI
(Breach of Fiduciary Duty under Delaware law)**

144. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

145. Ferrovia SA, Cintra, Cintra US, ZII, and ZAI dominated SH 130. They controlled SH 130 through, among other things, their controlling ownership interests in the company, and their control over the company's directors and officers, almost all of whom were officers, directors, or employees of Ferrovia SA, Cintra, Cintra US, ZII, or ZAI. Although ZII and ZAI did not hold a majority interest in SH 130, they exercised control through their active management of the company, and with Ferrovia SA, Cintra, and Cintra US shifted money to their commonly owned and controlled CTHC. By virtue of their domination of SH 130, Ferrovia SA, Cintra, Cintra US, ZII, and ZAI owed fiduciary duties of care and loyalty to SH 130 (with due consideration for its residual risk holders which, in insolvency, included creditors), and duties of entire fairness with respect to any interested transactions.

146. Ferrovia SA, Cintra, Cintra US, ZII, and ZAI breached their fiduciary duties to SH 130 when, despite knowing that SH 130 was insolvent, they caused SH 130 to pay money in interested transactions that were not entirely fair to SH 130, either because the payments were prohibited or not required, or were otherwise for inadequate value.

147. SH 130 was damaged by this wrongful conduct in at least the following ways: It was damaged to the extent it made payments it was not otherwise required to make, and to the extent it took on additional debt to do so. And SH 130 was damaged to the extent these breaches caused it to accept a facility that was far less valuable than what it would have received had these duties not been breached.

148. In addition, SH 130 is entitled to disgorge all profits and fees that Ferrovia SA, Cintra, Cintra US, ZII and ZAI derived from interested transactions with SH 130 while in breach of their fiduciary duties.

**FIFTH CAUSE OF ACTION
AGAINST FERROVIAL SA, FERROVIAL AGROMAN, FAUS,
CINTRA, CINTRA US, ZAI, AND ZII
(Aiding and Abetting Breach of Fiduciary Duty under Delaware law)**

149. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

150. SH 130's directors and officers owed fiduciary duties of care and loyalty to SH 130 (with due consideration for its residual risk holders which, in insolvency, included creditors).

151. These duties were breached when SH 130's directors and officers caused SH 130 to enter into interested transactions that benefitted SH 130's affiliates at SH 130's expense, including the gratuitous payments to CTHC.

152. In the event the exercise of control over SH 130 by any of Ferrovia SA, Cintra, Cintra US, ZII, or ZAI is determined not to give rise to fiduciary duties, then in the alternative, their conduct in connection with the management of SH 130 constituted knowing participation in the breach of fiduciary duties by SH 130's officers and directors. In addition, by causing CTHC not to remediate improperly completed work, and by using CTHC as a vehicle for extracting unearned payments from the insolvent SH 130 for the benefit of CTHC's ultimate parents, Ferrovia SA, Ferrovia Agroman, FAUS, ZII, and ZAI knowingly participated in and thereby aided and abetted the SH 130 officer and director breaches of fiduciary duty.

153. SH 130 was damaged by this wrongful conduct in at least the following ways: It was damaged to the extent it made payments it was not otherwise required to make, and took on

additional debt to do so. And SH 130 was damaged to the extent these defendants' knowing participation in these breaches caused it to accept a facility that was far less valuable than what it would have received had these duties not been breached.

154. In addition, SH 130 is entitled to disgorge all profits and fees that Ferrovia SA, Ferrovia Agroman, FAUS, Cintra, Cintra US, ZII and ZAI derived from interested transactions with SH 130 while knowingly participating in breaches of fiduciary duties owed to SH 130.

**SIXTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(Unjust Enrichment)**

155. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

156. Defendants received funds that belong to SH 130, both through payments to CTHC for improperly completed work under the D&C Contract, and as management and other fees charged to SH 130.

157. Defendants were unjustly enriched by these funds.

158. It would be unconscionable to permit Defendants to keep these funds.

**SEVENTH CAUSE OF ACTION
AGAINST ZAI
(Nullification of Certificate of Cancellation)**

159. SH 130 repeats and realleges the foregoing allegations as though they were fully set forth here.

160. On June 28, 2017, pursuant to the Plan of Reorganization, the ownership of SH 130—and with it, many documents demonstrating misconduct by Defendants—was transferred from Ferrovia and Zachry insiders to SH 130's lenders.

161. Just months later, on December 21, 2017, ZAI filed a Certificate of Cancellation.

162. When ZAI filed its Certificate of Cancellation, it knew, based on the misconduct that it had committed as described in this Complaint, that it was likely to face liability to SH 130 for breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

163. Under Delaware’s LLC Act, “[a] limited liability company which has dissolved . . . [s]hall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution.” 6 Del. C. § 18-804(b)(3).

164. Despite the requirements of the LLC Act, and despite knowing that it was likely to face liability to SH 130, ZAI failed to make sufficient provision for these liabilities.

165. Accordingly, ZAI’s affairs were not wound up in compliance with the LLC Act, and its Certificate of Cancellation should be nullified.

166. The chart below summarizes the claims brought against each Defendant:

Defendant	Constructive Fraudulent Transfer	Actual Fraudulent Transfer	Subsequent Transferee	Breach of Fiduciary Duty	Aiding and Abetting Breach of Fiduciary Duty	Unjust Enrichment	Nullification of Certificate of Cancellation
CTHC	✓	✓				✓	
Ferrovial SA			✓	✓	✓	✓	
Ferrovial Agroman			✓		✓	✓	
Ferrovial US			✓			✓	
FCC			✓		✓	✓	
FAUS			✓		✓	✓	
Cintra			✓	✓	✓	✓	
Cintra US				✓	✓	✓	
ZII			✓	✓	✓	✓	
ZAI				✓	✓	✓	✓

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests:

- a. Judgment that each Subject Transfer is avoided under 11 U.S.C. § 544(b);
- b. Judgment that the Plaintiff may recover from CTHC each Subject Transfer pursuant to 11 U.S.C. § 550(a)(1);
- c. Judgment that the Plaintiff may recover from Ferrovia SA, Ferrovia Agroman, Ferrovia US, FCC, FAUS, Cintra, and ZII under 11 U.S.C. § 550(a)(2);
- d. Judgment that the Plaintiff may recover damages from Ferrovia SA, Cintra, Cintra US, ZII, and ZAI for breach of fiduciary duty, and disgorge the profits and management fees that these Defendants derived while in breach;
- e. Judgment that the Plaintiff may recover damages from CTHC, Ferrovia SA, Ferrovia Agroman, FAUS, Cintra, Cintra US, ZII, and ZAI for aiding and abetting breach of fiduciary duty, and disgorge the profits and management fees that these Defendants derived while knowingly participating in the breach;
- f. Judgment that the Plaintiff may recover from all Defendants for unjust enrichment;
- g. Judgment that ZAI's Certificate of Cancellation is nullified for failure to wind up in compliance with 6 Del. C. § 18-804(b)(3);
- h. Reasonable costs and expenses incurred in this action, including, to the extent applicable, counsel fees; and
- i. Such other relief as the Court deems just and proper.

Dated: Houston, Texas
September 28, 2018

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I certify that on September 28, 2018 a true and correct copy of the foregoing Plaintiff's First Amended Complaint was served upon the following parties via ECF and electronic mail:

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