

**IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE
FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

**OMEGA ENGINEERING LLC
AND
MR. OSCAR RIVERA
*CLAIMANTS***

v.

**THE REPUBLIC OF PANAMA
*RESPONDENT***

CLAIMANTS' REQUEST FOR ARBITRATION

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30 NOVEMBER 2016

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I. INTRODUCTION

1. This dispute pertains to a series of measures targeted against U.S. investors¹ by the Government of Panama (“**Panama**”, “**Respondent**”, or the “**Government**”) upon President Varela’s ascension to power in July 2014. Prior to the commencement of what can be objectively judged as nothing less than a coordinated governmental campaign, these U.S. investors had worked assiduously to earn, over the course of some 34 years, a track record of successful performance in a myriad of complex construction projects, including in Panama itself. As a result they deservedly enjoyed an impeccable standing in the construction industry. It was thanks to this reputation and track-record that the investors were able to win a series of bids for major public works contracts with Government agencies, thereby establishing themselves in Panama’s booming construction sector between 2008 and 2014.

2. Unfortunately, everything changed during and following the presidential election of 2014. Thereafter, the new Government promptly targeted the U.S. investors, whose contracts had each been awarded during the previous administration, with a number of hostile measures. In particular, Respondent refused to pay the investors’ invoices, wrongfully terminated their largest contract, failed to provide required permits and change orders, targeted the investors and a related company with several baseless criminal investigations, and launched a mudslinging campaign aimed solely at sullyng the investors’ international reputation.

3. The construction contracts which form the factual predicate to the present dispute were signed between, on the one hand, private companies owned and controlled by Mr. Oscar

¹ The U.S. investors are Mr. Oscar Rivera, an American citizen, and Omega Engineering LLC, an American company, described in more detail in paragraph 2 (together, “**Claimants**”).

Rivera (“**Mr. Rivera**”), a United States citizen,² and on the other hand, authorized agents of the Panamanian Government. Mr. Rivera’s companies included Omega Engineering LLC (“**Omega-U.S.**”)—a United States-registered, full-service, general contractor engaged in the construction business³—and Panama-registered Omega Engineering Inc. (“**Omega-Panama**”) (together with Omega-U.S., the “**Omega Consortium**”).⁴ The Government contracts won by these U.S. investors concerned the construction of schools, hospitals, markets, and a courthouse.

4. Mr. Rivera’s commercial interest in Panama first began with an initial investment in early 2008. The following year, Omega-Panama was established and formal operations began. Due to its competitive pricing, international expertise, and experience in completing similar projects in the United States, Claimants were awarded public contracts over the following years to complete ten separate construction projects in Panama worth over US\$156 million.⁵ The

² U.S. Passport of Oscar Iván Rivera Rivera, issued on 9 Mar. 2007 (C-0001).

³ Omega-U.S. was originally incorporated as Omega Engineering Corp. on 27 March 1980. *See* Certificate of Incorporation of Omega Engineering Corp. dated 27 Mar. 1980 (C-0002). Omega-U.S. was reorganized as a Special Partnership (“*Sociedad Especial*”) named Omega Engineering S.E. on 30 March 1989. *See* Constituting Certificate of Omega Engineering S.E. dated 30 Mar. 1989 (C-0003). On 2 March 2009, Omega Engineering S.E. reorganized as a Limited Liability Company and formally changed its name to Omega Engineering LLC. *See* Certificate of Conversion from Omega Engineering S.E. to Omega Engineering LLC dated 2 Mar. 2009 (C-0004). Omega-U.S. possessed, prior to commencing its activities in Panama, almost 30 years of experience, specializing in large-scale, complex, and commercial construction projects.

⁴ As explained in more detail below (*see infra* Section 2.A.1) the Omega Consortium would, as and when particular expertise was required in order to bid on a public Panamanian contract, partner with additional companies with specialist expertise. These companies would become, on a case by case basis for particular contracts, members of the Omega Consortium bidding for a particular project, albeit their share in the consortium was always very small (never exceeding 1%). For the sake of simplicity, references in this Request for Arbitration to the “Omega Consortium” are limited to the core consortium members which worked on all of the Omega Consortium contracts in Panama, namely Omega-U.S. and Omega-Panama.

⁵ In addition to the eight projects listed below (*see infra* Section 2.A.1), Claimant Mr. Rivera, through a separate wholly-owned Panamanian company—PR Solutions S.A. (“**PR Solutions**”)—was, on 14 December 2010, awarded another public works construction contract for work pertaining to Panama’s International Tocumen Airport. *See* Contract No. 017/10 dated 14 Dec. 2010 (C-0005). The Omega Consortium was also awarded a separate contract for work on the Tocumen International Airport, which contract was successfully completed on time and fully paid in 2013. *See* Contract No. 035/11 dated 28 Feb. 2012 (C-0006); Certificate of Final Acceptance of Contract No. 035/11 dated 31 July 2013 (C-0007).

Omega Consortium performed this work and invoices were issued to the Panamanian Government seeking payment under those contracts in the ordinary course. For the first few years, these invoices were generally paid (albeit almost never on time). However, when Mr. Varela assumed the office of the Presidency in July 2014, the Omega Consortium's outstanding invoices went unpaid, its contracts were terminated, or both. As a result, Claimants were forced to halt field operations altogether in 2015—after more than a year of continuing to complete work under the contracts without receiving any payment from the Government. Since then, Claimants have incurred, and continue to incur, further expenses in protecting and attempting to recover their investments.

5. Worse was to follow. Seemingly with the sole aim of exacting a political vendetta against a foreign investor,⁶ the Varela administration then instituted bogus criminal investigations into Omega-Panama and Mr. Rivera. Despite the fact that, in September 2016—over a year after Respondent was required to have terminated its investigations pursuant to Panamanian law—a Panamanian court finally annulled one of the investigations into Omega-Panama and Mr. Rivera,⁷ these investigations have had the inevitable effect of decimating the business in Panama and destroying Mr. Rivera's reputation internationally. This Request for Arbitration follows months of good faith negotiations by Claimants and their representatives with the Government to salvage their investment and the relationship, all to no avail.

⁶ While it is not necessary to describe the nature or impetus of the Government's underlying motivation for this political vendetta in order to prove Respondent's blatant breaches of international law on the facts as described here, Claimants reserve the right to do so in due course if appropriate.

⁷ See Judgment of Panama's Second Superior Tribunal for the First Judicial District dated 23 Sept. 2016 (C-0008).

6. Claimants Omega-U.S. and Mr. Rivera bring this arbitration pursuant to: (i) the Treaty between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investment (the “**BIT**”);⁸ and (ii) the U.S.-Panama Trade Promotion Agreement (the “**TPA**”).⁹ Article VII(3) of the BIT and Article 10.17 of the TPA set forth Panama’s consent to arbitrate disputes before the International Centre for Settlement of Investment Disputes (“**ICSID**”).¹⁰ This Request for Arbitration is likewise made in accordance with Articles 25 and 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“**ICSID Convention**”)¹¹ and Rules 1 and 2 of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) (“**ICSID Rules**”).¹²

7. In this arbitration, Claimants seek substantial damages, including moral damages, from Respondent. While Claimants reserve the right to quantify that amount in greater detail in the course of the arbitration, including through expert testimony, they anticipate that the amount

⁸ Treaty between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investment, signed on 27 Oct. 1982, entered into force on 30 May 1991 (CL-0001). This treaty was amended by the Protocol between the Government of the United States of America and the Government of the Republic of Panama Amending the Treaty Concerning the Treatment and Protection of Investments of 27 October 1982, signed on 1 June 2000, entered into force on 14 May 2001 (CL-0002) (cumulatively the “**BIT**”).

⁹ United States – Panama Trade Promotion Agreement, signed on 28 June 2007; entered into force on 31 Oct. 2012 (the “**TPA**”) (CL-0003).

¹⁰ See BIT (CL-0001; CL-0002), art. VII(3) (which provides that “[a]t any time after six months from the date upon which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute . . . to the International Centre for the Settlement of Investment Disputes . . . for settlement either by conciliation or binding arbitration”); TPA (CL-0003), art. 10.17(2) (which provides that “[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of . . . Chapter II of the ICSID Convention . . .”).

¹¹ See Convention on the Settlement of Investment Disputes between States and Nationals of Other States, entered into force on 14 Oct. 1966 (“**ICSID Convention**”) (CL-0004).

¹² See Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) dated Apr. 2006 (“**ICSID Rules**”) (CL-0005).

will be significantly in excess of US\$100 million plus interest, costs, expenses, and other losses to be pled at the appropriate juncture.

A. Claimants

8. Claimant Omega-U.S. is a company organized and existing under the laws of the Commonwealth of Puerto Rico, United States of America.

9. Claimant Mr. Rivera, the President of Omega-U.S., is a citizen of the United States of America.

10. Claimants have taken all necessary internal actions to authorize the filing of this Request and are represented in these proceedings by Jones Day and International Dispute Resources, LLC.¹³ Contact details for all communications to Claimants in relation to this matter are as follows:¹⁴

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Attention of:
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JONES DAY
21 Tudor St.
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¹³ Power of Attorney from Claimants to Jones Day dated 7 Sept. 2016 (C-0009); Power of Attorney from Claimants to International Dispute Resources, LLC dated 7 Sept. 2016 (C-0010).

¹⁴ Claimants respectfully request that this information be considered as Claimants' contact information and addresses for the purposes of Rule 2 of the ICSID Rules.

Attention of:
Lee Coffey (lcoffey@jonesday.com)
Baiju S. Vasani (bvasani@jonesday.com)

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Attention of:
Ricardo Ampudia (ricardo.ampudia@internationaldisputeresources.com)

B. Respondent

11. Respondent is the Republic of Panama, a sovereign State and a Contracting Party to the BIT, the TPA, and the ICSID Convention. Annex 10-E of the TPA indicates that notices and other documents in these proceedings shall be served on the Panamanian Ministry of Commerce and Industry.¹⁵ Although Claimants have submitted all notices and other documents to that Ministry, Panamanian officials have formally requested that all notices and

¹⁵ TPA (CL-0003), Annex 10-E.

communications relating to this matter be sent to the Minister of Economy and Finance as follows:¹⁶

Minister of Economy and Finance
Attention of: Mr. Dulcideo de la Guardia
via Mr. Aristides Valdonedo
Ministry of Economy and Finance
Edificio Ogawa - Vía España y Calle 52E
Corregimiento de Bella Vista
Panama, Republic of Panama 0816-02886
Email: *avaldonedo@mef.gob.pa*
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Tel: +1.507.504.3136

In addition, Claimants hereby also notify Panama's Administration Attorney:

Administration Attorney
Mr. Rigoberto González Montenegro
Panama Public Ministry
Calle 34, Ave. Cuba
La Exposición – Antiguo Palacio de Arte
Panama, Republic of Panama
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II. FACTUAL BACKGROUND

A. Claimants' Investment in Panama

12. Omega-U.S. is an American company registered under the laws of the Commonwealth of Puerto Rico.¹⁷ It is a full-service general contractor engaged in the construction business, and specializing in large-scale, complex, and commercial projects.¹⁸ Mr. Rivera is a U.S. citizen hailing from Puerto Rico,¹⁹ and the sole owner of Omega-U.S. Mr.

¹⁶ See Letter MEF-2016-5968 from Panama's Minister of Economy and Finance to Jones Day dated 24 Aug. 2016 (C-0011).

¹⁷ Certificate of Incorporation of Omega Engineering Corp. dated 27 Mar. 1980 (C-0002).

¹⁸ See Omega-U.S.'s Corporate Profile, undated (C-0012).

¹⁹ U.S. Passport of Oscar Iván Rivera Rivera, issued on 9 Mar. 2007 (C-0001).

Rivera acquired his ownership in Omega-U.S. in 2006,²⁰ after working for the company since 1991. Prior to 2008, Omega-U.S.'s core market was Puerto Rico and the U.S. Virgin Islands, where Omega-U.S. successfully completed hundreds of projects for both the U.S. Government and private clients including Warner Lambert, Walgreens, and Eli Lilly, among others.

13. Mr. Rivera has extensive experience in the construction industry, having participated as general contractor, partner, or sub-contractor in hundreds of successfully completed projects in Puerto Rico, including the Puerto Rico Coliseum, the Puerto Rico Symphony Hall, the Bayamon Centro, the Complejo Deportivo Tren Urbano metro stations, the Roberto Clemente Stadium, and several correctional facilities, medical facilities, hotels, condominiums, commercial buildings, and industrial facilities. In addition, he has been a key member of owner/developer teams for residential and mix-use projects such as the Torre de Cervantes development (two residential high-rise apartment blocks built in the Rio Piedras area of Puerto Rico), the Plaza de Diego development (a mixed-use high-rise built in the city of San Juan, Puerto Rico), and the Ridgetop Villas development (a low-rise luxury residential complex constructed in the city of Guaynabo, Puerto Rico). Recently, through Omega-U.S., Mr. Rivera also completed the Centro de Distribución Goya (a distribution center constructed for the Goya food company in 2007 in Puerto Rico), the 2010 Central American and Caribbean Games Stadium (a sports facility in Mayaguez, Puerto Rico completed in 2010), as well as two Walgreens stores constructed, respectively, in Saint Thomas, U.S. Virgin Islands (in 2013), and

²⁰ In 2006, Mr. Rivera and Ms. Cristina Soto Benitez (Mr. Rivera's wife at the time) acquired 100% ownership of Omega-U.S. *See* Purchase and Sale of Partnership Interest in Omega Engineering S.E. dated 5 Oct. 2006 (C-0013); Stock Purchase Agreement of Omega Engineering S.E. dated 5 Dec. 2006 (C-0014); Agreement to Sell Business Enterprises and Real Estate dated 23 June 2006 (C-0015). On 8 November 2012, following his divorce from Ms. Cristina Soto Benitez, Mr. Rivera became the sole owner of Omega-U.S. *See* Divorce Decree (redacted) dated 8 Nov. 2012 (C-0016).

Puerto Rico (in 2014). Mr. Rivera holds land and/or development rights for several projects in Puerto Rico, which are currently stalled as a direct result of the illegal measures taken by Respondent against him and his companies.

14. In 2008, Mr. Rivera and Omega-U.S. became interested in opportunities presented by the Panamanian market, which was then experiencing a construction boom. To take advantage of this opportunity, as well as for tax and liability reasons, Mr. Rivera registered Omega-Panama with the Panamanian Companies Registry on 26 October 2009.²¹ Mr. Rivera was also the new company's 100% shareholder.²²

15. Similarly, PR Solutions, a Panamanian company also owned by Mr. Rivera,²³ was part of Mr. Rivera's and Omega-U.S.'s strategy to enter the Panamanian construction market. Through PR Solutions, in 2010, Mr. Rivera submitted a bid to complete work on Panama's Tocumen International Airport, specifically to construct certain electric, communications, fuel, and water systems. PR Solutions won the bid, and the contract was signed in December 2010.²⁴ The project was successfully completed on schedule, approved by Respondent's Comptroller-General on 30 December 2011, and paid in full to PR Solutions by Aeropuerto Internacional Tocumen, S.A., an entity wholly owned by the Government.²⁵

²¹ Public Registry of Omega Engineering Inc. dated 26 Oct. 2009 (C-0017).

²² *Id.*; Stock Certificates for Omega Engineering Inc. dated 20 Nov. 2009 (C-0019); Share Register for Omega Engineering Inc., undated (C-0018); Subscriber's Resignation Letters for Omega Engineering Inc. dated 26 Oct. 2009 (C-0020).

²³ Public Registry of PR Solutions, S.A. dated 11 June 2010 (C-0021); Resolution of the Extraordinary Meeting of Shareholders of PR Solutions, S.A. dated 17 Nov. 2010 (C-0022).

²⁴ Contract No. 017/10 dated 14 Dec. 2010 (C- 0005).

²⁵ *See* Certificate of Final Acceptance of Contract No. 017/10 dated 24 Jan. 2012 (C-0023). Further detail on the involvement of Panama's Comptroller-General in the awarding of public contracts is available below. *See infra* note 63.

16. Pleased with the progress of his initial operations in Panama and positive about the outlook for his investments in the country, Mr. Rivera, through the Omega Consortium, subsequently proceeded to participate in several competitive tenders for public works there. Of the 58 public bids in which the Omega Consortium tendered, it was successful in winning a total of 9 additional contracts, one of which was completed in 2013.²⁶ The remaining 8 contracts (collectively, the “**Contracts**” or the “**Projects**”) pertained to a variety of State infrastructure matters, totalling over US\$148 million in revenue. As required by Panamanian law, the Omega Consortium’s bids were fully transparent and subjected to a thorough review by a diverse range of independent commissions in order to ensure that they satisfied different criteria established by statute.²⁷

17. Further detail on the Projects is set out below. As will be explained, although the Omega Consortium has completed significant work on the Projects, to this day substantial payments from the Government remain outstanding.

1. Claimants’ Contractual Investments

a. Contracts with the Ministry of Health

18. On 7 December 2010, Panama’s Ministry of Health issued a request for proposals (“**RFP**”) for the construction of ten different medical facilities in various different locations

²⁶ See Contract No. 035/11 dated 28 Feb. 2012 (C-0006). The contract was completed on 31 July 2013. See Certificate of Final Acceptance of Contract No. 035/11 dated 31 July 2013 (C-0007).

²⁷ The different criteria for each public contract bid were set out in the respective requests for proposals (“*Pliego de Cargos*”) for each project. See, e.g., Request for Proposals No. 2012-0-30-0-08-AV-004833 “*Construcción de un Edificio para la Unidad Judicial Regional de La Chorrera*” dated 2012 (C-0024), at 21-24.

throughout Panama (the “**Minsa CAPSi Projects**”).²⁸ Proposals from seven different companies were received to complete these projects by the Government’s deadline of 17 January 2011, including one from the Omega Consortium.²⁹ On 28 March 2011, the Ministry of Health issued Resolution No. 345 awarding three of the Minsa CAPSi Projects to the Omega Consortium, three to a consortium led by Spanish construction firm TEYCO, SL, and the four remaining projects to another team led by a different Spanish construction firm, Contratos Iglesias, S.A.³⁰ The three Minsa CAPSi Projects awarded to the Omega Consortium, via three separate contracts all signed on 22 September 2011, were as follows:

- *The Rio Sereno Contract:*³¹ This Contract between the Omega Consortium³² and Panama’s Ministry of Health (acting on behalf of the Government),³³ was a turnkey construction contract contemplating the design and construction of a 27,500 square foot medical facility in the town of Rio Sereno (the “**Rio Sereno Contract**”). The medical facility was to have provided emergency medical treatment services, and was to have been equipped with a maternity ward and outpatient facilities. Under the Contract the Omega Consortium was also to equip the medical center with furniture and medical equipment. The

²⁸ See Request for Proposals No. 2010-0-12-0-99-AV-003042 “*Estudio, Desarrollo de Planos, Construcción, Equipamiento and Financiamiento de Diez Centros de Atención Primaria de Salud Innovadores (Minsa CAPSi)*” dated 2010 (C-0025).

²⁹ The seven groups submitting the proposals consisted of (1) Consorcio TAS Panamá; (2) Consorcio Panamá Salud 2011; (3) Consorcio BECSA Eduinter; (4) Consorcio HPC-Contratas-P&V; (5) Sociedad Española de Montajes Industriales; (6) Consorcio Galdiano-Beretz-HEYMOCOL PROCOMON; and (7) the Omega Consortium. See Minutes of the Opening of Proposal Envelopes dated 17 Jan. 2011 (C-0026), at 2.

³⁰ See Resolution of Adjudication No. 345 dated 28 Mar. 2011 (C-0027).

³¹ Contract No. 077 (2011) dated 22 Sept. 2011 (C-0028).

³² On this occasion Omega-U.S. and Omega-Panama formed a Consortium with Ciracet Corp., a Puerto Rican corporation registered as a foreign company in Panama on 12 January 2012, which was brought in due to its expertise in biomedical engineering and technology consulting services and biomedical equipment maintenance. For the Consortium’s bid for the Minsa CAPSi Projects, Ciracet Corp. was a 1% partner in the Consortium, with Omega-Panama holding a 98% share and Omega-U.S. a 1% share. See Temporary Consortium Agreement for MINSAs CAPSi Projects dated 15 Jan. 2011 (C-0029).

³³ Final Government sign-off was provided when Panama’s Comptroller-General endorsed the contract on 26 October 2011. See Contract No. 077 (2011) dated 22 Sept. 2011 (C-0028). As detailed, *infra*, the Comptroller-General’s approval is required for all Government contracts. See *infra* note 63.

last payment issued by the Government in connection with this project covers work performed in December 2013. The Omega Consortium continued on-site operations until October 2014, but the Varela administration has failed to make any further payments to the Omega Consortium.

- *The Kuna Yala Contract:*³⁴ This Contract was concluded between the Ministry of Health (acting on behalf of the State) and the Omega Consortium (the “**Kuna Yala Contract**”).³⁵ The Kuna Yala Contract was also a turnkey construction contract contemplating the design and construction of a medical facility in the town of Kuna Yala, this time of a larger size of 39,000 square feet. This medical facility was also to have provided emergency medical treatment services, and was to have been equipped with surgery rooms, a maternity ward, hospital facilities and an outpatient clinic. Under the Contract the Omega Consortium was also to have equipped the medical center with furniture and medical equipment. The last payment issued by the Government in connection with this project covers work performed in January 2014. The Omega Consortium continued on-site operations until October 2014, but the Varela administration has failed to make any further payments to the Omega Consortium.
- *The Puerto Caimito Contract:*³⁶ This Contract was concluded between the Ministry of Health (acting on behalf of the State) and the Omega Consortium.³⁷ Again, this was a turnkey contract contemplating the design and construction of a medical facility in the town of Puerto Caimito, this time of a size of 32,500 square feet (the “**Puerto Caimito Contract**”). This medical facility was also to have provided emergency medical treatment services and would have been equipped with an outpatient clinic. Under the Contract the Omega Consortium was also to have equipped the medical center with furniture and medical equipment. The last payment issued by the Government in

³⁴ Contract No. 083 (2011) dated 22 Sept. 2011 (C-0030).

³⁵ As with the Rio Sereno Contract, for the Kuna Yala Contract Ciracet Corp. was a 1% partner in the Consortium, with Omega-Panama holding a 98% share and Omega-U.S. a 1% share. *See* Temporary Consortium Agreement for MINSA CAPSi Projects dated 15 Jan. 2011 (C-0029). Final Government sign-off was provided by Panama’s Comptroller-General on 26 October 2011. *See* Contract No. 083 (2011) dated 22 Sept. 2011 (C-0030).

³⁶ Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031).

³⁷ As with the Rio Sereno and Kuna Yala Contracts, for the Puerto Caimito Contract Ciracet Corp. was a 1% partner in the Consortium, with Omega-Panama holding a 98% share and Omega-U.S. a 1% share. *See* Temporary Consortium Agreement for MINSA CAPSi Projects dated 15 Jan. 2011 (C-0029). Final Government sign-off was provided by Panama’s Comptroller-General on 26 October 2011. *See* Contract No. 085 (2011) dated 22 Sept. 2011 (C-0031).

connection with this project covers work performed in November 2013. The Omega Consortium continued on-site operations until October 2014, but the Varela administration has failed to make any further payments to the Omega Consortium.

b. Contract with the Ministry of the Presidency

19. Following the Omega Consortium's success in securing the Minsa CAPSi Projects, Mr. Rivera and Omega-U.S. remained interested in tendering for additional Panamanian Government construction projects. In August 2011, Panama's Ministry of the Presidency issued an RFP for the construction of a public market in the city of Colón.³⁸ The Omega Consortium submitted a tender for this project, and the Government ultimately received a total of six proposals from different consortia. Having reviewed the tender documents, in October 2011 the Ministry awarded the Contract to the Omega Consortium.³⁹ The Contract was signed in August 2012 between the Ministry of the Presidency (acting on behalf of the State) and the Omega Consortium (the "**Mercado Público de Colón Contract**").⁴⁰ It was a standard lump-sum, owner-financed construction contract for the construction, outfitting and equipping of a public market approximately 38,600 square feet in size intended to replace an existing, outdated building.

20. The Omega Consortium, however, has to date been unable even to commence work on this project following the issuance by the Government of a suspension order on 13

³⁸ See Request for Proposals No. 2011-0-03-0-03-AV-006870 "*Construcción y Equipamiento del Mercado Público de la Ciudad de Colón, Provincia de Colón*" dated 2011 (C-0032).

³⁹ See Resolution of Adjudication No. 124-2011 dated 10 Oct. 2011 (C-0033).

⁴⁰ Contract No. 043 (2012) dated 17 Aug. 2012 (C-0034). Final sign-off was provided by the Comptroller-General on the same day of its signature, 17 August 2012. See *id.* On this occasion Omega-U.S. and Omega-Panama bid on the project as a Consortium with Omega-Panama holding a 99% share and Omega-U.S. a 1% share. See Temporary Consortium Agreement for the Mercado Público de Colón Project dated 14 Sept. 2011 (C-0035).

December 2012. This order was issued as a result of the Government's failure to enforce orders to vacate the original premises that had previously been issued to merchants who had been occupying the existing market site.⁴¹ Since that suspension almost four years ago, the Government has steadfastly refused to provide any reasons for its failure to comply with its contractual obligations.

21. Despite numerous attempts by the Omega Consortium to persuade the Government—including under the Varela administration—to move forward with the Mercado Público de Colón Contract, the project remains at a stand-still; to this date the suspension has not been lifted. Neither has the Government reimbursed the Omega Consortium for the expenses it has incurred, and continues to incur, as a result of being forced to keep the project alive but at a stand-still. As a result, the Omega Consortium was left with no option, in February 2015 following the latest refusal by the Varela administration to lift the suspension, but to lay-off the Mercado Público de Colón's project management team, which had been hired specifically for the project in 2011. Other than an initial advance payment that the Government was required to make under the Mercado Público de Colón Contract, the Government has made no other payments to the Omega Consortium pertaining to this Contract.

c. Contract with the National Institute of Culture

22. In January 2012, an RFP was issued by Panama's National Institute of Culture ("INAC"),⁴² this time for the design and construction of a higher education facility in the area of

⁴¹ See Letter No. 691-SCF-2012 from the Ministry of the Presidency to the Omega Consortium dated 13 Dec. 2012 (C-0036), at 1-2 (explaining that the reason for the suspension was the State's failure to clear the existing market of merchants).

⁴² INAC was created on 6 June 1974 by the Council of National Legislation, through Law No. 63, in order to coordinate and develop cultural and folkloric activities in Panama. See INAC Website, last viewed on 9 Nov. 2016 (C-0037). Law No. 63 states that the INAC is under the control of the Executive Body of the

Curundú. The RFP for this turnkey project envisaged that the winning bidder would design and construct a higher education facility for cultural and artistic pursuits of approximately 313,200 square feet in size (the “**Ciudad de las Artes Contract**”).⁴³ Proposals from a total of five different groups were received by the Government on 21 April 2012, including from the Omega Consortium.⁴⁴ On 11 May 2012, INAC (acting on behalf of the State) issued a resolution awarding the Contract to the Omega Consortium,⁴⁵ with the Contract being signed between the Omega Consortium and INAC on 6 July 2012.⁴⁶ The Government, however, has failed to pay for approved and completed work billed under this Contract as of May 2014. Moreover, the Contract was abruptly and improperly terminated by INAC by way of a resolution issued in December 2014, five months after the Varela administration assumed office.⁴⁷ INAC founded its decision to terminate on baseless allegations of unjustified delays to the project.⁴⁸

(continued...)

Ministry of Education. *See* Law No. 63 “Creating the National Institute of Culture,” Official Gazette, 25 June 1974 (C-0038), art. 1.

⁴³ *See* Request for Proposals No. 2012-1-30-0-08-LV-002784 “*Contratación de los Estudios, Diseño, Suministro de Materiales, Mano de Obra, Equipo, Administración y Construcción del Proyecto Ciudad de las Artes*” dated 2012 (C-0039).

⁴⁴ The five groups submitting the proposals were: (i) RIVA, S.A.I.I.C.F.A.; (ii) Elecnor, S.A.; (iii) FCC CONSTRUCCION, S.A.; (iv) Quality Construction Services S.A.; and (v) the Omega Consortium. *See* Minutes of the Opening of Proposal Envelopes of INAC dated 21 Mar. 2012 (C-0040), at 1.

⁴⁵ *See* Resolution No. 184-12 DG/DAJ from INAC dated 11 May 2012 (C-0041).

⁴⁶ Contract No. 093-12 dated 6 July 2012 (C-0042). The Comptroller-General signed off on the Contract on 19 Sept. 2012. *See id.* On this occasion Omega-U.S. and Omega-Panama bid on the project as a Consortium with Omega-Panama holding a 99% share and Omega-U.S. a 1% share. *See* Temporary Consortium Agreement for the Ciudad de las Artes Project dated 5 Mar. 2012 (C-0043).

⁴⁷ Resolution No. 391-14 DG/DAJ from INAC dated 23 Dec. 2014 (C-0044).

⁴⁸ *Id.* at 3.

d. Contract with the Judiciary

23. Panama's Judiciary issued an RFP in September 2012 for the construction of a building in the country's La Chorrera District.⁴⁹ The RFP was for a lump-sum, owner-financed contract for the construction of a 176,500 square-foot court building with additional parking facilities. Proposals from four different consortia, including the Omega Consortium,⁵⁰ were received on 1 October 2012,⁵¹ and on 17 October 2012 the Judicial Branch issued a resolution awarding the Contract to the Omega Consortium.⁵² On 22 November 2012, the President of the Supreme Court (acting on behalf of the State) entered into a contract with the Omega Consortium on behalf of Panama's Judiciary (the "**La Chorrera Contract**").⁵³ Shortly after the Varela administration took office in July 2014, all payments on account of work performed under this Contract stopped. As a result, the Omega Consortium was in turn forced to stop work under this Contract as of January 2015.

e. Contract with the Municipality of Colón

24. The Municipality of Colón issued an RFP in November 2012 for the design, construction and equipping of a 51,000 square-foot municipal hall and mayoral offices in the

⁴⁹ See Request for Proposals No. 2012-0-30-0-08-AV-004833 "*Construcción de un Edificio para la Unidad Judicial Regional de La Chorrera*" dated 2012 (C-0024).

⁵⁰ On this occasion the Omega Consortium included Cielo Grande, S.A. as a 1% stakeholder, with Omega-Panama holding a 98% share and Omega-U.S. a 1% share. See Temporary Consortium Agreement for La Chorrera Project dated 17 Sept. 2012 (C-0045). Cielo Grande was brought in to assist with this bid due to its decade of experience building in Panama, a specific requirement under the RFP and something which the Omega Consortium, at that time, lacked.

⁵¹ The four groups which submitted proposals were: (i) Consorcio Construcciones La Chorrera; (ii) Constructora Nova, S.A.; (iii) Constructora Corcione & Asociados, S.A.; and (iv) the Omega Consortium. See Minutes of the Opening of Proposal Envelopes for La Chorrera dated 1 Oct. 2012 (C-0046), at 2-3.

⁵² Resolution No. 092-DALSA dated 17 Oct. 2012 (C-0047).

⁵³ Contract No. 150/2012 dated 22 Nov. 2012 (C-0048). The Comptroller-General signed off on the Contract on 27 December 2012. See *id.*

district of Colón.⁵⁴ The Omega Consortium submitted the only proposal in response to this RFP, and on 23 November 2012 the Municipality issued a resolution awarding the Contract to the Omega Consortium.⁵⁵ On 24 January 2013, the Mayor of the Municipality of Colón signed this turnkey, owner-financed contract on behalf of his municipality (the “**Municipality of Colón Contract**”).⁵⁶ Work on this Contract never began because the Government: (i) never vacated the project site to allow construction to commence; (ii) failed to pay for invoices issued for any task performed after May 2014; and (iii) refused to move ahead with the project after the Varela administration assumed office.

f. Contract with the Municipality of Panama

25. Finally, the Omega Consortium was also interested in an RFP issued by the Municipality of Panama in March 2013 for the design, construction, and equipping of two public markets comprised of small open-air plazas with enclosed stands from which local agricultural producers and vendors could sell their products to the public.⁵⁷ Proposals from six different consortia, including the Omega Consortium, were received by the Municipality on 8 April

⁵⁴ See Request for Proposals No. 2012-5-16-516-03-AV-000218 “*Diseño, Desarrollo de Planos, Demolición del Actual y Construcción con Equipamiento Completo del Nuevo Palacio Municipal Ubicado en la Calle 11 y 12 Santa Isabel en el Distrito de Colón*” dated Nov. 2012 (C-0049).

⁵⁵ Resolution No. 132 from the Municipality of Colón dated 23 Nov. 2012 (C-0050).

⁵⁶ Contract 01-13 dated 24 Jan. 2013 (C-0051). The Comptroller-General signed off on the Contract on 2 July 2013. See *id.* On this occasion, the Consortium consisted only of Omega-Panama and Omega-U.S, which held, respectively, a 99% and a 1% share in the Consortium. See Temporary Consortium Agreement for the Palacio Municipal de Colón Project dated 15 Nov. 2012 (C-0052).

⁵⁷ See Request for Proposals No. 2013-5-76-0-08-AV-004644 “*Diseños, Planos de Construcción, Estudio de Suelo, Impacto Ambiental, Construcción de Obra y Equipamiento de Mercado Periférico de Pacora y Juan Diaz Acuerdo a las Especificaciones Técnicas Establecidas en el Presente Pliego de Cargos*” dated Mar. 2013 (C-0053).

2013.⁵⁸ On 3 May 2013, the Municipality issued a resolution awarding the Contract to the Omega Consortium.⁵⁹ On 12 September 2013, the Municipality of Panama entered into this turnkey, owner-financed contract with the Omega Consortium (the “**Municipality of Panama Contract**”).⁶⁰ The Omega Consortium was able to complete a significant part of each market before it was forced to stop work because of the Government’s failure to pay for approved and completed tasks as of May 2014. Further, on 2 September 2014—two months after the Varela administration had assumed office—the Municipality of Panama suspended work altogether at one of the two markets to be constructed under the Municipality of Panama Project.⁶¹

* * *

26. In sum, Claimants, in conjunction with Mr. Rivera’s Panamanian company, Omega-Panama, entered into eight contracts with six different Panamanian Government entities, only to have each breached *at virtually the same time* by the six *different* Government entities *at or around the time the Varela administration took office*. These actions smack of a coordinated campaign. A more detailed summary of the Contracts is exhibited as Annex A.

⁵⁸ The six groups which submitted proposals were: (i) CIVILTEC; (ii) TENGISER; (iii) TEYCO; (iv) Constructora Pacifico y Atlantico S.A.; (v) Consorcio Mercados; and (vi) the Omega Consortium. *See* Minutes of the Opening of Proposal Envelopes dated 8 Apr. 2013 (C-0054).

⁵⁹ Resolution No. C-040 dated 3 May 2013 (C-0055).

⁶⁰ Contract No. 857-2013 dated 12 Sept. 2013 (C-0056). The Comptroller-General signed off on the contract on the same date of its signature, 12 September 2013. *See id.* On this occasion Omega-U.S. and Omega-Panama bid on the project as a Consortium with Omega-Panama holding a 99% share and Omega-U.S. a 1% share. *See* Temporary Consortium Agreement for the Municipality of Colón Project dated 3 Apr. 2013 (C-0057).

⁶¹ Letter No. S.G.-087-from the Municipality of Panama to the Omega Consortium dated 2 Sept. 2014 (C-0058)

B. Early Operational Success Was Followed by Oppression from the New Panamanian Administration

27. As detailed *supra*, all of the Contracts were at differing stages of completion by the time of the presidential election of 2014, following which the new administration of President Varela took office. As of that date, apart from the Mercado Público de Colón Contract, the progress with all of the Contracts had been relatively smooth. This is easily confirmed by the Government’s approval and payment—under the terms of the Contracts—of numerous invoices from the Omega Consortium.⁶² Despite this progress, the new Government immediately initiated a campaign of harassment against several contractors, including Claimants, that had worked with the previous administration.

28. To start with, shortly after the July 2014 change of administration, the Government swiftly cut the flow of essential funds to the Omega Consortium’s projects. Even payments that had already been approved by the respective Government agencies, and were therefore before Panama’s Comptroller-General for final sign-off on the date the new

⁶² In Panama, any Government agency that undertakes a construction project will rely on the monthly progress report, or “*Avances de Obra*,” prepared by its contractor in order to determine the progress of a particular project. Such progress reports must be approved by each Government agency’s in-house inspector as well as, on occasion, a third party inspection company, in order to ensure that payment is applied correctly and reasonably. As an additional fail-safe, an inspector from the Comptroller-General’s office must sign-off on the document prior to payment being made under the relevant contract. *See* Law No. 32 “*Por la cual se adopta la Ley Orgánica de la Contraloría General de la República*” dated 8 Nov. 1984 (C-0059), arts. 1, 11(2); Political Constitution of the Republic of Panama, as amended on Nov. 2004 (C-0060), art. 280.

administration took office,⁶³ were sent back to the relevant agencies and never paid. This action by the Comptroller-General was undertaken without explanation or basis in law.⁶⁴

29. Thus, less than six months into Mr. Varela's Presidency, the Government was in arrears in all of its eight Contracts with the Omega Consortium. From that point on, *none* of the Omega Consortium's invoices were ever paid.⁶⁵ In addition, invoices for many months of work that had already been performed went unpaid, leaving the Omega Consortium with no option but to halt operations and lay-off personnel in an effort to mitigate the damages caused by the Government's defaults.

30. This, however, was not the limit of the Government's campaign of harassment against the Omega Consortium. In addition to failing to honor the payment obligations it had under the Contracts, the Government also failed to grant the Omega Consortium routine extensions to contract performance periods for delays that were in no way attributable to the

⁶³ Under Panamanian law, the Comptroller-General must provide final sign-off for any payments from public funds. *See* Law No. 32 "*Por la cual se adopta la Ley Orgánica de la Contraloría General de la República*" dated 8 Nov. 1984 (C-0059), arts. 1, 2, 11(2); Political Constitution of the Republic of Panama, as amended on Nov. 2004 (C-0060), art. 280.

⁶⁴ That the Comptroller-General would proceed in such a way on the orders of the President is unsurprising. The term of office of the Comptroller-General runs in parallel with that of the President, and, although nominally independent, in practice Comptrollers-General "have virtually never challenged government policy." *See, e.g.,* PANAMA: A COUNTRY STUDY 182 (Sandra W. Meditz and Dennis M. Hanratty, eds 1987) (C-0061) ("The Constitution also provides for an independent Comptroller-General who serves for a term equal to that of the president and who may be removed only by the Supreme Court. The Comptroller General is charged with overseeing government revenues and expenditures and investigating the operations of government bodies. Although independent in theory, in practice holders of this office have virtually never challenged government policy."). President Varela's chosen Comptroller-General has proven no exception to this rule.

⁶⁵ Only one Omega Consortium invoice was ever approved by the current Comptroller-General, Mr. Federico Humbert Arias, after December 2014—an invoice issued in January 2015 for the La Chorrera Contract, approved in October 2015, and paid shortly thereafter. *See* Work Advance No. 13 dated 26 Jan. 2015 (C-0062).

Omega Consortium.⁶⁶ These time extensions arise out of well-documented Government-induced delays, which were acknowledged by the project inspectors. Consequently, and despite the Omega Consortium’s numerous and wholly justified extension requests, as of December 2014 the Government had improperly allowed all but one⁶⁷ of the Contracts to lapse, as follows:

Contract	Expiration
Rio Sereno	27-Sept-2014
Kuna Yala	28-Sept-2014
Puerto Caimito	04-Aug-2014
Mercado Público de Colón	01-Mar-2014
Ciudad de las Artes	08-Jul-2014
La Chorrera	09-Jul-2014
Municipality of Panama	15-Sept-2014

31. Moreover, and in addition to failing to honor its payment obligations under all of the Contracts and allowing them to expire, the Government—from December 2014—began to pass a series of measures that further harmed at least three of the Omega Consortium’s Contracts.

32. *First*, under the La Chorrera Contract, the Government was required to timely provide approved construction plans and an environmental study before the Omega Consortium

⁶⁶ Some of these contract performance extensions were properly approved by the relevant Government agencies; however, those which were before Panama’s Comptroller-General for final sign-off on the date the new administration took office were sent back to those agencies without explanation and unjustifiably denied.

⁶⁷ As of December 2014, only the Municipality of Colón Contract had not expired, but the Government was still refusing to allow the Omega Consortium access to the site. Ultimately the Government did nothing to resolve the issues preventing the Omega Consortium from gaining access to the site and the contract finally expired on 21 July 2015. *See* Letter No. 691-SCF-2012 from the Ministry of the Presidency to the Omega Consortium dated 13 Dec. 2012 (C-0036) (ordering temporary suspension of work on the project); Letter 659-CF-2013 from the Ministry of the Presidency to the Omega Consortium dated 25 Nov. 2013 (C-0063) (instructing the Omega Consortium to commence work on 15 January 2014, but failing to clear the site of the occupying merchants); Letter 2015 06 19 P004-62 from the Omega Consortium to the Ministry of the Presidency dated 19 June 2015 (C-0064) (summarizing all pending issues, including the fact that the Municipality had failed to relocate the merchants occupying the work site).

could commence construction.⁶⁸ Despite this, and offering no excuse, the Government failed to provide approved construction plans, effectively barring the Omega Consortium from fulfilling its contractual obligations.⁶⁹

33. *Second*, on 2 September 2014, the Government officially suspended construction of one of the two markets due to be built under the Municipality of Panama Contract.⁷⁰ While the Government claimed this was because it needed to revise the terms and conditions of the Contract, to date the Omega Consortium has received no revised terms and conditions, no payment under this Contract, and no communication from the Government explaining why the project has remained suspended for almost two years. Notably, after Claimants notified Respondent, on 29 July 2016, of their intent to file this Request for Arbitration, a letter was posted on the PanamaCompra website on 23 August 2016 expressing Respondent's intention to rescind the Contract and alleging breaches by Claimants.⁷¹

34. *Third*, the Government terminated the Ciudad de las Artes Contract in December 2014. In doing so, it followed neither the proper procedures for termination of the Contract set out in the document itself, nor any of the procedures established under Panamanian law more generally. Instead it unilaterally, and without notice, rescinded the Contract on the barest of

⁶⁸ Request for Proposals No. 2012-0-30-0-08-AV-004833 "*Construcción de un Edificio para la Unidad Judicial Regional de La Chorrera*" dated 2012 (C-0024), Chapter III, §§ 1.1-1.3 at 54.

⁶⁹ See Letter No. 2014 04 08 – P007-037 from the Omega Consortium to the Judiciary dated 8 Apr. 2013 (C-0065); Letter No. 2014 05 15 – P007-045 from the Omega Consortium to the Judiciary dated 15 May 2014 (C-0066).

⁷⁰ See Letter S.G.-087-from the Municipality of Panama to the Omega Consortium dated 2 Sept. 2014 (C-0058), at 2.

⁷¹ See Letter 5527/DS/2016 from Panama's Office of the Mayor to the Omega Consortium dated 19 Aug. 2016 (C-0068).

pretexts.⁷² That Respondent's excuses for its rescission were nothing but a pretext is confirmed by the fact that it had evidently decided months before that it would not continue with the project. The 2015 budget of Panama's National Assembly, published in September 2014—*three months* before Respondent's formal termination of the Contract—confirms as much by excluding any reference whatsoever to the Ciudad de las Artes project.⁷³ The Omega Consortium still has not received payment for the work it performed under the Ciudad de las Artes Contract *prior to* the Government's unilateral termination thereof.

35. Throughout this period and despite being subjected to this barrage of hostile governmental actions, the Omega Consortium nevertheless remained optimistic that an amicable resolution to the disputes over the Contracts could be reached. The Omega Consortium was thus careful to ensure that its insurance coverage, required permits, surety bonds, and guarantees remained up-to-date as required under the Contracts for as long as it could. The Omega Consortium also made numerous attempts to collect payment for its outstanding invoices—both through written communications and personal visits—but its pleas were either ignored or dismissed out-of-hand.⁷⁴ But the worst was yet to come.

⁷² See Resolution No. 391-14 DG/DAJ from INAC dated 23 Dec. 2014 (C-0044), at 1. The Government claimed that it was rescinding the Contract due to purported delays on the part of the Omega Consortium in completing key phases of the project. *Id.* at 3-4. In correspondence pre-dating issuance of the Resolution, however, the Omega Consortium had established that the project had been delayed for reasons not attributable to it. Instead of acting as it should have done under the Contract, extending the Contract performance period, and compensating the Omega Consortium for such delays, the Government chose to misconstrue these delays as breaches by the Omega Consortium. *See id.*

⁷³ See generally 2015 Budget presented by Panama's National Assembly dated 8 Sept. 2014 (C-0067).

⁷⁴ See, e.g., Letter MINSAs-50 from the Omega Consortium to Panama's Ministry of Health dated 29 July 2014 (C-0069) (requesting that MINSAs endorse already-issued change orders so that the Omega Consortium could issue the relevant invoices and receive payment for this work); Letter 2015 06 19 P004-62 from the Omega Consortium to the Ministry of the Presidency (*Secretaría de la Cadena del Frio*) dated 19 June 2015 (C-0064) (acknowledging the Government's desire to resume work on the Contract, but requesting, *inter alia*, that change orders be issued so as to re-balance the Contract with respect to payments owed for 45

C. Government Oppression Culminates in Baseless Criminal Charges

36. In October 2014, in the midst of an ongoing battle between the outgoing Martinelli and the incoming Varela administrations—a fight that involved grave accusations of corruption from both sides despite Mr. Varela’s former role as Mr. Martinelli’s Vice-President—the Varela administration opened a criminal investigation into an appointee of the previous administration, the President of Panama’s Supreme Court, Mr. Moncada Luna. Notably, during the presidential campaign and while Mr. Varela was still Panama’s Vice-President, he had voiced concerns that Mr. Moncada Luna was supporting an alleged attempt by the outgoing President to change the Panamanian Constitution to seek re-election.⁷⁵ Indeed, before winning

(continued...)

months’ worth of delay that was not attributable to the Omega Consortium); Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Municipality of Colón dated 19 June 2015 (C-0070) (requesting an explanation as to why, despite numerous inquiries from the Omega Consortium, the Municipality had not paid the Omega Consortium for work completed during the period December 2013 through April 2014, or its invoice of 12 December 2014); Letter No. MAP-5-09-14 from the Omega Consortium to Panama’s Office of the Mayor dated 5 Sept. 2014 (C-0071) (requesting assistance from the Municipal Government in coordinating the required inspections by the Comptroller-General’s office in order to receive payment for outstanding invoices); Letter No. S.G.-087-from the Municipality of Panama to the Omega Consortium dated 2 Sept. 2014 (C-0058) (explaining that the motivation for the suspension of work on the Municipality of Panama Contract was to permit the revision of the entire project, but failing to explain the exact terms of such suspension); Letter DG/107 from INAC to the Omega Consortium dated 9 Sept. 2014 (C-0073) (refusing, with no excuse, to pay for delays it had caused and most of the changes to the project that it had requested); Letter No. DG/149 from INAC to the Omega Consortium dated 23 Oct. 2014 (C-0074) (stating evasively that INAC had forwarded the Omega Consortium’s petition for information with respect to payments to its lawyers). The Omega Consortium’s employees, including its financial director, Salvador del Toro, have made, since July 2014, numerous visits to the relevant Panamanian authorities to discuss progress on the Projects, to no avail.

⁷⁵ See, e.g., *Polémica gestión de Moncada Luna*, LA PRENSA, 25 Feb. 2015 (C-0075) (describing Moncada Luna’s purportedly active role, when the Martinelli administration was in power, in trying to add an extra Chamber to Panama’s Supreme Court—a so-called Fifth Chamber—which would have had the power to extend Presidential term limits. The proposal for a Fifth Chamber had already, by that stage, been declared unconstitutional by Panama’s Supreme Court).

the election Mr. Varela publicly threatened Mr. Moncada Luna with impeachment proceedings if he did not resign.⁷⁶

37. Shortly after Mr. Varela became President, in October 2014, a criminal investigation into Mr. Moncada Luna (the “**First Investigation**”) was indeed opened. This investigation was triggered ostensibly by Mr. Moncada Luna’s purchase of two luxury condominiums for prices which were not, the Government alleged, within the economic reach of someone earning Mr. Moncada Luna’s declared Government salary. Omega-Panama and Mr. Rivera were unwittingly drawn into this investigation under the most tenuous of connections.

38. Specifically, in April 2013, the Omega Consortium had negotiated an unrelated land deal to develop a vacation resort and residential homes on the island of Las Cañas in the region of Los Santos, Tonosí, Panama (the “**Las Cañas Development**”). Omega-U.S. and Mr. Rivera had made similar investments in the past in both Puerto Rico and the Dominican Republic. Thus, the Las Cañas Development was entirely in keeping with Omega U.S.’s and Mr. Rivera’s routine business activities. For this land purchase, Omega-Panama set up a Panamanian special purpose vehicle—Punela Development Corp. (“**Punela**”)—to purchase and hold title to the land.⁷⁷ The initial meetings regarding the Las Cañas Development were conducted between Mr. Frankie Lopez (a Director of Omega-Panama and long-time friend and business associate of Mr. Rivera) and Ms. Maria Gabriela Reyna (“**Ms. Reyna**”) of local law firm Reyna y Asociados, who was representing the land owner—a Panamanian company named J.R. Bocas Investment Inc. (“**JR Bocas**”).

⁷⁶ See *Juan Carlos Varela reitera que Moncada Luna debe renunciar por dignidad*, LA PRENSA, 21 June 2012 (C-0076).

⁷⁷ See generally Public Registry of Punela Development Corp. dated 2 Jan. 2013 (C-0077).

39. Negotiations for the Las Cañas Development took place over the course of a few weeks, and a Sale and Purchase Agreement was ultimately signed by JR Bocas and Punela on April 2013 for an agreed purchase price of US\$1 million, payable in three installments.⁷⁸ The first two of these installments, payments of US\$250,000 each, were made before a dispute subsequently developed regarding: (i) the outstanding mortgage on the land; and (ii) the lack of public works infrastructure (electricity lines, water pipes, *etc.*) at the site.

40. Members of the Varela administration alleged that the two contractual payments made by Omega-Panama—through PR Solutions—to Reyna y Asociados for the account of the seller,⁷⁹ JR Bocas, were then subsequently transferred by Ms. Reyna to another account, then to another, and that these funds eventually found their way into the bank account of Mr. Moncada Luna’s wife, and were ultimately used to purchase the two luxury condominiums which led to the investigation into Mr. Moncada Luna.⁸⁰

41. Separately, five months before the documents in the Las Cañas Development were executed, on 22 November 2012, Mr. Moncada Luna had signed the La Chorrera Contract with the Omega Consortium on behalf of the Judiciary (as the President of Panama’s Supreme Court). In essence, therefore, the Government was attempting to piece together a link between (a) Mr. Rivera’s role in the Las Cañas Development; to (b) the money used by Mr. Moncada Luna’s

⁷⁸ See Sale and Purchase Agreement between JR Bocas Investments, Inc. and Punela Development Corp. dated Apr. 2013 (C-0078).

⁷⁹ See Check from PR Solutions, S.A. to Reyna y Asociados dated 25 Apr. 2013 (C-0079); Check from PR Solutions, S.A. to Reyna y Asociados dated 12 July 2013 (C-0080).

⁸⁰ See Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081); Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082).

wife in purchasing the condominiums; to (c) Mr. Moncada Luna's earlier signature of the La Chorrera Contract.

42. There simply was no such link. The La Chorrera Contract had been awarded to the Omega Consortium following a transparent public bid, which included a review by an independent, three-person "vetting commission" of architects.⁸¹ This independent commission had evaluated the four bids initially received by the Government and had chosen the Omega Consortium's as the best.⁸² Within that construct, signature by the President of the Court of the contractual arrangements fell precisely and legitimately within Mr. Moncada Luna's legal purview.⁸³ He had no influence over whom the Government chose for the construction, and would have signed the contract in his designated role as President of the Court no matter whom the Government had selected. Equally, Mr. Rivera had no control over where, when, and to whom Ms. Reyna transferred the purchase price funds under the Las Cañas Development.

43. Indeed, the prosecutor leading the investigation into Mr. Moncada Luna (the "**Designated Prosecutor**"), ultimately and publicly dismissed the allegation of any involvement by Mr. Rivera or the Omega Consortium,⁸⁴ and, as discussed below, the Government has never

⁸¹ See Request for Proposals No. 2012-0-30-0-08-AV-004833 "*Construcción de un Edificio para la Unidad Judicial Regional de La Chorrera*" dated 2012 (C-0024); Report from the Vetting Commission dated 9 Oct. 2012 (C-0083); see also Administrative Resolution No. 082/2012 dated 18 Sept. 2012 (C-0084) (nominating the three architects to the Vetting Commission).

⁸² Report from the Vetting Commission dated 9 Oct. 2012 (C-0083).

⁸³ It is important to emphasize that, in addition to the Omega Consortium, three other companies participated in the public bid for this Contract, none of which were competitive with the Omega Consortium's bid and all of which exceeded the Panamanian Government's reference value (which was then publicly available). See Minutes of the Opening of Proposal Envelopes for La Chorrera dated 1 Oct. 2012 (C-0046).

⁸⁴ See Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015, available at: https://www.youtube.com/watch?v=JFX_tCVyHo4 (Part I); https://www.youtube.com/watch?v=6bMNm_IDJ6Q (Part II); <https://www.youtube.com/watch?v=ySoXEjIkOvY&nohtml5=False> (Part III) (C-0085) (only available electronically).

produced *any evidence whatsoever* indicating that either Omega-Panama or Mr. Rivera transferred funds to Mr. Moncada Luna or any of his relatives for any purpose.⁸⁵

44. Unfortunately, this did not stop the Government from using this fabricated connection between Mr. Rivera and Mr. Moncada Luna as a tool to harass and intimidate Claimants. For instance, although the Panamanian Government's investigation of Mr. Moncada Luna commenced in October 2014, Mr. Rivera remained unaware of his apparent involvement until 22 January 2015, when the Designated Prosecutor abruptly froze Omega-Panama's and PR Solutions' Panamanian bank accounts. By this point, the Government had already suspended and subsequently terminated two of the Omega Consortium's Contracts and refused to make payments for work already performed on the others. Crucially the Government *never* attributed these actions to the pendency of the criminal investigation. Indeed, in mid-2015 (well after the criminal investigation had begun), Mr. Moncada Luna's successor as Supreme Court President offered to amend the La Chorrera Contract with the Omega Consortium to provide it more time

⁸⁵ The only "evidence" provided by the Government has been the Government's confirmation that: (i) the Omega Consortium entered into a contract with the Judiciary, which, as required by Panamanian law, was signed by Mr. Moncada Luna on its behalf; and (ii) reports authored by the forensic unit of the prosecutor's office attempting to link the two payments to Reyna y Asociados for the purchase of the Tonosí land with unrelated payments made by unrelated companies to accounts owned by Mr. Moncada Luna's wife. *See* Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor Organized Crime Division dated 5 June 2015 (C-0081); Resolution 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082); Summary by the Public Prosecutor First Anti-Corruption Division of the Attorney-General dated 17 Nov. 2015 (C-0086). The Government has relied on the same "facts" to pursue two different investigations into Mr. Rivera and Omega-Panama, conduct two raids of Omega Panama's offices, freeze two bank accounts belonging to PR Solutions and Omega-Panama, and as purported justification for issuing both a detention order against Mr. Rivera in Panama, and an Interpol Red Notice against Mr. Rivera worldwide. All of these actions have been taken against the Omega Consortium and Mr. Rivera despite the fact that the Prosecutor leading the investigation into Mr. Moncada Luna, relying on the same evidence, saw fit to exonerate Omega-Panama and Mr. Rivera.

to complete the project,⁸⁶ strongly suggesting that the new Supreme Court President—who was appointed by President Varela—did not find the criminal allegations convincing.

45. In February 2015, Mr. Moncada Luna pled guilty to unjustified enrichment and perjury on public documents. As mentioned, *supra*, during Mr. Moncada Luna’s sentencing hearing on 5 March 2015, the Designated Prosecutor publicly affirmed that Omega-Panama and Mr. Rivera were not linked to Mr. Moncada Luna’s assets.⁸⁷ In a publicly accessible video of the proceedings, the Designated Prosecutor affirmed categorically that “PR Solutions [and] Omega Engineering . . . are [among the] companies that are not linked to the *unjustified enrichment charges against the judge*,” further declaring them to be no more than “Affected Third Parties.”⁸⁸ This confirmation was corroborated by Ms. Reyna’s testimony in that investigation: despite incriminating herself and others in forging three bills of exchange on behalf of a further company involved in the investigations, which allegedly made payments that eventually reached Mr. Moncada Luna, and despite being offered a reduced sentence in exchange for incriminating her accomplices (and indeed pointing the finger at others who were, in fact, involved in illicit actions), she nevertheless correctly absolved Omega-Panama and Mr. Rivera from any and all wrongdoing.⁸⁹

⁸⁶ Letter No. 765/DALSA/2015 from the Judiciary to the Omega Consorcio dated 10 Aug. 2015 (C-0087).

⁸⁷ *See supra* ¶ 42 & n.82.

⁸⁸ Sentencing Hearing of Mr. Moncada Luna dated 5 Mar. 2015, available at https://www.youtube.com/watch?v=6bMNm_IDJ6Q (Part II) (C-0085), at 25:40 - 28:38 minutes (only available electronically). Under Panamanian law an Affected Third Party is a person, natural or legal, who is not found to be criminally or civilly liable for the underlying criminal act, but whose assets remain affected by the criminal proceeding or judgment. Criminal Procedure Code of the Republic of Panama dated 28 Aug. 2008 (C-0088), art. 106.

⁸⁹ *See* Supplemental Declaration of Maria Gabriela Reyna Lopez dated 14 July 2015 (C-0089); Witness Confrontation between Maria Gabriela Reyna Lopez and Jorge Enrique Espino Mendez dated 22 July 2015 (C-0090).

46. Despite this, and in direct breach of Panamanian law,⁹⁰ the Government did not contemporaneously take, and to this day still has not taken, any steps to unfreeze Omega-Panama's and PR Solutions' frozen bank accounts. Worse still, a second investigation was opened by the public prosecutor's organized crime division (the "**Second Investigation**") days after Mr. Moncada Luna's sentencing hearing, on the *same* factual allegations and case theory,⁹¹ albeit this time the investigation targeted Felipe "Pipo" Virzi (a close friend of Mr. Moncada Luna), Mr. Moncada Luna's wife, and all other companies or individuals allegedly linked to the original allegations—which therefore encompassed, in breach of Panamanian law,⁹² Omega-Panama and Mr. Rivera. Notably, the Second Investigation was opened at the behest of

⁹⁰ Under Panamanian law a prosecutor must conclude an investigation within a maximum of four months from the date the investigation commences. *See* Judicial Code of the Republic of Panama dated Jan. 2010 (C-0091), art. 2033.

⁹¹ *See generally* Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082); Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081). Both Resolution No. 40-15 and the Report of Preliminary Financial Analysis state that, in response to the Attorney-General's 20 March 2015 Resolution, the Designated Prosecutor had submitted the case file used in the investigation of Mr. Moncada Luna to the Prosecutor in charge of the Second Investigation ("**Second Prosecutor**") in order that he might conduct an investigation into Felipe Virzi, María del Pilar Fernández de Moncada and other related parties (which include Mr. Rivera, Omega-Panama and PR Solutions) in order to determine whether the evidence in the case file constitutes a crime, and, if so, to proceed to individualize charges against those responsible. Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082), at 2; *see also* Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081). Further, Resolution No. 40-15 and the Report of Preliminary Financial Analysis proceed to list (as the basis of the investigation) the same forensic financial evidence (transfers of money between layers of companies) as that used by the Designated Prosecutor. *See* Resolution No. 40-15 of the Second Prosecutor dated 15 June 2015 (C-0082); Report of the Preliminary Financial Analysis of Case No. 049-15 by the Public Prosecutor for Organized Crime dated 5 June 2015 (C-0081). These documents confirm, therefore, that the Second Investigation is based on the same factual allegations as the First Investigation. In addition, the crime of money laundering, which is the basis for the Second Investigation, is one of the crimes for which Mr. Moncada Luna was investigated.

⁹² It is Claimants' understanding that Panama's Criminal Procedure Code provides protection from double jeopardy. In particular, Article 7 of the Code provides that "[n]o one can be *criminally investigated* or judged *more than once* for the same crime, even if the crime is given a different name." Criminal Procedure Code of the Republic of Panama (C-0088), art. 7 (emphasis added, translation by Claimants' Counsel). Here, the Prosecutor from Panama's Anti-Corruption Division and, as described *infra* at paragraph 47, the Prosecutor from Panama's Organized Crime Division have launched investigations into Mr. Rivera and Omega-Panama based on the same evidence, thereby attempting to circumvent article 7 of the Panamanian Criminal Procedure Code's prohibition against double jeopardy by giving the alleged crime a different name.

Panama's Attorney-General a mere two weeks after the Omega Consortium filed its formal Notice of Dispute under the BIT and the TPA following Respondent's unilateral rescission of the Ciudad de las Artes Contract.⁹³

47. Then, and in complete disregard of the Designated Prosecutor's express finding that neither Omega-Panama nor Mr. Rivera had a case to answer, the Prosecutor directing the Second Investigation issued a detention order⁹⁴ and INTERPOL Red Notice⁹⁵ against both Mr. Rivera and Mr. Francisco Feliú (one of Omega-Panama's senior officers).

48. The Government's harassment of Omega-Panama and Mr. Rivera did not stop there. Incredibly, a *third* investigation was initiated by a Prosecutor from Panama's Anticorruption division (the "**Third Investigation**") on the basis of the very same set of "facts" that were used as purported justification for opening the first two prosecutions against Mr. Rivera and Omega-Panama.⁹⁶ Yet despite executing search and seizure orders against Omega-Panama's and PR Solutions' offices in an attempt to obtain documentation related to bank transactions relating to the facts being investigated,⁹⁷ the Government has been unable to find any incriminating evidence. This is due to the simple fact that none exists.

⁹³ Notice of Dispute dated 3 Mar. 2015 (C-0092).

⁹⁴ See Resolution of Detention No. 052-15 dated 25 Aug. 2015 (C-0093).

⁹⁵ See *Fiscalía pide a Interpol que emita 'alerta roja' para ubicar a 4 empresarios por caso Moncada Luna*, TVN NOTICIAS, 2 Sept. 2015 (C-0094).

⁹⁶ In his search and seizure order, the Anticorruption Prosecutor stated that, upon having received the case file from the Second Prosecutor, there appeared to be evidence of illicit transactions that implied that offences against the public administration had been committed, though the Anticorruption Prosecutor in the Third Investigation supported this assertion with only the bank transactions listed by the Designated Prosecutor in the First Investigation (which Prosecutor had reviewed this evidence and subsequently exonerated Omega-Panama of any and all illicit activity) and the Second Prosecutor in the Second Investigation. See Search and Seizure Order issued by the Anticorruption Prosecutor dated 17 Nov. 2015 (C-0095), at 2-3.

⁹⁷ See *id.*

49. Perhaps unsurprisingly, on 23 September 2016, Panama's Second Superior Tribunal for the First Judicial District annulled the Second Investigation.⁹⁸ Despite this, as of today and in violation of Panamanian law, both Omega-Panama's and PR Solutions' Panamanian bank accounts remain frozen. Moreover, the Government has still refused to lift the detention orders and INTERPOL red notices issued against Messrs. Rivera and Feliú, and Mr. Rivera remains unable to travel outside of the United States (including to oversee what remains of his investment in Panama) for fear of being apprehended by INTERPOL or the Panamanian authorities.

50. Respondent's actions against Mr. Rivera and the Omega Consortium have destroyed their investments both in Panama and Puerto Rico and damaged their reputations internationally. The numerous press articles reporting on the investigations into Omega-Panama and Mr. Rivera have prompted both Mr. Rivera's Panamanian and U.S. banks to close most of Mr. Rivera's (and therefore Omega-Panama's and Omega-U.S.'s) commercial accounts both inside and outside of Panama.⁹⁹ On top of that, and as a direct result of Panama's unjustified campaign against Omega-Panama and Mr. Rivera, Omega-Panama's and Omega-U.S.'s surety company, Travelers Casualty & Surety Company ("Travelers"), has refused to bond any potential new Omega-Panama or Omega-U.S. projects. With no other banks, sureties, and contractors willing to do business with someone accused of such a crime in Panama, this has effectively barred Omega-Panama and Omega-U.S. from participating in public bids or obtaining new contracts anywhere in the world.

⁹⁸ See Judgment of Panama's Second Superior Tribunal for the First Judicial District dated 23 Sept. 2016 (C-0008).

⁹⁹ UBS, Credit Suisse, BAC and Banesco are among the institutions that have forcibly closed Mr. Rivera's deposit accounts or credit facilities.

51. Mr. Rivera was also required by the Agency for the Finance of Infrastructure, a Government entity in Puerto Rico for which Omega-U.S. used to perform a building project, to provide a sworn statement certifying that he was not being investigated.¹⁰⁰ As a direct result of Respondent’s actions, the relationship between the Government of Puerto Rico and Omega-U.S. seriously deteriorated, eventually leading Omega-U.S. to lose the project.¹⁰¹ And as yet another direct result of Respondent’s actions, in 2015 Travelers began the process of forcing Omega-U.S. to admit default under the indemnity agreement resulting in Omega-U.S.’s loss of its last contract in Puerto Rico.¹⁰²

III. CLAIMANTS MEET THE JURISDICTIONAL REQUIREMENTS OF THE BIT, THE TPA, AND THE ICSID CONVENTION

A. The BIT and the TPA Apply in This Arbitration

52. The BIT entered into force in 1991, and remains in force to this date.¹⁰³ On 31 October 2012, and after the Omega Consortium had entered into five of its eight Contracts with the Government,¹⁰⁴ the TPA entered into force.¹⁰⁵ The TPA—which protects investments that

¹⁰⁰ See Letter from the Puerto Rico Infrastructure Financing Authority to Oscar Rivera dated 7 Sept. 2015 (C-0096).

¹⁰¹ See Letter from the Puerto Rico Infrastructure Financing Authority to Corporación del Fondo de Seguro del Estado dated 28 Mar. 2016 (C-0097).

¹⁰² See, e.g., Email from Travelers Casualty & Surety Company to Omega-U.S. dated 9 Feb. 2015 (C-0098); Letter from Travelers Casualty & Surety Company to Omega-U.S. dated 16 Sept. 2015 (C-0099). Under the General Agreement of Indemnity executed between Travelers Casualty & Surety Company (“Travelers”) and Omega-U.S. on 17 May 2010, upon the occurrence of an event of default (such as those alleged by Panama) Travelers had the right to “take possession of the work under any Contract and to complete said Contract, or cause, or consent to, the completion thereof.” General Agreement of Indemnity executed between Travelers Casualty & Surety Company and Omega-U.S. dated 17 May 2010 (C-0100), §6(a).

¹⁰³ See generally BIT (CL-0001; CL-0002).

¹⁰⁴ Contract No. 077 (2011) dated 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-0028); Contract No. 083 (2011) dated 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-0030); Contract No. 085 (2011) 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-

were “in existence as of the date of entry into force of [the TPA] or established, acquired, or expanded thereafter”¹⁰⁶—provides that the BIT’s dispute resolution provisions (but *not* its substantive provisions) “shall be suspended.”¹⁰⁷ The TPA also provides, however, that for a period of ten years from the TPA’s entry into force—*i.e.*, until 31 October 2022—this suspension does not apply to, *inter alia*, “investments covered by the [BIT] as of the date of entry into force of [the TPA].”¹⁰⁸ Therefore, the substantive provisions of both the BIT and the TPA are applicable to the totality of Claimants’ investment, while the dispute resolution provisions of the BIT apply to the five Contracts concluded prior to the TPA’s entry into force, and the dispute resolution provisions of the TPA apply to Claimants’ three remaining Contracts.

B. The BIT’s Jurisdictional Requirements Are Satisfied

53. This arbitration fits squarely within the jurisdiction of the BIT. To satisfy the BIT’s jurisdictional requirements: (1) the respondent must be a Contracting Party to the BIT; (2) Claimants must be a “national” or a “company” of the United States of America; and (3) Claimants must have a legal dispute with Panama in connection with their “investment” in Panama.¹⁰⁹ As explained below, Claimants’ claims satisfy all of these requirements.

(continued...)

0031); Contract No. 043 (2012) dated 17 Aug. 2012 (approved by Comptroller-General on 17 Aug. 2012) (C-0034); Contract No. 093-12 dated 6 July 2012 (approved by Comptroller-General on 19 Sept. 2012) (C-0042).

¹⁰⁵ *See generally* TPA (CL-0003).

¹⁰⁶ *Id.*, art. 2.1.

¹⁰⁷ *Id.*, art. 1.3(2) (“Articles VII [investor-State dispute resolution] and VIII [State-to-State dispute resolution] of the [BIT] shall be suspended on the date of entry into force of this Agreement.”).

¹⁰⁸ *Id.*, art. 1.3(3).

¹⁰⁹ BIT (CL-0001; CL-0002), art. VII(2) (referring to an “investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of the first Party”).

54. *First*, the Republic of Panama is an original signatory of the BIT, which was signed on 27 October 1982 and entered into force on 30 May 1991.¹¹⁰ As such, Panama is a Contracting Party to the BIT and remains so to this date. The initial term of validity of the BIT is 10 years, which period is extended tacitly, unless the BIT is terminated “by giving one year’s written notice to the other Party.”¹¹¹ As explained above, the entry into force of the TPA merely suspended the *dispute resolution provisions* of the BIT as regards investments made *after* that date. Consequently, no termination notice for the BIT has been lodged and the substantive provisions of that treaty remain fully in force.

55. *Second*, the BIT defines “national of a Party” as “a natural person who is a citizen of that Party.”¹¹² Claimant Mr. Rivera is an American citizen and, therefore, a “national of a Party” under the BIT. Further, the BIT defines “company of a Party” as a “company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof.”¹¹³ As set out above, Claimant Omega-U.S. is a company registered in the United States of America. Accordingly, Omega-U.S. is a “company of a Party” as defined under the BIT.

56. *Third*, Claimants have a legal dispute in connection with their “investment” in Panama. “Investment” is defined by Article I(d) of the BIT as “every kind of investment, owned or controlled directly or indirectly including equity, debt, and service, and investment contracts, and includes:

¹¹⁰ *See id.* at [34].

¹¹¹ *Id.*, art. XIII(2)-(3).

¹¹² *Id.*, art. I(a).

¹¹³ *Id.*, art. I(c).

- (i) tangible and intangible property, including rights, such as mortgages, liens and pledges;
- (ii) a company or shares of stock or other interests in a company or interests in the assets thereof;
- (iii) a claim to money or a claim to performance having economic value and associated with an investment;
- (iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how; and goodwill;
- (v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;
- (vi) any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products; and
- (vii) returns which are reinvested. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.”¹¹⁴

57. Nearly all of these examples make up a part of Claimants’ investment in Panama. For instance, the eight construction Contracts entered into by Claimant Omega-U.S. constitute a clear and valid “right conferred by law or contract” giving Omega-U.S. (and Claimant Mr. Rivera through his ownership of Omega-Panama) a “claim to money or a claim to performance.” Further, Claimant Mr. Rivera’s ownership of Omega-Panama constitutes ownership of “a company or shares of stock and other interests in a company” in Panama. Finally, Claimant Mr. Rivera’s capital investment through Omega-Panama also constitutes an investment under the BIT, specifically in “tangible” property. It therefore follows that Claimants unquestionably have made a qualified investment under the BIT in Panama. The legal dispute between Claimants and the Government in connection with this investment is discussed *infra* at paragraphs 68-73.

¹¹⁴ *Id.*, art. I(d).

58. Claimants have also satisfied the BIT's requirements for negotiations and a cooling-off period. With respect to the negotiations requirement, Article VII(2) of the BIT provides that "[i]n the event of an investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of the first Party, the parties to the dispute shall initially seek to resolve it by consultation and negotiation."¹¹⁵ In accordance with this requirement, Claimants attempted to negotiate the resolution of the present dispute with Respondent.¹¹⁶ To date, however, negotiations have proven fruitless. With respect to the cooling off period, the BIT grants investors the right to "choose to consent in writing to the submission of the dispute to [ICSID]" "at any time after six months from the date upon which the dispute arose"¹¹⁷ As discussed in Section IV below, the actions by the Government giving rise to this dispute began in the latter half of 2014.

C. The TPA's Jurisdictional Requirements Are Satisfied

59. Similarly, this arbitration fits squarely within the jurisdiction of the TPA. As with the BIT, to satisfy the TPA's jurisdictional requirements: (1) the respondent must be a Contracting Party to the TPA; (2) Claimants must be an "investor of a Party," which includes a "national" or an "enterprise" of the United States of America; and (3) Claimants must have a

¹¹⁵ *Id.*, art. VII(2).

¹¹⁶ *See* Letter from Jones Day to the Chief of International Trade Negotiations of Panama dated 29 July 2016 (C-0101). This letter was received by Respondent on 29 July 2016. *See* Email from Ministry of Commerce and Industry to Jones Day dated 1 Aug. 2016 (C-0102).

¹¹⁷ BIT (CL-0001; CL-0002), art. VII(3).

legal dispute with Respondent in connection with their “investment” in Panama.¹¹⁸ Claimants’ claims satisfy all of these requirements.

60. *First*, the Republic of Panama is an original signatory to the TPA, which was signed on 28 June 2007 and which entered into force on 31 October 2012.¹¹⁹ As such, Panama is a Contracting Party to the TPA and remains so to this date. The TPA remains in force unless terminated “by written notification to the other Party.”¹²⁰ No such termination notice has been lodged and, thus, the TPA remains in force.

61. *Second*, the TPA has a similar nationality requirement to the BIT. It defines “investor of a Party” as “a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.”¹²¹ As an American citizen, Claimant Mr. Rivera is a “national . . . of a Party” under the TPA. Claimant Omega-U.S. is “an enterprise constituted or organized under the law of [the United States of America],”¹²² and, accordingly, is an “enterprise of a Party” under the TPA.

62. *Third*, Claimants have “made an investment” in Panama from which this legal dispute arises. “Investment” is defined by Article 10.29 of the TPA as follows: “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

¹¹⁸ TPA (CL-0003), arts. 10.1(1) (providing that Chapter 10 of the TPA “applies to measures adopted or maintained by a Party relating to . . . (a) investors of the other Party [and] (b) covered investments . . .”); 10.29.

¹¹⁹ *See id.* at [32].

¹²⁰ *Id.*, art. 22.5.(2)

¹²¹ *Id.*, art. 10.29.

¹²² *Id.*

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

. . .

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

. . . and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”¹²³

63. Claimants’ “investment” in Panama plainly satisfied this definition. Claimant Mr. Rivera’s ownership of Omega-Panama constitutes ownership of “an enterprise” in Panama as well as ownership of “shares, stock, and other forms of equity participation in an enterprise.”¹²⁴ Further, the eight construction Contracts entered into by Claimant Omega-U.S. are a quintessential investment under the TPA as “turnkey, construction . . . contracts.”¹²⁵ Finally, Claimant Mr. Rivera’s capital investment in Panama through Omega-Panama constitutes an investment under the TPA as, *inter alia*, an investment in “tangible . . . movable or immovable property.”¹²⁶ The legal dispute between Claimants and the Government in connection with this investment is discussed *infra* at paragraphs 68-73.

64. In addition, Claimants have satisfied the TPA’s negotiation, notice, and cooling-off requirements. Article 10.15 of the TPA provides that “[i]n the event of an investment dispute,

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation” before submitting these claims to ICSID.¹²⁷ In accordance with this requirement, Claimants attempted to negotiate the resolution of the present dispute with Panama.¹²⁸ To date, however, negotiations have proven fruitless. With respect to notice of the dispute, the TPA requires that Claimants “deliver to the respondent a written notice of [their] intention” to arbitrate “[a]t least 90 days before submitting any claim to arbitration.”¹²⁹ Claimants satisfied this requirement by filing a notice of intent to submit their claims to arbitration on 11 March 2016.¹³⁰ Lastly, Article 10.16(3) of the TPA stipulates that Claimants may submit their claims to arbitration “[p]rovided that six months have elapsed since the events giving rise to the claim.”¹³¹ As discussed in Section IV below, the actions by the Government giving rise to this dispute began in the latter half of 2014, and more than six months have passed since Claimants’ 11 March 2016 notification.

D. All Claimants Meet the ICSID Convention’s Jurisdictional Requirements

65. Article 10.16.3(a) of the TPA, and Article VII(3)(a) of the BIT, respectively, permit covered investors to bring disputes against Respondent to ICSID.¹³² Under the ICSID

¹²⁷ *Id.*, art. 10.15.

¹²⁸ *See* Letter from Jones Day to the Chief of International Trade Negotiations of Panama dated 29 July 2016 (C-0101). This letter was received by Respondent on 29 July 2016. *See* Email from Ministry of Commerce and Industry to Jones Day dated 1 Aug. 2016 (C-0102).

¹²⁹ TPA (CL-0003), art. 10.16(2). No notice requirement is found in the BIT.

¹³⁰ *See* Notice of Intent to Submit Claims to Arbitration under the United States-Panama Trade Promotion Agreement dated 11 Mar. 2016 (C-0103); Email from Ministry of Commerce and Industry to Mr. Rivera dated 11 Mar. 2016 (C-0104) (confirming receipt of the Notice of Intent).

¹³¹ TPA (CL-0003), art. 10.16(3); *see also* BIT (CL-0001; CL-0002), art. VII(3)(a).

¹³² *See* BIT (CL-0001; CL-0002), art. VII(3)(a) (“At any time after six months from the date upon which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute . . . to [ICSID]”); TPA (CL-0003), art. 10.16.3(a) (“[A] claimant may submit a

Convention, a claimant must meet ICSID's jurisdictional requirements as well. Article 25(1) of the ICSID Convention specifies that the "jurisdiction of the Centre shall extend to [(1)] any legal dispute arising directly out of an investment, [(2)] between a Contracting State . . . and a national of another Contracting State, [(3)] which the parties to the dispute consent in writing to submit to the Centre."¹³³ All of these prerequisites are met in the present case.

66. *First*, while the ICSID Convention provides no definition of the term "investment," the term is widely accepted to have a broad meaning that is satisfied here. Claimants have continuously invested in Panama since 2009. Mr. Rivera created a Panamanian company, Omega-Panama, to act in consortium with Omega-U.S. Claimants then poured millions of dollars into the Omega Consortium's activities under the Contracts, and had a contractual right to complete and be paid for various construction activities in Panama through the Omega Consortium over a 6-year period. The Contracts were profitable for Claimants and beneficial for Respondent. Revenue and profits grew steadily until Respondent began its unlawful actions against the Claimants' investment, and the legal dispute between Claimants and Respondent arises directly out of the actions taken by Respondent against this investment in breach of Claimants' rights under the BIT and the TPA, as discussed *infra* at paragraphs 68-73. This long-term commitment, the expectation of profit and risk, and the avowed benefit to the host State economy, qualify Claimants' activities as a quintessential investment operation in Panama.

(continued...)

claim . . . under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention . . .").

¹³³ ICSID Convention (CL-0004), art. 25(1).

67. *Second*, Claimants are nationals of a Contracting State to the ICSID Convention. Mr. Rivera has been and remains a national of the United States as of the date of this Request. Omega-U.S. (as a juridical person of the United States) has been and remains a national of the United States as of the date of this Request. The United States signed the ICSID Convention on 27 August 1965; deposited instruments of ratification on 10 June 1966,¹³⁴ and the Convention entered into force there on 14 October 1966. For its part, Panama signed the ICSID Convention on 22 November 1995 and deposited instruments of ratification on 8 April 1996.¹³⁵ The ICSID Convention entered into force in Panama on 8 May 1996.¹³⁶

68. *Third*, Claimants and Respondent have both expressed their consent in writing to submit this dispute to arbitration. By the terms of Article VII of the BIT (as amended), Panama “consent[ed] to the submission of an investment dispute in accordance with the choice of the [U.S.] national or company under paragraph 3(a)(i) [which confirms that “the national or company concerned may choose to consent in writing to the submission of the dispute to [ICSID]].”¹³⁷ The BIT further clarifies that “[t]his consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre).”¹³⁸ Similarly, under Article 10.16(3) of the investment chapter of the TPA, U.S. investors are entitled to bring investment disputes against Panama to ICSID.¹³⁹ Article 10.17 provides that “[e]ach Party consents to the submission of a

¹³⁴ List of Contracting States and Other Signatories of the Convention dated 12 Apr. 2016 (C-0105).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ BIT (CL-0001; CL-0002), art. VII(3)(b).

¹³⁸ *Id.*, art. VII(3)(b)(i).

¹³⁹ TPA (CL-0003), art. 10.16(3).

claim to arbitration under this Section in accordance with this Agreement” and that “[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre)”¹⁴⁰ These are Panama’s unequivocal statements of consent and offers to arbitrate a potential legal dispute with a qualified investor. Claimants hereby accept Panama’s offer of arbitration by requesting registration of this Request for Arbitration with ICSID.

IV. RESPONDENT’S BREACHES OF THE BIT AND THE TPA

69. As a result of Respondent’s unlawful actions discussed in Section II above, and additional information to be pled during the course of the arbitration, Respondent has committed multiple breaches of its obligations under the BIT and the TPA in respect of Claimants’ investments in Panama, including without limitation the following:

70. *First*, Respondent’s treatment of Claimants’ investments constituted an expropriation or a measure having an effect equivalent to an expropriation in the territory of the Respondent State without providing just compensation.¹⁴¹ Specifically, but without limitation, Respondent’s termination, suspension, and cessation of payments on the Contracts constituted an expropriation of Claimants’ contractual rights under the BIT and the TPA. In addition, the termination, suspension, and cessation of payments on such Contracts and Respondent’s unlawful actions that ultimately led to the demise of Omega-Panama and Claimants’ other investments constituted an expropriation of Omega-Panama and Omega-U.S. as a going concern, as well as other companies and interests held by Claimants.

¹⁴⁰ *Id.*, art. 10.17.

¹⁴¹ *See* BIT (CL-0001; CL-0002), art. IV; TPA (CL-0003), art. 10.7.

71. *Second*, for the same reasons, Respondent also failed to accord Claimants' investments with "fair and equitable treatment," thereby violating Claimants' rights under both the BIT and the TPA.¹⁴² Further, Respondent's unfounded criminal investigations and the subsequent issuance of a detention order and Interpol Red Notice have prevented Mr. Rivera from managing his business interests in Panama and destroyed Mr. Rivera's business and reputation both inside and outside Panama. These actions therefore also constitute breaches of the BIT's and the TPA's fair and equitable treatment¹⁴³ and the BIT's full protection and security provisions.¹⁴⁴

72. *Third*, Panama's actions breached the BIT's and the TPA's obligation to not impair the Omega Consortium's investments through unreasonable or arbitrary measures. Respondent's decisions to refuse payment for work, to suspend or terminate contracts, and to issue an unfounded detention order did not have any legitimate basis in fact or law, and thereby meet the definition of an arbitrary or discriminatory measure.¹⁴⁵

¹⁴² See BIT (CL-0001; CL-0002), art. II.2; TPA (CL-0003), art. 10.5.

¹⁴³ See BIT (CL-0001; CL-0002), art. II.2; TPA (CL-0003), art. 10.5.

¹⁴⁴ See BIT (CL-0001; CL-0002), art. II.2.

¹⁴⁵ See *id.* The TPA's Most Favored Nation ("MFN") clause provides that "[e]ach Party shall accord to investors [and investments] of the other Party treatment no less favorable than that it accords, in like circumstances, to investors [and investments] of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory." TPA (CL-0003), art. 10.4. Via this MFN provision, Claimants may import the protection against unreasonable and discriminatory measures from other treaties to which Panama is a party. One such treaty is the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama for the Promotion and Protection of Investments, which provides that "neither Contracting Party shall in any way impair by unreasonable and discriminatory measures the management, maintenance, use, enjoyment, or disposal of investments in its territory of nationals or companies of the other Contracting Party." Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama for the Promotion and Protection of Investments, signed on 7 October 1983, entered into force on 7 November 1985 ("UK-Panama BIT") (C-0072), art. 2.

73. *Fourth*, Respondent’s breaches of its obligations under the Contracts also amount to a breach of the “umbrella clauses” found in the BIT and the TPA.¹⁴⁶ This clause obligates Panama to “observe all obligations” it has with foreign investors.¹⁴⁷

74. As a direct and proximate result of Respondent’s breaches of the BIT and the TPA, Claimants have suffered significant damages in an amount to be quantified, but anticipated to be significantly in excess of US\$100 million. Pursuant to Article IV(1) of the BIT and Article 10.7 of the TPA, Claimants are entitled to recover these damages, including lost profits and loss of opportunity, caused to their investments. Claimants reserve the right to further clarify their legal claims under the BIT and the TPA, and their resulting damages, through documentary, testimonial, and expert evidence in their Memorials and at a hearing on the merits of their claims.

V. ARBITRATORS AND PROCEDURAL MATTERS

75. The BIT is silent as to the method for constitution of the Arbitral Tribunal or the number of arbitrators. The TPA, however, provides that: (i) the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties;¹⁴⁸ (ii) the Secretary-General [of ICSID] shall serve as appointing authority;¹⁴⁹ and (iii) if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration . . . the Secretary-General [of ICSID], on the request of a disputing party, shall appoint, in his or her discretion, the

¹⁴⁶ See BIT (CL-0001; CL-0002), art. II.2. As provided above, Claimants may import, via the TPA’s MFN clause, the umbrella clause from other treaties between Panama and other States. See, e.g., UK-Panama BIT (C-0072), art. 2 (stating that “[e]ach Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party”).

¹⁴⁷ See BIT (CL-0001; CL-0002), art. II.2.

¹⁴⁸ TPA (CL-0003), art. 10.19(1).

¹⁴⁹ *Id.*, art. 10.19(2).

arbitrator or arbitrators not yet appointed.¹⁵⁰ Accordingly, Claimants confirm that a three-member Arbitral Tribunal should be appointed and that the 75-day time limit for such appointment should run from the date of registration of this Request.

76. Claimants hereby nominate Dr. Horacio A. Grigera Naón, an Argentine national, as their party-appointed arbitrator. Dr. Grigera Naón may be reached at:

5224 Elliott Road
Bethesda, MD 20816
United States of America
Tel: (301) 229-1985; (202) 436-4877 (cell)
Fax: (301) 320-3136
Email: hgnlaw@gmail.com

77. Claimants further propose that Washington, D.C., the United States of America, be the place of the proceedings, and that the language of the arbitration be English.¹⁵¹

VI. RELIEF REQUESTED

78. Reserving their right to supplement or otherwise amend their claims and the relief requested in connection therewith, Claimants request an award granting them the following relief:

- a. A declaration that Respondent violated the BIT and the TPA in respect of Claimants' investment;
- b. A declaration that the Interpol red notice issued against Mr. Rivera is a violation of the BIT and TPA;
- c. A declaration that the continued criminal investigations by Respondent's prosecutors against Omega-Panama and Mr. Rivera are a violation of the BIT and TPA;

¹⁵⁰ *Id.*, art. 10.19(3).

¹⁵¹ Claimants further propose that any exhibits submitted in the proceedings may be submitted either in English or Spanish without the need for a translation.

- d. Compensation to Claimants for all damages and loss they sustained, including moral damages, to be developed and quantified in the due course of these proceedings;
- e. All costs and expenses of these proceedings, including attorneys' fees and expenses;
- f. Pre-award and post-award compound interest until the date of Respondent's full and final satisfaction of the award; and
- g. Such other relief as the Arbitral Tribunal may deem appropriate in the circumstances.

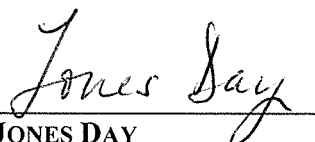
79. Claimants expressly reserve their right to amend their request for relief during the course of this proceeding in any manner they deem appropriate, including seeking relief on additional grounds. Moreover, as the damages caused by Respondent's wrongful conduct will likely continue to accrue throughout the course of this proceeding, Claimants expressly reserve the right to update their damages claims and calculations accordingly.

80. Finally, Claimants also expressly reserve their right to request provisional measures under Rule 39 of the ICSID Arbitration Rules upon institution of the proceeding.

VII. CONCLUSION

81. For the reasons set forth above, Claimants respectfully request that the Secretary-General of ICSID register this arbitration against Respondent in accordance with Article 36(1) and (3) of the ICSID Convention.

Respectfully submitted,



JONES DAY
MIAMI; WASHINGTON, D.C.; &
LONDON



RICARDO AMPUDIA, ESQ.
INTERNATIONAL DISPUTE
RESOURCES, LLC
FORT LAUDERDALE, FL

Counsel for Claimants

ANNEX A
SUMMARY OF CONTRACTUAL INVESTMENT

Contract No.	Project	Owner	Contract Value		
			Original Value	Value of Approved Change Order	Revised Value
<i>Outstanding Projects:</i>					
077-2011	CAPSi - Rio Sereno	Ministerio de Salud	\$ 8,693,640.00 ⁱ	\$ 4,795,076.97 ⁱⁱ	\$ 13,488,716.97
083-2011	CAPSi - Kuna Yala	Ministerio de Salud	\$ 11,591,949.00 ⁱⁱⁱ	\$ 4,352,064.41 ^{iv}	\$ 15,944,013.41
085-2011	CAPSi - Puerto Caimito	Ministerio de Salud	\$ 9,450,000.00 ^v	\$ 2,369,597.11 ^{vi}	\$ 11,819,597.11
124-2011	Mercado Público Colón	Ministerio de la Presidencia	\$ 17,989,780.00 ^{vii}	\$ -	\$ 17,989,780.00
093-12	Ciudad de las Artes	Instituto Nacional de Cultura	\$ 54,527,345.00 ^{viii}	\$ -	\$ 54,527,345.00
150-2012	Unidad Judicial La Chorrera	Órgano Judicial	\$ 16,495,000.00 ^{ix}	\$ -	\$ 16,495,000.00
01-13	Palacio Municipal	Municipio de Colón	\$ 16,050,000.00 ^x	\$ -	\$ 16,050,000.00
857-2013	Mercado Periférico Juan Díaz	Municipio de Panamá	\$ 1,310,285.50 ^{xi}	\$ -	\$ 1,310,285.50
857-2013	Mercado Periférico Pacora	Municipio de Panamá	\$ 645,364.50 ^{xii}	\$ -	\$ 645,364.50
Sub-totals			\$ 136,753,364.00	\$ 11,516,738.49	\$ 148,270,102.49
<i>Completed Projects:</i>					
035-11	Ampliación Tocumen	Aeropuerto Internacional Tocumen	\$ 3,731,290.00 ^{xiii}	\$ 913,992.00 ^{xiv}	\$ 4,645,282.00
017-10	Utilidades Varias	Aeropuerto Internacional Tocumen	\$ 2,850,000.00 ^{xv}	\$ 398,599.00 ^{xvi}	\$ 3,248,599.00
Sub-totals			\$ 6,581,290.00	\$ 1,312,591.00	\$ 7,893,881.00
TOTALS			\$ 143,334,654.00	\$ 12,829,329.49	\$ 156,163,983.49

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- ⁱ Contract No. 077 (2011) dated 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-0028).
- ⁱⁱ Addendum No. 4 to Contract No. 077 (2011) dated 7 May 2014 (C-0106).
- ⁱⁱⁱ Contract No. 083 (2011) dated 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-0030).
- ^{iv} Addendum No. 3 to Contract No. 083 (2011) dated 26 Dec. 2014 (C-0107).
- ^v Contract No. 085 (2011) 22 Sept. 2011 (approved by Comptroller-General on 26 Oct. 2011) (C-0031).
- ^{vi} Addendum No. 3 to Contract No. 085 (2011) dated 7 May 2014 (C-0108).
- ^{vii} Contract No. 043 (2012) dated 17 Aug. 2012 (approved by Comptroller-General on 17 Aug. 2012) (C-0034).
- ^{viii} Contract No. 093-12 dated 6 July 2012 (approved by Comptroller General on 19 Sept. 2012) (C-0042).
- ^{ix} Contract No. 150/2012 dated 22 Nov. 2012 (approved by Comptroller-General on 27 Dec. 2012) (C-0048).
- ^x Contract No. 01-13 dated 24 Jan. 2013 (approved by Comptroller-General on 2 July 2013) (C-0051).
- ^{xi} Contract No. 857-2013 dated 12 Sept. 2013 (approved by Comptroller-General on 12 Sept. 2013) (C-0056).
- ^{xii} *Id.*
- ^{xiii} Contract No. 035/11 dated 28 Feb. 2012 (C-0006).
- ^{xiv} Certificate of Final Acceptance of Contract No. 035/11 dated 31 July 2013 (C-0007).
- ^{xv} Contract No. 017/10 dated 14 Dec. 2010 (C-0005).
- ^{xvi} Certificate of Final Acceptance for Contract No. 017/10 dated 30 Dec. 2011 (C-0023).