

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

REPUBLIC OF KAZAKHSTAN and
OUTRIDER MANAGEMENT, L.L.C.,

Plaintiffs,

v.

DANIEL CHAPMAN, ARGENTEM CREEK
HOLDINGS LLC, ARGENTEM CREEK
PARTNERS LP, PATHFINDER ARGENTEM
CREEK GP LLC, and ACP I TRADING LLC,

Defendants.

Index No. 652522/2020

FIRST AMENDED COMPLAINT

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DEMAND FOR JURY TRIAL 77

PRAYER FOR RELIEF 77

1. Plaintiffs Republic of Kazakhstan and Outrider Management, L.L.C. (collectively, “Plaintiffs”), by and through their undersigned counsel, bring this action against Defendants Daniel Chapman, Argentem Creek Holdings LLC, Argentem Creek Partners LP, Pathfinder Argentem Creek GP LLC, and ACP I Trading LLC (collectively, “Defendants”). In support thereof, Plaintiffs allege as follows:

NATURE OF THE ACTION

2. This case arises from Defendants’ knowing participation in, conspiracy to commit, and aiding and abetting of, an ongoing fraudulent scheme that has damaged Plaintiffs.

THE PARTIES

3. Plaintiff Republic of Kazakhstan (“**Kazakhstan**”) is a sovereign state.

4. Plaintiff Outrider Management, L.L.C. (“**Outrider**”) is an investment advisor that invests in distressed assets in emerging markets. Outrider’s principal place of business is at One Franklin Parkway, Building 920, San Mateo, CA 94403.

5. Defendant Daniel Chapman (“**Chapman**”) is the founder, Managing Partner, Chief Executive Officer, and Chief Investment Officer of Argentem Creek Partners LP. He also wholly owns Argentem Creek Holdings LLC. Prior to founding Argentem Creek Partners LP, Chapman was a member of the senior management at Black River Asset Management LLC (“**Black River**”). Chapman resides at 165 West 91st Street, New York, NY 10024.

6. Defendant Argentem Creek Holdings LLC (“**Argentem Creek Holdings**”) is a limited liability company organized under the laws of the State of Delaware. Argentem Creek Holdings is the controlling owner of Argentem Creek Partners LP. Argentem Creek Holdings’ principal place of business is at 12 East 49th Street, New York, NY 10017.

7. Defendant Argentem Creek Partners LP (“**Argentem Creek Partners**”) is a registered investment advisor organized as a limited partnership under the laws of the State of Delaware. Both Argentem Creek Holdings and Argentem Creek Partners were formed in connection with a spin-off from Black River in December 2015. Argentem Creek Partners’ principal place of business is at 12 East 49th Street, New York, NY 10017.

8. Defendant Pathfinder Argentem Creek GP LLC (“**Pathfinder**”) is organized as a limited liability company under the laws of the State of Delaware. Pathfinder is the general partner of Pathfinder Strategic Credit LP and Pathfinder Strategic Credit II LP. Pathfinder’s principal place of business is at 12 East 49th Street, New York, NY 10017.

9. Upon information and belief, Defendant ACP I Trading LLC (“**ACP I**”) is a limited liability company organized under the laws of the Cayman Islands. Its legal address is P.O. Box 309, Ugland House, South Church Street, George Town KY1-1104, Cayman Islands. ACP I’s principal place of business is at 12 East 49th Street, New York, NY 10017.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Defendants under CPLR § 302(1) and (2) because they transact business within the State and have committed tortious acts within the State. This Court also has personal jurisdiction under CPLR § 302(4) because, upon information and belief, Defendants own, use, or possess real property situated within the State.

11. Venue is proper in New York County pursuant to CPLR §§ 503(a) and 503(d), because Defendants reside and/or have their principal offices in this County, and a substantial part of the events or omissions giving rise to the claims occurred in this County.

FACTUAL ALLEGATIONS

I. OVERVIEW

12. Defendants are conspiring with, and aiding and abetting, a fraudulent scheme led by Moldovan oligarch Anatolie Stati, his son Gabriel Stati, and a murky web of companies that they control, often secretly (collectively the “**Statis**”).

13. Between 1999 and 2004, the Statis purchased two Kazakh companies – Kazpolmunay LLP (“**KPM**”) and Tolkynneftegaz LLP (“**TNG**”) – that were licensed to engage in the exploration and production of oil and gas in Kazakhstan.¹

14. For the purported purpose of raising funds to finance the operations of KPM and TNG, the Statis sold notes to third-party investors. Specifically, in 2006 and 2007, the Statis used their special-purpose entity Tristan Oil Ltd. (“**Tristan Oil**”) to sell two tranches of notes in the aggregate principal amount of \$420 million (the “**Tristan Notes**”) to Noteholders (the “**Tristan Noteholders**”).

15. One of the largest Tristan Noteholders was Black River Asset Management LLC (“**Black River**”), which invested through several of its funds. Defendant Argentem Creek Holdings and its subsidiary Defendant Argentem Creek Partners (collectively, “**Argentem Creek Partners**”) were spun out from Black River as an employee-owned investment firm in December 2015 and became the successor in interest to Black River, including by assuming ownership of the Tristan Notes. Defendant Chapman, who had managed the investments for Black River, became

¹ TNG was wholly owned by Terra Raf Trans Trading Ltd., which in turn is owned in equal shares by Anatolie and Gabriel Stati, while KPM was wholly owned by Ascom Group S.A. (“**Ascom**”), which in turn is wholly owned by Anatolie Stati. At all relevant times, the Statis had the power to direct the actions of KPM and TNG.

the owner and CEO of Argentem Creek Partners.² On information and belief, Defendants bought and sold Tristan Notes after 2006 and 2007.

16. Plaintiff Outrider, through its Caymans-based fund Outrider Master Fund, L.P., began incrementally purchasing and selling Tristan Notes on the open market beginning in October 2009. Between 2009 and 2014, Outrider purchased Tristan Notes with a face value of nearly \$48 million. Outrider sold the last of its Tristan Notes in September 2016, and it did so at a significant loss.

17. The Stasis represented to Black River, Plaintiff Outrider, and the other Tristan Noteholders that their invested monies would be used for legitimate business activities in Kazakhstan; specifically, to repay debts of TNG, to make a shareholder distribution, and for working capital and general corporate purposes of KPM and TNG. KPM and TNG also guaranteed the Tristan Notes.

18. In fact, the Stasis always intended to, and did, steal the monies invested by the Tristan Noteholders. The Stasis did this by engaging in fraudulently inflated related-party transactions that systematically stripped assets from KPM and TNG and put them into the pockets of the Stasis.

19. The Stasis' fraud took several forms. For example, the Stasis fraudulently skimmed more than \$120 million in oil sales from the Kazakh fields. They did so by "selling" the oil at artificially low prices to a secretly related party, which would then in turn sell the oil to a third

² Hereinafter, the term "Defendants," unless otherwise indicated, shall include the named Defendants and their predecessor in interest, Black River. Upon information and belief, Black River no longer exists as an operating entity, and Defendants now hold all the rights, responsibilities, and interests that Black River used to hold with regard to this matter.

party at market prices. This difference in revenues was not properly returned to the Statis' Kazakh companies, but were instead diverted directly to the Statis.

20. Another example of the involved the Statis paying related parties – including Kaspy Asia Service Company Limited (“**KASKO**”) and Ascom – an estimated half billion dollars at artificially inflated prices for drilling services.

21. The Statis also paid nearly \$100 million in “salaries,” “dividends,” and “management fees” directly to themselves, despite a lack of any justification for these payments.

22. Another key component of the Statis' fraud was a series of related-party transactions made in connection with the unfinished construction of a liquefied petroleum gas plant (the “**LPG Plant**”) in Kazakhstan. The principal equipment for the LPG Plant was supplied to the Statis by an independent third party at a cost of approximately \$35 million. However, through a series of sham related-party transactions and machinations, the Statis falsely inflated the stated costs of the LPG Plant to \$245 million, and thereby stole the difference between this amount and the amount of the actual costs.

23. The Statis perpetrated their fraudulent scheme through a series of lies. A key lie of the Statis was that the fraudulent related-party transactions through which they stripped assets from KPM and TNG were legitimate business expenditures. The Statis began telling this lie as early as 2006, when they contrived their scheme and put it into action. To cover up this key lie, and to maintain their fraudulent scheme, the Statis had to tell other lies.

24. The Statis told this key lie to multiple persons, including to Plaintiffs. They also told it to their other investors, business partner, and auditors. The Statis have also told this key lie to multiple arbitral tribunals and courts.

25. The Statis' key lie has taken many forms. To Plaintiff Kazakhstan, the Statis falsely represented that their fraudulent related-party transactions were legitimate business transactions, thereby falsely inflating the value of their Kazakh assets. To their investors, including Defendants (before they discovered and joined in the scheme) and Plaintiff Outrider, the Statis fraudulently stated that their monies would be spent on legitimate business expenditures in Kazakhstan, when in fact the Statis intended to and did steal these monies. To their business partner, the Statis fraudulently inflated the costs of their joint business operation in Kazakhstan. To their auditor, KPMG Audit LLC ("KPMG"), the Statis fraudulently represented that the companies through which they effected their fraudulent related-party transactions were not Stati companies.

26. To perpetuate their fraudulent scheme, the Statis cooked up years of materially false financial statements, all of which recorded their fraudulently inflated related-party transactions as legitimate and at arm's-length. The Statis provided these fraudulent financial statements to multiple persons, including Plaintiff Kazakhstan. The Statis also provided them to their investors, including but not limited to Plaintiff Outrider, their auditors, and multiple arbitral tribunals and courts.

27. The Statis used fraudulent misrepresentations to obtain audit reports from KPMG opining that these financial statements were materially correct when in fact they were materially false. The Statis then repeatedly relied on the KPMG audit reports to bolster their fraudulent financial statements.

28. On July 1, 2010, the Statis defaulted on the interest payments due to the Tristan Noteholders. But for the Statis' fraudulent asset-stripping and theft of the Tristan Noteholders' monies, these interest payments could have been made by Tristan.

29. On July 21, 2010, the Statis initiated an international arbitration against Plaintiff Kazakhstan under the terms of the Energy Charter Treaty (the “**ECT Arbitration**”). In the ECT Arbitration, the Statis repeated their key lie, *i.e.*, that the fraudulent related-party transactions through which they had stolen the Tristan Noteholders’ monies were legitimate business expenditures. To support this lie, the Statis produced and relied upon the falsified financial statements and the fraudulently obtained KPMG audit reports. The Statis’ purpose in perpetuating this lie in the arbitration was to obtain from Plaintiff Kazakhstan as damages the monies that the Statis had stolen from the Tristan Noteholders.

30. Defendants discovered the Statis’ fraudulent scheme during the course of the ECT Arbitration, in or about 2011. Specifically, Defendants learned that the Statis had stolen their money (and that of the other Tristan Noteholders) through their fraudulent related-party transactions and asset stripping. However, rather than taking legal action against the Statis, Defendants decided to conspire with and support the Statis in an effort to perpetuate their fraudulent scheme and damage Plaintiffs, including the perpetuation of the Statis’ key lie that the fraudulent related-party transactions were legitimate business expenditures.

31. Defendants did so through a written agreement. On December 17, 2012, Defendants and several other (but not all) Tristan Noteholders, including Plaintiff Outrider, signed an agreement with the Statis to share in the proceeds of any arbitral award against Plaintiff Kazakhstan (the “**Sharing Agreement**”).³

32. Unlike Defendants, Plaintiff Outrider was not aware of the Statis’ fraudulent scheme when it signed the Sharing Agreement. Defendants led the negotiations with the Statis regarding the Sharing Agreement and, unlike Plaintiff Outrider, were in direct contact with the

³ Defendants later assumed Black River’s interest in the Sharing Agreement.

Statis throughout the negotiations. Defendants also led an investigation into the Statis' business activities in an effort to gain informational leverage for the agreement negotiations. Defendants, despite knowing of the Statis' fraudulent scheme, induced the other Noteholders into joining the Agreement and therefore into aligning with the Statis rather than exercising their legal rights against the Statis or pursuing other alternative courses of action.

33. In exchange for the waiver of any legal claims that the Noteholders may have had against the Statis, the Sharing Agreement released the Statis and Tristan Oil from liability to the Noteholders and provided that any amounts collected by the Statis on any award issued in their favor and against Plaintiff Kazakhstan in the ECT Arbitration would be distributed among the signing Noteholders. The Sharing Agreement thereby gave Defendants a financial incentive to conspire with, and aid and abet, the Statis in perpetuating their fraudulent scheme.

34. Pursuant to the Sharing Agreement, the Statis kept Defendants apprised of the developments and legal strategy in the ECT Arbitration. As a result, and given their knowledge of the Statis' fraudulent scheme, Defendants knew the Statis were making and relying upon fraudulent misrepresentations in the ECT Arbitration. Although they knew that the Statis were making such misrepresentations, Defendants chose to join and support the fraud. At a minimum, Defendants encouraged the Statis to pursue the arbitration against Plaintiff Kazakhstan and consulted with them on legal strategy. Defendants did so maliciously, knowing that the ECT Arbitration was based on fraudulent misrepresentations, in an attempt to obtain hundreds of millions of dollars from Plaintiff Kazakhstan for their and the Statis' own personal self-enrichment and for the wrongful and corrupt enrichment of others.

35. Defendants conspired with and/or aided and abetted the Statis' ongoing fraud for their own financial benefit. Defendants did so with a willful, wanton, and/or malicious disregard

for the rights of Plaintiff Outrider. Defendants also did so with a willful, wanton, and/or malicious disregard for Plaintiff Kazakhstan's rights, so that Plaintiff Kazakhstan would unknowingly be forced to pay Defendants for the monies that the Stasis had stolen.

36. Plaintiff Outrider justifiably relied to its detriment on the Stasis' and/or Defendants' misrepresentations. This detriment took *inter alia* the form of (a) continuing to act as a Noteholder without knowledge of the Stasis' fraud, including continuing to purchase, retain, and sell the Notes; (b) incurring legal fees and other expenses; (c) entering into the Sharing Agreement; (d) not exercising and/or waiving legal rights against the Stasis; and (e) not exercising other alternative options vis-à-vis the Tristan Notes, the Stasis and/or Defendants. Plaintiff Outrider would not have suffered these detriments but for the Stasis' fraudulent misrepresentations and Defendants' wrongful and malicious assistance to the Stasis that maintained and perpetuated the Stasis' fraudulent scheme.

37. In knowingly conspiring with and aiding and abetting the Stasis in their scheme, Defendants' actions are akin to those of a victim of a Ponzi scheme who, rather than taking legal action that would risk collapsing the scheme, decides to join and support the scheme to obtain money from a new victim (Plaintiff Kazakhstan) rather than seeking to recover their own stolen monies in a legitimate and legal way, and in so doing caused harm to other unknowing persons such as Plaintiff Outrider.

38. In December 2013, the tribunal in the ECT Arbitration (the "**ECT Tribunal**") issued an award (the "**ECT Award**") in favor of the Stasis and against Plaintiff Kazakhstan in the total amount of \$497,685,101.00, plus \$8,975,496.40 in costs, of which \$199 million was awarded to the Stasis for the LPG Plant. Because the Stasis continued to cover up their fraud, including from Plaintiff Kazakhstan, the ECT Tribunal issued the award without any knowledge of the fraud.

39. Once they had obtained the ECT Award, the Stasis initiated proceedings in several jurisdictions to confirm and enforce the award, as well as proceedings to attach assets to satisfy the ECT Award. This included proceedings in Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy (collectively, the “**Enforcement Proceedings**”). In each of these proceedings, the Stasis maintained and propagated their key lie that their fraudulent related-party transactions were legitimate business expenditures, to the detriment of Plaintiffs.

40. The Stasis did this with the active encouragement and support of Defendants, who consulted with the Stasis on legal strategy and provided critical financing that allowed the Stasis to engage in these legal proceedings against Plaintiff Kazakhstan despite having knowledge of their fraudulent scheme.

41. Plaintiff Kazakhstan justifiably relied to its detriment on the Stasis’ misrepresentations during the ECT Arbitration and Enforcement Proceedings. This detriment, at minimum, took the form of legal fees and other damages and costs that were wasted. Plaintiff Kazakhstan would not have incurred these costs or suffered these injuries but for the Stasis’ fraudulent misrepresentations and Defendants’ wrongful and malicious assistance to the Stasis. Plaintiff Kazakhstan’s defenses in these proceedings were, by definition, prepared in response to and in reliance on the Stasis’ claims and allegations, as supported by and joined in by Defendants. Had the Stasis made truthful instead of fraudulent representations in these proceedings, Plaintiff Kazakhstan would have made different defenses, would not have incurred the costs that it did, and the conduct of these proceedings would have been materially different.

42. To date, the only court to rule on the merits of the Stasis’ fraudulent scheme is the English High Court. The Stasis commenced proceedings to enforce the ECT Award in the English High Court in February 2014 (the “**English Enforcement Proceedings**”). In August 2015, after

its initial discovery of the fraud, Plaintiff Kazakhstan applied for permission to amend its pleadings to introduce the defense that the ECT Award was unenforceable as a matter of English public policy because it was obtained by fraud. The Statis opposed this application. On June 6, 2017, on the basis of extensive evidence and legal submissions, the English High Court granted Plaintiff Kazakhstan's application to amend. In a 22-page, fully reasoned opinion, it held that "there is a sufficient prima facie case that the Award was obtained by fraud" and that the Statis had committed "fraud on the Tribunal." It further held that the interests of justice required Plaintiff Kazakhstan's fraud allegations to be "examined at trial and decided on their merits."⁴

43. However, in February 2018, the Statis unexpectedly filed a notice seeking to voluntarily discontinue the English Enforcement Proceedings so as to avoid the trial on the merits of the fraud. This discontinuance was rejected by the High Court. The Statis appealed and were eventually allowed to discontinue the case, but only on the condition that they pay Plaintiff Kazakhstan's legal fees and costs and never again institute any proceedings in England and Wales to enforce the ECT Award.

44. As part of the English proceedings, by letter dated July 30, 2018, the Statis disclosed to Plaintiff Kazakhstan for the first time that costs relating to the appeal in the English Enforcement Proceedings were funded by Pathfinder Strategic Credit LP, Pathfinder Strategic Credit II LP, and ACP I, which the letter identified as "Noteholders." According to the letter, "There is no repayment obligation as the Noteholders are funding this matter at their own expense and in order to protect their interests under the Sharing Agreement."

⁴ A copy of this judgment is reported at 2017 EWHC 1348 (Comm) and can be found online at <http://www.bailii.org/ew/cases/EWHC/Comm/2017/1348.html> (last accessed June 10, 2020).

45. Defendant Pathfinder, upon information and belief, is the general manager of Pathfinder Strategic Credit LP and Pathfinder Strategic Credit II LP, and Defendant Argentem Creek Partners is the general manager of ACP I. All of these entities are ultimately controlled by Defendants Chapman and/or Argentem Creek Partners.

46. Upon information and belief, these funds and/or other funds controlled by Defendants have provided additional funding to the Statis in the Enforcement Proceedings beyond that alleged above. Upon information and belief, this funding served as the horsepower for the Statis' ability to continue their campaign of lies before multiple tribunals and courts. It was a *sine qua non* for the dissemination of those lies.

47. Defendants thus funded the Statis' efforts to escape the fraud trial in the English proceedings, which they realized the Statis stood no chance of winning, so that final judgment on the Statis' fraud could be avoided in England.

48. In the ongoing Enforcement Proceedings in various jurisdictions, the Statis, with the substantial assistance of Defendants, have continued to make a series of representations that the Statis and Defendants know are materially false. These misrepresentations have been made in order to perpetuate the Statis' key lie, *i.e.*, that the Statis' fraudulent related-party transactions were legitimate business expenditures when, in fact, and as Defendants know, these transactions were fraudulent and these amounts were stolen by the Statis. These misrepresentations have also been made in order to cover up the Statis' scheme. These misrepresentations have damaged Plaintiff Kazakhstan by, among other things, increasing Kazakhstan's legal expenses and other costs in the Enforcement Proceedings.

49. On April 3, 2019, Plaintiff Kazakhstan obtained sworn deposition testimony from Mr. Artur Lungu, the former Chief Financial Officer of Tristan Oil and Vice President of Ascom.

Mr. Lungu testified, *inter alia*, that Anatolie Stati repeatedly made material misrepresentations to KPMG in connection with its reviews and audits of the Stati financial statements.

50. On August 21, 2019, KPMG issued a letter revoking all of its audit reports for the Stati financial statements – 18 audit reports covering three years of financial statements, stating that “reliance should not be placed on the audit reports.” KPMG took this extraordinary action after reviewing evidence, including the Lungu deposition transcript, showing that Anatolie Stati had made a series of material misrepresentations to KPMG concerning the financial statements. KPMG stated in its August 21, 2019 letter that it took this decision after it “conducted a thorough and independent assessment.” KPMG also stated that, consistent with International Standards of Auditing, it had sought to engage with Anatolie Stati and Ascom on this matter but that the Statis had not provided any explanation for his false and fraudulent representations.

II. FURTHER DETAILS OF THE FRAUDULENT SCHEME

A. The Statis’ Scheme to Defraud the Tristan Noteholders, Including Defendants

51. In 2006, the Statis raised money by a private placement of loan notes through Tristan Oil, a company wholly owned by Anatolie Stati.

52. Pursuant to an Indenture and its amendments (collectively, the “**Indenture**”), Tristan Oil issued 10.5% senior secured loan notes in the aggregate principal amount of \$300 million on or about December 20, 2006 and a second tranche of notes in the aggregate principal amount of \$120 million on or about June 7, 2007. The issue of these Tristan Notes was fully subscribed, and the notes did not mature until January 1, 2012. Prior to maturity, the Indenture required that the Statis make regular interest payments to the Tristan Noteholders.

53. The following investors, among possibly others, purchased the Tristan Notes: (i) Argo Capital Investors Fund SPC – Argo Global Special Situations Fund; (ii) Argo Distressed

Credit Fund; (iii) Black River Emerging Markets Fund Ltd.; (iv) Black River EMCO Master Fund Ltd.; (v) Black River Emerging Markets Credit Fund Ltd.; (vi) BlueBay Multi-Strategy (Master) Fund Limited; (vii) BlueBay Specialised Funds: Emerging Market Opportunity Fund (Master); (viii) CarVal Master S.a.r.l; (ix) CVI GVF (Lux) Master S.a.r.l. (by CarVal Investors, LLC Its Attorney in-Fact); (x) Deutsche Bank AG London; (xi) Goldman Sachs International; (xii) Gramercy Funds Management LLC (not in its individual capacity but solely on behalf of its investment funds and managed accounts holding the notes); (xiii) Latin America Recovery Fund LLC; (xiv) Outrider Management LLC (on behalf of Outrider Master Fund, LP); (xv) Standard Americas, Inc.; and (xvi) Standard Bank Plc.

54. Black River Emerging Markets Fund Ltd., Black River EMCO Master Fund Ltd., and Black River Emerging Markets Credit Fund Ltd. were funds managed by Black River and are the predecessors in interest to Defendants.

55. An after-market in these Notes developed as the original Noteholders, including, on information and belief, Defendants, began selling their Notes and/or purchasing them from other Noteholders. Plaintiff Outrider entered into this market on or about October 8, 2009, when it first purchased Notes with a face value of \$850,000. Overall, between October 2009 and February 2014, Outrider purchased Notes with a face value of \$47,673,000. In making these purchases, Plaintiff Outrider relied on the same representations made by the Statis as did the original Noteholders, such as the Statis' audited financials.

56. The Statis represented to the purchasers of the Tristan Notes that the funds raised from them would be invested in KPM and TNG. Specifically, the Statis represented that proceeds from the Tristan Notes would be used to repay KPM's and TNG's existing debt and to fund their working capital, general corporate purposes, and capital expenditures, including for construction

of the LPG Plant. These representations were false, and known by the Statis to be false, when made. As described below, through the mechanism of multiple fraudulent related-party transactions, the Statis inflated the stated costs of KPM and TNG and stole the delta.

57. The Indenture named Wells Fargo N.A. as the Trustee and was guaranteed by KPM and TNG. Anotlie Stati executed the Indenture on behalf of Tristan Oil, KPM, and TNG. He also executed a Tristan Note Guarantee on behalf of KPM and TNG.

58. The Indenture included a mechanism by which related-party transactions between Tristan Oil, KPM, and TNG, and any other Stati company, defined as “Affiliates,” were prohibited unless certain approvals were provided by the Statis, with the level of approval increasing in line with the dollar value of the related-party transaction. Specifically, Section 4.12 of the Indenture stated that Tristan Oil, KPM, and TNG could not “make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate” unless the transactions met certain criteria. Transactions greater than \$1 million (in aggregate) were required to be on an arm’s-length basis (*i.e.*, they must be on terms no less favorable than a comparable transaction “with an unrelated Person”). Transactions greater than \$3 million further required a board resolution and an officer’s certification that a majority of the disinterested members of the board and at least one independent director determined that the transaction complied with Section 4.12. Finally, transactions greater than \$10 million also required an independent fairness opinion “issued by an accounting, appraisal or investment banking firm of national standing.”

59. The Indenture further required that the Statis provide audited financial statements to the Tristan Noteholders on a regular basis. Section 4.03 of the Indenture required that the Statis

furnish the Tristan Noteholders with combined financial statements of Tristan Oil, KPM, and TNG on a quarterly and annual basis, as well as a reserve report from an independent petroleum engineer on an annual basis. The combined financial statements were to include audit reports by a certified independent accountant.

60. Tristan Oil, KPM, and TNG also were required to conduct conference calls to discuss the information furnished in the audited financial statements and reserve reports and to post the audited financial statements on Tristan Oil's website.

61. Section 4.04(b) of the Indenture required that the year-end financial statements delivered pursuant to Section 4.03 be accompanied by a written statement of Tristan Oil's independent public accountants that "in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that [Tristan Oil] has violated any of the [Indenture's] provisions."

62. As alleged herein, the Statis violated the above terms of the Indenture by falsely certifying the identity of related parties and related-party transactions to KPMG, by failing to obtain the necessary approvals for certain related-party transactions, and by circulating to the Tristan Noteholders financial statements that were materially falsified and for which the audit reports had been fraudulently obtained.

63. As alleged herein, the multiple related-party transactions through which TNG's reported costs were artificially inflated were undisclosed and, through such inflation, the Statis defrauded the Tristan Noteholders. Specifically, the Statis' scheme breached each of the covenants in section 4.12(a) of the Indenture that prohibited related-party transactions.

64. Also in breach of their representations and covenants under the Indenture, the Statis diverted millions of dollars of the proceeds of the Tristan Notes received from U.S. investors to a

Stati company in South Sudan, Ascom Sudd Operating Limited, which was subsequently placed on the U.S. Department of Commerce’s list of companies “reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.” According to the U.S. Government, the companies on this list contribute to the crisis in South Sudan because they supply the country with significant “revenue that, through public corruption, is used to fund the purchase of weapons and other material that undermine the peace, security, and stability of South Sudan rather than support the welfare of the South Sudanese people.”⁵

65. At his April 2019 deposition, Mr. Lungu confirmed that the Stati related-party transactions alleged herein triggered the \$10 million threshold under the Indenture. However, as Mr. Lungu further testified, because Anatolie Stati fraudulently concealed certain related parties, the Statis avoided having to obtain and provide the Noteholders with the board resolution and independent fairness opinion required by the Indenture’s covenant for related-party transactions. In so doing, the Statis further perpetuated their fraud on the Tristan Noteholders.

66. The Statis’ motive in misleading the Tristan Noteholders was to cover up the fact that the Statis were stealing or misappropriating nearly \$150 million of the Tristan Noteholders’ funds that, as alleged herein, had been advanced to TNG by Tristan Oil.

B. The Statis Fraudulently Inflate the Stated Costs of the LPG Plant

67. In mid-2015, as a result of discovery obtained pursuant to 28 U.S.C. § 1782, Plaintiff Kazakhstan began to unravel the Statis’ fraudulent scheme with regard to the LPG Plant that they were constructing in Kazakhstan before abandoning it in March 2009. In the December

⁵ *Addition of Certain Persons to the Entity List and Removal of Certain Persons From the Entity List; Correction of License Requirements*, 83 Fed Reg. 12,475–12,476 (Mar. 22, 2018); 15 South Sudanese Entities Added to the Entity List (Mar. 22, 2018), U.S. DEPARTMENT OF COMMERCE, <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear/17-regulations>.

2013 ECT Award, the Statis obtained an award against Plaintiff Kazakhstan for \$199 million in compensation for the LPG Plant.

68. The LPG Plant was to be owned by TNG and operated jointly by Ascom and an affiliate of Vitol. The principal equipment for the LPG Plant was supplied by an independent third-party, TGE Gas Engineering GmbH, formerly Tractebel Gas Engineering GmbH (“**Tractebel**”).

69. Rather than having TNG purchase the equipment directly from Tractebel, the Statis instead laundered the transactions through two companies that they controlled. Specifically, the Statis structured the transactions so that Azalia Ltd. (“**Azalia**”) (a company the Statis owned) would purchase the equipment from Tractebel at the market price of approximately \$35 million. The Statis then had Azalia “sell” the equipment at wildly inflated prices to Perkwood Investment Limited (“**Perkwood**”) (another company the Statis secretly owned), which would in turn “sell” the equipment again to TNG at the same wildly inflated prices. Through these machinations, and others described herein, the Statis falsely inflated the price of the LPG Plant equipment and stole such amounts from the Tristan Noteholders in the amount of at least \$148 million.

70. Perkwood was a critical element in the Statis’ fraudulent scheme. To the outside world, the Statis presented Perkwood as an independent, London-based company with which they engaged in arm’s-length business transactions. In fact, Perkwood was a sham company, covertly owned and operated by the Statis, and used by the Statis for the fraudulent purposes alleged herein,

71. The Statis took extraordinary measures to conceal the fact that Perkwood was their company. They created a series of forged documents and made a series of false declarations to present Perkwood as an independent third party. This was done to give the impression that

payments from TNG to Perkwood were legitimate and at arm's length, when in fact they were fraudulently inflated.

72. The Perkwood transactions were a sham and intended by the Statis to disguise the fact that they were stealing or misappropriating funds from the Tristan Noteholders (and TNG). A number of facts confirm this:

- a. Perkwood was under the ultimate ownership and control of the Statis at all times.
- b. Anotolie Stati and Gabriel Stati were the signatories and sole beneficiaries of Perkwood's bank account held at Rietumu Bank in Latvia.
- c. Perkwood was a shell company. It never had any employees, premises, or operations. It never paid any taxes, salaries, or rent, and it did not incur any costs normally incurred by a company that actually carries out business. From 2006 to 2009 – the same time period when TNG was recording on its books purchases of LPG Plant equipment from Perkwood valued at hundreds of millions of dollars – the Statis filed dormant accounts for Perkwood with the British Companies House. Under English law, for a company to legally file dormant accounts, that company must not have carried out any substantial business transactions for the relevant time period.
- d. The sole director and shareholder of Perkwood was Sarah Petre-Mears. Her husband, Edward Petre-Mears, was the company secretary. Mr. and Mrs. Petre-Mears are identified in public documents as sham directors and the “directors” of thousands of

companies.⁶ Mr. and Mrs. Petre-Mears granted a series of general powers of attorney to Anatolie Stati and Gabriel Stati to act for Perkwood.⁷

e. Franjo Zaja was the lead engineer for Tractebel, the German company that supplied the main equipment for the LPG Plant. He was personally involved in the construction of the LPG Plant and worked on site until the Statis abandoned the construction in early 2009. He testified in a witness statement that he was not aware of a company called Perkwood. He further testified that the equipment “sold” from Perkwood to TNG is the identical equipment that Tractebel delivered under its contract with Azalia, but was presented as different equipment and at materially inflated prices.

73. The Statis used multiple, overlapping schemes to fraudulently inflate the LPG Plant construction costs through Azalia and Perkwood. These schemes included: (1) the “**Resale Fraud**”; (2) the “**Double-Billing Fraud**,” (3) the “**Equipment for Construction Fraud**,” (4) the “**Management Fee Fraud**,” and (5) the “**Interest Fraud**.” Alleged below is an overview of each scheme:

a. **Resale Fraud** – The Statis had Perkwood “sell” TNG, and TNG pay for, the LPG Plant equipment already purchased from Tractebel, but at almost triple the price – inflating the stated LPG Plant costs by approximately \$58 million;

⁶ James Ball, *The Guardian*, *Sham Directors: the woman running 1,200 companies from a Caribbean rock*, Nov. 25, 2012, <https://www.theguardian.com/uk/2012/nov/25/sham-directors-woman-companies-caribbean>.

⁷ Plaintiff first obtained copies of these powers of attorney in 2016 and filed them with the Svea Court of Appeal in Sweden that Plaintiff has asked to annul the ECT Award. It was only thereafter, on the first day of the hearing in the annulment proceedings in September 2016, that the Statis finally admitted that Perkwood was a Stati company. Prior to this, the Statis had concealed and/or denied this fact.

- b. **Double-Billing Fraud** – The Statis had Perkwood “sell” TNG certain of the same LPG Plant equipment twice, using differently worded descriptions – inflating the stated LPG Plant costs by approximately \$22 million;
- c. **Equipment for Construction Fraud** – The Statis included non-existent equipment in the Perkwood Agreement – inflating the stated LPG Plant costs by approximately \$72 million;
- d. **Management Fee Fraud** – The Statis had TNG “pay” Perkwood a fictitious “management fee,” inflating the stated LPG Plant costs by approximately \$44 million; and
- e. **Interest Fraud** – The Statis charged inter-company interest on the fraudulently inflated LPG Plant costs – further inflating the stated LPG Plant construction costs by up to approximately \$60 million.

74. **Payments to Perkwood.** Between on or about April 19, 2006 and on or about April 14, 2009, the Statis caused TNG to pay the total sum of approximately \$175 million to Perkwood out of loans made by Tristan Oil using the monies invested by the Tristan Noteholders.

75. The bulk of this \$175 million was then laundered by the Statis through their various companies. During the same period, Perkwood paid approximately \$175 million to Azalia. In addition to making legitimate payments to Tractebel of approximately \$34 million, Azalia also paid a total of approximately \$148 million to two Stati companies – approximately \$94 million to Hayden Investest Ltd. (“**Hayden**”) and the remainder to Terra Raf Trans Traiding Ltd. (“**Terra Raf**”). Neither company had any contractual entitlement to receive this money from Azalia.

76. Because the \$148 million paid to Hayden and Terra Raf was the product of the Statis’ fraudulent inflation, and was paid by the Statis to themselves using the monies of the Tristan Noteholders, the Statis defrauded the Tristan Noteholders out of the inflated amounts.

77. As alleged herein, after Defendants discovered that the Statis had defrauded them of their invested monies, they made the unlawful and malicious decision to join with the Statis in their efforts to obtain the amount of these stolen monies from Plaintiff Kazakhstan.

C. The Statis Intentionally Falsify Their Financial Statements

78. The Statis included the fraudulently inflated LPG Plant costs in the combined financial statements of Tristan Oil, KPM, and TNG knowing that such costs were fraudulent. This made the financial statements materially false.

79. In the combined 2007 annual report for Tristan Oil, KPM, and TNG, the Statis made the following express, fraudulent misrepresentations:

LPG Plant. TNG is currently building a new LPG processing facility for liquid petroleum gas. As of December 31, 2007 TNG has made advance payments of approximately \$158.6 million related to the LPG project. TNG expects to spend a total of \$232.6 million in capital expenditures on this project through 2008.

80. In Tristan Oil's 2008 annual report, the Statis made the following express, fraudulent misrepresentations:

LPG Plant. TNG is currently building a new LPG processing facility for liquid petroleum gas. As of December 31, 2008 TNG has invested approximately \$223.2 million in the LPG project. TNG expects to spend a total of \$241.7 million in capital expenditures on this project through 2009.

81. In the annual financial statements for 2009, the Statis made the express, fraudulent misrepresentation that the costs of construction of the LPG Plant as of December 31, 2009 were more than \$248 million.

82. All of these representations were false. The Statis had not invested these amounts in the construction of the LPG Plant, nor did they intend to. These figures were based on the amounts of the related-party transactions with Perkwood, through which the Statis fraudulently

inflated the stated construction costs of the LPG Plant, and stole the amount of this inflation from the monies invested by the Tristan Noteholders.

D. The Statis Fraudulently Obtain Audit Reports for Their Falsified Financial Statements

83. Another key step in the Statis' scheme was to legitimize their fraudulent transactions by obtaining the stamp of approval of an international accounting firm. They accomplished this by misrepresenting to their auditors that the transactions were at arm's length and by falsely portraying Perkwood as an independent third party.

1. Principles Governing Financial Statements and Auditing

84. A company's financial statements are the primary source of financial information available to interested third parties for the purpose of making economic decisions on the business. To be of value for its intended users, financial statements are prepared in compliance with an accounting standards framework.

85. In view of the importance of financial statements for interested third parties, financial statements are normally subject to an independent audit that ensures that the financial statements are complete, fair, and accurate. To achieve this outcome, audit procedures are regulated by international standards, in particular the audit standards developed by the International Auditing and Assurance Standards Board ("IAASB"), which include the International Standards on Auditing ("ISA").

2. The Importance of Accurate Identification of "Related Parties" and Related-Party Transactions: The IAS 24 Standard

86. One of the fundamental items of information that must be disclosed in a company's financial statements is the identity of "related parties," as well as any transactions and outstanding balances with those related parties. In general terms, the term "related parties" refers to companies

that are under the influence or control of the same person(s) or companies, who may influence their decisions.

87. The objective regarding “Related Party Disclosures” is set forth in IAS 24.1:

The objective of this standard is to ensure that an entity’s financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances of such parties.

88. The importance of identifying related parties and related-party transactions is due to, in particular, the heightened risk that transactions between related parties may not reflect normal market conditions (the concept of “arm’s length”). IAS 24.6 (emphasis added) explains the reason why related parties must be identified:

A related party relationship could have an effect on the profit or loss and financial position of an entity. Related parties may enter into transactions that unrelated parties would not. For example, an entity that sells goods to its parent at cost might not sell on those terms to another customer. Also, transactions between related parties may not be made at the same amounts as between unrelated parties.

89. In view of this risk, it is essential for company management to truthfully identify to its auditors all related parties and related-party transactions.

3. The Statis Fraudulently Conceal that Perkwood Was a Related Party

90. The Statis falsely represented that their financial statements were prepared in accordance with the International Financial Reporting Standards (“IFRS”).

91. KPMG audited the individual and combined financial statements of Tristan Oil, TNG, and KPM (collectively referred to by KPMG as the “**Company**”) for 2007, 2008, and 2009.⁸

⁸ Deloitte audited the Statis’ financial statements prior to 2007.

92. The financial statements emphasize the importance of “related-party” status because transactions with related parties were a key part of the Statis’ “business model.” For example, the combined 2008 financial statements of the Company state that a “significant proportion of the Companies’ business is conducted through transactions with related parties and the effect of these, on the basis determined between the related parties, is reflected below. The Company’s ultimate controlling party is Anatolie Stati.”

93. Because TNG (and Ascom) are and were at all relevant times controlled by the Statis, and Perkwood was also at all relevant times under the ownership and/or control of the Statis, Perkwood was at all relevant times a “related party” to TNG (and Ascom) within the meaning of IAS 24.

94. Pursuant to the requirements of IFRS (and, in particular, IAS 24), all of the transactions between TNG and Perkwood should therefore have been disclosed as related-party transactions. Specifically, TNG’s financial statements should have provided all of the information that was “necessary for an understanding of the potential effect of the relationship [between TNG and Perkwood] on the financial statements.”

95. In violation of this requirement, TNG’s audited financial statements for 2007 to 2009 (i) did not disclose the status of Perkwood as a related party to TNG; (ii) did not disclose the fact that any transactions between Perkwood and TNG were related-party transactions; and (iii) did not disclose the information that should have been disclosed pursuant to IAS 24 in relation to those transactions.

96. Instead, the statements stated that a “significant proportion of the Company’s business is conducted through transactions with related parties and the effect of these, on the basis

determined between the related parties is reflected below,” but the fraudulently omitted Perkwood from the list of Stati related companies.

97. Instead, the Statis stated that the (only) related parties with whom TNG had conducted transactions during the relevant time period were (i) Ascom; (ii) Arpega Trading; (iii) General Affinity; (iv) KASKO; (v) KASKO-Petrostar; (vi) KPM; and (vii) Tristan Oil.

98. Artur Lungu, the former Chief Financial Officer of Tristan Oil and Vice President of Ascom, testified at his April 3, 2019 deposition that Anatolie Stati knowingly misled KPMG by failing to identify Perkwood as a related party in the financial statements. Mr. Stati did this by falsely stating to KPMG in multiple management representation letters in 2008, 2009 and 2010 that all related parties and related-party transactions were accurately disclosed, when in fact Perkwood was not disclosed as a related party and the transactions with Perkwood were not disclosed as related-party transactions. Mr. Lungu testified that these omissions rendered the management representation letters materially false.

99. As a result of the failure to disclose that Perkwood was a related party, the Statis concealed the materially falsified LPG Plant construction costs that they engineered through the sham Perkwood transactions, as set forth above. As a result of these misrepresentations, the Statis obtained audit reports from KPMG opining that the financial statements were materially correct when, in fact, they were materially false.

100. The Statis knew and intended that the fraudulently obtained audit reports would be relied upon by the Tristan Noteholders. Confirming this, Mr. Lungu admitted in his deposition that the audited financial statements were required under the Tristan Trust Indenture so that the Tristan Noteholders would have a true and accurate understanding of the financial position of KPM, TNG, and Tristan Oil.

101. Mr. Lungu further testified that each of the year-end combined financial statements of Tristan Oil, TNG, and KPM for 2007, 2008, and 2009, as well as various interim financial statements, were materially false because they failed to identify Perkwood as a related party and failed to identify the transactions between TNG and Perkwood as related-party transactions.

102. After receipt of these fraudulent misrepresentations, KPMG issued audit reports for 2007 to 2009 that opined that the combined financial statements of Tristan Oil, TNG, and KPM fairly presented their combined financial position, their combined financial performance, and their combined cash flows in accordance with IFRS. In fact, these financial statements were materially false.

103. After receipt of these fraudulent misrepresentations, KPMG also approved the combined interim financial statements for the periods ending March 31, 2008, June 30, 2008, September 30, 2008, March 31, 2009, June 30, 2009, and September 30, 2009. All these financial statements were materially false.

104. On August 21, 2019, after reviewing Mr. Lungu's deposition testimony and after conducting its own independent assessment, KPMG took the extraordinary step of revoking all of its audit reports for the Stati financial statements – eighteen audit reports covering three years of financial statements – and it notified Anatolie Stati and Ascom and, separately, Plaintiff Kazakhstan that it had done so.

105. As alleged herein, in or around 2012, Defendants discovered that the Statis had materially misrepresented the extent and value of the related-party transactions within the Stati group of companies and thereby stripped significant monies from TNG and KPM to offshore companies.

E. The Statis Use Their Falsified “Audited” Financial Statements to Fraudulently Obtain Inflated Bids for Their Kazakh Operations

106. In June 2008, the Statis continued the fraudulent scheme by using their falsified “audited” financial statements to obtain bids for their Kazakh operations from prospective purchasers. This was done through a bidding process that the Statis called “Project Zenith.” The Statis then deployed these fraudulently obtained bids in the ECT Arbitration, along with their falsified “audited” financial statements, to obtain an award of \$199 million in compensation for the LPG Plant.

1. The Teaser Contained False and Misleading Information

107. In June 2008, the Statis caused Ascom and Terra Raf (as the shareholders of KPM and TNG) to retain Renaissance Securities (Cyprus) Limited and Renaissance Capital Central Asia JSC (together, “**Renaissance Capital**”) as the financial advisor for Project Zenith.

108. In July 2008, Renaissance Capital distributed a “teaser” offer (the “**Teaser**”) to 129 potential purchasers. The prospective purchasers included companies located in the United States, Europe, the Middle East, Russia, Asia, and Kazakhstan. The Teaser stated that the information contained therein – “assembled” by the “management” of Tristan Oil, TNG, and KPM with the assistance of Renaissance Capital – was “believed to be accurate and reliable.”

109. The Teaser further stated that the Statis expected to spend \$230 million on capital expenditures on the LPG Plant and had already spent \$160 million to date. For the reasons alleged herein, these statements were knowingly false, as they reflected the fraudulently inflated LPG Plant construction costs.

2. The Information Memorandum Contained False and Misleading Information

110. For those parties that responded to the Teaser, the Statis caused Renaissance Capital to distribute an August 2008 Information Memorandum that contained further false information

about KPM and TNG (the “**Information Memorandum**”). The stated “sole purpose” of the Information Memorandum was to “assist” potential purchasers in “evaluating” the Statis’ operations in Kazakhstan.

111. Like the Teaser, the Information Memorandum stated that the information contained therein was “assembled by the management” of KPM and TNG with the assistance of Renaissance Capital and “believed to be accurate and reliable.”

112. The Information Memorandum included false financial information regarding the Statis’ operations offered for sale, including the LPG Plant. It stated that this financial information was derived from, among other things, the audited individual and combined balance sheets and financial statements of KPM, TNG, and Tristan Oil from 2005 to 2007. Mr. Lungu confirmed at his 2019 deposition that the Information Memorandum was false to the extent it relied on the underlying falsified financial statements.

113. The Information Memorandum further represented that these financial statements were audited and had been prepared in accordance with IFRS:

[KPM’s and TNG’s] and Tristan Oil’s financial statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”). Prior to 01 January 2007, the combined and individual financial statements of Tristan Oil, KPM and TNG were audited by Deloitte. Following the best practice to change auditors periodically, the Companies and Tristan Oil changed to KPMG as auditor for the year ended 31 December 2007 and thereafter.

114. This representation was knowingly false and misleading, for the reasons alleged herein. The financial statements had not been prepared in accordance with IFRS, and the Statis knew this.

115. The Statis also fraudulently represented in the Information Memorandum that they had changed auditors from Deloitte to KPMG because they were “[f]ollowing best practice.” In

fact, the Statis changed auditors because Deloitte had begun asking troublesome questions regarding the Statis' related-party transactions.

116. The Information Memorandum also repeated the misrepresentations from the Stati financial statements regarding the LPG Plant construction costs. Specifically, the Information Memorandum stated that the "LPG plant is expected to be commissioned in the second quarter of 2009 with total CAPEX requirement of US\$233 million." It also stated that "[a]s of 1 July 2008, TNG had spent approximately \$193 million on the LPG plant." These representations were known by the Statis to be false and misleading, for the reasons alleged above.

117. The Information Memorandum also described the Tristan Notes. It highlighted the Indenture's covenant limiting the ability of Tristan Oil, KPM, and TNG to enter into related-party transactions unless the requisite approvals and/or independent fairness opinions were obtained. The Statis highlighted this to create the false and deceptive impression that there were no Stati related-party transactions on the books of the Company that did not have the approvals and/or independent fairness opinions required by the Indenture's covenant.

3. The KPMG Vendor Due Diligence Report

118. In connection with Project Zenith, the Statis retained KPMG's Tax and Advisory department to prepare a financial "Vendor Due Diligence" document intended to be circulated to potential investors, entitled "*Project Zenith – Vendor Due Diligence Report*" ("**VDD Report**"). The Statis induced KPMG to prepare this report so that it falsely stated that Perkwood was an independent third party, and not a Stati-related party.

119. The VDD Report was supposed to report on the combined businesses of Tristan Oil, KPM, and TNG. The "primary source" for the data in the VDD Report was information and representations made to KPMG by the Statis.

120. The final VDD Report stated that its contents had been reviewed in detail by the directors of Tristan Oil, KPM, and TNG, who confirmed the factual accuracy of the report in writing and represented that there were no material facts or information omitted from the report that “may cause the view it gives of the Tristan Oil Group to be misleading.”

121. One of the VDD Report’s key areas of analysis was related-party transactions. In this respect, KPMG stated that its scope of work was to:

Identify significant related party transactions, enquire into their rationale, the underlying terms and nature of such transactions; [e]nquire if these transactions have been at arms’ length and assess the financial impact and related risks; and [c]omment on the impact of discontinuing related party transactions on the business of the target companies.

122. On August 31, 2008, KPMG provided the Statis with a draft of the VDD Report. This draft mentioned Perkwood four times and each time correctly identified Perkwood as a Stati “related party.”

123. If KPMG had issued the VDD Report with Perkwood identified as a Stati company, it would have exposed the Stati fraudulent scheme. Accordingly, the Statis had to procure the falsification of the report.

124. Mr. Lungu testified at his 2019 deposition that, upon receipt of the draft VDD Report, he held a telephone call with KPMG in which he expressly instructed KPMG to change all identifications of Perkwood in the VDD Report from that of a “related party” to that of an unrelated “third party.” KPMG followed this instruction and changed the report. These changes falsified the VDD Report, as Mr. Lungu acknowledged at his deposition.

125. The VDD Report also repeated the misrepresentations from the Stati financial statements regarding the LPG Plant construction costs, *i.e.*, that the total cost of the LPG Plant was estimated to be \$233 million, of which \$193 million had been invested as of June 30, 2008.

126. As a result of these misrepresentations, a document intended to be distributed to prospective purchasers for the Stati operations in Kazakhstan, including the LPG Plant, was intentionally falsified to describe Perkwood as an unrelated “third party.” The Statis deliberately engaged in these falsifications to conceal their fraudulent scheme and to deceive third parties.

4. KMG Submits Bid on the Basis of the Falsified “Audited” Financial Statements

127. KazMunaiGas (“**KMG**”), the state-owned oil and gas company of Kazakhstan, was one of the eight prospective purchasers that responded to the Teaser and Information Memorandum.

128. KMG’s response was an “indicative offer” dated September 25, 2008 (the “**KMG Indicative Offer**”). The KMG Indicative Offer relied on the false and misleading information provided by the Statis. It stated: “[i]n formulating our Indicative Offer, we have relied upon the information contained in the Information Memorandum and certain other publicly available information. Our valuation depends upon this information and assumptions being substantiated in the next round through due diligence materials and meetings.” KMG also stated that any final bid depended on a review of the documents constituting “standard customary due diligence from a buyer’s point of view,” which included “commercial, financing and related parties’ contracts.”

129. With regard to the calculation of the value of the Statis’ operations in Kazakhstan and in particular the LPG Plant, the Indicative Offer stated that among its “key assumptions” was that the \$193 million in LPG Plant construction costs stated in the Information Memorandum was accurate: “[O]ur estimates of the Company’s value and the present Indicative Offer are based on the following key assumptions: ... Historical production, revenues, costs and CAPEX were as reported in the Information Memorandum.”

130. The Indicative Offer also made clear that its stated \$199 million valuation of the LPG Plant was calculated using the “[h]istorical costs of US\$193 million,” as stated by the Statis, “as a base for cost method valuation.”

131. Thus, the KMG Indicative Offer was expressly based upon information that the Statis knew to be false (*i.e.*, the fictitiously inflated construction costs of the LPG Plant and the concealed related-party status of Perkwood set forth in the financial statements and Information Memorandum).

132. If KMG had known of the Statis’ fraudulent scheme, it would not have made the KMG Indicative Offer. At minimum, if KMG had instead been provided with the true construction costs of the LPG Plant, then the value it assigned to the LPG Plant in the Indicative Offer would have been materially lower.

III. DEFENDANTS’ KNOWLEDGE OF AND PARTICIPATION IN THE FRAUDULENT SCHEME

133. Upon information and belief, Defendants had knowledge of and/or were on notice of the Statis’ fraudulent scheme at least as early as 2011.

A. The Laren Transaction

134. In June 2009, the Statis caused Tristan Oil to issue additional notes (the “**Laren Notes**”) to new investors (the “**Laren Noteholders**”). The Laren Notes were issued at a significant discount to their face value. Specifically, Tristan Oil issued \$111,110,000 in notes to Laren Holdings, Ltd. (“**Laren**”) in exchange for a \$30,000,000 loan. Laren then issued the Laren Notes to the Laren Noteholders (the “**Laren Transaction**”).

135. The Laren Transaction was put in place by the Statis by deception that included at least two different elements. First, Laren was an entity secretly created and controlled by the Statis. As was the case with Perkwood, Laren was presented by the Statis as an independent third

party, not under the control of the Statis. In fact, Laren is a Stati company. Confirming this, key Laren documents were signed for Laren by Eldar Kasumov, who is the personal chauffeur for Anatolie Stati. Second, the Laren Transaction was structured so that Anatolie Stati could materially benefit from its supposed conditions. Specifically, in the event that Anatolie Stati timely repaid the “loan,” he stood to receive a substantial kickback – referred to as an “upside.”

136. The issuance of the Laren Notes spurred Defendant Chapman and Defendants’ predecessors-in-interest to investigate the Stati operations in Kazakhstan. In connection with their investigation, Defendants uncovered the Statis’ broader fraudulent scheme involving the related-party transactions, money laundering, and asset stripping of the Statis’ Kazakh companies. This discovery occurred while the ECT Arbitration was ongoing. In pertinent part, Defendants discovered the following:

- a. That TNG had shipped at least \$160 million in crude oil to another Stati company, Montvale Invest Limited (“**Montvale**”), without any payment back to TNG.
- b. That the Statis’ claim in the ECT Arbitration that the cash crunch that TNG and KPM experienced in 2009 was the result of a harassment campaign by Plaintiff Kazakhstan was pretextual; that in fact the cash crunch was caused by the Statis’ asset stripping; and that the Statis never had any intention of paying back the Tristan Noteholders.
- c. That the Statis were systematically stripping their assets in Kazakhstan, partly through the scheme of shipping oil to related parties that was never paid for and also by paying a large dividend to a related company, in violation of the Indenture.
- d. That the 2009 Laren Transaction was entirely unnecessary to fund the operations of TNG and KPM and that it was likely another sham transaction designed to defraud additional investors.

e. That claims could be brought by the Tristan Noteholders against the Statis in Kazakhstan for their fraudulent scheme, including claims for unjust enrichment and for piercing the corporate veil because Anatolie Stati signed the promissory notes on behalf of TNG and KPM and directed the oil-skimming scheme and the fraudulent dividend through an array of companies that he owned and controlled.

f. That the Statis appeared to have taken more than \$200 million through fraudulent transfers from TNG and KPM to related companies that should have gone to the Tristan and Laren Noteholders, including tens of millions in dividends, a salary of \$9 million paid to Anatolie Stati as CEO of Tristan Oil (whose only activity was to issue the Laren Notes), and other illegitimate related-party transfers.

g. That the Statis had been overstating (by 200% to 350%) the capital expenses for production of the Kazakh wells and then laundering the amount of the overstated costs through other Stati-controlled companies; and rather than paying the market rate to drill the wells, the Statis paid pay one of their other companies, KASKO, to drill them at inflated rates, then pocketed the difference.

h. That the Statis, based on an initial investment of approximately \$10 million, were able to pay themselves salaries and cash dividends of \$40 million, skim as much as \$250 million in oil revenues, and raise and steal several hundred million dollars in investments from the Tristan Noteholders.

137. In summary, Defendants discovered:

a. That the Statis ran an overarching fraudulent scheme to strip assets from TNG and KPM worth more than \$1.04 billion since 2004, with approximately half of that representing pure profit to the Statis;

b. That the Statis' financial statements were fraudulent and showed a systematic stripping of assets of KPM and TNG in part by failing to return revenue from the sale of crude oil; and

c. That the Statis' fraud included a total of \$555 million in related-party transactions, including approximately \$124 million in skimmed oil sales, nearly \$40 million in dividends and salaries paid to the Statis, and other transfers of funds to other Stati companies.

138. The Defendants did not communicate their knowledge of the Statis' fraudulent scheme to Plaintiff Outrider. At certain relevant times, Plaintiff Outrider was a member of an ad hoc committee of Noteholders (the "**Ad Hoc Committee**") and paid certain of the costs of legal counsel and other expenses. Defendants were also members of the Ad Hoc Committee but maintained independent lines of communication with the Statis and the investigators -- meeting with the Statis and their representatives outside of the presence of Plaintiff Outrider, and communicated with the investigators in Kazakhstan outside of the presence of Plaintiff Outrider. On information and belief, Defendants obtained their knowledge of the Statis' fraud through these independent lines of communications.

139. Plaintiff Outrider, unlike Defendants, was not aware of that the Statis were engaged in a fraudulent scheme. Instead, as a result of what was communicated to the Ad Hoc Committee, Plaintiff Outrider believed that the Statis were legitimately shielding their assets from the risk of expropriation from Kazakhstan. This is precisely what the Statis asserted in the ECT Arbitration and in the subsequent enforcement efforts. For example, the Statis claimed to the ECT tribunal that Plaintiff Kazakhstan's argument that the Statis "stripped KPM and TNG of cash in preparation to abandon them is unsupported and wrong. KPM paid dividends in 2009 and 2010 to avoid seizure of the funds - not to prepare for voluntary abandonment."

140. Outrider did not learn the truth of the matter – that the Stasis were engaged in a systemic fraud and that Defendants were aware of, conspired in and aided and abetted this fraud – until years later, after this lawsuit was filed in June 2020.

B. Defendants Enter into the Sharing Agreement

141. In or about July 2012, Defendants knew conclusively as a result of their investigation that they had been defrauded by the Stasis. However, they decided that their best hope of recovering their stolen monies was to not to pursue legal action against the Stasis, but rather to try to conspire with and aid and abet the Stasis in perpetrating their fraud against Plaintiff Kazakhstan, so that Kazakhstan ultimately paid Defendants the amounts that the Stasis had stolen from Defendants.

142. To that end, Defendants negotiated and entered into the 2012 Sharing Agreement with the Stasis.

143. Defendant Chapman negotiated the Sharing Agreement with the Stasis during the period from July to December 2012. Leading up to the execution of the Sharing Agreement, Defendant Chapman was in frequent contact with the Stasis and their representatives. For example, Defendant Chapman met with Anatolie Stati and Mr. Lungu on or about January 17, 2012 in New York, without Plaintiff Outrider or the other Noteholders. Other telephone, electronic, and in-person communications took place between Defendants and the Stasis and their representatives from March 2012 to July 2012.

144. Eleven Tristan Noteholders constituting the majority of the ownership rights of the Tristan Notes signed the Sharing Agreement, including the three funds managed by Black River, Defendants' predecessors in interest. This included Plaintiff Outrider, which Defendants induced

to sign by, in part, failing to disclose the extent of the Stasis' fraud despite having knowledge of same.

145. The Sharing Agreement recognized that Tristan Oil and the Note guarantors (TNG and KPM) had defaulted on the Tristan Notes and that the parties "desire to restructure the obligations owed by Tristan Oil to the Noteholders and to provide the benefits of the Sharing Agreement" to the signatory Tristan Noteholders.

146. The Sharing Agreement restructured the obligations by requiring the Stasis to pay the Tristan Noteholders the "Proceeds" that they obtained from Plaintiff Kazakhstan in the ECT Arbitration. Specifically, Section 4(b) of the Sharing Agreement provided that the first \$18 million of any such Proceeds obtained by the Stasis from Kazakhstan would be used for legal fees for, among other things, obtaining and then collecting on any arbitral award against Kazakhstan. The signatory Noteholders would receive 70 percent of any additional Proceeds until they had been fully paid, with the Stasis receiving the remaining 30 percent. The Stasis would also receive 100 percent of any Proceeds above that amount. Such Proceeds included not only any award rendered in the ECT Arbitration, but also any order in favor of the Stasis in any confirmation, recognition, or execution proceedings against Kazakhstan.

147. The Sharing Agreement thereby gave Defendants a powerful financial incentive to support the Stasis in their fraudulent scheme.

148. The Agreement required that the Stasis keep Defendants and other signatories "reasonably informed of any and all material developments with respect to the Arbitration and all Claims, including the issuance of any Awards and any monies received in respect of any such Awards." The Agreement also required that the Stasis make themselves reasonably available to respond to inquiries from Defendants regarding the status of the ECT Arbitration and the collection

and enforcement of any awards against Plaintiff Kazakhstan. The Agreement also provided various incentives and penalties for the Statis to comply with its terms.

149. Under Section 6 of the Sharing Agreement, in exchange for sharing in the Proceeds, Defendants agreed not to take any legal action against the Statis to remedy the default on the Tristan Notes. Specifically, it required the Noteholders to forbear “from exercising any and all default-related remedies to the extent provided under the Indenture or otherwise under any related documents (other than this Agreement) or under applicable law or at equity against the Tristan Parties or any family member of A. Stati or G. Stati.” The Agreement also blocked the Noteholders “from asserting any claims against the Guarantors and/or the Republic of Kazakhstan or any of its Affiliates, arising out of or connected to the Notes (including the Modified Notes) or the Indenture.”

C. Defendants Take Overt Actions to Support the Statis’ Fraud

150. Following the execution of the Sharing Agreement, Defendants took other overt acts in support of the Statis’ fraudulent scheme. For example, Defendants provided critical funding for the Statis’ efforts to avoid a trial on the merits of the fraud in England. Defendants, upon information and belief, also funded the Statis’ legal proceedings against Plaintiff Kazakhstan in other jurisdictions. Defendants have also regularly consulted with, and provided guidance to, the Statis regarding the strategy for enforcing the ECT Award in various jurisdictions since at least 2014. They have also worked to frustrate Plaintiff Kazakhstan’s attempts to discover information related to the fraudulent scheme. These wrongful acts were done with willful and wanton disregard for Kazakhstan’s rights.

151. By engaging in these activities with knowledge of the Statis’ fraudulent scheme, Defendants have knowingly participated in, and provided substantial assistance to, the

perpetuation of the fraudulent scheme. In doing so, they have aided and abetted the continuation of the fraudulent scheme by the Stasis. Defendants' actions have caused separate damage to Plaintiff Kazakhstan and Plaintiff Outrider.

152. Defendants' knowing participation in, provision of substantial assistance to, and aiding and abetting of the Stasis' fraudulent scheme is evidenced in a series of communications between Defendants and the Stasis that took place during the period from December 2012 – when Black River was the Noteholder of the Tristan Notes – to the present, as alleged below.

153. From the date the Sharing Agreement was executed to the date the ECT Award was issued, December 19, 2013, Defendants were in frequent contact with the Stasis and their representatives regarding, upon information and belief, legal strategy, the potential likelihood of success in the ECT Arbitration, and litigation financing related to the ECT Arbitration.

154. Defendants remained in frequent contact with the Stasis and their representatives during the period that the Stasis were attempting to enforce the ECT Award in various jurisdictions, including England. This included, at a minimum, multiple electronic communications between August and October 2015. Upon information and belief, these communications concerned legal strategy, the potential likelihood of success in the Enforcement Proceedings, and litigation financing related to those proceedings.

155. From December 2015 until December 2016, Defendants remained in frequent contact with the Stasis and their representatives regarding, upon information and belief, legal strategy, the potential likelihood of success, and litigation financing related to the Enforcement Proceedings. Such communications occurred by telephone, electronic mail, and in person in, at minimum, March, April, August, September, October, and December 2016.

156. Further communications between Defendants and the Stasis and their representatives occurred in January 2017, when the Stasis and Plaintiff Kazakhstan were making submissions regarding the Stasis' fraudulent scheme in the English Enforcement Proceedings. The communications related to, *inter alia*, hiring a communications consultant focusing on government and media relations and reputation and crisis management.

157. Defendants remained in frequent contact with the Stasis and their representatives regarding the February 2017 hearing in the English Enforcement Proceedings. The February 2017 communications related to, *inter alia*, the "amount required" to fund the Enforcement Proceedings and "calculations" thereof. Further communications occurred in March 2017 related to, *inter alia*, the legal strategy of, the potential likelihood of success in, and litigation financing for the English Enforcement Proceedings.

158. Upon information and belief, throughout the remainder of 2017, Defendants remained in frequent contact with the Stasis and their representatives, during which time the Stasis initiated further proceedings to attempt to enforce the ECT Award in Belgium, Luxembourg, the Netherlands, Italy, Sweden, and the United States. Communications by electronic mail, for example, occurred in July, October, November, and December 2017. Upon information and belief, these communications related to, *inter alia*, the legal strategy of, the potential likelihood of success in, and litigation financing for the new Enforcement Proceedings.

159. Defendants provided the above-referenced funding to the Stasis for use in the appeal of the English Enforcement Proceedings, which enabled the Stasis to discontinue and abandon those proceedings to escape final judgment on the fraudulent scheme. Defendants agreed to provide and did provide such funding maliciously, with the intention of harming Kazakhstan by depriving it of the opportunity to prove the Stasis' fraud in England. Had Kazakhstan proven this

fraud at trial, the Statis' efforts to enforce the ECT Award would have been adversely affected, and thus Defendants' unlawful plan to obtain from Kazakhstan the monies that Defendants knew had been stolen from them by the Statis would have been adversely affected.

160. From January 2018 to present, Defendants have remained in frequent contact with the Statis and their representatives regarding, upon information and belief, the legal strategy of, the potential likelihood of success in, and litigation financing for the Enforcement Proceedings.

161. The Enforcement Proceedings continue to the present, wherein the Statis, with the substantial assistance of Defendants, are attempting to continue to cover up the fraud perpetrated by the Statis against the Tristan Noteholders, including Plaintiff Outrider, (and Plaintiff Kazakhstan), all to accomplish Defendants' above-referenced unlawful plan.

IV. PERPETUATION OF THE FRAUD IN THE ECT ARBITRATION

162. As alleged above, the Statis' fraudulent scheme centered around the key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures, thereby stripping assets from those companies, laundering money through them, and falsely portraying them as having more assets than they actually did. This key lie is at the center of the Statis' fraud, which Defendants joined and actively supported to accomplish their unlawful plan.

A. The Statis Institute Arbitral Proceedings Against Plaintiff Kazakhstan

163. On July 1, 2010, the Statis (Tristan) defaulted on the interest payments due to the Tristan Noteholders. This default occurred as a result of the Statis' fraudulent asset stripping of their Kazakh companies (TNG and KPM), through which the defrauded the Tristan Noteholders of their invested monies.

164. On July 26, 2010, the Statis filed a Request for Arbitration with the Stockholm Chamber of Commerce, claiming that Plaintiff Kazakhstan had engaged in a "campaign of

harassment” that violated various provisions of the ECT. The Statis claimed as damages all, or substantially all, of the monies they had unlawfully stripped from their Kazakh companies and stolen from the Tristan Noteholders.

165. The arbitration hearings were held in Paris, France. In the ECT Arbitration, the Statis contended that, as a result of Plaintiff Kazakhstan’s alleged breaches of the ECT, the Statis were entitled to damages for, *inter alia*, (i) their actual investment in the LPG Plant, which they falsely claimed was approximately \$245 million; and (ii) the additional profit that they contended would have been realized from the LPG Plant but for Plaintiff Kazakhstan’s alleged breaches of the ECT, which the Statis asserted was \$84,077,000.00.

B. In Furtherance of the Fraudulent Scheme, the Statis Make Multiple Misrepresentations in the ECT Arbitration

166. During the ECT Arbitration, the Statis made a series of false statements and submitted a range of falsified evidence on a range of subjects, including false evidence supporting their key lie that the related-party transactions were legitimate business expenditures.

167. With regard to the LPG Plant, the Statis contended that the LPG Plant should be valued based on the investment that they had allegedly made on the plant, while Plaintiff Kazakhstan contended that it should be valued as scrap, given that it was never completed and was not a viable investment.

168. The Statis, in making their arguments regarding the quantum of damages, made several misrepresentations, the falsity of which Plaintiff Kazakhstan and Plaintiff Outrider did not discover until years later.

169. First, the Statis, in reliance on the fraudulently obtained audit reports and falsified financial statements, represented that they had invested more than \$245 million in the development and construction of the LPG Plant, and should be awarded that amount. In fact, the amount

invested by the Statis in the development and construction of the LPG Plant was substantially less than the claimed \$245 million, and this amount had been fictitiously inflated through the LPG Plant fraud scheme described above.

170. In addition to submitting fraudulent documentary evidence, the Statis made the following misrepresentations to the ECT Tribunal:

a. The Statis' May 18, 2011 Statement of Claim stated that they "invested more than USD 245 million in development and construction of the LPG plant."

b. The First Witness Statement of Mr. Lungu, dated May 17, 2011, asserted that "[w]hen the State seized KPM and TNG and all of their assets, including the LPG Plant, in July of 2010, more than USD 245 million had been invested in construction of the LPG Plant."

c. The May 17, 2011 expert report of FTI Consulting, Inc. ("**FTI**") stated that "[p]er the audited financial statements for the period ended 31 December 2009, TNG has invested approximately \$245 million in the design and construction of the LPG Plant," and that "[a]s of 30 September 2008, TNG reported \$208.5 million related to total capital costs invested into the LPG Plant."

d. The Statis' May 7, 2012 Reply Memorial on Jurisdiction and Liability stated that "in May of 2009, Claimants ceased their capital outlays for construction of the LPG Plant, having already invested more than US \$245 million in its construction."

e. The Second Witness Statement of Anatolie Stati, dated May 7, 2012, stated that "[f]aced with this climate of fear and uncertainty, I [*i.e.*, Anatolie Stati] chose in May of 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction."

- f. The supplemental expert report of FTI dated May 28, 2012 stated that the “[t]otal investment that the Claimants have invested in the LPG Plant is \$245 million.”
- g. The Statis’ May 28, 2012 Reply Memorial on Quantum [*i.e.*, damages] reiterated that “[i]n the event the Tribunal chooses not to award the prospective value of the LPG Plant, Claimants request an award of the investment value of the LPG Plant, as adjusted by FTI to account for the approximately US \$37 million in additional expenditures by Claimants through May, 2009, in the sum of US \$245 million.”
- h. In oral evidence at a hearing during the arbitration proceedings, on October 2, 2012, Anatolie Stati repeated the statement made in his Second Witness Statement.
- i. In oral evidence at a hearing in the arbitration on January 28, 2013, Mr. Lungu repeated the statement made in his First Witness Statement.
- j. The Statis’ April 8, 2013 First Post-Hearing Brief stated that “Claimants invested more than US \$240 million in construction of the LPG plant,” that the investment cost of the LPG Plant was \$245 million, and that they were claiming their investment cost of \$245 million for the LPG Plant.
- k. The Statis’ June 3, 2013 Second Post-Hearing Brief stated that “TNG’s audited 2009 financial statements . . . list the net book value of the LPG Plant as US \$248 million at December 31, 2009, which corroborates FTI’s assessment of US \$245 million. Data from the Claimants’ historical financial records, particularly data from audited financial statements, is perfectly reliable evidence, and is not simply FTI parroting the Claimants.” They urged the ECT Tribunal to “award damages for the LPG Plant based on . . . Claimants’ out-of-pocket investment costs of US \$245 million.”

171. Each of the above statements was false because the stated construction costs did not represent the true costs that had been incurred in connection with the construction of the LPG Plant. Instead, the stated construction costs had been materially and fraudulently inflated through the above-referenced schemes that included (but may not have been limited to) the Resale Fraud, the Double-Billing Fraud, the Equipment for Construction Fraud, the Management Fee Fraud, and the Interest Fraud.

172. Second, the Statis concealed the existence of highly relevant documents from Plaintiff Kazakhstan and the ECT Tribunal. In a February 3, 2012 Order, the ECT Tribunal ordered the Statis to disclose to Kazakhstan, *inter alia*, documents in their possession, custody, or control “specifying the cost of construction and assembly operations, start-up and adjustment works in respect of basic facilities” of the LPG Plant. Documentation regarding the transfers between Tractebel, Azalia, and Perkwood all fell directly within the scope of this Order, and should have been disclosed by the Statis. However, in breach of the Order, the Statis failed to disclose these documents.

173. Third, the Statis used the KMG Indicative Offer during the ECT Arbitration as evidence that the value of the LPG Plant, at minimum, was the \$199 million included in the KMG Indicative Offer. The Statis did this despite knowing that the KMG Indicative Offer (i) had been procured by fraud; and (ii) was not, and could not be regarded as, a valid indicator of the market value of the LPG Plant. For example, the Statis made the following misrepresentations:

- a. The Statis’ May 18, 2011 Statement of Claim stated that “[t]he non-binding indicative offers ... provide a record of the actual reaction of willing and able buyers to an offer of the properties by a willing and able seller, with each acting at arms’ length in an

open and unrestricted market, without compulsion to buy or sell, and each having knowledge of the relevant facts.”

b. The Statis’ May 7, 2012 Reply Memorial on Jurisdiction and Liability twice referred to the KMG Indicative Offer, once again representing that it comprised a relevant (if conservative) guide to the value of its subject matter.

c. The Statis’ May 28, 2012 Reply Memorial on Quantum (*i.e.*, damages) invited the Tribunal to consider the KMG Indicative Offer in the following terms:

Indeed, the offer made for the LPG Plant by [KMG] at that time was US \$199 million. While Claimants did not accept these offers because at the time they deemed them too low and did not feel that they would lead to a sale, the Tribunal should note that State-owned [KMG] itself offered almost US \$200 million for the [LPG] Plant, more than six times the highest value assigned to the LPG Plant by Deloitte of US \$32 million. Little more is needed to demonstrate that Deloitte’s salvage value assumptions and calculations are worthless.

d. The Statis’ April 8, 2013 First Post-Hearing Brief, again referred to the KMG Indicative Offer, directly and indirectly, representing that it comprised a relevant (if conservative) guide to the value of its subject matter.

e. At a hearing on damages on January 28, 2013, the Statis submitted that damages should, at a minimum, be awarded in the amount of the KMG Indicative Offer.

174. Fourth, the Statis submitted expert reports that relied on the fraudulently obtained audit reports, the falsified financial statements, the fraudulently obtained KMG Indicative Offer, and the false testimony of Anatolie Stati and Mr. Lungu. Specifically, the Statis retained FTI to assess the economic damages related to their Kazakh operations, including the LPG Plant.

175. For example, FTI’s May 28, 2012 supplemental expert report relied on two categories of the Statis’ false information. First, in Paragraph 7.5, it cited the indicative offers on

the LPG Plant, including KMG's \$199 million Indicative Offer, to demonstrate that the value of the LPG Plant was "well in excess of its salvage value":

Offers made by interested buyers in 2008 for buying Claimants' assets ... valued the LPG Plant at \$150 million on average. The offer made by state-owned KazMunaiGaz at that time was \$199 million for the LPG Plant. Hence it is clear that the value of the LPG Plant at the 2008 Valuation Date was well in excess of its salvage value.

176. This report also relied on the false representations in the Statis financial statements and annual reports when assessing the investment value of the LPG Plant.

177. At no point did the Statis disclose that the financial statements were falsified and fraudulent. Instead, during the ECT Arbitration, the Statis affirmatively relied on the falsified financial statements to support their claims. For example, in their Second Post-Hearing Brief, the Statis defended criticisms of FTI's assessment of the investment value of the LPG Plant on the basis that the financial statements and annual reports were "prepared for investors in the ordinary course of business, and not for the purposes of litigation." In the same document, the Statis also falsely represented that their "historical financial records, particularly data from audited financial statements," were "perfectly reliable evidence."

C. Plaintiff Kazakhstan Relied to Its Detriment on the Fraudulent Misrepresentations

178. Plaintiff Kazakhstan justifiably relied to its detriment on the Statis' misrepresentations throughout the ECT Arbitration. This justifiable reliance took multiple forms.

179. First, in preparing and presenting its defenses on jurisdiction, Plaintiff Kazakhstan relied on the Statis' misrepresentations – both in its financial statements, pleadings, and expert evidence – that the expenses stated therein were legitimately and lawfully incurred. Had the Statis not made these misrepresentations, and instead disclosed the truth – that the Statis were engaged in a massive fraud through the operations of Tristan Oil, KPM, and TNG – Kazakhstan's defenses

would have been materially different. As a result of the Statis' misrepresentations, Kazakhstan incurred damages, including litigation costs in connection with preparing its defenses on jurisdiction and liability, which were completely wasted.

180. Second, in preparing and presenting its defenses concerning liability, Plaintiff Kazakhstan relied on the Statis' misrepresentation that their financial statements were materially correct, as evidenced by the KPMG audit reports. Had the Statis not made this misrepresentation, and instead disclosed the truth – that the Statis materially falsified the financial statements and obtained the KPMG audit reports by fraud – Kazakhstan's defenses would have been materially different. As a result of the Statis' misrepresentations, Kazakhstan incurred damages, including litigation costs in connection with preparing its defenses concerning jurisdiction, liability, and damages that were completely wasted.

181. Third, in preparing and presenting its defenses concerning the value of the LPG Plant, Plaintiff Kazakhstan relied on the Statis' misrepresentations – in their financial statements, pleadings, and expert evidence – that they had invested \$245 million in the construction of the LPG Plant. For example, Kazakhstan relied on the Statis' misrepresentation of the LPG Plant's costs to calculate how much the Statis lost as a result of building the plant, arguing that the Statis “invested USD 245 million to create an asset that, in the best case scenario, had a value of only USD 67 million.”⁹

182. Had the Statis not made these misrepresentations, and instead disclosed the truth – that their claimed investments in the LPG Plant were based on falsified and fraudulent evidence – Plaintiff Kazakhstan's defenses would have been materially different. As a result of the Statis'

⁹ *Id.* ¶ 1728 (citing Kazakhstan's Second Post-Hearing Brief, June 3, 2013, ¶¶ 829–32).

misrepresentations, at minimum, Kazakhstan incurred damages, including litigation costs in connection with preparing its defenses concerning damages that were completely wasted.

D. Impact of the Fraud on the ECT Tribunal's Decision

183. The Statis' fraud affected the outcome of the ECT Arbitration because it impacted the ECT Tribunal's determinations regarding jurisdiction, liability, and damages. For example, with respect to damages, the ECT Tribunal awarded the Statis total compensation in the amount of \$497,685,101, comprised of the following: (i) \$277.8 million for two oil and gas fields; (ii) \$31.3 million for another contract area; and (iii) \$199 million for the LPG Plant. After deducting \$10,444,899 in the Statis' debts (not including debt related to the Laren Transaction), the ECT Tribunal issued the final award in the amount of \$497,685,101.¹⁰

184. Under the terms of its analysis, the ECT Tribunal concluded that the LPG Plant should be assessed in the amount of \$199 million based on the amount of the KMG Indicative Offer.¹¹ This decision was the result of fraud committed by the Statis, from three perspectives.

185. First, KMG almost certainly would not have issued the KMG Indicative Offer had it known of the Statis' fraudulent scheme, particularly that the audit opinions for the Statis' financial statements had been obtained fraudulently and that the LPG Plant costs stated in the financials were materially falsified.

186. Second, the KMG Indicative Offer was explicitly based on the historical costs of construction of the LPG Plant included in the Information Memorandum.¹² This Information Memorandum was prepared unilaterally by the Statis using the materially inflated and fictitious

¹⁰ *Id.* ¶¶ 1856–59.

¹¹ *Id.* ¶ 1747.

¹² *Id.*

construction costs resulting from the transactions with Perkwood and Azalia. The Information Memorandum failed to mention the Perkwood/Azalia transactions and presented the construction costs as if they corresponded to the costs of supply by Tractebel. Despite this, the Statis affirmatively introduced the KMG Indicative Offer into the ECT Arbitration and asked the ECT Tribunal to use the KMG Indicative Offer as a basis to award them damages.¹³ Given that the ECT Tribunal accepted the Statis' request and awarded them \$199 million on the basis of the fraudulently obtained KMG Indicative Offer, the Statis obtained the ECT Award by fraud.

187. Third, the ECT Tribunal relied on the amount included in the KMG Indicative Offer on the grounds that in its view, this was “the relatively best source of information.”¹⁴ However, this conclusion was based on the Statis' fraud, in that the Statis:

- a. Concealed a series of essential elements that determined the price fixed in the KMG Indicative Offer, including the artificially inflated costs and the fact that the suppliers of equipment at fictitious prices were related parties;
- b. Filed in the ECT Arbitration falsified documents (the altered VDD Report, the annual accounts of TNG, the Information Memorandum, among other items described above), and on this basis repeatedly falsely represented that they had invested \$245 million in construction costs for the LPG Plant; and
- c. Urged the Tribunal to rely on the submitted KMG Indicative Offer as a valid minimum valuation for the LPG Plant.

188. These facts caused the English court to decide in 2017:

If construction costs were ... fraudulently inflated by the Claimants ... then, because the ... Indicative Bid valued the LPG Plant [on the basis of these

¹³ *Id.* ¶ 1707.

¹⁴ *Id.* ¶ 1747.

inflated construction costs] there is the clearest argument that the ... Indicative Bid would have been lower.

[I]n asking the Tribunal to rely on the ... Indicative Bid in circumstances (concealed from the Tribunal, as from the bidder) of the alleged fraud, there was a fraud on the Tribunal.¹⁵

189. The Statis, rather than attempt to defend against the fraud allegations in the English proceedings, dismissed their own action to enforce the arbitral award, which efforts were materially assisted by Defendants.

V. PERPETUATION OF THE FRAUD IN THE ENFORCEMENT PROCEEDINGS

190. After the Statis obtained the ECT Award against Plaintiff Kazakhstan, they began recognition and enforcement proceedings in a series of jurisdictions, including England, Italy, the Netherlands, Luxembourg, Belgium, and the United States.¹⁶ Plaintiff Kazakhstan, meanwhile, initiated proceedings to have the award set aside or invalidated and to seek discovery from Defendants.¹⁷ In initiating or defending themselves in these proceedings, the Statis continued to perpetrate and cover up the fraud against their investors with the substantial and continuous assistance of Defendants and to the detriment of Plaintiff Kazakhstan.

191. In these proceedings, upon information and belief, Defendants worked with the Statis to provide funding and to create legal strategy. They did so, in part, through the dozens of communications detailed above, as well as others. Rather than trying to recoup their stolen investments from the Statis through lawful means, Defendants joined and assisted the Statis'

¹⁵ Anatolie Stati, Gabriel Stati. Ascom Group S.A. and Terra Raf Trans Trading Ltd., Case no. CL-2014-000070 (June 6, 2017), ¶¶ 43, 48.

¹⁶ Specifically, they began enforcement proceedings in England and the United States in 2014, and in Sweden, Belgium and Italy in 2017. They also began attachment or exequatur proceedings in the Netherlands beginning in 2014, in Sweden, Luxembourg, and Belgium in 2017, and in Italy in 2018.

¹⁷ Plaintiff asked the Svea Court of Appeal in Sweden to set aside the ECT Award in 2014. It initiated discovery proceedings in the United States starting in 2015.

fraudulent schemes so that they could unlawfully have Plaintiff Kazakhstan pay them the amounts stolen by the Stasis. In so doing, Defendants entered into a civil conspiracy to commit fraud, of which Plaintiff Kazakhstan was a victim, and aided and abetted the Stasis' wrongful activities.

192. As the Stasis prosecuted or defended these proceedings, they and their counsel engaged in a series of misrepresentations to the various courts. This had the effect of furthering the fraud. Although the Stasis and their counsel have made dozens of different misrepresentations in dozens of different proceedings, the five categories listed below represent the majority of such misrepresentations.

193. Upon information and belief, Defendants knew that these representations were false and that the Stasis were attempting to enforce an arbitral award that they had procured by fraud in order to continue the cover-up of the underlying fraud. Nevertheless, Defendants continued to encourage and support the Stasis in these enforcement efforts, including by providing guidance and critical funding for these efforts.

A. The Stasis Falsely Claim that the Perkwood Transactions Were Legitimate

194. As alleged above, one component of the Stasis' fraud against Plaintiffs was the fraudulent accounting at the LPG Plant, in which they falsely inflated the costs of the plant through related-party transactions. When confronted by the truth, as presented in Plaintiff Kazakhstan's legal submissions and evidence, the Stasis made a series of misrepresentations regarding these related-party transactions.

195. After they belatedly admitted that they actually owned Perkwood after hiding this fact for years, the Stasis continued to hide the fraudulent LPG Plant costs by falsely claiming in several European proceedings that Perkwood was an operational company that handled the

delivery of equipment to Kazakhstan, so the markups could be attributed to associated delivery costs. For example:

a. The Statis told the Svea Court of Appeal in Sweden, without evidence or explanation, that “Perkwood did deliver. They did perform services.”

b. The Statis asserted to the Luxembourg Court of Appeal that:

[D]espite being part of the group of companies that the Statis controlled/owned, the Perkwood Company had a separate legal personality, distinct from the Statis as individuals and other entities within the Statis’ group of companies. The Perkwood company was able to have rights and obligations, regardless of the fact that it did not own any premises or employees.... [T]he Perkwood company was fully operational. The company was set up to take care of the bidding process and to take over equipment delivery to Kazakhstan, in order to allow the construction of the LPG [Plant] by TNG.

c. Before the Rome Court of Appeals, the Statis argued that Perkwood was a fully functional company. Using circular logic (and no evidence), the Statis argued that the fact that Perkwood filed dormant company accounts in the U.K. during all relevant years was irrelevant because Perkwood was a fully operative company.

196. The Statis also made the false representation in various proceedings that the sham Perkwood transactions were a “bona fide transfer pricing agreement” and that their decision to use related parties was a legitimate “tax optimization scheme.” These misrepresentations were made notwithstanding the fact that the Statis concealed their relationship with Perkwood from the outside world (including from their own auditors) and that Perkwood, a sham company without employees or offices for which the Statis filed dormant company reports, could not offer any value.

197. The Statis made the following misrepresentations in the Swedish proceedings:

a. “The Perkwood agreement was not a sham agreement. Perkwood’s role was to manage the purchasing and delivery of equipment for the construction of the LPG Plant....

In other words, there has been no question of any misleading arrangement or sham agreement between TNG and Perkwood.”

b. They denied, without evidence, that the financial statements reflected the purchase of \$72 million in equipment that, in fact, never existed.

c. They claimed, again without evidence, that up to \$60 million in interest costs “corresponds to the actual cost.”

d. They further claimed that the “management fee” of \$44 million paid to Perkwood was a legitimate cost: “this assertion that the management fee that was paid to Perkwood without any basis in any agreement, no account of performance in the form of services, well, we know that from the bank history that was not true.”

198. The Statis never explained to the Swedish court what services Perkwood performed, how the management fee was calculated, or who decided the amount of the management fee. Instead, they falsely represented that the management fee was valid consideration for Perkwood coordinating the project, arranging for storage at various delivery sites, transportation, insurance, customs duties, and legal liability.

199. In England, the Statis repeated the key lie that the related-party transactions constituted a legitimate transfer pricing arrangement. In their “Points of Defence,” they falsely claimed:

Some of the Claimants’ investments into the construction of the LPG Plant, in so far as they related to delivery of certain equipment for the LPG Plant, were structured using a transfer pricing arrangement involving transactions between related business entities affiliated with the Claimants.... This constituted a lawful arrangement driven by tax optimisation purposes. At no point did this arrangement involve fraudulent trade or misinvoicing or any other dishonest practice.

200. They further falsely attributed the price increases, in which the price of the equipment was tripled, to the fact “that Perkwood was responsible for the costly loading in Europe

and unloading in Kazakhstan and the transportation in between” and that “Perkwood also bore all related insurance and storage costs relating to the requisite equipment during its delivery to Kazakhstan.” Finally, the Statis claimed (falsely) that the “management fee was a legitimate add-on cost for the equipment supplied under the Perkwood Contract, corresponding to approximately a third of the total value of the Perkwood Contract.”

201. The Statis made the same false assertions in Belgian exequatur proceedings: “Perkwood had to bear the excessive costs and much higher for the loading of goods in Europe, their unloading in Kazakhstan and the corresponding transport. Unlike Azalia, Perkwood also had to insure the goods concerned, as well as organize their storage to allow delivery to Kazakhstan.” They further asserted that “[s]uch a tax optimization is a perfectly legal arrangement and is customary in a group of companies and in complex construction projects of this magnitude.... This tax optimization mechanism allowed Perkwood (and Azalia) to minimise their tax base for corporate income tax in their country of incorporation, namely Russia (for the Azalia Company) and England (for the Perkwood Company).”

202. The Statis repeated these false assertions in the Luxembourg proceedings:

The Perkwood Company and Contract were part of a Transfer Pricing Agreement, which involved operations between different entities, belonging to the Statis. It is around this Transfer Pricing Agreement, that a part of the investments made by the Statis in the construction of the LPG Plant (in particular as regards the delivery of certain equipment) was structured. Such a mechanism is a perfectly legal arrangement for tax optimisation purposes, as is customary in a group of companies and in complex construction projects of this size.... [T]hese ‘fees and management fees’ were initially perfectly legitimate, since Perkwood bore all costs and expenses relating to deliveries, storage, insurance and costs related to the conversion of EUR/USD currencies in relationship to equipment deliveries from Europe to Kazakhstan. They corresponded to about a third of the value of the Perkwood contract.

203. In the Netherlands, the Statis also made these false assertions, stating during a hearing that a large part of the inflated LPG Plant costs were bona fide costs for the transport of

equipment. Later, however, the Statis changed their position and claimed in a filing that the (non-existent) management fee was an explanation for the costs. Either way, the Statis falsely asserted that the increase of the construction costs was part of a bona fide transfer pricing arrangement.

204. In Italy, the Statis again asserted that the Perkwood transactions were part of a lawful transfer pricing arrangement. They claimed in a brief that the price increase for the equipment was explained by transportation costs, insurance costs, and the floating exchange rate between the US dollar and the Euro. The Statis also asserted that the \$44 million management fee paid by TNG to Perkwood was a legitimate construction cost and had a sound legal basis.

B. The Statis Misrepresented that KPMG Endorsed their Financial Statements Based on Access to Complete and Truthful Information.

205. In the European courts, the Statis relied heavily on the false assertion that their financial statements had been audited by KPMG to defend against Plaintiff Kazakhstan's allegation that the statements were fraudulent. The Statis falsely claimed that KPMG had full access to all company records and that they were fully aware of Perkwood's status as a related company.

206. For example, the Statis made the following false statements to these courts:

- a. They falsely told the Swedish court that “[w]hen reviewing the prepared annual statements, TNG’s auditors, KPMG, had full access to all accounting records. KPMG was aware of Perkwood’s function.” They reiterated to the same court that “KPMG was aware of Perkwood’s function” and that “KPMG had full access to all accounting documents.”
- b. The Statis also falsely informed the court in the Netherlands that “[d]uring the examination of the annual financial accounts, TNG’s auditors, KPMG, had full access to all the accounting records. KPMG was aware of Perkwood’s function.”

c. They claimed to the Luxembourg court that “TNG, who was also a co-contractor in the allegedly fictitious contract, was also independently audited by KPMG Audit LLC (‘KPMG’), who had access to all of the accounting records concerning Perkwood. KPMG never issued the slightest remark regarding the existence of Perkwood or the incriminating contract.”

207. These representations were knowingly false, given the clear evidence that Anatolie Stati deliberately concealed the fact that Perkwood was a related company from KPMG and, further, instructed KPMG’s Tax and Advisory department to remove any reference to Perkwood as a related company from relevant documents. These representations by the Statis are also proven false by the newly discovered (October 2019) correspondence between KPMG and the Statis in February 2016 in which KPMG warned that it would withdraw its audit reports on the basis of the new information discovered by Plaintiff Kazakhstan that Perkwood was a related party, unless the Statis were able to provide an explanation. All of the misrepresentations alleged in this section were made after the Statis received the KPMG correspondence in 2016.

208. The Statis’ representations regarding KPMG also are proven false by the August 2019 decision by KPMG to invalidate all of its audit reports for the Statis’ financial statements after KPMG was provided Mr. Lungu’s deposition testimony and after Anatolie Stati could not explain his deliberate lies.

209. As evidence of their claim that KPMG knew that Perkwood was a related company, the Statis falsely represented to the Netherlands court that the “Vendor Due Diligence report drawn up by KPMG, which was compiled in 2008 in the context of a possible sale of TNG by Stati, submitted in the ECT Arbitration, mentions Perkwood as a ‘related party’ and supplier of materials for the LPG Plant.”

210. Similarly, in Belgium they falsely represented that:

Perkwood is further mentioned several times in a KPMG Due Diligence report entitled “Zenith Project” which was produced by the Statis in the course of the arbitral proceedings. More particularly, the report in question (i) refers to Perkwood as a ‘related party’ of the Statis; (ii) lists Perkwood as the main supplier of equipment for the LPG Plant; and (iii) was used by Kazakhstan during the arbitration proceedings, for the cross-examination conducted on the Statis and their witnesses (Anatolie STATI and Artur LUNGU).

211. They also falsely represented to the English High Court that “Perkwood’s status as a related party to TNG was set out in the vendor due diligence report for Project Zenith.” Finally, to the Luxembourg court, they falsely represented that “Perkwood’s status as a party affiliated to TNG was established in KPMG’s due diligence report.”

212. These representations were knowingly false. As Mr. Lungu admitted at his 2019 deposition, the draft Vendor Due Diligence Report prepared by KPMG stated in four separate places that Perkwood was a Stati-related party. Upon reviewing this draft, Mr. Lungu informed KPMG that this was incorrect and he instructed KPMG to change the Vendor Due Diligence Report so that it (falsely) stated that KPMG was an unrelated third party. KPMG followed these instructions. Mr. Lungu testified that he issued these instructions because he, as the Statis’ CFO, had been misled by the Statis into believing that Perkwood was an unrelated third party and not a Stati company.

213. The KPMG Vendor Due Diligence Report therefore was a direct product of the Statis’ fraudulent scheme, and was engineered by the Statis to continue the scheme.

C. The Statis Misrepresented that They Never Concealed Perkwood’s Status from KPMG or the Outside World

214. The evidence shows that the Statis consistently sought to conceal the fact that Perkwood was a company they owned and controlled, and that the transactions with Perkwood were not at arm’s length. The Statis continued to misrepresent this fact to various courts.

215. For example, after evidence of the Statis' double accounting had been revealed in the U.S. discovery proceedings, the Statis continued to conceal the fact that Perkwood was a related party by refusing to admit or deny the fact before the Svea Court of Appeal. In a submission to that court, the Statis attempted to fend off Plaintiff Kazakhstan's complaint that they were evading the issue by stating that they "have not asserted that Perkwood was 'freestanding from the Investors' sphere.' What has been stated by the Investors is that they do not concede to the fact that Perkwood was an affiliate in some – yet unspecified by Kazakhstan – way." They also evaded the question by stating that they "have never been able to contest (but neither to admit) that Perkwood is in any particular way an 'affiliated' company." Only on September 5, 2016, once Plaintiff Kazakhstan introduced documents that it had obtained from Latvian authorities showing that the Statis had full powers of attorney over Perkwood, did the Statis finally concede that Perkwood was a related party. In a September 8, 2016 hearing, counsel for the Statis stated that "we are not contesting that it is an affiliate company. We don't need to argue on this case, because it is an affiliate company."

216. Despite this clear example of attempting to conceal Perkwood's status, the Statis continued to falsely claim to the various courts that they had never tried to conceal that information. In Belgium, for example, they told the court that "it is therefore incorrect to claim that 'the Statis never informed KPMG of their relationship with Perkwood.'" They further insisted (falsely) in the same submission that "[i]t should be recalled that the Statis have never tried to hide the Perkwood Contract and Company" and that "it should be noted that the Statis never sought to conceal the facts of Perkwood being part of the group of companies they controlled/owned." They continued to make such representations the next year, stating that "it should be stressed that the

Statis have never sought to conceal the status of Perkwood as part of the group of companies they controlled/possessed, unlike what Kazakhstan keeps repeating.”

217. The Statis consistently made this misrepresentation to other courts as well. In England, they “denied that the Claimants at any time sought to conceal Perkwood’s status as part of the group of companies owned and/or controlled by the Statis.” In Luxembourg, they claimed that “[t]here was no deliberate concealment of Perkwood’s status as a party affiliated to TNG within the meaning of the IFRS standards and IAS 24 or in any manner whatsoever.” And in Italy, they further argued that neither Perkwood nor documentation regarding Perkwood had been concealed.

D. The Statis Misrepresented by Omission the Incriminating KPMG Correspondence and Concealed It from the Courts

218. On February 2, 2016, after KPMG belatedly learned, as a result of the disclosures obtained by Plaintiff Kazakhstan, that Perkwood was actually a related company that had significantly inflated the costs of the equipment for the LPG Plant, KPMG reached out to the Statis for an explanation. It did so as part of its ongoing responsibility to revisit any audit reports “if we become aware of facts which may have caused the audit reports to be amended, had such facts been known to us at the audit report date.”

219. The 2016 KPMG letter (which Plaintiff Kazakhstan did not discover until October 2019) identified three primary issues that it was unaware of at the time of the audits. This included (a) the fact that Perkwood charged a management fee of approximately \$44 million; (b) the fact that Perkwood was a related party controlled by the Statis; and (c) that Perkwood was not the “actual supplier of the equipment for the LPG Plant,” but instead was a dormant company that was passing through costs that were “significantly different from the corresponding cost” charged by the actual supplier of the equipment. The letter demanded written responses to a series of six

questions regarding these issues and warned that if it did not receive this information, it could “prevent future reliance on our audit reports and in particular to withdraw our audit reports and to inform about such withdrawal all parties who are still, in our view, relying on these reports, including ... the Svea Court of Appeals.” The Statis, however, did not substantively respond to KPMG’s questions, but instead threatened legal action against KPMG.

220. After the disclosure by the Statis of documents in the then-ongoing English proceedings in June 2018, Plaintiff Kazakhstan located Mr. Lungu in Houston, Texas and obtained his deposition in April 2019. Kazakhstan then provided this deposition transcript to KPMG, along with other materials evidencing the Statis’ fraud. KPMG (as Kazakhstan subsequently discovered in October 2019), contacted Anatolie Stati and demanded an explanation. None was provided.

221. On August 5, 2019, KPMG again reached out to the Statis and stated that “[o]ur audit files indicate that transactions with Perkwood were not disclosed in the financial statements of the [Stati] Companies, and that Perkwood was not included in the list of related parties which management provided to us during our audits.” The letter again requested information regarding Perkwood’s status.

222. After receiving no response, on August 21, 2019, KPMG took the extraordinary and rare step of invalidating all of its audit reports for the Statis’ financial statements, and further instructed the Statis to “immediately take all necessary steps to prevent any further, or future, reliance” on the audit reports, including informing all parties in receipt of the financial statements or audit reports of this “development,” *i.e.*, KPMG’s decision to invalidate the reports.

223. Instead of complying with KPMG’s instruction, the Statis continued to conceal the KPMG correspondence from Plaintiffs and the various courts. They did not inform any court, or other recipients of the audited financial statements, of KPMG’s decision to invalidate its audit

reports. They also did not submit the KPMG correspondence to any of the courts that were in the process of adjudicating issues relating to the ECT Award in late 2019, including the Amsterdam Court of Appeal and the Luxembourg Court of Appeal. Far from preventing any reliance on the audit reports, the Statis continued to falsely represent to the courts that KPMG had performed their audits with full access to all documents and full knowledge of Perkwood's status despite knowing that the exact opposite was true. When Plaintiff Kazakhstan eventually learned of the KPMG correspondence in October 2019, the Statis sought to block Kazakhstan from introducing the correspondence and to minimize its significance.¹⁸

224. In Luxembourg, Plaintiff Kazakhstan asked the Statis in a November 15, 2019 letter to disclose the KPMG correspondence to the Court of Appeal of Luxembourg even though the submission date for evidence had passed. The Statis did not respond. When Kazakhstan attempted to submit the evidence itself, the Statis sought to block the request in a letter to the Court of Appeal of Luxembourg. They falsely asserted that Kazakhstan's request was unfounded and that the KPMG correspondence was the result of threats by Kazakhstan against KPMG.

225. The Statis elaborated on this misrepresentation in a letter to the court in Belgium, stating as follows:

Kazakhstan had first put KPMG Audit LLC (Kazakhstan) under pressure in 2016 – the subject of the notorious correspondence of 2016 of which the production is now requested by Kazakhstan – but the manoeuvre failed at the time; the letter of KPMG Audit LLC (Kazakhstan) dated 21 August 2019 is manifestly the result of new pressure exercised by Kazakhstan and is by no means the result of an independent and impartial investigation that we can expect from an auditor as renowned as KPMG.

¹⁸ Although Plaintiff received notification in August 2019 from KPMG regarding its decision that month to withdraw its audit reports, it did not receive the 2016 and 2019 correspondence between KPMG and the Statis until November 2019, after the submission date for evidence in the various proceedings had passed.

226. The Statis further represented that the 2016 and 2019 KPMG correspondence was “far from new” because it related to fraud arguments already dismissed by the Svea Court of Appeal. Even so, the Statis represented, the correspondence did not establish any fraud: “the so-called KPMG documents do not show any fraud; Kazakhstan attempts to give these ‘new’ documents a scope they do not have.”

227. In the Netherlands, the Statis actively sought to falsify the record regarding the KPMG correspondence. They sent a letter to the Court of Appeal asking it to correct the record and add statements that were never pleaded before the court. Specifically, they attempted to include a reference to their offering to produce the 2016 KPMG correspondence, although no such offer had ever been made.

VI. NOTICE OF INTENT TO RAISE ISSUES UNDER ENGLISH LAW

228. Certain of the above-alleged acts of Defendants occurred in England such that English law applies.

229. Pursuant to CPLR § 4511, Plaintiffs hereby give notice of their intent to raise issues under the laws of England, including but not limited to, the law governing the economic tort of unlawful means conspiracy. Plaintiffs intend to offer expert testimony, documents, and other relevant sources to the Court to determine the foreign law at issue.

230. English law recognizes the economic tort of unlawful means conspiracy, which arises when two or more persons conspire to take action through unlawful means that results in damages to another person.

231. The elements of an unlawful means conspiracy are: (a) an agreement or understanding between two or more parties, (b) an intent to act unlawfully, (c) concerted action pursuant to that agreement or understanding, and (d) damages to a third party as a result.

232. A conspirator is liable for all damages suffered by a victim of the conspiracy from the time the conspirator joins the conspiracy.

233. Under English law, the conspirators' sole or predominant purpose need not be to harm the plaintiff. In *OBG Ltd and others v. Allan*, [2007] UKHL 21 (OBG), the House of Lords found that the intent element of the tort can be satisfied where a defendant harms the plaintiff in furtherance of an unlawful conspiracy:

A defendant may intend to harm the claimant as an end in itself, where, for instance, he has a grudge against the claimant. More usually a defendant intentionally inflicts harm on a claimant[. . . as a means to an end. He inflicts damage as the means whereby to protect or promote his own economic interests. Intentional harm inflicted against a claimant in either of these circumstances satisfies the mental ingredient of this tort.

234. Unlawful means include acts which are themselves unlawful under criminal or civil law.

COUNT I
CIVIL CONSPIRACY TO COMMIT FRAUD
(PLAINTIFF KAZAKHSTAN AGAINST ALL DEFENDANTS)

235. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–234 above as if fully set forth herein.

236. The Stasis engaged in a fraudulent scheme, as alleged herein.

237. The Stasis made misrepresentations and material omissions of fact that were false and known to be false. The Stasis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiff Kazakhstan, Plaintiff Outrider and the other Tristan Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

238. These parties and/or others, justifiably relied on the Stasis' misrepresentations and material omissions.

239. The Statis' misrepresentations and material omissions caused injury to Plaintiff Kazakhstan.

240. The Statis' misrepresentations and material omissions were part of their fraudulent scheme, premised on their key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures. These misrepresentations are being perpetuated in the Enforcement Proceedings, wherein the Statis continue to misrepresent that the amounts they stole were legitimate expenditures.

241. Defendants had knowledge that the Statis stole the Noteholders' monies through their fraudulent related-party transactions and, to cover up this theft, falsely represented that these stolen monies were legitimate business expenses.

242. Defendants agreed to participate in the unlawful acts of the Statis. Specifically, Defendants knew that the Statis had stolen the Noteholders' monies and were claiming reimbursement for such stolen monies as investment costs in the ECT Arbitration. Despite this, Defendants agreed to enter into the Sharing Agreement with the Statis, under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff Kazakhstan the monies that the Statis had stolen from Defendants (and the other Tristan Noteholders).

243. Further, Defendants subsequently engaged in overt acts in furtherance of the unlawful scheme. For example, they agreed to provide funding to the Statis for the Enforcement Proceedings, and they did provide such funding, knowing that the Statis had made numerous fraudulent misrepresentations in the ECT Arbitration and in the Enforcement Proceedings. They also regularly consulted with the Statis and/or their counsel and provided guidance regarding the

legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Statis' fraud.

244. By engaging in these activities with knowledge of the Statis' fraud, Defendants have knowingly participated in, and provided substantial assistance to, the fraudulent scheme.

245. As a direct and proximate result of the fraudulent scheme, in which Defendants knowingly participated, Plaintiff Kazakhstan was injured and suffered damages, including but not limited to the amount of the litigation costs that it otherwise would not have incurred in the ECT Arbitration and the Enforcement Proceedings and that were wasted.

246. Defendants' acts as alleged in Count I were willful, wanton, malicious, and/or oppressive.

COUNT II
AIDING AND ABETTING WRONGFUL CONDUCT
(PLAINTIFF KAZAKHSTAN AGAINST ALL DEFENDANTS)

247. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–246 above as if fully set forth herein.

248. The Statis made misrepresentations and material omissions of fact that were false and known to be false. The Statis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiff Kazakhstan, Plaintiff Outrider and the other Tristan Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

249. These parties and/or others, justifiably relied on the Statis' misrepresentations and material omissions.

250. The Statis' misrepresentations and material omissions caused injury to Plaintiff Kazakhstan.

251. The Statis' misrepresentations and material omissions were part of their fraudulent scheme, premised on their key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures. These misrepresentations are being perpetuated in the Enforcement Proceedings, wherein the Statis continue to misrepresent that the amounts they stole were legitimate expenditures.

252. Defendants had knowledge that the Statis stole the monies through their fraudulent related-party transactions and, to cover up this theft, falsely represented that these stolen monies were legitimate business expenses.

253. Defendants aided and abetted the unlawful acts of the Statis. Specifically, Defendants knew that the Statis had stolen the monies and were claiming reimbursement for such stolen monies as investment costs in the ECT Arbitration but, despite this, Defendants agreed to enter into the Sharing Agreement with the Statis under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff the monies that the Statis had stolen from Defendants (and the other Tristan Noteholders)

254. Further, Defendants subsequently engaged in overt acts in furtherance of the unlawful scheme. For example, they agreed to provide funding to the Statis for the Enforcement Proceedings, and they did provide such funding, knowing that the Statis had made numerous fraudulent misrepresentations in the ECT Arbitration and subsequent enforcement proceedings. They also regularly consulted with the Statis and/or their counsel and provided guidance regarding the legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Statis' fraud.

255. Defendants' actions substantially assisted the Statis in furthering the fraudulent scheme.

256. As a direct and proximate result of Defendants' substantial assistance to the Stasis, Plaintiff was injured and suffered damages, including but not limited to the amount of the litigation costs that it otherwise would not have incurred in the ECT Arbitration and the Enforcement Proceedings and that were wasted.

257. Defendants' acts as alleged in Count II were willful, wanton, malicious, and/or oppressive.

COUNT III
UNLAWFUL MEANS CONSPIRACY UNDER ENGLISH LAW
(PLAINTIFF KAZAKHSTAN AGAINST ALL DEFENDANTS)

258. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–257 above as if fully set forth herein.

259. Defendants knowingly joined a conspiracy amongst the Stasis and others to steal monies from the Tristan Noteholders and Plaintiff Kazakhstan through unlawful means.

260. Among other unlawful means, the Stasis conspired to, and did, commit fraud against the Tristan Noteholders through the illegitimate and systematic stripping of assets from TNG and KPM using sham related-party transactions that devalued the companies. These sham related-party transactions were made with the proceeds of fraud, and thus constituted money laundering.

261. The Stasis made misrepresentations and material omissions of fact that were false and known to be false. The Stasis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiffs, the Tristan Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

262. These parties and/or others, justifiably relied on the Stasis' misrepresentations and material omissions.

263. The Statis' misrepresentations and material omissions caused injury to Plaintiff Kazakhstan.

264. Defendants had knowledge that the Statis stole the monies through unlawful means and, to cover up this theft, conspired to, and did, falsely represent that these stolen monies were legitimate business expenses.

265. Defendants conspired to, and did, engage in numerous acts in furtherance of the Statis' fraudulent scheme with the intention of causing damage to Plaintiff Kazakhstan. Specifically, Defendants knew that the Statis were claiming reimbursement for such stolen monies as investment costs in the ECT Arbitration but, despite this, Defendants agreed to enter into the Sharing Agreement with the Statis under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff Kazakhstan the monies that the Statis had stolen from Defendants (and the other Tristan Noteholders).

266. Further, Defendants agreed to provide funding to the Statis for the Enforcement Proceedings, and did provide such funding, knowing that the Statis had made numerous fraudulent misrepresentations in the ECT Arbitration and subsequent enforcement proceedings. They also regularly consulted with the Statis and/or their counsel and provided guidance regarding the legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Statis' fraud.

267. As a result of the unlawful means conspiracy, Plaintiff Kazakhstan was injured and suffered damages, including but not limited to the amount of the litigation costs that it otherwise would not have incurred in the ECT Arbitration and the Enforcement Proceedings and that were therefore wasted.

COUNT IV
CIVIL CONSPIRACY TO COMMIT FRAUD
(PLAINTIFF OUTRIDER AGAINST ALL DEFENDANTS)

268. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–267 above as if fully set forth herein.

269. The Statis engaged in a fraudulent scheme, as alleged herein.

270. The Statis made misrepresentations and material omissions of fact that were false and known to be false. The Statis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiff Kazakhstan, Plaintiff Outrider and the other Tristan Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

271. The Statis' misrepresentations and material omissions were part of their fraudulent scheme, premised on their key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures. In fact, these transactions were designed to enrich the Statis by fraudulently diverting assets from KPM and TNG. Because these companies were the guarantors of the Tristan and Laren Notes, this fraudulent scheme had the effect of depressing the value of the Notes and thereby defrauding the Noteholders.

272. When Plaintiff Outrider made decisions concerning the Notes, including *inter alia* decisions concerning their purchase, retention and sale, it reasonably relied on the Statis' various statements detailed above claiming that these transactions were legitimate business expenses.

273. Defendants had knowledge that the Statis stole the Noteholders' monies through their fraudulent related-party transactions and, to cover up this theft, falsely represented that these stolen monies were legitimate business expenses. Defendants knew that the Statis were claiming reimbursement for such stolen monies as investment costs in the ECT Arbitration.

274. Despite this, Defendants agreed to participate in the unlawful acts of the Stasis. They agreed to enter into the Sharing Agreement with the Stasis, under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff Kazakhstan the monies that the Stasis had stolen from Defendants (and the other Tristan Noteholders). As part of this fraudulent scheme, Defendants aided the Stasis in maintaining and perpetuating the key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures.

275. Further, Defendants subsequently engaged in overt acts in furtherance of the unlawful scheme. For example, they agreed to provide funding to the Stasis for the Enforcement Proceedings, and they did provide such funding, knowing that the Stasis had made numerous fraudulent misrepresentations in the ECT Arbitration and in the Enforcement Proceedings. They also regularly consulted with the Stasis and/or their counsel and provided guidance regarding the legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Stasis' fraud.

276. By engaging in these activities with knowledge of the Stasis' fraud, Defendants have knowingly participated in, and provided substantial assistance to, the fraudulent scheme.

277. As a direct and proximate result of the fraudulent scheme, in which Defendants knowingly participated, Plaintiff Outrider was injured and suffered damages, including but not limited to damages caused by (a) acting as a Noteholder without knowledge of the Stasis' fraud, including purchasing, retaining, and selling the Notes; (b) incurring legal fees and other expenses; (c) entering into the Sharing Agreement; (d) not exercising and/or waiving legal rights against the Stasis; and (e) not exercising other alternative options vis-à-vis the Tristan Notes, the Stasis and/or Defendants.

278. Had the Stasis and Defendants made truthful rather than fraudulent representations, Plaintiff Outrider would not have would not have suffered these damages.

279. Defendants' acts as alleged in Count IV were willful, wanton, malicious, and/or oppressive.

COUNT V
AIDING AND ABETTING WRONGFUL CONDUCT
(PLAINTIFF OUTRIDER AGAINST ALL DEFENDANTS)

280. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–279 above as if fully set forth herein.

281. The Stasis engaged in a fraudulent scheme, as alleged herein.

282. Pursuant to that scheme, the Stasis made misrepresentations and material omissions of fact that were false and known to be false. The Stasis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiff Kazakhstan, Plaintiff Outrider and the other Tristan Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

283. The Stasis' misrepresentations and material omissions were part of their fraudulent scheme, premised on their key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures. In fact, these transactions were designed to enrich the Stasis by fraudulently diverting assets from KPM and TNG. Because these companies were the guarantors of the Tristan and Laren Notes, this fraudulent scheme had the effect of depressing the value of the Notes and thereby defrauding the Noteholders.

284. When Plaintiff Outrider made decisions concerning the Notes, including *inter alia* decisions concerning their purchase, retention and sale, it reasonably relied on the Stasis' various statements detailed above claiming that these transactions were legitimate business expenses.

285. Defendants had knowledge that the Statis stole the monies through their fraudulent related-party transactions and, to cover up this theft, falsely represented that these stolen monies were legitimate business expenses. Specifically, Defendants knew that the Statis had stolen the monies and were claiming reimbursement for such stolen monies as investment costs in the ECT Arbitration.

286. Despite this, Defendants aided and abetted the unlawful acts of the Statis. They agreed to enter into the Sharing Agreement with the Statis, under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff the monies that the Statis had stolen from Defendants (and the other Tristan Noteholders). As part of this fraudulent scheme, Defendants aided the Statis in maintaining and perpetuating the key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures.

287. Further, Defendants subsequently engaged in overt acts in furtherance of the unlawful scheme. For example, they agreed to provide funding to the Statis for the Enforcement Proceedings, and they did provide such funding, knowing that the Statis had made numerous fraudulent misrepresentations in the ECT Arbitration and subsequent enforcement proceedings. They also regularly consulted with the Statis and/or their counsel and provided guidance regarding the legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Statis' fraud.

288. Defendants' actions substantially assisted the Statis in furthering the fraudulent scheme.

289. As a direct and proximate result of the fraudulent scheme, in which Defendants knowingly participated, Plaintiff Outrider was injured and suffered damages, including but not

limited to damages caused by (a) acting as a Noteholder without knowledge of the Statis' fraud, including purchasing, retaining, and selling the Notes; (b) incurring legal fees and other expenses; (c) entering into the Sharing Agreement; (d) not exercising and/or waiving legal rights against the Statis; and (e) not exercising other alternative options vis-à-vis the Tristan Notes, the Statis and/or Defendants.

290. Had the Statis and Defendants made truthful instead of fraudulent representations, Plaintiff Outrider would not have suffered these damages.

291. Defendants' acts as alleged in Count V were willful, wanton, malicious, and/or oppressive.

COUNT VI
UNLAWFUL MEANS CONSPIRACY UNDER ENGLISH LAW
(PLAINTIFF OUTRIDER AGAINST ALL DEFENDANTS)

292. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1–291 above as if fully set forth herein.

293. Defendants knowingly joined a conspiracy amongst the Statis and others to steal monies from the Tristan Noteholders, including Plaintiff Outrider, and Plaintiff Kazakhstan through unlawful means.

294. Among other unlawful means, the Statis conspired to, and did, commit fraud against the Tristan Noteholders through the illegitimate and systematic stripping of assets from TNG and KPM using sham related-party transactions that devalued the companies. These sham related-party transactions were made with the proceeds of fraud, and thus constituted money laundering.

295. The Statis made misrepresentations and material omissions of fact that were false and known to be false. The Statis made the misrepresentations and material omissions for the purpose of inducing multiple parties, including Plaintiff Outrider, Plaintiff Kazakhstan, the Tristan

Noteholders, KPMG, the ECT Tribunal, and the courts of Sweden, the United States, England, Belgium, the Netherlands, Luxembourg, and Italy to rely upon them.

296. These parties and/or others, justifiably relied on the Statis' misrepresentations and material omissions.

297. The Statis' misrepresentations and material omissions caused injury to Plaintiff Outrider.

298. Defendants had knowledge that the Statis stole the monies through unlawful means and, to cover up this theft, conspired to, and did, falsely represent that these stolen monies were legitimate business expenses, having knowledge that Plaintiff Outrider would suffer injury as a result.

299. Defendants conspired to, and did, engage in numerous acts in furtherance of the Statis' fraudulent scheme. They agreed to enter into the Sharing Agreement with the Statis, under the terms of which Defendants joined, and actively supported, the unlawful objective of obtaining from Plaintiff the monies that the Statis had stolen from Defendants (and the other Tristan Noteholders). As part of this fraudulent scheme, Defendants aided the Statis in maintaining and perpetuating the key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures.

300. Further, Defendants subsequently engaged in overt acts in furtherance of the unlawful scheme. For example, they agreed to provide funding to the Statis for the Enforcement Proceedings, and they did provide such funding, knowing that the Statis had made numerous fraudulent misrepresentations in the ECT Arbitration and subsequent enforcement proceedings. They also regularly consulted with the Statis and/or their counsel and provided guidance regarding

the legal strategy to enforce the fraudulently obtained ECT Award. They also sought to frustrate Plaintiff Kazakhstan's attempts to discover information regarding the Statis' fraud.

301. As a result of the unlawful means conspiracy, Plaintiff Outrider was injured and suffered damages, including but not limited to damages caused by (a) acting as a Noteholder without knowledge of the Statis' fraud, including purchasing, retaining, and selling the Notes; (b) incurring legal fees and other expenses; (c) entering into the Sharing Agreement; (d) not exercising and/or waiving legal rights against the Statis; and (e) not exercising other alternative options vis-à-vis the Tristan Notes, the Statis and/or Defendants.

DEMAND FOR JURY TRIAL

302. Plaintiffs hereby demand a trial by jury of all issues in this action for which a trial may be had.

PRAYER FOR RELIEF

303. WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, as follows:

- a. actual damages in an amount to be proven at trial;
- b. punitive damages in an amount to be proven at trial;
- c. attorneys' fees, interests, and costs; and
- d. such other relief that the Court deems just and proper.

Dated: December 31, 2020
New York, New York

Respectfully submitted,

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By: /s/ Felice B. Galant

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