

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

REPUBLIC OF KAZAKHSTAN,

Plaintiff,

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

THIRD AMENDED COMPLAINT

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1. Plaintiff Republic of Kazakhstan (“**Kazakhstan**”), by and through its undersigned counsel, brings 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, Kazakhstan alleges as follows:

NATURE OF THE ACTION

2. This case arises from Defendants’ knowing participation in, conspiracy to commit, and aiding and abetting of, long-running, multi-faceted, and ongoing fraud schemes that have damaged Kazakhstan.

3. Specifically, Defendants are, and have been, conspiring with, and aiding and abetting, a series of fraud schemes engineered by Moldovan oligarch Anatolie Stati, his son Gabriel Stati, and a murky web of companies that they control, often secretly (collectively the “**Statis**”).

4. The Statis’ fraud is an established fact. In November 2021, the Court of Appeal of Brussels in Belgium (the “**Belgium Court of Appeal**”) considered the full evidence of the Statis’ fraud – the first court ever to do so – and conclusively held that the Statis had engaged in the multiple fraud schemes asserted by Kazakhstan.¹

5. The Statis’ fraud schemes also are attested to by a veritable “who’s who” list of the world’s leading experts in international law, international arbitration, and accounting.

6. Further confirmation of the Statis’ fraud was provided by the Statis’ own auditors, KPMG, which on August 21, 2019 withdrew all of its audit reports for the Statis’ financial statements. KPMG took this extraordinary step after it “concluded an independent assessment” of

¹ A true and correct copy of the Belgium Decision is attached hereto as Exhibit 1, both in a verified English translation and in its original French.

the Statis' fraud, including reviewing sworn testimony from the Statis' former CFO that the Statis' financial statements were materially misstated and that the Statis had repeatedly lied to KPMG.

7. Despite all this, Defendants continue to conspire with, and aid and abet, the Statis. The reason Defendants are engaging in these unlawful acts is the oldest in the world – money.

8. Defendants are investors in the Statis' former business operations and, ironically, were one of the original victims of the Statis' fraud. However, after Defendants discovered or otherwise were put on notice of the fraud, Defendants decided not to pursue legal action against the Statis, but rather to conspire with and aid and abet the Statis' efforts to defraud Kazakhstan.

9. In so doing, Defendants' actions are akin to those of a victim of a Ponzi scheme who, rather than taking legal action that would risk collapsing and exposing the scheme, decides to join and support it. Here, this means trying to obtain money from a new victim (Kazakhstan) rather than seeking to recover from the party (the Statis) that had actually harmed Defendants.

10. The purpose of this lawsuit is to bring Defendants to justice and to obtain the full measure of compensation available under applicable law for their unlawful acts and the damage they have caused Kazakhstan.

THE PARTIES

11. Plaintiff Kazakhstan is a sovereign state.²

12. Defendant Daniel Chapman ("**Chapman**") is the founder, Managing Partner, Chief Executive Officer, and Chief Investment Officer of Argentem Creek Partners LP. He also wholly

² On December 31, 2020, Outrider Management, L.L.C. ("**Outrider**") joined this action as a plaintiff through the filing of the amended complaint. On April 20, 2021, Defendants removed this action to the U.S. District Court for the Southern District of New York. By order dated February 11, 2022, the District Court (i) remanded Kazakhstan's claims and (ii) granted Defendants' motion to compel arbitration of Outrider's claims and stayed those claims. Accordingly, Outrider's claims remain under the jurisdiction of the District Court and are not included in the Third Amended Complaint. Outrider reserves its right to seek to re-join this action should that become possible.

owns Argentem Creek Holdings LLC. Prior to founding Argentem Creek Partners LP, Chapman was a Senior Managing Director at Black River Asset Management LLC (“**Black River**”). Chapman resides at 165 West 91st Street, New York, NY 10024.

13. 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 located at 12 East 49th Street, New York, NY 10017.

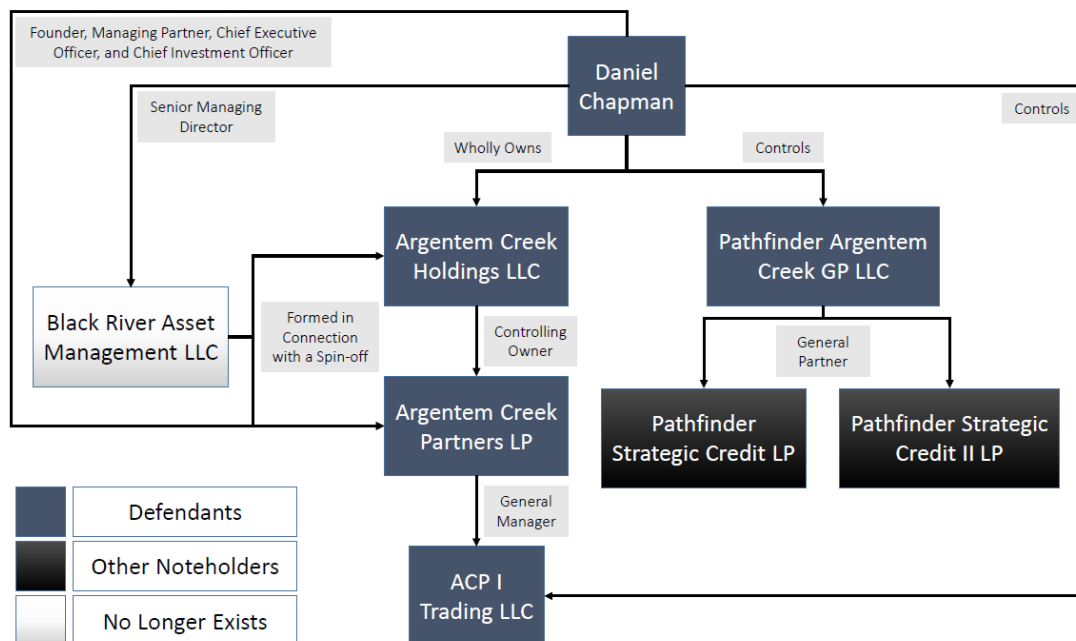
14. Defendant Argentem Creek Partners LP (“**Argentem Creek Partners**”) is a registered investment advisor organized as a limited partnership under the laws of the State of Delaware. Upon information and belief, Argentem Creek Holdings and Argentem Creek Partners were formed in connection with a spin-off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

15. Defendant Pathfinder Argentem Creek GP LLC (“**Pathfinder**”) is a limited liability company organized under the laws of the State of Delaware. Pathfinder’s principal place of business is located at 12 East 49th Street, New York, NY 10017. Pathfinder, upon information and belief, is the general manager of two other Chapman-related entities that, as alleged herein, are relevant to this case: Pathfinder Strategic Credit LP and Pathfinder Strategic Credit II LP.

16. 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 located at 12 East 49th Street, New York, NY 10017.

17. Upon information and belief, Chapman controls each of the corporate defendants: Argentem Creek Holdings, Argentem Creek Partners, Pathfinder, and ACP I.

18. Set forth below is a chart that, upon information and belief, depicts the relationship between the above alleged entities that Chapman owns and/or controls.



JURISDICTION AND VENUE

19. The Supreme Court of New York, County of New York, 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. The Supreme Court of New York, County of New York, also has personal jurisdiction under CPLR § 302(4) because, upon information and belief, Defendants own, use, or possess real property situated within the State.

20. Venue is proper in New York County pursuant to CPLR §§ 503(a) and 503(d), because Defendants reside and/or have their principal place of business 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

21. Defendants are, and have been, conspiring with, and aiding and abetting, a series of fraud schemes engineered by the Statis, *i.e.*, the Moldovan oligarch Anatolie Stati, his son Gabriel Stati, and a murky web of companies that they control, often secretly.

22. The Statis' base of operations is Moldova. However, between 1999 and 2004, the Statis purchased two Kazakh companies – Kazpolmunay LLP (“**KPM**”) and Tolkyneftegaz LLP (“**TNG**”) – that had existing licenses to engage in oil and gas activities in Kazakhstan. TNG was wholly owned by Terra Raf Trans Trading Ltd. (“**Terra Raf**”), which is owned in equal shares by Anatolie and Gabriel Stati. KPM was wholly owned by Ascom Group S.A. (“**Ascom**”), which is wholly owned by Anatolie Stati. At all relevant times, the Statis had the power to direct the actions of KPM and TNG.

23. The Statis, it is now known, used KPM and TNG as vehicles to accomplish their fraudulent schemes. For the purported purpose of raising funds to finance the operations of KPM and TNG, the Statis sold notes to third-party investors.

24. 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 investors (the “**Tristan Noteholders**”) via the investment banking firm Jefferies & Company, Inc. (“**Jefferies**”), which acted as the “Initial Purchaser” for the offering.

25. One of the Tristan Noteholders was Black River, which invested through several of its funds. Chapman managed the investments for Black River and, upon information and belief, was responsible for Black River's decision to purchase the Tristan Notes. Subsequently, in or

about December 2015, Chapman formed Argentem Creek Holdings and its subsidiary Argentem Creek Partners. Chapman is the owner and CEO of Argentem Creek Partners.³ Upon information and belief, Argentem Creek Partners is a Tristan Noteholder.

26. The Statis represented to investors in the Tristan Notes that the monies raised from the sale of the Tristan Notes would be used for legitimate business expenses 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. The Statis caused KPM and TNG to guarantee the Statis' obligations to repay the Tristan Notes.

27. In fact, the Statis always intended to defraud the Tristan Noteholders. The Statis did this by engaging in multiple fraudulent related-party transactions.

28. The Statis' fraud has taken several forms, including but not limited to the following five schemes:

a. The "**Tristan Circular Fraud**" – The Statis represented to investors in the Tristan Notes that \$70 million of the monies raised from the sale of the Tristan Notes would be applied by the Statis to repay amounts which one of their other companies, Terra Raf, owed to TNG. In fact, the Statis did not use the \$70 million for this purpose but instead diverted it to their other companies.

b. The "**LPG Plant Fraud**" – The Statis fraudulently inflated the construction expenses of an unfinished liquefied petroleum gas plant (the "**LPG Plant**") in Kazakhstan. This was done through a series of covert, fraudulent related-party transactions. For example, the principal equipment for this LPG Plant, it is now

³ Upon information and belief, Black River no longer exists as an operating entity. Chapman has denied that Argentem Creek Partners is the successor-in-interest to Black River.

known, cost the Statis only circa \$35 million, but in their financial statements the Statis claimed that they had invested \$245 million in the construction of the LPG Plant. The Statis diverted into their own pockets the difference between the amount of their actual costs and the fraudulently inflated \$245 million.

c. The “**Oil Skimming Fraud**” – The Statis fraudulently skimmed circa \$228 million from sales of oil and gas from the Kazakh fields. They did this by “selling” the oil and gas at artificially low prices to their own companies, and then re-selling it to a third party at market prices. The Statis then diverted the amount of the price differential into their own pockets rather than, as they should have, returning the full market price to their Kazakh companies (KPM and TNG).

d. The “**Laren Transaction Fraud**” – The Statis made fraudulent misrepresentations concerning Tristan Oil’s issuance of an additional \$111,110,000 in notes to Laren Holdings Ltd. (“**Laren**”) in June 2009.

e. The “**Cash Collateral Fraud**” – In violation of the documents governing the issuance of the Tristan Notes, the Statis used for their own purposes cash that should have been sequestered as collateral for repayment of the Tristan Notes.

29. In addition, the Statis paid their own companies – including Kaspay Asia Service Company Limited (“**KASKO**”) and Ascom – an estimated half billion dollars for drilling services at artificially inflated prices. And the Statis paid nearly \$100 million in “salaries,” “dividends,” and “management fees” directly to themselves, despite a lack of any justification for these payments.

30. The Statis perpetrated these fraudulent schemes through a series of lies. A key lie of the Statis was that their fraudulently inflated related-party transactions were legitimate business

expenditures. The Statis began telling this lie as early as 2006, when they contrived their schemes and put them into action.

31. The Statis told this key lie to multiple persons, including to Kazakhstan. They also told it to their investors, their auditors and at least one business partner. The Statis have also told this key lie to multiple arbitral tribunals and courts.

32. To cover up this key lie and maintain their fraudulent schemes, the Statis had to tell other lies. To the investors in the Tristan Notes, the Statis, *inter alia*, fraudulently stated that the monies raised from the sale of the Tristan Notes would be spent on legitimate business expenditures in Kazakhstan, when in fact the Statis intended to defraud the Tristan Noteholders. To their auditors, KPMG Audit LLC (“**KPMG**”), the Statis, *inter alia*, fraudulently represented that the companies through which they effected their fraudulent related-party transactions were not Stati companies and fraudulently represented the costs of their investments in Kazakhstan. To their business partner, Vitol, the Statis, *inter alia*, fraudulently inflated the costs of their joint business operation in Kazakhstan. To Kazakhstan, the Statis, *inter alia*, falsely represented that their fraudulent related-party transactions were legitimate business transactions, and thereby falsely inflated the value of their operations in Kazakhstan.

33. To perpetuate their fraudulent schemes, 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 but not limited to: their investors; their auditors; Kazakhstan; and multiple courts (and an arbitral tribunal). The Statis are continuing, with Defendants’ support, to rely on these fraudulent financial statements through the present.

34. The Statis made material misrepresentations to obtain audit reports from KPMG opining that these financial statements were materially correct when in fact they were materially false. The Statis repeatedly relied on the KPMG audit reports to bolster their fraudulent financial statements, including providing them to multiple persons, such as: their investors; Kazakhstan; and multiple courts (and an arbitral tribunal). As with their fraudulent financial statements, the Statis are continuing, with Defendants' support, to rely on these fraudulently obtained KPMG audit reports through the present.

35. On July 1, 2010, the Statis defaulted on the interest payments due to the Tristan Noteholders. The Statis feigned a lack of resources necessary to make the July 1, 2010 interest payments, but that was another lie.

36. On July 21, 2010, the Statis initiated an international arbitration against 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 their fraudulent related-party transactions were legitimate business expenditures. To support this lie, the Statis produced and relied upon the fraudulent financial statements and the fraudulently obtained KPMG audit reports. The Statis' purpose in perpetuating this lie in the arbitration was to obtain damages from Kazakhstan to replace the monies that the Statis themselves had stolen, embezzled and/or misappropriated.

37. Chapman, upon information and belief, discovered the Statis' fraudulent schemes while the ECT Arbitration was ongoing, in or about 2011. Specifically, Chapman learned that the Statis had defrauded the Tristan Noteholders through their related-party transactions. However, rather than taking legal action against the Statis, Chapman decided to conspire with and support the Statis in the perpetuation of their fraudulent schemes, including in particular perpetrating the Statis' key lie that the fraudulent related-party transactions were legitimate business expenditures.

38. On December 17, 2012, several (but not all) of the Tristan Noteholders signed an agreement with the Stasis to share in the proceeds of any arbitral award against Kazakhstan (the “**Sharing Agreement**”). Black River was one of the Tristan Noteholders that signed the Sharing Agreement on behalf of its various funds. The Tristan Noteholders that signed the Sharing Agreement on behalf of their funds are defined in the Sharing Agreement as “**Participating Noteholders.**”

39. Chapman, who at the time was a member of Black River’s management, led the negotiations with the Stasis regarding the Sharing Agreement and was in direct contact with the Stasis throughout the negotiations. Chapman also led an investigation into the Stasis’ business activities in an effort to gain informational leverage for the negotiations of the Sharing Agreement. Chapman, despite having learned of the Stasis’ fraudulent schemes, encouraged other Tristan Noteholders to enter into the Sharing Agreement and thereby align with the Stasis rather than exercise their legal rights against the Stasis.

40. Under the Sharing Agreement, the Participating Noteholders agreed to forbear from prosecuting legal claims against the Stasis in exchange for seventy percent (70%) of any amounts collected by the Stasis on any award issued in their favor and against Kazakhstan in the ECT Arbitration. The Sharing Agreement thereby gave Chapman a powerful financial incentive to conspire with, and aid and abet, the Stasis in perpetuating their fraudulent schemes.

41. The Stasis kept Chapman apprised of the developments and legal strategy in the ECT Arbitration. As a result, and given Chapman’s knowledge of the Stasis’ fraud, Chapman would have known that the Stasis were making and relying upon fraudulent misrepresentations in the ECT Arbitration. Despite this, Chapman and eventually (as a result of his ownership and control) the corporate Defendants chose to join and support the Stasis’ fraudulent schemes.

Defendants did so maliciously, in an attempt to obtain hundreds of millions of dollars from Kazakhstan for Defendants' and the Statis' own personal self-enrichment and for the wrongful enrichment of others. This wrongful conduct has continued through the present. Defendants, despite knowing about the Statis' misrepresentations, are continuing to support the Statis in their efforts, and are taking efforts of their own, to wrongfully obtain from Kazakhstan compensation for the monies that the Statis had stolen, embezzled and/or misappropriated.

42. 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 Kazakhstan, so that Kazakhstan would unknowingly be forced to pay Defendants for the monies that the Statis had stolen, embezzled and/or misappropriated.

43. In December 2013, the tribunal in the ECT Arbitration (the "**ECT Tribunal**") issued an award (the "**ECT Award**") in favor of the Statis and against 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 Statis for the LPG Plant. Because the Statis continued to make material misrepresentations and cover up their fraud throughout the arbitration, including from Kazakhstan, the ECT Tribunal issued the award without knowledge of the fraud.

44. Once they fraudulently obtained the ECT Award, the Statis initiated proceedings against Kazakhstan in several jurisdictions to confirm and enforce it. 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 Statis maintained and propagated their key lie that their fraudulent related-party transactions were legitimate business expenditures.

45. The Statis did this with the active encouragement and support of Defendants, who consulted with the Statis on legal strategy and provided critical financing that allowed the Statis to engage in these legal proceedings against Kazakhstan, despite having knowledge of the Statis' fraudulent schemes.

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

47. In June 2017, the English High Court (Justice Knowles) ruled on the LPG Plant Fraud – the one Stati fraud scheme for which Kazakhstan had uncovered evidence at the time. This ruling was issued in legal proceedings that the Statis had commenced in England in February 2014 to attempt to recognize and enforce the ECT Award (the “**English Enforcement Proceedings**”). In August 2015, after its initial discovery of evidence that the Statis had inflated the costs of the LPG Plant, 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 one of its material components – the \$199 million award for the LPG Plant – was obtained by fraud. The Statis opposed this application. The English Court held a two-day hearing on

Kazakhstan's application in February 2017. In advance of this hearing, Kazakhstan presented the then-available evidence of the LPG Plant Fraud and the parties made extensive written submissions. At the hearing itself, the parties made extensive oral submissions.

48. On June 6, 2017, the English High Court granted Kazakhstan's application. In a 22-page, fully reasoned opinion, the English High Court reviewed the available evidence and submissions and held that "there is a sufficient prima facie case that the Award was obtained by fraud" and that the Stasis had committed "fraud on the [ECT] Tribunal." It further held that the "interests of justice" required Kazakhstan's allegations regarding the LPG Plant Fraud to be "examined at trial and decided on their merits."⁴

49. However, in February 2018, in advance of a pre-trial disclosure deadline, the Stasis unexpectedly filed a notice to voluntarily discontinue the English Enforcement Proceedings. The English High Court rejected this notice, finding that the Stasis' stated basis for discontinuance – a supposed lack of funds – was not credible and that, in reality, the Stasis only were seeking to avoid the risks of the impending trial and final judgment on the LPG Plant Fraud. On appeal, the Stasis were allowed to discontinue, but only after they were required to agree to three harsh conditions: (i) to never again attempt to enforce the ECT Award in England; (ii) to reimburse Kazakhstan for its legal fees and costs; and (iii) to vacate an earlier English court order that had deemed the ECT Award enforceable.

50. The consequence of the English appeal court's ruling was that the Stasis suffered a permanent loss in England – the ECT Award is unenforceable in England because of the LPG

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 March 17, 2022).

Plant Fraud – but the Statis were able to escape trial and a final judgment on merits of the LPG Plant Fraud.

51. Defendants funded the Statis' escape in the English proceedings. By letter dated July 30, 2018, attorneys for the Statis disclosed to Kazakhstan that costs relating to the appeal in the English Enforcement Proceedings were funded by entities controlled by Chapman. Specifically, the letter stated:

With respect to paragraph 4 of your letter, the Noteholders who have agreed to fund Mr Foxton QC's representation of the Stati Parties in the Court of Appeal are **Pathfinder Strategic Credit LP, Pathfinder Strategic Credit II LP, and ACP I Trading LLC**, respectively, (the "Noteholders"). 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. (Emphasis added).

52. The Statis, thus, identified the following entities as "Noteholders": Pathfinder Strategic Credit LP, Pathfinder Strategic Credit II LP, and ACP I. Pathfinder, upon information and belief, is the general manager of Pathfinder Strategic Credit LP and Pathfinder Strategic Credit II LP. Argentem Creek Partners is the general manager of ACP I.

53. In April 2019, 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.

54. On August 21, 2019, KPMG issued a letter to the Statis in which it confirmed that the Statis had failed to disclose material transactions in their financial statements and withdrew all of its audit reports for the Stati financial statements – 18 audit reports covering three years of

financial statements.⁵ KPMG took this extraordinary action after it “concluded an independent assessment” of evidence of the Statis’ misrepresentations, including the Lungu deposition transcript and its own “workpapers.” KPMG also stated that, consistent with International Standards of Auditing, it had asked the Statis to respond to this evidence but the Statis had not responded.

55. In its August 21, 2019 letter, KPMG informed the Statis that they “should immediately take all necessary steps to prevent any further, or future, reliance on” the KPMG audit reports. KPMG stated: “This includes ensuring that anyone in receipt of the relevant financial statements and Reports is informed of this development.”

56. In violation of KPMG’s instructions, the Statis did not, and have not to date, taken any of the “necessary steps to prevent any further, or future, reliance on” the KPMG audit reports. Upon information and belief, the Statis have not informed any person in receipt of their fraudulent financial statements and the audit reports of this “development,” *i.e.*, KPMG’s withdrawal of the audit reports, including Kazakhstan, the Tristan Noteholders, the ECT Tribunal, and the various courts.

57. Upon information and belief, Chapman, either through the above-referenced entities and/or other entities he controls, has provided additional funding to the Statis in the Enforcement Proceedings beyond that identified in this July 30, 2018 letter from the Statis. Upon information and belief, this funding from Chapman and his entities, including the corporate Defendants, has been of material assistance to the Statis’ ability to continue their campaign of lies.

⁵ See August 21, 2019 KPMG Letter, *Republic of Kazakhstan et al. v. Chapman et al.*, Case No. 1:21-cv-03507-JGK (S.D.N.Y. 2021) (“**SDNY Docket**”), ECF 47-1 (Exhibit A).

58. 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' original 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. These misrepresentations have also been made in order to cover up the Statis' schemes. These misrepresentations have damaged Kazakhstan by, among other things, increasing Kazakhstan's legal expenses and other costs in the Enforcement Proceedings.

59. Defendants, as part of their efforts to conspire with and aid and abet the Statis in the perpetration of their fraudulent schemes, are propounding a new key lie, *i.e.*, that the merits of Kazakhstan's current fraud allegations against the Statis have already been decided and rejected by multiple courts. This is false, for several reasons, and Defendants know it is false.

60. First, in November 2021, the Belgium Court of Appeal considered the full evidence of the Statis' fraud – the first court ever to do so – and conclusively held that the Statis engaged in the multiple fraudulent schemes before, during, and after the ECT Arbitration and, as a result, overturned recognition of the ECT Award in Belgium. Further, in June 2017, the High Court of England issued a judgment determining that Kazakhstan had established *prima facie* that the Statis had committed the one fraud that was known to Kazakhstan at that time – the LPG Plant Fraud. As a result, the Statis were forced to flee the English proceedings, and the ECT Award is unenforceable in England.

61. Second, the legal proceedings relied upon by Defendants to make this misrepresentation did not decide the merits of Kazakhstan's fraud allegations. To the contrary, in these proceedings, the courts assessed only one narrow issue – did the then-existing evidence of

the Statis' fraud justify a refusal to deny recognition of the ECT Award under the domestic law of the countries in which those courts sit. That such courts did not decide the merits of Kazakhstan's current fraud allegations was confirmed by the Belgium Court of Appeal overturning recognition of the ECT Award. It also was confirmed by the U.S. District Court for the District of Columbia in its March 2021 decision, when it rejected Defendants' motion for leave to attempt to enjoin the present action in this Court. Despite these clear holdings, Defendants have continued to falsely represent that the U.S. District Court for the District of Columbia, and other courts, have decided the merits of Kazakhstan's current fraud allegations.

62. Third, in making this misrepresentation, Defendants consistently omit or misrepresent the material fact that those prior proceedings have considered only one of the Statis' fraud schemes – the LPG Plant Fraud. Now, because of new evidence – including but not limited to the April 2019 Lungu deposition, the August 2019 KPMG withdrawal of its audit reports, the August 2019 discovery of the Statis' Latvian banking records, and the October 2019 discovery of additional KPMG correspondence – four additional Stati fraud schemes have been discovered.

63. Fourth, in making this misrepresentation, Defendants consistently omit or misrepresent the material fact that the prior proceedings considering this one then-known Stati fraud scheme – the LPG Plant Fraud – were themselves based on false and fraudulent statements and machinations by the Statis in those proceedings. For example, as alleged herein, the Statis violated their duty of candor and truth to the Swedish courts during the prior proceedings initiated by Kazakhstan to set aside and/or invalidate the fraudulent ECT Award. This is confirmed by the expert opinion of Patrik Schöldström, now a judge on the Svea Court of Appeal, as alleged herein. It is further confirmed by the Belgium Court of Appeal in its November 2021 decision, as well as in the comprehensive expert opinion of Professor George Bermann, as alleged herein.

64. Defendants – in promulgating this **new key lie** – also omit or misrepresent the material fact that as the new evidence of the Statis’ fraud has been revealed, the courts have reversed course. For example:

- a. on February 11, 2021, the Luxembourg Court of Cassation granted Kazakhstan’s cassation application and annulled the judgment of the Luxembourg Court of Appeal, which had confirmed the enforcement of the ECT Award, on the basis that the Court of Appeal had incorrectly dealt with crucial pieces of evidence of the Statis’ fraud;
- b. on November 16, 2021, the Belgium Court of Appeal overturned recognition of the ECT Award, finding that the Statis had committed fraud before, during, and after the ECT Arbitration. The Court of Appeal further held that the substantial evidence gathered since the award was rendered demonstrates “beyond any possible doubt the fraudulent behavior of the Statis,” including that they “firstly deceived” their auditors, KPMG, then obtained the award by multiple fraudulent acts, and then “deliberately misled” Swedish courts during the annulment proceedings;
- c. on December 2, 2021, the Court of Appeal of Luxembourg ruled in favor of Kazakhstan and stayed the Statis’ efforts to recognize and enforce the ECT Award pending the ongoing criminal court proceedings against the Statis in Luxembourg for forgery, fraud, and money laundering;
- d. on December 24, 2021, the Dutch Supreme Court granted Kazakhstan’s appeal in cassation and confirmed that the Statis instituted their exequatur proceedings in the wrong court. It therefore reversed the prior judgment granting exequatur and

remanded the case for new proceedings to the correct court, during which Kazakhstan will be able to present its full fraud case.

II. THE BELGIUM DECISION – THE STATIS’ FRAUD IS AN ESTABLISHED FACT

65. The only court in the Enforcement Proceedings to have reviewed the full evidence of the Statis’ fraud is the Belgium Court of Appeal, and it conclusively determined that the Statis engaged in multifaceted and long-running fraudulent schemes that defrauded not only Kazakhstan and ECT Tribunal, but also the Swedish courts during subsequent proceedings initiated by Kazakhstan to annul the award. The Statis’ fraud, the court held, had a direct impact on the ECT Tribunal’s findings both on liability and damages. On this basis, the court reversed the lower court’s order that granted recognition to the ECT Award.

66. In a 32-page Judgment issued on November 16, 2021, the Belgium Court of Appeal found that the Statis had committed fraud before, during, and after the ECT Arbitration. With respect to the fraud committed before the arbitration, the court found that (i) “[t]he Statis had purposefully misled their auditor [KPMG] in order to give credibility to their financial statements in the eyes of third parties,”⁶ and (ii) they have since “admitted to concealing (Stati-owned company) Perkwood from their financial statements, in clear violation of IFRS, with the view in particular to avoid a review of the transactions between Perkwood and TNG by an independent third party” in order to “deliberately conceal[] the true status of Perkwood.”⁷

67. With respect to the Statis’ fraud committed during the ECT Arbitration, the Belgium Court of Appeal found that the following acts by the Statis, among others, were fraudulent or deceptive:

⁶ *Id.* at 27.

⁷ *Id.* at 27 and 29.

- a. The Statis legitimized their fraudulent financial statements in the ECT Arbitration by relying on audit reports which were later “withdrawn” in August 2019 by KPMG so that “no reliance should be placed on [them]”;⁸
 - b. The Statis obtained damages in the ECT Arbitration on the basis of an indicative offer from KMG that they knew was based on their fraudulent financial statements and fraudulently obtained audit reports;⁹
 - c. The Statis failed to disclose to the ECT Tribunal the true status of Perkwood, which the Statis secretly owned but falsely represented as an independent third party supplier of the LPG Plant in Kazakhstan, and the failure to disclose this was the result of a purposeful scheme by the Statis to manipulate the costs of construction of the LPG Plant;¹⁰
 - d. The Statis relied on documents in the ECT Arbitration that their former CFO, Mr. Artur Lungu, confirmed were materially false;¹¹
 - e. The Statis insisted in the ECT Arbitration on the supposed “reliability” of their financial statements to demonstrate the legality of their investment in Kazakhstan, and that they had been audited by a “Big Four” auditing firm, without disclosing that the auditors had been deceived.¹²
68. On this basis, the Belgium Court of Appeal found that the ECT Tribunal, in reaching its decision, “relied on evidence that is now known to be inaccurate and tainted by

⁸ *Id.* at 24.

⁹ *Id.* at 27–28.

¹⁰ *Id.* at 29.

¹¹ *Id.* at 21–22

¹² *Id.* at 23.

misstatements” and that “the documents and evidence discovered after the notification of the Award would have had a fundamental impact on the Award.”¹³ It further found that all the evidence gathered by Kazakhstan since the ECT Award was handed down demonstrates “beyond any possible doubt the fraudulent behavior of the Statis” and shows that “the Statis’ investment in Kazakhstan was conducted in bad faith.”¹⁴

69. With respect to the Statis’ fraud committed *after* the ECT Arbitration, the Belgium Court of Appeal found that the Statis defrauded the Swedish courts during the annulment proceeding initiated by Kazakhstan in 2014 to set-aside the ECT Award. Specifically, the court held that the Statis “knowingly concealed... the truth” and “deliberately misled the Swedish courts...which –purposefully – prevented these jurisdictions from ruling on the matter on the basis of all information and evidence available.”¹⁵

70. Based on these findings, the Belgium Court of Appeal rejected the Statis’ claim that any of the prior Swedish court judgments were entitled to *res judicata* effect, and that subsequent courts that had relied on the Swedish decisions, such as the U.S. District Court for the District of Columbia when it granted the Statis’ motion to confirm the ECT Award, similarly did not have all the relevant information and evidence.¹⁶ In this respect, the Belgium Court of Appeal found that the Statis concealed evidence from the various courts and discontinued the English Enforcement Proceedings to avoid the risk that Kazakhstan would succeed in its fraud case at trial. The Belgium Court of Appeal analyzed the decisions in each jurisdiction and found that no other court had the opportunity to consider Kazakhstan’s full fraud case on the merits.

¹³ *Id.* at 22, 24.

¹⁴ *Id.* at 29.

¹⁵ *Id.* at 7–8.

¹⁶ *Id.* at 8.

III. EXPERT OPINIONS AND REPORTS EVIDENCING THE STATIS' FRAUD

71. The wide-ranging fraud schemes perpetrated by the Statis have also been attested to by multiple experts.

72. In January 2017, Deloitte GmbH (“**Deloitte**”) issued an expert report assessing the LPG Plant Fraud in the context of the then-pending English Enforcement Proceedings. Deloitte found that the compensation awarded to the Statis for the LPG Plant was “based on the amount stipulated in” an indicative offer letter submitted by a subsidiary of KazMunaiGas (“**KMG**”), which in turn, was “based on the historical costs of the LPG plant shown in TNG’s financial statements,” and that these historical costs were “massively inflated in several ways without recognizable cause or justification . . . [b]y an amount of up to approx. USD 130 million.”¹⁷ Deloitte concluded, *inter alia*: “This unjustified inflation had a direct impact on KMG’s indicative offer amount and, consequently, on the amount awarded by the Arbitral Tribunal.”¹⁸

73. In February 2019, **Steeff Huibregtse**, the CEO of Transfer Pricing Associates Global (“**TPA Global**”), a transfer pricing firm with a global network of over 5,000 tax professionals, issued an expert opinion on the transfer pricing aspects of intercompany transactions between three Stati companies – Azalia Ltd. (“**Azalia**”), Perkwood Investment Limited (“**Perkwood**”), and TNG – in the context of the LPG Plant Fraud. He concluded, *inter alia*, that the Statis’ “actions . . . to minimise the taxable base of the corporate income tax . . . [were] without any economic substance and therefore *clearly a sham*.”¹⁹ For example, Mr. Huibregtse classified the Statis’ use of Azalia and Perkwood to internally re-sell the equipment actually supplied by

¹⁷ Expert Report of Deloitte, January 12, 2017, SDNY Docket, ECF 47-2 (Exhibit B), ¶¶ 27, 28(e).

¹⁸ *Id.*

¹⁹ Expert Opinion of TPA Global, February 6, 2019, SDNY Docket, ECF 47-3 (Exhibit C), ¶ 107 (emphasis added).

third-party TGE Gas Engineering GmbH, formerly Tractebel Gas Engineering GmbH (“**Tractebel**”), and the charging of a management fee by Perkwood, as a “*series of sham transactions*[.]”²⁰ Mr. Huibregtse further concluded that the Statis’ conduct violated the “standards of reporting taxable income” in Russia, the United Kingdom, and Kazakhstan,²¹ and that such conduct would be “punishable with, at the very least, administrative fines and . . . additional criminal charges.”²²

74. In August 2019, after Mr. Lungu’s deposition was taken, PricewaterhouseCoopers LLP (“**PwC**”), one of the world’s largest professional services networks, issued its first report concerning the Statis’ misconduct (“**PwC I**”), in which it analyzed the Statis’ financial statements and considered “whether the transactions with Perkwood were recorded and disclosed in these financial statements in accordance with applicable financial reporting standards.” PwC concluded, *inter alia*, that:

- a. “Based on the information contained in the representation letters that [it] ha[d] been provided with and on the deposition testimony of Mr Lungu, TNG’s auditors [*i.e.*, KPMG] were provided with false representations as to Perkwood’s status as an unrelated party”; and that
- b. “each of the material misstatements and the serious impairment of the integrity of TNG’s management would render [TNG’s audited financial statements] unreliable.”²³

75. In November 2019, BDO Mälarden AB (“**BDO**”), a member of the BDO international network of public accounting, tax, consulting, and business advisory firms, issued an expert opinion on the “effect from an auditor’s perspective of KPMG’s letter dated August 21,

²⁰ *Id.* ¶ 109 (emphasis added).

²¹ *Id.*

²² *Id.* ¶ 108.

²³ PwC I, August 19, 2019, SDNY Docket, ECF 47-4 (Exhibit D), ¶¶ 52, 57.

2019” withdrawing all of its audit reports for the Stati financial statements. It concluded, *inter alia*, that:

- a. KPMG’s decision to withdraw its audit reports was made on the basis of a “proper investigation” by KPMG;²⁴ and
- b. KPMG’s decision to “actively work to ensure that no one relies on” its audit reports was in compliance with the International Accounting Standards (“IAS”),²⁵ specifically IAS 560, which “provides guidance on how an auditor should act when the auditor becomes aware of facts after the auditor submits its report.”²⁶

76. In January 2020, **Professor Christoph Schreuer**, a leading expert in the field of international investment law and arbitration, issued a legal opinion on “the question of the effect of false or fraudulent evidence” on the ECT Award. He concluded, *inter alia*, that:

- a. the evidence of the Statis’ fraud that led to KPMG’s withdrawal of its audit reports “would have had a material impact on the ECT Arbitration and the Award”;²⁷
- b. the “unusual and serious step of auditors withdrawing their audits, because their client has provided them with false information, renders the entire financial information relating to the investment unreliable and thus deprives the [ECT] Award providing compensation for losses relating to such investment of any reliable basis”;²⁸ and
- c. the evidence of the Statis’ fraud uncovered by Kazakhstan, including the KPMG correspondence and the fraudulent financial statements, “clearly demonstrates the [Statis’] illicit conduct and bad faith.”²⁹

77. Also in January 2020, **Professor George A. Bermann**, an internationally recognized expert on the law of international arbitration, transnational litigation, European Union

²⁴ Expert Opinion of BDO, November 25, 2019, SDNY Docket, ECF 47-5 (Exhibit E), ¶ 39.

²⁵ *Id.*

²⁶ *Id.* ¶ 24.

²⁷ Legal Opinion of Professor Christoph Schreuer, January 21, 2020, SDNY Docket, ECF 47-6 (Exhibit F), ¶ 71.

²⁸ *Id.*

²⁹ *Id.* ¶ 72.

law, and the law of multiple European jurisdictions, and a professor at Columbia Law School,³⁰ issued an expert opinion on, *inter alia*, “whether there exists in this case credible evidence of fraud and a causal link between fraud and the outcome” of the ECT Arbitration. Professor Bermann opined, *inter alia*, that:

- a. “the seriousness of fraud under the public policy of most jurisdictions, the credible evidence of fraud and causation in this case, and the absence of a prior merits determination by the Swedish court that fraud did or did not occur – militate in favor of a court conducting a searching investigation into the fraud allegations”;³¹ and
- b. “it cannot be doubted that there exist in this case both credible evidence of fraud and a sufficient connection between such fraud and the outcome of the arbitration.”³²

78. Also in January 2020, **PwC** issued its second report (“**PwC II**”), in which it concluded, *inter alia*, that “the Financial Statements to which [the KPMG] audit reports refer have been relied upon by the [Statis] in the ECT Arbitration, their witnesses, their experts, and their counsel, as well as the Arbitral Tribunal, and they continue to be part of the court records in the court proceedings following the [award].”³³

³⁰ Professor Bermann joined the Columbia Law School Faculty in 1975. He is the director of the Center for International Commercial & Investment Arbitration, and founded both the Columbia Journal of European Law and the European Legal Studies Center, where he serves as the director. He also is an affiliated faculty member of the School of Law of Sciences Po in Paris and the MIDS Masters Program in International Dispute Settlement in Geneva. Previously, he was the chief reporter for the American Law Institute (ALI) for its Restatement of the Law, The U.S. Law of International Commercial and Investor-State Arbitration, a 12-year project that was completed in 2019; it was the first ALI Restatement on this area of the law. Professor Bermann is also co-author of the UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, chair of the Global Advisory Board of the New York International Arbitration Center (NYIAC), co-editor in chief of the American Review of International Arbitration, and founding member of the governing body of the ICC Court of Arbitration and a member of its standing committee.

³¹ First Expert Opinion of Professor George A. Bermann, January 21, 2020, SDNY Docket, ECF 47-7 (Exhibit G), ¶ 56.

³² *Id.* ¶ 60.

³³ PwC II, January 21, 2020, SDNY Docket, ECF 47-8 (Exhibit H), ¶ 32.

79. PwC further opined:

The decision by KPMG in 2019 to take steps to prevent any further, or future, reliance on the audit opinions that had previously been issued by KPMG in respect of TNG et al. is a highly unusual and serious issue. The actions taken by KPMG do not only go to specific transactions, for example in relation to those between Perkwood and TNG, but represent in effect a complete ‘withdrawal’ by KPMG of its audit opinions over all of the financial information of the Financial Statements. This includes but is not limited to KPMG’s report on the TNG financial statements to 30 June 2008 that formed the basis of the costs and EBITDA figures that fed into the calculation of the Awarded Amount. As set out in the KPMG Correspondence, it further extends as well to a wider range of 26 sets of financial statements prepared by the Stati Parties for which KPMG had previously issued audit reports.³⁴

80. In July 2020, **Alexander Layton QC**, an expert in private international law and state immunity, issued an opinion on the English Enforcement Proceedings.³⁵ Mr. Layton opined that Justice Knowles of the English High Court, in his June 2017 judgment, had found with regard to the LPG Plant Fraud that there was “a sufficient prima facie case that the ECT Award was obtained by fraud and directed that the allegations of fraud should be determined at a trial.”³⁶ Specifically, Mr. Layton said that Justice Knowles had found that “there was a sufficiently strong case that there had been fraud on the Tribunal, on the basis that the Stati parties had submitted the KMG Offer in the full knowledge of that offer not being reliable evidence because it was based on false financial information provided to KMG by the Stati parties.”³⁷ Mr. Layton concluded, *inter alia*, that Kazakhstan had produced evidence of fraud “which was not available to [it] at the time of the” ECT Arbitration and that the evidence was “so strong that if examined at a trial it would

³⁴ *Id.* ¶ 31.

³⁵ Legal Opinion of Alexander Layton, QC, July 27, 2020, SDNY Docket, ECF 47-9 (Exhibit I), ¶ 1.

³⁶ *Id.* ¶ 15.

³⁷ *Id.* ¶ 41.

reasonably be expected to be decisive[.]”³⁸ He further opined that Justice Knowles’ judgment was “final and has binding (*res judicata*) effect in respect of the issues which it necessarily decided.”³⁹

81. Also in July 2020, PwC issued two further reports – PwC III and PwC IV. These reports were based on accounting data of TNG and KPM and bank statements of over 30 Stati companies that became available to Kazakhstan in late 2019.

82. PwC III stated that PwC had identified “a significant number of related party transactions for which we have been unable to establish the commercial basis” and concluded, *inter alia*, that:

- a. “the related party transactions undertaken by TNG and KPMG were not at arm’s length” and “do not appear to have been undertaken in accordance with the requirements of the [Indenture]” governing the Tristan Notes;⁴⁰ and
- b. there were “over USD 150 million of related party transactions between 2007 and 2009 which were not disclosed as related party transactions in TNG’s and KPM’s audited financial statements” and that “to the extent that such documents . . . also failed to disclose the related party transactions . . . , then those statements too would be inaccurate.”⁴¹

83. PwC IV identified “a number of transactions by the [Statis] which display characteristics that are relevant to the risk set out under the red flags of money laundering” and “an effective ‘ring’ of related parties (some of which the [Statis] failed to identify as related parties to professional advisors such as their auditors, KPMG) established by the [Statis] around TNG and

³⁸ *Id.* ¶ 55.

³⁹ *Id.* ¶ 41.

⁴⁰ PwC III, Review of the application of TNG and KPM funds by the Stati Parties, July 29, 2020, SDNY Docket, ECF 47-10 (Exhibit J), ¶ 6.22.

⁴¹ *Id.* ¶ 6.23.

KPM.”⁴² It concluded, *inter alia*, that “the use of the related party structure that was established by the [Statis] . . . display characteristics which fall under the red flags of money laundering[.]”⁴³

84. Also in July 2020, **Stefan D. Cassella**, former Deputy Chief of the U.S. Department of Justice’s Asset Forfeiture and Money Laundering Section, issued an expert opinion in which he assessed the then-existing evidence of the Statis’ fraud in the context of potential violations of money laundering laws of the United States and other jurisdictions. Mr. Cassella opined *inter alia* that: the Statis’ “transactions involving . . . fraudulently obtained funds constitute criminal violations of Latvian money laundering laws” and that “because one part of the [Statis’] scheme involved investors in the United States whose funds were transferred overseas, . . . the transactions constituted criminal violations of US money laundering laws as well.” He further opined that “it appears that the [Statis] may have perpetuated a fraud upon the Tribunal in the ECT Arbitration[.]” and in such a case, the “ECT Award would constitute the proceeds of crime (i.e. fraud), and any attempt by the [Statis] to collect on the Award could constitute a money laundering offense under US law or the law of any other country where the collection occurred.” On this basis, he concluded that there is evidence that the Statis “could be prosecuted criminally in Latvia for money laundering offenses involving the proceeds of the Tristan Notes scheme, the Sales of Oil and Gas scheme, and the Perkwood scheme, and in the United States and in other jurisdictions for conducting any future financial transaction involving the Award from the Tribunal in the ECT Arbitration.”⁴⁴

⁴² PwC IV, Review of transactions by the Stati Parties for characteristics of money laundering risks, July 29, 2020, SDNY Docket, ECF 47-11 (Exhibit K), ¶ 3.73.

⁴³ *Id.* ¶ 3.74.

⁴⁴ Legal Opinion of Stefan D. Cassella, July 30, 2020, SDNY Docket, ECF 47-12 (Exhibit L), 20–21.

85. In August 2020, **Patrik Schöldström**, now a Judge on the Svea Court of Appeal, issued an expert opinion on various questions concerning the ECT arbitration proceedings (which were seated in Sweden) and Kazakhstan’s applications to set aside and/or invalidate the ECT Award (which were heard in the Swedish courts). Mr. Schöldström concluded, *inter alia*, that:

- a. “there is credible evidence that the Stati[s] . . . procured the Award by actions and omissions that under Swedish law amount to criminal fraud”,⁴⁵
- b. the arbitral tribunal relied on KMG’s indicative bid that the Statis had obtained “with the help of ‘fraudulent financial reporting and fraudulently obtained audit reports’”;⁴⁶ and
- c. that this amounts to “essentially deceit” by the Statis, “from which they have gained at the expense of” Kazakhstan.⁴⁷

86. With respect to the annulment proceedings brought by Kazakhstan in Sweden, Mr. Schöldström concluded that the Statis “violated the duty to tell the truth and the duty not to litigate ‘against better knowledge’”⁴⁸ and that accordingly, the Svea Court “did not have a correct and truthful basis for its 2016 Decision” in which it refused to set aside the ECT Award.⁴⁹

87. In January 2021, **Professor Bermann** issued another expert opinion in which he conducted a comprehensive assessment of the evidence of the Statis’ fraud before, during, and after the ECT Arbitration. Based on this evidence, Professor Bermann concluded, *inter alia*, that:

- a. the Statis operated in Kazakhstan by means of a “deceptive corporate structure” and “sham companies” through which they were able to “enrich themselves at the expense of others;”⁵⁰

⁴⁵ Legal Opinion of Patrik Schöldström, August 23, 2020, SDNY Docket, ECF 47-13 (Exhibit M), ¶ 82.

⁴⁶ *Id.* (quoting First Expert Opinion of Professor George Bermann, January 21, 2020, ¶ 46).

⁴⁷ *Id.* ¶ 83.

⁴⁸ *Id.* ¶ 84.

⁴⁹ *Id.* ¶ 87.

⁵⁰ Second Expert Opinion of Professor George A. Bermann, SDNY Docket, ECF 47-14 (Exhibit N), January 17, 2021, ¶ 90.

- b. during the ECT Arbitration, “had the Tribunal been aware of the full measure of the Statis’ fraudulent conduct, it would have most likely come to the conclusion that the Statis unlawfully stripped the Kazakh companies of hundreds of millions of dollars, blamed Kazakhstan for the financial distress of these companies and unjustifiably requested the Tribunal to order Kazakhstan to pay compensation for these ‘lost’ funds”;⁵¹ and further
- c. the “fraud did not end with the Kazakh operations, the Arbitration, or the post-Award proceedings. It is continuing today by ongoing misrepresentations in the actions pending in various courts”;⁵² specifically,
- d. “the Statis systematically misled the national courts on a number of critical issues” and that the national courts – other than those of the U.K. – “assumed the truthfulness of the information provided by the Statis and ruled in favor of them, without realizing the extent to which the Statis’ case, as well as their presentation of it, were the product of fraud”⁵³; and
- e. the Statis have “repeatedly misrepresented the findings of one court to another” in order to perpetuate their fraud.⁵⁴

88. Also in January 2021, **Professor Catherine Rogers**, a leading expert in the field of ethics in international arbitration and a professor at Pennsylvania State University School of Law, issued an expert opinion regarding “the applicable ethics rules and related considerations that apply when a party to an international arbitration is credibly accused of submitting false or fraudulent evidence to the arbitral tribunal.” Professor Rogers reviewed the operative facts of the fraud, focusing on KPMG’s withdrawal of its audit reports for the Stati financial statements. Professor Rogers found, *inter alia*, that “the tribunal’s decision-making would have been affected by a determination by the [Statis’] own independent professional auditors that their financials were completely unreliable and had been procured through material misstatements or omissions.”⁵⁵

⁵¹ *Id.* ¶ 199.

⁵² *Id.* ¶ 205.

⁵³ *Id.* ¶ 201.

⁵⁴ *Id.* ¶ 202.

⁵⁵ Expert Opinion of Professor Catherine Rogers, January 17, 2021, SDNY Docket, ECF 47-20 (Exhibit O), ¶ 190.

Professor Rogers concluded that “this new evidence would have raised independent concerns that the [Statis] had engaged in underlying fraud and corruption that should preclude them altogether from bringing claims in investment arbitration.”⁵⁶

89. In April 2021, **Professor Bernard Hanotiau**, an expert in international commercial law and arbitration, issued an expert opinion on “whether the facts and evidence discovered after the [ECT] Award was made could have affected the arbitration proceedings and the Arbitral Tribunal’s rulings” on, *inter alia*, jurisdiction and arbitrability, the assessment of liability, the causal link, and the quantum of damages, in particular with regard to the Belgian enforcement proceedings.⁵⁷ Professor Hanotiau concluded, *inter alia*, that: “it seems obvious to me that if the documents and evidence obtained after notification of the Award had been in the possession of the Arbitral Tribunal, they would have had a material and fundamental impact on the Award.”⁵⁸ Specifically, he opined that “had the new elements and evidence discovered since the notification of the Award been known at the time of the arbitration proceedings, both Kazakhstan and the Arbitral Tribunal would have been dealing with a dispute of a totally different nature and content” and that “[t]he new documents and evidence would have had a fundamental impact on the arbitral proceedings and on the Award.”⁵⁹ He further opined that “[t]he Arbitral Tribunal would have given no credibility, or at most, little weight to testimony, financial statements, statements and other erroneous or falsified documents produced by the Statis”⁶⁰ and that “it is certain that the

⁵⁶ *Id.*

⁵⁷ Expert Opinion of Professor Bernard Hanotiau, April 20, 2021, SDNY Docket, ECF 47-21 (Exhibit P), ¶ 2.

⁵⁸ *Id.* ¶ 148.

⁵⁹ *Id.* ¶ 154.

⁶⁰ *Id.* ¶ 156.

content of the Award and the conclusions of the Arbitral Tribunal regarding its competence, responsibility, causality and the quantum would have been totally different.”⁶¹

IV. THE GIBRALTAR PROCEEDING

90. The Statis’ fraud schemes are the subject of pending legal proceedings other than the Enforcement Proceedings. In November 2020, in one such proceeding (the “**Gibraltar Proceeding**”), the Gibraltar Supreme Court (the “**Gibraltar Court**”)⁶² assessed evidence relating to four of the Statis’ schemes – the Tristan Circular Fraud, the LPG Plant Fraud, the Oil Skimming Fraud, and the Laren Transaction Fraud. Applying Gibraltar law, the court found that claims based on each of these frauds had a “real prospect of success.”

91. The background to the Gibraltar Proceeding is that in 2019, Kazakh tax authorities filed a bankruptcy claim against TNG, the Statis’ former company, in Kazakhstan. TNG was declared bankrupt on September 27, 2019, and this entered into force on February 25, 2020.

92. On July 17, 2020, TNG’s bankruptcy manager, acting on his own behalf and on behalf of TNG, initiated the Gibraltar Proceeding by filing claims in the Gibraltar Court against Terra Raf, Anatolie Stati and Gabriel Stati (as directors and shareholders of Terra Raf), and Tristan Oil.⁶³ The claims asserted are for fraudulent misrepresentation, unlawful interference, and unlawful means conspiracy under Gibraltar law.

93. On November 27, 2020, the Gibraltar Court issued its judgment granting TNG’s application for permission to serve the Statis (the “**Gibraltar Decision**”). The Gibraltar Decision was based on the court’s review of evidence submitted by the Claimants in support of their

⁶¹ *Id.* ¶ 157.

⁶² The Gibraltar Supreme Court is an intermediary court.

⁶³ *See* Judgment of the Supreme Court of Gibraltar, 2020/ORD/02, November 27, 2020, SDNY Docket, ECF 47-22 (Exhibit Q), ¶ 9.

allegations, consisting of witness statements, expert opinions, and several volumes of documents from other proceedings involving the Statis, and argument from counsel for the Claimants.

94. As the Gibraltar Decision noted, in order to serve any defendants outside of Gibraltar, such as the Statis, TNG was required to show that there was a “real issue” to be tried on the merits with respect to each of its four claims.⁶⁴

95. Under applicable Gibraltar law, the term “real issue” is defined as: “A claim is made against a person (‘the defendant’) on whom the claim form has been or will be served (otherwise in reliance of this paragraph) and (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.”⁶⁵ To make this determination, the Gibraltar Court stated that it must answer these three questions:

“Firstly, is there a good arguable case that between the claimants and the anchor defendant (Terra Raf) there is a real issue which is reasonable for the court to try.”⁶⁶

“Secondly, is there a serious issue to be tried as between the claimants and the foreign defendants (the Statis and Tristan). Both the question whether there is a real issue which is reasonable to try between the claimants and the anchor defendant and the question of whether there is a serious issue to be tried between the claimants and the foreign defendants, involve the application of the summary judgment test.”⁶⁷

“Thirdly, is there a good arguable case that the foreign defendants are necessary or proper parties to the claim.”⁶⁸

⁶⁴ *Id.* ¶ 13.

⁶⁵ *Id.* ¶ 12 (quoting paragraph 3.1(3) of the Practice Direction).

⁶⁶ *Id.* ¶ 17.

⁶⁷ *Id.*

⁶⁸ *Id.* ¶ 18.

96. As described in the Gibraltar Decision, TNG’s first claim – relating to the **Tristan Circular Fraud** – alleges that Anatolie Stati made fraudulent misrepresentations related to the Tristan Notes issued in 2006 and 2007 to “pay the existing indebtedness of TNG” and “provide it with working capital.” More specifically, the fraudulent misrepresentations were that \$70 million “was to be applied by Terra Raf to repay sums which it owed to TNG and KPM” but that “Terra Raf did not do so and instead transferred funds via other companies controlled by the Statis to interests they had in South Sudan.”⁶⁹ The Gibraltar Court found that TNG has a “**real prospect of success**” with respect to this claim and “the assertion that the representation made by or on behalf of Terra Raf was a fraudulent representation is not fanciful.”⁷⁰

97. As described by the Gibraltar Court, the second claim – relating to the **LPG Plant Fraud** – alleges that the Statis used payments by TNG to Perkwood, a dormant company secretly owned by the Statis, to inflate the cost of the equipment to construct the LPG plant, with the balance of these funds also misappropriated by the Statis.⁷¹ The Gibraltar Court similarly concluded that TNG has “**a real prospect of success against Terra Raf in relation to the second claim**” and “it would therefore be reasonable to try it.”⁷²

98. The third claim described in the Gibraltar Decision – relating to the **Oil Skimming Fraud** – asserts that TNG produced and exported millions of barrels of oil and gas to a Dutch company, Vitol FSU B.V. (“**Vitol**”) via intermediary companies owned by the Statis, and that Vitol paid approximately \$665 million for the oil and gas, but only approximately \$437 million was paid to TNG, with the remainder being used by the Statis for other business interests or

⁶⁹ *Id.* ¶ 4.

⁷⁰ *Id.* ¶ 43 (emphasis added).

⁷¹ *Id.* ¶ 5.

⁷² *Id.* (emphasis added).

personal use.⁷³ With respect to the third claim, the Gibraltar Court found that “[t]he evidence of New York law supports the claimants’ assertion that the sale by TNG was not a fair market value,” and “[l]ike with the previous claims, it is reasonable to try the claim, [and] **the prospects of success are realistic.**”⁷⁴

99. With respect to the fourth claim – relating to the **Laren Transaction Fraud** – the Gibraltar Court noted that it arises from alleged fraudulent misrepresentations made by Terra Raf, the Statis, and Tristan Oil, to enable Tristan Oil’s issuance of the Laren notes in 2009, and is “substantial.” As with the other claims, the Gibraltar Court found that the fourth claim had “**real prospects of success.**”⁷⁵

100. After finding that there was a “serious issue to be tried on all four claims,” the Gibraltar Court granted TNG and its bankruptcy manager permission to serve the Statis out of the jurisdiction.⁷⁶

101. The Gibraltar Proceeding is ongoing.

V. THE STATIS’ FRAUD BEFORE THE ECT ARBITRATION

A. The Statis’ Scheme to Defraud the Tristan Noteholders

102. In 2006 and 2007, the Statis raised money through the capital markets by causing Tristan Oil, a company wholly owned by Anatolie Stati, to issue notes to investors.

103. 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

⁷³ *Id.* ¶ 6.

⁷⁴ *Id.* ¶¶ 61, 65 (emphasis added).

⁷⁵ *Id.* ¶ 70 (emphasis added).

⁷⁶ *Id.* ¶ 72.

amount of \$120 million on or about June 7, 2007. Through Jefferies, these Tristan Notes were fully subscribed. The maturity date of the notes was January 1, 2012. Prior to maturity, the Indenture required that the Stasis make regular interest payments to the Tristan Noteholders.

104. The following investors, among possibly others, purchased Tristan Notes, either in the initial offering or subsequently: (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.

105. 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 therefore, as noted *supra*, were managed by Chapman.

106. An after-market in these Notes developed in which the original Noteholders sold their Notes and/or purchased Notes from other Noteholders.

107. The Stasis falsely represented to the purchasers of the Tristan Notes that the funds raised from them would be used for legitimate business purposes of KPM and TNG. Specifically, the Stasis represented that proceeds from the Tristan Notes would be used to repay KPM's and TNG's existing debt, to make a shareholder distribution, 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, stole, embezzled and/or misappropriated the delta and defrauded the Tristan Noteholders.

108. The Indenture named Wells Fargo N.A. (“**Wells Fargo**”) as the Trustee for the Tristan Notes and KPM and TNG as the Guarantors of the Statis’ obligations thereunder.⁷⁷ Anatolie 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.

109. The Indenture included a mechanism by which related-party transactions between Tristan Oil, KPM, and TNG, and any other Stati company, defined as “**Affiliates**,”⁷⁸ were prohibited unless the Statis satisfied certain conditions, with the conditions increasing in line with the dollar value of the related-party transaction.

110. 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

⁷⁷ Effective March 8, 2021, Wells Fargo resigned as Trustee and was replaced by GLAS Trust Company.

⁷⁸ The Indenture defined the term “Affiliate” as follows:

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms “*controlling*,” “*controlled by*” and “*under common control with*” have correlative meanings.

transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate” unless the Statis satisfied the following conditions:

- a. 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”).
- b. Transactions greater than \$3 million further required that the Statis deliver to the Trustee (Wells Fargo) 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 terms were no less favorable than a comparable transaction at an arm’s length basis.
- c. Transactions greater than \$10 million further required an independent fairness opinion, *i.e.*, an opinion “issued by an accounting, appraisal or investment banking firm of national standing” as to the fairness of the transaction to Tristan, TNG, or KPM, as applicable.

111. The Indenture also required that the Statis provide audited financial statements to the Tristan Noteholders on a regular basis. Specifically, 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.

112. 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.

113. 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."

114. As alleged herein, the Statis violated the above terms of the Indenture by, *inter alia*, falsely certifying the identity of related parties and related-party transactions to their auditors, failing to obtain the necessary approvals for certain related-party transactions, and circulating to the Tristan Noteholders the fraudulent financial statements and fraudulently obtained audit reports. The Statis repeated these misrepresentations in their quarterly conference calls with the Tristan Noteholders. Through such conduct, the Statis defrauded the Tristan Noteholders.

115. The Statis' schemes breached each of the covenants in Section 4.12(a) of the Indenture that prohibited related-party transactions.

116. 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 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.”⁷⁹

117. At his April 2019 deposition, Mr. Lungu (the Statis’ former CFO) 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 the related parties in the financial statements, the Statis avoided having to obtain and provide the Tristan Noteholders with the board resolution and independent fairness opinion required by the Indenture. In so doing, the Statis further perpetrated their fraud on the Tristan Noteholders.

118. One of the Statis’ motives in misleading the Tristan Noteholders was to cover up the fact that they were defrauding the Tristan Noteholders of hundreds of millions of dollars that, as alleged herein, had been advanced to TNG by Tristan Oil.

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

119. 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 Tractebel Gas Engineering GmbH (“**Tractebel**”), an independent third party.

120. Rather than having TNG purchase the equipment directly from Tractebel, the Statis instead interposed two sham companies that they owned and/or controlled. Specifically, the Statis structured the transactions so that **Azalia** (a Stati sham company) would purchase the equipment from Tractebel at the market price of approximately \$35 million. The Statis then had Azalia “sell” the same equipment at wildly inflated prices to **Perkwood** (another sham company the Statis

⁷⁹ *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>.

secretly owned) for a total of \$93 million. Then, the Statis created a sham contract – the “**Perkwood Agreement**” – under which the same equipment was again “re-sold” 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 defrauded the Tristan Noteholders of in excess of \$100 million.

121. Perkwood was a critical element in the Statis’ fraudulent schemes. 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.

122. The Statis took extraordinary measures to conceal the fact that Perkwood was their company. They created a series of forged documents, including their financial statements, 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 the payments were fraudulently inflated.

123. The Perkwood transactions were a sham and intended by the Statis to disguise the fact that they were defrauding the Tristan Noteholders. 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 at Rietumu Bank in Latvia.
- c. Perkwood was a shell company. It had no employees, premises, or operations. It paid no 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 in the amount of 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.⁸⁰ In furtherance of the fraudulent scheme, Mr. and Mrs. Petre-Mears granted a series of general powers of attorney to Anatolie Stati and Gabriel Stati to act for Perkwood.⁸¹

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

⁸⁰ 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>.

⁸¹ Kazakhstan first obtained copies of these powers of attorney in 2016 and filed them with the Svea Court of Appeal in Sweden. It was only thereafter, on the first day of the hearing in the Swedish annulment proceedings in September 2016, that the Statis admitted that Perkwood was a Stati company. Prior to this, the Statis had consistently concealed and/or falsely denied this fact.

presented by the Statis in the Perkwood Agreement as different equipment and at materially inflated prices.

124. The Statis used multiple, overlapping schemes to fraudulently inflate the LPG Plant construction costs. 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” to 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;
- b. **Double-Billing Fraud** – The Statis had Perkwood “sell” to 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 – inflating the stated LPG Plant construction costs by up to approximately \$60 million.

125. **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 using the monies invested by the Tristan Noteholders.

126. 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 Interinvest Ltd. (“**Hayden**”) and the remainder (approximately \$54 million) to Terra Raf. Neither company had any contractual entitlement to receive this money from Azalia.

127. Because the \$148 million paid to Hayden and Terra Raf was the product of the Statis’ fraud, and was paid by the Statis to themselves using the monies of the Tristan Noteholders, the Statis thus defrauded the Tristan Noteholders.

C. The “Oil Skimming Fraud” – The Statis Siphon Money from TNG By Skimming Payments for Oil And Gas

128. Between 2005 and 2010, TNG produced and exported millions of barrels of oil and gas to third party Vitol. It did so via intermediary companies owned by the Statis, including Terra Raf. The contracts by which the sales were executed were sham contracts pursuant to which Terra Raf sold the oil and gas to Stati-controlled intermediaries at below-market prices.

129. Specifically, Vitol made payments of circa \$665 million for the oil and gas to Stati-controlled intermediaries. Only circa \$437 million was ultimately paid to TNG. The balance of circa \$228 million was stolen, embezzled and/or misappropriated by the Statis through related-party transactions.

130. In TNG’s audited financial statements for 2007, the Statis stated that market prices were being paid for TNG’s oil and gas. That statement was knowingly false.

D. The Statis Intentionally Falsify Their Financial Statements

131. The Statis included the fraudulently inflated LPG Plant costs in their financial statements and knew that such costs were false. This made the financial statements materially false.

132. In the combined 2007 annual report for Tristan Oil, KPM, and TNG, the Statis made the following representation:

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.

133. This representation was knowingly false and fraudulent. 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 through which the Statis fraudulently inflated the stated construction costs of the LPG Plant.

134. In Tristan Oil's 2008 annual report, the Statis made the following representation:

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.

135. This representation was knowingly false and fraudulent. 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 through which the Statis fraudulently inflated the stated construction costs of the LPG Plant.

136. In Tristan Oil's 2009 annual report, the Statis represented that the costs of construction of the LPG Plant as of December 31, 2009 were more than \$248 million.

137. This representation was false. The Statis had not invested these amounts in the construction of the LPG Plant, nor did they intend to. This figure was based on the amounts of the related-party transactions through which the Statis fraudulently inflated the stated construction costs of the LPG Plant.

E. The Statis Fraudulently Obtain Audit Reports for Their Fraudulent Financial Statements

138. Another key step in the Statis' schemes was to legitimize the fraudulent transactions recorded in their financial statements by obtaining the stamp of approval of an international accounting firm. They accomplished this by falsely representing to their auditors that the transactions were on arm's length terms and by falsely representing that Perkwood was an independent third party when, in fact, it was a Stati company.

1. Principles Governing Financial Statements and Auditing

139. 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.

140. 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

141. 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 related parties.

142. 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.

143. Per IFRS, a related party is “a person or an entity that is related to the reporting entity” as follows:

A person or a close member of that person’s family is related to a reporting entity if that person has control, joint control, or significant influence over the entity or is a member of its key management personnel.

An entity is related to a reporting entity if, among other circumstances, it is a parent, subsidiary, fellow subsidiary, associate, or joint venture of the reporting entity, or it is controlled, jointly controlled, or significantly influenced or managed by a person who is a related party.⁸²

144. The importance of identifying related parties and related-party transactions is due, in particular, to the heightened risk that transactions between related parties may not reflect normal market conditions (the concept of “arm’s length”).

145. IAS 24.6 explains the reasons 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. (Emphasis added.)

⁸²[https://www.ifrs.org/issued-standards/list-of-standards/ias-24-related-party-disclosures/\(emphasis added\).](https://www.ifrs.org/issued-standards/list-of-standards/ias-24-related-party-disclosures/(emphasis%20added).)

146. For these reasons, and others, it is essential that a company and its management truthfully identify to their auditors all related parties and related-party transactions.

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

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

148. KPMG audited the individual and combined financial statements of Tristan Oil, TNG, and KPM (collectively referred to by KPMG as the “**Companies**”) for 2007, 2008, and 2009. Deloitte audited the Stati financial statements for 2006.

149. The Stati financial statements disclose that transactions with related parties were a key part of the Statis’ “business model.” For example, the combined 2008 financial statements 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 Companies’ ultimate controlling party is Anatolie Stati.”

150. 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.

151. Pursuant to the requirements of IFRS (and, in particular, IAS 24), the Statis should have disclosed that Perkwood was a related party, and should have identified all of the transactions between TNG and Perkwood as related-party transactions.

152. IAS 24 also required that TNG’s financial statements provide 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.”

153. In violation of these requirements, TNG's audited financial statements for 2007 to 2009 did not (i) disclose that Perkwood was a related party; (ii) identify the transactions between TNG and Perkwood as related-party transactions; or (iii) disclose the information regarding those transactions required by IAS 24.

154. Instead, and even though the financial 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," the Statis fraudulently omitted Perkwood from the list of Statis related companies.

155. The Statis falsely stated that the (only) related parties with whom TNG had conducted transactions during the relevant time period were: (i) Ascom; (ii) Arpega Trading S.R.L.; (iii) General Affinity; (iv) KASKO; (v) KASKO-Petrostar; (vi) KPM; (vii) Stadoil; (viii) Terra Raf; (ix) Tristan Oil.

156. As alleged above, Artur Lungu, the former Chief Financial Officer of Tristan Oil and Vice President of Ascom, testified at his April 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 confirmed in his testimony that these omissions rendered the management representation letters materially false.

157. 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.

158. 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.

159. Mr. Lungu further confirmed in his testimony 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.

160. 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.

161. After receipt of these fraudulent misrepresentations, KPMG 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 of these financial statements were materially false.

F. The Statis Used Their Fraudulent “Audited” Financial Statements to Obtain Inflated Bids for Their Kazakh Operations

162. In June 2008, the Statis used their fraudulent “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 fraudulent “audited” financial statements, to obtain an award of \$199 million for the LPG Plant.

1. The Project Zenith “Teaser” Contained Misleading, False and/or Fraudulent Information

163. 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.

164. 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.”

165. The Teaser further stated that the Statis expected to spend a minimum of \$230 million in 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 Project Zenith “Information Memorandum” Contained Misleading, False and/or Fraudulent Information

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

167. 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.”

168. 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 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 fraudulent financial statements.

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

[KPM’s, 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.

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

171. The Statis also fraudulently represented in the Information Memorandum that they had changed auditors from Deloitte to KPMG because they were “[f]ollowing the best practice to change auditors periodically.” In fact, the Statis changed auditors because Deloitte, despite having been appointed as the Statis auditor just a year before, had begun asking questions regarding the Statis’ related-party transactions.

172. The Information Memorandum also repeated the misrepresentations from the Statis 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 US\$193 million on the LPG plant.” These representations were misleading, false and/or fraudulent, for the reasons alleged above.

173. 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 Statis related-party transactions on the books of Tristan Oil, KPM, and TNG that did not have the approvals and/or independent fairness opinions required by the Indenture’s covenants.

3. The KPMG Vendor Due Diligence Report

174. 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 Statis-related party.

175. The purpose of the VDD Report was 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.

176. 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.”

177. 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.

178. 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."

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

180. Mr. Lungu testified at his 2019 deposition that, upon receipt of the draft VDD Report, he held a telephone call with KPMG in which, on the basis of his understanding from Anatolie Stati, 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 materially falsified the VDD Report, as Mr. Lungu acknowledged at his deposition.

181. 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 construction was estimated to be \$233 million, of which \$193 million had already been invested as of June 30, 2008.

182. 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 (the supplier of the LPG Plant equipment to TNG) as

an unrelated “third party” and to overstate the LPG Plant construction costs. The Statis deliberately engaged in these falsifications to conceal their fraudulent schemes and to deceive third parties.

4. KMG Submits Bid on the Basis of the Statis’ Fraudulent Information

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

184. KMG’s response was an “indicative offer” dated September 25, 2008 (the “KMG Indicative Offer”). The KMG Indicative Offer relied on the false 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 “[s]tandard customary due diligence from a buyer’s point of view,” which included “commercial, financing and related parties’ contracts.”

185. 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. Specifically, the Indicative Offer stated: “[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.”

186. The Indicative Offer also made clear that its \$199 million valuation of the LPG Plant was calculated on the basis of the Statis’ representation that they had incurred “[h]istorical costs of US \$193 million” in constructing the LPG Plant.

187. Thus, the KMG Indicative Offer was expressly based upon information in the financial statements, the Teaser and the Information Memorandum 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.

188. If KMG had known of these false statements and the Statis' fraudulent schemes, it would not have made the KMG Indicative Offer. At a minimum, if KMG had instead been provided with the true construction costs of the LPG Plant, then its valuation of the LPG Plant in the Indicative Offer would have been materially lower.

G. The Laren Transaction

189. 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**").

190. The Laren Transaction was engineered by the Statis by deception that included at least two different elements.

191. First, Laren was an entity secretly created and controlled by the Statis. As was the case with Perkwood, Laren was falsely presented by the Statis as an independent third party.

192. 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."

VI. THE STATIS' FRAUD DURING THE ECT ARBITRATION

193. As alleged above, the Statis' fraudulent schemes centered on the key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business

expenditures. Through this key lie, the Statis stripped assets from KPM and TNG, laundered money through these companies, and falsely portrayed these companies as having more assets than they actually did. This key lie is at the center of the Statis' fraud. Defendants have joined and actively supported this fraud to accomplish their own unlawful plan.

A. The Statis Initiate the ECT Arbitration Against Kazakhstan

194. After the Statis defaulted on the interest payments due to the Tristan Noteholders on July 1, 2010, the Statis filed a Request for Arbitration with the Stockholm Chamber of Commerce on July 26, 2010, claiming that Kazakhstan had engaged in a "campaign of harassment" that violated various provisions of the ECT. In respect of the LPG Plant, the Statis claimed as damages (i) the purported amount of 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 Kazakhstan's alleged breaches of the ECT, which the Statis asserted constituted an additional \$84,077,000.

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

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

196. With regard to the LPG Plant, the Statis contended that the LPG Plant should be valued based on the amount of the investment that they had allegedly made in the plant.

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

198. First, the Statis, in reliance on the fraudulently obtained audit reports and fraudulent financial statements, represented that they had invested more than \$245 million in the development

and construction of the LPG Plant, and they demanded an award in that amount. In fact, the amount invested by the Statis in the development and construction of the LPG Plant was substantially less, and the claimed \$245 million had been fictitiously inflated through the LPG Plant Fraud scheme described above.

199. 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 false statement made in his Second Witness Statement that more than \$245 million had been invested in the construction of the LPG Plant.

i. In oral evidence at a hearing in the arbitration on January 28, 2013, Mr. Lungu repeated the false statement made in his First Witness Statement that more than \$245 million had been invested in construction of the LPG Plant.

j. The Statis’ April 8, 2013 First Post-Hearing Brief stated that “Claimants invested more than \$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."

l. On this basis, the Statis urged the ECT Tribunal to "award damages for the LPG Plant based on . . . Claimants' out-of-pocket investment costs of US \$245 million."

200. Each of the above statements was knowingly false because the Statis did not invest more than \$245 million in the construction of the LPG Plant. This \$245 million number was materially and fraudulently inflated by the Statis 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.

201. Second, the Statis concealed highly relevant documents from Kazakhstan during the arbitration. On February 3, 2012, 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 these contracts should have been disclosed by the Statis. In breach of the Order, the Statis failed to disclose these documents to Kazakhstan.

202. Third, the Statis used the KMG Indicative Offer to claim 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 (i) they had procured the KMG Indicative Offer by fraud, and (ii) the KMG Indicative Offer 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.

203. Fourth, the Statis submitted expert reports that relied on the fraudulently obtained audit reports, the fraudulent financial statements, the fraudulently obtained KMG Indicative Offer, and the false testimony of Anatolie Stati and Mr. Lungu.

204. For example, the Statis retained FTI to assess the economic damages related to their Kazakh operations, including the LPG Plant. 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.

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

206. At no point during the ECT Arbitration did the Statis disclose that the financial statements were fraudulent, the KPMG audit reports were fraudulently obtained, and the indicative offers on which they relied were based on these fraudulent documents. Instead, the Statis affirmatively relied on the fraudulent 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 falsely represented that their “historical financial records, particularly data from audited financial statements,” were “perfectly reliable evidence.”

C. Kazakhstan Relied to Its Detriment on the Fraudulent Misrepresentations

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

208. First, in preparing and presenting its defenses on jurisdiction, Kazakhstan relied on the Statis’ misrepresentations – in their 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 materially and knowingly 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 on jurisdiction and liability, and other costs, which were wasted.

209. Second, in preparing and presenting its defenses concerning liability, 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 and knowingly 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, damages, and other costs, that were wasted.

210. Third, in preparing and presenting its defenses concerning the value of the LPG Plant, 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.⁸³

211. Had the Statis not made these misrepresentations, and instead disclosed the truth – that the Statis materially and knowingly 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, at minimum, Kazakhstan incurred damages, including litigation costs in connection with preparing its defenses concerning damages, and other costs, that were wasted.

D. The ECT Tribunal’s Decision

212. The Statis’ fraud had a substantial impact on the ECT Tribunal’s determinations regarding jurisdiction, liability, and damages, as now confirmed by the Belgium Court of Appeal. 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 \$497,685,101.⁸⁴

213. 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.⁸⁵ This decision was the result of fraud committed by the Statis, for at least three reasons.

⁸³ ECT Award ¶ 1728 (citing Kazakhstan’s Second Post-Hearing Brief, June 3, 2013, ¶¶ 829–32).

⁸⁴ *Id.* ¶¶ 1856–59.

⁸⁵ *Id.* ¶ 1747.

214. First, KMG almost certainly would not have issued the KMG Indicative Offer had it known of the Statis' fraudulent schemes, and particularly had it known that the audit opinions for the Statis' financial statements had been fraudulently obtained and that the LPG Plant costs stated in the financial statements were materially falsified and heavily inflated. If the KMG Indicative Offer had not existed, the Tribunal could not have relied upon it to award the Statis \$199 million in compensation for the LPG Plant.

215. Second, the KMG Indicative Offer was expressly based on the historical costs of construction of the LPG Plant set forth in the Information Memorandum.⁸⁶ The Information Memorandum was prepared by the Statis using the materially inflated and fictitious construction costs from the sham transactions with Perkwood (which they secretly owned) 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 of Tractebel, the actual supplier of the LPG Plant equipment. 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.⁸⁷ 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.

216. Third, the ECT Tribunal relied on the \$199 million amount in the KMG Indicative Offer on the grounds that in its view, this was "the relatively best source of information."⁸⁸ However, this conclusion was based on the Statis' fraud, in that the Statis:

⁸⁶ *Id.*

⁸⁷ *Id.* ¶ 1707.

⁸⁸ *Id.* ¶ 1747.

- a. Concealed a series of essential elements that determined the \$199 million amount in the KMG Indicative Offer, including the artificially inflated costs and the fact that the suppliers of equipment at fictitiously inflated prices were related parties;
- b. Filed in the ECT Arbitration falsified and fraudulent documents (*e.g.*, the altered VDD Report, the annual accounts of TNG, the Information Memorandum, among other items described above), and on this basis falsely represented to the Tribunal 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.

217. These facts caused the English High Court to find in its June 2017 judgment:

If construction costs were . . . fraudulently inflated by the Claimants . . . then, because the . . . Indicative Bid valued the LPG Plant [on the basis of these 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.⁸⁹

218. The Statis, as alleged above, rather than attempt to defend against the fraud allegations in the English proceedings, dismissed their own action to enforce the arbitral award (after agreeing to harsh conditions imposed by the English court). Defendants materially assisted the Statis in these actions by, *inter alia*, funding the Statis' legal fees for these appeal proceedings.

VII. THE STATIS' FRAUD AFTER THE ECT ARBITRATION

219. After the Statis obtained the fraudulent ECT Award, they began recognition and enforcement proceedings against Kazakhstan in a series of jurisdictions, including England, Italy,

⁸⁹ Anatolie Stati, Gabriel Stati. Ascom Group S.A. and Terra Raf Trans Trading Ltd., Case no. CL-2014-000070 (June 6, 2017), ¶¶ 43, 48.

the Netherlands, Luxembourg, Belgium, and the United States. Kazakhstan initiated proceedings in Sweden to have the award set aside or invalidated. In these proceedings, and as now confirmed by the Belgium Court, the Statis continued to perpetrate their fraudulent schemes. They did so with the substantial assistance of Defendants, and to the detriment of Kazakhstan.

220. 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 communications alleged herein. After discovering initial evidence of the Statis' fraud, rather than trying to recoup their investments through lawful means, Defendants joined and assisted the Statis' fraudulent schemes so that they could unlawfully have Kazakhstan pay them the amounts that the Statis had stolen, embezzled and/or misappropriated. In so doing, Defendants entered into a civil conspiracy to commit fraud, of which Kazakhstan was a victim, and aided and abetted the Statis' wrongful activities.

221. As the Statis prosecuted or defended these proceedings, they and their counsel engaged in a series of misrepresentations to the various courts and Kazakhstan. This conduct furthered the fraud. Although the Statis and their counsel have made dozens of different misrepresentations in numerous proceedings, summarized below are five categories of material misrepresentations.

222. Upon information and belief, Defendants knew that these representations were false and that the Statis 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 encouraged and supported the Statis in these enforcement efforts, and continue to do so, including by providing guidance and critical funding for these efforts.

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

223. As alleged above, one component of the Statis' fraud was the fraudulent accounting at the LPG Plant, in which they falsely inflated the costs of the plant through related-party transactions. After Kazakhstan discovered the LPG Plant Fraud, and presented it in the post-ECT enforcement proceedings, the Statis made new misleading, false and/or fraudulent representations.

224. After the Statis belatedly admitted that they actually owned Perkwood after hiding this fact for years, they continued to hide the fraudulent LPG Plant costs by falsely claiming in several proceedings that Perkwood was an operational company that handled the delivery of equipment to Kazakhstan, so the markups could be attributed to delivery costs. For example:

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

b. The Statis falsely 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 falsely asserted 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 operational company.

225. 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 Stasis knew that Perkwood was a sham company without employees or offices for which the Stasis filed dormant company reports, and which could not offer any value.

226. For example, in the Swedish proceedings:

a. The Stasis falsely represented that 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 falsely denied, without evidence, that the financial statements reflected the purchase of \$72 million in equipment that, in fact, never existed.

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

d. They falsely 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.”

227. In England, the Stasis 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.

228. To justify the fraudulent inflation, through which the stated cost of the LPG Plant equipment was tripled, the Statis falsely claimed “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.” The Statis also falsely claimed 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.” The Statis knew that Perkwood was a dormant company and that, therefore, these representations were false.

229. The Statis made the same false assertions in the Belgian exequatur proceedings, For example, they falsely asserted that: “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 also falsely 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).”

230. The Statis repeated these false assertions in the Luxembourg proceedings. For example, they falsely asserted that:

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.

231. In the Netherlands, the Statis also made these false assertions. For example, the Statis falsely claimed that a large part of the inflated LPG Plant costs were bona fide costs for the transport of equipment. Later, the Statis changed their position and falsely claimed that the (non-existent) management fee was an explanation for the costs.

232. In Italy, the Statis also falsely asserted that the Perkwood transactions were part of a lawful transfer pricing arrangement. They falsely claimed 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. They also falsely 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 Misrepresent that KPMG Endorsed their Financial Statements Based on Access to Complete and Truthful Information

233. The Statis also relied heavily on the fact that their financial statements had been audited by KPMG to defend against Kazakhstan’s allegation that the statements were fraudulent. In making this assertion, the Statis falsely claimed that KPMG had full access to all company records and that KPMG was fully aware of Perkwood’s status as a related company.⁹⁰

234. For example:

⁹⁰ In its August 21, 2019 letter, KPMG confirmed that it was not aware that Perkwood was a related party and that transactions with Perkwood were related-party transactions.

a. The Statis 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.” The Statis also reiterated the false statement that “KPMG was aware of Perkwood’s function” and that “KPMG had full access to all accounting documents.”

b. The Statis falsely told the Netherlands court 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 falsely told 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.”

235. These representations were knowingly false, given the clear evidence that Anatolie Stati deliberately concealed from KPMG the fact that Perkwood was a Stati-related party and, further, through Artur Lungu, instructed KPMG’s Tax and Advisory department to remove any reference to Perkwood as a related company from relevant documents.

236. The knowing falsity of these Stati representations is proven by the February 2016 KPMG correspondence (that Kazakhstan discovered in October 2019). All of the misrepresentations alleged in this section were made after the Statis engaged in this correspondence with KPMG in 2016.

237. The Statis’ representations regarding KPMG also are proven false by the August 2019 decision by KPMG to withdraw all of its audit reports for the Stati financial statements after

KPMG was provided Mr. Lungu's deposition testimony and after Anatolie Stati refused to answer KPMG's questions.

238. In relation to their assertion 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."

239. Similarly, in the Belgium proceedings the Statis 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).

240. The Statis 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."

241. To the Luxembourg court, the Statis falsely represented that "Perkwood's status as a party affiliated to TNG was established in KPMG's due diligence report."

242. These representations were knowingly false. As Mr. Lungu admitted for the first time at his 2019 deposition, he instructed KPMG to change the draft Vendor Due Diligence Report so that it (falsely) stated that Perkwood was an unrelated third party. KPMG followed these instructions. The Vendor Due Diligence Report therefore did not identify Perkwood as a related party; it falsely identified Perkwood as an unrelated third party.

243. The KPMG Vendor Due Diligence Report therefore was deliberately falsified by the Statis on the exact point – concealment of the fact that Perkwood was a Stati company – that the Statis are misrepresenting in the Enforcement Proceedings.

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

244. The Statis consistently concealed 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 misrepresented this fact to various courts.

245. 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 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.”

246. Only on September 5, 2016, once Kazakhstan introduced documents that it had obtained from Latvian authorities showing that the Statis had full powers of attorney over Perkwood, were the Statis forced to admit that Perkwood was a Stati-related party.

247. 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.”

248. The Statis continued to make such representations in Belgium in further submissions, 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.” Ultimately, in overturning recognition of the ECT Award in November 2021, the Belgium Court of Appeal did indeed find that the Statis “deliberately concealed the true status of Perkwood.”⁹¹

249. The Statis consistently made this misrepresentation to other courts. In England, the Statis falsely “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, the Statis falsely asserted “[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.” In Italy, the Statis falsely asserted that neither Perkwood nor documentation regarding Perkwood had been concealed.

D. The Statis Misrepresent by Omission the Incriminating KPMG Correspondence and Conceal It from the Courts

250. On February 2, 2016, after KPMG belatedly learned, as a result of the disclosures obtained by Kazakhstan, that Perkwood was a Stati company, 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

⁹¹ Belgium Decision at 27 and 29.

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.”

251. The 2016 KPMG letter (which Kazakhstan did not discover until October 2019) identified three primary issues that KPMG was unaware of at the time of the audits: (i) that Perkwood charged a management fee of approximately \$44 million; (ii) that Perkwood was a related party controlled by the Stasis; and (iii) that Perkwood was not the “actual supplier of the equipment for the LPG Plant,” but instead a dormant company that passed through costs that were “significantly different from the corresponding cost” charged by the actual supplier of the equipment.

252. KPMG, in its 2016 letter, demanded written responses from the Stasis 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 but not limited, [the] Ministry of Justice of Kazakhstan and the Svea Court of Appeals.” The Stasis, however, did not substantively respond to KPMG’s questions, but instead threatened legal action against KPMG. The Stasis never disclosed this 2016 correspondence to the courts or to Kazakhstan during the Enforcement Proceedings.

253. After the June 2018 disclosure by the Stasis of documents in the then-ongoing English proceedings, 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 Stasis’ fraud. KPMG (as Kazakhstan subsequently discovered in October 2019) contacted Anatolie Stati and demanded an explanation. None was provided.

254. For example, on August 5, 2019, KPMG 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.” In this letter, KPMG again requested information regarding Perkwood’s status.

255. On August 21, 2019, after receiving no response from the Statis, KPMG withdrew all of its audit reports for the Stati 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 withdraw the reports.

256. Instead of complying with KPMG’s instruction, the Statis continued to conceal the KPMG correspondence from Kazakhstan, their investors, and the various courts. The Statis did not inform any court, or other recipients of the audited financial statements, of KPMG’s decision to withdraw its audit reports. The Statis 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.

257. Instead of preventing further reliance on the KPMG audit reports, the Statis continued to falsely represent to the courts that KPMG had performed its audits with full access to all documents and full knowledge of Perkwood’s status despite knowing this was false. When Kazakhstan eventually learned of the KPMG correspondence in October 2019, the Statis sought to block Kazakhstan from introducing the correspondence.

258. For example, in Luxembourg, 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.

259. In the Netherlands, the Statis actively sought to falsify the record regarding the KPMG correspondence. The Statis 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, the Statis attempted to include a reference to their offering to produce the 2016 KPMG correspondence, although no such offer had ever been made.

VIII. THE “CASH COLLATERAL” FRAUD

260. As alleged above, on December 20, 2006 and June 7, 2007, Tristan Oil issued notes in the amount of \$300 million and \$120 million, respectively, under the Indenture, with Tristan Oil as issuer, TNG and KPM as Guarantors, and Wells Fargo as Trustee. The proceeds from these notes were, according to the Statis’ representations, to be used to repay TNG’s existing debts and to fund general corporate purpose expenses of KPM and TNG.

261. The interest rate on the Tristan Notes was due and payable on a semi-annual basis. All Tristan Notes were secured by pledges of 100% of the capital stock of Tristan Oil, KPM, and TNG, and all notes payable to Tristan Oil by KPM, TNG, and Terra Raf (the “**Intercompany Notes**”). The guarantees of the Intercompany Notes were secured by pledges of 100% capital stock of KPM and TNG.

262. Out of the first issuance of the Tristan Notes, on December 20, 2006, Tristan Oil loaned \$76 million to Terra Raf in exchange for a promissory note issued by Terra Raf in favor of Tristan Oil in the same principal amount (the “**Promissory Note**”).

263. Because Tristan Oil’s obligations under the Tristan Notes were secured by, among other things, pledges over the Intercompany Notes, on December 20, 2006, Tristan Oil signed a

pledge agreement with Wells Fargo (the “**Pledge Agreement**”), which contemplated that any additional right, title, or interest received under the Intercompany Notes would constitute collateral under pledge.

264. The Pledge Agreement provided that in the event of a default, (i) all cash proceeds from the Intercompany Notes were to be directed to a bank account under the control of Wells Fargo, and (ii) Tristan Oil was not entitled to use those funds without Wells Fargo’s prior written permission.

265. The Intercompany Notes were endorsed “*in blank*” (without naming an endorsee) and were transferred as such (notes and allonge endorsement) to Wells Fargo.

266. Anatolie Stati signed all of the Intercompany Notes on behalf of TNG, KPM, and Terra Raf.

267. Anatolie Stati also endorsed each Intercompany Note on behalf of Tristan Oil.

268. Tristan Oil failed to make the interest payment that became due on the Tristan Notes on July 1, 2010.

269. Thirty days after Tristan Oil’s interest payment default, on August 2, 2010, Wells Fargo declared an Event of Default under the Indenture.

270. Upon information and belief, after Wells Fargo declared an Event of Default on August 2, 2010 and before execution of the Sharing Agreement on December 17, 2012, Terra Raf paid Tristan Oil, as partial repayment of the Promissory Note, approximately \$8 million. Upon information and belief, the majority of this payment was used by the Statis to pay legal fees to King & Spalding LLP, Salans LLP, and other law firms, and alleged consulting services of Ascom.

271. Upon information and belief, King & Spalding LLP and/or Salans LLP knew that Tristan Oil had defaulted on its payment obligations under the Notes and that the default was continuing, but nevertheless accepted payments directly from Tristan's bank accounts.

272. Upon information and belief, Terra Raf paid Tristan Oil on April 4, 2015, as partial repayment of the Promissory Note, approximately \$8.5 million, most of which was paid to the Statis' counsel, King & Spalding for legal fees.

273. Each of these amounts should have been used to repay the Tristan Noteholders under the terms of the Indenture.

274. After the execution of the Sharing Agreement in December 2012, Tristan Oil issued a Supplemental Indenture, which modified the original Indenture to include the following new covenant:

Section 4.25 Pledge Agreements and Security and Collateral Assignment Agreement.

The Company will not assign its interest in any Pledge Agreement or the Security and Collateral Assignment Agreement or otherwise amend any Pledge Agreement or the Security and Collateral Assignment Agreement.

275. The Statis did not disclose to the Tristan Noteholders that (i) Tristan Oil continued to receive payments from Terra Raf under the Promissory Note even after Wells Fargo had declared an Event of Default; or (ii) the Statis and Tristan Oil were in breach of material covenants under the Indenture and Pledge Agreement by using the monies owed to Tristan Oil to pay their attorneys.

276. The Cash Collateral Fraud represents another component of the Statis defrauding the Tristan Noteholders.

IX. DEFENDANTS' KNOWLEDGE OF AND PARTICIPATION IN THE FRAUDULENT SCHEMES

277. Upon information and belief, Chapman had knowledge of the Statis' fraudulent schemes at least as early as 2011, both in his individual capacity and in his capacity as a member of senior management of Black River and, subsequently, each corporate Defendant.

278. The above alleged issuance of the Laren Notes spurred Chapman to investigate the Stati operations in Kazakhstan. In connection with his investigation, Chapman uncovered the Statis' broader fraudulent schemes 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, Chapman 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 an alleged harassment campaign by Kazakhstan was false; 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 unnecessary to fund the operations of TNG and KPM and that it was likely another sham transaction designed to defraud investors.

e. That claims could be brought by the Tristan Noteholders against the Statis in Kazakhstan for their fraudulent schemes, 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 of dollars 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 and/or unlawful related-party transfers.

g. That the Statis had been overstating (by 200% to 350%) the capital expenses for production of their wells in Kazakhstan 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 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 defraud the Tristan Noteholders of several hundred millions of dollars.

279. In sum, 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 Stati 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.

280. Chapman, through his position at Black River, was a member of an ad hoc committee of Noteholders (the “**Ad Hoc Committee**”) and maintained independent lines of communication with the Statis and the investigators – meeting with the Statis and their representatives, and communicating with the investigators in Kazakhstan. Upon information and belief, Chapman obtained his knowledge of the Statis' fraud through these independent lines of communications.

A. Chapman Negotiates the Sharing Agreement with the Statis

281. As of July 2012, upon information and belief, Chapman had learned that the Statis had defrauded the Tristan Noteholders. However, Chapman decided not to pursue legal action against the Statis, but rather to conspire with and aid and abet the Statis in perpetrating their fraud against Kazakhstan.

282. To that end, Chapman negotiated the Sharing Agreement with the Statis.

283. Chapman negotiated the Sharing Agreement with the Statis during the period from July to December 2012.

284. Leading up to the execution of the Sharing Agreement, Chapman was in frequent contact with the Statis and their representatives. For example, Chapman met with Anatolie Stati and Mr. Lungu on or about January 17, 2012 in New York, without the other Tristan Noteholders. Other telephone, electronic, and in-person communications took place between Chapman and/or his representatives and the Statis and their representatives from March 2012 to July 2012.

285. Eleven Tristan Noteholders, constituting the majority of the ownership rights of the Tristan Notes, signed the Sharing Agreement, including the three Black River funds.

286. The Sharing Agreement recognized that Tristan Oil and the 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.

287. The Sharing Agreement required the Statis to pay the Tristan Noteholders seventy percent (70%) of any “Proceeds” that they obtained from Kazakhstan in connection with the ECT Arbitration (after the Statis took \$18 million for their legal fees). In exchange, the Participating Noteholders agreed to forbear for a specified period of time from taking any legal action against the Statis to remedy the default on the Tristan Notes.

B. Defendants’ Knowledge of the Statis’ Fraud

288. Since 2011 and continuing to the present, the extent of Chapman’s knowledge of the Statis’ fraud has continued to grow as additional details of the fraud became known to Chapman, through his regular and frequent communications with the Statis, and additional legal proceedings, court rulings, and publicly available information.

289. Upon information and belief, Chapman discovered additional elements of the Statis' fraud and their various schemes in the months leading up to the execution of the Sharing Agreement, dated December 17, 2012, pursuant to which several (but not all) of the Tristan Noteholders agreed with the Statis to share in the proceeds of any arbitral award against Kazakhstan.

290. In negotiating and entering the Sharing Agreement on behalf of the Black River Tristan Noteholders, which he controlled, Chapman formally aligned himself with the Statis, rather than exercising rights that those entities had against the Statis in connection with their frauds and the amounts owed under the Tristan Notes.

291. During the period from July to December 2012, Chapman was in frequent contact with the Statis and their representatives. Concurrent with these discussions, Chapman discovered, upon information and belief, that the Statis had materially misrepresented the extent and value of the related-party transactions within the Statis' companies that had stripped significant assets from TNG and KPM.

292. To the extent he did not know before, Chapman would have been put on notice of one of the Statis' fraud schemes – the LPG Plant Fraud – no later than June 6, 2017, when the English High Court issued its decision in the English Enforcement Proceedings, as alleged above.

293. On July 30, 2018, the Statis' attorneys disclosed that entities that Chapman controlled had funded the Statis' legal costs relating to an appeal in the English Enforcement Proceedings. By this time, Chapman knew of the Statis' fraud, in particular, the LPG Plant Fraud, based on the ruling from the English High Court. This funding was critical to Statis avoiding a trial on the merits of the LPG Plant Fraud.

294. Upon information and belief, since at least 2014 through to the present, Chapman and his companies have funded the Statis' enforcement proceedings in other jurisdictions and have continued to regularly consult with, and provide guidance, including legal strategy to the Statis.

295. To the extent he did not know before, Chapman would have been put on notice of other elements of the Statis' fraud schemes when Kazakhstan filed this action in June 2020, including but not limited to KPMG's withdrawal of its audit reports on August 21, 2019.

296. Chapman's knowledge of the Statis' fraud increased yet again (to the extent not yet known before) on November 27, 2020, when the Supreme Court of Gibraltar issued a decision concluding that the fraud claims of TNG's bankruptcy manager, acting on his own behalf and on behalf of TNG, against Terra Raf, Anatolie Stati and Gabriel Stati (as directors and shareholders of Terra Raf), and Tristan Oil under Gibraltar law had "a real prospect of success" and "it would therefore be reasonable to try" these claims.

297. As of November 16, 2021 – with the issuance of the decision of the Belgium Court of Appeal overturning recognition of the ECT Award – Chapman can no longer deny having full knowledge of the Statis' fraud schemes.

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

298. After the Sharing Agreement was executed, Chapman took other overt acts in support of the Statis' fraudulent schemes. For example, as alleged above, 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 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 Kazakhstan's attempts to discover

information related to the fraudulent schemes. These wrongful acts were done with willful and wanton disregard for Kazakhstan's rights.

299. By engaging in these actions with knowledge of the Statis' fraudulent schemes, Defendants have knowingly participated in, and provided substantial assistance to, the perpetuation of the fraudulent schemes. In doing so, they have aided and abetted the continuation of the fraudulent schemes by the Statis. Defendants' actions have caused damage to Kazakhstan.

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

301. From the date the Sharing Agreement was executed, December 17, 2012, to the date the ECT Award was issued, December 19, 2013, Chapman and his representatives were in frequent contact with the Statis 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.

302. Upon information and belief, Chapman and his representatives remained in frequent contact with the Statis and their representatives during the period that the Statis were attempting to enforce the ECT Award in various jurisdictions, including England. This included, at a minimum, multiple 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.

303. From December 2015 until December 2016, Chapman, in his individual capacity and/or on behalf of, by and through the other Defendants, remained in frequent contact with the

Statis 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.

304. Further communications between Chapman and his representatives and the Statis and their representatives occurred in January 2017, when the Statis and Kazakhstan were making submissions regarding the Statis' 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.

305. Chapman and his representatives remained in frequent contact with the Statis 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 between Chapman and his representatives and the Statis and their representatives 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.

306. Upon information and belief, throughout the remainder of 2017, Chapman and his representatives remained in frequent contact with the Statis and their representatives, during which time the Statis initiated further proceedings to attempt to enforce the fraudulent 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.

307. 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 LPG Plant Fraud 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 Stasis' efforts to enforce the ECT Award would have been adversely affected, and thus Defendants' unlawful plan to obtain from Kazakhstan compensation for the monies that Defendants knew had been stolen, embezzled and/or misappropriated by the Stasis would have been adversely affected.

308. From January 2018 through the present, Chapman and his representatives have remained in contact with the Stasis 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.

309. The Enforcement Proceedings continue to the present, wherein the Stasis, with the substantial assistance of Defendants, have been and are making material misrepresentations in an attempt to perpetuate and continue to cover up the frauds against the Tristan Noteholders (and Kazakhstan), all to accomplish Defendants' above-referenced unlawful plan.

D. Defendants' Website, Press Releases, and Other False Statements

310. One of the mechanisms through which Defendants are supporting the Stasis' ongoing fraudulent schemes is a website that Defendants own and/or operate, <https://www.tristangate.com/>. The website was launched in or about January 2021.

311. On this website, Defendants make numerous statements which are misleading, false and/or fraudulent.

312. Defendants' objective in making these misleading, false and/or fraudulent statements is to attempt to create the false impression that the merits of Kazakhstan's current fraud allegations against the Stasis have already been decided by multiple courts – the above alleged “new key lie.”

313. In fact, as alleged herein, and as Defendants know, this is false. The Belgium Court of Appeal confirmed the falsity of this claim by analyzing the decisions rendered in all other jurisdictions and finding that no other court has considered Kazakhstan's full fraud case against the Stasis on the merits. The Belgium Court of Appeal made critical findings in this respect, including that the Stasis concealed evidence from the various courts and discontinued the English proceedings specifically to avoid the risk that the outcome of the trial would be in favor of Kazakhstan.

314. Upon information and belief, Defendants nonetheless continue to coordinate the making of these misleading, false and/or fraudulent statements with the Stasis as part of their combined fraudulent schemes, to damage Kazakhstan.

315. Set forth below are examples of the statements on Defendants' website that are misleading, false and/or fraudulent, either in whole or in part:

- a. *The Kazakh authorities have . . . refused to comply with the arbitral tribunal's decision and to pay the award. Instead, Kazakhstan claims that the investors allegedly obtained the award by fraud by making certain misrepresentations to the arbitral tribunal in the course of the arbitration. Kazakhstan repeatedly made these arguments to the Swedish courts which have supervisory jurisdiction over the award, but on two separate occasions – in October 2017 and May 2020 – the Swedish Supreme Court upheld the award in full.*
- b. *Despite Kazakhstan's repeated claims that the award creditors committed fraud, courts in Sweden, the United States, Italy, Luxembourg, Belgium, the Netherlands, and France have all recognized the award. In addition, various assets belonging to the Kazakh state in Sweden, Luxembourg, Belgium and the Netherlands have been successfully attached and frozen by the award creditors in their efforts to enforce the award, so far locking up approximately US\$ 6.27 billion by way of cash, shares and receivables owned by Kazakhstan.*

- c. *[T]he courts of six different jurisdictions have fully recognized the Swedish award, which in Sweden has been fully adjudicated and is of final, binding and non-appealable nature.*
- d. *The original award and multiple subsequent court orders compelling Kazakhstan to pay the award are now final, binding and non-appealable yet the Kazakh authorities are continuing a litigation fight that they have already lost.*
- e. *Foreign states with deep pockets cannot be allowed to victimise American investors with endless re-litigation...Kazakhstan needs to pay the award since it has exhausted its legal remedies in Sweden.*
- f. *Kazakhstan has refused to pay the Swedish arbitral Award to Tristan Oil's owners in compensation for the harassment campaign and illegal expropriation of assets. The Award has since been recognized in multiple jurisdictions, including the U.S., Sweden, Luxembourg, Italy, France, and the Netherlands. It has been upheld in both the Svea Appeals Court and the Swedish Supreme Court – making the Award final, binding and non-appealable.*
- g. *The Tristangate Award has been recognized in multiple jurisdictions, including US, Sweden, Luxembourg, Italy, France, and the Netherlands.*

316. In addition to the aforementioned false statements published on the Tristangate website, Defendants, both individually and through their counsel, have made a number of false statements in various press releases aimed at supporting the Statis' fraud schemes and harming Kazakhstan, including but not limited to the following:

- a. *In this case, Kazakhstan is damaging the image it wants to create as an investor-friendly destination. Rule of law requires following the law. Kazakhstan needs to pay the award since it has exhausted its legal remedies in Sweden.⁹²*
- b. *Attempts to lay false allegations against a foreign investor will fail, just as similar tactics have failed in other jurisdictions. This award is final, binding and non-appealable, and the [Kazakh] Ministry of Justice needs to accept that before irreparable damage is done to Kazakhstan's reputation as serious, modern, investor-friendly economy.⁹³*

⁹² See Dorothy Atkins, Law 360, *Kazakhstan Wants \$506M Award Fight Sent to NY State Court*, <https://www.law360.com/articles/1389702/kazakhstan-wants-506m-award-fight-sent-to-ny-state-court> (last accessed March 17, 2022).

⁹³ See Marek Grzegorzcyk, *Emerging Europe, In Kazakhstan's mammoth legal battle with two Moldovan investors, the pendulum is swinging in favour of the Central Asian State*, <https://emerging->

- c. *[Kazakhstan has] effectively weaponiz[ed] the American judicial system to victimize and harass American investors. This strategy of endless litigation, menacing statements and disinformation campaign doesn't change the truth – Tristan Oil's assets were expropriated, and the Swedish and U.S. courts have previously confirmed this.*⁹⁴

317. Defendants have also communicated, or threatened to communicate, their misleading, false, and/or fraudulent statements to the U.S. Government, including members of Congress and the Executive Branch.

318. Continuing their series of improper pressure tactics, in November 2021, Defendants caused the delivery of a letter to Kazakhstan's U.S. Ambassador, H.E. Mr. Ambassador Yerzhan Ashikbayev, that threatened to communicate misleading, false and/or fraudulent information to the U.S. Government unless Kazakhstan agreed to "enforce" the fraudulent ECT Award – meaning that Kazakhstan make a payment on account of the award – and unless the Ambassador meet with counsel for Defendants to discuss the terms of such payment. The letter threatened to communicate a number of objectively false statements to the Office of the U.S. Trade Representative in order to revoke the Republic of Kazakhstan's eligibility for benefits under the Generalized System of Preferences, including:

- a. The ECT Award is *payable to and thus in favor of several U.S. companies, as well as a U.S. partnership*. In fact, the ECT Award, as is clear on its face, it payable to the Statis – none of which are U.S. companies or persons.
- b. *Kazakhstan's actions have caused serious and ongoing harm to Argentem Creek*. In fact, Kazakhstan does not owe any monies or have any commercial dealings with Argentem Creek or any Defendant. To the extent that Defendants purchased the Tristan Notes, it was the Statis, not Kazakhstan, that defaulted on repayment of these notes and caused any financial harm to Defendants.

europe.com/news/in-kazakhstans-mammoth-legal-battle-with-two-moldovan-investors-the-pendulum-is-swinging-in-favour-of-the-central-asian-state/ (last accessed March 17, 2022).

⁹⁴ See Caroline Simpson, Law 360, *Kazakhstan's Suit over \$506M Award Survives Dismissal Bid*, <https://www.law360.com/articles/1464742/kazakhstan-s-suit-over-506m-award-survives-dismissal-bid> (last accessed March 17, 2022).

- c. Kazakhstan's actions *represent[] defiance of Kazakhstan of arbitral awards in favor of U.S. companies, thereby violating Kazakhstan's international commitments.* In fact, as is public knowledge, the ECT Award is the only arbitral award that Kazakhstan has contested post-annulment. Given the clear and convincing evidence that the ECT Award was obtained by fraud, and the judicial decisions and expert opinions confirming same, Kazakhstan would be in breach of its international obligations if it were to use government funds to pay the fraudulent ECT Award.
- d. *Kazakhstan continues to refuse to pay the award and is adopting a multi-jurisdictional legal strategy designed to frustrate the award and avoid compliance with its binding legal obligations.* As set forth above, this statement is directly contradicted by the evidence showing the Statis' engaged in fraud and the judicial opinions that have confirmed this fact.
- e. *Courts of six different jurisdictions (Sweden, the United States, Luxembourg, Belgium, the Netherlands, and France) have fully recognized the Swedish award.* In fact, as now confirmed by the Belgium Court, no other court has evaluated the full merits of Kazakhstan's fraud claims because these jurisdictions did not have access to the full evidence of the fraud.

X. NOTICE OF INTENT TO RAISE ISSUES UNDER ENGLISH LAW

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

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

321. 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.

322. 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.

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

324. 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.

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

COUNT I
CIVIL CONSPIRACY TO COMMIT FRAUD

326. Kazakhstan re-alleges and incorporates by reference each and every allegation above as if fully set forth herein.

327. The Statis engaged in fraudulent schemes, as alleged herein.

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

329. Kazakhstan (and these other parties) justifiably relied on the Statis' misrepresentations and material omissions.

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

331. The Statis' misrepresentations and material omissions were part of their fraudulent schemes, premised on their key lie that their fraudulent related-party transactions involving KPM and TNG were legitimate business expenditures. The Statis are continuing to perpetrate this key lie in the Enforcement Proceedings.

332. Defendants had knowledge that the Statis defrauded the Tristan Noteholders through their fraudulent related-party transactions and that, to cover this up, the Statis falsely represented that their fraudulent related-party transactions were legitimate.

333. Defendants agreed to participate in the unlawful acts of the Statis. Defendants knew that the Statis had defrauded the Noteholders and were claiming as investment costs in the ECT Arbitration the monies that they had stolen, embezzled and/or misappropriated. Despite this, Defendants joined, and actively supported, the unlawful objective of obtaining these monies from Kazakhstan.

334. Defendants engaged in overt acts in furtherance of the Statis' unlawful schemes. 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 regularly consulted with the Statis and/or their counsel, provided guidance regarding the legal strategy to enforce the fraudulently obtained ECT Award, and sought to frustrate Kazakhstan's attempts to discover information regarding the Statis' fraud.

335. Defendants have engaged in a campaign of public misinformation and lies, including making misleading, false and/or fraudulent statements on their website TristanGate, in their press releases, and in their communications with third parties, all to further the Statis' fraudulent schemes, advance Defendants' own monetary interests and harm Kazakhstan.

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

337. As a direct and proximate result of the fraudulent schemes, in which Defendants knowingly participated, 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 other costs, that were wasted.

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

COUNT II
AIDING AND ABETTING WRONGFUL CONDUCT

339. Kazakhstan re-alleges and incorporates by reference each and every allegation above as if fully set forth herein.

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

341. Kazakhstan (and these other parties) justifiably relied on the Statis' misrepresentations and material omissions.

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

343. The Statis' misrepresentations and material omissions were part of their fraudulent schemes, 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 Stasis continue to misrepresent that the amounts they stole, embezzled and/or misappropriated were legitimate expenditures.

344. Defendants had knowledge that the Stasis stole, embezzled and/or misappropriated monies through their fraudulent related-party transactions and that, to cover this up, the Stasis falsely represented that these transactions were legitimate.

345. Defendants aided and abetted the unlawful acts of the Stasis. Defendants knew that the Stasis had defrauded the Noteholders and were claiming as investment costs in the ECT Arbitration the monies that they had stolen, embezzled and/or misappropriated. Despite this, Defendants joined, and actively supported, the unlawful objective of obtaining these monies from Kazakhstan.

346. Defendants engaged in overt acts in furtherance of the unlawful schemes. 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 subsequent enforcement proceedings. They 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 Kazakhstan's attempts to discover information regarding the Stasis' fraud.

347. Defendants have engaged in a campaign of public misinformation and lies, including making misleading, false and/or fraudulent statements on their website TristanGate, in their press releases, and in their communications with third parties, all to further the Stasis' fraudulent schemes, advance Defendants' own monetary interests and harm Kazakhstan.

348. Defendants' actions substantially assisted the Stasis in furthering the fraudulent schemes.

349. As a direct and proximate result of Defendants' substantial assistance to the Stasis, 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 other costs, that were wasted.

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

COUNT III
UNLAWFUL MEANS CONSPIRACY UNDER ENGLISH LAW

351. Kazakhstan re-alleges and incorporates by reference each and every allegation above as if fully set forth herein.

352. Defendants knowingly joined a conspiracy among the Stasis and others to defraud Kazakhstan and the Tristan Noteholders through unlawful means.

353. 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.

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

355. Kazakhstan (and these other parties) justifiably relied on the Stasis' misrepresentations and material omissions.

356. The Stasis' misrepresentations and material omissions caused injury to Kazakhstan.

357. Defendants had knowledge that the Statis stole, embezzled and/or misappropriated the monies through unlawful means and that, to cover this up, the Statis conspired to, and did, falsely represent that such transactions were legitimate business expenses.

358. Defendants conspired to, and did, engage in numerous acts in furtherance of the Statis' fraudulent schemes with the intention of causing damage to Kazakhstan. Specifically, Defendants knew that the Statis were had defrauded the Noteholders and were claiming as investment costs in the ECT Arbitration the monies that they had stolen, embezzled and/or misappropriated but, despite this, Defendants joined, and actively supported, the unlawful objective of obtaining from Kazakhstan compensation for the monies that the Statis had stolen.

359. 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 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 Kazakhstan's attempts to discover information regarding the Statis' fraud.

360. Defendants have engaged in a campaign of public misinformation and lies, including making misleading, false and/or fraudulent statements on their website TristanGate, in their press releases, and in their communications with third parties, all to further the Statis' fraudulent schemes, advance Defendants' own monetary interests and harm Kazakhstan.

361. As a result of the unlawful means conspiracy, 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 other costs, that were wasted.

DEMAND FOR JURY TRIAL

362. Kazakhstan hereby demands a trial by jury of all issues in this action for which a trial may be had.

PRAYER FOR RELIEF

363. WHEREFORE, Kazakhstan prays 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: March 18, 2022
New York, New York

Respectfully submitted,

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