

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Omega Engineering and Mr. Oscar Rivera**

**v.**

**Republic of Panama**

**(ICSID Case No. ARB/16/42)**

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**PROCEDURAL ORDER No. 4**

***Members of the Tribunal***

Mr. Laurence Shore, President of the Tribunal  
Prof. Horacio A. Grigera Naón, Arbitrator  
Prof. Zachary Douglas QC, Arbitrator

***Secretary of the Tribunal***

Catherine Kettlewell

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6 October 2020

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**I. PROCEDURAL BACKGROUND**

1. On 10 March 2020, the Tribunal informed the parties that due to travel restrictions resulting from the COVID-19 pandemic, the Second Week Hearing would not be held in person. The Tribunal further consulted with the parties whether they would be amenable, at least in principle, to the option of videoconference to maintain the originally scheduled dates. On 11 March 2020, the parties responded with respect to this option.
2. In light of the parties responses, on 13 March 2020, the Tribunal decided to postpone the Second Week Hearing and proposed new dates. On 18 March 2020, the Tribunal provided four specific days within the originally proposed new dates for the Respondent to indicate its availability. On 25 March 2020, the Tribunal confirmed the parties' agreed schedule for corrections to the transcript, written responses to the United States Non-Disputing Party submission, the tentative Second Week Hearing dates and the post-hearing briefs and requested that the Respondent confirm the new proposed dates for the Second Week Hearing as soon as possible.
3. On 23 April 2020, the Tribunal requested the Respondent to confirm the proposed dates for the Second Week Hearing. In this communication, the Tribunal also noted to the parties that the hearing could be held by videoconference if an in-person meeting proved to be impossible. On 30 April 2020, the Respondent confirmed its availability for the Second Week Hearing to be held from 13 to 16 October 2020.
4. On 14 August 2020, the Tribunal advised the parties that due to the COVID-19 pandemic, the Tribunal considered that it would not be feasible to conduct the Second Week Hearing on 13 to 16 October 2020 in-person, as planned. As the possibility of a virtual hearing had already been announced in the 23 April 2020 letter, the Tribunal invited the parties to confirm they agreed to proceed with the Second Week Hearing remotely.
5. On 17 August 2020 and 20 August 2020, the Claimants and the Respondent, respectively, confirmed their agreement to hold the Second Week Hearing remotely.

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6. On 31 August 2020, the parties submitted the proposed Second Week Hearing schedule attached to this order as **Annex A**. This proposed schedule shortened the first three hearing days and extended the fourth and final day to have a schedule starting at 9:00 am (EDT) and ending at 4:00 pm (EDT) for each day. This parties expressed that this proposal was mindful of the time zones and that shorter hearing days were preferable when conducting virtual/remote hearings.
7. In addition to Procedural Order No. 3, this Order sets out additional procedural rules that the parties have agreed upon and/or the Tribunal has determined to reflect the virtual modality of the Second Week Hearing.
8. On 22 September 2020, the Tribunal invited the parties to comment on a draft procedural order for the organization of the Second Week Hearing. On 2 October 2020, the parties submitted their agreements to the Tribunal.
9. This Procedural Order reflects the agreement of the parties and further items that the Tribunal has considered necessary to rule in advance of the Second Week Hearing.

**II. ORGANIZATION OF THE HEARING**

**A. DATE AND FORMAT**

10. The Hearing will take place virtually through the video conference platform called ZOOM on 13 to 16 October 2020 with the use of a third party service provider, FTI Consulting (“**FTI**”).
11. FTI has set up a portal with access to the Zoom platform, the document repository, English and Spanish transcript links (“**Hearing Portal**”). The Hearing Portal will be accessed through a link and a password. The ICSID Secretariat has provided the link with corresponding passwords of the Hearing Portal only to the individuals in the official email distribution list, court reporters, interpreters.

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**B. ORDER OF PROCEEDINGS AND SCHEDULE**

12. In order to accommodate the different time zones of all Hearing Participants, the Hearing will start at 9:00 am (EDT). It is expected to conclude approximately by 4:00 pm (EDT). There will be one or two 15-minute breaks and a one-hour lunch break as reflected in **Annex A**.
13. The order of proceedings and structure of the Second Week Hearing will be as indicated in the agenda incorporated as **Annex A**.
14. The Tribunal reserves discretion to adjust the Second Week Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.
15. For the purposes of the record, the remaining time for each party after the First Week Hearing is as follows: (i) Claimants have 12 hours and four minutes, and (ii) Respondent has 11 hours and forty-five minutes. The time allocation for each party for the Second Week Hearing will not take into account the time remaining and will solely follow the time estimates indicated in **Annex A**, to be adjusted, as necessary, to account for Respondent's letter of 1 October 2020, stating the President Varela would not attend the Second Week Hearing. The Secretary of the Tribunal shall keep account of time and advise the parties of the total time used as allocated in **Annex A**.

**C. DOCUMENTS FOR USE AT THE HEARING**

**1. Electronic Hearing Bundle**

16. The parties have prepared a modified Second Week Hearing bundle which they have uploaded to the filesharing platform (BOX folder) for this case. The Tribunal was notified of this step.
17. Claimants, on behalf of both of the parties, have provided Prof. Horacio Grigera Naón with a hyperlinked USB (PC and Mac compatible).
18. The parties proposed that ICSID allow FTI to access the Box in order to pull the case files contained therein. The parties agree that the transcript of the First Week Hearing will be included in the secure file repository. On 5 October 2020, the ICSID Secretariat confirmed that

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FTI had been granted access to the files and that these had been successfully transferred. The document repository will only be accessible with a password for purposes of protected information. The ICSID Secretariat has provided the password to the individuals in the official distribution list. The password to the repository should not be distributed or should only be provided to those authorized to have access to protected information.

19. Procedural Order No. 3 contains further provisions for the treatment of protected information.

**2. Demonstrative Exhibits and Direct Presentations**

20. The parties agree that sections 24 and 26 of Procedural Order No. 3 shall continue to apply, as written, to the Second Week Hearing.

21. The Parties shall also provide a copy of each of their Expert Witnesses' direct presentations to the Tribunal Secretary to transfer to the Tribunal members, to opposing counsel, interpreters, court reporters and to FTI one hour prior to their testimony. FTI will upload the direct presentation to the secure document repository.

**3. Electronic Presentation of Evidence**

22. Both parties will use FTI's secure document repository feature, which shall contain the official record for use at the Second Week Hearing. Both parties also will use FTI's Neutral Documentation Presentation and Annotation feature, and will split the cost of that feature. Electronic evidence will be presented at the Second Week Hearing by FTI from the FTI secure document repository.

23. Documents that do not form part of the record may not be displayed.

**D. WITNESS AND EXPERTS EXAMINATIONS**

24. Each party will be responsible for sharing only the Zoom link with the witnesses and experts.

25. In addition to the requirements and procedures established in sections 27 and 29 of Procedural Order No. 3 (and, by reference, section 18 of Procedural Order No. 1), the following shall also apply to the Second Week Hearing:

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(a) **Fact Witness:** The fact witness testifying during the Second Week Hearing shall be sequestered, as provided in Procedural Order No. 1, section 18, and Procedural Order No. 3, section 29.

(i) The fact witness shall provide his testimony while alone in a room containing a 360-degree camera provided by FTI (“**Testimony Room**”).

(ii) The fact witness shall remain sequestered until his testimony is completed, including during breaks in the Hearing. During the breaks, the fact witness will be taken to a virtual waiting room (“**Sequestration Waiting Room**”).

(iii) The Testimony Room shall contain only the following Hearing-related materials:

(1) A clean, unmarked copy of the witness’ witness statement(s).

(2) The electronic equipment (computer, screens, camera, etc.) provided by FTI.

(iv) The fact witnesses shall not bring any other materials or electronic equipment (such as personal cell phones, tablets, etc.) into the Testimony Room.

(v) When Respondent’s remaining fact witness provides his testimony at the GALA Law Firm, Claimants shall have an observer (“**the Observer**”) present in the GALA Offices. While the fact witness will be alone in the Testimony Room when providing testimony, the Observer may:

(1) Inspect the Testimony Room just prior to the fact witness’ testimony to ensure that only the materials and equipment described above in Section 21(a)(iii) are present.

(2) Remain outside the Testimony Room during the fact witness’ testimony to ensure that no one enters the room.

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(3) Observe that sequestration of the fact witness is maintained, and that the foregoing provisions of Section 21(a) of this Procedural Order are applied.

(vi) The fact witness will remain in the Sequestration Waiting Room to ensure that the witness is available in time to be brought into the Hearing Room. Once the fact witness is virtually brought into the Hearing Room by the ICSID Secretary at the instruction of the Tribunal, but before the witness takes the declaration and begins testifying, FTI shall present to the Hearing participants a full view of the Testimony Room using the 360-degree camera, allowing the Tribunal and participants to confirm that the witness is alone.

**(b) Expert Witnesses:** Expert witnesses shall not be sequestered, as was the case during the First Week Hearing.

(i) Expert witnesses shall provide their testimony while alone in a room containing a 360-degree camera provided by FTI (“**Expert Testimony Room**”).

(ii) The Expert Testimony Room shall contain only the following Hearing-related materials:

(1) A clean, unmarked copy of the expert witness’ report(s).

(2) A clean, unmarked copy of the expert witness’ direct presentation.

(3) The electronic equipment (computer, screens, camera, etc.) provided by FTI (except in the case of Mr. Roy Pollitt who will be using electronic equipment provided by Shearman & Sterling).

(iii) Once an expert witness is virtually brought into the Hearing Room by the ICSID Secretary at the direction of the Tribunal, but before the expert witness takes the declaration and begins testifying, FTI shall present to the Hearing participants a full view of the Testimony Room using the 360-degree camera, allowing the Tribunal and the participants to confirm that the expert witness is alone.

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**E. AUDIO/VIDEO RECORDING**

26. The parties agree that a video recording will be made of the Second Week Hearing. The video recording will not be made public or become part of the record of this arbitration. However, the video recording may be used to guide transcript corrections, and once transcript corrections have been completed, the transcript shall serve as the record of the Hearing. The Tribunal also may refer to the video recording, as it deems necessary.
27. The audio recording shall be made by the ICSID Secretariat, and it will be shared with the parties and the Members of the Tribunal at the conclusion of the Second Week Hearing. Hearing Participants shall not otherwise record, via audio, video or screenshot, the Second Week Hearing or any part of it.

**F. TRANSCRIPTION**

28. Real-time court reporting in English and Spanish shall be made available to the Hearing Participants through the Hearing Portal. The details (key) and instructions to connect to the English streamed transcript shall be provided by the court reporter or the ICSID Secretariat to the Hearing Participants before the start of the Hearing day.
29. Unless otherwise instructed by the parties, the final English and Spanish transcript will be distributed to the official email distribution list in the ICSID Secretariat records.
30. As provided in Section 21.3 of Procedural Order No. 1, the deadline for corrections to the transcript shall be 30 days following the later of the dates of the receipt of the audio recordings and/or transcripts.

**G. INTERPRETATION**

31. ICSID has made the required arrangements for interpretation and will communicate them to the parties and the Tribunal in due course.
32. Each Participant should indicate the language it expects to use at the Hearing in **Annex B** of this Order. Once a language selection is made, it is highly recommended that the Participant



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only use that language and avoid switching interpretation channels. The witnesses and experts will be shown the corresponding declaration of ICSID Rule 35 in the language that has been indicated in **Annex B**.

33. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
34. Each Active Participant should, insofar as possible, circulate any speaking notes to the Secretary of the Tribunal to the start of each intervention.

**H. POST-HEARING BRIEFING AND STATEMENTS OF COSTS**

35. As confirmed by the Tribunal in its letter to the Parties of 25 March 2020, there shall be one-round of Post-Hearing Briefing, simultaneously filed, and limited to 100 pages in length. While the parties originally agreed to simultaneously exchange their Post-Hearing Briefs on 8 December 2020, Counsel for Respondent has now requested an extension of that deadline, and the parties have agreed that Post-Hearing Briefs will now be simultaneously exchanged on **21 December 2020**.
36. Each Party shall submit a one-page Statement of Costs, to be accompanied by a Submission of no more than five (5) pages in length by **11 January 2021**. The parties submissions shall be simultaneously exchanged.

**I. TRANSPARENCY**

37. By letter dated 10 March 2020, the parties informed ICSID of their agreement that the Second Week Hearing, like the First Week Hearing, would be fully moderated, with non-protected information being released after the Hearing Sessions are completed and materials are properly redacted, in accordance with the Treaty.
38. The ICSID Secretariat will inform the Government of the United States of America, the Non-Disputing Party pursuant to the United States -Panama Trade Promotion Agreement (TPA), of the dates of the upcoming Second Week Hearing.

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39. The ICSID Secretariat will publish an announcement of the hearing on its website in the following terms:

*Omega Engineering LLC and Oscar Rivera v. Republic of Panama (ICSID Case No. ARB/16/42) - Public Hearing*

*A second part of the hearing on jurisdiction, merits and damages in the above case is scheduled to take place virtually on October 13 to 16, 2020.*

*In accordance with Article 10.21(2) of the United States-Panama Trade Promotion Agreement (TPA) which entered into force on October 31, 2012, the hearing shall be open to the public, except to the extent necessary to ensure the protection of confidential information. The transcripts of the hearing will be uploaded to the ICSID website after the hearing.*

*Please continue to monitor our website for further announcements concerning the dates in which the transcripts will be posted on the ICSID website.*

**J. PREPARATION FOR THE VIRTUAL HEARING**

40. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

**1. Testing**

41. The ICSID Secretariat will conduct a pre-hearing test with Hearing Participants to test connectivity to the video conference platform (ZOOM) and the real-time transcription (“**Pre-hearing Test**”). For this purpose, the Pre-hearing Test shall be held on **Monday, 12 October 2020 at 8:00 a.m. (EDT)** to verify the proper functioning of the videoconference system. The Hearing Participants will replicate to the extent possible the conditions which each person will participate in the hearing. The access details will be communicated by the ICSID Secretariat in due course.

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**2. Connectivity**

42. To improve operation of the ZOOM platform, the parties are advised to keep the number of video connections to a minimum and to Active Participants only. Passive Participants should preferably join the meeting through their computer but connecting only their audio (*i.e.* turning off their video).
43. All Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording.

**3. Equipment and Set Up**

44. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use a headset equipped with a microphone and connected through the USB or “mic” jack of the computer or laptop that they use for the ZOOM videoconference. Internal microphones do not give as good a sound quality as external microphones. If not available, Active Participants are asked to speak close to the microphone of the computer or laptop from which they are connected to the ZOOM session.
45. While not indispensable, Hearing Participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the ZOOM video connection; (ii) the online real time transcript; and (iii) offline documents.
46. Hearing Participants joining via video shall avoid sitting with a window or source of light behind them because this darkens their image on screen.

**4. Participants**

47. Each Party provides below its List of Participants (“**Hearing List of Participants**”) for the Hearing in **Annex B**. Each Party has designated the participants that will have an active speaking role (“**Active Participants**”) and those who will be passive attendees (“**Passive Participants**”).

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48. All Hearing Participants shall clearly denote their names and affiliation when connecting to ZOOM. Example: “Jane Doe (ICSID).” Any name appearing in ZOOM shall also be listed on the Hearing List of Participants (See **Annex B**). Should there be a discrepancy at any point during the Hearing, the Secretary of the Tribunal will alert the Tribunal, and the Tribunal will promptly address the matter.

**5. Inter-team communication**

49. Each Party shall itself directly arrange for a separate channel to handle their team’s internal communications during breaks, which shall be separate from the ZOOM virtual Hearing Room. The Tribunal will similarly make its own arrangements for use of a separate channel.

**6. Hearing Protocol**

50. The hearing protocol to join the hearing and during the hearing is attached as **Annex C**.

For and on behalf of the Tribunal,

[Signed] \_\_\_\_\_

Mr. Laurence Shore  
President of the Tribunal  
Date: 6 October 2020

**Procedural Order No. 4 – Amended Annex A**

**SECOND WEEK HEARING SCHEDULE**

**Day 6: Tuesday, 13 October 2020**

<b>TIME</b>	<b>PROCEDURAL STEP</b>
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:45 AM	Zarak Direct/Redirect (0.5 hr)
9:45 AM-10:45 AM	Zarak Cross (1.0 hr)
10:45 AM-11:00 AM	<b>Break</b>
11:00 AM-12:00 PM	Zarak Cross (1.0 hr)
12:00 PM-1:00 PM	<b>Lunch</b>
1:00 PM-1:45 PM	Zarak Cross (0.75 hr)
1:45 PM-2:00 PM	Tribunal Questions (0.25 hr)
2:00 PM-2:15 PM	Ponce Direct Presentation (0.25 hr)
2:15 PM-3:15 PM	Ponce Cross (1.0 hr)
3:15 PM-3:30 PM	Ponce Redirect (0.25 hr)
3:30 PM-4:00 PM	Tribunal Questions and Admin (0.5 hr)

**Day 7: Wednesday, 14 October 2020**

<b>TIME</b>	<b>PROCEDURAL STEP</b>
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:30 AM	Troyano Direct Presentation (0.25 hr)
9:30 AM-10:30 AM	Troyano Cross (1.0 hr)
10:30 AM-10:45 AM	<b>Break</b>
10:45 AM-11:45 AM	Troyano Cross (1.0 hr)
11:45 AM-12:00 PM	Troyano Redirect (0.25 hr)
12:00 PM-12:15 PM	Tribunal Questions (0.25 hr)
12:15 PM-1:15 PM	<b>Lunch</b>
1:15 PM-1:30 PM	Arjona Direct Presentation (0.25 hr)
1:30 PM-2:45 PM	Arjona Cross (1.25 hr)
2:45 PM-3:00 PM	<b>Break</b>
3:00 PM-4:15 PM	Arjona Cross (1.25 hr)
4:15 PM-4:45 PM	Arjona Redirect (0.5 hr)
4:45 PM-5:00 PM	Tribunal Questions and Admin (0.25 hr)

**Day 8: Thursday, 15 October 2020**

<b>TIME</b>	<b>PROCEDURAL STEP</b>
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:30 AM	Jimenez Direct Presentation (0.25 hr)
9:30 AM-10:30 AM	Jimenez Cross (1.0 hr)
10:30 AM-10:45 AM	<b>Break</b>
10:45 AM-11:45 AM	Jimenez Cross (1.0 hr)

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11:45 AM-12:00 PM	Jimenez Redirect (0.25 hr)
12:00 PM-12:15 PM	Tribunal Questions (0.25 hr)
12:15 PM-1:15 PM	<b>Lunch</b>
1:15 PM-1:30 PM	Pollitt Direct Presentation (0.25 hr)
1:30 PM-2:30 PM	Pollitt Cross (1.0 hr)
2:30 PM-2:45 PM	<b>Break</b>
2:45 PM-3:45 PM	Pollitt Cross (1.0 hr)
3:45 PM-4:00 PM	Tribunal Questions and Admin (0.25 hr)

**Day 9: Friday, 16 October 2020**

<b>TIME</b>	<b>PROCEDURAL STEP</b>
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-10:15 AM	Pollitt Cross (1.25 hr)
10:30 AM-10:45 AM	<b>Break</b>
10:45 AM-11:30 AM	Pollitt Cross (0.75 hr)
11:30 AM-12:00 PM	Pollitt Redirect (0.5 hr)
12:00 PM-12:30 PM	Tribunal Questions and Admin (0.5 hr)

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**Procedural Order No. 4 – Annex B**

**Annex B**

OMEGA ENGINEERING AND MR. OSCAR RIVERA

v.

REPUBLIC OF PANAMA

(ICSID CASE NO. ARB/16/42)

HEARING ON JURISDICTION, MERITS AND QUANTUM

13 October 2020 – 16 October 2020  
Video Conference

**LIST OF PARTICIPANTS**

**LEGENDS:**

**PARTICIPATION:**

Active (VC & Audio)

Passive (Audio)

**BREAK OUT ROOMS:**

Tribunal

Claimants

Respondent

Sequestration

**CLAIMANTS' CLUSTERS:**

Jones Day Conference Room (Washington)

Jones Day Conference Room (San Francisco)

Shook, Hardy & Bacon Conference Room (Miami)

**RESPONDENT'S CLUSTERS:**

None

<u>Name</u>	<u>Role/ Affiliation</u>	<u>Cluster Name</u>	<u>Time zone</u>	<u>Active (VC&amp;Audio)/ Passive (Audio)</u>	<u>Language</u>	<u>Need interp.</u>	<u>Email address/ Phone number</u>
<b>TRIBUNAL</b>							
Mr. Laurence Shore	President of the Tribunal		CET	Active	English	Y	Laurence.Shore@belex.com
Prof. Horacio Grigera Naón	Arbitrator		EDT	Active	English/ Spanish	N	hgnlaw@gmail.com
Prof. Zachary Douglas	Arbitrator		CET	Active	English	Y	ZacharyDouglas@matrixlaw.co.uk
<b>ICSID SECRETARIAT</b>							
Ms. Catherine Kettlewell	Secretary of the Tribunal		EDT	Active		N	ckettlewell@worldbank.org (202) 473-7231

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**Procedural Order No. 4 – Annex B**

Ms. Ivania Fernandez	Paralegal		EDT	Passive		N	Ifernandez1@worldbank.org (202) 473-7013
<b>CLAIMANTS</b>							
<b><u>Counsel</u></b>							
Melissa S. Gorsline	Jones Day	Jones Day Conference Room (Washington)	EDT	Active	English	Y	msgorsline@jonesday.com
Maria I. Pradilla Picas	Jones Day	Jones Day Conference Room (Washington)	EDT	Active	English	Y	mpradillapicas@jonesday.com
Lee M. Coffey	Jones Day		CET	Passive	English	N	lcoffey@jonesday.com
Charles T. Kotuby	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	ctkotubyjr@jonesday.com
Michael P. Daly	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	mdaly@jonesday.com
Paloma Cipolla Moguilevsky	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	pcipollamoguilevsky@jonesday.com
Kelsey S. Shroyer	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	kshroyer@jonesday.com



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<b>Fahad A. Habib</b>	Jones Day	Jones Day Conference Room (San Francisco)	PDT	Passive	English	N	fahabib@jonesday.com
<b>Paul C. Hines</b>	Jones Day	Jones Day Conference Room (San Francisco)	PDT	Passive	English	N	phines@jonesday.com
<b>Carlos Concepcion</b>	Shook, Hardy & Bacon	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	cconcepcion@shb.com
<b>Ricardo Ampudia</b>	Shook, Hardy & Bacon	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	rampudia@shb.com
<b><u>Experts</u></b>							
<b>Alison Jimenez</b>	Bates Group	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Active	English	Y	ajimenez@securitiesanalytics.com
<b>Jose A. Troyano</b>	Troyano & Troyano Abogados		EST (Panama)	Active	Spanish	Y	jtroyano@tyt-abogados.com
<b>Fidel Ponce</b>	ARC Consulting		EST (Panama)	Active	English	Y	fidel@core.com.pa

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<b>Party Representatives</b>							
<b>Oscar I. Rivera</b>	Omega	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	orivera@omega-pa.net
<b>Support Staff</b>							
<b>Tania Troyano</b>	Troyano & Troyano Abogados		EST (Panama)	Passive	Spanish	N	troyanotroyanoabogados@outlook.com
<b>Lorna J. Strachan</b>	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	lstrachan@jonesday.com
<b>Matthew Brewer</b>	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	mdbrewer@jonesday.com
<b>David Voltaggio</b>	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	dvoltaggio@jonesday.com
<b>Andrew Youngman</b>	Jones Day	Jones Day Conference Room (Washington)	EDT	Passive	English	N	awyoungman@jonesday.com
<b>Erick Rodriguez</b>	Shook, Hardy & Bacon	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	erodriguez@shb.com

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<b>Mario Lao</b>	Shook, Hardy & Bacon	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	mlao@shb.com
<b>Raphael Hagos</b>	Shook, Hardy & Bacon	Shook, Hardy & Bacon Conference Room (Miami)	EDT	Passive	English	N	rhagos@shb.com
<b>Observers</b>							
<b>David Mizrachi</b>	MDU Legal		EST (Panama)	Passive	English	N	mizrach_mdu@cwpanama.net
<b>Donald Saez</b>	MDU Legal		EST (Panama)	Passive	English	N	dsaez.mdu@gmail.com
<b>RESPONDENT</b>							
<b>Counsel</b>							
<b>Henry Weisburg</b>	Shearman & Sterling LLP		EDT	Active	English	Y	henry.weisburg@shearman.com
<b>Christopher Ryan</b>	Shearman & Sterling LLP		EDT	Active	English	Y	christopher.ryan@shearman.com
<b>Anna Stockamore</b>	Shearman & Sterling LLP		EDT	Active	English	N	anna.stockamore@shearman.com
<b>Carlton Mosley</b>	Shearman & Sterling LLP		EDT	Passive	English	N	carltonmosley@shearman.com

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<b>Administrative Staff</b>							
<b>Adrian Stoute</b>	Shearman & Sterling LLP		EDT	Passive	English	N	adrian.stoute@shearman.com
<b>Kevin Bryant</b>	Shearman & Sterling LLP		EDT	Passive	English	N	kevin.bryant@shearman.com
<b>Frank Johnson</b>	Shearman & Sterling LLP		EDT	Passive	English	N	frank.johnson@shearman.com
<b>Jonathan Bonds</b>	Shearman & Sterling LLP		EDT	Passive	English	N	jonathan.bonds@shearman.com
<b>Eduardo Snape</b>	GALA		EST	Passive	Spanish	N	esnape@gala.com.pa
<b>Party Representatives</b>							
<b>Aristides Valdonedo</b>	Ministry of Economy and Finance of Republic of Panama		EST	Passive	Spanish	N	avaldonedo@mef.gob.pa
<b>Germaine Perret</b>	Ministry of Economy and Finance of Republic of Panama		EST	Passive	Spanish	N	gperret@mef.gob.pa
<b>Miguel Clare</b>	Ministry of Economy and Finance of Republic of Panama		EST	Passive	Spanish	N	mclare@mef.gob.pa

*Omega Engineering and Mr. Oscar Rivera v. Republic of Panama*  
(ICSID Case No. ARB/16/42)

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<b><u>Witness</u></b>							
Ivan Zarak	Former Vice Minister of Economy and Finance of the Republic of Panama		EST	Active	English	N	ivan@zarak.com.pa
<b><u>Experts</u></b>							
Adan Arjona	GALA		EST	Active	Spanish	Y	aarjona@gala.com.pa
Michelle Ferrara	GALA		PDT	Passive	English	N	mferrara@gala.com.pa
Diego Herrera	GALA		EST	Passive	Spanish	N	dherrera@gala.com.pa
Roy Pollitt	Exiger		EDT	Active	English	N	rpollitt@exiger.com
Skyler Chi	Exiger		EDT	Passive	English	N	schi@exiger.com

**COURT REPORTERS**

Ms. Dawn Larson	Court reporter (English)
Mr. Dante Rinaldi	Court reporter (Spanish)

**INTERPRETERS**

Ms. Silvia Colla	Interpreter
Mr. Daniel Giglio	Interpreter
Mr. Charles Roberts	Interpreter

**ZOOM OPERATOR**

Mr. Steve Schwartz	FTI Consulting
Mr. TJ Loebbaka	FTI Consulting

## **Annex C**

### **PROTOCOL REGARDING REMOTE HEARING MATTERS**

#### **1. JOINING THE HEARING**

- a. Joining the Hearing Room: The Secretary of the Tribunal will circulate a portal link and password, provided by FTI, to the individuals in the official email distribution list of this proceeding. The ICSID Secretariat will also provide the portal link to the interpreters and the court reporters. Click on “Join Zoom Remote Proceeding.”
- b. FTI will be connecting each witness and expert to the ZOOM platform remotely. The link and password to the Hearing Portal should not be provided to the witness and experts.
- c. Participants will be required to provide their names to join ZOOM. All participants must join ZOOM with their first and last names since identities will be checked against the List of Participants. The names must correspond so please do not use nicknames. Participants will be placed in a waiting room until FTI and/or ICSID have verified all names before allowing entry into the Hearing Room. If several participants are joining with one device from the same location, the List of Participants must indicate a name for that “cluster” facility (e.g., Jones Day Conference Room or Shearman Sterling Conference Room) and the names of the participants joining from that location. The cluster facility name also needs to be reflected when joining ZOOM. If participants are joining from the same room but with different devices, they should join with their full name as per the above. Each party shall ensure that no person is allowed access to the cluster facility if that individual is not included in the List of Participants. No other persons will be allowed to enter the Hearing Room without prior notification by a party to ICSID and the other party to include a person on the List of Participants.
- d. All participants should connect 40 minutes prior to the scheduled starting time on each day to allow timely access to the Hearing Room. This will also allow to address any set-up,

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connectivity and other IT issues before the starting time.

- e. Joining the Real-time Transcript. The Hearing Portal contains a link to the English (“English Remote Real-time Court Reporter Feed”) and Spanish real-time transcript (“Spanish Remote Real-time Court Reporter Feed”). The English transcript is password protected and the court reporter will be providing a key to each of the individuals that have been indicated by the parties and interpreters. Instructions to access LiveLitigation for the English transcript will be provided by the Secretary of the Tribunal before the pre-hearing test.
- f. Joining of Witnesses and Experts.
- g. Claimants’ experts will testify from the following locations:
  - i. Mr. Jose A. Troyano will give his testimony from the Obarrio office of Workings Latam in Panama City, Panama;
  - ii. Mr. Fidel Ponce will give his testimony from his current residence in the town of Torio, Peninsula de Azuero, Panama;
  - iii. Ms. Alison Jimenez will give her testimony from the Miami office of Shook, Hardy & Bacon.

Additionally, Respondent’s experts and witness will testify from the following locations:

- i. Mr. Ivan Zarak will give his testimony from the offices of GALA in Panama City, Panama;
  - ii. Justice Adan Arjona will give his testimony from the offices of GALA in Panama City, Panama; and
  - iii. Mr. Roy Pollitt will give his testimony from the offices of Shearman & Sterling, LLP in New York, New York.
- h. The witnesses and experts will be prompted by the President to state the corresponding ICSID Arbitration Rule 35 declaration, which will be projected by FTI on the screen in English or

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Spanish depending on the language in which the witness or expert will testify, as indicated by the parties in **Annex B**.

- i. Starting on Time. The Tribunal will start promptly on time unless a key participant (Member of the Tribunal, lead counsel expected to speak, or a witness or expert) is unable to join the Hearing Room. If a participant has any doubt or questions concerning their connectivity or the functionality of any of the platforms, they should contact FTI prior to the first day of the Second Week Hearing.
- j. Upon the joining of participants in ZOOM on the first day of Second Week Hearing, those using their computer should turn both their audio and video on. The President will invite each party to introduce its team. After each party has introduced all of its participants, the participants who are not expected to speak will turn off their videos and mute their microphones.
- k. Only participants who will be speaking in the relevant part of the Second Week Hearing and the Members of the Tribunal shall appear on video. They shall ensure that they have adequate front lighting and avoid a light source behind them (e.g., a window).
- l. All participants shall keep their microphones muted when they are not speaking, whether or not they appear on video.
- m. Participants who will be speaking shall have headsets with microphones or a high-quality microphone close to their head and keep their phones and other devices on silent mode.

**2. DURING THE HEARING**

- a. Technical Issues. If a participant experiences any technical issue during the Second Week Hearing, they may use the chat function in ZOOM or email to communicate with directly with FTI with Mr. Steve Schwartz ([Steve.Schwartz@fticonsulting.com](mailto:Steve.Schwartz@fticonsulting.com)) or Mr. TJ Loebbaka ([TJ.Loebbaka@fticonsulting.com](mailto:TJ.Loebbaka@fticonsulting.com)).



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- b. All other remote hearing support issues should be addressed to Ms. Catherine Kettlewell ([ckettlewell@worldbank.org](mailto:ckettlewell@worldbank.org); +1202 473-7231); to Ms. Ivania Fernandez, ([ifernandez1@worldbank.org](mailto:ifernandez1@worldbank.org); +1 202 473-7013).
- c. Chat Function: The ZOOM chat function is reserved for communications dealing with technical matters with the ZOOM operator. The parties will use their own arrangements for any internal communications.
- d. Connectivity Issues. If a participant experiences connectivity issues, ZOOM will automatically prioritize the audio feed and may disconnect the video feed. For best connectivity, it is recommended that participants (i) use an ethernet connection if available; (ii) avoid streaming on Netflix or other streaming services in the household during the Second Week Hearing; and (iii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to [www.speedtest.net](http://www.speedtest.net)).
- e. Sound recording and transcript. The court reporters will send the transcript of each Second Week Hearing day by email to the individuals in the official distribution list at the end of that day Washington, D.C. time. The parties will be provided with a video recording of the Floor, and audio recordings of the Floor and the English and the Spanish channels shortly after the Second Week Hearing has concluded.
- f. Interpretation. The participants who will be speaking in the Second Week Hearing should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the ZOOM platform, there will be a Spanish and English channels in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing. Participants on one channel can only be heard by other participants on that channel.