

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

REPUBLIC OF PANAMA,)	
<i>Petitioner,</i>)	
v.)	Civil Action No.
OMEGA ENGINEERING LLC and)	
OSCAR RIVERA,)	
<i>Respondents.</i>)	

PETITION TO RECOGNIZE AND ENFORCE ICSID ARBITRATION AWARD

1. The Republic of Panama (“Panama” or “Petitioner”) brings this action, pursuant to 22 U.S.C. § 1650a and Article 54 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“ICSID Convention”), to obtain recognition and enforcement of an arbitral award (the “Final Award”) that was rendered in Panama’s favor. Pursuant to the Final Award, which was issued in a case administered by the International Centre for Settlement of Investment Disputes (“ICSID”) and is dated October 14, 2022, the claims brought by Omega Engineering LLC and Oscar Rivera (collectively, “Respondents”) against Panama were all rejected, and Panama was awarded costs of the proceeding in the amount of US \$4,840,086.78. A certified copy of the Final Award (with minor redactions agreed by the parties and accepted by the ICSID Secretariat) is annexed as **Exhibit 1** hereto.

2. Panama’s Memorandum of Law in support of this Petition is annexed as **Exhibit 2** hereto.

3. To date, Respondents have not paid Panama any part of the Final Award, which is now final and has not been stayed.

PARTIES, JURISDICTION AND VENUE

4. Panama is a sovereign state and a Contracting State of the ICSID Convention.

5. Respondent Oscar Rivera (“Rivera”) is a natural person and a national of the United States. Mr. Rivera is a resident of Miami, Florida, and owns and controls Respondent Omega Engineering LLC (“Omega”).

6. Omega is a company incorporated in the Commonwealth of Puerto Rico.

7. The Respondents together commenced an arbitration against Panama and submitted to ICSID, which was registered by the ICSID Secretariat on December 30, 2016. *Omega Engineering LLC and Mr. Oscar Rivera v. Republic of Panama*, ICSID Case No. ARB/16/42.

8. This Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331, Article 54 of the ICSID Convention, and 22 U.S.C. § 1650a.

- a. Section 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” With specific respect to ICSID awards, the district courts have exclusive jurisdiction over actions to enforce such awards. 22 U.S.C. § 1650a(b).
- b. The United States has signed and ratified the ICSID Convention and is therefore a Contracting State thereto. Article 54(1) of the ICSID Convention provides that “[e]ach Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.”
- c. The United States has also adopted implementing legislation that accords full faith and credit to arbitral awards rendered under the ICSID Convention: “The pecuniary

obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.” 22 U.S.C. § 1650a(a).

9. Pursuant to 22 U.S.C. § 1650a, “[t]he Federal Arbitration Act (9 U.S.C. § 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the [ICSID Convention].” Therefore, the Federal Arbitration Act and its jurisdictional requirements are inapplicable here.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because it is the judicial district in which Rivera is subject to the Court’s personal jurisdiction with respect to this action.

THE ARBITRATION AND THE AWARD

11. The Respondents filed a Request for Arbitration, dated November 30, 2016, with ICSID, in which Respondents asserted that Panama had improperly terminated multiple project contracts Omega had with Panama, failed to pay invoices, failed to issue permits, and wrongfully initiated a criminal investigation of Mr. Rivera. *See* Final Award ¶¶ 5, 128-164. Panama denied all of these claims. *Id.* ¶¶ 165-180.

12. Thereafter a tribunal was constituted, in accordance with Article 37(2)(a) of the ICSID Convention, composed of Mr. Laurence Shore (who served as the tribunal’s President), Dr. Horacio Grigera Naón and Professor Zachary Douglas KC. The tribunal was deemed to be constituted on May 1, 2017. *Id.* ¶¶ 18-20.

13. Thereafter the parties engaged in document production and filed a series of memorials, witness statements and expert reports. *See generally id.* ¶¶ 16-101.

14. An evidentiary hearing was held in Washington, D.C., from February 24 through February 28, 2020, at which witnesses and experts testified on behalf of both sides. *Id.* ¶¶ 77-78. That hearing was then continued by videoconference (in view of COVID-19 restrictions) from

October 13 through October 16, 2020, at which additional witnesses and experts testified. *Id.* ¶¶ 92-93.

15. The tribunal declared the arbitral proceeding closed on September 28, 2022. *Id.* ¶ 101.

16. The tribunal issued its unanimous Final Award on October 14, 2022, in which it dismissed all of Respondents' claims. *Id.* ¶¶ 389-405. The tribunal further awarded Panama "a significant percentage of its costs in successfully defending the case brought against it," in the amount of US \$4,840,086.78. *Id.* ¶¶ 420, 424-426.

17. Respondents did not seek to have the tribunal's Final Award interpreted, revised or annulled pursuant to the ICSID Convention, and the time for doing so has expired.

COUNT I: FOR RECOGNITION OF AN ICSID ARBITRATION AWARD
PURSUANT TO 22 U.S.C. § 1650a

18. The Final Award is a final and binding arbitral award in Petitioner's favor, properly issued pursuant to the ICSID Convention.

19. The ICSID Convention provides, at Article 54(1), that ICSID awards "shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention."

20. Pursuant to 22 U.S.C. § 1650a(a), ICSID awards are subject to mandatory recognition and enforcement in the courts of the United States, are not subject to collateral attack, and are to be treated as final.

21. Respondents have not paid any portion of the Final Award.

22. Accordingly, Panama is entitled to an order enforcing the Final Award as a judgment and the entry of judgment thereon in the amount of US \$4,840,086.78, together with interest.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court enter judgment in favor of Petitioner against Respondents as follows:

- i. Ordering that the pecuniary obligations in the Final Award in favor of Petitioner against Respondents be recognized and entered as a judgment by the Clerk of this Court in the same manner and with the same force and effect as if the Final Award were a final judgment of this Court, as authorized by 22. U.S.C. § 1650a and Article 54 of the ICSID Convention;
- ii. Entering judgment in favor of Petitioner against Respondents equal to the full amount of pecuniary obligations contained in the Final Award, through October 14, 2022 in the amount of US \$4,840,086.78, plus interest from October 14, 2022 through the date when payment is made in full;
- iii. Awarding Petitioner the costs of this proceeding, including attorneys' fees as permitted by law, in an amount to be quantified; and
- iv. Granting Petitioner such other and further relief as this Court determines is just and proper under the circumstances.

Dated: March 21, 2024

Respectfully submitted,

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