APPENDIX

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APPENDIX A

In the [PUBLISH]
United States Court of Appeals
For the Eleventh Circuit

No. 21-14408

GRUPO UNIDOS POR EL CANAL, S.A.,
SACYR, S.A.,
WEBUILD, S.P.A.,
JAN DE NUL, N.V.,

Plaintiffs-Appellants,

versus

AUTORIDAD DEL CANAL DE PANAMA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-24867-RNS

Before WILLIAM PRYOR, Chief Judge, and HULL, and MARCUS, Circuit Judges.

MARCUS, Circuit Judge:

This appeal requires us to decide whether the losing party to an international arbitration can obtain a vacatur of the award because the arbitrators failed to disclose their involvement in unrelated arbitrations. After Grupo Unidos por el Canal, S.A., received two adverse awards amounting to more than a quarter-billion dollars in an arbitration arising out of its construction work on the Panama Canal, Grupo Unidos sought wide-ranging disclosures from each of the three members of the panel pertaining to possible bias. Each arbitrator disclosed for the first time that he had served on panels in other, unrelated arbitrations in which an arbitrator or counsel involved in Grupo Unidos's arbitration also participated.

Following the disclosures of the new information, Grupo Unidos challenged the impartiality of the arbitrators before the International Court of Arbitration ("ICA") of the International Chamber of Commerce. The ICA agreed that some arbitrators failed to make a few disclosures but, notably, did not find any basis for removal and rejected Grupo Unidos's challenges on the merits. Thereafter, Grupo Unidos moved—unsuccessfully—for the vacatur of the awards in the United States District Court for the Southern District of Florida. Autoridad del Canal de Panama, in turn, cross-moved for confirmation of the awards, which the district court granted.

Grupo Unidos timely appealed this decision in our Court, arguing that the awards should either be vacated or not confirmed under three different provisions of Article V of the New York Convention. But, after oral argument, this Court, sitting *en banc*,

held that Chapter 1 of the Federal Arbitration Act—not Article V of the New York Convention—provides the proper grounds for vacatur of international arbitration awards where the New York Convention governs and the United States is the primary jurisdiction. *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 880 (11th Cir. 2023) (en banc). Thus, the questions for us are whether the two arbitral awards at issue in this case should be vacated under Chapter 1 of the Federal Arbitration Act or not confirmed under Article V of the New York Convention.

Because we agree with the International Court of Arbitration and the district court that Grupo Unidos has presented nothing that comes near the high threshold required for vacatur, we affirm the denial of vacatur and the confirmation of the awards.

I.

A.

Grupo Unidos, an incorporated consortium of European companies (collectively "Grupo Unidos"), won a multibillion-dollar bid to design and construct a new set of locks to expand the Panama Canal. Construction began in 2009, and the consortium planned to finish its work by October 2014. But after complications caused progress to be "severely delayed and disrupted," Grupo Unidos did not complete construction until over twenty months past the deadline. Liability disputes soon followed. As of last count, the parties had entered into seven arbitrations; this appeal concerns one of them—the Panama 1 Arbitration, where Grupo Unidos brought several

contractual claims against the canal authority, Autoridad del Canal de Panama.

Grupo Unidos's contract with the canal authority required that any disputes be resolved through arbitration in Miami, Florida, under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). Pursuant to the ICC Rules, both parties nominate one arbitrator for confirmation by the ICA. ICC Rules arts. 12(4), 13. Then, the ICA appoints a president of the tribunal, unless the parties agree upon a different procedure. *Id*. arts. 12(5), 13.

In March 2015, Autoridad del Canal nominated Dr. Robert Gaitskell, an engineer and a lawyer who specializes in construction cases. The next month, Grupo Unidos nominated Claus von Wobeser, a lawyer and the former president of the Mexican chapter of the ICC. The ICA confirmed both men in July 2015. The parties agreed on their own procedure to appoint a president, which led to the nomination of Pierre-Yves Gunter, a lawyer who heads the international arbitration group at a Swiss firm. The ICA confirmed him, too, in April 2016. All three arbitrators had considerable experience in international arbitration, collectively boasting more than 500 arbitrations over the course of their combined careers, and each bringing relevant expertise to this construction contract dispute.

After confirmation, and with the panel all set, the ICC Rules required each arbitrator to submit "a statement of acceptance, availability, impartiality and independence," including "any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the

parties" or "could give rise to reasonable doubts as to the arbitrator's impartiality." *Id.* art. 11(2)–(3). Accordingly, each of the three arbitrators submitted a form entitled "ICC Arbitrator Statement Acceptance, Availability, Impartiality and Independence."

Gaitskell accepted his appointment "with disclosure." He submitted a statement of impartiality in conformity with the ICC Rules. He also noted that, "[a]s the parties [were] aware, [he was] already a co-arbitrator in [an] associated case," which was one of the several other arbitrations over the canal. And he disclosed that he was an arbitrator in twenty-two pending proceedings, eight as a sole arbitrator or tribunal chair and fourteen as a co-arbitrator.

Von Wobeser checked off an identical statement of impartiality. In his "[a]nnex" to the statement, he also "confirm[ed] that there [were] no circumstances which could lead . . . any of the parties in this arbitration to question [his] independence or impartiality of judgement in this case" and that he had "not had any professional, work relationship or any other nature with the parties to this arbitration." He acknowledged that "[b]oth . . . counsel in this arbitration are important law firms active in international arbitration and therefore [he had] and ha[s] professional relationship[s] with both law firms," and that he "was appointed by Panama" in another international arbitration "which ha[d] already concluded." He reassured the parties that none of these circumstances "in any way affect [his] impartiality of judgement in the present arbitration." Finally, he reported that he was taking part in fourteen pending arbitrations: one as a sole arbitrator or tribunal chair, seven as a co-arbitrator, and six as counsel.

Gunter submitted two statements. In each, he indicated that he had "[n]othing to disclose," and ticked a box confirming the following statement:

> I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

He also noted that he was involved in twenty pending arbitrations—eight as a sole arbitrator or tribunal chair, seven as a co-arbitrator, and five as counsel—and two pending court litigations as counsel. At that time, neither party requested any additional information from any of the three arbitrators.

Over the next five years, the arbitration took place. The proceedings included over 3,500 pages of pleadings; 78 fact witnesses; 63 expert witnesses; over 3,500 exhibits; a 20-day merits hearing; and around 1,290 pages of post-hearing briefs. On September 21, 2020, the tribunal issued a Partial Award, which addressed liability and the main damages determinations. The Partial Award dismissed most of Grupo Unidos's claims but awarded it $26,838,878.20. Meanwhile, the tribunal awarded Autoridad del Canal $265,299,500.00, resulting in a net win of $238,460,621.80 plus interest.

Three weeks after the Partial Award was rendered, Grupo Unidos began to question the impartiality of the arbitrators. On October 15, 2020—for the first time

since the arbitration began five years earlier — Grupo Unidos asked for additional disclosures from each of the arbitrators of "any facts or circumstances that may affect [the arbitrators'] independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to their impartiality." More specifically, it asked each of them to describe the relationships amongst and between the arbitrators, and with other arbitrators in related arbitration matters between the parties, and with the parties' counsel in any related or unrelated and pending or closed arbitrations.

Gunter, writing for the tribunal, responded that these requests were "different and much broader than" the examples given in the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration. Nevertheless, each member of the tribunal provided additional disclosures. Gunter wrote that he had no disclosures "pursuant to the applicable rules as [he] under[stood] them," but offered some additional disclosures based on Grupo Unidos's request that went "beyond [his] disclosure obligations." Von Wobeser followed suit with a few additional disclosures but "reaffirm[ed] that there are no circumstances that could lead any of the Parties in this arbitration to question [his] independence or impartiality of judgment in this case." Gaitskell offered disclosures of his own, also denying any improper relationships.

Dissatisfied with these additional disclosures, Grupo Unidos sought more, this time asking for information on any relationships between Gunter's firm and the parties since 2013 in any unrelated matters, and the process that led to Gunter's and Gaitskell's appointments in other arbitrations. The

arbitrators once again responded, providing still more contacts between themselves and the parties.

Four disclosures made during these inquiries are relevant to this appeal. First, while the Panama 1 Arbitration was pending, Gaitskell served as an arbitrator in an unrelated arbitration in which Gaitskell and his co-arbitrator nominated (and the ICA confirmed) Gunter to serve as tribunal president. That arbitration involved entirely different counsel and different parties. Second, while the Panama 1 Arbitration was ongoing, von Wobeser served as an arbitrator in an unrelated arbitration with a co-arbitrator Andres Jana, who serves as one of Autoridad del Canal's attorneys in the instant arbitration. Third, several years before the Panama 1 Arbitration began, Gaitskell served as an arbitrator in an unrelated arbitration with another co-arbitrator James Loftis, also one of Autoridad del Canal's attorneys. Fourth, since 2016, Gaitskell has been serving as an arbitrator in an unrelated arbitration in which a different party is represented by Manus McMullan, another of Autoridad del Canal's attorneys in the Panama 1 Arbitration.

Prior to the issuance of a Final Award, Grupo Unidos filed an application with the ICA seeking the removal of each of the tribunal members based on three of these four disclosures and other, similar pieces of information. *See* ICC Rules art. 14. Grupo Unidos argued that "all three members of the Tribunal . . . withheld important connections" that were "highly problematic" and that brought their neutrality into question. After weeks of proceedings, including written submissions and arguments, the ICA found that there was no conflict warranting

disqualification, concluding that there was no merit in any of Grupo Unidos's challenges. The ICA did observe that Gaitskell should have disclosed his arbitration where McMullan appeared, and that von Wobeser should have disclosed his arbitration when he was serving with Jana. But none of these facts led it to question the arbitrators' independence or impartiality, and the ICA rejected Grupo Unidos's challenges.

Having survived an attempt to disqualify each of its members, the tribunal issued a Final Award on February 17, 2021. The award addressed the remaining issues of liability and the main damages determination, ultimately resulting in a final award of some $285 million for Autoridad del Canal.[1] Grupo Unidos has since paid the damages in full.

On November 25, 2020, while its challenge to the arbitrators was still pending with the ICA, Grupo Unidos moved to vacate the Partial Award in the Southern District of Florida. A few months later, on April 19, 2021, Grupo Unidos moved to vacate the Final Award in a separate action. Grupo Unidos made the same basic argument that the arbitrators had evinced evident partiality, asserting that the arbitrators' nondisclosures implicated three defenses to the enforcement of the award under the New York Convention, the agreement that governs international arbitration that the United States has joined and is

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[1] The increase in amount due to the canal authority from the Partial Award to the Final Award came from a few lingering merits claims undisposed of at the Partial Award-stage, as well as costs due to the canal authority having prevailed on most claims.

codified in Chapter 2 of the Federal Arbitration Act ("FAA"). *See* 9 U.S.C. § 201 *et seq*.; *see also* Compl., *Grupo Unidos por el Canal, S.A. v. Autoridad Del Canal De Panama*, No. 21-cv-21509 (S.D. Fla. Apr. 19, 2021). Specifically, Grupo Unidos pointed to Articles V(2)(b), V(1)(d), and V(1)(b) of the New York Convention, provisions that protect the losing party from the enforcement of an international arbitral award if, respectively, enforcement "would be contrary to the public policy" of the United States, the "arbitral procedure was not in accordance with the agreement of the parties," or the party was "unable to present his case." *See* New York Convention arts. V(1)(b), V(1)(d), V(2)(b).

The district court consolidated both cases and directed the parties to file a consolidated motion to vacate and a consolidated cross-motion to confirm the awards. The district court found that none of the three New York Convention defenses applied to the awards, and it concluded that Grupo Unidos's arguments "depend[ed] on multiple speculative assumptions, each assuming the worst in [the arbitrators'] character," and that "[n]o reasonable person would follow [Grupo Unidos] down this conspiratorial web." Thus, the court denied Grupo Unidos's motion to vacate and granted Autoridad del Canal's cross-motion to confirm the awards.

B.

Prior to this Court's recent *en banc* opinion in *Corporación AIC*, our case law had long held that international arbitral awards rendered by tribunals seated in the United States were subject to vacatur on the grounds found in Article V of the New York

Convention. *Corporación AIC* overruled our prior case law, ruling instead that "in a New York Convention case where the arbitration is seated in the United States, or where United States law governs the conduct of the arbitration, Chapter 1 of the FAA provides the grounds for vacatur of an arbitral award." 66 F.4th at 890.

It is undisputed that this case falls under the New York Convention because the awards arose out of a commercial relationship among parties that are not domiciled in the United States; that this arbitration was seated in Miami, Florida; that the parties agreed the FAA would govern the arbitration; and, therefore, that the FAA provides the proper basis, if any, for vacatur. The parties further agreed that, although the initial round of briefing focused on the New York Convention, the dispute over vacatur really boiled down to an argument about the FAA's evident partiality exception. Grupo Unidos added that its Article V arguments remain valid grounds for this Court to refuse confirmation of the awards, even if vacatur was inappropriate.

We agree with the parties that *Corporación AIC* changed the statutory foundation for vacatur, but it did not affect our analysis in any real way, or the results we reach. The parties' arguments on vacatur — while framed as arising out of the New York Convention — were really grounded in the FAA, so we will consider them as FAA arguments. And their disputes about confirmation are properly based on the New York Convention. With that, we turn to the merits.

II.

We review the denial of a motion to vacate and the confirmation of international arbitration awards *de novo*. *Técnicas Reunidas de Talara S.A.C. v. SSK Ingeniería y Construcción S.A.C.*, 40 F.4th 1339, 1343 (11th Cir. 2022); *Gianelli Money Purchase Plan & Tr. v. ADM Inv. Serv., Inc.*, 146 F.3d 1309, 1311 (11th Cir. 1998).

A.

If there is one bedrock rule in the law of arbitration, it is that a federal court can vacate an arbitral award only in exceptional circumstances. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013); *Gianelli*, 146 F.3d at 1312. In accordance with this country's "liberal federal policy favoring arbitration," *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citation omitted), our courts understand arbitration as a complete method of dispute resolution, not "merely a prelude to a more cumbersome and time-consuming judicial review process," *Hall Street Assocs., LLC v. Mattel Inc.*, 552 U.S. 576, 588 (2008) (citation omitted). So, almost always, an arbitral award should represent the end, not the start, of a legal dispute. *See AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 508 F.3d 995, 1001 (11th Cir. 2007) ("Because arbitration is an alternative to litigation, judicial review of arbitration decisions is 'among the narrowest known to the law.'" (citation omitted)).

The presumption against vacatur applies with even greater force when a federal court reviews an award rendered during an international arbitration. *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth,*

Inc., 473 U.S. 614, 631 (1985). As the Supreme Court has explained, "[t]he goal of the [New York] Convention, and the principal purpose underlying American adoption and implementation of it, was . . . to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced," in recognition of the fact that the complex system of international commerce functions only if its disputes are given consistent and predictable resolutions around the world. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1973); *see also Mitsubishi Motors*, 473 U.S. at 629–31. Against this legal backdrop, U.S. courts refrain from unilaterally vacating an award, rendered under international arbitral rules, in all but the most extreme cases. It is no surprise, then, that although the losing parties to international arbitrations often raise defenses to award enforcement before our courts, those efforts "rarely" succeed. *See Cvoro v. Carnival Corp.*, 941 F.3d 487, 496 (11th Cir. 2019) (citation omitted).

Grupo Unidos contends that the Panama 1 Arbitration presents this Court with one of those rare exceptions. It argues that the panel's non-disclosures concealed information related to the arbitrators' possible biases and thereby "deprived [Grupo Unidos] of . . . [its] fundamental right to a fair and consensual dispute resolution process." In particular, it reasons that Gaitskell's nomination of Gunter to serve as president of another arbitral panel, a position that sometimes pays hundreds of thousands of dollars, possibly influenced Gunter to side with Gaitskell. And it asserts that the arbitrators' work with the canal authority's lawyers in other arbitrations allowed them

to become familiar with each other, creating a potential conflict of interest.

Grupo Unidos is correct that both the ICC Rules and this country's arbitration law require arbitrators to disclose information liberally. Arbitrators must "disclose to the parties any dealing that might create an impression of possible bias." *Univ. Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1338 (11th Cir. 2002) (quoting *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 149 (1968)). And the FAA allows for "an arbitration award [to be] vacated due to the 'evident partiality' of an arbitrator" when "the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists." *Id.* at 1339 (citation omitted). So, Grupo Unidos's point that arbitrators should err on the side of greater, not lesser, disclosure is well-taken.

But to the extent that Grupo Unidos seeks to have the entire arbitral awards vacated under this standard simply because the arbitrators worked with each other and with related parties elsewhere, Grupo Unidos finds itself on much shakier footing. To rule for Grupo Unidos, we would need to hold, in essence, that mere indications of professional familiarity are reasonably indicative of possible bias.

Chapter 1 of the FAA offers four grounds that may permit the district court to "make an order vacating the award upon the application of any party to the arbitration." 9 U.S.C. § 10(a). Grupo Unidos points to only one of those four grounds: "where there was evident partiality or corruption in the arbitrators." *Id.* § 10(a)(2). A movant may prove evident partiality

"when either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists." *Univ. Commons*, 304 F.3d at 1339 (citation omitted). That said, "the 'evident partiality' exception is to be strictly construed," and "[t]he alleged partiality must be 'direct, definite and capable of demonstration rather than remote, uncertain and speculative.'" *Gianelli*, 146 F.3d at 1312 (quoting *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d 1197, 1202 (11th Cir. 1982)).

Grupo Unidos points to four late-disclosed relationships as proof of evident partiality and grounds for vacatur under § 10(a)(2). The first point Grupo Unidos makes is that Dr. Gaitskell nominated Gunter to serve as the president of another tribunal during the course of the Panama 1 Arbitration. This falls far short of meeting the exacting standard for vacatur.

Grupo Unidos has not provided us with a single case where this Court considered the act of an appointment of one arbitrator by another in a separate case standing alone to be enough evidence to justify vacatur. *Cf. Lozano v. Md. Cas. Co.*, 850 F.2d 1470, 1473 (11th Cir. 1988) (holding that the fact "that arbitrators appoint each other to panels does not *per se* manifest 'evident partiality or corruption'" (citation omitted)). Nor can we find any. There must be more. Thus, for example, we keep an eye out for "undisclosed business relationship[s]" and "dealings" between arbitrators. *Commonwealth Coatings*, 393 U.S. at 147–49. But there was no evidence of any such dealings in this case. This record is barren of any indication that Gunter evinced bias or that he was in

any way influenced in the Panama I Arbitration because he was selected to serve in another arbitration proceeding.

Nobody has disputed that there were many sound and impartial reasons for the parties to have chosen Gunter in this case. The record evidence also offers many sound and impartial reasons for Gaitskell's appointment of Gunter in the other arbitration. In one of Gunter's disclosures, Gunter wrote that when Gaitskell nominated him in the unrelated case, "Gaitskell . . . explained to [Gunter] that [the tribunal was] looking for a President who had experience with construction arbitration cases." Indeed, the record also establishes the nature and extent of Gunter's extensive experience. He has served, at different times, as an arbitrator or counsel in over 220 arbitrations, as a member of the Board of Directors of the Singapore International Arbitration Centre, as a co-chair of the International Arbitration Committee of the American Bar Association, and as a member of the Arbitration Committee of the Geneva Chamber of Commerce's Industry and Services division. Additionally, he is regularly ranked in Who's Who Legal — and, notably, recommended for his expertise in construction matters. Finally, we repeat that Gunter affirmed in this very case that he was "impartial and independent and intend[ed] to remain so." On this record, a reasonable person would not suspect bias simply because Gaitskell appointed Gunter in an unrelated proceeding.

The second alleged conflict cited by Grupo Unidos is said to inhere in von Wobeser's service with Jana as co-arbitrators in an unrelated arbitration while the Panama 1 Arbitration was ongoing. Grupo Unidos

cites *University Commons* to support its claim of evident partiality. The problem with the argument is that in *University Commons*, an arbitrator represented co-defendants in a different, ongoing case with a member of counsel appearing before him in the arbitration. 304 F.3d at 1340. Although we thought that relationship posed a potential conflict, the relationship between co-arbitrators is fundamentally different than the relationship between two counsel representing co-defendants. Arbitrators do not represent a client. Their job is simple: to hear the case and apply the law in a fair, reasonable, and impartial manner.

Nothing in the record evidence we have seen would cause a reasonable person to suspect that von Wobeser somehow was improperly influenced by Jana. And von Wobeser himself affirmed that he was "impartial and independent and intend[ed] to remain so." Without anything more, it would be "remote, uncertain and speculative" to assume the arbitrator would violate his affirmation of neutrality and independence. *Gianelli*, 146 F.3d at 1312–13; *see also Lifecare Int'l, Inc. v. CD Med., Inc.*, 68 F.3d 429, 4333–35 (11th Cir. 1995).

The third point Grupo Unidos makes is that Gaitskell served along with Loftis as co-arbitrators in a separate, unrelated arbitration before the Panama 1 Arbitration began, and Loftis now serves as a member of the canal authority's counsel. But "standing alone, the fact that an arbitrator . . . had previous contacts with counsel for one of the parties does not suggest evident partiality." *Univ. Commons*, 304 F.3d at 1340. When an arbitrator and counsel had "frequent interactions" in various "arbitrations, mediations, and litigations prior to the arbitration in [that] case," this

Court noted that "a large number of . . . encounters" might "imply an inappropriately close association between arbitrator and counsel," but "[c]loser inspection reveal[ed]" that the interactions "result[ed] [from] the fact that both specialize[d] in construction law in Birmingham, Alabama." *Id.* at 1339–40. We concluded that "[s]uch familiarity due to confluent areas of expertise does not indicate bias." *Id.* at 1340.

Moreover, because Gaitskell served with Loftis as co-arbitrators in an unrelated case before the Panama 1 Arbitration had begun, the link is even more attenuated than von Wobeser and Jana's. Regardless, Gaitskell is an experienced and sought-after arbitrator in this field, and the fact that these individuals overlapped in unrelated, prior arbitrations was hardly a conflict at all, let alone a conflict that requires vacatur. *See Técnicas Reunidas*, 40 F.4th at 1345; *see also In re Andros Compania Maritima, S.A. (Marc Rich & Co., A.G.)*, 579 F.2d 691, 701–02 (2d Cir. 1978) (declining to vacate an award where an arbitrator failed to disclose his past service as co-arbitrator on nineteen panels with an interested party's agent).

For the fourth and final alleged conflict, Grupo Unidos cites the fact that Gaitskell serves as an arbitrator in an unrelated case where McMullan, a member of Autoridad del Canal's counsel, represented a party. We're hard pressed to see how this in any way questions Gaitskell's impartiality. Repeated appearances establish only familiarity, and familiarity "does not indicate bias." *Univ. Commons*, 304 F.3d at 1340. This connection, too, is a non-issue.

It is little wonder, and of little concern, that elite members of the small international arbitration community cross paths in their work. As one of the canal authority's expert witnesses testified, "[w]orldwide, there are only several dozen arbitrators who would be attractive candidates" for "a proceeding such as the Panama 1 Arbitration." We refuse to grant vacatur simply because these people worked together elsewhere. The record reveals no evidence of *actual* bias in the Panama 1 Arbitration. And as to *possible* bias, Grupo Unidos has established only that some of the arbitration's participants were otherwise familiar with each other, and "familiarity due to confluent areas of expertise does not indicate bias." *Id.* We affirm the order of the district court denying the application to vacate.

B.

Having found no reason to vacate the awards under Chapter 1 of the FAA, 9 U.S.C. § 10(a)(2), the only remaining question is whether we should decline to confirm the awards under Article V of the New York Convention. *See Corporación AIC*, 66 F.4th at 884 & n.5; *see also* 9 U.S.C. § 207. Grupo Unidos suggests that three different provisions in Article V of the New York Convention — Articles V(2)(b), V(1)(d), and V(1)(b) — offer defenses to confirmation and provide separate reasons for denying confirmation. At the end of the day, these arguments are the same ones we have already rejected, although the nomenclature is a little different. We are, therefore, unpersuaded that any of these provisions offer a defense to confirmation.

1.

The first defense is whether any of the arbitrators' late-disclosed relationships violated Article V(2)(b) of the New York Convention, which provides a defense to an arbitral award if "[t]he recognition or enforcement of the award would be contrary to the public policy of that country." New York Convention art. V(2)(b). This defense, too, is "construed narrowly in light of the presumption favoring enforcement of international arbitral awards," *Cvoro*, 941 F.3d at 496, and is "rarely successful," *Técnicas Reunidas*, 40 F.4th at 1344.

To vacate an award under the public policy defense, the moving party must prove "violations of an 'explicit public policy' that is 'well-defined and dominant' and is ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" *Cvoro*, 941 F.3d at 496 (citation omitted). "Put another way, the defense 'applies only when confirmation or enforcement of a foreign arbitration award would violate the forum state's most basic notions of morality and justice.'" *Técnicas Reunidas*, 40 F.4th at 1345 (citation omitted). "The party opposing enforcement of the award, here [Grupo Unidos], has the burden of proving" the violation. *Cvoro*, 941 F.3d at 495.

Undeniably, there is a public policy in the United States against "evident partiality." 9 U.S.C. § 10(a)(2); *see also Commonwealth Coatings*, 393 U.S. at 147. But, as we have already discussed, that public policy was not violated in this case. Thus, for the same reasons we denied the application to vacate on evident partiality grounds, we cannot refuse to confirm them.

2.

Next up is whether the tribunal "was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place." New York Convention art. V(1)(d). The parties agreed to follow the ICC Rules and the FAA. Grupo Unidos argued that the composition of the tribunal violated both the ICC Rules and the FAA because the four late disclosures all evinced a level of partiality that Grupo Unidos would not have consented to. Again, the non-disclosures did not violate this country's prohibition against evident partiality. So, here, we focus only on the claim that the arbitration violated the ICC Rules.

The record does not reflect an issue with the composition of the tribunal due to the arbitrators' late disclosures. The ICC Rules were properly followed and enforced. The parties appointed arbitrators, who affirmed their independence and disclosed any potential conflicts. ICC Rules art. 11(2)–(3). Grupo Unidos challenged the arbitrators based on the late disclosures, and the ICA followed the proper procedure when denying that challenge. *Id.* art. 14. True, the ICA noted that Gaitskell should have disclosed his case where McMullan appeared and that von Wobeser should have disclosed his case with Jana. But it did not disqualify either arbitrator for those reasons because it did not find any facts that led it to question either arbitrator's independence or impartiality. As for Gaitskell, the ICA said that the "mere fact" that the counsel appeared in front of him before "is not such as to cast reasonable doubts as to Mr Gaitskell's continued independence or impartiality," and that "is

not changed by [his] failure to timely disclose this circumstance." As for von Wobeser, the ICA observed that, while "Mr von Wobeser's more recent role as arbitrator in an [International Centre for Settlement of Investment Disputes] case sitting together with Mr Jana should have been disclosed as a professional relationship pursuant to the ICC Note," the ICA "does not consider that role to be such that it calls into question Mr von Wobeser's continued independence or impartiality." Thus, while it may have been prudent for Gaitskell and von Wobeser to provide broader disclosures, the ICA did not find any reason to believe that these two arbitrators actually violated ICC Rule 11.

The record shows that "the parties 'explicitly settled on a form' for the arbitration, and 'their commitment [was] respected.'" *Andes Petroleum Ecuador Ltd. v. Occidental Expl. & Prod. Co.*, No. 21-3039-cv, 2023 WL 4004686, at *2 (2d Cir. June 15, 2023) (alteration in original) (citation omitted). Everything suggests that the ICA reasonably construed its own rules. *Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte Int'l GmbH*, 921 F.3d 1291, 1304 (11th Cir. 2019), *overruled on other grounds by Corporación AIC*, 66 F.4th at 880. So, we see no reason to refuse confirmation of the awards.

3.

The final issue raised is whether Grupo Unidos "was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present [its] case." New York Convention art. V(1)(b). Grupo Unidos argues that this provision mandates "[f]undamental procedural

fairness." *See* Restatement (Third) of U.S. Law of Int'l Comm. Arb. § 4.11 cmt. a (Am. L. Inst. Proposed Final Draft, 2019). According to the Restatement, "this exception is interpreted narrowly and protects only against serious procedural defects that have a material effect on arbitral proceedings, rendering them fundamentally unfair." *Id.* Similarly, other courts have interpreted it to require the forum state's basic due process standards. *See Soaring Wind Energy, L.L.C. v. Catic USA Inc.*, 946 F.3d 742, 756 (5th Cir. 2020); *Slaney v. Int'l Amateur Athletic Fed'n*, 244 F.3d 580, 592 (7th Cir. 2001); *Iran Aircraft Indus. v. Avco Corp.*, 980 F.2d 141, 145–46 (2d Cir. 1992). Even assuming the provision requires adherence to this country's basic due process principles, Grupo Unidos cannot succeed on this defense. The bare minimum of due process is an impartial proceeding, during which the parties had the opportunity to present evidence and confront and rebut what is offered by the other side. *See Harper v. Pro. Prob. Servs. Inc.*, 976 F.3d 1236, 1241 (11th Cir. 2020). There is no indication in this record that Grupo Unidos did not have a robust opportunity to present evidence and confront the other side's evidence. And as we have already observed, there is no evidence of partiality in this proceeding.

Accordingly, we affirm the order of the district court denying the application for vacatur and confirming the arbitral awards.[2]

AFFIRMED.

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[2] The unopposed motion to withdraw as counsel by Caroline Edsall Littleton is also granted.

APPENDIX B

United States District Court
for the
Southern District of Florida

Grupo Unidos por el Canal, S.A. and others, Movants,	)	
v.	)	Civil Action No. 20-24867-Civ-Scola
Autoridad del Canal de Panama, Respondent.	)	

Amended Order

This matter is before the Court on the Respondent's unopposed motion to correct the Court's order dated November 18, 2021. (ECF No. 73.) For good cause shown, the Court **grants** the motion (**ECF No. 73**) and corrects certain references to the Respondent's name as follows.

The Movants—a consortium that contracted with the Respondent in connection with construction work at the Panama Canal—move to vacate two arbitration awards (a partial and a final award), the last of which was issued on February 22, 2021. (ECF No. 55.) The Respondent ("ACP"), a Panamanian governmental agency tasked with the operation and management of the Panama Canal, also filed a motion to confirm the arbitration awards at issue. (ECF No. 58.) The

parties fully briefed the motions (ECF Nos. 57, 61, 62, 67.) After thorough review of the record, the parties' briefing, and the relevant legal authorities, the Court **grants** ACP's motion to confirm (**ECF No. 58**) and **denies** the Movants' motion to vacate (**ECF No. 55**).

1. Background

Of the Panama Canal, Theodore Roosevelt said at the time of its construction, "No single great material work which remains to be undertaken on this continent is as of such consequence to the American people." Over fifty miles long and completed over 100 years ago, the Panama Canal changed the nature of trade in the Western Hemisphere. And as with any piece of infrastructure, great or small, work continues today.

This case concerns a multi-billion-dollar contract entered between the parties for the design and build of two new sets of locks and related approach channels on both the Pacific and Atlantic ends of the Canal. (*Id.*; ECF No. 57-1 at ¶ 8.) While this project appears to have been a massive undertaking with many different components, the Court will briefly summarize the relevant background to the Contract and the work performed.

In 2007, four consortia tendered bids in response to a request for proposal ("RFP") concerning the design and build of the Locks. (ECF No. 57-1 at ¶ 13.) In 2009, the Movants' bid, priced at approximately $3.22 billion, was awarded the Contract. (*Id.*; ECF No. 55-3 at ¶ 3.) Relevant here, another entity, Consorcio C.A.N.A.L., also tendered a bid, although its bid was higher than the Movants' offer. (ECF No. 57-1 at ¶ 13.)

Work began in 2009, and pursuant to the Contract, the Movants were to complete construction by October 2014. (*Id*. at ¶ 12.) However, the construction was delayed by over twenty months. (*Id*.)

Relevant to this case, the Contract required a lot of concrete—several million cubic meters of it. (*Id*. at ¶ 19.) The contractor (the Movants) was responsible for procuring the "aggregate" (a mix of geological materials), which would then be used to produce the concrete. (*Id*.) In addition, the contractor was required to blast and excavate material on the Pacific-side of the Canal to build the lock structures—this was called the Pacific Locks Excavation ("PLE"). (*Id*. at ¶ 20.) As a general matter, the material (basalt rock) that was excavated from the PLE could serve as aggregate material to be used to produce the necessary concrete. (*Id*.)

Perhaps inevitably, disputes arose. In total, there have been at least seven arbitrations, spanning continents and near-decades, between the parties in connection with this project. (*Id*. at ¶ 23.) Next, the Court will walk through those arbitrations that are relevant to this matter and the underlying disclosure challenges at issue.

A. The Underlying Arbitrations

Cofferdam Arbitration: The first arbitration, filed in 2013, was the "Cofferdam Arbitration"—named because it concerned work related to a cofferdam (a temporary enclosure that serves as a watertight barrier between a dry working environment and a surrounding body of water) that was to be constructed at the Pacific-side entrance to the Canal. (*Id*. at ¶ 25.) A panel of three arbitrators

(Professor Cremades, Professor Hanotiau, and Dr. Gaitskell) issued a final award in 2017 (the "Cofferdam Award"), dismissing the Movants' claims and ordering the Movants to pay certain legal costs.[1] (*Id*. at ¶ 26.)

Panama 1 Arbitration: What the parties refer to as the Panama 1 Arbitration began in 2015 and concerned work relating to the excavation of PLE basalt and the use of that basalt as concrete aggregate. (*Id*. at ¶ 27; ECF No. 55-3 at ¶ 11.) The Movants nominated Mr. von Wobeser as co-arbitrator, and ACP nominated Dr. Gaitskell. (ECF No. 57-1 at ¶ 27) One year later, the International Court of Arbitration confirmed Mr. Gunter as president, and those three members constituted the Tribunal. (*Id*.) When accepting the nomination, Dr. Gaitskell disclosed that he had been appointed to the Cofferdam Arbitration. (ECF No. 57-1 at ¶ 28; ECF Nos. 55-12, 55-15.) Mr. Gunter did not disclose any facts, stating that he was not aware of any facts that could "call into question my independence" or otherwise "give rise to reasonable doubts as to my impartiality." (ECF Nos. 55-17, 55-18.) Mr. von Wobeser disclosed that there were no facts that could call his independence into question, although he noted that he had a general "professional relationship with both law firms." (ECF Nos. 55-13, 55-14.)

Panama 2 Arbitration: What the parties refer to as the Panama 2 Arbitration was first initiated in late 2016 for claims relating to a series of alleged delays and disruptions regarding concrete and earthwork.

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[1] In 2018, this Court denied the Movants' motion to vacate the Cofferdam Award and confirmed the Award. (ECF No. 57-3.)

(ECF No. 55-3 at ¶ 20; ECF No. 57-1 at ¶ 31.) The Tribunal in the Panama 2 Arbitration was composed of the same members as the Tribunal in the Panama 1 Arbitration. (ECF No. 57-1 at ¶ 31.) Again, Dr. Gaitskell disclosed that he had been appointed to the Cofferdam Arbitration as well as the Panama 1 Arbitration. (*Id.* at ¶ 32.) Mr. Gunter and Mr. von Wobeser also disclosed that they had been appointed to the Panama 1 Arbitration. (*Id.*)

B. The Panama 1 Arbitration Awards

After five years of proceedings, in September 2020, the Tribunal issued a Partial Award, and in February 2021, the Tribunal issued the Final Award (collectively, the "Awards"). (ECF No. 55-3 at ¶¶ 18–19.) The Tribunal ordered that the Movants reimburse ACP approximately $238 million. (ECF No. 57-1 at ¶ 53.) Relevant to the Movants' arguments in this matter, while the Tribunal had found that the Cofferdam Award was not to be binding, the Tribunal referenced the Cofferdam Award over 100 times. (ECF No. 55-3 at ¶ 27.)

C. The ICC Court Challenge

Dissatisfied with the outcome of the Partial Award, the Movants first grew concerned with the Tribunal's disclosures in the Panama 1 and 2 Arbitrations in October 2020. (*Id.* at ¶ 27.) Articles 11(2) and 11(3) of the International Chamber of Commerce ("ICC") arbitration rules impose a continuing obligation on arbitrators to disclose "any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give

rise to reasonable doubts as to the arbitrator's impartiality." *See* ICC Rules, art. 11(2), 11(3).

On October 15, 2020, the Movants requested that each member of the Tribunal update their disclosures. (*Id*. at ¶ 65; ECF No. 55-3 at ¶ 30.) In late October 2020 and early November 2020, members of the Tribunals made the following disclosures for the first time:

- Mr. Gunter was appointed, in part, by Dr. Gaitskell in an ongoing, unrelated arbitration;
- During the Panama 1 and 2 Arbitrations, Mr. Gunter sat on a tribunal in an unrelated arbitration with Professor Hanotiau;
- Dr. Gaitskell did not extend his disclosures to potential conflicts within his barristers' chambers.

(ECF No. 55-3 at ¶¶ 33–34, 38–39.)

On October 28, 2020, the Movants submitted a challenge to the ICC Court against all three members of the Tribunal based on their alleged failure to make timely and appropriate disclosures. (*Id*. at ¶ 36.) In mid-December 2020, the ICC Court rejected the Movants' challenge. (*Id*. at ¶ 47; ECF No. 55-62.)

2. Legal Standard

Under the New York Convention, as codified by the Federal Arbitration Act ("FAA"), an international arbitration award must be confirmed unless one of the defenses set forth in Article V of the Convention applies. *See Cvoro v. Carnival Corp.*, 941 F.3d 487, 495 (11th Cir. 2019) ("[A] district court must confirm the arbitral award unless a party successfully asserts

one of the seven defenses against enforcement of the award enumerated in Article V of the New York Convention.") (cleaned up); *see also* 9 U.S.C. § 207 ("The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention."). Review of a foreign arbitration award is "quite circumscribed," and "there is a general pro-enforcement bias manifested in the Convention." *See Productos Roche S.A. v. Iutum Servs. Corp.*, No. 20-20059-Civ, 2020 WL 1821385, at *2 (S.D. Fla. Apr. 10, 2020) (Scola, J.) (quoting *Four Seasons Hotel & Resorts B.V. v. Consorcio Barr, S.A.*, 613 F. Supp. 2d 1362, 1366–67 (S.D. Fla. 2009)). The pro-enforcement bias of the Convention parallels that of the FAA. *See Gianelli Money Purchase Plan and Trust v. ADM Inv. Servs., Inc.*, 146 F.3d 1309, 1312 (11th Cir. 1998) ("[T]he FAA presumes that arbitration awards will be confirmed."); *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 842 (11th Cir. 2011) (holding that the FAA "imposes a heavy presumption in favor of confirming awards"). For this reason, judicial review of arbitration awards is "among the narrowest known to the law." *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 508 F.3d 995, 1001 (11th Cir. 2007) (internal quotations omitted).

The Movants rely on two grounds to challenge the Awards. First, Articles V(1)(b) and V(1)(d), which provide a defense to enforcement where a party was "unable to present [its] case" and where the arbitral panel or procedure were "not in accordance with the agreement of the parties," respectively. *See Four Seasons Hotel*, 613 F. Supp. 2d at 1369. Article V(1)(b) provides parties with a hearing that meets the

"minimal requirements of fairness." *Productos Roche*, 2020 WL 1821385, at *3. It does not guarantee parties to an arbitration the "complete set of procedural rights" that would otherwise be guaranteed in a federal court. *See id.*; *cf. Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 679 (7th Cir. 1983) (noting the tradeoffs inherent in choosing arbitration as a method of dispute resolution).

Second, Article V(2)(b), which provides that confirmation of an award "may . . . be refused if . . . recognition or enforcement of the award would be contrary to the public policy" of the country where enforcement is sought. *See Cvoro*, 941 F.3d at 495 (citing New York Convention, art. V(2)(b)). This is a "very narrow" defense, which only applies to explicit public policies that are "well-defined and dominant" and ascertainable by "reference to the laws and legal precedents and not from general considerations of supposed public interests." *See id.* at 496. Moreover, the public-policy defense only applies if confirmation would "violate the forum state's most basic notions of morality and justice." *See id.*

3. Analysis

The gravamen of the Movants' challenge is that all three members of the Tribunal failed to properly disclose various facts—facts that the Movants contend would lead a reasonable person to question each of the arbitrators' impartiality. (ECF No. 55 at 8.) But at issue is not necessarily whether the arbitrators had a duty to disclose or whether they should have, but did not, disclose certain information. Rather, at issue is whether the arbitrators' failure to disclose certain facts constitutes a ground for vacatur provided under

the Convention. (*See* Expert Report of Gary B. Born, ECF No. 57-92 at 58.) In particular, the Movants seek to vacate the Awards under the public-policy defense of Article V(2)(b), as well as under the procedural defenses contained in Articles V(1)(b) and V(1)(d). ACP seeks to confirm the Awards under 9 U.S.C. § 207. The Court will address each argument in turn.

A. Evident Partiality

As an initial matter, the Court holds that maintaining the partiality of arbitrators, as expressed in 9 U.S.C. § 10(a)(2), is a "well-defined" and "dominant" public policy within the United States that is capable of determination by reference to law. *See Cvoro*, 941 F.3d at 495; *see also Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 147 (1968) (recognizing that Congress sought "to provide not merely for any arbitration but for an impartial one"). Therefore, maintaining the evident partiality of arbitrators is a cognizable public policy within the meaning of Article V(2)(b).

As eliminating evident partiality in arbitration is a well-defined and dominant public policy, the Court must determine (1) whether the Movants have established a *prima facie* case of a violation of that public policy and (2) if so, whether confirmation of the award would "violate the forum state's most basic notions of morality and justice." *See Cvoro*, 941 F.3d at 495; *cf. Lifecare Int'l, Inc. v. CD Med., Inc.*, 68 F.3d 429, 433 (11th Cir. 1995) ("[T]he mere appearance of bias or partiality is not enough to set aside an arbitration award."). Partiality, as used in the FAA, means "bias in favor of or against a party." *Aviles v. Charles Schwab & Co., Inc.*, 435 F. App'x 824, 829

(11th Cir. 2011). An arbitration award may be vacated due to evident partiality where "(1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists." *Univ. Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1339 (11th Cir. 2002).

The Movants make no allegation of an "actual conflict," and therefore the Movants must proceed by showing that "the arbitrator [knew] of, but fail[ed] to disclose, information which would lead a reasonable person to believe that a potential conflict exists." *See id.* When challenging the partiality of the arbitration panel under the second prong of the *Univ. Commons* test, the moving party must establish facts permitting a reasonable person to believe that there existed a potential—not actual—bias in favor of a party that was "direct, definite and capable of demonstration rather than remote, uncertain, and speculative." *See Gianelli*, 146 F.3d at 1312 (internal quotations and citations omitted). Moreover, courts largely find that an arbitrator's failure to disclose a relationship only warrants vacatur where it was a substantial or close personal relationship to a party or counsel. *See Fed. Vending, Inc. v. Steak & Ale of Fla., Inc.*, 71 F. Supp. 2d 1245, 1250 (S.D. Fla. 1999) (Hurley, J.) (holding that "failure to disclose substantial business dealings, and close social or familial relationships with one of the parties will justify setting aside an award").

1. Pierre-Yves Gunter

The Movants point to the following facts as *prima facie* evidence of Mr. Gunter's evident partiality:

- In 2019, Mr. Gunter was confirmed as president of an unrelated ICC case. (ECF No. 55 at 11; ECF No. 55-3 at ¶ 53.) Mr. Gunter had been nominated and appointed to that position by Dr. Gaitskell and the other co-arbitrator in the unrelated matter. (*Id.*)
- In 2013, 2016, and 2017, Mr. Gunter sat as co-arbitrator in three unrelated arbitrations with Professor Hanotiau, who had been the president of the Cofferdam Tribunal. (ECF No. 55 at 12–13; ECF No. 55-3 at ¶ 55.)

The Court will address these bases in turn.

First, the Movants refer to Mr. Gunter's appointment by Dr. Gaitskell as the "most egregious" example of evident partiality. (ECF No. 55 at 10.) The Movants posit that there may or may not have been a "quid pro quo," but that in any event, Mr. Gunter received a "lucrative" appointment that may have "influenced" him, "consciously or subconsciously," in favor of Dr. Gaitskell. (*Id.* at 10–12.)

The question before the Court is whether Mr. Gunter's appointment, in part due to Mr. Gaitskell, in an unrelated arbitration would lead a "reasonable person to believe that a potential conflict exists." *See Univ. Commons*, 304 F.3d at 1339. The Court holds that this standard is not met. Rather, while the Movants call this the "most egregious" example of evident partiality, it is an exemplar of an accusation that is "remote, uncertain, and speculative." *See Gianelli*, 146 F.3d at 1312. The fact that Mr. Gunter was appointed by Mr. Gaitskell and a second arbitrator, Mr. Perry, in an unrelated

arbitration is likely a testament to Mr. Gunter's experience and expertise. *See Commonwealth Coatings*, 393 U.S. at 150 (White, J. concurring) ("It is often because [arbitrators] are men [or women] of affairs, not apart from but of the marketplace, that they are effective in their adjudicatory function."); *Scott v. Prudential Secs., Inc.*, 141 F.3d 1007, 1016 (11th Cir. 1998) ("The courts have repeatedly explained, however, that an arbitrator's experience in an industry, far from requiring a finding of partiality, is one of the factors that can make arbitration a superior means of resolving disputes."), *abrogated on different grounds Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576 (2008). Indeed, that was Mr. Gunter's stated belief for why he was selected by two of his peers to serve as an arbitrator in the unrelated arbitration. (*See* ECF No. 55-46 at 5 ("I was appointed by my two co-arbitrators, Dr. Robert Gaitskell and Mr. James C. Perry, who were looking according to my recollection for a President who had experience with construction arbitration cases.").

Arbitrators are appointed every day, and oftentimes the same arbitrators, particularly in matters concerning subjects that are highly specialized, will sit together. *See Leatherby Ins.*, 714 F.2d at 679 ("Expertise in an industry is accompanied by exposure, in ways large and small, to those engaged in it.") (quoting *Andros Co. Maritima, S.A. v. Marc Rich & Co.*, 579 F.2d 691, 701 (2d Cir. 1978)). The mere fact that arbitrators may sit together on other panels and may have an opportunity to discuss matters, outside the presence of another member of another arbitration panel, does not constitute a "direct, definite and capable of demonstration" allegation of partiality. *See*

Gianelli, 146 F.3d at 1312. The ICC agreed, holding that "[t]he mere theoretical opportunity to discuss the matter without the third arbitrator . . . cannot qualify as a reasonable doubt as to Mr. Gunter's independence or impartiality." (ECF No. 55-62 at 9.) Moreover, the Movants do not clearly assert that this late disclosure would lead a reasonable person to believe that there existed possible partiality *in favor of* any party. Rather, it seems that the Movants rely on an unfounded train of speculation that: because Mr. Gunter was well paid in the unrelated arbitration, and because Dr. Gaitskell was also on the panel in the unrelated arbitration, and because Dr. Gaitskell was nominated in the Panama 1 Arbitration by ACP, therefore a reasonable person would conclude that Mr. Gunter was biased in favor of ACP. Such a position depends on multiple speculative assumptions, each assuming the worst in Mr. Gunter's and Dr. Gaitskell's character. No reasonable person would follow the Movants down this conspiratorial web. For these reasons, this allegation does not equal a *prima facie* showing of evident partiality.

Second, the Court similarly holds that Mr. Gunter's service with Professor Hanotiau in a handful of unrelated arbitrations does not constitute evident partiality. The only basis that the Movants identify to tie any potential bias to these facts is that Professor Hanotiau authored the Cofferdam Award, issued in 2017. (ECF No. 55 at 13.) The Movants' theory appears to be that Mr. Gunter was unduly influenced in a manner that compelled him to impartially defer to the Cofferdam Award, which the Movants believe was substantively "wrong." (*Id*. at 13, 34.) To the extent that the Movants argue that the

Cofferdam Award was substantively wrong and that the Awards are substantively wrong given the extensive citations to the Cofferdam Award, the Court will disregard such arguments. Review of an arbitration award is extremely limited, and the Court will not consider the Movants' gestures to the merits of the Tribunal's citations to the Cofferdam Award. *See generally Cat Charter*, 646 F.3d at 842 (holding that an arbitration award need only provide a "mention of expressions or statements offered as a justification").

As the Court will not adopt the Movants' implicit argument that the Cofferdam Award was wrong, there is nothing more than speculation to the Movants' arguments. As discussed above, arbitrators will often overlap in unrelated cases—the fact that Mr. Gunter and Professor Hanotiau appeared in three unrelated arbitrations is unremarkable and does not raise the appearance of a "direct, definite and capable of demonstration" allegation of partiality. *See Gianelli*, 146 F.3d at 1312. Moreover, it is not clear where the alleged partiality lies. Partiality means a bias in favor of a party, *see Aviles*, 435 F. App'x at 829; at most, the Movants argue that Mr. Gunter's and Professor Hanotiau's co-service presented the "opportunity" to discuss the case. (ECF No. 55 at 22.) Having the opportunity to discuss a case is not the same as having a possible bias in favor of a party.[2]

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[2] Furthermore, Professor Hanotiau was confirmed to the Cofferdam Arbitration by the ICC; he was not appointed by a party. (ECF No. 57-1 at ¶ 25.) Therefore, the Movants cannot conjecture, as they appear to regarding Dr. Gaitskell, that Mr. Gunter's opportunity to discuss the case with Professor

In total, the Movants have not shown a "direct, definite and capable of demonstration" allegation of partiality as to Mr. Gunter that warrants vacatur of the award. *See Gianelli*, 146 F.3d at 1312. Nonetheless, for the avoidance of doubt, even if the Movants made a showing of a non-speculative impression of possible bias that could lead "a reasonable person to believe that a potential conflict exists," *see Univ. Commons*, 304 F.3d at 1339, the Court holds that confirmation of the award would not "violate the forum state's most basic notions of morality and justice." *See Cvoro*, 941 F.3d at 495. The allegations of possible bias are so weak here that, even if a reasonable person could believe that a potential conflict exists, confirmation of the award would not violate the "most basic notions of morality and justice." *See id.*

2. Dr. Robert Gaitskell

The Movants point to the following facts as *prima facie* evidence of Dr. Gaitskell's evident partiality:

- In 2019, Dr. Gaitskell, with another co-arbitrator, appointed Mr. Gunter as president of an unrelated ICC arbitration. (ECF No. 55 at 14.)
- Dr. Gaitskell refused to investigate any potential conflicts of interest that may exist with respect to his barristers' chambers, Keating Chambers. (*Id.*)
- Dr. Gaitskell was appointed to sit in an unrelated arbitration by one of the

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Hanotiau must have led to discussions in favor of the Respondent by virtue of his appointment alone.

Respondent's counsel (Mr. McMullen) during the Panama 1 Arbitration. (*Id.* at 14–15.)

First, the Court holds that Dr. Gaitskell's failure to disclose his role in the appointment of Mr. Gunter as president in an unrelated arbitration does not warrant vacatur for the reasons set out above. ***Second***, the Eleventh Circuit "has clearly stated that arbitrators don't have a duty to investigate potential conflicts." *See Mendel v. Morgan Keegan & Co., Inc.*, 654 F. App'x 1001, 1005 (11th Cir. 2016). Therefore, while the parties argue about whether an arbitrator can, let alone should, investigate potential conflicts in British barristers' chambers, the Court holds that Dr. Gaitskell's refusal to investigate conflicts within Keating Chambers does not provide a basis to vacate the Awards. In any event, due to the nature and structure of barristers' chambers, the Court holds that Dr. Gaitskell's failure to investigate Keating Chambers for potential conflicts does not constitute evident partiality or provide a basis for vacatur.

Third, the appearance of one of the Respondent's attorneys, on behalf of an unrelated client in an unrelated arbitration, before Dr. Gaitskell also does not provide a basis to vacate the award. Similar to the principles discussed above, "the reoccurrence of appearing before arbitrators . . . does not, by itself create an appearance of bias[.]" *Boll v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 04-80031-CIV, 2004 WL 5589731, at *8 (S.D. Fla. June 28, 2004) (Johnson, M.J.). While the Movants assert that the circumstances here create an impression of bias, the Court holds that the Movants have not established a "direct, definite and capable of demonstration" allegation of evident partiality. *See Gianelli*, 146 F.3d

at 1312. The fact that Mr. McMullan, counsel for the Respondents, played some role in appointing Dr. Gaitskell to an unrelated arbitration panel during the Panama 1 Arbitration is, of itself, unremarkable and would not lead a reasonable person to conclude that there was a potential, non-speculative bias.

In total, the Movants have not shown a "direct, definite and capable of demonstration" allegation of partiality as to Dr. Gaitskell that warrants vacatur of the award. *See Gianelli*, 146 F.3d at 1312. Nonetheless, for the avoidance of doubt, even if the Movants made a showing of a non-speculative impression of possible bias that could lead "a reasonable person to believe that a potential conflict exists," *see Univ. Commons*, 304 F.3d at 1339, the Court holds that confirmation of the award would not "violate the forum state's most basic notions of morality and justice." *See Cvoro*, 941 F.3d at 495. As above, the allegations of possible bias are so weak that, even if a reasonable person could believe that a potential conflict exists, confirmation of the award would not violate the "most basic notions of morality and justice." *See id*.

3. Claus von Wobeser

The Movants point to the following facts as *prima facie* evidence of Mr. von Wobeser's evident partiality:

- The evident partiality of Mr. Gunter and Dr. Gaitskell "taint the work" of Mr. von Wobeser, as Mr. Gunter and Dr. Gaitskell had the opportunity to discuss the arbitration without Mr. von Wobeser's input. (ECF No. 55 at 15.)

- Mr. von Wobeser failed to disclose that, beginning in July 2019, one of the Respondent's attorneys (Mr. Jana) sat with Mr. von Wobeser as co-arbitrators in an unrelated arbitration. (*Id*.)

First, as the Movants' challenges to Mr. Gunter and Dr. Gaitskell fail, the Movants' contention that Mr. von Wobeser was tainted also fails. ***Second***, the Court holds that Mr. von Wobeser's service with one of the Respondent's attorneys as co-arbitrators in an unrelated arbitration does not permit a reasonable person to believe that a potential conflict exists. The reasons mirror the principles above.

As discussed above, it is axiomatic that arbitrators are selected because of their expertise and experience. *See Scott*, 141 F.3d at 1016; *see also Morelite Const. Corp. v. New York City Distrib. Council Carpenters Benefit Fund*, 748 F.2d 79, 83 (2d Cir. 1984) ("[P]arties agree to arbitrate precisely because they prefer a tribunal with expertise regarding the particular subject matter of their dispute."). Therefore, it is unremarkable that arbitrators and attorneys would overlap. Given the inherent oscillations among arbitrators and practitioners in arbitration, courts require a "substantial relationship between the arbitrator and a party" to establish evident partiality. *See Austin S. I, Ltd. v. Barton-Malow Co.*, 799 F. Supp. 1135, 1142 (M.D. Fla. 1992); *Antietam Indus., Inc. v. Morgan Keegan & Co., Inc.*, No. 6:12-cv-1250, 2013 WL 1213059, at *5 (M.D. Fla. Mar. 25, 2013) (holding that parties must show an undisclosed "relationship[] that the arbitrator had with a party or a party's counsel, family, or others" to establish evident partiality); *see also Fed. Vending*, 71 F. Supp. 2d at

1250 (holding that "failure to disclose substantial business dealings, and close social or familial relationships with one of the parties will justify setting aside an award").

Courts have held that situations where an arbitrator and attorney served as co-counsel in an unrelated arbitration could constitute evident partiality. *See Univ. Commons*, 304 F.3d at 1340 ("Whether [the arbitrator] acts as co-counsel or opposing counsel in a mediation, litigation or other arbitration, the arbitrator could seem biased[.]"). However, despite the Movants' arguments, the Court holds that *Univ. Commons* is inapplicable to this case. Rather, here, the arbitrator (Mr. von Wobeser) served as a co-arbitrator, not co-counsel or opposing counsel, with one of Respondent's attorneys (Mr. Jana) in an unrelated arbitration. (ECF No. 55 at 20.) Unlike in *Univ. Commons*, Mr. von Wobeser and Mr. Jana did not share a duty to a client, nor did Mr. von Wobeser share an identifiable bias with Mr. Jana or otherwise stand to gain anything from any relationship with Mr. Jana. *Compare Univ. Commons*, 304 F.3d at 1340 (holding that where an arbitrator also serves as co-counsel in another matter to an attorney before her, a "ruling in the arbitration could be seen as a way to curry favor in the other matter"). The Movants point to no tangible or identifiable "favor" that Mr. von Wobeser could be swayed to "curry" from Mr. Jana while the two of them served together on a separate, unrelated arbitration panel.[3]

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[3] In their reply brief and their opposition to the motion to confirm, the Movants also identify an alleged conflict where Dr. Gaitskell chaired an unrelated arbitration in which another one of ACP's

For these reasons, the Movants' challenges to Mr. von Wobeser fail. But, as above, the Court holds that, for the avoidance of doubt, even if the Movants made a showing of a non-speculative impression of possible bias that could lead "a reasonable person to believe that a potential conflict exists," *see Univ. Commons*, 304 F.3d at 1339, confirmation of the award would not "violate the forum state's most basic notions of morality and justice." *See Cvoro*, 941 F.3d at 495. As with Mr. Gunter and Dr. Gaitskell, the allegations of possible bias as to Mr. von Wobeser are so weak that, even if a reasonable person could believe that a potential conflict exists, confirmation of the award would not violate the "most basic notions of morality and justice." *See id*.

B. The Awards

The Movants next contend that the evident partiality of the Tribunal "manifested itself" through the Partial and Final Awards. (ECF No. 55 at 23.) Rhetoric aside, the crux of the Movants' arguments is that the Awards violate Articles V(1)(b) and V(1)(d). In particular, the Movants argue that the substance of the Awards violate the Convention's guarantees that parties will have an arbitration that accords with their agreement and that all parties will have the opportunity to present their case. The Court will address each argument.

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counsel also sat as an arbitrator. (ECF No. 61 at 6; ECF No. 62 at 10.) This occurred years before the Panama 1 Arbitration. (*Id*.) However, courts do not consider arguments raised for the first time in a reply brief. *See Lovett v. Ray*, 327 F.3d 1181, 1183 (11th Cir. 2003). In any event, this challenge fails for the same reasons that the challenge to Mr. von Wobeser fails.

1. Paragraph 1.07.D.1

The Movants first argue that the Tribunal improperly interpreted paragraph 1.07.D.1 of section 01 50 00 of the Employer's Requirements, which are part of the Contract and set out requirements relating to the design and construction of the Locks. (ECF No. 55 at 25; ECF No. 55-3 at ¶ 82.) In particular, the Movants argue that the Tribunal ignored the "plain meaning" of the Contract and interpreted this provision in a manner that was not presented by the parties. (ECF No. 55 at 25–26.)

As discussed above, Article V(1)(b) provides parties with a hearing that meets the "minimal requirements of fairness." *Productos Roche*, 2020 WL 1821385, at *3. It does not guarantee parties to an arbitration the "complete set of procedural rights" that would otherwise be guaranteed in a federal court. *See id*. And as courts have long recognized, "[f]ederal courts do not superintend arbitral proceedings. Our review is restricted to determining whether the procedure was fundamentally unfair." *Hispasat, S.A. v. Bantel Telecom, LLC*, No. 17-20534, 2017 WL 8896241, at *4 (S.D. Fla. Aug. 2, 2017) (Torres, M.J.) (quoting *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1999)).

The Movants invite the Court to nitpick the Tribunal's opinion and decipher whether every holding was based on some argument by the parties over the five-year arbitration. However, the Court will not dive into the substantive merit of the Awards or determine whether the Tribunal correctly interpreted paragraph 1.07.D.1. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572–73 (2013) ("So long as the

arbitrator was arguably construing the contract . . . a court may not correct [the arbitrator's] mistake . . . however good, bad, or ugly."). Rather, the Court's review is limited to whether the Movants had an adequate opportunity to present its case regarding the interpretation of paragraph 1.07.D.1 and whether the Tribunal acted in accordance with the parties' arbitration agreement.

The Court holds that the Movants had an adequate opportunity to be heard and that the Tribunal's interpretation of paragraph 1.07.D.1 was in accordance with the parties' arbitration agreement. The Movants point to paragraph 931 of the Partial Award as evidence of the Tribunal's adoption of an interpretation of paragraph 1.07.D.1 that was not presented by the parties. (ECF No. 55 at 26.) However, the parties had ample opportunity to brief and argue the meaning and interpretation of paragraph 1.07.D.1. (*See, e.g.*, ECF No. 55-22 at 7, 46–47 ECF No. 57-19 at 97–100.) The Tribunal adopted the Movants' argument to interpret the "literal reading" of paragraph 1.07.D.1—the Movants merely disagree with what the Tribunal found the literal meaning of the paragraph to be. (*See* ECF No. 55-5 at 225–26.) Therefore, the Movants have not shown that they were foreclosed from presenting their case in violation of Articles V(1)(b) and V(1)(d).[4]

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[4] In a footnote, the Movants argue that the Tribunal also violated Article V(1)(c), which provides for vacatur where the award "deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration." *See* Art. V(1)(c); (ECF No. 55 at 32 n.135.) In particular, the Movants press that the Tribunal contradicted itself and therefore

2. Prudent Industry Practices

Similarly, the Movants complain that the Tribunal "ignore[ed]" their arguments and "did not engage" with their evidence regarding the definition of "Prudent Industry Practices." (ECF No. 55 at 28; ECF No. 55-3 at ¶¶ 101–03.) The Movants, understandably, are disappointed that the Tribunal did not rule in their favor on the question of whether the Movants complied with "Prudent Industry Practices" by failing to conduct additional tests on the PLE basalt. But this is not a ground for vacatur. *See Oxford Health*, 569 U.S. at 572–73. In particular, the Movants point to no authority that a Tribunal violates Article V(1)(b) or V(1)(d) when it fails to expressly discuss all evidence before it in the final or interim award. *Cf. Cat Charter*, 646 F.3d at 844 (holding that an arbitration award need only be "something short of findings and conclusions but more than a simple result"); *Leeward Constr. Co., Ltd. v. Am. Univ. of Antigua College of Med.*, 826 F.3d 634, 640 (2d Cir. 2016) (holding that an arbitration award need not have "full findings of fact and conclusions of law on each issue raised before the panel").[5]

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exceeded its authority under Article V(1)(c). However, the interpretation of paragraph 1.07.D.1 was squarely before the Tribunal, as discussed above. Therefore, there is no violation of Article V(1)(c). *Cf. Johnson v. Directory Assistants Inc.*, 797 F.3d 1294, 1302 (11th Cir. 2015) (holding that an arbitrator did not exceed the scope of his authority when the ruling was "derived" from the contract at issue).

[5] *Cat Charter* and *Leeward* discuss what constitutes a "reasoned award" under Section 10(a)(4) of the FAA. The Court notes that a "reasoned award," as established under Section 10(a)(4) of the FAA, generally comports with the "minimal requirements of

To establish grounds for vacatur under Articles V(1)(b) and V(1)(d), the Movants must show that they were "unable to present [their] case" or that the arbitral panel or procedure were "not in accordance with the agreement of the parties," respectively. *See* Convention, art. V(1)(b), V(1)(d). The Movants complain on three grounds that they contend show the Tribunal did not appropriately consider Prudent Industry Practices.

First, the Movants argue that the Tribunal did not address the evidence that the Movants provided concerning bulk testing. (ECF No. 55 at 28; ECF No. 55-3 at ¶ 101.) It is noteworthy that the Movants do not argue that they were "unable" to present their case—only that the Tribunal did not consider their evidence, which as discussed above is not a basis to vacate an award. In any event, the Movants point to no facts establishing that the Tribunal ignored their evidence. Rather, the Tribunal weighed the evidence, considered the actions of other tenderers as the Movants urged, and concluded that Prudent Industry Practices required bulk testing of the PLE basalt.

Second, the Movants argue that the Tribunal adopted arguments that were not made by the parties. (ECF No. 55 at 28; ECF No. 55-3 at ¶ 102.) However, the one example that the Movants provide—that the Respondent never argued that bulk testing was a necessary step for a prudent tenderer—is flatly wrong. One of the Respondent's expert reports before the Tribunal opined that "[b]ulk testing is the best way" to

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fairness" that is guaranteed by Article V(1)(b), *see Productos Roche*, 2020 WL 1821385, at *3, as well as the procedural protections in Article V(1)(d).

determine the behavior of material when crushed. (ECF No. 57-46 at 8.) This was quoted in the Awards. (*See* ECF No. 55-5 at 238.) Moreover, the Respondent's expert testified at the hearing that he believed a contractor should perform a bulk test. (ECF No. 57-47 at 27.) Therefore, both parties had the opportunity to present and argue their evidence; the Tribunal merely determined the definition of Prudent Industry Practices in the Respondent's favor.

Last, the Movants argue that the Tribunal "did not even engage" with its argument that its testing of Cerro Escobar basalt was representative of the PLE basalt at issue or that the Movants could not conduct bulk testing on the PLE basalt. (ECF No. 55 at 28; ECF No. 55-3 at ¶ 103.) Again, this is not an argument that the Movants were "unable" to present their case, only that the Tribunal did not satisfactorily consider their evidence. In any event, the Tribunal explicitly considered the arguments above. (*See* ECF No. 55-5 at 238.) To the extent that the Movants argue that the Tribunal did not engage *enough* with their evidence, the Movants essentially ask the Court to improperly wade into the substantive reasoning of the Awards. *See Oxford Health*, 569 U.S. at 572–73. In all, the Movants point to no evidence that the Tribunal did not consider the arguments that they made; therefore, the Movants have not shown that they were "unable to present their case" or otherwise deprived of the arbitration that they agreed to under Articles V(1)(b) and V(1)(d). *See Cat Charter*, 646 F.3d at 844; *Leeward Constr.*, 826 F.3d at 640.

3. C.A.N.A.L.

Last, the Movants complain that the Tribunal considered an argument that neither party raised when the Tribunal noted that C.A.N.A.L. may have bid a higher price because it may have better assessed the suitability of PLE basalt for use as concrete aggregate. (ECF No. 55 at 29.) But, as held above, the Convention does not require an arbitration panel to issue detailed findings of fact and conclusions of law as to every possible point raised by a party. *See Cat Charter*, 646 F.3d at 844. Moreover, fundamental fairness does not necessarily bind a finder of fact or law to the exact arguments made by a party. *Cf. U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) ("[A] court may consider an issue antecedent to . . . and ultimately dispositive of the dispute before it, even an issue the parties fail to identify and brief.").

In any event, the parties briefed and argued in detail C.A.N.A.L.'s bid. (*See, e.g.*, ECF No. 57-4 at 146; ECF No. 57-42 at 199–201; ECF No. 57-38 at 128, 231.) Moreover, the Tribunal's reference to C.A.N.A.L.'s higher bid was dicta and was not controlling. Therefore, such a reference in the Awards cannot violate Articles V(1)(b) and V(1)(d).

4. Request for Hearing and Discovery

The Movants requested an evidentiary hearing and expedited discovery. (ECF No. 55 at 34–35.) While courts hold that the question of evident partiality is a "fact intensive inquiry," *see Lifecare Int'l*, 68 F.3d at 435, discovery and an evidentiary hearing are not always required. *See Perez v. Cigna Health and Life Ins. Co.*, No. 20-12730, 2021 WL 2935260, at *3 n.5

(11th Cir. July 13, 2021) (holding that it is not an abuse of discretion to deny discovery and an evidentiary hearing where the movant fails to allege sufficient evidence to vacate an arbitration award); *see also Aviles*, 435 F. App'x at 829. Here, the Movants do not allege sufficient evidence to vacate an arbitration award, despite dispensing reams of briefing, declarations, expert reports, and exhibits. The Movants allege only speculation that, even if credited in favor of the Movants, affords only an inference that various arbitrators had an opportunity to discuss the arbitration outside of the full Tribunal (an opportunity that is always present given the ease of communication) and that each arbitrator is well respected in their fields and in high demand. Therefore, the Court denies the Movants' request for an evidentiary hearing and discovery.[6]

5. Confirmation of the Award

Section 207 of the FAA controls the confirmation of an international arbitration award under the Convention.[7] Section 207 states that a court having

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[6] The Movants argue that they are entitled to discovery because the Court entered a discovery order in this matter. (ECF No. 55 at 35 n.153.) However, the Court merely entered a form order that is entered in most civil cases. This order does not compel or guarantee discovery. In any event, this order only mentions discovery pursuant to Rule 26, which has limited application in arbitration-review proceedings, as such proceedings are "summary in nature." *See O.R. Secs., Inc. v. Pro. Planning Assocs., Inc.*, 857 F.2d 742, 747–48 (11th Cir. 1988); *cf.* Fed. R. Civ. P. 81(a)(6)(B).

[7] The arbitration agreements and Awards at issue fall under the Convention, as the parties' legal relationships are commercial in nature, involve written agreements involving parties in foreign

jurisdiction "shall confirm" the award unless one of the defenses listed in the Convention applies. *See* 9 U.S.C. § 207. As ACP timely brought this motion to confirm, and as the Court has been provided with a certified copy of the Awards and the arbitration agreements, ACP has made a *prima facie* showing in support of confirmation. *See Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 n.3 (11th Cir. 2004) (holding that once the party requesting confirmation provides the court with certified copies of the award and arbitration agreement, the award is "presumed to be confirmable"); (*see* ECF Nos. 55-4, 55-5, 55-6, 55-9; ECF Nos. 57-89, 57-90.) And as none of the Convention defenses apply, as discussed above, the Court finds confirmation of the Awards appropriate.

The Movants last contend that confirmation is not appropriate as the Movants already paid the amounts found due in the Awards, therefore mooting the motion for confirmation. (ECF No. 62 at 33.) As a general matter, courts "shall confirm" arbitration awards under the Convention unless one of the seven defenses set out in the Convention apply. *See* 9 U.S.C. § 207. Mootness is not a listed defense under the Convention. In any event, the Movants brought a motion to vacate the Awards—therefore, there is a live, actual controversy for purposes of mootness. *See Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (holding that an issue is moot when it "no longer presents a live controversy with respect to

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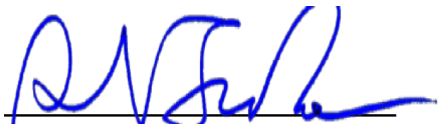
countries, provide for arbitration in the United States, and revolve around property in foreign states. *See Alberts v. Royal Caribbean Cruises, Ltd.*, 834 F.3d 1202, 1204 (11th Cir. 2016) (setting out the prerequisites to the Convention); *see also* 9 U.S.C. § 202.

which the court can give meaningful relief"). The Court will confirm the Awards.

6. Conclusion

For the reasons set out above, the Court **denies** the Movants' motion to vacate (**ECF No. 55**) and **grants** the Respondent's motion to confirm (**ECF No. 58**). The Court confirms the Awards and enters final judgment in favor of ACP and against the Movants. The Court **directs** the Clerk to **close** this case.

Done and ordered at Miami, Florida on December 9, 2021.



Robert N. Scola, Jr.
United States District Judge