

DRUMMOND LTD.
July 1, 2014

**Open Letter to All Recipients of the Report *The Dark Side of Coal:
Paramilitary Violence in the Mining Region of Cesar, Colombia,*
Published by PAX, the Netherlands**

We are writing regarding a largely false and entirely misleading “report” that has unfortunately been distributed to media members and other parties in the European Union. The report, entitled *The Dark Side of Coal: Paramilitary Violence in the Mining Region of Cesar, Colombia*, lists as its authors Marianne Moor and Joris van de Sandt of PAX, the Netherlands (hereinafter “PAX”). Drummond has only obtained access to a version watermarked “Final Draft,” as neither PAX nor the authors have favored Drummond with a copy of the final version that has, according to some reports, already been presented in Berlin, Germany by PAX in conjunction with an environmental group called PowerShift.¹ Given the fact that PAX has not provided Drummond with the final report, Drummond was surprised to read the report’s claim that the mining companies made the subject of the report are the reading audience “[o]f primary concern.”²

Whatever the agenda is behind the circulation of this report, it is not, as the report claims, “to uncover the truth.”³ The truth is: **Drummond has never paid or otherwise assisted any illegal group in Colombia, whether paramilitary or guerilla.** Although PAX purports to “value[] the principle of hearing both sides,”⁴ the PAX report is pure advocacy, and ignores all contradictory evidence casting doubt on the report’s false and incendiary theme: that Drummond collaborated with Colombian paramilitaries in perpetrating violence and other heinous crimes in Colombia.

In fact, PAX investigated and essentially completed the report without seeking input from Drummond. PAX claims to have begun “investigating” in 2011, yet Drummond did not learn of the report until March, 2014, *after* the report was substantially complete. As is described in further detail below, PAX *did* collaborate with Terrence P. Collingsworth, an American attorney who has been repeatedly and unsuccessfully suing Drummond since 2002 based on allegations parroted in the PAX

¹ <http://kolko.net/termine/berlin-24-06-veranstaltung-zu-kohle-und-drummond-fussball/>;
<http://colombiareports.co/mining-companies-financed-paramilitaries-colombia-report/>.

² *The Dark Side of Coal: Paramilitary Violence in the Mining Region of Cesar, Colombia*, Final Draft, p. 13 (hereinafter “*The Dark Side*”).

³ *The Dark Side*, p. 5.

⁴ *Id.* at 71.

report. Every one of these cases that has been litigated to conclusion before a trial court has resulted in a judgment in favor of Drummond.⁵

Once Drummond learned of the report, it informed PAX of the falsity of its plot line, and provided PAX with reams of evidence discrediting the witnesses on which the report is based. The PAX report, in citing these witnesses' allegations of Drummond-paramilitary involvement, repeatedly emphasizes that they testified "under oath," implying they must be telling the truth. Drummond provided PAX with testimony from these same witnesses, testifying under oath that they have absolutely no knowledge of Drummond ever collaborating with paramilitaries. PAX chose not to include any of this testimony in its report.

In fact, PAX either wholly ignored or intentionally omitted any evidence contrary to the report's theme. For example, the PAX report discusses alias Tolemaida, and states, "To date, this ex-paramilitary has yet to make a statement about the alleged links between the JAA Front and the mining companies."⁶ This statement is utterly false, and PAX should know it. Included in the documentary evidence Drummond provided to PAX on March 28, 2014 was a declaration of Tolemaida in which he testified, under oath, "During the five or six years I served as Commander of the Juan Andres Alvarez Front, there was never any relationship between Drummond and the AUC. The Juan Andres Alvarez Front never received any money from Drummond. I never met with Drummond directors whether Colombian or foreign, and I never sent anybody to meet with them."⁷ The PAX report describes Tolemaida as an "important witness,"⁸ yet when Drummond provided PAX with the testimony of this witness, PAX omitted it from its report and falsely represented he had given no such testimony.

Also included in the evidence Drummond provided PAX were numerous documents, including deposit slips, wire confirmations and the like, reflecting substantial payments made by Mr. Collingsworth and his legal team to paramilitary witnesses and/or

⁵ The first case concluded at the trial court level in 2007, and was affirmed on appeal by the Eleventh Circuit Court of Appeals in 2008. *Romero v. Drummond Co., Inc.*, 552 F.3d 1303 (11th Cir. 2008). After the affirmance, the second and third cases were filed in 2009, and dismissed by the trial court in 2012 and 2013, respectively. Both are currently on appeal to the Eleventh Circuit.

⁶ *The Dark Side*, p. 42.

⁷ Aug. 11, 2011 Declaration of Oscar Jose Opino Pacheco, a/k/a Tolemaida, provided to PAX on March 28, 2014, and also available to the public via www.pacer.gov at docket entry 50-5 of *Drummond Company, Inc. v. Collingsworth, et al.*, United States District Court for the Northern District of Alabama, Case No. 2:11-cv-3695-RDP-TMP. References to publicly available documents in that case will hereinafter be cited to as "*Drummond v. Collingsworth* Doc. [#]."

Tolemaida has also responded to questions posed by a Colombian judge similarly testifying that he has no knowledge of Drummond ever supporting the AUC. February 7, 2012 Letters Rogatory Testimony of Oscar Jose Ospino Pacheco.

⁸ *The Dark Side*, p. 15.

their families. For example, Mr. Collingsworth and his legal team have paid close to USD \$40,000 to the family of Jairo de Jesus Charris, a witness prominently featured in the PAX report.⁹ But PAX did not provide detail of any of the witness payments. There is not a single reference to them in the body of its 70-page report. Only in an annex to the report does PAX include a vague reference to the payments, after which PAX blithely argues that “[e]ven if it should transpire that witnesses were paid by Mr. Collingsworth, there is no reason for the witness statements not to be taken into account for the purpose of this report.”¹⁰

Drummond also informed PAX that the documents filed in the U.S. court cases brought by Mr. Collingsworth against Drummond, as well as the defamation case Drummond is currently pursuing against Mr. Collingsworth, “are publicly available through the Public Access to Court Electronic Records (PACER) online service which can be found at www.pacer.gov.”¹¹ Drummond urged PAX to review those court files prior to publishing its report: “Given the gravity of the allegations made in your report, it would be no less than reckless to publish it relying on only a selection of documents from one of the cases without having reviewed in detail the entirety of the publicly available documents.”¹² It appears PAX either failed to do this or intentionally ignored the public court record.

For example, the PAX report claims, “Only the ex-manager of Drummond’s security department, Mr. James Adkins, made a statement in the US court case. Messrs. Jimenez and Araujo, Drummond Ltd. Colombia’s president and manager of community relations in the years concerned, were subpoenaed by the US District Court for the Northern District of Alabama, but failed to appear.”¹³ Had PAX made any effort to review the publicly available court file in the U.S. court case, it would have known that both of the above-quoted sentences are blatantly false. Both Augusto Jimenez and Alfredo Araujo testified in the case, and the transcripts of their testimony are available to the public.¹⁴ In all, thirteen of Drummond’s current and former employees testified in the case, including: Garry Drummond, CEO of Drummond Company, Inc.; Mike Tracy, President-Mining of Drummond Company, Inc.; Bruce Webster, Executive Vice President, General Counsel, and Secretary of Drummond Company, Inc.; Augusto

⁹ See pp. 9-10, below.

¹⁰ *The Dark Side*, p. 75. Contrary to PAX’s suggestion that this a hypothetical scenario, there no dispute that the payments were in fact made. The only dispute is why they were made. See note 59, *infra*.

¹¹ Apr. 2, 2014 Letter from H. Thomas Wells, III to Marianne Moor.

¹² *Id.*

¹³ *The Dark Side*, p. 71.

¹⁴ *Balceró, et al. v. Drummond Company, Inc., et al.*, United States District Court for the Northern District of Alabama, Case No. 2:09-cv-1041-RDP, Doc. 396-21 (Testimony of Alfredo Santander Araujo) and Doc. 470-3 (Testimony of Augusto Jimenez Mejia). References to publicly available documents in this case will hereinafter be cited as “*Balceró* Doc. [#].”

Jimenez, then President of Drummond Ltd.; and Jose Miguel Linares, then Vice President of Corporate Affairs of Drummond Ltd. and the current President of Drummond Ltd. Each one of them confirmed the falsity of the allegations lodged in Mr. Collingsworth's lawsuit, which are now being repeated in the PAX report.

As will be further detailed below, Drummond has evidence that PAX collaborated with Mr. Collingsworth in preparing the report, and on March 28, 2014, Drummond requested that PAX produce to Drummond any documents evidencing its contacts with Mr. Collingsworth.¹⁵ PAX did not respond to this request, and Drummond repeated the request on April 2, 2014.¹⁶ Again, PAX did not respond, and still has not to this day. Given the PAX report's trumpeting of the principle of transparency, it is both surprising and disappointing that PAX is not willing to be transparent with regard to its methods in creating the report. After all, by his own estimation Mr. Collingsworth and his legal team stand to potentially gain tens of millions of dollars in legal fees if a jury were to actually believe the false testimony of the paramilitary witnesses cited in the PAX report.¹⁷

Despite Drummond providing PAX with abundant evidence discrediting its claim that Drummond collaborated with paramilitaries, and rendering without basis PAX's call for a European boycott of Drummond coal, PAX failed to cite any of this evidence in its report. Drummond therefore provides this open letter to any recipients of the PAX report, lest any readers be misled into thinking that the PAX report is a well researched or balanced piece of journalism, or that it is what it claims to be: a contribution "to the truth finding process in Cesar"¹⁸ that "values the principle of hearing both sides."¹⁹

Collingsworth and Llanos Oil

Llanos Oil Exploration, Ltd. is a company that purports to focus on oil exploration and drilling in Colombia.²⁰ It is led by two brothers from the Netherlands, Albert and Hendrik van Bilderbeek.²¹ According to the Ministry of Foreign Affairs of Colombia, in 2002, Llanos Oil entered into an oil contract with the Colombian company Ecopetrol S.A., but Ecopetrol terminated it in 2003 due to Llanos Oil's breach of the

¹⁵ Mar. 28, 2014 Email from H. Thomas Wells, III to Marianne Moor.

¹⁶ Apr. 2, 2014 Letter from H. Thomas Wells, III to Marianne Moor.

¹⁷ See p. 6, below.

¹⁸ *The Dark Side*, p. 11.

¹⁹ *Id.* at 71.

²⁰ Paragraph 9 of Complaint in *Llanos Oil Exploration, Ltd. v. Drummond Company, Inc., et al.*, United States District Court for the Middle District of Florida, Case No. 6:05-cv-00580-JA-DAB (Doc. 1) (hereinafter "*Llanos Oil Complaint*").

²¹ *Id.* at ¶23.

contract.²² In September 2004, the Colombian General Prosecutor’s Office opened an investigation into Hendrik van Bilderbeek and others on charges of money laundering, and van Bilderbeek was imprisoned.²³

Llanos Oil filed a lawsuit claiming that the termination of the contract, as well as Hendrik van Bilderbeek’s imprisonment on charges of money laundering for groups such as the AUC, was a conspiracy between Ecopetrol, the Government of Colombia, and Drummond, so that Drummond could “steal” Llanos Oil’s oil rights.²⁴ The lawsuit was dismissed approximately 6 months after it was filed, before Drummond had even been served.²⁵

In July 2007, *Semana* magazine published an article featuring Javier Ernesto Ochoa Quinonez (El Mecanico)—one of the witnesses relied upon in the PAX report—wherein El Mecanico recounted meeting Hendrik van Bilderbeek in jail in Colombia, and stated “that here in jail there is a man (the Dutch national Hendrik Van Vilderbek [sic]) of Llanos Oil Company” offering money for testimony that Drummond paid the paramilitaries.²⁶ Drummond provided PAX with a copy of this article on March 28, 2014, but it is nowhere mentioned in the PAX report.

El Mecanico also testified, under oath, before the Colombian Attorney General’s Office that Hendrik van Bilderbeek offered him asylum in the Netherlands if he would offer false testimony that Drummond collaborated with the AUC.²⁷ According to El Mecanico, van Bilderbeek wanted to implicate Drummond with the paramilitaries so that Drummond would lose the oil concession once held by Llanos Oil.²⁸ El Mecanico also testified that he “never knew about the AUC meeting with Drummond.”²⁹ This testimony is omitted from the PAX report’s discussion of El Mecanico’s completely contrary statements that Drummond *did* collaborate with the AUC.

Drummond is still investigating when the first contact between Llanos Oil and Mr. Collingsworth occurred. But Mr. Collingsworth says that by May 2010 he had entered into an attorney-client relationship with Llanos Oil and the van Bilderbeek brothers “for the purpose of seeking legal advice concerning possible claims against Drummond

²² Ministry of Foreign Affairs of Colombia: Precisions about the case Llanos Oil Exploration Limited, <http://www.colombiaemb.nl/documents/LLANOSOIL.pdf>.

²³ *Id.*; *Llanos Oil* Complaint at ¶78.

²⁴ *Llanos Oil* Complaint at ¶¶1, 77-79.

²⁵ *Llanos Oil* Order of Dismissal (Doc. 21).

²⁶ <http://www.semana.com/Imprimir.aspx?idItem=87202>.

²⁷ *Balcero* Doc. 26-2.

²⁸ *Id.*

²⁹ *Id.*

Company, Inc. for its role in stealing Llanos Oil’s mineral rights in Colombia.”³⁰ In June 2010, Collingsworth and Albert van Bilderbeek emailed to discuss media coverage of Drummond and setting up meetings in the Netherlands to garner additional coverage with the Dutch press.³¹ During this discussion, Collingsworth tells van Bilderbeek he is “look[ing] forward to meeting and together **closing down** Drummond.” (emphasis added).³²

Shortly thereafter, on July 29, 2010, Mr. Collingsworth wrote Llanos Oil requesting assistance in funding the *Balceró* litigation against Drummond (what the PAX report calls the “US court case”).³³ He states: “My firm has already spent about \$750,000 in costs to get the case to this stage. To get us through the discovery period, we are going to need approximately another two million dollars for costs. ... In our system, lawyers’ fees are paid on a contingency basis only in the event we win the case. ... To be clear, we are seeking a loan or line of credit to be devoted to the costs of this case, which would be repaid once we have a verdict and recover from Drummond.”³⁴

In this letter, Mr. Collingsworth provided Llanos Oil with an enormous estimated value of a jury verdict in the case against Drummond.³⁵ Mr. Collingsworth and his legal team have entered into contracts with the *Balceró* decedents’ families entitling the lawyers to 40% of any jury award. Based on Mr. Collingsworth’s estimated value, Mr. Collingsworth and his legal team’s fees would reach into the tens of millions of dollars.

In December 2010, Mr. Collingsworth and Albert van Bilderbeek again discuss drawing attention to the case against Drummond. Mr. van Bilderbeek asks Collingsworth to send him a letter addressed to members of the Dutch Parliament.³⁶ Mr. Collingsworth suggests waiting until after the New Year, voicing concern that a letter during the holidays may “get ignored in the midst of the celebrations.”³⁷ Consistent with this suggestion, Mr. Collingsworth finalizes a letter on January 18, 2011 to be hand-delivered by van Bilderbeek to Dutch government officials in Amsterdam.³⁸

The letter states as “objective facts” that Drummond collaborated with the AUC in atrocious human rights violations, including “the violent slaughter of hundreds of

³⁰ *Drummond v. Collingsworth* Doc. 99-4.

³¹ *Drummond v. Collingsworth* Doc. 62-6.

³² *Id.*

³³ July 29, 2010 Letter from Terry Collingsworth to Albert van Bilderbeek.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Drummond v. Collingsworth* Doc. 62-10.

³⁷ *Id.*

³⁸ *Drummond v. Collingsworth* Doc. 62-11.

innocent civilians.”³⁹ Mr. Collingsworth concludes his letter by telling the Dutch Prime Minister, “I hope that you will urge your government to terminate any business relationship with Drummond until it makes full amends for the atrocities it committed in Colombia.”⁴⁰

In February 2011, Collingsworth and Llanos Oil were working on another letter to the Dutch government. On February 3, Albert van Bilderbeek emails Collingsworth “regarding campaign case strategy,” and Collingsworth works on finalizing a second letter with edits by van Bilderbeek.⁴¹ The next day, the letter is sent to Dutch government officials again implicating Drummond in murder and stating Collingsworth’s belief that members of the Dutch Parliament “are siding with Drummond and its co-conspirators over the interests of my clients, the hundreds of Colombian victims of Drummond’s human rights violations.”⁴² These letters are currently the subject of a defamation claim Drummond is pursuing against Mr. Collingsworth and his law firm in the Northern District of Alabama.⁴³

Collingsworth and PAX

In the spring of 2011, shortly after Collingsworth’s February 2011 letter, PAX of the Netherlands made a trip to Cesar, Colombia—a place it had not visited since two years earlier—at which time PAX claims the victims of paramilitary violence requested PAX to investigate a report on “paramilitary violence in the context of the mining industry in the region, and to publicize the findings to a broad international audience.”⁴⁴ Three of the victims interviewed for the report, Claudia Balcerro, Olga Martinez and Gloria Navarro Amaya, are Mr. Collingsworth’s clients in the *Balcerro* case—clients who have promised Mr. Collingsworth a large percentage of the recovery they seek to obtain from Drummond. Consistent with its stated interest in transparency, PAX should disclose all of its contacts with Mr. Collingsworth so the “broad international audience” can learn the scope of his involvement in the report.

The evidence Drummond has been able to gather thus far reflects that Collingsworth and his team provided substantial assistance to PAX. The report vaguely asserts that in 2012, PAX “gained possession” of written and oral testimonies alleging

³⁹ *Drummond v. Collingsworth* Doc. 43-2.

⁴⁰ *Id.* Compare this to the PAX report’s call to European Union governments to “[u]rge electricity utilities to refrain from buying coal from Drummond and Prodeco until effective remedy has been provided for the victims of gross human rights violations committed by the paramilitaries in Cesar between 1996 and 2006.” *The Dark Side*, p. 81.

⁴¹ *Drummond v. Collingsworth* Doc. 62-8, p. 12 of 32; *Drummond v. Collingsworth* Doc. 62-12.

⁴² *Drummond v. Collingsworth* Doc. 43-3.

⁴³ *Drummond Company, Inc. v. Terrence P. Collingsworth, et al.*, 2:11-cv-3695-RDP-TMP (N.D. Ala.).

⁴⁴ *The Dark Side*, p. 10.

Drummond's support of the AUC.⁴⁵ In August 2012, Collingsworth's team compiled paramilitary declarations for PAX.⁴⁶ In November 2012, Mr. Collingsworth communicated with PAX regarding "facts in [the] Drummond case fore [sic] report to be published in [the] Netherlands."⁴⁷ In December 2012, there were further discussions between Collingsworth's team and PAX for purposes of the report.⁴⁸

On January 29, 2013, Marianne Moor, the lead author of the report, met with Collingsworth to, in Collingsworth's words, "develop strategy for DR campaign in European Union."⁴⁹ According to the PAX report, information discovered through 2013 "led PAX to reformulate the objective underlying this report."⁵⁰

Drummond again invites PAX to disclose all of its contacts with Mr. Collingsworth and his legal team. Drummond has twice made this request directly to Marianne Moor, but these requests have been ignored. Drummond further calls upon PAX to disclose any arrangements or agreements it may have with Mr. Collingsworth and his legal team.

The Evidence

The PAX report willfully ignores mountains of contradictory evidence, and presents a selective and distorted view of the evidence it deemed worthy of mentioning in its report. For example, PAX twice references a September 1995 memorandum from James Adkins reporting on a request from the Colombian military to support Convivir groups.⁵¹ The portion of the memorandum cited by PAX actually reads:

The Cordoba Battalion Commander visited my office last week and made a presentation of [Operacion Convivir] for the purpose of obtaining Drummond financial support. He apparently misread the regulation because foreign firms like Drummond and Dole are forbidden to participate. At any rate, such a program will bring with it egregious human rights violations that preclude Drummond from ever participating. Even without Drummond and Dole, some version of the plan will undoubtedly be adopted which may heat up this region dramatically. We are better advised

⁴⁵ *Id.* at 11.

⁴⁶ Billing records for Susana Tellez, a member of Collingsworth's legal team, dated August 23, 2013.

⁴⁷ Billing records for Mr. Collingsworth dated November .

⁴⁸ Billing records for Lorraine Leete, a member of Collingsworth's legal team, dated December 3 and 4, 2012.

⁴⁹ Billing records for Mr. Collingsworth dated January 29, 2013.

⁵⁰ *The Dark Side*, p. 11.

⁵¹ *Id.* at 28, 36. Convivir groups were legal in Colombia at the time. Republic of Colombia, Decree 356 (1994).

to keep our heads down and keep producing coal. It is not our fight but we are almost certain to be affected by it.⁵²

PAX then twists this memorandum, written in **1995**, to state: “Adkins said that he informed Drummond’s CEO that the military plan to set up paramilitary groups ‘will bring with it egregious human rights violations,’ but that Garry Drummond nevertheless consented to a payment of USD 1.1 million to the army.”⁵³ The referenced payment was being discussed six years later in **October 2001**, and related to a request by the Colombian military.

In other words, PAX took a September 1995 memorandum stating that Drummond would not ever participate in Plan Convivir and combined it with an expense for the Colombian military made more than six years later (and four years after Plan Convivir was no longer in existence) to insinuate that Drummond *did* participate in Plan Convivir and supported the early formation of paramilitary groups. Such distortion of the evidence is irresponsible and dishonest, and is rampant throughout the PAX report. The PAX report cannot be viewed as anything other than an advocacy piece with an agenda. Discovering what that agenda truly is depends upon PAX adhering to its own stated goals of “transparency” and “access to information.”⁵⁴

Jairo de Jesus Charris Castro

Charris is one of the witnesses heavily relied upon in the PAX report. Charris was arrested in July 2008 for participation in the murders of two union leaders, and thereafter provided a deposition to Colombian prosecutors.⁵⁵ During this deposition, Charris denied any knowledge of coordination between Drummond and the AUC; denied knowledge of the presence of paramilitary or other subversive groups in the area of Drummond’s operations; and denied having any knowledge of paramilitary Tolemaida.⁵⁶ This deposition was provided to PAX on March 28, 2014, yet it is nowhere mentioned in the report.

According to testimony provided by Mr. Collingsworth, he and his team began meeting with Charris in July 2008.⁵⁷ After this, Charris’s story began to change. He started telling Colombian prosecutors Drummond was involved with the AUC. In July

⁵² *Balcer* Doc. 396-22.

⁵³ *The Dark Side*, p. 36. As support for the USD 1.1 million reference, PAX cites pp. 200-201 of the deposition testimony of Michael Zervos in the *Balcer* case. *Id.* at n.91. This testimony is also publicly available at *Balcer* Doc. 396-18.

⁵⁴ *The Dark Side*, p. 80.

⁵⁵ *Drummond v. Collingsworth* Docs. 43-16 and 44-1.

⁵⁶ *Drummond v. Collingsworth* Doc. 43-16 at 9-10, 17-18, 19; *Drummond v. Collingsworth* Doc. 44-1 at 8.

⁵⁷ *Drummond v. Collingsworth* Doc. 69 at ¶40 (discussing an April 2008 email sent “before [Charris] met anyone from my team, in July 2008”).

2009, Mr. Collingsworth's team paid three million Colombian pesos to Charris and his family.⁵⁸ A little more than a month later, Charris signed a declaration (not a deposition which is testimony under oath) for Mr. Collingsworth telling a dramatically different story than he told the Colombian authorities upon his arrest.⁵⁹

Documents Drummond has been able to obtain to date reflect Mr. Collingsworth and his team made payments to Charris and his family from July 2009 through September 2013, totaling 74,681,950 pesos—at exchange rates as of October 2013, this equates to more than USD \$38,000.⁶⁰ All but one of the payments were made directly to Charris' wife, Claudia Elena Pinzon.⁶¹

The payments have been facilitated by Ricardo Garzon and Yineth Baeza.⁶² Garzon is a “field attorney” for Collingsworth's law firm and NGO.⁶³ Baeza works with Francisco Ramirez who is a member of Mr. Collingsworth's legal team.⁶⁴ PAX interviewed Mr. Ramirez for its report, calling him a “human rights lawyer.”⁶⁵ Until recently, Mr. Ramirez was the President of Sintraminercol, a Colombian mineworkers' union. When Charris was asked during his testimony in the *Balceró* case who was paying his legal fees, he stated they were being paid by Francisco Ramirez's law firm.⁶⁶

Drummond provided all of this evidence to PAX on March 28, 2014. It is telling that PAX included none of it in the report.

The Role of Ivan Otero

⁵⁸ *Drummond Company, Inc. v. Terrence P. Collingsworth, et al.*, United States District Court for the Western District of Pennsylvania, Case No. 2:13-mc-00365-JBW-JO, Docs. 8-7 and 8-8. Collingsworth admits making the payments to Charris and his family, but claims they were for “security.” *Drummond v. Collingsworth* Doc. 69 at ¶38. Indeed, Collingsworth contends that all of the payments discussed herein were for “security.” Yet Collingsworth has not produced any contracts with security companies, police reports claiming the need for security, or receipts reflecting what the witnesses spent the money on.

⁵⁹ *Drummond v. Collingsworth* Doc. 69-26.

⁶⁰ *Drummond Company, Inc. v. Terrence P. Collingsworth, et al.*, United States District Court for the Western District of Pennsylvania, Case No. 2:13-mc-00365-JBW-JO, Docs. 8-7 and 8-8.

⁶¹ *Id.*; *Drummond v. Collingsworth* Doc. 43-16 at 2.

⁶² *Drummond v. Collingsworth* Doc. 43-1 at ¶5.

⁶³ *Id.* Mr. Collingsworth is the Executive Director and General Counsel of International Rights Advocates. According to its website—which is cited extensively in the PAX report—IRA is an “entity focused on litigation against US corporations for human rights violations committed abroad, principally under the Alien Tort Statute (ATS).”

⁶⁴ *Drummond v. Collingsworth* Doc. 43-1 at ¶5.

⁶⁵ *The Dark Side*, p. 61.

⁶⁶ *Balceró* Doc. 411 at 162, 164-66.

At his letters rogatory testimony in *Balceró*, Charris was represented by Ivan Otero, a Colombian criminal attorney. Based on information known to date, Mr. Otero has represented at least five of the nine paramilitaries and paramilitary collaborators cited in the PAX report: Charris, El Tigre,⁶⁷ Samario,⁶⁸ Jaime Blanco,⁶⁹ and Peinado.⁷⁰

According to an article by *Cambio*, documents discovered on property owned by Jorge 40 implicated “attorneys Guillermo Rafael Luna Arroyo and Iván Otero, in the handling of payments of substantial ‘extra attorney fees’ to get six important members of the north block network [of the AUC] out of the Santa Marta prison.”⁷¹ *Cambio* described it as a “bribe and corruption story.”⁷²

Verdad Abierta reported in September 2009 that Mr. Otero was named by victims who stated they were intimidated after a Justice and Peace hearing.⁷³ The hearing involved the murders of the CTI officials which are discussed at length in the PAX report. At that hearing, according to Verdad Abierta, it was said that Ivan Otero “pressured [two paramilitaries] to make their confessions about the disappearance of the seven CTI officials agree with those of ‘El Tigre’ and ‘Samario.’”⁷⁴ Verdad Abierta further reported that due to changing testimonies, “[t]he victims no longer have much trust in the voluntary declarations of ‘El Tigre,’” and that:

The contradictions could mean the exclusion of ‘El Tigre’ from Justice and Peace, since, according to the attorneys of the victims, the former leader of the Northern Block is not committed to the truth. In addition, Iván Otero, the defense attorney of the demobilized personnel of the Northern Block could be accused of false testimony and procedural fraud....⁷⁵

Drummond provided this article to PAX on March 28, 2014. Considering PAX claims “[o]ne of our key written sources was the website of Verdad Abierta,”⁷⁶ it is interesting

⁶⁷ *Balceró* Doc. 396-11 at 63, 74, 87-106, 194-95.

⁶⁸ *Balceró* Doc. 396-10 at 83-96, 154-56.

⁶⁹ *Balceró* Doc. 396-15 at 187-88.

⁷⁰ *Drummond v. Collingsworth* Doc. 69-29 at 12.

⁷¹ *Drummond v. Collingsworth* Doc. 78-8.

⁷² *Id.*

⁷³ *Drummond v. Collingsworth* Doc. 78-9.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *The Dark Side*, p. 14.

that PAX neglected to mention this article from Verdad Abierta's website dealing directly with many subjects of the PAX report.⁷⁷

Drummond has recently discovered that Otero entered into an agreement with Mr. Collingsworth in December 2008 whereby Otero was promised 17% of any attorney fee recovered in the *Balceró* case.⁷⁸ Francisco Ramirez was promised 16% of the fees.⁷⁹ Using Mr. Collingsworth's own estimated value of the case (discussed above), and again excluding the punitive damages multipliers, the potential benefit to Otero and Ramirez is in the millions of USD each.

Jhon Jairo Esquivel Cuadrado ("El Tigre")

One of Otero's clients at the time Mr. Collingsworth promised him a financial interest in the *Balceró* case was El Tigre. Between 2007 and 2009, El Tigre provided testimony numerous times in the Justice and Peace process and never once mentioned anything about Drummond having involvement with paramilitaries.⁸⁰ Sometime in late 2008 or early 2009, Otero and Mr. Collingsworth approached El Tigre and another of Otero's clients, Samario, about providing testimony against Drummond.⁸¹

El Tigre ultimately signed a declaration for Otero and Mr. Collingsworth in December 2009 claiming to have knowledge of Drummond's links to the AUC.⁸² This declaration is cited numerous times in the PAX report as El Tigre's "written statement."

A few months later in February 2010, El Tigre gave testimony to the Colombian Attorney General's Office.⁸³ El Tigre testified, under oath:

ASKED: Please state if you found out or if you realized about a possible infiltration, of members of the self-defenses from the Northern Block in DRUMMOND. In case it is affirmative, what do you know in this respect?

ANSWERED: I never knew nor was I ever told to look for an approach with that company. Our objective was to fight subversion. **ASKED:** Please state if you found out about a possible indulgence, permissiveness, cooperation, liking or sympathy of the managers or workers from

⁷⁷ <http://www.verdadabierta.com/justicia-y-paz/imputaciones/558-bloque-norte/1699-victimas-amenazadas-en-valledupar>.

⁷⁸ *Drummond v. Collingsworth* Doc. 69 at ¶51.

⁷⁹ *Id.*

⁸⁰ *Balceró* Doc. 396-11 at 86-87.

⁸¹ *Balceró* Doc. 396-10 at 83-85, 113-16.

⁸² *Balceró* Doc. 396-11 at 87-112.

⁸³ *Balceró* Doc. 221-5.

DRUMMOND with members of the self-defenses of the Northern Block. In case it is affirmative, what do you know in this respect? **ANSWERED:** Never did I personally receive money or logistics from that company; on the contrary, we were financed by installments from the cattlemen[] and for that, there was a financier in charge, a retired captain from the SIPOL by the name of WILSON POSADA. He was the one who coordinated the actions and the coordinator who was at the head was Mr. SANTIAGO TOBON. I never had anything to do with the finance issues. My activity was the military action against the subversion. I never had any meeting with DRUMMOND nor do I know them. I know that such company exists because when I was at the head, they told me where it was located, and the military forces protected it. ... **ASKED BY THE DEFENSE MR. AUGUSTO JIMENEZ:** Under oath, please say in simple and precise manner if during the time that you were in command of self-defense groups, was there any relation or link of any nature with DRUMMOND or its executives AUGUSTO JIMENEZ, GARRY DRUMMOND and ALFREDO ARAUJO? **ANSWERED:** At no moment have I heard or have I had any knowledge that there have been links of that company or of the persons mentioned in the question with the Self-Defenses. I have not heard about them whether outside or being in prison.⁸⁴

This testimony was provided to PAX, along with the above discussed evidence regarding El Tigre's attorney, Ivan Otero, on March 28, 2014. It is nowhere mentioned in the PAX report.

Alcides Mattos Tabares ("Samario")

Another of Otero's clients at the time who obtained a substantial financial interest in the Drummond case was Samario. Up to that point, Samario had never claimed to have knowledge of Drummond having links to the AUC. On November 23, 2009, Samario testified at a Justice and Peace hearing regarding the murders of the Drummond union leaders.⁸⁵ He was specifically asked whether he knew why the murders occurred, how they were planned, and who cooperated.⁸⁶ He testified:

well at that time I was just a simple bodyguard of the commander of the front. It was rumor inside the front because one would hear inside the front and of which I made part of that there were many, in other words, who had something to do with this canteen that was inside Drummond and some

⁸⁴ *Id.*

⁸⁵ Nov. 23, 2009 Free Version of Samario in Justice and Peace.

⁸⁶ *Id.*

executives from Drummond. I am not aware, I did not see it, I did not see those of the, if it was true or if it was not true. This was just gossip inside the group.⁸⁷

Eleven days later, Samario signed a declaration (not a deposition which is testimony under oath) for Otero and Collingsworth claiming to know that Drummond ordered the deaths of the union leaders.⁸⁸ Although he made these claims to Mr. Collingsworth and his team, to Drummond's knowledge, Samario has not provided any testimony to Colombian authorities regarding Drummond having any link to paramilitaries.

In a May 2010 declaration to the Colombian Attorney General's Office, El Mecanico was asked about his knowledge of Samario.⁸⁹ He testified, under oath, as follows:

ASKED.- Do you know Mr. MATOS TABARES and what opinion do you have of him? **ANSWERED.-** Yes. I know ALCIDES. I met him at the end of 2002 when he left the legal prison and he went back again to the ranks of the JUAN ANDRÉS ALVAREZ front, I don't know exactly in what month. From there, in several meetings, they agreed on to appoint him as urban commander of a town in gratitude for not having allowed the arrest of TOLEMAIDA, when he was captured in the district of la Guajirita from the municipality of Becerril. He was appointed urban commander in the month of January, 2003 in the municipality of Becerril, Cesar. He was there until January, 2005. From there he was transferred from la Jagua to be the one in charge of the Urban of la Jagua de Ibérico until the date in which he was arrested, which was halfway through 2005. We met again in jail when I was captured in 2006 in the prison of Valledupar. When I arrived at the judicial prison, the economical situation of ALCIDES MATOS was precarious because several times I gave him minutes on my mobile phone plan that I had inside the prison. The number was 310-684-0895, which nowadays my wife uses it. I gave him minutes so that he could call home because he had no money with which he could call home. Nowadays he has a comfortable economical situation. It is being said that he received money to accept the charges of having participated in the homicides of the labor union members from DRUMMOND, Mr. ORCASITA and the other I do not remember his name right now. It is said that he received money from the civil part. ...

⁸⁷ *Id.*

⁸⁸ *Drummond v. Collingsworth* Doc. 69-37.

⁸⁹ May 14, 2010 Declaration of Javier Ernesto Ochoa Quinonez to Fiscalía General de la Nación.

ALCIDES MATTOS has committed a large amount of atrocities in his declarations. If you investigate, in 2007 he was in the psychiatric ward of the prison in Valledupar. When he belonged to the self-defenses, he asked for permission to go to Bucaramanga to the Ardila Lulle clinic to do some exams of his head, which I don't know exactly.⁹⁰

Of course, none of this testimony is cited, referenced or mentioned in the PAX report.

Jose del Carmen Gelvez Albarracin (“El Canoso”)

Between 2006 and 2012, El Canoso testified six times in the Justice and Peace process, and never once mentioned Drummond as having any connections to paramilitaries.⁹¹ Between December 2010 and February 2011, El Canoso met Charris when they were serving in the same prison.⁹² By that time, Charris's family had been receiving monthly payments from Mr. Collingsworth's team for approximately a year-and-a-half.⁹³ Those payments were monthly deposits made by the assistant to Francisco Ramirez.⁹⁴

Charris informed El Canoso that he had already provided a declaration to Mr. Collingsworth, and offered to introduce him to Francisco Ramirez to provide testimony against Drummond.⁹⁵ El Canoso met with Ramirez in approximately February 2011.⁹⁶

On November 21, 2011, El Canoso signed a declaration for Mr. Collingsworth's team.⁹⁷ On November 28, 2011, \$2,084 was wired to El Canoso's wife from the bank account of Mr. Collingsworth's law firm.⁹⁸ But when El Canoso provided his oral testimony in *Balceró*, and before this payment was ever disclosed to Drummond, he stated: “I'm not receiving any benefits, financial benefits. I don't need them. Since I come from a good family, a good family of principles and it's not money what makes me

⁹⁰ *Id.*

⁹¹ *Balceró* Doc. 396-24 at 95-96.

⁹² *Id.* at 96-100.

⁹³ See pp. __, above.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 96.

⁹⁷ This is the “written statement” cited numerous times in the PAX report.

⁹⁸ *Drummond v. Collingsworth* Doc. 44-16; *Drummond v. Collingsworth* Doc. 69 at ¶44.

talk about this.”⁹⁹ El Canoso neglected to mention the more than \$2,000 his wife received from Mr. Collingsworth’s law firm less than five months earlier.

El Canoso does not claim to have much knowledge about Drummond, given that during the relevant time period he was an employee of Prodeco. But the limited knowledge he claims to have is objectively false. El Canoso claims that he attended a meeting with Drummond security officials during which Drummond and Prodeco allegedly agreed to provide support to the paramilitaries.¹⁰⁰ One of the Drummond employees supposedly present was Luis Carlos Rodriguez.¹⁰¹ Although he does not specify the date of the meeting, it had to have occurred prior to the end of 1997, when El Canoso states he was no longer employed by Prodeco.¹⁰² Luis Carlos Rodriguez did not begin working for Drummond until November of 1999, some two years later.

Libardo Duarte (“Bam Bam”)

Although the PAX report attributes little to Bam Bam, payments were made for his benefit as well. On April 15, 2011, Bam Bam emailed Lorraine Leete, another member of Mr. Collingsworth’s legal team, and provided Leete with the names and account information for two women.¹⁰³ Over the next two weeks, Mr. Collingsworth’s law firm made transfers into these women’s bank accounts totaling \$10,000.¹⁰⁴ Drummond provided PAX with this information on March 28, 2014. Like most all of the other evidence provided, PAX did not mention it in its report.

Bam Bam’s testimony is also demonstrably false. Bam Bam claims to have arrived in the Cesar region in late 1998 or early 1999.¹⁰⁵ PAX quotes his claim that after he arrived, “My main job was to patrol the roads of the area to make sure that the trucks carrying Drummond’s coal to [the dock of] Prodeco, where it was loaded onto ships, was safe.”¹⁰⁶ The problem with this is during the time Bam Bam claims to have been in Cesar, Drummond transported its coal exclusively by train.¹⁰⁷ There were no Drummond

⁹⁹ *Balcerio* Doc. 396-24 at 151-52.

¹⁰⁰ *The Dark Side*, p. 14.

¹⁰¹ *Id.* at n.99.

¹⁰² *Balcerio* Doc. 407-43 at ¶4.

¹⁰³ *Drummond v. Collingsworth* Doc. 44-12.

¹⁰⁴ *Drummond v. Collingsworth* Docs. 44-13 and 44-15; Doc. 12 at 26-27 *Drummond Company, Inc. v. Collingsworth, et al.*, No. 9:14-mc-80660-JIC (S.D. Fla.).

¹⁰⁵ *Balcerio* Doc. 137-1 at ¶8.

¹⁰⁶ *The Dark Side*, p. 53.

¹⁰⁷ *Balcerio* Doc. 185-1.

coal trucks for Bam Bam to have been protecting.¹⁰⁸ Furthermore, Drummond has never used Prodeco's port to ship coal or for any other purpose.¹⁰⁹

Bam Bam's claim, repeated by PAX, that during this time he knew of forced displacements to provide land for the rail line is also a fabrication.¹¹⁰ Drummond did not build the main rail line, which was built by the Colombian government in the 1950s.¹¹¹ Drummond did build a spur from the railroad to its mine near La Loma, which is approximately 12.5 km in length.¹¹² It purchased the land for this spur in 1994 (long before Bam Bam claims to have been in the area) from a small number of large landowners, who are easily identified and none of whom was "displaced" or harmed in any way.¹¹³ Another short spur was built on Drummond's own property at its port, and did not require the purchase of land.¹¹⁴

PAX also repeats Bam Bam's allegation that Drummond came to own land near the town of El Copey after the violent displacement of the landowners by the AUC.¹¹⁵ This, too, is objectively false. The town of Copey is some 83 km (51 miles) north of Drummond's mine. Drummond has never acquired and does not own any land near the town of Copey.¹¹⁶ Drummond invites PAX to produce a property record that would support this false allegation printed in its report.

Finally, PAX asserts that Bam Bam "confirmed" that "he regularly saw vehicles being fuelled at the Drummond mine."¹¹⁷ But in attempting to support his claim, Bam Bam provides a false description of the layout of Drummond's mine, suggesting that—contrary to his statements—he has never been on the property. He states that "[o]nce inside the main gate, the area where the trains are loaded with coal is on the left."¹¹⁸ In fact, as shown by a satellite map, the coal loading facility at Drummond's mine is on the right, more than 6 km inside the main gate.¹¹⁹ Duarte claims that the road to the mine's pit is on the left.¹²⁰ In fact, the pit is on the right.¹²¹ He also says that mobile homes for

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *The Dark Side*, p. 53.

¹¹¹ *Balceró* Doc. 185-2.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *The Dark Side*, p. 53.

¹¹⁶ *Balceró* Doc. 185-1.

¹¹⁷ *The Dark Side*, p. 53.

¹¹⁸ *Balceró* Doc. 137-1 at ¶22.

¹¹⁹ *Balceró* Doc. 185-1.

¹²⁰ *Balceró* Doc. 137-1 at ¶22.

the Drummond managers are on the right.¹²² In fact, housing for managerial personnel is on the far side of the mine near the airstrip.¹²³ Finally, Duarte says “military guards” admitted him at the gate.¹²⁴ No members of the military have ever served as guards at the gate to Drummond’s mine.¹²⁵

Jaime Blanco Maya (“Blanco”)

The PAX report puts great emphasis on the testimony of Blanco. When Blanco was arrested in September 2010, Blanco provided a declaration to the Colombian Attorney General’s Office.¹²⁶ Blanco testified, under oath, that he had no knowledge of Charris being affiliated with the AUC and that Charris is an extortionist.¹²⁷ He also testified that he never met El Tigre, he had no prior knowledge of the deaths of the union leaders, and he had no knowledge of Drummond being involved with the deaths of the union leaders.¹²⁸

In reference to the allegation that Drummond funneled money to the AUC using his company, Blanco testified that this was “something that is absolutely false and accounting-wise impossible. It is what we call a numerical reality.”¹²⁹ Blanco informed the Colombian Attorney General’s Office that money was being offered to paramilitaries to give false testimony for a civil case against Drummond in the United States:

I want to state before Mr. Prosecutor with all due respect that a lot of interests are moving with respect to this issue since the only objective of this moment is to link DRUMMOND to a civil proceeding so that a proceeding be reopened in the United States, the proceeding that had already been closed. It is merely a financial interest. It would be good that the Office of the Prosecutor would look into the labor unions, NGOs and a large amount of lawyers who are offering money to these demobilized groups that are in precarious financial conditions so that they say what they want to hear or say.¹³⁰

¹²¹ *Balceró* Doc. 185-1.

¹²² *Balceró* Doc. 137-1 at ¶22.

¹²³ *Balceró* Doc. 185-1.

¹²⁴ *Balceró* Doc. 137-1 at ¶22.

¹²⁵ *Balceró* Doc. 185-1.

¹²⁶ *Drummond v. Collingsworth* Doc. 99-3.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

In February and March of 2011, Collingsworth began communicating with Blanco, offering help with the FBI as well as with a civil case.¹³¹ During the next few months, Collingsworth had discussions with his co-counsel wherein he requested whether they could pay up to \$100,000 for Blanco’s criminal legal fees.¹³² One of the attorneys questioned whether this was a wise course: “If paying his legal fees is going to be disclosed at some point in his deposition (which I’m sure we can all agree it will be), would it be of any real value to our case if his credibility as a witness is significantly damaged as the payment will likely be viewed as a form of bribery?”¹³³ Mr. Collingsworth responded with a question of his own: “*As opposed to him saying Drummond had nothing at all to do with it?*”¹³⁴

As testified to by Blanco, Ivan Otero—to whom Collingsworth promised 17% of all legal fees collected in the *Balceró* case—ultimately began representing Blanco in his criminal proceeding in Colombia.¹³⁵ On October 14, 2011, Blanco gave Mr. Collingsworth a declaration which completely contradicted his prior testimony to the Colombian Attorney General’s Office and implicated Drummond in financing the AUC.

Drummond provided PAX with all of this evidence on March 28 and April 2, 2014. PAX did not include any of it in its report.

Moreover, PAX ignored irreconcilable versions of the events in the evidence it *did* rely on for its report. On pages 46-47 of the report, PAX recounts Blanco’s claim that his company’s food services contract was negotiated in 1995 and 1996 with inflated prices to allow for payments to paramilitaries—specifically, to El Tigre. PAX quotes Blanco’s statement that he personally delivered the money every month from late 1996 until El Tigre’s arrest in July 2000.¹³⁶

PAX then immediately follows with a discussion of El Tigre’s testimony.¹³⁷ But El Tigre unequivocally testified that the first time he ever met Blanco was in March or April 2000, when Blanco gave him information that caused El Tigre to murder a man named Victor Guerra.¹³⁸ El Tigre testified to that exact same thing before the Colombian

¹³¹ *Balceró* Doc. 396-15 at 183-88; *Drummond v. Collingsworth* Doc. 101-16.

¹³² *Drummond v. Collingsworth* Docs. 101-15 and 101-17

¹³³ *Drummond v. Collingsworth* Docs. 101-15 at PWEMAIL000066-67.

¹³⁴ *Id.* at PWEMAIL000066 (emphasis added).

¹³⁵ *Balceró* Doc. 396-15 at 187-88.

¹³⁶ *The Dark Side*, p. 46-47.

¹³⁷ *Id.* at 47.

¹³⁸ *Balceró* Doc. 396-15 at 41-46.

Attorney General's Office.¹³⁹ PAX provides no explanation as to how these two versions of the events could possibly be true.

* * *

Drummond has been defending itself against false claims that it collaborated with Colombian paramilitaries since 2002, and has been exonerated in every case to have reached conclusion. During the course of this serial litigation, Drummond has produced hundreds of thousands of pages of documents, and submitted to at least 20 depositions of its current and former employees and executives. Drummond also opened its financial records for review. There is not a single document that evidences a single payment to any illegal group in Colombia. The only "evidence" mustered was the contradictory testimony of a handful of convicted criminals, several of whom are admitted mass murderers. As the trial court stated in dismissing the case in which this evidence was gathered, "when the statements are brought into the sunshine, they cannot withstand scrutiny."¹⁴⁰ We hope this letter illuminates PAX's irresponsibility in relying wholeheartedly on such sources.

PAX claims that it "values the principle of hearing both sides before publishing a report and will, if possible, maintain a dialogue with all parties referred to in a report."¹⁴¹ Yet PAX conducted its entire investigation, supposedly more than two years worth, without seeking any input from Drummond. When Drummond finally learned of the report, after it was already substantially complete, Drummond provided PAX with an enormous amount of evidence discrediting the allegations contained in the report. PAX either ignored, or deliberately omitted, all of the evidence provided by Drummond that contradicts PAX's incendiary theme, which raises serious questions about the agenda behind the report.

After Drummond provided thousands of pages of testimony and documentary evidence to PAX, we requested that PAX reciprocate by producing its communications with Terrence Collingsworth. We are particularly interested in their discussions regarding what Mr. Collingsworth described as developing a "strategy for DR campaign in [the] European Union."¹⁴² PAX ignored these requests. A true dialogue requires meaningful participation from both sides. Drummond invites PAX to disclose all contacts, arrangements and/or agreements with Collingsworth and his team, and prove that when PAX extols the virtues of transparency, it is not simply paying lip service.

¹³⁹ *Balceró* Doc. 221-5 at 2-3.

¹⁴⁰ *Balceró* Doc. 455 at 11. Contrary to PAX's suggestion that *Balceró* was dismissed on a technicality, *The Dark Side* p. 72, the trial court undertook a searching review of the evidence and, even viewing it in a light most favorable to the plaintiffs, found it to be lacking. The change in the law referenced by PAX had no impact on the trial court's review of the evidence.

¹⁴¹ *The Dark Side*, p. 71.

¹⁴² Billing records for Mr. Collingsworth dated January 29, 2013.

PAX should recognize that its accusations of criminal conduct by Drummond is intended to cause harm. Drummond asks: What is PAX's purpose?