

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

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<b>Freddy Locarno Baloco; Katherine Paola</b>	)	
<b>Lacarno Baloco, through her guardian and</b>	)	<b>Case No. 7:09-cv-00557-</b>
<b>representative Yaneth Ester Baloco Tapia;</b>	)	<b>RDP</b>
<b>Ayleen Paola Orcasita Almarales; Stefany</b>	)	
<b>Loren Orcasita Cordoba; Marlon Alexi</b>	)	
<b>Orcasita Almarales, through his guardian</b>	)	
<b>and representative Elisa Almarales Vloria;</b>	)	
<b>Ashly Patricia Orcasita Almarales through</b>	)	
<b>her guardian and representative, Elisa</b>	)	
<b>Almarales Vloria; Sergio Esteban Soler</b>	)	
<b>Urrego; Ingrid Karina Soler Urrego; Greysi</b>	)	
<b>Paola Locarno Larios; Gustavo Alberto</b>	)	
<b>Locarno Larios; Linda Teresa Orcasita</b>	)	
<b>Pineda; Vanessa Katherine Orcasita</b>	)	
<b>Pisccioty,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
	)	
<b>Drummond Company, Inc.;</b>	)	
<b>Drummond Ltd; Augusto Jimenez;</b>	)	
<b>James Adkins; Mike Tracy,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	

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**FIRST AMENDED COMPLAINT**

Plaintiffs hereby submit their First Amended Complaint and allege as follows:

## **I. INTRODUCTION**

1. Plaintiffs are children and legal heirs of Valmore Locarno Rodriguez (hereinafter Locarno), Victor Hugo Orcasita Amaya (hereinafter Orcasita), and Gustavo Soler Mora Amaya (hereinafter Soler) who were union leaders and employees of Drummond Company, Inc. and Drummond Ltd. (collectively, “Drummond”) and were assassinated by paramilitaries of the United Self-Defense Forces of Colombia (hereinafter “AUC”), hired by Drummond. The original Plaintiffs to this action are Freddy Locarno Baloco, Katherine Paola Locarno Baloco, through her legal guardian and representative Yaneth Ester Baloco Tapia; Marlon Alexi Orcasita Almarales and Ashly Patricia Orcasita Almarales, through their guardian and representative, Elisa Almarales Vilorio; Ayleen Paola Orcasita Almarales, Stefany Loren Orcasita Almarales; Sergio Esteban Soler Urrego; and Ingrid Karina Soler Urrego.. Plaintiffs are the legal heirs to, and wrongful death beneficiaries of Locarno, Orcasita, and Soler. Greysi Paola Locarno Larios, Gustavo Alberto Locarno Larios, Linda Teresa Orcasita Pineda and Vanessa Katherine Orcasita Pisccioty join this amended Complaint as the children and legal heirs to, and wrongful death beneficiaries of Locarno and Orcasita, respectively. Additionally, Freddy Locarno Baloco and Ingrid Karina Soler Urrego are no longer minors and therefore now represent themselves in this case. Plaintiffs, in their

capacities as wrongful death beneficiaries, bring claims for damages on behalf of the decedents and for their own damages incurred as a result of the executions of the decedents based on war crimes and extrajudicial killings under the Alien Tort Statute (“ATS”) and for extrajudicial killing under the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350, against Defendants Drummond Company, Inc. (“DCI”); Drummond Ltd. (“DLTD”); and amend this complaint to add Defendant James Adkins, former Director of Security for DCI; and Defendant Mike Tracy, President of DCI Mining Operations (hereinafter collectively referred to as “Drummond” or “Defendants” unless otherwise specified).

2. This case is brought under the Alien Tort Claims Act (ATS), Torture Victims Protection Act (TVPA), 28 U.S.C. § 1350, and Colombian wrongful death law, and seeks to remedy the violent persecution of trade unionists working at the Drummond facilities in Colombia. These facilities include the coal mine in Valledupar, Colombia, the rail line connecting the coal mine to the port near Santa Marta, Colombia, and Puerto Drummond, the company-owned port used to load coal on shipping barges.

3. By 1999, Drummond had developed a strong relationship with the AUC. Drummond initially stated that it would remain neutral in the civil conflict between the leftist guerillas, particularly the FARC, and the Colombian military

and its AUC paramilitary proxies. In a September 13, 1995 memo from Defendant Adkins to Defendant Tracy, the President of Mining Operations for DCI, Adkins as head of security for Drummond indicated that he was perplexed as to why the guerillas had yet to make a significant attack on Drummond. He suggested that the short run goal for the company should be to keep its head down and mine coal. However, according to Drummond security reports, the company was formally declared a military target by the guerillas.

4. After considering the various options, Drummond chose to enter the conflict. By no later than 1999, Drummond formally took a side in the civil conflict and joined with the AUC to defeat the FARC and drive its remnants out of Cesar and Magdalena Provinces. For its part, Drummond financed a significant expansion of the AUC's Juan Andres Alvarez Front, based in Cesar Province. Along with providing this Front funds to arm and supply over 165 new soldiers, Drummond provided it with its day-to-day operating expenses.

5. Further, Drummond re-prioritized and directed the strategy of the Juan Andres Alvarez Front, conditioning ongoing support on requiring it to focus on defeating the FARC and eliminating its supporters and sympathizers in the area of Drummond's railroad line going through Cesar and Magdalena Provinces. During the first year of Drummond's formal relationship with the AUC,

Drummond escalated its own role and began coordinating the collection of funds from other companies and individuals in the area. Drummond provided funds directly to the AUC and also to Popa Battalian Commander Colonel Mejia, who was in charge of the official Colombian military troops on the Drummond property. Colonel Mejia then distributed the funds supplied by Drummond to AUC leaders based on confirmed executions of suspected guerilla supporters.

6. As a result of Drummond's direct intervention in the civil conflict in these areas, hundreds of people living in Drummond's railroad corridor were executed as the AUC utilized its well-known scorched earth methodology as a way to terrorize the local population and ensure they would no longer support or sympathize with the FARC.

7. Drummond also shared with the AUC an intense hatred of trade unionists. Drummond's strong anti-union position, and its willingness to use unlawful means to keep unions out of its facilities, dates to the early days of Drummond's operations in Alabama. In Colombia, however, Drummond was able to use the lawless environment to engage in an ongoing campaign of terror against trade unionists.

8. As is detailed more fully below, Drummond hired, contracted with and directed AUC paramilitary forces to use extreme violence, including against trade

union leaders, to protect their property, assets and profits. Locarno, Orcasita, and Soler were murdered by paramilitaries employed by and working for the Drummond Defendants. Defendants directed the paramilitaries to carry out these killings to eliminate effective leaders of the trade union representing Drummond workers, and to intimidate other workers from joining the union or assuming a union leadership position. The murders of Locarno, Orcasita, and Soler are extrajudicial killings in violation of the ATS, the TVPA, international human rights law and Colombian law.

9. Plaintiffs do not have access to an independent or functioning legal system within Colombia to raise their complaints. Any efforts by Plaintiffs to seek redress would be futile because those seeking to challenge official or paramilitary violence, including prosecutors and prominent human rights activists, are at great risk of retaliation. In particular, there is almost complete legal impunity for the murder of trade unionists in Colombia. Further, no remedies are possible in Colombia against the Defendants residing in the U.S. due to lack of personal jurisdiction. Also, there is no course of action for civil damages available in Colombia against the Drummond corporate Defendants.

10. Prior to their murders, Locarno, Orcasita and Soler sought the assistance and protection of the Colombian Administrative Department of Security (DAS) –

the government organization tasked at the time to protect unionists under threat -- citing threats of death against them and their colleagues. Not only was no action taken by the DAS to redress these concerns, subsequent evidence indicates the DAS was actually collaborating with the paramilitaries, was funneling money to them and was providing the paramilitaries with lists of unionists to kill on behalf of politically and economically powerful individuals.

11. In fact, the collaboration between the AUC and the government of Colombia goes to the highest levels and ensures that no serious action will be taken in Colombia to bring to justice those involved in the murders alleged herein. Indeed, the administration of former Colombian President Alvaro Uribe is under pressure from outside Colombia, including from the U.S., due to the ongoing “para-political” scandal which has implicated numerous high-ranking government officials, including 60 congressional representatives aligned with Uribe, and high-ranking military officers in collaborating with paramilitaries and shielding paramilitaries from justice. However, within Colombia, it is business as usual. According to a Human Rights Watch (HRW) report issued in November, 2008, entitled, *Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia*, Human Rights Watch explains that:

In Colombia, more than in almost any country in the Western hemisphere, violence has corroded and subverted democracy. Too often, killings and

threats - not free elections or democratic dialogue - are what has determined who holds power, wealth in the country.

Nowhere is this more evident than in the relationship between paramilitary groups and important sectors of the political system, the military and the economic elite. Paramilitary groups have ravaged much of Colombia for two decades. Purporting to fight the equally brutal guerillas of the left, they have massacred, tortured, forcibly 'disappeared,' and sadistically killed countless men, women, and children. Wherever they have gone, they have eliminated anyone who opposed them, including thousands of trade unionists, human rights defenders, community leaders, judges and ordinary civilians.

12. In this same report, HRW blames the “para-political” phenomenon for the extensive paramilitary violence throughout the country. As HRW explains, **“[t]he close military-paramilitary collaboration in several regions allowed the paramilitaries to commit massacre after massacre of civilians largely unimpeded and with impunity.”** HRW further relates that former President Uribe himself has been a major obstacle to the efforts of the Colombian Supreme Court to investigate and punish government officials for collaborating with the paramilitaries. As HRW states, “President Uribe has [r]epeatedly launched personal attacks on the Supreme Court and its members in what increasingly looks like a concerted campaign to smear and discredit the Court; [o]pposed and effectively blocked meaningful efforts to reform the Congress to eliminate paramilitary influence; [p]roposed constitutional reforms that would remove the 'parapolitics' investigations from the jurisdiction of the Supreme Court.” Even

after former President Uribe left office in July 2010, around 80 members of congress remain under criminal investigation by the Colombian Supreme Court of Justice for their alleged illegal ties to the AUC. However, according to Amnesty International, “the government has repeatedly sought to undermine the legitimacy of the Court in order to assure impunity. Several magistrates investigating the case have been threatened, placed under surveillance and have had their communications intercepted by state institutions.”

## **II. JURISDICTION AND VENUE**

13. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, based on the ATS and the TVPA, 28 U.S.C. §1350, for the alleged violations of international human rights law. Supplemental jurisdiction exists over the state law causes of action pursuant to 28 U.S.C. §1367.

14. Venue properly lies in this Judicial District pursuant to 28 U.S.C. §1391(b) and (c) as Defendants Drummond Company, Inc. and Drummond Ltd. are Alabama corporations, with their principle places of business in Alabama.

## **III. PARTIES**

### **A. Plaintiffs**

15. The original Plaintiffs in this action were Freddy Locarno Baloco, Katherine Paola Locarno Baloco, through her legal guardian and representative

Yaneth Ester Baloco Tapia; Marlon Alexi Orcasita Almarales and Ashly Patricia Orcasita Almarales, through their legal guardian and representative, Elisa Almarales Vilorio; Ayleen Paola Orcasita Almarales, Stefany Loren Orcasita Almarales; Sergio Esteban Soler Urrego; and Ingrid Karina Soler Urrego. Plaintiffs are the legal heirs to, and wrongful death beneficiaries of Locarno, Orcasita and Soler, who were murdered by the AUC receiving support from Defendant Drummond.

16. An additional four (4) Plaintiffs join this Amended Complaint, Greysi Paola Locarno Larios, Gustavo Alberto Locarno Larios, Linda Teresa Orcasita Pineda and Vanessa Katherine Orcasita Pisccioty and they are the children and legal heirs to, and wrongful death beneficiaries of Valmore Locarno Rodriguez and Victor Hugo Orcasita Amaya, respectively. Plaintiffs herein and their mothers- Josefina Matilde Larios Henriquez, Carmen Elena Pineda Piedrahita, and Luz Marina Pisccioty Fuentes- have not been a party to any prior legal action brought against the Drummond Defendants for the murder of their fathers.

17. Plaintiffs are all legal beneficiaries following the murders of their fathers under federal common law, international law, and the law of Colombia, and all have standing to sue to recover their personal damages following the extrajudicial killings of their fathers. Plaintiffs have suffered damages, including emotional

harm, loss of companionship and financial support, as a result of the murders of Locarno, Orcasita and Soler. Plaintiffs seek compensatory and punitive damages in amounts to be ascertained at trial for the harm they have suffered individually as well as for the harm suffered by Locarno, Orcasita and Soler leading up to and during their murders and for their loss of life. The Plaintiffs further seek equitable relief to prevent further human rights violations.

18. Plaintiff Freddy Locarno Baloco, was a minor child when this complaint was originally filed on March 20, 2009 and is now an adult person of 18 years. He now brings this case on his own behalf for his own personal damages suffered as the result of the murder of his father. He was not a party to any prior legal action brought against the Drummond Defendants for the murder of his father, and he has the status of a legal beneficiary following his father's death under federal common law, international law, and the law of Colombia. He seeks damages and equitable relief for the death of his father, Locarno, who was a citizen and resident of Colombia and was murdered on March 12, 2001. He resides in Canada, having fled there with his family and obtaining refugee status following threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Locarno when it was common knowledge in

Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

19. Katherine Paola Locarno Baloco, a minor, seeks damages and equitable relief for the death of her father, Locarno, who was a citizen and resident of Colombia and was murdered on March 12, 2001. She brings this case, through her mother, Yaneth Ester Baloco Tapia, who is her guardian and representative in this case, for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Canada, having fled there with her family and obtaining refugee status following threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Locarno when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

20. Ayleen Paola Orcasita Almarales, an adult individual of 23 years of

age, seeks damages and equitable relief for the death of her father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. She brings this case for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia, but has moved several times after the death of her father because of threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Orcasita when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

21. Stefany Loren Orcasita Cordoba, an adult individual of 22 years of age, seeks damages and equitable relief for the death of her father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. She brings this case for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a

legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia, but has moved several times after the death of her father because of threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Orcasita when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

22. Marlon Alexi Orcasita Almarales, a minor child, seeks damages and equitable relief for the death of his father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. He brings this case through his mother, Elisa Almarales Vilorio, who is his guardian and representative in this case, for his own personal damages suffered as the result of the murder of his father. He was not a party to any prior legal action brought against the Drummond Defendants for the murder of his father, and he has the status of a legal beneficiary following his father's death under federal common law, international law, and the law of Colombia. She resides in Colombia, but has moved several times after the death of her father because of threats to the family from the AUC when the family and the union complained to government authorities about the

failure of the government to investigate or prosecute the AUC for the murder of Orcasita when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

23. Ashly Patricia Orcasita Almarales, a minor child, seeks damages and equitable relief for the death of her father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. She brings this case through her mother, Elisa Almarales Vilorio, who is her guardian and representative in this case, for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia, but has moved several times after the death of her father because of threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Orcasita when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

24. Sergio Esteban Soler Urrego, an adult person of 25 years of age, seeks damages and equitable relief for the death of his father, Soler, who was a citizen and resident of Colombia and who was murdered in October 2001. He brings this case on his own behalf for his own personal damages suffered as the result of the murder of his father. He was not a party to any prior legal action brought against the Drummond Defendants for the murder of his father, and he has the status of a legal beneficiary following his father's death under federal common law, international law, and the law of Colombia. He resides in Colombia, but has moved several times after the death of his father because of threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Soler when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

25. Plaintiff Ingrid Karina Soler Urrego, was a minor child when this complaint was originally filed on March 20, 2009 and is now an adult person of 19 years. She now brings this case on her own behalf for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her

father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She seeks damages and equitable relief for the death of her father, Soler, who was a citizen and resident of Colombia and who was murdered in October 2001. She resides in Colombia, but has moved several times after the death of her father because of threats to the family from the AUC when the family and the union complained to government authorities about the failure of the government to investigate or prosecute the AUC for the murder of Soler when it was common knowledge in Colombia that the highest levels of the AUC, including Jorge 40, planned the murders of the Drummond union leaders at the behest of the Drummond Defendants.

26. Greysi Paola Locarno Larios, an adult individual of 24 years of age, seeks damages and equitable relief for the death of her father, Locarno, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. She brings this case for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia.

27. Gustavo Alberto Locarno Larios, an adult individual of 20 years of age, seeks damages and equitable relief for the death of his father, Locarno, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. He brings this case for his own personal damages suffered as the result of the murder of her father. He was not a party to any prior legal action brought against the Drummond Defendants for the murder of his father, and he has the status of a legal beneficiary following his father's death under federal common law, international law, and the law of Colombia. He resides in Colombia.

28. Linda Teresa Orcasita Pineda, an adult individual of 24 years of age, seeks damages and equitable relief for the death of her father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001. She brings this case for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia.

29. Vanessa Katherine Orcasita Pisccioty, an adult individual of 27 years of age, seeks damages and equitable relief for the death of her father, Orcasita, who was a citizen and resident of Colombia and who was murdered on March 12, 2001.

She brings this case for her own personal damages suffered as the result of the murder of her father. She was not a party to any prior legal action brought against the Drummond Defendants for the murder of her father, and she has the status of a legal beneficiary following her father's death under federal common law, international law, and the law of Colombia. She resides in Colombia and was living with her father at the time of his assassination. Following his murder, she went to live with her mother. A truck circled her mother's home on a regular basis for three months after her father's assassination.

**B. Defendants**

30. Defendant Drummond Company, Inc. is a for-profit corporation incorporated in Alabama that is engaged primarily in the mining and shipment of coal. It is a closely-held corporation owned by the Drummond family, and is controlled in its day-to-day operations by Garry N. Drummond. Its principal place of business is located at 530 Beacon Parkway, Suite 900, Birmingham, Alabama 35209. Among other places, Drummond Company, Inc. owns and operates a large coal mine, rail line and port in Colombia, South America. The operations in Colombia are financed and managed from the Alabama headquarters of Drummond Company, Inc., and the profits from the Colombia operations revert to Drummond Company, Inc.

31. Defendant Drummond Ltd. is an Alabama company, incorporated in Jasper, Alabama, and has its principal place of business at 3000 Highway 78, Jasper, Alabama 35501. It is wholly-owned by Drummond Company, Inc. Drummond Ltd. manages the day-to-day operations of the Drummond coal operations in Colombia, but is at all times operating under the complete ownership, direction and control of Defendant Drummond Company, Inc. Fully aware of the violence in Colombia, particularly anti-union violence, and the absolute impunity afforded to the perpetrators of such violence in Colombia, Drummond Company, Inc. created Drummond Ltd. for the sole purpose of operating the Colombian mines for the sole benefit of Drummond Company, Inc. while also attempting to shield Drummond Company, Inc. from liability for any and all tortious conduct committed by the management of these mines. The creation of Drummond Ltd. was a sham done for the aforesaid unlawful purpose.

32. Defendant Augusto Jimenez is the President of Defendant Drummond Ltd. At all material times herein, Jimenez was a direct participant in Drummond's plan to make significant payments to the AUC, specifically to murder the three trade union leaders Locarno, Orcasita, and Soler, and more generally to provide support to the AUC to provide "security services" at the company mine and along its railroad line.

33. Defendant James Adkins was the Director of Security for Drummond's operations in Colombia. Hired by Drummond from the CIA, Defendant Adkins had full knowledge of the AUC's terrorist activities at the time he was hired. Adkins reported to both Garry Drummond and Defendant Mike Tracy, as well as other Alabama-based Drummond officers and Defendant Jimenez. On behalf of the Drummond Defendants, Defendant Adkins approved the payments to the AUC as described herein. During his years of service for Drummond, between 1995-2002, Defendant Adkins traveled to Alabama every 4-6 weeks to brief Garry Drummond, Mike Tracy, and other Drummond officials on security issues, including Drummond's support for the AUC. Adkins regularly told the AUC leaders and their intermediaries that he went to Alabama regularly to brief Garry Drummond and obtain his consent to key strategic issues, including providing support to the AUC. Adkins obtained consent in Alabama from Garry Drummond and other Drummond officers to provide substantial support to the AUC.

34. At all times relevant to the allegations herein, Defendant Mike Tracy was the President of Mining Operations for Defendant Drummond Company, Inc. In this position, Defendant Tracy oversaw the start up of operations for Drummond's mine in Colombia. Defendant Tracy was in charge of all aspects of the Drummond mining operation in Colombia and reported directly to Garry Drummond.

Defendant Tracy was fully briefed by Defendant Adkins of the agreements made with the AUC, and he approved of Drummond's direct collaboration with the AUC terrorists. On numerous occasions, Defendant Tracy himself met with AUC commanders to discuss the status of the AUC's work on Drummond's behalf.

35. Defendant Drummond Company, Inc. is jointly and severally liable for all of the tortious actions committed when its alter ego and/or agent, Drummond Ltd., acts in concert with any other person or entity in furtherance of Drummond Company, Inc.'s business interests and activities.

36. The AUC paramilitary forces that murdered the three union leaders, Locarno, Orcasita and Soler, were acting within the course and scope of a business relationship with Defendants with the advance knowledge, acquiescence or subsequent ratification of Defendants.

#### **IV. BACKGROUND FACTS CONCERNING VIOLENCE AGAINST TRADE UNION LEADERS AND MEMBERS IN COLOMBIA**

37. Colombia is widely-known as a country that is torn by a long-standing civil war involving armed leftist groups on the one side, and the Colombian military as well as right-wing paramilitaries on the other. It is universally acknowledged that the regular military in Colombia, and the civil government authorities, tolerate the paramilitaries, allow them to operate, and often cooperate,

protect and/or work in concert with them. The extent of the civil conflict is so pervasive that the country's civil war necessarily must be governed by the rules of war so that the combatants, the right-wing paramilitaries, the leftist guerillas, and the regular military are governed by Article 3 of the Geneva Convention, which applies to "an armed conflict not of an international character." Thus, noncombatants to the Colombian civil war, including the Plaintiffs herein, standing in the place of the deceased, are protected from human rights violations and other war crimes committed by any parties to the conflict, regardless of whether the combatant parties are formally recognized as government officials. This includes the paramilitary forces which clearly are major participants in the civil conflict.

38. The paramilitaries in Colombia, including those directly involved in the wrongful acts alleged herein, were created based on official sanction of the Government of Colombia. Under "Law 48," passed in 1968, the Defense Ministry was authorized to create and provide weapons to civil patrols. Most of the paramilitary groups were created and sustained under the authority of this law. In 1989, the Colombian Supreme Court of Justice declared Law 48 unconstitutional. However, 21 years of close, lawful, and open collaboration allowed the Colombian Armed Forces and the paramilitaries to create solid and lasting relationships.

39. Moreover, in 1994 the Colombian government effectively re-legalized

paramilitary organizations in Decree 356, which established the “Special Vigilance and Private Security Services.” This decree laid the foundation for the creation of the Convivir groups, officially launched in 1995 through Resolution 368. The Convivir groups are comprised of civilians who petition the government for a license to “provide their own security. . . in areas of high risk or in the public interest, which requires a high level of security.” Defense Ministry, Decree 356, República de Colombia, February 11, 1994, pp. 19-20; and Resolution 368, April 27, 1995. Convivir members interviewed by Human Rights Watch confirmed that they regularly supply the Colombian army with intelligence, routinely collaborate with Colombian security forces, and are supervised by a government agency within the Defense Ministry. One Convivir commander stated frankly, “We are paramilitaries, machetes, or Convivir, whatever the hell you want to call us.” Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (1998).

40. Despite the Colombian government’s official demobilization of paramilitary forces in 2005, these illegally armed groups continue to thrive and enjoy de facto approval from the government, and the Colombian military often outsources its “dirty work” to the paramilitaries in an attempt to clean up its own international image. The Colombian Army and the Uribe administration (2002-

2010) are currently involved in several scandals regarding the inflation of successes in Colombia's fight against illegal armed groups. According to local Colombian news reports, the Colombian Prosecutor General's Office is presently investigating the deaths of over more than 2,000 civilians who were murdered because of alleged membership in guerrillas groups. These summary executions by Colombian military and paramilitary units whose victims would then be dressed in fatigues and counted as "rebels killed in action" became a scandal known as "false positives." As recently as August 2011, according to local Colombian news reports, the Colombian Prosecutor General's Office pressed charges against former Peace Commissioner Luis Carlos Restrepo for faking a demobilization of paramilitaries during ex-President Alvaro Uribe's term in office.

41. Reemerging paramilitary groups continue to enjoy impunity under President Juan Manuel Santos's administration (August 2010 – Present). Amnesty International's 2011 update on its work in Colombia explains that, "Paramilitary presence in the region has continued although army-backed paramilitaries were supposedly demobilized under a government-backed process during the previous government of President Alvaro Uribe." Amnesty International's 2011 update also cites high levels of impunity, explaining that "Colombia is the world's most dangerous country for trade unionists, and a staggering 95% of the roughly 3,000

cases of assassination of union members committed over the last 30 years remain unprosecuted.”

42. Similarly, according to Human Rights Watch’s 2011 World Report on Colombia:

Colombia still leads the world in killings of trade unionists, with more than 2,800 reported killings since 1986, according to the National Labor School (ENS), Colombia's leading NGO monitoring labor rights. Most are attributed to paramilitaries and their successor groups.

While the number of murders dropped in 2007 to 39, statistics are still alarmingly high: 52 murders in 2008, 47 in 2009, and 36 from January to September 15, 2010, according to the ENS. Threats against unionists—mostly attributed to paramilitaries' successor groups—have increased since 2007.

Impunity in such cases is widespread: only 25 percent of more than 2,800 ENS-documented killings of unionists are being investigated by the Attorney General's Office unit mandated to prosecute such crimes. The office has opened investigations into more than 1,300 cases of anti-union violence (including several hundred that do not appear on the ENS list), but has only obtained convictions in 14 percent of these cases. There are also concerns the investigations are piecemeal, and do not consider whether the victim's union activities motivated the crime.

43. Likewise, according to a 2010 Annual Survey of Trade Union Rights released by the International Trade Union Confederation at the 100<sup>th</sup> International Labor Organization in June 2011, more trade unionists were murdered in Colombia in 2010 than in the rest of the world combined. The report, conducted across 143 countries, specifically highlights that “49 of the 90 trade unionists murdered in

2010 were killed in Colombia.”

44. These reemerging paramilitaries groups in Colombia have a mutually-beneficial, symbiotic relationship with the Colombian government’s military. In the August 4, 2010 Final Observations Report of the United Nations Human Rights Committee (“UNHCR Final Observations Report”), the Committee expresses its “concern for the lack of significant progress in the application of prior Committee recommendations (including the legal benefits enjoyed by demobilized illegal armed groups, collusion between armed forces and members of paramilitary groups, the lack of investigation of grave human rights violations and attacks against human rights defenders.)”

45. This symbiotic relationship has a long history dating back to before the assassination of the decedents in 2001. As reported by Human Rights Watch, 78% of the murders in Colombia from October 1999 to March 2000 were attributable to the paramilitaries. The Human Rights Watch investigators found “detailed, abundant, and compelling evidence of continuing close ties between the Colombian Army and paramilitary groups responsible for gross human rights violations.” The facts supporting the ongoing symbiotic relationship between the military and paramilitaries in Colombia include active and retired military actually setting up paramilitary units, the military providing the paramilitaries with

weapons, intelligence, and supplies, and the paramilitaries conducting missions at the request of the military.

46. The close, symbiotic relationship between the military and paramilitaries in Colombia is so widely acknowledged that the U.S. State Department confirms this fact without reservation:

Credible allegations of cooperation with paramilitary groups, including instances of both silent support and direct collaboration by members of the public security forces, in particular the army, continued. Evidence suggests that there were tacit arrangements between local military commanders and paramilitary groups in some regions, and paramilitary forces operated freely in some areas that were under military control or despite a significant military presence. Individual members of the security forces actively collaborated with members of paramilitary groups – passing them through roadblocks, sharing intelligence, providing them with ammunition, and allegedly even joining their ranks while off-duty.

47. In the February 28, 2002 Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia (“UNHCR Report”), the UN High Commission explains that the links between the paramilitaries and the State continue and indeed are intensifying. As the UNHCR Report explains:

During 2001, the Office continued to observe that paramilitary activity was strengthening and spreading throughout much of the country’s territory. ...  
Toleration, support and complicity on the part of public servants, as well as nonfulfillment of their duty to safeguard rights, with respect to several acts by these groups, means that the State continues to bear responsibility.

48. The UNHCR Report further relates that “the growth in paramilitary activity has been aided by the State’s inaction or slow reaction in preventing the formation of illegal armed groups, and in keeping new territories from falling into the de facto control of these organizations.” Finally, the UNHCR explains that the growth in paramilitary control and violence has been assisted by the impunity which human rights violators receive in the Colombian judicial system. Thus, the UNHCR states that, throughout 2001, it “continued to receive troubling reports of ties between members of the security forces and elements of the paramilitary groups. The existence of pending criminal and disciplinary investigations of members of the security forces shows how widespread these relationships are. However, the investigations have not led to any determination of responsibility or the application of relevant sentences and punishments to ensure that these acts do not benefit from impunity.”

49. Nevertheless, impunity within the Colombian justice system remains problematic. A government-backed legal framework was created in 2006 to facilitate the demobilization of illegal armed forces through a law known as the "Justice and Peace" law. However, according to Amnesty International, “the demobilization process fails to adequately address the brutal legacy of paramilitary abuse, and led to intensification of already high levels of impunity in the country,

fails to ensure victims' right to justice, and did not prevent demobilized paramilitaries from being 'recycled' into the armed conflict in other roles.” A demobilized individual testifying under the "Justice and Peace" law serves a significantly reduced prison sentence (five to eight years as opposed to the maximum 40-year sentence imposed on those who testify outside the Justice and Peace law) for human rights violations and other crimes. According to Amnesty International, “one criticism of the law is that it has allowed paramilitary members who are responsible for serious human rights violations to be "recycled" into the ongoing Colombian conflict through security-related employment or as military informants. The law also fails to bring to justice those security forces responsible for working closely with paramilitary forces in the commission of serious human rights violations.”

50. The UNHCR reached the very same conclusions in its recent, March 18, 2003 report, stating that there remains “open collusion” on the part of Colombian security forces with paramilitaries and that there is continued “expansion and consolidation of paramilitaries in several areas.”

51. Further, in Country Reports on Human Rights Practices – Colombia (March, 2002), the U. S. State Department, which had in September 2001 designated the AUC, the chief and largest paramilitary group as a “terrorist” group,

continued to conclude that “in some locations elements of the state security forces tolerated or even collaborated with paramilitary forces.” The State Department reached this same conclusion in its Report of March 31, 2003, stating that “[s]ome members of the security forces collaborated with paramilitary groups that committed serious abuses.”

52. For a number of years, the location in which Defendants operate in Colombia, the Cesar Province, has been one of these locations where the collaboration between the state security forces and the paramilitary forces is especially keen. Thus, Amnesty International has reported that it “has been increasingly concerned by the escalation in human rights violations carried out in the Department of Cesar by members of the security forces and paramilitary allied to them. ‘Disappearances,’ extrajudicial executions and other human rights violations continue to be reported as the security forces have increased their presence and paramilitary organizations have been set up and consolidated in the region, sometimes with the support of powerful economic interests.” Indeed, Drummond allowed its vast property around its coal mine to serve as a joint base for the military and AUC in that area, and there was frequent collaboration between the military and the AUC due to Drummond’s provision of a safe haven for the AUC.

53. The close, symbiotic relationship between the military and paramilitaries in Colombia is such that the paramilitaries are acting under color of the authority of the government of Colombia. The paramilitaries in Colombia, including those who committed the wrongful acts alleged herein, are legal creations of the government of Colombia, and they act with support from and cooperation with the official military.

54. The paramilitaries in Colombia are particularly well-known for murdering, abducting and torturing trade union leaders who they view as being subversives. The paramilitaries' characterization of trade unionists as subversives is in accord with the view of the Colombian government which, in Decree 180/88, has designated leftist trade union leaders as "terrorists." As a result, in the words of the International Confederation of Free Trade Unions in their 2002 Report ("ICFTU Report"), Colombia is "the most dangerous place in the world to be a trade union activist." And, as the ICFTU notes, these trade unionists are being murdered by very virtue of the fact that they are trade unionists – that is, they are not merely being caught in the cross-fires of the armed conflict in Colombia; they are targets, particularly of the paramilitaries which are "hostile towards the unions."

55. Amnesty International, in specifically describing the human rights

situation in the Cesar Province – the area in which the acts described herein took place – explains that “[t]he systematic violation of human rights against members of popular organizations. . .in the department of Cesar corresponds to a national strategy of undermining organizations which the [state] security forces deem to be subversive.” Amnesty International further finds that “[m]any violations of human rights in the [Cesar] region are committed in order to advance and protect the interests of economically powerful sectors. Labeling anyone who dares to challenge the interests of powerful economic sectors as subversive. . .and then targeting them for human rights violations provides a means for those sectors to protect their interests.” Recently, the UNHCR has confirmed this assessment of Amnesty International, noting in the same breath that “members of paramilitary groups have been blamed for most of the [ ] violent deaths” suffered by trade unionists and that Cesar is one of “[t]he departments most affected by anti-union violence. . .”

56. The paramilitaries’ targeting of thousands of individuals for assassination, including Locarno, Orcasita and Soler, simply because of their status as trade unionists, constitutes war crimes. The paramilitaries are able to execute trade unionists with impunity, including Locarno, Orcasita and Soler, because of the lawless environment in Colombia created by the ongoing civil conflict.

57. As a consequence of the official vilification of trade unionists by the Colombian government, which serves as an open invitation to paramilitaries to target trade union leaders with violence, Colombia has led the world in the number of murders of trade unionists for the past ten years.

58. As more fully explained below, the Drummond Defendants took advantage of the fact that paramilitaries target trade unionists in Colombia to prevail upon these paramilitaries to commit violent acts against the employees at the La Loma mines who held leadership positions in the union. Defendants knew that, because of the lawless environment created by the civil conflict in Colombia, the paramilitaries acting as their agents, could murder trade unionists employed at their mines -- including Locarno, Orcasita and Soler -- with impunity. The ICFTU, in its 2002 report, noted with alarm that “[t]rade union activists affiliated to the Union of Workers of the Mining and Energy Industry of Colombia [SINTRAMIENERGETICA] and working at mines run by the US multinational Drummond have been particularly severely affected by the violence that occurred throughout 2001.”

#### **V. SPECIFIC EVENTS LEADING TO THE MURDERS OF LOCARNO, ORCASITA, AND SOLER**

59. Defendants Drummond Company, Inc. and Drummond Ltd. utilize the services of the Colombian military to protect its mining facilities, railway lines and

U.S. workers in Colombia. Drummond Company, Inc. and/or Drummond Ltd. actually support a military base on company property by providing the land, as well as electricity, fuel, and equipment. The Defendant companies also maintain the local roads used by the military. Defendants do so with specific knowledge that some of the local military supported by the company cooperate with the paramilitaries that also operate on the Drummond property and act on behalf of Drummond. Further, a significant number of these military personnel also are members of the paramilitaries operating in Valledupar, Colombia and elsewhere.

60. In addition, Drummond Company, Inc. and Drummond Ltd., to protect its operations in the Cesar Department, engaged in a concerted effort to organize what was then a small and diffuse paramilitary operation in the region into a more powerful organization which had the capability to protect their property, assets, profits and personnel. Through Defendants' efforts and regular monetary support, the Juan Andres Alvarez Front of the AUC was substantially strengthened and became dominant in the region. Defendants have permitted this AUC division to freely enter and patrol their mining facilities with the full cooperation and support of the regular army which also provides security to the Drummond Defendants. Indeed, some of the regular military soldiers based on Drummond's property also are members of the AUC paramilitaries operating in and around the Drummond

facilities. Pedro Maya, a Human Resources Manager for Drummond at the La Loma mines, has regular contacts and meetings with the AUC. Likewise, Defendant James Adkins, former Director of Security for DCI; Defendant Mike Tracy, President of DCI Mining Operations; and Alfredo Araujo, a community relations manager for Drummond, openly associate with paramilitaries, and coordinate their activities in the Cesar Department. The Defendant companies provide supplies, including fuel, as well as monetary support to these paramilitaries.

61. The Drummond Defendants have a personal and direct connection to the origin of the AUC. Alfredo Araujo, Drummond's Director of Community Relations, was a close friend since childhood of Rodrigo Tovar Pupo, alias Jorge 40, who was one of the original founders of the AUC along with Carlos Castaño and Salvatore Mancuso. Several of Araujo's close relatives joined Jorge 40 as active members of the AUC. Three close family members of Araujo, his cousin, Hernando Molina Araujo, a former governor of Cesar Province, another cousin, Alvaro Araujo Castor, a former Senator, and his uncle, Alvaro Araujo Noguera, a former Minister of Agriculture, are in jail for their participation in and support for the AUC. Araujo used his family relationship and connection to Jorge 40 to make the initial arrangements for Drummond to make substantial payments to the AUC.

Araujo made the plan with Jorge 40. He then used his position in the company to get Defendant Jimenez and others to agree to a plan to make substantial payments to the AUC. Araujo, on behalf of Drummond, shared with the AUC the goal of eradicating the FARC and other leftist guerillas and prevailing in the ongoing civil conflict.

62. Araujo was also a friend of Jaime Blanco Maya, who had close ties to both the AUC and to the government. Araujo brought Blanco into the Drummond fold by awarding his company, ISA, the food concession for the workers at the Drummond mine. Blanco was close friends with Oscar Jose Ospino Pacheco, alias “Tolemaida”, one of the AUC Northern Block’s top commanders under Jorge 40. At the same time, Blanco’s half-brother, Edgardo Maya, was until recently the Government of Colombia’s Inspector General. He is now in prison for his ties to the AUC.

63. While Carlos Castaño is either dead or disappeared, the other two AUC founders, Salvatore Mancuso and Jorge 40, both now in prison in the United States and awaiting trial on drug trafficking charges, have stated that Drummond was one of the U.S. multinationals that provided substantial support to the AUC that allowed it to buy arms and equipment and join the war effort to defeat the FARC. The other major companies that Mancuso and Jorge 40 have mentioned as

major initial supporters of the AUC are Chiquita Brands International and Dole Foods, Inc.

64. Shortly after the Drummond employees in Colombia successfully organized themselves into a union known as SINTRAMIENERGETICA, the Drummond Defendants decided to use the very paramilitaries which they helped establish as a force in the region to destroy this union. In relevant part, key members of the Drummond Ltd. management – including Defendant James Adkins, Defendant Mike Tracy; Defendant Augusto Jimenez; Alfredo Araujo; Ricardo Urbina Aroca, Senior Human Resources supervisor; and Pedro Maya, Human Resources Manager of the La Loma mines met with leaders of the AUC, including AUC Northern Block leader, Rodrigo Tovar Pupo, Alias “Jorge 40” and his representatives, during the latter part of 2000 and the beginning of 2001 to arrange for the AUC to eradicate the union through violent means. In furtherance of this conspiracy, this management made payments to the AUC as consideration for the AUC’s carrying out this violent destruction of the union, including the murder of Locarno, Orcasita, and Soler.

65. Locarno and Orcasita, President and Vice President, respectively, of the union, had been in heated negotiations with Defendants for nearly a year for a new contract. In the course of the ongoing negotiations, pamphlets were passed out on

and around the Drummond Company facilities in Colombia labeling SINTRAMIENERGETICA a “guerilla union,” and attacking Locarno and Orcasita as supporters of the guerillas. In a letter to Drummond Ltd., Locarno specifically protested that the pamphlets described above had been distributed around the La Loma mine in the Cesar Department of Colombia. He asked for security protection from the death threats he had been receiving. His request was denied by Drummond Ltd.’s Senior Human Resources supervisor, Ricardo Urbina Aroca, by letter dated October 6, 2000. In rejecting this request without explanation, Ricardo Urbina Aroca told Locarno, on behalf of Drummond Ltd., that “[w]e hope that the authorities can take measures that they consider appropriate regarding the situations raised by you all.”

66. There were two persistent issues that were the subject of heated negotiations between SINTRAMIENERGETICA and the Drummond Company. First, the union demanded better security to protect them from the paramilitaries who had been hired or retained by Defendants to protect the Drummond rail lines and other facilities from attacks by guerillas operating in the area. The other contentious issue was that in the prior year, several Drummond workers were killed in a mining accident, and the company had failed to pay the compensation due their families under the laws of Colombia. During these negotiations, the

President of the La Loma mines, Defendant Augusto Jimenez, made veiled threats against the union leaders, telling them on several occasions that “the fish dies from opening his mouth.”

67. Locarno met personally with Garry Drummond on the worker compensation issue on or about June 12, 2000, in Colombia. Locarno and Orcasita had also written and faxed to Garry Drummond personally their concerns that their lives, and the lives of other union leaders and members, were in danger due to the presence of the violent paramilitary forces that were agents or employees of Defendants. They also specifically notified other officials of the Drummond Company and/or Drummond Ltd., including, but not limited to, Defendant Augusto Jimenez, D. L. Lobb, General Manager of Drummond Ltd., and Mike Zerbos, an employee of Drummond Company, Inc. about their security concerns.

68. The concerns expressed by Locarno and Orcasita to Garry Drummond and other representatives of Defendants were based on recent assassinations, kidnappings and torture of other members and leaders of SINTRAMIENERGETICA. In the year prior to the murders of Locarno and Orcasita, Candido Mendez and Manuel Enrique Charris Ariza were also murdered by the paramilitaries. Locarno and Orcasita had made a very simple demand to be permitted to sleep at the coal mine, rather than being transported to nearby villages

by bus, where they were exposed to the paramilitaries who control the local roads. This request, made to Garry Drummond and other Drummond officials, was denied despite the fact that Colombia's secret service agency, the DAS, had alerted Drummond that Locarno and Orcasita were at risk of assassination and despite the fact that the DAS itself echoed their request to be able to sleep at the coal mine.

69. Meanwhile, at other levels, the DAS itself was collaborating with the AUC paramilitaries, funneling money to these paramilitaries and actually encouraging them to kill unionists. Indeed, at least one DAS official, Rafael Garcia, witnessed the payment of monies by a top Drummond official – Alfredo Araujo– to Jorge Castro Pacheco, a sitting Colombian Senator and a representative of the AUC Northern Block commander Jorge 40. It was clear from what was said at this meeting that the exchange of money was in return for the AUC's agreement to carry out the killings of Valmore Locarno and Victor Orcasita. Yet, the DAS did nothing to prevent these killings though it was officially tasked to protect unionists by the Colombian government.

70. Although Defendants flatly refused to improve security arrangements for the union leaders who had received specific death threats, Defendants made sure that the expatriate employees from the U.S. were never exposed to danger. At all times material hereto, these U.S. employees were flown in and out of the

Drummond mines and port on a private runway and provided with a compound where they lived and were protected by the military and private security forces 24 hours a day, 7 days a week. At all times relevant hereto, Drummond's private security forces, which guard both its operations and U. S. personnel, have themselves been led by active and former military personnel, including General Pena (chief of security for both the port and mines), Retired Colonel Jorge Garzon (chief of Security for the port) and Retired Colonel Edgar Ruiz.

71. In approximately July, 2000, Jorge 40 assigned the command of the Juan Andres Alvarez Front to Tolemaida, who continued the AUC's war against the FARC. After the change in power, Defendant Adkins participated in a November, 2000 meeting between Drummond officials and top AUC leaders. The meeting occurred at the entrance to Drummond's mine in La Loma at approximately 2 p.m. Defendant Adkins was accompanied by Araujo and Jaime Blanco, the previously described friend of Araujo's who ran the cafeteria concession at the Drummond mine, and a contingent of bodyguards. For the AUC, Jorge 40 was present, along with Tolemaida, and several other armed AUC members. At this meeting, Defendant Adkins and Araujo approved a payment to the AUC on behalf of Drummond for the assassination of the top leaders of the Drummond union, including Locarno and Orcasita.

72. Locarno and Orcasita were murdered by the AUC on March 12, 2001. The union leaders were pulled off a company bus on their home from their shift in the Drummond mine and executed by the AUC. Tolemaida was in charge of the operation, following the orders of Jorge 40, and one of Tolemaida's key commanders, Samario, participated as well. Some of these paramilitaries were themselves members of the regular military and were getting direct support from the regular military. The paramilitaries who killed Locarno and Orcasita were working as agents or employees of Defendants at the time.

73. The paramilitaries boarded the bus and asked for Locarno and Orcasita by name, saying that these two "had a problem with Drummond." The paramilitaries made the workers produce their identification cards. When Locarno was identified by the paramilitaries, he was pulled off the bus and shot in the head several times in front of the other workers. Orcasita was then identified. He was tied up and thrown in the paramilitaries' vehicle. He was found dead by the side of the road several hours later, shot in the head. He had been tortured before he was murdered. There were cuts on his chest, and his teeth had been knocked out. Both because some of the regular military in the area were involved in the executions as members of the paramilitaries, and because the regular military stationed at the Drummond compound allow the paramilitaries to operate with impunity, no action

was taken to bring those responsible for the murders of Locarno and Orcasita to justice.

74. Rafael Garcia, the former DAS official, stated under oath that in early 2001, when he was working as political adviser to the AUC, he traveled to Valledupar along with Jorge Castro Pacheco of Ariguani, a municipality in Magdalena, Colombia. Jorge Castro Pacheco served as the representative for Jorge 40. Garcia attended a meeting at the Hotel Sicarare in Valledupar with Jorge Castro Pacheco, who, at the time of the meeting was 3<sup>rd</sup> succentor to Roberto Perez, a Senator from Sucre, Colombia. Also in attendance was Guillermo Sanchez Quintero, who at the time was Mayor of Ariguani and Alfredo Araujo, who was Drummond's Director of Community Relations. At this meeting, Garcia witnessed Araujo give Jorge Castro Pacheco a suitcase filled with money. Araujo and Jorge Castro Pacheco talked openly about the purpose of this money - to take violent measures against union workers at Drummond. Garcia heard Araujo say to Jorge Castro Pacheco that the money was to be given to Jorge 40 to carry out the killings of certain union leaders at Drummond. It was clear from things said in this conversation that the plan to violently attack the union leaders had been made some time before and had been a matter of discussion between Araujo and Jorge 40. Araujo specifically said that he wanted the AUC's "help with these guys that

were causing problems.” Garcia specifically recalls the names Orcasita and Locarno mentioned as targets by Araujo.

75. At a subsequent meeting in early May, 2001, Defendant Adkins and Araujo met again with the top leaders of the AUC, including Jorge 40, Tolemaida, Don Luis, and several AUC operatives who worked closely with Jorge 40, including Kener, El Chino, El Toro, Samario, Machoman, and 05. The meeting was held at a farm on the road between Bosconia and Plato. In front of the entire group, including Adkins and Araujo, Jorge 40 congratulated Tolemaida for the successful operation of executing the two Drummond union leaders Locarno and Orcasita.

76. At this meeting Drummond, through Adkins and Araujo, made an agreement with Jorge 40 to make an additional large cash payment to the AUC of approximately \$1.5 million (U.S.) and regular monthly payments of approximately \$100,000 (U.S.) to continue to support the AUC troops and equipment for the Juan Andres Alvarez Front to continue to attack and destroy the FARC. This additional funding was to allow the Juan Andres Alvarez Front to maintain a permanent base and to continue its ongoing and successful war against the FARC. Once again, the Drummond representatives, including Defendant Adkins and Araujo, directed that the AUC focus on the towns along Drummond’s rail line where the FARC had a

presence.

77. On or about the time of this meeting, at the instigation of Araujo, Drummond escalated its own role in the development and support of the AUC and began raising funds from other businesses and individuals to make payments to the AUC. A portion of these funds were provided to the Popa Battalion commander, Colonel Mejia, who made payments to the AUC based on executions of suspected guerillas. With the ongoing support from Drummond, the Juan Andres Alvarez Front continued to confront the FARC in the areas around the Drummond rail line, and in the process, continued to terrorize, displace and murder innocent civilians who lived along Drummond's rail line.

78. Subsequent to the murders of Locarno and Orcasita, their families received threats to keep quiet about the murders.

79. Soler eventually stepped up to assume the position of President of the Union. He renewed negotiations with Drummond and specifically sought to obtain new security arrangements for the workers, especially in light of the murder of Locarno and Orcasita. He and the other leaders of SINTRAMIENERGETICA sent a letter to Garry Drummond renewing the demand to allow the workers to have sleeping facilities at the mine site. Again, this request was denied. In addition, Soler publicly denounced the murders of Locarno and Orcasita and publicly stated

his belief that someone at the La Loma mines must have told the paramilitaries which specific bus was carrying them on the fateful night of March 12, 2001. Meanwhile, threats against Soler's life and the lives of other union leaders continued.

80. On October 5, 2001, shortly after assuming the position of President of the Union, Soler himself was murdered by paramilitaries of the AUC. Just as Locarno and Orcasita, Soler was captured by AUC paramilitaries on his way back home from the La Loma mines. After leaving work around 2:30 in the afternoon, Soler was left by the escorts he was using for security at the transport terminal near the mines in the city of Valledupar. He then boarded a public bus traveling toward his hometown of Chiriguana. While in transit, the bus he was on was stopped by paramilitaries which drove in the path of the bus with a white truck and parked the truck in front of the bus. The paramilitaries boarded the bus and called Soler by name. They then removed him from the bus. On October 7, farmers found the body of Soler in a nearby area. His body showed signs of torture and he had been shot twice in the head.

## **VI. DEFENDANTS' VIOLATIONS OF LAW**

81. Defendants' actions violate, and Plaintiffs' causes of action arise from, the following laws, agreements, conventions, resolutions and treaties, which

constitute specific examples of the applicable law of nations or customary international law:

- a) Alien Tort Claims Act, 28 U.S.C. § 1350;
- b) Torture Victim Protection Act, 28 U.S.C. § 1350;
- c) Common law of the United States of America;
- d) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- e) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U. N. Doc. A/810 (1948);
- f) International Covenant on Civil and Political Rights, G.A. Res. 2220(A)(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N.Doc. A/6316 (1966);
- g) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) (ratified 10/28/98);
- h) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- i) Vienna Declaration and Programme of Action (World Conference on Human Rights, 1993);
- j) International Labor Organization Conventions 87 and 98, which protect the fundamental rights to associate and organize;
- k) Article 3 of the Geneva Conventions; and
- l) Statutes and common law of Colombia including but not limited to, wrongful death, negligence, and recklessness.

## **VII. CAUSES OF ACTION**

### **First Cause of Action**

#### **The Alien Tort Claims Act, 28 U.S.C. § 1350 For Extrajudicial Killing on Behalf of All Plaintiffs Against All Defendants**

82. Plaintiffs incorporate by reference paragraphs 1 through 81 of this Complaint as is set forth herein.

83. Defendants Drummond Company, Inc. and Drummond Ltd. engaged in acts and omissions intentionally and tortiously causing their employees and/or agents to murder Locarno, Orcasita, and Soler. Specifically, as is alleged above, the Defendant companies' employees and/or agents, including Defendant James Adkins, Defendant Mike Tracy, Defendant Augusto Jimenez, Alfredo Araujo, Pedro Maya, and Richardo Urbina engaged in joint action with, and/or conspired with, paramilitary forces that were operating under color of law, and, so acting, murdered Locarno, Orcasita and Soler. Further, through their employees and/or agents, including Augusto Jimenez, Alfredo Araujo, James Adkins, Mike Tracy, Pedro Maya, and Ricardo Urbina, the Defendant companies knowingly aided and abetted the paramilitary forces that murdered Locarno, Orcasita, and Soler by providing financial support, supplies, access, and other substantial assistance that contributed to the ability of the paramilitary forces to murder Locarno, Orcasita and Soler. Defendants realized substantial benefits from the murders of Locarno,

Orcasita and Soler, including the de-stabilization of SINTRAMIENERGETICA and the avoidance of financial obligations to members of the union. As noted by the ICFTU, the “[t]rade union activists affiliated to the Union of Workers of the Mining and Energy Industry of Colombia [SINTRAMIENERGETICA] and working at mines run by the US multinational Drummond have been particularly severely affected by the violence that occurred throughout 2001.”

84. The aforesaid acts violate the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra. The acts described herein are actionable under ATS, and, if such a showing is required, were done with the complicity of state actors. The paramilitary security forces in the Cesar Province are permitted to exist, openly operate under the laws of Colombia, and are assisted by government military officials. In engaging in joint action and/or a conspiracy with such paramilitary agents and other state government officials, Defendants acted under color of law in violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra. Further, the Government of Colombia fails to enforce its laws that would prevent or remedy the violations alleged herein.

85. Defendants’ conduct in violation of the law of nations, customary

international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra, resulted in the deaths of Locarno, Orcasita and Soler. Defendants are jointly and severally liable for the acts of any and all subsidiaries that are in violation of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra. Defendants are also vicariously liable for any violations of their employees or agents of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra.

86. Plaintiffs are all legal beneficiaries following the murders of their fathers under federal common law, international law, and the law of Colombia, and all have standing to sue to recover their personal damages following the extrajudicial killings of their fathers. Plaintiffs have suffered damages, including emotional harm, loss of companionship and financial support, as a result of the murders of Locarno, Orcasita, and Soler. These Plaintiffs seek compensatory and punitive damages in amounts to be ascertained at trial for the harm they have suffered

individually as well as for the harm suffered by Locarno, Orcasita and Soler leading up to and during their murders and for their loss of life. The Plaintiffs further seek equitable relief to prevent further human rights violations.

**Second Cause of Action**  
**The Alien Tort Claims Act, 28 U.S.C. § 1350**  
**For War Crimes on Behalf of**  
**All Plaintiffs Against All Defendants**

87. Plaintiffs incorporate by reference paragraphs 1 through 86 of this Complaint as is set forth herein.

88. Defendants Drummond Company, Inc. and Drummond Ltd., through their employees and agents, including Defendants Jimenez, Adkins and Tracy, and Alfredo Araujo, Pedro Maya, and Ricardo Urbina, among others, aided and abetted the war crime of murdering three civilian non-combatants, Locarno, Orcasita and Soler, by providing knowing and substantial assistance to the AUC. The Drummond Defendants also had a shared purpose with the AUC to target union leaders as leftist guerillas, and to view them as legitimate targets of the civil conflict. These Drummond Defendants also conspired with the AUC to commit war crimes because they had an express agreement for the AUC to execute the three union leaders on Drummond's behalf.

**The AUC's Extrajudicial Killings of Plaintiffs' Decedents Were War Crimes**

89. The Colombian military was not able to effectively address the uprising of the FARC, so as previously alleged, the Colombian government facilitated the creation and funding of the AUC for the sole purpose of using this unofficial force to defeat the FARC. As one high commander of the AUC told Plaintiffs' representatives, "the Colombian military felt itself bound to the Geneva Conventions. The AUC was not." Further, as Colonel Mejia, the commander of the Popa Battalion at all times material to this action, stated, the Colombian military needed to use the AUC in order to defeat the FARC.

90. The extreme brutality practiced by the AUC that earned it the terrorist moniker by the U.S. Department of State was from the outset a planned strategy to effectively confront and defeat the FARC.

91. Article 3 of the Geneva Convention, which applies to "an armed conflict not of an international character," applies to the civil conflict in Colombia. Thus, noncombatants to the Colombian civil war, including the Plaintiffs' decedents, are covered, and the war crimes committed by any parties to the conflict, including the AUC, are actionable under the ATS.

92. The three elements of "war crimes" are well-established and not in dispute. As the Second Circuit held in *Kadic v. Karadzic*, 70 F.3d 232, 242 (2d Cir.

1995)), the elements are:

- (1) that there was an armed conflict;
- (2) that the AUC and the FARC were parties to the conflict; and
- (3) that Plaintiffs were killed in the “course of hostilities.”

93. *As to the first element*, there is no dispute that Colombia has been devastated by a raging civil conflict since the early 1990's. This has been widely documented and has never been disputed in this or any other case. For example, the 1997 State Department Human Rights Report notes that the Colombian government's control of national territory “has been increasingly challenged by longstanding and widespread internal armed conflict and rampant violence. . .” *Id.* at 1. As AUC Commander Carlos Tijeras described the nature of the conflict in a sworn statement, “at the time I was acting as Commander of the William Rivas Front I was a major participant in a civil war that was being fought over the future direction of my country. I was on the side of democracy and capitalism and we were fighting communists and guerillas.”

94. *As to the second element*, once the AUC consolidated the various paramilitary groups in late 1996 under the leadership of Carlos Castaño, the AUC became the most visible armed opposition to the FARC, which, by late 1996, had become the prominent leftist rebel group. As previously alleged, acting in the

place of the Colombian military, the AUC directly engaged the FARC in an extremely brutal and violent struggle that left thousands of innocent civilians dead, displaced and terrorized. *See generally* R. Kirk, *More Terrible Than Death: Massacres, Drugs, and America's War in Colombia* (2003); S. Dudley, *Walking Ghosts: Murder and Guerilla Politics in Colombia* (2006).

95. *As to the third and final element*, all of the violent acts against the three union leaders alleged herein occurred in the “course of hostilities.” Locarno, Orcasita, and Soler were targeted as civilians because they were union leaders.

96. As the U.S. Department of State reported in 1999, the year that Drummond formally joined forces with the AUC:

Paramilitary groups and guerillas were responsible for the vast majority of political and extrajudicial killings during the year. **Throughout the country, paramilitary groups killed, tortured and threatened civilians suspected of sympathizing with guerillas in an orchestrated campaign to terrorize them into fleeing their homes, thereby depriving guerillas of civilian support. The AUC paramilitary umbrella organization . . . exercised increasing influence during the year, extending its presence through violence and intimidation into areas previously under guerilla control.**

1999 State Department Report at 2 (emphasis added).

97. These consistent and reliable reports by the State Department of the AUC's tactics in killing civilians, like Locarno, Orcasita and Soler, merely because, as union leaders they were accused of being sympathetic to the guerillas,

demonstrate that the three leaders were killed in furtherance of the armed conflict.

**Third Cause of Action**  
**The Torture Victim Protection Act, 28 U.S.C. § 1350**  
**For Extrajudicial Killing on Behalf of**  
**All Plaintiffs Against All Defendants**

98. Plaintiffs incorporate by reference paragraphs 1 through 97 of this Complaint as is set forth herein.

99. Defendants Drummond Company, Inc. and Drummond Ltd engaged in acts and omissions intentionally and tortuously causing their employees and/or agents to murder Locarno, Orcasita and Soler. Specifically, as is alleged above, the Defendant companies' employees and/or agents, including Defendant Augusto Jimenez, Defendant James Adkins, Defendant Mike Tracy, Pedro Maya, and Ricardo Urbina, engaged in joint action with, and/or conspired with, paramilitary forces that were operating under color of law, and, so acting, murdered Locarno, Orcasita and Soler in violation of the TVPA. Further, through their employees and/or agents, including Garry N. Drummond, Defendant Augusto Jimenez, Alfredo Araujo, Defendant James Adkins, Defendant Mike Tracy, Pedro Maya, and Ricardo Urbina, the Defendant companies knowingly aided and abetted the paramilitary forces that murdered Locarno, Orcasita and Soler by providing financial support, supplies, access, and other substantial assistance that contributed

to the ability of the paramilitary forces to murder Locarno, Orcasita and Soler.

100. Defendants realized substantial benefits from the murders of Locarno, Orcasita and Soler, including the de-stabilization of SINTRAMIENERGETICA and the avoidance of financial obligations to members of the union. As noted by the ICFTU, the “[t]rade union activists affiliated to the Union of Workers of the Mining and Energy Industry of Colombia [SINTRAMIENERGETICA] and working at mines run by the US multinational Drummond have been particularly severely affected by the violence that occurred throughout 2001.”

101. The aforesaid acts violate the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra. The acts described herein are actionable under the TVPA, and, if such a showing is required, were done with the complicity of state actors. The paramilitary security forces of the Cesar Province are permitted to exist, openly operate under the laws of Colombia, and are assisted by government officials and the Colombian military. In engaging in joint action and/or a conspiracy with such paramilitary agents and other state government officials, Defendants acted under color of law in violating each of the applicable laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra.

Further, the Government of Colombia fails to enforce its laws that would prevent or remedy the violations alleged herein.

102. Defendants' conduct in violation of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra, resulted in the deaths of Locarno, Orcasita and Soler. Defendants are jointly and severally liable for the acts of any and all subsidiaries that are in violation of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra. Defendants are also vicariously liable for any violations of their employees or agents of the law of nations, customary international law, and worldwide industry standards and practices, including, but not limited to, the specific laws, agreements, conventions, resolutions and treaties listed in paragraph ¶81, supra.

103. Plaintiffs are all legal beneficiaries following the murders of their fathers under federal common law, international law, and the law of Colombia, and all have standing to sue to recover their personal damages following the extrajudicial killings of their fathers. Plaintiffs have suffered damages, including

emotional harm, loss of companionship and financial support, as a result of the murders of Locarno, Orcasita and Soler. Plaintiffs seek compensatory and punitive damages in amounts to be ascertained at trial for the harm they have suffered individually as well as for the harm suffered by Locarno, Orcasita and Soler leading up to and during their murders and for their loss of life. The Plaintiffs further seek equitable relief to prevent further human rights violations.

**Fourth Cause of Action**  
**Wrongful Death on Behalf of All Plaintiffs Against All Defendants**

104. Plaintiffs incorporate by reference paragraphs 1 through 103 of this Complaint as is set forth herein.

105. Defendants Drummond Company, Inc. and Drummond Ltd. committed, or acted in concert to commit, or Defendants' employees or agents, committed acts that constitute wrongful death under the laws of Colombia, and that caused the deaths of Locarno, Orcasita and Soler.

106. Defendants' actions and omissions were a direct and substantial cause of the deaths of Locarno, Orcasita and Soler. Defendants failed to use due care to protect them from injury and harm, thereby proximately causing their wrongful deaths.

107. Plaintiffs are all legal beneficiaries following the murders of their fathers under federal common law, international law, and the laws of Colombia and

all have standing to sue for wrongful death. They have suffered damages, including emotional harm, loss of companionship and financial support, as a result of the murders of Locarno, Orcasita and Soler. Plaintiffs seek compensatory and punitive damages in amounts to be ascertained at trial for the harm they have suffered individually as a result of the murders of Locarno, Orcasita and Soler. The Plaintiffs further seek equitable relief to prevent further human rights violations.

**VIII. DEMAND FOR JURY TRIAL**

108. Plaintiffs demand a trial by jury on all issues so triable.

**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court to:

- (a) enter judgment in favor of Plaintiffs on all counts of the Complaint;
- (b) declare that Defendants have violated Plaintiffs' human rights and the laws of the State of the United States and Colombia, as set forth herein;
- (c) award Plaintiffs compensatory and punitive damages;
- (d) grant Plaintiffs equitable relief, permanently enjoining Defendants from further engaging in human rights abuses against Plaintiffs and other members of SINTRAMIENERGETICA;

(e) award Plaintiffs the costs of suit including reasonable attorneys' fees; and

(f) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

Dated: September 12, 2011

Respectfully submitted,

/s/ Terry Collingsworth

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