### INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc.

v.

**Republic of Panama** 

(ICSID Case No. ARB/16/34)

### PROCEDURAL ORDER No. 7 – On Document Production –

*Members of the Tribunal* Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal Mr. Horacio A. Grigera Naón, Arbitrator Mr. J. Christopher Thomas, QC, Arbitrator

*Secretary of the Tribunal* Ms. Luisa Fernanda Torres

15 January 2019

### Procedural Order No. 7

### I. PROCEDURAL HISTORY

- 1. On 29 November 2018, in accordance with Section 16.2.4 of Procedural Order No. 1, and the Procedural Calendar established for this case (as amended on 28 August 2018), each Party submitted its respective completed Redfern Schedule for decision by the Tribunal.
- On 11 January 2019, Respondent submitted a communication to the Tribunal concerning its Document Production Request No. 6. The Claimants submitted a response on 15 January 2019.

#### II. ORDER

- 3. This Procedural Order contains the Tribunal's decisions on the Parties' respective Requests for Production of Documents.
- 4. The Tribunal's decisions are incorporated in the Redfern Schedules filed by the Parties, which are part of this Procedural Order as **Annex A** (Decision on the Claimants' Request for Production of Documents) and **Annex B** (Decision on the Respondent's Request for Production of Documents).
- 5. Pursuant to the Procedural Calendar, the Parties shall produce the documents ordered by the Tribunal by **14 February 2019**. The Parties are reminded that in accordance with Section 16.7 of Procedural Order No. 1 "documents exchanged in the course of this document disclosure process shall **not** be copied to the Tribunal or the Secretary of the Tribunal;" and, in accordance with Section 16.11 "[d]ocuments produced as part of a document production but not submitted as exhibits do not form part of the record."

For and on behalf of the Tribunal,

\_\_\_\_\_Signed\_\_\_\_\_ Lord Nicholas Phillips Baron of Worth Matravers President of the Tribunal

#### Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama (ICSID Case No. ARB/16/34) Procedural Order No. 7 Annex A

#### INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

#### ICSID ARB. No. ARB/16/34

#### **BRIDGESTONE LICENSING SERVICES, INC. BRIDGESTONE AMERICAS, INC.**

**Claimants** 

vs.

#### THE REPUBLIC OF PANAMA

**Respondent** 

#### CLAIMANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

29 November 2018

This Request for Production of Documents is served pursuant to the Tribunal's Procedural Order No. 1 dated 11 July 2017, as amended by Amendment No. 4 dated 28 August 2018. In this document, the word "document" shall mean anything in which information of any description is recorded, including, without limitation, paper and emails and electronic documents in native formats containing metadata.

### INTRODUCTION TO PANAMA'S RESPONSES AND OBJECTIONS

1. References to "IBA Article(s)" are to Article(s) of the 2010 IBA Rules on the Taking of Evidence in International Arbitration.

2. References to "COMMENTARY" are to the *Commentary on the Revised Text of the* 2010 IBA Rules on the Taking of Evidence in International Arbitration.

3. Panama details objections to Claimants' specific Document Requests in the Redfern Schedule below. It is important to make clear at the outset, however, that not a single one of Claimants' Document Requests — the bulk of which seek privileged internal judicial deliberations and communications and confidential bank records — abides by the relevant IBA Articles and/or ICSID Arbitration Rules, and the Requests contain demands so patently indefensible that it is difficult to conclude anything other than Claimant's Requests are a waste of Party and Tribunal resources.

First, Claimants' Requests fail to satisfy IBA Article 3.3(a)(ii), requiring the document request to contain a "description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist." Claimants' Requests are a demonstration of desires and wishful thinking, providing no reasonable amount of detail to a narrow and specific category of documents or any evidence that there is a reasonable foundation for believing that they exist. Second, Claimants' statements of relevance and materiality, required by IBA Article 3.3(b), are often disingenuous and unrelated to the Documents requested. Third, none of Claimants' requests abides by IBA Article 3.3(c), which requires (1) a certification that the Documents requested are not in Claimants' possession, custody, or control or establish the reasons why it would be unduly burdensome for Claimants to produce such documents, and (2) a statement of the reasons why Claimants assume that the Documents requested are in Panama's possession, custody, or control. Finally, nearly all of Claimants' Requests seek disclosure of information that is protected by privilege and/or would be illegal to produce, requiring Panama to object pursuant to IBA Article 9.2(b), based on a "legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;" and IBA Article 9.2(f), due to "grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling."

# INTRODUCTION TO CLAIMANTS' REPLIES TO PANAMA'S RESPONSES AND OBJECTIONS

- 1. The Claimants detail their replies to the Respondent's responses and objections in the Redfern Schedule below.
- 2. However, the Claimants note at the outset that it is remarkable that the Respondent objects to every single one of their requests. For none of the requests does the Respondent say that they have looked and there are no documents in the category sought, or that it would be too burdensome or disproportionate to undertake searches. Rather, the Respondent's blanket objections are based on a number of points which are repeated in relation to some or all of the document requests made. It may therefore assist the Tribunal by way of introduction to receive some initial responses to those points.
- 3. <u>*First*</u>, the Respondent says there is no basis for a reasonable belief that any of the requested Documents exist. Tellingly, it does not say it has made reasonable searches and no such Documents have been found. Rather, the Respondent seeks to put the burden on the Claimants to show documents exist.
- 4. As to communications between the three Supreme Court judges, the Respondent itself has specifically pleaded and relied on an allegation that there was "*vigorous debate among the three justices*" (Counter-Memorial,  $\P$  147).
- 5. As to communications and dealings with others, the victim of corruption seldom knows the details or what documents exist evidencing it. In the present case, the Claimants have specifically pleaded that the judgment of Justices Oyden Ortega, Hernan de Leon and Harley Mitchell in the Supreme Court was a denial of justice, and that the judgment is so clearly and manifestly wrong that it could only have been procured through corruption. The Claimants rely on evidence that they were able to obtain through public sources, while being transparent about the fact that direct evidence of corruption by the justices in this case was likely to be hard to find: evidence of corruption is likely to be "*untraceable*" (Memorial, ¶ 210).
- 6. The Respondent latches on to this and says that the Claimants "cannot have it both ways." (Response 5 below). But such evidence is only untraceable by the <u>Claimants</u>. The Respondent is fully able to trace any corruption (and may well already have done so). The Claimants' requests were thus aimed at documents which would support (or refute) its claims relating both to the alleged corruption in the procurement of the Supreme Court Judgment, and the corruption of the drafting judges themselves.
  - 7. The recent finding of the tribunal in UFG v Egypt (CLA-0137 (ENG)) supports the Claimants' requests "As has long been recognised, corruption is rarely proven by direct cogent evidence; but, rather, it usually depends upon an accumulation of circumstantial evidence. Circumstantial evidence of corruption is as good as direct evidence in proving corruption." (¶ 7.52). Similarly, the tribunal in Metal-Tech v Uzbekistan (CLA-0138 (ENG)) stated, "corruption is by essence difficult to establish and that it is thus generally admitted that it can be shown through circumstantial evidence." (¶ 243). In circumstances where the evidence of corruption is all within the Respondent's possession, control or knowledge, and where there is prima facie evidence of corruption, as the Claimants have provided with respect to Justice Ortega

and other justices of the Panamanian Supreme Court, the burden of proof shifts to the Respondent (*Karkey Karadeniz v Pakistan* ¶ 497 (**CLA-0139 (ENG**))).

- 8. The Claimants have indeed provided evidence of corruption, including evidence of what has been said by the Panamanian Ambassador and circumstantial evidence not least, the impugned judgment itself. It follows that there is a basis for a reasonable belief that documents evidencing communications and dealings between the judges and third parties in respect of the judgment exist.
- 9. <u>Second</u>, the Respondent relies on IBA Article 3.3(c)(i), that the Claimants have not made "a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Document." But it goes without saying that the Claimants do not have the requested Documents and cannot produce such material itself. The Respondent is fully aware that it is the only party that could do so, and its reliance on Article 3.3(c)(i) betrays a certain desperation.
- 10. <u>*Third*</u>, the Respondent relies on provisions of Panamanian law that it says make it impossible for it to disclose the requested documents. However, this Tribunal is not subject to or bound by the domestic law of Panama. The findings of the tribunal in *Rompetrol v Romania* (**CLA-0140** (**ENG**)) regarding its powers to determine the rules of evidence apply: "an ICSID tribunal is endowed with the independent power to determine, within the context provided by the circumstances of the dispute before it, whether particular evidence or kinds of evidence should be admitted or excluded, what weight (if any) should be given to particular items of evidence so admitted, whether it would like to see further evidence of any particular kind on any issue arising in the case, and so on and so forth. The tribunal is entitled to the cooperation of the parties in that regard, and is likewise entitled to take account of the quality of their cooperation." (¶181).

1	2		3	4	5	6
No.	Documents or Category of Documents	Relevance and Materiality According to Requesting Party		Responses/Objections to Document Requests	Replies to Responses/Objectio ns to Document	Tribunal's Decisions
	Requested	Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments		Requests	
1.	All documents	Memorial, ¶ 79-	A central aspect	<b>1.</b> Panama objects to	1. IBA Article 9.2(b)	No order. The
	comprising or	101	of the claims	Claimants' request for the	provides for a ground	privilege that
	recording	Counter-	brought in the present arbitration	production of privileged judicial deliberations.	for objection being a <i>"legal impediment or</i>	protects judicial deliberations
	between Justices	Memorial, ¶ 147.	concerns the	Specifically, Panama	privilege under the	should be
	Oyden Ortega,		Claimants'	objects to the request: (1)	legal or ethical rules	respected.
	Hernan de Leon		contention that	pursuant to IBA Article	determined by the	respected.
	and/or Harley		the judgment of	9.2(b), because the legal	Arbitral Tribunal to	
	Mitchell in relation to		Justices Oyden	impediment of judicial	be applicable."	
	Muresa Intertrade		Ortega, Hernan	deliberation privilege	Panama relies on	
	S.A.'s ("Muresa")		de Leon and	prevents the Documents'	"judicial privilege",	
	claim against		Harley Mitchell	disclosure; and (2)	which is a concept	
	Bridgestone		in the Supreme	pursuant to IBA Article	found in both	
	Corporation and		Court was a	9.2(f), because the	Panamanian and U.S.	
	Bridgestone		denial of justice.	requested Documents are	law. But neither law	
	Licensing Services,		The documents	secret due to compelling	is applicable here –	
	Inc. (" <b>BSLS</b> ") in the		comprising or	grounds of institutional	the Tribunal is not	
	Supreme Court of		recording	sensitivity.	required to adhere to	
	Panama (the		communications		domestic rules of	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST **FOR**

"Supreme Court	between those	The privilege of judicial	evidence in
Case").	judges in relation	deliberations is recognized	international
	to that case is on	in Panama, (See Annex A,	arbitration. (See
	any view directly	Code of Judicial Ethics of	CLA-0139 (ENG)
	relevant and	Panama, Article 70), and	Rompetrol v
	material to that	in most other jurisdictions.	<i>Romania</i> , ¶181, and
	contention.	For example, judicial	ICSID Arbitration
		deliberations are protected	Rule 34).
	Further, the	by privilege in the United	
	Respondent has	States. (See Annex F,	But even if the
	specifically put in	Thomas v. Page, 361	Tribunal was minded
	issue the content	Ill.App.3d 484 (2005)).	to take into account
	of the discussions	Notably, the deliberations	domestic laws,
	between the	of this Tribunal are	documents protected
	Supreme Court	likewise protected by	by judicial privilege
	Justices up to the	ICSID Arbitration Rule	may still become
	issuance of the	15(1), which states, "The	disclosable. For
	impugned	deliberations of the	example, disclosure
	judgment. The	Tribunal shall take place	may be required if the
	Respondent	in private and remain	tribunal's need for
	expressly pleads	secret."	the documents
	that there was		outweighs the judicial
	"vigorous debate	Without such protection, a	interest in privileged
	among the three	judicial body (such as this	communications (See
	justices hearing	Tribunal) cannot engage	Respondent's Annex
	this case."	in frank and honest	F, Thomas v. Page,
	However, having	deliberations with a view	361 Ill.App.3d 484
	made this positive		(2005) at 489, and
	allegation of fact,	and objective decision.	<b>CLA-0140 (ENG)</b> <i>In</i>
	the Respondent	There is no more	re Certain

## PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

		has disclosed no documents whatever that relate to it. In order for the Claimants and the Tribunal to be able to test the Respondent's allegation, it is necessary for the requested category of documents to be disclosed.	compelling institutional sensitivity for the judiciary than the protection of the deliberative process. Panama therefore objects to this document request. <b>2.</b> Panama objects to this request pursuant to IBA Article 3.3(b), which requires a (legitimate) statement as to how the Documents requested are relevant and material; and IBA Article 9.2(a), because it lacks sufficient relevance to the case or materiality to its outcome. Claimants assert that Panama "put in issue the content of the discussions between the Supreme Court Justices" by citing to Panama's statement in its Counter-Memorial regarding "vigorous debate among the three justices hearing this case." However, Claimants pull	Complaints Under Investigation by an Investigating Comm. (Williams v. Mercer), 783 F.2d 1488, 1521, 1525 (11th Cir. 1986.). In Panama too, Article 70 of the Code of Judicial Ethics provides for exceptions to the rule of judicial privilege – it expressly states: "Judges belonging to multi-member panels must guarantee the secrecy of the deliberations of the court, <u>subject to the</u> <u>exceptions provided</u> for in the legal norms <u>in force.</u> " (emphasis supplied. See <b>Respondent's Annex</b> <b>A</b> ). The Respondent conveniently does not refer to the sectond part of the sentence in Article 70, but it is clear that even	
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this quote out of context.	Panamanian law
The complete sentence	provides for
states as follows: "Indeed.	1
	1 5
in some respects,	privilege
Magistrate Mitchell's	Fronthan if any
dissenting opinion directly	
contradicts [the claim of a	
failure of the entire	apply to the requested
Panamanian legal system]	
because it demonstrates	privilege has been
vigorous debate among	waived because the
the three justices hearing	Respondent has
this case." (Counter-	specifically pleaded
<b>Memorial</b> , ¶ 147).	and relied on an
Panama thus pointed to	allegation that there
the dissenting opinion	was "vigorous debate
(which is in the record) a	
evidence of an	justices".
adjudicative process, and	
Panama did not imply or	The Respondent,
state that it has evidence	recognizing that this
of any actual	allegation is
communications between	problematic for
the justices. Thus,	present purposes,
Claimants' statement on	now says that this
relevance and materiality	was merely a
is disingenuous.	reference to the
	existence of the
In addition to	dissenting opinion of
misrepresenting Panama's	Magistrate Mitchell.
	But that is plainly not

	submissions, Claimants	right. The existence
	have never even alleged	of a dissenting
	an improper deliberative	judgment evidences a
	process. Thus, Claimants'	difference of opinion,
	request lacks sufficient	it does not evidence
	relevance to the case and	the occurrence of
	materiality to its outcome.	debate, let alone
	Claimants should not be	"vigorous debate".
	allowed to misuse an out-	
	of-context quote to	But even if the
	support a fishing	dissenting opinion
	expedition to expand the	did evidence
	scope of their denial of	"vigorous debate",
	justice claim.	the Respondent has
		put in issue the
	<b>3.</b> Panama further objects	question of the nature
	to this request on the basis	and substance of the
	that it fails to satisfy IBA	communications
	Article 3.3(a)(ii), which	between the judges
	requires a "a description	and has waived any
	in sufficient detail of a	privilege that may
	narrow and specific	have applied to it.
	category of Documents"	
	that are "reasonably	The Respondent
	believed to exist."	further complains that
		the Claimants "have
	There is no basis for a	never even alleged an
	reasonable belief that any	improper deliberative
	of the requested	process". But the
	Documents exist. The IBA	Claimants' primary
	Rules define a	claim is denial of

"Document" as "a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means." Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court is relevant to the claim in issue and material to its outcome.Supreme Court proceedings were improper. On any view, evidence as to how the judges arrived at their is relevant to the claim in issue and material to its outcome.Use Supreme Court provided no evidence, nor have they alleged, that communications between the Supreme Court gustices regarding any case, including the Panamanian tort proceeding, are recorded or maintained.Outcome.2. The Respondent also asserts that these documents are "secret due to compelling grounds of broadly seek each andSupreme Court institutional	
drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means." Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court material to its outcome.Supreme Court proceedings were improper. On any view, evidence as to how the judges arrived at their is relevant to the claim in issue and material to its outcome.Justices regarding any case, including the Proceeding, are recorded or maintained.Outcome.Panamanian tort proceeding, are recorded or maintained.2. The Respondent also asserts that these documents are "secret due to compelling grounds of	
of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means." Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court Justices regarding any case, including the Panamanian tort Porceeding, are recorded or maintained.proceedings were improper. On any view, evidence as to how the judges arrived at their impugned judgment is relevant to the claim in issue and material to its outcome.100002The Respondent also asserts that these documents are "secret due to compelling grounds of0	
recorded or maintained on paper or by electronic, audio, visual or any other means." Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court Justices regarding any case, including the Panamanian tort proceeding, are recorded or maintained. Further, Claimants	
paper or by electronic, audio, visual or any other means." Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court Justices regarding any case, including the Panamanian tort proceeding, are recorded or maintained.view, evidence as to how the judges arrived at their impugned judgment is relevant to the claim in issue and material to its outcome.2. The Respondent also asserts that these documents are "secret due to compelling grounds of	
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provided no evidence, nor have they alleged, that communications between the Supreme Court Justices regarding any case, including the Panamanian tort proceeding, are recorded or maintained.impugned judgment is relevant to the claim in issue and material to its outcome.2. The Respondent also asserts that these documents are "secret due to compelling grounds of	
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communications between the Supreme Courtclaim in issue and material to its outcome.Justices regarding any case, including the Panamanian tortc. The Respondent also asserts that these documents are "secret due to compelling grounds of	
Image: state of the state	
Justices regarding any case, including the       outcome.         Panamanian tort       2. The Respondent         proceeding, are recorded       also asserts that these         or maintained.       documents are "secret         due to compelling       further, Claimants	
case, including the Panamanian tort2. The Respondent also asserts that these documents are "secret due to compelling grounds ofFurther, Claimantsgrounds of	
Panamanian tort2. The Respondentproceeding, are recordedalso asserts that theseor maintained.documents are "secretdue to compellingFurther, Claimantsgrounds of	
or maintained.     documents are "secret due to compelling       Further, Claimants     grounds of	
or maintained.     documents are "secret due to compelling Further, Claimants       grounds of	
Further, Claimantsdue to compelling grounds of	
Further, Claimants grounds of	
broadly seek each and <i>institutional</i>	
every Document sensitivity", pursuant	
comprising to IBA Article 9.2(f).	
communications between But "secret"	
the Supreme Court information under	
Justices in relation to the IBA Article 9.2(f) is	
Panamanian tort case. information that has	
Claimants do not detail been " <i>classified as</i>	
the specific date or date secret by a	
range in which the government or a	
Documents would have public international	

	descri creatin Docum memo	created, nor do they be the person(s) ng or receiving the ments that orialized the alleged nunications.	<i>institution.</i> " The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why communications between the relevant judges should have been so classified, unless as part of an attempt to withhold evidence from this Tribunal.	
			3. The Respondent's assertion that the request fails to satisfy IBA Article 3.3(b) and 9.2(a) is wrong for the reasons stated in the Claimants' Introduction to their Reply points above. The Respondent has	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### FOR PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

		put communications	
		between the justices	
		in issue, and the	
		Claimants' pleaded	
		contention is that the	
		Supreme Court	
		Judgment is so	
		clearly and	
		manifestly wrong,	
		that it could only	
		have been procured	
		through corruption.	
		Therefore, the request	
		is relevant and	
		material to the	
		outcome of the case.	
		outcome of the cuse.	
		4. The Respondent's	
		assertion that the	
		request fails to satisfy	
		IBA Article 3.3(a)(ii)	
		because there is " <i>no</i>	
		basis for a	
		reasonable belief that	
		any of the requested	
		documents exist" is	
		wrong for the reasons	
		stated in the	
		Claimants'	
		Introduction to their	
		muoduction to their	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### <u>FOR</u> PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

		reply points above.
		The Respondent
		pleads that there had
		been "vigorous
		<i>debate</i> " between the
		justices, and it is
		therefore reasonable
		to believe that this
		debate generated
		written
		communications
		between them. This is
		not a "fishing
		expedition."
		expedition.
		5. However, in the
		interest of narrowing
		the scope, the
		Claimants agree:
		"The date range for
		this request is 1 July
		2013 to 16 March
		2016."
		"The persona execting
		"The persons creating
		or receiving the
		Documents requested
		are Justices Oyden
		Ortega, Hernan de
		Leon, Harley

### CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST <u>FOR</u>

### PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

					Mitchell and any of their respective clerks or assistants."	
2.	All documents and communications between any of the Justices of the Supreme Court and any third party created in relation to the Supreme Court Case.	Memorial, ¶ 79- 101, 210 Counter- Memorial, ¶ 56 60, 147.	This request is relevant and material to the Claimants' pleaded contention that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption. As the Claimants explained in their pleading, it is notoriously very difficult for a claimant to obtain evidence of a host state's corruption on its own. Tellingly, the Respondent has	<ol> <li>Panama objects to this request on the basis that it fails to satisfy IBA Article 3.3(a)(ii), which requires that the category of Documents requested be "reasonably believed to exist."</li> <li>Claimants have provided no evidence that any communications between the Supreme Court Justices and third parties related to the Panamanian tort case occurred. Furthermore, Claimants have never argued that any such communications ever occurred. This is no more than a fishing expedition.</li> <li>Panama also objects to this request, because it fails to satisfy IBA Article 3.3(b), which requires that</li> </ol>	1. The Respondent's objection under IBA Article 3.3(a)(ii) is wrong for the reasons stated in the Claimants' Introduction to their reply points above. The Claimants have indeed provided evidence of corruption, including evidence of what has been said by the Panamanian Ambassador and circumstantial evidence – not least, the impugned judgment itself. It follows that there is a basis for a reasonable belief that documents evidencing communications and dealings between the	Documents in this category, if they exist, to be produced by 14 February 2019.

		not denied corruption; rather, it has put the Claimants to proof, contending that the Claimants' claim fails "for want of evidence". The Respondent has therefore expressly put in issue the question of what evidence is available, and accordingly justice requires that the Respondent now provide all relevant evidence.	the request include a (legitimate) statement as to how the Documents requested are relevant and material. Claimants contend that as Panama identified Claimants' failure to meet their burden of proof, it should be required to provide the missing relevant evidence. This is no more than an inappropriate attempt to shift the burden of proof to Panama. The relevance and materiality of a piece of evidence is independent from the question of which party bears evidentiary burdens. Claimants make general allegations of corruption while stating that evidence of corruption in the present case "is unlikely to be traceable." ( <b>Memorial</b> , ¶ 210). That	judges and third parties in respect of the judgment exist. 2. The Respondent's objection under IB Article 3.3(b) is wrong for the reasons stated in the Claimants' Introduction to their Reply points above. The Claimants' pleaded contention is that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption. Therefore, communications between third parties and the justices which may evidence such corruption is relevant and material to the outcome of the case.	
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## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST FOR

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	Panama has identified 3. However, in	
	Claimants' failure to meet interest of narr	owing
	their burden of proof does the scope, the	
	not shift that burden; Claimants agree	ee:
	otherwise, any party that	C .
	challenges the sufficiency "The date rang	
	of the other party's this request is	
	evidence would bear the 2013 and 16 M	larch
	burden of proof. 2016."	
	<b>3.</b> Panama further objects "The persons of	e
	to this request: (1) because or receiving th	
	it fails to satisfy IBA documents are	
	Article 3.3(a)(ii), which Justices Oyder	
	requires that requests be Ortega, Hernar	n de
	for a "narrow and specific Leon, Harley	
	category of Documents," Mitchell and a	-
	and be "carefully tailored their respective	e clerks
	to produce relevant and or assistants."	
	material documents"	
	(COMMENTARY, p. 9); and	
	(2) pursuant to IBA	
	Article 9.2(a), because the	
	Documents requested lack	
	sufficient relevance to the	
	case or materiality to its	
	outcome.	
	Claimants' request is	
	unhinged from their	
	statement on relevance	

and materiality. Claimants
state that the documents
are relevant and material
to the issue of corruption.
However, Claimants
request the production of
all documents and
communications between
the Supreme Court
Justices and any third
parties in relation to the
Panamanian tort case,
without identifying the
specific parties to, or
subject of, the relevant
communication or even a
relevant date or date
range. Thus, Claimants
request would include
Documents without any
connection to their
statement on relevance
and materiality.
This overbroad request is
therefore not carefully
tailored and lacks
sufficient relevance and
materiality to the issue of
corruption.

3.	All documents,	Memorial, ¶ 79-	A central aspect	1. Panama objects to	1. IBA Article 9.2(b)	No order. The
	including, without	101	of the claims	Claimants' request for the	provides for a ground	privilege that
	limitation, notes and		brought in the	production of privileged	for objection being a	protects judicial
	working documents	Counter-	present arbitration	judicial deliberations.	"legal impediment or	deliberations
	prepared by or on	Memorial, ¶ 147.	concerns the	Specifically, Panama	privilege under the	should be
	behalf of Justices		Claimants'	objects to the request: (1)	legal or ethical rules	respected.
	Oyden Ortega,		contention that	pursuant to IBA Article	determined by the	
	Hernan de Leon		the judgment of	9.2(b), because the legal	Arbitral Tribunal to	
	and/or Harley		Justices Oyden	impediment of judicial	be applicable."	
	Mitchell in relation to		Ortega, Hernan	deliberation privilege	Panama relies on	
	the Supreme Court		de Leon and	prevents the Documents'	"judicial privilege",	
	Case and/or the		Harley Mitchell	disclosure; and (2)	which is a concept	
	judgment therein		in the Supreme	pursuant to IBA Article	found in both	
	dated 28 May 2014		Court was a	9.2(f), because the	Panamanian and U.S.	
	(the "Supreme Court		denial of justice.	requested Documents are	law. But neither law	
	Judgment").		Documents	secret due to compelling	is applicable here –	
			containing any	grounds of institutional	the Tribunal is not	
			record of the	sensitivity.	required to adhere to	
			judges'		domestic rules of	
			deliberations and	The privilege of judicial	evidence in	
			considerations	deliberations is recognized	international	
			relation to the	in Panama, (See Annex A,	arbitration. (See	
			preparation of the	Code of Judicial Ethics of	CLA-0139 (ENG)	
			Supreme Court	Panama, Article 70), and	Rompetrol v	
			Judgment is on	in most other jurisdictions.	Romania, ¶181, and	
			any view directly	For example, judicial	<b>ICSID</b> Arbitration	
			relevant and	deliberations are	Rule 34).	
			material to that	privileged in the United		
			contention.	States (See Annex F,	But even if the	
				Thomas v. Page, 361	Tribunal was minded	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST <u>FOR</u>

### PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

	Ill.App.3d 484 (2005)). Notably, the deliberations of this Tribunal are likewise protected by ICSID Arbitration Rule 15(1), which states, "[t]he deliberations of the Tribunal shall take place in private and remain secret." Without such protection, a judicial body (such as this Tribunal) cannot engage in frank and honest deliberations with a view to reaching an informed and objective decision. There is no more compelling institutional sensitivity for the judiciary than the protection of the deliberative process.	to take into account domestic laws, documents protected by judicial privilege may still become disclosable. For example, disclosure may be required if the tribunal's need for the documents outweighs the judicial interest in privileged communications ( <i>See</i> <b>Respondent's Annex</b> <b>F</b> , <i>Thomas v. Page</i> , 361 Ill.App.3d 484 (2005) at 489, and <b>CLA-0140 (ENG)</b> <i>In</i> <i>re Certain</i> <i>Complaints Under</i> <i>Investigation by an</i> <i>Investigating Comm.</i> ( <i>Williams v. Mercer</i> ), 783 F.2d 1488, 1521, 1525 (11th Cir.
	protection of the deliberative process.	(Williams v. Mercer), 783 F.2d 1488, 1521,
	Simply, the Tribunal does not have the authority to order a party to breach such privilege.	1986.). In Panama too, Article 70 of the Code of Judicial Ethics provides for
	3. Panama further objects	exceptions to the rule

|--|

			C · 1 · 1 · 1	
		to this request on the basis	of judicial privilege –	
		that it fails to satisfy IBA	it expressly states:	
		Article 3.3(a)(ii), which	"Judges belonging to	
		requires a "a description	multi-member panels	
		in sufficient detail of a	must guarantee the	
		narrow and specific	secrecy of the	
		category of Documents"	deliberations of the	
		that are "reasonably	court, subject to the	
		believed to exist."	exceptions provided	
			for in the legal norms	
		There is no basis for a	in force." (emphasis	
		reasonable belief that any	supplied. See	
		of the requested	Respondent's Annex	
		Documents exist. The IBA	A). The Respondent	
		rules define a "Document"	conveniently does not	
		as, "a writing,	refer to the second	
		communication, picture,	part of the sentence in	
		drawing, program or data	Article 70, but it is	
		of any kind, whether	clear that even	
		recorded or maintained on	Panamanian law	
		paper or by electronic,	provides for	
		audio, visual or any other	exceptions to judicial	
		means." Claimants have	privilege	
		provided no evidence, nor	privilege	
		have they alleged, that any	2. The Respondent	
		of the requested	also asserts that these	
		Documents were ever	documents are "secret	
		created, let alone that the	due to compelling	
		Documents are recorded	grounds of	
		or maintained.	institutional	
		or manitanica.	msnunnna	

		Further, Claimants broadly seek, "without limitation," every document created by or on behalf of the Supreme Court Justices in relation to the Panamanian tort case. Claimants do not detail the specific date or date range in which the Documents might have been created, nor do they identify the person(s) creating the Documents "on behalf of" the Supreme Court Justices.	sensitivity", pursuant to IBA Article 9.2(f). But "secret" information under IBA Article 9.2(f) is information that has been "classified as secret by a government or a public international institution." The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why	
		identify the person(s)	no allegation that the	
			e	
		Supreme Court Justices.	,	
			-	
			communications	
			between the relevant	
			judges should have	
			been so classified,	
			unless as part of an	
			attempt to withhold	
			evidence from this	
			Tribunal.	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### <u>FOR</u> <u>PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)</u>

assertion that the request fails to satisfy IBA Article 3.3(a)(ii) because there is "no basis for a reasonable belief that any of the requested documents exist" is wrong for the reasons stated in the Claimants' Introduction to their Reply points above. The Respondent pleads that there had been "vigorous debare" between the justices, and it is therefore reasonable to believe that this debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working				
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IBA Article 3.3(a)(ii)         because there is "no         basis for a         reasonable belief that         any of the requested         documents exist" is         wrong for the reasons         stated in the         Claimants'         Introduction to their         Reply points above.         The Respondent         pleads that there had         been "vigorous         debate" between the         justices, and it is         therefore reasonable         to believe that this         debate generated not         only written         communications         between the justices, as         as requested above,         but also drafts of the         judgment and dissent         and other working				
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Image: state in the claimants'       Image: state in the claimants'         Image: state in the state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Image: state in the claimants'         Image: state in the claimants'       Imag			because there is "no	
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Image: state in the state in the state in the claimants'         Image: state in the claimants'			reasonable belief that	
Image: state in the state in the claimants'         Image: state in the claimants' <t< td=""><td></td><td></td><td>any of the requested</td><td></td></t<>			any of the requested	
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The Respondent pleads that there had been "vigorous debate" between the justices, and it is therefore reasonable to believe that this debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working			Introduction to their	
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Image: state in the state			The Respondent	
been "vigorous debate" between the justices, and it is therefore reasonable to believe that this debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working				
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therefore reasonable to believe that this debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working				
Image: state of the state			justices, and it is	
debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working			therefore reasonable	
Image: state of the state			to believe that this	
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communications between the justices, as requested above, but also drafts of the judgment and dissent and other working				
as requested above, but also drafts of the judgment and dissent and other working			•	
as requested above, but also drafts of the judgment and dissent and other working			between the justices,	
but also drafts of the judgment and dissent and other working				
judgment and dissent and other working				
and other working				
			documents. This is	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### <u>FOR</u> PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

					not a "fishing expedition." 4. However, in the interest of narrowing the scope, the Claimants agree: "The date range for this request is 1 July 2013 and 28 May 2014." "The persons creating or receiving the Documents requested are Justices Oyden Ortega, Hernan de Leon, Harley Mitchell and any of their respective clerks or assistants."	
4.	Documents relevant to the existence or absence of corruption in relation to the Supreme Court Judgment.	Memorial, ¶ 210 Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11	This request is relevant and material to the Claimants' pleaded contention that the Supreme Court Judgment is	1. Panama objects to this request, because it fails to satisfy IBA Article 3.3(a)(ii), which requires that the category of Documents requested be "reasonably believed to	1. The Respondent's assertions that the request fails to satisfy IBA Article 3.3(a)(ii) and Article 9.2(c) are wrong for the reasons stated in the Claimants'	No order. The request is insufficiently specific.

Witness Statement of Steven Akey dated 30 April 2018, ¶ 8 Counter- Memorial, ¶ 56- 60	so clearly and manifestly wrong, that it could only have been procured through corruption. As the Claimants explained in their pleading, it is	exist." Claimants have offered no evidence of corruption in the Panamanian tort case, and have stated that any evidence of corruption "is unlikely to be traceable." ( <b>Memorial</b> , ¶ 210). Thus, the only remaining basis	Introduction to their Reply points above. 2. The Respondent also objects to the request under IBA Article 3.3(c)(i), because the Claimants cannot <i>"truthfully assume"</i>
	notoriously very difficult for a claimant to obtain evidence of a host state's corruption on its own. Tellingly, the Respondent has not denied corruption; rather, it has put the Claimants to proof, contending that the Claimants' claim fails "for want of evidence". The Respondent has therefore expressly put in	<ul> <li>for believing it likely that the requested Documents exist is to accept Claimants' unfounded allegations of corruption. Claimants are begging the question. If any unsubstantiated allegation sufficed to create a reasonable belief in the existence of a Document, IBA Article 3.3(a)(ii) would be emptied of any meaning.</li> <li>2. Panama further objects to this request: (1) because it fails to satisfy IBA Article 3.3(a)(ii), which requires that a request contain "a description in</li> </ul>	that these documents are under the custody or control of the Respondent, since the number of documents that could potentially be responsive to this request is large. This is a non-sequitur. The Claimants have explained why they believe that documents responsive to this request exist. 3. However, in the interest of narrowing the scope, the Claimants agree:

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST **FOR**

	issue the question of what evidence is available, and accordingly justice requires that the Respondent now provide all relevant evidence.	sufficient detail of a narrow and specific requested category of Documents," and (2) pursuant to IBA Article 9.2(c), because the production of the requested evidence would be an unreasonable burden on Panama. Claimants do not identify the authors of the requested Documents, the nature of the Documents sought, the specific date or date range of their creation, or the Documents' format. Evidence of the request's overbreadth is also found in Document Production Request No. 5, which begins, "[w]ithout prejudice to the generality of request 4." <i>Document</i> <i>requests cannot be</i> <i>general</i> ; they must be sufficiently detailed, narrow, and specific.	"The date range for such documents is 1 July 2013 to the present."	
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### PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

As a result, identifying,
compiling, and producing
the requested Documents
would prove unreasonably
burdensome to Panama.
<b>3.</b> Panama also objects to
this request on the basis
that it fails to satisfy IBA
Article 3.3(b), which
requires that the request
include a (legitimate)
statement as to how the
Documents requested are
relevant and material.
Claimants contend that
because Panama identified
that Claimants had failed
to meet their burden of
proof, Panama should be
required to provide the
missing relevant evidence.
This is no more than an
inappropriate attempt to
shift the burden of proof
to Panama.
The relevance and
The relevance and
materiality of a piece of
evidence is independent

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST <u>FOR</u>

### PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

	I		1
		from the question of	
		which party bears	
		evidentiary burdens.	
		Claimants allege	
		corruption while stating	
		that evidence of	
		corruption in the present	
		case "is unlikely to be	
		traceable." (Memorial, ¶	
		210). That Panama has	
		identified Claimants'	
		failure to meet their	
		burden of proof does not	
		shift that burden;	
		otherwise, all respondents	
		would bear the burden of	
		proof whenever they	
		challenged the sufficiency	
		of a claimant's evidence.	
		4. Panama also objects to	
		this request on the basis	
		that it fails to satisfy IBA	
		Article 3.3(c)(i). The	
		universe of Documents	
		requested is so broad,	
		Claimants cannot	
		truthfully assume that they	
		are in Panama's	
		possession, custody, or	
		possession, custouy, of	

				control.		
5.	Without prejudice to the generality of request 4 above, bank statements and other records evidencing payments received by or on behalf of Justices Ortega, De Leon and Mitchell other than by way of their judicial salaries. The date range for this request is 12 September 2007 to 16 March 2016. Searches pursuant to this request should include, without limitation, documents in the possession or control of the Panamanian government Financial Analysis Unit (" <b>UAF</b> ").	Memorial, ¶ 210 Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11 Witness Statement of Steven Akey dated 30 April 2018, ¶ 8 Counter- Memorial, ¶ 56- 60	See comments above in relation to request 4.	<ul> <li>1. Panama objects to this request pursuant to (1) IBA Article 9.2(b), because a legal impediment prevents the Documents' disclosure, and (2) IBA Article 9.2(f), because the requested Documents are classified as secret.</li> <li>Under Panamanian law, bank account information in the possession of the Superintendent of Banks, the government entity with exclusive jurisdiction to regulate and supervise the banking industry (<i>See</i> <b>Annex B</b>, Banking Law of Panama, Article 4), "must be kept under strict confidentiality" and can only be disclosed "within the course of a criminal process." (<i>See</i> <b>Annex B</b>, Banking Law of Panama, Article 110).</li> </ul>	<ol> <li>IBA Article 9.2(b) provides for a ground for objection being a "legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable." Panama relies on Panamanian legal provisions which apparently prohibit the Superintendent of Banks from disclosing documents other than in the course of criminal proceedings.</li> <li>Even if that is true, the judges themselves are agents of the state (CLA-099 (ENG) International Law Commission, Draft articles on Responsibility of</li> </ol>	No order. The restrictions imposed by the law of Panama in respect of banking confidentiality should be respected.

Similarly, information in the possession of the UAFStates for Internationally(known in most countries as the "FinancialWrongful Acts (2001), Article 2 (and Intelligence Unit"), "shall be kept under strictbe kept under strict confidentiality," (See Annex C, ExecutiveArticle 2 (5))), and confidentiality," (See the Respondent to Decree No. 241, Article	
(known in most countries as the "Financial Intelligence Unit"), "shall be kept under strict confidentiality," (See Annex C, Executive Decree No. 241, ArticleWrongful Acts (2001), Article 2 (and see Commentary to Article 2 (5))), and consident to provide the requested	
as the "Financial (2001), Article 2 (and Intelligence Unit"), "shall see Commentary to be kept under strict Article 2 (5))), and confidentiality," ( <i>See</i> can be required by <b>Annex C</b> , Executive the Respondent to Decree No. 241, Article provide the requested	
Intelligence Unit"), "shall be kept under strictsee Commentary to Article 2 (5))), and confidentiality," (See Annex C, Executive Decree No. 241, ArticleIntelligence Unit"), "shall be kept under strict confidentiality," (See the Respondent to provide the requested	
be kept under strict Article 2 (5))), and confidentiality," ( <i>See</i> can be required by <b>Annex C</b> , Executive the Respondent to Decree No. 241, Article provide the requested	
confidentiality," (Seecan be required byAnnex C, Executivethe Respondent toDecree No. 241, Articleprovide the requested	
Annex C, Executivethe Respondent toDecree No. 241, Articleprovide the requested	
Decree No. 241, Article provide the requested	
Decree No. 241, Article provide the requested	
3), and can only be documents. The	
disclosed to specific Respondent has not	
entities in relation to even suggested that it	
investigations on "money would make efforts to	
laundering, financing of make requests of the	
terrorism, and financing justices.	
for the proliferation of	
weapons of mass 2. The Respondent	
destruction." (See Annex also asserts that these	
C, Executive Decree No. documents are "secret	
241, Article 2.8, 2.9, <i>due to compelling</i>	
2.10). None of these grounds of	
situations is applicable <i>institutional</i>	
here, nor is an ICISD sensitivity", pursuant	
Tribunal one of the to IBA Article 9.2(f).	
entities to whom But "secret"	
disclosure is permitted information under	
IBA Article 9.2(f) is	
Panamanian law provides information that has	
for the prosecution of been " <i>classified as</i>	
government officials who secret by a	

	1'1	
	disclose confidential government or a	
	information, (See public international	
	Annex B, Banking Law of <i>institution</i> ." The	
	Panama, Article 191; see Respondent has made	
	also Annex E, Executive no allegation that the	
	Decree No. 947, Article Documents sought	
	5), with a potential have been so	
	sentence of up to 2-years' classified, and	
	imprisonment. (See certainly no evidence	
	Annex D, Penal Code of of such classification	
	Panama, Article 355). has been provided.	
	Indeed, it is hard to	
	In sum, there are legal see why	
	prohibitions against the communications	
	disclosure of the requested between the relevant	
	Documents, which are judges should have	
	classified as secret under been so classified,	
	Panamanian law. Not only unless as part of an	
	does the Tribunal not have attempt to withhold	
	authority to order such a evidence from this	
	request, Panama cannot Tribunal.	
	violate its own law, and a	
	government official would 3. The Respondent's	
	be subject to criminal objection under IBA	
	prosecution for disclosing Article 3.3(a)(ii) is	
	the requested Documents. unfounded, for the	
	reasons stated in the	
	<b>2.</b> Panama further objects Claimants'	
	to this request on the basis Introduction to their	
	that it fails to satisfy IBA Reply points above.	
	Article 3.3(a)(ii), which	

## CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST FOR PDODUCTION OF DOCUMENTED (20 NOVEN DED 2010)

	requires the request to	The Claimants	
	detail a "narrow and	reasonably believe	
	specific category of	that such documents	
	Documents," "reasonably	exist because there is	
	believed to exist," that is	evidence that bribes	
	"carefully tailored to	were paid to judges	
	produce relevant and	including Ortega and	
	material documents." (See	Mitchell in another	
	Annex G, COMMENTARY,	case (Memorial ¶	
	p. 9).	129-130, and so the	
		possibility that bribes	
	<i>First</i> , the request is	may have been paid	
	unhinged from the	in this case cannot be	
	statement on relevance	discounted.	
	and materiality, which		
	focuses solely on	4. The Respondent	
	corruption. Instead,	further objects that	
	Claimants request all bank	the request is a	
	records evidencing any	"fishing expedition"	
	income other than the	because all bank	
	Supreme Court Justices'	records evidencing	
	judicial salaries, whether	any income of the	
	licit or illicit. That the	justices is requested,	
	request would include the	including those of the	
	dissenting Justice's bank	dissenting Justice.	
	records is evidence that	But all of the bank	
	this request is merely a	statements need to be	
	fishing expedition.	provided in order that	
		the Claimants can	
	Second, Claimants have	understand whether	
	offered no positive		

evidence that the Supreme any payments made
Court Justices have to the justices were
received any income other illicit or not, since
than their judicial salaries, such illicit payments
or that a corrupt official are unlikely to be
would accept a bribe via marked as such.
traceable means such as
bank transfers. At the 4. The Respondent's
same time, they have assertion that the
stated that any evidence of request fails to satisfy
corruption "is unlikely to IBA Article 3.3(a)(ii)
be traceable." (Memorial, is wrong for the
¶ 210). Claimants cannot reasons stated in the
have it both ways, and Claimants'
they have not established Introduction to their
that the Documents reply points above.
requested can be The Claimants'
reasonably believed to allegations of
exist. corruption are not
unsubstantiated. The
<i>Third</i> , the only remaining Claimants have
basis for believing it likely pleaded corruption,
that the requested rely on the statements
Documents exist is to made by the
accept Claimants' Panamanian
unfounded allegations of Ambassador at the
corruption. Claimants are meeting of 13 March
begging the question. If 2015, and have
any unsubstantiated provided such
allegation sufficed to evidence as they were

	create a reasonable belief	able to obtain via
	in the existence of a	public sources of the
	Document, the	numerous
	requirements of IBA	investigations into
	Article 3.3(a)(ii) would be	corruption which
	emptied of any meaning.	appear to have been
		abandoned by
	<i>Fourth</i> , the request does	Panama without
	not describe a narrow and	reaching any
	specific category of	conclusion.
	documents. Instead,	
	Claimants' seek a broad	As to the shifting of
	category of financial	the burden of proof,
	documents spanning	in circumstances
	nearly 10 years, which	where the evidence of
	could be in the possession	corruption is all
	of multiple persons or	within the
	entities.	Respondent's
		possession, control or
	<b>3.</b> Panama also objects to	knowledge, and
	this request, because it	where there is <i>prima</i>
	fails to satisfy IBA	facie evidence of
	Articles 3.3(b) and 9.2(a),	corruption, as the
	which require that the	Claimants have
	Documents requested be	provided with respect
	relevant and material.	to Justice Ortega and
		other justices of the
	Claimants contend that	Panamanian Supreme
	because Panama identified	Court, the burden of
	Claimants' failure to meet	
	their burden of proof,	proof shifts to the
	then burden of proof,	

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		Panama should be required to provide the	Respondent (See CLA-0139 (ENG)	
		missing relevant evidence.	Karkey Karadeniz v	
		This is no more than an	Pakistan, Award ¶	
		inappropriate attempt to	497).	
		shift the burden of proof		
		to Panama.		
		The relevance and		
		materiality of a piece of		
		evidence is independent		
		from the question of		
		which party bears		
		evidentiary burdens.		
		Claimants allege		
		corruption while stating		
		that evidence of		
		corruption in the present		
		case "is unlikely to be		
		traceable." (Memorial, ¶		
		210). That Panama has		
		identified Claimants'		
		failure to meet their		
		burden of proof does not		
		shift that burden;		
		otherwise, the party		
		challenging the		
		sufficiency of the other		
		party's evidence would		
		always bear the burden of		

r	
	proof.
	Instead, as stated in
	Panama's Objection No. 2
	to this request, the
	Documents lack sufficient
	relevance and materiality
	to the supposed issue of
	corruption because
	Claimants request all bank
	records evidencing any
	income other than the
	Supreme Court Justices'
	judicial salaries, whether
	licit or illicit.
	4. Panama also objects to
	this request, because it
	fails to satisfy IBA Article
	3.3(c), as there is no
	reason to believe that
	Panama is in possession,
	custody, or control of the
	personal bank records of
	the Supreme Court
	Justices, nor have
	Claimants offered any
	such reason. For example,
	Claimants have never
	alleged that the UAF has
	investigated the Supreme

	Court Justices' bank accounts.
	<b>5.</b> Panama further objects to this request on the basis that it does not follow the procedure for requesting documents from third- parties under IBA Article 3.9.
	<i>First</i> , while the actions of State Organs are
	attributable to the State, the individual Supreme Court Justices are not
	parties to this arbitration.
	Claimants are requesting non-official documents.
	To the extent that Claimants' request
	personal bank records in the possession of persons
	who, in their individual capacities, are third-
	parties, the proper procedure to request such
	Documents is established in IBA Article 3.9, by
	which Claimants have not

	abided.	
	Second, Claimants also cannot request Documents in possession of banks, which are also third- parties. (See Annex B, Banking Law of Panama, Article 111). Banks can only disclose information relating to clients under certain specific circumstances, none of which is applicable here. For example, the Tribunal is not a "competent authority" that can "require" the disclosure of the requested Documents. The Tribunal is not a Panamanian State Organ with jurisdiction over banks, and pursuant to ICSID Arbitration Rule	
	ICSID Arbitration Rule 34(2)(a), the Tribunal can only require the production of documents from parties to the	
	arbitration.	

6.	In April 2017, a complaint was filed against Justice Oyden Ortega, one of the judges who issued the Supreme Court Judgment, by Mr. Alvarado Taylor. His complaint was that Justice Ortega and his son conspired to accept money in exchange for procuring a judgment favorable to the appellant in a case before him. Therefore, the Claimants request a copy of the complaint, all documents relating to it, including any documents relating to archive the complaint, any documents relating to any investigation	Memorial ¶ 114, 123-125 Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11 Witness Statement of Steven Akey dated 30 April 2018, ¶ 8 Counter- Memorial, ¶ 56 - 60	This request is relevant and material to the Claimants' pleaded contention that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption, and that at least two of the Justices of the Supreme Court tribunal that issued the Supreme Court Judgment have been the subject of numerous allegations of corruption, which Panama has chosen not to investigate.	1. Panama objects to this request pursuant to IBA Article 9.2(a), because it lacks sufficient relevance to the case or materiality to its outcome. Investment arbitration jurisprudence is clear that "corruption is a serious allegation, especially in the context of the judiciary[;] generalized allegations of corruption in the [Respondent State] do not meet [a claimants'] burden of proof." <b>RLA-</b> 0100, <i>Liman Caspian Oil</i> <i>BV and NCL Dutch</i> <i>Investment BV v. Republic</i> <i>of Kazakhstan</i> , ICSID Case No. ARB/07/14 (Excerpts of Award, 22 June 2010) (Böckstiegel, Hobér, Crawford), ¶ 422; <i>see also</i> <b>RLA-0101</b> , <i>Jan</i> <i>Oostergetel and Theodora</i> <i>Laurentius v. Slovak</i> <i>Republic</i> , UNCITRAL, (Final Award, 23 April	1. The Respondent's objection under IBA Article 9.2(a) is wrong for the reasons stated in the Claimants' Introduction to their reply points above. The documents requested are relevant to the case and material to its outcome, because they concern specific allegations of corruption made against the very judge that drafted the Supreme Court Judgment. The Respondent objects that a legal impediment prevents disclosure of documents responsive to this request [ <i>add more on</i> <i>UAF</i> ].	Documents in this category to be produced by 14 February 2019, other than documents in the possession of the UAF whose production would infringe Panamanian law.
			investigate. As the Claimants		request [ <i>add more on UAF</i> ]. 2. The Respondent	

evidence obtained	explained in their	Wladimiroff, Trapl), ¶ 303	also asserts that these
during such	pleading, it is	("While [general reports	documents are "secret
investigation	notoriously very	of bribery of judges] are	due to compelling
including, without	difficult for a	to be taken very seriously	grounds of
limitation, bank	claimant to obtain	as a matter of policy, they	institutional
statements and other	evidence of a host	cannot substitute for	sensitivity", pursuant
records evidencing	state's corruption	evidence of a treaty	to IBA Article 9.2(f).
payments received by	on its own.	breach <i>in a specific</i>	But "secret"
or on behalf of Justice	Tellingly, the	instance.")(emphasis	information under
Ortega other than by	Respondent has	added), <b>RLA-0106</b> , <i>ECE</i>	IBA Article 9.2(f) is
way of his judicial	elected, in its	et al. v. Czech Republic,	information that has
salary. The date range	Counter-	PCA Case No. 2010-5,	been "classified as
for this request is to	Memorial, not to	(Award, 19 September	secret by a
be determined by	respond to those	2013) (Berman, Bucher,	government or a
reference to the dates	allegations, and to	Thomas), ¶ 4.879	public international
in the complaint.	put the Claimants	("Reference to other	<i>institution</i> ." The
Searches pursuant to	to proof as to	instances of alleged	Respondent has made
this request should	whether there was	corruption may prove that	no allegation that the
include, without	any corruption in	corruption exists in the	Documents sought
limitation, documents	this case.	State, but it does little to	have been so
in the possession or		advance the argument that	classified, and
control of the UAF.	Therefore, there	corruption existed in the	certainly no evidence
	is an issue	specific events giving rise	of such classification
	between the	to the claim.")(emphasis	has been provided.
	Parties, not only	added).	Indeed, it is hard to
	as to whether the		see why
	Supreme Court	Claimants request	communications
	Judgment was	Documents regarding	between the relevant
	procured through	allegations that are wholly	judges should have
	corruption, but	unrelated to the	been so classified,
			• • •

	also as to whether	Panamanian tort case and	unless as part of an
	there is a track	therefore lack both	attempt to withhold
	record of	relevance and materiality	evidence from this
	corruption by any	to the outcome of this	Tribunal. Even if the
	of the three	case. Contrary to	Respondent is unable
		-	1
	Supreme Court	Claimants' assertion, the	to produce documents
	judges.	Supreme Court Justices'	held by UAF, it
	The Deener lent	"track record" is not at	should be able to
	The Respondent	issue in, or relevant to,	provide documents
	has therefore	this arbitration. The only	held by other
	expressly put in	relevant matter is whether	Panamanian
	issue the question	"corruption existed in the	government entities,
	of what evidence	specific events giving rise	such as the National
	is available, and	to the claim." See RLA-	Assembly.
	accordingly	<b>0106</b> , <i>ECE et al. v. Czech</i>	
	justice requires	<i>Republic</i> , PCA Case No.	3. The Respondent's
	that the	2010-5, (Award, 19	objection that the
	Respondent now	September 2013)	request is overbroad
	provide all	(Berman, Bucher,	and thus fails to
	relevant evidence.	Thomas), ¶ 4.879.	satisfy the
		Claimants should not be	requirements of IBA
		allowed to poison the well	Article 3.3(a)(ii) is
		with irrelevant and	wrong. First, the
		immaterial allegations.	Claimants do have a
		initiaterial anegations.	reasonable belief that
		2. Panama objects to this	illicit income may
		request pursuant to (1)	have been received
		IBA Article 9.2(b), a legal	by the Supreme Court
		impediment prevents the	Justices, because
		Documents' disclosure,	there is evidence that
		Documents disclosure,	mere is evidence that

|--|

		and (2) ID A Article () $2(f)$	Instigan Ortage and	
		and (2) IBA Article 9.2(f),	Justices Ortega and	
		because the requested	Mitchell have been	
		Documents are classified	bribed before	
		as secret.	(Memorial, ¶ 129-	
			130)	
		Information in the		
		possession of the UAF,	Second, all of the	
		"shall be kept under strict	bank statements are	
		confidentiality," (See	requested in order	
		Annex C, Executive	that the Claimants	
		Decree No. 241, Article	can understand	
		3), and can only be	whether any	
		disclosed to specific	payments made to the	
		entities in relation to	justices were illicit or	
		investigations on "money	not, since such illicit	
		laundering, financing of	payments are unlikely	
		terrorism, and financing	to be marked as such.	
		for the proliferation of		
		weapons of mass	Third, date ranges	
		destruction." (See Annex	cannot be supplied	
		C, Executive Decree No.	because it is not	
		241, Article 2.8, 2.9,	possible to know	
		2.10). None of these	what the dates of the	
		situations is applicable	investigations carried	
		here, nor is an ICISD	out by Panama are.	
		Tribunal one of the	That information is	
		entities to whom	solely within the	
			Respondent's	
		disclosure is permitted.	knowledge.	
		Further, Claimants request	KIIOWICUZE.	
		ý <b>1</b>	Fourth, it is not	
		"Documents related to any	rourui, it is liot	

		investigation undertaken,"	overbroad to request	
			all documents	
		Panamanian law provides	obtained during any	
		for the prosecution of	investigation, when	
		public servants who	the subject of the	
		disclose confidential	investigation was	
		information, by virtue of	Justice Ortega	
		an abuse of their authority,	himself.	
		with a potential sentence		
		of up to 2-years'	4. The Respondent's	
		imprisonment. (See	objection under IBA	
		Annex D, Penal Code of	Article 3.3(c) is	
		Panama, Article 355).	wrong because	
			Panamanian Supreme	
		In sum, there are legal	Court Justices are	
		prohibitions against the	agents of the state	
		disclosure of the requested	(CLA-099 (ENG)	
		Documents. Not only does	International Law	
		the Tribunal not have	Commission, Draft	
		authority to order such a	articles on	
		request, Panama cannot	Responsibility of	
		violate its own law, and a	States for	
		government official would	Internationally	
		be subject to criminal	Wrongful Acts	
		prosecution for disclosing	(2001), Article 2 (and	
		the requested Documents.	see Commentary to	
			Article 2 (5))), and	
		<b>3.</b> Panama objects to this	can be required by	
		request as it fails to satisfy	the Respondent to	
		IBA Article 3.3(a)(ii),	provide the requested	
		which requires a	1	

# CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST <u>FOR</u>

	"description in sufficient detail" of "a narrow and specific" category of Documents, that is "reasonably believed to exist," and is "carefully tailored to produce relevant and material documents." ( <i>See</i> <b>Annex G</b> , COMMENTARY, p. 9).	documents. The Respondent has not even suggested that it would make efforts to make requests of the justices.	
	<i>First</i> , Claimants request, once again, bank records evidencing <i>any</i> income separate from judicial salary, whether licit or illicit. But they have not established a reasonable belief that any Supreme Court Justice receives any income other than his judicial salary, that such other income is illicit, or that any illicit income would be recorded in traceable bank records.		
	<i>Second</i> , Claimants broadly request "any documents relating to any		

	investigation undertaken," in addition to bank records. Investigators can be expected to compile information that is broader than the limited permissible scope of a request under the IBA Rules. For example, investigators would likely	
	investigators would likely investigate and compile personal information on all the relevant parties, not just the accused party. Such information is irrelevant and immaterial but would be included in Claimants' overbroad request. <i>Third</i> , the request is not narrow and specific because Claimants state that the range "is to be determined by reference to the dates in the	
	complaint," but do not identify the category of relevant dates in the complaint.	

# CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST **FOR**

				request because it fails to satisfy IBA Article 3.3(c), as there is no reason to believe that Panama is in possession, custody, or control of the personal bank records of the Supreme Court Justices, nor have Claimants offered any. For example, Claimants have never offered evidence, nor even alleged, that the UAF has ever investigated the Supreme Court Justice's bank records.		
7.	On 6 June 2014, the Panamanian press reported a complaint filed against Justice Ortega with the Secretary General of the National Assembly which included allegations and evidence of bribery. Therefore, the Claimants request a	Memorial ¶ 114, 127 Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11 Witness Statement of Steven Akey dated 30 April	See comments above in relation to request 6.	Panama objects on the same bases as its objections to Document Production Request No. 6.	See comments above in relation to request 6.	Documents in this category to be produced by 14 February 2019, other than documents in the possession of the UAF whose production would infringe Panamanian law.

# CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### **FOR**

copy of the	2018, ¶ 8		
complaint, all			
documents relating to	Counter-		
it, including any	Memorial, ¶ 56 -		
documents relating to	60		
any decision to			
archive the complaint,			
any documents			
relating to any			
investigation			
undertaken, and			
evidence obtained			
during such			
investigation			
including, without			
limitation, bank			
statements and other			
records evidencing			
payments received by			
or on behalf of Justice			
Ortega other than by			
way of his judicial			
salary. The date range			
for this request is to			
be determined by			
reference to the dates			
in the complaint.			
Searches pursuant to			
this request should			
include, without			

### CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST FOR

	limitation, documents in the possession or control of the UAF.					
8.	On 15 July 2015, former Panamanian President Ricardo Martinelli filed complaints against six Supreme Court Justices, including Justice Ortega and Justice Mitchell. Therefore, the Claimants request a copy of the complaints, all documents relating to them, including any documents relating to the decision to archive any of the complaints, any documents relating to any investigation undertaken, and evidence obtained during such investigation including, without	Memorial ¶ 114, 128 Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11 Witness Statement of Steven Akey dated 30 April 2018, ¶ 8 Counter- Memorial, ¶ 56 - 60	See comments above in relation to request 6.	Panama objects on the same bases as its objections to Document Production Request No. 6.	See comments above in relation to request 6.	No order. The request is insufficiently specific and does not establish the relevance of the documents.

# CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### <u>FOR</u> <u>PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)</u>

	limitation, bank statements and other records evidencing payments received by					
	or on behalf of Justice Ortega or Justice					
	Mitchell other than by way of their judicial					
	salaries. The date					
	range for this request					
	is to be determined by reference to the dates					
	in the complaints.					
	Searches pursuant to					
	this request should include, without					
	limitation, documents					
	in the possession or					
	control of the UAF.					
9.	On 30 September	Memorial ¶ 114,	See comments	Panama objects on the	See comments above	Documents in this
	2015, the National Assembly's	129-130	above in relation	same bases as its	in relation to request 6.	category to be
	Credentials	Exhibit C-0246,	to request 6.	objections to Document Production Request No. 6.	0.	produced by 14 February 2019,
	Committee archived a	¶140-141				other than
	complaint against	Witness				documents in the
	Justices Ortega and Mitchell filed by	Statement of				possession of the UAF whose
	Mitchell filed by Miguel Antonio	Jeffrey Lightfoot				production would
	Bernal, in relation to a	dated 9 May				infringe

### CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST FOR

judgment issued with	2018, ¶ 11		Panamanian law.
respect to the			
inheritance of a U.S.	Witness		
businessman, Wilson	Statement of		
Lucom, alleging	Steven Akey		
corruption of the	dated 30 April		
Supreme Court	2018, ¶ 8		
justices. Therefore,	a		
the Claimants request	Counter-		
a copy of the	Memorial, ¶ 56 -		
complaint, all	60		
documents relating to			
it, including any			
documents relating to			
the decision to			
archive the complaint,			
any documents			
relating to any			
investigation			
undertaken, and			
evidence obtained			
during such			
investigation			
including, without			
limitation, bank			
statements and other			
records evidencing			
payments received by			
or on behalf of			
Justices Ortega and			

# CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST

### <u>FOR</u> PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)

Mitchell other than by			
way of their			
respective judicial			
salaries. The date			
range for this request			
is to be determined by			
reference to the dates			
in the complaint.			
-			

#### Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama (ICSID Case No. ARB/16/34) Procedural Order No. 7 Annex B

#### Respondent Panama's Redfern Schedule for Production of Documents Panama's Replies to Claimants' Objections and Responses to Panama's Document Production Requests 29 November 2018

- Pursuant to Section 16 of Procedural Order No. 1 and Amendment No. 3 to Annex A in the above-captioned proceeding, the Republic of Panama ("Panama") submits this request for production of documents on Claimants Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. ("Claimants").
- 2. To the best of Panama's knowledge, the documents requested below are not in its possession, custody, or control. Additionally, because the requested documents are typically kept in the usual course of business, Panama submits that they exist and that they are in Claimants' possession, custody, or control.
- 3. Panama excludes from its requests any documents that have already been exhibited or otherwise submitted into the record of this proceeding.
- 4. The term "Document" includes any writing, communication, image, drawing, program or any type of data, whether it is saved or recorded in electronic, printed, audio, visual, or any other format, including (but not limited to) emails, letters, fax, text messages, contracts, memoranda, reports, notes, minutes or registry of any meeting, audio recordings, presentation slides, books, tables, or spreadsheets.
- 5. Panama requests that all Documents responsive to Panama's requests be produced:
  - a. in their totality, including (if applicable) annexes or attached attachments;
  - b. in their original or "native" format (*i.e.*, .doc, .docx, .ppt, .xlsx) when the Document is available in its native electronic format;
  - c. in color, in the event that the requested Document includes color graphics; and
  - d. accompanied by an index that identifies (i) the date of the Document; and (ii) to which of Panama's Document Requests the Document responds.

1	2		3	4	5	6
No.	<b>Documents or Category</b>	Relevance and Materiality According to		<b>Responses/Objections</b>	Replies to Responses /	Tribunal's
	of Documents Requested	Reques	sting Party	to Document Requests	Objections to	Decisions
		Ref. to Pleadings,	Comments		Document	
		Exhibits, Witness			Requests	
		Statements or				
		Expert Reports				
1.	Documents recording or	Hearing (Day 3), Tr.	Mr. Thomas Kingsbury	The Claimants have	Article 9(2)(b) of the IBA	No order. The Tribunal
	commenting	482:15-483:07	asserted in the Hearing	carried out diligent	Rules on the Taking of	accepts the affirmation of
	on discussions and/or	(Kingsbury);	on Expedited Objections	searches and have	Evidence in International	Claimants' counsel that
	meetings		that Bridgestone	provided all non	Arbitration ("IBA Rules")	all non privileged
	between 28 May 2014 and	Decision on	Licensing received the	privileged documents that	empowers the "[t]he	documents that are
	the present, relating to the	Expedited	funds used to pay the	are responsive to this	Arbitral Tribunal," not a	responsive to this request
	purported loan that was used	Objections, ¶ 329;	Judgment in the form of	request.	party, to exclude	have been produced.
	to pay the Supreme Court		a "loan."		Documents from production	Justification for a
	Judgment, including but not	Memorial, ¶¶ 223-25;			on the basis of privilege.	Privilege Log not
	limited to:	~	These documents are			demonstrated.
		Counter-Memorial,	relevant to the case and		Article 9(3) of the IBA	
	(a) Minutes or informal notes	¶¶ 39, 40, 279-81;	material to its outcome,		Rules establishes the	
	or records of meetings, calls,		because the original		considerations that the	
	videoconferences or	First Shopp Report,	source of the funds used		Tribunal can take into	
	discussions; and	¶¶ 30-32, 160-67.	to pay the Judgment (and		account when deciding on	
			the use of Bridgestone		issues of privilege.	
	(b) Communications created,		Licensing and/or			
	sent or received by		Bridgestone Americas as		Here, Claimants have only	
	employees or officers of		vehicles in this regard)		summarily alleged that	
	Bridgestone Licensing and		will affect Claimants'		some Documents are	
	Bridgestone Americas		purported injury and		privileged, without	
	("Claimants"), Bridgestone		damages owed (if any). (In the words of the		explaining the basis for this assertion. As a result, it is	
	Corporation, and any other subsidiary or affiliate of		Tribunal, "It does not		· · · · · · · · · · · · · · · · · · ·	
	Bridgestone Corporation or		follow that the whole of		impossible for Panama to effectively reply to	
	Claimants.		the payment will be		Claimants' <i>de facto</i>	
	Ciaimains.		recoverable as loss		objection, or for the	
	This request does not include		sustained by		Tribunal to consider	
	Documents that are subject to		[Bridgestone		whether the relevant	
	Documents that are subject to		Indgestolle		whether the relevant	

	atterner alignt privilage		Licensing ??)		Documents are in fact	
	attorney-client privilege.		Licensing].")			
					privileged.	
					Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow	
					Panama and the Tribunal to consider Claimants' allegations.	
					If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained	
					Documents, pursuant to	
					ICSID Arbitration Rule	
					34(2)(a).	
					To assist with the Document	
					production process, Panama	
					is providing a proposed	
					Privilege Log template. (See	
					Annex H, Privilege Log).	
2.	The following Documents or	Hearing (Day 3), Tr.	These documents are	The Claimants have	<b>1.</b> Article 9(2)(b) of the IBA	No order. The Tribunal
	categories of Documents,	482:15-483:07	relevant to the case and	carried out diligent	Rules empowers the "[t]he	accepts the affirmation of
	created or sent between May	(Kingsbury);	material to its outcome,	searches and have	Arbitral Tribunal," not a	Claimants' counsel that
	28, 2014 and the present,		because Bridgestone	provided all non	<i>party</i> , to exclude	all non privileged
	relating to payment of the	Decision on	Licensing must have	privileged documents that	Documents from production	documents that are
	Supreme Court Judgment:	Expedited	suffered a financially	are responsive to this	on the basis of privilege.	responsive to this request
		Objections, ¶ 329;	assessable injury to	request.		have been produced.
	(a) Any intercompany loan		recover damages for the		Article 9(3) of the IBA	Justification for a
	agreement between any	Memorial, ¶¶ 223-25;	payment of the Supreme	Confidential and	Rules establishes the	Privilege Log not
	combination of Bridgestone		Court Judgment, and	irrelevant or privileged	considerations that the	demonstrated.
	Licensing, Bridgestone	Counter-Memorial,	evidence to support the	information contained	Tribunal can take into	
	Americas, Bridgestone Japan,	¶¶ 39, 40, 279-81;	alleged existence of the	within the documents has	account when deciding on	
	and any other subsidiary or		loan are required to	been redacted.	issues of privilege.	
	affiliate of Bridgestone	First Shopp Report,	assess the alleged injury.			

Corporation or Claimants;	¶¶ 30-32, 160-67.	Here, Claimants have	
	¶¶000 <b>2,</b> 10000	summarily alleged that	
(b) Monthly bank statements		some Documents are	
for Bridgestone Licensing		privileged, without	
and Bridgestone Americas;		explaining the basis for this	
and		assertion. As a result, it is	
und		impossible for Panama to	
(c) Other financial records,		effectively reply to	
communications, or other		Claimants' <i>de facto</i>	
Documents demonstrating		objection, or for the	
any transfer of funds between		Tribunal to consider	
Bridgestone Americas,		whether the relevant	
Bridgestone Licensing,		Documents are in fact	
Bridgestone Corporation, and		privileged.	
any other subsidiary or			
affiliate of Bridgestone		Thus, as is common practice	
Corporation or Claimants in		in arbitral proceedings,	
connection with the		Claimants should provide a	
purported loan; and		Privilege Log to allow	
		Panama and the Tribunal to	
(d) Other financial records,		consider Claimants'	
communications, or other		allegations.	
Documents, including			
internal planning or		If Claimants are unable to	
marketing Documents, or tax		provide such Privilege Log,	
returns of Claimants,		the Tribunal should require	
Bridgestone Corporation		them to produce the retained	
and/or any other subsidiary		Documents, pursuant to	
or affiliate of Bridgestone		ICSID Arbitration Rule	
Corporation or Claimants		34(2)(a).	
evidencing the financial			
source or sources used to		To assist with the Document	
fund the purported loan.		production process, Panama	
		is providing a proposed	
		Privilege Log template. (See	
		Annex H, Privilege Log).	
		<b>2.</b> Article 9(2)(b) of the IBA	

1	 1	D 1 45 31	1
		Rules empowers the "[t]he	
		Arbitral Tribunal," not a	
		<i>party</i> , to exclude	
		Documents from production	
		on the basis of privilege.	
		on the basis of privilege.	
		The IBA Rules also	
		expansively define the term	
		"Document" as "a writing	
		. or data of any kind." Thus,	
		Claimants' redaction of	
		information is tantamount to	
		a failure to produce a	
		Document.	
		Document.	
		Article 9(3) of the IBA	
		Rules establishes the	
		considerations that the	
		Tribunal can take into	
		account when deciding on	
		issues of privilege.	
		issues of privilege.	
		Here, Claimants have	
		summarily alleged that	
		some redacted information	
		is privileged, without	
		explaining the basis for this	
		assertion. As a result, it is	
		impossible for Panama to	
		effectively reply to	
		Claimants' <i>de facto</i>	
		objection, or for the	
		Tribunal to consider	
		whether the redacted	
		information is in fact	
		privileged.	
		Thus, as is common practice	
		Thus, as is common practice	

		in arbitral proceedings,	
		Claimants should provide a	
		Redaction Log to allow Panama and the Tribunal to	
		consider Claimants'	
		allegations.	
		If Claimants are unable to	
		provide such Redaction	
		Log, the Tribunal should require them to produce the	
		redacted information,	
		pursuant to ICSID	
		Arbitration Rule 34(2)(a).	
		To assist with the Document	
		production process, Panama	
		is providing a proposed	
		Redaction Log template.	
		(See Annex I, Redaction	
		Log).	
		3. Panama objects to	
		Claimants' redaction of	
		information that they deem	
		irrelevant.	
		Article 9(2)(a) of the IBA	
		Rules empowers the "[t]he	
		Arbitral Tribunal," not a	
		<i>party</i> , to exclude	
		Documents from production on the basis of relevance.	
1		The IBA Rules also	
1		expansively define the term	
		"Document" as "a writing	
		. or data of any kind." Thus,	

3.       Financial records, communications, or other Documents demonstrating the existence or eventual use of the sum that represents the difference between the total purported loan amount and the payment of the Supreme Court Judgment.	Hearing (Day 3), Tr. 482:15–483:07 (Kingsbury); Decision on Expedited Objections, ¶ 329; Memorial, ¶¶ 223-25; Counter-Memorial, ¶¶ 39, 40, 279-81; First Shopp Report, ¶¶ 30-32, 160-67.	Mr. Kingsbury asserted in the Hearing on Expedited Objections that Bridgestone Licensing received a USD \$6 million loan from Bridgestone Americas. Panama's damages expert has identified a cash inflow of USD \$5.8 million to Bridgestone Licensing between January and July 2016. <i>See</i> First Shopp Report, ¶ 163. These documents are relevant to the case and	The Claimants object to this Request, on the grounds that it is irrelevant. The justification provided by the Respondent fails to explain how the information and documents requested are said to be relevant to the case and material to the outcome. The difference between the total loan amount and the payment of the Supreme Court Judgment is not relevant to the loss that BSLS has suffered, and does not form part of the loss claimed by BSLS in this	Claimants' redaction of information is tantamount to a failure to produce a Document. Claimants have failed to identify the foundation they assume allows them to redact information on the basis of relevance, and the Tribunal should require Claimants to produce the Documents without the redactions based on relevance, pursuant to ICSID Arbitration Rule 34(2)(a). Panama has sufficiently explained the relevance of the Documents requested, both in its Statement of Relevance and in the sections of its Counter- Memorial to which it cites. BSLS seeks damages of USD 5,431,000 based on the payment it made to Muresa as a result of the Supreme Court Judgment. However, BSLS financed this payment with a loan of USD 6 million. Moreover, Documents recently produced by Claimants demonstrate that BSLS has not repaid any portion of the	No order. Relevance not demonstrated.
		relevant to the case and material to its outcome,	claimed by BSLS in this case. It is unclear why the	not repaid any portion of the loan and does not intend to	

			because Bridgestone Licensing must have suffered a financially assessable injury to recover damages for the payment of the Supreme Court Judgment, and evidence related to the apparent surplus is relevant to the assessment of the alleged injury.	difference between the total loan amount and the payment of the Supreme Court Judgment is said to be relevant to the analysis performed by the Respondent's expert.	do so at any point in the near future. ( <i>See</i> <b>Annex J</b> , <i>BSLS 2018 Income</i> <i>Statement Summary</i> (chart showing no decrease in BSLS's USD 6 million Ioan balance); <b>Annex K</b> , <i>Email</i> <i>from BSJ to BSLS and</i> <i>BSAM on Loan Renewal</i> (planning to renew the Ioan until 2020)). As a result, BSLS has actually benefited from a surplus of almost USD 600,000. These documents (regarding the existence or eventual use of this sum, <i>e.g.</i> , whether it was repaid) are patently relevant to the case because BSLS must have suffered a financially assessable injury to recover damages for the payment of the Supreme Court Judgment, and if BSLS has benefited from a surplus, it has not suffered	
4.	Any unproduced (1) licensing	Decision on	These documents are	The Claimants have	an injury. Article 9(2)(b) of the IBA	No order. The Tribunal
4.	or sublicensing agreements,	Expedited	relevant to the case and	carried out diligent	Rules empowers the "[t]he	accepts the affirmation of
	(2) transfer pricing reports,	Objections, ¶ 219,	material to its outcome	searches and have	Arbitral Tribunal," <i>not a</i>	Claimants' counsel that
	and (3) Documents	242;	because (as affirmed by	provided all non	<i>party</i> , to exclude	all non privileged
	demonstrating the alteration,		the Tribunal) the royalty	privileged documents that	Documents from production	documents that are
	rescission, or modification of	Memorial, ¶¶ 234,	rates contained in such	are responsive to this	on the basis of privilege.	responsive to this request
	existing licensing and	238-39;	agreements are relevant	request.		have been produced.
	sublicensing agreements		to the value of the		Article 9(3) of the IBA	Justification for a
	subsequent to May 28, 2014,	First Daniel Report,	Panamanian trademarks,		Rules establishes the	Privilege Log not
	related to the following:	¶¶ 36, 39, 77, 84-86,	and Claimants allege that		considerations that the	demonstrated.

	94-102;	the value of the	Tribunal can take into	
(a) The FIRESTONE	<i>y</i> 1102,	trademarks has been	account when deciding on	
Trademark registered in	First Shopp Report,	diluted.	issues of privilege.	
Panama;	¶ 85, 129-32, 142-	unutou	issues of privilege.	
i ultullu,	48.		Here, Claimants have	
(b) Bridgestone America's	10.		summarily alleged that	
FIRESTONE Trademark			some Documents are	
License in Panama; and			privileged, without	
Elective in Fundina, and			explaining the basis for this	
(c) Bridgestone America's			assertion. As a result, it is	
BRIDGESTONE Trademark			impossible for Panama to	
License in Panama.			effectively reply to	
License in Fundina.			Claimants' <i>de facto</i>	
			objection, or for the	
			Tribunal to consider	
			whether the relevant	
			Documents are in fact	
			privileged.	
			privileged.	
			Thus, as is common practice	
			in arbitral proceedings,	
			Claimants should provide a	
			Privilege Log to allow	
			Panama and the Tribunal to	
			consider Claimants'	
			allegations.	
			6	
			If Claimants are unable to	
			provide such Privilege Log,	
			the Tribunal should require	
			them to produce the retained	
			Documents, pursuant to	
			ICSID Arbitration Rule	
			34(2)(a).	
			To assist with the Document	
			production process, Panama	
			is providing a proposed	

5.	Updated Documents and records showing information relating to sales of FIRESTONE and BRIDGESTONE-branded products in Panama in 2018, including but not limited to the following: (a) the identity of the customer; (b) the brand of tire sold, (c) the number of tires sold, (d) revenues derived from these sales, and (e) the final destination market of the tires sold.	Decision on Expedited Objections, ¶ 219, 242; Memorial, ¶¶ 233-40; Counter-Memorial, ¶¶ 28, 35, 166, 186- 90; First Daniel Report, ¶¶ 15-17, 78-109; First Shopp Report, ¶¶ 57-61.	These documents are relevant to the case and material to its outcome because (as affirmed by the Tribunal) the revenue from sales of branded products are relevant to the value of the trademark licenses, and Claimants allege that the value of the Panamanian licenses has been diluted.	The Claimants have carried out diligent searches and have provided all non privileged documents that are responsive to items (a) to (d) of this Request. As to item (e), the Claimants object to this Request, on the grounds that it is irrelevant to the matters in dispute. Without prejudice to the foregoing, the Claimants do not keep any records of information pertaining to this Request.	Privilege Log template. ( <i>See</i> <b>Annex H</b> , <i>Privilege Log</i> ). <b>1.</b> Article 9(2)(b) of the IBA Rules empowers the "[t]he Arbitral Tribunal," <i>not a</i> <i>party</i> , to exclude Documents from production on the basis of privilege. Article 9(3) of the IBA Rules establishes the considerations that the Tribunal can take into account when deciding on issues of privilege. Here, Claimants have summarily alleged that some Documents are privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants' <i>de facto</i> objection, or for the Tribunal to consider whether the relevant Documents are in fact privileged.	<ul> <li>(a) to (d): No order. The Tribunal accepts the affirmation of Claimants' counsel that all non privileged documents that are responsive to this request have been produced. Justification for Privilege Log not demonstrated.</li> <li>(e) Claimants to confirm within 14 days, if it be the case, that their subsidiaries are not in a position to produce documents giving this information.</li> </ul>
					impossible for Panama to effectively reply to Claimants' <i>de facto</i> objection, or for the Tribunal to consider whether the relevant	
					Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow Panama and the Tribunal to consider Claimants' allegations.	

		If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).	
		To assist with the Document production process, Panama is providing a proposed Privilege Log template. ( <i>See</i> <b>Annex H</b> , <i>Privilege Log</i> ).	
		<b>2.</b> Claimants' objection on the basis of relevance is without merit.	
		As the Tribunal has affirmed, the value of a trademark license to the licensee is based on the revenue from sales of trademark-branded products. ( <i>See</i> Decision on Expedited Objections, ¶¶ 219, 242).	
		Panama's damages expert has determined that many FIRESTONE and BRIDGESTONE-branded tires sold in Panama were actually sold in the Colon Free Trade Zone. Thus, these tires were likely exported to other countries.	

		(See First Shopp Report,	
		¶ 101-105). Such sales	
		cannot be categorized as	
		sales of trademark-branded	
		tires in Panama.	
		tiles in Fallalla.	
		These Documents are	
		relevant to the case because	
		the difference between the	
		purported and actual	
		Panamanian sales will	
		change the revenue derived	
		from such sales. This affects	
		the value of the relevant	
		trademark license, and	
		consequently, the potential	
		damages amount.	
		3. Panama requests	
		clarification as to whether	
		BATO or BSCR are in	
		possession, custody, or	
		control of the Documents	
		relevant to Panama's	
		Document Production	
		Request No. 5(e).	
		Request no. 5(e).	
		Claimants allege that <i>they</i>	
		do not retain such	
		Documents. However,	
		Article 3(c)(i) of the IBA	
		Rules permits Panama to	
		request Documents in	
		Claimants' "possession,	
		custody or control."	
		custody of condor.	
		As wholly-owned	
		subsidiaries of BSAM,	

					<ul> <li>BSCR and BATO are under its control. (See e.g.,</li> <li>Decision on Expedited</li> <li>Objections, ¶¶ 214-218).</li> <li>Additionally, Claimants have willingly produced</li> <li>Documents from BATO and</li> <li>BSCR. (See Annex L,</li> <li>BATO 2015 and 2016</li> <li>Consolidated Financial</li> <li>Statements; Annex M,</li> <li>BSCR Sales Invoice). Thus,</li> <li>Documents in the possession, custody, or control of BATO and BSCR are clearly under BSAM's control.</li> <li>If BATO and BSCR are in possession, custody, or control of the requested</li> <li>Documents, Claimants should comply with</li> <li>Panama's production request.</li> </ul>	
6.	Documentation and records on sales of FIRESTONE and BRIDGESTONE-branded products in each of the remaining BSCR-Region countries from 2014 to 2018,	Decision on Expedited Objections, ¶ 219, 242; Memorial, ¶¶ 233-40;	These documents are relevant to the case and material to its outcome because (as affirmed by the Tribunal) the revenue from sales of branded	The Claimants have carried out diligent searches and have provided all non privileged documents that are responsive to items (a)	<b>1.</b> Article 9(2)(b) of the IBA Rules empowers the "[t]he Arbitral Tribunal," <i>not a</i> <i>party</i> , to exclude Documents from production on the basis of privilege.	The Tribunal is giving further consideration to this request in the light of recent correspondence.
	<ul> <li>including but not limited to:</li> <li>(a) the identity of the customer;</li> <li>(b) the brand of time cold</li> </ul>	Counter-Memorial, ¶¶ 28, 35, 166, 175- 85, 186-90;	products are relevant to the value of the trademark licenses, and Claimants allege that the value of the Panamanian	to (d) of this Request. As to item (e), the Claimants object to this Request, on the grounds	Article 9(3) of the IBA Rules establishes the considerations that the Tribunal can take into	
	(b) the brand of tire sold,	First Daniel Report, ¶¶ 15-17, 78-109;	licenses in the BSCR region has been diluted.	that it is irrelevant to the matters in dispute.	account when deciding on issues of privilege.	

	1		T	
(c) the number of tires sold,		Without prejudice to the		
	First Shopp Report,	foregoing, the Claimants	Here, Claimants have	
(d) revenues derived from	¶¶ 57-61.	do not keep any records	summarily alleged that	
these sales, and		of information pertaining	some Documents are	
, , , , , , , , , , , , , , , , , , ,		to this Request.	privileged, without	
(e) the final destination			explaining the basis for this	
market of the tires sold.			assertion. As a result, it is	
market of the thes sold.			impossible for Panama to	
			effectively reply to	
			Claimants' <i>de facto</i>	
			objection, or for the	
			Tribunal to consider	
			whether the relevant	
			Documents are in fact	
			privileged.	
			Thus, as is common practice	
			in arbitral proceedings,	
			Claimants should provide a	
			Privilege Log to allow	
			Panama and the Tribunal to	
			consider Claimants'	
			allegations.	
			unogutions.	
			If Claimants are unable to	
			provide such Privilege Log,	
			the Tribunal should require	
			them to produce the retained	
			Documents, pursuant to	
			ICSID Arbitration Rule	
			34(2)(a).	
			To assist with the Document	
			production process, Panama	
			is providing a proposed	
			Privilege Log template. (See	
			Annex H, Privilege Log).	

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		2. Claimants' objection on	
		the basis of relevance is	
		without merit.	
		As the Tribunal has	
		affirmed, the value of a	
		trademark license to the	
		licensee is based on the	
		revenue from sales of	
		trademark-branded	
		products. (See Decision on	
		Expedited Objections, ¶¶	
		219, 242).	
		=, = ·=··	
		However, Panama's	
		damages expert has	
		determined that many	
		FIRESTONE and	
		BRIDGESTONE-branded	
		tire sales in the remaining	
		BSCR Region were either	
		intercompany sales or sales	
		of tires that are likely to be	
		exported outside the BSCR	
		Region. (See First Shopp	
		<b>Report</b> , <b>¶</b> 106-113). Such	
		sales cannot be categorized	
		as sales of trademark-	
		branded tires in the	
		remaining BSCR Region.	
		Thus, these Documents are	
		relevant to the case, because	
		the difference between the	
		purported and actual BSCR	
		Region sales will change the	
		revenue derived from such	
		sales. This affects the value	

		of the relevant trademark	
		license, and consequently,	
		the potential damages	
		amount.	
		3. Panama requests	
		clarification as to whether	
		BATO or BSCR are in	
		possession, custody, or	
		control of Documents	
		relevant to Panama's	
		Document Production	
		Request No. 6(e).	
		÷ ` ` /	
		Claimants allege that they	
		do not retain such records.	
		However, Article 3(c)(i) of	
		the IBA Rules permits	
		Panama to request	
		Documents in Claimants'	
		"possession, custody or	
		control."	
		As wholly-owned	
		subsidiaries of BSAM,	
		BSCR and BATO are under	
		its control. (See e.g.,	
		Decision on Expedited	
		<b>Objections,</b> ¶¶ 214-218).	
		Additionally, Claimants	
		have willingly produced	
		Documents from BATO and	
		BSCR. (See Annex L,	
		BATO 2015 and 2016	
		Consolidated Financial	
		Statements; Annex M,	
		BSCR Sales Invoice). Thus,	
		Documents in the	
		Documents in the	

					<ul> <li>possession, control, custody, or control of BATO and BSCR are clearly under BSAM's control.</li> <li>If BATO and BSCR are in possession, custody, or control of the requested Documents, Claimants should comply with Panama's production request.</li> <li>4. Panama is currently in discussions with Claimants on the proper method of production for Panama's Document Production Request No. 6. Panama hereby reserves the right to amend this reply (or supplement it) if these discussions are</li> </ul>	
7.	The following Documents or categories of Documents, created or sent from May 28, 2014 to the present: (a) Audited annual financial statements for Bridgestone Americas (" <b>BSAM</b> "), Bridgestone Licensing (" <b>BSLS</b> "), Bridgestone Costa Rica (" <b>BSCR</b> "), and Bridgestone Americas Tire Operations (" <b>BATO</b> ");	Memorial, ¶¶ 229-40; Counter-Memorial, ¶¶ 5-11, 168-74, 186- 205; First Shopp Report, ¶¶ 30-32, 57-61, 67- 78.	Claimants allege that they have already incurred a loss as a result of the Supreme Court Judgment. Further, Claimants muddle the clear difference between Bridgestone entities and assets. These documents are relevant to the case and	The Claimants have carried out diligent searches and have provided all non privileged documents that are responsive to this request, subject to the following: (a) Audited annual financial statements do not exist for all of the entities. Unaudited annual financial statements have	unsuccessful. Article 9(2)(b) of the IBA Rules empowers the "[t]he Arbitral Tribunal," <i>not a</i> <i>party</i> , to exclude Documents from production on the basis of privilege. Article 9(3) of the IBA Rules establishes the considerations that the Tribunal can take into account when deciding on issues of privilege.	No order. The Tribunal accepts the affirmation of Claimants' counsel that all non privileged documents that are responsive to this request have been produced. Justification for Privilege Log not demonstrated.

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(b) Quarterly financial		material to its outcome	been provided in the	Here, Claimants have	
statements for BSAM, BSLS	,	because they will assist	absence of audited	summarily alleged that	
BSCR, BATO;		in determining if and	statements.	some Documents are	
		how each entity was		privileged, without	
(c) Sales and marketing		affected (in a financially	(b) Quarterly financial	explaining the basis for this	
reports for BSCR region		assessable manner) by	statements do not exist for	assertion. As a result, it is	
prepared by BSCR, BSAM,		the loan payment and	all of the entities.	impossible for Panama to	
or related companies; and		revenues derived from		effectively reply to	
		sales of trademark-	(c) No dividends have	Claimants' de facto	
(d) Statements or dividends		branded products.	been paid by any of	objection, or for the	
paid by each of BSAM,		-	BSAM, BSLS, BSCR or	Tribunal to consider	
BSLS, BSCR and BATO to			BATO to its respective	whether the relevant	
its respective parent compan	y		parent company for the	Documents are in fact	
for the period 2010 to the			period 2010 to the	privileged.	
present.			present.		
-			•	Thus, as is common practice	
				in arbitral proceedings,	
				Claimants should provide a	
				Privilege Log to allow	
				Panama and the Tribunal to	
				consider Claimants'	
				allegations.	
				-	
				If Claimants are unable to	
				provide such Privilege Log,	
				the Tribunal should require	
				them to produce the retained	
				Documents, pursuant to	
				ICSID Arbitration Rule	
				34(2)(a).	
				To assist with the Document	
				production process, Panama	
				is providing a proposed	
				Privilege Log template. (See	
				Annex H, Privilege Log).	
8. Customer Relationship	11 55 000 00	<u> </u>	TT1 1		Cl i fi
Management information	Memorial, ¶¶ 238-39;	Claimants assume that	There are no documents	Panama requests clarification as to whether	Claimants to confirm

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including the legal name,	First Daniel Report,	branded tires sold in	Request, because the	BATO or BSCR are in	case, that their
address, and description of	¶¶ 58-64, 73-77, 81-	Panama are Panamanian	Claimants do not maintain	possession, custody, or	subsidiaries are not in a
business for customers who	83, 93;	sales.	Customer Relationship	control of the requested	position to produce
purchased FIRESTONE and			Management information	Documents.	documents giving this
BRIDGESTONE-branded	Counter-Memorial,	Panama's damages	other than that provided in		information.
tires in Panama from May 28,	¶¶ 257-60;	expert has identified tire	response to Requests 5	Claimants allege that <i>they</i>	
2014 to the present.		sales to customers who	and 6.	do not retain such	
	First Shopp Report,	will likely export the		Documents. However,	
	¶¶ 101-05	products.		Article 3(c)(i) of the IBA	
				Rules permits Panama to	
		These documents are		request Documents in	
		relevant to the case and		Claimants' "possession,	
		material to its outcome		custody or control."	
		because they will assist			
		in determining the actual		As wholly-owned	
		number of tire sales in		subsidiaries of BSAM,	
		Panama, which is a base		BSCR and BATO are under	
		variable for Claimants'		its control. (See e.g.,	
		damages calculation.		Decision on Expedited	
		_		<b>Objections</b> , <b>¶</b> 214-218).	
				Additionally, Claimants	
				have willingly produced	
				Documents from BATO and	
				BSCR. (See Annex L,	
				BATO 2015 and 2016	
				Consolidated Financial	
				Statements; Annex M,	
				BSCR Sales Invoice). Thus,	
				Documents in the	
				possession, custody, or	
				control of BATO and BSCR	
				are clearly under BSAM's	
				control.	
				If BATO and BSCR are in	
				possession, custody, or	
				control of the requested	
				Documents, Claimants	
				Documento, Clannanto	

					should comply with Panama's production request.	
9.	Customer Relationship Management information including the legal name, address, and description of business for customers who purchased FIRESTONE and BRIDGESTONE-branded tires in the remaining BSCR region from May 28, 2014 to the present, broken down by BSCR region country.	Memorial, ¶¶ 238-39; First Daniel Report, ¶¶ 58-64, 73-77, 81- 83, 93. Counter-Memorial, ¶¶ 257-60; First Shopp Report, ¶¶ 106-13.	Claimants assume that all of the trademark- branded tires sold in the remaining BSCR region are BSCR region sales. Panama's damages expert has identified tire sales to other Bridgestone entities outside of the BSCR region. These documents are relevant to the case and material to its outcome because they will assist in determining the actual number of arm's-length tire sales inside the BSCR region, which is a base variable for Claimants' damages calculation.	There are no documents responsive to this Request, because the Claimants do not maintain Customer Relationship Management information other than that provided in response to Requests 5 and 6.	Panama replies on the same basis as its reply to Claimants' Response to Document Production Request No. 8.	Claimants to confirm within 14 days, if it be the case, that their subsidiaries are not in a position to produce documents giving this information.