[Corrected Version]

Before the

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

BRIDGESTONE LICENSING SERVICES, INC.,
BRIDGESTONE AMERICAS, INC.,
Claimants,

v.

REPUBLIC OF PANAMA,
Respondent.

ICSID CASE NO. ARB/16/34

Panama's Post-Hearing Brief

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16 October 2019

Arnold & Porter

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I. INTRODUCTION

1. In his treatise on the ICSID Convention, Professor Christoph Schreuer remarks on the trouble with trying to rationalize a defeat to the party that loses.[1] The exercise is "often[] futile,"[2] as moral convictions may blind — and may do so to such an extent that the party disregards reason. Indeed, as the present case shows, there are parties who will not (or cannot) accept a defeat and move on, no matter what logic or evidence had supported the adverse ruling.

2. In the early 2000s, the "Bridgestone/Firestone"[3] group unveiled a new corporate initiative.[4] The initiative was "extremely aggressive,"[5] involved peppering competitors with legal claims,[6] and — accordingly — it should have been implemented with care and appropriate diligence.[7] But, in the event, the group paid no heed to the rules of decorum. It threatened a competitor group[8] with an unresearched[9] and unfounded claim;[10] asserted the claim in Panama without evidentiary support;[11] and then, when it lost and was given a chance at *de novo* review,[12]

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[1] *See* C. Schreuer *et al*, THE ICSID CONVENTION: A COMMENTARY (2d. ed. 2009), Art. 52, ¶ 342 (*cited in* Letter from Panama to the Tribunal, 26 June 2017, p. 3).
[2] C. Schreuer *et al*, THE ICSID CONVENTION: A COMMENTARY, Art. 52, ¶ 342.
[3] *See* **RFA**, ¶ 17; **Ex. C-10**, BS Entities' Notice of Riverstone Trademark Opposition, USTPO (3 Dec. 2003), ¶¶ 7, 9, 15; **Ex. C-0150**, BS Litigants' Complaint (Opposition Proceeding) (5 April 2005), p. 3.
[4] *See* **Third Kingsbury Stmt.**, ¶ 6.
[5] **Ex. VP-0005**, Special 301 Review Public Hearing, pp. 64–65; **2019 Hearing** (Day 1), Tr. 314:16–20 (Kingsbury).
[6] *See* **Memorial**, ¶ 2; **RFA**, ¶¶ 16–20.
[7] *See generally* **2019 Hearing** (Day 4), Tr. 912:17–913:17 (Jacobs-Meadway); **RLA-0092**, Rpt. to U.S. Congress: Trademark Litigation Tactics (April 2011), pp. 11–13.
[8] *See* **Ex. R-0033**, Memorandum, J. Lightfoot (12 Jan. 2005), p. 1 ("In November 2004, ***Bridgestone*** sent a standard 'reservation of rights' letter to the ***Plaintiffs*** . . . .") (emphasis added); *see also id.* ("Bridgestone Corporation, Bridgestone Brands, and Bridgestone Licensing Services (collectively, 'Bridgestone') . . . . Muresa Intertrade, L.V. International, and Tire Group of Factories (collectively, 'Plaintiffs') . . . ."); **RFA,** note 16 ("L.V. International and T[ire Group] belong to the same business group as Muresa, called the 'Luque Group'").
[9] **Ex. C-0013**, Demand Letter (3 Nov. 2004) ("Without undertaking a country-by-country analysis . . . ."); **2019 Hearing** (Day 1), Tr. 297:5–21 (Kingsbury).
[10] *See* **2019 Hearing** (Day 1), Tr. 143:11–18 (Panama's counsel).
[11] *Compare* **Ex. C-0150**, BS Litigants' Complaint (Opposition Proceeding) (5 April 2005), p. 2 *with* **Ex. R-0040**, Opposition Decision (21 July 2006), p. 24; *see also* **Second Lasso de la Vega Rpt**, ¶¶ 14–22.
[12] **2019 Hearing** (Day 2), Tr. 549:15–21 (Lee).

[FOOTNOTE CONTINUED ON NEXT PAGE]

the group revealed that it "understood that [it] w[as] very unlikely to succeed . . . ."[13] To act with such abandon was reckless, as the Panamanian Supreme Court found.[14]

3. The Bridgestone group party line is that this finding is incomprehensible; at the hearing, Claimants argued repeatedly that it is "impossible to understand."[15] But this argument is plainly a case of Professor Schreuer's phenomenon, as the Supreme Court judgment at issue is both sound and within the pale. It is logical on its face, accords with the *expediente*, conforms to Panamanian law,[16] has analogues in other countries,[17] and carries out State obligations pursuant to international treaties.[18] It simply does not amount to a breach of the TPA.

4. Claimants' argument to the contrary rests upon the assertion that the Bridgestone group "simply [was] exercising [its] legal rights[,] bringing trademark opposition proceedings . . . ."[19] But this assertion is akin to describing the group's guerilla tactics in the present proceeding — *e.g.*, the threat[20] and assertion[21] of manifestly frivolous claims, the attempted use of the U.S. government as "muscle,"[22] the insults and public muckraking,[23] the open rebellion against Article 27 of the ICSID Convention,[24] and the tactical creation of

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[13] *See* **Memorial**, ¶ 43.
[14] *See* **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 17.
[15] *See, e.g.*, **Reply**, ¶¶ 2(d), 2(e); **2019 Hearing** (Day 1), Tr. 56:12–15 (Claimants' Counsel).
[16] *See generally* **First Lee Rpt.**; **Second Lee Rpt**.
[17] *See, e.g.*, **RLA-0224**, MCCARTHY, § 1:10 (5th ed. 2018), p. 25; **First Jacobson Rpt.**, ¶¶ 25–30.
[18] *See* **RLA-0120**, Paris Convention for the Protection of Industrial Property, WIPO (28 Sept. 1979); **Ex. R-0001**, TPA, Arts. 15.1.5, 15.1.13; **First Jacobson Rpt.**, ¶¶ 38-66; **Second Jacobson Rpt.**, ¶ 50.
[19] **Memorial**, ¶ 94; *see also id.*, ¶¶ 25(p), 113, 197; **RFA**, ¶¶ 3, 30, 56; **Reply**, ¶¶ 2(e), 23, 93, 115; **Ex. C-0032**, 2015 Special 301 Public Hearing Stmt. of BSAM (24 Feb. 2015), p. 3.
[20] *Compare, e.g.*, **Notice of Arbitration**, ¶ 19 ("The measures taken by the Supreme Court . . . constituted a flagrant denial of justice . . . .") *and* note 2 ("[A] motion to vacate [the Supreme Court] decision is currently pending . . . .") *with* **2019 Hearing (Day 1)**, Tr. 48:19–21 (Claimants' Counsel) ("Claimants accept that it is a prerequisite of a denial-of-justice claim that the Claimants must exhaust local remedies").
[21] **Panama's Closing Stmt. (2017 Hearing)**, Slides 24–25; **Panama's Closing Stmt. (2019 Hearing)**, Slides 3–8.
[22] *See* **Ex. C-0035**, Congressional Letters (28 Sept. 2016) (30 Sept. 2016); **Ex. VP-0005**, Transcript, Special 301 Review Hearing (24 Feb. 2015); **Lightfoot Stmt.**, ¶¶ 3–4; **Notice of Intent**, p. 1; **RFA**, ¶¶ 44–51.
[23] *See, e.g.*, **Reply**, ¶ 79; **2019 Hearing** (Day 5), Tr. 1223–1224.
[24] *Compare* **ICSID Convention**, Art. 27 ("No Contracting State shall give diplomatic protection . . . in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have

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evidence[25] — as simply exercising a legal right to ICSID arbitration. Aron Broches no doubt would shudder if his brainchild were so described.

5. In the Sections that follow, Panama rehearses the many reasons why Claimants' claims must be dismissed. For the Tribunal's convenience, the discussion begins in **Section II** with a short chronology. **Sections III** and **IV** then address the issues of merits and damages, and **Section V** sets out a conclusion and Panama's request for relief.

II. CHRONOLOGY

Date	Event
1988	Bridgestone Tire Co. "change[s] its name to Bridgestone/Firestone, Inc."[26] The name is then widely used by group entities for at least 15 years — and according to them, acquires "fame."[27]
1999	Muresa, which owns the RIVERSTONE mark, begins selling RIVERSTONE tires in Panama.[28] Despite claiming to "carefully and diligently monitor[] the tire market[]" for potential trademark infringement,[29] Bridgestone/Firestone never asserts a trademark infringement claim.
May 2002	Muresa requests the registration of the RIVERSTONE mark in Panama.[30]
Aug. 2002	A Muresa affiliate, L.V. International, requests registration of the mark in the U.S.[31]
Aug. 2003–Sept. 2003	Muresa, L.V. International, and/or affiliate Tire Group request the registration of the RIVERSTONE mark in Bolivia, Costa Rica, the Dominican Republic, Nicaragua, and Peru.[32] Claimants do not contend that these requests were ever opposed.
3 Dec. 2003	Two U.S.-based Bridgestone entities oppose the U.S. application by L.V. International.
Spring 2004	The RIVERSTONE mark is registered in Costa Rica, Guatemala, and Nicaragua.[33] In Claimants' own words, "[this] means that tires with the RIVERSTONE mark may be sold in [these countries] alongside BRIDGESTONE and FIRESTONE tires, and [that] the Bridgestone group cannot prevent this."[34]

submitted to arbitration under this Convention . . . .") *with* **RFA**, ¶ 75 ("Claimants hereby consent to arbitration . . . ."), ¶ 51 ("Bridgestone continues to pursue resolution through diplomatic channels").

[25] *See* Section IV, below; *see also* **Rejoinder**, § III.B.1.

[26] **RFA**, ¶ 12.

[27] **Ex. C-10**, BS Entities' Notice of Riverstone Trademark Opposition, USPTO (3 Dec. 2003), ¶¶ 7, 9, 15.

[28] *See* **Ex. C-0176**, Muresa's Answer (Opposition Proceeding) (20 June 2005), p. 9.

[29] **RFA**, ¶ 17.

[30] *See generally* **Ex. C-0146**, Appl. for Registration (6 May 2002); **Ex. C-0009**, Riverstone U.S. Trademark Appl. (13 Aug. 2002); **Ex. C-0015**, Appl. for Supportive Joint or Third Party Intervention (25 April 2005), p. 9.

[31] *See generally* **Ex. C-0009**, Riverstone U.S. Trademark Appl. (13 Aug. 2002); **Ex. C-0015**, Appl. for Supportive Joint or Third Party Intervention (25 April 2005), p. 9.

[32] *See generally* **Ex. C-0015**, Appl. for Supportive Joint or Third Party Intervention (25 April 2005), p. 9.

[33] *See* **Ex. C-0018,** L.V. International's *Coadyuvante* Petition (10 May 2010), p. 4.

[34] **Reply**, ¶ 102.

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Aug. 2004	For reasons unexplained, L.V. International withdraws the U.S. application.[35]
3 Nov. 2004	In a letter to Mr. Jesus Sanchelima, counsel to L.V. International, "***Bridgestone/Firestone*** objects ***not only*** to any registration of the RIVERSTONE mark for tires ***by your client***, but also to ***any use*** of the mark" — "anywhere in the world[.]"[36] This objection is leveled "[w]ithout undertaking a country-by-country analysis."[37] The letter ("**Demand Letter**") is shared with Mr. Jorge Luque, president of L.V. International and one of Muresa's directors.[38] Mr. Luque informs other personnel at Muresa and Tire Group.[39]
The Panamanian Opposition Proceeding	
4 Feb. 2005	The Panamanian authorities publish Muresa's registration request.[40] In practical terms, this means that the mark can be registered unless a valid objection is made.[41]
Mar. 2005	BSJ and BSLS (the "**BS Litigants**") sign powers of attorney for the "filing [of] an opposition [case],"[42] which acknowledge that there could be counter-claims filed against them.[43]
5 Apr. 2005	The BS Litigants file their opposition claim, alleging that the RIVERSTONE "trademark is deceptively similar to the BRIDGESTONE and FIRESTONE trademarks . . . ."[44] Their submission also asserts that the BS Litigants are part of a "single corporate group and represent a single group of economic interests."[45]
25 Apr. 2005	Tire Group and L.V. International request permission to intervene.[46]
20 June 2005	Muresa submits its "answer," alleging that the opposition is "reckless" and unfounded.[47]
Aug. 2005 – Nov. 2005	The court grants permission for Tire Group and L.V. International to intervene.[48] The BS Litigants appeal, arguing in a 27-page submission[49] that the interveners have not proven that they and Muresa have a "substantial relationship" that could be harmed by the opposition action.[50] The appellate court rejects both this argument and the broader appeal,[51] confirming the substantial relationship. Tire Group and L.V. International join as *coadyuvantes*.
7 Feb. 2006	The BS Litigants present their evidence, which includes a part of the record from the U.S. Opposition Proceeding.[52] Despite Claimants' admission that "a judgment must be made by the relevant authority in each [jurisdiction] as to whether a mark is confusingly similar to

[35] **Memorial**, ¶ 31.
[36] **Ex. C-0013**, Demand Letter (3 Nov. 2004).
[37] **Ex. C-0013**, Demand Letter (3 Nov. 2004).
[38] *See* **Ex. R-0124**, Panamanian Opposition Proceeding Evidentiary Hearing (11 May 2006), p. 4; **Ex. R-0126**, L.V. International Corrected *Coadyuvante* Petition (3 June 2010) p. 4.
[39] *See* **Memorial**, ¶ 58.
[40] **Ex. C-0256**, Partial Official Panamanian Gazette No. 162, MICI (4 Feb. 2005).
[41] **Ex. C-0127 (SPA)**, Law No. 35 (10 May 1996), Arts. 102–06.
[42] **Ex. R-0151**, BSJ Power of Attorney (22 March 2005); **Ex. R-0159**, BSLS Power of Attorney (28 March 2005).
[43] **Ex. R-0151**, BSJ Power of Attorney (22 March 2005); **Ex. R-0159**, BSLS Power of Attorney (28 March 2005).
[44] **Ex. C-0150**, BS Litigants' Complaint (Opposition Proceeding) (5 April 2005), p. 2.
[45] **Ex. C-0150**, BS Litigants' Complaint Opposition Proceeding (5 April 2005), p. 3.
[46] *See generally* **Ex. C-0015**, Application for Supportive Joint or Third Party Intervention (25 April 2005).
[47] **Ex. C-0176**, Muresa's Answer (20 June 2005), pp. 4–9.
[48] *See* **Ex. R-0196**, Excerpt from Decision Admitting Coadyuvante Petitions (31 Aug. 2005).
[49] *See generally* **Ex. C-0181 (SPA)**, BS Litigants' Arguments in Support of Appeal (14 Oct. 2005).
[50] *See* **Ex. C-0181 (SPA)**, BS Litigants' Arguments in Support of Appeal (14 Oct. 2005), pp. 3–4; **Ex. C-0181 (ENG)**, BS Litigants' Arguments in Support of Appeal (14 Oct. 2005), p. 3.
[51] *See* **Ex. C-0183 (SPA)**, Decision Rejecting the BS Litigants' Appeal, p. 8.
[52] **Ex. R-0123**, Panamanian Opposition Proceeding Evidentiary Hearing (21 Feb. 2006).

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	Bridgestone's trademarks,"[53] the BS Litigants do not adduce any evidence of confusion in Panama. Instead, they advert to the U.S. Opposition Proceeding (which they claim that "[BSJ], through its subsidiaries, [had] filed"); state that BSJ had argued in the U.S. proceeding that the BRIDGESTONE and FIRESTONE marks were famous; and posit: "Hence, the registration of the RIVERSTONE . . . brand could create a risk of confusion . . . ."[54]
11 May 2006	The parties present oral arguments; the BS Litigants argue that "the [trademark] rights held by [the BS Litigants] . . . should[] be known by Defendant Muresa" because of (1) the "opposition complaint" that "[the BS Litigants], through its United States subsidiaries, [had] filed" in the United States, and (2) "the[] presumed relationship" between Muresa and L.V. International.[55]
21 July 2006	The Opposition Court rejects the BS Litigants' claim, observing that "the trademarks . . . had [had] occasion to coexist in the market," but "there [wa]s ***no*** evidence [of] error, confusion, mistake, mislead [sic] or deception in the consumer public . . . ."[56] The Court declines, however, to make an award of attorneys' fees, on the grounds that the BS Litigants "ha[d] acted with apparent good faith . . . ."[57]
Aug. 2006	The BS Litigants appeal, but quickly withdraw their challenge — even though it would have meant a chance to argue *de novo*. Claimants say that this was "because they understood that they were very unlikely to succeed . . . ."[58]
The Civil Proceeding	
11 Sept. 2007	Muresa and Tire Group ("**Plaintiffs**") initiate a civil suit against the BS Litigants. As is customary in Panama,[59] the complaint is a notice pleading. The objective of the suit is to recover damages caused by the "opposition to the Registry of the [Riverstone mark] that culminated with ruling No. 48 of July 21, 2006, and which was appealed, [and] subsequently withdrawn."[60] The Plaintiffs request an award of USD 5 million, plus costs and expenses.[61]
13 Oct. 2008	BSLS submits an answer, arguing *inter alia*: (1) that Article 217 of the Judicial Code (*i.e.*, a "recklessness" standard) applies; (2) that BSLS had not acted recklessly, in bad faith, or negligently in the filing of or during the Panamanian Opposition Proceeding; and (3) that this was proven by "BSLS's"[62] victory in the U.S. Opposition Proceeding.[63] The submission concludes with a note that states: "In a timely manner we shall submit our arguments[] and evidence that we consider appropriate for the best defense and protection of [our client]."[64]
19 Aug. 2009	BSJ submits an answer, asserting (1) that the applicable standard "is found in Article 217 of the Judicial Code," which requires "reckless or frivolous procedural conduct and the existence of damage derived from said conduct," (2) that "at no time did our [client] act recklessly or in bad

[53] **RFA**, ¶ 20.
[54] **Ex. R-0123**, Panamanian Opposition Proceeding Evidentiary Hearing (21 Feb. 2006), p. 3, ¶ 51(2).
[55] **Ex. R-0124**, Panamanian Opposition Proceeding Evidentiary Hearing (11 May 2006), p. 2.
[56] **Ex. R-0040**, Opposition Proceeding Decision (21 July 2006), p. 24 (emphasis added).
[57] **Ex. R-0040**, Opposition Proceeding Decision (21 July 2006), p. 25.
[58] **Memorial**, ¶ 43.
[59] *See* **2019 Hearing** (Day 2), Tr. 484–85 (Lee).
[60] **Ex. C-0016**, Muresa/Tire Group Complaint (11 Sept. 2007), p. 5 (emphasis added).
[61] **Ex. C-0016**, Muresa/Tire Group Complaint (11 Sept. 2007), p. 6.
[62] *See* **Memorial**, ¶ 50.
[63] *See* **Ex. R-0045**, BSLS's Answer to the Civil Torts Claim (13 Oct. 2008), p. 2.
[64] **Ex. R-0045**, BSLS's Answer to the Civil Torts Claim (13 Oct. 2008), p. 4.

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	faith or file a frivolous litigation," and (3) that "[t]his situation was even expressly acknowledged and declared by the [Opposition] Court. . . . ."[65]
19 Aug. 2009	The BS Litigants submit an objection to admissibility. The submission argues, *inter alia*, that "[i]t is clearly visible in the complaint that the object of the litigation is to determine whether there was or was not bad faith in a trademark registration proceeding."[66]
Sept. 2009	The Plaintiffs contest the objection[67] and submit a list of proposed exhibits, witnesses, and questions to pose to experts. On the list is Jorge Luque, president of L.V. International.[68]
1 Oct. 2009	The BS Litigants submit a list of proposed affirmative evidence, which includes a copy of the record from the U.S. Opposition Proceeding.[69] No witnesses are proposed.
6-9 Oct. 2009	The BS Litigants propose counter-evidence, and object to certain items and witness testimony proposed by the Plaintiffs.[70] One objection pertains to Jorge Luque.[71]
1 Jan. 2010	*Even though Claimants' counsel have argued before this Tribunal that it "would [have been] a bit odd . . . for Bridgestone Corporation to pay half and BSLS to have paid half [of an adverse damages award],"[72] the BS Litigants agree formally to do precisely that; this is confirmed in documents that Claimants produced to Panama, but attempted in their Reply to conceal.*[73]
26 Jan. 2010	The First Instance Court (1) admits the Plaintiffs' affirmative evidence, sets dates for witness statements/questioning (Jorge Luque included), commissions accounting expert reports;[74] and (2) admits the BS Litigants' affirmative evidence and documentary counter-evidence.[75]
21 Apr. to 5 May 2010	Eight witnesses give statements and are cross-examined by the BS Litigants. In their statements, the witnesses (1) discuss the legal challenges that the BS Litigants had filed (in Panama, the U.S., and elsewhere), and (2) explain that these challenges had created costs, engendered fears of product seizure, and reduced sales.[76] In response, the BS Litigants question causation, repeatedly arguing through cross that the issue would turn on the existence (*vel non*) of a document from the BS Litigants requesting the suspension of RIVERSTONE sales.[77] One witness testifies: "I thought that I saw a written document that my superior had

[65] **Ex. C-0019**, BSJ's Answer (19 Aug. 2009), pp. 4–6.
[66] **Ex. R-0062**, BS Litigants' Motion to Dismiss (19 Aug. 2009), p. 3.
[67] **Ex. C-0187**, Response to Motion to Dismiss (14 Sept. 2009), pp. 2–5.
[68] *See* **Ex. C-0189,** Submission of List of Evidence by Muresa and Tire Group (28 Sept. 2009).
[69] **Ex. R-0121**, BS Litigants' List of Affirmative Evidence (1 Oct. 2009), ¶ 23.
[70] *See* **Ex. C-0191**, BS Litigants' List of Counter-Evidence (6 Oct. 2009); **Ex. C-0192**, BS Litigants' Objections to Muresa/Tire Group Evidence (9 Oct. 2009).
[71] **Ex. C-0192**, BS Litigants' Objections to Muresa/Tire Group Evidence (9 Oct. 2009), p. 4, ¶ 14.
[72] **Expedited Objections Hearing** (Day 4), Tr. 631 (Claimants' Counsel).
[73] *Compare* **Reply** (22 March 2019), ¶ 83 ("[T]he Tribunal may look to any agreement between the [BS Litigants] as to how they would apportion loss [in the Civil Proceeding]. ***There are <u>no</u>*** documents that demonstrate any formal agreement between BSLS and BSJ . . . .") (emphasis added) *with* **Ex. C-0318**, Agreement between BSJ and BSLS (1 Jan. 2010) *and* **Ex. R-0203**, BSJ Email Correspondence Regarding BSLS Loan (20 May 2016), p.1.
[74] *See generally* **Ex. R-0106**, Excerpt, First Instance Court Ruling Authorizing Expert Rpts. and Admitting Muresa/Tire Group Evidence (26 Jan. 2010).
[75] *See* **Ex. C-0194**, Order No. 114-10, (26 Jan. 2010); **Ex. R-0120**, First Instance Court Ruling (26 Jan. 2010).
[76] *See*, *e.g.*, **Ex. C-0160**, Testimony by Fernan Jesus Luque Gonzalez (27 April 2010), p. 3.
[77] *See*, *e.g.*, **Ex. C-0154**, Testimony of D. Romero Ceballos (21 April 2010), pp. 4–5; **Ex. C-0155**, Testimony of G. Pineda Castillo (22 April 2010), p. 9; **Ex. C-0156**, Testimony of A. Vega de Barrera (23 April 2010), p. 8; **Ex. C-0161**, Continuation of Testimony of F. Luque Gonzalez (27 April 2010), p. 7; **Ex. C-0157**, Testimony of A. Ramirez de Gonzalez - Part 1 (30 April 2010), p. 5; **Ex. C-0158**, Testimony of M. Moreira Martinez (3 May 2010), p. 9; **Ex. C-0159**, Testimony of L. Murgas de Bracho (5 May 2010), p. 7.

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	but I [didn't] read all of it and I would have to thoroughly search the files in order to see if this written document is among the documents, I only heard verbally about the matter."[78]
10 May 2010	L.V. International submits a *Coadyuvante* Petition; appended are (1) a notarized copy of the Demand Letter, and (2) a notarized delivery confirmation.[79]
14 May 2010	The president of L.V. International testifies. On direct, he is asked if he had "received any threats or any document which would prevent the sale of RIVERSTONE tires."[80] The BS Litigants object, despite having repeatedly posed the same question themselves. The objection to the question is upheld, but discussion about the Demand Letter may (and does) continue.[81] The BS Litigants cross-examine the witness about the Demand Letter.[82]
24 May 2010	The experts submit their reports. Both the court-appointed expert and the Plaintiffs' experts append the Demand Letter to their reports.[83] The BS Litigants' expert (1) acknowledges that Muresa's sales of RIVERSTONE tires had trended upward from 2003–04 and then decreased after the Opposition Proceeding began, (2) opines that the Opposition Proceeding did not damage Muresa, because it had continued to sell RIVERSTONE tires, and (3) testifies that he could not reach a conclusion re Tire Group because its accounting was done from Shanghai.[84] The court-appointed expert testifies that she cannot opine on "what damages were caused to the [Plaintiffs] by not being able to sell . . . Riverstone tires," because "the compan[ies] did not stop selling the Riverstone tires."[85] The Plaintiffs' experts emphasize that sales and growth had decreased, and testify that the Plaintiffs had suffered damages of USD 5,775,793.84.[86]
25 May 2010	The court-appointed expert testifies and is cross-examined (*inter alia* on the Demand Letter).[87]
26–27 May 2010	The Plaintiffs' experts testify and cite the Demand Letter multiple times as a factor contributing to injury.[88] On cross, the BS Litigants pose questions about the Demand Letter.[89]
3 June 2010	L.V. International submits a corrected *Coadyuvante* Petition. The corrected version, like the original one, appends and discusses the Demand Letter.[90]
4 June 2010	The Plaintiffs submit their arguments ("*alegatos*"), and assert that the Panamanian Opposition Proceeding was part of "an international persecution" in which the BS Litigants used "FOLEY & LARDNER [to] ma[ke] a series of threats which culminated in a formal note in November

[78] **Ex. C-0159**, Testimony of L. Murgas de Bracho (5 May 2010), pp. 7–8
[79] **Ex. C-0018,** L.V. International's *Coadyuvante* Petition (10 May 2010), p. 4.
[80] *See* **Ex. C-0148**, Testimony of J. Luque Gonzalez (Morning Session) (14 May 2010), p. 4.
[81] *See* **2019 Hearing** (Day 2), Tr. 520–521 (Lee).
[82] *See* **Ex. C-0147**, Testimony of J. Luque Gonzalez (Afternoon Session) (14 May 2010), pp. 5–6.
[83] *See* **Ex. R-0111**, Demand Letter (copy submitted by court-appointed expert); **Ex. R-0112**, Demand Letter (copy submitted by Plaintiffs' experts).
[84] *See* **Ex. C-0020**, Expert Report of Manuel Ochoa (24 May 2010), pp. 6, 8–13.
[85] *See* **Ex. C-0163**, Expert Report of Court-Appointed Expert (24 May 2010), pp. 5, 7, 10, 13.
[86] **Ex. C-0162**, Expert Report of Plaintiffs' Experts (24 May 2010), pp. 4, 7; *see also* **Ex. C-0198**, Examination of Plaintiffs' Experts (First Session) (26 May 2010), pp. 3-5; **Ex. C-0199**, Examination of Plaintiffs' Experts (Second Session) (27 May 2010), pp. 7–8.
[87] *See* **Ex. C-0195**, Examination of the BS Litigants' Expert (25 May 2010).
[88] **Ex. C-0198**, Examination of Plaintiffs' Experts (First Session) (26 May 2010), pp. 3, 4, 6, 7.
[89] **Ex. C-0198**, Examination of Plaintiffs' Experts (First Session) (26 May 2010), p. 11; **Ex. C-0199**, Examination of Muresa/Tire Group Experts (Second Session) (27 May 2010), p. 2.
[90] *See* **Ex. R-0126**, L.V. International's Corrected Coadyuvante Petition (3 June 2010).

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	2004 [*i.e.*, the Demand Letter]," and then took "[t]he actions . . . from threats to realities . . . ." The Plaintiffs claim injury due to this "reckless and malicious" conduct.[91]
11 June 2010	The BS Litigants submit their *alegatos* and argue: (1) that Article 217 of the Judicial Code applies; (2) that the Plaintiffs have not proven causation or damages; (3) that the submission of the Demand Letter by the Plaintiffs' experts had been untimely and contravened Judicial Code Articles 871, 877, and 878; (4) that the Demand Letter would not in any event establish recklessness, as it had not been sent by the BS Litigants (specifically) to Muresa or Tire Group; and (5) that the "statement [in the Opposition Decision] of Clear Good Faith" operated, via *res judicata*, to bar any claim of bad faith or recklessness.[92]
25 Nov. 2010	The First Instance Court rejects the BS Litigants' objection to admissibility.[93]
17 Dec. 2010	The First Instance Court issues its decision on the merits ("**First Instance Decision**"), rejecting both the merits claim and the BS Litigants' *res judicata* theory. With respect to the latter, the Decision states that, "under no assumption can a *res judicata* objection operate in this proceeding because it does not conform to any of the assumptions enshrined in the standard."[94] With respect to the merits, the Court accepts that "fear of seizure caused the Plaintiff[s] to stop production and sale of the RIVERSTONE brand," but rejects the claim on the basis that such fear "was not a decision based on any judicial order."[95]
	Appellate Phase
5 Jan. 2011	The Plaintiffs appeal. Their submission (1) quotes the Demand Letter, and discusses it *in extenso*, and (2) observes that the *Coadyuvante* Petition had not been decided.[96]
14 Jan. 2011	The BS Litigants submit a response. Their submission (1) argues that they had already presented a winning defense on recklessness, (2) repeats the *res judicata* argument, (3) objects anew to the Demand Letter, on relevance and procedural grounds, (4) argues again that the Demand Letter cannot be considered reckless, and (5) requests a finding that "it has not been proven that the [BS Litigants] acted recklessly or in bad faith . . . ."[97]
6 Apr. 2011	The Appellate Court orders the First Instance Court to rule on the *Coadyuvante* Petition.[98]
May 2011	The First Instance Court rejects the *Coadyuvante* Petition,[99] and L.V. International appeals.[100]
2 June 2011	The BS Litigants object "to the form and substance" of the evidence appended to the *Coadyuvante* Petition.[101]
19 June 2012	The Appellate Court grants the *Coadyuvante* Petition, explaining that *coadyuvantes* can intervene at any time, and that L.V. International's petition had included relevant evidence.[102]

[91] *See* **Ex. C-0164**, Muresa/Tire Group Closing Arguments (4 June 2010), pp. 3–4, 8, 19.
[92] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 3.
[93] **Ex. R-0065**, Decision No. 1859 of the Eleventh Court (25 Nov. 2010).
[94] **Ex. R-0036**, First Instance Decision (17 Dec. 2010), p. 8.
[95] *See* **Ex. R-0036**, First Instance Decision (17 Dec. 2010), p. 13.
[96] *See generally* **Ex. C-0022**, Muresa/Tire Group Appeal (5 Jan. 2011).
[97] **Ex. C-0023**, BS Litigants' Opposition to Appeal (14 Jan. 2011), p. 4, 15–17, 30, 38.
[98] **Ex. R-0104**, First Instance Court Ruling Rejecting Coadyuvante Petition (5 May 2011), p. 1.
[99] *See* **Ex. R-0104**, First Instance Court Ruling Rejecting Coadyuvante Petition (5 May 2011).
[100] **Ex. R-0105**, L.V. International Inc. Appeal of Judgment No. 629 (26 May 2011).
[101] **Ex. R-0103**, BS Litigants Opposition to L.V. International Inc.'s Appeal (2 June 2011), p. 1.
[102] **Ex. R-0101**, Appellate Court Ruling Admitting L.V. International as a Coadyuvante (19 June 2012), pp. 1–2.

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26 July 2012	The First Instance Court physically reinserts the *Coadyuvante* Petition into the record,[103] and the Appellate Proceeding continues. **NB:** The BS Litigants could have petitioned the Appellate Court for permission to introduce responsive evidence.[104] They did not do so.
23 May 2013	The Appellate Court issues the Appellate Decision. After rejecting the BS Litigants' *res judicata* objection, the Court states (1) that "one needs to verify whether the Respondents acted recklessly and in bad faith when they opposed the trademark registration requested by the Plaintiffs," and (2) that the term "recklessness" refers to conduct "go[ing] beyond a mere exercise of procedural rights authorized by the law in defense of an interest.'"[105] The Court then proceeds to reject the Plaintiffs' appeal; the analysis is one paragraph long, and does not advert to any particular item of evidence.[106]
	Cassation
1 July 2013	The Plaintiffs request "cassation" of the Appellate Decision, and ask that the Supreme Court render a replacement judgment, awarding them "USD $5,000,000.00 . . . plus interest, costs, and expenses." The Plaintiffs argue that two grounds for cassation exist. The *first* is that the Appellate Court had ignored certain items of evidence — an "error of fact as to the existence of evidence"— and that this amounted to non-application of Arts. 217 and 1644. The *second* was that the Appellate Court had infringed Arts. 217 and 1644 by not applying them.[107]
16 Sept. 2013	The BS Litigants object to the admissibility of both cassation grounds, asserting that (1) the second ground was duplicative; (2) the Plaintiffs' arguments in support of the first ground went to the probative value of evidence, and accordingly exceeded the ambit of an "error of fact as to the existence of evidence;" (3) the Appellate Court had not "ignored" evidence; and (4) in any event, the evidence was not outcome determinative.[108] **NB:** The submission accepts that "ignoring" evidence amounts to an "error of fact as to the existence of evidence."[109]
4 Dec. 2013	The Supreme Court admits the first cassation ground, confirming that the Plaintiffs had met the pleading requirements for a claim of "error of fact as to the existence of evidence."[110]
3 Jan. 2014	The Plaintiffs submit arguments in support of cassation, asserting that the evidence that the Appellate Court had ignored (1) was outcome-determinative, and (2) justifies a finding of liability and an award of damages.[111]
14 Jan. 2014	The BS Litigants submit a response, addressing the merits once more. The submission discusses every event and item of evidence that the Plaintiffs had said was ignored (including the Demand Letter, and the withdrawal of the appeal in the Opposition Proceeding). The

[103] **Ex. R-0102**, Edict No. 1230, Eleventh Civil Circuit Court (26 July 2012).
[104] **Ex. R-0138**, Judicial Code of the Republic of Panama, Art. 473 (permitting a party to request that a court exercise any *ex officio* power), Art. 793 (authorizing first instance and appellate courts to order the production of evidence *ex officio*), Art. 1195 (permitting the Supreme Court to order the production of evidence *ex officio*); *see also* **2019 Hearing** (Days 2, 3), Tr. 541–543 (Lee), Tr. 634–635 (Lee).
[105] **Ex. R-0037**, Appellate Decision (23 May 2013), p. 20.
[106] **Ex. R-0037**, Appellate Decision (23 May 2013), pp. 19-21.
[107] **Ex. R-0046**, Muresa/Tire Group Cassation Request (1 July 2013), pp. 4–12.
[108] *See generally* **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013).
[109] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), pp. 2–3.
[110] **Ex. R-0050**, Decision on Admissibility (4 Dec. 2013), p. 2.
[111] **Ex. R-0051**, Muresa/Tire Group Arguments in Support of Cassation (3 Jan. 2014).

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	submission also observes "the appellant insists that there has been 'bad faith and recklessness," and concedes that this is "a claim that . . . can be tried."[112]
28 May 2014	The Supreme Court, by majority, overturns the Appellate Decision. The majority judgment ("Supreme Court Judgment") agrees with the legal standard in the Appellate Decision,[113] but, applying that standard, concludes that ***the BS Litigants had transcended the bounds of merely exercising a legal right***.[114] The Judgment states that the BS Litigants' "behavior cannot be held as good faith behavior; indeed, it is negligent behavior."[115] The Court deems the BS Litigants jointly and severally liable for USD 5 million in damages, plus USD 431,000 in legal fees/expenses. In Claimants' words, "BSLS ***and*** BSJ incur[] a liability on this date."[116] **NB:** Justice Mitchell dissents. His opinion confirms that the Court had deliberated, by stating that "[his] remarks . . . were partially accepted by [his] colleagues . . . ."[117]
Post-Cassation	
"Soon after May 2014"	The Bridgestone group consults with Akin Gump — a U.S. law firm without any presence in Panama — about "options to try to overturn the [Panamanian] Decision."[118]
16 June 2014	The BS Litigants hire specialized Supreme Court counsel for the first time,[119] and submit a motion for "clarification and modification" of the Supreme Court Judgment. The submission asserts that the Judgment (1) "does not explain in detail how [the damages] total [*i.e.*, USD 5 million] was mathematically reached," and (2) should be modified to award a different (unidentified) amount of damages. In articulating the latter argument, the BS Litigants reveal that they can follow the Judgement's logic, and "infer" its implicit reasoning.[120]
July 2014	In parallel, Mr. Kingsbury works with Akin Gump to "*see whether any diplomatic . . . channels could be pursued to assist Bridgestone in overturning the [Supreme Court] decision*."[121]
30 Sept. 2014	The BS Litigants initiate a "review recourse" in Panama, arguing, *inter alia*, that the Demand Letter had been submitted improperly and was unrelated to the Civil Proceeding.[122]
7 Nov. 2014	The Court unanimously rejects the review recourse.[123]
28 Nov. 2014	The Court unanimously rejects the motion for clarification and modification.[124]
16 Dec. 2014	The BS Litigants appeal the rejection of their review recourse.[125]

[112] **Memorial**, ¶ 25(o) (conceding that the submission addressed the Demand Letter); **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014).
[113] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 16.
[114] *See* **Ex. R-0034**, Supreme Court Judgment (28 May 2014), pp. 16–17.
[115] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 17.
[116] **Claimants' Rejoinder on Expedited Objections**, ¶ 62.
[117] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 19 (Mitchell Dissent).
[118] **Expedited Objections Hearing** (Day 3), Tr. 444:01–07 (Kingsbury).
[119] **Memorial**, ¶ 105.
[120] *See* **Ex. R-0053**, BS Litigants' Motion for Clarification and Modification (16 June 2014), pp, 1, 5, 6.
[121] **Akey Stmt.**, ¶ 4.
[122] **Ex. R-0056**, BS Litigants' Request for Judicial Review (30 Sept. 2014), p. 7.
[123] **Ex. R-0073**, Decision Rejecting Request for Judicial Review (7 Nov. 2014).
[124] **Ex. R-0055**, Decision Rejecting Motion for Clarification and Modification (28 Nov. 2014), p. 2.
[125] **Ex. R-0057**, BS Litigants' Appeal of Decision Rejecting Request for Review (16 Dec. 2014).

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23 Dec. 2014	Akin requests a meeting with the Panamanian Embassy on behalf of "Bridgestone Corporation, Bridgestone Brands, and Bridgestone Licensing Services (collectively, 'Bridgestone')," and advises that "Bridgestone" is considering ISDS claims.[126] BSAM is not mentioned.
12 Jan. 2015	Jeffrey Lightfoot — a lobbyist who works out of Akin's offices[127] — writes to the Panamanian Embassy, explaining that "[he] work[s] for former National Security Advisor General James L. Jones and was asked by [his] partners at the law firm of Akin Gump . . . to follow up on their note . . . ."[128] According to Lightfoot, "General Jones' . . . name often opens doors . . . ."[129]
24 Feb. 2015	Mr. Kingsbury testifies for the Bridgestone group at a U.S. inter-agency hearing, arguing (1) that the Supreme Court had "severely penalized Bridgestone simply for utilizing an ordinary opposition mechanism," and (2) that Panama should be placed on a priority watchlist.[130]
13 Mar. 2015	Mr. Lightfoot, a BSAM VP (Mr. Akey), and Akin Gump partners Steven Kho and Charlie Johnson meet with Ambassador Gonzalez-Revilla for "around 30 minutes."[131] Although it is customary for attorneys to write "memos to file" to record important/unusual events with legal significance — and the "Bridgestone team agreed that [Akin partner] Charlie [Johnson] would write up a short note of the meeting"[132] — Claimants have not produced any such note. Nor is there a witness statement from either Akin attorney (despite the fact that other firm attorneys and BS counsel have testified as witnesses).[133]
30 Sept. 2015	Claimants formally threaten ISDS, sending a Notice of Intent to Panama and — unusually — copy the U.S. Secretaries of State and Commerce, the United States Trade Representative, and the U.S. Ambassador.[134] Even though local remedies in Panama have not been exhausted, Claimants nevertheless allege a "denial of justice."[135] They also claim expropriation, asserting that "the Supreme Court has destroyed the economic value of the FIRESTONE and BRIDGESTONE trademarks."[136] The Notice of Intent alleges that "[t]he loss and damage suffered to date by Claimants is currently estimated as being in excess of ***$10 million***."[137]
6 Nov. 2015	An entity named *Trabajadores Democráticos de Occidente, S.C.* applies to Panamanian authorities for registration of the BLACKSTONE mark. The Bridgestone group opposes.[138]
16 Mar. 2016	The Supreme Court rejects the appeal of the BS Litigants' review recourse.[139]
29 Mar. 2016	The BS Litigants submit a motion for clarification.[140]
	In discussions about ISDS, Akin Gump advises that if BSJ were to pay the Supreme Court Judgment, there would not be any basis under the TPA to seek recovery for the Judgment

[126] **Ex. C-0212**, Email from Akin Gump to Panamanian Embassy (23 Dec. 2014).
[127] **Lightfoot Stmt.**, ¶ 4.
[128] **Ex. C-213**, Email from J. Lightfoot to J. Helbron re meeting with Ambassador (12 Jan. 2015).
[129] **Lightfoot Stmt.**, ¶ 4.
[130] **Ex. C-0032**, 2015 Special 301 Public Hearing Stmt. of BSAM (24 Feb. 2015), p. 3.
[131] **Akey Stmt.**, ¶ 11.
[132] **Akey Stmt.**, ¶ 11.
[133] *See generally* **First Hyman Stmt.**; **Second Hyman Stmt.**; **Williams Stmt**.
[134] **Notice of Intent**.
[135] **Notice of Intent**, ¶ 4.
[136] **Notice of Intent**, ¶ 21.
[137] **Notice of Intent**, ¶ 22 (emphasis added).
[138] **Third Kingsbury Stmt.**, ¶ 11.
[139] **Ex. R-0058**, Decision Rejecting Appeal (16 March 2016).
[140] **Ex. C-0210**, Request for Clarification (29 March 2016).

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	amount.[141] The Bridgestone group then "realize[s]" that, "[i]n the event [it] decided to file this arbitration . . . there would be some benefits to having [BSLS] pay the full amount."[142]
April-May 2016	The Bridgestone group authorizes "payment [by BSLS[143]] of compensation for damages related to Panama litigation by BSJ/BSLS . . . ."[144] When deciding to proceed accordingly, the 100% dual-hatted membership of the BSLS board[145] "t[akes] into account that [BSLS] had standing to bring the present arbitration claim to recover the sum paid whereas BSJ did not."[146]
6 May 2016	BSLS does not have sufficient funds to discharge the Judgment. Accordingly, "the people in Tokyo [a]re trying to figure out how they were going to get money to BSLS so that BSLS could bring the arbitration . . . ."[147] Internal emails assert that "a possibility has suddenly emerged for an increase in BSLS' damage compensation," and discuss "the possibility of a group loan."[148]
9 May 2016	The Court unanimously rejects the motion for clarification, deeming it an improper appeal.[149]
19 May 2016	BS group discussions continue in respect of the loan, and it is "decided that it will be BSLS's responsibility alone to pay a total of approximately $8M in Panama-related damage compensation and international arbitration expenses, ***which had initially been planned for an even split between BSJ and BSLS***. Therefore, the funding need has increased to $6M."[150]
20 July 2016	The BS group papers the file to support an increased damages claim, recording a new agreement "that (i) despite the 2010 Agreement [BSLS] will pay, and bear the entire financial burden of [the Supreme Court Judgment] payment, and (ii) [BSLS] will be entitled to initiate, and keep the entire financial benefit of any recovery from, any investor-state arbitration . . . against the Republic of Panama."[151] BSAM and BSLS also execute a "loan" agreement for $6 million.[152] A repayment date is set in July 2017,[153] but the entities hatch a "plan" to "roll [the loan] each year," making repayment contingent on a damages award against Panama.[154]
19 Aug. 2016	Once the funds have been shifted from BSAM to BSLS, "Bridgestone, through its subsidiary BSLS, . . . pa[ys] the damages award to Muresa and T[ire Group]."[155]
Sept. 2016	Continuing to exert pressure, "Bridgestone sen[ds] to [Ambassador] Gonzalez-Revilla copies of letters from Bridgestone's representatives in the U.S. House of Representatives and U.S. Senate to the USTR," which "encourage settlement of the matter through diplomatic channels."[156]

[141] **Expedited Objections Hearing** (Day 3), Tr. 484 (Kingsbury).
[142] **2019 Hearing** (Day 1), Tr. 268:4–7 (Kingsbury).
[143] *See* **Ex. R-0204**, BSJ Emails re BSLS Loan (9 May 2016), p. 1.
[144] **Ex. R-0204**, BSJ Emails re BSLS Loan (9 May 2016); *but see* **2017 Hearing** (Day 4), Tr. 627:20–22.
[145] *See* **Reply**, ¶ 81; **Ex. C-0081**, BSLS Written Consent of the Board (1 Oct. 2015); **Ex. C-0086**, Legal Representation Agreement (25 Feb. 2016); Legal Representation of BSLS (10 May 2013), p. 1; **First Kingsbury Stmt.**, ¶ 5; **Expedited Objections Hearing** (Day 3), Tr. 462:8–19 (Kingsbury).
[146] **2019 Hearing (Day 1)**, Tr. 119 (Claimants' Counsel).
[147] **2019 Hearing (Day 1)**, Tr. 344:16–345:1 (Kingsbury).
[148] **Ex. R-0204**, BSJ Email Correspondence Re BSLS Loan (9 May 2016), p. 1.
[149] **Ex. R-0059**, Decision Rejecting Motion for Clarification (9 May 2016), p. 2
[150] **Ex. R-0203**, BSJ Email Correspondence Regarding BSLS Loan (20 May 2016), p. 1 (emphasis added).
[151] **Ex. R-0095**, BSLS Written Consent of the Board of Directors for Action Without a Meeting (20 July 2016).
[152] *See* **Ex. C-0271**, Loan Agreement (20 July 2016).
[153] *See* **Ex. C-0271**, Loan Agreement (20 July 2016), p. 2
[154] **Ex. VP-0046**, BSLS Financials, Tab BSJ & BSAM Loan Plan; **2019 Hearing** (Day 1), Tr. 334:4–19 (Kingsbury).
[155] **RFA**, ¶ 53.
[156] **RFA**, ¶ 51; *see also* **Ex. C-0035**, Congressional Support Letters (28 Sept. 2016) (30 Sept. 2016).

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7 Oct. 2016	Claimants submit their RFA, increasing by $6 million the previous damages estimate,[157] in order to account for non-Claimant BSJ's alleged "losses arising from the Supreme Court . . . ."[158] (This is plain from a comparison of the Notice of Intent to the RFA. The former, which had predated the plan to try to jerry-rig "an increase in BSLS' damage compensation,"[159] had asserted that "[t]he loss and damage suffered to date by ***Claimants [i.e., BSLS and BSAM]*** is currently estimated as being in excess of ***$10 million***."[160] The RFA, by contrast, asserted that "***Bridgestone's*** losses arising from the Supreme Court are ***USD 5,471,000 [sic]***. The diminution in value of ***BSLS*** and ***BSAM***'s trademarks and its business losses in the region has been estimated at no less than ***USD 10,000,000.***")[161]
19 Oct. 2016	ICSID requests that Claimants advise (1) "whether each BSLS and BSAM is submitting the claim to arbitration on its own behalf under Article 10.16.1(a)(i)(A) of the [TPA]," and (2) whether and how "the provision of Annex 10-C of the [TPA] is met in this case."[162] The Annex provides that a U.S. investor "may not submit . . . a claim that Panama has breached an obligation under Section A . . . if the investor . . . has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Panama."[163]
25 Oct. 2016	Claimants "confirm" that "each of BSLS and BSAM is submitting the claim to arbitration on its ***own*** behalf . . . ."[164] In addition, Claimants contend that even though "Bridgestone [had] made two attempts to appeal the Supreme Court decision in Panama, . . . the Claimants ha[d] ***not*** alleged any breach of any obligation under Section A of [TPA Chapter Ten] before any court or administrative tribunal of Panama."[165]
24 July 2017	In response to Panama's expedited objections, Claimants contend that "BSLS ultimately paid the whole [damages] sum. Thus, it is BSLS who has lost that US$5.4 million."[166]
Sept. 2017	At the Hearing on Expedited Objections, Panama mentions in passing that all of Claimants' merits claims suffer from some threshold conceptual defect.[167]
25 Oct. 2017	The Panamanian courts reject the BLACKSTONE trademark application.[168]
11 May 2018	Claimants submit their Memorial. They abandon some of their merits theories, and claim corruption for the first time.[169]

6. The above chronology confirms at least seven important conclusions. ***First***, the BS Litigants knew, before the Civil Proceeding began, that their opposition action in Panama

[157] **RFA**, ¶ 3.
[158] **RFA**, ¶ 67.
[159] **Ex. R-0204**, BSJ Email Correspondence Re BSLS Loan (9 May 2016), p. 1.
[160] **Notice of Intent**, ¶ 22.
[161] **RFA**, ¶ 67 (emphasis added).
[162] **Letter from ICSID to Claimants**, 19 Oct. 2016, p. 1.
[163] **Ex. R-0001**, TPA, Annex 10-C.
[164] **Claimants' Supplement to RFA**, p. 1 (emphasis added).
[165] **Claimants' Supplement to RFA**, p. 2 (emphasis added).
[166] **Claimants' Response on Expedited Objections**, ¶ 134.
[167] **Expedited Objections Hearing** (Day 1), Tr. 113:14–22; 114:1–2 (Panama's counsel).
[168] **Third Kingsbury Stmt.**, ¶ 11.
[169] *See* **Memorial**, ¶¶ 116–30, 208–10.

could lead to claims being filed against them. They also were fully aware that they could lose the Civil Proceeding, and allocated the costs of defeat. ***Second***, as the matter unfolded, the BS Litigants were afforded due process. (Notably, Claimants' expert Mr. Arjona could not even posit the contrary without ignoring every single one of the BS Litigants' pre-Judgment submissions. The only pre-Judgment documents from the Civil Proceeding that Mr. Arjona cites are the Plaintiffs' complaint, the Plaintiffs' appeal, and the Plaintiffs' arguments in support of cassation.) Indeed, a review of the record confirms that, throughout the Civil Proceeding, the BS Litigants were advised of the arguments against them; thereafter had the chance to respond; and used those opportunities to comment on every conceivable topic (*viz.*, evidence, procedure, applicable law, jurisdiction, admissibility, merits, causation, and damages).

7. ***Third***, the BS Litigants also addressed the Demand Letter — which, as the chronology shows, had entered the record during the evidence submission phase. They attacked the Letter on technical grounds; they opined on substance and meaning; they discussed the Demand Letter in pleadings, and with witnesses and experts as well. In addition, they had the chance to petition to present counter-evidence,[170] but apparently chose not to do so "because [they] w[ere] objecting as to admissibility."[171] This decision, if later regretted, was a strategic decision with which the BS Litigants must live. To recall, they were represented by counsel who understood that their charge was to "submit [the] arguments[] and evidence that [they] consider[ed] appropriate for the best defense and protection of [their client]."[172]

[170] **Ex. R-0138**, Judicial Code of the Republic of Panama, Art. 473 (permitting a party to request that a court exercise any *ex officio* power), Art. 793 (authorizing first instance and appellate courts to order the production of evidence *ex officio*), Art. 1195 (permitting the Supreme Court to order the production of evidence *ex officio*).
[171] **2019 Hearing** (Day 5), Tr. 1232 (Claimants' Counsel).
[172] **Ex. R-0045**, BSLS Answer to the Civil Torts Claim (13 Oct. 2008), p. 4.

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8. ***Fourth***, despite promising ICSID that "Bridgestone['s] attempts to appeal the Supreme Court decision in Panama" had ***not*** amounted to claims under TPA Chapter Ten,[173] Claimants since have mined those "attempts to appeal" for merits arguments. Indeed, virtually all of their theories have been copied and pasted from the BS Litigants' pleadings. The only exceptions are the new arguments that Claimants improperly unveiled at the hearing, in violation of the TPA's time bar[174] — *viz.*, that the Court should not have applied Panamanian law,[175] and misinterpreted the phrase "error of fact as to the existence of evidence."[176] These arguments, for their part, ***contradict*** the BS Litigants' pleadings. To recall, during the Civil Proceeding, the BS Litigants were adamant that the case was governed by a Panamanian norm (*viz.*, Article 217 of the Judicial Code). They also accepted in principle that "ignoring evidence" amounts to an "error of fact as to the existence of evidence."[177]

9. ***Fifth***, the Supreme Court Judgment is a reflection of practical reality, the evidence in the *expediente*, accepted Panamanian laws, and the arguments advanced by the parties. Indeed, as the table below demonstrates, there are clear answers to all of the questions that Claimants have posed for rhetorical flourish.

[173] **Claimants' Supplement to RFA**, p. 2 (emphasis added).
[174] **Ex. R-0001**, TPA, Art. 10.18.1 ("No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant . . . has incurred loss or damage").
[175] *See* **2019 Hearing** (Day 2), Tr. 608:03–12 (Claimants' Counsel).
[176] *See* **2019 Hearing** (Day 1), Tr. 52:15–55:16 (Claimants' Counsel).
[177] *See* **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), pp. 2–3.

Rhetorical Question by Claimants About The Supreme Court Judgment	Answer
How could someone possibly interpret the Demand Letter's use of the term "Bridgestone/Firestone" to refer to the BS Litigants?[178]	The BS Litigants "[we]re members of a single corporate group" that "for a great many years . . . use[d] the identifiers BRIDGESTONE and FIRESTONE . . . ."[179] And, beginning in 1988 — and for at least the next 15 years — the group used "Bridgestone/Firestone" as a "trade name and corporate identifier . . . ."[180] Accordingly, *many* group entities used "the Bridgestone/Firestone name in connection with their goods, services, and business . . . ."[181] Further, despite counsel's claim that it would be an "extraordinary mistake [to] [say] that the Foley letter was sent on behalf of BSLS,"[182] a BS group memo to Panama states that the letter was sent by "Bridgestone Corporation, Bridgestone Brands, and Bridgestone Licensing Services[.]"[183]
How could someone ever read the Demand Letter (which had been sent to L.V. International's attorney) as pertaining to Muresa and Tire Group?	***First***, the Letter expressly states that "Bridgestone/Firestone objects not only to any registration of the RIVERSTONE mark for tires by ***your*** client, but also to ***any*** use of the mark."[184] This easily could be interpreted as pertaining to Muresa and Tire Group, as Muresa owned the RIVERSTONE mark and Tire Group was a sister entity/distributor. ***Second***, in the Civil Proceeding, the BS Litigants argued that, given the relationship between the Plaintiffs and L.V. International, the Plaintiffs were no doubt aware of legal actions involving L.V. International. ***Third***, as a practical matter, a letter to L.V. International was a letter to Muresa as well. To recall, "both L.V. International . . . and T[ire Group] . . . are part of the same business group as Muresa, the so-called Luque Group."[185] In the Luque Group — as in the BS group — certain people are double-hatted (*e.g.*, the president of L.V. International is also a Muresa's director). Accordingly, Claimants' question is a bit like asking how a letter to Mr. Kingsbury at BSAM could ever be linked to BSLS.
How could someone ever consider relevant a letter that one attorney had sent to another in the U.S.?[186]	***First***, it was not only the Supreme Court that considered the Demand Letter relevant. The Appellate Court also deemed the Letter to be relevant, in its decision granting the *Coadyuvante* Petition.[187] ***Second***, the BS Litigants opened the door to the Demand Letter by discussing the U.S. opposition proceeding,[188]

[178] *See* **2019 Hearing** (Day 5), Tr. 1233–34 (Claimants' Counsel).
[179] **Ex. C-0150**, BS Litigants' Complaint Opposition Proceeding (5 April 2005), p. 3.
[180] **Ex. C-0010**, BS Entities' Notice of Opposition to RIVERSTONE Mark (3 Dec. 2003), ¶ 7.
[181] **Ex. C-0010**, BS Entities' Notice of Opposition to RIVERSTONE Trademark (3 Dec. 2003), ¶ 7.
[182] *See* **2019 Hearing** (Day 1), Tr. 81 (Claimants' Counsel).
[183] *See* **Ex. R-0033**, Memorandum, J. Lightfoot (12 Jan. 2015), p. 1.
[184] **Ex. C-0013**, Demand Letter (3 Nov. 2004) (original emphasis omitted; additional emphasis added).
[185] **RFA**, ¶ 25.
[186] **2019 Hearing** (Day 1), Tr. 74–75 (Claimants' Counsel).
[187] **Ex. R-0101**, Appellate Court Ruling Admitting L.V. International as a Coadyuvante (19 June 2012), pp. 1–2.
[188] *See* **Ex. R-0045**, BSLS Answer to the Civil Torts Claim (13 Oct. 2008), p. 2.

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	claiming that they had played a role in it,[189] and adducing the record therefrom.[190] If the Demand Letter formed part of such proceeding (as Claimants argue), then it seems a rational step for a court to consider the Letter. ***Third***, both of the parties had argued that the Demand Letter was important. The Plaintiffs' position was that the Letter (1) shed light on motive, and (2) established causation. The BS Litigants agreed that causation had the potential to turn on the existence (*vel non*) of a letter requesting the suspension of sales. ***Fourth***, the letter, on its face, was not limited to the U.S., but voiced an "object[ion] to . . . the use or registration anywhere in the world of the mark RIVERSTONE for tires."[191]
How could someone ever interpret the grounds of "error of fact as to the existence of evidence" to encompass "ignoring evidence?"[192]	This interpretation has long been accepted in Panama,[193] and was used by the BS Litigants in their submissions to the Supreme Court.[194] As confirmed by Claimants' email of 9 October 2019,[195] there are no authorities that support Claimants' new argument.
How could someone ever square a finding of "recklessness" with the statement about "good faith" in the Opposition Decision?[196]	The statement did not amount to a binding ruling on recklessness, as the parties, subject matter, and request for relief in the Opposition Proceeding were different.[197] The BS Litigants accepted this in their submissions to the Supreme Court.[198]
How could someone possibly deem reckless the mere act of "exercising [one's] legal rights?"[199]	The Judgment expressly disclaims any such finding, and explains that the BS Litigants had gone beyond merely exercising a right.[200] The Appellate Decision confirms that "recklessness" encompasses conduct "go[ing] beyond a mere exercise of procedural rights authorized by the law in defense of an interest.'"[201]
How could someone ever "find the withdrawal of an appeal to be reckless[?]"[202]	The Supreme Court Judgment does not contain any such finding. Instead, it states: "[The BS Litigants'] conduct in the Opposition Proceeding did not go unnoticed. There were ***doubts*** about there being any good faith when [the BS Litigants] went to extremes to oppose the registration of a product brand that was conveniently commercially competitive. Then, after spending a significant

[189] **Ex. R-0123**, Panamanian Opposition Proceeding Evidentiary Hearing (21 Feb. 2006), p. 3, ¶ 51(2).
[190] **Ex. R-0121**, BS Litigants' List of Affirmative Evidence (1 Oct. 2009), ¶ 23.
[191] **Ex. C-0013**, Demand Letter (3 Nov. 2004).
[192] *See* **2019 Hearing** (Day 1), Tr. 52:15–55:16(Claimants' Counsel).
[193] **2019 Hearing** (Day 2), Tr. 571:06–572:11 (Lee); **RLA-0225**, J. Fábrega, CASSATION AND REVIEW 109 (2001); **RLA-0226**, Cassation Ruling Rendered by Justice Harley Mitchell (10 March 2014).
[194] **Ex. R-0047**, BS Litigants' Objection to the Admission of the Cassation Recourse (16 Sept. 2013), p. 2 (differentiating between (1) ignoring evidence (which would be "an error of fact as to the existence of evidence"), and (2) taking evidence into account but improperly valuing it).
[195] *See* Email from Claimants to the Tribunal (9 Oct. 2019).
[196] **2019 Hearing** (Day 1), Tr. 70–71 (Claimants' Counsel).
[197] **Ex. R-0036**, First Instance Decision, (17 Dec. 2010), p. 8.
[198] **Ex. R-0052**, BS Litigants' Response to the Cassation Recourse (14 Jan. 2014), pp. 2–3.
[199] **Memorial**, ¶ 94; *see also id.*, ¶¶ 25(p) 113, 197; **RFA**, ¶¶ 3, 30, 56; **Reply**, ¶¶ 2(e), 23, 93, 115; **Ex. C-0032**, 2015 Special 301 Public Hearing Stmt. of BSAM (24 Feb. 2015), p. 3.
[200] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 16.
[201] **Ex. R-0037**, Appellate Decision (23 May 2013), p. 20.
[202] **2019 Hearing (Day 1)**, Tr. 88 (Claimants' Counsel).

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	amount of time in litigation, they withdrew the appeal they had filed against an adverse Decision."[203] As Mr. Lee has explained, the withdrawal of an appeal is an unusual occurrence in Panama.[204]
How could someone find injury when the opposition action "did not affect Muresa's ability to continue selling[?] Muresa's right to sell goods . . . could be affected only if BSLS had obtained an injunction . . . ."[205]	"Muresa's right to sell goods" also "could be affected" if the Plaintiffs were frightened away from selling tires, which happened here. In the words of the First Instance Decision, a "fear of seizure caused the Plaintiff[s] to stop production and sale of the RIVERSTONE brand . . . ."[206]

10. ***Sixth***, Claimants have not been truthful in their discussions about the payment of the Supreme Court Judgment amount. During the hearing on expedited objections, Claimants were adamant (1) that "BSLS did ***not*** force itself to incur loss,"[207] (2) that "BSJ had ***no*** role in the payment of damages,"[208] and (3) that "[i]t was only when all of the local [remedies] were exhausted that BSLS paid . . . ."[209] However, the first two assertions were false, and the third was a careful half-truth. BSLS — with BSJ as puppet master — ***did*** force itself to incur loss, by altering the pre-agreed division of the expense. Further, even though payment may have post-dated the exhaustion of remedies, the decision regarding payment was made while local proceedings were pending.[210] And it is ***not***, as Claimants had argued, that "BSLS paid the full amount of the judgment debt, using financing from BSAM . . . due to the simple fact that BSLS and BSAM were the two entities responsible for the group's trademark protection in the Americas."[211] Nor is it the case that "BSLS[] made the payment in full" merely because, "[i]n the Americas, FIRESTONE has historically been the more significant brand."[212] Rather, as

[203] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 16.
[204] *See* **2019 Hearing** (Day 2), Tr. 470 (Lee).
[205] **2019 Hearing** (Day 1), Tr. 65–66 (Claimants' Counsel).
[206] *See* **Ex. R-0036**, First Instance Decision (17 Dec. 2010), p. 13.
[207] **Claimants' Response on Expedited Objections**, ¶ 164 (emphasis added).
[208] **Expedited Objections Hearing** (Day 1), Tr. 341 (Claimants' Counsel); **Reply**, ¶ 31; *see also id.*, ¶ 80.
[209] **Expedited Objections Hearing** (Day 2), Tr. 627–628 (Claimants' Counsel); *see also id.* (Day 2), Tr. 348 (Claimants' Counsel); **Claimants' Rejoinder on Expedited Objections**, ¶¶ 15–16; **Claimants' Post-Hearing Brief on Expedited Objections**, ¶ 58; **Reply**, ¶ 81.
[210] *See* **Ex. R-0204**, BSJ Emails re BSLS Loan (9 May 2016).
[211] **Reply**, ¶ 20.
[212] **Reply**, ¶ 32.

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Claimants now concede, the motive was calculating: "BSLS took into account that it had standing . . . to recover the sum paid whereas BSJ did not,"[213] and attempted to paint a picture that would increase BSLS's damages claim.[214]

11. ***Seventh***, and finally, the Bridgestone group is trying to bully its way out of a "bullying" charge. Thus, instead of sound arguments, supported by law and evidence, Claimants have resorted to lawfare and various guerrilla tactics — perhaps hoping that the Bridgestone group's size and the mere fact of an international suit would bring Panama to heel. This is not an appropriate use of an international investment treaty.

III. CLAIMANTS' DENIAL OF JUSTICE CLAIM FAILS

12. Claimants have long conceded that, "under the TPA, the Claimants must show [a treaty] breach by the Respondent"[215] to win their case. Yet, after five years of accusations,[216] Claimants have failed to establish any such breach. At present — having abandoned their other three TPA claims — Claimants' sole remaining theory is that of "denial of justice." As discussed below, however, even this remaining theory falls flat.

A. Only Bridgestone Licensing May Allege A Denial of Justice

13. In the pleadings and at the hearing, it repeatedly was made clear that both of the BS Litigants are attacking the Supreme Court Judgment; the claims expressly are framed as alleged slights to "BSLS ***and BSJ***,"[217] and these entities are ones to whom both counsel and the

[213] **2019 Hearing** (Day 1), Tr. 119 (Claimants' Counsel).
[214] **Ex. R-0204**, BSJ Email Correspondence Re BSLS Loan (9 May 2016), p. 1.
[215] **Claimants' Rejoinder on Expedited Objections**, ¶ 62.
[216] *See* **Ex. C-0212**, Email from Akin Gump to Panamanian Embassy (23 Dec. 2014), p. 1; **Ex. C-0032**, Special 301 Public Hrg. (24 Feb. 2015), p. 3; *see also generally* **Notice of Intent**, **RFA**, **Memorial**, **Reply**.
[217] *See* **Claimants' Reply**, ¶¶ 2(a)–(f), 39(a)–(e) (emphasis added).

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experts report.[218] Nonetheless, as the Tribunal has stated, "BSJ . . . has no claim . . . ."[219] In fact, without qualification, "BSJ . . . falls outside the protection of the TPA."[220]

14. On occasion, there also has been mention of "BSAM's claim for denial of justice."[221] But BSAM can have no such claim.[222] As Claimants themselves have explained, before a "tribunal may find a denial of justice to have occurred, ***the domestic legal system[,] as a whole[,] must have been put to the test and . . . have failed*** . . . ."[223] It follows directly from this that the "system[,] as a whole[,]" must be tested. Indeed, it is blackletter law — tracing back to the 14th century[224] — that a person may not allege a denial of justice unless he has exhausted all available domestic avenues.[225] This rule, which Claimants accept,[226] is fatal for BSAM's purposes, as, "to ***exhaust*** a particular remedy, one necessarily must first pursue it . . . ."[227] By neglecting to even attempt to take part in the local proceedings, BSAM waived any potential denial of justice claim.[228]

15. At the hearing, Claimants responded by arguing that "[t]here is no need for ***BSAM*** to have been personally denied justice. It's sufficient for [*a*] denial of justice to have

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[218] *See* **Ex. C-0001**, Power of Attorney for BSLS and BSAM (28 Sept. 2016); Internal Approval Stmt. for BSLS (7 Oct. 2016), p. 4; **2019 Hearing** (Day 2), Tr. 369 (Claimants' Counsel); **2019 Hearing** (Day 3), Tr. 663: 15–18 (Molino).
[219] **Decision on Expedited Objections**, ¶ 221.
[220] **Decision on Expedited Objections**, ¶ 221.
[221] *See* **Reply**, § II; *but see* **Ex. R-0033**, Memorandum, J. Lightfoot (12 Jan. 2015), p. 1.
[222] **Rejoinder**, § II(A)(1); **Counter-Memorial**, § II(A); **2019 Hearing** (Day 1), Tr. 210:21–211:17.
[223] **Memorial**, ¶ 163.
[224] **RLA-0113**, Jan Paulsson, DENIAL OF JUSTICE IN INTERNATIONAL LAW 101 (2005).
[225] *See* **RLA-0093**, *Loewen*, ¶¶ 154–56; **RLA-0063**, *Arif*, ¶ 347; **RLA-0210**, *The Panevezys–Saldutiskis Railway (Estonia v. Lithuania)*, ¶ 3; **RLA-0211**, *Case of Certain Norwegian Loans (France v. Norway)*, Separate Opinion of Judge Sir Hersch Lauterpacht, pp. 34–66; **Paulsson Rpt.**, ¶ 52.
[226] **2019 Hearing** (Day 1), Tr. 48 (Claimants' Counsel) ("Claimants accept that it is a prerequisite of a denial-of-justice claim that ***the Claimants*** must exhaust local remedies") (emphasis added).
[227] **Paulsson Rpt.**, ¶ 52 (emphasis added).
[228] *See* **2019 Hearing** (Day 1), Tr. 24:14–21 (United States) (explaining that, for a denial of justice "claim submitted under [TPA] Article 10.16, paragraph 1(a), a [c]laimant . . . must establish that the [c]laimant was, or sought to be but was prohibited from becoming, a party to [the] adjudicatory proceeding" at issue).

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taken place which has deprive [sic] BSAM of its rights."[229] But this theory is untenable — for reasons pertaining to standing: implicit in Claimants' theory is an assertion that BSAM may prosecute an alleged treaty breach that some other entity may have suffered. The problem with this is that, by the TPA's express terms, BSAM may only assert claims "on its own behalf" or "on behalf of an enterprise [of Panama] that is a juridical person that [BSAM] owns or controls . . . ."[230] There is no standing to prosecute claims on behalf of a parent or sister.

16. During closings, the Tribunal inquired whether it should make an exception.[231] As Panama explained, however, there is not any basis for doing so.[232] ***First***, the TPA provision that Claimants contend has been violated — *viz.*, Article 10.5 — "prescribes the customary international law minimum standard of treatment[,] . . . and do[es] not create additional substantive rights."[233] ***Second***, under customary international law, the rule is that a "claim for denial of justice . . . can only be successfully pursued by a person that was denied justice through court proceedings in which it participated as a party."[234] ***Third***, Claimants concede that "if BSAM was bringing a self-standing claim under customary international law, then the fact that it was not a party to the Muresa litigation would mean that it did not have standing . . . ."[235] ***Fourth***, as the TPA states, "'customary international law' generally and as specifically referenced in Article[] 10.5 . . . results from a general and consistent practice of States that they follow from a sense of legal obligation."[236] Accordingly, only States have the power to create an exception, whether through the development of new customary international law or through a

[229] **2019 Hearing (Day 1)**, Tr. 39–40 (Claimants' Counsel).
[230] **Ex. R-0001**, TPA, Art. 10.16.1.
[231] **2019 Hearing (Day 5)**, Tr. 1264:8–13 (Tribunal).
[232] **2019 Hearing (Day 5)**, Tr. 1264–65 (Panama's counsel).
[233] **Ex. R-0001**, TPA, Art. 10.5.1.
[234] **RLA-0063**, *Arif*, ¶ 435.
[235] **2019 Hearing** (Day 1), Tr. 37 (Claimants' Counsel).
[236] **Ex. R-0001**, TPA, Annex 10-A.

TPA amendment. For a tribunal to simply invent one would amount to an excess of powers. Thus, in short, only BSLS may allege a denial of justice.

B. The Merits Theory Fails In Any Event

17. In any event, irrespective of the party asserting the claim, the denial of justice claim fails — for at least the following reasons. ***First***, as the U.S. has observed, and many awards can attest, "it is well-established that international tribunals, such as U.S.-Panama TPA Chapter Ten tribunals, are not empowered to be supranational courts of appeal . . . ."[237] In practical terms, this means (1) that the Tribunal's mandate is ***not*** to decide the dispute in the Civil Proceeding,[238] (2) that its "function is ***not*** to correct errors of domestic procedural or substantive law,"[239] and (3) that the Tribunal may ***not*** revisit evidentiary rulings.[240] As Professor Paulsson explains, "[d]ecisions as to the [admissibility[241]], 'relevancy' and weight granted to evidence are classically matters within the evidentiary discretion of the national courts . . . ."[242]

18. ***Second***, there is no question that Claimants' arguments are an appeal. As demonstrated in the table below, Claimants' merits theories consist of (1) a position plucked from the BS Litigants' pleadings, and — in certain instances — (2) an assertion that any contrary position is "impossible to understand."

Table 1: Claimants' "Merits Theories" Merely Reiterate Previous Arguments

Claimants' Argument in ICSID Proceeding	BS Litigants' Argument in Civil Proceeding
"It is, we say, impossible to understand how a competent and honest Supreme Court could have taken	The Plaintiffs have "alleged 'factual mistake in the existence of evidence,' attempting to state that there is

[237] **Third U.S. Subm.**, ¶ 4; *see also, e.g.*, **RLA-0100**, *Liman*, ¶ 274; **RLA-0110**, *Enkev Beheer*, ¶ 327; **RLA-0097**, *RosInvest*, ¶ 489; **CLA-0041**, *Apotex*, ¶ 278; **CLA-0027**, *Azinian*, ¶ 99; **CLA-0074**, *Waste Management II*, ¶ 129.
[238] *See* **RLA-0099**, *H&H Enterprises*, ¶ 400; **RLA-0106**, *ECE*, ¶ 4.764; **RLA-0110**, *Enkev Beheer*, ¶ 327; **CLA-0071**, *Azinian*, ¶ 99; **CLA-0073**, *Mondev*, ¶ 126; **RLA-0100**, *Liman*, ¶ 274; **RLA-0097**, *RosInvest*, ¶ 489.
[239] **RLA-0100**, *Liman*, ¶ 274; *see also* **2019 Hearing** (Day 1), Tr. 43 (Claimants' Counsel).
[240] **Paulsson Rpt.**, ¶¶ 40, 59, 62; **RLA-0104**, *Arif*, ¶ 485.
[241] *See* **Paulsson Rpt.**, ¶ 40.
[242] **Paulsson Rpt.**, ¶ 62; *see also* **RLA-0100**, *Liman*, ¶ 274; **RLA-0104**, *Arif*, ¶ 485; **RLA-0216**, *Dogan*, ¶ 129.
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the view that the lower court had totally ignored [certain evidence],"[243] as the cassation ground of "error of fact as to the existence of evidence" is "***not*** a ground, for example, saying that the, oh, the [c]ourt had misconstrued the weight or the importance or the meaning of particular evidence."[244]	evidence in the case file that . . . w[as] ignored by the Superior Court. This argument is, from a conceptual point, mistaken . . . ."[245] "In our estimation, the [cassation] grounds cited [by the Plaintiffs] are mistaken, . . . , for the plaintiff claiming as ignorance, which in reality is an issue of evidentiary evaluation."[246]
"We say it is incomprehensible that the Supreme Court could find the withdrawal of an appeal . . . to be reckless or evidence of bad faith . . . ."[247] Indeed, "we say withdrawal of an appeal . . . is the opposite of reckless behavior."[248]	"The withdrawal of an appeal . . . does [no]t represent an abuse of the right to litigate; to the contrary, it indicates evaluative decisions that indicated at the time to withdraw from the discussion initially set forth . . . no[t] proof of recklessness or bad faith."[249]
"[W]e say that . . . it's irrational and unreasonable for the Supreme Court to consider that [the Demand] letter could have been intimidating and reckless because of its content, and who sent it and to whom it was sent."[250] The Letter "plainly is not addressed to Muresa,"[251] and "[wa]s not sent by or on behalf of BSLS or BSJ. It was sent following a successful opposition action [in the U.S.]."[252]	"The note is addressed to an American lawyer by another American lawyer and is related to events in the United States of America that are not part of these proceedings, so it is irrelevant []herein, and is outside the Panamanian jurisdiction."[253] "How can the [BS Litigants[254]] recklessly assert intimidating and threatening actions against the claimants if [the Demand Letter] is not aimed at them and if it was not drafted by [the Bridgestone Litigants]?"[255]
"[T]he finding of the Supreme Court that it was reckless of BSLS to bring a trademark opposition because Muresa had a legal right to sell its products, we say[,] simply cannot be understood,"[256] because "[t]he fact that BSLS opposed the registration did not affect Muresa's ability to continue selling. Muresa's right to sell goods . . . could be affected only if BSLS had	"The opposition claim against a brand registration application is a merely declarative process which consists of analyzing the best right derived from the use of the brand or the discussion of the overlapping of signs."[258] The BS Litigants "did not request any type of injunctive

[243] **2019 Hearing** (Day 1), Tr. 56 (Claimants' Counsel); *see also id.*, Tr. 61 (Claimants' Counsel).
[244] **2019 Hearing** (Day 1), Tr. 55 (Claimants' Counsel) (emphasis added).
[245] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 2.
[246] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept.2013), p. 2.
[247] **2019 Hearing (Day 1)**, Tr. 88–89 (Claimants' Counsel).
[248] **2019 Hearing (Day 1)**, Tr. 88 (Claimants' Counsel).
[249] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 5; *see also* **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 9.
[250] **2019 Hearing** (Day 1), Tr. 74 (Claimants' Counsel); *id.*, Tr. 75; **Reply**, ¶ 2(d).
[251] **2019 Hearing** (Day 1), Tr. 75 (Claimants' Counsel).
[252] **2019 Hearing** (Day 1), Tr. 74–75 (Claimants' Counsel).
[253] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 4; **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 7.
[254] **Ex. C-0200 (SPA)**, BS Litigants' Closing Arguments (11 June 2010), p. 15.
[255] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 15; *see also id.*, p. 13; **Ex. C-0023**, BS Litigants' Opposition to Appeal (14 Jan. 2011), pp. 18, 32; **Ex. R-0103**, BS Litigants' Opposition to L.V. International Inc.'s Appeal (2 June 2011), pp. 2, 3; **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 4; **Ex. R-0056**, BS Litigants' Request for Judicial Review (30 Sept. 2014), p. 7.
[256] **2019 Hearing** (Day 1), Tr. 66 (Claimants' Counsel).
[258] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 24.

[FOOTNOTE CONTINUED ON NEXT PAGE]

obtained an injunction in that country to restrain sale or seize goods, but at no time did BSLS seek such an injunction . . . ."[257]	measure against Muresa."[259] Indeed, "[t]here was no judicial order in Panama that would have prevented the plaintiffs from selling their RIVERSTONE Y DISEÑO brand product."[260]
"[T]he decision made by the Supreme Court simply makes no sense and is not coherent and is not explained,"[261] because "[t]he Supreme Court did not even attempt to reconcile the fact that the [Opposition Proceeding] Court had made a finding of evident good faith with its own finding of bad faith under Article 217."[262]	**Argument in First Instance and Appellate Proceedings:** It is "not true" that "the[] procedural actions displayed in the [Panamanian] opposition suit" were "reckless . . . . In this sense, the [Opposition Proceeding Court] declared THE CLEAR GOOD FAITH of [the Bridgestone Litigants]."[263] Therefore, the issue is *res judicata*.[264] **Argument to Supreme Court:** "[T]he appellant insists that there has been 'bad faith and recklessness' in the aforementioned judicial action," and this is "a claim that, in general terms, as stated by the [Appellate Court], from the conceptual point of view, can be tried."[265]
"[T]he finding of the Supreme Court that BSLS and BSJ's opposition to Muresa's trademark application was of itself brought 'with the intent to cause damages' is impossible to understand," because the BS Litigants "simply invoked the mechanism for trademark opposition mandated under Panamanian law, and did so on entirely reasonable grounds – namely that the use of the suffix '-STONE' in the context of tires is confusingly similar to the BRIDGESTONE and FIRESTONE marks."[266]	"[T]he BRIDGESTONE companies just utilized a right granted thereto by a national law to oppose the registry of a trademark that it considered to be confusedly similar to its own, without excess in its allegations or abusing its right to litigation."[267]
The Supreme Court violated "BSLS and BSJ's right to due process"[268] by taking account of the Bridgestone	"[T]he claimant is attempting for Your Honor to consider facts other than those stated in the claim [*i.e.*, complaint]

[257] **2019 Hearing** (Day 1), Tr. 65–66 (Claimants' Counsel).
[259] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 25; *see also id.* at 3; **Ex. C-0019**, BSJ's Answer (19 Aug. 2009), p. 4; **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 4; **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 11.
[260] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 7; **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 12; **Ex. R-0056**, BS Litigants' Request for Judicial Review (30 Sept. 2014), p. 9.
[261] **2019 Hearing** (Day 1), Tr. 73 (Claimants' Counsel).
[262] **2019 Hearing** (Day 1), Tr. 69 (Claimants' Counsel).
[263] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 3; **Ex. C-0023**, BS Litigants' Oppn. to Muresa Appeal (14 Jan. 2011), pp. 3, 19, 21, 26, 31, 37.
[264] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 3; **Ex. C-0023**, BS Litigants' Oppn. to Muresa Appeal (14 Jan. 2011), pp. 3, 19, 21, 26, 31, 37.
[265] **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 2.
[266] **Reply**, ¶ 2(e); *see also* **2019 Hearing (Day 1)**, Tr. 66 (Claimants' Counsel).
[267] **Ex. R-0047**, BS Litigants' Objection to Admissibility (16 Sept. 2013), p. 7; *see also* **Ex. C-0019**, BSJ's Answer (19 Aug. 2009), p. 3; **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), pp. 24, 25, 27; **Ex. C-0023**, BS Litigants' Opposition to Appeal (14 Jan. 2011), pp. 3, 26; **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), pp. 2, 12; **Ex. R-0056**, BS Litigants' Request for Judicial Review (30 Sept. 2014), p. 9.
[268] **Reply**, ¶ 39(d).

[FOOTNOTE CONTINUED ON NEXT PAGE]

Litigants' "opposition actions against the RIVERSTONE mark in several countries," when those actions had not been mentioned in the first instance proceeding complaint.[269]	and for you to proffer an *ultra petita* judgment on . . . intimidating and threatening actions which generated damages due to an international persecution . . . This conclusively violates legal due process."[270]
"The Supreme Court relied on evidence that was not properly admitted, such that BSLS and BSJ did not have the opportunity properly to respond to it. This was a violation of Articles 792, 856, 857, 871, 877 and 878 of the Panamanian Judicial Code."[271]	The submission of the Demand Letter by the Plaintiffs' experts "directly violates Articles 871 of the Judicial Code . . . [and] 877 and 878 of the Judicial Code."[272] "[T]he claimant has obtained a procedural advantage by curtailing our right to contradict the evidence and our fight to defense, given that the objection and counter-evidence period already passed."[273]
"[T]he Supreme Court's finding on loss appears at Page 18 of the Judgment, with the Supreme Court ordering BSJ and BSLS to pay Muresa and TGFL the sum of $5 million as compensation for contractual liability [sic], and there is no attempt to explain where that number came from."[274]	"In the Judgment of May 28, 2014, the Chamber does not make any explanation or indication as to what amount of the damages awarded of US$5,000,000.00, corresponds to the alleged damages sustained by [Tire Group], and does not explain how such amount has been quantified."[275]

19. ***Third***, the Supreme Court Judgment does not offend a sense of juridical propriety. As a threshold matter, the Judgment followed a typical cassation proceeding — and one that afforded due process. The BS Litigants had notice of the Plaintiffs' arguments, and exercised their right to be heard. Following the submissions, deliberations took place,[276] and the Court then rendered a judgment that accords with Panamanian law, the *expediente*, and common sense. At the hearing, Claimants — bizarrely — questioned the application of Panamanian law; their contention was that the Supreme Court should have conducted a "conflict-of-law" analysis in

[269] **Reply**, ¶ 54.
[270] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), pp. 19–20; *see also* **Ex. C-0023**, BS Litigants Opposition to Appeal (14 Jan. 2011), p. 37.
[271] **Reply**, ¶ 39(b); *see also* **2019 Hearing** (Day 1), Tr. 78–81; *see id.* at 74 (Claimants' Counsel).
[272] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 13; *see also id.* at p. 21; **Ex. C-0023**, BS Litigant's Opposition to Appeal (14 Jan. 2011), pp. 17, 31; **Ex. R-0103**, BS Litigants' Opposition to L.V. International Inc.'s Appeal (2 June 2011), pp. 2, 3; **Ex. R-0052**, BS Litigants' Arguments Against Cassation (14 Jan. 2014), p. 6; **Ex. R-0056**, BS Litigants' Request for Judicial Review (30 Sept. 2014), p. 7.
[273] **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 14; *see also* **Ex. C-0023**, BS Litigants' Opposition to Appeal (14 Jan. 2011), pp. 15, 16, 17, 31–32.
[274] **2019 Hearing** (Day 1), Tr. 101:4–12 (Claimants' Counsel).
[275] **Ex. R-0053**, BS Litigants' Motion for Clarification and Modification (16 June 2014), p. 5.
[276] **Ex. R-0034**, Supreme Court Judgment (28 May 2014), p. 19 ("Dissenting opinion . . . . Despite having submitted my remarks, ***which were partially accepted by my colleagues***, I must state that I do not agree with the decision issued in the Judgment") (emphasis added).

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connection with the Demand Letter.[277] However, this is a brand-new argument. In the Civil Proceeding, the BS Litigants argued in all seven of their pleadings, before all three levels of courts, that the court *du jour* should apply Art. 217 of the Panamanian Judicial Code.[278]

20. In any event, if the Tribunal were to look beyond Panamanian law, it would find precedent in other countries for deeming actions like the Demand Letter to be improper.[279] For example, the Letter would be at home on the following list, which the leading U.S. treatise on trademark law cites as examples of unfair competition: "Filing a groundless lawsuit . . . as an aggressive competitive weapon; . . . [s]ending cease and desist letters . . . charging patent infringement without having a reasonable basis for a belief that there was infringement; . . . [s]ending bad faith cease and desist letters . . . charging copyright infringement . . . ."[280]

21. Finally, as Panama has demonstrated[281] — and a review of the document confirms — the logic of the Supreme Court Judgment can be followed from Point A to Point B to the end. In fact, at the hearing, Claimants even conceded that "[t]he Supreme Court Judgment ***does*** explain what evidence [the justices] relied on, and the basis for their findings other than the finding of loss . . . ."[282] On this last point, Claimants' assertion is that "there is no attempt to explain where [the USD 5 million damages] number came from."[283] But, notably, the BS

[277] **2019 Hearing** (Day 2), Tr. 608 (Claimants' Counsel).
[278] **Ex. R-0045**, Answer of BSLS to the Civil Torts Claim (13 Oct. 2008), p. 2; **Ex. C-0019**, Answer of Bridgestone Corp. to the Civil Torts Claim (19 Aug. 2009), p. 4; **Ex. R-0062**, BS Litigants' Motion for Dismissal (19 Aug. 2009), p. 3; **Ex. C-0200**, BS Litigants' Closing Arguments (11 June 2010), p. 2; **Ex. C-0023**, BS Litigants' Oppn. to Muresa Appeal (14 Jan. 2011), p. 4; **Ex. R-0047**, BS Litigants' Objection to Admission of Cassation Recourse (16 Sept. 2013), pp. 8, 10; **Ex. R-0052**, BS Litigants' Response to Cassation Recourse (14 Jan. 2014), pp. 3, 4, 10, 12.
[279] *See* **2019 Hearing** (Day 3), Tr. 800–803; 817–820 (Jacobson); *id.* (Day 1), Tr. 315–317 (Kingsbury); **First Jacobson Rpt.**, ¶¶ 54–59.
[280] **RLA-0224**, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 1:10 (5th ed. 2018), p. 25.
[281] *See* **Panama's Opening Stmt.** (2019 Hearing), Slides 127–39.
[282] **2019 Hearing** (Day 1), Tr. 93 (Claimants' Counsel).
[283] **2019 Hearing** (Day 1), Tr. 101 (Claimants' Counsel).

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Litigants have already tried this argument[284] — and when doing so, they expressly revealed that they could "infer" the Supreme Court's logic.[285]

22. In any event, not even this last complaint could offend judicial propriety. In this vein, it may be useful to review Exhibit R-70: a cassation judgment drafted by Claimants' expert Mr. Arjona, who testified that he always complied with his duty under Article 199 of the Judicial Code to provide reasons.[286] As the Tribunal will find, Mr. Arjona's reasoning was succinct. The analysis section of the judgment begins on page four, under the heading marked "IV. Decision of the Third Chamber." In the second paragraph, the judgment deals with the respondent's argument that the cassation request should be "dismissed forthwith due to errors of form." The entire discussion is quoted below:

> First, it is noted that the [respondent] has requested the [matter] to be dismissed forthwith due to errors of form. However, the Chamber considers that such errors do not comply with provisions in Article 926 of the Labor Code and, therefore, on the basis of Articles 925 and 926 of the Labor Code and 474 of the Judicial Code, consideration will be given to the [substance].[287]

Similarly succinct reasoning then follows for Mr. Arjona's decisions on substance. This is common for Panamanian judgments,[288] particularly on cassation.

23. Thus, in sum, while the Tribunal "may find that [it] disagree[s] with the Supreme Court,"[289] there is nothing here that comes close to a denial of justice.

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[284] *See* **Ex. R-0053**, BS Litigants' Motion for Clarification and Modification (16 June 2014), p. 5; **Reply**, ¶ 2(f).
[285] *See* **Ex. R-0053**, BS Litigants' Motion for Clarification and Modification (16 June 2014), p. 5; *see also generally* **First Lee Rpt.**, ¶ 163; **Second Lee Rpt.**, ¶ 89
[286] **2019 Hearing** (Day 2), Tr. 388:9–11 (Arjona).
[287] **Ex. R-0070**, Decision of the Third Chamber of the Supreme Court of Panama (22 June 2004), p. 4.
[288] *See* **First Lee Rpt.**, ¶ 168.
[289] **2019 Hearing** (Day 1), Tr. 137:12–17 (Panama's counsel).

C. There Is No Basis For Drawing Any Inference of Corruption

24. At the hearing, Claimants continued to make allegations of "corruption." To date, however, they have failed to advance ***any*** factual narrative as to what the alleged "corruption" supposedly entailed. This defect is fatal for at least two reasons. ***First***, it is well accepted that — whether they be States or investors — any parties alleging corruption must provide "clear and convincing" evidence[290] of corruption in the matter *sub judice*.[291] ***Second***, under Article 48(3) of the ICSID Convention, the Tribunal is required to render an award that "states the reasons upon which it is based."[292] In practical terms, this requirement involves (1) making findings of law, (2) making findings of fact, and (3) stating the Tribunal's conclusion from applying the law to the facts.[293] Skipping the second step would amount to annullable error;[294] so, too, would inventing a narrative when none has been presented by Claimants.[295]

25. Claimants appear to be arguing that the Tribunal should ***infer*** corruption, based on an "accumulation" of four items of "circumstantial evidence."[296] But as Claimants' own expert advises, it would be "terribly irresponsible"[297] to divine "corruption" from these four items. For example, the *first* consists of "numerous reports and NGO reports [sic]" that allegedly demonstrate a "prevalence of corruption" in Panama.[298] Yet these reports are not actually evidence, whether circumstantial or otherwise, of corruption in the Cassation Proceeding.[299] As the *Oostergetel* tribunal observed, "[t]he burden of proof cannot be simply shifted by attempting

[290] *See* **RLA-0114**, *EDF (Services) Limited v. Romania*, ¶ 221; **RLA-0117**, *Karkey*, ¶ 492.
[291] *See* **Paulsson Rpt.**, ¶ 79; **CLA-0137**, *Union Fenosa Gas*, ¶ 7.58; **2019 Hearing** (Day 1), Tr. 26:4–16 (U.S.).
[292] ICSID Convention, Art. 48(3).
[293] *See* **RLA-0070**, *Soufraki*, ¶ 123.
[294] ICSID Convention, Art. 52(1)(e) ("[T]he award has failed to state the reasons on which it is based . . . ").
[295] *See, e.g.*, **RLA-0073**, *Pey (Resubmission)*, ¶ 244.
[296] **2019 Hearing** (Day 1), Tr. 111 (Claimants' Counsel).
[297] **2019 Hearing** (Day 2), Tr. 427 (Arjona).
[298] **2019 Hearing** (Day 1), Tr. 104 (Claimants' Counsel).
[299] *See, e.g.*, **RLA-0195**, *Vanessa Ventures*, ¶ 228.

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to create a general presumption of corruption in a given State."[300] The *second* alleged item of "evidence" concerns the document production phase of this arbitration, and specifically, the nonexistence of documents demonstrating communications between the Supreme Court justices and third parties.[301] In other words, Claimants' purported ***affirmative*** evidence of corruption is the ***nonexistence*** of evidence. This is not sustainable.

26. The *third* set of "circumstantial evidence" is composed of the made-for-arbitration tales of two of the Bridgestone group's lobbyists — one in-house and one external — who allege that Panamanian Ambassador Gonzalez-Revilla admitted that the Supreme Court Judgment had been the result of corruption.[302] One problem, however, is that there is no contemporaneous record of this alleged statement. This is especially notable, considering that (1) at the time, Akin Gump was helping to analyze potential ISDS claims, (2) there were two Akin Gump partners present,[303] (3) any competent lawyer would have immediately recorded the statement and preserved the notes for posterity, and (4) the embassy's aide-mémoire has been submitted as evidence.[304] Further, in his written and oral testimony, Ambassador Gonzalez-Revilla has consistently denied ever making the statement.[305] As he explained, at the time of the meeting, he did not even know the parties or the justices involved in the Supreme Court proceedings.[306] Thus, even assuming *arguendo* that the alleged statement ***had*** been made, it could not amount to a binding admission on behalf of Panama, given the circumstances of its alleged delivery.[307]

[300] **RLA-0101**, *Oostergetel*, ¶ 296.
[301] *See* **2019 Hearing** (Day 1), Tr. 107–109 (Claimants' Counsel).
[302] *See* **Akey Stmt.**, ¶ 8; **Lightfoot Stmt.**, ¶ 11.
[303] **Memorial**, ¶ 114.
[304] **Ex. R-0035**, *Ayuda Memoria* of the Embassy of Panama (13 March 2015).
[305] *See* **Gonzalez-Revilla Stmt.**, ¶ 7; **2019 Hearing** (Day 6), Tr. 1362:1–1363:6 (Gonzalez-Revilla).
[306] *See* **2019 Hearing** (Day 6), Tr. 1362:4–10 (Gonzalez-Revilla).
[307] *See* **Counter-Memorial**, ¶ 62 (alleged statement suffered from absence of specific facts and informal context) .

[FOOTNOTE CONTINUED ON NEXT PAGE]

27. The *fourth* and final set of "circumstantial evidence" consists of the National Assembly complaints designated as Restricted Information.[308] Notably, even though Claimants had spent weeks demanding these documents, their counsel did not once ask that the hearing be closed to allow for discussion thereof — not even during the five-plus hour examination of Mr. Lee. The reason is simple: had counsel spent any time on the documents, they would have been forced to admit that they had no answer to the discussion in Panama's Rejoinder.[309]

IV. CLAIMANTS' DAMAGES CASE ALSO FAILS

28. On some level, there is no need to discuss the issue of damages. Reparation is plainly contingent upon the existence of a TPA breach,[310] and in this case, Claimants have failed to demonstrate any such breach. Nevertheless, for the sake of completeness, Panama notes that Claimants' damages case fails. This conclusion derives from the following rules, which Claimants have never contested.

29. ***First***, the starting point in any analysis is the identification of injury.[311] This is clear from the very word "damages." Compensation is compensation ***for injury***.[312] ***Second***, the only form of compensable injury in this case is injury that a claimant has already incurred[313] in its capacity as an "investor" in Panama,[314] as a result of the Supreme Court Judgment.[315] The TPA does not allow any claims for hypothetical injury,[316] for injury not caused by the

[308] *See generally* **Procedural Orders Nos. 9, 10**.
[309] *See generally* **Rejoinder**, § III.A.2.d.
[310] **RLA-0027**, Articles on State Responsibility, Art. 31; **Claimants' Rejoinder on Expedited Objections**, ¶ 62.
[311] *See, e.g.*, **RLA-0073**, *Pey (Resubmission)*, ¶ 200; **Second Versant Rpt.**, ¶¶ 22–57.
[312] *See* **RLA-0027**, Articles on State Responsibility, Arts. 31, 34, 36; *see also, e.g.*, **CD-0007**, Daniel Presentation, Slide 5; **RLA-0075**, *Hrvatska*, ¶ 238; **RLA-0076**, *Khan Resources*, ¶ 388; **RLA-0191**, *MNSS B.V.*,¶ 356.
[313] **Ex. R-0001**, TPA, Art. 10.16.1(a).
[314] *See* **2019 Hearing** (Day 1), Tr. 27:1–15 (United States); **Ex. R-0001**, TPA, Arts. 10.16, 10.28; **Counter-Memorial**, ¶¶ 5–13; **Rejoinder**, ¶¶ 202–203.
[315] *See* **Ex. R-0001**, TPA, Art. 10.16; **RLA-0027**, Articles on State Responsibility, Arts. 31, 34, 36, 39.
[316] *See* **2019 Hearing** (Day 1), Tr. 23:8–22 (United States).

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Judgment,[317] or for injury to alleged investments that may exist outside of Panama.[318] Nor does it offer any recourse for injury to BSJ. To recall, as a Japanese entity, "BSJ . . . falls outside the protection of the TPA,"[319] and accordingly "holds no rights" and "has no claim" under the treaty.[320] This defect cannot be cured — not even by assigning "loss" from BSJ to one of the Claimants. As the *Mihaly* tribunal explained, one reason for this is that "*nemo dat quod non habet* or *nemo potiorem potest transfere quam ipse habet*. That is, no one could transfer a better title than what he really has."[321] Another reason is that the arrangement "would defeat the object and purpose of the ICSID Convention and the sanctity of the privity of international agreements not intended to create rights and obligations for non-parties."[322] Even 17 years ago, at the time of the *Mihaly* award, "[t]his proposition [wa]s confirmed by ICSID long-standing practice."[323]

30. ***Third***, as Claimants concede, they bear the burden of establishing injury.[324] ***Fourth***, to discharge this burden, the injury must be real — *i.e.*, a genuine "incurred loss[.]"[325] This rule follows both (1) from the text of the TPA ("has incurred loss"),[326] and (2) from the basic evidentiary tenet that a "fiction" lacks probative value. This self-evident tenet does not often need stating, but its fingerprints can be found throughout the ICSID world (*e.g.*, in

[317] *See* **Third U.S. Submission.**
[318] *See* **2019 Hearing** (Day 1), Tr. 27:1–20 (United States).
[319] **Decision on Expedited Objections**, ¶ 221.
[320] **Decision on Expedited Objections**, ¶ 221.
[321] **RLA-0022**, *Mihaly*, ¶ 24.
[322] **RLA-0022**, *Mihaly*, ¶ 24 (explaining also that "[a] claim under the ICSID Convention with its carefully structured system is not a readily assignable chose in action as shares in the stock-exchange market or other types of negotiable instruments, such as promissory notes or letters of credit").
[323] **RLA-0022**, *Mihaly*, ¶ 25.
[324] *See* **Claimants' Rejoinder on Expedited Objections**, ¶¶ 62, 71; *see also, e.g.*, **RLA-0073**, *Pey (Resubmission)*, ¶ 231; **RLA-0082**, *Rompetrol*, ¶ 190.
[325] **Ex. R-0001**, TPA, Art. 10.16.1(a).
[326] *See* **Ex. R-0001**, TPA, Art. 10.16.1(a).

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Arbitration Rule 35;[327] in the rule that "speculative" injury is not compensable;[328] in the requirement that there "objectively" be an investment;[329] in denial-of-benefits cases, which assess whether the claimant "genuinely" qualifies for the treaty's protections;[330] in the *jurisprudence constante* that confirms that made-for-trial evidence does not establish jurisdiction).[331] The table below applies these rules to Claimants' theories, which fail.

Table 2: **Claimants' Theories Of Injury Fail**

Claimants' Theory Of Injury	Defect(s)
Theory 1: All trademarks in Panama have been devalued as a result of the Supreme Court Judgment.[332]	**No evidence.** At the hearing, Claimants' own expert conceded that the Supreme Court Judgment has ***not*** devalued all trademarks in Panama.[333]
Theory 2: The BRIDGESTONE and FIRESTONE trademarks (in Panama and the BSCR region) have been devalued as a result of the Supreme Court Judgment.[334]	**Threshold legal problem**. Approximately 90% of Mr. Daniel's calculation pertains to trademarks (and licenses to use trademarks) in the so-called "BSCR Region." The TPA limits claims to injury to investments in Panama,[335] and if a Panamanian trademark qualifies as an "investment" in Panama, it follows that trademarks registered in other States — *e.g.*, in the "BSCR Region" (which include, *inter alia*, the United States and Canada) — would be investments in those other States, and not in Panama. **In any event, there is no evidence.** In the words of the Tribunal, "the value of the trademark to the owner will reflect the amount of royalties received, while the value of the license to the licensee will reflect the fruits of the exploitation of the trademark, out of which the royalties are

[327] ICSID Arbitration Rule 35(2) ("Each witness shall make the following declaration before giving his evidence: 'I solemnly declare upon my honour and conscience that I shall speak ***the truth*** . . . .") (emphasis added); Rule 35(3) ("Each expert shall make the following declaration before making his statement: 'I solemnly declare upon my honour and conscience that my statement will be in accordance with my ***sincere*** belief . . . .") (emphasis added).
[328] *See*, *e.g.*, **2019 Hearing** (Day 1), Tr. 27:3–6 (United States); **RLA-0074**, *Nations*, ¶ 619; **RLA-0075,** *Hrvatska*, ¶ 238; **RLA-0076**, *Khan Resources*, ¶ 388.
[329] *See* **Claimants' Response to Expedited Objections**, ¶ 101; **RLA-0007**, *Malaysian Historical Salvors*, ¶ 72; **RLA-0008**, *Philip Morris*, ¶ 203; **RLA-0009**, *SGS v. Pakistan*, ¶ 133, note 153; **RLA-0010**, *Mytilineos*,¶ 125; **RLA-0011**, *Tenaris*, ¶ 284; **RLA-0012**, *Fedax*, ¶ 28.
[330] *See*, *e.g.*, **RLA-0017**, *Pac Rim*; **RLA-0018**, *Empresa Eléctrica*.
[331] *See*, *e.g.*, **RLA-0025**, *Levy*, ¶¶ 185, 195; **RLA-0020**, *Phoenix Action*, ¶ 142; **RLA-0042**, *Mobil v. Venezuela*, ¶ 205; **RLA-0043**, *Tidewater*, ¶¶ 146–48; **RLA-0024**, *Lao Holdings*, ¶ 70; **RLA-0022**, *Mihaly*, ¶ 24; *see also* **RLA-0023**, *Gallo*, ¶ 336; **RLA-0044**, *Philip Morris*, ¶ 588.
[332] **2019 Hearing** (Day 1), Tr. 129 (Claimants' Counsel).
[333] **2019 Hearing** (Day 3), Tr. 661:17–20, 696:14–18 (Molino).
[334] **2019 Hearing** (Day 1), Tr. 130 (Claimants' Counsel); *see also id.*, (Day 4), Tr. 992–993 (Daniel).
[335] *See* **2019 Hearing** (Day 1), Tr. 27:1–20 (United States); *see also* **Ex. R-0001**, TPA, Arts. 10.16, 10.28; **Counter-Memorial**, ¶¶ 25–26, 260; **Rejoinder**, ¶¶ 235–236, 279–283.

[FOOTNOTE CONTINUED ON NEXT PAGE]

Claimants' Theory Of Injury	Defect(s)
	paid [*i.e.*, sales]."[336] However, "BSLS and BSAM do not claim that sales have dropped,"[337] and Claimants' own expert concedes: (1) that sales have increased,[338] (2) that the royalty rate has not changed,[339] and (3) that there has not been any loss of market share in Panama.[340] Further, Claimants' financial statements do not reflect any loss; to the contrary, they expressly confirm that there were "no impairments" for any intangible assets (including "trade names" and "other" intangibles).[341]
Theory 3: The Supreme Court Judgment has had "for the Claimants, at least, a chilling effect on the exercise of trademark rights."[342]	**No evidence.** At the hearing, Claimants' own witness and expert conceded that the Bridgestone group (and, more broadly, claimants in Panama) have continued to bring — and win — trademark opposition proceedings, even in the context of prior use.[343]
Theory 4: The Supreme Court Judgment "may influence the determination of issues in other jurisdictions and, of course, in other cases within that jurisdiction."[344]	**No existing injury is alleged.** Claimants' framing (*i.e.*, "*may* influence") and their own experts confirm that the alleged injury is hypothetical. At the hearing, Claimants' experts conceded that (1) no Panamanian court has ever cited the Supreme Court Judgment,[345] and (2) there is no evidence that any foreign courts have cited the Judgment.[346]
Theory 5: Before opposing a "-STONE" suffix mark, "we have to take a closer look at whether we [oppose] or not"[347] — *e.g.*, "determine how much use there is [of the mark they intend to oppose]"[348]	**This is not a genuine injury.** The need to conduct due diligence before threatening or filing suit cannot seriously be deemed "injury." Claimants' witness and trademark expert concede that due diligence is standard and prudent.[349]
Theory 6: "BSLS . . . has lost . . . US$5.4 million,"[350] *i.e.*, the (approximate) amount of the damages award.	**This is not a genuine injury**. Seven full months after threatening suit against Panama, the Bridgestone group "realized"[351] that "an increase in BSLS' damage compensation"[352] might obtain if only the evidence showed that BSLS had paid the Supreme Court Judgment. At the time, however, there *was* no evidence: BSLS did not have the requisite funds,[353] and there were records of another arrangement (*i.e.*, an even

[336] **Decision on Expedited Objections**, ¶ 219; *see also id.*, ¶ 242.
[337] **Reply**, ¶ 21.
[338] **2019 Hearing** (Day 4), Tr. 1034:9–18 (Daniel).
[339] **2019 Hearing** (Day 4), Tr. 1040:14–17 (Daniel).
[340] **2019 Hearing** (Day 4), Tr. 1038–40 (Daniel); *see also* **Ex. VP-0048**, Market Share Data, 2014-2017.
[341] **2019 Hearing** (Day 4), Tr. 1034:2–8 (Daniel); *see also* **Second Versant Rpt.**, ¶¶ 32–35.
[342] **2019 Hearing** (Day 1), Tr. 127 (Claimants' Counsel).
[343] *See* **2019 Hearing** (Days 1, 3), Tr. 276:13–17 (Kingsbury), 694-96 (Molino); **Third Kingsbury Stmt.**, ¶ 8.
[344] **2019 Hearing** (Day 1), Tr. 128 (Claimants' Counsel).
[345] **2019 Hearing** (Day 3), Tr. 693:1–21 (Molino).
[346] **2019 Hearing** (Day 4), Tr. 925:1–4 (Jacobs-Meadway).
[347] **2019 Hearing** (Day 1), Tr. 275:14–22 (Kingsbury); *see also* **2019 Hearing** (Day 3), Tr. 692 (Molino).
[348] **2019 Hearing** (Day 1), Tr. 277:5–13 (Kingsbury).
[349] **2019 Hearing** (Day 1), Tr. 295–96 (Kingsbury); *see also* **2019 Hearing** (Day 4), Tr. 913–14 (Jacobs-Meadway).
[350] **Claimants' Response on Expedited Objections**, ¶ 134.
[351] **2019 Hearing** (Day 1), Tr. 268:4–7 (Kingsbury).
[352] **Ex. R-0204**, BSJ Email Correspondence Re BSLS Loan (9 May 2016), p. 1.
[353] **First Versant Rpt.**, ¶ 164, Figure 4.

[FOOTNOTE CONTINUED ON NEXT PAGE]

Claimants' Theory Of Injury	Defect(s)
	split of the cost).[354] And so, the Bridgestone group created a fiction: "[T]he people in Tokyo [worked] to get money to BSLS,"[355] and amended the prior arrangement,[356] perhaps believing that Panama would never even bother to check. Funds were then wired from BSAM — as a "loan"[357] to keep up the appearance. But the loan was also a ruse; its maturity date has come and gone without payment,[358] which was always the "plan."[359] This loan was at best a contingent liability and not a true economic liability.[360] There is no evidence whatsoever of any intent to repay, and BSLS did not even bother to ask this Tribunal for interest — a singular event in the experience of Panama's counsel. **This is not genuine injury**; it is abuse. Instead of attempting to mitigate (as required by international law),[361] BSLS did the opposite, in a manifest attempt to circumvent the TPA's rules. Assuming that investment treaties were analogous to insurance policies (*quod non*),[362] the circumstances here would be akin to a father permitting his unlicensed and uninsured minor son to drive his car, and then — when the son crashes the car — moving to the driver's seat before the police arrive, to create the illusion for insurance purposes that the father had been the one driving. Such gamesmanship is not permitted in settings in which the rule of law governs.
Theory 7: "Lightning can strike tomorrow."[363]	**This is hypothetical, and not a properly pled claim.**

31. At the hearing, in light of their failure to articulate any genuine injury, Claimants' counsel attempted to punt to their damages expert, asserting that, "[w]ith Mr. Daniel, Claimants ***will establish that they . . . have, in fact, incurred damage*** as a result of the Supreme Court decision."[364] Yet during his appearance, Mr. Daniel admitted that he had ***assumed*** the existence

[354] **Ex. C-0318**, Agreement between BSJ and BSLS (1 Jan. 2010); **Ex. R-0095**, BSLS Written Consent of the Board of Directors for Action Without a Meeting (20 July 2016).
[355] **2019 Hearing (Day 1)**, Tr. 344:16–345:2 (Kingsbury).
[356] **Ex. R-0095**, BSLS Written Consent of the Board of Directors for Action Without a Meeting (20 July 2016).
[357] **Claimants' Reply**, ¶¶ 18, 31.
[358] **Second Versant Rpt.**, ¶¶ 131–32.
[359] *See* **VP-0046**, BSLS 2016 Financials, Tab: "BSJ & BSAM Loan Plan."
[360] **Second Shopp Rpt.**, ¶¶ 20, 130–132.
[361] *See* **Rejoinder**, ¶¶ 245–247.
[362] *See* **RLA-0174**, *Maffezini*, ¶ 64; **CLA-0074**, *Waste Management II*, ¶ 114.
[363] **2019 Hearing** (Day 5), Tr. 1255 (Claimants' Counsel).
[364] **2019 Hearing** (Day 1), Tr. 129 (Claimants' Counsel) (emphasis added).

[FOOTNOTE CONTINUED ON NEXT PAGE]

of injury.[365] Thus, when asked by the Tribunal about his description of the alleged injury, he said: "I did not mean that I'm forming an opinion or I have a basis to establish that."[366] When pressed on the subject, he further conceded that:

> [T]he Tribunal or others, will have to determine the extent of the impact to the legal rights. And I'm predicating my analysis on a determination that those rights have been impaired and effectively changed them from what would be economically exclusive rights to economically non-exclusive rights.[367]

It is difficult to understand how a damages expert could possibly quantify an injury that he has not observed — and, in fact, could not even define.[368]

32. In an attempt to rehabilitate Mr. Daniel, Claimants asserted during their closing that "Ms. Jacobs Meadway provides the legal foundation" for Mr. Daniel's assumption that the Supreme Court Judgment caused exclusive rights to become non-exclusive.[369] Nevertheless, a few moments later, Claimants were forced to concede that this was not true:

> TRIBUNAL PRESIDENT: "Did Ms. Jacobs Meadway say that the effect of the judgment was that the license right should be treated as non-exclusive rather than exclusive rights?"
>
> MS. KEPCHAR: "I don't recall that she does, Mr. President."[370]

Accordingly, it would seem that Claimants' expert purported to quantify an injury that he could not define — and simply assumed existed — based on non-existent testimony from another of Claimants' experts. By even Mr. Daniel's own logic, his analysis is "of no assistance."[371]

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[365] *See, e.g.*, **2019 Hearing** (Day 4), Tr. 1008:10–11 ("I can't define the injury. I need that to be an assumption") (Daniel).
[366] **2019 Hearing** (Day 4), Tr. 1006:11–14 (Daniel).
[367] **2019 Hearing** (Day 4), Tr. 1007:6–13 (Daniel).
[368] *See* **2019 Hearing** (Day 4), Tr. 1017:16–19 ("Q. . . . What went into the assumption? A. I'm trying to be as clear as I can. I can't answer that question. That's a question that someone else needs to answer") (Daniel).
[369] **2019 Hearing** (Day 5), Tr. 1247 (Claimants' counsel).
[370] **2019 Hearing** (Day 5) Tr. 1248 (Claimants' Counsel).
[371] **2019 Hearing** (Day 4), Tr. 1008:16–22 (Daniel).

[FOOTNOTE CONTINUED ON NEXT PAGE]

33. In light of this, neither Panama nor the Tribunal need to delve into the manifold other problems with Mr. Daniel's analysis. These include, *inter alia*, the facts that (1) he first omitted any damages calculation for BSAM, and improperly included a calculation for BSJ;[372] (2) when forced to deal with this problem, he decided that the value of BSAM's license rights must be at least twice the value of BSJ's trademark rights (A = 2B),[373] such that the alleged damages that had been attributed to BSJ in his first report doubled;[374] and (3) Mr. Daniel's calculations reflect the assumption that the value of the BRIDGESTONE and FIRESTONE marks decreased by approximately 60% the day after the Judgment.[375] However, if the Tribunal turned to Mr. Daniel's figures in any event, it would find them to be hyper-inflated. As the figure below illustrates, more than 99% of the USD 14.5 million requested corresponds to one or another illegitimate demand. Once the Tribunal excises the sums for the "BSCR Region" and BSAM, the damages figures drop to the range of USD 59,311.00 to USD111,104.00. As Mr. Shopp has explained, once corrected, those figures drop further (USD 0 to USD 25,741.00).[376]

Mr. Daniel's Proposed Damages Figures

Decrease in Value	Panama Only		BSCR Region	
	Low Scenario	High Scenario	Low Scenario	High Scenario
Trademarks				
~~Bridgestone (BSJ)*~~	~~$438,982~~	~~$874,464~~	~~$5,725,293~~	~~$11,102,364~~
Firestone (BSLS)	$59,311	$111,104	$1,003,769	$1,710,588
Trademark Licenses				
Bridgestone (BSAM)	$438,982	$874,464	$5,725,293	$11,102,364
Firestone (BSAM)	$59,311	$111,104	$1,003,769	$1,710,588
Damages (BSLS + BSAM)	$557,604	$1,096,672	$7,732,831	$14,523,540

* denotes non-claimant

[372] *See, e.g.*, **First Daniel Rpt.**, Figure 1; **First Versant Rpt.**, ¶¶ 57–61; **Second Daniel Rpt.**, ¶ 27, fn. 28.
[373] *See* **2019 Hearing** (Day 4), Tr. 1080:06–09 (Daniel).
[374] *See* **2019 Hearing** (Day 4), Tr. 1059–1064 (Daniel).
[375] *See* **2019 Hearing** (Day 4), Tr. 1029:14–1030:19 (Daniel).
[376] **RD-0009**, Shopp Presentation, Slide 5.

[FOOTNOTE CONTINUED ON NEXT PAGE]

V. CONCLUSION AND REQUEST FOR RELIEF

34. Ultimately, this arbitration appears to trace back to hubris — the "shock" that a "small country" like Panama[377] would dare to stand up to the Bridgestone group, and state that it had acted improperly. But this is no basis on which to pursue an international claim, and Panama has demonstrated as much during the course of this arbitration. The exercise has been an expensive endeavor, as Claimants have raised claims only to abandon them; aggressively sought the production of — and expert access to — sensitive documents, which they never discussed at the hearing, and their expert did not even cite; made assertion after assertion without ascertaining its accuracy; misled the Tribunal about the existence of their own documents; pursued multiple meritless requests to disqualify Panama's experts; and (most recently) propounded a new and twice-waived theory on a highly-technical question of Panamanian civil procedure, demanded that a civil law practitioner disprove their theory by citing "precedent" from memory, sat silently and then objected on the two occasions on which Panama offered to provide the authorities, demanded two weeks to conduct the research that they should have had on hand before embarking on this folic and detour and labeling a former Supreme Court Justice "unsatisfactory," and then stated simply: "Claimants have decided not to submit . . . legal authorities."[378] This conduct should be sanctioned with a full[379] award of costs and attorneys' fees.[380] For all of the foregoing reasons, Panama respectfully requests that the Tribunal:

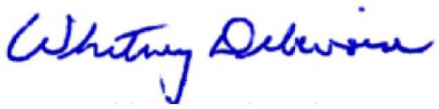
[377] **2019 Hearing** (Day 1), Tr. 275:20–21 (Kingsbury).
[378] Email from Claimants to ICSID (9 Oct. 2019).
[379] *See* **Decision on Claimants' Application to Remove J. Lee** (13 Dec. 2018), ¶ 41.
[380] *See* ICSID Convention, Art. 61(2); **RLA-0215**, *Quadrant Pacific*, ¶¶ 72–73; **Counter-Memorial**, ¶¶ 287–99; **Rejoinder**, ¶¶ 284–88.

a. dismiss BSAM's claim under Article 10.5 of the TPA for lack of standing, or in the alternative, reject such claim for lack of merit; reject BSLS' claim under Article 10.5 of the TPA for lack of merit;

b. in any event, reject (1) BSLS' request for USD 5.431 million; and (2) Claimants' request for compensation in excess of USD 5.431 million; and

c. award to Panama, with interest, all costs of the arbitration, including all attorneys' fees and costs and expenses.

Respectfully submitted,



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