

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

LUPAKA GOLD CORP.

Claimant

v.

REPUBLIC OF PERU

Respondent

(ICSID Case No. ARB/20/46)

PROCEDURAL ORDER No. 4
Production of Documents

Members of the Tribunal

Prof. John R. Crook, President of the Tribunal
Mr. Oscar M. Garibaldi, Arbitrator
Dr. Gavan Griffith QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

2 June 2022

1. Pursuant to Paragraphs 12.3 and 16.4 of Procedural Order No.1 (“**PO 1**”) and the latest revised procedural calendar (Revision No. 5), the Parties submitted their respective Requests for the Production of Documents on 23 May 2022.¹ This Order sets out the Tribunal’s decisions and directions regarding disputed matters contained in those Requests.
2. As specified in Paragraph 15.1 of PO 1, the Tribunal has used the International Bar Association Rules on the Taking of Evidence in International Arbitration as adopted in 2020 (“**IBA Rules**” or “**Rules**”) as guidelines in assessing the Parties’ requests for production of documents.
3. Paragraph 16.1 of PO 1 authorizes Parties to submit “*a request to produce a limited number of documents or narrow categories of documents within the other Party’s possession, custody or control in accordance with the IBA Rules*” (emphasis added). PO 1 thus authorizes only limited and focused requests. The document request process under PO 1 and the IBA Rules is fundamentally different from, and narrower than, discovery in civil cases as practiced in some common law jurisdictions. Document requests are not “fishing licenses” for broadly framed and wide-reaching requests equivalent to general discovery under common law civil procedural rules.
4. Article 3(3)(a) of the IBA Rules provides that documents may be requested only if they “*are reasonably believed to exist*” by the requesting Party. The Rules do not authorize requests intended to probe whether responsive documents exist, or to establish that there are none. Further, a requester’s generic statements that all of its requests are for documents “*believed to exist*” is not sufficient, particularly in cases involving wide-ranging and broadly-worded requests.

¹ In this Order, the term “Parties” is used to refer to the Claimant and the Respondent in this proceeding, and the term “Party” is used to refer to either the Claimant or the Respondent. (The Tribunal is mindful that Chapter 8 of the Canada-Peru FTA refer to the Claimant and the Respondent together as the “disputing parties” and to either of them as a “disputing party.”) In this Order, the State signatories of the FTA (Canada and Peru) will be referred to as “FTA Party” or the “FTA Parties,” for clarity. (The Tribunal is mindful that the Canada-Peru FTA refers to the States signatories to the FTA as “Party.”)

5. Further, pursuant to Paragraph 16.1 of PO 1, requests for the production of documents “*shall identify with precision each document or narrow category of documents sought and establish its relevance to the case and materiality to the outcome*” (emphasis added). In this regard, pursuant to Paragraph 16.5 of PO 1, in deciding contested document requests, the Tribunal is to have regard to “*the requirements under this section and the IBA Rules (including specificity, materiality, and any rules on legal privilege and confidentiality).*”
6. PO 1 and the IBA Rules operate jointly, as well as together with other applicable standards. In particular, Paragraph 16.11 of PO 1 states that “[t]he Parties and the Tribunal take note of the provision in Article 835(7) of the Canada-Peru FTA.” Article 835(7) explains that “[a]s provided under Article 2202 (Exceptions- National Security) and Article 2204 (Exceptions - Disclosure of Information), the Tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party’s law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level [...].”
7. Aspects of Article 835(7) call for comment. First, an FTA Party cannot be required to furnish or allow access to “*information the disclosure of which would impede law enforcement.*” The protection accorded by the provision applies where disclosure of particular information “*would impede*” law enforcement – not where it “could” or “might” do so. This means that potential claims to withhold documents on this basis stand to be assessed in light of the particular situation and documents involved. The fact that a Request touches upon past law enforcement activities in some manner should not automatically bring it within the scope Article 835(7) of the Canada-Peru FTA.
8. Next, Article 835(7) exempts from disclosure documents bearing on deliberative and policy-making processes at the cabinet level of the Executive Branch. This provision does not apply to documents related to debates and deliberations at lower levels of government.

9. Certain of the Parties' document requests raise issues regarding the relevance of national legislation bearing on disclosure of information. These international arbitration proceedings have their legal foundation in the Canada-Peru FTA, not in the national legislation of either of the States party to the Canada-Peru FTA. The national legislation of either FTA Party does not directly apply. This observation is made without prejudice to the Tribunal's powers and duties under Article 9(2) of the IBA Rules, which provides that a Tribunal shall exempt documents from disclosure on account of "*legal impediment or privilege under the legal or ethical rules determined by the Tribunal to be applicable*" or where it finds compelling grounds of "*special political or institutional sensitivity [...]*."
10. Article 9(5) of the IBA Rules authorizes Tribunals to make arrangements to permit documents to be presented "*subject to suitable confidentiality protection.*" The Tribunal has made such arrangements in the form of Procedural Order No. 2 on Transparency/Confidentiality ("**PO 2**"). Paragraph 4(d)(vi) of PO 2 defines as "Confidential Information" information that, pursuant to Article 2204 of the Canada-Peru FTA, "*the Respondent deems would impede law enforcement or would be contrary to its law protecting deliberative and policy making processes of the executive branch of government at the cabinet level [...].*"
11. The Tribunal applies the foregoing principles in its Rulings on the Parties' requests set out in the following **Annexes A** (Claimant's Requests) **and B** (Respondent's Requests).
12. Pursuant to Paragraph 16.6 of PO 1: "*[w]ithin the time limit set out in the Procedural Calendar [i.e. by Tuesday, 14 June 2022], documents shall be produced which are responsive to requests for which no objection has been made, and where objections have been made, documents shall be produced to the extent directed by the Tribunal. Documents shall be produced to the Requesting Party without copying the Tribunal or the Secretary of the Tribunal.*"
13. For purposes of this Order, "*document*" means "*Document*" as defined in the IBA Rules. Documents already of record need not be produced. The Party producing documents should

indicate the Request(s) to which the documents are intended to respond. If after diligent efforts a Party is unable to locate or produce responsive documents, it shall so affirm.

14. Where in response to a Request for production of documents a requested Party composes and serves a “*privilege log*” for documents believed to be exempt from disclosure, the requested Party shall bear in mind the determinations made in Paragraphs 7 and 8 of this Order. In the case of service of a “*privilege log*” by a requested Party, the requesting Party has leave within 14 days of service to make reasoned application to the Tribunal to compel production or for protection through protective measures. The requested Party shall then respond within seven days.

For and on behalf of the Tribunal,

_____[Signed]_____

Prof. John R. Crook
President of the Tribunal
Date: 2 June 2022

ANNEX A – CLAIMANT’S REQUESTS FOR PRODUCTION

1. **CLAIMANT’S REQUEST No. 1.** This request seeks documents related to fifteen requests for assistance made by the Claimant to various government officials between 18 June 2018 and 26 August 2019. The request raises several separate issues, as follows:

(A) The Respondent, as it has undertaken to do, shall “*conduct a reasonable search for documents prepared or exchanged by the MININTER, the MINEM, and the OGGS between 18 June 2018 and 26 August 2019 that concern the requests for assistance listed in items (i) through (xv) of Column 2, and to produce non-privileged and non-confidential documents identified as a result of such search.*”

(B) The Respondent otherwise objects to the breadth of the request, noting that under the Claimant’s broad definition of “*Peruvian Authorities*” the request could require searches related to the fifteen assistance requests in at least eleven entities including the MEM, the MININTER, the Huaura Sub-Prefect, police authorities (including those in Sayán, Huacho and Lima), the Prosecutor’s Office for the Prevention of Crime, the Prosecutor’s Office for Criminal Prosecutions, the Ombudsman, the OEFA and the Council of Ministers. Given the number of requests and of entities involved, the Tribunal agrees that the scope of the Claimant’s request is over-broad and that compliance with the Request as stated would involve an unreasonable burden under Article 9(2)(c) of the IBA Rules.

REQUEST GRANTED IN PART, limited to responsive documents located in the office or entity to which each of the fifteen requests was initially addressed, as well as in any office or entity that those documents show was subsequently involved in addressing the particular request. To the extent that the Respondent identifies documents potentially falling within the scope of sub-paragraphs (C) and (D) below, those sub-paragraphs will apply.

(C) The Respondent declined as a general matter to provide documents revealing deliberations and policy making viewed as exempt from disclosure under the Canada-Peru FTA (which as noted above, covers only deliberations at the senior cabinet level) or under the Respondent’s national legislation related to government deliberations and policy-making.

As noted above, the Tribunal has adopted mechanisms in PO 2 to protect confidential information. Should the Respondent decline to produce any otherwise responsive document(s) in this or any other Request on the basis that the document(s) would disclose protected deliberative or policy-making processes, it shall promptly prepare and submit to the Claimant and to the Tribunal a privilege log that: (1) identifies the specific document(s) at issue; (2) precisely identifies the legal provision(s) believed to preclude disclosure; (3) precisely identifies the government agency or authority (or agencies of authorities) whose deliberations or policy-making are being invoked; and (4) explains why the document(s) could not be sufficiently protected through protective measures under PO 2.

(D) The Respondent also declined as a general matter to produce any document(s) “*protected under principle of confidentiality for the non-obstruction of law enforcement work*” under the Canada-Peru FTA and its national legislation, referring in particular to documents prepared by the MININTER (Ministry of the Interior) and the PNP (Peruvian National Police).

Should the Respondent decline to produce any otherwise responsive documents pursuant to this Request, or any other of the Claimant’s Requests, because it believes that the document(s) would obstruct or impede law enforcement, it shall expeditiously prepare and submit to the Claimant and to the Tribunal a privilege log that (1) identifies the specific document(s) at issue; (2) identifies how disclosure of the specific document(s) would obstruct or impede law enforcement (taking account that the events primarily at issue occurred several years ago); and (3) explains why the document(s) could not be sufficiently protected through protective measures under PO 2.

2. **CLAIMANT’S REQUEST No. 2.** This Request seeks documents related to several inspections and visits to the mine site. It again poses multiple issues.

(A) The Respondent shall, as it has undertaken to do, “*conduct a reasonable search for documents prepared or exchanged by the MININTER, the MINEM, and the OGGS between 18 June 2018 and 26 August 2019 that concern the [specified] inspections and Invicta Mine visits [...] and to produce non-privileged and non-confidential documents identified as a result of such search.*”

(B) The Respondent objects to the remainder of the request. It first declines to produce documents on the basis of “*principles of confidentiality for the non-obstruction of law enforcement,*” stating that the request implicates documents prepared by MININTER and PNP that are not subject to disclosure under stated provisions of Peru’s national legislation.

As in the case of Claimant’s Request No 1, should the Respondent decline to produce any responsive document(s) pursuant to this Request that are claimed to be exempt from disclosure because they pertain to law enforcement or are barred from disclosure by national law, it shall expeditiously prepare and submit to the Claimant and to the Tribunal a privilege log that (1) identifies the specific document(s) at issue; (2) specifies how disclosure would obstruct or impede law enforcement (taking account that the events primarily at issue occurred several years ago) or contravene national law; and (3) specify why the document(s) could not be sufficiently protected through protective measures under PO 2.

(C) The Respondent also objects to the Request as overbroad and as a “*fishing expedition,*” again citing the Claimant’s broad definition of “*Peruvian Authorities*” and the Claimant’s sometimes argumentative and conclusory descriptions of what it believes the requested documents will show.

While perhaps not conducive to the efficient conduct of this process, the Claimant’s argumentative descriptions of the suspected contents of requested documents do not render its request for documents dealing with the six specific events an improper fishing expedition. The Tribunal

agrees, however, that the Claimant’s broad definition of “*Peruvian Authorities*” renders its request overbroad and that searches in the numerous indicated locations in relation to the six events would involve an unreasonable burden under Article 9(2(c) of the IBA Rules.

REQUEST GRANTED IN PART, limited to documents prepared by or located in the agencies or offices that carried out the six visits or inspections as well as in any office or agency that those documents show was subsequently involved in addressing any reports of the six visits or inspections.

3. **CLAIMANT’S REQUEST No. 3.** This request seeks documents prepared by or exchanged within the criminal prosecutor’s office, police authorities, and the MININTER concerning six criminal complaints.

The Respondent maintains that the Request is overbroad and a “*fishing expedition*.” The Tribunal does not agree. The request seeks documents prepared by or exchanged between or within, three specified entities involving six clearly identified criminal complaints. As with the previous Request, the Claimant’s animated description of what it expects the documents to show does not render the request for them improper. However, the Request is broadly framed and could by its terms extend to problematic matters such as prosecutor’s legal analyses and witness interview statements, as well as other matters of limited relevance and materiality.

REQUEST GRANTED IN PART, limited to any documents showing the final dispositions of the six complaints by the prosecutor’s office, police authorities, or the MININTER.

As with the previous Request, the Respondent objects to production “*of any document that is protected under principles of confidentiality for the non-obstruction of law-enforcement work*.” The Respondent shall identify any such documents and either produce them or provide a privilege log identifying the document(s), the grounds asserted for non-disclosure, and why the document(s) could not be sufficiently protected through protective measures under PO 2.

4. **CLAIMANT’S REQUEST No. 4.** This Request seeks documents prepared by or exchanged between and within the provincial Prosecutor’s Office for Criminal Prosecutions, the MININTER and police authorities over a four-year period related to ten listed criminal offenses the Claimant alleges occurred and were committed by Parán Community members. Some of the alleged offenses are described in broad and imprecise terms (“*criminal offences committed by the Parán Community members*”) without further specification or clarification of the individuals or events involved. In other instances, however, the Request includes sufficient particulars to allow identification of a limited group of identifiable documents.

REQUEST GRANTED IN PART, limited to the final disposition of the investigations referred to in items (iii), (iv), (vi), and the cases identified as (1), (2) and (3) at the end of the Request.

5. **CLAIMANT'S REQUEST No. 5.** This Request seeks a wide array of identified or generically described documents “*prepared by or exchanged between and within*” the numerous Peruvian authorities identified by the Respondent over a ten-month period relating to review or assessment of a police operational plan, “*any prior or subsequent plans,*” and “*any decisions taken concerning*” such a plan. “*For the avoidance of doubt,*” the request specifies at least 12 numbered police reports and letters, as well unspecified correspondence between two senior officers “*or other police or ministerial authorities,*” “*any record of advice received,*” and various other documents and types of documents.

(A) The Respondent, as it has undertaken to do, shall “*conduct a reasonable search for documents prepared or exchanged by the MININTER, the MINEM, and the OGGS between 14 October 2018 and 26 August 2019 that concern items (i) through (iii) listed in the first paragraph of Column 2, and to produce non-privileged and non-confidential documents identified as a result of such search.*”

(B) The Respondent objects to the remainder of the request, on various grounds. The Tribunal considers, in any case, that the remainder of the request is impermissibly overbroad. **REQUEST DENIED** for failure to comply with the requirements of PO 1 and the IBA Rules, authorizing, *inter alia*, only requests to produce a limited number of documents or narrow categories of documents.

6. **CLAIMANT'S REQUEST No. 6.** This Request seeks documents “*prepared by or exchanged between and within Peruvian Authorities*” in connection with alleged breaches of two specified agreements, and in particular documents prepared to “*review, assess or otherwise act on*” complaints set out in eight identified letters. The Respondent objects to the Request on the grounds that responsive documents may bear upon protected matters related to law enforcement or confidential deliberative matters, and on the breadth of the request in light of the Claimant’s wide-ranging definition of “*Peruvian Authorities.*” (While the Claimant has agreed to limit this definition by deleting the words “*includes but is not limited to,*” the definition still covers eleven listed entities and agencies.)

REQUEST GRANTED IN PART, limited to the extent of any documents showing the final action or disposition in relation to each of the eight identified letters.

If the Respondent objects to disclosure of any responsive documents identified in response to the Claimant’s Request, as narrowed by the Tribunal, on grounds of interference with law enforcement or disclosure of protected deliberative material, it shall prepare and submit a privilege log or logs as specified above in relation to Claimant’s Requests Nos. 1 and 2.

7. **CLAIMANT'S REQUEST No. 7.** This Request seeks communications between the Parán Community and the Peruvian Authorities concerning IMC’s activities over a roughly 20-month period, any related documents prepared by or exchanged between the Peruvian Authorities, and any documents relating to meetings held with Parán members during this period.

(A) The Respondent, as it has undertaken to do, shall “conduct a reasonable search for communications exchanged between the MININTER, the MINEM, and the OGGS and the Parán Community between 1 January 2018 and 26 August 2019 that concern Invicta’s activity at the Invicta Mine as well as documents prepared and exchanged within the MININTER, the MINEM, and the OGGS concerning those communications and meetings referred to in Column 2, and to produce non-privileged and nonconfidential documents identified as a result of such search.”

(B) The Request is otherwise **DENIED**, for failure to comply with the requirements of PO 1 and the IBA Rules, inter alia, by failing to request a limited number of identifiable documents that are reasonably believed to exist.

8. **CLAIMANT’S REQUEST No. 8.** This Request seeks “[d]ocuments evidencing the involvement” of the Leoncio Pado Sub-Prefect and the members of Parán’s rural patrols in acts by the Parán Community relating to the project over a 14-month period, and any related correspondence, as well as any documents identifying the members of Parán’s rural patrols during a 20-month period. The Request does not state whether or why responsive documents are believed to exist, or (with a limited exception) identify the person or entities among the many the Respondent defines as constituting the “*Peruvian Authorities*” believed to have created or to hold responsive documents.

REQUEST DENIED for failure to comply with the requirements of PO 1 and the IBA Rules, inter alia, by failing to request a limited number of identifiable documents that are believed to exist.

9. **CLAIMANT’S REQUEST No. 9. NO ORDER REQUIRED.** The Tribunal notes the Respondent’s undertaking “to conduct a reasonable search for the documents listed in items (i) through (x) in Column 2 [of this request] and produce such documents to the extent they are nonprivileged, non-confidential, and within its possession, custody or control.”
10. **CLAIMANT’S REQUEST No. 10. REQUEST DENIED.** This Request seeks police reports over a period of eight years, from 2014 to date, regarding the alleged cultivation of marijuana by Parán’s members. Inter alia, the requested material is not relevant or material.
11. **CLAIMANT’S REQUEST No. 11.** This Request seeks “[d]ocuments prepared by or exchanged between and within Peruvian Authorities from January 2019 to date concerning the exploitation of the Mine to the benefit of the Parán Community or its members.”

REQUEST GRANTED IN PART, limited to documents showing (a) whether or not the Mine has been exploited at any time during the period from January 2019 to date, and (b) whether the Parán Community has been involved in or benefitted from any such exploitation.

12. **CLAIMANT'S REQUEST No. 12.** This Request seeks “[d]ocuments prepared by or exchanged between and within Peruvian Authorities in connection with Police interventions planned or carried out from August 2019 to date to dislodge the Parán Community members from the Site,” and in particular “the Police intervention carried out on 14 December 2021 [...].”

REQUEST GRANTED IN PART, limited to documents describing or reporting the police intervention at the Mine on 14 December 2021, and documents showing or discussing the reason(s) for that intervention.

Should the Respondent decline to produce any otherwise responsive documents pursuant to this Request because it believes that the document(s) would obstruct or impede law enforcement, it shall expeditiously prepare and submit to the Claimant and to the Tribunal a privilege log that (1) identifies the specific document(s) at issue; (2) identifies how disclosure of the specific document(s) would obstruct or impede law enforcement; and (3) explains why the document(s) could not be sufficiently protected through protective measures under PO 2.

ANNEX B – RESPONDENT'S REQUESTS FOR PRODUCTION

1. **RESPONDENT'S REQUEST No. 1. REQUEST GRANTED IN PART**, limited to: “*the results of Claimant's due diligence process with respect to (i) Claimant's knowledge of Peru's history of social conflicts and use of force protocols; (ii) Claimant's knowledge of territorial disputes between the Rural Communities; and (iii) Claimant's understanding regarding whether it needed to obtain the support of the Parán Community.”*
2. **RESPONDENT'S REQUEST No. 2. REQUEST GRANTED IN PART**, limited to: “*risks in relation to: [...] (ii) the history of social conflict between mining companies and rural communities in Peru; and (iii) Invicta's past practice of breaching community agreements.”*
3. **RESPONDENT'S REQUEST No. 3. REQUEST GRANTED IN PART**, limited to documents provided to or prepared by or for the benefit of the Claimant's governing bodies during the period 1 January 2012 to 1 October 2012 regarding the risks to which Claimant considered it was exposed to in making the investment.
4. **RESPONDENT'S REQUEST No 4. REQUEST GRANTED IN PART**. The Claimant to produce any documents sufficient to describe its community relations strategy for the Parán Community from October 2012 until 14 September 2016.
5. **RESPONDENT'S REQUEST No. 5. REQUEST GRANTED IN PART**. The Claimant to produce (a) contracts between Invicta and SSS from September 2016 through 31 October 2018, and (b) documents evidencing the qualifications, training, and/or experience of the SSS community relations team assigned to the Invicta Project.
6. **RESPONDENT'S REQUEST No. 6. REQUEST GRANTED IN PART**. The Claimant to produce documents within its possession, custody or control describing Invicta's plans, protocols, and procedures concerning relations with the Parán Community from 14 September 2016 through 31 October 2018.
7. **RESPONDENT'S REQUEST No. 7. REQUEST GRANTED IN PART**. The Claimant to produce documents within its possession, custody or control describing Invicta's plans, protocols, and procedures concerning relations with the Parán Community from 31 October 2018 through 26 August 2019.
8. **RESPONDENT'S REQUEST No. 8. REQUEST GRANTED IN PART**, limited to (a) documents within the Claimant's possession, custody or control evidencing significant actions that the Claimant took to implement its community relations strategy with the Rural Communities from October 2012 until the loss of its investment on 26 August 2019, (b) Reports on the Invicta Project prepared by SSS between September 2016 and October 2018; and (c) Reports on the Invicta Project prepared by Invicta's CR Team.

9. **RESPONDENT'S REQUEST No. 9. NO RULING REQUIRED.** The Claimant to “*conduct a reasonable search of the Documents requested*,” as it has undertaken to do.
10. **RESPONDENT'S REQUEST No. 10. REQUEST DENIED.** The requested documents are not relevant or material.
11. **RESPONDENT'S REQUEST No. 11. REQUEST DENIED.** The requested documents are not relevant or material.
12. **RESPONDENT'S REQUEST No. 12. REQUEST DENIED.** The requested documents are not sufficiently relevant or material.
13. **RESPONDENT'S REQUEST No. 13. REQUEST GRANTED IN PART,** limited to any documents from 1 January 2017 to 31 January 2019 recording or reflecting Claimant's contemporaneous assessment whether it could meet the repayment schedule in the PPF Agreement with PLI Huaura.
14. **RESPONDENT'S REQUEST No. 14. REQUEST GRANTED IN PART,** limited to Project Monthly Reports for the period beginning and including August 2017 through and including August 2019.
15. **RESPONDENT'S REQUEST No. 15. REQUEST GRANTED IN PART,** limited to documents describing, explaining, or discussing the reason(s) for abandonment or termination of the effort to conclude the Draft Third Amendment.
16. **RESPONDENT'S REQUEST No. 16. REQUEST GRANTED IN PART,** limited to any documents describing, explaining, or discussing the reason(s) for abandonment or termination of the effort by Claimant and/or Invicta to acquire the Mallay Plant.
17. **RESPONDENT'S REQUEST No. 17. NO RULING REQUIRED.** Request withdrawn.
18. **RESPONDENT'S REQUEST No. 18. NO RULING REQUIRED.** The Claimant to “*conduct a reasonable search for the Documents requested*,” as it has undertaken to do.
19. **RESPONDENT'S REQUEST No. 19. REQUEST DENIED.** The requested documents are not relevant or material.
20. **RESPONDENT'S REQUEST No. 20. REQUEST GRANTED IN PART.** The Claimant to search for the contract with War Dogs Security S.A.C. (“WDS”), as it has undertaken to do. The Claimant also to produce any other documents specifying or describing the services or outcomes that the Claimant or Invicta wished WDS to provide or obtain, as well as any correspondence or communications between it and WDS concerning the 14 May 2019 incident.

21. **RESPONDENT'S REQUEST No. 21. REQUEST GRANTED IN PART**, limited to any documents by which it was notified of the fourteen claimed incidents of default specified in PLI Huaura's Notice of Acceleration and its responses, if any, to those notifications of default.
22. **RESPONDENT'S REQUEST No. 22. REQUEST DENIED.** The requested documents are not sufficiently relevant or material.
23. **RESPONDENT'S REQUEST No. 23. REQUEST DENIED.** The Tribunal notes the Claimant's affirmation that the IMC Valuation was never provided to IMC or the Claimant and is not in its possession, custody or control, and that Respondent's Request for the IMC Valuation has been retracted. The remainder of the request is **DENIED**, for failure to identify a narrow and specific category of documents that are reasonably believed to exist.
24. **RESPONDENT'S REQUEST No. 24. NO RULING REQUIRED.** The Claimant to “*conduct a reasonable search for the Documents requested,*” as it has undertaken to do.
25. **RESPONDENT'S REQUEST No. 25. NO RULING REQUIRED.** The Tribunal notes that the Respondent has retracted the request in light of Claimant's stipulation regarding release of two of the liens involved.
26. **RESPONDENT'S REQUEST No. 26. NO RULING REQUIRED.** The Claimant to produce the Share Allocation Agreement, as it has undertaken to do.
27. **RESPONDENT'S REQUEST No. 27. REQUEST DENIED.** The requested documents are not sufficiently relevant or material.
28. **RESPONDENT'S REQUEST No. 28. REQUEST DENIED.** The requested documents are not sufficiently relevant or material.
29. **RESPONDENT'S REQUEST No. 29. REQUEST DENIED.** The requested documents are not sufficiently relevant or material.
30. **RESPONDENT'S REQUEST No. 30. REQUEST DENIED.** The Request fails to specify a narrow and specific category of documents that are reasonably believed to exist. The Tribunal notes in this regard that the stated justification for the request is that the requested documents, “*if they exist,*” could go to a disputed issue.
31. **RESPONDENT'S REQUEST No. 31. REQUEST DENIED.** The Tribunal notes that the Respondent's comments on this request emphasize whether the Claimant has satisfied its burden of proof on a particular issue. Such issues should be addressed in the Parties' proceedings involving the merits of claims or defenses or the examination of experts' reports, not in the context of document production.

32. **RESPONDENT'S REQUEST No. 32. REQUEST DENIED.** The Request fails to specify a narrow and specific category of documents. The Tribunal again notes that the Parties' comments on this request go to whether the Claimant has satisfied its burden of proof on an issue. Such issues going to the merits of a claim or defense or the examination of experts' reports should be addressed in the Parties' written pleadings and at the hearing, not in the context of document production.
33. **RESPONDENT'S REQUEST No. 33.** The Claimant to “*conduct a reasonable search for valuations of Invicta in relation to any contemplated sales or transfers of shares from 1 January 2018 to 14 October 2018*,” as it has undertaken to do. The request is otherwise **DENIED**.
34. **RESPONDENT'S REQUEST No. 34. REQUEST DENIED.** The Request fails to specify a narrow and specific category of documents that are reasonably believed to exist. The Request does not identify particular documents or timeframes, and instead seeks whatever documents may exist involving “*completed or pending*” upgrades to multiple roads over a seven-year period.