

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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

**v.**

**Republic of Panama**

**(ICSID Case No. ARB/16/34)**

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**PROCEDURAL ORDER No. 7**

**– On Document Production –**

***Members of the Tribunal***

Lord Nicholas Phillips Baron of Worth Matravers, President of the Tribunal

Mr. Horacio A. Grigera Naón, Arbitrator

Mr. J. Christopher Thomas, QC, Arbitrator

***Secretary of the Tribunal***

Ms. Luisa Fernanda Torres

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15 January 2019

**Procedural Order No. 7**

**I. PROCEDURAL HISTORY**

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

**II. ORDER**

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

For and on behalf of the Tribunal,

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Signed  
Lord Nicholas Phillips Baron of Worth Matravers  
President of the Tribunal

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

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID ARB. No. ARB/16/34

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BRIDGESTONE LICENSING SERVICES, INC.  
BRIDGESTONE AMERICAS, INC.

Claimants

vs.

THE REPUBLIC OF PANAMA

Respondent

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CLAIMANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

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29 November 2018

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

## INTRODUCTION TO PANAMA'S RESPONSES AND OBJECTIONS

1. References to "IBA Article(s)" are to Article(s) of the *2010 IBA Rules on the Taking of Evidence in International Arbitration*.
2. References to "COMMENTARY" are to the *Commentary on the Revised Text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration*.
3. Panama details objections to Claimants' specific Document Requests in the Redfern Schedule below. It is important to make clear at the outset, however, that not a single one of Claimants' Document Requests — the bulk of which seek privileged internal judicial deliberations and communications and confidential bank records — abides by the relevant IBA Articles and/or ICSID Arbitration Rules, and the Requests contain demands so patently indefensible that it is difficult to conclude anything other than Claimant's Requests are a waste of Party and Tribunal resources.

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

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

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

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

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

**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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



**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

	<p>“Supreme Court Case”).</p>		<p>between those judges in relation to that case is on any view directly relevant and material to that contention.</p> <p>Further, the Respondent has specifically put in issue the content of the discussions between the Supreme Court Justices up to the issuance of the impugned judgment. The Respondent expressly pleads that there was “<i>vigorous debate among the three justices hearing this case.</i>” However, having made this positive allegation of fact, the Respondent</p>	<p>The privilege of judicial deliberations is recognized in Panama, (<i>See Annex A</i>, Code of Judicial Ethics of Panama, Article 70), and in most other jurisdictions. For example, judicial deliberations are protected by privilege in the United States. (<i>See Annex F</i>, <i>Thomas v. Page</i>, 361 Ill.App.3d 484 (2005)). Notably, the deliberations of this Tribunal are likewise protected by ICSID Arbitration Rule 15(1), which states, “The deliberations of the Tribunal shall take place in private and remain secret.”</p> <p>Without such protection, a judicial body (such as this Tribunal) cannot engage in frank and honest deliberations with a view to reaching an informed and objective decision. There is no more</p>	<p>evidence in international arbitration. (<i>See CLA-0139 (ENG) Rompetrol v Romania</i>, ¶181, and ICSID Arbitration Rule 34).</p> <p>But even if the Tribunal was minded to take into account domestic laws, documents protected by judicial privilege may still become disclosable. For example, disclosure may be required if the tribunal’s need for the documents outweighs the judicial interest in privileged communications (<i>See Respondent’s Annex F, Thomas v. Page</i>, 361 Ill.App.3d 484 (2005) at 489, and <i>CLA-0140 (ENG) In re Certain</i></p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

			<p>has disclosed no documents whatever that relate to it. In order for the Claimants and the Tribunal to be able to test the Respondent’s allegation, it is necessary for the requested category of documents to be disclosed.</p>	<p>compelling institutional sensitivity for the judiciary than the protection of the deliberative process. Panama therefore objects to this document request.</p> <p>2. Panama objects to this request pursuant to IBA Article 3.3(b), which requires a (legitimate) statement as to how the Documents requested are relevant and material; and IBA Article 9.2(a), because it lacks sufficient relevance to the case or materiality to its outcome.</p> <p>Claimants assert that Panama “put in issue the content of the discussions between the Supreme Court Justices” by citing to Panama’s statement in its Counter-Memorial regarding “vigorous debate among the three justices hearing this case.” However, Claimants pull</p>	<p><i>Complaints Under Investigation by an Investigating Comm. (Williams v. Mercer)</i>, 783 F.2d 1488, 1521, 1525 (11th Cir. 1986.). In Panama too, Article 70 of the Code of Judicial Ethics provides for exceptions to the rule of judicial privilege – it expressly states: “<i>Judges belonging to multi-member panels must guarantee the secrecy of the deliberations of the court, subject to the exceptions provided for in the legal norms in force.</i>” (emphasis supplied. See <b>Respondent’s Annex A</b>). The Respondent conveniently does not refer to the second part of the sentence in Article 70, but it is clear that even</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>this quote out of context. The complete sentence states as follows: “Indeed, in some respects, Magistrate Mitchell’s dissenting opinion directly contradicts [the claim of a failure of the entire Panamanian legal system], because it demonstrates vigorous debate among the three justices hearing this case.” (<b>Counter-Memorial</b>, ¶ 147). Panama thus pointed to the dissenting opinion (<i>which is in the record</i>) as evidence of an adjudicative process, and Panama did not imply or state that it has evidence of any actual communications between the justices. Thus, Claimants’ statement on relevance and materiality is disingenuous.</p> <p>In addition to misrepresenting Panama’s</p>	<p>Panamanian law provides for exceptions to judicial privilege</p> <p>Further, if any judicial privilege did apply to the requested documents, that privilege has been waived because the Respondent has specifically pleaded and relied on an allegation that there was “<i>vigorous debate among the three justices</i>”.</p> <p>The Respondent, recognizing that this allegation is problematic for present purposes, now says that this was merely a reference to the existence of the dissenting opinion of Magistrate Mitchell. But that is plainly not</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>submissions, Claimants have never even alleged an improper deliberative process. Thus, Claimants’ request lacks sufficient relevance to the case and materiality to its outcome. Claimants should not be allowed to misuse an out-of-context quote to support a fishing expedition to expand the scope of their denial of justice claim.</p> <p><b>3.</b> Panama further objects to this request on the basis that it fails to satisfy IBA Article 3.3(a)(ii), which requires a “a description in sufficient detail . . . of a narrow and specific category of Documents” that are “reasonably believed to exist.”</p> <p>There is no basis for a reasonable belief that any of the requested Documents exist. The IBA Rules define a</p>	<p>right. The existence of a dissenting judgment evidences a difference of opinion, it does not evidence the occurrence of debate, let alone “<i>vigorous debate</i>”.</p> <p>But even if the dissenting opinion did evidence “<i>vigorous debate</i>”, the Respondent has put in issue the question of the nature and substance of the communications between the judges and has waived any privilege that may have applied to it.</p> <p>The Respondent further complains that the Claimants “<i>have never even alleged an improper deliberative process</i>”. But the Claimants’ primary claim is denial of</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>“Document” as “a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.” Claimants have provided no evidence, nor have they alleged, that communications between the Supreme Court Justices regarding any case, including the Panamanian tort proceeding, are recorded or maintained.</p> <p>Further, Claimants broadly seek each and every Document comprising communications between the Supreme Court Justices in relation to the Panamanian tort case. Claimants do not detail the specific date or date range in which the Documents would have</p>	<p>justice, and an allegation that the Supreme Court proceedings were improper. On any view, evidence as to how the judges arrived at their impugned judgment is relevant to the claim in issue and material to its outcome.</p> <p>2. The Respondent also asserts that these documents are “<i>secret due to compelling grounds of institutional sensitivity</i>”, pursuant to IBA Article 9.2(f). But “<i>secret</i>” information under IBA Article 9.2(f) is information that has been “<i>classified as secret by a government or a public international</i></p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>been created, nor do they describe the person(s) creating or receiving the Documents that memorialized the alleged communications.</p>	<p><i>institution.</i>” The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why communications between the relevant judges should have been so classified, unless as part of an attempt to withhold evidence from this Tribunal.</p> <p>3. The Respondent’s assertion that the request fails to satisfy IBA Article 3.3(b) and 9.2(a) is wrong for the reasons stated in the Claimants’ Introduction to their Reply points above. The Respondent has</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

					<p>put communications between the justices in issue, and the Claimants' pleaded contention is that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption. Therefore, the request is relevant and material to the outcome of the case.</p> <p>4. The Respondent's assertion that the request fails to satisfy IBA Article 3.3(a)(ii) because there is "<i>no basis for a reasonable belief that any of the requested documents exist</i>" is wrong for the reasons stated in the Claimants' Introduction to their</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST**  
**FOR**  
**PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

					<p>reply points above. The Respondent pleads that there had been “<i>vigorous debate</i>” between the justices, and it is therefore reasonable to believe that this debate generated written communications between them. This is not a “<i>fishing expedition</i>.”</p> <p>5. However, in the interest of narrowing the scope, the Claimants agree:</p> <p>“The date range for this request is 1 July 2013 to 16 March 2016.”</p> <p>“The persons creating or receiving the Documents requested are Justices Oyden Ortega, Hernan de Leon, Harley</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

			<p>not denied corruption; rather, it has put the Claimants to proof, contending that the Claimants’ claim fails “<i>for want of evidence</i>”. The Respondent has therefore expressly put in issue the question of what evidence is available, and accordingly justice requires that the Respondent now provide all relevant evidence.</p>	<p>the request include a (legitimate) statement as to how the Documents requested are relevant and material.</p> <p>Claimants contend that as Panama identified Claimants’ failure to meet their burden of proof, it should be required to provide the missing relevant evidence. This is no more than an inappropriate attempt to shift the burden of proof to Panama.</p> <p>The relevance and materiality of a piece of evidence is independent from the question of which party bears evidentiary burdens. Claimants make general allegations of corruption while stating that evidence of corruption in the present case “is unlikely to be traceable.” (Memorial, ¶ 210). That</p>	<p>judges and third parties in respect of the judgment exist.</p> <p>2. The Respondent’s objection under IB Article 3.3(b) is wrong for the reasons stated in the Claimants’ Introduction to their Reply points above. The Claimants’ pleaded contention is that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption. Therefore, communications between third parties and the justices which may evidence such corruption is relevant and material to the outcome of the case.</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Panama has identified Claimants’ failure to meet their burden of proof does not shift that burden; otherwise, any party that challenges the sufficiency of the other party’s evidence would bear the burden of proof.</p> <p><b>3.</b> Panama further objects to this request: <b>(1)</b> because it fails to satisfy IBA Article 3.3(a)(ii), which requires that requests be for a “narrow and specific category of Documents,” and be “carefully tailored to produce relevant and material documents” (COMMENTARY, p. 9); and <b>(2)</b> pursuant to IBA Article 9.2(a), because the Documents requested lack sufficient relevance to the case or materiality to its outcome.</p> <p>Claimants’ request is unhinged from their statement on relevance</p>	<p>3. However, in the interest of narrowing the scope, the Claimants agree:</p> <p>“The date range for this request is 1 July 2013 and 16 March 2016.”</p> <p>“The persons creating or receiving the documents are Justices Oyden Ortega, Hernan de Leon, Harley Mitchell and any of their respective clerks or assistants.”</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>and materiality. Claimants state that the documents are relevant and material to the issue of corruption. However, Claimants request the production of <i>all</i> documents and communications between the Supreme Court Justices and any third parties in relation to the Panamanian tort case, without identifying the specific parties to, or subject of, the relevant communication or even a relevant date or date range. Thus, Claimants request would include Documents without any connection to their statement on relevance and materiality.</p> <p>This overbroad request is therefore not carefully tailored and lacks sufficient relevance and materiality to the issue of corruption.</p>		
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

3.	All documents, including, without limitation, notes and working documents prepared by or on behalf of Justices Oyden Ortega, Hernan de Leon and/or Harley Mitchell in relation to the Supreme Court Case and/or the judgment therein dated 28 May 2014 (the “ <b>Supreme Court Judgment</b> ”).	Memorial, ¶ 79-101  Counter-Memorial, ¶ 147.	A central aspect of the claims brought in the present arbitration concerns the Claimants’ contention that the judgment of Justices Oyden Ortega, Hernan de Leon and Harley Mitchell in the Supreme Court was a denial of justice. Documents containing any record of the judges’ deliberations and considerations relation to the preparation of the Supreme Court Judgment is on any view directly relevant and material to that contention.	<p><b>1.</b> Panama objects to Claimants’ request for the production of privileged judicial deliberations. Specifically, Panama objects to the request: <b>(1)</b> pursuant to IBA Article 9.2(b), because the legal impediment of judicial deliberation privilege prevents the Documents’ disclosure; and <b>(2)</b> pursuant to IBA Article 9.2(f), because the requested Documents are secret due to compelling grounds of institutional sensitivity.</p> <p>The privilege of judicial deliberations is recognized in Panama, (<i>See Annex A</i>, Code of Judicial Ethics of Panama, Article 70), and in most other jurisdictions. For example, judicial deliberations are privileged in the United States (<i>See Annex F</i>, <i>Thomas v. Page</i>, 361</p>	<p>1. IBA Article 9.2(b) provides for a ground for objection being a “legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable.” Panama relies on “judicial privilege”, which is a concept found in both Panamanian and U.S. law. But neither law is applicable here – the Tribunal is not required to adhere to domestic rules of evidence in international arbitration. (<i>See CLA-0139 (ENG) Rompetrol v Romania</i>, ¶181, and ICSID Arbitration Rule 34).</p> <p>But even if the Tribunal was minded</p>	No order. The privilege that protects judicial deliberations should be respected.
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Ill.App.3d 484 (2005)). Notably, the deliberations of this Tribunal are likewise protected by ICSID Arbitration Rule 15(1), which states, “[t]he deliberations of the Tribunal shall take place in private and remain secret.”</p> <p>Without such protection, a judicial body (such as this Tribunal) cannot engage in frank and honest deliberations with a view to reaching an informed and objective decision. There is no more compelling institutional sensitivity for the judiciary than the protection of the deliberative process.</p> <p>Simply, the Tribunal does not have the authority to order a party to breach such privilege.</p> <p><b>3. Panama further objects</b></p>	<p>to take into account domestic laws, documents protected by judicial privilege may still become disclosable. For example, disclosure may be required if the tribunal’s need for the documents outweighs the judicial interest in privileged communications (<i>See Respondent’s Annex F, Thomas v. Page</i>, 361 Ill.App.3d 484 (2005) at 489, and <b>CLA-0140 (ENG) In re Certain Complaints Under Investigation by an Investigating Comm. (Williams v. Mercer)</b>, 783 F.2d 1488, 1521, 1525 (11th Cir. 1986.). In Panama too, Article 70 of the Code of Judicial Ethics provides for exceptions to the rule</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>to this request on the basis that it fails to satisfy IBA Article 3.3(a)(ii), which requires a “a description in sufficient detail . . . of a narrow and specific category of Documents” that are “reasonably believed to exist.”</p> <p>There is no basis for a reasonable belief that any of the requested Documents exist. The IBA rules define a “Document” as, “a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.” Claimants have provided no evidence, nor have they alleged, that any of the requested Documents were ever created, let alone that the Documents are recorded or maintained.</p>	<p>of judicial privilege – it expressly states: “Judges belonging to multi-member panels must guarantee the secrecy of the deliberations of the court, subject to the exceptions provided for in the legal norms in force.” (emphasis supplied. See Respondent’s Annex A). The Respondent conveniently does not refer to the second part of the sentence in Article 70, but it is clear that even Panamanian law provides for exceptions to judicial privilege</p> <p>2. The Respondent also asserts that these documents are “<i>secret due to compelling grounds of institutional</i></p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Further, Claimants broadly seek, “without limitation,” every document created by or on behalf of the Supreme Court Justices in relation to the Panamanian tort case. Claimants do not detail the specific date or date range in which the Documents might have been created, nor do they identify the person(s) creating the Documents “on behalf of” the Supreme Court Justices.</p>	<p><i>sensitivity</i>”, pursuant to IBA Article 9.2(f). But “<i>secret</i>” information under IBA Article 9.2(f) is information that has been “<i>classified as secret by a government or a public international institution.</i>” The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why communications between the relevant judges should have been so classified, unless as part of an attempt to withhold evidence from this Tribunal.</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

					<p>3. The Respondent's assertion that the request fails to satisfy IBA Article 3.3(a)(ii) because there is "<i>no basis for a reasonable belief that any of the requested documents exist</i>" is wrong for the reasons stated in the Claimants' Introduction to their Reply points above. The Respondent pleads that there had been "<i>vigorous debate</i>" between the justices, and it is therefore reasonable to believe that this debate generated not only written communications between the justices, as requested above, but also drafts of the judgment and dissent and other working documents. This is</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

		<p>Witness Statement of Steven Akey dated 30 April 2018, ¶ 8</p> <p>Counter-Memorial, ¶ 56-60</p>	<p>so clearly and manifestly wrong, that it could only have been procured through corruption.</p> <p>As the Claimants explained in their pleading, it is notoriously very difficult for a claimant to obtain evidence of a host state’s corruption on its own. Tellingly, the Respondent has not denied corruption; rather, it has put the Claimants to proof, contending that the Claimants’ claim fails “<i>for want of evidence</i>”. The Respondent has therefore expressly put in</p>	<p>exist.”</p> <p>Claimants have offered no evidence of corruption in the Panamanian tort case, and have stated that any evidence of corruption “is unlikely to be traceable.” (<b>Memorial</b>, ¶ 210). Thus, the only remaining basis for believing it likely that the requested Documents exist is to accept Claimants’ unfounded allegations of corruption. Claimants are begging the question. If any unsubstantiated allegation sufficed to create a reasonable belief in the existence of a Document, IBA Article 3.3(a)(ii) would be emptied of any meaning.</p> <p>2. Panama further objects to this request: (1) because it fails to satisfy IBA Article 3.3(a)(ii), which requires that a request contain “a description in</p>	<p>Introduction to their Reply points above.</p> <p>2. The Respondent also objects to the request under IBA Article 3.3(c)(i), because the Claimants cannot “<i>truthfully assume</i>” that these documents are under the custody or control of the Respondent, since the number of documents that could potentially be responsive to this request is large. This is a non-sequitur. The Claimants have explained why they believe that documents responsive to this request exist.</p> <p>3. However, in the interest of narrowing the scope, the Claimants agree:</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

				<p>As a result, identifying, compiling, and producing the requested Documents would prove unreasonably burdensome to Panama.</p> <p><b>3.</b> Panama also objects to this request on the basis that it fails to satisfy IBA Article 3.3(b), which requires that the request include a (legitimate) statement as to how the Documents requested are relevant and material.</p> <p>Claimants contend that because Panama identified that Claimants had failed to meet their burden of proof, Panama should be required to provide the missing relevant evidence. This is no more than an inappropriate attempt to shift the burden of proof to Panama.</p> <p>The relevance and materiality of a piece of evidence is independent</p>		
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>from the question of which party bears evidentiary burdens. Claimants allege corruption while stating that evidence of corruption in the present case “is unlikely to be traceable.” (<b>Memorial</b>, ¶ 210). That Panama has identified Claimants’ failure to meet their burden of proof does not shift that burden; otherwise, all respondents would bear the burden of proof whenever they challenged the sufficiency of a claimant’s evidence.</p> <p><b>4.</b> Panama also objects to this request on the basis that it fails to satisfy IBA Article 3.3(c)(i). The universe of Documents requested is so broad, Claimants cannot truthfully assume that they are in Panama’s possession, custody, or</p>		
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Similarly, information in the possession of the UAF (known in most countries as the “Financial Intelligence Unit”), “shall be kept under strict confidentiality,” (<i>See Annex C</i>, Executive Decree No. 241, Article 3), and can only be disclosed to specific entities in relation to investigations on “money laundering, financing of terrorism, and financing for the proliferation of weapons of mass destruction.” (<i>See Annex C</i>, Executive Decree No. 241, Article 2.8, 2.9, 2.10). None of these situations is applicable here, nor is an ICISD Tribunal one of the entities to whom disclosure is permitted</p> <p>Panamanian law provides for the prosecution of government officials who</p>	<p>States for Internationally Wrongful Acts (2001), Article 2 (and see Commentary to Article 2 (5))), and can be required by the Respondent to provide the requested documents. The Respondent has not even suggested that it would make efforts to make requests of the justices.</p> <p>2. The Respondent also asserts that these documents are “<i>secret due to compelling grounds of institutional sensitivity</i>”, pursuant to IBA Article 9.2(f). But “<i>secret</i>” information under IBA Article 9.2(f) is information that has been “<i>classified as secret by a</i></p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>disclose confidential information, (<i>See Annex B</i>, Banking Law of Panama, Article 191; <i>see also Annex E</i>, Executive Decree No. 947, Article 5), with a potential sentence of up to 2-years’ imprisonment. (<i>See Annex D</i>, Penal Code of Panama, Article 355).</p> <p>In sum, there are legal prohibitions against the disclosure of the requested Documents, which are classified as secret under Panamanian law. Not only does the Tribunal not have authority to order such a request, Panama cannot violate its own law, and a government official would be subject to criminal prosecution for disclosing the requested Documents.</p> <p><b>2.</b> Panama further objects to this request on the basis that it fails to satisfy IBA Article 3.3(a)(ii), which</p>	<p><i>government or a public international institution.”</i> The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why communications between the relevant judges should have been so classified, unless as part of an attempt to withhold evidence from this Tribunal.</p> <p>3. The Respondent’s objection under IBA Article 3.3(a)(ii) is unfounded, for the reasons stated in the Claimants’ Introduction to their Reply points above.</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>requires the request to detail a “narrow and specific category of Documents,” “reasonably believed to exist,” that is “carefully tailored to produce relevant and material documents.” (<i>See Annex G, COMMENTARY, p. 9</i>).</p> <p><i>First</i>, the request is unhinged from the statement on relevance and materiality, which focuses solely on corruption. Instead, Claimants request <i>all</i> bank records evidencing <i>any</i> income other than the Supreme Court Justices’ judicial salaries, whether licit or illicit. That the request would include the <i>dissenting</i> Justice’s bank records is evidence that this request is merely a fishing expedition.</p> <p><i>Second</i>, Claimants have offered no positive</p>	<p>The Claimants reasonably believe that such documents exist because there is evidence that bribes were paid to judges including Ortega and Mitchell in another case (<b>Memorial ¶ 129-130</b>, and so the possibility that bribes may have been paid in this case cannot be discounted.</p> <p>4. The Respondent further objects that the request is a “<i>fishing expedition</i>” because all bank records evidencing any income of the justices is requested, including those of the dissenting Justice. But all of the bank statements need to be provided in order that the Claimants can understand whether</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>evidence that the Supreme Court Justices have received any income other than their judicial salaries, or that a corrupt official would accept a bribe via traceable means such as bank transfers. At the same time, they have stated that any evidence of corruption “is unlikely to be traceable.” (<b>Memorial</b>, ¶ 210). Claimants cannot have it both ways, and they have not established that the Documents requested can be reasonably believed to exist.</p> <p><i>Third</i>, the only remaining basis for believing it likely that the requested Documents exist is to accept Claimants’ unfounded allegations of corruption. Claimants are begging the question. If any unsubstantiated allegation sufficed to</p>	<p>any payments made to the justices were illicit or not, since such illicit payments are unlikely to be marked as such.</p> <p>4. The Respondent’s assertion that the request fails to satisfy IBA Article 3.3(a)(ii) is wrong for the reasons stated in the Claimants’ Introduction to their reply points above. The Claimants’ allegations of corruption are not unsubstantiated. The Claimants have pleaded corruption, rely on the statements made by the Panamanian Ambassador at the meeting of 13 March 2015, and have provided such evidence as they were</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>create a reasonable belief in the existence of a Document, the requirements of IBA Article 3.3(a)(ii) would be emptied of any meaning.</p> <p><i>Fourth</i>, the request does not describe a narrow and specific category of documents. Instead, Claimants' seek a broad category of financial documents spanning nearly 10 years, which could be in the possession of multiple persons or entities.</p> <p><b>3.</b> Panama also objects to this request, because it fails to satisfy IBA Articles 3.3(b) and 9.2(a), which require that the Documents requested be relevant and material.</p> <p>Claimants contend that because Panama identified Claimants' failure to meet their burden of proof,</p>	<p>able to obtain via public sources of the numerous investigations into corruption which appear to have been abandoned by Panama without reaching any conclusion.</p> <p>As to the shifting of the burden of proof, in circumstances where the evidence of corruption is all within the Respondent's possession, control or knowledge, and where there is <i>prima facie</i> evidence of corruption, as the Claimants have provided with respect to Justice Ortega and other justices of the Panamanian Supreme Court, the burden of proof shifts to the</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Panama should be required to provide the missing relevant evidence. This is no more than an inappropriate attempt to shift the burden of proof to Panama.</p> <p>The relevance and materiality of a piece of evidence is independent from the question of which party bears evidentiary burdens. Claimants allege corruption while stating that evidence of corruption in the present case “is unlikely to be traceable.” (<b>Memorial</b>, ¶ 210). That Panama has identified Claimants’ failure to meet their burden of proof does not shift that burden; otherwise, the party challenging the sufficiency of the other party’s evidence would always bear the burden of</p>	<p>Respondent (<i>See CLA-0139 (ENG) Karkey Karadeniz v Pakistan</i>, Award ¶ 497).</p>	
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>proof.</p> <p>Instead, as stated in Panama's Objection No. 2 to this request, the Documents lack sufficient relevance and materiality to the supposed issue of corruption because Claimants request all bank records evidencing any income other than the Supreme Court Justices' judicial salaries, whether licit or illicit.</p> <p><b>4.</b> Panama also objects to this request, because it fails to satisfy IBA Article 3.3(c), as there is no reason to believe that Panama is in possession, custody, or control of the personal bank records of the Supreme Court Justices, nor have Claimants offered any such reason. For example, Claimants have never alleged that the UAF has investigated the Supreme</p>		
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>Court Justices’ bank accounts.</p> <p><b>5.</b> Panama further objects to this request on the basis that it does not follow the procedure for requesting documents from third-parties under IBA Article 3.9.</p> <p><i>First</i>, while the actions of State Organs are attributable to the State, the individual Supreme Court Justices are not parties to this arbitration. Claimants are requesting non-official documents. To the extent that Claimants’ request personal bank records in the possession of persons who, in their individual capacities, are third-parties, the proper procedure to request such Documents is established in IBA Article 3.9, by which Claimants have not</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>abided.</p> <p><i>Second</i>, Claimants also cannot request Documents in possession of banks, which are also third-parties. (See <b>Annex B</b>, Banking Law of Panama, Article 111). Banks can only disclose information relating to clients under certain specific circumstances, none of which is applicable here. For example, the Tribunal is not a “competent authority” that can “require” the disclosure of the requested Documents. The Tribunal is not a Panamanian State Organ with jurisdiction over banks, and pursuant to ICSID Arbitration Rule 34(2)(a), the Tribunal can only require the production of documents from parties to the arbitration.</p>		
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

6.	<p>In April 2017, a complaint was filed against Justice Oyden Ortega, one of the judges who issued the Supreme Court Judgment, by Mr. Alvarado Taylor. His complaint was that Justice Ortega and his son conspired to accept money in exchange for procuring a judgment favorable to the appellant in a case before him. Therefore, the Claimants request a copy of the complaint, all documents relating to it, including any documents relating to any decision to archive the complaint, any documents relating to any investigation undertaken, and</p>	<p>Memorial ¶ 114, 123-125</p> <p>Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11</p> <p>Witness Statement of Steven Akey dated 30 April 2018, ¶ 8</p> <p>Counter-Memorial, ¶ 56 - 60</p>	<p>This request is relevant and material to the Claimants’ pleaded contention that the Supreme Court Judgment is so clearly and manifestly wrong, that it could only have been procured through corruption, and that at least two of the Justices of the Supreme Court tribunal that issued the Supreme Court Judgment have been the subject of numerous allegations of corruption, which Panama has chosen not to investigate.</p> <p>As the Claimants</p>	<p><b>1.</b> Panama objects to this request pursuant to IBA Article 9.2(a), because it lacks sufficient relevance to the case or materiality to its outcome.</p> <p>Investment arbitration jurisprudence is clear that “corruption is a serious allegation, especially in the context of the judiciary[;] generalized allegations of corruption in the [Respondent State] do not meet [a claimants’] burden of proof.” <b>RLA-0100, <i>Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan</i></b>, ICSID Case No. ARB/07/14 (Excerpts of Award, 22 June 2010) (Böckstiegel, Hobér, Crawford), ¶ 422; <i>see also</i> <b>RLA-0101, <i>Jan Oostergetel and Theodora Laurentius v. Slovak Republic</i></b>, UNCITRAL, (Final Award, 23 April 2012) (Kaufmann-Kohler,</p>	<p>1. The Respondent’s objection under IBA Article 9.2(a) is wrong for the reasons stated in the Claimants’ Introduction to their reply points above. The documents requested are relevant to the case and material to its outcome, because they concern specific allegations of corruption made against the very judge that drafted the Supreme Court Judgment.</p> <p>The Respondent objects that a legal impediment prevents disclosure of documents responsive to this request [<b><i>add more on UAF</i></b>].</p> <p>2. The Respondent</p>	<p>Documents in this category to be produced by 14 February 2019, other than documents in the possession of the UAF whose production would infringe Panamanian law.</p>
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

<p>evidence obtained during such investigation including, without limitation, bank statements and other records evidencing payments received by or on behalf of Justice Ortega other than by way of his judicial salary. The date range for this request is to be determined by reference to the dates in the complaint. Searches pursuant to this request should include, without limitation, documents in the possession or control of the UAF.</p>		<p>explained in their pleading, it is notoriously very difficult for a claimant to obtain evidence of a host state’s corruption on its own. Tellingly, the Respondent has elected, in its Counter-Memorial, not to respond to those allegations, and to put the Claimants to proof as to whether there was any corruption in this case.</p> <p>Therefore, there is an issue between the Parties, not only as to whether the Supreme Court Judgment was procured through corruption, but</p>	<p>Wladimiroff, Trapl), ¶ 303 (“While [general reports of bribery of judges] are to be taken very seriously as a matter of policy, they cannot substitute for evidence of a treaty breach <i>in a specific instance.</i>”)(emphasis added), <b>RLA-0106, ECE et al. v. Czech Republic</b>, PCA Case No. 2010-5, (Award, 19 September 2013) (Berman, Bucher, Thomas), ¶ 4.879 (“Reference to other instances of alleged corruption may prove that corruption exists in the State, but it does little to advance the argument that corruption existed <i>in the specific events giving rise to the claim.</i>”)(emphasis added).</p> <p>Claimants request Documents regarding allegations that are wholly unrelated to the</p>	<p>also asserts that these documents are “<i>secret due to compelling grounds of institutional sensitivity</i>”, pursuant to IBA Article 9.2(f). But “<i>secret</i>” information under IBA Article 9.2(f) is information that has been “<i>classified as secret by a government or a public international institution.</i>” The Respondent has made no allegation that the Documents sought have been so classified, and certainly no evidence of such classification has been provided. Indeed, it is hard to see why communications between the relevant judges should have been so classified,</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

			<p>also as to whether there is a track record of corruption by any of the three Supreme Court judges.</p> <p>The Respondent has therefore expressly put in issue the question of what evidence is available, and accordingly justice requires that the Respondent now provide all relevant evidence.</p>	<p>Panamanian tort case and therefore lack both relevance and materiality to the outcome of this case. Contrary to Claimants’ assertion, the Supreme Court Justices’ “track record” is not at issue in, or relevant to, this arbitration. The only relevant matter is whether “corruption existed in the specific events giving rise to the claim.” <i>See RLA-0106, ECE et al. v. Czech Republic</i>, PCA Case No. 2010-5, (Award, 19 September 2013) (Berman, Bucher, Thomas), ¶ 4.879. Claimants should not be allowed to poison the well with irrelevant and immaterial allegations.</p> <p>2. Panama objects to this request pursuant to (1) IBA Article 9.2(b), a legal impediment prevents the Documents’ disclosure,</p>	<p>unless as part of an attempt to withhold evidence from this Tribunal. Even if the Respondent is unable to produce documents held by UAF, it should be able to provide documents held by other Panamanian government entities, such as the National Assembly.</p> <p>3. The Respondent’s objection that the request is overbroad and thus fails to satisfy the requirements of IBA Article 3.3(a)(ii) is wrong. First, the Claimants do have a reasonable belief that illicit income may have been received by the Supreme Court Justices, because there is evidence that</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>and (2) IBA Article 9.2(f), because the requested Documents are classified as secret.</p> <p>Information in the possession of the UAF, “shall be kept under strict confidentiality,” (<i>See Annex C</i>, Executive Decree No. 241, Article 3), and can only be disclosed to specific entities in relation to investigations on “money laundering, financing of terrorism, and financing for the proliferation of weapons of mass destruction.” (<i>See Annex C</i>, Executive Decree No. 241, Article 2.8, 2.9, 2.10). None of these situations is applicable here, nor is an ICISD Tribunal one of the entities to whom disclosure is permitted.</p> <p>Further, Claimants request “Documents related to any</p>	<p>Justices Ortega and Mitchell have been bribed before (<b>Memorial</b>, ¶ 129-130)</p> <p>Second, all of the bank statements are requested in order that the Claimants can understand whether any payments made to the justices were illicit or not, since such illicit payments are unlikely to be marked as such.</p> <p>Third, date ranges cannot be supplied because it is not possible to know what the dates of the investigations carried out by Panama are. That information is solely within the Respondent’s knowledge.</p> <p>Fourth, it is not</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>investigation undertaken,”</p> <p>Panamanian law provides for the prosecution of public servants who disclose confidential information, by virtue of an abuse of their authority, with a potential sentence of up to 2-years’ imprisonment. (<i>See Annex D</i>, Penal Code of Panama, Article 355).</p> <p>In sum, there are legal prohibitions against the disclosure of the requested Documents. Not only does the Tribunal not have authority to order such a request, Panama cannot violate its own law, and a government official would be subject to criminal prosecution for disclosing the requested Documents.</p> <p><b>3.</b> Panama objects to this request as it fails to satisfy IBA Article 3.3(a)(ii), which requires a</p>	<p>overbroad to request all documents obtained during any investigation, when the subject of the investigation was Justice Ortega himself.</p> <p>4. The Respondent’s objection under IBA Article 3.3(c) is wrong because Panamanian Supreme Court Justices are agents of the state (<b>CLA-099 (ENG)</b> International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 2 (and see Commentary to Article 2 (5))), and can be required by the Respondent to provide the requested</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>“description in sufficient detail” of “a narrow and specific” category of Documents, that is “reasonably believed to exist,” and is “carefully tailored to produce relevant and material documents.” (See <b>Annex G</b>, COMMENTARY, p. 9).</p> <p><i>First</i>, Claimants request, once again, bank records evidencing <b>any</b> income separate from judicial salary, whether licit or illicit. But they have not established a reasonable belief that any Supreme Court Justice receives any income other than his judicial salary, that such other income is illicit, or that any illicit income would be recorded in traceable bank records.</p> <p><i>Second</i>, Claimants broadly request “any documents relating to any</p>	<p>documents. The Respondent has not even suggested that it would make efforts to make requests of the justices.</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>investigation undertaken,” in addition to bank records. Investigators can be expected to compile information that is broader than the limited permissible scope of a request under the IBA Rules. For example, investigators would likely investigate and compile personal information on all the relevant parties, not just the accused party. Such information is irrelevant and immaterial but would be included in Claimants’ overbroad request.</p> <p><i>Third</i>, the request is not narrow and specific because Claimants state that the range “is to be determined by reference to the dates in the complaint,” but do not identify the category of relevant dates in the complaint.</p>	
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**CLAIMANTS’ REPLIES TO RESPONDENT’S RESPONSES AND OBJECTIONS TO CLAIMANTS’ REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

				<p>4. Panama objects to the request because it fails to satisfy IBA Article 3.3(c), as there is no reason to believe that Panama is in possession, custody, or control of the personal bank records of the Supreme Court Justices, nor have Claimants offered any. For example, Claimants have never offered evidence, nor even alleged, that the UAF has ever investigated the Supreme Court Justice’s bank records.</p>		
7.	<p>On 6 June 2014, the Panamanian press reported a complaint filed against Justice Ortega with the Secretary General of the National Assembly which included allegations and evidence of bribery. Therefore, the Claimants request a</p>	<p>Memorial ¶ 114, 127</p> <p>Witness Statement of Jeffrey Lightfoot dated 9 May 2018, ¶ 11</p> <p>Witness Statement of Steven Akey dated 30 April</p>	<p>See comments above in relation to request 6.</p>	<p>Panama objects on the same bases as its objections to Document Production Request No. 6.</p>	<p>See comments above in relation to request 6.</p>	<p>Documents in this category to be produced by 14 February 2019, other than documents in the possession of the UAF whose production would infringe Panamanian law.</p>



**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST**  
**FOR**  
**PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

<p>copy of the complaint, all documents relating to it, including any documents relating to any decision to archive the complaint, any documents relating to any investigation undertaken, and evidence obtained during such investigation including, without limitation, bank statements and other records evidencing payments received by or on behalf of Justice Ortega other than by way of his judicial salary. The date range for this request is to be determined by reference to the dates in the complaint. Searches pursuant to this request should include, without</p>	<p>2018, ¶ 8  Counter-Memorial, ¶ 56 - 60</p>				
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST**  
**FOR**  
**PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST**  
**FOR**  
**PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

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

**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST  
FOR  
PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

<p>judgment issued with respect to the inheritance of a U.S. businessman, Wilson Lucom, alleging corruption of the Supreme Court justices. Therefore, the Claimants request a copy of the complaint, all documents relating to it, including any documents relating to the decision to archive the complaint, any documents relating to any investigation undertaken, and evidence obtained during such investigation including, without limitation, bank statements and other records evidencing payments received by or on behalf of Justices Ortega and</p>	<p>2018, ¶ 11</p> <p>Witness Statement of Steven Akey dated 30 April 2018, ¶ 8</p> <p>Counter-Memorial, ¶ 56 - 60</p>				<p>Panamanian law.</p>
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**CLAIMANTS' REPLIES TO RESPONDENT'S RESPONSES AND OBJECTIONS TO CLAIMANTS' REQUEST**  
**FOR**  
**PRODUCTION OF DOCUMENTS (29 NOVEMBER 2018)**

	Mitchell other than by way of their respective judicial salaries. The date range for this request is to be determined by reference to the dates in the complaint.					
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**(ICSID Case No. ARB/16/34)**  
**Procedural Order No. 7**  
**Annex B**

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

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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



***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

	<p>Corporation or Claimants;</p> <p>(b) Monthly bank statements for Bridgestone Licensing and Bridgestone Americas; and</p> <p>(c) Other financial records, communications, or other Documents demonstrating any transfer of funds between Bridgestone Americas, Bridgestone Licensing, Bridgestone Corporation, and any other subsidiary or affiliate of Bridgestone Corporation or Claimants in connection with the purported loan; and</p> <p>(d) Other financial records, communications, or other Documents, including internal planning or marketing Documents, or tax returns of Claimants, Bridgestone Corporation and/or any other subsidiary or affiliate of Bridgestone Corporation or Claimants evidencing the financial source or sources used to fund the purported loan.</p>	<p>¶¶ 30-32, 160-67.</p>			<p>Here, Claimants have summarily alleged that some Documents are privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants' <i>de facto</i> objection, or for the Tribunal to consider whether the relevant Documents are in fact privileged.</p> <p>Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow Panama and the Tribunal to consider Claimants' allegations.</p> <p>If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed Privilege Log template. (<i>See Annex H, Privilege Log</i>).</p> <p><b>2.</b> Article 9(2)(b) of the IBA</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

				<p>Rules empowers the “[t]he Arbitral Tribunal,” <i>not a party</i>, to exclude Documents from production on the basis of privilege.</p> <p>The IBA Rules also expansively define the term “Document” as “a writing . . . or data of any kind.” Thus, Claimants’ redaction of information is tantamount to a failure to produce a Document.</p> <p>Article 9(3) of the IBA Rules establishes the considerations that the Tribunal can take into account when deciding on issues of privilege.</p> <p>Here, Claimants have summarily alleged that some redacted information is privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants’ <i>de facto</i> objection, or for the Tribunal to consider whether the redacted information is in fact privileged.</p> <p>Thus, as is common practice</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

				<p>in arbitral proceedings, Claimants should provide a Redaction Log to allow Panama and the Tribunal to consider Claimants' allegations.</p> <p>If Claimants are unable to provide such Redaction Log, the Tribunal should require them to produce the redacted information, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed Redaction Log template. (See <b>Annex I</b>, <i>Redaction Log</i>).</p> <p><b>3.</b> Panama objects to Claimants' redaction of information that they deem irrelevant.</p> <p>Article 9(2)(a) of the IBA Rules empowers the "[t]he Arbitral Tribunal," <i>not a party</i>, to exclude Documents from production on the basis of relevance.</p> <p>The IBA Rules also expansively define the term "Document" as "a writing . . . or data of any kind." Thus,</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

	<p>(a) The FIRESTONE Trademark registered in Panama;</p> <p>(b) Bridgestone America’s FIRESTONE Trademark License in Panama; and</p> <p>(c) Bridgestone America’s BRIDGESTONE Trademark License in Panama.</p>	<p>94-102;</p> <p>First Shopp Report, ¶¶ 85, 129-32, 142-48.</p>	<p>the value of the trademarks has been diluted.</p>		<p>Tribunal can take into account when deciding on issues of privilege.</p> <p>Here, Claimants have summarily alleged that some Documents are privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants’ <i>de facto</i> objection, or for the Tribunal to consider whether the relevant Documents are in fact privileged.</p> <p>Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow Panama and the Tribunal to consider Claimants’ allegations.</p> <p>If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

					<p>If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed Privilege Log template. (<i>See Annex H, Privilege Log</i>).</p> <p><b>2.</b> Claimants’ objection on the basis of relevance is without merit.</p> <p>As the Tribunal has affirmed, the value of a trademark license to the licensee is based on the revenue from sales of trademark-branded products. (<i>See Decision on Expedited Objections</i>, ¶¶ 219, 242).</p> <p>Panama’s damages expert has determined that many FIRESTONE and BRIDGESTONE-branded tires sold in Panama were actually sold in the Colon Free Trade Zone. Thus, these tires were likely exported to other countries.</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

					<p>(See <b>First Shopp Report</b> , ¶¶ 101-105). Such sales cannot be categorized as sales of trademark-branded tires in Panama.</p> <p>These Documents are relevant to the case because the difference between the purported and actual Panamanian sales will change the revenue derived from such sales. This affects the value of the relevant trademark license, and consequently, the potential damages amount.</p> <p><b>3.</b> Panama requests clarification as to whether BATO or BSCR are in possession, custody, or control of the Documents relevant to Panama’s Document Production Request No. 5(e).</p> <p>Claimants allege that <i>they</i> do not retain such Documents. However, Article 3(c)(i) of the IBA Rules permits Panama to request Documents in Claimants’ “possession, custody or control.”</p> <p>As wholly-owned subsidiaries of BSAM,</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

	<p>(c) the number of tires sold,</p> <p>(d) revenues derived from these sales, and</p> <p>(e) the final destination market of the tires sold.</p>	<p>First Shopp Report, ¶¶ 57-61.</p>		<p>Without prejudice to the foregoing, the Claimants do not keep any records of information pertaining to this Request.</p>	<p>Here, Claimants have summarily alleged that some Documents are privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants' <i>de facto</i> objection, or for the Tribunal to consider whether the relevant Documents are in fact privileged.</p> <p>Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow Panama and the Tribunal to consider Claimants' allegations.</p> <p>If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed Privilege Log template. (<i>See Annex H, Privilege Log</i>).</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

					<p><b>2.</b> Claimants’ objection on the basis of relevance is without merit.</p> <p>As the Tribunal has affirmed, the value of a trademark license to the licensee is based on the revenue from sales of trademark-branded products. (<i>See Decision on Expedited Objections</i>, ¶¶ 219, 242).</p> <p>However, Panama’s damages expert has determined that many FIRESTONE and BRIDGESTONE-branded tire sales in the remaining BSCR Region were either intercompany sales or sales of tires that are likely to be exported outside the BSCR Region. (<i>See First Shopp Report</i>, ¶¶ 106-113). Such sales cannot be categorized as sales of trademark-branded tires in the remaining BSCR Region.</p> <p>Thus, these Documents are relevant to the case, because the difference between the purported and actual BSCR Region sales will change the revenue derived from such sales. This affects the value</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

					<p>of the relevant trademark license, and consequently, the potential damages amount.</p> <p><b>3.</b> Panama requests clarification as to whether BATO or BSCR are in possession, custody, or control of Documents relevant to Panama’s Document Production Request No. 6(e).</p> <p>Claimants allege that <i>they</i> do not retain such records. However, Article 3(c)(i) of the IBA Rules permits Panama to request Documents in Claimants’ “possession, custody or control.”</p> <p>As wholly-owned subsidiaries of BSAM, BSCR and BATO are under its control. (<i>See e.g., Decision on Expedited Objections</i>, ¶¶ 214-218). Additionally, Claimants have willingly produced Documents from BATO and BSCR. (<i>See Annex L, BATO 2015 and 2016 Consolidated Financial Statements; Annex M, BSCR Sales Invoice</i>). Thus, Documents in the</p>	
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

	<p>(b) Quarterly financial statements for BSAM, BSLS, BSCR, BATO;</p> <p>(c) Sales and marketing reports for BSCR region prepared by BSCR, BSAM, or related companies; and</p> <p>(d) Statements or dividends paid by each of BSAM, BSLS, BSCR and BATO to its respective parent company for the period 2010 to the present.</p>		<p>material to its outcome because they will assist in determining if and how each entity was affected (in a financially assessable manner) by the loan payment and revenues derived from sales of trademark-branded products.</p>	<p>been provided in the absence of audited statements.</p> <p>(b) Quarterly financial statements do not exist for all of the entities.</p> <p>(c) No dividends have been paid by any of BSAM, BSLS, BSCR or BATO to its respective parent company for the period 2010 to the present.</p>	<p>Here, Claimants have summarily alleged that some Documents are privileged, without explaining the basis for this assertion. As a result, it is impossible for Panama to effectively reply to Claimants' <i>de facto</i> objection, or for the Tribunal to consider whether the relevant Documents are in fact privileged.</p> <p>Thus, as is common practice in arbitral proceedings, Claimants should provide a Privilege Log to allow Panama and the Tribunal to consider Claimants' allegations.</p> <p>If Claimants are unable to provide such Privilege Log, the Tribunal should require them to produce the retained Documents, pursuant to ICSID Arbitration Rule 34(2)(a).</p> <p>To assist with the Document production process, Panama is providing a proposed Privilege Log template. (See <b>Annex H, Privilege Log</b>).</p>	
8.	Customer Relationship Management information	Memorial, ¶¶ 238-39;	Claimants assume that all of the trademark-	There are no documents responsive to this	Panama requests clarification as to whether	Claimants to confirm within 14 days, if it be the

***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

	<p>including the legal name, address, and description of business for customers who purchased FIRESTONE and BRIDGESTONE-branded tires in Panama from May 28, 2014 to the present.</p>	<p>First Daniel Report, ¶¶ 58-64, 73-77, 81-83, 93;</p> <p>Counter-Memorial, ¶¶ 257-60;</p> <p>First Shopp Report, ¶¶ 101-05</p>	<p>branded tires sold in Panama are Panamanian sales.</p> <p>Panama’s damages expert has identified tire sales to customers who will likely export the products.</p> <p>These documents are relevant to the case and material to its outcome because they will assist in determining the actual number of tire sales in Panama, which is a base variable for Claimants’ damages calculation.</p>	<p>Request, because the Claimants do not maintain Customer Relationship Management information other than that provided in response to Requests 5 and 6.</p>	<p>BATO or BSCR are in possession, custody, or control of the requested Documents.</p> <p>Claimants allege that <i>they</i> do not retain such Documents. However, Article 3(c)(i) of the IBA Rules permits Panama to request Documents in Claimants’ “possession, custody or control.”</p> <p>As wholly-owned subsidiaries of BSAM, BSCR and BATO are under its control. (<i>See e.g., Decision on Expedited Objections</i>, ¶¶ 214-218). Additionally, Claimants have willingly produced Documents from BATO and BSCR. (<i>See Annex L, BATO 2015 and 2016 Consolidated Financial Statements; Annex M, BSCR Sales Invoice</i>). Thus, Documents in the possession, custody, or control of BATO and BSCR are clearly under BSAM’s control.</p> <p>If BATO and BSCR are in possession, custody, or control of the requested Documents, Claimants</p>	<p>case, that their subsidiaries are not in a position to produce documents giving this information.</p>
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***Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama***  
**ICSID Case No. ARB/16/34**

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