

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

The Lopez-Goyne Family Trust and others

v.

Republic of Nicaragua

(ICSID Case No. ARB/17/44)

PROCEDURAL ORDER NO. 2

Decision on Document Production

Members of the Tribunal

Prof. Luca G. Radicati di Brozolo, President of the Tribunal

Mr. José A. Martínez de Hoz, Arbitrator

Prof. Brigitte Stern, Arbitrator

Assistant to the President of the Tribunal

Mr. Gregorio Baldoli

Secretary of the Tribunal

Ms. Catherine Kettlewell

13 November 2020

I. INTRODUCTION

1. In accordance with section 16 of Procedural Order No. 1, as amended, the Parties were to exchange requests for production of documents simultaneously, if any, no later than 21 days after the date the Respondent filed its Counter-Memorial (“**Request to Produce**”). If a Party objected to the production of certain documents, the other party would submit that objection to the decision of the Tribunal pursuant to section 17 of Procedural Order No. 1.
2. On 30 October 2020, both Parties submitted to the Tribunal their requests for production of documents in the form of a Redfern/Stern Schedule (“**Document Requests**”), in accordance with section 17 of Procedural Order No. 1. Each of the Document Requests contained the requests (including an identification of documents or category of documents requested, relevance and materiality, indication whether the documents were not in the party’s possession), the objections by the disputing party and the reply.

II. APPLICABLE RULES

3. This Procedural Order decides on the objections submitted by the Parties with respect to the Document Requests submitted by the other Party. The reasoning of the Tribunal is included in each of the requests contained in the Redfern/Stern Schedules of each party which are attached to this Procedural Order. **Annex A** contains the Decision on the Claimants’ Document Requests and **Annex B** contains the Decision on Respondent’s Document Requests.

4. ICSID Arbitration Rule 34 provides:

(1) The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

(2) The Tribunal may, if it deems it necessary at any stage of the proceeding:

*(a) call upon the parties to produce documents, witnesses and experts;
and*

(b) visit any place connected with the dispute or conduct inquiries there.

(3) The parties shall cooperate with the Tribunal in the production of the

evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.

(4) Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties within the meaning of Article 61(2) of the Convention.

5. Based on the provisions above, the Tribunal has discretion to decide on the Parties' Document Requests. Pursuant to paragraph 16.2 of Procedural Order No. 1, the Tribunal's decisions also took into consideration whether the documents (i) are sufficiently identified, (ii) are relevant to the case and material to its outcome, and (iii) are in possession, custody or control of another party. The decision on document production is without prejudice of determination of admissibility or weight of the evidence, or of any determination of the Tribunal with respect to the jurisdiction or the merits of the dispute.
6. The Tribunal has taken note that the Respondent has agreed to produce a number of the Claimants' Document Requests. The Tribunal has decided only on those Document Requests from Claimants which are still outstanding.
7. With respect to Respondent's Document Requests, the Tribunal notes that it is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof, since failure to discharge such burden will by itself lead to dismissal. Production with the purpose of disproving the counterparty's allegations will only be ordered in exceptional circumstances.

III. THE TRIBUNAL'S DECISION

8. Having considered and discussed the Parties' Document Requests and pursuant to the abovementioned applicable rules, the Tribunal decides on each of the Parties' Document Requests as indicated in the Redfern/Stern Schedules attached to this Procedural Order as **Annex A** and **Annex B**.

9. The Parties shall produce the documents ordered by the Tribunal within 14 days of this Procedural Order pursuant to paragraph 17.3 of Procedural Order No. 1, *i.e.* **Friday, 27 November 2020.**

On behalf of the Tribunal

[signed]

Prof. Luca G. Radicati di Brozolo
President of the Tribunal
13 November 2020

Annex A

Decision on the Claimants' Document Requests

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

ICSID Case No. ARB/17/44

**THE LOPEZ-GOYNE FAMILY TRUST, THE GOYNE FAMILY TRUST, THE
BOCHNOWSKI FAMILY TRUST, THE BARISH FAMILY TRUST OF 2008,
HILLS EXPLORATION CORPORATION, LG HAWAII OIL & GAS, INC., LG
HAWAII DEVELOPMENT CORPORATION, MICHAEL DAVID GOYNE,
EMILY LOPEZ GOYNE, DAVID MICHAEL GOYNE, ESTHER VALENTINA
GOYNE, JAMES JOHN BOCHNOWSKI, JANET A. BOCHNOWSKI, DAVID A.
BARISH, GALE RUTH FEUER BARISH, JAMES DOUGLAS GOYNE,
RAYMOND GERALD BAILEY, ANITA MEJARITO-GUZMAN ROSS,
ELSBETH IRENE FOSTER, SCOTT STUART SHOGREEN, ELOISA LOPEZ
SHOGREEN, HAROLD ORRIS SHATTUCK, DIANE ELIZABETH RADU AND
WALTER JOHN BILGER**

Claimants

-v-

THE REPUBLIC OF NICARAGUA

Respondent

CLAIMANTS' REQUEST FOR PRODUCTION OF DOCUMENTS

16 SEPTEMBER 2020

I. INTRODUCTION

1. This Request for Production of Documents (the *Request to Produce*) is made in accordance with Article 43(a) of the ICSID Convention, Rules 33 and 34 of the ICSID Arbitration Rules, and section 16 of Procedural Order No. 1 dated 6 August 2019 (as amended on 16 December 2019 and 26 June 2020).
2. By this Request to Produce, Claimants seek voluntary production by the Republic of Nicaragua (*Nicaragua*) of certain documents and categories of documents, failing which the Tribunal will be requested to order their production. The attached Redfern/Stern Schedule (the *Schedule*) lists the documents that Claimants request Nicaragua to produce, insofar as these are within its possession, custody or control. The Schedule further sets out the relevance and materiality of each request to the outcome of this case.

II. GENERAL MATTERS

3. This Request to Produce is made in connection with Nicaragua's Counter-Memorial dated 26 August 2020 (the *Counter-Memorial*) in response to Claimants' Memorial dated 10 January 2020 (the *Memorial*). It is without prejudice to any requests that may be made at a later date.
4. The Request to Produce seeks production of the documents listed in the Schedule as soon as possible on a rolling basis, and in any event no later than 16 October 2020 for uncontested documents and 27 November 2020 for documents ordered for production by the Tribunal, as contemplated by sections 16 and 17 of Procedural Order No. 1. Should Nicaragua locate any additional responsive documents after these dates, Nicaragua should produce them immediately. All documents should be produced together with any attachments, enclosures or annexes.
5. Each individual request in the Schedule is justified by reference to its relevance and materiality in accordance with Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration as of 29 May 2010 (the *IBA Rules*).

6. The requested documents are reasonably believed to exist based on their subject matter as described in the Schedule; not to be within Claimants' possession, custody or control; and to be, or logically should be, within the possession, custody or control of Nicaragua.
7. To the extent that any of the requested documents did exist but is said no longer to exist and/or no longer to be in Nicaragua's possession, custody or control, Nicaragua shall identify such documents and the circumstances in which they are said to have been lost and/or destroyed and/or reasons why the document is said no longer to be in Nicaragua's possession, custody or control.
8. To the extent that any of the requested documents ought to have been created by or for Nicaragua in the ordinary course of business or as required by Nicaraguan law, but were not so generated, Nicaragua shall identify such documents and any reason they were not so generated.
9. To the extent that Nicaragua relies on legal privilege to withhold disclosure of documents identified in this Request to Produce, Claimants request that Nicaragua provide a privilege log identifying the relevant communication, the parties to the communication and the basis on which legal privilege is asserted.
10. For the purposes of this Request to Produce, "*document*" means a writing of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information in the possession, custody or control of Nicaragua (including its state-owned company, Petronic). Documents recorded on electronic means include documents that are accessible from computer systems and other electronic devices and media, native format documents stored on servers and back-up systems, electronic documents that have been software deleted, and additional information stored and associated with electronic documents known as metadata.
11. For the avoidance of doubt, the scope and extent of this Request to Produce do not signify any acknowledgement by Claimants that Nicaragua satisfied its evidential burden with respect to any factual or legal issue merely because certain allegations of fact or law are not the subject of specific requests in this Request to Produce.

12. Capitalised terms in the Request to Produce have the meaning attributed to them in Claimants' Memorial on the Merits.

Document Request Number	1
Identification of documents or category of documents requested	<p>Documents related to Nicaragua’s (including its State-owned oil company Petronic) contact with EastSiberian (including under its former name PetroKamchatka), and/or their representatives, in relation to the Concession (or any part thereof) from 22 October 2013 (first termination of the Concession Contract by the MEM, C-25) to 27 April 2017 (Issuance of Decree No. 52-2017 in favor of PAO), including but not limited to:</p> <ul style="list-style-type: none"> a. copy of the Cooperation Agreement (letter of intent) executed between EastSiberian and Petronic, as reported in March 2015 (C-156) and September 2016 (C-157); b. copy of the Heads of Joint Operations Agreement between EastSiberian and Petronic in respect of the parties’ “intention of finding ways to cooperate in oil and gas activities in Nicaragua”, as reported in September 2016 (C-157); c. any third-party engineering review of the Nicaraguan oil and gas concessions requested by EastSiberian (C-156); d. documents related to Nicaragua’s grant of Exploration Contractor Status to EastSiberian (C-46); e. communications to or from Nicaragua, Petronic, Graeme Phipps and/or EastSiberian in relation to prospective investments in Nicaragua; f. any supporting documents and agreements related to either private placement or public offering of EastSiberian from 2014-2016 (C-150); g. copy of the Memorandum of Understanding signed by EastSiberian and PAO (C-162 and C-163). <p>See: Memorial, paras 198-201; Witness Statement of Michael Goyne, paras 141-143 and 145; “EastSiberian Plc is Granted Exploration Contractor Status in Nicaragua”, EastSiberian, 29 October 2015, Exhibit C-46; “EastSiberian Plc signs Cooperation Agreement with Petronic Regarding Oil and Gas Opportunities in Nicaragua”, EastSiberian, 19 March 2015, Exhibit C-156; “EastSiberian Plc Announces Memorandum of Understanding for Proposed Sale Transaction and Reports Financial Results for the year ended May 31, 2016”, EastSiberian, 2 September 2016, Exhibit C-157; “EastSiberian Plc Announces Expiry of Memorandum of Understanding with Pan American Oil Ltd.”, EastSiberian, 30 June 2017, Exhibit C-162; “EastSiberian Plc (TSX NEX: ESB.H) Reports Interim Financial Results for the period ended August 31, 2017 plus update on Nicaragua situation”, 6 November 2017, Exhibit C-163; Counter-Memorial, paras 213-218; Witness Statement of Lorena Lanza, para 40; Witness Statement of Graeme Phipps, para 38.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to the Claimants’ claim that the true motivation for Nicaragua’s termination of the Concession Contract was to enable Nicaragua to offer the Concession to third parties. In particular, Nicaragua refers in its Counter-Memorial to communications between the MEM and Graeme Phipps, which Mr Phipps confirms in his Witness Statement (Counter-Memorial, paras 213-218; Witness Statement of Graeme Phipps, para 38). This request thus includes communications exchanged by Nicaragua with Mr Phipps and/or EastSiberian (Witness Statement of Graeme Phipps, para 38). The requested documents are material because they will show the extent of Nicaragua’s contacts with Mr Phipps and/or EastSiberian prior to and after the termination of the Concession Contract, as well as Nicaragua’s motivation for that termination.</p> <p>The requested documents are also relevant to the value of the Concession, as discussed by Nicaragua in its Counter-Memorial (paras 57-78), and through Mr</p>

	<p>Phipps’ Witness Statement (para 10), Mr Charuk’s Witness Statement (para 15), Ms Artiles’ Witness Statement (para 6) and Ryder Scott’s Expert Report (para 13). The requested documents are also material to determine the value attributed by Nicaragua to the Concession and the geological prospects of the ION Block in contemporaneous correspondence with third parties outside the context of this proceeding.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. Exhibit C-157 explicitly refers to the Cooperation Agreement and the Heads of Joint Operations Agreement. Moreover, the existence of communications between the MEM and Mr Phipps with respect to possible investment opportunities in Nicaragua is noted by Nicaragua in its Counter-Memorial and by Mr Phipps in his Witness Statement (Counter-Memorial, paras 213-218; Witness Statement of Graeme Phipps, para 38).</p>
<p>Objections by disputing party to production of requested documents</p>	<p>Nicaragua agrees to provide responsive documents in its possession, except where documents are covered by “commercial or technical confidentiality”. Pursuant to Article 9(2)(e) of the IBA Guidelines, the Tribunal may exclude documents on grounds of commercial or technical confidentiality. We have therefore withheld documents such as the memorandum of understanding signed by EastSiberian and PAO, which concern business transactions and/or record business relationships of parties unrelated to this arbitration.</p> <p>We have also withheld and/or redacted documents which include technical sensitive information of other petroleum companies, such as their activities outside Nicaragua, and refer to intra-company information. This particularly applies to Claimants’ request regarding EastSiberian’s application to qualify as contractor pursuant to Nicaraguan law.</p> <p>Tribunals have recognized that intra-company information or information pertaining to transactions with third parties do not have to be disclosed (<i>see, e.g., Merrill & Ring Forestry L.P. v Canada</i>, in which the tribunal held that: “The parties have refused the production of a number of documents on the ground of them containing confidential commercial information. To the extent that some such refusals are based on the nature of the transaction or information contained in the pertinent document, particularly if it relates to intracompany information or business transactions involving third parties, a refusal might be well justified on these grounds.” (<i>Merrill & Ring Forestry L.P. v Canada</i>, ICSID Case No. UNCT/07/1 Decision on Document Production (18 July 2008), ¶ 31).</p> <p>We also note that Claimants have not shown why the specific information of a third-party presented in its attempt to obtain contractor status in Nicaragua would be material or relevant for their case.</p>
<p>Reply</p>	<p>Nicaragua has agreed to provide responsive documents in its possession, custody or control, but has withheld or partially redacted certain documents under Articles 9(2)(b) and 9(2)(e) of the IBA Rules on the basis of an assertion that they (or parts of them) are legally privileged and/or subject to “commercial or technical confidentiality”.</p> <p>Nicaragua’s attempt to use its characterization of documents as confidential as a basis for withholding and/or redacting responsive documents is inappropriate for the reasons set out below.</p> <p>(a) First, Article 9(2)(e) of the IBA Rules provides that the Tribunal may exclude documents from production on grounds of commercial or technical confidentiality where the Tribunal determines such grounds “to be compelling”. This is a very high threshold.</p>

The reason that the justificatory threshold for withholding documents on the grounds of confidentiality is set so high is because, as memorialized in Article 3(13) of the IBA Rules: “[a]ny Document submitted or produced by a Party ... in the arbitration and not otherwise in the public domain shall be kept confidential by the Arbitral Tribunal and the other Parties, and shall be used only in connection with the arbitration”. Therefore, in the normal course, it should not be necessary to withhold documents on the grounds of confidentiality.

Further, the Tribunal is empowered to make “necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection”, as set out in Article 9(4) of the IBA Rules. This also means that it will be rare for a party to be justified in withholding a document on grounds of confidentiality.

Second, as held by the *Pope & Talbot* and *Merrill & Ring* tribunals, among others, a party may only withhold or redact material if it has sufficiently identified the document (or part of the document) and provided a clear and compelling explanation of the reasons that material should be withheld or redacted (*see for example Pope & Talbot Inc. v. Government of Canada* (UNCITRAL), Decision of 6 September 2000, para. 1.4; *Merrill & Ring Forestry L.P. v Government of Canada* (ICSID Case No. UNCT/07/1), Decision on Document Production, 18 July 2008, para. 19). This is necessary so that another party can assess whether it agrees with the asserted basis for withholding the material from disclosure and, if it does not, the Tribunal is in a position to make a decision.

Third and relatedly, Nicaragua purports to rely on a single statement taken from the *Merrill & Ring Forestry L.P. v Canada* Tribunal’s ‘Decision on Document Production’ as justifying its broad claims to confidentiality. But far from recognizing that “intra-company information or information pertaining to transactions with third parties do not have to be disclosed”, as Nicaragua asserts, the *Merrill & Ring* tribunal only stated that a refusal to produce documents on grounds that they contain confidential information, such as “intracompany information or business transactions involving third parties [...] might be well justified” (*Merrill & Ring Forestry L.P. v Canada*, ICSID Case No. UNCT/07/1 Decision on Document Production (18 July 2008), para 31; full quote included in Nicaragua’s objection above).

Nicaragua fails to acknowledge the different context in which document production took place in that proceeding. Both parties had argued the confidentiality of documents produced in that arbitration through multiple submissions, particularly with respect to whether Canadian laws of public access to information could be interpreted to require Canada to disclose any such documents; no such discussion occurred in this case. Both parties had “refused the production of a number of documents on the ground of them containing confidential commercial information”.

In this case, Nicaragua’s request to produce such documents is inconsistent with its confidentiality objection. Nicaragua made multiple requests for the production of documents specifically seeking “intracompany information or business transactions involving third parties”, with respect to which Claimants produced over 180 documents without withholding or redacting a single document on grounds of any purported commercial or technical confidentiality.

(b) In respect of this Request No. 1, Nicaragua has asserted that it is entitled to withhold seventeen documents on the grounds of “commercial or technical confidentiality” and a further eight that it is only producing in part on the same basis. Nicaragua has also asserted that it is entitled to withhold three documents on the grounds of legal privilege. Nicaragua’s justification for those claims is set out in *Annex II – Nicaragua’s Log for Withheld and Redacted Documents*. But a review of this document confirms that it does not provide a clear explanation for the legal privilege or the “commercial or technical confidentiality” asserted by Nicaragua (and that the Claimants must rely on to assess Nicaragua’s claim), let alone a basis for the

Tribunal to determine that Nicaragua has discharged its burden of establishing “compelling” grounds of “commercial or technical confidentiality”.

The Claimants’ specific responses to the documents in respect of which Nicaragua has invoked legal privilege or “commercial or technical confidentiality” are set out below.

(c) Nicaragua’s description of the documents it withheld or redacted often relies on assertions that such documents or the information they contain are “unrelated to ION or Claimants”. But Nicaragua identified these documents as responsive to the Claimants’ request for “Documents related to Nicaragua’s (including its State-owned oil company Petronic) contact with EastSiberian [...], and/or their representatives, in relation to the Concession (or any part thereof)”. As such, on Nicaragua’s own assessment, the documents include information concerning the Concession that is at the heart of this dispute.

Redacted documents and withheld annexes listed in Nicaragua’s *Annex II – Nicaragua’s Log for Withheld and Redacted Documents*:

Document No. 1: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this letter, which was sent on 14 October 2014 by representatives of EastSiberian to Petronic, because it “allegedly includes financial details of other projects unrelated to ION or Claimants”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

(i) EastSiberian was publicly listed on the Toronto Stock Exchange between 2009 and 2018 and over that period it publicly released approximately 300 documents discussing financial details of its projects, including financial statements, news releases and Management Discussion & Analysis (MD&A) documents, in compliance with securities regulations (see <https://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00029236>). It is thus unlikely that the letter would include any financial details from “other projects” that EastSiberian did not disclose in compliance with those securities regulations.

(ii) In any event, in 2018, EastSiberian divested its interests in the only “other projects” it held (“On August 30, 2018 LukinCholot, CJSC Tigil Exploration and CJSC Icha Exploration have been liquidated and the companies closed. This terminated the Corporations’ connection with Russian operations...”; see <https://www.sedar.com/GetFile.do?lang=EN&docClass=7&issuerNo=00029236&issuerType=03&projectNo=02834642&docId=4406819>). Even if the letter did contain information that could have been once considered commercially or technically sensitive, it would have lost any such sensitivity after six years and EastSiberian’s abandonment of its other projects.

Document No. 2: The Claimants respectfully request that the Tribunal direct Nicaragua to produce an unredacted version of this document. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone compelling grounds as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua partially redacted this email, which was sent on 21 October 2014 by EastSiberian’s external counsel, Mr Molina, to Petronic’s counsel, Mr Peter Hans Díaz Balladares, and other EastSiberian and Petronic officers, because it allegedly “includes sensitive commercial and technical details about Petronic’s and EastSiberian’s partnership, which is unrelated to ION or Claimants”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”. But “Petronic’s and EastSiberian’s partnership” was memorialized in the *Acuerdo de Asociación* and the *Acuerdo de Cooperación* that the parties signed in early January 2015 and that Nicaragua has voluntarily produced without any redactions. It follows that the redacted portion of the mail sent months prior to the execution of those agreements may not include sensitive commercial and technical details about said partnership that have not been already disclosed to Claimants. In any event, “Petronic’s and EastSiberian’s partnership” was terminated by mutual agreement in August 2016, through the agreements to terminate the *Acuerdo de Asociación* and the *Acuerdo de Cooperación*, which Nicaragua has also voluntarily produced without any redactions.

Further, Nicaragua cannot credibly argue that “Petronic’s and EastSiberian’s partnership” is “unrelated to ION or Claimants”, when it is clear, from the evidence that Claimants have produced and will produce in this arbitration, that such partnership was predicated on EastSiberian’s interest to exploit the areas covered by the ION Concession Contract that Nicaragua terminated in December 2014.

Document No. 3: Nicaragua has grouped email communications together and claimed privilege over all those communications, even though the communications are said to have been authored by Mr Jose Francisco López (or at least initiated by Mr López), who is not identified as a lawyer, and the recipients are three individuals, only one of whom is identified as a lawyer.

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua’s Log for Withheld and Redacted Documents* that: (i) lists each communication separately; (ii) identifies the role and affiliation of each individual that is an author or recipient of the relevant document(s), including whether any individual is a legal adviser; and (iii) identifies the date or date range for the email communications.

Documents No. 4 and 5: Claimants respectfully request that the Tribunal direct Nicaragua to produce these documents, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone compelling grounds as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld these Memoranda of Understanding, which were concluded between PAO and EastSiberian on 19 August 2016 and 26 August 2016, because they were supposedly executed “between two third parties concerning their relationship”, they “includ[e] sensitive commercial and technical details unrelated to ION or Claimants” and are “marked confidential”, and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

However, EastSiberian extensively described the main terms of these Memoranda, which only referred to oil and gas projects in Nicaragua, in its press release of 2 September 2016

(<https://www.sedar.com/GetFile.do?lang=EN&docClass=8&issuerNo=00029236&issuerType=03&projectNo=02531384&docId=3981721>). It is unlikely that these

documents would include sensitive commercial and technical details that EastSiberian did not disclose in compliance with securities regulations.

Further, as publicly reported by EastSiberian on 30 June 2017 (<https://www.newswire.ca/news-releases/eastsiberian-plc-announces-expiry-of-memorandum-of-understanding-with-pan-american-oil-ltd-631857023.html>), these Memoranda expired more than three years ago. Therefore, even if the documents contain information that could have been considered commercially or technically sensitive, they would have lost any such sensitivity after three years and the frustration of the transaction between EastSiberian and PAO.

In addition, EastSiberian and/or PAO provided copies of these Memoranda to Nicaragua, which is bound by its Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007, which could, among other things, potentially require disclosure to third parties. It follows that EastSiberian and PAO did not consider their Memoranda of Understanding to include sensitive information, as Nicaragua now asserts.

Document No. 6: Claimants respectfully request that the Tribunal direct Nicaragua to produce an unredacted version of this document and its annexes. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua partially redacted this letter recording “EastSiberian’s request to qualify as contractor according to Nicaraguan law” sent on 12 May 2015 by EastSiberian’s counsel, Mr Molina (not Mr, Phipps, as erroneously asserted by Nicaragua), to the Minister of Energy and Mines, Mr Salvador Mansell, and withheld all its annexes, because they allegedly “include sensitive commercial, financial and technical details about EastSiberian, and [are] unrelated to ION or Claimants”, and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

But the information that EastSiberian had to submit to Nicaragua pursuant to Article 18 of Decree 43-98 (**Exhibit C-67**), as amended by Decree 29-2014, in order to qualify as a contractor, is not “sensitive business and technical information”. Article 18 of Decree 43-98 (as amended) required applicants to present limited legal, economic and technical information, such as their name, nationality and constitutive corporate documents, information about their experience in oil exploration (such as discoveries, success percentage, etc.), and a list of projects and countries in which they had performed oil exploration or exploitation activities. This information does not qualify as sensitive and, in any event, it is likely to have been publicly disclosed by EastSiberian in compliance with securities regulations.

Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.

In addition, there is no indication that EastSiberian contemporaneously requested Nicaragua to keep these documents under any specific regime of confidentiality or otherwise exclude them from the application of Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007, which could, among other things, potentially require its disclosure to third parties.

Document No. 7: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be

addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this undated technical report submitted by EastSiberian “in connection to its application to qualify as contractor according to Nicaraguan law”, because it supposedly “records sensitive business and technical information of EastSiberian, including its operations outside of Nicaragua [and] is unrelated to ION or Claimants” and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above. There is no indication that EastSiberian contemporaneously requested Nicaragua to keep this report under any specific regime of confidentiality or otherwise exclude it from the application of Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007, which could, among other things, potentially require its disclosure to third parties.

Document No. 8. The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this “internal executive summary” prepared in 2016 by Mr Eryel Monterrey Cervantes (who appears to be an employee of Petronic) that records “PetroNic’s meetings with EastSiberian, PAO and PEMEX, and their interest in exploring and producing oil in Nicaragua” because it supposedly “includes sensitive commercial and technical details concerning the technical works the parties intended to undertake” and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

But Nicaragua does not claim (as it has sought to do with several other documents) that this document is unrelated to ION, Claimants or the ION Concession. It is therefore reasonable to assume that the works would be performed in the San Bartolo Block. The Claimants note that Nicaragua has voluntarily produced several documents showing the works EastSiberian intended to undertake in the San Bartolo Block, without claiming any confidentiality or privilege, notwithstanding the fact that EastSiberian itself had labelled some of those documents to be “Strictly Private and Confidential”.

Documents No. 13 and 14: The Claimants respectfully request that the Tribunal direct Nicaragua to produce these documents, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld these internal documents of the MEM of 27 July 2015 and 4 August 2015, evaluating EastSiberian’s request to qualify as contractor in Nicaragua, because they allegedly contain “sensitive commercial and technical details of EastSiberian’s operations, which are unrelated to ION or Claimants” and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.

Document No. 15: Nicaragua has withheld this email of 5 August 2015 from Mr Jorge Antonio Vásquez Peralta to the President of PetroNic, Mr López, and the Minister of Energy and Mines, Mr Mansell, supposedly because it was sent by “the attorney, Mr Jorge Antonio Vásquez Peralta ... “to MEM and Petronic”, he “provides legal advice concerning the interest of two oil companies, including EastSiberian, in oil exploration in Nicaragua”, and this allegedly makes the email fall “under the ‘commercial or technical confidentiality’ exclusion”, in addition to falling under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.

Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules. In fact, Nicaragua’s own description of the documents does not mention any commercially or technically sensitive information; it refers solely to the interest of two oil companies (including EastSiberian) in oil exploration in Nicaragua more than five years ago. It is not a secret that EastSiberian and other oil companies were interested in exploring for oil in Nicaragua around the date of that email.

While Nicaragua refers to the sender of the email as “the attorney”, it fails to explain whether he was acting as a legal attorney for the MEM and/or Petronic at that time. However, Nicaragua’s description insinuates that Mr Vásquez Peralta was not acting for the MEM and/or Petronic, as it first refers to him sending an email “to MEM and PetroNic” (as if he were not affiliated with either) and, in the following sentence, states that he “provides legal advice”, but without stating to whom.

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to clarify whether Mr Vásquez Peralta was in-house or outside counsel for MEM and/or Petronic and if he was providing legal advice to either in this withheld document.

Documents No. 17, 18 and 19: The Claimants respectfully request that the Tribunal direct Nicaragua to produce these documents, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld these letters, which were sent by Slater Investments Limited, AVI Partners Limited and Richardson GMP Investments Limited to EastSiberian on 28 July 2014, 4 August 2014 and 8 August 2014, respectively, because they supposedly record “correspondence [...]in relation to EastSiberian’s interest in oil exploration [or an oil concession] in Nicaragua” and they “includ[e] business sensitive information of EastSiberian’s operations, which is unrelated to ION or Claimants”, and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above. Even if the letters contain information that could have been once considered commercially or technically sensitive, they would have lost any such sensitivity after six years, in which EastSiberian lost its interest in Nicaraguan projects.

Document No. 20: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA

Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this letter sent by Mr Mauricio Treviño Zambrano, a representative of Treza Asset Management Ltd., to the Minister of Energy and Mines Salvador Mansell on 21 April 2015, because it supposedly “is a facility commitment letter [...] prepared in relation to EastSiberian’s interest in an oil concession in Nicaragua” and “records sensitive business details concerning the business relationship of two parties unrelated to ION or Claimants”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above. Even if the document contains information that could have been once considered commercially or technically sensitive, they would have lost any such sensitivity after more than five years, in which EastSiberian lost its interest in Nicaraguan projects.

In any event, Mr Treviño Zambrano’s letter was delivered to Nicaragua, not to EastSiberian, thus effectively disclosing any purported “sensitive business details” to a State bound by its Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007, which could, among other things, potentially require its disclosure to third parties. It follows that Mr Treviño Zambrano did not consider his letter to include sensitive information as Nicaragua is now asserting.

Document No. 21: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this email sent by Ms Lorena Lanza to Mr Emilio Rappaccioli, Nicaragua’s Minister of Energy and Mines at that time, on 29 August 2014, because it supposedly “records an internal communication from MEM concerning EastSiberian’s application to qualify as contractor under Nicaraguan law” and “technical and commercial information of EastSiberian’s operations, which is unrelated to ION or Claimants”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.

Document No. 22: Nicaragua has withheld this email of 17 March 2015 from Mr Jorge Antonio Vásquez Peralta to Ms Verónica Artiles and Ms Norma Rayo, because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.

While Nicaragua refers to Mr Jorge Antonio Vásquez Peralta as “the attorney”, it does not assert that he was acting as a legal attorney for the MEM at that time. In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to clarify whether Mr Vásquez Peralta was in-house or outside counsel for MEM and if he was providing legal advice to the MEM in this withheld document.

Document No. 23: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not

established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this chain of emails apparently all dated 16 May 2014 between Petronic's President, Mr José Francisco López, Petronic's counsel, Mr Peter Hans Díaz Balladares, and other individuals (whose affiliation Nicaragua does not provide) because those emails all supposedly include "business and financial details of EastSiberian's operations elsewhere, as well as its interest in oil exploration in Nicaragua", and this allegedly makes it fall "under the 'commercial or technical confidentiality' exclusion".

But Nicaragua does not claim (as it has sought to do with several other documents) that this document is unrelated to ION, Claimants or the ION Concession. It is therefore reasonable to assume that EastSiberian's interest referred to the San Bartolo Block. The Claimants note that Nicaragua has voluntarily produced several documents showing the works EastSiberian intended to undertake in the San Bartolo Block and its interest in it, without claiming any confidentiality or privilege, notwithstanding the fact that EastSiberian itself had labelled some of those documents to be "Strictly Private and Confidential". It is not a secret that EastSiberian was interested in exploring for oil in Nicaragua around the date of that email.

In addition, EastSiberian provided the allegedly "sensitive business and financial details" of its "operations elsewhere" and information about "its interest in oil exploration in Nicaragua" recorded in these documents to Petronic, which is bound by Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007. Under the law, the material could, among other things, potentially be disclosed to third parties. It follows that EastSiberian did not consider this information to be sensitive.

The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.

Document No. 24: The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld this chain of emails apparently all dated 18 July 2014 between Petronic's President, Mr José Francisco López, Petronic's counsel, Mr Peter Hans Díaz Balladares, and other Petronic officers, and its annex, including EastSiberian's application to qualify as a contractor in Nicaragua, because it supposedly includes "business sensitive information of EastSiberian unrelated to ION or Claimants" and this allegedly makes it fall "under the 'commercial or technical confidentiality' exclusion".

But the information that EastSiberian had to submit to Nicaragua pursuant to Article 18 of Decree 43-98 (**Exhibit C-67**), as amended by Decree 29-2014, in order to qualify as a contractor, is not "sensitive business and technical information". Article 18 of Decree 43-98 (as amended) required applicants to present limited legal, economic and technical information, such as their name, nationality and constitutive corporate documents, information about their experience in oil exploration (such as discoveries, success percentage, etc.), and a list of projects and countries in which they had performed oil exploration or exploitation activities. This information does

	<p>not qualify as sensitive and, in any event, it is likely to have been publicly disclosed by EastSiberian in compliance with securities regulations.</p> <p>The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.</p> <p><u>Documents No. 25 and 26:</u> The Claimants respectfully request that the Tribunal direct Nicaragua to produce unredacted versions of these documents. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.</p> <p>Nicaragua partially redacted two emails, dated 18 July 2014 and 20 July 2014, which were sent by Petronic’s President, Mr José Francisco López to Ms Katherine Argeñal, and other Petronic employees, because they supposedly “include business sensitive information” of “an oil company unrelated to ION or Claimants” and “third parties unrelated to the ION Concession Contract”, respectively, and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.</p> <p>However, the only redaction in these documents is a three-line instruction from Petronic’s President to Petronic’s employees, that appears to have been repeated in both emails. It is highly unlikely that such a short instruction from Petronic’s President to the company’s employees would include “business sensitive information” of EastSiberian.</p> <p>In any event, the Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.</p> <p><u>Document No. 27:</u> The Claimants respectfully request that the Tribunal direct Nicaragua to produce this document, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.</p> <p>Nicaragua withheld this undated document prepared by Mr Eryel Monterrey Cervantes (who appears to be an employee of Petronic), because it supposedly “records sensitive commercial and technical details about EastSiberian’s operations elsewhere as well as financial aspects of its activities, which are unrelated to ION or Claimants” and is “marked confidential”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.</p> <p>EastSiberian provided the allegedly “sensitive commercial and technical details” of its “operations elsewhere” and “financial aspects of its activities” to Petronic, which is bound by Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007. Under this law, the material could, among other things, potentially be disclosed to third parties. It follows that EastSiberian did not consider this information to be sensitive.</p> <p>The Claimants repeat their arguments under (i) and (ii) in respect of Document No. 1 above.</p>
<p>Decision of the Tribunal</p>	<p>Request denied for lack of relevance in relation to documents No. 1, 6, 7, 13, 14, 21, 27 because such documents concern the activities of third parties outside Nicaragua.</p> <p>As to the remaining documents:</p>

	<ul style="list-style-type: none"> • The requests in relation to Documents No. 2, 3, 16 are denied for lack of relevance and on grounds of commercial and technical confidentiality because such documents concern the commercial relationship between third parties. • The request in relation to Document No. 15 is denied on grounds of legal privilege and commercial and technical confidentiality. • The requests in relation to Documents No. 9, 10, 11, 12 are denied for lack of relevance and on grounds of commercial and technical confidentiality to the extent that these documents concern offshore oil blocks unrelated to ION or Claimants. • The request in relation to Document No. 23 is denied for lack of relevance and on grounds of commercial and technical confidentiality. • The requests in relation to Documents No. 4, 5, 8, 17, 18, 19, 20, 24, 25, 26 are denied on grounds of commercial or technical confidentiality. • The request in relation to Document No. 22 is denied on grounds of legal privilege.
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Document Request Number	2
Identification of documents or category of documents requested	<p>Documents exchanged between the MEM and PAO in relation to PAO’s application for oil concessions in Nicaragua (C-158, C-159), including but not limited to:</p> <ol style="list-style-type: none"> a. any correspondence between Nicaraguan authorities and PAO and/or its representatives, in relation to PAO’s application for an oil concession (C-159); b. any contracts entered into between Nicaraguan authorities and PAO and/or its representatives pursuant to Presidential Decree 52-2017 (C-158), including but not limited to the “<i>Acuerdo Marco de Asociación en Participación para Operación Conjunta PETRONIC-PAO</i>” cited in C-159; and c. any environmental impact studies prepared by or on behalf of PAO and/or declarations of commercial discovery made by PAO. <p>See: Memorial, paras 198-201; Decree No. 52-2017, 27 April 2017, Exhibit C-158; Applications for oil concessions by Pan American Oil, 21 June 2017, Exhibit C-159; Map of applications for oil concessions by Pan American Oil, Exhibit C-165; Counter-Memorial, paras 213-218; Witness Statement of Lorena Lanza, para 40.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to the Claimants’ claim that Nicaragua wrongfully terminated the Concession Contract as a pretext for offering the Concession to third parties (Memorial, paras 198-201). Nicaragua alleges that it “<i>made no agreement with any other investor, even after the Concession Contract terminated</i>” (Counter-Memorial, para 215). However, in April 2017 President Ortega authorized the MEM to negotiate an oil concession with PAO through Decree No 52-2017 (C-158). The application for oil concessions made by PAO soon after involved the same San Bartolo Block that had been explored by ION (C-159, C-165). The requested documents are material because they will evidence the extent of Nicaragua’s contacts with PAO following the termination of the</p>

	<p>Concession Contract and Nicaragua’s motivation for terminating the Concession Contract.</p> <p>The requested documents are also relevant to the value of the Concession, as discussed by Nicaragua in its Counter-Memorial (paras 57-78), and through Mr Phipps’ Witness Statement (para 10), Mr Charuk’s Witness Statement (para 15), Ms Artiles’ Witness Statement (para 6) and Ryder Scott’s Expert Report (para 13). The requested documents are also material to determine the value attributed by Nicaragua to the Concession and the geological prospects of the ION Block in contemporaneous correspondence with third parties outside the context of this proceeding.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control, since these are documents that the concessionaire should have reasonably filed with the MEM and Exhibits C-158 and C-159 refer expressly to them.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>Nicaragua agrees to provide responsive documents in its possession, except where documents are covered by “commercial or technical confidentiality”.</p> <p>The documents Claimants are seeking include technical and business sensitive information of other petroleum companies, such as their activities outside Nicaragua, and refer to intra-company information as well as business relationships among third parties, which Nicaragua is not obliged to provide. As explained with respect to Request No. 1, pursuant to Article 9(2)(e) of the IBA Guidelines, the Tribunal may exclude documents on grounds of commercial or technical confidentiality. As also explained in response to Request No. 1, tribunals have recognized that intra-company information or information pertaining to transactions with third parties do not have to be disclosed (<i>see, e.g., Merrill & Ring Forestry L.P. v Canada</i>).</p> <p>We also note that Claimants have not shown why the specific information of a third-party presented in its attempt to obtain contractor status in Nicaragua would be material or relevant for their case.</p>
<p>Reply</p>	<p>Nicaragua has agreed to provide responsive documents in its possession, custody or control, but has withheld or partially redacted certain documents under Article 9(2)(e) of the IBA Rules on the basis of an assertion that they (or parts of them) are subject to “commercial or technical confidentiality”.</p> <p>Nicaragua’s attempt to use its characterization of documents as confidential as a basis for withholding and/or redacting responsive documents is inappropriate for the reasons set out below.</p> <p>(a) The Claimants repeat their arguments under (a) in respect of Request No. 1 above.</p> <p>(b) In respect of this Request No. 2, Nicaragua has asserted that: it is entitled (i) to withhold five documents on the grounds of “commercial or technical confidentiality”; (ii) to withhold the annexes of another document; and (iii) to partially redact a seventh document on the same basis. Nicaragua’s justification for those claims is set out in <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i>. But a review of this document confirms that it does not provide a clear explanation for the “commercial or technical confidentiality” asserted by Nicaragua (and that the Claimants must rely on to assess Nicaragua’s claim), let alone a basis for the Tribunal to determine that Nicaragua has discharged its burden of establishing “compelling” grounds of “commercial or technical confidentiality”.</p> <p>The Claimants make the following comments in respect of these documents.</p> <p><u>Document No. 28</u>: The Claimants respectfully request that the Tribunal direct Nicaragua to produce a full version of this document, including its annexes, without</p>

any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld the annexes of “PAO’s request to qualify as a contractor under Nicaraguan Law”, because they supposedly “include sensitive commercial, financial and technical details of PAO’s operations” and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

However, as reported by the Nicaraguan press, PAO had not undertaken any oil and gas operations by this time (“Pan American Oil Limited es una empresa que no tiene sitio web, ni se le conocen operaciones similares de exploración de yacimientos de hidrocarburos en el mundo”; “Pan American Oil no tiene oficina formal en el país, no tiene sitio web, pero buscan petróleo en Nicaragua”, La Prensa, 28 June 2017, **Exhibit C-161**).

There is no indication that PAO requested that Nicaragua keep these documents confidential or otherwise exclude them from the application of Law 621 of 2007 on access to public information, as implemented by Decree No. 81-2007. As Nicaragua is aware, that regime means that the report could, among other things, potentially be disclosed to third parties. It follows that PAO did not consider this information to be sensitive.

Documents No. 29, 32 and 33: The Claimants respectfully request the Tribunal to direct Nicaragua to produce these documents, without any redactions. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua withheld the letters of 20 March 2017 and 5 April 2017 that were sent by Petronic’s President, Mr López, and PAO’s representative, Mr Molina Vaca, to the Minister of Energy and Mines, Mr Mansell, on the grounds that they supposedly record “PAO’s and Petronic’s application to MEM to engage in direct negotiations in order to obtain a concession in the Pacific onshore” and “sensitive commercial details about PAO’s and Petronic’s request, which is unrelated to ION or Claimants”, and this allegedly makes them fall “under the ‘commercial or technical confidentiality’ exclusion”.

But Nicaragua has voluntarily produced several documents prepared as a result of these requests, including draft concession contracts and the minutes of meetings in which PAO, Petronic and the MEM negotiated the terms of those contracts. It therefore is very unlikely that the withheld documents include sensitive commercial details about PAO’s and Petronic’s request that have not been already disclosed to Claimants.

Further, it would appear from the information provided by Nicaragua that PAO is no longer pursuing any concession contracts in Nicaragua. Even if the requests contain information that could have been once considered commercially or technically sensitive, they would have lost any such sensitivity after more than three years, during which it appears that PAO lost its interest in Nicaraguan projects.

Document No. 34: The Claimants respectfully request that the Tribunal direct Nicaragua to produce an unredacted version of this document. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could

	<p>not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.</p> <p>Nicaragua has redacted one of the annexes of a “confidential letter” sent by PEMEX to Petronic on 15 January 2018, because it supposedly “contains a technical presentation relating to PAO’s and PEMEX’s partnership to obtain an oil concession in Nicaragua”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.</p> <p>But the unredacted parts of the document confirm that its partial redaction on grounds of “commercial or technical confidentiality” is unwarranted. This document had been originally classified by PEMEX (or the Mexican authorities) as confidential for a one-year period, subject to a potential extension for an additional year, which elapsed in January 2020. It follows that the author of the document and the beneficiary of any confidentiality exclusion no longer maintains any claim to confidentiality, in whole or in part. Further, the basis invoked to declare the document confidential under Mexican law was not any purported “commercial or technical confidentiality”, but a type of deliberative privilege recognized under Mexican law pursuant to Article 110 (viii) of the Federal Law of Transparency and Access to Public Information, which Nicaragua may not have relied on even prior to January 2020.</p>
<p>Decision of the Tribunal</p>	<p>The request in relation to Document No. 28 (withheld annexes) is denied for lack of relevance because such document concerns the activities of third parties outside Nicaragua.</p> <p>The requests in relation to Documents No. 30, 31 are denied for lack of relevance and on grounds of commercial and technical confidentiality because these documents regard offshore oil blocks unrelated to ION or Claimants.</p> <p>The requests in relation to Documents No. 29, 32, 33, 34 (redacted) are denied on grounds of commercial or technical confidentiality.</p>

<p>Document Request Number</p>	<p>3</p>
<p>Identification of documents or category of documents requested</p>	<p>Documents related to any efforts by Nicaragua to seek investors for the ION Block (through tender processes, direct negotiation or other methods), since 2011, including but not limited to:</p> <ol style="list-style-type: none"> a. internal documents referring to, <i>inter alia</i>, the status, geological prospects and value of the San Bartolo Block; b. brochures and promotional documentation including the San Bartolo Block and/or the ION Block; c. communications between the MEM and potential investors (other than those requested in Requests 1(c) and 2(a) above) in relation to the San Bartolo Block and/or ION Block, describing the status of the Concession and/or the technical information relating to the area. <p>See: Memorial, para 21; Law 286, Exhibit C-1, articles 4 and 8(b); Counter-Memorial, paras 213-218; Witness Statement of Lorena Lanza, para 40.</p>

<p>Relevance and materiality according to Requesting Party</p>	<p>The requested documents are relevant to the value of the Concession, as discussed by Nicaragua in its Counter-Memorial (paras 57-78), and through Mr Phipps' Witness Statement (para 10), Mr Charuk's Witness Statement (para 15), Ms Artiles' Witness Statement (para 6) and Ryder Scott's Expert Report (para 13). Nicaragua acknowledges that it was approached by third parties interested in the Concession (Witness Statement of Lorena Lanza, para 40). The requested documents are material to determine the value attributed by Nicaragua to the Concession and the geological prospects of the ION Block in contemporaneous correspondence with third parties outside the context of this proceeding.</p> <p>The requested documents are also relevant to the Claimants' claim that the true motivation for Nicaragua's termination of the Concession Contract was to enable Nicaragua to offer the Concession to third parties. The requested documents are also material because they will show the extent of Nicaragua's contacts with third parties prior to and after the termination of the Concession Contract, as well as Nicaragua's motivation for that termination.</p>
<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua's possession, custody or control. Law No. 286 (C-1) encourages administrative authorities to promote and facilitate investments related to the exploration and exploitation of hydrocarbons. On the back of the intrinsic value of the ION and San Bartolo Block and Ms Lanza's claims at para 40 of her witness statement, it is reasonable to assume that the MEM has produced documentation with respect to hydrocarbons' opportunities in Nicaragua, including reports on the ION Block.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>Nicaragua agrees to provide documents that are responsive to (b) and (c) within this request that are in its possession, except where documents are covered by "commercial or technical confidentiality", as noted above, pursuant to Article 9(2)(e) of the IBA Guidelines.</p> <p>Nicaragua objects, however to (a) of this request, "internal documents referring to, <i>inter alia</i>, the status, geological prospects and value of the San Bartolo Block." This is an overly-broad, open-ended request amounting to a fishing expedition in contravention of Articles 3(3)(a)(i) and (ii), 3(3)(c)(i) and 9(2)(c) of the IBA Guidelines. The documents requested are not precisely defined and cover an extensive period of almost a decade. Claimants' failure to identify documents with particularity also means that it would be unreasonably burdensome to require Nicaragua to examine potentially massive amounts of documents in a short period of time.</p>
<p>Reply</p>	<p>The Claimants note that Nicaragua has agreed to produce responsive documents in its possession, custody or control, subject to claims to privilege and/or confidentiality for sub-requests (b) and (c) above.</p> <p>Nicaragua has withheld certain documents on the basis of an assertion that they (or parts of them) are legally privileged and/or subject to "commercial or technical confidentiality". The Claimants make the following comments in respect of one of these documents.</p> <p><u>Document No. 35:</u> Nicaragua has withheld this Word document titled "Bases del Concurso", prepared by "Ms. Luviana Bonilla, who is an attorney working for MEM's legal department". According to Nicaragua, "[t]he word document constitutes work product and has been created in relation with Nicaragua's second bidding process". The Claimants respectfully request that the Tribunal direct Nicaragua to confirm that no final document for Nicaragua's second bidding process exists, as Nicaragua identified Document No. 35 as responsive to this Request No. 3, but has not produced any documents that appear to be final version of Document No. 35.</p>

	<p>In respect of the remainder of this Request No. 3, the Claimants note that Nicaragua has mischaracterized the scope of the request in an attempt to avoid producing responsive documents.</p> <p>First, the Claimants did not only request the categories of documents set out in items (a), (b) and (c). Rather, Claimants requested “Documents related to any efforts by Nicaragua to seek investors for the ION Block (through tender processes, direct negotiation or other methods), since 2011, <u>including but not limited to</u>” the narrower categories set out in items (a), (b) and (c) (emphasis added). The Claimants respectfully request that the Tribunal direct Nicaragua to produce all responsive documents, including those falling under item (a) for the reasons set out below.</p> <p>Second, the category of documents identified under item (a) of this Request is precisely defined. It is limited to internal documents relating to a single block of approximately 39,000 acres (i.e., less than 5 percent of the original 850,000 acres of the ION Block), and further limited to documents referring to its: (i) status; (ii) geological prospects; and (iii) value. Nicaragua obviously would not have engaged with third parties interested in the ION Concession (see Witness Statement of Lorena Lanza, paras. 37 and 40), or prepared the documents it voluntarily produced under items (b) and (c), without internal consideration of the status, geological prospects and value of the San Bartolo Block.</p> <p>Nor is it credible that locating such documents would be overly burdensome. Nicaragua has already conducted a search to locate the documents it voluntarily produced in response to sub-requests (b) and (c). In the process of that search it will have located documents responsive to sub-request (a) (or at least identified the archives in which such documents could be kept).</p> <p>Further, Nicaragua knows which of its officials engaged with potential investors in relation to the ION Concession over this period and it is reasonable to expect that those officials would have been briefed on the status of that concession, its geological prospects and its value before Nicaragua authorized them to engage with third parties. Those officials, including Ms Lanza and Ms Artiles who have appeared as witnesses for Nicaragua, would have access to the relevant materials or be in a position to advise Nicaragua’s attorneys where those materials can be found.</p> <p>To the extent it assists Nicaragua in identifying responsive materials, the Claimants note that they would be willing to limit their request to documents responsive to Request No. 3(a) <u>from 22 October 2013 to 30 June 2018</u>.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimants proposal to limit the scope of Request No. 3(a) to documents from 22 October 2013 to 30 June 2018 and directs Respondent to search for responsive documents within that time frame.</p> <p>The request in relation to Document No. 35 is denied on grounds of legal privilege.</p> <p>The request in relation to Document No. 36 (redacted) is denied on grounds of commercial and technical confidentiality.</p>

Document Request Number	4
Identification of documents or category of documents requested	<p>Documents reflecting the status of the three remaining oil concessions awarded by Nicaragua in 2003 (in addition to ION's), including:</p> <ol style="list-style-type: none"> a. documents related to the concession awarded to MKJ including but not limited to concession contracts, declarations of commercial discovery, extensions of the exploratory/exploitation phase and any actual or threatened termination of the concession; b. documents related to the concession awarded to Infinity including but not limited to concession contracts, declarations of commercial discovery and extensions of the exploratory/exploitation phase and any actual or threatened termination of the concession; c. documents related to the concession awarded to HGT including but not limited to concession contracts, declarations of commercial discovery and extensions of the exploratory/exploitation phase and any actual or threatened termination of the concession. <p>See: Memorial, paras 33-36, and 40; INE Resolution No. 08-2003, 11 April 2003, Exhibit C-71; Witness Statement of Michael Goyne, paras 20 and 28.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Nicaragua's treatment of the oil concessions granted by Nicaragua to MKJ, Infinity and HGT (the Other Concessionaires) (Witness Statement of Michael Goyne, para. 28; Memorial, para. 40) as part of the International Tender in 2003 (Memorial, paras 27-35). Nicaragua claims that "[o]n ION's watch, the Concession area sat neglected and abandoned for nearly four years, until the Concession Contract was finally terminated. During this time, Nicaragua lost any economically productive use of the Concession area that could have been gained if exploration activities had been performed in that area during that time" (Counter-Memorial, para 263). Despite these claims and that none of the Other Concessionaires have reportedly made declarations of commercial discoveries under Law 286, there is no public report of the termination of these concessions by Nicaragua. The requested documents are material because they will evidence that Nicaragua's treatment of the Claimants' investment was inconsistent with its treatment of the Other Concessionaires, and will show that Nicaragua acted in an disproportionate, arbitrary and unreasonable manner when it terminated the Concession Contract (Memorial, paras 276-286; Counter-Memorial paras 296-313).</p>
Documents that are not in the party's possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua's possession, custody or control. Under the terms of Law 286, these are documents that the concessionaires should have filed or executed with Nicaragua's authorities during the life of their concessions. It is also reasonable to assume that Nicaragua has in its possession, custody or control any actual or threatened termination by it of the Other Concessionaires' concessions.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua objects to Claimants' Request No. 4.</p> <p>Claimants have failed to explain why their request is relevant to the case and material to its outcome. Claimants allege that the sought documents "will evidence that Nicaragua's treatment of the Claimants' investment was inconsistent with its treatment of the Other Concessionaires." But Claimants did not make this claim in their Memorial. Indeed, although they initially raised it in their Notice of Arbitration (<i>see</i> NoA, ¶¶ 43-44), they later abandoned it. These documents are therefore irrelevant to their case and immaterial to its outcome.</p> <p>Furthermore, Claimants' request is overly-broad and open-ended amounting to a fishing expedition in contravention of Articles 3(3)(a)(i) and (ii), 3(3)(c)(i) and 9(2)(c) of the IBA Guidelines. Claimants seek all information concerning the three concessions Nicaragua granted in 2003, that is, over more than a decade ago. Thus, Claimants' request is not precisely defined and covers an extensive period of time.</p>

	<p>Claimants’ failure to identify documents with particularity also means that it would be unreasonably burdensome to require Nicaragua to examine potentially massive amounts of documents in a short period of time.</p>
<p>Reply</p>	<p>Nicaragua’s objections are disingenuous. The true purpose of Nicaragua’s objection to this request is to allow Nicaragua to avoid confirming that, as the Claimants have recorded above (i.e., “none of the Other Concessionaires have reportedly made declarations of commercial discoveries under Law 286” and “there is no public report of the termination of these concessions by Nicaragua”), none of the Other Concessionaires: (i) made a declaration of discovery; and yet (ii) Nicaragua has extended, not terminated, their concessions.</p> <p>The obvious inference, absent documents from Nicaragua justifying its different treatment of the Other Concessionaires, is that Nicaragua has no proper basis for this difference in treatment.</p> <p>First, contrary to Nicaragua’s assertion that the Claimants “abandoned [their claim]”, the Claimants have consistently alleged that Nicaragua’s purported termination of the Concession Contract violated, among other things, the guarantee of treatment in accordance with customary international law, including fair and equitable treatment. Moreover, the Claimants specifically argued in their Memorial that “Nicaragua’s Measures were specifically aimed at Claimants’ investments and Nicaragua did not take any similar action against other investors holding similar concessions” (see Memorial, para. 245), when explaining that Nicaragua’s expropriation of Claimants’ investments was not lawful because it did not meet the requirement of non-discriminatory action.</p> <p>Nicaragua’s defence to the Claimants’ allegations regarding the treatment Nicaragua has guaranteed to their investment is that it did not act arbitrarily, inconsistently or without due process and in any event its termination could not have constituted a breach of the treaty’s international standard of protection (see Counter-Memorial, paragraphs 284-325).</p> <p>Nicaragua’s defence thus put its conduct in issue. If Nicaragua only terminated the ION Concession but not the others and none of those Other Concessionaires made a discovery (and none has been announced by the Nicaraguan Government), Nicaragua must justify that different treatment. These documents are clearly relevant to whether Nicaragua’s conduct was, in fact, not arbitrary or inconsistent (as it asserts) and material to the outcome of the case.</p> <p>Second, contrary to Nicaragua’s assertion that the request seeks “all information concerning the three concessions Nicaragua granted in 2003”, the Claimants’ request is precisely defined. The request identifies specific documents in the form of “concession contracts, declarations of commercial discovery, extensions of the exploratory/exploitation phase and any actual or threatened termination of the concession”. If such documents exist, they are likely to be very few in number.</p> <p>Nor is it credible to suggest that this request would be unduly burdensome. These documents would obviously be held by MEM (as Nicaragua is well aware). It stands to reason that Nicaragua would keep an individual file for each of these concessions.</p> <p>The Claimants therefore respectfully request that the Tribunal direct Nicaragua to produce any “concession contracts, declarations of commercial discovery, extensions of the exploratory/exploitation phase and any actual or threatened termination of the concession” relating to the Other Concessionaires’ concessions or confirm that it has no such documents in its possession, custody or control.</p>
<p>Decision of the Tribunal</p>	<p>Denied for lack of relevance.</p>

Document Request Number	5
Identification of documents or category of documents requested	<p>Any policy documents, comments or advice issued by the MEM and/or MARENA, or other Nicaraguan entities and officials in relation to the 7 August 2014 draft bill to amend Law 286; in particular (but not limited to) documents reflecting the basis for President Ortega’s comment in his Message of 7 August 2014 that “<i>la experiencia en estos primeros años de impulso en el sector petrolero nos obliga a la revisión de algunas disposiciones [...] que requieren determinados ajustes a fin de armonizar los plazos de las actividades previstas en la Ley</i>”.</p> <p>See: Memorial, paras 155-159; Witness Statement of Michael Goyne, paras 121-124; President Ortega’s Message, 7 August 2014, Exhibit C-147; Law 879, 17 September 2014, Exhibit C-27.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants’ claim in their Memorial that both President Ortega’s Message on the 7 August 2014 draft bill to amend Law 286 (C-147) and the subsequent amendment of Law 286 (C-27), reveal that, in the words of President Ortega, “<i>los plazos del periodo de exploración resultan insuficientes cuando el resultado de la perforación no es un descubrimiento comercial y consecuentemente se requiere de más evaluación</i>” (C-147, pp 1-2). President Ortega’s Message and Law 286 thus evidence the arbitrariness of the timelines imposed by the MEM to evaluate the San Bartolo Block (Memorial, paras 155-159 and 162-163). Nicaragua refers to this amendment in just one paragraph of its Counter-Memorial (Counter-Memorial, para 305), where it fails to address the substance of, and policy motivations behind, President Ortega’s Message. The requested documents are material because they will reveal Nicaragua’s policy concerns, including the motivation behind Nicaragua’s amendment of the hydrocarbons’ law and will demonstrate the arbitrariness of the MEM’s termination of the Concession Contract.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. It is reasonable to assume that the MEM and MARENA, as the governmental authorities responsible for the oil and gas sector, were involved in the process of reviewing the draft bill to amend Law 286 and/or advised the President in relation to it.</p>
Objections by disputing party to production of requested documents	<p>Claimants can access documents relating to the enactment of Law 879 through the website of Nicaragua’s Parliament (<i>Asamblea Nacional de Nicaragua</i>). Nicaragua has no other responsive documents in its possession.</p>
Reply	<p>The Claimants note Nicaragua’s claim that it does not have any policy documents, comments or advice issued by the MEM and/or MARENA, or other Nicaraguan entities and officials in relation to the 7 August 2014 draft bill to amend Law 286 in its possession, custody or control. No such documents are available on the website of Nicaragua’s Parliament.</p> <p>For the avoidance of doubt, the Claimants consider it improbable that a State would have formally introduced a bill to amend the legislation regulating its oil and gas sector <i>without</i> advice, including policy advice, from the ministries responsible for administering that sector or any other State officials. This is particularly so, in view of the fact that the “documents relating to the enactment of Law 879 through the website of Nicaragua’s Parliament (<i>Asamblea Nacional de Nicaragua</i>)” refer to consultations with the Minister of Energy and Mines, Mr Rappaccioli Baltodano, the President of Petronic, Mr López, and the President of the Management Council of Nicaraguan Institute of Energy, Mr Castillo Sánchez, among others. The Claimants have not located any records of such consultations at “the website of Nicaragua’s Parliament” or elsewhere.</p>

	In the light of Nicaragua’s claim that no such documents are in its possession, custody or control, the Claimants reserve the right to seek inferences from the absence of such documents.
Decision of the Tribunal	No decision required in light of Respondent’s statement that no responsive documents are in its possession, custody or control (“PCC”).

Document Request Number	6
Identification of documents or category of documents requested	<p>Communications between the MEM and MARENA in relation to the Concession between 19 April 2013 (approval of ION’s Evaluation Program, C-23) and 22 October 2013 (the MEM’s first termination of the Concession Contract, C-25).</p> <p>See: Memorial, paras 126-132; Counter-Memorial, paras 147-151; Witness Statement of Lorenza Lanza, para 27; Letter from the MEM (Ms Lorenza Lanza) to ION, 19 April 2013, Exhibit C-23; Letter from the MEM (Ms Lorenza Lanza) to ION, 22 October 2013, Exhibit C-25.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants’ claim that ION was prevented from conducting the Evaluation Program during 2013 because it did not receive MARENA’s environmental clearance (“<i>no objeción</i>”), which MARENA advised was required on 3 July 2013 (Witness Statement of Michael David Goyne, para 96; Letter from ION (Mr Michael Goyne) to MARENA, 3 July 2013, C-119). Nicaragua argues that ION did not comply with the Evaluation Program and that the termination “<i>fue mera consecuencia de los incumplimientos de Indoklanicsa, los cuales llevaba arrastrando por más de dos años</i>” (Counter-Memorial, para 151; Witness Statement of Lorenza Lanza, para 27) disregarding the fact that MARENA had not granted ION environmental clearance. The MEM also stated that “<i>esta instancia no tuvo conocimiento de las gestiones realizadas ante MARENA en aras de obtener un nuevo Permiso Ambiental, pues de haber tenido conocimiento hubiera aclarado sobre la innecesariedad de las mismas</i>” (Letter from the MEM (Ms Lorenza Lanza) to ION, 22 October 2013, Exhibit C-25, p 2). The requested documents are material because they will confirm the accuracy of the MEM’s statements that it was unaware of the requirements that MARENA was imposing on ION in relation to the Evaluation Program and reveal the degree of coordination between the different governmental agencies in circumstances where those agencies were responsible for administering different aspects of the regulatory framework that applied to ION and its concession, as well as the Nicaraguan authorities’ general attitude towards ION throughout the life of the Concession Contract.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. As the two key governmental agencies involved with the activities of oil concessionaires in Nicaragua, it is reasonable to assume that the MEM and MARENA exchanged communications related to the Concession during this period of time, particularly in the light of MARENA’s request that ION obtain environmental clearance to perform the Evaluation Program approved by the MEM.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua does not have any responsive documents in its possession.</p>
Reply	<p>The Claimants note Nicaragua’s confirmation that it does not have responsive documents in its possession, custody or control.</p>

Decision of the Tribunal	No decision required in light of Respondent’s statement that no responsive documents are in its PCC.
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Document Request Number	7
Identification of documents or category of documents requested	<p>Documents recording the justification for the MEM’s decision to terminate the Concession Contract communicated to ION on 22 October 2013, including:</p> <ol style="list-style-type: none"> internal documents recording the decision to terminate the Concession Contract; internal documents discussing the potential termination of the Concession Contract; advice and/or briefings provided by the MEM to its Vice-Minister Ms Lanza in respect of the decision to terminate; and any responses to such advice and/or briefings. <p>See: Memorial, paras 133-135; Counter-Memorial, paras 147-151; Witness Statement of Michael Goyne, paras 103-104; Witness Statement of Lorenza Lanza, para 27.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants’ claim that ION was prevented from conducting the Evaluation Program during 2013 because it did not receive MARENA’s environmental clearance (<i>no objeción</i>), which MARENA advised was required on 3 July 2013 (Witness Statement of Michael David Goyne, para 96; Letter from ION (Mr Michael Goyne) to MARENA, 3 July 2013, C-119). Nicaragua argues that ION did not comply with the Evaluation Program and that the termination “<i>fue mera consecuencia de los incumplimientos de Indoklanicsa, los cuales llevaba arrastrando por más de dos años</i>” (Counter-Memorial, para 151, Witness Statement of Lorena Lanza, para 27) disregarding the fact that MARENA had not granted ION environmental clearance. The requested documents are material because they will show the motivations behind, and justification for, Nicaragua’s decision to terminate the Concession Contract on 22 October 2013, as well as its general attitude towards ION throughout the life of the Concession Contract.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. It is reasonable to assume that the MEM internally discussed the decision to terminate the Concession Contract and the basis for it, and that the MEM provided advice and/or briefings to its Minister in relation to the decision and any risks involved.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua has already submitted documents recording its justification for terminating the Concession Contract on 22 October 2013 and has described the reasons in its Counter-Memorial (<i>see</i> ¶¶ 140-151 of Nicaragua’s Counter-Memorial). Nicaragua agrees to provide additional responsive documents in its possession, except where documents are covered by legal privilege pursuant to Article 9(2)(b) and (3) of the IBA Guidelines or “commercial or technical confidentiality”, according to Article 9(2)(e) of the IBA Guidelines.</p>
Reply	<p>The Claimants note that Nicaragua has agreed to produce responsive documents in its possession, custody or control, subject to claims to privilege and/or confidentiality.</p>

	<p>The Claimants also note that Nicaragua has produced only one document in response to this request and that Nicaragua has not listed any responsive documents that it has withheld on the grounds of privilege or confidentiality.</p> <p>In the light of Nicaragua’s response above (which is ambiguous as to whether it is withholding documents on grounds of confidentiality and/or legal privilege), the Claimants respectfully request that the Tribunal direct Nicaragua to confirm that it is not withholding any documents responsive to this request on the basis of claims to privilege and/or confidentiality, and whether it has completed its search for responsive documents.</p>
Decision of the Tribunal	No decision required in light of Respondent’s statement that no non-confidential responsive documents are in its PCC.

Document Request Number	8
Identification of documents or category of documents requested	<p>Documents related to any advice and/or briefings provided by MEM officials, including Ms Lanza, to Minister Rappaccioli in respect of the decision to reinstate the Concession Contract on 19 December 2013.</p> <p>See: Witness Statement of Lorena Lanza, paras 26-28; MEM Resolution No 22, 19 December 2013, Exhibit C-26.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to the legal framework applicable to the Concession Contract and Nicaragua’s understanding of it. Ms Lanza indicates in her Witness Statement that “<i>en el MEM decidimos darle a la concesionaria una segunda oportunidad para que desarrollara su programa de evaluación</i>” (Witness Statement of Lorena Lanza, para 28, emphasis added). This statement indicates that Ms Lanza was involved in the decision to reinstate the Concession Contract. However, MEM Resolution No 22 (C-26) was signed solely by Minister Rappaccioli and overruled Ms Lanza’s prior decision to terminate the Concession Contract (C-25) and her subsequent rejection of ION’s request for reconsideration (C-131). The requested documents are material because they will clarify Ms Lanza’s role in the process of drafting of MEM Resolution No 22 and show the MEM’s contemporaneous interpretation of the legal framework applicable to the Concession Contract.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. Ms Lanza was at the time an official within the MEM and would have created the requested documents in the ordinary course of business.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua does not have any responsive documents in its possession.</p>
Reply	<p>The Claimants note Nicaragua’s confirmation that it does not have responsive documents in its possession, custody or control.</p>
Decision of the Tribunal	No decision required in light of Respondent’s statement that no non-confidential responsive documents are in its PCC.

Document Request Number	9
Identification of documents or category of documents requested	<p>Documents relating to Nicaragua’s prospective cancellation of the Concession Contract and/or ION’s ability to conduct exploration activities within the framework of the Concession between MEM Resolution No 22 of 19 December 2013 (C-26), and Minister Rappaccioli’s 11 September 2014 interview stating that “[ION debería] de haber perforado un pozo para noviembre y no lo han comenzado así que es imposible ya que cumplan, entonces ya esa concesión va a salir del dominio de Indoklanicsa”(C-149), including advice and/or briefings from MEM to Minister Rappaccioli.</p> <p>See: Memorial paras 160-161; Witness Statement of Michael Goyne, para 125; MEM Resolution No 22, 19 December 2013, Exhibit C-26; “Reformas a la Ley de Hidrocarburos y Tumarín ya tienen dictamen”, <i>El Nuevo Diario</i>, 11 September 2014, Exhibit C-149.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants’ allegations with respect to Minister Rappaccioli’s approach towards ION’s project between the date the Minister decided to reinstate the Concession Contract in December 2013 (C-26) to his public statements in September 2014 (C-149) as ION was close to reaching an agreement with external investor NTE. As Michael Goyne explains in his witness statement those statements “came at a critical time when we were waiting for the Government’s green light to proceed with our partnership with NTE” (Witness Statement of Michael Goyne, para 125). Nicaragua failed to address this issue in its Counter-Memorial. The requested documents are material because they will reveal Nicaragua’s motivation for terminating the Concession and how Nicaragua, through a concerted action by certain governmental officials, sought to undermine ION’s ability to attract a partner for the Concession at the same time that it was seeking to impose an unreasonable deadline for ION to advance works in the Concession.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. It is reasonable to assume that the MEM considered, and the Minister received, advice and/or briefings in relation to both the possible termination of the Concession and the status of the concession during the relevant period.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua does not have any responsive documents in its possession beyond those already on the record.</p>
Reply	<p>The Claimants note Nicaragua’s confirmation that it does not have responsive documents in its possession, custody or control.</p>
Decision of the Tribunal	<p>No decision required in light of Respondent’s statement that no non-confidential responsive documents are in its PCC.</p>

Document Request Number	10
Identification of documents or category of documents requested	<p>Any documents relating to the inspection of the ION Block by the MEM and/or MARENA between 25 February 2015 (MARENA Inspection Report of Site Visit to San Bartolo, R-0094) to 19 March 2020 (MARENA Inspection Report of Site Visit to Maderas Negras and San Bartolo I and II, R-0097), including:</p>

	<p>a. records of any decision made by the MEM and/or MARENA to inspect the ION Block;</p> <p>b. records of any decision not to inspect the Concession during that period;</p> <p>c. briefings by the MEM and/or MARENA to their respective Ministers regarding inspection of the ION Block;</p> <p>d. discussions of the inspection of the ION Block by the MEM and/or MARENA before 10 January 2020 when the Claimants filed their Memorial; and</p> <p>e. discussions of the inspection of the ION Block by the MEM and/or MARENA after the Claimants filed their Memorial on 10 January 2020 (R-0097, R-0098 and R-0099).</p> <p>See: Counter-Memorial, Section IX; Witness Statement of Petrona Gago, paras 27-29; Exhibits R-0094, R-0097, R-0098 and R-0099.</p>
<p>Relevance and materiality according to Requesting Party</p>	<p>The requested documents are relevant to assessing the motivation and basis for Nicaragua’s counterclaim for environmental damages (Counter-Memorial, Section IX). Nicaragua failed to produce any environmental reports and inspections for a period of nearly five years between 2015 (after the Concession was terminated) and 2020. MARENA only revisited the sites in March 2020 (R-0097, R-0098) after Claimants filed their Memorial and in July 2020 at the request of Counsel for Respondent (R-0099) and prior to Nicaragua’s filing of its Counter-Memorial. They are material because they will reveal whether Nicaragua had genuine concerns about, and undertook inspections of, the concession area between 2015 and 2020 and, if it did, the extent to which the reports generated as a result are consistent with the claims advanced by Nicaragua in support of its Counterclaim.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of the Claimants. Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. It is reasonable to assume that the MEM and MARENA produced reports or discussed these issues between 2015 and 2020.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>We note that documents responsive to this request are already in the record. Nicaragua agrees to provide any additional documents in its possession, provided that they are not protected by “commercial or technical confidentiality”, according to Article 9(2)(e) of the IBA Guidelines, or legal privilege under Article 9(2)(b) of the IBA Guidelines.</p>
<p>Reply</p>	<p>Nicaragua has agreed to provide responsive documents in its possession, custody or control, but has withheld one document under Article 9(2)(b) of the IBA Rules on the basis of an assertion that it (or parts of it) would be subject to legal privilege. The Claimants make the following specific comments in respect of that document.</p> <p><u>Document No. 37</u>: Nicaragua has grouped email communications together and claimed privilege over all those communications, even though the communications are said to have been authored by Ms Reyna Dania (or at least initiated by Ms Dania), who is not identified as a lawyer, and the recipients are five individuals, only two of whom are identified as lawyers.</p> <p>In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i> that: (i) lists each communication separately; (ii) identifies the role and affiliation of each individual that is an author or recipient of the relevant document(s), including whether any individual is a legal adviser; and (iii) identifies the date or date range for the communications, including email communications.</p> <p>In addition, Nicaragua has not listed any responsive documents that it has withheld on the grounds of confidentiality. In the light of Nicaragua’s response above (which is ambiguous as to whether it is withholding documents on grounds of</p>

	confidentiality), the Claimants respectfully request that the Tribunal direct Nicaragua to confirm that it is not withholding any documents responsive to this request on the basis of claims to privilege and/or confidentiality.
Decision of the Tribunal	In relation to Document No. 37, the Tribunal directs Respondent to identify each communication of the email thread separately in order to allow the assessment of the privilege asserted.

Document Request Number	11
Identification of documents or category of documents requested	<p>Documents recording the reasons for the MEM’s decision to terminate the Concession Contract (as communicated to ION on 3 December 2014), including:</p> <ol style="list-style-type: none"> a. internal documents recording the decision to terminate; b. internal documents discussing the potential termination of the Concession Contract; c. internal documents discussing the process to be followed in terminating the Concession Contract; d. advice and/or briefings provided by the MEM to its Minister in respect of the decision to terminate; e. advice and/or briefings provided by the MEM or its Minister to the Attorney-General before 3 December 2014 in relation to the decision to terminate; f. advice and/or briefings provided by the MEM to the President before 3 December 2014 in relation to the decision to terminate; and g. any responses to such advice and/or briefings. <p>See: Memorial, paras 174-180; Witness Statement of Michael Goynes, paras 137-140; Termination Letter, 3 December 2014, Exhibit C-34; Counter-Memorial, paras 185-194).</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants’ claim in their Memorial that Nicaragua’s termination of the Concession Contract on 3 December 2014 was wrongful and did not follow due process (Memorial, paras 189-197, 287-292). Nicaragua disputes this claim in its Counter-Memorial (Counter-Memorial, paras 186-187, 200-202). However, Nicaragua’s defense is contradicted, <i>inter alia</i>, by the fact that the termination letter of 3 December 2014 failed to identify any source from which the MEM could have derived its authority to terminate the Concession Contract or provide adequate justification for doing so (Memorial, para 174). The requested documents are material because they will show whether the manner in which Nicaragua purported to terminate the Concession Contract complied with due process and reveal the motivation behind Nicaragua’s termination of the Concession Contract.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. It is reasonable to assume that the MEM produced briefings or discussed the decision to terminate the Concession.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua has already submitted documents recording its justification for terminating the Concession Contract and has described the reasons in its Counter-Memorial (<i>see</i> ¶¶ Section IV of Nicaragua’s Counter-Memorial). Nicaragua agrees to provide additional responsive documents in its possession, except where documents are covered by “commercial or technical confidentiality”, according to Article 9(2)(e) of the IBA Guidelines or legal privilege, in accordance with Article 9(2)(b) of the IBA Guidelines.</p>

<p>Reply</p>	<p>The Claimants note that Nicaragua has agreed to produce responsive documents in its possession, custody or control, subject to claims to privilege and/or confidentiality.</p> <p>Nicaragua has asserted privilege in one of the documents it identified as responsive, even though the document is dated February 2015 and thus does not appear to be responsive to this request, but to Request No. 12 instead. The Claimants nevertheless make the following specific comments in respect of that assertion of privilege.</p> <p><u>Document No. 38:</u> Nicaragua has grouped email communications together and claimed privilege over all those communications, even though the communications are said to have been authored by two attorneys (Ms Luviana Bonilla and Ms Auxiliadora Casco) but include a “request for legal advice”. It is unclear why either of the two attorneys named as authors would be making a request to the three recipients (each of whom is a non-lawyer) for legal advice.</p> <p>In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i> that: (i) lists each communication separately; (ii) identifies the role and affiliation of each individual that is an author or recipient of the relevant document(s), including whether any individual is a legal adviser; and (iii) identifies the date or date range for the communications, including email communications.</p> <p>In addition, the Claimants note that Nicaragua has produced only one document in response to this request and that Nicaragua has not listed any responsive documents that it has withheld on the grounds of confidentiality.</p> <p>In the light of Nicaragua’s response above (which is ambiguous as to whether it is withholding documents on grounds of confidentiality), the Claimants respectfully request that the Tribunal direct Nicaragua to confirm that it is not withholding any documents responsive to this request on the basis of claims to confidentiality and whether it has completed its search for responsive documents.</p>
<p>Decision of the Tribunal</p>	<p>No decision required in light of Nicaragua’s agreement to provide non-confidential documents in its possession and control</p> <p>In relation to Document No. 38, the Tribunal directs Respondent to identify each communication of the email thread separately in order to allow the assessment of the asserted privilege.</p>

<p>Document Request Number</p>	<p>12</p>
<p>Identification of documents or category of documents requested</p>	<p>Documents from Nicaragua relating to the termination of the Concession Contract between 4 December 2014 (after the termination of the Concession Contract) and the issuance of Decree 191 of 28 October 2015, including:</p> <ol style="list-style-type: none"> a. communications to or from the MEM, its Minister, the Attorney-General and/or the President in relation to termination of the Concession Contract; b. internal documents of the MEM and/or the Attorney-General discussing the process to be followed in terminating the Concession Contract; c. internal documents discussing MEM’s letter of 3 December 2014;

	<p>d. the briefings, advice and/or resolutions on which Decree 191 was based; and</p> <p>e. any responses to such advice, briefings and/or resolutions.</p> <p>See: Memorial paras 189-197; Witness Statement of Michael Goynes, paras 144-148; Counter-Memorial paras 186-187, 200-202 and 213-218; Witness Statement of Verónica Artiles, para 53).</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants' claim in their Memorial that Nicaragua's termination of the Concession Contract on 3 December 2014 was wrongful and did not follow due process (Memorial, paras 189-197, 287-292). Nicaragua disputes this claim in its Counter-Memorial (Counter-Memorial, paras 186-187, 200-202) and through the witness statement of Ms Artiles, who claims that the MEM held discussions with the Attorney General regarding this process (Witness Statement of Verónica Artiles, para 53). The requested documents are material because they will show the manner in which Nicaragua purported to terminate the Concession Contract and demonstrate the extent to which Nicaragua followed due process in doing so, as well as the extent to which it was aware it lacked the legal basis for such termination.</p>
Documents that are not in the party's possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua's possession, custody or control. It is reasonable to assume that the MEM and Attorney-General produced briefings or discussed the issue of ION's termination with the Presidency after the termination letter of 3 December 2014 and prior to the issuance of Decree 191. In particular, Ms Artiles refers to the meetings between the MEM and the Attorney General during this period of time (Witness Statement of Verónica Artiles, para 53).</p>
Objections by disputing party to production of requested documents	<p>Nicaragua agrees to provide the documents requested, provided that they are not privileged, in accordance with Article 9(2)(b) of the IBA Guidelines.</p>
Reply	<p>Nicaragua has agreed to provide responsive documents in its possession, custody or control, but has withheld nine documents on the grounds of legal privilege under Article 9(2)(b) of the IBA Rules and asserted that it would also be entitled to withhold one of those documents due to "commercial or technical confidentiality" under Article 9(2)(e) of the IBA Rules. Nicaragua's justification for those claims is set out in <i>Annex II – Nicaragua's Log for Withheld and Redacted Documents</i>. The Claimants make the following comments in respect of these documents.</p> <p><u>Document No 39</u>: Nicaragua has withheld this letter of 6 May 2015 from Nicaragua's Minister of Energy and Mines, Mr Salvador Mansell, to Nicaragua's Attorney General, Mr Hernán Estrada, because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.</p> <p>In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised <i>Annex II – Nicaragua's Log for Withheld and Redacted Documents</i> that: (i) confirms that the attachment to the letter is the "Internal Memorandum from MEM, 28 April 2015" listed as Document No. 40 in <i>Annex II</i> or, if it is a different document, separately lists that document in the privilege log; (iii) identifies the "litigation and/or administrative proceedings" that were said to be ongoing at the time of this request, including the parties to those proceedings; and (iv) confirms that no response was received from the Attorney General to this request for legal advice since none has been listed in the privilege log.</p> <p><u>Document No. 40</u>: Nicaragua has withheld this internal MEM memorandum of 28 April 2015 because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.</p>

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that: (i) identifies the individuals within MEM who authored the memorandum, including, for each individual author, whether the individual is a legal adviser, and identifies the recipient(s); and (ii) given that, on Nicaragua's own account, the document "contains work product", confirm that the entire document is privileged and the privileged sections cannot therefore be redacted.

Document No. 41: Nicaragua has withheld this letter of 6 May 2015 from Nicaragua's Minister of Energy and Mines, Mr Salvador Mansell, to Nicaragua's Attorney General, Mr Hernán Estrada, because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules. In addition, Nicaragua asserts that the document "is also covered by the technical and commercial confidentiality exception because it records information on other oil concessions unrelated to ION or Claimants".

In order for the Claimants to properly assess the legal privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that: (i) identifies the "litigation and/or administrative proceedings" that were said to be ongoing at the time of this request, including the parties to those proceedings; and (ii) confirms that no response was received from the PGR to this request for legal advice since none has been listed in the privilege log.

Moreover, on Nicaragua's own account, the document appears to contain non-privileged material that has been withheld on the grounds of confidentiality. It is unclear why sensitive information about other concessions, presumably those held by the Other Concessionaires, is discussed in a document that "records work product prepared by counsel for MEM offering legal advice in relation to the ION Concession Contract".

Nicaragua does not provide a clear explanation for the "commercial or technical confidentiality" it asserts (and that the Claimants must rely on to assess Nicaragua's claim), let alone a basis for the Tribunal to determine that Nicaragua has discharged its burden of establishing "compelling" grounds of "commercial or technical confidentiality". Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

The Claimants repeat their arguments under (a) in respect of Request No. 1 above.

Document No. 42: Nicaragua has withheld these minutes of a meeting of 20 October 2015 between representatives of the MEM and the Attorney General's Office, because they allegedly fall under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that (i) identifies the "litigation and/or administrative proceedings" that were said to be ongoing at the time of this request, including the parties to those proceedings, and (ii) given that, on Nicaragua's own account, the document includes

both the conclusions reached in the meeting as well as legal advice provided by the Attorney General's Office, confirm that the entire document is privileged and the privileged sections cannot therefore be redacted.

Document 43: Nicaragua has withheld an internal MEM memorandum titled "Resumen: Contratista: Indoklanicsa" of 30 June 2015, because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that: (i) identifies the individuals within MEM who authored the memorandum, including, for each individual author, whether the individual is a legal adviser, and identifies the recipient(s)—it is plainly insufficient to simply assert that the "letter contains work product" prepared by an unidentified "legal counsel to MEM"; and (ii) given that, on Nicaragua's own account, the document "contains work product" and the apparent discrepancy between its description as a "Internal Memorandum of MEM" and a "letter", confirm that the entire document is privileged and the privileged sections cannot therefore be redacted.

The Claimants further note that Nicaragua has already produced another internal MEM memorandum titled "Resumen contratista: Indoklanicsa", dated 21 October 2015, without making any redactions nor claiming any legal privilege or confidentiality over that document.

Documents No. 44 and 45: Nicaragua has grouped email communications together and claimed privilege over all those communications. In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that: (i) lists each communication separately; (ii) identifies the date or date range for the communications, including email communications; and (iii) identifies the "litigation and/or administrative proceedings" that were said to be ongoing at the time of this request, including the parties to those proceedings.

Document No. 46: Nicaragua has withheld this internal MEM memorandum of 2015 because it allegedly falls under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules.

In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold a responsive document on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II – Nicaragua's Log for Withheld and Redacted Documents* that: (i) identifies the individuals within MEM who authored the memorandum, including, for each individual author, whether the individual is a legal adviser, and identifies the recipient(s); and (ii) given that, on Nicaragua's own account, the document "contains work product", confirm that the entire document is privileged and the privileged sections cannot therefore be redacted.

Document No. 48: Nicaragua has grouped email communications together and claimed privilege over all those communications. In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua's request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised *Annex II –*

	<i>Nicaragua's Log for Withheld and Redacted Documents</i> that: (i) lists each communication separately; (ii) identifies the date or date range for the communications, including email communications; and (iii) identifies the "litigation and/or administrative proceedings" that were said to be ongoing at the time of this request, including the parties to those proceedings.
Decision of the Tribunal	<p>The requests in relation to Documents No. 39, 40, 42, 43, 46 are denied on grounds of legal privilege.</p> <p>The request in relation to Document No. 41 is denied on grounds of legal privilege and commercial or technical confidentiality.</p> <p>With respect to Documents No. 44 and 45, the Tribunal directs Respondent to identify each communication of the email thread separately in order to allow the assessment of the legal privilege asserted by Respondent.</p>

Document Request Number	13
Identification of documents or category of documents requested	<p>Documents related to the process followed by the Attorney General to terminate the Concession Contract after the issuance of Presidential Decree 191, including but not limited to:</p> <ol style="list-style-type: none"> a. communications to or from the MEM, its Minister, the Attorney-General and/or the President in relation to termination of the Concession Contract from 28 October 2015 (after the issuance of Decree 191) and the Attorney-General's Termination Decision of 24 May 2016, including any briefings, advice and/or resolutions on which the 24 May 2016 Termination Decision was based and any responses to such advice, briefings and/or resolutions. b. the complete file of the "<i>Proceso de Terminación del Contrato de Concesión Petrolera</i>" (Decree 191, 28 October 2015, C-45; Letter from the Attorney General (Mr Hernán Estrada Santamaría) to ION, 10 November 2015, C-47, Termination Decision, 24 May 2016, C-55). <p>See: Memorial paras 189-197; Witness Statement of Michael Goyne, paras 144-148; Counter-Memorial paras 186-187, 200-202 and 213-218; Witness Statement of Verónica Artiles, para 53.</p>
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant to Claimants claim in their Memorial that Nicaragua's termination of the Concession Contract on 3 December 2014 was wrongful and did not follow due process (Memorial, paras 189-197, 287-292). Nicaragua disputes this claim in its Counter-Memorial (Counter-Memorial, paras 186-187, 200-202) and through the witness statement of Ms Artiles, who states that the MEM held discussions with the Attorney General regarding this allegedly lawful proceeding (Witness Statement of Verónica Artiles, para 53). The requested documents are material because they will demonstrate the extent to which the procedure followed by Nicaragua to terminate the Concession Contract was lawful and in good faith.</p>
Documents that are not in the party's possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua's possession, custody or control. The requested documents would have been necessary for the Attorney General's office to produce the <i>Proceso de Terminación del Contrato de Concesión Petrolera</i> referred to in Exhibits C-45, C-47 and C-55. In particular, Ms Artiles refers to the meetings between the MEM and the Attorney General during this period of time (Witness Statement of Verónica Artiles, para 53).</p>

<p>Objections by disputing party to production of requested documents</p>	<p>Nicaragua agrees to provide the documents requested, provided that they are not privileged, in accordance with Article 9(2)(b) of the IBA Guidelines.</p>
<p>Reply</p>	<p>Nicaragua has agreed to provide responsive documents in its possession, custody or control, but has asserted that it is entitled to withhold five documents on the grounds of legal privilege under Article 9(2)(b) of the IBA Rules and has partially redacted a sixth document both on the basis of legal privilege and “commercial or technical confidentiality” under Article 9(2)(e) of the IBA Rules. Nicaragua’s justification for those claims is set out in <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i>. The Claimants make the following comments in respect of these documents.</p> <p><u>Documents No. 47, 49, 50, 51 and 52</u>: Nicaragua has grouped email communications together and claimed privilege over all those communications, even though at least one of the communications (Document No. 52) is said to have been authored by Mr Jose Francisco López (or at least initiated by Mr López), who is Petronic’s president and is not identified as a lawyer.</p> <p>In order for the Claimants to properly assess the privilege asserted (or, if the Claimants reject such assertion, the Tribunal to rule on Nicaragua’s request to withhold responsive documents on this basis), the Claimants respectfully request that the Tribunal direct Nicaragua, within such timeframe as the Tribunal may specify, to provide a revised <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i> that: (i) lists each communication separately; (ii) identifies the role and affiliation of each individual that is an author or recipient of the relevant document(s), including whether any individual is a legal adviser; (iii) identifies the date or date range for the communications, including email communications.</p> <p><u>Document No. 53</u>: Nicaragua has redacted an undated file of the Attorney General’s Office on ION’s Concession Contract, because parts of it allegedly fall under the legal privilege exclusion under Article 9(2)(b) of the IBA Rules, <u>and</u> other parts supposedly contain “technical and commercial details of third parties’ operations” which allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.</p> <p>The Claimants repeat their arguments under (a) in respect of Request No. 1 above.</p> <p>The Claimants do not object to Nicaragua’s redaction of pages 92 to 94 (of the PDF document). However, Nicaragua has redacted: (i) the first twelve pages of the file; (ii) the MEM’s assessment of Norwood’s application to be granted contractor status; and (iii) parts of the minutes of a meeting between representatives of the MEM and representatives of ION, including Claimants Michael David Goyne and Emily López Goyne.</p> <p>It is self-evident that redactions (ii) and (iii) do not fall within the scope of Articles 9(2)(b) or 9(2)(e) of the IBA Rules. Redaction (ii) refers to a document prepared by three people who are not identified as lawyers, and which contains information submitted by ION’s subcontractor Norwood. Redaction (iii) reflects a discussion that involved ION’s representatives, some of whom are Claimants in this case.</p> <p>As regards redaction (i), Nicaragua has not specified the basis upon which it redacted this portion of the document. Based on a review of the unredacted material, the file appears to be in chronological order. The document shown by the file on page 13 (i.e. the document that followed the document/s reflected in the first twelve pages) is ION’s Concession Contract of 2004. Therefore, the redacted document/s on the first twelve pages are likely to predate 2004 and would therefore be more than 15 years old. It is very unlikely that such documents fall “under the ‘commercial or technical</p>

	<p>confidentiality’ exclusion” as they would have lost any sensitivity they could have once had due to the passage of time.</p> <p>The Claimants therefore respectfully request that the Tribunal direct Nicaragua to produce a new version of the document without redactions (ii) and (iii).</p> <p>The Claimants also respectfully request that, in respect of redaction (i), the Tribunal direct Nicaragua to provide a description of the document(s) redacted, including date(s), the author(s) and/or recipient(s), as well as a clear explanation of the reasons why Nicaragua asserts that the redactions are justified (including, where it has been redacted on the basis of a claim that it is confidential, why the confidentiality concern could not be addressed by the Tribunal taking appropriate steps to protect the confidential material).</p>
Decision of the Tribunal	<p>The request in relation to Document No. 48 is denied on grounds of legal privilege.</p> <p>The request in relation to Document No. 53 is denied on grounds of both legal privilege and commercial and technical confidentiality.</p> <p>With respect to Documents 47, 49, 50, 51 and 52, the Tribunal directs Respondent to identify each communication of the email thread separately in order to allow the assessment of the legal privilege asserted by Respondent.</p>

Document Request Number	14
Identification of documents or category of documents requested	<p>Documents related to MARENA’s control and audit of the Concession:</p> <ol style="list-style-type: none"> “<i>Términos de referencia</i>” for the closure of the San Bartolo Well (Witness Statement of Petrona Gago, para 10; Letter from MARENA (Mr. Norman Henríquez) to Norwood, 29 April 2010, R-0022; MEM and MARENA Inspection Report of San Bartolo, 8 July 2010, R-0025, p 8) communication from MARENA to Norwood dated 21 July 2010 (Witness Statement of Petrona Gago, para 11; MARENA Inspection Report of Site Visit to San Bartolo, 3 February 2012 R-0044).
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant and material, as they have been referred by Ms Gago in her witness statement and in exhibits filed by Nicaragua, but Nicaragua has failed to exhibit them:</p> <ol style="list-style-type: none"> Ms Gago refers to this document in her Witness Statement, which is an attachment to Exhibit R-0022 that Nicaragua failed to exhibit. Ms Gago and Exhibit R-0044 refer to this document, which Nicaragua failed to exhibit.
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of the Claimants. The Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. The requested documents were produced by governmental entities and are expressly referred to by Ms Gago in her witness statement and in Exhibits R-0022 and R-0044, both of which are official governmental documents.</p>
Objections by disputing party to production of requested documents	<p>Nicaragua agrees to provide the documents requested, provided that they are not covered by “commercial or technical confidentiality”. As explained above, pursuant to Article 9(2)(e) of the IBA Guidelines, the Tribunal may exclude documents on grounds of commercial or technical confidentiality.</p> <p>Nicaragua also withholds all documentation covered by legal privilege, in accordance with Article 9(2)(b) of the IBA Guidelines.</p>

Reply	<p>The Claimants note that Nicaragua has agreed to produce responsive documents in its possession, custody or control, subject to claims to privilege and/or confidentiality.</p> <p>Nicaragua has not listed any responsive documents that it has withheld on the grounds of privilege or confidentiality.</p> <p>In the light of Nicaragua’s response above (which is ambiguous as to whether it is withholding documents on grounds of confidentiality and/or legal privilege), the Claimants respectfully request that the Tribunal direct Nicaragua to confirm that it is not withholding any documents responsive to this request on the basis of claims to privilege and/or confidentiality.</p>
Decision of the Tribunal	No decision required in light of Nicaragua’s agreement to provide non-confidential responsive documents in its possession and control.

Document Request Number	15
Identification of documents or category of documents requested	<p>Documents referred to in the Counter-Memorial and/or its supporting Witness Statements and/or contemporaneous evidence that Nicaragua has not exhibited:</p> <ol style="list-style-type: none"> a. Communications related to the MEM’s efforts to secure the perforation of a new well after the Concession Contract was reinstated in December 2013, as referred in the witness statement of Lorena Lanza, paras 29-30; b. “<i>Informe PME INDOKLANICSA</i>”, 5 September 2014, cited in Decree 191 (C-45); c. Internal correspondence related to the letters sent by Michael Goyne on 30 July 2014 (R-0084), 31 July 2014 (C-145) and 28 August 2014 (C-148) (Counter-Memorial, paras 174-177); d. Independent reservoir engineering report from RPS Group (R-0024, p 42; R-0021, p. 32).
Relevance and materiality according to Requesting Party	<ol style="list-style-type: none"> a. Ms Lanza claims that the MEM “<i>trabajaron para asegurar que Indoklanicsa comenzara la perforación en cuanto antes</i>” and that “<i>la concesionaria no pudo proporcionar al MEM la información básica sobre la perforación, como, por ejemplo, información sobre su operador de perforación, aunque el MEM insistiera reiteradamente en la necesidad de que la concesionaria presentara dicha información</i>”. Nicaragua has failed to provide any letters or communications relating to that alleged effort. The requested documents will therefore be relevant and material to assess the good faith of Ms Lanza’s claim that the MEM was supporting ION’s efforts to advance the perforation works. b. This document is cited in Decree 191 as supporting evidence for the termination. However, Nicaragua has not produced copies of this document; the requested document is relevant and material to assess the basis on which Decree 191 was enacted. c. Nicaragua refers to Michael Goyne’s several letters to the MEM in relation to his efforts to obtain financial support for the Concession, which went unanswered by the MEM (R-84, C-145, C-148). The requested documents are relevant and material to the reasons for the MEM’s refusal to respond to Mr Goyne’s letter at a time when ION’s was actively seeking to secure financial support for the Concession. d. During the first quarter of 2013, Davis produced an asset report, in order to estimate the productive capacity and revenue-making potential of ION’s discovery (C-21 bis). Nicaragua attempts to discredit the viability of the ION Block in its Counter-Memorial (paras 57-71) as well as in Ms Artiles’ Witness Statement (para 6) and Ryder Scott’s Expert Report (para 13).

	<p>However, Exhibit R-0024 relies upon this document which suggests “<i>that fracture stimulation of the Brito Resource Play could result in commercial production rates</i>” (p 42). This document is relevant and material to assess the value of the Concession and determine the damages suffered by the Claimants.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of the Claimants. Claimants have reason to believe the requested documents exist and are in Nicaragua’s possession, custody or control. The requested documents are all issued or cited by Nicaragua and its representatives. In particular,</p> <ol style="list-style-type: none"> a. Ms Lanza refers to these “efforts” in her witness statement and it is reasonable to assume that the MEM documented them in some form during its ordinary course of business; b. This document is expressly cited in Decree 191 (C-45); c. It is reasonable to assume that the MEM considered Mr Goynes letters, discussed their contents (whether a response was or not required) and decided that it would not respond to them. d. Mr Phipps assisted in the preparation of the presentation filed as R-0024 and it is reasonable to assume that he reviewed the documentation cited therein and is in possession of a copy of the RPS Group Report.
<p>Objections by disputing party to production of requested documents</p>	<p>Nicaragua agrees to produce responsive documents not already on the record.</p> <p>In particular, we note that Nicaragua has already produced documents responsive to sub-paragraph (a) and (c) with its Counter-Memorial.</p>
<p>Reply</p>	<p>The Claimants note that Nicaragua has agreed to produce responsive documents in its possession, custody or control.</p> <p>Nicaragua also claims that documents in their possession, custody or control were produced with its Counter-Memorial for the following categories: (a) communications related to the MEM’s efforts to secure the perforation of a new well after the Concession Contract was reinstated in December 2013; and (c) internal correspondence related to the letters sent by Michael Goynes on 30 July 2014, 31 July 2014 and 28 August 2014.</p> <p>But Nicaragua has not produced any responsive documents with respect to sub-request (a), and, with respect to sub-request (c), Nicaragua has produced a single email from Ms Verónica Artiles to Ms Lorena Lanza, but it has not produced any other “internal correspondence related to the letters sent by Michael Goynes on 30 July 2014 (R-0084), 31 July 2014 (C-145) and 28 August 2014 (C-148)”. The absence of any further responsive documents is surprising given the subject-matter of these sub-requests.</p> <p>In the light of Nicaragua’s claim that no further documents are in its possession, custody or control, the Claimants respectfully request that the Tribunal direct Nicaragua to confirm that it has no additional responsive documents in its possession, custody or control.</p> <p>In addition, the Claimants respectfully request that the Tribunal direct Nicaragua to confirm whether additional RPS Group reports are in its possession, custody or control (or of Mr Phipps’), because the document titled “RPS Energy Report” of 5 February 2009 produced by Nicaragua does not appear to be the basis for the assertion “<i>that fracture stimulation of the Brito Resource Play could result in commercial production rates</i>” (R-0024, p 42).</p>
<p>Decision of the Tribunal</p>	<p>No decision required in light of Nicaragua’s agreement to provide non-confidential responsive documents in its possession and control.</p>

Document Request Number	16
Identification of documents or category of documents requested	<p>Documents including but not limited to case law and authorities on Law 286 providing support for and/or explanation for the following assertions by Ms Rizo:</p> <ol style="list-style-type: none"> a. Ms Rizo asserts that “<i>La declaración de comercialidad de un descubrimiento no depende de una suposición o afirmación al arbitrio del Contratista</i>” (Expert Report of Ms Rizo, para 25). Claimants have alleged that article 42(a) of Law 286 recognized the concessionaire’s discretion to make a declaration of discovery (Memorial, para 103). b. Ms Rizo states that “<i>Interpretar la Ley y el Contrato de Concesión en el sentido de que el Programa de Evaluación no tendría un plazo para su ejecución es insostenible, ya que esta interpretación llevaría a entender que la duración del Programa quedaría a total arbitrio del Contratista.</i>” (Expert Report of Ms Rizo, para 31). Claimants have asserted that article 42(d) established a 180-day period to declare commerciality once the evaluation has been completed, but not for the performance of the actual evaluation program (Memorial, para 48, 138-139 and 177; ION Appeal, 26 November 2013, C-132, p 6; Letter from ION (Mr Modesto Barrios) to the MEM, 19 January 2015, C-35, p 3); c. Ms Rizo states that “<i>El Contrato de Concesión, Artículo Trigésimo Segundo, y la Ley No. 286, en su artículo 70 b), establecen claramente que, en el caso de que al ‘término de la fase de exploración, sin que el contratista haya hecho declaración de descubrimiento comercial y no esté vigente un periodo de retención’ procede la terminación del Contrato sin requisito previo [...] Verificado un incumplimiento conforme el Artículo 70 de la Ley No. 286, el Contrato de Concesión termina sin más trámite, sin que quepa la posibilidad de subsanación de tal incumplimiento</i> (Expert Report of Ms Rizo, para. 39). Claimants have asserted that since the exploration phase had ended two years before the MEM issued its Termination Letter, any purported termination by the MEM should follow the procedure set out in article 29 of the Concession Contract (that ION had invoked), which expressly prevented the MEM from terminating the Contract unilaterally (Memorial, para. 176). d. Ms Rizo states that “[a]unque la Ley No. 286 no establece un procedimiento especial para formalizar una terminación de un contrato de concesión derivado de las causales establecidas en el artículo 70 de la Ley No. 286, en el derecho nicaragüense se aplica el principio propio del ámbito de las ciencias jurídicas, que reza: “<i>En Derecho, así como las cosas se hacen, así se deshacen</i>” (Expert Report of Ms Rizo, para 41). Claimants have alleged that Law 286 does not allow the MEM to modify (let alone terminate) a concession contract without an authorization from the President (Memorial, para 174) based on Article 24 of Law 286 (C-1).
Relevance and materiality according to Requesting Party	<p>The requested documents are relevant and material to establishing the legal framework applicable to the Concession under Nicaraguan law and thus, to show the illegality of Nicaragua’s termination of the Concession Contract. Ms Rizo failed to exhibit any documents supporting the abovementioned statements. The Claimants request Ms Rizo to produce supporting documents to enable the Claimants to analyze and clarify Ms Rizo’s conclusions. Further, pursuant to the IBA Rules “documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>
Documents that are in the party’s possession	<p>Nicaragua’s expert, Ms Rizo, must disclose these documents pursuant to the IBA Rules, which provide that an expert report shall contain “his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>

Objections by disputing party to production of requested documents	In her report, Ms. Rizo cites to legal provisions supporting each of the statements raised in the present document request. Nicaragua agrees to submit any additional legal sources that Ms. Rizo relied upon for the statements in question.
Reply	The Claimants note that Nicaragua has agreed to produce the additional legal sources that Ms Rizo relied upon for the statements in question.
Decision of the Tribunal	No decision required in light of Nicaragua’s agreement to submit the requested documents.

Document Request Number	17
Identification of documents or category of documents requested	<p>Documents cited by or providing support for the following assertions contained in the Expert Report of Ryder Scott:</p> <ol style="list-style-type: none"> a. Complete copy of the independent expert opinion on the oil and gas exploration potential of the Pacific coast blocks, including the area of the ION Block, prepared by Ryder Scott as required by Nicaragua prior to the engagement of Ryder Scott in this arbitration (Expert Report of Ryder Scott, para 6); b. Complete copies of the Drill Stem Test performed by Expro, Schlumberger, RPS, and Welltest Engineering (Expert Report of Ryder Scott, Appendix C, pp 55-56); c. Access to the specific software required to analyze the well logs, core data, seismic data and drill stem test data (Expert Report of Ryder Scott para 17, footnote 8. Claimants acknowledge that Ryder Scott offered to make this information available if requested); d. Documents evidencing that <i>“a single successful well is seldom enough to show a play to be commercially feasible”</i> (Expert Report of Ryder Scott, para 16). Ryder Scott must have relied on external sources to reach that conclusion, but has not exhibited any such documents; e. Documents showing the threshold of what constitutes <i>“significant quantities of hydrocarbons”</i>. Ryder Scott makes several statements regarding the lack of significant quantities of hydrocarbons in the ION Block: <i>“In our view, the San Bartolo well did not result in a discovery because the data available does not show significant quantities of potentially recoverable hydrocarbons.”</i> (Expert Report of Ryder Scott para 61, emphasis added); <i>“In the context of determining the feasibility of developing a project such as this concession, 91,000 barrels would not be considered a significant quantity.”</i> (Expert Report of Ryder Scott para 62, emphasis added); <i>“the potentially recoverable volumes estimated by Davis (with or without the Zone Not Tested) do not qualify as “significant” in a country with no oil production and no infrastructure. Sproule’s assignment of 160 acres and Davis’ assignment of 80 acres are the spacing areas for a single well. In a wildcat exploratory project, these areas are not significant.”</i> (Expert Report of Ryder Scott para 66, emphasis added). However, Ryder Scott failed to exhibit any external sources establishing or evidencing the parameters it used to reach such conclusions; f. Documents evidencing that <i>“The Sandino Basin is not equivalent to those basins that have historically attracted exploration investment”</i> (Expert Report of Ryder Scott para 88); Ryder Scott states that it has reviewed documents to reach that conclusion, but has not exhibited any such documents; g. Ryder Scott alleges that <i>“[t]he methodology [applied by RAA] to derive the 26.25 percent [chance of geologic discovery] itself is incorrect with respect</i>

	<p><i>to industry best practices.</i>” (Expert Report of Ryder Scott para 106). Ryder Scott must have reviewed documents related to the industry’s best practices to reach that conclusion, but has failed to exhibit such documents and does not identify them when making that assertion;</p> <ul style="list-style-type: none"> h. Documents providing support for and/or explanation to Ryder Scott’s conclusion that the wells of the ION Block have a 10 percent chance of geological discovery (Expert Report of Ryder Scott para 108); i. Documents providing support for and/or explanation for the use of “<i>a conservative 1.5 cost adjustment multiplier due to the lack of infrastructure</i>” (Expert Report of Ryder Scott para 111); j. Ryder Scott estimates that an Authorization for Expenditure in Nicaragua “<i>would be approximately \$1.2 million to drill a simple conventional vertical well and \$300,000 to frac a single zone</i>” (Expert Report of Ryder Scott para 115). However, Ryder Scott cites a document that only provides information for the United States in 2016 (RS-0022), failing to exhibit any documents applicable to Nicaragua at the time of Termination of the Concession Contract; k. Ryder Scott estimates the costs of recompletion for forecasting production on “<i>approximately \$150,000 for the recompletion and \$300,000 for the frac operation for Zone 7, for a total recompletion cost of \$450,000 per well</i>” (Expert Report of Ryder Scott para 117). However, Ryder Scott failed to exhibit documents establishing or evidencing the parameters it used to reach such conclusions; l. Documents providing support for and/or explanation to Ryder Scott’s application of a 10 percent dry hole factor to the Concession (Expert Report of Ryder Scott para 118).
<p>Relevance and materiality according to Requesting Party</p>	<p>The requested documents are relevant and material to the valuation of the Claimants’ damages. Ryder Scott failed to exhibit the documents discussed in points (a) and (b) above. The Claimants acknowledge that Ryder Scott offered to produce the documents in (c) and accepts that offer. Ryder Scott also failed to exhibit any documents supporting the statements from point (d) to (l) above. The Claimants request Ryder Scott to produce the supporting documents to enable the Claimants to analyze and assess Ryder Scott’s conclusions. Further, pursuant to the IBA Rules, “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>
<p>Documents that are in the party’s possession</p>	<p>Nicaragua’s expert, Ryder Scott must disclose these documents pursuant to the IBA Rules, which provide that an expert report shall contain “his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>
<p>Objections by disputing party to production of requested documents</p>	<p>With respect to request (a), any references in the Report prepared for MEM to “Pacific” blocks, coast or region are inclusive of <u>onshore and offshore areas</u>. Given that this arbitration relates specifically to the ION Block, the portions of the Report that do not relate to said blocks have been redacted to preserve the commercial confidentiality of this information.</p> <p>In relation to request (b), Nicaragua will provide the Drill Stem Tests performed by Expro and Schlumberger. As regards Well Test Engineering and RPS, this information is set out in other sources. For instance, Ryder Scott used the San Bartolo -1 DST data that was attributed to RPS in EastSiberian’s “Nicaragua Onshore Oil Exploration History” investor presentation. This presentation includes the log-log diagnostic plots and summaries of interpreted skin factor as well as permeability data.</p> <p>As regards the interpretations by Well Test Engineering, Ryder Scott relied on the skin factor and permeability results presented in the Expro Report titled “Final Report DST SB1X and SB1X-2 2010”. The log-log plot, interpreted parameters such as permeability and skin factor, are set out in the “Nicaragua Onshore Oil Exploration History” presentation mentioned above.</p>

With respect to (c), following clarification from opposing counsel concerning the materials requested, Nicaragua undertakes to provide access to the data referenced by Ryder Scott in footnote 8 rather than the “specific software required to analyze” that data.

Regarding Claimants’ request (d), Ryder Scott based its opinion on its professional experience and knowledge of the region, as well as standard industry practice. Several sources confirm the rather self-evident fact that one or more appraisal or confirmation wells are needed to provide additional data to establish that a play can be commercially feasible.

This general understanding is evidenced in the supporting documentation referenced by Ryder Scott. For example, the publication, “Risk Analysis and Management of Petroleum Exploration Ventures” by Peter R. Rose (**RS-0015**), which reflects widely accepted industry standards, supports this conclusion at pages 17-18 and 38-40. This uncontroversial proposition is further reflected in other sources describing the appraisal process as involving “drilling multiple wells to assess the size of the oil or gas discovery and whether it is [a] commercially viable system.” (See <https://www.westernsaharaoil.com/current-operations/project-lifecycle> and <https://www.stabroeknews.com/2018/04/29/sunday/guyana-and-the-wider-world/the-petroleum-project-life-cycle/>). Given the poor results of drilling to date in the ION blocks, it is unlikely that any investor would fund the infrastructure development based on a single well with non-commercial rates.

With respect to (e), Ryder Scott based this opinion on its professional experience and knowledge of the region, as well as standard industry practice and PRMS resource definitions (RS-0023). As to the latter, section 2.1.1.1A of the 2018 PRMS states that “*significant*” implies that there is evidence of a sufficient quantity of petroleum to justify estimating the in-place quantity demonstrated by the well(s) and for evaluating the potential for commercial recovery. It is evident by the amount of potentially recoverable hydrocarbons that were encountered in the San Bartolo well that there was no discovery.

Indeed, Ryder Scott agreed with Sproule’s report, (**C-0015**), which considered the volumes of oil to be “discovered unrecoverable”, indicating zero potentially recoverable hydrocarbons. Sproule’s determination of zero recoverable hydrocarbons clearly indicates the absence of significant quantities of potentially recoverable hydrocarbons.

Regarding (f), Ryder Scott based its opinion on its professional experience and knowledge of the region. At paragraph 99, Ryder Scott simply explains that RAA’s chance of geologic discovery (Pg) of 26.25% assumes the ION Concession is comparable to more established basins with a track record of success. Given the history of the exploratory efforts in the Sandino Basin, this comparison cannot be seriously made by any potential investor in the ION Concession area. In any event, Nicaragua has produced a “fact sheet” describing the World Petroleum Resources Projects, which is a multi-year project by the United States Geological Survey that identifies the world’s most promising hydrocarbon prospects. The second page of this document shows the basins included in this study for evaluation. Unsurprisingly, the Sandino Basin is not among the areas considered for inclusion.

With respect to (g), Claimants appear to have misunderstood Ryder Scott’s opinion. Ryder Scott does not dispute the methodology used by RAA to calculate the “Pg”. Rather, they disagree with the methodology used to estimate the risk associated with specific variables. As Ryder Scott explained in their expert report at paragraph 97: “The assumptions used by RAA to estimate Pg were inappropriate in the context of what was known regarding the Sandino Basin”. These inappropriate assumptions are discussed in detail at paragraphs 101 through 105 of the report. Furthermore, Ryder Scott’s conclusion is supported by Chapter 6 of Rose (**RS-0015**).

	<p>Regarding (h), Ryder Scott based its opinion on its professional experience, knowledge of the region, and independent investigation of seismic and well data associated with the ION Concession. Ryder Scott explains how it arrived at the more realistic chance of geologic discovery in section 7.5.2 of their Expert Report of 25 August 2020. Moreover, this opinion is supported by their findings in respect of the exploration potential for the Pacific Coast blocks performed for MEM (see Request 17a). Particularly, Ryder Scott did not attribute any prospective resources or chance of geologic discovery to the area covered by seismic data in the concession.</p> <p>In relation to (i), Ryder Scott based its opinion on its professional worldwide experience and knowledge of the region as well as standard industry practice. A cost adjustment to drill in Nicaragua of 1.5 is very reasonable for anyone who understands the risks and challenges of drilling wells in a country where there is no infrastructure. This is reflected, for example, in the article “<i>Financing Oil and Gas Projects in Developing Countries</i>”, which provides references to the commercial and political risks associated with drilling in a country that is developing with little or no infrastructure for oil and gas development. This risk necessarily implies additional costs.</p> <p>With respect to (j), given the early development stage of the oil and gas industry in Nicaragua, Ryder Scott is not aware of any other applicable data from Nicaragua at the purported valuation date. No other wells were drilled in Nicaragua apart from the ION Concession. Using United States cost data as a reference is, in fact, a conservative assumption since these costs are much lower given that equipment, services, trained personnel and parts are accessible without having to import them.</p> <p>With regard to (k), these additional costs are extrapolated from data from the US Energy Information Administration’s typical recompletions and fracs (https://www.eia.gov/analysis/studies/drilling/pdf/upstream.pdf). Based on the information from the US Energy Information Administration and on the basis of our experience and knowledge, these costs are conservative.</p> <p>Regarding (l), Ryder Scott based its opinion on its professional experience and knowledge of the region as well as the project’s exploratory track record. The use of a 10 percent dry hole percent factor was a very conservative representation of the high likelihood that if there were to be a success case for development, there would undoubtedly be some dry holes as the field is appraised and delineated. To date, the dry hole percentage has been 100% (3 out of 3 wells have been dry). Ryder Scott’s chance of geologic discovery (Pg) is 10 percent, meaning that the chance of a dry hole is 90 percent. The appraisal of a field with the geological characteristics of the San Bartolo area (notably – poor reservoir quality, weak hydrocarbon charge, ineffective fault traps) will inevitably result in dry holes, and this needs to be considered in any full-field development scenario.</p>
Reply	<p>Nicaragua has: (i) produced documents responsive to sub-requests 17(a), 17(b), 17(c), 17(d), 17(f), 17(h), 17(i) and 17(k); (ii) redacted the document responsive to sub-request 17(a) on grounds of “commercial or technical confidentiality”; and (iii) withheld a document responsive to sub-request 17(h) on the same basis. Nicaragua has also provided explanations in response to sub-requests 17(b), 17(d), 17(e), 17(f), 17(g), 17(h), 17(i), 17(j), 17(k) and 17(l).</p> <p>As to (ii) and (iii), Nicaragua’s justification for withholding a document on the grounds of “commercial or technical confidentiality”, and partially redacting a second document on the same basis, is set out in <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i>.</p> <p>The Claimants make the following comments in respect of these documents.</p> <p><u>Document No. 54:</u> The Claimants respectfully request that the Tribunal direct Nicaragua to produce an unredacted version of this document. Nicaragua has not</p>

established any grounds of commercial or technical confidentiality, let alone any compelling grounds of such confidentiality as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.

Nicaragua purportedly redacted this report, which was prepared on 4 June 2020 by Ryder Scott, because it “includes information regarding offshore blocks which do not relate to this arbitration”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.

Nicaragua’s redaction of the document makes it impossible for the Claimants to assess Nicaragua’s confidentiality assertion. For example, Nicaragua has entirely redacted the first two pages of the report. This material would likely include important context for assessing Nicaragua’s assertion, including, for instance, a table of contents and a table of figures (see, for example, Ryder Scott’s report submitted in the present case). There can be no basis for withholding this type of generalized information about the structure of the document.

Based on a review of the unredacted portions of the report, it is clear that Nicaragua is using its assertions of “commercial and technical confidentiality” to exclude material discussing the potential and existing resources at the San Bartolo Block.

First, Nicaragua has left several passages containing information about its offshore blocks unredacted (see for example, at pages 13, 18 and 22 of the PDF document). It would not have done this if it were truly concerned about the confidentiality of that information.

Second, the extent of Nicaragua’s redactions confirms that it is likely to have redacted information concerning the San Bartolo Block. Nicaragua has redacted approximately 80 per cent of the 46-page report. However, in the few unredacted sections, the San Bartolo Block is clearly the focus of the report. For example, the section on petrophysical analysis includes five pages discussing the San Bartolo Block, and only a short paragraph stating that “Very little petrophysical information is available for the offshore wells”. It is simply not credible that 80 per cent of a document focused on the San Bartolo Block deals exclusively with offshore blocks.

Third, the unredacted portions of the report provide a basis for inferring that Nicaragua has sought to withhold material regarding the San Bartolo Block because that material harms its position in this arbitration. The report confirms that the San Bartolo Block included some of the most promising “EOAs” identified by Ryder Scott: “The EOAs identified by Ryder Scott are concentrated in blocks PTC-32, PTC-33 and PT-03” (see page 9 of the PDF document).

Even though the San Bartolo Block covered a substantial part of blocks PTC-33 and PT-03, Nicaragua has completely redacted the tables at the beginning of the report discussing those EOAs. For example, while Ryder Scott explains in an unredacted paragraph at page 4 of the PDF document that “Figure 1b is a map showing the locations of the EOAs in Table 1” and that “[t]he polygons in red are mature EOAs for which Ryder Scott has prepared Prospective Resource and Pg estimates”, whereas “[t]he polygons in blue are immature EOAs that are of interest, but they are not associated with prospective resource estimates and Pg”, Nicaragua redacted all of Figure 1b rather than only redacting the parts covering the offshore blocks it claims to be concerned about.

Fourth, Ryder Scott itself acknowledges that part of its mandate in the June 2020 report was to “provide an independent expert opinion on the oil and gas exploration potential of the Pacific coast blocks, including the area specific to this dispute” (Ryder Scott Report, para 6). It follows that the redacted tables and figures at the beginning of the June 2020 report in which Ryder Scott discusses the potential of all

	<p>the areas it analyzed must discuss and describe “the exploration potential of the [...] area specific to this dispute”.</p> <p>Nicaragua’s assertion of confidentiality is further undermined because its expert Ryder Scott has submitted a report in this arbitration that specifically relies on redacted parts of its June 2020 report. For example, in paragraph 97 of the report submitted in this arbitration, Ryder Scott states that “[i]n 2020, Ryder Scott performed an assessment of exploration potential in the basin” and compares the exploration potential of the “onshore area around the San Bartolo well” to other areas as per the findings in its June 2020 report.</p> <p>Nicaragua retained Ryder Scott for two simultaneous mandates: to provide an “independent expert opinion on the oil and gas exploration potential of the Pacific coast blocks” and to prepare the report it submitted in this arbitration. Nicaragua cannot allow Ryder Scott to rely on findings from the June 2020 report in the report it has submitted in this arbitration and then seek to withhold the relevant parts of the June 2020 report on grounds of confidentiality.</p> <p>The Claimants repeat their arguments under (a) in respect of Request No. 1 above.</p> <p><u>Document No. 55</u>: Claimants respectfully request that the Tribunal direct Nicaragua to produce this document. Nicaragua has not established any grounds of commercial or technical confidentiality, let alone compelling grounds as required by Article 9(2)(e) of the IBA Rules. Nor has Nicaragua explained why any confidentiality concern could not be addressed through arrangements to protect any confidential information in the document under Article 9(4) of the IBA Rules.</p> <p>Nicaragua withheld this “list of the 26 potential onshore fault blocks” produced by Ryder Scott in 2020, because it supposedly includes “a list of 26 potential onshore fault block traps mapped by Ryder Scott in 2020 as part of work on the exploration potential of western Nicaragua”, and this allegedly makes it fall “under the ‘commercial or technical confidentiality’ exclusion”.</p> <p>Nicaragua does not claim (as it has sought to do with several other documents) that this document is unrelated to ION, the Claimants or the ION Concession. It is therefore reasonable to assume that this list includes fault block traps related to the ION Block and/or the San Bartolo Block. The Claimants note that Nicaragua has voluntarily produced several documents showing geological studies over the onshore Pacific area, without claiming any confidentiality. Further, as explained above, Nicaragua only purportedly redacted “information regarding offshore blocks” in Document No. 54. This evidences that Nicaragua does not actually deem information about the onshore blocks to be confidential and merit exclusion on that basis.</p> <p>In any event, the Claimants would not object to Nicaragua redacting the potential onshore fault block traps that are not related to the ION Block.</p>
Decision of the Tribunal	With respect to Documents No. 54 and 55, the Tribunal directs Respondent to remove the redactions relating to the ION Block and/or the San Bartolo Block.

Document Request Number	19
Identification of documents or category of	Documents cited by or providing support for the assertions contained in the Expert Report of Ramboll:

<p>documents requested</p>	<ol style="list-style-type: none"> a. Copy of the 20-minute video that was prepared by MARENA and provided to Ramboll which showed certain conditions at San Bartolo I, Maderas Negras, and Santa Rita (Expert Report of Ramboll, para 9); b. The inspection report dated 25 February 2013 (Expert Report of Ramboll, para 28, second bullet); c. Documents evidencing the “Unit costs” used by Ramboll for similar remediation and restoration work being conducted at other petroleum exploration and extraction sites in Latin America (Expert Report of Ramboll, para 48, third bullet and Appendix B); d. Documents providing support for and/or explanation for the “<i>assumed removal thickness across the sites of 0.5 meters and disturbed areas such as land farm cells, pits or other features to a depth of 1 meter</i>” (Expert Report of Ramboll, para 48, fourth bullet and Appendix B); e. Documents providing support for and/or explanation for the standard 5 percent established for General construction items (mobilization, demobilization, site preparation and control measures), delineation of impacted areas (soil sampling), and permitting and engineering (design, construction, etc.) and for the 20 percent assumed for contingencies (Expert Report of Ramboll, para 48, fifth bullet and Appendix B); f. Documents providing support for and/or explanation for the periods estimated for the annual ecosystem service losses (Expert Report of Ramboll, para 60); g. Copies of the reports reviewed by Ramboll indicating that INDOKLANICSA did not return soils at the four sites to pre-existing, natural conditions.” (Expert Report of Ramboll, para 22); h. Ramboll asserts that the bioremediation efforts of Norwood between September 2010 to April 2011 seemed effective as the concentrations of hydrocarbons proved to be below the applicable standards. However, it also states that “<i>the potential for residual materials within the cells to contain petroleum hydrocarbon fractions still above applicable standards cannot be discounted.</i>” (Expert Report of Ramboll, para 26, second bullet). Ramboll must have reviewed external sources to reach that conclusion, but has failed to exhibit any such documents; i. Ramboll asserts that “<i>a six-month bioremediation period is unusually short for treating soils of this nature</i>” when discussing Norwood’s remediation efforts” (Expert Report of Ramboll, para 27). Ramboll must have reviewed documents to support that conclusion, but has failed to exhibit any such documents; j. Ramboll states that based on the information reviewed, it assumes that “<i>the average reduction in ecosystem services due to premature site abandonment and incomplete restoration is 80% for all sites</i>”. However, Ramboll does not provide any evidence of the sources on which it relied to reach such assumption (Expert Report of Ramboll, para 60).
<p>Relevance and materiality according to Requesting Party</p>	<p>The requested documents are relevant and material to determining the valuation of Nicaragua’s counterclaim. Ramboll failed to exhibit the documents discussed in points (a) and (b) above. Ramboll also failed to exhibit any documents supporting the abovementioned statements (c) to (j). The Claimants request Ramboll to produce the supporting documents so that the Claimants can analyze Ramboll’s conclusions. Further, pursuant to the IBA Rules “Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>
<p>Documents that are in the party’s possession</p>	<p>Nicaragua’s expert, Ramboll must disclose these documents pursuant to the IBA Rules, which provide that an expert report shall contain “his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided.” (IBA Rules, Art 5(2)(e)).</p>
<p>Objections by disputing party to production</p>	<p>Nicaragua agrees to produce documents responsive to this request to the extent such documents are not already in the record.</p>

of requested documents	<p>Further answering, Nicaragua states that to the extent the assertions contained in subsections (c), (d), (e), (f), (h), (i), and (j) are based on Ramboll’s expertise and professional experience and experience, Nicaragua will only produce documents Ramboll referenced and/or relied upon while drafting their expert report, to the extent such documents exist.</p> <p>Nicaragua is unable to provide documents “evidencing the ‘Unit costs’ used by Ramboll for similar remediation and restoration work being conducted at other petroleum exploration and extraction sites in Latin America” in response to subsection (c) because such documents are confidential and not publicly available by order of the tribunals who governed the arbitral proceedings in such matters.</p>
Reply	<p>Nicaragua has agreed to produce documents responsive to this request.</p> <p>However, Nicaragua has asserted that it is entitled to withhold one document because it “was prepared by the expert in confidential, unrelated arbitration proceedings”. Nicaragua’s justification for those claims is set out in <i>Annex II – Nicaragua’s Log for Withheld and Redacted Documents</i>.</p> <p>The consequence of Nicaragua’s assertion of confidentiality is that Ramboll relied on a document that is not publicly available to estimate the Unit Costs that it applied in its report. The inability to access that material severely restricts the Claimants’ (and the Tribunal’s) ability to evaluate that aspect of the Expert Report of Ramboll. The Claimants will address the implications of Nicaragua’s position in due course.</p> <p>Nicaragua also states that, for sub-requests (c), (d), (e), (f), (h), (i) and (j), “Nicaragua will only produce documents Ramboll referenced and/or relied upon while drafting their expert report, to the extent such documents exist”.</p> <p>The Claimants therefore respectfully request that the Tribunal direct Nicaragua to confirm for any of those sub-requests with respect to which Nicaragua did not produce any documents, that Ramboll did not rely upon any documents.</p>
Decision of the Tribunal	<p>The request in relation to Document No. 56 is denied in order to protect the confidentiality of unrelated arbitration proceedings.</p>

Annex B

Decision on the Respondent's Document Requests

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

THE LOPEZ-GOYNE FAMILY TRUST AND OTHERS,

Claimants,

v.

THE REPUBLIC OF NICARAGUA,

Respondent.

ICSID CASE NO. ARB/17/44

REQUEST TO PRODUCE OF THE REPUBLIC OF NICARAGUA

16 September 2020

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REQUEST TO PRODUCE OF THE REPUBLIC OF NICARAGUA

1. In accordance with Procedural Order No. 1 as amended on 26 June 2020 (“PO No. 1”), the Republic of Nicaragua (“Nicaragua”) hereby submits this request for the production of documents by the Lopez-Goyne Family Trust, the Goyne Family Trust, the Bochnowski Family Trust, the Barish Family Trust of 2008, Hills Exploration Corporation, LG Hawaii Oil & Gas, Inc., LG Hawaii Development Corporation, Michael David Goyne, Emily Lopez Goyne, David Michael Goyne, Esther Valentina Goyne, James John Bochnowski, Janet A. Bochnowski, David A. Barish, Gale Ruth Feuer Barish, James Douglas Goyne, Raymond Gerald Bailey, Anita Mejarito-Guzman Ross, Elsbeth Irene Foster, Scott Stuart Shogreen, Eloisa Lopez Shogreen, Harold Orris Shattuck, Diane Elizabeth Radu and Walter John Bilger (“Claimants”).

2. As provided for in Section 16.2 of PO No. 1, below Nicaragua identifies its document requests in the Redfern/Stern Schedule and provides (i) a description of each requested document or document category, (ii) a statement as to why each request is relevant to the case and material to its outcome, (iii) a statement that each document or document category requested is not in the possession, custody or control of Nicaragua; and (iv) the reasons why Nicaragua assumes that the document or document category requested is in possession, custody, or control of Claimants. Below, Nicaragua also provides a list of definitions and interpretations, which informs its request for the production of documents.

3. Nicaragua reserve its right to make any additional document request in the future in accordance with Section 16.8 of PO No. 1.

A. Definitions and Interpretations

4. Defined terms in this request shall have the meaning given to them in Nicaragua’s Counter-Memorial of 26 August 2020. The following definitions likewise apply to Nicaragua’s Redfern/Stern Schedule:

- a) “and” and “or” shall be construed conjunctively and disjunctively as necessary to make the requests inclusive rather than exclusive.
- b) “any” and “all” mean “all”.
- c) “CM” means Nicaragua’s Counter-Memorial of 26 August 2020.
- d) “CLM” means Claimants’ Memorial of 10 January 2020.
- e) “Goyne WS” means the Witness Statement of Michael David Goyne of 10 January 2020.
- f) Reference to ION or any company shall be considered to also include its employees, directors, officers and agents.
- g) “Communication(s)” and “communication(s)” means letters, memoranda, e-mails and facsimiles, including any attachments.
- h) “Internal communications” means any communication (including letters, memoranda, e-mails, and facsimiles, including attachments) exchanged between ION (as described in (e)) and any Claimant, among any Claimants, and among ION’s employees, directors, officers and agents.

- i) “Document(s)” and “document(s)” means any writing, communication (including letters, memoranda, e-mails, and facsimiles), report (including daily, monthly, trimestral and quarterly drilling reports), notes, meeting minutes, transcripts, talking points, speech, agreement (and annexes thereto), contract, financial statement, accounting record, proposal, pictures or photographs, diagram, drawing, chart, program, or data of any kind, whether recorded or maintained on paper or other hard copy or by any electronic, audio, visual, mechanical, or any other means of storing or recording information.
- j) “include” and “including” means “including but not limited to”.
- k) Any reference to one or more of the words “address,” “refer to,” “pertain to,” “reflect,” “concern,” “constitute,” “discuss,” “evidence,” “demonstrate,” “comprise,” “contain,” or any like word shall be deemed to incorporate all such words and, accordingly, be construed inclusively.
- l) Use of the singular includes the plural, and vice-versa.

B. Additional Remarks

5. Each document request seeks production of documents in their entirety, without abbreviation, expurgation or redaction, and together with any attachments, enclosures and annexes.

6. These document requests are continuing. Claimants shall produce any additional responsive documents that come to their attention or come into their possession, custody or control after the date of the initial production.

7. To the extent that documents responsive to any request are located and withheld by Claimants on account of any alleged privilege or for any other reason, Claimants are asked to provide together with their response a description of the responsive document (including its date, author and its recipient) and the reason for withholding that document from production. Similarly, to the extent Claimants redact any document, they are requested to provide full reasons for doing so. Nicaragua reserves its rights in connection with both eventualities.

8. In accordance with Section 16.6 of PO No. 1, Nicaragua suggests that Claimants produce the requested documents through the file sharing platform Box. Furthermore, Nicaragua invites Claimants to submit the requested documents:

- a) electronically, in PDF format if the original document is a hard copy, or, where the document was originally in electronic format, in the original format, without removing or altering any metadata; and
- b) organized in a way that allows Nicaragua to clearly identify to which of Nicaragua’s requests enumerated in the Redfern/Stern schedule Claimants’ produced documents respond to.

The Lopez-Goyne Family Trust and others v. Republic of Nicaragua (ICSID Case No. ARB/17/44)
Request to Produce of the Republic of Nicaragua

Document Request Number	1
Identification of documents or category of documents requested	Any and all shareholder agreements concluded between any Claimants and ION.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention.
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their shareholding in ION.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, Nicaragua has failed to establish the relevance of the requested documents to the case or that they are material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules on the Taking of Evidence in International Arbitration 2010 (the <i>IBA Rules</i>). Nicaragua simply asserts, without explanation, that any and all shareholder agreements concluded between a Claimant and ION must be relevant to the issues in dispute and material to its outcome because they relate to whether the Claimants made an investment under Article 25(1) of the ICSID Convention. This is an inadequate basis for seeking disclosure. Nicaragua has made no attempt to explain how a shareholder agreement would determine whether one or more Claimants made an investment for the purposes of Article 25(1) of the ICSID Convention.</p> <p>Second, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. In the present case, the Claimants have already provided sufficient information to demonstrate that they made an investment for the purposes of Article 25(1) of the ICSID Convention, including by proving that they own shares in ION by the inscription of the Claimants in ION's shareholders' registry in accordance with Articles 37 and 232 of the Nicaraguan Commercial Code (<i>see e.g. Exhibit C-62</i>). In any event, "[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears</p>

	<p>the burden of proof” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p>
Reply	<p>Nicaragua opposes Claimants’ objections to its Request No. 1.</p> <p>First, the Request seeks relevant and material documents. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (<i>see</i> CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (<i>see id.</i>, ¶¶ 234-238, 240-241).</p> <p>Shareholder agreements between Claimants and ION are relevant and material to determining whether each Claimant invested in ION. A shareholder agreement may evidence that a Claimant holds shares of ION and may evidence how much money a Claimant paid for those shares. Conversely, the lack of such an agreement or the nonpayment or underpayment for shares may evidence that a Claimant never invested in ION (<i>see Quiborax S.A. v. Plurinational State of Bolivia</i>, ICSID Case No. ARB/06/2, Decision on Jurisdiction (27 Sept. 2012) (Kaufmann-Kohler, Lalonde, Stern), ¶¶ 232-233; <i>KT Asia Investment Group B.V. v. Republic of Kazakhstan</i>, ICSID Case No. ARB/09/8, Award (17 Oct. 2013) (Kaufmann-Kohler, Glick, Thomas), ¶¶ 204-206). Thus, the requested documents have the potential to shed light on the extent to which Claimants have invested in ION, and consequently have standing in the present arbitration, which are critical issues in dispute between the Parties.</p> <p>Second, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce documents relevant and material to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-239).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof

Document Request Number	2
Identification of documents or category of documents requested	Any and all trust documents or communications concerning the establishment, organization, administration and functioning of (i) the Lopez-Goyne Family Trust; (ii) the Goyne Family Trust; (iii) the Bochnowski Family Trust; (iv) the Barish Family Trust of 2008 (“Trust Claimants”).
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention and to ensure that any Trust Claimant held equity in ION as part of the Trust Claimant’s property.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their shareholding in ION.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking all documents or communications regarding a range of activities in respect of trusts that have existed for a combined period of over 60 years (<i>see Exhibits C-63.A, C-63.B, C-63.C, C-63.D, C-63 bis.A and C-63 bis.D</i>). Even on the scant basis offered by Nicaragua as a justification for this request, it is clear that it would not be entitled to production of “Any and all trust documents concerning the establishment, organization, administration and functioning” of each of these trusts.</p> <p>Second, the request is unduly burdensome. It would require each of the named trusts to search for and locate all documents covering a range of activities for periods of up to 29 years (<i>see e.g. Exhibits C-63.C and C-63 bis.D</i>). The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has made no attempt to explain how documents concerning the establishment, organization, administration and functioning of each of the named trusts would determine whether one or more of those trusts made an investment for the purposes of Article 25(1) of the ICSID Convention. Nicaragua simply asserts, without explanation, that documents concerning the establishment, organization, administration and functioning of the Lopez-Goyne Family Trust; the Goyne Family Trust;</p>

	<p>the Bochnowski Family Trust; and the Barish Family Trust of 2008 are relevant to the issues in dispute and material to its outcome because they relate to whether: (i) the Claimants made an investment under Article 25(1) of the ICSID Convention; and (ii) any of those Claimants held equity in ION as part of their trust property. This is an inadequate basis for seeking disclosure. It is telling that Nicaragua has not requested equivalent documents pertaining to the corporations holding shares in ION. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, as explained above, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that they made an investment for the purposes of Article 25(1) of the ICSID Convention, including by proving that they own shares in ION by the inscription of the Claimants in ION’s shareholders’ registry in accordance with Articles 37 and 232 of the Nicaraguan Commercial Code (<i>see e.g. Exhibit C-62</i>). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para 20).</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 2.</p> <p>First, the Request is not overbroad. The Request identifies the four Trust Claimants and asks for documents dealing with the establishment, organization, and administration of these trusts. As explained in greater depth below, these documents are necessary because each Trust Claimant must prove that they hold shares of ION and that they invested in ION. Moreover, trustees are required by law to keep trust records and an accounting of the trust, so the documents from each trust should be readily available (<i>see, e.g.,</i> Uniform Trust Code § 813 (adopted by numerous states of the United States); California Probate Code § 16062 (Barish Family Trust executed in California); Hawaii Revised Statutes § 560:7-303 (Goyme Family Trust modification executed in Hawaii)).</p> <p>Second, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of four Claimants’ records to respond to the Request. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information relevant to the claims of multiple Claimants cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield themselves from having to search for and produce documents responsive to Respondent’s Request.</p> <p>By the same token, Claimants have not explained how many documents each Trust Claimant may have that would be responsive to the Request or how it would be burdensome for each Claimant to locate documents that, as described above, should already be readily available. The fact that there may be documents created over a limited number of years should not be a reason for Claimants to avoid their obligations to produce. If there are particular, good faith reasons (<i>e.g.,</i> document retention policies, loss of files) that make it difficult for a particular Trust Claimant to undertake a reasonable search for documents, Nicaragua is open to discussing such issues on a case-by-case basis. In an effort to alleviate Claimants’ burden, Nicaragua is willing to reduce the scope of its Request to documents of the four Trust Claimants sufficient to show the establishment of each Trust Claimant, the continued existence of each Trust Claimant, and any and all documents related to each Trust Claimant’s holding of shares of ION or involvement with ION.</p> <p>Third, the Request seeks relevant and material information. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (<i>see CM, ¶¶ 219-264</i>). Because Claimants submitted</p>

	<p>their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (<i>see id.</i>, ¶¶ 234-238, 240-241). The Trust Claimants have not produced documents showing that they hold shares in ION, much less that they made an investment in ION. This Request seeks information that would help the Tribunal determine whether each Trust Claimant holds shares in ION and whether each Trust Claimant invested in ION. Since each Trust Claimant must prove that they invested in ION, the Request seeks information that is relevant and material.</p> <p>Fourth, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-239).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	3
Identification of documents or category of documents requested	Any and all documents showing any purchase of equity in ION by any Claimant.
Relevance and materiality	This request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention.

according to Requesting Party	
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to Claimants' and ION's shareholding relationship.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that documents showing any purchase of equity in ION by any Claimant are relevant to the issues in dispute and material to its outcome because they relate to whether the Claimants made an investment under Article 25(1) of the ICSID Convention. Nicaragua has made no attempt to explain how documents showing that a Claimant purchased equity would determine whether that Claimant has made an investment for the purposes of Article 25(1) of the ICSID Convention, given that, as explained below, Claimants have already submitted ION's shareholders' registry evidencing any such acquisitions (Exhibit C-62). This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Second, as explained above, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that they made an investment for the purposes of Article 25(1) of the ICSID Convention, including by proving that they own shares in ION by the inscription of the Claimants in ION's shareholders' registry in accordance with Articles 37 and 232 of the Nicaraguan Commercial Code (see e.g. Exhibit C-62). In any event, "[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof." (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20)</p>
Reply	<p>Nicaragua opposes Claimants' objections to its Request No. 3.</p> <p>First, the Request seeks relevant and material documents. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (<i>see</i> CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (<i>see id.</i>, ¶¶ 234-238, 240-241).</p> <p>A purchase of equity in ION is relevant and material to determining whether each Claimant invested in ION because the purchase reveals money being provided to ION. Conversely, the lack of documents evidencing a purchase of equity in ION or the lack of payment or underpayment for equity of ION may evidence that a Claimant never invested in ION (<i>see Quiborax S.A. v. Plurinational State of Bolivia</i>, ICSID Case No. ARB/06/2, Decision on Jurisdiction (27 Sept. 2012) (Kaufmann-Kohler, Lalonde, Stern), ¶¶ 232-233; <i>KT Asia</i></p>

	<p><i>Investment Group B.V. v. Republic of Kazakhstan</i>, ICSID Case No. ARB/09/8, Award (17 Oct. 2013) (Kaufmann-Kohler, Glick, Thomas), ¶¶ 204-206).</p> <p>Second, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-239).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	4
Identification of documents or category of documents requested	Any and all documents and/or communications recording any Claimant’s financial contribution to ION or to exploration activities, including, but not limited to, payment of administrative, operating and exploration-related expenses under the ION Concession Contract.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention.

<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to Claimants' and ION's shareholding relationship.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request. The Claimants nevertheless produce documents reflecting their contributions to ION and/or to exploration activities between 2011 (when Norwood went bankrupt) and 2014 (when Nicaragua terminated the ION Concession Contract), without prejudice to their objections below.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking all documents or communications regarding contributions by any Claimant during a period of over fifteen years. Even on the scant basis offered by Nicaragua as a justification for this request, it is clear that it would not be entitled to production of "Any and all documents and/or communications recording any Claimant's financial contribution to ION or to exploration activities".</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants and/or ION to search for and locate all documents during a period of over fifteen years. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that "all documents and/or communications recording any Claimant's financial contribution to ION or to exploration activities, including, but not limited to, payment of administrative, operating and exploration-related expenses under the ION Concession Contract" are relevant to the issues in dispute and material to its outcome because they relate to whether the Claimants made an investment under Article 25(1) of the ICSID Convention. But Nicaragua has made no attempt to explain how the requested documents would determine whether that Claimant has made an investment for the purposes of Article 25(1) of the ICSID Convention. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) as recorded in the subcontractor agreements between ION and Norwood (Exhibits C-4 and R-0003), Norwood agreed to pay all moneys necessary to carry out exploration activities under the ION Concession Contract; and (iii) in accordance with the subcontractor agreements, Norwood made contributions on behalf of ION (<i>see e.g. Exhibits C-1</i> (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and CLEX-14). In any event, "[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof" (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p>
<p>Reply</p>	<p>Claimants produced documents responsive to this request. If Claimants have produced all documents responsive to this request, then they have complied with the request.</p>

If Claimants have not produced all documents responsive to this request, they must do so. Nicaragua opposes Claimants' objections to its Request No. 4.

First, the Request is not overbroad. It asks for a specific category of materials: documents or communications recording Claimants' financial contributions to ION or to the Concession Contract. As explained in greater depth below, such materials are necessary for Claimants to establish the Tribunal's jurisdiction.

Second, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants' records to respond to the Request. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information relevant to the claims of multiple Claimants cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION's behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Nicaragua's Request.

By the same token, it is not unduly burdensome for each Claimant to search for documents covering the time period in which they may have invested in ION or in exploration activities in Nicaragua. For each Claimant, such a time period will be different and likely not nearly as long as Claimants assert. If there are particular, good faith reasons (*e.g.*, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for documents, Nicaragua is open to discussing such issues on a case-by-case basis.

Third, the Request seeks relevant and material information. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (*see* CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (*see id.*, ¶¶ 234-238, 240-241).

A financial contribution to ION or to exploration of hydrocarbons in the Concession Area is relevant and material to determining whether each Claimant made an investment under Article 25(1). A contribution of resources to the alleged investment is the most basic element of an investment under Article 25(1) (*see* CM, ¶¶ 235-249). If Claimants object to providing documents showing that they contributed to the alleged investment, then they should concede that the Tribunal lacks jurisdiction over the arbitration. Otherwise, they should produce all documents showing financial contributions to ION or to the exploration of hydrocarbons in the Concession Area.

Fourth, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal's jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua's assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.

Moreover, Claimants are incorrect that they have "provided sufficient information" to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants' only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (*see* CM, ¶¶ 235-239).

	<p>Furthermore, Claimants' references to the Concession Contract (C-3), Hydrocarbon Law (C-1) and Decree (C-67), the subcontractor agreements between ION and Norwood (C-4 and R-3), as well as Norwood financial statements (C-79, C-95, CLEX-14), reports (C-81) and press releases (C-90, C-97) are not proof of ION's investment in the project. Instead, those exhibits reveal Norwood's investment activities in the project. Claimants cannot piggyback on the investment expenditures and development efforts of an independent non-party to these proceedings (<i>see</i> CM, ¶¶ 240-256).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	5
Identification of documents or category of documents requested	Any and all documents showing a contribution of resources by ION to the exploration of hydrocarbons in the Concession area.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention.
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to Claimants' and ION's shareholding relationship. Furthermore, they relate to operational aspects of the ION Concession Contract and ION was the Concession's operator from 2011 to 2014.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request. The Claimants nevertheless produce documents reflecting ION's contributions of resources to the ION Concession between 2011 (when Norwood went bankrupt) and 2014 (when Nicaragua terminated the ION Concession Contract), without prejudice to their objections below.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking "all documents showing a contribution</p>

	<p>of resources by ION to the exploration of hydrocarbons in the Concession area” without any attempt to identify the specific documents (or narrow class of documents) sought or to limit the requested documents to a particular period of time.</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants and/or ION to search for and locate all documents during a period of over fifteen years. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that “all documents showing a contribution of resources by ION to the exploration of hydrocarbons in the Concession area” are relevant to the issues in dispute and material to its outcome because they relate to whether the Claimants made an investment under Article 25(1) of the ICSID Convention. But Nicaragua has made no attempt to explain how the requested documents would determine whether that Claimant has made an investment for the purposes of Article 25(1) of the ICSID Convention. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) as recorded in the subcontractor agreements between ION and Norwood (Exhibits C-4 and R-0003), Norwood agreed to pay all moneys necessary to carry out exploration activities under the ION Concession Contract; and (iii) in accordance with the subcontractor agreements, Norwood made contributions on behalf of ION (<i>see e.g. Exhibits C-1</i> (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and CLEX-14). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p> <p>Fifth, many of the requested documents are in Nicaragua’s possession, custody or control. Nicaragua has possession of all of the reports filed by ION and Norwood regarding their activities in the ION Concession from 2004 to 2014. In addition, as evidenced by the documents submitted by Nicaragua with its Counter-Memorial (<i>see e.g. Exhibits R-0003, R-0007, R-0024</i>), Nicaragua has access to Norwood’s archives through its witnesses Graeme Phipps and James Charuk, including documents from the period in which Norwood financed and implemented operations in the ION Concession on behalf of ION.</p>
<p>Reply</p>	<p>Claimants have produced documents responsive to this request. If Claimants produced all documents responsive to this request, then they have complied with the request.</p> <p>If Claimants have not produced all documents responsive to this request, they must do so. Nicaragua opposes Claimants’ objections to its Request No. 5.</p>

First, the Request is not overbroad. It asks for a specific category of materials: documents showing a contribution of resources by ION to the exploration of hydrocarbons in the Concession Area. As explained in greater depth below, such materials are necessary for Claimants to establish the Tribunal’s jurisdiction.

Second, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ or ION’s records to respond to the Request. That is a non-sequitur. To the extent a Claimant’s records need to be searched to respond to this Request, each individual Claimant would only have to undertake a search of its own records. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Nicaragua’s Request. In any event, the Request asks for documents showing a contribution of resources by ION, so it is unclear why Claimants believe they will have to search each of their own records, as opposed to the records of ION.

By the same token, it is not unduly burdensome for each Claimant to search for documents covering the time period in which ION may have invested in the exploration of hydrocarbons in the Concession Area. Claimants brought this arbitration to recover for their alleged investments during this specific time period. If there are particular, good faith reasons (*e.g.*, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for documents, Nicaragua is open to discussing such issues on a case-by-case basis.

Third, the Request seeks relevant and material documents. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (*see* CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (*see id.*, ¶¶ 234-238, 240-241).

A contribution of resources by ION to exploration of hydrocarbons in the Concession Area therefore is relevant and material to determining whether each Claimant made an investment under Article 25(1). A contribution of resources to the alleged investment is the most basic element of an investment under Article 25(1) (*see* CM, ¶¶ 235-249). If Claimants object to providing documents showing that they contributed to the alleged investment, then they should concede that the Tribunal lacks jurisdiction over the arbitration. Otherwise, they should produce all documents showing financial contributions to ION or to the exploration of hydrocarbons in the Concession Area.

Fourth, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.

Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (*see* CM, ¶¶ 235-239). Furthermore, Claimants’ references to the Concession Contract (C-3), Hydrocarbon Law (C-1) and Decree (C-67), the subcontractor

	<p>agreements between ION and Norwood (C-4 and R-3), as well as Norwood financial statements (C-79, C-95, CLEX-14), reports (C-81) and press releases (C-90, C-97) are not proof of ION’s investment in the project. Instead, those exhibits reveal Norwood’s investment activities in the project. Claimants cannot piggyback on the investment expenditures and development efforts of an independent non-party to these proceedings (<i>see</i> CM, ¶¶ 240-256).</p> <p>Fifth, Nicaragua does not have in its possession, custody, or control documents showing a contribution of resources by ION to the exploration of hydrocarbons in the Concession Area. Moreover, Claimants incorrectly assert that Nicaragua has access to these documents through its witnesses, Graeme Phipps and James Charuk. Mr. Phipps was a board director of Norwood who stepped down ten years ago. Mr. Charuk was an employee who left the company twelve years ago. Consequently, their records relating to Norwood are not complete. More importantly, Nicaragua is seeking documents of ION and/or the Claimants, not Norwood. Thus, these documents cannot reasonably be expected to be in the possession, custody, or control of Mr. Phipps and Mr. Charuk.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	6
Identification of documents or category of documents requested	Any and all communications between ION and Norwood from 2004 through 2010 concerning the operations of the ION Concession Contract, including, but not limited to, the outcome of Norwood’s exploration works and the required funding to finance the exploratory campaign under the Concession Contract.
Relevance and materiality according to Requesting Party	<p>In their Memorial, Claimants portray ION’s involvement in the exploratory works as substantial (<i>see, e.g.,</i> CLM, ¶ 67: “ION commissioned geochemical, geological and seismic studies in the ION Block, including geological reconnaissance campaigns to determine the general features and characteristics of rock masses and mineral resources [...] in the area and the layout and execution of 2D seismic line campaigns”; CLM, ¶ 68: “ION started the construction of the San Bartolo [...] and Las Mesas [...] drilling locations.”</p> <p>Consequently, this request is relevant and material in determining Claimants’ and/or ION’s level of involvement in and their financial commitment to the ION Concession as well as their technical and financial capability to develop and operate the Concession Contract. The request is thus also relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention and in assessing Claimants’ and its expert Compass Lexecon’s sunk costs calculations.</p>

<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to the Concession's operations and in their Memorial Claimants assert that ION was involved in the technical and financial aspects of the ION Concession Contract from 2004 to 2011.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking "<u>all communications between ION and Norwood from 2004 through 2010 concerning the operations of the ION Concession Contract</u>, including, but not limited to, the outcome of Norwood's exploration works and the required funding to finance the exploratory campaign under the Concession Contract". The underlined words do not seek to identify specific documents (or a narrow class of documents). As Nicaragua's own justification for this request makes clear, they are able to identify the documents they are seeking with greater specificity.</p> <p>Second, the request is unduly burdensome. It would require Claimants to search for and locate every single communication between ION and Norwood in their possession, custody or control from a period of over six years that started sixteen years ago. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, "that this request is relevant and material in determining Claimants' and/or ION's level of involvement in and their financial commitment to the ION Concession as well as their technical and financial capability to develop and operate the Concession Contract", which would somehow render the request "relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention and in assessing Claimants' and its expert Compass Lexecon's sunk costs calculations".</p> <p>Nicaragua has made no attempt to explain: (i) how the requested documents would be determinative of "Claimants' and/or ION's level of involvement in and their financial commitment to the ION Concession as well as their technical and financial capability to develop and operate the Concession Contract"; or (ii) how the "Claimants' and/or ION's level of involvement in and their financial commitment to the ION Concession as well as their technical and financial capability to develop and operate the Concession Contract" would be determinative of "whether Claimants made an investment for the purposes of Article 25(1) of the ICSID Convention" and the assessment "of Claimants' and its expert Compass Lexecon's sunk costs calculations", which are based on financial statements, not private communications (<i>see e.g. Exhibit CLEX-14</i>). This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) as recorded in the subcontractor agreements between ION and Norwood (Exhibits C-4 and R-0003), Norwood agreed to pay all moneys necessary to carry out exploration activities under the ION Concession Contract; and (iii) in accordance with the subcontractor agreements, Norwood made contributions on behalf of ION (<i>see e.g. Exhibits C-1</i> (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and</p>

	<p>CLEX-14). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof.” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p> <p>Fifth, as evidenced by the documents submitted by Nicaragua with its Counter-Memorial (<i>see, e.g., Exhibits R-0003, R-0007, R-0024</i>), Nicaragua has access to Norwood’s archives through its witnesses Graeme Phipps and James Charuk, including documents from the period in which Norwood financed and implemented operations in the ION Concession on behalf of ION. In addition, evidence of the nature and extent of the contributions made on behalf of ION by its subcontractor Norwood is already in the record (<i>see e.g. Exhibits C-79, C-80, C-81, C-84, C-86, C-87, C-88, C-89, C-90, C-91, C-92, C-93, C-94, C-95, C-96, C-97, C-98, C-99, C-100, C-101, C-102, C-103, CLEX-14, R-0010, R-0013 R-0014, R-0018, R-0028, and R-0031</i>).</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 6.</p> <p>First, the documents sought are relevant to this case and material to its outcome. Claimants attribute Norwood’s exploratory results to ION and claim that these works “bore fruit and vindicated the conviction of Mr. Goyne and his partners [that] ‘important discoveries’ were made within the ION Block” (CLM, ¶ 8). Claimants further characterize Norwood’s exploratory works as encouraging, contrary to the understanding of Norwood’s employees involved at that time (<i>e.g., “By mid-February 2007, drilling at the San Bartolo well had resulted in the discovery of gas condensate and light oil in eight separate zones”</i> (CLM, ¶ 72); “The drilling of the Maderas Negras well started shortly thereafter and resulted in findings of significant volumes of hydrocarbons by mid-2008” (CLM, ¶ 79)). With this Request, Nicaragua seeks documents that show ION’s contemporaneous understanding of the implications of Norwood’s exploratory results for the viability of the Concession. These documents will likewise show ION’s involvement in the financial and technical aspects of it Concession at that time, which is relevant to determining whether Claimants made an investment under Article 25(1) of the ICSID Convention (<i>see CM, ¶¶ 219-264</i>).</p> <p>Second, the fact that Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal does not justify their withholding the requested documents. This objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see CM, ¶¶ 235-239</i>). Furthermore, Claimants’ references to the Concession Contract (C-3), Hydrocarbon Law (C-1) and Decree (C-67), the subcontractor agreements between ION and Norwood (C-4 and R-3), Norwood financial statements (C-79, C-95, CLEX-14), reports (C-81) and press releases (C-90, C-97) are not proof of ION’s investment in the project. Instead, those exhibits reveal Norwood’s investment activities in the project. Claimants cannot piggyback on the investment expenditures and development efforts of an independent non-party to these proceedings (<i>see CM, ¶¶ 240-256</i>).</p>

	<p>Second, the request is not overbroad. To the contrary, Nicaragua’s request refers to a specific subject matter (<i>i.e.</i>, the operations of the ION Concession Contract), specific parties (<i>i.e.</i>, ION and its operator Norwood) and a specific time period (<i>i.e.</i>, from 2004 to 2010). Furthermore, it is Nicaragua’s contention that, if existent, these communications will be limited in number due to ION’s minimal involvement during that time period (<i>see, e.g.</i>, Charuk’s WS, ¶ 10). This request also is not unduly burdensome. Claimants complain that they would have “to search for and locate every single communication between ION and Norwood [...] for a period of over six years that started sixteen years ago.” The fact that Nicaragua seeks documents from sixteen years ago relevant to the dispute at hand is attributable to Claimants’ decision to file their Memorial in 2020, more than two years after they initiated this arbitration, and more than five years after the alleged breach Claimants complain of. The consequences of Claimants’ decision to file at a specific time is for them to bear and ought not affect Nicaragua’s evidentiary request. If there are particular, good faith reasons (<i>e.g.</i>, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for documents, Nicaragua is open to discussing such issues on a case-by-case basis.</p> <p>Third, Claimants incorrectly assert that Nicaragua has access to these documents through its witnesses, Graeme Phipps and James Charuk. Mr. Phipps was a board director of Norwood who stepped down ten years ago. Mr. Charuk was an employee who left the company twelve years ago. Consequently, their records relating to Norwood are not complete. More importantly, Nicaragua is seeking documents of ION and/or the Claimants, not Norwood. As such, these documents cannot reasonably be expected to be in the possession, custody or control of Mr. Phipps and Mr. Charuk.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	7
Identification of documents or category of documents requested	<p>Any and all documents and communications from ION and/or any Claimant concerning their efforts to attract and secure investment for the Concession Contract between 2004 and 2011 including, but not limited to:</p> <ul style="list-style-type: none"> • brochures, • reports, • communications, and • presentations.
Relevance and materiality	Claimants contend that through their efforts, they secured the US\$ 74.3 million they claim ION invested in the ION Concession Contract (<i>see, e.g.</i> , CLM, ¶ 85).

<p>according to Requesting Party</p>	<p>Consequently, this request is material and relevant in determining Claimants’ and/or ION’s level of involvement in the development of the ION Concession for the purposes of assessing whether Claimants made an investment under Article 25(1) of the ICSID Convention, as well as Claimants’ and its expert Compass Lexecon’s sunk costs calculations.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to the Concession’s operations and in their Memorial Claimants assert that ION was involved in the technical and financial aspects of the ION Concession Contract from 2004 to 2011.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request.</p> <p>First, the Claimants repeat their objections to Request 6 above with respect to the overbroad and unduly burdensome nature of the request, covering documents during an eight-year period, starting sixteen years ago.</p> <p>Second, the Claimants submit that the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua relies on paragraph 85 of Claimants’ Memorial to assert that “Claimants contend that through their efforts, they secured the US\$ 74.3 million they claim ION invested in the ION Concession Contract”, which would “[c]onsequently” render the request “material and relevant in determining Claimants’ and/or ION’s level of involvement in the development of the ION Concession for the purposes of assessing whether Claimants made an investment under Article 25(1) of the ICSID Convention, as well as Claimants’ and its expert Compass Lexecon’s sunk costs calculations”. But Nicaragua’s justification relies on an incorrect premise. Paragraph 85 of Claimants’ Memorial —the only source Nicaragua that cites to support the relevance and materiality of its request— states only that “[b]y March 2010, approximately US\$74 million had been invested in exploration activities in the ION Block”.</p> <p>Nicaragua has made no attempt to explain how the requested documents would determine whether Claimant has made an investment for the purposes of Article 25(1) of the ICSID Convention or whether the sunk costs calculations submitted by Claimants are accurate. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Third, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID and their damages calculations are supported. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) as recorded in the subcontractor agreements between ION and Norwood (Exhibits C-4 and R-0003), Norwood agreed to pay all moneys necessary to carry out exploration activities under the ION Concession Contract; and (iii) in accordance with the subcontractor agreements, Norwood invested over US\$74 million on behalf of ION (<i>see e.g. Exhibits C-1 (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and CLEX-14</i>). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof.” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p>

	<p>Fourth, as evidenced by the documents submitted by Nicaragua with its Counter-Memorial (<i>see e.g. Exhibits R-0003, R-0007 and R-0024</i>), Nicaragua has access to Norwood’s archives through its witnesses Graeme Phipps and James Charuk, including documents from the period in which Norwood financed and implemented operations in the ION Concession on behalf of ION.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 7.</p> <p>Claimants’ first objection that this request is overbroad and burdensome is without merit. This Request clearly identifies a narrow and specific category of documents (<i>i.e.</i>, brochures, reports, communications, and presentations concerning ION or Claimants’ efforts to attract and secure financing) over a given period (<i>i.e.</i>, 2004-2011).</p> <p>Nor is Claimants’ objection credible that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ records. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information relevant to the claims of multiple Claimants cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Respondent’s Request. By the same token, Claimants’ cannot seriously maintain that it is unduly burdensome for them to search for documents over a seven year-period that started sixteen years ago when it was the Claimants that choose when to bring this arbitration. As for ION, any well-managed business with proper record-keeping practices should have no difficulty locating relevant documents involving potential investors.</p> <p>With respect to the second objection, Claimants’ cannot seriously challenge the relevance and materiality of this request. Claimants seek \$74.3 million in the alternative based on the project’s alleged sunk costs. Claimants’ strenuous objection simply underscores their resistance to substantiate their alleged investment in the ION Concession, which is relevant to both Article 25(1) and their damages claim. Documents and communications concerning Claimants’ or ION’s efforts to attract and secure investment for the Concession Contract will shed light on ION’s role in the exploration of hydrocarbons in the Concession Area. Moreover, such information will help the Tribunal determine whether ION had the financial capacity to even invest in the project.</p> <p>Claimants’ third objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objection. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-239). Furthermore, Claimants’ references to the Concession Contract (C-3), Hydrocarbon Law (C-1) and Decree (C-67), the subcontractor agreements between ION and Norwood (C-4 and R-3), as well as Norwood financial statements (C-79, C-95, CLEX-14), reports (C-81) and press releases (C-90, C-97) are not proof of ION’s investment in the project. Instead, those exhibits reveal Norwood’s investment activities in the project. Claimants cannot piggyback on the investment expenditures and development efforts of an independent non-party to these proceedings (<i>see</i> CM, ¶¶ 240-256).</p>

	<p>Fourth, Claimants incorrectly assert that Nicaragua has access to these documents through its witnesses, Graeme Phipps and James Charuk. Mr. Phipps was a board director of Norwood who stepped down ten years ago. Mr. Charuk was an employee who left the company twelve years ago. Consequently, their records relating to Norwood are not complete. More importantly, Nicaragua is seeking documents of ION and/or the Claimants, not Norwood. As such, these documents cannot reasonably be expected to be in the possession, custody or control of Mr. Phipps and Mr. Charuk.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	8
Identification of documents or category of documents requested	<p>Any and all service contracts concluded to carry out the exploration and evaluation activities under the ION Concession Contract, including, but not limited to the service contracts concluded with:</p> <ul style="list-style-type: none"> • Multiservicios de Perforación Geopetroleros S.A. (“MPG”); • Baker Atlas; • Fronterra Geosciences; • Expro Gulf Ltd; • BJ Services de Nicaragua; • Smith Bits; • Object Reservoir; • Vetco Gray Inc.; • Western Energy Services Corp.; • MI Drilling Fluids de Mexico; • International Logging Inc.; • D’Guerreros Ingenieros, S.A.; • Schlumberger.
Relevance and materiality	Nicaragua seeks these documents to determine ION’s level of commitment during the exploratory phase and, consequently, its assumption of the exploration works’ risk. Consequently, this request is relevant and material in determining whether Claimants made

<p>according to Requesting Party</p>	<p>an investment under Article 25(1) of the ICSID Convention, and in assessing Claimants’ and its expert Compass Lexecon’s sunk costs calculations.</p>
<p>Documents that are not in the party’s possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to the Concession’s operations and in their Memorial Claimants assert that ION was involved in the technical and financial aspects of the ION Concession Contract from 2004 to 2011.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request.</p> <p>First, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that this request seeks “to determine ION’s level of commitment during the exploratory phase and, consequently, its assumption of the exploration works’ risk”, which would somehow be “relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention, and in assessing Claimants’ and its expert Compass Lexecon’s sunk costs calculations”.</p> <p>Nicaragua has made no attempt to explain: (i) how the requested documents would be determinative of “ION’s level of commitment during the exploratory phase” or “their assumption of the exploration works’ risk”, especially when, as the holder of the ION Concession and beneficiary of its development and exploitation, ION was obviously exposed to the “exploration works’ risk”; and (ii) how such factual elements would be determinative of “whether Claimants made an investment for the purposes of Article 25(1) of the ICSID Convention” and the assessment “of Claimants’ and its expert Compass Lexecon’s sunk costs calculations”, which are based on financial statements, not service contracts (<i>see e.g. Exhibit CLEX-14</i>). This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Second, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) pursuant to the terms of the subcontractor agreements between ION and its contractor Norwood (Exhibits C-4 and R-0003), the latter would typically engage service providers on ION’s behalf; and (iii) in accordance with that agreement, Norwood invested over US\$74 million on behalf of ION (<i>see e.g. Exhibits C-1 (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and CLEX-14</i>). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof.” (Procedural Order No. 3, 12 July 2018, para. 20).</p> <p>Third, as evidenced by the documents submitted by Nicaragua with its Counter-Memorial (<i>see e.g., Exhibits R-0003, R-0007 and R-0024</i>), Nicaragua has access to Norwood’s archives through its witnesses Graeme Phipps and James Charuk, including documents from the period in which Norwood financed and implemented operations in the ION Concession on behalf of ION. Nicaragua also has possession of all of the reports filed by ION and Norwood regarding their activities in the ION Concession from 2004 to 2014. Moreover, evidence of the nature and extent of the contributions made on behalf of ION by its subcontractor Norwood are already in the record (<i>see</i></p>

	<p>e.g. Exhibits C-79, C-80, C-81, C-84, C-86, C-87, C-88, C-89, C-90, C-91, C-92, C-93, C-94, C-95, C-96, C-97, C-98, C-99, C-100, C-101, C-102, C-103, CLEX-14, R-0010, R-0013, R-0014, R-0018, R-0028, and R-0031).</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 8.</p> <p>Claimants’ first objection based on relevance and materiality underscores the fundamental weakness of their case. For the Tribunal to have jurisdiction over this arbitration, Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (<i>see</i> CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (<i>see id.</i>, ¶¶ 234-238, 240-241).</p> <p>The contracts requested are relevant and material to determining whether ION invested in the exploration of hydrocarbons in the Concession Area. The contracts, for example, will help the Tribunal determine whether ION contributed resources to the exploration of hydrocarbons in the Concession Area. A contribution of resources to the alleged investment is the most basic element of an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-249).</p> <p>Similarly, the contracts are relevant and material to determining which entity assumed the risks of exploring for hydrocarbons in the Concession Area, which is a separate and necessary element of an investment under Article 25(1) (<i>see</i> CM, ¶¶ 250-256). Claimants wrongly argue that as the holder of the ION Concession and the beneficiary of its development and exploitation, it was exposed to “exploration works’ risk.” It appears that Claimants mistakenly believe that investment risk can be borne by passively benefiting from the upside of an investment opportunity without taking on any of the financial costs. However, the assumption of investment risk necessitates the incurring of financial costs in relation to an uncertain financial benefit (<i>see Romak S.A. v. Republic of Uzbekistan</i>, PCA Case No. AA280, Award (26 Nov. 2009) (Mantilla-Serrano, Rubins, Molfesses), ¶ 230 (RLA-0046); <i>KT Asia Investment Group B.V. v. Republic of Kazakhstan</i>, ICSID Case No. ARB/09/8, Award (17 Oct. 2013) (Kaufmann-Kohler, Glick, Thomas), ¶ 220). The requested documents would shed light on whether Claimants were financially exposed to the downside of the project’s failure. Additionally, the requested documents are relevant and material to determining which entity was responsible for the investment expenditures associated with these contracts, which is the basis of Claimants’ alternative damages claim.</p> <p>Claimants’ second objection is based on the faulty premise that they have established the Tribunal’s jurisdiction and thereby are under no obligation to produce relevant and material documents to Nicaragua’s assertion that the Tribunal lacks jurisdiction. To begin, Claimants cite to neither any procedural orders in this case nor the IBA Rules as the basis for this objections. Instead, Claimants rely on a procedural order from another arbitration that bears no relation to the present arbitration.</p> <p>Moreover, Claimants are incorrect that they have “provided sufficient information” to show that each Claimant made an investment under Article 25(1) of the ICSID Convention. Claimants’ only evidence that they invested in ION is a photograph of a barely legible handwritten ledger purporting to show that they held shares in ION (Shareholder Registry of ION (C-62)). Even if that photograph could sufficiently evidence that each Claimant held shares in ION, it does not demonstrate that any Claimant contributed money or other resources to ION, which is necessary to show that each Claimant made an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-239). Furthermore, Claimants’ references to the Concession Contract (C-3), Hydrocarbon Law (C-1) and Decree (C-67), the subcontractor agreements between ION and Norwood (C-4 and R-3), as well as Norwood financial statements (C-79, C-95, CLEX-14), reports (C-81) and press releases (C-90, C-97) are not proof of ION’s investment in the project. Instead, those exhibits reveal Norwood’s investment</p>

	<p>activities in the project. Claimants cannot piggyback on the investment expenditures and development efforts of an independent non-party to these proceedings (<i>see</i> CM, ¶¶ 240-256).</p> <p>Third, Claimants incorrectly assert that Nicaragua has access to these documents through its witnesses, Graeme Phipps and James Charuk. Mr. Phipps was a board director of Norwood who stepped down ten years ago. Mr. Charuk was an employee who left the company twelve years ago. Consequently, their records relating to Norwood are not complete. Claimants’ reference to Norwood reports filed with Nicaragua is similarly inapposite. Nicaragua has requested documents establishing ION’s (not Norwood’s) assumption of risk by producing service contracts. Therefore, Claimants’ reference to documents “of the contributions made ... by its subcontractor Norwood” are not responsive to this request. Furthermore, none of the exhibits referenced in their objection consist of the actual service contracts requested by Nicaragua.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
<p>Decision of the Tribunal</p>	<p>Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.</p>
<p>Document Request Number</p>	<p style="text-align: center;">9</p>
<p>Identification of documents or category of documents requested</p>	<p>Any and all communications and agreements concluded between ION and/or any Claimant and Sproule International Ltd (“Sproule”) pursuant to which Sproule prepared the “Resource Assessment of Certain P&NG Holdings of Industria Oklahoma Nicaragua S.A. on the Oklanicsa Block” (the “2012 Sproule Report”), including, but not limited to:</p> <ul style="list-style-type: none"> a) any communications containing instructions of ION and/or any Claimant to Sproule concerning the scope and/or preparation of the 2012 Sproule Report; b) any communications concerning the hiring of Sproule; c) any communications concerning the conclusions of Sproule’s assessment; d) any communications between Mr. Michael Goyne and ION’s Drilling Manager, Mr. James Oswald, and/or any other employee of ION concerning the findings of the Sproule Report.
<p>Relevance and materiality according to Requesting Party</p>	<p>This document request is relevant and material in assessing Claimants’ fundamental claim that the Sproule Report reinterpreted existing exploration data and demonstrated that ION made a discovery with commercial potential. This factual allegation is the basis of Claimants’ argument that Nicaragua treated Claimants unfairly and inequitably and expropriated their rights (<i>see</i>, CLM, ¶¶ 97, 105; sections V(B)(C)).</p>

<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to an expert report which ION and Claimants had commissioned and which they have submitted as an exhibit in this arbitration proceeding.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants produce the letters sent by Sproule to both ION and Nicaragua, further confirming (as already explained in the report itself) that the Sproule Report “was prepared using current geological and engineering knowledge, techniques and computer software [...] within the Code of Ethics of the Association of Professional Engineers and Geoscientists of Alberta” and adhered “in all material aspects to the “best practices” recommended in the Canadian Oil and Gas Evaluation (COGE) Handbook”. The Claimants otherwise object to this request for the reasons below.</p> <p>The requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has failed to explain how the communications between ION and/or any Claimant and Sproule pursuant to which Sproule prepared that report, including those listed at (a) to (d) of the request, are relevant to the case or material to its outcome. The Sproule Report is Exhibit C-15 in this case and records the basis on which it was prepared, as already explained above (<i>see e.g.</i> p. 6).</p> <p>Whether Sproule Report “reinterpreted existing exploration data and demonstrated that ION made a discovery with commercial potential” must be assessed on the basis of the Sproule Report itself. Nor is it correct to say that the content of the Sproule Report represents “the basis of Claimants’ argument that Nicaragua treated Claimants unfairly and inequitably and expropriated their rights”. That is an obvious mischaracterization of the Claimants’ case. As the Claimants made clear in their Memorial and accompanying evidence, the Claimants’ claims that Nicaragua violated its treaty-based guarantees are based on: (i) Nicaragua’s wrongful termination of the ION Concession; and (ii) Nicaragua’s failure to pay prompt, adequate and effective compensation for the loss caused by that taking.</p> <p>In addition, in respect of sub-request (d), Nicaragua’s request is internally inconsistent. The sub-category of “communications between Mr. Michael Goynes and ION’s Drilling Manager, Mr. James Oswald, and/or any other employee of ION concerning the findings of the Sproule Report” presupposes that the Sproule Report and its findings have been issued, but the overarching request seeks “communications or agreements” pursuant to which Sproule prepared its report.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 9 and notes that the two letters they have produced do not satisfy Nicaragua’s Request.</p> <p>Contrary to Claimants’ assertions, this Request is relevant to the case and material to its outcome. In 2012, ION deliberately decided to breach its undertaking of drilling a new well, which would have enabled it to potentially make a commercial discovery. Instead, only one month prior to the expiration of the extended exploration period ION abandoned its work program and retained Sproule to prepare a resource assessment report of the ION Block (<i>see</i> letter from ION to MEM (3 Oct. 2012) (R-0059)), letter from ION to MEM (6 Nov. 2012) (C-16) and letter from ION to MEM (30 Nov. 2012) (C-19)). On the basis of Sproule’s assessment, ION submitted a declaration of discovery to MEM and represented to Nicaragua that its discovery had commercial potential (<i>see</i>, letter from ION to MEM (6 Nov. 2012) (C-16) and letter from ION to MEM (30 Nov. 2012) (C-19)). In their Memorial, Claimants allege that ION’s decision to abandon its work program and retain Sproule was “strategic” because it allowed ION “to focus its efforts on confirming the results from its prior</p>

	<p>exploration campaigns in San Bartolo” (CLM, ¶ 95). The communications Nicaragua requests under a) and b) will therefore determine ION’s contemporaneous reasoning for deciding to breach its undertakings towards MEM and clarify ION’s understanding of how commissioning a resource assessment allowed it to comply with its legal and contractual obligation to submit a declaration of commercial discovery at the end of the exploration period in 2012.</p> <p>The communications concerning the conclusions of Sproule’s assessment, which Nicaragua seek under c), are likewise relevant to the case and material to its outcome. According to Claimants, Sproule “confirmed the presence of oil resources at San Bartolo” and concluded that “the San Bartolo well was ‘considered to be an oil discovery’” [which,] to its best estimate, contained approximately 500,000 barrels of discovered petroleum in place and an additional 11.5 million barrels of undiscovered petroleum in place” (CLM, ¶¶ 96-97). However, Claimants omit the most important finding of Sproule, namely that all the resources of the ION Block are <i>unrecoverable</i> (see CM, ¶¶ 121-122). Nicaragua’s experts, Ryder Scott, have amply explained how these findings mean that Sproule is “not aware of any way that new wells could be drilled, even using different technology, that would commercially or economically recover any of the oil that was found in the San Bartolo well” (Ryder Scott Expert Report, ¶ 85; CM ¶¶ 121-123). MEM and Norwood’s former employees likewise share their understanding that Sproule’s findings are clear in that the ION Block bore no discovery with commercial potential, much less a commercial discovery (see CM ¶¶ 121-131). Nicaragua has sufficient reasons to believe that Sproule expressly informed ION and Michael Goyne about the implications that its findings on the unrecoverability of the resources had for the viability of the ION Concession Contract. Indeed, Claimants note that in October 2012, one month prior to the expiration of the extended exploration period, Sproule provided Michael Goyne with preliminary conclusions of its assessment (CLM, ¶ 96, Goyne WS, ¶ 73), but neither Claimants nor Michael Goyne have provided any supporting documentation recording these preliminary findings.</p> <p>Furthermore, the sought communications are necessary to ascertain ION’s and Michael Goyne’s contemporaneous understanding of the Concession’s viability and the extent to which they misrepresented the latter to MEM and Nicaragua. These are also relevant and material to determining whether other of Claimants’ assertions concerning the viability of the ION Concession are warranted (e.g., “[t]his is a straightforward case of the Nicaraguan state abusing its sovereign powers to expropriate a <i>valuable</i> hydrocarbon concession” (CLM ¶ 4)) as well as to establish causation (see CM ¶¶ 348-354).</p> <p>The same reasoning applies to Nicaragua’s sought documents under d). Nicaragua has sufficient reasons to believe that Michael Goyne discussed any preliminary findings Sproule shared with him regarding the ION Concession’s viability with ION’s team, including its then drilling manager, Mr. James Oswald. Nicaragua therefore expressly rejects Claimants’ contention that this request is “internally inconsistent” because it requires that the Sproule Report had been issued. For the sake of clarification, Nicaragua hereby reiterates its request to obtain any communications between Mr. Michael Goyne and ION’s drilling manager, Mr. James Oswald, and/or any other employee of ION discussing Sproule’s findings, <u>including any preliminary findings</u>.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
<p>Decision of the Tribunal</p>	<p>Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.</p>

Document Request Number	10
Identification of documents or category of documents requested	Sproule’s written consent authorizing ION to submit the 2012 Sproule Report to MEM, as required pursuant to the Sproule Report’s exclusivity clause.
Relevance and materiality according to Requesting Party	<p>According to the Sproule Report, the report had been prepared for ION’s internal use. Its exclusivity clause stated that the report “may not be reproduced, distributed, or made available to any other company or person, regulatory body, or organization without the knowledge and written consent of Sproule and without the complete contents of the report being made available to that party” (Sproule Report (2 Nov. 2012), p. 2 of the pdf (C-15)). On 6 November 2012, ION submitted the 2012 Sproule Report to MEM to demonstrate that it had made a discovery with commercial potential in the Concession area, and, therefore, that it was warranted for ION to continue holding its concession contract rights (Letter from ION (Mr Modesto Barrios) to MEM (6 Nov. 2012) (C-16)); <i>see</i>, Nicaragua’s CM, Section III.B).</p> <p>This request is relevant and material in determining the appropriateness of ION and Claimants’ submission of the Sproule Report to Nicaragua to prove ION’s alleged discovery with commercial potential.</p>
Documents that are not in the party’s possession	The document requested is not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the document requested is in the possession, custody, or control of Claimants because it relates to an expert report which ION and Claimants had commissioned and which they have submitted as an exhibit in this arbitration proceeding.
Objections by disputing party to production of requested documents	The Claimants hereby produce a letter dated 26 November 2012 from Sproule to Nicaragua’s Minister of Energy and Mines, confirming that Sproule prepared the Sproule Report “using current geological and engineering knowledge, techniques and computer software [...] within the Code of Ethics of the Association of Professional Engineers and Geoscientists of Alberta” and had adhered “in all material aspects to the “best practices” recommended in the Canadian Oil and Gas Evaluation (COGE) Handbook”. This confirms that Sproule knew and had consented to ION submitting the Sproule Report to Nicaragua.
Reply	Nicaragua notes that Claimants do not object to this Request and that they have produced responsive documents.
Decision of the Tribunal	No decision required.

Document Request Number	11
Identification of documents or category of documents requested	Documents from 4 January 2010 to 22 January 2010 that verify the claims of fluids recovered from well testing operations during that time, including supporting documents for Test Recovery summaries in the Sproule report (Sproule Report (2 Nov. 2012), pp. 19-20 (C-15)) and the Davis report (Davis Report (1 Feb. 2013), p. 22, table 6 (C-20)).
Relevance and materiality according to Requesting Party	The claimed fluid recovery from this period is used in part to justify opinions by Sproule and Davis that the ION Block contains a petroleum discovery. Consequently, this request is relevant and material in assessing whether a discovery was made in accordance with the definitions in the SPE-PRMS.
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to technical information upon which the Sproule and Davis Reports, which ION and/or Claimants commissioned, relied on.
Objections by disputing party to production of requested documents	<p>The Claimants have not identified any responsive documents in their possession, custody or control from the period 4 January to 22 January 2010.</p> <p>To the extent that Nicaragua is now seeking, in the context of this case, to allege for the first time that no such documents exist, the Claimants note as follows.</p> <p>First, the recovery of fluids was publicly disclosed by Norwood's board of directors (including Mr. Graeme Phipps) on 19 February 2010, pursuant to Canadian securities regulations (<i>see Exhibit C-103</i>). Mr Phipps does not address this issue in his witness statement, even though it is clearly within his knowledge and Nicaragua considers it to be relevant to its defence.</p> <p>Second, as evidenced by the documents submitted by Nicaragua with its Counter-Memorial (<i>see e.g. R-0003, R-0007 and R-0024</i>), Nicaragua has access to Norwood's archives through its witnesses Graeme Phipps and James Charuk, including documents from the time that the relevant tests were commissioned.</p>

<p>Reply</p>	<p>Nicaragua acknowledges that Claimants have unsuccessfully searched for documents responsive to this Request. Nevertheless, Claimants appears to challenge the Request.</p> <p>The fundamental importance of this information, however, is indisputable. The fluid recovery tests measure the quantity of oil and water recovered in swab tests. Claimants rely on swab tests performed over a 35-day period in which 1,289 barrels of total fluid—of which 241 barrels was 38.5° API oil—was reportedly recovered from the interval corresponding to DST 7. The results from these tests form the basis of Sproule and Davis’ opinion concerning whether a discovery was made. Yet it appears that only the results from these tests were reported to Sproule and Davis but the actual raw data was not provided (<i>see e.g.</i>, Sproule Report, p. 19 (C-15)). Thus, these critical results remain unverified.</p> <p>First, Claimants cite to a Norwood press release (C-103) arguing that “recovery of fluids was publicly disclosed by Norwood’s board of directors” in February 2010. However, this news release is simply an announcement of the test results that were similarly reported to Sproule and Davis. Although it was issued on behalf of the Board of Directors, it is not evident that any member of the Board (including Mr. Phipps) would have personally reviewed this technical data. Furthermore, it is untrue that Mr. Phipps did not address this issue in his witness statement. At ¶¶ 8 and 14-15 of his witness statement, Mr. Phipps discussed the consequences of these disappointing results.</p> <p>Second, Claimants once again incorrectly assert that Nicaragua has access to these documents through its witnesses, Graeme Phipps and James Charuk. These witnesses left Norwood ten and twelve years ago, respectively. In fact, Mr. Charuk had left the company in March 2008, almost 2 years before any swabbing occurred in January 2010. For his part, Mr. Phipps resigned from Norwood’s Board in August 2010 shortly after the tests were released in mid-February when it became apparent that the project had failed (Phipps WS, ¶ 35). Thus, neither witness has access to the technical data of their former employer. It is, conversely, reasonable to assume that any technical data procured by Norwood, ION’s sub-contractor, should be readily available to Claimants and/or ION.</p>
<p>Decision of the Tribunal</p>	<p>No decision required.</p>
<p>Document Request Number</p>	<p>12</p>
<p>Identification of documents or category of documents requested</p>	<p>Any and all memoranda of understanding, letters of intent, draft agreements or agreements concluded between ION and/or any Claimant and any drilling company between 2011 and 2016 for oil services and/or drilling equipment in relation to the ION Concession Contract, including, but not limited to any and all memoranda of understanding, letters of intent, draft agreements and/or agreements concluded between ION or any Claimant and:</p> <ul style="list-style-type: none"> a) ThermaSource; b) Arrow Construction; c) Island Oil Exploration Services, S.A; and/or

	d) Victor Aguilar.
Relevance and materiality according to Requesting Party	<p>As Nicaragua explains in its Counter-Memorial, from the moment ION took over the Concession Contract's operations until Nicaragua terminated the Concession Contract in 2014, ION continually represented to MEM that it was engaged in conversations with prospective drilling companies (<i>see</i> Nicaragua's CM, ¶¶ 82-84, 98, 174-183). In particular, when MEM granted ION a one-year extension of the exploration period, ION asserted that it was in conversations with the company ThermaSource, which, according to ION, had drilling equipment available in Nicaragua (Nicaragua's CM, ¶ 89). Likewise, in September 2012, ION informed MEM that it was engaged in conversations with the drilling company Arrow Construction, and that the company would provide ION with drilling equipment within 10 days (MEM Inspection Report of Site Visit to LOC4 (27 Sept. 2012) (R-0058)); Nicaragua's CM, ¶ 245). Throughout 2014, ION informed MEM that it was negotiating an operating agreement with a drilling company (<i>see, e.g.</i>, Letter from ION (Mr Michael Goyne) to MEM (31 July 2014), p. 1 (C-145)). Moreover, in their Memorial, Claimants assert that ION was considering Island Oil Exploration Services S.A. for the drilling of the San Bartolo II well (CLM, footnote 284).</p> <p>Consequently, this request is relevant and material in assessing ION's and Claimants' technical and financial capability to operate and develop the Concession Contract and the accuracy of ION's contemporaneous representations to MEM concerning ION's and Claimant's technical capacity to take over the Concession Contract's operations.</p>
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract, and ION was the Concession's operator from 2011 to 2014.
Objections by disputing party to production of requested documents	<p>Without prejudice to the objections that apply to Nicaragua's flawed requests, the Claimants produce responsive documents in their possession, custody or control with the following companies for the period up to Nicaragua's purported termination of the ION Concession Contract in December 2014:</p> <ul style="list-style-type: none"> (i) ThermaSource; (ii) Arrow Construction; (iii) Island Oil Exploration Services, S.A.; (iv) Maranco Limited; and (v) International Resource Management, Ltd.
Reply	Nicaragua notes that Claimants do not object to this Request and that they have produced responsive documents. Nicaragua requests that, where appropriate, Claimants produce any additional responsive documents that came to their attention or to their possession, custody or control after the date of their first production.
Decision of the Tribunal	No decision required: The Tribunal takes note that Claimants have produced responsive documents.

Document Request Number	13
Identification of documents or category of documents requested	Any and all communications between ION and/or any Claimant and Claimant Emily Lopez Goyne concerning the financial aspects of the ION Concession Contract between 2011 and 2014.
Relevance and materiality according to Requesting Party	<p>According to Claimant Michael Goyne, Emily Lopez Goyne was “in charge of ION’s financial aspects” of the ION Concession Contract (Goyne WS, ¶ 70).</p> <p>Consequently, this request is relevant and material in assessing ION’s and Claimants’ financial capability to operate the Concession Contract.</p>
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract and ION was the Concession’s operator from 2011 to 2014.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking all communications between ION or any of nearly 20 different Claimants regarding “financial aspects of the ION Concession” over a four-year period.</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants to search for and locate all communications with a particular individual covering the “financial aspects of the ION Concession” for a four-year period dating back nearly a decade. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has failed to explain how “ION’s and Claimants’ financial capability to operate the Concession Contract” are relevant to the case or material to its outcome. The “financial capability” of ION was not advanced by Nicaragua for its purported termination of the Concession Contract. Even if documents relating to that issue were relevant and material (and they are not), Nicaragua has not explained how the requested documents would enable it to assess ION’s and the Claimants’ financial capabilities in any event. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p>

Reply	<p>Fourth, the Claimants note that they are voluntarily producing documents reflecting expenditures made by ION and Claimants for the advancement of the ION Concession during the period identified in Nicaragua’s request in response to requests 4 and 5 above.</p> <p>Nicaragua opposes Claimants’ objections and notes that, contrary to Claimants’ allegations, the documents produced under Requests Nos. 4 and 5 are not responsive to Nicaragua’s Request No. 13.</p> <p>Nicaragua rejects Claimants’ objection that the request is overbroad. The documents sought refer to a specific subject matter (<i>i.e.</i>, the financing of the ION Concession Contract), specific parties (<i>i.e.</i>, ION and Claimants and Emily Lopez Goyne) and a specific time period of four years (<i>i.e.</i>, from 2011 to 2014).</p> <p>Furthermore, Claimants’ objection that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ records is not credible. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information relevant to the claims of multiple Claimants cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Respondent’s Request. Moreover, Claimants do not explain why searching communications “with a particular individual” for “a four-year period dating back nearly a decade” is burdensome. In any event, the fact that Nicaragua seeks documents from a decade ago relevant to the dispute at hand is attributable to Claimants’ decision to file their Memorial in 2020, more than two years after they initiated this arbitration, and more than five years after the alleged breach Claimants complain of. The consequences of Claimants’ decision to file at a specific time is for them to bear and ought not affect Nicaragua’s evidentiary request.</p> <p>Furthermore, the documents are relevant to the case and material to its outcome. Emily Lopez-Goyne was the Chief Financial Officer (“CFO”) of ION. In her capacity as CFO, she oversaw the funding needs of ION and was involved in ION’s relationship with potential partners and investors (<i>see, e.g.</i>, email from Emily Lope-Goyne to David Shields and Ed Cabrera (Wellington Shields) (June 2013) (CPROD-260)). These communications would therefore show ION’s and Claimants’ contemporaneous understanding of ION’s financial position and its capacity to drill a new exploratory well, carry out its appraisal program, and its ability to comply with its other ancillary financial obligations under the ION Concession Contract (such as payment of land use). These documents will also determine whether ION was misrepresenting its financial capability to Nicaragua.</p> <p>Contrary to Claimants’ allegations, documents showcasing ION’s and Claimants’ financial capability to operate the Concession Contract are relevant to the case and material to its outcome. In particular, they are relevant to assess the merits of Claimants’ claims that with more than 180 days ION would have been in a position to complete its appraisal program in 2014 (CLM, ¶ 272) or that “ION’s delay in the execution of the Evaluation Program was attributable [...] to the MEM’s withdrawal of collaboration” (CLM, ¶ 278) and not to ION’s own technical and financial shortcomings. Documents relating to ION’s financial capacity are likewise relevant for Nicaragua’s arguments on causation (<i>see</i> CM, ¶¶ 328-354).</p> <p>In any event, Nicaragua notes that, with respect to Request No. 17, in which Nicaragua likewise determined the relevance and materiality of its request to obtain documents and communications between ION and its alleged partner NTE on the basis that the sought documents would allow it to assess ION’s and Claimants’ financial capacity to operate the Concession, Claimants did not second-guess the relevance and materiality of Nicaragua’s request and, in fact, produced responsive documents.</p> <p>In light of the foregoing, Nicaragua maintains its request.</p>

Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	14
Identification of documents or category of documents requested	<p>Any and all memoranda of understanding, letters of intent, draft agreements and/or agreements concluded between ION and/or any Claimant and any prospective partner, investor, agent and/or operator for the ION Concession Contract between 2011 and 2015, including, but not limited to:</p> <ul style="list-style-type: none"> a) E.F. Hutton & Co; b) Noble Energy; c) Glencore; d) New Times Energy (“NTE”); e) Alrino Oil & Gas Corporation (“Alrino”); f) and/or an Israeli investor with whom ION had been holding discussions during July 2012.
Relevance and materiality according to Requesting Party	<p>In their Memorial, Claimants allege that ION was liaising with prospective investors for the ION Concession Contract from 2011 to 2015. For instance, Claimants argue that, in 2012 “ION’s prospective deal with an Israeli investor with whom ION had been holding discussions” came to a halt (CLM, ¶ 95). Moreover, Claimants explain that, in July 2012, ION’s representatives attended a meeting with MEM joined by representatives of the New York-based investor group, E.F. Hutton & Co (CLM, ¶ 93). Furthermore, Claimants argue that Nicaragua’s termination of the Concession Contract on 22 October 2013 “had brought ION’s discussions with potential partners to a halt”, but that, after the reinstatement of the Contract, “ION engaged in discussions with Noble Energy [...] the Swiss multinational Glencore and Hong-Kong publicly listed company New Times Energy (<i>NTE</i>)” (CLM, ¶ 145).</p> <p>Consequently, this request is relevant and material in assessing Claimants’ and/or ION’s contemporaneous representations concerning its financial capacity to operate the Concession Contract.</p>
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract and ION was the Concession’s operator from 2011 to 2014.
Objections by disputing party to production of	The Claimants produce responsive documents in their possession, custody or control between ION and E.F. Hutton & Co, Noble Energy, Glencore, New Times Energy (“NTE”) (<i>see</i> response to Request 17 below), Global 3 Capital, LLC., Oxbridge Ventures Inc., Aegis Capital Corp., Trafigura AG and White City Ventures for the period up to Nicaragua’s purported termination of the ION Concession Contract in December 2014. The Claimants otherwise object to this request for the reasons below.

<p>requested documents</p>	<p>The requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has failed to explain how “Claimants’ and/or ION’s contemporaneous representations concerning its financial capacity to operate the Concession Contract” are relevant to the case or material to its outcome. Neither any such “representations” nor the “financial capacity” of ION were advanced by Nicaragua as reasons for its purported termination of the Concession Contract.</p> <p>Even if documents relating to that issue were relevant and material (and they are not), Nicaragua has not explained how the requested documents would enable it to assess ION’s and the Claimants’ financial capabilities. This is particularly true with respect to documents concluded in 2015, which post-date Nicaragua’s termination of the Concession Contract in December 2014. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ partial objections to its Request No. 14.</p> <p>Nicaragua notes that Claimants’ objection that this Request is immaterial and irrelevant is unpersuasive since Claimants readily produced some responsive documents under the Request.</p> <p>In any event, Nicaragua reiterates its position that the documents sought are relevant to the case and material to its outcome. As Nicaragua has argued in its Counter-Memorial, ION had no financial means to undertake any additional exploratory works under its Concession when it assumed operations in 2011. ION nonetheless continually represented to MEM and Nicaragua that it was close to or had concluded agreements with potential investors and partners, which would fund the Concession’s works (<i>see</i> CM sections III and IV). The communications with potential investors and partners will therefore show ION’s, Claimants’ and investors’ contemporaneous understanding of ION’s financial position and capacity to drill a new exploratory well and carry out its appraisal program, as well as its ability to comply with its other ancillary financial obligations under the ION Concession Contract (such as payment of land use). They will also determine whether ION was misrepresenting its financial capability to Nicaragua.</p> <p>Contrary to Claimants’ assertions, documents showcasing ION’s and Claimants’ financial capability to operate the Concession Contract are relevant to the case and material to its outcome. In particular, they are relevant to assess the merits of Claimants’ allegations that ION would have been in a position to complete its appraisal program had Nicaragua granted ION more than 180 days (CLM, ¶ 272), or that “ION’s delay in the execution of the Evaluation Program was attributable [...] to the MEM’s withdrawal of collaboration” (CLM, ¶ 278) and not to ION’s own technical and financial shortcomings. Documents relating to ION’s financial capacity are likewise relevant for Nicaragua’s arguments on causation (<i>see</i> CM ¶¶ 328-354).</p> <p>Nicaragua notes that, with respect to Request No. 17, in which Nicaragua likewise determined the relevance and materiality of its request on the basis that the sought documents would allow it to assess ION’s and Claimants’ financial capacity to operate the Concession, Claimants did not second-guess the relevance and materiality of Nicaragua’s request and, in fact, produced responsive documents.</p> <p>Furthermore, Nicaragua particularly rejects Claimants’ objection based on the fact that the documents “post-date Nicaragua’s termination of the Concession Contract in December 2014”. Nicaragua notes that, throughout 2015, ION and Michael Goyne were still representing to Nicaragua that ION was close to obtaining the required financial capacity to carry out works under its Concession (<i>see, e.g.</i>, ION’s letter to the Attorney General (23 Nov. 2015) (C-49); NoA, ¶ 30; CM, ¶ 216; <i>see also</i> email from M. Goyne to NTE of 13 March 2015, in which Michael Goyne notes that “[o]ther highly qualified parties have shown interest in partnering with ION in concession development since ION and NTE discussed the MOU” (email from ION to NTE (13 March 2015) (CPROD-455)).</p>

	<p>Nicaragua therefore seeks documents which prove Claimants’ own contentions. In any event, Claimants themselves have already recognized the pertinence of Nicaragua’s request by producing documents between ION and potential investors dating 2015 (<i>see</i> email from ION to NTE (13 March 2015) (CPROD-455)).</p> <p>In light of the foregoing, Nicaragua maintains its Request and asks Claimants to complement their production under this Request by producing all responsive documents, including documents relating to the Israeli investor with whom ION had been holding discussions during July 2012, documents relating to Alrino Oil & Gas Corporation, as well as documents dated 2015.</p> <p>Nicaragua also reminds Claimants that it had sought all documents “without abbreviation, expurgation or redaction, and together with any attachments, enclosures and annexes” (<i>see supra</i> “Additional Remarks,” ¶ 5). In this regard, Nicaragua notes that, under this request, Claimants have produced a Confidentiality Agreement which lists documents from ION’s data room as “Exhibit B” (Confidentiality Agreement between ION and Noble Energy, Inc. (8 Jan. 2014) (CPROD-199)). To the extent that these documents are part of the Confidentiality Agreement, Nicaragua expressly requires Claimants to produce them.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	15
Identification of documents or category of documents requested	Any and all communications between ION and/or any Claimant and Alan Painter, Helen Gibbel Painter and/or Alrino Oil and Gas Corporation in 2015 and 2016 concerning the US\$ 200 million guarantee.
Relevance and materiality according to Requesting Party	<p>On 23 November 2015, Claimant Michael Goyne informed the Nicaraguan Attorney General, Hernán Estrada, that ION had secured a USD\$ 200 million guarantee for the ION Concession (letter from ION (Mr Michael Goyne) to the Attorney General (23 Nov. 2015), p. 1 of the pdf (C-49)). Michael Goyne’s communication was accompanied by a letter from the company Alrino and the bank guarantee, which had been issued by Schneider Securities Ltd on behalf of the CEO of Alrino, Alan Painter, and Helen Gibbel Painter (Letter from ION (Mr Michael Goyne) to the Attorney General (23 Nov. 2015), pp. 3,5 of the pdf (C-49)).</p> <p>Consequently, this request is relevant and material in assessing Claimants’ and/or ION’s representations concerning ION’s financial capacity to operate the Concession Contract.</p>

<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because Claimant Michael Goyne informed Nicaraguan representatives of the guarantee and Claimants submit it as an exhibit in the present proceeding.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request.</p> <p>The requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has failed to explain how “Claimants’ and/or ION’s contemporaneous representations concerning its financial capacity to operate the Concession Contract” are relevant to the case or material to its outcome. Neither any such “representations” nor the “financial capacity” of ION were advanced by Nicaragua as reasons for its purported termination of the Concession Contract.</p> <p>Even if documents relating to that issue were relevant and material (and they are not), Nicaragua has not explained how the requested documents would enable it to assess ION’s and the Claimants’ financial capabilities in any event. This is particularly true with respect to documents from 2015 and 2016, which post-date Nicaragua’s termination of the Concession Contract in December 2014. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 15. Nicaragua notes that it is unpersuasive for Claimants to object on these grounds when they themselves have recognized the adequacy of Nicaragua’s Request by producing responsive documents under Request No. 14, pursuant to which Nicaragua sought documents between ION and other potential investors and partners.</p> <p>In any event, the documents sought are relevant to this case and material to its outcome. As Nicaragua has argued in its Counter-Memorial, ION lacked the financial means to undertake any additional exploratory works under its Concession when it assumed operations in 2011. ION nonetheless continually represented to MEM and Nicaragua that it was close to or had concluded agreements with potential investors and partners, which would fund the Concession’s works (<i>see</i> CM sections III and IV). In particular, during 2015 and 2016 ION claimed that it had secured US\$ 200 million to develop the ION Concession Contract (<i>see</i> CM, ¶ 216). But the documents that ION submitted to Nicaragua referred to a US\$ 200 bank guarantee issued by the Schneider Brothers on behalf of Alan Painter and Helen Gibbel Painter from Alrino Oil and Gas, not ION or any of Claimants (<i>see</i> letter from ION to the Attorney General (23 Nov. 2015) (C-49)). The communications with Alan Painter, Helen Gibbel Painter and/or Alrino Oil and Gas Corporation will therefore show ION’s, Claimants’ and the potential investors’ contemporaneous understanding of ION’s financial position. They will also determine whether ION was misrepresenting its financial capability to Nicaragua.</p> <p>Contrary to Claimants’ assertions, documents showcasing ION’s and Claimants’ financial capability to operate the Concession Contract are relevant to the case and material to its outcome. In particular, they are relevant to assess the merits of Claimants’ allegations that ION would have been in a position to complete its appraisal program had Nicaragua granted ION more than 180 days (CLM, ¶ 272), or that “ION’s delay in the execution of the Evaluation Program was attributable [...] to the MEM’s withdrawal of collaboration” (CLM, ¶ 278) and not to ION’s own technical and financial shortcomings. Documents relating to ION’s financial capacity are likewise relevant for Nicaragua’s arguments on causation (<i>see</i> CM, ¶¶ 328-354).</p>

	<p>Furthermore, Nicaragua notes that, with respect to Request No. 17, in which Nicaragua likewise determined the relevance and materiality of its request on the basis that the sought documents would allow it to assess ION's and Claimants' financial capacity to operate the Concession, Claimants did not second-guess the relevance and materiality of Nicaragua's request and, in fact, produced responsive documents.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	16
Identification of documents or category of documents requested	Any and all communications between ION and/or any Claimant and the broker company Wellington Shields & Co LLC concerning the company's participation in the ION Concession Contract, including, but not limited to any communications between ION and/or any Claimant and Mr David Shields from Wellington Shields & Co LLC.
Relevance and materiality according to Requesting Party	<p>According to Claimant Michael Goynes, "in May 2013, we formally engaged Wellington Shields, a New York-based broker company [...] to assist us in securing financing for the ION Project. David Shields, who had more than four decades of experience working in Wall Street and one of the founders of the company, personally oversaw the assignment" (Goynes WS, ¶ 93).</p> <p>Consequently, this request is relevant and material in assessing ION's and Claimants' financial capacity to operate the ION Concession Contract.</p>
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract and ION was the Concession's operator from 2011 to 2014.
Objections by disputing party to production of requested documents	<p>The Claimants produce documents responsive to this request sufficient to demonstrate that Wellington Shields (including Mr David Shields) was: (i) engaged by ION to assist in securing financing of the ION Concession; and (ii) carried out that mandate by engaging with several parties to secure financing for the ION Project. The Claimants otherwise object to this request for the reasons below.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking all communications between ION or any of the Claimants with Wellington Shields & Co LLC over an unlimited period of time. Nicaragua's own justification for this request</p>

	<p>underscores that it is overbroad. Nicaragua has failed to explain why it seeks “Any and all communications” between ION, any of the Claimants and Wellington Shields (including Mr David Shields) in relation to attempts to secure financing by ION for the exploration and development of its Nicaraguan concession in circumstances where its basis for doing so is to assess “ION’s and Claimants’ financial capacity to operate the ION Concession Contract”.</p> <p>Second, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua has failed to explain how “ION’s and Claimants’ financial capacity to operate the Concession Contract” are relevant to the case or material to its outcome. Nicaragua did not advance the “financial capacity” of ION or Claimants as a basis for its purported termination of the Concession Contract. Even if documents relating to that issue were relevant and material (and they are not), Nicaragua has not explained how the requested documents would enable it to assess ION’s and the Claimants’ financial capacity in any event. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ partial objections to its Request No. 16.</p> <p>Nicaragua notes that it is unpersuasive for Claimants to object to this Request on the basis that the sought documents are not material or relevant considering that Claimants themselves have recognized their relevance and materiality by producing responsive documents. In particular, Nicaragua notes that Claimants have failed to explain why the documents they produced under that request are responsive and pertinent, but others (unidentified by Claimants) are objectionable because they are overbroad or neither relevant to the case nor material to its outcome.</p> <p>In any event, Nicaragua contests Claimants’ objection that the Request is overbroad. Nicaragua’s Request relates to a specific subject matter (<i>i.e.</i>, Wellington Shields & Co’s participation in the ION Concession Contract) and specific parties (<i>i.e.</i>, ION and or any Claimant and Wellington Shields). Furthermore, the sought communications are limited in time given that, according to Claimant Michael Goyne, ION’s and Claimants’ relationship with Wellington started around May 2013 (Goyne WS, ¶ 93).</p> <p>Furthermore, contrary to Claimants’ contentions, the documents sought are relevant to the case and material to its outcome. As Nicaragua has argued in its Counter-Memorial, ION had no financial means to undertake any additional exploratory works under its Concession when it assumed operations in 2011. ION nonetheless continually represented to MEM and Nicaragua that it was close to or had concluded agreements with potential investors and partners, which would fund the Concession’s works (<i>see</i> CM sections III and IV). The communications with Wellington and/or its representatives will therefore show ION’s, Claimants’ and Wellington’s contemporaneous understanding of ION’s financial position and its funding needs to carry out its appraisal program.</p> <p>Documents showcasing ION’s and Claimants’ financial capability to operate the Concession Contract are relevant to the case and material to its outcome. In particular, they are relevant to assess the merits of Claimants’ claims that with more than 180 days ION would have been in a position to complete its appraisal program in 2014 (CLM, ¶ 272) or that “ION’s delay in the execution of the Evaluation Program was attributable [...] to the MEM’s withdrawal of collaboration” (CLM, ¶ 278) and not to ION’s own technical and financial shortcomings. Documents relating to ION’s financial capacity are likewise relevant for Nicaragua’s arguments on causation (<i>see</i> CM, ¶¶ 328-354).</p>

	<p>Furthermore, Nicaragua notes that, with respect to Request No. 17, in which Nicaragua likewise assessed the relevance and materiality of its request on the basis that the sought documents would allow it to assess ION's and Claimants' financial capacity to operate the Concession, Claimants did not second-guess the relevance of Nicaragua's request and, in fact, produced responsive documents.</p> <p>In light of the foregoing, Nicaragua maintains its Request. Nicaragua requests Claimants to produce any additional responsive documents, in particular communications which record the outcome of Wellington's efforts to attract partners for the ION Concession Contract (and which are partially recorded in some of the documents Claimants produced under this request (<i>e.g.</i>, email from Marc Estigarribia (Wellington Shields) to Michael Goyne in which he informs that "[w]e have another interested investor digging into the data room and going through their due diligence" (Email from Wellington Shields to ION (3 Oct. 2013) (CPROD-305)) as well as documents recording the reasons for the termination of ION's and Wellington's business relationship.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	17
Identification of documents or category of documents requested	<p>Any and all communications, agreements and/or draft agreements between any Claimant and/or ION and NTE in 2014 and 2015 concerning NTE's participation in the ION Concession Contract, including, but not limited to:</p> <ol style="list-style-type: none"> a) The Non-Disclosure Agreement ION and/or any of Claimant concluded with NTE in January 2014; b) Any drilling plans prepared by NTE for the ION Block; c) Any and all communications between Claimant Mr Bailey and NTE's CEO, Mr Tommy Cheng, concerning NTE's participation in the ION Concession Contract; d) Any and all communications concerning NTE's alleged withdrawal from the ION Project.
Relevance and materiality according to Requesting Party	<p>According to Claimant Michael Goyne, "ION's discussions with NTE evolved productively due to the personal relationship between Mr Bailey and NTE's CEO, Mr Tommy Cheng" (Goyne WS, ¶ 115). Furthermore, he asserts that in January 2014 ION and/or Claimants signed a Non-Disclosure Agreement with NTE (<i>Id</i>). Claimant Michael Goyne also claims that, in 2014, NTE started preparing a drilling plan for the ION Project and "contacting Chinese drilling companies with a view to implementing those plans" (Goyne WS, ¶ 146). In contemporaneous correspondence, Claimant Michael Goyne asserted that NTE would commit US\$ 11 million to the ION Project (<i>see, e.g.</i>, letter from ION (Michael Goyne) to MEM (20 Nov. 2014), p. 1 (C-153)).</p> <p>Under their Minimum Standard of Treatment ("MST") claim, Claimants allege that, at the time Nicaragua terminated the Concession Contract in 2014, "ION was in a position to advance the San Bartolo Block project with the support of NTE" (CLM, ¶ 284). In particular, according to Claimants, "following the issuance of the Termination Letter, NTE withdrew its interest in partnering with ION to develop the ION Block" (CLM, ¶ 179).</p>

	Consequently, this request is relevant and material in assessing ION’s and Claimants’ financial capacity to operate the ION Concession Contract.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract and ION was the Concession’s operator from 2011 to 2014.
Objections by disputing party to production of requested documents	Without prejudice to the objections that apply to Nicaragua’s flawed requests, the Claimants produce documents responsive to this request.
Reply	<p>Nicaragua notes that Claimants do not object to this request and that they have produced responsive documents. Nicaragua requests that, where appropriate, Claimants produce any additional responsive documents that came to their attention or to their possession, custody or control after the date of their first production.</p> <p>Nicaragua also reminds Claimants that it had sought all documents “without abbreviation, expurgation or redaction, and together with any attachments, enclosures and annexes” (<i>see supra</i> “Additional Remarks”, ¶ 5). In this regard, Nicaragua notes that, under this request, Claimants have produced an email between Michael Goyne and NTE in which Michael Goyne communicates that he has shared data from ION’s data room with NTE (email from ION to NTE (9 Jan. 2014) (CPROD-318)). Likewise, Claimants have produced an email between Claimant Raymond Gerald Bailey and NTE, which includes a zip file as attachment (email from ION to NTE (13 Dec. 2014) (CPROD-442)). To the extent that ION submitted this information to NTE, Nicaragua expressly requires Claimants to produce these documents and attachments. Furthermore, to the extent they exist, Nicaragua reiterates that it seeks documents recording the reasons for NTE’s withdrawal from the partnership with ION.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	18
Identification of documents or category of	<p>Any and all economic and financial documents of ION related to its activities in Nicaragua, including, but not limited to:</p> <ul style="list-style-type: none"> a) records of revenues and expenditures; b) statements of earnings; c) balance sheets;

documents requested	d) payrolls.
Relevance and materiality according to Requesting Party	<p>Under articles 9.6 and 9.7 of the Concession Contract, ION, among other contractual obligations, had to keep and provide to MEM all technical and economic data of its activities under the Concession Contract (Concession Contract (23 Apr. 2004) (C-3)).</p> <p>Consequently, this request is relevant and material in determining ION’s compliance with its contractual commitments. Furthermore, the request is relevant and material in determining whether Claimants made an investment under Article 25(1) of the ICSID Convention.</p>
Documents that are not in the party’s possession	Nicaragua has some balance sheets of ION from 2011-2012, but not all of the documents requested. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to ION’s obligations under the ION Concession Contract.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, the request is duplicative of Requests 4 and 5.</p> <p>Second, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking “Any and all economic and financial documents of ION related to its activities in Nicaragua” without any attempt to identify, let alone, limit the period for which the information is sought.</p> <p>Third, the request is unduly burdensome. It would require Claimants to search for and locate every single economic and financial document of ION in their possession, custody or control from a period of over twenty years that started in the 20th century. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Fourth, by definition, the documents that ION (or Norwood on behalf of ION) was obliged to provide to MEM under the Concession Contract would be in Nicaragua’s possession, custody or control.</p> <p>Fifth, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts “that this request is relevant and material in determining ION’s compliance with its contractual commitments” and “whether Claimants made an investment under Article 25(1) of the ICSID Convention.” But Nicaragua has made no attempt to explain why the requested documents are relevant and material to determine “ION’s compliance with its contractual commitments” or why ION’s compliance with its contractual commitment to provide documents to MEM under the Concession Contract is relevant to the case and material to its outcome. Nicaragua’s purported termination of the Concession Contract did not rely on ION’s and Claimants’ alleged lack of “compliance with its contractual commitments”. Moreover, if MEM was not receiving documents that it considered it was entitled to receive from ION (or Norwood on its behalf), it is reasonable to expect that MEM would have requested those documents.</p>

	<p>As to Nicaragua’s suggestion that the requested documents are relevant and material to determining whether the Claimants have an investment for the purposes of Article 25(1) of the ICSID Convention, the Claimants repeat their responses at Requests 5 and 6 above. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Sixth, the Claimants bear the burden of establishing that their claims fall within the jurisdiction of the Tribunal and ICSID. The Claimants have already provided sufficient information to demonstrate that: (i) they made an investment for the purposes of Article 25(1) of the ICSID Convention (<i>see e.g. Exhibit C-62</i>); (ii) as recorded in the subcontractor agreements between ION and Norwood (Exhibits C-4 and R-0003), Norwood agreed to pay all moneys necessary to carry out exploration activities under the ION Concession Contract; and (iii) in accordance with that agreement, Norwood made contributions on behalf of ION (<i>see e.g. Exhibits C-1</i> (article 28), C-3 (articles 9(9), 22(1) and 22(7)), C-4 (p. 2), R-0003 (p. 2), C-67 (articles 65 and 67), C-79, C-81 (p. 4), C-90, C-95, C-97 and CLEX-14). In any event, “[i]t is not for a Party to disprove, by way of document requests directed to the counterparty, allegations for which the counterparty bears the burden of proof.” (<i>Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru</i> (ICSID Case No. UNCT/18/2), Procedural Order No. 3, 12 July 2018, para. 20).</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 18.</p> <p>First, the Request is not overbroad. It refers to a specific category of documents pertaining to ION’s activities in Nicaragua under the ION Concession Contract. As such, the request is inherently limited in time. Furthermore, the request is not burdensome because the sought documents are the type of economic and financial documents, which any diligent management keeps track of pursuant to its book-keeping and filing procedures.</p> <p>Second, ION was contractually obliged to keep these documents and provide them to Nicaragua if so required (<i>see</i> articles 9.6 and 9.7 of the Concession Contract (C-3)). Nicaragua is entitled to determine on its own whether ION fulfilled its contractual commitments by requesting the production of these documents. In fact, Nicaragua notes that ION only provided MEM with some balance sheets of ION from 2011-2012.</p> <p>Third, the Request is not duplicative of Requests Nos. 4 and 5. Request No. 4 asks for documents recording “any Claimant’s financial contribution to ION or to exploration activities,” not for financial documents of ION. Request No. 5 is both broader in scope than the present one, because it requests all documents showing a contribution of resources by ION, and narrower in scope, because it requests only those documents showing a contribution of resources by ION “to the exploration of hydrocarbons in the Concession area.” Thus, while some documents may be responsive to both Requests, others will be responsive only to Request 5 or to this Request.</p> <p>Fourth, the Request seeks relevant and material documents. In particular, ION’s compliance with its contractual commitments is relevant for causation purposes.</p> <p>Moreover, for the Tribunal to have jurisdiction over this arbitration Claimants must prove that they made an investment under Article 25(1) of the ICSID Convention (<i>see</i> CM, ¶¶ 219-264). Because Claimants submitted their claims on their own behalves, as shareholders of ION, instead of on behalf of ION, each Claimant must prove (1) that they invested in ION and (2) that ION invested in the exploration of hydrocarbons in Nicaragua (<i>see id.</i>, ¶¶ 234-238).</p>

	<p>Financial documents of ION related to its activities in Nicaragua therefore are relevant and material to determining whether each Claimant made an investment under Article 25(1), because they help determine, among other elements, whether ION made a contribution of resources to the exploration of hydrocarbons in the Concession Area. A contribution of resources to the alleged investment is the most basic element of an investment under Article 25(1) (<i>see</i> CM, ¶¶ 235-249).</p> <p>In light of the foregoing, Nicaragua maintains its Request. However, in the spirit of cooperativeness, Nicaragua agrees to limit its Request to ION's documents from 2011 to 2014.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	19
Identification of documents or category of documents requested	Any and all communications between ION and/or any Claimant and Lissette Grijalva-Oswald concerning ION's fulfilment of its environmental obligations under the ION Concession Contract between 2011 and 2013.
Relevance and materiality according to Requesting Party	<p>According to Claimant Michael Goyne, Ms Lissette Grijalva-Oswald was ION's environmental director (Goyne WS, ¶ 70).</p> <p>Consequently, this request is relevant and material in assessing ION's compliance with its legal and contractual environmental obligations.</p>
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to operational aspects of the ION Concession Contract and ION was the Concession's operator from 2011 to 2014.
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, the request is unduly burdensome. It would require each of the Claimants and/or ION to search for and locate documents in the possession, custody or control of more than 20 different entities for a three-year period nearly a decade ago. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p>

	<p>Second, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that “[a]ny and all communications between ION and/or any Claimant and Lissette Grijalva-Oswald” are “relevant and material in assessing ION’s compliance with its legal and contractual environmental obligations”. But Nicaragua does not explain how communications between the Claimants and/or ION and Ms. Grijalva-Oswald could determine whether ION complied with its contractual environmental obligations under the Concession Contract. Those obligations related to specific activities and communications with the relevant authorities in Nicaragua. The obligations Nicaragua needs to make its assessment would be recorded in communications between ION and the Nicaraguan authorities, not communications between ION and/or any Claimant and Ms. Grijalva-Oswald.</p> <p>Nicaragua has in any event failed to explain how “ION’s compliance with its legal and contractual environmental obligations” is relevant to the case or material to its outcome. Nicaragua never claimed that “compliance with its legal and contractual environmental obligations” was a basis for its purported termination of the Concession Contract. This is an inadequate basis for seeking disclosure. The production of the requested documents should be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Third, Nicaragua and, in particular MARENA, has possession, custody or control over documents showing ION’s level of compliance with its obligations under the Concession Contract and related communications. The Nicaraguan authorities also would have possession, custody or control over any contemporaneous documents suggesting that they considered ION was in breach of those obligations, including records of site visits made to the ION Concession.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 19.</p> <p>First, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ records to respond to the Request. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information that may be in the possession of multiple Claimants and is relevant to the claims of multiple Claimants and Nicaragua’s counter-claim against them cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Nicaragua’s Request.</p> <p>By the same token, it is not unduly burdensome for Claimants to search for documents covering a 3-year period during which ION operated the Concession, regardless of when that occurred. Claimants’ and ION’s conduct over that time is relevant and material to Nicaragua’s counter-claim and ION’s compliance with its environmental obligations; just because the conduct began 9 years ago cannot be a reason for Claimants to avoid their obligations to produce responsive documents. Maintaining such an objection would render nearly every request for documents relevant to the facts of this case as imposing a de facto burden on a party. That cannot be so. If there are particular, good faith reasons (<i>e.g.</i>, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for documents covering that five-year period, Claimants should identify with particularity the factors contributing to such difficulties so that Nicaragua can negotiate, where appropriate, reasonable search parameters on a case-by-case basis.</p> <p>Second, the requested documents are relevant to this case and material to its outcome because they relate to whether and how ION fulfilled its environmental obligations and representations, which is the basis of Nicaragua’s counter-claim. Claimants make no attempt to explain why the information requested is not relevant or material to the resolution of the counter-claim. Claimants’ argument that the requested documents are not relevant to the termination of the Concession Contract is thus beside the point. In any event, Claimants are</p>

	<p>wrong: the Concession Contract was terminated, in part, under Article 70(e)(3) of Law No. 286, which provides for termination for “<i>no cumplir con las normas de protección y mitigación del impacto ambiental</i>” (CM, ¶ 152, fn. 273). Documents responsive to the Request in ION’s and Claimants’ possession would demonstrate ION’s own awareness of its environmental responsibilities and liabilities, the seriousness with which it regarded them, and whether it knowingly failed to address them and/or what steps it determined to take to address them, which are central to the termination of the Concession Contract and Nicaragua’s counter-claim.</p> <p>Third, it is irrelevant that Nicaragua is in possession of inspection reports and other documents it generated regarding ION’s level of compliance with its obligations under the Concession Contract. Internal correspondence with ION’s environmental manager – a position Claimants do not dispute Ms. Grijalva-Oswald occupied – will demonstrate ION’s and Claimants’ awareness of their environmental responsibilities and liabilities, the seriousness with which they regarded them, and whether they knowingly failed to address them and/or what steps they determined to take to address them. None of this would necessarily be reflected in documents in Nicaragua’s possession or would have necessarily been communicated to the Nicaraguan authorities, yet this information is relevant and material to Nicaragua’s counter-claim and the justification for termination of the Concession Contract under Article 70(e)(3) of Law No. 286. Moreover, each individual Claimants’ knowledge about ION’s obligations – as demonstrated in correspondence with Ms. Grijalva-Oswald – is relevant to whether Claimants “adopt[ed] any measures or t[ook] any action designed to avoid [environmental damages], comply with Nicaraguan environmental laws, or meet environmental closure and restoration obligations at the drill sites” (CM, ¶ 466).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	20
Identification of documents or category of documents requested	Any and all documents regarding any outstanding environmental liabilities held by ION between 2011 and 2015.
Relevance and materiality according to Requesting Party	As explained in Nicaragua’s counter-claim (Section IX of Nicaragua’s Counter-Memorial), ION was required under the environmental permit to provide MARENA with baseline information concerning the environmental state of each drilling location. This information was necessary in order to ensure that ION restored the drilling sites to their original environmental condition.

	<p>This request is relevant and material in assessing whether ION fulfilled its environmental obligations and representations it made to MARENA during the operation of the Concession Contract.</p>
<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to ION's environmental obligations under the ION Concession Contract and Nicaraguan law.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants object to this request.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking "Any and all documents regarding any outstanding environmental liabilities" over a five-year period, without any attempt to identify the source of or otherwise limit the purported liabilities. This request is an impermissible fishing expedition.</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants and/or ION to search for and locate documents for a five-year period that commenced nearly a decade ago.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that its "request is relevant and material in assessing whether ION fulfilled its environmental obligations and representations it made to MARENA during the operation of the Concession Contract". But Nicaragua has made no attempt to explain how the fulfillment of contractual obligations and/or representations it made to the Nicaraguan authorities are relevant to the case or material to its outcome. ION's fulfillment "of its environmental obligations and representations" was not advanced by Nicaragua as a basis for its purported termination of the Concession Contract. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, Nicaragua and, in particular MARENA, has possession, custody or control over documents showing ION's level of compliance with its obligations under the Concession Contract and related communications. The Nicaraguan authorities also would have possession, custody or control over any contemporaneous documents suggesting that they considered ION was in breach of those obligations, including records of site visits made to the ION Concession.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants' objections to its Request No. 20.</p> <p>First, Claimants' overbreadth objection does withstand scrutiny because Claimants know full well that the environmental liabilities referred to in the Request concern activities carried out pursuant to the Concession Contract and ION's contractual and legal obligations under Nicaraguan environmental law, a narrow and clear category. The only way Claimants could seriously claim that this</p>

Request is overbroad would be if ION had many outstanding environmental liabilities, a fact which would in and of itself be relevant to Nicaragua's counter-claim and to assessing ION's environmental conduct.

Second, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants' records to respond to the Request. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information that may be in the possession of multiple Claimants and is relevant to the claims of multiple Claimants and Nicaragua's counter-claim against them cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION's behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to this Request.

By the same token, it is not unduly burdensome for Claimants to search for documents covering the 5-year period during which ION operated the concession, regardless of when that occurred. Claimants' and ION's conduct over that time is relevant and material to Nicaragua's counter-claim and ION's compliance with its environmental obligations; just because the conduct began 9 years ago cannot be a reason for Claimants to avoid their obligations to produce. Maintaining such an objection would render nearly every request for documents relevant to the facts of this case as imposing a de facto burden on a party. That cannot be so. If there are particular, good faith reasons (*e.g.*, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for documents covering that five-year period, Claimants should identify with particularity the factors contributing to such difficulties so that Nicaragua can negotiate, where appropriate, reasonable search parameters on a case-by-case basis.

Third, the requested documents are relevant to this case and material to its outcome because they relate to whether and how ION fulfilled its environmental obligations and representations, which is the basis of Nicaragua's counter-claim. Claimants make no attempt to explain why the information requested is not relevant or material to the resolution of the counter-claim. Claimants' argument that the requested documents are not relevant to the termination of the Concession Contract is thus beside the point. In any event, Claimants are wrong: the Concession Contract was terminated, in part, under Article 70(e)(3) of Law No. 286, which provides for termination for "*no cumplir con las normas de protección y mitigación del impacto ambiental*" (CM, ¶ 152, fn. 273). Documents in ION's possession would demonstrate ION's own knowledge about its environmental obligations and its level of compliance with those obligations, which are central to the termination of the Concession Contract.

Fourth, it is irrelevant that Nicaragua is in possession of inspection reports and other documents it generated regarding ION's level of compliance with its obligations under the Concession Contract. ION, the concessionaire and environmental permittee, had obligations to ensure and monitor compliance with environmental protection norms, and to generate records on the topic (*see, e.g.*, MARENA Resolution No. 16-2004 (18 May 2005), ¶¶ 3, 4, 10, 15, 17, 26 (C-76); Concession Contract (23 Apr. 2004), Art. 9(11) (C-3)). ION must therefore have contemporaneous information in addition to what Nicaragua possesses regarding the environmental liabilities associated with the Concession. Further, ION's own internal documents would demonstrate its awareness of its environmental responsibilities and liabilities, the seriousness with which it regarded them, and whether it knowingly failed to address them and/or what steps it determined to take to address them. None of this would be reflected in documents in Nicaragua's possession or would have necessarily been communicated to the Nicaraguan authorities, yet this information is relevant and material to Nicaragua's counter-claim and the justification for termination of the Concession Contract under Article 70(e)(3) of Law No. 286. Finally, each individual Claimants' knowledge about ION's obligations and the outstanding liabilities is relevant to whether Claimants "adopt[ed]

	<p>any measures or t[ook] any action designed to avoid [environmental damages], comply with Nicaraguan environmental laws, or meet environmental closure and restoration obligations at the drill sites” (CM, ¶ 466).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	21
Identification of documents or category of documents requested	Any and all documents and internal communications concerning the environmental state of the drilled Concession area as well as any geochemical analysis carried out by ION and/or Claimants to determine the state of the Concession area.
Relevance and materiality according to Requesting Party	<p>As explained in Nicaragua’s counter-claim (Section IX of Nicaragua’s Counter-Memorial), ION was required under the environmental permit to provide MARENA with baseline information concerning the environmental state of each drilling location. This information was necessary in order to ensure that ION restored the drilling sites to their original environmental condition.</p> <p>This request is relevant and material in assessing whether ION fulfilled its environmental obligations and representations it made to MARENA during the operation of the Concession Contract.</p>
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to ION’s environmental obligations under the ION Concession Contract and Nicaraguan law.
Objections by disputing party to production of	<p>The Claimants object to this request.</p> <p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under section 16.2.1 of Procedural Order No. 1 and Article 3.3(a) of the IBA Rules. Rather, Nicaragua is seeking “Any and all documents and internal</p>

<p>requested documents</p>	<p>communications concerning the environmental state of the drilled Concession area”, without any attempt to limit the period or the authors or recipients of the requested documents. This request is an impermissible fishing expedition.</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants and/or ION to search for and locate documents for a period of more than a decade.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that its “request is relevant and material in assessing whether ION fulfilled its environmental obligations and representations it made to MARENA during the operation of the Concession Contract”. But Nicaragua has made no attempt to explain how the fulfillment of such contractual obligations and/or any representations it made to the Nicaraguan authorities would be relevant to the case or material to its outcome. ION’s fulfillment “of its environmental obligations and representations” was not advanced by Nicaragua as a basis for its purported termination of the Concession Contract. This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Fourth, Nicaragua and, in particular MARENA, has possession, custody or control over documents showing ION’s level of compliance with its obligations under the Concession Contract and related communications. The Nicaraguan authorities also would have possession, custody or control over any contemporaneous documents suggesting that they considered ION was in breach of those obligations, including records of site visits made to the ION Concession.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 21.</p> <p>First, Claimants’ overbreadth objection does withstand scrutiny because the request is clearly limited to (1) documents and correspondence in Claimants’ possession relating to a discrete topic and (2) specific scientific analyses conducting in the Concession area.</p> <p>Second, Claimants argue that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ records to respond to the Request. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information that may be in the possession of multiple Claimants and is relevant to the claims of multiple Claimants and Nicaragua’s counter-claim against them cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to this Request.</p> <p>By the same token, is not unduly burdensome for Claimants to search for documents covering the period ION was the concessionaire and therefore responsible for the drilled Concession area, regardless of when that occurred. Claimants’ and ION’s knowledge and conduct during the time the Concession Contract was in force is relevant and material to Nicaragua’s counter-claim and ION’s compliance with its environmental obligations; just because the Concession Contract was entered into in 2004 cannot be a reason for Claimants to avoid their obligations to produce. Maintaining such an objection would render nearly every request for documents relevant to the facts of this case as imposing a de facto burden on a party. That cannot be so. If there are particular, good faith reasons (<i>e.g.</i>, document retention policies, loss of files) that make it difficult for a particular Claimant to undertake a reasonable search for</p>

	<p>documents, Claimants should identify with particularity the factors contributing to such difficulties so that Nicaragua can negotiate, where appropriate, reasonable search parameters on a case-by-case basis.</p> <p>Third, the requested documents are relevant to this case and material to its outcome because they relate to whether and how ION fulfilled its environmental obligations and representations, which is the basis of Nicaragua’s counter-claim. The requested information is essential to determining any environmental impacts or alterations to existing conditions at the drilling sites, Claimants’ and ION’s awareness, observations, or scientific testing of such impacts and alterations, and ION’s ultimate fulfillment of its legal obligation to restore the drilling sites to baseline environmental conditions. Claimants make no attempt to explain why the information requested is not relevant or material to the resolution of the counter-claim. Claimants’ argument that the requested documents are not relevant to the termination of the Concession Contract is thus beside the point. In any event, Claimants are wrong: the Concession Contract was terminated, in part, under Article 70(e)(3) of Law No. 286, which provides for termination for “<i>no cumplir con las normas de protección y mitigación del impacto ambiental</i>” (CM, ¶ 152, fn. 273). Documents in ION’s possession would demonstrate ION’s own knowledge about its environmental obligations and its level of compliance with those obligations, which are central to the termination of the Concession Contract.</p> <p>Fourth, it is irrelevant that Nicaragua is in possession of inspection reports and other documents it generated regarding ION’s level of compliance with its obligations under the Concession Contract. ION, the concessionaire and environmental permittee, had obligations to ensure and monitor compliance with environmental protection norms, and to generate records on the topic (<i>see, e.g.</i>, MARENA Resolution No. 16-2004 (18 May 2005), ¶¶ 3, 4, 10, 15, 17, 26 (C-76); Concession Contract (23 Apr. 2004), Art. 9(11) (C-3)). ION must therefore have contemporaneous information in addition to what Nicaragua possesses regarding the environmental liabilities associated with the Concession. Further, ION’s own internal documents would demonstrate its awareness of its environmental responsibilities and liabilities, the seriousness with which it regarded them, and whether it knowingly failed to address them and/or what steps it determined to take to address them. None of this would be reflected in documents in Nicaragua’s possession or would have necessarily been communicated to the Nicaraguan authorities, yet are relevant and material to Nicaragua’s counter-claim and the justification for termination of the Concession Contract under Article 70(e)(3) of Law No. 286. Finally, each individual Claimants’ knowledge about ION’s obligations and the outstanding liabilities is relevant to whether Claimants “adopt[ed] any measures or t[ook] any action designed to avoid [environmental damages], comply with Nicaraguan environmental laws, or meet environmental closure and restoration obligations at the drill sites” (CM, ¶ 466).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
<p>Decision of the Tribunal</p>	<p>Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.</p>
<p>Document Request Number</p>	<p>22</p>

Identification of documents or category of documents requested	<p>Any and all communications among Claimants and/or between ION any Claimant in 2014 and 2015 concerning the appointment of an expert or the commencement of national arbitration pursuant to article 29 of the Concession Contract.</p>
Relevance and materiality according to Requesting Party	<p>This request is relevant and material in assessing Claimants’ allegation that Nicaragua “systematically disregarded ION’s invocation of the dispute settlement procedure” (CLM, ¶ 265) and the related claim that that Nicaragua’s failure to terminate the Concession Contract without first resorting to domestic arbitration or expert resolution constituted a breach of the DR-CAFTA’s MST (CLM, ¶¶ 264-265).</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to a key decision which ION’s shareholders would have been involved with and/or would have been aware of.</p>
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>The requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that the requested documents are relevant and material in assessing Claimants’ allegation that Nicaragua “systematically disregarded ION’s invocation of the dispute settlement procedure” and their related claim that “Nicaragua’s failure to terminate the Concession Contract without first resorting to domestic arbitration or expert resolution constituted a breach of the DR-CAFTA’s MST”.</p> <p>Nicaragua has made no attempt to explain how communications among Claimants and/or ION discussing their legal strategy in response to Nicaragua’s conduct are relevant to the case or material to its outcome. Even on the fact of Nicaragua’s request, the requested documents are clearly irrelevant and immaterial. The Claimants submitted evidence of ION’s repeated invocation of Article 29 of the Concession Contract with their Memorial (See Exhibits C-35, C-37 and C-43, see also e.g. Claimants’ Memorial, paras 176 and 186). It is undisputed that: (i) Nicaragua did not comply with the procedure agreed under Article 29 of the Concession Contract; and (ii) Nicaragua instead purported unilaterally to terminate the ION Concession Contract (see e.g. Claimants’ Memorial, paras 174-180 and 187-188). The production of the requested documents should be rejected pursuant to Article 9.2(a) of the IBA Rules.</p> <p>In any event, the Claimants note that any internal communications among them and/or ION discussing their legal strategy in response to Nicaragua’s conduct that Nicaragua is requesting would likely be privileged.</p>
Reply	<p>Nicaragua opposes Claimants’ objections to its Request No. 22.</p> <p>Contrary to Claimants’ assertion, the sought documents are relevant to the case and material to its outcome. In their Memorial Claimants complain that Nicaragua “systematically disregarded ION’s invocation of the dispute settlement procedure in article 29 that</p>

	<p>provided for the submission of the dispute to expert determination or arbitration, which should have prevented the MEM from terminating the Concession Contract” (CLM, ¶ 265). But, there is no evidence on the record that ION ever formally invoked the dispute resolution clause under Nicaraguan law and the letters Claimants refer to in their objection do not prove otherwise.</p> <p>The sought documents will show whether Claimants and ION intended to activate the dispute resolution mechanism under the Concession Contract prior to initiating this arbitration. They will thus allow Nicaragua to ascertain whether Claimants’ allegations that Nicaragua undermined their rights under the Treaty by “systematically disregard[ing] [their] dispute settlement procedure” (CLM, ¶ 265) are warranted.</p> <p>In light of the foregoing, Nicaragua maintains its Request. If Claimants believe that communications among them and/or between Claimants and ION discussing their legal strategy would likely be privileged, Nicaragua invites Claimants to provide a privilege log identifying those documents.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	23
Identification of documents or category of documents requested	Any and all documents and communications related to the potential sale of Claimants’ shares in ION.
Relevance and materiality according to Requesting Party	This request is relevant and material in evaluating the potential value, if any, of ION’s shares for the purposes of evaluating Compass Lexecon’s fair market value calculation.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their shareholding in ION.
Objections by disputing party to	The Claimants object to this request.

<p>production of requested documents</p>	<p>First, the request is overbroad. The request does not refer to a narrow and specific category of documents, as required under the Article 3.3(a) of the IBA Rules. Rather, Nicaragua seeks all documents and communications concerning potential sales of shares by multiple Claimants without any attempt even to limit the scope of the request to a defined period. Indeed, Nicaragua’s own justification for this request confirms that the request is overbroad. If the objective of the request is to obtain documents to evaluate the potential value of ION’s shares, then most “documents and communications related to the potential sale” of shares in ION by a Claimant will be irrelevant. Similarly, the failure to specify a date range is problematic in circumstances where the basis for seeking the documents appears to be as a comparison with the value derived by Compass Lexecon as of 2 December 2014.</p> <p>Second, the request is unduly burdensome. It would require each of the Claimants to search for and locate documents “related to” the potential sale of shares in ION for the entire period in which that Claimant held shares. The production of the requested documents should thus be rejected pursuant to Article 9.2(c) of the IBA Rules.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua simply asserts, without explanation, that the documents are relevant and material as a basis of comparison with “Compass Lexecon’s fair market value calculation”. That is obviously wrong. Compass Lexecon has not submitted a fair market value calculation based on actual or potential transactions, only discounted cash flow (DCF) and sunk costs valuations (<i>see</i> Compass Lexecon Report, paras 34-69). In any event, any transactions after Nicaragua’s intention to terminate the ION Concession Contract had become apparent would not be relevant because “compensation shall not reflect any change in value occurring because the intended expropriation had become known earlier a fair market valuation” (Treaty, Exhibit C-5, article 10.2(c)). This is an inadequate basis for seeking disclosure. The production of the requested documents should thus be rejected pursuant to Article 9.2(a) of the IBA Rules.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 23.</p> <p>First, Claimants argue that the request is overbroad. Nicaragua fails to see how documents related to potential sales of Claimants’ shares is neither narrow or specific. Nicaragua seeks documents of Claimants concerning the potential sale of shares in ION. Thus, the subject-matter and the relevant parties are clearly designated. It should be readily apparent to each Claimant whether they have such documents in their possession, custody or control if they attempted to sell any portion of their shares at any point in time. What is more, Claimants apparently concede that certain types of documents dated prior to 2 December 2014 (<i>i.e.</i>, their purported valuation date) may provide information to evaluate the potential value of ION’s shares but they make no effort whatsoever to produce any such documents.</p> <p>Second, neither is Claimants’ objection credible that responding to this Request would be unduly burdensome because it would require a search of multiple Claimants’ records for documents related to potential sales of their ION shares. That is a non-sequitur. Each individual Claimant would only have to undertake a search of its own records. The fact that the Request seeks information relevant to the claims of multiple Claimants cannot render it burdensome. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to Respondent’s Request. Furthermore, it is reasonable to assume the number of documents related to potential sales transactions for each Claimants’ shares would not be voluminous.</p> <p>Third, Claimants argue that the requested documents are neither relevant nor material because Compass Lexecon has put forward its fair market valuation on the basis of the DCF and sunk costs methods rather than an actual or potential transaction. However, even Compass Lexecon acknowledges that “Other Methods” are used to assess FMV, including “examining the value of comparable assets</p>

	<p>or companies” (see, Compass Lexecon Report, ¶¶ 32-33). Moreover, arbitral tribunals have found both actual and potential transaction data involving the underlying investment relevant for the purposes of determining fair market value (see e.g., <i>BG Group Plc v. The Republic of Argentina</i>, UNCITRAL, Final Award (24 Dec. 2007) (Garro, Van den Berg, Aguilar Alvarez C.), ¶¶ 440-44; <i>OAO Tatneft v. Ukraine</i>, PCA Case No. 2008-8, Award on the Merits (29 July 2014) (Orrego Vicuña, Brower, Lalonde), ¶¶ 608-9; <i>Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. Government of Mongolia and Monatom Co., Ltd.</i>, PCA Case No. 2011-09, Award on the Merits (2 Mar. 2015) (Hanotiau, Fortier, A.R. Williams), ¶ 411). It is therefore best practice to evaluate fair market value using different valuation methods. In this case, Nicaragua seeks information about transactions involving shares in the company at issue in this arbitration, ION. Accordingly, this information is relevant and material to assess Compass Lexecon’s fair market value calculation.</p> <p>Alternatively, Claimants’ argue that “any transactions after Nicaragua’s intention to terminate the ION would have been apparent would not be relevant” because compensation should not reflect any change in value due to the alleged measures. Yet, Claimants make no effort to produce any documents prior to their purported valuation date. Nor do Claimants acknowledge that tribunals have permitted the implementation of adjustments to minimize the impact of the alleged measures on the value of an investment (see e.g., <i>Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. Government of Mongolia and Monatom Co., Ltd.</i>, PCA Case No. 2011-09, Award on the Merits (2 Mar. 2015) (Hanotiau, Fortier, A.R. Williams), ¶ 418).</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	24
Identification of documents or category of documents requested	Any and all audited consolidated financial statements and quarterly reports of ION for all available years and quarters.
Relevance and materiality according to Requesting Party	Claimants have not produced any financial statements of ION but only present financial statements for Norwood for its sunk costs calculation. This request is relevant and material in examining the financial status of ION throughout its history and to analyze the costs incurred by ION on the Concession that form the basis of its sunk cost damages calculation.

Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to ION's book-keeping obligations.
Objections by disputing party to production of requested documents	There are no audited consolidated financial statements or quarterly reports of ION.
Reply	Claimants do not object as such to this Request, nor could they reasonably do so. Instead, Claimants contend that: "There are no audited consolidated financial statements or quarterly report of ION." However, this is incorrect. Presently, there are two 2012 quarterly reports on record for ION SA (<i>see</i> C-108 and C-13). Therefore, Nicaragua reiterates its request that Claimants produce the other financial statements and quarterly reports similar to the ones on record, audited or unaudited, to the extent that they exist.
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	25
Identification of documents or category of documents requested	Any and all documents showing the sales or changes in ownership of any of ION's shares by any Claimants after the Valuation Date.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants received any payments for their shares in ION as these must be deducted from the compensation awarded, if any.

Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their shareholdings in ION.
Objections by disputing party to production of requested documents	The Claimants produce responsive documents in their possession, custody or control. The Claimants note that the requested documents are neither relevant nor material for the purposes asserted by Nicaragua. The Claimants have not brought claims with respect to the shares in ION that were transferred under the transaction reflected therein.
Reply	Nicaragua acknowledges receipt of two documents produced in relation to Request No. 25. Should additional transactions arise, Nicaragua requests that Claimants produce those documents.
Decision of the Tribunal	Denied because the documents are requested to prove matters for which the requested party bears the burden of proof.
Document Request Number	26
Identification of documents or category of documents requested	Any and all funding agreements and any related documents that Claimants concluded to fund this investment arbitration, including but not limited to documents sufficient to show (1) the name of any person or entity funding this arbitration and (2) any terms of any funding agreement concerning termination and payment of an adverse costs award.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua's costs in this arbitration. This request is also relevant and material in assessing the arbitrators' impartiality and independence in deciding the dispute, in the event of potential ties to the funder.

<p>Documents that are not in the party's possession</p>	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their decision to commence this arbitration proceeding.</p>
<p>Objections by disputing party to production of requested documents</p>	<p>The Claimants provide the following information relating to the existence of funding for this case and the identity of the funder, but otherwise object to Nicaragua's request for the reasons below.</p> <p>The Claimants confirm that, subsequent to the commencement of this arbitration, they entered into a funding agreement with La Française IC 2 SICAV-SIF, a regulated fund incorporated under the form of a limited liability company (<i>société anonyme</i> or "SA") under the laws of Luxembourg, with its registered address at 60 avenue J.F. Kennedy, 1855 – Luxembourg (IC2). Profile Investment, a Paris-based third-party funder, with its registered address at 58 bis, rue La Boétie – 75008 Paris, France, acted as investment advisor to La Française in relation to the funding agreement.</p> <p>The Claimants further confirm that they are the sole holders of the claim and Claimants' counsel confirm that they take instructions exclusively from the Claimants and owe their duty of care to the Claimants. The Claimants confirm that Profile Investment has confirmed that there is no conflict of interest between IC2 or Profile Investment, and any of the members of the Arbitral Tribunal.</p> <p>The Claimants otherwise object to Nicaragua's request. First, once the existence of the funding and the identity of the funder have been disclosed, there is no requirement to disclose the terms of the funding. The funding agreement is a private financing arrangement between a claimant and a funder containing confidential information and is subject to legal privilege. This approach has been endorsed in both the IBA Guidelines on Conflicts of Interest in International Arbitration of 2014 (<i>see</i> General Rules 6(b) and 7(a)) and the joint ICCA-Queen Mary report on third party funding in international arbitration.</p> <p>Second, investment treaty tribunals similarly rejected requests for the disclosure of the terms of funding agreements on the basis that it is sufficient for the funded party to disclose the existence of the funding and the identity of the third-party funder because this will clarify whether there are any conflicts of interests (<i>see</i> for example, <i>EuroGas Inc. and Belmont Resources Inc. v. Slovakia</i> (ICSID Case No. ARB/14/14), First Session and Hearing on Provisional Measures, p. 145; <i>Guaracachi America, Inc. and Rurelec Plc v. Bolivia</i> (PCA Case No. 2011-17), Procedural Order No. 13, 21 February 2013, para. 8; <i>South American Silver Limited (Bermuda) v. Bolivia</i> (PCA Case No. 2013-15), Procedural Order No. 10, 11 January 2016, paras 80-82; <i>Teinver and others v. Argentina</i> (ICSID Case No. ARB/09/1), Decision on Jurisdiction, 21 December 2012, paras 24-26).</p> <p>Third, Nicaragua assumes that the mere existence of external funding would be indicative of an inability by the Claimants to meet an eventual costs award and that the financing arrangement relates to the decision to commence the arbitration. Both of those assumptions are obviously wrong. The financing arrangement goes to how the Claimants finance the arbitration and not whether they would commence the arbitration (which they did many months before the agreement was signed). Furthermore, how the Claimants have chosen to finance their arbitration is not relevant to the recovery of Nicaragua's costs and is not a valid basis for requiring the disclosure of the funding agreement. The use of external funding by a party and the existence of a funding agreement is a regular feature of international arbitration proceedings. Investment treaty tribunals have recognized that a party may resort to external funding for different reasons, and that the existence of such funding does not suggest that a party is unable to meet a costs award (<i>see</i> for example, <i>South American Silver</i></p>

	<p><i>Limited (Bermuda) v. Bolivia</i> (PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, para. 76; <i>EuroGas Inc. and Belmont Resources Inc. v. Slovakia</i> (ICSID Case No. ARB/14/14), Procedural Order No. 3, 23 June 2015, para. 123).</p> <p>Fourth, Nicaragua’s request is a fishing expedition. Nicaragua has not and cannot identify any objective evidence or indication that the Claimants would be unable to meet an eventual costs award. As Nicaragua is aware, none of the Claimants is subject to any type of liquidation, conservatorship, bankruptcy, moratorium, receivership, insolvency, reorganization, or similar debtor relief laws (information which would be publicly available to Nicaragua and its US counsel).</p> <p>Fifth and in any event, the requested documents are subject to legal privilege. The funding agreement was entered into after these proceedings had been commenced for the purposes of pursuing legal proceedings against Nicaragua for its violations of the protections it had guaranteed to US investors under DR-CAFTA.</p>
<p>Reply</p>	<p>Claimants’ objections to providing the requested terms of their third-party funding agreement with La Française IC 2 SICAV-SIF (“La Française”) lack merit.</p> <p>First, Claimants object because the third-party funding agreement is a private financing arrangement containing confidential information. This is not a valid ground for objecting to a document request under the procedural orders in this arbitration or under the IBA Rules. In contrast, the IBA Rules contemplate that parties will produce confidential information, and the Rules provide that any document produced that is “not otherwise in the public domain shall be kept confidential by the Arbitral Tribunal and the other Parties, and shall be used only in connection with the arbitration.” IBA Rules, art. 3.13; <i>see id.</i> (“The Arbitral Tribunal may issue orders to set forth the terms of this confidentiality.”).</p> <p>Second, Claimants also make the conclusory statement that the third-party funding agreement “is subject to legal privilege.” This is a contract between separate entities, not a document representing confidential communications with a Claimant’s lawyers or revealing legal advice from those lawyers. To the extent the agreement contains privileged communications between Claimants and their lawyers, Claimants may redact such communications when producing the agreement.</p> <p>Third, Claimants cite cases to support their proposition that the existence of the third-party funder is sufficient to determine conflicts of interests, but Claimants do not provide authority to support that the terms of the third-party funding agreement are irrelevant and immaterial to determining whether to order Claimants to post security for an eventual adverse costs award.</p> <p>As explained in Nicaragua’s Counter-Memorial, because Claimants have a history of renegeing on their financial obligations, Nicaragua intends to submit a request to the Tribunal for an order requiring Claimants to post security to ensure payment of an eventual award for Claimants to pay Nicaragua’s costs and attorneys’ fees in this arbitration (<i>see</i> CM, ¶ 22). The terms of the third-party funding agreement are relevant and material to such a request because they will help the Tribunal determine whether Claimants will comply with an adverse costs award.</p> <p>In <i>Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrienanlagen GmbH v. Turkmenistan</i>, for example, the tribunal ordered the claimant to attempt to post security for a possible adverse costs award because the third-party funder was not obligated to pay an award of costs against the claimant and the claimant did not have the financial wherewithal to pay (<i>Dirk Herzig as</i></p>

	<p><i>Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan</i>, ICSID Case No. ARB/18/35, Decision on the Respondent’s Request for Security for Claim (27 Jan. 2020) (Reed, Sands, Voser), ¶¶ 47-67). In that case, the third-party funder was the same entity funding the Claimants here, making it even more likely that Claimants’ funder will not be responsible for an award of costs against Claimants. As the tribunal in <i>Dirk Herzig</i> explained, “the critical factor is that La Française has no contractual risk whatsoever to pay an adverse costs award.” (<i>id.</i>, ¶ 62).</p> <p>Similarly, the tribunal in <i>Tennant Energy, LLC v. Government of Canada</i> required the claimant to disclose the identity of the third-party funder and “any terms contained in the third-party funding arrangement relating to the payment of adverse costs orders against the Claimant in this arbitration,” because such information was relevant to the tribunal’s assessment of an application for security for costs (<i>Tennant Energy, LLC v. Government of Canada</i>, PCA Case No. 2018-54, Procedural Order No. 4 (27 Feb. 2020), ¶¶ 106, 109).</p> <p>Nicaragua does not “assume[] that the mere existence of external funding” demonstrates Claimants’ inability to meet an eventual costs award, which is why the terms of the funding agreement are relevant and material. If the third-party funding agreement provides that the third-party funder must pay an eventual costs award, then the tribunal must determine whether the third-party funder is likely to comply with that award. If, on the other hand, the third-party funder has no contractual risk to pay an eventual costs award, then the tribunal must determine whether Claimants’ history of renegeing on their financial obligations—as well as their financial capabilities, among other factors—indicates that Claimants will pay an eventual costs award (<i>id.</i>, ¶¶ 57-63).</p> <p>Fourth, contrary to Claimants’ assertion, Nicaragua’s request is not “a fishing expedition.” Claimants consistently have demonstrated an unwillingness or inability to comply with financial obligations (<i>see</i> CM, ¶¶ 1-23, 85-218, 386-485).</p> <p>Moreover, Claimants chose to submit their claims on their own behalves, not on behalf of ION. For that reason, Nicaragua potentially will have to pursue claims against each Claimant individually to recover costs. Such a pursuit could cost Nicaragua more than the amount of costs awarded to it (<i>see Theodoros Adamakopoulos et al. v. Cyprus</i>, ICSID Case No. ARB/15/49, Decision on Jurisdiction (7 Feb. 2020) (McRae, Escobar, Kohen), ¶ 265). All parties and the Tribunal should be aware of who would be forced to pay an eventual costs award and whether those persons or entities would be willing and able to pay that award.</p> <p>In light of the foregoing, Nicaragua maintains its Request.</p>
<p>Decision of the Tribunal</p>	<p>Denied because request is premature.</p>
<p>Document Request Number</p>	<p>27</p>
<p>Identification of documents or</p>	<p>Any and all documents sufficient to show the current net worth of each Claimant.</p>

category of documents requested	
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua’s costs in this arbitration.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their asset ownership.
Objections by disputing party to production of requested documents	<p>The Claimants object to Nicaragua’s request.</p> <p>First, Nicaragua’s request is overly broad and fails to identify a “narrow and specific” category of documents as required by article 3.3(a) of the IBA Rules and article 16.2.1 of Procedural Order No. 1. The request simply refers without limitation to “any and all documents” relating to the net worth of each of the more than 20 different Claimants without identifying the specific documents (or, at least, the narrow category of documents) requested.</p> <p>Second, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua does not explain how documents showing the net worth of each individual Claimant are relevant to the case and material to its outcome. Nicaragua’s justification for seeking these documents on the basis that it is seeking to determine whether the Claimants would comply with an adverse costs award against them simply confirms that the request should be rejected. Investment treaty tribunals have rejected similar requests for disclosure on the basis that the financial capacity of a claimant party in investment arbitration is irrelevant in order to assess the risk of non-payment of an eventual adverse costs award. For instance, the tribunal in <i>Hesham Tallat M Al-Warraq v. Indonesia</i>, concluded that the claimant was “not required to demonstrate sufficient financial standing to meet a possible adverse costs award, or to provide security for such a sum as a precondition of pursuing an investor-state arbitration” (see <i>Hesham Tallat M Al-Warraq v. Indonesia</i> (UNCITRAL), Award on Respondent’s Preliminary Objections to Jurisdiction and Admissibility of the Claims, 21 June 2012, para. 109; <i>EuroGas Inc. and Belmont Resources Inc. v. Slovakia</i> (ICSID Case No. ARB/14/14), Procedural Order No. 3, 23 June 2015, para. 120, quoting <i>RSM v. Grenada</i> “it is not part of the ICSID dispute resolution system that an investor’s claim should be heard only upon the establishment of a sufficient financial standing of the investor to meet a possible costs award”; <i>Victor Pey Casado and Fundación Presidente Allende v. Chile</i> (ICSID Case No. ARB/92/2), Decision on Provisional Measures, 25 September 2001, para. 86).</p> <p>Third, Nicaragua cannot seek to use the document production exercise as a fishing expedition. Nicaragua has failed to identify any evidence that the Claimants would not comply with and/or be able to satisfy an award on costs. As noted above, none of the Claimants are subject to any type of liquidation, conservatorship, bankruptcy, moratorium, receivership, insolvency, reorganization, or similar</p>

	<p>debtor relief laws (information which would be available from public sources to Nicaragua and its US counsel). Nor is there any evidence that the Claimants have defaulted on any of their financial obligations in the present proceedings or in any other proceedings. As Nicaragua is aware, the Claimants have timely paid the advance on costs requested by the Tribunal in this case.</p> <p>Fourth, information on asset ownership (other than the information available in public registries, to which Nicaragua has access) is confidential. The Claimants therefore also object to this request on the basis of article 9.2(e) of the IBA Rules. No justification has been advanced by Nicaragua for disregarding the confidential nature of the Claimants’ asset ownership information in this case. For the reasons discussed above, it is clear that there is no compelling reason here to disregard the confidential nature of the Claimants’ asset ownership information.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 27.</p> <p>First, the Request is not overly broad. It requests only documents “sufficient to show” the net worth of each Claimant. It does not request, as Claimants mischaracterize, documents “relating to” the net worth of each Claimant. Moreover, each individual Claimant would only have to undertake a search of its own records. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to the Request.</p> <p>Second, the Request is relevant and material to whether Claimants will comply with an adverse costs award. As explained in Nicaragua’s Counter-Memorial, because Claimants have a history of renegeing on their financial obligations, Nicaragua intends to submit a request to the Tribunal for an order requiring Claimants to post security to ensure payment of an eventual award for Claimants to pay Nicaragua’s costs and attorneys’ fees in this arbitration (<i>see</i> CM, ¶ 22).</p> <p>A Claimant’s ability to pay an adverse costs award is a factor in determining whether to grant a request for security for costs (<i>see Eugene Kazmin v. Republic of Latvia</i>, ICSID Case No. ARB/17/5, Procedural Order No. 6 (13 Apr. 2020) (Houtte, Kantor, Knieper), ¶¶ 42-57; <i>Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan</i>, ICSID Case No. ARB/18/35, Decision on the Respondent’s Request for Security for Claim (27 Jan. 2020) (Reed, Sands, Voser), ¶¶ 57-63; <i>Manuel García Armas et al. v. Republic of Venezuela</i>, PCA Case No. 2016-08, Procedural Order No. 9 (20 June 2018) (Nunes Pinto, Gómez-Pinzón, Torres Bernárdez), ¶ 209). This factor is even more important when there are multiple claimants. Nicaragua potentially will have to pursue claims against each Claimant individually to recover costs. Such a pursuit could cost Nicaragua more than the amount of costs awarded to it (<i>see Theodoros Adamakopoulos et al. v. Cyprus</i>, ICSID Case No. ARB/15/49, Decision on Jurisdiction (7 Feb. 2020) (McRae, Escobar, Kohen), ¶ 265). All parties and the Tribunal should be aware of who would be forced to pay an eventual costs award and whether those persons or entities would be willing and able to pay that award.</p> <p>Third, contrary to Claimants’ assertion, Nicaragua’s request is not “a fishing expedition.” Claimants consistently have demonstrated an unwillingness or inability to comply with financial obligations (<i>see</i> CM, ¶¶ 1-23, 85-218, 386-485).</p> <p>Fourth, Claimants object because the information requested may contain confidential information. This is not a valid ground for objecting to a document request under the procedural orders in this arbitration or under the IBA Rules. In contrast, the IBA Rules contemplate that parties will produce confidential information, and the Rules provide that any document produced that is “not otherwise in the public domain shall be kept confidential by the Arbitral Tribunal and the other Parties, and shall be used only in connection with the arbitration.” IBA Rules, art. 3.13; <i>see id.</i> (“The Arbitral Tribunal may issue orders to set forth the terms of this confidentiality.”). Claimants cite</p>

	<p>Article 9.2(e) of the IBA Rules, but that Article deals with “commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling,” and Claimants have not asserted that the Request would force Claimants to divulge commercial or technical confidentiality.</p> <p>In light of the foregoing, Nicaragua maintains its request.</p>
Decision of the Tribunal	Denied because request is premature.
Document Request Number	28
Identification of documents or category of documents requested	Any and all documents sufficient to show all assets and liabilities of each Claimant.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua’s costs in this arbitration.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their asset ownership.
Objections by disputing party to production of requested documents	The Claimants repeat their objections to Request 27 above.

Reply	Nicaragua repeats its reply in support of Request No. 27 above.
Decision of the Tribunal	Denied because request is premature.
Document Request Number	29
Identification of documents or category of documents requested	Any documents relevant to determining whether each Claimant has the financial resources to satisfy an award to pay Nicaragua's costs—including but not limited to Nicaragua's attorneys' fees—in this arbitration.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua's costs in this arbitration.
Documents that are not in the party's possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their asset ownership.
Objections by disputing party to production of requested documents	The Claimants repeat their objections to Request 27 above. Moreover, the request is inherently speculative. Nicaragua has provided no information on the fee arrangement it has entered into with its attorneys for these proceedings, the costs incurred to date or the total legal costs that it reasonably expects to incur in defending these proceedings.
Reply	Nicaragua repeats its reply in support of Request No. 27 above.

Decision of the Tribunal	Denied because request is premature.
Document Request Number	30
Identification of documents or category of documents requested	<p>Any and all documents sufficient to show all legal or regulatory proceedings brought against each Claimant, including but not limited to documents sufficient to show the court, tribunal, or regulatory agency in which the proceeding took place, the case number, and the claims asserted against the Claimant, including:</p> <p>a) all documents related to the case titled <i>In the matter of Nathan McCotter</i>, Case No. SEU-2013-028, a proceeding in the State of Hawaii’s Department of Commerce and Consumer Affairs.</p>
Relevance and materiality according to Requesting Party	<p>This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua’s costs in this arbitration, as the decision in the aforementioned case details how LG Hawaii Development Corporation and Claimant Emily Lopez Goyne helped to illegally induce a person to invest in LG Hawaii Development Corporation.</p>
Documents that are not in the party’s possession	<p>The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to proceedings involving Claimants.</p>
Objections by disputing party to production of requested documents	<p>The Claimants object to this request.</p> <p>First, Nicaragua’s request is overly broad and fails to identify a “narrow and specific” category of documents as required by article 3.3(a) of the IBA Rules and article 16.2.1 of Procedural Order No. 1. The request simply refers without limitation to “any and all documents” relating to “all legal or regulatory proceedings” brought against each of the more than 20 different Claimants without identifying the specific documents (or, at least, the narrow category of documents) requested, or the nature of the proceedings. Nicaragua fails to narrow the scope of its request to specified individuals or documents, fails to identify a specific time-period and fails to specify the jurisdictions in respect of which its request is made.</p> <p>Second, the requested documents would be publicly available and the request is therefore contrary to Article 3.3(c)(i) of the IBA Rules and Article 16.2.3 of Procedural Order No. 1. Nicaragua seeks documents showing “all legal or regulatory proceedings brought against each Claimant” but does not explain why it or its US counsel are unable to search for such documents themselves. The fact that Nicaragua</p>

	<p>and/or its US counsel has obtained information in relation to a proceeding involving two of the Claimants (i.e., <i>In the matter of Nathan McCotter</i>, Case No. SEU-2013-028) simply underscores the objectionable nature of this request.</p> <p>Third, the requested documents are neither relevant to the case nor material to its outcome, as required under section 16.2.2 of Procedural Order No. 1 and Article 3.3(b) of the IBA Rules. Nicaragua does not explain how documents showing legal or regulatory proceedings brought against each Claimant in any jurisdiction are relevant to this case and material to its outcome. Nor does Nicaragua attempt to explain how the existence of legal or regulatory proceedings involving any of the Claimants would be relevant to assess the risk of non-payment of an eventual adverse costs award.</p> <p>Fourth, Nicaragua’s request is a fishing expedition. As set out above, Nicaragua has offered no evidence that the Claimants will not comply with or be able to meet an award on costs. The Claimants have confirmed that none of them is subject to any type of liquidation, conservatorship, bankruptcy, moratorium, receivership, insolvency, reorganization, or similar debtor relief laws and Nicaragua has not provided any evidence that the Claimants have defaulted on any of their financial obligations.</p> <p>The issues raised by <i>In the matter of Nathan McCotter</i>, Case No. SEU-2013-028. are totally unrelated to this arbitration. Nicaragua’s characterization of the events related to such proceedings is in any event misleading. While document production is not the appropriate setting to discuss these types of factual allegations, the Claimants note that LG Hawaii Development Corporation and Emily Lopez-Goyne were directly affected by a fraudulent real estate scheme devised by the individual subject of those proceedings and other third parties.</p>
<p>Reply</p>	<p>Nicaragua opposes Claimants’ objections to its Request No. 30.</p> <p>First, the Request is not overly broad. It requests only documents “sufficient to show” all legal or regulatory proceedings brought against each Claimant. It does not request, as Claimants mischaracterize, documents “relating to” all legal or regulatory proceedings brought against each Claimant, except for documents relating to one specific case. Moreover, each individual Claimant would only have to undertake a search of its own records. Claimants chose to bring claims on their own behalves and not on ION’s behalf; they cannot now hold that up to shield them from having to search for and produce documents responsive to the Request.</p> <p>Second, there is no prohibition on requesting documents that are publicly available, and the rules cited by Claimants say nothing about publicly available documents. Moreover, documents sufficient to show legal or regulatory proceedings brought against each Claimant are not necessarily publicly available. In any event, Claimants would have knowledge of and easy access to documents sufficient to show the information requested.</p> <p>Third, the Request is relevant and material to whether Claimants will comply with an adverse costs award. As explained in Nicaragua’s Counter-Memorial, because Claimants have a history of renegeing on their financial obligations, Nicaragua intends to submit a request to the Tribunal for an order requiring Claimants to post security to ensure payment of an eventual award for Claimants to pay Nicaragua’s costs and attorneys’ fees in this arbitration (<i>see</i> CM, ¶ 22).</p> <p>Information on previous legal or regulatory proceedings brought against Claimants will evidence whether Claimants have been accused in other cases of failing to meet financial obligations, of fraud, or of any other claim that would make it less likely that they will comply with an adverse costs award. In the case cited by Nicaragua in its Request, <i>In the Matter of Nathan McCotter</i>, the State of Hawaii’s</p>

	<p>Department of Commerce and Consumer Affairs found in a Preliminary Order that an individual was induced to invest in Claimant LG Hawaii Development Corporation “based upon the representations made by [an individual named Nathan McCotter] and [Claimant Emily] Lopez-Goyne.” A finding of fraud, in particular, is relevant and material to a request for security for costs (<i>see, e.g., Eugene Kazmin v. Republic of Latvia</i>, ICSID Case No. ARB/17/5, Procedural Order No. 6 (13 Apr. 2020) (Houtte, Kantor, Knieper), ¶¶ 31-41). If, as Claimants, assert, the characterizations in the Preliminary Order in <i>In the Matter of Nathan McCotter</i> are “misleading,” then Claimants should produce documents related to the case that will show those characterizations to be misleading.</p> <p>Fourth, contrary to Claimants’ assertion, Nicaragua’s request is not “a fishing expedition.” Claimants consistently have demonstrated an unwillingness or inability to comply with financial obligations (<i>see</i> CM, ¶¶ 1-23, 85-218, 386-485). Moreover, as Nicaragua has cited, there is at least one proceeding dealing with allegations of fraudulent misrepresentations involving two Claimants. The Claimants should provide information on whether there are other such proceedings, which will help the Tribunal to determine whether to grant Nicaragua’s potential request for security for costs.</p>
Decision of the Tribunal	Denied because request is premature.
Document Request Number	31
Identification of documents or category of documents requested	Any and all documents sufficient to show all legal or regulatory proceedings brought against any entity owned in whole or in part by any Claimant (whether that ownership is direct or through subsidiaries also owned in whole or in part by any Claimant), including but not limited to documents sufficient to show the court, tribunal, or regulatory agency in which the proceeding took place, the case number, and the claims asserted against the Claimant.
Relevance and materiality according to Requesting Party	This request is relevant and material in determining whether Claimants will comply with an award to pay Nicaragua’s costs in this arbitration.
Documents that are not in the party’s possession	The documents requested are not in the possession, custody, or control of Nicaragua. Nicaragua assumes that the documents requested are in the possession, custody, or control of Claimants because they relate to their asset ownership.

Objections by disputing party to production of requested documents	The Claimants repeat their objections to Request 30 above.
Reply	Nicaragua repeats its reply in support of Request No. 30 above.
Decision of the Tribunal	Denied because request is premature.