

PCA Case No. 2018-39

**IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF
THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED ON APRIL 17, 1998 AND
ENTERED INTO FORCE ON JUNE 6, 2001**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2010/2013 (the “UNCITRAL Rules”)**

- between -

**1. THE ESTATE OF JULIO MIGUEL ORLANDINI-AGREDA
2. COMPAÑÍA MINERA ORLANDINI LTDA.**

(the “Claimants”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent”, or “Bolivia”, and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 10

**Decision on the Respondent’s Requests for Document Production
in respect of the Yanus Witness Statement**

Tribunal

Dr. Stanimir A. Alexandrov (Presiding Arbitrator)
Professor Dr. Guido Santiago Tawil
Dr. José Antonio Moreno Rodríguez

March 6, 2021

I. Background

1. On February 16, 2021, the Respondent requested “(i) the procedural opportunity to seek document production from Claimants on the basis of the substantial body of new evidence enclosed with Claimants’ Reply...and (ii) a one-month extension of the time-limit for the submission of Bolivia’s Rejoinder”.
2. On February 21, 2021, following consultations with the Parties, the Tribunal issued Procedural Order No. 9, pursuant to which (i) the Respondent was granted an extension until March 11, 2021 to file its Rejoinder; and (ii) the Tribunal allowed the Respondent to present to the Claimants document production requests arising strictly from the Witness Statement of Dr. Avi Yanus (CWS-8), noting that any issues arising out of such requests were to be resolved by March 11, 2021.
3. On March 4, 2021, the Respondent submitted its Response to Claimants’ Objections to Bolivia’s Request for Documents and Reasoned Application for an Order Compelling Production (the “**Respondent’s Second Redfern Schedule**”).

II. Analysis

4. The Tribunal’s rulings on the Respondent’s requests for production of documents, as reflected in the Respondent’s Second Redfern Schedule and in accordance with the relevant standards provided in the UNCITRAL Rules and Procedural Order No. 1, are set forth in **Annex 1** to this Procedural Order.
5. The Tribunal recalls that, as per Articles 17(1) and 27(3) of the UNCITRAL Rules and section 6.2.6 of Procedural Order No. 1, it may exercise wide discretion when deciding on document production. In particular, and as permitted under Section 6.2.6 of Procedural Order No. 1, the Tribunal has taken guidance from the *IBA Rules on the Taking of Evidence in International Arbitration 2010* in reaching its decisions on the Parties’ requests for document production.
6. The Tribunal notes that the rulings set out in Annex 1 to this order are based on a *prima facie* assessment of the relevance and materiality of the documents requested by the Respondent. The Tribunal does not intend to prejudge the materiality of such documents as far as its final determinations on admissibility and burden of proof are concerned.
7. The Tribunal also notes that this Order and the production of responsive documents pursuant to it shall not serve as a basis for any further extension requests. The Tribunal understands that the timing of the ordered production will not allow the Respondent to comment on the documents in its Rejoinder due on March 11, 2021. Nevertheless, the Respondent may apply to submit into the record any such documents within a reasonable time to be determined based on the number of documents and pages produced, but not to exceed 10 days from production. The Respondent shall be free to use at the hearing any such documents admitted into the record either for the purposes of the cross-examination of Dr. Yanus (if called to testify) or in oral argument.
8. Finally, the Tribunal takes note of the Claimants’ objections based on privilege. It is the Tribunal’s understanding that the documents requested relate to correspondence between the interviewed persons and Black Cube, correspondence between Dr. Yanus and Black Cube, and internal Black Cube documents. The Tribunal does not see how legal privilege would attach to such documents. For the avoidance of doubt, the Tribunal clarifies that its Order does not encompass the production of correspondence between the interviewed persons, Black Cube or Dr. Yanus, on the one hand, and the Claimants’ counsel in this arbitration, on the other hand. The only exception is Request No. 1, where no privilege has been asserted. If the Claimants

nevertheless assert privilege over any responsive documents, they should prepare a privilege log including the following information: (i) the date of the document; (ii) its author(s); (iii) its recipient(s) (if any); (iv) a very brief description of the document; and (v) the basis for the assertion of privilege.

III. Decision

9. Having carefully considered the Respondent's document production requests and the Parties' observations with respect to each of them in light of all relevant circumstances, the Tribunal decides as follows:
 - (i) To grant, for the reasons and to the extent set out in the Tribunal's decisions as incorporated in the Respondent's Second Redfern Schedule (enclosed as Annex 1 to this Procedural Order) the Respondent's document production requests Nos. 1, 3, 4, 5, 6 and 7.
 - (ii) To reject all remaining document production requests submitted by the Respondent for the reasons set out in the Tribunal's decisions as incorporated in the Respondent's Second Redfern Schedule.
 - (iii) The Claimants shall produce all documents as ordered by **Monday, March 15, 2021**.
 - (iv) Pursuant to Section 6.2.7 of Procedural Order No. 1, if a Party fails to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
 - (v) Pursuant to Section 6.3 of Procedural Order No. 1, the documents produced shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the procedural calendar.

Place of Arbitration: Paris, France



Dr. Stanimir A. Alexandrov
(Presiding Arbitrator)

On behalf of the Tribunal

PERMANENT COURT OF ARBITRATION

In the Proceeding Between

The Estate of Julio Miguel Orlandini-Agreda
Compañía Minera Orlandini Ltda.
(Claimants)

- VS -

The Plurinational State of Bolivia
(Respondent)

**BOLIVIA'S RESPONSE TO CLAIMANTS' OBJECTIONS TO
BOLIVIA'S REQUEST FOR DOCUMENTS AND REASONED
APPLICATION FOR AN ORDER COMPELLING
PRODUCTION**

4 March 2021

Members of the Tribunal:

Dr. Stanimir A. Alexandrov

Prof. Guido Santiago Tawil

Dr. José Antonio Moreno Rodríguez

Dechert (Paris) LLP

32 rue de Monceau
75008 Paris, France

PERMANENT COURT OF ARBITRATION

In the Proceeding Between

The Estate of Julio Miguel Orlandini-Agreda
Compañía Minera Orlandini Ltda.
(Claimants)

- VS -

The Plurinational State of Bolivia
(Respondent)

BOLIVIA'S REQUEST FOR DOCUMENTS

24 February 2021

Members of the Tribunal:

Dr. Stanimir A. Alexandrov

Prof. Guido Santiago Tawil

Dr. José Antonio Moreno Rodríguez

Dechert (Paris) LLP

32 rue de Monceau
75008 Paris, France

1. In accordance with the procedural calendar enclosed with Procedural Order No. 9 of 21 February 2021, the Plurinational State of Bolivia (“**Bolivia**”) hereby requests the Estate of Julio Miguel Orlandini Agreda and Compañía Minera Orlandini (“**CMO**”) (hereinafter, jointly “**Claimants**”) to produce the documents and categories of documents described below (the “**Requested Documents**” and the “**Request**”).
2. Pursuant to paragraph 6.2.5 of Procedural Order No. 1 amended as of 27 March 2019, Bolivia submits its request in tabular form, using the template provided by the Tribunal at Annex 2 to Procedural Order No. 1.
3. Bolivia confirms that the Requested Documents are not in its possession, custody or control.
4. Bolivia requests that responsive documents be numbered by Claimants and produced in an electronic form sufficient to identify each separate document, document families (*e.g.*, e-mails and their attachments), the relationship between documents within a family (*e.g.*, multiple attachments to an e-mail) and the request to which they are responsive. Should the native files (*e.g.*, Microsoft Excel or Outlook files) of any of the Requested Documents be available, Bolivia requests that Claimants produce the Requested Documents in such native format.
5. Should Claimants assert privilege over any of the Requested Documents, Bolivia requests that Claimants provide, together with Claimants’ objections to the production of such Requested Documents, a privilege log identifying such Requested Documents and the grounds on which privilege is invoked over them.
6. For the purposes of this Request, documents in the possession, custody, or control of Claimants are deemed to include documents in the possession, custody, or control of its advisors, contractors, employees and consultants, including B.C. Strategy UK Ltd. and any agents, employed personnel and/or subcontractors thereof.
7. Bolivia reserves the right to amend or supplement this Request in light of the documents produced (or not produced) by Claimants.
8. The following definitions are used in Bolivia’s Request:¹
 - **Black Cube:** B.C. Strategy UK Ltd., as well as any agents, employed personnel and/or subcontractors thereof, including, but not limited to (i) Dr. Avi Yanus, (ii) the

¹ Capitalized terms not expressly defined shall have the same meaning as in Bolivia’s Statement of Defense and Preliminary Objections.

agents referred to as “Marcia”, “BC1” and “BC2” in Black Cube’s interviews of Antonio Iporre Rua of 26 February 2020, 27 April 2020 and 15 June 2020, (iii) the agents referred to as “Mariela”, “BC” and “BC1” respectively in Black Cube’s interviews of Hugo Delgado Burgos of 21 October 2019, 6 December 2019 and 27 February 2020, (iv) the agent referred to as “BC” in Black Cube’s interview of Zoilo Moncada Cortéz of 10 December 2019, (v) the agent referred to as “BC” in Black Cube’s interviews of Maria Milagro Nemer Chaloup of 19 November 2020 and 23 November 2020, and (vi) the agent referred to as “BC” in Black Cube’s interviews of Aly Agreda Vedia of 18 July 2019 and 24 September 2019.

- **Black Cube Statement:** Witness Statement of Dr. Avi Yanus dated 26 November 2020 (CWS-8).
- **COMIBOL:** Corporación Minera de Bolivia.
- **Comsur:** Compañía Minera del Sur (see “Sinchi Wayra” below).
- **Correspondence:** any communication sent or received, in any format and form (soft and/or hard copy), including, but not limited to letters, emails, faxes, memoranda, SMS, WhatsApp messages, handwritten notes, communiqués, and drafts of the same.
- **Document(s):** all forms of written communications and Correspondence, including, but not limited to emails, letters, notes, minutes of meetings, memoranda, surveys, audits, assessments, internal analyses, reports, contracts, agreements, drawings, graphs, charts, photographs, phono records, and data compilations.
- **Easement Proceedings:** the administrative easement proceedings commenced by COMIBOL against CMO on 17 February 2000, before the Oruro Mining Superintendent.
- **Florida Probate Court:** Probate Division of the Circuit Court of the Eleventh Judicial Circuit, in and for the Miami-Dade County, Florida (U.S.).
- **Glencore:** Glencore International A.G. and/or Glencore International plc and/or their affiliates.
- **Grupo Minero Totoral Concessions:** any and all of the 48 mining concessions previously held by CMO, granted this denomination by Supreme Decree No. 87.7668, Resolution No. 015 regarding the Grupo Minero Totoral denomination, dated 21

October 1966 (**R-119**) and by Resolution No. 273/77 of Ministry of Mining and Metallurgy, dated 19 January 1977 (**R-122**).

- **Judgment:** decision rendered on 22 December 1989 by the Third Labor Court of La Paz in the proceedings commenced by Carlos Martínez Miranda, Fabian Fuertes Caceres and Martin Choque Jaurequi, complemented by a judgment of that same Court of 1 February 1990, in the record as **C-55** and **R-282**.
- **Martínez Case:** proceedings comprising any and all of (i) the labor law suit commenced against CMO on 6 December 1988 by Carlos Martínez Miranda, Fabian Fuertes Caceres and Martin Choque Jaurequi, and subsequently joined by other former workers of CMO in connection with unpaid social benefits, and (ii) the ensuing proceedings for the enforcement of the Judgment rendered by the Third Labor Court against CMO's assets.
- **Reply:** Claimants' Reply to Respondent's Statement of Defense and Jurisdictional Objections dated 26 November 2020.
- **Sinchi Wayra:** Sinchi Wayra S.A. (and prior to the change in the company's name in 2005, Comsur), a Bolivian company indirectly owned and controlled by Glencore.
- **Statement of Defense:** Bolivia's Statement of Defense and Preliminary Objections dated 6 May 2020.

The Plurinational State of Bolivia’s Requests for Document Production

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
I. Black Cube’s instructions and retainer						
1.	The instructions provided to Black Cube by Claimants and/or Quinn Emanuel Urquhart & Sullivan LLP and/or Wayar & Von Borries Abogados S.C.	Black Cube Statement, ¶ 1, 23; Reply, ¶ 55	Claimants assert that CMO would have been dispossessed of the Grupo Minero Totoral Concessions as a result of a conspiracy between Bolivian State authorities and enterprises and private sector actors (Reply, ¶¶ 24, 65, 298-302). This assertion is based primarily on the Black Cube Statement (Reply, Section II.B; Black Cube Statement, ¶ 47). The Black Cube Statement briefly describes the scope of Black Cube’s work in the	Claimants object to this request for the following reasons: The documents requested are neither sufficiently relevant to the case nor material to its outcome (IBA Rules on the Taking of Evidence in International Arbitration of 2010 (“ IBA Rules ”), Art. 9.2(a)), nor are they “necessary for Bolivia to be in a position properly to exercise its right of defense by examining Dr.	<u>Bolivia moves to compel production.</u> In addition to the reasons provided in “Comments,” Bolivia submits the following five comments in response to Claimants’ objections: <i>First</i> , Claimants do not deny that the Requested Documents exist and are readily available to them and/or to Black Cube. <i>Second</i> , Claimants admit, in connection with Request 8 below, that Bolivia has the right “to examin[e] any document on which the Claimants and their witnesses have relied in their written	Granted.

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			<p>following terms: “[w]e [i.e., Black Cube] were retained in this case by Claimants to conduct an investigation into certain of the actions of the Bolivian Mining Authorities and a Bolivian former judge in relation to Claimants’ investments in Bolivia and conduct by the State with respect thereto” (Black Cube Statement, ¶ 1); “Black Cube was retained by Claimants to investigate the actions of the Bolivian mining authorities and a Bolivian former judge in relation to CMO’s mining rights and assets <u>as well as the underlying motives of, and collusion between, the Bolivian Mining Authorities</u></p>	<p>Yanus” as argued by Bolivia.</p> <p>First, Bolivia’s request is improper under Procedural Order No. 1. Bolivia justifies this request by stating that “[t]o be in a position properly to exercise its right of defense by examining Dr. Yanus at the Oral Hearing” and “[t]o safeguard Bolivia’s due process rights” under Procedural Order No. 1 Bolivia must have access to “all the documents underpinning the investigation described in the Black Cube Statement, and, crucially,</p>	<p><i>submissions and their witness statements.”</i> It cannot reasonably be denied that Dr. Yanus relied on the Requested Documents for the purposes of the Black Cube Statement. This alone suffices for the disclosure of the Requested Documents.</p> <p><i>Third</i>, Claimants do not assert any privilege over the Requested Documents.</p> <p><i>Fourth</i>, Claimants do not object to the scope of this Request.</p> <p><i>Fifth</i>, Claimants’ five objections are unavailing:</p> <p><u>One</u>, Claimants seek to convert Procedural Order No. 1 into a limitation to Respondent’s right to disclosure (by arguing that Procedural Order No. 1 does not explicitly provide for the disclosure</p>	

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			<p><i>and third parties to expropriate CMO's mining concessions</i>" (Black Cube Statement, ¶ 23, emphasis added). However, the specific instructions provided to Black Cube for the purposes of such retainer are not enclosed with the Black Cube Statement.</p> <p>The following three reasons underpin Bolivia's request for disclosure:</p> <p><i>First</i>, the Requested Documents are necessary for Bolivia to be in a position properly to exercise its right of defense by examining Dr. Yanus at the Oral Hearing on Jurisdiction and Liability. To safeguard Bolivia's due process right and permit its</p>	<p>the instructions on which such investigation is based, which define its premises and scope". This is not true. Said provision, contrary to Bolivia's misreading, only requires that a witness statement contain, among others, "a <u>description</u> of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge, and this should be done in a narrative form containing the full substance of the witness's testimony" (Procedural Order No. 1, ¶ 8.3.4). Dr. Avi Yanus' witness</p>	<p>of instructions provided to a witness). But Procedural Order No. 1 provides only the elementary requirements for a witness statement, and does not limit either the information to be provided therewith or a Party's ability to obtain disclosure.</p> <p><u>Two</u>, the Black Cube Statement is not an ordinary statement by an ordinary witness. As Claimants themselves have now admitted (in response to Request 2 below), Black Cube was retained "<i>in preparation of and in composing and refining the arguments and evidence that Claimants would be making in the present arbitration.</i>" In other words, Dr. Yanus is a witness to a purpose-driven investigation, aimed at supporting Claimants' fanciful arguments of</p>	

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			<p>unimpeded exercise (and to maintain the equality of arms), Bolivia must have access to “<i>a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge, and this should be done in a narrative form containing the full substance of the witness’s testimony</i>” (Procedural Order No. 1, ¶ 8.3.4, emphasis added).</p> <p>This includes all the documents underpinning the investigation described in the Black Cube Statement, and, crucially, the instructions on which such investigation is based, which define its premises and</p>	<p>statement (hereinafter also referred to as the “Black Cube Statement”) fully complies with this provision, as it not only provides a detailed description of the facts on which his testimony is offered, but it also provides a description of the source of his knowledge, which includes obviously the individuals who Black Cube interviewed that are familiar with Claimant’s case and whose full recordings of the interviews Black Cube submitted with Dr. Avi Yanus’s witness statement (CWS-8, Black</p>	<p>collusion, and hence his statement deliberately withheld any information supporting Bolivia’s case that Black Cube uncovered.</p> <p>It would be a breach of Bolivia’s procedural rights if, as Claimants would have it, Bolivia were compelled to approach the cross-examination of Dr. Yanus without the benefit of the full facts surrounding his testimony regarding that investigation (including, crucially, the instructions underpinning it and defining its premises and scope). Bolivia’s Request is thus also justified by considerations of due process (which Claimants do not deny).</p> <p><u>Three</u>, Claimants contend that disclosure of the Requested</p>	

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			<p>scope (e.g., whether such investigation relates to the actions of the “<i>Bolivian Mining Authorities</i>” alone (Black Cube Statement, ¶ 1) or also to those of “<i>third parties</i>” and their respective “<i>motives</i>” (Black Cube Statement, ¶ 23), and, in the latter case, which such parties were investigated by Black Cube).</p> <p><i>Second</i>, Black Cube’s instructions are relevant to Bolivia’s case and material to its outcome, for the following reasons:</p> <p><u>One</u>, the Requested Documents are relevant to Dr. Yanus’ credibility. This is a matter which goes directly to Bolivia’s</p>	<p>Cube Statement, ¶¶ 14-26). As required in Procedural Order No. 1, Dr. Avi Yanus also provided these descriptions in “a narrative form containing the full substance of the witness’s testimony”. There is nothing in Procedural Order No. 1 that requires that the witness reveal what a party’s lawyer says to them during their first meeting or what requests the party’s lawyer makes to them in the context of their executing a witness statement or an expert report.</p>	<p>Documents would be duplicative. This is incorrect.</p> <p>Disclosure cannot be duplicative given that the instructions provided to Black Cube are not on the record of this arbitration (as confirmed by Claimants’ failure to refer to any exhibit in their response). The record only contains a summary description of such instructions, in the Reply and in the Black Cube Statement. Further, Claimants have made brand new submissions regarding these instructions in their objections to this Request (e.g., stating that “<i>they do not involve any instruction as to the way the evidence should be treated;</i>” “<i>Black Cube was specifically retained by Claimants and their counsel in preparation of and in composing and refining the arguments and</i></p>	

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			<p>argument that, contrary to Claimants’ position, there was never a conspiracy aimed at dispossessing CMO of the Grupo Minero Totoral Concessions (Statement of Defense, ¶¶ 13-17, 19, 295).</p> <p>Further, Black Cube was retained to carry out an investigation in support of Claimants’ conspiracy allegations. The instructions provided to Black Cube will confirm that no other evidence supports such allegations.</p> <p><u>Two</u>, Dr. Yanus explains that, “<i>during the investigation, Black Cube contacted several individuals who are familiar with the Claimants’ case and</i></p>	<p>Moreover, as indicated in the portions of Dr. Avi Yanus’ witness statement that Bolivia quotes in its request, Bolivia is already clearly aware of “the instructions on which [Black Cube’s] investigations is based” as well as “its premises and scope.” Black Cube was hired and instructed by Claimants to “<i>to investigate the actions of the Bolivian mining authorities and a Bolivian former judge in relation to CMO’s mining rights and assets as well as the underlying motives of, and collusion between, the Bolivian Mining</i></p>	<p><i>evidence that Claimants would be making in the present arbitration”).</i> Such submissions cannot be tested without access to the actual instructions to Black Cube.</p> <p><u>Four</u>, Claimants go as far as to claim that disclosure would be overly burdensome. But the Requested Documents are or should be readily available to Claimants and/or Black Cube. In fact, Claimants have not argued otherwise, and have not substantiated any further the allegation of burdensomeness. Claimants’ objection should not be sustained on the basis of these unsupported boilerplate assertions.</p> <p><u>Five</u>, Claimants challenge the relevance and materiality of the Requested Documents, by arguing that they would be “<i>completely</i></p>	

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			<p><i>the relevant parties</i>” (Black Cube Statement, ¶ 25, emphasis added). However, Black Cube encloses certain audio recordings of the interviews of only five persons, “<i>who provided key evidence to our investigation</i>” (Black Cube Statement, ¶ 25, emphasis added). The instructions provided to Black Cube will reveal the way in which it was required to treat evidence uncovered in the course of such investigation, including evidence that was not “<i>key</i>” to “<i>their</i>” investigation because it did not support Claimants’ case.</p> <p>In light of the above, the Requested Documents are</p>	<p><u><i>Authorities and third parties to expropriate CMO’s mining concessions</i></u>” (CWS-8, Black Cube Statement, ¶ 23). Claimants’ instructions and the scope of Black Cube’s investigations, including a description of the facts on which Dr. Avi Yanus’s witness statement is offered, were also stated in Claimants’ Reply Memorial (¶¶ 55-62), As such, documents requested will be unnecessary and duplicative as Bolivia has all the information it needs about Black Cube’s witness statement to</p>	<p><i>irrelevant and immaterial to the outcome of the case.</i>” Claimants’ arguments are contradictory with Claimants’ own case and ignore completely the explanations provided by Bolivia in the “Comments” section. This calls for five comments:</p> <p>As a <i>first comment</i>, by submitting the Black Cube Statement into the record, Claimants have already admitted its relevance and materiality, and by extension the relevance and materiality of the instructions underpinning it and sought in this Request.</p> <p>As a <i>second comment</i>, contrary to Claimants’ misleading description of this Request, Bolivia is not seeking “<i>that the witness reveal what a party’s lawyer says to them during their first meeting or what</i></p>	

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			<p>material to the outcome of the case, insofar as they relate to the merits of the case.</p> <p><i>Third</i>, the Requested Documents are reasonably believed to exist and to be in the possession, custody or control of Claimants, who provided such instructions to Black Cube, either directly or through counsel.</p>	<p>“properly exercise its right of defense by examining Dr. Yanus at the Oral Hearing...”.</p> <p><i>Second</i>, the “instructions provided to Black Cube by Claimants and/or Quinn Emanuel Urquhart & Sullivan LLP” are completely irrelevant and immaterial to the outcome of the case. Bolivia’s stated justification of relevance is that “the Requested Documents are relevant to Dr. Yanus’ credibility” and that this “goes directly to Bolivia’s argument that, contrary to Claimants’ position, there was never a conspiracy</p>	<p><i>requests the party’s lawyer makes to them in the context of their executing a witness statement or an expert report.”</i> Bolivia merely seeks the instructions underpinning Black Cube’s investigation. Notably, Claimants do not allege privilege as an objection to this Request.</p> <p><i>As a third comment</i>, Claimants’ objection deliberately confuses the standard of relevance and materiality. The test is not whether the Documents Requested are relevant to <u>Claimants’ case</u>, but to <u>Bolivia’s case</u>. The Requested Documents must also be material to a decision by the Tribunal, whether on Bolivia’s defense or on Claimants’ claims, and Bolivia has already shown this to be the case. Further, in objecting to this</p>	

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				<p>aimed at dispossessing CMO of the Grupo Minero Totoral Concessions.” However, Bolivia fails to explain in any specific manner how the requested information could possibly be relevant to Dr. Yanus’ credibility and does not provide any evidence to question the integrity of Dr. Avi Yanus. Moreover, Bolivia fails to explain how Dr. Avi Yanus’ credibility would affect the statements of the five people that were interviewed and whose recordings were submitted with Dr. Avi Yanus’ witness statement.</p>	<p>Request, Claimants have made additional submissions on the matter of Black Cube’s mandate, which confirm that the instructions to Black Cube are relevant and material, and necessary for Bolivia to have a meaningful opportunity to test the evidence in the Black Cube Statement.</p> <p>As a <i>fourth comment</i>, Bolivia must only make a <i>prima facie</i> showing of relevance and materiality (to hold differently would imply prejudging Bolivia’s arguments). Claimants instead seek to impose an additional and unreasonably exacting burden of proof on Bolivia, by suggesting that Bolivia should first provide “<i>evidence to question the integrity of Dr. Avi Yanus,</i>” as a pre-condition to the present Request. This argument is absurd and</p>	

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				<p>Bolivia, in any event, will be able to cross-examine Dr. Yanus during the hearing in this matter.</p> <p><i>Lastly</i>, Bolivia’s further stated justification for this request is that “[t]instructions provided to Black Cube will reveal the way in which it was required to treat evidence uncovered in the course of such investigation, including evidence that was not “key” to “their” investigation because it did not support Claimants’ case”. Respondent fails to explain how this information would be</p>	<p>circular: Claimants would have Bolivia show evidence of Dr. Yanus’ lack of credibility before disclosing such evidence.</p> <p><i>As a fifth comment</i>, in any event, Bolivia has already explained why the Requested Documents go to the credibility of Dr. Yanus’ testimony. Dr. Yanus will testify regarding the result of an investigation that was carried out according to specific instructions, “<i>in preparation of and in composing and refining the arguments and evidence that Claimants would be making in the present arbitration.</i>” Dr. Yanus will not be testifying with respect to an objective and impartial investigation carried out by a third party with no ties or attachments to Claimants.</p>	

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				relevant and material to the outcome of the case and its justification is purely speculative. In any event, as explained above, Claimants’ instructions are stated in Dr. Avi Yanus’ witness statement and in Claimants’ Reply Memorial and they do not involve any instruction as to the way the evidence should be treated.		
2.	In connection with Black Cube’s retainer “to investigate the actions of the Bolivian mining authorities and a Bolivian former judge in relation to CMO’s mining rights and	Black Cube Statement, ¶¶ 1, 23-24; Claimants’ letter to the Tribunal dated 19 February 2021, pp. 5-6	Claimants’ assertion that CMO would have been dispossessed of the Grupo Minero Totoral Concessions as a result of a conspiracy between Bolivian State authorities and enterprises and private sector actors (Reply, ¶¶ 24, 65, 298-302)	Claimants object to Respondent’s document request on the following grounds: <i>First</i> , Bolivia has failed to establish that “the Requested Documents are necessary to safeguard	<u>Bolivia moves to compel production.</u> In addition to the reasons provided in “Comments,” Bolivia submits the following four comments in response to Claimants’ objections: <i>First</i> , Claimants do not deny that the Requested Documents exist and	Denied for lack of relevance/materiality.

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	<p><i>assets, as well as the underlying motives of, and collusion between, the Bolivian Mining Authorities and third parties to expropriate CMO’s mining concessions”</i> (Black Cube Statement, ¶ 23):</p> <p>(i) Documents recording the date of such retainer;</p> <p>(ii) Documents recording the start date of Black Cube’s work under such retainer;</p> <p>(iii) Documents recording the identity of the</p>		<p>is based primarily on the Black Cube Statement (Reply, Section II.B; Black Cube Statement, ¶ 47).</p> <p>The following three reasons underpin Bolivia’s request for disclosure:</p> <p><i>First</i>, as explained in Request 1 above, the Requested Documents are necessary to safeguard Bolivia’s due process and defense rights, as well as the equality of arms between the Parties, in the examination of Dr. Yanus.</p> <p><i>Second</i>, the Requested Documents are relevant to Bolivia’s case and material to its outcome, for the following reasons:</p>	<p>Bolivia’s due process rights, as well as the equality or arms between the parties, in the examination of Dr. Yanus.” Bolivia’s does not (and cannot) provide any explanation as to why and how the documents requested are necessary to safeguard Bolivia’s due process rights. Bolivia should not be granted documents requests on the basis of these unsupported boilerplate assertions.</p> <p><i>Second</i>, Claimants object to this request because the documents solicited by Bolivia would include privileged information protected by work-</p>	<p>are readily available to them and/or to Black Cube.</p> <p><i>Second</i>, Claimants admit, in connection with Request 8 below, that Bolivia has the right “<i>to examin[e] any document on which the Claimants and their witnesses have relied in their written submissions and their witness statements.</i>” It stands to reason that, for the purposes of the Black Cube Statement, Dr. Yanus relied on Claimants’ retainer of Black Cube, as well as on the consideration paid or promised to Black Cube in exchange for their services, following the date of such retainer. This alone suffices to justify the disclosure of the Requested Documents.</p>	

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	<p>person(s) responsible for the payment of Black Cube’s invoices under such retainer; and</p> <p>(iv) Documents evidencing the payments made and to be made to Black Cube.</p>		<p><u>One</u>, in their letter to the Tribunal dated 19 February 2021, Claimants emphasized that “<i>Black Cube conducted its investigation from ‘June 2019 until November 2020,’ [...] the results of the investigation could not have been presented with the SOC</i>” (pp. 5-6, emphasis added). However, the key facts which gave rise to the present dispute (<i>i.e.</i>, the occurrences in the Easement Proceedings and the Martínez Case which Claimants criticize) took place between <u>1999 and 2007</u>. The Notice of Arbitration was submitted on <u>31 January 2018</u>. Neither Claimants nor the Black</p>	<p>product privilege. Black Cube was specifically retained by Claimants and their counsel in preparation of and in composing and refining the arguments and evidence that Claimants would be making in the present arbitration and any contracts and/or agreements between Claimants and Black Cube, if they were to exist, would have been prepared to assist in the present arbitration and they would have also contained Claimants’ counsel’s mental impressions, ideas or strategies concerning the</p>	<p><i>Third</i>, Claimants do not object to the scope of this Request.</p> <p><i>Fourth</i>, Claimants’ six objections to this Request are unavailing:</p> <p><u>One</u>, Claimants incorrectly dispute that the Requested Documents would be necessary to safeguard Bolivia’s due process and defense rights, and assert that Bolivia’s reference to the protection of such rights would amount to “<i>unsupported boilerplate assertions.</i>”</p> <p>The Requested Documents are necessary for Bolivia to be in a position properly to exercise its right of defense in the examination of Dr. Yanus at the Oral Hearing on Jurisdiction and Liability. Specifically, the Requested Documents go to the credibility of</p>	

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			<p>Cube Statement indicate <u>when</u> Black Cube was retained, or why it would have commenced the investigation described in paragraphs 1 and 23 of the Black Cube Statement only in <u>June 2019</u>, <i>i.e.</i>, 16 months after the Notice of Arbitration and only five months prior to the Statement of Claim.</p> <p><u>Two</u>, Dr. Yanus states that Black Cube would have been retained by Claimants. However, Claimants have indicated that “<i>CMO has no other meaningful assets, with the exception of the claims in this proceeding</i>” (Notice of Arbitration, ¶ 149). Likewise, the Estate’s</p>	<p>present arbitration. In addition, such agreements or contracts between Black Cube and Claimants would include commercially confidential information and the parties to such agreements or contracts had an expectation that they would be kept confidential. As such, any documents responsive to this request, if they were to exist, are not subject to disclosure. (IBA Rules, Arts. 9.2(b) and (e)).</p> <p><i>Third</i>, the documents solicited by Respondent are neither sufficiently</p>	<p>Dr. Yanus, insofar as they will reveal, for instance, whether the past, present and/or future remuneration of Black Cube’s services is dependent on supporting Claimants’ (baseless) allegations, or on the results of this arbitration. This matter is all the more relevant in light of Claimants’ dire financial situation (which Claimants do not deny).</p> <p><u>Two</u>, Claimants contend that disclosure would be duplicative “<i>for the reasons explained above.</i>” This contention is incorrect.</p> <p>Disclosure cannot be duplicative given that the record of this arbitration contains no information regarding the date on which Black Cube was retained, the date on which Black Cube would have started to work under such retainer,</p>	

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			<p>sole asset are the claims submitted in this arbitration, which have an estimated fair market value of US\$ 0.00, according to Claimants' own indication to the Florida Probate Court (included in a document provided by Claimants to Bolivia in disclosure). Yet neither Dr. Yanus nor Claimants have disclosed the identity of the payor of Black Cube's fees or the amount of such fees. It bears noting that the Black Cube Statement does not indicate, as required under paragraph 8.3.3 of Procedural Order No. 1, "<u>a description of any past and present relationship between the witness and the Parties,</u></p>	<p>relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a)). Bolivia asserts that "[n]either Claimants nor the Black Cube Statement indicate <u>when</u> Black Cube was retained, or why it would have commenced the investigation described in paragraphs 1 and 23 of the Black Cube Statement only in <u>June 2019</u>". Once more, Bolivia makes no effort to explain why this information would be relevant and material to the outcome of the case as required by the IBA Rules. The request should therefore be denied</p>	<p>the identity of the payor of Black Cube's invoices or the payments made and to be made to Black Cube. Claimants have not been able to point to any document in the record to the contrary.</p> <p>In fact, the record now contains contradictory information, insofar as the Black Cube Statement indicates that Black Cube's investigation would have commenced in June 2019, whilst Claimants now assert that Black Cube would have been retained "<i>in preparation of and in composing and refining the arguments and evidence that Claimants would be making in the present arbitration.</i>" Given that the Notice of Arbitration, in which Claimants' already made their fanciful collusion allegations, was submitted</p>	

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			<p><i>counsel, or members of the Tribunal</i>” (emphasis added).</p> <p>In the circumstances, the Requested Documents go to the credibility of the Black Cube Statement (including, <i>inter alia</i>, whether Black Cube has a vested interest in the outcome of this arbitration), and the reliability of its conclusion that CMO would have been dispossessed of its concessions as a result of a conspiracy. Specifically, the Requested Documents will show that Dr. Yanus’ testimony is not intended to be an objective presentation of the facts. It is, instead, the result of a targeted mission to only put before</p>	<p>without any further analysis. In any event, Dr. Avi Yanus’ witness statement indicate the dates when Black Cube’s investigation was conducted.</p> <p>Bolivia’s further stated justification for this request is purportedly that the requested documents “go to the credibility of the Black Cube Statement (including, <i>inter alia</i>, whether Black Cube has a vested interest in the outcome of this arbitration)” and that they “will show that Dr. Yanus’ testimony is not intended to be an objective presentation of</p>	<p>on 31 January 2018, Claimants’ assertion suggests that Black Cube would have been retained well in advance of June 2019.</p> <p><u>Three</u>, Claimants go as far as to claim that disclosure would be overly burdensome. But the Requested Documents are or should be readily available to Claimants and/or Black Cube. In fact, Claimants have not argued otherwise, and have not substantiated any further the allegation of burdensomeness. Claimants’ objection should not be sustained on the basis of these unsupported boilerplate assertions.</p> <p><u>Four</u>, Claimants challenge the relevance and materiality of the Requested Documents – and, in so doing, ignore the explanations provided by Bolivia in the</p>	

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			<p>the Tribunal elements which purportedly support Claimants’ case, to the exclusion of any information supporting Bolivia’s case that Black Cube uncovered.</p> <p>This, in turn, supports Bolivia’s argument that no such conspiracy existed, and that CMO lost its concessions as a direct consequence of its own conduct.</p> <p>In light of the above, the Requested Documents are material to the outcome of the case, insofar as they relate to the merits of the case.</p> <p><i>Third</i>, the Requested Documents are reasonably</p>	<p>the facts.” However, Respondent’s justification is purely speculative and Respondent does not provide any evidence to question the integrity or motive of Black Cube and/or Dr. Avi Yanus. Bolivia’s request thus amounts to nothing more than a fishing expedition that should not be allowed in this arbitration. In addition, as noted, Bolivia will be able to cross-examine Dr. Yanus at the hearing in this proceeding.</p> <p>In addition and for the reasons explained above, complying with this request would be</p>	<p>“Comments” section. This calls for three comments:</p> <p><i>As a first comment</i>, by submitting the Black Cube Statement into the record, Claimants have already admitted its relevance and materiality, and, by extension, the relevance and materiality of the date on which Black Cube was retained, the date on which Black Cube would have started to work under such retainer, the identity of the payor of Black Cube’s invoices or the payments made and to be made to Black Cube, which are sought in this Request and go to the credibility of Dr. Yanus (as explained below). Claimants themselves have further clarified in their objections that Black Cube would have been retained “<i>in preparation of and in composing</i></p>	

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			believed to exist and to be in the possession, custody or control of Claimants and/or Black Cube, insofar as Black Cube was purportedly retained by Claimants.	unreasonably burdensome, given that it seeks unnecessary and duplicative information (IBA Rules, Art. 9.2(c)).	<p><i>and refining the arguments and evidence that Claimants would be making in the present arbitration.”</i></p> <p>This is all the more reason for the Requested Documents to be disclosed.</p> <p>As a <i>second comment</i>, Claimants’ objection deliberately confuses the standard of relevance and materiality. The test is not whether the Documents Requested are relevant to <u>Claimants’ case</u>, but to <u>Bolivia’s case</u>. The Requested Documents must also be material to a decision by the Tribunal, whether on Bolivia’s defense or on Claimants’ claims, and Bolivia has already shown this to be the case. Specifically, the Requested Documents go to Dr. Yanus’ credibility and his financial interest in the present arbitration. Given</p>	

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					<p>that Claimants now allege Black Cube would have been retained “<i>in preparation of and in composing and refining the arguments and evidence that Claimants would be making in the present arbitration,</i>” the dates on which Black Cube was retained and commenced work under such retained, respectively, are also relevant to the credibility of the conclusions reached in the Black Cube Statement. As explained in connection with Request 1 above, at the Oral Hearing on Jurisdiction and Merits, Dr. Yanus will not be testifying with respect to an objective and impartial investigation carried out by a third party with no ties or attachments to Claimants. His conclusions, instead, are the result of a targeted mission to only put</p>	

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					<p>before the Tribunal elements which purportedly support Claimants’ case, to the exclusion of any information supporting Bolivia’s case that Black Cube uncovered.</p> <p>As a <i>third comment</i>, Bolivia must only make a <i>prima facie</i> showing of relevance and materiality (to hold differently would imply prejudging Bolivia’s arguments). Claimants instead seek to impose an additional and unreasonably exacting burden of proof on Bolivia, by suggesting that Bolivia should first provide “<i>evidence to question the integrity of Dr. Avi Yanus</i>,” as a pre-condition to the present Request. This argument is absurd and circular: Claimants would have Bolivia show evidence of Dr. Yanus’ lack of credibility before disclosing such evidence.</p>	

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					<p><u>Five</u>, in a desperate attempt to block disclosure, Claimants contend that the Requested Documents would be covered by <i>work product</i> privilege. This absurd position calls for six comments:</p> <p>As a <i>first comment</i>, Claimants bear the burden of proof as to their assertion of privilege. Claimants have failed to substantiate such assertion, to an extent where they do not even explain why the US-civil procedure work product doctrine would apply to this international arbitration. It is not enough to include boilerplate language with the word “privilege” in it to block disclosure.</p> <p>As a <i>second comment</i>, Claimants’ own objections belie their allegation of privilege. Claimants did not raise privilege in connection with</p>	

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					<p>the instructions provided to Black Cube, yet would want the Tribunal to accept that the date of such retainer, the start date of Black Cube’s work, and the payments made or to be made to Black Cube would be privileged, without any substantiation. This demonstrates that Claimants’ assertion of privilege is baseless and self-serving.</p> <p><i>As a third comment, Claimants’ assertion of privilege is based on a mischaracterization of Bolivia’s Request. Bolivia does not seek “Claimant’s counsel’s mental impressions, ideas or strategies concerning the present arbitration,”</i> but Documents reflecting the date of Black Cube’s retainer, the date on which Black Cube’s work commenced under such retainer, the</p>	

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					<p>identity of the payor of Black Cube’s invoices and the payments to Black Cube.</p> <p>As a <i>fourth comment</i>, no work product privilege applies to the Requested Documents. The work product privilege doctrine under US-civil procedure rules distinguishes between “opinion” and so-called “fact” work product, consisting of factual information that pertains to the dispute and is prepared or gathered in connection with it. Fact work product can be disclosed where the Requested Documents are necessary to the requesting party and this party is unable to obtain them without undue hardship.² These conditions</p>	

² See, for instance, T. D. Sawaya, “The work-product privilege in a nutshell”, *Florida Bar Journal*, vol. 67, no. 7, July/August 1993, available at <https://www.floridabar.org/the-florida-bar-journal/the-work-product-privilege-in-a-nutshell/>.

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					<p>are amply satisfied in the present case:</p> <p>As explained above, the Requested Documents are necessary (i) for the unimpeded exercise of Bolivia’s rights in the cross-examination of Dr. Yanus, and (ii) given their relevance to Bolivia’s defense and their materiality to the Tribunal’s decision on the merits. Given that Claimants retained and instructed Black Cube, Bolivia cannot independently access any information regarding such retainer and instructions (including the Requested Documents).</p> <p>As a <i>fifth comment</i>, even if work product privilege applied, Claimants have waived it by providing a summary description of Black Cube’s mandate in the Reply and allowing Dr. Yanus to make a</p>	

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					<p>similar summary description in his statement. Claimants have affirmatively referred to the mandate pursuant to which Black Cube was retained to operate, including the Requested Documents, and cannot use purportedly privileged information both as a sword and a shield.</p> <p><i>As a sixth comment</i>, Bolivia requested that Claimants provide, together with their objections, a privilege log identifying the Requested Documents over which privilege was asserted and the specific grounds on which such privilege is invoked over them (as Claimants themselves did in their requests for documents of 27 May and 8 June 2020). Claimants have failed to do so, without even bothering to explain why. Yet the</p>	

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					<p>explanation is simple: an itemized privilege log would only demonstrate that Claimants’ assertion of privilege is deprived of any basis.</p> <p><u>Six</u>, Claimants contend that the Requested Documents would be protected from disclosure for reasons of commercial confidentiality under Article 9.2(b) of the IBA Rules. But Claimants – who have the burden of proof as to the purported confidentiality – do not even explain why Documents reflecting the date of Black Cube’s retainer, the date on which Black Cube’s work commenced under such retainer, the identity of the payor of Black Cube’s invoices and the payments to Black Cube would be commercially confidential. To suggest that Bolivia or its external</p>	

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					<p>counsel could be commercial competitors of Black Cube is preposterous. On their own standard, Claimants should not be permitted to oppose disclosure on the basis of unsupported boilerplate assertions of confidentiality.</p> <p>In any event, the present arbitration is confidential, and governed by rules which Claimants helped fashion (in accordance with paragraph 12.1 of Procedural Order No. 1). Procedural Order No. 2 provides, notably, that “<i>all information exchanged or submitted in these proceedings shall be confidential and not disclosed to any third party, except as authorized by the Tribunal or as necessary for a Party to pursue or defend a legal right</i>” (Procedural Order No. 2, Annex 1, ¶ f; see also</p>	

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					<p>id., ¶¶ a-e). Claimants have not argued (much less demonstrated) that these provisions would be insufficient to safeguard the purported confidentiality of the Requested Documents.</p> <p>In any event, should the Tribunal so order, Bolivia is open to agreeing to a confidentiality order to protect those responsive Documents which Claimants may disclose and over which confidentiality is asserted.</p>	
II. Regarding Black Cube’s interviews of Aly Agreda Vedia						
3.	<p>In connection with the interview(s) of Aly Agreda Vedia by Black Cube:</p> <p>(i) Correspondence between Aly</p>	<p>Black Cube Statement, ¶¶ 24, 33-35, 46, 75; Black Cube Audio Recording of the September 24, 2020 conversation</p>	<p>Dr. Yanus encloses an audio recording of an interview with Aly Agreda Vedia carried out by Black Cube (Black Cube Statement, footnote 1). On the basis of such interview, Dr. Yanus</p>	<p>Claimants object to this request in its entirety as it is an impermissible fishing expedition that seeks to obtain privileged and confidential commercially sensitive business information that</p>	<p><u>Bolivia moves to compel production.</u></p> <p>In addition to the reasons provided in “Comments,” Bolivia submits the following three comments in response to Claimants’ objections:</p>	Granted.

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	<p>Agreda Vedia and Black Cube;</p> <p>(ii) Video and/or audio recordings of any meetings between Aly Agreda Vedia and Black Cube, with the exception of the file “(1) Black Cube audio recording of the September 24, 2020 conversation with Aly Agreda” included in Annex A to the Black Cube Statement;</p> <p>(iii) Documents reflecting Aly Agreda Vedia’s consent to be</p>	<p>with Aly Agreda; Reply, ¶¶ 78, 833</p>	<p>concludes that “<i>Mr. Agreda, also confirmed that the actual value of CMO’s concessions was estimated to be within the range of \$ 400 to 500 million and that Empresa San Lucas paid a minimal price</i>” (Black Cube Statement, ¶ 75), whilst Claimants state that “<i>Mr. Burgos and Mr. Agreda also confirmed during their interviews with Black Cube that the Bolivian government was clearly aware of the high value of CMO’s concessions, and further explained that the present dispute arose precisely because the Bolivian government found CMO’s</i></p>	<p>is neither relevant to Bolivia’s case nor material to its outcome.</p> <p><i>First</i>, Respondent’s request soliciting documents containing internal analysis and opinions, strategy and “research across multiple sources” is over broad and simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii). Respondents have failed to identify documents with sufficient specificity (IBA Rules, Art. 3.3(a)(i) and (ii)) (<i>see, e.g.</i>, Documents reflecting</p>	<p><i>First</i>, Claimants do not deny that the Requested Documents exist and are readily available to them (in fact, they have confirmed that “<i>Claimants already have this</i>”), and/or to Black Cube.</p> <p><i>Second</i>, Claimants admit, in connection with Request 8 below, that Bolivia has the right “<i>to examin[e] any document on which the Claimants and their witnesses have relied in their written submissions and their witness statements.</i>” As explained below, Dr. Yanus did not participate in or attend the interviews which were recorded and enclosed with the Black Cube Statement. Dr. Yanus thus relied on the Requested Documents for the purposes of the Black Cube Statement. This alone</p>	

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	<p>recorded during the meetings with Black Cube;</p> <p>(iv) Notes and/or transcriptions of any meetings between Aly Agreda Vedia and Black Cube;</p> <p>(v) Documents reflecting how, with respect to Aly Agreda Vedia, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “inform[ation]”</p>		<p><i>concessions so valuable</i>” (Reply, ¶ 833).</p> <p>The following three reasons underpin Bolivia’s request for documents:</p> <p><i>First</i>, as explained in connection with Request 1 above, the Requested Documents are necessary for Bolivia to be in a position properly to exercise its due process right of defense by examining Dr. Yanus at the Oral Hearing on Jurisdiction and Liability in connection with the conclusions he reaches on the basis of the audio recordings of the interviews of Mr. Agreda. To safeguard Bolivia’s rights and permit their unimpeded exercise (and to maintain the</p>	<p>how, with respect to Aly Agreda Vedia, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “inform[ation]” (CWS-8, Black Cube Statement, ¶ 46)). It is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p><i>Second</i>, the documents solicited by Respondents are privileged and commercially sensitive information/trade secret, as they include proprietary information</p>	<p>suffices to justify the disclosure of the Requested Documents.</p> <p><i>Third</i>, Claimants’ six objections to this Request are unavailing:</p> <p><u>One</u>, Claimants assert that items (v) and (vii) of the Request would not “identify documents with sufficient specificity,” thus being overbroad. This is incorrect.</p> <p><i>In limine</i>, Bolivia notes that Claimants’ objection is limited to items (v) and (vii).</p> <p>Claimants omit that items (v) and (vii) track the very <u>language used by Dr. Yanus himself</u>. It is reasonable to assume that Dr. Yanus knows what he meant by the words he used and knows what Documents correspond to his statements. For instance, Dr. Yanus must necessarily know how Black</p>	

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	<p>(Black Cube Statement, ¶ 46);</p> <p>(vi) Correspondence received by Dr. Avi Yanus from Black Cube in relation to Aly Agreda Vedia;</p> <p>(vii) Documents recording Black Cube’s “comprehensive research across multiple sources” carried out “[f]rom June 2019 until November 2020” (Black Cube Statement, ¶ 24) in connection</p>		<p>equality of arms), Bolivia must have access to “a description of the facts on which the witness’s testimony is offered and, if applicable, <u>the source of the witness’s knowledge</u>, and this should be done in a narrative form <u>containing the full substance of the witness’s testimony</u>” (Procedural Order No. 1, ¶ 8.3.4, emphasis added).</p> <p>In the present case, the omission of the Requested Documents deprives Bolivia of the complete “source of the witness’s knowledge” and “full substance of the witness’ testimony.” For instance, Dr. Yanus has at his disposal a full record of</p>	<p>relating to Black Cube’s intelligence methods, business practices and communications, and internal strategy, opinions and analysis. Disclosure of this information could cause significant business injury to both Black Cube and Quinn Emanuel. Further, the documents are privileged, attorney work-product privilege, as they were prepared in anticipation of litigation (this arbitration) by consultants retained by Claimants’ legal counsel. Bolivia cannot credibly claim that the substance</p>	<p>Cube agents “informed [him] of what occurred during the meeting” (item (v)) and what “research” he referred to (item (vii)). Bolivia has performed its best effort to specify a category of Documents that Claimants can easily identify, if need be with the assistance of Dr. Yanus (bearing in mind that Bolivia does not have access to such Documents).</p> <p><u>Two</u>, Claimants do not dispute that, for Bolivia to fully exercise its right of defense and due process, it must have access to “a description of the facts on which the witness’s testimony is offered and, if applicable, <u>the source of the witness’s knowledge</u>, and this should be done in a narrative form <u>containing the full substance of the witness’s testimony</u>” (Procedural</p>	

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	<p>with Aly Agreda Vedia; and</p> <p>(viii) Documents reflecting any payments or any form of consideration made and/or given and/or promised by Black Cube to Aly Agreda Vedia.</p>		<p>the Correspondence exchanged between Black Cube and Mr. Agreda, as well as information from the Black Cube agents as to what occurred in each of the meetings with Mr. Agreda (including meetings additional to the one recorded and enclosed). By extension, such information is available to Claimants, but not also to Bolivia. In fact, Bolivia disposes of no other means but this request for documents to level the playing field.</p> <p><i>Second</i>, the Requested Documents are relevant to Bolivia’s case and material to its outcome.</p>	<p>of the documents it now seeks is at issue because Black Cube has shared the audio records and transcripts upon which Dr. Yanus’s witness statement is based.</p> <p><i>Third</i>, Respondent claims that the requested documents are “necessary for Bolivia to be in a position properly to exercise its due process right of defense” which entails knowledge of the “<i>source of the witness’s knowledge</i>” and “<i>full substance of the witness’ testimony.</i>” Claimants already have these things. Dr. Avi Yanus states in his witness statement that</p>	<p>Order No. 1, ¶ 8.3.4, emphasis added).</p> <p>Instead, Claimants assert that “<i>Claimants already have these things.</i>” This is precisely the reason why Bolivia’s Request should be granted: Claimants have the Documents Requested, not Bolivia. This statement also confirms that the Request is narrow and specific (contrary to Claimants’ objection discussed below), and that Claimants have already identified Documents responsive thereto.</p> <p>Conversely, it is not correct that “<i>Dr. Avi Yanus states in his witness statement that it is based on the audio recordings of the individuals identified therein, and these have already been provided.</i>” The Black Cube Statement is not based solely on the audio recordings enclosed</p>	

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			<p>Bolivia demonstrated in the Statement of Defense that no evidence supports Claimants’ allegations that CMO was dispossessed of the Grupo Minero Totoral Concessions as a result of conspiracy and collusion. Claimants now rely on the audio recordings enclosed with the Black Cube Statement as evidence of such conspiracy and collusion, without the individuals whose statements were recorded being presented as witnesses. Claimants and Dr. Yanus also withheld a significant amount of information underpinning the conclusions reached in</p>	<p>it is based on the audio recordings of the individuals identified therein, and these have already been provided. (CWS-8, Black Cube Statement, ¶ 26, Annex A)).</p> <p><i>Fourth</i>, the documents Respondent seeks are neither sufficiently relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a)). Respondent justifies this request by stating that (i) the individuals whose statements were recorded were not presented as witnesses; and (ii) “Claimants and Dr. Yanus</p>	<p>therewith, since, as Claimants openly acknowledge, <u>Dr. Yanus did not participate in or attend any such interviews</u>. The audio recordings were provided to Dr. Yanus by Black Cube, and their content was analyzed and explained to him by Black Cube. Such analysis and explanations were based, <i>inter alia</i>, on “<i>comprehensive research across multiple sources</i>” carried out “[f]rom June 2019 until November 2020” with respect to Mr. Agreda (item (vii)), information provided by Black Cube to Dr. Yanus on each of the interviews with Mr. Agreda following the conclusion of such interview (item (v)), and “[n]otes and/or transcriptions of any meetings between Aly Agreda Vedia and Black Cube” (item (iv)). Claimants do not dispute that these</p>	

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			<p>the Black Cube Statement, as described below. Such information goes to the weight to be ascribed to Dr. Yanus’ testimony and the evidence enclosed with the Black Cube Statement (including, for example, the scope of Mr. Agreda’s knowledge of and involvement in the facts of this case, or any incentives he may have asked for or been offered in exchange for his purported statements). These matters, in turn, are relevant to the allegations of conspiracy and collusion, and material to the Tribunal’s decision.</p> <p><u>One</u>, Dr. Yanus draws certain conclusions</p>	<p>... withheld a significant amount of information underpinning the conclusions reached in the Black Cube Statement.” Respondent’s arguments are speculative and meritless.</p> <p><u>One</u>. Respondent is incorrect that Dr. Yanus “withheld a significant amount of information underpinning the conclusions reached.” All relevant information and the unedited audio recordings containing the information upon which the conclusions were reached have been submitted. Respondent</p>	<p>Documents have not been provided. Nor can Claimants credibly dispute that the Requested Documents go to the credibility of Dr. Yanus.</p> <p><u>Three</u>, Claimants challenge the relevance and materiality of the Requested Documents by arguing that the information in the Black Cube Statement and its enclosures would be sufficient (in Claimants’ view), with no further disclosure being warranted. Claimants’ self-serving arguments call for two comments:</p> <p><i>As a first comment</i>, it is incorrect that “<i>all relevant information and the unedited audio recordings containing the information upon which the conclusions were reached have been submitted,</i>” as Claimants wrongly assert.</p>	

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			(described above) from the audio recording of Mr. Agreda’s interview, but does not provide the full background against which such interview must be considered. Dr. Yanus does not enclose a full record of the Correspondence exchanged between Black Cube and Mr. Agreda (including the premises under which Mr. Agreda was contacted by Black Cube or the incentives that Mr. Agreda may have had to make certain statements to Black Cube). Relevantly, “[t]he Black Cube agent [who interviewed Mr. Agreda] [...] expressed that he was looking to hire a	ignores the fact that Dr. Yanus’s witness statement is based on the audio recordings of the individuals identified in his witness statement. (See CWS-8, Black Cube Statement, ¶¶ 27-44, 48). As stated in the witness statement, Claimants provided a copy of these audio files. See <i>id.</i> at ¶ 26, Annex A when Claimants submitted their Reply on November 26, 2020. Dr. Yanus also provided a transcript of the relevant statements, translated in Spanish and English, in his witness statement. (See <i>id.</i> at ¶ 48)	On the one hand, Claimants themselves contradict this statement when they allege, for the first time in their objections, that Mr. Agreda was not “ <i>incentivized to make any statements based on payments given or promised to him to make those statements.</i> ” This information was not in the Black Cube Statement or in the Reply, and is relevant to assess the credibility of the Black Cube Statement. Thus, not all relevant information is already in the record. On the other hand, as Bolivia explained, Dr. Yanus has at his disposal a full record of the Correspondence exchanged between Black Cube and Mr. Agreda, as well as information from the Black Cube agents as to what occurred in each of the meetings	

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			<p><i>local consultant to advise on mining investments in Bolivia</i>” (Black Cube Statement, ¶ 34, emphasis added). Mr. Agreda’s statements were thus made in the context of a job interview (in his belief), yet neither Black Cube nor Claimant disclose any specifics regarding the job in question and the incentives that Mr. Agreda would have had to seek to obtain that job.</p> <p>Further, Dr. Yanus does not disclose any information regarding payments that Black Cube may have made or consideration that Black Cube may have offered or promised to Mr. Agreda,</p>	<p>The information that Respondents seek in addition to the information already provided—<i>i.e.</i> correspondence between Mr. Agreda and Black Cube, documents reflecting Mr. Agreda’s consent to be recorded, notes or transcriptions of any meetings, documents reflecting information provided to Dr. Yanus after the meetings relating to its content <i>other than</i>, presumably, the recordings and transcripts already provided, and payment or consideration made or promised to Mr. Agreda—is simply not</p>	<p>with Mr. Agreda (including meetings <u>additional</u> to the one recorded and enclosed). Such information necessarily colored the conclusions described in the Black Cube Statement, and Claimants cannot credibly argue otherwise. Such information, however, is not available to Bolivia (or to the Tribunal), and, hence, Dr. Yanus’ testimony cannot be meaningfully tested.</p> <p>Further, Dr. Yanus’ testimony is not intended to be an objective presentation of the facts uncovered in the course of an investigation by a third party with no ties or attachments to Claimants. It is, instead, the result of a targeted mission to only put before the Tribunal elements which purportedly support Claimants’</p>	

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			<p>which, in turn, may have induced him to make certain statements.</p> <p><u>Two</u>, the Black Cube Statement encloses <u>one</u> audio recording of an interview of Mr. Agreda by Black Cube, yet indicates that “[a] Black Cube agent met with Mr. Agreda on <u>two occasions</u> in Santiago, Chile: on July 18th, 2019; and on September 24th, 2019” (Black Cube Statement, ¶ 33, emphasis added). Further, the Black Cube Statement does not affirm that these would have been the only meetings with Mr. Agreda. Thus, it may be reasonably assumed that additional meetings existed,</p>	<p>relevant because it did not underpin, nor even inform, the conclusions Dr. Yanus reached in the Black Cube Statement.</p> <p>Specifically, Respondent takes issue with the fact that “Mr. Agreda’s statements were thus made in the context of a job interview (in his belief), yet neither Black Cube nor Claimant disclose any specifics regarding the job in question and the incentives that Mr. Agreda would have had to seek to obtain that job.” Specifics of the job in question are irrelevant,</p>	<p>case, to the exclusion of any information supporting Bolivia’s case that Black Cube uncovered. Only disclosure will level the playing-field.</p> <p>As a <i>second comment</i>, Claimants are wrong to contend that the Requested Documents would be “<i>simply not relevant because [they] did not underpin, nor even inform, the conclusions Dr. Yanus reached in the Black Cube Statement.</i>” This argument is false (as we just explained), and, in any event, it is based on a misstatement of the relevance and materiality test.</p> <p>The Requested Documents must be relevant to <u>Bolivia’s case</u> and material to a decision of the Tribunal on the merits. It is precisely because the Requested Documents include information</p>	

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			<p>regarding which, however, Dr. Yanus provides no information.</p> <p><u>Three</u>, Dr. Yanus does not indicate whether Mr. Agreda consented to the recording of his interview with Black Cube. Whether or not such consent was given by Mr. Agreda is a matter relevant to the legality of the evidence enclosed with the Black Cube Statement. This matter is relevant in light of the fact that the seat of this arbitration is Paris.</p> <p><u>Four</u>, Dr. Yanus himself did not participate in the interviews with Mr. Agreda. Thus, the conclusions reached by Dr. Yanus were necessarily underpinned by</p>	<p>immaterial to the allegations made or the weight of the testimony, and is confidential business information. Further, the premise upon which Mr. Agreda met with Respondent was already described in Dr. Yanus’s witness statement. Nor, as is clear from the already-produced recordings, was Mr. Agreda incentivized to make any statements based on payments given or promised to him to make those statements. Mr. Agreda simply responded during the normal course of</p>	<p>which supports Bolivia’s case and not Claimants’ that such Documents were not enclosed with the Black Cube Statement, yet are both relevant and material in the present case. For example, the specifics of the job offered to Mr. Agreda – and to any of the other interviewees of Black Cube – are relevant to the assessment of the statements he (and they) made in the recordings.</p> <p><u>Four</u>, Claimants assert that “<i>the facts gathered by Black Cube are publicly available and the sources of information are described in Dr. Yanus’s witness statement.</i>” This is absurd on its face and based on a mischaracterization of this Request. Indeed, it is absurd to now suggest that Black Cube only gathered public information, when Claimants themselves saw a need to retain</p>	

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			<p>(i) the fact that Dr. Yanus was “<i>informed [by Black Cube] [...] of what occurred during the meeting[s]</i>” with Mr. Agreda (Black Cube Statement, ¶ 46) after such meetings had taken place, and (ii) the fact that Black Cube carried out “<i>comprehensive research across multiple sources,</i>” “[f]rom June 2019 until November 2020,” for the purposes of the Black Cube Statement (Black Cube Statement, ¶ 24). Yet Dr. Yanus does not disclose the content of the “<i>information</i>” provided to him by Black Cube, of any Correspondence he received from Black Cube with</p>	<p>conversation with the Black Cube agents.</p> <p>Respondents are incorrect in asserting that the information they request “goes to the weight to be ascribed to Dr. Yanus’ testimony and the evidence enclosed with the Black Cube Statement.” As stated above, the testimony is based on unedited audio recordings whose weight Respondents and the Tribunal can assess by listening to the contents or reading the relevant portions of the transcript provided. (See CWS-8, Black Cube Statement, ¶</p>	<p>undercover agents to conduct interviews, and such agents saw a need to assume fake identities, to conduct fake job interviews and to record them without the interviewees’ consent.</p> <p>In any event, Bolivia does not seek publicly available facts, but the collection, processing and analysis of such facts by Black Cube, which represents “<i>the source of the witness’s knowledge</i>” and “<i>the full substance of the witness’s testimony</i>” (Procedural Order No. 1, ¶ 8.3.4).</p> <p><u>Five</u>, Claimants contend that the Requested Documents would be covered by attorney work product privilege. This assertion is unsupported, and calls for four comments:</p>	

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			<p>respect to Mr. Agreda or of the “<i>comprehensive research.</i>”</p> <p><i>Third</i>, the Requested Documents are reasonably believed to exist and to be in the possession, custody or control of Claimants and/or Black Cube, insofar as Black Cube identified, analyzed and interviewed Mr. Agreda in connection with their investigation in the present case.</p>	<p>26, Annex A). Again, Bolivia and its counsel will have the opportunity to cross-examine Dr. Yanus.</p> <p><u>Two</u>. Respondents note that “the Black Cube Statement encloses <u>one</u> audio recording of an interview of Mr. Agreda by Black Cube, yet indicates that “[a] <i>Black Cube agent met with Mr. Agreda on two occasions in Santiago, Chile: on July 18th, 2019; and on September 24th, 2019. . .</i>” and state that “it may be reasonably assumed that additional meetings existed, regarding which,</p>	<p>As a <i>first comment</i>, Claimants bear the burden of proof as to their assertion of privilege. Claimants have failed to substantiate such assertion, to an extent where they do not even explain why the US-civil procedure work product doctrine would apply to this international arbitration. It is not enough to include boilerplate language with the word “privilege” in it to block disclosure.</p> <p>As a <i>second comment</i>, as explained in connection with Request 2 above, no privilege applies. Bolivia does not seek “<i>Claimant’s counsel’s mental impressions, ideas or strategies concerning the present arbitration.</i>” It is in fact absurd to suggest, as Claimants do, that the Requested Documents (which include Correspondence from Black</p>	

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				<p>however, Dr. Yanus provides no information.” The Black Cube Statement inadvertently omitted to include the audio recording from the meeting of July 18, 2019 although Dr. Yanus referenced the July 18th meeting in his statement. Claimants will produce this additional recording.</p> <p><u>Three.</u> Whether or not Mr. Agreda consented to be recorded is irrelevant to the legality of the evidence. As stated in Mr. Yanus’s witness statement, “recordings are only made in jurisdictions where it is lawful to</p>	<p>Cube to Dr. Yanus, notes and transcriptions of Black Cube’s interview with Mr. Agreda etc.) would have been prepared with the assistance of counsel.</p> <p>Bolivia seeks disclosure of “fact” work product, which can be disclosed where the Requested Documents are necessary to the requesting party and this party is unable to obtain them without undue hardship.</p> <p>As explained above, the Requested Documents are necessary (i) for the unimpeded exercise of Bolivia’s rights in the cross-examination of Dr. Yanus, and (ii) given their relevance to Bolivia’s defense and their materiality to the Tribunal’s decision on the merits. Given that Black Cube generated and/or retrieved the Requested Documents</p>	

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				<p>record a conversation with consent from only one of the parties to the conversation.” (<i>See id.</i> at ¶¶ 10, 13). Thus, all recordings made and provided were lawfully obtained.</p> <p><u>Four.</u> The fact that Dr. Yanus did not participate in the meetings is irrelevant to the weight or materiality of his witness statement or his conclusions because, as stated above, Dr. Yanus’s witness statement is based on the audio recordings of the individuals identified in his witness statement as well as his expertise in the</p>	<p>in the course of the investigation described in the Black Cube Statement, Bolivia cannot independently access the information contained therein (even if it were public information, <i>quod non</i>, Claimants have the information readily available and it would be an undue hardship to require Bolivia to repeat the investigation). Thus, the conditions are fulfilled for the disclosure of the Requested Documents in spite of Claimants’ misplaced assertion of privilege.</p> <p>As a <i>third comment</i>, even if work product privilege applied, Claimants have waived it by providing a summary description of such fact work product in the Reply and in the Black Cube Statement, and by making further submissions</p>	

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				<p>field of human intelligence operations, and these recordings and transcripts have already been produced. (<i>See id.</i> at ¶¶ 27-44, 48).</p> <p>Specifically with respect to Respondent’s request for “Documents recording Black Cube’s ‘comprehensive research across multiple sources’ carried out “[f]rom June 2019 until November 2020” the facts gathered by Black Cube are publicly available and the sources of information are described in Dr. Yanus’s witness statement. (<i>See id.</i> at ¶ 24). Bolivia and</p>	<p>on this matter in their objections (<i>e.g.</i>, stating that Mr. Agreda was not provided any specific incentives in exchange for the statements he made in the recorded interview with Black Cube). Claimants cannot use purportedly privileged information as both a sword and a shield.</p> <p>As a <i>fourth comment</i>, and as explained in connection with Request 2 above, Claimants have failed to provide the itemized privilege log requested by Bolivia, or any explanation for such omission. This can only be because an itemized privilege log would confirm that Claimants’ assertion of privilege is deprived of any basis.</p> <p><u>Six</u>, Claimants contend that the Requested Documents would be protected from disclosure for reasons of “<i>commercially sensitive</i></p>	

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				its counsel will be able to cross-examine Dr. Yanus on these issues.	<p><i>business information/trade secret,</i>” as they would contain proprietary information pertaining to Black Cube’s <i>know how</i>, under Article 9.2(b) of the IBA Rules. But Claimants – who have the burden of establishing confidentiality – do not explain why the Requested Documents would reveal any <i>trade secret</i> or <i>know how</i>. It is difficult to see how Documents generated for this specific arbitration in connection with the interview(s) of an individual named Aly Agreda Vedia could contain any <i>trade secret</i> or <i>know how</i>.</p> <p>Claimants go as far as to suggest that disclosure of the Requested Documents “<i>could cause significant business injury to both Black Cube and Quinn Emanuel.</i>” But they do not bother to specify or substantiate</p>	

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					<p>this allegation. It is unclear what business injury could be caused to counsel and/or to a witness by the disclosure in this arbitration of the full substance of the testimony of that witness. Such unspecific business injury is entirely hypothetical and speculative, and cannot act as a limitation of Bolivia's due process and defense rights.</p> <p>In any event, (i) it is preposterous to suggest that Bolivia or its external counsel could be commercial competitors of Black Cube, and, (ii) by submitting the Black Cube Statement, Claimants have waived any potential commercial confidentiality of the Documents Requested. On their own standard, Claimants should not be permitted to oppose document requests on the</p>	

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					<p>basis of unsupported boilerplate assertions of confidentiality.</p> <p>Further, as explained in connection with Request 2 above, this arbitration is confidential (see Procedural Order No. 2), and Claimants have not argued (much less demonstrated) that the applicable confidentiality provisions would be insufficient to safeguard the purported confidentiality of the Requested Documents.</p> <p>In any event, should the Tribunal so order, Bolivia is open to agreeing to a confidentiality order to protect those responsive Documents which Claimants may disclose and over which confidentiality is asserted.</p>	
III.	Regarding Black Cube’s interviews of Hugo Delgado Burgos					

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4.	<p>In connection with the interviews of Hugo Delgado Burgos by Black Cube:</p> <p>(i) Documents reflecting the contact information of Hugo Delgado Burgos;</p> <p>(ii) Correspondence exchanged between Hugo Delgado Burgos and Black Cube;</p> <p>(iii) Video and/or audio recordings of any meetings between Hugo Delgado Burgos</p>	<p>Black Cube Statement, ¶¶ 24, 36-38, 46; Black Cube Audio Recording of the December 6, 2019, October 21, 2019 and February 27, 2020 conversations with Hugo Delgado Burgos; Reply, ¶¶ 65-69, 71-72, 77, 301, 366</p>	<p>Bolivia refers to the comments provided in connection with Request 3 above, which, <i>mutatis mutandis</i>, it incorporates herein by reference.</p>	<p>Claimants refer to and incorporate by reference as if fully set forth herein the objections made in connection with Request 3 above.</p> <p>Additionally, in respect of Request 4 (i), in which Bolivia requests “[d]ocuments reflecting the contact information of Hugo Delgado Burgos,” Claimants object to this request on the basis that the information requested is neither relevant to the case nor material to its outcome (IBA Rules, Art. 9.2(a)). Respondent has not articulated why Mr.</p>	<p><u>Bolivia moves to compel production.</u></p> <p>Bolivia refers to the “Comments” provided in connection with Request 3 above, which, <i>mutatis mutandis</i>, is herein incorporated by reference. In addition, Bolivia submits the following comment in response to Claimants’ objections:</p> <p>Claimants assert that the Documents reflecting the contact information of Hugo Delgado Burgos would be “<i>neither relevant to the case nor material to its outcome.</i>” This is incorrect, for, at least, three reasons:</p> <p><u>One</u>, Claimants again misstate the relevance and materiality test.</p> <p>The Requested Documents must be relevant to <u>Bolivia’s case</u> and</p>	<p>Granted, with the exception of Request 4(i), which is denied.</p>

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>and Black Cube, with the exception of the files “(5) <i>Black Cube audio recording of the December 6, 2019 conversation with Hugo Delgado Burgos</i>”, “(6) <i>Black Cube audio recording of the October 21, 2019 conversation with Hugo Delgado Burgos</i>” and “(7) <i>Black Cube audio recording of the February 27, 2020 conversation with</i></p>			<p>Burgos’s contact information is relevant or material, nor can it. Dr. Avi Yanus’s statement and the conclusions he draws are based on his review of the already-submitted recordings, none of which have any relevance to Mr. Burgos’s contact information. Should Bolivia wish to contact Mr. Burgos itself, it has access to the same publicly accessible sources as Black Cube’s investigators used to commence their investigation.</p>	<p>material to a decision of the Tribunal on the merits. Mr. Delgado’s contact information is necessary for Bolivia to be able to contact him in connection with his interview by Black Cube. The fact that Mr. Delgado’s contact information may not be relevant to Claimants’ case is irrelevant for the purposes of an order compelling disclosure of the Requested Documents.</p> <p><u>Two</u>, Claimants themselves have admitted that Mr. Delgado’s interview is relevant to the case and material to its outcome, given that they sought out Mr. Delgado, interviewed and recorded him, submitted such recording and discussed it in the Reply and the Black Cube Statement.</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p><i>Hugo Delgado Burgos</i>” included in Annex A to the Black Cube Statement;</p> <p>(iv) Documents reflecting Hugo Delgado Burgos’ consent to be recorded during the meetings with Black Cube;</p> <p>(v) Notes and/or transcriptions of any meetings between Hugo Delgado Burgos and Black Cube;</p> <p>(vi) Documents reflecting how, with respect to</p>				<p><u>Three</u>, in any event, the Documents reflecting Mr. Delgado’s contact information are or should be readily available to Claimants and/or Black Cube. Claimants have not argued otherwise, nor have they asserted that disclosing such Documents would be overly burdensome. In contrast to Claimants, Bolivia is not in possession, custody or controls of such Documents. Moreover, Mr. Delgado’s contact information is not publicly available. Indeed, Claimants themselves had to resort to a business intelligence firm in order to locate and interview Mr. Delgado. It stands to reason that, when information is readily and without unreasonable burden accessible to one Party and not so to the other, disclosure of such information should be ordered.</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>Hugo Delgado Burgos, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “inform[ation]” (Black Cube Statement, ¶ 46);</p> <p>(vii) Correspondence received by Dr. Avi Yanus from Black Cube in relation to Hugo Delgado Burgos;</p> <p>(viii) Documents recording Black</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>Cube’s “comprehensive research across multiple sources” carried out “from June 2019 until November 2020” (Black Cube Statement, ¶ 24) in connection with Hugo Delgado Burgos; and</p> <p>(ix) Documents reflecting any payments or any form of consideration made and/or given and/or promised by Black Cube to</p>					

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	Hugo Delgado Burgos.					
IV. Regarding Black Cube’s interviews of Antonio Iporre Rua						
5.	In connection with the interview(s) of Antonio Iporre Rua by Black Cube: (i) Documents reflecting the contact information of Antonio Iporre Rua; (ii) Correspondence between Antonio Iporre Rua and Black Cube; (iii) Video and/or audio recordings	Black Cube Statement, ¶¶ 24, 43-46, 62-69; Black Cube Audio Recording of the June 16, 2020, February 26, 2020, April 27, 2020 conversations with Antonio Iporre; Reply, ¶¶ 70, 73-74, 78-79, 707, 726	Bolivia refers to the comments provided in connection with Request 3 above, which, <i>mutatis mutandis</i> , it incorporates herein by reference.	Claimants refer to and incorporate by reference as if fully set forth herein the objections made in connection with Requests 3 and 4 above.	<u>Bolivia moves to compel production.</u> Bolivia refers to the “Comments” provided in connection with Requests 3 and 4 above, which, <i>mutatis mutandis</i> , it incorporates herein by reference.	Granted, with the exception of Request 5(i), which is denied.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>of any meetings between Antonio Iporre Rua and Black Cube, with the exception of the files “(2) <i>Black Cube audio recording of the June 15, 2020 conversation with Antonio Iporre</i>”, “(3) <i>Black Cube audio recording of the February 26, 2020 conversation with Antonio Iporre</i>”, and “(4) <i>Black Cube audio recording of the April 27, 2020 conversation with</i></p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p><i>Antonio Iporre</i>” included in Annex A to the Black Cube Statement;</p> <p>(iv) Documents reflecting Antonio Iporre Rua’s consent to be recorded during the meetings with Black Cube;</p> <p>(v) Notes and/or transcriptions of any meetings between Antonio Iporre Rua and Black Cube;</p> <p>(vi) Documents reflecting how,</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>with respect to Antonio Iporre Rua, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “inform[ation]” (Black Cube Statement, ¶ 46);</p> <p>(vii) Correspondence received by Dr. Avi Yanus from Black Cube in relation to Antonio Iporre Rua;</p>					

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>(viii) Documents recording Black Cube’s “<i>comprehensive research across multiple sources</i>” carried out “<i>from June 2019 until November 2020</i>” (Black Cube Statement, ¶ 24) in connection with Antonio Iporre Rua; and</p> <p>(ix) Documents reflecting any payments or any form of consideration made and/or given and/or promised by</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	Black Cube to Antonio Iporre Rua.					
V. Regarding Black Cube’s interview of Zoilo Moncada Cortéz						
6.	In connection with the interviews of Zoilo Moncada Cortéz by Black Cube: (i) Documents reflecting the contact information of Zoilo Moncada Cortéz; (ii) Correspondence between Zoilo Moncada Cortéz and Black Cube;	Black Cube Statement, ¶¶ 24, 39-42, 46, 51, 55; Black Cube Audio Recording of the December 10, 2019 conversation with Zoilo Moncada; Reply, ¶¶ 66, 69	Bolivia refers to the comments provided in connection with Request 3 above, which, <i>mutatis mutandis</i> , it incorporates herein by reference.	Claimants refer to and incorporate by reference as if fully set forth herein the objections made in connection with Requests 3 and 4 above.	<u>Bolivia moves to compel production.</u> Bolivia refers to the “Comments” provided in connection with Requests 3 and 4 above, which, <i>mutatis mutandis</i> , it incorporates herein by reference.	Granted, with the exception of Request 6(i), which is denied.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>(iii) Video and/or audio recordings of any meetings between Zoilo Moncada Cortéz and Black Cube, with the exception of the file “(10) Black Cube audio recording of the December 10, 2019 conversation with Zoilo Moncada Cortéz” included in Annex A to the Black Cube Statement;</p> <p>(iv) Documents reflecting Zoilo Moncada</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>Cortéz’s consent to be recorded during the meetings with Black Cube;</p> <p>(v) Notes and/or transcriptions of any meetings between Zoilo Moncada Cortéz and Black Cube;</p> <p>(vi) Documents reflecting how, with respect to Zoilo Moncada Cortéz, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p><i>the meeting,”</i> including the content of such “<i>inform[ation]</i>” (Black Cube Statement, ¶ 46);</p> <p>(vii) Correspondence received by Dr. Avi Yanus from Black Cube in relation to Zoilo Moncada Cortéz;</p> <p>(viii) Documents recording Black Cube’s “<i>comprehensive research across multiple sources</i>” carried out “<i>from June 2019 until November 2020</i>” (Black Cube</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	Statement, ¶ 24) in connection with Zoilo Moncada Cortéz; and (ix) Documents reflecting any payments or any form of consideration made and/or given and/or promised by Black Cube to Zoilo Moncada Cortéz.					
VI.	Regarding Black Cube's interviews of María Milagro Nemer Chaloup					
7.	In connection with the interviews of María Milagro Nemer	Black Cube Statement, ¶¶ 24, 27-32, 46, 70-73;	Bolivia refers to the comments provided in connection with Request 3	Claimants refer to and incorporate by reference as if fully set forth herein the objections made in	<u>Bolivia moves to compel production.</u>	Granted.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>Chaloup by Black Cube:</p> <p>(i) Correspondence between María Milagro Nemer Chaloup and Black Cube;</p> <p>(ii) Video and/or audio recordings of any meetings between María Milagro Nemer Chaloup and Black Cube, with the exception of the files “(8) <i>Black Cube audio recording of the November 19, 2019 conversation with María Nemer</i>”</p>	<p>Black Cube Audio Recording of the November 19, 2020 and November 23, 2020 conversations with María Nemer; Reply, ¶¶ 64, 67, 75-76</p>	<p>above, which, <i>mutatis mutandis</i>, it incorporates herein by reference.</p>	<p>connection with Requests 3.</p>	<p>Bolivia refers to the “Comments” provided in connection with Request 3 above, which, <i>mutatis mutandis</i>, it incorporates herein by reference.</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>and “(9) <i>Black Cube audio recording of the November 23, 2020 conversation with Maria Nemer</i>” included in Annex A to the Black Cube Statement;</p> <p>(iii) Documents reflecting María Milagro Nemer Chaloup’s consent to be recorded during the meetings with Black Cube;</p> <p>(iv) Notes and/or transcriptions of any meetings</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>between María Milagro Nemer Chaloup and Black Cube;</p> <p>(v) Documents reflecting how, with respect to María Milagro Nemer Chaloup, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “inform[ation]” (Black Cube Statement, ¶ 46);</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>(vi) Correspondence received by Dr. Avi Yanus from Black Cube in relation to María Milagro Nemer Chaloup;</p> <p>(vii) Documents recording Black Cube's "<i>comprehensive research across multiple sources</i>" carried out "<i>from June 2019 until November 2020</i>" (Black Cube Statement, ¶ 24) in connection with María Milagro Nemer Chaloup; and</p>					

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	(viii) Documents reflecting any payments or any form of consideration made and/or given and/or promised by Black Cube to María Milagro Nemer Chaloup.					
VII.	<i>“Individuals who are familiar with the Claimants’ case and the relevant parties” (Black Cube Statement, ¶ 25)</i>					
8.	In connection with the <i>“individuals who are familiar with the Claimants’ case and the relevant parties,” other than Aly Agreda Vedia, Hugo Delgado Burgos, Antonio Iporre Rua, Zoilo Moncada</i>	Black Cube Statement, ¶¶ 23-25, 46	Black Cube’s investigation is said to have lasted for over 17 months, and targeted <i>“several individuals who are familiar with the Claimants’ case and the relevant parties”</i> (Black Cube Statement, ¶ 25). However, only <i>“[t]he individuals with</i>	Claimants objects to this request for the following reasons: <i>First</i> , Claimants object to this request because the information solicited by Bolivia would include privileged information	<u>Bolivia moves to compel production.</u> In addition to the reasons provided in “Comments,” Bolivia submits the following three comments in response to Claimants’ objections: <i>First</i> , in Claimants’ submission, Bolivia would not have established	Denied as overly broad.

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	<p>Cortéz, and María Milagro Nemer Chaloup:</p> <p>(i) Documents reflecting the contact information of such “<i>individuals</i>”;</p> <p>(ii) Correspondence between such “<i>individuals</i>” and Black Cube;</p> <p>(iii) Video and/or audio recordings of any meetings between such “<i>individuals</i>” and Black Cube;</p> <p>(iv) Documents reflecting the consent of such “<i>individuals</i>” to be recorded</p>		<p><i>whom Black Cube made contact [sic] with and who provided key evidence to [Black Cube’s] investigation</i>” are named in the Black Cube Statement, and only the audio recordings of (some of) their interviews are enclosed (Black Cube Statement, ¶¶ 25-26, emphasis added). Accordingly, there may be individuals with whom Black Cube made contact and who did not provide evidence that was “<i>key</i>” for “<i>their</i>” investigation because it did not support Claimants’ case.</p> <p>The following three reasons underpin Bolivia’s request for documents:</p>	<p>protected by the attorney work-product privilege. As stated in Mr. Avi Yanus’ Statement, Black Cube was specifically “retained by Claimants to investigate the actions of the Bolivian mining authorities and a Bolivian former judge in relation to CMO’s mining rights and assets . . .” in preparation of the present arbitration (CWS-8, Black Cube Statement, ¶¶ 1, 23). Thus, any documents and information prepared or obtained by Black Cube in connection with its investigation would have been prepared or obtained exclusively in preparation</p>	<p>that the Requested Documents are reasonably believed to exist, and it would be “<i>speculation</i>” on Bolivia’s part to assert that, during its investigation, Black Cube found and/or interviewed individuals other than those named in the Black Cube Statement, who corroborated Bolivia’s position regarding the inexistence of any conspiracy or collusion against Claimants. Two facts belie Claimants’ objection:</p> <p><u>One</u>, when pretending that this Request would be overbroad, Claimants allege that the “<i>breadth of this request is in fact astonishing [because] it covers any and all individuals with whom Black Cube had ever made contact throughout the course of its 17-month-long investigation</i>”. In stating so, <u>Claimants admit that Black Cube</u></p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>during the meetings with Black Cube;</p> <p>(v) Notes and/or transcriptions of any meetings between such “<i>individuals</i>” and Black Cube;</p> <p>(vi) Documents reflecting how, with respect to such “<i>individuals</i>”, “[a]fter each meeting ended, the Black Cube agents informed [Dr. Avi Yanus] of what occurred during the meeting,” including the content of such “<i>inform[ation]</i>”</p>		<p><i>First</i>, as explained in connection with Request 3 above, the Requested Documents are necessary for Bolivia to be in a position properly to exercise its right of defense by examining Dr. Yanus at the Oral Hearing on Jurisdiction and Liability in connection with the conclusions of the Black Cube Statement. To safeguard Bolivia’s rights and permit their unimpeded exercise (and preserve the equality of arms), Bolivia must have access to “<i>a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge, and</i></p>	<p>of the present arbitration by Claimants and their counsel.</p> <p>In addition, those documents would have also necessarily contained or reflected Claimants’ counsel’s mental impressions, ideas or opinions concerning the present arbitration. If one follows Bolivia’s logic and accepts this request, then Claimants would be entitled to discover from Bolivia documents or information for anyone that it, its in-house or outside counsel, or investigators contacted in the preparation of</p>	<p><u>has interviewed individuals other than those named in the Black Cube Statement.</u></p> <p>This admission is consistent with the Black Cube Statement, which expressly states that two cumulative conditions had to be met for Dr. Yanus to name an interviewee: “<i>[t]he individuals with whom Black Cube made contact [sic] with and who provided key evidence to [Black Cube’s] investigation</i>” (Black Cube Statement, ¶¶ 25-26, emphasis added). Those contacted but who did not support Claimants’ case are not named.</p> <p><u>Two, Claimants do not deny that the Requested Documents exist.</u> Claimants dedicate the longest reasoned objection in the entire Redfern to this Request, when a simple statement that the Requested</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	<p>(Black Cube Statement, ¶ 46);</p> <p>(vii) Correspondence received by Dr. Avi Yanus from Black Cube in relation to such “<i>individuals</i>”;</p> <p>(viii) Documents recording Black Cube’s “<i>comprehensive research across multiple sources</i>” carried out “<i>from June 2019 until November 2020</i>” (Black Cube Statement, ¶ 24) in connection with such “<i>individuals</i>”; and</p> <p>(ix) Documents reflecting any</p>		<p><i>this should be done in a narrative form containing the full substance of the witness’s testimony</i>” (Procedural Order No. 1, ¶ 8.3.4, emphasis added).</p> <p>In the present case, the omission of the Requested Documents deprives Bolivia of the “<i>source of the witness’s knowledge</i>” and the “<i>full substance of the witness’ testimony.</i>”</p> <p>Thus, Dr. Yanus has at his disposal a full record of, for instance, the “<i>comprehensive research</i>” that Black Cube, as a diligent investigator, must have carried out in connection with these other individuals, as well as information from the Black</p>	<p>Bolivia’s defense and to obtain all of the information that Bolivia is requesting here of Black Cube. That would be improper, and surely objected to by Bolivia, but that is precisely what Bolivia is requesting from Claimants and Black Cube, who were hired by Claimants and their counsel to investigate Bolivia’s conduct as it pertains to the claims that Claimants have put forth in this case.</p> <p>Further, given the overly broad scope of this speculative request, the requested information—if</p>	<p>Documents would not exist, if true, would have ended the discussion.</p> <p>For example, Claimants have not stated that Black Cube only identified, corresponded with and/or interviewed the five named individuals. Black Cube corresponded with and interviewed other individuals.</p> <p>Likewise, Claimants also have not stated that all the individuals interviewed by Black Cube corroborated Claimants’ theory of conspiracy and collusion. Black Cube interviewed individuals who contradicted such theory (and instead corroborated Bolivia’s position that no conspiracy or collusion ever targeted Claimants).</p> <p>Similarly, Claimants do not deny that Correspondence was</p>	

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	<p>payments or any form of consideration made and/or given and/or promised by Black Cube to such “individuals”.</p>		<p>Cube agents as to what occurred in any meetings with such individuals. By extension, such information is available to Claimants, but not also to Bolivia. In fact, Bolivia disposes of no other means but this request for documents to level the playing field.</p> <p><i>Second</i>, the Requested Documents are relevant to Bolivia’s case and material to its outcome.</p> <p>Bolivia demonstrated in the Statement of Defense that no evidence supports Claimants’ allegations that CMO was dispossessed of the Grupo Minero Totoral Concessions as a result of conspiracy and collusion.</p>	<p>they were to exist— would necessarily contain highly confidential business information/trade secrets, such as Black Cube’s investigation and intelligence methods, which Black Cube and Mr. Avi Yanus have developed over multiple years, by investing a significant amount of time, resources, and know-hows of skilled intelligence officers and other professionals, such as attorneys, economists, and financial professionals. (<i>See CWS-8</i>, Black Cube Statement, ¶ 6). The disclosure of</p>	<p>exchanged between Black Cube and such individuals or that Dr. Yanus received Correspondence from Black Cube in connection with such individuals. Such Correspondence thus exists.</p> <p><i>Second</i>, Claimants are wrong to seek to limit Bolivia’s right to disclosure to “any document on which the Claimants and their witnesses have relied in their written submissions and their witness statements.” Such absurd rule would defeat the very purpose of disclosure, since it can be expected that parties will not rely on evidence that is contrary to their case (as Black Cube has done with the evidence gathered that belied Claimants’ claims).</p> <p>In any event, as explained below, Dr. Yanus did not participate in any</p>	

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			<p>Claimants now rely on the audio recordings enclosed with the Black Cube Statement as evidence of such conspiracy and collusion. But Claimants disclose no information regarding any individuals who corroborated Bolivia’s demonstration instead of Claimants’ allegations, thus failing to provide “<i>key evidence</i>” to the investigation carried out by Black Cube on Claimants’ behalf, as defined and circumscribed by Claimants. In turn, the Requested Documents are material to the Tribunal’s decision on the merits.</p>	<p>these investigation and intelligence techniques and intelligence methods will cause substantial injury to the interests of Black Cube, a “business intelligence firm” specializing in “intelligence collection and analysis”. (<i>See CWS-8</i>, Black Cube Statement, ¶ 6). As such, any documents responsive to this request, if they were to exist, are not subject to disclosure. (IBA Rules, Arts. 9.2(b) and (e)). This is particularly true in light of the facts that Bolivia has made no showing whatsoever that it has any</p>	<p>of the interviews carried out by Black Cube. Thus, Dr. Yanus necessarily relied on the information contained in the Requested Documents for the purposes of the Black Cube Statement. For instance, Dr. Yanus relied, at the very least, on Black Cube’s “<i>comprehensive research across multiple sources</i>” carried out “[f]rom June 2019 until November 2020” (Black Cube Statement, ¶ 24) in connection with the “<i>individuals who are familiar with the Claimants’ case and the relevant parties</i>” (item (viii)). This alone suffices to justify the disclosure of the Requested Documents. <i>Third</i>, Claimants’ six main objections to this Request are unavailing:</p>	

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			<p>The Requested Documents are thus relevant to Bolivia’s demonstration that there was never any conspiracy to which Bolivia would have been a part, aimed at depriving CMO of the Grupo Minero Totoral Concessions.</p> <p>The Requested Documents are reasonably believed to exist, in light of the language from the Black Cube Statement excerpted above. The Requested Documents are reasonably believed to be in the possession, custody or control of Claimants and/or Black Cube, insofar as Black Cube identified, analyzed and interviewed “<i>several individuals who are familiar</i></p>	<p>need—much less substantial need—for the documents requested here.</p> <p>As further discussed below, the relevancy and materiality of the requested documents are highly questionable at best, because this request is entirely premised on a series of speculations that: (i) there might have been individuals with whom Black Cube made contact other than Aly Agreda Vedia, Hugo Delgado Burgos, Antonio Iporre Rua, Zoilo Moncada Cortéz, and María Milagro Nemer Chaloup; (ii) those individuals</p>	<p><u>One</u>, Claimants contend the Request would be unspecific and overbroad, insofar as, on the one hand, it would cover “<i>any and all individuals with whom Black Cube had ever made contact throughout the course of its 17-month-long investigation,</i>” and “<i>regardless of the nature and purpose of Black Cube’s contact with all such individuals.</i>” This is misleading.</p> <p>On the one hand, Claimants omit that this Request tracks the very language used by Dr. Yanus himself in paragraph 25 of the Black Cube Statement. It is reasonable to assume that Dr. Yanus knows what he meant by the words he used and knows which individuals were targeted by Black Cube’s investigation and what Documents correspond to his statements. For</p>	

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			<p><i>with the Claimants’ case and the relevant parties” (Black Cube Statement, ¶ 25).</i></p>	<p>might have discussed the issues of Bolivia’s corruption and conspiracy; and (iii) what those individuals might have told Black Cube on those issues might have supported Bolivia’s defense in this case, which for the purpose of this document request is that “that there was never any conspiracy to which Bolivia would have been a part, aimed at depriving CMO of the Group Minero Totoral concessions”. It thus strains credibility for Bolivia to argue that it has any justifiable need for the requested documents.</p>	<p>instance, Dr. Yanus must necessarily know how Black Cube agents “<i>informed [him] of what occurred during the meeting[s]</i>” (item (v)) and what “<i>research</i>” he referred to (item (vii)). Bolivia has performed its best efforts to specify a category of Documents that Claimants can easily identify, if need be with the assistance of Dr. Yanus (bearing in mind that Bolivia does not have access to such Documents).</p> <p>On the other hand, Bolivia notes that this Request cannot be compared, as Claimants do, with a hypothetical request by Claimants that Bolivia “<i>produce all documents, correspondence, meeting notes, contact information regarding any individuals Bolivia had contacted with in preparation</i></p>	

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				<p>Second, Bolivia has failed to establish that the requested documents are reasonably believed to exist (IBA Rules, Art. 3.3(a)). Respondent unjustifiably speculates that “there <i>may be</i> individuals with whom Black Cube made contact and who did not provide evidence that was <i>key</i>’ for <i>their</i>’ investigation because it did not support Claimants’ case.” Bolivia does not offer any evidence to support its conjecture, . Bolivia merely notes that in paragraph 25 of the Black Cube’s Statement, Dr.</p>	<p><i>of its Statement of Defense, except for those who submitted witness statement.”</i> As explained above in connection with Request 1, the Black Cube Statement is not an ordinary statement by an ordinary witness. Dr. Yanus will not be testifying with respect to an objective and impartial investigation carried out by a third party with no ties or attachments to Claimants, but as a witness to an investigation commissioned and designed by Claimants.</p> <p><u>Two</u>, Claimants do not dispute that, for Bolivia to fully exercise its right of defense and due process, it must have access to “<i>a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge, and this</i></p>	

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				<p>Avi Yanus states “during the investigation, Black Cube contacted several individuals who are familiar with the Claimants’ case and the relevant parties.” Based on this statement alone, Bolivia then speculates that the requested documents may exist “<i>in so far as</i> Black Cube identified, analyzed and interviewed ‘several individuals who are familiar with the Claimants’ case and the relevant parties’.” In fact, Dr. Avi Yanus’ witness statement and recordings submitted with it clearly show that these several</p>	<p><i>should be done in a narrative form containing the full substance of the witness’s testimony</i>” (Procedural Order No. 1, ¶ 8.3.4, emphasis added). Instead, Claimants contend that the Black Cube Statement complies with this requirement, such that no additional disclosure is warranted. This is incorrect, as the Black Cube Statement does not contain “<i>the full substance of the witness’ testimony.</i>”</p> <p>The Black Cube Statement is not based solely on the audio recordings enclosed therewith, for two main reasons:</p> <p>On the one hand, as Claimants openly acknowledge, <u>Dr. Yanus did not participate in or attend any such interviews.</u> The audio recordings were provided to Dr. Yanus by Black Cube, and their content was</p>	

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				<p>individuals are familiar with Claimants’ case and the relevant parties. As apparent, Bolivia itself admits that the existence of the requested documents is based on its own guess work and wishful thinking, and not reasonable belief as required by IBA Rules, Art. 3.3(a).</p> <p>With respect to item (ix), Claimants further note that Bolivia has offered no basis to believe that there was “any payments or any form of consideration made and/or given and/or promised by Black Cube” to any</p>	<p>analyzed and explained to him by Black Cube. Such analysis and explanations were based, <i>inter alia</i>, on “<i>comprehensive research across multiple sources</i>” carried out “[f]rom June 2019 until November 2020” with respect to the “<i>individuals who are familiar with the Claimants’ case and the relevant parties</i>” (Black Cube Statement, ¶¶ 24-25) (item (vii)), information provided by Black Cube to Dr. Yanus on each of the interviews with such individuals following the conclusion of such interview (item (v)), and notes and/or transcriptions of any meetings between such individuals and Black Cube (item (iv)). Claimants do not dispute that these Documents have not been provided. Nor can Claimants credibly dispute</p>	

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				<p>individual whatsoever, including Aly Agreda Vedia, Hugo Delgado Burgos, Antonio Iporre Rua, Zoilo Moncada Cortéz, and María Milagro Nemer Chaloup (collectively, the “Black Cube Interviewees”). This again shows that Bolivia is using its request to engage in a fishing expedition that should never be allowed in this arbitration.</p> <p><i>Third</i>, the documents requested—if they were to exist—are neither sufficiently relevant to the case nor material to its outcome (IBA Rules, Art.</p>	<p>that the Requested Documents go to the credibility of Dr. Yanus.</p> <p>On the other hand, as explained above, Dr. Yanus is a witness to a purpose-driven investigation, aimed at supporting Claimants’ fanciful arguments of collusion, and hence his statement deliberately withheld any information supporting Bolivia’s case that Black Cube uncovered.</p> <p>It would be a breach of Bolivia’s rights if, as Claimants would have it, Bolivia were compelled to approach the cross-examination of Dr. Yanus without the benefit of the full facts surrounding his testimony regarding that investigation (including, crucially, facts which corroborate Bolivia’s case and not Claimants’). Bolivia’s Request is thus also justified by considerations</p>	

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				<p>9.2(a)) because Bolivia’s request is based on a speculative foundation. Bolivia justifies this request by stating the requested documents “are relevant to Bolivia’s demonstration that there was never any conspiracy to which Bolivia would have been a part, aimed at depriving CMO of the Group Minero Totoral concessions”.</p> <p>Notwithstanding that Bolivia’s statement that “there was never any conspiracy to which Bolivia would have been a part, aimed at depriving CMO of the Group</p>	<p>of due process (which Claimants do not deny).</p> <p><u>Three</u>, Claimants challenge the relevance and materiality of the Requested Documents “<i>because Bolivia’s request is based on a speculative foundation.</i>” This objection fails for two reasons:</p> <p>On the one hand, as explained above, Claimants have admitted that the Documents Requested exist.</p> <p>On the other hand, the Requested Documents are relevant to <u>Bolivia’s case</u> and material to its outcome. This is confirmed by the submissions that Claimants themselves presently make, to the effect that Bolivia’s case “<i>is already contradicted not only by the ample evidence of conspiracy and</i></p>	

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				<p>Minero Totoral concessions” is already contradicted not only by the ample evidence of conspiracy and corruption submitted with Black Cube’s Witness Statement, but also with other evidence Claimant submitted into the record (<i>see e.g.</i>, CWS-5; C-87; C-258; C-304; Reply, ¶¶ 293-317), the entire basis upon which Bolivia attempts to justify this improper request for documents is that “Claimants disclose no information regarding any individuals who corroborated Bolivia’s demonstration instead of</p>	<p><i>corruption submitted with Black Cube’s Witness Statement, but also with other evidence Claimant submitted into the record.”</i> That Claimants felt it appropriate to make such submissions demonstrates that the existence or inexistence of a conspiracy against Claimants is a material issue in this case, one, moreover, which justified the submission of the Black Cube Statement in the first place.</p> <p>Finally, in Claimants’ submission, there would be “<i>no basis to believe that there was ‘any payments or any form of consideration made and/or given and/or promised by Black Cube’ to any individual whatsoever, including [the five individuals whose interview recordings are enclosed with the Black Cube Statement].</i>” This statement is false</p>	

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				<p>Claimants’ allegation”. As explained above, Bolivia does not provide any evidence to support this conjecture. Moreover, Bolivia does not offer any basis to believe that any contact, communications, meetings between Black Cube and all “<i>individuals who are familiar with the Claimants’ case and the relevant parties,</i>” other than the Black Cube Interviewees—if they were to exist—would have been related to the issues of corruption and conspiracy. As such, Bolivia’s justification is founded upon multiple</p>	<p>as a matter of fact, as demonstrated by, at least, the following two examples: (i) during his interview with Black Cube, Aly Agreda was given US\$ 1000 according to the recording (“<i>BC: Esto es tuyo, pónelo ahí en algún lugar. Son mil dólares</i>”); (ii) likewise, during his interview, Antonio Iporre was offered money by Black Cube (“<i>BC: [...] quiero que Marcia [a Black Cube agent] te mande una bonificación por lo que nos ayudado hasta ahora, ¿te parece? A. Iporre: Bueno gracias</i>”).</p> <p><u>Four</u>, Claimants contend that the Requested Documents would be protected by attorney work product privilege. This assertion is unsupported, and calls for four comments:</p>	

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				<p>layers of pure speculations. The requested documents are therefore not relevant or material to the defenses raised by Bolivia in this arbitration (IBA Rules, Art. 9.2(a)).</p> <p><i>Fourth</i>, Bolivia’s request lacks specificity and is overly broad. The breadth of this request is in fact astonishing. As an initial matter, it covers <i>any and all individuals</i> with whom Black Cube had ever made contact throughout the course of its 17-month-long investigation, other than the Black Cube Interviewees. Further, in</p>	<p>As a <i>first comment</i>, Claimants bear the burden of proof as to their assertion of privilege. Claimants have failed to substantiate such assertion, to an extent where they do not even explain why the US-civil procedure work product doctrine would apply to this international arbitration. It is not enough to include boilerplate language with the word “privilege” in it to block disclosure.</p> <p>As a <i>second comment</i>, as explained in connection with Request 2 above, no privilege applies. Bolivia does not seek “<i>Claimant’s counsel’s mental impressions, ideas or strategies concerning the present arbitration</i>” nor any Documents prepared by counsel for Claimants. It is in fact absurd to suggest, as Claimants do, that the Requested</p>	

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				<p>connection with all such individuals, and regardless of the nature and purpose of Black Cube’s contact with all such individuals—if they were to exist, the request seeks, among others, documents reflecting contact information of all such individuals (item (i)); all communications between Black Cube and such individuals and all communications between Black Cube and Dr. Avi Yanus regarding such individuals (items (ii) & (vii)); all research carried out by Black Cube in connection with such individuals (item (viii));</p>	<p>Documents (which include internal Correspondence from Black Cube to Dr. Yanus, notes and transcriptions of Black Cube’s interviews with the individuals familiar with Claimants’ case, and the consent of these individuals to be recorded etc.) would have been prepared by counsel.</p> <p>Bolivia seeks disclosure of “fact” work product, which can be disclosed where the Requested Documents are necessary to the requesting party and this party is unable to obtain them without undue hardship. Claimants’ comparison of this Request with a hypothetical request by Claimants to Bolivia for disclosure of “documents or information for anyone that it, its in-house or outside counsel, or investigators</p>	

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				<p>“notes”, “transcripts”, “video and/or audio recordings” of any meetings between such individuals and Black Cube (items (iii) & (v)). Had Claimants, during the document production phase, asked Bolivia to produce all documents, correspondence, meeting notes, contact information regarding any individuals Bolivia had contacted with in preparation of its Statement of Defense, except for those who submitted witness statements, such a request would have been certainly denied by the Tribunal. That is the very scope of</p>	<p><i>contacted in the preparation of Bolivia’s defense and [...] all of the information that Bolivia is requesting here of Black Cube” is thus misguided. However, it bears recalling that Claimants did, in fact, seek disclosure of “[a]ll documents that Mr. Yáñez relied upon for the preparation of his expert report,” which Claimants described as “a narrowly defined category of documents that [...] have been consulted by Mr. Yáñez in the preparation of his expert report” (Claimants’ Request for Documents dated 8 June 2020, Request 4).</i></p> <p>As explained above, the Requested Documents are necessary (i) for the unimpeded exercise of Bolivia’s rights in the cross-examination of Dr. Yanus, and (ii) given their relevance to Bolivia’s defense and</p>	

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				<p>the information that Bolivia seeks to obtain via this request. This is simply an impermissible fishing expedition that does not comply with IBA Rules, Art. 3.3(a)(i) or (ii) and is therefore unreasonably burdensome under IBA Rules, Art. 9.2(c).</p> <p><i>Lastly</i>, Claimants object to this request on the basis that while per Procedural Order No.1. and the IBA Rules, Respondent’s right is limited to examining any document on which the Claimants and their witnesses <i>have relied</i> in their written submissions</p>	<p>their materiality to the Tribunal’s decision on the merits. Given that Black Cube generated and/or retrieved the Requested Documents in the course of the investigation described in the Black Cube Statement, Bolivia cannot independently access the information contained therein (even if it were public information, <i>quod non</i>, Claimants have the information readily available and it would be an undue hardship to require Bolivia to repeat the investigation). Thus, the conditions are fulfilled for the disclosure of the Requested Documents in spite of Claimants’ misplaced assertion of privilege.</p> <p><i>As a third comment</i>, even if attorney work product privilege applied (<i>quod non</i>), Claimants have</p>	

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				<p>and their witness statements, Respondent nevertheless explicitly seeks to obtain documents—in the event that any of documents responsive to this request were to exist—that were <i>neither</i> relied upon by the Claimants in their Reply nor by Dr. Avi Yanus in his witness statement. Procedural Order No. 1, Section 7.3 provides: “the Parties shall submit with their written submissions all evidence and authorities on which <i>they intend to rely</i> in support of the factual and legal arguments advanced therein, including witness</p>	<p>waived it by providing a summary description of such fact work product in the Reply and in the Black Cube Statement, and by making further submissions on this matter in their objections.</p> <p>As a <i>fourth comment</i>, and as explained in connection with Request 2 above, Claimants have failed to provide the itemized privilege log requested by Bolivia, or any explanation for this omission. This can only be because an itemized privilege log would confirm that Claimants’ assertion of privilege is deprived of any basis.</p> <p><u>Six</u>, Claimants contend that the Requested Documents would be protected from disclosure as they “<i>necessarily contain highly confidential business information/trade secrets, such as</i></p>	

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				<p>statements, expert reports, documents, and all other evidence in whatever form.” Article 4.5(b) of the IBA Rules states that the witness statement shall contain “[d]ocuments on which the witness <i>relies</i> that have not already submitted.” Claimants have complied with the relevant provisions of Procedural Order No. 1 and the IBA Rules because all of the recordings on which Dr. Avi Yanus relied in his statement have been produced as Annex A to his witness statement and because Claimants have</p>	<p><i>Black Cube’s investigation and intelligence methods,”</i> which pertain to Black Cube’s <i>know how</i>. This calls for four comments:</p> <p>As a <i>first comment</i>, Claimants – who have the burden of establishing confidentiality – do not explain why the Requested Documents would reveal any <i>trade secret</i> or <i>know how</i>. It is difficult to see how Documents generated for this specific arbitration in connection with the interview(s) of “<i>several individuals who are familiar with the Claimants’ case and the relevant parties</i>” could contain any <i>trade secret</i> or <i>know how</i>.</p> <p>Moreover, though Bolivia seeks, in this Request, the same categories of Documents it sought in Requests 3-7 above, Claimants contend that the Requested Documents would</p>	

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				<p>not relied on anything other than the already-submitted evidence to advance their claims in this arbitration.</p> <p>Also, Respondent misleadingly asserts that Procedural Order No. 1, ¶ 8.3.4 supports its purported right to have access to the requested documents. This is not true. Said provision, contrary to Bolivia’s misreading, only requires that a witness statement contain, among others, “a <u>description</u> of the facts on which the witness’s testimony is offered and, if applicable, the source of</p>	<p>contain “<i>Black Cube’s investigation and intelligence methods, which Black Cube and Mr. Avi Yanus have developed over multiple years, by investing a significant amount of time, resources and know-hows of skilled intelligence officers and other professionals.</i>” But Claimants did not raise this objection in connection with any of Requests 3-7. This only shows that the objection is baseless and opportunistic.</p> <p>As a <i>second comment</i>, Claimants go as far as to suggest that disclosure of the Requested Documents would cause substantial injury to the interests of Black Cube. But they do not bother to specify or substantiate this allegation. It is unclear what business injury could be caused to a witness by the</p>	

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				<p>the witness’s knowledge, and this should be done in a narrative form containing the full substance of the witness’s testimony’. Dr. Avi Yanus’ witness statement fully complies with this provision, as it not only provides a detailed description of the facts on which his testimony is offered, as well as a description of the source of his knowledge (Black Cube’s Statement, ¶¶ 14-26). As required in Procedural Order No. 1, Dr. Avi Yanus also provided these descriptions in “a narrative form containing</p>	<p>disclosure in this arbitration of the full substance of the testimony of that witness. Such unspecific business injury is entirely hypothetical and speculative, and cannot act as a limitation of Bolivia’s due process and defense rights.</p> <p>As a <i>third comment</i>, in any event, (i) it is preposterous to suggest that Bolivia or its external counsel could be commercial competitors of Black Cube, and (ii) by submitting the Black Cube Statement, Claimants have waived any potential commercial confidentiality of the Documents Requested. On their own standard, Claimants should not be permitted to oppose document requests on the basis of unsupported boilerplate assertions of confidentiality.</p>	

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				the full substance of the witness’s testimony”.	<p>As a <i>fourth comment</i>, as explained in connection with Request 2 above, this arbitration is confidential (see Procedural Order No. 2), and Claimants have not argued (much less demonstrated) that the applicable confidentiality provisions would be insufficient to safeguard the purported confidentiality of the Requested Documents.</p> <p>In any event, should the Tribunal so order, Bolivia is open to agreeing on a confidentiality order to protect those responsive Documents which Claimants may disclose and over which confidentiality is asserted.</p>	