

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

DISCOVERY GLOBAL LLC

(United States)

Claimant

– v –

THE SLOVAK REPUBLIC

Respondent

(ICSID Case No. ARB/21/51)

ANNEX B

20 June 2023

Professor Gabrielle Kaufmann-Kohler, President
Mr. Stephen L. Drymer, Arbitrator
Professor Philippe Sands, KC, Arbitrator

SQUIRE 
PATTON BOGGS

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I. INTRODUCTION

1. The Slovak Republic hereby directs the enclosed Request for Production of Documents (“**Request**”) to Claimant, Discovery Global, LLC (“**Discovery**”). This Request is made pursuant to Section 16 of Procedural Order No. 1, and the International Bar Association’s Rules on the Taking of Evidence in International Arbitration (2010) (“**IBA Rules**”) to which paragraph 16.1 of Procedural Order No. 1 refers.
2. Per the IBA Rules, the Slovak Republic’s Request identifies documents relevant to the dispute and material to the outcome of the case. The enclosed Redfern Schedule provides the Slovak Republic’s basis for each Request. Many Requests relate in whole or in part to Discovery’s claims and allegations; this should not be seen as in any way an acceptance or endorsement of Discovery’s arguments. The basis for each Request is not intended to be exhaustive, but rather to summarize the main reasons for each document or category of documents in a brief and succinct manner. Where the Tribunal requires additional submissions on any of the Requests set out below, the Slovak Republic is prepared to elaborate for the benefit of the Tribunal, if necessary.
3. The Slovak Republic’s Redfern Schedule has been grouped by broad topics, for the recipients’ and the Tribunal’s convenience. The topical headings are intended solely for the purpose of reference and are not intended to limit or qualify the categories of documents requested.
4. To the best of the Slovak Republic’s knowledge, the requested documents are not in its possession, custody, or control, and the Slovak Republic reasonably believes the documents requested are within Discovery’s possession, custody, or control, and that their production would not be unduly burdensome. The Slovak Republic reasonably believes that the documents and/or categories of documents requested in this Request are in Discovery’s possession, custody, or control because the requested documents: (i) were produced by Discovery or related entities; (ii) are documents that Discovery, the witnesses, or related entities would be expected to maintain in the normal course of business; or (iii) have been referred to by Discovery, its witnesses, or its experts in its submissions, witness statements or expert reports, respectively, in this arbitration.
5. As a general matter, and for the avoidance of doubt, the present Requests encompass documents within the possession, custody, or control of Discovery and its affiliates within the same corporate family and under common control, even if the latter are not formally party to this

arbitration. This includes documents within the possession, custody, or control of Mr. Michael Lewis, who is Discovery's "sole shareholder."¹

6. In addition to the definitions introduced in paragraph 1 above and those in the Slovak Republic's prior submissions (which are maintained in full unless otherwise indicated herein), the following non-exhaustive list of definitions shall apply to the Slovak Republic's Request:
- (a) "**document**" means a record of information of any kind, whether recorded on paper or by electronic means, such as, but not limited to, decisions, memoranda, analysis, correspondence, notices, presentations, reports, minutes, notes, spreadsheets, emails, video and sound recordings, and any other record of information, including documents created and/or stored electronically, and/or by hand. Also, any references herein to communications, responses, requests, explanations and files shall be interpreted to include any and all documents (as just defined) in respect of the foregoing.
 - (b) "**communication**" means any oral or written transmission or transfer of information (both internal and external to the relevant entity), whether to a person, place, or thing (real or virtual) by or from a person, place or thing (real or virtual) of any nature whatsoever and by whatever medium whatsoever (including, but not limited to emails, faxes, text messages, and any other form of electronic communication such as Blackberry messenger and WhatsApp messages).
 - (c) "**regarding**" or "**relating to**" or "**pertaining to**" (including any variant thereof), shall encompass referring to, alluding to, responding to, preparing for, concerning, connected with, evidencing, reflecting, commenting on or in respect of.
 - (d) "**such as**" or "**including**" shall be interpreted as providing representative, but non-exhaustive, examples of the concept at issue.
 - (e) "**and**" shall include the word "**or**" and the use of "**or**" shall include "**and**," unless the context clearly requires a different meaning. Similarly, in the Slovak Republic's Requests, the use of the singular form of any word shall include the plural and *vice-versa*, unless the context clearly requires a different meaning.
 - (f) "**JV Partners**" refers to Discovery Global LLC, Romgaz, and JKX.

¹ Lewis WS, ¶ 2.

7. Where any responsive document makes up a portion of a larger document, the entire document shall be produced, including, but not limited to annexes, attachments or covering letters/emails.
8. To assist in the production of documents, and to narrow the temporal scope of each of the Slovak Republic's Requests, the Slovak Republic has included an indicative "*Time Period*" for each Request in the Redfern Schedule below. Since the Slovak Republic is unable to identify with precision the exact dates on which the requested documents originated or were transmitted, these indicative Time Periods should be taken as approximations intended to assist in narrowing down any searches for responsive documents. However, the indicative Time Period in each Request should not be understood to limit the Slovak Republic's Requests, and where responsive documents are known to exist outside of the indicative Time Periods, they should still be considered responsive and produced per the relevant Request.
9. All rights are reserved, including to seek compelled production of documents and/or to seek adverse inferences (where appropriate). The Slovak Republic reserves the right to amend or supplement these requests during the course of this arbitration (by leave, if required).

Submitted on behalf of the Slovak Republic.



5 May 2023

SQUIRE PATTON BOGGS

Counsel for the Slovak Republic

II. CLAIMANT'S INTRODUCTORY REMARKS

10. Discovery is surprised by the large and disproportionate number of document requests made by Slovakia, ie 55 requests. The sheer breadth of Slovakia's requests is compounded by the following matters:
- (a) Discovery has already produced 236 factual exhibits together with its Request for Arbitration and Memorial. By contrast, Slovakia has only exhibited 94 documents with its Counter-Memorial.
 - (b) A number of Slovakia's requests are overly broad and fail to identify a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules. These requests amount to a fishing expedition whereby Slovakia seeks a broad universe of documents for which it has not provided any relevant justification. To take just one example, request 32 is excessively broad in that (i) the subject matter of the request relates to the entire project in which Discovery and AOG were engaged in Slovakia (the "**Project**") and (ii) the request covers a time period of 4 years: "[d]ocuments evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, and the JV Partners regarding the evolution of the project. Time Period: March 2014 until the end of 2018".² Granting these requests would impose an unreasonable burden on Discovery (Articles 3.3(c) and 9.2(c) of the IBA Rules) and would undermine basic principles of fairness and equality (Article 9.2(g) of the IBA Rules).
 - (c) A number of Slovakia's requests fail to identify how the requested documents are relevant to the case and material to its outcome, as required by Article 3.3(b) of the IBA Rules. See, for example, requests 8, 16, 39, and 49. Indeed, in many cases, Slovakia admits that the documents are no more than *prima facie* relevant, see eg request 16. These requests are not appropriate pursuant to Article 9.2(a) of the IBA Rules.
 - (d) At least one of Slovakia's requests is not even relevant to any of the issues in dispute in this arbitration and is, for that reason, inappropriate: see request 28.
 - (e) Slovakia has waited until document production to challenge certain redactions which were applied to a limited number of exhibits disclosed by Discovery together with its Memorial (Discovery only partially redacted 7 of the 210 exhibits it submitted with its

² See also requests 4, 8, 16, 45 and 46.

Memorial). If these redactions had in fact prejudiced Slovakia's ability to prepare its defence, the redactions would have been challenged well before Slovakia filed its Counter-Memorial. In any event, as explained at paragraph 14 below, all redactions have been applied appropriately and in accordance with Article 9.2 of the IBA Rules.

11. Without prejudice to the foregoing, and in the spirit of co-operation and efficiency, Discovery is willing to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to the majority of requests pursued by Slovakia, as indicated in the Redfern Schedule below. This is consistent with Discovery's extensive production of exhibits accompanying its Memorial and its desire to be co-operative and reasonable in connection with document production.
12. For transparency and good order, Discovery notes that its reasonable and proportionate searches for, and production of, any responsive relevant documents are subject to the following caveats:
 - (a) Discovery is not and does not intend to waive privilege. See paragraph 14 below as to Discovery's position on privilege. If any privileged material is inadvertently produced by Discovery during document production, this should be understood by Slovakia as an inadvertent waiver of privilege. Slovakia should, therefore, raise any such issue with Discovery immediately and delete copies of any privileged material.
 - (b) Discovery's agreement to conduct such searches and produce any responsive relevant documents is not an acceptance or admission of any of the assertions made by Slovakia either in its Counter-Memorial or in this Redfern Schedule and should not be construed as such. Discovery does not, however, consider it necessary or appropriate to state in the Redfern Schedule the allegations or arguments of Slovakia with which it disagrees.
 - (c) Many of the searches are expected to yield a limited number of responsive relevant documents or no documents at all. This is for two reasons:
 - (i) First, as Discovery is a relatively small company, owned and run day-to-day by Mr Michael Lewis, many communications took place orally (over the phone, on video calls, or in person), and notes of any reviews, discussions or meetings were not necessarily taken. This is particularly the case for Mr Lewis himself.
 - (ii) Second, Discovery no longer has access to some of its emails due to a change of domain server/email hosting which resulted, prior to the commencement of these proceedings, in an inadvertent loss of data. In about February/March

2019, Discovery changed its domain server/email hosting to Gmail, following issues with its previous hosting provider. As a result of that change, the emails that had been hosted using the domain name “@discoverygeo.com” and dated prior to April 2018, in the case of incoming emails, and February 2018, in the case of outgoing emails, in the sole possession, custody or control of Mr Lewis were inadvertently lost.³ However, Discovery believes that Mr Alexander Fraser (Discovery’s CFO) was copied on and retained copies of most, although not all, relevant emails from December 2014. As such, with the exception of emails from August 2017 to February 2018, the majority of the “@discoverygeo.com” emails dated prior to February/April 2018 (as well as emails subsequent to that date) were also in the possession, custody or control of Mr Fraser and these emails were not lost because they had been stored on the hard drive of the laptop(s) that he owned from time to time⁴ and backed up onto an online backup platform. Emails dated from August 2017 to February 2018 in the possession, custody or control of Mr Fraser have, however, been inadvertently lost due to a failure of a backup platform when his laptop was being replaced. As such, Discovery is aware that there may be missing relevant emails, primarily in the periods prior to December 2014, and from August 2017 to February 2018.

13. Discovery has reasonably and proportionately objected to a limited number of requests. Discovery has summarised its reasoned objections in the Redfern Schedule below and stands ready to provide further submissions to the Tribunal should this be of assistance. The primary reason for Discovery’s objections is that the documents requested are irrelevant to the case and immaterial to its outcome, and so there can be no prejudice to Slovakia’s defence and the seamless progression of this arbitration should these objections be upheld by the Tribunal.
14. The other main reason for Discovery’s objections relate to those requests where Slovakia seeks the unredacted versions of several of Discovery’s exhibits on the misconceived basis that Discovery has supposedly waived privilege (see requests 10 to 15 below). As to these requests:
 - (a) Slovakia contends that Discovery has waived privilege because Discovery/AOG shared the redacted (and privileged) communications with third parties (ie JKX and Romgaz) during the course of the Project, such that Discovery/AOG have waived any privilege

³ While Mr Lewis does have emails from February 2018, the data loss may have affected some of Mr Lewis’ emails from the period between February 2018 and February/March 2019.

⁴ Although it is accepted that there is a possibility that some data may have been lost when there was a change of laptop, this is not understood to have had any material impact.

attaching to the communications. This contention is strongly denied by Discovery and is clearly wrong applying the relevant legal principles.

- (b) As Slovakia is well aware, JKK and Romgaz are not unrelated third parties—they were Discovery/AOG’s JV Partners (as defined by Slovakia itself at paragraph 6(f) above). Discovery/AOG’s JV Partners had a joint and/or common interest in the legal advice which Discovery/AOG obtained and communicated to them during the course of the Project. As such, any legally privileged information received by Discovery/AOG and shared with JKK and/or Romgaz did not constitute a waiver of that privilege vis-à-vis other third parties such as Slovakia.
- (c) In this regard, Discovery relies on the following legal principles:

- (i) In accordance with PO1 at [16.1], the Tribunal must be guided by Articles 3 and 9 of the IBA Rules. Article 9.2 of the IBA Rules provides (*inter alia*):

“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:

[...]

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;

[...]

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

[...]

(g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.”

- (ii) Moreover, Article 9.3 of the IBA Rules provides:

“In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:

(a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the

purpose of providing or obtaining legal advice;

(b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;

(c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;

(d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and

(e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.”

- (iii) Pursuant to these rules, the Tribunal has a broad discretion to: (i) determine the legal or ethical rules which govern a claim of privilege or other legal impediment invoked by the parties; and (ii) consider and apply the factors listed in Article 9.3 in relation to such matters. This requires the Tribunal first to determine whether there are any mandatory legal or ethical rules applicable to issues of privilege.⁵
- (iv) In the present case, there are no mandatory rules which apply to issues of privilege or other legal impediments to disclosure. This is because (i) the present arbitration is an ICSID arbitration without a formal seat; (ii) the Tribunal is therefore not bound by any mandatory rules of any particular country; and (iii) neither the ICSID Convention nor the ICISD Arbitration Rules contain any mandatory rules on issues of privilege or other legal impediments to disclosure of documents. Instead, the Tribunal enjoys a broad discretion in matters of evidence.⁶
- (v) In considering which legal or ethical rules govern a claim of privilege or legal impediment to disclosure, ICSID tribunals have applied a variety of legal tests. As Discovery explained in its letter to the Tribunal dated 5 April 2022 at [2.2] (citing relevant authority), there are two possible approaches in this regard: (i) the application of national law rules on privilege; or alternatively (ii) the

⁵ See eg *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Procedural Order No. 7, 4 October 2018 (“*Carlos Ríos*”) at [9] **Exhibit CL-003**.

⁶ See Article 44 of the ICSID Convention and Rule 34(1) of the ICSID Arbitration Rules (2006). See also *Carlos Ríos* at [10] **Exhibit CL-003**.

application of international principles.

- (vi) If the Tribunal were to apply national law rules concerning legal privilege, Discovery submits that the Tribunal should apply either:
- (A) Texas law (as the law of the place where Discovery is incorporated, the place where Mr Lewis was based at the relevant time and the place where he received the legal advice and conveyed that advice to Discovery’s JV Partners⁷);
 - (B) English law (as the law of the place where Discovery’s counsel in this arbitration are qualified to practice and the law of the place where one of Discovery’s JV partners, JKX, was incorporated and received legal advice⁸); or
 - (C) Slovak law (as the law of the place where AOG was incorporated and the place where Slovak counsel were qualified to practice).
- (vii) All three of the national laws identified at (vi) above have a close connection to the parties and to the communications. All three national laws recognise that attorney-client privilege and/or confidentiality is not waived if an otherwise privileged communication is shared with a third party who has a joint or common interest in the subject matter of the communication.⁹ Alternatively, if the Tribunal were to apply international principles (rather than national law rules), the factors listed in Article 9.3 of the IBA Rules undoubtedly lead to the same conclusion, having regard to the reasonable expectations of the parties as well as considerations of fairness and equality.¹⁰

⁷ See e.g. **Exhibit C-169** (Status Update dated 10 March 2017 drafted by Mr Lewis and showing an address header in Texas together with US contact details).

⁸ See Claimant’s Memorial at [39(1)] (“JKX Oil & Gas plc (‘JKX’)—a British upstream oil and gas exploration and production company which was publicly listed on the London Stock Exchange [...]”). See also eg **Exhibit C-169** concerning a “Status Update” sent to JKX at its address in London.

⁹ As to Texas law, see generally *In re JDN Real Estate-McKinney LP*, 211 SW 3d 907 (Tex., Court of Appeals, 5th Dist. 2006) at 922 **Exhibit CL-066**. As to English law, see generally Passmore *Privilege* (4th ed, Sweet & Maxwell, 2019) at [6-002] and [6-041]-[6-043] **Exhibit CL-065**. According to *Phipson on Evidence (20th Ed)* [24-07], “Common interest privilege will also apply to companies in the same group.” **Exhibit CL-064**. This principle applies in the present case because, at all material times, AOG was wholly owned by Discovery (Memorial at [55]). See also *The TAG Group Litigation Winterthur Swiss Insurance Company and another v AG (Manchester) Ltd (in liquidation) and others* [2006] EWHC 839 (Comm) at [78] and [80] (“[...] where a communication is produced by or at the instance of one party for the purposes of obtaining legal advice or to assist in the conduct of litigation, then a second party that has a common interest in the subject matter of the communication or the litigation can assert a right of privilege over that communication as against a third party. The basis for the right to assert this ‘common interest privilege’ must be the common interest in the confidentiality of the communication.”) **Exhibit CL-067**. As to Slovak law, the right to legal protection is provided in Article 47 of the Slovak Constitution **Exhibit R-018**. Moreover, communications between an attorney and its client are strictly confidential under [section 23] of the Slovak Act No. 586/2003 Coll. on the Legal Profession **Exhibit CL-068**.

¹⁰ See also *Carlos Ríos* at [28] **Exhibit CL-003**; *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Procedural Order No. 4 on the Production of Documents Referred to in the Parties’ Privilege Logs, 3 May 2021 at [47] and [48] (“The Tribunal therefore does not consider the concept of legal privilege to be limited to the conditions specifically enumerated in the Transparency Law, since the Tribunal must decide in all the circumstances of the present case, including the Tribunal’s duty to uphold due

- (d) Applying these principles, the Tribunal should dismiss Slovakia’s misguided assertion that Discovery waived privilege and/or confidentiality when it shared confidential legal advice with its JV Partners during the course of the Project. It is indisputable that the JV Partners had a joint and/or common interest in the subject matter of the legal advice, given that the advice was obtained and provided in connection with the execution of the Project. Moreover, when Discovery/AOG shared privileged communications with its JV Partners, they were simply complying with AOG’s obligations under the Joint Operating Agreements¹¹ (“JOAs”) and communicating to the JV Partners information they were entitled to receive. Indeed, AOG was compelled to do so under the express terms of the JOAs—terms which only serve to reinforce the joint and/or common interest of each JV Partner in the communications. In this regard:
- (i) Information acquired as a result of any “Joint Operations” (as defined in Article 1.40 of the JOAs – these are operations carried out by the Operator, ie AOG, pursuant to the JOAs) fell within the definition of “Joint Property” (as defined in Article 1.41), and so belonged to all the Parties to the JOAs.
- (ii) Thus, if AOG (and thereby Discovery) received legal advice in relation to any of the “Joint Operations” (including with respect to the factual issues as addressed by Discovery in Section II of its Memorial) such legal advice was automatically classified as “Joint Property” under the JOAs and so belonged equally to JKX, Romgaz and Discovery/AOG.
- (iii) Accordingly, (i) JKX and Romgaz were entitled to receive that advice under

process, fairness and equality between the Parties. In particular, the majority of the Tribunal does not consider the claims of attorney-client privilege to be limited to documents revealing the State's defence strategy in ongoing administrative or judicial proceedings. Under the IBA Rules, it is foreseen that there may be a need to protect the confidentiality of a document on the basis that it is created in connection with and for the purpose of providing or obtaining legal advice.”) Exhibit CL-063.

¹¹ A set of identical JOAs were initially entered into by Aurelian Oil & Gas Slovakia s.r.o.’s operating subsidiaries, ie, Dukla Oil & Gas s.r.o., Magura Oil & Gas s.r.o. and Radusa Oil & Gas s.r.o. (the “Operating Subsidiaries”) and JKX on 28 November 2008. See enclosed Joint Operating Agreement between Magura Oil & Gas s.r.o and JKX Slovakia B.V. relating to the area known as Medzilaborce in the Slovak Republic dated 28 November 2008 **Exhibit C-237**; Joint Operating Agreement between Radusa Oil & Gas s.r.o and JKX Ondava B.V. relating to the area known as Svidnik in the Slovak Republic dated 28 November 2008 **Exhibit C-238**; Joint Operating Agreement between Dulka Oil & Gas s.r.o and JKX Carpathian B.V. relating to the area known as Snina in the Slovak Republic dated 28 November 2008 **Exhibit C-239**; and Joint Operating Agreement between Alpine Oil & Gas s.r.o and JKX Slovakia B.V relating to the area known as Pakostov in the Slovak Republic dated 16 September 2015 **Exhibit C-240**. Given that the rights to the licences were separately and individually owned by a different Operating Subsidiary, there was a JOA for each of the licences with the relevant Operating Subsidiary. Following the farm-in by Romgaz into each of the Licences (pursuant to which they were transferred a 25% interest in each of the Licences – see Memorial at [40]), each Operating Subsidiary together with JKX and Romgaz entered into an identical set of Novation and Amendment Agreements, which served to *inter alia* (i) release the relevant Operating Subsidiary from the 25% interest transferred to Romgaz under the farm-in agreements, (ii) impose relevant obligations and liabilities under the JOAs on Romgaz, and (iii) keep all provisions of the JOA in full force and effect and binding on each of the Operating Subsidiary, JKX and Romgaz (subject to the amendments made in the Novation and Amendment Agreement). See enclosed Novation and Amendment of Joint Operating Agreement for area known as Medzilaborce in the Slovak Republic dated 1 May 2019 **Exhibit C-241**; Novation and Amendment of Joint Operating Agreement for area known as Svidnik in the Slovak Republic dated 1 May 2019 **Exhibit C-242**; and Novation and Amendment of Joint Operating Agreement for area known as Snina in the Slovak Republic dated 1 May 2019 **Exhibit C-243**. Pursuant to the Merger Agreement (see **Exhibit C-33**, discussed in the Memorial at [43]), the Operating Subsidiaries merged with their parent Aurelian Oil & Gas Slovakia s.r.o. (ie AOG), following which AOG became the successor of the Operating Subsidiaries, including in the JOAs. As referred to in the Memorial at [47]-[59] Discovery then purchased the participation interests in AOG to become its sole shareholder. Following Discovery’s purchase of AOG, it was confirmed in the Operating Committee Meeting Minutes of 11 September 2014 (Exhibit C-61) that AOG (now renamed as Alpine Oil & Gas, s.r.o., under the control of Discovery), would be the Operator under the JOAs (in place of the previously named Aurelian Oil & Gas Slovakia s.r.o.).

the JOAs, (ii) Discovery/AOG were equally bound to communicate that advice to JKK and Romgaz under those same provisions, and so (iii) there was no waiver of any privilege or confidentiality by virtue of Discovery/AOG communicating to the JV Partners information they were entitled to receive, and which Discovery/AOG were compelled to communicate to them via the various status updates during the course of the Project.

- (e) Without prejudice to the foregoing, even if (which is denied) a waiver occurred in relation to the legally privileged and redacted sections of Discovery's exhibits which were shared with the JV Partners, this was only a limited waiver because the information was being shared with those who had a joint and/or common interest and for a specific purpose. Accordingly, there was no general waiver of any privilege such that would entitle Slovakia to be provided with unredacted copies of the documents in question. Discovery, therefore, maintains that it is entitled to withhold the redacted portions of the relevant documents in accordance with Article 9.2(b) of the IBA Rules.
 - (f) To the extent that Slovakia does not accept Discovery's claim to privilege, and intends to challenge it, Discovery expressly reserves the right to respond to any submissions made by Slovakia with regard to any alleged waiver of privilege and in particular paragraphs 14(a)-14(e) above.
15. Discovery confirms that it will make every effort to comply with the timetable and voluntarily produce relevant responsive documents by 2 June 2023. However, given the large and disproportionate number of document requests made by Slovakia, Discovery expressly reserves its right to apply for an extension of time to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to Slovakia's requests.
16. Finally, to the extent that Slovakia challenges any of Discovery's objections to the document requests set out in this Redfern Schedule and seeks an order for production of any such documents from the Tribunal, Discovery respectfully requests that Slovakia provides the Tribunal with the entirety of Claimant's Introductory Remarks as well as copies of the exhibits and legal authorities referred to in footnotes 6-12 and enclosed herewith.

III. THE SLOVAK REPUBLIC'S REPLIES TO DISCOVERY'S OBJECTIONS

17. The Slovak Republic hereby encloses its replies (“**Replies**”) to Discovery’s answers and objections to the Slovak Republic’s document production requests (“**Requests**”).
18. There is nothing excessive or disproportionate about the Slovak Republic’s Requests. Many of these document production requests seek documents that were expressly relied upon and cited by Discovery but were inexplicably not included as exhibits to its Memorial. For instance, Discovery failed to submit basic contractual documents relied upon by it, such as: the JV Agreement between Discovery, JKX, and Romgaz (**Request 7**); the Akard Agreement (**Request 40**), and the Gulf Shores Agreement (**Request 41**). Discovery’s failure to exhibit the Akard Agreement is particularly notable, given that Discovery’s damages are calculated net of amounts allegedly owed under that agreement. **Requests 52-55** seek technical data and analyses underpinning Discovery’s quantum calculations. Discovery’s failure to exhibit these reliance documents at the appropriate juncture, *i.e.*, with its Memorial, as is normal practice, necessarily required the Slovak Republic to request these documents now. The relative number of requests made by Discovery, on the one hand, and the Slovak Republic, on the other, reflect this evidentiary omission.
19. Against this backdrop, Discovery’s superficial argument that it has produced more exhibits than the Slovak Republic rings especially hollow. Merely counting the Parties’ respective exhibits says nothing about their substantive value, or whether a party has submitted all of its reliance documents. Nor does the number of exhibits that Discovery has attached to its Memorial foreclose the Slovak Republic from seeking documents that are (i) reasonably believed to exist and (ii) relevant and material to the dispute. The Slovak Republic has done precisely that in its Redfern Schedule.
20. Discovery next bemoans an alleged “fishing expedition” that it perceives in the Slovak Republic’s Requests, citing a document production request the Slovak Republic made which spans four years—a time period that Discovery considers unreasonable. On this, the Slovak Republic raises three points in rebuttal:
 - (a) *First*, the Slovak Republic has already explained that, at times, it is difficult, without having the documents in hand, to understand when documents may have been generated. Each of its Requests therefore contains an *indicative* time period to assist in narrowing an otherwise unknown date range. We anticipate that Discovery’s custodians will be familiar with the documents and will be able to rapidly identify them, especially once given the indicative time period.

- (b) *Second*, in each Request where the Slovak Republic requested documents over a longer period of time, it narrowed the *subject matter* of that Request. In other words, a document production request can be narrow and specific, even if it spans more than six months or one year. Citing temporal durations alone, as Discovery does, says nothing about the reasonableness or scope of the request, or the burden required to comply with it.
- (c) *Third*, Discovery’s objection to a four-year time period as being burdensome contrasts with its own approach in its document production requests where: Discovery’s Request 5 seeks documents over a **10-year period**; Discovery’s Request 14 seeks documents over a **14-year time period**; Discovery’s Requests 15 and 16 seek *all* documents for those categories with *no temporal limitation whatsoever*; and Discovery’s Request 21 seeks documents from **19 years ago**. Thus, Discovery’s objection rings hollow.
21. Despite these unwarranted criticisms of the Slovak Republic’s Requests, relatively few disputes exist between the Parties. The most substantive is a putative privilege issue.
22. Discovery devotes a substantial part of its answers and objections to privilege, and it is now obvious why: the documents Discovery has redacted on the basis of legal privilege were never privileged in the first place. Discovery must produce these documents in their unredacted form.
23. As the Slovak Republic explained in its Redfern Schedule and its Counter-Memorial,¹² Discovery has submitted a series of documents into the record that are purportedly redacted on the basis of legal privilege. The Slovak Republic specifically alleged in each Request for these redacted documents that none was a communication between counsel and client:
- (a) **C-120** is a “Report to Partners – Status update” (**Request 10**): The Slovak Republic already explained in its justification for this request that it is “*not a communication between counsel and client.*”¹³ Discovery has now conceded this fact.
- (b) **C-78** is an e-mail from Mr. Michael Lewis to [REDACTED] (from Romgaz), [REDACTED] (from JKK), and carbon copied to Ron Crow, Maciej Karabin, and Alex Fraser (**Request 11**): This e-mail is a “Weekly Update.” Discovery has now confirmed that this document is not a communication between counsel and client.

¹² Counter-Memorial, ¶ 151.

¹³ Request 10, Statement of Relevance and materiality.

- (c) **C-135** is a “Weekly Status Report” dated 15 June 2016 (**Request 12**): Discovery has now confirmed that this document is not a communication between counsel and client.
- (d) **C-169** is another status update from Mr. Michael Lewis to [REDACTED] (from JKX) and [REDACTED] (General Manager at Romgaz) (**Request 13**): Discovery has now confirmed that this document is not a communication between counsel and client.
- (e) **C-204** is another status update from Mr. Michael Lewis, this time sent to Romgaz (Messrs. [REDACTED] and [REDACTED]) (**Request 14**): Discovery has now confirmed that this document is not a communication between counsel and client.
- (f) **C-205** is a status update from Mr. Lewis to Romgaz (Mr. [REDACTED] [REDACTED]) (**Request 15**): Discovery has now confirmed that this document is not a communication between counsel and client.

24. In short, it is now undisputed that not a single one of these documents, for which Discovery invoked privilege, is a communication between client and counsel. Each was drafted by a non-lawyer and shared with other non-lawyers. Instead of rebutting this fundamental defect with each of its claims of privilege, Discovery has devoted almost all of its objections to the Slovak Republic’s alternative argument, namely: even if privilege applied, Discovery has waived it for each document because Discovery shared the documents with third parties. This is why Discovery discusses the “common interest exception” to privilege in its answers and objections. But this misses the point. Even assuming that the common interest exception *would* apply between distinct commercial parties that happen to desire to invest in a common asset (and that is doubtful), it is not an independent ground to assert privilege. In other words, before the alleged “common interest exception” can apply, the document/communication itself must be privileged in the first instance.

25. This point is crucial. Each law that Discovery claims may be applicable to privilege only protects communications between client and counsel, which *none of these communications* is. Thus:

- (a) **Texas law:** Under Texas law, “[t]he attorney-client privilege protects confidential communications *between a client and his counsel*, which were made for the purpose of facilitating the rendition of legal services to the client, from disclosure.”¹⁴ Indeed,

¹⁴ *In re JDN Real Estate-McKinney LP*, 211 SW 3d 907 (Tex. Court of Appeals, 5th Dist. 2006), p. 921, **CL-066**.

“*[t]he privilege attaches to the legal and factual information included in the completed communications between the attorney and the client.*”¹⁵

This does not change even in the face of the “*common interest exception.*” As Discovery’s own Texas case explains, “*when more than one person seeks consultation with an attorney on a matter of common interest, the parties and the attorney may reasonably presume the parties are seeking representation of a common matter.*”¹⁶ But that does not dispel with the requirement that the protected communication must be one between counsel and client.

- (b) **English law:** “*It hardly needs saying that when considering privilege in the context of [common interest privilege], it should be borne in mind that, for example, (per HHJ Parkes QC in WXY v Gewanter [2012] EWHC 1071 (QBB)): ‘common interest privilege is not a free-standing head of privilege but is a parasitic on orthodox legal privilege’. In other words, the communication over which the joint or common interest is asserted must be one which is already covered by advice or litigation privilege irrespective of the interest claimed over it.*”¹⁷
- (c) **Slovak law:** Communications *between an attorney and their client* are strictly confidential under Section 23 of the Slovak Act No. 586/2003 Coll. on the Legal Profession.¹⁸ Discovery does not even try to allege that the “common interest exception” exists under Slovak law.

26. Not one of these laws confers privilege onto Discovery’s redacted documents.

27. As for international principles, Discovery states that this Tribunal should also be guided by Article 9(3) of the IBA Rules and consider “*fairness*” and “*equality.*” The Slovak Republic agrees in the abstract. It would, in fact, be *unfair* to afford privilege to documents that, in each of the three jurisdictions listed above, would not be privileged. It would also be unfair because Discovery has taken an inconsistent (and self-serving) approach to redactions. This is evident in, among others, document **C-120**. Part of that document is redacted on the basis of legal privilege, but another part of that same document says: “*Our lawyer advises that we have legal access to both the road and the location.*”¹⁹ That is an unequivocal waiver. It is a statement about legal advice—including the content of that legal advice—that Discovery received from its lawyer. The same is true for document **C-204**. Part of that document is redacted on the

¹⁵ *In re JDN Real Estate-McKinney LP*, 211 SW 3d 907 (Tex. Court of Appeals, 5th Dist. 2006), pp. 921-922, **CL-066**.

¹⁶ *In re JDN Real Estate-McKinney LP*, 211 SW 3d 907 (Tex. Court of Appeals, 5th Dist. 2006), p. 922, **CL-066**.

¹⁷ Passmore *Privilege* (4th ed, Sweet & Maxwell, 2019), p. 581, fn. 2, **CL-065**.

¹⁸ Slovak Act No. 586/2003 Coll. on the Legal Profession, **CL-068**.

¹⁹ Report to Partners – Status Update, 20 January 2016, **C-120**.

basis of legal privilege, but another part states: “*We continue to be advised by counsel that there are no legal grounds for preventing us from drilling at our proposed location.*” This, too, is an unequivocal statement divulging the contents of legal advice received. It is manifestly unfair for Discovery to claim that these statements can be shared, but another statement in the same document is somehow protected by legal privilege.

28. In any event, none of the documents is privileged. Common interest privilege does not create a privileged communication where the communication was never privileged in the first place. The Slovak Republic therefore maintains its document production requests for **Requests 10-15**, and it seeks an order from this Tribunal requiring Discovery to produce these documents unredacted.
29. Next, even if the JOA Agreement means that JKX and Romgaz became “owners” of any legal advice, or were entitled to receive such legal advice, that does not create privilege over these otherwise non-privileged documents. Not one of these documents is a communication from a lawyer. Most were drafted and sent by Mr. Lewis. His communications and “status reports” cannot be considered a communication between counsel and client, and thus receive protection by legal privilege. Again, this is nothing but an excuse to avoid the implications of putting documents on the record that are not privileged but contain information that Discovery wishes to conceal. It cannot hide behind the “*common interest privilege*” exception to withhold these documents, and it equally cannot rely on the JOA Agreement to claim that this somehow created privilege where none existed. Indeed, many oil and gas companies enter into JOAs but retain separate counsel, obtain separate legal advice, and function as commercial adversaries with respect to other projects or assets. While the Slovak Republic does not have the benefit of many of the underlying contractual documents that Discovery should have submitted with its Memorial, there is no reason to believe that this alleged investment is any different.

* * *

30. The Slovak Republic reserves all of its rights to revert to the Tribunal in due course regarding Discovery’s document production.

Submitted on behalf of the Slovak Republic.

A handwritten signature in blue ink, appearing to read 'J. H. H. H.', is positioned above the typed text.

2 June 2023

SQUIRE PATTON BOGGS

Counsel for the Slovak Republic

IV. REDFERN SCHEDULE

A. Discovery’s decision to acquire AOG and the Exploration Area Licenses

Document Request No.	1
Identification of documents or category of documents requested	<p>Documents provided by San Leon Energy, Aurelian and/or their shareholders, advisors, employees or other persons to Discovery and/or its directors, employees, or advisors in connection with Discovery’s decision to purchase AOG and acquire the Exploration Area Licenses.</p> <p>Time Period: Late 2013 to end of March 2014</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery argues that one of its affiliates “<i>entered into a Confidentiality Agreement with San Leon and obtained access to certain information relating to AOG’s interests in the Svidník, Medzilaborce and Snina blocks (including the Licences and certain geological data).</i>”²⁰ Upon review of these documents, Mr. Lewis allegedly “<i>concluded that the geological data was promising.</i>”²¹</p> <p>The requested documents are relevant and material to this dispute. They likely show Discovery’s understanding of the project’s feasibility, its risks, its business intentions, and its understanding of the oil and gas regulation regime in Slovakia at the time of purchase. All of this information ultimately factors into Discovery’s legitimate expectations, and thus Discovery’s case on liability. The documents are equally relevant to issues of quantum in this case, namely the overall prospectivity of the Exploration Area Licenses and their fair market value.</p> <p>As Discovery refers to these documents in its own submissions, the Slovak Republic reasonably believes they exist. Furthermore, the Slovak Republic has narrowed the temporal scope of this Request to the presumed due diligence period (ie, late 2013) to the end of March 2014—when Discovery concluded its transaction for AOG.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p> <p>It should be noted, however, that the due diligence documents provided to Discovery are primarily in hard copy. It is likely, therefore, that more time will be needed to review these documents to determine which, if any, are responsive to this request and relevant to the case and material to its outcome. In addition, and subject to determining the volume of any such responsive relevant documents, Discovery reserves its rights as to the costs of providing copies of such hard copy documents.</p> <p>In addition, as the information within these documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that such documents will be made available only to its external legal team (Squire Patton Boggs) and technical experts (SLR), and that they will not be disseminated to Slovakia itself, that any reference made to them in any future submissions will be kept confidential, and that no use will be made of them outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

²⁰ Memorial, ¶ 48; *see also* Lewis WS, ¶¶ 13-14, 24-25.

²¹ Memorial, ¶ 49.

<p>Reply to objections</p>	<p>The Slovak Republic notes that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.²²</p> <p>The Slovak Republic does not accept Discovery’s proposed limitations, which would prevent the Slovak Republic from seeing these documents. Mere allegations that the information contained in these documents is “highly confidential” and “valuable” are insufficient. Nor has Discovery alleged any specific harm should the Slovak Republic receive and review these documents. As such, Discovery has not justified the extreme position of prohibiting the Slovak Republic from seeing these materials—as it must if one party to this arbitration is being deprived of access to materials in the record (and the ability to consult with its counsel about those materials).</p> <p>Accordingly, the Slovak Republic (i) notes that Discovery will produce these documents, (ii) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (iii) confirms that information contained in these documents will not be used outside of this arbitration.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal denying Discovery’s demand that the Slovak Republic be barred from receiving the documents Discovery has agreed to produce.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes that the Claimant agrees to conduct reasonable and proportionate searches for, and produce any relevant responsive document. The Tribunal further notes that the Respondent undertakes that any information concerning responsive documents in its future submissions will be kept confidential in accordance with Procedural Order No. 2 and not be used outside of this arbitration. In these circumstances, the Tribunal rejects the Claimant’s request that the information contained in the responsive documents only be made available to the Respondent’s external legal team and its technical experts from SLR. For the avoidance of doubt, it adds with reference to Procedural Order No. 2 that any information concerning responsive documents shall be treated as confidential by all participants in the arbitration and shall not be published.</p>

²² The Slovak Republic notes Discovery’s reservation of rights to seek recovery of the costs to produce hard copies of these documents. For the avoidance of doubt, the Slovak Republic, its counsel, and its experts do not require hard copies of any documents, and in fact prefer native electronic files. In any event, a request for *de minimis* printing/postage costs is premature. The Slovak Republic expects to brief this request, including any objections, at the appropriate juncture—namely, at the conclusion of the arbitration.

Document Request No.	2
Identification of documents or category of documents requested	Documents including, but not limited to, legal, geological, and financial due diligence reports, memoranda, and analyses, prepared by Discovery and/or its affiliates and advisors in connection with Discovery’s decision to purchase AOG and acquire the Exploration Area Licenses. Time Period: Late 2013 to April 2014
Relevance and materiality according to requesting party, including reference to submissions	Discovery argues that Mr. Lewis “ <i>carried out a detailed assessment of the information provided by San Leon.</i> ” ²³ Upon review of these documents, Mr. Lewis allegedly “ <i>concluded that the geological data was promising.</i> ” ²⁴ Mr. Lewis’ “ <i>detailed assessment</i> ” and similar analyses are relevant and material to this dispute. These documents are likely to contain Discovery’s/Mr. Lewis’ understanding of the Slovak legal regime regarding oil and gas projects, the initial assessment of the overall prospectivity of the region, the initial understanding of what capital contributions would be needed for such a project, and general analysis of the environment in which Discovery was planning to invest. All of this information is relevant and material to various aspects of this dispute, including Discovery’s legitimate expectations, its national treatment allegations concerning NAFTA, causation (<i>e.g.</i> , the expected financial contribution for the project), and issues of quantum. Mr. Lewis and Discovery expressly refer to this “ <i>detailed assessment</i> ” and thus the Slovak Republic reasonably believes the requested documents exist.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

²³ Memorial, ¶ 49; *see also* Lewis WS, ¶¶ 13-14, 21.

²⁴ Memorial, ¶ 49.

Document Request No.	3
Identification of documents or category of documents requested	Documents evidencing Discovery’s (i) evaluation of geological surveys and explorations performed on the Exploration Area Licenses before Discovery’s acquisition of AOG; and Discovery’s (ii) identification of potential deposits after its acquisition of AOG, including analysis done of data inherited from Aurelian. Time Period: March 2014 to end of 2014
Relevance and materiality according to requesting party, including reference to submissions	As noted, Mr. Lewis allegedly “ <i>carried out a detailed assessment of the information provided by San Leon.</i> ” ²⁵ Upon review of these documents, Mr. Lewis “ <i>concluded that the geological data was promising.</i> ” ²⁶ Once Discovery completed its acquisition of AOG, Discovery states that it “ <i>undertook a significant amount of work and effort</i> ” reviewing and interpreting the data it had acquired as part of the deal, and new data that it obtained through its own work, like analyzing survey data, or identifying suitable drilling sites. ²⁷ The requested documents are relevant and material to this dispute. They will likely address issues of causation and quantum. Specifically, the requested documents will shed light on the value of Discovery’s project at the time of purchase, the required financial contributions to bring this project to fruition, and the overall prospectivity of the Exploration Area Licenses. The requested documents will also identify whether Discovery’s planned development of the Exploration Area Licenses was reasonable based upon the data available to it. Given that Mr. Lewis and Discovery expressly refer to these analyses and studies being undertaken after Discovery purchased AOG, the Slovak Republic reasonably believes they exist. The Slovak Republic has narrowed the temporal scope of this Request from the month Discovery purchased AOG to the end of that same year, when the Slovak Republic presumes that Discovery’s analyses were complete. As explained in the Introduction, if responsive documents exist outside this indicative time period, they should still be produced.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

²⁵ Memorial, ¶ 49; *see also* Lewis WS, ¶¶ 13-14, 21.

²⁶ Memorial, ¶ 49.

²⁷ Memorial, ¶ 63.

B. Discovery’s understanding of the Slovak oil and gas permitting regime

Document Request No.	4
Identification of documents or category of documents requested	Documents evidencing Discovery’s understanding of the Slovak legal regime for oil and gas projects. Time Period: Late 2013 to July 2016
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery alleges that part of its legitimate expectations was based on its understanding of its Exploration Area Licenses. Specifically, Discovery states that it “<i>legitimately expected that AOG would not be prevented from completing the geological exploration that it was permitted to conduct under the terms of the Licenses [...] includ[ing] drilling exploration wells of between 1200m and 1500m in depth, pumping tests and geophysical surveys.</i>”²⁸</p> <p>Meanwhile, the Slovak Republic has already explained the Slovak legal regime for oil and gas projects, including the numerous permits, decisions, and approvals needed for all oil and gas works.²⁹</p> <p>Given the importance that Discovery has placed on its understanding of what it was permitted to do under Slovak law with <i>only</i> its Exploration Area Licenses, the requested documents are reasonably believed to exist. In fact, it would appear that Discovery had a group of employees devoted to permitting issues alone, referring to “<i>our permit group</i>” in a status update to JXX and Romgaz in June 2015 (C-78).</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from the due diligence period Discovery undertook before purchasing AOG to one month after the Ministry of Environment extended the Exploration Area Licenses in 2016. The latter event is expressly relied upon by Discovery as confirming their alleged belief that they could conduct the full range of oil and gas exploration activities (e.g., drilling) with <i>only</i> the Exploration Area Licenses in hand.³⁰</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p><i>First</i>, this category is overly broad and fails to identify a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules, and it covers a wide time period. As such, it amounts to a fishing expedition.</p> <p><i>Second</i>, Slovakia’s justification is flawed. In its Counter-Memorial, Slovakia alleges that Discovery’s case is that it needed <i>only</i> the Licences (and no other permits, approvals, etc) to be able to conduct drilling operations. That is not, however, Discovery’s case but rather a misconstrued interpretation of it to suit Slovakia’s narrative. Accordingly, it cannot be relied upon as a justification to request documents, the relevance and materiality of which have otherwise not been identified.</p> <p><i>Third</i>, and without waiving any privilege, the request for any understanding of the “<i>Slovak legal regime for oil and gas projects</i>” seeks documents which include legal advice received by Discovery and or/its JV Partners in connection with the Project, which are clearly privileged. Discovery refers to paragraphs 12 and 14 above, and reiterates that it does not intend to waive any privilege.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal compelling Discovery to produce the requested documents.</p> <p><i>First</i>, this document production request seeks a narrow category of documents: Discovery’s understanding of the permitting regime in the Slovak Republic. That regime, in turn, is defined narrowly by reference to the applicable laws and regulations, insofar as they impact the underlying proposed activities. The Tribunal will note that Discovery has not denied</p>

²⁸ Memorial, ¶ 226(1).

²⁹ Counter-Memorial, ¶¶ 33-34.

³⁰ Memorial, ¶ 226(1).

	<p>that these documents exist. Nor would that be a credible assertion. An entity like Discovery would have (or should have) conducted its own research or memorialized the steps it must take (and permits it must acquire) to conduct its operations. Any prudent investor would do this, and this request seeks that narrow category of documents. If Discovery failed to undertake such due diligence, that fact will necessarily impact its claimed expectations and their legitimacy under the BIT’s FET standard.</p> <p><i>Second</i>, despite Discovery claiming that the Slovak Republic’s premise for this request is flawed, it does not provide a single citation to its own pleadings showing that the Slovak Republic has misconstrued its case. This is because the citation the Slovak Republic included in this request contradicts Discovery’s objection, by showing that Discovery argued that it legitimately expected it could drill because this was “<i>permitted</i>” under the Exploration Area Licenses.³¹ That argument from Discovery’s Memorial must have an evidentiary foundation—which is precisely what this Request seeks.</p> <p><i>Third</i>, the Slovak Republic does not seek any privileged communications. However, the Parties disagree about the scope of privilege. Discovery alleges privilege over a swath of documents, most (if not all) of which appear to bear little relation to the typical legal privilege situation (<i>i.e.</i>, communications between a lawyer and his or her client for the purposes of seeking legal advice). Further, Discovery’s assertion that “<i>legal advice received by [...] its JV Partners</i>” is privileged is erroneous, as explained above. By copying or sharing such advice with Discovery, a third-party to the JV Partners’ attorney-client relationship with their respective counsel, any privilege that may have attached—assuming <i>ex hypothesi</i> it even applied—was waived. <i>See supra</i> in the Slovak Republic’s general Replies. Similarly, to the extent that Discovery shared its legal advice with third parties, like its JV Partners, any privilege that may have applied, if any, was waived. Nevertheless, rather than litigate these issues in the abstract, the Slovak Republic proposes that, to the extent that privileged communications exist that are responsive to this Request, Discovery can list those in a privilege log, as is standard practice in international arbitration.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>The request for any documents evidencing Discovery’s understanding of the Slovak legal regime for oil and gas projects is overly broad and not sufficiently specific.</p>

³¹ Memorial, ¶ 226(1).

Document Request No.	5
Identification of documents or category of documents requested	All correspondence, meeting minutes, analyses, and memoranda prepared and/or generated between Discovery/AOG and Discovery's/AOG's " <i>permitting adviser</i> " TDE Services. Time Period: March 2014 to the end of 2018
Relevance and materiality according to requesting party, including reference to submissions	According to Mr. Fraser, TDE Services was Discovery's/AOG's " <i>permitting adviser</i> " for its activities in the Slovak Republic. ³² The requested documents are relevant and material to all aspects of this dispute. As the Slovak Republic explained in its Counter-Memorial, not only did Discovery require numerous permits to conduct its activities, ³³ but it routinely failed to take proper courses of action related to this permitting regime, which ultimately led to the project's failure. Given the importance of the Slovak permitting regime to this dispute, and the fact that Discovery had a dedicated permitting advisor, the requested documents are reasonably believed to exist. The Slovak Republic is unaware of when TDE Services was retained, or when their services were no longer required. It has therefore provided an indicative time frame of March 2014 (when Discovery purchased AOG) until the end of 2018 (this being the year when JXX relinquished its holdings in the project). While this time frame might seem long, this Request is nevertheless narrow and specific in that it only seeks documents/communications between Discovery/AOG and one other entity—TDE Services.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above. In addition, Discovery notes that TDE was engaged for a couple of discrete tasks, namely the procuring of some of the drilling permits, up until May 2015, and the procurement of wellheads. There is, therefore, likely to be a very limited amount of correspondence and other documents in connection with TDE's engagement.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

³² Fraser WS, ¶ 30.

³³ Counter-Memorial, ¶ 33.

Document Request No.	6
Identification of documents or category of documents requested	Documents evidencing conversations or meetings with Gulf Shores, the JV Partners or internally among AOG/Discovery personnel concerning plans for drilling operations in 2014. Time Period: March 2014 to December 2014
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser testifies that in September 2014, <i>“it was thought that the wells could be commenced and drilled quite quickly, ideally before 31 December 2014 (and this was the understanding we had with our original investor Gulf Shores).”</i> ³⁴ As the Slovak Republic explained in its Counter-Memorial, this timeline was not reasonable. ³⁵ An Exploration Area License holder must secure numerous permits and landowner rights to commence actual drilling operations. The requested documents are relevant and material to this case. Specifically, the requested documents will evidence Discovery’s/AOG’s understanding of the Slovak permitting regime. This issue affects liability, causation, and quantum. The documents are reasonably believed to exist. Discussions at this time were taking place about drilling operations, and it is reasonable that Discovery would have communicated or discussed the necessary steps/permits/milestones it needed to commence drilling. ³⁶ The Slovak Republic has narrowed the temporal scope of this Request from the month when Discovery purchased AOG to the end of 2014.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

³⁴ Fraser WS, ¶ 22.

³⁵ Counter-Memorial, ¶ 64.

³⁶ Fraser WS, ¶ 22; Opcom minutes of meeting on 11 September 2014, C-61.

C. Corporate documents, operating committee meeting minutes/slides, and partnership updates

Document Request No.	7
Identification of documents or category of documents requested	The JV Agreement / Joint Operating Agreement between Discovery Global LLC, Romgaz, and JKX, and any amendments or other documents/agreements affecting the JV Agreement's/Joint Operating Agreement's validity or substance.
Relevance and materiality according to requesting party, including reference to submissions	Discovery's exhibits have referred to a JV or Joint Operating Agreement between Discovery, Romgaz, and JKX, ³⁷ but it is not on the record. Standard for this type of agreement, the JV Partners' Joint Operating Agreement likely contains provisions on how decisions are made and governs key topics like financial contributions and dissolution of the joint venture. All of these provisions are relevant and material to this case. Seeing this agreement will allow the Slovak Republic to analyze the various decisions that were made during Discovery's time in the Slovak Republic and provide a better understanding of how financial matters (relevant to causation), were governed between the Parties.
Responses and/or Objections by disputing party to production of requested documents	Slovakia has failed to establish the relevance and materiality of this request, as it was required to pursuant to Article 3.3(b) of the IBA Rules. In particular, the impact of the JOAs on how decisions were made, or how financial matters were governed, as between the JV Partners does not go to any issue in dispute. That said, and without prejudice to the foregoing, Discovery agrees to disclose the JOAs (and they are enclosed herewith as referred to in footnote 12 above).
Reply to objections	The Slovak Republic acknowledges with thanks Discovery's disclosure of these documents. The Slovak Republic respectfully requests Discovery to either (i) confirm that there are no additional responsive documents to this Request, or (ii) to produce remaining responsive documents. As a side note, the fact that Discovery exhibited these documents to support numerous positions that it takes in this document production phase confirms that these documents are relevant and material to this dispute. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

³⁷ See e.g., Opcom Minutes, 10 April 2014, C-58 (referring to the "Joint Operating Agreement"); Opcom Minutes, 11 September 2014, C-61 (referring to the "joint operating agreement").

Document Request No.	8
Identification of documents or category of documents requested	All operating committee meeting minutes and accompanying slides/presentations for the period since Discovery acquired AOG. Time Period: 2014 to 2020
Relevance and materiality according to requesting party, including reference to submissions	Discovery relies extensively on various slide decks and meeting minutes from its operating committee meetings. ³⁸ These materials support factual allegations concerning all aspects of this dispute. However, Discovery has not provided all meeting minutes and slides from each operating committee meeting held during its time in the Slovak Republic. For example, the operating committee minutes from 11 September 2014 (C-61) refer to the next meeting taking place in December of that year; however, it does not appear that any meeting minutes from that December meeting are on the record. Indeed, no operating committee minutes from 2016 until the end of the project have been produced at all, despite key facts (on Discovery’s case) occurring in these years. This includes the 16 February 2016 operating committee presentation that Mr. Atkinson relies upon for various assertions about technical data. ³⁹ The document he cites (C-80) is from an operating committee meeting that happened on 16 September 2015—not on 16 February 2016. The record is therefore incomplete with this respect. Given how much Discovery relies on these documents, the Slovak Republic must have the opportunity to analyze all meeting minutes (and the slide decks presented at those meetings) to respond to Discovery’s case.
Responses and/or Objections by disputing party to production of requested documents	Discovery objects to this document request. <i>First</i> , this category is overly broad and fails to identify a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules, and it covers a wide time period. As such, it amounts to a fishing expedition. <i>Second</i> , Slovakia has not explained why the minutes of each and every operating committee meeting over a 6-year period between 2014-2020 (together with each and every accompanying presentation) would be relevant to the case and material to its outcome. Slovakia’s request is based purely on the fact that Discovery has relied on some minutes in its Memorial (copies of which have been produced), but without any attempt even to state why those which Discovery does not rely on would be relevant and material. Slovakia is therefore wrong to assert that Discovery “ <i>relies on these documents</i> ”—the minutes and presentations upon which Discovery relies are those which have already been exhibited to its Memorial. <i>Third</i> , as regards the reference in Slovakia’s justification to footnotes 65 and 118 of Mr Atkinson’s expert report, Discovery confirms that these contain a typographical error. Instead of saying “C-80 OCM 2016-02-16 Technical Slides, p23” these footnotes should read “C-80 OCM 2015-09-16 Technical Slides, p29”. As such, Discovery can confirm that Slovakia already has the correct document which Mr Atkinson relies on, and this error does not constitute a valid basis for any further document request.
Reply to objections	The Slovak Republic maintains its request and seeks an order from this Tribunal compelling Discovery to produce the requested documents. <i>First</i> , this Request is not overly broad because the <i>subject matter</i> is narrow. The Operating Committee is established by the JOA between Discovery and the JV Partners. ⁴⁰ Based upon evidence in the record, the Operating Committee appears to

³⁸ Opcom Minutes, 10 April 2014, **C-58**; Opcom Minutes, 11 September 2014, **C-61**; Opcom Minutes, 28 November 2014, **C-66**; Opcom Presentation, 16 September 2015, **C-80**; Opcom Minutes, 16 September 2015, **C-81**; Opcom Minutes, 3 December 2015, **C-100**.

³⁹ Atkinson ER, fns 65, 118.

⁴⁰ See, e.g., Joint Operating Agreement between Magura Oil & Gas s.r.o and JKX Slovakia B.V. relating to the area known as Medzilaborce in the Slovak Republic dated 28 November 2008, Art. 5 (“*To provide for the overall supervision and direction of*

	<p>have met every few months (e.g., quarterly) to discuss all aspects of the project in Slovakia. This means that, in a given year, the Operating Committee met only a handful of times. Thus, the number of documents for each year is minimal.</p> <p><i>Second</i>, there is <i>no</i> dispute that Operating Committee meeting minutes exist for every single meeting. The JOA requires this.⁴¹ And, Discovery has not denied that these documents exist.</p> <p><i>Third</i>, the minutes are readily identifiable. A reasonable and prudent operator or company would no doubt maintain records in which such formal and important documents are separately filed or recorded. Typically, there is an approval process to ensure all parties endorse such minutes. The JOAs here are no different.⁴² As such, the final product is likely few in number (per year) and readily ascertainable.</p> <p><i>Fourth</i>, the documents are relevant and material because they record evidence of the Operating Committee’s discussions about the project as a whole—including pertinent factual developments. Discovery has already used these documents to support factual assertions underlying its case and quantum-related allegations.⁴³</p> <p>As the Slovak Republic noted, Discovery has not submitted a <i>single copy</i> of any Operating Committee minutes from 2016 to the end of the project, even though almost <i>all</i> of Discovery’s allegations of breach occurred in these years. That omission is conspicuous. Discovery cannot rely on Operating Committee minutes for one part of the project, but then withhold Operating Committee minutes for the most crucial moments of the project’s history. Doing so would create an unlevel playing field, wherein Discovery can cherry-pick those materials to suit its case but deny production of other minutes to the Slovak Republic. Indeed, the fact that Discovery has already relied on these minutes in support of its case suggests that it has already identified the group of responsive documents in question, such that all necessary searches have already been carried out.</p> <p><i>Finally</i>, production of these minutes is justified in view of Discovery’s protestation that Mr. Lewis and Mr. Fraser have lost large amounts of e-mail communications. While the Slovak Republic is in no position to verify that protestation, should it be taken at face value, then it becomes even more imperative for the Tribunal to order production of these minutes, which are (by contrast) known to exist. Discovery already alleges that it has lost potentially responsive documents, citing technical failures. Be that as it may, such <i>lacunae</i> strengthen the necessity of producing all relevant and material evidence, like the minutes to which this Request pertains.</p> <p>Finally, the Slovak Republic acknowledges and thanks Discovery for the clarification about Mr. Atkinson’s report.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED IN PART</p> <p>Considering that the key issues in dispute relate to events between January 2016 and 31 December 2018, the requested documents for that period appear to be <i>prima facie</i> relevant. The request for documents originally created outside that period is, however, denied.</p> <p>The Tribunal notes the Claimant’s clarification regarding footnotes 65 and 118 of Mr. Atkinson’s expert report.</p>

Joint Operations, there is established an Operating Committee composed of representatives of each Party holding a Participating Interest. . .”), C-237.

⁴¹ See, *id.*, Art. 5.8, Operator’s Duties for Meetings (“With respect to meetings of the Operating Committee and any subcommittee, Operator’s duties shall include: (1) timely preparation and distribution of the agenda; (2) organization and conduct of the meeting; and (3) preparation of a written record or minutes of each meeting.”), C-237.

⁴² See, e.g., Joint Operating Agreement between Magura Oil & Gas s.r.o and JKX Slovakia B.V. relating to the area known as Medzilaborce in the Slovak Republic dated 28 November 2008, Art. 5.8, Operator’s Duties for Meetings (“With respect to meetings of the Operating Committee and any subcommittee, Operator’s duties shall include: (1) timely preparation and distribution of the agenda; (2) organization and conduct of the meeting; and (3) preparation of a written record or minutes of each meeting.”), C-237.

⁴³ See Memorial, fns 75, 79, 86-87; Atkinson ER, fns 65, 118.

Document Request No.	9
Identification of documents or category of documents requested	The unredacted version of the 10 April 2014 operating committee meeting minutes (C-58).
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery relies upon operating committee meeting minutes from 10 April 2014.</p> <p>However, these are partially redacted on the basis that the redacted information is “[n]ot relevant and confidential information concerning third parties.”⁴⁴</p> <p>The meeting minutes themselves note that the redacted paragraph deals with “[t]he initial issue discussed related to the unresolved VAT dispute between JKX and [Aurelian Oil and Gas].”⁴⁵ Discovery’s allegation does not withstand scrutiny because San Leon Energy, PLC and Romgaz were present at this meeting. In other words, this alleged sensitive information was discussed in front of various other entities and, in any event, was important enough to make it into the official minutes of the JV Partners’ operating committee meeting minutes.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p>Slovakia’s attempt to justify its request on the basis that Romgaz and San Leon were present at this meeting is flawed, for two reasons.</p> <p><i>First</i>, for the reasons stated above at paragraph 14, Romgaz is not an unrelated third party. Romgaz was one of Discovery’s JV Partners and as such was entitled to receive any confidential information which Discovery obtained or itself received.</p> <p><i>Second</i>, and similarly, San Leon Energy PLC (“San Leon”) is not an unrelated third party. Discovery purchased the participation interests in Aurelian Oil & Gas Slovakia s.r.o. (the “Transaction”), of which San Leon was the ultimate beneficial owner, in March 2014. The minutes referred to by Slovakia on 10 April 2014 were a record of the first meeting which took place and was attended by all the parties involved in the Transaction following its completion. It was effectively a hand-over meeting (Memorial at [59]). Therefore, there are no unrelated third parties in attendance to whom the confidential information was disclosed – present were (i) JKX and Romgaz, the JV Partners, (ii) Discovery, as the new owner of AOG, and (iii) San Leon, the transferring party in the Transaction. Each of these parties had a joint and/or common interest in the matters set out in the minutes.</p> <p><i>Third</i>, and in any event, the information sought is not relevant or material to the outcome of the case. As stated, the minutes concerned an outstanding VAT issue between JKX and Aurelian. That is not an issue in dispute in this arbitration. Further, neither of those parties is a party to this arbitration and it would be inappropriate for confidential information regarding taxation issues relating to those parties to be disclosed where there is no good reason for doing so and the documents are not relevant or material. The fact that the information was referred to in the minutes is not a sufficient argument to request disclosure.</p>
Reply to objections	The Slovak Republic withdraws this Request. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

Document Request No.	10
Identification of documents or category of documents requested	The unredacted version of C-120 , Report to Partners – Status update.
Relevance and materiality according to requesting party, including reference to submissions	<p>C-120 is a “Report to Partners – Status update” that Discovery has redacted on the basis of legal privilege. This privilege claim is doubtful for two reasons.</p> <p><i>First</i>, this is not a communication between counsel and client. Indeed, it is unclear to whom this document was sent or with whom it was shared. “Partners” may refer to the JV Partners, or it could even include an entity like Akard. It is equally unclear who the holder of any legal privilege is in this instant. Even assuming that privilege existed on this document, then privilege has been waived because it has been shared with third parties.</p> <p><i>Second</i>, and in any event, Discovery has waived whatever legal privilege exists over this document. In another part of this same document concerning the Snina Exploration Area License, Discovery states: “<i>Our lawyer advises that we have legal access to both the road and the location.</i>” That is a clear waiver of legal privilege. And even if it were not, it shows an inconsistent approach that Discovery has taken to its redactions. Even the sentence immediately preceding the redaction says (in relation to Mrs. Varjanová’s car): “<i>She has a legal right to park her car on the road.</i>” This only confirms the inconsistency of Discovery’s approach to privilege.</p> <p>The redacted portion of this document is relevant and material for obvious reasons: it involves Mrs. Varjanová’s car blocking access to the Smilno Site—one of Discovery’s principal grievances in its Memorial.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the two redacted lines of C-120 (on page 2) has not been waived by reason of the fact that the document was shared with Discovery’s JV Partners. As stated at paragraph 14 above, each of the JV Partners was entitled to receive the privileged information and had a joint and/or common interest in the legal advice which has been redacted. The holders of this legal privilege were Discovery and AOG who engaged Slovak counsel to provide the relevant advice. The “<i>Partners</i>” with whom this document was shared were Discovery’s JV Partners, and not any third parties such as Akard.</p> <p><i>Second</i>, privilege has not been waived by reason of the fact that Discovery has disclosed C-120 as an exhibit in this arbitration. It has always been Discovery’s case that it had a legal right to access the Road – no waiver of privilege has taken place by disclosing one of Discovery’s arguments in the arbitration. In any event, disclosing part of a document which is not privileged does not amount to a waiver of privilege over the whole document.</p> <p><i>Third</i>, Discovery has not adopted an inconsistent approach to the redactions. Slovakia’s submissions in this regard are misleading. The redacted portion of C-120 relates to matters under and pertaining to the Smilno Well under the Svidnik License (see the heading on page 2 of C-120). The quoted excerpt upon which Slovakia relies (“<i>Our lawyer advises that we have legal access to both the road and the location</i>”) relates to an entirely different road and matters under and pertaining to the Ruská Poruba Well under the Snina License (see the heading on page 4 of C-120 and over to page 5). These</p>

⁴⁴ Opcom Minutes, 10 April 2014, **C-58**.

⁴⁵ Opcom Minutes, 10 April 2014, **C-58**.

	<p>are completely separate issues and it is misleading for Slovakia to conflate the two issues. Whatever advice was received in relation to one issue was completely unrelated to the other – it is not part of the same narrative of legal advice. Therefore, no waiver of privilege occurred in relation to the redacted portion of this document (which relates to operations under the Svidnik License), by virtue of references in the section relating to operations under the Snina License. In any event, any alleged inconsistency (which is strenuously denied) is not a sufficient reason of itself to warrant the disclosure of the redacted section.</p>
<p>Reply to objections</p>	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of providing legal advice. This is, therefore, not a communication between counsel and client—and thus not privileged. Discovery has conspicuously failed to address this point because it is fatal to its claims of privilege. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on a document that otherwise lacks it. A document must first be privileged, before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the Slovak Republic never argued that, by virtue of exhibiting this document in the arbitration, Discovery waived privilege. Rather, the Slovak Republic explained that privilege for this document (if any existed) has been waived because, in this same document, Discovery has not redacted the following line: “<i>Our lawyer advises that we have legal access to both the road and the location.</i>” By disclosing the contents of <i>some</i> of the legal advice received, Discovery has waived any privilege claim over this document. Of course, parties are not entitled to produce some legal advice (where it suits their arbitration position), and not others. If part of the advice is revealed, privilege—if applicable—is waived over the remainder.</p> <p><i>Third</i>, the idea that privilege has not been waived because “[w]hatever advice was received in relation to one issue was completely unrelated to the other – it is not part of the same narrative of legal advice” defies reason. Privilege cannot be divvied up like this to avoid waiver, and Discovery cites no authority for that position in any event.</p>

<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>Pursuant to Article 9(3)(a) of the 2010 IBA Rules, the Tribunal may consider “any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice”. In the Tribunal’s view, the JV partners are also beneficiaries of the legal advice since that advice was received for the purpose of the JV’s project. In this context, the Tribunal notes the Claimant’s statement that the redacted portion in Exhibit C-120 relates to legal advice that was shared with Discovery’s JV Partners. The fact that the paragraph of the redacted portion in Exhibit C-120 begins with the words “[w]e are working with our <i>attorney</i>, security, construction company and the local police to repeatedly remove the vehicle”, tends to support the contention that the redacted portion reflects legal advice.</p> <p>Neither the fact that the next sentence states that “[s]he has a legal right to park her car on the road”, nor the statement in another portion of Exhibit C-120 that “[o]ur lawyer advises that we have legal access to both the road and the location”, imply that the Claimant waived any privilege with respect to the redacted portion in question. Indeed, article 9(3)(d) of the 2010 IBA Rules allows the Tribunal to consider “any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise”. The Respondent has not established that the Claimant consented, disclosed or made affirmative use of the legal advice in question.</p> <p>The Claimant shall include this document in a privilege log and set forth the (i) author(s) of the legal advice, (ii) the recipient(s), (iii) the date on which the advice was given, (iv) the subject matter of the legal advice, without disclosing its content, and (v) the basis for the claim of privilege, including the applicable legal provisions, if any.</p>
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Document Request No.	11
Identification of documents or category of documents requested	The unredacted version of C-78 .
Relevance and materiality according to requesting party, including reference to submissions	<p>C-78 is an e-mail from Mr. Michael Lewis to [REDACTED] (from Romgaz) and [REDACTED] (from JKX). The e-mail is carbon copied to Ron Crow, Maciej Karabin, and Alex Fraser. The e-mail is a “Weekly Update” and recounts status updates for each well location and the project’s overall advancement. The first section of this e-mail is redacted on the basis of legal privilege.</p> <p>There appears to be no attorney copied on this e-mail and, therefore, Discovery’s claim of privilege is suspect. Assuming that Mr. Lewis is the holder of the privilege in this instance, he has presumably waived that privilege by divulging it with third parties (ie, Romgaz and JKX).</p> <p>The document is <i>prima facie</i> relevant and material. It is part of a comprehensive update on the project’s status.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the redacted portions of the email was not waived by reason of the fact that the email was sent to Discovery/AOG’s JV Partners and to Discovery/AOG’s employees and project team members. The email is a chain between Discovery/AOG, JKX and Romgaz. Ron Crow, Maciej Karabin and Alex Fraser were all employees and/or team members of Discovery/AOG. The redacted portions of the email consist of legal advice received by Discovery/AOG for the purposes of the Project which all the JV Partners were entitled to receive (and which Discovery/AOG were obliged to communicate) under the JOAs. Therefore, no waiver of privilege can be said to have occurred.</p> <p><i>Second</i>, and in any event, Slovakia has failed to demonstrate that the documents requested are relevant to the case and material to its outcome. Slovakia has based its request on the assertion that the legal advice is only “<i>prima facie</i> relevant and material”. This justification is insufficient to require production of the redacted section.</p>

<p>Reply to objections</p>	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of legal advice. As Discovery now explains, this is an email chain between “Discovery/AOG, JKX and Romgaz.” There is no attorney on this email chain, and its author (Mr. Michael Lewis) is obviously not a lawyer. This document is therefore not privileged in any way. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on the document. A document must first be privileged before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the IBA Rules do not impose any heightened standard of relevance and materiality as Discovery suggests. If the document is <i>prima facie</i> relevant and material, as Discovery’s own submission of this document into the record as exhibit C-78 suggests, then it meets the requirements under the IBA Rules. The Slovak Republic’s request meets those requirement. As explained, the document provides an overview of progress on the works. It is self-serving and unjustified that Discovery would claim this is not relevant nor material, given that it relies on this (and other similar documents) for the factual bases of its claims.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>The Tribunal notes that the Claimant’s explanation that the redacted portion of Exhibit C-78 consists of “legal advice received by Discovery/AOG for the purposes of the Project” and that this advice was shared with the JV Partners. In the Tribunal’s view, what matters is not whether an attorney is in the email chain, but rather what the substantive content (legal advice about the JV’s project) is and to whom the advice is directed (JV and, hence, JV partners) For the same reasons as in Request No. 10 above, the request is denied.</p> <p>The Claimant shall include this document in a privilege log as specified in Request No. 10 above.</p>

Document Request No.	12
Identification of documents or category of documents requested	The unredacted version of C-135 .
Relevance and materiality according to requesting party, including reference to submissions	<p>C-135 is a another “Weekly Status Report” dated 15 June 2016. Like the e-mail in the Request immediately above, this document provides an update on each well location and an overall update on the project’s status.</p> <p>Part of the section devoted to the Ruská Poruba well site is redacted on the basis of legal privilege. Like the Request immediately above, this invocation of privilege is, again, suspect. It is unclear who drafted this document and who the recipients of it were. This is not a communication between attorney and counsel, and the fact that it was shared with other people (presumably third parties like the e-mail above) means that whatever privilege this document had (if any) has been waived.</p> <p>The document is <i>prima facie</i> relevant and material. The section on Ruská Poruba discusses AOG’s alleged right to use the access road at that location. As the Slovak Republic explained in its Counter-Memorial, AOG made critical errors at this location, which prevented it from accessing this site, too.⁴⁶</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the redacted portions of C-135 was not waived by reason of the fact that this document was shared with Discovery’s JV Partners. As stated at paragraph 14 above, each of the JV Partners was entitled to receive the privileged information and had a joint and/or common interest in the legal advice which has been redacted. It is clear from the title on the first page of C-135 that this document was drafted by Discovery/AOG. The recipients of this document were JKX and Romgaz (Discovery’s JV Partners).</p> <p><i>Second</i>, Slovakia has failed to establish that the redacted portion is relevant to the case and material to its outcome. The redacted portions appear on page 4 under the heading “AOG Ruska Poruba #1”. Discovery makes no claim based on the Ruská Poruba site other than in relation to the EIA process. However, this document request and the immediate context in which the redacted portion appears does not concern the EIA process. As such, this request is a fishing expedition. Indeed, Slovakia has conceded that its request is only “<i>prima facie</i> relevant and material” but this is not a sufficient ground of itself to require production of the redacted section.</p>

⁴⁶ Counter-Memorial, ¶¶ 167-172.

<p>Reply to objections</p>	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of legal advice. As Discovery admits, this document was “<i>drafted by Discovery/AOG</i>.” This is not a communication between counsel and client and is therefore not privileged. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on the document. A document must first be privileged before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the document is relevant and material to this case. The Slovak Republic has explained throughout its Counter-Memorial that Discovery’s own errors led to the numerous problems in Slovakia and to the ultimate failure of its project. The Ruská Poruba location is part of this narrative.⁴⁷ As the Slovak Republic explained in its Counter-Memorial, Discovery could not access this site because AOG obtained the Poruba Injunction against Urbariát only, but not against the owners of the land that Discovery actually tried to cross.⁴⁸ Accordingly, Discovery’s internal deliberations about Ruská Poruba are relevant and material to the Slovak Republic’s case that Discovery’s failures were the result of its own mistakes.</p> <p><i>Third</i>, the IBA Rules do not impose some heightened standard of relevance and materiality as Discovery suggests. If a document is <i>prima facie</i> relevant and material, then it meets the requirements under the IBA Rules. Here, the Slovak Republic’s request meets that test. In any event, Discovery itself relies on this document (and others like it) for the factual bases of its claims, thus confirming that it is relevant and material.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>For the same reasons as for Request No. 10 above. The Tribunal notes the Claimant’s statement that the redacted portion of Exhibit C-135 contains legal advice that was shared with the JV Partners. The sentence immediately preceding the redacted portion reads “[t]he main hearing of this lawsuit is due in September”, which tends to support the Claimant’s affirmation that the redacted portion reflects legal advice.</p> <p>The Claimant shall include this document in a privilege log as specified in Request No. 10 above.</p>

⁴⁷ Counter-Memorial, ¶¶ 167-172.
⁴⁸ Counter-Memorial, ¶¶ 167-172.

Document Request No.	13
Identification of documents or category of documents requested	The unredacted version of C-169 .
Relevance and materiality according to requesting party, including reference to submissions	<p>C-169 is another status update from Mr. Michael Lewis to ██████████ (from JKX) and ██████████ (General Manager at Romgaz). In the section devoted to Smilno, Discovery has redacted a portion of this document concerning AOG’s subsidiary, Cesty Smilno, on the basis of legal privilege.</p> <p>Like the documents in Requests 10, 11, 12 mentioned above, this document is not a communication between counsel and client. Even if privilege existed over it, Mr. Lewis has waived that privilege by sharing it with third parties.</p> <p>The document is <i>prima facie</i> relevant and material. As the Slovak Republic explained in its Counter-Memorial, AOG established Cesty Smilno to circumvent the Interim Injunction.⁴⁹ Thus, this document, and the unredacted portions, are relevant and material to issues of liability and causation.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the redacted portions of C-169 was not waived by reason of the fact that this document was shared with Discovery’s JV Partners. As stated at paragraph 14 above, each of the JV Partners was entitled to receive the privileged information and had a joint and/or common interest in the legal advice which has been redacted. It is clear from the title on the first page of C-169 that this document was drafted by Discovery/AOG. The recipients of this document were JKX and Romgaz (Discovery’s JV Partners).</p> <p><i>Second</i>, Slovakia has failed to establish that the redacted portions of C-169 are relevant to the case and material to its outcome. Slovakia has conceded that the redacted portions are only “<i>prima facie</i> relevant and material” but this is a not sufficient ground of itself to require production of the redacted section.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of legal advice. As Discovery admits, this document was “<i>drafted by Discovery/AOG</i>.” This is not a communication between counsel and client and is therefore not privileged in any way. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on the document. A document must first be privileged before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the IBA Rules do not impose some heightened standard of relevance and materiality as Discovery suggests. If a document is <i>prima facie</i> relevant and material, then it meets the requirements under the IBA Rules. Here, the Slovak Republic’s request meets that test. In any event, Discovery itself relies on this document (and others like it) for the factual bases of its claims, thus confirming that it is relevant and material.</p>

⁴⁹ Counter-Memorial, ¶ 97 *et seq.*

Decision of the Tribunal	<p>DENIED</p> <p>For the same reasons as for Request No. 10 above. The Tribunal notes the Claimant’s statement that the redacted portion of Exhibit C-169 contains legal advice that was shared with the JV Partners. The sentence immediately preceding the redacted portion, which reads “AOG and its subsidiary Cesty Smilno had already brought proceedings for an injunction against Ms. Varjanova and her co-protestors”, tends to support the Claimant’s affirmation that the redacted portion reflects legal advice.</p> <p>The Claimant shall include this document in a privilege log as specified in Request No. 10 above.</p>
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Document Request No.	14
Identification of documents or category of documents requested	The unredacted version of C-204 .
Relevance and materiality according to requesting party, including reference to submissions	<p>C-204 is another status update from Mr. Michal Lewis, this time sent to Romgaz (Messrs. ██████████ and ██████████). The document is redacted on the basis of legal privilege, and the redacted portion appears to address the EIA procedure. This document is not a communication between counsel and client. It is Mr. Lewis providing information to Romgaz. If any privilege even exists over this document, Mr. Lewis has waived it by sharing it with a third-party.</p> <p>Additionally, in another part of this status update, Mr. Lewis states: “<i>We continue to be advised by counsel that there are no legal grounds for preventing us from drilling at our proposed location.</i>” Thus, if the mere act of sharing the document does not constitute waiver, then this part clearly does.</p> <p>The document is <i>prima facie</i> relevant and material. The redacted portion concerns one of the key issues in this case—the EIA procedure.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the redacted portions of C-204 was not waived by reason of the fact that this document was shared with one of Discovery’s JV Partners. As stated at paragraph 14 above, each JV Partner was entitled to receive the privileged information and had a joint and/or common interest in the legal advice which has been redacted. It is clear from the title on the first page of C-135 that this document was drafted by Discovery/AOG. The recipients of this document were representatives of Romgaz (Discovery’s JV Partner) because by November 2018 (the date of this document) JKX had already withdrawn from the Project (Memorial at [188]-[189]).</p> <p><i>Second</i>, privilege has not been waived by reason of the fact that Discovery has disclosed C-204 as an exhibit in this arbitration. It has always been Discovery’s case that there were no legal grounds preventing them from drilling at its proposed locations. No waiver of privilege has taken place by disclosing one of Discovery’s arguments in this arbitration. Furthermore, disclosing part of a document which is not privileged does not amount to a waiver of privilege over the whole document.</p> <p><i>Third</i>, Slovakia has failed to establish that the redacted portion is relevant to the case and material to its outcome. Slovakia concedes that its request is only “<i>prima facie</i> relevant and material” but this is not a sufficient ground of itself to require production of the redacted section.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of legal advice. As Discovery now admits, this document was “<i>drafted by Discovery/AOG.</i>” This is not a communication between counsel and client and therefore is not privileged. Discovery has conspicuously failed to address this point because it is fatal to its claims of privilege. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on the document. A document must first be privileged before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the Slovak Republic never argued that, by virtue of exhibiting this document in the arbitration, Discovery waived privilege. Rather, the Slovak Republic explained that privilege for this document (assuming privilege existed here) has been waived because,</p>

	<p>in this same document, Discovery has not redacted the following line: “<i>We continue to be advised by counsel that there are no legal grounds for preventing us from drilling at our proposed location.</i>” By disclosing the contents of <i>some of</i> the legal advice received, Discovery has waived any privilege claim over this document. It cannot claim privilege over other parts of this document so as to shield unhelpful or damaging advice from this Tribunal’s eyes.</p> <p><i>Third</i>, the IBA Rules do not impose some heightened standard of relevance and materiality as Discovery suggests. If a document is <i>prima facie</i> relevant and material, as Discovery’s own submission of this document into the record as exhibit C-204 would suggest, then it meets the requirements under the IBA Rules. Here, the Slovak Republic’s request meets that test. The requested document concerns one of the fundamental aspects of this case: the EIA Procedure. The EIA forms one of the critical parts of Discovery’s case and the Slovak Republic’s defense.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>For the same reasons as for Request No. 10 above. The Tribunal notes the Claimant’s statement that the redacted portion of Exhibit C-204 contains legal advice that was shared with the JV Partners. The Tribunal repeats that the disclosure of some portion of a document containing or reflecting legal advice does not imply the waiver of legal advice contained or reflected in another portion of the document.</p> <p>The Claimant shall include this document in a privilege log as specified in Request No. 10 above.</p>

Document Request No.	15
Identification of documents or category of documents requested	The unredacted version of C-205 .
Relevance and materiality according to requesting party, including reference to submissions	<p>Like C-204, C-205 is a status update from Mr. Lewis to Romgaz (Mr. ██████████ ██████████). The document is redacted on the basis of legal privilege. This document is not a communication between counsel and client for the purposes of providing legal advice. The document is, therefore, not privileged. If privilege does exist, that has been waived by Mr. Lewis sharing it with a third-party.</p> <p>The document—and the unredacted portion—are <i>prima facie</i> relevant. The redacted portion addresses the Preliminary EIAs that Discovery agreed to undertake and appears to address, as well, Minister Sólymos’ communications with Discovery about the same. These are key issues on liability and causation and thus relevant and material to this case.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request for the reasons stated at paragraph 14 above.</p> <p><i>First</i>, privilege in the redacted portions of C-205 was not waived by reason of the fact that this document was shared with one of Discovery’s JV Partners. As stated at paragraph 14 above, each JV Partner was entitled to receive the privileged information and had a joint and/or common interest in the legal advice which has been redacted. It is clear from the title on the first page of C-135 that this document was drafted by Discovery/AOG. The recipients of this document were representatives of Romgaz (Discovery’s JV Partner) because by February 2019 (the date of this document) JKX had already withdrawn from the Project (Memorial at [188]-[189]).</p> <p><i>Second</i>, Slovakia has failed to establish that the redacted portion is relevant to the case and material to its outcome. Slovakia concedes that its request is only “<i>prima facie</i> relevant and material” but this is not a sufficient ground of itself to require production of the redacted section.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal that Discovery produce this document unredacted. The Slovak Republic incorporates paragraphs 22-29 from its introductory remarks above.</p> <p><i>First</i>, Discovery now concedes that this document was not authored by an attorney for the purposes of legal advice. This is not a communication between counsel and client and therefore cannot be privileged. Discovery has conspicuously failed to address this point because it is fatal to its claims of privilege. Even if the “common interest privilege” exception applies here, that does not bestow legal privilege on the document. A document must first be privileged before it can benefit from the common interest privilege exception.</p> <p><i>Second</i>, the IBA Rules do not impose some heightened standard of relevance and materiality as Discovery suggests. If a document is <i>prima facie</i> relevant and material, as Discovery’s own submission of this document into the record as exhibit C-205 would suggest, then it meets the requirements under the IBA Rules. This document meets that threshold requirement. It concerns the Preliminary EIAs that Discovery agreed to undertake, which forms the factual basis for major portions of Discovery’s case on liability.⁵⁰ The requested document also concerns Minister Sólymos’ communications with Discovery about these Preliminary EIAs. This is</p>

⁵⁰ Memorial, ¶ 257 *et seq.*

	<p>another major part of Discovery's case. Discovery claims that Minister Sólymos made specific representations about the EIA Act and its applicability to Discovery's project.⁵¹ The document is obviously relevant and material to this case, and to argue otherwise defies credibility.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>For the same reasons as for Request No. 10 above. The Tribunal notes the Claimant's statement that the redacted portion of Exhibit C-205 contains legal advice that was shared with the JV Partners.</p> <p>The Claimant shall include this document in a privilege log as specified in Request No. 10 above.</p>

⁵¹ Memorial, ¶ 236.

Document Request No.	16
Identification of documents or category of documents requested	All “Weekly Status Updates” and “Updates to Partners” not already on the record. Time Period: March 2014 to April 2020
Relevance and materiality according to requesting party, including reference to submissions	Along with the operating committee meeting minutes, Discovery also relies on “weekly updates” ⁵² and status updates to partners ⁵³ to support its factual assertions. However, only a fraction of these is exhibited on the record. These updates often discussed key factual events for all of Discovery’s operations in the Slovak Republic. The requested documents are <i>prima facie</i> relevant and material to this dispute, and the record is incomplete without the full suite of these documents. The Slovak Republic reasonably believes these to exist because, as the name suggests, these were “weekly” updates.
Responses and/or Objections by disputing party to production of requested documents	Discovery objects to this document request. <i>First</i> , this category is overly broad and fails to identify a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules, and it also covers an extremely wide time period of six years. As such, it amounts to a fishing expedition. <i>Second</i> , Slovakia has failed to explain or establish why every “update” is relevant to the case and material to its outcome. Slovakia’s request is based purely on the fact that Discovery has relied on some of these updates (which it has exhibited to its Memorial), but without any attempt even to state why those documents upon which Discovery does not rely would be relevant and material. To base a request on a document supposedly being “ <i>prima facie</i> relevant and material” is not sufficient pursuant to Article 3.3(b) of the IBA Rules.
Reply to objections	The Slovak Republic maintains its request and seeks an order from this Tribunal compelling Discovery to produce the requested documents. <i>First</i> , the subject matter of this Request is evidently narrow. Discovery held weekly updates, which were often called “updates to partners.” This Request seeks those readily identifiable documents, which one would expect to be formally designated and maintained in any commercial rigorous project (like Discovery holds this one out to be). As such, the time period of the Request does not make it “ <i>overly broad</i> ”, when (as here) the documents in question are readily ascertainable. <i>Second</i> , there are major gaps in the record. As explained earlier, Discovery has not submitted a single set of Operating Committee meeting minutes from 2016 and beyond, <i>i.e.</i> , the time period in which practically all of the alleged breaches occurred. Discovery’s reliance on these weekly status updates for other parts of its case shows that the information shared and discussed at these meetings is relevant and material to the dispute—otherwise Discovery would not rely on them. It cannot selectively include some—but not all—of these weekly updates. <i>Third</i> , the IBA Rules do not impose any heightened standard of relevance and materiality, as Discovery suggests. If the documents are <i>prima facie</i> relevant and material, then they meet the requirements under the IBA Rules. The Slovak Republic’s request meets that requirement. Nevertheless, in the spirit of cooperation, the Slovak Republic would be content to receive documents dating from January 2016 to 31 December 2018 .

⁵²

E-mail from Mike Lewis to Partners, 24 June 2015, C-78.

Decision of the Tribunal	<p>GRANTED AS NARROWED DOWN</p> <p>Considering that the key issues in dispute relate to events between January 2016 and 31 December 2018, the requested documents appear to be <i>prima facie</i> relevant.</p>
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⁵³ AOG's report to Partners, 10 March 2017, **C-169**; Report to Partners – Status Update, 20 January 2016, **C-120**; E-mail from Mike Lewis to Partners, 3 October 2016, **C-146**; AOG's report to Partners, 2 November 2018, **C-204**; AOG's report to Partners, 28 February 2019, **C-205**.

D. Drilling Sites

Document Request No.	17
Identification of documents or category of documents requested	Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning the possibility of using alternative routes to access the Smilno Site, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions. Time Period: June 2015 to June 2016
Relevance and materiality according to requesting party, including reference to submissions	Discovery claims that the field track on the Access Land was “ <i>the only viable access route for AOG in due course to move the drilling rig and other heavy machinery to the Smilno well site.</i> ” ⁵⁴ Meanwhile, the Slovak Republic explained in its Counter-Memorial that this was not true. In fact, AOG was able to access the Smilno Site using “ <i>a track located on a different land plot leading from the Cooperative towards the Smilno Site.</i> ” ⁵⁵ The requested documents are relevant and material to this dispute. They will show whether Discovery was aware it had another route to the Smilno Site, and they will show why Discovery chose not to pursue that option. All of these issues bear on questions of liability and on causation. The Slovak Republic reasonably believes the documents to exist. Alternative routes were discussed in a January 2016 status update, ⁵⁶ and it is reasonable to assume that additional discussions of accessing the Smilno Site took place. The Slovak Republic has narrowed the temporal scope of this Request from Discovery’s first attempt to access the Smilno Site to one year later—when AOG and Mr. ██████ conceded Mrs. Varjanová’s claims. ⁵⁷ Given the various attempts to access the Smilno Site during this time, it is reasonable to assume that responsive documents were generated over the course of this year.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁵⁴ Memorial, ¶ 89.

⁵⁵ Counter-Memorial, ¶ 103.

⁵⁶ Report to Partners – Status Update, 20 January 2016, C-120.

⁵⁷ Counter-Memorial, ¶ 132.

Document Request No.	18
Identification of documents or category of documents requested	<p>Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning the status of the Access Land in Smilno as a public special purpose road, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions.</p> <p>Time Period: June 2015 to June 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The Tribunal is no doubt aware of the importance Discovery places on the Access Land’s status.</p> <p>Discovery argues in its Memorial that the field track located on the Access Land in Smilno qualifies as a public special purpose road.⁵⁸ This allegation supports several arguments in Discovery’s Memorial concerning alleged failures by the Slovak Republic that result in liability under the BIT. For instance, Discovery asserts that the Police “<i>are obliged to ensure that public special purpose roads (including the [field track]) remain open for use by members of the public.</i>”⁵⁹ Discovery also uses the track’s status as an excuse for why it never applied under the Geology Act for compulsory access.⁶⁰ And despite not arguing the Access Land’s status during AOG’s appeal against the Interim Injunction, Discovery now argues that the District Court Bardejov failed to take into account the status of the field track as a public special purpose road.⁶¹</p> <p>As the Slovak Republic explained in its Counter-Memorial, however, Discovery/AOG, just like other stakeholders, consistently treated the Access Land as private property.⁶²</p> <p>The documents are relevant and material to this dispute, given the importance that Discovery places on its understanding of the status of the Access Land. Furthermore, it is reasonable to assume that documents concerning the Access Land’s status exists. For example, Discovery has already put onto the record an update to partners sent on 20 January 2016 when it admitted that Mrs. Varjanová had a legal right to park her car “<i>on the road.</i>”⁶³ Additional analyses like this must exist.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from June 2015—when Discovery first tried to access the Smilno Site—to one year later. This one-year time period is reasonable in light of the 20 January 2016 status update to partners, which is already on the record, and which shows that the Access Land’s status was being discussed six months after AOG first tried to access the Smilno Site.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁵⁸ Memorial, ¶ 85.

Document Request No.	19
Identification of documents or category of documents requested	<p>Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning:</p> <ul style="list-style-type: none"> • the need to upgrade the field track on the Access Land; • the scope of required improvements and upgrades; and • the assessment and fulfilment of the statutory requirements to upgrade the field track on the Access Land; <p>including, but not limited to, minutes from meetings, analyses produced, communications with landowners’, any consents obtained or withdrawal thereof, and/or evidence of any records of decisions taken or discussed by Discovery/AOG, the JV Partners, and/or other advisors.</p> <p>Time Period: June 2015 to end of 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>Several documents already on the record show that AOG would need to upgrade the field track on the Access Land to move its equipment to the Smilno Site.⁶⁴ As the Slovak Republic explained in its Counter-Memorial, any upgrade of the field track was subject to landowner consent.⁶⁵ In other words, irrespective of any road signs being erected, any permits being granted, etc., AOG would have needed landowner consent to upgrade the field track. The documents sought are therefore relevant and material to issues of liability and causation.</p> <p>The Slovak Republic reasonably believes that responsive documents exist. Discovery held weekly status updates on its project and routinely addressed issues like this in those updates. Indeed, as already explained, numerous documents on the record discuss the need to upgrade the field track,⁶⁶ and it is reasonable to presume that additional documents were generated at the time.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from the time Discovery first tried to access the Smilno Site to the end of 2016, following its last attempts to do the same.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁵⁹ Memorial, ¶ 87.

⁶⁰ Fraser WS, ¶ 77.

⁶¹ Memorial, ¶ 99.

⁶² Counter-Memorial, ¶ 131.

⁶³ Report to Partners – Status Update, 20 January 2016, C-120.

⁶⁴ Counter-Memorial, ¶¶ 78-79.

⁶⁵ Counter-Memorial, ¶¶ 77-80.

⁶⁶ Counter-Memorial, ¶¶ 78-79.

Document Request No.	20
Identification of documents or category of documents requested	<p>Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning the reasons and decision to establish Cesty Smilno, s.r.o., including, but not limited to, minutes from meetings, analyses produced, and records of decisions.</p> <p>Time Period: 12 March 2016 to 12 April 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>As the Slovak Republic explained in its Counter-Memorial, after the District Court Bardejov issued the Interim Injunction preventing AOG from using the Access Land, AOG established its subsidiary company, Cesty Smilno, s.r.o. This was a clear attempt to circumvent the Interim Injunction.</p> <p>At the same time, had Discovery/AOG considered the track on the Access Land as a public special purpose road, it would not have established Cesty Smilno, s.r.o. and become a co-owner of the Access Land.</p> <p>Nevertheless, despite the Interim Injunction in place, AOG attempted to access the Smilno Site in June and November 2016, claiming that it was not AOG—but Cesty Smilno, s.r.o.⁶⁷</p> <p>Given Discovery’s argument in this arbitration that the Access Land is a public special purpose road, and various Slovak entities’ failure to respect that results in liability under the BIT, the requested documents are relevant and material to test this argument. The requested documents will reveal the reasons for establishing Cesty Smilno, s.r.o. and any other considerations behind AOG’s/Discovery’s decision to establish this company.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request to one month before the date Discovery established Cesty Smilno, s.r.o. to the date that Cesty Smilno, s.r.o. was established. Should documents outside this indicative Time Period exist, those should still be produced.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

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Slamka Partners - Smilno report by JUDr. Pavol Vargaestok of the events on 17-18 June 2016, 14 December 2016, C-161.

Document Request No.	21
Identification of documents or category of documents requested	Documents concerning Discovery's/AOG's second attempt to access the Smilno Site, including but not limited to, reports, meeting minutes, internal correspondence, correspondence with JKX and Romagz, and correspondence with any outside investors. Time Period: 16 June 2018 to end of June 2018
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser claims that, though he was not present for AOG's second attempt to access the Smilno Site, he " <i>received numerous reports by phone and email from [his] colleagues.</i> " ⁶⁸ Mr. Fraser then describes, in significant detail, what occurred during this second attempt to access the Smilno Site. All of this information presumably came from the numerous reports he received. This Request seeks those reports along with any additional documents generated about this attempt to access the site. The documents are <i>prima facie</i> relevant to liability in this case, as they concern one of Discovery's allegations that its inability to access this site triggers the Slovak Republic's liability under the BIT.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁶⁸ Fraser WS, ¶ 50.

Document Request No.	22
Identification of documents or category of documents requested	Documents concerning the 15 July 2016 meeting between Discovery/AOG and the Police in Smilno, including, but not limited to, internal correspondence, external correspondence with JXX, Romgaz, and outside investors, meeting minutes, and/or meeting notes. Time Period: 1 July 2016 to 15 August 2016
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser testifies that Discovery/AOG had a meeting with the Police on 15 July 2016. He states that the Police explained that if Discovery “ <i>could arrange for the Smilno municipality to put up a road sign at the entrance to the Road, which acknowledged that the Road was a special purpose road, then they would keep the Road open.</i> ” ⁶⁹ Mr. Fraser also alleges that “ <i>the Police agreed that the law states that the Road was public even without such a procedure but they said something needed to be done to calm the nervous situation.</i> ” ⁷⁰ Mr. Fraser cites no documents for these assertions and this Request seeks those. It is reasonable to assume that the requested documents exist. This issue is relevant and material to matters of liability, as Discovery claims that actions/inactions of the Police and other Slovak ministries regarding the Access Land violate the BIT. An important meeting like this, and the discussion had, would have been communicated internally and to relevant stakeholders. The Slovak Republic has narrowed the temporal scope of this Request from shortly before this meeting took place to one month after.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁶⁹ Fraser WS, ¶ 66.

⁷⁰ Fraser WS, ¶ 66.

Document Request No.	23
Identification of documents or category of documents requested	<p>Documents concerning the 26 October 2016 and 14 November 2016 meetings between Discovery/AOG and the Police, including, but not limited to, Discovery's/AOG's internal correspondence, external correspondence with JKK and Romgaz and/or outside investors, meeting minutes, or notes.</p> <p>Time Period: 1 October 2016 to 14 December 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>Mr. Fraser testifies that Discovery/AOG had meetings with the Police on the two dates mentioned above.⁷¹ According to Mr. Fraser, at these meetings, Discovery's/AOG's legal advisers "<i>explained the position of the Road under Slovak law</i>"⁷² but that the Police "<i>refused to accept our arguments and presented a confused position, both accepting that the Road was a public road but also stating that it was a field track and not accessible to the public.</i>"⁷³</p> <p>Mr. Fraser does not cite to any documents for these assertions and this Request seeks those. The requested documents are relevant and material to issues of liability. Discovery claims that its inability to access the Smilno Site was a result of breaches of the BIT by various Slovak ministries or emanations of the State. This signage issue forms part of those allegations. It is reasonable to assume that documents were generated both before and after these meetings, given the importance Discovery places on them in its Memorial.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from a few weeks before the first meeting to one month after the second one.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁷¹ Fraser WS, ¶ 69.

⁷² Fraser WS, ¶ 69.

⁷³ Fraser WS, ¶ 69.

Document Request No.	24
Identification of documents or category of documents requested	<p>Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning the possibility of invoking Article 29 of the Geology Act to obtain access to individual drilling sites, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions.</p> <p>Time Period: June 2015 to April 2017</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>As the Slovak Republic explained in its Counter-Memorial, the Geology Act provides an avenue to access private lands when the landowner does not provide consent.⁷⁴ This is Article 29 of the Geology Act.</p> <p>Although Discovery routinely failed to obtain landowner consent for its activities, it made the choice <i>not</i> to avail itself of Article 29 of the Geology Act. Specifically, Discovery did not use this procedure for its planned activities at Ruská Poruba. Nor did it use Article 29 at its Smilno location. Mr. Fraser claims that Discovery did not invoke Article 29 for Smilno because Discovery thought the Access Land was public (an allegation contradicted by Discovery’s own internal documents).⁷⁵ He also claims that Discovery did not need to invoke Article 29 because Cesty Smilno, s.r.o. (the entity Discovery created to circumvent the Interim Injunction) was a co-owner of the Access Land. The Slovak Republic has already addressed these arguments in its Counter-Memorial.</p> <p>What is more likely the case is that Discovery did not avail itself of Article 29 because it did not want to spend the time taking the proper legal route, or it simply did not care to. The fact remains that Discovery had options and chose not to pursue them. This is relevant and material to this dispute not only for issues of liability, but also causation.</p> <p>It is reasonable to assume that Discovery would have documents responsive to this Request. It must have considered alternative ways to obtain access to its drilling sites. Indeed, Discovery even invoked Article 29 for its Krivá Ol’ka site; therefore, it knew about this provision of Slovak law, and it knew that it could be used to obtain access to lands if it failed to obtain landowner consent.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request to Discovery’s first attempts at accessing the Smilno Site to its agreement with the local activists to conduct Preliminary EIAs (a decision that altered the project’s path). While this may seem like an expansive time period, the subject matter (ie, whether to use Article 29 at any locations is, itself, narrow).</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

Document Request No.	25
Identification of documents or category of documents requested	Documents, including but not limited to, internal correspondence, correspondence with the JV Partners, correspondence with third-party advisors and investors, meeting minutes, or analyses regarding the Council of the Prešov Self-Governing Region’s resolution of 24 June 2016. Time Period: 24 June 2016 to 24 September 2016
Relevance and materiality according to requesting party, including reference to submissions	According to Discovery, the Council of the Prešov Self-Governing Region’s resolution of 24 June 2016 was a “ <i>public, official condemnation of Discovery/AOG’s proposed activities in the region</i> ” and was “ <i>intended to impair Discovery’s ability to reap the benefits of its investment.</i> ” ⁷⁶ There is no contemporaneous documents or evidence on the record showing Discovery/AOG discussing this apparent “ <i>public, official condemnation.</i> ” As the Slovak Republic explained in its Counter-Memorial, contrary to Discovery’s claims, the Slovak government and various governmental entities went out of their way to <i>help</i> Discovery. The documents are relevant and material to Discovery’s claims in this arbitration. The requested documents are reasonably believed to exist, given that Discovery emphasizes them greatly, and even considers that this statement was attributable to the Slovak Republic such that it results in liability under the BIT. The Slovak Republic has narrowed the temporal scope of this Request to begin from the day the resolution was issued to three months after its issuance.
Responses and/or Objections by disputing party to production of requested documents	Slovakia has failed to demonstrate the relevance and materiality of the documents requested. In particular, it is noted that Slovakia does not deny that the resolution was made. Without prejudice to the above, Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. Discovery makes the specific allegation that this resolution was a “ <i>public, official condemnation</i> ” of AOG’s project, yet no documents on the record show that AOG even contemporaneously discussed this. The documents are relevant and material to assess the veracity of the case as put forward by Discovery itself. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁷⁴ Counter-Memorial, ¶¶ 3-5.

⁷⁵ Report to Partners – Status Update, 20 January 2016, C-120.

⁷⁶ Memorial, ¶ 110.

Document Request No.	26
Identification of documents or category of documents requested	<p>Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning (i) AOG's request for an extension of the Lease Agreement, and (ii) AOG's request for approval of the Amendment by the MoA, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions.</p> <p>Time Period: 4 May 2015 to 30 June 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The Slovak Republic explained in its Counter-Memorial that the reason why the MoA did not approve the Amendment to the Lease Agreement was AOG's failure to timely request an extension of it, in breach of the Lease Agreement's provisions.⁷⁷ In fact, the Minister of Agriculture expressly notified AOG of this fact.⁷⁸</p> <p>Discovery failed to mention this critical fact in either of its submissions. Rather, Discovery misinterprets the Lease Agreement,⁷⁹ or asserts that the MoA failed to approve the Lease Agreement because of some personal prejudice from Mr. Regec.⁸⁰ At the same time, Discovery complains of the timing of the MoA's response, arguing that because it took six months for the MoA to respond, "<i>six months of valuable time was lost.</i>"⁸¹</p> <p>The requested documents are relevant and material to this case. They raise issues related to liability and causation. They will evidence whether Discovery and its JV Partners knew that AOG failed to comply with the terms of the Lease Agreement, which in of itself, is fatal to a number of Discovery's claims related to this part of its case. In the same vein, the requested documents will further evidence Discovery's overall understanding of its obligations and commitments related to its project. As the Slovak Republic detailed in its Counter-Memorial, Discovery routinely made errors throughout its time in the Slovak Republic, which contributed to the project's failure.</p> <p>The Slovak Republic reasonably believes the requested documents exist because exhibits already evidence discussions within Discovery about the Lease Agreement (e.g., C-130). It is reasonable to presume that additional documents were generated, given the importance of the Lease Agreement.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request to the date the Lease Agreement was signed until the date that Discovery applied for compulsory access under Article 29 of the Geology Act for the Krivá Ol'ka site.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

Document Request No.	27
Identification of documents or category of documents requested	Documents concerning the 27 April 2015 meeting between Mr. ██████████ and Mr. Ron Crow, including, but not limited to, Discovery/AOG's internal correspondence, correspondence with JKK and Romgaz and/or external investors, meeting minutes, and notes. Time Period: 20 April 2015 to 27 May 2015
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser explains that Mr. Crow met with Mr. ██████████ on 27 April 2015 regarding the Lease Agreement signed with LSR. According to Mr. Fraser, Mr. ██████████ expressed LSR's interest in doing business with Discovery, stated that the Lease Agreement would follow a template similar to ones used with NAFTA, and that the Lease Agreement would quickly be approved by the Minister of Agriculture. ⁸² Mr. Fraser further claims that "AOG understood that this agreement followed the same template as that used for NAFTA and that agreeing an extension would be a formality." ⁸³ Mr. Fraser does not cite to any documents concerning this meeting or what was discussed, and this Request seeks those. The requested documents are relevant and material to issues of liability. Discovery relies upon the non-renewal of the Lease Agreement and alleged differential treatment between it and NAFTA as violations of the BIT. The requested documents are relevant and material to these issues and will fill in the evidentiary gap for these allegations. The Slovak Republic reasonably believes these documents exist. Mr. Fraser was not at this meeting, but he recounts what occurred. This means that the meeting was discussed internally, and records or documents memorializing those discussions are likely to exist. The Slovak Republic has narrowed the temporal scope of this Request from one week before the meeting occurred to one month after.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁷⁷ Counter-Memorial, ¶¶ 145-148.

⁷⁸ Counter-Memorial, ¶¶ 154-159.

⁷⁹ Counter-Memorial, ¶¶ 151-153.

⁸⁰ Memorial, ¶ 253.

⁸¹ Memorial, ¶ 141(2).

⁸² Fraser WS, ¶ 30.

⁸³ Fraser WS, ¶ 31.

Document Request No.	28
Identification of documents or category of documents requested	Documents evidencing activities performed by AOG or its employees, contractors or partners in Ruská Poruba. Time Period: January 2016 to September 2017
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery claims that the decision imposing a Full EIA for its proposed exploration drilling, including that in Ruská Poruba issued on 7 September 2017, “<i>frustrated Discovery’s legitimate expectations</i>” and “[<i>s</i>]uch conduct was the last nail in the coffin of Discovery’s investment.”⁸⁴</p> <p>Discovery says little about its activities in Ruská Poruba. As the Slovak Republic explained, AOG was unable to access this site in January 2016 due to its own legal mistakes.⁸⁵ In fact, it does not appear that from January 2016 until September 2017 Discovery did any work at Ruská Poruba. The requested documents are relevant and material to this dispute. They will show the status of works when the project came to a halt, which itself is relevant and material to issues of liability, causation, and quantum.</p> <p>The Slovak Republic reasonably believes these documents exist. Discovery routinely held operating committee meetings, and Ruská Poruba was discussed in C-120—a status update to partners. It is reasonable to assume that similar updates like C-120 were sent, which describe the work done at Ruská Poruba.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p>Slovakia’s justification is flawed. Discovery advances a claim against Slovakia in relation to Ruská Poruba <u>only</u> in respect of the EIA procedure and the underlying administrative process (Memorial at [186], [235(i)], [238], [257]). The requested documents are not relevant to this claim. Discovery does <u>not</u> make a claim against Slovakia regarding “<i>access</i>” to the Ruská Poruba site. Slovakia has evidently misunderstood Discovery’s case. As such, this document request is speculative and, more importantly, not relevant to the case and material to its outcome.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal compelling Discovery to produce the requested documents.</p> <p>Discovery has only focused on one aspect of the Slovak Republic’s request: the EIA procedure. But, as the Slovak Republic already explained, this Request also relates to issues of causation and quantum. As such, Discovery’s limited objection ignores other disputed issues to which the requested documents are relevant. Ruská Poruba was one of the three initial wells Discovery would have drilled. When it comes to causation, as the Slovak Republic explained, after AOG’s unsuccessful attempts to access this site in late 2015, AOG did not return to Ruská Poruba after January 2016 and did no further work there until it was allegedly prevented from drilling its exploration well by a Full EIA imposition more than one year later. Requested documents are thus relevant to show that regardless of the decision on the EIA, AOG was nowhere near any drilling in Ruská Poruba.</p> <p>Its case on quantum depends upon the hypothetical results of that well (and others).⁸⁶ Understanding the status of works at the time that Discovery left the Slovak Republic, if any, necessarily influences quantum. In other words, the requested documents will show how advanced the project was, what remained before drilling could begin, <i>etc.</i> The requested documents are therefore relevant and material to these parts of Discovery’s claim, and the Slovak Republic’s defense to it.</p>

⁸⁴ Memorial, ¶ 238.

Decision of the Tribunal	DENIED Since the activity at this site would be reflected in the operating committee meeting minutes, which are already covered by Request No. 16, this request is denied.
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⁸⁵ Counter-Memorial, ¶¶ 167-172.
⁸⁶ Howard ER, ¶ 277.

Document Request No.	29
Identification of documents or category of documents requested	Documents concerning the 9 February 2016 meeting between Mr. Benada and the Ministry of Environment, including, but not limited to, internal correspondence within Discovery/AOG, correspondence with JXX, Romagaz and/or external investors, and any notes or minutes taken by Mr. Benada. Time Period: 1 February 2016 to end of February 2016
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser claims that Discovery’s employee, Mr. Benada, met with the Ministry of Environment on 9 February 2016. According to Mr. Benada, the Ministry was “ <i>sympathetic to the difficulties faced by AOG</i> ” and they confirmed that AOG “ <i>was acting within its rights and had the right to carry out exploration activity on its Licenses.</i> ” ⁸⁷ There is no documentary evidence from this meeting, which is relevant to issues of liability. The requested documents are reasonably believed to exist. Mr. Fraser’s secondhand knowledge of it means that Mr. Benada obviously communicated what allegedly occurred to his colleagues. It is reasonable to presume that further discussions were had, and that those discussions were memorialized.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁸⁷ Fraser WS, ¶ 43.

Document Request No.	30
Identification of documents or category of documents requested	Documents concerning meetings held with ██████████ in May and June 2016, including, but not limited to internal correspondence, external correspondence with JKX, Romgaz, and external investors, and meeting minutes. Time Period: 1 May 2016 to end of June 2016
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser alleges that he and Mr. Benada met with ██████████ (a member of the National Council) in May and June 2016. According to Mr. Fraser, at the June meeting, ██████████ reported to Mr. Benada that the Ministry of Agriculture’s Chief of Staff of the Office, Mr. Regec, “ <i>had based his re-election campaign on opposing AOG’s activities.</i> ” ⁸⁸ This is one of the reasons Discovery claims that the Ministry of Agriculture did not approve the Lease Agreement, even though the Slovak Republic already explained that it was actually Discovery’s failure to timely request an extension that led to it not being approved. In any event, there are no documents concerning these meetings and this Request seeks those. Given the importance that Discovery places on this meeting for its case on liability, it is reasonable to presume that communications or documents concerning them were generated. Indeed, Mr. Fraser was not present at the June 2016 meeting, and his secondhand knowledge presumably comes from conversations with Mr. Benada. It is therefore reasonable to presume that Discovery discussed these meetings internally and with its JV Partners, given what Discovery alleges transpired during them.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁸⁸ Fraser WS, ¶ 84.

Document Request No.	31
Identification of documents or category of documents requested	Documents concerning the 7 February 2017 meeting between AOG, the Ministry of Environment, and the Ministry of Agriculture. Time Period: 1 February 2017 to end of February 2017
Relevance and materiality according to requesting party, including reference to submissions	Mr. Fraser discusses a meeting that occurred between AOG, the Ministry of Environment, and the Ministry of Agriculture on 7 February 2017. Although Mr. Fraser was not in attendance, he recounts that, at this meeting, both Ministries discussed AOG’s Article 29 application for the Krivá Ol’ka location, and that the Ministry of Environment “ <i>had been in the process of drafting a decision in favour of AOG, when they received instructions from more senior members of the Ministry to decide against us.</i> ” ⁸⁹ There are no documents on the record concerning this meeting and this Request seeks those. It is reasonable to assume that Discovery discussed this meeting internally, and with external JV Partners and advisors. The meeting was with two Ministries of the Slovak Republic and involved issues that are relevant and material to Discovery’s case on liability. Indeed, the fact that Mr. Fraser discusses the meeting in detail (despite having not attended it) demonstrates that conversations about it occurred.
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁸⁹ Fraser WS, ¶ 87.

Document Request No.	32
Identification of documents or category of documents requested	Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, and the JV Partners regarding the evolution of the project. Time Period: March 2014 until the end of 2018
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to all aspects of this dispute. Discovery’s project involved several moving parts, various work streams, and coordination across Slovakia and beyond. As the Slovak Republic detailed in its Counter-Memorial, along the way, Discovery routinely ran into problems caused by its own making, and these must have shaped or altered Discovery’s and the JV Partners’ goals or approach. This Request seeks documents exchanged internally at Discovery/AOG, and correspondence with all relevant stakeholders about the evolution of the project through Discovery’s time in Slovakia. While Discovery has tried to tell a narrative of consistent breaches of the BIT by the Slovak Republic, the reality is a consistent series of missteps by Discovery. Production of these documents will provide a complete record, as seen from Discovery and its partners.</p> <p>The requested documents are reasonably believed to exist. Discovery often held status update meetings, routinely communicated with internal staff about the project, and often informed partners of status updates through detailed correspondence.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p><i>First</i>, this request is overly broad, speculative, and amounts to a pure fishing expedition. Slovakia is in effect seeking production of <u>all</u> documents evidencing <u>all</u> communications both within Discovery and between Discovery and its JV Partners about the entirety of the Project over a time period spanning nearly 5 years, without any attempt to narrow this request. Slovakia has failed to identify a single, specific event (even as an example) which would justify such an overly broad request in relation to Slovakia’s allegation of “<i>missteps by Discovery</i>”. This is a naked attempt at a ‘catch all’ request in case any of Slovakia’s more specific requests (most of which Discovery has agreed to – see above and below) do not cover a point which Slovakia has to date not thought of. This is impermissible and is precisely the type of request that the IBA Rules are designed to prevent.</p> <p><i>Second</i>, this request is irrelevant to the case and immaterial to its outcome. Slovakia even contradicts itself by saying, on the one hand, that the requested documents are relevant and material to the dispute and, on the other hand, alleging that it has already “<u>detailed</u> in its Counter-Memorial” (emphasis added) a counternarrative of Discovery’s alleged “<i>missteps</i>”. As such, Slovakia has admitted that it does not require the production of more documents, following the large number of exhibits already provided by Discovery together with its Memorial, to pursue its counternarrative (to which Discovery disagrees and will vigorously contest in its Reply).</p>

<p>Reply to objections</p>	<p>As the Slovak Republic explained in its Replies for Requests 8 and 16, there are major evidentiary gaps for crucial moments of Discovery’s time in the Slovak Republic on the case as put forward in Discovery’s Memorial. Namely, there is a dearth of meeting minutes, weekly updates, and internal communications from 2016 to the end of Discovery’s time in the Slovak Republic; what Discovery has put forward thus far is incomplete and self-serving. These documents, which are known to exist, would discuss the major events in this dispute that Discovery claims give rise to breaches of the BIT. This Request was meant to help fill those gaps by obtaining a complete record of Discovery’s internal commercial materials (and those shared by or among AOG and JV Partners) concerning the evolution of the project.</p> <p>Updated and reformulated request: In the spirit of cooperation, however, the Slovak Republic will conditionally withdraw this Request should its Requests 8 and 16 be granted, given the potential overlap of these Requests (in view of explanations provided by Discovery in its comments to all three requests).</p>
<p>Decision of the Tribunal</p>	<p>NO DECISION REQUIRED IN PART AND OTHERWISE DENIED</p> <p>Considering the updated and reformulated request, no decision is required in part since the Tribunal granted Request Nos. 8 and 16 from January 2016 to 31 December 2018. For the period of March 2014 to the end of 2015, the request is overly broad and burdensome and is therefore denied.</p>

E. EIA

Document Request No.	33
Identification of documents or category of documents requested	<p>Documents regarding the 15 December 2016 meeting between AOG and Minister Sólymos, including any meeting minutes from AOG, internal correspondence following this meeting or leading up to it, and correspondence to the JV Partners (or relevant third-party investors like Akard) concerning this meeting.</p> <p>Time Period: 1 December 2016 to 31 December 2016</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to liability in this case.</p> <p>Discovery claims that it met with Minister Sólymos on 15 December 2016 and that at this meeting, Minister Sólymos asked AOG to undergo Preliminary EIAs—a request that Discovery rejected.</p> <p>Discovery then claims that after it submitted its Preliminary EIA applications and was ordered to undergo Full EIAs, those decisions “<i>contradicted the clear and repeated specific statements by the MoE and Minister Sólymos in late 2016 and early 2017.</i>”⁹⁰ Although Discovery has exhibited a follow-up letter that it sent to Minister Sólymos, it has not exhibited any internal notes or communications about this meeting where, on Discovery’s case, specific representations were made about future Full EIAs.</p> <p>It is reasonable to assume that the documents exist. Neither Romgaz nor JKK were in attendance. Nor was Akard. AOG presumably communicated with these entities following this meeting, given the importance that Discovery places on what transpired.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from two weeks before the date of this meeting to two weeks after it was held.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁹⁰ Memorial, ¶ 184(2).

Document Request No.	34
Identification of documents or category of documents requested	<p>Documents evidencing communication between AOG, Discovery, VLK and/or other activists regarding the community agreement memorialized in the press release from April 2017, including meeting minutes with activists, internal and external correspondence regarding discussions with activists.</p> <p>Time Period: 1 January 2017 to end of April 2017</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are <i>prima facie</i> relevant and material to this case.</p> <p>As this Tribunal knows, Discovery agreed with the local activists to submit Preliminary EIA applications for each of its three planned wells.⁹¹ Discovery/AOG agreed that “<i>for each exploration well, including those where operations have already started, AOG will prepare and submit an application under the preliminary environmental procedure described in law no. 24/2006 Coll. on Environmental Impact Assessments. AOG is not obliged by law to follow this procedure but will do so as a sign of good faith.</i>”⁹²</p> <p>Despite agreeing to undergo the Preliminary EIA for “<i>each exploration well</i>”, which is a process that could lead to a Full EIA, Discovery now claims that the Slovak Republic breached the BIT by accepting these applications and requiring Discovery to undertake the process to which it voluntarily consented.⁹³ At the same time, Discovery alleges that the Slovak Republic breached the BIT by requiring the Preliminary EIA on all future drills.</p> <p>This is a central point to Discovery’s case, and it is equally important to the Slovak Republic’s defense. The requested documents are relevant and material to liability, causation, and quantum. The requested documents will provide further context to the agreement reached with the activists, provide insight into what Discovery expected to happen when it submitted to this process, and, importantly, will show how its JV Partners viewed this stage of the project. Notably absent from the record is any correspondence or meeting minutes with the JV Partners around this time. This Request seeks those documents among others.</p> <p>Given the importance of this issue (<i>e.g.</i>, Mr. Fraser acknowledging that the only way forward was to sit down with the activists), documents must exist. Indeed, it is reasonable to assume that Discovery extensively discussed the content of this community agreement with the JV Partners, with its third-party investor Akard, and with the public relations firm(s) helping it.</p> <p>The Slovak Republic has limited the temporal scope of this Request to early 2017 (when Discovery claims it began considering this option after meeting with activists) to the end of April 2017, given that Discovery reached agreement with the activists in April 2017.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>

Decision of the Tribunal	NO DECISION REQUIRED
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⁹¹ Counter-Memorial, ¶¶ 187-192.

⁹² Press Release in relation to AOG's commitment to local communities in North-East Slovakia, 5 April 2017, C-171.

⁹³ Memorial, ¶ 235.

Document Request No.	35
Identification of documents or category of documents requested	Documents regarding Minister Sólymos' remarks in late 2016 and early 2017 regarding the EIA Act, including Discovery's/AOG's internal meeting minutes, internal correspondence, and correspondence to the JV Partners (or relevant third-party investors like Akard) concerning these statements. Time Period: 25 November 2016 to September 2017
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to liability in this case.</p> <p>Discovery claims that Minister Sólymos made repeated statements that the new amendments to the Slovak Republic's EIA Act would not apply to Discovery's project.⁹⁴</p> <p>Discovery then claims that after it submitted its Preliminary EIA applications and was ordered to undergo Full EIAs, those decisions "<i>contradicted the clear and repeated specific statements by the MoE and Minister Sólymos in late 2016 and early 2017.</i>"⁹⁵ Similarly, Discovery claims that when the Ministry of Environment reduced the Svidník Exploration Area License area, and included the requirement to conduct a Preliminary EIA, this, too, "<i>contradicted the clear and repeated specific statements by the MoE and Minister Sólymos in late 2016 and early 2017.</i>"⁹⁶</p> <p>It is reasonable to assume that the requested documents exist. Discovery emphasizes the alleged importance these statements had on Discovery, along with a specific claim of how they understood what these statements meant regarding its project. One would expect that, in the normal course of business, Discovery and its JV Partners (and third-party investors) would have discussed these remarks after they were made, and most certainly would have discussed how later actions (<i>e.g.</i>, the Full EIA orders and the Preliminary EIA obligation for the Svidník Exploration Area License) contradicted these remarks.</p> <p>The Slovak Republic has limited the temporal scope of this Request to the first instance when Minister Sólymos made one of these statements to the MoE's inclusion of the Preliminary EIA requirement in the Svidník Exploration Area License.</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

⁹⁴ Memorial, ¶¶ 164, 175, 177, 180.

⁹⁵ Memorial, ¶ 184(2).

⁹⁶ Memorial, ¶ 193(2).

Document Request No.	36
Identification of documents or category of documents requested	<p>Documents regarding Discovery’s decision to submit Preliminary EIA applications, including, but not limited to, internal communications within Discovery, communications between the JV Partners, communications with third-party investors (e.g., Akard), internal memoranda, and any other non-privileged communications between Discovery, the JV Partners, and third parties, such as Discovery’s public relations advisor.</p> <p>Time Period: 1 January 2017 to end of April 2017</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are <i>prima facie</i> relevant and material to this case.</p> <p>As this Tribunal knows, Discovery agreed with the local activists to submit Preliminary EIA applications for each of its three planned wells.⁹⁷ According to Discovery, various representations were made by the activists about their participation in this process, and Discovery has also made various accusations against the State that the Full EIA orders, issued after the Preliminary EIA applications, contradicted specific statements made to Discovery.</p> <p>It is reasonable to assume that Discovery extensively discussed its decision to submit these Preliminary EIA applications with the JV Partners, with its third-party investors, and with the public relations firm(s) helping it. Those communications will evidence what Discovery understood about the Preliminary EIAs, what it expected to occur following those applications, and evidence whatever assurances or statements it claimed to have received about how its Preliminary EIA applications would be handled.</p> <p>The Slovak Republic has limited the temporal scope of this Request to early 2017 (when Discovery claims it began considering this option after meeting with activists) to the end of April 2017, given that Discovery reached agreement with the activists in April 2017.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁹⁷ Counter-Memorial, ¶¶ 187-192.

Document Request No.	37
Identification of documents or category of documents requested	<p>Documents evidencing discussions between any members, directors, employees and/or advisors of Discovery, AOG, or JV Partners, concerning AOG’s decision not to appeal two EIA Decisions, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions.</p> <p>Time Period: 2 August 2017 to March 2018</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>Once AOG was ordered to undergo Full EIAs for its planned wells, it chose to appeal some of these decisions, but not all. Specifically, AOG decided not to appeal the Krivá Ol’ka EIA Decision and the Smilno EIA Decision, ie, two out of the three decisions imposing a Full EIA.⁹⁸</p> <p>Mr. Fraser now testifies that AOG “<i>could have filed an appeal against [Smilno EIA Decision], but our sense was that there was no chance that an appeal would get a hearing that was any fairer than that for the original application.</i>”⁹⁹ The Slovak Republic already explained that Mr. Fraser’s testimony and justification is implausible because when AOG appealed the Ruská Poruba EIA Decision, the District Office in Prešov decided in AOG’s favor and quashed that decision.¹⁰⁰</p> <p>The requested documents are relevant and material to this case. They are relevant to issues of liability, causation, and quantum. While AOG had a clear avenue to appeal these decisions (and was even successful in one of those appeals), it made the decision not to exercise its rights. The decision not to appeal must have been considered by the JV Partners, discussed in meetings, or addressed in correspondence among all stakeholders, including third-party investors like Akard.</p> <p>The Slovak Republic has narrowed the temporal scope of this Request from the date AOG was ordered to undergo its first Full EIA for Smilno until March 2018, when JKX decided to withdraw from the project.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

⁹⁸ Counter-Memorial, ¶¶ 204-209.

⁹⁹ Fraser WS, ¶ 98.

¹⁰⁰ Counter-Memorial, ¶¶ 204-209.

F. End of Discovery’s tenure in the Slovak Republic

Document Request No.	38
Identification of documents or category of documents requested	Documents evidencing discussions between members, directors, employees and/or advisors of Discovery, AOG, or among JV Partners, concerning JKX’s and Romgaz’s decisions to withdraw from the project and the reasons for the withdrawal, including, but not limited to, minutes from meetings, analyses produced, and/or records of decisions.
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery alleges that “<i>against the background of the Slovak Republic’s conduct including the decision to order a full EIA, JKX informed AOG and Romgaz that it had decided to relinquish its exploration interests in Slovakia.</i>”¹⁰¹ Documents put forward by Discovery, however, suggest that JKX’s decision to withdraw from the Slovak Republic were part of wider efforts to dispose of its nonperforming assets.¹⁰²</p> <p>In fact, as the Slovak Republic explained, neither email from JKX introduced by Discovery suggests that JKX’s decision to withdraw or sell its assets in the Slovak Republic was caused by the State’s treatment of AOG.¹⁰³ And apart from Romgaz’s notice to Discovery that it was withdrawing, there are limited documents on the record leading up to that decision.</p> <p>The requested documents are relevant and material to liability, causation, and quantum. For instance, Discovery assumes in its but-for scenario that “<i>JKX and Romgaz would not have withdrawn from the project had drilling been able to proceed as it ought to have done. This assumption is based on the fact that both JKX and Romgaz expressly withdrew because of the delays experienced and opposition encountered.</i>”¹⁰⁴ That assumption affects both causation (because JKX and Romgaz were needed for their financial support of the project) and quantum—again because JKX’s and Romgaz’s financial contributions were funds that Discovery would have needed. The requested documents are likely to reveal the full discussions among the JV Partners as to why JKC and Romgaz left—such as the confidence these partners had in the overall prospectivity of the Exploration Areas Licenses, which was extremely low, as explained in the SLR Report.¹⁰⁵</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹⁰¹ Memorial, ¶ 188.

¹⁰² Email from Romgaz re JKX departure dated 22 February 2018, C-185.

¹⁰³ Counter-Memorial, ¶ 214.

¹⁰⁴ Memorial, ¶ 298.

¹⁰⁵ SLR Report, ¶ 9.

G. Discovery’s financing arrangements

Document Request No.	39
Identification of documents or category of documents requested	Mr. Lewis’ tax returns from 2013 until 2021.
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to causation and quantum.</p> <p>One of Discovery’s key allegations regarding its financial capabilities is that Mr. Lewis could fund part of the initial drilling program with his own funds.</p> <p>However, conflicting information about Mr. Lewis’ finances appears throughout the record. Mr. Fraser claims that Mr. Lewis had “<i>sufficient resources to fund at least a further four wells.</i>”¹⁰⁶ But Mr. Lewis claims that he “<i>had sufficient funds of [his] own to cover Discovery’s 50% share of the cost of drilling the first three wells...</i>”¹⁰⁷ Mr. Howard then echoes Mr. Fraser’s witness statement and states that “<i>Michael Lewis notes that he would have been able to fund Discovery’s share of at least four further wells from his own resources...</i>”¹⁰⁸</p> <p>Discovery’s ability to fund its project is not only a relevant and material aspect to causation, but it is also relevant and material to the suitability of a DCF model. As explained throughout the Slovak Republic’s Counter-Memorial, tribunals require an entity to show that it could have financed its project as one of the many criteria to justify a DCF valuation on a non-operational asset.¹⁰⁹ Having made Mr. Lewis’ financial capabilities a key component to its case, Discovery must allow the Slovak Republic to test those allegations.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p><i>First</i>, there is no conflicting information. Slovakia has selectively quoted from Mr Lewis’ witness statement in its attempt to justify this request. Mr Lewis’ evidence is <u>not</u> that he <i>only</i> had enough funds of his own to cover the costs of 50% of the first three wells. Rather, he confirmed that Discovery could pay its 50% share of those costs (the other 50% falling to the JV Partners) as he had sufficient funds to cover them.</p> <p><i>Second</i>, as Slovakia and its counsel will no doubt be aware, there is no declaration of assets in a US tax return (Mr Lewis is only tax resident in the US). Instead, form 1040 (US individual income tax return) requires the taxpayer to record their income, tax credits and payments.¹¹⁰ As such, Mr Lewis’ tax returns from 2013 to 2021 will not provide the financial information that Slovakia alleges it is seeking concerning his ability to fund a fourth well. Indeed, the request suggests that Slovakia has an ulterior motive in seeking such information. For this reason, this request is irrelevant for the case and immaterial to its outcome. It is a fishing expedition.</p>
Reply to objections	<p>The Slovak Republic maintains its request and seeks an order from this Tribunal ordering Discovery to produce the requested documents.</p> <p>Discovery’s baseless allegation that an ulterior motive exists for this Request is unsubstantiated and inflammatory. It is a <i>fact</i> that Discovery, its witnesses, and its</p>

¹⁰⁶ Fraser WS, ¶ 15.

¹⁰⁷ Lewis WS, ¶ 34.

¹⁰⁸ Howard ER, ¶ 277.

¹⁰⁹ Counter-Memorial, ¶ 467.

¹¹⁰ See <https://www.irs.gov/pub/irs-pdf/f1040.pdf>

	<p>experts, all claim that Discovery’s project could have been financed (and thus advanced) because Mr. Lewis had enough <i>personal</i> funds to cover part of the initial drilling program:</p> <ul style="list-style-type: none"> • Michael Lewis witness statement: “<i>At the outset, I had sufficient funds of my own to cover Discovery’s 50% share of the cost of drilling the first three wells referred to above with the remaining 50% share of the costs of the first three wells being met by JKX and Romgaz who each held a 25% interest.</i>”¹¹¹ • Alexander Fraser witness statement: “<i>Mr. Lewis had already informed me that while he did have sufficient financial resources to continue funding Discovery’s share of the cost of an initial three-well drilling program in Slovakia, his preference was to share the financial risk and reward with third party investors.</i>”¹¹² • Howard Expert Report: “<i>In this regard, Michael Lewis notes that he would have been able to fund Discovery’s share of at least four further wells from his own resources should it be required, making a total of seven exploration wells.</i>”¹¹³ <p>This last citation is particularly important. Mr. Howard uses Mr. Lewis’ (alleged) ability to finance these wells to calculate the alleged “success rate” for these initial wells.¹¹⁴ In other words, Mr. Lewis’ financial capabilities are critical to causation and quantum on Discovery’s own case as set forth in its Memorial (and supporting materials).</p> <p>In other words, Discovery’s case relies on Mr. Lewis’ personal funds, and his ability to allegedly co-finance not just a fourth well as Discovery mistakenly claims, but <i>all</i> of these initial wells. It is not open to Discovery, and its fact and expert witnesses, to advance hearsay speculation about Mr. Lewis’ financial capabilities. Having made such speculation, however, Discovery must reveal the reliance documents that corroborate (or not) such statements.</p> <p>Accordingly, the Slovak Republic maintains its request and seeks Mr. Lewis’ tax returns for years 2013-2021.</p> <p>Updated and alternative request: If the Tribunal is not inclined to grant the Slovak Republic’s request for Mr. Lewis’ tax returns, then the Slovak Republic requests annual statements from Mr. Lewis’ banking and investment accounts from 2013-2018. The Slovak Republic is content to restrict access to these documents to counsel and its quantum/technical experts only, and to take all necessary precautions to protect any and all confidential information contained in documents produced.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>As regards the initial request for Mr. Lewis’ tax returns from 2013 until 2021, the Respondent has not rebutted the Claimant’s explanation that there is “no declaration of assets in a US tax return”, only a declaration of income, tax credits and payments.</p> <p>As regards the updated and alternative request for annual statements from Mr. Lewis’ banking and investment accounts from 2013-2018, this is a new and belated request to which the Claimant has not been able to respond.</p>

¹¹¹ Lewis WS, ¶ 34.
¹¹² Fraser WS, ¶ 12.
¹¹³ Howard ER, ¶ 277 (emphasis added).
¹¹⁴ Howard ER, ¶¶ 272-277.

Document Request No.	40
Identification of documents or category of documents requested	<ul style="list-style-type: none"> a) The initial investment agreement between Akard and Discovery Global LLC; b) Any additional financing agreements entered into between Akard and Discovery; and c) All correspondence between Akard and Discovery about Akard’s “default” on its funding obligations.
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to jurisdiction, causation, and quantum.</p> <p>According to Discovery it entered into an initial investment agreement with Akard for the “<i>cost of drilling the first three wells on the Licences.</i>”¹¹⁵ This agreement anticipated Discovery and Akard creating a new company, which would be owned 50/50 between Discovery and Akard, whereby Akard would share in AOG’s profits in return for funding.¹¹⁶ Akard therefore appears to be a beneficial owner of the claims in this arbitration—something that would affect this Tribunal’s jurisdiction.</p> <p>The initial investment agreement is not on the record, despite Mr. Fraser and Discovery referencing it.¹¹⁷ Moreover, Mr. Howard’s quantum valuation (<i>i</i>) assumes that the Akard agreement would have remained in place but for the Slovak Republic’s alleged breaches¹¹⁸ and (<i>ii</i>) is calculated <i>net</i> of apparent financial obligations still owed to Akard.¹¹⁹ Without seeing the actual agreement (which indisputably exists), the Slovak Republic cannot assess Mr. Fraser’s and Discovery’s allegations regarding its contents. Nor can the Slovak Republic fully respond to Mr. Howard’s decision to calculate damages net of amounts owed to Akard.</p> <p>Next, as the CRA Report explains, the Akard agreement’s contents are relevant and material to the valuation of Discovery’s project. Given the 50/50 ownership structure and the debt Discovery allegedly owes Akard (which encumbers the overall asset), CRA opines that Discovery’s project may have a fair market value of USD 0.¹²⁰ But without seeing the contents of the Akard agreement, CRA cannot form a definitive conclusion.</p> <p>Finally, for sub request (c), Discovery alleges that Akard defaulted on its funding obligations because of alleged delays caused by the Slovak Republic, and had these delays not occurred, Akard would have remained in the project.¹²¹ The only support for this allegation is Mr. Fraser’s testimony and Discovery’s allegations in its Memorial.¹²² Given the importance of the Akard agreement to the project (<i>e.g.</i> Mr. Howard being instructed to assume it would have remained in place so Discovery could fund its project),¹²³ it is reasonable to assume that Akard and Discovery discussed Akard’s withdrawal from the project, and thus reasonable to assume that documents memorializing these discussions exist.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery rejects Slovakia’s assertion that the requested documents are relevant and material to jurisdiction. Slovakia has not pleaded any jurisdictional objection in the Counter-Memorial with respect to any agreements concluded with Akard. It would be too late for Slovakia to raise any fresh jurisdictional objection in its Rejoinder.</p> <p>Without prejudice to the above, Discovery accepts that the requested documents are relevant and material to quantum (which is the alternative justification put forward by Slovakia in its request). Accordingly, Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p> <p>As the information within these documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that such documents will be made available only to its external legal team (Squire Patton Boggs) and technical experts (SLR), and that they will not be disseminated to the Respondent itself, that any reference made to them in any future submissions will be kept</p>

	confidential, and that no use will be made of them outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. Discovery rightly concedes that these materials are relevant and material. However, it advances certain limited objections that are erroneous and should be swept aside.</p> <p><i>First</i>, it is incorrect for Discovery to claim that the Slovak Republic did not plead any jurisdictional objections related to Akard. The Slovak Republic included this Akard arrangement in its objections to jurisdiction <i>ratione personae</i>, where the Slovak Republic explained that third parties—and not Discovery—were financing this project.¹²⁴ Akard is potentially one such third party on Discovery’s case. As such, the matter has been timely raised, and production is fully appropriate. Even <i>arguendo</i> if Discovery is right, this Tribunal is obliged to establish its jurisdiction, including by assessing possible defects <i>sua sponte</i>—especially where, as here, the respondent party did not have the opportunity to request the materials in question at an earlier stage of the arbitration.¹²⁵ If Discovery’s contention is that any objections about Akard’s involvement are untimely, as they have not yet been raised—a contention that the Slovak Republic rejects—then Discovery should file an application to exclude such objections when (in its view) they are ultimately raised. It is not appropriate to litigate the issue of admissibility of jurisdictional objections, and their timeliness, in a Redfern Schedule.</p> <p>Next, the Slovak Republic does not accept Discovery’s proposal that the Slovak Republic should be precluded from seeing these documents. Limiting documents to counsel is only rarely justified, as it would deprive a party to an arbitration from seeing evidence marshalled by the other party (and from consulting with its counsel about those documents). Discovery has not provided any authority for this aberrant demand. The Slovak Republic is not a commercial entity competing with Discovery, and obviously cannot use any alleged “valuable information” for its own gain as a commercial competitor might. In any event, Akard defaulted on its obligations, and the agreement is presumably no longer in force. There is no justifiable explanation for the extreme position that the Slovak Republic should not be permitted to receive these documents, which appear to be of historical relevance (but lacking present legal validity).</p> <p>Accordingly, the Slovak Republic (<i>i</i>) accepts that Discovery will produce these documents, (<i>ii</i>) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (<i>iii</i>) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal confirming that the Slovak Republic is permitted to receive the documents Discovery has agreed to produce.</p>

115 Fraser WS, ¶ 15.
116 Fraser WS, ¶ 15.
117 Fraser WS, ¶ 15; Memorial, ¶¶ 298, 324, 325-327.
118 Howard ER, ¶ 268.
119 Howard ER, ¶ 268.
120 CRA Report, ¶ 51, fn. 59.
121 Fraser WS, ¶¶ 15, 104; Memorial, ¶¶ 289, 324.
122 Fraser WS, ¶¶ 15, 104; Memorial, ¶¶ 289, 324.
123 Howard ER, ¶¶ 268-269.
124 Counter-Memorial, ¶ 226.
125 *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 364, **RL-110**: “pursuant to Article 41 of the ICSID Convention, tribunals must address jurisdictional objections irrespective of when they were raised”.

Decision of the Tribunal	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes that the Claimant agrees to conduct reasonable and proportionate searches for, and produce any relevant responsive document. The Tribunal further notes that the Respondent undertakes that any information concerning responsive documents in its future submissions will be kept confidential in accordance with Procedural Order No. 2 and not be used outside of this arbitration. In these circumstances, the Tribunal rejects the Claimant’s request that the information contained in the responsive documents only be made available to the Respondent’s external legal team and its technical experts from SLR. For the avoidance of doubt, it adds with reference to Procedural Order No. 2 that any information concerning responsive documents shall be treated as confidential by all participants in the arbitration and shall not be published.</p>
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Document Request No.	41
Identification of documents or category of documents requested	<p>a) The letter of intent between Gulf Shores and Discovery dated 24 November 2014;</p> <p>b) The Farm-In Agreement between Gulf Shores and Discovery dated 19 March 2015;</p> <p>c) Any additional financing agreements between Gulf Shores and Discovery; and</p> <p>d) All communications between Gulf Shores and Discovery concerning or relating to Gulf Shores' inability to complete its fundraising and its subsequent withdrawal from the project</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to causation and quantum.</p> <p>Like with the Akard agreement, Discovery alleges that it entered into a letter of intent and a Farm-In Agreement with Gulf Shores to fund its project in the Slovak Republic. According to Mr. Fraser, this agreement would finance “<i>an initial two-well program</i>” and it also contemplated additional 3D seismic survey work and further well drilling.¹²⁶ But according to Mr. Fraser, “<i>a combination of the weak oil price environment and the issues with local activists [] resulted in Gulf Shores being unable to complete its fundraising, and it subsequently withdrew.</i>”¹²⁷</p> <p>Neither the letter of intent nor the Farm-In Agreement are on the record, despite Messrs. Fraser and Lewis citing to these documents. The Slovak Republic cannot independently assess what conditions or obligations were attached to this funding that might be the actual reason why Gulf Shores withdrew from the project.</p> <p>Similarly, given the importance of Gulf Shores' financing to the initial well-drilling program,¹²⁸ it is reasonable to assume that Gulf Shores' decision to withdraw from the project (and the reasons for that withdrawal) would have been discussed by Discovery and among the JV Partners and that documents memorializing this withdrawal exist.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p> <p>As the information within these documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that such documents will be made available only to its external legal team (Squire Patton Boggs) and technical experts (SLR), and that they will not be disseminated to the Respondent itself, that any reference made to them in any future submissions will be kept confidential, and that no use will be made of them outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

¹²⁶ Fraser WS, ¶ 14.

¹²⁷ Fraser WS, ¶ 14.

¹²⁸ Lewis WS, ¶ 35 (“*After Gulf Shores withdrew, and in light of the more challenging situation on the ground in Slovakia, I felt that it was important to secure a replacement investor, for reasons of risk-sharing.*”).

<p>Reply to objections</p>	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>Discovery rightly concedes that these materials are relevant and material. However, it advances certain limited objections that are erroneous and should be swept aside.</p> <p>The Slovak Republic cannot accept Discovery’s unreasoned proposal that the Slovak Republic should not be entitled to see these documents. As stated in the reply to Request 40, above, it is rarely justified to preclude a party to an arbitration from seeing the evidence marshalled against it, on which a potential award might be based. Discovery has identified no authorities supporting its proposed invasion on the Slovak Republic’s due process rights and its rights to consult with its counsel.</p> <p>In any event, the documents in question do not appear to be in force today. Gulf Shores could not complete its obligations in the Gulf Shore agreement, and it never successfully raised the funds Discovery required. The business relationship no longer exists, and the commercial “value” of this information, now, is not apparent. There is no justification for the extreme position of restricting the Slovak Republic’s access to these documents.</p> <p>Accordingly, the Slovak Republic (<i>i</i>) accepts that Discovery will produce these documents, (<i>ii</i>) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (<i>iii</i>) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal denying Discovery’s request to preclude the Slovak Republic from receiving the documents Discovery has agreed to produce.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>The Tribunal notes that the Claimant agrees to conduct reasonable and proportionate searches for, and produce any relevant responsive document. The Tribunal further notes that the Respondent undertakes that any information concerning responsive documents in its future submissions will be kept confidential in accordance with Procedural Order No. 2 and not be used outside of this arbitration. In these circumstances, the Tribunal rejects the Claimant’s request that the information contained in the responsive documents only be made available to the Respondent’s external legal team and its technical experts from SLR. For the avoidance of doubt, it adds with reference to Procedural Order No. 2 that any information concerning responsive documents shall be treated as confidential by all participants in the arbitration and shall not be published.</p>

Document Request No.	42
Identification of documents or category of documents requested	<ul style="list-style-type: none"> a) NewCo’s annual financial statements (including balance sheet) since inception; b) NewCo’s most recent financial statements (including balance sheet) even if not year-end; and c) NewCo’s shareholder agreement/articles of association (or other corporate form equivalent).
Relevance and materiality according to requesting party, including reference to submissions	<p>When the Slovak Republic refers to “NewCo”, it is referring to the company that was expected to be created through the Discovery/Akard partnership.¹²⁹ Although the Slovak Republic cannot determine from the record if this company was formed (which the Akard agreement contemplates), it nevertheless seeks NewCo’s financial statements should the company exist.</p> <p>As the CRA Report explains, these documents are relevant and material to this case. NewCo would be an owner of this project and given that Discovery calculates its damages <i>net</i> of amounts owed to Akard,¹³⁰ it is reasonable to assume that at least some parts of the Akard agreement have been fulfilled—including the creation of this company. NewCo’s debt ultimately affects the fair market value of Discovery’s project for the reasons explained in the CRA Report.¹³¹</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery confirms that the so called NewCo has never been incorporated and, as such, Discovery does not have any relevant responsive documents in its possession, custody or control.
Reply to objections	<p>The Slovak Republic accepts that Discovery has no responsive documents for this Request.</p> <p>No ordered required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹²⁹ CRA Report, ¶ 51, fn. 59.

¹³⁰ Howard ER, ¶ 268.

¹³¹ CRA Report, ¶ 51, fn. 59.

Document Request No.	43
Identification of documents or category of documents requested	Documents evidencing any “encumbrances” on Discovery’s shareholding in AOG (<i>e.g.</i> , liens, deeds of trust, etc).
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to issues of jurisdiction and quantum. The record demonstrates that Discovery employed (or at least planned to) various ways of structuring its investment to seek funds from third parties. One of these was the contemplated Discovery/Akard company referred to in Request 40. In fact, and as explained in that same Request, Discovery still owes money to Akard and calculates its alleged damages in this case <i>net</i> of those amounts.</p> <p>It is reasonable to assume that Discovery may have concluded similar agreements with other third parties. This Request seeks documents evidencing this. The documents are relevant to jurisdiction and quantum as they may demonstrate the existence of one or more beneficial owners.</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery confirms that there are no “encumbrances” on its shareholding on AOG and as such it does not have any relevant responsive documents in its possession, custody or control.
Reply to objections	<p>The Slovak Republic accepts that Discovery has no responsive documents to this Request.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

Document Request No.	44
Identification of documents or category of documents requested	Discovery’s / AOG’s agreement with Clermont Energy Partners LLP along with all correspondence between Discovery/AOG and Clermont Energy Partners LLP concerning Discovery’s fundraising efforts.
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to issues of causation and quantum.</p> <p>According to Mr. Fraser, Discovery engaged Clermont Energy Partners LLP “to assist with [Discovery’s] capital raising exercise.”¹³² As explained in the Slovak Republic’s Counter-Memorial, this “capital raising exercise” failed at numerous instances, and Discovery ultimately ran out of funds to continue with its project.</p> <p>The requested documents will reveal key questions about Discovery’s financial health and needs. For example, the documents will evidence how much external financing Discovery needed, how much Discovery expected its project to cost—short and long term—and whether Discovery even had the capacity to finance the project irrespective of this “capital raising exercise.” All of this is relevant and material to causation and quantum in this case.</p> <p>The Slovak Republic reasonably believes the documents exists, as Mr. Fraser expressly mentions Discovery engaging Clermont Energy Partners LLP.</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹³² Fraser WS, ¶ 12.

Document Request No.	45
Identification of documents or category of documents requested	Discovery’s / AOG’s correspondence with all other potential investors, including but not limited to, e-mail correspondence, records of meetings or calls, letters, and meeting minutes. Time Period: March 2014 until the end of 2015
Relevance and materiality according to requesting party, including reference to submissions	The requested documents are relevant and material to issues of causation and quantum. According to Mr. Fraser, sometime in 2014 and 2015, Discovery “ <i>maintained a dialogue with a range of potential investors, in both London and the US.</i> ” ¹³³ This Request seeks documents evidencing these conversations and their content. The requested documents will likely show how Discovery was marketing its project and what the overall market appetite was for it. This relates to both causation and quantum and will evidence why Discovery routinely failed to secure the outside investment that it needed. The Slovak Republic reasonably believes the requested documents exist because Mr. Fraser refers to such discussions taking place. Given the unknown dates of these conversations, the Slovak Republic has narrowed the temporal scope of this Request to the month and year when Discovery purchased AOG to the end of 2015.
Responses and/or Objections by disputing party to production of requested documents	Discovery objects to this document request. Discovery notes that requests 45 and 46 are essentially the same, split in two time periods. As such, Discovery addresses both requests together. Both requests are overly broad, speculative, and amount to a fishing expedition. Slovakia has failed to identify a narrow and specific category of documents, as required by Article 3.3(a) of the IBA Rules. Slovakia is in effect seeking production of <u>all</u> documents evidencing <u>all</u> communications with <u>all</u> potential investors over a three-year period, without any attempt to narrow this request. Slovakia has failed to identify a single, specific event (even as an example) that would require confirmation against documents not already in the record. This is impermissible and is precisely the type of request that the IBA Rules are designed to prevent.
Reply to objections	The Slovak Republic maintains its request and seeks an order from the Tribunal compelling Discovery to produce the requested documents. There is nothing speculative about this Request. Mr. Fraser admits that Discovery “ <i>maintained a dialogue with a range of potential investors, in both London and the US.</i> ” ¹³⁴ That is proof positive that conversations with investors occurred, and emails or other documentary evidence are likely to exist. Discovery relies on Mr. Fraser’s testimony to establish, among other things, the financial wherewithal to carry out the would-be investment—something that the Slovak Republic contests (and that goes to causation and quantum). Discovery must produce the reliance documents for the testimony and arguments that it advances. As for the indicative time period, it is disingenuous for Discovery to combine this Request with the one immediately below to claim that the Slovak Republic seeks documents over a three-year period. These are different requests and, importantly, occur at two materially different moments during the project. This Request covers a time frame earlier in Discovery’s tenure in the Slovak Republic whereas the request below seeks documents towards the end of Discovery’s project.

¹³³ Fraser WS, ¶ 15.
¹³⁴ Fraser WS, ¶ 15.

Document Request No.	45
	<p>The conversations with investors at both points in time will be different—as they must be. On Discovery’s own case, it allegedly brought value to the Exploration Area Licenses it acquired and improved the quality of data underlying its technical and financial analyses. This means that conversations with investors before that data gathering and processing occurred will be (or should be) materially different than conversations with investors after. Each request must be judged on its own merits, as they seek different sets of documents from (potentially) different pools of prospective investors.</p> <p>In any event, the time period in question comes from Discovery’s own submissions and evidence. Namely, Mr. Fraser’s witness statement claims that discussions occurred in 2014 and 2015. The Slovak Republic therefore maintains its time period of March 2014 until the end of 2015 because it is based on Mr. Fraser’s own witness testimony as to the general time frame when these conversations occurred. Given that the subject matter is narrow, as presumably well-known already to Discovery and its witnesses, there can be no argument that it would be a burden on Discovery to find these communications.</p> <p>Finally, the Slovak Republic notes that Discovery has not objected to this Request on grounds of relevancy or materiality. Discovery has therefore conceded that responsive documents are both relevant and material to this case, thus confirming that Discovery should produce them.</p>
Decision of the Tribunal	<p>DENIED</p> <p>The request is overly broad.</p>

Document Request No.	46
Identification of documents or category of documents requested	<p>Documents evidencing conversations or meetings with potential investors in 2017 and 2018, including but not limited to, correspondence, meeting minutes, meeting presentations, offers for financing, draft contracts, internal correspondence at Discovery/AOG regarding these investors, and external correspondence with JKK and Romgaz regarding the same.</p> <p>Time Period: June 2017 until June 2018</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>According to Mr. Fraser, Discovery “<i>held discussions with a number of potential investors from the oil and gas sector in the second half of 2017 and early 2018.</i>”¹³⁵ He further claims that “[w]hile oil and gas investors easily understood the untapped potential of the Carpathian region, local issues involving a track record of activist opposition and an obstructive attitude from the authorities, were a major disincentive.”¹³⁶</p> <p>There are no documents on the record evidencing these discussions with investors. The requested documents are relevant and material to issues of causation and quantum. As the Slovak Republic explained in its Counter-Memorial, Discovery routinely failed to secure financing for its project (both at the beginning of its project and at the end), and this was one of the many reasons why its project failed.</p> <p>Equally, the requested documents will evidence how Discovery was marketing its asset, what prices or financing arrangements were being discussed (relevant to fair market value) and will support or deny Mr. Fraser’s claims regarding why funding could not be secured.</p> <p>Given that Discovery claims these discussions occurred in the second half of 2017 into the early part of 2018, the Slovak Republic has narrowed the temporal scope of this Request from June 2017 until one year later.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this document request.</p> <p>See Discovery’s response accompanying request 45 above for the justification.</p>
Reply to objections	<p>The Slovak Republic maintains this Request and seeks an order from this Tribunal compelling Discovery to produce the requested documents.</p> <p>Again, there is nothing speculative about this Request. Mr. Fraser admits that conversations with investors occurred “<i>in the second half of 2017 and early 2018.</i>”¹³⁷ It is reasonable to believe that documents exist recording these conversations, if they occurred and were anything more than purely speculative. This Request seeks those documents.</p> <p>The Slovak Republic incorporates its additional reasons to maintain this Request from the Request immediately above but makes one additional point. These conversations with investors occurred after <i>all</i> of Discovery’s alleged contributions to the Exploration Area Licenses were made. Comparing the valuations put forth by disinterested third parties relates to quantum. These conversations will provide a contemporaneous view of how the market perceived, and valued, Discovery’s alleged asset.</p>

¹³⁵ Fraser WS, ¶ 105.

¹³⁶ Fraser WS, ¶ 105.

¹³⁷ Fraser WS, ¶ 105.

Decision of the Tribunal	GRANTED IN PART The request is overly broad and the Tribunal limits production to correspondence, meeting minutes, meeting presentations, offers for financing, draft contracts, all with potential investors, to the exclusion of internal correspondence at Discovery/AOG, and external correspondence with JKK and Romgaz.
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Document Request No.	47
Identification of documents or category of documents requested	<p>a) The “sale flier” and proposed marketing materials that JKX sent to Discovery/AOG and Romgaz; and</p> <p>b) Any correspondence between JKX and Discovery regarding JKX’s attempts to sell its interest in the project.</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>When JKX relinquished its interest in the project, it notified Discovery/AOG and Romgaz that it was “<i>putting together a ‘sale flier’ and will be contacting the industry later this week.</i>”¹³⁸ JKX then explained that it would “<i>send a copy of the proposed materials to you</i>” before sending to the market.¹³⁹</p> <p>Shortly thereafter, JKX informed Discovery that it was not “<i>going to achieve a sale.</i>”¹⁴⁰</p> <p>The documents in subpart (a) are relevant and material to quantum. Specifically, they will show how JKX marketed its interest in the project to willing buyers which, in turn, will allow CRA to assess these materials and update or edit their fair market value calculations. The requested materials are likely to include an explanation of the work done (ie, value added) to the project, the then-current state of work, and even estimates as to the financial contributions needed to bring the project to fruition.</p> <p>The documents in subpart (b) are equally relevant. JKX likely explained its discussions with would-be buyers, how those buyers viewed the project, and why those buyers did not purchase JKX’s interest.</p> <p>All of these bear on causation and quantum related issues in this arbitration.</p> <p>The requested documents are reasonably believed to exist given JKX’s explicit reference to them in C-185.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹³⁸ Email from Romgaz re JKX departure dated 22 February 2018, **C-185**.

¹³⁹ Email from Romgaz re JKX departure dated 22 February 2018, **C-185**.

¹⁴⁰ Email from JKX re. withdrawal, 16 March 2018, **C-187**.

Document Request No.	48
Identification of documents or category of documents requested	Any other financing agreement or arrangement concluded by Discovery/AOG with an investor for the purposes of funding its project in Slovakia.
Relevance and materiality according to requesting party, including reference to submissions	<p>While Discovery refers to outside investors like Akard and Gulf Shores explicitly, the Slovak Republic is unaware if there are other investors in the project, but reasonably believes this to be the case. Regarding Discovery’s third attempt to access the Smilno Site, Mr. Fraser notes that Discovery was “<i>under pressure from partners and investors and felt that we had no choice but to attempt to resume operations.</i>”¹⁴¹</p> <p>The reference to “investors” leads the Slovak Republic to believe that additional financing or investment agreements were concluded. This Request seeks those agreements. For the avoidance of doubt, to the extent that Discovery has concluded financing agreements with Discovery’s own affiliate companies (<i>e.g.</i>, Alpha Exploration), this Request seeks those, too.</p> <p>The documents are relevant and material to this dispute. Any financing agreements may reveal the existence of beneficial ownership relationships, which would affect this Tribunal’s jurisdiction. The documents are equally relevant to matters of quantum. As already explained in the CRA Report, the Akard agreement may result in the fair market value of Discovery’s asset being USD 0.¹⁴² Additional financing agreements will therefore bear on CRA’s conclusions, too.</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery confirms that no other financing agreements or arrangements were concluded and as such it does not have relevant responsive documents in its possession, custody or control.
Reply to objections	<p>The Slovak Republic accepts that Discovery has no responsive documents to this Request.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹⁴¹ Fraser WS, ¶ 69.

¹⁴² CRA Report, fn. 59.

Document Request No.	49
Identification of documents or category of documents requested	Any agreements between Discovery and Mr. Lewis, witnesses, and/or other parties for the proceeds of any award issued in this arbitration.
Relevance and materiality according to requesting party, including reference to submissions	The requested documents are relevant and material to issues of jurisdiction and quantum. Specifically, if any other entity shares in the proceeds of any award in this arbitration, it would be a beneficial owner of the claims in these proceedings. The Slovak Republic reasonably believes these documents exist. Discovery already calculates its damages net of amounts owed to Akard, and it engaged in various fundraising efforts for its project in the Slovak Republic and for the pursuit of this arbitration (e.g., third-party funding).
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery objects to this request. Slovakia attempts to justify its request on the basis that the documents requested are relevant to issues of jurisdiction and quantum. Neither justification has any merit.</p> <p><i>First</i>, as to quantum, Discovery confirms that there is no agreement in place with any third party which would affect the quantum of its claim, other than that with Akard which has already been set out in Discovery’s Memorial (and which is, in any event, the subject of separate request 40 above, to which Discovery has agreed). As such, Discovery has no responsive documents that would be relevant to the case on quantum.</p> <p><i>Second</i>, as to jurisdiction, Slovakia seeks to justify its request on the basis that it “<i>if any other entity shares in the proceeds of any award in this arbitration, it would be a beneficial owner of the claims in these proceedings</i>”. However, Slovakia has not pleaded any such jurisdictional objection in its Counter-Memorial. It would be too late for Slovakia to raise any fresh jurisdictional objection in its Rejoinder. Indeed, there is no reference at all to “<i>beneficial ownership</i>” in the Counter-Memorial. This is unsurprising – the determination of whether a claimant is an “<i>investor</i>” or has made an “<i>investment</i>” within the terms of the relevant BIT are determined according to the situation <u>prior</u> to any dispute arising. By definition, any agreement with any party to share in any proceeds of a dispute can only have been concluded after that dispute has arisen, and so can have no impact on the question of jurisdiction. Accordingly, Slovakia has failed to identify how the documents requested are relevant in any way to its case on jurisdiction and material to the outcome of the case.</p> <p>The Tribunal will also recall that Slovakia previously requested a copy of the funding agreement between Discovery and its funder and sought at the time to justify that request on the basis of an unsubstantiated claim that it may affect jurisdiction, to which Discovery objected.¹⁴³ As the Tribunal rightly determined at that time, such a request was premature prior to any jurisdictional objection having been pleaded.¹⁴⁴ Slovakia has now pleaded its jurisdictional objections in its Counter-Memorial. However, no mention is made of any issue of jurisdiction with respect to the funding agreement. Accordingly, Slovakia’s request is neither relevant to the pleaded issues nor material to the outcome of the case. For completeness, Discovery disputes the suggestion that any party who may share in the proceeds of any award is a “<i>beneficial owner</i>” of the claims.¹⁴⁵</p>

¹⁴³ Letter from Squire Patton Boggs dated 4 March 2022; Letter from Signature Litigation dated 18 March 2022; Letter from Squire Patton Boggs dated 29 March 2022; Letter from Signature Litigation dated 5 April 2022.

¹⁴⁴ Tribunal’s decision dated 20 April 2022.

¹⁴⁵ See in this regard Letter from Signature Litigation dated 5 April 2022 at [4.2]-[4.8]. The submissions set out in that letter should be deemed as incorporated by reference into this Redfern Schedule.

	<p>Accordingly, Slovakia has failed to establish that the documents requested are relevant to the case and material to its outcome. The request constitutes a fishing expedition, and an inappropriate attempt to seek confidential and irrelevant information for an ulterior purpose and should not be permitted. In any event, given the novel suggestion (although without any explanation or substantiation) that a party being entitled to a share of any proceeds may affect jurisdiction, it would be inappropriate for any documents of the nature requested (including, eg, the funding agreement), which are highly confidential and contain privileged information, to be produced without Discovery having first had the ability to understand precisely what Slovakia’s alleged argument as to jurisdiction is and the full opportunity to challenge that argument (including Slovakia’s ability to raise any such untimely argument) before any documents should be required to be produced.</p>
<p>Reply to objections</p>	<p>The Slovak Republic maintains its Request and seeks an order from this Tribunal compelling Discovery to produce the requested documents.</p> <p>The Request seeks “[a]ny agreements between Discovery and Mr. Lewis, witnesses, and/or other parties for the proceeds of any award issued in this arbitration.” Discovery reformulates this Request when it offers the confirmation that “there is no agreement in place with any third party which would affect the quantum of its claim, other than that with Akard.” This confirmation is meaningless, as it does not relate to the documents requested. Discovery does not define whether Mr. Lewis is a “third party”. Be that as it may, agreements for the proceeds of any award may exist, but not “affect the quantum”—for instance, where an individual or entity is entitled to a portion of damages awarded at the close of an arbitration. Such an agreement is encompassed by the Slovak Republic’s Request, but not by Discovery’s meaningless “confirm[ation]”.</p> <p>While not expressly styled as a confirmation, Discovery has implicitly confirmed the existence of responsive documents to this Request. That is because, while Discovery claims that there are no additional agreements that could affect quantum, it <i>does not deny</i> the existence of agreements that grant the proceeds of any award in this arbitration to other parties. In other words, Discovery has conceded that responsive documents to this point exist. While at least one is known to exist (the third-party funding agreement), Discovery’s response suggests that additional agreements granting the proceeds of any award to third parties also exist. Such materials are undoubtedly relevant and material, as they relate to a witness’ credibility (to the extent party to such an agreement) and to questions about the true beneficial owner of a claim—which may or may not be covered by the BIT formally invoked by Discovery.</p> <p>To avoid scrutiny of such agreements, whose existence Discovery appears to concede, Discovery instead claims that the Slovak Republic did not raise a jurisdictional objection on this point in its Counter-Memorial, and therefore any objection raised now would be untimely. That is fundamentally incorrect.</p> <p><i>First</i>, the very first opportunity to request any documents is precisely this evidentiary exchange, after the Slovak Republic’s Counter-Memorial. It can hardly be true, as Discovery proposes, that any and all jurisdictional objections are foreclosed <i>before</i> the objecting party can request internal documents from its counterparty. Discovery’s position only makes sense, if at all, if it is limited to objections a party could have advanced earlier but did not.</p> <p><i>Second</i>, in any event, parties are permitted to refine jurisdictional objections as proceedings evolve and new information comes to light. This does not constitute a new objection, but rather further development of existing ones. As explained in the Decision on Annulment in the recent case of <i>Orascom TMT Investments S.à r.l. v. People’s Democratic Republic of Algeria</i>, “the Committee does not consider that these were ‘new’ preliminary objections in a technical sense as the admissibility of [claimant’s] claims had been contested from the very outset of the proceeding. Whereas the factual circumstances as well as the specific legal theories relied upon evolved throughout</p>

	<p><i>the proceeding, the broad legal nature of the objections remained unchanged.</i>¹⁴⁶ Even if Discovery’s characterization of this Request is right (and it is not), the Slovak Republic has made its jurisdictional objections at the appropriate time, and specifically objected to this Tribunal’s jurisdiction <i>ratione personae</i>. To quote the <i>Orascom</i> annulment committee above, it is acceptable for the “<i>factual circumstances</i>” and “<i>specific legal theories relied upon</i>” to “<i>evolve[] throughout the proceeding</i>”, where (as here) the “<i>broad legal nature</i>” of the objection was timely made.</p> <p><i>Third</i>, as already explained, BIT tribunals, like this one, must assure themselves of their jurisdiction, <i>sua sponte</i> if necessary. Thus, one recent ICSID award observed that, “<i>pursuant to Article 41 of the ICSID Convention, tribunals must address jurisdictional objections irrespective of when they were raised.</i>”¹⁴⁷ In that matter, the ICSID tribunal admitted a jurisdictional objection <i>raised at the end of the hearing</i>.</p> <p><i>Fourth</i>, Discovery mischaracterizes the Tribunal’s 20 April 2022 letter, which did <i>not</i> say that the Slovak Republic’s request for documents “<i>was premature prior to any jurisdictional objection having been pleaded.</i>” Rather, the Tribunal said: “<i>This being so, this is not the appropriate time in the procedural calendar agreed by the Parties to seek the production of documents. Indeed, the Parties have agreed on a procedural calendar without bifurcation providing for a document production phase after the first round of written submissions.</i>”¹⁴⁸ This is exactly what the Slovak Republic is doing—seeking documents at this procedural phase, in accordance with the procedural calendar. In any event, it is not appropriate for a Redfern Schedule to debate the admissibility or timelines of claims or jurisdictional objections, still less ones that Discovery claims have not even been made yet. The fact remains that responsive documents to this Request exist, Discovery should produce them, and if it wants to object to the Slovak Republic’s jurisdictional objections based on those documents, it can do so at the appropriate time.</p> <p><i>Fifth</i>, Discovery’s claims about beneficial ownership are simply wrong. Although a Redfern Schedule is not the appropriate stage to address the issue of beneficial ownership, the Slovak Republic briefly responds as follows: the date to assess beneficial ownership is not when the dispute arose—it is when the arbitration commenced. In other words, if an agreement that transfers a part of the award to a third party is concluded <i>before</i> the arbitration is commenced, that transferee may, depending on the terms of the agreement(s), become a beneficial owner of the claim.¹⁴⁹ Depending on the nationality of that third party, this could affect the Tribunal’s jurisdiction <i>ratione personae</i>.</p> <p><i>Finally</i>, whether Discovery has granted Mr. Lewis, Mr. Fraser, or any additional entities a share of any future award in these proceedings is also an issue of credibility.</p> <p>In short, given that documents are now known to exist, the Tribunal should compel Discovery to produce them.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED IN PART AND AS SPECIFIED</p> <p>With respect to the issue of quantum, the Tribunal takes note of the Claimant’s confirmation, which it has no reason to doubt, that “there is no agreement in place with any third party which would affect the quantum of its claim, other than that with Akard”, which it agreed to produce under Request No. 40 above. It also notes the Claimant’s statement that “Discovery has no responsive documents that would be relevant to the case on quantum”. The Tribunal further notes the Respondent’s acknowledgement that “Discovery already calculates its damages net of amounts owed</p>

¹⁴⁶ *Orascom TMT Investments S.à r.l. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Decision on Annulment, 17 September 2020, ¶ 208, **RL-111**.

¹⁴⁷ *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 1 March 2023, ¶ 364, **RL-110**.

¹⁴⁸ Letter from Tribunal to Parties, 20 April 2022 (emphasis added).

¹⁴⁹ J. van Goeler, *Jurisdictional Issues and Third-Party Funding*, p. 228, **RL-007**.

to Akard” and that the Respondent did not raise any arguments related to quantum in its letter of 14 June 2023.

With respect to the issue of jurisdiction, the Respondent’s objections *ratione personae* relate to (i) the passive shareholding of Discovery and its alleged failure to contribute to the investment (paras. 223-231), (ii) Discovery’s alleged lack of activities and assets (paras. 232-234), and (iii) Discovery’s alleged lack of ownership or control until 2020 (paras. 235-238). Specifically, the Respondent’s jurisdictional objection in para. 226 of its Counter-Memorial concerns Discovery’s alleged lack of contribution to the investment, since the project was financed “through external investment from Akard”. The Respondent did not reserve its right to raise a beneficial ownership objection in relation to the third-party funding agreement with 24LF or other agreements “for the proceeds of any award in this arbitration”. The Respondent has not sufficiently explained how obtaining those agreements would affect jurisdiction. In particular, it has not sufficiently explained how the potential entitlement to a portion of the proceeds of any award correlates to beneficially owning a part of the claims.

With respect to the issue of credibility of the Claimant’s witnesses, i.e. Messrs. Smith and Fraser, the Tribunal notes that the Claimant did not state that no agreements for proceeds of any award exist with these individuals, but that it added that any such agreements would be highly confidential and contain privileged information. Subject to the following, such documents appear to be *prima facie* relevant. The Claimants shall state whether any agreements for the proceeds of any award exist with Messrs. Smith and Fraser and, if so, disclose the share of any proceeds from any award those individuals are entitled to, without disclosing the rest of the agreements.

H. Quantum related requests

Document Request No.	50
Identification of documents or category of documents requested	<p>Documents concerning the royalty granted to Aurelian Oil & Gas Limited, its purchase by Alpha Exploration LLC, and its subsequent assignment to Discovery, including, but not limited to, correspondence with Aurelian Oil & Gas Limited and/or San Leon Energy, internal correspondence at Discovery, offer sheets, meeting minutes, and/or negotiation records.</p> <p>Time Period: 1 March 2014 to end of January 2015</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>When Discovery purchased AOG, it granted a royalty to Aurelian Oil & Gas Limited equal to 3.5% “of all the petroleum produced under the licenses, which translated into 7% net of AOG’s 50% share of the petroleum produced under the licenses.”¹⁵⁰</p> <p>Less than one year later, a company called Alpha Exploration LLC—a “company affiliated with Discovery”—purchased the royalty,¹⁵¹ after which Alpha Exploration LLC assigned it to Discovery for nominal consideration of USD 10.¹⁵²</p> <p>The requested documents are relevant and material to issues of jurisdiction and quantum. Regarding the former, the Slovak Republic explained in its Counter-Memorial that the nominal consideration paid for this royalty was emblematic of the lack of active investment by Discovery in Slovakia. The nominal consideration and overall structure of this arrangement merits additional scrutiny to understand how this Tribunal’s jurisdiction may be affected.</p> <p>The requested documents are also relevant and material to quantum. As shown in the CRA Report, the royalty allows CRA to derive a fair market value of Discovery’s project. The requested documents will provide additional background information for CRA to amend or update their fair market value calculations if need be.</p> <p>It is reasonable to presume the documents exist. This royalty was part of various transactions, and the overall deal was likely discussed and negotiated. The Slovak Republic has narrowed the temporal scope of this Request from 1 March 2014 (the month Discovery purchased AOG) to the end of November 2015 (the month when Alpha Exploration LLC assigned it to Discovery).</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.</p>
Reply to objections	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>No order required.</p>
Decision of the Tribunal	NO DECISION REQUIRED

¹⁵⁰ Lewis WS, ¶ 16.

¹⁵¹ Lewis WS, ¶ 16, fn. 5.

¹⁵² Lewis WS, ¶ 16, fn. 5; Assignment of Overriding Royalty Interest, 3 November 2015, C-84.

Document Request No.	51
Identification of documents or category of documents requested	Documents evidencing any financial forecasts, economic analyses (<i>e.g.</i> , discounted cash flow analyses), expected revenues and target profits, and/or similar projected financials created or generated by Discovery/AOG regarding its project in the Slovak Republic. Time Period: January 2014 to end of 2017
Relevance and materiality according to requesting party, including reference to submissions	<p>The requested documents are relevant and material to issues of quantum.</p> <p>Discovery invested minimal amounts in the Slovak Republic and planned three initial wells. Now, however, it claims that its project would have generated over 2 billion dollars and consisted of 52 oil producing wells and 74 gas producing wells.¹⁵³ Discrepancies between what Discovery was reporting at the time and what its experts now say have already been explained by the SLR Report regarding numbers of wells and estimated oil volumes.¹⁵⁴ The requested documents will show that the economic valuation that Discovery has put forward is completely at odds with its own expected financial forecasting.</p> <p>These documents are relevant and material because they will show if, in fact, Discovery was planning the large-scale (and unrealistic) production plan their experts now present, or if they were anticipating a project size substantially different.</p> <p>It is reasonable to believe that the requested documents exist. For example, in October 2017, Discovery presented the project to investors and claimed that they could expect a return on equity of 1,517%.¹⁵⁵ That figure was derived from an “illustrative financial returns” calculation on the last slide of that presentation.¹⁵⁶ Similar financial return calculations like this must have been generated at various points during the project. This Request seeks those.</p>
Responses and/or Objections by disputing party to production of requested documents	Discovery agrees to conduct reasonable and proportionate searches for, and produce, any relevant document responsive to this request, subject to the caveats set out at paragraph 12 above.
Reply to objections	The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production. No order required.
Decision of the Tribunal	NO DECISION REQUIRED

¹⁵³ SLR Report, ¶ 144.

¹⁵⁴ SLR Report, ¶ 64 and Figure 7.

¹⁵⁵ Discovery Global, LLC: Exploration and appraisal in Slovakia, Investor Introduction, October 2017, Slide 30, C-180.

¹⁵⁶ Discovery Global, LLC: Exploration and appraisal in Slovakia, Investor Introduction, October 2017, Slide 30, C-180.

Document Request No.	52
Identification of documents or category of documents requested	The Petrel Seismic Interpretation Project underlying the EGI Report.
Relevance and materiality according to requesting party, including reference to submissions	<p>One of the key documents Mr. Atkinson uses¹⁵⁷ in his expert report is the EGI Report—a study commissioned by the Energy and Geoscience Institute of the University of Utah. As the SLR Report explains, the EGI Report undertakes a mapping exercise, which Mr. Atkinson ultimately (and unconditionally) accepts for various conclusions he reaches in his own expert report, that are then relied upon by the Moy and Howard Reports.¹⁵⁸</p> <p>EGI utilized Petrel software to create the interpretation project including the final maps generated. Dr. Chris Longman, from SLR, cannot assess Mr. Atkinson’s conclusions or the robustness of the geological mapping without having the Petrel seismic interpretation project that underpins the EGI Report. He therefore cannot assess the full weight the EGI Report should be given, and whether Mr. Atkinson’s reliance on it is appropriate for certain conclusions he makes.</p> <p>The requested documents are thus <i>prima facie</i> relevant to quantum, as they underlie Mr. Atkinson’s conclusions.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to produce this document.</p> <p>However, as the information within this documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that it will be made available only to its technical experts (SLR), and that it will not be disseminated to the Respondent itself, that any reference made to it or the information in it in any future submissions will be kept confidential, and that no use will be made of it or the information it contains outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

¹⁵⁷ See e.g., Atkinson ER, § 3.4.2; Structural Architecture, Petroleum Habitat, and Potential of NE Slovakia, 2022, AA-002.
¹⁵⁸ SLR Report, ¶¶ 55-60.

**Reply to
objections**

The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery's production.

The Slovak Republic does not accept the proposed limitations on recipients of this information. Notably, Discovery asks that this information only be shared with the Slovak Republic's technical experts, SLR. There is no justification for why counsel and the Slovak Republic cannot see this information. Doing so would constitute a serious infringement of the Slovak Republic's fundamental due process rights and its right to consult with its counsel. Discovery failed to submit any legal authorities justifying such a limitation, nor has it submitted any proof of alleged confidentiality (or risk should the materials in question be shared with counsel or the Slovak Republic, in addition to SLR as technical experts). Indeed, such technical studies would appear to be of the sort that are routinely submitted to petroleum regulators as part of ongoing operations. The fact that Discovery wishes to shield it from view is bizarre and inexplicable. Ultimately, the requested limitation therefore lacks legal and factual foundation.

Indeed, it is important to note that the data that is fed into the Petrel software is the geological and geophysical data acquired from the Exploration Area Licenses. This is not a request, therefore, for trade secrets or business secrets (and Discovery has alleged none in any event). It is merely a request for the document which shows *how* that Petrel project was constructed. To be clear, the *results* of this Petrel project are already known, described, and analyzed in both the EGI Report and the Atkinson Report. To arrive at those results, assumptions and decisions must be made by the person creating the Petrel project, and those assumptions and decisions often drive the *output* of the analysis. This is why the Slovak Republic seeks this information—to understand how the raw data was input and what assumptions were made.

Counsel must have access to this information. This information goes to the heart of technical analyses underpinning geological models contained in Discovery's quantum calculations. Counsel cannot adequately address quantum, or test Discovery's expert testimony, without being able to probe this information independently. Nor can counsel adequately prepare for cross-examination without all of the technical information supporting Discovery's quantum models, or, for that matter, the ability to consult with the respondent Party (*i.e.*, the Slovak Republic) on those materials.

As for the Slovak Republic itself, Discovery has not justified why this information is so valuable and confidential that the Slovak Republic cannot access it *in toto*—especially when the results and conclusions of the Petrel project are already known. As noted, these are not trade secrets, business secrets, or sensitive pricing data (and Discovery does not so allege). Rather, it is a document that will show *how* the data that has been inputted to the Petrel software has been interpreted. In circumstances in which the *output* is already known and disseminated, the underlying *input* cannot be held back.

Accordingly, the Slovak Republic (*i*) notes that Discovery will produce these documents, (*ii*) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (*iii*) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.

Therefore, the Slovak Republic requests an order from this Tribunal rejecting Discovery's proposed limitation, such that counsel and the Slovak Republic are permitted to receive the documents Discovery has agreed to produce.

Decision of the Tribunal	GRANTED AS SPECIFIED <p>The Tribunal notes that the Claimant agrees to produce this document. The Tribunal further notes that the Respondent agrees to keep any information concerning this document confidential in future submissions in accordance with Procedural Order No. 2, and not to use that information outside of this arbitration. In these circumstances, the Tribunal rejects the Claimant’s request that the information contained in the document only be made available to the Respondent’s technical experts from SLR. For the avoidance of doubt, it adds with reference to Procedural Order No. 2, that any information concerning this document shall be treated as confidential by all participants in the arbitration and shall not be published.</p>
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Document Request No.	53
Identification of documents or category of documents requested	Mr. Atkinson’s Kingdom seismic interpretation project.
Relevance and materiality according to requesting party, including reference to submissions	<p>Mr. Atkinson created a Kingdom seismic interpretation project that incorporated the EGI Petrel data and interpretation, but also included additional data and further work, for his estimated petroleum initially in place (“PIIP”) results.¹⁵⁹ He has not provided the underlying Kingdom seismic interpretation project itself. Therefore, Dr. Chris Longman cannot assess the robustness or appropriateness of the various input parameters—or conclusions—of Mr. Atkinson’s PIIP volumes.¹⁶⁰</p> <p>The requested documents are thus <i>prima facie</i> relevant to quantum, as they underlie Mr. Atkinson’s conclusions.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to produce this document.</p> <p>However, as the information within this documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that it will be made available only to its technical experts (SLR), and that it will not be disseminated to the Respondent itself, that any reference made to it or the information in it in any future submissions will be kept confidential, and that no use will be made of it or the information it contains outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

¹⁵⁹ Atkinson ER, ¶ 80.

¹⁶⁰ SLR Report, ¶ 89.

<p>Reply to objections</p>	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>The Slovak Republic does not accept the proposed limitations on recipients of this information. Notably, Discovery asks that this information can only be shared with the Slovak Republic’s technical experts, SLR. There is no justification for why counsel and the Slovak Republic cannot see this information. The Slovak Republic incorporates its responses to the preceding request, where Discovery made the same proposal.</p> <p>Additionally, like the Petrel project in the previous Request, the Kingdom seismic interpretation project’s results have been referenced, analyzed, and quantified by Mr. Atkinson. The Slovak Republic now seeks the underlying software file to understand <i>how</i> the geophysical and geological data from the Exploration Area Licenses was input into this software and the interpretation made using the software. As stated in the previous request, assumptions and executive decisions must be made by the person creating the Kingdom project, and those assumptions and decisions drive the <i>output</i> of the analysis. This is why the Slovak Republic seeks this information—to understand how the raw data was inputted and what assumptions were made. This is not a request for trade secrets or business secrets (and Discovery does not allege those). It is merely a request for the file which shows <i>how</i> that Kingdom project was constructed.</p> <p>Counsel must have access to this information. This information goes to the heart of technical analyses underpinning geological models contained in Discovery’s quantum calculations. Counsel cannot adequately address quantum without being able to probe this information independently. Nor can counsel adequately prepare for cross-examination without all of the technical information supporting Discovery’s quantum models.</p> <p>As for the Slovak Republic, Discovery has not justified why this information is so valuable and confidential that the Slovak Republic cannot access it—especially when the results and conclusions of the Kingdom project are already known. As noted, these are not trade secrets, business secrets, or sensitive pricing data (and Discovery does not so allege). It is a document that will show <i>how</i> this data has been input to the Kingdom software.</p> <p>Accordingly, the Slovak Republic (<i>i</i>) accepts that Discovery will produce these documents, (<i>ii</i>) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (<i>iii</i>) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal rejecting Discovery’s proposed limitation, such that counsel and the Slovak Republic are permitted to receive the documents Discovery has agreed to produce.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>For the same reasons and under the same specifications as for Request No. 52 above.</p>

Document Request No.	54
Identification of documents or category of documents requested	The database referred to in Section 8 of the Ceranka Study.
Relevance and materiality according to requesting party, including reference to submissions	<p>Mr. Atkinson refers to and relies upon the Ceranka Study—a study prepared by Dr Tomasz Ceranka, who was employed by Discovery/AOG.¹⁶¹ The Ceranka Study is a “<i>study of historic hydrocarbon production in the Polish oil fields</i>” that Mr. Atkinson claims are “<i>on trend</i>” with Discovery’s Exploration Area Licenses.¹⁶²</p> <p>While the Ceranka Study is on the record as AA-011, the underlying data supporting its conclusions are not—including a database and map referred to in Section 8 (pages 90-91) of the Ceranka Study that purports to detail information about Outer Carpathian wells and fields that Mr. Atkinson ultimately uses as analogues.</p> <p>Though Dr. Longman has already explained why the Polish fields used by Mr. Atkinson are not “<i>on trend</i>” with Discovery’s Exploration Area Licenses, he cannot assess the full range of data relied upon by Mr. Atkinson (through the Ceranka Study) without access to this database.</p> <p>The requested documents are thus <i>prima facie</i> relevant to quantum, as they underlie Mr. Atkinson’s conclusions.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to produce this document.</p> <p>However, as the information within this documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that it will be made available only to its technical experts (SLR), and that it will not be disseminated to the Respondent itself, that any reference made to it or the information in it in any future submissions will be kept confidential, and that no use will be made of it or the information it contains outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

¹⁶¹ Atkinson ER, ¶ 78 *et seq*; Oil Production in Outer Carpathians, Ceranka, 2015, **AA-011**.

¹⁶² Atkinson ER, ¶ 78 *et seq*; Oil Production in Outer Carpathians, Ceranka, 2015, **AA-011**.

<p>Reply to objections</p>	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>The Slovak Republic does not accept the proposed limitations on recipients of this information. Notably, Discovery asks that this information only be shared with the Slovak Republic’s technical experts, SLR. There is no justification for why counsel and the Slovak Republic cannot see this information. The Slovak Republic incorporates its replies to the preceding two requests, wherein Discovery proposed similar limitations on recipients.</p> <p>Additionally, the database from the Ceranka Study appears to be historical information on South Carpathian fields that Mr. Ceranka used for his report and copied into an Excel spreadsheet and a PDF file. There is no explanation for how or why this data is so confidential and valuable that neither counsel nor the Slovak Republic can see it.</p> <p>Counsel must have access to this information because it goes to the heart of technical analyses underpinning geological models contained in Discovery’s quantum calculations. Counsel cannot adequately address quantum without being able to probe this information independently. Nor can counsel adequately prepare for cross-examination without all of the technical information supporting Discovery’s quantum models.</p> <p>As for the Slovak Republic, apart from claiming that this database is “highly confidential” and “valuable,” Discovery has failed to justify the severe restrictions it claims are necessary (both as a matter of legal principle and of fact).</p> <p>Accordingly, the Slovak Republic (<i>i</i>) accepts that Discovery will produce these documents, (<i>ii</i>) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (<i>iii</i>) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal rejecting Discovery’s proposed limitation, such that counsel and the Slovak Republic are permitted to receive the documents Discovery has agreed to produce.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>For the same reasons and under the same specifications as for Request No. 52 above.</p>

Document Request No.	55
Identification of documents or category of documents requested	The digital inputs of Dr. Moy’s MBal and Prosper models.
Relevance and materiality according to requesting party, including reference to submissions	<p>Dr. Moy created MBal and Prosper models to generate production profiles for each “<i>prospect</i>” that Mr. Atkinson has identified.¹⁶³ These profiles are then used by Mr. Howard in his economic valuation of Discovery’s project.</p> <p>Dr. Moy has only provided the results of this model, and not the underlying digital inputs. Dr. Longman cannot assess the robustness of Dr. Moy’s modelling conclusions without analyzing the digital inputs to this model.</p> <p>The requested documents are thus <i>prima facie</i> relevant to quantum, as they underlie Mr. Moy’s calculations.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>Discovery agrees to produce this document.</p> <p>However, as the information within this documents is highly confidential and valuable, before any such documentation is provided, Slovakia is asked to confirm that it will be made available only to its technical experts (SLR), and that it will not be disseminated to the Respondent itself, that any reference made to it or the information in it in any future submissions will be kept confidential, and that no use will be made of it or the information it contains outside of this arbitration. If this is not agreed, Discovery will seek an appropriate order from the Tribunal in this regard.</p>

¹⁶³ Moy ER, § 8.

<p>Reply to objections</p>	<p>The Slovak Republic accepts that Discovery will search for, and produce, documents responsive to this Request, and reserves its rights to revert to the Tribunal to address any inadequacies with Discovery’s production.</p> <p>The Slovak Republic does not accept the proposed limitations on recipients of this information. Notably, Discovery asks that this information can only be shared with the Slovak Republic’s technical experts, SLR. There is no justification for why counsel and the Slovak Republic cannot see this information. The Slovak Republic refers to its replies to Discovery’s objections to Requests 52-54 above, wherein Discovery sought the same limitation.</p> <p>Like the Petrel project and the Kingdom seismic project, the results from the MBal and Prosper analyses have been referenced, analyzed, and quantified by Dr. Moy. The Slovak Republic now seeks the underlying software files to understand <i>how</i> the production profiles were generated using the software. As stated for the previous requests seeking similar software files, assumptions and decisions must be made by the person creating the MBal and Prosper models, and those assumptions and decisions drive the <i>output</i> of the analysis. This is why the Slovak Republic seeks this information—to understand how the raw data was inputted and what assumptions were made. This is not a request for trade secrets or business secrets (and Discovery does not so allege). It is merely a request for the file which shows <i>how</i> Dr. Moy constructed the MBal and Prosper models he uses.</p> <p>Counsel must have access to this information. This information goes to the heart of technical analyses underpinning geological models contained in Discovery’s quantum calculations. Counsel cannot adequately address quantum without being able to probe this information independently. Nor can counsel adequately prepare for cross-examination without all of the technical information supporting Discovery’s quantum models.</p> <p>As for the Slovak Republic, Discovery has not justified why this information is so valuable and confidential that the Slovak Republic cannot access it—especially when the results and conclusions of the MBal and Prosper models are already known. As noted, these are not trade secrets, business secrets, or sensitive pricing data (and Discovery does not so allege). It is a document that will show <i>how</i> this data has been input to these two models.</p> <p>Accordingly, the Slovak Republic (<i>i</i>) accepts that Discovery will produce these documents, (<i>ii</i>) agrees that any information concerning these documents in future submissions will be kept confidential in accordance with the rules and procedures contained in Procedural Order No. 2, and (<i>iii</i>) confirms that information contained in these documents will not be used outside of this arbitration. The existing confidentiality regime is adequate to protect the materials in question.</p> <p>Therefore, the Slovak Republic requests an order from this Tribunal rejecting Discovery’s proposed limitation, such that counsel and the Slovak Republic are permitted to receive the documents Discovery has agreed to produce.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>For the same reasons and under the same specifications as for Request No. 52 above.</p>