

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

----- x
 In the Matter of Arbitration between: :
 :
 BRIDGESTONE LICENSING SERVICES, INC. :
 and BRIDGESTONE AMERICAS, INC., :
 :
 Claimants, :
 : Case No.
 and : ARB/16/11
 :
 REPUBLIC OF PANAMA, :
 :
 Respondent. :
 ----- x Volume 3

HEARING ON EXPEDITED OBJECTIONS

Tuesday, September 5, 2017

The World Bank Group
1818 H Street, N.W.
Conference Room 4-800
Washington, D.C.

The hearing in the above-entitled matter commenced
at 9:10 a.m. before:

LORD NICHOLAS PHILLIPS, President of the
Tribunal

MR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

MR. J. CHRISTOPHER THOMAS, QC, Co-Arbitrator

ALSO PRESENT:

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Secretary to the Tribunal

Court Reporter:

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PRESIDENT PHILLIPS: Good morning, everyone.
I understand that any technical problems have now been solved, so the proceeding can commence.

The first thing on the Agenda is housekeeping.
Are there any housekeeping matters that we need to deal with before we proceed to hear oral evidence?

MR. WILLIAMS: Not from the Claimants' side.

MR. DEBEVOISE: Good morning, Mr. President.

From the Respondent's side, in addition to the team that was here yesterday, we wanted to introduce Mr. Francisco Olivardia, who is a lawyer with the Embassy of Panama here in Washington. He's seated down here at counsel table, the next to the last.

PRESIDENT PHILLIPS: Thank you very much.

And you're welcome.

Mr. Williams, will you proceed to call Ms. Williams?

Ms. Hyman is going to do it.

AUDREY WILLIAMS, CLAIMANTS' WITNESS, CALLED

MS. HYMAN: Good morning, Ms. Williams. Can you hear us and see us?

1 THE WITNESS: Yes, good morning. I can see
2 you and hear you.

3 MS. HYMAN: Good.

4 DIRECT EXAMINATION

5 BY MR. WILLIAMS:

6 Q. Could you please open the first document in the
7 bundle of documents that was sent to you by me last
8 night on your computer.

9 A. Yes.

10 Q. Yes. Is that your Witness Statement?

11 SECRETARY TORRES: Mr. President, I'm sorry to
12 interrupt. Before we start, she has to take the oath.

13 PRESIDENT PHILLIPS: I was wondering whether
14 the first document you were going to refer the Witness
15 to is the Witness Declaration.

16 MS. HYMAN: It was not.

17 PRESIDENT PHILLIPS: It was not. Well, I had
18 better refer you, Ms. Williams.

19 Do you have in front of you a witness
20 declaration?

21 THE WITNESS: I have my Witness Statement in
22 front of me.

1 PRESIDENT PHILLIPS: So, I infer that you do
2 not have a Witness Declaration, which you should make
3 before you give your evidence.

4 THE WITNESS: Oh, no, I'm sorry. No, I don't
5 have it in front of me.

6 PRESIDENT PHILLIPS: Well, would you be kind
7 enough to repeat it after me. I shall read it out in
8 stages, not all at once.

9 THE WITNESS: Okay.

10 PRESIDENT PHILLIPS: I solemnly declare upon
11 my honor and conscience...

12 THE WITNESS: I solemnly declare upon my honor
13 and conscience...

14 PRESIDENT PHILLIPS: That I shall speak the
15 truth...

16 THE WITNESS: I shall speak the truth...

17 PRESIDENT PHILLIPS: The whole truth...

18 THE WITNESS: The whole truth...

19 PRESIDENT PHILLIPS: And nothing but the
20 truth.

21 THE WITNESS: And nothing but the truth.

22 PRESIDENT PHILLIPS: Thank you very much.

1 THE WITNESS: Thank you.

2 BY MS. HYMAN:

3 Q. Ms. Williams, could you please turn to open the
4 first document which should be your Witness Statement.

5 A. Yes. I have already opened it.

6 Q. Okay, thank you.

7 And scrolling to the end of it, is that your
8 signature at the end of it?

9 A. Yes, it is my signature.

10 Q. And did you sign this statement, believing the
11 contents to be true?

12 A. Yes, I did.

13 Q. Have you had a chance to read your statement
14 recently?

15 A. Yes, I did.

16 Q. Do you have any corrections that you would like
17 to make?

18 A. No, I don't.

19 Q. Okay. Then I don't have any further questions
20 for you; so, if you please wait, and then some--one of
21 the lawyers from the Respondent's team will ask you
22 some questions.

1 A. Thank you.

2 CROSS-EXAMINATION

3 BY MS. GEHRING FLORES:

4 Q. Good morning, Ms. Williams.

5 A. Good morning.

6 Q. Can you--sorry. Excuse me.

7 Can you hear me and see me?

8 A. Yes, I can see you and hear you.

9 Q. My name is Gaela Gehring Flores, and I'm a
10 partner at the law firm of Arnold & Porter, and I
11 represent the Republic of Panama in this proceeding.

12 I wanted to thank you for being here today--or
13 being there today. I understand that you were unable
14 to travel to Washington, D.C., and, therefore, we're
15 doing this via video.

16 I'm going to be referring to certain documents
17 that were sent to you, I believe, yesterday.

18 Did you receive an electronic file of documents
19 yesterday from counsel at Akin Gump?

20 A. Yes, I did.

21 Q. And did that electronic file contain a smaller
22 number of documents than the electronic file you

1 received previously from them?

2 A. That's--that is right.

3 Q. Okay. I'd like to use that, some of the
4 documents in that file today with you.

5 And have you been able to print out those
6 documents?

7 A. No. I was told that I should refer to the
8 documents electronically and not to have any
9 documents, any printed documents with me.

10 Q. Okay.

11 Well, if at any point in time you need me to
12 repeat a question or if you have any concerns or
13 questions, please feel free to stop me, and just ask
14 me to repeat a question.

15 A. Okay.

16 Q. So, first, I'd just like to confirm some
17 preliminary matters.

18 And, for your information, here today at the
19 Respondent's table, is Marissa Lasso de la Vega
20 Ferrari.

21 And she is a partner at the Panamanian law firm
22 of Alfaro, Ferrer & Ramirez.

1 Have you met Ms. Lasso de la Vega Ferrari?

2 A. Yes.

3 Q. Okay. You are a practicing lawyer in Panama;
4 correct?

5 A. Yes, I am.

6 Q. And you're a member of the Panamanian
7 Association of Intellectual Property Law; is that
8 correct?

9 A. Yes, it is correct.

10 Q. And that's the same association of which
11 Ms. Lasso de la Vega is President; is that right?

12 A. That is right. I'm Assistant Secretary.

13 Q. You are a partner of the law firm of Benedetti
14 & Benedetti; is that right?

15 A. That is correct.

16 Q. And you specialize in the field of
17 intellectual-property law?

18 A. Yes--yes, I do.

19 Q. Do you specialize in the field of public
20 international law?

21 A. No, I don't.

22 Q. Do you specialize in the field of international

1 investment arbitration?

2 A. No, I don't.

3 Q. Your firm, Benedetti & Benedetti, was retained
4 by Bridgestone Corporation and Bridgestone Licensing
5 in 2005, according to your Witness Statement; is that
6 correct?

7 A. Yes, it is correct.

8 Q. And was that to represent Bridgestone
9 Corporation and Bridgestone Licensing in a trademark
10 opposition action against Muresa Intertrade?

11 A. Yes.

12 Q. Did you personally represent Bridgestone
13 Corporation and Bridgestone Licensing in that
14 proceeding?

15 A. No. Two other attorneys of my law firm were
16 the ones in charge of the trademark opposition case.

17 Q. Bridgestone Corporation and Bridgestone
18 Licensing lost that opposition proceeding; correct?

19 A. Yes.

20 Q. And after, Muresa sued Bridgestone for
21 \$5 million in damages that they alleged were caused by
22 Bridgestone's opposition proceeding; is that correct?

1 A. Yes.

2 Q. Did you represent Bridgestone Licensing and
3 Bridgestone Corporation in that proceeding?

4 A. Yes, I did, together with another attorney at
5 my firm.

6 Q. And, during that representation, you had
7 contact with your clients Bridgestone Licensing and
8 Bridgestone Corporation; correct?

9 A. Yes.

10 Q. Who was your client contact at Bridgestone
11 Corporation?

12 A. Well, we first dealt with the law firm in the
13 U.S., Bridgestone's outside counsel in the U.S., the
14 law firm Ladas & Parry, specifically Mr. Daniel
15 Zendel. And, afterwards, we also corresponded
16 after--after the Supreme Court's decision was
17 rendered, with Mr. Tom Kingsbury from Bridgestone
18 Licensing Services.

19 Q. Thank you.

20 So, from--do you remember from what years to
21 what year or from what year to what year you
22 represented Bridgestone Corporation and Bridgestone

1 Licensing in the proceeding that Muresa brought
2 against them for damages?

3 A. I don't specifically recall the year it
4 started, but I think it was around 2008 until
5 the--until the end, until the Final Decision around
6 2014.

7 Q. Did you represent them in relation to that
8 proceeding beyond 2014, say, until August of 2016?

9 A. We--Benedetti & Benedetti's representation of
10 Bridgestone was up to the Supreme Court's decision,
11 and clarification and modification petition that we
12 filed with the Court, with the Supreme Court. We were
13 not handling a review motion that was filed by another
14 local law firm in Panama. We were aware of that other
15 proceeding, but we were not representing Bridgestone
16 in that review motion, which I believe was the one
17 ending in 2015 or 2016.

18 Q. Did you represent Bridgestone Licensing and
19 Bridgestone Corporation when it came time to pay the
20 damages award?

21 A. Yes, I did.

22 Q. Do you know about what time or what year that

1 was?

2 A. It was 2016.

3 Q. Now, when you represent your
4 intellectual-property clients, do you ever coordinate
5 or work with international counsel?

6 A. Yes. If you mean that we work with the outside
7 counsel law firm that has instructed us with the work
8 or with the in-house counsel with whom we should--we
9 could be working at some point?

10 Q. I guess more specifically, do you ever
11 coordinate in working with your IP clients or your
12 intellectual-property clients, do you ever coordinate
13 with counsel that specializes in public international
14 law?

15 A. No.

16 Q. I understand that counsel for Bridgestone, in
17 this arbitration proceeding, which is Akin Gump, they
18 have been in contact with you about this proceeding;
19 correct?

20 A. Yes, that is correct.

21 Q. And do you understand that Akin Gump has
22 experience in matters of international law?

1 A. That's what I understand.

2 Q. And I also understand that you have been
3 advising them in this case regarding issues of
4 Panamanian law; is that correct?

5 A. Yes, that is correct.

6 Q. When did you first start working with Akin Gump
7 on advising them of issues of Panamanian law in this
8 case?

9 A. Well, if you refer to the specific Witness
10 Statement that I'm providing, it was last month.

11 Q. Had you worked with them before your Witness
12 Statement, perhaps to describe the Muresa proceedings?

13 A. Yes.

14 Q. Did you help them with their, I assume, their
15 filings in this case, to describe the Muresa
16 proceedings?

17 A. Yeah, we were--I was asked to answer some
18 questions regarding Muresa's proceedings.

19 Q. When was the first time--

20 (Overlapping speakers.)

21 Q. When was the first time you were asked to
22 advise Akin Gump on the Muresa proceedings?

1 A. I don't remember the exact date, but I think it
2 was the last year or the year before.

3 Q. Okay. Thank you.

4 So, I think, as you state in your Witness
5 Statement, Law Number 35 of 1996 governs trademark
6 rights in Panama; is that correct?

7 A. Yes, that's correct.

8 Q. And you quoted and provided translations of
9 provisions of this law in your Witness Statement; is
10 that correct?

11 A. Yes.

12 Q. Specifically, you quote Article 121 of Law
13 Number 35; is that correct?

14 A. Yes, it is.

15 Q. And, as you point out in Paragraph 9 of your
16 Witness Statement, Article 121 of Law Number 35
17 provides that, if there is a trademark that is
18 registered in Panama, the owner of that mark may
19 license the use of that trademark to another
20 individual; is that correct?

21 A. Yes, it is correct.

22 Q. And such a license has to be created through an

1 agreement or a contract; is that right?

2 A. Yes, that is right.

3 Q. So, to determine what exact rights and
4 obligations a licensee has, you would need to look to
5 the terms of the Licensing Agreement; is that correct?

6 A. Yes, it is.

7 Q. Keeping that in mind, I know you've made a
8 number of statements about the application of
9 Article 121 as a general matter in your statement; is
10 that correct?

11 A. Yes.

12 Q. So, for example, you state that in Paragraph 9:
13 "A trademark registration holder may therefore
14 transfer their intellectual property rights with
15 respect to the use of the trademark to a licensee."

16 Is that correct?

17 A. Yes.

18 Q. You also state that a licensee that is granted
19 the right to use a trademark possesses "intellectual
20 property" rights under Panamanian law; is that
21 correct?

22 A. Yes.

1 Q. Okay. I would like to explore that statement a
2 little bit further.

3 By the word "possess" or "possesses," do you
4 mean that a trademark licensee is the owner of the
5 "intellectual property" rights in the License
6 Agreement?

7 A. No.

8 Q. Okay. I would like to go through one of
9 Bridgestone Americas' License Agreements.

10 Are you familiar with the Bridgestone group of
11 companies generally, Ms. Williams?

12 A. I have learned a little bit now in reading all
13 these documents.

14 Q. Okay. Have you, Ms. Williams, read the
15 pleadings that have been submitted in this case?

16 A. Yes.

17 Q. So, I assume you're familiar that the two
18 Claimants in this case are not Bridgestone Corporation
19 and Bridgestone Licensing but Bridgestone Americas and
20 Bridgestone Licensing; is that your understanding?

21 A. I understand that the Claimants in these
22 proceedings are Bridgestone Licensing Services, Inc.

1 and Bridgestone Americas.

2 Q. And are you aware that Bridgestone Americas is
3 a party to License Agreements related to the
4 BRIDGESTONE and FIRESTONE trademarks that are
5 registered in Panama?

6 A. I learned that from reading the License
7 Agreements that I was provided.

8 Q. Well, let's turn to one of them. Could you
9 please, in your file, turn to Claimants' Exhibit 48,
10 which Claimants' counsel has labeled as the "FIRESTONE
11 trademarks Licensing Agreement."

12 A. Yes. I have it in front of me.

13 Q. And, as you can see from the first paragraph of
14 the License on Page 1, this is a Trademark License
15 Agreement between Claimant Bridgestone Licensing
16 Services and Bridgestone/Firestone Americas Holding;
17 correct?

18 A. Correct, yes.

19 Q. Claimants have represented that
20 Bridgestone/Firestone Americas Holding is the
21 predecessor of Claimant Bridgestone Americas. So, for
22 the purposes of this examination, we will simply

1 assume that the License Agreement is between Claimant
2 Bridgestone Licensing and Claimant Bridgestone
3 Americas. Is that okay?

4 A. Yeah, that's my understanding.

5 Q. Okay. So, are you familiar--you have read--you
6 have reviewed this License Agreement; is that correct?

7 A. Yes.

8 Q. So, are you familiar with how limited or not
9 limited Bridgestone Americas' rights are under this
10 particular agreement?

11 A. Yes.

12 Q. Okay. Well, let's see what their rights are
13 under the Agreement.

14 Turning to Section 1 on Page 1 of 7, or it's
15 Page 1 of 41, depending on which designation you're
16 looking at. That's the section entitled "Grant."

17 And this Agreement states that: "Bridgestone
18 Licensing, the LICENSOR, grants to the LICENSEE,"
19 which we understand is Bridgestone Americas, "a
20 non-exclusive license to use the Marks."

21 Do you see that?

22 A. Yes.

1 Q. What do you understand "non-exclusive" to mean
2 in this context?

3 A. It means that the Licensor can rent licenses to
4 other persons as well.

5 Q. Okay. Let's turn to Section 5 which is on Page
6 2 of 41, and that's entitled "Mark Usage."

7 It states: "The LICENSEE may use Marks only on
8 Licensed Products after receiving the written approval
9 of LICENSOR and only after LICENSOR has seen,
10 inspected and approved a sample of the use of each of
11 the Marks as well as a sample of each of the Licensed
12 Products provided by LICENSEE."

13 Do you see that?

14 A. Yes.

15 Q. Would you agree that Section 5 limits
16 Bridgestone Americas' rights to use the Marks?

17 A. It subjects the use of the Mark to the written
18 approval of Licensor.

19 Q. Would you consider that a limitation under use
20 of the Marks?

21 A. Yes.

22 Q. Now, let's turn to Section 14 on Page 4, and

1 this is titled "Rights Protection." It states:
2 "LICENSEE will cooperate fully and in good faith with
3 LICENSOR for the purpose of securing and preserving
4 LICENSOR'S rights including rights in the Marks and
5 rights in any dispute including specifically, but not
6 exclusively, one involving Sections 11 and/or 16.
7 LICENSEE agrees to give LICENSOR notice of any known
8 or suspected infringement of the Marks and to
9 cooperate with the efforts by LICENSOR to police the
10 Marks."

11 Do you see that?

12 A. Yes.

13 Q. Would you agree that this section of the
14 License provides that the Licensor controls the
15 policing of the Marks?

16 A. I understand from this paragraph that the
17 Licensee agrees to be bound to notify the Licensor of
18 any suspected infringements and to be at the look of
19 those to help the Licensor in the policing of the
20 Marks.

21 Q. Thank you. Do you believe that the Licensee,
22 given this Clause in the Contract, could ever bring an

1 opposition case on its own to oppose the use of a
2 trademark?

3 A. If you are talking about Panama, the answer
4 would be no.

5 Q. And is that because of this specific License
6 Agreement or because of the law or both?

7 A. No, because of the law.

8 Q. Okay. So, Panamanian law would not allow any
9 trademark licensee to bring an opposition case to a
10 trademark on its own; is that correct?

11 A. Yes. I believe the Licensee would be able to
12 participate as a co-plaintiff, but the trademark owner
13 would--you know, the trademark owner would also have
14 to be a plaintiff.

15 Q. The licensee could never be a plaintiff by
16 itself; is that correct?

17 A. Well, I'm not saying that that "never," because
18 an opposition action in Panama can be based on prior
19 use of the mark. But, in my opinion, the owner of the
20 mark, relying on the use that probably a licensee has
21 made of the mark, can then oppose a trademark
22 application based on prior use.

1 So, in my opinion, both the trademark owner
2 and the Licensee would need to be the plaintiffs.

3 Q. Okay. But, just to clarify, the Licensee could
4 not bring that case on its own?

5 A. In my opinion, no.

6 Q. Let's turn to Section 11, Page 3, so go back
7 one page--on "Ownership."

8 This states: "The LICENSEE agrees that
9 LICENSOR owns the Marks and all the goodwill
10 associated therewith. LICENSOR shall retain all
11 right, title and interest in and to the Marks, the
12 goodwill associated therewith, and all registrations
13 granted thereon. Any and all uses of all Marks by
14 LICENSEE shall inure to the benefit of LICENSOR.
15 LICENSEE shall have no rights to the Marks or any
16 confusingly similar variation thereof."

17 Given this, Bridgestone Americas does not own
18 the trademark; correct?

19 A. That is correct.

20 Q. And a licensee, in fact, could never own the
21 trademark; is that correct?

22 A. Yeah, that is correct.

1 Q. Would you please turn to Section 27, on Page 6,
2 entitled "Assignment and Delegation."

3 This states: "This Agreement may not be
4 assigned or delegated by LICENSEE without obtaining
5 the prior written consent of the LICENSOR. LICENSEE
6 shall not have the right to grant sublicenses
7 hereunder, except as indicated in Section 1. This
8 Agreement may be assigned by a LICENSOR to another
9 entity with prior written notice to LICENSEE."

10 Having read this Clause, Bridgestone Americas
11 cannot assign this license to a third party; is that
12 correct?

13 A. Not--not without obtaining the prior written
14 consent of Licensor.

15 Q. Okay. And, absent that prior written consent
16 of the Licensor, could Bridgestone Americas contact a
17 third party and sell its license to a third party?

18 A. No.

19 Q. Do you think that--strike that.

20 I had asked you previously if you ever
21 collaborate with counsel that specializes in
22 international law to serve your intellectual-property

1 clients. I wanted to ask you to refer to Claimants'
2 Exhibit 36.

3 MS. GEHRING FLORES: For the record, this is a
4 letter that was--that's exhibited in both Spanish and
5 English. It's a letter from Benedetti & Benedetti,
6 dated 19 August 2016, to representatives at Muresa
7 Intertrade and the Tire Group of Factories, Limited.
8 Both are in Panama.

9 BY MS. GEHRING FLORES:

10 Q. Ms. Williams, do you recognize this letter?

11 A. Yes, I do.

12 Q. And is that your signature on the second page
13 of the document?

14 A. I had opened the English version, so I'm
15 opening the Spanish version right now.

16 Q. Sure.

17 A. Yes, that is my signature.

18 Q. And I understand in the letter--and I think,
19 the, maybe, third paragraph of the letter on the first
20 page, you're telling the representatives of Muresa and
21 Tire Group that your clients Bridgestone Corporation
22 and Bridgestone Licensing will proceed to make payment

1 to satisfy the 28 May 2014 Supreme Court Decision.

2 Is my understanding correct?

3 A. Yes, it is.

4 Q. And let's turn to the second page of that
5 document, which, in Spanish, the last sentence says:

6 "Asimismo, dejamos constancia que Bridgestone
7 Corporation y Bridgestone Licensing Services, Inc. se
8 reservan sus derechos consagrados bajo el Derecho
9 Internacional, incluyendo el Tratado de Promoción
10 Comercial entre Estados Unidos de America y Panama."

11 And the English is, similarly: "We express
12 that Bridgestone Corporation and Bridgestone Licensing
13 Services reserve their rights under international law,
14 including the Trade Promotion Agreement between the
15 United States of America and Panama."

16 I just wanted to ask: Did you coordinate with
17 counsel that specializes in international law when
18 drafting--when preparing this letter?

19 A. Yes.

20 Q. Was that Akin Gump?

21 A. I believe so.

22 Q. Do you remember who at Akin Gump you worked

1 with when preparing this letter?

2 A. No, I don't.

3 Q. Okay, I think I only have a--thank you,
4 Ms. Williams, for all of your cooperation. I think I
5 only have a few more questions for you today.

6 I wanted you to turn to your Witness
7 Statement--and, in fact, it's the final sentence of
8 your Witness Statement. It's Paragraph--well, no it's
9 not the final sentence, excuse me. It's on Page 3,
10 Paragraph 15.

11 It states: "In summary, the right to use a
12 trademark granted to a licensee by the owner of a
13 trademark registered in Panama is a valuable asset,
14 and constitutes an intellectual property right under
15 Panamanian law."

16 Do you see that?

17 A. Yes.

18 Q. Okay. There are a couple of concepts going on
19 in that sentence, and I understand that one of the
20 things that you're saying is that, under Panamanian
21 law, the right to use a trademark granted to a
22 licensee is an "intellectual property" right; is that

1 correct?

2 A. Yes, it is.

3 Q. It also seems, but I'm not sure--it also seems
4 that you're saying that Panamanian law establishes
5 that the right to use a trademark granted to a
6 licensee is a "valuable asset."

7 Are you saying that with that sentence? Are
8 you saying that Panamanian law states that trademark
9 rights granted to a licensee are valuable assets?

10 A. No, I am not saying that.

11 Q. Okay. Could you tell me what you mean to say
12 by--well, strike that.

13 Let me clarify: Is there any Panamanian law
14 provision that provides that trademark rights granted
15 in a license agreement are assets, valuable or
16 otherwise?

17 A. I'm not aware of any law that says so.

18 Q. By the term "asset" in that sentence, do you
19 mean something--that it's a general benefit to the
20 license holder, to the Licensee?

21 A. I mean that it's definitely a valuable thing.
22 It's an investment for the Licensee. So, having

1 value, in my opinion, it's an asset for the Licensee.

2 Q. Okay. And I just want to be really precise
3 here because, in English, "asset" can mean kind of
4 something generally of value, but it can also mean a
5 piece of property that can be converted to cash--you
6 know, like you see in accountants' books, you see
7 assets and liabilities.

8 I'm trying to figure out: Are you saying that
9 a licensee or a license agreement, a trademark license
10 agreement--excuse me, let me start again--that the
11 "intellectual property" rights in a trademark license
12 agreement are property that can be converted to cash?

13 A. That would be something that would depend on
14 what the Trademark License Agreement specifies.
15 Because, if the Licensee can assign its rights upon
16 written approval of the Licensor and if he gets that
17 approval, he can definitely assign his rights for a
18 compensation.

19 Q. Okay. And--

20 A. But that would depend on what the Contract
21 states.

22 Q. And we just went through the FIRESTONE

1 Trademark Licensing Agreement, which is Claimants'
2 Exhibit C-48; correct?

3 A. Yes.

4 Q. And we reviewed the Assignment Clause in that
5 Agreement; correct?

6 A. Yes.

7 Q. So, in accordance with that particular License
8 Agreement, could, for instance, Bridgestone Americas
9 call up Muresa tomorrow and say, "I have these
10 'intellectual property' rights that are very valuable,
11 and I'd like to sell them to you"?

12 Could it do that?

13 A. Not without the approval of the Licensor.

14 Q. Okay. Thank you very much, Ms. Williams. That
15 concludes my questions.

16 MR. WILLIAMS: Mr. President, we have no
17 questions in redirect.

18 PRESIDENT PHILLIPS: That means, Ms. Williams,
19 that your assistance is no longer required. May I
20 thank you for the assistance that you have given to
21 the Tribunal.

22 THE WITNESS: It's my pleasure. Thank you.

1 Good morning.

2 (Witness steps down.)

3 PRESIDENT PHILLIPS: Shall we have a
4 five-minute break?

5 (Brief recess.)

6 THOMAS R. KINGSBURY, CLAIMANTS' WITNESS, CALLED

7 PRESIDENT PHILLIPS: Yes, Mr. Williams.

8 Oh, sorry, Ms. Hyman.

9 DIRECT EXAMINATION

10 BY MS. HYMAN:

11 Q. Good morning, Mr. Kingsbury. In front of you I
12 think you should have a Witness Declaration.

13 A. Yes.

14 Q. Would you please read that out loud.

15 A. Sure.

16 I solemnly declare upon my honor and
17 conscience that I shall speak the truth, the whole
18 truth, and nothing but the truth.

19 Q. Thank you.

20 You have next to you a folder like this.

21 A. Yes.

22 Q. Could you turn to the first document in that

1 folder.

2 A. Sure.

3 Q. Is that your Witness Statement?

4 A. Yes, it is.

5 Q. And if you turn to--well, not the last page
6 because there's a schedule, but if you turn to, I
7 think, Page 11, that should be the last page.

8 A. Yes.

9 Q. And is that your signature?

10 A. Yes, it is.

11 Q. And did you sign that statement believing the
12 contents to be true.

13 A. Yes, I did.

14 Q. And have you had a chance to read that
15 statement recently?

16 A. Yes.

17 Q. Are there any corrections that you would like
18 to make?

19 A. No.

20 Q. Okay. Could you turn to the next document?

21 Is that your Second Witness Statement?

22 A. Yes, it is.

1 Q. And, on the last page, is that your signature?

2 A. Yes, it is.

3 Q. And did you sign that document--

4 A. Yes, I did.

5 Q. --believing that the contents were true?

6 A. Yes.

7 Q. And have you read that recently?

8 A. Yes.

9 Q. And do you have any corrections you'd like to
10 make to that document?

11 A. No, I don't.

12 Q. Mr. Kingsbury, who do you work for?

13 A. I work for Bridgestone Americas, Incorporated.

14 Q. And what does Bridgestone Americas do?

15 A. We have a number of different businesses. We
16 sell tires as our primary line of business, but we
17 also have an Industrial Products Division that makes
18 air springs, a Building Products Division that makes
19 rubber roofing membranes, and a store of--about 2200
20 company-owned automotive stores that operate under the
21 Firestone complete auto-care brand.

22 Q. And do you have a role at the other Claimants

1 in these proceedings, Bridgestone Licensing?

2 A. Yes, yes. I support the legal function for
3 Bridgestone Licensing.

4 Q. And what does Bridgestone Licensing do?

5 A. Bridgestone Licensing owns the FIRESTONE
6 trademark outside the United States and licenses it to
7 various entities for use in other countries.

8 Q. Thank you.

9 I don't have any further questions for you now,
10 and one of the lawyers from Panama's counsel team will
11 now ask you some questions.

12 A. Okay.

13 CROSS-EXAMINATION

14 BY MR. DEBEVOISE:

15 Q. Good morning, Mr. Kingsbury.

16 A. Good morning.

17 Q. My name is Whitney Debevoise, and I'm one of
18 the lawyers representing the Republic of Panama in
19 this case. And I'll be asking you some questions
20 today on behalf of Panama.

21 A. Sure.

22 Q. If you need a break at any point, please let me

1 know or the Tribunal President.

2 A. Okay.

3 Q. I can accommodate that.

4 And I wanted to ask you, in preparing to be
5 here today, did you also review the Witness Statement
6 of Mr. Calderon?

7 A. I did not.

8 Q. Okay. And did you review the Witness Statement
9 of Mr. Hidalgo?

10 A. I did not.

11 Q. Okay. So, according to the Witness Statement
12 that you submitted, you described yourself as having a
13 dual role as Chief Counsel of Intellectual Property
14 for Bridgestone Americas; is that correct?

15 A. That's correct.

16 Q. And also as Assistant Secretary of Bridgestone
17 Licensing Services.

18 A. Correct.

19 Q. I think, to shorten things up today, I'm just
20 going to refer to Bridgestone Licensing--

21 A. Sure.

22 Q. --instead of saying Bridgestone Licensing

1 Services every time, or maybe we'll even lapse into
2 the acronyms.

3 A. We say BSLS. So, if you would like to use
4 BSLS, you may.

5 Q. Well, we're all learning or feeling as though
6 we're becoming part of the family here.

7 (Witness laughs.)

8 Q. So, you became Assistant Secretary of
9 Bridgestone Licensing in November 2014; is that
10 correct?

11 A. Yes, I believe that's the date.

12 Q. And, prior to that time, you had no formal role
13 as an officer or director of Bridgestone Licensing?

14 A. Correct.

15 Q. And that was because you were performing your
16 services on behalf of Licensing under another
17 agreement--

18 A. Yes, Services Agreement.

19 (Overlapping speakers.)

20 Q. A Services Agreement.

21 Okay, that's the transcriber.

22 So, from whom do you receive your paycheck?

1 A. I receive my paycheck from Bridgestone
2 Americas.

3 Q. Now, Bridgestone Corporation and its
4 subsidiaries first became aware of the RIVERSTONE
5 trademark when a Miami-based company named L.V.
6 International filed an application to register that
7 mark with the U.S. Patent and Trademark Office; is
8 that correct?

9 A. Yes.

10 Q. And, in 2003, Bridgestone Brands, LLC, another
11 member of the group here, and Bridgestone/Firestone
12 North American Tire LLC, another number member of this
13 group, filed an opposition to that RIVERSTONE mark
14 here in the United States; correct?

15 A. Yes, they did.

16 Q. And, after you filed that opposition, L.V.
17 International, after some interval, withdrew its
18 application; is that correct?

19 A. Yes, it did.

20 Q. And, after the withdrawal, you sent a
21 Reservation of Rights Letter to L.V. International; is
22 that right?

1 A. Well, when you say "you," you're referring to
2 the Company; right? I personally did not, but the
3 Company did send a Reservation of Rights Letter, yeah.
4 It's a standard kind of "close-the-loop" letter, we
5 call it. When we don't get closure to an actual
6 action like the opposition, when they just unitarily
7 withdraw it, you're kind of left in this state of
8 limbo of whether or not they're going to continue to
9 sell or enter the market, so we send a Reservation of
10 Rights Letter just to say, "Hey, we wanted to know
11 that, you know, we're aware of you."

12 Q. And L.V. International is part of something
13 called the Luque Group, is it not?

14 A. That's a very confusing area, the Luque Group.
15 But, if you say so, then yeah. I don't know off the
16 top of my head whether that's part of the Luque Group,
17 but I believe that they're all interrelated somehow.

18 Q. Okay. And Muresa, the litigant against you in
19 the Panamanian proceedings, is part of that group as
20 well; right?

21 A. They are, yes.

22 Q. And you said a minute ago that you sent this to

1 sort of close the loop, but the real purpose of a
2 letter like that is to deter the person who's trying
3 to register and use that mark from actually using it,
4 is it not?

5 A. Sure.

6 Q. And, in this case, after you sent that letter,
7 did it work? Was it effective?

8 A. We are not aware of any tires that had entered
9 the United States relative to global sales because I
10 believe the letter did refer to worldwide. I believe
11 that there are--there were tires that were being sold.
12 So, I guess the answer to your question is no.

13 Q. Okay. And you also opposed the RIVERSTONE mark
14 in Panama; is that correct?

15 A. Yes, we did.

16 Q. And that opposition failed.

17 A. Yes, it did.

18 Q. So, that means that the Tire Group and Muresa
19 can sell tires in Panama under the RIVERSTONE mark?

20 A. Yes.

21 Q. And as a result, therefore, of their ability to
22 sell, they can, as I think one of the pleadings says,

1 "flood the Panamanian market with low-cost tires"; is
2 that right?

3 A. Yes, they have the ability to do that.

4 Q. And Tire Group distributes tires in Panama; is
5 that right?

6 A. Yes.

7 Q. Does Tire Group manufacture tires?

8 A. Again, you're getting into the corporate
9 structure of that company that I'm not really sure
10 what the--I mean, I believe that there's Chinese
11 manufacturing going on, but I'm not exactly sure who
12 the manufacturer is.

13 Q. So, Tire Group might be the Panamanian
14 distributor? They're not making the tires in Panama?

15 A. I believe they are a distributor.

16 Q. And turning now to your company, sales of
17 BRIDGESTONE- and FIRESTONE-branded tires in Panama are
18 coordinated by Bridgestone Costa Rica; right? BSCR;
19 is that correct?

20 A. Yes, they're sold out of Bridgestone Costa
21 Rica.

22 Q. And Bridgestone Costa Rica sells those tires

1 through distributors in Panama; is that right?

2 A. Yes, dealers and distributors.

3 Q. Yes, okay.

4 And it was after this case was filed and very
5 recently in May of 2017 that Bridgestone Costa Rica
6 engaged its first full-time sales representative in
7 Panama; is that right?

8 A. Yes, I believe that's correct. They serviced
9 that market out of the Costa Rican office, right.

10 Q. Okay. And is that person a Bridgestone Costa
11 Rica employee?

12 A. That's Roger Hidalgo, and I don't know who his
13 actual employer is.

14 Q. Maybe we can put up Exhibit 62, and on Page 3.

15 So, if you could either look at the screen or look
16 in your book, Exhibit 62, on Page 3. You see what it
17 says there in Clause 9 on Page 3, "nature of the
18 Agreement."?

19 A. Yes.

20 Q. Does it say "both Parties declare that this
21 Agreement is a commercial and not an employment
22 agreement"?

1 A. I don't know what this document is that I'm
2 looking at. Sorry.

3 Can I have a minute to look through this?

4 Q. Pardon.

5 A. Can I have a minute? I don't know what this
6 document is. I've never seen it before.

7 Q. Oh, yes. We should identify it.

8 This is the Professional Services Agreement
9 between Gaston Aguilar Nigot, a Panamanian, and
10 Bridgestone Costa Rica, S.A., which is--I'm sorry,
11 it's Exhibit Number 62. We're looking at the English.
12 I think the original was in Spanish.

13 A. Mm-hmm.

14 Q. Why don't you just read Paragraph 1 to us.

15 A. "BSCR establishes a Professional Services
16 Agreement with the PROFESSIONAL, to develop and manage
17 the sales of BSCR clients in Panama."

18 Q. And why don't you read Paragraph 9 to us on
19 Page 3.

20 A. "Both parties declare that this Agreement is a
21 commercial and not an employment agreement. Any
22 difference must be resolved in accordance with legal

1 commercial regulations."

2 Q. So this is--

3 A. So this is the Services Agreement that you're
4 referring to when we have somebody actually servicing
5 the sales in Panama; correct?

6 Q. Okay. So, I think, in the submissions in this
7 case, your counsel has represented that there is now a
8 full-time person in Panama for BSAM, and the evidence
9 submitted to support that statement is this Agreement.
10 This is an agreement between Bridgestone Costa Rica
11 and this individual. And, as you just read, it's not
12 an employment agreement. It's a Professional Services
13 Agreement.

14 A. Right.

15 So, we're paying him to--to service the
16 territory for us, right.

17 Q. Okay. Thank you.

18 So, Bridgestone Costa Rica and BSAM incurred
19 marketing expenses in connection with their sales in
20 Panama; is that right?

21 A. Yes, they do.

22 Q. They include promotions, seasonal promotions,

1 free merchandise and services, volume discounts and
2 the like; is that right?

3 A. Yes.

4 Q. And that's true whether it's a direct sale or a
5 sale to a distributor; right? There's marketing
6 expenses associated with that--

7 A. You say "direct sales." We don't--I'm not sure
8 what you mean by "direct sales." We don't sell to
9 consumers directly. We sell to distributors and
10 dealers, so we would generate and do marketing in the
11 territory kind of on their behalf or to support their
12 businesses to sell tires.

13 Q. Okay. And is the internet involved at all in
14 your sales?

15 A. You know what, I'm not sure. I don't--you're
16 getting into areas where I am not involved with the
17 business.

18 Q. All right. You--

19 A. You can ask me these questions, but, again, I'm
20 not the businessperson. I'm not down there. I don't
21 deal with the marketing and the sales.

22 Q. But you do have a Distribution Agreement with

1 an entity called--

2 (Overlapping speakers.)

3 Q. --Tambor?

4 A. We do. Yes, that's correct.

5 Q. Let me just state for the record, when I say
6 "BSAM" going forward, I'm referring to Bridgestone
7 Americas, BSAM.

8 So, in preparing their internal reports,
9 Bridgestone Costa Rica and Bridgestone Americas treat
10 these marketing expenses as expenses; right?

11 A. They're costs.

12 Q. They're cost, right?

13 A. Right.

14 Q. Okay. And, in preparing their accounts,
15 Bridgestone Costa Rica and BSAM, are treating them as
16 costs?

17 A. Yes.

18 Q. So, both in internal marketing and also in
19 accounting.

20 A. Yes.

21 Again, you're getting into accounting issues
22 that I am not--I'm not familiar with.

1 Q. But these expenses are not capitalized; right?

2 A. I don't know, but--I don't know.

3 Q. But you do work on the tax returns for
4 Licensing; right?

5 A. No, I don't. Jim Crothers does; he's the
6 Assistant Secretary.

7 Q. Okay.

8 A. Assistant Treasurer, I'm sorry.

9 Q. Yes, right. Okay. And the results of
10 Bridgestone Costa Rica's sales are reported on BSAM's
11 consolidated Financial Statements?

12 A. That's correct.

13 Q. And these results are also included in sales
14 reports that go to Bridgestone Corporation management
15 in Japan; no?

16 A. The reports--I mean, again, I don't have
17 first-hand knowledge of that, but I have to assume
18 that they go to Bridgestone in Japan, sure.

19 Q. I'm sure the big boys in Tokyo like to know
20 what's going on; right?

21 A. I'm sure they would like to know what's going
22 on in the United States, sure.

1 Q. And BSAM's results are also reported to
2 Bridgestone Corporation; right?

3 A. Yes.

4 Q. And BSAM pays dividends to Bridgestone
5 Corporation; correct?

6 A. I don't know.

7 I mean, I would assume that we pay dividends,
8 but you're getting into accounting areas that I'm just
9 am not--that's not my area of the Company.

10 Q. Well, who would decide whether BSAM was going
11 to pay a dividend to Bridgestone Corporation?

12 A. That would probably be our CFO.

13 Q. And who is that person?

14 A. Amanda Mathis.

15 Q. And where--

16 A. She's located in Nashville.

17 Q. In Nashville.

18 And she's the CFO of?

19 A. Of Bridgestone Americas.

20 Q. Bridgestone Americas, okay.

21 And she would also decide how much to pay as a
22 dividend?

1 A. I guess it would be a joint decision between
2 her and our executives, but, again, you're getting
3 into corporate structure decisions and that are way
4 out of my--

5 Q. Do you think the people in Tokyo would have any
6 interest in how much they got?

7 A. I'm sure they do, but, you know, it's a
8 function of how much money you make. So, if there's
9 dividends to pay, then, yes. If there's no profits to
10 pay dividends off of then there's nothing to pay
11 dividends on, so I don't know who makes that final
12 decision.

13 Q. I see.

14 Has this been a problem recently with BSAM not
15 having enough profits to pay dividends?

16 A. I don't know. I don't.

17 You're asking me questions about financial
18 situations that I'm just not privy to within the
19 Company. I don't get into dividend issues.

20 Q. Is there a bonus system at BSAM?

21 A. It is. There is.

22 Q. And when things are not good, you don't get

1 bonuses; right?

2 A. That's true.

3 Q. Have you been--

4 A. There's targets, I guess you could say.

5 Q. Right. And, to your knowledge, have bonuses
6 been paid in recent years?

7 A. Yes, there have.

8 Q. Okay. Thank you.

9 So, let's talk a little bit more about
10 Bridgestone Americas.

11 You're based in Akron, Ohio; right?

12 A. Correct.

13 Q. And Bridgestone Americas has an office there?

14 A. They have a technical center there, correct.

15 Q. And the Legal Department is based in Akron?

16 A. Just the Intellectual Property Department is
17 based--

18 Q. Intellectual Property Department, okay.

19 And when you hire outside counsel for
20 Bridgestone Licensing, where do you tell them to send
21 the invoice?

22 A. To Akron, Ohio.

1 Q. To Akron, Ohio.

2 And do you give them a Bridgestone Licensing
3 address?

4 A. Yes. It's 10 East Firestone Boulevard, Akron,
5 Ohio.

6 Q. All right. Why don't we put up Exhibit 88.
7 Have you located that in the book?

8 A. Yes.

9 Q. Okay. Can you tell us what this document is?

10 A. This is a summary page of an invoice from Ladas
11 & Parry.

12 Q. Okay. And do you see on the very first page,
13 the same page that has the exhibit Tab C-88, at the
14 top in the center, what does it say there?

15 A. It says: "Mr. Tomoki Akiyama, Bridgestone
16 Licensing Services, Inc."

17 Q. Right. But I was talking about the language in
18 the middle, which is highlighted on the screen.

19 A. Oh. You said the top.

20 That says: "Ms. Barb Gray, care of
21 Bridgestone Americas (Law Department), 10 East
22 Firestone Boulevard, Akron, Ohio, 44317, USA."

1 Q. Okay. So, this is really the Bridgestone
2 Americas Licensing unit, which is taking care of
3 Bridgestone Licensing business; correct?

4 A. This is Bridgestone Americas's Law Department
5 that processes the invoices for Bridgestone Licensing
6 Services, Inc., as we do for all of our other business
7 units; right? Bridgestone--or Firestone Building
8 Products, the ones that I mentioned before.

9 Q. Okay. In Paragraph 2 of your First Witness
10 Statement, you explain that you provided
11 intellectual-property-related legal services to BSLs
12 under the terms of a Support Services Agreement
13 between BSLs and BSAM's predecessor. Let us take a
14 look now at that Agreement.

15 Could we put up Exhibit 77, please?

16 Is this the Support Services Agreement that you
17 referenced in your Witness Statement?

18 A. Yes.

19 Q. Is this agreement still in effect?

20 A. Yes.

21 Q. And what is the date on this Agreement?

22 A. Dated as of December 1st, 2001.

1 Q. Okay. So, would you say that Bridgestone
2 Licensing has been operating by doing exactly the same
3 thing since at least 2001 when this Agreement was
4 signed?

5 A. They have been doing things the same way for as
6 long as I have been with the Company.

7 Q. And when did you start with the Company?

8 A. 2006.

9 Q. 2006, okay. Thank you.

10 A. Prefaced with, I was there during this period
11 of time but not involved in this transaction.

12 Q. I see. Okay. So, when did you become involved
13 with the Support Agreement?

14 A. Probably not soon after the 2006 start date.
15 There was another attorney who handled the work from
16 an outside firm called "Ulmer Berne," and I supervised
17 her, but it wasn't immediate. It was over time.

18 Q. Okay. But the financial arrangements with
19 respect to that work were covered by this Support
20 Services Agreement?

21 A. The in-house work, yes.

22 Q. So, let's turn to Exhibit A to this Agreement.

1 I think it's on Page 6.

2 Is this Exhibit A entitled "management fees"?

3 A. Yes, it is.

4 Q. And what does it say in the first sentence?

5 Could you read that for us, please.

6 A. It says: "A fee of 2 percent of the total net
7 budgeted license fees incurred by the
8 Licensee/Sublicensee, under The Agreements, will be
9 charged to BFAH to the Company for services performed
10 hereunder by BFAH."

11 Q. Okay, just for the record, is "BFAH" a
12 predecessor of BSAM?

13 A. Yes, it is.

14 Q. Okay. And how is this 2 percent fee
15 established?

16 A. It says 2 percent of the total net budgeted
17 license fees, so there is a license fee that's
18 budgeted at the beginning of the year and then they
19 take 2 percent off of that.

20 Q. But who decides whether it's 2 percent or
21 3 percent or 10 percent?

22 A. Who decides?

1 Q. Well, let me rephrase the question because the
2 Agreement was signed in 2000 and apparently it's not
3 been amended since; is that correct?

4 A. Not to my knowledge.

5 Q. Okay. So, in 2001, somebody decided that the
6 appropriate fee level was 2 percent.

7 Do you think that involved consultation with
8 the Tax Department?

9 A. Do I think? You're asking me to speculate
10 whether someone in 2001 consulted our Tax Department
11 before entering into this Agreement? Again, I wasn't
12 involved in this transaction.

13 Q. Have you ever heard the term "transfer
14 pricing"?

15 A. Yes, but I'm not familiar with it. I've heard
16 the term.

17 Q. I see. Have you heard reference to Section 482
18 of the Internal Revenue Code?

19 A. No.

20 Q. Would it surprise you if I told you that has to
21 do with transfer pricing?

22 A. I guess not.

1 Q. In general, most companies like to avoid having
2 discussions with the Internal Revenue Service, don't
3 they?

4 A. I would imagine they do.

5 Q. Yes. So, it's convenient to set prices at
6 levels that would not raise transfer-pricing issues.
7 Is that--

8 A. I suppose, but I don't know what those levels
9 are, and I don't know if that was taken into
10 consideration with this Agreement.

11 Q. I see. Okay.

12 If we turn to Page 7 of this Exhibit C-77,
13 we'll see a description of services to be provided.
14 And we see three categories: Financial Services, Tax
15 Services, and Legal Services.

16 What are the Financial Services that are
17 provided?

18 A. Those would be the processing--do you want me
19 to read this or do you want my general understanding?

20 Q. Why don't you give us your general
21 understanding.

22 A. It's the processing of the invoice, the

1 handling of the bank accounts. It's basically the
2 work that Tomoki Akiyama does.

3 Q. Okay. And when you say "processing," what does
4 that mean? If Bridgestone Costa Rica has to pay a
5 royalty to BSAM, how does that happen?

6 A. If Bridgestone Costa Rica--do you mean to BSLS?

7 Q. Yes.

8 A. To BSAM?

9 Q. Either one.

10 Let's do either one.

11 Start with BSAM.

12 A. I don't know that Bridgestone Costa Rica pays a
13 royalty to BSAM because of a legal requirement. BSAM
14 is the collection agency for BSLS for the Licenses
15 that the Companies charge for the use of the
16 trademark, the FIRESTONE trademark.

17 Q. Okay. Well, let's go on the Bridgestone
18 Licensing side of the equation, then. So, let's just
19 say there is a royalty due from Bridgestone Costa Rica
20 to Bridgestone Licensing; right?

21 A. Mm-hmm.

22 Q. That would be under the Licensing Agreement

1 between Bridgestone Licensing and BSAM, which is
2 sublicensed to Costa Rica; right?

3 A. I think it's--

4 (Overlapping speakers.)

5 A. I think it's from Bridgestone Licensing
6 Services to Bridgestone Americas's Tire Operations,
7 LLC to Bridgestone Costa Rica.

8 Q. Exactly. Okay.

9 So, is an invoice sent for those royalties?

10 A. That I don't know, whether they send an
11 invoice. Sometimes--sometimes--and I'm not saying
12 this is how it is, but sometimes it's based off of
13 budgeted sales; right? So, rather than going through
14 and calculating every tire that's manufactured, they
15 say, "According to our budget, we anticipate
16 manufacturing this many of tires, and here's the
17 amounts of the royalties due."

18 Q. But is it Bridgestone Costa Rica that's
19 actually initiating that conversation, they're saying
20 "we're budgeted for this" or "we sold X"?

21 A. No, I believe it would be Bridgestone Licensing
22 Services saying, "You owe us X."

1 Q. Do they send an invoice for them?

2 A. I don't know if it's done through an actual
3 invoice or whether there's just a wire transfer done
4 based on--

5 Q. Who does that?

6 A. I don't know who does that.

7 Q. But it's not Mr. Akiyama.

8 A. I don't know.

9 Q. Okay. Is there a Treasury function at
10 Bridgestone Americas?

11 A. Yes.

12 Q. Okay. Is there a Treasury function at
13 Bridgestone Licensing?

14 A. Mr. Akiyama does most of the financial stuff.
15 Whether he would consider it to be Treasury, I don't
16 know where that line is between accounting,
17 Treasury/Finance.

18 Q. Okay.

19 And the Bridgestone Americas Treasury, are they
20 effectively the Treasury for all of the Companies
21 underneath?

22 A. Again, you're asking me questions of our

1 corporate structure that--that I'm just not familiar
2 with.

3 Do we have a Treasury Department? Yes. As
4 part of Bridgestone Americas, there is a Treasury
5 Department. Do the individual business units have
6 their own Treasury representatives or functions? I
7 don't know whether Firestone Building Products or
8 Bridgestone Mexico or Firestone Industrial Products
9 has their own Treasury person.

10 Q. Is Mr. Akiyama a BSAM employee?

11 A. He is a--yes, he is an employee. I believe his
12 function now is within our Building Products group.

13 Q. And is he also an employee of Bridgestone
14 Corporation in Japan?

15 A. No.

16 Q. So, he gets a single paycheck from BSAM?

17 A. That's my understanding.

18 Q. And Bridgestone Corporation in Japan has a
19 Treasury function as well; right?

20 A. Again, I would assume so.

21 Q. Okay. And they control the money; right?

22 A. Yes.

1 Q. Okay.

2 A. That would be the function of a Treasury
3 Department.

4 Q. The Agreement also talks about tax services,
5 does it not?

6 A. It does.

7 Q. Okay. With whom do you work to provide tax
8 services?

9 A. Now, when you say "you," are you talking about
10 me, or are you talking about the Corporation?

11 Q. Well, let's ask if you do it.

12 A. I do not. I do not provide tax services to
13 Bridgestone Licensing.

14 Q. And who does the Corporation use?

15 A. There is an internal person, Jim Crothers, who
16 is the Assistant Treasurer--

17 Q. Okay.

18 A. --of Bridgestone Licensing--

19 Q. Is there an outside accounting firm?

20 A. There is. But I don't know if it's--I mean, we
21 use a lot of accounting firms, so I'm not sure which
22 one this would be, whether it's Ernst & Young or KPMG,

1 or another one, but...

2 Q. Okay. Is Mr. Crothers an employee of
3 Bridgestone Americas?

4 A. Yes, he is.

5 Q. And, under this Agreement, there also is
6 provision for legal services; is that right?

7 A. That's correct.

8 Q. Okay. Now, did you personally provide legal
9 services from Akron, Ohio?

10 A. I have provided legal services for BSLs out of
11 Akron, Ohio.

12 Q. And the Agreement talks about legal services
13 from the Legal Department in Akron; correct?

14 A. Yes.

15 Q. Okay. And, in this connection, did you oversee
16 the work of an attorney named Mallory Smith?

17 A. I do.

18 Q. And who approved the retention of Mallory
19 Smith?

20 A. The Bridgestone Licensing Services--I'm not
21 sure who signed the Agreement. There is an agreement
22 somewhere.

1 Q. Why don't we--we can look at Exhibit 86, if
2 that would help you.

3 A. Sure.

4 It was Mr. Mineki.

5 Q. And what was his position?

6 A. He's Director of Intellectual Property for
7 Bridgestone, and President of Bridgestone Licensing
8 Services.

9 Q. When you said "Bridgestone" there, you meant
10 Bridgestone Corporation in Japan?

11 A. Correct.

12 Q. And pursuant to this Agreement, you supervise
13 Mallory Smith; is that right?

14 A. Yes.

15 Q. And why don't we look at Page 2 of the
16 Agreement for a minute.

17 In the first full paragraph of the Agreement,
18 you see that the second sentence, beginning in the
19 third line, beginning with "Kitamura-san."

20 A. Yes.

21 Q. Could you just read that sentence for us,
22 please.

1 A. It says: "Mr. Kitamura-san shall supervise Mr.
2 Kingsbury, and Mr. Kingsbury shall report all
3 activities to Kitamura-san, either personally or
4 through Ms. Smith."

5 Q. And actually, that's the third sentence. The
6 second sentence begins in the third line,
7 "Kitamura-san."

8 A. Sorry, I didn't see the period.

9 "Kitamura-san is responsible for BSLS work
10 globally, with Tom Kingsbury acting as the local agent
11 for BSLS."

12 Q. So, do I correctly understand from this
13 arrangement that someone in Tokyo is actually
14 supervising Mallory Smith?

15 A. That's not how I read that. You--

16 Q. How does it work in practice?

17 A. Well, in practice--all right, so, in practice,
18 we have a lot of work through BSLS--right?--so we look
19 at trade-watch notices, we do clearance
20 investigations, we do trademark applications, we file
21 oppositions. All of that work is done out of
22 Akron--right? So all of the work is managed by

1 Mallory, or at least coordinated by Mallory and me.

2 We are responsible for the Americas. So
3 requests that come in through North and South America
4 come to us directly, and then we consult with
5 Mr. Kitamura on whether we should proceed or whether
6 he agrees with our recommendation. And we contact
7 local counsel, which is Ladas & Parry, for the most
8 part. Sometimes we'll go direct to--sometimes we'll
9 go direct to foreign counsel with the request. But
10 that's basically how it works in practice.

11 Q. And who is Mr. Kitamura?

12 A. He's the Head of the BRIDGESTONE trademark
13 group, and he is also an officer and a member--well,
14 he was a prior member when this was done. He was a
15 member of the Board of Directors for Bridgestone
16 Licensing Services.

17 Q. And had he been a director for a long time?

18 A. Do you have that?

19 Q. Okay--yes, we can go through those documents
20 for you. Why don't we do that while we're at it. I
21 think the sequence begins--

22 (Pause.)

1 Q. Exhibit Number 83.

2 A. I don't have that.

3 Q. And I believe it's on the second page. No, I'm
4 sorry, the first page.

5 PRESIDENT PHILLIPS: We do not have this in
6 the bundle.

7 MR. DEBEVOISE: You do not?

8 I think we could either provide it or you
9 could look at it on the screen.

10 All right. So, let's just scroll down through
11 the First Resolution.

12 BY MR. DEBEVOISE:

13 Q. Do you see Mr. Kitamura's name there?

14 A. I do.

15 Q. What is the position to which he's being
16 re-elected?

17 A. Vice President.

18 Q. So, then, let's go back to C--

19 MR. DEBEVOISE: Mr. President, are you all
20 right? Are you following along here?

21 PRESIDENT PHILLIPS: Yes, thank you.

22 BY MR. DEBEVOISE:

1 Q. Let's go to C-80.

2 This is a unanimous written consent of Board of
3 Directors of Bridgestone Licensing Services, dated
4 May 31, 2016; is that correct?

5 A. Yes.

6 Q. And could you read the Fourth Resolution,
7 "Resolved further..."

8 A. "Mr."--

9 Q. Go ahead.

10 A. "Mr. Hisashi Kitamura is hereby elected as Vice
11 President of the Corporation, pursuant to Section 3.01
12 of the bylaws of the Corporation, to take effect as of
13 the May 31, 2016, to hold office and exercise the
14 powers and responsibilities of such office until his
15 successor is duly elected and qualified."

16 All right. So, I stand corrected.

17 Q. So, Mr. Kitamura became the Vice-President of
18 Bridgestone Licensing only on May 31, 2016?

19 A. Apparently that's the case.

20 Q. And prior to that, he had the supervisory power
21 that we saw in the letter, but he was not formally an
22 officer of Bridgestone Licensing; correct?

1 A. That would be correct.

2 Q. And the next exhibit we'd like to take you to
3 is another board resolution.

4 A. 79?

5 Q. 79--yes, please.

6 So, this is a written consent of the Board of
7 Directors for action without a meeting of Bridgestone
8 Licensing Services, Inc., dated December 21, 2016; is
9 that correct?

10 A. That's correct.

11 Q. Okay. And that is signed by two directors:
12 Mr. Araki and Mr. Akiyama; is that correct?

13 A. Yes.

14 Q. Because at that time there were only two
15 directors of Licensing.

16 A. I--yes.

17 Q. Yes. And if we look at Page 1 of Exhibit 79,
18 near the bottom, there is a heading "CHANGES TO VICE
19 PRESIDENT; AUTHORITY OF VICE PRESIDENT"?

20 A. Yes.

21 Q. And it says that Mr. Kitamura desires to resign
22 effective December 31, 2016; is that correct?

1 A. That's correct.

2 Q. Okay. So, he was only a vice president for a
3 few months; is that right?

4 A. Well, what was that previous date he was
5 elected?

6 Q. I believe it was also a 2016 date.

7 A. November 2016? So that's correct.

8 Q. Okay. So, continuing on, on the next page of
9 the exhibit we were just looking at, you can see these
10 further resolutions, that pursuant to Section 3.04 of
11 the bylaws of the Corporation: "The Vice President of
12 the Corporation is hereby granted with full power to
13 act on behalf of the Corporation to do all or any the
14 following acts, deeds, matters or things (and all
15 other power granted to Vice President in prior board
16 resolutions is hereby repealed)."

17 Is that what that says?

18 A. That's what it says.

19 Q. And can we take a look at Item (d) of the
20 powers. That's the power to select service providers,
21 except for financial service providers, for the
22 Corporation in an amount not to exceed \$30,000; is

1 that correct?

2 A. That's correct.

3 Q. And would you say that that's a pretty ample
4 authority?

5 A. \$30,000--this depends what the services are.
6 That would cover most trademark matters other than
7 potential litigations and oppositions. And so, the
8 day-to-day trademark monitoring, the requests for
9 opinion work, the registration of trademarks would all
10 be under \$30,000.

11 Q. And if something went over \$30,000, from whom
12 would you have to get authority?

13 A. Probably the board.

14 Q. Which means Tokyo?

15 A. Which means the board members at that time,
16 which Tomoki Akiyama is one of, who's located in
17 Nashville.

18 Q. Mm-hmm, okay. But, individually or from the
19 full board?

20 A. It would need to be from the full board.

21 Q. Okay. And what about the power in (e)?

22 A. "Strategy regarding lawsuits and dispute

1 resolutions relating to any intellectual property of
2 the Corporation, or defense in measures against
3 infringement, in either case, whose estimated damages
4 shall not exceed \$30,000."

5 Q. So, again, if there were to be an expense in
6 excess of \$30,000, it would have to be approved by the
7 full board?

8 A. Correct.

9 Q. And--thank you. And these--strike that.

10 MR. DEBEVOISE: Mr. President, I think we are
11 probably at the 10:45 break time, if you'd like to
12 take a break, in the interest of everyone's human
13 rights?

14 PRESIDENT PHILLIPS: Yes, certainly. That's a
15 very good idea. We will take a 15-minute break.

16 SECRETARY TORRES: Microphone. Microphone.

17 MR. DEBEVOISE: I just noticed, Mr. Kingsbury
18 seems to have a black binder at his table. I don't
19 know--in addition to the bundles that are here, I
20 don't know what that is. Is that something that you
21 brought to the Hearing?

22 THE WITNESS: It is.

1 MR. DEBEVOISE: All right. I think maybe if
2 you could hand that to your counsel, I think you're
3 not allowed to be looking at that during this. Thank
4 you.

5 (Brief recess.)

6 PRESIDENT PHILLIPS: Yes, we continue.

7 BY MR. DEBEVOISE:

8 Q. Are you ready, Mr. Kingsbury?

9 A. Yes.

10 Q. Thank you.

11 Right. I'd like to start by taking a look at
12 the Notice of Intent of Arbitration, which is
13 Exhibit 43, which was submitted by Bridgestone
14 Americas and Bridgestone Licensing in this
15 arbitration.

16 I think in the notebook, somehow, it's
17 appearing under the tab "Notice of Arbitration"
18 instead of by the exhibit number, so it's right up
19 front in the book.

20 Do you recognize this document?

21 A. Yes.

22 Q. Okay. And it's dated 30 September 2015;

1 correct?

2 A. Yes.

3 Q. And did you assist in the preparation of this
4 document?

5 A. Yes, I did.

6 Q. Okay. And you signed this document on behalf
7 of Bridgestone Licensing?

8 A. Yes, I did.

9 Q. And also on behalf of Bridgestone Americas?

10 A. Yes.

11 Q. Now, I'd like us to take a look at Claimants'
12 Exhibit C-45.

13 Do you have that in front of you?

14 A. I do.

15 Q. Okay. And this is entitled "Claimants'
16 Waiver"; is that right?

17 A. Yes, it is.

18 Q. And it's dated October 21, 2016; correct?

19 A. Yes.

20 Q. And that was after the filing of the Request
21 for Arbitration.

22 A. Yes, it was.

1 Q. And if you'll recall, following the filing of
2 the Request for Arbitration, there was correspondence
3 received from the ICSID Secretariat asking some
4 questions of Bridgestone Licensing and Bridgestone
5 Americas; is that correct?

6 A. That's correct.

7 Q. And then, in response to that, this waiver was
8 sent in; is that right?

9 A. Yes.

10 Q. And you signed this waiver on behalf of
11 Bridgestone Americas; correct?

12 A. I did.

13 Q. Okay. Now, I'd like to ask the Secretary of
14 the Tribunal if she could retrieve for us Claimants'
15 Exhibit 44, which I believe is the similar waiver on
16 behalf of Bridgestone Licensing, and bring us the
17 original that's in the files of the Secretariat.

18 A. Okay, thank you.

19 SECRETARY TORRES: Who should I pass this on
20 to?

21 MR. DEBEVOISE: I will show it to him.

22 BY MR. DEBEVOISE:

1 Q. This is the original version that's received
2 here at the Secretariat. And is this also a
3 Claimants' waiver?

4 A. Yes, it is.

5 Q. And is it on behalf of Bridgestone Licensing?

6 A. Yes, it is.

7 Q. Okay. And it's signed by...

8 A. The President of Bridgestone Licensing
9 Services, Mitsuru Araki.

10 Q. Okay. And Mr. Araki is located where?

11 A. He is in Tokyo.

12 Q. Tokyo, right.

13 And this letter purports to be on Bridgestone
14 Licensing Services letterhead.

15 A. Correct.

16 Q. And, in the Bridgestone logo, usually the
17 little corner of the "B" is in red, is it not?

18 A. That's correct.

19 Q. Is this in red?

20 A. It is not.

21 Q. Okay. Thank you.

22 Does Bridgestone Licensing actually have a

1 letterhead of its own?

2 A. There is no corporate letterhead per se.
3 There's the logo, and then there's a box where you can
4 input the Corporation and your name and address. So,
5 for example, mine is not an official letterhead.
6 It's--I used the Bridgestone logo and then typed in a
7 text box the address and my name and my contact
8 information.

9 Q. Now I would ask you to turn to Exhibit C-2 in
10 the materials, which should be a copy of the Power of
11 Attorney for Akin Gump to act on behalf of Bridgestone
12 Americas in this arbitration.

13 Do you recognize this document?

14 A. I do.

15 Q. And is it that Power of Attorney?

16 A. Yes, it is.

17 Q. Dated October 3, 2016?

18 A. Yes.

19 Q. And signed by you.

20 A. Yes.

21 Q. And, when you signed this document, you were in
22 Akron, Ohio?

1 A. I was.

2 Q. And did you consult with Bridgestone
3 Corporation before signing this document?

4 A. I don't think so, no.

5 Q. You did not consult with Bridgestone
6 Corporation.

7 A. Did I consult with Bridgestone Corporation--I
8 don't believe I consulted with the Bridgestone
9 Corporation.

10 Q. Could we turn over the page and look at Page 2
11 of the document.

12 What is the heading on this Page 2?

13 A. Bridgestone Americas, Inc.

14 Q. And then what does it say below that?

15 A. "Approval for Commencing and Pursuing
16 Arbitration Against the Republic of Panama."

17 Q. Okay. And would you read us the second
18 paragraph on that page.

19 A. Yes.

20 "BSAM, in consultation with Bridgestone
21 Corporation and Bridgestone Licensing, has been
22 contemplating legal action following the

1 above-referenced Supreme Court action."

2 Q. Okay. And the third paragraph.

3 A. "BSAM with Bridgestone Corporation and BSLS,
4 has consulted with the law firm of Akin Gump Strauss
5 Hauer & Feld LLP ('Akin Gump'), and has filed, on
6 September 30, 2015, a Notice of Arbitration pursuant
7 to U.S.-Panama FTA."

8 Q. So--

9 A. So, I stand corrected. I did consult with
10 Bridgestone.

11 Q. Okay. And it seems that you were consulting
12 with them as early as 2015.

13 A. Correct.

14 Q. Before the filing of the Notice of intent.

15 A. Yes.

16 Q. Okay. Thank you.

17 And as this document indicates, you sought
18 advice from Akin Gump before filing this arbitration;
19 correct?

20 A. Correct.

21 Q. When did you first consult with Akin Gump?

22 A. Probably after the Supreme Court Decision in

1 Panama.

2 Q. I think there were several, so maybe we should
3 be more precise about that.

4 The decision that you complain about in this case
5 was in 2014. Are you referring to that decision?

6 A. Yes.

7 Q. Okay. And I think, as we just saw, at a
8 minimum, it would have been before September 2015,
9 which is the date of this document we were just
10 looking at; correct?

11 A. Yes.

12 Q. And, in fact, it might have been quite a bit
13 earlier, might it not?

14 A. Yes.

15 Q. So, how much earlier do you think it might have
16 been?

17 A. Can you give me the date of the Decision again?
18 Do you have that?

19 Q. The Decision was in May of 2014.

20 A. May?

21 It would have probably been soon after
22 May 2014.

1 Q. Soon after May 2014, you were consulting Akin
2 Gump about the possibility of filing an investor-State
3 arbitration claim against Panama?

4 A. No.

5 Q. What were you consulting with them about?

6 A. Our options to try to overturn the Decision in
7 Panama.

8 Q. But they're not Panamanian lawyers.

9 A. No, but they know a lot of Panamanian lawyers.

10 Akin Gump is our--is our Government lobbyist
11 firm as well, so we were looking for ways to try to
12 influence either the United States Government to take
13 a look at this case for us or looking for contacts
14 within Panama--i.e., an outside law firm--to try to
15 help file appeals in the case.

16 Q. But it was at least on or before the 24th of
17 February--was it not?--when you appeared and made a
18 statement to the office of the United States Trade
19 Representative.

20 A. Could you repeat that?

21 Oh, September 25th--or September 2015? Is
22 that the date you were referring to?

1 Q. No. That was the Notice of intent.

2 So, let's look at Exhibit C-32.

3 A. Okay.

4 Q. Okay. So, Exhibit 32 is entitled "2015 Special
5 301 Public Hearing," of the Special 301 Subcommittee
6 of the Trade Policy Staff Committee of the Office of
7 the U.S. Trade Representative. Is that right?

8 A. That's right.

9 Q. And it's dated February 24, 2014--2015?

10 A. Yes.

11 Q. Okay. And it's the Hearing statement of
12 Bridgestone Americas, Inc., correct?

13 A. That's correct.

14 Q. And it was a statement given by you,
15 Mr. Kingsbury; correct?

16 A. It was.

17 Q. Okay. And whose idea was it to go to this
18 Special 301? Was that Akin Gump's idea?

19 A. Yes, it was.

20 Q. And can we look, please, at Page 3 of this same
21 exhibit. And in the top paragraph on the page, let's
22 look at the last sentence in that paragraph.

1 A. Yes.

2 Q. Do you see where it says: "Specifically, we
3 believed that the Panamanian Supreme Court's ruling
4 raises serious questions under...", and then in
5 addition to the WTO TRIPS, it says: "The U.S.-Panama
6 Trade Promotion Agreement (TPA)."

7 A. Yes.

8 Q. And two paragraphs on, paragraph beginning with
9 the word "Second."

10 A. Mm-hmm.

11 Q. "The Panamanian Supreme Court's decision
12 prevents Bridgestone," et cetera?

13 A. Yes.

14 Q. And at the end of that sentence it says: "And
15 did not afford Bridgestone 'fair and equitable
16 treatment' as required under Article 10.5.2 of the
17 TPA." Is that right?

18 A. That's correct.

19 Q. And if we go two paragraphs on below that,
20 under the paragraph that begins "Fourth," in the last
21 sentence of that paragraph--do you follow me?--where
22 it says: "Such expropriation without due compensation

1 is prohibited under Article 10.7 of the TPA."

2 A. That's correct.

3 Q. So, that's 24 February when you're giving this
4 statement, 24 February 2015; correct?

5 A. Yes. Correct.

6 Q. Okay. And, in fact, it was even earlier that
7 you had consulted Akin Gump on these matters; is it
8 not true?

9 A. I'm sure we would have had to consult them
10 earlier in order to prepare all that, that's correct.

11 Q. All right. If we look at that same exhibit on
12 Page 5 of the exhibit--

13 A. Right.

14 Q. --is that another letter signed by you?

15 A. It is.

16 Q. And is it dated February 6, 2015?

17 A. It is.

18 Q. Addressed to the Office of the U.S. Trade
19 Representative.

20 A. Correct.

21 Q. Expressing a Notice of Intent to testify; is
22 that correct?

1 A. Yes.

2 Q. And if we look at Page 10 of this exhibit, the
3 very last page, in the carryover paragraph at the top
4 of Page 10, you see the last sentence of that
5 carryover paragraph?

6 A. Yes.

7 Q. Would you read that for the Tribunal, please,
8 beginning with "Therefore."

9 A. "Therefore, the Supreme Court's actions
10 constitute indirect expropriation of Bridgestone's
11 investment without compensation, in violation of
12 Article 10.7 of the TPA and Article IV of the BIT."

13 Right, but just to clarify, you asked me did
14 we contact Akin Gump immediately after the suit to
15 file an ISDS action; right?

16 Q. I don't think I asked you that. I asked when
17 was your first contact, and then you said--

18 A. I said soon after.

19 Q. You said it was after the suit.

20 A. Yes.

21 Q. And then after the Supreme Court Decision?

22 A. Yes.

1 Q. Right.

2 And we're just going back trying to find out
3 when that might have been, and I think we've now
4 established that it was at least before
5 February 6, 2015.

6 A. That's fair.

7 Q. Okay. So, now let's take a look at Exhibit C-1
8 of your materials.

9 You found that.

10 A. I did.

11 Q. Okay. Is that a Power of Attorney from
12 Bridgestone Licensing Services?

13 A. It is.

14 Q. Okay. Addressed to Akin Gump--or addressed to
15 the attorneys of Akin Gump, I guess I should say.

16 A. Yes, it is.

17 Q. All right. And that is signed by whom?

18 A. Hisashi Kitamura.

19 Q. Mr. Kitamura.

20 And what is his capacity listed there?

21 A. Vice President.

22 Q. Vice President of Bridgestone Licensing

1 Services.

2 And I think we established a few minutes ago
3 that Mr. Kitamura had only become a Vice President of
4 Licensing Services shortly before; is that right?

5 A. I think we said May. Does that sound right?

6 Q. Yes, I believe it was in May.

7 And that he resigned in December of 2016?

8 A. Yes--was that a question?

9 Q. I think you nodded your head.

10 A. Well, I don't know if that was a question or if
11 that was just a statement.

12 Q. Yes, that's a question.

13 A. All right. Yes.

14 Q. Okay. Thank you.

15 And I think we established previously that
16 Mr. Kitamura was responsible for Bridgestone Licensing
17 IP work globally; is that right?

18 A. Can you repeat that?

19 Q. That Mr. Kitamura was responsible for
20 Bridgestone Licensing IP work globally.

21 A. Yes, he coordinates the work globally.

22 Q. Okay. And he's also part of the Global IP Unit

1 for Bridgestone Corporation?

2 A. He is.

3 Q. And based in Japan?

4 A. Correct.

5 Q. Now, if we go back and look at Exhibit 80,
6 which was that Board Resolution we were looking at
7 earlier, there was another action that was taken that
8 day.

9 What was the final resolution adopted by the
10 board on that date?

11 A. It says: "RESOLVED FURTHER, that the number of
12 Directors comprising the Board of Directors of the
13 Corporation shall hereafter be reduced from three (3)
14 to two (2)."

15 Q. Okay. So, at the time of the filing of the
16 arbitration case, there were only two Directors of
17 Bridgestone Licensing?

18 A. Yes.

19 Q. And they were both based in Japan; correct?

20 A. No. Mr. Hayato was based in Nashville.

21 Q. Until when?

22 A. Until Mr. Akiyama replaced him, so whatever the

1 date was.

2 Q. I see. So, there was a regular rotation
3 process that goes on, here, of these senior people
4 from Tokyo?

5 A. Yes.

6 I don't know how regular it is, but they do
7 rotate people into the Treasury or the Finance
8 function within BSLS periodically.

9 Q. I see. So, it's always the Treasury function
10 that comes from Japan.

11 A. Yes.

12 Q. All right. And these people are housed in
13 BSAM.

14 A. Within the Bridgestone Americas family of
15 companies, yes.

16 Q. And they cease getting a paycheck from
17 Bridgestone Corporation and they start to get it from
18 BSAM when they're in Nashville?

19 A. Yes.

20 Q. Bridgestone Licensing was formed in 2001;
21 correct?

22 A. Correct.

1 Q. And the FIRESTONE trademark was transferred to
2 Bridgestone--

3 A. Licensing--

4 Q. --Licensing when?

5 A. There is an Assignment Agreement somewhere. I
6 don't have the exact date, but I'm sure it was soon
7 after 2001.

8 Q. 2001?

9 A. Yeah.

10 Q. Right after the incorporation?

11 A. I would assume so.

12 Q. Okay.

13 And Bridgestone Corporation acquired Firestone
14 Tire and Rubber in 1998; is that right?

15 A. 1988.

16 Q. '88. Excuse me, that's a typo in my notes.
17 1988.

18 A. Yes.

19 Q. And the FIRESTONE mark was not transferred to
20 Bridgestone Corporation in Japan after that
21 acquisition?

22 A. That's correct.

1 Q. And instead, the ownership of the FIRESTONE
2 trademark was left in place initially and then
3 subsequently transferred to Bridgestone Licensing in
4 2001; is that right?

5 A. There were a number of different assignments
6 that happened after the purchase in 1988. It went to
7 a company called "Bridgestone/Firestone, Inc." for a
8 period of time, and then it was separated into the
9 United States and foreign marks and assigned to
10 different entities at that time.

11 Q. Maybe what we should do, then, is take a look
12 at Claimants' Exhibit Number 97.

13 Do you recognize this exhibit--

14 A. I do.

15 Q. --which was attached to your Witness Statement.

16 It's called the "FSGBP Funding Proposal."

17 A. Yes.

18 Q. Dated February 2, 2017?

19 A. Correct.

20 Q. So earlier this year?

21 A. Yes.

22 Q. And "FSGBP" stands for what? Firestone Global

1 Branding something?

2 A. Project.

3 Q. Project. I apologize. I think it looks as
4 though only six pages of 20 made it into my binder,
5 but I have it here. I don't know whether your binder
6 suffers from the same defect.

7 Do you have Page 11 of the binder?

8 A. I do, yeah.

9 Q. Of the exhibit?

10 A. Yep.

11 Q. This shows the Assignment History, so maybe we
12 could put up Page 11.

13 Okay. So, according to this chart, the
14 assignment to Bridgestone Licensing Services would
15 have been shown in Step 2(a); is that right?

16 A. Yes, that's true.

17 Q. And if we read Footnote 2(a), that's "The
18 General Trademark Assignment Agreement between
19 Bridgestone/Firestone, Inc., and Bridgestone Licensing
20 Services, LLC, Assignment of United States Patents and
21 Patent Applications and Tire-Related Confidential
22 Know-how and Technology." Is that right?

1 A. Yes.

2 Q. And by leaving ownership of the FIRESTONE
3 trademark in an U.S. entity, as we all know, as U.S.
4 citizens, we're taxed on our worldwide income;
5 correct?

6 A. We are.

7 Q. And U.S. corporations are as well?

8 A. Yes.

9 Q. So, by leaving the trademark ownership in a
10 U.S. company, the Bridgestone group was exposing the
11 income deriving from that trademark to U.S. taxation
12 on all of its global earnings?

13 A. Yes.

14 Q. But the Bridgestone tax planners decided to go
15 ahead and do that.

16 A. I don't know who was involved in that decision,
17 but that was the decision that was made.

18 Q. Right. Okay.

19 And the only source of revenues for Bridgestone
20 Licensing is royalties; right?

21 A. Correct.

22 Q. Okay. And that's passive income?

1 A. Yes, royalties, I guess, are defined as passive
2 income.

3 Q. Right. Okay.

4 But we talked a little bit earlier about
5 transfer pricing, so you have to be careful when you
6 accept the amount of the royalty--right?--not to run
7 afoul of transfer-pricing rules. Is that right?

8 A. Again, I don't--I'm not familiar with
9 transfer-pricing rules.

10 Q. Okay. All right. And is it safe to assume
11 that the people at the time were not--that they were
12 looking out for the best interests of Bridgestone
13 Corporation, the acquirer in this transaction, from a
14 tax perspective? They were going to maximize--

15 A. I'm sure that was a consideration. I'm sure
16 there were other considerations as well that were
17 considered when we made this decision, but again, I
18 wasn't--

19 Q. So, if they had actually moved the trademark
20 out to Bridgestone Corporation, maybe they would have
21 had to pay even more tax?

22 A. You said maybe, right.

1 Q. Okay.

2 A. I don't know. I'm not a tax authority.

3 Q. Right. Okay.

4 So, we talked a little bit about Treasury
5 functions.

6 Does Bridgestone Licensing borrow money from
7 other Bridgestone affiliates?

8 A. Yes. It can, and it does.

9 Q. And when it does that, does it pay interest on
10 the borrowings?

11 A. I don't know. I would assume so, but I don't
12 know.

13 Q. Okay.

14 A. I wasn't--I have not seen one of those physical
15 agreements.

16 Q. I see, okay. Well, again, because of transfer
17 pricing, if it were zero, if there were no interest,
18 there might be a problem?

19 A. I would assume that there would be problems
20 with that, sure.

21 Q. Okay. And there can also be problems, though,
22 with companies that borrow from other companies within

1 a group and then try and take a deduction for that
2 interest. There can be rules that limit the amount of
3 your deductions; is that not true?

4 A. I can--again, I apologize, but I'm just not--

5 Q. Okay.

6 A. This is not my area. I have no idea. I'm not
7 in Accounting or Financial within the Company.

8 Q. Well, why don't we just take a quick look at
9 C-123. And C-123 is the tax return that you submitted
10 for the Year 2015; is that correct?

11 A. It's the tax return the Company submitted, yes.

12 Q. The tax return of Bridgestone Licensing
13 Services, Inc.

14 A. That's correct.

15 Q. For the calendar year 2015.

16 A. Yes.

17 Q. That was attached to your Witness Statement.

18 A. Yes.

19 Q. And at Page 52 of this 64-page document, you
20 see a Form 8926.

21 Have you located that?

22 A. I have, yes.

1 Q. Okay. And what is the heading of that form?

2 A. "Disqualified Corporate Interest Expense
3 Disallowed Under Section 163(j) and Related
4 Information."

5 Q. Okay. And I'm not going to ask you if you
6 understand what it means, but you see on Page 53 of
7 that document, Line 5(f).

8 A. I do.

9 Q. And does that say "Total disqualified interest
10 for the tax year"?

11 A. It does.

12 Q. Okay. So, this is interest that's paid but not
13 allowed to be deducted.

14 Okay. The borrowing that takes place, is that
15 coming from Bridgestone Corporation in Japan?

16 A. Yes.

17 Q. Okay. And if we can go back to the document we
18 were looking at earlier, the Funding Proposal
19 document, it's at 97, I believe. And if we look on
20 Page 17, please, of that, can you tell us what this
21 page shows?

22 A. This represents the BSLS payments to

1 Bridgestone Corporation and the remaining principal on
2 a loan that was taken out in 2001.

3 Q. So, you said there was a loan taken out in 2001
4 from Bridgestone Corporation; is that right?

5 A. Yes.

6 Q. And what was the amount of that loan?

7 A. \$31 million.

8 Q. \$31 million.

9 It seems like a lot of money, doesn't it?

10 A. \$31 million is a lot of money, sure.

11 Q. Yeah, okay. Thank you.

12 And if Bridgestone Licensing were not a
13 subsidiary of Bridgestone Corporation, do you think
14 that they could go to the bank and get a loan for
15 \$31 million?

16 A. Good question. If you leveraged the assets
17 that it owned, I guess you'd have to value how--I
18 would argue that the value of the FIRESTONE trademarks
19 globally is worth more than \$31 million.

20 Q. Is Bridgestone Licensing Services at liberty to
21 sell the FIRESTONE trademark to pay debts?

22 A. To pay debts? No.

1 Q. No. Okay. All right. Well, maybe we'll move
2 along, then, and talk a little bit about the role of
3 Bridgestone Brands in the business.

4 In your capacity as Chief Intellectual Property
5 Counsel for Bridgestone Americas, do you work with
6 people at Bridgestone Brands?

7 A. Yes.

8 Q. Are you dual hatted? You also have
9 responsibilities with Bridgestone Brands?

10 A. I was Assistant Secretary, and I believe have
11 been made Secretary and General Counsel.

12 Q. I see.

13 So, for some purposes, this is all just melded
14 together?

15 A. In an organization like ours, yeah, that tends
16 to happen.

17 You often have multiple hats. I'm an officer
18 of several companies, as is a lot of people in the
19 Company, just in order to function--

20 Q. And how large is the Legal Department at
21 Bridgestone Brands?

22 A. It does not have a legal department. It's me,

1 and I think that that's the only attorney who you
2 would say has a title. There's another trademark
3 attorney in our group who has the title of Assistant
4 Secretary.

5 Q. And does Bridgestone Brands have employees?

6 A. No, it does not.

7 Q. Okay. You said you'd been a director of
8 Bridgestone Brands. Are you still a director of
9 Bridgestone Brands?

10 A. I'm Secretary--I'm Secretary and General
11 Counsel.

12 Q. Now, I think you said in your Witness Statement
13 that one of the important functions of Bridgestone
14 Licensing is, in fact, to license; is that correct?

15 A. Yes.

16 Q. And you attached an appendix with some License
17 Agreements.

18 A. Mm-hmm.

19 Q. And I think there is also an exhibit with the
20 actual text of some of those Licensing Agreements; is
21 that right?

22 A. That's right.

1 Q. So, let's take a look at the appendix to your
2 Witness Statement with that list, Appendix A. And the
3 left-hand column here is a column for Licensors; is
4 that right?

5 A. That's correct.

6 Q. And looking down the column, it would
7 appear--and maybe you can confirm this--that the
8 Licensors on all of these Licenses, save one, are two
9 in number. There is both Bridgestone Licensing
10 Services and BFS Brands, LLC; is that correct?

11 A. There are two--I think maybe there is a typo in
12 the first one on Page 13. But I would have to see the
13 Agreement to confirm.

14 Q. Okay.

15 A. Other than that--

16 Q. But basically the pattern here is that
17 Bridgestone Brands and Bridgestone Licensing Services
18 are jointly licensing or one's licensing outside the
19 U.S., the other is licensing inside the U.S., but it's
20 all in one agreement; is that right?

21 A. That's right.

22 Q. So, you're partnering with Brands for these

1 Licenses?

2 A. We, now, when you say "we"...

3 Q. Bridgestone Licensing is partnering with
4 Bridgestone Brands in these License Agreements?

5 A. They are partnering with them in these License
6 Agreements, that's correct.

7 Q. I can take you there, if you like, but if we
8 went back to that funding proposal document we were
9 looking at before--

10 A. Right.

11 Q. --does that document not state that 80 percent
12 of the royalty revenue is coming from the Brands
13 business and 20 percent from Licensing?

14 A. Let's go back there.

15 Q. Okay. Let's go look at it. I think on Page 3
16 of Exhibit 97. Do you see Page 3?

17 A. I do see Page 3.

18 Q. Okay. And the first bullet says: "It is
19 proposed a fair split of costs to be determined by
20 previous Year's Brand revenue by region." Is that
21 correct?

22 A. That's what it says, yes.

1 Q. And: "Based on 2015 global revenue, if the
2 proposed approach had been in place, BS Brands would
3 have been tasked with 80 percent of the cost of global
4 projects and BS Licensing with the remaining
5 20 percent." Is that correct?

6 A. That's what it says, yes.

7 Q. Okay.

8 A. Yes. So, this was a proposal in order to fund
9 a branding initiative within the Company. We were--
10 The FIRESTONE Branding Global Committee obviously is a
11 global committee that is tasked with trying to enhance
12 the FIRESTONE brand around the world. This was a
13 proposal--I don't know that it was ever adopted, but
14 it was a proposal to fund the project in order to have
15 resources to do different initiatives globally with
16 the FIRESTONE brand, and those percentages represent a
17 percentage of the licensing from each one of those
18 entities. It's 80:20 because the United States is
19 such a large market, and we sell so many tires under
20 the FIRESTONE brand that it has a much greater
21 percentage of the cost of that project.

22 Q. Right. Okay. So--

1 A. And then the last sentence says: "As the brand
2 continues to expand, the split will continue to
3 shift." Right? So, it's going to go evenly as the
4 projects are.

5 Q. Right.

6 Now, we're talking about licensing activity
7 here, and I think I would be interested to know: Does
8 Bridgestone Licensing hold itself out to the public as
9 making the FIRESTONE brand available for license?

10 A. We have a third-party licensing agent who is
11 going out and looking for opportunities for that right
12 now.

13 Q. So that--

14 A. In and outside of the United States.

15 So, if you look at that list--I mean, most of
16 those companies want to sell worldwide. Right? So,
17 in order to sell worldwide, you need to have rights to
18 both of those companies.

19 Q. So, this agent is also working on behalf of
20 Brands.

21 A. He is, or they are.

22 Q. And it's really Brands that's taking the

1 initiative here; right? Because they're the bigger
2 boy?

3 A. They're the bigger boy in the sense that the
4 United States market is the largest market in the
5 world.

6 Q. And would you say that this type of licensing
7 activity is a major part of Bridgestone Licensing's
8 business?

9 A. Are we just talking about those in the exhibit?

10 Q. I think the only universe we have to go by is
11 your list and also the Exhibit 89, which we can look
12 at in a minute.

13 A. Okay. So, could you repeat the question?

14 Q. Yes.

15 So, is the type of licensing activity that you
16 described in your Witness Statement--

17 A. Yes.

18 Q. --and for which you provided this list of
19 agreements--

20 A. Right.

21 Q. --is that a major part of Bridgestone
22 Licensing's business activity?

1 A. It is a part of their business activity, yes.

2 A major part? Sure.

3 Q. Okay. And you submitted copies of some of
4 these agreements in C-89, did you not?

5 A. We did.

6 Q. And I think you said in your Witness Statement
7 that most of these are not revenue-generating?

8 A. That's correct.

9 Q. They're product placement agreements.

10 A. Yes, that's true. A lot of them are die-cast
11 models, just old historic models of cars or Hot Wheels
12 from Mattel. And while we would love to have a
13 revenue-generating royalty on those, most of them say,
14 by the time they pay the car companies, there's just
15 no money for revenues to pay for the tires. So, if
16 it's a choice of paying us to put FIRESTONE on the
17 tires or leaving them black, they would just choose to
18 leave them black. So, we made a determination as a
19 Company that it's better to have the brand exposure to
20 have these things with FIRESTONE tires than not.

21 Q. And we can go through the Agreements, if you
22 like, but would it surprise you if I told you that in

1 the universe of 16 agreements that you provided in
2 C-89, we found three that had a royalty?

3 A. No, again, because most of them are die-cast
4 models or video games.

5 Q. Right. And if we looked, for example, at C-89,
6 the first agreement that was there, the ACME Trading
7 Company Agreement?

8 A. Yep.

9 Q. Do you see that?

10 A. Yes.

11 Q. Okay. And then, if we went over to Page 8 of
12 that Agreement, Page 8 of the exhibit, 8 of 158
13 pages--

14 A. Yes.

15 Q. --we would see under "Royalties," \$2,000 a
16 year. I think it's highlighted on your screen if that
17 helps.

18 A. Yes.

19 Q. So, that's \$2,000.

20 And, if we were to look at the Agreement with
21 Round 2, LLC, which is on Page 132, which is a
22 Bridgestone Brands Agreement?

1 A. Correct.

2 Q. Okay. And then, if we were to look further at
3 Page 139, at the top of the page there, we'd see that
4 the compensation is a lump-sum payment of \$2,500 per
5 year?

6 A. Correct.

7 Q. So, the royalty income from this type of
8 agreement is very small.

9 A. Yes.

10 Q. And, if we were to now look at Exhibit 92.
11 Have you found that?

12 A. I did.

13 Q. Okay. Let's go to the very last page, which is
14 the Bridgestone Licensing Services Income Statement
15 for 2016.

16 A. Yes.

17 Q. Do you see that?

18 A. I do.

19 Q. Okay. And on the far-right column, there is
20 about halfway down the page a "Trademark Income TOTAL"
21 number of 5,020,881.

22 Do you see that?

1 A. I do.

2 Q. Okay. And that number represents the sum of
3 all the numbers above it; correct?

4 A. Correct.

5 Q. And, if we go over to the left-hand column, we
6 can see the sources of these royalties, and I think
7 there are 21 lines in the spreadsheet starting with
8 BSAR and coming down.

9 A. Mm-hmm.

10 Q. And the first 20 are all Bridgestone
11 affiliates, are they not?

12 A. They are.

13 Q. And the 21st line says "Others." Correct?

14 A. It does.

15 Q. So, that means that's the type of royalty
16 that's coming from these agreements that we were just
17 looking at?

18 A. Yes.

19 Q. And can you go over to the right-hand column
20 and see what the number there is.

21 A. 15,738.

22 Q. \$15,738 total royalty income in 2016 from

1 non-group?

2 A. Right.

3 Q. Okay.

4 A. Because again, that's the purpose of our
5 license initiative is more for brand recognition.

6 Q. Yes, so you do it as brand recognition, but
7 you're not in the business of holding yourself out to
8 third parties as having the FIRESTONE mark available
9 for general business. That's not the heart of what
10 you do; right?

11 A. We don't advertise ourselves as that, but if
12 you look at the License Agreements, the very last
13 clause, all of the models and all of the Hot Wheels
14 and everything that's sold does have the trademark
15 notice on it.

16 Q. Okay?

17 A. Right? So, it's not like we're hiding the fact
18 that Bridgestone Licensing Services owns the mark.
19 The last thing says: "Firestone and the Firestone
20 logos are registered trademarks of Bridgestone Brands,
21 LLC and Bridgestone Licensing Services, Inc. and are
22 used with permission."

1 So, every product and every package that these
2 Licenses have have that out in the public.

3 Q. But basically your business is licensing to the
4 group: You hold the mark, you have the registrations,
5 and you license it to the group?

6 A. That's true.

7 Q. Okay. Let's go back to the Tax Return for a
8 minute. That was C-123.

9 Have you found that?

10 A. I have.

11 Q. Let's look at Page 3 of that Return.

12 You see at the lower right portion of the page
13 a Schedule K?

14 A. I do.

15 Q. "Other Information."

16 And what does Line 2(b) say?

17 A. "Business Activity."

18 Q. And that's the question from the IRS. What is
19 the answer given by Bridgestone Licensing Services?

20 A. "Financial Management."

21 Q. Right. And what is the next question from the
22 IRS?

1 A. "Product or Service."

2 Q. What is the answer from the Bridgestone
3 Licensing Services?

4 A. "Intangible Assets."

5 Q. Okay. Let's go back to Page 1 of the Return.
6 Let's look at Line 11, that's "Total Income" for the
7 year; correct?

8 A. Correct.

9 MR. WILLIAMS: Mr. President, I'm sorry to
10 interrupt, and I don't want to interrupt the flow.
11 I'm slightly concerned that, bearing in mind that
12 today's hearing is broadcast to the world, the
13 continued reference to the tax returns and tax
14 information and tax filings, it seems to me that
15 issues around that, there may be slightly--it may not
16 be appropriate for those sorts of issues to be
17 broadcast to the world, and, therefore--and I don't
18 know where Mr. Debevoise is going with his questions,
19 but to the extent that there will be further questions
20 around tax questions and tax returns and information
21 contained in those returns, it seems to me that, if
22 there were, then it might be appropriate for the link

1 perhaps to be stopped for the duration of those sorts
2 of questions.

3 MR. DEBEVOISE: Mr. President, there is a
4 procedure for submitting business confidential
5 information. Claimants have elected not to use that
6 procedure in this matter. It's an election you make
7 at the time you submit the document, and they have not
8 elected to do that, so this comes a little bit late.

9 That said, I think--I just have a few more
10 questions about this tax return, which go very much
11 less to the numbers and more to the characterization,
12 the categories of the numbers that are on this tax
13 return; and, if you'll allow me, I think with four or
14 five questions, I will just conclude that.

15 (Tribunal conferring.)

16 PRESIDENT PHILLIPS: The Tribunal understands
17 that the exhibits are not being broadcast; and, having
18 regard to what Dr. Debevoise has said as to the
19 remaining questions, we will permit the continuation
20 without interrupting the broadcasting.

21 BY MR. DEBEVOISE:

22 Q. Line 11 on the tax return, without mentioning

1 any number, is income that consists only of royalties.

2 We went over that; right?

3 (No response.)

4 Q. And you do not report any income from sales on
5 this Tax Return; is that correct?

6 COURT REPORTER: Your microphone isn't on.

7 THE WITNESS: Sorry.

8 A. Right.

9 Q. And we went over the fact that this is passive
10 income.

11 So, then if we look down at the Tax Return,
12 there is a line for--Line 12 for compensation of
13 officers, which is blank; correct?

14 A. Correct.

15 Q. And there is a line for 13, for salaries and
16 wages, which is blank; correct?

17 A. That's correct.

18 Q. And there is a line for a deduction for rent,
19 and that is zero; correct?

20 A. You're referring to Line 16?

21 Q. Line 16.

22 A. Yes.

1 Q. Okay. And there also is a line for
2 advertising, and that's also zero; correct?

3 A. Twenty-two, yes.

4 Q. So, that would imply that there is no effort to
5 promote a product basically because you're selling to
6 the group?

7 A. Basically because we don't have a product;
8 right? We're a Licensing corporation that licenses
9 the mark, as we've discussed.

10 Q. Right. A passive activity.

11 And the only other deductions here are under
12 the categories of taxes and licenses; correct?

13 A. Mm-hmm, yes.

14 Q. And interest.

15 A. Correct.

16 Q. And then there is a final category of "Other,"
17 and to know the contents of "Other," we have to look
18 at Statement 2. And Statement 2, I think we will find
19 at Page 23 of the document, and that's the legal
20 expense that we have been hearing about from you and
21 "miscellaneous other expense," which I suspect but I
22 will ask you, is that miscellaneous other expense the

1 amount which is payable under the Reimbursement
2 Agreement at Exhibit 77, that's the 2 percent?

3 A. I don't know that.

4 Q. Okay. Well, we don't need to go further.

5 You've said that this is not your area, but in a small
6 organization like this, where you said that one of
7 your major functions was to advise the Board of
8 Directors, does it not seem a little bit surprising
9 that you don't have a little more familiarity with the
10 structure?

11 A. Financial documents? No, that's why we have
12 financial people.

13 Q. I see.

14 A. Right?

15 Q. Okay. And financial people are basically BSAM
16 people, they're those Treasury people we were talking
17 about earlier.

18 A. Yes.

19 Q. Okay. I think that concludes my questions
20 about the tax returns.

21 So, in the proceeding here today, Bridgestone
22 Licensing claims that it incurred a loss of 5,431,000

1 representing damages paid to Muresa pursuant to the
2 judgment of the Supreme Court of Panama issued on the
3 28th of March 2014; right?

4 A. Yes.

5 Q. And you had a first appeal that ended in
6 November 2014; right?

7 A. Yes.

8 Q. And you had a second appeal, and that was
9 denied in March 2016; correct?

10 A. A second appeal?

11 Q. Well, maybe "appeal" is actually not--that's
12 the term that's used in the Request for Arbitration.
13 I think technically, under Panamanian law, it was not
14 an "appeal." It was a "recurso" or something like
15 that, but you tried something in the Supreme Court to
16 make it go away.

17 A. Yes, post-judgment.

18 Q. Post-judgment, right.

19 So, let's go back to Exhibit 92 that we were
20 looking at before which were the Bridgestone Licensing
21 Services Income Statements. And, again, let's look at
22 Page 3 for the Year 2016.

1 Under the lines for "Expense," do you see about
2 four-fifths of the way down an entry for other
3 non-OPEX?

4 A. Yes.

5 Q. Okay. And in "Other non-OPEX," in the column
6 for April 2016 there is an amount of \$2,715,500.

7 Do you see that?

8 A. I do.

9 Q. And do you see in the column for June of 2016
10 in "Other non-OPEX," another entry for 2,715,500?

11 A. I do.

12 Q. All right. And if we were to add those two
13 numbers up, would they coincidentally equal 5,431,000,
14 the amount of the judgment?

15 A. They do.

16 Q. And so, if I'm reading this document correctly,
17 by June 2016, Bridgestone Licensing has paid the
18 judgment?

19 A. Yes.

20 Q. And looking at the far-right column on that
21 same page, Bridgestone Licensing's total income for
22 that year was \$5,020,881; correct?

1 A. Correct.

2 Q. So, if the total income for 2016 was only
3 5,020,881, how was Bridgestone Licensing Services able
4 to pay the Muresa judgment in April and June when the
5 year wasn't even halfway done?

6 A. Well, there is--do we a balance sheet--we don't
7 have a balance sheet.

8 Ultimately, they ended up borrowing some of
9 the money, but there was also a starting--I mean,
10 just--that's the income for 2016; right? So, there
11 may have been money in the account prior to 2016, but,
12 without seeing the balance sheet, I don't know what
13 that amount was.

14 Q. Okay.

15 A. But there was a loan taken out to pay the
16 judgment.

17 Q. There was a loan taken out?

18 A. Yes.

19 Q. And what was the amount of the loan?

20 A. I think \$6 million.

21 Q. \$6 million?

22 A. That neighborhood.

1 Q. Right. Okay.

2 And who was the lender in that loan?

3 A. Bridgestone Americas.

4 Q. Bridgestone Americas.

5 And where did Bridgestone Americas get the
6 money for that loan?

7 A. I'm sure its assets--I mean, a bank account.

8 Q. I see.

9 And who suggested that Bridgestone Licensing
10 Services should pay the full amount?

11 A. It was a joint discussion between us and
12 Bridgestone Americas, Bridgestone Licensing Services--

13 Q. "Us" is the same; right? It's the same people?
14 Bridgestone Licensing and Bridgestone Americas, you're
15 the same people?

16 A. Yes, in combination with legal counsel.

17 Q. In combination with legal counsel.

18 A. And tax and, I mean, cross-functional--

19 Q. Tax.

20 And were there people in Tokyo involved in this
21 conversation?

22 A. Yes.

1 Q. Okay. And did counsel tell you that if
2 Bridgestone Corporation paid this you would have no
3 case to bring under the Free Trade Agreement?

4 A. I don't want to say that there was no case to
5 bring because they're not the only Claimant, but
6 certainly it was a factor, sure.

7 Q. Okay. And if we were to look at
8 Exhibit 36--have you located that?

9 A. I did.

10 Q. Okay. And this is a letter from Benedetti &
11 Benedetti to Muresa and to Tire Group of Factories; is
12 that right?

13 A. That's correct.

14 Q. Dated August 19, 2016?

15 A. Yes.

16 Q. And Benedetti & Benedetti is local counsel in
17 Panama for Bridgestone Licensing Services in the
18 Muresa litigation?

19 A. Yes.

20 Q. Okay. And this letter says--we have the
21 English translation up. It says, six lines from the
22 bottom, "have made payment." Is that right?

1 A. "Costs, have made payment," yes.

2 Q. All right. In fact, the underlying Spanish
3 says "procederán," using the future tense, so maybe we
4 can talk with your counsel about the correct
5 translation, but the Spanish says "procederán," which
6 is future tense.

7 But, in any case, you did submit a bank account
8 statement from JPMorgan Chase, did you not?

9 A. Correct.

10 Q. And I think that's C-136, is it? 126, excuse
11 me. So, let's look at C-126.

12 And, on Page 2 of C-126--are you with me there?

13 A. I am.

14 Q. Do you see an entry for August 18 for
15 \$5,431,000?

16 A. I do.

17 Q. And was that the payment of the Muresa
18 judgment?

19 A. Yes, it was.

20 Q. Okay.

21 And, yet, when we were looking at C-92, the
22 Bridgestone Licensing Services Income Statement for

1 2016, we saw that this was actually expensed in April
2 and June, but the date of this payment is August.

3 This suggests some planning going on, does it not?

4 A. Can you refer me again to the Income Statement?

5 Q. The Income Statement was C-92, and we were
6 looking at the 2016, which is the last page in that
7 exhibit.

8 A. Yes.

9 So, again, this goes to my earlier statement
10 that these amounts on here are not actual; right? I
11 mean--I guess they're actual in the sense that they
12 are actual.

13 They're budgeted amounts. So, in the sense
14 that we were planning on paying this in April and June
15 and paid it in August would suggest that we budgeted
16 the amount in April and June but didn't actually pay
17 it until August.

18 Q. Yeah, which is what I just said, there was some
19 planning involved in this.

20 A. Sure.

21 Q. You were looking ahead. Okay. Very good.

22 So, I think--you stated in your statement that it's

1 Bridgestone Licensing's policy to oppose tire marks
2 with "STONE" in the suffix of every jurisdiction where
3 Bridgestone Licensing has registered marks?

4 A. Can you repeat that statement?

5 Q. Paragraph 13 of your Statement, Page 6. It's
6 Bridgestone Licensing's policy to oppose tire marks
7 with "STONE?"

8 A. I'm sorry, what are we referring to?

9 Q. Well, I apologize.

10 I gave you the wrong reference. My apologies.

11 The Request for Arbitration itself,
12 Paragraph 20.

13 A. "General policy of opposing tire marks with a
14 "STONE" suffix in every jurisdiction in which it has
15 registered trademarks."

16 Q. That is the policy; right?

17 A. That is the general policy.

18 Q. Right. And that includes in other countries in
19 Latin America; right?

20 A. It does.

21 Q. And you have opposed tire marks with the
22 "STONE" suffix in Argentina?

1 A. Yes.

2 Q. And what was the outcome?

3 A. Which one?

4 Q. All right. Well, how many have you filed in
5 Argentina, opposing--

6 A. I would have to look that up, but we've
7 probably filed multiple oppositions against "STONE"
8 marks in Argentina.

9 Q. Have you filed any oppositions against
10 RIVERSTONE in Argentina?

11 A. I believe we have.

12 Q. And how did you fare?

13 A. I believe we won, but I would have to see the
14 result of the decision.

15 Q. But you're in charge of IP. You got to be on
16 top of this, wouldn't you?

17 A. I think--to monitor 100-plus oppositions
18 worldwide and know the status and the result of every
19 one of them, that's why we have databases; right?
20 That's why--there is 24--we have 2400 trademarks
21 worldwide. To know every detail about every one of
22 them is impossible.

1 Q. Okay.

2 A. Right?

3 Q. We're having a big discussion here today about
4 it's all caused by the RIVERSTONE mark; right?

5 A. Right.

6 Q. And it's costing everybody a lot of money on
7 both sides. So, how have you done against RIVERSTONE
8 in Argentina?

9 A. I believe we won, but again, without seeing
10 the--again, we have spreadsheets that give the results
11 of these cases.

12 Q. Right. Okay.

13 A. Do you know otherwise?

14 Q. I'm asking you what you know.

15 (Laughter.)

16 Q. And what about in Brazil? Have you filed
17 oppositions to RIVERSTONE in Brazil?

18 A. We did file in Brazil.

19 Q. Again, how did that go?

20 A. Again, I believe--I believe we've won in
21 Argentina, the Philippines, and maybe one other
22 country, and some of them we've lost.

1 Q. I see. Okay.

2 And, in any of the ones that you lost, after
3 you lost, did the party whose registration you were
4 opposing sue you, sue Bridgestone Licensing or sue
5 Bridgestone Americas or whatever was the relevant
6 mark-holder?

7 A. No, they did not.

8 Q. Okay. Thank you.

9 I understand that, in the Andean Community, they
10 have a Special Tribunal for patents and trademarks; is
11 that right?

12 A. I'm sorry?

13 Q. In the Andean Community?

14 A. The Andean?

15 Q. Peru, Colombia, and Ecuador; is that right?

16 A. I believe.

17 Q. Okay. And that Tribunal deals with
18 registration of marks and opposition to marks, et
19 cetera; right?

20 A. Yes.

21 Q. Does that Tribunal also hear damages cases by
22 the people who you opposed?

1 A. That I don't--I'm not an expert in Latin
2 American trademarks.

3 Q. Okay. Thank you.

4 (Pause.)

5 Q. One more final set of questions, and then it
6 will be time for a lunch break. You can have a bit of
7 a break.

8 Trademarks are IP rights; correct?

9 A. They are.

10 Q. And patents are IP rights?

11 A. They are.

12 Q. And copyrights are IP rights?

13 A. They are.

14 Q. Okay. And one of the Agreements, the Licensing
15 Agreements, that was submitted in connection with your
16 statement was an agreement with Mattel.

17 A. Correct.

18 Q. And that license, if we look at it--it's 91.
19 Have you found it there?

20 A. I do.

21 Q. And so, this is a licensing agreement, June 11,
22 2010, between Bridgestone Brands and Bridgestone

1 Licensing Services with Mattel, Inc., right?

2 A. Yes.

3 Q. And, if we look at the License grant in
4 Paragraph 1, it follows the litany that you use in all
5 of these Agreements; right? That it is, starting in
6 Line 3, non-exclusive, non-transferable, except as set
7 forth in Paragraph 26, non-sub-licensable, limited
8 license, et cetera, et cetera. Right?

9 A. Yes.

10 Q. And it has limitations on use, and limitations
11 on assignment, and a series of limitations basically
12 so that Bridgestone Licensing can keep control of the
13 mark; is that right?

14 A. That's correct.

15 Q. Okay. And this particular Licensing Agreement
16 with Mattel, I guess, is so they could put it on toys;
17 right? On toy cars and things like that; right?

18 A. Yes.

19 Q. So, if Mattel sells toy cars in Panama using
20 this license, have they made an investment in Panama?

21 A. Have they made an investment in Panama? An
22 investment in--certainly in their business. Are you

1 talking about in the Firestone market in particular?

2 Is that your question?

3 Q. No, I'm asking whether Mattel has made an
4 investment--

5 A. Sure.

6 Q. --by selling those toy cars in Panama.

7 A. Yes.

8 Q. And even with no manufacturing in Panama, no
9 sales, no salespeople going to Panama, they put it up
10 on the internet and kids in Panama can order their--

11 A. Have they made an investment?

12 Q. --their Formula 1 car with the FIRESTONE tire
13 on it.

14 A. Have they made an investment Panama? Again, I
15 think your--there is a legal definition of
16 "investment" which--obviously, I've read the briefs
17 and understand where you're going with this, but I
18 would argue that there is an investment. Is it under
19 whatever language you're trying to get to? I don't
20 know. But certainly selling--in my--in my mind,
21 selling a product and advertising it into a territory
22 is an investment.

1 Q. Okay.

2 A. You've got to spend money to sell it; right?

3 Q. Okay.

4 MR. DEBEVOISE: I think we have no further
5 questions.

6 PRESIDENT PHILLIPS: Thank you.

7 Well, it's an appropriate moment, I think, to
8 adjourn for lunch, and we will start again at quarter
9 to 2:00.

10 Just before we do that, do you have anything
11 to ask by way of re-examination? Or do you want to
12 think about it over lunch?

13 MR. WILLIAMS: I have two very short questions
14 only.

15 PRESIDENT PHILLIPS: Well, then let's have
16 them now.

17 REDIRECT EXAMINATION

18 BY MR. WILLIAMS:

19 Q. So, Mr. Kingsbury, my first question is this:
20 That you had a discussion with Mr. Debevoise
21 about--that BSLs being able to have the possibility of
22 bringing the present case was a factor in BSLs paying

1 the Award. I believe that you said that.

2 What were the other factors that BSLS and--
3 (Overlapping speakers.)

4 A. The geographic location--

5 Q. What were the other factors that BSLS then took
6 into account in addition to the one that we've
7 discussed?

8 A. Certainly, the fact that the Decision was
9 "jointly and severally liable", so we had the ability
10 to pay out of either companies. Obviously, we've
11 mentioned the fact that legal ability to pay out of
12 the United States was a factor for the present action.
13 But, you know, we also consulted our Financial Group,
14 our Tax Group. The fact that we're here, that we're
15 closer to Panama and we're--this is an Americas
16 territory we're talking about, Panama. It's
17 Bridgestone Americas who sells the tires and services,
18 the market, from the United States.

19 And so, we just thought, you know, based on
20 all of those factors, that Bridgestone Licensing
21 Services, being a U.S. company, being affiliated with
22 the United States, and Panama being one of the

1 Bridgestone Americas' territories, that it made more
2 sense for us to do it out of the United States.

3 Q. And my second question is that there was some
4 discussion about where detailed decisions were made,
5 and discussion that you had with Mr. Debevoise, I
6 believe, about the extent to which decisions, detailed
7 decisions, are made by Bridgestone Corporation in
8 Japan; the extent to which decisions are made by BSAM.

9 Could you please give us some more color, some
10 more detail on the extent to which decisions are made,
11 BSAM or Bridgestone Corporation?

12 A. Sure. You know, BSLS, while it is an,
13 ultimately, a Japanese subsidiary, is located in the
14 United States. It manages--it manages trademarks that
15 date back to 1915, to The Firestone Tire & Rubber
16 Company. Our territory within Bridgestone Americas is
17 North and South America. And so when there is an
18 issue, or when there is a clearance that needs to be
19 conducted, or when there is an opposition that needs
20 to be filed, you know, we're the ones who make the
21 request.

22 Ultimately, yes, you know, Bridgestone is the

1 parent company. They're the ones who are paying as
2 the parent of Bridgestone Services. But certainly, we
3 have deference to make decisions to act on the marks
4 as we need to in the Americas.

5 And so, you know, to say that Bridgestone
6 Licensing Services doesn't conduct activities in the
7 United States, I think, is really giving it short
8 change. I mean, we manage the entire 2,400 portfolio
9 of patents from Akron, Ohio. It's managed by, you
10 know, outside counsel, yes, but in combination with
11 the Bridgestone Americas Law Department--you know, me
12 and another attorney that I have in Nashville.
13 It--you know, we have over a hundred years of
14 documents sitting in Akron, Ohio, that we manage out
15 of my office.

16 So, yes, it is a Japanese company. Yes, the
17 directors are Japanese. But, I mean, all of the
18 day-to-day operations of that company are conducted
19 out of Akron.

20 MR. WILLIAMS: Thank you. I have no further
21 questions.

22 PRESIDENT PHILLIPS: Well, then that clears

1 you. Thank you very much. Thank you for your
2 assistance.

3 THE WITNESS: Thank you.

4 (Witness steps down.)

5 PRESIDENT PHILLIPS: Could I ask this: Does
6 there exist a plan of the Bridgestone corporate
7 family?

8 MR. WILLIAMS: I think the answer is that we
9 can check and see what we can find for the Tribunal,
10 if that would be of assistance, and that's perhaps
11 something that we can look into over the lunch break.

12 PRESIDENT PHILLIPS: It would certainly assist
13 us if you were able to provide that. Of course, you
14 should show it to the Respondent before you put it
15 before us.

16 So, we'll adjourn for an hour.

17 MS. GEHRING FLORES: Mr. President--

18 PRESIDENT PHILLIPS: Yes, all that remains to
19 be done is for us to tell you any questions that we
20 would like you to address when you come to closing, I
21 think.

22 MS. GEHRING FLORES: Excuse the interruption.

1 I just wanted to tell you that Respondent actually
2 submitted an official document that has the
3 Bridgestone Corporation plan as one of its exhibits;
4 and, once we find the number, we will give that to
5 you.

6 PRESIDENT PHILLIPS: Thank you.

7 It's been suggested that it might be
8 preferable, as far as you're all concerned, if we
9 formulate our questions and send them to you by
10 e-mail, so anyone who wants to go off can do so.

11 MR. DEBEVOISE: For response when? I mean, to
12 be addressed in our Closing Arguments, you mean?

13 PRESIDENT PHILLIPS: Yes.

14 MR. DEBEVOISE: I see--in other words, not
15 independent back and forth with you, but just to
16 address them in the Closing Argument? That sounds
17 very efficient.

18 PRESIDENT PHILLIPS: Right.

19 MR. DEBEVOISE: We just request that it not
20 come at 8:00 a.m. tomorrow morning.

21 PRESIDENT PHILLIPS: We will let you have them
22 as soon as we reasonably can.

1 MR. WILLIAMS: And certainly from the
2 Claimants' side, that sounds very sensible.

3 PRESIDENT PHILLIPS: Good. Well, thank you
4 all very much. We will meet tomorrow at 9:00 a.m.

5 SECRETARY TORRES: The United States wants to
6 make a statement?

7 MR. BLANCK: Yes, thank you.

8 If the United States could also receive a copy
9 of the questions, we would greatly appreciate it.

10 PRESIDENT PHILLIPS: Certainly.

11 MR. BLANCK: Thank you.

12 (Whereupon, at 12:50 p.m., the Hearing was
13 adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.



DAVID A. KASDAN