

BILCON ET AL. v. GOVERNMENT OF CANADA

DOCUMENT PRODUCTION REQUESTS OF THE GOVERNMENT OF CANADA

Canada's document requests are set out in the attached Schedule. The documents being requested are material and relevant to this arbitration and are believed to be in the possession, custody or control of the Claimants.

Canada uses certain terms and abbreviations in the Schedule which, solely for the purpose of interpreting Canada's document requests, should be understood to have the following meanings:

1. "Amended SOC" means the Amended Statement of Claim;
2. "Bilcon of Delaware" means Bilcon of Delaware, Inc., including any current and former parent, subsidiary or affiliated companies, as well as any current and former directors, officers, shareholders, employees, consultants, contractors, representatives, agents, legal counsel, successors and assigns;
3. "Bilcon of Nova Scotia" means Bilcon of Nova Scotia, Corporation, including any current and former parent, subsidiary or affiliated companies including Global Quarry Products, as well as any current and former directors, officers, shareholders, employees, consultants, contractors, representatives, agents, legal counsel, successors and assigns;
4. "Claimants" means William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton, the Clayton Group, Bilcon of Delaware, Bilcon of Nova Scotia and Global Quarry Products, including any parent, subsidiary or affiliated companies, and all current and former directors, officers, shareholders, employees, consultants, representatives, contractors, agents, legal counsel, successors and assigns;
5. "Clayton Group" means the Clayton Group of Companies referred to in the Witness Statement of William Richard Clayton;
6. "Documents" includes electronic files, photocopies or hard copies of draft or final documents including, but not limited to, internal or external correspondence, memoranda, plans, reports, technical documents, technical reviews, engineering studies, design briefs, notes, minutes of meetings, transcriptions, facsimiles, corporate documents, financial documents, tax records, budgets, banking records, invoices, contracts, agreements, memoranda of agreement, memoranda of understanding, expressions of interest, forms of tender, request for proposals, schedules, timelines, diagrams, charts, drawings, sketches, maps, photographs, sound recordings, videos, film or other documents, regardless of physical

form or characteristics along with any annexes, appendices or other appended documents. “Documents” also include copies of documents that have been provided to either the Government of Canada or the Government of Nova Scotia, but that have been altered (*e.g.*, marginalia, handwritten notes) since the time at which they were provided to either the Government of Canada or the Government of Nova Scotia;

7. “JRP” means the Whites Point project Joint Review Panel;
8. “NOA” means the Notice of Arbitration;
9. “NOI” means the Notice of Intent to Submit a Claim to Arbitration;
10. “Whites Point project” means the Whites Point Quarry and Marine Terminal project proposed by the Claimants at Whites Point, in Digby County, Nova Scotia.

A reference to the singular of any noun in the Schedule should be understood as including the plural, and vice-versa.

SCHEDULE OF CANADA’S DOCUMENT PRODUCTION REQUESTS

No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party	
		Reference to Submissions	Comments
1.	Monthly, quarterly and annual financial statements and information, including any prepared by external accountants, for Bilcon of Nova Scotia, Bilcon of Delaware and the Clayton Group from 2002 to the present.	Amended SOC, ¶ 42(a).	Such documents are relevant to the Claimants’ allegations that they have suffered US \$101 million in damages.
2.	Detailed general ledgers and the associated chart of accounts, showing full detail of all transactions, by account for the fiscal year, or equivalent accounting information, for Bilcon of Nova Scotia, Bilcon of Delaware and the Clayton Group from 2002 to the present.	Amended SOC, ¶ 42(a).	Such documents are relevant to the Claimants’ allegations that they have suffered US \$101 million in damages.
3.	All documents relating to the	Witness Statement of	Such documents are relevant to the assertion by William R. Clayton that he

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	Claimants’ experience owning or operating quarries and/or marine terminals, including any financial performance data related to such projects.	William Richard Clayton, ¶ 32.	is “...sure that the Clayton Group would have been able to operate a successful quarry...”
4.	All documents relating to the Claimants’ expected ability to operate a quarry successfully.	Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the assertion by William R. Clayton that he is “...sure that the Clayton Group would have been able to operate a successful quarry...”
5.	All documents relating to the Claimants’ business plans for the Whites Point project, including but not limited to: <ul style="list-style-type: none"> a. Internal plans or financial models for purposes of investment analysis/ approval/authorization, and all supporting documentation, data, and schedules; b. Studies or market research relating to the North American or New Jersey aggregate market or any 	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the Claimants’ allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.

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	<p>other aggregate market served by the Clayton Group;</p> <p>c. Schedules relating to project construction;</p> <p>d. Contingencies that could impact the timing of project construction or impact project completion;</p> <p>e. Studies relating to transportation and distribution costs for aggregate extracted from Whites Point.</p>		
6.	All documents relating to financing for any and all aspects of the design, construction, ownership and operation of the Whites Point project, including but not limited to lender selection documentation, lender correspondence, lender term	<p>Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.</p>	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.

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	sheets, financing agreements, or other relevant lender communications.		
7.	Documents that support Claimants' financial capacity to develop and operate the Whites Point project, including but not limited to: <ul style="list-style-type: none"> a. Credit ratings; b. Lines of credit; c. Cash reserves; d. Projections for ability to meet interest payments. 	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.
8.	Financial pro-forma used for investment approval/authorization, and project financing solicitation	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.

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	<p>and negotiations, containing any information on or projections relating to the following:</p> <ul style="list-style-type: none"> a. Capital expenditures (Capex) over the useful life of the Whites Point project; b. Operating and Maintenance (O&M) costs over the useful life of the Whites Point project; c. Sales and general administrative costs; d. Transportation and delivery costs; e. Projected aggregate production volumes (by product type and by year or month); f. Aggregate price assumptions both delivered and undelivered; 	<p>Witness Statement of William Richard Clayton, ¶ 32.</p>	

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	<ul style="list-style-type: none"> g. Capital structure, financial leverage or gearing; h. Loan amortization; i. Royalties and/or production taxes; j. Other tax assumptions (income, property, excise, other); k. Decommissioning expenditures; l. Assumptions for value of the Whites Point project after decommissioning; m. Cost of capital, including its derivation. 		
9.	Feasibility studies or engineering reports, analyses, studies or research relating to resource evaluation at the Whites Point project site.	<p>Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.</p>	Such documents are relevant to the Claimants’ allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.

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10.	Feasibility studies or engineering reports, analyses, studies or research relating to the design, construction, ownership or operation of the Whites Point project, including both the quarry and the marine terminal.	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.
11.	Risk assessments or similar documents relating to the environmental approval, design, construction, completion, ownership or operation of the Whites Point project.	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.
12.	Insurance policies or insurance policy quotes relating to the design, construction, ownership or operation of the Whites Point project.	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶ 32.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.

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13.	<p>All documents relating to costs incurred by the Claimants between 2002-2008 with respect to the start-up of the Whites Point project, including but not limited to the costs of the following:</p> <ul style="list-style-type: none"> a. Resource evaluation; b. Negotiations with Nova Stone Exporters; c. Creation of Bilcon of Nova Scotia and Global Quarry Products; d. Dissolution of Global Quarry Products; e. The lease of land to be used for the purposes of the White Points project and purchase of related real estate; 	<p>NOA ¶ 40(a). Amended SOC, ¶¶ 11, 42(a). Memorial, ¶¶ 40, 43(b), 45, fn 19. Reply, ¶¶ 709, 738. Witness Statement of William Richard Clayton, ¶¶ 8, 10, 11.</p>	<p>Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages, as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point Project.</p>

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	<ul style="list-style-type: none"> f. Initial project development, including but not limited to quarry and marine terminal planning, design and site drawings; g. Acquisition of equipment; h. Any construction or work conducted on the Whites Point project site; i. Environmental consultants; j. Any and all financial contributions made by the Claimants to other parties with respect to the Whites Point project; k. Public relations and community outreach; l. Operations, management 		

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	<p>and administration;</p> <p>m. Legal fees (aside from those associated with this proceeding).</p> <p>These documents include but are not limited to: solicitations, inquiries, expressions of interest, consultations, requests for proposals, contracts, agreements, term sheets, work descriptions, statements of work, invoices, proof of payment and any other related communications with individuals or corporate entities retained to provide representation, services or expertise to the Claimants.</p>		
14.	All documents relating to costs incurred by the Claimants between 2002 -2008 in connection with steps taken to	Amended SOC, ¶ 39(a). Memorial, ¶¶ 185, 186, 773, 777. Reply Memorial, ¶¶ 787,	Such documents are relevant to the Claimants’ allegations that they have suffered US \$ 101 million in damages as well as to the allegation that the Claimants lost the investment they made in the environmental assessment process.

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	<p>obtain regulatory approval for the Whites Point project, including but not limited to the costs of the following:</p> <ul style="list-style-type: none"> a. Meetings or communications between the Claimants or their representatives with government officials regarding the approvals and regulatory review process applicable to the Whites Point project proposal; b. Preparation and filing of applications for the various permits or approvals required by the Whites Point project; c. The Community Liaison Committee; 	<p>791. Witness Statement of William Richard Clayton, ¶¶ 29, 33.</p>	

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	<p>d. Communications with the JRP;</p> <p>e. Preparation of the Claimants’ Environmental Impact Statement and any follow up communications with the JRP in connection with the Claimants’ Environmental Impact Statement;</p> <p>f. Appearances before the JRP;</p> <p>g. Communications with government officials following issuance of the JRP’s report;</p> <p>h. Actual or contemplated court proceedings relating to any aspect of, or decision made over the course of, the</p>		

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	<p>environmental assessment of the Whites Point project.</p> <p>These documents include but are not limited to: solicitations, inquiries, expressions of interest, consultations, requests for proposals, contracts, agreements, term sheets, work descriptions, statements of work, invoices, proof of payment and any other related communications with individuals or corporate entities retained to provide representation, services or expertise to the Claimants. For greater certainty this request applies in respect of, but is not limited to, the following:</p> <p>a. Paul Buxton or any other individual employed by the Claimants or retained by the Claimants to provide</p>		

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	<p>representation, services or expertise in connection with any of the activities listed above;</p> <p>b. AMEC;</p> <p>c. The individuals and studies listed in ¶¶ 185-186 of the Claimants’ Memorial, and any other individuals retained or studies solicited by the Claimants in connection with preparation of the Environmental Impact Statement or appearances before the JRP;</p> <p>d. Any legal representation provided to Claimants over the course of the regulatory review of the Whites Point project between 2002 and 2008.</p>		

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15.	<p>All documents relating to the costs expected to be incurred with respect to all components of the Whites Point project, including but not limited to the costs of the following:</p> <ul style="list-style-type: none"> a. Materials; b. Construction; c. Maintenance; d. Mitigation measures; e. Transportation of aggregate from the quarry site or marine terminal to delivery port in the U.S.; f. Legal services; g. Employment and labour; 	<p>Amended SOC, ¶42(a). Witness Statement of William Richard Clayton, ¶ 32.</p>	<p>Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.</p>

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	<ul style="list-style-type: none"> h. Public relations and community outreach; i. Operations, management and administration; j. Sales and general administrative costs; k. Royalties and/or production taxes; l. Interest expense; m. Other tax assumptions (income, property, excise, other); n. Decommissioning; o. Reclamation. <p>These documents include but are not limited to: internally prepared financial models,</p>		

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	solicitations, inquiries, expressions of interest, consultations, requests for proposals, contracts, agreements, term sheets, work descriptions, statements of work, invoices, proof of payment and any other related communications with individuals or corporate entities retained to provide representation, services or expertise to the Claimants.		
16.	Any studies, analyses, discussion, or market quotes relating to the logistics of shipping aggregate from the Whites Point project site to the point of delivery in the U.S.	Witness Statement of William Richard Clayton, ¶¶ 31 – 32. Memorial, ¶770. Reply Memorial, 785.	Such documents are relevant to the ability of the Claimants to transport aggregates from the Whites Point project site to a point of delivery in the U.S. as well as to capital and/or operational expenses entailed in the development and operation of the proposed Whites Point project.
17.	All documents relating to revenues forecasted from the Whites Point project, including but not limited to:	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18. Reply Memorial, ¶ 784. Witness Statement of	Such documents are relevant to the Claimants’ allegations that they have suffered US \$101 million in damages.

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	<p>a. Documents relating to the forecasted volume, aggregate type or value of crushed stone/aggregate from the Whites Point project that would be used to meet the needs of the Clayton Group;</p> <p>b. Documents relating to negotiations or discussions with third parties relating to the purchase or potential purchase of crushed stone/aggregate from the Whites Point project including but not limited to solicitations, inquiries, contracts, sales agreements or purchase orders.</p>	William Richard Clayton, ¶¶ 4, 32.	
18.	All documents relating to the source, volume, type, and delivered price at the point of receipt of all crushed	Amended SOC, ¶ 42(a). Memorial, ¶¶ 45, 769, fn 18.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.

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	stone/aggregate purchased by the Clayton Group from 2002 to 2015, including itemization of transportation or delivery costs, insurance, duties, or any other related costs.	Reply Memorial, ¶ 784. Witness Statement of William Richard Clayton, ¶¶ 4, 32.	
19.	All documents relating to the allegation that the Claimants lost the value of their investment in Nova Scotia, and that their related corporate interests in the United States suffered losses.	Amended SOC, ¶ 42(a). Memorial, ¶ 770, 771. Reply Memorial, ¶ 785. Witness Statement of William Richard Clayton, ¶¶ 4, 31- 33.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.
20.	All documents relating to the allegation that the Claimants experienced a major strategic disadvantage as the supply of aggregate in their markets became consolidated in fewer hands over the course of the environmental assessment of the Whites Point project, and its effect on Claimants.	Amended SOC, ¶ 39(b).	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.

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21.	<p>All documents relating to the Claimants’ inability or difficulties in acquiring aggregates from alternative sources, or the expected inability to do so in the future including, but not limited to:</p> <ul style="list-style-type: none"> a. Supply interruptions associated with the purchase of third-party aggregates; b. The inability to acquire high quality aggregates from third parties; c. The impact on the Claimants of the inability to obtain a secure and predictable supply of high quality aggregates, including any project 	<p>Witness Statement of William Richard Clayton, ¶¶ 4, 31- 32.</p>	<p>Such documents are relevant to the assertion by William R. Clayton that the “inability to obtain a secure and predictable supply of high quality aggregates from the Whites Point Quarry has caused loss to the Clayton Group.”</p>

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	delays, cost overruns, or quality problems.		
22.	All documents relating to the allegation that Bilcon was, or will be, forced to satisfy market demand at much greater cost than it would have as a result of the measures complained of in the Amended SOC.	Amended SOC, ¶ 39(b).	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.
23.	All documents relating to the Claimants' attempts to obtain other secure and predictable supplies of aggregates, including: <ul style="list-style-type: none"> a. Evaluation or analyses related to the acquisition of alternative properties; b. Attempts to acquire the Bayside Quarry. 	Witness Statement of William Richard Clayton, ¶¶ 4, 31.	Such documents are relevant to the importance of ownership of a quarry to the success of the Clayton Group's business.

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24.	All documents demonstrating that the Claimants' goodwill and reputation were damaged and that they suffered moral damages as a result of the measures complained of in the Amended SOC.	Amended SOC, ¶ 42(a). Memorial, ¶ 772. Reply Memorial, ¶ 786. Witness Statement of William Richard Clayton, ¶¶ 30, 33.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.
25.	All documents relating to the fees incurred to mitigate the effect of the measures that the Claimants complained of in the Amended SOC.	Amended SOC, ¶ 42(c).	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.
26.	All documents relating to damages claimed with respect to the tax consequences of the award to maintain the integrity of the award.	Amended SOC, ¶ 42(f).	Such documents are relevant to the damages the Claimants seek in order to account for the alleged tax consequences of an award.
27.	The last income tax returns filed by Bilcon of Delaware and each of the individual Claimants	Amended SOC, ¶ 42(f).	Such documents are relevant to the damages the Claimants seek in order to account for the alleged tax consequences of an award.

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28.	All documents relating to the recovery of the costs of the JRP process from the Claimants pursuant to the Service Level Agreement signed by Paul Buxton on November 7, 2005 including but not limited to invoices, proof of payment, communications with the Canadian Environmental Assessment Agency, or the Claimants' internal notes, memoranda or other communications regarding any of the foregoing.	Amended SOC, ¶ 39(a). Memorial, ¶¶ 185, 186, 773, 777. Reply Memorial, ¶¶ 787, 791. Witness Statement of William Richard Clayton, ¶¶ 29, 33.	Such documents are relevant to the Claimants' allegations that they have suffered US \$ 101 million in damages.
29.	All documents relating to the terms of the Global Quarry Products joint venture governing the ownership or control of the Whites Point project, including but not limited to:	Witness Statement of William Richard Clayton, ¶ 10.	Such documents are relevant to the value of the Whites Point project based on a market transaction relating to the actual property.

No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party	
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	<ul style="list-style-type: none"> a. Independent valuations of the project; b. Analyses conducted to determine the appropriate contributions of the parties; c. Joint venture terms; d. Operating agreements; e. Cost responsibilities; f. Ownership shares and equity contributions. 		
30.	<p>All documents relating to the April 2004 acquisition of Nova Stone’s partial interest in Global Quarry Products including, but not limited to:</p> <ul style="list-style-type: none"> a. Financial analysis of the project; 	<p>Witness Statement of William Richard Clayton, ¶ 11.</p>	<p>Such documents are relevant to the value of the Whites Point Project based on a market transaction relating to the actual property.</p>

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	<ul style="list-style-type: none"> b. The terms of the acquisition; c. Independent valuations. 		
31.	All documents relating to the actual or attempted sale, lease termination, or sublease of the property on which the Whites Point project would have been located or alternative potential uses of the property.	Witness Statement of William Richard Clayton, ¶ 33.	Such documents are relevant to the assertion by William R. Clayton that “[o]ur inability to obtain approval of the project has made out entire investment in Nova Scotia a loss.”
32.	<p>All documents relating to the value of the Whites Point project including but not limited to:</p> <ul style="list-style-type: none"> a. Independent valuations; b. Property tax assessments; c. Any submissions by the Claimants disputing 	Memorial, ¶ 771.	Such documents are relevant to the allegation that “the Investors lost the value of their investment in Nova Scotia.”

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	property tax assessments; d. Offers to acquire a partial or complete stake in the Whites Point Project.		