INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of Arbitration
Between:
GABRIEL RESOURCES LTD. and GABRIEL RESOURCES (JERSEY) LTD.,
Claimants,
and
ROMANIA,
Respondent.

Case No. ARB/15/31

HEARING ON THE MERITS

Tuesday, December 3, 2019

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C3-150
Washington, D.C.

The hearing in the above-entitled matter came on at 8:56 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal
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PROF. ZACHARY DOUGLAS, Co-Arbitrator
ALSO PRESENT:

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Secretary to the Tribunal

MS. MARIA ATHANASIOU  
Tribunal Assistant

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MR. HANSEL PHAM
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P R O C E E D I N G S

PRESIDENT TERCIER: Good morning, ladies and gentlemen. It is my honor to open the second day of the hearing in the ICSID Case 15/31 between Gabriel Resources Ltd. and Gabriel Resources (Jersey) Limited v. Romania. I hope you had a pleasant evening. And, again, I express a wish that we will have a serene and constructive day.

I would like first to ask whether there are people on the teams that were not present yesterday on your side.

MR. GREENWALD: Ms. Natalia Tchoukleva from White & Case is here. Francis Levesque from White & Case is here. Alyssa Howard from White & Case is here. Lillian Siegel from White & Case is here. Florentin Ţuca from the Ţuca law firm is here. Ruxandra Niţă from the Ţuca law firm is here.

People who were not here yesterday, I think that's it.

PRESIDENT TERCIER: Okay. Thank you.

On your side, Dr. Heiskanen?

DR. HEISKANEN: No changes on our side.
It's the same team as yesterday, Mr. President.

PRESIDENT TERCIER: Okay. Thank you very much. So, a few points before we start with the opening.

First, we have received the transcript. Thank you to David and Margie for their excellent job.

You have received also confirmation of the time spent yesterday: 5 hours 17 minutes for Claimant, and 41 minutes for the Arbitral Tribunal. Then we have all received new exhibits, C-2955 and C-2956 as well as R-689.

We have also received a joint list of the exhibits--the list of confidential exhibits. This was in line with PO 25 for the purpose of this hearing.

We have also received Claimants' letter concerning the issues and the exhibits that could be used during the examination of Mr. Henry and Mr. Tănase.

Have you a comment to these on your side?

MS. COHEN SMUTNY: No. No, we don't.
PRESIDENT TERCIER: On your side, Dr. Heiskanen?

DR. HEISKANEN: Only the comment that we made already yesterday, that the identification of topics or issues that the witnesses are going to discuss on direct doesn't help us because there's no indication of what the actual evidence will be that will be elicited.

PRESIDENT TERCIER: Okay. That is what you said.

(Comments off microphone.)

PRESIDENT TERCIER: Then the next question for us will be--it is too premature to do that--will be to adapt our program. It depends a bit on the time you'll have to spend today. Yesterday you told us you would have contact with Mr. Bode.

DR. HEISKANEN: Yes. We don't have any word from him yet, but we expect to be able to hear from him today. And as soon as we hear, we will inform the Tribunal.

PRESIDENT TERCIER: Okay. Good.

In that case, if there are no further
points--yes?

DR. HEISKANEN: There's a logistical point. We are likely to start with Mr. Henry this afternoon. And the Claimants have indicated earlier that Mr. Henry is going to give evidence on direct in response to the Witness Statements, so Mr. Gāman and Mr. Ariton, among others. Both Mr. Gāman and Ariton will be here in the afternoon, as authorized by the Tribunal in PO 25 for that part of the--for the part of the direct examination.

For that purpose, we will need some simultaneous interpretation. It's just a heads-up for logistical reasons.

PRESIDENT TERCIER: Comment on your side?

MS. COHEN SMUTNY: That is fine. We trust the interpreters are available and ready.

PRESIDENT TERCIER: We trust too.

SECRETARY YETANO: I will confirm.

PRESIDENT TERCIER: Okay. You'll confirm it on your side, Sara. Everything is fine? It's not a problem?

SECRETARY YETANO: No. I think they should
be here, but I'm going to confirm right now.

PRESIDENT TERCIER: Okay. Another point?

DR. HEISKANEN: No other points.

PRESIDENT TERCIER: Okay.

In that case, you have the floor for your opening.

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

DR. HEISKANEN: Mr. President, members of the Tribunal, you heard a very complicated story yesterday. The reality is simpler. This case is effectively about one single issue: Why did the Rosia Montana Project stall?

We need to be precise with the terms here because the Project has not failed; it has only stalled.

The Project is still alive. RMGC's mining license is still valid. And, in fact, it has been recently into this year, extended for another five years. Exhibit R-666.

RMGC still enjoys the rights it has under the mining license, and it still is in possession of all of its assets, including the real property that
it has purchased in Rosia Montana. It is up to RMGC and the Claimants to decide whether and how to pursue this Project.

The Romanian Government is not standing in the way and has never been standing in the way. It would not have any motive to do so. On the contrary, RMGC is a consortium in which the Romanian State, through Minvest, is a significant shareholder and has been a shareholder from the very beginning. Romania, in fact, stood greatly to benefit from the Project economically and, in fact, badly needed it.

Romania was still in the midst of the global financial crisis back in 2011 and 2012, during the period when the Claimants' claims allegedly arose. As the Tribunal will certainly recall, Romania was particularly hard hit by the global financial crisis. It was bailed out by the IMF, and it had to severely cut public spending and wages of civil servants by some 25 percent.

The simple answer to the question of why the Project stalled is that it fundamentally lacked social legitimacy. The Claimants and RMGC never
secured the social license to operate. RMGC, of course, also lacked a number of administrative and regulatory permits and approvals, including the Environmental Permit, but its inability to obtain these permits and approvals, or to maintain them, was also a result and a consequence of the social opposition.

There was local opposition to this Project, effectively, from the very beginning. And over the years, this opposition escalated to the national and even international level. Rosia Montana is a mining community, but the Claimants’ Project is not the kind of project that this community was used to for several reasons.

First, the Project would have involved destroying the Rosia Montana community itself. It would have required the relocation of the entire Rosia Montana village, a population of some 2,000 people and 900 households. Exhibit R-101, Page 10.

Second, the Project was also on a much larger scale than any of the earlier mining activities in the area. It would have been an
open-pit project and would have resulted in wiping out/leveling four mountaintops, and it would have involved—in fact, involved turning them into pits.

Third, the Project would also have involved using cyanide-based technologies with which Romania had had very bad experiences. In January 2000, when the Rosia Montana Project was already underway, a tailings dam in Baia Mare, a gold mine located some 200 kilometers north of Rosia Montana, failed during the heavy rain and released some 100,000 cubic meters of contaminated water, water contaminated by cyanide, into the Danube.

This caused an environmental incident that has been called the worst environmental disaster in Europe since Chernobyl. It caused pollution throughout Romania, Hungary, and Serbia, all the way down to the Black Sea some 2,000 kilometers away.

Fourth, the Project would also have involved building structures and facilities that neither Rosia
Montana, nor the wider region were used to, including, as you see on this screen, a massive 180-meters-high tailings dam, closing off an entire valley and overlooking the town of Abrud, a town of some 5,000 people.

And fifth and finally, the Project would have involved destroying at least 100 kilometers of mining galleries, many of them dating back to the Roman times, and very likely also other forms and types of cultural heritage. Exhibit C-766, Page 2; C-375, Page 10; and C-1898, Page 15.

This was not a mining project in Western Australia or in the great north of Canada or in the great north of Scandinavia, for that matter. This was a mining project at the heart of historical Europe, in a densely populated area.

At the same time, the Project would have been quite limited in terms of time. It would have been completed in some 15, 16 years. Exhibit C-193, Page 10.

It would not have secured a livelihood for the local population, even for one generation, for
those who would have been actually employed by the mine. And it should be kept in mind that not all Rosia Montana residents are miners. Those who are not miners would simply have had to move away.

And since the housing—much of the housing would have been destroyed, would have been demolished, except for the historical center, and the village would have been uninhabitable during the Project, local employees, those who would have actually been hired by the mining company, would have been displaced, and they would have had to commute to work from another town.

This would have been a very high price to be paid for a very limited return in terms of time. This equation, the comparison between the social, economic, and cultural cost and the return in terms of time led to many concerns and questions regarding the impact of the Project, understandably.

The question that arose was whether the financial return from the Project would be sufficient to offset its social, environmental, cultural impact. Many said no.
The local NGO opposing the Project, Alburnus Maior, was formed in September 2000 already. It became the focal point of social resistance, in particular, for those who did not want to move away, to sell their houses and move out of the village.

Apart from Alburnus Maior, other NGOs—other Romanian NGOs also got involved. And two years later, in July 2002, 25 NGOs, including Alburnus Maior, signed what they called the "Rosia Montana Declaration." This is Exhibit 13 to Alina Pop's Expert Opinion.

Two years later, in December 2002, Greenpeace and other NGOs organized a large demonstration in Bucharest, which was reported both nationally and internationally by the BBC. Exhibit 78 and 79 to the Thomson Reports.

Apart from this passive resistance refusal to sell and move, the social opposition also took another form of action. Alburnus Maior, together with the other NGOs, started to systematically challenge the permits and approvals issued by State authorities to RMGC, permits and approvals that RMGC
needed in order to take the Project forward.

Over the years, this litigation campaign led to over 80 main court and administrative proceedings filed against the Project. These are listed in Annex 4 to the Counter-Memorial.

Now, it is important to keep in mind that this is not a case of activists taking action to prevent access to an operating mine or to prevent a mining company from accessing a fully permitted mine. This Project never left the exploration phase.

The action taken by those who opposed the Project, refusal to sell and move and legal action against the permits and approvals, was entirely legal. The Romanian authorities could do nothing to prevent it except to defend the decisions they had taken in court, which is precisely what they did without exception for many years, and often with RMGC intervening on their side to defend those decisions.

As a result of the action that was taken by those who opposed the Project, RMGC never obtained the social license. So, what is, then, a social license?
Social license is a shorthand for the social legitimacy of a mining or any other large infrastructure project, a project that has adverse social, environmental, and cultural impacts. Social license is an established concept in the mining industry in particular. It has also been recognized and applied by investment treaty Tribunals in the context of mining disputes.

On the slide you see extracts from three cases—or two cases, and there’s also a reference to the South American Silver v. Bolivia case. This is nothing new. It is for the mining company to secure the social license, just as it is for the mining company to obtain the relevant administrative and other permits and regulatory approvals.

The Claimants acknowledged many times that they had to obtain the social license early on in the Project. You see extracts of some of these acknowledgments on the slide. This appears to be undisputed.

Determining whether a social license exists is not a matter of measuring whether the majority of
the local or the national population supports the mining Project. Social license is not a quantitative issue. Social license is about whether there's an entrenched opposition to the Project, a stakeholder group that is able and willing to take action to block it.

Social license is not a matter of opinion. It's a matter of action. Stakeholders who are prepared to act, even if they represent a minority of the affected population, may be in a position to block the Project and deny the social license through their action. And such action may be perfectly legal, as it was in this case.

Although the level of support that the opposition enjoys may affect its legitimacy—high level of support implies high legitimacy and lower level of support implies lower legitimacy—the evidence in this case shows that a substantial portion, if not the majority, of the population in Romania, including at the local level, in fact, opposed the Project—the Rosia Montana mining project. We will hear expert evidence on this issue
during this hearing.

The mining license issued by the Government is not a guarantee for a social license. It is for the mining company to convince the local population and other stakeholders that the net benefits of the Project outweigh the damage that it will cause to the environment, the social fabric, and the cultural heritage.

And it is for the mining company to convince the local population to sell their properties and move away—out of the way of the Project if that is what is required to make the mining project a reality.

As Dr. Thomson has already testified and stated in his Expert Reports RMGC lost the ability to influence its social license in the early years of the Project during the latter part of the exploration phase, back in 1999 to 2003, when Alburnus Maior was formed. Second Thompson Report, Paragraph 43.

The company made the fatal mistake of failing to provide sufficient information about the Project during the early years of the Project. And
it failed to constructively engage with the local community. Whether for ignorance or arrogance, the company did not take these concerns of the local community seriously. RMGC's approach prevented it from gaining the trust of the local population, which led to polarization of views about the costs and benefits of the Project.

The Project never recovered from RMGC's early mistakes. Although the company made substantial efforts during the later years to enhance the popularity and support for the Project, it was too little too late. By then the local opposition was already entrenched.

During the following years, the social conflict around the Project escalated from the local to the national and even international level. It culminated in the massive demonstrations in the fall of 2013 and the following months. These demonstrations continued throughout the country but also abroad for several months.

By 2012, if not earlier, the Project had become a political issue. It had become a political
issue in the sense that the social legitimacy of the Project was seriously and forcefully challenged at the national level. Exhibit C-641 and C-789, among others.

The Romanian Government, which had a stake in the Project and had supported it throughout, over the years, including, as we just discussed, by defending the lawsuits brought by NGOs against the decisions of Romanian authorities, eventually came to the view that the only legitimate way to take this Project forward and to have it approved was by way of submitting the matter to Parliament, the state organ that is in the best position to determine issues of social legitimacy, precisely because it represents the people. It directly represents the people.

As Prime Minister Ponta stated in July of 2013, a couple of months before the Rosia Montana Law was submitted to Parliament, I quote: "I believe the final decision in such a controversial project with advantages and disadvantage may only be made by Parliament." C-462. And see also C-641.

RMGC fully supported the Law--the Rosia
Montana Law, as we will see in a moment. It provided a solution to most of the permitting issues that it had been facing because of the social opposition.

The massive demonstrations that began in September 2013, after the submission of the Rosia Montana Law to Parliament, dispelled any remaining doubt about whether the Project was socially legitimate and whether the company had a social license. It very clearly did not have one.

In a Democratic society, the Government cannot impose laws on its own people, nor can it impose a mining project on people who are against it and who are willing and able to take action to block it. One cannot promote a mining project by use of force if the opposition uses legal means, which was the case here.

We heard yesterday much criticism over the conduct of Prime Minister Ponta during the period 2012-2013, when the Rosia Montana Law was conceived, drafted, and submitted to Parliament. This criticism is fundamentally misplaced and it's also
First of all, it's clear from the record that the Ponta Government and Mr. Ponta himself, in his capacity as Prime Minister, in fact, supported the Project. The very submission of the Draft Law to Parliament is evidence of support.

If passed, the Rosia Montana Law would have greatly facilitated and accelerated the Project, and it would have overcome many of the regulatory hurdles it had been facing. Mr. Ponta also made public statements in support of the Project. Many of these are on record, for example, C-1504, C-416, C-437.

Even after the submission of the law to Parliament, he continued to make public statements in support of the Project, although he did acknowledge that he had, I quote, "underestimated the level of opposition to the Project and the Law," end of quote.

This is Paragraph 61 of his Witness Statement.

The Claimants also argue that it was wrong for Mr. Ponta to say after the submission of the law to Parliament that he would leave the decision as to
whether or not to vote for the Project for each member of his government to decide on the basis of his or her conscience. C-789.

Contrary to what the Claimants suggested yesterday, he never changed this position. If you read the relevant Exhibit C-872, Pages 2 and 3 carefully—if you read the entire interview, you will see that he did not change that position.

There is nothing inappropriate about Mr. Ponta’s course of conduct. Taking into account the circumstances, he wanted to be neutral in his capacity as Prime Minister because the Project was, as he said, highly controversial. C-789.

Mr. Ponta’s position is no different from that of Mr. Corbyn, the Labour Leader in the UK, who is now head of the UK elections, refusing to take a stand for or against Brexit. He says that if he becomes the Prime Minister, he will negotiate a new Brexit deal with the EU and put this to a public vote, together with the option to remain.

He is refusing to take a stand because Brexit is a highly controversial issue, just as Rosia
Montana was a highly controversial issue in Romania at the time. Mr. Corbyn is being criticized by his political opponents for abdication of leadership. He says he's acting as an honest broker.

And this is indeed how Mr. Ponta explained his position in his Witness Statement--Paragraphs 51 to 59 of his Witness Statement. He says--and I quote: "I distinguish between my capacity as deputy and Prime Minister. I felt that it was better to maintain a neutral position and, thus, abstain from voting altogether."

We encourage the Tribunal to read his Witness Statement very carefully. It has not been challenged by the Claimants.

ARBITRATOR DOUGLAS: Can I ask you a question on Brexit?

The Brexit referendum had no legal significance in the sense that it wasn't binding on anyone after the vote took place and, yet, there's no political faction/party in the United Kingdom who is prepared to say we can ignore it because it was a decision of the people.
Aren't we in a similar situation here? The vote went to Parliament. Parliament overwhelming rejected the Law. Isn't that the end of the Project? Who is now going to ignore the fact that it went to Parliament, Parliament voted the way it did, even if that has no legal significance in the sense it's a formal legal declaration, the Project can't continue. Isn't effectively, politically that the end of the Project?

DR. HEISKANEN: I was not comparing Brexit and the Rosia Montana Project. I was comparing the conduct of Mr. Ponta and Mr. Corbyn.

ARBITRATOR DOUGLAS: My question was slightly different, but I was using that as a pretext to ask.

DR. HEISKANEN: It is similar, but I wouldn't say it's an identical situation.

ARBITRATOR GRIGERA NAÓN: Assuming that this notion of social license has the legal implications that I think you are suggesting, why is the social license just the responsibility of the investor and not the shared responsibility of the investor and the
Government which, after all, granted the license?

DR. HEISKANEN: Social license is not a legal concept. It's not a--it's a factual description of a situation. It follows from the fact that the issuance of the mining license doesn't mean that the Project is feasible in practice.

The mining license gives access to the mining company to the area, but it doesn't allow the mining company to start actually exploiting the area until it's physically possible, and that means getting surface rights. We'll come back to this issue later today.

But it is not the Government's task to promote and assist one particular investor. The Government has a regulatory function. Its function is to issue the license if that is--if the legal requirements are met. Its function is to issue the legal--the permits and approvals--the regulatory approvals that are required, if those are met.

But it is not the task of a Government to assist one particular investor, possibly against interests of the inhabitants of the country. That is
not the task of a Government.

ARBITRATOR GRIGERA NAÓN: Of course, I am not going to argue with you, but my question is, when the Government grants a license, it must have an idea of what kind of work and operations, the activity, that would be covered by the license, which eventually implies exploitation of the resources.

The Government has no relation to have an idea of what social implications that may have. As you have just said, there are three hills that are going to be erased--

DR. HEISKANEN: Four.

ARBITRATOR GRIGERA NAÓN: --or four. It will be an open-pit mineral exploitation. There's 2,000 people living in the area. None of these issues are part of--are ingredients of the social license.

And the State has no input into that, has not any duty to foresee that? It's just investor? That's my question.

DR. HEISKANEN: You cannot foresee these kind of issues, whether they come up or not. Many
mining licenses are, in fact, disputed, but not all of them are. Social license is an issue that arises only if there's local opposition. It may be that the mining company is able to convince the local people to support it and move away, if that is what is required.

You cannot know in advance—you cannot know in advance what the reaction of the local population will be. Just as—just as it is not the task of the Government to facilitate or provide shortcuts or assist the mining company to get the regulatory approvals; it is for the regulatory—for the mining company to make sure that it meets those requirements. It is similarly for the mining company to make sure that it obtains the social license; that is, that there is no opposition—local opposition that will prevent the mining company from going ahead with the Project.

The purpose—the function of the State and the government is to create circumstances where these kinds of activities can be undertaken and—but the Government is not a—-is not a garantor of the success
and feasibility of the Project.

ARBITRATOR DOUGLAS: Let's come back to my question.

The Prime Minister--we saw the videos--quite a few of the videos yesterday--made it very clear he will leave the decision to Parliament. If the Parliament says yes, they'll go through with the Project; if the Parliament says no, the Project won't happen.

So, given Parliament said no, doesn't the Government have to respect that decision of Parliament even though it's not legally binding in the Romanian legal system, just like the Brexit referendum wasn't legally binding?

But given that political decision is being made by Parliament, the highest representative organ, doesn't the Government have to respect that decision?

DR. HEISKANEN: Of course. And they did respect the decision in this case, but what was rejected was the Rosia Montana Law, not the Project in itself as such.

What the--and we will come back to what the
Rosia Montana Law actually contains in a moment. But the Rosia Montana Law was not and did not contain provisions saying, "This law approves the Project." It contained various provisions about how the Project could be facilitated and expedited, technical provisions, but it didn't actually—it wasn't in substance about whether the—in legal terms, it wasn't about whether the Project would go forward or not.

In political terms, of course, in the view of those that went to the streets, it was about whether to—whether this Project should go ahead or not. One should distinguish between the legal content of the Law and the political issue that surrounded it.

ARBITRATOR DOUGLAS: Understood. But even the Prime Minister was presenting it in that way, wasn't he? That either the Project goes ahead or not, that's up to Parliament?

DR. HEISKANEN: As he is explaining in his Witness Statement, Mr. Ponta said that he was observing the factual situation. He was not making
any legal determinations or conclusions about the
legal status of the Project. That is what he
explains. He observed what the situation was at the
time of the demonstrations.

And Mr. Ponta was not alone in taking this
position, of course. Mr. Antonescu, the President of
the Senate, stated on 9 September 2013, a few days
after the submission of the law to Parliament and
after the protests had erupted that, in his personal
view, the Rosia Montana Law should be rejected--and I
quote: "Not for technical reasons because this
Project would not have the chance to be feasible or
possibly useful, but because there are major
consequences and realities that prevent implementing
this Project at this time." C-832.

And he also said--and this is a transcript
from the video that we also saw yesterday--I
quote: "When talking about the Project involving
important natural resources of a nation, it is very
important to have public support. This is more
important than the technical data of that Project.
First of all, today we discover, as I was saying,
that the Project, the debate on it, is producing a significant breach"—schism—the Romanian term is schisma—schism, or division, within "the Romanian society." This is C-2690.1.

When the Claimants showed the video of this statement yesterday, they left out this part of Mr. Antonescu's statement which was, in his view, the main point. The Claimants also produced a slide that you have—if you still have the hard copies—of Mr. Antonescu's statement.

That appears to seek to mislead the Tribunal as to what the evidence on this issue actually is. And we will give you hard copies of the slide that the Claimants distributed yesterday and another page which shows actually what the evidence shows.

If you look at the slide, there's a red square. It's a blown-up version of the evidence, which is C-2690. And it appears to suggest that this is a complete extract of what Mr. Antonescu said.

But if you look at the actual document from which the extract is taken, which is the other page, you show that the highlighted part was actually
omitted. It is in that highlighted part which I just read, where Mr. Antonescu says--and I repeat: "When talking about a Project involving important natural resources of a nation, it is very important to have a public support. This is more important than the technical data of that Project."

"First of all, today we discover, as I was saying, that the Project, the debate on it, is producing a significant schisma in the Romanian society."

We encourage the Tribunal to request Claimants to verify that there are no similar issues with the remaining slides. The Respondent would be happy to do this verification, but we are not in a position to do it during the Hearing.

The Parliament's decision--the Government--the Parliament's decision to reject the Rosia Montana Law was indeed a political decision in the genuine term of that word, of that concept, because it was based on the assessment of the social legitimacy of the Project.

But the political decision is not a breach
of an investment treaty. A political decision to
reject a law that lacks social legitimacy is
perfectly legitimate and it is perfectly legal under
international law.

It is not the function of this Tribunal,
with all due respect, to sit in judgment of decisions
taken by democratically elected Romanian Parliament.

The Claimants suggested yesterday, as they
have suggested in their written submissions, that the
2013 demonstrations were not about the Project but
about a more general issue of Government corruption.
This is manifestly not the case.

Obviously, the demonstrators also criticized
the Government but only because it supported and
promoted the Project. What the demonstrations were
all about can be seen very clearly from these three
photographs. They are quite literally a snapshot of
what the demonstrations were--demonstrators were
against. They were against the Rosia Montana
Project.

We encourage the Tribunal to view very
carefully the many videos and photographs and the
documentary evidence and expert evidence that is on record on this issue, what was the demonstration about—what were the demonstrations about so that you can judge for yourselves.

We will now show you two videos that are on record. The first one is a photo montage about the 2013 demonstrations prepared by a professional photographer, as you see on the slide, Cristian Vasile, at the time. It shows in a more comprehensive manner than the three photographs that you just saw, the scale and the subject matter of the demonstrations.

Note the green and red logo of the "Save Rosia Montana" movement, which you see on the slide, as you will see it in many of the photographs on the video. The other logo, which translates as "United We Save," was also used by the Project opponents.

(Slides exhibited.)

DR. HEISKANEN: The Claimants have chosen not to call for examination, with one exception, the Rosia Montana residents that have submitted Witness Statements in this Arbitration.
The second video that we will show you shows what they have to say about the 2013 demonstrations. You will see on the right the names of the witnesses who have been called--who have not been called for examination in this Hearing in yellow. The one witness that has been called is shown in green.

One of the witnesses who has not been called, Mr. Petri, passed away before he was called. This is also indicated on the right side of the video with the cross.

When we show the video, you will see, in bold, the person--the name of the person who is speaking. This video was prepared by--as you see on the screen, by Mr. Tica Darie, a Rosia Montana resident, a few months after the demonstrations.

(Video played.)

DR. HEISKANEN: Gabriel Canada's initial reaction to the rejection of the Rosia Montana Law was that its failure did not mean the failure of the Project. It simply meant--it simply meant that the Project was no longer fast-tracked and would not get any special treatment.
RMGC had to continue on the standard regulatory track if it wanted to take the Project forward. This is a press release of Gabriel Canada, dated 12 November 2013.

But Gabriel Canada quickly changed tack, apparently concluding that securing the social license and the necessary regulatory approvals in the face of persistent litigation and local resistance and now also in the face of wider social movement against the Project was not a realistic option, at least not in the short-term.

This was their observation, as it was the observation of Mr. Ponta. It's a political observation, a factual observation, not a legal conclusion.

Already in September 2013, when the Rosia Montana Law was still being debated in Parliament, Mr. Henry, Gabriel Canada's CEO, announced that if the Law was rejected, Gabriel would go ahead with formal notification to commence litigation. C-1442.

By late 2013/early 2014, Gabriel Canada appears to have taken--appears to have given up on
the Project. In May 2014 it announced that it was looking for funding for arbitration, as you see on the slide.

Anything that the Claimants said or did as of late 2013, early 2014 must, therefore, be seen against this background in the context of this attempt to create a paper trail for an upcoming arbitration.

But even setting aside the issue of social license, the Claimants do not have a case. They do not have a case even if you, Members of the Tribunal, accept the Claimants' version of the facts but not their interpretation of those facts, the interpretation of their facts as to what they mean.

This case is mainly about the interpretation or appreciation of facts and events, not about whether certain events occurred. In fact, most of the events that are in dispute in this case are in the public domain. They cannot be disputed. So, what are, then, the main disputed facts?

Apart from the social license, the key disputed events relate, first of all, to the EIA
Process, Environmental Impact Assessment process. Was it completed or not in the TAC meeting of 29 November 2011 or at any later date?

Second, the renegotiation of the final terms of the Project. Was RMGC coerced by the Government to accept the new terms or did RMGC freely and willingly participate in the negotiations?

And, third, the Rosia Montana Law, was it an attempt by the Government to abdicate its responsibility, which is what the Claimants suggest, or was it a limited attempt by the Government to facilitate and expedite the Project in the face of social opposition?

My colleagues will soon address these three issues in detail, but before giving the floor to them, I'll make a few initial comments on the merits of the Claimants' claims, apart from the issue of social license.

In this connection, we have—we do not intend to repeat the Respondent's jurisdictional objections. We refer the Tribunal to the extensive submissions on this issue that the Respondent has
made in its written pleadings. Of course, we are
happy to address any claims--any questions that the
Tribunal may have on those submissions.

We only want to highlight for the Tribunal
three critical jurisdictional dates under the
Canada-Romania BIT that you see on this slide. These
are November 23, 2011, when the Canada BIT enters
into force; July 30th, 2015, when the Request for
Arbitration was filed; and the three-year statute of
limitations that will go back to July 30, 2012.

We encourage the Tribunal to keep these
critical jurisdictional dates in mind, in particular,
the date of 30 July 2012, when you receive the
evidence of the witnesses and experts in the next two
weeks.

Any events that took place before the
critical jurisdictional dates for--particularly the
date of 23 November 2011 and 30 July 2012, fall
outside the Tribunal's jurisdiction and the Canada
BIT, as do any events that took place after the
filing of the Request for Arbitration. I'll come
back to that in a moment.
The Claimants' main claim is for an alleged breach of the fair and equitable treatment standard under the two BITs. The expropriation claim is not a serious claim and the Claimants themselves do not seem to take it seriously because it's always listed in their submissions as the last claim in their list of alleged breaches of the Treaty. If you make a real serious claim for expropriation, it should be your first claim because it's a claim for the loss of the investment in its entirety.

And, indeed, it is evident that the expropriation claim has no basis in fact. As we explained in the very beginning, RMGC still has the mining license. It has been extended, in fact. It is still in possession of all of its assets, including the real estate, in Rosia Montana.

As to the other claims for breach of the full protection standard and non-impairment and others, the Claimants themselves confirm that they are based on the very same facts and the very same theory of composite breach of the BIT as the FET claim. So, if the FET claim fails, all these other
claims fail automatically.

As to the FET claim, the Claimants' main claim, the fundamental point is--and this is what we ask the Tribunal to keep in mind, again, when you receive the evidence--the Claimants could not have had any legitimate expectation on the basis of the mining license alone that they will be able to execute the Project.

The mining license does not create any legitimate expectation that RMGC would be able to meet the regulatory requirements for the Environmental Permit or, indeed, for any other permit or approval; nor does the mining license create any legitimate expectation that the Claimants will be able to get the social license.

This is the sole task of the Claimants. It is the risk they assumed when they embarked on the Project.

RMGC had to earn these permits and licenses, and if it failed, this doesn't make the Government nor the Romanian State liable for RMGC's failures for the risks that they assumed.
My colleagues will now address in detail the alleged breaches of the FET standard. They will focus on the three disputed events that I've just listed: the environmental permitting process, the renegotiation of the financial terms of the Project, and the Rosia Montana Law.

They will show that none of these events, these three events or these three sets of facts, amount to a breach—or amounts to a breach of the FET standard, whether individually or cumulatively, as part of the alleged composite breach.

You see the outline of our argument on the slide. I have covered the first part, the social license issue. My colleague, Lorraine de Germiny, will first address the Environmental Permitting process, including the social opposition that disrupted it.

What you heard yesterday was simply the exposition of the permitting process, but no reference was made to the disruption of that process because of the social opposition.

As she will explain, the Environmental
Permit which underpins the Claimants' entire claim was never due. RMGC never met the permitting requirements.

Mr. Bonifacio will then deal with the renegotiations of the financial terms of the Project. He will show that the negotiations were not forced on Gabriel. On the contrary, RMGC actively sought to use the negotiations to its own advantage, in order to have a special regime that would expedite and facilitate the permitting process.

We will also show that there was never any—that the permitting process was never subject to progress in the negotiations.

And finally, then, Christophe Guibert de Bruet will address the Rosia Montana Law. He will show that the Draft Law was not an attempt to abdicate the Government's responsibility. It was an attempt—the Rosia Montana Law was an attempt to advance the Project, including by enhancing its social legitimacy by way of parliamentary approval.

And, finally, Dr. Leaua will look at some of the post-July 2015 issues. This is mainly for
purposes of information to set the record straight, because whatever happened after the registration of the Claimants' Request for Arbitration on 30 July 2015 is irrelevant in this case because these events fall outside the Tribunal's jurisdiction.

The Claimants never notified to Romania these alleged breaches, as required by the two BITs. It is not enough for the Claimants to argue that the alleged breaches that occurred after this critical jurisdictional date form part of a practice or policy of the State for purposes of an alleged composite breach.

The Claimants will have to prove that there was such an alleged practice or policy but they have failed to do so.

MS. de GERMINY: Good morning, Mr. President, Members of the Tribunal. The Claimants' core claim is that Romania failed to provide their alleged investments with FET. This claim fails, since even if the allegedly impugned acts of state authorities were true, they would not rise to the level of breaches of the BITs.
We refer the Tribunal to our written submissions regarding the FET legal standard. Today we simply remind the Tribunal that the Canada-Romania BIT does not require Romania to provide more than the customary international law minimum standard of treatment.

Further to this standard, only egregious conduct can amount to a breach of FET, as we see, for instance, in this quote from Glamis Gold v. USA and, on the next slide, an excerpt from Berkowitz v. Costa Rica.

The Claimants argue that they reasonably and legitimately expected the administrative process to apply. Well, Romania has followed legal permitting procedures. Insofar as it briefly departed from those procedures in 2013, it did so to facilitate the Project via the Rosia Montana Law and with RMGC's full support, as my colleague, Mr. Guibert de Bruet, will explain.

Recently, in another mining case, South American Silver v. Bolivia, the Tribunal dismissed the Claimants' FET claim in part because the Claimant
had not explained exactly which legitimate
expectations were frustrated due to conduct
attributable to the State or which of Bolivia's
specific acts violated those legitimate expectations.

It held that a Tribunal should assess the
legitimacy of the investor's expectations, taking
into account the circumstances of the case, including
the investor's own conduct and due diligence.

It also found that in that case the Claimant
knew or should have known that the mining project was
"in an area inhabited by indigenous communities,
under specific political, social, cultural, and
economic conditions."

Like in South American Silver, the Claimants
have not explained which legitimate expectations were
frustrated or which of Romania's purported acts
frustrated those legitimate expectations.

The Claimants knew from the outset that RMGC
needed to first successfully move residents and,
second, secure permits in accordance with Romanian
law and with the approval of stakeholders.

A further question is the standard of review
that the Tribunal should apply when considering the State's actions. Under international law, Romanian State authorities enjoy and are entitled to a margin of appreciation in finding that RMGC has not yet met the requirements for issuance of the Environmental Permit.

Investment Tribunals and scholars have recognized the Doctrine of Margin of Appreciation which requires arbitrators to treat decisions by State authorities with a degree of deference.

For instance, in Electrabel v. Hungary, the Claimant alleged that the State's termination of a power purchase agreement following Hungary's accession to the EU and further to the European Commission, constituted a breach of FET.

The Tribunal rejected the Claimants' argument and held that Hungary "enjoyed a reasonable margin of appreciation in taking such measures before being held to account under the ECT's standards of protection."

And, furthermore, as we see in the first sentence, it held that its task was not to sit
retrospectively in judgment upon Hungary's
discretionary exercise of a sovereign power, not made
irrationally and not exercised in bad faith at the
relevant time.

The Tribunal also, for instance, in Unglaube
v. Costa Rica, similarly held that governments are
accorded a considerable degree of deference regarding
the regulation and administration of matters within
their borders.

Here, too, the Tribunal should defer to the
actions of the Romanian State authorities which, in
any event, do not rise—do not approach the realm of
arbitrariness described on this slide.

Furthermore, as I will explain, RMGC never
met the requirements for the Environmental Permit.
Even if it had met those conditions, though, as
Respondent's legal expert, Professor Tofan explains,
RMGC had no subjective legal right to obtain the
permit.

As she explains, under Romanian law,
administrative authorities enjoy a margin of
discretion when assessing whether an applicant to an
administrative act has complied with the conditions for this act to be issued. In particular, she opines that the Ministry of Environment and the TAC enjoyed a margin of discretion as to whether the Project's documentation and its overall features warranted the issuance of the permit.

So, the key FET claim in this case is that the Ministry of Environment improperly refused to issue the permit. This allegation also underpins the other claims regarding the commercial negotiations and the Rosia Montana Law that my colleagues will address.

But the Claimants only have themselves to blame for their predicament. RMGC failed to satisfy the requirements for the permit and for the Project more generally. And, crucially, RMGC also failed to secure the social license.

Now, the Claimants say that the TAC had completed its review of the EIA Report on 29 November 2011 and that the Ministry of Environment was required to issue its decision regarding the permit by January 2012.
They say that the Ministry failed to do so for political reasons, political reasons that they do not attempt to explain. The State's alleged motivations for not permitting a project in which it had an important economic interest and which it continuously defended in the Romanian courts remains a mystery.

In any event, by November 2011, the Ministry of Environment was nowhere near making a decision on the Environmental Permit. How do we get to November 2011?

To show where we are in November 2011, we must back up and look at the key milestones of the EIA Review Process, up to that moment in time. The Claimants make highly misleading statements to the effect that the decision had been pending on the permit since December 2004 and that there had been a delay of several years.

Well, as we see on this slide, although RMGC applied for the Environmental Permit in December 2004, it submitted its EIA Report only in May 2006. It is on the basis of the EIA Report that
the Ministry of Environment needed to decide the Application. The very purpose of the EIA Review Process is to assess the adequacy of the report. So, the Ministry could not review or make a decision regarding a report that it did not yet have.

A public consultation on the EIA Report then took place in the summer of 2006, with 16 public debates around Romania and also in Hungary. The public registered over 5,600 questions and comments with the Ministry of Environment during this time. This was unprecedented.

Questions and concerns ranged from the size of the dam, to the risk of another Baia Mare cyanide accident, to the impact on the site's cultural heritage.

In January 2007, the Ministry of Environment submitted the public's questions to RMGC, and in May 2007, RMGC then submitted its comments to those questions to the Ministry of Environment. At that point the TAC then promptly met four times between June 26, 2007, and 9 August 2007, and they discussed the EIA Report, which already then covered some
We heard little about this yesterday, but as we see on the slide, in parallel with the EIA Review Process, Rosia Montana residents were filing lawsuits through Alburnus Maior against other permits for the Project, including the so-called "urban certificate" which, by the end of July 2007, there were several problems in that regard.

RMGC's first and second urban certificates had been challenged in court for some time, but then in July 2007, the second urban certificate was both suspended by a court and it expired. And in September, the courts went further and they annulled that act.

The additional problem was that RMGC's third urban certificate was virtually identical to the one that had just been annulled. So, the Ministry of Environment considered that that was not appropriate, and it informed RMGC that it needed to address these problems and to submit a new urban certificate.

RMGC did not do so until 2010. The Parties and their legal expert dispute whether this
interruption in the EIA Review Process was lawful. Romania says it was. In any event, once RMGC submitted a new urban certificate to the Ministry of Environment in May 2010, as the Ministry of Environment had requested, the EIA Review Process resumed, and the TAC met in June 2010 and then with RMGC in September 2010.

So, even on the Claimants' case that the EIA Review Process was complete by the end of 2011, which the Respondent rejects, the EIA Review Process had only been essentially active for 15 months, between May 2006 and September 2007, and then for 14 months, between September 2010 and November 2011. So, just over two years.

By way of comparison, the Ministry of Environment conducted one other EIA Review Process which was in connection with the expansion of a nuclear plant in Southeast Romania called Cernavoda. That review process spanned nearly 7 years, between August 2006, the date of Application for the Environmental Permit, and October 2013, the date of the Government's issuance of that permit.
In any event, once the EIA Review Process resumed in 2010, the TAC asked RMGC to update its EIA Report, given this three-year lapse of time. Romania had, in the meantime, in 2007, joined the EU. New laws and regulations applied. And rather than submitting an updated report, as requested, RMGC submitted over 1,700 additional pages of notes and purported updates.

When the TAC met just a few weeks later, in December 2010, the Ministry of Environment representatives rightly explained that it was difficult to navigate between RMGC's different documents, and they asked RMGC to consolidate those documents.

So, the Ministry of Environment, by that point in time, in December 2010, was reviewing both RMGC's EIA Report from 2006 and its updates to that report.

The TAC next met in March 2011. The Claimants are misleading and arguing that by the end of that meeting, the Ministry of Environment had completed its review of RMGC's answers to questions
received from the public, and all but two chapters of the EIA Report remained for review.

During that meeting, the TAC discussed comments from the public in 2006. But another public consultation, as we see on the slide, was set to take place between March and May 2011, and RMGC then submitted a new EIA Report chapter in response to those comments and questions received from the public in late August 2011, which we also see on the slide.

ARBITRATOR DOUGLAS: Just to be clear, though, the requirement of the urban certificate, the Parties are in dispute as to whether or not that was actually a requirement of the Environmental Permit. So, the dispute is not reflected in this timeline, but that's a question of law, essentially.

MS. de GERMINY: It is, yes. And I will discuss the urban certificate question in a bit more detail in a few moments. But it is a disputed issue. It has been a disputed issue for years. Indeed, there was litigation in Romanian courts over that very issue.

And RMGC has had a number of urban
certificates over the years that have been the subject, separately, of litigation by NGOs. And I will go into that in a bit more detail in a few moments.

So, following a meeting between RMGC and the Ministry of Environment in September 2011, the Ministry sent to RMGC a letter with 102 questions regarding the report chapters reviewed to date and requesting further documents. The letter is detailed and shows many outstanding issues and refers to future TAC meetings, plural, in the future.

As we have learned in the past few days, there are two versions of this letter which was signed by then TAC President Mr. Marin Anton. First, there is Exhibit C-575, which is on the slide and which contains the sentence underlined in red. This letter was sent to RMGC on 22 September 2011.

Second, we have Exhibit R-215, which does not contain that sentence underlined in red and which the Ministry of Environment sent to RMGC on 26 September 2011.

So, this modified version of the letter
strangely deleted an express request for a water management permit and the ADC for Orlea. We have looked into the reasons for this discrepancy in the past few days, and as we have learned and as the new Exhibit R-689 filed last night shows and as Mrs. Mocanu may explain this week—or next week, this modified version of the letter did not go through the standard approval procedures within the Ministry and does not represent the views of the different directorates within the Ministry of Environment.

Only the 22 September 2011 version of the letter underwent the approval procedures within the Ministry in the sense that it was approved by the different directorates.

It is, therefore, the Respondent's position that the Ministry's official position is reflected in that letter that went through the normal approval procedures, so the 22 September version that we see on the screen.

In any event, though, State authorities had made clear on other occasions, both before and after this letter, that RMGC needed to provide a water
management permit and an ADC for Orlea.

Returning to the timeline. The Claimants submitted certain responses. The Claimants--excuse me--the Claimants submitted certain responses to the letter of 22 September 2011 on 10 October 2011. So, by this point in time, the EIA Report comprised not only ten chapters, but also baseline reports, management plans, updates and studies, totaling nearly 25,000 pages.

The Claimants allege that the Ministry of Environment convened the TAC to meet on 29 November 2011 to discuss RMGC's answers to the Ministry of Environment's final questions. However, neither letter from the Ministry of Environment to RMGC inviting it to meet on 29 November referred to any questions as being final.

As may be seen, the TAC planned to discuss not only RMGC's responses to the list of 102 questions, but also other issues. In late October, the TAC visited Rosia Montana and then, in late November, a delegation from the EU Parliament met with Ministry officials and then with RMGC
representatives in response to certain petitions that had been filed against the Project with the EU Parliament.

Neither the site visit report of the TAC nor the report of the visit of the European Delegation -- from just days before the EIA Review Process was allegedly completed, on the Claimants' case -- suggest that the EIA Review Process was near completion.

The content of the discussions at the November 29 TAC meeting is largely undisputed, insofar as there is an audio recording and a transcript. The Parties disagree regarding the meaning and the significance of certain statements at that meeting.

The Claimants make much of statements by Mr. Anton, as well as certain TAC members, indicating that they had no or few outstanding questions. However, those statements, when put in context, are either irrelevant and/or mischaracterized by the Claimants. We, thus, encourage the Tribunal to read the transcript from this meeting, Exhibit C-486, from start to finish.
As the Tribunal will see, several topics were discussed, as indicated in the agenda. Chapters 8 and 9 of the EIA Report were discussed. RMGC's October 2011 answers to the Ministry's 102 questions, the so-called "IGIE Report"--that was a report from 2006 done by independent experts on certain aspects of the EIA Report. They also discuss the TAC's site visit and the visit of the European Delegation.

As we see on the slide in the right-hand column, throughout each of these portions of the TAC's discussion that day, TAC officials asked technical substantive questions. When RMGC responded, the TAC official in question does not say "Okay, I approve" or "Okay, we validate."

These were technical ongoing discussions, and the TAC was taking note of RMGC's responses without endorsing them necessarily. There are also a number of items that you will not see in the transcript.

You will not see a moment when the TAC President asked the members to vote.

You will not see him say, "We will now go
around the room, and each TAC member will indicate whether they are for or against issuance of the Environmental Permit." Nor does the agenda indicate that such a vote will take place.

When he goes through the agenda items, Mr. Anton asks certain TAC members whether they have questions or comments regarding that agenda item. And in that context, certain TAC members say that they have no questions or comments.

In addition, discussion of an EIA Report chapter within the TAC did not mean that review and analysis of the issues raised in that chapter was closed. It did not mean that the TAC could not subsequently ask questions about a chapter discussed in the TAC.

As mentioned a moment ago, in September 2011, the Ministry of Environment sent a list of 102 questions about Chapters 1 to 7, which had been discussed in December 2010. Stated differently, the fact that by the end of the 29 November meeting, the TAC and RMGC had discussed Chapters 1 to 9 of the EIA Report did not mean that
the TAC's review and consideration of the EIA Report was complete.

It is, again, evident from the meeting transcript alone that certain TAC members were still reviewing and considering the EIA Report and had questions. Although the Claimants attach importance to statements by Mr. Anton, especially at the end of the meeting, to the effect that things were finalized in the TAC, RMGC knew, based on the discussions that same day, that the TAC was still considering the EIA Report and related documents and that additional issues were outstanding, even if the TAC did not mention them again at that particular meeting.

You will also see in the transcript that Mr. Anton was in a hurry. He was continuously saying, "Let's move on, next question" and even, at times, interrupting and cutting off TAC officials. Perhaps, to his credit, he was trying to conduct the meeting expeditiously.

His comment at the end of the meeting that things are finalized may reflect a commendable desire to move things along, but it was at odds with, first,
the fact that the questions—the fact that questions
had been raised during this meeting and not
necessarily answered to the TAC's satisfaction, and
also that other issues and questions that had not
been mentioned during this meeting were outstanding.

It is also important to bear in mind that
Mr. Anton, as State Secretary, was a political
appointee, not a technical expert. He was not one of
the civil servants within the Ministry of Environment
reviewing the thousands of pages of the EIA Report.
That was not his job.

His job was to schedule and coordinate these
TAC meetings. He was also not going to participate
in the TAC's decision as to whether to issue the
Environmental Permit.

Contemporaneous evidence after the meeting
also confirms that Ministry of Environment—that the
Ministry of Environment considered that the EIA
Review Process was ongoing. In letters from
December 2011, responding to questions from Members
of Parliament, the Minister of Environment,
Mr. Borbély explained: "The Project owner has been
asked to clarify some aspects raised by the public and, therefore, the EIA Procedure for the Rosia Montana project is underway and will be finalized after a complete, careful, and thorough analysis of all documentation by all decision-makers."

By letter dated January 2012, Mr. Anton responded to questions from an association regarding the Project. And he wrote that that it was "currently in the EIA Procedure," more specifically at the stage of the quality analysis of the Project Environmental Impact Report and that given the Project complexity and the multitude of legal requirements, the TAC has requested additional information/clarifications regarding the submitted documentation.

The next couple of documents to which I will refer are confidential.

(End of open session. Attorneys' Eyes Only information follows.)
(End of Attorneys' Eyes Only session.)
OPEN SESSION

ARBITRATOR GRIGERA NAÓN: May I ask you a question?

MS. de GERMINY: Yes.

ARBITRATOR GRIGERA NAÓN: From a regulatory viewpoint, what is the decision-making process of a TAC? Is it by majority/unanimity when the process comes to an end, so we can know that the TAC has really come to the finish of issues?

MS. de GERMINY: There has to be a moment—so, indeed, there are provision referring to the need for consensus. And there has to be a moment, effectively, when all members of the TAC are asked to take a position whether they are for or against issuance of the Permit. So, there has to be a moment when a decision is made, and then, separately, there is then a process when the conditions for issuance of the permit are discussed and drafted and finalized with the Ministry of Environment.

ARBITRATOR GRIGERA NAÓN: What do you mean by "consensus"? Is it head count? Is it vote? How
do--how--from a regulatory viewpoint, there is a TAC determination of issues. Is it issue by issue? Is it oral decision?

How does it work?

MS. de GERMINY: The legal provisions, indeed, refer to a consensus. So, there has to be a consensus on the idea of issuing--on issuing the Permit. Then there is discretion--there's area for maneuver, perhaps, in the way conditions are drafted. And that's where there's an element of discretion that may come in.

So, certain TAC members may be in favor or--or may have concerns regarding the permit, but they may be, perhaps, addressed through the conditions.

ARBITRATOR GRIGERA NAÓN: But at some point in time, somebody has to say "We have a consensus" or "not."

Is that the President of the TAC or that is not defined?

MS. de GERMINY: The Law does not say specifically whether--how that is managed. It does
not say. It says there is consensus, there are provisions relating to the need for consensus and for a conciliation meeting at some point with the TAC, where there may be a discussion of differing views or of concerns regarding the issuance of the Permit.

In addition, in May 2012, Gabriel Canada noted that public officials had referred to outstanding issues in the EIA Review Process, including the need for a Government decision that the Project was of public interest, the need for an ADC for Orlea, and the need for a waste management plan.

In any event, as I will demonstrate, as of January 2012, RMGC had not met the requirements to obtain the Environmental Permit and, in some cases, still has not met those requirements to this day. I'm going to go through these various issues.

In January 2012--

ARBITRATOR DOUGLAS: Just backtracking. Where is the reference to public interest?

MS. DE GERMINY: So, it's government approval for the diversion of a stream. And I'm going to discuss that.
ARBITRATOR DOUGLAS: Okay. So, it's the diversion of the stream; it's not about surface rights, just to be clear?

MS. de GERMINY: Correct. This is about the Water Framework Directive and the need for a declaration of outstanding public interest, in order to permit the diversion of the Corna River and Rosia streams to be able to derogate from the Water Framework Directive.

So, in January 2012, the Ministry of Culture had not endorsed the Project. The Parties agree that the Ministry of Culture endorsed the Project in April 2012—in April 2013. This is the endorsement from April 2013.

It's also undisputed that the Ministry of Culture was required to endorse the Project, as shown on this slide showing the relevant legal provisions. The Law does not spell out, though, what criteria the Ministry of Culture should take into account when deciding to endorse or not the Project.

Further to the law, though, and on the Principle of Integrated Conservation, which is
referred to in the red line, the endorsement must follow and be based on preventive archeological research.

Now, the Claimants argue that an ADC is only required prior to issuance of a building permit. This is misguided. For the Ministry of Culture to endorse a project for purposes of the Environmental Permit, it must be satisfied with the preventive research conducted by the developer or which the developer has committed to conduct.

So, in that regard, the Ministry of Culture may require the developer to secure certain ADCs before it will issue its endorsement.

The Claimants argue that the Ministry of Culture effectively endorsed the Project in December 2011. This is incorrect both as a matter of fact and of law. There is no dispute that there had been significant archeological research in Rosia Montana over the years, and that led to authorities either to protect or to discharge certain parts of the Project area.

However, in 2011, there was uncertainty
surrounding both Orlea and Cârnic Massifs, causing
TAC representatives—as we see, this is an example, an excerpt from TAC meeting minutes from
March 2011—to express concern and to seek
clarification regarding the situation with these two Massifs.

Cârnic was a problem because, although RMGC had secured an ADC in 2004, Alburnus Maior had successfully challenged that ADC in court. And when RMGC received a second ADC, further to more research for Cârnic, when RMGC secured a second ADC in 2011, Alburnus Maior again challenged it.

We see on the next slide the Cârnic ADC area that was the subject of litigation. That's in red. The map shows the other three mountains that were to become pits in orange-yellow, Orlea and Jig at the top and Cetate at the bottom left.

For Orlea—as for Orlea, RMGC had not, and still today has not, applied for an ADC. This slide shows, in green, the areas that have been—that are the subject of ADCs. The Orlea area, as you can see is not in green.
To this day, RMGC has not carried out preventive archeological research at Orlea. It did some field surveys and other preliminary assessments on the basis of which it mapped the underground galleries which you see represented on the map. Those are the black lines.

The outcome of those preliminary studies are set out in the Preliminary Assessment Study of Orlea which RMGC submitted to authorities in August 2011. And, later, a more detailed report was prepared setting out the research that was proposed to be carried out in Orlea in view of applying for an ADC.

So, when the Ministry of Culture endorsed the Project in April 2013, it did so following receipt of and on the basis of that 2013 Report, which the national archeological commission had just approved in March.

The Ministry also, though, conditioned its endorsement on RMGC's securing of an ADC for Orlea and on RMGC's obtaining all the endorsements necessary for the Project.

ARBITRATOR GRIGERA NAÓN: My understanding
is that Orlea was going to develop later on, in seven years, and that it was not an immediate need—at least that's what I've heard—to count on that approval, quote/unquote, regarding Orlea.

How do you address that issue?

MS. de GERMINY: So, the Ministry of Culture's endorsement of April 2013, as I say, is conditional, in the sense that it says that an ADC for Orlea must be obtained. The ADC is, in any event, also necessary for the building permit. And, of course, there are questions as to how that delayed research would affect the feasibility of the Project more generally.

So, in January 2012, RMGC also had not yet secured the approval of the Waste Management Plan which was a prerequisite to securing the Environmental Permit, as shown on the slide. The Law provides the approval of the Management Plan shall take place during the procedure for the assessment of environmental impact.

The Claimants argue that because the Waste Management Plan was not discussed at the 29 November
meeting, it was not required for the Environmental Permit. However, even if the plan was not mentioned during the meeting, that does not mean that it was not required. The Law is quite clear.

It's also undisputed that, by law, both the NAMR, National Agency for Mineral Resources and the Ministry of Environment were required to approve this plan in two steps and that RMGC did not submit an updated version of this plan to the NAMR until December 2011, so after the November 2011 TAC meeting. Moreover--

The next few slides are confidential.

(End of open session. Attorneys' Eyes Only information follows.)
(End of Attorneys' Eyes Only session.)
OPEN SESSION

MS. de GERMINY: RMGC needed but did not have in place valid urban plans. The Ministry of Environment was not in a position to issue the Environmental Permit in January 2012 because, as is undisputed, RMGC had not secured from the Rosia Montana and neighboring municipalities the approval of the PUZs for the Project area and the protected areas, including the historical center of the village.

What the Parties call the "industrial area PUZ" is sometimes also called the "Project area PUZ" or just "the PUZ." It was--

ARBITRATOR GRIGERA NAÓN: Precisely. I was confused. Do we have a project area? an industrial area? Is it the same thing? Are they different things? And which are the applicable regulations to each?

MS. de GERMINY: I will explain.

I think it's fair to say that the Parties, and depending on the documents you look at, essentially refer to two PUZs, the industrial area
PUZ or the Project area PUZ. So, that is really the zoning urban plan for the Project. And then there is a separate PUZ, which is the historical area PUZ. And we see these on the map.

So, first of all, the outer border is the original—and you see it—it's a bit hard to read—but on the left-hand side of the screen, the original industrial zone, that was the original area of the original PUZ from 2002, which I will mention in a moment. And then the area reduced slightly, so that's the inner gray line.

You see towards—and so you see at the top it says "Project's Footprint."

You then see the four blue areas for the four pits, Jig, Orlea, Cetate, and Cârnic. And you see between those four pits the thing that says "Protected Area."

So, the protected area there corresponds to the village, the historic center of the village. And that would have been the subject of an historic area PUZ. And it is surrounded by the green buffer zone.

So, at times you see references to a buffer
zone. That's the buffer zone. There's also, you'll see, a separate protected area a little bit to the left, which would have been in connection with the other protected area.

So, it was the zoning plan for the Project that RMGC really needed to submit to local authorities to get their approval. And to get their approval, RMGC needed to first submit its proposed PUZ to local utility companies and local authorities to get their endorsements and their--to get permits.

Once RMGC had collected all of these endorsements and permits from local authorities, it then needed to submit its proposed PUZ to the affected municipalities for their approval. This zone actually covers four villages. So, it needed the approvals from all four and not just Rosia Montana.

As of late 2011 and early 2012, RMGC needed to secure three endorsements for the industrial area PUZ and three endorsements for the historical area PUZ.

We see here an excerpt from the meeting
minutes from 29 November, where Mr. Tanase says: "We have to take these two PUZs to the final approval stage. There is a series of endorsements to be obtained for each of them, about 14 or over 20 endorsements to obtain. We have obtained the majority, but we are still short of a few."

ARBITRATOR DOUGLAS: Again, though, the context for that may have simply been that we need to do all that for the construction permit, not necessarily to obtain the Environmental Permit.

MS. de GERMINY: So, Romania's position is that the PUZ was very much necessary for the EIA Procedure, that authorities needed to see the zoning plan that was going to be the underlying basis of the whole Project.

That PUZ, of course, as the Tribunal may have seen in our submissions--we heard a little bit about it yesterday--one of the key endorsements that that PUZ needed to obtain was called the "SEA Endorsement," which was a separate environmental endorsement which was to be issued by the Sibiu EPA.

And so, the Ministry's EIA Review Process
also needed to take into account the Environmental Permit of the PUZ and the requirements delineated by the Sibiu EPA.

ARBITRATOR DOUGLAS: I know we're going to hear from the experts on this at length.

MS. de GERMINY: Yes.

ARBITRATOR DOUGLAS: But just in a nutshell, is the major difference between the parties as to whether or not it's a requirement for the Environmental Permit--I understand the Respondent's position to be it's not expressly stated in the Law, but it's part of the discretion because you would need to have it in front of you to make an informed decision; whereas the Claimants say, well, it's not part of the law, and therefore, it can only be relevant to the construction permit.

Is that, in a gist, where the dispute lies on that?

MS. de GERMINY: Right. So, I mean, the Claimants rely on the express requirement in Romanian law that a PUZ is required for a building permit, and that is undisputed. But there are other provisions
of Romanian law which are based on the EU SEA
directive and the EIA directives, as transposed into
Romanian law, that make it clear that a PUZ must also
be in place prior to issuance of the Environmental
Permit.

So, there is both a legal basis that flows
from a technical requirement, which is that the PUZ
is effectively showing the geographic delimitation of
the area, all of the characteristics of the area,
taking into account how the water and electricity and
the whole--the streets will feed into this area.

So, from a technical point of view, the
Ministry of Environment considered that this was
essential to have and, indeed, they requested it on
many occasions over the years to RMGC.

ARBITRATOR DOUGLAS: Just to clarify one
point.

Does your submission on it being a
requirement for the Environmental Permit depend upon
first establishing that there's a discretion?

MS. de GERMINY: It's our position that it
is a requirement that is clear from different legal
provisions that our experts set out in detail. But, certainly, if—even if the Tribunal were to conclude that it's not expressly provided for, that they certainly would have very much the discretion to consider that a PUZ is necessary.

ARBITRATOR DOUGLAS: Alternative, I guess.

MS. de GERMINY: Yeah.

So, as I just mentioned, this is just one other note from a Gabriel Canada disclosure from March 2012 which is, again, noting that they are trying to get all of the endorsements that they need to get.

And here I would just like to note that by way of background—I alluded to this a moment ago—that RMGC had secured the approval of a PUZ for the Project area in July 2002. There were, however, two problems with that PUZ.

First, local residents—and this is what we see on the slide—through Alburnus Maior, successfully challenged the Local Council Decision—the Rosia Montana Local Council Decision approving that PUZ. They challenged that for years,
as we see on the slide.

And second, as RMGC's urban certificate reported--this is a snapshot from RMGC's first urban certificate--and I'm going to discuss the urban certificates in a moment--but as RMGC's urban certificate recorded, RMGC, in any event, needed to amend that initial PUZ for technical reasons. So, that 2002 PUZ was not sufficient for this Project to go forward.

And as I also noted a moment ago, the Ministry of Environment repeatedly asked RMGC to provide this PUZ. This is an example of one of those requests. This is actually a request from the--from the Ministry of Environment. It's the first letter that the Ministry of Environment sends to RMGC following the resumption of the EIA Review Process in 2010.

It was a letter signed by the Minister himself, and as you see, he asks: "Please deliver the PUZ," indicating the whole area. And he--you know, the whole area for which the urban certificate is issued because they essentially go together.
And I'm now going to comment on certain confidential information.

(End of open session. Attorneys' Eyes Only information follows.)
Now returning to non-confidential material.

(End of Attorneys' Eyes Only session.)
OPEN SESSION

MS. de GERMINY: RMGC needed to obtain and maintain a valid Urban Certificate throughout the EIA Procedure. Valid for up to 24 months, the Urban Certificate is both an informative and a regulatory administrative act regarding a geographic area. It's informative because it sets out the legal, economic, and technical status of the area as it stands; regulatory because it lists the approvals and endorsements that a developer must obtain to apply for a building permit.

So, for instance—this is a snapshot from RMGC's first urban certificate from 2004. It indicated, among many other permits, that RMGC needed to secure the environmental permit that we see in Section d.3, before it could then secure the building permit.

It's undisputed that RMGC secured six urban certificates in connection with the Project. It's also undisputed that local residents, through Alburnus Maior and other NGOs, continuously challenged those urban certificates in court for
years. As we can see from the slide, as of late 2011, court proceedings regarding the urban certificate then in force, UC87, were pending.

Now, the Claimants argue that RMGC did not need an urban certificate to secure the Environmental Permit, and that in any event, these challenges did not impact the validity of the UCs. However, as Professors Dragoș and Tofan explain, under Romanian law, an urban certificate must be obtained at the start and kept valid throughout the procedure.

The Claimants were aware of this requirement since, in 2003, Gabriel Canada indicated that the submission of the EIA to the Minister of Environment has been delayed, pending receipt of the final confirmation of the land-use zoning, being the urban certificate.

And once RMGC did obtain—did secure its first urban certificate in 2004, it then applied for the Environmental Permit, and it included its urban certificate with its Application. The Ministry of Environment, in turn, made clear to RMGC that the EIA Procedure was tied to the Urban Certificate and its
underlying technical sheet.

You'll see references to a "technical sheet" or "technical memorandum" underlying the urban certificate.

As we see here, Ms. Filipas of the Ministry of Environment says the procedure for the issuance of the permit is based on the technical sheet which is attached to the UC. And if you don't have a valid deed, it means that we don't have the complete documentation necessary for issuing the regulatory deed.

Alburnus Maior and other NGOs continued to attack RMGC's urban certificates throughout 2012, starting with an appeal of the 21 December 2011 Bucharest Tribunal ruling. And shortly after RMGC obtained a new urban certificate in April 2013, Alburnus Maior again applied to the Cluj Tribunal to annul that certificate. And that litigation ultimately resulted in the Certificate's annulment in 2016.

Crucially, the Claimants have failed to show that the Ministry of Environment's alleged failure to
issue the Environmental Permit in January 2012 or subsequently, insofar as it was motivated by RMGC's failure to maintain a stable urban certificate that was not the subject of legal challenges, was unlawful.

In 2011 and 2013 RMGC also did not comply with the Water Framework Directive. It's undisputed that the Project involved the diversion of water streams, both in the Rosia and Corna Valleys. This diversion would deteriorate their ecological and chemical qualities.

These next two slides show--first, on top for this one, the existing Corna--the existing Rosia stream and, on the bottom, how it would be diverted.

If you look at the slides with the Corna Valley, you'll see there's a gray area where RMGC would put the TMF dam and you see different blue polka dot lines that show how the water would be diverted.

As a result, RMGC needed permission to derogate from the Water Framework Directive under Article 4(7) of the Directive which, of course, also
has been transposed into Romanian law. It's the Waters Law 107. "Such derogations are granted only in exceptional cases and only for purposes of overriding public interest."

As shown on the next slide, which contains confidential information—

(End of open session. Attorneys' Eyes Only information follows.)
ATTORNEYS' EYES ONLY SESSION

(End of Attorneys' Eyes Only session.)
OPEN SESSION

MS. de GERMINY: The Claimants, however, argue that the only issue in terms of compliance was that RMGC needed to secure this declaration of public interest. They say that RMGC secured that Declaration in September 2011 from the Alba County Council, and that that was the end of the story.

But it was far from being the end of the story. The Law does not provide from whom that declaration must come. And although the Claimants argue that the Declaration from a local authority, the Alba County Council, sufficed, neither the TAC nor the Ministry of Environment ever accepted that declaration or confirmed that it met the requirements of the directive.

On the contrary, given the significance of the Project, State authorities considered that the Declaration of Overriding Public Interest needed to come from a central government authority.

And that's—we see examples. There's extensive correspondence—but examples of two letters, internal State letters, but noting that a
governmental act is required.

The next slide is confidential.

(End of open session. Attorneys' Eyes Only information follows.)
ATTORNEYS' EYES ONLY SESSION

(End of Attorneys' Eyes Only session.)
OPEN SESSION

MS. de GERMINY: The next slide shows, in timeline form, the correspondence, both internal State correspondence and correspondence with RMGC, mainly from 2011 and 2014, regarding the Project's lack of compliance with the Water Framework Directive. And as you can see, it's really quite extensive.

For instance, at the 31 May 2013 TAC meeting, ANAR, the representative—ANAR is the Romanian Waters Authority, which was a TAC member—Mr. Cazan said that RMGC still needed to submit the documentation to comply with the directive and, therefore, to secure the water Management Permit.

And he warned this Project may lead to an infringement procedure declared by the European Commission, and this is why we need to be very sure and very convinced.

And just months later, in October 2013, the EU Commissioner for the environment noted to the Romanian Minister of Environment: This “project
involves the diversion of 2 rivers. This clearly involves a deterioration of these water bodies. In that case, the Project should only go ahead if all the conditions under the directive are fulfilled. The project being of 'overriding public interest' is only one condition. The Project should have also been included in the river basin management plan and therefore subject to a public consultation. And this was not the case."

As of 2014, RMGC still had not submitted the requisite documentation to the Ministry of Environment in connection with the Directive, as the Ministry of Environment explained in a 25 February 2014 letter to the Ministry of External Affairs, in connection with the Commission's queries about the Project.

And so, here they're staying no documentation has been submitted. "To the extent--to the extent that the Rosia Montana Project stays with the technical solution, we deem that in order to issue the Water Management Permit, an analysis of Article 4(7) is necessary."
RMGC also needed but did not have the surface rights to the Project area.

PRESIDENT TERCIER: May I just mention the fact that you—do you know how long you have to deal with the last point?

MS. de GERMINY: I need, perhaps, 10, 15, maybe 20. It's hard to say. But I think—I don't know how long.

PRESIDENT TERCIER: What do you prefer?

MS. de GERMINY: I would prefer, if it's amenable to the Tribunal, to go ahead and finish my presentation and then we break.

PRESIDENT TERCIER: Okay. You're surviving? You too?

Okay. Good. Then go ahead.

MS. de GERMINY: Okay.

ARBITRATOR DOUGLAS: Well, just to disrupt it, then, what is the position—the Respondent's position on whether or not the surface rights were required for the Environmental Permit? I have not understood you to say that they were required but—

MS. de GERMINY: Right.
ARBITRATOR DOUGLAS: --I'd like a clarification.

MS. de GERMINY: So it's certainly, indeed--I know that was your question yesterday. It's certainly undisputed that RMGC obviously needed the surface rights for the Building Permit, and we would not dispute that from a technical point of view.

But we say that that is shortsighted. It's misguided in the sense that RMGC ran a very important risk if it did not acquire the surface rights early on. Because even if a minority of residents refuse to move, RMGC would need to redesign the Project around those properties--of course, depending on how many properties and where they are located--and thus redo--restart an EIA Procedure and/or resort to expropriation proceedings which had an uncertain outcome.

So that's why we note that the surface rights were, of course, a very important issue also for the Environmental Permit.

ARBITRATOR DOUGLAS: Is this, again, a
matter that requires discretion, or is this a formal legal requirement of the permit?

MS. de GERMINY: It would--it is the same in that the surface rights are a requirement only perhaps for the building permit in terms of express provisions relating to that that you'll see in the Urban Certificate. But certainly from the Ministry's point of view, this was important.

And it goes hand in hand, of course, with the question of zoning. It's the same--it's directly related. Because if there are residents in the area that don't move and that you cannot move, then you have to redo the EIA Procedure.

You have to review what is going to be the impact of this Project on the area where the Project is going to be and that you don't know where the Project is going to be if there are people who are there.

And so, as we see on the next slide, the Rosia Montana Village is nestled; right? We've seen already a few drawings, but this one shows it, I think, very explicitly.
The Rosia Montana Village is nestled among the four mountains that were going to become pits. The village is in the middle. We see the houses that are spread out all around. And the orange line represents the delimitation of the Project area PUZ. It's that same outer limit we saw earlier.

So the blue squares, to be precise, are existing buildings as of today. Some of these buildings may not be dwellings or inhabited, but many of them are. Many Rosia Montana residents have, of course, left over the years and, in many cases, have sold their houses to RMGC. Many residents have also passed away. But as of 2011 according to the official and most recent Romanian census, there were over 600 people living in Rosia Montana Village.

RMGC knew from the outset that a failure to acquire the surface rights could derail the Project. In 2002, it indicated that “[i]t is to be expected that a certain number of people will be reluctant to negotiate with RMGC... However, the fact that some of these people are situated in the areas for the plant and tailings dam is of great concern given that these
are critical path areas”.

And the TAC also expressed concern about this issue. On various occasions—this is an example—an excerpt from TAC meeting minutes from 2007 where the representative of the Ministry of Environment said: This is a very serious issue. There are at least three households that—when I went that refused to leave and that are situated exactly on the TMF site. I don't know if you convinced them, but this project is not of public utility, so expropriation is out of the question.

So as we have seen, a number of fundamental issues were outstanding not only in 2011 but also in 2013. And before returning to the EIA Review Process timeline for 2013, I would like to make a couple of comments regarding statements that you heard yesterday about the 2013 period.

First, in the context of discussing events in 2013, Claimants' counsel, in their presentation, said yesterday that the Minister of Environment Gavrilescu, when called upon to be a witness, declined.
This is wrong. Minister Gavrilescu was not called to be a witness and she did not decline to be a witness. Madam Gavrilescu was Minister of the Environment for six months in 2015 and then between 2017 and 2019, not in 2013. Her name came up a few months ago because, as the Tribunal will recall, she had signed a May 2019 letter on behalf of the Ministry of Environment that one of the Respondent's technical experts had used as an exhibit to her report.

And the Claimants complained about this letter saying it was not contemporaneous, and the Tribunal held that unless the Respondent wished to resubmit the exhibit as a Witness Statement that exhibit should be stricken because it was not contemporaneous. And given the circumstances, Romania did not proffer a Witness Statement on Minister Gavrilescu's behalf.

Second, we heard much yesterday about the conclusions of an Inter-Ministerial Commission that met in March 2013 and its statement that the Ministry of Environment can "issue the Environmental Permit
and any other details can be solved along the way."

The views of that Commission are, however, of little relevance as a matter of law and fact. As a matter of law, the Commission was not a decision-making body, and its views took the form of an informative note addressed to the Government.

As a matter of fact, its views, which total eight pages, were based on limited information, namely two two-hour meetings on 11 and 22 March 2013. And they were issued, these views--the informative notes were issued just two weeks after the first meeting.

So let's return to the EIA Review Process in 2013. Following RMGC's submission of its Waste Management Plan and the Ministry of Culture's endorsement of the Project, the TAC met four times between May and July 2013.

The Claimants argue that these meetings reconfirmed the requirements--reconfirmed that the requirements for the permit were met and that the Ministry of Environment was prepared to recommend issuance of the permit.
However, in March 2013, Gabriel Canada noted in its public disclosures that it was confident that it could and would comply with its environmental obligations reflecting that this was an ongoing effort.

Then, at those meetings, the TAC, in fact, raised issues such as, as I just explained, the Water Framework Directive. The TAC also asked, for instance, about the route by which cyanide would be transported to Rosia Montana.

This had been a recurring issue for years for the public and the TAC, as we see on this slide. These are examples of comments from the public and questions raised in the TAC.

Although the cyanide was possibly—possibly going to arrive by ship in Constanta and then travel across the country to Rosia Montana, the Ministry of Transport's representative—and this is—on—it's on this slide on the bottom. The representative of the Ministry of Transport—and that's from a May 2013 meeting—observed: Nobody in the Constanta port was contacted. Nobody knows about this transport. Have
you contacted anybody? They don't know about it.

And RMGC's representatives in this meeting responded: Well, several alternative routes have been studied and the final route will be decided "when the time comes."

So, they declined to provide further information, notwithstanding the TAC's request, at that point in time and the previous requests.

And although the Claimants complain about these meetings in 2013—in, for instance, March 2013—Gabriel Canada reported that it looked forward to furthering discussions with relevant Ministries regarding compliance with environmental standards.

The Claimants also refer to the Ministry of Environment's publication on 11 July 2013 of a note for public consultation as evidence of the Ministry of Environment's—as evidence that the Ministry of Environment was allegedly ready to issue the permit.

They refer, at times erroneously, to this document as a "Draft Permit." It was not. And a 2014—indeed, the name indicates that it's not a
permit—it's not a Draft Permit, and that's also reflected in the document itself.

A 2014 RMGC Management Report confirms the understanding that that note for public consultation from 2013 was not a Draft Permit. So this is from 2014.

RMGC wrote: After the completion of the EIA Procedure, the TAC is to make—the TAC will make a consultative decision. Based on this decision and on the report, the Ministry will decide about the granting or rejecting of the permit. The decision of the Ministry, together with a Draft Permit, will be subject to a public consultation.

So they knew that the document from 2013 did not fulfill that role. And at the end of the consultation period, the Ministry of Environment will draw up the Environmental Permit.

This report flies in the face of the Claimants' argument that following a meeting on 26 July 2013, the Ministry of Environment should have issued the permit. Gabriel Canada and RMGC's contemporaneous statements reflect their
understanding that the EIA Review Process was ongoing, satisfaction that the TAC was continuing its work, and uncertainty as to whether RMGC had complied with all environmental obligations.

None of the complaints the Claimants voice in this Arbitration regarding the existence and the content of the TAC meetings in 2013 were the Ministry of Environment's alleged failure to issue the permit in 2013 appear in those documents.

PRESIDENT TERCIER: Thank you very much. So now I think we will have the break.

I'm sorry. I totally forgot to ask the court reporters whether they are still ready to work. Sorry for doing that. And thank you very much for your work.

We will take now 15 minutes' break. But before I would like to know what is the prospect--how do you see the time? You told us yesterday that you hoped to finish before lunch. Are you still--

DR. HEISKANEN: Probably an hour and a half, thereabouts. Perhaps a bit more, I'm being advised.

PRESIDENT TERCIER: Okay. I think it would
be good if we could have the lunch break as provided, at 1:15 would be good. So if you can arrange your timing and decide when or how you should--

DR. HEISKANEN: We will accommodate the Tribunal's wishes.

PRESIDENT TERCIER: I am not sure we are the only one asking.

Good. Thank you very much.

(Brief recess.)

PRESIDENT TERCIER: Okay. Good. So, let's resume, Mr. Bonifacio. You have the floor.

MR. BONIFACIO: Thank you.

Mr. President, Members of the Tribunal, the Claimants' case on composite breach rests on their argument that in 2011 the Government engaged in a series of actions with the intention of blocking the Project.

They say that the Government did this continuously as from August 2011 through the commercial negotiations between the Government and Gabriel in the fall of 2011 and until the end of the negotiations leading to the Rosia Montana Law in the
summer of 2013.

This allegation is without foundation. The Government did not block the Project or its permitting either in 2011 or in 2013 or, indeed, at any time. My colleague, Lorraine de Germiny, has just demonstrated why the Project did not meet the requirements for environmental permitting.

As I will explain in a moment, there were commercial negotiations between the Government and Gabriel which began in October 2011. They were nothing more than arm's-length discussions between two partners in a Project during a period when Romania was suffering one of the worst financial crises of its modern history. And those negotiations reached a conclusion within a couple of months, by the end of 2011.

For the ensuing negotiations in 2013—and as my colleague, Christophe Guibert de Bruet, will explain—the Rosia Montana Law came about with the Claimants' support and encouragement and was intended to assist, not block, the progress of the Project.

Turning first to 2011. The Claimants argue...
that starting on 1 August 2011 and running through to November 2013, the Government of Romania first conditioned the Project's permitting progress on the Government obtaining an increased stake in the Project's benefits, and, second, artificially blocked the permitting of the Project until it obtained that increased stake.

In order for this aspect of the Claimants' case to succeed, they must establish both of these propositions. As the Tribunal will see also in the course of this hearing, neither of their propositions is supported by the evidence. The progress of the permitting was not conditioned on obtaining increased benefits from the development of the Project and nor did the Government interfere in the permitting process, which ran its natural course.

The only reason for these allegations being made now is opportunism. The Claimants have chosen a valuation method for the quantification of their damages that is based on the market capitalization of Gabriel Canada in the Toronto Stock Exchange. This method is inappropriate and cannot be used to
reliably calculate damages, as Romania has explained throughout this arbitration.

But that's not the main point that I want to make now. The Claimants have chosen to use this method, which is highly sensitive to changes in the valuation date, and then they chose to backdate the start of the Composite Act to August 2011.

Why did they do so? Because in their quantification, this leads to an increase of approximately USD 3 billion of additional damages when comparing with a valuation date in August of 2013, and some USD 3.5 billion if valued after the end of August 2013. This is graphically shown on the screen.

In the red vertical line, you can see a valuation date. The blue line shows the market capitalization of Gabriel Canada and how it evolved in time. You can see that the historical peak of the market capitalization of Gabriel Canada was registered precisely in the period July/August 2011.

So, when the Claimants were preparing their quantum expert reports, they were hard-pressed to
create the appearance that Romania committed a breach
of treaty in July or August 2011. And this is
transparently why they chose to backdate the start of
the Composite Act to August 2011.

At no point before the preparation of the
Claimants' Memorial and its First Expert Report on
quantum did Gabriel ever allege that Romania had
interfered with Gabriel's investments in August of
2011 or, indeed, at any point throughout 2011 as a
result of the commercial negotiations with the
Government.

As we can see on the screen, in their
Request for Arbitration, the Claimants listed
chronologically all key events relevant to their
claims, and there is no mention of any political
statement or commercial negotiations with the
Government or, indeed, any conduct of Romania in the
summer of 2011. That omission was not an oversight.
It is the testament to a changing case theory
designed to achieve a certain result on quantum.

So, against that background as to why there
are now allegations that Romania's relevant conduct
started in August 2011, let's start by examining first the alleged events of August 2011 and then the subsequent commercial negotiations as from October 2011 to see whether they amount to such an act.

Turning to the first point, the international responsibility of Romania depends on a showing of a wrongful act attributable to Romania.

Far from pointing to an act taken by Romania on 1 August 2011, as we heard yesterday, again, the Claimants' point vaguely to a public statement by Prime Minister Emil Boc during an interview that he was "not a fan of the project."

You can see a portion of the interview on the screen which corresponds to a video projected yesterday.

On the slides, you can see a table showing all public statements of Central Government officials since 2006 through the end of 2012 that are part of the record.

We have also prepared a table version of the events in this slide to assist the Tribunal in
placing the statements in sequence during this part of the presentation. This has been distributed earlier.

The table shows where in the timeline of public statements the specific press article is located by reference to Prime Minister Boc's previous public statements since 2006.

First, whatever Prime Minister Boc said specifically that day and whether he is a fan of the Project or not, individual statements are not in and of themselves an act of State. Investment Treaty Tribunals have consistently and rightly made clear that statements of public officials that are not accompanied by concrete measures or that are contradicted or belied by the State's action are of limited relevance to interpret the State's motives.

As the Tribunal explained in S.D. Myers v. Canada, it is the record as a whole that must be considered when assessing the conduct of the State, not the statements of individual politicians who may simply express their own personal views.

Second, there was nothing new in the
Prime Minister's statements, as Prime Minister Boc expressly recalled during the interview. As we can see on the screen, Prime Minister Boc's statements are preceded by the words "I have said on a number of occasions," which is a key aspect of this statement. His personal position had been previously expressed publicly.

Third, whatever Prime Minister Boc's past and current personal views about the Project, it is a fact that this Project was firmly on the Government's program since 2009. Nowhere do Prime Minister Boc's statements support the Claimants' propositions that the permitting would only be--would only progress if Romania obtained increased benefits from this Project.

On the contrary, Prime Minister Boc refers that for the Government, there are “two major considerations” in this Project that were to be assessed at the respective Ministry level. One was the environmental aspect, and the second was the commercial aspect, as you can see on the screen.

Even from the standpoint of the commercial
aspect of the Project, Prime Minister Boc is only stating that this should be “rediscussed”. Nowhere does he state that the benefits must be absolutely increased or how. And even less is he stating that an increase is a condition for the Project to proceed.

The suggestion of revisiting the stake of Romania in this Project's benefits was also not new. As Mr. Sorin Găman states in his Witness Statement, the public debate regarding this project throughout the financial crisis, which seriously affected Romania between 2009 and 2011, had focused in part on whether or not the Romanian population derived sufficient benefits from the development of the Project when compared with the associated environmental risks.

In that context, in March 2010 the Government through Minister of Economy Adriean Videanu publicly endorsed the public opinion's view that it would be timely to consider whether the economic benefits from the development of the Project were appropriate for Romania.
Minister Ion Ariton, who is a witness in this arbitration and who replaced Mr. Videanu in September 2010, had also left the door open to that possibility when asked about a possible renegotiation with Gabriel some months later in October of 2010.

In summary, the statements of Prime Minister Boc do not support the contention that the Government of Romania conditioned the Project's permitting progress on the Government obtaining an additional stake in the Project’s benefits or artificially blocked the permitting of the Project until it obtained that increased stake.

The Claimants then try to bolster their argument by referring to a selection of a handful of other statements of Romanian officials after 1 August 2011.

The public statements about the Project were numerous at different points in time. The authors of those statements were, to name but a few: President Traian Băsescu, Prime Minister Boc, Prime Minister Mihai Răzvan Ungureanu, Minister of Economy Ion Ariton, Minister of Economy Lucian Bode, Minister of
Culture Kelemen Hunor, Minister of Environment László Borbély, Minister of Employment Sebastian Lăzăroiu.

Other state officials also publicly expressed their views over time, such as Secretary of State of Economy Claudiu Stafie and the Director of Mining Director within the Minister of Economy, Mr. Găman.

Given the significant diversity of views expressed in this specific assortment of public official statements, they cannot be equated to an act of Romania. And even on an individual basis, none of these statements says that permitting process would be held up pending an increase of Romania's stake in the Project.

I now turn to a confidential part of the presentation.

(End of open session. Attorneys' Eyes Only information follows.)
(End of Attorneys' Eyes Only session.)
OPEN SESSION

MR. BONIFACIO: In other words, it is only in this arbitration that the Claimants have felt the need to reinterpret the meaning of Mr. Borbély's statements throughout August 2011 to suggest that Mr. Borbély was pushing for a renegotiation of the commercial terms of the license.

They planted the seed of confusion regarding a link between commercial negotiations and permitting that cannot be inferred from Mr. Borbély's statements and continue to feed that confusion by quoting his statements out of context.

As we saw yesterday, the Claimants apply the same technique for other public statements of Romanian officials about the Project that summer and fall.

The Claimants' misrepresentation of the various statements are just too numerous to be addressed here. I refer the Tribunal to Romania's written pleadings where each of the relevant statements is explained in context, specifically, Counter-Memorial Section 4.7 and Rejoinder.
Section 3.4.1.

I will, however, say a word about one new document mentioned yesterday on Slide 31 of Volume 3 of the Claimants' Opening Statement. This is Exhibit C-2918, one of the rebuttal documents.

This exhibit contains a letter of Minister Hunor to a member of Parliament responding to a question about public statements relating to the economic advantages of the Project as well as cultural heritage protection.

The letter has absolutely nothing to do with the Ministry of Economy's negotiations with Gabriel, as becomes clear when looking at the question raised by Deputy Eugen Bejinariu that the letter is addressing.

So, the Tribunal is referred to Exhibit R-674 which contains the question that Mr. Hunor is answering in Exhibit C-2918.

The ultimate proof, that in the period starting in 1 August 2011, the Government did not change its conduct vis-à-vis the Project, lies in the fact that there is no trace of a protest against any
of those public statements on the part of the Claimants or RMGC. There had to be public shock and outrage had any public official actually stated or suggested in public statements that he would not comply with the law intentionally to force a foreign investor to sit at the negotiation table and offer an increase of benefits for the State.

But there are no such statements of protest, not least from Gabriel and RMGC. In their Opening Statement yesterday, the Claimants have called it coercion, a shakedown, an abuse, but this is not what they said at the time.

As Ms. Mocanu states in her Witness Statement, during the meeting at the Ministry of Environment in early September 2011 with representatives of RMGC that I mentioned before, she does not recall any representative of RMGC, including RMGC's lawyers, protest against any statements of Mr. Borbély to the press prior to that date to the effect that he would block the permitting subject to renegotiation of the commercial terms of the license; nor did Mr. Tanase complain to any of the many
officials he met after those statements were made,
including the very people who were conducting the
commercial negotiations as from October, such as
Mr. Ariton and Mr. Găman.

It is not that at the time the Claimants did
not know about the political statements of which
we--they complain now. They did, as we can see on
the screen. Gabriel and RMGC had various service
providers constantly reviewing all news items on the
Project in Romania and abroad.

On at least one occasion specifically,
referred to in the Claimants' Opening Statement, the
statements of the public official in question were
delivered viva voce in front of various RMGC
employees and directors during a joint site visit to
Rosia Montana.

RMGC had a track record of drafting
responses to and complaints against adverse news
items and distributing the positive items to key
contacts and publishing them on RMGC's website.

They helped diffusing some of those
statements, namely of Mr. Borbély, because they
contain positive statements to them, as we can see on the screen.

Far from complaining or protesting against any statements by public officials, Gabriel was pleased with those public statements and boasted in Gabriel Canada's disclosures in the Toronto Stock Exchange that the Project had gained significant political support that summer.

Several of those public statements were perceived in public opinion and political debate as being biased towards Gabriel such that Gabriel even felt compelled to publicly explain that they were not the result of Gabriel's financing of any political party, as we can see on the screen. And this is all that Gabriel had to protest about at the end of August 2011.

To conclude on the alleged start of the composite act, the Claimants try to fabricate a series of acts starting in August 2011, essentially based on a selection of political statements made not to Gabriel, but to the press. That attempt fails because those statements do not demonstrate the
beginning of a new pattern of conduct to the
Government vis-á-vis the Project; express very
different personal views, and not one unitary
position that can be said to reflect the position of
Romania.

And last but not least, those statements do
not anywhere support the serious allegations that the
permitting was conditioned on the increase in
Romania's economic benefits from the development of
the Project.

That allegation is equally unsupported by
what happened next in the commercial negotiations
starting in October 2011. So let's turn to that now.

This part of my presentation is
confidential.

(End of open session. Attorneys' Eyes Only
information follows.)
(End of Attorneys' Eyes Only session.)
OPEN SESSION

MR. GUIBERT de BRUET: Contains three articles which are all specific to the Rosia Montana Project.

These articles approve the Agreement and incorporate it as an appendix to the Rosia Montana law. And as we'll discuss in more detail, this chapter also declares the Project to be of public utility and outstanding national public interest.

Chapter II, titled "Implementing certain measures on the mining of gold and silver ores in the Rosia Montana perimeter and adopting certain legislative amendments," does pretty much what its title indicates. Article 4 addresses certain issues that are specific to the Project, including the extension of the license, the setting of the royalty rate, and the transfer of publicly-owned lands within the mining perimeter to RMGC.

Article 5, which constitutes approximately half of the legislative portion of the Rosia Montana Law, is divided itself into four parts. Article 5, Part I, amends the relevant portions of Law Number
571 of 2003 regarding the fiscal code granting mining projects of outstanding national interest the right to deduct from taxable income the costs related to sustainable development.

Article 5, Part II, amends relevant provisions of Mining Law Number 85 of 2003 changing, among other things the expropriation regime from mining projects declared to be of public utility, creating a mechanism for conveying expropriated land to license holders, setting a three-month deadline for issuing an Environmental Permit, provided all requested documents and information have been provided, and granting the ability to fulfill in phases the conditions for urbanism documentation related to areas which include mining perimeters.

Article--excuse me. Article 5, Part III, amends the Government--no, no. This is still non-confidential. Sorry.

Article 5, Part III, amends the Government emergency ordinance, Number 34/2003, regarding the organization, management, and operation of permanent pasturelands. And Article 5, Part IV, amends Law
Number 46/2008 of the forestry code, essentially exempting from its provision mining projects to be declared to be of public utility and outstanding national public interest.

Chapter III contains the final provisions, which are all specific to the Project. Articles 6 through 9 of the Rosia Montana Law address various issues, such as the royalty rate applicable to the Project, and the ability to proceed with construction prior to obtaining an archeological discharge certificate, and the ability to conduct the requisite archeological research in phases.

The next part of the Rosia Montana Law is the Agreement, which, as previously mentioned, was approved and incorporated as an annex pursuant to Article 1 of the Law. In the interest of time, I'll only cover the Agreement at a very high level.

Article 1 provides, among other things, for the increase of the State's interest in RMGC in stages. Upon the fulfillment of, first, the issuance of the Environmental Permit and the coming into force of the Rosia Montana Law, and, second, the issuance
of all authorizations required to commence operations.

Article 3 provides for an increase of the royalty rate to 6 percent and gives the option--the option to the State to request payment in kind. Article 4 provides for the extension of the mining license in accordance with the Rosia Montana law. Articles 5, 6, and 7 provide for RMGC's commitments with respect to investments in cultural heritage, environmental obligations, and obligations towards the Rosia Montana community.

Article 8 states that the Parties agree that RMGC shall be granted "the right to use all immovable assets located in the perimeter of the mining license which are necessary to achieve the goals set forth under the mining license." This would presumably include privately held land, although it's unclear from the language of the Agreement.

In Article 11 Gabriel undertakes to provide, within four months of the issuance of the Environmental Permit, a detailed plan on how the Project will be financed. It also provides an
estimated schedule for the issuance and approval of
the requisite permits and endorsements. Finally, in
Article 12, the State undertakes to secure the
financial stability of the main fiscal parameters of
the Project throughout the validity term of the
license.

It also provides for an ICC Dispute
Resolution Clause, with a seat in Paris, and
specifies that the Agreement is governed by Romanian
Law.

A brief word on the appendices. Appendix 1
to the Agreement lists the benefits of the Rosia
Montana project for the Romanian economy, including
the assumptions used to derive those benefits. And
Appendix 2 to the Agreement provides an indicative
permitting schedule "taking into account the great
number of endorsements, approvals, permits, and
authorizations which need to be obtained to build and
operate the project, as well as the current status of
the authorization procedure." The schedule assumes
that the streamlined procedures implemented by the
Rosiia Montana law would be applicable.
This next portion of the presentation is confidential.

(End of open session. Attorneys' Eyes Only information follows.)
(End of Attorneys' Eyes Only session.)
OPEN SESSION

MR. GUIBERT de BRUET: Ms. de Germiny discussed the issues that were hindering the implementation of the Project. While there isn't time to go through each and every one of these issues, it's useful to examine how the problems raised by just three of them led to RMGC's--led RMGC to request and the Government to include in the Rosia Montana Law legislative changes specifically designed to address these issues, thereby greatly facilitating the implementation of the Project.

These issues are one, surface rights, two, the requirement to obtain Archeological Discharge Certificates prior to obtaining building permits, and, three, compliance with the Water Framework Directive.

The first issue is surface rights. One of the major stumbling blocks was the fact that the Project had not yet secured all necessary surface rights and that certain landowners were refusing to sell their property.

I note here that the Claimants' case on
surface rights, as repeated during their opening presentations in Volume 2, Slides 27 to 29, is premised on Professor Bîrsan's erroneous interpretation of Law 33 of 1994. This interpretation of convenience is contrary to the contemporaneous position of RMGC as reflected in the Resettlement and Relocation Action Plan.

It is included in the EIA Report, which clearly states that pursuant to the law, the exploitation of mineral resources is potentially of public utility, the expropriation was subject to a declaration of public utility and that "a commission is to check whether public utility actually applies to the proposed project."

Please note here that the translation is incorrect. The original Romanian text refers to public utility and not public interest. This is an issue that is sometimes confused. Public utility refers to surface rights. Public interest refers to other requirements such as the Water Framework Directive. This is clear from page 27 of the Romanian original, which refers to "utilitate
publica." You can find that on page 111 of the merged PDF.

Professor Bîrsan's interpretation is also inconsistent with Gabriel's contemporaneous regulatory disclosures which provide that the Mining Law does not "provide exploitation, concession holders with the ability to compulsorily acquire land, nor are there specific legal mechanisms under Romanian law to allow a governmental authority to compulsorily acquire land under a mining concession on behalf of a private company." It also separately disclosed that "There can be no assurance that Gabriel will acquire all necessary surface rights."

This interpretation of convenience is thoroughly debunked by Professors Sferdian and Bojin. They explained, among other things, that the restrictive regime within a mining perimeter cannot be equated to a de facto expropriation, that the declaration of public utility must follow a prescribed administrative procedure, the outcome of which is not a foregone conclusion. And that if available, expropriation provides for a lengthy
procedure, the outcome of which is not guaranteed.

In other words, this issue could undermine the feasibility of the Project. Professors Sferdian and Bojin's interpretation of the Law is consistent with Gabriel's and RMGC's contemporaneous interpretation. And while the Respondent has called Professor Bîrsan for examination, the Claimants have not called Professors Sferdian and Bojin.

This next section is confidential.

(End of open session. Attorneys' Eyes Only information follows.)
This portion is non-confidential.

(End of Attorneys' Eyes Only session.)
OPEN SESSION

MR. GUIBERT de BRUET: So how did the Rosia Montana Law incorporate the Claimants' requested legislative changes with respect to surface rights?

Well, it provides that the Project is "a work of public utility and outstanding national public interest."

In Article 5.2.1 the Rosia Montana Law modified Mining Law 85/2003 with two new articles, 6 Index 1 and 6 Index 2.

Article 6 Index 1 provides for direct assignment of publicly owned lands within the mining perimeter to the owner of the mining concession upon payment of a royalty. Article 6 Index 2 does several things. It changes the expropriation regime, only a few of which I'll be highlighting. There's more. But it changes the expropriation regime from mining projects that were declared to be of public utility from Law Number 33/194 to Law 255 of 2010 which, as previously mentioned, has a streamlined expropriation procedure.

It provides that the Romanian State shall
expropriate upon request and that it will launch this
expropriation procedure within 30 days of this
request.

It provides that a concession agreement will
be concluded with the license holder within 30 days
of the completion of the expropriation procedure. It
also provides a mechanism whereby the expropriation
can be directly financed by the concession holder.

With this article, RMGC obtained a
fast-track procedure that solved many of its
problems. It greatly simplified and expedited the
procedure of expropriating the landowners that did
not wish to sell their properties. By virtue of
Article 9 of Law 255/2010, it enabled RMGC to use the
expropriated land while the expropriation process was
contested, thereby effectively eliminating an
important source of delay and uncertainty for the
Project.

It provided a specific mechanism for both
expropriating and conveying the land to the owner of
a private project, an important source of uncertainty
and potential delay that Gabriel had identified in
its disclosures.

These provisions would have enabled RMGC to expropriate Project opponents on an expedited basis and would have removed their ability to stall the permitting of the Project while the contested expropriation made its way through the courts.

So if the Tribunal would like, this is a good stopping point. We would next turn to ADCs, but we could do that after the lunch.

PRESIDENT TERCIER: Okay. So we start again at 5 minutes past 2:00.

Thank you.

(Whereupon, at 1:04 p.m., the Hearing was adjourned until 2:05 p.m. the same day.)
AFTERNOON SESSION

DR. HEISKANEN: Yes, we are ready, Mr. President, but just before we start, we can confirm or that Mr. Bode--

PRESIDENT TERCIER: We're not on the Transcript.

(Pause.)

PRESIDENT TERCIER: So, ladies and gentlemen, good afternoon. We may proceed.

Dr. Heiskanen, you have the floor for an announcement.

DR. HEISKANEN: Yes, Mr. President.

Mr. Bode has confirmed his availability for examination on Wednesday, 11 December, at 6:00 p.m. Bucharest time, which I understand is 11:00 a.m. EST.

PRESIDENT TERCIER: Okay. Video, of course?

DR. HEISKANEN: Yes.

PRESIDENT TERCIER: Okay. Comment on your side?

MS. COHEN SMUTNY: Well, of course, Claimants would have vastly preferred to have the opportunity to examine Mr. Bode in person, but we are
very much appreciative of the fact that Mr. Boc is here, and we will do our best to accommodate and do our cross-examination by video of Mr. Bode.

We haven't had the opportunity to look at the Schedule and figure out how maybe some adjustments need to be made, but in principle, Claimants are prepared to work with that. I think we'll need to consider the logistics in terms of also members of the team who will, I'm sure, on both sides would need to be present, but in principle we're prepared to try and make that work.

PRESIDENT TERCIER: Okay. It's clear that you will have to update the Schedule clearly, but I think it's a bit early; otherwise, we'll have a lot of successive drafts, so let's wait a bit.

Good. If there is no further points, please. You have the floor, Mr. Guibert de Bruet.

MR. GUIBERT de BRUET: Thank you, Mr. President.

So, before the break, we had seen that the legislative amendments requested by the Claimants had been incorporated into the Rosia Montana Law such
that these provisions would have enabled RMGC to
expropriate Project proponents on an expedited basis
and would have removed their ability to stall the
permitting of the Project while the contested
expropriation made its way through the courts.

So, turning to a different issue which now
would be confidential, the issue of ADCs.

(End of open session. Attorneys' Eyes Only
information follows.)
This portion is nonconfidential.

(End of Attorneys' Eyes Only session.)
OPEN SESSION

MR. GUIBERT de BRUET: These requested changes were incorporated almost verbatim into the Rosia Montana Law. As you can see, while the Rosia Montana Law does not explicitly state that an ADC is not required prior to the issuance of a building permit, it is clear from the text that RMGC can obtain its building permit for the Project after it submits its archaeological Research Reports. The impact of these provisions on the Project's development is significant.

Since the ADC is no longer required--is no longer a requisite, excuse me, for the building permit, Article 7(3) effectively eliminates the abilities of NGOs and Project opponents to delay the Project by requesting the suspension of the ADC. In effect, this provision would have rendered irrelevant the pending litigation on the Cârnic ADC and would have prevented any interruption or potential interruption of the Project's operations as a result of a potential suspension of the Orlea ADC.

Turning to the Water Framework Directive,
Ms. de Germeny explained that RMGC needed permission to derogate from the Water Framework Directive, and the RMGC knew that it needed the Government to declare the Project to be of overriding or outstanding public interest. As we saw earlier, the Claimants repeatedly requested that the Project be declared of "outstanding national public interest," which is exactly what they obtained in the Rosia Montana Law.

Through this provision, the Claimants satisfied one of the four mandatory requirements imposed by Article 4(7) of the Water Framework Directive, thereby bringing them that much closer to satisfying their permitting requirements.

Despite all of these advantages, the Claimants allege that they never wanted the Rosia Montana Law and that they objected to its Project-specific nature. Beyond the self-serving Witness Statements of Messrs. Henry and Tanase, the Claimants have not provided so much as a shred of evidence to support this claim. There is no evidence on the record of any contemporaneous protest,
objections or complaints regarding the Submission of the Rosia Montana Law to Parliament. Quite the opposite. Gabriel's public disclosures clearly portray the company's excitement and glowing support for the Rosia Montana Law. In its second quarter 2013 disclosures, after noting that Mr. Ponta had been quoted as stating that new law relating to the Project will be drafted for debate in the Parliament in September 2013, Gabriel Canada stated that it, "looked forward to a successful process through Parliament of the Project-specific legislation noted by Mr. Ponta."

In a press release issued on the day the Rosia Montana Law was submitted to Parliament, Gabriel Canada stated that it is "pleased to announce that the Romanian Government has approved draft legislation relating to the Rosia Montana Project. If adopted by the Romanian Parliament in its next session commencing September 2nd, 2013, this legislation will set the framework to significantly accelerate the development of Europe's largest gold mine at Rosia Montana and other mining projects in
Romania."

This Press Release also states that the company is highly encouraged by the recent progress of discussions with the Government since the Project's inclusion in the national plan for strategic investment and job creation in July 2013, and subsequent developments of the Agreement and draft law. This Press Release also quotes Mr. Henry's statement that: "The Romanian Government's decision to approve a law specific to the Rosia Montana Project represents a significant milestone for all stakeholders. We are extremely encouraged by this major step towards progression of the permitting process and consider it to be a clear sign of endorsement by the Government for investment into Romania."

Similarly, in a press release issued shortly after the Submission of the Rosia Montana Law to Parliament on 5 September 2013, Gabriel Canada stated that it was "pleased to announce that, further to the approval by the Romanian Government of the draft legislation relating to the Rosia Montana Project,"
the Draft Law has now passed to the Romanian Parliament for debate. This legislation if approved will establish a framework for the reinvigorating of the mining industry across Romania and assist the development of the Project to become one of Europe's most modern mines."

This Press Release also quotes Mr. Henry who stated in relevant part that, "he looked forward to the Romanian Parliament's review of the Rosia Montana Project. The Parliamentary approval and enactment of the Draft Law will enable Gabriel to partner the Romanian State in building Romania's first modern mine."

Nor is there any evidence that the Claimants did not want the Project-specific legislation, as we just saw. Although the Claimants expressed a preference during negotiations that certain provisions should be of general applicability rather than Project-specific, in other instances, they expressly acknowledge that certain of their Project-specific requests had to be implemented through legislation. As Dr. Heiskanen explained, the Law was
rejected after massive processes—after massive processes ensued, following which Gabriel effectively abandoned the Project in favor of pursuing arbitration.

And with that, we turn to Dr. Leaua.

PRESIDENT TERCIER: Thank you very much. Please, Dr. Leaua.

DR. LEAUÁ: Good afternoon, Mr. President, Members of the Tribunal.

In my presentation, I will refer to events related to the Parties’ dispute that occurred after January 2015 and focus on several factual corrections to the Claimants’ presentation of facts in this case in respect to three main topics: the UNESCO Application, the 2015 List of Historical Monuments and Minvest’s compliance with its obligations as Shareholders of RMGC. In the end, I will briefly address the Bucium Applications.

Turning now to the first of these topics. Indeed, on 16 February 2016, Romania applied to the UNESCO tentative list for the Rosia Montana Mining Cultural Landscape to be declared a World Heritage
site. On 4 January 2017, Romania submitted a full Application to UNESCO. However, on 2nd July 2018, Romania secured a referral of the UNESCO Application due to the ongoing arbitral proceedings. For this fact you have on record Exhibit C-1920.

On 4th of July 2018, following Romania's Request, the UNESCO World Heritage Committee issued a decision stating that it refers the nomination of the Rosia Montana Mining Landscape Romania back to the State Party due to the ongoing international arbitration. That is to be found on Page 6 of the document Exhibit C-1920. As such, the file is no longer submitted to the UNESCO World Heritage Committee but it is now in the hands of Romania.

I would like to make two comments related to these facts.

Firstly, that Claimants are wrong when arguing that by its request to postpone and not to withdraw the Application, Romania would like to confirm, as Claimants put it in their Reply, it intends never to allow the Project to be developed. The citation is from Page 9, Paragraph AA of the
Claimants' Reply.

In fact, Romania asked for the file to be referred precisely for the reason of this ongoing international arbitration, which means that it takes into consideration the situation.

Secondly, the Claimants wrongly state that the mere application to UNESCO coverage even postponed but not withdrawn would trigger a protection regime for the site on the Romanian law that is incompatible with the notion of Project. The reference is in the Claimants' Reply in Paragraph 283.

When taking this position, Claimants rely on their opinion or on the opinion of their legal expert, Professor Podaru, who is, however, providing an erroneous interpretation. In fact, the UNESCO Application in itself cannot have any impact on the Project. As mentioned, following Romania's express request, the UNESCO World Heritage Committee issued a decision stating that it refers the nomination back to Romania due to the ongoing arbitration, as I mentioned.
Referring back to Romania the file, it means, as I mentioned, that the applications is in the hands of Romania and obviously no decision was taken by UNESCO to grant protection. So, contrary to the way in which Claimants have presented the situation yesterday, the file is referred back to Romania and not deferred.

I will now turn to the second topic I would like to address for certain factual corrections, and that is the 2015 List of Historical Monuments.

The Claimants complain that the Government would have declared without legal justification the entire area of the Project as a historical monument in the 2015 List of Historical Monuments and that the issuance of this list was arbitrary and contrary to both law and fact. This idea is to be found in the Claimants' Reply on Page 211 and 128 and following.

The Claimants' allegations are baseless. The 2015 List of Historical Monuments was not arbitrary. It contained corrections of errors identified by the National Institute of Heritage on the 2010 List of Historical Monuments, and this
correction did not entail the listing of any new
monuments that had not been included previously in
the List of Historical Monuments.

Further, these corrections were consistent
with the views expressed by the Cultural Authorities
over the years. This can be found in a number of
exhibits on record: C-1331, R-558, C-1333, R-559, and
R-560. In any case, the List of Historical Monuments
is updated every five years, and nothing precludes
RMGC from instructing the completion of the necessary
archaeological research unless obtaining the
remaining Archaeological Discharge Certificates based
on which the declassification procedure can be
initiated.

This brings me to another issue. The
Claimants also wrongly complain that the 2015 List of
Historical Monuments disregarded an existing
Archaeological Discharge Certificate. That is in
their Reply on Page 129. The Claimants' position is
again wrong. The Archaeological Discharge
Certificate do not declassify, but only initiate the
declassification of a historical monument. This
clearly results from Article XIII of Law 422 of 2001 on the protection of Historical Monuments that is on record as Exhibit C-1703 at Page 6.

The declassification process was initiated based on the Archaeological Discharge Certificate Number 9 of 2011 and continued throughout the end of 2012. Following the suspension of this Archaeological Discharge Certificate on 30 of January 2014, the procedure can resume only if the challenge is dismissed, that is, if the Archaeological Discharge Certificate is not annulled. Pending the outcome of the litigation, any complaints related to a failure to declassify the Cárnic Massif are premature.

I will turn now to a confidential part.

(End of open session. Attorneys' Eyes Only information follows.)
With this, the confidential part ends.

(End of Attorneys' Eyes Only session.)
OPEN SESSION

DR. LEAUA: Finally, I would like to refer to the Claims brought by the Claimants in this arbitration arising out from Bucium Application submitted by RMGC to the National Agency of Mineral Resources in October 2007. These claims are also without merit. RMGC Bucium Applications are pending. A decision of those Applications requires completion of the homologation process. This consists notably in the review of the updated technical documentation submitted to date, most recently in 2015, when RMGC submitted the revised documentation requested by the National Agency of Mineral Resources. The process is highly technical, and it's still underway.

Finally, I would like to underline that Claimants' position and description on the facts—of the facts, is not reliable. Initially, Claimants' legal experts, Professor Bîrsan, argued in his first legal opinion, that the National Agency of Mineral Resources should have concluded an Exploitation License—on the Exploitation License submitted to it that, within 90 days after the Application, and that
is in January 2008. This is to be found in Bîrsan First Legal Opinion Page 89, Paragraph 403.

Then, Respondent demonstrated in the Counter-Memorial that, if that were true, the Claim would be time-barred under the Canada-Romania BIT, Article XIII(3). After seeing such defense of the Respondent, Claimant adjusted their position in the Reply to avoid the time-bar issue, claiming now that the National Agency of Mineral Resources, in fact, needed to decide the Application in March 2013 following the homologation of the Rosia Montana Resources and Reserves.

I refer now to Page 166, Paragraph 372 of the Claimants' Reply.

Such change is not credible and shows the Claimants' position in this arbitration does not reflect the facts.

Mr. President, Members of the Tribunal, this concludes the Respondent's opening presentation, and
I thank you for your attention.

PRESIDENT TERCIER: Thank you very much.
I don't know if my co-Arbitrators have
questions?

No questions at this juncture.

Fine. Thank you very much again.

We will now turn to the first examination, the examination of Mr. Henry.

Probably we have some logistic point to see where is Mr. Henry? He's probably there, and who will be the two that will also come, Mr. Ariton and Mr. Găman?

(Brief recess.)

JONATHAN HENRY, CLAIMANTS' WITNESS, CALLED

PRESIDENT TERCIER: Apparently everything is now ready.

Good afternoon, Mr. Henry.

THE WITNESS: Good afternoon.

PRESIDENT TERCIER: I would like to welcome you in this club.

THE WITNESS: Thank you.

PRESIDENT TERCIER: You probably know already two co-Arbitrators on my left-hand side, Professor Horatio Grigera Naón; on my right-hand side, Professor Zachary Douglas. You don't know me
because I'm new. I replaced as the Chairman Ms. Teresa Cheng.

You know our Secretary on the left-hand side is Ms. Maria Athanasiou; she is Assistant to the Tribunal, and I think I do need to introduce the teams who are on both sides of the room.

I would like to recall you that you will be heard in this proceeding as a witness; and, as such, I would like to invite you—you are not an expert, you are a witness. You must have a sheet of paper in front of you with the declaration that. Could you please read it aloud.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT TERCIER: Thank you.

You know already the procedure, and I don't want to be long or length of time. You have prepared for this proceeding two witness statements. The First Witness Statement is dated the 30th of June 2017, and the second is dated, if I'm not mistaken, though you're writing 31st of October 2018;
am I right?

THE WITNESS: That's correct, yes.

PRESIDENT TERCIER: Okay. You have those two documents in front of you?

THE WITNESS: I do, yes.

PRESIDENT TERCIER: Yes.

Can you confirm the content of these documents, or do you wish to make amendments or something else?

THE WITNESS: I can confirm them.

PRESIDENT TERCIER: Okay. So you know the procedure that it is now your Witness Statement, it is your testimony.

THE WITNESS: I understand.

PRESIDENT TERCIER: You know so the procedure; I will start with one or two very classical questions. It will then be for counsel for Claimant, to so-called "direct," I will come to it in a moment, and then there will be cross-examination, and a redirect at the end.

Everything will be on Transcript, and there is also a time limit. We will see how it works.
You remember that, for the benefit of the Transcript, you should not interrupt the speaker before you so that we have a clear Transcript.

The specificities here is that, in the direct, the Arbitral Tribunal has agreed that each Party had the right to submit new documents after the Rejoinder that had been submitted very recently after the procedure. And it has been also agreed that you may be asked in the direct on these exhibits and on special issue that you had written, presented or prepared by the Claimants. You understand it, so it's a bit special; it is an exceptional situation.

THE WITNESS: I understand it.

PRESIDENT TERCIER: You understand it?

THE WITNESS: I understand, yes.

PRESIDENT TERCIER: Fine. I have just two very, very general questions.

The first question is your role as the Head of Claimants from the time you started in 2010 and then the time you resigned.

Can you just describe in short terms what was your activities recent time?
THE WITNESS: Yes.

So, I became the Chief Executive Officer of Gabriel and joined the Board in June 2010. At the time, the Company had a head office in Toronto, so it was listed on the Toronto Stock Exchange. Because I was located in England, I was tasked with really putting a new management team at my discretion with regard to where and how together with regard to getting Rosia Montana through the permitting process.

I relocated the head office to London in the first year. I employed some new Senior Management, some of whom are in this room, in London, and we were relocated, so we were a European-based business. I empowered the Romanian management team, who you will meet some of them in the next couple of days. One of the reasons why I joined the business is their professionalism, and I empowered them to operate in Romania and spent the first six months, really about half my time in Romania, and my role was really to manage the listed entity, to report to the Board, who obviously had a care and responsibility to the Shareholders, and I did that with a team of
professionals based in London but traveling to Romania and Europe as necessary, and Canada for board meetings. So, I was really the overseer, as you would imagine, as with any Chief Executive Officer role.

So, I also signed off on our—as well as the Chief Financial Officer signed off on our disclosure documentation, obeying all Securities Law in Canada.

Is that what you—

PRESIDENT TERCIER: Yes.

And now, you resigned. When did you leave the Company?

THE WITNESS: I left the Company I want to say in July 2018, so about a year-and-a-half ago.

PRESIDENT TERCIER: Okay. Good.

So, I think for certainly—this was at this point with the green light. Have you been informed, that if there are confidential questions or answers, we will have somebody asking for it, and we could have then the red light. I don't know if that will be—no?

MR. LEW: I think after these initial
questions, we would consider Mr. Henry's testimony to be confidential.

PRESIDENT TERCIER: The whole testimony?

MR. LEW: (Nods head.)

DR. HEISKANEN: Well, it depends on the questions whether his evidence is confidential or not.

MR. LEW: Yeah. I think our position has been that the Witness Statements are confidential, and that extends to the testimony about the topics addressed.

DR. HEISKANEN: That is not the Respondent's understanding, and there is no Tribunal's decision on the record which says that the Witness Statements are confidential or witness testimony to be presented at the Hearing will be confidential. We are prepared to conduct the cross-examination on the basis of the rules that have been established by the Tribunal. When we are dealing with confidential documents, we will indicate that, and we'll be going to the confidential mode, but much of the questioning will not be confidential.
PRESIDENT TERCIER: But you have no objection to the direct being confidential?

DR. HEISKANEN: We do, if the questions do not relate to confidential information.

MR. LEW: But we think the principle has been established as to how the Witness Statements have been treated; that is to say, as confidential. His testimony is going to address matters that were within the Witness Statements by summary in addition to a new document that's going to discuss an aspect of the negotiations which were also addressed in the Witness Statement.

And so, we think that all of this is confidential.

PRESIDENT TERCIER: Okay. So, we have to decide.

(Tribunal conferring.)

PRESIDENT TERCIER: You are the first, we had to refresh our memory and look at PO3. According to PO3, that Witness Statement, Expert Report or Exhibits, 2.6, shall be presumed to contain confidential information and to be treated
accordingly. However, either Party may at any time propose to reclassify their own or the other side's supporting Witness Statement, Expert Report and exhibit on the ground that it does not constitute or contain confidential information. And then 2.8, if proposed designation of confidential information are not received within the 14-day period specified in 2.2, that could be reclassified.

So, the principle decided by the Tribunal is that the Witness testimony will be confidential.

MR. LEW: Thank you, Mr. President.

DR. HEISKANEN: Mr. President, two comments on this one. We are, of course, aware of this ruling of the Tribunal; it's just for the record. The practice of the Parties has been throughout this proceeding that when Witness Statements are quoted in the Submissions, the information is confidential only to the extent that the substance of the evidence is confidential. So, there are two—that has been the practice of the Parties.

We understand the Tribunal's ruling, but then it must apply equally to witnesses of both
Parties.

PRESIDENT TERCIER: Yeah, I do not see any reason not to do that.

Okay. Good.

MS. COHEN SMUTNY: I'm not quite sure--

PRESIDENT TERCIER: The second point, I mean equal--the first point is a comment that you made on your side; right?

DR. HEISKANEN: The first point is a comment for the record, on our part, which explains what the position, why the Respondent's position is what it is on this Issue. Of course, we accept the Tribunal's ruling. That is not what I meant.

But the second point is that, if the witness testimony is considered confidential for the Claimants' witnesses, then the same rule must apply to the Respondent's witnesses.

PRESIDENT TERCIER: It is what I had in mind; yeah?

MS. COHEN SMUTNY: On that last point, of course, we do agree.

PRESIDENT TERCIER: Okay. Good.
So, you are ready for a confidential examination, Mr. Henry?

THE WITNESS: I'm still here, yes.

(Laughter.)

PRESIDENT TERCIER: You're so confidential that you are still good. Okay, good.

THE WITNESS: With the President's permission, do you prefer me to leave my microphone on all the time or just turn it on when I'm speaking.

PRESIDENT TERCIER: All the time I see David behind nodding heavily, so you leave it open all the time.

THE WITNESS: Okay.

PRESIDENT TERCIER: Okay, good. So, please, Claimants, you have the floor.

MR. LEW: Thank you.

DIRECT EXAMINATION
PRESIDENT TERCIER: Okay. Dr. Heiskanen, if I may interrupt you one second, you have seen where we are on the timing?

DR. HEISKANEN: That is a very good timing also because I have completed my examination.

PRESIDENT TERCIER: It was not the goal of my question.

DR. HEISKANEN: That is not because of your question but because I'm truly done.

Thank you very much, Mr. Henry.

PRESIDENT TERCIER: Thank you very much.

THE WITNESS: Thank you.

PRESIDENT TERCIER: Wait we have, of course, we have further points.

Redirect?

MR. LEW: Can we have just a couple minutes to consider whether we have any questions? I just
want to confer with my colleagues.

PRESIDENT TERCIER: Yes.

MR. LEW: Thanks.

(Pause.)

MR. LEW: I think we maybe have one question.

PRESIDENT TERCIER: Okay. We will have one or two points to discuss after you.

MR. LEW: Sure, of course.

PRESIDENT TERCIER: Sorry. Yes, please, sorry, I'm back.

REDIRECT EXAMINATION
MR. LEW: No further questions.

PRESIDENT TERCIER: Thank you very much, Mr. Henry.

I would like to make a few points for the organization.

First point for tomorrow, we will start with Mr. Tanase, and then, according to the program, it would be Mr. Avram. He will be available, certainly tomorrow, and the question now for me is whether we should already envisage a possibility to start or to have Mr. Gligor.

DR. HEISKANEN: We don't think so.

PRESIDENT TERCIER: Okay. So, we would have tomorrow Mr. Tanase and Mr. Avram, okay?

Concerning Mr. Avram, we have now the procedure, and your homework to prepare. We have it from Mr. Tanase but we have not from Mr. Avram.

MR. LEW: Understood.

PRESIDENT TERCIER: Okay. Good. That's Point Number 1.

Point Number 2, we have to look at the overall schedule because now Mr. Bode will only
come--not "only," but, yeah, the second week, and it means that we will have more time on Friday, apparently. Would it be possible to have Mrs. Mocanu or Mrs. Serban already on Friday?

DR. HEISKANEN: We need to confer and see whether that's possible.

PRESIDENT TERCIER: Okay. But you've understood I'm not pushing but just trying to--otherwise we're all sitting and watching--so we can try to and see where. I don't remember where Mr. Bode, Mr. Bode would be on Wednesday, if I'm not mistaken. He said that it will take place then, so we have to reorganize a bit, okay, if you can check it.

Third point, we have questions--sorry, you have to help me a bit.

Sara, can you just explain what's the point.

(Pause.)

SECRETARY MARZAL YETANO: We just wanted to have clarification on--we understand that Claimants have requested a pass for Pierre Amariglio indicating affiliation of Gabriel Resources, and also I
understand that Robin Shah is here for Gabriel
Resources, but they've also signed for the
broadcasting room as Tenor Capital, so the Tribunal
would like to have clarification.

MR. POLÁŠEK: Yes, Mr. President. I'm Petr
Polášek, counsel for Claimants.

Yes, we confirm that we requested those
passes, these are representatives of Gabriel
Resources, and they will be attending the Hearing.
They have not--to the extent they don't have the
passes yet, they obviously are not here at this room,
but they would like to attend, and that's why we
asked for those passes, thank you.

PRESIDENT TERCIER: Comment on Respondent's
side?

DR. HEISKANEN: The question really is,
which was not answered, is whether they're employees
or representatives of Gabriel Resources.

PRESIDENT TERCIER: Answer?

MR. POLÁŠEK: They would be here in the same
capacity as Ms. Teitelbaum, for example, it's the
same thing, if that answers the question.
DR. HEISKANEN: It's unclear to us what that capacity is.

MS. COHEN SMUTNY: As a matter of public record, Tenor Capital has a seat on the Board of Gabriel Resources, so there is an affiliation at the Shareholder-Investor level in Gabriel.

PRESIDENT TERCIER: And Mr. Amariglio?

MS. COHEN SMUTNY: They're all affiliated with the same organization.

PRESIDENT TERCIER: Oh, yeah. True.

DR. HEISKANEN: Which is a third-party funder for Gabriel?

MS. COHEN SMUTNY: No, they're not a third-party funder. They're an investor and Shareholder in the company with a seat on the Board.

DR. HEISKANEN: We need to reflect on whether—potentially seek advice on whether we need to comment on that any further.

PRESIDENT TERCIER: You will do it tomorrow morning?

DR. HEISKANEN: Yes.

(Tribunal conferring.)
PRESIDENT TERCIER: Okay. Sorry, we would wait first for your position, if you have question, probably that will be answered by Claimants and the Arbitral Tribunal will decide whether to have the possibility to have a pass here. So know if you can just inform them that we will decide tomorrow morning after having reviewed it.

MR. POLÁŠEK: Yes, will do, Mr. President. Thank you.

PRESIDENT TERCIER: Sorry, can you repeat?

MR. POLÁŠEK: Yes, just confirming that we will do that. Thank you, Mr. President.

PRESIDENT TERCIER: Okay. Good.

Then next and last point that I would like to mention is the fact that, as you have probably seen, we have received a new letter from the EC, the European Commission--no?

SECRETARY MARZAL YETANO: It hasn't been transmitted.

PRESIDENT TERCIER: Sorry; you're doing it. So, you will receive it, and then we would be happy to have your comments again on the requests
made by the EC, so that the Arbitral Tribunal can
decide what we can do.

Sorry, Sara, I thought you had already done it.

Do you have another point that you would like to raise?

MS. COHEN SMUTNY: None from Claimant.

PRESIDENT TERCIER: Before, I have one, the time. You have the total time?

SECRETARY MARZAL YETANO: Yes.

PRESIDENT TERCIER: I was about to--

SECRETARY MARZAL YETANO: Claimants have 29 hours and 14 minutes remaining; Respondent 28 hours, 31 minutes remaining; and Tribunal, 3 hours and 54 minutes.

PRESIDENT TERCIER: Okay. Good.

So no further point on your side, Dr. Heiskanen?

DR. HEISKANEN: Nothing further from us.

PRESIDENT TERCIER: Okay. Good. So thank you very much to all of you. I wish you again a very lovely and good evening. We will see you tomorrow
morning. 9:00 would be okay. If you want to absolutely be before, we may, but we will start at 9:00.

(Whereupon, at 6:07 p.m., the Hearing was 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.

[Signature]

DAVID A. KASDAN
CERTIFICATE OF REPORTER

I, Margie Dauster, RMR-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.

MARGIE DAUSTER