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

Volume 5

VIDEOCONFERENCE:
HEARING ON THE MERITS AND JURISDICTION

Friday, October 2, 2020

The World Bank Group

The hearing in the above-entitled matter came on at 8:00 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

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. MIHAI BOTEA
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MS. LORRAINE de GERMINY
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PROCEDINGS

PRESIDENT TERCIER: So, ladies and gentlemen, good morning, effectively good afternoon. It's my honor to open the fifth day in the final hearing in the ICSID Arbitration Case 15/31 between Gabriel Resources, Limited, and Gabriel Resources (Jersey), Limited versus Romania.

I would like to welcome you again. Up to now the Hearings have been taking place very efficient, and especially valuable way. I wish very much that it will be the case today and then in the following days.

I may just make here two points that I would like to address. It is now clear that there are disagreements between the Parties to the scope of the examination--I will come to it in a moment--but I would like really to invite you to avoid any excess in the way you object. If you do it, we will listen to your objection and the answers and decide as quietly as we can and tell you, of course.

And the second point is that we are, Members of the Tribunal, of course, especially interested in
the merits and the questions that are on the table. They are difficult. We need to be well-informed about it, and we would be extremely grateful if you could limit the procedural incidents to a minimum. You have the right, of course, to do that, but if you could, to avoid too many of those incidents.

Now, going further, first, I would like to thank our court reporter for having sent, like always, the draft of the Transcript of yesterday's hearing.

Secondly, we have also--you have received written confirmation by our Secretary of timing, time used, time left. You have heard it yesterday, and you had no comment to do that.

The next question was the ruling on the scope of the examination and particularly the right of Respondent experts to address some points. You remember the procedure that we have followed. First, we had yesterday mentioned, given your position; the Arbitral Tribunal, after the end of the Hearing, has deliberated, not easily because of the time difference and the way we had to discuss. We came, unfortunately, not to a unanimous but to a majority
decision that was communicated to you.

This morning, Swiss standards, we received Claimant's request for reconsideration. Respondent was given an opportunity to comment, and it did, and then the Arbitral Tribunal in the remaining time has discussed and has come to the following position. I read it to you: The Tribunal considered the Request for Consideration made by Claimants and Respondent's comments thereon. The request is rejected by majority only with the following clarification to the Tribunal's ruling.

One: The procedure in connection with the rebuttal documents is not contested.

Ruling No. 2: It is a unanimous decision.

Two, the fact that an expert should not provide an answer which is outside the scope of his Reports or the reports is also not contested.

Ruling No. 3, unanimous decision.

Three, in principle, Claimants could not present new evidence other than the rebuttal procedure during this Hearing. In case of such new evidence are presented, Respondent expert should be permitted to
reply to the extent new evidence falls within the scope of Respondent's Expert's reports. This is also a unanimous decision.

Four, in accordance with general practice and principles of equality, Respondent's Experts--the Respondent Party not only in the written, but also in the oral procedure--shall be permitted to comment, and specifically when there is a disagreement on oral testimony offered by Claimants and their Experts. And again, to the extent that the issues are directly relevant to all, we'd spoke of the former's Report. This is ruling No. 3, but this is a majority decision.

And, five, the Decision concerning the question on the admissibility of Claimants' alleged new claims concerning the Valuation Date is reserved.

First, do my co-Arbitrators have a comment to make to this statement?


Do you have a comment at this point without, of course, going into the content?

From Claimants' side.
MS. COHEN SMUTNY: Claimants maintain their objection to the Tribunal's ruling, unfortunately and respectfully.

PRESIDENT TERCIER: Okay. We've taken note of it.

From Respondent's side?

DR. HEISKANEN: Mr. President, we take note of the Tribunal's ruling and have no comment at this stage.

PRESIDENT TERCIER: Okay. Thank you.

The next point is the question of requests in connection with the admissibility of the so-called, again alleged, new claims. We have received Claimants' reaction to the previous exchange between the Parties. I could, of course, not read it in the meantime.

The question to counsel for Respondent is whether you wish to comment to this, and if yes, when—in which timeline? What would be your timeline?

Dr. Heiskanen.

DR. HEISKANEN: Yes, Mr. President. We would like to be able to make a brief rebuttal, and
given it's going to be weekend now tomorrow and
thereafter during the Hearing, we suggest that we
reply by Sunday, 2:00 p.m., Central European Time,
given the needed support that is available during the
weekend.

PRESIDENT TERCIER: Okay. Comment on your
side, Mrs. Cohen?

MS. COHEN SMUTNY: As indicated in
Claimants' letter, Claimants are the responding Party
on this objection and maintain its position that the
Claimants should be entitled to respond finally,
especially as Respondent now is going to take
something like three days to respond to a letter that
Claimants wrote in a few hours in the middle of a
hearing, and so we would anticipate that there are
going to be new points that Claimants should be
permitted to respond.

So, perhaps for now we can just reserve our
right on the response. I'm not sure that there's more
to be said at this time.

PRESIDENT TERCIER: To make it clear, do you
object to the possibility for Respondent to make an
answer by Sunday?

MS. COHEN SMUTNY: Not if Claimants are thereafter entitled to an equal opportunity for a final rebuttal.

PRESIDENT TERCIER: Thank you.

Dr. Heiskanen?

DR. HEISKANEN: We will consider whether we have any objection to the Claimant having the last word, and we will revert during the next break.

PRESIDENT TERCIER: Thank you very much.

Good.

Are there question from my co-Arbitrators? Not from--there they are on my screen. Professor Douglas? No. Good.

Is there another request that you would like to raise or to make before we start with the examination of the Expert? On Claimants' side?

MS. COHEN SMUTNY: No, I have no further objection at this time, or no further comment.

PRESIDENT TERCIER: Thank you.

And the Respondent's side?

DR. HEISKANEN: No further comments from us,
Mr. President.

PRESIDENT TERCIER: Thank you very much.

So, we may turn to the examination of Mr. Karr McCurdy, the Expert.

KARR MCCURDY, RESPONDENT'S WITNESS, CALLED

PRESIDENT TERCIER: Mr. McCurdy, you are with us? You can hear me well?

THE WITNESS: Yes, I can hear you well, Mr. President. Thank you, Mr. President.

PRESIDENT TERCIER: And I also for you. You have been--you're with us today as an expert in this procedure. As expert, according to the general rule, you are invited to read a declaration, solemnly and to read it aloud. Have you this Declaration in front of you or on your screen?

THE WITNESS: Yes. I'm prepared to read the Declaration.

PRESIDENT TERCIER: Yes, please.

THE WITNESS: Thank you.

I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief. I will not receive or provide
communications of any sort during the course of my
examination.

PRESIDENT TERCIER: Thank you very much.

Because this procedure is, of course, a
special one, the Arbitral Tribunal has ruled on a
certain number of requirements. I would like to read
a few ones because they are relevant.

No person shall be present in the room with
the testifying expert.

Can you confirm it?

THE WITNESS: I can confirm that no one else
is present in this room.

PRESIDENT TERCIER: Okay. The second point
you have already, in fact, declared, that you will not
receive or provide communication of any sort
during—sorry—you will not receive or provide
communication of any sort during the course of your
examination. You did it.

The Witness shall remain visible at all
times. We will, of course, clarify, but it's easy.
And the Witness shall not use a virtual background or
in any way prevent or limit the recording of the
remote venue from which he's testifying.

Can you confirm it?

THE WITNESS: Yes, I can confirm those statements.

PRESIDENT TERCIER: Okay. Good.

You have also prepared a PowerPoint presentation. I would like to thank the Parties. I have received not only the electronic version here at my domicile the printed version. Thank you very much.

I come now to the formal part. I would like to ask you whether you can confirm the contents of your Report. It is a report called, "Assessment of Gabriel Resources, Limited, and Related Subsidiaries' Ability to Arrange Debt Finance for the Roșia Montană Gold Project." It has been prepared and the date is the 21 of May 2019.

Can you confirm the contents of your Report or do you wish to make some amendments?

THE WITNESS: Yes, Mr. President. I can confirm the contents, but I would like to cite just a couple of small amendments or corrections.

PRESIDENT TERCIER: Please.

And following that, on Page 8, Footnote No. 28, I failed to insert reference to Exhibit C-1809.

And the last correction I wish to mention is on Page 8, Footnote 29. Please insert reference to Exhibit R-489.

Thank you.

PRESIDENT TERCIER: Okay. Thank you very much. We have taken note of them, and now you have your confirmation.

You, of course, know the procedure. You will start with a presentation. That presentation should be given in lieu of the direct. Then we will have the cross-examination and the redirect. The Members of the Tribunal, you know, have the right to speak whenever they feel necessary to do so.

Is it clear?

THE WITNESS: Yes, very clear. Thank you.

PRESIDENT TERCIER: Okay. So, if you could
just introduce yourself, we have the indication in your Report. Could you in a few words just present yourself, and then you can start with your presentation.

Please, Mr. McCurdy.

DIRECT PRESENTATION

THE WITNESS: Yes, thank you, Mr. President. And I'd like to recognize the participants, the Tribunal, and counsel for both the Claimant and the Respondent. It's my pleasure to have the opportunity to address the--you know, this important arbitration today.

As you've heard, I'm providing an expert opinion. My name is Karr McCurdy, and I will be discussing an assessment of Gabriel Resources' ability to raise debt finance for its Roșia Montană Project.

You can see on the page of the presentation that's before you an overview of the presentation. It's quite brief, actually, there's a fair amount of detail here, but I'll begin just referring to my qualifications and experience and move through my concluding comments on my assignment.
On this page, there's a summary of my background. I'd like the Tribunal to take into account and understand that, throughout my career, I've been educated and have work experience in both the mining industry as a scientist, as a geologist, and in the financial services industry as a banker, a risk approver, and a lender.

Overall, I have over 40 years of experience in the mining industry, beginning working with the discovery and development of gold mines in a role as a geologist. And, with time, I moved to become involved in financing mining projects as a banker.

Early on, I received a B.S. degree in geology from the University of Michigan and, subsequent to that, an MBA degree at the Thunderbird School of Global Management in Arizona.

I have worked to discover and develop a world-class gold mine called "Pueblo Viejo" in the Dominican Republic. I referenced that because that experience is very much relevant to Roșia Montană, and Gabriel Resources' efforts to develop that Project. After working as a geologist and obtaining an MBA
degree, I moved on to hold leadership positions with major financial firms such as CitiGroup and Standard Chartered Bank.

During my banking career, I was involved in over 200 loan transactions valued at over $100 billion, including the financing of the expansion or redevelopment of the Pueblo Viejo gold mine at about the time of the Valuation Date of this undertaking.

I am currently a partner in an alternative investment firm called Rock Elm Capital. I work from time to time as an independent consultant for stakeholders in the mining industry, and I lecture on the topic of sustainable enterprise at the University of Denver in Denver, Colorado. Throughout my career, I've specialized in risk analysis along with financial and technical due diligence relevant to investment decisions and asset valuation.

Next slide, please.

The scope of the assignment which I accepted involved assessing RMGC's ability to raise debt financing for the Roșia Montană Mine Project during
the first quarter of 2012 and the second quarter of 2013. I was instructed to assume that RMGC had obtained its Environmental Permit for the Project, and I was further instructed to assume that the Project was, during the time period referenced above, that the Project was encountering significant social opposition, that it faced delays and possibly termination due to potential archaeological discovery, and lastly was subject to several pending court cases that could result in the invalidation of the Environmental Permit and/or the zoning certificates required to obtain the Building Permit.

Just a couple comments on these assumptions. I would like the Tribunal to understand and appreciate the fact that if--and in assuming that RMGC had obtained its Environmental Permit for the Project, I believe lenders, prospective lenders, would have perceived the Project's risk profile as being lower. It would have been a positive development. However, this positive effect of the Environmental Permit on the Project's overall risk profile may, however, likely have been negated by the assumptions regarding
the existence of significant social opposition, the risk of archaeological discovery, and possible—and the possible litigation threatening the Environmental Permit and/or ultimately the Building Permit.

My conclusions were that it is unlikely that Gabriel Canada would have been able to obtain a loan to build the Roșia Montană mine. There are a number of reasons for that. I cite some principal ones below.

No. 1, it's important to understand the environment in which the banking industry and financial markets were in at the time following the 2008 and 2009 Global Financial Crisis. This crisis resulted for the most part in banks having a higher cost of capital and, therefore, just a more limited appetite for lending.

Gabriel Canada, as a Managing Project Sponsor, did not have an attributable track record building mines or raising financing or the construction of mine projects.

The Project's Feasibility Study, based on my experience, was outdated and incomplete, and I think
that would have interfered with the loan process.

    Gabriel Canada's Ore Reserve estimate was not current, and I think that would have been an important observation by the bank market at that time.

    I would like to drill down a bit just on some of these broader factors that I referenced previously, with respect to the debt market in the period of 2011 and 2013. It's important to realize that banks, under the duress of credit losses stemming from the crisis, refrained from taking on new clients, and also refrained from undertaking complex transactions. The reason for this is that typically, in the midst or following a financial crisis, banks are focused--their principal priorities shift to support the liquidity requirements of their existing clients, and banks just become risk-averse, if you will.

    As alluded to earlier, banking regulators sought and imposed increased capital reserve requirements for banks, and this resulted in a higher cost of capital and, ultimately, lower loan margins and less--you know, less profitability, lower returns
on their loan products.

There was no mining industry precedent for large, long-term project financing transactions in Romania.

The apparent local, national, and international opposition to the Project would have been perceived as a reputational risk factor for lenders at that time.

A trend of mining projects not being completed on time or within budget prevailed throughout the industry during the time leading up to this time period and following it.

So, with that backdrop, financing—providing loans to new projects of this nature would have been a more difficult undertaking by banks.

To just provide a little further context, I would like to just touch on these loans and what makes them special and why they are used so, I've just proposed the question: What is project finance? And a few comments to help you to understand the nature of lending to a firm such as Gabriel and supporting its Roșia Montană Project.
A project loan, is based upon projected cash flows of the Project rather than the assets of the Sponsors.

Project loans have long tenors typically and are secured by the Project's cash flow as well as its assets.

Project Sponsors provide guarantees typically until construction of the mine is complete and it's operating.

So, why is project finance used?

Next page, please. Thank you.

It's advantageous when the project's capital budget is large relative to the financial standing of the Sponsor, as I believe was the case for Roșia Montană and its Sponsor Gabriel, at the time. The project risk can be ring-fenced at the Project level. Project loans provide discipline for the evaluation of project investment through both technical and financial covenants.

The robustness of the project's cash flow is critical to raising the entirety of the financing.

High cash flow coverage of debt service can
reduce the amount of equity the Sponsor has to put forth.

Key assumptions used to forecast cash flow can be independently verified.

Risk analysis can demonstrate that there is a high probability of repayment.

Lastly, with respect to a loan context, just a few comments on the loan process. How does this take place?

Well, typically, due to the size and the complexity and the location of these projects, these loans are underwritten by a syndicate of international banks with specialized industry, country, and lending expertise. It would be not common for a large loan supporting a complex project of this nature to be underwritten by just one or two financial institutions. Rather, banks would seek to delegate and share the risk with co-investors, if you will.

Each bank, it's important to understand, is independent in this process and responsible for their own approval, and credit approval, and ongoing credit management process.
Lenders are exposed to a multiple of risks when undertaking loans of this nature, including sponsor management, country, commodity price, capital and operating cost, ore reserve, environmental, permitting and social risk that require detailed and timely diligence.

Project lenders engage independent engineers and other experts to help assess various aspects of the project's viability.

So, moving through the layers of this onion a little further, the bank market would begin their process with a special focus on the Project Sponsor, and as such, I have provided some comments on this:

Gabriel Canada, it's important to understand, had a high financial risk profile. It was, in essence, a single-asset development company that produced no cash flow.

Although negotiable, and dependent on many factors, Gabriel Canada would have been required to contribute up to 40 percent of the Project's capital budgets as equity, as new equity.

Gabriel Canada was committed to provide
100 percent of the financing required for the Project, which was approximately 20 percent owned by the Government mining company.

Gabriel Canada was highly reliant, in my observation, on the contributions of third-party engineering companies and other contractors in managing the design and feasibility of the mine rather than from the efforts of its own employees.

The lack of engagement from influential international and government agencies such as the IFC, EBRD, or EDC of Canada to provide either equity or debt support to the Project would have been a weak point in the process, in my opinion.

Looking a little further at the Project and its Feasibility Study, I believe the bank market would have been critical and concerned about my belief that the Feasibility Study was not up to date. I agree with Behre Dolbear's concern about the study being stale or dated. I believe SRK incorrectly suggests that lenders would be satisfied with compilation of essentially all feasibility-related reports as a substitute for an updated Feasibility Study. In my
view, lenders would require an updated Feasibility Study, a single voice defining the Project.

Lenders would not have accepted NI 43-101 Technical Reports as a substitute for a Feasibility Study. They're simply just two different items prepared for different purposes.

Shortcomings around permitting I think were apparent during this time and would have been a concern of the bank market.

Just commenting on that, it's important to understand that RMGC had not completed the local relocation program denying it significant access and control of the mining concession to build the mine. Lenders would have been very concerned about the status and the ethics around a large relocation program such as the one undertaken in part and facing the Project. That type of situation is of concern to banks because it can very easily translate into increased reputational risk for their institutions.

Lenders generally seek a substantial level of ongoing community support, even if all the permits were to be in place. And again, that's tied to their
concern over reputational risk.

   And, lastly, RMGC, I believe, did not fully adapt to international mining Industry Best Practices, including the Equator Principles to the Project. This scrutiny surrounding the Equator Principles is very high priority for large-project lending institutions, most of which are signatories to the Equator Principles agreements.

   A few comments on the Project's viability. As you can suspect, lenders focus with a high amount of scrutiny on a project's technical and financial viability during all the phases of their process, from the initial assessment, to approval, to agreement execution, should the opportunity progress that far.

   Behre Dolbear mentions various technical concerns that it believed could adversely impact the financial viability of the Project. I think the bank market would agree that these areas of concern are relevant, and they would seek additional diligence on these matters. The tailings management, the location of the tailings dam, the design of the dam, the dam's surroundings, et cetera. They would be concerned
about the adequacy of the Project's mining equipment fleet and its ability to deliver the representations made in a mine plan. They would be concerned about ore dilution and, to the extent that it was appropriately accounted for in the resource estimations and production budgets. And they would also be concerned for a number of reasons about the appropriate recognition of past mining activity to the extent that it could present safety concerns and productivity impairments for the Project's operations.

Lastly, on Ore Reserve estimates, thank you, lenders experienced in financing mine projects place a very high priority on the level of confidence displayed by a project's mineral-resource estimates as this simply underscores the technical viability and, hence, the potential financial viability of the Project.

I believe that SRK wrongly asserted that Mineral Resource estimates do not become outdated with the passage of time. One of the reasons for that, and my pointing that out, is that certain factors impact a mineral-resource estimate and its classification as
either a "reserve" or a "resource." This was a concern expressed by Behre Dolbear. And there are a number of factors which contribute to this concern. One is the utilization of up-to-date metal price assumptions; the incorporation of an up-to-date status of the permitting process on the ground; as well as the consideration of other economic, legal, political and social modifying factors.

So, in wrapping up my presentation, I would just like to comment on the likelihood of financing the mine during the first quarter of 2012. I think, and I hope that the Tribunal can appreciate that the likelihood of a successful financing increases as a project is de-risked as it achieves key development milestones, such as obtaining its Environmental Permit. Under the assumption that RMGC had obtained its Environmental Permit, I believe the Project's risk profile would have been reduced and would have been perceived as being a lower risk profile.

However, lending institutions tend to look at the Permits required for a mining project as a continuum because many of these are interrelated. And
so, if other permits such as the Building Permit were not in hand, I believe the overall perceived permitting risk of the Project would have, you know, been negated by the assumption that the Environmental Permit was there and would have simply resulted in continued concern about permitting risk overall, and it would have limited RMGC's access to financing.

If lenders perceived a project as being subject to strong social opposition and/or litigation threatening the Environmental Permit, RMGC would have, again, faced significant hurdles in completing the financing.

So, moving forward to the second quarter of 2013, you know, did things change in my opinion? And I believe they would not have changed significantly. The Project would continue to have limited access to the debt/capital markets. I believe the situation on the ground at Roșia Montană had not materially changed since the first quarter of 2012.

And that's the end of my presentation.

Thank you.
MR. GREENWALD: Mr. President?

PRESIDENT TERCIER: Yes, sorry, I was looking towards the arrow. I have it back.

Okay, I would like first to ask Mr. Heiskanen whether you have something to add to what had been said in the direct?

DR. HEISKANEN: It will be Mr. Guibert who will be conducting the--any redirect examination, so I will defer to him.

PRESIDENT TERCIER: Yes, Mr. Guibert de Bruet.

MR. GUIBERT de BRUET: Nothing for us, Mr. President.

PRESIDENT TERCIER: Thank you. In that case, Mr. Greenwald, you have the floor for the cross-examination.

MR. GREENWALD: Thank you, Mr. President.

I would note before I start the cross-examination that the last two bullet points that were just shown on the last slide which relate to Section 10 of the Expert's Report are not provided as reasons for his opinion in his Report, and they're not
responsive to anything that was said by any expert or
witness of Claimants, and they don't purport to be.

MR. GUIBERT de BRUET: Mr. President, it's
the Respondent's view that Mr. McCurdy should be
allowed to comment on these points. If there's any
question from the Claimants on them, they're welcomed
to cross-examine him on them.

MR. GREENWALD: Given in Dr. Heiskanen's
e-mail this morning, it was to be limited to testimony
of Claimants' Witnesses and Experts, not for
Respondent's Experts to just now provide new opinions
on new bases that were not (drop in audio) proffered
in their Report.

MR. GUIBERT de BRUET: Mr. McCurdy should be
allowed to comment as to whether this evidence is new
or not.

I'm sorry, Mr. President, we can't hear you.

PRESIDENT TERCIER: I would like to ask the
Expert whether what is in these last slides are new
elements?

THE WITNESS: I believe they're not new. In
an undertaking such as a gold mine project financing,
basically, everything depends on the price of gold. The price of gold justifies the, you know, the undertaking in the most fundamental of senses, and is entirely relevant to each and every aspect and consideration of evaluating a project such as this. So, to suggest, as Mr. Greenwald may have done, that this is new evidence, I don't believe to be the case. There have been numerous references to the gold price throughout this Hearing that I have witnessed, and there are many Supporting Documents which report the history of the price such as the one presented in CRA-16, which I commented on in my presentation.

MR. GUIBERT de BRUET: Mr. President, just perhaps to avoid any doubt we would also refer the President to Page 20 of Mr. McCurdy's Report, when he says that "external factors such as gold prices, social concerns, political uncertainty and developments, labor rates, financial market developments and others can have a much more immediate impact on a project's technical and financial viability."
PRESIDENT TERCIER: Mr. Greenwald?

MR. GREENWALD: The slide says--Mr. President, the Tribunal can take the about minute that it will take to read Mr. McCurdy's discussion of the likelihood of financing the mine in the second quarter of 2013. It's at Paragraphs 51, 52, and 53. The Tribunal will plainly see that the factors that are referred to in Bullet Point 2 and Bullet Point 3 on this slide, as well as CRA-16, and anything about the price of gold or global economic factors are not mentioned. So, we object.

PRESIDENT TERCIER: Am I clear your objection is to accept, first, these slides, and secondly, to have questions related to the content of these slides. Is that your objections? These are your objections?

MR. GREENWALD: We object to the content of this last slide.

PRESIDENT TERCIER: What do you mean by the content? What is it, from a procedural point of view? What do you intend to invite the Tribunal to do?

MR. GREENWALD: The Tribunal should be
invited to have Mr. McCurdy resubmit his presentation without those two bullet points on the last slide, which were not part of his Report, and we reserve also the right to review the rest of the presentation and comments on it further as we're not able to, in realtime, assess everything that's new, but this one is clearly new.

PRESIDENT TERCIER: So, what is your request? Do you want these slides to be—I do not understand. Sorry. I'm—just to have a very clear request. What is your request?

MR. GREENWALD: The request is to remove Mr. McCurdy's comments on these slides, those two bullet points, to remove those two bullet points from this slide and have it be resubmitted. In the meantime, we can proceed with the rest of the examination.

PRESIDENT TERCIER: Very good.

So, I think we will go now on the Tribunal session and we will see what we will do with it. So, if I may ask my co-Arbitrators to go to the other room.
(Pause.)

DR. HEISKANEN: Mr. President, if I may?

PRESIDENT TERCIER: Just wait a second so that I have everything in front of me.

(Pause.)

SECRETARY MARZAL YETANO: I don't think Professor Grigera Naón is here yet.

Ah, there he is. Okay.

PRESIDENT TERCIER: Yes, Dr. Heiskanen, you have a comment before?

DR. HEISKANEN: Yes, simply that we are happy to withdraw these two bullet points and resubmit the presentation to avoid any further controversy about this issue. It's clear, as Mr. Guibert de Bruet explained, this is just common sense what he's saying here, and it's in his Report, but let's avoid any issue, and we are happy to remove those two bullet points.

PRESIDENT TERCIER: Okay. So, I should have given the floor to you before.

Okay. Good.

So, Mr. Greenwald, you can proceed now.
MR. GREENWALD: Thank you, Mr. President.

CROSS-EXAMINATION

BY MR. GREENWALD:

Q. Good morning, Mr. McCurdy. I'm Brody Greenwald, as you, I think, know from observing the Hearing, one of the members of the Claimants' legal team. Good morning to you.

A. Good morning, Mr. Greenwald.

Q. Your Report is dated May 21st, 2019. When were you first approached on behalf of Romania in connection with this Arbitration?

A. I was approached earlier that year. I don't recall the specific date, but a few months in advance. May 21st.

Q. And are you aware your Report was submitted with what's called the "Rejoinder" which was after Claimants' last written submission with evidence and testimony accompanying it?

A. Yes, I'm aware of the date that it was--

(Pause.)

A. Yes, thank you. I'm aware of the date that the report was submitted.
Q. And your Report does not respond to any expert report prepared by a financing expert testifying for Claimants, does it?

A. I don't believe it does.

Q. And that's because Claimants didn't proffer a financing expert; correct?

A. I'm not fully aware of all of the Experts that the Claimants may have brought forth.

Q. Section 6 of your Report refers to Claimants' Memorial and Reply, but you don't identify any arguments raised by Claimants in those submissions about project financing, do you?

A. Would you mind if I pull that up, Section 6?

Q. Called "Claimants' Memorial and Reply."

A. And is there a specific page that you're referring to?

Q. Starts on Page 6 of your Report. You describe Claimants' Memorial and Reply submission, make one observation about investment and the amount they invest, but you don't—you don't identify any arguments Claimants make about the financeability of the Project, do you?
A. I don't believe I made specific reference to an argument by the Claimants of that nature.

Q. There is nothing that prevented you from submitting your Report with Romania's Counter-Memorial in February 2018 so Claimants could respond to it with a financing expert in their Reply other than you not being asked to do so by Romania; isn't that right?

A. I'm not sure I have sufficient information to answer that question.

Q. Well, you're not responding to anything argued by the Claimants, so you could have put this Report in at any time in this proceeding; isn't that true?

A. Again, I wasn't aware of the timetable of the proceeding, and I don't believe I as an expert would have had control over when my input would have been entered into the process.

So, I can't comment on that. I'm not sure what your question is.

Q. Let's talk about the scope of your Report, Mr. McCurdy. At Footnote 12--can you go to Footnote 12 of your Report, which is on Page 4--and
you elaborated this in, I believe, Slide 8 of your presentation this morning--where you're discussing project finance, and you explain that project finance is a term that refers to the funding of projects through construction and production ramp-up up to a point where sufficient cash flow is generated to serve as the loan's principal and interest payment schedule; is that right?

A. That's correct.

Q. And you explain that it's typically a non-recourse or limited recourse structure where the debtor can't be pursued for any payment beyond the seizure of the Project's assets; right?

A. That's what's commented on there, yes.

Q. And, in Paragraph 3, where you set out the scope of your instructions, explain, as you did this morning, that you were asked to provide an analysis of Gabriel's ability to obtain debt financing, this type of project finance that you define here in Footnote 12 of your report; correct?

A. In general, I would agree with your comment, yes, but--
Q. It's what's stated in the first sentence: "I have been asked to provide an analysis of the sponsor's ability to obtain debt financing (project finance)" with a reference to Footnote 12, down to the footnote we just looked at to finding "project finance"; correct?

A. That's correct.

Q. Okay. You didn't provide an opinion on the possibility of a major acquiring Gabriel and financing construction with its own funds, did you?

A. No, I did not.

Q. You didn't provide an opinion on the ability to raise capital through Gabriel's existing Shareholders or any other way but this project finance that you described here; correct?

A. Yes.

My testimony hinged around debt finance, not equity or acquisition.

Q. Okay. At Paragraph 37 of your Report, (b), 37(b), you described Gabriel as a junior mining company with limited financial resources and access to capital.
Were you aware Gabriel had over 175 million in cash on hand at the Valuation Date?

A. I was generally aware of its liquidity position at that time.

Q. And were you also aware that, from 2007 to 2011 Gabriel raised over $453 million in cash equity; correct?

A. I was generally aware of that, yes.

Q. And are you also aware that, by the end of June 2011, Gabriel, in fact, had raised over $700 million through the issuance of equity and warrants in the exercise of share options and warrants?

A. Generally, yes.

Q. At Paragraph 18 of your Report, the last sentence, you state that acquisition activity and capital spending in the mining industry responded markedly to the financial crisis and declined from approximately $210 billion to just over a hundred billion dollars in 2009. You're not suggesting that acquisition activity was down in the period leading up to the Valuation Date in 2011 or in 2012, are you?
A. Well, I think the sentence is—you know, is quite precise. It refers to 2009.

Q. Okay. I would like to look at the period in 2011 heading into 2012, and I will show you CRA—Exhibit CRA-197, which is a report submitted with—it's a PwC survey for 2012, it's a gold price report, submitted with Mr. Burrows's Expert Report, the second one, I believe, and I would like to take you to Page 15 of that Report on "Gold M&A Activity."

Are you with me?

A. Yes.

I would like to pull that up. In which CRA report is this exhibit attached?

Q. Well, it's an exhibit, so it would be in the Respondent's Exhibit folder under CRA-197.

A. Okay. Let me try to work with what you have put up on the screen.

Thank you.

Q. Okay. So you see here there's a section called "Gold M&A Activity"? And if we go to the second paragraph on the right side of the screen, the right column, you can see there is a sentence starting
"this is noteworthy."

It says: "2010 was a record year for mergers and acquisitions in the gold sector."

Do you see that?

A. I do.

Q. And if you go to the first column, the second paragraph. PwC refers to a report in June 2011 released by Standard Chartered Bank, stating that: "The world's sixth largest mining companies are expecting to amass $144 billion in cash over the next two years."

Do you see that?

A. Yes.

Q. And then PwC observes: "This is a lot of cash on hand for gold companies to engage in M&A activity for purposes of securing new supplies and replacing reserves."

And if you continue on to the next column: "It has been an outstanding year for Gold Acquisitions."

Do you see that?

A. Yes.
Q. And if we go the fourth paragraph of the second column, PwC observes in the first sentence that: "Through November 30, 2011, premiums on deals worth more than CAD 250 million on average are a whopping 54 percent--that's an all-time high." Correct?

A. I can't comment whether that's an all-time high or not.

And, Mr. Greenwald, with all due respect, the scope of my assignment did not instruct me to explore in any detail as a primary focus the M&A history that transpired during this period of time.

Q. And yet, nonetheless, as we saw, you commented on acquisition activity being down in 2009, at least suggesting that acquisition activity was down as being relevant to your opinion.

If we continue down to the last paragraph, PwC is concluding that: "PwC expects to see high premiums in the gold sector to remain strong through 2012." Correct?

A. Yes.

Q. Would you agree, Mr. McCurdy, that a
hypothetical buyer of the Projects would almost have
to be a major international mining company?

A. I'm sorry, of which projects?

Q. Of the Project Rights held by Gabriel, that
is the Rośia Montană Project and the Bucium Projects.

A. I would think that, given the order of
magnitude of the challenge Gabriel was facing at
developing a large mining project in the setting it
was located that it would have been more plausible to
see a major mining company take that sort of action,
if it were to be taken.

Q. At Paragraph 17 of your Report which is on
Page 9, you explain in the last sentence that, during
the Global Financial Crisis, loan activity decreased
"equity and bond markets stepped up along with less
traditional sources of financing such as metal streams
and royalties along with asset sales"; correct?

A. That's correct.

Q. And at Paragraph 19 on the next page, you
state again that: "Non-traditional sources of finance
stepped up to address the voids, including off-take
finance, EPCM, which is engineering, procurement, and
construction management finance, equipment finance,
streaming and private equity finance."

Correct?

A. That's correct.

Q. And in support of that statement, you refer
to Exhibit KM-8; right?

A. That's correct.

Q. And KM-8 is a presentation by Rock Elm
Capital Management LLC, the entity you're a partner
in; correct?

A. That's correct.

Q. Let's look at KM-8.

Mr. McCurdy, I think we lost your video.
Are you still with us?

A. I am still here. Can you hear me?

Q. I can hear you.

SECRETARY MARZAL YETANO: I would ask the IT
person--sorry, I have asked the IT person to contact
the CRA team to make sure that they address this
issue. It seems to be a bandwidth issue.

MR. GREENWALD: Shall we take a 10-minute
break now, Mr. President? I don't hear the President.
SECRETARY MARZAL YETANO: We can't hear you, Mr. President.

PRESIDENT TERCIER: Here I am, with a voice. I have no objection to a 10-minutes' break in order to fix it up. In the meantime, I would like just to see just for today's program, Mr. Greenwald, you see--approximately you can estimate the time you would have for the next part of your cross-examination?

MR. GREENWALD: The estimate I would give for the cross-examination starting at about--which started about, I think, 17 minutes ago, would be one hour in total, but it could be a little more, it could be less. I can't say.

PRESIDENT TERCIER: Okay. Around an hour. And will you cross-examine Mr. Brady?

MR. GREENWALD: No, my colleague, Mr. Polašek will be cross-examining--

PRESIDENT TERCIER: Okay, because my question is, of course, I'm wondering whether, depending on when we finish whether we could already start with the presentation for your experts Compass
Lexecon that is on the program tomorrow. I don't know in order to be on the safe side. Have you the impression we could do it?

    MR. GREENWALD: No, we cannot, Mr. President. We will be using our time today with Mr. McCurdy and Dr. Brady.

    PRESIDENT TERCIER: Mr. Polašek, you're on the screen?

    MR. POLAŠEK: Yes, Mr. President. Just to confirm, I don't think it's possible that we would get to Claimants' Quantum Experts, the cross-examination of Mr. Brady will take awhile.

    Thank you.

    PRESIDENT TERCIER: Okay. Good. It was an attempt, it failed. But Mr. Greenwald, you think--Sara, do we--Ms. Mars, I should be formal.

    SECRETARY MARZAL YETANO: I don't see Mr. Burrows--I mean, sorry, Mr. McCurdy.

    Can the technician please confirm whether it contacted the CRA team? Okay. They say that they're on it, so perhaps we can wait for a few more minutes.

    MR. GREENWALD: Mr. President, this is as
good a time as any to take a 10-minute break, in any event.

PRESIDENT TERCIER: Good. Indeed, I think in that case we are close, by the way. And in that case we take a 15-minutes' break, and we will start again at--you're used to Swiss time, half past 3:00, so 3:30 p.m. Swiss time, okay?

MR. GREENWALD: Okay. Thank you.

PRESIDENT TERCIER: Thank you very much.

(Recess.)

PRESIDENT TERCIER: Good. I think we should now proceed.

Mr. McCurdy, now everything is fine? You're on mute. Mr. McCurdy, could you--

THE WITNESS: Yes, I believe you should be able to hear me now. I hear you.

PRESIDENT TERCIER: Yes, very well.

Okay. My co-Arbitrators are here. David is here I assume, Mr. Guibert de Bruet, that you are here?

MR. GUIBERT de BRUET: I am, Mr. President.

PRESIDENT TERCIER: Okay, so, Mr. Greenwald,
you have the floor.

    MR. GREENWALD: Very good. Thank you, Mr. President.

    BY MR. GREENWALD:

    Q. We were just turning, Mr. McCurdy, to your Exhibit KM-8, the Rock Elm Capital Mining Financing presentation of June 2018, and if you could turn to slide--labeled Slide 16, it's PDF Page 24.

        Are you with me, Mr. McCurdy?

        A. Yes, I am.

    Q. Okay. You describe here a typical capital structure that could be used to provide $1 billion in financing with the alternative sources described in your Report. That's the dark blue and light blue at the bottom; correct?

        A. That's correct.

    Q. And, as you said earlier, you didn't provide an opinion on the ability to provide--to finance the Project through this combination of alternative sources described here; correct?

        A. That's correct.

    Q. Okay. Let's turn to Paragraph 50 of your
Report. This is on Page 21. And subpoint (a), 50(a), you confirm—and I think you said something similar in your presentation that, "along with the Mining License, the EIA approval would have been a key milestone in the permitting of the Project. Having this permit in hand would have set the stage to validate the Project's overall feasibility in the eyes of the international debt markets. Thus, setting aside all other issues, this would have marked an important achievement helping to open the door to dialogue with banks." Correct?

   A. That's correct.

   Q. If we could turn to Paragraph 32 of your Report, which is at Pages 13 to 14?

   A. Yes, if you can pull that up.

   Q. You contend in the second sentence that lenders would not have seriously engaged the Sponsor in a tangible dialogue regarding financing without the Project's major permits in hand, and then on the next page you go on to say that lenders would not have taken the first key step of providing the Project indicative Term Sheet on the basis of an EIA approval,
but instead would have told the Sponsors to return when all approvals were in hand or at the very least imminent. That's your testimony; right?

A. That's correct.
Q. Okay.
A. --to my recollection.

Q. You refer in your Report more than a dozen times--and you referred also today a number of times--to the Report submitted in this Arbitration by Respondent's technical expert Behre Dolbear; correct?

A. That's correct.

Q. You didn't perform your own cost estimate. You relied on Behre Dolbear's Report submitted in this
Arbitration; correct?

A. It was not part of my instructions to analyze the capital cost estimates for the Project.

Q. You were the President and CEO of Behre Dolbear for six-and-a-half years from June 2009 to December 2015; is that right?

A. Roughly, yes.

Q. Are you receiving a pension or other form or current or future compensation from Behre Dolbear?

A. There is no future compensation. I am receiving a small payment based on a receivable that was outstanding at the time I resigned.

Q. And what's the amount of that receivable?

A. Roughly $5,000 a year. I gave myself a reduction in salary to allow the firm to pursue other objectives, so it was deferred compensation that had been previously agreed upon.

Q. You're aware that Behre Dolbear is providing its views in support of Romania's defense in this Arbitration? It's not acting as an independent advisor to a potential lender. You're aware of that; right?
A. That's correct.

Q. If we could go to Page 3 of your Report Paragraph 2(f), where you referred to other project Assessment Reports and then Footnote 8. You're also aware that contemporaneously, Romania was advised by AECOM as its independent technical expert consultant; correct?

A. I think you mentioned a couple of things there. Could you back up and just make these points one at a time?

Q. Paragraph 2(f), there's a reference to "other project assessment reports," with Footnotes 8 and 9?

A. Yes.

Q. And then Footnote 8 is--we capture--yeah, it's AECOM's Report to the Government of Romania dated June 21, 2013; correct?

A. Yes.

Q. So, you were aware Romania was contemporaneously advised by AECOM as its independent expert technical consultant; correct?

A. In general, I wasn't familiar with the
nature of the engagement. I only made reference to a report that was produced. I assume it was the result of an engagement of some type.

Q. You referred to this Report here in this one footnote, but you never refer to it anywhere else in your Report; is that correct?

A. Not to my recollection.

Q. Let's look at that Report. It's Exhibit C-2199. This was another document produced by Romania in Document Production in response to Claimants' document request.

And if we go to Page 14, second paragraph, AECOM's--I apologize, I'll wait for it to be on the screen. Page 14, top of the page, second paragraph.

AECOM's conclusion was that "CAPEX may be overstated for the Roșia Montană Project, but this does not pose a risk to the Romanian State. If CAPEX really was overestimated, the Project would be more profitable, and this would mean increased benefits for both Gabriel Resources and the Romanian State."

Do you see that?

A. I see that, yes.
Q. And you don't discuss or acknowledge anywhere in your Report that AECOM advised the Government of Romania that CAPEX might be less, not more, than SRK estimated; correct?

A. Yes, but I would add that it's really a hypothetical statement. It's not a quantitative disclosure, so it's a general statement that adds color to the Report, but it's difficult to assess the significance of points they were trying to make through this hypothetical.

So, no, I did not rely on it.

Q. Well, it's not a hypothetical statement that you didn't refer to this observation or any of the observations of AECOM about the CAPEX for the Project; correct?

A. Again, I respectfully disagree with what you've said. You asked me about a hypothetical in the AECOM Report, and I responded to you that I did not take that into--up into my Report.
Q. Okay. Let's go to Paragraph 21 of your Report. This is on Page 10. There is a sentence where you state that compliance or recognition of the importance of Equator Principles, compliance is not apparent in the Sponsor's reporting. Are you aware that, since at least 2003, Gabriel, in its public statements, its reporting, has underscored its commitments to fully comply with the Equator Principles?

A. I seem to recall statements of that nature, that it was their intent to comply, yes.

Q. Let's look at one of those early statements, and they continue in public statements thereafter, public reporting. Exhibit R-120. This is Gabriel's 2003 Annual Report and if we go to PDF Page 13, Page 13--I'm not sure if it's the PDF Page 13--there we go.

On the left-hand side, that's fine. There you go, starting with the second sentence: "Gabriel is committed to full compliance with Romanian
legislation, relevant EU policies and International Best Practice, as encompassed by the Equator Principles that were adopted by several leading international financial institutions in order to ensure that projects are developed in a manner that is socially responsible and reflect sound environmental Management practices. Gabriel has developed a Resettlement and Relocation Action Plan (the RRAP) as a formal public policy to ensure transparency consultation with all affected parties and a consistent and equitable process for managing the acquisition of properties and the corresponding compensation for eligible stockholders. The RRAP forms part of the environmental and social impact assessment currently being prepared for the Project and as part of this continuing process will be refined as necessary to comply publicly with the Equator Principles."

Does that change your opinion as to whether Gabriel's recognition of the importance of the Equator Principles is apparent in its public reporting?

A. I believe deeds are much more relied upon in
the loan market than intent or a statement of an
objective. Results are required to enable financial
institutions' process to move forward.

Q. Well, you refer in your Report to compliance
or recognition not being apparent. So, putting aside
compliance for the moment, can you agree with me that
this reflects recognition of the importance of the
Equator Principles?

A. No, I don't believe I have, you know,
sufficient knowledge of their intent or their
commitment outside of this statement to be able to
agree with you or not on such a very, very important
point.

Q. Okay. Let's go to Paragraph 2(h) of your
Report. This is on Page 3. And you contend there was
a failure to design the Project to meet the Equator
Principles.

Do you see that?

A. I'm sorry, could you repeat your question?

Q. I'm just saying, you state there is a
failure to design the Project to meet the Equator
Principles; correct?
A. Well, I think that has to be taken into context with the paragraph above, so I'm not stating or referencing a specific failure. I'm saying the possibility of a failure would be an issue or point of concern in the financial markets.

Q. So, you're not concluding that there was a failure to design the Project to meet the Equator Principles?

A. No, I'm not. That's outside of my expertise and the scope of my assignment, so I did not investigate whether or not there was a failure to meet the Equator Principles. I understood it was an objective, but again, the deeds and accomplishments, you know, outweigh intent typically in the loan market.

Q. But you do refer in Footnote 11—Footnote 10 is just a reference to the Equator Principles, and then you refer in Footnote 11 to the Second Report submitted by Respondent's Expert, Larraine Wilde, on this topic. Her First Report on this topic making this conclusion, it was submitted with the Rejoinder of the Respondent, but you refer to that in support of
this statement made here; right?

A. I make that reference to information that was made available to me or that I had knowledge of which discussed the Equator Principles and their relevance to the Project.

Q. Are you aware that, contemporaneously before the Rejoinder round of this arbitration—before this Arbitration at all—SRK concluded in its 43-101 in October 2012 that the Project complied with the Equator Principles.

A. I recall seeing a section over the span of one page, which expressed a view—

MR. GUIBERT de BRUET: Could the Witness be shown the Report and the reference that you're making?

MR. GREENWALD: He's saying right now he recalls it, but let's look at it. That's Exhibit C-128. And this is the SRK 2012 43-101 Technical Report, which the Tribunal is no doubt familiar with, and I'm sure you are as well now, because you were just mentioning it.

BY MR. GREENWALD:

Q. If we go to Page 59, it's PDF
Page 65--sorry, it's Page 63, I believe, and maybe--that's it. PDF Page 69, it's Page 63 Section 20.3 "Comparison with International Guidelines and Standards."

Are you following me, Mr. McCurdy?

A. Yes, I can see the page.

Q. This is what you were referring to a moment ago; correct?

A. Yes, I'm familiar with that page in the document. I have seen it previously.

Q. And SRK concluded in this first sentence, we can see here: "The general review of the EIA together with updates given in the presentations and site visit discussions indicate the environmental and social assessment processes undertaken by RMGC, together with the procedures for resettlement and relocation, are compliant with the Equator Principles applicable to Category A projects in middle-income OECD countries." Correct?

A. I can see that that is what is written there. I understand that this is a matter of dispute between the Parties, and again, a deep-dive on whether
or not the Project was compliant with the Equator Principles at a specific point in time was not the focus of my Report.

Q. Okay. Let's talk about some of the evidence submitted with your Report. Your report at Page--first of all, Mr. McCurdy, are you aware your Report does not include a CV for you?

A. I'm aware that there is no CV in my Report, yes.

Q. Is there a reason that wasn't provided with your Report?

A. I can't point to any reason why there was not a CV included.

Q. Okay. At Page 24, the last page of your Report, you have a list of exhibits, KM-1 through KM-20.

Do you see that?

A. Yes.

Q. There actually were 22 KM exhibits. There were KM-1 to KM-22 exhibits submitted with the Rejoinder. I would like to show you KM-21.

MR. GUIBERT de BRUET: Excuse me, I don't
believe that's an accurate statement. KM-21 and KM-22 were submitted as part of rebuttal documents in response to the documents that the Claimants submitted.

MR. GREENWALD: Okay. Thank you.

BY MR. GREENWALD:

Q. Mr. McCurdy, is it fair to say you didn't rely on KM-21 or KM-22 in your Report and didn't refer to them in your presentation either today?

A. I believe that's the case, yes.

Q. Just one moment, Mr. McCurdy, if you will bear with me.

(Pause.)

MR. GREENWALD: All right. I appreciate the clarification. I will move on to another topic.

BY MR. GREENWALD:

Q. Mr. McCurdy, if we could--can you hear me?

A. Yes, Mr. Greenwald. Thank you.

Q. Okay. If we could go to Page 21 of your Report, Section 9, where you address the likelihood of the Sponsor, that being Gabriel, successfully approaching the debt market in the first quarter of
2012, and this corresponds to Slide 16 of the presentation you gave this morning; is that right?

    A. I believe it does.

Q. Okay. At Paragraph 50(e), which is, yeah, there on Page 22, you state: "Even assuming that with the EIA in hand, evidence that the Equator Principles were met and the Sponsor's having sufficient equity, lenders would not likely engage in meaningful dialogue given the heightened political and social risk environment that existed at this time that served to confirm the Project's inability to maintain its Social License."

You did not conduct an independent assessment of whether the Project, in fact, had a Social License, did you, Mr. McCurdy?

    A. No, I did not. That was outside the scope of my Report.

Q. If we turn to Paragraph 3 of your Report on Page 4. And this corresponds with your Slide 4 from your presentation this morning. For your analysis, you were instructed to assume RMGC faced significant social opposition; correct?
A. Yes.

Q. You were instructed to assume RMGC could face delays or possible termination due to potential archaeological discoveries; correct?

A. Correct.

Q. And you were instructed to assume permitting uncertainties--this is down the reference to permitting uncertainties in 3(c)--which is as a result of the Bullet Point--Point 3 up in Paragraph 3, as a result of court cases that could result in invalidation of the Environmental Permit or other required permits. Those were your instructions; correct?

A. That's, in summary, correct, I believe.

MR. GREENWALD: Mr. President, I have no further questions.

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

MR. GUIBERT de BRUET: If I may ask the Tribunal for 5 to 10 minutes to just consult?
PRESIDENT TERCIER: Okay. As I said, I do not believe to 5 minutes, in that case we take 10 minutes. We will start again in 10 minutes. Thank you. No special room for my co-Arbitrators.

(Brief recess.)

PRESIDENT TERCIER: Now, let's see where everybody is on-line. It appears to be the case.

In that case, Mr. Guibert de Bruet, you have the floor for the redirect.

Please.

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

REDIRECT EXAMINATION

BY MR. GUIBERT de BRUET:

Q. Mr. McCurdy, you were taken to Exhibit C-128, which is SRK's NI 43-101. If we could bring up that exhibit, please. In particular, you were taken to Page 63 of the Report.

There we go.

And I believe you were asked about the paragraph here.

So, just below that paragraph you'll see
Table 22, which is the assessment of the Project's Equator Principles Compliance, and the left column is the principle, and the right column is the Project status. I'd like you to read Equator Principle 7 and the status.

A. Yes. No. 7: "Independent review: An independent social and/or environmental expert not directly associated with the borrower will review the Project to assess for Equator Principles compliance."

Q. What is your understanding of the significance of that statement?

A. Well, I think it's very significant, and the review has apparently not been completed at the time the table was produced, and its author suggested that the Project was in compliance with the Equator Principles.

MR. GREENWALD: Objection, Mr. President. That was speculation, the reference to "apparently." Mr. McCurdy has no idea whether or not an independent review was or was not conducted and should be asked whether he knows that. SRK was not asked whether or not an independent review was or was not conducted,
nor were Claimants' Witnesses.

PRESIDENT TERCIER: Mr. Guibert de Bruet, could you formulate in another way your question, if you want to maintain it?

MR. GUIBERT de BRUET: Just one second, Mr. President.

(Pause.)

MR. GUIBERT de BRUET: Mr. President, we think the Expert's answer is fine as it stands. No further questions.

PRESIDENT TERCIER: Do you maintain your objection, Mr. Greenwald?

MR. GREENWALD: The Expert's answer is speculation, and he stated himself on cross-examination that, analyzing Equator Principles was "outside the scope of his Report." He doesn't know what kind of review was or was not conducted. This was not asked of Claimants' Witnesses. It was not asked of SRK.

PRESIDENT TERCIER: Okay.

MR. GUIBERT de BRUET: Mr. President, the relevance of Mr. McCurdy's statements are for the
Tribunal to determine.

    PRESIDENT TERCIER: Very good. Can you go to the next question or you want us to discuss right now? I would say you will go to the next question, and then we will look at it during the break with my colleagues.

    MR. GUIBERT de BRUET: I think we have no further questions, Mr. President.

    PRESIDENT TERCIER: Okay.

    Do my co-Arbitrators have questions to the Expert? Yes? No, I'm sorry.

    Professor Douglas?

    ARBITRATOR DOUGLAS: No questions.

    PRESIDENT TERCIER: No question. Okay. But I have a question--sorry. First, Mr. McCurdy, I would like to thank you very much for your testimony and participating in our Hearing, and my question is whether we could not now introduce the first part of the presentation of Mr. Brady. Mr. Guibert de Bruet, do you think this would be possible? Because we are really rather--it's early, and we could have time.

    MR. GUIBERT de BRUET: Mr. President, I
think I would appreciate perhaps a five- or 10-minute technical break. They need to switch the camera so that Dr. Brady is visible, and I wouldn't want any interruptions or to rush the expert in that regard.

PRESIDENT TERCIER: Okay. Good.

Mr. Greenwald--

(Overlapping speakers.)

PRESIDENT TERCIER: Who is speaking?

DR. HEISKANEN: Heiskanen. According to the program, a meal break is supposed to take place at 4:30. Instead of having two different breaks, it may be more practical to break for an hour and then continue so that we don't have to two breaks back-to-back.

PRESIDENT TERCIER: I see your point.

Mr. Greenwald?

MR. GREENWALD: Let me ask Mr. Polašek to answer that.

MR. POLAŠEK: Mr. President, we defer to the Tribunal, whatever is your preference on this point. Thank you.

PRESIDENT TERCIER: Okay. We will not lose
a lot of time on that. Probably I will follow, if you have no objection, Respondent's proposal and introduce right now the break. We would start again at 5:30 Swiss time, but in that case, I would like to invite my co-Arbitrators to go on the session reserved to the Tribunal.

Okay. So, we will meet again in about an hour. Thank you.

(Recess.)

PRESIDENT TERCIER: So, I would like to start with this Hearing.

First, we have a few points to discuss.

First, you remember that counsel for Respondent asked for time until Sunday, probably beginning of the Hearing, to present its comment to the last version of the submission connected to the question of the so-called "new claims."

Dr. Heiskanen, it's still your view, your wish?

DR. HEISKANEN: Yes, indeed. I can confirm that the firm--as you know, it's going to be the weekend, so we have no support services available.
PRESIDENT TERCIER: You remember that Ms. Abby Cohen has not objected to it, but made a reservation concerning the possibility for her to respond to your own comment, and you have reserved your position. Are you in a position to tell us what is now your position, Mr. Heiskanen?

DR. HEISKANEN: Excuse me. If there is a reasoned request for comments on our submission, we have no objection.

PRESIDENT TERCIER: Okay. Thank you very much.

The second point, we have received from counsel for Respondent a new version of the PowerPoint presentation of Mr. McCurdy with a modification of the last slide. Thank you very much for it. We have--

MR. GUIBERT de BRUET: Apologies for interrupting, Mr. President. It's to the presentation of Dr. Brady, not Mr. McCurdy.

PRESIDENT TERCIER: I thought we had received both, first the document from Mr. McCurdy and with the last slide, the modification of the two bullet points, and we have, indeed, now received also
the new PowerPoint of Dr. Brady without the last slide.

MR. GUILBERT DE BRUET: Apologies, Mr. President. That was my mistake.

PRESIDENT TERCIER: Okay. So, everything seems to be clear, and we may now proceed.

MR. GREENWALD: Mr. President?

PRESIDENT TERCIER: Yes, you have a point? Yes, concerning—sorry. Go ahead.

MR. GREENWALD: Thank you, Mr. President.

We did receive the amended presentation, and we appreciate that update, but just to close the circle on this, the last couple of comments reflected in the Transcript, while the presentation was being delivered should be removed from the Transcript where Mr. McCurdy was referring to the bullet points that have now been removed. Those are sentences at 8:42 this morning starting: "I also want to comment that I believe lenders," blah blah blah, through the end of his presentation.

PRESIDENT TERCIER: Mr. Guibert de Bruet?

MR. GUILBERT DE BRUET: We have no objection,
as long as they do, indeed, refer to those specific slides.

PRESIDENT TERCIER: Okay, thank you very much. Have you another comment about the case?

All right. So, we now start with the examination of Thomas Brady.

DR. THOMAS BRADY, Respondent's Witness, Called

PRESIDENT TERCIER: Good afternoon, Dr. Brady. Welcome in this procedure. You see probably the faces of the people who are participating in particular with the Members of the Arbitral Tribunal.

You will be heard this afternoon as an expert. As such, I would like to invite you to read the Declaration. I'm sure you have it on your screen or paper. Could you read it aloud, please.

THE WITNESS: Yes. I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT TERCIER: Okay.

THE WITNESS: I will not receive or provide communication of any sort during the course of my
examination.

PRESIDENT TERCIER: Okay. Thank you very much. Sorry for having almost interrupted you.

Because of the specificities of this procedure, the Arbitral Tribunal has ruled on a few items, some of them are relevant for you. For instance, no person shall be present in the room with a testifying witness or expert. Can you confirm?

THE WITNESS: I can confirm that.

PRESIDENT TERCIER: Okay. You had already mentioned--declared the question of the communication. You must--shall remain visible all the time. This is easy for us to control, and to the last, the Witness shall not use a virtual background or in any way prevent or limit the recording of the remote video from which he or she is testifying. I assume you will also agree with this?

THE WITNESS: I agree.

PRESIDENT TERCIER: Okay. Dr. Brady, you have prepared for this procedure an expert report. This is called "Expert Opinion." It is dated November 13, 2019.
You have this document with you?

THE WITNESS: Yes, I do.

PRESIDENT TERCIER: Okay. My question to you is: Can you confirm the content of this Expert Opinion, or do you wish to make some corrections, some amendments?

THE WITNESS: No, I can confirm, no changes to the document.

PRESIDENT TERCIER: Okay. Thank you very much.

You know how the procedure will take place. You will first have an opportunity to present your Expert Opinion in maximum an hour, and this will be, in fact, in lieu of the direct examination. And I recall we have received a PowerPoint, which I appreciate it, but from this PowerPoint the last slides have been removed.

Then you will be cross-examined, and there will be redirect at the end. The Members of the Tribunal, having the right to ask questions whenever they consider it necessary.

Is it clear for you?
THE WITNESS: Yes, it is, Mr. President.

PRESIDENT TERCIER: Okay. In that case, I can give you the floor. You will certainly introduce yourself. Please, Dr. Brady.

DIRECT PRESENTATION

THE WITNESS: Hello. Again, it's an honor to present to the counsel and members of the Arbitration as well as to the counsel for the Claimants as well as Respondent. Today, if we could flip down to the next page, please.

My presentation will include a brief overview of my qualifications and experience, the scope of my assignment, and my conclusions.

Next slide, thank you. In terms of my qualifications and experience, I received a Ph.D. in Mineral Economics from the Colorado School of Mines. Also from the Colorado School of Mines, I received a master's degree in mathematics.

I have over 25 years of international mining and energy experience in economic analysis, finance and financial risk management. I'm currently employed as the Executive Director of the JPMorgan Center for
Commodities at the University of Colorado Denver's
Business School. In addition I provide independent
economic and Strategic Advisory Services for clients
across the mining and energy sectors.

At Newmont Mining, I held leadership
positions with increasing responsibility in finance
and strategy organizations. When leading a Strategic
Business Planning team, proprietary portfolio analysis
tools were developed to provide consistency in the
valuation of internal projects as well as external
investment opportunities. As the company's Chief
Economist I was responsible for developing forecast of
key metal prices, including gold, other energy
commodities, foreign exchange, and discount rates and
other financial assumptions used throughout the
corporation.

Next slide, please.

In terms of this assignment, I have been
asked to review the methodologies for valuing gold
properties for both internal purposes as well as for
acquisitions. I've also been asked to review
approaches for determining gold price assumptions and
for valuing gold properties. I'm also asked to comment on the appropriate use of acquisition premium in valuing gold properties.

Next slide, please.

In terms of conclusions, discounted-cash-flow analysis, from my experience at Newmont, the primary method to evaluate internal and external gold properties is discounted-cash-flow analysis. Throughout the company, Project cash flow financial models would be constructed using similar price forecasts and country-specific discount rate assumptions. Other valuation techniques, including market multiples such as price to reserves and/or price to resource amounts and financial multiples such as price to Net Asset Value were secondary and used as a crosscheck to the discounted-cash-flow analysis.

My view of these other valuation techniques, very difficult to obtain comparable projects and transactions; a lack of consistency in the assumptions used to create those multiples. At Newmont, the Strategic Development team would typically use market and financial multiples as a screening method prior to
a much more resource-intensive discounted-cash-flow analysis being completed.

Next slide, please.

In terms of gold price forecasts, as the Chief Economist, my process to forecast gold prices would initially review bank and analyst estimates and outlooks published by independent sources such as Oxford Economics and Murenbeeld and others, to assess an overall consensus.

Prior to publication, forecasts would be subsequently reviewed and modified in the context of other key forecasts required throughout the company other metal prices including copper and silver, energy, oil and diesel, and foreign exchange and interest rates. Expectations for long-run gold prices would be based on more qualitative factors in terms of demographic and wealth trends, and as well as in terms of previous internal forecasts.

Given the wide distribution of these forecasts across the company, forecasts would be provided in terms of real and nominal terms depending on the use of those forecasts.
That concludes my presentation. If the Tribunal has any questions, I can answer.

PRESIDENT TERCIER: Thank you very much, Dr. Brady. This was your presentation. It was direct.

Can you confirm, Mr. Guibert de Bruet, that it is what is meant to be the direct?

MR. GUIBERT de BRUET: We have no further questions for Dr. Brady at this time, Mr. President.

PRESIDENT TERCIER: Okay. Thank you very much.

Now, who will lead? It is Mr. Polašek will lead the cross-examination. Mr. Polašek, you have the floor.

MR. POLAŠEK: Yes, thank you, Mr. President.

CROSS-EXAMINATION

BY MR. POLAŠEK:

Q. Good afternoon and good morning everyone. I'm Petr Polašek, counsel for Claimants.

Dr. Brady, you covered a number of points in your Opening Presentation, and nothing prevented you from including all of these points that you made today
in your written opinion dated November 13, 2019. You agree?

A. Yes. The points in the presentation are also included in my written report.

Q. Well, there were some that were included and some that were not included, but all the points that you just made today--

MR. GUIBERT de BRUET: I'm sorry, but you're going to have to explain which points are not included, could you bring that to the Witness.

MR. POLAŠEK: Yes. We will get to that. I will proceed with my question. I will repeat my question.

BY MR. POLAŠEK:

Q. Dr. Brady, nothing prevented you from including all of the points that you just made today in your direct presentation in your written opinion dated November 13, 2019. Do you agree?

A. I would say that the presentation and the Report are consistent.

Q. My question does not go to the consistency. My question is simply whether you agree that nothing
prevented you--there was no obstacle that would
prevent you--from including all of the points that you
just made today in your Opening Presentation in your
November 13, 2019, written report. Do you agree with
that?

MR. GUIBERT de BRUET: I'm sorry, I'm going
to have to object here. The Witness has answered the
question. He has said that his report and his
presentation are consistent.

PRESIDENT TERCIER: Okay. Mr. Polašek
(overlapping speaking), that probably you are
intending to make between the Report and the
PowerPoint.

Please.

MR. POLAŠEK: Yes, Mr. President. Thank
you.

We will put on the screen Dr. Brady's
revised presentation. That's the one that does not
include Slide 7 at the end, which was removed, and we
will start with Slide 3.

BY MR. POLAŠEK:

Q. Okay. I direct your attention to the second
bullet. You say that you have over 25 years of mineral--international mining and energy experience.

Do you see that?

A. Yes, I do.

Q. Let's highlight "25 years."

That's not in your Expert Opinion, is it?

A. Let me bring up my Expert Opinion.

Q. Well, we will not--you're reading--

(Overlapping speakers.)

A. 25 years is not specifically stated in the Expert Opinion.

Q. The two bullets at the bottom of the page, Bullet 3 and Bullet 4, that information also is not stated in your written opinion, is it?

A. Not in those direct terms, but it does identify that I was the company's Chief Economist.

Q. But this level of detail is not there; would you agree?

A. I think in subsequent--in subsequent paragraphs in that Report--let me just confirm.

(Pause.)

A. Yes, there are points in the PowerPoint that
are not included in the written report.

Q. So, you are agreeing that these points are not included in your written report; correct?

A. How they're specifically spelled out, they are not in the Report; but, in the context of my review they are included in the overall report.

Q. Let's turn to Slide 5, and I direct your attention to the second bullet on that page, and it talks about other valuation techniques such as price to reserve and/or resource ounce and financial multiples such as Price to Net Asset Value.

It goes on to say that it is very difficult to obtain comparable projects and transactions, and it goes to say--it goes on to say that there is a lack of consistency in assumptions.

Do you see that?

A. Yes, I do see what has been highlighted.

Q. None of that is in your written report, is it?

A. Let me review. Give me a moment.

Again, in indirect terms, I state the--you know, I refer to market multiples--I do refer to
market multiples, but I would not rely on market
multiples to value—in the valuation to determine the
value of properties, so—

Q. Dr. Brady—

A. And this is some of the rationale for that
in that Report.

Q. Dr. Brady, point me to where in your Report
you say that it is very difficult to obtain comparable
projects and transactions.

A. That is not included in the—in the written
report.

Q. Point me to where in the written report you
say that there is a lack of consistency in
assumptions.

A. What I tried to do was wrap that up all into
the statement: "but would not rely on market multiples
valuation to determine the value of properties for
acquisition."

Q. That is not my question. However, the
question is: Point me to where in your Report you
mentioned the lack of consistency in assumptions.

A. It is not in the Report, but it is contained
in reference to that statement I just read on the Report. The rationale of that--

(Overlapping speakers.)

A. The rationale for that sentence is more--is spelled out in detail on the PowerPoint presentation.

Q. But the detail in the PowerPoint presentation does not appear in your written statement; would you agree?

A. The statements--the bullet points that you've highlighted here are not spelled out word for word, but they are implied in the sentence that I read previously.

Q. And/nor does your Expert Report refer expressly to financial multiples such as P/NAV, does it?

A. Give me a moment, please.

(Pause.)

A. I talk about market multiples can--the market multiples approach can provide a rough indication of value and is often used as a screening process--in the process of screening companies and to provide general confirmation of the discounted cash
flow and other valuation techniques.

Q. My question was about P/NAV. P/NAV is not mentioned there; right?

(Overlapping speakers.)

A. Again, that's what--when I'm--we're talking about market multiples, that's what I'm including in that is P/NAV.

Q. Yes, but it is not expressly stated, is it, in the written report?

A. No, not--

DR. HEISKANEN: Mr. President, I must object--

(Overlapping speakers.)

THE WITNESS: --market multiples--

DR. HEISKANEN: I must object. The Claimant--Mr. Polašek seems to be suggesting that the Expert's PowerPoint presentation should consist of an exact replica of his Expert Opinion. Frankly, I refrain from using the words I would like to use to describe this type of cross-examination, but this is not really helpful for the Tribunal.

PRESIDENT TERCIER: Mr. Polašek?
MR. POLAŠEK: Yes, Mr. President. That's not what I'm suggesting--well, I would refer to the rules which we have in place which is that direct presentation may provide a summary of the points made in the Expert Reports, not expand upon them.

Additional expert testimony, as we know, is limited to certain circumstances, and those have not been identified here, so it is not open to the Expert to be adding points to their opening presentation in quite this manner.

And the other reason that I'm asking this series of questions is because counsel for Respondent intervened and specifically asked me to specify which additional points in the presentation I am referring to, so that is what I'm doing, and I'm almost at the end. I have one more slide to go, and then I will go back to the question that I asked in the beginning.

PRESIDENT TERCIER: Okay, so go to the last question of your slides.

BY MR. POLAŠEK:

Q. Dr. Brady, please turn to Slide 6 in your presentation, and I direct your attention to the last
sub-bullets, the ones that start with the dash, and we will highlight it on the screen for you.

Do you see that? That's one. We will highlight both of them.

A. I see the highlighted section.

Q. Yes. And I see that we highlighted just the first bullet. There are two bullets on that screen, and on that slide we will highlight both of them.

Okay. Now we have it.

So, here you say that, "Prior to publication, forecasts would be reviewed and modified in the context of," and then you describe what that context is, according to you.

And, in that second bullet, you refer to forecasts, and you say that they will be provided in both real and nominal terms.

And none of the detail that we see here is included in your written report, is it?

A. Not in that kind of detail. Again, to your earlier questions, I would say that, to add additional color to the Tribunal, there is more detail there, but it is as an overall approach. What you see
highlighted there is what I tried to provide the company during my time there as a Chief Economist.

Q. Now, going back to the question that I asked you at the beginning, Dr. Brady, nothing prevented you from including all of these points that you made today in your written expert opinion dated November 13, 2019; correct?

A. Again, I would go back to--these details are wrapped up in summary, more summary statements in the Expert Report.

Q. And it was open to you at the time that you wrote the Expert Report to include these details in the Expert Report; correct?

A. When I was writing the Expert Report and putting the PowerPoint together, I thought it was--they were similar themes and similar conclusions wrapped up. And thus, my earlier statement that the PowerPoint and the written report are consistent.

Q. Well, would you agree with me that there was no obstacle to you to include this additional detail in your written Report, if that's what you wanted to do?
MR. GUIBERT de BRUET: I'm sorry, I'm going to have to interrupt you there again. This question has been asked now for the third time, and it's been answered already twice before.

PRESIDENT TERCIER: I agree. I would like to have a clear answer. It has been, I think, asked more than three times, and Dr. Brady, could you just say "yes" or "no" to the question. We have understood your comments, but could you answer, please, the question.

THE WITNESS: Okay. Mr. Polašek, could you repeat the question again?

BY MR. POLAŠEK:

Q. Yes, Dr. Brady.

If there is anything at all unclear in my question, please let me know. I will read it again. It is the question you heard it three or four times now.

So, the question is: Dr. Brady, there was nothing that prevented you from including all of the points that you made today in your direct presentation in the written Expert Opinion dated November 13, 2019.
Do you agree?

A. Yes, I would agree there was (sic) no obstacles.

Q. Now, the Report that you provided is two pages long, and the substance of it which is at Paragraphs 5 to 7. It's about three paragraphs, the text above that concerns qualifications.

Now, if you were to include these additional points that we just discussed in your written report, it would be longer than two pages, wouldn't it?

A. Potentially--yes, it potentially could be longer than two pages, to add those points that you highlighted specifically in the PowerPoint.

Q. Did Respondent's counsel ask you to limit your Report to two pages?

A. They did not. I chose brevity figuring that the points that I expressed in the written report would be fully captured in driving my intent and conclusions.

Q. And you made that Decision entirely on your own? This was your call. Is that your testimony?

A. Yes, that's my testimony.
Q. You refer in your two-page report to the Report of Dr. Burrows, who is the quantum expert, pardon me, for Respondent. You recall that?

A. Yes.

Q. And you've reviewed Dr. Burrows's report.

A. Those sections that are identified in the footnote, yes, I have--I reviewed--I reviewed those.

Q. And for purposes of that review, you received the entire Burrows Second Report; correct?

A. Yes, correct.

Q. So, you would have seen that it is over a hundred pages; correct?

A. Yeah. I think it's like 150-plus pages.

Q. And you also cite in your Expert Report the Witness Statement or the statement that is properly entitled of Mr. Jeannes. Do you recall that?

A. Yes, I do see that in my Paragraph 2.

Q. And you received the entire statement of Mr. Jeannes; correct?

A. I believe--I'm not sure if--I have a copy of Mr. Jeannes's Report, and I can't tell if that--if that's it in its entirety, I just can't tell if it is
or not.

Q. Well, what Respondent provided to you did not look like to you an excerpt, did it?
A. Let me bring that up. I haven't--

Q. Let me just ask you, you know, from your memory, does it sound about right that that statement is 13 pages long?
A. Mr. Jeannes's--

Q. Yes.

A. --report? I--I can bring it up and ask you that--

(Overlapping speakers.)

Q. No, that's fine. I'm just asking if you have a recollection one way or the other, if 13 pages sounds about right. If you don't recall at all, that's fine.

A. No, I don't recall how long Mr. Jeannes's Report was.

Q. It did not strike you as odd that whereas Mr. Burrows's report is a hundred pages and Mr. Jeannes's statement is 13 pages, your Expert Report is effectively a page-and-a-half?
A. Well, given the scope of my assignment to those three points that I was asked to review, I felt like it was an adequate length to summarize my views.

Q. Now, Dr. Brady, are you aware that the Expert Report that you submitted in this Arbitration was part of Respondent's rebuttal documents for which the Tribunal had established a page limit of 50 pages?

A. No, I am not familiar with--the page-limit requirement? I was asked to submit a report, and that's what was submitted.

Q. Now, you were an employee of Newmont Mining from 2007 to 2019; correct?

A. Correct.

Q. Do you recall on which date specifically you started working at Newmont?

A. I would believe it was May 1st, 2007.

Q. And are you certain of it, or is it an approximation?

A. No, I am certain of that. I'm just trying to--yes, it was May 1.

Q. And so you worked with Newmont for about 12 years; correct?
A. And then prior to that, I had two years from 1996 to 1998 where I was with the company for a total of fourteen years.

Q. And when exactly did you leave Newmont? Do you remember the date?

A. Yes, I left March 1st, 2019.
Q. Now, Dr. Brady, Newmont is a sophisticated mining company; you agree?

A. It has a long tenure as a global--one of the gold--one of the senior gold producers, so I would say "yes," it is a sophisticated Western Mining company.
Q. It's been publicly traded since 1925; right?
A. Correct.

Q. And it is what is known in the industry as a "major" mining company; correct?
A. Yes. It was a gold senior, but "major" is the same term.

Q. Yeah. And it has been a senior or major for many, many years; right?
A. Yes. I would probably say back to the early Nineties, 1990s.

Q. And are you aware that, in July 2011, Newmont was the only gold stock in the S&P 500 Index?
MR. GUIBERT de BRUET: I'm sorry. Where does this evidence appear on the record?
MR. POLAŠEK: This evidence, Mr. President, does not need to appear on the record.
MR. GUIBERT de BRUET: I'm sorry, Mr. President. It cannot be that the Respondent's Experts are prevented from introducing evidence, but the Claimant can introduce evidence at will.
MR. POLAŠEK: Mr. President, may I respond to that by reference to the applicable rules?
MR. POLAŠEK: I refer to Paragraph 60 in Procedural Order No. 33 which provides that the permitted scope of cross-examination includes matters that the Expert had direct knowledge of.

Now, Dr. Brady appears here as an expert on a couple of topics, and he's testified that he has been with Newmont since 2007 through 2019, that he's had--that he's held various positions in the Newmont, including its Chief Economist.

So, I don't think there is any basis for the objection. Questions like this are entirely within his direct knowledge. If he has no idea, he can just say so.

PRESIDENT TERCIER: Okay, I agree. We would have to go slowly to the merits. Yeah.

BY MR. POLAŠEK:

Q. Okay. Dr. Brady, I will repeat this question: Are you aware that, in July 2011, Newmont was the only gold stock in the S&P 500 Index?

A. I know that Newmont was in the S&P 500. I just can't remember if Barrick was also listed on the
exchange, another gold senior.

Q. Are you aware that Newmont is still on the S&P 500 Index today?

A. I haven't reviewed that particularly over the last year, but I would assume they are still in the S&P 500 Index.

Q. Now, are you aware that, in 2016, Newmont's market capitalization reached $24 billion?

A. I cannot recall the exact number or the exact figure for the market cap at that point.

Q. Would it surprise you if I told you that that was the case, $24 billion market cap 2016?

A. It would not surprise me, but again I--

(Overlapping speakers.)

MR. GUIBERT de BRUET: Objection. This calls for speculation, Mr. President.

PRESIDENT TERCIER: I think he answered, he would not be surprised. It would be up to the Tribunal to evaluate and assess the weight of the answer.

Please, Mr. Polašek, it would be happy if we could go to the merits--
MR. POLAŠEK: Yes, sir.

PRESIDENT TERCIER: Probably you will come to it soon, I'm sure.

MR. POLAŠEK: Yes, Mr. President.

Almost there. I will just observe that questions like this are appropriate for an expert, for an expert in particular where he has direct knowledge of these things, just to preempt further objections.

BY MR. POLAŠEK:

Q. Now, Dr. Brady, you're aware that, in 2019, Newmont acquired Goldcorp for $10 billion?

A. Yes. That was right toward the end of my time at the company when that acquisition was announced.

Q. Right.

And it was announced in January 2019; does that sound right?

A. I believe that is correct.

Q. Now, Newmont did not ask you to work on that transaction, did it?

A. Correct.

Q. So, when you testify at Paragraph 1 of your
Expert Opinion that you worked on valuation of mineral projects for Newmont, that did not include the Goldcorp acquisition, did it?

A. It did not. I did not have any--anything to do with the analysis or any other type of work with the Goldcorp acquisition.

Q. And since Newmont's acquisition of Goldcorp, Newmont's market capitalization increased to about $50 billion; are you aware of that?

A. I--I would have to look at--and I doubt that specific date. Gold price in particular has increased significantly since that acquisition, and that's going to be driving right into the market cap.

Q. Now, the gold price, where is it about today? Do you know?

A. I think it's right around 1900 plus an ounce.

Q. How does that compare to where it was, say, 2011, in your view?

A. 2000...?

Q. 2011.

A. Yes. The gold price did a significant climb
from the Year 2000, the early 2000s up through September, early September of 2011 where it peaked at 1900--$1,911 an ounce.

Q. And you just said that we are at 1900 today; right?
A. Yes.

Q. And did this impact the market capitalization of gold companies, in your view, where they are today?
A. Is the market capitalization impacted--does the gold price impact the market capitalization? Is that what--

Q. Let me withdraw that question. Just curious whether, in your view, you see a correlation between gold stocks and, you know, the price going up, as you described it, through today?
A. I haven't done a correlation analysis, as you referred to, of gold price and valuation--of market cap of companies. But the gold price, if it's a gold senior like Newmont, 90 percent of the revenue is driven by the sale of gold. When the gold price goes up, the revenues go up, the financial situation
of the company improves.

Q. And that would also mean that the value of mineral properties go up; right?

A. You can't put a blanket statement on that. Every property has its own specific characteristics.

Q. So, let me give you a hypothetical scenario. This goes to your statement that you worked as a professional in the area of valuating or valuing mineral properties. Assume the same deposit, same amount of gold in the ground. Let's say it is reserves. And assume that the gold price is $1,180 per ounce. That's Scenario 1.

Now, let's assume that there is a Scenario 2, where the gold price is $900 per ounce, and everything is the same and maybe the costs went up a little bit in Scenario 2, but would you say--do you have an opinion which--in which of the two scenarios--which of the two scenarios would have a higher value?

A. Well, I don't like the hypothetical example. I mean, I would like to know specifics of the scenarios. Again, the specifics of the particular
project.

Q. Yeah. Dr. Brady, I apologize. I think I misspoke. I might have confused you.

So, the first scenario is $1,180 per ounce of gold. The second scenario is 1,900, not 900, but $1,900 per ounce of gold. Everything else is the same. It's still the same deposit, still the same mineralization.

Do you have an opinion, one way or the other, whether the Project would be more valuable in Scenario 1 or Scenario 2?

A. Well, previously you said that the costs went up in Scenario 2, so--again, that's where I'm having trouble with this Scenario 1 and Scenario 2 when the costs are going up. Without doing a full evaluation, I don't know. I don't know how much the other characteristics of that Project might have changed under that scenario.

PRESIDENT TERCIER: But isn't it possible now to go to our specific case, leave the hypothetical cases. I'm curious to know where you're trying to go.

MR. POLAŠEK: Yes, Mr. President.
PRESIDENT TERCIER: Put it more in the Gabriel case, if you don't mind.

MR. POLAŠEK: Yes, of course, Mr. President. I will move on.

BY MR. POLAŠEK:

Q. Dr. Brady, Newmont secures its future supply of deposits to mine in part by acquiring junior mining companies. Agreed?

A. The company's primarily focus--has an extensive exploration staff, and they focused most of their reserve efforts on internal reserve replacement. They will supplement that with looking at external opportunities.

Q. And do you agree that, before Newmont acquires an interest in a gold-mining company, it conducts due diligence?

A. Yes. Similar to what--and depending on what stage of that due diligence is occurring, but similar to what Mr. Jeannes said at Goldcorp during his time there. If this particular opportunity was advancing, then a full team would be constructed, and that would include geologists, hydrologists, it would include
Government relations individuals. It would include social and environmental personnel, other technical people as well as financial--financial experts, particularly on the--on the actual development team, Corporate Development team.

Q. And the issues that Newmont might investigate would include, for example, investigations into the variability of samples from the mine pit; right?

A. Again, depending on the stage of that due-diligence effort, you would expect to have a qualified geologist to review that--to review that opportunity.

All this significant due-diligence effort helps in comprising an internal view of that opportunity to--and eventually all those assumptions get rolled into a cash-flow model that can be easily communicated to Boards of Directors and to Management--executive Management, including the CEO.

Q. Would you agree that Newmont would not invest in a mining company if it considered that the company's project was not feasible and/or not capable
of advancing to development?

A. Part of the approach from my opinion of Newmont, I was not directly in the Corporate Development team, but part of the strategy—and I can speculate again, my time not at Newmont, but was to take partial or toehold investments in opportunities that looked promising early on, and if that looked more promising to increase that investment.

Q. But not those opportunities that did not look promising; right?

A. You know, they would not invest—that didn't look promising at that time, at the time of the investment decision.

Q. Are you aware that Newmont is a Shareholder of Gabriel Canada, meaning Gabriel Resources, Incorporated?

A. I didn't know that Newmont is currently a Shareholder in Gabriel.

Q. So, let me make it clear. One of the entities that are the Claimants in this Arbitration is a Canadian entity. We refer to it as "Gabriel Canada." Newmont is a Shareholder in that. You did
not know that?

A. No. I knew that Newmont previously was a Shareholder. I have not heard about or followed that since over the last number of years. I don't know current--the company is still a current Shareholder.

Q. Respondent's counsel did not tell you that Newmont still is a Shareholder in Gabriel Canada?

A. I'm not clear of that. I don't recall counsel telling me anything related to whether Newmont was a Shareholder currently or not.

Q. Let's take a look at the NI 43-101 Technical Report for the Roșia Montană Project. This was a report that was prepared in October 2012 by SRK, and it was published and released to the market in early November 2012.

So, here--

(Overlapping speakers.)

A. Sorry, Mr. Polašek. This is outside the scope of my assignment. I did not review any of the technical documentation around the Roșia Montană property.

Q. Yes. That will not be my question. This
next series of questions, just to make it clear, pertain to Newmont, and we will stay on that topic. I will not be asking you technical questions about the Project at all.

So, let's turn to Page 55 in this document, and we will put it on the screen so that you do not need to look it up. We will zoom in on the entire paragraph.

And I will read it. It's Paragraph No. 17.2.3, and it says "Additional Investigations by Newmont and Others."

And it goes on to say: "At the time of the acquisition of a shareholding in the parent company"—do you see that, Dr. Brady?

A. Yes, I see the highlighted text.

Q. Yes. Parent company is Gabriel Canada.

"Newmont undertook a testwork program to confirm the design parameters selected for treatment of the Roșia Montană Project material including investigations into grind size, gravity concentration, cyanide strength, leaching conditions (addition of lead nitrate and increased lime addition), and
potential preg-robbing tendencies. Newmont also
investigated, in further detail, ore variability on
samples from the different pits, the results of which
were reviewed by Aurifex."

Did I read that correctly?

A. Yes, Mr. Polašek, you read that correctly.
PRESIDENT TERCIER: Dr. Polašek, I would like for you to go a little bit forward because really we are, I think, taking a lot of time for a document that at the time where the Expert was not at Newmont. Could you tell us where you're going to or go a little bit quicker?
MR. POLAŠEK: Yes, Mr. President.

As we are seeing here, Newmont did a lot of work and investigation and verification at the Roșia Montană Project in 2004, and later on as well. And I have a number of other documents like this. In the interest of time I will not go through them. I would just point out that Newmont also did work at the Bucium deposit, and maybe if we could look at that.

THE WITNESS: Could I--

PRESIDENT TERCIER: I think also--the Tribunal could also, of course, read all these documents, but if you want to project them, but I think it is for really for the--again, if time would be good, if we could go a bit forward.

MR. POLAŠEK: Okay. So, I will ask one more question on that, and then I will move on, Mr. President. Thank you.

BY MR. POLAŠEK:
PRESIDENT TERCIER: You answered the question, please.

MR. POLAŠEK: Let's move on.

PRESIDENT TERCIER: Dr. Brady, I'm the President. I think we would really also save time if you could just answer the question. If you have
comment, if you cannot answer, you don't answer, but really--

THE WITNESS: I'm not trying to be--I'm not trying to be difficult, but when I see something like nine samples, I can't comment on whether that's a lot of samples or just a limited amount of samples.

BY MR. POLAŠEK:

Q. Okay, Dr. Brady, let's move on. You state at Paragraph 1 of your Report that your role at Newmont included "valuation of mineral projects, including valuation for the purpose of valuation of gold and other mineral properties." Did I read that right?

A. Yes.

Q. Now, that third reference to valuation, where it says "including valuation for the purpose of valuation," that's a typo, isn't it?

A. "Including the valuation for the purposes of"--yes, that is a typo.

Q. And what is it supposed to say?

A. I will read this.

"My roles included valuation of mineral
Q. And the word that comes after "for the purpose of," should that be "acquisition of gold and other mineral properties"?

A. No, because it was—what's—adding some color to my role as leading a Strategic Planning team, we would have cash flows of internal development properties, maybe expansions of existing mines, or new mines that Newmont already owned, and we would evaluate those in the context of a portfolio, and also evaluated in that would be external M&A opportunities.

PRESIDENT TERCIER: Okay. Dr. Brady, sorry to cut you, but the question is rather easy. You tell us that on the fifth line of Para 1 there is or there must be a typo. So, if you can just now tell us what is the right reading or how you would put it, we would save a lot of time. "My roles"—

(Overlapping speakers.)

PRESIDENT TERCIER: "My roles included valuation of mineral projects, including valuation for the purpose of" what?
THE WITNESS: "My roles included the valuation of mineral projects, including gold and other mineral properties." That's what it—that's what it should say.

BY MR. POLAŠEK:

Q. Understood. Thank you, Dr. Brady.

At Paragraph 5 of your Report, you opine on the valuation methodologies used by Newmont for valuing gold properties, and you do not mention any examples of any actual acquisitions of gold-mining properties by Newmont, do you?

A. I do not list specific acquisitions by Newmont.

Q. So, let's look at an example. In February 2011, Newmont acquired Frontier Gold for CAD 2.3 billion. Does that sound right?

A. That sounds in the correct range, the exact figure on the acquisition costs. It sounds correct, though.

Q. And did you work on that acquisition?

A. No, I was not part of the Corporate Development team. I was part of the Strategic
Planning team that would evaluate external M&A opportunities such as Frontier in the context of other internal development projects.

(Overlapping speakers.)

Q. So, when it came to actual acquisitions that Newmont was making in the market of other mining companies, you were not involved in the valuation of that, were you?

A. We would receive the Project or the cash-flow model from our Corporate Development team and incorporate that into the wider portfolio for a lot of what-if type of analysis, what happens if we sell this property, acquire that company or develop this internal property in terms of the overall financial view of the company, in terms of and as well as the overall production-look of the company.

Q. But you did not do, yourself, a DCF analysis of Frontier Gold, did you?

A. That was probably done, again, by a due-diligence team that included Corporate Development personnel on the financial side as well as a number of technical people, including a lot of our folks from or
employees from Nevada, Newmont had been mining in
that--in the State of northern Nevada for 50 years,
and that acquisition was very close to the other parts
of Newmont's long-time mines and processing
facilities.

Q. Now, the Newmont--the price that Newmont
paid for Frontier included a premium of 37 percent
over the price of Frontier's stock publicly traded on
the Toronto Stock Exchange; does that sound right?
A. If there was--there was a premium paid.
Q. And are you aware that, when the Frontier
Gold acquisition closed, Newmont's CEO told the press
that "we feel like we've paid a fair
price--pardon--fair value for the company"?
A. I can't recall that statement.
Q. Would it surprise you if I told you that
that's what he said?
A. It would not surprise me.
Q. Now, let's look at Exhibit CRA-189. This
document describes the Frontier Gold acquisition by
Newmont.
A. CRA--that's a Press Release, okay.
Q. Yep.
And if you would go down to the third paragraph, let's focus on what Mineral Resources and Mineral Reserves existed at Frontier Gold at the time, and you will see that there is no reference in here to Mineral Reserves; correct?

A. It has Measured and Indicated Resources of 4.2 million ounces, Inferred Resources of 1.7.

Q. Now, as we mentioned, this transaction happened in February 2011.

Now, in your experience at Newmont running these DCF valuations that you mentioned in your Report, would a discounted-cash-flow valuation of 4.2 million ounces of Measured and Indicated resources of gold and 1.7 million ounces of Inferred Resources of gold yield CAD 2.3 billion?

A. The rationale--I can speak to the rationale for this, which will lend--

Q. I'm not asking about the rationale, Dr. Brady. I'm asking simply whether a DCF valuation of these Mineral Resources stated here in February 2011 would yield CAD 2.3 billion.
A. I need to push back a bit on that because the Newmont—this opportunity was in "Newmont's backyard." The company had significant tenure in operating mines of this type of quality in the area. It had significant synergies associated with personnel and processing facilities of this material. And in 50 years of exploration expertise where they thought that there were significant upside that Newmont could realize in this acquisition.

Q. Well, the upside would come from the--

A. In addition--

(Overlapping speakers.)

Q. Okay, let me repeat the question.

The upside, that would not come from the 4.2 million ounces and 1.7 million ounces that we see here; right?

A. So, again, as an acquisition target, a Discounted Cash Flow Model would be constructed by--after an extensive due-diligence process. That value would be related to what the--and again as a crosscheck with other financial multiples. If there was a large enough gap, if understanding -as similar
to what Goldcorp says- if you have to pay a premium for this, what kind of upside can this asset have to cover that kind of acquisition premium.

Q. So, is it correct that, when you're running these DCF models, you include in there metal that is above the Mineral Resources and Mineral Reserves such as we see here?

A. It would be input from, again, that technical side of that due-diligence team, and multiple scenarios would be run, different--maybe the different scenarios on cost, different scenarios on potential upside. All of that helps shapes a view of an eventual investment decision.

Q. So, let me ask you this: If Newmont did ask you to work on the Frontier Gold transaction, and if the CEO of Newmont called you up and told you please do the usual DCF that we normally do on this property, I can tell you that we have Measured and Indicated Resources, and there are 4.2 million ounces of gold and Inferred of 1.7 million ounces of gold, what resources would you put into the DCF? Would you limit that to these resources, 4.2 and 1.7, or would you
include more than that?

A. Again, multiple scenarios would be run to give a clear picture, and also multiple scenarios on gold price.

Q. And those multiple scenarios would include scenarios where additional metal is included in the DCF beyond the 4.2 million and 1.7 million ounces; right?

A. Yeah. Some scenarios would limit that, too. To give a full picture, if our technical folks and exploration personnel didn't realize that upside, you would want to have a picture of that, as well.

Q. Dr. Brady, you stated that at Newmont your job was to develop forecasts of metal prices; right?

A. Correct.

Q. And you also stated that--this is at Paragraph 6 of your Report--that, when you projected metal prices, you used the consensus projection of bankers and also projections by other independent agencies such as Oxford Economics, Murenbeeld and Company and others; right?

A. Correct.
Q. But you have not submitted into the record any projections by Oxford Economics, Murenbeeld, or others; right?

A. They--my role as Chief Economist started in 2013, and I would get up--I would update forecast assumptions generally two or three times a year, depending on--and then I would get updates--these companies would provide updates quarterly, so I would incorporate that new information into my assessment, in other models when I came up with the forecast assumptions.

Q. And my question is: These projections by Oxford Economics, Murenbeeld and others, you did not attach them to you Report, you did not submit them to this Tribunal, did you?

A. No, they were not included with my Report.

Q. And you mentioned previously that you reviewed Dr. Burrows's Expert Report; correct?

A. The sections that were identified in the report, correct.

Q. That section included a section on gold price forecasts; right?
A. I can't remember which one it was, whether it was Section VII or VI, but I believe there was a gold price projection section in Dr. Burrows's Report.

Q. Right. That's Section VII.E, and you mention it in the one footnote that you have in your Expert Report on Page 1.

A. Yep, that's correct, Mr. Polašek.

Q. Now, Dr. Burrows does not rely on any gold price projections by Oxford Economics or Murenbeeld, does he?

A. I don't believe that that was spelled out in his--in his Report.

MR. POLAŠEK: Okay. Mr. President, if I may take a moment to confer, I think this might be the end of the cross-examination. I just want to make sure.

PRESIDENT TERCIER: Okay. Please, yes.

MR. POLAŠEK: Thank you.

(Pause.)

MR. POLAŠEK: Okay. Dr. Brady, I have two additional questions, and that will conclude the examination.

BY MR. POLAŠEK:
Q. So, is it correct that you were not part of the team at Newmont that was deciding how to use the results of any DCF calculations that were done in determining what price Newmont would pay to acquire a target company?

A. I was part of a team that would evaluate the potential acquisition in terms of the context of the portfolio. The actual decision, that would go up to the Executive Management team and the Board of Directors for the Decision.

Q. And they may or may not pay whatever your calculations indicated; right?

A. They would take all that--those different scenarios into context and for an investment recommendation to the Board of Directors.

Q. Is it fair to say that, when Newmont spent its shareholders' money to make an acquisition, Newmont believed that it is getting Fair Value in exchange?

A. It would believe that there was significant--if there was a premium to be paid, there was a belief that there was significant upside
potential of that in the terms of that due-diligence team to justify that acquisition.

Q. And putting aside the issue of premium, let me just repeat the question. It was a broader question than the premium. The question is whether it is fair to state that, when Newmont spent its shareholders' money to make an acquisition, Newmont believed that it is getting Fair Value in exchange?

A. Given that there was that upside potential, that the company could leverage its expertise, it would believe that that was a good acquisition.

Q. Well, I'm not asking about the upside potential, Dr. Brady. I'm just asking generally, whether it is fair to state that, when Newmont spent its shareholders' money to make an acquisition, Newmont believed that it was getting Fair Value in exchange.

A. I can't--I can't make a blanket statement like that because when you mean "Fair Value," Mr. Polašek, what exactly are you referring to "Fair Value".

Q. That they believed that what they are
purchasing is being bought at Fair Value.

A. That's why I keep adding those extra--an extra qualifier on there.

If there's good exploration upside that it adds to the portfolio and it's shaped--and it fits into the company's strategy, then yes.

Q. Well, when Newmont acquires a company and pays a certain amount for it, it pays that amount because it believes that the company is worth that amount; would you agree?

A. It agrees that--I would say the same as my--as your previous question that, it believes that that opportunity has significant upside that it can justify the costs of that acquisition.

PRESIDENT TERCIER: Okay. You're repeating the same question and the same answer. And I don't think you will receive more than that. Yes, Mr. Polašek?

MR. POLAŠEK: Mr. President, thank you very much. That concludes the examination. Thank you.

PRESIDENT TERCIER: Thank you very much.

Mr. Guibert de Bruet?
MR. GUIBERT de BRUET: I think we only have one question for Dr. Brady, Mr. President.

PRESIDENT TERCIER: Yes. Go ahead.

REDIRECT EXAMINATION

BY MR. GUIBERT de BRUET:

Q. The following: Dr. Brady, you were asked about the due diligence that Newmont conducts. In general, how does due diligence at Newmont differ when Newmont is investing in a company versus acquiring a company?

A. It would be a similar type of analysis, and I would even extend that to whether to invest in an internal development project. The due-diligence team would be constructed to evaluate all aspects of social, governmental, geology, all the technical aspects of the company, or the project.

MR. GUIBERT de BRUET: No further questions, Mr. President.

THE WITNESS: It would also--

MR. GUIBERT de BRUET: I'm sorry, I interrupted you. Please go ahead.

THE WITNESS: The key is when I would roll
in as the Chief Economist would be to ensure all those different opportunities are evaluated under similar assumptions, whether it's gold price, other Foreign Exchange Rates, other metal prices, other energy costs, all using a standard approach with discount rates as well. So, as much of a like-to-like comparison can be made across investment opportunities.

PRESIDENT TERCIER: Mr. Guibert de Bruet, another question?

MR. GUIBERT de BRUET: That's it for us, Mr. President.

PRESIDENT TERCIER: Thank you very much. Do my co-Arbitrators have a question to the Expert?

Professor Douglas?

ARBITRATOR DOUGLAS: No. No questions from me. Thank you very much.

PRESIDENT TERCIER: Professor Grigera Naón? No question. I have no questions, either.

So, thank you very much, Dr. Brady, for your examination, for your answer to the questions that you
have been asked here.

(Witness steps down.)

PRESIDENT TERCIER: We're now at the end of today's program. We are well in advance, changed with previous days. We have, based on Claimants' proposal, we have renounced to start already the examination of the quantum experts, so I have nothing else to say but to close today's Hearing. But we start with the traditional time. Sara, are you able to give us the result of the game?

SECRETARY MARZAL YETANO: Yes.

So, Claimants have a total of 4 hours and 19 minutes left, and 18 seconds; Respondents have 4 hours and 15 minutes left, and the Tribunal has 2 hours and 31 minutes left.

PRESIDENT TERCIER: Comment to that from Claimants' side?

MS. COHEN SMUTNY: Claimants have no comments.

MR. POLAŠEK: Let me just repeat, Mr. President. We do not have comments. Thank you.

PRESIDENT TERCIER: Good. And on
Respondent's side?

DR. HEISKANEN: No comments on the timekeeping, but given that there is still around an hour on the clock, we could start with the Claimants' Experts, quantum experts' presentation today, if the Tribunal is agreeable.

PRESIDENT TERCIER: Claimants were apparently opposed to that. Mr. Polašek, I think you were the one who said we should not?

MR. POLAŠEK: Yes, Mr. President. We do not think that's—we do not think that makes sense. We've had a long day already, and we would suggest that we stick with the Schedule, which we've established initially. We think that is the Schedule that should be followed. We are happy to elaborate if the Tribunal is inclined to do otherwise.

Thank you.

PRESIDENT TERCIER: Okay. I will confer with my co-Arbitrators. If you can answer by WhatsApp, it would be probably shorter. What is your views, if I can find my own.

(Pause.)
PRESIDENT TERCIER: Okay. I think we are again on the same footing. We will stick to the program as it has been proposed, and we will start tomorrow morning with the examination of the next expert.

So, in that case, I will close today's Hearing, and I wish you a very good afternoon or evening. Thank you very much. Bye-bye.

(Whereupon, at 12:59 p.m. (EDT), the Hearing was adjourned until 8:00 a.m. (EDT) the following day.)
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN