ICSID Case No. ARB/20/46

Lupaka Gold Corp.

CLAIMANT

v.

Republic of Peru

RESPONDENT

SECOND QUANTUM EXPERT REPORT OF

ISABEL SANTOS KUNSMAN AND ALEXANDER LEE

AlixPartners

WASHINGTON DC

25 JANUARY 2023

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Figures

Glossary

Term	Description
2010 Optimi[z]ed Feasibility Study	A study performed by SRK on the resources present at the Project
AAG	Andean American Gold Corp.
Access Road Protest	The protest set up by the Parán Community on the access road to the Project on 14 October 2018
Accuracy	The consulting firm engaged by Claimant to quantify the alleged damages in connection with Claimant's Investment
Accuracy First Report	The expert report by Mr. Erik van Duijvenvoorde and Mr. Edmond Richards of Accuracy dated 1 October 2021
Accuracy Second Report	The second expert report by Mr. Erik van Duijvenvoorde and Mr. Edmond Richards of Accuracy dated 21 September 2022
Actual Scenario	The "Actual Situation" occupied by Claimant incorporating the impact of the Measures
Arbitration	Lupaka Gold Corp. v. Republic of Peru (ICSID Case No. ARB/20/46)
AuEq	Gold equivalent
Authorities' Measures	Alleged acts and omissions committed by the Peruvian regional and central state authorities (excluding acts and omissions by Parán Community members allegedly attributable to Peru)
Buenaventura	Compañía de Minas Buenaventura S.A.A.
But-For Scenario	The "But-For Situation" that Claimant would have occupied absent the impact of the Measures
CAPM	Capital Asset Pricing Model
CIM	The Canadian Institute of Mining Metallurgy and Petroleum
CIMVAL	The Special Committee of the Canadian Institute of Mining, Metallurgy & Petroleum on the Valuation of Mineral Properties
Claimant's Memorial	Claimant's Memorial dated 1 October 2021
Claimant's Reply	Claimant's Reply Memorial dated 23 September 2022
Contract Quantity	The amount of gold Lupaka was required to sell at a discount to PLI under the PLI Loan Agreement
COE	Cost of Equity
Collateral	Any and all real and personal property, assets, rights, titles and interests in respect of which the Buyer has or will have a Lien pursuant to a Security Document, whether tangible or intangible, presently held or hereafter acquired, and all products and proceeds of the foregoing, including insurance proceeds related to the foregoing.
Counsel	Arnold & Porter
CR Team	IMC's community relations team
CSRI	The Corporate Social Responsibility Initiative of the Harvard Kennedy School

CSRM	Centre for Social Responsibility in Mining at the University of Queensland's Sustainable Mineral Institute
DCF	Discounted Cash Flow – a method within the income approach whereby the present value of future expected net cash flows is calculated using a Discount Rate.
DIO	Days Inventory Outstanding
DPO	Days Payables Outstanding
Draft Third Amendment to PLI Loan Agreement	Draft Amendment and Waiver No. 3 to the PLI Loan Agreement
DSO	Days Sales Outstanding
EIA	Environmental Impact Assessment
Early Termination Amount	The amount by which the Seller to prepay its Gold Delivery obligations
FCFE	Free Cash Flow to Equity
FCFF	Free Cash Flow to the Firm
FMV	Fair Market Value – the (highest) price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms-length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.
First Report	The expert report by Mrs. Isabel Santos-Kunsman and Mr. Alexander Lee of AlixPartners dated 24 March 2022
FTA	Free Trade Agreement between Canada and Peru
GDXJ	VanEck Vectors Junior Gold Miners ETF
Gold Prepayment Amount	The disbursement of US$7.0 million in three tranches from PLI to Lupaka
IMC	Invicta Mining Corp. S.A.C.
Investment	Claimant’s 100% shareholding in the Invicta Project
Invicta Project (or Project)	The Invicta gold mine project located in Peru’s Huaura province
Lonely Mountain	Lonely Mountain Resources S.A.C.
Lupaka or Claimant	Lupaka Gold Corporation
Mallay Plant	The Mallay processing plant
Mallay Purchase Agreement	Draft Mallay Purchase Agreement between Buenaventura and IMC
Measures	Alleged acts and omissions Claimant claims amount to a breach of the FTA, comprising the Authorities’ Measures and the Parán Community Measures
MINEM	The Ministry of Energy and Mines of Peru
Micon Report	The expert report by Mr. Christopher Jacobs of Micon International Limited dated 21 September 2022

NPV	Net Present Value – the value, as of a specified date, of cash inflows less all cash outflows over a period of time, calculated using an appropriate discount rate
OEFA	Agency for Environmental Assessment and Control (Organismo de Evaluacion y Fiscalizacion Ambiental) of Peru
Pandion	Pandion Mine Finance LLC
Parán Community Measures	Alleged acts and omissions committed by the Parán Community
PEA	Preliminary Economic Assessment
Peru or Respondent	The Republic of Peru
PLI	PLI Huaura Holdings L.P.
PLI Loan Agreement	Second Amended and Restated Pre-Paid Forward Gold Purchase Agreement between Lupaka and PLI dated 2 August 2017
Primary Approach	Accuracy's calculation of the FMV of the Project using the DCF approach
Project (or Invicta Project)	The Invicta gold mine project located in Peru's Huaura province
Red Cloud	Red Cloud Klondike Strike
Red Cloud Model	An updated version of the SRK Model prepared by Red Cloud to reflect the impact of a purchase of the Mallay Plant
Respondent's Counter-Memorial	Respondent's Memorial dated 24 March 2022
Respondent's Rejoinder	Respondent's Rejoinder Memorial dated 25 January 2023
Sell or Sale	Lupaka's requirement to sell to PLI a set amount of gold each month after the grace period for each tranche at a discounted price, viz., market price less US$500/oz
SLO	Social License to Operate
SOFR	Secured Overnight Financing Rate
SRK	SRK Consulting (Canada) Inc.
SRK Model	The valuation model prepared by SRK in February 2018
SRK PEA	The preliminary economic assessment prepared by SRK in early 2018
UST	One-Year U.S. Treasury Bill
Valuation Date	26 August 2019
WACC	Weighted Average Cost of Capital – the cost of capital (Discount Rate) determined by the weighted average, at market value, of the cost of all financing sources in the Business Enterprise's capital structure.

I. Scope of Work and Qualifications

1. As discussed in our previous report dated 24 March 2022 ("**First Report**"), the Republic of Peru ("**Respondent**" or "**Peru**"), through Arnold & Porter ("**Counsel**"), has asked us to offer our independent expert opinion in relation to the arbitral proceeding ("**Arbitration**") that Lupaka Gold Corporation ("**Claimant"** or "**Lupaka**") initiated against Peru, under the Free Trade Agreement between Canada and Peru ("**FTA**").[1]

2. The investment at issue in this arbitration ("**Investment**") is Claimant's 100% shareholding in the Invicta gold mine project located in Peru's Huaura province ("**Invicta Project**" or "**Project**"). Lupaka held its shareholding in the Project through its wholly owned Canadian subsidiary, Andean American Gold Corp. ("**AAG**"), and AAG's 99.99% owned Peruvian subsidiary, Invicta Mining Corp. S.A.C. ("**IMC**").[2]

3. Claimant claims that alleged acts and omissions ("**Measures**") should be considered breaches by Peru of the FTA.[3]

4. Claimant retained Mr. Erik van Duijvenvoorde and Mr. Edmond Richards of Accuracy ("**Accuracy**") to quantify the alleged damages to Claimant's Investment resulting from the Measures.[4] Accuracy presented their opinions in their report dated 1 October 2021 ("**Accuracy First Report**").

5. In our First Report appended to Respondent's Counter-Memorial, we reviewed the Accuracy First Report and submitted our opinions on whether and to what extent their calculations correctly measure Claimant's alleged damages (measured as the

[1] Our use of defined terms in this report is consistent with those included in the First Report, unless otherwise stated.

[2] Claimant's Request for Arbitration dated 21 October 2020, ¶ 4; Claimant's Memorial, ¶¶ 22-26.

[3] Claimant's Memorial, ¶¶ 266, 312. Consistent with our First Report ¶¶ 92-94, we define the "**Measures**" as the "[a]lleged acts and omissions the Claimant claims amount to a breach of the FTA, comprising the Authorities' Measures and the Parán Community Measures." Furthermore, the "**Authorities' Measures**" are defined as the "[a]lleged acts and omissions committed by the Peruvian regional and central state authorities (excluding acts and omissions by Parán Community members allegedly attributable to Peru)", while the "**Parán Community Measures**" are defined as the "[a]lleged acts and omissions committed by the Parán Community". We understand that in relation to Parán Community Measures, Claimant's position is that the Parán Community's Access Road Protest amounted to a direct expropriation of Lupaka's investment in breach of Peru's obligations under the FTA. We understand that in relation to the Authorities' Measures, Claimant's position is that the following seven alleged acts and omissions amounted to an indirect expropriation of Lupaka's investment in breach of Peru's obligations under the FTA: a) The failure of the police and other state authorities to prevent the occupation of the Project by Parán Community members in June 2018; b) The failure of the police and other state authorities to end the occupation and prevent Parán Community members from damaging Lupaka's property and abusing Lupaka's personnel in June 2018; c) The failure by the police and other state authorities to sanction Parán Community members for the acts on 19 June 2018; d) The failure of the police and other state authorities to prevent the occupation of the Project and the Access Road Protest of the Lacsanga road by Parán Community members on 14 October 2018; e) The ongoing failure (since 14 October 2018) by the police and other state authorities to remove the Access Road Protest, notwithstanding its numerous complaints; f) The failure by the police and other state authorities to sanction Parán Community members for abuse of Claimant's representatives, including on 14 October 2018, 20 March 2019 and 14 May 2019; and, g) The state authorities' alleged support of Parán Community members' actions during the negotiations with Parán Community members following the Access Road Protest.

[4] Consistent with the First Report, we define the Investment as the "Claimant's 100% shareholding in the Invicta Project".

fair market value ("**FMV**") of Claimant's Investment offset by costs Claimant was required to remit to its lender PLI Huaura Holdings L.P. ("**PLI**") to maintain its Investment because of the Measures).

6. This report is in response to Accuracy's second expert report dated 21 September 2022 ("**Accuracy Second Report**") which was appended to Claimant's Reply dated 23 September 2022 ("**Claimant's Reply**"). Claimant also submitted an expert report by Mr. Christopher Jacobs of Micon International Limited ("**Micon**") dated 21 September 2022 ("**Micon Report**") containing opinions in relation to the planning, production, and operation of the Invicta Project. This report responding to the Accuracy Second Report and the Micon Report ("**Second Report**") will be appended to Respondent's Rejoinder Memorial dated 25 January 2023 ("**Respondent's Rejoinder**").

7. Nothing in our conclusions or opinions in this report is intended to address the Parties' respective legal arguments. This report does not contain any opinions on matters of law that would require legal expertise.

8. We are independent from the Parties, their legal advisors, and the Tribunal. The opinions and analyses contained in this report are ours and represent our considered views in light of our education and experience.

9. This report conforms with the Practice Standards of the Chartered Business Valuators Institute. The relevant Practice Standards for this report are those governing the preparation of expert reports (Practice Standards 310, 320, and 330).[5]

II. Executive Summary

10. In the Accuracy Second Report, Accuracy maintained their Primary Approach, while they adopted Micon's inputs and revised their damages conclusions. Under their Primary Approach, Accuracy calculated alleged damages as the difference between the But-For Scenario and the Actual Scenario using two different production scenarios: the 590t/day scenario and the 355t/day scenario, both of which are offset by the amounts Lupaka would have needed to pay to PLI to maintain its ownership of IMC. Their approach changed in the following principal ways:

   a) Accuracy previously assumed that Claimant would default on the PLI Loan Agreement and would be required to pay PLI a settlement payment of US$15.9

[5] The Practice Standards can be found at https://cbvinstitute.com/members-students/standards-ethics/.

million to maintain ownership and control of its shares of IMC. In the Accuracy Second Report, Accuracy adopted Micon's revised production schedule with an earlier start date of commercial mining operations allowing Claimant to meet its gold delivery obligations. Therefore, Accuracy modeled financing cash flows (i.e., periodic installment payments by Claimant, rather than one settlement payment) under both production scenarios (590t/day and 355t/day).

b) Accuracy revised their production schedule and cost assumptions under both production scenarios based on inputs received from Micon.

c) Accuracy decreased the discount rate in the 590t/day scenario by reducing their pre-production premium from 6.9% to 3.3%.

d) Accuracy increased the proposed pre-award interest rate from LIBOR+2% to LIBOR+4% or UST+5%.

11. In addition to updating their Primary Approach, Accuracy also revised the analysis of their proposed alternative indicators of value by incorporating some of our comments from our First Report.

12. Accuracy's updated analysis remains an "all or nothing" approach that does not provide the Tribunal with a basis to estimate damages if it determines that some Measures were not FTA breaches, while others were. We also note that Claimant's Reply has continued to rely upon the 590t/day scenario as the only basis for Claimant's damages claim.

A. Accuracy's Quantification of Damages Remains Fundamentally Flawed

13. In our First Report, we raised four fundamental flaws with Accuracy's damages conclusions. The Accuracy Second Report continued to ignore these fundamental flaws. In short, the four fundamental flaws in Accuracy's conclusions are the following:

a) *Ongoing social conflict and protests.* Accuracy did not directly respond to our point in our First Report that Accuracy's calculations did not take into account that police intervention would not have permanently resolved the conflicts between Claimant and the Parán Community. Accuracy's updated damages were based on the premise that intervention by the police would have been immediately and permanently resolved the Access Road Protest and the broader conflict at no additional cost or delay as of the Valuation Date. Because Accuracy's damages model omitted these likely costs and delays, it did not produce a reliable estimate of damages caused by Respondent's alleged breaches.

b) *SLOs from local communities.* Accuracy did not directly respond to the social license risk issues raised in our First Report with respect to the Parán, Lacsanga, Santo Domingo, and Mallay communities and instead dismissed them as "not relevant for our assessment of damages under Claimant's case". In the Accuracy Second Report, Accuracy accelerated their mining production schedule to begin in November 2018 without providing evidence or support that the social license issues would be resolved immediately. Accuracy also did not provide any information as to why the Mallay Community's approval of the Mallay Plant transaction was delayed or if specific social license issues could further impact future dealings between Claimant and the Mallay Community.

   As we have demonstrated, obtaining and maintaining the SLO is a critical step for mining projects. Claimant's inability to do so would impair its ability to deliver gold, meet its obligations under the PLI Loan Agreement, and may have further negatively impacted its operations. Not obtaining an SLO is a recognized cause of total project failure that would reduce damages to *nil*. In any case, the risk associated with obtaining and maintaining SLOs needs to be accounted for and the absence of such accounting is a fundamental flaw in Accuracy's calculations.

c) *Defaults on the PLI Loan Agreement Not Caused by Peru.* Under the 355t/day scenario, based on the Micon Report, Accuracy accelerated the Project's mining production start date from August 2019 to November 2018 by assuming Claimant would leverage third-party ore processing. Based on this revised schedule, Accuracy also assumed that Claimant would have avoided default under the PLI Loan Agreement. Micon provided no specific basis for their assumption that the failures at the third-party processing facilities would be resolved. Furthermore, we understand from Counsel that Ms. Dufour has concluded that Micon's revised production schedule is not feasible due to missing approvals for both the Invicta Project and for the ore processing plants, which would have prevented production from beginning before July 2020. We also understand from Counsel that Claimant had committed 14 defaults under the PLI Loan Agreement, some of which Claimant has acknowledged were unrelated to any acts or omissions by Peru or by the Parán Community, and that each one of those defaults entitled PLI to foreclose on Claimant's Investment. Accuracy did not account for those contract violations to isolate which damages, if any, should be calculated as the damages caused by Peru. The lack of an accounting for loan defaults not caused by Peru remains a fundamental flaw with Accuracy's analysis that would have resulted in Claimant's damages being reduced to *nil*.

Under the 590t/day scenario, Accuracy also assumed that Claimant's lender PLI, controlled by its former parent company Pandion, would have conceded payment extensions to Claimant and lent it more funds for a purchase of the Mallay Plant. This assumption disregarded Claimant's failure to obtain and maintain its SLO, its inability to meet its obligations under the PLI Loan Agreement due to the technical issues at the third-party processing facilities, and its lack of required permits and approvals before officially commencing commercial-scale production, and the events of default on the PLI Loan Agreement committed by Claimant that were unrelated to Peru's conduct. The multiple obstacles to producing marketable minerals discussed above lead us to conclude that it would have been irrational for PLI to provide further extensions and additional funding to Claimant and that this remains a fundamental flaw with Accuracy's analysis that would have resulted in Claimant's damages being reduced to *nil*.

d) *Refinancing Risk.* Accuracy assumed that, due to the revised production schedule provided by Micon (which shifted the start date of commercial mining to November 2018, instead of August 2019), Claimant would be able to meet its obligations under the PLI Loan Agreement and thus would not default on the loan and need financing to pay a settlement to PLI. Additionally, under the 590t/day scenario, Accuracy assumed that Claimant could obtain from PLI an additional loan of US$13.0 million for a potential purchase of the Mallay Plant and would thus not need an alternative lender. Due to PLI's continued involvement as Claimant's lender, Accuracy assumed that the Invicta Project faced no refinancing risk. However, this assumption is unjustified as, absent the Measures, Claimant still was likely to default on its obligations under the PLI Loan Agreement (and we understand Claimant indeed did so due to defaults unrelated to conduct by Peru) and Claimant therefore would be required to make a settlement payment to maintain ownership of its shares in IMC. Neither Claimant nor Accuracy have presented any evidence about how the refinancing risk for payment of such settlement to PLI would have been mitigated or avoided in the event of default. Although Mr. Gordon Ellis stated that Claimant raised financing five months before the Valuation Date, his testimony indicated that Claimant's attempt to raise US$1.0 million was undersubscribed and yielded only US$0.7 million, less than 5% of the US$15.9 million that Claimant would need to settle its default on the PLI Loan Agreement.

B. Accuracy's Damages Under the 590t/day Scenario are Overstated

14. As discussed previously, Accuracy did not adequately address the fundamental flaws. Notwithstanding the fundamental flaws, we assess Accuracy's revised 590t/day scenario including the new and remaining defects in it. To recall, Accuracy's 590t/day scenario assumed that Claimant would have acquired the Mallay Plant, and that Claimant's ownership of this plant would have enabled it to increase its ore production from 355t/day to 590t/day.

15. In its second report, Accuracy assumed that the Project would have started commercial production in November 2018 and that Claimant would have obtained additional funding from PLI when it closed the Mallay Plant transaction in March 2019. However, Accuracy's damages conclusions remain flawed because they:

    a) Assumed that the failures at the various third-party processing facilities, that made them unsuitable to process ore from the Invicta Project, would be resolved immediately before the commencement of production without additional cost or time to account for production prior to the acquisition of the Mallay Plant. Although Accuracy, Micon, and Claimant provided insufficient information on how they would resolve the third-party processing problems to enable an estimate of such costs, we note that those additional costs incurred would have the effect of reducing the damages under the 590t/day scenario. Additionally, any delay in obtaining ore processing capacity could lead to a default under the PLI Loan Agreement;

    b) Adopted Micon's unrealistic project start date (starting in November 2018 rather than August 2019) that does not consider the time and process required to acquire necessary permits and approvals to begin exploitation of the Project. We understand from Counsel that Respondent's expert in Peruvian mining law, Ms. Miyanou Dufour von Gordon has opined that Claimant could not have begun commercial exploitation of the Invicta Project's resources prior to July 2020;

    c) Adopted Micon's unsupported and unauthorized production schedule which extended the life of the Project from seven to ten years;

    d) Did not provide documentary evidence or analysis that would support Micon's rationalizations about why the grade of actual gold produced by the Invicta Project was lower than the budgeted grade (and subsequently in Micon's revised production schedule);

e) Did not consider various additional costs that would be necessary to proceed with production including incremental costs related to obtaining and maintaining the Project's SLO from the Parán Community; and,

f) Understated the discount rate as it did not consider the fundamental flaws above and used a pre-production risk premium that Accuracy revised downward based on only Micon's assurances and one source document that does not support the discount rate that Accuracy selected.

16. Accounting for the above, we have reduced Claimant's maximum damages from US$41.0 million to US$20.5 million, before pre-award interest. We also provided a sensitivity analysis should the Tribunal find it appropriate to increase the discount rate to address the additional risks or costs we have identified.

C. Accuracy's Damages Under the 355t/day Scenario are Overstated

17. As discussed previously, Accuracy did not adequately address the fundamental flaws. Notwithstanding the fundamental flaws, we assess Accuracy's revised 355t/day scenario including the new and remaining defects in it. To recall, the 355t/day scenario was based on Claimant's production plans that did not assume that Claimant would acquire the Mallay Plant.

18. Under the 355t/day scenario, Accuracy adopted Micon's updated production schedule and assumed the failures by the various third-party processors would be resolved immediately before the commencement of production. However, Accuracy and Micon did not explain how these issues would have been resolved or quantify the time and cost to do so. A delay in obtaining ore processing capacity could lead to a default under the PLI Loan Agreement.

19. In addition, Accuracy's 355/day scenario continued to overstate damages because they:

a) Adopted Micon's unrealistic project start date (starting in November 2018 rather than August 2019) that does not consider the time and process required to acquire necessary permits and approvals to begin commercial exploitation of the Project. We understand from Counsel that Ms. Dufour has concluded that Claimant could not have begun exploitation of the Invicta Project's resources prior to July 2020;

b) Did not provide documentary evidence or analysis that would support Micon's rationalizations about why the grade of actual gold produced by the Invicta

Project was lower than the budgeted grade (and subsequently in Micon's revised production schedule);

c) Did not consider various additional costs that would be necessary to proceed with commercial production including incremental costs related to obtaining and maintaining the Project's SLO from the Parán Community and other affected local communities; and,

d) Understated the discount rate since it did not consider the fundamental flaws discussed above.

20. Accounting for the above, we have reduced Claimant's maximum damages from US$32.1 million to US$22.5 million, before pre-award interest. We also provided a sensitivity analysis should the Tribunal find it appropriate to increase the discount rate to address the additional risks or costs we have identified.

D. Using Alternative Pre-Award Interest Rates Reduces Damages

21. In the Accuracy Second Report, Accuracy revised their selected pre-award interest rate from LIBOR+2% to LIBOR+4% or UST+5%. The total pre-award interest calculated under both damages scenarios increased compared to that in the Accuracy First Report, reflecting Accuracy's higher interest rates and a longer accrual period.

22. We recognize there is no consensus regarding the exact appropriate interest rate to calculate pre-award interest. Historically, the most commonly used variable interest rates were based on LIBOR and UST, with a premium of 2%. As LIBOR is being retired, we provide our calculation of the pre-award interest using SOFR+2% and UST+2%.

23. The pre-award interest would be zero if the damages are reduced to *nil* due to the fundamental flaws. Our conclusion on damages can be summarized as follows:

Figure 1 – Damages Summary Table

Item (US$ millions)	590t/day Scenario	355t/day Scenario
If fundamental flaws are considered		
Damages	*Nil*	*Nil*
If fundamental flaws are not considered		
Damages as of Valuation Date	20.5	22.5
Pre-Award Interest (SOFR+2%)	1.6	1.8
Pre-Award Interest (UST+2%)	1.8	1.9
Total Damages (SOFR+2%)	22.1	24.3
Total Damages (UST+2%)	22.3	24.4

E. There is no Inconsistency between Our Conclusions and the Independent Appraiser's Findings

24. In our First Report, we referred to an independent appraisal performed by PwC that assessed the value of the shares of IMC at US$13.0 million at the time of foreclosure. This amount was the basis of an alternative FMV of the IMC shares in the Actual Scenario (as opposed to Accuracy's assumption that the shares would be valued at *nil*).

25. Accuracy disagreed with this perspective and maintained that the shares should be valued at *nil* because Claimant's "economic position" would still be *nil* net of the settlement payment that it would have made to PLI. However, as noted in this report, Claimant's obligations under the PLI Loan Agreement, or other financing arrangements, do not directly impact the FMV of IMC. A result where Claimant, net of its own debts, would be left with no damages does not contradict the fact that the shares of IMC still had some value (i.e., US$13.0 million) that could be realized by a notional buyer.

26. They also alleged that the appraiser's findings conflict with our view with respect to the fundamental flaws, as we believed that the fundamental flaws could reduce the FMV to *nil*. We disagree that there is an inconsistency here. Our conclusion is that if the fundamental flaws remained unaddressed or unresolved, the value of the Project would be *nil*. The independent appraiser may have reached a different conclusion because a notional investor could potentially have addressed those issues more effectively than Claimant did and resolved those issues.

27. Finally, Accuracy contended that regardless, Claimant allegedly had no access to the Invicta Project and therefore the FMV under the Actual Scenario with respect to damages should be *nil*. However, even if Claimant could not access the Invicta Project before the foreclosure of the PLI Loan Agreement, the Project would still have value to market participants.

28. In conclusion, without the benefit of reviewing the actual independent appraiser's report, it is not possible to reasonably compare our valuation conclusions with those reached by PwC. However, we do not believe there is an inconsistency between our conclusions and those reached by the independent appraiser.

F. Accuracy's Other Indicators of Value are not Relevant

29. Accuracy responded to comments from our First Report and revised their other indicators of value. However, these indicators of value do not demonstrate that

Accuracy's damages conclusions under the 590t/day and 355t/day scenarios are reasonable:

a) Claimant's market capitalization is an inappropriate benchmark as Accuracy included unjustified adjustments that inflated the value. Correcting Accuracy's calculation reduces Claimant's market capitalization as of the Valuation Date below the range of Accuracy's conclusions and demonstrate that Accuracy's damages are overstated.

b) Claimant's sunk costs is an inappropriate benchmark as sunk costs are not a recommended methodology for valuing a Development Project under CIMVAL. This approach also does not consider the fundamental issues discussed above and does not represent the amount that a willing buyer would pay as of the Valuation Date. Finally, Accuracy's interest rate on the sunk costs inflated their FMV conclusion to an unreasonable degree. Applying an alternative rate based on the pre-award interest rates discussed in this report demonstrate that Accuracy's damages are overstated.

c) The transaction multiples selected by Accuracy are inappropriate benchmarks because they included transactions with multiple producing projects and projects that were located outside Latin America. Selecting a more comparable subset results in lower multiples than the multiples implied by Accuracy's damages conclusions. However, simply adjusting the scope of these transaction multiples does not result in a more reasonable proxy since this analysis does not consider the fundamental flaws discussed above.

d) The NPVs in the SRK and Red Cloud Models are both inappropriate benchmarks as both models do not account for the fundamental flaws discussed above.

III. Summary of Accuracy's Updated Damages Calculation

30. In the Accuracy Second Report, Accuracy continued to apply the discounted cash flow ("**DCF**") methodology to calculate the FMV of the Invicta Project ("**Primary Approach**"). Using the Primary Approach, Accuracy calculated the alleged damages as the difference in i) the alleged FMV of Claimant's Investment absent the impact of the Measures ("**But-For Scenario**") and ii) *nil*, the alleged FMV of Claimant's Investment impacted by the Measures ("**Actual Scenario**"). Using their Primary Approach, Accuracy calculated the value of Claimant's Investment in the But-For Scenario for two different production scenarios: the 590t/day scenario and the

355t/day scenario, both of which are offset by the amounts Lupaka paid to PLI to maintain its ownership of IMC.[6]

31. However, in the Accuracy Second Report, Accuracy changed their damages calculations and underlying assumptions from the Accuracy First Report in four respects as discussed below.

32. First, Accuracy changed the way that they modelled the offsetting cash outflows that were required for Claimant to meet its obligations under the PLI Loan Agreement. In the Accuracy First Report, Accuracy assumed that Claimant in the But-for Scenario, to prevent foreclosure under the PLI Loan Agreement, would make a settlement payment to PLI of US$15.9 million as of 26 August 2019 ("**Valuation Date**").[7]

33. In the Accuracy Second Report, however, Accuracy adopted Micon's revised production schedule with an earlier start date of operations. In doing so, Accuracy assumed that Claimant would have been able to meet its gold delivery obligations under the PLI Loan Agreement and thus avoid making a settlement payment of US$15.9 million to PLI on the Valuation Date. In addition, Accuracy modeled the financing cash flows required to operate the mine under both production scenarios and to acquire the Mallay processing plant ("**Mallay Plant**") in the 590t/day scenario. This change reduced damages by US$12.1 million[8] and US$12.0 million[9] for the 590t/day and 355t/day scenarios respectively, on a standalone basis before the pre-award interest.

34. **Figure 2** compares Accuracy's quantification of damages for both production scenarios between the two reports.[10]

[6] Accuracy Second Report, ¶ 5.19.

[7] Accuracy First Report, ¶¶ 7.7 – 7.8.

[8] Accuracy Second Report, Appendix 3, "Dashboard (ACC)", Cell E59. (1) In "Dashboard (ACC)", set the scenario to "First Accuracy Report" (2) Under "Live inputs", set "Financing cash flows and discount rate" to "Second Accuracy Report" (3) In "Summary", Cell D4, keep the discount of 14.7% under the "First Accuracy Report" scenario.

[9] Accuracy Second Report, Appendix 4, "Dashboard (ACC)", Cell E59. (1) In "Dashboard (ACC)", set the scenario to "First Accuracy Report" (2) Under "Live inputs", set "Financing cash flows and discount rate" to "Second Accuracy Report" (3) In "Summary", Cell D4, keep the discount of 11.1% under the "First Accuracy Report" scenario.

[10] Accuracy Second Report, Table 6.6 and Table 6.11.

Figure 2 – Summary of Accuracy's Damage Assessments

Item (US$ millions)	590t/day Scenario		355t/day Scenario	
Approach	**Accuracy First Report**	**Accuracy Second Report**	**Accuracy First Report**	**Accuracy Second Report**
Discounted Operating Cash Flows[11]	63.6	58.1	44.2	45.8
Less: Lump Sum Settlement with PLI	-15.9	-	-15.9	-
Less: NPV of the Financing Cash Flows (including Mallay Plant acquisition in 590t/day scenario)	-	-17.2	-	-13.7
Damages as of Valuation Date	**47.7**	**41.0**	**28.3**	**32.1**

35. Second, Accuracy revised the production and cost assumptions of both production scenarios. Notable changes include:[12]

a) For the 590t/day scenario, Accuracy incorporated Micon's extended production schedule of ten years from the previous seven years;

b) For both the 590t/day and 355t/day scenarios, Accuracy incorporated Micon's updated capital expenditure estimates; and,

c) For both scenarios, Accuracy adjusted, in some cases based on Micon's estimates, the Project's operating costs (such as employee profit sharing, G&A costs, direct unit cost of treating ore, etc.).

36. These changes reduced damages under the 590t/day scenario by US$5.2 million[13] and increased damages under the 355t/day scenario by US$2.5 million[14], on a standalone basis before the pre-award interest.

37. Third, Accuracy decreased the discount rate in the 590t/day scenario. Specifically, they reduced the "pre-production premium"[15] factored in the discount rate in the 590t/day scenario from 6.9% in the Accuracy First Report to 3.3% in the Accuracy Second Report, to reflect the alleged "comparable level of confidence in both scenarios following Micon's updates".[16] This change increased damages under the

[11] The difference in the FMV before financing is due to Accuracy's adjustments in the Accuracy Second Report.

[12] Accuracy Second Report, ¶¶ 6.7, 6.19, 6.28, 6.51, 6.55.

[13] Accuracy Second Report, Appendix 3, "Dashboard (ACC)", Cell E59. (1) In "Dashboard (ACC)", set the scenario to "First Accuracy Report" (2) Under "Live inputs", set "Updates for the Micon Report" and "Accuracy's modelling updates" to "Second Accuracy Report".

[14] Accuracy Second Report, Appendix 4, "Dashboard (ACC)", Cell E57. (1) In "Dashboard (ACC)", set the scenario to "First Accuracy Report" (2) Under "Live inputs", set "Updates for the Micon Report" and "Accuracy's modelling updates" to "Second Accuracy Report".

[15] Risk premium added by Accuracy to account for the uncertainty with the cash flows of a pre-production project based on PEA mine plan.

[16] Accuracy Second Report, ¶ 2.11.

590t/day scenario by US$9.0 million, on a standalone basis before the pre-award interest.[17]

38. Fourth, Accuracy increased the proposed pre-award interest rate from LIBOR+2% in the Accuracy First Report to LIBOR+4% or One-Year U.S. Treasury Bill ("**UST**")+5% in the Accuracy Second Report.[18] For each proposed rate, Accuracy continued to use annual compounding.

39. Accuracy's revised damages estimate as of the Valuation Date for the 590t/day scenario decreased by US$6.7 million, equivalent to -14.1% as summarized in **Figure 3**.[19] Despite reducing the amount of damages that would be accruing pre-award interest, the claim for pre-award interest more than doubled due to the higher interest rate[20] and the later valuation date of 31 August 2022.

Figure 3 – Accuracy's Damages for 590t/day Scenario

Item (US$ millions)	Accuracy First Report	Accuracy Second Report
Damages as of Valuation Date	**47.7**	**41.0**
Pre-Award Interest (LIBOR+2%)	2.8	NA
Pre-Award Interest (LIBOR+4%)	NA	6.7
Pre-Award Interest (UST+5%)	NA	7.5
Total Damages	**50.5**	**47.6 / 48.5**

40. As shown in **Figure 4**, Accuracy's revised damages estimate as of the Valuation Date for the 355t/day scenario increased by US$3.8 million, equivalent to 13.6% compared to their previous conclusion.[21] The claim for pre-award interest more than tripled due to the higher interest rate[22] and the later valuation date of 31 August 2022.

[17] Accuracy Second Report, Appendix 3, "Dashboard (ACC)", Cell E59. (1) In "Dashboard (ACC)", set the scenario to "First Accuracy Report" (2) In "Summary", update the discount rate to the value in "inputs", Cell C261 (11.1%).

[18] Accuracy Second Report, ¶ 2.12.

[19] Accuracy Second Report, Table 6.6, Table 6.13.

[20] Using higher pre-award interest rates, Accuracy increased the pre-award interest for damages under the 590t/day scenario by US$2.7 million (LIBOR+4% vs LIBOR+2%) and US$3.5 million (UST+5% vs LIBOR+2%). Accuracy Second Report, Appendix 3, "Pre-award interest (ACC)", update Cell C12 to 2%.

[21] Accuracy Second Report, Table 6.11, Table 6.13.

[22] Using higher pre-award interest rates, Accuracy increased the pre-award interest for damages under the 590t/day scenario by US$2.1 million (LIBOR+4% vs LIBOR+2%) and US$2.8 million (UST+5% vs LIBOR+2%). Accuracy Second Report, Appendix 4, "Pre-award interest (ACC)", update Cell C12 to 2%.

Figure 4 – Accuracy's Damages for 355t/day Scenario

US$ millions	Accuracy First Report	Accuracy Second Report
Damages as of Valuation Date	**28.3**	**32.1**
Pre-Award Interest (LIBOR+2%)	1.7	NA
Pre-Award Interest (LIBOR+4%)	NA	5.2
Pre-Award Interest (UST+5%)	NA	5.9
Total Damages	**29.9**	**37.3 / 38.0**

41. In addition to updating their Primary Approach, Accuracy also revised the analysis of their proposed alternative indicators of value by incorporating some of our comments from our First Report.

42. Accuracy's updated analysis is still an "all or nothing" approach. Accuracy did not separate and analyze the impact of each individual Measure that Claimant alleges was an FTA breach, nor did Accuracy determine a loss corresponding to each Measure. Should the Tribunal decide that some Measures were not FTA breaches, while others were, Accuracy's approach does not provide a basis to estimate damages. We also note that Claimant's Reply has continued to rely upon the 590t/day scenario as the only basis for Claimant's damages claim.[23]

IV. Fundamental Flaws with Accuracy's Quantification of Damages

43. In our First Report, we raised four fundamental flaws in Accuracy's quantification of damages.[24] In the following subsections we review and comment on the responses to these fundamental flaws Accuracy provided.

A. Removing the Authorities' Measures Would Not Resolve the Access Road Protest

44. In our First Report, we noted:[25]

> *"Intervention by the police appears to have been unlikely to permanently resolve the conflict with the Parán Community or the Access Road Protest, which therefore would have remained an obstacle to Claimant's ability to perform its obligations under the PLI Loan Agreement;"*

45. Accuracy did not provide any specific response to this issue in the Accuracy Second Report. We do however note that they have dismissed any potential issues related

[23] Claimant's Reply, ¶ 1062.
[24] First Report, ¶ 135.
[25] First Report, ¶ 16.

to Claimant's Social License to Operate ("**SLO**") as being "not relevant for our assessment of damages under Claimant's case."[26]

46. Accuracy's damages quantifications under both production scenarios are based on the fundamental assumption that the conflict with the Parán Community would have been immediately and permanently resolved at no additional cost or delay as of the Valuation Date. Since intervention by the police appears to have been unlikely to permanently resolve the conflict with the Parán Community or the protest set up by the Parán Community on 14 October 2018 ("**Access Road Protest**"), [27] Accuracy's damages model omitted likely costs and delays from those issues and did not produce a reliable estimate of the damages caused by Respondent's alleged breaches.

47. We discuss additional aspects of Accuracy's general position regarding the relevance of the SLO in the next section.

B. Accuracy Continued to Ignore the Social License Risk

48. In our First Report, we further noted that: [28]

> *"Accuracy failed to consider and incorporate any social license risk in its valuation analysis to account for the continued conflict between IMC and the Parán Community as of the Valuation Date;"*

49. As discussed above, in the Accuracy Second Report, Accuracy did not directly respond to the social license issues we raised in our First Report. Instead, Accuracy dismissed these issues as "not relevant for our assessment of damages under Claimant's case."[29] Contrary to Accuracy's opinion, and consistent with our position in our First Report, the social license risk the Invicta Project faced does impact Accuracy's analysis and Claimant's damages claim.

50. As we commented in our First Report, Accuracy did not provide any logic, basis or evidence to support the assumption that "Claimant's efforts towards starting production would resume immediately on the Valuation Date under both scenarios and that ore production would begin approximately 10 months after the start of the protest".[30] In the Accuracy Second Report, they made an even more aggressive assumption that ore production would begin in November 2018, instead of August

[26] Accuracy Second Report, ¶ 3.5.
[27] First Report, ¶¶ 105-111.
[28] First Report, ¶ 16.
[29] Accuracy Second Report, ¶ 3.5.
[30] First Report, ¶ 117.

2019 as assumed in the Accuracy First Report. No evidence was provided to support the assumption that Claimant would obtain and maintain SLOs with all of the affected local communities from November 2018 to the conclusion of Claimant's planned operation of the Invicta Project.

51. Also, as we pointed out in our First Report, and this issue remained in the Accuracy Second Report, Accuracy did not provide any information as to why the approval of the Mallay Plant transaction was delayed or if the delay was due to specific social license issues that could impact future dealings between Claimant and the Mallay Community.[31]

52. Maintaining positive relationships with local communities plays an important role for mining projects. Claimant's failure to obtain and maintain the SLO for the Invicta Project would impact Claimant's ability to extract, transport, process, and deliver gold, meet its obligations under the PLI Loan Agreement, and may have further negatively impacted its operations. Not obtaining an SLO is recognized as a cause of total project failure[32] and could reduce damages to *nil*. Even if this was not the case, the risk associated with Claimant's missing SLO needed to be accounted for, either in the form of costs to obtain and maintain the SLO or a specific premium in the discount rate. Not doing so is a fundamental flaw in Accuracy's damages.

C. Claimant Would Have Defaulted on its Existing and Anticipated Debt Financing Obligations Absent the Measures

53. To fund the development of the Project, on 30 June 2016, Lupaka and PLI, a subsidiary of Pandion Mine Finance L.P. ("**Pandion**"), executed a definitive Pre-Paid Forward Gold Purchase Agreement.[33] On 2 August 2017, Lupaka and PLI entered into the Second Amended and Restated Pre-Paid Forward Gold Purchase Agreement ("**PLI Loan Agreement**").[34] Under this agreement, Lupaka received from PLI US$7.0 million, divided in three tranches.[35]

54. To repay the loaned principal, Lupaka agreed to sell to PLI a set amount of gold each month ("**Contract Quantity**") after the grace period for each tranche for which PLI

[31] First Report, ¶ 118.

[32] First Report, ¶ 120.

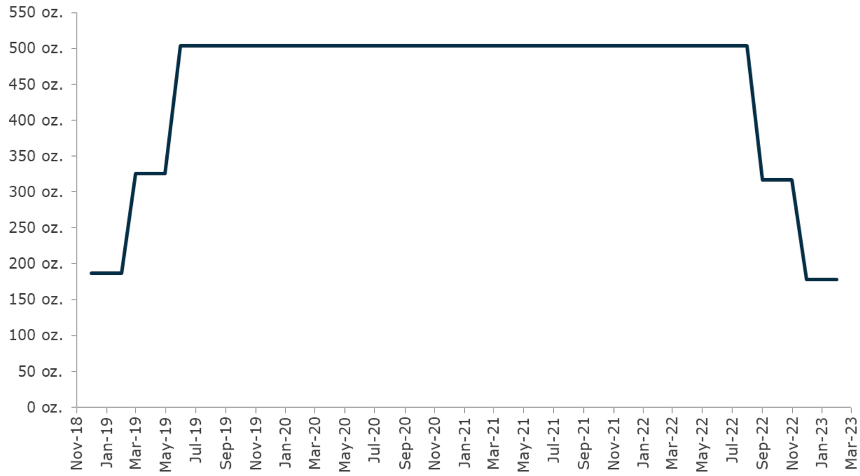
[33] Witness Statement of Gordon Ellis dated 1 October 2021, ¶ 32. Pre-Paid Forward Gold Purchase Agreement dated 30 June 2016. [C-0044]

[34] Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017. [AC-0004]

[35] Lupaka presentation Invicta Mining Suite for Difference dated September 2019, p. 4. [AC-0005]

would pay a discounted price: the market price less US$500/oz ("**Sale**" or "**Sell**").[36] The total Contract Quantity Lupaka had to Sell was 22,680 oz, over the full term of the PLI Loan Agreement, as displayed in **Figure 5** below.[37]

Figure 5 – Monthly Gold Delivery Obligation Under the PLI Loan Agreement



55. Lupaka would be deemed in default of the agreement if it failed to Sell the Contract Quantity of gold according to the agreed schedule or failed to remedy the deficiency within a 15-day grace period.[38] Should Lupaka then be deemed to be in default, PLI was able to demand payment of the "**Early Termination Amount**"[39] or enforce against the "**Collateral**" (i.e., Lupaka's shares in IMC).[40] The first Sale of the Contract Quantity of gold was scheduled for December 2018, which Claimant never fulfilled. We understand that Claimant claims that this was due to the Measures.

56. In the following subsections we explain that under both production scenarios Claimant was likely to default on its debt obligations regardless of the Measures.

[36] Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017, pp. 3-4. [AC-0004]. **"Contract Quantity"** means a total of 22,680 Ounces of Gold to be sold at a discount as follows: (a) 0 Ounces of Gold for each of the 15 calendar months following the calendar month in which the Gold Prepayment Amount is paid on the First Effective Date [August 2017] and 187 Ounces of Gold for each of the 45 calendar months thereafter; (b) 0 Ounces of Gold for each of the 15 calendar months following the calendar month in which the Gold Prepayment Amount is paid on the Second Effective Date [November 2017] and 139 Ounces of Gold for each of the 45 calendar months thereafter (which, for the avoidance of doubt, shall be in addition to the 187 Ounces of Gold listed in subclause (a) hereof); (c) 0 Ounces of Gold for each of the 15 calendar months following the calendar month in which the Gold Prepayment Amount is paid on the Third Effective Date [February 2018] and 178 Ounces of Gold for each of the 45 calendar months thereafter (which, for the avoidance of doubt, shall be in addition to the 187 and 139 Ounces of Gold listed in subclauses (a) and (b), respectively, hereof); and (d) any Ounces of Gold to be delivered pursuant to Section 7(3) under this Agreement."

[37] Accuracy First Report, ¶ 3.21.

[38] Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017, p. 52, section 13(1)(a). [AC-0004]

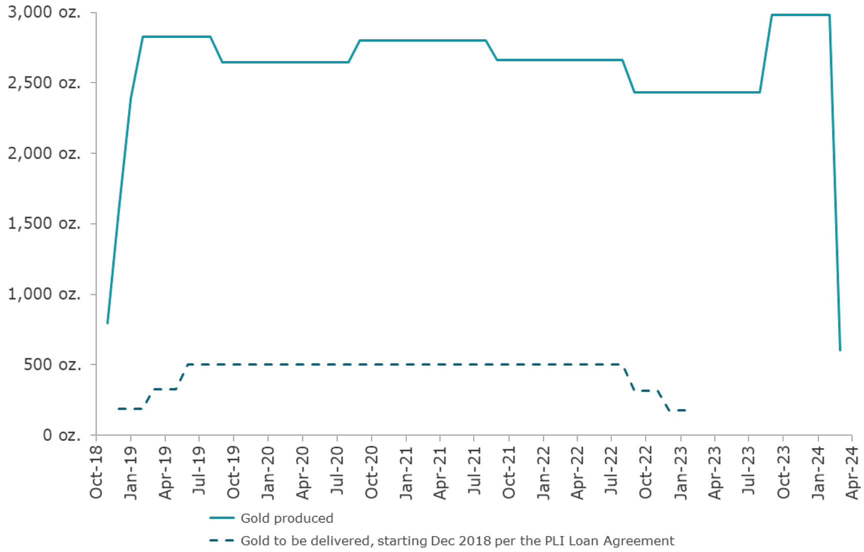
[39] Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017, p. 23, section 5(8). [AC-0004]

[40] Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017, p. 56, section 14(4). [AC-0004]

i. Claimant's Default of Its Debt Obligations Under the 355t/day Production Scenario

57. Accuracy, based on the Micon Report, moved up the Project's production start date from August 2019 to November 2018 for the 355t/day production scenario. As a result, and as shown in **Figure 6** below, according to Accuracy's assumptions Invicta would have been able to produce enough gold to comply with the Contract Quantity requirement under the PLI Loan Agreement.[41]

Figure 6 – 355t/day Scenario Production and Gold Delivery



58. We disagree with Accuracy's proposition that Claimant would have avoided default under the revised 355t/day production scenario because the analysis is based on the flawed assumptions that the Invicta Project could have started production in November 2018 and that the Project could have relied on third-party plants to process the quantities of ore projected under the 355t/day scenario. Specifically, the Micon Report stated:[42]

> *"[I]t is Micon's opinion that the gold grade shortfalls in development ore reported by Lupaka were the result of various factors that could have been overcome by early 2019 and, taking into account the previously recorded actual performance by Lupaka, Micon considers that, but for the Blockade that prevented access to and operation of the Invicta mine, Lupaka would otherwise have been able to produce the ore tonnages and grade required to service the PLI facility, to deliver and arrange treatment of this material*

[41] **Appendix 3**, "Monthly Production".

[42] Micon Report, ¶ 125.

> *at the <u>Huancapeti and other third-party toll-treatment plants (e.g., Coriland, Huari</u>), and to ship the resulting concentrates to market in time to meet its obligations as set out above." (emphasis added)*

59. With regards to the third-party ore processing, Micon provided no basis for their assumption that third-party ore processing would be available to Claimant as an alternative to the Mallay Plant. Micon ignored the various failures that Claimant's witness, Mr. Castañeda Mondragón, noted in his witness statement. In fact, neither Micon nor Accuracy was clear about which specific facility they assume Claimant would use for ore processing. As we noted in our First Report, Mr. Castañeda Mondragón identified several mechanical failures with the third-party plants:[43]

> *"For instance, Coriland, which was the closest to the Site (besides Mallay), lacked a cyanidation treatment option in its tailing facility, which meant potentially losing recoverable gold; San Juan Evangelista also lacked a cyanidation treatment option and had piles of mineral accumulated due to processing commitments which other mining companies; and Huancapeti II needed to postpone works due to unexpected mechanical failures."*

60. With regards to the November 2018 start date, we understand from Counsel that Ms. Dufour has concluded that Micon's revised production schedule is not feasible due to missing approvals both for the Invicta Project and for the ore the processing plants, and that these missing approvals would have prevented Claimant from exploiting the Invicta Project before July 2020. We understand that these approvals include:

    a) Approval of modifications to the environmental impact assessment ("**EIA**");

    b) Licenses to use water from sources not contemplated in the 2009 EIA;

    c) The Ministry of Energy and Mines of Peru ("**MINEM**") authorization to begin commercial exploitation; and,

    d) Authorization to purchase and store fuel.

61. Micon did not provide any explanation as to how these technical issues and missing authorizations could be resolved, much less within the three months before the Contract Quantity of gold requirement under the PLI Loan Agreement became due.[44]

[43] Witness Statement of Julio Félix Castañeda Mondragón dated 1 October 2021, ¶ 88.
[44] Micon Report, ¶ 125.

62. In addition, we understand from Counsel that Claimant had committed 14 defaults under the PLI Loan Agreement, several which were unrelated to any acts or omissions by Peru (or by the Parán Community), and each one entitled PLI to foreclose on Claimant's investment.

63. Therefore, the absence of an accounting for Claimant's defaults on the PLI Loan Agreement due to issues unrelated to conduct by Peru remains a fundamental flaw with Accuracy's analysis that would have resulted in Claimant's damages being reduced to *nil*.

ii. Claimant's Default of Its Debt Obligations Under the 590t/day Production Scenario

64. As we noted in Section III of our First Report, following Claimant's failure to achieve its production and processing targets, Claimant approached Compañía de Minas Buenaventura S.A.A. ("**Buenaventura**") to acquire the Mallay Plant in 2018.[45] A draft agreement dated 21 September 2018 contemplated that Claimant potentially could purchase the Mallay Plant at a price of US$10.4 million.[46] According to Claimant, a final agreement was planned to be signed on 15 October 2018.[47] The chart below compares the Contract Quantity of Gold under the Draft Third Amendment to the PLI Loan Agreement with the revised forecast of production under the 590t/day scenario from the Accuracy Second Report:[48]

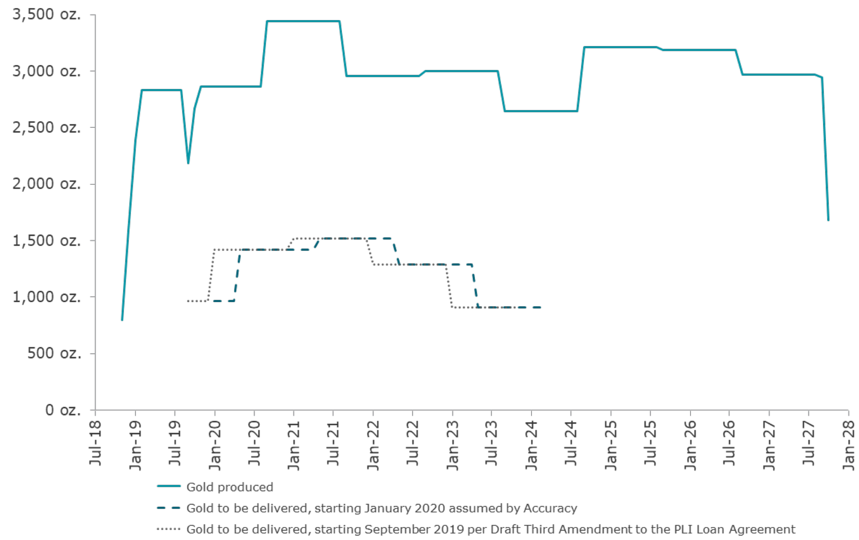
[45] First Report, ¶ 79.

[46] Witness Statement of Gordon Ellis dated 1 October 2021, ¶ 40. Draft Mallay Purchase Agreement between Buenaventura and IMC, 21 September 2018. [C-0048]

[47] Witness Statement of Gordon Ellis dated 1 October 2021, ¶ 52. Lupaka Board Meeting Minutes, 27 September 2018. [C-0051]

[48] **Appendix 2**, "Monthly Production".

Figure 7 – 590t/day Scenario Production and Gold Delivery



65. Accuracy's updated 590t /day scenario is based on the following three assumptions:

a) First, the Invicta Project would have started production in November 2018;

b) Second, Claimant and PLI would have executed the Draft Third Amendment to the PLI Loan Agreement, deferring Claimant's Contract Quantity of gold obligations to January 2020 based on the maximum allowed grace period under the contract; and,

c) Third, the Invicta Project could have relied on third-party processors for the period from November 2018 until at least March 2019 when the Mallay Plant was contemplated to come online.

66. In our First Report, we showed that under the 590t/day scenario Lupaka would have also likely defaulted on the PLI Loan Agreement for three reasons:[49]

a) The potential acquisition of the Mallay Plant was contingent on approval by the Mallay Community, which approved the transaction only in March 2019, after the latest closing date deadline of 15 February 2019;

b) Claimant had no alternative source of financing or other remedies for a failure to close the transaction by the deadline; and,

[49] First Report, ¶ 128.

c) The third-party plants were not capable of processing ore from the Invicta Project, putting Lupaka at risk of default its obligation to Sell the Contract Quantity of gold under the existing terms of the PLI Loan Agreement.

67. In their second report, Accuracy stated that our opinion "appears at odds with the [following] evidence submitted":[50]

a) Pandion historically demonstrated flexibility regarding the financing it provided to Claimant;[51] and,

b) Accuracy, referencing Claimant's witness Mr. Gordon Lloyd Ellis, continued that, in "the absence of the Blockade, Claimant and Buenaventura would likely have signed the Mallay Purchase Agreement shortly after the Mallay Community provided its approval of the transfer agreement in March 2019" (*emphasis added*).[52]

68. Accuracy's statements above were not a sound basis for calculating damages with respect to the 590t/day scenario for the following reasons.

69. First, Accuracy unreasonably assumed that Pandion and PLI would concede payment extensions to Claimant and lend it US$13.0 million in additional funds, despite Claimant's continued refusal to obtain and maintain its SLO. In reality, rather than wait indefinitely for Claimant to operate the Project, Pandion sold PLI, cut its losses, and ceased its involvement with the Project. Regardless, Accuracy's calculations assume that, absent the Measures, Pandion would have relinquished its contract enforcement rights indefinitely, further deferred Claimant's obligations, and lent more money to Claimant, which seems irrational and inconsistent with Pandion's and PLI's actual decisions and conduct.

70. Second, as discussed in **Paragraph 60**, with regards to the November 2018 start date, we understand from Counsel that Ms. Dufour's expert opinion is that Micon's revised production schedule is not feasible due to missing approvals both for the Invicta Project and for ore processing plants, and that these missing approvals would have prevented Claimant from exploiting the Invicta Project until July 2020.

71. Third, we understand from Counsel that Claimant had committed 14 defaults under the PLI Loan Agreement, several which were unrelated to any acts or omissions by

[50] Accuracy Second Report, ¶ 3.11.
[51] Accuracy Second Report, ¶¶ 3.12 – 3.18.
[52] Accuracy Second Report, ¶ 3.10.

Peru or by the Parán Community, and all which entitled PLI to foreclose on Claimant's investment.

72. Fourth, although Mr. Gordon Ellis stated that Claimant raised financing five months before the Valuation Date, his testimony indicated that Claimant’s attempt to raise US$1.0 million was undersubscribed and yielded only US$0.7 million,[53] less than 5% of the US$15.9 million that Claimant would need to settle its default on the PLI Loan Agreement.

73. In conclusion, because multiple obstacles prevented Claimant from commercially exploiting the Invicta Project, it would not have been rational for Pandion or PLI to provide further extensions and an additional US$13.0 million loan to Claimant, and Accuracy should not have assumed otherwise. Therefore, this remains a fundamental flaw with Accuracy’s analysis that would have resulted in Claimant’s damages being reduced to *nil*.

D. Accuracy does not Account for Difficulties in Refinancing

74. In our First Report, we noted that:[54]

> *“Accuracy’s But-For Scenarios ignored the actual financing issues that the Project faced. In the But-For Scenarios, Accuracy assumed that on 26 August 2019, the Valuation Date, Claimant paid the early termination fee to settle the PLI Loan Agreement. Without discussing or incorporating any terms of an alternative financing arrangement that would be required to pay for the settlement as well as the Invicta Project’s ongoing operations, Accuracy assumed away Claimant’s potential refinancing risks asserting that: ‘the project would be financed by a hypothetical investor using a mixture of equity and debt.’”*

75. In the Accuracy Second Report, however, by adopting Micon’s earlier start date of operations, Accuracy assumes that Claimant would have been able to meet its gold delivery obligations under the PLI Loan Agreement and thus avoid making a settlement payment of US$15.9 million to PLI.

76. As we have discussed above, however, absent the Measures, Claimant would have defaulted on the PLI Loan Agreement under both production scenarios due to the unresolved technical issues with the third-party processing plants, missing authorizations preventing operations from starting before July 2020, and the low

[53] Second Witness Statement of Gordon Ellis dated 23 September 2022, Annex.

[54] First Report, ¶ 131.

likelihood that the Draft Third Amendment to the PLI Loan Agreement would be closed. In addition, we understand from Counsel that Claimant had committed 14 defaults under the PLI Loan Agreement, several which were unrelated to any acts or omissions by Peru or by the Parán Community. Therefore, absent the Measures, Claimant would have had to pay the early termination fee of US$15.9 million to settle the PLI Loan Agreement and prevent losing its shares in IMC. To continue the Invicta Project, Claimant would have needed to obtain new financing to fund a payment of US$15.9 million to PLI, and Claimant also would have needed additional financing if it were to consummate an acquisition of the Mallay Plant.

77. Neither Claimant nor Accuracy have submitted any evidence to show how Claimant would have been able to obtain additional financing to settle the PLI Loan Agreement and under what terms and conditions this financing would be available, including a timeline of the necessary steps to achieve this task, nor did they show how Claimant would have obtained further financing to potentially acquire the Mallay Plant.

78. Lastly, as noted above, although Mr. Gordon Ellis indicated that Claimant raised financing five months before the Valuation Date, his testimony indicated that Claimant's attempt to raise US$1.0 million was undersubscribed and yielded only US$0.665 million,[55] less than 5% of the US$15.9 million that Claimant would need to settle its default on the PLI Loan Agreement.

E. Conclusion on Fundamental Flaws

79. In conclusion, we do not believe that Accuracy's But-For Scenarios reasonably estimate damages resulting from the Measures because they do not account for the following fundamental flaws:

   a) Claimant would not have resolved the issues underlying the Access Road Protest;

   b) Claimant would have failed to obtain and maintain its SLO;

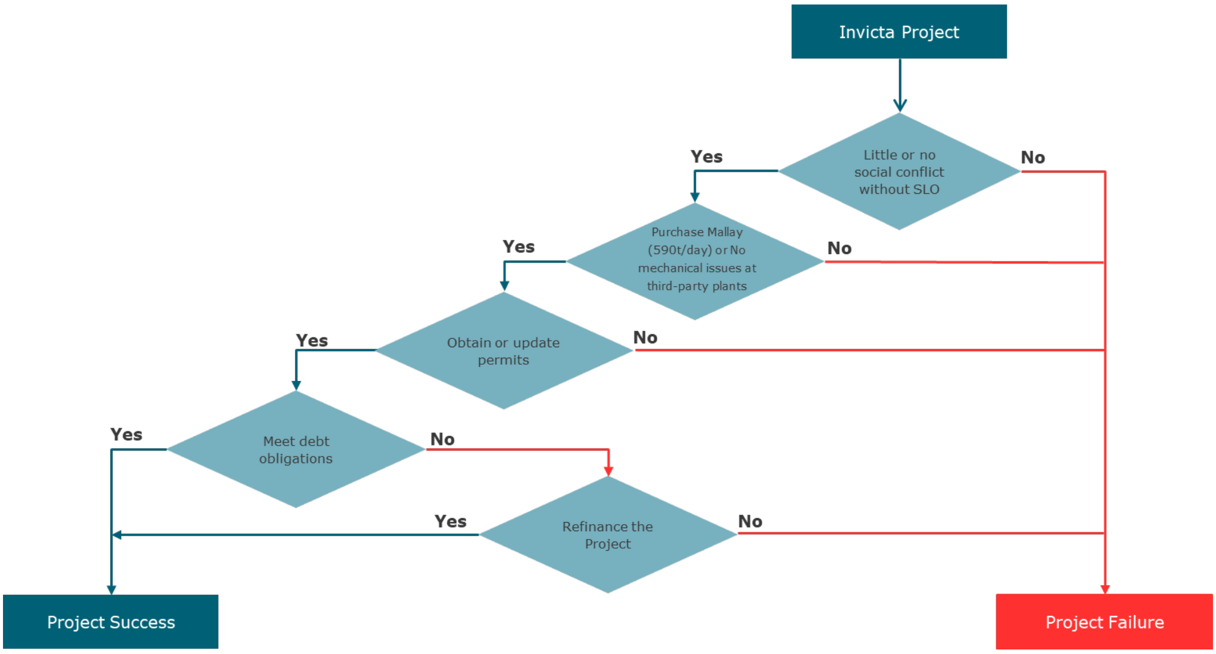
   c) Claimant was likely to default on its debt obligations regardless of any Measures; and,

   d) Claimant did not provide evidence that it could have secured alternative financing arrangements.

80. Based on these fundamental flaws, as shown in the figure below we conclude that Claimant's damages would be *nil.*

[55] Second Witness Statement of Gordon Ellis dated 23 September 2022, Annex.

Figure 8 – Accuracy's Decision Tree for the Invicta Project



V. Our Opinion of Accuracy's Updated 590t/day Scenario

81. In their second report, Accuracy revised certain assumptions and calculations under the 590t/day scenario. Notwithstanding the fundamental flaws discussed above in **Section IV**, we assess Accuracy's revised 590t/day scenario in the following section, including the new and remaining defects in it.

A. Opinions on Accuracy's Changes to the Damage Analysis under the 590t/day Scenario

82. In this subsection, we provide our comments on Accuracy's assumptions related to their damages calculation under the 590t/day scenario.

i. Additional Cost with Respect to the Third-Party Tolling Issues

83. As discussed in **Section IV**, Accuracy assumed that Claimant would have resolved the Project's third-party ore processing issues by early 2019.[56] As the Mallay Community did not approve the acquisition of the Mallay Plant until March 2019, Claimant would need to rely on third-party processors for the period from November 2018 until the Mallay Plant was online.

84. However, Accuracy and Micon did not explain how the various third-party ore processing failures would have been resolved during that period or quantify the

[56] **Paragraph 54**.

financial impact of doing so. Instead, Accuracy estimated damages assuming the third-party ore processing problems would be resolved immediately and at no cost, which seems unrealistic. As Accuracy did not provide an estimate of the additional cost that Claimant would have had to pay to resolve the issues, we are not able to quantify the impact. However, any incremental cost would reduce the damages under the 590t/day scenario.

ii. Project Start Date

85. Accuracy adopted Micon's opinion that commercial production would start as early as in November 2018 under their revised 590t/day scenario. This start date is ten months earlier than Accuracy's assumption in their first report of 26 August 2019.[57] By assuming an earlier project start date, Accuracy increased their damages estimate by approximately US$4.1 million on account of the cash flows occurring earlier and thus discounted less.[58]

86. However, as discussed in **Paragraph 6060**, Counsel has informed us that Ms. Dufour's expert opinion is that Claimant could not have exploited the Invicta Project's resources prior to July 2020. Therefore, Micon's revised production start date, which Accuracy adopts, is not a reasonable basis for estimating damages. Under Ms. Dufour's estimate, Claimant could not meet its PLI Loan Agreement obligations and would therefore default.

87. Setting aside other flaws and risks and assuming PLI would agree to a delayed gold delivery schedule, revising the production start date to 1 July 2020 reduces damages to US$32.3 million (a reduction of US$8.7 million from US$41.0 million).[59]

iii. Extended Production Schedule

88. The Accuracy Second Report adopted Micon's revised production schedule, which extended the project from seven years per the Red Cloud Model (and the Accuracy First Report) to ten years. Under this longer production schedule, the total quantity of ore mined and processed increased by 32.7% as shown in the **Figure 9** below.[60]

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[57] Accuracy Second Report, ¶ 6.11; Accuracy First Report, Footnote 153.

[58] **Appendix 2**, "AlixPartners", set the scenario to "Reset to Accuracy" and Cell C4 = "Accuracy First Report".

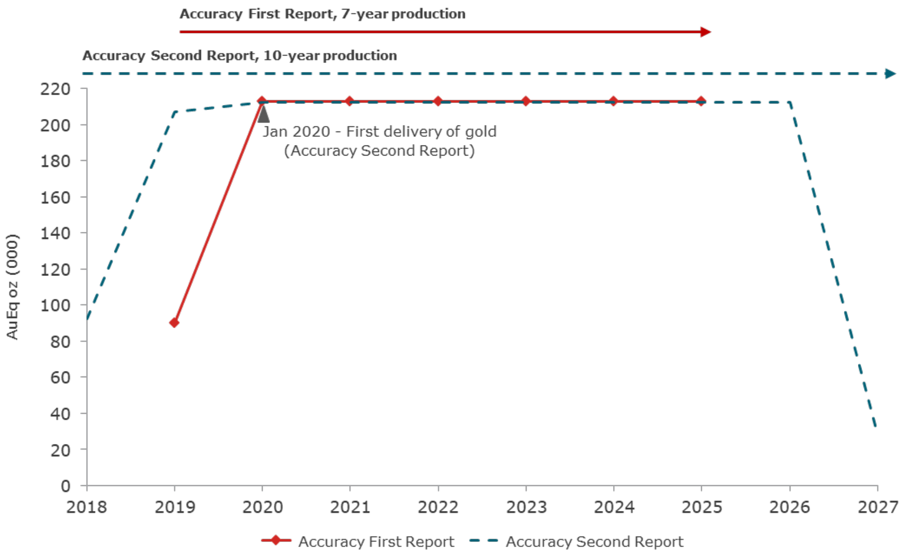
[59] **Appendix 2**, "AlixPartners", set Cell C4 = "July 2020".

[60] Accuracy Second Report, Appendix 3, "Inputs".

Figure 9 – 590t/day Scenario Updated Production

89. We compare the production schedules in **Figure 10**.[61]

Figure 10 – Comparison of Production Schedule



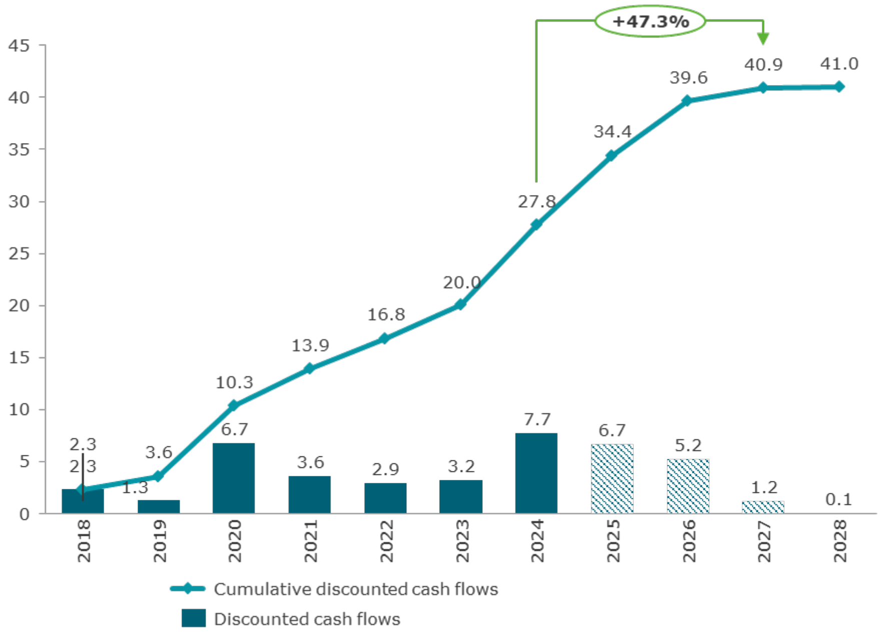
90. Accuracy's revised production schedule increased damages under the 590t/day scenario. On a pre-discounting basis, the post-tax cash flows in the last three additional years represent 42.1% of the total post-tax cash flows.[62] The discounted cash flows of these three years represent 32.1% of the total net present value ("**NPV**"), which means approximately one third of the FMV in the revised But-For Scenario is from the production schedule extension.[63]

[61] Accuracy Second Report, Appendix 3, "Inputs".

[62] Accuracy Second Report, Appendix 3, "Dashboard (ACC)".

[63] Accuracy Second Report, Appendix 3, "Summary".

Figure 11 – Impact of the Extended Production Schedule



91. Micon justified the three-year production schedule extension as follows:[64]

a) The preliminary economic assessment prepared by SRK Consulting (Canada) Inc. ("**SRK**") in early 2018 ("**SRK PEA**") mine plan did not consider four mineralized zones and excluded 78% of the mineral resources.

b) The SRK PEA mine plan applied a cut-off grade of 4.0 g/t gold equivalent ("**AuEq**"), which Micon reduced to 3.0 g/t AuEq. Micon thus recommended mining zones with lower mineral density that, under the SRK PEA, would be left unmined.

c) The SRK PEA mine plan's upper elevation limit of 3,505 meters for mining activities did not represent an upper bound to the presence of mineral resources.

d) The minimum stope width should be 3.0 meters based upon Micon's review of the proposed mining method, rather than 4.0 meters contemplated in the SRK PEA.

92. Micon modified the parameters of the SRK PEA block model in a way that Lupaka, SRK, and Red Cloud elected not to do contemporaneously.[65] We understand that Micon's extended production schedule was created only for this arbitration and that Claimant has not explained why this higher-value plan for the Project was never presented internally or to any third parties, including Canadian investors and regulators to whom Claimant reported quarterly and to whom it presumably owed

[64] Micon Report, ¶¶ 76, 78, 79, 103, Table 5.10.

[65] Micon Report, Table 5.10.

certain disclosure duties. We also understand that Accuracy, Micon, and Claimant have not reconciled their ten-year mining plan with Claimant's approval for only seven years of production (and at a maximum production rate of 400t/day).[66] Neither Micon nor Accuracy explained how the Project would have lawfully attained production up to 590t/day and a ten-year production period. Calculating damages based on this production rate and period therefore seems unreasonable.

93. In contrast, Red Cloud's production schedule was created around the time that Claimant was considering acquiring the Mallay Plant and was prepared in the ordinary course of business. The Red Cloud forecast reflects what Red Cloud and Lupaka expected during the negotiations with Buenaventura. The Red Cloud forecast is therefore a more credible basis for estimating damages than the revised production schedule that Micon improvised.

94. Finally, we note that Micon did not extend the production schedule under the 355t/day scenario. Although Micon opined that they think the SRK PEA mine plan also understated the life of the Invicta Project in that scenario, they did not modify the amount of ore mined and processed under the 355t/day scenario (669,813 tonnes).

95. Should the Tribunal find that Micon's adjustment is inappropriate,[67] Accuracy's damages estimate in the 590t/day scenario should be reduced by 29.6%, from US$41.0 million to US$28.9 million on a standalone basis, as of the Valuation Date.[68]

96. We note that Micon increased the total capital development cost for the 590t/day scenario by US$5.9 million.[69] We understand that US$2.2 million of this increase is attributable to the development costs that Accuracy excluded in the Accuracy First Report, and which Micon reinstated.[70] The Accuracy and Micon reports are unclear as to whether the remaining US$3.7 million increase in capital development costs is specifically and only attributable to the production period extension. We also note that Accuracy increased the additional closure costs corresponding to an extended production schedule. Removing the additional income from three additional years of

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[66] MEM Report and Resolution approving the Mining Plan, 11 December 2014, p. 5. [C-0009]; SRK Consulting PEA dated 13 April 2018, p. 145. [AC-0002]

[67] We are not mine engineering experts and do not purport to provide any testimony or opinion with respect to the technical engineering aspects of the Project. However, we have noted that Micon's approach requires several speculative adjustments and logic leaps.

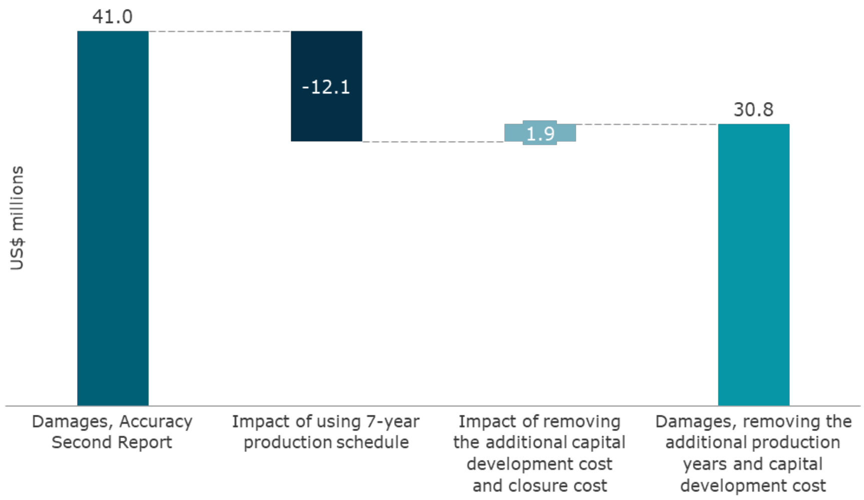
[68] Accuracy Second Report, Appendix 3, "Summary". Sum of the discounted cash flows from Year 1 to Year 7, adjusted for the remaining changes in working capital in Y8.

[69] Micon Report, Table 5.12; Accuracy First Report, Appendix 6, "capex-sum".

[70] Micon Report, Table 5.12.

production and eliminating the additional capital development costs and closure costs attributable to the three-year extension, the damages under the 590t/day scenario are reduced to US$30.8 million from US$41.0 million on a standalone basis as of the Valuation Date.[71]

Figure 12 – Accuracy's Damages Calculation Under 590t/day Scenario Using Red Cloud's Estimated Capital Expenditure



iv. Metal Grades

97. In our First Report, we commented that there was insufficient documentation or analysis to support Accuracy's assumed metal grades. In their second report, Accuracy adopted Micon's modifications to Red Cloud's metal grade assumptions. The metal grades Micon proposed are generally more conservative than those applied in the Red Cloud Model and the Accuracy First Report.[72]

98. In our First Report, we also observed that the grade of the payable gold that the Invicta Project yielded was less than half of the budgeted grade. Lupaka's report for October 2018 showed that the actual gold ore grade was 2.25g/t, only 46.6% of the budgeted grade of 4.83g/t.[73]

99. Responding to our observation that the actual gold grade was lower than predicted, Micon considered four possible explanations.

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[71] **Appendix 2**, "AlixPartners", set the scenario to "Reset to Accuracy" and Cell C5 = "ON".

[72] Accuracy Second Report, Appendix 3, "Inputs".

[73] First Report, Figure 12.

100. First, Micon conjectured that the low grade might be due to the natural variability of mineralization, and that low grade materials might have been presented around the tested elevation levels: [74]

> *"…material with actual gold grades well below average for the orebody could quite properly have been mined as payable ore based on its gold equivalent grade, owing to the contribution of copper, lead, zinc and silver to the value* of the ore."

101. However, Micon did not provide sufficient evidence that would support this statement.

102. Second, Micon suggested that the mix of waste with ore might dilute the average grade during the development stage. We note that Micon did not provide any documentary evidence to support this statement. [75]

103. Third, Micon speculated that the low gold grade might be because of the separation of heavy particles enriched in gold during the blasting of broken rock: [76]

> *"…Thus, compared to the average grade of the Invicta resource, the fine material was highly enriched in precious metals while being somewhat less enriched in the base metals. Enrichment of the fines in precious metals would necessarily leave the remainder of the ore depleted in precious metals. Fortunately, once recognised, this problem is manageable. The footwall of a stope is washed down once all lump ore has been removed, leaving a heavy sludge that can be collected and transported to the processing plant for separation of the base metal concentrates."*

104. This statement was also not supported by any documentary evidence.

105. Fourth, Micon opined on the third-party tolling process: [77]

> *"The gold grades reported are back-calculated from analysis of the saleable concentrates and mill tailings. However, during processing at third-party toll-treatment mills in the absence of close supervision, it is possible that a portion of the gold content of the ore was separated gravimetrically by the mill operators, leaving only that portion that was intimately mixed with sulphide minerals to be recovered into the base metal concentrates sold by Lupaka."*

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[74] Micon Report, ¶¶ 139 – 140.
[75] Micon Report, ¶ 141.
[76] Micon Report, ¶ 142.
[77] Micon Report, ¶ 143.

106. Again, Micon did not provide any documentary evidence that would support their speculation.

107. Furthermore, we have not identified any contemporaneous data or documents in which Claimant would have raised, observed, or been alerted to any of the issues that Micon listed above. Therefore, the theories that Micon surmised are not a reasonable basis for budgeting a grade 114.7% higher than the actual grade observed.[78]

108. In conclusion, the Micon Report has no analysis to demonstrate that any or all of their hypotheses could reasonably account for the entire difference in the actual and budgeted gold ore grades.

109. According to Micon, the first three issues could be managed and mitigated without incurring additional costs. For the last issue, Micon proposed closer supervision and improved security at third-party processing operations. However, Micon and Accuracy calculated no increase in expenses in the revised 590t/day scenario. Deploying closer supervision and improved security likely would increase Claimant's costs and thus reduce the damages Accuracy calculated.

v. Operating Costs

110. In their revised calculation of damages, Accuracy increased the average unit operating costs by US$13.40/t in the 590t/day scenario.[79] This change reflected the net changes by Micon and Accuracy to the operating cost inputs and assumptions, including:[80]

a) An increase in employee profit sharing from US$700,000 to US$975,000 per year;

b) An increase of US$5.50/t in the direct unit cost of treating ore to include the cost of electrical energy;

c) A reduction of US$20.00/t in transportation costs, which they attributed to the relative proximity of the Mallay Plant to Callao Port compared to Caraz, where the assumed processing plant was located per the SRK PEA;

d) Additional closure costs to account for the extended mine plan; and,

[78] **Paragraph 98**. Calculated as 4.83g/t / 2.25g/t -1.

[79] Accuracy Second Report, ¶ 4.16.

[80] Accuracy Second Report, ¶¶ 6.19 – 6.20.

e) Additional general and administrative costs of US$350,000 per year for management of the Mallay Plant.

111. Accuracy's revised operating costs still do not account for issues we raised in our First Report and discuss below. Accuracy's operating costs are therefore underestimated.

112. First, as discussed above, to make the project viable, Claimant would have to resolve the conflicts with the Parán Community. However, neither Micon nor Accuracy included any costs that Claimant would need to incur to obtain and maintain the Project's SLO from the Parán Community.

113. As summarized in **Figure 13** below, we reviewed several contemporaneous documents relating to Claimant's communications with the Parán Community and its commitments to the neighboring communities as a basis to derive a baseline cost for obtaining and maintaining the project's SLO with the Parán Community.

Figure 13 – Summary of Claimant's Agreed Payments to Neighboring Communities

Item	**One-time Cost**		**Annual cost**	
	PEN	US$	PEN	US$
Scenario 1:				
Parán Past Request	1,024,000	303, 309	-	-
Average of the payments to neighboring communities	105,000	31,101	1,078,400	319,422
Total	**1,129,000**	**334,410**	**1,078,400**	**319,422**
Scenario 2:				
Parán Past Request	1,024,000	303,309	-	-
Parán Most Recent Request	-	-	2,000,000	592,400
Total	**1,024,000**	**303,309**	**2,000,000**	**592,400**

114. Details regarding these costs can be found in **Appendix 5**.

115. Counsel also asked us to use the average of the following three amounts as a baseline for an estimate of the cost to obtain and maintain the SLO: i) costs Claimant agreed to pay to the Lacsanga Community; ii) costs Claimant agreed to pay to the Santo Domingo De Apache Community; and iii) the amounts that the Parán Community requested. The resulting total costs comprise a one-time payment of US$0.3 million and an annual payment of US$0.3 million for ten years.[81] Applying the discount factor

[81] If these annual payments are for seven years, as would be expected under a seven-year production schedule, then the net cost is US$2.0 million after discounting, on a standalone basis, as of the Valuation Date.

used in the Accuracy Second Report, the net cost is US$2.4 million, on a standalone basis as of the Valuation Date.

116. As an alternative benchmark, based on the Social Sustainable Solution report dated 20 May 2018,[82] it appears that the president of the Parán Community intended to negotiate with IMC an annual payment of US$0.6 million.[83] Paying this amount annually for ten years would imply a total net cost of US$4.2 million after applying the discounting factors Accuracy used, on a standalone basis as of the Valuation Date.[84]

117. Second, in addition to the one-time and annual payments to the Parán Community, we understand that IMC would have to incur costs to meet regulations and permit requirements. For example, we understand from Counsel that Ms. Dufour has provided several examples of these additional costs: preparing dossiers for permit applications, costs for implementing citizen participation mechanisms to modify the EIA, and costs for dismantling water management systems. We are not currently able to estimate the cost of obtaining and maintaining compliance with these regulations and permits.

118. Third, as mentioned earlier, Accuracy accounted for no incremental costs to supervise and improve security at third-party tolling plants, as Micon proposed to address one of the possible causes that Micon theorized could be responsible for the low gold ore grade.

119. To summarize, Accuracy's operating expenses are underestimated. After adjusting for the additional operating costs required to obtain and maintain the social license from the Parán Community, Accuracy's damages estimate is reduced to US$38.5 million as of the Valuation Date.[85] As noted above, we are not currently able to quantify the cost of obtaining and maintaining compliance with the regulations and permits, which as Counsel has informed us, were noted by Ms. Dufour. As Accuracy provided no estimates as to the incremental security and supervision costs at the third-party processing plants, and we are unable to locate public information on the cost to impose surveillance and security measures upon third-party processors, we are not able to quantify the financial impact.

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[82] SSS, Weekly Report, Project, 14/05/2018 to 20/05/2018, 14 May 2018 (ENG-SPA), pp. 1-2. [C-0435]

[83] PEN 2.0 million. Converted to US$ using the FX rate as of 26 August 2019. Capital IQ, US$PEN Exchange Rates. [AP-0065]

[84] If these annual payments are for seven years, as would be expected under a seven-year production schedule, then the net cost is US$3.5 million after discounting, on a standalone basis, as of the Valuation Date.

[85] **Appendix 2**, "AlixPartners", set Cell C6 = "Scenario 1".

vi. Capital Expenditures

120. In their second report, Accuracy adopted Micon's revisions to capital expenditures. Micon increased the capital expenditure estimate by US$5.1 million compared to the Accuracy First Report and by US$1.0 million compared to Red Cloud's forecast. As a comparison to these modest increases in capital expenditure (13.6% and 2.4%, respectively), Micon raised the total production volume by 32.7%, as was shown in **Figure 10**.

121. The three capital expenditure forecasts are presented in **Figure 14** below.

Figure 14 – Capital Expenditure Forecasts

Item (US$ millions)	Red Cloud[86]	Accuracy First Report[87]	Micon/ Accuracy Second Report[88]
Project Capital	**24.4**	**20.1**	**23.0**
Project infrastructure capital	1.8		-
Capital development	2.6		2.2
Mallay Plant purchase	10.7	10.7	10.9
Mallay Plant sustaining capital	4.4	4.4	4.9
Mallay Plant closure bond	5.0	5.0	5.0
Sustaining Capital	**17.0**	**17.0**	**18.8**
Infrastructure capital	5.3	5.3	3.4
Capital development	11.6	11.6	15.4
Additional Closure Cost	**NA**	**0.3**	**0.6**
Total	**41.4**	**37.3**	**42.4**
Micon increased the amount by	1.0	5.1	NA
% change	2.4%	13.6%	NA

122. As explained below, Micon's capital expenditure estimates appear to be underestimated for the following reasons:

123. First, as presented above, Micon reduced infrastructure capital spending by US$1.9 million (US$5.3 million less US$3.4 million), despite extending the production schedule by three years.

124. Micon's annual infrastructure capital spending estimate[89] appears to be consistent with the SRK PEA, which was based on a 355t/day production rate, as shown in the figure below. [90] Micon stated no rationale for why infrastructure capital spending,

[86] Accuracy Second Report, Appendix 3, "capex-sum" (set to "Red Cloud" on "Dashboard (ACC)").

[87] Accuracy Second Report, Appendix 3, "fin_lupaka" and Table 6.3 (set to "First Accuracy Report" on "Dashboard (ACC)").

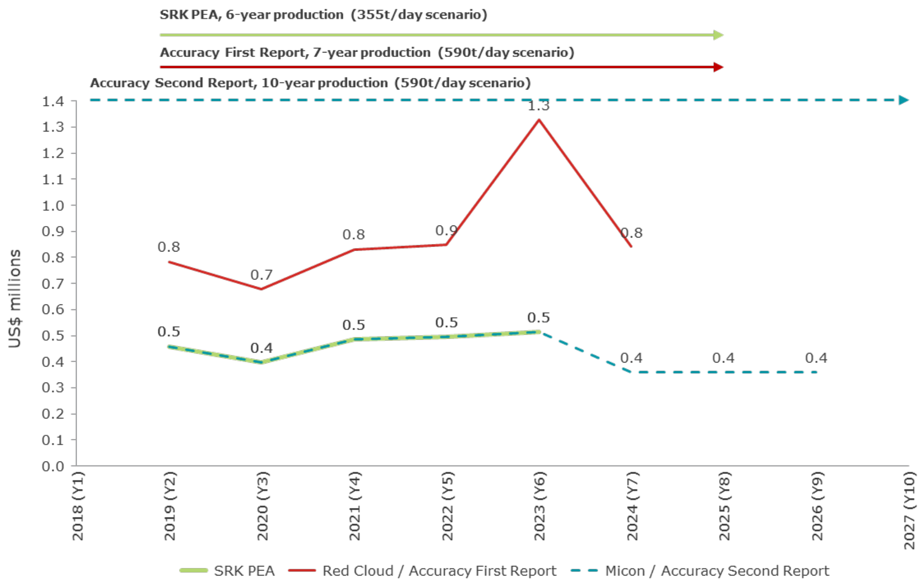
[88] Accuracy Second Report, Appendix 3, "fin_lupaka" and "capex-sum" and Table 6.3.

[89] Accuracy Second Report, Appendix 3, "Micon".

[90] Accuracy Second Report, Appendix 3, "Micon"; SRK Consulting PEA dated 13 April 2018, Table 102 and Table 103. [AC-0002]; Micon Report, Table 5.8.

comprised of "site roads and prep", "community infrastructure" and "environmental and closure", under the 590t/day scenario would be the same as in the 355t/day scenario (instead of the estimates used in the Red Cloud Model for the 590t/day scenario[91]). We understand that the annual community infrastructure cost in the SRK PEA did not account for any potential costs to provide such infrastructure to the Mallay Community.[92] Also, Micon discontinued the annual environmental and closure costs in Year 6 (as reflected by the decrease in Year 7), despite extending the production schedule to ten years.[93]

Figure 15 – Infrastructure Capital by Year



125. Second, we also note that, based on Micon's forecast for ten years of production, the last year Claimant would spend any amount on capital development costs is Year 6, while both SRK and Red Cloud assumed that, for seven years of production, such costs would be incurred through to Year 7 (as shown in **Figure 16**).[94] Micon thus assumes that, in the last four years of operation, Claimant would incur no capital development costs, in contrast to the contemporaneous forecasts that expected a such spending throughout the project.

126. Micon commented that "Red Cloud's estimate was very conservative" in the cadence of their projected capital spending (i.e., Micon viewed it as *front*-loaded in early

[91] Accuracy Second Report, Appendix 3, "Inputs". For comparison purpose, the infrastructure capital in Y1 is not included.

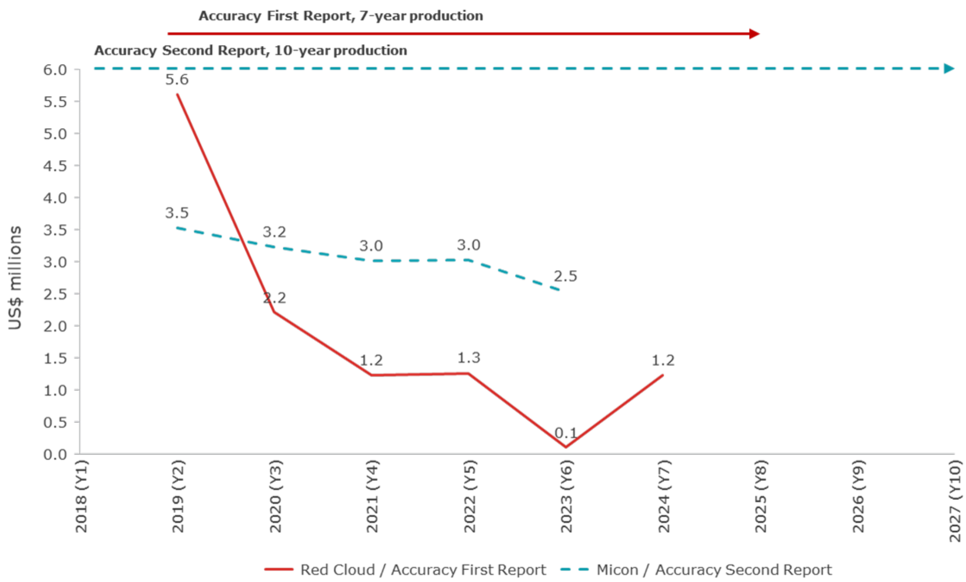
[92] Accuracy Second Report, Appendix 3, "Micon"; SRK Consulting PEA dated 13 April 2018, Table 102 and Table 103. [AC-0002]

[93] Accuracy Second Report, Appendix 3, "Micon"; SRK Consulting PEA dated 13 April 2018, Table 102 and Table 103. [AC-0002]

[94] Accuracy Second Report, Appendix 3, "Inputs", rows 55-57. To be consistent with Figure 14, the capital development cost in Y1 is not included.

years). Micon, instead, assumed capital expenditure would spread in a longer period of time, even though they assumed zero capital expenditure after Year 6.[95] Allocating capital expenditures across a longer period, as Micon did, would decrease the NPV of Project capital expenditures and thus increase the estimated damages.

Figure 16 – Capital Development Cost by Year



127. Third, Counsel has informed us that Ms. Dufour confirms that additional capital expenditure is required for construction of fuel storage facilities, surface water use works, and ground water use works. Any increase in capital expenditure reduces the estimated damages.

128. Based on the discussions above, Micon's capital expenditure estimates lack support and appear to be underestimated.

vii. Financing Cash Flows

129. In the Accuracy Second Report, instead of assuming Claimant would close the PLI Loan Agreement by paying to PLI a lump sum, Accuracy estimated the (periodic) financing cash flows under the loan. Accuracy combined the anticipated cash inflows of US$13.0 million (i.e., the loan disbursement by the lender) for the purchase of the Mallay Plant with the anticipated cash outflows totaling US$32.3 million for delivery to PLI of gold (or its cash equivalent), on an undiscounted basis.[96] Accuracy also included anticipated cash outflows totaling US$9.9 million that would be due to PLI

[95] Accuracy Second Report, Appendix 3, "Inputs", row 57.
[96] Accuracy Second Report, Appendix 3, "Dashboard (ACC)".

under the PLI Loan Agreement.[97] The net impact of the financing cash flows is US$17.2 million on a discounted basis.

130. Accuracy adopted Micon's extended production schedule and assumed that Claimant would have met its payment obligations under the PLI Loan Agreement. By making these assumptions, Accuracy reduced Claimant's total costs under the PLI Loan Agreement and increased the estimated damages. As shown below, with the extended production schedule, the net cost of the financing is US$17.2 million, as compared to the total cost of US$28.9 million that we calculated in our First Report (settlement payment of US$15.9 million plus the additional loan of US$13.0 million for the Mallay Plan transaction).

Figure 17 – Impact of the Debt Obligations under the 590t/day Scenario

Item (US$ millions)	Accuracy First Report	Our First Report	Accuracy Second Report
Settlement payment to Lonely Mountain	-15.9	-15.9	NA
Additional Loan for the Mallay Plant	0	-13.0	NA
Net Financing Cash Inflow[98]	NA	NA	-17.2
Total	-15.9	-28.9	-17.2

131. Based on our review of the Accuracy Second Report, these revisions appear to be appropriate only by assuming that Pandion (who would retain control over PLI in the But-For Scenario) would sign the Draft Third Amendment as Accuracy assumed for the 590t/day scenario, and that lawful commercial production at the Invicta Project would have started in November 2018 (e.g., with all permits in place). However, as we have discussed earlier, both of these assumptions are unsupported.

viii. Discount Rate

132. In the Accuracy Second Report, Accuracy discounted the cash flows using the cost of equity ("**COE**") of a hypothetical gold mining entity operating in Peru, rather than Claimant's WACC, consistent with the Free Cash Flow to Equity ("**FCFE**") method.[99]

133. Accuracy maintained the 11.1% cost of equity that they had calculated to be Claimant's cost of equity in the Accuracy First Report by applying the Capital Asset Pricing Model ("**CAPM**").

[97] Accuracy Second Report, Appendix 3, "Dashboard (ACC)".

[98] The net impact of the cash inflow (additional loan) and outflow (gold delivery to PLI and the upside participation). Also impacted by the change in discount rate. Accuracy Second Report, Table 6.6.

[99] Accuracy Second Report, ¶ 6.37.

134. In the Accuracy First Report, Accuracy further adjusted the discount rate by adding to the cost of equity of a hypothetical gold mining entity a premium of 6.9%, reflecting "the higher level of uncertainty attached to the 590t/day Scenario under the Mallay Acquisition Plan, which had not been subject to the same level of detailed financial analysis as the 355t/day Scenario and would have required further capital investment and financing".[100] In the Accuracy Second Report, however, Accuracy reduced this premium to 3.3%, the same premium Accuracy added to the 355t/day scenario, on the basis that "Micon considers the level of accuracy of the revised 590t/d plan to be very similar to that achieved in the 355t/d plan and that both plans are equally reliable."[101]

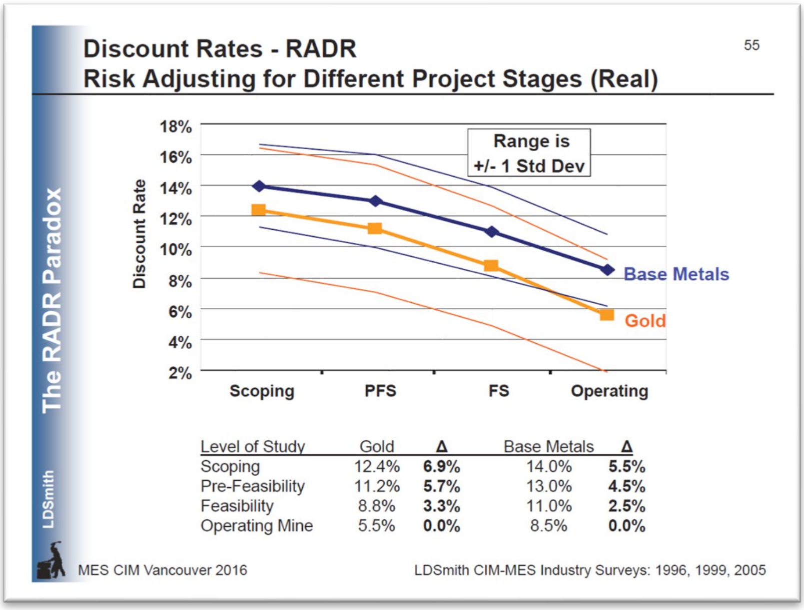
135. We disagree with Accuracy's adjustment to the project-specific risk premium. First, the source document Accuracy relied upon (AC-0047) indicates the premium was calculated based on data collected in 1996, 1999 and 2005, at least 14 years prior to the Valuation Date (as shown in the figure below).[102] Second, according to AC-0047, the 3.3% premium is applicable to mining projects that have undergone feasibility studies, whereas the SRK PEA is akin to a Pre-Feasibility Study, for which AC-0047 recommends applying a premium of 5.7%.

[100] Accuracy First Report, ¶ A4.23.

[101] Accuracy Second Report, ¶ 6.33.

[102] Lawrence Devon Smith, The RADR Paradox-Discount Rates: Risk, & Long Life Projects, 2016, p. 55. [AC-0047]

Figure 18 – Screenshot of the Premiums in AC-0047



136. There is no dispute that no Feasibility Study was undertaken as evidenced by a news release Claimant published on 28 November 2017:[103]

> *"The decision to commence potential production at the Invicta Gold Project and the Company's plans for a mining operation as referenced herein (the "**Production Decision and Plans**") were based on economic models prepared by the Company in conjunction with management's knowledge of the property and the existing estimate of measured, indicated and inferred mineral resources on the property. The Production Decision and Plans were not based on a preliminary economic assessment, a pre-feasibility study or a feasibility study of mineral reserves demonstrating economic and technical viability." (emphasis added).*

137. As explained in our First Report, a preliminary economic assessment ("**PEA**") is subject to a lower confidence level than a Pre-Feasibility Study.[104] Furthermore, the Micon Report and their production schedule do not constitute a Pre-Feasibility Study or Feasibility Study. Therefore, at the very least, the amount of project-specific risk premium should be increased to 5.7%.

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[103] Cision PR News, Lupaka Gold Commences Preliminary Economic Assessment on the Invicta Gold Development Project, Target Q1/18 Release, 28 November 2017. [AP-0066]

[104] First Report, Figure 5.

138. Additionally, as discussed in **Paragraph 92**, Claimant obtained from MINEM approval for production up to only 400t/day and for seven years. We understand that Claimant had not modified its approval to allow a 590t/day schedule for 10 years. The uncertainty with respect to the approval of the higher production volume and extended production schedule make the 590t/day scenario risker than the 355t/day scenario. Further, as Counsel has informed us, Ms. Dufour explains that Claimant needed to obtain various (new and revised) permits to commence commercial ore extraction. If damages were deemed to be greater than *nil*, these factors, among others, also would need be reflected in a project-specific risk premium.

139. As explained in our First Report and **Section IV**, Accuracy's discount rate explicitly excludes consideration of social license risk, which any reasonable and informed investor would consider.[105] Accuracy attempted to justify their approach by stating that 40% of the companies included in their reference data have operations in Central and/or South America and thus at least part of, if not all, the regional risk should already be considered.[106] Accuracy also contended that the inclusion of Peru's country risk premium reflects "additional risk associated with doing business in Peru over a 'risk-free' jurisdiction".[107]

140. We disagree with Accuracy's explanations. The beta in Accuracy's source data captures the average risk that a generic U.S. mining company faces. Accuracy provided no analysis as to why Claimant's social license risk, which would need to reflect the continuous and intense conflicts that already had materialized with the Parán Community, would be comparable to the risk level that an average U.S. mining company is faces when investing and operating a generic mining project.

141. In addition, as Accuracy explained, the country risk premium compensates investors for the additional risk of doing business in Peru compared to the United States. The country risk premium includes the general political, economic, legal, and other relevant risks that any reasonable investor would incorporate when making investment decisions, no matter what industry or project the investor is considering. Thus, the country risk premium reflects the average risk that an investor faces in Peru. Accuracy did not demonstrate that the project-specific social license risk that

[105] As noted in the Glossary, "Fair Market Value" requires measuring "the (highest) price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms-length in an open and unrestricted market, when neither is under compulsion to buy or sell **and when both have reasonable knowledge of the relevant facts**" (emphasis added).

[106] Accuracy Second Report, ¶ 4.47.

[107] Accuracy Second Report, ¶ 4.47.

Claimant faced would be fully captured in Peru's general country risk premium. In fact, aware of the unresolved conflicts with the Parán Community, any rational investor would adjust the overall risk premium (to exceed the general country risk premium) when valuing the Project.

Figure 19 – Summary of Accuracy's Considerations of Risks

Risks Included	Risks Omitted
Political Risk	Social License Risk
Country-Specific Economic Risk	Execution Risk
Country-Specific Financial Risk	
Currency Risk	

142. Furthermore, Accuracy's discount rate also does not account for the execution risk the Project faced, such as the uncertainties with respect to the third-party processors and variance in metal grades between actual result and the budget.[108]

143. That is, Accuracy accounted for country-specific risks, but failed to account for project-specific risks that were not captured in their cash flow estimates. To summarize, not accounting for the social license risk and execution risk, Accuracy's discount rate was underestimated.

144. As demonstrated above, Accuracy's risk adjustment lacks support. For comparison purposes, we apply the generally applicable premium of 5.7% for projects in the Pre-Feasibility Study phase (according to Accuracy's source, which is based on old data), and we revise the discount rate to 14.6% (from 12.2%). On a standalone basis, this adjustment to the discount rate reduces damages to US$37.4 million (from US$41.0 million).[109]

B. Conclusion on the 590t/day Scenario

145. As discussed, by adjusting the following assumptions in Accuracy's 590t/day model, damages are reduced to US$20.5 million:

a) Updating the Project start date to 1 July 2020;

b) Reducing the duration of the production schedule to seven years, consistent with the contemporaneous Red Cloud Model and the period of time that MINEM had approved Project mining.

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[108] See **Section V.A.i** and **Section V.A.iv**.

[109] **Appendix 2**, "AlixPartners", set Cell C7 = "ON".

c) Reducing the additional capital development costs (except the reversal of the cost in Year 1) and closure cost that Micon added to account for the seven (rather than ten) years of production;[110]

d) Increasing operating expenses to incorporate additional costs to obtain and maintain the SLO from the Parán Community; and,

e) Increasing the discount rate to 14.6% to account for risk factors Accuracy did not incorporate.

146. Our adjustments cover only the issues that we identified as material in the section above and that we were able to quantify. The Tribunal may find it necessary to increase the discount rate further to account for additional risks or costs, such as those we identified above but could not quantify.[111] As such, we present the following sensitivity analysis indicating the impact on damages of an increase in the discount rate of 1.0% to 5.0%.[112]

Figure 20 – Revised Damages and Sensitivity Analysis under the 590t/day Scenario

Additional Premium	0%	1%	2%	3%	4%	5%
Discount Rate	14.6%	15.6%	16.6%	17.6%	18.6%	19.6%
Damages (US$ millions)	20.5	19.6	18.8	18.1	17.3	16.6

VI. Our Opinion of Accuracy's Updated 355t/day Scenario

147. In their second report, Accuracy also revised certain assumptions and calculations under the 355t/day scenario. Notwithstanding the fundamental flaws discussed above in **Section IV**, in this section we analyze Accuracy's revised damages calculations under the 355t/day scenario.

A. Opinions on Accuracy's Changes to the Damages Analysis under the 355 t/day Scenario

148. In this subsection, we provide our comments to Accuracy's assumptions related to their damages calculation under the 355t/day scenario.

[110] **Paragraph 96**.

[111] **Paragraphs 84**, **109**, **119** and **127**.

[112] **Appendix 2**, "AlixPartners".

i. Additional Cost with Respect to the Third-Party Tolling Issues

149. As discussed in **Section IV**, Accuracy did not address Claimant's inability to secure a viable third-party ore processing facility. Instead, Accuracy adopted Micon's extended production schedule and assumed that Claimant would have resolved the Project's third-party tolling issues by early 2019.[113]

150. However, Accuracy and Micon did not explain how the various third-party ore processing failures would have been resolved during that period or quantify the financial impact of doing so. Instead, Accuracy estimated damages assuming the third-party ore processing problems would be resolved immediately and at no cost, which seems unrealistic. As Accuracy did not provide an estimate of the additional cost required to solve the issues, we are not able to quantify the impact. However, any incremental cost would reduce the damages under the 355t/day scenario.

ii. Project Start Date

151. Accuracy adopted Micon's opinion that commercial production would start as early as in November 2018 under their revised 355t/day scenario. This start date is ten months earlier than Accuracy's assumption in their first report of 26 August 2019.[114] By assuming an earlier project start date, Accuracy increased their damages estimate by approximately US$2.8 million on account of the cash flows occurring earlier and thus discounted less.[115]

152. As discussed in **Paragraph 60**, we have been informed by Counsel that Ms. Dufour's expert opinion is that IMC would need to obtain the water use license for the execution of the mining activities of the Project and the possible start date was July 2020. Therefore, Micon's revised production start date, which Accuracy adopts, is not a reasonable basis for estimating damages. Under Mr. Dufour's estimate, Claimant could not meet its PLI Loan Agreement obligations and would therefore default.

153. Setting aside other flaws and risks and assuming PLI would agree to a delayed gold delivery schedule, revising the production start date to July 2020 reduces damages to US$26.0 million (a reduction of US$6.1 million from US$32.1 million).[116]

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[113] Micon Report, ¶ 125.

[114] Accuracy Second Report, ¶ 6.43; Accuracy First Report, Footnote 153.

[115] **Appendix 3**, "AlixPartners", set Cell C4 = "Accuracy First Report".

[116] **Appendix 3**, "AlixPartners", set Cell C4 = "July 2020".

iii. Production Schedule

154. In the Accuracy Second Report, Accuracy adopted Micon's revised production schedule under the 355t/day scenario, which includes a three-month ramp-up period starting from the updated project start date of November 2018 (instead of August 2019 assumed in Accuracy First Report).[117] We note that Micon retained the production years and total production volume that was assumed in the SRK Model.[118]

iv. Metal Grades

155. Similar to the changes to the production schedule, Accuracy adopted Micon's updated metal grades in each production year. The average gold-equivalent grade was kept the same between the two Accuracy reports.[119]

156. As discussed in **Section V.A.iv**, Micon proposed four possible explanations for the lower metal grade that Claimant actually achieved compared to the budgeted grade, but, as explained above, those four theories are not supported by documentary evidence.

157. As discussed in **Paragraph 109**, one of Micon's theories for mitigating the metal grade deficiency required closer supervision of third-party tolling facilities. However, Micon and Accuracy calculated no increase in expenses in the revised 355t/day scenario. Deploying closer supervision and improved security likely would increase Claimant's costs and thus reduce the damages Accuracy calculated.

v. Operating Costs

158. In the Accuracy Second Report, Accuracy corrected an error in their operating cost calculations from their first report, which increased the unit operating cost by US$0.11/t.[120] Accuracy's other changes included:[121]

    a) Updating the provision for employee profit sharing to be consistent with the assumptions used in the 590t/day scenario, which increased the annual operating cost by US$90 thousand; and,

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[117] Accuracy Second Report, ¶ 6.43.
[118] Accuracy Second Report, Appendix 4, "Inputs".
[119] Accuracy Second Report, ¶ 6.45.
[120] Accuracy Second Report, ¶ 4.16 and Appendix 4, "opex".
[121] Accuracy Second Report, ¶ 6.49.

b) Correcting an error in the underlying SRK Model that mistakenly excluded copper and lead concentrate tonnages from the calculation of the concentrate transportation cost.

159. However, as discussed in **Section V.A.v**, Accuracy's operating cost estimate did not to account for the following issues:

a) Any costs required to obtain and maintain the SLO with the Parán Community;

b) Any costs in relation to meet the regulations and permit requirements; and,

c) Any costs required to conduct close supervision and improved security as Micon recommended to improve and maintain the gold grade.

160. In **Figure 13**, we provide our estimates for the costs related to obtaining and maintaining the SLO with the Parán Community under two scenarios. Applying Accuracy's discounting factors in the 355t/day scenario, the net impacts to damages are US$1.9 million and US$3.1 million under scenarios 1 and 2, respectively.[122]

161. As explained in **Paragraph 117**, neither Accuracy nor Micon have provided estimates for the cost of obtaining and maintaining compliance with the regulations and permits that, as Counsel has informed us, Ms. Dufour has considered, nor have they quantified the incremental cost of increased security at the third-party processing plants. We have also not been able to quantify financial impact of these costs.

vi. Capital Expenditure

162. In the Second Accuracy Report, Accuracy adopted Micon's updated capital expenditure estimate. We note that Micon reduced the SRK PEA's capital expenditure estimate by US$3.0 million, as in Micon's opinion these costs related to site roads, underground development for mine access, and stope preparation Invicta carried out prior to October 2018 and should be excluded.[123]

163. As discussed in **Paragraph 127**, Counsel has informed us that Ms. Dufour points out that additional capital expenditure would be required for the construction of fuel storage facilities, surface water use works, and ground water use works. Any increase in capital expenditure will reduce the damages.

[122] **Appendix 3**, "AlixPartners", set Cell C5 = "Scenario 1" or "Scenario 2".

[123] Micon Report, ¶ 93.

vii. Financing Cash Flows

164. To be consistent with the FCFE method, Accuracy deducted cash flows that were required by Claimant to meet its obligations under the PLI Loan Agreement. Accuracy calculated the anticipated cash outflows for the delivery of gold (or its cash equivalent) and for the PLI Loan Agreement upside participation clause.

165. Consistent with our findings under the 590t/day scenario discussed in **Paragraph 131**, Accuracy's calculation appears to be appropriate if Lupaka would be able to commence production in November 2018 and meet its obligations under the PLI Loan Agreement. However, this assumption is not well supported due to the issues with the third-party tolling plants and the permitting issues that, as Counsel has informed us, have been raised by Ms. Dufour which would also impact the production start date.

viii. Discount Rate

166. Consistent with our adjustment to the discount rate for the 590t/day scenario discussed in **Section V.A.viii**, we believe that an increase in Accuracy's "pre-production premium" to 5.7% is warranted. This is consistent with projects that have reached a Pre-Feasibility Study stage. The overall COE discount rate has increased to 14.6% (from 12.2%). As a result of this change, damages are reduced to US$30.7 million (from US$32.1 million) on a standalone basis.[124] However, as shown in **Figure 19**, even incorporating this increase, Accuracy's discount rate omitted consideration of social license risk and execution risk.

B. Conclusion on the 355t/day Scenario

167. As discussed above, after adjusting the following assumptions, Accuracy's damages under the 355t/day scenario are reduced to US$22.5 million (from US$32.1 million) on account of the following adjustments:

   a) Updating the project start date to 1 July 2020;

   b) Adding the costs that were required to obtain and maintain the SLO with the Parán Community; and,

   c) Increasing the discount rate to 14.6% to incorporate the risks that Accuracy did not consider.

[124] **Appendix 3**, "AlixPartners", set Cell C6 = "ON".

168. We further present the sensitivity analysis as follows in case the Tribunal finds it necessary to increase the discount rate to account for the additional costs and risks that Accuracy did not consider and we are unable to quantify.

Figure 21 – Revised Damages and Sensitivity Analysis under the 355t/day Scenario

Additional Premium	0%	1%	2%	3%	4%	5%
Discount Rate	14.6%	15.6%	16.6%	17.6%	18.6%	19.6%
Damages (US$ millions)	22.5	21.8	21.1	20.4	19.8	19.1

VII. Our Opinion on the Residual Value

169. Accuracy indicated that they calculated Claimant's alleged damages as the difference between:[125]

> *"Claimant's economic position in the But-For Situation and its economic position in the Actual Situation."*

170. Accuracy premised their damages calculation on the value of Claimant's economic position in the Actual Scenario being *nil* since Claimant lost all its shares in the Invicta Project due to PLI's foreclosure action.[126]

171. In our First Report, we noted that if the Tribunal agrees with Peru's position that PLI's foreclosure action on 26 August 2019 is not attributable to Peru, then the value of IMC's shares at the time of the foreclosure would be relevant to calculating Claimant's economic position in the Actual Scenario. An independent appraiser, PwC, assessed the equity value of the shares of IMC at US$13.0 million close to the foreclosure date (which is also the Valuation Date).[127] Therefore, the residual value of the IMC shares in the Actual Scenario is approximately US$13.0 million instead of *nil*. Accordingly, if PLI's foreclosure action was not attributable to Respondent, Claimant's damages would be reduced by a further US$13.0 million to account for IMC's residual value.

172. Accuracy disagrees with our opinion noting in the Accuracy Second Report that:

a) In the Actual Scenario, Claimant's "economic position" prior to the foreclosure should be the value of Claimant's shares in IMC of US$13.0 million, less the value of Claimant's liability to PLI, which Claimant approximated as PLI's settlement

[125] Accuracy Report, ¶ 4.34.

[126] Accuracy Report, ¶ 4.35.

[127] First Report, ¶ 97.

claim of US$15.9 million in July 2019. Therefore, Claimant's "economic value" in the Actual Scenario was negative. [128]

b) Our opinion that the value of the Invicta Project could be *nil* due to the unaddressed fundamental flaws (especially those discussed again in **Section IV**) contradicts the appraised value of IMC's shares (i.e., US$13.0 million) in the Actual Scenario. [129]

c) The Actual Scenario should represent the events that actually occurred. Accuracy stated that "even if Lonely Mountain had not foreclosed upon IMC shares, Claimant did not have access to the Invicta Mine", which they equate to the shares having no value under the Actual Scenario. [130]

173. We disagree with Accuracy's opinions above in three respects.

174. First, as stated in the Accuracy Second Report, Accuracy's damages calculation was based on Claimant's overall economic position (i.e., the amount Claimant would have retained net of its obligations to its creditors), and not the value of Claimant's Investment (i.e., the value of its shares in IMC): [131]

> *"Consistent with the principle of full reparation, we offset damages owed to Claimant by the value of the debts that would have been settled with PLI in the But-For Situation, which were claimed (and settled through foreclosure) in the Actual Situation and amounted to USD 15.9m."*

175. Claimant and not IMC held the obligation under the PLI Loan Agreement, would have defaulted on this obligation as discussed in **Section IV**, and would have needed to pay a settlement of US$15.9 million to avoid foreclosure on the IMC shares. Since Claimant, rather than IMC, held the obligation the residual value of the IMC shares should not be adjusted for financing obligations of the parent company.

176. Second, our opinion that the FMV of the Invicta Project could be *nil* is not inconsistent with the value the independent appraiser determined. Our conclusion assumes that, if the fundamental flaws, including the social license risk, financing risk, and execution risk, remained unaddressed and unresolved, the FMV of the Project would

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[128] Accuracy Second Report, ¶¶ 4.59–4.62.
[129] Accuracy Second Report, ¶¶ 4.59–4.62.
[130] Accuracy Second Report, ¶¶ 4.59–4.62.
[131] Accuracy Second Report, ¶ 1.21. Here, Accuracy is referring to its approach from the Accuracy First Report.

be *nil*. However, the independent appraiser would have likely excluded the financing risk and foreclosure risk if a notional investor did address and resolve those issues.

177. Third, we disagree with Accuracy's statement that Claimant's inability to access the Invicta Project implied that the shares had no value. Under the Primary Approach that Accuracy advocated in both of their reports, "future cash flows are discounted to their present value at the cost of capital," based on a "hypothetical transaction between unidentified market participants."[132] Even if Claimant could not access the Invicta Project before the foreclosure of the PLI Loan Agreement, the available *future* cash flows from the Invicta Project still would have value to market participants.

178. Lonely Mountain Resources S.A.C. ("**Lonely Mountain**") was one such market participant: it purchased PLI from Pandion when Claimant already was in debt distress and requiring waivers of its defaults under the PLI Loan Agreement. As a rational investor acquiring a non-performing loan, Lonely Mountain would have valued PLI based on the FMV of the collateral (i.e., the Invicta Project), not based on Claimant's credit profile at the time.

179. Accuracy claims that Claimant never received the independent appraiser's valuation.[133] It is not possible to reasonably compare our conclusions with those of the appraiser without carefully examining the differences in the underlying assumptions between our analysis and the appraiser's assessment. We understand that Respondent requested the appraisal report, and that Claimant has not produced it, which prevents us (and Accuracy) from evaluating the reasonableness of the assumptions in the appraisal report and comparing them to our assumptions.

VIII. Our Opinion on the Calculation of Pre-Award Interest

180. In the Accuracy Second Report, Accuracy recognized that "[u]ltimately, the question of the correct pre-award interest rate to apply in this case is for the Tribunal" and that a "wide range of rates" have been used in the past cases.[134] We agree with Accuracy on those two points.

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[132] Accuracy Second Report, ¶ 5.2.
[133] Accuracy Second Report, ¶ 4.63.
[134] Accuracy Second Report, ¶ 4.50; First Report, ¶ 168.

181. With partial support from Accuracy,[135] Claimant alleged that the current high inflation environment would encourage the Respondent to delay payment of any damages that might become due:[136]

> *"Indeed, in the current inflationary context, a respondent State would then have every incentive to delay payment of an award because an interest rate of UST+2% or SOFR+2% (or even LIBOR+2%) would mean that, contrary to the principles justifying awarding interest, the value of the amount owed to the Claimant would decrease over time in real terms. In other words, delaying payment or enforcement of an award would make the respondent State better off economically since the award would be worth less with the passage of time and the interest awarded for late payment would not be sufficient to offset the decrease in value of the principal."*

182. We disagree with the statement above for the following three reasons.

183. First, the indexed rates that we have referenced (i.e., UST, SOFR, and LIBOR) are all variable, market-determined interest rates that respond to fluctuations in the inflationary and macroeconomic environment.

184. Second, the high inflation Claimant referenced is not expected to last into 2023. The United States Federal Reserve projected in December 2022, that the inflation rate is expected to decrease to 3.1% in 2023 and 2.5% in 2024.[137]

185. Third, Claimant's statement ignores the mismatch in the currency in which Claimant has requested damages (US$) and the currency in which Peru collects revenues (PEN). This statement ignored any potential issues around the foreign exchange rate and the fact that Peru's income is primarily generated in local currency. As shown in **Figure 22** below, Peru's local currency has been generally depreciating against US dollars.[138] This means that from Peru's perspective, when Peru's Sol is depreciating against the dollar the "value of the amount owed" would increase rather than "decrease". That is, Peru would have to pay a higher amount of local currency to obtain and pay the same amount of US dollars.

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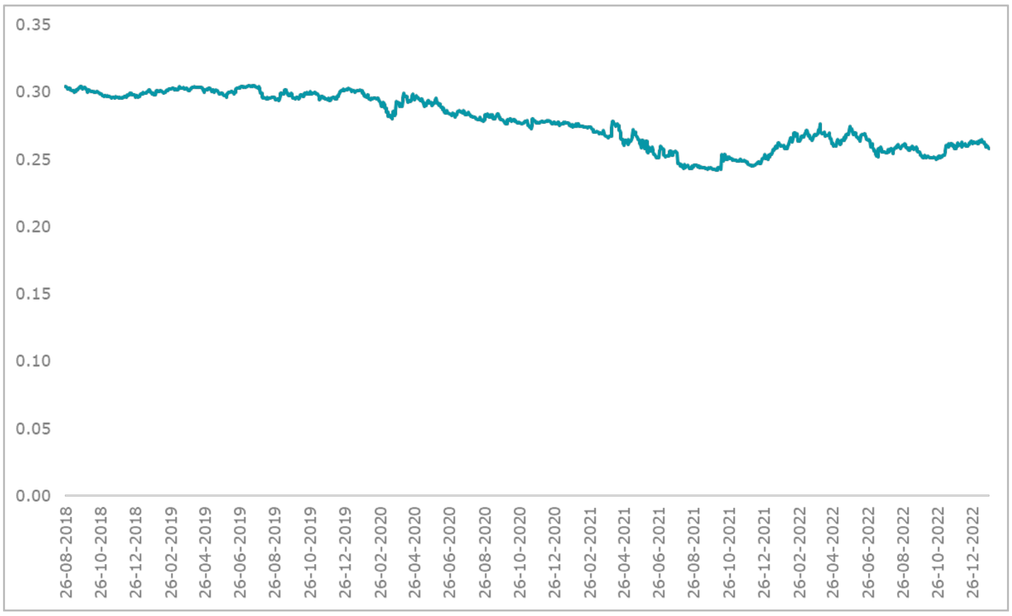
[135] Accuracy Second Report, ¶ 4.58, 6.64–6.65, and Appendix 6. Accuracy opined that the rates proposed by both Accuracy and AlixPartners would currently result in a negative real interest rate.

[136] Claimant's Reply, ¶ 1054.

[137] Federal Reserve, Summary of Projections, December 2022, Table 1. [AP-0067]

[138] Capital IQ, US$PEN Exchange Rates [AP-0065]. From the Valuation Date of 26 August 2019 to the 31 August 2022 (the ending date for Accuracy's pre-award interest calculation), the Peruvian Sol deprecated by 12.0%. This equals to an annualized rate of 3.82%, which is higher than the average SOFR+2% (2.52%) or UST+2% (2.76%) in this period. See **Appendix 2**, "Pre-award interest".

Figure 22 – The Trend of US Dollar per Peruvian Sol



186. The only reasonable situation that would incentivize Respondent to delay a payment due in foreign currency is when the local currency appreciates at a rate higher than the pre-award interest rate (as shown below), which is inconsistent with the historical trend.

Figure 23 – Illustration of the Interaction between Foreign Exchange Rate and the Pre-award Interest Rate

Item	Constant	Deprecation by 5%	Appreciation by 5%
Award (assume US$ 100) in Y0	100	100	100
Award in PEN in Y0 (assume US$ = 3 PEN)	300	300	300
Pre-award Interest (assume 3%)	3	3	3
Amount to be paid in Y1 (US$)	103	103	103
US$PEN	3	3.15	2.85
Amount to be paid in Y1 (PEN)	309	324	294
If incentivized to delay payment?	No	No	Yes

187. In the figure below, we update our calculation of pre-award interest under the rates of SOFR+2%[139] and UST+2% as of 31 August 2022 for the 590t/day and 355t/day scenarios.[140]

[139] In our First Report, we used the 180-day average SOFR rate. In this report, we update to the SOFR rate sourced from the Federal Reserve Bank of New York as the basis for our calculation.

[140] **Appendix 2**, "AlixPartners" and "Pre-award Interest".

Figure 24 – Revised Damages plus Pre-award Interest

Item (US$ millions)	590t/day scenario	355t/day scenario
Damages, before Pre-Award Interest	20.5	22.5
Pre-Award Interest (SOFR+2%)	1.6	1.8
Pre-Award Interest (UST+2%)	1.8	1.9
Total Damages (SOFR+2%)	22.1	24.3
Total Damages (UST+2%)	22.3	24.4

188. The detailed calculations can be found in **Appendix 2** and **Appendix 3** for the 590t/day and 355t/day scenarios respectively.

IX. Our Opinion on Accuracy's Other Indicators of Value

189. As in the Accuracy First Report, Accuracy also proposed four additional analyses as indicators of the value of Claimant's Investment and as benchmarks for assessing the reasonableness of their damage assessments using the Primary Approach:

a) Market capitalization approach;

b) Sunk costs approach;

c) Transaction multiples approach; and,

d) Valuation results per the SRK Model and the Red Cloud Model.

190. Although Accuracy modified these analyses in their second report based on our comments, we are still of the view that these indicators are either inaccurate or do not demonstrate the reasonableness of Accuracy's quantification of damages under the Primary Approach.

A. Accuracy's Market Capitalization Approach Remains Problematic

191. In the Accuracy First Report, Accuracy estimated Lupaka's market capitalization on the Valuation Date as a benchmark to damages. Accuracy took the market capitalization as of 25 October 2018, the date on which Claimant made the public announcement concerning the Invicta Project and before the market reflected this information in Lupaka's share price.[141] Accuracy then applied the daily percentage changes in the VanEck Vectors Junior Gold Miners ETF ("**GDXJ**") between 25 October 2018 to 26 August 2019 to Lupaka's actual market capitalization on 25 October 2018

[141] Accuracy First Report, ¶ 8.5.

to calculate Lupaka's implied market capitalization on 26 August 2019. Finally, Accuracy added a control premium of 43.2% to the implied market capitalization.[142]

192. In the Accuracy Second Report, Accuracy continued to use the approach from their first report. Accuracy provided three values (US$33.4 million, US$32.8 million and US$27.8 million) and concluded that the value of the Invicta Project would fall into this range from US$27.8 million to US$33.4 million. The US$33.4 million was sourced to the Accuracy First Report,[143] whereas the US$32.8 million and US$27.8 million were calculated with the following adjustments incorporated respectively:

a) Regarding the US$32.8 million, Accuracy accepted our position from our First Report that Claimant's stock price may have been distorted due to liquidity issues, and that the market capitalization on a specific date is not always realizable.[144] Therefore, Accuracy modified their approach to use the average of Lupaka's market capitalization from 13 September 2018 to 25 October 2018 (i.e., a 30-day trailing average) as the starting point,[145] instead of using Claimant's actual market capitalization as of 25 October 2018 as shown in **Figure 25**.

b) Regarding the US$27.8 million, Accuracy acknowledged our comment in our First Report that the implied market capitalization under Accuracy's approach was always lower than the actual market capitalization after 28 March 2018.[146] Therefore, Accuracy adjusted Lupaka's implied market capitalization by an "underperformance rate" of 16.9% between Claimant's share price and the GDXJ as of 25 October 2018.[147] **Figure 25** below summarizes Accuracy's updated calculations.[148]

[142] Accuracy First Report, Appendix 7, "Market Cap".
[143] Accuracy First Report, ¶ 8.18.
[144] First Report, ¶ 186.
[145] Accuracy Second Report, Appendix 5, "Share price v GDXJ".
[146] First Report, ¶ 183.
[147] Accuracy Second Report, Appendix 5, "Share price v GDXJ".
[148] Accuracy Second Report, Appendix 5.

Figure 25 – Damages Calculated Under Accuracy's Updated Market Capitalization Approach

Item (US$ millions)	Accuracy First Report[149]	First Alternative Method - Accuracy Second Report[150]	Second Alternative Method - Accuracy Second Report[151]
Lupaka's Actual Market Capitalization (25 October 2018)	16.3	16.0[152]	16.3
The Percentage Change in the GDXJ (25 October 2018 - 26 August 2019)	Daily Change		
Lupaka's Implied Market Capitalization (26 August 2019)	23.4	22.9	23.4
Control Premium Factor	43.2%		
Lupaka's Adjusted Market Capitalization with Control Premium	33.4	32.8	33.4
Lupaka's Underperformance Rate Relative to the GDXJ (28 March 2018 - 25 October 2018)			-16.9%
Lupaka's Adjusted Market Capitalization with Underperformance Rate	NA	NA	27.8

193. In summary, we disagree with Accuracy's result from their original approach in the Accuracy First Report (US$33.4 million) for the following reasons:

a) Accuracy relied on daily percentage changes in the GDXJ which demonstrated a weak relationship with Lupaka's share price;[153]

b) Accuracy's control premium was not applicable;[154]

c) Accuracy did not account for the underperformance of Lupaka relative to the GDXJ after 28 March 2018; and,[155]

d) Accuracy did not adjust this number for the issue that Lupaka's share price may be distorted due to low trading volume.[156]

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[149] Accuracy First Report, Appendix 7, "Market Cap".

[150] Accuracy's first alternative method in the Accuracy Second Report was to use Lupaka's 30-day trailing average market capitalization as the starting point.

[151] Accuracy's second alternative method in the Accuracy Second Report was to adjust the value in their first report by an underperformance rate

[152] US$16,021,120 is the 30-day trailing average of Lupaka's actual market capitalization from 13 September 2018 to 25 October 2018.

[153] **Paragraph 196.**

[154] **Paragraph 201.**

[155] First Report, ¶ 183.

[156] First Report, ¶ 186.

194. In summary, we disagree with Accuracy's result from the first alternative method in the Accuracy Second Report (US$32.8 million) for the following reasons:

a) Accuracy relied on daily percentage changes in the GDXJ which demonstrated a weak relationship with Lupaka's share price; and,[157]

b) Accuracy's control premium was not applicable.[158]

195. In summary, we disagree with Accuracy's result from the second alternative method in the Accuracy Second Report (US$27.8 million) for the following reasons:

a) Accuracy relied on daily percentage changes in the GDXJ which demonstrated a weak relationship with Lupaka's share price;[159]

b) Accuracy's control premium was not applicable; and,[160]

c) Accuracy's underperformance rate was understated.[161]

196. First, Accuracy based their calculations on an inappropriate dataset of daily percentage changes of the GDXJ. In our First Report, we performed a regression analysis on the daily data between returns of Claimant's stock and returns of the GDXJ from 1 January 2013 to 25 October 2018. Our analysis showed a beta coefficient of 0.34 and an R-squared of 1.8%, signifying weak and unreliable predictions in the response variable (i.e., daily percentage changes of Lupaka's stock price).[162] As a market index, the GDXJ reflected general systematic risks, but did not capture the Claimant-specific risks discussed in **Section IV**, such as social license, execution, regulatory, and financing risks.

197. We understand that the regression analysis included in the Accuracy Second Report suggested a stronger relationship between returns of Claimant's stock price and returns of the GDXJ, with a beta of 0.88 and a R-squared of 17.7%.[163] However, Accuracy's regression analysis was based on the monthly data from 25 October 2013 to 25 October 2018, which was less volatile than the daily data that Accuracy applied for their implied market capitalization calculations. A regression analysis based on the daily data between 25 October 2013 to 25 October 2018 shows a low beta

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[157] **Paragraph 196**.
[158] **Paragraph 201**.
[159] **Paragraph 196**.
[160] **Paragraph 201**.
[161] **Paragraph 209**.
[162] First Report, Appendix 5, "Regression".
[163] Accuracy Second Report, Appendix 5, "Monthly Beta".

coefficient of 0.15 and an R-squared of 0.2%.[164] The variance of the monthly data ranged from -18.7% to 27.0%, whereas that of the daily data ranged from -42.7% to 68.4%.[165] **Figure 26** below demonstrates the differences between monthly data and daily data.

Figure 26 – Correlation Between Returns of Lupaka's Stock Price and Returns of the GDXJ from 25 October 2013 to 25 October 2018

Item	Daily Data	Monthly Data
Beta Coefficient	0.15	0.88
R-Squared	0.2%	17.7%
Range of Variance	-42.7% to 68.4%	-18.7% to 27.0%

198. Although Accuracy appeared to prove a stronger relationship between Claimant's stock price and the GDXJ on a monthly basis, they still applied the daily percentage changes of the GDXJ, rather than the monthly percentage changes, to calculate Lupaka's implied market capitalization. This mismatch and the weaker relationship indicated by the regression analysis on daily data lead us to conclude that this approach remains unjustified.

199. Moreover, Accuracy applied the percentage changes in the GDXJ market capitalization on Claimant's market capitalization in a 1:1 ratio, thus assuming a beta coefficient of 1 (i.e., $\Delta P_{Lupaka}=\Delta P_{GDXJ}$). In theory, all else equal, a beta coefficient of 0.88 means that for 1 unit increase in the GDXJ, Claimant's stock price would increase by 0.88 unit rather than the 1 unit that Accuracy assumed.

200. Applying the monthly percentage changes in the GDXJ from October 2018 to August 2019 and integrating the beta coefficient of 0.88 reduce Lupaka's implied market capitalization to US$22.6 million or US$23.0 million on a standalone basis, as shown in **Figure 27**.[166]

[164] **Appendix 4**, "Daily Beta".

[165] **Appendix 4**, "Share price v GDXJ (Monthly)" and "Share price v GDX (Daily)".

[166] **Appendix 4**, "Implied Market Cap".

Figure 27 – Revised Calculation of Lupaka's Implied Market Capitalization Using Monthly Data Only

Item (US$ millions)	First Alternative Method		Second Alternative Method	
Approach	Accuracy	AlixPartners	Accuracy	AlixPartners
Lupaka's Actual Market Capitalization (25 October 2018)	16.0	16.0	16.3	16.3
The Percentage Change in the GDXJ (25 October 2018 – 26 August 2019)	Daily Change	Monthly Change	Daily Change	Monthly Change
Lupaka's Implied Market Capitalization (26 August 2019)	22.9	22.6	23.4	23.0
Control Premium Factor	43.2%			
Lupaka's Adjusted Market Capitalization with Control Premium	32.8	32.3	33.4	33.0
Lupaka's Underperformance Rate compared to the GDXJ (28 March 2018 – 25 October 2018)	NA	NA	-16.9%	-16.9%
Lupaka's Adjusted Market Capitalization with Underperformance Rate	NA	NA	27.8	27.4

201. Second, Accuracy's 43.2% control premium inflated Claimant's implied value. Accuracy stated that adding a control premium was "consistent with both common valuation practice and observable market evidence".[167] However, as we will discuss below, this approach did not actually follow the common practice or market evidence.

202. Accuracy oversimplified the concept of control premiums. The controlling interest itself has little inherent value but may be valuable if the exercise of control enhances the expected economic benefits and/or reduces the enterprise's risk for a hypothetical investor.[168] Therefore, a persuasive FMV calculation should be supported by a clear explanation of the benefits that are expected to be earned from control.[169] The value of control derives from and relies on a market participant's perspective on future growth in cash flows or reduced risks.

203. Due to the Invicta Project's high social license, execution and financing risks, its expected economic benefits are difficult to be reliably measured, reducing an

[167] Accuracy Second Report, ¶ 7.20.

[168] The Appraisal Foundation, "The Measurement and Application of Market Participant Acquisition Premiums", 6 September 2017, pp. 9-12. [AP-0068]

[169] The Appraisal Foundation, "The Measurement and Application of Market Participant Acquisition Premiums", 6 September 2017, pp. 13-17. [AP-0068]

investor's willingness to pay a control premium. As a result, Accuracy's method of applying historical premiums without clearly explaining what the value of control represents in this case inflates this indicator of value.

204. Moreover, some finance experts have proposed that the expected value of control is already reflected in a firm's share price. For example:[170]

> *"In 2001, Pratt further clarified his position in the first edition of Business Valuation Discounts and Premiums. Pratt quoted an article by Mark Lee and then wrote that "given the current state of debate, one must be extremely cautious about applying a control premium to public market values to determine a control level of value." Similarly, Mercer's 2004 book agreed with Nath's 1990 article and explained that "unless there are cash flow-driven differences between the enterprise's financial control value and its marketable minority value, there will be no (or very little) minority interest discount.*
>
> *Several professors of corporate law have questioned the assumption that most market prices include an IMD [implicit minority discount]. Professor Richard Booth wrote in 2001 that "it is not necessarily the case that actual market price is always less than fair market price." Professor William Carney argued in 2003 against assuming that market prices of most publicly traded shares include a significant IMD, concluding, "Even if all values, both present and potential, are valued in the market price for the firm's shares, one would not expect to find a discernible control premium in a widely held firm that is well managed and appears to offer little probability of a transfer of control."*
>
> *The 2007 Hamermesh and Wachter article argued that premiums paid in acquisitions are not justification for assuming that market prices include IMD, stating, "[N]ot a single piece of financial or empirical scholarship affirms the core premise of the IMD – that public company shares systematically trade at a substantial discount to the net present value of the corporation."*

205. Professor Aswath Damodaran of New York University's Stern School of Business noted that the stock price of every publicly traded firm includes an expected value of control, reflecting both the likelihood of changes in management and the value of the

[170] Fishman, Jay E., et al., "Standards of Value_Theory and Applications", 2013, pp. 165-166. [AP-0069]

changes.[171] Although the extent to which an expected value of control is built into a stock price varies across firms and industries, applying an additional premium calls for a careful analysis on the underlying expectations of a stock price, especially when a firm like Claimant experienced ongoing SLO issues.

206. Accuracy also misused the reference premium data cited in the Accuracy Second Report. Accuracy's control premium relied upon a MergerStat report dated Q1'2020 and an RSM study from 2017.[172] In the MergerStat report, the 10-year mining sector average control premium of 50.5% that Accuracy used included data from the metal mining industry, as well as the oil and gas extraction industry.[173] The control premiums of the metal mining industry alone averaged 34.9% in 2019.[174]

207. In the RSM study, the average 20-day pre-announcement premium of 35.8% that Accuracy adopted fell 16.5% below the average 2-day pre-bid control premium of 29.9%, which reflected better the expectations of hypothetical buyers in case of a high level of bid speculation.[175]

208. Therefore, the two reference premiums that Accuracy used overstated the 43.2% control premium compared to the more relevant reference points included in the same source documents. Setting those issues aside, we maintain our belief that a control premium should not be added to the calculation of Claimant's implied market capitalization. Removing the control premium would reduce Lupaka's adjusted market capitalization to US$22.9 million or US$19.4 million on a standalone basis, as shown in **Figure 28**.

[171] Damodaran, Aswath, "The Value of Control_Implications for Control Premia", pp. 44-50. [AP-0070]

[172] Accuracy First Report, ¶ 8.16.

[173] Mergerstat, Control Premium Study, 1st Quarter 2020, p. 8. [AC-0035]

[174] Mergerstat, Control Premium Study, 1st Quarter 2020, p. 27. [AC-0035]

[175] RSM, Control Premium Study 2017, p. 9. [AC-0036]

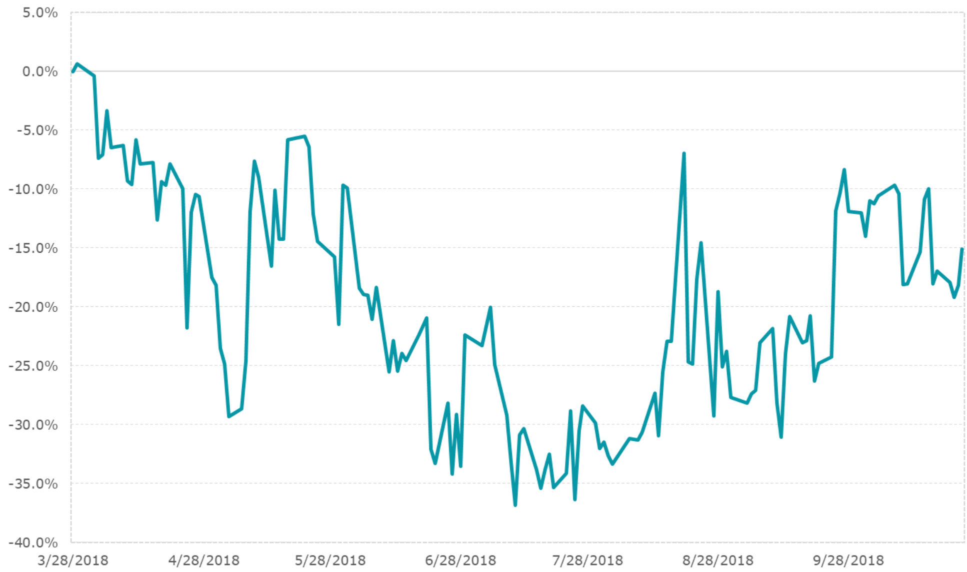
Figure 28 – Revised Calculation of Lupaka's Implied Market Capitalization By Removing Control Premium Only

Item (US$ millions)	First Alternative Method		Second Alternative Method	
	Accuracy	AlixPartners	Accuracy	AlixPartners
Lupaka's Actual Market Capitalization (25 October 2018)	16.0	16.0	16.3	16.3
The Percentage Change in the GDXJ (25 October 2018 – 26 August 2019)	Daily Change	Daily Change	Daily Change	Daily Change
Lupaka's Implied Market Capitalization (26 August 2019)	22.9	22.9	23.4	23.4
Control Premium Factor	43.2%	Removed	43.2%	Removed
Lupaka's Adjusted Market Capitalization with Control Premium	32.8	NA	33.4	NA
Lupaka's Underperformance Rate compared to the GDXJ (28 March 2018 – 25 October 2018)	NA	NA	-16.9%	-16.9%
Lupaka's Adjusted Market Capitalization with Underperformance Rate	NA	NA	27.8	19.4

209. Third, Accuracy's adjustment factor of 16.9% understated Lupaka's underperformance relative to the GDXJ from 28 March 2018 to 25 October 2018. During this period, Claimant's actual market capitalization compared to the GDXJ changed at a rate ranging from 0.6% to -35.9%, as displayed in **Figure 29**.[176]

[176] **Appendix 4**, "Share price v GDXJ (Daily)".

Figure 29 – Lupaka's Underperformance Rate between 28 March 2018 to 25 October 2018



210. The average and median underperformance rates were 20.8% and 21.0%, each above the 16.9% rate that Accuracy used in their calculation.[177] Using the average percentage decrease of 20.8% would reduce Accuracy's adjusted market capitalization to US$26.5 million on a standalone basis,[178] as shown in **Figure 30**.

Figure 30 – Revised Calculation of Lupaka's Market Capitalization Modifying Underperformance Rate Only

Item (US$ millions)	**Second Alternative Method**	
	Accuracy	AlixPartners
Lupaka's Actual Market Capitalization (25 October 2018)	16.3	16.3
The Percentage Change in the GDXJ (25 October 2018 – 26 August 2019)	Daily Change	Daily Change
Lupaka's Implied Market Capitalization (26 August 2019)	23.4	23.4
Control Premium Factor	43.2%	
Lupaka's Adjusted Market Capitalization with Control Premium	33.4	33.4
Lupaka's Underperformance Rate compared to the GDXJ (28 March 2018 – 25 October 2018)	-16.9%	-20.8%
Lupaka's Adjusted Market Capitalization with Underperformance Rate	27.8	26.5

[177] **Appendix 4**, "Share price v GDXJ (Daily)".
[178] Accuracy only applied an "underperformance rate" in the second alternative method of Accuracy Second Report.

211. In summary, revising Accuracy's approach by applying the monthly percentage changes in the GDXJ, removing the irrelevant control premium, and using the average underperformance rate reduces the adjusted market capitalization to US$22.6 million or US$18.2 million, [179] as shown in **Figure 31**.

Figure 31 – Revised Calculations of Lupaka's Implied Market Capitalization

Item (US$ millions)	First Alternative Method		Second Alternative Method	
	Accuracy	AlixPartners	Accuracy	AlixPartners
Lupaka's Actual Market Capitalization (25 October 2018)	16.0	16.0	16.3	16.3
The Percentage Change in the GDXJ (25 October 2018 – 26 August 2019)	Daily Change	Monthly Change	Daily Change	Monthly Change
Lupaka's Implied Market Capitalization (26 August 2019)	22.9	22.6	23.4	23.0
Control Premium Factor	43.2%	Removed	43.2%	Removed
Lupaka's Adjusted Market Capitalization with Control Premium	32.8	NA	33.4	NA
Lupaka's Underperformance Rate compared to the GDXJ (28 March 2018 – 25 October 2018)	NA	NA	-16.9%	-20.8%
Lupaka's Adjusted Market Capitalization with Underperformance	NA	NA	27.8	18.2

212. In conclusion, Accuracy's methodology of calculating Claimant's implied market capitalization was not generally accepted valuation practice, and the resulting range from US$27.8 million to US$33.4 million was overstated. Therefore, Accuracy's market capitalization approach does not support Accuracy's Project FMV conclusion.

B. Accuracy's Sunk Costs Approach Is Irrelevant

213. In the Accuracy Second Report, Accuracy reiterated their belief that Claimant's sunk costs was a relevant benchmark and should represent the floor of the damages estimate. Accuracy attributed the exploration expenditures expensed prior to 31 July 2017 and those capitalized between 1 August 2017 and 26 August 2019 to the total amount of sunk costs without adjustments, [180] as detailed in **Figure 32**.

[179] **Appendix 4**, "Summary_Market Cap".

[180] Accuracy First Report, Appendix 8, "Sunk Costs". Accuracy Second Report, Appendix 5, "Claimant's sunk costs".

Figure 32 – Accuracy's Calculation of Sunk Costs

Item (US$ millions)	Actual Amount	Interest	Amount with Interest	Interest Rate Factor
Exploration Expenditures (Expensed)	16.5	16.9	33.4	102.2%
Mineral Property Under Development (Capitalized)	8.3	1.4	9.6	16.5%
Total	**24.8**	**18.3**	**43.0**	**73.6%**

214. On the grounds that the sunk costs approach reflected Claimant's wish to "(at the very least) service its debts",[181] Accuracy then applied interest rate factors to each year's actual sunk costs. In their first report, Accuracy used the annual interest rate of 10.1% from the PLI Loan Agreement, based on a total amount of interest of US$7.0 million paid on the principal of US$11.3 million over 60 months.[182] In their second report, Accuracy switched to a higher rate of 12.0%, which was estimated based on the financing cash flows in the 355t/day scenario.[183]

215. We disagree that historical exploration expenditures of the Invicta Project would be a proxy for its value in this case.

216. First, according to the Special Committee of the Canadian Institute of Mining, Metallurgy & Petroleum on the Valuation of Mineral Properties ("**CIMVAL**") Standards, the cost approach is not appropriate for the valuation of development properties.[184] According to CIMVAL's definition, a Development Property is a Mineral Property that:[185]

> *"a Mineral Property that contains Mineral Reserves and/or Mineral Resources and for which economic viability has been demonstrated by a Feasibility Study or Pre-Feasibility Study and includes a Mineral Property that has a Current positive Feasibility Study or Pre-Feasibility Study but that is not yet in production."*

217. As discussed in our First Report, although the Project was not subject to a pre-feasibility study or feasibility study, we understand that it could be classified as a Development Property since it contained mineral resources, obtained a preliminary

[181] Accuracy First Report, ¶ 8.31.
[182] Accuracy First Report, ¶ 8.31, Footnote 203.
[183] Accuracy Second Report, ¶ 7.43.
[184] CIMVAL Standards (2019), p. 16. [AP-0007]
[185] CIMVAL Standards (2019), p. 32. [AP-0007]

economic assessment and was proceeding towards commercialization.[186] Accuracy also acknowledged that the Invicta Project was "at a more advanced stage" than a typical mineral resource property,[187] which indicated that the Project would fall into the category of development properties, as shown in **Figure 33**.[188] However, Accuracy did not explain how the cost approach was a relevant indicator of value.

Figure 33 – Valuation Approaches per CIMVAL Standards

Valuation Approach	Exploration Properties	Mineral Resource Properties	Development Properties	Production Properties
Income	No	In some cases	Yes	Yes
Market	Yes	Yes	Yes	Yes
Cost	Yes	In some cases	No	No

218. Furthermore, Claimant's sunk costs were not an appropriate estimate of costs that contributed to the Project's value, as those costs captured only the past exploration expenditures incurred up to the Valuation Date but could not account for the uncertainty and risks that Claimant faced (i.e., the fundamental flaws discussed in **Section IV**).

219. Second, Accuracy's application of interest rate factors to sunk costs inflated the value of sunk costs inappropriately. These interest rate factors ranged from 3.8% to 118.9% and increased the actual dollar amount of sunk costs by 73.6%, approximately doubling the actual dollar amount of sunk costs in some instances.[189] To calculate their interest rate factors, Accuracy chose the higher rate (12.0%) of the two effective interest rates in the 355t/day scenario (12.0% on a post-tax basis) and the 590t/day scenario (11.4% on a post-tax basis), without any explanation on why or how one rate should be preferred over the other.

220. Although Accuracy ignored Claimant-specific risks in their other damage calculations, they chose to use a Claimant-specific interest rate instead of a market interest rate to bring forward the value of Claimant's sunk costs.

221. As we explained in our First Report, recognizing Lupaka's historical costs at their actual dollar value, rather than with a cumulative rate of return, would be more appropriate. To bring these amounts forward to the Valuation Date, applying a pre-

[186] First Report, ¶ 102.
[187] Accuracy First Report, ¶ 4.31.
[188] CIMVAL Standards (2019), p. 16. [AP-0007]
[189] Accuracy Second Report, Appendix 5, "Claimant's sunk costs".

award interest rate of UST+2% or SOFR+2% should be sufficient. Since the Federal Reserve Bank of New York began the publication of SOFR on 2 April 2018,[190] we used UST+2% to illustrate a revised amount of interest on sunk costs,[191] as shown in **Figure 34**. This method reduced the interest from US$18.3 million to US$3.7 million.

Figure 34 – Revised Accuracy's Interest on Sunk Costs Using UST+2%

Item (US$ millions)	Actual Amount	Accuracy		AlixPartners	
		Interest	Interest Rate Factor	Interest	Interest Rate Factor
Source of Interest Rate	NA	PLI Loan Agreement		Pre-Award Interest Rate	
Exploration Expenditures (Expensed)	16.5	16.9	102.2%	3.2	19.4%
Mineral Property Under Development (Capitalized)	8.3	1.4	16.5%	0.5	5.5%
Total	**24.8**	**18.3**	**73.6%**	**3.7**	**14.8%**

222. In conclusion, Accuracy's sunk costs approach is not a relevant or reasonable benchmark of the FMV of the Project.

C. Accuracy's Market Transactions Are Not Comparable

223. In the Accuracy First Report, Accuracy identified 26 recent gold industry corporate transactions over US$1.0 million and calculated indexed valuation multiples using implied enterprise value of the acquired companies. Accuracy compared these multiples with the implied valuation multiples in the 355t/day and 590t/day scenarios to benchmark the reasonableness of the Primary Approach. The Accuracy Second Report retained the same set of transactions and updated the analysis to compute multiples based on equity value, rather than enterprise value.[192] **Figure 35** below summarizes Accuracy's transactions multiples based on implied equity value in their second report.[193]

[190] The Federal Reserve Bank of New York, "Additional Information about SOFR". [AP-0071]

[191] **Appendix 4**, "UST+2%".

[192] Accuracy Second Report, ¶¶ 7.55-7.56.

[193] Accuracy Second Report, ¶¶ 7.57, 7.65.

Figure 35 – Accuracy's Updated Transactions Multiples

Item	Indexed Multiples (US$/oz)
Market Transactions (Median)	219.1
Market Transactions (Mean)	368.0
590t/day Scenario	146.7
355t/day Scenario	202.3

224. However, this approach is still unreliable, as Accuracy did not address the following issues that we raised in our First Report.

225. First, Accuracy ignored the comparability issues between the 26 transactions and the Project due to the variability in their production stages and geography. We noted that 18 of the 26 transactions had more than one producing mine. Only eight of the 26 transactions were at the development or exploration stage, the stage to which the Invicta Project was closest. **Figure 36** shows the indexed multiples based on the equity value of these two subsets.[194]

Figure 36 –Transaction Multiples of Illustrative Subsets

Item (US$/oz)	Number of Transactions	Median Indexed Multiple	Mean Indexed Multiple	Range of Indexed Multiples
Accuracy Second Report	26	219.1	368.0	5.0 – 1,235.7
Companies with more than 1 producing mine	18	372.4	472.4	5.0 – 1,235.7
Companies with only pre-production projects	8	64.3	133.0	7.9 – 451.7

226. In the Accuracy Second Report, Accuracy contended that the valuation multiples that resulted from excluding transactions with producing mines were lower.[195] However, Accuracy did not explain whether or why those lower multiples would be inappropriate (except to note they were lower). Companies with more than one producing mine benefited from more diversified risks and more predictable cash flows. Given that Claimant had no producing mines, and that the Invicta Project faced various project-specific risks, using transactions with more than one producing mine as benchmarks inflated Claimant's indicated value. **Figure 37** details the number of

[194] **Appendix 4**, "Revised Market Transactions".
[195] Accuracy Second Report, ¶ 7.58.

producing mines the target companies in Accuracy's comparable transactions owned.[196]

Figure 37 – Number of Producing Mines of Accuracy's Comparable Transactions

Transaction Date	Target Companies	Number of Producing Mines
14-May-19	Atlantic Gold Corporation	2
14-Jan-19	Goldcorp Inc.	8
14-Nov-18	Tahoe Resources Inc.	4
24-Sep-18	Barrick Gold (Holdings) Limited	5
19-Mar-18	Klondex Mines Ltd.	4
23-Jan-18	Brio Gold Inc.	3
12-Jan-18	Primero Mining Corp.	1
7-Nov-17	AuRico Metals Inc.	5
11-Sep-17	Richmont Mines Inc.	2
28-Jun-17	Avnel Gold Mining Limited	1
29-Sep-16	Newmarket Gold Inc.	3
7-Mar-16	SGO Mining Inc.	1
8-Feb-16	Lake Shore Gold Corp.	2
16-Nov-15	St Andrew Goldfields Ltd.	3
2-Sep-15	Polyus Gold International Limited	6
8-Jun-15	NWM Mining Corporation	1
13-Apr-15	Alamos Gold, Inc.	1
9-Feb-15	Rio Alto Mining Limited	1
Average		**3**
Median		**3**

227. In response to Accuracy, we examined the target companies of these 18 transactions. For example, one of the target companies, Goldcorp Inc. announced its transaction on 14 January 2019, with an indexed multiple of US$225.7/oz based on equity value.[197] As a subsidiary of Newmont Corporation, it had eight producing mines in five countries and generated US$2,984.9 million in revenue as of 31 December 2018.[198] Goldcorp Inc.'s debt was considered investment grade by Standard and Poor's, indicating low risks and positive prospects.[199]

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[196] **Appendix 4**, "Revised Market Transactions".

[197] Accuracy Second Report, Appendix 5, "Table 7.1".

[198] Capital IQ, Goldcorp Inc_PrivateCompany, p. 1. [AP-0072] The revenue of Goldcorp Inc. was CA$4,072.9 million as of 31 December 2018. **Appendix 4**, "CAD per USD". The CAD/USD exchange rate was 1.3645 on 31 December 2018. CA$4,072.9 million / 1.3645 = US$2,984.9 million.

[199] Capital IQ, Goldcorp Inc_PrivateCompany, pp. 5-6. [AP-0072]

228. Another target company, Lake Shore Gold Corp., announced its transaction on 8 February 2016, with an index multiple of US$1,041.7/oz based on equity value.[200] It owned two producing mines in Canada and had generated revenues of US$195.6 million as of 31 December 2015.[201] Therefore, the 18 transactions were not comparable to the Invicta Project and thus should be excluded.

229. Although no two companies or transactions are exactly the same, a valuation multiples analysis assumes that the companies or transactions used should have similar underlying assets, size, cash flows, etc. Misusing companies or transactions that are not comparable to the subject creates unjustified biases on its value.[202]

230. Second, Accuracy did not analyze the relative risks faced by the projects acquired in these 26 transactions. Looking at the eight target companies with only development or exploration projects first, we noted that Romarco Minerals Inc. which had the highest indexed multiple of US$451.7/oz was located in South Carolina, a region described as a "low-risk jurisdiction".[203] Removing Romarco Minerals Inc. from the eight companies reduced the mean indexed multiple from US$133.0/oz down to US$87.4/oz.[204]

231. Risks and opportunities in the mining industry vary among jurisdictions. Indices such as the Investment Attractiveness Index rank mining risks by country.[205] Contrary to Accuracy's allegation, we did not assume that countries across Latin America were exposed to have "exact same level of risk".[206] The fact is that most countries in this region face persistent conflicts due to "insufficient consultation with affected communities".[207] Therefore, it is not reasonable to include mining companies or transactions without taking geographic characteristics into consideration.

232. We also noted that in their second report, Accuracy identified that three out of the eight transactions (i.e., two transactions of Rio Novo Gold Inc. and one transaction of Bison Gold Resources Inc.) had pre-production projects that appeared to be "at

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[200] Accuracy Second Report, Appendix 5, "Table 7.1".

[201] Capital IQ, Lake Shore Gold Corp_PrivateCompany, p. 1. [AP-0073] The revenue of Lake Shore Gold Corp. was CA$271.4 million as of 31 December 2015. **Appendix 4**, "CAD per USD". The CAD/USD exchange rate was 1.3874 on 31 December 2015. CA$271.4 million / 1.3874 = US$195.6 million.

[202] Damodaran, Aswath, "An Introduction to Valuation", pp. 24-25. [AP-0074]

[203] Financial Post, "OceanaGold Corp buys Romarco Inc for $856 million, gains low-cost mine in low-risk area", 30 July 2015. [AP-0038]

[204] **Appendix 4**, "Summary_Market Transactions".

[205] Fraser Institute, "Annual Survey of Mining Companies", 2021. [AP-0075]

[206] Accuracy Second Report, ¶ 7.62.

[207] Purdy, Caitlin and Castillo, Rodrigo, "The Future of Mining in Latin America", July 2022, pp. 7-8. [AP-0076]

significantly earlier stage of development" than the Invicta Project.[208] Accuracy calculated the mean and median indexed multiples of US$190.4/oz and US$212.8/oz by excluding only these three transactions. However, we believe that the 18 transactions with more than one producing mine and the Romarco Minerals Inc. transaction should also be removed.

233. **Figure 38** illustrates the impact of revising the scope of Accuracy's existing list of comparable transactions without adjusting for the risks that Claimant faced. As shown below, Accuracy's post-tax NPV of US$34.3 million and US$46.9 million from the 355t/day scenario and the 590t/day scenario are both higher than those of our three alternative scenarios.

Figure 38 – Claimant's Implied Equity Value Based on Adjusted Market Transactions

Item	Indexed Multiple (US$/oz)	355t/day (US$ millions)	590t/day (US$ millions)
AuEQ Resources (thousand oz) [209]	NA	169.5	319.5
Accuracy's Post-Tax NPV[210]	NA	34.3	46.9
Accuracy – All 26 Transactions without Adjustments[211]			
Median	219.1	37.1	70.0
Mean	368.0	62.4	117.6
Range	5.0 – 1,235.7	NA	NA
Accuracy – Companies with only pre-production projects (excl. 3 transactions of Rio, Bison)[212]			
Median	212.8	36.1	68.0
Mean	190.4	32.3	60.8
Range	7.9 – 451.7	NA	NA
AlixPartners – Companies with only pre-production projects[213]			
Median	64.3	10.9	20.6
Mean	133.0	22.5	42.5
Range	7.9 – 451.7	NA	NA
AlixPartners – Companies with only pre-production projects (excl. Romarco)[214]			
Median	63.4	10.7	20.3
Mean	87.4	14.8	27.9
Range	7.9 – 216.2	NA	NA

[208] Accuracy Second Report, ¶ 7.61.
[209] Accuracy Second Report, Appendix 5, "Table 7.2".
[210] Accuracy Second Report, Appendix 5, "Table 7.2".
[211] Accuracy Second Report, Appendix 5, "Table 7.1".
[212] Accuracy Second Report, Appendix 5, "Table 7.1".
[213] **Appendix 4**, "Revised Market Transactions".
[214] **Appendix 4**, "Revised Market Transactions".

AlixPartners – Companies with only pre-production projects (excl. Romarco and 3 transactions of Rio, Bison)[215]			
Median	138.1	23.4	44.1
Mean	125.1	21.2	40.0
Range	7.9 – 216.2	NA	NA

234. Regardless of the above, neither the full list of 26 transactions nor the smaller subsets in the illustrative calculations above adequately demonstrate that Accuracy's damages are reasonable. This approach does not account for any of Claimant-specific risks (see **Section IV**) and when making adjustments to improve the comparability of the transactions, few relevant data points remain. In conclusion, Accuracy's market transaction analysis is unreliable and does not indicate the FMV of the Project.

D. The SRK Model and Red Cloud Model

235. Accuracy's fourth indicator of value was the NPVs from the SRK Model and the Red Cloud Model. Accuracy claimed that because these NPVs were in line with or higher than their calculations for the 590t/day scenario and the 355t/day scenario, their damage assessments using the Primary Approach were reasonable. However, these two models are not indicative of Claimant's damages.

236. First, an issued that we raised in our First Report, the SRK Model and the Red Cloud Model did not consider the same fundamental flaws that Accuracy ignores in their own analysis (see **Section IV**). Neither model took social license, regulation, execution, and financing risks into account. Any of these risks could undermine Claimant's ability to continue operations or generate positive cash flows.

237. Specifically, the SRK Model does not account for the third-party ore processing issues discussed in **Section V.A.i**. Whether or when these issues could be resolved would impact Claimant's production schedule and increase its risk of default.

238. Second, Accuracy states that the SRK Model under the SRK PEA's mine plan was sufficient for estimating mineral resources. In Accuracy's But-For Scenario, Claimant could have "materially completed all development work" and "obtained third-party financing via the PLI Loan"; as a result, Accuracy claims that Claimant would not have needed further any feasibility studies.[216] However, Accuracy again ignored the fundamental flaws (see **Section IV**) and the uncertainty that the SRK PEA itself acknowledged:

[215] **Appendix 4**, "Revised Market Transactions".
[216] Accuracy Second Report, ¶ 7.70.

> *"This preliminary economic assessment is, however, not adequate to confirm the economics of the study. A preliminary-feasibility study, or feasibility study, as defined in Canadian Securities Administrators National Instrument 43-101, containing mineral reserve estimates is required for this purpose."*[217]

239. Third, Accuracy believed that applying a higher premium to the discount rate in the 590t/day scenario could help to offset the unreliability of the Red Cloud Model. As discussed in **Section V.A.viii**, Accuracy's selected discount rate was not adequate to capture all of the relevant risks that the Project was exposed to.

240. In conclusion, the NPVs in the SRK Model and the Red Cloud Model are not relevant indicators of the FMV of the Project.

X. Expert Declaration

241. We declare that:

a) We understand that our duty in giving evidence in this Arbitration is to assist the Tribunal in deciding issues in respect of which expert evidence is adduced. We have complied with, and will continue to comply with, that duty.

b) We understand that our expert report is to be objective and impartial and that it is to include everything we consider relevant to the expert opinions expressed.

c) We confirm that this is our own independent, objective unbiased opinion which has not been influenced by the pressures of the dispute resolution process or by any party to the arbitration.

d) We confirm that all matters upon which we have expressed an opinion is within our area of expertise.

e) We confirm that we have referred to all matters which we regard as relevant to the opinion We have expressed and have drawn to the attention of the Tribunal all matters, of which we are aware, that might adversely affect our opinion.

f) We confirm that, at the time of providing our written opinion, we consider it to be complete and accurate and constitute our true, professional opinion.

[217] SRK Consulting PEA dated 13 April 2018, p. xi. [AC-0002]

g) We confirm that if, subsequently, we consider this opinion requires any correction, modification, or qualification, we will notify the Parties and the Tribunal forthwith.

h) We confirm that we have made clear which facts and matters referred to in this report are within our knowledge and which are not. Those that are within our knowledge, we confirm to be true.

Isabel Santos Kunsman
Partner & Managing Director
25 JANUARY 2023

Alexander Lee
Director
25 JANUARY 2023

Appendix 1 - Scope of Review

Item	Title
AP-0065	Capital IQ. US$PEN Exchange Rates
AP-0066	Cision PR News. Lupaka Gold Commences Preliminary Economic Assessment on the Invicta Gold Development Project
AP-0067	Federal Reserve. Summary of Economic Projections. December 2022
AP-0068	The Appraisal Foundation. The Measurement and Application of Market Participant Acquisition Premiums
AP-0069	Fishman, Jay E., et al. Standards of Value_ Theory and Applications
AP-0070	Damodaran, Aswath. The Value of Control_ Implications for Control Premia
AP-0071	Federal Reserve Bank of New York. Additional Information about SOFR
AP-0072	Capital IQ. Goldcorp Inc_PrivateCompany
AP-0073	Capital IQ. Lake Shore Gold Corp_PrivateCompany
AP-0074	Damodaran, Aswath. An Introduction to Valuation
AP-0075	Fraser Institute. Annual Survey of Mining Companies. 2021
AP-0076	Purdy, Caitlin and Castillo, Rodrigo. The Future of Mining in Latin America. July 2022
AP-0077	Capital IQ. US Treasury Bill - 1 Year Rates 2012-2022
AP-0078	Federal Reserve Bank of New York. SOFR Data
AP-0079	Federal Reserve Bank of St. Louis. SOFR180DAYAVG
AP-0080	Capital IQ. Lupaka Share Pricing_Market Cap Monthly
AP-0081	Capital IQ. The GDXJ Share Pricing Monthly
Documents Listed in our First Report	
AP-0007	CIMVAL Standards (2019)
AP-0038	Financial Post. OceanaGold Corp buys Romarco Inc for $856 million, gains low-cost mine in low-risk area, 30 July 2015.
Other Documents Relied Upon	
Legal document	Claimant's Request for Arbitration dated 21 October 2020
Legal document	Claimant's Memorial dated 1 October 2021
Legal document	Respondent's Memorial dated 17 March 2022
Legal document	Witness Statement of Julio Félix Castañeda Mondragón dated 1 October 2021
Legal document	Witness Statement of Gordon Ellis dated 1 October 2021
Legal document	Second Witness Statement of Gordon Ellis dated 23 September 2022
Legal document	Claimant's Reply dated 23 September 2022
Legal document	Respondent's Rejoinder dated 25 January 2023
Legal document	Expert Report of Christopher Jacobs of Micon International Limited dated 21 September 2022
Legal document	Expert Report of Miyanou Dufour von Gordon dated 24 January 2023
C-0009	MEM Report and Resolution approving the Mining Plan, 11 December 2014

C-0042	Agreement of Proof of Fulfillment of Commitments between Invicta Mining Corp. S.A.C. and Lacsanga Community, 31 March 2015 (ENG-SPA)
C-0044	Pre-Paid Forward Gold Purchase Agreement dated 30 June 2016
C-0048	Draft Mallay Purchase Agreement between Buenaventura and IMC, 21 September 2018
C-0051	Lupaka, Board Meeting Minutes, 27 September 2018
C-0060	Agreement between the Parán Community and Invicta Mining Corp. S.A.C., 29 April 2008 (ENG-SPA)
C-0061	Agreement between the Parán Community and Invicta Mining Corp. S.A.C., 7 May 2008 (ENG-SPA)
C-0062	Addendum to Agreement between the Parán Community and Invicta Mining Corp. S.A.C., 13 December 2011 (ENG-SPA)
C-0063	Contract for the Constitution of Mining Easement between Invicta Mining Corp. S.A.C. and Santo Domingo de Apache Community, 22 October 2010 (ENG-SPA)
C-0090	Registration of the Agreement between Invicta Mining Corp. S.A.C. and Lacsanga Community, Sunarp, 26 July 2017 (ENG-SPA)
C-0094	Draft Addendum to Framework Agreement between Santo Domingo de Apache Community and Invicta Mining Corp. S.A.C., 15 September 2017 (ENG-SPA)
C-0391	SSS, Monthly Report, Project, December 2017 (ENG-SPA)
C-0398	SSS, Weekly Report, Project (SPA), 03/01/2018 to 14/01/2018, 3 January 2018 (ENG-SPA)
C-0429	SSS, Monthly Report, Project, January 2017 (ENG-SPA)
C-0435	SSS, Weekly Report, Project, 14/05/2018 to 20/05/2018, 14 May 2018 (ENG-SPA)
C-0436	SSS, Monthly Report, Project, February 2018 (ENG-SPA)
C-0452	SSS, Monthly Report, Project, May 2018 (ENG-SPA)
C-0521	SSS, Monthly Report Project, November 2017 (ENG-SPA)
AC-0002	SRK Consulting PEA dated 13 April 2018
AC-0004	Second Amended and Restated Pre-Paid Gold Purchase Agreement dated 2 August 2017
AC-0005	Lupaka presentation Invicta Mining Suite for Difference dated September 201**9**
AC-0035	Mergerstat, Control Premium Study, 1st Quarter 2020
AC-0036	RSM, Control Premium Study 2017
AC-0047	Lawrence Devon Smith, The RADR Paradox-Discount Rates: Risk, & Long Life Projects, 2016

Appendix 2 - Adjustments to Accuracy's 590t/day Scenario

[*Transmitted in native format*]

Appendix 3 - Adjustments to Accuracy's 355t/day Scenario

[*Transmitted in native format*]

Appendix 4 - Adjustments to Other Indicators of Value

[*Transmitted in native format*]

Appendix 5 - Estimate of the Cost for Social License

[*Transmitted in native format*]