

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF  
INVESTMENT DISPUTES

----- -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 GABRIEL RESOURCES LTD. and GABRIEL :  
 RESOURCES (JERSEY) LTD., :  
 : Case No.  
 Claimants, : ARB/15/31  
 :  
 and :  
 :  
 ROMANIA, :  
 :  
 Respondent. :  
 ----- -x Volume 3

VIDEOCONFERENCE:  
HEARING ON THE MERITS AND JURISDICTION

Wednesday, September 30, 2020

The World Bank Group

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

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

Also Present:

MS. SARA MARZAL YETANO  
Secretary to the Tribunal

MS. MARIA ATHANASIOU  
Tribunal Assistant

Court Reporters:

MR. DAVID A. KASDAN  
Registered Diplomate Reporters (RDR)  
Certified Realtime Reporters (CRR)  
B&B Reporters  
529 14th Street, S.E.  
Washington, D.C. 20003  
United States of America  
david.kasdan@wwreporting.com

APPEARANCES:

Attending on behalf of the Claimants:

MS. ABBY COHEN SMUTNY  
MR. DARRYL LEW  
MR. BRODY GREENWALD  
MR. PETR POLÁŠEK  
MR. HANSEL PHAM  
MS. GABRIELA LOPEZ STAHL  
MR. FRANCIS LEVESQUE  
MS. DARA BROWN  
White & Case, LLP  
701 13th Street, N.W.  
Washington, D.C. 20005  
United States of America

Representing Gabriel Resources Ltd.:

MR. DRAGOS TANASE  
MR. SIMON LUSTY  
MR. RICHARD BROWN  
MS. RUTH TEITELBAUM

Representing Roşia Montană Gold Corporation:

MS. CECILIA JAKAB  
MS. ELENA LORINCZ  
MR. MIHAI BOTEA

APPEARANCES: (Continued)

Attending on behalf of the Respondent:

DR. VEIJO HEISKANEN  
MR. MATTHIAS SCHERER  
MS. NORADÈLE RADJAI  
MS. LORRAINE de GERMINY  
MR. CHRISTOPHE GUIBERT de BRUET  
MR. DAVID BONIFACIO  
MR. BAPTISTE RIGAUDEAU  
MS. EMILIE McCONAUGHEY  
MS. VICTORIA LECLERC  
MS. STELA NEGRAN  
MR. GREGORY GAILLARD  
MR. KEN KOTARSKI  
Lalive  
35, rue de la Mairi  
CH - 1207 Geneva  
Switzerland

DR. CRENGUTA LEAUA  
DR. STEFAN DEACONU  
MS. ANDREEA SIMULESCU  
MS. LILIANA DEACONESCU  
MS. ANDREEA PITURCA

LDDP IT team:  
MS. IONELA MIHAILA  
Leaua Damcali Deaconu Păunescu-LDDP  
10 Zborului Street, sector 3  
030595, Bucharest  
Romania

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P R O C E E D I N G S

1  
2           PRESIDENT TERCIER:   Please start.

3           DR. HEISKANEN:   As you will remember, the  
4 Tribunal indicated during the first day of the Hearing  
5 that you will have questions to the Parties, at least  
6 you indicated you would have questions to the  
7 Claimants, and that you would revert during the  
8 Hearing as to when you would raise the questions. We  
9 would suggest that we would set aside some time  
10 tonight, if that is agreeable to the Tribunal, to  
11 discuss the questions that the Tribunal may have with  
12 the Parties on the basis of the Opening Statements.

13                   If they are left to a later date, for  
14 instance, until the last day, which is one of the  
15 options--

16                           (Overlapping speakers.)

17           DR. HEISKANEN:   --the Tribunal mentioned, it  
18 will complicate things. At least on the Respondent's  
19 side, we would very much appreciate getting a sense of  
20 the issues that the Tribunal is interested in so that  
21 we can develop our position for any post-hearing  
22 proceedings which still need to be discussed on the

1 last day. We would need to confer with our clients as  
2 to what the Respondent's position will be for any  
3 post-hearing proceedings.

4 So, the sooner we have a sense of the issues  
5 that the Tribunal has in mind at this stage of the  
6 proceedings based on the Opening Statements, the  
7 better from our perspective. So, that would be our  
8 suggestion, that we set aside some time tonight for  
9 those questions.

10 PRESIDENT TERCIER: Okay. Thank you for  
11 this. We are already, in fact, on the Transcript. I  
12 have not opened the--it doesn't matter. It's okay.

13 Mrs. Cohen, your comment?

14 MS. COHEN SMUTNY: Claimants would be happy  
15 to hear the Tribunal's questions whenever the Tribunal  
16 is ready to ask them.

17 PRESIDENT TERCIER: Okay.

18 MS. COHEN SMUTNY: And so, no particular  
19 comment at this time on Respondent's comments, except  
20 I would point out that the--well, no further comment  
21 at this time.

22 As a matter of housekeeping, just to come

1 back on the request for Transcripts from Canada, just  
2 to confirm, Claimants have no objection to Canada  
3 obtaining copies of the Transcripts. Claimants would  
4 only ask that Canada specifically be directed to  
5 Procedural Order No. 3 and the requirements set forth  
6 in that procedure--in that Procedural Order.

7 Thank you.

8 PRESIDENT TERCIER: Thank you very much. In  
9 fact, you have already taken some point that I would  
10 like to discuss earlier.

11 I formally open the Hearing, but I would  
12 like to make sure, Sara, that we have everybody  
13 on-line, active speakers. It's fine?

14 SECRETARY MARZAL YETANO: Yes.

15 My only question is whether we will be able  
16 to see the Experts.

17 PRESIDENT TERCIER: Okay.

18 SECRETARY MARZAL YETANO: I'm trying to  
19 connect.

20 PRESIDENT TERCIER: In a few moments.

21 Okay. Well, now coming back, good morning,  
22 good afternoon, ladies and gentlemen. It is my honor

1 to open the third day of the final hearings in the  
2 ICSID Arbitration Case 15/31 between Gabriel  
3 Resources, Limited, and Gabriel Resources (Jersey),  
4 Limited versus Romania. I hope you had a good rest,  
5 and I hope also that we will have a good discussion,  
6 quite a debate, if any.

7           We have heard that there are no new  
8 participants, so the group is the same.

9           The second point, I would like to thank  
10 again Mr. Kasdan for the Transcript that we have  
11 received, and I recall you on the decision that he  
12 gave in yesterday's letter.

13           Third point, you have received the written  
14 confirmation by Sara, by our Secretary, of the time  
15 that has been already used and is left to the Parties.

16           I wanted first to ask Claimant whether they  
17 had objection to the transmission of the Transcript to  
18 the Canadian Government. We have now the answers,  
19 with the reservation made in connection with P03.

20           Dr. Heiskanen, you had already given your  
21 agreement yesterday that the reservation of P03 raised  
22 a problem for you. I assume not?

1 DR. HEISKANEN: No. As we confirmed  
2 yesterday, the Respondent's position is that, under  
3 the BIT, the Canadian Government is entitled to full  
4 access to the Transcript and any other documents filed  
5 in the arbitration.

6 PRESIDENT TERCIER: Fine.

7 The next point is the position that we have  
8 asked to the Parties, more precisely to Claimant,  
9 concerning the question of the relevant dates and  
10 possible impact on the valuation. We have received a  
11 few minutes ago the position taken by the Claimant. I  
12 will recall that now Respondent is invited to make its  
13 own comment/answers by tomorrow, beginning of the  
14 Hearing.

15 Good. The next point is today's program.  
16 First, we will hear the Respondent's experts in a  
17 moment, if everything is fine, and I would like to  
18 make two points:

19 The first point is, indeed, I will discuss  
20 with my co-Arbitrators during the break whether we  
21 will already ask questions today, and I fully  
22 understand the position of the counsel in order to

1 avoid that there could be surprise and that they can  
2 be prepared sufficiently to answer that. I will  
3 discuss it with my co-Arbitrators and inform you  
4 during the course of today's Hearing.

5           The second point, I don't know, but in case  
6 the examination of our experts does not cover all the  
7 time we had envisaged, the question could raise  
8 whether we would not start already with Claimants'  
9 quantum witness, Mr. Cooper.

10           May I ask Claimant whether Mr. Cooper could  
11 be available?

12           MR. POLASEK: Mr. President, at this point,  
13 we would need to confer to find out. We will do so  
14 now, and we will let you know as soon as we know.

15           PRESIDENT TERCIER: Okay. But, of course,  
16 it is just to let him know that it is possible and  
17 then we will, in case, depending on the development of  
18 the examination, we will see whether this will be the  
19 case yes or no. Okay?

20           MR. POLASEK: Yes, yes, of course. We will  
21 do that. Thank you.

22           DR. HEISKANEN: As on that, Mr. President,

1 we would be happy to start with Mr. Cooper today. The  
2 Respondent is confident that we can complete the  
3 examination of both Mr. Cooper and Mr. Jeannes  
4 tomorrow.

5 PRESIDENT TERCIER: Good. Okay.

6 Next point and last point before going to  
7 the examination of the Experts: Have you on your side  
8 requested a special comment or a request? Mrs. Cohen.

9 MS. COHEN SMUTNY: I'm sorry, I didn't  
10 understand the question, Mr. President.

11 PRESIDENT TERCIER: It's a very neutral  
12 question, whether you have a request, another request  
13 or another comment before we start the beginning of  
14 the--

15 (Overlapping speakers.)

16 MS. COHEN SMUTNY: No. Oh, I'm sorry. No,  
17 we do not.

18 PRESIDENT TERCIER: Okay.

19 Dr. Heiskanen?

20 DR. HEISKANEN: Nothing from us,  
21 Mr. President.

22 PRESIDENT TERCIER: Okay, good.



1           So, we start and I start again. You will be  
2 heard this morning for you as experts; and, as such,  
3 you have first to read the Declaration. Have you the  
4 text of the Declaration?

5           VOICE: We have it, sir.

6           PRESIDENT TERCIER: Okay. Mr. Guarnera,  
7 please.

8           THE WITNESS: (Mr. Guarnera) I solemnly  
9 declare upon my honor and conscience that my statement  
10 will be in accordance--

11           (Pause.)

12           THE WITNESS: (Mr. Guarnera): Okay. Okay.  
13 We'll get IT. Excuse me.

14           (Pause.)

15           PRESIDENT TERCIER: Thank you very much,  
16 indeed.

17           So, we now come back on the Declaration.  
18 May I invite you, Mr. Guarnera, to read aloud the  
19 Declaration.

20           THE WITNESS: (Mr. Guarnera) I solemnly  
21 declare upon my honor and conscience that my statement  
22 will be in accordance with my sincere belief.

1           I will not receive or provide communications  
2 of any sort during the course of my examination.

3           PRESIDENT TERCIER: Thank you.

4           And, Mr. Jorgensen, please.

5           THE WITNESS: (Mr. Jorgensen) I solemnly  
6 declare upon my honor and conscience that my statement  
7 will be in accordance with my sincere belief.

8           PRESIDENT TERCIER: Sorry.

9           THE WITNESS: (Mr. Jorgensen) I will not  
10 receive or provide communications of any sort during  
11 the course of my examination.

12           PRESIDENT TERCIER: Thank you very much.  
13 Sorry for interrupting you.

14           Now, I would like to recall you because it  
15 is a virtual hearing that, according to PO 33, the  
16 Protocol, there are a few rules that should be  
17 applied. I'll recall them shortly.

18           First, no person shall be present in the  
19 room with the testifying Witness or Experts.

20           Two, any communication by or with the  
21 Witness or Expert during their examination are  
22 prohibited. Each witness and Expert shall affirm at

1 the start of the examination that he or she will not  
2 receive or provide communication of any sort during  
3 the course of his or her examination.

4           The Witness or Expert shall remain visible  
5 at all times during the examination, and the Witness  
6 and Expert shall not use a virtual background or in  
7 any way prevent or limit the recording of the remote  
8 venue from which he or she is testifying.

9           Could you confirm that you have heard this  
10 recommendation? Mr. Guarnera?

11           THE WITNESS: (Mr. Guarnera) I confirm that,  
12 sir.

13           PRESIDENT TERCIER: Mr. Jorgensen?

14           THE WITNESS: (Mr. Jorgensen) Yes.

15           PRESIDENT TERCIER: Good.

16           You have prepared or Behre Dolbear have  
17 prepared for this proceeding three reports. The First  
18 Report is called "Assessment of Technical Viability of  
19 Roşia Montană Gulf Project Transylvania, Romania." It  
20 is dated 10th of February 2018, and it has been  
21 prepared by you, Mr. Guarnera, Mr. Jorgensen, and  
22 Dr. Cameron.

1           The Second Report is a report called  
2 "Rebuttal Report of Behre Dolbear and Company (USA),  
3 Inc., and it was dated 20th of May 2019, and it has  
4 also been prepared by Mr. Guarnera, Mr. Jorgensen and  
5 Dr. Cameron.

6           The Third Report is a report called  
7 "Supplemental Expert Report--Habitability or Roşia  
8 Montană During Construction and Operation of the  
9 Project," dated 9th April 2020, but this one has been  
10 prepared by Mr. Michael McLoughlin. I assume you will  
11 speak about the two first reports that you have  
12 co-authored.

13           My question to you is whether you confirm  
14 the content of these two reports or whether you wish  
15 to make amendments, corrections, or make any comment  
16 to that.

17           Please, Mr. Guarnera.

18           THE WITNESS: (Mr. Guarnera) I do believe  
19 that some small corrections were submitted previously,  
20 sir.

21           PRESIDENT TERCIER: All right, yes. And  
22 they have been--you're right; there have been.

1           Otherwise, you can confirm the content of  
2 these two reports?

3           THE WITNESS: (Mr. Guarnera) I do.

4           PRESIDENT TERCIER: Okay. And I assume this  
5 is also the case for Mr. Jorgensen.

6           THE WITNESS: (Mr. Jorgensen) Yes.

7           PRESIDENT TERCIER: Now, we have special  
8 rules concerning the examination of reports of experts  
9 that have co-authored the report; that is your case,  
10 and here you have the special rule that I read for  
11 you. The Parties--sorry. Once a question is posed by  
12 the cross-examiner, and unless that question relates  
13 to the expertise of a particular expert or to a  
14 specific part in the Report prepared only by one  
15 author, either expert will be able to answer, but only  
16 one of them will be allowed to answer to each  
17 question. And to the extent that there are clear and  
18 justifiable grounds to do so, this rule will be  
19 applied with flexibility.

20           So, my first question to you is whether  
21 there are some parts of the Report that only one of  
22 you had authored.

1                   Who will answer? Mr. Guarnera?

2                   THE WITNESS: (Mr. Guarnera) Yes, sir. I  
3 have been responsible for the overall preparation of  
4 the Report, as has Mr. Jorgensen. The Report, as you  
5 saw with SRK, was a multiple person effort, but we  
6 were the two principals that compiled it.  
7 Mr. Jorgensen's expertise focuses on processing and  
8 infrastructure, as well as on cash-flow management,  
9 and capital and operating costs. My expertise focuses  
10 on the other aspects of the document, sir.

11                  PRESIDENT TERCIER: Okay. Could you tell us  
12 what is the role of Dr. Cameron?

13                  THE WITNESS: (Mr. Guarnera) Dr. Cameron was  
14 essential in that he was very helpful on the review of  
15 the Mineral Resources and Reserves, and he was relied  
16 upon for that, and I worked with him to prepare the  
17 report on that section.

18                  PRESIDENT TERCIER: Very good. That means  
19 that the question may cover every aspect covered by  
20 the two experts; am I right?

21                  THE WITNESS: (Mr. Guarnera) Of those two  
22 reports, that is absolutely correct, sir.

1           PRESIDENT TERCIER:   Okay.   Good.   So, I  
2 think we have now the rule is clear.

3           I should start, according to the classical  
4 view, in inviting you to introduce yourselves first.  
5 In fact, we have your résumés also on the document  
6 that we have received.   Would you like to add to  
7 anything to that, Mr. Guarnera?

8           THE WITNESS:   (Mr. Guarnera) Well, what I  
9 would say, sir, since you have that document, you can  
10 see that I have well over 50 years of experience.  
11 More than forty of those years has been spent in the  
12 review of technical and economic aspects of the  
13 mineral projects to determine their viability as well  
14 as the valuation, what is that project worth.   And I  
15 have extensive global experience, have worked on every  
16 continent and have visited hundreds of mining  
17 operations.

18          PRESIDENT TERCIER:   Thank you very much.

19          Mr. Jorgensen, do you want to add something  
20 to the résumé that we have?

21          THE WITNESS:   (Mr. Jorgensen) Yes, sir.  
22 Thank you, Mr. President.

1 I also have over 40 years of experience in  
2 the mining industry. My experience is both in  
3 engineering and in operations. I've worked for  
4 several major engineering companies as well as several  
5 major mining companies, in that I've had the  
6 opportunity, as Mr. Guarnera has had, to travel  
7 worldwide. I have been able to see many operations.

8 I have also been able to design and  
9 construct these operations. I have been able to  
10 operate these--actually, hands-on experience.

11 So, I feel that, you know, I have a very  
12 broad-based knowledge of the mining industry and  
13 especially the processing part.

14 Thank you.

15 PRESIDENT TERCIER: Thank you very much.

16 Now, concerning the way this examination  
17 will take place. You know the rules. You have made  
18 your Report. First, you will have an opportunity--you  
19 have an opportunity to make a short oral presentation.  
20 It must not be over one hour. You have prepared a  
21 PowerPoint, and I thank the counsel for having to find  
22 a way to communicate the printed version to me and, I

1 think, to my co-Arbitrator, too, so we have this  
2 document. Normally, this would be--instead of the  
3 direct, I don't know if on Respondent's side you will  
4 have other questions on direct, but it should normally  
5 not be the case. It will then be the  
6 cross-examination and then the redirect. I recall  
7 that the Arbitral Tribunal--Members of the Tribunal  
8 have the right to ask questions whenever they feel it  
9 could be necessary or interesting.

10 Is it clear to you, Mr. Guarnera?

11 THE WITNESS: (Mr. Guarnera) Yes,  
12 Mr. President. It is, thank you.

13 PRESIDENT TERCIER: And, Mr. Jorgensen?

14 THE WITNESS: (Mr. Jorgensen) Yes, thank  
15 you.

16 PRESIDENT TERCIER: Good. If my  
17 co-Arbitrators have no comment or requests or  
18 anything, we may proceed, so you have the floor for  
19 your presentation.

20 Please.

21 DIRECT PRESENTATION

22 THE WITNESS: (Mr. Guarnera) We're ready to

1 share the screen now.

2 (Pause.)

3 I believe, Mr. President, that I need to get  
4 our technical person in to share the screen.

5 (Pause.)

6 There we go. Okay. Looks like we're up and  
7 ready. Thank you.

8 Can you hear us, Mr. President?

9 PRESIDENT TERCIER: Yep.

10 THE WITNESS: (Mr. Guarnera) Okay. Thank  
11 you.

12 PRESIDENT TERCIER: Sorry, I'm also mixing  
13 things with the screen, so it's okay, I'm ready.

14 THE WITNESS: (Mr. Guarnera) I share the  
15 same type of fear of technology right now.

16 We've already introduced ourselves. We will  
17 provide you with the instructions that we received  
18 from the Respondent, the methodology that we used in  
19 our exercise, provide an overall summary of our  
20 findings, and some discussion of our findings and then  
21 some concluding remarks.

22 Next slide, please. Next slide, please.

1 Next slide, please.

2 Thank you.

3 Our instructions were to assess the accuracy  
4 of the Mineral Resources and Mineral Reserves  
5 estimated for the Project. We also were asked to  
6 determine if the Project was technically viable. We  
7 were asked to assess the accuracy of the capital and  
8 operating costs that had been projected for the  
9 Project. And, lastly, to determine, based upon the  
10 various technical and economic factors to be assessed,  
11 when RMGC could have begun operations at the Project,  
12 assuming that the Environmental Permit and other  
13 administrative acts necessary for the Project to  
14 proceed had not been challenged in court, and assuming  
15 as well that RMGC obtained the Building Permit in  
16 April of 2018.

17 Next slide, please.

18 So, the methodology that we had is that we  
19 visited the site of the mining site in November of  
20 2017. It was a several-day visit. We visited the  
21 site. We visited various areas around the site. We  
22 saw some of the antiquities. We visited areas where

1 cyanide might be delivered. And it was quite a  
2 complete exercise.

3           Upon our return, we examined  
4 project-specific management reports dating back to  
5 1998. We also then issued a report on the technical  
6 viability of the Project, a Rebuttal Report, and a  
7 Supplemental Report on the effects of blasting on the  
8 Roşia Montană Historical Center. As you can see and  
9 as you noted previously, sir, the First Report was in  
10 10 February of '18. Our Second Report was a rebuttal  
11 report in 20 May of '19.

12           One of the things I think it's important to  
13 understand is that our First Report was done in a very  
14 short period of time. For some reason or other, we  
15 were engaged at a late date and, therefore, did not  
16 have the normal time that we would take to complete  
17 the first document.

18           There was also, as you noted, a Supplemental  
19 Expert Report on the habitability of the Roşia Montană  
20 town site and other important places, and that was  
21 done by Mr. Michael McLoughlin. He really is out of  
22 Behre Dolbear's London office and not out of the U.S.



1           Next slide, please.

2           There's some real technical issues in that  
3 2012 SRK Report that is--challenged the technical  
4 viability of the Project. Specifically, RMGC has yet  
5 to complete the studies for underground workings in  
6 historic archaeological sites at Cârnic and Orlea, yet  
7 SRK declares Mineral Reserves are present at these two  
8 pits.

9           The Chance Finding of underground workings  
10 and archaeological sites still exists elsewhere, even  
11 within the existing surveys. Now, this is critically  
12 important, sir, in the sense that, if you come across  
13 one of these underground workings that you didn't know  
14 existed, it is a major challenge because you can lose  
15 equipment and you can even lose lives. Personal  
16 experience I have at a mine in the United States where  
17 previous underground mining had occurred, and we did  
18 radar and sonar surveys, and we were sure we had found  
19 all the tunnels, that was the case until our truck hit  
20 one we didn't know, and a 150-ton truck was almost  
21 lost.

22           MR. POLASEK: Mr. President, I am very sorry

1 to interrupt at this point. Under the Procedural  
2 Rules that we have in place, direct presentation is  
3 supposed to be a summary of the written reports.  
4 That's one permissible scope of a direct presentation,  
5 or the permitted rebuttal, not nothing more.

6           And, in this particular instance, I think we  
7 would need to know where in Behre Dolbear's Report we  
8 have the information about this mine in the United  
9 States and the experience that Mr. Guarnera had there.  
10 If this cannot be traced to the Report, it needs to be  
11 struck from the record.

12           Thank you.

13           THE WITNESS: (Mr. Guarnera) Apologies.  
14 That will not occur again. RMGC--

15           MR. POLASEK: Pardon me. So just to make  
16 sure that we understand this part of the direct  
17 presentation will be stricken from the Transcript.  
18 Are we proceeding on that basis?

19           PRESIDENT TERCIER: Can Respondent's side  
20 comment to that?

21           MS. de GERMINY: Sorry. Mr. President, the  
22 experts are simply providing context for certain

1 conclusions in their Report, so we don't think this  
2 needs to be stricken.

3 PRESIDENT TERCIER: Okay. The Arbitral  
4 Tribunal will decide and we will go further.

5 Mr. Guarnera, indeed, if you can avoid  
6 eliciting that, we would be very grateful.

7 THE WITNESS: (Mr. Guarnera) I will do that,  
8 sir.

9 RMGC stopped acquiring necessary properties  
10 in 2008 and must still acquire further properties.  
11 RMGC could and should have proposed a new Tailings  
12 Management Facility design due to a possible threat to  
13 the downstream village of Abrud.

14 Next slide, please.

█ [REDACTED]

[REDACTED]

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

Thank you.

PRESIDENT TERCIER: Mr. Guarnera?

THE WITNESS: (Mr. Guarnera) I'll have Mr. Jorgensen address that, if possible.

PRESIDENT TERCIER: Mr. Jorgensen.

THE WITNESS: (Mr. Jorgensen) Thank you. We reference BD-2, Section 1.7.

MR. POLASEK: And where specifically is this statement made in that section? I'm asking because this seems to be referring to the Zlatna facility, and I'm just not seeing that opinion in your Written

1 Reports.

2 THE WITNESS: (Mr. Jorgensen) Yes. Right.

3 We further reference cyanide-handling--this  
4 actually--

5 THE WITNESS: (Mr. Guarnera) You mentioned  
6 it under the environmental--

7 MS. de GERMINY: Mr. President, we object to  
8 this question. Counsel will have opportunity to ask  
9 questions about this on cross-examination. The  
10 Experts discuss certainly cyanide and costs. I'm  
11 looking at Paragraph 71 of their Second Report. There  
12 are references throughout their Reports to cyanide  
13 questions and to Zlatna. So, this is an inappropriate  
14 objection.

15 PRESIDENT TERCIER: Okay. Thank you.

16 I would invite counsel for Claimants to take  
17 note of the passages where they consider there are  
18 reference to passages--there are no reference to  
19 issues of fact that have not been dealt with in the  
20 Report and to come to it in the cross-examination so  
21 that we can have a fluid presentation.

22 Please, Mr. Guarnera.

1           THE WITNESS: (Mr. Guarnera) Most  
2 importantly--

3           MR. POLAŠEK: Mr. President, I apologize for  
4 another interruption. We actually reviewed the  
5 presentation, and we have a couple of other points  
6 like this. The concern on our side is not that we  
7 would not have an opportunity to cross-examine on the  
8 presentation, but that there is new evidence provided  
9 for the first time in this presentation, and that is  
10 not permitted. This is not--that that evidence is not  
11 within the scope of the permitted rebuttal. That is  
12 the only time that new evidence is permitted, and this  
13 goes beyond that.

14           So, I am afraid that cross-examination is  
15 not the tool to address the deficiency. It needs to  
16 be addressed now. I don't see how else we could  
17 proceed.

18           And, on this particular point, if we look at  
19 Paragraph 71 of the Behre Dolbear's Second Report, it  
20 does not mention an increase in costs in connection  
21 with the cyanide-handling. This, in my understanding,  
22 is a reference to the Zlatna facility. This is just

1 not mentioned in Behre Dolbear's Report, so it is in  
2 the Opening. That is not permissible.

3 And we, unfortunately, do not have citations  
4 in Behre Dolbear's presentation, so we don't know  
5 where these statements are coming from, but for this  
6 particular one, we are unable to trace it to the  
7 Reports.

8 Thank you.

9 PRESIDENT TERCIER: A question to you: Do  
10 you have many passages to which you have objections  
11 like this one?

12 MR. POLAŠEK: So, let me just--

13 PRESIDENT TERCIER: That was a general  
14 question. Do you have a lot of--

15 (Overlapping speakers.)

16 MR. POLAŠEK: Well, I would say about five  
17 or six. I don't know whether that qualifies as "a  
18 lot," but I am afraid that I will need to continue  
19 interrupting.

20 PRESIDENT TERCIER: That will be another  
21 question, whether the Tribunal will accept it, but now  
22 we know the problem.

1 On your side, a comment, Ms. de Germiny?

2 MS. de GERMINY: Yes. Mr. President.

3 The Experts discussed the Zlatna Cyanide  
4 Storage Facility in several instances in their  
5 Reports, including Paragraph 34 and 121 of their  
6 Second Report, as well as Paragraph 71 that I referred  
7 to previously.

8 This is not new evidence, and we don't know  
9 what other objections the Claimants have, but there is  
10 nothing objectionable to what has been stated.

11 PRESIDENT TERCIER: Okay. I--

12 MR. POLAŠEK: Mr. President, may I just have  
13 one last brief opportunity on this point?

14 We do not dispute that the Zlatna facility  
15 is addressed at these paragraphs; that is correct.  
16 But what is not there is that the Zlatna facility is a  
17 significant item relating to the capital and operating  
18 costs of the Project. That is not there.

19 PRESIDENT TERCIER: Okay.

20 (Overlapping speakers.)

21 MS. de GERMINY: Mr. President, this is  
22 something that can be asked about during

1 cross-examination. This is not new evidence.

2 PRESIDENT TERCIER: Okay. I would like now  
3 to discuss it with my co-Arbitrators. May I invite my  
4 co-Arbitrators to go now on the session of the  
5 Tribunal, please.

6 (Pause.)

7 PRESIDENT TERCIER: Okay. Sorry for taking  
8 so much time to deliberate, but we can begin again.

9 The Tribunal has considered both Parties'  
10 objections and responses to objections. It is clear  
11 that the direct should be in conformity with the PO  
12 and the (drop in audio) in particular.

13 (Pause.)

14 PRESIDENT TERCIER: So, the Arbitral  
15 Tribunal considers, of course, that the presentation  
16 by the Expert should be in compliance with the  
17 Procedural Order concerning the content of the direct.  
18 Therefore, he didn't give instruction to the Experts  
19 to avoid any mention of an element that had not been  
20 specially elaborated or mentioned in their Report.

21 But in order to avoid to have too many  
22 interruptions and to have difficulties to follow the

1 presentation, we invite counsel for Claimant to take  
2 notes of the passages where they consider that the  
3 presentation is not in compliance with the rule and to  
4 start in their cross-examination in asking the Experts  
5 where they have taken their information and to discuss  
6 it at the beginning of the cross-examination so that  
7 we have a clear presentation. So two points for  
8 experts, first, to avoid any comment outside of the  
9 reports, and for counsel for Respondent preparing the  
10 list of the passages where they consider there is a  
11 violation of the rules.

12 Is it clear to you, Mr. Guarnera?

13 THE WITNESS: (Mr. Guarnera) Yes, sir. I  
14 will try to abide by that.

15 MR. POLAŠEK: Mr. President, I apologize. I  
16 need to intervene again. And for Claimants, we would  
17 urge the Tribunal to reconsider this decision because  
18 the inadmissible material should not be part of the  
19 record, and it's not a remedy to allow  
20 cross-examination on it to determine whether it was  
21 referenced or not. By that point in time, the  
22 Tribunal will have heard the evidence; it will be on

1 the record, and this is not permissible. We have the  
2 rules that we have; on the Claimants' side we abided  
3 by them. You will have seen that SRK's presentation  
4 included citations to the sources in the record for  
5 the statements that they were making, and Behre  
6 Dolbear evidently did not do that here. So, I would  
7 suggest that we should have a procedure where these  
8 objections are decided as we go along, and I apologize  
9 to press this point, but I think it is a due-process  
10 issue and needs to be addressed that way.

11 Thank you.

12 PRESIDENT TERCIER: The way it could be done  
13 is once you have such passage where you consider that  
14 there is a violation of the rules, that you intervene  
15 to say, "We object to the last affirmation," and we  
16 could then decide, if after having heard the position  
17 of both Parties, decide afterwards to take it out of  
18 the record.

19 Would this compromise, would be acceptable  
20 for you?

21 MR. POLAŠEK: Yes, Mr. President. That  
22 would work just fine.

1           I would like to add that the time spent on  
2 this is of no making of the Claimants, so it needs to  
3 be counted, I suppose, against Respondent's time.

4 Thank you.

5           PRESIDENT TERCIER: (drop in audio) we will  
6 discuss the rules on these things. I would like  
7 really to go on the merit. We are interested in  
8 especially that. Due process will be, of course,  
9 respected.

10          DR. HEISKANEN: Mr. President, I have a  
11 couple of comments on this, if I may.

12          PRESIDENT TERCIER: Yes, please.

13          DR. HEISKANEN: Just to remind the Tribunal  
14 and the Claimants' counsel of the context of (sound  
15 interference) evidence and what evidence is being  
16 presented in the December Hearing and at this Hearing.  
17 As the Tribunal will certainly recall, Claimants were  
18 allowed to--I hear some echo. Somebody has to turn  
19 off his microphone.

20           (Pause.)

21          DR. HEISKANEN: Okay. As the Tribunal will  
22 recall, the Tribunal allowed the--I think it is the

1 President's microphone that is open.

2 PRESIDENT TERCIER: Oh, sorry. Yeah, it  
3 might be. Sorry. Wait a second. I just--I mute.

4 DR. HEISKANEN: Okay. As the Tribunal will  
5 recall, prior to the December Hearing, there was a  
6 ruling that the Claimants were allowed to present new  
7 rebuttal evidence at the Hearing so long as the  
8 subject matter of that evidence was identified prior  
9 to the Hearing.

10 You will also recall that the Respondent  
11 objected to that because the Experts and Witnesses  
12 will not be able to respond to evidence on the spot.  
13 The Respondent maintained that objection at the  
14 December Hearing; we continue to maintain that  
15 objection. Hearing new evidence for the first time at  
16 the Hearing is not fair and in accordance with the due  
17 process. We are very pleased now to see that the  
18 Claimants' counsel agrees with our objection.

19 But the issue here is that there is no  
20 problem with the evidence that the Respondents--there  
21 is no issue at all with the admissibility of the  
22 evidence that the Respondent's Experts are presenting

1 today.

2           First of all, they should be able to comment  
3 and they, indeed, have an obligation to comment, on  
4 any evidence that they have heard in the course of  
5 this Hearing by SRK or anybody else that will affect  
6 their views of the evidence that they have presented.  
7 That is their obligation. It is not new evidence. It  
8 is certainly a fundamental right of due process for  
9 the Respondent and its Experts to comment on the new  
10 evidence or any evidence that has been presented at  
11 this Hearing.

12           The Claimants cannot constrain the  
13 Respondent's Experts and Witnesses to evidence that  
14 they presented in their Expert Reports, if there has  
15 been evidence at this Hearing that allows or requires  
16 them to modify in any way the evidence that they have  
17 presented earlier. This is in anticipation of the  
18 further objections that may arise. The issue of  
19 principles that are at stake here are important. It  
20 is the question of the obligation of the Respondent's  
21 Experts to give the evidence that they are required as  
22 experts.

1           The objections that were raised earlier in  
2 relation to the course of the cyanide treatment  
3 facilities are of a different nature, and they have no  
4 basis in fact, as we have seen.

5           Thank you very much.

6           PRESIDENT TERCIER: Thank you.

7           Mr. Polašek, do you want to comment?

8           MR. POLAŠEK: Yes, Mr. President.

9 Ms. Smutny will present further observations.

10          Thank you.

11          MS. COHEN SMUTNY: Yes.

12          Of course, Claimants object entirely to  
13 Respondent's arguments. The fact is that the  
14 procedure has been very clear that the Respondent's  
15 Experts and Witnesses are entitled to present rebuttal  
16 direct on the rebuttal subjects. We don't have to,  
17 and we should not have to revisit all of the arguments  
18 that led us to the procedure relating to this  
19 rebuttal, which is all due to the Respondent's  
20 submission of an entirely inappropriate Rejoinder.  
21 There is absolutely no ground for the Respondent's  
22 Experts to expand their testimony in the context of a

1 direct presentation. The rules are very clear.  
2 They're established for important due-process reasons,  
3 and it's--the rules--the exceptions that we have  
4 relating to rebuttal are very tightly controlled, and  
5 Claimants have been complying with it, and it's  
6 entirely unacceptable to allow completely new expert  
7 testimony commenting generally on the record or  
8 expanding in various ways that is not tied  
9 specifically to a permissible rebuttal. Behre Dolbear  
10 is permitted to present rebuttal testimony on the  
11 rebuttal subjects that SRK presented. There were some  
12 limited rebuttal topics, and we see in Behre Dolbear's  
13 Report or in the presentation that there are a few  
14 slides that are probably intended to be rebuttal.  
15 That's fine.

16 But we can just go ahead, for example, on  
17 Slide 40; we're going to get to it. There are a few  
18 others before in which Behre Dolbear is commenting on  
19 the cross-examination of SRK. That's entirely  
20 unacceptable. That's not according to the rules. We  
21 have procedures, both Parties need to abide by them,  
22 and the notion that an Expert has an obligation to

1 present new testimony has no basis. That is not the  
2 procedure that we've agreed to, and we strongly object  
3 to this.

4           If the Tribunal is going to change the rule,  
5 then we need to have an opportunity to have the same  
6 rule, and perhaps have SRK come back and supplement  
7 their testimony, and our Experts and Witnesses going  
8 forward to abide by the same rule.

9           Both Parties have to have the same rules  
10 that they're following. That's very basic.

11           PRESIDENT TERCIER: Thank you, Mrs. Cohen.

12           It's not the intention of the Tribunal to  
13 change the rules that we have agreed upon, but I made  
14 a proposal a moment ago in order to facilitate a bit  
15 and to, on the one side, have the presentation of the  
16 report of the Experts. This is, of course, extremely  
17 important for us.

18           And, secondly, also to give Respondent an  
19 opportunity to make these objections when it considers  
20 it is important to do that.

21           And my proposal was to give Mr. Polašek or  
22 another counsel for Claimant to intervene whenever a

1 time that there is a newer fact or a declaration or a  
2 mention that is not in compliance with these rules, to  
3 mention it and to take it then beginning of the  
4 cross-examination, and we can go into them.

5           It is also for the Tribunal extremely  
6 difficult to decide on spot if there are so many  
7 incidents and objections. This is a proposal that  
8 I've made.

9           Mr. Polašek, a moment ago you agreed. Are  
10 you still of the opinion that this could be a feasible  
11 way of dealing with the problems, the issue that we  
12 are facing?

13           MR. POLAŠEK: Yes. So, Mr. President, my  
14 understanding is that, following the opportunity to  
15 ask--for me or for Claimants' counsel to ask questions  
16 on this topic, the Tribunal will decide whether to  
17 strike the offending portions of the Experts'  
18 testimony from the record. That, to us, is the key  
19 thing. How we do it logistically, I think the  
20 proposal that the Tribunal has made works just fine.

21           And my only question, then, would be whether  
22 I should identify during the course of the

1 presentation where we have an objection. So, for  
2 example, when we get to Slide 13, should I say, "We  
3 will have an objection," or would you prefer me to  
4 wait and just handle everything at once when we begin  
5 with the cross-examination? That is one question.

6           And then the other question I would have is  
7 whether I am understanding it correctly that the  
8 offending portions of the examination, that is the  
9 sections that the Tribunal concludes are new testimony  
10 or not permissible, will be stricken from the record?

11           Thank you.

12           PRESIDENT TERCIER: Thank you. That's the  
13 first comment.

14           Dr. Heiskanen, you have a comment to what  
15 has been said? I will then answer for the Tribunal  
16 under the control of my co-Arbitrators.

17           DR. HEISKANEN: We are happy with the ruling  
18 that the Tribunal made earlier.

19           PRESIDENT TERCIER: Good. In order to make  
20 clear, Mr. Polašek, I would suggest that when you have  
21 a problem coming, for instance, to Slide 13, just  
22 mention, "We have an objection," and then you will

1 deal with them at the end or beginning of your  
2 cross-examination, and it will be easier for the  
3 Tribunal to deal with this. That's okay with you?

4 MR. POLAŠEK: Yes, yes. Thank you very  
5 much, Mr. President.

6 PRESIDENT TERCIER: Do my co-Arbitrators  
7 accept that? Yes? Yes? I'm waiting for Professor  
8 Douglas's approval.

9 ARBITRATOR DOUGLAS: I'm fine with that,  
10 Mr. President. I just hope that we can return to  
11 having some sort of flow of the presentation because,  
12 with the objections coming, I completely understand  
13 that they need to be made, but if we get to a point  
14 where we hear five minutes and then there is an  
15 objection and we start again, it's going to be very  
16 difficult to follow. It's quite technical as it is.

17 That is my only comment.

18 PRESIDENT TERCIER: Okay. To make things  
19 clear with Mr. Polašek, I think you understood. When  
20 you come to the slide you say, "We have an objection,"  
21 that's it, and you don't develop these objections  
22 right now. You will do it later on so that we can

1 have the flow of the presentation. Otherwise, it will  
2 be really very difficult for the Tribunal.

3 Professor Douglas, you agree with that?

4 Okay.

5 So, we come back to the presentation, and  
6 Mr. Guarnera and Mr. Jorgensen, you have the floor,  
7 and to please avoid to create new incidents. You will  
8 see that we are losing a bit of time, and we want to  
9 really listen to your presentation.

10 Please, Mr. Guarnera.

11 THE WITNESS: (Mr. Guarnera) Thank you, sir.

12 The fourth point we wish to note in our  
13 findings is that the 2006 Feasibility Study is stale;  
14 and, in order to assure the Project is technically and  
15 economically viable, more importantly, in order to  
16 obtain financing, RMGC/Gabriel would need to secure a  
17 new Feasibility Study.

18 Next slide, please.

19 The SRK's timeline completed in 2012 for  
20 construction and operation of the mine failed to take  
21 into account the uncertainty of the social climate,  
22 relocation issues, and opposition from NGOs.

1 Further, the Roşia Montană Project's success  
2 is dependent on the acquisition of surface rights,  
3 which is uncertain. And again, a new Feasibility  
4 Study is required to obtain financing followed by  
5 final design work and then construction prior to the  
6 Project operation.

7 In summary, assuming a Building Permit was  
8 obtained in April 2018, a five-year period would be  
9 required to reach full projected gold production by  
10 mid-2023.

11 Next slide, please.

12 You will be hearing about Feasibility  
13 Studies and Technical Reports, and I think it's very  
14 important to try to distinguish between the two. Now,  
15 it's not my intent to read this definition.

16 Succinctly, a Feasibility Study is a  
17 comprehensive document which incorporates all of the  
18 available information about the Project, every aspect  
19 from the technical, geology, to the ore resource and  
20 reserve, to the processing, to the mining method, to  
21 the markets. That's all, everything including  
22 environmental, including social issues. All of these

1 studies have to be included in a project.

2           What's most important is that, at the Roşia  
3 Montană property, the 2006 Washington Group  
4 Feasibility Study was the last such study produced.  
5 And it, in itself, as you will see on a forthcoming  
6 slide, was a revision of a prior Feasibility Study.

7           Next slide, please.

8           Now, a 43-101 Technical Report is very  
9 different. First of all, it is a report that is  
10 required of Canadian companies when a material,  
11 scientific, or technical information in respect of the  
12 property has been found or occurred. The document is  
13 not a Feasibility Study and should not be considered.  
14 However, the completion of a Feasibility Study is a  
15 material event in itself; and, therefore, a public  
16 company in Canada is required to file an NI 43-101  
17 Technical Report.

18           Now, both 43-101 in Canada and the JORC Code  
19 in Australia and other similar codes all require a  
20 minimum of a Pre-Feasibility Study, which is a lower  
21 level of insurance to declare a Mineral Reserve. The  
22 2012 SRK Technical Report is based on prior Technical

1 Reports. And due to the numerous technical and other  
2 factors that have arisen since 2006, a new Feasibility  
3 Study is required to declare a Mineral Reserve for the  
4 Project.

5 Next slide, please.

6 Now, this is a major report timeline, and I  
7 think it's very important to see this.

8 MR. POLAŠEK: Mr. President, apologies for  
9 the interruption. We have an objection to this.

10 Thank you.

11 THE WITNESS: (Mr. Guarnera) The first study  
12 done was called a "Scoping Study." Most Scoping  
13 Studies have a level of accuracy of 50 to 70 percent.  
14 I mean, it's just that; it gives you a rough idea.

15 However, in 2000, PAH prepared a  
16 Pre-Feasibility Study based on the RSG document. Now,  
17 that Pre-Feasibility Study then triggered a new or a  
18 complete Feasibility Study. In 2001, GRD Minproc  
19 provided a definitive Feasibility Study based on an  
20 8 million-ton a year Project and a 20 million-ton a  
21 year Project.

22 In 2002 SNC-Lavalin did an optimization

1 study of the processing plant and selected a  
2 13 million-ton annual rate of production. In 2003,  
3 SNC-Lavalin did an open pit stability design report.  
4 Then, in 2005, RSG did a database review and provided  
5 a resource estimate. Now, of importance is that this  
6 resource estimate has not been revised since 2005  
7 despite new information, and it was this resource  
8 study that IMC, the Independent Mining Consultants,  
9 did a mine design and mining cost that led to the  
10 Declaration of Reserves in a 2006 Washington Group  
11 Feasibility Study. That is the study we say is stale.

12           Now, Micon, then, even though it shows  
13 prior, then filed a 43-101 Technical Report on the  
14 Project. That Report, however, is not in the record,  
15 and we found that through further digging.

16           In 2009, Independent Mining Consultants did  
17 a new mine design and mining costs only. Again, this  
18 study was not in the record. Micon in the same year  
19 then did a 43-101 Technical Report.

20           In 2011, a new mine design Feasibility Study  
21 update was produced by independent mining consultants,  
22 and it was mine design and mining costs only. And

1 then in 2012, you had the SRK's Technical Report, a  
2 43-101 Report, which is based primarily on the Micon  
3 and the 2011 study.

4 Next slide, please.

5 MR. POLAŠEK: Mr. President, in addition to  
6 Slide 13, we have objections to a lot of what was just  
7 stated by Behre Dolbear on this topic. And, in light  
8 of the extent of the new testimony, it might take a  
9 long time before we get to this one. We address this  
10 topic at the beginning of the cross-examination.

11 Thank you.

12 PRESIDENT TERCIER: Okay. We have taken  
13 note. Please, Mr. Guarnera, you go further.

14 THE WITNESS: (Mr. Guarnera) To people who  
15 are not familiar with the mining industry, a reserve  
16 is something that they will save for later, and a  
17 resource is something that they utilize now. In  
18 actuality in the mining industry, it's 180 degrees  
19 different. A reserve is a property in which the  
20 grades and tons of mineralization that is planned to  
21 be mined and processed to produce metals is known.

22 The resource is the initial grade and tons

1 of the potentially economic mineralization within a  
2 deposit.

3 Now, the difference that makes it a reserve  
4 is the inclusion of Modifying Factors.

5 Next slide, please.

6 I think you saw this slide in the SRK  
7 document. It's a common exploration of the hierarchy.  
8 The hierarchy is one that basically you start with an  
9 exploration project, and each level of further  
10 information increases the amount of information known  
11 and integrity of the statement as well as an increase  
12 in value.

13 So, you go from an exploration result to  
14 Mineral Resources. The first Mineral Resource is an  
15 Inferred Resource. And, importantly, that is distinct  
16 from the other two resources because its degree of  
17 assurance is very, very low, okay?

18 Now, when you get to Indicated and Measured  
19 Resources, they can be converted to Probable  
20 Reserves--and in the case of Measured Resource, either  
21 probable or Proved Reserves--once you can apply all of  
22 the 10 Modifying Factors.

1           Next slide, please.

2           Now, the modifying factors--and this is a  
3 direct quote from CIM--"are considerations used to  
4 convert Mineral Resources to Mineral Reserves. These  
5 include, but are not restricted to mining,  
6 processing," and that's the method that you use to  
7 grind and produce a flotation product or another  
8 product; "metallurgical," which is basically, actually  
9 the chemical aspects of the minerals in the deposit  
10 and the impact they have on the processing;  
11 "infrastructure," that's required for the property;  
12 "the economics" of the deposit; "marketing," where you  
13 were going to sell your product; the "legal" aspects;  
14 the "environmental" aspects; the "social" aspects and  
15 "governmental factors."

16           Next slide, please.

17           The requirement for the modifying factors  
18 for a Mineral Reserve is very strict in a sense. I'm  
19 going to read this: "Mineral Reserves are those parts  
20 of the Mineral Resources which, after the application  
21 of all mining factors, result in an estimated tonnage  
22 and grade which, in the opinion of the Qualified

1 Person or persons making the estimates is the basis of  
2 an economically viable project, after taking into  
3 account of all relevant modifying factors. Mineral  
4 Reserves are inclusive diluting material that will be  
5 mined in conjunction with the Mineral Reserves and  
6 delivered to the treatment plant or equivalent  
7 facility. The term "Mineral Reserve" need not  
8 necessarily signify that extraction facilities are in  
9 place or operative or that all Governmental approvals  
10 have been received. It does signify that there are  
11 "reasonable expectations of such approvals."

12           Next slide, please.

13           Now, significantly, the Mineral Resource  
14 Model that has been used by SRK omits pertinent  
15 information, and the 2005 RSG Mineral Resource Model  
16 which is used for the Mineral Reserve estimation by  
17 SRK does not reflect a significant amount of the  
18 information available as of 2012. 1,838 channel  
19 samples taken after 2005 are not included in the  
20 Resource Model. A channel sample is a sample that is  
21 extracted over an extended distance either by power  
22 saw or by hammer and chisel to then be assayed to

1 determine the grade of the mineralization. It is  
2 particularly done in underground mines and probably  
3 has been done in the underground tunnels. The mapping  
4 of old workings and voids that has been conducted  
5 since 2005 has not been incorporated in the Resource  
6 Model.

7 Now, significantly, these have been  
8 considered as immaterial, not material issues.

9 Next slide will show some more not material  
10 issues.

11 The geotechnical drilling and pit slope  
12 analyses have been conducted but are not reflected in  
13 SRK's reserve estimation.

14 Now, the change of a pit slope angle changes  
15 the amount of ore available for mining. If you have a  
16 steeper pit angle, you have more reserves; if you have  
17 a flatter pit angle, you have less reserves. Now,  
18 again, this has--according to SRK, is not a material  
19 issue.

20 Next slide, please.

21 Now, in 2012, SRK only considered contact  
22 dilution and losses, and I do have to note here that

1 they were the first party to recognize that the  
2 reserve really did not contain sufficient dilution  
3 within it. Normally, there is a dilution and loss  
4 estimate encompassed within the reserve numbers, and  
5 SRK recognized that.

6           The contact dilution and losses, that is  
7 where--you're using 19-cubic meter shovels here. Now,  
8 that shovel is going to be used to load waste and also  
9 to load ore. And you can assume that, in loading ore,  
10 you're going to have some dirt under it that has no  
11 grade at all. That's called "dilution." You're also  
12 going to have lower-grade ore inadvertently caught up  
13 in some of the high-grade ore. That's "dilution."  
14 And inadvertently you're going to get some waste when  
15 the shovel is along the contact of the ore deposit  
16 with waste.

17           Now, part of the process that the mine is  
18 going to be to stockpile low-grade material for feed  
19 later in the mine life, and these stockpiles, when you  
20 re-load that ore from it to feed it to the mill,  
21 you're going to again get more dilution.

22           Accordingly, SRK recommended incorporating a

1 3 percent contact dilution for the first five years  
2 and 1.5 percent thereafter. But they did it by  
3 reducing only the gold grade that would go to the  
4 mill. They failed to account for the loss of silver.  
5 And, as well, since you have lower grade--the recovery  
6 of--percentage of recovery of gold and silver from the  
7 mill will be, by necessity, lower, so that was not  
8 incorporated.

9           Next slide, please.

10           So, they have ignored other sources of  
11 dilution and losses. Now, again, dilution is  
12 something that occurs in the process of sending ore to  
13 the mill. Loss is where it's left behind, okay? And  
14 so, some of it, the dilution will come from  
15 misallocated materials. Mine drivers, mine operators  
16 are fallible, and occasionally, all too occasionally,  
17 mill grade ore is sent to the low-grade stockpile and  
18 even to the waste pile. That's not recoverable.  
19 That's just gone. That's dilution and loss.

20           Ore control, that's common. Ore control is  
21 the boundary that we've already talked about between  
22 the ore that is going to be shipped to the mill versus

1 low-grade ore that's going to be shipped to the  
2 stockpile or waste. And that happens quite frequently  
3 in a mine, that inadvertently you get more of that.

4 And then there's overblasting, with  
5 excessive back break and throwing and mixing of  
6 material when it's done near ore contacts as part of  
7 the blasting process.

8 Now, no mine--there is no single formula for  
9 what the dilution is at a mine--each mine has its own  
10 dilution--and so, but, based on the experience of our  
11 people, we felt that SRK was low in what they did, and  
12 we felt that 5.5 percent for the first five years of  
13 operation would be more appropriate and 3 percent  
14 thereafter.

15 Now, the significance of all of this is that  
16 the increase in dilution and losses results in the  
17 loss of 166,000 ounces of gold, or 5,200 kilograms.

18 Now, at a gold price of \$1,200 per ounce,  
19 which was used by SRK, that's \$200 million that's  
20 gone, \$200 million of future cash flow.

21 Next slide, please.

22 This slide is from our Report. And this is

1 about the Chance Finds Protocol, which is an excellent  
2 protocol, and RMGC recognized that there were large  
3 zones of archaeological risk in Cârnic and at Orlea,  
4 which would require supervision pursuant to the Chance  
5 Finds Protocol during both construction and mining  
6 operations.

7           Now, the red circles are areas of concern.  
8 We have specifically noted those at Orlea up to the  
9 northwest and Cârnic, which is basically at the  
10 center. But there is significant chance, in our  
11 opinion, that these Chance Finds will occur, and they  
12 result in a shutdown. If you find a relic, you are  
13 shut down. An archaeologist is called, the site is  
14 sealed off, no mining can occur there.

15           And until that issue with that has been  
16 resolved--in other words, is it a relic that you can  
17 take and put in a museum, or is it something that has  
18 to stay in place? If it has to stay in place, you are  
19 sterilizing any of the ore that has been incorporated  
20 in the Ore reserve from that area. And this is not  
21 recognized in the SRK Report.

22           Next slide, please.

1 MR. POLAŠEK: Mr. President, we have an  
2 objection to Slide 22 and probably some of what was  
3 just said.

4 Thank you.

5 THE WITNESS: (Mr. Guarnera) Excuse me while  
6 I get a little sip of water.

7 This is one of the modifying factors,  
8 essentially, is the right to mine, land title. A  
9 Declaration of Mineral Reserves requires that the  
10 rights for use of both the minerals and the surface of  
11 the Project, or at least a reasonable expectation of  
12 obtaining those rights, exists.

13 Now, RMGC has been working on their  
14 acquisition of surface projects since 2002 and has  
15 only obtained 60 percent of the land position required  
16 for the Project. They curtailed the acquisition  
17 program in 2008 of acquisition of households and  
18 public land. Our understanding is a couple of assets  
19 were acquired during that period of time. I do not  
20 know whether they actually completed the purchase.

21 Now, the 2012 Technical Report acknowledges  
22 that there were at least 155 households that remained

1 to be required.

2           Now, our experience, and I'm sure SRK's  
3 experience and every mining company's experience, is  
4 that, if you could not get all of the surface rights,  
5 you need to redesign the Project or abandon the  
6 Project, and even one person, one single person, can  
7 kill a mining project.

8           A very good example is--I'm sure Mr. Jeannes  
9 who will be speaking for the Claimants could attest  
10 was Glamis Gold's Imperial Valley project in  
11 California. At that point in time, a Native American  
12 group said that the place where the mine was going to  
13 be was Holy Land; and, on that basis, the project was  
14 killed.

15           I would just move on rather than give more  
16 examples. I'm prepared to do so, though.

17           Next slide, please.

18           MR. POLAŠEK: Mr. President, we will have an  
19 objection. Thank you.

20           PRESIDENT TERCIER: Sorry, objection to  
21 what? To what has been said or what will be said?

22           MR. POLAŠEK: Yes, to what has been said and

1 the example in particular.

2 PRESIDENT TERCIER: Okay.

[REDACTED]

21 I'm now going to ask Mr. Jorgensen to  
22 comment on some of these, and he will discuss further

1 things at this time.

2 THE WITNESS: (Mr. Jorgensen) Yes, so thank  
3 you--

4 (Overlapping speakers.)

5 PRESIDENT TERCIER: Mr. Jorgensen, I just  
6 would like to make you aware of the time. You  
7 don't--I don't know how much time you have left, you  
8 have certainly, but be careful, please.

9 THE WITNESS: (Mr. Jorgensen) Thank you.

10 I would like to call your attention to the  
11 middle of the chart there. We have Items 7.1, 7.3,  
12 7.5, 7.6 that all talk about risks that were  
13 identified pursuant to the Tailings Management  
14 Facility. These risks existed in 2001, and, as we've  
15 pointed out, they still exist today.

16 If we could go to the next slide, please.

17 This is a picture of the Tailings Management  
18 Facility. You will see the dam in the middle left  
19 center. It's 185 meters high, about two-thirds the  
20 height of the Eiffel Tower, very large structure. You  
21 see below it the town of Abrud. What is missing in  
22 this particular diagram is the solution pond that's

1 not shown, but behind the stand there would be a  
2 solution pond that would exist. That pond would be  
3 full of minor trace amounts of cyanide as well as  
4 dissolved minerals and metals, and then further up we  
5 see the town of Roşia Montană.

6 Next slide, please.

7 World Bank Environment, Health and Safety  
8 Guidelines in 1995 stated: "Tailings must be disposed  
9 of in a manner that optimizes protection for human  
10 safety and environment."

11 And the United Nations Report on Mine  
12 Tailings Safety in 2017 stated: "The approach to  
13 Tailings Storage Facilities must place safety first by  
14 making environmental and human safety a priority in  
15 Management actions and on the ground  
16 operations...safety attributes should be evaluated  
17 separately from economic consideration, and cost  
18 should not be a determining factor."

19 Next slide, please.

20 The possibility exists that during operation  
21 or during sequential dam construction, pond and dam  
22 levels will differ from design. You know that any

1 Tailings Facility the proper maintenance is critical.

█ [REDACTED]  
█ [REDACTED]  
█ [REDACTED]  
█ [REDACTED]

6 Next slide, please.

7 MR. POLAŠEK: Mr. President, apologies, we  
8 might have an objection on Slide 26 that was the  
9 Tailings Management Facility and some of what was said  
10 there.

11 Thank you.

12 THE WITNESS: (Mr. Jorgensen) The  
13 Representative of the Ministry of Environment noted  
14 during a TAC meeting in November 2011: "Even though  
15 the risk is very low, an accidental pollution can't be  
16 excluded--very unlikely, an accidental pollution due  
17 to a dam failure cannot be excluded." A very large  
18 quantity of tailings which could be discharged over  
19 Abrud.

20 So, in as late as 2011, even after all the  
21 design had been done, there was still very much real  
22 concerns about the tailings dam. The dam aesthetics

1 are poor, 185 meters high. And the memories of Baia  
2 Mare tailings dam failure--sorry about the  
3 pronunciation there--are still very real in the minds  
4 of the people of Romania.

5 Next slide, please.

6 MR. POLAŠEK: Mr. President, we have an  
7 objection to Slide 29 and most what was said in  
8 connection with that.

9 Thank you.

10 THE WITNESS: (Mr. Jorgensen) In a report by  
11 AMEC, commissioned by the International Institute of  
12 Environmental Development in 2002, it states:  
13 "Development of large capacity, vacuum and  
14 pressure-belt filter technology has presented the  
15 opportunity for disposing tailings in a dewatered  
16 state rather than a conventional slurry...the material  
17 can be transported by conveyor or truck, and placed,  
18 spread and compacted to form an unsaturated, dense,  
19 and stable tailings stack (often termed 'dry stack')  
20 requiring no dam retention."

21 In 2006, RMGC did not choose this  
22 technology.

1           Dry-stack tailings is being used in various  
2 climates, not unlike Roșia Montană.

3           And assuming that a new Feasibility Study  
4 would have been initiated in 2016, the use of  
5 dry-stack tailings would have been more prevalent in  
6 the mining industry.

7           Next slide, please.

8           Advantages of dry-stack tailings override  
9 the extra cost. It eliminates the specter of dam  
10 failure. It minimizes the discharge of cyanide and  
11 dissolved heavy metal. It maintains the aesthetic  
12 nature of the community. It eliminates significant  
13 seepage. It eliminates a toxic solution pond behind  
14 the dam, reducing the risk of wildlife fatality. It  
15 reduces water consumption. It lowers reclamation  
16 costs. It is more expensive. It increases initial  
17 capital costs by 155 million.

18           Next slide, please.

■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]





5                   Next slide, please.

6                   During this period--now, this is a very nice  
7 graph that was given to us and that we have in our  
8 Report, and this Report compares cost overrun  
9 percentage on the vertical axis and the time frame  
10 that we're talking about from 1980--or 1990 to 2020,  
11 we can see different projects. The size of the  
12 bubbles represent the capital expenditure, and the  
13 placement represents the overrun that occurred. The  
14 average cost was budgeted CAPEX at 1.2 billion, and  
15 that's actually represented by the red dot in the  
16 middle. The actual capital costs came in at  
17 1.6 billion for an average cost overrun of about  
18 37 percent.

19                   And it's interesting to note that, you know,  
20 the Roşia Montană capital costs was estimated in the  
21 1.4 to \$1.6 billion range.

22                   Next slide, please.



1 demonstrates our timeline. What we have looked at  
2 again--and it is predicated on the Building Permit  
3 being granted in April of 2018, so that we have  
4 started a Feasibility Study in 2016 to be sure it was  
5 complete by the time that the Project was--the  
6 Building Permit was issued.

7           In addition, financing we believe would have  
8 started well before the Building Permit was issued,  
9 once there was indications on the Parties that permits  
10 were going to be granted. And so, we looked at that  
11 starting again at the beginning of April in 2017, and  
12 it goes on for the first six months. In other words,  
13 you do get financing kind of agreed on; and, then,  
14 after you have the permits and everything, all the  
15 final details are done, and that can take significant  
16 time.

17           We allocated for pre-construction and final  
18 design work six months each, and then construction  
19 would be for a period of three years.

20           Our ramp-up--that is the time it takes to  
21 reach full production, and this mine was predicted to  
22 be a 500,000-ounce a year production, the time it

1 would take to reach 500,000 ounces a year production  
2 rate was a year for a ramp-up, and then production  
3 would go from April of 2023 until 2038, March of 2038.  
4 Afterwards, there would be a period of closure.

5           So, next slide, please.

6           So, what SRK has, they have a new  
7 Feasibility Study. Their tender bid and study  
8 completion in 18 months would be typical, in our  
9 experience. Our financing and due diligence to  
10 evaluate the technical issues by independent parties,  
11 such as SRK and Behre Dolbear, and to confirm all  
12 permits and surface rights are present. That could  
13 take significant period of time. We allotted three  
14 years of construction, as per the Washington Group  
15 Feasibility Study. I noted that a year of ramp-up was  
16 required. And also that year gives you the  
17 opportunity to get everything put together that you  
18 need, including labor, supply chains and other issues  
19 that can take a great deal of time, even though you  
20 may have started on them early on.

21           Next slide, please.

22           So, in conclusion, the Roşia Montană Project

1 has significant technical as well as economic  
uncertainties. [REDACTED]

[REDACTED]

10 A new Feasibility Study is required to  
11 incorporate additional information regarding capital  
12 and operating costs, cyanide-handling facilities, the  
13 missing samples, the current geotechnical drilling and  
14 pit slope analysis that has not been incorporated in  
15 the model, the underground workings that have not been  
16 incorporated in the model, archaeological finds--all  
17 of which would result in changes in the Mineral  
18 Reserves and Mineral Resource base. Again, assuming  
19 the Project had received its Building Permit in  
20 April 2018 and that it had secured a new Feasibility  
21 Study with positive results by then, and other permits  
22 as required, the Project may have been in full

1 production in 2023.

2 Now, the next slide, please.

3 Yesterday, from SRK's testimony, we learned  
4 that something that had--really verifies the concerns  
5 that we expressed in our two reports. Based on what  
6 was shown, the production levels at the mine will be  
7 reduced by as much as 70 percent. In other words,  
8 they're looking at 93,000--36 million-ton a year,  
9 98,000-ton a day mine. What you're looking at is  
10 something that's 70 percent smaller than that due to  
11 the constrictions of the zoning and the blasting.  
12 That means the economics of the Project will  
13 correspondingly be reduced, and it also demonstrates  
14 why a new Feasibility Study is needed.

15 Now, the following slides are in response to  
16 things that SRK raised about our documents.

17 MR. POLAŠEK: Mr. President, we will have an  
18 objection to Slide 14 and everything that was said in  
19 that connection.

20 Thank you.

21 THE WITNESS: (Mr. Guarnera) You will note  
22 that this Proyecto de Rio Tinto, two slides were

1 shown, one was EMD and the other one was El Alita.  
2 And, essentially, SRK omitted the fact that EMD and El  
3 Alita are the same company. They just changed the  
4 name, and they were trying to demonstrate that there  
5 was a stale Feasibility Study. Well, this mine had  
6 been operating until recently, up to the time of the  
7 Report. There was no new information available to  
8 incorporate into the existing Resource Model. Unlike  
9 at Roşia Montană where there's plenty of new  
10 information that needs to be incorporated. There was  
11 none here. Factually, the Project obtained all  
12 necessary permits in 2014 and completed construction  
13 and achieved full production in 2016.

14           Similarly, on the next slide, please, they  
15 raised the issue at Toromocho, and they said that  
16 there was a stale study there, and what we would note  
17 was that Behre Dolbear's role is cited here. We did a  
18 desktop review of reserves and resources, expedited  
19 desktop review of technical documents, a Site Visit  
20 and property inspection, and preparation of the  
21 independent technical report. This was for a listing  
22 on the Hong Kong Exchange by Chinalco, a China mining

1 company.

2           The Report was dated April 2012 and the  
3 property began production in the same year.

4 Dr. Cameron, who was cited as helping in the Roşia  
5 Montană, spent approximately 90 hours reviewing the  
6 Resource Model here. There was nothing stale about  
7 the Feasibility Study. This was a mine that was in  
8 construction when we undertook the inspection.

9           I believe that's all that we have.

10           PRESIDENT TERCIER: Thank you very much for  
11 this presentation. I would like first to ask  
12 Respondent whether they have anything to add as  
13 direct. I assume the presentation was in lieu of  
14 direct. Could you confirm it?

15           DR. HEISKANEN: No, we have no further  
16 follow-up questions to the Experts. I just want to  
17 comment on the procedural issues that were raised by  
18 the Claimants' counsel earlier.

19           PRESIDENT TERCIER: Okay. You'll have  
20 enough--

21           DR. HEISKANEN: It says on the timekeeping  
22 issue because I didn't have a chance to comment on

1 that. There was a suggestion that the time spent by  
2 the Claimants in objecting to the presentation should  
3 be counted against the Respondent's time. That is  
4 obviously not what the Tribunal's rulings say. I just  
5 draw the Tribunal's attention to its rulings in PO 25,  
6 Paragraph 21, and PO 33, Paragraph 18, which make it  
7 very clear that the time should be counted against the  
8 time allocated to the objecting Party.

9           PRESIDENT TERCIER: Okay. I think it will  
10 be a good time to have a break, and this will allow  
11 the Arbitral Tribunal to have an opportunity to  
12 discuss.

13           But, before that, I would like to give  
14 Mr. Polašek an opportunity to make a further comment  
15 and especially to explain differences that he will  
16 make between real cross-examination and the procedural  
17 matters that you would like to discuss. There are  
18 nine, if I have taken them, all of them.

19           Mr. Polašek.

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

21           So, in light of the scope of the objections  
22 that we will have which pertain not only to the

1 individual slides but also to a lot of what was said  
2 in connection with them, I would like to make an  
3 alternative proposal, and that is that, instead of  
4 dealing with this on cross-examination, we make a  
5 written submission to the Tribunal in which we  
6 identify with precision which slides and which parts  
7 we consider are outside of the permissible scope.

8           Same thing for the Transcripts. We can  
9 identify that in the Transcripts, pardon me, and mark  
10 it. And we would submit that to the Tribunal. I  
11 think we can achieve that, in, I would say, maybe by  
12 the end of this Hearing, if that would be acceptable.  
13 Of course, it's additional work that is imposed on  
14 Claimants by the Respondent's conduct, so that will  
15 have implications for costs. But I think if we do it  
16 that way, this will save us significant time. I'm  
17 concerned that if we proceed with the  
18 cross-examination, it is going to take at least an  
19 hour or maybe more before we would get through the  
20 objections.

21           Thank you.

22           PRESIDENT TERCIER: Thank you very much.

1 Dr. Heiskanen or Ms. de Germiny?

2 DR. HEISKANEN: We have no objection to the  
3 Claimants' proposal to make a written submission  
4 instead of dealing with the issue on cross-examination  
5 on the understanding that the Respondent will be able  
6 to respond. We just want to draw the Tribunal's  
7 attention to its prior rulings on the issue of what  
8 evidence can be presented at this Hearing,  
9 Paragraph 59 of PO 33, in particular, which deals with  
10 the new evidence, rebuttal evidence, or any new  
11 evidence produced by the Claimants' Experts at this  
12 Hearing. PO 33, Paragraph 59 makes it very clear that  
13 the Respondent's Experts shall also be afforded the  
14 opportunity to respond to this new evidence during the  
15 direct testimonies.

16 So, for instance, the addenda that were  
17 attached to the presentation of Behre Dolbear dealt  
18 with precisely that type of new rebuttal evidence that  
19 was presented by SRK yesterday. This is entirely  
20 within the prior rulings of the Tribunal. We are very  
21 much at a loss to understand the basis of the other  
22 objections because the presentation was strictly based

1 on Behre Dolbear's earlier reports.

2 PRESIDENT TERCIER: Okay. Thank you very  
3 much.

4 So, we have two issues. The first one is,  
5 indeed, the question of whether the slides or the  
6 comments made by the Experts are admissible. And  
7 indeed, we have to take into consideration all rules,  
8 including Para 59, and I thank counsel for Claimant  
9 for their proposal. It seems to me reasonable, and it  
10 has been agreed by counsel for Respondent. It seems  
11 to me a good opportunity and a good thing, even if  
12 it's true it's more work, but we'll have to do that.

13 And, really, the advantage that we can  
14 today, together with the Experts, really discuss the  
15 content of their Report, I will, nevertheless, ask, of  
16 course, during the break to my co-Arbitrators whether  
17 they can agree also with that.

18 And the second issue is the question of the  
19 timing. It is important that we decide--Dr. Heiskanen  
20 has mentioned the rule. Mr. Polašek, do you have a  
21 comment to that?

22 MR. POLAŠEK: Mr. President, if I may, I

1 would suggest that I revert at the--that we take a  
2 break and I revert at the beginning of the next  
3 portion of the Hearing.

4 PRESIDENT TERCIER: Okay. Good.

5 If there is no further point, we will  
6 introduce right now a 15 minutes' break. It will be a  
7 bit more, so that we have a clear timing. We will  
8 start again at 15 minutes after 4:00 Swiss time.

9 I would like to remind all experts that they  
10 are under testimony and that, therefore, they have to  
11 avoid any contact with counsel or Claimant or Party's  
12 representatives. Is that clear, Mr. Guarnera?

13 THE WITNESS: (Mr. Guarnera) Yes, sir.

14 PRESIDENT TERCIER: Mr. Jorgensen.

15 THE WITNESS: (Mr. Jorgensen) Yes.

16 PRESIDENT TERCIER: Okay. So, may I invite  
17 my co-Arbitrators to change the session and to go on  
18 the session of the Tribunal. Thank you.

19 MR. POLAŠEK: Mr. President, I apologize. A  
20 timing issue.

21 So, you mentioned we start after 4:00 p.m.  
22 Do we start at 4:15 D.C. time or which specific time

1 did the Tribunal have in mind for resuming?

2           PRESIDENT TERCIER: I see that you are  
3 specialized in timing. Probably my expression was  
4 wrong. It was really a quarter, 15 minutes after 4:00  
5 Swiss time, it is 4:15 Swiss time and then you make  
6 the calculation, and I'm sure you're able to do that.

7           MR. POLAŠEK: Thank you very much. Thank  
8 you.

9           (Recess.)

10           PRESIDENT TERCIER: Well, I'm happy to see  
11 that our stenographer is ready, what we confirmed that  
12 in writing. My co-Arbitrators are ready. Sara is  
13 ready, too.

14           Are counsel for Claimants ready? Claimants?  
15 Ms. de Germiny or Dr. Heiskanen?

16           MS. de GERMINY: We are ready, Mr.  
17 President.

18           PRESIDENT TERCIER: Thank you very much.  
19 Mr. Polašek?

20           MR. POLAŠEK: For Claimants, we are ready,  
21 Mr. President.

22           PRESIDENT TERCIER: Good.

1           So, we will now proceed with the  
2 cross-examination. Mr. Polašek, you have the floor.

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

4                           CROSS-EXAMINATION

5           BY MR. POLAŠEK:

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

8           So, first I would like to ask a couple of  
9 questions arising out of the direct presentation, and  
10 we will display a few of the slides on the screen.  
11 Let's show Slide 21, first, and I direct your  
12 attention to the last two lines on this slide where it  
13 says that the increase in dilution and losses results  
14 in a loss of 166,000 ounces, and that this corresponds  
15 to about \$200 million.

16           Do you see that?

17           A. (Mr. Guarnera) Who are you directing the  
18 question to, sir?

19           Q. Whoever between the two of you is qualified  
20 to answer it. My understanding was this would  
21 probably be Mr. Guarnera, but up to you.

22           A. (Mr. Guarnera) oh, That's fine. Yes, I do





1 A. (Mr. Guarnera) Yes.

2 Q. In your experience, was that work  
3 significant? Was it a lot of studies?

4 A. (Mr. Guarnera) It's important to understand  
5 that the 2006 Feasibility Study is an update of the  
6 2001 Study. The principal factor that went into it  
7 was the resource estimate that was provided in, I  
8 believe it was, 2005. I need to go back to the time  
9 check--time chart, Exhibit--I think that's Page 13, by  
10 my--

11 Q. So, let's stop there, and you might be able  
12 to elaborate on redirect examination. Let's move on  
13 to the next question.

14 In your First Report, you stated that the  
15 validity of a Feasibility Study is typically two years  
16 and, at most, three years after which a new study is  
17 required.

18 Do you recall that?

19 A. (Mr. Guarnera) Yes, that's my experience.

20 Q. And you stated in your Second Report as one  
21 of your conclusions concerning the Roşia Montană  
22 Project's 2006 Feasibility Study that the 2006

1 Feasibility Study is stale and a new Feasibility Study  
2 would be required.

3 Do you recall that?

4 A. (Mr. Guarnera) I'd like to look at the exact  
5 wording, if I might. Can you direct me to it?

6 Q. Yes. We will put it right up.

7 This is your Second Report, Page 4, first  
8 bullet. It says: "The 2006 Washington Group  
9 Feasibility Study is stale and a new Feasibility Study  
10 would be required to achieve financing."

11 Do you recall that?

12 A. (Mr. Guarnera) I do. Thank you.

13 Q. Now, in 2009, a group of specialists,  
14 including Micon and others, prepared the 2009  
15 NI 43-101 Report for the Roşia Montană Project, and  
16 that Report does not indicate that the 2006  
17 Feasibility Study is "stale," does it?

18 A. (Mr. Guarnera) It was updating information  
19 on the Mine Plan.

20 May I please see Slide 13 in our  
21 presentation?

22 Q. Well, let me ask you in addition--

1           PRESIDENT TERCIER: Mr. Polašek, please, to  
2 let the Expert go through, to give the explanation.  
3 You can ask your further question.

4           Please.

5           MR. POLAŠEK: Certainly, Mr. President.

6           THE WITNESS: (Mr. Guarnera) Slide 13,  
7 please. I think that's the timetable, timeline.

8           PRESIDENT TERCIER: Yeah.

9           THE WITNESS: (Mr. Guarnera) Thank you.

10          PRESIDENT TERCIER: Okay?

11          THE WITNESS: (Mr. Guarnera) All right, sir.  
12 Now, what is your question again? I thank you for  
13 doing this. I appreciate it. Can I--

14          MR. POLAŠEK: Yes--

15          (Overlapping speakers.)

16          PRESIDENT TERCIER: Okay. And, Mr. Polašek,  
17 you may ask your question.

18          MR. POLAŠEK: Yes, thank you, Mr. Guarnera.

19          BY MR. POLAŠEK:

20          Q. I just note that this slide is the subject  
21 of our standing objection. Nevertheless, my question  
22 was: In your recollection, the 2009 NI 43-101

1 Technical Report on the Roşia Montană Project did not  
2 indicate that the 2006 Feasibility Study was stale,  
3 did it?

4 A. (Mr. Guarnera) I ask you to repeat that  
5 question, please. Sorry. I was being--Mr. Jorgensen  
6 handed me the slide because you took it off the  
7 screen, and I wanted to make sure I knew.

8 Which document are we talking about now?

9 Q. Yes.

10 So, my question relates to Exhibit C-127,  
11 which is the 2009 NI 43-101 Technical Report on the  
12 Roşia Montană Project prepared by Micon and others.  
13 It is referenced in your Expert Reports.

14 A. (Mr. Guarnera) Right.

15 Q. And my question to you is: In your  
16 recollection, the 2009 NI 43-101 Technical Report did  
17 not indicate that the 2006 Feasibility Study was  
18 stale, did it?

19 A. (Mr. Guarnera) Well, the Technical Report  
20 was on the mine design and mining costs that IMC did.

21 Q. Do you have any recollection of the 2009  
22 Technical Report stating that the 2006 Feasibility



2 Q. Now, if the 2012 NI 43-101 Technical Report  
3 did say that the 2006 Feasibility Study was stale, you  
4 would have pointed it out in your Report; correct?

5 A. (Mr. Guarnera) If it had said that, yes.

6 Q. Let's move on to 2013. At that point in  
7 time the global consultancy AECOM prepared a report on  
8 the technical aspects of the Roşia Montană Project for  
9 the Romanian Government. This is Exhibit C-2199, and  
10 it is mentioned in your Second Report.

11 A. (Mr. Guarnera) May we see the cover of that  
12 document, please?

13 Q. Yes. We are putting it up.

14 This is the document.

15 And I direct your attention to Page 7 of  
16 this document, and we will go to the top, and we will  
17 zoom in on the section that addresses AECOM's  
18 qualifications and I will read this. It says: "AECOM  
19 provides professional technical and administrative  
20 support services globally for a wide range of markets,  
21 including mining."

22 Did I read that correctly?

1           A.     (Mr. Guarnera) Yes.

2           Q.     In your Expert Reports, you do not question  
3 AECOM's qualification to opine on matters of mining,  
4 do you?

5           A.     (Mr. Guarnera) I would have to review  
6 the--what I said. May I go to our Report and read  
7 exactly what we said about AECOM?

8           Q.     Well, that might take a long time, so I will  
9 ask you on the basis of your recollection.

10                   Do you remember, one way or the other,  
11 whether in your Expert Reports--and I should point out  
12 this is your Second Report, the most recent one or the  
13 more recent one, where you address this--do you recall  
14 whether you question AECOM's qualifications?

15           A.     (Mr. Guarnera) I certainly did.

16                   I also questioned their ethics because they  
17 failed to note that the Washington Group who prepared  
18 the 2006 Feasibility Study was owned by them.

19           Q.     And this is the group that the Romanian  
20 Government hired; right?

21           A.     (Mr. Guarnera) Yes.

22                   And I believe it took five days to do the

1 Report.

2 Q. Now, AECOM reviewed the NI 43-101 Report  
3 dated 2012, didn't it?

4 A. (Mr. Guarnera) The SRK Report.

5 Q. Correct, yes. From 2012.

6 A. (Mr. Guarnera) Yes.

7 Q. And it is apparent, isn't it, from the 2012  
8 NI 43-101 Report that the Roşia Montană Project's  
9 Feasibility Study was originally compiled in 2006?

10 A. (Mr. Guarnera) No. It was originally  
11 compiled in 2001 and updated in 2006 by the Washington  
12 Group.

13 Q. And the 2006 update, as you describe it,  
14 that is referenced in the NI 43-101 Report from 2012;  
15 correct?

16 A. (Mr. Guarnera) Correct.

17 Q. In your recollection, did the AECOM Report  
18 say that the 2006 Feasibility Study was stale?

19 A. (Mr. Guarnera) No, I think if I recall, the  
20 first nine or 10 pages were telling everybody about  
21 how great their Company was, and there was actually  
22 six pages of conversation, and it astounded us, in

1 fact, that how, in a five-day period they could  
2 accomplish all that they did. We dismissed it totally  
3 as junk in totality.

4 Q. Now, if the AECOM Report did say that the  
5 2006 Feasibility Study was stale, you would have  
6 mentioned that in your Expert Report; correct?

7 A. (Mr. Guarnera) Yes.

[REDACTED]

16           A.     (Mr. Guarnera) Well, the opinion of AECOM is  
17 based upon how poor the report that they prepared was,  
18 and the fact that they did not reveal that they owned  
19 the Washington Group. They're not about to say that  
20 the Washington Group Study is trash.

21                     And we never said that the Washington Group  
22 Study was bad. Why it needs to be updated, sir, is

1 be--or a new Feasibility Study is required is because  
2 of the significant amount of information that has been  
3 gathered prior to the completion--after the completion  
4 of that study and has not been incorporated into the  
5 Resource Model. You do not know what the resource is.

6 Q. The 2006 Washington Group Feasibility Study  
7 was a good study, wasn't it?

8 A. (Mr. Guarnera) Yes.

9 We never said it wasn't.

[REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

5 Q. Dr. Guarnera, you opined on whether the 2006  
6 Feasibility Study and generally whether the Roșia  
7 Montană documents would be acceptable to lenders for  
8 purposes of project financing; correct?

9 A. (Mr. Guarnera) we opined that a new  
10 Feasibility Study was required for them to obtain  
11 financing.

12 Q. Yes.

13 And that's repeated in many places in your  
14 Reports. You draw this link between financing and the  
15 Feasibility Study; correct?

16 A. (Mr. Guarnera) I'm sorry, there was  
17 something that cut you off.

18 Q. Yes.

19 My question was simply that this connection  
20 between the Feasibility Study and the project  
21 financing was made in a couple of places in your  
22 Reports; do you agree?





1 their own, if they have a property they're developing,  
2 and they have the cash to do it, will do the financing  
3 of that property, but I can't--I'm not going to say  
4 "yes" or "no" on that.

5 I am not aware of a major project that has  
6 not required some financing from a financial  
7 institution.

8 Q. Let's look at Exhibit KM-18. This is a  
9 Client Note by Northcott, and it says--let's zoom in  
10 on the language. It might be on the next page. There  
11 is text which starts, which says that: "A bankable  
12 Feasibility Study was not required to attract finance  
13 to fund construction." Let's see if we can Zoom in on  
14 that.

15 A. (Mr. Guarnera) Oh, I'm familiar with the  
16 Rubicon Project. In fact, SRK produced it, and I  
17 think they produced and said there was  
18 3.1 million ounces of gold there, and it ended up  
19 there was 310,000 ounces and a \$750 million write-off  
20 occurred.

21 Q. Well, Mr. Guarnera, the last sentence here  
22 says: "This approach is not uncommon and indeed has

1 been successful in the past."

2 Did I read that correctly?

3 A. (Mr. Guarnera) I would tell you this: That  
4 Royal Gold was one of the Parties involved in it, and  
5 I know the standards that they require.

6 (Noise.)

7 A. (Mr. Guarnera) I am sorry, there was--

8 PRESIDENT TERCIER: Sorry, I'm responsible  
9 for that.

10 MR. POLAŠEK: Okay, thank you,  
11 Mr. President. I will move on.

12 BY MR. POLAŠEK:

13 Q. In the Second Report at Exhibit 2, you give  
14 examples of what you say are projects where the  
15 companies chose not to undertake new feasibility  
16 studies, and this resulted in cost overruns and  
17 credibility issues with capital markets.

18 Do you recall that?

19 A. (Mr. Guarnera) That I believe I would have  
20 to have Mr. Jorgensen--

21 A. (Mr. Jorgensen) BD-2.

22 Q. Yes, that's the Second Report.

1           A.     (Mr. Jorgensen) Is that BD-2?

2           Q.     It is BD-2. We will be putting these  
3 documents on the screen. So it's your Second Report  
4 at the end; past your CVs and signatures there is an  
5 Exhibit 2, and we will walking through that exhibit.

6                    So, let me ask you first: Did you  
7 personally compile and write this section,  
8 Mr. Jorgensen?

9           A.     (Mr. Jorgensen) I think we should go there.

10          Q.     Yes. It begins at Paragraph 157.

11          A.     (Mr. Jorgensen) 157.

12          A.     (Mr. Guarnera) Can we see it on the screen,  
13 please?

14          Q.     Sure thing.

15          A.     (Mr. Jorgensen) 157.

16          A.     (Mr. Guarnera) On the screen.

17          A.     (Mr. Jorgensen) Okay. This is actually you.

18          Q.     Okay. So, did either of you write this  
19 section? I mean, this Exhibit 2.

20          A.     (Mr. Guarnera) That was mine that I wrote.

21          Q.     Okay. And, Mr. Guarnera, did you also  
22 compile the exhibits that go or that are cited in this

1 section?

2 A. (Mr. Guarnera) I believe I did.

3 Q. But you are not sure?

4 A. (Mr. Guarnera) Well, it's been a while ago,  
5 sir, so, please--

6 (Overlapping speakers.)

7 Q. And in your recollection--

8 A. (Mr. Guarnera) If I wrote that, certainly I  
9 was the one who got that, yes.

10 Q. Okay. And, in your recollection, did you  
11 review also the actual exhibits that are cited in  
12 here?

13 A. (Mr. Guarnera) I believe I did.

14 I would like to see it.

15 Q. Okay. So, let's start with Paragraph 157.  
16 This is your description of the Leanora Gold Project  
17 in Australia, and you say that "this project  
18 experienced very real potential increases in the  
19 capital budgets"--let's highlight this as I speak--"in  
20 the six months following the completion of the  
21 definitive feasibility study."

22 Do you see that?

1           A.     (Mr. Guarnera) Yes.

2           Q.     And so, in other words, what happened at  
3     Leanora was that its costs diverged from the estimated  
4     costs in the feasibility study shortly after the  
5     feasibility study was completed.

6                     Do you agree?

7           A.     (Mr. Guarnera) I'd have to read the entire  
8     thing again and including the--this is based upon  
9     Footnote 143, Exhibit BD-021. So, if I could see  
10    that, I think that was the source of the information  
11    that I derived.

12          Q.     Well, we will look at that shortly, but for  
13    now I direct your attention to the words that are  
14    highlighted on the screen, that "there is very real  
15    potential increases in the capital budgets," and then  
16    it says: "In the six months following the completion  
17    of the Definitive Feasibility Study." "Six months  
18    following the completion of the Definitive Feasibility  
19    Study."

20                     Do you see that?

21          A.     (Mr. Guarnera) Yes.

22          Q.     That implies that the increases happened

1 within six months following the completion of the  
2 Feasibility Study; correct?

3 A. (Mr. Guarnera) That's correct.

4 Q. This is not an instance where five years  
5 expired since the completion of the Feasibility Study;  
6 right?

7 A. (Mr. Guarnera) Yes, that's what it says.

8 Q. Let's look at the exhibit that you cited.  
9 It's BD-21. We'll put it on the screen.

10 Now, this is a copy of the press article,  
11 and on the lower right corner we see that the text is  
12 partially obstructed by textbooks that says:

13 "Australia is poised for a new era of mining growth."

14 Do you see that?

15 A. (Mr. Guarnera) Yes.

16 Q. Same thing on the next page, let's flip the  
17 page.

18 Now, you did not spot this issue when you  
19 were reviewing this exhibit?

20 VOICE: No.

21 THE WITNESS: (Mr. Guarnera) You mean spot  
22 the fact that there was--Australia is poised for a new

1 era of mining growth?

2 BY MR. POLAŠEK:

3 Q. Well, that I would assume that you would  
4 have been aware of, but the fact that your exhibit is  
5 partially obstructed by textbooks and we cannot make  
6 what is in the text.

7 A. (Mr. Guarnera) I don't know that there was  
8 text on there. I think it was just the pictures.

9 (Overlapping speakers.)

10 Q. Let's zoom in on the bottom part of the  
11 page.

12 A. (Mr. Guarnera) I see this in the first one  
13 there.

14 Q. Right. Do you see the sentence is cut in  
15 half, Mr. Guarnera?

16 A. (Mr. Guarnera) Yes.

17 Q. Let's move on to the next item, and I direct  
18 your attention to Paragraph 159 in your Second Report.  
19 You will put it on the screen.

20 Okay. So, this concerns Las Bambas. And  
21 right in the first line you say that this: "Although  
22 not a gold project or smaller in stature, Las Bambas,

1 in Peru, is a very contemporary example of an advanced  
2 project which did not review, change course, or modify  
3 the latest feasibility documents."

4 Do you see that?

5 A. (Mr. Guarnera) Yes.

6 Q. Now, Dr. Guarnera, the Las Bambas property  
7 was not a project. It was an operating mine.

8 Do you agree?

9 A. (Mr. Guarnera) Yes.

10 Q. Now, you say further down that: Villagers  
11 blockaded the main concentrate haul road to Las  
12 Bambas. Let's highlight that. Right there.

13 Do you see that?

14 A. (Mr. Guarnera) Right.

15 Q. Now, you did research the most current  
16 status of the Las Bambas mine before you submitted  
17 your Expert Report in this Arbitration, didn't you?

18 A. (Mr. Guarnera) I can't say I did or didn't.

19 Q. You didn't look?

20 A. (Mr. Guarnera) For anything about Las Bambas  
21 subsequent to this?

22 Q. Well, not anything, but where Las Bambas was

1 at the time that you submitted your Report.

2 A. (Mr. Guarnera) I know the property very  
3 well. We did--we did a major study on it.

4 Q. Okay. And so it would not surprise you if I  
5 told you that, on April 15th, which is one month prior  
6 to your Second Expert Report where you discussed Las  
7 Bambas, Mining.com reported that the Las Bambas  
8 community signed an accord with the company and the  
9 Government, the blockade was lifted, and the copper  
10 produced by Las Bambas is going into the markets  
11 again.

12 A. (Mr. Guarnera) Yes.

13 Are you aware that it's been shut down again  
14 by the same people?

15 Q. That was not my question.

16 A. (Mr. Guarnera) Well, I think it's relevant  
17 because it displays the continuing problems with  
18 social issues, whether it's a valid issue or not, and  
19 that's--the Chinese have failed to work with the  
20 people, and they are paying the price for it.

21 Q. Let's move to the next project. This is at  
22 the bottom of the page, the Maricunga project.

1 A. (Mr. Guarnera) Yes.

2 Q. And the way you describe it is that: "The  
3 plant design that was constructed did not follow the  
4 detailed engineering."

5 Do you see that?

6 A. (Mr. Guarnera) Yes, it was built on the  
7 wrong side of the mountain.

8 Q. And you do not opine in your Reports in this  
9 Arbitration that the Roşia Montană plant would be  
10 built on the wrong side of the mountain, do you?

11 A. (Mr. Guarnera) Well, what they had to do was  
12 totally dismantle the processing plant that was up and  
13 put it on the right side of the mountain.

14 You see, the engineering firm failed to  
15 recognize that they were in the Southern Hemisphere,  
16 and the sun shown from the North and not from the  
17 South. And, to keep the plant open year-round, they  
18 tried to put it where the sun would shine.

19 Q. Yes, but my question is you did not opine in  
20 your Expert Reports that any of these problems would  
21 arise at Roşia Montană, did you?

22 A. (Mr. Guarnera) Well, it hasn't been put into

1 production yet, has it?

2 Q. That's correct.

3 Let's go back to Paragraph 158, a little  
4 further up, and this relates to the Angangueo project,  
5 which is a polymetallic underground mine; correct?

6 A. (Mr. Guarnera) Yes, it is.

7 Q. And the Roşia Montană is not polymetallic,  
8 and it is not underground, is it?

9 A. (Mr. Guarnera) No, it is not.

10 Q. Now, what this says, and let's highlight  
11 that, is that in 2014 a feasibility study was  
12 prepared, and it had "disappointing results."

13 Do you see that?

14 A. (Mr. Guarnera) Yes.

15 Q. And it goes on to say that, in 2017, a new  
16 feasibility study was completed.

17 Do you see that?

18 A. (Mr. Guarnera) Yes.

19 Q. Now, you did not indicate that the results  
20 of the 2006 Feasibility Study for the Roşia Montană  
21 Project were disappointing, I think, did you?

22 A. (Mr. Guarnera) No. The 2006 Feasibility

1 Study, there is nothing wrong with it. [REDACTED]

11 Q. Doctor--

12 (Overlapping speakers.)

13 A. (Mr. Guarnera) I'm sure you don't want to  
14 hear about it. That's fine.

15 Q. Well, it's a time issue, and the rules that  
16 we have governing this examination. I'm sure that if  
17 you are--if you wish to elaborate on that point, the  
18 opportunity to do that will be on redirect  
19 examination. That's just how the rules work here.

20 A. (Mr. Guarnera) Suffice it to say, it's still  
21 not in operation.

22 Q. You mentioned when you said that--you know,

1 when you just described what, in your view, was  
2 happening with Roşia Montană since 2006, you mentioned  
3 not only Mineral Reserves but also Mineral Resources;  
4 right? Did I hear you correctly?

5 A. (Mr. Guarnera) Yes, because the reserve  
6 is--comes from the resource.

7 Q. Okay. So, let's take a look at an example  
8 of how Behre Dolbear approaches the issue of  
9 pre-existing studies in its own projects. Let's put  
10 on the screen Exhibit C-2588, and we will go to  
11 Page 38.

12 Let's zoom in on the center--no, no, this is  
13 it. Let's zoom in so that you can see what this is.

14 Does this look familiar to you?

15 A. (Mr. Guarnera) I remember it, yes.

16 Q. You were personally involved in authoring  
17 this Report, weren't you?

18 A. (Mr. Guarnera) Yes--I think parts of it.

19 Q. And the parts that you authored dealt with  
20 valuation; is that right?

21 A. (Mr. Guarnera) I don't recall.

22 Q. Okay. We will get to it.

1           So, this document was prepared by Behre  
2 Dolbear in 2005, as we can see in the middle of the  
3 screen, and it concerned Anglo Asian's placement,  
4 public placement, of shares relating to its gold and  
5 copper project in Azerbaijan.

6           Does that sound right?

7           A.   (Mr. Guarnera) Yes.

8           Q.   And it's similar to an NI 43-101 Report;  
9 would you agree?

10          A.   (Mr. Guarnera) Yes.

11          Q.   It says "Competent Person's Report" at the  
12 top.

13          Do you see that?

14          A.   (Mr. Guarnera) Right.

15          Q.   That's the equivalent of a Qualified Person  
16 under NI 43-101; agree?

17          A.   (Mr. Guarnera) Yes.

18          Q.   Let's go to Page 43. And I direct your  
19 attention to the bottom of the page section entitled  
20 "Behre Dolbear professionals."

21          A.   (Mr. Guarnera) Right.

22          Q.   We will zoom in on that.

1           Now, at the bottom. It says: "Valuation  
2 specialist, Mr. Bernard J. Guarnera."

3           See that?

4           A.   (Mr. Guarnera) Yes.

5           Q.   That's you; right?

6           A.   (Mr. Guarnera) Yes.

7           Q.   Now, it also refers to Mr. Mark Anderson in  
8 there. It's above the line. We will zoom in on it.

9           See that?

10          A.   (Mr. Guarnera) Right.

11          Q.   That's the same individual who co-authored  
12 your Expert Reports in this Arbitration; correct?

13          A.   (Mr. Guarnera) He was involved in the final  
14 edits of it, yes.

15          Q.   In the Second Report that you prepared in  
16 this Arbitration, his signature appears in the second  
17 place right underneath your signature.

18          Does that sound right?

19          A.   (Mr. Guarnera) Yeah. I guess it did. Could  
20 you demonstrate that? I'm not sure. I can't say  
21 "yes" or "no" until I see it.

22          Q.   Okay. You don't recall. Let's move on.

1           Let's go to Page 22 of this document. And,  
2 here, Anglo Asian describes the approach that it  
3 intends to take with respect to the Azerbaijan  
4 project, and we will zoom in on it. It says: "The  
5 Directors expect to minimize the costs involved in  
6 producing bankable feasibility studies through the use  
7 of Soviet era technology reports."

8           Then it goes on and it says that: "These  
9 contain, 'inter alia detailed design'--pardon  
10 me--'detailed process design, metallurgical testing,  
11 leachability testing and reagent consumptions and  
12 therefore only differ to standard Western bankable  
13 feasibility studies in that they lack economic or  
14 financial analysis."

15           Do you see that?

16           A.     (Mr. Guarnera) Yes.

17           Q.     Let's turn to Behre Dolbear's analysis of  
18 the Anglo Asian project. Let's go to Page 45 in these  
19 documents--in this document.

20           And I direct your attention to the bottom of  
21 the page. We will put that on the screen, and I  
22 quote: "Table 1.1 shows estimate of resources for

1 deposits in the three accessible contract areas in the  
2 various Soviet-system classifications. These are  
3 estimates made in the Soviet period and subsequently  
4 by Azeri authorities and are not Behre Dolbear's  
5 calculations; however, they are numbers that Behre  
6 Dolbear can support as being reasonable based on the  
7 evidence."

8 Did I read that correctly?

9 A. (Mr. Guarnera) Yes.

10 Q. And let's continuing reading. I quote:  
11 "Behre Dolbear considers them to meet the criteria for  
12 Inferred Resources. The table indicates over  
13 2.4 million tons of copper and 7.2 million ounces of  
14 gold are present at the properties."

15 Did I read that correctly?

16 A. (Mr. Guarnera) You did.

17 I also want to stress the term "Inferred  
18 Resources" as pointed out in our presentation,  
19 Inferred Resources are the highest risk.

20 Q. And they are, nonetheless, resources, aren't  
21 they?

22 A. (Mr. Guarnera) In--under new standards, the

1 U.S. stand--the 43-101 standards, you're not allowed  
2 to--you have to report them separately and put in a  
3 disclaimer. This was not being done for a 43-101. It  
4 was being done, I think, for AME.

5 Q. Well, as we saw at the beginning, this was  
6 done for a public offering of shares, and you agreed  
7 that this Report was equivalent to an NI 43-101  
8 Report, but let me move on to the next question, which  
9 is: It is correct that this Report was prepared in  
10 2005; correct? We saw that on the cover. That's when  
11 Behre Dolbear did this study.

12 A. (Mr. Guarnera) Yes.

13 And I believe right after that we advised  
14 the Company, and it was owned by Frank Timis, if I  
15 recall, that we had evidence that the samples that  
16 were taken were salted and should be disregarded and  
17 that the public should be notified.

18 Q. That didn't make it into this Report by  
19 Behre Dolbear to the investing public, did it?

20 A. (Mr. Guarnera) It was subsequent to the  
21 Report.

22 Q. Now, would you recall when the Soviet Union

1 was dissolved?

2 A. (Mr. Guarnera) I believe it was finally  
3 1999.

4 Q. It's 1991. And so, the Soviet-style studies  
5 that were prepared by the Soviet engineers that you  
6 relied on in this Report were at least 14 years old,  
7 weren't they?

8 A. (Mr. Guarnera) I can't comment on that.

9 Q. If you add--if you subtract 1991 from 2005,  
10 what do you get?

11 A. (Mr. Guarnera) 1991?

12 Q. Yes, 2005 minus 1991.

13 A. (Mr. Guarnera) 2005? That's 14 years.

14 I believe there are cautionary statements in  
15 that Report as well.

16 Q. Mr. Guarnera, let's move on to the next  
17 topic, and that is Roşia Montană's Mineral Reserves.

18 Now, are you aware that the Romanian  
19 National Agency for Mineral Resources, it's  
20 abbreviated as "NAMR," rendered a decision in 2013  
21 homologating or approving the Roşia Montană's Mineral  
22 Reserves and Mineral Resources?



[REDACTED]



1 A. (Mr. Guarnera) Yes.

2 Q. And I direct your attention to Page 11, and  
3 this again mentions the 10.1 million ounces of gold  
4 and 47.6 million ounces of silver.

5 Do you see that?

6 A. (Mr. Guarnera) Yes.

7 Q. Same numbers; right?

8 A. (Mr. Guarnera) Yes.

9 Q. And, there, AECOM also concludes that the  
10 Mineral Reserve calculation--I think we need to switch  
11 the zoom-in box--and we will highlight the Mineral  
12 Reserve calculation: "Has been performed using the  
13 best technology in the field."

14 Do you see that?

15 A. (Mr. Guarnera) Yes.

16 Q. And it goes on to say that "the risk  
17 associated with reserves is estimated to be low."

18 Do you see that?

19 A. (Mr. Guarnera) Did they independently do a  
20 deep-dive of looking at the material? That's the  
21 whole thing. This report was put together in five  
22 days.

1 Q. By the people whom the Romanian Government  
2 hired to assess the technical aspects of the Project;  
3 right?

4 A. (Mr. Guarnera) I'm assuming.

[REDACTED]



1           As regards the second question, I think I'm  
2 just under one half into the cross-examination. It's  
3 a little hard to predict, but we are--we still have a  
4 way to go.

5           PRESIDENT TERCIER: Okay. It was not, of  
6 course, any pressure. It was a real question. So it  
7 would mean that you need around two hours.

8           MR. POLAŠEK: That sounds about right,  
9 Mr. President.

10          PRESIDENT TERCIER: Okay. Right, if you say  
11 you are approximately in the middle, we had one hour  
12 for the presentation or a little bit more, and there  
13 will be a redirect, I assume, Ms. de Germiny or  
14 Dr. Heiskanen? Who will be able to answer it?

15          MS. de GERMINY: Well, we will wait until  
16 the conclusion of the cross-examination,  
17 Mr. President, to determine.

18          PRESIDENT TERCIER: Yeah, but you understand  
19 my question. My question, was of course linked to the  
20 question whether we should already start with  
21 Mr. Cooper this evening. It seems to me very unlikely  
22 that we can do it. Yeah?





1 Thank you.

2 PRESIDENT TERCIER: Okay. Thank you very  
3 much.

4 It is Swiss time 20 past 5:00. We will  
5 resume, if I may take five minutes as a "sconsure"  
6 (phonetic), we will start again at a quarter past 6:00  
7 Swiss time.

8 May I ask my co-Arbitrators to now switch to  
9 the Tribunal session just for a while.

10 Thank you very much. We will start in a  
11 moment.

12 Oh, sorry, I forgot to remind our experts  
13 that they're still under testimony and they have not  
14 the right to have any contact with the Parties, with  
15 Respondent.

16 THE WITNESS: (Mr. Guarnera) I understand.  
17 Thank you.

18 PRESIDENT TERCIER: Thank you.

19 (Recess.)

20 PRESIDENT TERCIER: Okay. I will see  
21 whether everybody is on board. My co-Arbitrators are  
22 with us. Sara is with us. I heard a moment ago that

1 David is with us. I see that our Experts already are  
2 ready.

3 Do you hear me?

4 THE WITNESS: (Mr. Guarnera) Yes, sir. Can  
5 you hear us?

6 PRESIDENT TERCIER: Yes, perfectly. Thank  
7 you very much.

8 THE WITNESS: (Mr. Guarnera) Thank you.

9 PRESIDENT TERCIER: On Claimants' side,  
10 Mr. Polašek is ready, and I would like to know whether  
11 on Respondent's side you are ready?

12 MS. de GERMINY: We are ready,  
13 Mr. President.

14 PRESIDENT TERCIER: Thank you very much.

15 So, let's start. And I will start in  
16 answering some of the points that have been addressed  
17 earlier.

18 First, I have not expressly confirmed that  
19 the Arbitral Tribunal agrees with the procedures that  
20 have been proposed by Claimant concerning the  
21 Declaration made during the Opening or the  
22 presentation and the PowerPoints and to the impact it

1 could have on the Transcript. And, indeed, we will  
2 fix a date for Claimant to make its proposal of the  
3 nine objections that were raised and we'll give  
4 Claimant and Respondent an opportunity to comment.

5           That's Point No. 1.

6           Point No. 2, the question of the timing in  
7 connection with the incident, it's important that our  
8 experts have had the time to make their presentation  
9 within an hour, if that were the case. Our Secretary  
10 has taken into account the other time with the  
11 Declaration, be it by each Party. This could have an  
12 importance at the very end, and so we'll look at it in  
13 case there is a problem. I remember the position of  
14 the Tribunal in that regard.

15           The third point, and the main important  
16 point is the question of the questions, the issue  
17 whether the Tribunal will already now ask questions.  
18 We have discussed it, and we considered that what is  
19 not a surprise for you, that this case is a huge case  
20 with an enormous number of documents and issues, and  
21 we consider that it would be premature at this stage  
22 that you come with questions. We need first to digest

1 a bit what we have read, what we have heard, and we  
2 should have a first deliberation, and we will come to  
3 the Parties. In connection with the Post-Hearing  
4 Brief, we will decide. We can discuss it still before  
5 the end of the Hearing, but the question will be when  
6 and how we will ask our questions. And this will also  
7 alleviate a bit the work for counsel and partly for  
8 the Tribunal during that hearing.

9 Have you a comment to that, Mrs. Cohen? Or  
10 Mr. Polašek?

11 MS. COHEN SMUTNY: Claimants do not--this is  
12 agreeable for Claimants. Thank you.

13 PRESIDENT TERCIER: Okay. Dr. Heiskanen?

14 DR. HEISKANEN: No comments, Mr. President.

15 PRESIDENT TERCIER: Thank you very much.

16 In that case, Mr. Polašek, you have the  
17 floor for the second part of your cross-examination.  
18 Please.

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

20 BY MR. POLAŠEK:

21 Q. Mr. Guarnera, I would like to go back to a  
22 statement you made earlier today about AECOM, and that

1 is, you said that you questioned their ethics because  
2 they failed to note that the Washington Group prepared  
3 the--that prepared the 2006 Feasibility Study was  
4 owned by them.

5           You recall making that statement?

6           A.   (Mr. Guarnera) Yes.

7           Q.   So, you suggested essentially that AECOM  
8 owned the Washington Group that was the author of the  
9 2006 Feasibility Study; right?

10          A.   (Mr. Guarnera) Yes.

11           They--the Washington Group was purchased by  
12 URS. URS was then acquired by AECOM.

13          Q.   So--

14          A.   (Mr. Guarnera) That's my understanding.

15          Q.   And would it surprise you if I told you that  
16 the purchase of the Washington Group International by  
17 URS occurred in 2007? Does that sound right?

18          A.   (Mr. Guarnera) Yes.

19          Q.   And then AECOM purchased URS in 2014;  
20 correct?

21          A.   (Mr. Guarnera) I'm not aware of the date,  
22 sir.

1 Q. And the date of the AECOM Report is 2013;  
2 right?

3 A. (Mr. Guarnera) I believe that's so.

4 Q. Please turn to Paragraph 136 of your Second  
5 Report. This is on page 36. And I direct your  
6 attention to the top of the page.

7 And in the morning you discussed the  
8 Modifying Factors. These are the Modifying Factors;  
9 correct?

10 A. (Mr. Guarnera) They are the Modifying  
11 Factors. However, if you note that the official  
12 definition says--does not say that it's limited to  
13 these.

14 Q. These are the ones that you enumerated in  
15 this paragraph; correct?

16 A. (Mr. Guarnera) These are the ones that  
17 I--are copied from the actual, I believe it is the  
18 CIMM definitions.

19 Q. And the CIM definitions from which you  
20 copied these Modifying Factors, and you enumerate them  
21 in this manner; right? Do you recall?

22 A. (Mr. Guarnera) Right.

1 I am looking at--I'm sorry, I'm losing my  
2 headset.

3 Q. No problem.

4 And, Mr. Guarnera, if you don't have a  
5 recollection, I think--I think we will move on to the  
6 next question.

7 I would like to point you next to  
8 Paragraph 137.

9 A. (Mr. Guarnera) Okay. Thank you.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. Now, at Paragraph 117 of your Second Report,  
8 which is on Page 30--we will put it up.

9 You stated that: "Behre Dolbear in its  
10 First Report recommended substituting the proposed  
11 Tailings Management Facility," abbreviated as  
12 "TMF"--"with a filtered price tag." And then you go  
13 on to say that: "While this is more expensive, it  
14 would" let's highlight that on the screen, "make the  
15 Project more acceptable to the local populace and the  
16 Government."

17 Do you see that?

18 A. (Mr. Guarnera) I do. But, sir, if we're  
19 going to be on that, I would suggest that  
20 Mr. Jorgensen be the one who talks. Is that  
21 appropriate?

22 Q. That is absolutely fine, and you should

1 please feel free to answer the questions. Whoever is  
2 the more qualified person to answer them should answer  
3 the questions.

4 A. (Mr. Guarnera) When it comes to the TMF,  
5 that certainly is Mr. Jorgensen.

6 Q. Thank you. Thank you, Mr. Guarnera.

7 So, on this paragraph there seems to be a  
8 typo. "Populace" should be "population"; right?

9 A. (Mr. Jorgensen) I don't see the difference.

10 Q. Okay. So--but the point is that, doing the  
11 dry-stacked tailings would be more acceptable to the  
12 local population and the Government; right?

13 A. (Mr. Jorgensen) Yes.

14 Q. That is the opinion you are expressing here;  
15 correct?

16 A. (Mr. Jorgensen) Correct.

17 Q. And you agree that Roşia Montană's TMF  
18 design was broadly consistent with regulatory  
19 requirements and generally accepted good practice as  
20 defined at the time?

21 A. (Mr. Jorgensen) Yes.

22 Q. And you also agree that the adoption of a

1 clay liner was from a strictly technical viewpoint  
2 justifiable?

3 A. (Mr. Jorgensen) From a strictly technical  
4 viewpoint. There still were some concerns that were  
5 expressed on a technical basis. For instance, a clay  
6 liner still leaks. It may leak one times 10 (drop in  
7 audio) minus seven centimeters, but it still leaks.

8 Q. Well, in your Second Report, you stated that  
9 Behre Dolbear has not asserted that the TMF plant is  
10 not technically sound; do you recall that?

11 A. (Mr. Jorgensen) Yes, I do.

12 Q. Do you agree that, in a wet climate,  
13 dry-stacking has major environmental disadvantages?

14 A. (Mr. Jorgensen) I disagree with that. I  
15 think it can be done in a wet climate, and I believe  
16 in our exhibits we show that it could be done in a wet  
17 climate.

18 Q. Let's turn to Exhibit C-2962, and this is an  
19 excerpt from a document by the Minnesota Department of  
20 Natural Resources.

21 A. (Mr. Jorgensen) Right. So this is not a  
22 Federal document. This is a state document; is that

1 correct?

2 Q. Well, I can tell you that it came from the  
3 Minnesota Department of Natural Resources.

4 A. (Mr. Jorgensen) So, it would be a state  
5 document?

6 Q. Perhaps.

7 A. (Mr. Jorgensen) And is this a formal study?

8 Q. Yes. This is a document that is a,  
9 "Findings of Fact, Conclusions and Order of  
10 Commissioner dated November 1st, 2018." That's the  
11 title of the document.

12 A. (Mr. Jorgensen) As I have read the entire  
13 document, I understand that this is in reply to a  
14 query by a constituent who said: "why haven't you  
15 considered dry-stack tailing?" It's not a formal  
16 study, but yet it's a reply to their question.

17 Q. Well, let's see what the Reply to the  
18 question says. Let's look at Paragraph 213 in this  
19 document. And the second line says that: "In a wet  
20 climate, dry-stacking has major environmental  
21 disadvantages."

22 Did I read that correctly?

1           A.     (Mr. Jorgensen) You did.  However, I would  
2 also like to note that this is based on a paper.  The  
3 crux of this document, if you read a little bit  
4 further, is based on a paper by a Dr. Michael Davies  
5 published in 2001.  That paper has since--the paper  
6 has since been superseded by another paper that he  
7 wrote in 2011, which is our Exhibit BD-13.

8           Q.     Would you agree that, once exposed to rain  
9 or snow, the dry-stack becomes wet and most of the  
10 benefits of dry-stackings are lost?

11          A.     (Mr. Jorgensen) I would not agree to that.  
12 Our practice has shown that it can be done in both wet  
13 and cold climates.  It can be done in dry--it can be  
14 done in cold climates, it can be done with snow  
15 climates, it can be done in warm climate.  It can be  
16 done almost anywhere, and that is what is shown by  
17 Mr. Davies's updated paper in 2011, which is BD-13.

18          Q.     Would you agree with respect to the  
19 conditions of the Roşia Montană site--and I'm focusing  
20 now on the climate conditions--would you agree that  
21 the Project's Tailings Management Facilities outside  
22 of the range of any existing sites in operation that

1 use dry-stack management methods because of the  
2 relatively wet climate at the Project site and  
3 relatively high production rate?

4 A. (Mr. Jorgensen) We know that dry-stacking  
5 tailings has been done in wetter climate. For  
6 instance, this particular PolyMet, the rainfall here  
7 is about or the moisture is about 750 millimeters. At  
8 Roşia Montană, it's about 500 millimeters, the annual  
9 precipitation.

10 The temperatures here are similar. It's  
11 going to be very cold in the winter, freezing  
12 conditions with snow. And in the summer they're going  
13 to get rain in the spring. I wouldn't think that  
14 would be unlike what's happening at Roşia Montană, but  
15 we do know that even wetter climates have been able to  
16 have dry-stack tailing, and we do know that there are  
17 operations that are within just 5 or 10 percent of the  
18 tonnage that we're predicting or that Roşia Montană  
19 would have.

20 Q. Let's turn to Mr. Corser's report, his  
21 Second Report in this Arbitration, and let's go to  
22 Paragraph 14. And we will zoom in on that. Now, his

1 opinion is that the dry-stack trailings approach would  
2 not have been appropriate for the Project because of  
3 the relatively high production rate for a dry-stack  
4 operation and the wet and very cold conditions at the  
5 site, and he goes on to say that: "The Project TMF is  
6 outside of the range of any existing sites in  
7 operation that use dry-stack management methods  
8 because of the relatively wet climate at the Project  
9 site and relatively high production rate."

10 Did I read it correctly?

11 A. (Mr. Jorgensen) You did. I would disagree  
12 with that statement.

13 Q. And although you provided some comments now,  
14 you did not respond to Mr. Corser in your Second  
15 Report, did you?

16 A. Well, actually, we cited Mr. Davies's paper  
17 wherein we listed the different dry-stack tailings  
18 conditions that have been used; that was updated in  
19 2011, and he disagrees with Mr. Corser.

20 Q. But you did not refer to Mr. Corser's  
21 opinion here in your Second Report, did you?

22 A. (Mr. Jorgensen) No, but I did refer to



█ [REDACTED]

9 Q. All right. So, we will discuss that in a

10 minute. I just want to go back to the issue of

11 rainfall at Roșia Montană, and I will have a question

12 back to Mr. Jorgensen.

13 Let's take a look at the NI 43-101 from

14 2012. That's Exhibit C-128. It's Page 18 in the PDF.

15 And it states--it's towards the bottom above

16 the bullets--let's zoom in on that: "The climate of

17 the area is designated as continental temperature and

18 is characterized by hot summers, cold winters,

19 significant snowfalls, and annual rainfall averaging

20 745 millimeters."

21 Did I read that correctly?

22 A. (Mr. Jorgensen) Yes, and it does appear that

1 I did say 500 millimeters. Evidently I was incorrect.

2 It should have been 750 millimeters.

3           The point is, yeah, 750 millimeters, thank  
4 you.

[REDACTED]







6 Q. Now, SRK stated in their First Report that  
7 Tarnita has the potential to be developed as a  
8 stand-alone operation; do you recall that?

9 A. (Mr. Guarnera) I do.

10 Q. And you did not express a disagreement with  
11 that statement in your Second Report, did you?

12 A. (Mr. Guarnera) No.

13 Q. Now, do you agree that all classes of  
14 Mineral Resources that is including Measured,  
15 Indicated, and also Inferred have value? This  
16 question would be for Mr. Guarnera?

17 A. (Mr. Guarnera) Yes. I absolutely do agree  
18 on that.

19 Q. And, in fact, that is what you testified at  
20 the public hearing in the ICSID Arbitration of Eco Oro  
21 v. Colombia in January of this year. Do you remember  
22 that?

1           A.     (Mr. Guarnera) I did.

2           Q.     And the deposit at issue in the Eco Oro  
3 arbitration had Mineral Resources, but no Mineral  
4 Reserves; right?

5           A.     (Mr. Guarnera) At one time it did have  
6 Mineral Reserves. Unfortunately, the social issues  
7 killed it, so now it's just a resource.

8           Q.     Well, you did not tell the Eco Oro Tribunal  
9 that the resources or the deposit provided little  
10 current value to Eco Oro, did you?

11          A.     (Mr. Guarnera) No, you know, that--you have  
12 to go back to before the date of the action. Before  
13 the date of the action, it had significant value.

14          Q.     Let's take another look at Exhibit C-2588.  
15 And this is the Anglo Asian Competent Person's Report  
16 that we discussed earlier.

17                   And, as we discussed previously, Behre  
18 Dolbear stated in this Report that the Mineral  
19 Resources of this project met the criteria for  
20 Inferred Resources; do you remember that?

21          A.     (Mr. Guarnera) I do.

22          Q.     And you concluded a valuation of the Project

1 on that basis, didn't you?

2 A. (Mr. Guarnera) Exactly.

3 Q. Let's go to Page 10 in the document. And  
4 there is a section there called "Valuation." Let's  
5 zoom in. And this says, I quote: "Behre Dolbear  
6 gives the company a market valuation of 247.5 million  
7 on the related transactions basis and 257 million on a  
8 market-multiples basis."

9 And then it goes on to say: "Based on the  
10 value that would be ascribed to each ounce of Inferred  
11 Resources."

12 Do you see that?

13 A. (Mr. Guarnera) Yes.

14 Q. And here, valuation for Anglo Asian was  
15 conducted in 2005; right?

16 A. (Mr. Guarnera) I believe so.

17 Q. That is at the time when gold prices were  
18 significantly lower than they were in mid-2011;  
19 correct?

20 A. (Mr. Guarnera) I believe so.

21 Q. And you did not tell the investing public in  
22 your valuation, in your competent report, for Anglo

1 Asian that its Soviet-certified inferred-only  
2 resources provided little value for the company, did  
3 you?

4 A. (Mr. Guarnera) No, because our opinion was  
5 that they did--we weren't being critical of the Soviet  
6 system. What I was saying is that it's a different  
7 system in the sense that it excludes some things that  
8 now are considered to be essential in declaring a  
9 reserve. But, when you have an Inferred Resource,  
10 there's almost no difference.

11 Q. Let's go to Page 46 in this document, and  
12 there is a table at the top--let's zoom in on it, the  
13 whole table.

14 Now, these are the Inferred Mineral  
15 Resources that are the subject of your Report; right?

16 A. (Mr. Guarnera) That's correct.

17 Q. And, on the right-hand side, Cu, that's  
18 copper?

19 A. (Mr. Guarnera) Yes.

20 Q. Au, that's gold?

21 A. (Mr. Guarnera) Yes.

22 Q. Ag, that's silver?





1 you said in that connection?

2 A. (Mr. Guarnera) It is.

3 Q. Let's turn to Page 85 in this document, and  
4 let's zoom in on the two lines at the bottom. This is  
5 what you told the investing public in connection with  
6 the multiple properties that we saw in the preceding  
7 chart. You stated that: "In Behre Dolbear's opinion,  
8 the group of properties covered by Anglo Asian's  
9 Production Sharing Agreement constitutes a potential  
10 source of copper and gold of world-class importance."

11 Did I read that correctly?

12 A. (Mr. Guarnera) You did.

13 Q. Let's turn to Page 92 in this document. And  
14 here, you also stated, I quote--it's at the bottom of  
15 the page: "The value applied to corporate entities as  
16 part of an acquisition will frequently include a  
17 'Control Premium' if the acquisition of a part or all  
18 of the entity results in effective control of the  
19 entity. The Control Premium typically ranges from  
20 20 percent to over 50 percent."

21 Did I read it correctly?

22 A. (Mr. Guarnera) You did.

1 Q. Now, in the Second Report, you also stated  
2 that NI 43-101 Technical Reports are only as good as  
3 the Qualified Person who takes responsibility for the  
4 content. Do you recall that?

5 A. (Mr. Guarnera) Yes.

6 Q. And you also made a reference to--

7 A. (Mr. Guarnera) I'd really like to see that.

8 Q. Yes. We could put that up. It's  
9 paragraph--

10 (Overlapping speakers.)

11 A. (Mr. Guarnera) I'm not disputing what you  
12 say, but I do want to verify it.

13 Q. This is Paragraph 82 in your Second Report.

14 A. (Mr. Guarnera) Okay.

15 Q. And you cited two studies by the British  
16 Columbia Securities Commission and the Ontario  
17 Securities Commission; right?

18 A. (Mr. Guarnera) Yes.

19 Q. Those would be state commissions?

20 A. (Mr. Guarnera) They're Provincial, but they  
21 basically are the ones that review the documents that  
22 are being filed in British Columbia because of the

1 Vancouver Stock Exchange, and the Ontario Securities  
2 Commission because of the Toronto Stock Exchange.

3 Q. And you made the point that these studies  
4 have shown that approximately 40 percent of NI 43-101  
5 Technical Reports did not meet the Canadian NI 43-101  
6 filing requirements; right?

7 A. (Mr. Guarnera) That's what it says, yes.

8 Q. Were any Behre Dolbear NI 43-101 Reports  
9 authored NI 43-101 Reports in this category, as far as  
10 you know?

11 A. (Mr. Guarnera) As far as I know, none.

12 Q. And you recall that in the Eco Oro  
13 arbitration that we mentioned previously, Dr. Cameron,  
14 who is the co-author of your Reports in this case,  
15 testified with respect to a report of the Respondent's  
16 Experts that the other report conflicted with the  
17 findings of multiple Qualified Persons over a period  
18 of years?

19 A. (Mr. Guarnera) I'd like to see that, please.

20 Q. Do you remember one way or the other?

21 A. (Mr. Guarnera) I don't, sir.

22 Q. And, if I told you that this is what

1 transpired at the Eco Oro hearing, which you attended,  
2 would you be surprised?

3 A. (Mr. Guarnera) No, I would not be surprised.  
4 I just--

5 Q. And, to your knowledge, Behre Dolbear did  
6 not bring to the attention of the Eco Oro Tribunal the  
7 studies by the British Columbia Securities Commission  
8 and the Ontario Securities Commission; correct?

9 A. (Mr. Guarnera) I do not recall one way or  
10 the other, sir. Sorry.

11 Q. Now, you are qualified to conduct valuation  
12 of mining companies and mining properties; correct?

13 A. (Mr. Guarnera) Yes, but that was not my role  
14 on this effort, sir, and so I have no--I was not  
15 assigned to do that, and I have not.

16 Q. But, generally, you consider yourself a  
17 valuation specialist; isn't that fair?

18 A. (Mr. Guarnera) As I said in the  
19 introductions, I specialize in assessing the technical  
20 and economic viability of mineral projects and what  
21 the value of the project is, yes, sir.

22 Q. Let's turn to Exhibit C-2588. Again, this

1 is Anglo Asian, and we will go to Page 44. And we  
2 will zoom in on the text at the top.

3 And, here you are described as Behre  
4 Dolbear's Principal Valuator.

5 Do you see that?

6 A. (Mr. Guarnera) Yes.

7 Q. And, in fact, you have served as a quantum  
8 expert in investment-treaty arbitrations; right?

9 A. (Mr. Guarnera) I have.

10 Q. And so, for example, you served as the  
11 Valuation Expert for the Claimant in Glamis Gold  
12 versus United States; right?

13 A. (Mr. Guarnera) That is correct.

14 Q. And you have your own views as to what are  
15 the proper ways of valuing mining companies and mining  
16 properties; is that fair?

17 A. (Mr. Guarnera) No, unfortunately, that's not  
18 because there are valuation--specific mineral  
19 valuation codes that generally have to be used.

20 Q. Well, in the context of an investment treaty  
21 arbitration, you would have your own views as to what  
22 methodologies to use to value the property; right?

1           A.     (Mr. Guarnera) Yes, I guess I certainly  
2 would have.  If that's what I was asked to do, I would  
3 review the Project, look at the type of project is,  
4 what the nature of the mineralization is and come up  
5 with an appropriate method of valuation.

6           Q.     And, in this Arbitration, Respondent has not  
7 asked you to serve as the quantum expert; right?

8           A.     (Mr. Guarnera) I have not been given that  
9 assignment.

10          Q.     Have you discussed it as a possibility with  
11 Respondent?

12          A.     (Mr. Guarnera) I have not.

13          Q.     And would you agree that, in the end,  
14 fundamental methods estimate value but value is  
15 established by markets?

16          A.     (Mr. Guarnera) I'm sorry, sir, I'm not going  
17 to state an opinion one way or the other.  I was not  
18 asked to look at valuations here, and I will not  
19 express an opinion.

20          Q.     Let's take--let's turn again to the 2005  
21 Competent Persons Report for Anglo Asian, and we will  
22 go to Page 93.

1 (Pause.)

2 Q. And this states that: "Behre Dolbear has a  
3 database of approximately 400 individual transactions  
4 in the precious metals industry, and an additional  
5 database--and that the database indicates that,  
6 historically, exploration phase precious metal  
7 properties trade at an average per-ounce value of  
8 approximately 2.5 percent of the current per-ounce  
9 gold price."

10 Do you see that?

11 A. (Mr. Guarnera) I do.

12 Q. The current per-ounce gold price, that would  
13 be the spot gold price; right?

14 A. (Mr. Guarnera) Yes.

15 Q. And then it goes on and it assigns a  
16 percentual weight to the ounces of gold.

17 Do you see that?

18 A. (Mr. Guarnera) Yes.

19 Q. And it gives an example at the end; right?

20 A. (Mr. Guarnera) Yes.

21 Q. And, on the next page--pardon me, it's  
22 Page 99 in the same document. At the top there is a

1 section entitled "VALUATION BY RULES OF THUMB."

2 Do you see that?

3 A. (Mr. Guarnera) Yes.

4 Q. And that's where you applied the method that  
5 we just saw on the preceding page to the Anglo Asian  
6 properties; right?

7 A. (Mr. Guarnera) That's correct.

8 Q. And the values that you obtained through  
9 this method range from \$259.5 million to  
10 \$310.9 million; right?

11 A. (Mr. Guarnera) Correct.

12 Q. And you also applied this "rule of thumb"  
13 method in the Glamis Gold arbitration to complete your  
14 analysis; is that fair?

15 A. (Mr. Guarnera) My recollection, it was one  
16 of the methods that we used, right. Other methods  
17 were used as well.

18 Q. It was a complementary method; right?

19 A. (Mr. Guarnera) I really don't recall. That  
20 was--God, it must be 15 years ago at least.

21 I'm sorry, sir. I can't recall.

22 Q. Now, in this case, in this Arbitration,

1 although you did opine that the Bucium properties  
2 provide little current value to Roșia Montană, you did  
3 not apply this "rule of thumb" methodology?

4 A. (Mr. Guarnera) I wasn't asked to--sir,  
5 that's not in my purview. These were totally--these  
6 properties are, in my understanding, under dispute,  
7 and so that dispute itself would have a significant  
8 impact on the value.

9 Q. Well, you did express an opinion that the  
10 Bucium properties provide little value to the Roșia  
11 Montană Project. We saw that--

12 (Overlapping speakers.)

13 A. (Mr. Guarnera) Yes.

14 Q. Is that opinion outside of the purview of  
15 what you were asked to do?

16 A. (Mr. Guarnera) I think it probably was.

17 Q. Do you wish to withdraw that opinion?

18 A. (Mr. Guarnera) No.

19 Q. So, you maintain the opinion?

20 A. (Mr. Guarnera) I have to maintain it. I've  
21 written it.

22 Q. Well, you can withdraw it, if it was outside

1 of the scope of what you were asked to do, as you  
2 testified.

3 A. (Mr. Guarnera) I--it's there, and it's on  
4 paper, and that's fine.

5 Q. You provided no analysis to support that  
6 opinion, did you?

7 A. (Mr. Guarnera) No, I told you that, unless  
8 Roşia Montană wanted to go and build a whole new  
9 processing plant to handle a porphyry copper deposit,  
10 it doesn't add any value. They can't run that stuff  
11 through their mill.

12 Q. But there is no analysis in your Report that  
13 would support that conclusion, is there?

14 A. (Mr. Guarnera) It is--there is, sir. It's  
15 called "common sense."

16 Q. Well, among other things, Mr. Guarnera, you  
17 did not apply the "rule of thumb" methodology [REDACTED]

[REDACTED]  
19 A. (Mr. Guarnera) No, I did not.

20 Q. And you, in fact, did not use any other  
21 valuation methodology to assess the Bucium properties,  
22 did you?

1           A.     (Mr. Guarnera) As I said, it was outside my  
2 purview.

3           Q.     Now, let's go to your Second Report, and we  
4 will be looking at Paragraph 57, Figure 3.1.

5           A.     (Mr. Jorgensen) I would like to take that  
6 question.

7           Q.     Sure. So, we will put it on the screen, and  
8 we will try to put on the screen at the same time the  
9 chart in Paragraph 57.

10                   And you state that, based on this chart,  
11 that the average overrun for gold projects was  
12 approximately 40 percent. That's at the bottom of the  
13 page.

14                   Do you see that?

15           A.     (Mr. Jorgensen) Yes, I do.

16           Q.     And, in the Opening Presentation, you also  
17 showed this chart; correct?

18           A.     (Mr. Jorgensen) That is correct.

19           Q.     And you commented that this is a very  
20 helpful chart; right?

21           A.     (Mr. Jorgensen) Well, what it does is it  
22 allows us to take in context the--what was happening

1 in the mining industry at the time.

2           You will notice that there were very few  
3 projects that underran their budget. There were many  
4 of them that overran them. And this is average cost  
5 overrun of mining project capital costs. It's simply  
6 an indicator.

7           Q. Now, if we were to draw a vertical line  
8 where the middle of 2011 is on this timeline, a lot of  
9 these bubbles that indicate cost overruns would be to  
10 the left of that line; right?

11           A. (Mr. Jorgensen) There would still be some  
12 pretty substantial ones to the right of it.

13           Q. Do you disagree that there would be  
14 substantial ones to the left of it?

15           A. (Mr. Jorgensen) Well, it is an average over  
16 time. It allows us to assess what's going on in in  
17 the Project--what's happening with projects at that  
18 time. I mean, we can't--we can't say that it's exact.  
19 We don't pretend that it's exact. All we're saying is  
20 is it's an indication of what was happening in the  
21 mining industry at that time.

22           Q. Right. And it's an indication on a time

1 basis; right?

2 A. (Mr. Jorgensen) Yeah, it's an average  
3 overrun during the time period. And if you look at  
4 where the bubbles are, I mean, they're going out to  
5 2017 and starting in 1994.

6 Q. Right.

7 A. (Mr. Jorgensen) The cluster seems to be  
8 around where that little red globe is, and that's  
9 about 2009, so it would not be the same as 2011. It  
10 would be a little--but it's still an indication. It's  
11 not an exact science. We never said it was exact. We  
12 say it's an indication of what's happened.

13 Q. And it is correct, isn't it, that  
14 information about such cost overruns, the ones around  
15 and to the left of the center of the cluster, as you  
16 described it, which was in 2009, would have been  
17 available to investors in the gold-mining sector prior  
18 to July 2011?

19 A. (Mr. Jorgensen) I don't know what  
20 information they had. That is what information I was  
21 able to find. This, I believe, was a paper given at a  
22 2015 presentation, "A lender's perspective."

1 Q. And this has cost overruns, let's say, in  
2 the middle of the 2000s; right? There are at least  
3 two large bubbles in there?

4 A. (Mr. Jorgensen) Yeah. And again, the large  
5 bubbles are the size of the Project. For instance,  
6 the bigger around the bubble is, the more billion  
7 dollars it is, and the red globe simply represents an  
8 average.

9 Q. Right. And information about these cost  
10 overruns, that these projects ran into cost overruns,  
11 would have been available to the market prior to  
12 July 2011; would you agree?

13 A. (Mr. Jorgensen) Yes, I would agree. I would  
14 think that, as we delve into this, we would see that  
15 there are probably--I mean, this is self-explanatory.  
16 I'm not sure of the question.

17 Q. Well, the question is: If we were standing  
18 in July 2011 and had a chart like this, we would see  
19 bubbles on it above the line; right?

20 A. (Mr. Jorgensen) That is correct. We would  
21 see bubbles to the left.

22 Q. Now, let's turn to Exhibit BD-17. This is a

1 document you submitted, and let's go to Page 12. And  
2 I direct your attention to the top of the slide. We  
3 will zoom that in. And this says that: "Fewer than  
4 10 percent of all mining projects are completed within  
5 budget and schedule."

6 Do you see that?

7 A. (Mr. Jorgensen) I do, yes.

8 Q. And the source for that cited is "Addison,  
9 2007."

10 Do you see that?

11 A. (Mr. Jorgensen) I do.

12 Q. And the next point: "Less than 20 percent  
13 achieve the ROI or NPV projected by their Feasibility  
14 Study."

15 Do you see that?

16 A. (Mr. Jorgensen) Yes.

17 Q. ROI, is that "Return on Investment"?

18 A. (Mr. Jorgensen) Yes.

19 And NPV would be "Net Present Value."

20 Q. Thank you.

21 And the source for that is stated as  
22 "Bullock, 2011."

1 Do you see that?

2 A. (Mr. Jorgensen) I do.

3 Q. And studies like this were available to  
4 investors in the gold-mining sector prior to  
5 July 2011; do you agree?

6 A. (Mr. Jorgensen) I don't know what would be  
7 available to people, but this was given at the IPMI  
8 41st Annual Meeting, so I would assume that it would  
9 be available to those who found it or looked for it or  
10 attended the conference.

11 Q. And those might be people interested in  
12 investing in the mining sector; would you agree?

13 A. (Mr. Jorgensen) I would think so, yes. I  
14 have no basis for that decision, for saying that, but  
15 I'm assuming, as you are that, yeah, this is public  
16 information, so it should be available.

17 Q. Let's turn to your Second Report, and let's  
18 take a look at Paragraph 35.

19 Do you see that?

20 A. (Mr. Jorgensen) I do.

21 Q. And there is a statement at the top, and  
22 then it is followed by a block quote; right?

1 A. (Mr. Jorgensen) Yes.

2 Q. And the block quote is reproduced verbatim  
3 from the source from which it comes; correct?

4 A. (Mr. Jorgensen) Correct.

5 Q. And may I ask who prepared this section of  
6 the Report?

7 A. (Mr. Jorgensen) I did.

8 Q. So, you personally looked at the source and  
9 chose this quote; is that fair?

10 A. (Mr. Jorgensen) Yes.

11 Q. Okay. And you put it in this paragraph;  
12 right?

13 A. (Mr. Jorgensen) I'm having a tough time  
14 remembering, but BD-15 and BD-16--

15 Q. Okay, well, we will look at the--we will  
16 look at this source. For now, let's look at what the  
17 quote says. It says: "Broadly speaking, there are  
18 three potential causes of systemic (sic) cost overruns  
19 for infrastructure projects or for mining projects."  
20 Let's highlight that on the screen.

21 A. (Mr. Jorgensen) That's correct.

22 Q. Let's highlight the words "mining projects."

1 Do you see that?

2 A. (Mr. Jorgensen) Yes.

3 Q. And now, let's just highlight the words  
4 "mining projects."

5 Do you see that?

6 A. (Mr. Jorgensen) I do, yes.

7 Q. Now, let's look at the source from which you  
8 took this text. This is Exhibit BD-15, and let's show  
9 the first page.

10 That's the source; right?

11 A. (Mr. Jorgensen) It is, yes.

12 Q. Now, let's look at the title at the top.  
13 Let's zoom that in.

14 Now, this says "Cost Overruns in Australian  
15 Transport Infrastructure Projects."

16 Did I read that correctly?

17 A. (Mr. Jorgensen) Yes, that's correct.

18 Q. Let's go to Page 3 in this document. And  
19 let's look at the bottom of the page and we will zoom  
20 in on the text that you quote in your Report. And  
21 let's close this and just put on the screen the top  
22 paragraph.

1           This is the text; right?

2           A.   (Mr. Jorgensen) It is, yes.

3           Q.   That's what you're quoting. So, let's read  
4 it: "Broadly speaking, there are three potential  
5 causes of systemic (sic) cost overruns for transport  
6 infrastructure projects."

7           Did I read that correctly?

8           A.   (Mr. Jorgensen) Yes.

9           Q.   There is no reference to "mining projects"  
10 in here, is there?

11          A.   (Mr. Jorgensen) No.

12          Q.   And you did not correct this as part of your  
13 errata that we received this morning, did you?

14          A.   (Mr. Jorgensen) I did not.

15          Q.   Did you personally make that alteration to  
16 insert the words "mining projects" into that text when  
17 you quoted it?

18          A.   (Mr. Jorgensen) Well, we added "or for  
19 mining projects."

20          Q.   That was you who added that?

21          A.   (Mr. Jorgensen) I did not add that, no.

22          Q.   Who did?

1           A.     (Mr. Jorgensen) I don't know.

2                     But, you know, the point here, and I don't  
3 think it's--the point here is that infrastructure  
4 plays a big part in the mining industry, and--

5           Q.     Mr. Jorgensen, I actually have questions on  
6 this topic, so I would suggest that we proceed. My  
7 questions will follow--

8                     (Overlapping speakers.)

9           A.     (Mr. Jorgensen) Okay.

10                    Well, I think it's really--it's really  
11 important to read Paragraph 36 of our  
12 Report--right?--on Page 10. I would like to read  
13 that. That answers your question.

14           Q.     Mr. Jorgensen, my question was about the  
15 quotation that you chose to use in your Report. You  
16 answered that question, and I would like to proceed  
17 with my other questions that relate to the topic you  
18 just mentioned. So, if you would, please, turn to  
19 your First Report and go to Paragraph 57. We will put  
20 it up on the screen.

21                    And there, you opine: "Based on the AACE  
22 Guidelines and these factors, the limits of the

1 accuracy of the 2006 Feasibility Study should be  
2 increased to -20 percent to +30 percent."

3 A. (Mr. Jorgensen) That is correct.

4 Q. Let's look at Paragraph 58. That's the next  
5 paragraph. And there you opine that: "Increasing the  
6 upper limit of accuracy from 15 percent to 30 percent  
7 would add a minimum of \$210 million to the Project  
8 budget in initial capital for a total of  
9 \$420 million."

10 Did I read it correctly?

11 A. (Mr. Jorgensen) You did.

12 Q. And so, you basically took the difference in  
13 the two percentages, applied it to the costs, and  
14 that's how you got to the \$210 million; right?

15 A. (Mr. Jorgensen) Right.

16 From the--based on what SRK had produced,  
17 they had already added \$140 million in there of  
18 contingency, so this would be on top of that.

19 Q. Right.

20 And the idea that you are implementing here  
21 is that if the upper range of the accuracy goes to  
22 30 percent, then we need to increase the budget up to

1 that amount; correct?

2 A. (Mr. Jorgensen) Yes.

3 You have to read the AACE Guidelines in  
4 order to understand what we did. That's an important  
5 part of it.

6 Q. That's what we're going to do now.

7 A. (Mr. Jorgensen) Great.

8 Q. So, let's turn to Paragraph 54 of your First  
9 Report.

10 A. (Mr. Jorgensen) Yes, there they are.

11 Q. And this is an intro paragraph that  
12 references to the AACE that references the AACE  
13 Guidelines, which are then presented in Table 4.1 on  
14 the next page; right?

15 A. (Mr. Jorgensen) That is correct.

16 Q. So, let's flip the page, and let's take a  
17 look at that Table 4.1.

18 Do you see that on the screen?

19 A. (Mr. Jorgensen) I do.

20 Q. And the source of this table is in Exhibit  
21 BD-3 at PDF Page 1. Let's put that on the screen.  
22 Exhibit BD-3.

1           Okay. Do you see that?

2           A.   (Mr. Jorgensen) I do.

3           Q.   Does this look like this is the exhibit?

4           A.   (Mr. Jorgensen) It is, yes.

5           Q.   Let's turn to Page 5 of this document. And  
6 this is the table that's used in your Report; right?

7           A.   (Mr. Jorgensen) It is.

8           Q.   And, at the bottom, it is described as the  
9 "Cost estimate classification matrix for process  
10 industries"; right?

11          A.   (Mr. Jorgensen) That is correct.

12          Q.   Let's go to Page 4 in this document, and  
13 there it states at the top of the page that: "This  
14 addendum specifically does not address cost estimate  
15 classification in non-process industries such as," and  
16 then you see the list.

17                   And then there is another sentence that  
18 follows, and it says: "It also does not specifically  
19 address estimates for the exploration, production, or  
20 transportation of mining or hydrocarbon materials."

21                   Do you see that?

22          A.   (Mr. Jorgensen) Yes. It says "it does not

1 specifically address." And when we're dealing with  
2 mining and hydrocarbon materials, certainly we have to  
3 have some guidelines. The AACE allows us to  
4 understand the range of accuracy that we should--that  
5 we should embrace. It doesn't say that can't use it.  
6 It says, you know, when you use it, please be careful.

7           And we haven't used these AACE Guidelines as  
8 an absolute rule. What we've said in our Report is,  
9 look, your accuracy isn't as good as you think. And  
10 because it isn't as good, there is more money  
11 associated with it that you haven't established. And,  
12 for that reason, you need a new Feasibility Study.

13           None of these numbers are hard numbers. We  
14 have never said that they're exact numbers that they  
15 need to be applied. We're saying that there's  
16 uncertainty, and it needs to be revisited.

17           Q. And as we just discussed, you, in fact, did  
18 apply these numbers numerically by increasing the  
19 alleged accuracy of the Roşia Montană Project to  
20 30 percent, and that's how you derived your  
21 210 million in extra costs? It's a simple--

22                           (Overlapping speakers.)

1           A.     (Mr. Jorgensen) Correct.  Could we go back  
2 to the AACE Guideline?

3           Q.     We will do so in a minute.  I have another  
4 question on this for you.

5                     And that is, if there had been guidelines  
6 that are specific to mining, that you would have used  
7 them in your Report; right?

8           A.     (Mr. Jorgensen) I'm--when we come to  
9 guidelines that are specific to the mining industry, I  
10 have a lot of experience with this.  I mean, I have  
11 worked for major engineering companies.  I worked for  
12 Bechtel as a Project Engineer; I worked for CH2 as a  
13 Project Manager.  So, the application of contingency  
14 is always something that comes into play.

15                     We've never found a really good tool.  The  
16 AACE Guidelines offer us probably the best  
17 opportunity.

18                     But again, because we have a guideline,  
19 we're able to say well, does this look right or does  
20 it not look right.  And we're usually able to explain  
21 why we chose the guideline or why we did not choose  
22 the guideline.  Here, in this case, I've used these

1 guidelines, and I've said, look, we need a new  
2 Feasibility Study. The accuracy isn't as good, and  
3 there's a lot of money at stake here. We should be  
4 careful with what we're doing.

5 Q. Now, would you agree if there were AACE  
6 Guidelines specific to mining you would have used  
7 those?

8 A. (Mr. Jorgensen) Yes.

9 Q. All right. Let's turn to Paragraph 49 in  
10 your Second Report. And you recall that SRK testified  
11 that the AACE Guidelines that you chose to rely upon  
12 are not used in the mining industry; do you recall  
13 that?

14 A. (Mr. Jorgensen) Well, I do recall that. I  
15 would disagree with that. For instance, I worked for  
16 CH2M Hill, and we used them, and we had a mining  
17 division.

18 Q. That's not--

19 A. (Mr. Jorgensen) We know that Golder, who is  
20 another mining firm, they use the AACE Guidelines. It  
21 says right there in the presentation by Alva  
22 Kuestermeyer of Golder Associates, guidelines are

1 referenced as a means "whereby if followed, an  
2 appropriate amount of contingency may be specified  
3 mitigating costs overrun."

4 Q. And the first example you just gave, you say  
5 that now but did you not mention that in your Second  
6 Report; right?

7 A. (Mr. Jorgensen) I didn't mention that in the  
8 Second Report, but I believe this is cross, and you're  
9 asking me questions and I can testify to what I do  
10 know; is that correct?

11 Q. Well, my question was simply that the first  
12 example was not included in your Second Report,  
13 correct?

14 A. (Mr. Jorgensen) yeah, it was not.

15 Q. Mr. Alva Kuestermeyer of Golder Associates  
16 who is mentioned here, he's a former associate of  
17 Behre Dolbear; right?

18 A. (Mr. Jorgensen) I did not know that. We  
19 could ask Mr. Guarnera.

20 A. (Mr. Guarnera) He was, yes.

21 Q. You chose not to mentioned that in your  
22 Report; right?

1           A.     (Mr. Guarnera) Well, if Mr. Jorgensen didn't  
2 know that, then it wasn't a choice, sir.

3           Q.     That question was for you, Mr. Guarnera.

4           A.     (Mr. Guarnera) Well, I'm at a loss.

5           A.     (Mr. Jorgensen) Well, I would like to answer  
6 that question.

7           A.     (Mr. Guarnera) No--

8           A.     (Mr. Jorgensen) I mean, he may have been an  
9 associate, but he was not at the time that we wrote  
10 the Report, this Report, an associate of Behre  
11 Dolbear, and I don't see what the problem is. I mean,  
12 he is simply citing a source. He's saying that the  
13 AACE Guidelines are used in a company that he works  
14 for.

15          Q.     Let's take a look at Exhibit BD-17--and we  
16 are coming to a break soon--this is another of your  
17 exhibits, and I direct your attention to Page 25. So,  
18 it's a presentation by Golder Associates. This is the  
19 presentation that you mentioned in connection with  
20 Mr. Kuestermeyer; right?

21          A.     (Mr. Jorgensen) That's correct.

22          Q.     Let's go to Page 25, and this is a slide

1 that addresses two topics. One is contingency, and  
2 the other is accuracy.

3 Do you see that?

4 A. (Mr. Jorgensen) I do.

5 Q. And then right underneath it, it says:

6 "Capital Cost criteria: AACE."

7 Do you see that?

8 A. (Mr. Jorgensen) I do.

9 Q. And there is small font underneath the  
10 table, which we will bring up and zoom in, and  
11 hopefully this will be legible.

12 And I direct your attention to the first  
13 footnote. It says: "AACE International recommended  
14 practice," and then there is text in quotation marks,  
15 and that says: "Cost estimate applied in the mining  
16 and mineral processing industries."

17 Do you see that?

18 A. (Mr. Jorgensen) I do.

19 Q. Now, let's look at the third column in this  
20 chart, and we will zoom in on that and also the next  
21 two columns so that we have the three columns starting  
22 with accuracy ranges through contingency.

1           A.     (Mr. Jorgensen) Yes.

2           Q.     Do you see that?

3           A.     (Mr. Jorgensen) And I think it's really  
4 important that we look on the columns to the left.  
5 I'm sorry, right there in the center we have "AACE:  
6 Percent completion of project definition deliverable."

7           Q.     Yes, well, Mr. Jorgensen, I will direct your  
8 attention to the column on the right, but before I do  
9 that, let's actually zoom in the whole chart including  
10 the descriptions on the left-hand side so that we see  
11 the Feasibility Study, basic engineering, and so  
12 forth.

13                    Okay. So, we will start on the left at the  
14 Feasibility Study-level and proceed to the right.

15 Okay.

16                    So, third column, and that's entitled  
17 "accuracy ranges."

18                    Do you see that?

19           A.     (Mr. Jorgensen) I do.

20           Q.     That deals with the accuracy; correct?

21           A.     (Mr. Jorgensen) It is.

22           Q.     And it has a low of -10 percent.

1 Do you see that?

2 A. (Mr. Jorgensen) Um-hmm.

3 Q. And then on the other extreme in the high  
4 range it goes up to 30 percent.

5 Do you see that?

6 A. (Mr. Jorgensen) Yes.

7 Q. And then we have a separate column that  
8 addresses contingency.

9 Do you see that?

10 A. (Mr. Jorgensen) Yes, I see that.

11 Q. And that word "contingency," that relates to  
12 contingency for costs; right?

13 A. (Mr. Jorgensen) It does.

14 Q. And there in that same row for Feasibility  
15 Studies, the range is 5 to 20 percent.

16 Do you see that?

17 A. (Mr. Jorgensen) I do.

18 Q. And it does not go up to 30 percent; right?

19 A. (Mr. Jorgensen) Yes.

20 If I could speak to that, I would like to  
21 talk about that.

22 Q. Well, the next question is that the average

1 contingency stated there is 13 percent.

2 Do you see that?

3 A. (Mr. Jorgensen) I do. I would again, like  
4 to talk about that.

5 PRESIDENT TERCIER: Let's first answer the  
6 question of Mr. Polašek, and then you will have the  
7 possibility to comment.

8 THE WITNESS: (Mr. Jorgensen) Yes, I did. I  
9 answered the question. I said yes, I agree.

10 MR. POLAŠEK: Okay. I think this would be a  
11 good time to take the break. Thank you.

12 PRESIDENT TERCIER: Thank you.

13 Do you want to make a comment on your side,  
14 Mr. Jorgensen?

15 THE WITNESS: (Mr. Jorgensen) I would like  
16 to go back and discuss the AACE.

17 PRESIDENT TERCIER: That could be done in  
18 the redirect.

19 THE WITNESS: (Mr. Jorgensen) Correct.

20 PRESIDENT TERCIER: We will go into the  
21 break.

22 It is at this time 20 minutes to 8:00. We

1 will start again at 5 to 8:00.

2 But Mr. Polašek, can you estimate where you  
3 are in your examination?

4 MR. POLAŠEK: Yes, Mr. President.

5 Can I be reminded of how much time I have  
6 used already?

7 PRESIDENT TERCIER: Yes. Sara?

8 SECRETARY MARZAL YETANO: Claimants have a  
9 total of 7 hours and 43 minutes and 5 seconds  
10 remaining.

11 PRESIDENT TERCIER: Sorry, I did not get the  
12 answer for Mr. Polašek. Can you relate the time he  
13 spent?

14 SECRETARY MARZAL YETANO: Yeah.

15 I mean, now the Claimants have now 7 hours  
16 and 43, but he started the cross-examination--let me  
17 see--with seven hours--with 10 hours and 7 minutes  
18 left, so he spent about 2 hours and 20 minutes.

19 PRESIDENT TERCIER: Okay. Now, Mr. Polašek,  
20 this is an important question because the day was  
21 long, long for everybody, for our experts in  
22 particular, and there will certainly be--certainly, I

1 don't know, likely, be redirect. How long do you need  
2 to finish your cross-examination?

3 MR. POLAŠEK: Mr. President, I'm hoping it  
4 will be about 30 minutes. It might extend slightly  
5 beyond that, but certainly not more than another hour.

6 PRESIDENT TERCIER: Okay. I like the  
7 "slightly." Normally half an hour and we will see the  
8 slight extension.

9 A comment on the Respondent's side?

10 MS. de GERMANY: No comment, Mr. President.

11 PRESIDENT TERCIER: Thank you very much.

12 Good. So, as I said now I really used five  
13 minutes already of a break, so we will start again at  
14 8:00 Swiss time. Thank you very much.

15 MR. POLAŠEK: Thank you.

16 (Recess.)

17 PRESIDENT TERCIER: Thank you very much.

18 Mr. Polašek, you have the floor for half an  
19 hour or slightly more.

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

21 BY MR. POLAŠEK:

22 Q. Let's take a look at document CL-7 and go to

1 Paragraph 446.

2           And this is the Award in the Glamis Gold  
3 arbitration; and, as we discussed previously,  
4 Mr. Guarnera, you appeared as an expert in that case  
5 on behalf of the Claimant; correct?

6           A.     (Mr. Guarnera) That is correct, sir.

7           Q.     And I will read from Paragraph 446. I  
8 quote--well, we will highlight it on the screen as  
9 well. I quote: "Behre Dolbear explains that it  
10 prefers to rely on values developed from 'a large  
11 basket of transactions, covering hundreds of  
12 transactions from which an average can be developed.'" "

13                   Did I read that correctly?

14           A.     (Mr. Guarnera) You did, sir.

15           Q.     And that's what you, in fact, did in the  
16 Glamis Gold arbitration; right?

17           A.     (Mr. Guarnera) That is correct.

18           Q.     And you applied this methodology in Glamis  
19 Gold because you considered it an appropriate  
20 methodology for the valuation of mining properties;  
21 right?

22           A.     (Mr. Guarnera) I consider it as one of the

1 methods. I tend to look at all of them; and, based on  
2 the nature of the property, its status, I will then  
3 select a method that I will use.

4 Q. And, if it were inappropriate to rely on an  
5 average of a large basket of hundreds of transactions,  
6 then you would not have used that methodology in  
7 Glamis Gold, would you?

8 A. (Mr. Guarnera) I can't say that. I really  
9 can't say that I would have used it or wouldn't have  
10 used it, sir.

11 Q. Well, if as a valuation specialist, which  
12 you confirmed you were, you considered this  
13 methodology inappropriate for mining properties, you  
14 would have not presented it with the Glamis Tribunal  
15 on behalf of the Claimant; right?

16 A. (Mr. Guarnera) I would not have used it if I  
17 felt it wasn't improper.

18 Q. Do you use different methodologies depending  
19 on whether you are an expert for the Claimant or for  
20 the Respondent, Mr. Guarnera?

21 A. (Mr. Guarnera) No. I use different methods  
22 based upon the nature of the property, but I will

1 not--I will not change the way I practice and operate.

2 Q. And so, the method that is described here,  
3 using "a large basket of hundreds of transactions" and  
4 taking an average of that, there is nothing  
5 principally flawed in that; will you agree?

6 A. (Mr. Guarnera) Well, understand that it's  
7 just one of the methods that are available.

8 Q. Yes. I understand that, and I'm focusing on  
9 that method, and my question pertains solely to that  
10 method, and my question is: There is nothing  
11 principally inappropriate--

12 MS. de GERMINY: Mr. President, we object.  
13 I'm sorry to interrupt, but we object to this line of  
14 questioning. Mr. Guarnera has already indicated  
15 they're not appearing as quantum experts in this case.  
16 This line of questioning is inappropriate.

17 PRESIDENT TERCIER: It is to the Expert to  
18 say whether it is in his confidence in this  
19 Arbitration or not, so, Mr. Guarnera, you should  
20 answer first this question, and then depending, answer  
21 or not the question of Mr. Polašek.

22 THE WITNESS: (Mr. Guarnera) I was not asked

1 to consider the valuation, and I have not considered  
2 it in any form or manner.

3 And in all fairness, sir, I will refuse to  
4 endorse any method for a valuation of Roșia Montană.  
5 You have an expert--quantum expert group who is doing  
6 that.

7 MR. POLAŠEK: Yes, Mr. President, if I may  
8 comment on that.

9 PRESIDENT TERCIER: Yes.

10 MR. POLAŠEK: I have two points.

11 One point is, as we have seen, Mr. Guarnera,  
12 in fact did render an opinion that the Rodu-Frasin and  
13 Tarnita properties provide little value, little  
14 current value to the Roșia Montană Project. These are  
15 the words he used. We can look at his Expert Report,  
16 so he is opining on value. If that opinion is to stay  
17 on the record, I must be allowed to test him on that  
18 and ask him about the valuation methodologies that he  
19 uses and so forth. That's Point No. 1.

20 Point No. 2, I refer to Paragraph 60 of  
21 PO 33, and that provides that cross-examination will  
22 be limited to matters arising out of the direct

1 testimony or statement or report, so we fit that box  
2 because, again, Mr. Guarnera did opine on the value of  
3 the Rodu-Frasin and Tarnita properties.

4           And then it goes on to say that, beyond that  
5 scope, questions may be put to the Expert in relation  
6 to matters that such expert or witness has direct  
7 knowledge of. And as we have established in this  
8 case, Mr. Guarnera has appeared as the quantum expert  
9 for the Claimant in Glamis Gold, and so we take that  
10 second category as well. We have two grounds why  
11 these questions are permissible.

12           PRESIDENT TERCIER: Okay. May I have on the  
13 sub-box the position of my co-Arbitrators, takes less  
14 time?

15           (Pause.)

16           PRESIDENT TERCIER: Okay. The ruling of the  
17 Tribunal is that the Experts should answer the  
18 question. It's a general question, but he should not  
19 have to ask specific questions about the Roșia  
20 Montană.

21           So, Mr. Guarnera, please answer the  
22 question, or Mr. Polašek repeat your question, in this

1 limited scope.

2 MR. POLAŠEK: Okay. Mr. President, so I  
3 will repeat my question, and I would ask that if I'm  
4 not within the scope of what the Tribunal has in mind,  
5 please correct me.

6 BY MR. POLAŠEK:

7 Q. And the question is: Mr. Guarnera, there is  
8 nothing principally incorrect or improper about  
9 valuing mining property based on the average of a  
10 large basket of hundreds of transactions; correct?

11 A. (Mr. Guarnera) In principle, no, so long as  
12 that average price that you have is adjusted for  
13 specific factors at the property.

14 Q. And so, you are agreeing with me; right?

15 A. (Mr. Guarnera) I am saying that it is a  
16 method that can be used.

17 Q. And there is nothing principally incorrect  
18 about that method; you agree?

19 A. (Mr. Guarnera) It is--I can't say whether  
20 it's good or bad. It's a method that I've used.

21 Q. When you served as the Expert for Claimant  
22 in Glamis Gold, you did not tell the Glamis Gold

1 Tribunal that you cannot tell whether it's good or  
2 bad; right?

3 A. (Mr. Guarnera) That was for a specific  
4 property. We're talking about a general property now.

5 Q. Well, we are talking generally. That's how  
6 I phrased my question. My question is that there is  
7 nothing principally incorrect in using this method to  
8 value mining properties. That's my question.

9 A. (Mr. Guarnera) I think you will find a lot  
10 of people who disagree with it.

11 Q. Do you disagree with it, Mr. Guarnera?

12 A. (Mr. Guarnera) I think it's one of--one of  
13 the many methods that are appropriate. If you look at  
14 the valuation methodologies that are present in the  
15 CIMVal Code, the Canadians, they say that the rule of  
16 thumb is a secondary method. They do not consider it  
17 a primary method. I have seen some who have said it's  
18 no good at all.

19 So, people have a different opinion, and I  
20 think those different opinions need to be considered.

21 Q. And would you please state what your opinion  
22 is on this topic?

1           A.     (Mr. Guarnera) As I said, it's a secondary  
2 method.

3           Q.     Okay.

4           PRESIDENT TERCIER:   Sorry, I have a question  
5 to the Expert.

6           Taking the wording of Paragraph 446, "Behre  
7 Dolbear explains that it prefers." Can you comment on  
8 "prefers"? What do you mean by "prefers"?

9           THE WITNESS:   (Mr. Guarnera) I think when  
10 you look at hundreds of transactions of mining  
11 companies that you realized that you're looking at  
12 valuations based upon companies that are good and  
13 companies that are--really have very poor properties,  
14 and then there's one that has decent property.

15           And so, what we like to do is to note that  
16 the number of properties tends to allay that  
17 disparity. That's basically what we're saying.

18           PRESIDENT TERCIER:   Okay. Mr. Polašek, you  
19 have the floor.

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

21           BY MR. POLAŠEK:

22           Q.     I would like to take Mr. Guarnera back to

1 Exhibit C-2588--that is the Anglo Asian document we  
2 reviewed previously--and let's go to Page 10. And  
3 let's put on the screen the paragraph that starts  
4 "Valuation." And again, we looked at this previously.  
5 It says that: "Behre Dolbear gives the Company a  
6 market valuation of \$247.5 million on a  
7 related-transactions basis."

8 Do you see that, Mr. Guarnera?

9 A. (Mr. Guarnera) Yes.

10 Q. There is nothing principally incorrect about  
11 using the related-transactions methodology to value  
12 mineral properties, is there?

13 A. (Mr. Guarnera) So long as the properties  
14 really are similar, and it's very difficult to find  
15 truly similar properties. Again, you have to adjust  
16 each property that transaction that you're looking at  
17 in that to see the nature of the company.

18 All of this basically--the political risk  
19 that may be present at that company, things like that,  
20 so that you are coming up with a rational number.

21 Q. And what you were looking at in the Anglo  
22 Asian case were Soviet studies in Azerbaijan and

1 Inferred Mineral Resources that were scattered across  
2 seven or eight properties; right?

3 A. (Mr. Guarnera) I believe so. It's been  
4 quite, as I said, quite a while ago.

5 Q. Yes.

6 And as we see here, you applied the  
7 related-transactions methodology and came up with the  
8 value of what? 257 million; right?

9 A. (Mr. Guarnera) That's what it says.

10 Q. And it also says that you also applied the  
11 market-multiples methodology; right?

12 A. (Mr. Guarnera) Yes.

13 Q. And you applied that methodology because  
14 there is nothing principally improper in using that  
15 methodology to value mineral properties; do you agree?

16 A. (Mr. Guarnera) So long as it's done  
17 properly.

18 Q. And, in this case, you are looking again at  
19 a project that had Soviet studies, was in Azerbaijan,  
20 and had Inferred Resources only that were scattered  
21 across seven or eight properties; right?

22 A. (Mr. Guarnera) That's what I recall, yes.

1 Q. And that did not prevent you from using the  
2 market-multiples methodology to come up with a value  
3 of 257 million; correct?

4 A. (Mr. Guarnera) Apparently. Again, it's been  
5 a long time.

6 Q. Well, it's been a long time, but you are  
7 stated as the author of the valuation section of that  
8 Report, as we established?

9 A. (Mr. Guarnera) Yes, I am, and that's what I  
10 did.

11 Q. All right. Let's turn to your Second  
12 Report, and let's look at Paragraph 121.

13 A. (Mr. Jorgensen) I'd be happy to answer those  
14 questions.

15 Q. Okay, thank you, Mr. Jorgensen.

16 So, this states, I read: "The plan that  
17 RMGC has adopted to receive cyanide assumes that a  
18 vendor will supply the chemical to the site. Cyanide  
19 is manufactured out of country and will be transported  
20 by rail to Zlatna Appelum."

21 Did I read that correctly?

22 A. (Mr. Jorgensen) Yes.

1 Q. Now, let's look at Respondent's opening  
2 slide. We will go to Slide 25.

3 Do you see that?

4 A. (Mr. Jorgensen) I do.

5 Q. It's entitled: "RMGC Did Not Identify the  
6 Cyanide Transportation Route."

7 Do you see that?

8 A. (Mr. Jorgensen) Yes, and that would be  
9 information that perhaps we misunderstood. I mean,  
10 we, during our Site Visit, when we were there, we  
11 asked, well, where does cyanide come from, or how does  
12 it get here? And, of course, we took the time to go  
13 to the Zlatna railhead to look at it.

14 Q. Cyanide is transported by rail, isn't it?

15 A. (Mr. Jorgensen) It's transmitted many  
16 different ways.

17 Q. And that includes rail?

18 A. (Mr. Jorgensen) It does include rail.

19 Q. Nothing unusual about that?

20 A. (Mr. Jorgensen) In Romania, that might be a  
21 problem. One of the things that I think was going to  
22 be investigated--and I certainly looked at it--I'm not

1 sure that RMGC looked at it, but it comes in in a  
2 container. Then the container goes to the  
3 railhead--you know, well, it's put on a rail, it's put  
4 on a train, and it goes by train to Zlatna. And, from  
5 there, it has to be unloaded and then put into  
6 isotainers. That was the plan that I believe that  
7 RMGC had adopted. Maybe they did not adopt it as much  
8 as I thought they had adopted it, but I certainly was  
9 under--that seemed like the most obvious thing for  
10 them to do, to me.

11 Q. But it sounds like you're not really sure;  
12 is that fair?

13 A. (Mr. Jorgensen) Well, I would think--I do  
14 not know of a contract that RMGC entered into. That  
15 would have been one of the things that they should  
16 have finished relatively quickly, you would think. I  
17 mean, it's a very important thing to know how your  
18 cyanide is getting there.

19 And I know that--I had assumed that that was  
20 what they were going to do. However, I had no  
21 for-sure knowledge that they were going to do that. I  
22 mean, I didn't see a contract from a vendor, I didn't

1 see a routing from them. That's all I can--I guess I  
2 can't say anything more about that.

3 (Pause.)

4 Q. Okay. Mr. Guarnera, let's zoom in on this  
5 picture, meaning the map that we see on the screen  
6 with the red line on it.

7 A. (Mr. Jorgensen) Did you want Mr. Guarnera to  
8 take this question or did you want me?

9 Q. No, no, my apologies. Mr. Jorgensen. The  
10 question is directed to you. I misspoke.

11 A. (Mr. Jorgensen) Thank you.

12 Q. Okay. Now, you are not an expert on the  
13 Romanian railway system, are you?

14 A. (Mr. Jorgensen) No, I am not.

15 Q. And was Respondent's opening the first time  
16 that you saw this map with this red line drawn on it  
17 in this way?

18 A. (Mr. Jorgensen) Yes, it was.

19 Q. They had not provided this map with this  
20 line drawn in this way to you previously; right?

21 A. (Mr. Jorgensen) They had not.

22 Q. Let's turn to document C-389, and we will

1 first show the first page of that document.

2           Now, this is the 2007 route survey that was  
3 submitted to the Ministry of Environment as part of  
4 the 2010 update to the EIA Report, Chapter 410,  
5 "Transportation."

6           Are you familiar with this document?

7           A.   (Mr. Jorgensen) I am not.

8           Q.   Respondent hasn't shown it to you, to your  
9 recollection?

10          A.   (Mr. Jorgensen) They may have. I looked at  
11 a number of different documents. I can't--I don't  
12 think I've seen this one, though. It may have been  
13 in--I'm sorry.

14          Q.   Let's go to Page 20.

15                   Now, there is a map in there.

16                   Do you see that?

17          A.   (Mr. Jorgensen) Um-hmm.

18          Q.   And it has a red line coming from the sea to  
19 Roşia Montană; right?

20                   Do you see that?

21          A.   (Mr. Jorgensen) I do.

22          Q.   The railway route, is that what it is?

1           A.     (Mr. Jorgensen) I don't know. Is that the  
2 railway route? I can't tell.

3           Q.     Let's put on the screen this map and the  
4 second map next to one another. And let's see if we  
5 can Zoom in so that we can see those maps next to one  
6 another.

7                     Okay. So, the left-hand map comes from  
8 Respondent's opening, and I note that there is no  
9 exhibit number and no other reference as to what is  
10 the source of that map. I believe there is a note  
11 that this might be from Google Maps. Let's see if we  
12 can zoom in on that.

13                    Okay. We can barely make that out, but do  
14 you see--do you see what it says there, Mr. Jorgensen?  
15 Google Maps?

16           A.     (Mr. Jorgensen) I can't see it clearly.  
17 Would you care to read it to me?

18           Q.     Yes. It says Google Earth. Google Earth,  
19 I'm sorry.

20           A.     (Mr. Jorgensen) Can we be sure that it says  
21 Google Earth? I can't really tell if it says Google  
22 Earth or not.

1 Q. Well, I believe so. I think everyone can  
2 make their own judgment as to whether it is Google  
3 Earth or something else.

4 Let's zoom out.

5 Now, if you look at these two lines, would  
6 you be able to tell me--put them next to one another  
7 again. Would you be able to tell me just visually  
8 which is longer?

9 A. (Mr. Jorgensen) No, I really have no idea.  
10 Hopefully they're the same scale. I can't be sure of  
11 the same scale.

12 Q. Would you agree that they are not the same?

13 A. (Mr. Jorgensen) I would agree that they're  
14 not the same.

15 MR. POLAŠEK: No further questions. Thank  
16 you.

17 PRESIDENT TERCIER: Thank you very much,  
18 Mr. Polašek.

19 Ms. de Germiny, you have the floor for the  
20 redirect, or do you wish to have a short break?

21 MS. de GERMINY: Thank you, Mr. President.  
22 We're happy to go ahead and proceed.





1 report that Behre Dolbear wrote about a deposit in  
2 Azerbaijan held by Anglo Asian.

3           You were asked earlier on about language at  
4 the bottom of Page 45 to the effect that Behre Dolbear  
5 was looking at resource estimates made in the Soviet  
6 era when it concluded that there were Inferred  
7 Resources. This is in the last paragraph, penultimate  
8 line?

9           A.     (Mr. Guarnera) Okay.

10          Q.     Just refresh your memory on what you were  
11 shown earlier.

12                I'd like to take you to Page 54 of this  
13 document, fourth paragraph from the top, and could you  
14 please read out loud the last sentence of this  
15 paragraph.

16          A.     (Mr. Guarnera) "Soviet era"--the last  
17 sentence?

18          Q.     The last sentence, yes, it's being  
19 highlighted and shown on the screen.

20          A.     (Mr. Guarnera) Thank you.

21                "Use of Soviet core drilling results and  
22 resource estimation must be made with appropriate

1 caution and in Behre Dolbear's opinion cannot be  
2 relied on exclusively to assign 'C1' or 'measured  
3 status' to a resource."

4 Q. And what is your understanding of this  
5 statement?

6 A. (Mr. Guarnera) I think it is why we  
7 downgraded the resource probably to do it to an  
8 Inferred. I can't remember exactly, ma'am. But I  
9 think that we downgraded C1 or measured status to an  
10 Inferred Resource.

11 Q. Okay. Mr. Jorgensen, you were asked  
12 questions about C-2962, Exhibit C-2962. Yes, this is  
13 the excerpt from the unsigned 2018 report by someone  
14 from the Minnesota Department of Natural Resources  
15 regarding dam and safety permits for a particular  
16 project. You noted that the author of this Report  
17 relies on a 2002 paper by Mr. Mike Davies, and you  
18 testified that Mr. Davies had written an article more  
19 recently in 2011 at BD-13, and I would like to take  
20 you to Behre Dolbear Exhibit 13. Perhaps we could  
21 pull that one up.

22 I would just like to ask you generally: How

1 does this 2011 paper by Mr. Davies update the 2002  
2 paper that is referred to in C-2962?

3 A. (Mr. Jorgensen) It does quite a bit of  
4 updating. It's actually covered at the very end in  
5 just the conclusions. It's quite concise down there.

6 Q. We can perhaps go to the conclusions, then,  
7 so you can explain what is the evolution, the update  
8 and thinking of Mr. Davies.

9 A. (Mr. Jorgensen) Right there, "key lessons  
10 learned from operating dry-stacks."

11 It talks about how zonation is essential to  
12 pragmatic and efficient tailings dry-stack. It allows  
13 you to place weather in any weather condition, and it  
14 removes many of the constraints that have been placed  
15 on dry-stack development.

16 He goes on to say it would be an extremely  
17 rare or unique situation that would not benefit and/or  
18 allow for a zoned approach to managing a given  
19 dry-stack tailings.

20 And it talks about the Pogo Mine in Alaska,  
21 where it's very cold and it's very wet. And they get  
22 a lot of snow and a lot of cold, but they are still

1 able to operate dry-stack without any problem.

2           It goes on to talk about seepage in the next  
3 one, where it says it targets moisture content in the  
4 next bullet point, first line, and it says "seepage is  
5 negligible." Imagine what that would mean to the  
6 residents that are below the dam, for someone to be  
7 able to say that about their tailings dam.

8           The next bullet point, it says:

9 "Resaturation," in other words, if it's rained on, it  
10 says, "of properly placed and compacted filtered  
11 tailings is extremely difficult and not the concern  
12 many presume." You have to remember how many tons  
13 that you're actually handling a day. I mean, we're  
14 handling 36,000 tons a day of material. And so, if  
15 you were to rain a 25-millimeter rain or even a  
16 50-millimeter rain on 35,000 tons or 36,000 tons, the  
17 surface area that's available, it just doesn't absorb  
18 that much moisture. It's not that big a deal. Just  
19 by the sheer volume. The small amount of water that  
20 falls compared to the large amount of tailings that  
21 are there to absorb it.

22           If we could go to the next one.

1           It talks about diversion ditches. In other  
2 words, you divert the rain water around it that  
3 protects it from erosion.

4           Next is compaction specifications. It talks  
5 about how that can be achieved in subfreezing  
6 conditions.

7           This talks about heated bed liners, but I  
8 don't think that would actually have much to do with  
9 Roşia Montană. I mean, these are very large tonnages,  
10 and the opportunity to compact them and place them  
11 while they're not frozen would be something that could  
12 be done.

13           And if we look down at the fifth bullet  
14 point here, it says: "Carrying on from the point  
15 above, dry-stacks can effectively"--"can be  
16 effectively developed in very wet conditions."

17           The next bullet point says that, in the DNR  
18 thing that we saw before, it talked about fugitive  
19 dust generations and says that can be considerable in  
20 colder months, but--and that can be a problem due to  
21 freeze drying on the surface of tailing stacks, but  
22 it's something that can be taken care.

1           And of course, we look at the last one where  
2 it says "filtration plants have occasional  
3 challenges." I mean, these are big plants, and you  
4 have to operate them properly.

5           And the final paragraph goes down here, it  
6 says: "Finally, filtered tailing dry stacks are not a  
7 panacea of mine waste management." And it says:

8 "They should be appropriately viewed as an alternative  
9 form of tailing placement and a part of the overall  
10 tailings continuum of options for today's designer and  
11 operator." And, if we look down here, this next part  
12 is so critical: "There are site conditions, including  
13 regulatory regime, that make the tailings dry-stack  
14 the best choice for certain projects."

15           And I just can't imagine a better scenario  
16 than Roşia Montană for a dry-stack tailings system.

17           Q. All right. Mr. Jorgensen, I would like to  
18 switch topics, thank you. I would like to turn to  
19 Paragraph 35 of your Second Report.

20           It was noted that there was a potential  
21 error in the citation here, and you wished to then  
22 refer but were not given the opportunity to read the

1 next paragraph. Could you please read out loud the  
2 first sentence of Paragraph 36.

3 A. (Mr. Jorgensen) "Behre Dolbear would note  
4 while this observation is from a paper delivered in  
5 Australia at an infrastructure conference and not  
6 specific to mining, the end results they were  
7 attempting to quantify are identical to Behre  
8 Dolbear's experience in evaluating mining project  
9 Feasibility Studies brought to us by our clients."

10 Q. And you wanted to explain your view as to,  
11 in the context of Paragraphs 35 and 36, and capital  
12 costs why infrastructure is important to mining  
13 projects. Would you like to comment on that?

14 A. (Mr. Jorgensen) It's been our experience  
15 that, you know, as miners, we do pretty good in  
16 identifying a mine. As process engineers, we put  
17 together a pretty standard process. And then there  
18 come the other things around it such as power, water  
19 availability, and tailings disposals, as we've talked  
20 about already. These logistics actually just getting  
21 the Project constructed, these things--you have to  
22 have an infrastructure to construct a project this

1 large. People don't understand what it takes. It  
2 takes an entire town to move into this area. And  
3 although you're employing a lot of local labor, there  
4 is a very large amount of people that are also there,  
5 and everybody needs power and water, and it just seems  
6 that these things always take more than what we  
7 estimate.

8 I mean, it's just something that we've had  
9 to deal with. Infrastructure is one of our biggest  
10 problems. Everyone would believe that the roads are  
11 fine, the roads are fine, until we start using them as  
12 much as we use them, and we find out that they're not  
13 fine, and they need to be redone.

14 Power. Everyone says, "oh yeah, we have  
15 power." Until you have a power contract that's signed  
16 by the supplier and then the supplier actually  
17 delivers that power, you really don't have power. I  
18 mean, I've learned that lesson in my career. I  
19 thought I had power on a project, and it turns out  
20 that I didn't.

21 It's very important to get the  
22 infrastructure right, and it can result in increased

1 capital costs.

2 Q. Okay. I would like to take you now back to  
3 Behre Dolbear Exhibit 17, if we could pull that up.  
4 You were asked a number of questions about this  
5 exhibit, and I would like to take you to the Page 27  
6 and the discussion about the AACE Guidelines. You  
7 were shown this table, and you wished to comment on  
8 the range of the contingency--in talking about  
9 accuracy and contingency, the range of the contingency  
10 for Feasibility Studies. It's the third row. What is  
11 your understanding of this table and of those items?

12 A. (Mr. Jorgensen) Well, this table actually  
13 does follow the AACE Guidelines as far as I'm  
14 concerned. I mean, if we look at the accuracy ranges,  
15 they're the same, but, in this particular case, the  
16 Class III Feasibility Study has been noted as having  
17 10 to 40 percent of the Project definition  
18 deliverables completed. If you look in the third  
19 column, third thing down, that's 10 to 40 percent.

20 In my experience, and what I believe is the  
21 case here, is that it's more likely 1 to 15 percent,  
22 and it's even possible, and I believe this is true

1 also, that it's 0 to 2 percent, it's of engineering  
2 that is actually completed. This would mean that  
3 there are POs that have been issued. There is vendor  
4 drawings that have been received. There are drawings  
5 that have been issued for construction. That's what  
6 you're talking about when you're talking about 10 to  
7 40 percent complete. And I did not see anything other  
8 than takeoff quantities that would lead--and takeoff  
9 quantities are normally done on--they're done on  
10 "issued for approval" drawings or "issued for study"  
11 drawings. They're nowhere close to the accuracy  
12 associated with the 10 to 40 percent engineering  
13 complete. You know, 10 to 40 percent complete,  
14 flowsheets, process, piping and instrument diagrams, a  
15 number of different layouts, sections, plans. And  
16 then that followed with implementing or actually  
17 inserting the real-sized equipment that's going to be  
18 purchased into that. So, there is no way that this  
19 project was 10 to 40 percent complete. More likely,  
20 it was 1 to 15 percent complete, and I think it was  
21 actually 0 to 2 percent complete. I think there was a  
22 lot of engineering that needed to be done and a lot of

1 work that needed to be done.

2           And this is one of the reasons that we did  
3 see the cost overruns in the mining industry is that  
4 people believe that their engineering is actually  
5 progressed farther than it is. So, my selection of  
6 a -20 to a +30 would match a Class V, which would say  
7 0 to 2 percent complete. If I go down a little bit  
8 more, let's say a -15, to the next one, the Class IV  
9 to a +20 to a +50, the range that I've chosen,  
10 the - 20 to the +30, fits in there exactly. I think  
11 it's a good selection.

12           So, I believe that this study was not a  
13 Class III study of 10 to 40 percent engineering  
14 complete. It was more like a Class IV of V study with  
15 0 to 15 percent complete. Hence, my choice of--we  
16 actually assigned it as a contingency, but it's a  
17 combination of contingency and accuracy. You know,  
18 the -20/+30.

19           Q.    Okay. And one final question,  
20 Mr. Jorgensen. You were asked questions about  
21 Paragraph 121 of your Second Report and about the  
22 cyanide route, Cyanide Transportation Route.

1           A.     (Mr. Jorgensen) Yes.

2           Q.     And there was a discussion about the extent  
3 to which this was a set plan, a set route.

4                     And I would like to take you to Exhibit  
5 C-486, if we could pull that up.

6                     Starting with this first page, these are  
7 Meeting Minutes from the TAC of 29 November 2011.

8                     You recognize this type of document and this  
9 document?

10          A.     (Mr. Jorgensen) I actually might have read  
11 this one.

12          Q.     Okay. Let's look at Page 33. And perhaps  
13 could you--actually, let's look at the third  
14 intervention, Mihaela Cristea, MTI. Actually, that's  
15 fine. I'll let you go ahead and perhaps you could  
16 read this, Mr. Jorgensen.

17          A.     (Mr. Jorgensen) "The Ministry of  
18 Transportation had the same observations during the  
19 previous meeting, when we sent out point of view--when  
20 we sent our point of view. It's important for you to  
21 comply with all the legal provisions related to the  
22 transport of hazardous substances and cyanide and to

1 have a detailed chapter in your documentation about  
2 how these provisions will be observed. So supplement  
3 the documentation with these provisions and later, of  
4 course, comply with them. As for the route you  
5 selected for cyanide transport, you should clearly  
6 know which route it is."

7 Q. And MTI, just to be clear, if we go back to  
8 the first page to get the acronym, MTI is Ministry of  
9 Transportation, just for the record, you should see  
10 that I guess about midway through, MTI, Ministry of  
11 Transportation.

12 So, my question, Mr. Jorgensen, is what is  
13 your understanding of the Ministry of Transportation's  
14 understanding of the cyanide, the possible cyanide,  
15 transportation route at this point in time?

16 A. (Mr. Jorgensen) That it had not yet been  
17 selected.

18 Q. Thank you.

19 MS. de GERMANY: No further questions.

20 PRESIDENT TERCIER: Thank you very much,  
21 Ms. de Germiny.

22 I'll ask my co-Arbitrators whether they have

1 a question to the Experts.

2 Professor Grigera Naón? No? Professor  
3 Douglas?

4 ARBITRATOR DOUGLAS: Just a couple. Here's  
5 where I stretch everyone's patience. I'm sorry about  
6 that. But there's just a few things I would like to  
7 clarify. I'm not sure to whom these questions should  
8 be addressed.

9 QUESTIONS FROM THE TRIBUNAL

10 ARBITRATOR DOUGLAS: But it might be helpful  
11 to have your Second Report at around Paragraph 76 and  
12 onwards, that might be helpful. Is someone able to  
13 put that on the screen? Ah, there you are.

14 So, really, my question is--the questions  
15 concern when the serious work for mineral-resource  
16 estimation takes place in the timeline which you set  
17 out on your Slide 13. So, when this model is prepared  
18 in May 2005, what raw data is that drawing upon? Is  
19 that the 2001 Definitive Feasibility Study, or is it  
20 something else?

21 THE WITNESS: (Mr. Guarnera) Sir, it would  
22 be that plus any drilling and other type of work that

1 was completed up to that point, and they would take  
2 that information; and, from that, they would be able  
3 to derive a Mineral Resource.

4 ARBITRATOR DOUGLAS: Okay. When you say the  
5 model you received from the Claimants, was the model  
6 generated in May 2005? Presumably that model had been  
7 updated since 2005.

8 THE WITNESS: (Mr. Guarnera) It has not  
9 been, sir. That is the whole issue here. There is  
10 all sorts of new information that is there. It hasn't  
11 been updated for metal prices. Of course, they vary  
12 all over the map, but as the 2012 SRK Report is still  
13 using the 2005 Model of RS Global, and they ignore all  
14 of these other items that we've enumerated as being  
15 immaterial.

16 And my simple feeling is, okay, one thing  
17 may be immaterial, another thing may be immaterial, a  
18 third thing may be immaterial, but pretty soon all the  
19 immaterial things add up to something that's material  
20 and that's the case here.

21 ARBITRATOR DOUGLAS: I thought at the very  
22 least the pricing that's being out there, for example,

1 I'm sure I read that somewhere, so is it your case  
2 that--your evidence that some things were updated and  
3 others weren't, and the things that weren't, were, in  
4 your opinion, material, or is it literally the same  
5 model that was produced in 2005 without any  
6 adjustment?

7 THE WITNESS: (Mr. Guarnera) Well, what has  
8 not taken account of the prices is the Reserve Model  
9 that has been based on the Resource Model.

10 ARBITRATOR DOUGLAS: I see. You mention in  
11 this part of your Report the 1,838 channel samples.  
12 When were they undertaken, and why were they  
13 undertaken?

14 THE WITNESS: (Mr. Guarnera) Well,  
15 certainly, they were undertaken to get information up  
16 to the grades of mineralization in the tunnels.  
17 That's probably where they were, sir, and they were  
18 taken that--I'm not sure of the exact date, but it was  
19 post-2005. And so, they were assayed, and we have no  
20 information about whether they're ore grade or not ore  
21 grade, but that needs to be put into the Resource  
22 Model, so a new Reserve Model can be developed.

1           ARBITRATOR DOUGLAS: So, when you talk about  
2 what Micon did, I wasn't quite sure whether they had  
3 analyzed the results and decided not to include it, or  
4 had not analyzed the results at all. Do you know  
5 which is correct in relation to what Micon did.

6           THE WITNESS: (Mr. Guarnera) No, I do not.  
7 But as you noted, they said that they're not  
8 considered to materially impact the resource quantum.  
9 But they do note that the data collected between 2000  
10 and 2008 have not been included.

11           Now, they say that's not material. All  
12 information is material.

13           ARBITRATOR DOUGLAS: Well, this is what I  
14 was confused by. Is it not material because they  
15 looked at the results of the sampling and they might  
16 have concluded that it was consistent with what had  
17 previously been done, or they say that the additional  
18 sampling per se is not material? I wasn't quite sure  
19 which one.

20           THE WITNESS: (Mr. Guarnera) To my  
21 knowledge, sir, they did not give an explanation as to  
22 why it hasn't been incorporated.

1           ARBITRATOR DOUGLAS: Somewhere else in your  
2 Report--I'm trying to find it now--I think it's  
3 Paragraph 43. It's just a general issue about when  
4 Feasibility Studies have an expiration date. SRK is  
5 correct, at least in the sense that there is no  
6 regulatory expiration date, is there? For example,  
7 when you're compiling an NI 43-101, you're not  
8 prohibited from using, by the regulations, from using  
9 a Feasibility Study that was done a certain number of  
10 years ago. When you say that there is no expiration  
11 date or there is an expiration date, you're basically  
12 saying that's a matter of judgment in each individual  
13 case.

14           THE WITNESS: (Mr. Guarnera) It's a matter  
15 of judgment, sir, and it's also a matter of  
16 experience.

17           Our company, Behre Dolbear, works regularly  
18 with financial groups who are looking at investing in  
19 mineral projects, and we've gotten to know the  
20 requirements of them for what needs to be in a  
21 Feasibility Study and what not, and whether they feel  
22 that they are sufficient.

1           One of the things is is that we've always  
2 seen these banks to be skeptical when they see you  
3 take them a study that's over three years. Now, that  
4 doesn't necessarily mean that it's not a good study.  
5 And we've never said that the Washington Group Study  
6 is not a good study.

7           Our premise here, sir, is again that it's  
8 not--the information that has been gathered in this  
9 property is not in a single place, in a single  
10 document. It's all over the place, and there's  
11 information that is new that's not included.

12           And, therefore, it is, in our opinion,  
13 outdated. And as we have seen, we think that it's  
14 flawed now because of the lack of inclusion and as we  
15 noted--and I know that it was protested, but the  
16 information dealing with the blasting situation is  
17 going to severely impact now the production rate. In  
18 other words, if this mine does get a permit, instead  
19 of operating for a period of time and then processing  
20 the low grade material for another period of time,  
21 that period of time could be doubled. And that's  
22 going to be significant on the cash flow and on the

1 total economics. It changes the nature of the  
2 equipment you need--all of the things like that.

3 ARBITRATOR DOUGLAS: Okay. Thanks very  
4 much. I have no further questions.

5 PRESIDENT TERCIER: Thank you very much.

6 On my side, I have no supplemental  
7 questions. It was quite a long examination. I would  
8 like to thank very warmly our experts for their  
9 presence and their answers. Thank you very much.

10 (Witnesses step down.)

11 PRESIDENT TERCIER: Before closing this  
12 Hearing, I have one or two points, easy points.

13 The first, for our Secretary, can you  
14 give--have you the timing? Sorry, the time spent and  
15 the time left.

16 SECRETARY MARZAL YETANO: Claimants have 7  
17 hours--

18 PRESIDENT TERCIER: We don't hear.

19 SECRETARY MARZAL YETANO: I'm sorry.

20 Claimants have 7 hours and 18 minutes left,  
21 Respondents 8 hours and 4 minutes left, and the  
22 Tribunal 3 hours and 3 minutes.

1           PRESIDENT TERCIER: Okay. A comment on your  
2 side? Claimant?

3           MR. POLAŠEK: No, Mr. President, and thank  
4 you for your attention.

5           PRESIDENT TERCIER: Okay. Respondent?

6           DR. HEISKANEN: No comment. I just wanted  
7 to understand how the time was calculated for the  
8 objections that were raised by the Claimants.

9           PRESIDENT TERCIER: Ms. Marzal?

10           SECRETARY MARZAL YETANO: So, when Claimants  
11 at the beginning, when they--in the first interruption  
12 to the presentation, that was obviously discounted,  
13 then the second one as well, then there was an  
14 entire--it was attributed to Claimants' time. Then  
15 there was an entire discussion where the Respondent,  
16 the Claimant, the Tribunal intervened, but I did not  
17 include in any Party, I considered it was a general  
18 procedural discussion. It was not to be assigned to  
19 anyone.

20           Then, when Respondent's Experts resumed the  
21 presentation, I started counting the time again, and  
22 every time the Claimant objected, those few seconds

1 were discounted. That's basically what I have done.

2 PRESIDENT TERCIER: Okay. Comment to that  
3 on Claimants' side?

4 MR. POLAŠEK: Mr. President, I think that is  
5 fine. No problem for Claimants. Thank you.

6 PRESIDENT TERCIER: On Respondent's side?

7 DR. HEISKANEN: The Respondent position  
8 remains that, in accordance with the Tribunal's prior  
9 rulings, the time spent by a Party raising objections  
10 should be counted against that Party's time.

11 PRESIDENT TERCIER: Okay. We will look at  
12 it and give you an answer, it doesn't play a role just  
13 now. I think we had a rather long hearing.

14 I would like to thank everybody. We will  
15 start tomorrow with Mr. Cooper at 2:00 p.m. Swiss  
16 time. I wish you a very pleasant afternoon for those  
17 who are before the afternoon, and an evening or a  
18 night for the others.

19 Thank you very much, and again bye-bye.

20 DR. HEISKANEN: Thank you.

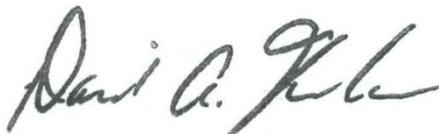
21 (Whereupon, at 3:03 p.m. (EDT), the Hearing  
22 was adjourned until 8:00 a.m. (EDT) the following

1 day.)

## CERTIFICATE OF REPORTER

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

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



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DAVID A. KASDAN