

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF  
INVESTMENT DISPUTES

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 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 5

VIDEOCONFERENCE:  
HEARING ON THE MERITS AND JURISDICTION

Friday, October 2, 2020

The World Bank Group

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

PROF. PIERRE TERCIER, President of the Tribunal

DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

Also Present:

MS. SARA MARZAL YETANO  
Secretary to the Tribunal

MS. MARIA ATHANASIOU  
Tribunal Assistant

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MR. DARRYL LEW  
MR. BRODY GREENWALD  
MR. PETR POLÁŠEK  
MR. HANSEL PHAM  
MS. GABRIELA LOPEZ STAHL  
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Representing Gabriel Resources Ltd.:

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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  
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P R O C E E D I N G S

1  
2           PRESIDENT TERCIER:   So, ladies and  
3 gentlemen, good morning, effectively good afternoon.  
4 It's my honor to open the fifth day in the final  
5 hearing in the ICSID Arbitration Case 15/31 between  
6 Gabriel Resources, Limited, and Gabriel Resources  
7 (Jersey), Limited versus Romania.

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

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

21           And the second point is that we are, Members  
22 of the Tribunal, of course, especially interested in

1 the merits and the questions that are on the table.  
2 They are difficult. We need to be well-informed about  
3 it, and we would be extremely grateful if you could  
4 limit the procedural incidents to a minimum. You have  
5 the right, of course, to do that, but if you could, to  
6 avoid too many of those incidents.

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

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

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

1 decision that was communicated to you.

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

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

14           Ruling No. 2: It is a unanimous decision.

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

18           Ruling No. 3, unanimous decision.

19           Three, in principle, Claimants could not  
20 present new evidence other than the rebuttal procedure  
21 during this Hearing. In case of such new evidence are  
22 presented, Respondent expert should be permitted to



1 reply to the extent new evidence falls within the  
2 scope of Respondent's Expert's reports. This is also  
3 a unanimous decision.

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

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

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

18 Professor Grigera Naón? No? Professor  
19 Douglas? No.

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

22 From Claimants' side.

1 MS. COHEN SMUTNY: Claimants maintain their  
2 objection to the Tribunal's ruling, unfortunately and  
3 respectfully.

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

6 From Respondent's side?

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

10 PRESIDENT TERCIER: Okay. Thank you.

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

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

20 Dr. Heiskanen.

21 DR. HEISKANEN: Yes, Mr. President. We  
22 would like to be able to make a brief rebuttal, and

1 given it's going to be weekend now tomorrow and  
2 thereafter during the Hearing, we suggest that we  
3 reply by Sunday, 2:00 p.m., Central European Time,  
4 given the needed support that is available during the  
5 weekend.

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

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

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

21 PRESIDENT TERCIER: To make it clear, do you  
22 object to the possibility for Respondent to make an

1 answer by Sunday?

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

5 PRESIDENT TERCIER: Thank you.

6 Dr. Heiskanen?

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

10 PRESIDENT TERCIER: Thank you very much.  
11 Good.

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

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

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

20 PRESIDENT TERCIER: Thank you.

21 And the Respondent's side?

22 DR. HEISKANEN: No further comments from us,

1 Mr. President.

2 PRESIDENT TERCIER: Thank you very much.

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

5 KARR MCCURDY, RESPONDENT'S WITNESS, CALLED

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

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

10 PRESIDENT TERCIER: And I also for you.

11 You have been--you're with us today as an  
12 expert in this procedure. As expert, according to the  
13 general rule, you are invited to read a declaration,  
14 solemnly and to read it aloud. Have you this  
15 Declaration in front of you or on your screen?

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

18 PRESIDENT TERCIER: Yes, please.

19 THE WITNESS: Thank you.

20 I solemnly declare upon my honor and  
21 conscience that my statement will be in accordance  
22 with my sincere belief. I will not receive or provide

1 communications of any sort during the course of my  
2 examination.

3 PRESIDENT TERCIER: Thank you very much.

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

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

10 Can you confirm it?

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

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

19 The Witness shall remain visible at all  
20 times. We will, of course, clarify, but it's easy.  
21 And the Witness shall not use a virtual background or  
22 in any way prevent or limit the recording of the

1 remote venue from which he's testifying.

2 Can you confirm it?

3 THE WITNESS: Yes, I can confirm those  
4 statements.

5 PRESIDENT TERCIER: Okay. Good.

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

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

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

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

22 PRESIDENT TERCIER: Please.

1           THE WITNESS: The first on Page 6,  
2 Footnote 17. I failed to insert a reference to  
3 Exhibit C-131.

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

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

10           Thank you.

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

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

20           Is it clear?

21           THE WITNESS: Yes, very clear. Thank you.

22           PRESIDENT TERCIER: Okay. So, if you could



1 just introduce yourself, we have the indication in  
2 your Report. Could you in a few words just present  
3 yourself, and then you can start with your  
4 presentation.

5 Please, Mr. McCurdy.

6 DIRECT PRESENTATION

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

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

17 You can see on the page of the presentation  
18 that's before you an overview of the presentation.  
19 It's quite brief, actually, there's a fair amount of  
20 detail here, but I'll begin just referring to my  
21 qualifications and experience and move through my  
22 concluding comments on my assignment.

1           On this page, there's a summary of my  
2 background. I'd like the Tribunal to take into  
3 account and understand that, throughout my career,  
4 I've been educated and have work experience in both  
5 the mining industry as a scientist, as a geologist,  
6 and in the financial services industry as a banker, a  
7 risk approver, and a lender.

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

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

17           I have worked to discover and develop a  
18 world-class gold mine called "Pueblo Viejo" in the  
19 Dominican Republic. I referenced that because that  
20 experience is very much relevant to Roşia Montană, and  
21 Gabriel Resources' efforts to develop that Project.  
22 After working as a geologist and obtaining an MBA

1 degree, I moved on to hold leadership positions with  
2 major financial firms such as CitiGroup and Standard  
3 Chartered Bank.

4           During my banking career, I was involved in  
5 over 200 loan transactions valued at over  
6 \$100 billion, including the financing of the expansion  
7 or redevelopment of the Pueblo Viejo gold mine at  
8 about the time of the Valuation Date of this  
9 undertaking.

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

19           Next slide, please.

20           The scope of the assignment which I accepted  
21 involved assessing RMGC's ability to raise debt  
22 financing for the Roşia Montană Mine Project during

1 the first quarter of 2012 and the second quarter of  
2 2013. I was instructed to assume that RMGC had  
3 obtained its Environmental Permit for the Project, and  
4 I was further instructed to assume that the Project  
5 was, during the time period referenced above, that the  
6 Project was encountering significant social  
7 opposition, that it faced delays and possibly  
8 termination due to potential archaeological discovery,  
9 and lastly was subject to several pending court cases  
10 that could result in the invalidation of the  
11 Environmental Permit and/or the zoning certificates  
12 required to obtain the Building Permit.

13           Just a couple comments on these assumptions.  
14 I would like the Tribunal to understand and appreciate  
15 the fact that if--and in assuming that RMGC had  
16 obtained its Environmental Permit for the Project, I  
17 believe lenders, prospective lenders, would have  
18 perceived the Project's risk profile as being lower.  
19 It would have been a positive development. However,  
20 this positive effect of the Environmental Permit on  
21 the Project's overall risk profile may, however,  
22 likely have been negated by the assumptions regarding

1 the existence of significant social opposition, the  
2 risk of archaeological discovery, and possible--and  
3 the possible litigation threatening the Environmental  
4 Permit and/or ultimately the Building Permit.

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

10 No. 1, it's important to understand the  
11 environment in which the banking industry and  
12 financial markets were in at the time following the  
13 2008 and 2009 Global Financial Crisis. This crisis  
14 resulted for the most part in banks having a higher  
15 cost of capital and, therefore, just a more limited  
16 appetite for lending.

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

21 The Project's Feasibility Study, based on my  
22 experience, was outdated and incomplete, and I think

1 that would have interfered with the loan process.

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

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

18 As alluded to earlier, banking regulators  
19 sought and imposed increased capital reserve  
20 requirements for banks, and this resulted in a higher  
21 cost of capital and, ultimately, lower loan margins  
22 and less--you know, less profitability, lower returns

1 on their loan products.

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

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

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

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

16           To just provide a little further context, I  
17 would like to just touch on these loans and what makes  
18 them special and why they are used so, I've just  
19 proposed the question: What is project finance? And  
20 a few comments to help you to understand the nature of  
21 lending to a firm such as Gabriel and supporting its  
22 Roşia Montană Project.

1           A project loan, is based upon projected cash  
2 flows of the Project rather than the assets of the  
3 Sponsors.

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

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

10           So, why is project finance used?

11           Next page, please. Thank you.

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

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

22           High cash flow coverage of debt service can



1 reduce the amount of equity the Sponsor has to put  
2 forth.

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

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

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

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

19 Each bank, it's important to understand, is  
20 independent in this process and responsible for their  
21 own approval, and credit approval, and ongoing credit  
22 management process.

1           Lenders are exposed to a multiple of risks  
2 when undertaking loans of this nature, including  
3 sponsor management, country, commodity price, capital  
4 and operating cost, ore reserve, environmental,  
5 permitting and social risk that require detailed and  
6 timely diligence.

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

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

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

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

22           Gabriel Canada was committed to provide

1 100 percent of the financing required for the Project,  
2 which was approximately 20 percent owned by the  
3 Government mining company.

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

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

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

1 view, lenders would require an updated Feasibility  
2 Study, a single voice defining the Project.

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

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

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

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

1 concern over reputational risk.

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

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

15           Behre Dolbear mentions various technical  
16 concerns that it believed could adversely impact the  
17 financial viability of the Project. I think the bank  
18 market would agree that these areas of concern are  
19 relevant, and they would seek additional diligence on  
20 these matters. The tailings management, the location  
21 of the tailings dam, the design of the dam, the dam's  
22 surroundings, et cetera. They would be concerned

1 about the adequacy of the Project's mining equipment  
2 fleet and its ability to deliver the representations  
3 made in a mine plan. They would be concerned about  
4 ore dilution and, to the extent that it was  
5 appropriately accounted for in the resource  
6 estimations and production budgets. And they would  
7 also be concerned for a number of reasons about the  
8 appropriate recognition of past mining activity to the  
9 extent that it could present safety concerns and  
10 productivity impairments for the Project's operations.

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

18           I believe that SRK wrongly asserted that  
19 Mineral Resource estimates do not become outdated with  
20 the passage of time. One of the reasons for that, and  
21 my pointing that out, is that certain factors impact a  
22 mineral-resource estimate and its classification as

1 either a "reserve" or a "resource." This was a  
2 concern expressed by Behre Dolbear. And there are a  
3 number of factors which contribute to this concern.  
4 One is the utilization of up-to-date metal price  
5 assumptions; the incorporation of an up-to-date status  
6 of the permitting process on the ground; as well as  
7 the consideration of other economic, legal, political  
8 and social modifying factors.

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

20           However, lending institutions tend to look  
21 at the Permits required for a mining project as a  
22 continuum because many of these are interrelated. And

1 so, if other permits such as the Building Permit were  
2 not in hand, I believe the overall perceived  
3 permitting risk of the Project would have, you know,  
4 been negated by the assumption that the Environmental  
5 Permit was there and would have simply resulted in  
6 continued concern about permitting risk overall, and  
7 it would have limited RMGC's access to financing.

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

13           So, moving forward to the second quarter of  
14 2013, you know, did things change in my opinion? And  
15 I believe they would not have changed significantly.  
16 The Project would continue to have limited access to  
17 the debt/capital markets. I believe the situation on  
18 the ground at Roşia Montană had not materially changed  
19 since the first quarter of 2012.

20  
21           And that's the end of my presentation.  
22 Thank you.



1 MR. GREENWALD: Mr. President?

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

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

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

10 PRESIDENT TERCIER: Yes, Mr. Guibert de  
11 Bruet.

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

14 PRESIDENT TERCIER: Thank you.

15 In that case, Mr. Greenwald, you have the  
16 floor for the cross-examination.

17 MR. GREENWALD: Thank you, Mr. President.

18 I would note before I start the  
19 cross-examination that the last two bullet points that  
20 were just shown on the last slide which relate to  
21 Section 10 of the Expert's Report are not provided as  
22 reasons for his opinion in his Report, and they're not

1 responsive to anything that was said by any expert or  
2 witness of Claimants, and they don't purport to be.

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

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

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

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

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

21 THE WITNESS: I believe they're not new. In  
22 an undertaking such as a gold mine project financing,

1 basically, everything depends on the price of gold.  
2 The price of gold justifies the, you know, the  
3 undertaking in the most fundamental of senses, and is  
4 entirely relevant to each and every aspect and  
5 consideration of evaluating a project such as this.

6           So, to suggest, as Mr. Greenwald may have  
7 done, that this is new evidence, I don't believe to be  
8 the case. There have been numerous references to the  
9 gold price throughout this Hearing that I have  
10 witnessed, and there are many Supporting Documents  
11 which report the history of the price such as the one  
12 presented in CRA-16, which I commented on in my  
13 presentation.

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

1           PRESIDENT TERCIER: Mr. Greenwald?

2           MR. GREENWALD: The slide  
3 says--Mr. President, the Tribunal can take the about  
4 minute that it will take to read Mr. McCurdy's  
5 discussion of the likelihood of financing the mine in  
6 the second quarter of 2013. It's at Paragraphs 51,  
7 52, and 53. The Tribunal will plainly see that the  
8 factors that are referred to in Bullet Point 2 and  
9 Bullet Point 3 on this slide, as well as CRA-16, and  
10 anything about the price of gold or global economic  
11 factors are not mentioned. So, we object.

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

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

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

22           MR. GREENWALD: The Tribunal should be

1 invited to have Mr. McCurdy resubmit his presentation  
2 without those two bullet points on the last slide,  
3 which were not part of his Report, and we reserve also  
4 the right to review the rest of the presentation and  
5 comments on it further as we're not able to, in  
6 realtime, assess everything that's new, but this one  
7 is clearly new.

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

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

18           PRESIDENT TERCIER: Very good.

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

1 (Pause.)

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

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

5 (Pause.)

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

8 Ah, there he is. okay.

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

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

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

21 Okay. Good.

22 So, Mr. Greenwald, you can proceed now.

1 MR. GREENWALD: Thank you, Mr. President.

2 CROSS-EXAMINATION

3 BY MR. GREENWALD:

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

8 A. Good morning, Mr. Greenwald.

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

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

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

19 A. Yes, I'm aware of the date that it was--  
20 (Pause.)

21 A. Yes, thank you. I'm aware of the date that  
22 the report was submitted.

1 Q. And your Report does not respond to any  
2 expert report prepared by a financing expert  
3 testifying for Claimants, does it?

4 A. I don't believe it does.

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

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

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

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

14 Q. Called "Claimants' Memorial and Reply."

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

17 Q. Starts on Page 6 of your Report. You  
18 describe Claimants' Memorial and Reply submission,  
19 make one observation about investment and the amount  
20 they invest, but you don't--you don't identify any  
21 arguments Claimants make about the financeability of  
22 the Project, do you?



1           A.    I don't believe I made specific reference to  
2 an argument by the Claimants of that nature.

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

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

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

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

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

20          Q.    Let's talk about the scope of your Report,  
21 Mr. McCurdy. At Footnote 12--can you go to  
22 Footnote 12 of your Report, which is on Page 4--and

1 you elaborated this in, I believe, Slide 8 of your  
2 presentation this morning--where you're discussing  
3 project finance, and you explain that project finance  
4 is a term that refers to the funding of projects  
5 through construction and production ramp-up up to a  
6 point where sufficient cash flow is generated to serve  
7 as the loan's principal and interest payment schedule;  
8 is that right?

9 A. That's correct.

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

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

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

21 A. In general, I would agree with your comment,  
22 yes, but--

1 Q. It's what's stated in the first sentence:  
2 "I have been asked to provide an analysis of the  
3 sponsor's ability to obtain debt financing (project  
4 finance)" with a reference to Footnote 12, down to the  
5 footnote we just looked at to finding "project  
6 finance"; correct?

7 A. That's correct.

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

11 A. No, I did not.

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

16 A. Yes.

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

19 Q. Okay. At Paragraph 37 of your Report, (b),  
20 37(b), you described Gabriel as a junior mining  
21 company with limited financial resources and access to  
22 capital.

1                   Were you aware Gabriel had over 175 million  
2 in cash on hand at the Valuation Date?

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

5           Q.    And were you also aware that, from 2007 to  
6 2011 Gabriel raised over \$453 million in cash equity;  
7 correct?

8           A.    I was generally aware of that, yes.

9           Q.    And are you also aware that, by the end of  
10 June 2011, Gabriel, in fact, had raised over  
11 \$700 million through the issuance of equity and  
12 warrants in the exercise of share options and  
13 warrants?

14          A.    Generally, yes.

15          Q.    At Paragraph 18 of your Report, the last  
16 sentence, you state that acquisition activity and  
17 capital spending in the mining industry responded  
18 markedly to the financial crisis and declined from  
19 approximately \$210 billion to just over a hundred  
20 billion dollars in 2009.  You're not suggesting that  
21 acquisition activity was down in the period leading up  
22 to the Valuation Date in 2011 or in 2012, are you?

1           A.    Well, I think the sentence is--you know, is  
2 quite precise.  It refers to 2009.

3           Q.    Okay.  I would like to look at the period in  
4 2011 heading into 2012, and I will show you  
5 CRA--Exhibit CRA-197, which is a report submitted  
6 with--it's a PwC survey for 2012, it's a gold price  
7 report, submitted with Mr. Burrows's Expert Report,  
8 the second one, I believe, and I would like to take  
9 you to Page 15 of that Report on "Gold M&A Activity."

10                   Are you with me?

11           A.    Yes.

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

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

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

18                   Thank you.

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

1 "this is noteworthy."

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

4           Do you see that?

5           A.    I do.

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

12           Do you see that?

13           A.    Yes.

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

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

21           Do you see that?

22           A.    Yes.

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

6 Correct?

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

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

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

17 If we continue down to the last paragraph,  
18 PwC is concluding that: "PwC expects to see high  
19 premiums in the gold sector to remain strong through  
20 2012." Correct?

21 A. Yes.

22 Q. Would you agree, Mr. McCurdy, that a

1 hypothetical buyer of the Projects would almost have  
2 to be a major international mining company?

3 A. I'm sorry, of which projects?

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

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

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

18 A. That's correct.

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



1 construction management finance, equipment finance,  
2 streaming and private equity finance."

3 Correct?

4 A. That's correct.

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

7 A. That's correct.

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

11 A. That's correct.

12 Q. Let's look at KM-8.

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

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

16 Q. I can hear you.

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

21 MR. GREENWALD: Shall we take a 10-minute  
22 break now, Mr. President? I don't hear the President.

1           SECRETARY MARZAL YETANO: We can't hear you,  
2 Mr. President.

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

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

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

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

19          PRESIDENT TERCIER: Okay, because my  
20 question is, of course, I'm wondering whether,  
21 depending on when we finish whether we could already  
22 start with the presentation for your experts Compass

1 Lexecon that is on the program tomorrow. I don't know  
2 in order to be on the safe side. Have you the  
3 impression we could do it?

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

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

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

13 Thank you.

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

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

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

22 MR. GREENWALD: Mr. President, this is as

1 good a time as any to take a 10-minute break, in any  
2 event.

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

8           MR. GREENWALD: Okay. Thank you.

9           PRESIDENT TERCIER: Thank you very much.

10           (Recess.)

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

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

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

17           PRESIDENT TERCIER: Yes, very well.

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

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

22           PRESIDENT TERCIER: Okay, so, Mr. Greenwald,

1 you have the floor.

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

4 BY MR. GREENWALD:

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

9 Are you with me, Mr. McCurdy?

10 A. Yes, I am.

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

16 A. That's correct.

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

21 A. That's correct.

22 Q. Okay. Let's turn to Paragraph 50 of your

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

12 A. That's correct.

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

15 A. Yes, if you can pull that up.

16 Q. You contend in the second sentence that  
17 lenders would not have seriously engaged the Sponsor  
18 in a tangible dialogue regarding financing without the  
19 Project's major permits in hand, and then on the next  
20 page you go on to say that lenders would not have  
21 taken the first key step of providing the Project  
22 indicative Term Sheet on the basis of an EIA approval,

1 but instead would have told the Sponsors to return  
2 when all approvals were in hand or at the very least  
3 imminent. That's your testimony; right?

4 A. That's correct.

[REDACTED]









[REDACTED]

[REDACTED]

[REDACTED]



1 A. --to my recollection.

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

6 A. That's correct.

[REDACTED]

20 [REDACTED]

21 Q. You didn't perform your own cost estimate.  
22 You relied on Behre Dolbear's Report submitted in this

1 Arbitration; correct?

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

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

7 A. Roughly, yes.

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

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

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

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

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

1 A. That's correct.

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

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

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

14 A. Yes.

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

18 A. Yes.

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

22 A. In general, I wasn't familiar with the

1 nature of the engagement. I only made reference to a  
2 report that was produced. I assume it was the result  
3 of an engagement of some type.

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

7 A. Not to my recollection.

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

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

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

21 Do you see that?

22 A. I see that, yes.









█ [REDACTED]  
█ [REDACTED]

3 Q. Okay. Let's go to Paragraph 21 of your  
4 Report. This is on Page 10. There is a sentence  
5 where you state that compliance or recognition of the  
6 importance of Equator Principles, compliance is not  
7 apparent in the Sponsor's reporting. Are you aware  
8 that, since at least 2003, Gabriel, in its public  
9 statements, its reporting, has underscored its  
10 commitments to fully comply with the Equator  
11 Principles?

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

14 Q. Let's look at one of those early statements,  
15 and they continue in public statements thereafter,  
16 public reporting. Exhibit R-120. This is Gabriel's  
17 2003 Annual Report and if we go to PDF Page 13,  
18 Page 13--I'm not sure if it's the PDF Page 13--there  
19 we go.

20 On the left-hand side, that's fine. There  
21 you go, starting with the second sentence: "Gabriel  
22 is committed to full compliance with Romanian

1 legislation, relevant EU policies and International  
2 Best Practice, as encompassed by the Equator  
3 Principles that were adopted by several leading  
4 international financial institutions in order to  
5 ensure that projects are developed in a manner that is  
6 socially responsible and reflect sound environmental  
7 Management practices. Gabriel has developed a  
8 Resettlement and Relocation Action Plan (the RRAP) as  
9 a formal public policy to ensure transparency  
10 consultation with all affected parties and a  
11 consistent and equitable process for managing the  
12 acquisition of properties and the corresponding  
13 compensation for eligible stockholders. The RRAP  
14 forms part of the environmental and social impact  
15 assessment currently being prepared for the Project  
16 and as part of this continuing process will be refined  
17 as necessary to comply publicly with the Equator  
18 Principles."

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

22 A. I believe deeds are much more relied upon in

1 the loan market than intent or a statement of an  
2 objective. Results are required to enable financial  
3 institutions' process to move forward.

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

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

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

18 Do you see that?

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

20 Q. I'm just saying, you state there is a  
21 failure to design the Project to meet the Equator  
22 Principles; correct?

1           A.     Well, I think that has to be taken into  
2 context with the paragraph above, so I'm not stating  
3 or referencing a specific failure. I'm saying the  
4 possibility of a failure would be an issue or point of  
5 concern in the financial markets.

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

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

16          Q.     But you do refer in Footnote 11--Footnote 10  
17 is just a reference to the Equator Principles, and  
18 then you refer in Footnote 11 to the Second Report  
19 submitted by Respondent's Expert, Lorraine Wilde, on  
20 this topic. Her First Report on this topic making  
21 this conclusion, it was submitted with the Rejoinder  
22 of the Respondent, but you refer to that in support of

1 this statement made here; right?

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

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

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

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

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

21 BY MR. GREENWALD:

22 Q. If we go to Page 59, it's PDF



1 Page 65--sorry, it's Page 63, I believe, and  
2 maybe--that's it. PDF Page 69, it's Page 63  
3 Section 20.3 "Comparison with International Guidelines  
4 and Standards."

5 Are you following me, Mr. McCurdy?

6 A. Yes, I can see the page.

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

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

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

20 A. I can see that that is what is written  
21 there. I understand that this is a matter of dispute  
22 between the Parties, and again, a deep-dive on whether

1 or not the Project was compliant with the Equator  
2 Principles at a specific point in time was not the  
3 focus of my Report.

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

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

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

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

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

17 Do you see that?

18 A. Yes.

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

22 MR. GUIBERT de BRUET: Excuse me, I don't

1 believe that's an accurate statement. KM-21 and KM-22  
2 were submitted as part of rebuttal documents in  
3 response to the documents that the Claimants  
4 submitted.

5 MR. GREENWALD: Okay. Thank you.

6 BY MR. GREENWALD:

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

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

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

13 (Pause.)

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

16 BY MR. GREENWALD:

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

18 A. Yes, Mr. Greenwald. Thank you.

19 Q. Okay. If we could go to Page 21 of your  
20 Report, Section 9, where you address the likelihood of  
21 the Sponsor, that being Gabriel, successfully  
22 approaching the debt market in the first quarter of

1 2012, and this corresponds to Slide 16 of the  
2 presentation you gave this morning; is that right?

3 A. I believe it does.

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

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

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

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

1           A.    Yes.

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

5           A.    Correct.

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

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

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

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

19               Mr. Guibert de Bruet, you have the floor for  
20 the redirect.

21               MR. GUIBERT de BRUET: If I may ask the  
22 Tribunal for 5 to 10 minutes to just consult?

1           PRESIDENT TERCIER: Okay. As I said, I do  
2 not believe to 5 minutes, in that case we take  
3 10 minutes. We will start again in 10 minutes. Thank  
4 you. No special room for my co-Arbitrators.

5           (Brief recess.)

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

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

10          Please.

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

13                           REDIRECT EXAMINATION

14          BY MR. GUIBERT de BRUET:

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

19           There we go.

20           And I believe you were asked about the  
21 paragraph here.

22           So, just below that paragraph you'll see

1 Table 22, which is the assessment of the Project's  
2 Equator Principles Compliance, and the left column is  
3 the principle, and the right column is the Project  
4 status. I'd like you to read Equator Principle 7 and  
5 the status.

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

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

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

17 MR. GREENWALD: Objection, Mr. President.  
18 That was speculation, the reference to "apparently."  
19 Mr. McCurdy has no idea whether or not an independent  
20 review was or was not conducted and should be asked  
21 whether he knows that. SRK was not asked whether or  
22 not an independent review was or was not conducted,

1 nor were Claimants' Witnesses.

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

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

7           (Pause.)

8           MR. GUIBERT de BRUET: Mr. President, we  
9 think the Expert's answer is fine as it stands.

10           No further questions.

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

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

20           PRESIDENT TERCIER: Okay.

21           MR. GUIBERT de BRUET: Mr. President, the  
22 relevance of Mr. McCurdy's statements are for the



1 Tribunal to determine.

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

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

9 PRESIDENT TERCIER: Okay.

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

12 Professor Douglas?

13 ARBITRATOR DOUGLAS: No questions.

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

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

1 think I would appreciate perhaps a five- or 10-minute  
2 technical break. They need to switch the camera so  
3 that Dr. Brady is visible, and I wouldn't want any  
4 interruptions or to rush the expert in that regard.

5 PRESIDENT TERCIER: Okay. Good.

6 Mr. Greenwald--

7 (Overlapping speakers.)

8 PRESIDENT TERCIER: Who is speaking?

9 DR. HEISKANEN: Heiskanen. According to the  
10 program, a meal break is supposed to take place at  
11 4:30. Instead of having two different breaks, it may  
12 be more practical to break for an hour and then  
13 continue so that we don't have to two breaks  
14 back-to-back.

15 PRESIDENT TERCIER: I see your point.

16 Mr. Greenwald?

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

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

22 PRESIDENT TERCIER: Okay. We will not lose

1 a lot of time on that. Probably I will follow, if you  
2 have no objection, Respondent's proposal and introduce  
3 right now the break. We would start again at 5:30  
4 Swiss time, but in that case, I would like to invite  
5 my co-Arbitrators to go on the session reserved to the  
6 Tribunal.

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

9 (Recess.)

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

12 First, we have a few points to discuss.  
13 First, you remember that counsel for Respondent asked  
14 for time until Sunday, probably beginning of the  
15 Hearing, to present its comment to the last version of  
16 the submission connected to the question of the  
17 so-called "new claims."

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

20 DR. HEISKANEN: Yes, indeed. I can confirm  
21 that the firm--as you know, it's going to be the  
22 weekend, so we have no support services available.

1           PRESIDENT TERCIER: You remember that  
2 Ms. Abby Cohen has not objected to it, but made a  
3 reservation concerning the possibility for her to  
4 respond to your own comment, and you have reserved  
5 your position. Are you in a position to tell us what  
6 is now your position, Mr. Heiskanen?

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

10          PRESIDENT TERCIER: Okay. Thank you very  
11 much.

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

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

19          PRESIDENT TERCIER: I thought we had  
20 received both, first the document from Mr. McCurdy and  
21 with the last slide, the modification of the two  
22 bullet points, and we have, indeed, now received also

1 the new PowerPoint of Dr. Brady without the last  
2 slide.

3 MR. GUIBERT de BRUET: Apologies,  
4 Mr. President. That was my mistake.

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

7 MR. GREENWALD: Mr. President?

8 PRESIDENT TERCIER: Yes, you have a point?  
9 Yes, concerning--sorry. Go ahead.

10 MR. GREENWALD: Thank you, Mr. President.

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

21 PRESIDENT TERCIER: Mr. Guibert de Bruet?

22 MR. GUIBERT de BRUET: We have no objection,

1 as long as they do, indeed, refer to those specific  
2 slides.

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

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

7 DR. THOMAS BRADY, RESPONDENT'S WITNESS, CALLED

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

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

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

20 PRESIDENT TERCIER: Okay.

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

1 examination.

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

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

9 THE WITNESS: I can confirm that.

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

18 THE WITNESS: I agree.

19 PRESIDENT TERCIER: Okay. Dr. Brady, you  
20 have prepared for this procedure an expert report.  
21 This is called "Expert Opinion." It is dated  
22 November 13, 2019.

1           You have this document with you?

2           THE WITNESS: Yes, I do.

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

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

9           PRESIDENT TERCIER: Okay. Thank you very  
10 much.

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

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

22           Is it clear for you?



1 THE WITNESS: Yes, it is, Mr. President.

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

5 DIRECT PRESENTATION

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

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

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

19 I have over 25 years of international mining  
20 and energy experience in economic analysis, finance  
21 and financial risk management. I'm currently employed  
22 as the Executive Director of the JPMorgan Center for

1 Commodities at the University of Colorado Denver's  
2 Business School. In addition I provide independent  
3 economic and Strategic Advisory Services for clients  
4 across the mining and energy sectors.

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

17           Next slide, please.

18           In terms of this assignment, I have been  
19 asked to review the methodologies for valuing gold  
20 properties for both internal purposes as well as for  
21 acquisitions. I've also been asked to review  
22 approaches for determining gold price assumptions and

1 for valuing gold properties. I'm also asked to  
2 comment on the appropriate use of acquisition premium  
3 in valuing gold properties.

4 Next slide, please.

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

17 My view of these other valuation techniques,  
18 very difficult to obtain comparable projects and  
19 transactions; a lack of consistency in the assumptions  
20 used to create those multiples. At Newmont, the  
21 Strategic Development team would typically use market  
22 and financial multiples as a screening method prior to

1 a much more resource-intensive discounted-cash-flow  
2 analysis being completed.

3 Next slide, please.

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

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

19 Given the wide distribution of these  
20 forecasts across the company, forecasts would be  
21 provided in terms of real and nominal terms depending  
22 on the use of those forecasts.

1           That concludes my presentation. If the  
2 Tribunal has any questions, I can answer.

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

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

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

10          PRESIDENT TERCIER: Okay. Thank you very  
11 much.

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

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

16                                   CROSS-EXAMINATION

17          BY MR. POLAŠEK:

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

20           Dr. Brady, you covered a number of points in  
21 your Opening Presentation, and nothing prevented you  
22 from including all of these points that you made today

1 in your written opinion dated November 13, 2019. You  
2 agree?

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

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

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

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

14 BY MR. POLAŠEK:

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

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

21 Q. My question does not go to the consistency.  
22 My question is simply whether you agree that nothing

1 prevented you--there was no obstacle that would  
2 prevent you--from including all of the points that you  
3 just made today in your Opening Presentation in your  
4 November 13, 2019, written report. Do you agree with  
5 that?

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

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

14 Please.

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

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

21 BY MR. POLAŠEK:

22 Q. Okay. I direct your attention to the second

1 bullet. You say that you have over 25 years of  
2 mineral--international mining and energy experience.

3 Do you see that?

4 A. Yes, I do.

5 Q. Let's highlight "25 years."

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

7 A. Let me bring up my Expert Opinion.

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

9 (Overlapping speakers.)

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

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

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

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

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

21 (Pause.)

22 A. Yes, there are points in the PowerPoint that



1 are not included in the written report.

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

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

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

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

16 Do you see that?

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

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

20 A. Let me review. Give me a moment.

21 Again, in indirect terms, I state the--you  
22 know, I refer to market multiples--I do refer to

1 market multiples, but I would not rely on market  
2 multiples to value--in the valuation to determine the  
3 value of properties, so--

4 Q. Dr. Brady--

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

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

10 A. That is not included in the--in the written  
11 report.

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

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

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

22 A. It is not in the Report, but it is contained

1 in reference to that statement I just read on the  
2 Report. The rationale of that--

3 (Overlapping speakers.)

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

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

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

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

16 A. Give me a moment, please.

17 (Pause.)

18 A. I talk about market multiples can--the  
19 market multiples approach can provide a rough  
20 indication of value and is often used as a screening  
21 process--in the process of screening companies and to  
22 provide general confirmation of the discounted cash

1 flow and other valuation techniques.

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

4 (Overlapping speakers.)

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

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

10 A. No, not--

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

13 (Overlapping speakers.)

14 THE WITNESS: --market multiples--

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

22 PRESIDENT TERCIER: Mr. Polašek?

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

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

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

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

20           BY MR. POLAŠEK:

21           Q. Dr. Brady, please turn to Slide 6 in your  
22 presentation, and I direct your attention to the last

1 sub-bullets, the ones that start with the dash, and we  
2 will highlight it on the screen for you.

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

5 A. I see the highlighted section.

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

9 Okay. Now we have it.

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

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

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

19 A. Not in that kind of detail. Again, to your  
20 earlier questions, I would say that, to add additional  
21 color to the Tribunal, there is more detail there, but  
22 it is as an overall approach. What you see

1 highlighted there is what I tried to provide the  
2 company during my time there as a Chief Economist.

3 Q. Now, going back to the question that I asked  
4 you at the beginning, Dr. Brady, nothing prevented you  
5 from including all of these points that you made today  
6 in your written expert opinion dated November 13,  
7 2019; correct?

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

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

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

19 Q. Well, would you agree with me that there was  
20 no obstacle to you to include this additional detail  
21 in your written Report, if that's what you wanted to  
22 do?

1 MR. GUIBERT de BRUET: I'm sorry, I'm going  
2 to have to interrupt you there again. This question  
3 has been asked now for the third time, and it's been  
4 answered already twice before.

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

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

13 BY MR. POLAŠEK:

14 Q. Yes, Dr. Brady.

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

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



1 Do you agree?

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

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

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

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

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

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

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

22 A. Yes, that's my testimony.

1 Q. You refer in your two-page report to the  
2 Report of Dr. Burrows, who is the quantum expert,  
3 pardon me, for Respondent. You recall that?

4 A. Yes.

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

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

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

10 A. Yes, correct.

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

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

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

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

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

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

1 or not.

2 Q. Well, what Respondent provided to you did  
3 not look like to you an excerpt, did it?

4 A. Let me bring that up. I haven't--

5 Q. Let me just ask you, you know, from your  
6 memory, does it sound about right that that statement  
7 is 13 pages long?

8 A. Mr. Jeannes's--

9 Q. Yes.

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

12 (Overlapping speakers.)

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

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

19 Q. It did not strike you as odd that whereas  
20 Mr. Burrows's report is a hundred pages and  
21 Mr. Jeannes's statement is 13 pages, your Expert  
22 Report is effectively a page-and-a-half?

1           A.     Well, given the scope of my assignment to  
2 those three points that I was asked to review, I felt  
3 like it was an adequate length to summarize my views.

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

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

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

13          A.     Correct.

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

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

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

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

21          Q.     And so you worked with Newmont for about 12  
22 years; correct?





1 Q. It's been publicly traded since 1925; right?

2 A. Correct.

3 Q. And it is what is known in the industry as a  
4 "major" mining company; correct?

5 A. Yes. It was a gold senior, but "major" is  
6 the same term.

7 Q. Yeah. And it has been a senior or major for  
8 many, many years; right?

9 A. Yes. I would probably say back to the early  
10 Nineties, 1990s.

11 Q. And are you aware that, in July 2011,  
12 Newmont was the only gold stock in the S&P 500 Index?

13 MR. GUIBERT de BRUET: I'm sorry. Where  
14 does this evidence appear on the record?

15 MR. POLAŠEK: This evidence, Mr. President,  
16 does not need to appear on the record.

17 MR. GUIBERT de BRUET: I'm sorry,  
18 Mr. President. It cannot be that the Respondent's  
19 Experts are prevented from introducing evidence, but  
20 the Claimant can introduce evidence at will.

21 MR. POLAŠEK: Mr. President, may I respond  
22 to that by reference to the applicable rules?

1           PRESIDENT TERCIER: Yes, please.

2           MR. POLAŠEK: I refer to Paragraph 60 in  
3 Procedural Order No. 33 which provides that the  
4 permitted scope of cross-examination includes matters  
5 that the Expert had direct knowledge of.

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

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

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

17           BY MR. POLAŠEK:

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

21           A. I know that Newmont was in the S&P 500. I  
22 just can't remember if Barrick was also listed on the



1 exchange, another gold senior.

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

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

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

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

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

13 A. It would not surprise me, but again I--  
14 (Overlapping speakers.)

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

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

21 Please, Mr. Polašek, it would be happy if we  
22 could go to the merits--

1 MR. POLAŠEK: Yes, sir.

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

4 MR. POLAŠEK: Yes, Mr. President.

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

9 BY MR. POLAŠEK:

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

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

15 Q. Right.

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

18 A. I believe that is correct.

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

21 A. Correct.

22 Q. So, when you testify at Paragraph 1 of your

1 Expert Opinion that you worked on valuation of mineral  
2 projects for Newmont, that did not include the  
3 Goldcorp acquisition, did it?

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

7 Q. And since Newmont's acquisition of Goldcorp,  
8 Newmont's market capitalization increased to about  
9 \$50 billion; are you aware of that?

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

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

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

18 Q. How does that compare to where it was, say,  
19 2011, in your view?

20 A. 2000...?

21 Q. 2011.

22 A. Yes. The gold price did a significant climb

1 from the Year 2000, the early 2000s up through  
2 September, early September of 2011 where it peaked at  
3 1900--\$1,911 an ounce.

4 Q. And you just said that we are at 1900 today;  
5 right?

6 A. Yes.

7 Q. And did this impact the market  
8 capitalization of gold companies, in your view, where  
9 they are today?

10 A. Is the market capitalization impacted--does  
11 the gold price impact the market capitalization? Is  
12 that what--

13 Q. Let me withdraw that question. Just curious  
14 whether, in your view, you see a correlation between  
15 gold stocks and, you know, the price going up, as you  
16 described it, through today?

17 A. I haven't done a correlation analysis, as  
18 you referred to, of gold price and valuation--of  
19 market cap of companies. But the gold price, if it's  
20 a gold senior like Newmont, 90 percent of the revenue  
21 is driven by the sale of gold. When the gold price  
22 goes up, the revenues go up, the financial situation

1 of the company improves.

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

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

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

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

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

1 project.

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

4 So, the first scenario is \$1,180 per ounce  
5 of gold. The second scenario is 1,900, not 900, but  
6 \$1,900 per ounce of gold. Everything else is the  
7 same. It's still the same deposit, still the same  
8 mineralization.

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

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

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

22 MR. POLAŠEK: Yes, Mr. President.

1           PRESIDENT TERCIER: Put it more in the  
2 Gabriel case, if you don't mind.

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

5           BY MR. POLAŠEK:

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

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

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

17          A. Yes. Similar to what--and depending on what  
18 stage of that due diligence is occurring, but similar  
19 to what Mr. Jeannes said at Goldcorp during his time  
20 there. If this particular opportunity was advancing,  
21 then a full team would be constructed, and that would  
22 include geologists, hydrologists, it would include

1 Government relations individuals. It would include  
2 social and environmental personnel, other technical  
3 people as well as financial--financial experts,  
4 particularly on the--on the actual development team,  
5 Corporate Development team.

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

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

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

20 Q. Would you agree that Newmont would not  
21 invest in a mining company if it considered that the  
22 company's project was not feasible and/or not capable



1 of advancing to development?

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

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

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

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

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

19 Q. So, let me make it clear. One of the  
20 entities that are the Claimants in this Arbitration is  
21 a Canadian entity. We refer to it as "Gabriel  
22 Canada." Newmont is a Shareholder in that. You did

1 not know that?

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

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

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

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

16 So, here--

17 (Overlapping speakers.)

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

22 Q. Yes. That will not be my question. This

1 next series of questions, just to make it clear,  
2 pertain to Newmont, and we will stay on that topic. I  
3 will not be asking you technical questions about the  
4 Project at all.

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

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

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

15           A. Yes, I see the highlighted text.

16           Q. Yes. Parent company is Gabriel Canada.

17           "Newmont undertook a testwork program to  
18 confirm the design parameters selected for treatment  
19 of the Roşia Montană Project material including  
20 investigations into grind size, gravity concentration,  
21 cyanide strength, leaching conditions (addition of  
22 lead nitrate and increased lime addition), and

1 potential preg-robbing tendencies. Newmont also  
2 investigated, in further detail, ore variability on  
3 samples from the different pits, the results of which  
4 were reviewed by Aurifex."

5 Did I read that correctly?

6 A. Yes, Mr. Polašek, you read that correctly.

[REDACTED]





1 MR. POLAŠEK: Yes, Mr. President.

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

9 THE WITNESS: Could I--

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

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

18 BY MR. POLAŠEK:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]





1 comment, if you cannot answer, you don't answer, but  
2 really--

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

7 BY MR. POLAŠEK:

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

14 A. Yes.

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

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

20 Q. And what is it supposed to say?

21 A. I will read this.

22 "My roles included valuation of mineral

1 projects...including gold and other minerals  
2 properties."

3 Q. And the word that comes after "for the  
4 purpose of," should that be "acquisition of gold and  
5 other mineral properties"?

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

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

19 (Overlapping speakers.)

20 PRESIDENT TERCIER: "My roles included  
21 valuation of mineral projects, including valuation for  
22 the purpose of" what?

1 THE WITNESS: "My roles included the  
2 valuation of mineral projects, including gold and  
3 other mineral properties." That's what it--that's  
4 what it should say.

5 BY MR. POLAŠEK:

6 Q. Understood. Thank you, Dr. Brady.

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

12 A. I do not list specific acquisitions by  
13 Newmont.

14 Q. So, let's look at an example. In  
15 February 2011, Newmont acquired Frontier Gold for CAD  
16 2.3 billion. Does that sound right?

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

20 Q. And did you work on that acquisition?

21 A. No, I was not part of the Corporate  
22 Development team. I was part of the Strategic

1 Planning team that would evaluate external M&A  
2 opportunities such as Frontier in the context of other  
3 internal development projects.

4 (Overlapping speakers.)

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

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

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

19 A. That was probably done, again, by a  
20 due-diligence team that included Corporate Development  
21 personnel on the financial side as well as a number of  
22 technical people, including a lot of our folks from or

1 employees from Nevada, Newmont had been mining in  
2 that--in the State of northern Nevada for 50 years,  
3 and that acquisition was very close to the other parts  
4 of Newmont's long-time mines and processing  
5 facilities.

6 Q. Now, the Newmont--the price that Newmont  
7 paid for Frontier included a premium of 37 percent  
8 over the price of Frontier's stock publicly traded on  
9 the Toronto Stock Exchange; does that sound right?

10 A. If there was--there was a premium paid.

11 Q. And are you aware that, when the Frontier  
12 Gold acquisition closed, Newmont's CEO told the press  
13 that "we feel like we've paid a fair  
14 price--pardon--fair value for the company"?

15 A. I can't recall that statement.

16 Q. Would it surprise you if I told you that  
17 that's what he said?

18 A. It would not surprise me.

19 Q. Now, let's look at Exhibit CRA-189. This  
20 document describes the Frontier Gold acquisition by  
21 Newmont.

22 A. CRA--that's a Press Release, okay.

1 Q. Yep.

2 And if you would go down to the third  
3 paragraph, let's focus on what Mineral Resources and  
4 Mineral Reserves existed at Frontier Gold at the time,  
5 and you will see that there is no reference in here to  
6 Mineral Reserves; correct?

7 A. It has Measured and Indicated Resources of  
8 4.2 million ounces, Inferred Resources of 1.7.

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

11 Now, in your experience at Newmont running  
12 these DCF valuations that you mentioned in your  
13 Report, would a discounted-cash-flow valuation of  
14 4.2 million ounces of Measured and Indicated resources  
15 of gold and 1.7 million ounces of Inferred Resources  
16 of gold yield CAD 2.3 billion?

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

19 Q. I'm not asking about the rationale,  
20 Dr. Brady. I'm asking simply whether a DCF valuation  
21 of these Mineral Resources stated here in  
22 February 2011 would yield CAD 2.3 billion.

1           A.    I need to push back a bit on that because  
2 the Newmont--this opportunity was in "Newmont's  
3 backyard." The company had significant tenure in  
4 operating mines of this type of quality in the area.  
5 It had significant synergies associated with personnel  
6 and processing facilities of this material. And in 50  
7 years of exploration expertise where they thought that  
8 there were significant upside that Newmont could  
9 realize in this acquisition.

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

11           A.    In addition--

12                   (Overlapping speakers.)

13           Q.    Okay, let me repeat the question.

14                   The upside, that would not come from the  
15 4.2 million ounces and 1.7 million ounces that we see  
16 here; right?

17           A.    So, again, as an acquisition target, a  
18 Discounted Cash Flow Model would be constructed  
19 by--after an extensive due-diligence process. That  
20 value would be related to what the--and again as a  
21 crosscheck with other financial multiples. If there  
22 was a large enough gap, if understanding -as similar

1 to what Goldcorp says- if you have to pay a premium  
2 for this, what kind of upside can this asset have to  
3 cover that kind of acquisition premium.

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

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

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



1 include more than that?

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

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

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

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

15 A. Correct.

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

22 A. Correct.

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

4 A. They--my role as Chief Economist started in  
5 2013, and I would get up--I would update forecast  
6 assumptions generally two or three times a year,  
7 depending on--and then I would get updates--these  
8 companies would provide updates quarterly, so I would  
9 incorporate that new information into my assessment,  
10 in other models when I came up with the forecast  
11 assumptions.

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

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

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

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

21 Q. That section included a section on gold  
22 price forecasts; right?

1           A.    I can't remember which one it was, whether  
2 it was Section VII or VI, but I believe there was a  
3 gold price projection section in Dr. Burrows's Report.

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

7           A.    Yep, that's correct, Mr. Polašek.

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

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

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

16               PRESIDENT TERCIER:  Okay.  Please, yes.

17               MR. POLAŠEK:  Thank you.

18               (Pause.)

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

22               BY MR. POLAŠEK:

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

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

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

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

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

20 A. It would believe that there was  
21 significant--if there was a premium to be paid, there  
22 was a belief that there was significant upside

1 potential of that in the terms of that due-diligence  
2 team to justify that acquisition.

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

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

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

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

22 Q. That they believed that what they are

1 purchasing is being bought at Fair Value.

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

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

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

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

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

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

21 PRESIDENT TERCIER: Thank you very much.  
22 Mr. Guibert de Bruet?

1 MR. GUIBERT de BRUET: I think we only have  
2 one question for Dr. Brady, Mr. President.

3 PRESIDENT TERCIER: Yes. Go ahead.

4 REDIRECT EXAMINATION

5 BY MR. GUIBERT de BRUET:

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

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

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

19 THE WITNESS: It would also--

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

22 THE WITNESS: The key is when I would roll

1 in as the Chief Economist would be to ensure all those  
2 different opportunities are evaluated under similar  
3 assumptions, whether it's gold price, other Foreign  
4 Exchange Rates, other metal prices, other energy  
5 costs, all using a standard approach with discount  
6 rates as well. So, as much of a like-to-like  
7 comparison can be made across investment  
8 opportunities.

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

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

13 PRESIDENT TERCIER: Thank you very much.

14 Do my co-Arbitrators have a question to the  
15 Expert?

16 Professor Douglas?

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

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

21 So, thank you very much, Dr. Brady, for your  
22 examination, for your answer to the questions that you



1 have been asked here.

2 (Witness steps down.)

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

11 SECRETARY MARZAL YETANO: Yes.

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

16 PRESIDENT TERCIER: Comment to that from  
17 Claimants' side?

18 MS. COHEN SMUTNY: Claimants have no  
19 comments.

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

22 PRESIDENT TERCIER: Good. And on

1 Respondent's side?

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

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

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

17 Thank you.

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

22 (Pause.)

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

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

9           (Whereupon, at 12:59 p.m. (EDT), the Hearing  
10 was adjourned until 8:00 a.m. (EDT) the following  
11 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