In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/14/14

ICC Hearing Centre
112, avenue Kléber
75016, Paris

Day 1 Monday, 12th September 2016
Hearing on Jurisdiction and Liability

Before:

PROFESSOR PIERRE MAYER
PROFESSOR BRIGITTE STERN
PROFESSOR EMMANUEL GAILLARD

EUROGAS INC and BELMONT RESOURCES INC
Claimants

-v-

SLOVAK REPUBLIC
Respondent

MONA BURTON and MAUREEN WITT, of Holland & Hart LLP, appeared on behalf of EuroGas Inc.

HAMID GHARAVI, EMMANUEL FOY and ELLEN-LOUISE MOENS, of Derains & Gharavi International, appeared on behalf of Belmont Resources Inc.

STEPHEN ANWAY, DAVID ALEXANDER, ROSTISLAV PEKAR, RAÚL MAÑÓN, MARIA POLAKOVA and EVA CIBULKOVÁ, of Squire Patton Boggs, appeared on behalf of the Respondent.

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INDEX

PAGE

Discussion re procedural matters 3

Opening statement on jurisdiction on behalf of Respondent 11

By Mr Anway 11

Opening statement on the merits on behalf of Claimants 81

By Dr Gharavi 81

Opening statement on jurisdiction on behalf of Claimants 112

By Dr Gharavi 112

Tribunal questions 137

Tribunal questions 141

Tribunal questions 148

By Ms Burton 150

By Ms Witt 159

Tribunal questions 174

Tribunal questions 177

Opening statement on the merits on behalf of Respondent 179

By Mr Anway 179

By Mr Alexander 192

By Mr Anway 210

Tribunal questions 226

14:00 1 Monday, 12th September 2016

2 (2.01 pm)

3 THE PRESIDENT: Good afternoon. Welcome to this hearing on

4 jurisdiction and liability in ICSID Case ARB/14/14,

5 EuroGas Inc and Belmont Resources Inc v the Slovak

6 Republic.

7 As you can see, the hearing is video-recorded, so

8 that it may be made public at some later point on the

9 ICSID website; and of course there is also the

10 transcript by Mr McGowan.

11 You know the Tribunal: Professor Emmanuel Gaillard,

12 Professor Brigitte Stern, myself. Ms Lindsay Gastrell

13 is the secretary to the Arbitral Tribunal and Ms Céline

14 Lachmann is the assistant to the Tribunal. We also have

15 the presence of our trainee [...] by special permission

16 from the parties, whom we thank.

17 Maybe Claimants want to introduce their teams.

18 DR GHARAVI: Good afternoon, Mr President, Professor Stern,

19 Professor Gaillard. On my left, my colleague from the

20 firm Derains & Gharavi, Emmanuel Foy. Next to him, the

21 president and CEO of my client, Belmont, Mr Agyagos.

22 Then we have two members of my team in the middle,

23 Ms Moens and Ms Deng, but also a third one --

24 THE PRESIDENT: Maybe you can raise your hand when your name

25 is --

14:05 DR GHARAVI: Yes, please raise your hand. Ms Moens, Ms Deng and Ms Morard. We have our mining expert, Mr Hill. And I take this opportunity also to introduce Mr Lepage from La Française.

Ms Burton will present EuroGas's team.

THE PRESIDENT: Yes, Ms Burton.

MS BURTON: Thank you. Good afternoon, members of the Tribunal. My name is Mona Burton. I am representing EuroGas along with my colleague Maureen Witt, who is to my left. The president of EuroGas who is present is Wolfgang Rauball. Wolfgang, will you raise your hand? We also have present the corporate attorney for EuroGas, Mr Michael Coombs. And the other members of our team are our legal expert witnesses, Mr David Leta and Mr Brad Merrill.

THE PRESIDENT: Thank you. So to this programme, the opening statements, but first -- sorry -- but first we hear Mr Anway presenting his team.

MR ANWAY: Thank you, Mr Chairman, distinguished members of the Tribunal. To my right, David Alexander from Squire Patton Boggs. To his right, Eva Cibulková of Squire Patton Boggs in Bratislava. To her right, Maria Polakova from our Prague office. To her right, Rostislav Pekar, partner in our Prague office. Then we have Raúl Mañón, who is a partner in our Miami office.

14:05 We have Andrea Holíková, who heads the Ministry of Finance dispute resolution team. To her right, we have Tomáš Jucha, who is also from the Slovak Ministry of Finance. Then Radovan Hronsky from the Slovak Ministry of Finance. I think the next person to your right, Radovan, is Ms Annette Jarvis, who is our Utah law expert. To her right is Mr Greg Sparks, our mining expert. To his right, Katerina -- and you'll have to help me with your last name, Katerina.

MS HALASEK DOSEDELOVA: Halasek Dosedelova.

MR ANWAY: ... from PwC in Prague. And to her right, you see Sirshar Qureshi, who is from PwC in Prague as well.

THE PRESIDENT: Yes. Opening statements, which will last the whole afternoon I think, until at least 8 o'clock, unless you are shorter than you had foreseen. But before that, there are a few matters.

First, as has been said, we have the presence of Mr Michael Coombs, EuroGas's corporate lawyer, who has submitted an undertaking to abide by the Tribunal's orders and rules. We have Mr Lepage, who has just submitted, I understand, a similar undertaking.

Then we have received during the previous days -- which have been very busy for everybody -- a certain number of documents, R-2091 and R-2092. We have received yesterday or this morning -- yesterday,

14:07 I think -- C-366 to C-370, and on these documents Slovakia has a right to comment at the appropriate time.

Then we had a request from EuroGas to accept new versions of CL-223 and CL-224. Is there an objection to these new versions?

MR ANWAY: With respect to the legal authorities, which I understand are just completed exhibits or corrected exhibits, we have no objection. As to the factual exhibits, we will come to those in due course.

THE PRESIDENT: You mean the Keller documents?

MR ANWAY: That's correct.

THE PRESIDENT: That's right. Well, we have read the letters from both parties. You know that a certain decision had been made because we thought that after some time there would be no objection; but there was one afterwards, so we decided to reopen the matter, and then we discussed it just now and decided not to admit these documents.

Now, another point: we'd like to know where we are exactly as to the number and the identity of the witnesses and experts who are going to be cross-examined or, even if they are not cross-examined, if there will be direct examination. So I will tell you what I have understood, but there has been a very recent exchange, so I'm not sure I'm right, I tell you.

14:08 First, Respondent's witnesses to be cross-examined by Claimants: Mr Peter Kúkelcík will be examined, and Mr Peter Corej, and no other witness? That's right, okay. Now their experts: Ms Jarvis, Samuel Gardiner, John Anderson, Gregory Sparks; that's right?

DR GHARAVI: Right.

THE PRESIDENT: No other?

DR GHARAVI: No.

THE PRESIDENT: On the other side, Claimants' witnesses to be cross-examined by Respondent: Mr Vojtech Agyagos?

MR ANWAY: Correct.

THE PRESIDENT: Mr Wolfgang Rauball?

MR ANWAY: Correct.

THE PRESIDENT: And Mr Ondrej Rozloznik?

MR ANWAY: Correct.

THE PRESIDENT: And as experts, only Mr Hill?

MR ANWAY: That's correct. We have indicated that we do not see the need to have the Utah law experts, being legal experts, testify before the Tribunal. If the Tribunal wishes to ask them questions, then we do reserve the right to conduct a cross-examination. We have also indicated that the KPMG expert offered by the Claimants is someone that we do not intend to cross-examine again, unless the Tribunal were to call them.

THE PRESIDENT: Are there witnesses or experts who would be

14:10 called for direct examination although they are not called for cross-examination?

MS BURTON: I don't believe so, Mr President. And my request would be: my legal experts have flown here from Utah. I understand that the Respondents do not intend to cross-examine them. I would request to be informed if the Tribunal wants to cross-examine them, because if not, I might want to let them go home.

THE PRESIDENT: We will tell you after the first break.

Before the opening statements, are there any other matters?

DR GHARAVI: Yes, Mr President, there are two matters.

We understand that the Tribunal has now excluded the two documents that it had admitted based on the arguments of Respondent, which we did not respond to. We don't want to create an issue with that. We are, as far as Belmont is concerned, fine with the exclusion of the affidavit.

Regarding the email from Cellar to Keller dated April 11th 2005, we ask the Tribunal to reconsider its reconsideration for procedural reasons, simply because we didn't have the opportunity to respond to the new arguments, but more importantly for two reasons.

One is that that email was expressly identified in our Reply Memorial at paragraph 464. We only had

14:12 clearance from the source, Mr Keller, to submit it when we asked leave to submit it to the Tribunal.

The second reason, independently of that, is that that document falls expressly within the document production order that you ordered, so there is an ongoing obligation of Respondent to submit that. So for that independent reason, that document should be admitted.

Finally, there is no prejudice, obviously, because we identified the document. It is their document. So we ask you to reconsider it and kindly rule on this issue before we take the floor, because we wish to rely on that document.

The second issue we want to raise is the status of legal authorities: what do we do with legal authorities? We want to rely on two legal authorities that are not on the record. And please also think in advance: what do we do in rebuttal, during the course of the process, if there are new legal authorities that become relevant and need to be raised either by Respondent or us?

But for the time being we have two legal authorities on which we want to rely in our opening statement. One is [a BIT] between the Slovak Republic and Iran. It is dated January 19th 2016, so it is after the submissions. Obviously it's a legal authority, but it's a document of

14:13 the Slovak Republic; it's a signatory to that agreement.

The second document is the dissenting opinion of Professor Stern. The Occidental decision was submitted as CL-267. It is heavily relied on by Respondent. The Occidental decision itself relies heavily on Professor Stern's opinion. We just want to have that admitted on the record because we want to address that during the opening.

MR ANWAY: We can certainly talk with opposing counsel about his request to introduce those authorities in a break. It's not something we've been approached with before. I certainly don't see any problem with Professor Stern's dissenting opinion, but it's something we'd like to discuss with our client with respect to the other matters.

With respect to the first comment that my colleague raised, as I understand it, there is not a reconsideration request for Mr Keller's new affidavit, there being two, the other one being two and a half years old and the same in substance; the request is only for the email. The suggestion that the Slovak Republic had an obligation to produce it presumes that it was within the possession, control or custody of the Slovak Republic, which it was not. The document is over a decade old. There was no legal requirement for the

14:15 government to retain those documents. We were never in possession or control of it when the document production order came down.

Candidly, that was the first time we had ever read anything about such an email, when we saw it in the Claimants' Reply. But they did not exhibit the document, and we still have been provided no reason as to why they didn't exhibit it. We think it is simply unfair to be springing on a party, days before a hearing that has already been delayed nine months because of this party, brand new documents.

THE PRESIDENT: Thank you. We will decide before you take the floor on this issue.

So we will have a first phase on jurisdiction, Respondent first, then Claimants; then a second phase on liability, Claimants first, Respondent second.

DR GHARAVI: Mr President, on this counterproposal we didn't have a chance to comment as well before you took the decision. We are fine with it. Respondent takes the floor first and addresses jurisdiction. Then you want us to address jurisdiction and liability, and Respondent takes the floor again on merits. We are fine with that.

Simply for purposes of form and substance, we want to start with merits, then jurisdiction, and then Respondent takes the floor and addresses merits again.

14:16 It doesn't change anything, save that when we take the floor, instead of addressing jurisdiction and merits, we will do merits, then jurisdiction, because it just flows better, and then Respondent takes the floor.

MR ANWAY: If I'm understanding that correctly, the suggestion you had made initially was to do your closing with merits first and then jurisdiction, so you would have the last word.

DR GHARAVI: Sorry, this is for just the opening. I'm talking about the opening.

MR ANWAY: You are proposing for the opening what you had proposed for the closing? Maybe I didn't understand.

DR GHARAVI: The new ground rule, as I understand it, is that Respondent starts with jurisdictional objections; correct?

MR ANWAY: Correct.

DR GHARAVI: Then we were to take the floor to address jurisdiction and merits, before you would take the floor back to address merits.

MR ANWAY: Correct.

DR GHARAVI: We are fine with the first step: you start with jurisdictional objections. We will just say merits, jurisdiction, instead of jurisdiction, merits, and then you take the floor.

MR ANWAY: And then we would end with --

14:17 DR GHARAVI: Yes, it simply flows better, that's it.

MR ANWAY: I see.

THE PRESIDENT: What you suggest, differing from what the Tribunal had accepted, is only in your part you --

DR GHARAVI: Yes, in our part, just because of organisational purposes; also it flows better, because the jurisdictional objection is tied to the merits.

THE PRESIDENT: We have no objection. It is more a problem for us to better understand, but I suppose you know better than us what is easier to understand. So we accept that.

The breaks. There may be either two breaks or three. My suggestion would be three: one after Respondent on jurisdiction -- well, no, stemming from what Dr Gharavi has just said, there would be one after the Respondent on jurisdiction; then if you want to have a break in the middle, it is possible after merits; and then we will have Respondent, and that's all. In fact, two breaks. Good.

So we are ready to listen to Respondent on jurisdiction. (Pause)

(2.21 pm)

Opening statement on jurisdiction on behalf of Respondent

MR ANWAY: Thank you, Mr Chairman. So you see we have a presentation today that will be aided with

14:21 a PowerPoint, which you should have received now.

If we move to the next slide (2), Mr Chairman and distinguished members of the Tribunal, our presentation today will be divided into three sections.

First, I will make a preliminary statement with regard to the Claimants' conduct in this arbitration as it pertains to the Tribunal's jurisdiction since our last hearing here in Paris, almost a year and a half ago.

Next, I will review in some detail the two reasons why the Tribunal does not have jurisdiction over EuroGas II: first, that EuroGas II never owned the alleged investment; and second, that the Slovak Republic properly denied EuroGas II the benefits of the US-Slovak BIT.

Following that, I will review the two reasons why the Tribunal has no jurisdiction over Belmont: first, that Belmont sold the investment in 2001, before the alleged violations; and second, the Canada-Slovak BIT only started to apply in March 2009, which was after the violations.

So on to the preliminary statement. I'd like to begin by asking the Tribunal to step back and reflect on what has occurred as it relates to your jurisdiction over the course of the last year and a half.

14:23 The Tribunal will recall that in their Request for Arbitration, which you see up on the slide (4), the Claimants misrepresented to you who they are, they actually misrepresented to you their own identity. One of the Claimants, EuroGas Inc, told you that it was a Utah company, incorporated by Mr Rauball in 1985, and which in fact did own the alleged investment at one point in time.

In reality, the Claimant was a different entity, not the one disclosed to you. It was a Utah company that Mr Rauball created 20 years later, in 2005, with the same name, the same address, the same officers and directors. And because it was a 2005 entity and was created after the talc mine interest was reassigned, the 2005 entity could never have owned the alleged investment. In other words, the Tribunal's jurisdiction depended upon that misrepresentation.

The Slovak Republic, through its own research, discovered the truth. We discovered the existence of the two companies going by the same name, EuroGas Inc. We discovered that the 1985 company had been dissolved under Utah law in 2001, and therefore lost the ability to do anything except wind up its business activities. We discovered that it was put into bankruptcy in 2004, and we discovered that it was liquidated, its assets, in

14:24 that bankruptcy in 2007.

We discovered that the 2005 company was created while the 1985 company was in bankruptcy, and created in secret, without telling the Bankruptcy Court, without telling the bankruptcy trustee, without telling the investing public. So to the outside world, with the same name, the same address, the same officers and directors, the 2005 company looked the same as the 1985 company, intentionally. We will show that Mr Rauball created this new company for a fraudulent purpose: to later exercise control over assets, including this ICSID claim, that he never disclosed to the Bankruptcy Court.

As you know, we call the 1985 company "EuroGas I" and the 2005 company "EuroGas II".

Having been caught in that misrepresentation, the Claimants were forced to admit that they were indeed a different entity than what they told you. Members of the Tribunal, it is no exaggeration to say that had we not caught EuroGas II misrepresenting its identity to you, something that we assume Claimants' counsel had not been aware of, this entire arbitration would have proceeded on a fraud. We ask you to bear these facts in mind when considering our application for a costs award.

What else has changed concerning your jurisdiction since our last hearing? Well, EuroGas's jurisdictional

14:26 case, no less than four times. After coming clean with the Tribunal about who the real Claimant is, EuroGas II had to change its explanation for how you even have jurisdiction to hear the claims. They have literally changed their jurisdictional story with every pleading they have made to you, all seven of them. The complexity of the transactions involved in Claimants' ever-evolving jurisdictional case has made your and our assessment of their jurisdictional theories, as you will soon see, exceedingly difficult.

What else happened concerning your jurisdiction since our last hearing? The Utah bankruptcy was reopened. And we have learnt that Mr Rauball was again not truthful with you when he told you who caused its reopening. We were first informed about the reopening when we read Claimants' Reply brief; that was in September 2015. We had never heard anything about it before then. So we were even more surprised when they blamed us for it in that pleading.

They stated that a creditor of the bankruptcy estate called Texas Euro Gas was asking the US trustee to reopen the bankruptcy, and here's where they blamed us for it (slide 6). They said:

"... Respondent [the Slovak Republic] has managed, directly or indirectly, to induce an alleged Texas

14:27 creditor of the EuroGas Inc company that was incorporated in 1985 ... to file a motion to reopen this Company's bankruptcy case in Utah ..."

Members of the Tribunal, at the time we told you that we did no such thing. But we continued to hear this accusation for the next year, as recently as our pre-hearing call last Monday. And lest there be any doubt, you can see in the next two slides (7 and 8) letters where they accused us of causing this reopening because we had leaked the expert report of Annette Jarvis. You will recall, members of the Tribunal, she is our Utah law expert. Although pleadings in this case are public, expert reports are not on the ICSID website. We were accused of leaking that report to Texas Euro Gas, and Texas Euro Gas then attached that report in its request to the US trustee to reopen the bankruptcy.

(Slide 8) In another letter, they effectively made the same allegation, "diffusion of the same" information that caused the Texas reopening.

Members of the Tribunal, in a document filed into evidence in the Utah Bankruptcy Court last Thursday, that we had no knowledge of before, we have learned that in fact after all those allegations against us, it was Mr Rauball himself who leaked Ms Jarvis's report to Texas Euro Gas, and here's the email where he did so

14:29 (slide 9).

From Wolfgang Rauball to David Sacks. You can see right next to David Sacks's name it says "Texas Euro Gas": that's the creditor.

"David,

"I plan to come to see you and ... Mike McKenzie ..."

And the second paragraph:

"I am sending you ahead of our planned meeting the big legal stumbling block which our lawyers are fighting in the Arbitration."

And if you look at that document, we don't have it up on the slide, but it attaches Ms Jarvis's report in full.

Think about what that means. Despite Mr Rauball personally leaking Ms Jarvis's report to Texas Euro Gas, he thought it was appropriate to tell you that we had done it, and he let his lawyers continue making those false allegations against us for the last year.

What else happened concerning your jurisdiction since the last hearing? Well, the Claimants refused to show up to the January hearing. In another document filed with the Utah Bankruptcy Court last Thursday -- these documents are all in the public domain -- counsel for Claimants in this arbitration, in October 2015 --

14:30 and you can see it up on your screen (slide 10) -- had concluded that based on the jurisdictional problems before this Tribunal, the "best case scenario" was for Claimants to postpone the January hearing.

We know now that that was back in October 2015. The Tribunal will recall, however, that Claimants waited until just before the January hearing to ask for postponement, and its justification was that the Utah bankruptcy reopening -- which we now know Mr Rauball caused when he leaked Ms Jarvis's report -- was pending, and EuroGas II wanted, as we now know, to try to solve its jurisdictional problem in the Utah Bankruptcy Court before it had to show up before you for the merits hearing.

You, members of the Tribunal, denied that request and ordered that that arbitration hearing proceed. Unhappy with your ruling, the Claimants just refused to show up. They said they needed new counsel because of a new unidentified conflict of interest. We invited them to identify what new conflict of interest could have arisen that did not already exist since the beginning of this case, but they declined to do so. Nevertheless, the Claimants put the Tribunal in an impossible position when Mr Rauball withdrew his consent from Dr Gharavi to represent him at that January

14:31 hearing. In so doing, he effectively handcuffed the Tribunal and blew up the January hearing.

Six months later, Mr Rauball told the Tribunal that he had retained Ms Burton, a lawyer with whom he has been working on this matter since all the way back in October 2015, and whose document I just showed you where it said the "best case scenario" was for postponement of the hearing. So EuroGas II forced the Tribunal to give it what the Tribunal previously denied it: its best case scenario, postponement of the January hearing so EuroGas could try to solve its jurisdictional problem before the Utah Bankruptcy Court. And we know they have tried to do just that.

As we informed the Tribunal, EuroGas II has made an offer, struck a preliminary agreement with the trustee to purchase whatever interest the bankruptcy estate has in the talc deposit, in exchange for which EuroGas II will pay $425,000 and cause Texas Euro Gas to withdraw an alleged $113 million claim against the estate. Now, why would Texas Euro Gas agree to withdraw its claim against the estate? We have reason to believe that it is because Mr Rauball has reached a side deal with Texas Euro Gas and will give it a portion of whatever award he receives in this arbitration.

Members of the Tribunal, I ask you a simple

14:33 question: why would EuroGas II pay almost half a million dollars and other consideration for something that it has told you it already owns, this ICSID claim? The answer is that Texas Euro Gas knows it does not own the claim; the bankruptcy estate does.

EuroGas's own counsel in this arbitration admitted this in yet another document filed before the Utah Bankruptcy Court last Thursday (slide 11). This email is from EuroGas's counsel in this arbitration, and it states:

"The reopening of the case will necessarily carry with it the conclusion that the asset was not abandoned and that EuroGas I still owns the claim and EuroGas II [the Claimant in this arbitration] does not."

The final thing that occurred regarding your jurisdiction since our last hearing was a series of events last week. Recall that the Claimants were instructed by you, members of the Tribunal, on that call we had in January 2016, where they refused to show up at the hearing, that they could not use the delay that they had caused to try to improve their position in this arbitration by introducing new exhibits or new witness statements. Yet last week, days before the hearing, we saw a flurry of requests seeking to do precisely that. Claimants sought to introduce documents that they say

14:35 allegedly prove when EuroGas II made its alleged investment, and that it even made an investment, days before the hearing.

This arbitration has been going on now for almost two years, yet at no time have Claimants ever tried to put these documents into the record. The Tribunal has permitted those documents into the record and I will comment on them shortly. But we have been given no reason why those documents were not put in earlier, when we would have had an opportunity to fully analyse them and address them in our memorials. Instead of offering an explanation, Claimants actually blame the Slovak Republic because we didn't put in their evidence for them. These are not serious positions.

Also last week, Claimants tried to haul before you, with no notice, one of the highest-ranking government officials in the nation, the Minister of Finance himself, even though, in two years of arbitration, they have never notified the Slovak Republic of their intention to do so; and even though the Minister of Finance, even more importantly -- who only took office in 2012 -- had absolutely nothing to do with the facts concerning the talc deposit. It was a plain attempt at harassment, unconnected to the truth-finding process.

Also last week we saw an unprecedented request for

14:36 provisional measures, seeking to have you remove us from the Utah bankruptcy proceedings so that Claimants could proceed unopposed; to silence us. As you know, the Utah Bankruptcy Court held a hearing on EuroGas II's proposed deal with the trustee last Thursday and they pushed very hard for the judge to approve their deal last Thursday, because recall they wanted that deal approved before they showed up to this hearing. It was the reason for the initial postponement; it was the reason why they pushed so hard last week. Emphasising the imminence of this hearing, EuroGas II pushed very hard. But the judge did not approve the deal at the conclusion of the hearing. Instead he granted our request to have a further hearing on 26th September.

Therefore the proposed deal which you will hear about today has no legal effect, and it may not ever -- and will not ever -- unless and until it is approved and sustained by judicial review.

Last week, as we have already talked about this [afternoon], Claimants tried to introduce an affidavit, allegedly of a witness -- they say it was before a US notary public, who witnessed it; it in fact was done in Germany, just like the original affidavit, which I will come to -- making inflammatory accusations. We are supposed to believe that it is just a coincidence that

14:37 this affidavit was signed one business day before this hearing. Just a coincidence. These documents, if admitted -- and I understand that they will not be, and that there has not been a motion to reconsider that decision -- would violate numerous provisions of this Tribunal's procedural orders, and would violate the Slovak Republic's due process rights, as we explained in our letter last Friday.

Now, I do want to be clear. The Claimants stated they could not introduce that affidavit into the record earlier because it was executed two days before they sought its entry into evidence, which was on 7th September 2016. In fact that same individual, Mr Keller, authored an affidavit before a German notary public two and a half years ago, and it was the same affidavit. And Claimants were well aware of it, because at the time Mr Rauball himself immediately shared the affidavit with the Slovak press, and here's the press article proving it (slide 12). This was in the media.

So Mr Rauball and EuroGas II had the same affidavit for two and a half years, yet never once in more than two years of proceedings have Claimants raised these allegations or introduced evidence in support of them before the Tribunal. Instead they waited and waited. And literally one day before the hearing, they have

14:39 a new affidavit signed saying the same thing as the earlier affidavit, and they spring it on us and the Tribunal as if it's something new. How convenient.

In short, Claimants are misrepresenting to the Tribunal that this is new information to them, when they have actually had it -- and publicly circulated it -- for two and a half years. This flurry of activity we saw last week shows that Claimants know their case, as put to you, has utterly failed. New documents, new witness statements, new provisional measures, all a week before a hearing that they have already delayed nine months. We would ask you to bear all of these facts in mind when you consider our application for a costs award.

Against that backdrop, I turn now to the two reasons why the Tribunal has no jurisdiction over EuroGas II. The first one, of course, is that EuroGas II does not own and has never owned the alleged investment.

It is -- or it should be -- common ground that the Claimants bear the burden to prove that EuroGas II qualifies as a protected investor, with a qualifying investment, at the time of the alleged breaches of the US-Slovak BIT. And I emphasise the last point: at the time of the alleged breaches of the US-Slovak BIT.

Despite bearing the burden to prove the facts

14:40 1 necessary for this Tribunal's jurisdiction, Claimants
2 have offered no less than four different stories for how
3 EuroGas II owns the alleged investment. We showed three
4 of them to you in a table in our Rejoinder under
5 paragraph 4, which you now see up on the slide (15).
6 As you know, their first story in the Request for
7 Arbitration was that EuroGas I was the Claimant and
8 owned the investment through its Austrian subsidiary,
9 EuroGas GmbH. We showed you that was
10 a misrepresentation. Claimants now admit that; they
11 scrapped that theory and came up with a second one.
12 The second theory, which appeared in the Memorial,
13 was that EuroGas II, not EuroGas I, was the Claimant and
14 had "assumed all of the assets" of EuroGas I through
15 what they called "a type-F reorganization" in 2008,
16 which they say they effected through a document called
17 a joint resolution that was claimed to be executed by
18 directors of EuroGas I and EuroGas II.
19 We demonstrated that can't be correct either because
20 a type-F restructuring is so named because it falls
21 under subsection F in the Internal Revenue Code, the
22 IRS; it's a tax statute in the United States, and as
23 a tax statute, it can't merge corporate entities. So we
24 pointed this out to the Claimants, and in fact they came
25 back and admitted we were right about that too. They

14:42 say in their Reply (slide 16):

"... US Internal Revenue Code could not, in and of itself, serve to realize the merger ..."

(Slide 17) In fact their experts, Mr Leta and Mr Merrill, go further and say:

"Ms Jarvis [our expert] is correct that [this] tax law commonly referred to as authorizing a 'class "F" reorganization', does not authorize a merger under state law."

So they go back to the drawing board again and they come up with a third story. The third story, articulated now in the Reply, is that EuroGas I and EuroGas II merged not through a type-F reorganisation, but rather through something they called de facto merger, common-law de facto merger (slide 18).

They also raise a fourth new theory, disclosed for the first time ever. These relate, Mr Chairman and members of the Tribunal, to the ruling you made last week granting the entry of five new documents. This new story they tell us, in their seventh submission in this case, and the last one before this hearing, is that EuroGas I in fact sold its investment to -- and its investment in EuroGas GmbH, its subsidiary, and thus the talc interest -- to a UK company called McCallan in 2007, and then EuroGas II purchased McCallan at some

14:43 unspecified time in the future. That's a remarkable admission. That's the investment; they don't even tell you when they made it. And then McCallan transferred EuroGas GmbH to EuroGas AG, a Swiss entity, in 2012.

(Slide 19) These are the two paragraphs in the Reply where Claimants take this position. This is the totality of the information we were provided before last week about this McCallan transaction.

Okay. Now, if we take a step back, we might ask ourselves: how do all these theories and facts -- alleged facts -- fit together? How can we make sense of them? How should we think about them? What kind of analytic framework do we put them in to understand how this all will work?

As you've seen from our Rejoinder, these complicated and ever-evolving jurisdictional "facts" have made a complete and total mess of Claimants' jurisdictional case. I'm going to take you through that complexity today in a way that I hope will be digestible, and as simply as I can. But before I do that, I want to tell you: you can avoid all of it. You can avoid the complexity. There is a threshold issue where, if you decide it a particular way, all of this gets avoided.

If the Tribunal simply concludes that EuroGas did not emerge from the bankruptcy with the alleged

14:44 investment, if you make that conclusion, that the bankruptcy estate did not abandon the asset and still owns it, none of these facts matter. Because if the bankruptcy estate owns the investment, then neither McCallan nor EuroGas II nor EuroGas AG could have later come into possession of it, whether by merger, acquisition, sale or otherwise.

So what I'm going to turn to next is that threshold issue. I'm going to avoid the complexity for now; we'll go through the threshold issue. And only if you decide against us on the threshold issue would all the complexity then come into play.

The first issue then: whether EuroGas I emerged from the bankruptcy with the alleged investment. If the Tribunal concludes it did not emerge with the investment, they can stop there; it has no jurisdiction over EuroGas II.

The entire problem in the bankruptcy was created because of one fact. The bankruptcy judge in that case issued an order for persons responsible for the debtor -- the debtor was EuroGas I -- to file schedules of assets and liabilities of the company. That was a statutory requirement, it was an order from the judge, and he named three individuals that were under an obligation to file those schedules of assets and

14:46 liabilities. Wolfgang Rauball was number 1.

Not one person on that list filed those schedules of assets and liabilities. It was a violation of the court's order then, and Mr Rauball remains in violation of that order now. If accurate schedules of assets and liabilities had been filed, then none of this would have happened. That's the root of the problem here.

This is important because under US bankruptcy law, as an unscheduled asset, the alleged investment remains the property of the EuroGas bankruptcy estate and it remains -- and this is important -- protected by the automatic stay that is triggered in bankruptcy from further transactions dealing with the investments or the assets of the debtor. There's an automatic stay that's put in place.

This position was fully supported by our expert Ms Annette Jarvis, a prominent member of the Utah bankruptcy bar and a partner at the international law firm of Dorsey & Whitney. The Tribunal will recall that Dr Gharavi unsuccessfully tried to have Ms Jarvis's report stricken from the record. Given how devastating it is to their case, that's not surprising. His attacks were based on the fact that while she was at a different law firm than the one she is at now, she represented an individual named Steve Smith.

14:47 Steve Smith was the trustee in an earlier bankruptcy called the McKenzie bankruptcy; you'll have read about it in our papers. That's the bankruptcy out of which the court issued that $113 million judgment that I described earlier, and that's the court decision that made those very serious and grave findings against Mr Rauball for fraud, conspiracy and providing false testimony. Mr Smith was the trustee in that case. Ms Jarvis was not involved in that case at all.

Mr Smith had a judgment against EuroGas because of that bankruptcy which went unpaid, and so he involuntarily caused EuroGas I to be put into involuntary bankruptcy, because the judgment was unpaid in Utah, which is the jurisdiction in which EuroGas I was incorporated, and there he retained Ms Jarvis as local counsel. Mr Smith himself is a lawyer, but he retained Ms Jarvis to be local counsel. And I should point out Ms Jarvis openly disclosed this fact in her first report.

Based on these factors, Claimants sought to strike her report on the basis -- and I'm quoting now from their letter (slide 20) -- that:

"... it [was] only to conceal her ... professional negligence towards her former client that [she] ... agreed to issue an expert report [in this

14:49 arbitration]..."

That is an extraordinary comment about a distinguished member of the United States bankruptcy bar. In fact the Claimants admitted in that correspondence that they too sought to hire Ms Jarvis to be their expert in this arbitration, and she didn't respond to their email. So it is particularly curious that they would now criticise the Slovak Republic for engaging her as an expert.

In any event, her former client Mr Smith, a lawyer himself, has never, ever suggested any dissatisfaction with the professional services she rendered so many years ago. And Ms Jarvis explained to the Tribunal in that correspondence -- she issued a statement we attached (slide 21) -- that the issues on which she is now opining before you were not the issues on which she gave any kind of legal advice in that case. All of the factual information contained in her report came from publicly available sources and documents, and nothing set forth in her report is based on any type of privileged or confidential information. To be absolutely clear, neither she nor her former client have any interest in this arbitration.

I might also point out that she is the partner in charge of bankruptcy at Dorsey & Whitney, she is

14:50 a member of her firm's management committee, and she recently received the Utah Lawyer of the Year award in her state; not just in bankruptcy, across all practice areas. The allegation that she is an expert in this proceeding to cover for professional negligence is both disappointing and without colourable basis, and it warrants no further response.

In her report Ms Jarvis explains that the talc interest could not be abandoned and must still be part of the bankruptcy estate because it was never listed on schedules of assets and liabilities, since none were filed, in violation of the court order.

The Claimants, on the other hand, have offered the expert report of Mr Leta and Mr Merrill, who somehow opine that a trustee can abandon an asset even though it's not scheduled. All you need to do is look at the statute that governs abandonment in the United States, and we will come to that statute soon. I'm getting ahead of myself.

Given EuroGas's proposed deal with the trustee, you might wonder what role, if any, the members of this Tribunal have to play in resolving the disagreement between Ms Jarvis on the one hand and Mr Leta on the other; that is, on resolving the question of whether the bankruptcy estate owns the asset or whether it was

14:51 abandoned. The answer, members of the Tribunal, is that unless the trustee changes her mind and declares whether the estate owns it or not, and assuming that's approved by a court, you, members of the Tribunal, will have to answer this question.

The reason is because the trustee's proposed deal with EuroGas II right now does not take a position on whether estate owns it or not; it simply says that the trustee is selling whatever interest it may have in the estate. It's what under US law we call a "quit claim". You are not making a representation as to whether you own it or not, as the seller. It means you, members of the Tribunal, will have to decide this issue.

Claimants will say, "But we bought whatever interest the estate has nunc pro tunc", which can be understood as meaning "retroactively". But as the Tribunal is all too aware, even if the trustee's proposed abandonment is retroactive, or purports to be retroactive, under public international law an investor cannot use a retroactive transaction to create investment protection that did not otherwise exist.

Let me give you an example. I have a colleague down the table, Mr Pekar. Mr Pekar is a national of the Czech Republic. Let's assume he makes an investment in the Czech Republic, and the Czech Republic expropriates

14:53 his domestic investment. He then sells his rights to the investment to me. I am a US national. And as we are permitted to do under civil law, we make our deal retroactive.

Can I bring a claim for a violation of the US-Czech Bilateral Investment Treaty? Of course not. And Mr Pekar and I know this all too well, having dealt with this issue, with one member of the Tribunal sitting as chair, in the Phoenix Action v Czech Republic case, where that issue was before the tribunal and we know how they ruled.

The point is: even if the trustee's deal were to be approved -- and we do not think it will be -- but even if it were to be approved, they haven't solved anything. It would still not solve the jurisdictional problem. And that means you will have to decide whether the asset was abandoned or not.

Fortunately the law is clear on the point. If we go to the next slide (22), the law is so clear on the point that even EuroGas's counsel has agreed with us. This is the document I showed you earlier where Ms Burton, counsel for EuroGas, stated:

"The reopening of the case will necessarily carry with it the conclusion that the asset was not abandoned and EuroGas I still owns the claim and EuroGas II ..."

14:54 The only EuroGas entity that's a Claimant in this arbitration:

"... does not."

It is not surprising that she took this position; she is absolutely right. Assets cannot be abandoned by operation of law in the United States unless they are listed on schedules of assets and liabilities with the Bankruptcy Court, period. Indeed, the statute to which I referred before specifically points this out.

(Slide 23) This is the statute that governs the abandonment of property in US Bankruptcy Court. You will see there are various provisions that contemplate court approval. One of them allows assets to be abandoned with court approval. We all know that didn't happen here. It's not even argued by the Claimants that there was court approval. The only provision that Claimants say could apply here is subsection (c), and it states:

"... any property scheduled ... [that is] not otherwise administered ... [can be] abandoned ..."

But the word "scheduled" is right there. There is simply no way around it. That is the only mechanism by which an asset can be abandoned by operation of law, and it explicitly requires the assets to be scheduled. It is undisputed they weren't here.

14:55 The case law has confirmed this point. I have here just a number of cases; I am not going to take you through each one. I want to spend just a minute on the very first one, but after that we are going to move through them very quickly.

The first one I am going to focus on is a case called Brumfiel (slide 24). Brumfiel is a case we discussed with some prominence in our last brief. We did so because it's a recent decision from the Tenth Circuit BAP; this is the judicial body directly above the Utah court.

In Brumfiel there was a debtor who listed in schedules -- so she did more here than EuroGas -- certain mortgages, but didn't disclose -- and I really want to call your attention to this because I'm going to come back to it in a minute -- did not disclose that there may be litigation, claims she may have arising out of those mortgages. She simply listed the mortgages, but not the claims; very important.

She later tries to bring a lawsuit against the bank that held those mortgages. The courts conclude that even though the mortgage was listed, because the claim -- the litigation arising out of the asset -- was not scheduled, the assets could not have been abandoned. The trustee had them. And you know who bought that

14:57 claim? The bank. It bought the claim against itself. And the Tenth Circuit courts concluded that that was perfectly appropriate; nothing wrong with that at all.

This case makes clear that if the assets -- including claims -- are not scheduled, then they can't be abandoned.

As I said, if you go to the next slide (25), you will see there are a number of cases from the Tenth Circuit that also stand for this proposition.

The circuit courts, by the way, are the United States courts of appeal, federal courts of the United States. They are all over the country. As you can see, this is hardly something unique to Utah. Not only is it the Tenth Circuit, but the First Circuit, the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, the Ninth Circuit, the Eleventh Circuit; and lower courts are of the same opinion. These are all courts directly below the United States Supreme Court. Indeed, even in the Brumfiel case, they tried to appeal it to the US Supreme Court, and the US Supreme Court wouldn't even take it.

Despite that crystal-clear proposition of law, the Claimants have told you that the trustee had subjective knowledge of the asset. So even though it wasn't scheduled, his subjective knowledge was enough to allow

14:58 for the abandonment. But the case law is equally clear, and of course it has to be the case -- based on the proposition of law I just described, that it has to be scheduled -- it must be the case that the trustee's subjective knowledge is irrelevant.

(Slide 36) Here is a case where the court in the United States said:

"The Bankruptcy Court will not do a case by case analysis of what the Trustee's knowledge was and whether that knowledge was enough to result in abandonment of an unscheduled asset ... Thus, because the Debtor did not properly schedule the cause of action it was not abandoned by operation of law pursuant to ..."

And you see the subsection (c) in that statutory provision; that's the operation of law.

But even if you were to look at the trustee's subjective knowledge -- and you are not, the case law is clear -- but even if you did, there is nothing to suggest that this trustee had full disclosure of the talc interests, or -- and I am going to focus on this more particularly -- this ICSID claim.

Indeed, EuroGas I's CFO, Hank Blankenstein, told the trustee under oath that EuroGas I did not own the talc mines. If you look up on the screen, you will see a cross-examination that the trustee did of

15:00 Mr Blankenstein (slide 41). This is before EuroGas and Mr Rauball started to refuse to participate in the bankruptcy and started to refuse returning counsel's calls. The question is asked:

"Question: ... And that is the property that is referred to as the ... Talc Deposit; is that right?

"Answer: Yes.

"Question: Correct?

"Answer: Correct.

"Question: Now, isn't it true that Eurogas does not even own this talc project?

"Answer: That's correct."

That's what he told the trustee.

Claimants will tell you today that Mr Blankenstein was only talking about Belmont's 57% interest, not EuroGas's 33% interest. They have said this before. When you hear that, members of the Tribunal, please read the transcript. It is clear that Mr Blankenstein led this trustee to believe that EuroGas I has no interest at all. And I will show you this, because on the next slide (42) Mr Smith, the trustee, says to the court:

"I'm trying to show, Your Honor, that the assets have been dissipated, that there is really nothing left."

To suggest this trustee thought he was abandoning

15:01 an ICSID claim worth the kind of money the Claimants are now claiming for is preposterous.

The Claimants will also cite you to an SEC filing which was attached to one of the trustee's briefs. I think this is, if memory serves well, C-69. It's a brief the trustee filed with the court. The brief says nothing about the talc interests, but it attaches an SEC filing, and buried in the SEC filing they talk about the talc interests.

What do they say about it? They say the talc interests have been revoked because the excavation area was reassigned. Again, reinforcing there's nothing for the trustee to deal with, there's no asset of value. There is no mention not only of this ICSID claim, but any present or future litigation that could arise out of the talc interests.

That's why I focused you so much, when we were reviewing the Brumfiel case, on the fact that even though the mortgage in that case had been scheduled, the claim itself was not, and that was found, even there, not to have been properly disclosed to the trustee.

So when did EuroGas finally list in its SEC filings this litigation, the ICSID claim and the related litigation? It won't surprise you to learn it was after the bankruptcy closed. Mr Rauball created another

15:02 entity by the same name, the same address, the same officers and directors -- to the outside world, everyone thinks it's the same company -- so he could wait until the bankruptcy was over and exercise assets like this ICSID claim that were never disclosed to the trustee, and for that reason they did not publish in their SEC statements that the ICSID claim was something they were even contemplating until after the bankruptcy was over.

As I note to you, the case law is uniform that the actual knowledge of the trustee is irrelevant. So you don't need to wade into this analysis about what the trustee knew or did not know. But even if it were relevant, you can see that the trustee did not have full disclosure. And because of that, the claim was not abandoned; and because the estate still owns the ICSID claim, EuroGas II is prosecuting a claim before you right now that it does not own, which is why they are trying to pay $425,000 and other consideration for it from the estate now.

If the Tribunal reaches this conclusion, you need not wade into the complexity I'm about to get into. With that conclusion, the Tribunal has no jurisdiction over EuroGas II, and the matter is over.

I'm going to pause here because I am about to address the complexity now. I'm going to assume that

15:04 you disagree with the argument that I just made, and that you conclude that somehow EuroGas I, despite being a dissolved, defunct company in the bankruptcy, somehow emerged with this claim.

As you will see, there are numerous other jurisdictional problems in that scenario that still remain, and this is paramount. Even if the trustee's deal gets approved by the court later this month, or the next month, these jurisdictional problems still exist; and that's even if you conclude it applies retroactively, which, as I told you, you can't do. So even if the deal gets approved, even if it applies retroactively to create ICSID jurisdiction where it doesn't otherwise exist, all of these jurisdictional problems still remain.

Okay. Let's first turn to Claimants' merger theory. In one of the iterations of its jurisdictional case, Claimants argued that EuroGas I merged with EuroGas II, and somehow the ICSID claim then magically transferred from one to the other.

How did these companies "merge"? Well, Claimants have come up with a number of different theories. As I noted to you, one of them is what's called a "type-F reorganisation", which was effectuated by a joint stipulation signed by the officers and directors of the

15:05 company in 2008. You saw already that they abandoned that argument; I had showed you that.

They also seem to suggest -- although it's not entirely clear -- that it might have been statutory merger. Merger is a state law doctrine because corporations and corporate law are a matter of state law. There are statutes in every state that govern when companies can merge.

To do that, you have to file articles of merger with the Division of Corporations in the relevant state. That makes sense, because the point is that the states want the public to be able to have access to that information. This is not something that's supposed to be done in secret. The merger is effective only when the articles of merger are actually filed in that Division of Corporations.

There is no dispute that no articles of merger were ever filed here. How was it transferred then, when we pointed this out? They instead reverted to this merger under de facto common-law merger.

Let's go to the next slide, if we could. Okay, we will come to that shortly.

This common-law merger doctrine does not exist to transfer assets from one corporation to another. What is de facto common-law merger? It is a common-law

15:07 doctrine, which means it's been created by judges in the case law, and it arises in a situation where you have one company that transfers its assets but does not merge with a second company. So the second company now holds all the assets. And there are creditors that are still owed money from the first company, so they sue the successor company before a US judge and they ask the judge to consider the two merged for purposes of attributing the liabilities of the first corporation, so that the corporation can't escape its obligations just by transferring its assets from company to company to company.

In other words, it's a doctrine to punish successor companies. It has never -- and the Claimants have not cited a single case -- been used to effectuate corporate mergers. Think about it: if it did, what would be the point of the statutes requiring the articles of merger? If one could accomplish this simply by doing nothing, or by signing a joint stipulation in secret, why would anyone comply with the statute?

Moreover, it's a common-law doctrine: it has to be declared by the judge. The judge has to say, "Yes, I'm going to hold the successor corporation liable for the predecessor's liabilities". There's never been anything like that here. Think about the point of the statute

15:09 from the respective states across the United States and why they have those requirements for filing, so that it not be done in secret.

Now, because we have a capitally starved company on the other side, I think the absurdity of this argument isn't as clear as it would be if we considered capitally healthy companies. Just imagine for a moment that Lufthansa and United secretly merged, but didn't tell anyone; they had a secret document between them. They're publicly traded, just like EuroGas was. They don't tell the market. You've never seen it in any SEC statement or public filing that EuroGas made that they did this merger. They don't file anything with the respective states of incorporation; it's just done in secret. I mean, that would be a laughable proposition, and that is the substance of this argument.

Okay, that's merger. I think understanding that that argument can't possibly work, they then offered the McCallan theory in their last brief. So now we turn to McCallan, and this is where it does get complicated.

As I said, the McCallan theory, the totality of what we have been told about it is up on the screen (slide 43). The theory appears to be that EuroGas I -- and again, this is on the assumption that it emerges from bankruptcy with the asset -- EuroGas I transfers

15:10 the claim -- I should say transfers its shareholding in EuroGas GmbH, the Austrian entity, to a UK entity in 2007.

So if you look at this paragraph here -- let me see if my pointer will work -- you see here it has the date: 2007. That's when EuroGas I transfers its interest in GmbH to McCallan. We have that date. But as I will show you, that's EuroGas I transferring the asset away; and as I will tell you, that means that the US-Slovak BIT stops to apply.

Then here's the important point: the EuroGas II company -- that's what they just call "EuroGas" -- "thereafter acquired the entirety of McCallan's issued shares", the implication being that they therefore then reacquire indirectly the EuroGas GmbH shareholding. Do you notice there's no date? That's the investment. In any event, we know it has to be after 2007; and it appears they say it was before June 2012, because then what apparently happens is McCallan transfers its interest [in] GmbH to a new Swiss subsidiary, EuroGas AG.

Here's where it gets complicated, because if this new theory is correct, it would mean -- and I direct your attention to the next slide (44) -- that the Tribunal is tracing two assets now. What do I mean by

15:12 that?

EuroGas I's ICSID claim relating to the 2005 reassignment of the excavation area, the ICSID claim that the excavation area was reassigned unlawfully, that is an asset of EuroGas I; it's not an asset of GmbH. It can't be, because GmbH is an Austrian entity. Only the US entity can own that asset. So when you transfer GmbH, you can't transfer the reassignment claim; it stays with EuroGas I. GmbH goes to McCallan.

So the second asset we have to trace is the GmbH shareholding. This reassignment claim stays with EuroGas I under this hypothetical. The GmbH shareholding gets moved to McCallan. And a mess ensues, because now you have to trace both assets throughout time, and they're moving around, and you have to determine what it means for your jurisdiction at all relevant points in time. This is the complexity that I warned you about.

You might also think, as you know I will get to -- totally different jurisdictional objection relating to Belmont -- Belmont sold its 57% interest to EuroGas, they did so in 2001; how does that fit into this? And the answer is that that 57% interest that Belmont sold EuroGas in 2001 -- remember, EuroGas has its own 33% interest under the GmbH shareholding -- that 57%

15:13 interest was not held through GmbH or any other subsidiary other than Rozmin. It means that the 57% stays with this reassignment claim; only EuroGas's 33% goes with the GmbH.

Is it fair to ask: if this is really what happened, why didn't Claimants tell the Tribunal this story in its first filing, or its second, or its third, fourth, fifth or sixth? The seventh submission is the first time we heard anything about this.

I should also tell you that McCallan is a related party again. These are all trafficking in corporate shells. In fact, Mr Rauball held a position in McCallan. And of course we know that because even Claimants' stated that EuroGas "caused McCallan to transfer" the EuroGas GmbH shareholding.

Okay. So now we're tracing two assets, and you have to determine at each point in time what your jurisdiction is. The way I'm going to try to simplify this is by looking at four different points in time (slide 45).

Let's first start with prior to 13th July 2007. What's that date? That is the date we are told that McCallan acquired from EuroGas I, that EuroGas I transferred the GmbH shareholding. So before that time, and under the assumption the asset was abandoned, and

15:15 EuroGas I emerged from the bankruptcy with the asset, under that assumption, before this date, EuroGas I had both: it had both the reassignment claim, the ICSID claim, and the GmbH shareholding. It had both.

What happens after that date? Well, on that date, EuroGas I transfers away the GmbH shareholding. At that moment the US-Slovak BIT ceases to apply to the talc interest, because it transfers it to a UK entity that doesn't enjoy any protection under the US-Slovak BIT.

I say "until some unspecified time". Why? Because we don't know when EuroGas II acquired McCallan -- and therefore the GmbH shareholding -- back. They didn't tell us. I already told you in the prior slide that there simply is no date specified.

Mr Chairman, members of the Tribunal, last week the Claimants submitted five new documents concerning McCallan. They blamed us for not putting these documents into the record to carry their burden of proof. In the cover letter, in a very strongly worded cover letter from counsel, we were told that it was outrageous for us to make these complaints when we had had the documents produced to them, and asked you to introduce those documents. You agreed to introduce those documents, so I will address them now briefly.

Those documents do not tell you when EuroGas II

15:17 1 became the shareholder of McCallan, and therefore GmbH,
2 and therefore Rozmin, and therefore the talc interests.
3 They don't tell you that.
4 There are two agreements under those five documents.
5 One of those agreements is a conditional agreement, you
6 will see it has a variety of different conditions in it,
7 and we do not know if those conditions were ever
8 satisfied and, if so, when they were satisfied. So it
9 did not effectuate a transfer of shares.
10 The other document is an option to purchase shares
11 in the future. It too is not an agreement for the
12 purchase of the shares. There is a deed showing that at
13 some point in time the shares were transferred from
14 EuroGas II to some new entity, but that document does
15 not tell you the date on which EuroGas II purchased its
16 interest in McCallan, and therefore GmbH. And that's
17 the investment at issue. We still don't know.
18 Okay. Now we go to some unspecified time between
19 13th July 2007 and 4th June. We start with the
20 unspecified time too because, again, that's whenever
21 EuroGas II purchased its interest in McCallan, and
22 therefore in GmbH, and up till 4th June 2007. Actually, before I do that, let me go back to the prior time period, point number ii.
23 As I noted, as of 13th July, the US-Slovak BIT
24 ceases to apply. I should make clear: the reassignment
25 claim itself -- not the GmbH shareholding but the

15:18 reassignment claim -- would have stayed with EuroGas. The point is the Tribunal's jurisdiction ratione temporis over any alleged breaches of the US-Slovak BIT ceases on 13th July 2007. This is important because the Tribunal will recall that Claimants complain about a number of court decisions and their implementation by Slovak authorities, and they all occurred after that date, after the US-Slovak BIT stopped applying.

Okay, now we move to the next time period, point number iii here below. Claimants state that -- and this was in the paragraph we saw earlier -- EuroGas II, the Claimant, acquired the entirety of McCallan's issued shares at some unspecified time, and then in June 2012 EuroGas II indirectly acquires this asset. What does it acquire? It is a dead Rozmin company whose shareholding has not enjoyed any BIT protection, since McCallan is now a UK company -- and this is important -- with notice of all facts that had occurred prior to that date. And we all know doctrines where investors take with full notice of facts that had previously occurred and cannot complain about them later.

EuroGas II itself can only bring claims relating to the US-Slovak BIT after its alleged acquisition of the shareholding in McCallan, whenever that was, which we still don't know.

15:20 Then finally, after 4th June 2012. That's the date on which EuroGas II allegedly caused McCallan to transfer its interest in EuroGas GmbH, and thus to Rozmin, to EuroGas AG. Because of the total lack of information provided by Claimants about this transaction, neither the Slovak Republic nor the Tribunal has any way of knowing what impact it has on this Tribunal's jurisdiction.

Where does this leave us? And again, we are presuming abandonment, which we deny; we are presuming that the trustees deal with EuroGas II was approved by the judge, and can retroactively create ICSID jurisdiction, which we deny; we're assuming all of that. Even with those assumptions, this is where we're left; these are the jurisdictional problems that remain (slide 46).

1. The US-Slovak BIT ceased to apply as to EuroGas I when it sold the GmbH shareholding, allegedly, to McCallan in 2007.

2. EuroGas II's "investment" was not made until some unspecified time between 2007 and 2012, when it allegedly acquired the GmbH shareholding indirectly through McCallan.

3. EuroGas II never reacquired the reassignment claim. Let me repeat that: EuroGas II never reacquired

15:21 the reassignment claim, which is at the heart of the dispute. And that's the Claimant in this arbitration.

4. The Tribunal has no jurisdiction ratione temporis before EuroGas II made its alleged investment by acquiring McCallan; and we don't know when that was, we don't know when it occurred.

5. Therefore EuroGas II cannot complain of any actions that predated that point in time, including the 2005 reassignment.

6. EuroGas II cannot complain about the Slovak court actions that postdated its investment because the investment, previously unprotected by a BIT because it bought it from a UK investor, in an asset embroiled in domestic litigation, is not protected under the Phoenix Action doctrine, and it leads to the conclusion that the investor, when it made that alleged investment, took notice of all facts that had previously occurred and cannot complain about them now.

As you can see, and as I warned, for the Tribunal to rule in favour of EuroGas II on jurisdiction, it would have to make so many factual assumptions, it would have to untangle so many corporate shell games, it would have to overlook the complete lack of evidence supporting these transactions, it would have to undertake so many legal gymnastics that the exercise is quite literally

15:23 dizzying. For all the reasons we've explained, EuroGas II does not own the alleged investment and has no standing before you.

But now let's assume that all of that's wrong. Let's assume that Claimants own all the relevant investments at all the relevant times. There is another reason why you have no jurisdiction, totally independent of the first, and it is because the Slovak Republic denied the benefits of the Slovak-US treaty.

Members of the Tribunal, we're all familiar with the case law on denial of benefits. This case is different. It's the first case in the history, to our knowledge, of investment treaty arbitration where the respondent state denied the benefits before the arbitration was commenced. We; are aware of no time where that has ever happened before. Why is that relevant? Because we denied the right to arbitration itself.

We all know in a treaty there are a bundle of rights: substantive rights, procedural rights. We all know there are cases that say, "You can't deny the arbitration right", but they're all ECT cases; and for good reason, because the ECT's denial of benefits clause says that you can deny only the benefits in I think it's Part III, and the dispute resolution clause is in a different part. In this case it's a US treaty, and so

15:24 the US cases apply rather than the ECT cases, and there is no such limitation.

So whereas the ECT cases, like Plama v Bulgaria and the others, conclude that the arbitration right itself cannot be denied, that is not the case in the US treaties. The US treaty cases -- and this denial of benefits clause in this US treaty is identical to the other ones that have been arbitrated before -- have held that the arbitration right can be denied. The cases are Pac Rim v El Salvador, Ulysseas v Ecuador.

What does this mean? It means, coming to the other issue that always comes up in these cases, that we denied the right prospectively. We do not need retroactive application of the denial of benefits clause. We denied it before the arbitration right was exercised, and therefore it was a right not being exercised that we denied prospectively. So any debate about prospective versus retroactive is irrelevant. To be sure, we think it applies retroactively as well, even to the substantive provisions of the treaty. But you need not reach that decision because we denied the arbitration right prospectively.

It may surprise you to know that in fact that issue, while I thought it was important to describe it to you, is not disputed between the parties right now. If you

15:26 go to this slide here (slide 53) and you look at the Claimants' Reply, in their denial of benefits section they do not make the argument that retroactive versus prospective even matters here; they don't quibble with it at all. It's an undisputed point now.

They did not dispute that a denial of benefits can apply even retroactively, even the substantive provisions of the treaty. Nor did they dispute that we have the right to deny the arbitration right itself; that's not in dispute. Nor did they deny that EuroGas II is controlled by Mr Rauball, who is a national of Germany, which is considered to be a third country within the meaning of Article I(2) of the US-Slovak Bilateral Investment Treaty.

Could you go back a slide (52). Just for the Tribunal's benefit, this is the letter where the Slovak Republic denied the benefits. It was on 21st December 2012, well before the arbitration right was exercised in this case, on 25th June 2014.

So to the extent that Claimants previously argued these points, they are now abandoned.

So what is Claimants' argument? There are a variety of arguments; in the interests of time, I'm not going to take you through each one. But the one that they seem to focus on the most is that EuroGas does have

15:27 substantial business activities in the United States, so I'm going to spend just a minute on that. As to the other arguments, we've fully set them forth in our brief and the Tribunal can read them at its convenience.

Putting aside for the moment the question of who has the burden of proof on this issue -- and I will return to that at the end of my presentation -- the Slovak Republic has offered voluminous evidence that EuroGas II, as well as EuroGas I, if you want to include that in the analysis as well, had no real business activity in the United States during the relevant time.

(Slide 56) We have shown that:

(1) EuroGas [II] has not conducted any material operations in the US from its creation in 2005 to the present;

(2) EuroGas II has been managed outside of the United States. We know it's been managed in Canada, Western and Central Europe, most recently in Austria and Switzerland;

(3) We know that Dun & Bradstreet reports have stated that EuroGas II has been inactive since at least 2nd December 2010, well before this arbitration;

(4) EuroGas II maintains no physical office in the US. Its purported office in New York is a mere mail drop;

15:29 (5) EuroGas II has repeatedly failed to meet its statutory requirements to file audited financial statements for the periods ending 2007, 2008 and 2009;

(6) EuroGas II was de-registered by the SEC on 30th March 2011 for non-compliance with US securities laws;

(7) EuroGas has no direct operating US subsidiaries since its bankruptcy;

And (8) EuroGas, by its own admission, lacked the ability to pay its auditors as far back as 2003, which coincided with its administrative dissolution.

The only activities that Claimants have been able to point to are lawsuits brought against EuroGas and shareholdings, idle shareholdings in companies. But, as the Tribunal in Pac Rim v El Salvador confirmed -- and we cite this in our brief -- the mere shareholding in another entity is not enough to give rise to substantial business activities in the US.

One can hardly expect the Slovak Republic to do more. Any possible evidence of substantial business activities would be in the hands of the Claimants. And perhaps for that reason, the Tribunal recognised in Procedural Order No. 4 (slide 57) that it is not the Slovak Republic that bears the burden on this issue, even though we have been told that we haven't satisfied

15:30 our burden by Claimants.

In fact, during document production in this arbitration, the Slovak Republic requested -- and you can see the request, it's the top box -- "Documents showing any business activities of EuroGas I or EuroGas II in the US since 1998". You denied that request, and your reasoning was that Claimants have the burden of proof. They've had every chance to put evidence showing EuroGas II's substantial business activities in the US; they have failed to do so.

That concludes my presentation on why the Tribunal lacks jurisdiction over EuroGas II. I now turn to Belmont.

The first reason the Tribunal lacks jurisdiction over Belmont is that it sold its shareholding in 2001. It told the police it did so, it told investors it did so, it told the marketplace it did so.

To set the stage for this, let me begin by noting the following. What we have seen in this case is a pattern of intentionally vaguely worded contracts between EuroGas and Belmont and other related companies. They are vaguely worded between affiliate companies, insiders, often acting in tandem to achieve common objectives. Often these agreements provide that they will only take effect if certain vaguely worded

15:31 conditions are satisfied or not.

Why do they do this? They do this so that when it suits their interest, they'll say it's a sale, it occurred, it's a transaction completed; and when it doesn't suit their interest, they will say the deal hasn't been concluded yet. They give themselves the freedom to take whatever position suits their interests.

As you will see, I am going to show you numerous statements where Belmont told the world, "We sold our 57% interest", and I will show you numerous statements from EuroGas telling the world, "We own now the 57% interest", and then later today they will show you different statements where they say the opposite. They have the burden to establish the facts necessary for your jurisdiction. These contracts are drafted intentionally so they can do this.

So what is the deal that Belmont signed in 2001 to transfer its 57% shareholding to EuroGas I? The document is up on the screen (slide 63). Yet again, the Claimants did not notify you of this; we had to find this ourselves again. It is a sale purchase agreement dated 27th March 2001.

In general terms, this SPA provided that Belmont would transfer its 57% interest to EuroGas I, and in exchange EuroGas I would pay Belmont 12 million of its

15:33 own shares. This becomes very important later. So Belmont will give its 57% interest in Rozmin, and in exchange EuroGas will give it 12 million of its shares.

This agreement is governed by British Colombia law. We have an expert on British Colombia law: his name is Mr John Anderson. He will be with us later this week. He concluded in his first report, and reiterated in his second report, as you see up on the screen (slide 64) -- this actually is his report -- Belmont "transferred to EuroGas [I] ownership [of] Belmont's 57% interest in Rozmin", and retained the shares as a collateral interest. I will read the quote:

"... retained a security interest in the 57% ... to secure EuroGas [I's] compliance with [other] covenants under ... the ... Agreement."

Those other covenants were effectively provisions that would require EuroGas to issue additional shares, depending on various events. 57% gets sold, but Belmont keeps the shares as security, collateral.

Claimants dispute that the 57% interest was transferred. They have no British Colombia law expert to support their position. No one who is qualified under British Colombia law has agreed with their position. Their arguments come from their advocates in this arbitration, who are not independent and who are

15:34 not experts qualified in British Colombia law.

But perhaps most tellingly, the Claimants themselves -- these parties, Belmont and EuroGas -- agreed with Mr Anderson's analysis before this arbitration started, and now I'm going to show you statement after statement after statement. If even one of these statements existed in an ordinary course, it would be dispositive. Look at how many we have.

(Slide 65) In its audited financial statements of 2001 and 2002, Belmont declared to the investing public that it had:

"... sold its 57% interest in Rozmin ... effective March 27, 2001."

And it states that it:

"... [held] the shares ..."

And this is the key part:

"... as a collateral measure only."

Only as security.

It also stated that "EuroGas acquired effective control of Rozmin" as of that date.

Now, note this quote comes from the audited financial statements. Audited. That means auditors went in and presumably read the contract as well, and the auditors agreed with Mr Anderson's conclusion.

(Slide 66) The next statement: Belmont publicly

15:36 informed its shareholders and the market in its 2002 annual report that it had sold its 57% interest in Rozmin, effective March 2001, telling shareholders this.

What about EuroGas I? EuroGas I made its own comments to the marketplace. (Slide 67) In its annual reports for 2002 to 2005, it states that:

"By virtue of its ownership of Rozmin and the talc deposit, EuroGas bears the full responsibility ..."

Full responsibility:

"... to fund the development costs necessary to bring the deposit to commercial production."

(Slide 68) The next statement: Belmont publicly disclosed in its audited financial statements for 2004 and 2005 that it held:

"[A] collateral security interest [which] is not considered by management to be a controlling or significant interest in the shares or operation of Rozmin ..."

(Slide 69) The next statement is different from the others. This is EuroGas going to a third-party purchaser and representing that it owns the 57%, and offering to give the third-party purchaser an option on the 57%. How can EuroGas be offering something it doesn't own? Because under Claimants' theory, Belmont owns it.

15:37 I want to be clear that our expert, who is with us today at the very end of the table, Mr Sirshar Qureshi, has done a forensic analysis of all the shell games that have gone on here. That's why they are not crossing him. He has serious questions about the bona fides of this particular transaction. The counterparty here was an entity called Protec Industries. But regardless of the bona fides of this transaction, it is clear that EuroGas is representing to a third-party purchaser its control over the 57% interest.

(Slide 70) The next document: Belmont thereafter threatened to repossess -- you don’t have to repossess something you already have -- the 57% interest that Belmont had previously described in its financial statements as a collateral interest. You don't have to repossess something you already have.

(Slide 71) The next statement: Belmont thereafter agreed not to foreclose on the 57% interest. That of course means it's collateral.

(Slide 73) And finally -- and if there's any admission in this case you should pay attention to, it's this one -- Mr Agyagos, the head of Belmont, gave a sworn statement to the Slovak police in 2009, and he stated:

"... Belmont Vancouver sold its business share around 2002 ..."

15:39 It should be 2001:

"... to company EuroGas ..."

And here is the key part:

"... we [Belmont] did not incur direct damage ..."

From what? From the actions at issue in this arbitration. If you read that affidavit, they are about the actions at issue in this arbitration.

"... we [Belmont] did not incur direct damage ..."

Why? As the statement states: because we sold the business shares around 2002. This statement, members of the Tribunal, was given under oath.

On the next slide (74) you will see a criminal provision. He was warned that his statement, if untrue, would result in criminal sanctions. Either he was lying to the Slovak police in 2009, which carries with it criminal sanctions, or he is lying to you now.

THE PRESIDENT: Is it Mr Rauball or Mr Agyagos?

MR ANWAY: Mr Agyagos.

THE PRESIDENT: Because on the slide --

MR ANWAY: The slide is incorrect.

Oh, I think I skipped this, Mr Chairman. Let me be clear. This is a statement from Mr Rauball in which he told the Slovak authorities that EuroGas owns the 57% that Belmont now owns. This is slide 72. The sworn statement with the admission I just mentioned was

15:40 slide 73. It was my mistake, I skipped over 72. I should not have, I apologise.

Go to the next one (slide 73). This is the admission from Mr Agyagos stating Belmont was not damaged because it sold its shares in 2002. He actually spoke incorrectly; it was 2001. You can see his signature there. As I mentioned, he was either lying to the police then or he is lying to this Tribunal now.

There are one or two other statements. The next one is a statement from EuroGas. So we have both parties announcing that this transaction is done. As I said, they will show you contrary statements in their presentation today, but that's the whole point of why the transaction is structured this way. (Slide 75) Again, EuroGas tells the marketplace -- this in fact is to the German stock exchange, and it states:

"EuroGas Inc is a holder of 57% of [the] shares ..."

That's the investment that Belmont is claiming before you today.

Now we go to the next one. This one is important because, as I mentioned, the consideration under the deal was that Belmont sent 57% to EuroGas, and EuroGas sent 12 million of its own shares to Belmont in return. Why is that important? If there were any remaining doubt that this transaction occurred, this erases it.

15:42 Both parties, having given that consideration, took that consideration and sold it on to third parties. In other words, Belmont received the 12 million EuroGas shares in exchange for the 57%, and then sold it to a third party.

(Slide 76) This is audited, consolidated financial statements where Belmont states:

"As at year end, all of the original 12,000,000 shares received from EuroGas Inc had been disposed of for proceeds of approximately $1,379,700."

But what about EuroGas's consideration? What did it receive under the deal? It received the 57%. It sold that to a third party. Let me repeat that: EuroGas sold the 57% on to a third party.

And if we go to the next slide (77), this is a filing from EuroGas AG, made to the German stock exchange, and it states:

"In the agreement, EuroGas Inc expressly confirmed the rightful title of EuroGas GmbH to 57% ..."

GmbH is a different company. So I can't emphasise enough how important the fact is that they exchanged consideration and then sold the consideration on to third parties, both on Belmont's side the 12 million shares [and] on EuroGas's side the 57%.

Mr Anderson goes through in some detail in his report why the agreement, the actual SPA, transfers the

15:43 57%, and Belmont only holds on to the shares as collateral. He explains why, under British Colombia law, that would be the result.

Having just talked about it with Ms Jarvis, she tells me that in bankruptcy proceedings these types of situations, where agreements aren't clear on who is holding legal title, it is frequently interpreted this way. Mr Anderson will tell you how under British Colombia law that is the only reasonable interpretation. And again, there is no other British Colombia law expert in this case.

I could take you through Mr Anderson's analysis, but we have outlined it fairly clearly, I think, in our Reply, and it would take a lot of time. So in the interests of time, I am going to try to summarise it in a paragraph.

Claimants will tell you there are conditions precedent in that contract that have not been satisfied. Under Article 2 of that contract, in fact they all have, and I could take you through them and, if it comes up during the hearing, will do so in the closing argument. But the real argument is that in Article 6, which deals with the closing, there is a requirement, a condition precedent, that the deal will not be complete unless the value of the shares that EuroGas gave to Belmont, the

15:45 12 million shares, reaches a certain value on sale.

As Mr Anderson points out, that provision would lead to an absurd commercial result. Here's what would happen. [Belmont] would receive the 12 million shares, and it could decide not to sell them at all. It could just hold on to them, and it would receive all the consideration under the contract, but have to pay nothing in return. Or it can do what it did, which is just sell it for an amount low enough to be under the amount in the contract. And then again it would receive the proceeds, which we know were $1.37 million, and it wouldn't ever have to give over the 57%. That's an absurd result.

Mr Anderson explains in his report why that type of deal would be construed by a British Colombia court to be a sale of the 57% while Belmont holds as collateral the shares to secure the obligations that EuroGas has under other provisions of the contract. And we know Claimants agreed with that interpretation, because they said in their SEC filings, "We are only holding the shares as collateral". And we know their auditors agreed with that conclusion because they said so in their audited financial statements.

As I say, that's the extent of the analysis I will go into. I am happy to go into it in more detail, but

15:46 as I say, it is time-consuming.

For these reasons, Belmont, having held the 57% interest merely as collateral, has no investment before you, and the Tribunal has no jurisdiction.

But now I want to assume that legal title was not transferred. Let's assume that Belmont retained legal title, which means they're not just holding it as collateral, as they told the marketplace; they have legal title to the shares. Even in that scenario, at a minimum, EuroGas was the beneficial owner of the shares. This proposition is supported by all of the quotes I just read to you, and reinforced by the repeated public statements from Belmont, EuroGas I and EuroGas II.

There is one letter in particular I would like to draw your attention to on this issue. It is a letter from September 24th 2004 (slide 78). It's a joint letter, executed by Mr Rauball and Mr Agyagos. The parties recognised EuroGas Inc's 57% interest in Rozmin:

"... currently ... standing [in] the name of Belmont."

This is a joint acknowledgement, and the most current authoritative statement from the parties to the SPA, that EuroGas I was, at a minimum, the beneficial owner of the 57% interest, and that Belmont remained the

15:48 nominal owner only.

Several members of the Tribunal will be familiar with the case I am about to cite, which is the Occidental Petroleum v Ecuador ad hoc decision. Before I get there, I would note that it is a general principle of public international law -- and here I'm citing from David Bederman. He has an article on beneficial ownership in international claims. And his statement -- and we quote this in our papers -- is that:

"... the beneficial (and not the nominal) owner of property is the real party-in-interest before an international court ..."

Now to the Occidental case, with which so many of us are familiar (slide 79). The ad hoc committee concluded:

"In cases where legal title is split between a nominee and a beneficial owner international law is uncontroversial ..."

He of course notes that Professor Stern had correctly noted this in her dissent:

"... the dominant position in international law grants standing and relief to the owner of the beneficial interest -- not to the nominee."

(Slide 80) And then again, later in the decision:

"The position as regards beneficial ownership is

15:49 a reflection of a more general principle of international investment law: claimants are only permitted to submit their own claims, held for their own benefit, not those held (be it as nominees, agents or otherwise) on behalf of third parties not protected by the relevant treaty."

Thus, even if one were to assume that Belmont only transferred beneficial ownership but retained legal title -- something obviously dramatically different than just a collateral interest -- even if that's the case, the Tribunal still has no jurisdiction over Belmont.

I come now to the final jurisdictional objection. Let's assume all of that is wrong too. Let's assume Belmont still retained the 57% interest, despite all these statements to the contrary, despite selling the consideration under the agreement to third parties. The Tribunal still doesn't have jurisdiction because the treaty under which it sues is a new Slovak-Canadian Bilateral Investment Treaty which in Article XV(6) states that the BIT only covers disputes:

"... which [have] arisen not more than three years prior to its entry into force."

That is after 14th March 2009; that's three years prior to its entry into force.

This is in effect a statute of limitations. We note

15:50 it is binding on the Tribunal and on the parties because the parties to this treaty, Slovakia and Canada, expressly agreed how they would treat succession under the treaties. Why is this so important? Because the Claimants' colourable allegations, and of course the removal of the excavation area for the talc mine, occurred back in 2005.

In an effort to blur the chronology of facts, Claimants had originally argued that all the Slovak Republic's alleged acts were creeping expropriation. But they have abandoned that; they do not make that argument anymore. The argument now seems to simply be that the claims arose after 14th March 2009, even though we all know they arose out of the reassignment of the excavation area in early 2005. It is the one and only source of the dispute. The subsequent conduct of the Slovak authorities -- whether it's the courts, the Main Mining Office, the District Mining Office -- those are inseparable from that original source.

I'm not going to speak much about case law during this presentation, but Lucchetti v Peru is a particular case that bears mention on this principle. There the tribunal held that because the subject matter and the purported new dispute was the same -- it was a revocation of licences, very similar to our case --

15:52 the purported new dispute was in fact a mere continuation of the old dispute, and thus arose prior to the scope of the treaty being triggered.

This Lucchetti approach finds support in other international decisions. In Phosphates of Morocco, the Permanent Court of International Justice similarly confirmed that a dispute may only arise out of its "real causes", as opposed to situations or factors that merely follow up or confirm the real causes.

The main authority that the Claimants cite to you is another case you are very familiar with: Jan de Nul v Egypt. It is the only case on which they rely for the proposition that judicial treatment of an earlier claim gives rise to a new investment dispute. But as you know, that dispute was very different, because in that case the dispute arose only with the judgment rendered by the Egyptian court.

You will recall there was a state attribution issue in that case. The Suez Canal Authority had entered into an agreement with the claimant that was purely contractual in nature, and the tribunal concluded that the Suez Canal Authority did not have the ability, its acts would not be attributable to Egypt. The Egyptian state only became involved later in the courts, because it handled the claimants' law suits on the contractual

15:53 dispute against the Suez Canal Authority. So the investment dispute between the claimants and Egypt thus came into existence only after the state became involved.

Here, in sharp contrast, the conduct of the Slovak Republic was not a new intervening factor when the judicial and quasi-judicial authorities became involved; rather the Slovak authorities merely pronounced themselves on the legality of the reassignment under Slovak law. In other words, these proceedings could have only remedied -- not worsened -- Belmont's position following the reassignment. The one and only source of the dispute -- the real cause, according to Claimants -- was this 2005 reassignment of the excavation area.

Indeed, Belmont itself articulated that an investment treaty claim had arisen before the new treaty took effect. (Slide 83) In November 2005, the same year that the licence was revoked, Belmont wrote to the Slovak Minister of Economy complaining about the reassignment and demanding that the Slovak Republic act in compliance with international investment law, and threatening international investment arbitration. Thus, even under the Claimants' own test, Belmont articulated an investment treaty dispute as early as November 2005.

That's not all. More than two months earlier, in

15:55 September 2005, Rozmin -- its alleged subsidiary -- had challenged the reassignment before local courts. And on September 22nd 2008, still well before the Canadian-Slovak BIT takes effect, Rozmin's shareholder, EuroGas GmbH, wrote to the Slovak Ministry of Economy complaining about the treatment of Rozmin's right to explore the excavation area.

I have some of these letters up on the slides, but I won't take you through them.

On 12th March 2009, two days before the Canadian-Slovak BIT became effective, Rozmin filed an administrative lawsuit against the DMO's second reassignment. Rozmin expressly stated that it is:

"... [a] company owned by foreign investors whose investments are covered by a specific legal regime under international agreements on protection of foreign investment."

Even Claimants' notice of dispute, which was sent on 23rd December 2013, shows that Belmont had previously noticed a dispute (slide 84). It expressly states that it had previously notified the Slovak Republic of the investment treaty dispute.

So their own words show that the investment dispute had already arisen. Belmont itself had articulated a dispute before 1st March 2009.

15:56 I am not going to go into the cases that address when a dispute arises or not. What those letters are meant to show you is that even if you adopt their definition of when a dispute arose, Belmont itself had articulated that a dispute had arisen prior to 14th March 2009.

They offer two final arguments. One was raised on our pre-hearing call last Monday. This is their basis for trying to bring before you the Slovak Minister of Finance himself. They had said that the Minister of Finance himself had told them, as late as May 2012, that the dispute was not yet ripe for filing of this arbitration, and therefore should be delayed. That's what the Claimants told you.

That is not what the minister said, and I can show you that the Claimants themselves know he didn't say that, because they wrote a letter to the Slovak Republic characterising the minister's comments before this arbitration was commenced, and here's what they said (slide 85). This is the notice of dispute, 23rd December 2013:

"... [he] stated that the dispute could not be settled amicably ..."

He is referring to settlement. He informed them that, as the Minister of Finance, he could not settle

15:57 the dispute under the policies of the Slovak Republic while matters were pending before local courts. He never told them they could not initiate arbitration, or that a dispute had not arisen, or that an investment treaty arbitration claim was not ripe. He simply said, "We cannot enter an agreement with you to settle the case". That's all he said to them. And this letter is from the Claimants themselves.

This proves to you that the assertion -- and now I'm quoting from their Statement of Claim -- that the dispute was not ripe for filing of arbitration, he said nothing of the sort, and this shows they did not understand him to say anything of the sort.

The second final argument they make is they point to Article X(5) of the Canada-Slovak BIT, arguing that this provision means this arbitration can't be filed while there are still local court actions pending. That's not true. If you read that provision, it states that in fact an investor can submit a dispute to international arbitration, but must discontinue or waive domestic proceedings only where it seeks money damages.

Rozmin's actions before the Slovak courts never sought money damages, therefore the proceedings do not fall within the scope of Article X(5), and Belmont was not required to waive or stay them in order to bring

15:59 this investment treaty arbitration.

If we all take a step back, there was an investment treaty under which Belmont could have brought its 2005 reassignment claim. In any of the years thereafter, it would have been covered under the prior Canada-Slovak BIT. It was effective from 30th January 2001 until 14th March 2012; that's when all the events that occurred in this case occurred. Indeed, the very last decision of the Main Mining Office confirming the reassignment of the excavation area to Economy Agency was dated 1st August 2012, a mere four months after the previous Canada-Slovak BIT was replaced by the successive Canadian-Slovak BIT. In sum, Belmont had seven years under the former treaty to bring this dispute to arbitration, and did not do so.

Members of the Tribunal, that concludes my presentation on jurisdiction. You do not have jurisdiction over either EuroGas II or Belmont for a multitude of reasons. Claimants, and not the Slovak Republic, bear the burden of establishing the facts for your jurisdiction. They have utterly failed to carry that burden. And with that, I close the Slovak Republic's opening on jurisdiction.

THE PRESIDENT: Thank you, Mr Anway. So we make a break until 4.15.

16:00 (4.00 pm)

(A short break)

(4.19 pm)

THE PRESIDENT: We resume. The Tribunal will not have questions for the Utah law experts, so they can leave if they want.

MS BURTON: Thank you.

THE PRESIDENT: Second, the Tribunal has decided not to change its decision taken on reconsideration. That means that it does not accept either of the two documents which Claimants wanted to introduce, which I call the Keller documents.

Now, who starts, Belmont or EuroGas?

DR GHARAVI: Professor Mayer, we will start. Before we do so, we would like to hand you two binders containing documents on the record that we will be relying on during the opening statement.

I think my learned colleague representing the Slovak Republic and I have agreed that each party would introduce five legal exhibits. We would want the dissenting opinion of Professor Stern in the underlying Occidental arbitration and four BITs with the Slovak Republic. I think there is an agreement on that. And Respondent wants to introduce five legal exhibits that it has identified, and in principle we have no problem

16:21 with that.

MR ANWAY: So just to confirm the agreement that Dr Gharavi and I discussed. In exchange for the new Slovak-Iranian treaty, which I understand has not yet taken effect, but I understand at least the draft is what Dr Gharavi is proposing to put on the record, as well as Professor Stern's dissent, and if Dr Gharavi could confirm the three other legal authorities, the five documents that we would submit are either corrections to exhibits that were incorrectly filed or they are documents that were quoted in our briefs or expert reports but, for whatever reason, didn't actually make their way into the record. So none of this should be particularly new.

Ms Cibulková is going to send a list of those documents to opposing counsel, and if you confirm you're comfortable with that, then we're comfortable with you relying on those authorities.

DR GHARAVI: Yes, we are comfortable.

MR ANWAY: Thank you. (Pause)

(4.23 pm)

Opening statement on the merits on behalf of Claimants

DR GHARAVI: Thank you, President Mayer, Professor Stern, Professor Gaillard. I will, on behalf of Belmont, start this opening statement by addressing the merits and the jurisdictional objections that are specific to Belmont,

16:23 before giving the floor to Ms Burton to present the jurisdictional objections that are specific to EuroGas. As I understand, EuroGas will not need to address the merits because it concurs with the position of Belmont.

Before I start with the merits -- because I would like to start with the merits -- I would like to make a general introductory remark and present the parties, if you will allow me.

The introductory and general remark is that the Slovak Republic's strategy is quite clear: it would like to portray itself as the good; Belmont, I would say, the bad; and EuroGas as the very ugly. We, Belmont, do not know, or no longer know, what EuroGas is. We don't think it is relevant for us. What is certain, and what we would make clear, is that Belmont is the good and, as we will demonstrate, the Slovak Republic the bad and the very ugly.

The case in summary that we will be putting to you during the opening statement is extremely simple. I think you have a lot of documents on the record, a little bit less in front of you, but in total there may be 10 or 15 documents that may be relevant material for decision-making purposes as far as the merits and Belmont's jurisdiction is concerned.

The case is simple and, I would say, scientifically

16:25 a strong case where we can only prevail. Why? On the merits, the Slovak Republic snatched our investment by applying law retroactively; and moreover, in any event, the violation of the authorisation given by the Slovak Republic that we be able to mine with a fresh authorisation until the end of 2006. That authorisation was confirmed later by site visit, in reference to that authorisation, that they confirmed that the works were progressing and in good standing. And then the Supreme Court of the Slovak Republic confirmed that the taking was in violation of law, for all the reasons I just mentioned: it was retroactive, the spirit of the law moreover was not applied; there was a fresh authorisation that was not respected.

Procedurally also it is flawed. Why? Because we were not given due process, no heads-up at all even. Worst, the decision, as we know again scientifically, was taken by the Slovak Republic, which even published the tender before notifying us of it. And here again we are blessed with a Supreme Court decision that found in our favour on procedure as well. They said the procedure for the taking of our rights was procedurally flawed; we had no right to be heard. And there was no compensation. So how good does it get?

And there are aggravating factors that we don't

16:27 need, which are corrupt practices, corrupt practices we know thanks to the documents that we underwent the burden of obtaining -- I am not talking about the document that you did not allow on the record but others that I will walk you through -- that show that there were third-party investors in contact with the ministry and the whole procedure was not transparent. And although you didn't admit that document we relied on, the reference in our brief was in relation to that specific email that described that there were wrongdoings, contacts, during the tender process.

Then procedurally during that process was also tainted and constitutes an aggravating factor. Why? Because we had expectations of the Supreme Court decisions of 2008. It came back to the Mining Office; it gave it to another company. We won again 2011 [in] the Supreme Court on substance. They sent it back to the Mining [Office]; they said, "No, we're not going to give it back to them, but to another company". And then when we wrote and engaged with the Slovak Republic, it told us, "It's premature" -- I will walk you through the letter -- "the procedure is still pending".

And then once we got out of the hamster wheel, by going back and forth around, we asked for compensation and said, "This time we're going to arbitration". They

16:28 said -- and I will walk you through the correspondence -- "No, quantify it, quantify it, quantify it, quantify it". I will walk you through five/six letters. They said, "No, quantify it".

And we found out we were taken for another ride because they used the whole process. They knew the triggering date by which we would stop the negotiations: they launched the criminal proceedings not because of any wrongdoing with EuroGas, but on the allegation that since we were claiming so much money, necessarily there was such fraud, and they snatched our documents. They returned it, but they kept it. So in other words, they have all of our documents, including privileged documents, and we don't have their documents.

And when you ordered production, we begged for production, an order for production, you gave that order, they did not comply with that order. We managed to find some documents, we put them on the record. The other we found we mentioned, but we didn't have authorisation to put. So it is crystal-clear the Respondent did not comply with the production order. And that excuse that, "We deleted the documents, it's archived", how can it be archived? The procedure was pending before the Supreme Court and there was a corruption case filed locally, so they cannot. It was

16:30 deleted by the government official engaged in corrupt practices, but that's not called "classified". If it was classified, there would be letters, there would be explanation as to the practice of the governments.

Then finally, when we get to this arbitration, we are we are faced with what we call "frivolous" defences. I will explain why. I will let Ms Burton address EuroGas's jurisdictional objections. They sound to Belmont as if the Slovak Republic, however, is more Catholic than the Pope. It knows better than the creditors what's good for them; it knows better than the trustee what's in the interest of public law; it knows better than the judge what Utah law should be; it knows better that form should prevail over substance.

But that's EuroGas's story. As far as Belmont is concerned, the true jurisdictional defence do not stand under law. They do not stand under law. Ratione temporis, we have Supreme Court decisions, moreover Supreme Court decisions that were in our favour, but they were not respected by another act of state, then Supreme Court decision in our favour not respected by an act of state. We have the conduct of the Respondent that says it's premature, wrote to us to confirm as per its previous letter that was premature, and is now raising this defence.

16:31 And on the Belmont side, it is just citing in bits and pieces these letters. It does not stand, for the many reasons I will advance to you, and again it is inconsistent with its own position on EuroGas. Just pause one second.

The conditions precedent for the closure of the sale purchase agreement of 2001 allowed closing only on July 18th 2001, when the Securities and Exchange Commission, the Venture Canadian commission, authorised the sale. Yet on July 11th -- it's scientific, it's on the record -- it's being put to you repeatedly that EuroGas was a dissolved company, so it cannot have any capacity to conclude that agreement. On the date of the closure, it was a dissolved company.

There are five/six other reasons where their argument doesn't stand, but this one, on which they heavily rely against EuroGas, again is inconsistent with the position that they take that not only closure was completed, which [it] was not, because all the documents refer to deals to be completed, to be completed, and moreover it could not be completed because at the outset the company EuroGas was dissolved.

Who are the parties in this arbitration, before I go to the merits? Yes, we have the Slovak Republic and Belmont. EuroGas will present itself.

16:33 Belmont has been around since 1978, 40 years. It's listed in the Venture Canadian stock exchange, as well as the Frankfurt Stock Exchange. It has never been dissolved, never been bankrupt. It is led by professionals in the business and engineering front. It is doing very well, if you look at the current market in terms of stock, and they have secured recently a huge project in Nevada. That is Belmont.

Who is the Slovak Republic? The Slovak Republic -- here again, my learned colleague very eloquently during the last conference call, and today between the lines, says, "Well, we're a sovereign state, victim of wrongdoers, and we're obliged" -- as it said last night -- "to defend with taxpayers' money". Well, all this sound good in provincial dinners. I'm in Nice, all my friends are impressed: "Oh, you represent a sovereign state". You have to be serious. Investment arbitration, it is what it is, and we will see what that is.

Let's look at what the Slovak Republic is. I propose to walk you through this document not to bad-mouth Respondent, in the limited time we have, but because it is relevant to establish a pattern, a damning pattern of conduct in relation to tenders and foreign investments that was exactly implemented as far as we

16:35 are concerned.

Now let us turn to that. If you kindly turn to tab 1 of your binder (C-85), and you should have a sticker in there. It's a corruption report, and the tabbed page says, "Many people accept corruption [in Slovakia] as part of [their] daily life", 35%.

Then if you look at the next tab, it is a World Bank report of 2000 (C-88). On the page where there is a sticker, it says:

"The surveys reveal that corruption is common and affects all ... sectors of the economy."

Then if we move ten years later, more recently, in 2012, by way of example, it's at tab 3, an article from 2012, "Corruption hurting Slovak economy, secret service says". So it's the Slovak secret services that acknowledge that corruption is a common practice in, if you read:

"... public tenders and diversion of [the] European ... funds damaged Slovakia's economy last year, the Slovak counter-intelligence services (SIS) said on Thursday."

Then it says:

"... identified manipulation of public infrastructure tenders ..."

And down, it says:

16:36 "Tens of thousands of Slovaks took to the streets in February over leaked transcripts of meetings of senior state officials ... in which they allegedly discussed kickbacks in return for the sale of public companies."

If you go to the next tab (C-80), you will see a US Department [of State] report of 2013 that says non-transparent, ineffective legal systems, and refers to corruption. And the following page, 3, says:

"Lack of transparency in public tenders ranks among the areas of most concern to foreign investors ...

"... Political pressure on regulators in several offices has at times resulted in changes of leadership to influence the outcome in specific regulatory adjudications."

And finally the next tab, November 9th 2010 -- it's tab 5 (C-103) -- says "EU Cash Tunnel Ends in Slovakia". It gives a large number of examples of irregularities or corrupt practices in relation to public tenders. The most telling one is a tender which one of the ministries put on a hallway of the ministry, but the hallway moreover was closed to the public, and it was $100 million-plus.

So that is the Slovak Republic. This is the damning evidence of its practice: corrupt, corrupt, corrupt, as acknowledged by the government itself, the secret

16:38 services, and the taxpayers' money, you see from this article. It's not me talking, it's not my client; it is EU money, basically it's your money and it's my money.

So the whole story of clichés of a sovereign state victim of wrongdoings, and taxpayers' money, is inconsistent with the track record, and more importantly with the specificities and the facts in this case. And I would propose to walk you through these facts and discuss the merits by walking you through the chronology, through the damning chronology, through the scientifically damning chronology, through the key documents, starting with our investment.

Belmont invested in the largest talc deposit in Europe; and again, these are not our words but the words of the Slovak Republic, including after the revocation of our rights. If you look at tab 6, you will see that statement concerning the quality and volume of estimated reserves:

"The deposit at Gemerská ranges among the largest European talc deposits ..."

And it provides all the data that in fact it is Rozmin, including during the shareholding of my client, that pertained and which is being used by the government.

By way of background, in 1992 Respondent granted

16:39 Dorfner to gather information and samples on the deposit for testing, to revisit the old data that was available, based on outdated technology, and to carry out additional drilling. Dorfner undertook, with another company called Östu, a technical evaluation in 1994, and completed a feasibility study that you will find in tab 7. You don't need to look at it; it is just out there for you to have a complete chronology.

Then what happened is that on May 7th 1997 the company Rozmin was incorporated. Dorfner held 32.5% shares in it, Östu 24.5% and Rima Muran 43%.

Now, who is Rima Muran? You have heard that. It was a shareholder from the outset. It was also a shareholder when Belmont came in. It held the dual hat of a contractor. There was a litigation with this company and its dual hat, and the company exited ultimately, as I will remind you later on.

It is, more importantly, owned by a gentleman called Mr Corej. Who is Mr Corej? He is the one that actively facilitated, took part in the corrupt practices that led to the revocation of our rights, and also is the beneficiary of the revocation of our rights, because Mr Corej's wife, who is an accountant, formed a shell company, called Intelligence or something, that won the tender when it was snatched from us, the deposit, in the

16:41 conditions that I described. It is Mr Corej who is the beneficiary of the taking, in collusion with the Republic of Slovakia, who has been offered by Slovakia to provide testimonial services in this arbitration.

Now, what happened? I continue with the chronology. On May 14th 1997 the District Mining Authority -- and you have it at tab 8 -- issued Rozmin a general mining authorisation for an indefinite period of time. In 1997 the District Mining Office, DMO, issued a certificate for the transfer to Rozmin of the exclusive mining rights; that you have at tab 9.

Then if you move at tab 10 (C-130), you will see that the Ministry of Environment of the Slovak Republic granted in 1997 to Rozmin the exclusive right to perform geological work in order to search for a talc deposit.

Another date that is relevant is on February 24th 2000 -- you have it at tab 11 -- that's when Belmont acquired 57% interest in Rozmin for $1.5 million approximately -- and you have the substantiation to that at tab 11 -- by buying shares 24.5% from Östu, 32.5% from Dorfner.

What happened during the Belmont era, two reports were issued. The first was commissioned by Rozmin and issued in April 2000, so after Belmont's shareholding. It's a [3D] model of the extraction area produced by

16:43 a company called Kloibhofer, which increased the proven and expected reserves of the talc.

If you look at that kindly -- you have it at tab 12 (C-154) -- at page 16 you would see that it identified 850,000 cubic metres of mineralised rock located in rich sections containing at least 60% of talc, which translated in over 1.4 million tonnes of pure talc. That is -- that is relevant -- 55% more than those estimated in the feasibility study. You will see in italics at 3:

"On the other hand in the [feasibility study] the assumption was made that there is 'only' 920 [million tonnes] of extractable talc reserve ..."

It also confirmed that that is a minimum talc content: this means that the talc reserve is even greater still.

Under the Belmont era, May 29th 2000, a final report of a German state-accredited testing agency called ARP/ECV was issued. You have it at tab 13 (C-162). It concluded that 77% of the end product will be of high-grade end product with a talc content of at least 98%, and identified the most effective way to process the raw product in order to maximise quality.

In the meantime, it is in our memorials, I'm not going to walk you through them, but there is a truckload

16:45 of permits and authorisations that were obtained by Rozmin to begin opening the deposit. Most importantly, if you turn at tab 14, is an authorisation of the mining activities dated May 29th 1998, valid until December 31st 2002. Okay?

So having everything in hand, Rozmin, which had recently obtained final reports increasing the level of confidence in the reserves, identifying the most effective means to proceed, had obtained permits, authorisations to proceed, and organised the tender for the opening of the works.

Who won that tender? It is the one and only Rima Muran, represented by Mr Corej. At the time he was a shareholder: he held 43%. So he took on two hats: one as a shareholder, one as a contractor.

Works -- if you look at tab 15, a monthly report dated October 18th 2000 (C-217) -- started effectively on September 25th 2000. So here we are: permits, authorisations, good reports and a contract, and works began. We ran into a problem.

We would see as a post facto defence in this arbitration Respondent says, "This company Rozmin, they were not going anywhere, they did not have the budget, they were not paying Rima Muran". Well, that is irrelevant because it is post facto, okay? And in any

16:47 event, it is proceeded by the authorisations, the new contract that we signed that I'll walk you through.

But if we even stop there, you would see that it's not true. It's not because Rozmin had financial difficulties that the project stopped. The fact is -- and this is recorded -- it is because Rima Muran and its shareholders were having serious disputes on shareholding issues and on the quality of the works, as well as the fact that the works were going over budget, over budget that Rima Muran had identified and pursuant to which it had secured the works.

If you look at tab 16, you would see that the adverse position taken by Rima Muran, without any warning against the position of all other shareholders in Rozmin, was acted in a document, C-348, a letter from EuroGas to Rima Muran. It said:

"At the shareholder meeting ... Mr Rauball attended as [representative] of the majority shareholder of your company, you opposed in your capacity as representative of the company Rima Muran ... several of the motions filed as recorded in the minutes.

"Your oppositional attitude greatly surprised us ..."

And the letter goes on and on.

If you look at tab 17 (C-350) you will see that

16:49 there were problems also on the construction front:

"... driving and reversing were not performed in accordance with the project documentation ... Alternation of driving of the gate ... was implemented without any submitted and approved project documentation."

So also there were significant constructional issues with that company. Rima Muran and Respondent say this was because of financial difficulties. This shows that it was not. Shareholders' problems, construction works, and there was no financial difficulty. Rozmin was paying Rima Muran.

If you look at tab 18 (R-169), in a letter that remained unanswered and is not addressed, you will see on the last page of this tab Rozmin writes, "It is clear from the table above" that all the payments have been made, and in fact an extra advance payment has been received.

That letter was not challenged, and it corresponds to the reality. In fact, if you turn to tab 19 (R-131), you have the handover certificate. On page 2 it says "Financial settlement status". It confirms that all the payments were received, save for a deduction of 7% for shortcomings, shortcomings that are acknowledged by the statement of the contractor who wants to rectify them.

16:50 And then "Investor's statement" at the bottom shows that there were problems with the contractor, and moreover the contractor was going over budget. So that was the reality on the ground.

In any event, all this does not matter. Why? Because Rozmin informed the Slovak Republic of the problems. The Slovak Republic didn't raise any objections; and later, we see, granted a further authorisation to my client to resume works. I will walk you through those documents.

Tab 20, C-221: on October 15th 2001, Rozmin informed the DMO of the suspension of mining activities because Rima Muran stopped works; and refused, more importantly, to withdraw from the works.

Tab 21: on November 30th 2001, Rozmin notified the DMO of the suspension of the mining activities for a period exceeding 30 days in accordance with Decree 1998/89, dated May 20th 1988. That's tab 21, Exhibit C-26.

What happened thereafter? Rozmin engaged in extensive negotiations with its troublemaker, shareholder and contractor, Rima Muran. A settlement agreement was reached; it is at tab 22, R-130. This allowed the handover certificate that I previously mentioned, dated October 23rd 2002.

16:52 Then what happened? Tab 23 (R-251): we in the meantime applied to obtain authorisation to resume the works in anticipation that this was being settled.

Tab 24, Exhibit C-223: the Mining Office rejected our application, not by saying, "It's too late", but simply saying, "You didn't provide the required documents". Again, one of the post facto defences of the Respondent in this arbitration is that we were generally slow and incompetent, we didn't know how to file documents. But it's the government bureaucrats that, instead of avoiding corrupt practices and learning how to ask for documents and identify them, are incompetent and causing delay.

Again, this is not our submission. If you turn to the next tab, tab 25 (C-226), we appealed the decision of the MMO, and the Main Mining Office recognised that it was nonsense: our application was denied simply because the documents that were expected by the DMO were not even clearly identified for us to be able to follow up on that request.

Tab 26, C-27: if you have to identify the material documents you need, I would start with this one. There are only ten you would need for your decision-making. Tab 26, C-27. What is it? It is when the DMO ultimately issued to Rozmin the new authorisation on

16:55 mining activities. And if you look at the date, tab 26 -- and keep that handy because I will be referring to that, the second page, tab 26 -- it was valid until November 13th 2006.

What did Rozmin do at the time? It prepared all administrative permits/authorisations necessary to initiate, in June 2004, a new tender. All of the permits, the local authorisations, are cited and documented in the record. I will not walk you through them. A new tender was organised. And who won? It is a company called Siderit. You have it at tab 27 (C-259). Siderit won the works previously granted to Mr Corej for an amount of US$2.5 million.

To show how diligently we were proceeding at the time and how eager we were to move forward, you have to turn to tab 28 and you will see that pending this tender and finalisation of the contract work, by specific work orders we allowed Siderit to carry out preparatory works towards the completion of the above-ground structure as of October 2004: Exhibits C-254, C-255, C-256 and C-257.

Then if you turn to tab 29, you have the witness statements of Mr Agyagos and Mr Rozloznik. What do they say? They confirm that on October 14th 2004 -- it is Mr Agyagos that disappeared. He is no longer with Belmont, Belmont is no longer involved, and we will get

16:57 to this point. He is on the ground following diligently what is going on, and meets Mr Baffi to announce to the DMO that Rozmin will be resuming with the works. There are two witness statements. The Respondent didn't deny that that meeting occurred; and Mr Baffi, obviously absent, in front of the evidence on the record and notably what he did in the following months.

On November 8th 2004, in any event, if you turn to tab 30, C-267, you have a letter from Rozmin to the District Mining Office dated November 8th 2004. This is a second letter that I would like you to keep in mind; and remember I said there are maybe ten exhibits that are material. This is tab 30, C-267. The first one was obviously tab 27, C-27.

Rozmin officially announced to the DMO that it would resume mining activities by November 18th 2004. What did DMO do? It carried out an inspection to verify the works. It was obviously informed that Rozmin could proceed with the works, because there was a mining authorisation -- the first document that I asked you to keep as a material document, the authorisation of May 31st 2004 -- and carried out an inspection.

Could you kindly turn to that inspection. It's at tab 31, I believe, and it's the third of the ten documents that I would like you to keep in mind. C-28.

16:59 What does it say? It starts with the first three paragraphs reminding of the background, and on what ground the works are being carried out. It refers to the first document I said is important, the November 13th 2006 authorisation.

It confirmed the background. It's Mr Baffi, the same one that Mr Agyagos met a few weeks before. The inspection lasted significant hours. And at the end:

"During today's inspection no facts were discovered indicating breach of legal regulations in force."

So he confirms by cross-reference what is undisputable: that we were entitled, based on the May 31st 2004 authorisation, to proceed, and we have until 13th November. And he comes to see the works and he finds nothing.

You will say to yourself, "All good. Finally we are moving. We have gotten rid of this troublemaker, Mr Corej. We have all these reports that confirm the prospects of this talc deposit. We have the means that are identified. We have all the permits. We have a new contractor. We have also the authorisation. The works have started. Mr Baffi has even come from the Mining Office to confirm, and he confirms". But that's not counting the reality of the noble sovereign state, taxpayers' money, the corrupt practices that

17:01 I mentioned. We don't need that. We don't want to establish corrupt practices. It's just for the ambience.

Look, the facts speak for themselves.

Tab 32, Exhibit C-30. That's the fourth document you need to keep on the record. Three weeks later, the DMO, under the signature of the same Mr Baffi that had referenced to the 2004 -- valid until 2006 -- authorisation that confirmed the works on the ground later, writes to us to revoke our rights. He does so by relying on a law that you find at tab 33 (R-62), which is an amendment of 2002 that they apply, the Mining Office, retroactively to apply to a mining investment that started in early 2000; turning a blind eye on tab 26 and tab 31, the 31st May 2004 authorisation, confirmed by the site visit that referred thereto and confirmed by the quality of the works. So application retroactive of the law, and inconsistency with not only the site visit but the authorisation.

Worse, if you go now to the next tab, tab 34, C-29, you see that before the revocation was notified to us on January 3rd 2005, the government had put it on tender. Our rights -- it sounds incredible but that's the damning evidence -- December 30th 2004, they tendered our rights. So if they tendered on December 30th, that

17:04 means necessarily that the decision was even taken weeks or months prior to that.

Then the chronology. Who won? As if all this was not funny and damning enough, who won? A company by the name, if you go to tab 35, C-31, of Economy Agency. Who has heard of Economy Agency? Remember the post facto defences, "We need financing". They gave it to Economy Agency. Have you heard of Economy Agency? You've done mining projects, mining disputes.

Let's look at the other names before we go to see who is Economy Agency. Mondo Minerals, worldwide leader, MII, they are ranked fourth and sixth. The next tab is complaint of Mondo. And a reminder in the following pages -- C-268 -- who the Economy Agency is: it's a shell company owned by an accountant who is the wife of Mr Corej, the bidder, shareholder and contractor.

What did we do? We decided to litigate our revocation. Yes, Belmont notified. If you look at the notice in 2005, we said we would go to local courts eventually, and that's what we did; February 27th 2008. And we are right, because not everybody is corrupt, not every organ is corrupt. In fact, hopefully your decision will have an impact so that all the organs are not corrupt.

17:06 Tab 37, C-33, a decision of the Supreme Court that says: violation of due process. I will go back to that decision.

Tab 38, C-34. What happened? DMO acted as if that decision of the Supreme Court did not exist. Why? We know why. And confirmed the rights to Economy Agency, which in the meantime had been absorbed by VSK Mining. We were on the hamster wheel. Okay, what do we do? Let's go again, let's try to resolve this.

And we were right, because the Supreme Court -- if you turn to tab 36, C-39 -- told us we were right, this time on substantive grounds. We will revert to that. They said everything that I just told you: retroactive doesn't work, it was an authorisation, nothing made sense in that.

What had happened in the meantime is that EuroGas had dispatched under the BIT. We had, as Belmont, but so did EuroGas. I remember we dispatched -- I wouldn't say a notice of BIT, because we said we were going in 2005 possibly to local courts, as we did. But EuroGas dispatched -- if you look at tabs 40 and 41, R-7 and C-31 -- BIT notices in December 2010 and October 2011, as a 33% shareholder. Had they truly believed that they were the 100% shareholder, the US company or someone would have raised a claim. But that Austrian company

17:08 gave notice for 33% without mentioning any of its group's right to any additional shareholding.

If you turn to [tab] 42, you have the response of the Slovak Republic (C-40). It's 2nd May 2012, well after the permissible date to bring a BIT claim under the Canada-Slovak treaty. What does the government say?

"As already outlined in letters of my predecessor dated June 16, 2011 and February 09, 2012, the administrative procedure before the Slovak mining office is still pending, therefore any discussion regarding the alleged claims of EuroGas ... seems to me to be premature prior relevant decisions of the local authorities are rendered."

What happened next? Tab 43, C-37: the DMO again reassigned to VSK Mining. We appealed the decision; we didn't let go. We tried still to make it work out. Tab 45, C-273. And the MMO on August 2012 confirmed the DMO's office. And that's when we decided to get out of that hamster wheel and the engrenage.

This is the damning chronology for Respondent. I submit to you that it's hardly possible to get a better case on international law. It is a textbook mess that is impossible to clean for the Slovak Republic. It is a textbook case for three independent reasons.

17:10 First, obviously the taking was not procedurally correct, which is a stand-alone ground for liability under international law for expropriation. It is said expressly in the treaty that expropriation has to be according to due process. No opportunity to be heard. No advance notice. Worst, we were notified the decision had been taken in a publication of the tender.

And you have somebody that already did the groundwork for you, Mr President: the Slovak Supreme Court, C-33, tab 37, decision of February 27th 2008. It confirmed what we are all saying: that there was no right of defence, and violated the right to be heard, the right to express an opinion, to propose evidence, to be acquainted with the reasons of the administrative act. Everything is set.

Also it's a textbook case because it is a violation of substantive reasons. The 2002 amendment cannot apply retroactively to ongoing investment that started before that. The chronology is damning again on substance because you have an authorisation of May 2006. You have confirmation of the works that were ongoing. And you have a Supreme Court decision on the same at tab 39, that says exactly what we said, and adds in fact that even if the 2002 amendment applied, it's not automatic; you need to look at whether the intention of the

17:12 contractor, the investor, is really to invest or speculate, because the 2002 amendment was to stop speculation.

Here the evidence is clear that we were a diligent contractor. We had contracted prior to the award of contract by orders. They were starting to work. Then we were obtaining the permits. The work started to the satisfaction. So even that would not stand.

Finally, there is no compensation. That itself is an independent ground for liability.

What can we add? I already did the post facto defences that we didn't have the means, because it is post facto, it is irrelevant and it is wrong, because we were proceeding. The fact that we were late in the licences, in obtaining the permits, is also superseded by the decision of May that granted us the mining rights until 2006. Also the reason we had delay, as we saw, is because it was the Mining Office that couldn't identify the documents it was requiring.

As I mentioned, we have very aggravating factors. On its face, if you look at the chronology, you will see that when there is an authorisation to proceed given by the same authority, the investor proceeds, the works are confirmed, the contract is signed, and then the rights are taken by that authority without proper due process,

17:14 with publication of the tender. Then awarded to who? A nobody. A shell company owned by an accountant. That doesn't smell good. It doesn't smell good.

Worse, if you now look at tab 45, you have your document production order. You ordered production of:

"... Documents pertaining to exchanges between Mr Corej, Economy Agency, or any of the other six bidding entities, on the one hand, and any Slovak body or authority, on the other hand, before the revocation of Rozmin's mining rights or thereafter but before the award of mining rights ..."

Nothing was produced. This is bad, it is very ugly.

Things got worse, because if you look now at tab 46, Exhibits C-356, C-357 and C-358, you will see, as my daughter said this morning when I changed the diaper of my little boy, "Pooh, it smells!" And it smells bad. It smells big-time bad. And this is not a poor baby's excrement; it is public money, it is the right of investors, it is EU taxpayers' money, local taxpayers' money, it is the interest of mining activity.

What is there out there? You will see that before the publication, before the revocation, while the works were ongoing, Mondo was in contact with Mr Corej to forward the letter to the Deputy Minister of the Slovak Republic Mr Rusko, and the Minister of Economy at the

17:17 time. These documents we underwent the burden to obtain after the document production that was left unanswered.

C-57: another document, this time directly from Mondo to the DMO, before our rights were revoked in December 2004. And finally again, correspondence with the DMO, this time in February 2005, during the tender process.

The other documents you precluded us from providing. I don't know what is your reasoning, President Mayer. I don't understand it. I challenge it. I don't think it's good. I think you should reconsider it, unless you really don't need it. It is documents responding to your document production order. Forget about this document. When you see that they snatched our documents, they have all of our documents, and we were obliged to beg; and then when we beg, they don't give. You ordered them, they don't give. That's why we managed to produce the documents at tab 46.

By the way, you get emotional when you find those documents. But I say to myself, to my client, "Why do you get emotional?" After all, it's your order. If you don't get emotional, members of the Tribunal, why would I get emotional?

And then they don't respond. The other one, we cite it, we have it. Just the person that gave it to us,

17:18 they don't disclose it. We put it in our brief and we described in our brief. We described it, and I refer you to the description. It shows that during the tender process, the government, before even the mining tender committee were in place, were in contact with one of the tender participants, giving them comments on the other bidders, how it's perceived.

What happened then? Tab 50: we filed a notice of dispute on December 23rd 2013, and then you have all the correspondence we flagged. They told us, "Give us documentation about compensation". So even then, they were not saying no in terms; we were in discussions on compensation. No longer specific performance, but compensation. And all they were asking is, "Give us quantum, give us quantum, give us your substantiation, give us your substantiation", before they prepare the criminal proceedings.

So that's the case on the merits. It's bulletproof. I can hardly see how we can get a stronger case. You have everything: due process, merits, failure to compensate, corrupt practices, dissimulation of information.

So what does one do in these circumstances? Either -- it depends -- it gives compensation or it does what the Slovak Republic decided to do: to take us for

17:20 a ride during the treaty negotiations, to prepare criminal proceedings, to get undue advantage and get our documents. And then when it has all those documents, and the Tribunal is constituted, and it cannot go on the criminal front, it raises jurisdictional objections.

I will raise now the jurisdictional objections. If you allow me, if the offer still stands, I could use a five-minute break.

THE PRESIDENT: Ten.

DR GHARAVI: Even better.

(5.21 pm)

(A short break)

(5.32 pm)

THE PRESIDENT: We will resume, if Respondent is ready.

DR GHARAVI: Yes, thank you. I will be using mostly the second binder, but for some time at the beginning, if you could have the first binder handy, I would appreciate it.

Opening statement on jurisdiction on behalf of Claimants

If you allow me, I will now resume by addressing the two jurisdictional objections that are raised against my client, Belmont. The first one is that we lack standing; the other one is a ratione temporis challenge. If you allow me, I will start with the ratione temporis challenge.

17:33 In general, before I start, I had hoped not to hear statements such as, "Oh, they did not submit a rebuttal expert statement: that shows that they could not find anyone that would submit a rebuttal statement". I mean, that is grotesque. The reality is that we don't believe to have to bring an expert on a point presented by the other side [when] the expert report is not worthy or the documents on the records are sufficient.

So the suggestion, for example, by my learned colleague that nobody in Canada would want to support the position is extraordinary. I wanted to make that clear: that it's not a sign of weakness, but rather of the fact that those expert reports are extremely weak, not even worth addressing, for the reason I will explain.

Now, ratione temporis. The Canada-Slovak BIT -- it's at tab 53 -- clearly excludes from its ratione temporis scope the disputes that have arisen more than three years before its entry into force. The BIT entered into force on March 19th 2012: that means you can only hear disputes from March 19th 2009 onwards.

Respondent relies on these terms to allege that we are barred from bringing this arbitration as the dispute arose at the time of the revocation of our rights back in 2005, and puts forward a number of theories, says

17:35 that that's the real cause, and a few others.

As a preliminary matter, I wanted to put out that the Respondent argues everything in its contrary. If we go back to tab [42], C-40. It's the letter which you are familiar with already, C-40, May 2nd 2012. Gentlemen, its author is the person in charge of the file, and responds saying, "It's premature [before] the relevant decisions of the local authorities are rendered". So prior to that, it's premature. So it means premature, it's not only about compensation, because if the mining authorities grant it to us, it's over; and if they don't grant it to us, there is still in fact a question of compensation. But here they are writing to us. So then they say it's premature.

And now we start the arbitration, we wait, and they say -- and they wrote not only once but three times, June 16th, [May 2nd], and on May 12th 2012. So three times to say it's premature. So even on the face of that letter, if you take it, you would see that there is a common agreement that it was premature and we had to wait for the prior decisions of the court.

If you now go to the second binder, tab 51(d). You will have to start from the back. It is the second to the last. We apologise for the confusion; in this tab there is a large number of documents. It should be

17:37 51(e). So here, under "Provisional Measures", Respondent says:

"Every time that Rozmin exhausted its right to appeal, its challenge succeeded, and when it did not exhaust its right of appeal, it voluntarily relinquished any claim it may have before an international tribunal."

So here they are saying -- during the process, they said, "It's premature". We waited, many times. Then in this arbitration they say, "It's too late". And on the substance, they're saying, "Go home, because it's too early; you should have gone to the Supreme Court". Does that make sense? Is that in good faith? Then they realise the mess and they tried to split. They said, "For denial of justice, it's too late". So they argue everything and its contrary. The only consistency with the argument is the lack of good faith.

If you turn to the next page, when we're talking about fairness, it's the legislative history in relation to this clause. This is a letter from Canada to Hungary, and you see the Hungarian official forwarded to many EU members, including Ms Holiková, present in the room, from the Slovak Republic, about the intention behind these clauses that were inserted. You have the intention at page 7. It says:

"... to prevent undue unfairness to investors,

17:39 disputes that have arisen ..."

So disputes that have not arisen. Unfairness. So I submit, with Ms Holiková in the room, that the Slovak Republic's conduct is everything but within the spirit of that agreement. It just uses every single defence, with utmost bad faith, and inconsistently when it suits it.

In any event, all this does not matter because the case is quite clear on this point. Why? Because the language of the BIT is very different to the specific restrictions in terms of ratione temporis scope inserted by both Canada and Slovakia in many of their other BITs.

If you turn to tab 52(a), you have the agreement, the draft, between the Slovak Republic and the Islamic Republic of Iran. And if you flip and you look at Article 2 of it, Article 2(3), if you continue, Article 2(3) says:

"This agreement does not bind either contracting party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this agreement."

If you look at the next tab, this is in reference to our Memorial at paragraph 209. We have summarised -- and it's in footnote 205 -- the language contained in other Canadian model BITs. This is the one I read you

17:41 with Slovakia, this is Canada, and the footnote contains the reference to documents on the record. I spare you of having to put a copy of these agreements in front of you. The language of those treaties says:

"A disputing investor may submit a claim to arbitration only if not more than three years have elapsed from the date on which the investor first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage hereby."

So what does that say? It means that if the sovereign states wish to have a restrictive position, which is consistent with the position in fact that Respondent adapts in its defence in this case, they could have provided so. They know how to do so, as proven by the practices of both countries.

Yet the drafters use the term "dispute", which has a clear meaning under international law. There is abundant case law that shows unanimously, I must submit, based on when the same language of the clause is applied, that it means what we say it means and not what Respondent alleges.

If I had to cite just one or two, I would propose to cite Maffezini perhaps. Maybe if you can go to Maffezini, which should be at 51(b) (CL-39). At

17:43 paragraph 96 it says:

"The Tribunal notes in this respect that there tends to be a natural sequence of events that leads to a dispute. It begins with the expression of disagreement and the statement of a difference of views. In time these events acquire a precise legal meaning through the formulation of legal claims, their discussion and eventual rejection or lack of response by the other party. The conflict of legal views and interests will only be present in the latter stage, even though the underlying facts predate them."

And then it goes on with other relevant remarks.

If I had to cite another one -- why not? -- 51(c) (CL-58): Professor Mayer, Professor Stern, your decision. Respondent tries to distinguish it -- you know the facts better of that case -- based on the fact that there may have been attribution problems. But if you look at the holding, it is consistent with all the case law. At page 35, what you rely on is to say:

"... [the Supreme Court decision] definitively eliminated all prospects that the Claimants could obtain redress from the Egyptian State."

Then be paragraph 119 cites Schreuer to say:

"... 'the domestic dispute antedated the contractual dispute and ultimately led towards it'."

17:44 I would say even more material, and not specific to the question of [international contract claims], is paragraph 121, which is basically what we have been saying: the reality on the ground, good faith, fairness.

"Indeed, as set forth by the Claimants' legal expert, there is a clear trend of cases requiring an attempt to seek redress in domestic courts before bringing a claim for violations of BIT standards irrespective of any obligation to exhaust local remedies. Although it agrees with the Respondent that there is no requirement for a mandatory 'pre-trial' before the local courts, this consideration reinforces the Tribunal in its conclusion that the dispute only crystallized after 22 May 2003 when the Ismailia Court rendered its judgment."

In any event, again, the case law is abundant in our favour. That's why I would in turn suggest Respondent did not wish to insist on discussing them.

In the case at hand -- each case is different -- it is even more so application of this principle warranted. Why? Because each time we won before the Supreme Court. We won.

So if you go back to tab 38, C-33 -- you don't need to -- you have the Supreme Court decision: on due process, we won. And what did the Slovak Republic do?

17:46 Exhibit C-34: it nevertheless ignored it, and granted it again to someone else. Then May 2011, tab 40, C-36: on substance, we won. And that Supreme Court decision dates May 18th 2011, so it was rendered after the period by which we could no longer bring. So it is rendered during the permissible timeframe. This decision itself, had it been complied with, would have put an end to the agony we were facing. But the Slovak Republic again disregarded the Supreme Court decision and granted it to someone else.

So until we got out of the hamster wheel I mentioned, upon receiving ultimate rejection by the MMO's decision of August 1st 2012, it is then and only then, with the August 1st 2012 decision in fact, that the dispute arose and crystallised, because had it been complied [with], again, we would have obtained our mining rights.

So our position ratione temporis is in conformity with the clear language of the BIT and international law; it is in conformity with the principle of good faith and the reality on the ground; and if you don't want to apply estoppel because, technically speaking, Respondent didn't reply to our letter, it corresponds to the conduct and to the state of mind of Respondent that the dispute was premature and should wait [for] the

17:48 decisions of the local authorities.

In fact, one can add a further refinement to say that there is specific performance and then liability, and then in liability there is the question of compensation, because compensation for an illegitimate taking or an unlawful taking. If you look at the chronology, tab 50, you will see that the claim for compensation was still being considered and entertained. When we wanted to file, they said, "No, why are you filing? Why are you filing this thing? Give us the four/five letters, give us the backup what you have, and we may settle". So technically we could even argue that the dispute crystallised as far as compensation is concerned in 2014, and in 2012 as far as liability, strictly speaking, is concerned.

Now what is Respondent trying to do? It is saying, "No, all this is different. You have a denial of justice". We don't have a denial of justice claim. It's all part of one claim that was being litigated. In fact, if we were going to split -- just for academic reasons, Professors, so maybe you find that entertaining -- if we were to split, the fact that we got a Supreme Court decision, the second one in 2011, during the permissible era, that was not complied with and completely disregarded by the Mining Office, by

17:50 itself creates another independent international law. So either way, if you wanted to split it or you want to join it, under the concept of the crystallisation of dispute, we have jurisdiction ratione temporis.

That's for ratione temporis. Now I turn to lack of standing, if you allow me.

Lack of standing. Respondent alleges that Belmont's shares are no longer owned by us, as they were in fact transferred to EuroGas pursuant to the sale purchase agreement dated April 2001, and that we have been simply holding these shares at the registry as collateral. That's Respondent's, I think, case.

That argument doesn't stand for five independent reasons. I'm going to submit to you five independent reasons. Each of them on its own is sufficient to send back home Respondent as regards this jurisdictional defence.

The first one is that I submit it is undisputed that we hold -- and we have always held since 2000, when we purchased these shares -- 57% shareholding in Rozmin at the Slovak registry. Okay. Respondent says beneficial ownership has passed. We have been holding it on paper -- on more than paper, I submit -- as a collateral. We're saying: even the best case scenario of Respondent is sufficient for us to prevail on this

17:51 point.

Why? Because if you look closely, the BIT does not require that the registered owner be also the beneficial owner of the shares. Okay. Now I need to [draw] your particular attention to the practice of sovereign states. Sovereign states try to control sometimes the identity of the investor. The Asian treaties, the Iranian treaties for example, even require that the investor be pre-screened, pre-approved by agency; it requires the names, the names of the beneficial owners, everybody. This is not the case. Others impose questions of ownership and control, and particular requirements that are not present in this case.

I ask you to turn to tab 52, to give you an example, when you look at the agreement with the Slovak Republic. If you look at the tab with Slovak Republic and Iran. If you look at Articles 1 and 2, you will see the term "investment". So it's tab 52. It says:

"The term 'investment' means shares, stock and other forms of equity participation in an enterprise ..."

So you would say to me, "So what? Why is he bringing our attention to this?" But what is relevant is what follows:

"... provided that the investment is directly owned or directly controlled by an investor."

17:53 They don't use the term "hold". They use the term "owned or directly controlled by an investor".

Moreover, "investor" is defined. And "investor" is defined, if you turn the page to paragraph 3:

"The term 'investor' means the following natural persons or entities that have made across-border investment in the territory ..."

So they use ownership by the investor or control, "investor" meaning cross-border investment.

So all these sovereign states, including the Slovak Republic, if it wanted to control the identity of the investor, could have done so and put that requirement in.

Let's look at what it did instead. If you turn to tab 53. Tab 53 is a copy of the BIT, Article 1(d). It says -- this is now as broad as it gets -- it says:

"The term 'investment' means any kind of asset ..."

Does it say "owned"? It says the same word that is being thrown at us by Respondent: it says "held", "held or invested". So it means "invested" could be different than "held". It adds:

"... either directly or indirectly by an investor of the contracting state."

You say: okay, maybe they controlled "investor" by putting a notion that he needs to make the investment

17:55 cross-border. But let's look down:

"The term 'investor' means a natural person possessing the citizenship or ..."

The next sentence:

"... any cooperation, partnership, venture, organisation, association or enterprise ..."

Without any requirement.

So based on the plain language, ordinary language, plain language, broad language of the treaty, the treaty practices of other states, the Slovak Republic, when they wish to impose restrictions, you would see that in this BIT the Slovak Republic and Canada could not give the slightest care whether the person holding it held it directly, indirectly, made an investment, had any participation, had any control, had anything to do with that.

And there is nothing wrong with that. There is nothing wrong with that. There is nothing wrong with that. An investor can set up his investment, hold the shares as it wishes; subject, of course, to the Phoenix, Saba Fakes, Cementownia, all these awards saying, "Listen, it's nasty, however, to change your corporate structure, your legal structure, for purposes to gain jurisdiction once the dispute has arisen". But here it says: holding directly or indirectly by an investor,

17:56 without any conditions, and it is not contested -- and in fact it is Respondent's case -- that we have been holding it throughout at the registry.

And moreover, in fact, even on the best case scenario of Respondent, they admit that we are not even acting as a puppet. Even puppet, you can, here. They say we still have a collateral interest in it.

So that's why in fact I am surprised that I do not see the strictest analysis of Respondent's position under international law based on the treaty. Nothing. As if I turn a blind eye on the treaty, I don't want hear, I don't want to speak. But that's not what the Slovak Republic signed.

What does Respondent rely on when it alleges that holding is not enough? Again, no analysis under the BIT, strictly nothing. It relies merely on two legal authorities. Two legal authorities. And I would say on the case law, when there is similar language, the majority, the vast majority -- there are one or two crazy decisions out there that required shareholding and control, meaning actual control -- unanimously, they didn't ever look at the beneficial ownership. They said: legal ownership is sufficient.

What did they rely on? Even when the clause didn't provide holding, even when they said ownership, what did

17:58 they rely on? Two authorities.

You have the first at tab 54 (RL-180), and it was rehashed today in the opening statement. Mr Bederman, 1989. I mean, if you stop there, you would say it's the [Stone Age] of investment arbitration. You open it: you discuss World War I, World War II, brokers, insurers, inheritance. It has strictly no relevance whatsoever in relation to investment dispute, and it could not have, because that matter was not relevant at the time. Strictly nothing.

And then the most relevant thing, that doesn't even come close to materiality for the -- it discusses the Iran-US Claims Tribunal, that you have some shares that were owned by an Iranian company but the beneficial owner was American, they were trying to exercise jurisdiction. There was no BIT clauses. It is completely, completely hors sujet.

Then the other decision is Occidental v Ecuador. You have it at tab 55 (RL-181). Annulment decision. That annulment decision is inapposite, its reasoning is flawed, and in any event clearly distinguishable from the facts and legal terms involved in this case. So this is the two they have.

Let's look at tab [55]. It's not inapposite because you don't have a doctrine or precedent that is binding

18:00 on you. But more importantly, it's an isolated decision and it has no support. Before I discuss that even if it was binding, it was substantiated, it has factually and legally nothing to do with our case, I want to look at what the decision cites in support. Tab 55. It's at page 70. Actually this was cited in the opening statement, paragraph 259:

"In cases where legal title is split between a nominee and a beneficial owner international law is uncontroversial: as [respectful] Arbitrator Stern has stated in her Dissent the dominant position in international law grants standing and relief to the owner of the beneficial interest -- not to the nominee."

First it says "uncontroversial", then it says "dominant position". So "uncontroversial", "dominant position", I don't see that as the same thing. And then what does it cite, it cites Professor Stern's dissent as a backup of all this being uncontroversial. Now, we love Professor Stern; she was with you, Professor Mayer, on my juris thesis. But it's not merely enough to say Professor Stern said something, and it's uncontroversial in international law.

Look, what else does it have? It cites articles. Articles of whom? It cites articles in footnote 192, Mr Vicuña. And when you read it -- it's 2000 -- it says

18:01 "Changing approaches to the nationality of claims in the context of diplomatic protection". Okay. What does that have to do with BIT? It's in the ICSID Review, okay. It's diplomatic protection. Then on its face, look what it says:

"In claims to property beneficially owned by one person, the nominal title to which it is vested in another person of different nationality, it was usually the nationality of the former that prevailed for the purposes of the claims."

So it was "usually" the nationality of the beneficial owner. Then if you read the article, it goes on and calls for more flexibility, in fact.

Then what does it cite? The Iran-US Claims Tribunal, completely irrelevant to the BIT. And that's the article. So it has Professor Stern's dissent, then it has articles in the footnote.

And look what's the only article that it cites in the full text. Guess who? 260. It's Mr Bederman, when he was the assistant to the Iran-US Claims Tribunal in the non-hors sujet article that I wrote. That's the supporting evidence. That's the supporting evidence.

Of course, it goes on afterwards, once it decides on this issue, to raise other articles in passing, relating not really to this. If you look at paragraph 274, it's

18:03 Impregilo v Pakistan. It's not even relied on by Respondent. Why? Because it's an Italian company that created a legal personality-cum-joint venture under the laws of Switzerland in which it held majority participation. Impregilo, that acted as the only signatory of the contract on behalf of the joint venture, it was claiming monies for others. That has nothing to do; that's why Respondent is not relying on it.

So basically we are left with Professor Stern's dissent and the articles that are completely irrelevant, and one footnote that supports in fact our position.

Then Occidental decision, what is striking also when you hear Respondent relying on it, because it doesn't have the same terms in the BIT. If you look at the Ecuador-US, it doesn't use the term "hold"; it uses the term "ownership". Okay?

And finally, the Occidental decision bears no, at least on its face -- I apologise, Professors, you know the case much better than us -- but when I look at the only thing I have and the only thing the arbitrators have, and the only thing the arbitrators should have, because then that would create a significant issue, because that's the only authority relied on by Respondent, which authority relies on Professor Stern's

18:04 decision, on its face the decision, the case, is distinguishable not only because the BIT contains different language, but if you look at tab 55, it should be page 135, I think -- it should be the last page. It's the decision, paragraph 590. It says:

"The Committee partially annuls the Award ... to the extent that the Tribunal assumed jurisdiction with regard to the investment now ..."

Use the "now":

"... beneficially owned by the Chinese investor ..."

Okay? And then if you look at Professor Stern's opinion at paragraph 38, I believe, it says:

"It is undisputed that Andes, following the implementation of the Farmout Agreement and the subsequent sale of ... interest ... has become -- and still is -- the owner of 40% ..."

Okay. In this case, on its face, it's not the case. In the farmout agreement, as Professor Stern goes on to dissent, the transfer of everything, of the beneficial ownership, was immediate. It was not at a closure date, it was immediate. And moreover, at the time of the arbitration, at the time of the decision, there was still a beneficial ownership. Here the company was dissolved, went bankrupt. The Respondent's best case scenario doesn't say that it was a transfer by the date

18:06 of the agreement.

So however you look at this, there is no support. The clear language of the treaty says "hold". The case law says "hold". The practice of the governments shows that there are mechanisms that they effectively use when they want to control who is beneficial or legal owner, or they want the owner to have some degree of control. But here it's not the case, and you are left with the language, plain and ordinary, of the treaty.

That was my first argument in defence. I have four more, that are independent, on the question of standing of Belmont.

The analysis of the parties' position over time, let alone during this arbitration, demonstrates, confirms that the sale was never completed in 2000. I will submit to you as a third ground that it could not have been even possible at the closure date, legally speaking, because the company was dissolved. But here, factually, I want to submit to you that it is clear that the transaction was never completed. And before I walk you through the correspondence, I want to make a few general remarks.

It is common ground that the documents that are relevant to appreciate this question are poorly drafted. There is a common position on that. Even their expert

18:08 on British common law says that.

It is also undisputed, at least undisputable, that there are few amendments to that 2001 agreement, and I will walk you through those. It is also undisputable that there is a truckload of statements, correspondence, declarations, even notices of lawyers, in relation to this question. So you can't just look at one piece of document to decide, and put it on a screen and say, "They said this, they said this, they said this". You have to say what was said before, what was said after; what was said below that paragraph, what was said above that paragraph.

You need to also construe the situation: where are those statements made, by whom? Is it a lawyer? Is it before a prosecutor? Is it in relation to a question of the share purchase agreement or it's in relation to a secondary question? If it's Mr Rauball that does it. I mean, I don't understand. Respondent says Mr -- I apologise, Mr Rauball -- basically Respondent says Mr Rauball is a crook, then relies on its statements against us. So we have to look in time, the forum, the author of these correspondences, before reaching a conclusion.

Then you need to also understand there are some terms, in addition to the poor drafting, that are used

18:09 that are loose in the correspondence: it says "collateral", "collateral", "security". It could mean a lot of things.

What else can I say on this issue? It's that what is also relevant is the position of the parties who are today in this arbitration. If even Respondent says it's EuroGas II, it's not EuroGas I, you're still left with Mr Rauball, as the signatory of these agreements, which confirm with Mr [Agyagos], the other signatory of this agreement, that there was no transfer, that today there is no transfer, that it was never closed. So you have a meeting of the minds of the drafters of those agreements and correspondence.

Why do I say all this? It's to invite you to look at this, also to address the questions of burden of proof. We have legal title at the registry: we claim that this is enough, that we have full beneficial and legal ownership today. The other party to the agreement relied on by Respondent is here and does not claim to the contrary, and supports our position. So the burden of proof is not only on Respondent, but the threshold is one of fraud. That means they have to show that my client's representative, Mr Agyagos, is engaged in collusion with EuroGas.

Let's look at these documents very briefly. You

18:11 have at tab 57 the SPA (R-107). It dates from April 17th 2001. I invite you to look at Article 6. I can accept that some of the correspondences are not clear, but at least Article 6 is as clear as it can get. It says Article 6, "Closing". Then it says:

"Within 30 days of the date of approval by the Canadian Venture Exchange of the transactions ... the Vendor shall deliver in trust to the solicitor ... for Rozmin ... any and all transfer documentation necessary for the transfer of the Shares to the Purchaser against payment of the Purchase ... Shares and ... US$100,000 ... The terms of the Trust are that:

"a) the ownership of the Shares shall not pass to the Purchaser; and

"b) no instructions to proceed with the share transfer ... will be given [in the Slovak registry] ..."

Next page:

"... unless and until ... 125% of its initial investment equal to CDN $3,000,000 [benefits the Seller]."

So it is clear: for title to pass, you need these conditions to be met.

The expert then engages -- that is why there is no need for rebuttal. It picks and chooses correspondence, doesn't take into consideration the intention of the

18:13 drafters that are here, does not take into consideration the fact that there is no claim by anyone except the Slovak Republic that EuroGas I or II may have had any interest remaining in these shares, and then goes on to say: yes, closure is required, but that wouldn't make sense, it would be abusive, because then if Belmont does that, where does that leave -- that's not a problem. There are remedies under law. If the beneficiary of that right thought that the other party was abusing it, it would have a recourse. There is no recourse.

And there is no problem, Professor Mayer, in Belmont selling the shares. Does it provide that we have to restitute the shares if the transaction is not complete? Where does it say that? Assuming there was such a right, it has to be exercised. But why is that relevant?

If I want to buy your property, and we do an act together, a private compromis, and I give you $20,000, I am not able to close, why can't you in the meantime even sell the $20,000? Nothing prevents you. You can sell. You can sell whatever you want. Then, if you want to go through the transaction, if I have a right to return it, that's another thing. Here there is no right of return, there is no restriction on what we can do with what we received.

18:15 So on its face, the agreement is clear. And there is common ground that Belmont, first, never received $100,000 in full, and Mr Agyagos will explain why. Belmont never placed the shares in trust. Belmont never received the 3 million Canadian dollars under the above agreement. There was no closure. EuroGas nor anyone claims ownership. Nor does Mr Rauball believe that he is entitled thereto. The shares have never transferred to EuroGas. EuroGas never requested the transfer of the shares, nor did Mr Rauball. So these facts alone are sufficient for you to reject -- yes?

THE PRESIDENT: Factually, the cash received by Belmont when it sold the shares of EuroGas, what became of that cash? Did they give it back, keep it, or what?

DR GHARAVI: No, to the best of our knowledge, subject to confirmation, it was not restituted. But so what? That's what I was trying to address. So what? Does the agreement oblige Belmont to restitute it? Is someone claiming that amount? Under what ground does the defaulting party --

THE PRESIDENT: I understood the argument. It was just factual.

DR GHARAVI: Okay, good.

The alternative argument also to that is that's a position that maybe whoever, assuming he has a right

18:16 to claim which is not provided under the law, is not provided under the contract, still doesn't overcome the finding that we have title. It's a question of how much we would have to reimburse eventually EuroGas, which is not at all relevant for purposes of jurisdiction.

I propose to walk you through the documents. These are the documents, tab 58 (R-114), tab 59 (R-116), that are relied on heavily by Respondent. These are consolidated financial statements. You are dealing with auditors. It's not the place to provide a history and detailed analysis of the SPA. You have to read it in the context of what I read to you in terms of the content of the SPA.

It says in any event, if you look at tab 58, that the company holds the Rozmin shares pending settlement of the amount of guarantee shares to be issued. Okay, it holds it pending completion. And then at tab 59 it similarly says: pending realisation of the terms.

So every document you look at, the facts today, at the time, is that the thing was not completed. Maybe it's not the language that a lawyer would use, but constantly there is a reference to an agreement that needs to be completed.

On the ground, what was happening? If you look at tab 60, C-299 to C-303, you will see that Belmont was

18:18 continuing capital injections in the company: 2001, 2003, 2003, 2003, 2004. It's C-299 to C-303, in tab 60. Plus we have the witness statement at tab 29 that in 2004, Mr Agyagos moreover was on the ground. So in practice you have to consider also what was going on on the ground: that we were continuing injecting money. So that reality, that we are participating physically in the gatherings and we were injecting money, is incompatible with us just holding the title as a nominee.

Now let's go to tab 60. You will see there is a letter of October 30th 2003 of Belmont that confirms that there was a breach by EuroGas of the SPA. It says that the breach under the assumption that EuroGas wishes and can continue is that okay, but every $10,000 we put, we get back 1% of the shares. We get back 1% of the shares assuming the transaction obviously closes, because it has not closed.

Then the next tab is an amendment dated November 8th 2003. It's Exhibit C-298. It's an amendment. That shows that Belmont went a step further and reserved the option to get back up to 57% for each $10,000 that it pays; but to get back within the context of the SPA, assuming that the transaction closes, and that the other party can close it.

18:21 Then you have tab 62, C-296: amendment of SPA, dated April 27th 2004. It says the parties agreed to complete the purchase of the 57%. So you have to complete something -- that means it's not done yet -- subject to payments.

Moreover, at the time EuroGas was not able to meet the conditions. If you look at tab 63, we said, "We will sell the 57% interest in Rozmin if you are not able to comply". Then at tab 64 there is a notice of default. At tab 65 we have EuroGas and Mr Rauball still claiming, pushing, thinking that he can still close the deal, complete the deal, and enters into an amendment, C-297, for issuance of further shares to allow Belmont to reach closure amount, but which was ultimately not reached.

So if you pause there, you will see that both parties even agreed at that time that they could not complete, that they have not closed, have not completed the sale. If Mr Belmont wants to offer the shares to a buyer, that's his problem. But even that, I think, for it to happen, has to be put into context of Mr Rauball saying to anybody or that anybody -- that third party requiring proof that the transaction has closed. So it is wishful thinking on behalf of Rauball saying, "I want to propose those sales". It is subject

18:23 to completion and having title; otherwise it's impossible.

In any event, tab 66, C-343 is the press release. Belmont unequivocally confirmed that Belmont owns 5[7]% share of Rozmin, which holds the interest in the deposit.

Tabs 67 and 68, C-344 and C-345, Belmont again declared in August 2008 and June 2011 that it has officially requested an acceleration of the return of the talc deposit. It has filed these requests on behalf of Rozmin, a company which EuroGas owns 33% and has an agreement to acquire 57% shares.

Then tab 69, May 1st 2008, EuroGas no longer claims beneficial ownership, but only a right -- again, wishful thinking -- to purchase the 57% shares if it were to pay $1 million more. Tab 70.

PROFESSOR STERN: But all these documents refer to EuroGas Inc.

DR GHARAVI: Yes.

PROFESSOR STERN: But at that time EuroGas II already existed, no?

DR GHARAVI: Yes, but I am just putting to you all the documents that are --

PROFESSOR STERN: I am trying to understand, that's all.

DR GHARAVI: This is, I would say, my colleague's problem to

18:24 explain. I am just telling you because Respondent is picking and choosing on the question of SPA on some documents to show that for EuroGas it has closed. I will get to your question, Professor Stern, when I address the third jurisdictional defence to this.

PROFESSOR STERN: You said at the beginning, if I listened carefully, that EuroGas Inc could not transfer anything to you because they were dissolved.

DR GHARAVI: Yes.

PROFESSOR STERN: You couldn't make the SPA.

DR GHARAVI: Yes. The second jurisdictional defence I have here is that if you look at the correspondence that I'm walking you through, you would see factually that there is an agreement and there is proof that the transaction never closed, assuming it could close. Then I will move to the agreement. I am just running through the declarations to say that nowhere is it stated that it was done, it's firm. It's always subject to completion. That's what I am telling you.

The conclusion of that is that if you look at all this correspondence, it is clear that Belmont today -- contrary to the Occidental case -- is both the beneficial and legal owner of the claims. Nobody is claiming those otherwise, except the Slovak Republic. Nobody. Not the author, not the company, not the

18:26 trustee, nobody.

The third defence that may perhaps allow me to clarify this issue for Professor Stern is that Respondent did not have the authority nor the capacity to close the transaction. Legally speaking, EuroGas could not have held beneficial ownership at any point in time, legally speaking.

Why? If you turn back to the SPA at tab 57 (R-107) you will see at Article 6 it says "Closing". It says:

"Within 30 days of the date of approval by the Canadian Venture Exchange of the transactions described in this Agreement ..."

So that's a condition precedent. And if you look at Article 4, "Representations":

"The Purchaser ... represents and warrants to the Vendor that now and at the Closing:

"(a) it has full authority to enter into this Agreement ..."

In tab 7 you have the Respondent's Canadian law expert, who agrees that closure can occur only if you get the authorisation of the stock exchange.

There are two certainties now. Tab 71, R-217. The first certainty is that the SPA was approved by the general assembly of Belmont only on July 16th 2011. The second certainty -- and there is no dispute on this.

18:28 It's tab 71, R-217, the second page, that shows that on July 18th 2001 the Canadian Venture Exchange accepted the purchase agreement, approved it. So there is a common agreement that the approval was obtained on July 18th. And there is an agreement that you can only close, as per Article 6, on July 18th 2001.

This is fatal to Respondent's case, and again proves the inconsistency and frivolous nature of its defences. Why? You have the answer in tab 72. Tab 72 is that on July 11th 2001, the company was dissolved. So EuroGas could not have closed. Previously we saw that it did not meet the conditions, and the transactions were completed. Here we have scientific close, and it's not Respondent, which is a champion of Utah law and public policy and corporate law, that can contradict me. EuroGas could not -- did not -- have the capacity. It breached the covenant at Article 4 that it could close. And the shareholders' agreement at Belmont was granted in ignorance of that representation.

In any event, forget about the shareholders, Article 6 said you can only close if you get the stock exchange agreement, and the stock exchange agreement was provided only on July 18th. So I'm afraid that's done, done, finished. We have to close this question that has been costly to Belmont. We don't need to show that we

18:31 have anything more than holding. Assuming we do, factually the transaction was not completed. Nobody is claiming on the EuroGas or Belmont side -- or nobody at all is claiming any title to the beneficial ownership.

And now we see that that SPA could not have been solved. So now maybe there are questions. What do we do? Do we keep the money we received? Yes, we are happy to keep the money. Where does it say that we've got to keep the money? We have damages again, as well, to those that declared that they had the capacity. The contract doesn't say we have to restitute the amount. The law doesn't say we have to restitute the amount. There is also, by the way, statute of limitations to whoever wants to claim that we have to restitute the amount.

But that's not it. We have a fourth defence and a fifth defence. I will be very short on those. Maybe before I get to the fourth, I would like to draw your attention to tab 76 (R-106). Tab 76 is what EuroGas even said. Maybe that will help Professor Stern. Tab 76, for the bankruptcy, what a EuroGas representative said. He said to the question:

"Question: And now you owe another 12 million, if they're willing to take it, or they want 1.6 million Canadian dollars?

18:32 "Answer: Correct.

"Question: Do you have the ability to pay ...?"

It's with reference to the SPA.

"Answer: Right now, no.

"Question: If -- is it true that your testimony was that you had four to six weeks to pay that or the talc deposit would be lost?

"Answer: There's a very distinct possibility, yes.

"Question: Okay. In addition, you have an ongoing royalty ..."

So there was common ground also that the issue was discussed. Outstanding amount acknowledged to be done for completion before the Bankruptcy Court, including by EuroGas I, in other words that the sale was not concluded, assuming even it had the legal capacity -- which it didn't -- to close.

I didn't walk you through the winding-up. Once a company is dissolved, it cannot do anything but wind up. I made reference to Respondent's position on this issue, which we are happy to follow as an alternative defence to the first two that I presented.

The fourth defence, a very independent defence, is: assuming that Belmont held only shares as collateral at one point of time, it ultimately exercised the collateral, and it legitimately officially warned

18:34 EuroGas that it would, for breach of the SPA and for inability of EuroGas to pay. It's tabs 64 and 66.

So be it under law, because of the insolvency, or because of the inability to close, we exercise our collateral. We don't need to go to the court to exercise. We kept it for this very purpose. And those who were not happy or contesting that could have gone, and nobody has gone. So we exercise that collateral, assuming that the SPA could have been closed, which we see now could not have legal -- assuming that payment was made for the beneficial ownership to pass, and that we only held it for collateral, ultimately we exercised that collateral.

The fifth and last independent defence is: assume we hold it for a collateral. Go back to tab 53. We don't want to insist on that; it's just again for the sake of completeness we go back to the BIT. It says at Article I that the term "investment" means any kind of asset held or invested, either directly or indirectly; movable and immovable property and any related property rights, such as mortgages, liens, pledges.

Holding is enough. Even if we had a collateral, without the holding, it would be enough to exercise jurisdiction, based on that provision.

If you go back to tab 52, you will see, if you look

18:36 at the Iran treaty, that at Article 1 -- I would say 1 and then it goes and discusses loans and debt securities. Slovakia, when it wants, like other sovereign states, puts a limit to jurisdiction exercised by those that hold a security that says: okay, but it has to be only in relation to loans and debt securities, with the original maturity of less than three years, a loan or debt security issued by a financial institution, and the extension of credit in connection with a commercial transaction such as trade finance.

So however you look at it, based on the pure language of the treaty, based on the facts, based on Utah law, based on the concept of holding a collateral which we exercised, or the mere holding as a collateral, we have jurisdiction.

PROFESSOR STERN: What do you mean exactly with "exercised the collateral"? Can you explain that?

DR GHARAVI: It means that when we wrote to the public, and we wrote as a shareholder, beneficial owner, any owner, to the government seeking redress, at that time there was no prospect of EuroGas being financially or legally capable of completing the transaction. As we held the shares -- this is our alternative claim, I just want you to be sure -- we kept title. The transaction didn't provide -- that's why I said these terms security,

18:38 collateral can mean many different things. You have to look at the contract.

It's not that we would then sell the shares and put it in auction and get what amount is outstanding for the shortfall to be completed. We keep the shares and we keep the money. Why not? There is no provision to the contrary. Nobody is claiming the contrary. Worst case scenario: if somebody dares -- EuroGas/Rauball comes and says "Restitute the money", we say: why? Maybe we are entitled even to damages against you. Or worst case scenario, we will restitute the money. But that's not an issue before this Tribunal.

So thank you. To summarise, I come back to my conclusion that it is scientific on liability for many reasons. In terms of then procedural impropriety, we gave you the reasons why we think we were the victims, not the offender. And finally, in terms of jurisdictional objections, their defences are inconsistent, frivolous and in violation of the law for the many reasons I set out. I thank you for your attention.

THE PRESIDENT: Thank you very much. So now we turn to Ms Burton for the jurisdictional objections concerning EuroGas.

MR ANWAY: Mr Chairman, before we do, can we have an update

18:39 on the time each party has used so far?

MS GASTRELL: I gave your colleague your count of time. I believe you used an hour and 38 minutes, if I remember correctly, and here Belmont has just used 1 hour and 54 minutes.

MS BURTON: Thank you, members of the Tribunal. To be clear, EuroGas agrees with the statements made by counsel for Belmont with regard to the merits, and we will not reiterate any additional arguments with regard to the merits, and we will focus our attention on jurisdictional arguments as they relate to EuroGas.

I am going to address the Tribunal on the issues that arise jurisdictionally from the Utah bankruptcy proceedings, and my colleague Maureen Witt will address the issues that relate to the denial of benefits under the treaty.

In my opinion the bankruptcy issues in the Utah bankruptcy case pose a question with regard to EuroGas's standing to prosecute this treaty arbitration. Our position is that EuroGas has that standing.

I suspect that the interplay between property concepts in the US Bankruptcy Code and what constitutes an investment under the treaty is a matter of first impression for you. It would certainly be a matter of first impression for a United States Bankruptcy Court.

18:41 Dr Gharavi mentioned the wisdom of interpreting the treaties according to their plain language. I agree with him. I think if you interpret the property provisions of the Bankruptcy Code and the definition of "investment" within the US-Slovak Bilateral Treaty according to the plain language that is contained in them, you will be able to resolve the threshold issue that Mr Anway discussed, and you will see that EuroGas has standing.

There is a saying where I come from: you cannot fit a square peg into a round hole. If you follow the logic that Mr Anway has given you with regard to the threshold issue he discussed, that's exactly what you are going to have to attempt to do. I don't believe that you have to do that.

What you need to do is take a look at the definitions, the plain language of the term "investment" under the bilateral treaty, and compare that to the plain language of the provisions in the Bankruptcy Code that define "property of the estate". The plain language of the US-Slovak treaty says that:

"(a) 'investment' means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party ..."

18:43 That requires that the investment be in the territory of the Slovak Republic. But it allows the investment to be one which is owned indirectly.

So the 1985 company, at the time it filed bankruptcy, owned an indirect interest in the investment. It owned stock in EuroGas GmbH. EuroGas GmbH owned stock in Rozmin. Rozmin had rights arising from the contracts and permits that Dr Gharavi described to you in his discussion.

That definition of "investment", when you consider it as a property concept, is a broader definition than the definition of "property of the estate" under the Bankruptcy Code. The concept of "property of the estate" under the Bankruptcy Code is a narrower one than the definition of "investment" under the treaty. Property of the bankruptcy estate includes all legal and equitable interests of the debtor in property as of the date the bankruptcy case was filed -- or was commenced. The 1985 company's bankruptcy case was commenced on May 18th 2004.

If the 1985 company had filed schedules of assets -- and it was required to do so, but didn't, and nobody disputes that -- if the 1985 company had filed schedules of assets, those schedules would have revealed and would have been required to state that the 1985 company owned

18:45 stock in EuroGas GmbH. The 1985 company schedules would not have included as assets EuroGas GmbH's stock in Rozmin, or Rozmin's contractual and other rights with regard to its mining activities in the Slovak Republic.

Mr Anway mentioned to you that the threshold issue is whether or not the bankruptcy estate still owns "the asset". From his discussion and the slides that he provided to you in his discussion, I understand that he is contending that the investment under the treaty was property of the 1985 company's bankruptcy estate. I do not believe he wants to take that position. Here's why.

On the commencement of the 1985 company's bankruptcy case on May 18th 2004, an automatic stay went into effect. An automatic stay goes into effect on the commencement of every bankruptcy case under the United States Bankruptcy Code. The automatic stay is similar to an injunction. It prohibits creditors and others from taking action against property of the estate. It prohibits parties from exercising control over property of the estate. It prohibits parties from taking property from the bankruptcy estate.

Sometime in late 2004 to early January 2005, the Slovak Republic expropriated Rozmin's mining rights. The 1985 company's bankruptcy case was pending at the time. If the investment was an asset of the bankruptcy

18:47 estate, then the Slovak Republic's conduct in expropriating that investment violated the automatic stay. Violations of the automatic stay are void. I don't think the Slovak Republic violated the stay, and that's because the indirect interest that the 1985 company had in Rozmin was not an asset of its bankruptcy estate.

So where does that leave us? Its interest in GmbH was, and according to the Slovak Republic, perhaps Belmont's interest in Rozmin was. But the fact of the matter is you had GmbH as an asset of the estate. There is a dispute between the parties as to whether or not that stock in GmbH was abandoned by the former trustee or not when the case was closed. Two very highly regarded experts in bankruptcy law have submitted expert reports on that issue, and they have come to different conclusions.

On December 21st 2015, the Bankruptcy Court reopened the bankruptcy case and ordered the appointment of a new trustee. The former trustee is now a judge and not able to serve as a trustee again. [It] charged the trustee with conducting an investigation to determine what is the nature and extent of the bankruptcy estate's remaining interest in this asset GmbH.

The bankruptcy trustee has conducted her

18:49 investigation. That investigation, as shown from the Utah Bankruptcy Court pleadings that have been provided to you, reveals that she reviewed information that was available to the former trustee regarding the 1985 company, including financial documents, the tax returns that were prepared by its accounting firm, securities filings that had been made with the United States Securities and Exchange Commission, certain stipulated facts that the United States trustee and EuroGas agreed to in connection with the hearing on the motion to reopen the case. She reviewed the extensive filings that you have before you: the memorials, the expert reports on the issues from Ms Jarvis, Mr Gardiner, Mr Leta and Mr Merrill. She has reviewed many of the exhibits that are before the Tribunal in this proceeding. She met and conferred with representatives of both the Slovak Republic and EuroGas. She did an extensive investigation.

Her conclusion was that the 1985 company's interest in GmbH may have been abandoned by the former trustee when the case was closed, but that that's inconclusive. So she entered into an agreement with my client to abandon whatever remaining interest the bankruptcy estate might have in GmbH. That agreement is subject to approval by the Bankruptcy Court.

18:51 It is important for you to know that when it comes to decisions regarding what transactions are to take place with regard to property of a bankruptcy estate, those decisions are made by the trustee, not the bankruptcy judge. The bankruptcy judge reviews a trustee's decision to determine whether the trustee has used sound business judgment in entering into the transaction, and that will be the guiding standard for the bankruptcy judge when he concludes the hearing on her request to approve this agreement on September 26th.

A bankruptcy judge does not substitute his or her decision-making for the trustees, they don't second-guess the trustee, but instead review a proposed transaction to make sure that it has been the subject of the trustee's business judgment. If the Bankruptcy Court approves the trustee's agreement -- and at this point I want to point out that, while Mr Anway states that my client is purchasing the claim or the stock in GmbH from the bankruptcy trustee, that's not the case; she is abandoning it. There are different provisions in the Bankruptcy Code for sales of assets and for abandonment of assets.

If the Bankruptcy Court approves the abandonment, the legal effect of that with regard to property of the bankruptcy estate is that whatever interest remains with

18:53 the bankruptcy estate in GmbH will revert back to the 1985 company, nunc pro tunc to the date of the commencement of the case on May 18th 2004 and it will be treated as if the bankruptcy case had never been filed.

The Slovak Republic, when the bankruptcy case was reopened at the hearing, joined in the hearing. It actually filed a pleading asking the Bankruptcy Court to reopen the case. My client disputed the need to reopen the case because our position has always been that the interest in GmbH was abandoned when the case was originally closed. The Slovak Republic wanted the case reopened. In fact, they flew Mr Anway and Mr Alexander to Salt Lake City, Utah, to attend the hearing. Mr Alexander addressed the court and encouraged the court to reopen the case saying it would be beneficial to the Tribunal for you to know what the bankruptcy trustee's decision would be, and whether the bankruptcy judge approved it.

Which leads me to another saying where I come from: be careful what you ask for, because you might get it. The bankruptcy trustee has reached a conclusion that the Slovak Republic does not like, and it is going to extraordinary efforts to try to prevent the Bankruptcy Court from approving the decision that the trustee has made. It has purchased a claim of $240,000 for

18:54 a purchase price of $6,000. The trustee's estimate is that the funds which we give her -- which, by the way, are not $450,000, but it will be $250,000 -- will return a dividend to creditors of the estate, including the Slovak Republic now, of 20%. The Slovak Republic will make a windfall on this investment, and yet it is trying to prevent us from paying it on that claim.

The Slovak Republic has indicated that it will appeal. If the Bankruptcy Court approves the abandonment, it's going to appeal it. Appeals from decisions of this nature in the appellate system within the US judiciary is an abuse of discretion. And to be able to overturn an abuse of a judge's discretion on appeal is rare.

So when you take a look at what is the effect of the bankruptcy case on the standing of these parties, certainly the existence and the disputes within the US Bankruptcy Court have thrown some confusion and doubt onto the standing of EuroGas to prosecute this claim. If the Bankruptcy Court approves the trustee's decision to abandon, that will resolve the standing issue. You do not have to try to fit the square peg of the Bankruptcy Code into the round hole of the bilateral treaty. They are different. The concepts are different, the policies are different, the purposes are

18:56 different. An investment under the bilateral treaty is broader -- because it allows for indirect ownership -- than the concept of property of the estate under the Bankruptcy Code. Don't go down that route; you don't need to.

MS WITT: Distinguished members of the Tribunal, good afternoon. My name is Maureen Witt, with Holland & Hart, a partner of Mona Burton's, and I am here representing EuroGas.

I would like to address first the issue of ownership of the investment, and then second the right to deny the benefits of the treaty, both whether or not the investment was controlled by a foreign national, and also whether or not the company did substantial business in the United States as a party to the treaty.

Counsel suggested that ownership of the investment is a complex and complicated issue, but actually it's quite simple. At the time that EuroGas's claim crystallised, which was on or after August 1st 2012, when the Slovak Republic made it expressly clear that it would not only not return or reinstate the mining rights of Rozmin, but it would not pay any investor for the investment that it had expropriated, and the claim crystallised, at that time EuroGas owned 100% of the investment, the shares in EuroGas GmbH. It's very clear

18:58 and very straightforward.

Additionally, EuroGas is a continuing corporate entity under Utah law. EuroGas was formed in 1985, which was seven years before the treaty between the United States and the Slovak Government was even entered into force. Clearly it did not come into being to take advantage of the treaty. EuroGas changed its name in 1994 from Northampton Inc, which it started out as, to EuroGas. But it made its investment in Rozmin in 1998, which was 13 years after it came into existence.

After that, EuroGas moved forward. It was true in 2001 that it was administratively dissolved for failing to file a single corporate report in Utah, but that dissolution had absolutely no effect on its ownership of any of its assets; none. Then, as Ms Burton mentioned, the bankruptcy took place in May 2004 and extended until March 2007. At that time, after EuroGas emerged from bankruptcy, it owned the investment. It owned the shares in EuroGas GmbH because they were abandoned by the trustee. So through that entire period of time, you see a continuum of ownership by EuroGas Inc in the investment.

Then in July 2007 EuroGas sold the shares in GmbH to McCallan Oil & Gas. But within two years -- excuse me, a little bit over that -- by no later than November

19:00 2011, EuroGas -- the second EuroGas, which was formed in 1985, and then merged with the first EuroGas as of 2008, retroactive to 2005, but whether it was retroactive or not is really irrelevant -- in 2008, EuroGas II was formed, and at that time, at a minimum, it absorbed all of the assets and liabilities of the first EuroGas. It was formed precisely to be the continuing entity of EuroGas, and EuroGas I expressly transferred all of its assets and liabilities, as part of its winding-up of its affairs, to the second EuroGas. So it was abundantly clear from every angle that you looked at it that the second EuroGas was the continuing corporate entity under Utah law for the first EuroGas.

The second EuroGas, the continuing corporate entity, by the end of November 2011 had purchased McCallan Oil & Gas and thereby reacquired all of its investment in EuroGas GmbH. So as of November 2011, EuroGas owned all of the investment, EuroGas GmbH, and had standing to bring the claims under the bilateral treaty which arose after that.

As you see from that continuing existence -- and let me just make a footnote. Counsel mentioned that there weren't any deeds in the record with respect to the transfer. My colleague Ms Burton submitted all of the evidence that shows that the agreement was reached to

19:02 transfer the shares from McCallan to EuroGas, and then that EuroGas had acquired it and transferred it to a subsidiary, EuroGas AG. It is our understanding that the United Kingdom does not issue deeds when a sale is made from one entity to another, so those deeds are not available to provide to the Tribunal, and that is why they have not been provided.

Nonetheless, all of the shares transferred and EuroGas owned all of McCallan and, as a result, all of the EuroGas GmbH investment as of no later than November 2011.

In sum, EuroGas owned the investment in Rozmin and the Gemerská Poloma talc mine when it was initially made in 1998, there's no question it made that investment; at the time that it was initially expropriated between December 2004, even though there are acts earlier than that, but at least by December 2004, through May 2005, no question that it owned the investment at that time; and there's no question that it owned it when the Slovak Republic awarded the rights to the talc mine to VSK Mining on August 1st 2012 and refused to pay anybody any compensation for having taken it away from Rozmin.

Finally, it's very clear that EuroGas owned 100% of EuroGas GmbH when the Slovak Republic denied the benefits of the treaty to EuroGas, and that was on

19:04 December 21st 2012; and that EuroGas owned 100% of the investment, EuroGas GmbH, when it filed its demand for arbitration in this case on June 25th 2014. So the evidence shows that EuroGas owned the investment, EuroGas GmbH, at every relevant point that matters for this arbitration.

The Slovak Government, not satisfied with contesting what is pretty obvious, that EuroGas owned the EuroGas GmbH investment at all material times, says that it is entitled to deny EuroGas the benefits of the treaty. Basically what the Slovak Republic is saying is, "You put substantial money, time and effort into a mine in our country. We wanted you to do that. We entered into a treaty to encourage you, as a foreign investor, to do that. We told you that you would be protected under the treaty if you did that". But once they did that, not only did they refuse to ever reinstate the mining rights, even though their own Supreme Court told them to on several occasions, and it refused to pay anyone, either EuroGas or Belmont, any compensation for having taken their investment under the treaty that they entered into, but now they're saying, "Not only are we not going to honour our own legal processes in our own country, we're not going to honour international law. We're not going to abide by the treaty, and we're going

19:06 to say that you're not even entitled to the benefits of the treaty".

In order to do that, they say two things. One is that EuroGas was controlled by a foreign national, Wolfgang Rauball. And they have to prove both that it was controlled by a foreign national and that it did not do substantial business in the United States. The reality is that they can't do either.

Mr Anway did not address the ownership of Mr Rauball, and perhaps that's because, if you focus on the statements even in their own Counter-Memorial, you realise that they don't make a case for the fact that he controls EuroGas. EuroGas has actually never been controlled by any individual who is not a citizen of the United States; not Mr Rauball and not anyone else.

Mr Rauball did not hold a position as an officer or a director of EuroGas until 2001. At the time the investment in the talc mine was made, in 1998, he was a consultant to EuroGas. He did not become a director and an officer until 2001, when he became the president and CEO. And he has been president and CEO since that time, but that doesn't make him control the company. In fact, at all times that he served as president and CEO -- as all presidents and CEOs -- he served at the pleasure of the board. The board could remove him at

19:07 any time. And the board served at the pleasure of the shareholders, who could remove board members by vote at any time.

During the time that Mr Rauball has been president and CEO, there have been a number of other directors, including numerous directors who were United States citizens and residents. And there have been a number of officers who have changed through the years, and the officers have included a number of United States citizens and residents. In fact, from approximately 1995 until 2012, except for a two-year period from 1999 to 2001, the individual who did the most of the management administration and operations of EuroGas was Hank Blankenstein, an individual Mr Anway referred to.

Mr Blankenstein lived in Salt Lake City for the entire time, 1995 through 2012. He served not only as an officer and a director and an employee, but as the CFO, the chief financial officer of EuroGas, for the entire time that he was with it, and he was in charge also of domestic fundraising and financing for EuroGas. As I said, he was in charge of management operations and administration.

Let's talk about Mr Rauball's shareholding interest. Mr Rauball never owned a controlling shareholding interest in EuroGas. He has owned between 5% and 30%,

19:09 but he has never owned more than 30% of the shares of EuroGas. His shares increased to 30% in 2010; but since then, due to dilution of the shares by the addition of new shareholders, his shares increased to approximately 25% in 2011 and 2012, and have remained at that level till today.

In fact, I think it's important to note that EuroGas has had over 375 shareholders of record, none of whom at any time have owned a controlling shareholding interest in EuroGas. Mr Rauball has never had a position to, never been able to make any material decision for the company without the approval and consent of the officers, directors and shareholders, and the Respondent has offered not a single shred of evidence that he has.

So, in sum, Mr Rauball does not own or control EuroGas, he never has, and no non-US citizen owns or controls EuroGas, and never has.

Let me turn to substantial business. Again I emphasise that in order to deny the rights of the treaty, the Slovak Republic has to show both. So if you find that Mr Rauball does not control EuroGas, then they can't deny the benefits of the treaty. They have to show that and that EuroGas has no -- no -- substantial business activities in the United States. That's the phrasing in the treaty: "no substantial business

19:10 activities".

So we talked about EuroGas was formed and incorporated in the state of Utah in the United States on October 7th 1985. That is an act of doing business in the United States. As we mentioned, that was seven years before the bilateral treaty, thirteen years before the investment in Rozmin. Then it changed its name from Northampton to EuroGas Inc in 1994. That is doing business in the United States. Importantly, EuroGas has always had its principal place of business in Salt Lake City, Utah. That's been true from 1985 to today.

As I mentioned earlier, for that entire period of time, from 1995 until 2012, except for that sliver of time in 1999 and 2001, Mr Blankenstein handled the majority of affairs for EuroGas from and in Salt Lake City. He had several employees, off and on, there, at least one or two secretaries who assisted him. Merlin Fish, who was the president of Northampton and became the first president of EuroGas in 1984, was also a resident of Utah.

From 1985 until the present, EuroGas has also always maintained an address in New York City --

MR ANWAY: Mr Chairman, I'm terribly sorry to interrupt. There are a lot of alleged facts being made now, with no citation to the record at all. I'm not sure if counsel

19:12 is suggesting these are facts that are in the record or not, but if they are in the record, I would ask counsel to point to where in the record they are.

MS WITT: I don't have the exact cites, but I'll be happy to provide the cites, if I can, at a later point to all the issues. They come from the SEC reports and the 10-Ks.

THE PRESIDENT: Yes, proceed.

MS WITT: In any event, counsel raised the point about the New York office. I just want to clarify: it's never been just a mail drop. As we pointed out in the Reply, the New York office has served as a financing and fundraising, investor relations and public relations office for EuroGas. EuroGas has had between one and three employees there, and today still has one employee in that office who raises funds for EuroGas.

MR ANWAY: It's a very good example -- again, I'm sorry to interrupt. It's a very good example of a fact I've never seen in the record.

MS WITT: I believe that's in the pleadings.

THE PRESIDENT: That's your opponent's problem.

MS WITT: Let me go through quickly, because it is getting late, some of the things that I think are indisputably in the record.

EuroGas filed annual reports in Utah from 1985 through 2015. EuroGas filed federal tax returns in the

19:13 United States, and state tax returns in Utah, from at least 1997 to 2001. Then the bankruptcy trustee filed a federal and state tax return for EuroGas in 2006. EuroGas filed reports with the United States Securities and Exchange Commission, including 10-Q and 10-K reports and other reports, from 1995 through March 2011. In April 2011, EuroGas withdrew its Securities and Exchange Commission registration; thereafter it wasn't required to file reports.

EuroGas was listed on the NASDAQ bulletin board and sought investors throughout the United States, which is doing business in the United States. EuroGas invested directly on its own, and in combination with Tombstone Exploration Company, in mining activities in the state of Arizona. And as I will discuss more in a moment, it also invested in mining activities both directly and in combination with other entities in the Banner mine near Boise, Idaho. Importantly, at the Boise Banner mine, EuroGas serves as the operator of the mine. It has also provided financing for EuroGas Silver & Gold, a subsidiary and a Nevada company.

EuroGas has been sued and has filed counterclaims in the United States, which shows that it has been subject to the jurisdiction of the United States courts, both state and federal. EuroGas was clearly subject to the

19:15 jurisdiction of the United States Bankruptcy Court between 2004 and 2007, and that was in Utah. So in order for that to happen, EuroGas had to have been a US corporation with either its principal place of business, substantial assets, or it had to have incorporated in Utah for that to be the proper venue.

Again, like EuroGas I, EuroGas II was incorporated in Utah, in Salt Lake [City], in 1985. EuroGas I and II entered into their merger, and EuroGas I transferred all of its assets and liabilities to EuroGas II in Utah. That's doing business.

So for all of these reasons, you can see that EuroGas has done substantial business in the United States from 1985 through today, including continuously raising funding and financing for mining projects, directly participating in and operating mining projects, negotiating and executing business deals, and other substantial continuous business activities.

I'd like to focus on a couple of points of time just to emphasise them. One is December 2012, when the benefits of the treaty were denied. At that time EuroGas Inc maintained its principal place of business in Utah. The address was 3098 South Highland Drive, Suite 323, Salt Lake City, Utah. It also maintained its office in New York at 14 Wall Street, 22nd Floor,

19:17 New York, New York, 10005. It had a registered agent for service of process in Salt Lake City, and a corporate attorney and accountant all in Salt Lake City. These are all listed in the SEC filings and corporate reports.

EuroGas's stock transfer agent was Interwest Transfer. That's listed in the SEC reports that are exhibits to the pleadings. And that transfer agent is listed in Salt Lake City, Utah, and has been from inception through today.

As I mentioned, EuroGas filed annual reports in Utah from 1985 through 2015. That obviously includes 2012, and in a moment I'm going to talk about 2014, so it includes that period too. And it was continuing to maintain and operate its office and its fundraising and other activities, investor relations and public relations, through its employee Philip Niemitz(?) in New York.

Significantly, in the last half of 2012, as Mr Rauball discussed in his witness statement, EuroGas directly negotiated and drafted a large share swap agreement with Tombstone Exploration Company in Phoenix, Arizona. That's doing business. And it was negotiating to acquire 70% of Tombstone and control all of Tombstone's mining activities in Arizona.

19:18 Also in 2012 EuroGas directly staked and owned 86 copper and gold mining claims in the Tombstone mining district, but it owned them directly, not in combination with Tombstone Exploration. And it acquired those interests from a private US mining company called Rio Plata out of Montana in 2008, and continued to hold those, prepare those for drilling, and work those up. It investigated those assets, it assessed the value of the assets, it submitted a plan to the Bureau of Land Management for the United States in preparation for drilling those assets.

Similarly for the Banner mine in Idaho in 2012, EuroGas, as I mentioned, was the operator, which means that it not only was responsible for funding, it was responsible for organising exploration, keeping the project up to date, current on all of its fees and permits, and moving the project forward.

EuroGas funded EuroGas Silver & Gold, the Nevada corporation which was doing exploration activities at the Banner mine: collecting core samples, staking claims, preparing for the summer drilling programme, which in Idaho is essential because it's hard to drill in the winter.

Also, as mentioned in Mr Rauball's witness statement, EuroGas funded the purchase of the rights of

19:19 Ashland Grant Inc, which was a Montana corporation, under an option agreement, to get those patented claims which surrounded the Banner mine, which were owned by a man named Gary Woods of Idaho.

Also EuroGas, as is stated in Mr Rauball's witness statement, funded a large geological reconnaissance programme at the Banner mine in 2012, which commenced in 2011 and continues through today.

Let me just say for purposes of brevity, those activities I just summarised are continuing through today, so they continued through 2014. The relevance of which is that not only were those activities ongoing in 2012 when the denial of the rights of the treaty took place, but they were ongoing, and EuroGas was actively participating in those substantial business activities in the United States, particularly in Utah, New York, Nevada, Arizona and Idaho in 2014, when it filed its demand for arbitration.

So I think it is obvious from all of these activities that it is impossible for the Slovak Republic to satisfy its burden under the treaty to show that Mr Rauball owned or controlled EuroGas, and that EuroGas had no substantial business activities in the United States. It was raising money, it was raising financing. It was issuing shares for a great period of time. It

19:21 was raising investment money and funds and participations after it was unable to issue shares. It has done geological sampling, prepared properties for drilling, done title work, paid fees to the Bureau of Land Management, advanced mining projects. It's done everything that you would expect a company that's organising and participating in substantial business activities in the United States to do. And it has done that consistently since 1985, and particularly at all times relevant to this dispute.

I also think it is telling that in its denial of rights under the treaty letter, the Slovak Republic sent that letter to EuroGas and it sent that letter --

THE PRESIDENT: Sorry, I interrupt you just to say: for each of these sentences that you made, "EuroGas did this, EuroGas did that", et cetera, it would be helpful for the Tribunal if you could give us and the opponent, at some point during the hearing, as early as possible, the number of the exhibit which relates to that, or, if there is no exhibit, a witness statement, for instance, so that it makes it easier for us.

MS WITT: I'll be happy to do that. Also I want to clarify that all of the mining activities I was explaining about -- the Banner mine, et cetera -- are in Mr Rauball's witness statement. I was trying to clarify

19:23 1 that as I went along. But I will be happy to provide
2 the statement to the Tribunal again if that would be the
3 easiest thing to do.
4 THE PRESIDENT: Reference to the witness statement is
5 useful. Reference to exhibits is even more useful when
6 it is possible.
7 MS WITT: Okay, I'll do that.
8 PROFESSOR STERN: Maybe if you also say whether it is
9 EuroGas I or II, that might be helpful.
10 MS WITT: Okay, I'll do that.
11 With respect to the denial of the rights of the
12 treaty letter that was issued by the Slovak Republic on
13 December 21st 2012, when the Slovak Republic denied the
14 rights of the Bilateral Treaty between the United States
15 and the Slovak Republic to EuroGas, it is very telling
16 that it sent that letter to, first, EuroGas Inc Office,
17 Utah, at 3098 South Highland Drive, Suite 323, Salt Lake
18 City, Utah, and it also sent a copy of it to EuroGas Inc
19 Office, New York, 14 Wall Street, 20th Floor, 10005
20 New York, New York. Also it included two email
21 addresses. It looks like points of reference that
22 weren't necessarily emailed there. But as points of
23 reference, it said: email Utah@eurogas-inc.com and email
24 NewYork@eurogas-inc.com.
25 So even when they denied the benefits of the treaty,

19:24 1 the Slovak Republic did so acknowledging that EuroGas's
2 principal place of business and its secondary office
3 were in the United States.
4 THE PRESIDENT: Sorry to interrupt you again, but I think
5 your time is over. I don't know if you had much more to
6 say.
7 MS WITT: If I could just mention two points, and then I can
8 quit for the night. And I apologise, I tried not to go
9 over.
10 Simply that it is EuroGas's position that the Slovak
11 Republic cannot retrospectively deny the benefits of the
12 treaty. That can only be done prospectively. It is
13 entirely unfair and inequitable to entice an investor
14 into the country, cause it to invest substantial time,
15 effort and money in a project like the Rozmin talc mine,
16 and then take away the talc mine, and say that, "You
17 don't get any rights under the treaty now",
18 retrospectively.
19 Secondarily, I would point out that the treaty
20 requires, rather than prohibits, the Slovak Republic to
21 arbitrate. It says in Article II, paragraph 6, that:
22 "Each Party [must] provide effective means of
23 asserting claims and enforcing rights with respect to
24 investments, [investment agreements and investment
25 authorizations]."

19:26 So the Slovak Republic, just by the terms of the treaty, can't deny EuroGas and Belmont any rights under its own processes within its country, and then turn around and similarly refuse to allow the arbitration to go forward under the treaty.

Thank you very much for your time, I appreciate it.

THE PRESIDENT: Thank you. Just a question. What is your client's case about the share purchase agreement with Belmont?

MS WITT: It is our client's position that that was never consummated, that the transaction did not go through.

THE PRESIDENT: Okay, thank you.

MS WITT: Thank you.

THE PRESIDENT: Maybe a short break, five minutes.

MR ANWAY: Mr Chairman, before we break, let me just offer an option. We don't feel particularly strongly about this, but just because I know it's getting late. We have, I think, agreed that a number of witnesses and experts will not be testifying: Mr Leta, Mr Merrill, Mr Qureshi, Mr Dorfner and Mr Haidecker. I think that probably alleviates some of the time pressure we had during the week. So we are perfectly open to doing it either way, we are in your hands, but if you would prefer that we break for the night now, and commence with our portion of the opening statements on the merits

19:27 tomorrow morning before the cross-examinations, that's fine with us. We are also happy to go on now, whichever you prefer.

THE PRESIDENT: How long will you take?

MR ANWAY: We will take the balance of our time.

MS GASTRELL: 1 hour and 7 minutes.

DR GHARAVI: If I can help you, we renounced to cross-examine two witnesses and one expert because we want to allocate that time to ask questions specifically to our friend Mr Corej. So it's not going to be an economy of time; we are just going to put that time to other witnesses and experts.

MR ANWAY: I think we have let a total of four or five witnesses or experts go, so certainly some of it is our time too. But as I say, we don't feel strongly about this; whatever the Tribunal would prefer.

THE PRESIDENT: So it would last, tonight or tomorrow, 1 hour and 7 minutes?

MR ANWAY: Yes. (Pause)

THE PRESIDENT: Five minutes' break, and then we will hear you.

MR ANWAY: Very good, thank you.

(7.29 pm)

(A short break)

(7.40 pm)

19:40 THE PRESIDENT: Mr Anway, ready?

MR ANWAY: We are. Thank you, Mr Chairman.

Opening statement on the merits on behalf of Respondent

MR ANWAY: Mr Chairman, I understand we will not be offering any rebuttal to the jurisdictional arguments we just heard, and instead this will just be our opening statement on the merits. We will reserve any comments we have -- and we have many -- about that presentation until our closing arguments on Friday.

So we have a second PowerPoint bundle to distribute to you with respect to the merits, and those will be distributed -- I think they already have been distributed.

Members of the Tribunal, you heard a story today about why Rozmin lost the excavation area which is not true. The reason that the Claimants lost the excavation area is because they were utterly devoid of the necessary capital to develop the project.

The Slovak Republic followed a mandatory statute requiring that the excavation area shall be reassigned if excavation was not commenced within a three-year period. Here it is undisputed that the Claimants never commenced excavation during that period. And when I say that period of time that three-year period, I mean the three-year period as confirmed by the Supreme Court:

19:41 that's January 1st 2002 to January 1st 2005. It's undisputed that Claimants never commenced excavation during that time period, or indeed in the seven years during which they held their interest; and that by the end of that three-year period, they were not even remotely close to being able to start excavation.

Our presentation today is divided into these six sections (slide 2). I'm going to start our presentation by giving you a background just on general mining activities and permits. Some of the facts that were described to you today conflate different permits, and making sure you understand the different permits is important to understanding what really happened here.

The second section is then the 2002 amendment. I will then, with your leave, Mr Chairman, turn the floor over to Mr Alexander, who will talk about what really caused the Claimants to lose the excavation area.

I will then address the Claimants' made-for-litigation story, which is what you heard today. I will also talk about the Slovak court judgments and their implementation by the local Slovak authorities. And finally, Ms Polakova will conclude with a brief section on public international law.

So let's now begin with a little bit of background. It's important the Tribunal understand the different

19:43 types of activities that occur in mines in Slovakia, and it's very important that you understand the different authorisations that must be obtained before a company can commence mining in Slovakia.

Let's first talk about the activities that occur at an excavation site. There are two general types of activities; you see them up on the slide (4).

The first is surface construction activities. An example would be the construction of a mining water treatment plant. That's often necessary when water is flowing out of the mine and it needs to be drained into a nearby stream, and to prevent contamination, a water treatment plant is necessary to be constructed. Surface construction activities.

The second general type are mining activities, and there are three different types of mining activities I list here. First, opening works. Opening works make the deposit accessible from the surface. Second, preparation works, which is the development both on the surface and in the deposit after the opening works, such that a specific excavation method can be used. And then third, we have the excavation of the deposit, which is the actual commercial production of the minerals from the deposit.

It is this last type, excavation, that the 2002

19:44 amendment required to be commenced with within three years. And later, when we show you the statute, you will see the word "excavation".

Indeed, on the next slide (5), Slovak law confirms that this last activity, excavation, may only be initiated:

"... after ... completion of [the required] opening and preparatory works ..."

Alright. With those activities in mind, let's look at the permits. And again, this is important, because some of what you were told today conflated these permits. It's very important that you distinguish between them. And I shouldn't call them "permits"; they're really authorisations that are given by the state.

There are three types of authorisations that a mining company must have before it can commence work on a particular site. There is a general mining permit which is required. That allows the company to carry out specific mining activities. A general mining permit.

There is also a requirement that a company obtain assignment of a particular geographic region, a geographic area, an excavation area to perform the specific mining activities authorised under the general mining permit, the first one. These can be granted by

19:46 an assignment from the local DMO, that's the District Mining Office, or the higher entity, which is the Main Mining Office, or by way of a contractual transfer from another party that holds the excavation area.

And finally, companies also have to secure an authorisation for the performance of mining activities specifying and authorising the detailed manner in which the mining activity shall be performed at that designated area.

You were told today that the "permit", without being more specific, was extended until 2006. That was not accurate in and of itself, but it was only with regard to the last authorisation, the authorisation for performance of mining activities. We can go into more detail about what exactly that extension provided for, but it only concerned the third one. And these three authorisations are entirely independent of each other.

The reason why that's so important is the 2002 amendment by which and under which the Slovak Republic reassigned the excavation area only pertained to the second. In other words, the Slovak Republic never indicated, explicitly or implicitly, that it was extending the time period under which Rozmin had the second, the assignment of a particular geographic area. We call this the "excavation area". So when you hear me

19:47 talk about the reassignment that occurred here, it's always the reassignment of the excavation area. We always must be careful to know which of these three different authorisations we're talking about. And again, the 2002 amendment concerned only the cancellation or the reassignment of that second requirement, the excavation area.

So let's turn now to the 2002 amendment.

The 2002 amendment was born of good reason. Prior to its enactment, the Slovak Republic had a problem, a systemic problem, with companies who were assigned to that second authorisation, those excavation areas, sitting idly on them. Often companies would not obtain excavation areas for the affirmative use of mining, but for the negative use of preventing other competitors from using those mines. The companies would collect numerous excavation areas throughout the country, develop only some of the sites and idly hold others, thus preventing their competitors from having access to those sites.

So the government undertook a rational response to that problem, and they took it in the public interest. There is legislative history behind the 2002 amendment explaining what Parliament's thinking was behind it. It's called the "Rationale Report"; that's what the

19:49 Slovak Republic legislative history is called.

We have up on this screen (slide 10) the Rationale Report for the government proposal to impose a time period by which excavation, that third activity, had to be commenced; and if it was not commenced within that three-year period, then that second authorisation, the reassignment of the excavation area or its cancellation would occur.

What did the legislative history say was the government's objective? You can read it right on this screen. It says:

"Frequently, in practice cases occur, when the excavation area is assigned to an organization for more years, but the organization does not perform any activities in the excavation area because of various, sometimes even speculative reasons ..."

And it goes on to talk about the problem further:

"... if the organization did not begin the excavation of the exclusive deposit within three years from the assignment of the excavation area ..."

That proposal was introduced to the Slovak Parliament on 25th July 2001, so now we're talking roughly five months before it ultimately took effect. This was not rushed through Parliament. It was a standard piece of legislation, trying to respond to

19:50 a legitimate problem that the country and its citizens were facing.

The initial bill, interestingly, made cancellation or reassignment of the excavation area discretionary. The government would have had the option to take the excavation area away or not. It stated, this is the first draft of the law: the DMO -- this is the District Mining Office, the first-instance mining office -- "may cancel or reassign the excavation area".

But the members of the Slovak Parliament were not satisfied with this proposal because it would have left cancellation or reassignment to the discretion of the local DMO office. The Parliament therefore adopted a stricter version of the law that made cancellation or transfer mandatory, stating that:

"The ... Mining Office will cancel ... or will assign the excavation area ..."

Members of the Tribunal, I am told from my Slovak colleagues that the word "will" in the Slovak language is the same as the word "shall"; there is no independent word for it.

The Parliament also published a document showing you, and the rest of us, what its thinking was behind this (slide 11). It states here that the reason that he changed it from discretionary "may" to mandatory "will"

19:52 or "shall" is that:

"A failure to meet the time limit for the commencement of excavation must be qualified as material violation of commitments and therefore it is necessary to impose, by law, an obligation ..."

Not just a discretion, but an obligation:

"... to the mining office."

The Slovak Republic, representing the citizens of the country, passed the amended wording of the proposal on 19th December 2001, and the 2002 amendment became effective on 1st January 2002. The final version of the law is up on the screen (slide 12), and you will see it says "will assign". No discretion given. It also refers to that type of activity I described: "excavation". Not opening works, not preparation, but excavation itself.

The three-year rule imposed by this provision applied to every holder of an excavation area, and it therefore applied -- and let me be clear: the Supreme Court, on which Claimants rely so heavily, confirmed that it applies to excavation areas acquired both before and after the law was passed. The effective date was January 1st 2002. And as we know from the Supreme Court's decision, consistent with the general laws of the Slovak Republic protecting against retroactive

19:53 application of legislative changes, the three-year rule started to run on 1st January 2002. That's what the Supreme Court held. So the three-year period, as held by the Supreme Court, that was proper and appropriate was 1st January 2002 to 1st January 2005.

You will see that the DMO had a different interpretation of that at first. But you'll also see it has no impact on Rozmin's rights because it didn't commence excavation even in that different three-year period.

As I mentioned, those companies who did not commence excavation yet, it means they had notice that they had until 31st December 2004 to commence excavation. It is undisputed that Claimants didn't do so, it is undisputed that they did not come remotely close to doing so, and you will hear that in detail. Because it is undisputed that the Claimants did not do so, the Slovak authorities were under a mandatory obligation, pursuant to their own legislation, to cancel or reassign the excavation area to another entity after that three-year period, and they did so after that three-year period, in March 2005. This is a textbook example of a state appropriately applying a mandatory statute.

In fact, the state's application was even-handed. Claimants' investment -- in fact, I will just read this

19:55 to you (slide 13). This is a witness statement from Mr Kúkelcík, who was the head of the Main Mining Office at certain relevant points in time in this case. He will be testifying before you later this week. He stated in his witness statement:

"... in total, in 2005 ..."

Which was the first year that the Main Mining Office or the DMO could have cancelled or reassigned the licence, the excavation area of any company, and of course it was the same year where Rozmin's excavation area was reassigned. In that year:

"... selection procedures were conducted for approximately 30 excavation area in which excavation was not commenced in the statutory period or in which excavation was suspended for a period longer than three years."

This was an even-handed application of the law. No one targeted Rozmin.

None of this was a surprise to Claimants, contrary to what they told you in this arbitration, and in fact we heard it again today. Claimants initially stated in their Memorial that they were unaware of the statute and that it would be applied to their investment.

I have put up the witness statement of Mr Agyagos (slide 14). He stated he was "in shock". And on the

19:56 next slide (15) we will see an excerpt from Claimants' brief where they stated they were "kept in the dark"; somehow Slovakia was hiding its laws from them.

So, as we have done so many times in this case, we went to the public record and found out that these statements too were untrue. We found that Claimants -- and I mean the Claimants themselves, as well as Rozmin -- publicly admitted outside this arbitration that they were well aware of the 2002 amendment and its relevance to Rozmin well before the excavation area was reassigned. In fact, as you will soon see, they were specifically warned by the local DMO office that unless they commenced excavation, the excavation area would be reassigned. Let's look at those documents now.

First, Rozmin's executive director, Ondrej Rozloznik, who issued a witness statement in this case and who we look forward to cross-examining later this week, told the press in 2003 that he was aware of the 2002 amendment, and that unless Rozmin started mining, Rozmin would lose the excavation area. Here's where he made the remark (slide 16). This is in the press:

"According to the executive director of Rozmin, this will be definitely decided on the next year because under the amended Mining Act the firm will have to commence the mining activity. If that is not the case,

19:58 it will lose the authorization for excavation."

Shocked, kept in the dark.

Claimants also admitted outside this arbitration that the local DMO office specifically warned them that they would lose the excavation area. You saw that Mr Agyagos told you in his witness statement he was "in shock" when it was reassigned. But in 2004 he gave sworn testimony to the Slovak criminal authorities that, "Mr Bafy from the DMO explicitly said to me" -- and it's right up on your screen (slide 17) -- "that if we did not start carrying out the works, our excavation rights would be removed as of midnight of the last day of November" -- and I'll come back to why it's November instead of December; it's not material, because they didn't commence excavation or were close to doing so anyway, but I'll come back to that -- "and a tender for the new owner of the exploration rights would be declared".

Beyond these admissions, which are extraordinary given what you were told in the witness statements and the briefs, there is of course a fundamental rule in Slovakia, like all legal systems, that ignorance of the law is no excuse. Slovak law in fact goes further in the mining context, requiring mining companies to designate a responsible representative -- for Rozmin, it

19:59 1 was Mr Rozloznik -- who had the obligation, the specific
2 statutory obligation, to have "knowledge of generally
3 binding legal regulations" related to "Protection and
4 use of mineral deposits" (slide 18). Mr Rozloznik thus
5 had a specific legal duty to be aware of the 2002
6 amendment; which, as the article showed, he clearly was
7 aware of.
8 This specific knowledge about the 2002 amendment is
9 not surprising. We have provided you evidence in our
10 briefs, and would be happy to cite you back to it, that
11 the 2002 amendment was subject to widespread discussion
12 within the mining community in the Slovak Republic; and
13 indeed, the Slovak mining society had conferences and seminars
14 in 2002 and 2003 specifically to help educate mining
15 companies about the 2002 amendment (slide 19).
16 Despite their knowledge of this three-year time
17 period, Claimants did not come close to actual
18 extraction. Why? Why couldn't they ever reach actual
19 extraction? And for that I would ask your permission,
20 Mr Chairman, to turn the floor over to Mr Alexander, who
21 will tell you exactly why they were unable to commence
22 excavation during that time period.
23 THE PRESIDENT: Yes, Mr Alexander.
24 MR ALEXANDER: Thank you, members of the Tribunal, counsel.
25 I'm going to now turn, recognising it's late, but to the

20:01 fundamental question of, as a practical matter, what caused all of this to happen. I'm going to go off of my prepared remarks for a second to try to bring it into focus a little bit.

Imagine if a company that was engaged in a very expensive enterprise and a very technical enterprise went for almost seven years without adequate capital, and two weeks before the end of its authorised period to begin a particular activity in order to keep its concession, two weeks before, the state committed certain irregularities, procedural irregularities, under a new statute. If there had never been any capital for this very expensive enterprise, and the evidence of that fact is overwhelming and what its impact was on this seven-year period, would we ever say with sort of a common-sense approach that those procedural irregularities caused them not to be able to excavate a mine? It's nonsensical. But that's the essence of the claim we're facing here.

For that reason, I want to go through what that capital picture was like and how central it was both to their invitation to come and invest, and in a variety of promises they made over those years. But that's really what the question of causation is about here.

But before I get deep into capital, two factors

20:03 contributed substantially to what led to the failure. One was Rozmin's chronic failure to timely submit complete submissions for required approvals and authorisations. We have laid it out in detail in our Memorial, the information is summarised in your chart in the slide (22), and I'm not going to take more time with it at this late hour.

Second, we think the evidence already in the record, and what you're going to hear more of, will demonstrate the utter inability of the Claimants to provide the necessary capital to bring the mine to production from beginning to end. In fact, if you look closely at their own expert report on what it was estimated to cost, we think in fact the evidence is going to show, taking all of their assumptions on figures and estimated capital, that they contributed actually less than a tenth of the capital that their own expert says was required, less than a tenth, over that almost seven-year horizon. It's actually, I think, six years and nine months, but I'm going to say seven rounded.

A central theme of their claim -- and it's in the slide there from their Memorial at 117 (slide 23) -- is the assertion that in 2000 -- and this was roughly two years after EuroGas first invested -- the Gemerská Poloma project had been fully de-risked, and its

20:04 production of commercially viable quantities of high quality talc was imminent. In their words, "any uncertainties regarding the commercial and financial viability of the reserves ... had been wiped out", by reason of the additional technical reports that had been generated, and the deposit had been de-risked.

You're going to hear that phrase a bit over the next week. It's not a reserve measurement term, it's kind of a colloquial term used in the mining industry, but it means that essentially the risk of the financial investment has been dealt with. And of course, one might reasonably ask: risk as to whom? Well, presumably market participants.

"All that remained to be done was to open the deposit and start exploitation."

But what's remarkable about that statement is it doesn't say a word about capital. Where is the $25 million going to come from? Nor does it address the persistent ways in which the project was chronically impacted by the lack of capital, and the evidence on that is simply overwhelming.

The Claimants maintain that the Slovak Republic's reassignment on the eve of the expiration of that mandatory three-year period caused the failure of commercial development. But when you look at the nearly

20:06 seven years they were there, with the project starved for capital, and the trail of promises to provide that capital, you have to ask yourself: could you possibly say that, after this long history, procedural irregularities that were corrected by the Supreme Court and complied with by the state, can you possibly say that that caused it? We think not.

In fact, the capital requirements were well known from the outset of the project. Indeed, Mr Rauball testified about that in his own witness statement: that he was advised by Dr Toeszer early on that there was need for a strong financial partner. And according to the testimony of Mr Haidecker -- well, let me back up for a second and tell you.

There were two major partners when they came in, Dorfner and Thyssen. These were substantial mining companies. They had been with the project from the beginning, from 1995. They had done the feasibility study. They had commissioned, through their possible financing partner, what was called the Hansa Geomin report. So those partners were there in place, and Mr Haidecker was with the project from the very beginning. He was a mining expert involved with the project's development, he had worked on the feasibility study. These were the original shareholders, into which

20:07 EuroGas came when it purchased its interest in Rima Muran.

They have waived cross-examination of Mr Haidecker, so I'm going to spend a little more time with it, because I think it really is important background.

Mr Haidecker was assigned to the project by Thyssen and its affiliate and became responsible for its development. He was the top dog. And perhaps ironically, he rejoined the project in 2011, after he had left it because EuroGas wasn't able to pay. He left the project because they stopped paying him.

Let me go back to the early days. So after joining the early stages of the project, he worked for five years. He worked alongside people who'd got a lot of mining experience. And he has testified -- if we could have that slide -- that:

"From the very beginning it was clear that the project would be technically and financially very demanding."

Financially very demanding. But:

"... because of the uncertainties surrounding the project, we did not succeed in finding a financial partner at the time."

So Dorfner, and you will hear it as well from Thyssen, there was concern about "We need capital".

20:09 So when Dorfner and Thyssen withdrew from the project in 2000, this was only a couple of years after EuroGas and Mr Rauball had joined, and they had announced in 1999 that they were going to withdraw.

Mr Rauball, according to Mr Haidecker's witness statement, asked him if he would continue. And it's understandable: he has lost the two key players, but Haidecker is a possibility. So he came on as the leader. But, as he said in his witness statement, and it's in your slide (24):

"... the project soon started to encounter major financial difficulties when Rozmin depleted financial reserves that had been created prior to the entry of EuroGas GmbH and Belmont ..."

Remember it was Belmont that actually bought out Dorfner and Thyssen's affiliate.

So what does Mr Haidecker do? He's not being paid for his work; in January 2001 he decided to leave (slide 25).

I want to stop there and pause for a second and talk about chronology, because I think it's so important. Recall that the mandatory three-year period began on January 1st 2002, the effective date of the law, and expired on January 1st 2005. So we're now talking about events that are transpiring in 1997 through 2000, two

20:11 years before that period even kicks in. So if somebody typically would get assigned the excavation area, they would have three years from the date of that assignment to begin excavation. EuroGas had effectively three months short of seven years.

I think it's helpful to think about where we are at that point in time. Mr Rauball enters the project, and how did he do it? According to his own testimony, he did so with a contractual promise to Mr Corej, whose company, in which he was a significant shareholder, Rima Muran, was the third shareholder in Rozmin. And that promise was very straightforward: EuroGas will provide the necessary capital. Nothing ambiguous about it.

You will see that in his testimony. There it is on the slide (27), paragraph 20 from his witness statement: Corej said Rima Muran was unable to provide the financing necessary, and Mr Rauball says, "I agreed that we would supply it".

But -- now we're back to Mr Haidecker, remember what he had said a minute ago -- by August 2000, reserves were depleted. Dorfner and Thyssen had left, and soon Haidecker left. So think about how dramatically that picture changed. The original partners, the mine experts, the people who had developed the feasibility

20:12 study, who had commissioned all the significant work, who were working to try to find financing, they were gone. Haidecker was gone. Belmont came in for about a year and a month, and then it entered into the share purchase agreement to sell to EuroGas. So what was left? EuroGas. Only two companies for that year and month, and then EuroGas.

Remember the relationship between these two companies. It's very important. You've already gotten a sense of it from what you heard today. They acknowledge they were related parties for certain reporting purposes in SEC filings, and that their transaction could be described as other than arm's length in the context of some relationships. They shared a common director for a period, Mr Agyagos. But both lacked substantial capital, let alone the kind of capital we're talking about here.

So they need to go to the capital markets. They need to go to lenders, potential farm-out participants, potential purchasers of portions of the interest in the company. But with the filing of their -- and remember they're both public companies. With the filing of their 2000 year-end financial statements for the prior year -- so those would have been filed early 2001, so right about the same time that the partners are pulling out,

20:14 Haidecker is gone, financial problems are starting to commence -- you read those statements and you can see plainly just how close they were to financial collapse. It would have been clear to anybody who read those public filings.

Every potential capital market participant is going to do due diligence. What's the first thing they're going to do? Look at the public records, look at their SEC filings. They could see the operators of this project were without any meaningful capital or resources.

Just think about it practically. If you're being asked to invest or loan substantial dollars on a project that's going to cost €25 million to develop, is that going to make anybody comfortable? Well, in the case of EuroGas -- and this is in Exhibit R-143. I apologise, I don't have a slide for you on it; I somehow misplaced it earlier today.

They could see in R-143 -- which is what's called under American securities laws an S-1, it's what's called a registration statement; it's filed when you're seeking to issue new stock as a public company, and it is required to be filed with the US Securities and Exchange Commission, open to the public. Filed in support of EuroGas's efforts to issue more stock, R-143.

20:15 As to EuroGas -- and I don't say this to offer any embarrassment to anyone here, but I think it is important to recognise that it was EuroGas's self-reporting -- this is its description of its own affairs: that they were defending serious litigation, had been under SEC investigation since August 1995 and had produced voluminous documents as part of that investigation; that its auditors had also been called upon to produce documentary evidence; and that Mr Rauball, listed as a director and important person, had been convicted, convicted by a German court in other matters relating to a bankruptcy in Germany, in matters bearing a remarkable resemblance to what was about to happen here with EuroGas's subsidiary, Rozmin.

It's stunning when you look at the description in that report. The parallels between the matters at issue and the matter that led to that conviction and the state of financials here are important. Think about the investors or capital market participants or lenders. Rauball's conviction was for a failure to capitalise a subsidiary; or alternatively, in order to protect creditors, to put it into bankruptcy.

The final point they would read as to EuroGas's financial affairs -- again, a legally required document filed annually, in the annual 10-K report -- would read

20:17 that EuroGas had virtually no revenue, had been loss-making for years, and that its accumulated deficits were very large and growing every year, because it was losing money year after year after year.

As the Tribunal may recall, we engaged PwC, Sirshar Qureshi, who they passed on cross-examining, so I just want to touch on this because I think it's very important to this issue we're discussing. We engaged him to conduct an analysis of whether Claimants were able to secure financing to complete the project, a fundamental question. If Rozmin's rights to the excavation area had not been allowed to lapse by reason of the running of the three-year period, could they have ever gotten financing?

Mr Qureshi's report, based again largely on publicly available information, focuses primarily on EuroGas, because he notes in his report that Belmont, by its own admission, reassessed after it had been in the project for a year and a month, concluded that the capital requirements were substantially larger than they expected they would be, and he made a determination that he had to sell. So that's why I say: there it was, EuroGas all alone.

So Mr Qureshi looks at EuroGas. And what he looked at, summarising the reports from the period -- and it is

20:19 on your slide (29), I hope -- from 1997 through 2004, the relevant period, through the final year of the period to initiate excavation of the deposit, you have to ask: how did EuroGas survive outside of bankruptcy as long as it did? From paragraph 62 of his report, he notes the following:

"... that EuroGas I had:

"(a) no operational revenues;

"(b) increasing accumulated losses;

"(c) experienced a sharp decrease in its share price; and

"(d) [self-reported] significant doubts as to its ability to continue as a going concern."

That's EuroGas to the investing public.

So there is an introduction on the lack of capital resources. I want to turn now quickly to some of the other testimony that I think it is important to have as we enter into this phase of the hearing.

First, if we have the slide from Mr Agyagos (slide 30), after he purchased the 57% in Rozmin, which I said a minute ago, he further investigated the project and came to the conclusion that it would need to raise greater sums than he had anticipated to prepare the deposit for its commercial development. So he contemplated in early 2001 selling the 57% interest.

20:21 He ultimately sold, of course, as the Tribunal already knows, to EuroGas. (Slide 31) And he did so in exchange, among other things, for the promise and contractual commitment for EuroGas to:

"... arrange the necessary financing to place the Gemerská Poloma talc deposit into Commercial Production within one year from the date of execution ..."

Execution was 27th March 2001. So one year later takes you to 27th March 2002. That's only three months into the mandatory period. So at the time that deal was struck, those parties obviously agreed it could be done in a year. And more importantly, EuroGas agreed they would do it within a year because they would fund the capital. That was the commitment.

Remember that chronology I set out a while ago (slide 32). If you look at where we are in that chronology, as I say, if EuroGas had provided the necessary financing, they would have been in production in March 2002 with a lot of headroom on that three-year period: 33 months, 30 months of extra time. But it didn't happen. That was the promise, production within a year, but nothing close to that happened.

So then I turn to Mr Corej, who has explained in great detail (slide 33). I'm going to move through these slides pretty quickly. I just want to point out

20:22 how dramatic this lack of capital was impacting the project. He is a partner, of course, in Rima Muran, alongside EuroGas.

"... miners were threatening with a strike [because they weren't being paid]."

(Slide 34):

"... payments from Rozmin were always late."

(Slide 35):

"... we did not have money to pay for the works at the deposit, we owed our suppliers, and we were under threat of bankruptcy. We tried to get financing from a bank but [couldn't]."

(Slide 36) Then he says:

"Insufficient financing in summer 2001 ..."

That, of course, was still before the inception of the mandatory three-year period:

"... led into an open dispute between Rima Muran and Rozmin, as a result of which Rima Muran discontinued works at the deposit several times."

Again, some of these names can get a little confusing sometimes, but remember the relationship here. EuroGas itself is the majority shareholder of Rima Muran during this entire period. It's the majority shareholder. And it's not funding its own contractor to keep the miners from striking or to keep the works from

20:24 being discontinued.

(Slide 37) So:

"After five months of further delay, on 28 November 2001, the works were [formally suspended and that was] notified to the DMO ..."

Let me check my time here for a minute.

MS GASTRELL: You have 24 minutes left.

MR ALEXANDER: I'm going to have to pick it up here.

I want to point out one other date though.

(Slide 38) The notice of suspension, stated as the estimated date of renewal of works: 1st May 2002. So the job is shut down, it's suspended. Rima Muran is not getting paid, they go off the job.

But if the date could be hit for the resumption of works which is estimated by Rozmin, think how much headroom they still have. They can come back six months into the mandatory period, resume the work; and remember EuroGas said, "We can do it in a year". They had said that about a year prior to that, because it was ready to go. But still no capital materialised. No significant capital materialised, despite efforts to borrow funds and sell an interest in the project.

Recall that these events are occurring two years after the point in time when EuroGas had said in its Memorial that it was de-risked and ready to go

20:26 (slide 39), and this was happening about a year after EuroGas promised to provide the capital to get it done within a year.

So EuroGas had breached not only its promises to Rima Muran to provide the necessary financing for the development of the project, it had breached its promise to Belmont:

"... to arrange the necessary financing to place the ... [project] into ... Production [by 27th March 2002]..."

And though EuroGas had tried to sell, according to Mr Agyagos, that option had also failed. If you look at his testimony at paragraph 29 in the slide (41), he says it very simply:

"EuroGas was, however, unable to sell its interest in Rozmin and did not provide any financing."

So the deficits continued to mount for both companies. The major financial difficulties that Mr Haidecker had described had reached utter financial collapse.

And then what happened? EuroGas suffered, in Texas and then in Utah, an enormous judgment for fraud and conspiracy, and was found to have given false testimony to a US Bankruptcy Court in a public document (slide 42). Soon thereafter, involuntary petition for

20:27 bankruptcy, May 2004, and an order for relief in October 2004.

So with no realistic prospects to raise the necessary capital, broken contractual commitments, bankruptcy, EuroGas began what we submit the evidence this week will show was another shell game, reminiscent of the conduct in which it had been engaged, and which had become the suspect of the fraud and conspiracy judgment against it. We believe the fair conclusion is going to be that this was reminiscent of the same kind of approach that was the subject of that fraud conspiracy judgment.

All of the events I have described so far occurred prior to anything happening with respect to the reassignment of that excavation area. All of this capital crisis occurred before anything to do with the reassignment of that excavation area.

So what happened then after EuroGas is in bankruptcy? I am going to move through this quickly. We have touched on some of it already.

Firstly, testimony by EuroGas's CFO that EuroGas did not own the interest in the Slovak talc mines and the claim related thereto. The outright flaunting of the US bankruptcy court's order to file schedules to disclose the interests. A secret incorporation of a new and

20:29 separate legal entity. A sham and secret merger agreement, executed after the conclusion of the bankruptcy, with purported retroactive effect to the period of the bankruptcy. The failure to disclose this obviously material information in any SEC filing: never told the investing public that there was a EuroGas I and a EuroGas II, never told the investing public that EuroGas I had been dissolved, never told the Austrian commercial register any of those facts.

And then the web of asset transfers you have heard about in the jurisdictional section, in an effort, respectfully, to manufacture jurisdiction before this Tribunal. And fundamentally it started with the initial misrepresentation to this Tribunal of the identity of the entity.

Fundamentally, what caused this project to fail? A lack of capital. It was a $25 million project; they brought a tenth of that to it. Those failures occurred long before any of these issues arose at the tail-end of the project. They didn't change the cause of the failure of this project.

Thank you very much. I turn the floor to Mr Anway.

MR ANWAY: Mr Chairman, let me just pick up then on a point we have tried to emphasise in our papers, which is something we'd like you to keep in mind for the rest of

20:31 these hearings, and that is the issue of causation.

I am going to come to the rest of the alleged actions in a moment. But as you will see just from reading any of the Supreme Court decisions that were handed down, those Supreme Court decisions never found that excavation was actually commenced; indeed, as I mentioned, it wasn't even remotely close to being commenced. And the Claimants don't dispute that in this arbitration. For that reason, nothing that could have occurred at the end of -- and certainly well after -- the three-year period could have caused any harm to Rozmin, since it had already failed to fulfil the requirement to keep the excavation area.

I want to emphasise that Rozmin was precluded by law, as the entity from whom the excavation area was being reassigned, from participating in the new tender. That is, it had no legal right to get the excavation area back. So they could not have suffered any damage from any of the events that occurred after or even at the end of the three-year period. Regardless of the state acts that later occurred, it still would have been required to relinquish its excavation area under the 2002 amendment.

You heard a very different story from Claimants today about why they lost the excavation area. I'd like

20:32 to address some of those comments now.

The Claimants try to create the impression that the Slovak authorities had told Rozmin that they would not lose the investment, whether by extending what as I've already explained to you was a different permit, totally independent; or the other act that they cite to is an inspection from Mr Baffi to the site on 8th December 2004, which was one month before the end of the three-year period. I just want you to understand that the reason for that inspection is that a month earlier, on 8th November, Rozmin informed the DMO that it intended to resume work at the site. Under law, it is required that the local DMO personnel come to the site and do an inspection.

You were given the impression today that that inspection somehow verified that the excavation area would not be reassigned. That was not the purpose of the inspection at all. This is a routine inspection that is done when the DMO receives notice that there will be a resumption of works. And the main purpose of the inspection -- indeed, the purpose of the inspection -- is to verify whether the contemporaneous on-site activities are being carried out in accordance with Slovak law, and in particular safety regulations.

So upon receiving the announcement on 8th December,

20:34 Mr Baffi from the DMO conducted a routine inspection to simply make sure that nothing that was going on at the site violated Slovak law; and of course nothing did. He observed that Rozmin was performing surface works, and concluded that none of the surface work activities were carried out in a way that would run afoul of local regulations, especially the safety standards.

That's the beginning and the end of the story. It was a routine inspection. The inspection had nothing to do with Rozmin having commenced excavation during the three-year period, or whether the 2002 amendment would be applied to Rozmin. And that stands to reason, because Mr Baffi did not have the authority to ignore the 2002 amendment, which was mandatory law. It was only to ensure there was no violations of Slovak law.

Just so you can see it for yourself, on slide 46 -- this is from Mr Baffi's report -- this is completely unremarkable. It's a routine inspection:

"During today's inspection no facts were discovered indicating a breach of legal regulations in force."

That's the beginning and the end of the story.

They also have portrayed to you that the state had pre-decided to reassign the licence, and they really cite two different arguments.

First, they cite and build a substantial amount of

20:35 their case on the fact that the notice of initiation of the tender procedure for the assignment of the excavation area was published two days early. Remember, they were not even close to being able to commence excavation. Everyone who knew anything about that excavation area knew it was impossible for them to start at this point in time.

Why did they post it two days early? You will recall earlier that the DMO -- Mr Baffi -- had warned that they might lose the site as early as November. The reason that he said that, and the reason that they posted the note when they did, is that the local DMO office thought that the statute applied starting at an earlier period of time. It was a good faith interpretation of the statute. They thought it commenced on 1st October 2001, rather than 1st January 2002.

Why that day, 1st October? That was the day when Rozmin announced it was suspending work at the site. So the DMO thought that the three-year period ended in October 2004. That was a good faith understanding of a brand new law. So when they published this notice on 30th December, it was after the three-year period as the DMO understood it.

With the benefit of hindsight, we know the Supreme

20:36 Court disagreed and said: no, the period started two months later. But that makes no difference, because Rozmin still was not able to commence excavation -- and was not close to doing so -- during that three-year period that ended on 1st January 2005.

So this miscalculation by the DMO, this incorrect interpretation, had no consequences for Rozmin because Rozmin had not commenced excavation in that time either. But that interpretation that the DMO had explains why they published two days early. There was nothing nefarious in it. They had a different interpretation of the time period, and it turned out to be irrelevant to Rozmin in any event.

In any event, the selection procedure to assign the excavation area commences only upon the first act of the DMO toward Rozmin, vis-ŕ-vis Rozmin. And that notification of the assignment of the excavation area was dated 3rd January 2005, after the three-year period, even as confirmed by the Supreme Court. So the administrative proceeding started only after the expiry of the three-year period.

Members of the Tribunal, are Claimants really staking an investment treaty arbitration case because a notice was posted two days early, when any reasonable observer already knew that the tender would happen

20:38 because Rozmin was not even remotely close to being able to commence excavation?

The second argument is that the Slovak Republic engaged in negotiations with third parties regarding the reassignment of the excavation area before the end of the three-year period. I want to be clear: the Slovak Republic did not negotiate anything. The documents that the Claimants rely upon merely show that there was an interested investor, Mondo, represented by Mr Keller, who had an interest in cooperating with Mr Corej if there was going to be an upcoming tender, and they requested a meeting with the Minister of Economy. He's the minister in charge of mining. The minister agreed to have the meeting. That's what the documents show; nothing else.

(Slide 47) As Mr Corej explains in his witness statement, he first notes:

"It is not uncommon for investors to want to meet with the relevant minister to discuss the relevant ministry's policies and plans for the future before making significant investments."

These meetings are ordinary course. It's what you would expect if you were an investor walking into a country and expecting to invest millions of dollars.

In addition, the allegations surrounding these

20:39 documents are incorrect. The meeting was not at the talc deposit. The Minister of Economy never met with Mr Keller or anyone else from Mondo at that site. Instead the meeting took place in Košice, the second largest city in Slovakia, some 75 kilometres away from the deposit. (Slide 48) And Mr Corej in his witness statement states:

"[The minister at that meeting] ... made clear that any interested [party] in the deposit would have to participate in an open tender selection procedure, and no one would be given preferential treatment."

There is absolutely no evidence that the minister promised anything to anyone. And Mondo didn't even win the tender. So it's unclear what Claimants are even trying to prove with these documents.

Members of the Tribunal, there is nothing before you that suggests in any way, shape or form that corruption was involved. Frankly, we are troubled by how, on such a meagre -- indeed, non-existent -- record, the Claimants would throw out such a sensationalistic and irresponsible allegation.

As noted above, it was public knowledge that the proceedings on cancellation or reassignment would be initiated on this three-year lapse, because they weren't even close to starting excavation. As we noted in our

20:41 papers, and as I explained to you at the beginning, there are opening works, preparation and then excavation. They had only completed 7% of just the opening works; that means they were 93% away from completing opening, much less preparation, much less actual excavation. Given how much work would have to be done to start excavation, it was impossible for Rozmin to start any time soon. And naturally other industry actors began enquiring about the area. That is hardly surprising or unusual.

I am going to conclude now with the court decisions. I have already told you there is an enormous causation problem with Claimants' case because anything that happened after that three-year period can't have caused any harm to Rozmin.

THE PRESIDENT: Are we also going to hear from Ms Polakova?

MR ANWAY: I had hoped so, but unfortunately I think we are a bit short on time.

THE PRESIDENT: How long?

MS GASTRELL: You have seven minutes left.

MR ANWAY: As good as Ms Polakova's presentation is, given how much the Supreme Court decisions have been discussed, I do feel that those facts are important, and facts that I need to address. So we would ask for perhaps a little leniency; but if that is not possible,

20:42 perhaps we could do it in our closing argument.

THE PRESIDENT: Ten minutes would not be a problem.

MR ANWAY: Okay, thank you.

There were three Supreme Court decisions that the Claimants discussed, but the last one did not involve the excavation area, it involved the general mining permit. You will recall there are the different authorisations. And because it doesn't relate to the excavation area, and we have never received a full explanation for how this could have caused any damage to Rozmin, I am not going to focus on that, just in the interest of time. We have dealt with it in our papers.

I am going to focus on the first two Supreme Court decisions that did relate to the excavation area. Both of those decisions required that the District Mining Office run again, re-conduct the reassignment proceeding. But this is the key fact that you have been continuously misled about. Neither of those decisions ever required the DMO to give the licence back to Rozmin for future use, or ever concluded that Rozmin had in fact commenced excavations. They simply told the DMO that it needed to rerun the reassignment proceeding because of procedural deficiencies.

The first decision was about a procedural issue. The 2002 amendment required, we know, reassignment after

20:43 three years. It did not establish the detailed procedures by which that reassignment was to occur. And because of the absence of any kind of detailed statutory guidance, the DMO was sailing on uncharted waters, applying a new statute without the benefit of precedent, without legislative guidance or any other authority that would guide them on how to do the procedure.

Ultimately the way the DMO conducted the procedure was to issue a simple notice to Rozmin in early 2005 about the reassignment area. It did so because it was a mandatory statute. It conducted an open tender, and it ultimately reassigned it to a company called Economy Agency. Mr Corej was involved; but that's not surprising, because Mr Corej had almost as much knowledge about that mine as anyone. It's not at all surprising he would put in the most competitive bid, given his intimate knowledge of the mine.

Rozmin challenged that decision, alleging that the procedure by which the excavation area was reassigned was faulty in two respects. First, it argued that a full administrative proceeding was required, rather than a simple notice. And second, Rozmin said that Rozmin should have been a party to the proceeding, even though it had no legal right to get it back, and could not get it back under the law.

20:45 It was appealed all the way up to the Supreme Court, and the Supreme Court agreed with Rozmin. It went down to the DMO. What did the DMO do? We have been told over and over again: the DMO ignored the Supreme Court decision. The DMO conducted a full administrative proceeding; that was holding number one. And it allowed Rozmin to be a party; that was holding number two. It did exactly what the Supreme Court said it should do. The Supreme Court did not opine on the licence going back to Rozmin.

Rozmin appeals that again. It goes all the way up to the Supreme Court, and it raises a number of arguments that were not raised in the first appeal. I could list them, but I'm very conscious of my time. There are five different arguments -- we have set them forth in our Memorial -- that they raised in that appeal. Why do I mention that? Because if Rozmin had raised these arguments in the first appeal, then the second appeal wouldn't have been necessary at all. Years of litigation would have been saved. Rozmin engaged in piecemeal litigation, and in so doing was solely responsible for this second appeal.

The Supreme Court ultimately found some of these arguments -- but not all of them -- meritorious. One of them was that the three-year period was not October 2001

20:46 to October 2004, but January 2002 to January 2005. That was one of them, the retroactive point.

It also instructed the DMO to undertake a more fulsome analysis -- something it had never told the DMO to do before because Rozmin hadn't raised it in the first appeal -- a more fulsome analysis of the activities on the site. On remand, the DMO again followed the Supreme Court's decision faithfully. It did a thorough investigation of Rozmin's activities on the site. The DMO enquired about the reasons for Rozmin's failure to excavate, and considered Rozmin's financial contributions and commitments to the site, and on that basis it issued a decision on March 30th 2012.

Here's what it found. This is the DMO applying the second Supreme Court decision that you have heard so much about. In a very detailed decision, the DMO concluded:

(1) Between 1st January 2002 and 1st January 2005 Rozmin did not excavate at the site, and failed to perform any of the DMO-approved activities that were necessary to lead to excavation.

(2) Rozmin had performed little work at the site. For example -- and this was the point I raised before -- out of 1,300 metres of decline -- that's the opening works -- that needed to be built, Rozmin had only built

20:48 93. 7% of just opening works; not preparation and not excavation. The openings works had to be completed first.

(3) Given Rozmin's failure to advance on works at the site, and the site's flooding, it could not comply with a pre-approved plan. In other words -- and I won't go into detail -- Rozmin was so far behind schedule that it couldn't commence excavation before the three-year period in any event.

(4) Rozmin had not demonstrated that it had sufficient financial resources -- recall Mr Alexander's discussion -- or the ability to secure funding necessary to commence excavation.

(5) Rozmin's failure to commence excavation was its own responsibility and did not result from (i) the geological characteristics of the mine, (ii) the technical conditions of the project, or (iii) interference from the Slovak authorities. There was no interference from the Slovak authorities which prevented them from being able to commence excavation.

Based on these findings, the DMO concluded that Rozmin's activities at the site were speculative; and that instead of concentrating on developing the mine and excavating the resource, their apparent goal was to delay work, and limit its capital investment in the mine

20:49 until it found a senior mining company interested in buying Rozmin out of the project, which we know it could not do.

The DMO then also applied a public interest analysis raised by the Supreme Court, and reasoned under the mining regulations in effect that public interest was best served by having a rational use of the country's natural resources.

Based on these findings, the DMO confirmed its earlier decision and assigned the excavation area to VSK Mining, which at that time was the legal successor to Economy Agency.

Rozmin then appealed to the DMO again, which denied Rozmin its appeal. And importantly, members of the Tribunal -- and now I come to the end -- Rozmin did not exercise its right to challenge the MMO's decision before the courts. If Rozmin believed that second detailed DMO decision, which followed faithfully every single thing the Supreme Court told it to do, if it thought that that was not in accordance with the second Supreme Court decision, then it could have submitted a claim and appealed to the Supreme Court. And if the reassignment was contrary to the Supreme Court's decision, then the Supreme Court would have certainly reversed it.

20:50 But Rozmin chose not to do so, and the fact that it chose not to do so is very telling. Having not given the Supreme Court an opportunity to review whether the DMO reached a wrong conclusion or didn't follow its instruction, how can they now complain about it now before an international tribunal? Any suggestion that Rozmin did not turn to the courts because it lost faith in the courts is disingenuous because Rozmin has always been successful before the Supreme Court, showing that the Slovak Republic is not at all adverse to the Claimants' investment.

Nor can Claimants plausibly argue that Rozmin was discouraged after eight long years of court proceedings because, as I showed you, Rozmin itself was entirely responsible for that second appeal. If it had just raised those arguments in the first appeal, there would have been only one appeal.

With the benefit of the Supreme Court's decisions on this brand new legislation, the DMO rectified all the procedural deficiencies identified by the Supreme Court and always acted in compliance with its instructions. And of course none of it could have harmed Claimants' investment anyway, because it never commenced excavation during the three-year period.

Members of the Tribunal, I don't know if there is

20:51 time left for Ms Polakova's ...

THE PRESIDENT: I suppose not.

MS GASTRELL: No, certainly not left in the time allotted.

MR ANWAY: As you wish.

THE PRESIDENT: We will rely on your memorials.

MR ANWAY: Thank you. And I think we can probably find a place for it in the closing arguments on Friday.

THE PRESIDENT: Yes, I think that's necessary, maybe not for legal reasons but for human reasons maybe.

MR ANWAY: That was my thought as well.

THE PRESIDENT: Just a question. Back to slide 6, please. The third authorisation, let's say, the authorisation for performance of mining activities, how is it distinguished from general mining permit and assignment of a particular geographic area? Can you explain?

MR ANWAY: Yes. I am happy to defer to some counsel who may be more familiar with the local regulations. But my understanding is that a general mining permit is exactly as it says: very general in nature. This is an overarching permit that a mining company must have before it can engage in this activity anywhere in the country. Obviously the assignment of the particular geographic area is limited to the particular geographic area.

My understanding of the authorisation for the

20:53 performance of mining activities is that it is a specific, detailed authorisation for the particular plan that will be --

THE PRESIDENT: In a specific area?

MR ANWAY: As I understand it, that's correct, yes. But it is not the assignment of the particular geographic area. There is a sharp distinction between 2 and 3, and they operate independently of each other.

THE PRESIDENT: Thank you.

What's the plan for tomorrow? You have three witnesses to cross-examine: Mr Agyagos, Mr Rauball and Dr Rozloznik.

MR ANWAY: Correct.

THE PRESIDENT: Will that take the whole day?

MR ANWAY: I would be surprised if we finished all three tomorrow.

THE PRESIDENT: Okay. So we start, I think, with Mr Agyagos, in the absence of Mr Rauball in the room.

MR ANWAY: Yes, indeed.

THE PRESIDENT: Anything before we leave?

DR GHARAVI: Could you give us a non-binding, very rough indication of how much time you would have with the first witness, so that at least Mr Rauball can ...

MR ANWAY: Much obviously depends on the witness, but I would expect it would not be any less than three

20:55 hours.

DR GHARAVI: So we will plan for Mr Rauball to be there in the afternoon, I guess.

MR ANWAY: I think that's fair.

THE PRESIDENT: Because we start at 9 o'clock.

MR ANWAY: Yes.

THE PRESIDENT: Well, thank you, and see you tomorrow.

MR ANWAY: Thank you.

(8.55 pm)

(The hearing adjourned until 9.00 am the following day)